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No.: **ICC-01/04-02/06**
Date: **19 February 2021**

TRIAL CHAMBER VI

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

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR V. BOSCO NTAGANDA***

Public

Public Redacted Version of “Expedited motion on behalf of Mr Ntaganda seeking disclosure of necessary material; leave to engage [REDACTED] and Mr Logo concerning the allegations raised against them; and variation of the time limit for the purpose of responding to the ‘Prosecution’ urgent request for immediate suspension of Defence investigators and other measures” 2 July 2015, ICC-01/04-02/06-691-Conf-Exp

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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Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation / Reparation)**

**The Office of Public Counsel for
Victims**

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

Amicus Curiae

REGISTRY

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Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Further to: (i) the “*Order taking interim measures in relation to a Defence investigator and related matters*” issued by Trial Chamber VI (“Chamber”) on 23 June 2015 (“Interim Order”)¹; and (ii) the submission of the confidential redacted version of the “*Prosecution’s urgent request for immediate suspension of Defence investigators and other measures*” by the Office of the Prosecutor (“Prosecution”) on 26 June 2015 (“Prosecution Request”)², Counsel representing Mr Ntaganda (“Defence”) hereby submit this:

Expedited motion on behalf of Mr Ntaganda seeking disclosure of necessary material; leave to engage [REDACTED] and Mr Logo concerning the allegations raised against them; and variation of the time limit for the purpose of responding to the “Prosecution’ urgent request for immediate suspension of Defence investigators and other measures”

“Expedited Defence Motion”

OVERVIEW

1. In its Interim Order, the Chamber directed the Defence to file “*any response to the Prosecution Request within 10 days of its notification to the Defence*”.³
2. The allegations raised in the Prosecution Request are very serious.
3. The consequences of these allegations and their outcome on the ability of the Defence to effectively represent Mr Ntaganda and to protect his right to a fair trial are even more severe and far-reaching.
4. Accordingly, it is the duty of the Defence as well as essential to fully scrutinize every aspect of the allegations raised by the Prosecution with the aim of *inter alia* allowing the Chamber to determine the merits, if any, of these allegations.

¹ ICC-01/04-02/06-667-Conf-Exp.

² ICC-01/04-02/06-658-Conf-Red. The confidential *ex parte* version – only available to the Chamber – of the Prosecution Request was filed on 19 June 2015.

³ Interim Order, pp.8-9.

5. This requires, at a minimum: (i) disclosure of additional material necessary to allow the Defence to assess the reliability and the foundation, if any, of the Prosecution allegations; (ii) engaging [REDACTED] and Mr Logo in respect of the allegations raised against them; and (iii) the adequate time and facilities to complete these tasks.

SUBMISSIONS

Introduction

6. According to the Prosecution: (1) [REDACTED] threatened Witness P-0190; (2) Mr Logo divulged confidential information to Witness P-0190 and suggested lines of defence; (3) Mr Logo revealed the identity of Prosecution witnesses and the content of confidential decisions of this Chamber; (4) Mr Logo attempted to influence Witness P-0190 and [REDACTED] prior to the their proposed interviews; (5) Mr Logo discussed paying witnesses without Defence Counsel's knowledge; and, (6) Mr Logo and [REDACTED] pressured Witness P-0901.⁴
7. As a preliminary matter, the Defence underscores the affirmative language used by the Prosecution in raising its allegations against [REDACTED] and Mr Logo as well as the interim measures ordered by the Chamber before even hearing the Defence, which make it all the more important to scrutinize every aspect of the Prosecution allegations.
8. The Prosecution allegations are very serious. They question not only the integrity and professionalism of two Defence investigators but also, and more importantly, the integrity of Defence investigations during the last five months.
9. Significantly, the preliminary analysis of the Prosecution Request and its 16 Annexes reveals contradictions, inconsistencies as well as genuine reasons to

⁴ Prosecution Request.

doubt and to have reservations regarding the reliability and the veracity of the material provided in support of the Prosecution allegations, more particularly in respect of the information provided by Witnesses P-0190 and P-0901. The same goes for the integrity of the conversation allegedly recorded by Witness P-0190.

10. Accordingly, it is essential for the Defence – in order to be able to respond to the Prosecution Request as ordered by the Chamber – to examine, analyse and challenge every facet of both the Prosecution allegations and the material provided in support thereof.
11. This requires, at a minimum: (i) obtaining access to necessary additional material to assess the allegations and the material in support thereof; (ii) engaging [REDACTED] and Mr Logo in respect of the allegations raised against them, and; (iii) having adequate time and facilities to complete these tasks and to respond to the Prosecution Request.

