

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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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 request for further restrictions to the
Accused's communications", 9 June 2015, ICC-01/04-02/06-635-Conf-Exp**

Source: Office of the Prosecutor

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

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Introduction

1. The Prosecution seeks further restrictions to the Accused's communications because the measures imposed by Trial Chamber VI ("Chamber") on 13 March 2015 remain inadequate to cease the communication of confidential information to third parties for the purpose of interfering with Prosecution witnesses.
2. The Prosecution's analysis of the Registry report confirms that the Accused has disclosed confidential case information, including the identity of Prosecution witnesses, by using coded language with interlocutors. The Prosecution analysed the Registry report over the course of several weeks to decipher and understand codes the Accused commonly uses in telephone conversations. The coded language used by the Accused required piecing together various bits of an investigation mosaic taking time, effort, and an intimate knowledge of the facts of this case. It required reviewing and re-reviewing certain passages multiple times. The Prosecution submits that no person listening to the Accused's real-time conversations could realistically recognise, understand, and stop all coded references containing confidential case information passed by the Accused until he had already passed the information to an interlocutor. Accordingly, and in order to protect witnesses and the integrity of these proceedings, the Prosecution requests that the Chamber impose further restrictions, pursuant to regulation 101(2), on the communications of the Accused.
3. Moreover, the Prosecution requests that it be informed of any instances in which the Registry terminated the Accused's telephone communications on the basis of inappropriate transmission of confidential information or use of coded language. Should this be the case, it lends further support to the Prosecution's request and the need for urgent additional restrictions to the Accused's communications.

4. No lesser measures are feasible since the Accused deliberately attempted to interfere with witnesses despite knowing that his calls were being recorded and/or monitored.
5. The Prosecution has reviewed information prepared by the Registry about the Accused's phone conversations between 9 and 17 February 2014. These conversations reveal that:
 - a. Bosco NTAGANDA ("NTAGANDA") considers that the "easiest solution" to his "problem" is to ensure that Prosecution witnesses, in particular [REDACTED] witnesses, do not appear before the Court;
 - b. NTAGANDA, knowing that his phone conversations are recorded, uses and instructs his interlocutors to use coded language in order to discuss confidential information, provide instructions and request reports on activities related to Prosecution witnesses;
 - c. NTAGANDA discloses and disseminates confidential information, including the identity and place of residence of Prosecution witnesses and their family members, directly, to his registered non-privileged contacts and to unregistered callers and, indirectly, to others, by instructing his interlocutors to further distribute the information to his networks of associates;
 - d. NTAGANDA discusses strategies to approach Prosecution witnesses and prevent them from testifying against him, including by silencing them and attempting to bribe them, and instructs his contacts and, through them, his networks of associates, to carry out this strategy.

6. The conversations reviewed by the Registry cover roughly 3% of the total number of the Accused's conversations between 1 December 2013 and 15 December 2014. The extent to which NTAGANDA distributes confidential information, instructs his contacts to disseminate it further, and instructs them to approach Prosecution witnesses, as well as the incidents reported to the Prosecution by its witnesses, point to a broad scheme of witness interference involving several networks of NTAGANDA's associates in the Democratic Republic of the Congo ("DRC"), Uganda and Rwanda.
7. The Prosecution requests that the Chamber prohibit any live non-privileged telephone calls to the Accused until the conclusion of the testimony of the Prosecution's [REDACTED] witnesses or limit the Accused's communications to pre-recorded messages on a digital recording device subject to monitoring. The Prosecution further requests the Chamber to restrict all telephone calls *by any individual at the detention centre* to the following individuals: [REDACTED]. Finally, the Prosecution requests that the Registry be ordered to inform the Prosecution and the Defence if any of the Accused's actively monitored calls were terminated, and the basis for the termination of the calls.

Confidentiality

8. This filing is classified as "Confidential *EX PARTE* - only available to the Prosecution and Registry", because it contains confidential information related to security concerns of Prosecution witnesses. The Prosecution will simultaneously file a confidential redacted version of this filing.

