

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 14 October 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

Public redacted version of "Urgent Request on behalf of Mr Ntaganda seeking disclosure of material related to Intermediary P-0154 as well as the lifting of redactions applied to this material", 15 September 2016, ICC-01/04-02/06-1509-Conf

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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Pursuant to Articles 64(3)(c) and 67(2) of the Statute and Rules 76, 77 and 81 of the Rules of Procedure and Evidence (“Rules”) and further to correspondence exchanged with the Office of the Prosecutor (“Prosecution” or “OTP”), Counsel representing Mr Ntaganda (“Defence”) hereby submit this:

**Public redacted version of “Urgent Request on behalf of Mr Ntaganda seeking disclosure of material related to Intermediary P-0154 as well as the lifting of redactions applied to this material”, 15 September 2016, ICC-01/04-02/06-1509-Conf
“Urgent Defence Request”**

INTRODUCTION

1. The Defence requests an order compelling the Prosecution to:

A. Disclose:

- i. All documents in the possession of the Prosecution related to the contacts between the Prosecution and Intermediary P-0154;
- ii. All documents in the possession of the Prosecution related to the contacts between Intermediary P-0154 and potential witnesses (including but not limited to the Prosecution’s witnesses who are considered as ‘Trial witnesses’ in Mr Ntaganda case); and
- iii. A schedule setting out Intermediary P-0154’s contacts with other intermediaries and with all witnesses as well as contacts between the witnesses themselves; and

B. Lift all redactions applied by the Prosecution to all documents related to Intermediary P-0154.

2. The relevance of the foregoing information is abundantly clear from the documentary and testimonial evidence showing that P-0154 may have exerted influence on a certain number of Prosecution witnesses. The experience of the *Lubanga* case demonstrates that this influence can be extremely negative, and that fulsome disclosure is the only way to get to the bottom of the scope of such

misconduct and its potential impact on trial proceedings. Yet the Prosecution continues to resist full and candid disclosure of the role played by P-0154, the influence he has exerted, and any knowledge that the Prosecution may have of his activities, including those that may demonstrate his web of influence over witnesses. The Prosecution asserts that all “contacts of relevance” have been disclosed,¹ thus asserting that it has a discretion to with-hold information about some of its contacts with this person. The Prosecution’s previous attempt to resist even the disclosure of P-0154’s identity demonstrates that it should not be accorded any discretion to determine what should and should not be disclosed to the Defence within the categories defined above.

3. Considering the upcoming testimony of 3 witnesses, adjudication of this Urgent Defence Request concerning the material and the redactions related to Intermediary P-0154 must be adjudicated at this stage.

PROCEDURAL BACKGROUND

4. All material falling under Article 67(2) and Rule 77 was to have been disclosed by 2 March 2015.²

5. On [REDACTED], Witness P-[REDACTED] testified about the role of Intermediary P-0154.³

6. On 4 July 2016, the Defence submitted its ‘Application on behalf of Mr Ntaganda seeking disclosure of the identity of Prosecution intermediary P-0154’ (“Defence Application”).⁴ In response, the Prosecution disclosed a security-related interview conducted with Intermediary P-0154 on 21 April 2010⁵ as well as redacted

¹ E-mail from the Prosecution dated 18 July 2016, 18:22, responding to a Defence disclosure request linked with Intermediary P-0154 sent by e-mail on 10 July 2016 11:51.

² ICC-01/04-02/06-411, para.17.

³ [REDACTED].

⁴ ICC-01/04-02/06-1435-CONF.

