

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 18 August 2015

**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 redacted version of**

**Decision on Prosecution requests to impose restrictions on Mr Ntaganda's contacts**

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

**The Office of the Prosecutor**

Ms Fatou Bensouda  
Mr James Stewart  
Ms Nicole Samson

**Counsel for Bosco Ntaganda**

Mr Stéphane Bourgon  
Mr Luc Boutin  
Mr Christopher Gosnell

**Legal Representatives of Victims**

Ms Sarah Pellet  
Mr Dmytro Suprun

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

Ms Paolina Massidda

**The Office of Public Counsel for the  
Defence**

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

Mr Nigel Verrill

**Detention Section**

Mr Patrick Craig

**Victims Participation and Reparations  
Section**

**Other**

**Trial Chamber VI** ('Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Bosco Ntaganda* ('Ntaganda case'), having regard to Articles 21(3), 64(6)(f), 67 and 68 of the Rome Statute ('Statute') and Regulations 23 *bis*, 34 and 101 of the Regulations of the Court ('Regulations'), issues the following 'Decision on Prosecution requests to impose restrictions on Mr Ntaganda's contacts'.

## **I. Procedural history**

1. On 8 August 2014, the Office of the Prosecutor ('Prosecution') requested the Chamber to order the Registry to impose measures pursuant to Regulation 101(2) of the Regulations to ensure that Bosco Ntaganda: i) refrains from disseminating confidential information to any person other than his counsel and other authorised members of his defence team; ii) is prevented from interfering with or intimidating witnesses in any manner that could affect the outcome of the proceedings; and iii) is prevented from harming or threatening the well-being of witnesses and their family members ('Request for Restrictive Measures').<sup>1</sup>
2. On 1 September 2014, the defence team for Mr Ntaganda ('Defence') responded to the Request for Restrictive Measures,<sup>2</sup> refuting the Prosecution's allegations and objecting to the imposition of any restrictive measures on Mr Ntaganda.<sup>3</sup>

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<sup>1</sup> 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. A confidential *ex parte* version – available to the Prosecution, Defence and Victims and Witnesses Unit only – was filed on the same day (ICC-01/04-02/06-349-Conf-Red). A lesser redacted confidential *ex parte* version – available to the Prosecution, Defence and Victims and Witnesses Unit only – was subsequently filed on 19 December 2014 (ICC-01/04-02/06-349-Conf-Red2).

<sup>2</sup> *Réponse/Observations de M. Bosco Ntaganda à la Demande du Procureur pour l'imposition des mesures prévues à la norme 101(2) du Règlement de la Cour*, ICC-01/04-02/06-360-Conf-Exp ('Response to the Request for Restrictive Measures'). The Chamber had initially shortened the deadline for the response to 15 August 2014 (E-mail from Legal Officer of the Chamber to Defence, 12 August 2014, 15:37). Due to the change in Lead counsel, the Defence requested an extension of the deadline (E-mail from Defence to Legal Officer of the Chamber, 13 August 2014, 13:32). That same day, the Chamber granted the Defence an extension until further notice (E-mail from Legal Officer of the Chamber to Defence, 13 August 2014 at 17:00). On 22 August 2014, after the new Lead counsel had started, the Chamber ordered the Defence to file its response by 1 September 2014 (E-mail from Legal Officer of the Chamber to Defence, 22 August 2014 at 18:03).

<sup>3</sup> Response to the Request for Restrictive Measures, ICC-01/04-02/06-360-Conf-Exp, para. 1.

3. On 8 December 2014, after receipt of various further submissions from the parties and the Registry, including the Victims and Witnesses Unit ('VWU'),<sup>4</sup> the Chamber issued its 'Decision on the Prosecution's request for restriction on contacts and the Defence request for access to logs' ('Decision on Interim Restrictive Measures') in which it, *inter alia*, ordered the *post-factum* review of Mr Ntaganda's phone conversations and imposed certain restrictions on his non-privileged contacts, such as prohibiting him from receiving non-privileged visits on an interim basis, pending receipt by the Chamber of further submissions by the parties.<sup>5</sup>
4. On 16 February 2015, the Chamber set out the procedure for the *post-factum* review of telephone communications and set the schedule for the Registry to file reports on its review of certain identified phone conversations ('Procedure Decision').<sup>6</sup>
5. On 10 March 2015,<sup>7</sup> the Registry filed the 'First Report on the *post-factum* review of the phone conversations made by Mr Ntaganda' ('First Registry Report').<sup>8</sup>

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<sup>4</sup> See the Chamber's instruction to the VWU and Registry to file observations on the Request for Restrictive Measure (subsequently filed in the record of the case in Annexes 1 and 2 to 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, 16 February 2015, ICC-01/04-02/06-459-Conf-Exp); Observations on the 'Prosecution's urgent request for Measures under Regulation 101(2) of the Regulations of the Court', 19 August 2014, ICC-01/04-02/06-356-Conf-Exp filed by the VWU; Registry's Observations, ICC-01/04-02/06-355-Conf-Exp. A confidential redacted *ex parte* – available to the Prosecution, Defence and Registry – version was filed on 23 February 2015 (ICC-01/04-02/06-355-Conf-Exp-Red); Prosecution's Reply to '*Réponse/Observations de M. Bosco Ntaganda à la Demande du Procureur pour l'imposition des mesures prévues à la norme 101(2) du Règlement de la Cour*', 12 September 2014, ICC-01/04-02/06-368-Conf); Prosecution's Submission of Additional Evidence in Support of 'Prosecution's urgent request for measures under Regulation 101(2) of the Regulations of the Court' dated 8 August 2014, 18 September 2014, ICC-01/04-02/06-371-Conf-Exp; Further Submissions on Behalf of Mr Ntaganda, 26 September 2014, ICC-01/04-02/06-379-Conf-Exp).

<sup>5</sup> ICC-01/04-02/06-410-Conf-Exp, para. 51 and disposition. A Confidential redacted *ex parte* – Prosecution, Defence and Registry – version was filed on the same day (ICC-01/04-02/06-410-Conf-Exp-Red). On 16 February 2015, corrected versions were filed (ICC-01/04-02/06-410-Conf-Exp-Corr and ICC-01/04-02/06-410-Conf-Exp-Red-Corr).

<sup>6</sup> 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, ICC-01/04-02/06-459-Conf-Exp.

<sup>7</sup> The Registry had requested, and was granted, an extension of the deadline until 10 March 2015 to file the report (E-mail from the Registry to Trial Chamber VI Communications on 6 March 2015 at 17:58).

<sup>8</sup> ICC-01/04-02/06-504-Conf-Exp, with annexes 1-9. An addendum was filed on 20 April 2015 (Addendum to the 'First Report on the post-factum review of the phone conversations made by Mr Ntaganda' (ICC-01/04-

6. On 13 March 2015, after having conducted a preliminary review of the First Registry Report, the Chamber instructed the Registry, in addition to the restrictions already imposed as a result of the Decision on Interim Restrictive Measures, to actively monitor Mr Ntaganda's phone calls ('Order on Active Monitoring').<sup>9</sup>
7. On 29 April 2015, after having received observations from the Defence on redactions to be applied to the First Registry Report,<sup>10</sup> the Chamber decided to make the report available to the Prosecution, subject to certain redactions deemed appropriate by the Chamber ('Decision on the First Registry Report').<sup>11</sup>
8. On 22 May 2015, the Registry submitted its second report on the *post-factum* review ('Second Registry Report', together with the First Registry Report referred to as 'Registry Reports').<sup>12</sup>
9. On 9 June 2015, the VWU filed a report on 'potential interferences with some Prosecution witnesses and other individuals',<sup>13</sup> which was subsequently made available to the Prosecution<sup>14</sup> and the Defence.<sup>15</sup>

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02/06-504-Conf-Exp), ICC-01/04-02/06-563-Conf-Exp, with annexes 1-3. On 24 April 2015, a corrigendum was filed as ICC-01/04-02/06-563-Conf-Exp-Corr) ('Registry Addendum').

<sup>9</sup> Order instructing the Registry to put in place additional temporary restrictions on contact, 13 March 2015, ICC-01/04-02/06-508-Conf-Exp, para. 7 and disposition.

<sup>10</sup> Observations on behalf of Mr Ntaganda on the *post-factum* review of the phone conversations made by Mr Ntaganda, 24 March 2015, ICC-01/04-02/06-533-Conf-Exp, with annexes A and B, notified on 25 March 2015. The Defence had been granted an extension of time to file its observations (see Expedited motion on behalf of Mr Ntaganda seeking an extension of time limit to file observations on the First Registry Report on phone conversations, 13 March 2015, notified on 16 March 2015, ICC-01/04-02/06-511-Conf-Exp; E-mail from Legal Officer of the Chamber to the Defence on 16 March 2015 at 13:51 granting the Request). On 22 April 2015, the Defence filed further observations on the Registry Addendum (see E-mail from Legal Officer of the Chamber to the Defence on 20 April 2015 at 16:02 inviting Defence's observations; Observations on behalf of Mr Ntaganda on the Addendum to the First Report on the *post-factum* review of the phone conversations made by Mr Ntaganda, ICC-01/04-02/06-568-Conf-Exp. A corrigendum was filed on 23 April 2015, ICC-01/04-02/06-568-Conf-Exp-Corr).

<sup>11</sup> Decision on reclassification of the Registry's report on *post-factum* review, ICC-01/04-02/06-578-Conf-Exp.

<sup>12</sup> Second Report on the *post-factum* review of the phone conversations made by Mr Ntaganda, 22 May 2015, ICC-01/04-02/06-607-Conf-Exp.

<sup>13</sup> Victims and Witnesses Unit's report on potential interferences with some Prosecution witnesses and other individuals, ICC-01/04-02/06-634-Conf-Exp.

