

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-02/06
Date: 15 February 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 'Decision on the request by the Legal Representative of the Victims of the Attacks for leave to present evidence and victims' views and concerns' (10 February 2017, ICC-01/04-02/06-1780-Conf)

To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

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Trial Chamber VI ('Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Bosco Ntaganda*, having regard to Articles 64, 67, 68 and 69 of the Rome Statute, Rule 140 of the Rules of Procedure and Evidence ('Rules'), and Regulation 43 of the Regulations of the Court, issues this 'Decision on the request by the Legal Representative of the Victims of the Attacks for leave to present evidence and victims' views and concerns'.

I. BACKGROUND

1. On 2 June 2015, having received submissions from the parties and participants, the Chamber issued its 'Decision on the conduct of proceedings',¹ in which it, *inter alia*, directed that the Legal Representatives of Victims ('LRVs') were to 'file any request for leave to present evidence no later than two days after the Prosecution concluded its presentation of evidence'.²
2. On 19 October 2016, the Chamber issued an order ('Order of 19 October 2016')³ in which it, amongst other things: (i) 'strongly encourage[d] the LRVs to make any such application as far in advance of [the abovementioned deadline] as possible';⁴ and (ii) directed the LRVs to indicate by 16 December 2016 whether 'they anticipate bringing a request to present evidence and/or for the views and concerns of victims to be presented to the Chamber, and the likely scope of any such request'.⁵ It further added that the LRVs should make any necessary preparations to facilitate expeditious disclosure in connection with any intended applications, and indicated that any views and concerns of victims could be presented directly at the end of the eighth evidentiary block.⁶

¹ ICC-01/04-02/06-619.

² Decision on the conduct of proceedings, ICC-01/04-02/06-619, para. 69.

³ Order setting certain deadlines related to the end of the presentation of evidence by the Prosecution, ICC-01/04-02/06-1588. A corrigendum was filed on 12 December 2016 (ICC-01/04-02/06-1588-Corr).

⁴ Order of 19 October 2016, ICC-01/04-02/06-1588-Corr, para. 8.

⁵ Order of 19 October 2016, ICC-01/04-02/06-1588-Corr, para. 9.

⁶ Order of 19 October 2016, ICC-01/04-02/06-1588, para. 9.

3. On 16 December 2016, the Legal Representative for former child soldiers indicated that she did not anticipate bringing a request to present evidence and/or for the views and concerns of victims to be presented in person before the Chamber.⁷ On the same day, the Legal Representative of Victims of the Attacks ('LRV') filed an *ex parte* notice, available to the Chamber only, indicating an intention to request that nine witnesses present evidence and four victims present views and concerns.⁸
4. On 11 January 2017, in order to ensure that any relevant disclosure could be made in adequate time, the Chamber modified the original deadline, directing the LRVs to file any request to call witnesses and/or to present the views and concerns of victims by no later than 23 January 2017.⁹
5. On 23 January 2017, the LRV filed its request seeking leave to present evidence and victims' views and concerns ('Request').¹⁰
6. On 31 January 2017, upon request of the Chamber,¹¹ the LRV provided further information with regard to two victims.¹²
7. On 3 February 2017, the Prosecution¹³ and the Defence¹⁴ filed their respective responses (respectively, 'Prosecution Response' and 'Defence Response').

⁷ E-mail communication from Legal Representative for former child soldiers to the Chamber on 16 December 2016 at 11:05.

⁸ Notification to Trial Chamber VI by the Common Legal Representative of the Victims of the Attacks of his intention to request for leave to present evidence, ICC-01/04-02/06-1687-Conf-Exp.

⁹ Order relating to the deadline for any requests by the Legal Representatives of Victims to present evidence or views and concerns of victims, ICC-01/04-02/06-1711 ('Order of 11 January 2017'). The Chamber further recalled that the hearing of any views and concerns for which permission is granted may occur during the eighth evidentiary block, and noted that the LRVs should ensure that any required preparations are made in a timely manner. Order of 11 January 2017, ICC-01/04-02/06-1711, para. 6.

