

1 International Criminal Court
2 Trial Chamber VI
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 - Courtroom 2
8 Thursday, 9 June 2016
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
17 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
18 We are in open session.
19 PRESIDING JUDGE FREMR: Thank you, court officer.
20 Now appearances, please. Prosecution first.
21 MR IVERSON: Good morning, Mr President, and your Honours. Appearing today for
22 the Prosecution are James Pace, assistant trial lawyer; Rens van der Werf, assistant trial
23 lawyer; Dianne Luping, trial lawyer; Selam Yirgou, case manager; Judith Boekstal, intern;
24 and Eric Iverson, trial lawyer.
25 PRESIDING JUDGE FREMR: Thank you, Mr Iverson.

1 Defence, please.

2 MR BOURGON: (Interpretation) Good morning, your Honour, your Honours, and
3 good morning to all those here in the courtroom. I'm representing Bosco Ntaganda,
4 who's here with us. Margaux Portier, Chloé Grandon and myself, Stéphane Bourgon.
5 Thank you, your Honour.

6 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

7 Now Legal Representatives of Victims, please.

8 MS PELLET: (Interpretation) Thank you, your Honour. The former child soldiers are
9 represented by myself, Sarah Pellet.

10 MR SUPRUN: (Interpretation) Good morning, your Honour, your Honours. The
11 victims of the attack are represented by the OPCV, Anne Grabowski and myself,
12 Dmytro Suprun.

13 PRESIDING JUDGE FREMR: Thank you, Ms Pellet. Thank you, Mr Suprun.
14 And now duty counsel, please.

15 MR LAUCCI: (Interpretation) Good morning, your Honour, your Honours. To assist
16 the Witness P-190 this morning, Mr Laucci.

17 PRESIDING JUDGE FREMR: Thank you, Mr Laucci.

18 Before we start the next part of cross-examination of current witness, the Chamber was
19 informed that Mr Bourgon, Defence, would like to address the Chamber. So,
20 Mr Bourgon, you have the floor.

21 MR BOURGON: Thank you, Mr President. I'm -- of course I recall the Chamber's
22 guidance to try and avoid any legal submissions, especially in the middle of testimony.
23 And I hesitated before doing so, but to us the matter is of such importance that it needs to
24 be raised at this time.

25 Mr President, the Chamber will recall that when the witness began his testimony

1 questions were asked about an event, or an alleged murder, which would have been
2 committed by Mr Ntaganda, and the name of the victim was (redacted). I think we can
3 remain in public session or --

4 PRESIDING JUDGE FREMR: Sorry, sorry. Mr Iverson.

5 MR IVERSON: Mr President, I was just -- that was the suggestion that I wanted to make,
6 that I wondered if the submissions might be made better in private session. Of course if
7 Defence counsel believes that he can do so without revealing any identifying information I
8 trust that, but I just ask him to be vigilant, please.

9 PRESIDING JUDGE FREMR: I think it's at least a good question, Mr Bourgon.

10 MR BOURGON: For the beginning I would like to remain in public session and to move
11 into private session if I come to some details about the event itself.

12 PRESIDING JUDGE FREMR: All right then. Please proceed.

13 MR BOURGON: For now, Mr President, as I was saying the allegation, which was
14 explored with the witness, refers to the name I mentioned a few moments ago, and on that
15 occasion the Defence first made an objection saying that this event had not been charged
16 in the indictment and that it was not in the Updated Document Containing the Charges,
17 nor was it found in the Prosecution's pre-trial brief. And for this reason the Prosecution
18 should not be authorised to lead evidence on this event. I'm not going to go back into
19 this submission.

20 The Chamber ruled that based on relevance and having weighed the matter in respect of
21 potential prejudice, the Prosecution was authorised to put questions to the witness on this
22 event.

23 On the same occasion, Mr President, the Defence made a request, via the Chamber of
24 course, to the Prosecution. I need to move into private session for a few seconds.

25 PRESIDING JUDGE FREMR: Court officer, please, let's move into private session now.

1 (Private session at 9.37 a.m.)

2 (Redacted)

3 (Redacted)

4 (Redacted)

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9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Open session at 9.38 a.m.)

16 THE COURT OFFICER: We are back in open session, Mr President.

17 PRESIDING JUDGE FREMR: Thank you, court officer.

18 Mr Bourgon.

19 MR BOURGON: Thank you, Mr President. Shortly after putting the question to the

20 Prosecution, during consultations with my colleague, first we were provided with a

21 document which was already in our possession. I refer here to document

22 DRC-OTP-0021-0787.

23 The Prosecution also announced, or at least informed us, that another document would be

24 disclosed to us later. It is actually a document that was already disclosed to the Defence,

25 but we were told that it would be disclosed to us with lesser redactions and that we

1 would understand once we would see the document.

