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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

Public Redacted Version of "Prosecution's response to the 'Defence Request for stay of proceedings with prejudice to the Prosecutor' (ICC-01/04-02/06-1830-Conf)", 30 March 2017, ICC-01/04-02/06-1840-Conf

Source: **The Office of the Prosecutor**

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Introduction

1. The Defence request for a stay of proceedings should be dismissed.[1] It fails to articulate any facts that would amount to an abuse of process or that warrant the exceptional remedy of a stay of proceedings.

2. The Defence argues that the Prosecution's judicially-authorised access to the Accused's Detention Centre communications, the lack of advance notice to the Accused of the investigation into *his own* potential criminal conduct and the review of his calls done by the prosecuting trial team gave the Prosecution a strategic advantage, made the trial fundamentally unfair and created an apprehension of bias on the part of the Chamber. These assertions are flawed. The Request misconstrues the factual context of the article 70 investigation, advances speculative and unfounded arguments and ignores rulings of this Chamber and the Appeals Chamber on some of these very issues.

3. The Prosecution legitimately investigated serious allegations of the Accused's misconduct aimed at circumventing the course of justice; allegations that were further supported by the Chamber's preliminary findings. Despite this, the Defence claims that "*the resulting prejudice to the Accused, having to present his defence while being completely in the dark, had become irreparable*".[2] The Accused may have been "in the dark" about the extent to which the Prosecution had further uncovered his attempts to coach witnesses and interfere with witnesses and evidence, but he was never in the dark about the false aspects of his defence strategy. On that score, he was – and remains – the person with the most information.

4. This is a critical flaw in the Defence's argument, and in all of its arguments on the point to date.

[1] ICC-01/04-02/06-1830-Conf, ("Defence Request").
[2] Defence Request, para. 7.

5. Indeed, the Accused has suffered no prejudice by the fact that the Prosecution uncovered a scheme of witness interference and coaching that he directed, nor can it be argued that the Prosecution's investigation into such serious misconduct has made the trial proceedings unfair or somehow biased the Trial Chamber.

6. The Accused also argues that the main Prosecution team should not have access to the calls, yet fails to cite any jurisprudence prohibiting a prosecuting team from investigating an Accused's alleged misconduct during trial. The Defence's choice to rely on the *obiter* from the Appeals Chamber is misplaced, as the Appeals Chamber found that the joinder provisions in the Statute indicate that the same Prosecutor may deal with charges under article 70 and charges under articles 6 to 8 without giving rise to a conflict of interest.[3]

7. The Defence contention that *ex parte* submissions were inappropriate lacks factual and legal foundation. *Ex parte* submissions in article 70 investigations are proper and necessary, and were extremely limited in this case. Chambers of this Court, including the Appeals Chamber, have held that it is not unfair for information to be withheld from a detained person to protect witnesses or ongoing investigations.

8. Nor can it be argued that there is an apprehension of bias on the part of the Trial Chamber solely because it adjudicated matters to safeguard the integrity of the proceedings due squarely to the Accused's misconduct. The Chamber consistently ensured that the trial remained fair. It safeguarded the integrity of these proceedings by deferring to an independent Pre-Trial Chamber on investigative measures associated with alleged article 70 offences.[4] It made clear rulings on the appropriateness of information about the Accused's conduct in

[3] ICC-01/05-01/13-648-Red3, para.35.
[4] ICC-01/04-02/06-777-Conf-Exp, para. 38.

connection with interim release and redactions,[5] and rejected Defence arguments that the allegations rendered the trial proceedings unfair or impartial.[6] Nor is the Accused prejudiced by requests that the Chamber *rejected*.[7]

9. The Defence speculates as to the extent to which the Prosecution had access to Defence strategy or the ways in which it allegedly "used" such information for a tactical advantage. The single example of information it alleges the Prosecution could *only* have obtained through the Detention Centre calls[8] is factually incorrect. The Prosecution collected and disclosed the information itself several years before it had reviewed those conversations.

10. Lastly, the Accused claims unfairness in that he did not know that his non-privileged conversations could be disclosed to the Prosecution.[9] This submission is implausible. The Accused knew his calls were recorded, he is represented by experienced counsel, he is detained with others whose recordings were disclosed to the Prosecution, and in August 2015, he submitted that his "*use of codes is hardly surprising in a world of rampant electronic surveillance, as well as previous disclosure of detainee conversations to the Prosecution*".[10] The Accused's decision to spend countless hours mounting an illegitimate defence from the Detention Centre was a poor choice on his part, but a fully informed one. In any case, an accused's ignorance of the Prosecution's ability to collect evidence of offences against the administration of justice, even if true, is an irrelevant consideration *vis-à-vis* the lawfulness of the evidence collection. Any other interpretation would allow an accused to escape responsibility by claiming ignorance of the Prosecution's lawful capacity to investigate.

[5] ICC-01/04-02/06-443-Conf-Exp, paras. 27-29.
[6] ICC-01/04-02/06-443-Conf-Exp, para. 32.
[7] Defence Request, para. 10.
[8] Defence Request, para.81.
[9] Defence Request, para.52.
[10] ICC-01/04-02/06-759-Conf-Exp-Red, paras. 4 and 37, citing disclosure to the Prosecution in *Katanga et al*.

Confidentiality

11. Pursuant to regulation 23*bis* (2) of the Regulations of the Court ("RoC"), this filing is classified as "*Confidential*" as it is in response to a Defence filing of the same classification. The Prosecution will file a public redacted version of this filing.

Extension of the page limit

12. On 27 March 2017, the Chamber granted the Prosecution an extension of the page limit to 30 pages.[11]

13. The Chamber authorised the Defence to file an additional ten pages.[12] The Defence Request exceeds the extended page limit. Confidential Annexes A andC contain 27 pages of the Defence's supplementary submissions on the procedures before the Court. The two annexes contain argumentative material which, according to regulation 36(2)(b) of the RoC, count towards the page limit. Accordingly, the Prosecution submits that the Chamber should disregard Confidential Annexes A and C.

