

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: 13 July 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
With Confidential Annexes 1-7**

**Public redacted version of “Prosecution request for an order giving effect
to conditions to testimony of United Nations staff”, 10 July 2015,
ICC-01/04-02/06-713-Conf**

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 United Nations (“UN”) consents to the testimony of Witnesses P-0046, P-0317, P-0075 and P-0810 (“UN Witnesses”) in the case and waives their immunity from legal process, subject to certain conditions.
2. The Prosecution seeks an order from Trial Chamber VI (“Chamber”) giving effect to these conditions, including an order authorising the presence of a UN representative in the courtroom during the testimony of Witnesses P-0046, P-0317 and P-0075 (“MONUC Witnesses”). Trial Chambers of this Court have granted similar requests in other cases.

Confidentiality

3. This filing and the attached Annexes 1-7 are classified as “Confidential”, because they contain confidential information and correspondence between the UN and the Prosecution. This classification is necessary as the UN seeks protective measures in relation to the public. The Prosecution will file a public redacted version.

Prosecution’s Submissions

4. The appearance of the UN Witnesses requires the consent of the United Nations in accordance with article 16(1) of the ICC-UN Relationship Agreement¹ and, in the case of the MONUC Witnesses, article 12 of the Memorandum of Understanding between the UN and the Court concerning cooperation between MONUC (now MONUSCO) and the Court.²

¹ Negotiated Relationship Agreement between the International Criminal Court and the United Nations, ICC-ASP/3/Res.1, art.16(1).

² Memorandum of Understanding between the United Nations and the International Criminal Court Concerning Cooperation between the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) and the International Criminal Court, ICC-01/04-01/06-1267-Anx2, art.12.

5. The United Nations waives the UN Witnesses' immunity from legal process to the extent necessary to permit them to testify at trial.
6. The UN's consent to their testimony is subject to conditions. The Prosecution transmits to the Chamber the letters in which the UN provides its consent and sets out its conditions.³
7. In relation to Witness P-0810, the UN consents to his swearing under oath that his expert report is true and authentic and to his being examined as an expert witness in relation to the information contained in his report.
8. In relation to the MONUC Witnesses, the UN consents to their being asked, and required by the Chamber to answer, questions concerning the elements of the crimes with which the Accused is charged, as well as any facts and circumstances that in the Chamber's opinion may be relevant to his criminal responsibility or that may mitigate his guilt, or to the making of an order of reparations against him.
9. The UN requires, however, that one of its representatives be present during the oral testimony of the MONUC Witnesses, and that he or she be permitted, to the extent required and with the Chamber's authorisation, to consult with the witnesses during the course of their testimony. The UN also requests that the representative be permitted to make submissions to the Chamber that the witnesses not be required to answer a question or supply certain information, disclosure of which would endanger the safety or security of persons, prejudice the security or proper conduct of UN operations or activities, or breach an obligation of confidentiality which it is incumbent upon the UN and the MONUC Witnesses to respect.

³ Confidential Annexes 1, 3, 5 and 7 contain letters from the United Nations providing its conditional consent to the testimony of Witnesses P-0046, P-0317, P-0075, and P-0810, respectively. Confidential Annexes 2, 4 and 6 contain letters from the United Nations setting out the nature of questions which the UN requires the Prosecution to refrain from asking P-0046, P-0317 and P-0075 in open or closed session. Witnesses P-0885 and P-0931 have also been authorised by the UN to testify but the UN has not imposed conditions to their testimony. They are therefore not included in this application.

10. This condition is consistent with article 64(6)(c) of the Rome Statute, which authorises the Chamber to “[p]rovide for the protection of confidential information”. It is also consistent with the terms of article 16(2) of the ICC-UN Relationship Agreement, according to which “[t]he Secretary-General shall be authorized by the Court to appoint a representative of the United Nations to assist any official of the United Nations who appears as a witness before the Court.” Trial Chambers I and II granted similar requests related to Witnesses P-0046 and P-0317 in the *Lubanga* and *Katanga* cases.⁴

11. Finally, in relation to [REDACTED], the UN requires that [REDACTED]. Trial Chamber I granted this same request in relation to [REDACTED] in the *Lubanga* case.⁵

12. The Prosecution also seeks authorisation to transmit to the UN a copy of the Chamber’s decision.

Relief requested

13. The Prosecution requests an order from the Trial Chamber giving effect to the UN’s conditions, as set out in the letters attached as Confidential Annexes 1, 3, 5 and 7, and summarised in paragraphs 9 and 11 above.



Fatou Bensouda, Prosecutor

Dated this 13th day of July 2015
At The Hague, The Netherlands

⁴ICC-01/04-01/06-602-Conf; ICC-01/04-01/06-1999-Conf; ICC-01/04-01/06-T-204-CONF-ENG ET, p.5, ln.5 to p.11, ln.22, esp. p.11, lns.13-17; ICC-01/04-01/07-1590, paras.20-22.

⁵ [REDACTED].