2 When I put the question to my colleague as to, well, give me a name so I can go and pick it
3 up from our disclosure database, my colleague could not -- was not in a position to give
4 me a name. I did not understand then, I now understand why he could not give me a
5 name at that time.

6 The document in question, Mr President, was disclosed to us yesterday with lesser
7 redaction. This document is actually a statement which was taken from (redacted)
8 (redacted). And, of course, it is a very extensive statement, which contains some
9 38 pages. And this statement goes back to 2005. And pursuant to this statement, it
10 appears that (redacted) is -- would he be called to testify, would provide the same
11 evidence that (redacted) told us over the weekend, and that is that Mr Ntaganda is not
12 involved in the murder or in the death of (redacted).

13 The --

14 PRESIDING JUDGE FREMR: Mr Iverson.

15 MR IVERSON: I was just wondering whether these submissions should be made in
16 private session.

17 PRESIDING JUDGE FREMR: Yes, I think it would be safer.

18 Court officer, let's move into private session as soon we are dealing with names.

19 (Private session at 9.41 a.m.)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

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25 (Redacted)

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9 (Recess taken at 9.55 a.m.)

10 (Upon resuming in open session at 10.06 a.m.)

11 THE COURT USHER: All rise.

12 Please be seated.

13 PRESIDING JUDGE FREMR: We can remain in open session because I think our ruling
14 does not contain anything that could reveal identity of our current witness.

15 So we deliberated and the decision or ruling of the Chamber is that the request of the
16 Defence to reconsider our previous decision to allow Prosecution to question this witness
17 on incident mentioned is rejected.

18 In this connection, I would like to emphasise that, as we several times said, this incident is
19 not directly charged, so the testimony was allowed and also led for very limited purpose.
20 Moreover, and it's also led for further request of the same nature, we don't consider
21 striking part of the record as a proper measure because, in our view, it's measure which is
22 mainly used and is efficient towards to lay judges, towards to jurors that may be confused
23 by something that is either not relevant or is unlawfully put into the record. But we are
24 professional Judges, so we are able to evaluate any information contained in the record
25 and to weigh it, whether we should take it into consideration, or not, if there is some

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1 prejudice that should prevent us to make any conclusions from such part of the record.

2 But at the same time, we would like to emphasise that we concluded that there was a
3 certain breach of disclosure obligations by Prosecution because they did not fully respect
4 our redaction protocol as concerns document DRC-OTP-0070-0340 because they had a
5 duty to review original redactions and there was obvious that there were strong reason to
6 make this document less redacted.

7 Nevertheless, we believe that to rescue this, some prejudice, it's sufficient, first, to allow
8 Defence to cross-examine this witness. Moreover, in the light of this certain prejudice, we
9 will also evaluate possible request to bring those two potential witnesses, (redacted)
10 (redacted) of the victim, mentioned by Mr Bourgon in his submission.

11 So that concludes our ruling.

12 Now, court officer, please bring Mr Witness in the courtroom.

13 (The witness enters the courtroom)

14 PRESIDING JUDGE FREMR: Good morning, Mr Witness. How are you doing today?

15 WITNESS: DRC-OTP-P-0190 (On former oath)

16 (The witness speaks French)

17 THE WITNESS: (Interpretation) Good morning, your Honour. I'm very well. Thank
18 you.

19 PRESIDING JUDGE FREMR: Mr Witness, today it should be the last day of your
20 testimony. Defence will continue in your cross-examination.

21 It's my duty again to remind you that you are still under oath, which means you have to
22 speak truth and nothing but the truth. And, again, I know I repeated myself, but it's very
23 important for us to -- for us if you keep at least three second pauses between your
24 response to Mr Bourgon's questions because there should be some time for interpretation.
25 So please have it in mind.

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1 Mr Bourgon, please, you have the floor.

2 MR BOURGON: Thank you, Mr President.

3 QUESTIONED BY MR BOURGON: (Continuing) (Interpretation)

4 Q. Good morning, Witness.

5 A. Good morning.

6 Q. I would like to start this morning with a new subject, that's to say Kisembo, the
7 Kisembo complex. Now, you mentioned that at a particular time Kisembo was the
8 bodyguard of Bosco Ntaganda; that's your testimony, is it not?