Statement of facts

I. Restrictions on the Accused's contacts; [REDACTED]

14. On 8 August 2014, the Prosecution requested restrictions to the Accused's non-privileged contacts pursuant to regulation 101(2) of the RoC ("Request for Restrictions"),[13] because it suspected him of passing confidential information about Prosecution witnesses to his relatives and associates in order to intimidate and threaten Prosecution witnesses and their families.[14] The Prosecution's

[11] Email from Trial Chamber VI on 27 March 2017 at 17:57.
[12] Defence Request, para. 15 and footnote 5.
[13] ICC-01/04-02/06-349-Conf-Exp, with Confidential redacted version at ICC-01/04-02/06-349-Conf-Red and lesser redacted Confidential version ICC-01/04-02/06-349-Conf-Red2.
[14] ICC-01/04-02/06-349-Conf-Red2; ICC-01/04-02/06-431-Conf-Exp, para.17.

suspicions and serious concerns stemmed from reports by its witnesses of intimidation and threats by [REDACTED] and others close to him, who urged the witnesses to recant and cease cooperation with the Court. The Defence was notified of a confidential redacted version of the request.

15. On 8 December 2014, the Chamber imposed the first restrictions on the Accused's contacts.[15] Citing "serious concerns" about the reported approaches to Prosecution witnesses,[16] the Chamber restricted the Accused's visits to those by his Counsel or Counsel's assistants and diplomatic and consular representatives. It also ordered the Registry to notify the Accused that the Registry may listen to all his non-privileged telephone conversations. It further ordered the Registry to conduct a *post factum* review of some of the Accused's telephone communications and report its findings to the Chamber.

16. On 10 March 2015, the Registry filed its first report on the *post factum* review of the Accused's phone conversations ("First Report").[17] The Defence was given full, unredacted access to the First Report and its annexes. The Prosecution received redacted versions of the First Report and eight of its annexes on 30 April 2015.[18]

17. On 11 March 2015, Prosecution and Defence representatives met to discuss reports of interference received by the Prosecution from Prosecution witnesses.

18. On 13 March 2015, on the basis of the information contained in the First Report and its annexes, the Chamber *proprio motu* found that the Accused had abused the right to communication afforded to him at the Detention Centre. It ordered the Registry to actively monitor all of his non-privileged telephone

[15] ICC-01/04-02/06-410-Conf-Exp, unavailable to the Prosecution. A *corrigendum* of the Decision, ICC-01/04-02/06-410-Conf-Exp-Corr, was made available to the Prosecution on 16 February 2015. *See* also ICC-01/04-02/06-410-Conf-Exp-Red-Corr.
[16] ICC-01/04-02/06-410-Conf-Exp-Corr, para.49.
[17] ICC-01/04-02/06-504-Conf-Exp. The main submission and annexes 1, 2, 4, 5, and 6, as well as redacted annexes 3, 8 and 9, were made available to the Prosecution on 30 April 2015. Redacted annex 7 was made available on 16 July 2015.
[18] Implementation of Decision ICC-01/04-02/06-578-Conf-Exp where the Registry granted the Prosecution access to ICC-01/04-02/06-504-Conf-Exp-(and its annexes 1-6, 8-and-9).

communications until further notice, and to restrict them to two time-slots per week. It also limited the languages which the Accused was permitted to use in his non-privileged telephone communications. The Chamber further ordered the Registry to restrict contact with persons through whom the Accused had breached the Detention Centre's instructions.[19]

19. On 18 March 2015, the Registry began actively monitoring the Accused's telephone communications.[20]

20. On 27 March 2015, [REDACTED].

21. On 20 May 2015, the Prosecution filed a request with the Trial Chamber for access to Thomas Lubanga's list of non-privileged contacts, as well as his call and visitation logs for the period of January to May 2015.[21]

22. On 22 May 2015, the Registry submitted its second report on the *post factum* review of the Accused's phone conversations ("Second Report").[22] The Defence was given full, unredacted access to the Second Report and its annexes. On 9 June 2015, the Victims and Witnesses Unit filed a report on potential interference with Prosecution witnesses and other individuals.[23] On 10 June 2015, the Prosecution requested further restrictions to the Accused's communications.[24]

23. [REDACTED].[25] [REDACTED].[26]

24. [REDACTED].[27] [REDACTED].[28] [REDACTED].[29]

[19] ICC-01/04-02/06-508-Conf-Exp.
[20] ICC-01/04-02/06-714-Conf-Exp, para.2. This report was communicated to the Prosecution on 16 July 2015.
[21] ICC-01/04-02/06-603-Conf-Exp.
[22] ICC-01/04-02/06-607-Conf-Exp. The Second Report was submitted *ex parte*. The Prosecution received advance copies of Annexes 9 and 15 on 13 July 2015 and of the Second Report and annexes 1, 2, 3, 5-8, 11, 12, 14, 16-18 on 15 July 2015 at 17:41. See ICC-01/04-02/06-607-Conf-Exp-Red2. The Prosecution received a courtesy copy of the *corrigendum* of Annex 5 to the Second Report on 20 July; it was subsequently filed on 21 July 2015. ICC-01/04-02/06-607-Conf-Exp-Anx-Red-Corr.
[23] ICC-01/04-02/06-634-Conf-Exp and ICC-01/04-02/06-634-Conf-Exp-Anx. The Chamber instructed that the Prosecution be granted access on 17 June 2015 and the Defence on 18 June 2015.
[24] ICC-01/04-02/06-635-Conf-Exp with confidential redacted version at ICC-01/04-02/06-635-Conf-Red.
[25] [REDACTED].
[26] [REDACTED].

25. On 29 June 2015, Trial Chamber VI ordered, *proprio motu* and on an interim basis, the active monitoring of Thomas Lubanga's calls.[30] The Chamber also restricted all telephone communication between any individual in the Detention Centre and the 11 individuals named in the decision.[31] On the same day, the Chamber granted the Prosecution's request for access to Lubanga's Detention Centre call records and recordings.[32]

26. On 3 July 2015, during a status conference in the Accused's presence, the Chamber issued guidance to the Parties with regard to the litigation concerning restrictions to the Accused's communications, and advised the Prosecution that if it required anything further, such a request should be the subject of separate proceedings before a different Chamber.[33]

27. On 10 July 2015, the Chamber issued its "Decision on reclassification of the second Registry's report on *post-factum* review", wherein the Chamber, referring to a specific non-privileged conversation of the Accused, "*note[d] with concern that in places Mr Ntaganda appears to be coaching his counterpart on certain factual matters pertaining to the case.*"[34]

28. On 4 August 2015, the Accused opposed the Prosecution's request for additional restrictions to his communications. He argued that he used codes because: (i) the use of codes is not prohibited by the Detention Centre rules; (ii) the Kinyarwanda language is inherently coded; (iii) his conversations might be disclosed to the

[27] [REDACTED].
[28] [REDACTED].
[29] [REDACTED].
[30] ICC-01/04-02/06-683-Conf-Exp, paras. 13-14.
[31] ICC-01/04-02/06-683-Conf-Exp, para. 11.
[32] ICC-01/04-02/06-684-Conf-Exp.
[33] ICC-01/04-02/06-T-22-CONF-ENG, p.2, ln.23 to p.3, ln.6.
[34] ICC-01/04-02/06-710-Conf-Exp-Red, para. 13.

