

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/04-02/06
Date: 7 November 2016

THE APPEALS CHAMBER

Before: Judge Howard Morrison, Presiding Judge
Judge Sanji Mmasenono Monageng
Judge Christine Van den Wyngaert
Judge Piotr Hofmański
Judge Raul C. Pangalangan

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

Public

Public redacted version of the “Former Child Soldiers’ response to ‘Bosco Ntaganda’s Appeal against the ‘Decision reviewing the restrictions placed on Mr Ntaganda’s contacts’”, No. ICC-01/04-02/06-1591-Conf-Corr

Source: Office of Public Counsel for Victims (CLR1)

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I. INTRODUCTION

1. The Common Legal Representative of the former child soldiers (the “Legal Representative”) hereby files her response to “Bosco Ntaganda’s Appeal against the ‘Decision reviewing the restrictions placed on Mr Ntaganda’s contacts’” (the “Document in Support of the Appeal” or the “Appeal”).¹ The Appeal should be dismissed as it fails to identify any clear error in the Trial Chamber's reasoning.

2. The crux of the Defence’s Appeal rests on allegations of factual errors regarding the Trial Chamber’s assessment of the restrictions imposed on the conditions of detention of the Accused. The issue certified for appeal concerns the proportionality and necessity of the restrictions imposed, as well as their impact on Mr Ntaganda’s rights. However, the Defence does not identify the specific measures which, in its view, render the continuous restrictions imposed disproportionate or unnecessary. In this regard, it is unclear whether the Defence disputes all of the restrictions imposed or only certain measures. For instance, the Defence does not appear to challenge the imposition of continuous active monitoring of telephone calls, but rather requests that their duration be increased from one to two hours per week.² Moreover, it is unclear whether the Defence seeks to challenge the restrictions imposed in relation to the use of coded language or on the discussion of case-related matters.

3. In any event, whether the measures imposed are necessary and proportionate in the specific case of Mr Ntaganda is essentially a factual matter. The Defence fails to identify any clear error in the Impugned Decision, let alone one that would have affected the outcome of the Impugned Decision. The Defence’s allegations as set out in the Document in Support of the Appeal fail to particularise any misappreciation of

¹ See the “Bosco Ntaganda’s Appeal against ‘Decision reviewing the restrictions placed on Mr Ntaganda’s contacts’”, No. ICC-01/04-02/06-1569 OA 4, 6 October 2016 (the “Document in support of Appeal”).

² *Idem*, para. 3.

facts, any reliance on irrelevant factors or lack of consideration of relevant ones. The Impugned Decision should therefore be upheld.

4. The merits of the Appeal should also be considered in light of the accused's recent conduct and lack of cooperation with the Court following the issuance of the Impugned Decision. The accused's expressed "*willingness to die*", "*refusal to appear in court*", and his decision to refuse food "*as an ultimate act of protest*" are all relevant factors to the assessment of correctness of the grounds put forward by the Defence.³ Incidentally, the Legal Representative notes that while the proceedings giving rise to this Appeal had to be dealt with on an expedited basis because of the accused's conduct,⁴ as soon as the Defence "*won permission to appeal the judges' decision* [on the restrictions placed on Mr Ntaganda's contacts]",⁵ the urgency was clearly no longer an issue since the Defence requested,⁶ and was subsequently granted, an extension of time limit to submit its Document in Support of the Appeal.⁷ This factor is also relevant to the assessment of the Appeals Chamber.

II. PROCEDURAL HISTORY

5. On 7 September 2016, Trial Chamber VI (the "Trial Chamber") issued the "Decision reviewing the restrictions placed on Mr Ntaganda's contacts" (the

³ See AFP, "DR Congo warlord ends hunger strike at ICC", 21 September 2016, available at the following address: <http://www.dailymail.co.uk/wires/afp/article-3799678/DR-Congo-warlord-Terminator-breaks-hunger-strike-ICC.html>. See also JEUNE AFRIQUE, "RD Congo – CPI: Bosco Ntaganda interrompt sa grève de la faim, selon son avocat", 21 September 2016, available at the following address: <http://www.jeuneafrique.com/358980/societe/rd-congo-cpi-bosco-ntaganda-interrompt-greve-de-faim-selon-avocat/>.

