

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-01/04-02/06
Date: 1 November 2017

TRIAL CHAMBER VI

Before: Judge Robert Fremr, Presiding Judge
Judge Kuniko Ozaki
Judge Chang-ho Chung

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR v. BOSCO NTAGANDA***

Public

**Public redacted version of "Prosecution submissions on appropriate classification level of documents related to deceased witnesses P-0022 and P-0041",
10 December 2015, ICC-01/04-02/06-1050-Conf**

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Other

Introduction

1. The Office of the Prosecutor (“Prosecution”) submits its observations, as ordered by Trial Chamber VI (“Chamber”).¹ It requests that the admitted documents of deceased witnesses P-0022 and P-0041 retain their current classification as confidential due to the security risks that may be posed to surviving relatives if that classification is changed to public.

Confidentiality

2. This filing is classified as “Confidential” pursuant to regulation 23*bis*(1) and (2) of the Regulations of the Court due to the confidential nature of information regarding surviving family members of deceased Prosecution witnesses P-0022 and P-0041. A redacted version of this filing will be filed subsequently.

Procedural History

3. On 28 June 2015, the Prosecution requested the admission of the prior recorded testimony, and associated documents, of three deceased witnesses P-0022, P-0041, and P-0103 (“Documents”), pursuant to rule 68(2)(c) of the Rules of Procedure and Evidence (“Request”). Additionally, or alternatively, the Prosecution sought their admission on the basis of articles 64(9)(a) and 69(2) and (4) of the Statute and rule 63(2) of the Rules (“Alternative Request”).²
4. On 20 July 2015, the Defence submitted its response,³ following the granting of an extension by the Chamber.⁴

¹ ICC-01/04-02/06-1029, p. 18.

² ICC-01/04-02/06-659-Conf.

³ ICC-01/04-02/06-706-Conf-Exp-Red2.

⁴ ICC-01/04-02/06-736-Conf-Exp.

5. On 27 August 2015, the Prosecution filed, as authorised by the Chamber,⁵ its reply on two issues related to admission of the documents associated with prior recorded testimony and the Defence's challenge to the admissibility of P-0022's first statement.⁶
6. On 20 November 2015, the Chamber issued its decision on the Prosecution Request ("Decision").⁷ The Chamber admitted the prior recorded testimony and associated documents of both P-0022 and P-0041, pursuant to rule 68(2)(c) of the Rules and article 69(4) of the Statute.⁸ The Chamber further ordered the Prosecution to file submissions on the appropriate classification level for the documents admitted ("Documents") by 2 December 2015.

Submissions

(a) Request for variation of the time limit

7. Due to an administrative oversight the Prosecution did not file its submissions on the appropriate classification level for the documents admitted, by 2 December 2015, as ordered.
8. The Prosecution recognises the importance of abiding by the time limits imposed by Chambers of the Court and it always endeavors to do so. In this instance, the Prosecution regrets its failure to timely file its observations and respectfully seeks authorisation pursuant to regulation 35 of the Regulations of the Court to submit its observations today. Chambers of the Court have confirmed that even where not all requirements of regulation 35 are met, a Chamber retains discretion to

⁵ Email from the Chamber to the Parties on 20 August 2015 at 13:43.

⁶ ICC-01/04-02/06-796-Conf-Exp.

⁷ ICC-01/04-02/06-1029.

⁸ ICC-01/04-02/06-1029, paras. 28 and 39, and p. 18.

grant an extension of the time limit, including in the interests of justice.⁹ The Prosecution submits that it would not be in the interests of justice to disallow the submissions because any change to the classification of the Documents from confidential to public could endanger surviving relatives of P-0022 and P-0041.

(b) The appropriate classification of the Documents

9. The classification of all the relevant Documents is already indicated in their metadata e-Court, as required, namely as confidential. The Prosecution submits that there is no good reason to alter the existing classification status of the Documents.
10. Although P-0022 and P-0041 are deceased, they both have surviving relatives [REDACTED], whose security would be unnecessarily put at risk if the identities of P-0022 and P-0041 are revealed publicly. The Documents include information of an identifying nature.
11. As the Chamber is aware, there have been apparent attempts to interfere with Prosecution witnesses in this case. Family members of witnesses have also been approached by supporters of the Accused.¹⁰ Thus, there is the possibility of retaliation against family members of witnesses whose testimony is relied upon against the Accused, even if the witnesses themselves are now deceased.
12. In some instances, surviving relatives of P-0022 and P-0041 are not even aware of the witnesses' cooperation with the Court, [REDACTED].

⁹ See e.g. ICC-01/04-01/07-2325-Red, para. 15; ICC-01/04-01/10-505 OA4, para. 11; and ICC-01/04-01/07-653, para. 6.

¹⁰ See e.g. ICC-01/04-02/06-349-Conf-Exp; ICC-01/04-02/06-410-Conf-Exp-Red-Corr, para. 49; ICC-01/04-02/06-785-Red.

Conclusion

13. For all the foregoing reasons the Prosecution requests that the existing classification status of the Documents as indicated in their metadata in e-Court not be altered, namely that they remain confidential.



Fatou Bensouda
Prosecutor

Dated this 1st day of November 2017

At The Hague, The Netherlands