Prosecution or intercepted by telephones in sub-Saharan Africa; and he wanted to conceal his financial resources from the Registry.[35]

29. [REDACTED].[36] [REDACTED].[37] [REDACTED].

30. On 18 August 2015, the Chamber maintained the active monitoring of the Accused's non-privileged telephone conversations and ordered additional restrictions, including the restrictions of the Accused's contacts to two persons.[38] The Chamber rejected the Defence's stated explanations for his use of codes and found that *"[t]he requirement that detained persons only speak to persons that have been placed on their list of non-privileged contacts by the Registry ensures the communications between detainees and those outside the Detention Centre are subject to a form of oversight. The numerous times Mr Ntaganda circumvented that oversight, even in the limited sample of phone conversations available to the Chamber, is concerning*".[39] The Chamber found reasonable grounds to believe that the Accused used coded language "*to prevent possible interceptors on his end, at the Detention Centre, from understanding the true content of his conversations*" and that "*the use of codes was meant to disguise attempts to disclose confidential information or to interfere with witnesses – including […] by way of coaching*".[40] The Chamber further found reasonable grounds to believe that the Accused "*instructed his interlocutors to coach witnesses, or directly told his interlocutors which story to tell, stressing the need to tell the story in the manner as described by the Accused and the necessity of synchronizing the stories*".[41] Lastly, the Chamber found that the content of the Accused's conversations about Prosecution witnesses was "*deeply troubling*",

[35] ICC-01/04-02/06-759-Conf-Exp and ICC-01/04-02/06-759-Conf-Exp-Red, para. 37-39.
[36] [REDACTED].
[37] [REDACTED].
[38] ICC-01/04-02/06-785-Conf-Exp and ICC-01/04-02/06-785-Red. paras.46, 50, 60, 62-65 and 70.
[39] ICC-01/04-02/06-785-Conf-Exp and ICC-01/04-02/06-785-Red. para. 47.
[40] ICC-01/04-02/06-785-Conf-Exp and ICC-01/04-02/06-785-Red. para.50.
[41] ICC-01/04-02/06-785-Conf-Exp and ICC-01/04-02/06-785-Red. para.57.

"*giving rise to a reasonable belief that Mr Ntaganda, through the relevant interlocutor, intended to engage in a serious form of witness interference*".[42]

II. Article 70 investigation

31. On 13 August 2015, the Prosecution filed an *ex parte* request with Pre-Trial Chamber II for judicial assistance to access the Accused's and Thomas Lubanga's non-privileged call logs, visitors logs and the recordings of their non-privileged telephone conversations from 22 March 2013 to date and on an on-going basis.[43]

32. On 14 August 2015, the Prosecution requested the Chamber to order the transfer of certain parts of the case record relevant to witness interference and coaching to Pre-Trial Chamber II.[44] On 19 August 2015, the Chamber granted the Prosecution's request.[45]

33. On 18 August 2015, the Chamber issued a final decision imposing restrictions to the Accused's communications and found that "*[m]indful of the limitations of the Registry Reports, […] the Chamber nonetheless finds there to be reasonable grounds to believe that Mr Ntaganda instructed his interlocutors to coach witnesses, or directly told his interlocutors which story to tell, stressing the need to tell the story in the manner as described by Mr Ntaganda and the necessity of synchronizing the stories*".[46]

34. On 21 August 2015, the Presidency reassigned the Situation in the Democratic Republic of the Congo to Pre-Trial Chamber I.[47] On 3 September 2015, Pre-Trial Chamber I designated Judge Tarfusser as Single Judge.[48]

[42] ICC-01/04-02/06-785-Conf-Exp and ICC-01/04-02/06-785-Red. para. 55.
[43] ICC-01/04-638-Conf-Exp.
[44] ICC-01/04-02/06-781-Conf.
[45] ICC-01/04-02/06-788.
[46] ICC-01/04-02/06-785-Conf-Exp.
[47] ICC-01/04-639.
[48] ICC-01/04-728.

35. On 18 September 2015, the Single Judge granted the Prosecution's request to obtain recorded materials from the Detention Centre.[49]

36. From 30 September 2015, the Prosecution obtained access to the Detention Centre non-privileged contact and visitors logs, and the recordings of non-privileged telephone conversations from 22 March 2013 for both the Accused and Thomas Lubanga. The Prosecution did not receive the first summary of these conversations until 2 February 2016**,** halfway through the third evidentiary block. It was only much later that the Prosecution could fully understand the contents of the summaries, after it reviewed more of the conversations in the following six months. To date, the Prosecution completed summaries of over 600 telephone conversations, which is only a small fraction of the Accused's 4,684 calls.

37. On 9 May 2016, the Prosecution filed its observations on the periodic review of the restrictions imposed on the Accused's contacts and submitted, on an *ex parte* basis, ten supporting summaries of his communications ("*Ex Parte* annexes").[50] On 11 May 2016, the Defence requested the disclosure, *inter alia*, of the *Ex Parte* annexes.[51] On 16 May 2016, the Prosecution opposed the disclosure of the *Ex Parte* annexes, arguing, *inter alia*, that their disclosure would compromise ongoing investigations related to potential article 70 offences.[52]

38. On 3 June 2016, the Chamber held that "*to the extent that such information may be material to the preparation of the Defence, [it] considers that Rule 81 would justify non-disclosure at this stage*".[53] The Chamber added that "*Article 70 investigations cannot be permitted to continue indefinitely in a manner which could impact proceedings in Ntaganda case*" and "*encouraged [the Prosecution] to conclude relevant portions of its*

[49] ICC-01/04-729-Conf.
[50] ICC-01/04-02/06-1313-Conf-Exp.
[51] ICC-01/04-02/06-1315-Conf-Exp-Corr.
[52] ICC-01/04-02/06-1318-Conf-Exp, paras.16-22.
[53] ICC-01/04-02/06-1364-Conf-Exp, para.22.

investigations as promptly as possible" and "*disclose all resulting information which may be material to the preparation of the Defence as soon as possible*."[54]