Procedural History

9. On 8 August 2014, the Prosecution filed a request for measures under regulation 101(2) in the case against NTAGANDA ("Request").¹
10. On 19 August 2014, the Registry² and Victims and Witnesses Unit³ submitted their respective observations on the Prosecution's request, after being instructed by the Chamber to do so.
11. On 1 September 2014, the Defence filed its response.⁴
12. On 12 September 2014, the Prosecution filed its reply to the Defence response,⁵ with the leave of the Chamber.⁶
13. On 18 September 2014, the Prosecution submitted additional evidence ("Additional Evidence Submission") in support of the Request,⁷ which it requested the Chamber to consider.
14. On 24 September 2014, following an application from the Defence,⁸ the Chamber issued a decision granting it leave to make further submissions.⁹ The Defence filed these submissions on 26 September 2014.¹⁰
15. On 8 December 2014, the Chamber issued its "Decision on the Prosecution request for restrictions on contact and the Defence request for access to logs" ("Decision"), instructing the Registry to provide a preliminary report including, *inter alia*, (1) lists of all individuals, with the exception of the members of the

¹ 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.

² ICC-01/04-02/06-355-Conf-Exp.

³ ICC-01/04-02/06-356-Conf-Exp.

⁴ ICC-01/04-02/06-360-Conf-Exp.

⁵ ICC-01/04-02/06-368-Conf-Exp.

⁶ ICC-01/04-02/06-367-Conf.

⁷ ICC-01/04-02/06-371-Conf-Exp, with Confidential redacted version at ICC-01/04-02/06-371-Conf-Red.

⁸ ICC-01/04-02/06-370-Conf-Exp.

⁹ ICC-01/04-02/06-378-Conf.

¹⁰ ICC-01/04-02/06-378-Conf.

Defence, who have visited NTAGANDA since December 2013, (2) lists of all individuals, with the exception of members of the Defence, who are included on the list of individuals NTAGANDA is authorised to communicate with by telephone and (3) all telephone calls received or made by NTAGANDA since December 2013, with the exception of privileged calls with members of the Defence.¹¹ The Chamber further instructed the Registry “to inform Mr Ntaganda that from 19 December 2014 onwards, and until otherwise ordered by the Chamber, all his non-privileged telephone conversations may be listened to, pursuant to Regulations 174(2) and 175(1) of the Regulations of the Registry”.¹² Lastly, the Chamber instructed the Prosecution to provide to the Registry, by 6 January 2015, “the parameters on the basis of which the review should be conducted, such as specific phone numbers, persons calling or being called by Mr Ntaganda, or dates”.¹³

16. On 15 December 2014, the Defence filed an urgent request¹⁴ seeking leave to appeal and partial suspensive effect of the Decision until the leave to appeal application was ruled upon.¹⁵ The Chamber granted the Defence’s request for partial suspensive effect on 18 December 2014.¹⁶

17. On 19 December 2014, the Registry filed its “Preliminary report on the post factum review of the non-privileged conversations made by Mr Ntaganda since December 2013”, together with *ex parte* annexes available only to the Registry and the Defence.¹⁷

18. On 7 January 2015, the Prosecution filed the “Prosecution’s provision of parameters for the post-factum review of Bosco Ntaganda’s visitation and call

¹¹ ICC-01/04-02/06-410-Conf-Exp.

¹² ICC-01/04-02/06-410-Conf-Exp, p.26.

¹³ ICC-01/04-02/06-410-Conf-Exp, para.57 & p.27.

¹⁴ ICC-01/04-02/06-413-Conf-Exp-Red and Corrigendum ICC-01/04-02/06-413-Conf-Exp-Red-Corr.

¹⁵ ICC-01/04-02/06-413-Conf-Exp-Red, para.13.

¹⁶ ICC-01/04-02/06-415-Conf-Exp.