I. Obtaining access to necessary additional material

12. Assessing the reliability and veracity of the Prosecution allegations and the material in support thereof, requires the Defence obtaining access to the following necessary additional material:
 - The audio medium of the entire recorded conversation between Mr Logo, [REDACTED] and Witness P-0190 (“Recorded Conversation”);
 - The pictures of the “*registre*” and “*deux messages*” mentioned by Witness P-0901 in his statement of 25 March 2015⁵;
 - The handwritten notes mentioned by Witness P-0190 in his statement of 24 March 2015⁶;

⁵ Prosecution Request, Annex 9, page 3.

⁶ Prosecution Request, Annex 2, para. 12.

- The results of any further investigative measures taken in relation to the “telephone” provided to the Prosecution by Witness P-0190 and that of Witness P-0901, if applicable.

A. Obtaining access to the audio medium of the Recorded Conversation

13. Four of the six main allegations made by the Prosecution against Mr Logo rest on the conversation recorded by Witness P-0190. As such, the Recorded Conversation constitutes the main evidence on which the Prosecution bases its allegation against Mr Logo.
14. P-0190, in his capacity as a Prosecution witness, is neither a professional investigator nor a representative of the Office of the Prosecutor. Consequently, the reliability of the Recorded Conversation – contrary to that which attaches *prima facie* to the recording of an interview conducted by the Prosecution – is certainly debatable.
15. More importantly, considering *inter alia*: (i) Witness P-0190’s background as a previous member of the [REDACTED] and [REDACTED] working in relation with, *inter alia*, [REDACTED] and [REDACTED]; and (ii) the endless contradictions and inconsistencies in the ‘some 400 pages’ statement he provided to the Prosecution as part of its case against Mr Ntaganda, the Defence has genuine reasons to put into question the integrity of the audio medium of the Recorded Conversation, if only to determine whether: (a) it reflects the entire conversation between Mr Logo, [REDACTED] and Witness P-0190; (b) it was stopped at any time during the conversation or manipulated in any way; and (c) the voices heard on the audio medium are indeed those of Mr Logo, [REDACTED] and Witness P-0190.
16. In addition, it is noteworthy that the Prosecution recognizes that “*Some portions of the Recorded Conversation are still incomprehensible*” and that “*the*

Prosecution is exploring whether it is technically possible to enhance the audio-file further".⁷

17. It is also indispensable for the Defence to gain access to the audio medium of the Recorded conversation for the purpose of: (i) verifying that the purported transcript of the Recorded Conversation reflects the exact words mentioned by Mr Logo, [REDACTED] and Witness P-0190 during their conversation; (ii) to ensure that the words attributed to Mr Logo, [REDACTED] and Witness P-0190 in the transcript are attributed to the right person; and (iii) verifying and confirming that the translation of the transcript of the Recorded Conversation is accurate and conveys the true meaning of the words spoken during the conversation.⁸
18. For the above reasons, it is crucial for the Defence to gain access to the audio medium.
19. Furthermore, in the event the Prosecution has taken any step to have the authenticity and reliability of the audio medium verified by a member of its Office or by an independent expert, the Defence respectfully requests the Chamber to order the Prosecution to disclose the results of these verifications along with the related request(s) and the proper statement(s).

B. Obtaining access to the pictures mentioned by Witness P-0901

20. In its statement of 25 March 2015, Witness P-0901 reported that [REDACTED] would have sent him a text message on 5 March 2015. The sending of this text message by [REDACTED] is interpreted by the Prosecution as the application of pressure on Witness P-0901.

⁷ Prosecution Request, Footnote 8, emphasis added.

⁸ While the issue of the resources necessary to undertake these tasks is not addressed in this Expedited Defence Motion, the Defence will be submitting a request to the Registrar for that purpose.

21. Witness P-0901 also confirms that the Prosecution investigators took a picture of his telephone “*registre*” as well as “*deux messages*”, referring to the text message received from [REDACTED] and the text message Witness P-0901 sent to [REDACTED] in reply.⁹
22. As mentioned by Witness P-0901 concerning this material “[REDACTED]”.¹⁰
23. If only for this reason, this material must be disclosed to the Defence.
24. In addition, this material is necessary to allow the Defence to compare these pictures with related material obtained from other sources and, if necessary, to engage [REDACTED] on the existence of this exchange of text messages.
25. This is yet another reason for the Chamber to order the Prosecution to disclose this material to the Defence.

C. Obtaining access to the handwritten notes of Witness P-0190

26. In his statement of 24 March 2015, Witness P-0190 explains regarding the Recorded Conversation that “[REDACTED]”.¹¹
27. Taking into consideration that these notes were written by Witness P-0190 during his interview with Prosecution investigators – in relation to the Recorded Conversation on which the Prosecution bases its allegations against Mr Logo – it is evident that Witness P-0190’s handwritten notes must be disclosed to the Defence.
28. In addition, this material is necessary to allow the Defence to assess the contradictions and inconsistencies included in: (i) Witness P-0190’s statement;

⁹ Prosecution Request, Annexe 9, para. 9-11.