¹⁰ Request by the Common Legal Representative of the Victims of the Attacks for leave to present evidence and victims' views and concerns, ICC-01/04-02/06-1739-Conf-Exp. A confidential redacted version of the Request was filed on the same day (ICC-01/04-02/06-1739-Conf-Red).

¹¹ Email communication from the Chamber sent on 31 January 2017, at 14:31.

¹² Email communication from the LRV sent on 31 January 2017, at 15:15.

¹³ Prosecution's response to the "Confidential Redacted Version of Request by the Common Legal Representative of the Victims of the Attacks for leave to present evidence and victims' views and concerns", ICC-01/04-02/06-1739-Conf-Red, ICC-01/04-02/06-1772-Conf.

¹⁴ Response on behalf of Mr Ntaganda to 'Request by the Common Legal Representative of the Victims of the Attacks for leave to present evidence and victims' views and concerns', ICC-01/04-02/06-1773-Conf.

II. APPLICABLE LAW

8. At the outset, the Chamber recalls that Article 68(3) of the Statute provides that '[w]here the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial'. The presentation of views and concerns may include the expression of views and concerns by individual victims in person.¹⁵
9. The Chamber further recalls that, as held by the Appeals Chamber and acknowledged by other chambers of this Court, while 'the right to lead evidence pertaining to the guilt or innocence of the accused and the right to challenge the admissibility and relevance of the evidence' lies primarily with the parties, victims may be authorised to present evidence in order to assist the Chamber in its determination of the truth.¹⁶ This conclusion is premised on Article 69(3) of the Statute, which authorises the Chamber to request the submission of all evidence that it considers necessary for the determination of the truth, read with Article 68(3), which establishes the right of victims to participate, and Rule 91(3) of the Rules, pursuant to which a chamber leaves

¹⁵ *The Prosecution v. Thomas Lubanga Dyilo*, Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, paras 115-116; *The Prosecutor v. Jean-Pierre Bemba Gombo*, Corrigendum to the Decision on the participation of victims in the trial and on 86 applications by victims to participate in the proceedings, 12 July 2010, ICC-01/05-01/08-807-Corr, para. 27; Decision on the supplemented applications by the legal representatives of victims to present evidence and the views and concerns of victims, 22 February 2012, ICC-01/05-01/08-2138 ('*Bemba Decision on Victims*'), paras 15-17.

¹⁶ *The Prosecution v. Thomas Lubanga Dyilo*, Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008, 11 July 2008, ICC-01/04-01/06-1432 ('*Appeals Chamber Judgment of 11 July 2008*'), paras 86-105, in particular paras 93-98. See also Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, para. 108; *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the Modalities of Victim Participation at Trial, 22 January 2010, ICC-01/04-01/07-1788-tENG ('*Katanga Decision on the modalities of victim participation at trial*'), paras 81-99; *Bemba Decision on Victims*, para. 18.

open the possibility for the legal representative to move the chamber to request the submission of any evidence.¹⁷

10. The presentation by individual victims of evidence on the one hand, and the expression of their views and concerns in person on the other, is governed by different requirements. As a result, victims who are not ultimately authorised to give evidence may still be permitted to express their views and concerns.¹⁸ As noted above, any presentation of victims' views and concerns must occur 'in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial'. Accordingly, the duty to ensure the expeditiousness of the proceedings and thus to avoid any undue delay requires the Chamber to determine whether and when victims shall be authorised to present their views and concerns in person. In the present case, the Chamber will consider whether the personal interests of the individual victims are affected and whether the accounts expected to be provided are representative of the harm suffered by a larger group of victims. In particular the assessment will take into account the nature of the harm suffered and the location of the events alleged by the victims.¹⁹

11. A number of requirements have been identified by other chambers for the presentation of evidence by victims. In addition to the demonstration of personal interests that are affected by the current proceedings, the Majority notes that it has been required primarily that: (i) the presentation of evidence needs to be consistent with the rights of the accused, including to a fair, expeditious and impartial trial and the right to have adequate time and facilities to prepare his or her defence; (ii) the hearing of the victims' evidence must be considered appropriate, taking into account its relevance to the issues

¹⁷ Appeals Chamber Judgment of 11 July 2008, ICC-01/04-01/06-1432, paras 93-98. The Appeals Chamber also recognised that, in light of the mentioned provisions, read with Article 69(4), victims are allowed to challenge the admissibility or relevance of evidence in trial proceedings. See in particular, paras 101-102.