⁵ DRC-OTP-2094-0302.

versions of four “*listes de presences*”.⁶ The Prosecution declined, however, to provide his identity. The Chamber, on 6 July 2016, ordered the Prosecution to disclose P-0154’s identity.⁷

7. On 10 July 2016, the Defence – having become aware from other documents of a certain number of undisclosed ‘*listes de presence*’ related to Intermediary P-0154⁸ – requested their disclosure. The Prosecution disclosed four documents in response to this request.⁹

8. On 2 September 2016, the Defence requested disclosure of specified material relating to Intermediary P-0154 as well as the lifting of redactions applied to material related to Intermediary P-0154 already in the possession of Defence.¹⁰

9. On 5 September 2016, the Prosecution responded, lifting some redactions to the name of Intermediary P-0154 as well as to the name of NGOs related to Intermediary P-0154.¹¹ The Prosecution also disclosed one Investigation Note containing information drawn from an ‘internal memorandum’ dated 12 July 2005.¹² The Prosecution refused all other requests.

⁶ E-mail from the Prosecution dated 6 July 2016, 13h13, in response to Defence request dated 1 July 2016; Four ‘*listes de presence*’ disclosed: DRC-OTP-2092-0319 dated [REDACTED], DRC-OTP-2092-0321 dated [REDACTED], DRC-OTP-2092-0323 dated [REDACTED] and DRC-OTP-2092-0325 dated [REDACTED].

⁷ ICC-01/04-02/06-T-115-CONF-ENG ET, 41:23-43:22.

⁸ E-mail from the Defence dated 10 July 2016, 11h51, requesting additional disclosure regarding “*liste de presences*” of Intermediary P-0154.

⁹ E-mail from the Prosecution dated 11 July 2016, 18h23, response to the request of additional disclosure regarding “*liste de presence*” of Intermediary P-0154. Disclosed documents: DRC-OTP-0198-0072 “*liste de presences*” from [REDACTED], DRC-OTP-2092-0215 “*liste de presences*” from [REDACTED], DRC-OTP-2094-0302 Investigation Note dated 6 July 2016, DRC-OTP-2094-0408 from a mission dated from [REDACTED].

¹⁰ Email from the Defence dated 2 September 2016, 10h18, requesting disclosure of material and lifting of redactions applied to material related to Intermediary P-0154.

¹¹ Email from the Prosecution dated 5 September 2016, 15h40, in response to the Defence email dated 2 September 2016.

¹² DRC-OTP-2095-0082.

APPLICABLE LAW

10. Article 67(2) requires the Prosecution to disclose information in its possession, *inter alia*, “which may affect the credibility of prosecution evidence”. Rule 77 requires the Prosecution to disclose any documents “which are material to the preparation of the Defence”.

11. In accordance with articles 64, 67(2) and 69(3) as well as Rule 84, read together, the Chamber has the power to exercise control and ensure that the Prosecution’s has fully met its disclosure obligations.

12. Pursuant to Article 67(2)¹³ and Rule 77,¹⁴ the material sought to be disclosed by the Defence must be identified with a sufficient degree of precision.

13. In addition, the material sought to be disclosed by the Defence must be in the possession or control of the Prosecutor.

14. Lastly, the potential exculpatory nature and/or materiality to the preparation of the Defence of the material sought to be disclosed must be established *prima facie*.

15. Redactions applied by the Prosecution are governed by Rule 81 and the Decision on the Protocol establishing a redaction regime (“Decision on the redaction protocol”).¹⁵

¹³ See e.g. ICTY, Prosecutor v Dario Kordic and Mario Cerkez, Case No. IT-95-14/2-A, Judgment, 17 December 2004, para.179; ICTR, Callixte Kalimanzira v The Prosecutor, Case No. ICTR-05-88-A, Judgment, 20 October 2010, (“Kalimanzira Appeal Judgment”), para.18; Mugenzi et al. v The Prosecutor, Case No. ICTR99-50-A, Decision on Prosper Mugiraneza’s Motions for Relief for Rule 68 Violations, 24 September 2015, para.8; ICTR, Kamuhanda v The Prosecutor, Case No. ICTR-99-54A-R68, Decision on Motion for Disclosure, 4 March 2010, para.17.

¹⁴ ICC-02/05-03/09-501 OA4, 28 August 2013, paras.2, 34, 42, & ICC-01/09-01/11-1465, para.15. ICC-01/04-01/06-2152, para.94.