<sup>14</sup> E-mail from Legal Officer of the Chamber to Registry on 17 June 2015 at 11:17, instructing the Registry to make the VWU Report available to the Prosecution; E-mail from Registry to Chamber on 17 June 2015 at 12:29, indicating that the report had been made available to the Prosecution. The Prosecution, upon the Chamber's

10. Also on 9 June 2015, on the basis of its assessment of the First Registry Report, the Prosecution submitted a further request seeking, *inter alia*, that: i) the Chamber prohibit any live non-privileged phone calls to Mr Ntaganda until the conclusion of the testimony of the Prosecution's insider witnesses or that his contacts be limited to pre-recorded messages on a recording device subject to monitoring; ii) that the Chamber restrict all telephone calls by any individual at the Detention Centre to certain named individuals; and iii) the Prosecution be informed of any calls that the Registry had to terminate in the course of the active monitoring conducted ('Request for Further Restrictions').<sup>16</sup>
11. On 12 June 2015, the Registry filed a report about an incident that occurred during the active monitoring of Mr Ntaganda's phone calls ('Incident Report'), when the Chief Custody Officer at the Detention Centre had terminated a call due to suspected use of coded language.<sup>17</sup>
12. On 29 June 2015, the Chamber issued the 'Order imposing interim restrictions on detainees' contacts with certain individuals and related measures', in which it directed the Registry, *inter alia*, to immediately restrict all telephone calls by any individual at the Detention Centre with certain named persons ('Named Individuals') on the basis that the Named Individuals had been implicated in allegations of witness interference in the *Ntaganda* case, including the

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invitation (E-mail from Legal Officer of the Chamber to Prosecution on 17 June 2015 at 12:40), indicated that it did not consider redactions to be necessary before transmission to the Defence (E-mail from Prosecution to Chamber on 18 June 2015 at 17:13).

<sup>15</sup> E-mail from Legal Officer of the Chamber to Registry on 18 June 2015 at 17:59, instructing it to make the VWU Report available to the Defence; E-mail from Registry to Chamber on 19 June 2015 at 11:50, indicating that the report had been made available to the Defence.

<sup>16</sup> Prosecution request for further restrictions to the Accused's communications, ICC-01/04-02/06-635-Conf-Exp (notified on 10 June 2015), in particular paras 1, 7, 44 and 50. A confidential *ex parte* – available to the Prosecution, Defence and Registry – redacted version was filed on 10 June 2015 (ICC-01/04-02/06-635-Conf-Red) (notified on 11 June 2015). In accordance with Chamber's '[d]ecision on requests pertaining to LRVs' access to certain filings', 15 July 2015, ICC-01/04-02/06-722-Conf, a confidential redacted version was filed on 28 July 2015 (ICC-01/04-02/06-635-Conf-Red3).

<sup>17</sup> Report on an incident that occurred during the active monitoring of M. Ntaganda's telephone communications, ICC-01/04-02/06-640-Conf-Exp.

dissemination of confidential information ('Interim Order on Restrictions').<sup>18</sup> The Chamber deferred its consideration of such restrictions with respect to Mr Ntaganda.

13. On 3 July 2015, the Chamber issued an order in which it, *inter alia*, directed the Registry to cease the *post-factum* review and prepare a third and final report to be provided to the VWU, containing any reviews conducted since the submission of the Second Report, and inviting the parties to file consolidated submissions on the matter of restrictions on Mr Ntaganda's contacts ('Order of 3 July 2015').<sup>19</sup> In the same order, the Chamber set the deadline for the Prosecution's and Defence's final submissions as, respectively, 21 and 30 July 2015.<sup>20</sup>
14. On 10 July 2015, after having received observations from the Defence on redactions to be applied to the Second Registry Report,<sup>21</sup> the Chamber reclassified the report, instructing the Registry to apply certain redactions the Chamber deemed appropriate ('Decision on the Second Registry Report').<sup>22</sup>
15. On 13 July 2015, in accordance with the deadline set in the Order of 3 July 2015,<sup>23</sup> the Registry filed a report on the active monitoring of Mr Ntaganda's phone

<sup>18</sup> ICC-01/04-02/06-683-Conf-Exp, available to the Prosecution and the Registry. Two redacted versions [REDACTED] were filed on 30 June 2015 (ICC-01/04-02/06-683-Conf-Exp-Red and ICC-01/04-02/06-683-Conf-Exp-Red2).

<sup>19</sup> Order requesting final submissions on restrictions on Mr Ntaganda's contacts and related matters, ICC-01/04-02/06-697-Conf-Exp. A confidential *ex parte* – available to the Prosecution, Defence and Registry – redacted version was issued on the same day (ICC-01/04-02/06-697-Conf-Exp-Red).

<sup>20</sup> Order of 3 July 2015, ICC-01/04-02/06-697-Conf-Exp-Red, disposition.

<sup>21</sup> Observations on behalf of Mr Ntaganda on the Second Report on the *post-factum* review of the phone conversations made by Mr Ntaganda, 4 June 2015, ICC-01/04-02/06-625-Conf-Exp and one confidential and *ex parte* Annex, available to the Chamber the Registry and the Defence.

<sup>22</sup> Decision on reclassification of the second Registry's report on post-factum review, 10 July 2015, ICC-01/04-02/06-710-Conf-Exp. A confidential, *ex parte* available to the Prosecution, was filed on the same day (ICC-01/04-02/06-710-Conf-Exp-Red). Annexes 9 and 15 to the Second Registry Report were reclassified on 13 July 2015; the redacted version of the Second Registry Report and its other annexes were notified to the Prosecution on 16 July 2015 (ICC-01/04-02/06-607-Conf-Exp-Red2) as well as the redacted version of annex 7 to the First Registry Report ICC-01/04-02/06-504-Conf-Exp-Anx7-Red). On 21 July 2015, a corrected version of annex 5 to the Second Registry Report was filed (ICC-01/04-02/06-607-Conf-Exp-Anx5-Red-Corr).

<sup>23</sup> Order of 3 July 2015, ICC-01/04-02/06-697-Conf-Exp-Red, para. 12 and disposition.

calls ('Report on Active Monitoring'),<sup>24</sup> which was made available in redacted form to the Prosecution, together with the Incident Report, on 16 July 2015.<sup>25</sup>

16. On 16 July 2015, the Prosecution filed observations on the current restrictions on detainee communications to the Named Individuals, arguing that they ought to remain in place on the basis that they are 'necessary, minimally intrusive, and proportionate to address the compelling interest of preventing further dissemination of confidential information and preventing suspected witness interference'.<sup>26</sup>
17. On 21 July 2015, the Prosecution filed its final observations on restrictions on Mr Ntaganda's contacts, reiterating that the further restrictions sought, namely the prohibition of any live contacts until the conclusion of the testimony of insider witnesses, should be imposed on Mr Ntaganda ('Prosecution Final Observations').<sup>27</sup>
18. On 27 July 2015, the Registry filed its third and final report on the *post-factum* review of Mr Ntaganda's phone conversations, available to the Chamber and VWU only.<sup>28</sup>

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<sup>24</sup> Report on the Active Monitoring Review of Mr Ntaganda's Telephone Conversations pursuant to Trial Chamber VI's Order ICC-01/04-02/06-697 dated 3 July 2015, ICC-01/04-02/06-714-Conf-Exp.

<sup>25</sup> On 16 July 2015, by way of e-mail the Chamber instructed the Registry to make the Incident Report, excluding its annexes, and the Report on Active Monitoring, including its annex in redacted form, available to the Prosecution (E-mail from a Legal Officer of the Chamber to Registry on 16 July 2015 at 10:46). That same day, the Registry informed the Chamber that the instruction had been implemented (E-mail from Registry to Chamber on 16 July 2015 at 12:29).

<sup>26</sup> Prosecution additional observations for further restrictions to detainee communications, ICC-01/04-02/06-727-Conf-Exp, only available to the Prosecution and the Registry. [REDACTED].

<sup>27</sup> Prosecution final observations on the need for further restrictions to NTAGANDA's contacts, ICC-01/04-02/06-738-Conf-Exp.

<sup>28</sup> Third Report on the *post-factum* review of the phone conversations made by Mr Ntaganda, ICC-01/04-02/06-748-Conf-Exp ('Third Registry Report'). The Chamber recalls that it did not find it 'necessary for the purposes of this litigation for the parties to be provided with the Third Registry Report' (Order of 3 July 2015, ICC-01/04-02/06-697-Conf-Exp, para. 12), which therefore was 'to be made available only to the VWU'. The Chamber's intention in providing the VWU with the Third Registry Report was to allow this unit to assess whether the content of the report would require it to take any action in relation to the witnesses in its care, or any other witnesses. The Chamber notes that the Registry filed the report on an ex parte, Chamber and VWU only, basis. It clarifies here that it has not taken note of the Third Registry Report for the purposes of the present decision.



19. On 3 August 2015, after having been granted a limited extension of time<sup>29</sup> following the disclosure of the audio-recordings of the *post-factum* review,<sup>30</sup> the Defence filed its response ('Defence Final Observations').<sup>31</sup> It opposes the Prosecution's request that further restrictions be put in place and instead requests for the active monitoring to continue 'to preclude any further unfounded and potentially prejudicial allegations' against Mr Ntaganda, but to limit his calls to three specific individuals. In addition, the Defence requests to increase Mr Ntaganda's current one hour of monitored calls per week to three hours.<sup>32</sup> It further requests that all further disclosure be made to an *amicus curiae*, rather than to the Prosecution, and that any further litigation be referred to a pre-trial chamber.<sup>33</sup>
20. On 11 August 2015, the Prosecution sought leave to reply to the Defence Final Observations on five issues.<sup>34</sup> Having been granted leave to reply on two of the

<sup>29</sup> Decision on the Defence request for variation of time limit for submissions on restrictions to Mr Ntaganda's contacts, ICC-01/04-02/06-739-Conf-Exp, paras 15-16. See also Request on behalf of Mr Ntaganda seeking a variation of time limit to file the Defence consolidated response on the requested restrictions on Mr Ntaganda's communications with non-privileged contacts, 9 July 2015, ICC-01/04-02/06-707-Conf-Exp; Prosecution Response to the 'Request on behalf of Mr Ntaganda seeking a variation of time limit to file the Defence consolidated response on the requested restrictions on Mr Ntaganda's communications with non-privileged contacts', 15 July 2015, ICC-01/04-02/06-724-Conf-Exp; Application on behalf of Mr Ntaganda seeking leave to reply to the 'Prosecution Response to the "Request on behalf of Mr Ntaganda seeking a variation of time limit to file the Defence consolidated response on the requested restrictions on Mr Ntaganda's communications with non-privileged contacts"', 20 July 2015, ICC-01/04-02/06-733-Conf-Exp.

<sup>30</sup> On 21 July 2015, the Chamber instructed the Registry to disclose the audio-recordings forthwith to the Defence (E-mail from Legal Officer of the Chamber to Registry on 21 July 2015 at 9:17). See also Expedited Request for Disclosure of Audio-Recordings of Non-Privileged Telephone Calls of Mr Ntaganda, 15 July 2015, ICC-01/04-02/06-719-Conf-Exp. On the same day, the Chamber, by way of e-mail, shortened the deadline for response to 20 July 2015 (E-mail from Legal Officer of the Chamber to Prosecution on 15 July 2015 at 15:51). On 20 July 2015, the Prosecution responded indicating that it does not oppose the request (Prosecution's Response to the Defence's 'Expedited Request for Disclosure of Audio-Recordings of Non-privileged Telephone Calls of Mr. Ntaganda', ICC-01/04-02/06-735-Conf-Exp). On 22 July 2015, the audio-recordings were disclosed (Annex 1 to Notice of transmission of audio recordings relating to the annexes to the Registry's First and Second reports on *post factum* review (ICC-01/04-02/06-504-Conf-Exp and ICC-01/04-02/06-607-Conf-Exp) pursuant to Trial Chamber VI instructions dated 21 July 2015, 23 July 2015 (notified on 24 July 2015), ICC-01/04-02/06-743-Conf-Exp.

<sup>31</sup> Final Observations on Prosecution Requests for Restrictions on Mr Ntaganda's Communications, ICC-01/04-02/06-759-Conf-Exp. A confidential redacted *ex parte* – Prosecution, Defence and Registry – version was filed on the same day and notified on 4 August 2015 (ICC-01/04-02/06-759-Conf-Exp-Red).

<sup>32</sup> Defence Final Observation, ICC-01/04-02/06-759-Conf-Exp-Red, paras 1, 5 and 83.

<sup>33</sup> Defence Final Observation, ICC-01/04-02/06-759-Conf-Exp-Red, paras 5 and 83.

<sup>34</sup> Prosecution request to file a reply to the Defence's "Confidential Redacted Version of 'Final Observations on Prosecution Requests for Restrictions on Mr Ntaganda's Communications', 3 August 2015, ICC-01/04-02/06-759-Conf-Exp", ICC-01/04-02/06-759-Conf-Exp-Red", ICC-01/04-02/06-775-Conf-Exp.

issues,<sup>35</sup> the Prosecution filed its reply on 13 August 2015 ('Prosecution Reply to Final Observations').<sup>36</sup>

*Prosecution request for public redacted versions of decisions pertaining to the restrictions litigation*

21. On 15 July 2015, the Prosecution filed a motion<sup>37</sup> requesting the Chamber to order the parties to file public redacted versions of the submissions made in the context of the litigation on Mr Ntaganda's restrictions on contacts and to issue public redacted versions of several decisions and orders that were rendered in the course of it ('Publicity Request').
22. On 6 August 2015, the Defence filed its response ('Response to Publicity Request'), in which it agreed with the Prosecution on the importance of having public redacted versions of the filings of the restrictions' litigation.<sup>38</sup> It therefore does not oppose the request, but requests the Chamber to provide certain clarifications and to allow the parties sufficient time to apply any redactions to their earlier submissions.<sup>39</sup>

## **II. Submissions**

### **A. Prosecution's requests to impose restrictions on Mr Ntaganda's contacts**

*Prosecution Submissions*

23. In the Request for Restrictive Measures, the Prosecution alleged incidents of intimidation and threatening of certain Prosecution witnesses, as well as their

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<sup>35</sup> E-mail from Legal Officer of the Chamber to Prosecution on 12 August 2015 at 16:42, setting the deadline for the reply for 13 August 2015.

<sup>36</sup> Prosecution reply to the Defence's "Confidential Redacted Version of 'Final Observations on Prosecution Requests for Restrictions on Mr Ntaganda's Communications', 3 August 2015, ICC-01/04-02/06-759-Conf-Exp", ICC-01/04-02/06-759-Conf-Exp-Red, ICC-01/04-02/06-780-Conf-Exp.

<sup>37</sup> Prosecution's request for public redacted versions of filings and decisions on allegations of witness interference, ICC-01/04-02/06-725-Conf-Exp.

<sup>38</sup> Response on behalf of Mr Ntaganda to 'Prosecution's request for public redacted versions of filings and decisions on allegations of witness interference', ICC-01/04-02/06-770-Conf-Exp.

<sup>39</sup> Response to Publicity Request, ICC-01/04-02/06-770-Conf-Exp, paras 22-28 and page 11.

family members, by [REDACTED] allegedly close to him.<sup>40</sup> The Prosecution submitted that the witnesses were urged to recant and cease cooperation with the Court, and their families pressured with phone calls and text messages, resulting in fear and concerns for their security.<sup>41</sup> The Prosecution further submitted that the incidents related to two of the witnesses 'strongly suggest' that relatives and associates of Mr Ntaganda are aware of confidential information, including information contained in confidential transcripts of witness interviews.<sup>42</sup> As to what qualifies as 'confidential', the Prosecution refers to Regulation 14(b) of the Regulations of Registry, which states that it is 'not to be disclosed to the public'.<sup>43</sup> The Prosecution submits that Mr Ntaganda 'has long been aware that he is under an obligation not to disclose the identity of Prosecution witnesses or any witnesses for whom [Regulation 42 of the Regulations] is in effect'.<sup>44</sup>

24. In its final observations, the Prosecution submits that the Registry Reports confirm that Mr Ntaganda: (i) breached the Detention Centre policy in that he made extensive use of coded language, spoke with non-registered callers, instructed his contacts to use the same codes and/or to use languages that are not spoken by the staff of the Detention Centre;<sup>45</sup> (ii) disclosed confidential information to his contacts, in particular to [REDACTED], including identifying information of certain protected witnesses;<sup>46</sup> (iii) instructed his associates to

<sup>40</sup> Request for Restrictive Measures, ICC-01/04-02/06-349-Conf-Red, paras 1-2.

<sup>41</sup> Request for Restrictive Measures, ICC-01/04-02/06-349-Conf-Red, paras 15-41.

<sup>42</sup> Request for Restrictive Measures, ICC-01/04-02/06-349-Conf-Red, paras 26 and 36. See also the clarification provided in footnote 7 of Prosecution's Submission of Additional Evidence in Support of "Prosecution's urgent request for measures under Regulation 101(2) of the Regulations of the Court" dated 8 August 2014, 18 September 2014, ICC-01/04-02/06-371-Conf-Exp.

<sup>43</sup> Prosecution Reply to Final Observations, ICC-01/04-02/06-780-Conf-Exp, para. 9.

<sup>44</sup> Prosecution Reply to Final Observations, ICC-01/04-02/06-780-Conf-Exp, para. 13. The Prosecution refers to the fact that a protocol on the handling of confidential information was in force in this case since 17 December 2013 and that Pre-Trial Chamber II issued written decisions, 'as early as July 2013', indicating that certain witnesses 'were subject to protective measures ordered in a previous case' (Prosecution Reply to Final Observations, ICC-01/04-02/06-780-Conf-Exp, paras 6, 7 and 10).

<sup>45</sup> Request for Further Restrictions, ICC-01/04-02/06-635-Conf-Red-Exp, in particular paras 2, 5(b) and 29; Prosecution Final Observations, ICC-01/04-02/06-738-Conf-Exp, paras 2, 26-27

<sup>46</sup> Request for Further Restrictions, ICC-01/04-02/06-635-Conf-Red-Exp, paras 1-2, 5(c) 28 and 31-39; Prosecution Final Observations, ICC-01/04-02/06-738-Conf-Exp, paras 2, 24, 26.

contact witnesses, interfere with them and even coach them;<sup>47</sup> and (iv) is willing to fabricate evidence.<sup>48</sup> According to the Prosecution, as the conversations reviewed by the Registry represent 'a fraction' of the calls made by Mr Ntaganda from the Detention Centre, 'the available information, combined with the information independently collected by the Prosecution, is fragmented in nature and cannot provide a full picture of [Mr Ntaganda's] involvement in suspected witness interference'.<sup>49</sup>

25. The Prosecution further alleges that the Report on Active Monitoring shows that Mr Ntaganda has continued to use coded language to circumvent the restrictions imposed on him as a result of the Order on Active Monitoring.<sup>50</sup> It submits that Mr Ntaganda's attempts to do so have sometimes been missed by the Registry, in particular when he: (i) used terms that were already identified by the Registry as code in the First Registry Report;<sup>51</sup> and (ii) referred to individuals already identified as having violated the Detention Centre policy and as being part of the alleged witness' interference scheme.<sup>52</sup>
26. The Prosecution submits that the restrictions currently in place are not sufficient to prevent Mr Ntaganda from giving instructions to [REDACTED] and associates, *inter alia*, for the purpose of interfering with witnesses.<sup>53</sup> The further restrictions that the Prosecution requests the Chamber to put in place include the restriction of all of Mr Ntaganda's non-privileged visits and phone calls until the conclusion of the testimony of the Prosecution's insider witnesses, or, alternatively, that Mr Ntaganda's communication be limited to pre-recorded

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<sup>47</sup> Request for Further Restrictions, ICC-01/04-02/06-635-Conf-Red-Exp, paras 28, 30 and 40-41; Prosecution Final Observations, ICC-01/04-02/06-738-Conf-Exp, paras 2, 26 and 29-32.

<sup>48</sup> Prosecution Final Observations, ICC-01/04-02/06-738-Conf-Exp, paras 2 and 33.

<sup>49</sup> Request for Further Restrictions, ICC-01/04-02/06-635-Conf-Red, para. 29.

<sup>50</sup> Prosecution Final Observations, ICC-01/04-02/06-738-Conf-Exp, paras 3 and 34.

<sup>51</sup> Prosecution Final Observations, ICC-01/04-02/06-738-Conf-Exp, paras 3, 35-37.

<sup>52</sup> Prosecution Final Observations, ICC-01/04-02/06-738-Conf-Exp, paras 3, 35 and 38.

<sup>53</sup> Prosecution Final Observations, ICC-01/04-02/06-738-Conf-Exp, paras 1-2 and 41-45.

messages that are subject to monitoring.<sup>54</sup> In this regard, the Prosecution had indicated that it intends to call the insider witnesses [REDACTED] and that the measure consequently 'will only be for [REDACTED].<sup>55</sup> Finally, the Prosecution requests to be informed of any termination of Mr Ntaganda's phone calls 'on the basis of inappropriate transmission of confidential information or use of coded language'.<sup>56</sup>

27. In the Reply to Final Observations, the Prosecution argues that it is not necessary to appoint an *amicus curiae* to provide any further information deriving from the monitoring of Mr Ntaganda, as 'no issues of privilege' arise from the recording of Mr Ntaganda's non-privileged calls.<sup>57</sup>

#### *Defence Submissions*

28. The Defence opposes the Prosecution's request that additional restrictions be imposed on Mr Ntaganda's contacts. It submits that the reporting on the active monitoring does not suggest any attempt on the part of Mr Ntaganda to reveal protected witness information or to circumvent the restrictions imposed.<sup>58</sup> It avers that the Report on Active Monitoring demonstrates that Mr Ntaganda 'proactively' directed his interlocutors not to use any codes.<sup>59</sup>

29. The Defence submits that the record of Mr Ntaganda's phone conversations is not accurate or reliable enough to substantiate the Prosecution's allegations.<sup>60</sup> It further argues that the fact that Mr Ntaganda spoke to unregistered

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<sup>54</sup> Request for Further Restrictions, ICC-01/04-02/06-635-Conf-Red, paras 7, 46-50; Prosecution Final Observations, ICC-01/04-02/06-738-Conf-Exp, paras 1-4, 23 and 42-46.

<sup>55</sup> Request for Further Restrictions, ICC-01/04-02/06-635-Conf-Red, para. 47. However, the Chamber notes in this regard that the Prosecution lists 19 witnesses as 'insider witnesses'.

<sup>56</sup> Request for Further Restrictions, ICC-01/04-02/06-635-Conf-Red, para. 3; see also Prosecution Final Observations, ICC-01/04-02/06-738-Conf-Exp, para. 44, where the Prosecution states that it 'maintains its request to be informed of any telephone calls that the Registry has terminated', but slightly modifies the request by adding that it wishes to be informed of 'the basis therefor'.

<sup>57</sup> Prosecution Reply to Final Observations, ICC-01/04-02/06-780-Conf-Exp, para. 16.

<sup>58</sup> Defence Final Observations, ICC-01/04-02/06-759-Conf-Exp-Red, para. 25.

<sup>59</sup> Defence Final Observations, ICC-01/04-02/06-759-Conf-Exp-Red, paras 25 and 30.

<sup>60</sup> Defence Final Observations, ICC-01/04-02/06-759-Conf-Exp-Red, paras 73-75.

interlocutors does not warrant measures of the level of those requested by the Prosecution.<sup>61</sup> The Defence submits that whilst Regulation 101(2) of the Regulations allows for placing certain restrictions on the communication of detainees with the outside world, such an imposition of restrictions ‘abridges important human rights’,<sup>62</sup> and therefore should not be imposed lightly; and that restrictive measures, as well as any extensions thereto, should continue to be ‘absolutely necessary’.<sup>63</sup>

30. As to the three incidents reported in the Incident Report and in the Report on Active Monitoring, the Defence submits that they occurred in the context of conversations on family and general issues and had nothing to do with the case against Mr Ntaganda. Moreover, it submits that Mr Ntaganda appropriately reacted to the use of codes by his interlocutors by instructing them to refrain from doing so.<sup>64</sup> The Defence contests the Registry’s and the Prosecution’s interpretation of the words used during these conversations as ‘codes’.<sup>65</sup>
31. The Defence submits that Mr Ntaganda’s past behaviour is outweighed by his ‘impeccable conduct’ since the imposition of active monitoring and refers to the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* (*Katanga and Ngudjolo case*), in which Trial Chamber II took into account the behaviour of the relevant accused during a period of active monitoring to lift certain restrictions previously imposed on the basis of past misconduct.<sup>66</sup> Although it submits that ‘[t]he current surveillance regime is unnecessary and unjustified’,<sup>67</sup> the Defence requests that active monitoring be maintained as a safeguard against allegations of misconduct. However, it asks that the calls subject to active monitoring be

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<sup>61</sup> Defence Final Observations, ICC-01/04-02/06-759-Conf-Exp-Red, para. 76.

<sup>62</sup> Defence Final Observations, ICC-01/04-02/06-759-Conf-Exp-Red, paras 14-15, referring to Rule 37 of the United Nations Standard minimum Rules for Treatment of Prisoners and Principle 19 of The Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment.

<sup>63</sup> Defence Final Observations, ICC-01/04-02/06-759-Conf-Exp-Red, para. 16 (emphasis omitted).

<sup>64</sup> Defence Final Observations, ICC-01/04-02/06-759-Conf-Exp-Red, para. 25.

<sup>65</sup> Defence Final Observations, ICC-01/04-02/06-759-Conf-Exp-Red, paras 26-28.

<sup>66</sup> Defence Final Observations, ICC-01/04-02/06-759-Conf-Exp-Red, paras 31-34.

<sup>67</sup> Defence Final Observations, ICC-01/04-02/06-759-Conf-Exp-Red, para. 5.

expanded to three hours a week and suggested that they could be limited to three specific individuals ('Proposed Contacts').<sup>68</sup> The Defence further requests that family and conjugal visits be permitted 'with any modality of surveillance deemed fit and appropriate'.<sup>69</sup>

32. As to the Prosecution allegations with respect to Mr Ntaganda's conduct in 2014, the Defence submits that the Prosecution fails to explain why and on what basis Mr Ntaganda would be prohibited from discussing with non-privileged contacts what the Prosecution refers to as 'confidential case information'.<sup>70</sup> With respect to the identity of protected witnesses, the Defence notes that the decisions establishing these measures were rendered orally in a previous case.<sup>71</sup> It avers that these decisions, pursuant to Regulation 42(1) of the Regulations, only apply if the relevant persons have been designated as witnesses in the present case and that there is no prohibition on an accused discussing potential witnesses with non-privileged contacts.<sup>72</sup>
33. The Defence further opposes the allegation that Mr Ntaganda used coded language and argues that its use is neither prohibited by the Court's rules on detention, nor indicative of any attempt to disclose confidential information. Instead, the Defence argues that in Kinyarwanda it is common to use codes or speak in metaphors, and that Mr Ntaganda's use of allegedly coded language could be attributable to other purposes, including an attempt to conceal potential financial resources from the Registry and the fear that third parties could intercept the conversations.<sup>73</sup> The Defence further provides a different explanation for certain alleged uses of codes, arguing that the meaning or the

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<sup>68</sup> Defence Final Observations, ICC-01/04-02/06-759-Conf-Exp-Red, paras 35-36.

<sup>69</sup> Defence Final Observations, ICC-01/04-02/06-759-Conf-Exp-Red, para. 83.

<sup>70</sup> Defence Final Observations, ICC-01/04-02/06-759-Conf-Exp-Red, paras 17-18.

<sup>71</sup> Defence Final Observations, ICC-01/04-02/06-759-Conf-Exp-Red, para. 19.

<sup>72</sup> Defence Final Observations, ICC-01/04-02/06-759-Conf-Exp-Red, paras 19-22.

<sup>73</sup> Defence Final Observations, ICC-01/04-02/06-759-Conf-Exp-Red, paras 37-39.

context was misunderstood by the Prosecution and/or the Registry.<sup>74</sup> The Defence specifically objects to the Prosecution's allegations that Mr Ntaganda disclosed [REDACTED] and [REDACTED] identities,<sup>75</sup> but acknowledges that Mr Ntaganda mentioned the identity of two Prosecution witnesses. In this regard, the Defence submits that he: i) referred to [REDACTED] only after having been informed by his interlocutor that this person was a witness;<sup>76</sup> and ii) disclosed [REDACTED] identity solely to [REDACTED], who was already aware of that person's role as a Prosecution witness.<sup>77</sup>

34. Finally, the Defence requests that any further information derived from the monitoring of detention communications be provided exclusively to an *amicus curiae* and that any further adjudication on the Prosecution's allegations be referred to a pre-trial chamber, to prevent further prejudice to Mr Ntaganda's defence.<sup>78</sup>

## **B. Request for public redacted filings**

35. The Prosecution requests that, in view of the principle of publicity, the Chamber issue public redacted versions of six decisions pertaining to 'alleged witness interference' that were rendered on a confidential *ex parte* basis.<sup>79</sup> The Prosecution further requests that the parties be ordered to file public redacted versions of the filings that underlie these decisions, 'without redaction to the allegations of witness interference or the measures in place to address these

<sup>74</sup> Defence Final Observations, ICC-01/04-02/06-759-Conf-Exp-Red, paras 58-72. See also Annex A to Defence Response (ICC-01/04-02/06-759-Conf-Exp-AnxA).

<sup>75</sup> Defence Final Observations, ICC-01/04-02/06-759-Conf-Exp-Red, paras 41-50.

<sup>76</sup> Defence Final Observations, ICC-01/04-02/06-759-Conf-Exp-Red, paras 51-54.

<sup>77</sup> Defence Final Observations, ICC-01/04-02/06-759-Conf-Exp-Red, paras 55-57.

<sup>78</sup> Defence Final Observations, ICC-01/04-02/06-759-Conf-Exp-Red, paras 77-81.

<sup>79</sup> The Prosecution requests public redacted versions of the following decisions: ICC-01/04-02/06-410-Conf-Exp-Corr, ICC-01/04-02/06-459-Conf-Exp, ICC-01/04-02/06-508-Conf-Exp, ICC-01/04-02/06-578-Conf-Exp, ICC-01/04-02/06-667-Conf-Exp, and ICC-01/04-02/06-710-Conf-Exp-Red. The Chamber notes that five of these decisions relate to the litigation that preceded the present decision, but that filing ICC-01/04-02/06-667-Conf-Exp pertains to matter that is subject to separate litigation, which was ruled upon in a separate decision of the Chamber: [REDACTED].



allegations’,<sup>80</sup> but with redaction of information identifying those alleged to be interfering with witnesses, as this information could reveal the witnesses’ identities.<sup>81</sup>

36. The Prosecution submits that the need for public redacted versions arises because some information about witness interference and restrictions placed on Mr Ntaganda’s contact are already in the public domain<sup>82</sup> and because there is a need to clarify for the public the reasons the trial commencement date was postponed.<sup>83</sup> In addition, it submits that in other cases before the Court, information on witness interference has been made publicly available,<sup>84</sup> and that such public information ‘could contribute to the deterrence of any attempts at witness interference in the present case and possibly other cases’.<sup>85</sup> According to the Prosecution, it is important that witnesses, victims and the public are informed that the issue of witness interference has been addressed by the Chamber.<sup>86</sup>
37. The Defence does not oppose the Publicity Request for it believes the principle of publicity of proceedings to be important.<sup>87</sup> However, it submits that the Prosecution has not identified any cogent reasons to justify making the relevant filings public at this moment in time. It further contests the extent to which information on witness interference is in the public domain.<sup>88</sup>
38. The Defence submits that any reclassification of the filings concerned should be subject to certain conditions. It asks that the Chamber, when issuing public redacted versions of its decisions, identify which filings it considers to underlie

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<sup>80</sup> Publicity Request, ICC-01/04-02/06-725-Conf-Exp, para. 2.

<sup>81</sup> Publicity Request, ICC-01/04-02/06-725-Conf-Exp, paras 2 and 36.

<sup>82</sup> Publicity Request, ICC-01/04-02/06-725-Conf-Exp, paras 39-44.

<sup>83</sup> Publicity Request, ICC-01/04-02/06-725-Conf-Exp, paras 45-48.

<sup>84</sup> Publicity Request, ICC-01/04-02/06-725-Conf-Exp, paras 3 and 49-50.

<sup>85</sup> Publicity Request, ICC-01/04-02/06-725-Conf-Exp, paras 4 and 51-53.

<sup>86</sup> Publicity Request, ICC-01/04-02/06-725-Conf-Exp, paras 4 and 53.

<sup>87</sup> Publicity Request, ICC-01/04-02/06-770-Conf-Exp, paras 2 and 10.

<sup>88</sup> Response to Publicity Request, ICC-01/04-02/06-770-Conf-Exp, paras 22-25. See further paras 26-27.

each of the decisions, and what information in these filings must be redacted.<sup>89</sup> In this regard, the Defence submits that there is no compelling reason to redact the information identifying those allegedly interfering with witnesses, and consequently opposes this part of the Prosecution's request.<sup>90</sup> In light of the 'heavy workload' prior to the start of trial, the Defence requests that the parties be given sufficient time to apply any necessary redactions to their filings.<sup>91</sup>

### III. Applicable law

39. The Chamber recalls that a detained person is entitled to, *inter alia*, 'communicate by letter or telephone with his or her family and other persons', and 'receive visits'.<sup>92</sup> These entitlements are not absolute and are subject to 'any restrictions necessary in the interests of the administration of justice or for the maintenance of the security and good order of the detention centre' as set out in the Regulations of the Registry.<sup>93</sup> Access to forms of communication, including visits and phone calls,<sup>94</sup> can further be limited by the Chamber pursuant to Regulation 101 of the Regulations, which provides in its second paragraph that

[t]he Prosecutor may request the Chamber seized of the case to prohibit, regulate or set conditions for contact between a detained person and any other person, with the exception of counsel, if the Prosecutor has reasonable grounds to believe that such contact:

- (a) Is for the purposes of attempting to arrange the escape of a detained person from the detention centre;
- (b) Could prejudice or otherwise affect the outcome of the proceedings against a detained person, or any other investigation;
- (c) Could be harmful to a detained person or any other person;

<sup>89</sup> Response to Publicity Request, ICC-01/04-02/06-770-Conf-Exp, paras 2 and 10.

<sup>90</sup> Response to Publicity Request, ICC-01/04-02/06-770-Conf-Exp, paras 26-27.

<sup>91</sup> Response to Publicity Request, ICC-01/04-02/06-770-Conf-Exp, para. 28.

<sup>92</sup> Regulations 99(h) and (i) and 100(1) of the Regulations, respectively.

<sup>93</sup> Regulations 99(2) and 100(3) of the Regulations. Chapter 5 of the Regulations of the Registry sets out further specific regulations regarding detention matters, including in respect to correspondence, telephone communications and visits.

<sup>94</sup> Regulations 180(1) and 185 of the Regulations of the Registry.

(d) Could be used by a detained person to breach an order for non-disclosure made by a judge;

(e) Is against the interests of public safety; or

(f) Is a threat to the protection of the rights and freedom of any person.

40. The Chamber considers that the standard of 'reasonable grounds to believe', underpinning the Prosecution's request, can also be appropriately applied to the Chamber's assessment of such a request.

41. In addition to Regulation 101 of the Regulations, Article 68(1) of the Statute mandates the Chamber to take appropriate measures to protect witnesses.

42. The right to privacy and family life is an internationally recognised human rights principle enshrined in a number of important human rights instruments<sup>95</sup> and thus guides the Chamber's interpretation of the Statute by virtue of Article 21(3) of the Statute.<sup>96</sup> The Chamber further notes that, in giving effect to this right, the European Court of Human Rights ('ECtHR') has held that any interference by a public authority with the exercise of the right to respect a detained person's private and family life, as well as correspondence, must be: i) in accordance with the law; ii) necessary, *inter alia*, for the prevention of disorder and crime and the protection of the rights and freedoms of others; and iii) proportionate to the legitimate aim pursued.<sup>97</sup> The Chamber notes that the provisions of the Court legal framework referred to above provide the relevant legal basis to impose the restrictions sought and will therefore in its analysis only assess whether the continuation of current restrictions and/or additional

<sup>95</sup> See Article 17 of the International Covenant on Civil and Political Rights, Article 8 of the European Convention on Human Rights, Article 11 of the American Convention on Human Rights. See also Principle 5 of the Basic Principles for the Treatment of Prisoners.

<sup>96</sup> See *The Prosecutor v. Thomas Lubanga Dyilo*, "Judgment on the Appeal of Mr. Thomas Lubanga Dyilo against the Decision on the Defence Challenge to the Jurisdiction of the Court pursuant to article 19 (2) (a) of the Statute of 3 October 2006", 14 December 2006, ICC-01/04-01/06-772 (OA 4), para. 36.

<sup>97</sup> Decision on Interim Restrictive Measures, ICC-01/04-02/06-410-Conf-Exp-Corr, para. 43, referring to: ECtHR, *Messina v. Italy*, Appl. no. 25498/94, Judgment, 28 September 2000, paras 59-74; ECtHR, *Lavents v. Latvia*, Appl. no. 58442/00, Judgment, 28 November 2002, paras 134-143; ECtHR, *Van der Ven v. The Netherlands*, Appl. no. 50901/99, Judgment, 4 February 2003, paras 64-72; ECtHR, *Kornakovs v. Latvia*, Appl. no. 61005/00, Judgment, 15 June 2006, paras 134-136.

restrictions are necessary and proportionate to the aim previously identified by the Chamber, namely 'to ensure the safety of witnesses, prevent breaches of confidentiality and ensure the integrity of the proceedings'.<sup>98</sup>

## IV. Analysis

### A. Request for restrictions

43. The Chamber recalls that in its Decision on Interim Restrictive Measures, in addition to the provision of information on Mr Ntaganda's contacts and communications prior to the decision and the setting up of a *post-factum* review of his phone calls, the Chamber, as an interim measure, imposed restrictions on Mr Ntaganda's visits regime, in that from that moment onwards he was not permitted to receive any visits apart from those under Regulations 97(2) and 98 of the Regulations and Regulation 178 of the Regulations of the Registry.<sup>99</sup> In its Order on Active Monitoring, the Chamber ordered that these restrictions were to remain in place, pending the litigation on restrictions between the parties, and added further restrictions by imposing a regime of active monitoring of all of Mr Ntaganda's non-privileged phone calls. The active monitoring required these phone calls to be limited to two time-slots per week for a fixed amount of time. In light of the fact that Mr Ntaganda and those registered to contact him had abused the right to communication by allowing non-registered users to speak to Mr Ntaganda without prior approval by the Registry, the Chamber additionally instructed the Registry 'to fully restrict all contact with those persons through whom Mr Ntaganda has breached the Detention Centre's instructions'.<sup>100</sup>

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<sup>98</sup> Decision on Interim Restrictive Measures, ICC-01/04-02/06-410-Conf-Exp-Corr, paras 49-50; and Order on Active Monitoring, ICC-01/04-02/06-508-Conf-Exp, para. 5.

<sup>99</sup> Decision on Interim Restrictive Measures, ICC-01/04-02/06-410-Conf-Exp-Corr, pages 26-28.

<sup>100</sup> Order on Active Monitoring, ICC-01/04-02/06-508-Conf-Exp, para. 7.