¹⁸ See *Bemba* Decision on Victims, ICC-01/05-01/08-2138, paras 19-20.

¹⁹ See *Bemba* Decision on Victims, ICC-01/05-01/08-2138, paras 21-22.

of the case and capacity to assist the Chamber in its understanding of the case or evidence heard so far; and (iii) victims are not allowed to testify anonymously.²⁰ In light of the aforementioned requirements, and of the criteria identified and followed by other chambers,²¹ the information provided by the LRV, and the submissions of the parties, the Chamber has conducted an individual analysis for each victim and/or proposed witness in order to determine which victims may be authorised to present evidence or their views and concerns in person.

III. ANALYSIS

12. In this case, the LRV requests the Chamber for leave to call: (i) one witness who is not a participating victim in the present case to present evidence; (ii) seven participating victims to present evidence; and (iii) four participating victims to present views and concerns.

13. The Prosecution does not oppose six of the eight proposed witnesses the LRV requests to be called. Specific submissions on each of the proposed individuals will be addressed in the analysis below.

14. The Defence makes general submissions concerning the eight proposed witnesses, including that: (i) their expected testimony is superfluous and unnecessarily repetitive of the evidence already presented by the Prosecution; (ii) their personal interests as well as those of the group they belong to, have already been addressed during the testimony of dual status witnesses; and (iii)

²⁰ See Appeals Chamber Judgment of 11 July 2008, ICC-01/04-01/06-1432, para. 104; see also, Judgment on the Appeal of Mr Katanga Against the Decision of Trial Chamber II of 22 January 2010 Entitled “Decision on the Modalities of Victim Participation at Trial”, 16 July 2010, ICC-01/04-01/07-2288, paras 3 and 114; *Bemba* Decision on victims, ICC-01/05-01/08-2138, para. 23; *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Directions for the conduct of the proceedings and testimony in accordance with rule 140, 1 December 2009, ICC-01/04-01/07-1665-Corr (‘*Katanga* Directions on conduct of the proceedings’), paras 20, 22; *Katanga* Decision on the modalities of victim participation at trial, para. 87.

²¹ See also *Bemba* Decision on victims, ICC-01/05-01/08-2138, para. 24, *Katanga* Directions on conduct of the proceedings, ICC-01/04-01/07-1665-Corr, para. 30 (those criteria include whether the proposed testimony relates to matters already addressed by the Prosecution, or is representative of a larger group of participating victims).

the LRV does not explain how the testimony of these eight victims would bring substantial new information on issues that the Chamber must consider in its assessment of the charges, nor does he explain whether the proposed testimony is representative of a larger group of victims.

15. Further Defence arguments specific to certain individuals are incorporated into the analysis below when applicable.

a) Request for witnesses or victims to present evidence

Proposed witness CLR2-1

16. Proposed witness CLR2-1 is not a participating victim. On the basis of the information provided in the Request, his expected testimony would mainly relate to his fleeing, between the end of 2002 and the beginning of 2003, from [REDACTED], seeing dead civilians and destroyed and pillaged houses; his attendance at a [REDACTED] before the Sangi 'pacification meeting'; his knowledge of the call for a pacification meeting and subsequent warning message; and seeing approximately 17 people killed in Kobu.²²

17. The Prosecution does not oppose the presentation of evidence by this witness, and submits that this witness's account 'completes the testimony of Prosecution witnesses' without duplicating it, in particular on the identification of [REDACTED] who was killed.²³ Noting that this proposed witness is not a participating victim, the Prosecution submits that the proposed witness could be called by the Chamber, in accordance with Articles 64(6)(b), (d) and 69(3) of the Statute.²⁴

²² Request, ICC-01/04-02/06-1739-Conf-Red, paras 11-12.

²³ Prosecution Response, ICC-01/04-02/06-1772-Conf, para. 22.

