

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/04-02/06

Date: 2 June 2017

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 'Corrected version of Fifth Report on the post-factum review of Mr Bosco Ntaganda's actively monitored communication', 3 April 2017, ICC-01/04-02/06-1847-Conf-Exp

Source: Registry

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

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**Victims Participation and Reparations
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I. Introduction

1. The Registry submits its fifth report pursuant to Trial Chamber VI's ("Trial Chamber") instruction to report on the period of active monitoring of communications of Mr Bosco Ntaganda ("Mr Ntaganda") from 29 April 2016¹ until now.²

2. In addition to the actively monitored non-privileged telephone communications, Mr Ntaganda has, since the Registry's fourth report on the matter,³ received [REDACTED] actively monitored family visits.

3. Whilst one non-privileged telephone conversation with [REDACTED] was terminated for reasons explained below, no incident occurred during the monitored family visit.

II. Procedural History

4. On 7 September 2016, the Trial Chamber maintained the restrictions as previously ordered⁴ and additionally decided, *inter alia*, that: i) Mr Ntaganda's conversations with his non-privileged contacts will continue to be actively monitored, and ii) that [REDACTED], who had previously been removed by the Trial Chamber from Mr Ntaganda's list of authorised contacts for the purposes of non-

¹ ICC-01/04-02/06-Conf-Exp, Fourth Report on the post-factum review of the phone conversations made by Mr Ntaganda, plus four annexes, also filed as confidential *ex parte*, available only to the Registry and Defence, 29 April 2016 ("Fourth Report").

² Email from Trial Chamber VI Communications to the Registry on 16 March 2017 at 13:42; See ICC-01/04-02/06-785-Conf-Exp, Decision on Prosecution requests to impose restrictions on Mr Ntaganda's restrictions, 18 August 2015, para. 70 and ICC-01/04-02/06-1494-Conf-Exp, Decision reviewing the restrictions placed on Mr Ntaganda's contacts, 7 September 2016, para. 36.

³ Fourth Report.

⁴ See ICC-01/04-02/06-410-Conf-Exp-Corr, Decision on the Prosecution's request for restriction on contacts and the Defence request for access to logs, 8 December 2014, para. 51 and disposition; ICC-01/04-02/06-508-Conf-Exp, Order instructing the Registry to put in place additional temporary restrictions on contact, 13 March 2015, para. 7 and disposition; ICC-01/04-02/06-785-Conf-Exp, Decision on Prosecution requests to impose restrictions on Mr Ntaganda's contacts, 18 August 2015, paras 60, 66, 69 (deciding, *inter alia*, to maintain on-going restrictions on Mr Ntaganda's contacts and to impose certain further restrictions to his communications in and from the Detention Centre).

privileged, actively monitored telephone conversations, may be immediately reinstated on the said list.⁵

5. [REDACTED].⁶

III. Classification

6. In accordance with regulation 23*bis*(1) of the Regulations of the Court, the present report is classified as confidential *EX PARTE*, Defence and Registry only, as it contains sensitive information concerning Mr Ntaganda's private life and detention-related matters.

IV. Report

a. Prosecution and Defence access to the relevant audio files

7. From 30 September 2015 onwards, pursuant to the "Decision on the Prosecutor's 'Request for judicial assistance to obtain evidence for investigation under Article 70'"⁷ ("Decision on Audio Recording"), the Registry has provided the Office of the Prosecutor with access to the relevant audio files and their corresponding call logs and metadata, via a folder in TRIM. The Registry continues, pursuant to same, to provide the said information on a monthly basis by uploading the information to the relevant TRIM folder.

⁵ ICC-01/04-02/06-1494-Conf-Exp, Decision reviewing the restrictions placed on Mr Ntaganda's contacts, ("Decision Reviewing the Restrictions"), para. 41, Disposition.

⁶ [REDACTED].

⁷ ICC-01/04-728/729, 18 September 2015, disposition (ordering the Registry to provide the Prosecutor, *inter alia*, with all the ICC Detention Centre non-privileged recordings of telephone conversations pertaining to Mr Ntaganda, from 22 March 2013 onwards and on an on-going basis); ICC-01/04-02/06-1616, Prosecution's Communication of the Disclosure of Evidence obtained pursuant to Article 70, 7 November 2016, paras 1, 8.