¹⁷ ICC-01/04-02/06-417-Conf-Exp.

records” providing the Registry with information to assist in the Registry’s review of information in its possession.¹⁸

19. On 16 January 2015, the Chamber denied the Defence request seeking leave to appeal the Chamber’s order to the Registry to provide the Prosecution with the *ex parte* annexes containing call logs and visitation records.¹⁹ The Chamber further ordered the Prosecution to notify the Registry of modifications to its parameters within five days after having received the call logs and visitation records.
20. On 19 January 2015, the Registry provided the Prosecution with the call logs and visitation records.²⁰
21. On 26 January 2015, the Prosecution filed the “Prosecution’s provision of updated parameters for the post-factum review of Bosco Ntaganda’s visitation and call records”.²¹
22. On 16 February 2015, the Chamber issued its “Decision on procedure for review of telephone communications and Defence requests ICC-01/04-02/06-421-Conf-Exp and ICC-01/04-02/06-446-Conf-Exp”.²²
23. On 10 March 2015, the Registry filed, *ex parte*, Defence and Chamber only, its first report on the *post-factum* review of the phone conversations made by NTAGANDA (“First report”).²³
24. On 13 March 2015, on the basis of the information contained in the Registry’s First report and its annexes, the Chamber ordered the Registry to put in place further restrictions to NTAGANDA’s contact regime.²⁴

¹⁸ ICC-01/04-02/06-422-Conf-Exp.

¹⁹ ICC-01/04-02/06-425-Conf-Exp.

²⁰ ICC-01/04-02/06-417-Conf-Exp.

²¹ ICC-01/04-02/06-431-Conf-Exp.

²² ICC-01/04-02/06-459-Conf-Exp.

²³ ICC-01/04-02/06-504-Conf-Exp.

²⁴ ICC-01/04-02/06-508-Conf-Exp.

25. On 20 April 2015, the Registry filed an addendum to the First Report (“Addendum”).²⁵
26. On 29 April 2015, the Chamber directed the Registry to make available to the Prosecution the First report, together with annexes 1, 2, 4, 5 and 6, without redactions, as well as annexes 3, 8 and 9, with redactions. The Chamber also directed the Registry to make to make available to the Prosecution the Addendum, without redactions, together with redacted versions of its annexes.²⁶
27. On 30 April 2015, the Registry provided the Prosecution with the phone conversations made by NTAGANDA.²⁷

Prosecution’s Submissions

Findings of the Prosecution investigation to date

28. The Registry’s summaries of NTAGANDA’s detention centre calls between 9 and 17 February 2014 indicate that NTAGANDA has attempted to interfere with Prosecution witnesses. These summaries show that NTAGANDA disclosed confidential information to his contacts, including the identity and place of residence of Prosecution witnesses and their family members. The summaries also indicate that NTANGANDA discussed plans to “silence” or bribe Prosecution witnesses, and gave instructions to his contacts to implement his plans.
29. In his communications, NTAGANDA made extensive use of coded language to conceal his activities.²⁸ Moreover, he instructed his contacts to use codes,²⁹ taught

²⁵ ICC-01/04-02/06-504-Conf-Exp.

²⁶ ICC-01/04-02/06-578-Conf-Exp.

²⁷ 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) and ICC-01/04-02/06-563-Conf-Exp-Corr-(and its annexes 1-3).

²⁸ See ICC-01/04-02/06-504-Conf-Exp, paras.10-32.

them how to develop codes as they speak³⁰ and interrupted them whenever they communicated too openly.³¹ The conversations also show that NTAGANDA, knowing that his phone communications were being recorded, used his non-privileged visits to pass and disseminate confidential information to [REDACTED], and, [REDACTED], to his networks.³² Further, the conversations reviewed by the Registry represent a fraction of NTAGANDA's Detention Centre calls. As a result, the available information, combined with the information independently collected by the Prosecution, is fragmented in nature and cannot provide a full picture of NTAGANDA's involvement in suspected witness interference.

30. NTAGANDA considers the Prosecution's [REDACTED] witnesses as his "real problem"³³ and that they have to use the "easiest solution" to his "problem".³⁴ He explained to his contacts that these [REDACTED] witnesses are the key to his freedom, saying that: the Prosecution only "rel[ies] upon them, but everything will collapse if they don't show up"³⁵; "if [they] were not there, the door would be open";³⁶ "if the friends of [NTAGANDA] can reach [them] in all areas where

²⁹ See ICC-01/04-02/06-417-Conf-Exp-Anx3. The Prosecution observes that in the Registry reports of the Telephone records there is not usually an identification of the caller. The Prosecution has used the list of non-privileged contacts to match up phone numbers with likely names of callers. ICC-01/04-02/06-504-Conf-Exp-Anx8-Red, p.30,lns.860-868 [REDACTED]; p.33,lns.974-975, [REDACTED]; p.26,lns.757-760 [REDACTED]; ICC-01/04-02/06-504-Conf-Exp-Anx1, p5,lns.138-139-and-p.8,lns.210-224 [REDACTED]; ICC-01/04-02/06-563-Conf-Exp-Anx2-Red, p.3,lns.67-70-and-p.4,lns.104-112 [REDACTED]. The Prosecution submits that [REDACTED]. During this phone conversation (ICC-01/04-02/06-563-Conf-Exp-Anx2-Red, p.3,lns.61-65), the Accused told [REDACTED] [REDACTED].

