

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

**Public redacted version of 'Decision on Defence's request to hear the testimony of
Witnesses D-0057, D-0201 and D-0211 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 ('Court'), in the case of *The Prosecutor v. Bosco Ntaganda*, having regard to Articles 64 and 67 to 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 the testimony of Witnesses D-0057, D-0201 and D-0211 via video-link'.

1. On 2 August 2017, the defence team for Mr Ntaganda ('Defence') filed a request seeking that the testimony of Witnesses D-0057, D-0201, and D-0211 ('Witnesses') be heard via video-link ('Request').¹ According to the Defence, hearing the Witnesses' testimony via video-link 'gives due weight to their personal circumstances, does not prejudice the rights of the accused, does not disadvantage any party or participant, and is appropriate'.²
2. In relation to Witnesses D-0057 and D-0201, the Defence submits that: (i) they are to 'attest to very limited and specific facts' which are 'not probative of the acts and conduct of Mr Ntaganda';³ (ii) their respective direct examination is not expected to exceed one hour, while substantial expenses would be required for their physical appearance at the seat of the Court;⁴ and (iii) reducing their period of absence from work would lessen the danger that their participation in the trial will become known and reduce the likelihood of any retaliation for an unjustified absence from work.⁵
3. Concerning Witness D-0211, the Defence submits that: (i) the witness has expressed specific concerns that travelling to the seat of the Court may expose her identity;⁶ (ii) her expected testimony is limited in scope and does not

¹ Request to hear Defence Witnesses D-0057, D-0201 and D-0211 by video-link, ICC-01/04-02/06-2004-Conf.

² Request, ICC-01/04-02/06-2004-Conf, para. 12.

³ Request, ICC-01/04-02/06-2004-Conf, para. 6.

⁴ Request, ICC-01/04-02/06-2004-Conf, para. 6.

⁵ Request, ICC-01/04-02/06-2004-Conf, para. 7.

⁶ Request, ICC-01/04-02/06-2004-Conf, para. 8.

concern the acts and conduct of Mr Ntaganda;⁷ (iii) the expected testimony intends to cover primarily [REDACTED] and the Office of the Prosecutor ('Prosecution') [REDACTED];⁸ (iv) the witness has substantial family commitments and video-link testimony will mitigate any related difficulties that would otherwise arise;⁹ and (v) the witness has no valid travel documents.¹⁰

4. On 11 August 2017, the Prosecution responded to the Request ('Response').¹¹ While not opposing the Defence's request in relation to Witnesses D-0057 and D-0201, due to the nature and limited scope of their expected testimony,¹² the Prosecution urges the Chamber to reject the Request with respect to Witness D-0211.¹³ In this regard, the Prosecution submits that: (i) contrary to the Defence's assertion, Witness D-0211's testimony is not limited in scope, but relates to at least five charges faced by the accused and is expected to challenge various aspects of the testimony, as well as the credibility, of Prosecution witnesses who appeared before the Chamber in person, and should therefore be heard under the same conditions;¹⁴ (ii) the fact that the witness [REDACTED] is irrelevant to the Chamber's assessment;¹⁵ (iii) the family reasons advanced by the Defence should not be given 'undue weight', noting that other witnesses have faced similar issues which could be addressed by, *inter alia*, the Victims and Witnesses Unit;¹⁶ (iv) logistical measures can be put in place to ensure that the witness's identity is not

⁷ Request, ICC-01/04-02/06-2004-Conf, para. 9.

⁸ Request, ICC-01/04-02/06-2004-Conf, para. 9.

⁹ Request, ICC-01/04-02/06-2004-Conf, para. 10.

¹⁰ Request, ICC-01/04-02/06-2004-Conf, para. 11.

¹¹ Prosecution's response to the "Request to hear Defence Witnesses D-0057, D-0201, and D-0211 by video-link", ICC-01/04-02/06-2004-Conf, ICC-01/04-02/06-2007-Conf. A public redacted version was filed on 14 August 2017 as ICC-01/04-02/06-2007-Red.

¹² Response, ICC-01/04-02/06-2007-Red, paras 1 and 10.

