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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-Carbuccia

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

Public

Public Redacted Version of “Confidential redacted version of ‘Response on behalf of Mr Ntaganda to the ‘Prosecution’s urgent request for immediate suspension of Defence investigators and other measures’”, 5 August 2015, ICC-01/04-02/06-767-Conf-Exp”, 12 August 2015, ICC-01/04-02/06-767-Conf-Exp-Red2

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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Further to: (i) the *Prosecution's urgent request for immediate suspension of Defence investigators and other measures* submitted on 19 June 2015 and conveyed to the Defence on 26 June 2015 ("Prosecution Request");¹ and (ii) the Trial Chamber VI ("Chamber")'s *Order taking interim measures in relation to a Defence investigator and related matters* issued on 23 June 2015;² Counsel representing Mr Ntaganda hereby submit this

Response on behalf of Mr Ntaganda to the "Prosecution's urgent request for immediate suspension of Defence investigators and other measures"
"Defence Response"

I. INTRODUCTION

1. The Defence of Mr Ntaganda acknowledges that its former investigator, Jean Logo, identified two Prosecution witnesses during a conversation with individuals not authorized to receive that information. Nonetheless, the Prosecution's three-month delay in disclosing this information to the defence – and even then, only after having seized the Chamber *ex parte* – has deprived the Defence of the opportunity to respond to this issue much earlier. The failure to disclose this information earlier has not been justified, and has prejudiced Mr Ntaganda's defence.
2. The allegations against [REDACTED] are unfounded. P-901's account of his interaction with [REDACTED] reveals no improper contact, let alone intimidation. P-190's allegations of witness intimidation are contradictory and unreliable. The Prosecution's more general claim that Mr Logo's conversation with P-190 reflects a "broader practice" of "interfering and/or intimidating witnesses", in which [REDACTED] is said to have participated, finds no support in the audio of that conversation. The allegations against [REDACTED] – both specific and general – have no merit and should be rejected.

¹ ICC-01/04-02/06-658-Conf-Exp ("Prosecution Request").

² ICC-01/04-02/06-667-Conf-Exp ("Interim Order").

II. PROCEDURAL BACKGROUND

3. On 19 June 2015, the Prosecution Request was submitted *ex parte* only available to the Chamber.³
4. The Chamber ordered, on 23 June 2015,⁴ the immediate interim suspension of Mr Logo, but not [REDACTED]; and the Defence to retrieve all confidential information from Mr Logo, to respond to the Prosecution Request within ten days, and to indicate the investigators' degree of access to confidential material. This order included a prohibition on giving Mr Logo any access to "confidential information,"⁵ which was deemed by the Defence to prohibit sharing the content of any confidential filings and decisions.
5. On 25 June 2015, the Defence filed a notice⁶ indicating the steps that had been taken to retrieve all confidential material from Mr Logo, and advising the Chamber and the Prosecution of the temporary suspension of [REDACTED].⁷
6. An *inter partes* version of the Prosecution Request, at the Chamber's instructions, was filed by the Prosecution in redacted form on 26 June 2015.⁸
7. On 2 July 2015, the Defence requested additional time to respond to the Prosecution Request ("Defence Motion"); permission to discuss the allegations with the two investigators; and disclosure of, *inter alia*, the audio-recording of the conversation between P-190, [REDACTED] and Mr Logo that is the primary basis of the Prosecution Request.⁹ The audio-recording ("Recorded Conversation") and other material were disclosed by the Prosecution the next day.¹⁰

³ Prosecution Request, para.55.

⁴ Interim Order.

⁵ *Id.* p.8.

⁶ ICC-01/04-02/06-673-Conf-Exp ("Defence Notice (25/06/2015)").

⁷ Defence Notice (25/06/2015), paras.1-2.

⁸ Prosecution Request.

⁹ ICC-01/04-02/06-691-Conf-Exp.

¹⁰ ICC-01/04-02/06-701-Conf-Exp.

8. A status conference on 3 July 2015¹¹ addressed issues relevant to the Prosecution Request, including the standard to be applied for determination of the facts alleged.
9. The Prosecution responded to the Defence Motion on 9 July 2015.¹² The next day, the Defence requested leave to reply, which was granted on 13 July 2015 by email as to the scope of disclosure required concerning P-190. The reply was filed on 14 July 2015 (“Defence Reply”).¹³
10. Statements of Mr Logo and [REDACTED] signed prior to the disclosure of the Prosecution Request were disclosed to the Chamber on 13 July 2015.¹⁴
11. On 16 July 2015, the Chamber decided the Defence Motion, ordering the Prosecution to disclose the results of any investigation into the authenticity or reliability of the Recorded Conversation; authorised the Defence to contact the investigators; extended the deadline for response; denied requests for further disclosure orders in relation to P-190; and adopted a “reasonable grounds to believe” standard for making factual determinations.¹⁵ A Request for Reconsideration or, in the alternative, Leave to Appeal this decision was filed on 20 July 2015, to which the Prosecution responded on 24 July 2015,¹⁶ and which the Chamber denied on 4 August 2015.¹⁷
12. On 21 July 2015, the Defence filed its *Urgent request for confidential documents in the Katanga case*¹⁸, to which the Prosecution responded on 24 July 2015.¹⁹ On

¹¹ ICC-01/04-02/06-T-22-CONF-ENG, ICC-01/04-02/06-T-21-CONF-EXP-ENG (“Status Conference”).

¹² ICC-01/04-02/06-705-Conf-Exp.

¹³ ICC-01/04-02/06-718-Conf-Exp.

¹⁴ [REDACTED]

¹⁵ ICC-01/04-02/06-731-Conf-Exp.

¹⁶ ICC-01/04-02/06-746-Conf-Exp.

¹⁷ ICC-01/04-02/06-761-Conf-Exp.

¹⁸ ICC-01/04-02/06-731-Conf-Exp.

¹⁹ ICC-01/04-02/06-744-Conf-Exp.

29 July, the Chamber granted the request in part, and extended the deadline for responding to the Prosecution Request to 5 August 2015.²⁰

III. THE PROSECUTION FAILED TO DISCLOSE HIGHLY RELEVANT INFORMATION FOR MORE THAN THREE MONTHS

13. Intentional disclosure of a protected witness's identity is a violation of paragraph 21 of 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").²¹ The Defence takes confidentiality very seriously and does not, and will not, tolerate disclosure of confidential information. Accordingly, taking into consideration Mr Logo's disclosure of confidential information, the Defence acknowledges that his further collaboration with the Defence in this case would not be appropriate,²² even though the other serious allegations raised by the Prosecution against him are not founded.
14. The information about this disclosure was in the Prosecution's possession for more than three months before it was disclosed to the Defence. The Prosecution knew, on 24 March 2015, the content and potential significance of the information. Mr Logo continued to work during that interval without the Defence being in any way informed or aware of the information in the Prosecution's possession. Instead of promptly disclosing this information to the Defence, the Prosecution filed an *ex parte* motion before the Trial Chamber – and even then, not until **eighty-eight days** after the information had been received. During the interval, on 27 March 2015, the Defence met with the Prosecution to discuss witness protection issues.²³ The Prosecution gave no

²⁰ ICC-01/04-02/06-754-Conf-Exp-Red.

