

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-01/04-02/06
Date: **9 September 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 Witness P-0668'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 Christopher Gosnell

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

Mr Nigel Verrill

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 67-69 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 Witness P-0668's testimony via video-link'.

1. On 2 September 2016, the Office of the Prosecutor ('Prosecution') filed a request to hear Witness P-0668 ('Witness')'s testimony via video-link ('Request').¹ The Prosecution informs the Chamber that the health condition of the Witness prevents her from travelling to give testimony² and submits that, in the case at hand, the use of video-link testimony would not be 'prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial'.³
2. On 7 September 2016, pursuant to the Chamber's instructions,⁴ the defence team for Mr Ntaganda ('Defence') filed a response indicating that it was 'not in a position to support the [Request] in its present form' as it was not supported by 'objective evidence' concerning the health condition of the Witness.⁵ The Defence requests the Chamber to instruct the Prosecution to provide 'additional independent information' confirming the inability of the Witness to travel, indicating it will not oppose the Request if this information confirms the need for use of video-link.⁶
3. As previously held,⁷ the Chamber considers that the Statute and the Rules give the Chamber a broad discretion to permit evidence to be given *viva voce* by

¹ Prosecution's request to hear DRC-OTP-P-0668's testimony *via* video-link, ICC-01/04-02/06-1485-Conf.

² Request, ICC-01/04-02/06-1485-Conf, para. 3.

³ Request, ICC-01/04-02/06-1485-Conf, para. 4.

⁴ Email from Legal Officer of the Chamber to parties, 2 September 2016, 15:23.

⁵ Response on behalf of Mr Ntaganda to 'Prosecution's request to hear DRC-OTP-P-0668's testimony *via* video-link', ICC-01/04-02/06-1495-Conf ('Response').

⁶ Response, ICC-01/04-02/06-1495-Conf, para. 3.

⁷ Decision on Prosecution's request to hear P-0933's testimony via video-link, 16 March 2016, ICC-01/04-02/06-1213-Red, para. 6 ; and Decision on Prosecution's request to hear P-0039's testimony by way of video-

means of video or audio technology provided, *inter alia*, that such measures are not prejudicial to, or inconsistent with, the rights of the accused.

4. The Chamber notes that the Witness recently informed the Prosecution that she suffers from a condition which ‘prevents her from travelling long distances’.⁸ Noting the Witness’s reported situation, and having taken into consideration her personal circumstances, including her age, the Chamber considers it to be appropriate to hear the Witness’s testimony by way of video-link. The Chamber notes that it does not consider that use of video-link for testimony requires exceptional justification, and that it does not consider it necessary to obtain further information on the Witness’s inability to travel.
5. The Chamber is of the view that the measure adopted is consistent with its obligations under Article 68(1) of the Statute and that it will not be prejudicial to Mr Ntaganda, whose counsel shall be permitted to question the Witness, as usual, *via* video-link.

link, 12 October 2015, ICC-01/04-02/06-897-Red2, 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.

⁸ Request, ICC-01/04-02/06-1485-Conf, para. 3.


FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

GRANTS the Request;


DIRECTS the Registry to make the necessary arrangements for the hearing of Witness P-0668's testimony by way of video-link; and

DIRECTS the parties to file public redacted versions of their respective filings by 26 September 2016.

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



Judge Robert Fremr, Presiding Judge



Judge Kuniko Ozaki

Judge Chang-ho Chung

Dated this 9 September 2016

At The Hague, The Netherlands