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

Public redacted version of "Prosecution's Submission of Additional Evidence in Support of "Prosecution's urgent request for measures under regulation 101(2) of the Regulations of the Court" dated 8 August 2014", 18 September 2014, ICC-01/04-02/06-371-Conf-Exp

Source: The Office of the Prosecutor

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

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I. Introduction

1. On 10 September 2014, the Prosecution obtained a document that Prosecution witness [REDACTED] allegedly emanating from third parties. The document is consistent with [REDACTED] account of disclosure of confidential information by Bosco NTAGANDA ("Accused") and attempted interference by the Accused's associates. The document references [REDACTED] interview with the Prosecution in [REDACTED]; it refers solely to the names of persons whose identity is not redacted in the version of the [REDACTED] provided to the Accused; and it identifies passages of the [REDACTED] using confidential registration references only available to the Accused and his Defence team.
2. The Prosecution submits the additional evidence (the document and an accompanying "Investigator's Note"), attached as Annexes A and B, in support of its request for measures under regulation 101(2) of the Regulations of the Court ("RoC") ("Prosecution's Request").¹ The Prosecution asks that the Chamber consider this additional evidence in its assessment of the Prosecution's Request.

II. Confidentiality

3. This filing and Annexes A and B are classified as "Confidential, *EX PARTE* – only available to the Prosecution and VWU," as they contain information that could impact the security of a Prosecution witness [REDACTED] and [REDACTED].

III. Procedural History

4. On 8 August 2014, the Prosecution filed a request for measures under regulation 101(2) of the RoC² in the case against the Accused.
5. On 1 September 2014, the Defence filed its response.³

¹ ICC-01/04-02/06-349-Conf-Exp.

² ICC-01/04-02/06-349-Conf-Exp, with Confidential redacted version at ICC-01/04-02/06-349-Conf-Red.

6. On 12 September 2014, the Prosecution filed its reply to the Defence response,⁴ after having been granted leave to do so.⁵

IV. Prosecution's Observations

7. The Prosecution's Request sets out detailed allegations concerning witness interference and improper disclosure of confidential information by the Accused involving Prosecution witnesses [REDACTED],⁶ [REDACTED] and another witness.⁷ The Prosecution has recently received further evidence in support of [REDACTED] allegations that the Accused has provided confidential [REDACTED] to third parties. It requests that the Chamber consider this additional evidence in its assessment of the Prosecution's Request.
8. On [REDACTED], [REDACTED] contacted the Prosecution asking whether it had received a document [REDACTED]. The Prosecution immediately [REDACTED] and on [REDACTED] transmitted a copy of a handwritten document to the Prosecution. On [REDACTED], representatives of the Prosecution spoke with [REDACTED] by phone [REDACTED] to obtain information about the document.⁸
9. The document refers to information contained in [REDACTED] interview with the Prosecution completed in [REDACTED].⁹
10. The witness indicated that [REDACTED] received the document approximately [REDACTED] ago from [REDACTED]. According to the witness, [REDACTED] currently resides [REDACTED].¹⁰

³ ICC-01/04-02/06-360-Conf-Exp.

⁴ ICC-01/04-02/06-368-Conf-Exp.

⁵ ICC-01/04-02/06-367-Conf.

⁶ See ICC-01/04-02/06-349-Conf-Exp, paras. 27-36.

⁷ See ICC-01/04-02/06-349-Conf-Exp, paras. 15-26 and 37-41 (note that the allegations concerning one witness, [REDACTED], only concerned witness interference, not disclosure of confidential information).

⁸ [REDACTED].

⁹ [REDACTED]; [REDACTED].

¹⁰ [REDACTED].

11. [REDACTED] stated that the document was given [REDACTED].¹¹ [REDACTED] approached [REDACTED] with the document. [REDACTED] that [REDACTED] personally made the handwritten notes based on information provided to [REDACTED] by [REDACTED].¹²
12. The document reveals two significant points that corroborate [REDACTED] account that the Accused has circulated confidential witness statements to third parties. First, only [REDACTED] present during the interview are named in the document; notably, other persons were also present during the interview but their identity was redacted in the version disclosed to the Accused. [REDACTED] is not privy to the Prosecution's application for redactions and does not know which [REDACTED] of those in attendance during [REDACTED] interview were later subject to identity redactions in the version provided to the Accused.
13. Second, the document refers to the Prosecution's Evidence Registration Numbers ("ERNs") of [REDACTED].¹³ According to the Prosecution's records, the Prosecution has not provided this information to [REDACTED] is not aware of these [REDACTED] references. The [REDACTED] ERNs are, however, contained in the redacted version [REDACTED] provided to the Accused.
14. The document provided by [REDACTED] supports the allegations made in the Prosecution's Request concerning improper disclosure of confidential information by the Accused and witness interference. Specifically, it supports [REDACTED] previous assertion that [REDACTED] are in possession of the [REDACTED] interview with the Prosecution and are contacting [REDACTED].

¹¹ [REDACTED].

¹² [REDACTED].

¹³ [REDACTED].

15. This latest piece of evidence emphasises the ongoing need for measures pursuant to regulation 101(2) as set out in the Prosecution's Request.¹⁴

V. Conclusion

16. Based on the foregoing, the Prosecution submits the additional annexed evidence and requests that the Chamber consider it in the assessment of the Prosecution's Request.



Fatou Bensouda
Prosecutor

Dated this 15th day of January 2016

At The Hague, The Netherlands

¹⁴ See ICC-01/04-02/06-349-Conf-Exp, para. 51.