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

Date: **13 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

Request on behalf of Mr Ntaganda seeking disclosure of any and all material in the possession of the Prosecution obtained from “Radio Candip”

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

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Unrepresented Victims

**Unrepresented Applicants
(Participation / Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
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States' Representatives

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REGISTRY

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Victims and Witnesses Unit

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**Victims Participation and Reparations
Section**

Further to the disclosure of audio copies of five “Radio Candip” broadcasts by the Prosecution on 2 March 2015 and the disclosure of the corresponding transcriptions on 6 May 2015,¹ Counsel representing Mr Ntaganda (“Defence”) hereby submit this:

Request on behalf of Mr Ntaganda seeking disclosure of any and all material in possession of the Prosecution obtained from “Radio Candip”

“Defence Request”

INTRODUCTION

1. Pursuant to Article 67(2) and Rule 77 of the Rules of Procedure and Evidence, the Prosecution bears the duty to disclose: (i) all material in its possession which shows or tends to show the innocence of the accused, or to mitigate the guilt of the accused, or which may affect the credibility of Prosecution evidence; as well as (ii) books, documents, photographs and other tangible objects in its possession or control, which are material to the preparation of the Defence or are intended for use by the Prosecution as evidence.
2. Moreover, pursuant to Article 54(1)(a), the Prosecution shall investigate incriminating and exonerating circumstances *equally*.
3. In light of the above obligations incumbent upon the Prosecution, the Defence respectfully requests Trial Chamber VI (“Chamber”) to order the Prosecution to disclose to the Defence any and all material in its possession obtained from “Radio Candip”, including *inter alia*: audio files, transcription of audio files, recordings of “Radio Candip” broadcast – whether in audio, video or hard copy – as well as written documents and notes compiled by “Radio Candip” personnel during the period from 1 January 2000 to 31 December 2003.

¹ ICC-01/04-02/06-496; ICC-01/04-02/06-588.

PROCEDURAL BACKGROUD

4. On 2 March 2015, the Prosecution filed a request seeking variation of the time limit to disclose the transcriptions of audio copies of five “Radio Candip” broadcasts to 30 April 2015 (“Prosecution Request”).²
5. On the same day, audio copies of the five “Radio Candip” broadcasts, in French as well as in Swahili, in the possession of the Prosecution were disclosed to the Defence.
6. On 19 March 2015, the Defence responded to the Prosecution Request, arguing *inter alia*, that the Prosecution Request failed “to provide any information as to when the [“Radio Candip”] 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”.³
7. On 30 April 2015, the Chamber rendered a decision ordering the Prosecution to disclose the transcription of the five “Radio Candip” broadcasts, if the Prosecution has not already done so.⁴
8. On 1 May 2015, the Prosecution sent a courtesy copy of the transcriptions of the five audio copies of “Radio Candip” broadcasts disclosed on 2 March 2015. The Prosecution then officially disclosed the material on 6 May 2015.
9. On 12 August 2015, during an informal meeting, the Prosecution informed the Defence that the five copies of the “Radio Candip” transcriptions disclosed officially on 6 May 2015 comprise many errors and that new copies would soon be disclosed.

² ICC-01/04-02/06-489-Red.

³ ICC-01/04-02/06-527.

⁴ ICC-01/04-02/06-580.

SUBMISSIONS

10. In light of the Prosecution's duty to investigate incriminating and exonerating circumstances equally and the fact that the Prosecution had access to "Radio Candip" archives, the Defence is surprised that only five "Radio Candip" broadcasts have been disclosed by the Prosecution to this day, whereas "Radio Candip" was actively covering the situation in Ituri between January 2000 to December 2003.
11. Pursuant to Article 67(2) and Rules 77 of the Rules, the Prosecution bears the duty to disclose: (i) all material in its possession which shows or tends to show the innocence of the accused, or to mitigate the guilt of the accused, or which may affect the credibility of Prosecution evidence; as well as (ii) books, documents, photographs and other tangible objects in its possession or control, which are material to the preparation of the Defence or are intended for use by the Prosecution as evidence.
12. Taking into consideration the numerous references to "Radio Candip" in the Prosecution Pre-Trial Brief, it is evident that any and all material in possession of the Prosecution obtained from "Radio Candip", including *inter alia*: audio files, transcription of audio files, recordings of "Radio Candip" broadcast – whether in audio, video or hard copy – as well as written documents and notes compiled by "Radio Candip" personnel during the period from 1 January 2000 to 31 December 2003, is material to the preparation of the Defence and/or potentially exculpatory.
13. Consequently, unless the five copies of audio broadcasts already disclosed to the Defence are the only material collected by the Prosecution at the premises of "Radio Candip", the Defence respectfully requests the Chamber to order the Prosecution to disclose to the Defence, without any delay, all "Radio Candip" related material in its possession.

RELIEF SOUGHT

In light of the above submissions, the Defence respectfully requests the Chamber to:

ORDER the Prosecution to disclose any and all “Radio Candip” material in its possession.

RESPECTFULLY SUBMITTED ON THIS 13TH DAY OF AUGUST 2015

A handwritten signature in black ink, appearing to read 'StB' with a flourish at the end.

Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands