

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **16 May 2017**

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 Defence's request to hear Witness D-0052'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 Defence's request to hear Witness D-0052's testimony via video-link'.

1. On 5 May 2017, the defence team for Mr Ntaganda ('Defence') filed a request seeking that the testimony of Witness D-0052 ('Witness') be heard via video-link ('Request').¹ The Defence submits that video-link testimony would 'avoid a substantial disruption to the [W]itness's daily life by travelling for an extended period of time to The Hague'² and, noting that this measure will ensure that he is able to testify during the first evidentiary block, that the Request will facilitate the expeditiousness of the proceedings.³
2. On 15 May 2017, in line with the deadline set by the Chamber,⁴ the Office of the Prosecutor filed a response indicating that, although the Defence 'fails to provide any cogent reason why [the Witness]'s testimony should be heard *via* video-link', it does not oppose the Request.⁵
3. As previously held,⁶ 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 Request on behalf of Mr Ntaganda to hear DRC-D18-0052's testimony *via* video-link, ICC-01/04-02/06-1889-Conf.

² Request, ICC-01/04-02/06-1889-Conf, para. 5.

³ Request, ICC-01/04-02/06-1889-Conf, para. 7.

⁴ Email from Legal Officer of the Chamber to parties, 12 May 2017, 15:38.

⁵ Prosecution's response to the "Request on behalf of Mr Ntaganda to hear DRC-D18-0052's testimony *via* video-link", ICC-01/04-02/06-1889-Conf.

⁶ 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-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.

means of video or audio technology provided, *inter alia*, that such measures are not prejudicial to, or inconsistent with, the rights of the accused. The Chamber further recalls that it does not consider the use of video-link for testimony to require exceptional justification.⁷

4. In the present circumstances, noting *inter alia*, the nature of the Witness's expected testimony, the Chamber finds that the requested measure is not prejudicial to the rights of the accused and considers it appropriate to hear the Witness's testimony by way of video-link.

⁷ See Decision on Prosecution's request to hear Witness P-0668's testimony via video-link, 9 September 2016, ICC-01/04-02/06-1499, para. 4; 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, para. 5.

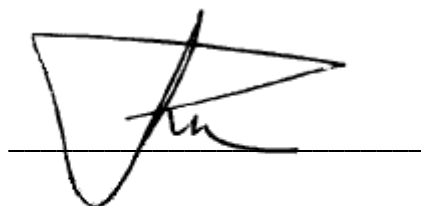
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

GRANTS the Request;

DIRECTS the Registry to make the necessary arrangements for the hearing of Witness D-0052's testimony by way of video-link; and

DIRECTS the parties to file public redacted versions of their respective filings by 30 May 2017.

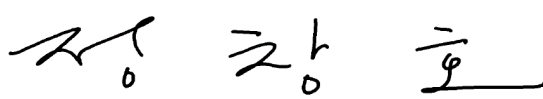
Done in both English and French, the English version being authoritative.

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 read 'Kuniko Ozaki', written over a horizontal line.

Judge Kuniko Ozaki

A handwritten signature in black ink, consisting of Korean characters '정창호' followed by a horizontal line.

Judge Chang-ho Chung

Dated this 16 May 2017
At The Hague, The Netherlands