¹⁵ ICC-01/04-02/06-411.

SUBMISSIONS

I. Intermediary P-0154 was involved with many witnesses

16. Intermediary P-0154 – who was active from April 2005¹⁶ to July 2009¹⁷ – is linked at minimum to 29 individuals, including 15 Prosecution trial witnesses, namely:

- 5 witnesses who already testified;¹⁸
- 3 witnesses who have yet to be called to testify during the [REDACTED] evidentiary block;¹⁹
- 4 witnesses who have yet to be called;²⁰
- 3 witnesses who are dead;²¹
- 7 non-trial witnesses – for which only very limited information was disclosed under Article 67(2) and/or Rule 77;²² and
- 7 other individuals – for whom only one Investigation Note has been disclosed in addition to their individual handwritten notes taken by Intermediary P-0154.²³

17. In addition, Intermediary P-0154 indicated to the Prosecution – when questioned on this issue in 2010 – to have been in contact with more than 100 potential victims in Mr Ntaganda case.²⁴ Intermediary P-0154 also added that he knew all of them.²⁵

¹⁶ DRC-OTP-2090-0406.

¹⁷ ICC-01/04-02/06-T-116-CONF-ENG ET, 42:24-43:1.

¹⁸ Witnesses [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

¹⁹ Witnesses [REDACTED], [REDACTED] and [REDACTED].

²⁰ Witnesses [REDACTED] (Witness [REDACTED] [REDACTED]). The Prosecution will seek admission of his statements under Rule 68(2)(b)), [REDACTED], [REDACTED] and [REDACTED].

²¹ Witnesses [REDACTED], [REDACTED] and [REDACTED].

²² P-[REDACTED]'s niece ([REDACTED]), P-[REDACTED] ([REDACTED]), P-[REDACTED] ([REDACTED]), P-[REDACTED] ([REDACTED]), [REDACTED], [REDACTED] and [REDACTED].

²³ [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

²⁴ DRC-OTP-2094-0302, p.6.

²⁵ DRC-OTP-2094-0302, p.7.

18. The Prosecution's attempt to not even disclose this person's identity, and its previous failure to disclose all documents responsive to Rule 77, demonstrates its inability to properly assess the contours of disclosure in respect of P-0154. The Chamber has already noted that *"the Defence has identified in its request [for the identity of Intermediary P-0154] a number of issues potentially related to P-154's role as an intermediary that are of prima facie relevance to the case at hand"* and *"should be provided with the opportunity to explore the role of the intermediary in question in a more concrete manner."*²⁶

19. The Prosecution's resistance to full disclosure of information relevant to P-0154's role in this case obstructs that opportunity.

II. Requests for disclosure

20. The material sought to be disclosed: (i) is identified with precision; (ii) is in the possession of the Prosecutor; and (iii) affects either the credibility of Prosecution's evidence and/or is material to the preparation of the Defence.

A. The material sought to be disclosed is identified with a sufficient degree of specificity

1. Contacts between the Prosecution and Intermediary P-0154

21. The material sought to be disclosed consists of any documents, reports, and/or informal notes containing, *inter alia*: (i) the nature of P-0154's employment contract(s); (ii) instructions given by the Prosecution to P-0154; (iii) information reported by P-0154 to the Prosecution about developments in the field; and (iv) records of expenses paid by the Prosecution on behalf of Intermediary P-0154.

2. Contacts between Intermediary P-0154 and potential witnesses

22. The material sought to be disclosed comprises: documents, reports, and/or informal notes containing, *inter alia*: (i) the selection process to find potential

²⁶ ICC-01/04-02/06-T-116-CONF-ENG ET, 43:5-12.

witnesses; (ii) information reflecting any and all interaction between Intermediary P-0154 and potential witnesses in the field; (iii) the contribution of any NGOs related to Intermediary P-0154 (*i.e.* [REDACTED] and [REDACTED]); as well as (iv) information reflecting any and all interactions between Intermediary P-0154 and any assistant who would have contributed at any point in time to his 'work' with the Prosecution.