44. The imposition of the aforementioned restrictions followed a *prima facie* assessment by the Chamber of, first, the information provided by the Prosecution and second, the information contained in the First Registry Report. The Chamber at the time considered it necessary to impose these restrictions, on an interim basis, to ensure the safety of witnesses, prevent breaches of confidentiality and ensure the integrity of the proceedings.<sup>101</sup> Now, after having received the various reports by the Registry and the final observations and submissions by the parties, the Chamber is in a position to rule on the merits of the requests for restrictions and consider whether continued restrictions, if any, are to be imposed on Mr Ntaganda.<sup>102</sup>
45. At the outset, the Chamber observes that the Registry Reports concern phone conversations that took place over a year ago, had to be translated from Kinyarwanda, Swahili and other languages, and have content that ‘is not ordinary and not easy to understand’.<sup>103</sup> Moreover, the number and length of the conversations required the Registry to summarise parts of them. The transcripts, translations and summaries provided by the Registry therefore leave room for discussion about the correctness of the translations, as well as the way the translated content or summaries of the conversations should be interpreted. Indeed, the Prosecution and the Defence put forward different interpretations of the conversations contained in the Registry Reports. Nevertheless, the Chamber observes that although the Defence contests certain of the Prosecution’s allegations and the Prosecution’s interpretation of conversations and topics discussed, it accepts the veracity of certain of the allegations. For these reasons, the Chamber will focus primarily on those allegations that are not, or are only partially, contested by the Defence.

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<sup>101</sup> Decision on Interim Restrictive Measures, ICC-01/04-02/06-410-Conf-Exp-Corr, paras 49-50; and Order on Active Monitoring, ICC-01/04-02/06-508-Conf-Exp, para. 5.

<sup>102</sup> See Order of 3 July 2015, ICC-01/04-02/06-697-Conf-Exp-Red, paras 11-12.

<sup>103</sup> First Registry Report, ICC-01/04-02/06-504-Conf-Exp, para. 4.

*Unregistered persons*

46. As recalled above, the Chamber has found previously that Mr Ntaganda abused his entitlement to communication by speaking to non-registered interlocutors without prior approval by the Registry. The Defence acknowledges that Mr Ntaganda spoke to unregistered interlocutors.<sup>104</sup>
47. The requirement that detained persons only speak to persons that have been placed on their list of non-privileged contacts by the Registry ensures that communications between detainees and those outside the Detention Centre are subject to a form of oversight. The numerous times Mr Ntaganda circumvented that oversight, even in the limited sample of phone conversations available to the Chamber,<sup>105</sup> is concerning. The Chamber has already shown that it considers this a serious matter, warranting the full restriction of 'all contact with those persons through whom Mr Ntaganda has breached the Detention Centre's instructions'.<sup>106</sup> The Chamber observes that during the reporting period of the active monitoring, Mr Ntaganda has not spoken to such unauthorised interlocutors. Indeed, in the view of the Chamber, active monitoring appears to be the least restrictive way of ensuring that the phone is not passed over to unknown third persons, as described in the Registry Reports.

*Use of coded language*

48. From the Registry Reports it is apparent that Mr Ntaganda wanted his interlocutors to use coded language<sup>107</sup> and, at times, speak in another language, even if Mr Ntaganda himself had trouble expressing himself in that other

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<sup>104</sup> Defence Final Observations, ICC-01/04-02/06-759-Conf-Exp-Red, para. 76.

<sup>105</sup> See, e.g., First Registry Report, ICC-01/04-02/06-504-Conf-Exp, para. 7; and Second Registry Report, ICC-01/04-02/06-607-Conf-Exp, para. 8.

<sup>106</sup> Order on Active Monitoring, ICC-01/04-02/06-508-Conf-Exp, para. 7.

<sup>107</sup> See, e.g., Annex 8 to the First Registry Report, ICC-01/04-02/06-504-Conf-Exp-Anx8-Red, pages 30 and 33.

language.<sup>108</sup> The Defence does not dispute that Mr Ntaganda used such coded language.<sup>109</sup>

49. The Chamber accepts that, as submitted by the Defence, prior to being ordered by the Chamber to refrain from using codes in his communication, Mr Ntaganda was not prohibited *per se* from using coded language in his phone conversations. However, the Chamber considers the Defence's submissions on Mr Ntaganda's reasons for such use to be unconvincing. The Chamber notes, for example, that Kinyarwanda being a language 'in which speaking in metaphors or "codes" is common'<sup>110</sup> does not explain why Mr Ntaganda, on multiple occasions, explicitly referred to the need to speak in codes and inquired whether his interlocutors, including unauthorised third persons who were to be handed the phone, were able to speak in coded language.<sup>111</sup>
50. Furthermore, in the Chamber's view the Defence's submission that coded language was used to conceal 'potential financial resources of Mr Ntaganda's family from the Registry because of a misplaced concern that this would jeopardize legal aid'<sup>112</sup> does not explain Mr Ntaganda's use of codes (or an altogether different language) for conversations that do not appear to relate to financial matters, or for conversations about the proceedings against Mr Ntaganda. In this regard, the Chamber observes that – as submitted by the Defence – it is not inconceivable for someone to suspect that third parties may intercept his phone conversations, but Mr Ntaganda's alleged fear that 'third parties could intercept conversations with telephones in sub-Saharan Africa and

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<sup>108</sup> For example, Mr Ntaganda is reported to have said: 'I just wanted to suggest we talk in RUHIMA language even if I do not speak it well. This is because my calls are monitored and my conversations listened to.' (Annex 1 to Second Registry Report, page 2, lines 59-60). The Registry further reports that the following was said during a conversation: 'UM: Your ruhema is really confusing, mzee [...] BN: I am saying... you will talk to me in KIHHEMA. We reached there... can you tell me how we reached there. When did we go there? How were things when we arrived there? But you respond in KIHHEMA.' (Annex 2 to Second Registry Report, page 2, lines 59-63).

<sup>109</sup> Defence Final Observations, ICC-01/04-02/06-759-Conf-Exp-Red, paras 37-39.

<sup>110</sup> Defence Final Observations, ICC-01/04-02/06-759-Conf-Exp-Red, paras 37-39.

<sup>111</sup> Defence Final Observations, ICC-01/04-02/06-759-Conf-Exp-Red, para. 38.

<sup>112</sup> See, for example, Annex 8 to the First Registry Report, ICC-01/04-02/06-504-Conf-Exp-Anx8-Red, page 33.

<sup>113</sup> Defence Final Observations, ICC-01/04-02/06-759-Conf-Exp-Red, para. 37.

interfere with efforts to identify potential Defence witnesses'<sup>113</sup> cannot explain why he requested his interlocutors to speak in a certain sub-Saharan African language, even when speaking that language was – by his own admission – difficult for Mr Ntaganda to communicate in. The Chamber considers that reasonable grounds exist to believe that Mr Ntaganda used coded language not to shield information from possible interceptors on the end of the interlocutors, but rather to prevent possible interceptors on his end, at the Detention Centre, from understanding the true content of his conversations. On the basis of the information discussed during the conversations in which Mr Ntaganda expressly requested his interlocutors to speak in a different language and/or to use codes, the Chamber finds that reasonable grounds exist to believe that the use of codes was meant to disguise attempts to disclose confidential information or to interfere with witnesses, including – as will be addressed in further detail below – by way of coaching.

*Discussion of identity of Prosecution witnesses and alleged interference*

51. The Defence acknowledges that Mr Ntaganda 'indirectly refers to [REDACTED]'s identity as a Prosecution witness' in a telephone conversation, but 'only did so in the belief that his interlocutors possessed this information already'.<sup>114</sup> However, in the Chamber's view, the – uncontested – summarised translation of the relevant conversation shows that Mr Ntaganda confirms as correct what otherwise may only have been a suspicion about a certain person being a Prosecution witness.<sup>115</sup> The Defence further acknowledges that Mr Ntaganda's belief that it was already known that the relevant person was a Prosecution witness does not excuse the breach of confidentiality, but it submits that Mr Ntaganda at the time had not been instructed how to handle such a situation, nor had he been informed that such conduct would constitute

<sup>113</sup> Defence Final Observations, ICC-01/04-02/06-759-Conf-Exp-Red, para. 37.

<sup>114</sup> Defence Final Observations, ICC-01/04-02/06-759-Conf-Exp-Red, para. 51.

<sup>115</sup> Annex 8 to the First Registry Report, ICC-01/04-02/06-504-Conf-Exp-Anx8-Red, page 35.



revealing of confidential information. Even if this were the case,<sup>116</sup> the Chamber does not consider this to be a mitigating factor, especially in light of the fact that Mr Ntaganda – on the basis of a non-contested translation of a section of that same conversation – appears to have been well aware of the fact that he should not reveal the names of Prosecution witnesses.<sup>117</sup> The Chamber further notes that the seriousness of Mr Ntaganda’s breach of confidentiality is compounded by the fact that during this conversation, in which the relevant Prosecution witness is discussed, the phone is handed over to non-registered persons, who were not authorised to speak to Mr Ntaganda.<sup>118</sup>

52. The Chamber notes the Defence’s submissions that an accused person is neither prohibited from ‘discussing his case in general with his friends and family’, nor from discussing potential or even actual witnesses with non-privileged contacts.<sup>119</sup> It also notes its submissions that having discussed such potential witnesses prior to being informed that these persons are protected Prosecution witnesses would ‘complicate’ matters where it is indicated to interlocutors that those persons can no longer be discussed, from which it may be difficult to avoid disclosure by inference.<sup>120</sup> However, the Chamber notes that with regard to one of the witnesses, for whom the Defence accepts that Mr Ntaganda revealed that witness’s identity, Mr Ntaganda was aware of the fact that this person was a witness almost seven months prior to the conversation concerned.<sup>121</sup> Moreover, regardless of whether or not an accused person

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<sup>116</sup> The Chamber notes that by the time of the breach, the confirmation proceedings, which included witnesses, were taking place. Moreover, Mr Ntaganda had been in the Detention Centre for over ten months by then and had been represented by his (previous) lawyers for that same period.

<sup>117</sup> Annex 8 to the First Registry Report, ICC-01/04-02/06-504-Conf-Exp-Anx8-Red, page 35. Mr Ntaganda is reported to have mentioned to his interlocutor that the confirmation hearing discussed the ‘names of the prosecution witnesses’ and explained that ‘they even mentioned that one whose name I cannot pronounce “here”’.

