

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **5 January 2018**

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 request to hear the testimony of
Witness D-0207 via video-link**

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 Victims

**Unrepresented Applicants for
Participation/Reparation**

**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 ('Court'), in the case of *The Prosecutor v. Bosco Ntaganda*, having regard to Articles 64 and 67 to 69 of the Rome Statute ('Statute') and Rule 67 of the Rules of Procedure and Evidence ('Rules'), issues the following 'Decision on Defence request to hear the testimony of Witness D-0207 via video-link'.

1. On 27 December 2017, the defence team for Mr Ntaganda ('Defence') filed a request seeking that the testimony of Witness D-0207 ('Witness') be heard via video-link ('Request').¹ According to the Defence, it will not be possible to complete all necessary arrangements allowing the Witness to travel to the seat of the Court in time to testify during the sixth evidentiary block, and therefore, his testimony can only be accommodated by way of video-link.² It further submits that the subject matter of his anticipated testimony is 'limited in scope', and that recourse to video-link gives 'due weight' to the Witness's personal circumstances and professional obligations, does not prejudice the accused, the Office of the Prosecutor ('Prosecution') or the participants, 'favours the expeditious conduct of the proceedings', and 'is in line with the principle of judicial economy'.³
2. On 3 January 2018, the Prosecution responded to the Request ('Response').⁴ While not opposing use of video-link on the basis that it is 'consistent with the Defence's description of th[e] [W]itness's expected testimony as limited in scope',⁵ the Prosecution notes, *inter alia*, that the Defence does not provide any justification why it will not be possible to complete the necessary arrangements allowing the Witness to testify at the seat of the Court during

¹ Request on behalf of Mr Ntaganda seeking leave to adduce the testimony of Defence Witness D-0207 via video-link, ICC-01/04-02/06-2168-Conf.

² Request, ICC-01/04-02/06-2168-Conf, para. 10.

³ Request, ICC-01/04-02/06-2168-Conf, paras 11-14.

⁴ Prosecution's response to the "Request on behalf of Mr Ntaganda seeking leave to adduce the testimony of Defence Witness D-0207 via video-link", ICC-01/04-02/06-2168-Conf, ICC-01/04-02/06-2173-Conf.

⁵ Response, ICC-01/04-02/06-2173-Conf, para. 1.

the sixth evidentiary block, and argues that the Defence ‘should have taken steps to complete all such necessary arrangements’ upon notification of the Chamber’s direction that the Witness’s testimony be scheduled in the sixth evidentiary block.⁶

3. As previously held,⁷ the Chamber considers that the Statute and the Rules give the Chamber 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, when deciding on a request to that effect, it may consider a variety of factors, including the nature and scope of a witness’s anticipated testimony, as well as a witness’s personal and professional circumstances, or logistical difficulties in arranging a witness’s travel to the seat of the Court.⁸ The Chamber further recalls that the term ‘given in person’ in Article 69(2) of the Statute does not imply that witness testimony shall necessarily be given by way of live testimony in court.⁹ In light of the foregoing, the Chamber does not consider it necessary to

⁶ Response, ICC-01/04-02/06-2173-Conf, para. 3. The Prosecution refers to the Chamber’s Decision on Defence Requests to add D-0185, D-0207, and D-0243 to its List of Witnesses and for the admission of prior recorded testimony pursuant to Rule 68(2)(b), 6 November 2017, ICC-01/04-02/06-2099, para. 32.

⁷ See, *inter alia*, transcript of hearing on 29 May 2017, ICC-01/04-02/06-T-206-CONF-ENG ET, pages 36-37; Decision on Defence’s request to hear Witness D-0054’s testimony via video-link and advance notice concerning Witness D-0210, 23 May 2017, ICC-01/04-02/06-1919; Decision on Prosecution’s request to hear P-0933’s testimony via video-link, 16 March 2016, ICC-01/04-02/06-1213-Red (‘Decision on P-0933’), 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.

⁸ See transcript of hearing on 29 May 2017, ICC-01/04-02/06-T-206-CONF-ENG ET, pages 36-37; Decision on Defence’s request to hear Witness D-0054’s testimony via video-link and advance notice concerning Witness D-0210, 23 May 2017, ICC-01/04-02/06-1919; 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.

⁹ Decision on P-0933, ICC-01/04-02/06-1213-Red, para. 6.

address the Prosecution's submission that the Defence should have taken steps to complete the necessary arrangements for the Witness to testify at the seat of the Court at an earlier stage.

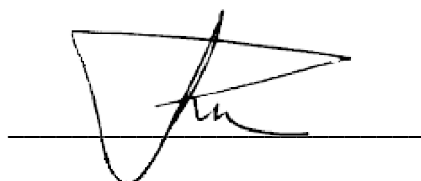
4. In the present circumstances, noting, *inter alia*, the nature, the expected scope, and the length of the Witness's testimony, as well as his personal circumstances and professional commitments, the Chamber considers it appropriate to hear the Witness's testimony by way of video-link.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

GRANTS the Request; and

DIRECTS the Registry to make the necessary arrangements for the hearing of the testimony of Witness D-0207 by way of video-link during the sixth evidentiary block.

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 5 January 2018
At The Hague, The Netherlands