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No.: ICC-01/04-02/06
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TRIAL CHAMBER VI

Before: Judge Robert Fremr, Presiding Judge
Judge Kuniko Ozaki
Judge Chang-ho Chung

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

Public

**Public redacted version of "Prosecution's urgent request for measures under regulation 101(2) of the Regulations of the Court", 8 August 2014,
ICC-01/04-02/06-349-Conf-Exp**

Source: The Office of the Prosecutor

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

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I. Introduction

1. In May 2014, witness [REDACTED] informed the Office of the Prosecutor (“Prosecution”) that [REDACTED] had received phone calls and text messages from [REDACTED], and others close to, Bosco NTAGANDA (“Accused”). These individuals referred to confidential information in this case and urged or threatened the witness to cease [REDACTED] cooperation with the Prosecution.

2. This is not an isolated incident. In May 2014, [REDACTED].

3. These incidents point to a pattern of disseminating confidential information and interfering with witnesses undertaken by the Accused, [REDACTED], and his associates. Based on the evidence discussed below, there are reasonable grounds to believe that contact between the Accused and others has led to conduct falling within the enumerated grounds under regulation 101(2) of the Regulations of the Court (“RoC”).

4. On this basis, the Prosecution requests that the Chamber impose restrictions, pursuant to regulation 101(2), on the contact between the Accused and any other person with the exception of Counsel, at or from the ICC Detention Centre (“Request”).

5. The immediate implementation of the requested measures is necessary to ensure the confidentiality of disclosed information, the integrity of the proceedings, and the security of Prosecution witnesses and their family members.

II. Confidentiality

6. This Request is classified as “Confidential, *EX PARTE* – only available to the Prosecution and VWU,” as it contains highly sensitive information which could impact the security of Prosecution witnesses and their family members (such as, their identities). The Prosecution simultaneously files a Confidential redacted version.

7. The redacted version of the Request is classified as Confidential as it addresses issues of witness safety and discusses personal details of individuals whose cooperation with the Prosecution is confidential.

8. The annexed documents are classified as “Confidential, *EX PARTE* – only available to the Prosecution,” as they also contain highly sensitive information, which could impact the security of Prosecution witnesses and their family members (including, their identities and contact information).

III. Procedural History

9. On 9 June 2014, Pre-Trial Chamber II issued its Decision confirming the charges against the Accused, committing him to trial (“Decision on the Confirmation of Charges”).¹

10. On 18 July 2014, the Presidency constituted Trial Chamber VI.²

IV. Prosecution’s Submissions

11. Pursuant to regulation 101(2) of the RoC, the Chamber seized of a case may “prohibit, regulate or set conditions for contact between a detained person and any other person, with the exception of counsel” where there are reasonable grounds to believe that such contact, *inter alia*,

“(b) [c]ould prejudice or otherwise affect the outcome of the proceedings against a detained person, or any other investigation; (c) [c]ould be harmful to a detained person or any other person; (d) [c]ould be used by a detained person to breach an order for non-disclosure made by a judge; (e) [i]s against the interests of public safety; or (f) [i]s a threat to the protection of the rights and freedoms of any person.”

12. For the reasons discussed below, an order by the Chamber restricting contact between the Accused and others pursuant to regulation 101(2) is required in the present case to ensure the confidentiality of disclosed information, the integrity of

¹ ICC-01/04-02/06-309.

² ICC-01/04-02/06-337.

the proceedings, and the security of Prosecution witnesses and their family members.