23. When using the term 'potential witnesses', the Defence refers in particular to: (i) Prosecution trial witnesses in this case; (ii) Prosecution non-trial witnesses in Mr Ntaganda case; as well as (iii) individuals that were in contact with Intermediary P-0154 in other cases before the International Criminal Court (*i.e.* Mr Lubanga case).

3. Schedule setting out the contacts

24. The requested schedule should include contacts between: (i) Intermediary P-0154 and any other intermediaries; (ii) Intermediary P-0154 and potential witnesses; and (iii) potential witnesses related to Intermediary P-0154.

25. The schedule setting out the contacts of Intermediary P-0154 and the related witnesses should indicate specific information – *i.e.* date, time, place, activities, persons present – regarding any and all contacts.

B. The material sought to be disclosed is in the possession of the Prosecutor

26. The above-described material is in the possession of the Prosecutor as: (i) the Defence of Mr Ntaganda is in possession of similar documents obtained from the Prosecution; and/or (ii) similar documents have been disclosed in the *Lubanga* case, where P-0154 was also an intermediary.

1. Contacts between the Prosecution and Intermediary P-0154

27. Several documents mentioning contacts between the Prosecution and Intermediary P-0154 have already been disclosed to the Defence.²⁷ In addition, the Prosecution's response to the Defence request for disclosure indicated that it "does not consider that every contact of the intermediary with Prosecution witnesses is material for the Defence nor are they potentially exculpatory"²⁸ as well as having disclosed to the Defence "the contacts of relevance pursuant to rule 77 or article 67(2)".²⁹ These answers suggest that the Prosecution is indeed in possession of documents sought to be disclosed. In addition, Trial Chamber I confirmed the existence of contract(s) between the Prosecution and Intermediary P-0154.³⁰

2. Contacts between Intermediary P-0154 and potential witnesses

28. Similarly, documents referring to contacts between Intermediary P-0154 and potential witnesses have already been disclosed to the Defence.³¹ Moreover, for the reasons stated above, the Defence posits that it is well established that the Prosecution is indeed in possession of the documents sought to be disclosed.

3. Schedule setting out the contacts

29. Trial Chamber I compelled the Prosecution to provide a schedule of contacts between its intermediaries and its witnesses upon a showing that the

²⁷ DRC-OTP-2094-0408 (Example of an extract of a field mission by the Prosecution where they met with Intermediary P-0154); and DRC-OTP-2094-0302 (Investigation Note containing a transcript of a discussion between the Prosecution and Intermediary P-0154).

²⁸ E-mail from the Prosecution dated 18 July 2016, 18h22, responding to a Defence disclosure request linked with Intermediary P-0154 sent by e-mail on 10 July 2016 11h51.

²⁹ E-mail from the Prosecution dated 18 July 2016, 18h22, responding to a Defence disclosure request linked with Intermediary P-0154 sent by e-mail on 10 July 2016 11h51.

³⁰ ICC-01/04-01/06-2842, para.204.

³¹ DRC-OTP-2058-0163 (Example of a handwritten list of attendance to a group meeting by Intermediary P-0154); DRC-OTP-2092-0323 (Example of an Investigation Note stating a list of attendance to a group meeting by Intermediary P-0154); DRC-OTP-0077-0002 (Example of a meeting between Intermediary P-0154 and a potential witness; and DRC-OTP-2093-0200 (Example of an Investigation Note created by the Prosecution concerning a meeting between Intermediary P-0154 and a witness).

