

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/04-02/06
Date: **11 September 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

Prosecution's response to the Defence "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'", ICC-01/04-02/06-802

Source: Office of the Prosecutor

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

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Introduction

1. The Prosecution opposes the Defence Application for leave to reply to the Prosecution's response to the Defence's request seeking disclosure of any and all Radio Candip material in the possession of the Prosecution ("Application to Reply").¹ The Application to Reply repeats submissions made in the initial request. None of the proposed points on which the Defence seeks leave to reply relate to any alleged misrepresentation, a new explanation or solution to a problem raised, any new or distinct issue, any new information previously unavailable, any arguments not reasonably foreseeable at the time of the initial request, or any novel or particularly important issue.

2. Granting leave to reply will not assist the Chamber in its determination. The Application to Reply re-argues three points: First, it describes the Radio Candip material previously requested;² second, it repeats submissions on why the Radio Candip material seized by the Prosecution is either material to the preparation of the defence or exculpatory pursuant to the Prosecution's disclosure obligations and article 54(1)(a) of the Rome Statute;³ and third, it repeats its request for *any* further Radio Candip material not yet disclosed.⁴

3. Accordingly, the Application to Reply should be dismissed.

¹ ICC-01/04-02/06-802.

² ICC-01/04-02/06-779, para.3.

³ Application to Reply, para.8.

⁴ Application to Reply, para.9.

Prosecution's Submissions

The Defence seeks to make additional submissions on three issues which are not new and do not assist the Chamber in deciding on the merits of the Defence Request

4. The Application to Reply repeats arguments from the initial request⁵ and raises no new issues. In *Bemba* the Trial Chamber stressed that the "Defence's reply must be narrowly tailored to only address new issues raised [...] and avoid repetitious submissions on matters already addressed in the Request [...]"⁶
5. The "First Issue" in the Application to Reply repeats the request for disclosure of "'Radio Candip' material in the possession of the Prosecution".⁷ Seeing as the Prosecution has disclosed all relevant material collected from Radio Candip, further submissions are unnecessary. Disclosure by the Prosecution under rule 77 of the Rules of Procedure and Evidence ("Rules") is "broad but not unlimited".⁸ If additional relevant material collected from Radio Candip were in the possession of the Prosecution, it would have been disclosed accordingly.
6. The "Second Issue" in the Application to Reply makes submissions on article 54(1)(a), alleging that seizing "only five" audio broadcasts from Radio Candip amounts to a violation of the Prosecution's duty to investigate incriminating and exonerating circumstances equally.⁹ This is a mirror argument of paragraph 10 of the Defence's original request¹⁰ and there is no explanation as to what new and distinct issues or misrepresented facts justify a reply.
7. The "Third Issue" merely repeats the request for "any further Radio Candip material"¹¹ and overlooks the fact that the Prosecution bears the responsibility of

⁵ ICC-01/04-02/06-779, paras.2, 3, 10, 13.

⁶ ICC-01/05-01/08-3272, para.4.

⁷ Application to Reply, para.7.

⁸ ICC-01/05-01/08-3100, para.11; *see also* ICC-02/05-03/09-501, para.39; ICC-01/09-01/11-1465, para.12(v).

⁹ Application to Reply, para.8.

¹⁰ ICC-01/04-02/06-779, para.10.

¹¹ Application to Reply, para.9.

making the initial determination of materiality of evidence within its possession.¹²
It raises no new or distinct issues.

Conclusion

8. For the reasons set out above, the Prosecution requests that the Chamber dismiss the Application to Reply.



Fatou Bensouda,
Prosecutor

Dated this 11th day of September 2015
At The Hague, the Netherlands

¹² *Sesay et al.*, Sesay – Decision on Defence Motion for Disclosure Pursuant to Rules 66 and 68 of the Rules, Case No. SCSL-04-15-T, T. Ch., 9 July 2004; *Delalić et al.*, Decision on the Motion by the Accused Zejnil Delalić for the Disclosure of Evidence, Case No. IT-96-21-T, T. Ch., 26 September 1996, para.11.