

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

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

Date: **18 March 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 “Prosecution’s Request to Hear Expert Witness P-0933’s
Testimony via Video-link”, 9 March 2016, ICC-01/04-02/06-1202-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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Introduction

1. Pursuant to articles 68(1), 69(2) of the Rome Statute (“Statute”) and rule 67 of the Rules of Procedure and Evidence (“Rules”), the Prosecution requests that Expert Witness P-0933’s testimony be heard via video-link from British Columbia, Canada. Dr Yuille [REDACTED] that prevents him from travelling to The Hague to give testimony.
2. Should the Chamber grant its request to hear Expert Witness P-0933’s testimony via video-link, the Prosecution requests that Trial Chamber VI (“Chamber”) implement a modified sitting schedule in order to accommodate the testimony of this Expert Witness, given the time difference between British Columbia, Canada and the seat of the Court.¹

Confidentiality

3. The filing is classified as Confidential pursuant to regulation 23*bis* (1) and (2) of the Regulations of the Court (“Regulations”) because it contains [REDACTED]. The Prosecution will file a public redacted version.

Background and Procedural History

4. On 16 April 2015, the Prosecution filed its list of expert witnesses, which included Dr Yuille, a forensic psychologist with expertise in trauma (symptoms, behaviours and cognitive impacts).²
5. On 15 September 2015, the Defence filed a notice setting out its position in respect of the Prosecution’s proposed expert witnesses.³ In its notice, the Defence did not challenge Dr Yuille’s qualifications or that his report was an expert report;

¹ British Columbia, Canada is in the Pacific Time Zone, which is nine hours behind Central European Time.

² ICC-01/04-02/06-560, para. 10. In this filing, the Prosecution also sought a variation of the time limit to file the expert report of Dr Yuille until 6 May 2015 (para. 17), which the Chamber granted (ICC-01/04-02/06-581).

³ ICC-01/04-02/06-836.

however, the Defence took issue with the probative value that could be attributed to his report.⁴

6. On 6 November 2015, the Prosecution was advised that Dr Yuille [REDACTED]. The Prosecution was advised that he would be unable to testify in The Hague as a result.
7. On 2 December 2015, the Prosecution filed its response to the supplementary submissions by the Defence in relation to the proposed expert witnesses, in which it informed the Chamber that Dr Yuille would no longer be able to testify [REDACTED] that it intended to submit his expert report under rule 68 of the Rules and that it would seek to add a new expert on trauma under regulation 35 of the Regulations.⁵
8. On 20 January 2016, the Prosecution was advised that [REDACTED]. On 21 January 2016, the Prosecution inquired into whether Dr Yuille would be [REDACTED] of testifying via video-link rather than travelling to The Hague.
9. On 9 February 2016, Dr Yuille advised that he would be willing and able to testify via video-link and that it would be optimal for this to occur prior to [REDACTED] June 2016.

Prosecution's Submissions

10. Article 69(2) of the Statute grants Chambers the power to permit the presentation of evidence by means of video or audio technology provided that these measures are not prejudicial to or inconsistent with the rights of the Accused.⁶ Chambers of

⁴ ICC-01/04-02/06-836, paras. 19 and 20. On 23 November 2015, the Defence filed supplementary submissions in relation to the proposed expert witnesses (ICC-01/04-02/06-1032-Conf) in which it reiterated its position on Dr Yuille and did not provide any additional submissions in relation to him (para. 1).

⁵ ICC-01/04-02/06-1044-Conf, paras. 3 and 32. In its reply to the Prosecution's response to the Defence's supplementary submissions in relation to proposed expert witnesses, the Defence takes issue with the Prosecution's intention to admit Dr Yuille's report into evidence *and* seek an additional expert's testimony (ICC-01/04-02/06-1046-Conf, para. 20-21).

⁶ ICC-01/04-02/06-897, para 12.

this Court have applied their discretion to allow testimony to be provided via video-link.⁷

11. As this Chamber articulated in its decision on a previous request to hear a witness' testimony by way of video-link, 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."⁸ The Chamber further held that the assessment the appropriateness of video-link technology is "fact specific and requires consideration of a range of different factors, such as, non-exhaustively, a witness's age, vulnerability, state of health, psychological well-being, as well as procedural and logistical considerations."⁹
12. Pursuant to article 68(1) of the Statute, the Court has a 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."
13. Dr Yuille [REDACTED] that [REDACTED] to travel to The Hague to testify. He is 75 years old. The distance between Vancouver, British Colombia (the nearest international airport to his home on Salt Spring Island) to Amsterdam is nearly 8,000 km. The extended travel time and the time difference of 9 hours will be physically demanding and exhausting. If he were to travel to testify at the seat of the Court, Dr Yuille would be far from the [REDACTED], as well as far from his family. He nonetheless remains committed to testifying in this case, provided he can do so via video-link and before June 2016 [REDACTED]. Dr Yuille will need to be [REDACTED] and such a long trip abroad to testify with a significant time

⁷ For instance, *Prosecutor v Jean-Pierre Bemba Gombo*, ICC-01/05-01/08-2646, para. 8; *Prosecutor v Jean-Pierre Bemba Gombo*, ICC-01/05-01/08-2101-Red2; *Prosecutor v Thomas Lubanga Dyilo*, ICC-01/04-01/06-2285-Red, para.14-16.

⁸ ICC-01/04-02/06-897, para. 12.

⁹ ICC-01/04-02/06-897, para. 12.

difference [REDACTED]. [REDACTED]. In these circumstances, Dr Yuille cannot travel to The Hague for testimony.

14. The use of video-link testimony is not prejudicial to or inconsistent with the Accused's rights, as the Defence will have the opportunity to observe and cross-examine the witness in the same manner it would have if the witness appeared physically in the courtroom. Nor will the proposed video-link testimony detrimentally affect the fairness of the trial. Indeed, given Dr Yuille's unique area of expertise, the Prosecution would be denied its right to present its case and the Chamber deprived of evidence valuable to determining the truth should the application be denied. Moreover, granting the Prosecution's application will ensure trial expediency as Dr Yuille has already prepared an expert report that was filed in accordance with the Chamber's disclosure orders. Allowing his testimony via video-link will enable the Prosecution to call the expert it intended to call from the outset, without the need to seek to add a new expert to its list of witnesses and disclose a new expert report to the Defence, which could cause delays.

Proposed modification to the sitting schedule

15. The Prosecution requests that the Chamber implement a modified sitting schedule in order to accommodate the testimony of Dr Yuille from a location close to his place of residence in British Columbia, Canada. There is a nine-hour time difference between this location and the seat of the Court. The Prosecution estimates that the direct examination of Dr Yuille will require four hours and, for scheduling purposes, has assumed the Defence will require an equal amount of time.
16. In light of the above, the Prosecution requests that the Chamber hear the testimony of Dr Yuille from 18 April to 21 April 2016 in four, two-hour blocks

conducting during exceptional evening sittings from 17h00 to 19h00 (this will be 8h00 to 10h00 for Dr Yuille). The Prosecution seeks to schedule Witness P-0892 in the two morning sessions over this period (18 April to 21 April 2016), should the Chamber grant its request.

Conclusion and Request

17. In addition to its duty to protect the physical and psychological well-being of witnesses, the Chamber has broad discretion to permit evidence to be given *viva voce* by means of video or audio technology, provided such measures are not inconsistent with the rights of the Accused.
18. In view of the exceptional circumstances and the unique expertise of Dr Yuille, the Prosecution requests that the Chamber permit his testimony via video-link from British Columbia, Canada. Further, the Prosecution requests that the Chamber modify the sitting schedule as set out in paragraph 16, above.



Fatou Bensouda
Prosecutor

Dated this 18th day of March 2016
At The Hague, The Netherlands