²⁴ Prosecution Response, ICC-01/04-02/06-1772-Conf, para.21, making reference to *Katanga* Directions on conduct of the proceedings, ICC-01/04-01/07-1665-Corr, para. 46.

18. In addition to the general submissions mentioned above, the Defence notes with regard to this proposed witness that 'to the best of its knowledge, only participating victims have been authorized to give evidence in past cases'.²⁵
19. The Chamber considers that the proposed testimony appears to be of potential relevance to several crimes charged allegedly committed during the 'Second Attack'. The LRV submits that [REDACTED] was mentioned 'without details' by some Prosecution witnesses. Although this proposed witness may provide additional details concerning the [REDACTED] or other proposed aspects of the testimony (such as, seeing bodies in Kobu), the Chamber notes that the Prosecution has called several witnesses who testified in relation to these events, and considers that it would not be appropriate to hear further testimony in relation to those areas. For these reasons, the Chamber does not consider it appropriate in the circumstances to hear CLR2-1's proposed evidence.

Victim a/30012/15

20. On the basis of the information provided in the Request, Victim a/30012/15 is [REDACTED], and his expected testimony would pertain to the arrival of UPC troops in the Kilo area between the end of 2002 and the beginning of 2003; Mr Ntaganda and Kisembo [REDACTED].²⁶
21. The Prosecution submits that this proposed witness could shed light, *inter alia*, on the identification of UPC troops through their uniforms and weapons, and the persecution of [REDACTED], and could provide 'unique information on the conduct of the [a]ccused and a co-perpetrator'.²⁷
22. The Chamber notes that the expected evidence appears relevant, in particular the issues of arbitrary arrests and killings of [REDACTED] civilians by the

²⁵ Defence Response, ICC-01/04-02/06-1773-Conf, para. 25.

²⁶ Request, ICC-01/04-02/06-1739-Conf-Red, paras 15-16.

²⁷ Prosecution Response, ICC-01/04-02/06-1772-Conf, para. 25.

UPC following the attack on [REDACTED], and the acts allegedly committed by Mr Ntaganda and Kisémbó in that period. The Chamber considers that certain aspects of the expected testimony may be cumulative of evidence already before it, and would therefore not significantly contribute to evidence already on the record. The Chamber notes however that the proposed witness could provide relevant and potentially unique information on the conduct of Mr Ntaganda and Kisémbó in the period between end of 2002 and beginning of 2003. The Chamber considers this aspect of this victim's expected testimony to be of particular relevance. It therefore authorises that he be called as a witness, but directs that the examination should focus on this aspect.

Victim a/30365/15

23. On the basis of the information provided by the LRV, Victim a/30365/15 witnessed UPC troops attacking [REDACTED] between the end of 2002 and the beginning of 2003, allegedly searching for Lendu people, killing civilians, destroying houses and pillaging goods. Together with her family, she allegedly fled to [REDACTED] were said to have been killed and her house was destroyed and goods pillaged.²⁸
24. The Prosecution submits that the proposed witness's testimony covers a wide range of charged crimes, including as related to [REDACTED] the murder [REDACTED], a village around Mongbwalu, and as such is 'representative of a wider victimisation'. It further submits that Victim a/30365/15 provides difficult-to-obtain information on the UPC *modus operandi* in the [REDACTED].²⁹
25. The Chamber notes that this victim's expected testimony appears to be of relevance with regard to numerous crimes allegedly committed in [REDACTED] or in the surrounding area. Although in part cumulative of

²⁸ Request, ICC-01/04-02/06-1739-Conf-Red, paras 18-19.

²⁹ Prosecution Response, ICC-01/04-02/06-1772-Conf, para. 26.

evidence already presented, the expected testimony covers a wide range of crimes charged and is therefore potentially representative of a larger group of victims. For these reasons, the Majority considers it appropriate for this victim to present evidence before the Chamber.