³⁰ ICC-01/04-02/06-563-Conf-Exp-Anx2-Red, p.4,lns.104-112-and-p.5,lns.134-138 [REDACTED]; ICC-01/04-02/06-504-Conf-Exp-Anx8-Red, p.31,ln.880 [REDACTED].

³¹ ICC-01/04-02/06-504-Conf-Exp-Anx1, p.8,lns.210-214 [REDACTED]; ICC-01/04-02/06-504-Conf-Exp-Anx8-Red, p.19,lns.551-554, [REDACTED].

³² ICC-01/04-02/06-504-Conf-Exp-Anx8-Red, p.16,lns.452-456 [REDACTED]; ICC-01/04-02/06-504-Conf-Exp-Anx8-Red, p.25,lns.713-715 [REDACTED]; ICC-01/04-02/06-504-Conf-Exp-Anx5, p.6,lns.142-158 [REDACTED].

³³ ICC-01/04-02/06-504-Conf-Exp-Anx4, p.4,lns.89-95 [REDACTED].

³⁴ ICC-01/04-02/06-504-Conf-Exp-Anx4, p.3,lns.56-59 [REDACTED].

³⁵ ICC-01/04-02/06-504-Conf-Exp-Anx8-Red, p.33,lns.955-956 [REDACTED].

³⁶ ICC-01/04-02/06-504-Conf-Exp-Anx8-Red, p.30,lns.853-855 [REDACTED].

they are [...], all will be finished”;³⁷ “if they can silence them, it will be over”;³⁸ and “if they are not there, it will finish!”³⁹

31. In pursuit of this goal, NTAGANDA disclosed to his contacts and disseminated confidential information about Prosecution [REDACTED] witnesses and their family members, including their identity and places of residence.

32. In particular, NTAGANDA referred to [REDACTED] witnesses,⁴⁰ whom he describes as “the bad ones”⁴¹ or as “devils”.⁴² NTAGANDA referred to [REDACTED] witnesses the Prosecution relied upon [REDACTED], which is when the phone conversations took place. These witnesses are [REDACTED].

33. In order to refer to [REDACTED] without naming [REDACTED], NTAGANDA uses identifying descriptions, such as [REDACTED],⁴³ that [REDACTED],⁴⁴ that [REDACTED]⁴⁵ and lives [REDACTED],⁴⁶ and that [REDACTED] was [REDACTED].⁴⁷ These are all descriptions that apply to [REDACTED].⁴⁸

34. The Prosecution believes that the words [REDACTED] and [REDACTED] refer to [REDACTED].⁴⁹ [REDACTED] is also referred to as one of the [REDACTED] “bad ones”,⁵⁰ i.e. one of the [REDACTED] witnesses. NTAGANDA referred to

³⁷ ICC-01/04-02/06-504-Conf-Exp-Anx8-Red, p.31,lns.897-900 [REDACTED].

³⁸ ICC-01/04-02/06-563-Conf-Exp-Anx2-Red, p.7,lns.185-188 [REDACTED].

³⁹ ICC-01/04-02/06-504-Conf-Exp-Anx5, p.5,lns.116-117, [REDACTED].

⁴⁰ ICC-01/04-02/06-563-Conf-Exp-Anx2-Red, p.8,lns.200-220 [REDACTED]; ICC-01/04-02/06-504-Conf-Exp-Anx5, p.5,lns.113-117 [REDACTED]; ICC-01/04-02/06-504-Conf-Exp-Anx8-Red, p.31,lns.897-902 [REDACTED]; p.33,lns.946-949 [REDACTED].

