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

Date: **29 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***

Public

**Defence observations on Prosecution recommendations
regarding 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:

The Office of the Prosecutor

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Legal Representatives of Victims

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**Unrepresented Applicants
(Participation / Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
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States' Representatives

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REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**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,¹ and the submission on 28 March 2018 of the *Prosecution’s recommendations on the reclassification of items admitted into evidence through the Defence bar table motion* (“Prosecution Recommendations”),² Counsel representing Mr Ntaganda (“Defence”) hereby submit this:

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

“Defence Observations”

INTRODUCTION

1. On 31 January and 21-22 February 2018, the Chamber ordered the parties and participants to coordinate with each other and the Registry, as appropriate, to review the documents admitted *via* the Defence bar table motions and to indicate any items that could be reclassified as ‘public’, with or without redactions by 29 March 2018.
2. On 28 March, the Prosecution filed its Prosecution Recommendations.

SUBMISSIONS

3. The Defence has reviewed all items admitted into evidence pursuant to the Chamber’s decisions on the bar table motions submitted by the Defence, as set out in Annex A to the Prosecution Recommendations (“OTP Annex A”)

¹ ICC-01/04-02/06-2201-Conf, para.66, ICC-01/04-02/06-2240, para.12 and ICC-01/04-02/06-2241, para.10.

² ICC-01/04-02/06-2265.

4. Other than for the ten items addressed below, the Defence agrees with the Prosecution's recommendations regarding the reclassification of certain items as public, with or without redactions, as well as concerning the documents which should not be reclassified and remain confidential.
5. OTP Annex A - Item No 34: Reclassification as a public document is not opposed but without redactions. Whereas the document might contain information related to a witness, which is not clear, public access to this document would not allow to identify him or her.
6. OTP Annex A - Item No 35: Reclassification as a public document is not opposed but without redactions. Whereas the document does refer to the name of a Prosecution witness, public access to this document would not allow to identify him.
7. OTP Annex A – Items 47, 48, 100 and 101: Reclassification as public documents is not opposed but without redactions. Although the protection of innocent third parties is a valid objective, redacting the identities of all persons considered to be innocent third parties would defeat the purpose of reclassifying these documents. Adopting this approach implies that many other documents would require redactions.
8. OTP Annex A – Item 70: Contrary to the Prosecution's recommendations, this document should be reclassified as a public document. This item is similar to many other documents, which were not provided under Article 54(3)(e) and the fact that this document was obtained pursuant to this provision does not appear on the document. More importantly, public access to this document would not allow to establish the source's identity or the identity of any particular witness.

9. OTP Annex A – Items 126, 127 and 128: Contrary to the Prosecution’s recommendations, these documents should be reclassified as public documents. Considering that certain redactions have already been applied to protect the identities of persons referred to therein, the justification provided that they ‘fall with Prosecution internal works’ is not valid. Moreover, public access to these documents would not allow to identify either protected witnesses or the intermediary involved.

RESPECTFULLY SUBMITTED ON THIS 29th DAY OF MARCH 2018

A handwritten signature in black ink, appearing to read 'StB' with a flourish at the end.

Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands