

**Cour
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**International
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Court**

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

Date: **27 May 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 application under rule 68(3) to admit the prior recorded testimony and associated documents of Witness P-0315", 25 May 2016, ICC-01/04-02/06-1333-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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Introduction

1. The Office of the Prosecutor (“Prosecution”) requests that Trial Chamber VI (“Chamber”) admit into evidence the prior recorded testimony of Witness P-0315 under rule 68(3) of the Rules of Procedure and Evidence (“Rules”).
2. Specifically, the Prosecution seeks to admit Witness P-0315’s witness statement, the documents annexed to her witness statement, the reports and other materials referred to in her witness statement, as well as other associated documents, pursuant to rule 68(3) as part of her testimony. All of these items are relevant and probative, and Witness P-0315 will be asked to confirm their accuracy and her knowledge about them at the beginning of her testimony.¹
3. Witness P-0315 will be the fifth witness to testify during the fifth evidence block, which is scheduled to commence on 6 June 2016. As such, the Parties and Chamber will have the opportunity to examine this witness in the course of these proceedings. The admission of the prior recorded testimony of Witness P-0315 will not be prejudicial to the rights of the Accused.
4. The admission of the prior recorded testimony of Witness P-0315 will enhance the expeditiousness of the proceedings by reducing the length of her in-court testimony. Should this application be granted, the Prosecution intends to conduct a brief supplementary examination of Witness P-0315, as provided for under rule 68(3), to elicit limited, focused *viva voce* evidence after Witness P-0315 has confirmed the accuracy of her prior recorded testimony.

¹ ICC-01/04-02/06-619, para.43.

Confidentiality

5. The filing is classified as Confidential, with Confidential annexes, pursuant to regulation 23bis (1) of the Regulations of the Court because it contains [REDACTED]. The Prosecution will file a public redacted version.

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. The Prosecution considers that Witness P-0315 is an appropriate witness for the procedure under rule 68(3), which is consistent with the Chamber's guidance for the Prosecution to identify additional witnesses, including Witness P-0315, to whom this procedure may apply.²
7. In its Decision on the conduct of proceedings, the Chamber ordered that the calling party file an application 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.³
8. Accordingly, attached as Annex A to this application, is a list of the materials that the Prosecution seeks to admit into evidence under rule 68(3) of the Rules. For ease of reference, this list has been divided into sub-categories of information. Also listed in Annex A are other materials necessary to understand Witness P-0315's prior recorded testimony, but which the Prosecution does not seek to admit into evidence in this application.

² Email from the Chamber to the Parties and participants on 4 May 2016 at 13:11.

³ ICC-01/04-02/06-619, para.42.

Witness statement and annexes

9. First, the Prosecution seeks to admit specific passages of Witness P-0315's witness statement, as well as the two documents annexed to her statement.⁴ This statement was voluntarily given by Witness P-0315. She attested to it being true to the best of her recollection and knowledge. It is relevant and reliable. Further, Witness P-0315 will be asked to confirm the accuracy of her statement and the documents annexed to it.
10. In her statement, Witness P-0315 provides information on, *inter alia*: her background, the research methodology of Human Rights Watch, information collected in relation to events in Ituri between July 2002 and the end of 2004, the reports drafted on the basis of the information collected, field missions to Ituri, interviews with victims of sexual violence, and her meetings with the Accused and with Thomas LUBANGA.

Human Rights Watch reports

11. The Prosecution seeks to admit three Human Rights Watch reports which the witness researched and authored, as explained in her statement.⁵

Materials referred to in P-0315's witness statement

12. In addition to the documents annexed to her statement and the three above-mentioned reports, Witness P-0315 also references specific documents and materials in her statement which the Prosecution seeks to admit into evidence under rule 68(3). This includes 12 photographs that she took of the "garage" in Bunia, which she concluded was a location used as a place of detention and

⁴ See DRC-OTP-2058-0990 at 0993, para. 20 (referring to DRC-OTP-2058-1020) and at 1018, para. 150 (referring to DRC-OTP-2058-1028).

⁵ See DRC-OTP-2058-0990 at 0994-0995, paras. 23-27 (referring to DRC-OTP-0074-0797 and DRC-OTP-0074-0628) and at 0995, paras. 28-30. See also, DRC-OTP-2058-0990 at 0995-0996, paras 31-33.

military office, and a location sometimes referred to as the Accused's compound or house.⁶ The Prosecution also seeks to admit the interview notes made by Witness P-0315 that pertain to her interviews with the Accused and her interview with Thomas LUBANGA.⁷ The Prosecution seeks to admit a document that Witness P-0315 received and referred to in one of the Human Rights Watch reports, as explained in her statement.⁸ Finally, the Prosecution seeks to admit a video filmed in Mongbwalu that [REDACTED].⁹

Summaries of interviews with Witness P-0315

13. Lastly, the Prosecution is seeking to admit two sets of notes pertaining to interviews conducted by representatives of the Prosecution with Witness P-0315 in 2004. These interviews pertained directly to Witness P-0315's knowledge of the events in Ituri over the relevant period. There are minimal redactions applied to one of these two documents [REDACTED].
14. As directed by the Chamber, the Prosecution also lists in Annex A any other materials that may be necessary for a complete understanding of the witness' prior recorded testimony.¹⁰ This includes a Human Rights Watch video that Witness P-0315 refers to in her statement.¹¹ The Prosecution does not seek to admit this item through this witness.
15. The Prosecution is seeking to admit Witness P-0315's statement and the associated materials contained in Annexes B-N to this application, into evidence under rule 68(3) of the Rules. Witness P-0315 will be asked to confirm whether she agrees to the admission of her witness statement and the

⁶ See DRC-OTP-2058-0990 at 1016, para 140.

