

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-01/04-02/06
Date: 11 December 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***

Confidential *ex parte*, Prosecution and Registry only

Decision on 'Prosecution notification of the consultation of 20 original items by an external expert'

To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Ms Nicole Samson

Counsel for Bosco Ntaganda

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber VI ('Chamber') of the International Criminal Court, in the case of *The Prosecutor v. Bosco Ntaganda*, having regard to Article 64 of the Rome Statute and Regulation 16(3) of the Regulations of the Registry, issues the following "Decision on 'Prosecution notification of the consultation of 20 original items by an external expert'".

I. Procedural history

1. On 21 November 2017, the Office of the Prosecutor ('Prosecution'), pursuant to Regulation 16(3) of the Regulations of the Registry, notified the Chamber of its intention to have an external expert consult 20 original items of evidence disclosed and tendered by the Prosecution and currently stored in the Registry's vault ('Items of Evidence'),¹ should the Chamber have any 'objections' to the consultation taking place; in the alternative, subject to a different interpretation of Regulation 16(3), the Prosecution requests that the Chamber authorise an external expert to consult the Items of Evidence ('Request').²
2. The Prosecution submits that, according to his testimony, Mr Ntaganda travelled to Kigali between 14 and 17 February 2003, and on 15 February 2003, he allegedly signed a registration form at a Kigali hotel ('Hotel Document'),³ which purportedly confirms his stay in Rwanda on those dates.⁴ The Prosecution submits that it has reasons to believe that the accused's signature on the aforementioned document is not authentic, and therefore intends to

¹ The Chamber notes that of the 20 Items of Evidence, all except for one (DRC-OTP-0016-0285) have been admitted into evidence.

² Prosecution notification of the consultation of 20 original items by an external expert, 21 November 2017, ICC-01/04-02/06-2121-Conf-Exp, with a confidential annex. The Prosecution indicates that, in the absence of any objection from the Chamber or, in the alternative, if the Request is granted, it will submit a request to the Registry pursuant to Regulation 16(5) of the Regulations to allow the expert to consult the Items of Evidence outside the area designated within the Registry for a period not exceeding two months, *see* Request, ICC-01/04-02/06-2121-Conf-Exp, para. 30.

³ DRC-D18-0001-5147.

⁴ Request, ICC-01/04-02/06-2121-Conf-Exp, paras 2, 25.

request a forensic examination thereof.⁵ The Prosecution further explains that the intended forensic examination will include a comparison of the signature on the original scanned version of the Hotel Document with a set of samples of Mr Ntaganda's signature, including 20 samples from the Items of Evidence.⁶ The Prosecution submits that the consultation of the original form of the identified items by an external expert is necessary for the forensic examination to be conducted.⁷ It further indicates that it may submit the resulting expert report as evidence in rebuttal of the accused's testimony on this issue, following the completion of the Defence's presentation of evidence.⁸

3. The Request is classified as *ex parte* as it concerns a prospective investigative step envisaged by the Prosecution, the collection of potential rebuttal evidence, of which, the Prosecution submits, the Defence is not entitled to be notified.⁹

II. Analysis

4. Regulation 16(3) of the Regulations of the Registry provides that: 'Chambers and participants may consult the original form of evidence [...] depending on the level of confidentiality of the evidence [...]. Experts or other specified persons may consult the original form of evidence [...] subject to an order of the Chamber.'
5. The Chamber notes the arguments provided by the Prosecution justifying the expert's consultation of the original form of the Items of Evidence, namely that such consultation is necessary to carry out a forensic examination of the accused's signature on a certain document, and that the

⁵ Request, ICC-01/04-02/06-2121-Conf-Exp, paras 2, 26.

⁶ Request, ICC-01/04-02/06-2121-Conf-Exp, paras 3, 28-29. The Prosecution intends to submit to the expert four additional samples from Defence filings or documents dated between March 2013 and June 2017, two of which are confidential, and indicates that with respect to the confidential ones it will submit only extracts limited to the accused's signature. Request, ICC-01/04-02/06-2121-Conf-Exp, para. 29.

⁷ Request, ICC-01/04-02/06-2121-Conf-Exp, para. 24.

⁸ Request, ICC-01/04-02/06-2121-Conf-Exp, paras 2, 26.

⁹ Request, ICC-01/04-02/06-2121-Conf-Exp, para. 6.

resulting expert report may be submitted as evidence in rebuttal of the accused's testimony on that issue.¹⁰

6. While observing that the Hotel Document is not in evidence, and further noting attendant concerns as to the relevance of any resulting expert report, the Chamber authorises the consultation of the Items of Evidence by the designated Prosecution expert as a procedural matter. This is without prejudice to any decision of the Chamber on future requests regarding the further use or admission of the resulting expert report as rebuttal evidence in this case.
7. The Chamber further notes that most of the items in question are currently classified as 'confidential'. In this regard, the Chamber notes that a review of the classification of all items admitted into evidence in the present case is currently ongoing.¹¹ The Chamber notes, however, that all of the identified items are Prosecution exhibits, and therefore considers that the Prosecution is in the best position to assess how to present them to the expert without revealing any confidential information contained therein.¹²

¹⁰ Request, ICC-01/04-02/06-2121-Conf-Exp, paras 24-27.

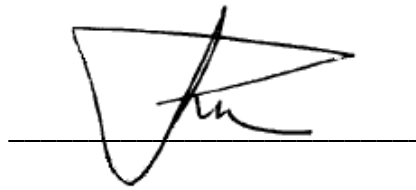
¹¹ See transcript of hearing of 28 August 2017, ICC-01/04-02/06-T-231-Red-ENG, page 4, lines 9-15, and Decision on the reclassification of certain items admitted into evidence, 15 September 2017, ICC-01/04-02/06-2033. See also Observations of the Common Legal Representative of the Victims of the Attacks regarding the reclassification of certain documents admitted into evidence, 31 October 2017, ICC-01/04-02/06-2089; Prosecution's recommendations on the reclassification of items admitted into evidence, 31 October 2017, ICC-01/04-02/06-2091, with confidential Annex A. The latter filing was notified on 1 November 2017. The Defence has not yet provided its observations (see transcript of hearing of 27 November 2017, ICC-01/04-02/06-T-252, page 34, lines 6-22). Of the 20 items identified in the Request, only items DRC-OTP-0014-0272, DRC-OTP-0016-0131, and DRC-OTP-0029-0255 are currently classified as 'public' in eCourt.

¹² See also Decision on adoption of a 'Protocol on the Handling of Confidential Information During Investigations and Contact Between a Party or Participant and Witnesses of the Opposing Party or a Participants, ICC-01/04-02/06-412, 12 December 2014, and Annex A.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

AUTHORISES the consultation of the original form of the Items of Evidence by the designated Prosecution expert.

Done in both English and French, the English version being authoritative.

A handwritten signature in black ink, consisting of a large, stylized 'F' followed by a horizontal line and a small flourish.

Judge Robert Fremr, Presiding Judge

A handwritten signature in black ink, appearing to be 'K. Ozaki' in a cursive style.

Judge Kuniko Ozaki

A handwritten signature in black ink, appearing to be 'Chang-ho Chung' in a cursive style.

Judge Chang-ho Chung

Dated this 11 December 2017
At The Hague, The Netherlands