

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **15 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 Witness P-0863’s
Testimony *via* Video-link” 20 December 2016, ICC-01/04-02/06-1695-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 Witness P-0863’s testimony be heard *via* video-link, because the present political situation in Kinshasa makes it unlikely that the witness can obtain a visa to travel to The Hague in time for his testimony.

Background

2. Witness P-0863 is scheduled to appear as the first witness in the eighth evidentiary block, beginning on 16 January 2017.¹
3. The Prosecution and the Victims and Witnesses Section (“VWS”) have been collaborating to obtain a passport for Witness P-0863 since [REDACTED]. After a failed initial attempt in [REDACTED], a second attempt was made on [REDACTED]. Whereas passports are normally issued by Congolese authorities within approximately two weeks, P-0863’s passport took six weeks to process, and was available for collection on [REDACTED]. The Prosecution understands that the delay in processing Witness P-0863’s passport was due to a strike in the passport office while P-0863’s passport application was pending.
4. The Prosecution received Witness P-0863’s passport on [REDACTED].
5. On the same day, the VWS applied for a visa for P-0863, sufficiently ahead of his required travel date.
6. On 20 December 2016, the VWS informed the Prosecution that the Dutch Ministry of Foreign Affairs has advised that due to the political situation in Kinshasa, the Dutch Consulate is closed until further notice. Accordingly,

¹ Email from the Prosecution to Trial Chamber VI, the Defence and the Legal Representatives, of [REDACTED].

Witness P-0863 is unlikely to be able to travel to The Hague for testimony. The VWS also advised the Prosecution that, should the political situation improve, the Consulate would resume the processing of P-0863's visa application.

Confidentiality

7. 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.

Prosecution submission

8. 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, P-0918 and P-0773.³ 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

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, ICC-01/04-02/06-1667-Conf.

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

procedural and logistical considerations”.⁵ As the Chamber held, the use of video-link for testimony does not require exceptional justification.⁶

9. 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 he appeared physically in the courtroom. Nor will the proposed video-link testimony detrimentally affect the fairness of the trial.
10. Despite diligent efforts to obtain Witness P-0863’s visa in time,⁷ delays in the processing of the visa application and the current shutdown of the Dutch Consulate in Kinshasa make it unlikely that the visa will be ready in time.

Request

11. In light of the above, the Prosecution requests that the Chamber authorise the testimony of Witness P-0863 be heard *via* video-link.



Fatou Bensouda
Prosecutor

Dated this 15th day of March 2017
At The Hague, The Netherlands

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.

⁷ Visa applications are normally submitted shortly before a witness’s expected travel date because they are generally only valid for three months from the date of issue.