¹⁰ Prosecution Request, Annexe 9, para. 11.

¹¹ Prosecution Request, Annexe 2, para. 12, emphasis added.

- (ii) the audio recording of Witness P-0190' interview and related transcript; and (iii) the handwritten notes of Witness P-0190.
29. This is yet another reason for the Chamber to order the Prosecution to disclose this material to the Defence.
30. Furthermore, it stems from the preliminary analysis of the Prosecution Request and 16 related Annexes, that the Prosecution has not disclosed all of the information obtained from Witness P-0190 by representatives of the Office of the Prosecutor during the period from 12 February 2015 – the date of the alleged initial contact between Witness P-0190 and a Prosecution representative concerning [REDACTED] – and 24 March 2015 – the date of the interview conducted by the Prosecution investigator with Witness P-0190.
31. Indeed, on 11 March 2015, during the meeting between the Defence and the Prosecution – which was scheduled at the request of the Prosecution following the Defence 7 March 2015 email reporting to the Prosecution an inadvertent contact between Mr Logo and Witness P-0190 – the Prosecution informed the Defence that Witness P-0190 reported to them that he was pressured by [REDACTED] who would have told him that “he had to switch side”. To the best of the Defence’s knowledge, this information obtained by the Prosecution from Witness P-0190, on a date unknown but in all likelihood close to 7 March 2015 when the Defence reported an inadvertent contact with Witness P-0190, has not been disclosed.
32. This issue is raised at this time to ensure that any and all contacts between Prosecution representatives and Witness P-0190 – which were necessarily the object of at least the drafting of investigation note(s) – are disclosed to the Defence pursuant to either Rule 76 or Rule 77 of the Rules of Procedure and Evidence.

33. Accordingly, the Defence respectfully requests the Chamber to order the Prosecution to disclose to the Defence any information obtained from Witness P-0190, during any contact with him, during its investigations.

D. Obtaining access to the further investigations on phone numbers

34. In his statement of 24 March 2015, Witness P-0190 reports that “[REDACTED]”.¹²
35. The Defence understands from this statement that the Prosecution intended to conduct certain verifications concerning the mobile phone provided by Witness P-0190.
36. The Defence underscores that no information drawn either directly from Witness P-0190’s mobile phone (such as, for example, lists of calls sent, lists of calls received, lists of missed calls, lists of contacts, recording of any types, lists of persons to whom text messages were sent, lists of persons from whom text messages were received as well as the content of text messages sent or received) or indirectly, as a result of technical verifications conducted by members of the Office of the Prosecutor or independent experts, has been disclosed to the Defence.
37. Taking into consideration that Witness P-0190’s mobile phone was obtained as evidence in a criminal investigation, all of the above information must be disclosed to the Defence.
38. In addition, this material is necessary to allow the Defence to respond effectively to the Prosecution Request, including both the Prosecution allegations against [REDACTED] and Mr Logo and the material provided in support thereof.

¹² Prosecution Request, Annexe 2, para. 6.

39. The Defence notes in this regard that Witness P-0190 was not able to provide the Prosecution investigators with the phone numbers of [REDACTED] and Mr Logo while Witness P-0901 was able to provide [REDACTED]'s telephone numbers. Conspicuously, Witness P-0190 could only give the first two figures of [REDACTED]'s telephone number.¹³
40. This is yet another reason for the Chamber to order the Prosecution to disclose this material to the Defence.
41. Furthermore, in the event the Prosecution has taken any step to obtain the telephone records of Witness P-0190 and/or Witness P-0901 from the providers in [REDACTED], the Defence posits that this material must be disclosed by the Prosecution in the context of the Prosecution Request.

II. Engaging Mr. Logo and [REDACTED] concerning the allegations raised against them

42. As confirmed by the Defence on 25 June 2015¹⁴, steps were taken to recover from Mr Logo the confidential material he was provided with by the Defence, following which he was informed of his suspension ordered by the Chamber.
43. Consequently, as of 25 June 2015, Mr Logo is no longer authorized to take any action on behalf of the Defence team of Mr Ntaganda. In addition, since 25 June 2015, the Defence has neither provided any type of information to Mr Logo nor requested him to provide information or take any action on behalf of the Defence team.
44. Nevertheless it is essential for the Defence – once the necessary additional material will have been disclosed and the Defence has been able to complete

¹³ Prosecution Request, Annexe 5, Ins. 101, 128-142, 1799-1802, 997.

