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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

**With Confidential Redacted Annexes 1, 2, 5-7 and 9-11 and Confidential
Annexes 3, 4, 8 and 12-16**

**Public redacted version of "Prosecution's urgent request for immediate
suspension of Defence investigators and other measures", 19 June 2015, ICC-
01/04-02/06-658-Conf-Exp**

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

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Introduction

1. The Prosecution seeks the immediate suspension of investigators Jean LOGO DHENGACHU (“LOGO”) and [REDACTED] from the Defence team of the Accused, Bosco NTAGANDA (“NTAGANDA”).
2. In a recorded conversation between LOGO, Prosecution Witness P-0190 and potential Defence witness [REDACTED], LOGO: (i) intentionally revealed the identity of Prosecution Witnesses P-0768 and P-0055 and information contained in confidential decisions of this Chamber; (ii) suggested to Prosecution Witness P-0190 and [REDACTED] what they should say in their proposed interviews with Defence Counsel; and (iii) discussed paying witnesses without Defence Counsel’s knowledge as a strategy for ensuring NTAGANDA’s release.
3. Defence investigator [REDACTED] threatened Prosecution Witness P-0190 because of his cooperation with the Prosecution and pressured another Witness, P-0901, to cooperate with the Defence.
4. LOGO and [REDACTED] acted in breach of orders of this Chamber, improperly pressured and interfered with two witnesses in violation of article 55(1)(b) of the Statute, and breached numerous provisions of the Code of Conduct for Investigators. Both may also have committed the offence of corruptly influencing a witness under article 70(1)(c) of the Statute.
5. Their conduct warrants immediate suspension from the Defence team. The Prosecution further requests that the Chamber refer the matter to the Registrar and the Disciplinary Board to decide on LOGO and [REDACTED]’s ultimate exclusion from the ICC list of professional investigators and any applicable disciplinary measures. Permitting LOGO and [REDACTED] to continue to

work as Defence investigators jeopardises the safety of witnesses and their families and risks undermining the integrity of these proceedings.

6. The Prosecution additionally requests that LOGO and [REDACTED] be removed from the list of authorised callers to any detained or convicted person at the Detention Centre, and seeks other measures on the extent to which LOGO and [REDACTED] had access to Prosecution witnesses.
7. The Chamber has the authority to grant the requested relief under articles 64(2), 64(6)(c), (e) and (f) and 68 of the Statute, to protect the safety, well-being, dignity and privacy of witnesses and to prevent any further witness interference.

Confidentiality

8. This filing and its annexes are classified as “Confidential, *Ex Parte*” – Prosecution and Victims and Witnesses Unit (“VWU”) only further to regulation 23*bis* of the Regulations of the Court (“RoC”). The Prosecution has not notified NTAGANDA or his Defence team at this time, to ensure that the Chamber has an opportunity to consider whether the requested measures are *prima facie* well evidenced and proportionate. If NTAGANDA were to be aware of the Prosecution application while it was under consideration by the Chamber this would be likely to drive him to further misuse his communications. The Prosecution requests that Defence investigators LOGO and [REDACTED] are not informed of the various measures it is seeking in relation to confidential materials that may still be in their possession, to ensure those materials are first secured and returned to the Court.
9. Once the Chamber has had an opportunity to consider the Prosecution’s request and to make any interim order suspending LOGO and [REDACTED]

from the Defence team, the Prosecution can file a confidential redacted version of this request. This will enable the Defence to make factual or legal submissions on the Prosecution's application and whether any interim orders should be further extended. The Prosecution requests that Defence Counsel and the Accused be ordered to refrain from informing either LOGO or [REDACTED] of the Prosecution request until Defence Counsel secures the immediate return of all confidential materials from them. This will ensure that they do not make copies or further distribute any documents that they are ordered to return.

Background

10. On 12 December 2014, the Chamber adopted the Protocol on the Handling of Confidential Information During Investigations and Contact Between a Party or Participant and Witnesses of the Opposing Party or of a Participant ("Protocol").¹ The Protocol prohibits, in all circumstances, the disclosure to the public of a witness's involvement with the activities of the Court and nature of that involvement.² The Protocol further requires a party to notify the opposing party if it seeks to contact witnesses of the opposing party.³

11. The Defence was notified that the Prosecution was relying on P-0190's statement since 18 December 2014. The Defence was first made aware that P-0190 met with the Prosecution through disclosure of an investigation note as Rule 77 in May 2013. In any event, on 15 January 2015, the Prosecution included P-0190 on its list of witnesses.⁴

¹ ICC-01/04-02/06-412-AnxA.

² See in particular Protocol, para.21.

³ Protocol, para.34.

⁴ ICC-01/04-02/06-426-Conf-AnxA-Red, p.3.