⁴¹ ICC-01/04-02/06-504-Conf-Exp-Anx1, p.5,lns.111-115 [REDACTED]; ICC-01/04-02/06-504-Conf-Exp-Anx8-Red, p.31,lns.901-902 [REDACTED].

⁴² ICC-01/04-02/06-504-Conf-Exp-Anx8-Red, p.30,lns.853-854 [REDACTED].

⁴³ ICC-01/04-02/06-504-Conf-Exp-Anx8-Red, p.16,ln.470 [REDACTED]; ICC-01/04-02/06-504-Conf-Exp-Anx1, p.4,lns.82-84 [REDACTED].

⁴⁴ ICC-01/04-02/06-504-Conf-Exp-Anx8-Red, p.12,ln.374 [REDACTED]; ICC-01/04-02/06-563-Conf-Exp-Anx2-Red, pp.7-8,lns.196-202 [REDACTED].

⁴⁵ ICC-01/04-02/06-563-Conf-Exp-Anx2-Red, p.7,lns.174-183-and-p.8,lns.200-202 [REDACTED].

⁴⁶ ICC-01/04-02/06-504-Conf-Exp-Anx8-Red, p.25,lns.731-732 [REDACTED].

⁴⁷ ICC-01/04-02/06-504-Conf-Exp-Anx8-Red, p.25,lns.708-710 [REDACTED]; ICC-01/04-02/06-504-Conf-Exp-Anx1, p.4,lns.82-84, [REDACTED].

⁴⁸ [REDACTED] is indeed [REDACTED].

⁴⁹ It should be noted, however, that NTAGANDA also refers to the [REDACTED] or [REDACTED] to refer, more generally, to Prosecution [REDACTED] witnesses.

⁵⁰ ICC-01/04-02/06-504-Conf-Exp-Anx1, p.3,ln.75-p.5,ln.115 [REDACTED].

[REDACTED] place of residence,⁵¹ the last syllable of [REDACTED] last name,⁵² and the fact that two of his associates know [REDACTED] identity.⁵³ [REDACTED], who was already mentioned [REDACTED] in the context of incidents of witness interference in this case. [REDACTED].⁵⁴ It is the same individual who contacted [REDACTED], called him a traitor, and threatened his life and the lives of his family members if he continued to cooperate with the ICC and testify against NTAGANDA.⁵⁵

35. NTAGANDA also referred to “two other persons” who are among the “bad ones”, providing details that leave no doubt as to their identity, mentioning parts of their names. In one conversation [REDACTED], during which he tried to remind [REDACTED] of the names of these two witnesses, he explained [REDACTED] that the name of one of the two individuals [REDACTED].⁵⁶ [REDACTED]. [REDACTED] name is [REDACTED]. As for the second person, NTAGANDA told [REDACTED] that [REDACTED].⁵⁷ [REDACTED] name is [REDACTED]. In addition to their names, NTAGANDA referred to their ethnicity,⁵⁸ [REDACTED],⁵⁹ and their places of residence, explaining that one of the two individuals lives [REDACTED]⁶⁰ and that the other one lives [REDACTED], adding that [REDACTED] lives in [REDACTED].⁶¹ [REDACTED].

⁵¹ ICC-01/04-02/06-504-Conf-Exp-Anx8-Red, p.25,lns.728-731[REDACTED]; ICC-01/04-02/06-504-Conf-Exp-Anx1, p.6,ln.142[REDACTED]. The Prosecution believes that [REDACTED].

⁵² ICC-01/04-02/06-504-Conf-Exp-Anx8-Red, p.25,lns.728-731[REDACTED]. [REDACTED] which the Prosecution understands to be a reference to [REDACTED].

⁵³ ICC-01/04-02/06-504-Conf-Exp-Anx8-Red, p.25,lns.728-731 [REDACTED].

⁵⁴ ICC-01/04-02/06-349-Conf-Exp-AnxC, para.30.

⁵⁵ ICC-01/04-02/06-349-Conf-Exp-AnxA, paras.19-25.

⁵⁶ ICC-01/04-02/06-504-Conf-Exp-Anx8-Red, p.25,lns.724-727, [REDACTED].

⁵⁷ ICC-01/04-02/06-504-Conf-Exp-Anx8-Red, p.25,lns.719-721, [REDACTED].