39. On 7 September 2016, in its decision reviewing the restrictions, the Chamber recalled "*its prior guidance to the Prosecution that any Article 70 investigations should be concluded as expeditiously as possible, and that any related applicable disclosure of information to the Defence be made as soon as possible*".[55]

40. On 2 November 2016, the Prosecution requested the Single Judge to order the Registry to provide the Accused with access to the TRIM folder containing his and Thomas Lubanga's Detention Centre call records and recordings.[56] On 4 November 2016, the Single Judge granted the Prosecution's request.[57]

41. On 7 November 2016, the Prosecution disclosed the Accused's and Thomas Lubanga's Detention Centre call logs and recordings. On the same day, the Prosecution filed a notice of the disclosure of evidence obtained under article 70, in which it announced its intention to request additional Defence disclosure, and "*to use the evidence obtained under article 70 during and after the Defence case, in particular for the establishment of the truth, the fair evaluation of the evidence, witness impeachment purposes, rebuttal and for sentencing, if applicable*".[58]

42. Between 15 and 24 November 2016, the Prosecution provided the Defence with advance copies of 414 summaries of the Accused's and Thomas Lubanga's Detention Centre communications.[59]

43. On 14 November 2016, the Defence requested an immediate suspension of proceedings,[60] which the Chamber rejected on 16 November 2016.[61]

[54] ICC-01/04-02/06-1364-Conf-Exp, para.22.
[55] ICC-01/04-02/06-1494-Conf-Exp-Red, para.24.
[56] ICC-01/04-737-Conf-Exp.
[57] ICC-01/04-738-Conf-Exp.
[58] ICC-01/04-02/06-1616.
[59] These summaries were formally disclosed on 25 January 2017.

44. On 17 November 2016, the Prosecution filed an addendum to its notice on the disclosure of evidence obtained under article 70, clarifying the nature and volume of the materials disclosed to the Defence, including over 4500 audio files of the Accused's telephone conversations.[62]

45. On 23 November 2016, the Prosecution added 590 audio recordings of the Accused's and Thomas Lubanga's communications to its List of Evidence.[63]

46. On 14 December 2016, the Defence sought reconsideration of the Chamber's order to provide it with a provisional list of witnesses by 16 December 2016, arguing that "*the disclosure of Prosecution Article 70 investigations related material as well as the allegations raised by the Prosecution (including inter alia the coaching of potential Defence witnesses) [...] impact the preparation of the case for the Defence, in particular the selection of Defence witnesses*", and that it could not produce such a list "*without knowledge, whether any potential Defence witness was the object of any coaching, by whom, in what circumstances as well as the nature of such coaching*".[64] On 16 December 2016, the Chamber rejected the Defence's request for reconsideration, indicating that the Defence failed to acknowledge that it would not be bound by the preliminary list of witnesses, that no deadline had yet been set for the filing of the Defence's final list, and, accordingly, the Defence was still able to make modifications to the witness list in the interim.[65]

47. On 10 January 2017, the Prosecution found two transcripts of the Accused's non-privileged conversations, prepared by the Registry, in the designated TRIM folder containing the Accused's non-privileged telephone conversations obtained pursuant to article 70. Before reviewing these transcripts, the Prosecution sought

[60] ICC-01/04-02/06-1629-Conf.
[61] ICC-01/04-02/06-T-159-CONF-ENG, p. 2, ln.13 to p. 7, ln.24.
[62] ICC-01/04-02/06-1637.
[63] ICC-01/04-02/06-1646-AnxA, pp. 259-274.
[64] ICC-01/04-02/06-1683, paras. 13 and 15.
[65] ICC-01/04-02/06-1688, paras. 5-6.

and received confirmation from the Registry that they were intended for the parties.

48. On 24 January 2017, the Prosecution provided the Defence with advance copies of 90 additional summaries of the Accused's and Thomas Lubanga's communications.[66]

49. On 30 January 2017, the Prosecution added 505 summaries of the Accused's and Thomas Lubanga's Detention Centre communications to its List of Evidence.[67]

50. On 3 February 2017, the Prosecution sought a variation of the deadline to submit into evidence transcriptions and translations of ten of the Accused's Detention Centre communications.[68]

51. On 10 February 2017, the Prosecution sought additional Defence disclosure, on the basis of evidence that the Accused was involved in a broad scheme to coach potential Defence witnesses.[69]

52. On 23 February 2017, the Chamber rejected the Prosecution's request for an extension of time to seek admission of the transcriptions and translations of ten of the Accused's Detention Centre communications.[70]

53. On 27 February 2017, the Prosecution provided the Defence with advance copies of 48 transcriptions and translations of the Accused's communications.

54. On 1 March 2017, the Defence opposed the Prosecution's request for additional Defence disclosure.[71]

[66] These summaries were formally disclosed on 30 January 2017.
[67] ICC-01/04-02/06-1762-AnxA, pp. 277-289.
[68] ICC-01/04-02/06-1769-Conf.
[69] ICC-01/04-02/06-1783-Conf-Corr.
[70] ICC-01/04-02/06-1799.

55. On 6 March 2017, the Defence requested that the Chamber grant an extension of three months for the preparation of the Defence case, by delaying: (i) the submission of the further provisional list of witnesses until 30 June 2017, (ii) the submission of the final list of witnesses and final disclosure until 31 July 2017 and, (ii) the presentation of evidence until 4 September 2017.[72]

56. On 10 March 2017, the Chamber rejected the Prosecution's request for additional Defence disclosure.[73]

57. On 13 March 2017, the Prosecution opposed the Defence's request for an extension of time for the preparation of the Defence case.[74]

58. On 21 March 2017, the Defence requested a stay of proceedings.[75]

59. On 22 March 2017, the Chamber rejected the Defence request for an extension of time to start its case.[76]

Prosecution's Submissions

There is no prejudice to the Accused or abuse of process

60. It is not an abuse of process for the Prosecution to investigate serious allegations that the Accused disclosed confidential witness information, sought to interfere with Prosecution witnesses and coached potential Defence witnesses. Nor is it unfair or prejudicial for the Prosecution to have accessed the main evidence of the criminal wrongdoing: the Accused's unredacted non-privileged telephone calls. The Accused's attempts to tamper with evidence should not be confused with legitimate defence strategy.