A. The Accused has the capacity to interfere with and intimidate witnesses

13. A Single Judge of Pre-Trial Chamber II found as recently as 12 July 2014 that the Accused maintains, from detention, a robust network capable of disseminating information, as well as interfering with and influencing witnesses. The persisting breadth and strength of the Accused's influence and network—despite his incarceration—was noted by the Single Judge in the “Decision on the Defence's Application for Interim Release”³ and the “Second Decision on Bosco Ntaganda's Interim Release.”⁴ As the Single Judge observed in the Second Decision:

“[I]t is evident that Mr. Ntaganda remains influential in the DRC due to the contacts he managed to retain with a considerable number of his former soldiers including those from the *Forces Patriotiques pour la Libération du Congo* and the *Congrès National pour la Défense du Peuple* who used to be part of the *Mouvement du 23 mars*.”⁵

In the “Third Decision on Bosco Ntaganda's Interim Release,” the Single Judge observed that these statements “remain valid” to date.⁶

14. The Single Judge noted, *inter alia*, the extensive evidence of the Accused's “documented history of violence”⁷ and observed that “one cannot rule out the possibility of him influencing, threatening or intimidating witnesses and victims”

³ ICC-01/04-02/06-147, para. 58. In coming to this conclusion, the Single Judge relied upon, *inter alia*, “Midterm report of the Group of Experts on the Democratic Republic of the Congo”, UN Doc. S/2013/433, at pp. 15-16 (“Group of Experts Midterm Report”); “2011 Final report of the Group of Experts on the Democratic Republic of the Congo,” DRC-OTP-2045-0800, at 0869, paras. 239-240 and at 0881, paras. 297-300.

⁴ ICC-01/04-02/06-284, at para. 37.

⁵ ICC-01/04-02/06-284, at para. 37 (relying on her previous findings at ICC-01/04-02/06-147, para. 58).

⁶ ICC-01/04-02/06-335, para. 36.

⁷ ICC-01/04-02/06-147, para. 59. In coming to this conclusion in the first decision on interim release, the Single Judge relied upon, *inter alia*, DRC-OTP-2054-6846 at 6867 (the testimony of UN Context Expert DRC-OTP-P-0046 in *The Prosecutor v. Thomas Lubanga Dyilo*); DRC-OTP-2045-0800 at 0834, paras. 82-83, at 0835, para. 85, at 0843, paras. 123-124, and at 0849-0850, paras. 149-150; Group of Experts Midterm Report, at paras. 129-130.

and/or their family members” (emphasis added).⁸ She observed further that “the fact that he has also the financial means necessary strengthens the conclusion that he is capable of carrying out these acts.”⁹ The Single Judge’s findings in her first decision on interim release were confirmed by the Appeals Chamber.¹⁰

B. Interference with Witness [REDACTED] and dissemination of confidential information

15. [REDACTED]. [REDACTED] provides significant first-hand evidence concerning [REDACTED], and the Accused’s participation therein. In addition, [REDACTED] provides important evidence concerning the [REDACTED], and second-hand evidence concerning the events that took place. The Decision on the Confirmation of Charges relies extensively on [REDACTED] evidence.¹¹

16. [REDACTED] met with Prosecution investigators about [REDACTED] willingness to give a statement [REDACTED].¹²

17. The transcripts of [REDACTED] interview were subsequently disclosed *confidentially* to the Defence, first in draft form on [REDACTED],¹³ and subsequently in a finalised version on [REDACTED].¹⁴

18. [REDACTED], the witness was informed of the disclosure of [REDACTED] interview to the Defence by representatives of the Prosecution, as well as the progression of the confirmation hearing and other matters.¹⁵

⁸ ICC-01/04-02/06-335, para. 37.

⁹ ICC-01/04-02/06-335, para. 37 (relying on her previous findings at ICC-01/04-02/06-147, para. 58). In coming to this conclusion initially, the Single Judge relied upon, *inter alia*, Group of Experts Midterm Report, pp. 6, 13; DRC-OTP-2045-0800 at 0949-0950, pp. 150-151.

¹⁰ ICC-01/04-02/06-271-Conf, at paras. 43, 49-50.

¹¹ See, e.g., ICC-01/04-02/06-309, at fns. 39-40, 42, 43, 51, 53, 58, 66, 68, 105, 122, 136, 140-142, 144-145, 158, 184, 185, 235-239, 242-245, 261-262, 272-273, 281, 284-285, 287, 343, 370, 371, 375, 381, 390, 403, 412, 415, 437, 447-449, 455-456, 458-464, 466, 483-484, 499, 510, 515-517, 519, 526, 531-536, 541, 546, 551, 554-555, 561, 570, 572-573, 575-576, 578, 581-588, 600-608, 611, 614, 651, 653, 661, 671, 677-680 and 682.

