

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **14 March 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 "Prosecution's Request to Hear Witnesses P-0005's and P-0108's Testimony *via* Video-link", 20 December 2016, ICC-01/04-02/06-1694-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 Witnesses P-0005’s and P-0108’s testimony be heard *via* video-link, as both witnesses have serious health conditions that prevent them from travelling to The Hague to give testimony.

Background

1. On 30 May and 2 June 2016, the Prosecution was informed that Witness P-0005 had been [REDACTED]. As a result, [REDACTED]. He is in the process of recovering from [REDACTED]. The Victims and Witnesses Section (“VWS”) has advised the Prosecution that Witness P-0005 is unlikely to be able to travel to The Hague for testimony.
2. In August 2016, the VWS conducted the fitness for travel and vulnerability assessments of Witness P-0108. On 1 September 2016, the VWS advised the Prosecution that Witness P-0108 had been diagnosed with [REDACTED] and that, as a result, he was unlikely to be able to testify in The Hague. On 6 September 2016, the Prosecution removed Witness P-0108 from its list of witnesses for the 6th evidentiary block.¹ On 14 December 2016 the VWU advised the Prosecution that Witness P-0108 will not be able to travel to The Hague for testimony.

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 Prosecution witnesses. The Prosecution will file a public redacted version of this application.

¹ See e-mail from the Prosecution to Trial Chamber VI on 6 September 2016, at 15:45.

Prosecution submission

3. Article 69(2) of the Statute grants the Chamber broad discretion 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.² In exercise of this discretion, the Chamber previously allowed testimony to be provided *via* video-link by Witnesses P-0039, P-0933, P-0668 and P-0918.³ As the Chamber recalled, the requirement of article 69(2) of the Statute for witnesses to give testimony “in person” “does not imply that witness testimony shall necessarily be given by way of live testimony in Court”.⁴ The Chamber has further held that the assessment of 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”.⁵ As the Chamber held, the use of video-link for testimony does not require exceptional justification.⁶
4. 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 witnesses in the same manner it would have if they appeared physically in the courtroom. Nor will the proposed video-link testimony detrimentally affect the fairness of the trial.
5. Witness P-0108 has a serious health condition [REDACTED] that impacts his ability to travel to The Hague to testify. Although Witness P-0108 [REDACTED], he is still undergoing a treatment, which can take several months. His health

² ICC-01/04-02/06-897-Red2, para. 12.

³ ICC-01/04-02/06-897-Red2, ICC-01/04-02/06-1213-Red, ICC-01/04-02/06-1499 and ICC-01/04-02/06-1612-Conf.

⁴ ICC-01/04-02/06-897-Red2, para. 12 and ICC-01/04-02/06-1213-Red, para. 6.

⁵ ICC-01/04-02/06-897-Red2, para. 12 and ICC-01/04-02/06-1213-Red, para. 6.

⁶ ICC-01/04-02/06-1499, para. 4.

condition is compounded by [REDACTED]. In these circumstances, Witness P-0108 cannot travel to The Hague for testimony.

6. Likewise, Witness P-0005 suffered a serious health problem in [REDACTED], and is in the process of recovering. On 25 November 2016, the witness confirmed his willingness to testify, provided that his health situation allows for this. He informed the Prosecution that his health situation remained fragile and that, although he was able to [REDACTED]. In view of Witness P-0005's health situation, 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.

Request

7. In light of the above, the Prosecution requests that the Chamber authorise the testimony of Witnesses P-0108 and P-0005 be heard *via* video-link.



Fatou Bensouda
Prosecutor

Dated this 14th day of March 2017
At The Hague, The Netherlands