<sup>118</sup> Annex 8 to the First Registry Report, ICC-01/04-02/06-504-Conf-Exp-Anx8-Red, page 35

<sup>119</sup> Defence Final Observations, ICC-01/04-02/06-759-Conf-Exp-Red, para. 21.

<sup>120</sup> Defence Final Observations, ICC-01/04-02/06-759-Conf-Exp-Red, para. 22.

<sup>121</sup> The Defence accepts, as discussed below, that Mr Ntaganda disclosed the identity of Witness [REDACTED]. Pre-Trial Chamber II had issued a decision that was notified in redacted form to the Defence [REDACTED], in which Witness [REDACTED] is explicitly mentioned as a witness for whom protective measures are in place. [REDACTED].

discusses someone as a potential or actual witness, it is at all times prohibited to interfere with witnesses, or to attempt to do so. The Chamber therefore considers the context, as well as the content of the above discussed conversation during which Mr Ntaganda revealed the identity of a Prosecution witness, albeit indirectly, to be of grave concern. This includes the subject-matter of the conversation, which – according to the, on this point, uncontested translation – was about the present case and, more specifically, Prosecution witnesses. It was in this context that Mr Ntaganda mentioned that ‘everything will collapse if they don’t show up’.<sup>122</sup> The Chamber further observes that Mr Ntaganda expressly wished to speak in codes during this conversation.<sup>123</sup>

53. Although the Defence seeks to minimise the pressure that was reportedly put on the aforementioned witness, the Chamber considers that, irrespective of whether [REDACTED],<sup>124</sup> it is sufficiently clear that the unauthorised interlocutor talks with Mr Ntaganda about the witness potentially testifying and pressure being put on that person in that regard. In addition, and contrary to the Defence’s submission that the *post-factum* review of this phone conversation ‘directly contradicts’ the information provided by the Prosecution in the Request for Restrictive Measures,<sup>125</sup> the Chamber considers that the review, in fact, corroborates the relevant part of the Prosecution’s allegation.<sup>126</sup>

54. As to the other witness for whom the Defence acknowledges that Mr Ntaganda informed his interlocutor about the witness’s identity,<sup>127</sup> the Chamber considers that the content of the Defence’s submissions – namely that there is no indication that Mr Ntaganda referred to this witness’s identity ‘to anyone other than his interlocutor, ‘who was already well aware [...] that [this person] was a

<sup>122</sup> Annex 8 to the First Registry Report, ICC-01/04-02/06-504-Conf-Exp-Anx8-Red, page 35.

<sup>123</sup> Annex 8 to the First Registry Report, ICC-01/04-02/06-504-Conf-Exp-Anx8-Red, page 33.

<sup>124</sup> [REDACTED] Defence Final Observations, ICC-01/04-02/06-759-Conf-Exp-Red, para. 53.

<sup>125</sup> Defence Final Observations, ICC-01/04-02/06-759-Conf-Exp-Red, para. 53.

<sup>126</sup> Request for Restrictive Measures, ICC-01/04-02/06-349-Conf-Red, para 19.

<sup>127</sup> [REDACTED] Defence Final Observations, ICC-01/04-02/06-759-Conf-Exp-Red, paras 55-57. The relevant conversation is contained in Annex 5 to the First Registry Report, ICC-01/04-02/06-504-Conf-Exp-Anx5.

Prosecution witness'<sup>128</sup> – do not mitigate the breach of confidentiality, especially in the specific circumstances of that particular person,<sup>129</sup> which were known to Mr Ntaganda.

55. With respect to allegations of interference with witnesses, the Chamber notes the Defence's submissions that the reference to 'silencing' of certain persons could refer to something 'entirely different'; and relate to 'entirely lawful efforts to recruit witnesses other than Prosecution witnesses'.<sup>130</sup> However, the Chamber considers the Prosecution's interpretation of the relevant conversation,<sup>131</sup> and meaning of silencing in the context of that conversation,<sup>132</sup> to be a reasonable one. Conversely, the Chamber finds the version put forward by the Defence to be implausible and incapable of refuting the Prosecution's allegation. While mindful of the abovementioned reservation about translations, the Chamber notes that an original language transcription was provided to the Defence for this conversation.<sup>133</sup> The Chamber considers the content of the conversation concerned to be deeply troubling and giving rise to a reasonable belief that Mr Ntaganda, through the relevant interlocutor, intended to engage in a serious form of witness interference.<sup>134</sup>

#### *Coaching of witnesses*

56. The Chamber recalls that in its Decision on the Second Registry Report, it noted with concern that certain *post-factum* reviews appeared to show that Mr Ntaganda had been coaching his counterpart on certain factual matters

<sup>128</sup> Defence Final Observations, ICC-01/04-02/06-759-Conf-Exp-Red, para. 56. The Chamber similarly does not consider the submissions made in para. 57 could lead to mitigation of the gravity of the breach.

<sup>129</sup> [REDACTED].

<sup>130</sup> Defence Final Observations, ICC-01/04-02/06-759-Conf-Exp-Red, paras 70-72.

<sup>131</sup> Annex 2 to the Registry Addendum, ICC-01/04-02/06-563-Conf-Exp-Anx2. The reference to silencing is made on page 8 of the annex.

<sup>132</sup> Prosecution Final Observations, ICC-01/04-02/06-738-Conf-Exp, paras 30 and 39.

<sup>133</sup> Defence Final Observations, ICC-01/04-02/06-759-Conf-Exp-Red, para. 70. The transcription was provided to the Defence by way of annex to the Registry Addendum, ICC-01/04-02/06-563-Conf-Exp-Anx2.

<sup>134</sup> The Chamber notes in this regard that Mr Ntaganda appears to direct his interlocutor to go to [REDACTED], who would be able to provide the interlocutor with information about the persons that are to be silenced (see Annex 2 to the Registry Addendum, ICC-01/04-02/06-563-Conf-Exp-Anx2, pages 7-9).

pertaining to the case.<sup>135</sup> The Chamber notes that despite this statement by the Chamber and the submissions on coaching in the Prosecution Final Observations, the Defence has not addressed the allegations of coaching of witnesses in its final submissions.

57. The Chamber considers that coaching of witnesses is a form of witness interference and has the potential to severely affect the integrity of the proceedings. The apparent attempts to coach witnesses, be they Prosecution or potential Defence witnesses, is therefore reason for grave concern. Mindful of the limitations of the Registry Reports, as identified above, the Chamber nonetheless finds there to be reason to believe that Mr Ntaganda instructed his interlocutors to coach witnesses, or directly told his interlocutors which story to tell, stressing the need to tell the story in the manner as described by Mr Ntaganda and the necessity of synchronising the stories.<sup>136</sup>

*Ongoing and further restrictions*

58. The Chamber considers that the Report on Active Monitoring does not provide a reasonable basis for the Prosecution's allegation that Mr Ntaganda made 'a calculated effort to circumvent the restrictions on his communications imposed by the Chamber'.<sup>137</sup> It has taken note of the Prosecution's submissions on conversations during which reference was made to an 'old man',<sup>138</sup> and the Registry's observations that these conversations were 'unclear',<sup>139</sup> but finds that it cannot be concluded that Mr Ntaganda's behaviour during the reported period of active monitoring amounts to witness interference, or otherwise affects the integrity of the proceedings. Although the Chamber does not

<sup>135</sup> Decision on the Second Registry Report, ICC-01/04-02/06-710-Conf-Exp-Red, para. 13.

<sup>136</sup> See, e.g., Annex 2 to the Second Registry Report, page 4, lines 103-113 and pages 5 and 6, lines 160-175.

<sup>137</sup> Prosecution Final Observations, ICC-01/04-02/06-738-Conf-Exp, para. 34.

<sup>138</sup> Prosecution Final Observations, ICC-01/04-02/06-738-Conf-Exp, para. 37.

<sup>139</sup> Report on Active Monitoring, ICC-01/04-02/06-714-Conf-Exp, para. 10.

consider this to equate to ‘impeccable conduct’, as averred by the Defence,<sup>140</sup> the Chamber notes that Mr Ntaganda indeed appears to have made an effort to ensure that his interlocutors did not use coded language.<sup>141</sup>

59. For its request to modify the active monitoring, the Defence relies on decisions by Trial Chamber II in the *Katanga and Ngudjolo* case. Yet, the manner in which Trial Chamber II dealt with restrictions imposed on Mr Ngudjolo cannot serve as authoritative guidance for the Chamber; these matters need to be assessed on a case-by-case basis. Moreover, the Chamber does not consider that the ceasing of misconduct during this limited period of active monitoring warrants the relaxing of measures imposed to prevent the continuation and consequences of misconduct prior to the taking of these measures. Not engaging in misconduct should be the norm and the fact that restrictive measures have been effective does not necessarily lead to the conclusion that the need to continue these measures has diminished or disappeared.
60. For the above reasons, the Chamber considers it necessary for the active monitoring of Mr Ntaganda’s non-privileged telephone conversations to continue. In respect of the monitoring, the Chamber does not share the Prosecution’s concerns as to the (lack of) effectiveness of the active monitoring. The Chamber observes in this respect that the Prosecution compounds allegations about Mr Ntaganda’s conduct prior to the start of the active monitoring, or any restrictions being in place, with the perceived failure of the Registry to prevent Mr Ntaganda from circumventing the restrictions imposed after the monitoring had commenced.<sup>142</sup> However, mindful of the need for the active monitoring to be effective in order to achieve the goal of the restrictions on communications, the Chamber decides to impose restrictions as to the

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<sup>140</sup> Defence Final Observations, ICC-01/04-02/06-759-Conf-Exp-Red, para. 51.

<sup>141</sup> Report on Active Monitoring, ICC-01/04-02/06-714-Conf-Exp, para. 6.

<sup>142</sup> See, for example, the combined references to the Registry Reports and the Report on Active Monitoring in paras 3 and 41 of the Prosecution Final Observations.

content of Mr Ntaganda's monitored non-privileged phone calls. Mr Ntaganda, or his interlocutors, shall not use coded language during their phone calls and shall only converse about private or family matters. In no circumstance may any case-related matters, including possible evidence or witnesses, whether appearing for the Prosecution or the Defence, be discussed.<sup>143</sup> Should this occur, the Registry is instructed to terminate the call immediately and report the matter to the Chamber.