⁴ The deadline for submitting responses to the Public redacted version of 'Request for leave to appeal decision maintaining restrictions on Mr Ntaganda's communications and contacts', No. ICC-01/04-02/06-1501-Red, 13 September 2016 was indeed shorten to the following day by Trial Chamber VI. See the transcript of the hearing held on 13 September 2016, No. ICC-01/04-02/06-T-130-CONF-ENG ET, p. 17, lines 10 to 15.

⁵ See AFP, *op. cit.*, *supra* note 3.

⁶ See the "Urgent request on behalf of Mr Ntaganda seeking an extension of time limit to submit the Document in Support of the Appeal", No. ICC-01/04-02/06-1543, 26 September 2016.

⁷ See the "Decision on the 'Urgent request on behalf of Mr Ntaganda seeking an extension of time limit to submit the Document in Support of the Appeal'" (Appeals Chamber), No. ICC-01/04-02/06-1549 OA 4, 28 September 2016.

“Impugned Decision”), in which it decided to, *inter alia*: (i) maintain the restrictions already in place; (ii) reinstate a certain individual to Mr Ntaganda’s list of non-privileged contacts; and (iii) continue to periodically review the Restrictions.⁸

6. On 13 September 2016, the Defence filed a request for leave to appeal the Impugned Decision.⁹ The Defence raised several grounds of appeal including whether the Trial Chamber “*erred in determining that the continued restrictions are necessary and proportionate to the objectives being served, including in respect of Regulation 101(2) of the Regulations of the Court*”.¹⁰

7. On the same day, the Trial Chamber shortened the deadline for responses to the request for leave to appeal.¹¹ In accordance with the Trial Chamber’s instructions, the Prosecution and the legal representatives of victims filed their responses to the request for leave to appeal.¹²

8. On 16 September 2016, the Trial Chamber – by majority – granted the Defence’s request for leave to appeal the Impugned in respect of the Third Alternative Issue. This issue concerns whether “*the continued restrictions are necessary and proportionate to the objectives being served, including in respect of Regulation 101(2) of the Regulations of the Court*”.¹³

⁸ See the “Public redacted version of ‘Decision reviewing the restrictions placed on Mr Ntaganda’s contacts’” (Trial Chamber VI), No. ICC-01/04-02/06-1494-Red3, 7 September 2016 (The “Impugned Decision”).

⁹ See the “Public redacted version of ‘Request for leave to appeal decision maintaining restrictions on Mr Ntaganda’s communications and contacts’”, No. ICC-01/04-02/06-1501-Red, 16 September 2016.

¹⁰ *Idem.*, paras. 17-18.

¹¹ See the transcript of the hearing held on 13 September 2016, *supra* note 4.

¹² See the “Response of the Common Legal Representative of the Attacks to the “Public redacted version of ‘Request for leave to appeal decision maintaining restrictions on Mr Ntaganda’s communications and contacts’”, No. ICC-01/04-02/06-1505, 14 September 2016; the “Public redacted version of ‘Prosecution’s response to the Defence’s request for leave to appeal the decision reviewing restrictions placed on Mr Ntaganda’s contacts’”, No. ICC-01/04-02/06-1506-Red2, 15 September 2016 and the “Former child soldiers’ response to the “Public redacted version of ‘Request for leave to appeal decision maintaining restrictions on Mr Ntaganda’s communications and contacts’”, No. ICC-01/04-02/06-1507, 15 September 2016.

¹³ See the “Decision on Defence request for leave to appeal the ‘Decision reviewing the restrictions placed on Mr Ntaganda’s contacts’” (Trial Chamber VI), No. ICC-01/04-02/06-1513, 16 September 2016.

III. STANDARD FOR APPELLATE REVIEW

9. Since the matter *sub judice* is essentially a factual one, a heightened standard of review applies. Indeed, the Appeals Chamber previously held that “*it will not interfere with factual findings of the first-instance Chamber unless it is shown that the Chamber committed a clear error, namely, misappreciated the facts, took into account irrelevant facts, or failed to take into account relevant facts*”.¹⁴ As to the “misappreciation of facts”, the Appeals Chamber also stated that it “*will not disturb a Pre-Trial or Trial Chamber’s evaluation of the facts just because the Appeals Chamber might have come to a different conclusion. It will interfere only in the case where it cannot discern how the Chamber’s conclusion could have reasonably been reached from the evidence before it*”.¹⁵

10. The Appeals Chamber further held that the “*jurisprudence relevant to appeals brought under article 82 of the Statute indicates that the Appeals Chamber should give a margin of deference to factual findings of a Trial Chamber*”.¹⁶