²¹ ICC-01/04-02/06-412-AnxA.

²² The Defence notes that while Mr Logo's disclosure of confidential information is a clear violation of the Protocol, this breach must be assessed in the light of the additional information provided in Annex E ("Second Logo Statement").

²³ Status Conference, p.20, ll.23-25.

indication during that meeting – aside from an oblique hint²⁴ – of the existence of this information.

15. The tardy disclosure of this information was unjustified. The Prosecution investigators listened to the audio-recording on 24 March 2015.²⁵ P-190 described its content to them on that date. P-190 claimed that the audio-recording reflected a conversation in which, according to him, Mr Logo identified two protected witnesses.²⁶ The investigators understood this claim, as is reflected in the statement they then drafted: “[REDACTED].”²⁷
16. The source language of the audio is Swahili, a language used in several cases currently before the ICC. The specific portion of greatest relevance could have been prioritized for translation and transcription. A *verbatim* transcript of just the most relevant passage could have been produced quickly. Even without any translation, the entire audio-tape of P-190’s interview with the Prosecution on 24 March 2015 (which included the audio of the alleged statement by Mr Logo) was disclosable to the Defence. The Defence would then have had the opportunity, with some notice from the Prosecution as to the content of the audio itself, to react.
17. The Prosecution failed to take any of these steps. They were not taken despite knowing that Mr Logo would likely come into contact with more witnesses. They were not taken despite knowing that Mr Logo might come into possession of additional confidential information. They were not taken despite the fast approaching start of trial. No indication of the alleged misconduct was provided until three weeks before the scheduled start of trial – which was more than twelve weeks after the Prosecution received the information.

²⁴ Status Conference, p.21, l.1 (“[a]ll we were told is this is soon to be your problem.”)

²⁵ Prosecution Request, Annex 5 (“Transcript of P-190 Statement (24/03/2015)”), Track 1, p.12, l.420 (“[Début de la diffusion audio, 00:26:14]”).

²⁶ Transcript of P-190 Statement (24/03/2015), Track 2, p.9, l. 317-326.

²⁷ Prosecution Request, Annex 4 (“P-190 Statement (24/03/2015)”), DRC-OTP-2083-0209, para. 14, sub-item 8.

18. No specific remedy can mitigate the consequent prejudice. The Defence is left without investigators on the eve of trial; some investigations may need to be repeated or re-confirmed; and the integrity of the Defence has been impugned. Some of these same consequences would have arisen anyway, but the untimeliness of disclosure of this information has substantially exacerbated the negative consequences for the Defence that could have been otherwise avoided.

IV. THE SPECIFIC ALLEGATIONS AGAINST [REDACTED] ARE UNFOUNDED

(i) Introduction

19. Three specific allegations are made against [REDACTED]: (i) he improperly contacted a Prosecution witness, P-190; (ii) he threatened P-190; and (iii) he threatened P-901. The Prosecution does not allege that [REDACTED]'s mere contact with P-901 was wrongful since at the time of the contact the latter had not been notified to the Defence as a Prosecution witness.²⁸

(ii) [REDACTED] did not contact P-190 knowing that he was a Prosecution witness

20. There is no dispute that there was a telephone communication between [REDACTED] and P-190 in mid-February 2015.²⁹ However, at the time of these contacts, [REDACTED] was unaware that P-190 was a Prosecution witness; indeed, he positively and justifiably believed that he was not a Prosecution witness.³⁰

21. The basis for this belief was that on 6 February 2015, [REDACTED] received an email from the Defence with an attachment listing persons to be met

²⁸ Prosecution Request, para.16 (“[o]n 20 March 2015, the Prosecution disclosed P-901’s identity”).

²⁹ Annex A (“First [REDACTED] Statement”), paras.12-13, (also filed as ICC-01/04-02/06-717-Conf-Exp-AnxA); Annex C (“Second [REDACTED] Statement”), paras.4-5,10,13.

³⁰ First [REDACTED] Statement, paras.3-4.

during an upcoming mission to [REDACTED].³¹ The Trial Chamber has received this list.³² The following person is listed: “18) [REDACTED].” “[REDACTED]” is a reference to [REDACTED], “[REDACTED]”, by which this person was known at the time of events in Ituri in 2002-2003.³³ This person was understood [REDACTED], Democratic Republic of the Congo and, hence, appears under the heading “[REDACTED]”.³⁴ The Defence subsequently realized that [REDACTED]. [REDACTED] knew of both individuals: “[REDACTED]” [REDACTED]; and “[REDACTED]” a [REDACTED]. [REDACTED] was guided by the misspelled name “[REDACTED]” and, consequently, did not realize that the name referred to the [REDACTED] known as “[REDACTED]”³⁵.

22. The Defence acknowledges, and sincerely regrets, its misspelling of this individual’s name and that it did not more explicitly spell out the person’s call-sign to avoid any possible confusion. [REDACTED], however, is not at fault. He had not been informed by the Defence that “[REDACTED],” the [REDACTED], was a Prosecution witness.³⁶ Accordingly, [REDACTED] was not alert to the need to rigorously avoid confusing the two individuals, let alone advised of the need not to contact P-190.
23. On or about the morning of 13 February 2015, [REDACTED] noticed a missed call indication on his mobile telephone from a number that he did not recognize.³⁷ He called the number back and spoke to a man who immediately

³¹ First [REDACTED] Statement, para. 4; Annex F (“[REDACTED] Affidavit”), para. 3; ICC-01/04-02/06-555 (“Defence Notice (13/04/2015)”).

³² [REDACTED].

³³ Defence Notice (13/04/2015), para.23.

³⁴ [REDACTED].

³⁵ Second [REDACTED] Statement, para.14.

³⁶ [REDACTED] Affidavit, para. 5, 15; Annex G (“[REDACTED] Affidavit”), para. 8

³⁷ First [REDACTED] Statement, para. 12; Second [REDACTED] Statement, paras.4-5.

introduced himself as “[REDACTED].”³⁸ [REDACTED] does not know who gave [REDACTED] his telephone number.³⁹

24. [REDACTED] had a cordial conversation with his interlocutor. He informed him in general terms that members of the Defence of Bosco Ntaganda wished to speak with him, and [REDACTED]⁴⁰. His interlocutor, without manifesting any reluctance,⁴¹ agreed to meet with them.⁴² [REDACTED] did not ask, and [REDACTED] did not indicate, whether he was a Prosecution witness.⁴³

25. On 15 February 2015 – i.e. two days after their initial contact by telephone – [REDACTED] sent a text message to [REDACTED] phone asking for the contact details of P-67.⁴⁴ As of this date, P-67 was not a Prosecution witness.⁴⁵ This was not at the Defence’s request, who had not mentioned P-67’s name on the list of individuals sent to [REDACTED] to be met during the upcoming mission.⁴⁶ [REDACTED] says that he made this inquiry on behalf of a friend from [REDACTED] who wanted to talk politics with P-67.⁴⁷

26. On or around 18 February 2015, [REDACTED] contacted [REDACTED] and confirmed his availability for a meeting with the Defence, [REDACTED].⁴⁸ Once again, [REDACTED] expressed no reluctance to attend this meeting, and there was no discussion about previous contacts or associations with the ICC.⁴⁹ This was [REDACTED] last contact with [REDACTED].