¹² [REDACTED].

¹³ [REDACTED].

¹⁴ [REDACTED].

19. Shortly after the conversation with the Prosecution, the witness received a phone call from [REDACTED] based in the [REDACTED]. [REDACTED] informed [REDACTED] that he had been contacted by [REDACTED]. These individuals informed [REDACTED] was included in a list of witnesses who were to testify against the Accused “in The Hague.” [REDACTED] pleaded with [REDACTED] to withdraw his cooperation with the Prosecution. [REDACTED] indicated that he was afraid such involvement would result in a risk that the Accused’s [REDACTED] would cause “problems” for [REDACTED].¹⁶

20. The next day, the witness received a phone call from [REDACTED]. [REDACTED] informed [REDACTED] that the Accused’s [REDACTED] had contacted him requesting [REDACTED] phone number. [REDACTED] complied with the request, and provided the witness’s phone number.¹⁷

21. Later that same day, the witness received a phone call from the Accused’s [REDACTED]. [REDACTED] introduced [REDACTED] and specifically indicated that the Accused was [REDACTED]. During the conversation, [REDACTED] stated that [REDACTED] knew that [REDACTED] was acting as a Prosecution witness in the case against the Accused. [REDACTED] asked [REDACTED] to cease [REDACTED] involvement as a witness against [REDACTED] and [REDACTED] cooperation with the ICC.¹⁸ [REDACTED] subsequently contacted [REDACTED] to confirm whether the Accused’s [REDACTED] had called.¹⁹

22. Shortly after, the witness received a phone call from an individual named [REDACTED]. [REDACTED] had met [REDACTED] on multiple occasions since [REDACTED], and knew him to be a [REDACTED] of the Accused.²⁰ Over the course

¹⁵ [REDACTED].

¹⁶ [REDACTED].

¹⁷ [REDACTED].

¹⁸ [REDACTED].

¹⁹ [REDACTED].

²⁰ [REDACTED].

of the conversation, [REDACTED] described the witness as a traitor, and threatened [REDACTED] life [REDACTED] if [REDACTED] continued to cooperate with the ICC and testify against the Accused.²¹

23. [REDACTED] indicates that this was not the first time [REDACTED] had contacted [REDACTED] about the case. The witness had previously received a text message from [REDACTED]. [REDACTED].²² [REDACTED].²³ The witness believes the message was intended to dissuade [REDACTED] from cooperating with the Prosecution against the Accused.²⁴

24. [REDACTED] brought the security concerns regarding [REDACTED] involvement in the case against the Accused to the attention of Prosecution investigators in a meeting [REDACTED].²⁵

25. The witness indicates that the pressure to recant has continued since the meeting with the Prosecution. Subsequent to the meeting, [REDACTED] was contacted by [REDACTED], who sought to persuade him to withdraw his cooperation with the Prosecution. [REDACTED] explained that [REDACTED], who had contacted [REDACTED], had told [REDACTED] what the Accused's [REDACTED] had said to [REDACTED] previously. It was on this basis that [REDACTED] sought to persuade P-768 to refrain from testifying.²⁶

26. These incidents strongly suggest that the Accused's [REDACTED] are aware that [REDACTED] has cooperated with the Prosecution and intends to testify against the Accused, despite the confidential disclosure of the transcript of his interview. The dissemination of the witness's transcript and/or the fact of [REDACTED]

²¹ [REDACTED].

²² [REDACTED].

²³ [REDACTED].

²⁴ [REDACTED].

²⁵ [REDACTED].

²⁶ [REDACTED].

participation in the present case violates the obligation not to disclose confidential information.

C. Interference with [REDACTED] and dissemination of confidential information

27. The dissemination of confidential information concerning [REDACTED] and the threats [REDACTED] received are not isolated incidents. Other Prosecution witnesses attest to experiencing similar intimidation and interference. However, out of fear for their safety, and the possibility of retaliation upon coming forward, they have asked that the Accused not be made aware that they have reported such interference.

