

**Cour
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**International
Criminal
Court**

Original: **English**

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

Date: **24 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,
with Public Annexes A-I**

**Prosecution application under rule 68(3) to admit the prior recorded
testimony and associated documents of Expert Witness P-0931**

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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**Victims Participation and
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Introduction

1. The Office of the Prosecutor (“Prosecution”) requests that Trial Chamber VI (“Chamber”) admit into evidence the prior recorded testimony of Witness P-0931, under rule 68(3) of the Rules of Procedure and Evidence (“Rules”). Witness P-0931 was called by Trial Chamber I to testify as an expert in the *Lubanga* proceedings. The Prosecution seeks to rely on Witness P-0931 as an expert on context in these proceedings.¹
2. The Prosecution intends to call Witness P-0931 as the third (and final) witness to testify during the first evidence block, which is scheduled to commence on 15 September 2015. As such, the Parties and Chamber will have the opportunity to examine this witness in the course of these proceedings. His prior recorded testimony is relevant and reliable, and Witness P-0931 will be asked to confirm its accuracy.² The admission of the prior recorded testimony is not prejudicial to the rights of the Accused.
3. The Prosecution also seeks to admit Witness P-0931’s expert report and two documents referred to in his testimony, pursuant to rule 68(3) of the Rules as part of his testimony or, in the alternative, article 69(2) and (3) of the Statute. These documents are relevant to the proceedings and Witness P-0931’s evidence.
4. The admission of the prior recorded testimony of Witness P-0931 and associated documents will enhance the expeditiousness of the proceedings by reducing the length of the expert’s in-court testimony. Should this application be granted, the Prosecution intends to ask supplementary questions to Witness P-0931, as is provided for under rule 68(3) of the Rules. Other

¹ ICC-01/04-02/06-560, para.10 (i).

² ICC-01/04-02/06-619, para.43.

Chambers of this Court have authorised supplementary questions to follow the introduction of prior recorded testimony. This supplementary examination will be brief.

Prosecution's Submissions

5. Rule 68(3) of the Rules provides that the Chamber may allow the introduction of the prior recorded testimony of a witness who is present before the Chamber where the individual does not object, and the Parties and Chamber have the opportunity to examine the witness. In its Decision on the conduct of proceedings, the Chamber ordered that the calling party file an application with copies of the previously recorded testimony, identifying the precise passages it wishes to tender into evidence, and other materials referred to in these passages that are available to the calling party and, without which, the passages would not be understandable.³
6. Accordingly, attached as Annex A to this application is a chart listing the materials which the Prosecution seeks to admit in evidence, which includes the precise passages of the prior recorded testimony, Witness P-0931's expert report and two associated documents. Also listed in Annex A are other materials necessary to understand Witness P-0931's prior recorded testimony, but which the Prosecution does not seek to admit into evidence.
7. Attached as Annexes B and C are the transcripts of Witness P-0931's prior testimony from the *Lubanga* proceedings, which occurred on 17 and 18 June 2009, respectively.⁴ Witness P-0931 testified about the historical and political

³ ICC-01/04-02/06-619, para.42.

⁴ Transcripts ICC-01/04-01/06-T-193 and ICC-01/04-01/06-T-194, respectively. There was an error in the registration of ICC-01/04-01/06-T-194, such that only 22 of the 86 pages were registered into Ringtail and disclosed; however, the entire transcript is available on the Court's website at: http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200104/related%20cases/icc%200104%200106/transcripts/trial%20chamber%20i/Pages/194.aspx. The Prosecution re-registered the entire transcript and re-disclosed it to the Defence as document DRC-OTP-2083-1056.

background of the conflict in Ituri. The Prosecution seeks to admit Witness P-0931's prior recorded testimony in full, pursuant to rule 68(3). This includes the summary of his report provided at the outset of his testimony, and his examination by the Prosecution, Defence for Thomas Lubanga, the Legal Representatives of the Victims and Trial Chamber I.⁵

8. Attached as Annex D is Witness P-0931's expert report in the *Lubanga* proceedings. The Prosecution relies on this same report for the present proceedings.⁶ The Prosecution seeks to admit the report under rule 68(3), as part of the prior recorded testimony of Witness P-0931,⁷ or, in the alternative, under article 69(2) and (3).
9. Attached as Annex F and Annex G are two documents associated to Witness P-0931's testimony, which the Prosecution also seeks to admit under rule 68(3) as part of the prior recorded testimony or, in the alternative, under article 69(2) and (3). Both documents were referred to by the witness during his testimony.

⁵ As a result, the only portions of the transcripts of the prior recorded testimony that are excluded are those relating to other witnesses or administrative matters unrelated to Witness P-0931's evidence.

⁶ Witness P-0931's expert report was originally filed in the *Lubanga* case as ICC-01/04-01/06-1655-Anx. At the beginning of his testimony in that case, the witness explained that there were some errors in his report with regard to dates and documents. He was provided the opportunity to make corrections to his report. The new, corrected, version was subsequently filed by the Registry (ICC-01/04-01/06-1987-Corr and ICC-01/04-01/06-1987-Anx), with the corrections highlighted in red. **Annex D** to this application contains the corrected version of the expert report. The original and corrected versions of the report were both disclosed to the Defence.

The Prosecution provides, in **Annex E**, the official English translation of the expert report, for the Chamber's reference. This translation was produced by the Court Interpretation and Translation Section during the *Lubanga* proceedings. It does not contain the corrections made by Witness P-0931 to his report. Should the Chamber wish for the English translation to be updated to reflect the corrections made to the French version of the report, the Prosecution suggests that this could be most efficiently done by the Registry, as the body that provided the initial translation. Alternatively, the Prosecution's Language and Services Unit is available to update the translation, if the Registry provides it with the Word version of the English translation (ICC-01/04-01/06-1655-Anx-tENG). The Prosecution could file the updated English translation in the record of the case prior to Witness P-0931's testimony.