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[71] ICC-01/04-02/06-1811-Conf.
[72] ICC-01/04-02/06-1815-Conf.
[73] ICC-01/04-02/06-1818.
[74] ICC-01/04-02/06-1822-Conf.
[75] ICC-01/04-02/06-1830-Conf.
[76] ICC-01/04-02/06-1832-Conf.

61. Under rule 165 of the Rules of Procedure and Evidence, the responsibility to initiate and conduct investigations into crimes that may have been committed under article 70 of the Statute lies with the Prosecution. Starting in 2013, the Prosecution obtained reliable information of the Accused's suspected involvement – along with [REDACTED] associates – in disseminating and using confidential information to intimidate Prosecution witnesses. This information was confirmed when the Chamber reviewed certain of the Accused's conversations from the Detention Centre and found that he had abused his entitlement to communicate by speaking to non-registered callers numerous times and found reasonable grounds to believe that the Accused used coded language "*to prevent possible interceptors on his end, at the Detention Centre, from understanding the true content of his conversations*" and that "*the use of codes was meant to disguise attempts to disclose confidential information or to interfere with witnesses – including […] by way of coaching*".[77] The Chamber further found reasonable grounds to believe that the Accused "*instructed his interlocutors to coach witnesses, or directly told his interlocutors which story to tell, stressing the need to tell the story in the manner as described by the Accused and the necessity of synchronizing the stories*".[78] Additionally, the Chamber found that the content of the Accused's conversations about Prosecution witnesses was "*deeply troubling*", "*giving rise to a reasonable belief that Mr Ntaganda, through the relevant interlocutor, intended to engage in a serious form of witness interference*".[79]

62. The Chamber twice noted the possibility for the Prosecution to bring a request for further investigative steps before a Pre-Trial Chamber, rather than continuing to engage the Chamber directly.[80] Based on the Chamber's serious findings of potential criminal misconduct in a limited number of the Accused's calls from the Detention Centre, the Prosecution sought authorisation for further investigative

[77] ICC-01/04-02/06-785-Conf-Exp and ICC-01/04-02/06-785-Red. Para.50.
[78] ICC-01/04-02/06-785-Conf-Exp and ICC-01/04-02/06-785-Red. Para.57.
[79] ICC-01/04-02/06-785-Conf-Exp and ICC-01/04-02/06-785-Red. Para. 55.
[80] ICC-01/04-02/06-T-22-CONF-ENG, p.2, ln.23 to p.3, ln.6 and ICC-01/04-02/06-777-Conf-Exp, para. 38.

steps from Pre-Trial Chamber II, including access to all the Accused's non-privileged telephone calls. In this request to Pre-Trial Chamber II, the Prosecution provided all relevant information about the Trial Chamber's review of the limited number of the Accused's calls and its findings. The Prosecution also outlined the redaction mechanism put in place by the Trial Chamber and explained its need to have unredacted access to the calls for a complete investigation into alleged criminal conduct under article 70. Having considered all these arguments, the Single Judge granted such access.[81]

63. The Defence complaint that the lack of a "screening mechanism"[82] for the review of the Accused's telephone calls demonstrates a "clear abuse of process"[83] must be rejected. The process that the Trial Chamber adopted when reviewing a limited number of the Accused's conversations in the context of a request to restrict his communications was inapplicable to the case of an investigation under article 70 of the Statute to investigate the Accused's culpability for criminal conduct. It is remarkable that the Defence should suggest that a prosecuting authority, when investigating crimes within its competence, must be subject to a regime whereby the potential perpetrator is involved in determining what information is available and reviewed by those investigating his alleged criminality.[84] Not surprisingly, the Defence cites no authority in support of this assertion.

64. The Defence goes on to claim abuse of process because "*Mr Ntaganda was plainly unaware that all his Conversations were, or could be, disclosed to the Prosecution*" and that he "*simply had no way of knowing that everything he said in non-privileged conversations from the Detention Centre had been and continued to be provided to the Prosecution*".[85] His assertion contradicts Defence arguments advanced in 2015 that the Accused used codes in his non-privileged conversations, in part, because of "*a*

[81] ICC-01/04-729-Conf-Exp and ICC-01/04-729-Conf.
[82] Defence Request, para. 53.
[83] Defence Request, para. 54.
[84] Defence Request, para. 53.
[85] Defence Request, paras. 51-52.

concern that such conversations might be disclosed to the Prosecution, as occurred in the Katanga case".[86]

65. There can be very little expectation of privacy in the Accused's situation: (i) he is in prison facing serious war crimes and crimes against humanity charges; (ii) his calls are fully recorded and passively monitored and he was informed of this pursuant to regulations 174(3) and 175(3) of the Regulations of the Registry; (iii) since August 2014, he knew that the Prosecution sought to restrict his communications because it alleged he was abusing the communications mechanism; (iv) the Chamber sought access to a number of his recorded telephone calls, made serious preliminary findings of wrongdoing in those very conversations and further restricted his calls and ordered active monitoring; (v) the Accused was aware that the conversations of other detainees had been disclosed to the Prosecution, such as Germain Katanga and Jean-Pierre Bemba, following reliable information of abuse and criminal conduct; (vi) entitlement to communication in detention is not absolute, [87] but subject to any necessary restrictions for the administration of justice or the security and good order of the Detention Centre.[88] Under regulation 101 of the RoC, the Chamber may restrict contact with persons (other than counsel) in a number of important situations.

66. Critically, the Accused and his experienced legal counsel were fully aware that the Prosecution had obtained access to the Detention Centre communications of other detainees, including Germain Katanga and Jean-Pierre Bemba. The latter

[86] ICC-01/04-02/06-759-Conf-Exp-Red, para. 37. The Accused also argued in the same paragraph that he used codes because he believed his conversations could also be intercepted by third parties in sub-Saharan Africa. The Chamber held that the use of codes was intended "*to prevent possible interceptors on his end, at the Detention Centre, from understanding the true content of his conversations*": See, ICC-01/04-02/06-785-Conf-Exp and ICC-01/04-02/06-785-Red, para. 50.
[87] ICC-01/04-02/06-785-Conf-Exp, para.39.
[88] Regulations 99(2) and 100(3) of the Regulations of the Registry. Chapter 5 of the Regulations of the Registry sets out further specific regulations regarding detention matters, including in respect to correspondence, telephone communications and visits.

was facing prosecution for article 70 offences since 2013 based in large part on his Detention Centre calls.[89]

The use of* ex parte *proceedings was appropriate

67. The Defence complains that the Prosecution's investigation into article 70 offences was conducted *ex parte*.[90] The Defence does not cite any jurisprudence to support its argument that this is inappropriate. Indeed, an investigation into any criminal behavior is rarely notified to the alleged perpetrators at the time of the investigation, precisely to protect the integrity of that ongoing investigation. The Prosecution investigation was not limited to the Accused but to anyone involved in article 70 offences.

