

1 International Criminal Court
2 Trial Chamber VI - Courtroom 2
3 Situation: Democratic Republic of the 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 Monday, 29 February 2016
9 (The hearing starts in open session at 9.09 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: Good morning, your Honours.
16 This is the situation in the Democratic Republic of the Congo, The Prosecutor versus
17 Bosco Ntaganda, case number ICC-01/04-02/06.
18 And we are in open session.
19 PRESIDING JUDGE FREMR: Thank you.
20 Now appearances as usually, starting with Prosecution.
21 MS SAMSON: Good morning, Mr President, your Honours. Appearing for the
22 Prosecution today are Mr Rens van der Werf and Mr James Pace, both assistant trial
23 lawyers; Ms Marion Rabanit, associate trial lawyer; Ms Selam Yirgou, case manager;
24 Ms Dianne Luping, trial lawyer; and myself, Nicole Samson, senior trial lawyer.
25 PRESIDING JUDGE FREMR: Thank you.

1 Defence, please.

2 MR BOURGON: (Interpretation) Good morning, your Honours. Good morning to
3 everyone in the courtroom. Representing Bosco Ntaganda, who is present this morning,
4 Mrs Sandrine De Sena, intern; Elisa Binon, intern; Dignité Bwiza, consultant;
5 Isabelle Martineau, temporary consultant; Chloé Grandon; and myself, Stéphane Bourgon.
6 Thank you, Mr President.

7 PRESIDING JUDGE FREMR: Thank you.

8 Legal Representatives of Victims, please.

9 MR ABDOU: Good morning, Mr President, your Honours. The former child soldiers
10 are today represented by myself, Mohamed Abdou, associate legal officer at the Office of
11 Public Counsel for Victims.

12 PRESIDING JUDGE FREMR: And I will just add for the record that Ms Pellet is excused.
13 Then, Mr Suprun.

14 MR SUPRUN: (Interpretation) Good morning, Mr President, your Honours. The
15 victims of the attack are represented by OPCV, Anne Grabowski and myself,
16 Dmytro Suprun. Thank you.

17 PRESIDING JUDGE FREMR: And I'd also add for the record that Mr Cikonza, duty
18 counsel for this witness, is not present at the moment, but I was told he would be here
19 shortly.

20 We are starting without Mr Witness because the Chamber was informed that Mr Bourgon
21 would like to address it.

22 So, Mr Bourgon, you have the floor.

23 MR BOURGON: Thank you, Mr President.

24 Mr President, allow me to begin by saying that immediately this morning we have a
25 computer difficulty. The computer here to my right is completely turned off and,

1 Mr President, we are not in a position to proceed unless the -- this computer works, but I
2 can do this first part, of course, which is not related to the work performed by my
3 colleague, Maître Martineau.

4 Mr President, over the weekend of course we had time to assess the situation with the
5 witness and the issues that he raised -- that he raised during his examination-in-chief and
6 how much time we would need to finalise our cross-examination. With the view to
7 ensuring that there is no surprise, Mr President, we will be making a request for
8 additional time and we will be seeking five additional hours in addition to what we have
9 already been allotted. And I think I have about four hours left.

10 Mr President, the -- without going into the details of this request, which will be presented
11 later on, the main points of this request, of course, have to do with the -- the importance of
12 the witness for the Prosecution in terms of first of all the volume of material. I'm not
13 going to get into any of the details, but the volume of material, and my colleague from the
14 Prosecution has already mentioned how much material is available for this witness.
15 The importance of the witness, according to the Prosecution, and the fact that we are
16 convinced that we can basically deconstruct the testimony of this witness line by line,
17 word by word, comma by comma and we believe that it is in the interest of our client to
18 do so.

19 This -- the topics on which this witness has testified if we just look at the will-say
20 provided by the Prosecution, he provided testimony, according to the will-say, on 14 of 18
21 counts, and all charged modes of liability. And in the will-say there were 23 main themes
22 or thematics, paragraphs.

23 There's at least, once I finish today, it's my assessment that there will be some 20 different
24 topics that I will not have had time to address. I'm not going to get again -- once again
25 into the detail.

1 Mr President, I understand, of course, that today is the last day with this witness. We
2 have -- tomorrow is not possible to sit unless arrangements can be made, but I suggest,
3 Mr President, that the fact that there's only two courtrooms should not be -- if, of course,
4 the Chamber is inclined to give right to our request, the -- we should not be penalised by
5 the fact that there is only two courtrooms and not three available at this point in time
6 before the new ICC building.

7 Prosecution has already requested some time and the Chamber, of course, already gave us
8 an additional hour and arguments were put by the Prosecution and of course we did not
9 oppose at that time, but we did highlight, of course, that we would be likely requesting
10 more time. We did not know until we did the final assessment over the weekend.

11 In addition to substance, of course the Chamber will have seen that the witness is opposed
12 or if not hostile to the Defence and that the manner in which he is answering questions is
13 taking a lot of time.

14 There is an issue, because on Friday I wanted to mention this but I wanted to assess
15 because as I said myself, I decided to take -- I believe I took a little more than one hour on
16 one main topic which was of course the fact that his involvement in a (Redacted)
17 (Redacted) and I took a lot of time, I would say a
18 little more than an hour I think on these two topics.

19 And what I would like to say, Mr President, is although, of course, it was my choice to do
20 so, I needed to do so, and I'm -- it was important for me to do so, but it highlights the fact
21 that there's so many statements for this witness that when there is an issue that comes out,
22 that comes up, in order for us to highlight all the discrepancies in all of his statements it
23 takes a lot of time.

24 So, Mr President, this witness is one of the type where the Defence requires more time
25 than the Prosecution to cross-examine.

1 So this is basically what I will explain, of course, but providing a lot of substance in my
2 request, but I thought it was appropriate to do it at this time so that there would be no
3 surprise. And what I suggest, Mr President, that if we are -- if it's not possible to
4 continue tomorrow, then simply to use the time allotted to me today and to file a written
5 motion at the end of the day requesting for the witness to be recalled for a further day of
6 five hours of cross-examination.

7 So that would be one way at least to do this without wasting any time today so we can
8 immediately get into, continue the cross-examination. So that's one suggestion.

9 However, if it was possible to sit tomorrow, we would be glad to sit tomorrow and finish
10 that with the witness or at any point tonight we would be glad to do this, but it is our
11 respectful submission that we require this additional time to highlight that this witness,
12 the evidence that he provided cannot be accorded any probative value whatsoever other
13 than some issues he raised which were positive for Mr Ntaganda.

14 So these are my submissions this morning, Mr President. Thank you.

15 I note that the computer beside me is now working so I guess we could proceed
16 immediately after this issue. Thank you, Mr President.

17 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon. I think I find fair to decide
18 about your request immediately, so we will leave the courtroom and we will deliberate
19 with my colleagues.

20 But before doing that, Ms Samson, do you also want to make any (Redacted)

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11 PRESIDING JUDGE FREMR: Even my apologies that I also was not vigilant enough.

12 So, court officer, we will have to redact the last part of Ms Samson's submission and let's

13 move into private session now.

14 (Private session at 9.21 a.m.)

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8 (Recess taken at 9.34 a.m.)

9 (Upon resuming in private session at 9.42 a.m.)

10 (Redacted)

11 (Redacted)

12 (Open session at 9.42 a.m.)

13 THE COURT OFFICER: We are now in open session, Mr President.

14 PRESIDING JUDGE FREMR: Thank you, court officer.

15 So we will now continue by rendering oral ruling on the Defence request since Defence
16 requested to be granted five additional hours for their cross-examination of the
17 Witness P-55.

18 After deliberation, the Chamber rules the following way: The Chamber shares the
19 reasoning presented by the Prosecution. The Chamber considers that the Defence had
20 sufficient time to prepare for this witness and to prioritise the material points of
21 cross-examination.

22 The Chamber notes that it is not influenced in this regard by the availability of courtroom
23 time. Rather, the Chamber considers that the conduct of the examination of the witness
24 to date, including at times that of the Prosecution has not been efficient and therefore does
25 not find any justification for granting further time.

1 The request is rejected.

2 This is the end of our ruling and in practice it means that Mr Bourgon you have at your
3 disposal 3 hours 55 minutes, so please proceed.

4 And now we can bring Mr Witness into the courtroom. And I guess that duty counsel
5 will join him as well.

6 (The witness enters the courtroom)

7 PRESIDING JUDGE FREMR: Good morning, Mr Cikonza. Good morning, Mr Witness.
8 Take your seats.

9 Mr Witness, good morning. Just to assure myself, are you feeling all right today?

10 WITNESS: DRC-OTP-P-0055 (On former oath)

11 (The witness speaks Swahili)

12 THE WITNESS: (Interpretation) Yes, I am very well. Thank you, Mr President.

13 PRESIDING JUDGE FREMR: Good. So it's my duty as usually to remind you that you
14 have to speak the truth and nothing but the truth. I guess it is clear to you. Mr Bourgon
15 will continue with your cross-examination.

16 Mr Bourgon you have the floor. And as usual, I am asking you whether you can remain
17 in open or it's better for you, depending on the character of your questions, to move to
18 private session?

19 MR BOURGON: We can go into private session, Mr President.

20 PRESIDING JUDGE FREMR: All right.

21 Court officer, let's move into private session now.

22 (Private session at 9.46 a.m.)

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- 23 (Recess taken at 11.07 a.m.)
- 24 (Upon resuming in open session at 11.35 a.m.)
- 25 THE COURT USHER: All rise.

1 Please be seated.

2 PRESIDING JUDGE FREMR: So we will continue with the testimony.

3 And just to remind all of you we will sit -- because we have to sit in extended hours, so
4 this session will take till half past 1.

5 Mr Bourgon, I guess you will need to continue in private session; am I right?

6 MR BOURGON: Indeed, Mr President.

7 PRESIDING JUDGE FREMR: So, court officer, let's move into private session.

8 (Private session at 11.36 a.m.)

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15 (Recess taken at 1.36 p.m.)
16 (Upon resuming in open session at 3.01 p.m.)
17 THE COURT USHER: All rise.
18 Please be seated.
19 PRESIDING JUDGE FREMR: Good afternoon, everybody.
20 Before you start, Mr Bourgon, I would like to deliver our ruling on your request for
21 additional time.
22 I would rather omit or I would rather avoid to give the reasoning because to be absolutely
23 sincere there are very different opinions between the Judges, but what is the importance is
24 the result we agreed on, and then this that we will give you in total 1 hour, which means
25 to your 40 minutes you already have plus a further 20 minutes, so you have 60 minutes

1 from now. So please proceed.

2 And I guess we will have to move into private again?

3 MR BOURGON: Yes, Mr President, please.

4 PRESIDING JUDGE FREMR: So let's move into private session.

5 (Private session at 3.03 p.m.)

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22 (Open session at 4.17 p.m.)

23 THE COURT OFFICER: We are now in open session, Mr President.

24 PRESIDING JUDGE FREMR: Now question to you, Ms Samson: Do you think it would
25 be feasible for you, now we have for the fourth evidentiary block, I understood you are in

1 negotiation with the Defence about the list of witnesses. Do you think it would be
2 feasible, I know it still be a certain level of likelihood, but to inform them also with some
3 expected list of witnesses for the fifth evidentiary block before the summer recess?

4 MS SAMSON: Yes, Mr President, I think that we could provide an approximate order of
5 witnesses for the fifth evidentiary block as soon as possible. We're still finalising the list
6 for the fourth evidentiary block, so there is still quite a bit of work to do before we're able
7 to confirm with any degree of reliability what the fifth evidentiary block order will look
8 like.

9 We also do not yet know how long that block is expected to be, which will make a very
10 big difference in terms of which witnesses we call and how many.

11 Where we can, we have consistently provided the anticipated forthcoming list early. We
12 did so several weeks up to almost a month early before the -- this evidentiary block
13 commenced and we provided the list to the Defence last week, which was over a week
14 earlier, for the fourth block.

15 We're happy to provide whatever we can on the fifth block in advance, but as I said, there
16 are a lot of uncertainties in relation to that list at the moment, so it certainly wouldn't be
17 something the Prosecution could provide in the next week until we have a bit more
18 concrete information about the fifth block. Thank you.

19 PRESIDING JUDGE FREMR: I think just on our part we will be hopefully able in a short
20 time to inform you about dates we booked for the fifth block because as you know there
21 are three cases that have to share two courtrooms, but we have already booked dates and
22 we will inform you shortly.

23 And just to conclude this issue, yes, as we used to say always this Chamber would prefer
24 if the parties could reach agreement, especially as concerns planning. If not, then
25 obviously it is our role to intervene and to make decision on that.

1 So we would like, encourage you to make this agreement. It is true that especially now
2 the Defence is in some troubles, we all know what it is about, it is not their fault, so I think
3 it also should be taken into account. But if there will be no agreement, we will decide.

4 So, Mr Bourgon.

5 MR BOURGON: I'm sorry, Mr President. Just in terms of the future blocks, of course
6 there's a number of weeks between the end of the next block, which is 6 May, going right
7 up until 22 July. So I'm not sure if we -- if it's possible to have any, at least some kind of
8 information, but if we would prefer two shorter blocks rather than one very long block
9 depending on how the Trial Chamber -- I anticipate that the Trial Chamber wants to fill it
10 up as much as possible and we agree with that, but it would be better for us to have two
11 shorter blocks rather than one longer block. I just wanted to put this on the record.

12 Thank you.

13 PRESIDING JUDGE FREMR: We will take it into consideration.

14 Ms Samson, what do you think about this idea, whether to have one longer block or two
15 shorter?

16 MS SAMSON: We have no preference, your Honour. We can go either way. Thank
17 you.

18 PRESIDING JUDGE FREMR: Okay.

19 So thank you and before we leave the courtroom I would like also to express our thanks to
20 court reporters, interpreters and guards who supported us. I also would like to thank
21 Mr Cikonza who supported Mr Witness.

22 So thank you and otherwise we will adjourn and we will then reconvene on 4 April.

23 THE COURT USHER: All rise.

24 (The hearing ends in open session at 4.22 p.m.)