⁵⁸ He describes them as [REDACTED]; ICC-01/04-02/06-504-Conf-Exp-Anx1, p.4,lns.94-107

[REDACTED]. In this context, [REDACTED] is a reference to [REDACTED] and [REDACTED] a reference to [REDACTED]; ICC-01/04-02/06-504-Conf-Exp-Anx1, p.4,lns.94-107[REDACTED]; This is a reference to [REDACTED] and the area in which he was based, [REDACTED].

⁵⁹ ICC-01/04-02/06-563-Conf-Exp-Anx2-Red, p.7,lns.177-183[REDACTED]. In this context, [REDACTED]; ICC-01/04-02/06-504-Conf-Exp-Anx3-Red, p.7,ln.199-p.8,ln.219 [REDACTED].

⁶⁰ ICC-01/04-02/06-504-Conf-Exp-Anx8-Red, p.25,lns.719-721 [REDACTED]. The Prosecution submits that [REDACTED].

⁶¹ ICC-01/04-02/06-504-Conf-Exp-Anx8-Red, p.25,lns.722-724 [REDACTED].

36. The phone conversations reviewed by the Registry demonstrate that NTAGANDA disclosed the identity and place of residence of at least [REDACTED] Prosecution witnesses to his associates, although it is clear that the dissemination of the identity of Prosecution witnesses extends beyond these [REDACTED] witnesses.⁶² NTAGANDA's phone conversations further demonstrate that he directed his contacts to other associates, in order to obtain information about Prosecution witnesses,⁶³ and to disseminate their names to his networks.⁶⁴

37. Referring to the [REDACTED] witnesses, NTAGANDA explained to one of his contacts that "if [his friends] can reach [them] in all areas where they are [...] all can be finished",⁶⁵ and that he should contact one of his associates who knows the witnesses, where they live, where their families are and who can reach them, adding: "[i]f they do nothing, everything may collapse."⁶⁶

38. In another conversation, [REDACTED], he provided [REDACTED] with the identity of the [REDACTED] Prosecution [REDACTED] witnesses, their places of

⁶² ICC-01/04-02/06-504-Conf-Exp-Anx1, p.2,ln.48-p.3,ln.64 [REDACTED]. During this conversation, NTAGANDA informed [REDACTED]. NTAGANDA then instructs [REDACTED]. The individual referred to could be [REDACTED]; ICC-01/04-02/06-563-Conf-Exp-Anx2-Red, p.6,lns.174-175,177,185-and-242-247, [REDACTED]. In this conversation, NTAGANDA directed [REDACTED] to obtain from him the names of Prosecution witnesses. He further referred to the fact that the Prosecution used numbers instead of names at the confirmation hearing, but told his interlocutor to speak to [REDACTED].

⁶³ ICC-01/04-02/06-563-Conf-Exp-Anx2-Red, p.7,ln.174-p.9,ln.247. In this conversation, NTAGANDA directs his interlocutor, [REDACTED] to obtain details on Prosecution witnesses; ICC-01/04-02/06-504-Conf-Exp-Anx8-Red, p.31,lns.899-902, [REDACTED]. In this conversation, about Prosecution witnesses, NTAGANDA directs his contact to [REDACTED]; ICC-01/04-02/06-504-Conf-Exp-Anx8-Red, p.32,lns.941-945 [REDACTED]. In this later conversation with [REDACTED], NTAGANDA repeats that [REDACTED] knows all the Prosecution witnesses and their places of residence as well as the places of residence of their family members.

⁶⁴ ICC-01/04-02/06-504-Conf-Exp-Anx1, p.3,ln.74-p.5,ln.120, [REDACTED]. In this conversation [REDACTED], NTAGANDA tells [REDACTED]; ICC-01/04-02/06-504-Conf-Exp-Anx8-Red, p.24,lns.704-705, [REDACTED]. In this later conversation, NTAGANDA asks [REDACTED]. Later during this conversation, NTAGANDA provides [REDACTED] with the identity of these two others, namely [REDACTED].

⁶⁵ ICC-01/04-02/06-504-Conf-Exp-Anx8-Red, p.31, lns.897-902, [REDACTED]. In this conversation, NTAGANDA explains: [REDACTED]. In this context, [REDACTED].

