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

Date: **31 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 leave to reply to “Prosecution’s
response to the Defence ‘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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Legal Representatives of Victims

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 *“Prosecution’s response to the Defence ‘Request on behalf of Mr Ntaganda seeking disclosure of any and all material in the possession of the Prosecution from ‘Radio Candip’”* by the Office of the Prosecutor (“Prosecution”) on 25 August 2015 (“Prosecution Response”),¹ Counsel representing Mr Ntaganda (“Defence”) hereby submit this:

Request on behalf of Mr Ntaganda seeking leave to reply to “Prosecution’s response to the Defence ‘Request on behalf of Mr Ntaganda seeking disclosure of any and all material in the possession of the Prosecution from ‘Radio Candip’”

INTRODUCTION

1. On 13 August 2015, the Defence respectfully requested the Chamber to order the Prosecution to disclose any and all ‘Radio-Candip’ material in its possession (“Defence Request”).²
2. On 25 August 2015, the Prosecution responded to the Defence Request.
3. Pursuant to Regulation 24(5) of the Regulations of the Court (“Regulations”), the Defence requests leave to reply to the Prosecution Response.
4. The Defence submits that a reply is necessary with a view to assisting the Chamber in adjudicating the Defence Request.
5. The Defence wishes to reply on three specific issues, namely: (i) the Prosecution’s argument regarding the scope of the Defence Request;³ (ii) the Prosecution’s contention that the Defence has not shown that the material requested is material to the preparation of the defence and/or potentially

¹ ICC-01/04-02/06-794.

² ICC-01/04-02/06-779.

³ Prosecution Response, para.9.

exculpatory;⁴ and (iii) the Prosecution's failure to confirm that it has disclosed all 'Radio-Candip' material in its possession.⁵

SUBMISSIONS

6. As a preliminary matter, justifying the need for the submission of a reply, the Defence notes that:

- a. The Prosecution's Pre-Trial Brief alleges that the daily evening news of 'Radio-Candip' were used by the UPC to broadcast its propaganda";⁶
- b. The Prosecution does not dispute the Defence's assertion that 'Radio-Candip' was actively covering the situation in Ituri between January 2000 and December 2003;⁷ and
- c. The Prosecution confirms that a Prosecution investigator visited 'Radio-Candip' archives in October 2014.⁸

I. First Issue

7. The Defence's prospective reply will explain why the Defence Request does not capture "clearly irrelevant material", as the Prosecution contends. Indeed, the Defence Request is limited to 'Radio-Candip' material *in the possession of the Prosecution*. Unless the Prosecution seized at 'Radio-Candip' premises broadcasts of "cooking programs, health programs, learning and languages programs, other community programs or music shows" – which would be very surprising – these are not targeted by the Defence Request.

II. Second Issue

8. In its reply, the Defence will set out – on the basis of the above preliminary remarks – that the 'Radio-Candip' material seized by the Prosecution is either

⁴ Prosecution Response, paras.3, 10.

⁵ Prosecution Response, paras.3, 15.

⁶ ICC-01/04-02/06-503-Conf-AnxA, para.107.

⁷ Prosecution Response, para.9.

⁸ Prosecution Response, fn.12.

material to the preparation of the defence or exculpatory. In this regard, the Defence will address the interplay between the Prosecution's disclosure obligations and the Prosecution's duty to investigate incriminating and exonerating circumstances equally pursuant to Article 54(1)(a). The latter was invoked by the Defence to establish, on a *prima facie* basis, the existence of further 'Radio-Candip' material in the possession of the Prosecution. It would be awkward for the Prosecution – bearing in mind its duty to investigate *à charge et à décharge* – to visit 'Radio-Candip' archives and seize only five audio broadcasts to be used as incriminating evidence and no other audio broadcasts, either material to the preparation of the defence or exculpatory in nature.

III. Third Issue

9. In its reply, the Defence will also underscore that the Prosecution Response – stating that the Prosecution has disclosed all *relevant* 'Radio-Candip' material⁹ – fails to confirm whether the Prosecution has *any* further 'Radio-Candip' material in its possession not yet disclosed.

RELIEF SOUGHT

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

GRANT the Defence leave to reply to the Prosecution Response.

RESPECTFULLY SUBMITTED ON THIS 31ST DAY OF AUGUST 2015



Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands

⁹ Prosecution Response, paras.3, 15.