11. As for allegations of procedural errors, the Appeals Chamber ruled that “*it will only reverse a [...] decision if it is materially affected by the procedural error*”.¹⁷ In this

¹⁴ See the “Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled ‘Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute’”(Appeals Chamber), No. ICC-01/09-01/11-307 OA, 30 August 2011, para. 56. See also the “Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled ‘Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute’”(Appeals Chamber), No. ICC-01/09-02/11-274 OA, 30 August 2011, para. 55 and the “Judgment on the appeal of Mr. Jean-Pierre Bemba Gombo against the decision of Pre-Trial Chamber III entitled ‘Decision on application for interim release’” (Appeals Chamber), No. ICC-01/05-01/08-323, 16 December 2008, para. 52.

¹⁵ *Idem*. See also “Judgment on the appeal of Mr Callixte Mbarushimana against the decision of Pre-Trial Chamber I of 19 May 2011 entitled “Decision on the ‘Defence Request for Interim Release’”(Appeals Chamber), No. ICC-01/04-01/10-283 OA, 14 July 2011, para. 17.

¹⁶ See the “Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction” (Appeals Chamber), No. ICC-01/04-01/06-3121-Red A5, 1 December 2014, para. 20.

¹⁷ *Idem*.

respect, the appellant “needs to demonstrate that, in the absence of the procedural error, the judgment would have substantially differed from the one rendered”.¹⁸

IV. SUBMISSIONS

1. The Trial Chamber’s reliance on the necessity of protecting [REDACTED] and [REDACTED] witnesses is correct and reasonable

12. As a first ground of appeal, the Defence alleges that the fact that the Prosecution had sufficient time to call [REDACTED] witnesses should have been considered by the Trial Chamber as a factor against prolonging the restrictions.¹⁹

13. This argument is without merit. Whether the Prosecution had enough time to call [REDACTED] witnesses does not dispense the Chamber from its obligation under article 68(1) of the Rome Statute to ensure the protection of all witnesses – both [REDACTED] or [REDACTED]. Indeed, this provision imposes a general duty on the Court to ensure the safety and well-being of victims and witnesses: “*The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender as defined in article 7, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children*”.²⁰

14. Article 68(1) of the Rome Statute does not make any distinction based on whether a witness is an [REDACTED] or a [REDACTED], nor does it accord less importance to the so-called [REDACTED] witnesses. Quite the contrary, the provision imposes a particular duty of care for [REDACTED], particularly where the crimes involve “*sexual or gender violence or violence against children*”. This is

¹⁸ *Ibid.*

¹⁹ See the Document in Support of the Appeal, *supra* note 1, para. 16.

²⁰ Emphasis added.

particularly important in the case against Mr Ntaganda, which involves six counts of rape and sexual slavery as well as five counts related to acts committed against children aged below 15.

15. Although the progress of the case and the regular decrease in the number of witnesses scheduled to testify may justify a review of the restrictions imposed, the fact that the Chamber noted that “*there remain in excess of 50 witnesses on the Prosecution’s list of witnesses*” also constitutes a relevant consideration.²¹ The fact that the Trial Chamber gave more weight to the latter does not *per se* constitute a reversible error.

16. Likewise, the fact that the Chamber relied on recent intimidation of witnesses, (even after the imposition of the restrictions)²² is reasonable as the protection of witnesses and the preservation of evidence constitute the main justification for the restrictions imposed. Moreover, the Trial Chamber’s reference to recent security and intimidation incidents, even though not directly implicating Mr Ntaganda,²³ is relevant to the assessment of the “risk” as well as the necessity of prolonging the restrictions in place.

17. Accordingly the Defence fails to identify any “manifest” or materially incorrect finding warranting the reversal of the Impugned Decision.

2. Recent incidents of interference are essential to the assessment of whether restrictions should be prolonged

18. The Trial Chamber was correct in finding that recent security incidents and threats reported by certain witnesses were relevant to its assessment in the

²¹ See the Impugned Decision, *supra* note 8, para. 29.

²² See the Document in Support of the Appeal, *supra* note 1, para. 17.

²³ *Idem*.

Impugned Decision.²⁴ The aim of the measures imposed is to guard against the risk of interference with witnesses and evidence. The fact that certain witnesses reported concrete cases of intimidation by individuals believed to be associates of Mr Ntaganda is obviously relevant to the assessment of the risk of interference in the event that the restrictions are lifted. Moreover, these incidents are relevant to the assessment of whether less restrictive measures are suitable and appropriate to fulfil the same objectives. The fact that recent threats do not point to the accused's direct involvement does render these incidents irrelevant: (1) particularly in light of the Trial Chamber's previous finding of reasonable grounds to believe that the accused had personal involvement in incidents prior to the imposition of the restrictions, and (2) these incidents tend to show that the risk of intimidation of witnesses continues to exist, and are thus relevant to the assessment of the "necessity" requirement.

19. Moreover, the Trial Chamber's reliance on allegations emanating from Prosecution witnesses does not constitute *per se* an error. The very aim of the restrictions in place is to preserve the evidence and to ensure protection for witnesses scheduled to testify before the Court. Contrary to the Defence's assertions, all previously reported incidents, including those dating from [REDACTED], continue to be relevant to the Chamber's assessment for prolonging the restrictions.²⁵ In any event, the evaluation conducted does not have any bearing on the guilt or innocence of the accused and is limited to the assessment of the risk for the victims and witnesses. This inherently entails a lower standard of proof and does not require certainty or definitive findings against the defendant, but merely the existence of "reasonable grounds".

3. The restrictions were the least restrictive measures

20. The Defence asserts that "*the [Trial] Chamber erred [...] by assuming without giving any reasons that active monitoring is the least restrictive way of preventing the*

²⁴ See the Impugned Decision, *supra* note 8, para. 29.

²⁵ See the Document in Support of the Appeal, *supra* note 1, para. 20-23.

prejudice caused by coaching".²⁶ As an alternative, the Defence suggests that the Trial Chamber could have instructed the "*Registry to disclose any passively-monitored examples of alleged coaching to the Trial Chamber and, if warranted, to the parties*" and that "*any such indications can then be put to the witness*".²⁷

21. In that respect, the Defence's assertions demonstrate, at best, a mere "disagreement" with the Impugned Decision. Indeed, the Trial Chamber has discretionary powers to either implement active monitoring to avoid any likelihood of coaching of witnesses or adopt the procedure suggested by the Defence. More importantly, the Defence's submissions fail to consider the other factors examined by the Trial Chamber in order to impose the disputed restrictions. Indeed, the active monitoring was not put in place simply to prevent "witness coaching" but in response to security incidents and threats reported by several witnesses in this case. The "*least restrictive measures*" requirement should therefore be considered against all the factors involved, and not against one sole factor.

4. Witness coaching constitutes both a prohibited conduct and a relevant factor for imposing restrictions

22. The Defence asserts that the Trial Chamber erred in referring to witness "coaching" without defining the term.²⁸ This, as such, is not an error that would have affected the outcome of the Impugned Decision. In particular, the Defence does not show how the lack of definition could have impacted on the Trial Chamber's assessment of the necessity and proportionality of the measures imposed.

23. Moreover, and contrary to the Defence's assertions,²⁹ the risk of coaching is not limited to intimidation leading to a witness refusing to testify, but covers any type of interference with evidence. Trial proceedings are clearly prejudiced by attempts to

²⁶ *Idem*, para. 26.

²⁷ *Ibid.*

²⁸ *Ibid.*, paras. 28-29.

²⁹ *Ibid.*

alter the substance of the evidence presented before the Court or by efforts aimed at influencing the witnesses. Such an improper conduct impedes the Court's ability to establish the truth, to conduct fair and expeditious proceedings, and to hold perpetrators accountable for the crimes committed.

24. The jurisprudence of the Court also highlighted the need to establish sufficient safeguards against witness coaching, described as a prohibited practice. Judge Eboe-Osuji previously emphasised that even in adversarial jurisdictions where witness proofing is authorised, a code of professional conduct provides a framework to sanction inappropriate conduct such as witness coaching.³⁰ Likewise, Trial Chamber V established that witness preparation sessions must be video-recorded at all times. The Chamber determined that these videos will only be disclosed at the discretion of the Chamber, in the event of allegations of coaching of a witness or of any other improper interference.³¹

5. The Trial Chamber properly considered the adequacy of less intrusive measures and the impact of the passage of time

25. Contrary to the Defence's contentions,³² the Trial Chamber explicitly referred to the need of resorting to the least restrictive measures. The Impugned Decision clearly stipulates that "*the maintenance of the present Restrictions [is] the least restrictive means available to achieve these objectives*".³³ Moreover, the Chamber gave due consideration to the Defence's proposal for the termination of active monitoring of telephone calls and visits, but ultimately found that it does not "*adequately guard against the potential for further conduct listed in Regulation 101(2) of the Regulations, given that any such conduct could only be ascertained after it had already occurred*".³⁴ Likewise,

³⁰ See "Partly dissenting opinion of Judge Eboe-Osuji", No. ICC-01/09-01/11-524, 2 January 2013, paras. 46-47.