68. This Court's case-law on the use of *ex parte* submissions is clear. Chambers have "discretion" to "determine, within the framework of the applicable law, whether applications are kept *ex parte* […] and whether or not to hold proceedings on an *ex parte* basis."[91] There may well be circumstances where it is "inappropriate" for a Party even to be aware of some applications, and such matters must "be determined on [their] own facts and consistently with internationally recognised human rights standards".[92] Thus, *ex parte* procedures should only be "used exceptionally when they are truly necessary and when no other, lesser, procedures are available, and the [C]ourt must ensure that their use is proportionate given the potential prejudice".[93] Even when the reasons for the *ex parte* proceeding no longer apply, it may not be appropriate to make available *inter partes* the entirety of the *ex parte* submissions.[94]

[89] ICC-01/04-02/06-759-Conf-Exp and ICC-01/04-02/06-759-Conf-Exp-Red, paras. 4 and 37.
[90] Defence Request, para. 43.
[91] *Lubanga* Rule 81 Appeal Decision, ICC-01/04-01/06-568 OA3, para. 66.
[92] *Lubanga* Rule 81 Appeal Decision, ICC-01/04-01/06-568 OA3, para. 67. *Also Lubanga Ex Parte* Proceedings Decision, ICC-01/04-01/06-1058, para. 12 ("Complete secrecy" may be justified "if providing information about the procedure would risk revealing the very thing that requires protection").
[93] *Lubanga Ex Parte* Proceedings Decision, ICC-01/04-01/06-1058, para. 12.
[94] *Lubanga Ex Parte* Proceedings Decision, ICC-01/04-01/06-1058, para. 14.

69. The Chambers' approach to the Prosecution's *ex parte* submissions concerning the article 70 investigation conformed entirely to these principles. Moreover, Judges of this Court are professional judges, who are able to differentiate between inadmissible and admissible information in carrying out their functions. Consistent with the Appeals Chamber's guidance, Chambers must consider the nature of the application, on its facts, and apply the Court's procedural law consistent with international human rights law accordingly.

70. In this case, *ex parte* procedures were undoubtedly necessary, and their use was proportionate to the potential prejudice. Initial *ex parte* submissions were justified because they contained sensitive information that, if disclosed, would compromise an ongoing investigation. *Ex parte* submissions were further legitimate, especially when the investigation was prompted by the Prosecutor's unique role in protecting witnesses and ensuring the integrity of the Court's proceedings by detecting, investigating, and prosecuting article 70 violations. Indeed, the Appeals Chamber recently upheld the use of *ex parte* procedures in the restrictions litigation taking place in this case, stating *"[t]he fact that information may be withheld from a detained person in such proceedings is not per se unfair"*.[95] The Appeals Chamber rejected Defence arguments that *ex parte* procedures in the restrictions litigation was unfair, confirming that much of the relevant information for response was available in redacted versions.[96]

No legal requirement for a separate review team

71. The Defence cites an *obiter dictum* of the Appeals Chamber[97] to support its assertion that an independent counsel should have reviewed the Accused's Detention Centre calls. But the Appeals Chamber held in *Bemba* that the involvement of Prosecution staff members in the article 70 investigation who had

[95] ICC-01/04-02/06-1817-Conf OA4, paras. 87-97.
[96] ICC-01/04-02/06-1817-Conf OA4, para. 87.
[97] Defence Request, para.47.

knowledge of the case did not on its own give rise to reasonable doubts as to the Prosecutor's impartiality.[98] Indeed, as the Appeals Chamber stated, the fact that an article 70 prosecution can be joined to the main charges acknowledges that the same team can both investigate and prosecute such offences.[99] And the Rules of this Court require no recourse to an *amicus curiae* review team.

72. Importantly, the facts of this case differ in critical respects from those of the *Bemba* case. First, the Prosecution's initial investigation related primarily to the protection of its witnesses under article 68(1) from unlawful interference, threat and harm. This is squarely within the purview of the trial team. Second, the use of coded language made the review more difficult and the need to have people familiar with the parameters of the case was, and remains, a critical factor. Third, the Prosecution was not investigating Defence counsel or reviewing any privileged communications or records. Indeed, no privileged communications are recorded at the Detention Centre and the Prosecution received no such information. Accordingly, there was no need to screen the Detention Centre calls or to engage a separate entity for this review.

73. Indeed, in this case it was incumbent on the Prosecution trial team to investigate these allegations to ensure the protection of its witnesses and the integrity of the proceedings under article 68(1). It was appropriate for the same Prosecution team to review the telephone conversations with a view to protecting its witnesses and deciphering the coded communications used by the Accused and his network, and in considering whether to join any charges under article 70 to the main case.

74. The Defence complains that the Prosecution had access to the Accused's Detention Centre calls since 30 September 2015.[100] As set out in paragraph 36, above, the Defence ignores that it took significant time for the Prosecution to

[98] ICC-01/05-01/-8-3255, para.83.
[99] ICC-01/05-01/13-648-Red3, para. 35.
[100] Defence Request, para.7.

organise the information in a useable format and five months before the Prosecution received any summaries of the conversations it identified as a priority for review. Indeed, the first summaries were finalised in February 2016.

75. The Defence incorrectly suggests that the Prosecution was reviewing calls concurrent with the trial proceedings[101] and claims that it has no way of knowing which calls the Prosecution reviewed.[102] The Defence makes an oblique reference to an *inter partes* discussion [REDACTED]. It is necessary to set the facts straight. On 17 November 2016, the Prosecution disclosed to the Defence a tracking sheet of the calls reviewed to date. [REDACTED]. The Prosecution raised its concerns with the Defence. This does not support the Defence's accusation that the Prosecution misrepresented the scope of its review of the Accused's telephone calls.

The Defence Request is general and speculative

76. The Appeals Chamber has held that a stay of proceedings is an exceptional remedy and that "*the power of a court of law to stay proceedings should be sparingly exercised*".[103] It is a remedy limited to conduct that would "*make it otiose, repugnant to the rule of law to put the accused on trial*".[104] Such is not the case, nor is a stay of proceedings warranted. General, overstated and speculative assertions cannot substantiate such extraordinary relief.

77. The Prosecution did not open an investigation into allegations of witness interference to obtain a "colossal" "undue advantage".[105] The Defence fails to articulate *any* undue advantage; rather, the Defence speculates and makes general and inaccurate blanket assertions about the Prosecution's access to Defence

[101] Defence Request, para. 6.
[102] Defence Request, para. 89.
[103] ICC–01/04–01/06-772 OA4, 14 December 2006, para.31.
[104] ICC–01/04–01/06-772 OA4, 14 December 2006, para.30.
[105] Defence Request, paras. 7, 55, 56, 57, 65.

strategy without concretely identifying what legitimate information the Prosecution obtained. For example, the Defence makes an amplified claim that "*all*" of the Prosecution's decisions "*pertaining to its selection of witnesses, their order of appearance, their preparation and questioning, and its choice as to whether to call them viva voce or pursuant to Rule 68(3) […] were taken with detailed knowledge of confidential Defence information*".[106] Plainly, this is not the case (nor could it conceivably be so) when the Prosecution's selection of witnesses was completed by March 2015, some six months before the Prosecution obtained access to the Detention Centre calls (and more than one year before it received the first summaries of the calls). Similarly, the Prosecution had finalised the order of appearance and examined witnesses in at least the first three blocks before it reviewed any of the newly summarised calls. In any event, the information from the summaries was used to assess whether the Accused and others were engaged in criminal misconduct, and not to select witnesses or make any other litigation-related assessment.

78. The Defence further posits that had it been aware of the information in the possession of the Prosecution, "*it could, and indeed would have, reconceptualised its whole defence strategy*".[107] No further detail is provided.

79. This wild assertion is flawed at its core. The Accused was fully aware of the information he discussed in his telephone communications (namely, a false line of defence) and the impact this would have on his case. And the Defence team was fully aware since prior to the start of trial of the ways in which the Accused had been abusing his Detention Centre communications.[108] If the Defence opted to wait and see the extent to which the Prosecution had uncovered the illicit scheme before making meaningful changes to its investigations and the way it mounted

[106] Defence Request, para. 56. See also the Defence argument in para. 80.
[107] Defence Request, para. 56.
[108] *See*, ICC-01/04-02/06-1832-Conf, para. 17 and Transcript of hearing on 16 November 2016, ICC-01/04-02/06-T-159, pp. 2-7.

the Defence case, then it was a poor strategy, but in any event, it does not amount to unfairness to the Accused or warrant a stay of proceedings. Nor should the Prosecution shoulder any blame for this decision.

80. Although the Defence sought an extension of the page limit to 30 pages, the Defence devotes only 7 paragraphs[109] to what it claims is the "illustrative sample"[110] of legitimate Defence strategy that the Prosecution inappropriately accessed. These paragraphs include only general statements without any further detail or precision: (i) "the whereabouts" of the Accused and "others" at times material to the charges;[111] (ii) information the Accused considered "useful" in countering Prosecution allegations and how to obtain such information;[112] (iii) the identity of 11 individuals who could potentially provide information in support of the Defence case but also "many more";[113] and (iv) details about the provenance and contents of documents the Accused "considered important" to his Defence and information he considered "would assist" in challenging documents.[114]

81. What these overly generalised yet minimal submissions fail to convey is that the Prosecution alleges that each of these conversations is aimed at interfering with the course of justice by coaching witnesses and fabricating evidence. Indeed, the 11 individuals to whom the Defence refer are those whom the Prosecution identified as having been coached by the Accused. The Defence concedes as much,[115] making it unclear what legitimate Defence strategy the Prosecution allegedly accessed and used to its advantage regarding those 11 witnesses. The Defence also attached an *ex parte* annex with a "non-exhaustive" list of relevant

[109] Defence Request, paras. 58-64.
[110] Defence Request, para. 57.
[111] Defence Request, para. 58.
[112] Defence Request, para. 59.
[113] Defence Request, paras. 60-62.
[114] Defence Request, paras. 63-64.
[115] Defence Request, para. 60.

individuals mentioned in the conversations;[116] but if, as the Defence contends, the Prosecution knows these people and has used the knowledge to its advantage, there should be no reason justifying an *ex parte* classification. Now, the Prosecution is unable to respond to the precise allegation and further assist the Chamber on the point.

82. The Defence advances further broad and vague claims regarding the Prosecution's reliance on ten *ex parte* annexes detailing the allegations of interference in support of the need to maintain the restrictions to the Accused's telephone communications, filed on 9 May 2016. The Defence contends that it was "*severely prejudiced*"[117] by its lack of access to these ten annexes and repeated an earlier bald assertion that access to the information "*could, and would, have allowed the Defence to react and adjust its strategy, more particularly, the manner in which it would cross-examine the remaining 52 witnesses*".[118] The Defence fails to explain what changes it would have made by this date to "adjust" Defence strategy as a result of access to the ten annexes. This argument must fail in any event given the Chamber's findings that the Defence has been on notice of allegations of coaching since prior to the commencement of trial and "*must be presumed to have discussed the issue with Mr Ntaganda and to have been conscious of it in conducting its investigations and preparations to date*".[119]

83. The Defence states that it is "*difficult to assess*" the full scope of the ways in which the Prosecution used this information, but ineffectually adds that "*it may have*" included "*contacting sources identified in the conversations, altering its examinations in chief of its witnesses, opting not to present certain evidence and/or choosing to present evidence it had originally not intended to present*".[120] These speculations are

[116] Defence Request, footnote 63.
[117] Defence Request, para. 69.
[118] Defence Request, para. 69.
[119] ICC-01/04-02/06-1832-Conf, para. 17. *See also*, Transcript of hearing on 16 November 2016, ICC-01/04-02/06-T-159-Red-ENG, pages 2-7.
[120] Defence Request, para.65.

unsubstantiated and they are insufficient to meet the stringent test to grant a stay of proceedings.

84. The Defence advances *one* concrete instance in which it alleges that the Prosecution gained knowledge of information through the conversations, but the example is inaccurate. The Defence claims that the existence of a video recorded with the Accused's video camera during the charged events was discussed by the Accused in his telephone conversations and that, as a result, the Prosecution was "fully informed" of details about the video [REDACTED].[121]

85. Yet, this fact was well-known to the Prosecution long before it had access to the Accused's Detention Centre calls. First, [REDACTED], which was disclosed to the Defence on 16 December 2013. The Prosecution also relied on this fact in its pre-trial brief filed on 9 March 2015.[122] Importantly, the Prosecution did not receive the summaries of these particular Detention Centre conversations from its interpretation service until *after* [REDACTED] in April and September 2016.

There is no apprehension of bias on the part of the Trial Chamber

86. The Defence Request fails to demonstrate either actual bias or the apprehension of bias on the part of the Chamber due to the steps it took to protect witnesses and the trial from allegations of the Accused's wrongdoing.[123] The Chamber

[121] Defence Request, para. 81.
[122] ICC-01/04-02/06-503-Conf-AnxA, paras. 145-146.
[123] *See Prosecutor v. Karemera et al*, ICTR-98-44-AR75.15, Decision on Joseph Nzirorera's Appeal Against a Decision Of Trial Chamber III Denying the Disclosure of a Copy of the Presiding Judge's Written Assessment of a Member of the Prosecution Team, 5 May 2009, para.9; *Prosecutor v. Akayesu*, ICTR-96-4-A, Judgement, 1 June 2001, para.203, stating "*That there is a general rule that a Judge should not only be subjectively free from bias, but also that there should be nothing in the surrounding circumstances which objectively gives rise to an appearance of bias. On this basis, the Appeals Chamber considers that the following principles should direct it in interpreting and applying the impartiality requirement of the Statute: A. A Judge is not impartial if it is shown that actual bias exists. B. There is an unacceptable appearance of bias if: (i) a Judge is a party to the case, or has a financial or proprietary interest in the outcome of a case, or if the Judge's decision will lead to the promotion of a cause in which he or she is involved, together with one of the parties. Under these circumstances, a Judge's disqualification from the case is automatic; or (ii) the circumstances would lead a reasonable observer, properly informed, to reasonably apprehend bias.*" None of the information before the Chamber or referred to by the Prosecution could undermine the Chamber's institutional impartiality. "*[A]n informed person, with knowledge of all the relevant circumstances, including the traditions of integrity and impartiality, apprised*

adjudicated specific issues before it on account of reliable information that the Accused abused his Detention Centre communication privileges to interfere with Prosecution witnesses and coach potential Defence witnesses. It reviewed the information before it to the extent necessary to issue orders for particular relief to protect witnesses and the integrity of these proceedings. This neither demonstrates bias nor the appearance of bias.

87. The Chamber previously rejected Defence submissions that the allegations of the Accused's reported activities, influence or network made both by the Prosecution and the Registry could call into question the fairness or impartiality of the proceedings.[124] It recalled Trial Chamber III's position that it is "*'composed of three professional judges who, unlike a lay jury', are capable of evaluating any allegations brought before them and of disregarding information, as necessary".*[125] The Chamber found that it would, at the appropriate juncture of proceedings, evaluate relevant evidence in support of the charges brought against the accused and is capable of disregarding any irrelevant information.[126] The Defence Request provides no valid reason for the Chamber to depart from this position. Further, the Defence has been given ample opportunity to counter and/or contradict the information that the Prosecution has presented to the Chamber.

88. Indeed, the Chamber *must* be informed of conduct that risks jeopardising the integrity of the proceedings and the safety of witnesses. It is on this basis that the Chamber decided it should be kept informed of the effectiveness of the restrictions imposed on the Accused's communications to protect the integrity of the trial: "*The Chamber therefore does not consider it appropriate for further information*

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also of the fact that impartiality is one of the duties that Judges swear to uphold" would not apprehend any bias on the part of the Chamber: *Prosecutor v. Nahimana et al.*, ICTR-99-52-A, Judgement, 28 November 2007, para.50.

[124] ICC-01/04-02/06-443-Conf-Exp, para. 32.

[125] ICC-01/04-02/06-443-Conf-Exp, para.32 citing ICC-01/05-01/08-3070, para. 29 (The Prosecutor v. Jean-Pierre Bemba Gombo, Trial Chamber III, Decision on the "Defence Motion on Prosecution contact with its witnesses », 22 May 2014, ICC-01/05-01/08-3070, para. 29.).

[126] ICC-01/04-02/06-443-Conf-Exp, para. 33.

derived from the active monitoring to be provided solely to an amicus curiae, as requested by the Defence. As the restrictions are imposed to protect the integrity of, and witnesses in, the present proceedings, the Chamber considers that it is best placed to assess which restrictions are necessary and proportionate to achieve this goal. It does not therefore consider it appropriate to refer the request for restrictions to a pre-trial chamber".[127]

89. Moreover, and as already stated elsewhere, the Statute envisages the joinder of article 70 charges to the main case. This not only involves the same prosecuting counsel but also the same trial chamber. For the same reasons as set out by the Appeals Chamber,[128] these provisions acknowledge that the same chamber can both adjudicate allegations of article 70 offences while it adjudicates allegations under articles 6 to 8.

90. Importantly, the Chamber already held that the information in the Detention Centre communications must be considered in their appropriate context, noting that "*they do not relate directly to the charges and, are, for a large part, devoid of any direct materiality to these proceedings or relate to peripheral issues*."[129] The Chamber declined to consider the additional Prosecution analysis of the Detention Centre communications when it adjudicated the Prosecution's requests for additional time to submit ten transcriptions of calls[130] and for additional Defence disclosure.[131] The Defence argument that it is prejudiced by relief that the Chamber declined to grant lacks merit.

91. Lastly, the Defence claim that "numerous" *ex parte* submissions submitted to the Judges created an apprehension of bias on the part of the Chamber must also fail. First, there were limited *ex parte* filings. Second, the Chamber recently reviewed all *ex parte* submissions and decisions, notwithstanding the ambiguity of the

[127] ICC-01/04-02/06-785-Conf-Exp and ICC-01/04-02/06-785-Red, para. 70.
[128] ICC-01/05-01/13-648-Red3, para. 35.
[129] ICC-01/04-02/06-1832-Conf, para. 17.
[130] ICC-01/04-02/06-1799.
[131] ICC-01/04-02/06-1818.

Defence's request.[132] It found that the information "*is mostly already known to the defence due to public versions or lesser redacted version having been issued or the information having been referred to in a later decision*".[133]

Relief Requested

92. The Prosecution requests that the Chamber reject the Defence Request.

Fatou Bensouda
Prosecutor

Dated this 6th day of April 2017
At The Hague, The Netherlands

[132] ICC-01/04-02/06-1826, para. 8.
[133] ICC-01/04-02/06-1826, para. 8.