



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 request for video-link and modification
of the sitting schedule for Witness P-0918", 7 November 2016,
ICC-01/04-02/06-1613-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-0918’s testimony be heard *via* video-link [REDACTED], as the witness is [REDACTED]The Hague to give testimony.
2. Should the Chamber grant its request to hear Witness P-0918’s testimony *via* video-link, the Prosecution requests that the Chamber implement a modified sitting schedule on 10, 11 and 14 November 2016, sitting between 9:30 to 13:00 and then for another two hours at times to be determined between 16:00 and 19:00, in order to [REDACTED].

Background

3. On 28 October 2016, Witness P-0918 informed the Prosecution that [REDACTED]. For other witnesses who [REDACTED], the Prosecution has counted on the assistance of the authorities of the Government of the Democratic Republic of the Congo in ensuring that [REDACTED]. Given the security situation of Witness P-0918,¹ this is not an option in Witness P-0918’s case.
4. Permitting Witness P-0918’s testimony to be given by video-link would be consistent with the Court’s duty under article 68(1) of the Statute to “take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses [...]” so long as they are not “prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial”.

¹ ICC-01/04-02/06-1579-Conf-Red, paras. 20 and 24.

Confidentiality

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

Prosecution submission

Request to hear Witness P-0918 via video-link

6. 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 and P-0668.³ 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 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

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 and ICC-01/04-02/06-1499.

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.

7. 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 she appeared physically in the courtroom. Nor will the proposed video-link testimony detrimentally affect the fairness of the trial. Moreover, granting the Prosecution's application will ensure trial expediency by ensuring this witness can appear during the seventh witness block, and by reducing the uncertainty as to whether the Prosecution would face similar difficulties securing her appearance in person before the completion of the presentation of its case.
8. The Registry has provided advance confirmation that the video-link can be arranged on the proposed dates.

Proposed modification to the sitting schedule

9. The Prosecution requests that the Chamber implement a modified sitting schedule in order to accommodate the testimony of Witness P-0918 [REDACTED]. The Prosecution intends to complete the direct examination of Witness P-0918 in two-and-a-half hours. The Chamber has indicated that the maximum time allowed for the Defence's cross-examination would be the same.⁷ Accordingly, the Prosecution requests that the Chamber hear the testimony of Witness P-0918 on 10, 11 and 14 November 2016 in three 2-hour blocks, conducted during exceptional evening sessions (a 2-hour session to be set between 16h00 and 19h00 once the Prosecution confirms the precise time the witness can get to the video-link location [REDACTED]). The Prosecution seeks to schedule Witnesses P-0898 and P-0911 in the morning sessions over this period (10, 11 and 14 November 2016), should the Chamber grant its request.

⁷ Chamber's email to the Parties of 17 October 2016 at 14:47.

Request

10. In light of the above, the Prosecution requests that the Chamber authorise the testimony of Witness P-0918 be heard *via* video-link and modify the sitting schedule for 10, 11 and 14 November 2016, as described in para. 9 above.



Fatou Bensouda
Prosecutor

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