28. [REDACTED] witness in the case against the Accused, whose evidence [REDACTED].²⁷ [REDACTED].

29. [REDACTED].²⁸

30. After the Accused's arrest, but prior to [REDACTED] involvement in the case against the Accused, the Accused's [REDACTED] contacted [REDACTED] unexpectedly inquiring about [REDACTED] intention to testify against the Accused.²⁹ Shortly thereafter, [REDACTED] contacted [REDACTED] to dissuade [REDACTED] from testifying against the Accused.³⁰

31. Members of the Accused's [REDACTED] have also contacted members of the witness's family [REDACTED], asserting that [REDACTED] is involved in the case against the Accused.³¹

32. Moreover, the dissemination of confidential information and efforts to interfere with witnesses involve individuals beyond the Accused's [REDACTED]

²⁷ [REDACTED].

²⁸ [REDACTED].

²⁹ [REDACTED].

³⁰ [REDACTED].

³¹ [REDACTED].

alone. [REDACTED] states that [REDACTED] received a telephone call in [REDACTED] from [REDACTED].³² [REDACTED] that the witness intended to testify against the Accused.³³ [REDACTED] asked [REDACTED] to dissuade [REDACTED] from testifying.³⁴

33. [REDACTED] phoned the witness again in [REDACTED], and stated that he had received a copy of [REDACTED] statement “against” the Accused.³⁵ [REDACTED] relayed various details from the statement’s contents, indicating that he had in fact seen the text.³⁶ In addition, [REDACTED] that the Accused had called to inform [REDACTED] that his lawyer had received a statement from [REDACTED].³⁷ According to the witness, [REDACTED] asked if “there was a way [REDACTED] could correct what [REDACTED] had said and [they] could work together.”³⁸ [REDACTED] also forwarded a text message to [REDACTED], that [REDACTED] had allegedly received from [REDACTED].³⁹ [REDACTED]. The witness is uncertain who [REDACTED] refers to.⁴⁰

34. [REDACTED] also contacted the witness’s family [REDACTED], and showed them a copy of the witness’s statement. [REDACTED] family members, in turn, asked [REDACTED] if there was any way [REDACTED] “could ... get [REDACTED] self out of this process”⁴¹ and indicated they were concerned for their own safety.⁴²

35. Finally, [REDACTED] was informed by [REDACTED] that [REDACTED] have visited the Accused regularly.⁴³ According to the witness, [REDACTED]

³² [REDACTED].

³³ [REDACTED].

³⁴ [REDACTED].

³⁵ [REDACTED].

³⁶ [REDACTED].

³⁷ [REDACTED].

³⁸ [REDACTED].

³⁹ [REDACTED].

⁴⁰ [REDACTED].

⁴¹ [REDACTED].

⁴² [REDACTED].

⁴³ [REDACTED].

suggested that [REDACTED] received a copy of the witness's statement from the Accused directly and that they in turn shared it with [REDACTED].⁴⁴

36. [REDACTED].

D. Interference with [REDACTED]

37. Though not involving concerns of disclosure, Witness [REDACTED] also provides evidence of witness interference and intimidation. [REDACTED].⁴⁵

38. [REDACTED].⁴⁶

39. [REDACTED] provided a statement to the Prosecution in [REDACTED].⁴⁷ [REDACTED] informed Prosecution investigators [REDACTED] threatening phone call from the Accused in [REDACTED] 2007, well before his arrest, asserting [REDACTED] and that the Accused could reach [REDACTED] despite [REDACTED].⁴⁸

40. [REDACTED] also states that in or around [REDACTED] 2013, [REDACTED] did not say anything explicitly threatening nor mention the case against the Accused. Nevertheless, [REDACTED].⁴⁹ [REDACTED] experience involves notable parallels to [REDACTED] experience during the same period, when both were contacted by [REDACTED] after the Accused's arrest but prior to the Prosecution's confirmation of which witnesses it would rely upon in the case. Significantly, [REDACTED] accentuates the ease with which the Accused can reach Prosecution witnesses through family and associates.

