

**Cour
Pénale
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**International
Criminal
Court**

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

Date: **9 October 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 A-E**

**Public redacted version of “Prosecution application under rule 68(3) to admit the
prior recorded testimony of Witness P-0010”, 7 October 2015,
ICC-01/04-02/06-890-Conf**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Ms Nicole Samson

Counsel for the Defence

Mr Stéphane Bourgon
Mr Luc Boutin

Legal Representatives of the Victims

Ms Sarah Pellet
Mr Dmytro Suprun

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. The Prosecution requests that Trial Chamber VI ("Chamber") admit into evidence the prior in-court testimony of Witness P-0010, pursuant to rule 68(3) of the Rules of Procedure and Evidence ("Rules") and the decision on the conduct of proceedings.¹ Witness P-0010 testified as a Prosecution witness in the *Lubanga* case, and will be called to testify as a Prosecution witness in these proceedings.² Witness P-0010 is scheduled to appear as the seventh witness in the second evidentiary block commencing on 19 October 2015.
2. The introduction of Witness P-0010's prior testimony under rule 68(3) will enhance the expeditiousness of the proceedings by reducing the length of her upcoming testimony. The Prosecution will, however, need to ask supplementary questions, as is provided for under rule 68(3) of the Rules, on areas of her evidence that were either not germane to the *Lubanga* case (and therefore not elicited), or were addressed only briefly in her previous testimony. Additional examination on such topics is necessary for the determination of the truth and to elicit evidence specific to the *Ntaganda* case, which involves significantly more charges than the *Lubanga* case as well as a different accused.
3. Admission of the prior recorded testimony of Witness P-0010 is not prejudicial to the rights of the Accused. The Parties, the Legal Representatives of Victims (where applicable) and the Chamber will have an opportunity to examine the witness. Her prior recorded testimony was given under oath and is relevant and reliable; Witness P-0010 will be asked to confirm its accuracy and that she does not object to its introduction.
4. The Prosecution does not seek to admit any materials referred to in Witness P-0010's prior testimony. Attached to this application are two documents referred to

¹ ICC-01/04-02/06-619, paras. 41-43.

² ICC-01/04-02/06-491-Conf-AnxA-Red.

in her testimony, without which her prior testimony would not be understandable.³

Confidentiality

5. The filing is classified as “Confidential” pursuant to regulation 23*bis*(1) of the Regulations of the Court as it contains confidential information about a Prosecution witness. The Prosecution will file a public redacted version of this filing.

Prosecution’s Submissions

6. 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 together 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.⁴
7. Witness P-0010 is [REDACTED] during the relevant period. She was interviewed by the Prosecution [REDACTED] on the substantive charges in this case and in the *Lubanga* case in [REDACTED] prior to her trial testimony, and then [REDACTED]. During the *Lubanga* trial, Witness P-0010 testified on areas including her forced recruitment by the UPC/FPLC in 2002, her subsequent military training and her participation in combat. She testified about the presence

³ There are three items listed in this chart, two documents and a video recording.

⁴ ICC-01/04-02/06-619, para. 42.

of children under the age of 15 at the training camps and in ranks of the UPC/FPLC. [REDACTED].

8. In the *Lubanga* case, the Prosecution relied on Witness P-0010 as a soldier under the age of 15; the Trial Chamber did not find that the Prosecution had established Witness P-0010's age beyond reasonable doubt. Notwithstanding, the Trial Chamber found that Witness P-0010 may have been a member of the UPC/FPLC and that her appearance in a video with UPC/FPLC commanders "speaks for itself".⁵ In these proceedings, the Prosecution is relying on Witness P-0010 in regard to the events she experienced [REDACTED].⁶
9. Through this application, the Prosecution seeks to introduce the prior in-court testimony of P-0010 from the *Lubanga* trial under rule 68(3) of the Rules. Accordingly, attached as Annex A is a chart listing the precise excerpts of her prior recorded testimony that the Prosecution seeks to admit into evidence. Also listed separately in Annex A are the other materials necessary to understand Witness P-0010's prior recorded testimony, but which the Prosecution does not seek to admit into evidence through this witness.
10. Attached as Annexes B and C are the transcripts of Witness P-0010's prior in-court testimony in the *Lubanga* proceedings, which took place on 5 and 6 March 2009.⁷ The Prosecution seeks to admit Witness P-0010's prior recorded in-court testimony in full. The entirety of her previous testimony is relevant and its introduction in full is preferable to an artificial fragmentation of the evidence provided by the witness in court. The examination by the Prosecution, two Legal Representatives of the Victims, Defence for Thomas Lubanga and Trial Chamber I

⁵ ICC-01/04-01/06-2842, paras. 254-257 and 268.