¹³ Response, ICC-01/04-02/06-2007-Red, paras 1, 4 and 13.

¹⁴ Response, ICC-01/04-02/06-2007-Red, para. 5.

¹⁵ Response, ICC-01/04-02/06-2007-Red, para. 6.

¹⁶ Response, ICC-01/04-02/06-2007-Red, para. 7.

revealed due to her travelling to the seat of the Court;¹⁷ (v) authorising video-link testimony would disadvantage the Prosecution and impede the truth-finding mandate of the Chamber, since it is easier for the Chamber to properly assess a witness's demeanour when the witness is inside the courtroom;¹⁸ and (vi) in a number of instances during previous video-link testimony, background noise at the video-link location has prevented interpreters from properly hearing and interpreting the testimony.¹⁹

5. As previously held,²⁰ 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. The Chamber further recalls that it does not consider the use of video-link for testimony to require exceptional justification, and that, when deciding on a request to that effect, it may consider a variety of factors, including a witness's personal circumstances or logistical difficulties in arranging a witness's travel to the seat of the Court.²¹

¹⁷ Response, ICC-01/04-02/06-2007-Red, para. 8.

¹⁸ Response, ICC-01/04-02/06-2007-Red, para. 9.

¹⁹ Response, ICC-01/04-02/06-2007-Red, para. 9.

²⁰ *See, inter alia*, transcript of hearing on 29 May 2017, ICC-01/04-02/06-T-206-CONF-ENG ET, pages 36-37; Decision on Defence's request to hear Witness D-0054's testimony via video-link and advance notice concerning Witness D-0210, 23 May 2017, ICC-01/04-02/06-1919; Decision on Prosecution's request to hear P-0933's testimony via video-link, 16 March 2016, ICC-01/04-02/06-1213-Red ('Decision on P-0933'), 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.

²¹ *See* Transcript of hearing on 29 May 2017, ICC-01/04-02/06-T-206-CONF-ENG ET, pages 36-37; Decision on Defence's request to hear Witness D-0054's testimony via video-link and advance notice concerning Witness D-0210, 23 May 2017, ICC-01/04-02/06-1919; 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; 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, ICC-01/04-02/06-1612-Red, para. 5; ICC-01/05-01/08-2646, para. 9.

6. The Chamber notes that the Prosecution does not oppose recourse to video-link for the testimony of Witnesses D-0057 and D-0201, but opposes the Request to the extent that it relates to Witness D-0211. However, recalling further that 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,²² and that there is no requirement for parity between witnesses testifying on the same subject matter to do so at the seat of the Court itself, the Chamber is not persuaded by the Prosecution's arguments that use of video-link would be inappropriate for this witness. In particular, the Chamber does not consider the use of video-link to cause any disadvantage to the Prosecution, or to affect the Chamber's ability to assess the witness's testimony.

7. In the present circumstances, noting, *inter alia*, the nature and expected length of the Witnesses' testimony and their personal circumstances, the Chamber considers it appropriate to hear the Witnesses' testimony by way of video-link.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

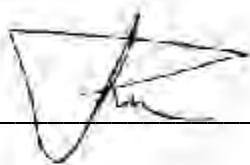
GRANTS the Request;

DIRECTS the Registry to make the necessary arrangements for the hearing of the testimony of Witnesses D-0057, D-0201, and D-0211 by way of video-link; and

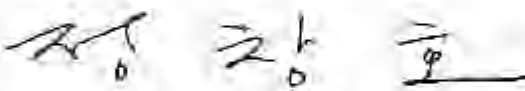
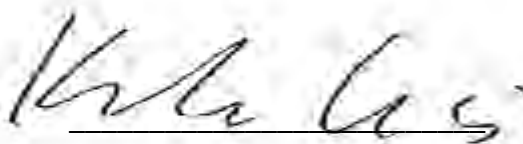
DIRECTS the Defence to file a public redacted version of its Request within two weeks of notification of the present decision.

²² Decision on P-0933, ICC-01/04-02/06-1213-Red, para. 6.

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 17 August 2017
At The Hague, The Netherlands