12. On 6 March 2015, Prosecution Witness P-0901 met LOGO in [REDACTED].⁵
13. On 7 March 2015, Prosecution Witness P-0190 met LOGO and [REDACTED] in Kampala.⁶ P-0190 audio-recorded the meeting (“Recorded Conversation”).
14. On the same day, Defence Counsel informed the Prosecution that the Defence investigators had inadvertently contacted Prosecution Witness P-0190. Defence Counsel instructed the investigators to cease all contact with the witness at once, and began the process of obtaining a statement from both investigators setting out the circumstances of their contacts with P-0190.
15. At a meeting on 11 March 2015, Defence Counsel confirmed that he could make the investigators’ statements available. He also informed the Prosecution that [REDACTED] was one of the two Defence investigators.
16. On 20 March 2015, the Prosecution disclosed P-0901’s identity along with the transcripts of his interview.⁷
17. At a meeting on 27 March 2015, Defence Counsel informed the Prosecution that LOGO was the second Defence investigator, and had worked for the Defence since 15 February 2015.
18. On 17 June 2015, the Prosecution obtained a transcription and a translation of the Recorded Conversation.⁸

⁵ Confidential *Ex Parte* Annex 1, DRC-OTP-2082-2713, para.10.

⁶ Confidential *Ex Parte* Annex 2, DRC-OTP-2083-0206, paras.8-11.

⁷ The transcripts were re-disclosed formally on 26 March 2015. ICC-01/04-02/06-535.

⁸ The transcription and translation of the Recorded Conversation are attached as Confidential *Ex Parte* Annexes 3 and 4 to this filing, respectively.

On 24 March 2015, the Prosecution interviewed P-0190. The interview was audio-recorded. The transcript of the interview is attached as Confidential *Ex Parte* Annex 5. The first part of the transcript of P-0190’s interview (corresponding to track 1 of the recording) contains a transcript of the Recorded Conversation at pp.14-52, lns.421-1762, because P-0190 played the recording to the Prosecution during the interview. Some portions of the Recorded Conversation are still incomprehensible. The Prosecution is exploring whether it is technically possible to enhance the audio-file further. On 24 March 2015 P-0190 also provided a brief

Prosecution's Submissions

[REDACTED] threatened P-0190

19. [REDACTED] made several telephone calls to P-0190 in February 2015, seeking to arrange a meeting between P-0190 and the Defence Counsel in Uganda. According to P-0190, on 12 February 2015, [REDACTED] told P-0190 that he knew he was a Prosecution witness and warned that P-0190 was exposing his family [REDACTED] by cooperating with the Prosecution. P-0190 replied that [REDACTED] and he did not like that kind of intimidation. P-0190 terminated the calls.⁹ On 22 February 2015, [REDACTED] called P-0190 again, this time to persuade P-0190 to meet with Defence Counsel in Kampala on 6 March 2015. [REDACTED] said he regretted that P-0190 had given a statement against the Accused, because NTAGANDA was fighting for the Hema [REDACTED]. [REDACTED] then threatened P-0190 by cautioning P-0190 not to forget that [REDACTED].¹⁰

20. [REDACTED] called P-0190 again on 5 March 2015 to inform P-0190 that NTAGANDA's Defence Counsel would arrive on 6 March 2015 and that he would receive a call from LOGO.¹¹

LOGO divulged confidential information to P-0190 and suggested lines of defence

21. On 6 March 2015, LOGO called P-0190 to convince P-0190 to meet NTAGANDA's Defence Counsel. LOGO asked to meet P-0190 alone first; P-0190 agreed.¹²

statement in which he discusses the Recorded Conversation. It is attached as Confidential *Ex Parte* Annex 2, DRC-OTP-2083-0206.

⁹ Confidential *Ex Parte* Annex 6, DRC-OTP-2079-1102, paras.3-6.

¹⁰ Confidential *Ex Parte* Annex 2, DRC-OTP-2083-0206, para.6.

¹¹ Confidential *Ex Parte* Annex 2, DRC-OTP-2083-0206, para.7; Confidential *Ex Parte* Annex 5, pp.5-6, lns.104-119; Confidential *Ex Parte* Annex 5, p.82, lns.1000-1005.

22. On 7 March 2015, P-0190 arrived at the agreed location and saw that LOGO was accompanied by [REDACTED], a [REDACTED] whom P-0190 knew because he had been [REDACTED].¹³ [REDACTED] played an active role throughout the meeting with P-0190. P-0190 later explained to the Prosecution that when he realised that [REDACTED] was working as a “*défenseur*” for NTAGANDA, he felt it best to audio record the meeting.¹⁴ LOGO and [REDACTED] were not aware that P-0190 was recording the conversation.¹⁵

23. During the meeting, LOGO identified P-0055 and P-0768 as Prosecution witnesses, revealed confidential information about the restrictions to NTAGANDA’s telephone calls from the Detention Centre, suggested specific lines of defence to P-0190 and [REDACTED] for use in their proposed upcoming interviews with Defence Counsel, and discussed with P-0190 and [REDACTED] the possibility of paying witnesses without Defence Counsel’s knowledge as a strategy for ensuring NTAGANDA’s release, as set out in greater detail below.