³⁸ First [REDACTED] Statement, para.13; Second [REDACTED] Statement, 4

³⁹ First [REDACTED] Statement, para.14.

⁴⁰ First [REDACTED] Statement, para.15.

⁴¹ First [REDACTED] Statement, para.24.

⁴² First [REDACTED] Statement, paras.16.

⁴³ First [REDACTED] Statement, paras.22-23.

⁴⁴ First [REDACTED] Statement, para.20.

⁴⁵ See e.g. Defence Notice (13/04/2015), para.39.

⁴⁶ List of Individuals.

⁴⁷ First [REDACTED] Statement, para.28; Second [REDACTED] Statement, para.10.

⁴⁸ First [REDACTED] Statement, para.25; Second [REDACTED] Statement, para.12.

⁴⁹ First [REDACTED] Statement, paras.22-24.

27. At no time during these contacts between 13 and 18 February 2015 was [REDACTED] aware that [REDACTED] was, in fact, P-190.⁵⁰ [REDACTED]'s unawareness of this fact arose from the regrettable circumstances described above, and that have been the subject of past submissions by the Defence.⁵¹ [REDACTED] did not contact [REDACTED] knowing he was Prosecution Witness P-190; on the contrary, he believed that he was the person being sought by the Defence as a potential defence witness.
28. Furthermore, the Defence acted quickly and with full candour to notify the Prosecution as soon as the above-mentioned circumstances became known.⁵² The contact with P-190 was reported to the Prosecution on the day that the Defence became aware of what had occurred.⁵³ The Defence also took the initiative to procure statements from both investigators to describe the circumstances of these contacts.⁵⁴ Both statements were signed prior to the Defence being informed of the content of the allegations against them.⁵⁵
- (ii) *No credible basis exists to believe that [REDACTED] threatened P-190*
29. The Prosecution alleges, based on the uncorroborated statement of P-190, that [REDACTED] threatened P-190.
30. P-190's claims in this regard are manifestly unreliable. He contradicts himself repeatedly in the two statements in which he makes this allegation:
- **As to the conversation in which the threat was made:** P-190 alleged on 12 February 2015 that [REDACTED] threatened him during their first conversation;⁵⁶ on 24 March 2015, he states that the

⁵⁰ Second [REDACTED] Statement, para.13.

⁵¹ Defence Notice (13/04/2015), paras.23-27.

⁵² Defence Notice (13/04/2015), paras.34-38.

⁵³ ICC-01/04-02/06-555-AnxH.

⁵⁴ Defence Notice (13/07/2015).

⁵⁵ First [REDACTED] Statement, Annex B ("First Logo Statement") (Also filed as ICC-01/04-02/06-717-Conf-Exp-AnxB).

⁵⁶ Prosecution Request, Annex 6, DRC-OTP-2079-1102 ("Investigation Note (12/02/2015)"), para.6.

threat occurred in the same conversation when [REDACTED] told him that the meeting with the lawyers was to occur around 6 March 2015,⁵⁷ which was during the second conversation;

- **As to the mention of P-190**[REDACTED]: P-190 alleged on 12 February 2015 that [REDACTED] told him that he was “[REDACTED]”, to which P-190 retorted “[REDACTED]”;⁵⁸ on 24 March 2015, P-190 instead attributes these words to [REDACTED], who is alleged to have said “[REDACTED]”;⁵⁹
- **As to the date of arrival of the lawyers:** P-190 stated to the Prosecution on 12 February 2015 that “[REDACTED] told [him] that he had arrived from Bunia, in [REDACTED] along with 3 other people in order to meet with the Defence Counsel of Bosco Ntaganda on Saturday 14 February 2015”;⁶⁰ on 24 March 2015, the story has changed to “*ses avocats arrivent le 6 mars*”;⁶¹
- **As to the number from which [REDACTED] called:** on 12 February 2015, the number from which P-190 is alleged to have been called by [REDACTED] is a [REDACTED] number;⁶² by 24 March 2015 this has changed to a [REDACTED] number;⁶³ and
- **As to the place from which [REDACTED] said he was calling:** on 12 February 2015, P-190 says that “[REDACTED] told the witness that he had arrived from [REDACTED]”;⁶⁴ by 24 March 2015 the story has changed to “[REDACTED] *m’a appelé de* [REDACTED].”⁶⁵

⁵⁷ Transcript of P-190 Statement (24/03/2015), Track 1, p.2, ll.70-75.

⁵⁸ Investigation Note (12/02/2015), para.6.

⁵⁹ Transcript of P-190 Statement (24/03/2015), Track 1, p.3, ll.85-86.

⁶⁰ Investigation Note (12/02/2015), para.5.

⁶¹ Transcript of P-190 Statement (24/03/2015), Track 1, p.2, ll.75.

⁶² Investigation Note (12/02/2015), para.3.

⁶³ Transcript of P-190 Statement (24/03/2015), Track 1, p.3, ll.101.

⁶⁴ Investigation Note (12/02/2015), para.5.

⁶⁵ Transcript of P-190 Statement (24/03/2015), Track 1, p.2, ll.65.

31. Several key elements of P-190's story – aside from being contradictory – are also demonstrably or circumstantially false: (i) it is inherently implausible that [REDACTED] would, in one and the same conversation, have acknowledged that P-190 was a Prosecution witness while also insisting that he come to meet Mr Ntaganda's lawyers;⁶⁶ (ii) [REDACTED] had not been informed by the Defence that P-190 was a Prosecution witness at the time of the alleged threat;⁶⁷ and (iii) there was never any mission, planned or actual, of Mr Ntaganda's counsel to [REDACTED] in mid-February 2015.⁶⁸ Further, it is highly unlikely that [REDACTED] would have been aware of P-190's status as a Prosecution witness, while Mr Logo, who was working with [REDACTED], manifests no such knowledge during the Recorded Conversation. There are numerous other inconsistencies and falsehoods in P-190's various statements that undermine his overall credibility, discussion of which would go far beyond the scope of the present submission.
32. P-190's contradictory and implausible story is also categorically denied by [REDACTED], who says that: (i) he has *never* travelled to [REDACTED], and has not had a valid passport since October 2014;⁶⁹ (ii) he has never used the name "[REDACTED]";⁷⁰ and (iii) he has never had a [REDACTED] telephone number.⁷¹ Since not even P-190 stood by these elements in his latter interview with the OTP, [REDACTED]'s version should be accepted as more reliable, truthful and accurate than that provided by P-190.
33. Further, P-190's propensity to manipulate and his animosity towards Mr Ntaganda, and by extension his defence, is self-evident from the Recorded Conversation.

⁶⁶ Transcript of P-190 Statement (24/03/2015), Track 3, p.2, ll.73-87.

⁶⁷ [REDACTED] Affidavit, para. 5 and 15.

⁶⁸ Second [REDACTED] Statement, para.8.

⁶⁹ Second [REDACTED] Statement, para.7; Annex D.

⁷⁰ Second [REDACTED] Statement, para.9.

⁷¹ Second [REDACTED] Statement, para.6.