⁶⁶ ICC-01/04-02/06-504-Conf-Exp-Anx8-Red, p.32,lns.941-945, [REDACTED].

residence and gave [REDACTED] the identity of his associates who can “act as a go-between” or “facilitate access” to each witness.⁶⁷

39. In yet another conversation, NTAGANDA directs his contact to obtain from [REDACTED] the names of Prosecution witnesses and contact an individual who is only referred to as [REDACTED] or [REDACTED] and is described as having the “authority/capability/power” to “silence them”.⁶⁸ The contact is an individual called [REDACTED], but whom the Prosecution believes to be using a false identity and is, in reality [REDACTED].⁶⁹

40. NTAGANDA also discussed the bribing of witnesses [REDACTED] in one conversation. Referring again to the [REDACTED] witnesses, he explained to [REDACTED] that “[i]t will be fine if they give them grass. It can be finished. They can stop/give up”, after which he told [REDACTED] that [REDACTED] should meet those people [...] so that they may decide whether they will keep on “building those houses” or give up.”⁷⁰

41. The above conversations are just a few examples, among others,⁷¹ that demonstrate NTAGANDA’s intent to interfere with witnesses and of his actions to pursue this objective. That such a level of involvement in witness interference is established after a review of a fraction of his calls points to the existence of a broad scheme to prevent Prosecution witnesses from testifying at the ICC.

42. Moreover, the security incidents described by Prosecution witnesses who have been identified for targeting in these calls - including [REDACTED] - indicate

⁶⁷ ICC-01/04-02/06-504-Conf-Exp-Anx8-Red, p.25,lns.707-734, [REDACTED]. In this conversation, NTAGANDA explains that [REDACTED].

⁶⁸ ICC-01/04-02/06-563-Conf-Exp-Anx2-Red, p.7,lns.179-195, [REDACTED].

⁶⁹ See Annex 1 to the Registry’s First Report (ICC-01/04-02/06-563-Conf-Exp-Anx1-Red, lns.60-66), [REDACTED].

⁷⁰ ICC-01/04-02/06-504-Conf-Exp-Anx8-Red, p.20-lns.581-585, [REDACTED].

⁷¹ ICC-01/04-02/06-504-Conf-Exp-Anx6, pp.4-5,lns.103-123, [REDACTED]. Another example of NTAGANDA’s reliance upon a network of associates to interfere with witnesses is his discussion with an unauthorized contact [REDACTED]. In this conversation, NTAGANDA explains that a [REDACTED] (See ICC-01/04-02/06-504-Conf-Exp-Anx8-Red, p.25,lns.707-708, [REDACTED]).

that the Accused's supporters are actively trying to implement that broad scheme.⁷²

Further restrictions are warranted, proportionate and allow for an adequate alternative means of communication

43. The Prosecution requests are warranted, proportionate to the legitimate interests at stake, and allow for adequate alternate means of communication for the Accused. There are no feasible lesser measures. As demonstrated above, out of a small fraction of the calls that have been reviewed to date, the Accused has routinely disclosed confidential case information and posed a serious risk to Prosecution witnesses. Many of the Accused's codes are not susceptible to instantaneous understanding and may be missed by the Registry staff tasked to monitor the Accused's calls. The Registry cannot know, detect, or determine all possible coded information in the Accused's calls. It is impractical if not impossible to impart the Prosecution's investigation knowledge to equip the Registry with the context it needs to effectively monitor the Accused's calls. The Registry may not recognise a seemingly insignificant piece of the overall mosaic, which the Accused would be able to pass in a coded form. The Prosecution needed weeks to decipher and piece together the Accused's codes. It is unrealistic to expect the Registry, unfamiliar with the details of this case, to do the same instantaneously as it monitors calls. Accordingly, there is a high risk that the Registry will miss crucial information, and that the Accused may be able to pass information before Registry staff can terminate the call.

44. The requested further restrictions apply to a number of individuals to whom the Accused has previously passed confidential information.⁷³ The Prosecution requests that no person, including any other detainee, be allowed to contact

⁷² See e.g. ICC-01/04-02/06-349-Conf-Exp; ICC-01/04-02/06-371-Conf-Exp; ICC-01/04-02/06-565-Conf-Exp-AnxA-(DRC-OTP-2084-0613); ICC-01/04-02/06-630-Conf-Exp.