LOGO revealed the identity of Prosecution witnesses and the content of confidential decisions of this Chamber

24. During the Recorded Conversation, LOGO breached two orders of the Chamber. First, he revealed the identity of two Prosecution witnesses [REDACTED] (P-0768) and [REDACTED] (P-0055), to members of the public.¹⁶ Second, he divulged information contained in confidential decisions by

¹² Confidential *Ex Parte* Annex 2, DRC-OTP-2083-0206, paras.8-9; Confidential *Ex Parte* Annex 5, pp.7-8, lns.157-195.

¹³ Confidential *Ex Parte* Annex 2, DRC-OTP-2083-0206, para.9; Confidential *Ex Parte* Annex 5, pp.8-9, lns.212-239. Confidential *Ex Parte* Annex 5, p.61, lns.250-252.

¹⁴ Confidential *Ex Parte* Annex 5, p.11, lns.305-312.

¹⁵ Confidential *Ex Parte* Annex 2, DRC-OTP-2083-0206, para.10; Confidential *Ex Parte* Annex 5, p.11, lns.316-321.

¹⁶ Confidential *Ex Parte* Annex 2, DRC-OTP-2083-0206, para.14, eighth and ninth bullet points. For the Prosecution’s allegations of interference with P-0768 and P-0055, see ICC-01/04-02/06-349-Conf-Exp, paras.15-26, ICC-01/04-02/06-348-Conf-Exp; ICC-01/04-02/06-349-Conf-Exp, paras.27-36.

confirming that the Accused had threatened certain witnesses¹⁷ and that his communications were restricted as a result.¹⁸

25. As a Defence investigator, LOGO is bound by the Chamber's orders.¹⁹ In revealing the names of P-0768 and P-0055 and their role as Prosecution witnesses testifying against NTAGANDA, he breached paragraphs 19, 20 and 21 of the Protocol, relating to the disclosure of the identity of witnesses of other parties and participants in the course of investigations. It is evident from the Recorded Conversation that disclosure of their names was not justified for investigative purposes. In any event, the Protocol prohibits revealing that P-0768 and P-0055 are involved with the activities of the Court and the nature of their involvement – in this case, as witnesses testifying against NTAGANDA.²⁰

26. During the Recorded Conversation, LOGO also discussed P-0768 and P-0055's value as Prosecution witnesses,²¹ indicated that P-0055 [REDACTED],²² provided the number of witnesses on the Prosecution's list,²³ and speculated about one other individual's possible status as a Prosecution witness²⁴ – all highly inappropriate matters for a Defence investigator to discuss freely with potential witnesses or members of the public. He also misled Defence Counsel about the fact that he was meeting with P-0190 and [REDACTED] at the same time.²⁵

¹⁷ Confidential *Ex Parte* Annex 5, p.63, lns.317-326; Confidential *Ex Parte* Annex 2, DRC-OTP-2083-0206, para.14, eighth bullet point.

¹⁸ Confidential *Ex Parte* Annex 4, pp.14-15, lns.426-469; Confidential *Ex Parte* Annex 5, p.63, lns.328-331; Confidential *Ex Parte* Annex 2, DRC-OTP-2083-0206, para.14, eighth bullet point.

¹⁹ Protocol, para.3(a).

²⁰ Protocol, para.21.

²¹ Confidential *Ex Parte* Annex 4, pp.15-16, lns.472-503.

²² Confidential *Ex Parte* Annex 4, p.28, l.979.

²³ Confidential *Ex Parte* Annex 4, p.16, lns.531-533.

²⁴ Confidential *Ex Parte* Annex 4, p.16, lns.523-527; Confidential *Ex Parte* Annex 2, DRC-OTP-2083-0206, para.14, ninth bullet point.

²⁵ Confidential *Ex Parte* Annex 4, p.36, lns.1269-1284; Confidential *Ex Parte* Annex 2, DRC-OTP-2083-0206, para.16.

27. LOGO further confirmed that he had spoken with “Thomas” who encouraged LOGO to leave his work in Kinshasa to work for NTAGANDA’s Defence.²⁶ The Prosecution believes this to be a reference to Thomas Lubanga and to a conversation that must have taken place from the Detention Centre relatively recently, since LOGO joined the NTAGANDA Defence team in February 2015.

