

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/04-02/06
Date: 17 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 reply to the “Response on behalf of Mr Ntaganda to ‘Prosecution application under rule 68(3) to admit the prior recorded testimony and associated documents of Expert Witness P-0931’”, ICC-01/04-02/06-809

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
Reparations Section**

Other

Prosecution's Submissions

1. As authorised by Trial Chamber VI ("Chamber"),¹ the Prosecution replies to two issues raised in the Defence Response² to the Prosecution Application³ to admit under rule 68(3) of the Rules of Procedure and Evidence the prior recorded testimony and three associated documents of Expert Witness P-0931.
2. First, an excerpt⁴ containing submissions by Mr Joseph Keta Orwinyo, one of the Legal Representatives of Victims in the *Lubanga* case, during Expert Witness P-0931's testimony in that case should not be admitted.⁵ The Defence erroneously states that in the excerpt at issue, Witness P-0931 explains certain contradictions between P-0931's expert report and the report of another expert witness who testified in the *Lubanga* case.⁶ However, the only speakers in this excerpt are the Legal Representative and the Presiding Judge. Indeed, at the start of the excerpt, the Legal Representative notes that he has finished with his questions and that *he* would like to address certain alleged contradictions.⁷
3. Therefore, the excerpt at issue does not form part of Expert Witness P-0931's testimony or part of his examination. It contains submissions made by one of the Legal Representatives⁸ and as such is in no way required to understand Expert Witness P-0931's prior testimony.⁹

¹ The Chamber fully granted the Prosecution request for leave to reply (ICC-01/04-02/06-819) *via* an email dated 14 September 2015 at 16:39.

² ICC-01/04-02/06-809 ("Defence Response").

³ ICC-01/04-02/06-793 ("Prosecution Application").

⁴ See ICC-01/04-01/06-T-194-ENG, p.11, ln.25 – p.14, ln.4 (Prosecution Application, Annex C, p.12, ln.25 – p.15, ln.5).

⁵ *Contra* Defence Response, para.12.

⁶ Defence Response, para.12.

⁷ See ICC-01/04-01/06-T-194-ENG, p.11, ln.25 – p.12, ln.3 (Prosecution Application, Annex C, p.12, ln.25 – p.13, ln.3).

⁸ The Prosecution also notes that the Presiding Judge in *Lubanga* had forewarned the Legal Representative not to use a comparison which he intended to make between Expert Witness P-0931's report and Expert Witness Prunier's report as a substitute for advancing submissions, *see* ICC-01/04-01/06-T-193-ENG, p.10, lns.15-20 (Prosecution Application, Annex B, p.11, lns.15-20); *see also* ICC-01/04-01/06-T-193-ENG, p.6,

4. Second, rule 68(3) does not impose any restrictions on the type and length of questions which can be put during the calling party's examination.¹⁰ Neither does the rule make any distinction between the questions which a calling party can put to witnesses of fact as opposed to any other types of witness.¹¹ Further, there is nothing in the jurisprudence and practice of this Court to suggest that any restrictions apply to such questioning.¹²
5. The Prosecution has already noted that its supplementary examination of Expert Witness P-0931 will be brief.¹³ The Prosecution is also mindful of the fact that the Decision on the Conduct of Proceedings establishes that examinations should be efficient and focused,¹⁴ and that on a case-by-case basis at any time during a witness's testimony, the Chamber shall rule, either on its own motion or at the request of a party, on the appropriateness or relevance of a given line of questioning.¹⁵ The Defence's request for the Chamber to impose restrictions on the calling party's examination of Witness P-0931 at this stage is therefore unnecessary.

lns.6-16 (Prosecution Application, Annex B, p.7, lns.6-16) and ICC-01/04-01/06-T-191-Red2-ENG, p.68, ln.4 – p.70, ln.25.

⁹ *Contra* Defence Response, para.12.

¹⁰ See Defence Response, para.9.

¹¹ See Defence Response, para.9.

¹² See Prosecution Application, para.12, fn.12, citing ICC-01/04-01/06-1603, para.25, which is the ruling in *Lubanga* permitting the Prosecution to ask "any necessary questioning" after the introduction of the prior recorded testimony of a witness present before the Chamber.

¹³ Prosecution Application, paras.4, 12, 14.

¹⁴ ICC-01/04-02/06-619, para.23.

¹⁵ ICC-01/04-02/06-619, para.24. The Prosecution notes, further, that on 15 September 2015 the Presiding Judge noted that, should the Prosecution Application be granted, this is likely to shorten the duration of the first block of evidence, see ICC-01/04-02/06-T-25-ENG, p.3, lns.14-19 (open session).

Request

6. Based on the foregoing, the Prosecution requests that the Chamber grant the Prosecution Application and that it reject the Defence's request to admit the submissions by the Legal Representative and to impose restrictions on the calling party's examination.



Fatou Bensouda
Prosecutor

Dated this 17th day of September 2015
At The Hague, the Netherlands