34. Given all these circumstances, P-190's uncorroborated, contradictory, implausible and biased account should be rejected as a fabrication.

(iii) *No credible basis exists to believe that [REDACTED] threatened P-901*

35. Nothing in P-901's description of the conduct of [REDACTED], or Mr Logo for that matter, constitutes anything close to improper "pressure".⁷² The Prosecution's implied assertion that [REDACTED] (or Mr Logo) is responsible for contacts by other persons with P-901⁷³ is devoid of foundation.

36. P-901, widely-known by the name "[REDACTED]", was identified on the list sent to [REDACTED] and Mr Logo on 6 February 2015 as a person whom the Defence wished to meet during the Defence mission to commence on 25 February 2015.⁷⁴ The Defence, as the Prosecution acknowledges, was not notified that P-901 was a Prosecution witness until 20 March 2015.⁷⁵ Further, the Defence knew that this person had met with the previous Defence team on 23 March 2014.⁷⁶ Although P-901 claims in a December 2014 statement that he told Mr Ntaganda's previous Defence counsel that he did not wish to cooperate with the Defence, another statement given just three months later states that he only decided not to cooperate with the defence some days *after* this meeting.⁷⁷ The information provided by previous Defence counsel was that P-901 provided exculpatory information and expressed no refusal to cooperate with the Defence.

⁷² Prosecution Request, para.33.

⁷³ Prosecution Request, paras.39-40.

⁷⁴ List of Individuals, p.2.

⁷⁵ Prosecution Request, para.16.

⁷⁶ Defence Notice (13/04/2015), para.50. The date given by P-901 himself is inaccurate (Prosecution Request, Annex 7 ("Investigation Note (14-18/12/2014)"), DRC-OTP-2078-2330, para.15 ("January or early February 2014")) as is the date proffered by the Prosecution (Prosecution Request, para.34 ("in or about January 2014")).

⁷⁷ Prosecution Request, Annex 9, DRC-OTP-2083-0200, para.7 (stating that he decided that he did not want to collaborate with the Defence after receiving a telephone call three days after the meeting with former Defence Counsel).

37. [REDACTED], who has [REDACTED] with P-901, obtained his telephone number not long after having received the list of potential Defence witnesses on 6 February 2015 and spoke to him “à quelques reprises.”⁷⁸ [REDACTED]’s recollection is that P-901 did not categorically refuse to meet with the Defence,⁷⁹ whereas P-901 states that he responded that “he was not interested in cooperating.”⁸⁰ P-901 clarifies, however, that although [REDACTED] “was a little insistent” and that P-901 felt “a little annoyed”, they had “finished their conversation normally.”⁸¹

38. On 5 March 2015, [REDACTED] sent 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.*⁸²

39. This message reflects no intimidation. [REDACTED] is courteous and straightforward, as is appropriate in seeking the cooperation of a witness. Indeed, since all potential witnesses arguably have a legal and moral duty to cooperate equally with the Prosecution and Defence, [REDACTED]’s message falls well within the limits of propriety.

40. P-901 messaged back as follows:

[REDACTED]⁸³

41. P-901 complains that after sending this message, and after refusing to answer calls from [REDACTED], he was contacted by [REDACTED]. [REDACTED] allegedly asked P-901 “*pourquoi je ne voulais pas collaborer avec les avocats de*

⁷⁸ First [REDACTED] Statement, para.35.

⁷⁹ First [REDACTED] Statement, para.36.

⁸⁰ Prosecution Request, Annex 8, DRC-OTP-2079-1104 (“Investigation Note (12/02/2015)”), para.2.

⁸¹ Investigation Note (12/02/2015), paras.2-3.

⁸² *Pictures of text messages*, DRC-OTP-2083-0255 to DRC-OTP-2083-0257; Prosecution Request, Annex 9 (“P-901 Statement (25/03/2015)”), DRC-OTP-2083-0201, para.9.

⁸³ P-901 Statement (25/03/2015), DRC-OTP-2083-0201, para.10.

*Bosco. Elle me demandait également les raisons qui m'empêchaient de collaborer.”*⁸⁴

While these might seem to be inappropriate questions from a stranger, [REDACTED] and P-901 apparently have a close friendship and “*communiquent régulièrement ensemble.*”⁸⁵

42. P-901 says that when he spoke to [REDACTED], he explained his reluctance to talk to [REDACTED] by evoking an event that had happened more than a year before. “[REDACTED]” had allegedly called him in February or March 2014⁸⁶ – more than a year before [REDACTED] was involved in the defence of Mr Ntaganda – and allegedly remonstrated with him for not having responded properly during an interview with Defence lawyers on 23 March 2014. It was only then, according to P-901, that he decided “*de ne pas collaborer avec la Défense de Bosco.*”⁸⁷ P-901 says that he was explaining this event to [REDACTED] “*à nouveau*”,⁸⁸ but gives no information about the previous occasion on which he described this event. [REDACTED]’s telephone call does not constitute, in the circumstances of their close relationship, any improper pressure.

43. P-901 apparently did not feel too intimidated or pressured by this conversation with [REDACTED] because later that evening he accepted a call from [REDACTED], who handed the phone over to Mr Logo, whom P-901 knew from a previous association [REDACTED].⁸⁹ P-901, by his own account, did not categorically refuse to co-operate with the Defence during this conversation, but rather told Mr. Logo that he should come to him in

⁸⁴ P-901 Statement (25/03/2015), DRC-OTP-2083-0201, para.12.

⁸⁵ Second [REDACTED] Statement, para.21.

⁸⁶ The timing of this call is not entirely clear. P-901 says it was “approximately one month” after his meeting with previous counsel for Mr Ntaganda. By P-901’s account, this would place the event in February or March 2014; based on information in the Defence’s possession, however, the event should have taken place in April 2014. Investigation Note (14-18/12/2014), DRC-OTP-2078-2330, para. 17.

⁸⁷ P-901 Statement (25/03/2015), DRC-OTP-2083-0200, para.7.

⁸⁸ P-901 Statement (25/03/2015), DRC-OTP-2083-0201, para.12.

⁸⁹ P-901 Statement (25/03/2015), DRC-OTP-2083-0201, para.13 (“[REDACTED].”).

[REDACTED]: “LOGO m’a demande de venir à [REDACTED]. Je lui ai répondu de venir me voir a [REDACTED].”⁹⁰

44. The next day Mr Logo met with P-901 and they discussed a potential meeting between P-901 and Mr Ntaganda’s defence lawyers. P-901 chose the location and even arrived late for the *rendez-vous*.⁹¹ This discussion was evidently neither intimidating nor coercive because at the end of the discussion, P-901 and Mr Logo went together to a third party “pour discuter d’un problème de famille,” and then dined together.⁹² By P-901’s own account,⁹³ he received no further calls or text messages from either Mr Logo or [REDACTED].
45. None of the individual communications, let alone the entire course of conduct viewed in its totality, constitutes “intimidation.”
46. The Prosecution seems to vaguely imply, without actually asserting, that [REDACTED] is responsible for three interactions between P-901 and third parties that occurred on 8, 9 and 31 March 2015.⁹⁴ The Prosecution does not actually say this, but implies that to be the case on the basis that these events occurred “[f]ollowing his contacts with [REDACTED] and Logo,”⁹⁵ as if to imply that they are responsible for these contacts.
47. The events in question are vague and ambiguous, not least because details and sources are heavily redacted.⁹⁶ Someone seems to have reproached P-901 on 8 March 2015 because he was thought to be a Defence, rather than Prosecution witness;⁹⁷ another person ostensibly pressured him for the opposite reason.⁹⁸ In any event, P-901 himself openly discussed his potential

⁹⁰ P-901 Statement (25/03/2015), DRC-OTP-2083-0201, para.13.