LOGO attempted to influence P-0190 and [REDACTED] prior to their proposed interviews

28. During the Recorded Conversation, LOGO tried to persuade P-0190 to meet with Defence Counsel in [REDACTED] that afternoon or the next day.²⁷ In anticipation of that meeting, LOGO characterised the Prosecution’s allegations as false,²⁸ indicated to P-0190 the areas on which the Defence would ask him to provide information,²⁹ and suggested the lines that P-0190 should follow in response.³⁰

29. LOGO insisted on the need for P-0190 and [REDACTED] to help obtain the release of the Accused. While agreeing with P-0190 that NTAGANDA had committed crimes, LOGO insisted on the need to defend him.³¹

30. The Prosecution submits that by this conduct LOGO may have committed the offence of corruptly influencing a witness under article 70(1)(c).

LOGO discussed paying witnesses without Defence Counsel’s knowledge

31. In addition, LOGO agreed to implement a strategy for NTAGANDA’s Defence which was to be organised among the witnesses, without informing Defence

²⁶ Confidential *Ex Parte* Annex 4, p.5, lns.83-87.

²⁷ Confidential *Ex Parte* Annex 4, p.6, lns.115-119; Confidential *Ex Parte* Annex 5, p.7, lns.176-187.

²⁸ Confidential *Ex Parte* Annex 4, p.9, l.227.

²⁹ Confidential *Ex Parte* Annex 4, p.6, lns.118-121, 136-139.

³⁰ Confidential *Ex Parte* Annex 4, pp.8-9, lns.209-257, p.24, 820-831.

³¹ Confidential *Ex Parte* Annex 4, pp.22-23, lns.759-783, p.26, 887-898. See also Confidential *Ex Parte* Annex 5, p.66, lns.431-444, p.67, lns.463-473; and Confidential *Ex Parte* Annex 2, DRC-OTP-2083-0206, para.14, twelfth bullet point.

Counsel.³² According to P-0190, the plan was to open a bank account to be used to make payments to witnesses before their testimony; LOGO agreed to conceal from the Defence Counsel such payments to the witnesses, which would go *via* [REDACTED] and the UPC co-founder and head of civilian intelligence and named co-perpetrator [REDACTED], who were the “*financiers*”.³³

32. The Prosecution alleges that LOGO’s contribution to the discussion of payments to potential witnesses is inconsistent with the high ethical and professional standards required by the Code of Conduct for Investigators, all the more so because he did not tell the potential witnesses that this was not possible; rather, he agreed to take action without Defence Counsel’s knowledge.

LOGO and [REDACTED] pressured P-0901

33. The Defence investigators – and [REDACTED] – also contacted and pressured Prosecution Witness P-0901.³⁴

34. In early 2014, [REDACTED] called P-0901 and told him that NTAGANDA was trying to contact him because his Defence Counsel was going to [REDACTED]. Former Defence “resource person” [REDACTED] introduced P-0901 to then Defence Counsel Marc Desalliers and another member of the Defence team in or about January 2014, in [REDACTED]. They asked him questions about Mongbwalu but P-0901 answered that he was not interested in becoming a Defence witness.³⁵ Following the meeting with the Defence, P-901 received a call from [REDACTED] who told him that he had not provided the correct

³² Confidential *Ex Parte* Annex 4, pp.11-12, lns.312-355, pp.31-32, lns.1095-1118, pp.37-38, lns.1293-1336.

³³ Confidential *Ex Parte* Annex 5, pp.59-60, lns.169-190, p.67, lns.457-461, pp.68-69, lns.488-528; *see also* Confidential *Ex Parte* Annex 2, DRC-OTP-2083-0206, para.14, second and last bullet points.

³⁴ ICC-01/04-02/06-603-Conf-Exp, paras.27-30.

³⁵ Confidential *Ex Parte* Annex 7, DRC-OTP-2078-2328, paras.14-15.

answers to the lawyers' questions about Mongbwalu, urged him to give false testimony and to lay all the blame for the crimes on FPLC Chief of Staff Floribert Kisembo.³⁶ Approximately one month later, P-0901 was approached by a man in a vehicle who said he had been sent by [REDACTED]. The man told P-0901 that accommodation had been prepared for [REDACTED], and offered him US\$1,000. P-0901 refused the money.³⁷

35. In February and early March 2015, P-0901 received several calls from [REDACTED], who sought to re-establish P-0901's cooperation with the Defence.³⁸ P-0901 refused.³⁹

36. On 5 March 2015, [REDACTED] once again called P-0901 but did not succeed in speaking with him. He sent P-0901 the following text message:

"Je vous informe que nous venons demain vers midi à [REDACTED] avec les Avocats de Bosco et ils veulent nécessairement te parler. Alors, tu auras le programme dès que nous venons. Ne nous déçois pas svp mon fils. Thank's. God bless you".⁴⁰

37. [REDACTED] eventually succeeded in speaking with P-0901 that same day, after [REDACTED] called P-0901 to ask him why he was not answering [REDACTED]'s calls. Once [REDACTED] reached P-0901, he handed the phone to LOGO.⁴¹ P-0901 agreed to meet LOGO, whom he knew from Kinshasa.⁴²

³⁶ Confidential *Ex Parte* Annex 7, DRC-OTP-2078-2328, para.16.