Victim a/01635/13

26. On the basis of the information provided in the Request, Victim a/01635/13 fled with her family from [REDACTED] during the *Shika na mukono* operation, first to the bush and then to Kilo Etat. [REDACTED] by UPC soldiers, [REDACTED].³⁰
27. The Prosecution submits that this victim can shed light on the crimes charged by giving evidence on [REDACTED] perpetrated by UPC soldiers, for an extended period of time. Furthermore, the Prosecution avers that the victim can complete, without duplicating, the evidence provided by Witness [REDACTED] on a specific event [REDACTED].³¹
28. In light of the information provided by the LRV in its Request, and despite the additional information provided upon request of the Chamber,³² it does not appear clearly where [REDACTED], or when the displacement from [REDACTED] took place. Noting this uncertainty as to exact time and place of certain of these events, the Chamber does not consider that it would be sufficiently assisted by this victim's expected evidence or that it would be appropriate in the circumstances to call her as a witness when the proximity to the temporal and geographical location of the charges has not been adequately demonstrated. Nevertheless, given the distinctive nature of the victims' alleged experience [REDACTED], the Chamber is of the view that it would be

³⁰ Request, ICC-01/04-02/06-1739-Conf-Red, paras 21-22.

³¹ Prosecution Response, ICC-01/04-02/06-1772-Conf, para. 24.

³² See *supra* para. 6.

appropriate for the victim to express her views and concerns in person, on the harm suffered.

Victim a/30286/15

29. On the basis of the information provided by the LRV, this victim is mainly expected to testify about [REDACTED], during the attack on [REDACTED] in February 2003.³³

30. The Prosecution submits that the witness can testify to the UPC attack on Petsi in February 2003 which is charged, and to [REDACTED] near [REDACTED], which is around Bambu and Buli. It submits further that the witness' account is representative of a wider victimisation [REDACTED].³⁴

31. The issues of the expected testimony appear relevant to several of the crimes charged as part of the 'Second Attack'. However, the Chamber considers that the expected evidence appears to be cumulative of evidence that had already been presented by the Prosecution. Notwithstanding, given that her account is potentially representative of wider victimisation in terms of alleged [REDACTED] by UPC soldiers, the Chamber considers it is appropriate to authorise this victim to appear to present her views and concerns in person on the harm suffered.

Victim a/00256/13

32. In light of the information provided in the Request, Victim a/00256/13 [REDACTED], who is expected to testify on the attack on [REDACTED] in early 2003; the use of heavy weaponry, which allegedly killed [REDACTED]; the destruction of his houses and pillaging of his goods.³⁵

³³ Request, ICC-01/04-02/06-1739-Conf-Red, paras 24-25.

³⁴ Prosecution Response, ICC-01/04-02/06-1772-Conf, para. 27.

³⁵ Request, ICC-01/04-02/06-1739-Conf-Red, paras 27-28.

33. The Prosecution submits that the victim can assist in the determination of the truth, as his account is not cumulative of the Prosecution's evidence and is representative of the wider victimisation of Lendu civilians. The Prosecution does not oppose the LRV's request that his testimony be heard by way of video-link, given the victim's [REDACTED].³⁶
34. The Chamber considers that the proposed testimony appears relevant to several crimes alleged to have been committed in [REDACTED] as part of the 'Second Attack'. While the Chamber notes that a number of witnesses have testified in relation to the attacks on [REDACTED], it considers that, as a [REDACTED] who can testify regarding the use of heavy weaponry, the witness may be in a position to provide additional information of relevance. For these reasons, the Majority considers it appropriate to authorise this victim to appear as a witness primarily on this aspect of his expected testimony.

Victim a/00045/13

35. Victim a/00045/13 is, on the basis of the information provided in the Request, [REDACTED]. He allegedly resided in Bambu when the UPC attacked the villages; [REDACTED]. This victim was allegedly at the Kobu market when it was attacked and is said to have seen corpses at a banana field in Kobu. [REDACTED] were purportedly killed by UPC soldiers, and his house was burned.³⁷
36. The Prosecution submits that although the witness's account is relevant to the charges and he held a particular position at the time, it appears cumulative of the evidence of other Prosecution's witnesses. It therefore submits that his

³⁶ Prosecution Response, ICC-01/04-02/06-1772-Conf, paras 28-29.