⁹¹ P-901 Statement (25/03/2015), DRC-OTP-2083-0201, para.15.

⁹² P-901 Statement (25/03/2015), DRC-OTP-2083-0201, para.19 (“[REDACTED].”).

⁹³ P-901 Statement (25/03/2015), DRC-OTP-2083-0201, para.19.

⁹⁴ Prosecution Request, para.39.

⁹⁵ Prosecution Request, para.39.

⁹⁶ P-901 Statement (25/03/2015), DRC-OTP-2083-0202, paras.20-26.

⁹⁷ P-901 Statement (25/03/2015), DRC-OTP-2083-0202, para.20 (“[REDACTED]”).

⁹⁸ Prosecution Request, Annex 11, DRC-OTP-2083-0334, para.8.

participation, or non-participation, as a defence witness in front of third parties, as he himself acknowledges.⁹⁹

48. There is no apparent, alleged or asserted basis to assert any connection between these events and [REDACTED].

V. THE GENERAL ALLEGATIONS AGAINST [REDACTED] ARE UNFOUNDED

(i) *Introduction*

49. The Prosecution alleges that “[REDACTED] and Logo’s actions” are part of “a broader practice of divulging sensitive information and interfering with and/or intimidating witnesses.”¹⁰⁰ If true, the allegation would require the Defence to make permanent its interim decision to suspend [REDACTED] *proprio motu*. The claim therefore requires an analysis of whether Mr Logo’s conduct reflects a “broader practice” of “interfering with and/or intimidating witnesses”; and, if so, whether there is any indication of [REDACTED]’s involvement. The present section addresses whether, as alleged by the Prosecution: (i) Mr Logo’s statements during his meeting with P-190 and [REDACTED] are indicative of any scheme to pay witnesses;¹⁰¹ (ii) Mr. Logo “coached” P-190;¹⁰² (iii) Mr Logo’s conduct during the Recorded Conversation in any way indicates [REDACTED]’s involvement in such activities.¹⁰³

(ii) *Mr Logo’s statements during his meeting with P-190 reflect no scheme to pay witnesses*

50. The Prosecution asserts that Mr Logo “agreed” to payments to witnesses by opening bank accounts for them; to conceal such payments from counsel; and

⁹⁹ P-901 Statement (25/03/2015), para.28.

¹⁰⁰ Prosecution Request, para.52.

¹⁰¹ Prosecution Request, paras.31-32.

¹⁰² Prosecution Request, para.28-30.

¹⁰³ Prosecution Request, paras.50-53.

that [REDACTED], a.k.a. [REDACTED], was to be the source of such funds.¹⁰⁴ This is based on P-190's allegation that Mr Logo stated during their conversation that "people would be organized by [REDACTED] and [REDACTED], they are the financiers ... it's they who are the financiers, and it's they who are responsible for paying witnesses."¹⁰⁵ The basis for this claim, in turn, appears to be an extract of conversation where [REDACTED] insists on being compensated for his time and expenses during fifteen days of searching for documents, possibly requiring travel, that he thinks are useful for the Defence.¹⁰⁶ In response to these complaints from [REDACTED], Mr Logo says "*nous allons monter cette stratégie avec [REDACTED]*"; that "*[a]vec les avocats, ça ne passera pas, il faut dire les choses telles quelles sont*" and then implies that reimbursement will be sought from sources whom P-190 himself suggests to be "*les gens de Bosco*."¹⁰⁷

51. The issue under discussion here is not, as the Prosecution alleges, a vast scheme of witness bribery but rather [REDACTED]'s demand to be paid for alleged time spent searching for documents and travel expenses. [REDACTED] goes on about these expenses at great length and persistence.¹⁰⁸ Mr Logo's goal in resorting to this explanation, as is even corroborated by P-190,¹⁰⁹ was simply to bring the conversation to a rapid conclusion and take [REDACTED] to the meeting with the lawyers.¹¹⁰ The discussion of repayment

¹⁰⁴ Prosecution Request, para.31.

¹⁰⁵ Transcript of P-190 Statement (24/03/2015), Track 2, p.5, ll.181-182 ("[REDACTED].")

¹⁰⁶ Revised French translation of the transcript of the 7 March 2015 meeting between Mr Logo, [REDACTED] and [REDACTED] ("Revised Transcript"), DRC-OTP-2087-1110, ll.1313,1317,1320-1328.

¹⁰⁷ Revised Transcript, ll.1308-1310.

¹⁰⁸ Revised Transcript, DRC-OTP-2087-1100, ll. 931-939 ("[REDACTED]: [...] moi, j'ai cherché des bandes, j'ai cherché même des journaux. **LOGO:** Oui, on va chercher même des documentations. [REDACTED]: Des documentations, toutes ces documentations là-bas. [REDACTED]: Mm[REDACTED]: C'est de l'argent que moi j'ai perdu. [REDACTED]: Mm. [REDACTED]: Il faut qu'il sache cela. [REDACTED]: C'est principalement du CONGO que vous avez ramené ça. Mm."); ll.1308-1310 ("Vous savez quand j'ai commence à chercher cette documentation ? Ça m'a pris au moins 15 jours, vous allez demander à [REDACTED] [phon.] il vous dira toutes ces choses, 15 jours").

¹⁰⁹ Transcript of P-190 Statement (26/06/2015), DRC-OTP-2087-0769, ll.646-651 ("Et quand tu écoutes à partir de 50^e minute jusqu'à une heure, vraiment LOGO parle, il voulait qu'on termine la conversation vite [...] Les avocats lui faisaient la pression de venir vite avec [REDACTED]").

¹¹⁰ Second Logo Statement, para.20.

of [REDACTED]'s alleged expenses, even if it does appear to include an unfortunate implication of unauthorized payments, is not indicative of a witness bribery scheme.

52. Rather than Mr Logo, it is P-190 and [REDACTED] who repeatedly raise the issue of money. P-190 candidly admits that his purpose during this conversation was to entrap Mr Logo into admitting that he was paying witnesses.¹¹¹ Unsurprisingly, therefore, he is the first person in the conversation to raise the issue of money,¹¹² and returns to the subject repeatedly for that malicious purpose.¹¹³

53. Indeed, P-190 himself demands money in exchange for his cooperation.¹¹⁴ The request starts with P-190 referring to "[REDACTED]" [REDACTED] as someone who "*a un gros problem avec ça*" – with "*ça*" being a euphemism for money.¹¹⁵ P-190 states that both he and "[REDACTED]" have spoken to [REDACTED].¹¹⁶ P-190 essentially implies that [REDACTED] believes that Mr Ntaganda has money and that he will not respond to requests for meetings with Defence counsel unless he receives money.¹¹⁷ [REDACTED], after an interval, intervenes with the statement that "[t]out le monde peut raisonner comme ça".¹¹⁸ P-190 responds:

*Vous voyez, chacun va raisonner comme ça, lui aussi va raisonner comme ça, et moi-même, je vais raisonner comme ça.*¹¹⁹

¹¹¹ Transcript of P-190 Statement (26/06/2015), DRC-OTP-2087-0736, ll.423-424,426-428 ("*Et je voulais avoir aussi l'idée, si ils ont mis l'argent en jeu pour recruter des témoins. Alors, ça d'abord, c'est mon numéro un*").

¹¹² Revised Transcript, l.335.

¹¹³ Transcript of P-190 Statement (26/06/2015), DRC-OTP-2087-0736, ll.408-409 ("*Et d'abord, c'est moi qui ai presque soulevé, à 80%, les histoires de magots*").

¹¹⁴ First Logo Statement, para.25; Second Logo Statement, para.15.

¹¹⁵ Revised Transcript, DRC-OTP-2087-0981, ll.371,381,383. Second Logo Statement, para. 14-15.

¹¹⁶ Revised Transcript, DRC-OTP-2087-1079 et 1085, ll. 160, 385, 386.

¹¹⁷ Revised Transcript, DRC-OTP-2087-1085, ll.395-401.

¹¹⁸ Revised Transcript, DRC-OTP-2087-1086, l.425.

¹¹⁹ Revised Transcript, DRC-OTP-2087-1086, ll.428-429.

54. Mr Logo repeatedly tries to deflect these requests for money. He tries to make excuses as to why Mr Ntaganda cannot authorize such payments, as [REDACTED] and P-190 seem to expect.¹²⁰ While [REDACTED] and P-190 talk about opening bank accounts, Mr Logo ignores their discussion and diverts the conversation back to a person of potential interest named “[REDACTED]”.¹²¹ Even P-190 acknowledges that Mr Logo’s subsequent phrase at line 1128 – “*Mm. C’est ça... c’est ça le début du travail*” – refers to the fact that the Defence is far behind the Prosecution in terms of witnesses.¹²² A perception reflected in the Recorded Conversation is that Prosecution witnesses “*sont payés*” and, therefore, so too must be Defence witnesses.¹²³

55. The discussion of the word “*magot*”, incidentally, does not refer to witness bribery.¹²⁴ P-190 himself interprets this exchange as concerning the “White” people who are purportedly draining Mr Ntaganda’s financial resources, and using the ICC proceedings as their *fonds de commerce*.¹²⁵

56. The Prosecution and P-190’s allegation that [REDACTED] was presented by Mr Logo as someone who would pay witnesses¹²⁶ is false. The only person to make that suggestion is [REDACTED].¹²⁷ At no time does Mr Logo confirm, or

¹²⁰ Revised Transcript, DRC-OTP-2087-0981, ll.421-429 (in which P-190 and [REDACTED] agree with each other that payments should be made to them and other witnesses; Mr Logo, as an excuse, tries to claim that no such payments can be made to witnesses because Mr Ntaganda is being held incommunicado and, accordingly, cannot instruct people to pay witnesses).

¹²¹ Revised Transcript, DRC-OTP-2087-1105, ll.1117-1122,1128.

¹²² Transcript of P-190 Statement (26/06/2015), DRC-OTP-2087-0763, ll.446-474 (“*Peut-être, il a fait allusion là-bas : « C’est le début du travail », peut-être parce que, pour lui, pour LOGO, les témoins de BOSCO sont vraiment, vraiment en retard par rapport aux témoins du Procureur. Pour moi, j’ai cru que, peut-être, il a dit ça parce que... à propos du retard. Donc, c’est le début, parce qu’ils sont en retard. Ce que moi je peux comprendre. C’est dans ce sens-là qu’il a dit : « C’est le début du travail », je crois*”). Second Logo Statement, para.16.

¹²³ Transcript of P-190 Statement (24/03/2015), Track 2, p.13, ll.457-461 (“[REDACTED]”); Transcript of P-190 Statement (26/06/2015), DRC-OTP-2087-0756 to 0759, ll.205-214 (“[REDACTED]”).

¹²⁴ Prosecution Request, fn.32.

¹²⁵ Transcript of P-190 Statement (26/06/2015), DRC-OTP-2087-0738 to 0739, ll.477-507 (“*Mais il a fait allusion que le Blanc connaît que BOSCO a l’argent. Raison pour laquelle il faut qu’il diminue cet argent-là, de BOSCO. [...] Le Blanc. Et donc, la CPI [...] doit diminuer l’argent de BOSCO [...] Et c’est ainsi que LOGO a répliqué : « C’est le fonds de commerce [...] des Blancs »*”).

¹²⁶ Prosecution Request, para.31.

¹²⁷ Revised Transcript, DRC-OTP-2087-1105, l.1111-1112.

even indirectly imply, that [REDACTED] would give money to [REDACTED] or any other witness. Even P-190 admits that his allegation about the involvement of [REDACTED], or any association between [REDACTED] and [REDACTED], has no basis in fact.¹²⁸ [REDACTED] avers not to have met or spoken to [REDACTED] since 2007 or 2008;¹²⁹ has no knowledge of any scheme to pay witnesses; and has no access to funds to do so himself.¹³⁰

57. The entire context of the conversation between Mr Logo and [REDACTED] does not establish that there is a covert scheme of witness compensation. If such a covert scheme did exist, Mr Logo would have probably said so expressly during what he believed to be a private conversation. Even assuming there was such a covert payment operation, no reasonable basis exists to suspect that [REDACTED] is part of any such scheme.

(iii) *Mr Logo did not corruptly influence P-190 or [REDACTED]*

58. The Prosecution alleges that Mr Logo “may have”¹³¹ corruptly influenced witnesses pursuant to Article 70(1)(c) on the basis of the transcripts of his meeting with P-190 and [REDACTED]. The Prosecution relies exclusively on the Recorded Conversation.¹³² Since the Prosecution has a transcript of the exact words spoken by Mr Logo, and has had this transcript since 17 June 2015, it is unclear what uncertainty causes the Prosecution to say only that Mr Logo “may have” committed, rather than “did” commit, the offence.

59. The offence of “corruptly influencing a witness,” as proscribed by Article 70(1)(c), requires the perpetrator to intend to induce the “witness to falsely

¹²⁸ Transcript of P-190 Statement (26/06/2015), DRC-OTP-2087-0781, ll.162-164 (“Par quel moyen, ça je peux pas vous confirmer, parce que j’ai pas de preuves qu’il faisait des transferts ou qu’il leur envoyait quelqu’un”).

¹²⁹ Second [REDACTED] Statement, para.15.

¹³⁰ Second [REDACTED] Statement, paras.16-17.

¹³¹ Prosecution Request, paras.23,28,29.