³⁷ Confidential *Ex Parte* Annex 7, DRC-OTP-2078-2328, at 2330, para.17.

³⁸ Confidential *Ex Parte* Annex 8, DRC-OTP-2079-1104, paras.2-3; Confidential *Ex Parte* Annex 10, DRC-OTP-2082-2711, paras.2-4; Confidential *Ex Parte* Annex 1, DRC-OTP-2082-2713, paras.2-5; Confidential *Ex Parte* Annex 9, DRC-OTP-2083-0199, paras.6-15.

³⁹ Confidential *Ex Parte* Annex 1, DRC-OTP-2082-2713, para.4; Confidential *Ex Parte* Annex 10, DRC-OTP-2082-2711, para.4.

⁴⁰ Confidential *Ex Parte* Annex 10, DRC-OTP-2082-2711, paras.2-4; Confidential *Ex Parte* Annex 9, DRC-OTP-2083-0199, paras.9-10.

⁴¹ Confidential *Ex Parte* Annex 1, DRC-OTP-2082-2713, para.2; Confidential *Ex Parte* Annex 9, DRC-OTP-2083-0199, paras.12-13.

38. On 6 March 2015, P-0901 met LOGO briefly in [REDACTED]. LOGO told P-0901 that NTAGANDA needed P-0901 and that “his community”⁴³ should help NTAGANDA.⁴⁴ P-0901 explained why he did not wish to cooperate with the Defence.⁴⁵ LOGO and P-0901 subsequently went to a restaurant to wait for [REDACTED], whom P-0901 knew because he had been “*dans les services de sécurité de l’UPC en 2002-2003*”.⁴⁶

39. Following his contacts with [REDACTED] and LOGO in early March 2015, several individuals approached P-0901 and said they knew he was a witness in the *Ntaganda* case.⁴⁷ First, on [REDACTED], UPC sympathiser [REDACTED] said he had heard that P-0901 would testify for NTAGANDA.⁴⁸ Second, on [REDACTED], a former UPC soldier, [REDACTED], advised P-0901 not to go to The Hague and told him that “*les gens de Bosco*” were looking for him.⁴⁹ Third, on [REDACTED], P-0901’s friend [REDACTED] told him that his collaboration with the Prosecution was being openly discussed in the Hema community in [REDACTED]: “*La communauté Gegere à [REDACTED] est en alerte*”.⁵⁰ [REDACTED] told P-0901 that Lubanga had contacted [REDACTED] and had asked him to find P-0901 so Lubanga could speak with him. According to [REDACTED], P-0901’s anticipated testimony “*a fait beaucoup de mal à Bosco*”. [REDACTED] then asked [REDACTED] to find P-0901 and to convey the message that Lubanga was looking for him.⁵¹

⁴² Confidential *Ex Parte* Annex 1, DRC-OTP-2082-2713, para.10; Confidential *Ex Parte* Annex 9, DRC-OTP-2083-0199, paras.13-16.

⁴³ LOGO and P-0901 [REDACTED].

⁴⁴ Confidential *Ex Parte* Annex 9, DRC-OTP-2083-0199, para.16.

⁴⁵ Confidential *Ex Parte* Annex 9, DRC-OTP-2083-0199, para.17.

⁴⁶ Confidential *Ex Parte* Annex 9, DRC-OTP-2083-0199, para.19.

⁴⁷ Confidential *Ex Parte* Annex 9, DRC-OTP-2083-0199, paras.20-22.

⁴⁸ Confidential *Ex Parte* Annex 9, DRC-OTP-2083-0199, para.20.

⁴⁹ Confidential *Ex Parte* Annex 9, DRC-OTP-2083-0199, paras.21-22.

⁵⁰ Confidential *Ex Parte* Annex 11, DRC-OTP-2083-0333, at 0333, para.4.

⁵¹ Confidential *Ex Parte* Annex 11, DRC-OTP-2083-0333, at 0333, para.5.

