

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **23 May 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

**Decision on Defence's request to hear Witness D-0054's testimony
via video-link and advance notice concerning Witness D-0210**

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 Applicants for
Participation/Reparation**

Unrepresented Victims

**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, in the case of *The Prosecutor v. Bosco Ntaganda*, having regard to Articles 64 and 67-69 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 Witness D-0054's testimony via video-link and advance notice concerning Witness D-0210'.

1. On 16 May 2017, the defence team for Mr Ntaganda ('Defence') filed a request seeking that the testimony of Witness D-0054 ('Witness') be heard *via* video-link and giving advance notice concerning Witness D-0210 ('Request').¹ In relation to Witness D-0054, the Defence submits that testimony *via* video-link is necessary and appropriate, noting that: (i) the scope of the witness's testimony is limited and expected to be concise;² (ii) the witness has not yet obtained a passport;³ (iii) video-link testimony would enable the witness to testify during the first evidentiary block and avoid 'a substantial disruption to the witness's daily life by travelling for an extended period of time to The Hague';⁴ and (iv) video-link would allow the Office of the Prosecutor ('Prosecution') to adequately cross-examine the witness and the Chamber to observe her demeanour and answers.⁵ Regarding Witness D-0210, the Defence submits that should he not obtain his passport in time, it 'would not oppose' recourse to video-link, 'taking into consideration that the scope of his testimony is very limited and as such is expected to be brief'.⁶
2. On 22 May 2017, in line with the deadline set by the Chamber,⁷ the Prosecution filed a response, indicating that '[d]espite the lack of an adequate

¹ Request on behalf of Mr Ntaganda to hear the testimony of Defence Witness D-0054 *via* video-link and advance notice concerning Defence Witness D-0210, ICC-01/04-02/06-1906-Conf.

² Request, ICC-01/04-02/06-1906-Conf, para. 8.

³ Request, ICC-01/04-02/06-1906-Conf, para. 9.

⁴ Request, ICC-01/04-02/06-1906-Conf, para. 11.

⁵ Request, ICC-01/04-02/06-1906-Conf, para. 12.

⁶ Request, ICC-01/04-02/06-1906-Conf, para. 14.

⁷ Email communication from the Chamber, 17 May 2017, at 13:27.

basis’ to grant the Request, it does not object to the testimony of Witnesses D-0054 and D-0210 being heard *via* video-link.⁸

3. As previously held,⁹ the Chamber considers that the Statute and the Rules endow the Chamber with 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 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.¹⁰
4. In the present circumstances, noting *inter alia*, the nature of Witness D-0054’s expected testimony, the Chamber considers it appropriate to hear Witness D-0054’s testimony by way of video-link. For the same reasons, the Chamber sees no obstacle, at this stage, to hear Witness D-0210’s testimony by way of video-link, in the event the necessary travel documents are not obtained in time to allow the witness to travel to The Hague.

⁸ Prosecution’s response to the “Request on behalf of Mr Ntaganda to hear the testimony of Defence Witness D-0054 via video-link and advance notice concerning Defence Witness D-0210”, ICC-01/04-02/06-1906-Conf, ICC-01/04-02/06-1917-Conf, para. 18.

⁹ Decision on Prosecution’s request to hear P-0933’s testimony via video-link, 16 March 2016, ICC-01/04-02/06-1213-Red, 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.

¹⁰ See 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.

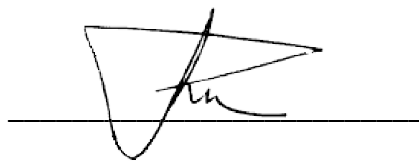
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

GRANTS the Request;

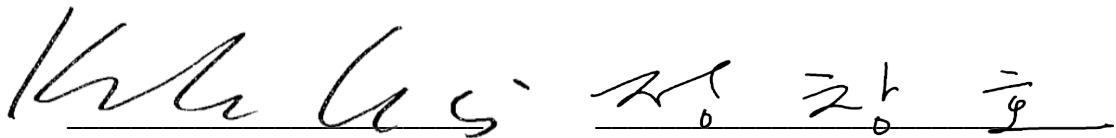
DIRECTS the Registry to make the necessary arrangements for the hearing of the testimony of Witness D-0054, and, if necessary, Witness D-0210, by way of video-link; and

DIRECTS the parties to file public redacted versions of their respective filings within two weeks of notification of the present decision.

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 23 May 2017
At The Hague, The Netherlands