

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 16 March 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

Decision on Prosecution's request to hear P-0933's testimony via video-link

To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Ms Nicole Samson

Counsel for Bosco Ntaganda

Mr Stéphane Bourgon
Mr Luc Boutin

Legal Representatives of Victims

Ms Sarah Pellet
Mr Dmytro Suprun

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber VI ('Chamber') of the International Criminal Court, in the case of *The Prosecutor v. Bosco Ntaganda*, having regard to Articles 64, and 68-69 of the Rome Statute ('Statute') and Rule 67 of the Rules of Procedure and Evidence ('Rules'), issues the following 'Decision on Prosecution's request to hear P-0933's testimony via video-link'.

I. Procedural history and submissions

1. On 16 April 2015, the Office of the Prosecutor ('Prosecution') filed a list of proposed expert witnesses it intends to call to testify, which included P-0933, a forensic psychologist with expertise in trauma.¹
2. On 15 September 2015, the defence team for Mr Ntaganda ('Defence') filed a notice setting out its position in respect of the Prosecution's proposed expert witnesses,² in which it did not challenge P-0933's qualifications or the fact that his report was an expert report; it challenged, however, the probative value that could be attributed to the report.³
3. On 2 December 2015, the Prosecution informed the Chamber that expert witness P-0933 would no longer be able to testify, [REDACTED]. It further indicated that it intended to submit his report under Rule 68 of the Rules, and that it would seek to add a new expert on trauma under Regulation 35 of the Regulations of the Court.⁴
4. On 9 March 2016, after having been advised that P-0933's [REDACTED] and that he would be willing and able to testify via video-link, the Prosecution

¹ Prosecution's list of expert witnesses and request pursuant to regulation 35 to vary the time limit for disclosure of the report of one expert witness, ICC-01/04-02/06-560.

² Notice on behalf of Mr Ntaganda setting out the position of the Defence on proposed Prosecution expert witnesses, ICC-01/04-02/06-826-Conf ('Defence Notice'). A public redacted version (ICC-01/04-02/06-826-Red) was filed on the same day.

³ Defence Notice, ICC-01/04-02/06-826-Red, paras 19-22.

⁴ Prosecution's response to "Supplementary submission on behalf of Mr Ntaganda in relation to proposed Expert witnesses", ICC-01/04-02/06-1032-Conf, ICC-01/04-02/06-1044-Conf. This filing was reclassified as 'public' on 2 March 2016 (ICC-01/04-02/06-1044).

filed a request to hear P-0933's testimony via video-link ('Request').⁵ The Prosecution submits that the [REDACTED] of the witness prevents him from travelling to The Hague to give testimony.⁶ It further submits that the use of video-link testimony is not prejudicial to or inconsistent with the accused's rights, nor will it detrimentally affect the fairness of the trial.⁷ It further submits that the testimony should be given before [REDACTED].⁸ Finally, the Prosecution requests that the Chamber modify the sitting schedule in order to accommodate the testimony of this expert witness, given the time difference between his place of residence and the seat of the Court.⁹

5. On 15 March 2016, the Defence filed a response, indicating that it does not object to the Request.¹⁰

II. Analysis

6. As the Chamber has previously recalled, the term 'given in person' in Article 69(2) of the Statute, does not imply that witness testimony shall necessarily be given by way of live testimony in court. Instead, the Statute and the Rules give the Chamber broad discretion to permit evidence to be given *viva voce* by means of video or audio technology, provided, *inter alia*, that such measures are not prejudicial to, or inconsistent with, the rights of the accused.¹¹ The technology used must be such as to permit the witness to be questioned by the

⁵ Prosecution's Request to Hear Expert Witness P-0933's Testimony via Video-link, ICC-01/04-02/06-1202-Conf.

⁶ Request, ICC-01/04-02/06-1202-Conf, paras 1 and 13.

⁷ Request, ICC-01/04-02/06-1202-Conf, para. 14.

⁸ Request, ICC-01/04-02/06-1202-Conf, paras 9 and 13.

⁹ Request, ICC-01/04-02/06-1202-Conf, paras 2, 15-16, and 18.

¹⁰ Response on behalf of Mr Ntaganda to "Prosecution's Request to Hear Expert Witness P-0933's Testimony via Video-link", ICC-01/04-02/06-1209-Conf.

¹¹ See also, Decision on Prosecution's request to hear P-0039's testimony by way of video-link, 12 October 2015, ICC-01/04-02/06-897-Red2 ('Decision of 12 October 2015'), para. 12, making reference, *inter alia*, to *Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on the "Second Further Revised Defence Submissions on the Order of Witnesses" (ICC-01/05-01/08-2644) and on the appearance of Witnesses D04-02, D04-09, D04-03, D04-04 and D04-06 via video-link, 31 May 2013, ICC-01/05-01/08-2646, para. 8; and *Prosecutor v. Thomas Lubanga Dyilo*, Redacted Decision on the defence request for a witness to give evidence via video-link, 9 February 2010, ICC-01/04-01/06-2285-Red, paras 14-15.

parties and the Chamber at the time of his testimony.¹² The assessment of whether or not the use of video-link technology is appropriate in any particular case is fact specific and requires a careful weighing of a range of different factors.¹³

7. In the present circumstances, the Chamber considers it appropriate for P-0933's testimony to be heard by way of video-link, noting also that the Defence does not oppose the Request. The Chamber further finds that certain amendments to the sitting schedule are necessary to accommodate the testimony of the witness by video-link. In particular, the Chamber grants the request for the testimony to be heard in evening sessions of two hours each, commencing at 17h00.

¹² Rule 67(1) of the Rules.

¹³ Decision of 12 October 2015, ICC-01/04-02/06-897-Red2, paras 12-13.

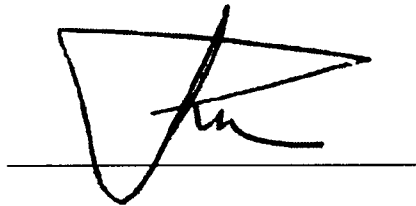
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

GRANTS the Request;

DIRECTS the Registry, in consultation with the Prosecution, to make the necessary arrangements for the hearing of P-0933's testimony by way of video-link; and

DIRECTS the parties to file public redacted versions of their respective filings (ICC-01/04-02/06-1202-Conf, and ICC-01/04-02/06-1209-Conf), by 31 March 2016.

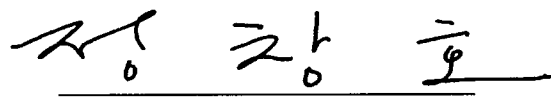
Done in both English and French, the English version being authoritative.

A handwritten signature in black ink, consisting of a large, stylized 'F' and 'R' intertwined, written over a horizontal line.

Judge Robert Fremr, Presiding Judge

A handwritten signature in black ink, appearing to be 'Kuniko Ozaki', written over a horizontal line.

Judge Kuniko Ozaki

A handwritten signature in black ink, consisting of Korean characters '정창호' (Jeong Chang-ho), written over a horizontal line.

Judge Chang-ho Chung

Dated this 16 March 2016

At The Hague, The Netherlands