40. On [REDACTED], P-0901 further heard, from another individual of Hema ethnicity in [REDACTED], that [REDACTED], [REDACTED],⁵² was aware of his cooperation with the Prosecution and had tried to send him the following dissuasive message: "*Ce que vous êtes en train de faire ne va vous emmener nulle part*".⁵³

LOGO and [REDACTED] should be immediately suspended

41. The Prosecution submits that no lesser measures than immediate suspension would be adequate to deal with LOGO and [REDACTED]'s disregard for orders of this Chamber and the Code of Conduct for Investigators. Their behavior in this case alone merits it. Moreover, in LOGO's case, it is a reprise of alleged improprieties during the *Katanga* investigation and trial.

42. LOGO worked as a "resource person" and investigator for the Defence team of Germain Katanga. He was on Katanga's list of registered callers⁵⁴ and had telephone discussions with both Lubanga and Katanga at the Detention Centre.⁵⁵ He also appeared as a Defence witness in the *Katanga* case,⁵⁶ acknowledging his close personal links to the Hema community, to the UPC, and to various associates of the Accused.⁵⁷ During his testimony, LOGO

⁵² [REDACTED].

⁵³ Confidential *Ex Parte* Annex 11, DRC-OTP-2083-0333, para.8. According to P-0901's source, [REDACTED] had sent the message erroneously to another person [REDACTED], who was also a former FPLC combatant [REDACTED]. [REDACTED] replied to the text message saying [REDACTED]. [REDACTED] responded by text message as follows: "*Je m'excuse, la personne qui m'a donné le numéro s'est trompée*". Confidential *Ex Parte* Annex 11, DRC-OTP-2083-0333, para.8. The Prosecution notes that [REDACTED] is believed to be in [REDACTED] since [REDACTED]. [REDACTED].

⁵⁴ ICC-01/04-01/07-T-288-ENG-CT, p.72, lns.20-24 (open session).

⁵⁵ ICC-01/04-01/07-T-288-ENG-CT, p.72, l.20 to p.73, l.6 (open session).

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⁵⁷ LOGO confirmed the accuracy of his title of *Président of La Commission Relations Publiques et Mobilisation*, as set out in an official UPC document: Confidential *Ex Parte* Annex 12, DRC-OTP-0094-0260, pp.4, 9-11; ICC-01/04-01/07-T-289-ENG-WT, p.16, l.22 to p.18, l.17 (open session), p.24, lns.1-10 (open session). LOGO belonged to a committee responsible for organising the official launch of the UPC party in 2004 in the DRC : ICC-01/04-01/07-T-288-ENG-CT, p.87, l.1 to p.88, l.4 (open session). LOGO's password to his email address was found on a piece of paper seized from Tinanzabo's home in 2005, suggesting that LOGO may have given Tinanzabo access to his account –the same email account he subsequently used to communicate with the Defence team of Katanga and to receive confidential evidence, including Prosecution witness statements. ICC-01/04-01/07-T-289-Red-ENG-WT, p.30, l.22 to p.31, l.4

admitted that he had put Katanga in direct contact with third parties⁵⁸ who were not on the Detention Centre's approved list of callers for Katanga. This was a violation of the Detention Centre rules.⁵⁹

43. Prosecution witnesses in that case gave information indicating that LOGO acted inappropriately in his work as an investigator:

- i. A Prosecution witness alleged that LOGO provided confidential information about Prosecution witnesses to third parties – as he informed the [REDACTED] of a Prosecution witness, that [REDACTED] was a principal witness testifying against Mathieu Ngudjolo and Germain Katanga;⁶⁰
- ii. LOGO tried to obtain the locations and contact details of two Prosecution witnesses, even though they were known to be Prosecution witnesses in the ICCPP.⁶¹

44. LOGO also acknowledged during his testimony in the Katanga Trial that it is inappropriate to discuss details of the Defence case with potential Defence witnesses.⁶²

45. During the Recorded Conversation, LOGO *referred* to himself as Katanga's lawyer ("*avocat*"), misrepresenting his role.⁶³ Katanga Defence witnesses,⁶⁴ as

(open session); ICC-01/04-01/07-T-288-ENG-CT, p.65, lns.19-20 (open session); ICC-01/04-01/07-T-288-ENG-CT, p.61, lns.4-25, p.64, l.1 to p.65, l.10 (open session). The document seized from Tinanzabo's house is contained in Confidential *Ex Parte* Annex 13, DRC-OTP-0094-0208 at 0209. The document on which LOGO wrote his email address is attached as Confidential *Ex Parte* Annex 14, DRC-ICC-0001-0322; see also ICC-01/04-01/07-T-288-ENG-CT, p.61, lns.4-21 (open session), p.65, lns.6-10 (open session); ICC-01/04-01/07-T-288-ENG-CT, p.61, lns.4-21 (open session), p.65, l.24 to p.66, l.21 (open session). Finally, LOGO is a relative of the deceased General KISEMBO of the UPC (the former FPLC Chief of Staff), with whom he spent time in his youth. ICC-01/04-01/07-T-289-Red-ENG-WT, p.28, l.1 to p.29, l.1 (open session).

