

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/04-02/06**
Date: **15 January 2016**

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 additional observations for further
restrictions to detainee communications", 16 July 2015,
ICC-01/04-02/06-727-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. On 29 June 2015, Trial Chamber VI (“Chamber”) ordered the Office of the Prosecutor (“Prosecution”) to submit further observations on the ongoing necessity of restricting any ICC detainee’s contacts with [REDACTED] named individuals who are suspected of interfering with Prosecution witnesses in this case.¹
2. The Prosecution submits that the ongoing restriction on contact with the [REDACTED] named individuals is necessary, minimally intrusive, and proportionate to address the compelling interest of preventing further dissemination of confidential information and preventing suspected witness interference.
3. The Prosecution requests that the restriction on contact with the [REDACTED] named individuals remain in place at least until all Prosecution [REDACTED] witnesses have concluded their testimony before the Court.

Confidentiality

4. This filing is classified as confidential *ex parte* because it corresponds to a confidential *ex parte* order of the Chamber. A confidential redacted version will be filed simultaneously.

Procedural History

5. On 9 June 2015, the Prosecution filed a request for measures under regulation 101(2) of the Regulations of the Court seeking, *inter alia*, the restriction of all

¹ ICC-01/04-02/06-683-Conf-Exp, para.17.

phone calls by any person detained at the ICC Detention Centre to [REDACTED] named individuals.²

6. On 29 June 2015, the Chamber partially granted the Prosecution 9 June 2015 request and ordered the Prosecution to file further observations on the ongoing necessity of the restriction on contact with [REDACTED] named individuals.³
7. [REDACTED]⁴ [REDACTED].⁵ [REDACTED].

Prosecution's Submissions

8. The necessity of ongoing restrictions is justified by the evidence of suspected witness interference previously submitted to the Chamber and is further justified by the future risk of witness interference. The Prosecution submits that the restrictions on contact with the [REDACTED] named individuals is necessary at least until all Prosecution [REDACTED] witnesses have concluded their testimony before the Court.⁶
9. The past practices of the [REDACTED] named individuals strongly suggest a willingness to circumvent procedures designed to prevent witness interference. Any lessening of the restrictions at this stage would risk inviting further witness interference. Additionally, the restriction on any detainee's contacts with named individual suspects of witness interference is minimally intrusive and proportionate to address the suspected interference abuses in this case. As with any restriction on liberty, including for example, pre-trial confinement itself, the issue relates to the possibility or likelihood of the occurrence of witness interference, not the actual occurrence of interference. The minimal

² ICC-01/04-02/06-635-Conf-Exp. A confidential redacted version was filed on 10 June 2015, ICC-01/04-02/06-635-Conf-Red.

³ ICC-01/04-02/06-683-Conf-Exp.

⁴ ICC-01/04-02/06-686-Conf-Exp.

⁵ ICC-01/04-02/06-687-Conf-Exp.

⁶ [REDACTED].

inconvenience to [REDACTED] detainees being temporarily prohibited from contacting the [REDACTED] named individuals must be balanced against the interest in protecting witnesses and ensuring the integrity of the proceedings. The compelling interest here is to ensure witness protection and the integrity of the proceedings by preventing further dissemination of confidential information and by preventing suspected witness interference.

10. The risks of witness interference are not mitigated by the Registry's monitoring system. The number of calls and the duration of the calls permitted at the Detention Centre create an enormous volume of material to review for suspected witness interference.⁷ The volume of calls elevates the risk of witness interference since detainees must be fully aware that the Registry is unlikely to be able to monitor the hundreds of hours of calls the detainees are able to log, and could calculate that the risk of being discovered is minimal.
11. The Registry's *post-factum* review of recorded phone calls has demonstrated the challenges to conducting enquiries into suspected detainee abuse of its telephone system. The Registry does not have sufficient personnel to effectively monitor hundreds of logged calls.⁸ The volume of the recorded material combined with the Registry's stated lack of personnel to review recorded calls in any reasonable length of time does not mitigate the risks involved. The Registry permits detainees to generate a large volume of calls and this, in turn, prevents the timely review of the calls, further preventing the Chamber, Registry, and the Prosecution from learning of vital and potentially time-sensitive information related to the mandate to protect witnesses. Adding more calls for the Registry to review would further impede its ability to monitor and review the already high volume of calls it allows.

⁷ ICC-01/04-02/06-417-Conf-Exp, para.4.

⁸ ICC-01/04-02/06-702-Conf-Exp, para.5.

Relief Sought

12. For all of the foregoing reasons, the Prosecution requests the ongoing restrictions to detainee communications as set out herein.



Fatou Bensouda,
Prosecutor

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