

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/04-02/06
Date: 17 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

Public redacted version of “Prosecution’s Reply to “Defence response to ‘Prosecution’s request to submit additional evidence on sentencing’”, ICC-01/04-02/06-2373-Conf, 5 August 2019”, 13 August 2019, ICC-01/04-02/06-2381-Conf

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

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Introduction

1. The Prosecution replies to an issue raised in the “Defence response to ‘Prosecution’s request to submit additional evidence on sentencing’”,¹ namely, “whether the evidence of three proposed Prosecution witnesses – [REDACTED], Ms PAPINUTTO, and [REDACTED] – is duplicative of other evidence on the record of the case and could have been elicited from other witnesses”.²

Level of Confidentiality

2. The Prosecution files this submission as “Confidential” pursuant to regulation 23bis(1) and (2) of the Regulations of the Court, because it replies to a document with the same confidentiality level and it contains confidential information regarding prospective witnesses who are the subject of requests for protective measures.

Procedural History

3. On 8 July 2019, Trial Chamber VI (the “Chamber”) convicted Mr Bosco Ntaganda (“Convicted Person”) of 18 counts of war crimes and crimes against humanity.³
4. 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
5. 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).

¹ ICC-01/02-02/06-2373-Conf (“Defence Response”).

² ICC-01/04-02/06-2379-Conf, para. 10.

³ ICC-01/02-02/06-2359.

⁴ ICC-01/02-02/06-2360.

⁵ ICC-01/02-02/06-2368-Conf (“Prosecution Request”).

6. On 5 August 2019, the Defence opposed the Prosecution Request.⁶
7. Also on 5 August 2019, the LRVs submitted a joint response to the Prosecution Request.⁷ The LRVs supported the totality of the Prosecution Request and noted that the evidence of the five witnesses proposed by the Prosecution is not duplicative of the evidence admitted in the case record and will assist the Chamber in assessing the extent of the harm caused.⁸
8. On 7 August 2019, the Prosecution sought leave to reply to three issues arising from the Defence Response.⁹
9. On 8 August 2019, the Chamber granted the Prosecution leave to reply in relation to one issue,¹⁰ namely, whether the evidence of three proposed Prosecution witnesses is duplicative of other evidence on the record of the case and could have been elicited from other witnesses.

Submissions

10. The Prosecution submits that the evidence of proposed Prosecution witnesses [REDACTED], Ms Mirella PAPINUTTO, and [REDACTED] is not duplicative of other evidence on the record of the case and could not have been elicited from other witnesses.
11. In any event, even if similar evidence *could have* been elicited from other witnesses, but was not, this would not be a bar to permitting such evidence to be led during the sentencing phase. The Chamber never ordered the Parties to elicit all available evidence on sentencing during the trial and there is accordingly no reason to exclude relevant evidence on this ground alone.

⁶ ICC-01/02-02/06-2373-Conf (“Defence Response”).

⁷ ICC-01/02-02/06-2374-Conf (“Legal Representatives Response”).

⁸ Legal Representatives Response, paras. 2, 12-18.

⁹ ICC-01/02-02/06-2379-Conf, para. 10. The filing was notified on 8 August 2019.

¹⁰ Email communication from Trial Chamber VI dated 9 August 2019 at 09:55.

A. [REDACTED]

12. The Chamber should dismiss the Defence's argument that the proposed evidence of [REDACTED] is "substantially duplicative of testimony heard from a number of witnesses". The Defence argues that "[REDACTED] was very well-known, and many witnesses *described the reaction to this event*" (emphasis added), referring to specific portions of the testimony of Prosecution Witnesses [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED], and further claims that these witnesses would have been able to testify about the impact of [REDACTED].¹¹

13. However, *first*, none of the portions of testimony referred to by the Defence refer to the impact of [REDACTED]. Witness [REDACTED] testified that he saw [REDACTED].¹² Witness [REDACTED] testified that [REDACTED]. [REDACTED],¹³ that [REDACTED].¹⁴ Witness [REDACTED] testified that [REDACTED]; that he [REDACTED]; and that [REDACTED].¹⁵ The Chamber did not rely on this witness. Witness [REDACTED] testified that [REDACTED].¹⁶ Lastly, Witness [REDACTED] testified that [REDACTED]. [REDACTED].¹⁷

14. *Second*, none of these [REDACTED] witnesses would have been able to testify about the impact of [REDACTED] in the same manner as proposed witness [REDACTED]. Indeed, Witnesses [REDACTED] were not [REDACTED] and only [REDACTED], shortly after [REDACTED]. Likewise, [REDACTED] only testified about [REDACTED] and receiving information about [REDACTED]. None of these three witnesses was well-placed to observe the long-lasting impact of [REDACTED]. While Witnesses [REDACTED] were [REDACTED].

¹¹ ICC-01/04-02/06-2373-Conf, para. 22.

¹² [REDACTED].

¹³ [REDACTED].

¹⁴ [REDACTED].

¹⁵ [REDACTED].

¹⁶ [REDACTED].

¹⁷ [REDACTED].

