

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: 22 May 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***

Public

**Decision on the Defence request for admission of three items used during the
testimony of the accused**

Decision 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

Mr Stéphane Bourgon

Mr Christopher Gosnell

Legal Representatives of Victims

Ms Sarah Pellet

Mr Dmytro Suprun

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 Peter Lewis

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 Articles 64(2) and (9)(a), and 69(2) and (4) of the Rome Statute, and Rule 63(2) of the Rules of Procedure and Evidence, issues the following 'Decision on the Defence request for admission of three items used during the testimony of the accused'.

I. Background and submissions

1. On 16 March 2018, the presentation of evidence was declared closed.¹
2. On 14 May 2018, the defence team for Mr Ntaganda ('Defence') requested the admission into evidence of items DRC-D18-0001-5683, DRC-D18-0001-5748, and DRC-D18-0001-5778 ('Items'), used during the testimony of the accused, which, 'due to an oversight', were not tendered into evidence at that time ('Request').²
3. The Defence submits that, despite the closure of presentation of evidence, the admission of the Items at this stage is 'necessary, practical as well as in the interests of justice'.³ In this regard, the Defence notes that: (i) the Items were used by the Defence and the Office of the Prosecutor ('Prosecution') 'on multiple occasions' during the accused's testimony, which therefore needs to be assessed on the basis of these items;⁴ (ii) item DRC-D18-0001-5683 is an 'identical reproduction/copy, in colour, containing blank pages', of item DRC-OTP-0017-0003, the short UPC Communications Logbook, admitted into evidence on 10 February 2016, and is the only version that is identical to the version stored in the Registry's vault;⁵ (iii) item DRC-D18-0001-5478 is a replica

¹ Decision closing the presentation of evidence and providing further directions, ICC-01/04-02/06-2259.

² Request on behalf of Mr Ntaganda seeking admission in evidence of three items used during the testimony of Witness D-0300, ICC-01/04-02/06-2284, paras 2 and 42.

³ Request, ICC-01/04-02/06-2284, para. 34.

⁴ Request, ICC-01/04-02/06-2284, para. 21.

⁵ Request, ICC-01/04-02/06-2284, paras 5, 10, and 23-25. The Defence highlights that the only difference between item DRC-D18-0001-5683 and item DRC-OTP-0017-0003 is that the latter is reproduced in black and white, recto side only, and does not include blank pages.

of DRC-D18-0001-5683 in which the pages have been reorganised by the accused and referred to by him during his testimony, is referred to in the Prosecution's closing brief, and 'faithfully reproduces the original version' kept in the vault;⁶ and (iv) item DRC-D18-0001-5778 is a copy of item DRC-OTP-2102-3828, the amended translation of the reorganised version of the short UPC Communications Logbook.⁷

4. The Defence further submits that admission of the Items is not prejudicial to the Prosecution or the participants,⁸ noting that: (i) the Items are not new but were formally disclosed on 3 July 2017;⁹ (ii) items DRC-D18-0001-5748 and DRC-D18-0001-5778 have been extensively used by the parties during the accused's testimony;¹⁰ (iii) the Defence intends to refer to the Items in its closing brief;¹¹ (iv) the Prosecution and the participants will have an opportunity to address these references in their respective responses;¹² (v) the Chamber must have the ability to assess the accused's testimony on the basis of the documents that were in the accused's possession when he testified;¹³ and (vi) had the Defence requested admission of the Items during the accused's testimony, all requirements for their admission would have been met.¹⁴
5. On 21 May 2018, in line with the time limit set by the Chamber,¹⁵ the Prosecution filed its response, not opposing the Request ('Response').¹⁶ The Prosecution submits that: (i) while the Defence requests to re-open the evidentiary phase of the case, which is an exceptional remedy generally

⁶ Request, ICC-01/04-02/06-2284, paras 27-30.

⁷ Request, ICC-01/04-02/06-2284, paras 32-33.

⁸ Request, ICC-01/04-02/06-2284, para. 34.

⁹ Request, ICC-01/04-02/06-2284, para. 35.

¹⁰ Request, ICC-01/04-02/06-2284, paras 36-37.

¹¹ Request, ICC-01/04-02/06-2284, para. 38.

¹² Request, ICC-01/04-02/06-2284, para. 38.

¹³ Request, ICC-01/04-02/06-2284, para. 39.

¹⁴ Request, ICC-01/04-02/06-2284, para. 40.

¹⁵ Email from the Chamber on 15 May 2018, at 09:26.

¹⁶ Prosecution's response to the "Request on behalf of Mr Ntaganda seeking admission in evidence of three items used during the testimony of Witness D-0300", ICC-01/04-02/06-2284, ICC-01/04-02/06-2286.

involving the admission of ‘fresh’ evidence not otherwise used during the trial, the Request ‘is not *per se* a request to admit “fresh” evidence’, since it relates to items used during the accused’s testimony;¹⁷ and (ii) admitting the Items will make it easier for the Chamber to follow and assess the accused’s evidence related to these items.¹⁸

II. Analysis

6. At the outset, noting that the Items were used during the presentation of evidence, the Chamber considers that the Request does not amount to a request to re-open the presentation of evidence involving the submission of ‘fresh’ evidence.
7. Given that the Items were repeatedly referred to during the testimony of the accused, the Chamber is of the view that their admission will facilitate the Chamber’s assessment of the accused’s testimony in this regard. Further, in view of the Defence’s submission that the Items have not been previously tendered into evidence ‘due to an oversight’, and as their admission is not opposed, the Chamber considers that no undue prejudice arises from admission at this stage. In these circumstances, and on an exceptional basis, the Chamber finds it appropriate to admit the Items into evidence.

¹⁷ Response, ICC-01/04-02/06-2286, para. 5.

¹⁸ Response, ICC-01/04-02/06-2286, para. 6.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

GRANTS the Request;

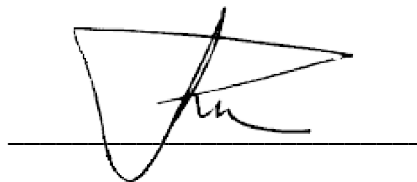
ADMITS items DRC-D18-0001-5683, DRC-D18-0001-5748, and DRC-D18-0001-5778 into evidence;

DIRECTS the Registry to update the eCourt metadata of the aforementioned items so as to reflect their admission status and the fact that they were admitted pursuant to the present decision;

DIRECTS the Registry to file the final list of admitted items in the record of the case; and

DIRECTS the Defence, in coordination with the Prosecution, to file, within one week of notification of the present decision, submissions on the appropriate confidentiality level for the items admitted by way of the present decision.

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



Judge Robert Fremr, Presiding Judge



Judge Kuniko Ozaki



Judge Chang-ho Chung

Dated this 22 May 2018

At The Hague, The Netherlands