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No.: ICC-01/04-02/06
Date: 02 September 2016

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
With confidential annex A**

**Corrected version of “Public redacted version of
‘Request on behalf of Mr Ntaganda seeking Trial Chamber VI to request the
Prosecutor to conduct an investigation into Witness [REDACTED]’s testimony for
the offence of giving false testimony under Article 70’,
31 August 2016, ICC-01/04-02/06-1483-Conf”, 01 September 2016, ICC-01/04-02/06-
1483**

Source: Defence Team of Mr Bosco Ntaganda

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

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Section**

Further to the testimony of Witness [REDACTED] from [REDACTED], Counsel representing Mr Ntaganda (“Defence”) hereby submit this:

Request on behalf of Mr Ntaganda seeking Trial Chamber VI to request the Prosecutor to conduct an investigation into Witness [REDACTED]’s testimony for the offence of giving false testimony under Article 70(1)(a)

“Defence Request”

1. The Defence respectfully seeks Trial Chamber VI (“Chamber”) to request the Prosecution to initiate and conduct an investigation into Witness [REDACTED]’s testimony under oath before the International Criminal Court (“Court”), for the Article 70 offence of false testimony.
2. In particular, the witness lied in testifying that he [REDACTED].
3. The circumstances in which [REDACTED], however, are well-documented and well-known. In almost no respect is [REDACTED]’s account truthful, as he could not have failed to know. The witness’s false testimony is so blatant, so material, and so serious, that the integrity of the Court requires the imposition of a meaningful sanction.

APPLICABLE LAW

4. Article 70(1)(a) declares that “the Court shall have jurisdiction over the following offences against its administration of justice when committed intentionally: (a) Giving false testimony when under an obligation pursuant to article 69, paragraph 1, to tell the truth.”
5. Rule 165 of the Rules of Procedure and Evidence (“Rules”) empowers the Prosecutor (“Prosecution”) to initiate and conduct investigations with respect to offences defined in Article 70 of the Statute on her own initiative, on the basis of information communicated by a Chamber or any reliable source.

BACKGROUND

6. [REDACTED], during its examination-in-chief, the Prosecution asked Witness [REDACTED] whether he witnessed, in addition to events he had testified about, [REDACTED].¹ Witness [REDACTED] volunteered that [REDACTED].²

SUBMISSIONS

7. Only one [REDACTED] Witness [REDACTED]. The event is widely-known and well-documented.³ The Prosecution's own investigations have presumably confirmed these accounts.⁴
8. Witness [REDACTED] testified *inter alia* that [REDACTED];⁵ [REDACTED],⁶ [REDACTED] ⁷ [REDACTED]; [REDACTED].⁸
9. Having explored the circumstances of [REDACTED] at length, the Defence put to the witness that: (i) [REDACTED]; (ii) [REDACTED]; and (iii) [REDACTED] Witness [REDACTED]. The Defence suggested to Witness [REDACTED] that his testimony in this regard was, in fact, a complete fabrication.⁹
10. Witness [REDACTED] denied the suggestion.¹⁰

¹ [REDACTED].

² [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

³ [REDACTED]; [REDACTED]; U.N. Observer Shot Dead In Congo, Reflecting Last Year's Troubles, SunSentinel, 14 February 2004: http://articles.sun-sentinel.com/2004-02-14/news/0402140105_1_peacekeeping-mission-military-observers-convoy ; Killing of a U.N. Observer in Congo Heightens a Mission's Fears, The New York Times, 14 February 2004: http://www.nytimes.com/2004/02/14/world/killing-of-a-un-observer-in-congo-heightens-a-mission-s-fears.html?_r=0.

⁴ Any such information, incidentally, should be subject to disclosure to the Defence pursuant to Article 67(2).

⁵ [REDACTED].

⁶ [REDACTED].

⁷ [REDACTED].

⁸ [REDACTED].

⁹ [REDACTED].

¹⁰ [REDACTED].

