

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-01/04-02/06
Date: 21 November 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 'Decision on Prosecution's request to hear
Witness P-0918's testimony via video-link', 4 November 2016, ICC-01/04-02/06-
1612-Conf**

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-0918's testimony via video-link'.

1. On 2 November 2016, the Office of the Prosecutor ('Prosecution') requested that the testimony of Witness P-0918 ('Witness') be heard via video-link and that the sitting schedule be modified for the duration of her testimony ('Request').¹ The Prosecution informs the Chamber that [REDACTED] of the Witness prevents her from travelling to give testimony 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'. The Prosecution further indicates that the Registry has provided 'advance confirmation that the video-link can be arranged'.
2. Also on 2 November 2016, the Chamber shortened the deadline for responses to no later than 14:00 on 4 November 2016 and instructed the Registry to confirm, by the same deadline, whether the video-link could be facilitated on the specific dates.²
3. On 4 November 2016, the defence team for Mr Ntaganda ('Defence') provided its response ('Response')³ indicating its opposition to the Request. The Defence submits that 'no genuine justification has been provided' by the Prosecution in support of its Request and argues that the amended sitting schedule would cause undue prejudice to the accused.

¹ Email communication from the Prosecution to the Chamber on 2 November 2016 at 9:48.

² Email communication from Legal Officer of the Chamber to parties and participants on 2 November 2016 at 15:15.

³ Email communication from the Defence to the Chamber on 4 November 2016 at 12:53.

4. As previously held,⁴ the Chamber considers that the Statute and the Rules give the Chamber a 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.
5. The Chamber notes the Prosecution submission that the Witness's [REDACTED]. The Chamber recalls, in this regard, that it does not consider the use of video-link to require exceptional justification.⁵ Therefore, the Chamber does not find it necessary to obtain further information concerning the Witness's inability to travel. The Chamber does not consider that any prejudice would arise to the Defence based purely on the fact that the testimony would be heard by way of video-link, and notes that the Defence makes no submissions to that effect. In the circumstances, the Chamber finds it appropriate to hear the Witness's testimony by way of video-link.
6. The Chamber notes that certain amendments to the sitting schedule are requested as necessary to accommodate the Witness's testimony. In particular, the Prosecution seeks that the Chamber hear the Witness's testimony during evening sessions, commencing at or after 16:00, and requests that other witnesses testify during the morning sessions on the same days.
7. The Chamber notes the concerns raised by the Defence⁶ but considers that, in the case at hand, hearing the Witness's evidence concurrently with other witnesses would not be unduly prejudicial to or inconsistent with the rights of

⁴ 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; 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, 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; and Decision on Prosecution's request to hear Witness P-0668's testimony via video-link, 9 September 2016, ICC-01/04-02/06-1499 ('Decision of 9 September 2016').

⁵ Decision of 9 September 2016, ICC-01/04-02/06-1499, para. 4.

⁶ Response, paras 7-8.

the accused. In this regard, the Chamber has taken into consideration the nature and scope of the Witness's expected testimony, that the amended schedule will not increase the total number of sitting hours each day, and the time which is available to the Defence to prepare for the testimony of ongoing and upcoming witnesses.

8. In light of the above, the Chamber finds it appropriate to modify the sitting schedule for the duration of the Witness's testimony in the manner proposed by the Prosecution and directs the Registry to make the necessary arrangements for the Witness's testimony to be heard by way of video-link during the week of 14 November 2016. Upon consultation with the Registry, the Chamber will confirm the specific details of the amended schedule in due course.
9. Finally, the Chamber recalls its direction that the Prosecution file a copy of the Request into the record⁷ and further instructs the Defence to also file a copy of its Response.

⁷ Email communication from Legal Officer of the Chamber to the parties and participants, 2 November 2016 at 15:15.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

GRANTS the Request;

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

DIRECTS the Defence to file a copy of its Response into the record.

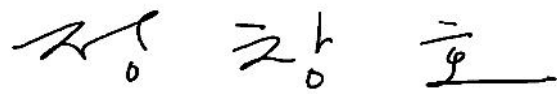
Done in both English and French, the English version being authoritative.

A handwritten signature in black ink, consisting of a large, stylized 'F' followed by 'remr', 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' followed by a stylized '이', written over a horizontal line.

Judge Chang-ho Chung

Dated this 21 November 2016

At The Hague, The Netherlands