

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-02/06
Date: 11 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 request for leave to reply to the Defence's "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:

The Office of the Prosecutor

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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

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Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. Pursuant to regulation 24(5) of the Regulations of the Court (“Regulations”), the Prosecution seeks leave to reply to the Defence’s response to the Prosecution application to admit the prior recorded testimony and associated documents of Expert Witness P-0931, under rule 68(3) of the Rules of Procedure and Evidence.¹
2. The Prosecution seeks to address the following issues:
 - (i) whether comments of the Legal Representative of Victims should be admitted, despite their not being part of Expert Witness P-0931’s testimony or part of his examination, but rather submissions of counsel;² and
 - (ii) whether there is a requirement when prior recorded testimony is admitted under rule 68(3) that the calling party’s supplementary examination be restricted to “general” and “short” questions “especially with respect to witnesses of fact”.

Procedural Background

3. On 24 August 2015, the Prosecution filed an application to admit the prior recorded testimony and three associated documents of Expert Witness P-0931 under rule 68(3) (“Prosecution Application”).³
4. On 8 September 2015, the Defence filed its response in which it did not oppose the introduction of Expert Witness P-0931’s prior recorded testimony and associated documents (Annexes D, F and G⁴), provided that the witness is asked at the

¹ ICC-01/04-02/06-809 (“Defence Response”).

² For the sake of clarity, the Prosecution notes that both Parties have referred to the page numbers of the transcript itself, rather than to the page numbers assigned to the annexes by CMS upon filing.

³ ICC-01/04-02/06-793 and ICC-01/04-02/06-793-AnxA, pp.2-3.

⁴ The Defence also did not oppose the admission of Annex E, which contains the official English translation of Witness P-0931’s expert report. See Defence Response, paras.6 and 10. As stated in the Prosecution Application at footnote 6, the Prosecution does not seek to admit this English translation of the expert report because it is

beginning of his testimony whether he objects to their introduction.⁵ The Defence also sought to admit an additional portion of the transcript of the witness's prior recorded testimony.⁶

Prosecution's Submissions

5. Pursuant to regulation 24(5) of the Regulations, the Prosecution seeks to reply to the Defence submission that the portion of Witness P-0931's prior testimony in *Lubanga* – which contains submissions by Mr Joseph Keta Orwinyo, one of the Legal Representative of Victims in the *Lubanga* case – that starts on page 11, line 25 and ends on page 14, line 4 of the transcript (Annex C), is “essential to understanding the overall context of Witness P-0931's prior testimony”.⁷
6. Second, the Prosecution seeks to address whether, following the admission of prior recorded testimony pursuant to rule 68(3), there is a requirement for the calling party's supplemental examination to be restricted to “general and short questions” to the witness, “especially with respect to witnesses of fact”.⁸
7. The Prosecution's reply would assist the Chamber in its determination. Should the Chamber grant leave, the Prosecution will succinctly set out its substantive submissions without repeating submissions contained in its original request.

uncorrected. The Prosecution provided the uncorrected English translation for the Chamber's reference and suggested that, should the Chamber wish it, it can be updated by the Registry to reflect the corrections made by Witness P-0931 to the French version of his report.

⁵ Defence Response, paras.6, 8, 10.

⁶ Defence Response, para.12.

⁷ Defence Response, para.12.

⁸ Defence Response, para.9.

Request

8. 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 11th day of September 2015
At The Hague, the Netherlands