



Original: **English**

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

Date: **19 March 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

**Response on behalf of Mr Ntaganda to Prosecution's request for variation of time
limit to disclose the transcriptions of "Radio Candip" broadcasts**

Source: Defence Team of Mr Bosco Ntaganda

Document 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 the Defence

Me Stéphane Bourgon
Me Luc Boutin
Me William St-Michel

Legal Representatives of Victims

Ms Sarah Pellet
Mr Dmytro Suprun

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation / Reparation)**

**The Office of Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Further to the submission of the “*Public redacted version of ‘Prosecution’s request pursuant to regulation 35’, 2 March 2015*” by the Prosecutor on 2 March 2015 (“Prosecution Request”), Counsel representing Mr Ntaganda (“Mr Ntaganda” or “Defence”) hereby submit this:

Response on behalf of Mr Ntaganda to Prosecution’s request for variation of time limit to disclose the transcriptions of “Radio Candip” broadcasts

1. The Defence hereby responds to the Prosecution Request seeking a variation of the time limit to disclose the transcriptions of audio copies of five “Radio Candip” broadcasts obtained by the Prosecution.
2. As a preliminary matter, the Defence wishes to underscore that the Prosecution Request is replete with redactions, applied unilaterally and without providing any justification – i.e. what or what type of information is redacted and for what reason – which do not make it possible for the Defence to provide meaningful observations on the merits of the Prosecution Request. Consequently, the Defence respectfully requests Trial Chamber VI (“Chamber”) to order the Prosecutor to justify its redactions, especially with respect to paragraphs 11 to 16 of the Prosecution Request.
3. More importantly, the Prosecution Request places the Chamber, the Defence and the participants before a *fait accompli*¹ with no real option but to wait until the transcription of the five “Radio Candip” broadcasts becomes available.
4. It is highly significant in this regard that the Prosecution Request fails to provide any information as to when the broadcasts were obtained and/or why the broadcasts could not be obtained earlier with a view to respecting the disclosure schedule issued by the Chamber back in October 2014. Surely, the

¹ The Defence notes that it was notified of the Prosecution Request at 15:34 on 2 March 2015.

Prosecution cannot argue that it was not aware of the existence of these broadcasts.

5. Hence, the Prosecution plainly failed to show good cause for the extension of time limit requested.
6. Nonetheless, taking due note of the Prosecution's undertaking to disclose the transcriptions as soon as they are completed "which may be in advance of the 30 April 2015 deadline",² the Defence takes no position with respect to the Prosecution Request as it would be meaningless to do so.
7. However, the Defence takes this opportunity to stress the fact that the Prosecution Request is further evidence of the reality that as of today, full disclosure of all material in the possession of the Prosecutor – including exhibits the Prosecutor intends to rely on at trial, exhibits material to the preparation of the Defence and exculpatory material – is far from being complete.
8. In this regard, the Defence recalls its constructive approach from the beginning, undertaking to be ready for trial without delay, contingent upon the Prosecution's disclosure being complete and the filing of the Prosecution's Pre-trial brief a minimum of three months before the start of the trial.³
9. As for the Prosecution's suggestion that the Defence will not be unduly prejudiced by the delay, it is without merit. Indeed, at a time when the Prosecution is providing the Defence with last minute disclosure on a continuous basis and the Defence is actively preparing for trial, there is a huge difference between analysing the relevance and potential probative value of radio broadcasts by reading the transcriptions thereof and listening to the audio version of the broadcasts for the same purpose.

² Prosecution Request, para.9.

³ See, for example, I CC-01/04-02/06-T-15-ENG, p.10; ICC-01/04-02/06-T17-CONF-ENG, pp.11-12.

10. The Defence submits that the Mr Ntaganda should not be penalized for the delay in transcribing the five “Radio Candip” broadcasts, which should have been obtained earlier.
11. Should the Chamber consider granting the Prosecution Request, the Defence respectfully requests that the trial schedule be adjusted accordingly.

RESPECTFULLY SUBMITTED ON THIS 19th DAY OF MARCH 2015

A handwritten signature in black ink, appearing to read 'S. Bourgon'.

Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands