

1 International Criminal Court
2 Trial Chamber VI - Courtroom 1
3 Situation: Democratic Republic of Congo
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and
6 Judge Chang-ho Chung
7 Trial Hearing
8 Tuesday, 15 September 2015
9 (The hearing starts in open session at 9.31 a.m.)
10 THE COURT USHER: All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: Good morning, everybody.
14 Court officer, please call the case.
15 THE COURT OFFICER: Thank you, Mr President.
16 The situation in the Democratic Republic of the Congo in the case of the Prosecutor versus
17 Bosco Ntaganda, case reference ICC-01/04-02/06. We are in open session.
18 PRESIDING JUDGE FREMR: Thank you.
19 First of all, I would like to welcome the parties, the participants and Mr Ntaganda, the
20 accused. I also welcome those who are watching this hearing from the public gallery
21 or online via streaming from the ICC website.
22 Now I would like to ask for appearances, and I would appreciate if lead counsel could
23 introduce both themselves and their teams for the record, starting with Prosecution.
24 MS SAMSON: Good morning, Mr President, your Honours. Today for the Prosecution are
25 Mr Eric Iverson; Ms Dianne Luping; Ms Julieta Solano, all of whom are trial lawyers;

1 Ms Kristy Sim, assistant trial lawyer; Lois Mbafor, legal assistant; Selam Yirgou, case manager;
2 and myself, Nicole Samson, senior trial lawyer.

3 PRESIDING JUDGE FREMR: Thank you, Ms Samson.

4 Now, Defence please.

5 MR BOURGON: (Interpretation) Good morning, your Honours. All the -- good morning to
6 everyone here in the courtroom. Representing Mr Ntaganda is Ms Elsje van Braber;

7 Ms Chloé Grandon; Luc Boutin; and myself, Stéphane Bourgon. Thank you, your Honour.

8 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

9 And Legal Representatives.

10 MR SUPRUN: (Interpretation) Good morning, your Honours. Representing victims of the
11 attacks, we have Anne Grabowski; and myself, Dmytro Suprun.

12 MS PELLET: (Interpretation) Good morning. Former child soldiers are represented by
13 Mohammed Samy Hamed Abdou; and myself, Sarah Pellet, counsel. Thank you.

14 PRESIDING JUDGE FREMR: Thank you, all of you.

15 Before we commence today, I note that the Defence sent an email to the Chamber last night
16 seeking to raise a number of issues prior to the calling of the first witness. I will be
17 addressing several procedural matters before inviting the first witness to take the stand. To
18 the extent that the Defence still wishes to raise any issues that are urgent at this stage, they
19 may briefly outline them after we have dealt with the initial matters.

20 However, please be aware that the Chamber does not intend to spend much time on
21 these matters today and simply seeks greater clarity in relation to them so as to
22 determine whether any further action is required such as receipt of more detailed
23 submissions or any ruling.

24 As the first preliminary matter, before we commence the evidentiary phase of trial, I
25 would like to recall the schedule for the first two evidentiary blocks in light of the

1 Defence request for clarification of this issue, transmitted to the Chamber by way of
2 email on 7 September 2015.

3 Today, 15 September 2015, we start with the first evidentiary block, which, based on
4 the time estimates provided by the parties, was initially estimated to continue until
5 approximately 29 September, although in this regard the Chamber notes that the
6 request pursuant to Rule 68(3) is outstanding. If granted, this is likely to shorten the
7 duration of the first block.

8 The second evidentiary block is scheduled to commence on 19 October 2015 and will
9 run no later than till 20 November 2015. The Chamber is not seized of any concrete
10 request to modify that schedule and finds no reason to proprio motu do so at this
11 stage. I trust that this clarifies the issue.

12 While we are on the issue of scheduling, I wish to inform you that, unless otherwise
13 necessary, we will adhere to the usual daily time schedule preferred by the Registry,
14 which consists of three sessions daily of one and a half hours each, running from 9.30
15 to 11 a.m., then from 11.30 a.m. to 1 p.m., after which we shall break for lunch, and
16 the last session should be from 2.30 p.m. to 4 p.m.

17 Should there be a need to request a deviation from this schedule, please inform the
18 Chamber as soon as possible, bearing in mind that the tapes recording these
19 proceedings allow for two hours in maximum. I would like to emphasise to the
20 parties and participants the importance of adhering to estimated times for
21 questioning witnesses. The court officer shall assist me in this regard, and I shall
22 also be keeping a sharp eye on the clock.

23 Prior to commencing with the first witness, I would also like to remind the parties
24 and participants that as directed in the Conduct of Proceedings decision, they should
25 attempt to group together any questions that are required to be asked in private

1 session as much as possible so as to limit the need to go in and out of public and
2 private sessions. In addition, you are requested to only resort to private session
3 when strictly necessary to protect the witness' identity.

4 So are there any questions on this matter? Prosecution, no.

5 Defence, any questions on that issue? I don't see any -- any request for question.

6 Okay, then before I ask the first witness be called in I have two further matters I wish
7 to deal with. The Chamber notes that according to an email from Defence that was
8 received on 11 September, the Defence objects to the Prosecution's use of document
9 DRC-OTP-2087-0054, which is the statement of Witness 805, dated 11 July 2015. The
10 Defence objects on the basis that this document does not appear on the Prosecution's
11 most recent list of evidence, dated 29 July 2015, which was filed as Annex A to
12 filing 753.

13 Defence, now, you might like to please first clarify whether the scope of your
14 objection relates to the Prosecution attempting to actually use this document with the
15 witness, for example, showing it to the witness?