⁵⁸ ICC-01/04-01/07-T-288-ENG-CT, p.7, lns.5-16 (open session); ICC-01/04-01/07-T-290-Red-ENG-WT, p.33, l.2 to p.35, l.25 (open session), p.37, lns.3- to p.38, l.5 (open session).

⁵⁹ [REDACTED].

⁶⁰ Confidential *Ex Parte* Annex 15, DRC-OTP-1053-0201, para.36 ([REDACTED]).

⁶¹ Confidential *Ex Parte* Annex 16, p.3 (P-0028); Confidential *Ex Parte* Annex 15, DRC-OTP-1053-0201, para.35 (P-0538).

⁶² ICC-01/04-01/07-T-289-Red-ENG-WT, p.53, lns.3-8 (open session).

well as a Prosecution witness,⁶⁵ alleged that LOGO had introduced himself as Katanga's lawyer instead of as Katanga's investigator. According to P-0190, LOGO also identified himself as NTAGANDA's lawyer ("*avocat*"), once again misrepresenting his role.⁶⁶

46. [REDACTED] was a witness for the Defence in the *Lubanga* case,⁶⁷ where he testified that he was a coordinator for self-defence committees in Hema villages⁶⁸ and had worked with Lubanga in that capacity.⁶⁹

47. Under articles 64(2) and (6)(c), (e) and (f) and 68(1) the Chamber has a duty to take appropriate measures to protect the safety, well-being, dignity and privacy of witnesses and the confidentiality of information. The Chamber has the authority to order LOGO and [REDACTED]'s interim suspension, and to refer the matter to the Registrar and the Disciplinary Board further to its powers under articles 64(2) and (6)(c), (e) and (f) and 68(1).

Conclusion

48. The Prosecution submits that [REDACTED] violated article 55(1)(b) of the Statute and may have committed an offence under article 70(1)(c) by threatening Witness P-0190 due to his cooperation with the Prosecution.

49. LOGO improperly shared confidential information with third parties in deliberate breach of the Chamber's orders. He revealed the identity of Prosecution Witnesses P-0768 and P-0055 and other confidential information in the case against the Accused.

⁶³ Confidential *Ex Parte* Annex 4, p.19, lns.637-642, p.34, lns.1205-1207. See also p.5, lns.76-77.

⁶⁴ ICC-01/04-01/07-T-265-Red-ENG, p.44, lns.2-5 (D02-146); ICC-01/04-01/07-T-284-Red-ENG-WT, p.7, lns.14-18 (open session) (D02-196).

⁶⁵ Confidential *Ex Parte* Annex 15, DRC-OTP-1053-0201, paras.33, 42 (P-0538).

⁶⁶ Confidential *Ex Parte* Annex 5, pp.6-7, lns.124-161, p.11, lns.337-343. Confidential *Ex Parte* Annex 5, pp.55-56, lns.24-48.

⁶⁷ ICC-01/04-01/06-T-348-ENG ET, pp.21-62.

⁶⁸ ICC-01/04-01/06-T-348-ENG ET, p.25, l.3.

⁶⁹ ICC-01/04-01/06-T-348, p.28, lns.4-7.

50. Both LOGO and [REDACTED] violated sections 4.2, 5.2, 6.1 and 6.2 of the Code of Conduct for Investigators,⁷⁰ which requires them to comply with the Chamber's orders, refrain from making disclosures likely to place the security of a person at risk, and observe confidentiality and minimise the potential for harm. [REDACTED] acted in breach of sections 4.8(b) and 7.3 of the Code by coercing, threatening and pressuring witnesses. In agreeing to cooperate in a plan to pay witnesses without Defence Counsel's knowledge, LOGO also violated section 4.7 of the Code, which required him to abstain from dealings with persons who compromise or appear to compromise the integrity of the Defence investigation. Finally, LOGO violated section 7.1 of the Code by failing to identify himself accurately as an investigator rather than a lawyer.

51. The Prosecution submits that LOGO and [REDACTED]'s conduct, as it transpires from the Recorded Conversation and P-0190 and P-0901's statements to the Prosecution, warrants their immediate dismissal from the Defence team and their permanent removal from the ICC list of professional investigators.

52. [REDACTED] and LOGO's actions appear to be part of a broader practice of divulging sensitive confidential information and interfering with and/or intimidating witnesses.⁷¹ [REDACTED] and LOGO appear to be working very closely with named co-perpetrator [REDACTED],⁷² who has been identified by Prosecution witnesses⁷³ and through NTAGANDA's recorded conversations

⁷⁰ ICC/AI/2008/005.