⁷ See ICC-01/04-01/06-T-193-ENG, p.16, ln.9.

10. In the course of his prior recorded testimony, Witness P-0931 referred to or was shown other materials, in addition to the documents already identified.⁸ As directed by the Chamber, the Prosecution attaches to this application those materials that may be necessary for a complete understanding of the witness' prior recorded testimony.⁹ These materials are listed and described in the chart attached as Annex A to this application, and the documents are attached as Annexes H and I. The Prosecution is not seeking the admission of these documents.

11. The admission of the prior recorded testimony, expert report and two further relevant documents is not prejudicial to or inconsistent with the rights of the Accused. The Prosecution intends to call Witness P-0931 to provide *viva voce* testimony. As such, the Parties and the Chamber will have the opportunity to examine this witness during the proceedings in accordance with rule 68(3) of the Rules. The Prosecution is seeking to admit the entirety of Witness P-0931's unredacted prior recorded testimony into evidence, including the examination by the Prosecution, the Defence for Thomas Lubanga, the Legal Representatives of the Victims, and Trial Chamber I. This testimony is relevant and reliable, and Witness P-0931 will be asked to confirm its accuracy.¹⁰ The expert report and two other associated documents are relevant. Witness P-0931 verified the authenticity and accuracy of his expert report in the course of his prior recorded testimony,¹¹ and indicated that he

⁸ Witness P-0931 referred to DRC-OTP-2084-0326, a report he authored about the human rights situation in Zaire (dated 23 December 1994), during the summary of his expert report at the beginning of his testimony (see: DRC-OTP-2083-0622 at 0645 (T-193, p.24), line 24). The Legal Representative of the Victims referred Witness P-0931 to DRC-OTP-0131-0321 and DRC-OTP-0131-0262, the French and English versions of a UN panel of experts report on the illegal exploitation of natural resources in the DRC (see: DRC-OTP-2083-1056 at 1069 (T-194, p.14), lines 15-24).

⁹ ICC-01/04-02/06-619, para.42. An eighth document referred to during Witness P-0931's testimony, his *curriculum vitae*, has not been annexed to this application. The Prosecution has disclosed to the Defence an up-to-date copy of the *curriculum vitae* (DRC-OTP-2083-0189), and will seek to admit that report into evidence when the witness takes the stand.

¹⁰ ICC-01/04-02/06-619, para.43.

¹¹ Annex B, p.16, ln.23 to p.17, ln.8 (ICC-01/04-01/06-T-193-ENG, p.15, ln.23 to p.16, ln.8).

produced the document provided in Annex G. These documents are also necessary to understand Witness P-0931's evidence.

12. The Prosecution seeks to be permitted to ask Witness P-0931 supplementary questions, following the introduction of his prior recorded testimony and associated documents. This supplementary examination will be brief. Other Chambers of this Court have permitted supplementary questioning after the introduction of the prior recorded testimony.¹²

13. Should this application be granted, the Prosecution submits there is no need to read into evidence any portions of Witness P-0931's prior recorded testimony as he previously testified in open session and the entirety of his prior testimony is available to the public. After tendering his prior recorded testimony and relevant documents into evidence, the Prosecution anticipates asking Witness P-0931 supplementary questions, in accordance with rule 68(3) of the Rules. This examination will be brief and focused and come within the time estimate provided by the Prosecution.¹³

Conclusion

14. The Prosecution requests that the Chamber admit the prior recorded testimony of Witness P-0931, as identified in the chart contained in Annex A pursuant to rule 68(3) of the Rules. It also requests that the Chamber admit

¹² Trial Chamber I permitted the Prosecution to admit the prior recorded testimony of three witnesses (by way of written statements, transcripts of in-court testimony and associated documents) and then to ask necessary supplementary questions in the course of the *Lubanga* proceedings (ICC-01/04-01/06-1603, para.25; ICC-01/04-01/06-T-205-Red3, p.14, l.16 to p.19, l.9 (introduction of prior recorded testimony) and p.19, l.11 ss (supplementary questioning)). In *Katanga & Ngudjolo*, Trial Chamber II similarly permitted the Prosecution to admit certain portions of witness P-30 and P-2's prior recorded testimony (ICC-01/04-01/07-2233-Corr, paras. 16-17 (P-30) and ICC-01/04-01/07-2289-Corr-Red, p.17 (P-2), and allowed the Prosecution to ask supplementary questions to the witness (ICC-01/04-01/07-2233-Corr, paras. 16-17, ICC-01/04-01/07-T-176-Red-ENG (P-30, questioned by Prosecution from p.23), ICC-01/04-01/07-T-184-Red-ENG (P-2, questioning by Prosecution from p.24).

¹³ In accordance with ICC-01/04-02/06-619, para.16, the Prosecution provided a Forthcoming Witness List by email on 14 August 2015, in which it estimated the examination in chief of Witness P-0931 would take 2 hours.

Witness P-0931's expert report (Annex D) and two other associated documents attached in Annexes F and G, pursuant to rule 68(3) of the Rules or, in the alternative, article 69(2) and (3) of the Statute. Finally, the Prosecution requests to be permitted to conduct a brief supplementary examination following the introduction of Witness P-0931's prior recorded testimony.



Fatou Bensouda
Prosecutor

Dated this 24th day of August 2015
At The Hague, the Netherlands