16 MR BOURGON: Our objections as presented in the email we forwarded to the Chamber is
17 directed at the use of the document. Now, of course, this is a statement, so the Prosecution
18 indicated also that it did not intend to tender the statement into evidence, so that of course
19 takes care of one difficulty.

20 The other difficulty is, of course, one might ask when would the Prosecution be
21 inclined to use this document, and this could only happen to refresh the memory of
22 the witness, or, of course, if the witness was to be declared hostile. Those are the
23 only two circumstances we see where this document could be used.

24 Now, since the document was not added to the list, we believe that the Prosecution
25 should not be authorised in the event to refresh the memory of the witness with this

1 document, with this statement and should the witness be declared hostile, the
2 Prosecution should not be entitled to use this document because it was not on the
3 Prosecution's list.

4 Now, the whole issue of the list, of course, is one that is of concern to us in terms of
5 which documents are added to the list and when and what the Prosecution intends to
6 do with the document. The Prosecution is -- has been granted leave to add any
7 documents to its list as it wishes, and that's perfectly clear with the Defence.

8 Now, the fact that the Prosecution adds a document to its list, we still don't know what is the
9 intention of the Prosecution regarding this document. So we have been granted the -- not
10 leave, but basically we have been advised that we can object to the use of that document at
11 any time. We choose to raise this, to take this opportunity whenever such a document will
12 appear on the list of documents to be used with the witness.

13 We feel that this is the proper time for us, at least for the Defence, to raise this
14 objection. Should the Prosecution wish to use the document, I believe that they have
15 to make their case as to why the document was not added on the list prior to 2 March.
16 That's number one. And number two, if it's added to the list after 2 March what are
17 the reasons.

18 And we have already explained in the previous filings, submissions to the Chamber, that
19 whenever a party wishes to use a document that was generated after 2nd March, it must fulfil
20 a test, there must be at least reasons. And there is a number of reasons why the Prosecution
21 could be or could not be authorised to use such a document. So we feel the Prosecution
22 should make its case. Thank you, Mr President.

23 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

24 Prosecution, could you kindly respond to those questions of Mr Bourgon.

25 MR IVERSON: Yes, your Honour. Good morning, your Honours. Thank you for the

1 floor.

2 First of all, just to explain what the -- what the witness statement, what the document
3 is and why we put it on our list of documents. It's essentially an ancillary statement
4 that was taken on a collateral issue. We don't anticipate using the document, but for
5 the sake of completeness we included it on the list.

6 Now, I understand that we are going to update our list of evidence today, including
7 the document, but I can say, for my purposes, I don't intend on using the document
8 during the witness' testimony unless a need arises. And like I said, it's on a collateral
9 issue that is not likely to arise but, again, for the sake of completeness it was included
10 on the list.

11 PRESIDING JUDGE FREMR: And maybe one question for my part. So you said you will
12 not use this document unless some reason arise. So what kind of reason it could be?

13 MR IVERSON: If it came up in cross-examination, for example, and I needed to ask
14 questions on re-direct to clarify an issue with -- that was covered on cross-examination that I
15 don't intend to cover. That could be one reason for using the document. Defence counsel
16 listed a few other reasons. I don't anticipate that those issues will arise with this witness, but
17 those would be potentially valid reasons for using the document.

18 PRESIDING JUDGE FREMR: And maybe I think you did not respond to question why you
19 did not put this document on the list on time.

20 MR IVERSON: The statement was taken after the list of evidence had been filed. So the list
21 of evidence originally was filed on 2 March 2015, and the statement itself was taken on
22 11 July 2015. So I believe it was an administrative oversight that was then not placed on the
23 list of evidence, your Honour.

24 PRESIDING JUDGE FREMR: I was interested as well. I think it was oversight. Thank
25 you.

1 Now, I am coming back to Mr Bourgon. Mr Bourgon, are you insisting on your
2 objection or have you changed your position on the use of this possible document?

3 MR BOURGON: Thank you, Mr President. No, our position does not change in this regard.
4 I think it is a matter of principle. I don't think, as my colleague put it, that there will be a
5 problem with this particular document. However, it is important, this is the first witness,
6 this is the first list of documents that is presented with the first witness in this trial, so we
7 want to be sure that the rules of the game are clear to everyone.

8 If a document was added to the list after 2 March, somehow, somewhere, somebody must
9 provide justification as to why it was not obtained before, why the -- why the statement was
10 not obtained before the cut-off date because that means that the Prosecution is continuing to
11 investigate. And if it was obtained for specific reasons, because that can happen, the Defence
12 recognizes that this can happen, but then there is a test to be made. This test was established
13 in the Lubanga trial, and there are -- it's a two-pronged test. Basically, I don't have the test
14 with me right now, but what I do have is that it must be established why is this evidence, why
15 was it so necessary that it had to be added to the list?

16 And of course, there is the supplementary issue of prejudice to the Defence, but that's not our
17 main concern. Our main concern is why is a document added after? Why? And the test
18 that was established says is the evidence so overwhelming and so necessary in the interests of
19 justice that the Prosecution should be granted leave to use it and to eventually adduce it?
20 Because this time it's a statement, next time it will be another type of document. So we want
21 to make sure that the rules of the game are straight. Thank you, Mr President.

22 PRESIDING JUDGE FREMR: Thank you. Now please give us a moment. I think I will
23 confer with my colleagues on this issue.

24 (Trial Chamber confers)

25 PRESIDING JUDGE FREMR: So after a short silent deliberation, the Chamber agreed that

1 we will not decide on this at the moment because it's even not sure whether the Prosecution
2 really will use this document, so we will decide, we will take into consideration all what have
3 been said, but if it will be such a need we will decide at the moment when the request will
4 come with the request to use this document.

5 Now, the other issue I will note before we get started today is that the Defence has
6 foreshadowed that it partially opposes the Legal Representatives of Victims' request
7 to put certain questions to Witness 805.

8 I recall that any such objections shall be considered after the Prosecution's
9 examination-in-chief in accordance with our decision on Conduct of Proceedings. At that
10 time I shall ask the Legal Representative of Victims if he maintains his application to question
11 Witness 805, and if so, in relation to which topics.

12 I note in this regard that while mindful of the importance of the rights of victims and
13 the need to ensure their meaningful participation in these proceedings, the Chamber
14 shall be fairly strict in ensuring that any questions from Legal Representatives focus
15 on harm suffered by each individual and his or her family, or other closely connected
16 matters.

17 So now I guess we have exhausted the preliminary matters, so we needed to deal with
18 before the witness is brought in.

19 Maybe one last thing, Defence, in relation to your email of last night, please clarify
20 briefly, if possible, the specific difficulties arising and indicate mainly any urgency
21 with respect to them. Please do not go into submissions. We simply want to better
22 understand what the issues are in order to assess what, if any, action is required. As
23 I indicated, please be brief.

24 MR BOURGON: Thank you, Mr President. I'd like first to just to add to what I said earlier
25 concerning the test. I made a mistake, this was not -- this test was not established in the

1 Lubanga trial, it was established in the Katanga trial, and the filing number is 2325. That's
2 the previous issue.

3 Moving on to the email I sent to the Chamber and copied to the parties -- to the
4 parties and the participants, five issues basically happened over the last ten days,
5 which I believe for the Defence require the immediate attention of the Trial Chamber.
6 I will briefly summarise these issues.

7 As part of this familiarisation process, organised by VWU, when a witness arrives at
8 the Court, there is a courtesy meeting which is planned, a courtesy meeting attended
9 by person of VWU. And this courtesy meeting is -- it's an opportunity given to all
10 parties and to the participants to meet, if they wish, to use the opportunity to meet
11 with the witness.

12 Without going into any detail, there has been some differences or different point of
13 views expressed by the parties in various emails concerning what can be mentioned
14 and what cannot be mentioned. So I will not go into the details, but it is directly
15 related to the second issue, which deals with requests to meet witnesses of the
16 opposing party.

17 There are significant differences in the parties' understanding of what the protocols,
18 with an S, say about this issue. I say protocols because we take the view that this
19 deals with both the protocol on familiarisation of witness as well as -- sorry, as
20 protocol for contacting witnesses of the other party and also the protocol on
21 preparation of witnesses. Both must be read together to address the issue that came
22 up over the last ten days. The issue happened with both witnesses, 805 and
23 Witnesses P-0901.

24 The issues basically are in terms of the request to the witness, the answer provided by
25 the witness and then the subsequent follow-up session if the witness decides to be

1 represented or at least to have a member of the calling party present at such a
2 meeting.

3 One of the issues, of course, is there is a misunderstanding between the parties which,
4 based on the production of a recording of the meeting between the opposing party, in
5 this case the Defence and the witness, Prosecution believes that whenever the Defence
6 meets with the witness, one or two things must happen; either a member of the
7 Prosecution must be present if the witness so desires and, second, if the witness does
8 not call for the presence of a member of the Prosecution, then the recording must be
9 produced and must be handed over to the Prosecution immediately after that session.

10 Without going into argument, because you asked me to be brief, Mr President, this of
11 course for us creates an imbalance that we would like the Trial Chamber to address.

12 Not only -- it's the how to, how is the witness informed about the possibility of
13 meeting with the witness and how is the witness informed of whether he can or
14 cannot, he will ask for the presence or not of a member of the calling party, and the
15 second issue is of course the production of a video.

16 I can give arguments at whatever time the Trial Chamber wishes to hear this
17 argument.

18 The third issue deals with the same thing, but in respect of expert witnesses.

19 Defence takes the view that the protocol does not apply to expert witnesses.

20 Prosecution takes the view that the protocol does apply to expert witnesses. We feel
21 expert witnesses, by their very nature, are independent and impartial, they're there to
22 assist the Court and they should have no problems meeting with the Defence without
23 the presence of anyone, and there is no recording required, because this is simply
24 preparing knowledge or assistance to the Court. Prosecution believes otherwise. I
25 don't -- I will not submit into arguments on this issue.

1 A fourth issue deals with the production of a log following a preparation session as
2 well as a production of a disclosure note.

3 The Chamber will recall, Mr President, that this was an issue that was of course litigated in
4 our different submissions before the Trial Chamber issued the applicable protocol. In there it
5 says that after each session the Prosecution has certain obligations with regards to the
6 production of a log and the production of a disclosure note. The debate between the parties
7 is if a preparation session takes four days, then should the Prosecution do a log and disclosure
8 note every day?

9 We feel that this would be of assistance to allow the Defence to prepare in realtime. The
10 Prosecution takes the view that they will simply put a disclosure note at the end of the four
11 days. It is something that should be clarified at this stage.

12 Those are the first four issues, all dealing with witness preparations.

13 Now, the why and what is the urgency? Well, yesterday there was a meeting with one
14 witness, a preparation session where the witness accepted to meet with the Defence but in the
15 presence of the Prosecution. And I took the liberty of explaining to the witness why the
16 preparation session was conducted, and I came over again on the topic of whether -- whether
17 he should reconsider in meeting us alone for the benefit -- for his benefit and for the benefit of
18 his testimony. And this created a lot of tension between my colleague and I for the
19 Prosecution. And I think it is important that we clarify the matter before moving onto many
20 other witnesses. So that's why -- this is what triggered the last night's email is really that
21 meeting that took place yesterday afternoon.

22 The fifth issue, Mr President, is one of completely different but also related to
23 witnesses, and it deals with inadvertent contacts with Prosecution witnesses. There
24 has been, in the course of the last five days only, I think it's five or six, three
25 inadvertent contacts between Defence investigator and witnesses from the

1 Prosecution. And the -- we feel that all due diligence was applied to prevent those
2 inadvertent contacts, and as soon as they took place, they were immediately reported
3 to the Prosecution.

4 The Prosecution takes the view that we are maybe not fulfilling our obligations and that we
5 are not correctly instructing our investigator. I think it's an issue that must be raised with the
6 Chamber because there are circumstances where these contacts are almost impossible to avoid.

7 The main reason for this is that when witnesses are encountered by the investigator, the
8 investigator always asks at the beginning. First the investigator identifies the investigation
9 party as that being and representing Mr Ntaganda, and second, always the question that is
10 put to the witness, "Did you ever meet anyone from the Court?"

11 When we get information that there is no problem, then of course we are likely to
12 carry on until we find really information and say, "Whoop," this is a problem here,
13 and then we immediately report it to the Prosecution.

14 Now, I think it is important to -- for all parties involved, but for the Chamber to be aware this
15 is continuing. And I unfortunately have to report this morning a fourth inadvertent contact,
16 and my colleague is not even aware of, that I was made aware of yesterday. So it happened
17 again, a fourth one in less than five or six days. So it is an issue that needs to be addressed.

18 Now, the last thing in this regard -- I would like to say this ends my presentation of

19 those five issues, and why they should be addressed now. There is one last thing
20 that came up with one of the witnesses, happened to be Witness 805, is a dual-status

21 witness. And of course, I exchanged correspondence with the Prosecution without

22 informing my colleague, the Legal Representative, and that was a mistake on my part,

23 and I -- we had an exchange of correspondence and I told the Legal Representative

24 that, of course, I would keep him in the loop whenever there was an issue arising

25 with a dual-status witness.

1 So these are the issues, Mr President. And it's because -- before the trial starts, with
2 the number of witnesses that we will be dealing with, this Court in many respects
3 goes out of its way to ensure the well-being of witnesses, the protection of witnesses,
4 how they are treated and how they feel. When they arrive here at the Court, it is
5 important that this is -- of course all efforts are taken to ensure that they are well
6 treated and that they are comfortable during their testimony, but this should not be
7 done at the expense of the rights of the parties or of the participants. So we feel that
8 these things should be addressed. Thank you, Mr President.

9 PRESIDING JUDGE FREMR: Thank you very much, Mr Bourgon. Before I move to the
10 Prosecution, I would like to just reiterate that the Chamber already expressed its will that if
11 there are any, you call it, misunderstanding between parties, that the best way how to solve it,
12 to find some, you know, common consensus on that, if possible. So understood that, at least
13 from your point of view, you don't see any perspective that you could just solve it between
14 Prosecution and you, just yourselves?

15 MR BOURGON: Thank you, Mr President. I wish -- I wish we could, but I'm just simply
16 looking at the tension that was in the air yesterday when we had this meeting. It will be very
17 difficult. I will -- I undertake, if that is the Chamber's wish, to again meet with the
18 Prosecution and, maybe, we can at least focus the issues more, so that they are more specific
19 in order for the Trial Chamber to address them. And I'm certainly willing to do that with my
20 colleague here. And if my colleague wants to such a meeting, we can probably try and
21 arrange these issues, but so far, based on what's on paper, it appears that we are far apart.
22 Thank you.

23 PRESIDING JUDGE FREMR: Thank you.

24 Prosecution, please.

25 MS SAMSON: Thank you, Mr President. There are a number of issues that have not been

1 resolved, excuse me, and that it is unlikely we will be able to resolve without the assistance of
2 the Chamber.

3 The matters that my friend from the Defence have raised are very serious and the Prosecution
4 is deeply concerned by the breaches of the protocol committed by the Defence and by the
5 continued approaches to Prosecution witnesses, which are done under, perhaps, the guise of
6 inadvertence, but in situations where it should be very clear that the investigators of the
7 Defence are meeting with witnesses from the Prosecution. And once it becomes clear that a
8 person from the Prosecution, or a witness of the Prosecution is being met, the Defence
9 investigator is not, in every instance, ceasing the communication, but is rather engaging in
10 further discussions about whether or not the witness will meet with the Defence, seeking the
11 consent of the witness to meet with the Defence before the Defence has even raised the issue
12 with the Prosecution.

13 In my submission that's a clear breach of the protocol on contacts with witnesses of
14 the opposing party.

15 Paragraph 34 of which clearly states that should a party wish to speak to a witness of
16 the opposing party, that request must first come to the calling party and thereafter the
17 calling party has within five business days the obligation to approach the witness and
18 obtain his or her consent.

19 It is not appropriate in my submission for the Defence to undertake that discussion
20 with the Defence before the Prosecution does so.

21 Equally disturbing, your Honours, is that the witnesses at issue, there are more than 805,
22 including 790, including 100, are dual-status witnesses for whom contact with the Defence
23 must first be cleared with their legal representative.

24 The issue that arose as well with Witness P-901 is that the Defence informed the
25 witness during the courtesy meeting that it had requested to meet with the witness.

1 The Prosecution objected to this approach with the Defence, who disagrees that that's
2 inappropriate. And the reason the Prosecution objected to that approach is that the
3 protocol again clearly states that it's the Prosecution who will first have the discussion
4 with the witness. The Prosecution in neutral terms explains to the witness that the
5 Chamber has permitted meetings with the Defence and that it is the choice of the
6 witness whether or not to agree to that meeting.

7 When the Defence announces to a witness, asks, or simply notifies that such a
8 meeting may take place, the witness is not sufficiently familiar with the process to be
9 able to give an informed answer. A witness may say "Yes," given that they don't
10 understand the process, when in fact they feel afraid, it affects their well-being, they
11 don't understand that they can have a representative with them if they choose.

12 Alternatively, the witness may say "No," and only after discussion with the
13 Prosecution or the Legal Representative do they understand that this is something
14 that the Chamber has sanctioned.

15 It is imperative that the Defence fulfils its obligations under the protocol as ordered
16 by the Chamber, and that the Defence notifies the Prosecution, and where applicable
17 the legal representative, of a request to meet with a witness. Thereafter we seek the
18 consent of the witness in all fairness under our professional ethical obligations and we
19 convey that decision of the witness to the Defence. This is one of the issues, your
20 Honour.

21 A second issue that I touched upon is the contact with witnesses in the field by investigators.
22 The Defence has indicated that its investigator always indicates who they represent. In one
23 recent occasion when the Defence investigator met with a Prosecution witness, and thereafter
24 asked the witness if he or she would meet with the Defence, when we spoke with the witness,
25 the witness was not aware that they were speaking with a representative of Mr Ntaganda.

1 The witness indicated to us that he thought he was meeting with a representative of the ICC
2 who was interested in meeting with victims from the Kobu area.
3 Again, it's imperative the Defence investigators properly identify themselves to
4 witnesses so that they understand with whom they are speaking. This does not
5 appear to be done. And I would encourage the Chamber to remind the Defence of
6 their obligations to supervise their investigators.
7 Along with this same topic, the investigators of the Defence are going to places where
8 they are likely to meet Prosecution witnesses; the place of employment of a
9 Prosecution witness, or a village where a particular witness has a very esteemed role
10 within the community. And when they go to these places they're likely to meet with
11 Prosecution witnesses.
12 Their investigators need to be mindful of that. They need to be informed and advised of that.
13 And those contacts need to be very carefully monitored by the Defence to avoid inadvertent
14 meetings that in one case actually extended into an interview with a Prosecution witness,
15 allegedly before the Defence investigator understood who they were meeting with.
16 That is unacceptable. And the list of the Prosecution witnesses has been disclosed
17 for some months now. The Defence and their investigators ought to know when
18 they go to a village who they are meeting with and they ought to know when they are
19 given the name of an individual that that person features on the Prosecution's witness
20 list.
21 There are no further excuses for speaking to witnesses at length, and only following,
22 the conclusion of those at-length meetings, recognizing that they're speaking with a
23 Defence -- a Prosecution witness, excuse me.
24 And the last issue I would like to raise, your Honour, has to do with the witness
25 preparation meetings and the meetings between Defence and Prosecution witnesses.

1 As the Defence mentioned we did have one such meeting yesterday, and there were serious
2 disagreements in relation to the conduct of that meeting. In the end, the meeting was
3 unnecessary because the Defence simply intended to do three things during that meeting:
4 The first was to transmit a message directly from Mr Ntaganda to the witness.
5 In my view that is inappropriate during a meeting between the Defence and a Prosecution
6 witness. Mr Ntaganda should not be, through his counsel, communicating directly to
7 Prosecution witnesses.
8 Secondly, the witness chose to speak in Swahili, which is his choice. Initially he
9 wanted to testify in French, and then determined that he would testify in Swahili.
10 The Defence chose to question the witness at some length about that choice
11 suggesting it was inappropriate. And in my submission, both of those topics made
12 the witness uncomfortable. Following the meeting with the Defence, the witness
13 informed me that he was not comfortable with the message from Mr Ntaganda sent to
14 him by Defence counsel.
15 And the third issue, your Honours, is the attempt to have the witness reconsider his
16 informed decision to attend the Defence meeting with a legal representative present.
17 I had canvassed this issue in all neutral terms with the witness. Again, that is my
18 professional obligation. I certainly would not seek to influence the witness in any
19 way in that type of environment. And the witness expressed his desire to have
20 representatives present.
21 Mr Bourgon spent 15 minutes seeking to convince the witness otherwise. I objected
22 to that because I do not think that's appropriate. And Mr Bourgon had no intention
23 of asking the witness any questions beyond those three areas, all of which I submit
24 are not appropriate topics for witness meetings with the Prosecution witnesses.
25 On those topics, your Honours, those are our submissions. We are preparing a filing

1 that I hope we will be submitting today because it is of serious concern to us and it
2 deserves attention from the Chamber.

3 The meeting yesterday with the witness was audio recorded. Again, in accordance
4 with provision 45 of the protocol. The Defence is refusing to provide that recording
5 to the Prosecution. In my submission, that's another breach of the protocol.

6 In relation to witness preparation logs, we the Prosecution are following the model of
7 the Kenya case. We provide detailed witness log and witness preparation disclosure
8 note and we provide it at the end of that meeting. In some cases the meeting takes
9 one day where the material to review is very short, in other cases it can take several
10 days because the witness materials are quite lengthy. It is not inappropriate or in
11 any way prejudicial to have that note provided at the conclusion of the witness
12 preparation session.

13 Your Honour, subject to any questions you may have, those are my submissions.

14 PRESIDING JUDGE FREMR: Thank you, Ms Samson. Maybe just, but I'm getting less
15 optimistic, so I think the chance that you could just solve all those problems just after some
16 negotiation with Defence is probably not very realistic; am I right?

