

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: ICC-01/04-02/06

Date: 6 March 2018

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

Prosecution's response to the "Request for further directions to ensure compliance with the Trial Chamber's decision directing the filing of a lesser redacted version of Filing 2179", ICC-01/04-02/06-2248-Conf

Source: Office of the Prosecutor

Document 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 the Defence

Mr Stéphane Bourgon
Mr Christopher Gosnell

Legal Representatives of the Victims

Ms Sarah Pellet
Mr Dmytro Suprun

Legal Representatives of the 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

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

Prosecution's Submissions

1. The Defence requests the Chamber to direct the Prosecution to disclose: (i) “the substantive description” of the anticipated evidence of a witness whom the Prosecution does not intend to rely on in rebuttal “in a way that does not reveal the witness’s identity”; and (ii) “the portion of the witness testimony that concerns Mr NTAGANDA’s testimony”.¹ In the alternative, the Defence requests² that the Chamber itself prepare a further lesser redacted version of the Prosecution’s preliminary submissions,³ in which reference is made to this witness.
2. The Defence Request should be rejected in its entirety. The Prosecution has complied with the Chamber’s 26 February 2018 Order to file a lesser redacted confidential version of the Prosecution Preliminary Submissions concerning rebuttal evidence “with redactions being limited to any information that would reveal the identity of the individual concerned.”⁴ The remaining redactions, if lifted, would reveal the identity of the individual concerned.
3. The Chamber held that protection of the individual’s identity is “justified and necessary” and, since the witness’s information will not be adduced during these proceedings, “not unduly prejudicial to the accused”.⁵ The protections afforded to the individual by the Chamber will be moot if disclosure is made of the precise information he provides, including the passage of the Accused’s testimony to which his information relates.

¹ ICC-01/04-02/06-2248-Conf (“Defence Request”), filed on 1 March 2018. On 2 March 2018, the Chamber set 6 March 2018 as the deadline for any responses to the Defence Request, *see* email from the Chamber to the Parties and participants dated 2 March 2018 at 10:42.

² Defence Request, para. 9(b).

³ The Prosecution’s preliminary submissions were originally filed *ex parte* (ICC-01/04-02/06-2179-Conf-Exp, “Prosecution Preliminary Submissions”) on 11 January 2018, with a confidential redacted version (ICC-01/04-02/06-2179-Conf-Red) provided on the same day. A second confidential redacted version (ICC-01/04-02/06-2179-Conf-Red2) was provided on 25 January 2018.

⁴ ICC-01/04-02/06-2246, para. 25 (“26 February 2018 Order”). Subsequent to the 26 February 2018 Order, the Prosecution filed a third confidential redacted version of the Prosecution Preliminary Submissions (ICC-01/04-02/06-2179-Conf-Red3) on 28 February 2018.

⁵ ICC-01/04-02/06-2230, para. 11.

4. Since this issue is the subject of parallel litigation, the Prosecution incorporates its previous submissions⁶ by reference.

Confidentiality

5. This filing is classified as “Confidential” pursuant to regulation 23*bis*(2) of the Regulations of the Court since it responds to a request bearing the same classification. The Prosecution requests the Chamber’s authorisation to reclassify this filing as “Public” since it contains no confidential information.

Conclusion

6. For the foregoing reasons, the Defence Request should be rejected.



Fatou Bensouda
Prosecutor

Dated this 6th day of March 2018
At The Hague, the Netherlands

⁶ ICC-01/04-02/06-2247-Conf, paras. 3, 6, 8-14.