8. On 7 November 2016, pursuant to the “Decision on the ‘Prosecution’s request to provide Bosco Ntaganda with access to evidence obtained pursuant to article 70’”,⁸ the Registry provided the Defence with access to the same TRIM folder, and has since then uploaded, on a monthly basis, the information as instructed. Verification by the Information Management Services Section revealed, after the Defence raised the matter,⁹ that it appeared that the Defence did not have access to all information in the TRIM folder, including information uploaded as of 1 December 2016. The matter was resolved on 27 January 2017;¹⁰ since then, both parties have equal access to the audio-recordings.

b. Reinstatement of [REDACTED] on Mr Ntaganda’s list of authorised contacts

9. On 7 September 2016,¹¹ [REDACTED] was reinstated on Mr Ntaganda’s list of authorised contacts for the purposes of non-privileged, actively monitored telephone conversations. Mr Ntaganda has not had any telephone communication with [REDACTED] since the said reinstatement.

c. Mr Ntaganda’s actively monitored non-privileged telephone conversations

10. At the outset, as noted in the Registry’s Fourth Report, in a dynamic live environment, such as an active telephone call, it is rather difficult for an interpreter, who actively monitors the conversations, to readily identify whether such conversations are deliberately vague or whether the apparent vagueness is a result of the caller hesitating in an attempt to be more specific in his or her descriptions.¹²

⁸ ICC-01/04-738, 4 November 2016, disposition (ordering, *inter alia*, the Registry to provide Mr Ntaganda with immediate access to the TRIM folder containing his ICC Detention Centre call records and recordings that are available to the Office of the Prosecutor).

⁹ Email from the Defence of Mr Ntaganda to the Office of the Director of Judicial Services on 25 January 2017 at 17:57.

¹⁰ Email from the Office of the Director of the Division of Judicial Services to the Counsel for Mr Ntaganda on 27 January 2017 at 18:07.

¹¹ Decision Reviewing the Restrictions.

¹² Fourth Report, para. 13.

11. On [REDACTED] 2016, Mr Ntaganda's telephone conversation with [REDACTED] was terminated when reference was made, without more, to "documents."¹³ Mr Ntaganda was informed that day of the reasons for the termination; namely, that even if the telephone conversation may not have been strictly related to the *Ntaganda* case, Mr Ntaganda is to be clear when discussing documents on the exact nature and content of those documents.¹⁴

12. On [REDACTED] 2016, Mr Ntaganda made a telephone call to [REDACTED]. On [REDACTED] 2016, Mr Ntaganda made three telephone calls: to [REDACTED], which was disconnected as a result of a poor connection, to [REDACTED], and to [REDACTED] again.

13. In order to fulfil its duty to ensure that no coded language is used and no case related information is discussed, the Detention Section sought to clarify the content of these telephone conversations, and therefore requested the transcription, by the Language Services Section, of the said conversations. On this basis, the Registry determined that, without more, it appears that no violation(s) of the restrictions regime occurred.

14. On 24 November 2016, the transcript of the [REDACTED] 2016 conversation was uploaded to the TRIM folder established pursuant to the Decision on Audio Recordings, and is therefore available to the Prosecution and to the Defence. On 1 December 2016, the transcript of the [REDACTED] 2016 telephone conversations was similarly uploaded.

15. On 29 November 2016, Mr Ntaganda was notified of a new time schedule¹⁵ for the monitoring of his weekly, one hour non-privileged telephone calls;¹⁶ namely,

¹³ See generally Fourth Report, paras 3-4.

¹⁴ DS/2016/036/PC/cf, Raisons de l'interruption de votre conversation téléphonique du 10 juin 2016, 10 juin 2016.

¹⁵ Fourth Report, para. 5.

¹⁶ Decision on Restrictions, para. 66.

[REDACTED].¹⁷ The Registry wishes to clarify that last minute changes to this schedule may occur depending, *inter alia*, on the availability of the staff required to actively monitor Mr Ntaganda's non-privileged conversations and constraints that are related to the hearing schedule.

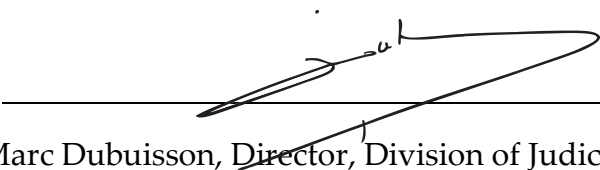
d. Family visits

16. From [REDACTED] 2016, Mr Ntaganda had [REDACTED] visits from [REDACTED].

17. Arrangements had been made for a family visit, [REDACTED], from: i) [REDACTED] 2016; and ii) [REDACTED] 2017. This visit did not take place.

18. From [REDACTED] 2017, [REDACTED] visited Mr Ntaganda [REDACTED] times, [REDACTED].

19. No incidents occurred during the visits by [REDACTED].



Marc Dubuisson, Director, Division of Judicial Services
on behalf of
Herman von Hebel, Registrar

Dated this 2 June 2017

At The Hague, the Netherlands

¹⁷ International Criminal Court Detention Centre Request Form, 29 November 2016.