15. [REDACTED], on the other hand, (1) has been [REDACTED],¹⁸ (2) had [REDACTED], (3) worked with [REDACTED], (4) played an important role in [REDACTED], including by [REDACTED],¹⁹ and (5) is presently [REDACTED]. Given his long-term engagement with [REDACTED], [REDACTED], his ability to describe [REDACTED] cannot be compared to that of Prosecution Witnesses [REDACTED]. Accordingly, the Chamber should dismiss the Defence's argument on this point.

B. Ms PAPINUTTO

16. According to the testimony heard at trial, only a small number of *centres de transit et d'orientation* ("CTOs") served the needs of demobilised child soldiers in Bunia in 2003 and 2004.²⁰ The Chamber heard evidence from [REDACTED]. It also heard evidence from Witness P-0046's vantage point as a coordinator of the work done by the humanitarian organisations in 2003 and 2004. Although these witnesses were able to explain COOPI's role in general terms, they provided scant detail beyond characterising it as having focussed on young, female former child soldiers and having provided them with psychological assistance.²¹

17. Specifically, neither witness testified – nor could have testified – with the in-depth insight acquired by COOPI staff as to the impact of the conflict on victims, derived from the NGO's close interaction with female victims of the conflict. MONUC reports, open source material, and witness statements and trial testimony document the range of COOPI's deep involvement with these victims: the launch, in about July 2003, of COOPI's in-depth research project about sexual violence, involving the dispatch of numerous researchers around Bunia,²² and its reliance on professional psychologists;²³ the opening of the COOPI CTO;

¹⁸ See [REDACTED].

¹⁹ [REDACTED]; See also [REDACTED].

²⁰ P-0046: T-100-CONF-ENG CT, 21:7-23.

²¹ [REDACTED]; P-0046: T-100-Red-ENG WT 21:14-15.

²² DRC-OTP-0001-0049, p. 0050, heading II.2.

²³ DRC-OTP-0001-0055, p. 0056, heading II.2.

COOPI's participation in missions outside of Bunia in 2004, carrying out awareness-raising, assessing victims' medical conditions, and providing training to other organisations.²⁴ As late as mid-2006, COOPI continued to focus specifically on former female child soldiers, going *"door to door in remote areas of Ituri where armed groups [were] operating, seeking girls associated with armed forces"*,²⁵ and providing them with medical care, educational activities and vocational training.²⁶

18. In contrast to Ms PAPINUTTO, who as Project Manager for COOPI, was focused on the specific situation of girls, Witness [REDACTED],²⁷ out of [REDACTED].²⁸ As for Witness P-0046, although she and her colleagues had contact with many more young women and girls [REDACTED],²⁹ she left Ituri in June 2004, whereas Ms PAPINUTTO remained there until 2006. She is therefore far better placed to testify about the impact of the Convicted Person's crimes in the mid-2004 to 2006 period.

C. [REDACTED]

19. The Prosecution acknowledges that [REDACTED], [REDACTED] and [REDACTED] gained insight about the impact of the Convicted Person's crimes from a common vantage point, namely because of their work for [REDACTED].

20. [REDACTED]'s work, however, did not include Ituri for as long as the work of [REDACTED] and [REDACTED]. Given that, as noted above, Witness [REDACTED] left Ituri in [REDACTED], there is no potential for duplication between [REDACTED] testimony and [REDACTED]'s for the period between mid-2004 and 2006.

²⁴ DRC-OTP-0001-0246; P-0046: T-100-Red-ENG WT 21:14-15; [REDACTED].

²⁵ DRC-OTP-2104-0602, p. 0602.

²⁶ DRC-OTP-2104-0602, p. 0603.

²⁷ [REDACTED].

²⁸ [REDACTED].

²⁹ DRC-OTP-0155-0009, pp. 0055-0056, paras. 168-170.

21. While both [REDACTED] and [REDACTED] worked for [REDACTED] in the 2004-2006 period after the charges, only [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED],³⁰ [REDACTED].³¹ [REDACTED],³² [REDACTED].³³ [REDACTED].³⁴ [REDACTED]³⁵ – [REDACTED].³⁶ As [REDACTED], [REDACTED] is, accordingly, better placed to testify about the impact of the Convicted Person's crimes in the 2004 to 2006 period.

22. In contrast to Witnesses [REDACTED] and [REDACTED], [REDACTED]'s testimony will bring the specific perspective of [REDACTED] in the 2004-2006 period that followed the charges. [REDACTED]'s proposed testimony is therefore not duplicative of evidence already in the record of the case.

Conclusion

23. Based on the foregoing, the Prosecution submits that the proposed testimony of [REDACTED], Ms PAPINUTTO, and [REDACTED] is not duplicative of other evidence on the record of the case and could not have been elicited from other witnesses.



Fatou Bensouda
Prosecutor

Dated this 17th day of September 2019
At The Hague, The Netherlands

³⁰ [REDACTED].

³¹ [REDACTED].

³² [REDACTED].

³³ [REDACTED].

³⁴ [REDACTED].

³⁵ [REDACTED].

³⁶ [REDACTED].