⁴⁴ [REDACTED].

⁴⁵ [REDACTED].

⁴⁶ [REDACTED].

⁴⁷ [REDACTED].

⁴⁸ [REDACTED].

⁴⁹ [REDACTED].

41. [REDACTED] ongoing safety concerns *vis-à-vis* the Accused is, ultimately, the same network recognised by the Single Judge in her decisions on interim release. As [REDACTED] observes, the Accused “has many people around”: he has a network of friends and relatives that even reaches [REDACTED] location in [REDACTED], and has sufficient resources to pay individuals to harm others on his behalf.⁵⁰ Moreover, it is important to emphasise that [REDACTED] decision not to cooperate further with the Prosecution in the case against the Accused is a result of [REDACTED] fear of the danger this network poses for her and [REDACTED] family.⁵¹

E. Non-Disclosure Obligations

42. The general obligation to ensure witness safety through the adherence to confidentiality and protected measures is recognised throughout the Court’s legal texts, and underpins, *inter alia*, articles 57(3)(c) and 68 of the Rome Statute (“Statute”), as well as rule 87 of the Rules of Procedure and Evidence.

43. Likewise, article 8 of the Code of Professional Conduct for counsel provides that Counsel may only reveal confidential information where such disclosure is provided for in the legal texts of the Court. [REDACTED]. The Code also recognises Counsel’s obligation not to intimidate or harass witnesses, at article 29.⁵²

44. In addition to these pre-existing obligations, during the pre-trial proceedings, the Defence and Prosecution agreed to a “Protocol on the Handling of Confidential Information during the Investigation and Contact between a Party and Witnesses of the Opposing Party” with respect to the treatment of *inter partes* disclosure.⁵³ The

⁵⁰ [REDACTED].

⁵¹ [REDACTED].

⁵² The Prosecution stresses that, in highlighting these obligations, *it is not in any way* suggesting that Counsel for the Defence has been involved in the alleged witness interference or disclosure. These obligations are simply included to demonstrate the strict protections recognised for confidential information across the various legal texts of the Court.

⁵³ ICC-01/04-02/06-167-AnxA.

only two paragraphs disputed between the parties were submitted to, and amended by, a Single Judge of the Pre-Trial Chamber on 17 December 2013.⁵⁴

45. Notably, the Defence did not dispute the fundamental principle that

“[T]he investigating party [...] shall under no circumstances reveal (i) that [a witness] is involved, directly or indirectly, with the activities of the Court; or (ii) the nature of such involvement” (emphasis added).⁵⁵

Nor did it dispute the general obligations to “minimize the risk of exposing non-public information to the greatest extent possible,”⁵⁶ and to limit disclosure of confidential information to the public *only* “where such disclosure is directly and specifically necessary to the preparation of the presentation of their case.”⁵⁷

46. [REDACTED].⁵⁸

47. While the Single Judge instructed the parties to solicit observations from the Victims and Witnesses Unit before official adoption of the text,⁵⁹ she nonetheless “remind[ed] the Prosecutor and the Defence to abide to their obligations in respect of the confidentiality of information and protection of victims and witnesses” (emphasis added).⁶⁰

F. Conclusion

48. On the basis of the above information, the Prosecution has reasonable grounds to believe that the Accused has improperly disclosed confidential information to [REDACTED] and associates concerning Prosecution witnesses

⁵⁴ The parties agreed on the terms of the Protocol but for two provisions (paragraph 21 concerning witnesses participating in the ICCPP, and paragraph 26 concerning witnesses who allegedly suffered from sexual violence and gender based crimes). ICC-01/04-02/06-185, at paras. 5, 6-8, 16-18. In the Single Judge’s decision, she prescribed amendments to be made to paragraph 21, and approved paragraph 26 in the form suggested by the Prosecution. ICC-01/04-02/06-185, at paras. 15, 21.

⁵⁵ ICC-01/04-02/06-167-AnxA, at para. 20.

⁵⁶ ICC-01/04-02/06-167-AnxA, at para. 4.

⁵⁷ ICC-01/04-02/06-167-AnxA, at para. 5.

⁵⁸ [REDACTED].

⁵⁹ ICC-01/04-02/06-185, at para. 22.

⁶⁰ ICC-01/04-02/06-185, at p. 11.

including, at least, [REDACTED] identities as witnesses as well as [REDACTED] in the present case. There are reasonable grounds to believe that this may be part of a broader practice of violating non-disclosure obligations, and interfering with and/or intimidating witnesses.

49. In short, the Prosecution submits that the concerns articulated by the Single Judge in her decisions on interim release have proven true.

50. Immediate steps are thus necessary to: (i) prevent the further dissemination of confidential information by the Accused, pursuant to regulation 101(2)(d) of the RoC, (ii) protect against the interference with or intimidation of witnesses in a manner that would affect the outcome of the proceedings, pursuant to regulation 101(2)(b), and (iii) protect against threats or harm to witnesses and their family members, pursuant to regulation 101(2)(c), (e) and (f) of the RoC, and article 68(1) of the Statute.

51. The Prosecution defers to the Chamber's determination of the measures necessary to appropriately restrict contact between the Accused and all other individuals, with the exception of Counsel. However, the Prosecution considers it appropriate for the Chamber to order the Registrar to:

- a. immediately prohibit any contact (in person, telephone, or mail) between the Accused and any other person outside the Detention Centre, with the exception of Counsel and other authorised members of the Defence team;
- b. should restrictions on the Accused's telephone contact with individuals other than Counsel and authorised members of the Defence team be lifted at a later stage, certain limits should remain, namely, the Registrar shall: (i) actively monitor all telephone calls, (ii) require that the Accused's conversations are restricted to a language that the

Registrar has the capability to translate, and (iii) provide a report, confidential, *ex parte*, to the Chamber and Prosecution, concerning the conversations that take place;

- c. require that any visits by diplomatic or consular officials take place within the hearing of Detention Centre staff (notwithstanding regulation 98 of the RoC), and in a language they can comprehend;⁶¹
- d. provide a list, confidential, *ex parte*, to the Chamber and Prosecution, of all individuals, with the exception of Counsel and authorised members of the Defence team, who have visited the Accused since he entered the detention facility;
- e. provide a list, confidential, *ex parte*, to the Chamber and Prosecution, of all individuals, with the exception of Counsel and authorised members of the Defence team, who are included on the list of individuals the Accused is authorised to communicate with by telephone;⁶²
- f. provide a list, confidential, *ex parte*, to the Chamber and Prosecution, of all telephone calls that have been received or made by the Accused

⁶¹ Regulation 101(2) is explicit in providing the Chamber with authorisation to prohibit, regulate and set conditions on contact between the detained individual and “any other person, with the exception of counsel” (emphasis added). Thus, the Chamber is authorised to set conditions on contact with consular or diplomatic officials, notwithstanding the presumptive conditions on contact set out in regulation 98 of the RoC. Significantly, the source of the regulation 98 standard, article 36 of the Vienna Convention on Consular Relations, only requires that individuals have a right of notification to their consular officials, access to their consular officials, and communication with their consular officials. It does not require that such communication takes place out of hearing of Detention Centre guards. In fact, article 36(2) of the Convention explicitly endorses regulatory restrictions on these provided rights as long as the restrictions, nonetheless, “enable [the] full effect to be given to the purposes for which the rights accorded ... are intended”. Vienna Convention on Consular Relations art. 36, 24 April 1963, 596 UNTS 261.

⁶² Pursuant to regulation 173(4) of the Regulations of the Registry, all telephone calls by the detained person require prior authorisation.

since he entered the detention facility,⁶³ with the exception of those from or to Counsel and authorised members the Defence team;

- g. provide a list, confidential, *ex parte*, to the Chamber and Prosecution, of all mail which has been received to or sent from the Accused since he entered the detention facility,⁶⁴ with the exception of that from or to Counsel and authorised members the Defence team;
- h. review the content of all non-privileged telephone conversations made by the Accused since December 2013,⁶⁵ when the relevant disclosure took place, and report as soon as practicable to the Chamber and Prosecution on a confidential, *ex parte* basis, all relevant information; and
- i. provide the name, on a confidential, *ex parte* basis, to the Chamber and Prosecution, [REDACTED].

52. The Prosecution submits that these measures are necessary to cease and prevent the impugned conduct discussed above, pursuant to regulation 101(2) of the RoC. Moreover, these restrictions are narrowly tailored to ensure that they are: in accordance with the law;⁶⁶ necessary, *inter alia*, to prevent disorder and crime and to protect the rights and freedoms of others; and are proportionate to the legitimate aim pursued.⁶⁷

⁶³ Pursuant to regulation 173(1) of the Regulations of the Registry, a log shall be maintained of all telephone calls made by the detained person.

⁶⁴ Pursuant to regulation 169(2) of the Regulations of the Registry, a log shall be maintained of all incoming and outgoing mail.

⁶⁵ Pursuant to regulation 174 of the Regulations of the Registry, all telephone conversations made by the Accused in the detention facility shall be recorded, and the recordings maintained until the completion of proceedings.

⁶⁶ Such restrictions are provided for by law, *inter alia*, under regulation 101(2) of the RoC.

⁶⁷ This standard ensures that the Court's practice fulfils the obligation under article 21(3) to ensure that the application of the law is consistent with internationally recognised human rights. *See, e.g.,* ECHR, *Messina v. Italy*, Appl. no. 25498/94, "Judgment", 28 September 2000, paras. 59- 74; ECHR, *Lavents v. Latvia*, Appl. no. 58442/00, "Judgment", 28 November 2002, paras. 134-143; ECHR, *Van der*

V. Requested Relief

53. For the foregoing reasons, the Prosecution requests, pursuant to regulation 101(2) of the RoC that the Chamber direct the Registrar to implement immediately such measures as are necessary to ensure that the Accused:

- a. refrains from disseminating confidential information to any person (other than Counsel and authorised members of the Defence team) at or from the ICC Detention Centre;
- b. is prevented from interfering with or intimidating witnesses in any manner that could affect the outcome of the proceedings; and
- c. is prevented from harming or threatening the well-being of witnesses and their family members.

54. To this end, the Prosecution requests the implementation of those measures proposed at paragraph 51, including, (i) an immediate prohibition of all outside contact (in person, by telephone, and by mail) between the Accused and all other persons, other than Counsel and other authorised members of the Defence team; (ii) active monitoring of any telephone contact that is permitted with individuals other than Counsel and other authorised members of the Defence team; (iii) logs, provided on an *ex parte*, confidential basis to the Prosecution and Chamber, of all prior visits, telephone calls, and mail the Accused has sent or received since arriving at the Detention Centre from individuals other than Counsel and other authorised members of the Defence team; (iv) a report, provided on an *ex parte*, confidential basis to the Prosecution and Chamber, based upon a review of all the non-confidential phone calls made by the Accused since arriving at the Detention Centre;

Ven v. The Netherlands, Appl. no. 50901/99, "Judgment", 4 February 2003, paras. 64-72; ECHR, *Kornakovs v. Latvia*, Appl. no. 61005/00, "Judgment", 15 June 2006; ECHR, *Moiseyev v. Russia*, Appl. no. 62936/00, "Judgment", 9 October 2008, paras. 243-267 (setting out the relevant standard to be applied when assessing the proportionality of restrictions upon a detained individual's contacts).

and (v) the name of the [REDACTED].

A handwritten signature in blue ink, appearing to read 'Fatou Bensouda', is written over a horizontal line. The signature is stylized with a large initial 'F' and a long horizontal stroke.

Fatou Bensouda, Prosecutor

Dated this 15th day of January 2016
At The Hague, The Netherlands