³¹ See the "Decision on witness preparation" (Trial Chamber V), No. ICC-01/09-01/11-524, 2 January 2013, para 47.

³² See the Document in Support of the Appeal, *supra* note 1, paras. 32-33.

³³ See the Impugned Decision, *supra* note 8, para. 34.

³⁴ *Idem*.

the Trial Chamber – relying on the jurisprudence of the European Court of Human Rights (the “ECtHR”) – stated that *“the passage of time and severity of the measures imposed require a ‘careful review’ of the necessity of the measures in question and the consideration of ‘alternative means’ of fulfilling the aim of the measures imposed”*.³⁵ It subsequently reasonably concluded that *“the passing of time alone will not necessarily require the lifting or adjustment of the measures imposed”*.³⁶

26. Further, the Chamber concretely gave effect to this consideration (*i.e.* the passing of time) by rejecting the Prosecution’s proposal for maintenance of restrictions until the end of the Defence case, favouring instead the implementation of a (i) periodic monitoring of the restrictions; and, where necessary, (ii) the conduct of an *ad hoc* review where compelling reasons exist.³⁷

27. The Defence wrongly asserts that the Trial Chamber failed to take into account the passage of time as a relevant factor when assessing the continuing existence of reasonable grounds to believe that the accused will engage in a prohibited conduct.³⁸ The Trial Chamber did so when it found that, at this stage, *“the fact that preparations for any defence case should currently be actively underway is a relevant consideration”*.³⁹ In doing so, the Trial Chamber reasonably found that the ongoing defence investigation constituted a potential incentive for engaging in a prohibited conduct. The fact that the Chamber did consider whether less restrictive measure may *“constitute a disincentive for the prohibited conduct”* cannot be characterised as an error. Indeed, Regulation 101(2) of the Regulations of the Court does not require the Court to examine potential “disincentives” for the accused.

28. Moreover, the accused is expected not to engage in prohibited conduct at all times, irrespective of the nature of the restrictions in place or the applicable detention

³⁵ *Ibid.*, para. 18.

³⁶ *Ibid.*

³⁷ *Ibid.*, para. 36.

³⁸ See the Document in Support of the Appeal, *supra* note 1, para. 33.

³⁹ See the Impugned Decision, *supra* note 8, para. 30.

regime. The Defence did not specifically request that this factor be taken into account by the Trial Chamber and shall therefore not be raised for the first time on appeal.

6. The restrictions aim at mitigating the “risk”, are subject to a lower evidentiary standard, and do not have a bearing on the guilt or innocence of the accused

29. The Defence’s assertions that Mr Ntaganda’s rights have been violated as a consequence of the procedure adopted by the Chamber are incorrect.⁴⁰ The Defence confuses the right “to be heard” with the disclosure and translation requirements. With respect to the latter, it is important to note that the restrictions imposed have no bearing on the Court’s assessment of the merits of the case, or on the guilt or innocence of the accused. They are limited to addressing security risks targeting witnesses and do not typically concern their knowledge of the facts of the case.

30. With regard to disclosure of security information, the Appeals Chamber in this case previously held that:

“information regarding the witness’s security concerns or logistical arrangements, which Mr Ntaganda seeks to obtain through disclosure under rule 76(1) of the Rules, may be disclosed to him under rule 77 of the Rules if it is material to the preparation of his defence, or under article 67(2) of the Statute if it affects the credibility of prosecution evidence. In cases of dispute, he may seek an order from the Trial Chamber. While such material is not translated into the language which the accused fully understands and speaks, the Appeals Chamber considers that no prejudice arises because article 67(1)(f) of the Statute ensures that translations that ‘are necessary to meet the requirements of fairness’ may be ordered”.⁴¹

31. Accordingly, the fact that the Trial Chamber relied on *ex parte* submissions and materials, as well as non-certified translations, is appropriate. It does not

⁴⁰ See the Document in Support of the Appeal, *supra* note 1, paras. 38-40.