¹³² Prosecution Request, fns.27-31.

testify or withhold information before the Court.”¹³³ Coaching, which may or may not be deemed a form of corruptly influencing, has been defined as “preparing a witness in a manner that involves improper influence upon the witness, intentionally exerted by counsel, with the view to rendering false evidence into testimony.”¹³⁴ Judge Eboe-Osuji has explained that:

‘Coaching’, as indicated earlier, involves counsel’s heavier footprint in the testimony, in terms of influencing a witness not only as to how to say something, but also as to the thing to say in fact. I am firmly against ‘coaching’. ‘Practising’ or ‘rehearsing’, on the other hand, may cover a range of helpful conducts—none of which involves the host-counsel in what a witness says or how the witness says it.¹³⁵

60. Prosecution investigators employ techniques such as “putting questions in leading terms and [...] showing resentment, impatience or disappointment whenever the witness replies in terms which are not entirely in line with [...] expectations.”¹³⁶ Statements in this very case illustrate the degree to which Prosecution investigators assert propositions and ask leading questions to witnesses.¹³⁷

61. The allegation that Mr Logo corruptly influenced [REDACTED] or P-190 is unfounded. Presenting topics and subjects for discussion is not improper; asking leading questions is not improper; and presenting propositions for confirmation – while not an ideal practice as a means of adducing information – is not so improper as to constitute serious misconduct. Further, the

¹³³ *Bemba et al.*, Decision pursuant to Rule 61(7)(a) and (b) of the Rome Statute, ICC-01/05-01/13-749, 11 November 2014, para.30.

¹³⁴ *Muthaura & Kanyatta*, Decision on witness preparation, ICC-01/09-02/11-588, para.27.

¹³⁵ *Muthaura & Kanyatta*, Decision on witness preparation, Partly dissenting opinion of Judge Eboe-Osuji, ICC-01/09-02/11-588, para.52.

¹³⁶ *Mbarushimana*, Decision on the confirmation of charges, ICC-01/04-01/10-465-Red, para.51.

¹³⁷ *Transcript of P-17 Statement*, DRC-OTP-0174-1670 to 1671, ll.540-567 (“[REDACTED]: *Parce qu’on a des informations dans notre Bureau que parfois il y avait aussi des chansons qui parlaient de l’ennemi. Vous connaissez ce genre de chansons?*”); DRC-OTP-0174-1462 to 1463, ll.787-798 (“[REDACTED]: *Il y avait pas de commandant? Personne entendue: Ce sont des milit. ... de jeunes militaires qui venaient de n’importe où, ils se sont retrouvés, ils attendaient tout ... lorsque le chef d’état-major est arrivé, tout était organisé là-bas, tout. [REDACTED]: Et ça c’est ... mais ... je tr ... ça m’étonne un peu parce que ça ne s’organise pas comme ça. Personne entendue: Non. le chef d’état-major ... [REDACTED]: Il faut quelqu’un qui organise*”).

information that was presented in a leading fashion was not so specific that it would have been unknown to the two potential witnesses, or taken as an invitation to lie; the witnesses, on the contrary, had every opportunity to reject or accept the propositions being suggested.

62. The first excerpt of conversation cited by the Prosecution in support of its claim that Mr Logo “may have” corruptly influenced P-190 and [REDACTED] is his statement to them that Prosecution witnesses “themselves know that what they are saying is false.”¹³⁸ This does not constitute corrupt influence.

63. The second excerpt cited by the Prosecution as corruptly influencing involves Mr Logo describing the subjects upon which counsel wished to pose questions to the witnesses:

Ils vont vous poser quelques questions ... au sujet de la façon dont l'UPC était organisée à KINSHASA, eh, pardon, là-bas en ITURI. Parce que BOSCO ... la plupart des faits qui sont reprochés à BOSCO, c'est la guerre de MONGBWALU, la guerre de KOBU, la guerre de LIPRI. Pour lui, ce sont là ses trois affaires ... ce sont ces éléments qu'ils citent.

[...]

Alors, ces gens disent qu'il faut se rencontrer. Donc, ils vont poser certaines questions sur ces choses-là, sur la façon dont cette guerre s'est déroulée et sur le comportement général de BOSCO, est-ce que c'était quelqu'un de bon, est-ce que ... est-ce que ... ainsi de suite. Dans tout cela, il n'y a pas beaucoup de mauvaises choses. Hein ?¹³⁹

The passage self-evidently does not constitute corruptly influencing a witness, nor suggests such an intention.

64. The third set of excerpts relied on by the Prosecution are said to convey “the lines that P-190 should follow in response”:¹⁴⁰

LOGO : *Oui, donc vraiment, essayons d'abord de parler à nos Blancs de tous les événements qui se sont déroulés, parce que la situation principale sur laquelle nous allons beaucoup insister, ce n'est pas de cette façon qu'elle est*

¹³⁸ Revised Transcript, DRC-OTP-2087-1081, ll.230 (“ils savent eux-mêmes que ce qu'ils sont en train de dire est faux”).

¹³⁹ Revised Transcript, DRC-OTP-2087-1078, ll.120-124, 139-142.

¹⁴⁰ Prosecution Request, para.30.

présentée là-bas. Mais dans le dossier de GER ... il est dit que c'est BOSCO et les Hema qui ont créé une certaine organisation qu'ils ont appelée UPC, FLPC, et que ce sont eux qui ont tué tous ceux qui étaient non-Hema en ITURI. C'est ça la base. Et, entre autres, ils ont tué les Lendu à MONGBWALU, à KOBU, à LIPRI, à BAMBU, ainsi de suite. Tout ça pour montrer leurs massacres.

[REDACTED] : Mm.

LOGO : *Oui. Ils ont commis des massacres à grande échelle, principalement sur les Lendu et les non-Hema.*

[REDACTED] : *Est-ce que ces gens ... ces gens-là savent que lorsque des balles tombent chez quelqu'un ...*

LOGO : *Non, ça ...*

[REDACTED] : *... il est obligé de se battre contre les agresseurs.*

LOGO : *... sur ça, inutile de poser la question. Donc, c'est ça, voilà ...*

[REDACTED] : *Non, non, il faut qu'ils sachent cela, vous connaissez le ...*

LOGO : *... non, je le sais bien. Donc ... eux, eux ...*

[REDACTED] : *... l'autodéfense.*

LOGO : *... ils savent eux-mêmes que ce qu'ils sont en train de dire est faux. Vous comprenez ?*

[REDACTED] : Mm.

LOGO : *Ce ne sont que des choses qu'ils ont inventées de toutes pièces contre nous. Alors, nous devons nous sortir de là, parce que les juges ne le savent pas. Ces juges-là, les juges internationaux, ils ne savent pas. C'est à vous donc qu'incombe la tâche de prouver que le procu... que ce que le procureur dit est faux. Voici d'ailleurs ... il n'y avait même pas cette guerre que vous appelez la guerre, parce que tout se situe sur la période 2002-2003.*

[REDACTED] : Mm.

LOGO : *Eh, août 2002 jusqu'à fin de l'année 2003. Dans cet intervalle, il n'y avait pas de guerres tribales en ITURI.*

[REDACTED] : Mm. *C'est fin août ... 2002 ?*

LOGO : *2001 ... euh ... l'intervalle ... août, donc l'intervalle 2002-2003. C'est ... c'est cette période que la Cour pénale doit ... eh ... à partir de 2002.*

[REDACTED] : Mm.

LOGO : *Août 2002 et plus tard.*

[REDACTED] : Mm.

