

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/04-02/06
Date: 9 September 2019

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-B**

**Prosecution's submission of the prior recorded testimony of two witnesses
pursuant to rule 68(2)(b) as sentencing evidence**

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. Pursuant to the Chamber's preliminary ruling of 23 August 2019 ("Preliminary Ruling"),¹ the Prosecution submits the prior recorded testimony of Witnesses P-0824 and P-1000 and requests their admission as sentencing evidence under rule 68(2)(b) of the Rules.²

Procedural History

2. On 8 July 2019, the Chamber convicted Bosco Ntaganda of 18 counts of war crimes and crimes against humanity.³ On the same day, the Chamber issued an order on the sentencing procedure and directed the Parties and Legal Representatives of Victims ("LRVs") to file any requests to submit further evidence or to call witnesses by 29 July 2019.⁴
3. On 29 July 2019, the Prosecution filed its request to submit additional evidence on sentencing.⁵ The Prosecution requested the testimony of one *viva voce* expert witness and the admission of four statements under rule 68(2)(b).
4. On 23 August 2019, the Chamber issued the Preliminary Ruling, granting the Prosecution's request to submit evidence pursuant to rule 68(2)(b) in respect of two of its proposed four witnesses, namely P-0824 and P-1000. The Chamber found their prior recorded testimony, in principle, appropriate for admission under rule 68(2)(b), subject to the fulfilment of the requirements of rule 68(2)(b)(ii), namely that the testimony be accompanied by a "declaration by the testifying person that the contents of the prior recorded testimony are true and correct to the best of that person's knowledge and belief".⁶ The Chamber further

¹ ICC-01/04-02/06-2385-Conf.

² Rules of Procedure and Evidence ("Rules").

³ ICC-01/02-02/06-2359.

⁴ ICC-01/02-02/06-2360.

⁵ ICC-01/02-02/06-2368-Conf.

⁶ ICC-01/04-02/06-2385-Conf, para. 10. The Chamber further held, in relation to the requirement under rule 68(2)(b)(iii), that: "mindful of the present stage of the proceedings, the Chamber considers that declarations of the witnesses whose prior recorded testimony will be submitted pursuant to Rule 68(2)(b) for the purposes of

instructed the Prosecution to submit Witnesses P-0824's and P-1000's prior recorded testimony by 9 September 2019.⁷ The Chamber granted protective measures for these two witnesses: that the prior recorded testimony be classified as confidential and that a pseudonym be used to refer to the witnesses for the purposes of the trial.⁸

Level of Confidentiality

5. This filing is classified as "Public" and its Annexes A and B are classified as "Confidential" pursuant to regulation 23*bis*(1) and (2) of the Regulations of the Court, because they contain confidential information regarding witnesses who are the subject of protective measures.

Submission

6. Pursuant to the Chamber's Preliminary Ruling, the Prosecution submits the prior recorded testimony of Witnesses P-0824 and P-1000⁹ and requests that the Chamber admit both statements in their entirety.
7. The Chamber has already considered the factors under rule 68(2)(b)(i), to the extent that they are applicable at the sentencing phase.¹⁰ In its Preliminary Ruling, the Chamber held that the prior recorded testimony of these two witnesses was, in principle, appropriate for admission under rule 68(2)(b), subject only to the fulfilment of the requirements of rule 68(2)(b)(ii).¹¹ It further held that an accompanying declaration is not required at this stage of the

sentencing need not be witnessed by a member of the Registry as was the case for the declarations accompanying prior recorded testimony admitted under Rule 68(2)(b) during the previous phase of the trial".

⁷ ICC-01/04-02/06-2385-Conf.

⁸ ICC-01/04-02/06-2385-Conf, paras. 17 and 28.

⁹ Confidential Annex A contains the prior recorded testimony of P-0824 (DRC-OTP-2109-4426) and Confidential Annex B the prior recorded testimony of P-1000 (DRC-OTP-2109-4363).

¹⁰ See, ICC-01/04-02/06-2385-Conf, paras. 14 and 25.

¹¹ ICC-01/04-02/06-2385-Conf, paras. 14 and 25.

proceedings (rule 68(2)(b)(iii)).¹² This final requirement has now been fulfilled and both statements should be admitted into evidence.

8. Indeed, both statements submitted in Confidential Annexes A and B are accompanied by a declaration by the testifying person that the contents of the prior recorded testimony are true and correct to the best of that person's knowledge and belief.¹³ The Prosecution refers to the last page of Witnesses P-0824's and P-1000's prior recorded testimony,¹⁴ where the witnesses certified that they (i) were provided with their prior recorded testimony; (ii) were given an opportunity to read the prior recorded testimony in a language that they understood; (iii) confirmed that it is indeed their prior recorded testimony and that it was given voluntarily; and (iv) declared that the content is true and accurate to the best of their knowledge and recollection. Accordingly, the prior recorded testimony of Witnesses P-0824 and P-1000 now fully meet all requirements under rule 68(2)(b).

Conclusion

9. For all the foregoing reasons, the Prosecution requests that the Chamber admit the prior recorded testimony of Witnesses P-0824 and P-1000 as evidence for sentencing.



Fatou Bensouda
Prosecutor

Dated this 9th day of September 2019
At The Hague, The Netherlands

¹² ICC-01/04-02/06-2385-Conf, para. 10.

¹³ ICC-01/04-02/06-2385-Conf, para. 10.

¹⁴ Confidential Annex A: DRC-OTP-2109-4426 at 4438 and Confidential Annex B: DRC-OTP-2109-4363 at 4372.