“intermediaries may have misused their positions in varying ways.”³² The schedules included the dates of meetings, the names of those present, the locations.³³

30. On 7 June 2010, the Prosecution in Mr Lubanga case disclosed to the Defence a schedule.³⁴ On 9 June 2010, the Prosecution disclosed an updated version containing "the additional disclosable information on the known contacts among the witnesses whose evidence falls within Article 67(2) of the Rome Statute and Rule 77 of the Rules of Procedure and Evidence".³⁵ On 22 June 2010, a third version was disclosed.³⁶

C. The material sought to be disclosed is *prima facie* of potential exculpatory nature and/or material to the preparation of the Defence

31. The above-mentioned material is potentially exculpatory in, *inter alia*, affecting the Prosecution's evidence pursuant to Article 67(2) related to: (i) the previous witnesses – as seen in cross-examination of witnesses P-[REDACTED], P-[REDACTED] and P-[REDACTED]; as well as (ii) the upcoming witnesses – including 3 witnesses who have yet to be called in the [REDACTED] evidentiary block.

32. It is also material to the preparation of the Defence as it is essential in order to, *inter alia*: (i) conduct investigation to challenge the evidence being adduced by the Prosecution; (ii) assess Intermediary P-0154's credibility, which could affect the entire related evidence; and (iii) assist the Defence in fulfilling its duty to investigate every possible avenue.

³² ICC-01/04-01/06-2434-Conf-Red, paras.140, 147.

³³ ICC-01/04-01/06-2434-Conf-Red-Corr, para.147; Annexe B to Prosecution's communication of information on intermediaries and witnesses pursuant to Trial Chamber's Order of 12 May 2010, 7 June 2010, ICC-01/04-01/06-2466-Conf-AnxB.

³⁴ Annex B to Prosecution's communication of information on intermediaries and witnesses pursuant to Trial Chamber's Order of 12 May 2010, 7 June 2010, ICC-01/04-01/06-2466-Conf-AnxB.

³⁵ Prosecution's Submission of its "Updated Schedule on the Contacts Between Witnesses" pursuant to Trial Chamber's Order of 12 May 2010, 9 June 2010, ICC-01/04-01/06-2469-Conf, para.1 and ICC-01/04-01/06-2469-Conf-AnxA.

³⁶ ICC-01/04-01/06-2644-Conf, para.4 and ICC-01/04-01/06-2644-Conf-Anx4.

33. In addition, the identity of Intermediary P-0154 was disclosed to the Defence on 6 July 2016³⁷ when the Chamber recognized that:

*[...] the Defence should be provided with the opportunity to explore the role of the intermediary in question in a more concrete manner.*³⁸

34. The material sought to be disclosed goes beyond the possible misconduct of Intermediary P-0154. In fact, it also affects Defence preparations for trial as well as the Chamber's assessment of the probative value, which can be attributed to the witnesses who are being called by the Prosecution. The Defence has an obligation to investigate these allegations in order to properly challenge the evidence being adduced.

35. The testimony of P-[REDACTED]³⁹, P-[REDACTED]⁴⁰ and P-[REDACTED]⁴¹ – in addition to the Prosecution's own documentation – demonstrates that P-0154 may have exerted improper influence on witnesses.

36. The role of Intermediary P-0154 – leaving aside the other intermediaries involved in Mr Ntaganda case – has become a crucial issue in this case as more information has come to light. Trial Chamber I's Decision on Intermediaries in Mr Lubanga case ("Decision on Intermediaries") stated that:

*The precise role of the intermediaries (together with the manner in which they discharged their functions) has become an issue of major importance in this trial. Contrary to the prosecution's argument, the defence submissions are not dependent on speculative assertions: they are, to an important extent, clearly evidence based.*⁴²

37. It is noteworthy that intermediaries who had been in contact with the largest amount of potential witnesses in Mr Lubanga case, namely P-0143 (*also involved in*

³⁷ E-mail from the Prosecution dated 6 July 2016, 16h33, pursuant to the Chamber's order to disclose Intermediary P-0154 identity.

³⁸ ICC-01/04-02/06-T-116-CONF-ENG ET, 43:10-12.

³⁹ [REDACTED].

⁴⁰ [REDACTED].

⁴¹ [REDACTED].

⁴² ICC-01/04-01/06-2434-Conf-Red-Corr, para.135.

Mr Ntaganda case), P-0321 and P-0316 (*also involved in Mr Ntaganda case*), were involved with respectively [REDACTED], [REDACTED] and [REDACTED] witnesses in Mr Lubanga case⁴³ – which constitutes merely [REDACTED] of the Prosecution’s Trial witnesses who had contacts with Intermediary P-0154 in Mr Ntaganda case, when leaving aside all other potential witnesses with who this intermediary also had contacts.

1. Intermediary P-0154 [REDACTED]

38. Intermediary P-0154 is [REDACTED].⁴⁴

39. [REDACTED].⁴⁵ [REDACTED].⁴⁶ [REDACTED].⁴⁷ [REDACTED].⁴⁸
[REDACTED].⁴⁹

40. [REDACTED].⁵⁰ [REDACTED], Intermediary P-0154 was [REDACTED].⁵¹
Also, Intermediary P-0154 [REDACTED].⁵²

41. Information related to [REDACTED] of Intermediary P-0154 [REDACTED]. In fact, Intermediary P-0154 [REDACTED]. The involvement of [REDACTED].

2. Intermediary P-0154 [REDACTED]

42. In the first place, Intermediary [REDACTED].⁵³

43. [REDACTED].⁵⁴

⁴³ ICC-01/04-01/06-2434-Conf-Red-Corr, para.3.

⁴⁴ [REDACTED].

⁴⁵ [REDACTED].

⁴⁶ [REDACTED].

⁴⁷ [REDACTED].

⁴⁸ [REDACTED].

⁴⁹ [REDACTED].

⁵⁰ [REDACTED].

⁵¹ [REDACTED].

⁵² [REDACTED].

⁵³ [REDACTED].

⁵⁴ [REDACTED].

44. Following [REDACTED] Intermediary P-0154 and [REDACTED].⁵⁵
[REDACTED].⁵⁶

45. Additionally, [REDACTED]⁵⁷ and [REDACTED]⁵⁸ [REDACTED]. Hence,
[REDACTED],⁵⁹ [REDACTED].

3. Intermediary P-0154 [REDACTED]

46. [REDACTED] that Intermediary P-0154 [REDACTED]⁶⁰ [REDACTED].⁶¹

47. Furthermore, Intermediary P-0154 [REDACTED].⁶²

48. [REDACTED] with Intermediary P-0154 [REDACTED].⁶³ This raises the
question as to [REDACTED].

49. [REDACTED] disclosure of Intermediary P-0154 [REDACTED]⁶⁴

4. [REDACTED]

50. According to information obtained by the Prosecution from Intermediary P-
0154 [REDACTED]⁶⁵ ([REDACTED]⁶⁶) [REDACTED]

51. The Defence is in possession of documents related to 8 group meetings with
at least 21 different potential witnesses – including 15 Prosecution Trial witnesses –
involving Intermediary P-0154, namely:

- DRC-OTP-2090-0407: meeting dated [REDACTED]
 - **5 potential witnesses present:** P-[REDACTED], P-[REDACTED]

⁵⁵ [REDACTED].

⁵⁶ [REDACTED].

⁵⁷ [REDACTED].

⁵⁸ [REDACTED].

⁵⁹ [REDACTED].

⁶⁰ [REDACTED].

⁶¹ [REDACTED].

⁶² [REDACTED].

⁶³ [REDACTED].

⁶⁴ [REDACTED].

⁶⁵ [REDACTED].

⁶⁶ [REDACTED].

(dead), P-[REDACTED], P-[REDACTED] and P-[REDACTED].