61. In placing this restriction on the subject-matter of Mr Ntaganda's non-privileged phone calls, the Chamber has taken Mr Ntaganda's right to have 'adequate facilities' for the preparation of his defence<sup>144</sup> into account. It nonetheless considers that this right does not encompass unrestricted access to persons outside his defence team. In this regard, the Chamber notes that Article 67 of the Statute only guarantees free and privileged access to an accused's counsel. If Mr Ntaganda wishes to discuss case-related matters, or request that certain persons be contacted as potential Defence witnesses, he is to use privileged channels for such communication.
62. With respect to the proportionality of the restrictions, the Chamber is mindful of Mr Ntaganda's right to family life. It therefore considers it appropriate to allow for (limited) communication with his family. In this regard, the Chamber notes that the three Proposed Contacts are all family members. As to one of the Proposed Contacts, [REDACTED]. Nevertheless, as restrictions imposed need to be necessary and proportionate, the Chamber notes that [REDACTED]. The Chamber considers it therefore appropriate to permit Mr Ntaganda to continue having contact with [REDACTED].

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<sup>143</sup> The Chamber appreciates that Mr Ntaganda may wish to inform his family of when trial hearings take place. As evidenced by the Report on Active Monitoring, Mr Ntaganda kept his wife informed about the planned start dates of the trial. The Chamber clarifies that referring to trial dates is permitted and the mere reference to trial hearings should not be considered as a breach of the restrictions.

<sup>144</sup> Article 67(1)(b) of the Statute.

63. The Chamber clarifies that [REDACTED]. However, the Chamber stresses that the limitation that the conversations shall be strictly of a personal nature and may not relate in any way to the present case applies also to any information passed on or directly discussed with [REDACTED]. Should any breaches of this limitation occur, the Registry is instructed to terminate the call immediately and report the matter to the Chamber.
64. In addition to the actively monitored phone calls, Mr Ntaganda is authorised to record messages for his children, in a manner and length to be decided on by the Registry, which can be played to his children following a review of their content by the Registry.
65. The Chamber notes that one of the Proposed Contacts is currently suspended from Mr Ntaganda's contact list. As this is subject to a separate complaint before the Registrar, the Chamber will not now decide whether this person may be contacted by Mr Ntaganda. Following the outcome of that complaint, should the determination result in [REDACTED] being reinstated as one of Mr Ntaganda's contacts, the Chamber will consider the request to make him one of the authorised contacts for the actively monitored phone conversations. The Chamber considers it appropriate to allow the other person, [REDACTED], to already at this stage be authorised as one of Mr Ntaganda's contacts for the purposes of his actively monitored phone calls.

#### *Conclusion*

66. As described above, the Chamber considers it necessary to maintain the current restrictions to Mr Ntaganda's contacts and to impose certain further restrictions. The Chamber believes the active monitoring of phone calls to a limited number of persons for a maximum of one hour a week, combined with the further measures the Chamber has taken to prevent confidential information being

disseminated from the Detention Centre,<sup>145</sup> to be adequate at this time to prevent interference with witnesses and breaches of confidentiality, and to ensure the integrity of the proceedings. The Chamber does not consider it necessary, or proportionate, to add, as requested by the Prosecution, the additional restriction of all of Mr Ntaganda's live non-privileged phone calls until the conclusion of the testimony of the Prosecution's insider witnesses.

67. With respect to the Prosecution's request to restrict Mr Ntaganda's contact with certain individuals,<sup>146</sup> the Chamber notes that the above adopted regime results in ten of the Named Individuals not being authorised to contact Mr Ntaganda. The Chamber therefore partially grants this limb of the Request for Further Restrictions with respect to Mr Ntaganda. [REDACTED] Consequently, this part of the request is rejected.

68. The Registry is instructed to report any breaches of the above regime to the Chamber on an *ex parte*, Chamber and Defence only, basis. In this regard, the Chamber does not consider it necessary, or appropriate, for such information to be provided to the Prosecution directly. Following the report of such breaches, if any, by the Registry, the Chamber will consider whether it is warranted to inform the VWU and/or the Prosecution.

69. On the basis of the above findings, and having regard to certain concerning information pertaining to visits, contained in the First Registry Report,<sup>147</sup> the Chamber considers it necessary for the restrictions to Mr Ntaganda's private visits under Regulation 185 of the Regulations of the Registry to remain in place, so as to ensure the effectiveness of the restrictions imposed. The Defence's request for such visits to be allowed is consequently rejected. However, in light

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<sup>145</sup> Order taking interim measures in relation to Defence investigator and related matters, 23 June 2015, ICC-01/04-02/06-667-Conf-Exp; Interim Order on Restrictions, 29 June 2015, ICC-01/04-02/06-683-Conf-Exp.

<sup>146</sup> Request for Further Restrictions, ICC-01/04-02/06-635-Conf-Exp, para. 44.

<sup>147</sup> [REDACTED] See Annex 5 to the First Registry Report, ICC-01/04-02/06-504-Conf-Exp-Anx5, page 7, lines 136-158.



of Mr Ntaganda's right to family life, [REDACTED], the Chamber modifies the full restriction of any visits other than those under Regulations 97(2) and 98 of the Regulations and Regulation 178 of the Regulations of the Registry, as imposed in the Decision on Interim Restrictive Measures,<sup>148</sup> to now also permit family visits, subject to the following conditions. The visits shall be actively monitored. Conversations are to take place in a language that can be monitored by the Registry and shall be strictly of a personal nature and may not relate in any way to the present case. The Registry is permitted to set such time limits as necessary to allow effective monitoring of the visits and is instructed to take all necessary measures to ensure that the effectiveness of the restrictions imposed on Mr Ntaganda's contacts are not compromised by the visits. The Chamber considers this to be the least restrictive means available, in light of the importance of the objectives of protecting witnesses and the integrity of the proceedings. Considering that the restrictions imposed will be subject to further review, the Chamber considers these measures to be proportionate.

70. Should there arise a compelling reason to modify this ruling the Chamber shall, if appropriate, review the matter as soon as practicable. Otherwise, the Chamber will periodically review the continued need for the restrictions imposed by way of the present decision. To be in a position to conduct such periodical reviews, and to realise its duty to protect witnesses and the integrity of the proceedings, the Chamber has to be kept informed of the effectiveness of the restrictions and of any potential contraventions of the restriction regime set up by way of the present decision. The Chamber therefore does not consider it appropriate for further information derived from the active monitoring to be provided solely to an *amicus curiae*, as requested by the Defence.<sup>149</sup> As the restrictions are imposed to protect the integrity of, and witnesses in, the present proceedings, the Chamber considers that it is best placed to assess which restrictions are

<sup>148</sup> Decision on Interim Restrictive Measures, ICC-01/04-02/06-410-Conf-Exp-Corr, pages 26-27.

<sup>149</sup> Defence Final Observations, ICC-01/04-02/06-759-Conf-Exp-Red, paras 77-80.

necessary and proportionate to achieve this goal. It does not therefore consider it appropriate to refer the request for restrictions to a pre-trial chamber.

## **B. Request for public filings**

71. Notwithstanding the principle of publicity, the Chamber considers it was initially appropriate for the litigation on restrictions to take place on an *ex parte* basis, as it concerned serious allegations and the Chamber had so far only made interim and *prima facie* findings. With the issuing of the present decision on the merits of the request for restrictions, the Chamber considers it timely to modify the classification of the litigation. In this regard, the Chamber notes the parties' preference to create a public record of the litigation. Therefore, the Chamber will shortly issue a public redacted version of the present decision. As all the relevant information contained in the Chamber's previous decisions on restrictions has been incorporated in the present decision, the Chamber does not consider it necessary to issue public redacted versions of these earlier decisions. The parties are to prepare public redacted versions of their underlying filings,<sup>150</sup> where possible, in consultation with each other and mindful of information kept confidential by the Chamber. These are to be filed in the case record by the end of September 2015. Should any disputes arise as to the extent of any redactions, the parties are to submit these disputes in a joint filing to the Chamber within the same timeframe.

**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY**

**GRANTS** the Request for Further Restrictions, in part;

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<sup>150</sup> The Chamber clarifies that the various filings by the parties referred to in the procedural history are to be considered as 'underlying filings'.

**MAINTAINS** the restrictions on Mr Ntaganda's communications as imposed by the Decision on Interim Restrictive Measures and the Order on Active Monitoring, subject to the modifications made below;

**RESTRICTS** Mr Ntaganda's phone contact to two of the three Proposed Contacts and defers its decision as to the third proposed individual, in accordance with paragraphs 62-67 above;

**ORDERS** Mr Ntaganda not to discuss any matters related to the present case with these three persons, in accordance with paragraph 60 above;

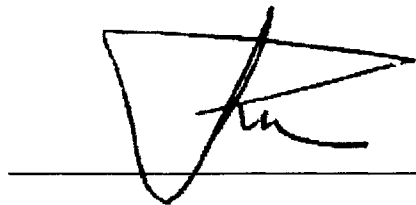
**PERMITS** Mr Ntaganda to receive family visits, subject to the conditions set out in paragraph 69 above.

**GRANTS** the Request for Publicity of Restrictions' Litigation in part and **DECIDES** to issue a public redacted version of the present decision;

**DIRECTS** the parties to prepare public redacted versions of the relevant underlying filings in accordance with paragraph 71 above; and

**REJECTS** all other requests.

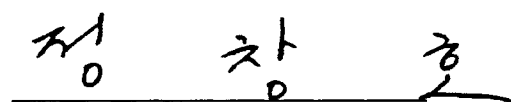
Done in both English and French, the English version being authoritative.



Judge Robert Fremr, Presiding Judge



Judge Kuniko Ozaki



Judge Chang-ho Chung

Dated 18 August 2015

At The Hague, The Netherlands