LOGO : *Donc, ce n'est pas sur les choses qui se sont déroulées avant. Mais ça pourrait porter sur la genèse, et les questions essentielles seront ... on vous posera surtout des questions sur la période 2002-2003 : qu'est-ce que vous connaissez sur cette situation, ainsi de suite, est-ce que vous connaissez bien BOSCO ? Quel type de personne était-il ? Est-ce qu'il a violé des gens ? Après le viol, on vous demandera aussi : est-ce qu'il a enrôlé des enfants dans*

l'armée ? Tout ça, ainsi de suite. Hein, alors, là où il faut beaucoup peut-être insister, il faut dire que peut-être, le problème c'était pour la survie des gens. Survie, parce que les APC qui étaient alliés, les APC, les Maï-Maï, le groupe Lendu, et les INTERAHAMWE, et les forces gouvernementales, ils ont constitué une coalition commune pour la reconquête de l'ITURI, ainsi de suite. Ce sont eux qui tuaient des gens là-bas, alors il fallait nécessairement contrer ces massacres-là. C'est à peu près ça la base de ... il faut montrer vraiment que ... parce que ce n'est même pas ... ce n'est même pas du mensonge. L'APC était présente sur le terrain sur tous les fronts, avec tous les moyens....¹⁴¹

65. Nothing in the foregoing excerpt constitutes corrupt influence. Mr Logo does no more than indicate the subjects on which the witnesses will be asked questions, or recites propositions that would be widely-shared and widely-known in the Hema community. Although Mr Logo may be reproached for taking the lead in such a discussion, rather than allowing his interlocutors to provide information, neither the content nor the context implies corruptly influencing the potential witnesses.

66. The Prosecution asserts that Mr Logo "suggested the lines" that P-190 should follow in respect of one issue:

[REDACTED] : La façon dont BOSCO a fait le recrutement, nous la connaissons. Vous la connaissez, je la connais. BOSCO a fait toutes ces choses, mais aujourd'hui, il faut le défendre.

LOGO : *D'ailleurs, il faut ...*

[REDACTED] : N'est-ce pas ?

LOGO : *... oui.*

[REDACTED] : Oui ? Vous comprenez ?

LOGO : *Oui.*

[REDACTED] : Il faut le défendre.

LOGO : *Oui. Et même lors de cette bataille de MONGBWALU, lui, il n'y est allé que plus tard. C'est ça notre défense.*

[REDACTED] : Ah, ça, c'est la défense.

LOGO : *Oui, je vous le dis.*

[REDACTED] : En effet, ça, c'est un argument de défense. Ça, c'est entre ... nous sommes à trois, ça, c'est un argument de défense, mais ...¹⁴²

¹⁴¹ Revised Transcript, DRC-OTP-2087-1080 and 1081, ll.212-257.

¹⁴² Revised Transcript, DRC-OTP-2087-1097, ll.826-839.

67. P-190, as is common throughout the conversation, initiates and dominates the discussion of this topic. Although Mr Logo's second-last intervention in the passage above does not necessarily reflect best investigative practice, asking a leading question or seeking confirmation of a proposed fact does not constitute corruptly influencing a witness.

68. The Prosecution also reproaches Mr Logo for having, on various occasions "insisted on the need to defend" Mr Ntaganda.¹⁴³ In both passages cited by the Prosecution in support of this claim, it is actually P-190 who makes this comment, with which Mr Logo expresses agreement.¹⁴⁴ None of those passages come close to suggesting corruptly influencing any witness.

69. The Prosecution's tentative allegation that Mr Logo in these passages, "may have" committed the offence of corruptly influencing a witness is, accordingly, devoid of merit. It follows that there is no basis to believe that there is a "wider practice" of falsely influencing witnesses in which [REDACTED] might be involved that would require his suspension.

VI. THE PROHIBITION ON REQUESTING "INVESTIGATIVE ASSISTANCE" FROM [REDACTED] AND "[REDACTED]" SHOULD BE LIFTED

70. The Defence has not shared any confidential information in the case with [REDACTED] and [REDACTED] and has no intention of doing so at any time.

71. Also, the Defence has no intention to, and as directed by the Chamber, will not use them for investigative assistance.

72. However, the Defence requests the Chamber to clarify its Interim Order so as to ensure that it is not precluded from seeking to meet and interview these

¹⁴³ Prosecution Request, para.29.

¹⁴⁴ Revised Transcript, DRC-OTP-2087-1095, ll. 773-775 ("**LOGO** : *Oui, mais ça...* [REDACTED] : *Mais, c'est ça, mais il faut le défendre. LOGO* : *Il faut le défendre.*"); and DRC-OTP-2087-1099 ll. 904-905 ("*[REDACTED] : ... il faut qu'on le défende. [REDACTED] : Oui.*").

individuals for the purpose of obtaining information and/or documents in their possession that could be of assistance to the Defence.

73. The Defence notes in this regard that even though [REDACTED]'s conduct during the Recorded Conversation appears at best questionable and although the Defence is aware of allegations of misconduct on the part of [REDACTED], these do not justify precluding all contact with these persons, especially if they are believed to have information relevant for the conduct of the Defence's investigations.

VI. ACCESS TO CONFIDENTIAL INFORMATION

74. The Chamber has ordered the Defence to indicate the degree of access to which Mr Logo and [REDACTED] have had to confidential case information. The confidential Prosecution material to which the investigators were given access consisted of: (i) the *will-say* statements of Prosecution witnesses, and (ii) the list of the Prosecution witnesses.¹⁴⁵

VII. STATEMENTS BY MR LOGO AND [REDACTED]

75. The Defence has previously filed statements¹⁴⁶ of Mr Logo and [REDACTED] that were finalized and signed before disclosure of the Prosecution's allegations against them, and files two additional statements as annexes to the present filing.

VIII. CONFIDENTIALITY

76. Pursuant to Regulations 23bis (1) and (2) of the Regulations of the Court, these submissions are submitted on a confidential *ex parte* basis – only available to the Chamber and Defence, because they refer to filings bearing the same classification. A version available to the Prosecution will be filed separately.

¹⁴⁵ ICC-01/04-02/06-426-Conf-AnxA-Red, ICC-01/04-02/06-426-Conf-AnxB-Red; Annex H. [REDACTED]

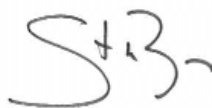
¹⁴⁶ [REDACTED].

IX. CONCLUSION AND REMEDY REQUESTED

77. In light of the above, the Defence respectfully request the Trial Chamber to:

- (i) **FIND** that none of the specific allegations against [REDACTED] warrant his suspension as a Defence resource-person;
- (ii) **FIND** that none of the general allegations against [REDACTED], including those based on allegations against Mr Logo, that he: (i) discussed a strategy of paying witness without Defence counsel's knowledge and (ii) suggested lines of response to potential witnesses prior to their proposed meeting with counsel for the Defence team for Mr Ntaganda are well-founded, and that they provide no basis for [REDACTED]'s suspension; and
- (iii) **CLARIFY** its order in respect of [REDACTED] and [REDACTED] so as not to preclude contact with them for the purposes of obtaining information relevant to Defence investigations.

RESPECTFULLY SUBMITTED ON THIS 19TH DAY OF FEBRUARY 2021



Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands