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N° : ICC-01/04-02/06
Date : 13 January 2016

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

Public redacted version of "Corrected version of '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, 22 April 2015

Source: Defence Team of Mr Bosco Ntaganda

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

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Further to the submission by the Registry of the “*Addendum to the First Report on the post-factum review of the phone conversations made by Mr Ntaganda*” along with three Annexes on 20 April 2015 (“Addendum” and “Annexes”) and Trial Chamber VI’s email (“Chamber”) received on 20 April 2015 (“20 April email”), Counsel representing Mr Ntaganda (“Mr Ntaganda” or “Defence”) hereby submit these:

**Observations on behalf of Mr Ntaganda on the Addendum to the
post-factum review of the phone conversations made by Mr Ntaganda
 (“Defence Observations”)**

INTRODUCTION

1. As requested by the Chamber in its 20 April email, the Defence hereby submits its observations on the redactions to be applied to the Addendum and the Annexes.
2. For the reasons set out below, the Defence respectfully submits that only Annexes 2 and 3 to the Addendum should be disclosed to the Prosecution, with the exception of: (i) lines 19 to 59 (Annex 2); and (ii) lines 28 to 77 (Annex 3), which correspond to lines 19 to 59 of Annex 3 to the First Report on the *post-factum* review of the phone conversations made by Mr Ntaganda (“First Report”).
3. The Addendum itself and Annex 1 to the Addendum should not be disclosed to the Prosecution.

PROCEDURAL BACKGROUND

4. On 10 March 2015, the Registry filed its First Report along with confidential Annexes 1-6 and 8 (“Annexes to the First Report”).¹
5. On 25 March 2015, the Defence submitted its Observations on the redactions to be applied to the First Report and the Annexes.²

¹ First report on the *post-factum* review of the phone conversations made by Mr Ntaganda, dated 10 March 2015, ICC-01/04-02/06-504-Conf-Exp (“First Report”).

² Observations on behalf of Mr Ntaganda on the *post-factum* review of the phone conversations made by Mr Ntaganda, dated 25 March 2015, ICC-01/04-02/06-533-Conf-Exp (“25 March Observations”).

6. On 20 April 2015, the Registry submitted the Addendum along with three confidential Annexes (“Annexes to the Addendum”).³
7. On the same day, the Chamber instructed the Defence to submit any observations it may have on redactions to be applied to the Addendum and the Annexes to the Addendum by 22 April 2015.

SUBMISSIONS

I. The Addendum should not be disclosed to the Prosecution

8. As a preliminary matter, the Defence underscores that the Registry proceeded *proprio motu* to the re-listening of Annex 3 to the First Report, which forms the basis of the Addendum. The Addendum was not solicited by the Defence.
9. In its Addendum, the Registry concludes that a re-listening of all audio-conversations referred to in the First Report would not fulfil any efficient purpose as the transcriptions are provided by competent interpreters duly selected to successfully achieve the task.⁴
10. The Registry misconstrued the Defence’s observations. The Defence did not dispute the competence of the Registry’s interpreters. The Defence’s position was and remains that Annexes 1 to 6 and 8 (in part) to the First Report, which purportedly reflect the words spoken by Mr Ntaganda, cannot be disclosed to the Prosecution because they were produced without the benefit of transcripts of Mr Ntaganda’s conversations in the original language in which they took place.
11. In fact, the production of Annex 3 to the Addendum demonstrates the importance of transcripts being provided in the original language in which the conversations took place.
12. Indeed, Mr Ntaganda was only able to recollect and provide observations with respect to [REDACTED] to the Addendum because he could compare these lines with the words he actually spoke in his language which appear in [REDACTED] to the Addendum.

³ Addendum to the First Report on the on the *post-factum* review of the phone conversations made by Mr Ntaganda, dated 20 April 2015, ICC-01/04-02/06-563-Conf-Exp (“Addendum”).

⁴ Addendum to the First Report, para. 5.

13. [REDACTED].
14. The above demonstrates why Annexes 1 to 6 and 8 (in part) which were prepared without the benefit of transcripts in the original language in which the conversations took place cannot be disclosed to the Prosecution.
15. Consequently, the Registry conclusion in the Addendum that the re-listening of the conversations is not necessary as they were prepared by competent interpreters must be disregarded.
16. For the same reason, the Defence respectfully submits that it would not be in the interest of justice to disclose the Addendum to the Prosecution.

II. Annexes 2 and 3 to the Addendum can be disclosed to the Prosecution

17. Now that a transcript of the conversation found in Annex 3 to the First Report is available (Annex 3 to the Addendum), from which a new version of this conversation has been produced (Annex 2 to the Addendum), the Defence does not object to the disclosure of both Annexes to the Prosecution.
18. As for Annex 1 to the Addendum, the Defence takes the view that it should not be disclosed to the Prosecution as it is identical to Annex 3 to the First Report.
19. Nonetheless, considering that lines 19 to 59 of Annex 3 to the First Report contained confidential information relevant to the preparation of the Defence of Mr Ntaganda,⁵ these lines should be redacted from Annex 2 to the Addendum (lines 19 to 59) as well as from Annex 3 to the Addendum (lines 28 to 77).
20. The Defence takes this opportunity to reiterate its earlier submission concerning Annexes 1 to 6 and 8(in part) to the First Report. In the event the Chamber is inclined to disclose these Annexes to the Prosecution despite its objections, the Defence respectfully submits that the Chamber should order that the contents thereof can only be used in relation to the pending Prosecution request for restrictions on contact, as they do not reflect the actual words and/or expressions used by Mr Ntaganda.

⁵ Defence Observations, paras. 24-26.

CONFIDENTIALITY

21. The Defence requests that these observations on the Addendum be received as “Confidential *ex parte*”, pursuant to Regulation 23bis (1) of the Regulation of the Court – as it responds to the Registry’s Addendum, which was filed with the same designation. Accordingly, the Defence Observations are submitted as confidential *ex parte* – Chamber, Defence and Registry only.

RESPECTFULLY SUBMITTED ON THIS 13th DAY OF JANUARY 2016

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

Mr Stéphane Bourgon, Counsel for Bosco Ntaganda
The Hague, The Netherlands