³⁷ Request, ICC-01/04-02/06-1739-Conf-Red, paras 30-31.

testimony would not substantially assist the Chamber in the determination of the truth.³⁸

37. In addition to the general submissions, the Defence notes this [REDACTED], which it submits is unclear from the Request.³⁹

38. Despite the described role of the witness, and the fact he allegedly made [REDACTED], the Chamber considers that the expected testimony appears to be cumulative of evidence already presented by the Prosecution and does not consider it appropriate to authorise this victim to give evidence in these circumstances.

Victim a/30287/15

39. On the basis of the information provided in the Request, Victim a/30287/15 is a [REDACTED] in Ngabulo, who is expected to testify about the UPC attack on [REDACTED] village; his escape to [REDACTED], where he allegedly witnessed the killing of Lendu civilians; and [REDACTED]. He may also testify about seeing [REDACTED]; his knowledge of another letter of pacification; seeing dead bodies at Lipri; and the destruction of his house.⁴⁰ The LRV submits that this victim was mentioned by Prosecution witnesses during their testimonies.⁴¹

40. The Prosecution submits that, although the witness's account is relevant to the charges and he held a particular position at the time, his expected testimony appears cumulative of the evidence of other Prosecution witnesses. It therefore submits that his testimony would not substantially assist the Chamber in the determination of the truth.⁴²

³⁸ Prosecution Response, ICC-01/04-02/06-1772-Conf, para. 30.

³⁹ Defence Response, ICC-01/04-02/06-1773-Conf, paras 33-34.

⁴⁰ Request, ICC-01/04-02/06-1739-Conf-Red, paras 33 and 35.

⁴¹ Request, ICC-01/04-02/06-1739-Conf-Red, para. 34.

⁴² Prosecution Response, ICC-01/04-02/06-1772-Conf, para. 31.

41. Although the proposed witness appears to have had a direct role in the events, and his expected testimony is of apparent relevance to the charges, the Chamber considers that it appears cumulative of the evidence of other Prosecution witnesses and therefore does not consider it appropriate to hear this victim to give evidence in these circumstances.

b) Request for leave to call victims to present views and concerns

42. The LRV requests that Victims a/01243/13, a/20126/14, a/30169/15 and a/20018/14 present their views and concerns in person.

43. According to the LRV, Victim a/01243/13 fled [REDACTED] with his family, after the UPC troops arrived at the end of December 2002. He is expected to present views and concerns about, *inter alia*, seeing bodies of killed civilians in [REDACTED]; the murder [REDACTED]; and about the harm suffered by him and his family.⁴³

44. Victim a/20126/14 is expected to present views and concerns about fleeing from [REDACTED] following the UPC attack between the end of 2002 and the beginning of 2003, [REDACTED]; the killing [REDACTED]; and the destruction of his house and pillaging of his goods.⁴⁴

45. Victim a/30169/15 fled with his children when the UPC troops attacked [REDACTED] in March 2003. He is expected to present views and concerns about the death of [REDACTED] pillaged goods in Lipri.⁴⁵

46. Victim a/20018/14 is expected to present views and concerns about, *inter alia*, her and her family fleeing to Lipri when the UPC troops attacked [REDACTED] at the end of 2002; [REDACTED] by UPC soldiers on the road to

⁴³ Request, ICC-01/04-02/06-1739-Conf-Red, paras 38-39.

⁴⁴ Request, ICC-01/04-02/06-1739-Conf-Red, paras 41-42.

⁴⁵ Request, ICC-01/04-02/06-1739-Conf-Red, paras 44-45.