- DRC-OTP-2092-0207: meeting dated before [REDACTED]
 - **19 potential witnesses present:** P-[REDACTED], P-[REDACTED], P-[REDACTED] (dead), P-[REDACTED], P-[REDACTED], P-[REDACTED], P-[REDACTED], P-[REDACTED], P-[REDACTED] (non-trial), P-[REDACTED], P-[REDACTED] (non-trial), P-[REDACTED], P-[REDACTED] and 6 individuals.
- DRC-OTP-0198-0072 and DRC-OTP-2092-0325: meeting dated [REDACTED]
 - **9 potential witnesses present:** P-[REDACTED], P-[REDACTED] (dead), P-[REDACTED], P-[REDACTED], P-[REDACTED], P-[REDACTED] and 3 other individuals.
- DRC-OTP-2092-0319: meeting dated [REDACTED]
 - **12 potential witnesses present:** P-[REDACTED], P-[REDACTED], P-[REDACTED], P-[REDACTED], P-[REDACTED], P-[REDACTED], P-[REDACTED], P-[REDACTED], P-[REDACTED], P-[REDACTED], P-[REDACTED] and P-[REDACTED].
- DRC-OTP-2092-0230: meeting dated [REDACTED]
 - **9 potential witnesses present:** P-[REDACTED], P-[REDACTED], P-[REDACTED], P-[REDACTED], P-[REDACTED], P-[REDACTED], P-[REDACTED] and 2 other individuals
- DRC-OTP-2092-0213 and DRC-OTP-2092-0321: meeting dated [REDACTED]
 - **19 potential witnesses present:** P-[REDACTED], P-[REDACTED], P-[REDACTED] (dead), P-[REDACTED], P-[REDACTED], P-[REDACTED], P-[REDACTED], P-[REDACTED] (non-trial), P-[REDACTED], P-[REDACTED], P-[REDACTED] (non-trial), P-[REDACTED], P-[REDACTED] and 6 individuals.
- DRC-OTP-2092-0227: meeting dated [REDACTED]
 - **No specific list of witnesses present.**
- DRC-OTP-2092-0215, DRC-OTP-2092-0229 and DRC-OTP-2092-0323: meeting dated [REDACTED]
 - **19 potential witnesses present:** P-[REDACTED], P-[REDACTED], P-[REDACTED] (dead), P-[REDACTED], P-[REDACTED], P-[REDACTED], P-[REDACTED], P-[REDACTED] (non-trial), P-[REDACTED], P-[REDACTED], P-[REDACTED] (non-trial), P-[REDACTED], P-[REDACTED] and 6 individuals.

52. [REDACTED].

5. Intermediary P-0154 [REDACTED]

53. Witnesses [REDACTED].⁶⁷ [REDACTED] Intermediary P-0154 [REDACTED].⁶⁸

54. Additionally and as an example of [REDACTED].⁶⁹

6. Intermediary P-0154 [REDACTED]

55. The Defence has in its possession 13 handwritten notes⁷⁰ [REDACTED].

III. Request for lifting of redactions applied by the Prosecution to all documents related to Intermediary P-0154

56. The Defence submits that in light of all above-mentioned uncertainties about Intermediary P-0154, namely: [REDACTED], overcome any concerns the Prosecution may have regarding the redacted information.

57. As stated by the Chamber in its Decision on the redaction protocol:

Chambers of this Court have consistently emphasised that disclosable material should be served in full and any redactions need to be justified and authorised individually under the provisions of the Statute.⁷¹

The Chamber agrees with the Defence that only the 'most basic' redactions, the ones 'not likely to impact the ability of the Defence to investigate' or 'to give rise to a dispute' should be covered by standard justifications.⁷²

58. Pursuant to Rule 81 and the requirements reproduced in the Chamber's Decision on the redaction protocol,⁷³ the Defence posits – aside from noting that P-0154 stopped working with the Prosecution in 2009 – that: (i) the investigations of

⁶⁷ [REDACTED].

⁶⁸ [REDACTED].

⁶⁹ [REDACTED].

⁷⁰ [REDACTED].

⁷¹ ICC-01/04-02/06-411, para.13.

⁷² ICC-01/04-02/06-411, para.20.

