

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **1 October 2015**

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 “Prosecution’s request to hear DRC-OTP-P-0039’s
testimony *via* video-link”, 30 September 2015, ICC-01/04-02/06-875-Conf**

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Other

Introduction

1. Pursuant to articles 68, 69(2) of the Rome Statute (“Statute”) and rule 67 of the Rules of Procedure and Evidence, the Office of the Prosecutor (“Prosecution”) requests that Witness DRC-OTP-P-0039 (“P-0039”)’s testimony be heard *via* video-link from [Redacted]. P-0039 has a health condition that prevents him from travelling long distances.

Confidentiality

2. The filing is classified as Confidential pursuant to regulation 23*bis* (1) and (2) of the Regulations of the Court, because it contains confidential information regarding a Prosecution witness.

Background

3. On 21 September 2015, the Victims and Witnesses Unit (“VWU”) informed the Prosecution that P-0039’s health condition prevents him from travelling long distances. The VWU provided the Prosecution with a [Redacted] medical report attached as confidential *ex parte* Annex A.

Prosecution’s Submissions

4. Article 68(1) of the Statute establishes the Court’s duty to “take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses [...]” so long as they are not “prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial”. The use of video-link testimony is not in any way prejudicial to or inconsistent with the Accused’s rights; the Defence will have the opportunity to observe and cross-examine the witness in the same manner it would have if the witness would

appear physically in the courtroom. Nor will the proposed video-link testimony detrimentally affect the fairness of the trial. Indeed, because P-0039 is an important percipient witness, his unavailability would deny the Prosecution its right to a fair opportunity to present its case and would also deprive the Chamber of evidence essential for determining the truth.

5. Moreover, article 68(2) of the Statute specifies that “the Chambers of the Court may, to protect victims and witnesses or an accused, [...] allow the presentation of evidence by electronic or other special means”. In *Lubanga*, Trial Chamber I explained that the use of video-link testimony would be appropriate where the “personal circumstances of the witness lead to a strong *prima facie* conclusion that requiring her to travel to The Hague to give evidence would be inimical to her psychological well-being and her dignity.”¹ In *Bemba*, over a Defence objection, Trial Chamber III granted a similar Prosecution request to hear the testimony of a Prosecution witness *via* video-link due to the witness’s poor health.² Trial Chamber III found that the health reasons preventing the Prosecution witness from travelling to The Hague were well-founded.³
6. In view of the exceptional nature of the personal circumstances of P-0039, the authorisation from the Chamber to proceed with his testimony *via* video-link would be in accordance with its duty to protect the “physical and psychological well-being” of the witness. Accordingly, the Prosecution respectfully submits that the Chamber grant its request for video-link testimony.

¹ ICC-01/04-01/06-2285-Red, para. 16.

² ICC-01/05-01/08-2101-Red2.

³ ICC-01/05-01/08-2101-Red2, para. 11.

Conclusion

7. For the above reasons the Prosecution requests that the Chamber approve its request for P-0039 to testify *via* video-link.



Fatou Bensouda, Prosecutor

Dated this 1st day of October 2015
At The Hague, the Netherlands