17 MS SAMSON: I believe you're correct, your Honour. We have exchanged discussions on
18 the topics, and the Defence are very clear that they disagree with the Prosecution that they're
19 breaching the protocol or that they have obligations to provide the audio record of meetings,
20 they can speak to Prosecution witnesses about contact with witnesses before we do. There
21 does not appear to be any possibility for agreement on these issues.

22 PRESIDING JUDGE FREMR: Okay. Thank you, Ms Samson.

23 So just to summarise that we heard five issues from the part of Defence, which according to
24 Defence require assistance or intervention of the Chamber, three issues from the Prosecution,
25 which is in total many indeed. So during the first break, the Chamber will deliberate what

1 will be the best way how to deal with those issues and what will be the best way how

2 Chamber can assist and get some progress on this.

3 And I think now we can move, we can move to the testimony of the first witness.

4 Sorry. Sorry, I omit to ask for position of legal -- Mr Suprun, you have the floor. Sorry for
5 that.

6 MR SUPRUN: (Interpretation) Thank you, Mr President. I just have a few observations to
7 make.

8 In view of the fact that the victims that I represent are indeed concerned by the events of the
9 last few days, and in mentioning a number of protocols on which the parties and participants
10 have agreed, the Defence did indeed mention the protocol covering contact between those
11 individuals who have dual status.

12 And the victims that I represent, having been touched by these very events, I also
13 mention that the visions of this protocol, with contact to dual-status witnesses, are
14 very clear, notably, and this is paragraph 6 of this very protocol that states that "When
15 one party wishes to contact a witness who is also a victim, he or she must notify the
16 legal representative of their intention," end of quote.

17 And because we have the protocol at our fingers, and in view of the fact that this is a
18 Prosecution witness, I believe that the Defence should have notified us of its intention
19 to contact the witness, not only us, but also the Prosecution.

20 Those are, after all, the provisions that have been stated within this protocol.

21 Now, with reference to Witness 805, the Defence did not notify the Legal
22 Representatives nor did they copy in the Office of the Prosecution in their notification.
23 That is one thing.

24 Now, secondly, with regard to the victims, those witnesses who were also contacted
25 by the investigator of the Defence out in the field, the Chamber should be aware of

1 the fact that, once again, those are some of the victims that I represent. Contact with
2 the investigation -- investigator of the Defence was made without notifying the Office
3 of the Prosecution or the Legal Representatives.

4 Now, the Defence did send a notification post facto to the Office of the Prosecution
5 but we, the Legal Representatives, were not copied in.

6 Now, as to contact with witnesses and contacts with those who are dual status, not
7 only should the protocol be brought into play, but also that is to say the protocol
8 applied to witnesses from the opposite party but also the protocol applicable to
9 dual-status witnesses.

10 Now, as to the inadvertent meetings with witnesses out in the field, we should
11 underscore the fact that this practice is indeed or -- or, is in -- not, in fact, appropriate
12 at all, and it is not only because we have the provisions at hand clearly stated within
13 the protocol, but it is especially, and this is my main concern, that all non-monitored
14 contacts with dual-status witnesses might cause prejudice to the psychological
15 well-being of those victims.

16 Not only should we be aware of the fact that the security situation in Ituri is an
17 unstable one, but this kind of contact should be avoided in the future.

18 So it is for this reason that certain or some discussions should be held between the
19 parties as to the ways and means in which the protocol should be interpreted. It is
20 very important for the Legal Representatives to be involved in those discussions, and
21 I thank you.

22 PRESIDING JUDGE FREMR: Thank you, Mr Suprun.

23 Ms Pellet, do you have anything to add?

24 MS PELLET: (Interpretation) Thank you, Mr President. I have nothing further to add to
25 this issue because as I was not informed myself as to the contacts that took place between the

1 clients and the investigators from the Defence. The Defence did not enter into contact with
2 my clients notably.

3 However, I am very concerned by this information I have just received. And were any other
4 mistakes to be -- to take place, mistakes on the part of the investigators for the Defence, I very
5 much hope that those two protocols that my colleague has just mentioned will be brought into
6 play and respected by the members of the Defence team. I thank you, Mr President.

7 PRESIDING JUDGE FREMR: Thank you very much, Ms Pellet. As I already said, the
8 Chamber will return back to this issue just after the break.

9 Mr Bourgon.

10 MR BOURGON: (Interpretation) Thank you, Mr President.

11 (Speaks English) The Chamber invited us this morning to highlight the issues. I
12 tried to avoid moving into the facts and to moving into allegations or any arguments,
13 but things have been raised now addressing and aim at the Defence which need to be
14 addressed, a few of them, very quickly.

15 The first one is of course --

16 PRESIDING JUDGE FREMR: Sorry, Mr Bourgon, because really I'm really reluctant whether
17 it is necessary because it seems very likely that we'll ask -- we will ask parties and participants
18 for written submissions in order to get all those details. So, you know, I don't want to cut
19 you, but do you really think necessary to start with details because we'll any way need
20 probably more detailed, you know, submissions from all parties.

21 MR BOURGON: If you allow me, Mr President, I will just say two things: We fully agree
22 with the Legal Representatives about contacting them. If we did not do so it was a mistake.
23 I said so, and we will not do this mistake again.

24 As for what is taking place in the field, I can assure you, Mr President, that due
25 diligence is taking place to avoid these contacts, and then when they happen we act in

1 a professional manner and in a quick manner to inform the Prosecution and now, of
2 course, the Legal Representative. Thank you, Mr President.

3 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

4 So we still have some time before the first break, so I think we can now move to the testimony
5 of the first witness.

6 So please, court officer, you can bring witness in. But we have to do it in closed
7 session.

8 (Closed session at 10.22 a.m.)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Open session at 10.24 a.m.)

16 THE COURT OFFICER: We're in open session, Mr President.

17 PRESIDING JUDGE FREMR: Thank you, court officer.

18 Just for the record, I note that the witness has been brought in and also that

19 Mr Bourgon, with the approval of the Presiding Judge, left the courtroom.

20 Now, Mr Witness, good morning. We are going to --

21 WITNESS: DRC-OTP-P-0805

22 (The witness speaks Swahili)

23 THE WITNESS: (Interpretation) Good morning.

24 PRESIDING JUDGE FREMR: You are going to testify before the International Criminal
25 Court.

1 On behalf of the Chamber, I would like to welcome you to the courtroom.

2 Mr Witness, this Chamber has been established to try the case of the Prosecutor
3 against Mr Bosco Ntaganda. You are called to testify to assist us in our search for the
4 truth. You will be asked questions both by the Judges and lawyers in the courtroom.

5 In this connection, I would like to guide you.

6 First, please listen carefully to those questions. It is very important that you make sure that
7 you understand the question before you answer it. If you don't understand, feel free to ask
8 for the question to be repeated or rephrased.

9 We want you to tell the truth and tell us only what you really saw or heard or sensed
10 yourself. If you did not see or hear it yourself, but you found out some other way,
11 then you should explain how. You may be asked about events that happened many
12 years ago, so it is natural that you may not remember all details. It doesn't matter;
13 please testify just on that which you really remember. Don't guess, don't make
14 things up, please. There is nothing wrong in saying "I don't know" or "I don't
15 remember."

16 Do you understand all this, Mr Witness?

17 THE WITNESS: (Interpretation) Yes.

18 PRESIDING JUDGE FREMR: Very good.

19 Now, court officer, can you please administer the solemn undertaking to tell the
20 truth?

21 THE COURT OFFICER: I solemnly declare --

22 THE WITNESS: (Interpretation) I solemnly declare that I will speak the truth, the whole
23 truth and nothing but the truth.

24 PRESIDING JUDGE FREMR: Thank you very much, Mr Witness.

25 So now, Mr Witness, you are under oath. You have already been informed by

1 representatives of the Victim and Witness Unit and afterwards by representatives of the
2 Prosecution about the importance to speak the truth. Nevertheless, I want to reiterate to you
3 that, as you have just promised, you have to speak the truth and that it is an offence within
4 the jurisdiction of this Court to give false testimony. Do you understand that?

5 THE WITNESS: (Interpretation) Yes.

6 PRESIDING JUDGE FREMR: Thank you. Let me now explain to you how the protective
7 measures work that our Chamber has put in place for your testimony.

8 We decided to order face distortion, which in practice means that no one outside the
9 courtroom can see your face during the testimony on the screen.

10 We also decided to order voice distortion, which means that no one outside the
11 courtroom will be able to identify you by your voice, as it has been distorted.

12 Finally, the Chamber also decided on use of pseudonym. In accordance with that,
13 we will all refer to you only as "Mr Witness" to make sure that the public does not
14 know your name. When you answer questions that will not give away who are you,
15 we will do so in open session which means that the public can hear what is being said
16 in the courtroom. You can see that we are in open session if the light in front of you
17 is red like now.

18 When you are asked to describe anything that relates specifically to you, or you are
19 asked to mention facts that might reveal your identity, for example any locations
20 where you live, or persons close to you, we will do this in private session. The light
21 in front of you will then be green.

22 Then there is no broadcast and no one outside the courtroom can hear you answer.

23 If ever anything gets said during open session which should have been said in private
24 session, we will do our best to protect this information. In such a case, your
25 testimony will be broadcast on a delay and we can remove any such remarks from the

1 broadcast which will be heard by the public and from the public transcript of the
2 proceedings.

3 The Chamber recognizes that your security and well-being is important during the course of
4 this trial. If at any point you feel that you would like a brief break from giving your
5 testimony or you feel unwell, do not hesitate to let us know.

6 Do you understand that?

7 THE WITNESS: (Interpretation) Yes, I've understood.

8 PRESIDING JUDGE FREMR: Fine. Now a few practical matters you should have in mind
9 when giving your testimony.

10 Everything we say here in the courtroom is written down and interpreted into English and
11 French, which is rather complex. It is therefore important to speak clearly and to speak at a
12 moderate or at a slow pace like me now. We want to make sure that your words can be well
13 understood by the interpreters and then by the rest of us. Please speak into the microphone
14 and only start speaking when the person asking you the question has finished.

15 To allow for the interpretation, everyone has to wait a few seconds before starting to
16 speak. So I recommend to you when the lawyer or me has asked his or her question,
17 please count in your head to three and only then give your answer.

18 If you have any questions yourself, raise your hand so we know that you wish to say
19 something. We will then give you the opportunity to speak. Have you understood
20 all that?

21 THE WITNESS: (Interpretation) Yes, I've understood.

22 PRESIDING JUDGE FREMR: Very well. Very well. Thank you.

23 So now we can start your testimony, Ms Samson. Who will be leading this witness?

24 MS SAMSON: Mr Eric Iverson will be conducting the examination-in-chief.

25 PRESIDING JUDGE FREMR: Thank you.

1 So Mr Iverson, you have the floor, please. Just one comment please, Mr Iverson, bear in
2 mind what kind of session you need for your questioning, okay?