⁶ [REDACTED].

⁷ Transcripts ICC-01/04-01/06-T-144-ENG (DRC-OTP-2055-0558) and ICC-01/04-01/06-T-145-ENG (DRC-OTP-2055-0709), respectively.

are included. The Prosecution has omitted purely procedural exchanges and those portions of the session held in the absence of the witness.

11. In the course of her prior recorded testimony, Witness P-0010 was shown other material. 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.⁸ The two documents listed and described in the chart attached as Annex A are attached as Annexes D and E to this application.
12. The third item listed in this chart in Annex A is the video recording of Bosco Ntaganda's visit to Rwampara camp in February 2003.⁹ During her previous testimony, Witness P-0010 [REDACTED],¹⁰ [REDACTED]¹¹ [REDACTED].¹² Witness P-0010 also identifies Bosco Ntaganda and Thomas Lubanga,¹³ provides the lyrics to the songs the recruits are singing,¹⁴ and explains that the individuals holding sticks are recruits who were almost at the end of their training.¹⁵ The Prosecution is not seeking to admit these two documents or the video recording into evidence through this witness [REDACTED].
13. The admission of the prior recorded testimony of Witness P-0010 is not prejudicial to or inconsistent with the rights of the Accused. The Prosecution will call Witness P-0010 to provide *viva voce* testimony. As such, the Parties, the Legal Representatives for Victims (if applicable) and the Chamber will have the opportunity to examine her during the proceedings in accordance with rule 68(3)

⁸ ICC-01/04-02/06-619, para. 42.

⁹ The electronic registration number for this video recording is DRC-OTP-0120-0293. The transcript of the video recording is DRC-OTP-0120-0318 and the English translation is DRC-OTP-0120-0298.

¹⁰ [REDACTED].

¹¹ [REDACTED].

¹² [REDACTED].

¹³ ICC-01/04-01/06-T-145-ENG, [REDACTED] p. 19, l. 2-15 (DRC-OTP-2055-0709 at 0727) [REDACTED].

¹⁴ ICC-01/04-01/06-T-145-ENG, p. 19, l. 16 to p. 21, l. 8 (DRC-OTP-2055-0709 at 0727-0729).

¹⁵ ICC-01/04-01/06-T-145-ENG, p. 24, l. 3-14 (DRC-OTP-2055-0709 at 0732).

of the Rules. This prior recorded testimony is relevant and reliable, and Witness P-0010 will be asked to confirm its accuracy.¹⁶

14. The Prosecution seeks to be permitted to ask Witness P-0010 supplementary questions, following the introduction of her prior recorded testimony as anticipated by rule 68(3). This supplementary examination is necessary to elicit evidence specific to this case and to the charges against Bosco Ntaganda. Other Chambers of this Court have permitted supplementary questioning after the introduction of the prior recorded testimony.¹⁷ Trial Chamber I notably permitted the Prosecution to supplement the admission of prior recorded testimony of witnesses present before the Chamber (under this rule) with “any necessary questioning.”¹⁸

15. The Prosecution will avoid eliciting evidence that is duplicative of the witness’ previous testimony, which is the very purpose of this application. While certain individuals and general events are the same as in the *Lubanga* case, the charges are significantly broader in the present proceedings and involve a different accused. As such, it is necessary to address, in detail, certain topics that were only briefly touched upon during the previous testimony, or that were not addressed at all during the previous testimony (but which were discussed in the interviews with Witness P-0010 and/or are in her witness statements). During its examination, the Prosecution will need to expand upon these topic areas in order to elicit the additional information necessary to prove its case against Bosco

¹⁶ ICC-01/04-02/06-619, para. 43.

¹⁷ 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-ENG, p. 14, l. 16 to p. 19, l. 9 (introduction of prior recorded testimony) and from p. 19, l. 11 (supplementary questioning). In *Katanga & Ngudjolo*, Trial Chamber II similarly permitted the Prosecution to admit certain portions of witnesses P-30 and P-2’s prior recorded testimony (ICC-01/04-01/07-2233-Corr, paras. 6-17 (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 witnesses (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, questioned by Prosecution from p. 25)).

¹⁸ ICC-01/04-01/06-1603, para. 25.

Ntaganda. These areas of questioning will focus primarily on the role and responsibility of the Accused, attacks on Mongbwalu and crimes committed there, [REDACTED].¹⁹

16. Should the application be granted, the Prosecution will not ask extensive, if any, questions on the following topics: the circumstances of Witness P-0010's recruitment into the UPC/FPLC; the nature of her military training at Rwampara and Mandro camps, and the presence of children under the age of 15 at these camps; the living conditions and disciplinary regime in the training camps; being issued a weapon and uniform by Bosco Ntaganda following the completion of her training; her participation in combat in Libi, Mbau, Kpandroma, Bunia and Centrale [REDACTED]; and her knowledge of the UPC/FPLC structure, the internal communication system within the UPC/FPLC and the delivery of weapons.²⁰
17. The Prosecution estimates that admitting the witness' prior recorded testimony will reduce its examination by approximately 4-5 hours. The Prosecution will provide the Chamber with an updated estimate of the anticipated length of its examination in advance of the witness testifying.
18. The Accused will not be prejudiced by the admission of this prior recorded testimony as he will have the opportunity to cross-examine the witness, allowing the Defence to test the witness' evidence, particularly on information concerning the Accused and the charges against him. The Prosecution submits, however, that in the interest of the expeditiousness of the proceedings, virtually identical lines of questioning to those already covered by Thomas Lubanga's Defence team should be limited. Repetitive cross-examination on issues appropriately tested by

¹⁹ The areas that the Prosecution intends to develop in its examination include the following points set out in the witness' summary of evidence: ICC-01/04-02/06-491-Conf-AnxB, pp. 26-28, points 4, 7-11, 13, 15 and 16.

²⁰ The topics are set out in the witness' summary of evidence: ICC-01/04-02/06-491-Conf-AnxB, pp. 26-28, points 1-3, 6, 12, 14 and 17.

the Defence, which are neither specific to this case nor to this Accused, should not be permitted.

19. In trials involving joint accused before the Court, Chambers have limited subsequent cross-examination on “grounds already covered by a prior cross-examiner”²¹ or have simply forbidden repetitive questions.²²

20. Should this application be granted, the Prosecution submits that only the references to the relevant portions of the transcript of the prior recorded testimony, as identified in Annex A, should be read into the record for the sake of efficiency. This practice has been followed by other Chambers in this Court.²³

Request

21. The Prosecution requests that the Chamber admit those portions of the prior recorded testimony of Witness P-0010 identified in the chart contained in Annex A, pursuant to rule 68(3) of the Rules. The Prosecution requests permission to conduct a supplementary examination following the introduction of Witness P-0010’s prior recorded testimony on areas of particular relevance to these proceedings.



Fatou Bensouda, Prosecutor

Dated this 9th day of October 2015
At The Hague, the Netherlands

²¹ For instance, see: ICC-01/09-01/11-847-Corr, para. 14 (*Ruto and Sang*).

²² For instance, see: ICC-01/05-01/13-T-10-Conf-ENG, p. 7, l. 13-20 (*Bemba, Kilolo, Mangenda, Babala and Arido*); ICC-01/04-01/07-1665-Corr, para. 72 (*Katanga and Ngudjolo*).

²³ For instance, see: ICC-01/04-01/06-T-205-Conf-ENG, starting at p. 11, l.1 (DRC-OTP-2054-6568 at 6578-6582), in which Trial Chamber I admitted the testimony of Witness P-0046 from the confirmation of charges hearing.