11. The Defence then proceeded to read out an excerpt of document [REDACTED].
12. [REDACTED]: (i) [REDACTED]; (ii) [REDACTED] ; (iii) [REDACTED]; (iv) [REDACTED]; (v) [REDACTED]; and (vi) [REDACTED].¹¹ [REDACTED].¹²
13. The Defence also quoted an excerpt of document [REDACTED].
14. [REDACTED]: (i) [REDACTED]; (ii) [REDACTED]; and (iii) [REDACTED].¹³
15. The Defence underscores that [REDACTED] demonstrate clearly that the event during which [REDACTED], did not unfold in any way as Witness [REDACTED] described it during his testimony. It is also obvious on this basis that [REDACTED] was neither present nor involved in this incident.
16. This is significant in respect of the following aspects of the incident during which [REDACTED]:
 - a. [REDACTED] ¹⁴;
 - b. [REDACTED] ¹⁵;
 - c. [REDACTED] ¹⁶, and;
 - d. [REDACTED].¹⁷
17. On the basis of [REDACTED], the Defence reiterated to Witness [REDACTED] its case that his testimony concerning [REDACTED] was a pure invention.¹⁸
18. In response to the Defence's suggestion, Witness [REDACTED] answered:

¹¹ [REDACTED].

¹² [REDACTED].

¹³ [REDACTED].

¹⁴ [REDACTED]. On the contrary, Witness [REDACTED].

¹⁵ [REDACTED]. On the contrary, Witness [REDACTED].

¹⁶ [REDACTED]. On the contrary, Witness [REDACTED].

¹⁷ [REDACTED]. On the contrary, Witness [REDACTED].

¹⁸ [REDACTED].

A. [REDACTED].¹⁹

(emphasis added)

19. Witness [REDACTED]'s answer evidences an implicit acknowledgement that although he might have been informed in nebulous circumstances about [REDACTED], it did not happen as he described it and he was neither involved nor present when it happened. Significantly, the Defence gave Witness [REDACTED] every opportunity to correct his testimony. What is more, when confronted with [REDACTED] Witness [REDACTED] implicitly acknowledged [REDACTED] while continuing to deny that he did not tell the truth.
20. The witness's conduct goes far beyond a mere question of credibility. Witness [REDACTED]'s answer to the Defence's suggestion that his testimony is a pure fabrication constitutes a sufficient basis triggering the Prosecutor's duty to consider initiating and conducting an investigation into Witness [REDACTED]'s testimony under Article 70(1)(a) and Rule 165. The witness persisted in his fabrication and offered many details to make his made-up narrative appear more credible. The lie does not concern a minor detail, but a false accusation of [REDACTED].²⁰ This is a situation where, to adopt the words of the *Katanga* Trial Chamber, the witness "intentionally tried to mislead" the Trial Chamber.²¹
21. Finally, the Defence posits that such behaviour from a witness must be investigated, and if there are sufficient grounds to believe that the witness lied under oath, prosecuted in order to avoid creating an impression of impunity when a witness openly lies when testifying.

¹⁹ [REDACTED].

²⁰ [REDACTED].

²¹ Katanga, 22 September 2012, ICC-01/04-01/07-T-190-Red-ENG, p.5, ll.18-19.

CONFIDENTIALITY

22. Pursuant to Regulation 23*bis* (1) of the Regulations of the Court, this Defence Request is classified as confidential, as it refers to matters raised in private session. The Defence will submit a public redacted version of its Request.

RELIEF SOUGHT

23. In light of the above submissions, the Defence respectfully seeks the Chamber to:

REQUEST that the Prosecutor initiate and conduct an investigation into Witness [REDACTED]'s testimony for the purpose of determining whether proceedings under Article 70(1)(a) should be instigated.

RESPECTFULLY SUBMITTED ON THIS 2ND DAY OF SEPTEMBER 2016



Me Stéphane Bourgon, Counsel for Bosco Ntaganda

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