⁷³ ICC-01/04-02/06-411, para.15.

the Prosecution should be almost completed, if not already completed, as the Prosecution has been investigating this case since 21 June 2014 and his presentation of evidence started almost a year ago; (ii) there is no particular risk arising from the disclosure of the redacted information related to Intermediary P-0154 material to the Defence; and (iii) in view of [REDACTED], the rights of Mr Ntaganda to a fair and impartial trial would be affected if critical information is being hidden from him, precluding him to fully investigate this crucial issue.

59. Consequently, the Defence requests lifting of the redactions applied by the Prosecution to P-0154 material in the possession of the Defence.⁷⁴

IV. This Urgent Defence Request must be adjudicated at this stage

60. The Trial Chamber I in Mr Lubanga case expressed its concerns on the "*issue of whether there has been sufficient disclosure [in relation to intermediaries in the case] to the Defence, given the evidence that we have heard thus far as part of the Defence case.*"⁷⁵ The Defence of Mr Ntaganda submits that we have already reached that phase of concern.

61. The urgency is demonstrated, *inter alia*, with: (i) the on-going trial preparations; (ii) the review of the previous Prosecution's witnesses; (iii) the upcoming end of the Prosecution's case as well as; (iv) the on-going investigations of the Defence.

62. In light of the circumstances illustrated above and in any event before the end of the Prosecution's case, the Defence should be in possession of all relevant documents related to Intermediary P-0154 – with the minimum redactions applied.

⁷⁴ DRC-OTP-2058-0163 (Example of a handwritten list of attendance to a group meeting by Intermediary P-0154); DRC-OTP-2092-0323 (Example of an Investigation Note stating a list of attendance to a group meeting by Intermediary P-0154); DRC-OTP-0077-0002 (Example of a meeting between Intermediary P-0154 and a potential witness; and DRC-OTP-2093-0200 (Example of an Investigation Note created by the Prosecution concerning a meeting between Intermediary P-0154 and a potential witness).

⁷⁵ ICC-01/04-01/06-T-240-CONG-ENG-ET, 2:3-22.

V. Conclusion

63. The documents sought are disclosable under Article 67(2) or Rule 77. The potential relevance of information concerning intermediaries is amply illustrated by the Lubanga case.⁷⁶

64. The Defence also requires this information in order to be in a position, as occurred in the *Lubanga* case in respect of other intermediaries,⁷⁷ to request that P-0154 be summoned to testify before the Trial Chamber.

CONFIDENTIALITY

65. Pursuant to Regulations 23bis (1) of the Regulations of the Court, this Defence Request is classified as confidential *ex parte* only available to the Chamber and the Defence as it refers to matters related to Intermediary P-0154 as well as to the theory of the Defence.

66. A confidential redacted version will be made available to the Prosecution and the Participants as soon as practicable.

RELIEF SOUGHT

In light of the above submissions, the Defence respectfully requests the Chamber to:

67. **ORDER** the Prosecution to disclose to the Defence:

- A. All documents in the possession of the Prosecution related to the contacts between the Prosecution and Intermediary P-0154;
- B. All documents in the possession of the Prosecution related to the contacts between Intermediary P-0154 and potential witnesses (including but not limited to the Prosecution's witnesses who are considered as 'Trial witnesses' in Mr Ntaganda case); and

⁷⁶ ICC-01/04-01/06-2842, para.178.

⁷⁷ Trial Chamber I ordered the Prosecution to call intermediaries P-0316 and P-0321 in Mr Lubanga case following the Defence witnesses, see ICC-01/04-01/06-2434-Conf-Red-Corr, para.150(iii).

C. A schedule setting out Intermediary P-0154's contacts with other intermediaries and with all witnesses as well as contacts between the witnesses themselves; as well as

68. **ORDER** the Prosecution to lift the redactions applied to all documents related to Intermediary P-0154.

RESPECTFULLY SUBMITTED ON THIS 14TH DAY OF OCTOBER 2016

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

Me Stéphane Bourgon, Counsel for Bosco Ntaganda
The Hague, The Netherlands