⁷³ Those individuals are: [REDACTED].

persons known to have communicated previously about confidential case information. The Prosecution does not currently have conclusive information indicating that other detainees are being used as conduits to pass information to the individuals referred to above. However, the Prosecution submits that it is evident from the calls with the Accused that these individuals are willing to assist the Accused in his attempts to interfere with Prosecution witnesses.⁷⁴ The risk that they may seek to support him, by enlisting the support of another co-detainee is too great, as compared with any minimal inconvenience posed to fellow detainees or convicted persons. Moreover, ensuring that these individuals are not on the list of contacts of the Accused's co-detainees is not an invasive measure and should not cause any major disruption to the lives of the co-detainees.

45. This proposed restriction is narrowly tailored to specific individuals and is proportionate to address both the Accused's previous abuse of telephone privileges and to the interests at stake: the protection of witnesses and the integrity of these proceedings.
46. The requested further restrictions will prevent abuse of the Accused's telephone privileges while at the same time allow for adequate alternate means of communication. The further restrictions would limit the Accused's non-privileged communications to pre-recorded messages on a digital recording device and to letters. Interlocutors could also call to leave messages with the Accused or write letters. All of the communications should be subject to monitoring by the Registry to ensure that no additional confidential case information is leaked by the Accused.
47. The Prosecution proposes that this additional measure of not allowing any live calls only be imposed until the end of the testimony of the last [REDACTED]

⁷⁴ See *e.g.* ICC-01/04-02/06-630-Conf-Exp-Red, para.32,fn.34, [REDACTED].

witness. The Prosecution intends to call all [REDACTED] witnesses in the first groups of witnesses. Accordingly, this measure will only be for a finite period of time.

48. The requested further restrictions are lawful. Jurisprudence of the European Court of Human Rights supports this approach to restrictions on telephone communications. Though detainees have a recognised right to communicate with the outside world, there is no right to communicate by telephone when adequate alternative means of communications, such as mail, are available.⁷⁵ In detention regimes that allow for telephone use, as not all do, restrictions on the number of calls or authorized recipients are acceptable.⁷⁶ In special circumstances where the detainee faces very serious offences – there is a risk crimes can be organised from inside prison and family relations can play a crucial role – the ECHR has found that restrictions such as two family visits per month (with glass partitions between the detainee and visitors) or one telephone call per month do not violate the European Convention on Human Rights.⁷⁷

49. The Prosecution submits that these measures are necessary and proportionate. If the Accused is entitled to continue making live calls, which are in reality unchecked, this may cause potentially irreparable harm to the Prosecution's case, in violation of the right to a fair trial and contrary to the interests of justice.

⁷⁵ See *e.g.* A.B. v. Netherlands, 29-January-2002, 37328/97, Judgment, ECHR ("A.B. v Netherlands), para.92: "In respect of the telephone facilities, the Court considers that Article 8 of the Convention cannot be interpreted as guaranteeing prisoners the right to make telephone calls, in particular where the facilities for contact by way of correspondence are available and adequate". The complainant was able to send two or three letters a week and receive letters.

⁷⁶ See *e.g.* A.B. v. Netherlands, para.93: "Where, as in the present case, telephone facilities are provided by the prison authorities, these may – having regard to the ordinary and reasonable conditions of prison life – be subjected to legitimate restrictions, for example, in the light of the shared nature of the facilities with other prisoners and the requirements of the prevention of disorder and crime. In this context and to the extent that such conditions may be regarded as an interference with private life or correspondence, the Court finds that they may be considered justified in terms of [Article 8(2)]." See also *Chester v UK*, 32783/96, European Commission of Human Rights, para.1, 11-September-1997.

⁷⁷ See *e.g.* Messina v. Italy (No. 2), 28-September-2000, 25498/94, ECHR 2000-X, paras.59-74.

Relief Sought

50. For all of the foregoing reasons, the Prosecution requests further restrictions to the Accused's communications as set out herein. The Prosecution also requests to be informed of: any telephone calls that the Registry has terminated, if any, since 13 March 2015, and the basis for the termination; and any suspicious messages sent by alternative form of communication (e.g. letter).



Fatou Bensouda
Prosecutor

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