

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-01/04-02/06
Date: 22 September 2016

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

**Public redacted version of "Prosecution request to file a reply to the 'Response on Behalf of Mr Ntaganda to 'Prosecution application under Rule 68(3) to admit Witness P-0014's prior recorded testimony and associated material'",
5 September 2016, ICC-01/04-02/06-1492-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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**Unrepresented Applicants
(Participation/Reparation)**

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Other

Introduction

1. Pursuant to regulation 24(5) of the Regulations of the Court (“Regulations”), the Prosecution requests leave to file a reply to the “Response on Behalf of Mr Ntaganda to ‘Prosecution application under Rule 68(3) to admit Witness P-0014’s prior recorded testimony and associated material’” (“Response”).¹
2. The Prosecution seeks to address three issues in its reply, namely: (i) whether the Defence should be granted eight hours for Witness P-0014’s cross-examination; (ii) whether through its supplementary examination, a Party may only seek to obtain “discrete clarifications” and may not expand or “go beyond” a witness’s statement admitted pursuant to rule 68(3) of the Rules of Procedure and Evidence (“Rules”) or address topics not covered in the witness’s prior recorded testimony; and (iii) the admissibility, pursuant to rule 68(3) of the Rules, of a video shown to and explained by Witness P-0014 [REDACTED].

Confidentiality

3. This filing is classified as “Confidential” pursuant to regulation 23*bis*(1) and (2) of the Regulations because it contains confidential information and in order to be consistent with the classification of the Response. The Prosecution will file a public redacted version of this filing.

¹ ICC-01/04-02/06-1484-Conf.

Procedural Background

4. On 22 August 2016, the Prosecution filed a motion in which it requested the Chamber to admit Witness P-0014's prior recorded testimony and associated material ("Motion").²
5. On 1 September 2016, the Defence filed its Response. While the Defence does not oppose certain aspects of the Motion, it opposes others and requests additional time for Witness P-0014's cross-examination.

Prosecution's Submissions

6. Pursuant to regulation 24(5) of the Regulations, the Prosecution seeks leave to reply to Defence submissions regarding the duration of cross-examination, the scope of supplementary examination, and the admissibility of video evidence.
7. The Prosecution's reply, if allowed, will address the following issues:
 - (i) *Issue one:* Whether the Defence should be granted eight hours to conduct its cross-examination of Witness P-0014.³ This would mean granting the Defence two more hours than the estimate originally provided for the examination-in-chief of Witness P-0014 were his evidence to be elicited entirely *viva voce*.⁴
 - (ii) *Issue two:* Whether, through its supplementary examination, a Party may only seek to obtain "discrete clarifications" but may not expand or "go beyond" a witness's statement admitted pursuant to rule 68(3) and

² ICC-01/04-02/06-1479-Conf.

³ See Response, paras.37-38.

⁴ ICC-01/04-02/06-491-Conf-AnxB-Red, p.138.

may not seek to elicit new evidence from witnesses on the stand by addressing topics not covered in the prior recorded testimony.⁵

(iii) *Issue three:* Whether a video shown to and explained by Witness P-0014 [REDACTED] is admissible, pursuant to rule 68(3) of the Rules.⁶ In particular, the Prosecution seeks to address the issue as to the degree of connection required between a witness and audio-visual material for the purposes of admissibility. The Prosecution would also elaborate on the limited purpose for which it seeks admission of this video.

8. The Prosecution did not address the first issue in its Motion and could not have anticipated that the Defence would raise the issue of the duration of cross-examination at this stage. As this issue is, in effect, a new Defence request the Prosecution should be able to respond to this new request without seeking leave.
9. Allowing the Prosecution to provide its views on the second issue is necessary, in particular since the Chamber's determination may have an impact on supplementary examinations of witnesses other than Witness P-0014 and, as such, may influence the Prosecution's decision as to whether to submit further applications pursuant to rule 68(3) of the Rules.
10. Similarly, the third issue necessitates a reply since its determination will have an impact on the admissibility of audio-visual evidence more broadly than in relation to Witness P-0014 alone.
11. A reply by the Prosecution will assist the Chamber in its determination. Should the Chamber grant leave, the Prosecution will set out its substantive submissions in its reply without repeating any arguments contained in its Motion.

⁵ See Response, paras.31-35.

⁶ See Response, paras.4(iii), 12-19.

Request

12. Based on the foregoing, and pursuant to regulation 24(5) of the Regulations, the Prosecution requests that the Chamber grant leave to file a reply.



Fatou Bensouda
Prosecutor

Dated this 22nd Day of September 2016
At The Hague, the Netherlands