⁴¹ See the “Judgment on the appeal of Mr Bosco Ntaganda against the “Decision on Defence requests seeking disclosure orders and a declaration of Prosecution obligation to record contacts with witnesses” (Appeals Chamber), No. ICC-01/04-02/06-1330 OA3, 20 May 2016, para. 33.

therefore constitute *per se* a reversible error or cause any unjustified prejudice to the accused. In this regard, the Trial Chamber's indication that the Defence was generally aware of the types of allegations made⁴² is reasonable and sufficiently guarantees the accused's right 'to be heard'.

32. The Defence's submissions concerning the reversal of the burden of proof are unfounded.⁴³ The Trial Chamber's reliance on expressions used by Mr Ntaganda, even if ambiguous, was reasonable in light of previous findings of improper conduct involving the use of coded language by the accused. In any event, the Trial Chamber was not required to establish with certainty the existence of a threat, but merely that there were "reasonable grounds" to believe that such a risk could exist. The nature and purpose of the procedure under Regulation 101 of the Regulation of the Court, and the lower evidentiary threshold governing the imposition of restrictions, justify the procedure followed by the Trial Chamber. Similar procedures are envisaged in the legal texts of the Court. For instance, Rule 81(6) of the Rules of Procedure and Evidence provides for the possibility of withholding disclosable materials from the Defence and only provide summary thereof.

7. The trial Chamber adequately considered the impact of the restrictions on the accused

33. The Legal Representative further submits that the Trial Chamber adequately addressed the impact of the restrictions on the accused. First, the Chamber referred to the standards articulated in the jurisprudence of the ECtHR emphasising that any interference with the detained person's private and family life must be "*necessary*" and "*proportionate to the legitimate aim pursued*".⁴⁴

⁴² See the Document in Support of the Appeal, *supra* note 1, paras. 39-40.

⁴³ *Idem.*, para. 41.

⁴⁴ See the Impugned Decision, *supra* note 8, para. 16.

34. Second, the Trial Chamber implemented a periodic review scheme, rejecting the Prosecution's request for the restrictions to remain in place until the end of the Defence case without further review. This safeguard is sufficient to ensure a regular review of the restrictions and adequately takes into account the related impact for the accused.⁴⁵

35. Third, the Trial Chamber has since had the opportunity to clarify that the restrictions imposed do not affect the arrangement of family visits. During the hearing held on 13 September 2016, the Chamber noted:

*“that nothing in the Chamber's decision on restrictions prevents family visits from taking place. Indeed, recognising the importance of such contact, the Chamber has always expressly authorised Mr Ntaganda to have family visits. We therefore also direct the Registry, in consultation with the Defence, to expedite its efforts to arrange such a visit for Mr Ntaganda as soon as possible and note the Registry's submission that it is doing so. The Chamber further encourages the Registry to show maximum flexibility regarding the logistical arrangements for such visits [...]”.*⁴⁶

36. The Trial Chamber's stance regarding family visits clearly meets the minimum rights guaranteed to detained persons.

37. Fourth, the Trial Chamber took a balanced approach with regard to visits by third persons. For instance, it deferred its decision in respect of the Defence's request that members of the Defence team, who are not entitled to privileged communications with Mr Ntaganda, be allowed to visit him in detention.⁴⁷ The Trial Chamber considered that the Defence had not sufficiently clarified the scope of its request and urged it to clarify, at a minimum, the relief sought.

⁴⁵ See also *supra*, para. 26.

⁴⁶ See the transcript of the hearing held on 14 September 2016, ICC-01/04-02/06-T-130-ENG ET, p. 17, lines 1 to 8.

⁴⁷ See the Impugned Decision, *supra* note 8, para. 38.

CONFIDENTIALITY

38. Pursuant to regulations 23bis(1) and (2) of the Regulations of the Court, the present submissions are classified as “confidential” as they constitute a response to a document marked with the same classification.

FOR THESE REASONS, the Legal Representative respectfully requests the Chamber to dismiss the Appeal in its entirety.

It is hereby certified that this document contains a total of 4,349 words and complies in all respects with the requirements of Regulation 36 of the Regulations of the Court.⁴⁸



Sarah Pellet
Common Legal Representative of the Former
Child soldiers

Dated this 7th Day of November 2016

At The Hague, The Netherlands

⁴⁸ This statement (30 words), not itself included in the word count, follows the Appeals Chamber’s direction. See No. ICC-01/11-01/11-565 OA6, 24 July 2014, para. 32.