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No.: **ICC-01/04-02/06**
Date: **15 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***

Public

**Defence observations on Prosecution recommendations on the reclassification of
items admitted into evidence**

Source: Defence Team of Mr Bosco Ntaganda

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

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(Participation / Reparation)**

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REGISTRY

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Victims and Witnesses Unit

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**Victims Participation and Reparations
Section**

Other

Further to Trial Chamber VI (“Chamber”)’s direction to the Parties and participants to coordinate with each other and the Registry, as appropriate, to indicate any items that could be reclassified as ‘public’, with or without redactions, and the submission on 31 October 2017 of the *Prosecution’s recommendations on the reclassification of items admitted into evidence* (“Prosecution Recommendations”), Counsel representing Mr Ntaganda (“Defence”) hereby submit this:

Defence observations on Prosecution recommendations on the reclassification of items admitted into evidence

“Defence Observations”

INTRODUCTION

1. On 22 August 2017, the Chamber ordered the parties and participants to coordinate with each other and the Registry, as appropriate, to review the case record and indicate, by 31 October 2017, any items that can be reclassified as ‘public’, with or without redactions, and to provide reasons for any admitted items to remain confidential.¹
2. On 31 October 2017, the Prosecution filed its *recommendations on the reclassification of items admitted into evidence* (“Prosecution Recommendations”).²
3. On the same date, the Common Legal Representative of the Victims of the Attacks filed his *observations regarding the reclassification of certain documents admitted into evidence* (“LRV Observations”).³

¹ Email from Trial Chamber VI to the Parties and participants dated 22 August 2017 at 12 :32 p.m.

² Prosecution’s recommendations on the reclassification of items admitted into evidence, 31 October 2017, ICC-01/04-02/06-2091.

³ 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.

4. On 03 November 2017, the Defence informed the Chamber that it did not have any proposal for the reclassification of items admitted into evidence from 'confidential' to 'public' at this stage of the proceedings but that it nevertheless intended to submit as soon as practically possible observations on the Prosecution Recommendations and the LRV Recommendations.
5. On 27 November 2017, the Defence informed the Chamber that it expected to be in a position to submit its observations no later than 15 December 2017.⁴

SUBMISSIONS

6. The Defence has reviewed all items classified as 'confidential' that were admitted into evidence in the proceedings to date, as set out in Annex A of the Prosecution Recommendations.
7. The Defence has no objection to all items identified by the Prosecution that can be reclassified as "public", either with or without redactions.
8. However, the Defence deems necessary to make observations on the Prosecution's application for certain redactions.
9. In relation to certain redactions suggested by the Prosecution, the Defence takes the view that the current location of expert witnesses, in particular their place of work, is public knowledge and hence, should not be redacted.⁵
10. More importantly, concerning transcripts and translations of audio-video material, the Defence underscores that the Prosecution referred to non-amended versions of transcripts and translations as being admitted into

⁴ ICC-01/04-02/06-T-252-CONF-ENG-ET, 34:18-22.

⁵ See for instance reclassification recommendations on DRC-OTP-2075-0156, DRC-OTP-2075-0158, DRC-OTP-2075-0173 and DRC-OTP-2075-0179.

evidence.⁶ In this regard, the Defence takes the view pursuant to the Chamber's orders dated 28 December 2017⁷ and 9 May 2017,⁸ that only final amended versions of audio-video material, following their review by the Registry, are admitted into evidence.

RESPECTFULLY SUBMITTED ON THIS 15TH DAY OF DECEMBER 2017



Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands

⁶ See for instance reclassification recommendations on DRC-OTP-0204-0036 and DRC-OTP-0204-0056.

⁷ Order referring certain translation matters to the Registry, 28 December 2017, ICC-01/04-02/06-1705.

⁸ Second order referring certain transcription and translation matters to the Registry, 9 May 2017, ICC-01/04-02/06-1897.