[REDACTED] and associated consequences; and the pillage of her goods and [REDACTED].⁴⁶

47. The estimated time for the presentation of views and concerns of the above four victims is one hour each.⁴⁷ The LRV requests that they be allowed to appear anonymously *vis-à-vis* the public and via video-link.⁴⁸
48. The Prosecution does not oppose this part of the Request. The Defence submits that, should the Chamber authorise one or more victims to present ‘views and concerns,’ they should only be heard ‘on the prejudice and the harm suffered by them and their relatives’. The Defence also emphasises that, if the Chamber allows questions to go beyond this scope, full disclosure be effected of all material obtained from and related to these victims, as well as the victims taking an oath and being subjected to cross-examination.⁴⁹
49. The Chamber notes the expected account of the four victims above, their alleged harm suffered, and the temporal and geographical proximity of the alleged events in relation to the charges. In light of the information provided by the LRV, the Chamber considers that the personal interests of the four victims above are affected and that their expected accounts to be potentially representative of the harm suffered by a larger number of victims. For these reasons, the Chamber is satisfied that the requirements for the presentation of views and concerns in person by Victims a/01243/13, a/20126/14, a/30169/15, a/20018/14, a/30286/15, and a/01635/13, are met. The presentation of views and concerns will be limited to discussing the harm suffered. The LRV shall be allocated one hour for each victim to present his or her views and concerns, as requested.

⁴⁶ Request, ICC-01/04-02/06-1739-Conf-Red, paras 47-48.

⁴⁷ Request, ICC-01/04-02/06-1739-Conf-Red, paras 40, 43, 46 and 49.

⁴⁸ Request, ICC-01/04-02/06-1739-Conf-Red, paras 52-56.

⁴⁹ Defence Response, ICC-01/04-02/06-1773-Conf, paras 10-16.

c) Disclosure

50. The LRV indicates that the witnesses and victims he requests to call have all consented that their identity be disclosed to the parties and participants should the Chamber decide to authorise them to appear in person before it.
51. Taking into account the parties' submissions, and in order to ensure that the Prosecution and the Defence receive related material sufficiently in advance to enable them to prepare effectively, the Chamber sets the schedule below. The LRV should provide the parties and the Legal representative for former child soldiers with the identity of the victims authorised to present evidence and views and concerns, by **20 February 2017**. By the same date, the LRV should provide the statements and lesser redacted victims' application forms. The Chamber further indicates that the presentation of evidence by Victims a/30012/15, a/30365/15, and a/00256/13 is scheduled to take place between **10 and 13 April 2017**. The timing for the examination of those witnesses by the LRV, the Prosecution and the Defence will be communicated separately.

d) In-court protective measures

52. Noting the concerns expressed by the victims about their safety and well-being should their identity be disclosed to the public, the LRV anticipates that he will request for protective measures for the witnesses and victims permitted to appear before the Chamber.⁵⁰
53. In this regard, the Chamber recalls that, in light of the purpose of the presentation of views and concerns, in principle, they should be presented in

⁵⁰ Request, ICC-01/04-02/06-1739-Conf-Red, paras 52-54.

public and any recourse to private session should only be of a very limited nature.⁵¹

54. The Chamber directs the LRV to file any request for protective measures pursuant to Rule 87 of the Rules and any special measures pursuant to Rule 88 of the Rules for Victims a/01243/13, a/20126/14, a/30169/15, a/20018/14, a/30286/15, and a/01635/13, by **20 February 2017**, and for Victims a/30012/15, a/30365/15 and a/00256/13 by **15 March 2017**. Responses to any such requests should be filed by **28 February 2017** and **23 March 2017**, respectively.

e) Video-link

55. The Chamber notes that the LRV request that the testimony of Victim a/00256/13, in light of his [REDACTED], and the views and concerns of Victims a/01243/13, a/20126/14, a/30169/15, a/20018/14, a/30286/15, and a/01635/13, be heard via video-link. The Prosecution supports this aspect of the Request, while the Defence did not make submissions on this point. `

56. The Chamber recalls its previous finding that the Statute and the Rules give it 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.⁵² In the present case, the Chamber notes that the victims authorised to present views and concerns have been allocated just one hour each, and considers that it is therefore in the interests of expeditiousness, as well as the appropriate allocation and use of resources, to permit this to occur by way of video-link.

57. On this basis, the Chamber finds it appropriate to hear the views and concerns of all authorised victims by way of video-link.

⁵¹ Order of 11 January 2017, ICC-01/04-02/06-1711, para. 5.

⁵² See, most recently, Transcript of hearing on 3 February 2017, ICC-01/04-02/06-T-191-CONF-ENG ET, page 69, line 16 to page 70, line 18.

58. With respect to Victim a/00256/13, the Chamber has had regard to the nature of the anticipated areas of testimony or views and concerns, the fact that the Chamber, parties, and participants will be able to see and hear the witness testifying in real-time. The Chamber recalls further that it does not consider the use of video-link to require exceptional justification, nor has it previously required further evidence of a [REDACTED] to warrant use of video-link. The victim's testimony is anticipated to be elicited *viva voce* and both the Chamber and the parties will have the opportunity to examine him. Therefore, the Chamber finds it appropriate to hear Victim a/00256/13's testimony by way of video-link, and directs the LRV and the Registry to make all necessary arrangements.

f) Conclusion

59. The Majority, by way of summary, indicates that it shall authorise three victims to give evidence and six victims to present views and concerns, in accordance with the directions above. Noting (i) the particularised assessment conducted in relation to each individual in accordance with the applicable law set out above; (ii) the delineated subject matter upon which the victims are authorised to testify, and the scheduled timing of such testimony; (iii) the fact that the victims presenting views and concerns will be limited to discussing the harm suffered; and (iv) the disclosure directions and timetable set out above, the Majority considers such order to be wholly consonant with the rights of the accused, including the right to have adequate time and facilities to prepare for his defence.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

AUTHORISES the presentation of evidence by Victim a/30012/15 in accordance with the direction above;

BY MAJORITY, Judge Ozaki dissenting, AUTHORISES the presentation of evidence by Victims a/30365/15 and a/00256/13 in accordance with the direction above;

AUTHORISES Victims a/01243/13, a/20126/14, a/30169/15, a/20018/14, a/30286/15, and a/01635/13 to present their views and concerns;

DIRECTS the LRV to disclose to the parties and the Legal representative for former child soldiers the identity of all authorised victims forthwith and no later than 20 February 2017;

DIRECTS the LRV to disclose to the parties and the Legal representative for former child soldiers the statements and lesser redacted versions of the victim application forms of Victims a/30012/15, a/30365/15, and a/00256/13, by 20 February 2017;

DIRECTS the LRV to file any request for measures pursuant to Rule 87 or 88 of the Rules for Victims a/01243/13, a/20126/14, a/30169/15, a/20018/14, a/30286/15, and a/01635/13, by 20 February 2017, and the parties to file any response to such requests by 28 February 2017;

DIRECTS the LRV to file any request for measures pursuant to Rules 87 or 88 of the Rules for Victims a/30012/15, a/30365/15, and a/00256/13, by 15 March 2017, and the parties to file any response to such requests by 23 March 2017;

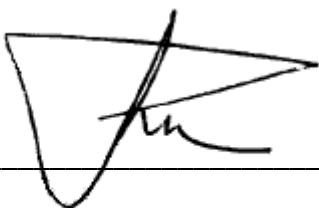
SCHEDULES the presentation, by video-link, of the views and concerns of Victims a/01243/13, a/20126/14, a/30169/15, a/20018/14, a/30286/15, and a/01635/13, for 2 and 3 March 2017, and **DIRECTS** the LRV and the Registry to liaise in order to make the necessary arrangements;

INDICATES that the presentation of evidence by Victims a/30012/15 and a/30365/15 (at the seat of the Court), and a/00256/13 (by way of video-link) is scheduled to take place between 10 and 13 April 2017, and **DIRECTS** the LRV and the Registry to liaise in order to make the necessary arrangements; and

DIRECTS the LRV, the Prosecution, and the Defence to file public redacted versions of their respective filings within two weeks from the present decision.

A partly dissenting opinion by Judge Ozaki will be filed in due course.

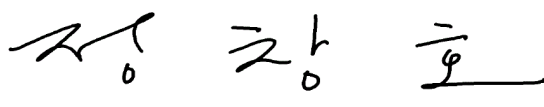
Done in both English and French, the English version being authoritative.



Judge Robert Fremr, Presiding Judge



Judge Kuniko Ozaki



Judge Chang-ho Chung

Dated 15 February 2017

At The Hague, The Netherlands