

Annex B

From: Bourgon, Stephane [REDACTED]

Sent: 17 September 2019 10:01

To: Samson, Nicole; Trial Chamber VI Communications

Cc: Yirgou, Selamawit; Solano, Julieta; Rabanit, Marion; van der Werf, Hendrik Rens; Gosnell, Christopher; Portier, Margaux; Daria Mascetti; Pellet, Sarah; Suprun, Dmytro; Grabowski, Anne; Kiss, Alejandro; Tchidimbo, Patrick

Subject: RE: Prosecution Request for Disclosure of Witness D-0305's Statement

To the Honourable Judges of Trial Chamber VI

I hereby refer to the Prosecution's request for disclosure of the statement obtained from Witness D-0305, including its submissions to the Chamber below.

The Defence has already responded in detail to the Prosecution's request (which the Prosecution has kindly included in its request to the Chamber), and the Defence maintains that position before the Chamber. The Prosecution has now set out certain further additional arguments, to which the Defence responds here.

Nevertheless, the Defence wishes to make clear at the outset that the Defence's opposition to disclosure is based on the plain language of the Rules, which provide disclosure obligations for the Defence clearly different from those imposed on the Prosecution.

Nonetheless, should the Trial Chamber decide otherwise, the Defence respectfully requests that the Chamber simultaneously receives copies of the entire statements as part of the disclosure. Furthermore, the Defence would do so only if so ordered by the Chamber, because the Defence maintains its position, again as set out below, that the Rules do not impose an obligation on the Defence to disclose any and all statements of witnesses in its possession, and that the Chamber has not departed from the framework set out in the Rules.

The Defence also notes that the same issue applies to D-0306 and D-0047, for whom there exist signed statements.

The Defence also notes that the witness preparation notes are very extensive and detailed, especially in relation to the limited scope of their testimony.

Response to additional arguments of the Prosecution.

First argument. The Prosecution asserts that the statement must be disclosed under the Witness preparation protocol because the content of the prior statement, although not the statement itself, was discussed during the preparation session. This is a manifestly unsound test that would lead to the disclosure of any and all sources of information relied upon for propositions put during a witness preparation session.

Second argument. The Prosecution asserts that the Trial Chamber has already ordered the Defence to disclose any and all statements of its witnesses in its possession, relying on a statement by the Trial Chamber starting with the word "noting" which refers back to a

previous decision. The Defence has cited in full the decision of the Trial Chamber in its response to the Prosecution email. The Defence maintains that the Trial Chamber has not made any such order and that if it had intended to depart from the framework prescribed by the Rules, then it would have done so clearly. Such an order, incidentally, would have broad disclosure consequences that is contrary to the plain language of the Rules.

Third argument. The Defence does not disagree that the issue in question has not arisen during trial and that, accordingly, there is no clear precedent from trial. The Defence notes that previous disclosure of witness statements was done on a courtesy basis and given the particularities of those witnesses and of trial.

RESPECTFULLY SUBMITTED ON THIS 17TH DAY OF SEPTEMBER 2019

Me Stéphane Bourgon, *Ad.E*,
Counsel representing Mr. Bosco Ntaganda