

PARTIALY CONCURRING OPINION OF JUDGE HENDERSON

1. I am in agreement with my colleagues' decision that the particular circumstances giving rise to the application requesting the viva voce testimony of witness P-0047 to be provided by means of video link technology, justify the granting of this request. However, given the nature of this witness's evidence, I do not agree with the majority decision that, having decided to grant this application, it is unnecessary to consider the proposals of either the Gbagbo or Blé Goudé defence on how to give effect to this procedure. The Chamber is still obliged to ensure that allowing testimony by video link does not prejudice the rights of the accused.

2. I have already expressed my own views on the appropriate exercise of this Chamber's discretion permitting the use of video link technology whenever it becomes necessary, provided that it does not occasion prejudice to the accused.¹ In that application, the majority allowed the use of video link evidence from witnesses whose evidence was given pursuant to Rule 68(3). It is noteworthy that in authorizing its use, the majority expressly noted that the evidence of these witnesses would in all likelihood be shorter than that of other witnesses and that they were "all crime base witnesses". With the exception of P-0435 who testified via video link from his place of detention, no other central insider witnesses in this trial have testified by video link.

3. Unlike almost all other insider witnesses in this trial, P-0047 will testify by means of video link. Witness P-0047 is described by the Prosecutor as "a high level insider whose evidence is critical to the truth seeking function of this Court"². His evidence is expected to deal with, inter alia, meetings with Mr Gbagbo and Mr Blé Goudé during the period of the post-election crisis. It

¹ [ICC-02/11-01/15-721-Anx](#)

² ICC-02/11-01/15-1002-Conf, para. 6

therefore behoves the Chamber to be extra careful with regard to the rights of the accused, in particular their right to confront adverse witnesses. Both the Gbagbo and Blé Goudé defence have objected to the use of video link technology for P-0047 or in the event that the procedure is used, requested the adoption of measures to eliminate the risk of prejudice arising as a result of its use. While I agree with the majority that the prosecutor has provided a proper justification for P-0047 to testify with the use of video link testimony, in my view they were wrong to dismiss the alternative request without providing a thoroughly reasoned justification for why the counterbalancing measures requested by the Defence were deemed unnecessary. Moreover, the question may even be asked whether some of the measures requested were even the Chamber's to grant or to deny. Indeed, I am not convinced that the Chamber has the authority to deny counsel for the parties to be present on the location where a witness provides evidence remotely if there are no specific reasons for this, such as, e.g., the vulnerability or security of the witness. This is not to say that I am necessarily of the view that the Court should automatically facilitate – and finance – such presence, but this is a different issue upon which there is no need for me to dwell in the present opinion.


Judge Geoffrey Henderson

Dated 9 November 2017

At The Hague, The Netherlands