¹⁴ Notice on behalf of Mr Ntaganda informing the Chamber of the steps taken following the Chamber's order dated 23 June 2015, ICC-01/04-02/06-673-Conf-Exp.

its analysis of all this material – to engage Mr Logo and [REDACTED] on the results thereof.

45. Mr Logo and [REDACTED] being the object of the Prosecution allegations, the Defence cannot respond effectively to the Prosecution Request without obtaining their point of view.
46. It is also imperative for the Defence to engage [REDACTED] and M Logo in respect of the Prosecution allegations in relation to actions they would have taken without informing the Defence.
47. The extent to which the Defence will have to meet again with witnesses who were interviewed in the presence of [REDACTED] and/or Mr Logo and/or who were met by [REDACTED] and Mr Logo in the absence of any member of the Defence team, depends to a large extent on information which can only be obtained by the Defence directly from [REDACTED] and Mr Logo.
48. For the above reasons, the Defence should be granted leave to engage [REDACTED] and Mr Logo in relation to the Prosecution allegations.
49. In addition, engaging [REDACTED] and Mr Logo regarding the Prosecution allegations will also allow the Defence to confirm the identity and contact details of all persons they encountered since joining the Defence team of Mr Ntaganda.
50. Bearing in mind the time that would be necessary for the Defence to secure the services of at least one new investigator, obtaining and confirming this information from [REDACTED] and Mr Logo is of the highest importance.
51. This is yet another reason why the Chamber should grant leave to the Defence to engage [REDACTED] and Mr Logo in respect of the Prosecution allegations.

III. Variation of the time limit to respond to the Prosecution Request

52. Gaining access to the necessary additional material described above and completing the necessary tasks related to this material will necessarily take much longer time than the 10 days presently allocated by the Chamber to the Defence.
53. On the basis of: (i) the seriousness of the Prosecution allegations; (ii) the imperative necessity for the Defence to thoroughly scrutinize all aspects of the Prosecution Request and material provided in support thereof; (iii) the necessary additional material to which the Defence must gain access to be able to respond effectively to the Prosecution Request; and (iv) the minimum necessary and reasonable tasks which must be performed by the Defence once this additional necessary material will have been disclosed, the Defence submits that good cause has been shown justifying a variation of the time limit, in accordance with Regulation 35 of the Regulations of the Court ("RoC").
54. Taking into consideration *inter alia*: (i) the time that will be necessary to gain access to the necessary additional material; (ii) the time that will be necessary to perform the tasks described in this Expedited Defence Motion; (iii) other on-going projects the Defence is involved in, including *inter alia*, representing Mr Ntaganda in relation to the Prosecution's requests for the imposition of restrictions on Mr Ntaganda's non-privileged communications; and (iv) the urgent need for the Defence to prepare for the presentation of the Prosecution case, the Defence respectfully requests a variation of the time limit to file its response to the Prosecution Request no later than 21 August 2015.
55. Of course, this date might have to be adjusted depending on full disclosure by the Prosecution of all the necessary additional material described herein.

RELIEF SOUGHT

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

ORDER the Prosecution to disclose to the Defence the audio medium of the Recorded Conversation;

ORDER the Prosecution, in the event it has taken any step to have the authenticity and reliability of the audio medium verified by a member of its Office or by an independent expert, to disclose the results of these verifications along with the related request(s) and the proper statement(s);

ORDER the Prosecution to disclose to the Defence the pictures of Witness P-0901 telephone "*registre*" and "*deux messages*";

ORDER the Prosecution to disclose to the Defence the handwritten notes mentioned by Witness P-0190 during his interview with Prosecution investigators on 24 March 2015;

ORDER the Prosecution to disclose to the Defence any information obtained from Witness P-0190, during any contact with him, during its investigations;

ORDER the Prosecution to disclose to the Defence the result of any verification concerning the mobile phone obtained by the Prosecution from Witness P-0190;

ORDER the Prosecution, in the event it has taken steps to obtain the telephone records of Witness P-0190 and/or Witness P-0901 from the providers in [REDACTED], to disclose this material to the Defence;

GRANT LEAVE to the Defence to engage Mr Logo and [REDACTED] concerning the allegations raised against them;

GRANT the Defence a variation of the time limit to respond to the Prosecution Request; and,

ORDER the Defence to file its Response to the Prosecution Request no later than 21 August 2015.

CONFIDENTIALITY

56. The Defence requests that its Expedited Defence Motion is submitted as “Confidential, *ex parte* – only available to the Chamber, the Registry, the Prosecution and the Defence”, pursuant to Regulations 23*bis*(1) and (2) RoC, as it refers to the Chamber Interim Order as well as to the Prosecution Request and its Annexes, which were issued with the same designation.

RESPECTFULLY SUBMITTED ON THIS 19TH DAY OF FEBRUARY 2021

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