

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-02/06
Date: 26 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

Former Child Soldiers' Response to the "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 Public Counsel for Victims (CLR1)

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

The Office of the Prosecutor

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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 Mohamed Abdou

Legal Representatives of the Applicants

Mr Dmytro Suprun
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Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

**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

I. INTRODUCTION

1. The Common Legal Representative of the former child soldiers (the “Legal Representative”) hereby files her response to the “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”.¹

II. SUMISSIONS

2. The Legal Representative supports the Prosecution application to admit into evidence the prior in-court testimony of Witness P-0010. The admission of the requested material will significantly enhance the efficiency and expeditiousness of the proceedings, by avoiding repetitive questions or duplication of the witness’s previous testimony in the *Lubanga* case. It will further enable the parties and participants to focus on the aspects that are genuinely specific to the present case.

3. Most importantly, reducing the length of the examination-in-chief while focusing on clarification questions, and the accused’s individual criminal responsibility, will limit the risk of re-traumatisation of the witness who already testified at length in the *Lubanga* case. In this regard, the Legal Representative recalls that pursuant to article 68(1) of the Rome Statute, *“the Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In doing that the Court shall have regard to all relevant factors, including age, gender [...], and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children.”*

4. Furthermore, the Legal Representative concurs with the Prosecution’s submission that 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*

¹ See the “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”, ICC-01/04-02/06-890-Red, 9 October 2015.

to test the witness' evidence, particularly on information concerning the Accused and the charges against him."² Likewise, the Legal Representative shares the Prosecution's view that the admission of P-0010's previous testimony does not affect the Legal Representative's right to request the questioning of the witness with respect to areas relevant to the interest of her clients and to the harm suffered as a result of the crimes charged.³ Accordingly, the fact that P-0010's testimony which the Prosecution seeks to have admitted comprises questions put to said witness by her former legal representative shall not affect the right of her current legal representative to question her, including on similar issues. This is because the interests of the victims participating in the *Lubanga* case are not necessarily identical or similar to those of the victims participating in the present case. Moreover, the witness' perception and views on the harm suffered as a result of the events may have changed, *i.e.* more than 6 years after she testified for the first time before the International Criminal Court. Such lapse of time may, in particular, enable the Legal Representative to elicit additional information regarding the long-term consequences of the harm the witness suffered as a result of the events.

Respectfully submitted,



Sarah Pellet
Common Legal Representative of the Former
Child soldiers

Dated this 26th Day of October 2015

At The Hague, The Netherlands

² *Idem.*, para. 18.

³ *Idem.*, para. 3.