⁷¹ See e.g. ICC-01/04-02/06-349-Conf-Exp and ICC-01/04-02/06-349-Conf-Red2; ICC-01/04-02/06-371-Conf-Exp and ICC-01/04-02/06-371-Conf-Red; ICC-01/04-02/06-565-Conf-Exp and ICC-01/04-02/06-565-Conf-Exp-AnxA (DRC-OTP-2084-0613); ICC-01/04-02/06-603-Conf-Exp; ICC-01/04-02/06-630-Conf-Exp and ICC-01/04-02/06-630-Red2; ICC-01/04-02/06-635-Conf-Exp and ICC-01/04-02/06-635-Conf-Red.

⁷² [REDACTED] called LOGO four times during his meeting with P-0190. Confidential *Ex Parte* Annex 4, pp.6-7, lns.122-130, 147-152, pp.18-19, lns.605-645, 1355-1364. On one of these calls, LOGO requested [REDACTED] to contact Prosecution Witness P-0067. Confidential *Ex Parte* Annex 4, pp.18-19, lns.608-618. P-0190 explained that [REDACTED] is a "*financier*" in the plan to pay witnesses, along with [REDACTED]. Confidential *Ex Parte* Annex 5, pp.59-60, lns.169-190, pp.68-69, lns.488-528. Indeed, P-0190 identified [REDACTED] as "*le grand collaborateur de [REDACTED] au niveau de l'Ituri*". Confidential *Ex Parte* Annex 5, p.68, lns.514-518.

⁷³ See para.34 above. See also ICC-01/04-02/06-462-Conf-Exp, para.26 and ICC-01/04-02/06-462-Conf-Exp-AnxA-Corr, p.25.

from the Detention Centre as an associate of the Accused's who has threatened witnesses and their families, coached, attempted to bribe, and encouraged witnesses to provide false evidence to the Prosecution.⁷⁴

53. By his own admission⁷⁵ and by his presence at meetings with two witnesses during the Defence Counsel's visit to Uganda in early March 2015, [REDACTED] is assisting LOGO and [REDACTED] in the identification and preparation of potential Defence witnesses. Given his active role in the Recorded Conversation, in particular in the discussion about the payments to witnesses without Defence Counsel's knowledge, he too should be prevented from working formally or informally for the Defence team.

54. The Prosecution submits that the Defence team should cease all forms of cooperation with [REDACTED] and [REDACTED].

Relief Requested

55. Pursuant to articles 64(2) and (6)(c), (e) and (f) and 68(1) of the Statute, the Prosecution seeks an order from the Chamber for [REDACTED] and LOGO's immediate suspension from the Defence team. The Prosecution also seeks an order removing [REDACTED] and LOGO from any lists of registered contacts at the Detention Centre and taking any other available measures to prevent their contact with other ICC detainees.

56. The Prosecution further requests that the Chamber order:

⁷⁴ See, for example, ICC-01/04-02/06-504-Conf-Exp, paras.29-32, ICC-01/04-02/06-603-Conf-Exp, paras.40. The VWU has recently confirmed the Prosecution's analysis. See ICC-01/04-02/06-634-Conf-Exp-Anx, pp.2-3.

⁷⁵ Confidential *Ex Parte* Annex 4, p.15, lns.470, 950-952.

- i. Defence Counsel to file LOGO's and [REDACTED]'s statements concerning the circumstances of their contact with P-0190 in the record of the case;
- ii. Defence Counsel to report to the Chamber and the Prosecution on the extent to which [REDACTED] and LOGO had access to case-related materials, in particular the identity, location, family relations and statements of Prosecution witnesses and other confidential materials and information;⁷⁶
- iii. Defence Counsel to report to the Chamber and the Prosecution on the means assigned to and/or used by [REDACTED] and LOGO for communicating case-related materials and information within the Defence team and with external parties, such as e-mail addresses and phone numbers;
- iv. Defence Counsel, in coordination with the Registry, to recover all case-related materials from [REDACTED] and LOGO without delay and immediately sever [REDACTED] and LOGO's further access to case-related materials and ICC resources; and
- v. Defence Counsel to instruct his team, including investigators and resources persons, not to share confidential information related to the case with [REDACTED] and [REDACTED] and not to receive assistance in any form from them.

57. Lastly, the Prosecution requests that the Chamber refer the matters addressed in this request to the Registrar, and to the Disciplinary Board in accordance with Section 10.1.(b) of the Code of Conduct for Investigators, to determine

⁷⁶ Protocol, para.11.

whether, as the Prosecution believes, their contracts should be terminated and they should be struck permanently from the list of investigators.



Fatou Bensouda
Prosecutor

Dated this 19th day of February 2021

At The Hague, The Netherlands