⁷ See DRC-OTP-2058-0990 at 1004-1006, paras. 81-97 (referring to DRC-OTP-2062-0363), at 1006-1007, paras. 98-99 (DRC-OTP-2062-0367) and at 1007, paras. 100-110 (DRC-OTP-0172-0296).

⁸ [REDACTED].

⁹ See DRC-OTP-2058-0990 at 1016, para. 139 [REDACTED].

¹⁰ ICC-01/04-02/06-619, para. 42.

¹¹ See DRC-OTP-2058-0990 at 1016, para. 139 (referring to DRC-OTP-2052-0507).

associated materials when she testifies. Further, she will be asked to attest to her witness statement being true to the best of her recollection, and to explain her knowledge of the associated documents. All of these items are relevant and probative.

16. The admission of Witness P-0315's prior recorded testimony under rule 68(3) is not prejudicial to or inconsistent with the rights of the Accused. The Prosecution intends to call Witness P-0315 to provide *viva voce* testimony. As such, the Parties and the Chamber will have the opportunity to examine this witness during the proceedings and she will confirm whether she consents to the admission of her materials, in accordance with rule 68(3) of the Rules.

Proposed procedure for the introduction of prior recorded testimony

17. Should this application be granted, the Prosecution submits that there will be no need to read into evidence Witness P-0315's statement as she will be asked to confirm its accuracy and to provide any corrections or amendments, if any, to her statement and the additional materials.
18. During witness preparation, the Prosecution will ask Witness P-0315 to review all of the materials attached to this application which the Prosecution seeks to admit under rule 68(3) of the Rules. She will be asked to advise of any corrections or clarifications that she wishes to make to these materials, and then to confirm their accuracy.¹² In accordance with the Witness Preparation Protocol this session will be video-recorded and the Prosecution will disclose a log of the session clearly indicating any changes or corrections the witness makes.¹³

¹² ICC-01/04-02/06-652-Anx, page 4, paras. 18-19.

¹³ ICC-01/04-02/06-652-Anx, page 4, paras. 14-15 and page 6, paras. 31-32.

19. To enhance expeditiousness of her in-court testimony, the Prosecution proposes that it be permitted to use leading questions to elicit from the witness any corrections or clarifications identified during witness preparation, asking her to confirm that she wishes to make a particular change and asking her to explain the reason for the change or clarification.
20. After tendering her prior recorded testimony into evidence, with any changes or clarifications noted on the record, the Prosecution will then conduct a brief supplementary examination of Witness P-0315 to ask limited clarification questions and to solicit specific, focused aspects of her evidence *viva voce*, in accordance with rule 68(3) of the Rules. This supplementary examination will ensure that the key aspects of her evidence are suitably explored through a non-leading examination by the Prosecution, which will ensure that the Chamber is able to fully assess these aspects of her evidence with a greater degree of clarity and reliability.

Specific areas of Witness P-0315's evidence to be provided *viva voce*

21. Following the introduction of her prior recorded testimony, the Prosecution seeks to be permitted to ask Witness P-0315 limited clarification questions, as well as specific, focused questions to explore what the Prosecution has identified to be the critical aspects of her testimony. This supplementary examination will be brief. Other Chambers of this Court have permitted supplementary questioning after the introduction of the prior recorded testimony.¹⁴ Trial Chamber I expressly permitted the Prosecution to

¹⁴ 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 (P-0043 and P-0293: ICC-01/04-01/06-1603, para. 25; P-0046: ICC-01/04-01/06-T-205-Red3, page 14, l.16 to page 19, l.9 (introduction of prior recorded testimony) and page 19, l.11 *ss* (supplementary questioning)). In *Katanga & Ngudjolo*, Trial Chamber II similarly permitted the Prosecution to admit certain portions of Witness P-0030 and P-0002's prior recorded testimony (ICC-01/04-01/07-2233-Corr, paras. 16-17 (P-0030) and ICC-01/04-01/07-2289-Corr-Red, page 17 (P-0002)), 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-0030,

supplement the admission of prior recorded testimony of witnesses present before the Chamber (under this rule) with “any necessary questioning.”¹⁵

22. In particular, Witness P-0315 is expected to provide evidence about her interactions with the Accused. This supplementary questioning will be brief and focused and come within the time estimate provided by the Prosecution of one hour for examination-in-chief.¹⁶

Request

23. The Prosecution requests that the Chamber admit the witness statement of Witness P-0315 and documents annexed to this statement, as well as the other materials listed in Annex A to this application, as prior recorded testimony pursuant to rule 68(3) of the Rules.

24. Further, the Prosecution requests to be permitted to conduct a brief supplementary examination of Witness P-0315 following the introduction of her prior recorded testimony, to elicit specific, focused aspects of her evidence *viva voce*.



**Fatou Bensouda,
Prosecutor**

Dated this 27th day of May 2016
At The Hague, The Netherlands

questioned by Prosecution from page 23), ICC-01/04-01/07-T-184-Red-ENG (P-0002, questioned by Prosecution from page 24).)

¹⁵ ICC-01/04-01/06-1603, para. 25.

¹⁶ In accordance with ICC-01/04-02/06-619, para.16, the Prosecution provided a Forthcoming Witness List by email on 10 May 2016, in which it estimated that the examination-in-chief of Witness P-0315, including the required procedure under rule 68(3) of the Rules for the admission of his prior recorded testimony, would be completed in one hour.