

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: **ICC-01/04-02/06**
Date: **11 December 2019**

TRIAL CHAMBER VI

Before: Judge Chang-ho Chung, Presiding Judge
Judge Robert Fremr
Judge Olga Herrera Carbuccion

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
*THE PROSECUTOR v. BOSCO NTAGANDA***

**Public
with one confidential annex**

Decision on Defence request in relation to *ex parte* filings

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**

Other

Trial Chamber VI ('Chamber') of the International Criminal Court, in the case of *The Prosecutor v. Bosco Ntaganda*, having regard to Articles 64, 67, and 68 of the Rome Statute and Regulation 23bis of the Regulations of the Court, issues this 'Decision on Defence request in relation to *ex parte* filings'.

I. BACKGROUND AND PROCEDURAL HISTORY

1. On 16 March 2017, the Chamber partially granted a request by the Defence for 'disclosure of any and all *ex parte* materials before the Chamber that concern, directly or indirectly, allegations of witness coaching against Mr Ntaganda or his associates and family',¹ and instructed the parties and participants to 'continue reviewing their filings and file lesser redacted versions, or request reclassification, if redactions are no longer necessary'.²
2. At various other moments during the trial, the Chamber decided on Defence requests in relation to *ex parte* materials³ or filings.⁴ On 15 February 2018, for example, the Chamber granted a Defence request to be provided with redacted versions of an *ex parte* filing by the Prosecution and an *ex parte* decision issued by the Chamber.⁵
3. On 1 November 2019, the Defence, by email, informed the Chamber that it 'is currently reviewing the record of the proceedings against Bosco Ntaganda during the period from 29 August 2013 to 31 August 2018 with a view to identifying any *ex parte* submissions addressed to the Chamber or to Pre-Trial Chamber II' ('1 November Email').⁶ It indicated that it had 'identified 91 *ex parte* submissions addressed either to the Chamber or to Pre-Trial Chamber II during the relevant

¹ Motion on behalf of Mr Ntaganda requesting access to *ex parte* material before the Chamber in Case ICC-01/04-02/06, 17 February 2018, ICC-01/04-02/06-1790-Conf.

² Decision on Defence request for access to *ex parte* material, ICC-01/04-02/06-1826.

³ E.g., Decision on Defence request seeking provision of transcript of the *ex parte* hearing held on 30 October 2015, 24 February 2016, ICC-01/04-02/06-1189-Conf.

⁴ E.g., Decision on Defence request for reclassification of *ex parte* filings, 8 January 2018, ICC-01/04-02/06-2177.

⁵ Decision on expedited Defence request for reclassification of *ex parte* documents, ICC-01/04-02/06-2230.

⁶ Email from the Defence to the Chamber, the Prosecution, and the participants on 1 November 2019, at 15:46.

period', and that the Prosecution had confirmed *inter partes* being the source of 35 of these filings.⁷

4. That same day, the Prosecution responded by email, noting that for 7 of the 35 Prosecution *ex parte* filings referred to by the Defence, it was responding to *ex parte* filings that originated from another entity or participant to the proceedings.⁸ In that same email, and in a further email dated 8 November 2019,⁹ respectively, the Prosecution requested guidance on how to proceed with the aforementioned seven filings in which it was responding to *ex parte* filings and requested the Chamber's authorisation to reclassify a further nine confidential *ex parte* filings to confidential. In the following days, the Prosecution filed confidential redacted versions of the remaining 19 confidential *ex parte* filings of which it had been the source.
5. On 8 November 2019, the Chamber issued its Sentencing judgment,¹⁰ following which the Presidency re-composed the Chamber,¹¹ and the Chamber in its new composition elected Judge Chang-ho Chung as Presiding Judge from then onwards.¹²
6. On 28 November 2019, the Defence, referring to the 1 November Email, requested:

the assistance of the Chamber in relation to three issues, namely:

1) To be provided with: (i) the filing numbers of the remaining 56 *ex parte* submissions originating from sources other than the Prosecution; (ii) the identity of the sources (submitting parties); and (iii) the title of the 56 *ex parte* submissions as well as the object/nature of these *ex parte* submissions[;]

2) To be informed of any Decision to which the Defence has access to, in which any of these 56 *ex parte* submissions were addressed either by Pre-Trial Chamber II or by the Chamber; [and]

⁷ 1 November Email.

⁸ Email from the Prosecution to the Chamber, the Defence, and the participants on 1 November 2019, at 15:58.

⁹ Email from the Prosecution to the Chamber on 8 November 2019, at 15:38.

¹⁰ ICC-01/04-02/06-2442 (with one public annex).