3 MR IVERSON: I will do so. Thank you, Mr President.

4 QUESTIONED BY MR IVERSON:

5 Q. Good morning, sir.

6 A. Good morning.

7 Q. Now, I introduced myself to you last week, but I just wanted to take the opportunity to
8 again introduce myself. My name is Eric Iverson, I'm a trial lawyer, and I represent the
9 Office of the Prosecutor, and I will be asking you questions today.

10 The Presiding Judge gave you a lot of information to remember. Just do your best, if you
11 forget any of it, just ask the Presiding Judge and the Court will guide you.

12 I just want to underscore one thing that he said, and it's really important, and I'm
13 saying this not only for you, but for me also to remember, to keep that five-second
14 pause in between question and answer. It's just -- it's really important since we have
15 interpretation. Do you understand that, sir?

16 A. Yes.

17 Q. And if there is a question that I ask that isn't clear to you, just ask me to rephrase and I'll
18 do my best to do that. Do you understand, sir?

19 A. Yes, I've understood.

20 MR IVERSON: Your Honour, I would ask that we move into private session just for the
21 beginning. I intend to ask questions that will elicit the witness's identity.

22 PRESIDING JUDGE FREMR: One question, can you estimate how much time you will need
23 for this part of the examination?

24 MR IVERSON: It will be -- I intend to keep it very short. I think it will be less than five
25 minutes, your Honour.

- 1 PRESIDING JUDGE FREMR: Thank you. That will be very good.
- 2 So now we -- let's move to private session
- 3 (Private session at 10.36 a.m.)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
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7 (Redacted)

8 (Open session at 10.42 a.m.)

9 THE COURT OFFICER: We're in open session, Mr President.

10 PRESIDING JUDGE FREMR: Thank you, court officer.

11 So Mr Iverson, you can proceed.

12 MR IVERSON: Thank you, your Honour. We're also having problems with the Court
13 transcript, but I believe I can continue. It's not an issue for now.

14 PRESIDING JUDGE FREMR: Very well. We appreciate it.

15 MR IVERSON:

16 Q. So what is your ethnic origin?

17 A. I am a Lendu person.

18 Q. And in general terms, what is your present occupation?

19 A. Right now I am a witness.

20 Q. And what do you do for a living, sir?

21 A. Before I had a number of business activities, but now I am working as a farmer.

22 Q. What languages are you able to speak and understand, sir?

23 A. I speak Kiswahili, Lingala and a little bit of French.

24 Q. Sir, I'd like to go back to the year 2002. Where were you living in 2002, in what specific
25 area?

1 PRESIDING JUDGE FREMR: Mr Witness, you have the floor.

2 THE WITNESS: (Interpretation) Could we go into private session.

3 PRESIDING JUDGE FREMR: Okay. I suppose the witness best know what is the reason for
4 that. Let's go to private session now.

5 (Private session at 10.46 a.m.)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 (Redacted)

2 (Redacted)

3 (Open session at 10.50 a.m.)

4 THE COURT OFFICER: We're in open session, Mr President.

5 PRESIDING JUDGE FREMR: Thank you, court officer.

6 Mr Iverson, you may proceed.

7 MR IVERSON:

8 Q. Sir, do you remember for what length of time in 2002 you lived in Mongbwalu?

9 A. I don't remember how much time I spent there.

10 Q. And what did you do for a living when you were in Mongbwalu?

11 A. When I was in Mongbwalu, I was a trader.

12 Q. In what types of goods or services did you trade?

13 A. I sold various items, for example, foodstuffs, and I also sold gold.

14 THE INTERPRETER: Correction from the Swahili interpreter: I bought gold.

15 MR IVERSON:

16 Q. Sir, back in 2002 in Mongbwalu were you familiar with an armed group called the UPC?

17 A. Yes. I was very familiar with that group, the UPC.

18 Q. What was your understanding of what the UPC was?

19 A. Well, to my knowledge, the UPC was an enemy group, enemies of the Lendu.

20 Q. Can you describe for the Court when you say "enemy" what do you mean an enemy of
21 the Lendu?

22 A. As far as I'm concerned, the enemy is someone who comes and fights me and drives me
23 away, drives me out.

24 Q. Sir, in 2002, was the UPC in your area in Mongbwalu?

25 A. No. Initially the UPC was not in Mongbwalu.

1 Q. At what point was the UPC in Mongbwalu?

2 A. The UPC arrived in Mongbwalu in 2002.

3 Q. Now, I understand that you may not be able to give the specific date, but could you tell
4 the Court approximately when in 2002 the UPC were in Mongbwalu, if you know the month
5 for example, or if you don't know the month, was it the beginning or the end of the year, for
6 example?

7 A. Yes, I do remember. The UPC came to Mongbwalu towards the end of 2002.

8 Q. And do you remember where you were when the UPC entered Mongbwalu?

9 A. Yes. When the UPC came to Mongbwalu, at that time I went to Yeti?

10 MR IVERSON: Your Honour, well, we only have two minutes left, I was going to show an
11 exhibit, but I think we would probably do it after the break instead.

12 Q. Sir, if I were to show you a map, would you be able to locate these places on the map?

13 A. Yes, I can show it to you on the map.

14 MR IVERSON: Mr President, I would ask that we take a break now and then when we
15 return I can show the exhibit. Thank you.

16 PRESIDING JUDGE FREMR: Very good, Mr Iverson.

17 So we now will break for 30 minutes and we resume at half past 11.

18 (Recess taken at 10.59 a.m.)

19 (Transcription of the hearing continues in Transcript: ICC-01/04-02/06-T-25Bis-ENG)