¹¹ Decision re-composing Trial Chamber VI, 20 November 2019, ICC-01/04-02/06-2444.

¹² Decision notifying the election of the Presiding Judge and the designation of a Single Judge, 22 November 2019, ICC-01/04-02/06-2445.

3) To take the necessary measures with a view to ensuring that the sources of these 56 *ex parte* submissions (submitting parties) submit confidential redacted, redacted or public versions of their *ex parte* filings. ('Request')¹³

7. On 29 November 2019, the Chamber provided the Prosecution the clarification sought in its emails dated 1 and 8 November 2019, respectively. In relation to the seven filings in which the Prosecution was responding to *ex parte* filings, while emphasising that, even though the filings concern matters that do not relate directly to Mr Ntaganda, or the case against him, noting that the filings originate from the Prosecution, the Chamber authorised the requested reclassification from *ex parte* to confidential.¹⁴ In relation to the further nine *ex parte* filings in relation to which the Prosecution requested the Chamber's authorisation to reclassify them to confidential, the Chamber authorised the requested reclassification.¹⁵
8. On 2 December 2019, the Chamber, noting in relation to point 1 of the Request that the Defence appeared to have the filing numbers of the 'remaining 56 *ex parte* submissions originating from sources other than the Prosecution', requested the Defence to indicate, at its earliest convenience, the filing numbers of the *ex parte* filings in relation to which it wished to be informed of their source, title, nature and/or object.¹⁶ That same day, the Defence duly provided a table with the requested information.¹⁷

II. DECISION

9. The Chamber hereby provides the parties and participants with its decision on the status of the 56 filings identified by the Defence. The decision per filing is indicated in the annexed table, which indicates the filing number, the title, and the source of each filing, as well as the Chamber's ruling. The rulings range from the Chamber ordering the reclassification of certain filings from confidential *ex parte* to confidential to providing an explanation for the continued *ex parte* status.

¹³ Email from the Defence to the Chamber, the Prosecution, and the participants on 28 November 2019, at 14:34.

¹⁴ Email from the Chamber to the parties and participants on 29 November 2019, at 12:00.

¹⁵ Email from the Chamber to the parties and participants and the Registry on 29 November 2019, at 12:04.

¹⁶ Email from the Chamber to the parties and participants on 2 December 2019, at 15:06.

¹⁷ Email from the Defence to the Chamber, the Prosecution, and the participants on 2 December 2019, at 19:35.

10. The Chamber notes that 15 of the 56 filings were filed before Pre-Trial Chamber II, and were not previously considered by the Chamber. It further emphasises that, even though it now reclassifies a number of filings from *ex parte* to confidential, in relation to some of them, the Defence was already privy to the relevant information contained therein, and that due to the nature of the filings and/or their content, no prejudice arises to Mr Ntaganda as a result of such filings not having been available to the Defence until this point. The Chamber also emphasises that no prejudice arises to Mr Ntaganda as a result of the continued *ex parte* status of certain filings, as their content does not concern the charges and/or evidence of the criminal case against Mr Ntaganda. In the Chamber's view, the provision of the information contained in the annex to this decision ought to make this sufficiently clear to the Defence.
11. The Chamber has thereby addressed points 1 and 3 of the Request. Given the fact that the Defence will be provided with confidential or confidential redacted versions of a number of the filings identified by it and that the other filings do not concern the charges or the evidence against Mr Ntaganda, the Chamber does not consider it necessary to 'inform' the Defence of 'any Decision to which the Defence has access to, in which any of these 56 *ex parte* submissions were addressed either by Pre-Trial Chamber II or by the Chamber'.¹⁸

¹⁸ Point 2 of the Request.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

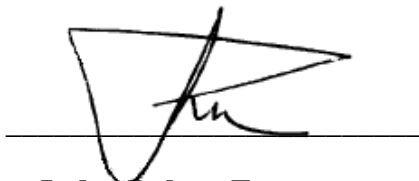
GRANTS the Request in part; and

INSTRUCTS the Registry and the Legal Representative of the Victims of the Attacks to implement the Chamber's rulings as indicated in the annex.

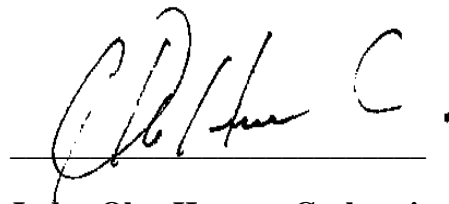
Done in both English and French, the English version being authoritative.



Judge Chang-ho Chung, Presiding Judge



Judge Robert Fremr



Judge Olga Herrera Carbuccion

Dated 11 December 2019

At The Hague, The Netherlands