9 A. Yes.

10 Q. Where does this information come from?

11 A. From myself.

12 Q. Still?

13 A. It comes from myself.

14 Q. So what are the observations, how did you conclude that Kisembo was the
15 bodyguard of Bosco Ntaganda and when?

16 PRESIDING JUDGE FREMR: I think we will have to move into private session. We are
17 still in open. Because Mr Witness probably will add some personal details.

18 So now, court officer, let's move into private session.

19 (Private session at 10.13 a.m.)

20 (Redacted)

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22 (Redacted)

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20 (Recess taken at 11.22 a.m.)
21 (Upon resuming in open session at 11.51 a.m.)
22 THE COURT USHER: All rise.
23 Please be seated.
24 PRESIDING JUDGE FREMR: So let's continue. We will continue till 1 o'clock. And it
25 seems that the afternoon session will be devoted to the rest of cross-examination and to

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1 re-X in-chief, if any, and to questions from the Chamber, if any.

2 Now, Mr Bourgon, please proceed.

3 MR BOURGON: Thank you, Mr President.

4 Q. (Interpretation) Good morning again, Witness.

5 A. Good morning.

6 Q. I have a few more questions I'd like to put to you as part of my cross-examination?

7 PRESIDING JUDGE FREMR: Mr Bourgon, are we safe in open session, or should we
8 move into -- I think it will be safer to move into private.

9 MR BOURGON: Yes, Mr President.

10 PRESIDING JUDGE FREMR: Court officer, let's move into private session.

11 (Private session at 11.53 a.m.)

12 (Redacted)

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19 (Open session at 1.03 p.m.)

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

21 PRESIDING JUDGE FREMR: Thank you.

22 So for the sake of planning, Mr Bourgon, how much time you will need to finish
23 cross-examination of this witness?

24 MR BOURGON: Mr President, as much time as I have left. And I could keep him for
25 three more days.

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1 PRESIDING JUDGE FREMR: I believe you.

2 Mr Iverson, how do you envisage a need for re-examination at the moment?

3 MR IVERSON: Well, this is of course subject to what happens this afternoon, but I do
4 right now plan on asking for a re-examination probably around 10 to 15 minutes.

5 PRESIDING JUDGE FREMR: All right.

6 So just to be precise, Mr Bourgon, according our measuring you still have at your disposal
7 1 hour and 6 minutes. So be ready that we really ask you to finish at this time.

8 Now we adjourn and we will reconvene at half past 2.

9 THE COURT USHER: All rise.

10 (Recess taken at 1.05 p.m.)

11 (Upon resuming in open session at 2.32 p.m.)

12 THE COURT USHER: All rise.

13 Please be seated.

14 PRESIDING JUDGE FREMR: Good afternoon, everybody. We will start with two oral
15 rulings. The Chamber will first deliver its oral ruling on the Prosecution request bearing
16 filing number 1326, seeking the admission under Rule 68(3) of the prior recorded
17 testimony and associated documents of Witness P-9 -- sorry, 894.

18 In its request the Prosecution seeks admission of all but one section of the witness
19 statement, which relates to the alleged murder of Colonel Lusala by Mr Ntaganda, as well
20 as two sketches annexed to the statement. The Prosecution also appends to its request
21 the victim application form for Witness P-894, which it submits may be necessary to
22 understand the materials, but which it does not seek to be admitted.

23 The Prosecution indicates that in addition to admission of these materials it seeks to
24 conduct a supplementary examination of the witness of one-and-a-half hours.

25 The Defence responded to the request in filing 1365, indicating that it does not oppose

1 admission of the identified materials, but objects firstly to the Prosecution's proposed
2 procedure for their introduction and, secondly, to the admissibility of the evidence
3 concerning the alleged murder of Colonel Lusala by Mr Ntaganda on the basis that this
4 incident was not charged in the Updated Document Containing the Charges.

5 Yesterday in filing 1373, the Prosecution sought leave to reply to the response on one
6 issue; namely, the admissibility of the evidence of Mr Ntaganda's direct perpetration of
7 murder of individuals who are not referred to by name in the Updated Document
8 Containing the Charges.

9 Yesterday evening the Defence responded by way of email submitting that it does not
10 object to leave to reply being granted. However, having regard to the numerous
11 submissions previously received on this broader issue, the Chamber does not consider it
12 will be assisted by further submissions with respect of this matter in connection with
13 Witness P-894's testimony.

14 Accordingly, the request for leave to reply is rejected.

15 Having considered the submissions before it, and in light of its previous guidance on the
16 examination of upcoming witnesses, including with respect to the application of Rule
17 68(3), and in relation to time estimates, the Chamber indicates at this stage that in
18 principle the application of Rule 68(3) is appropriate for Witness P-894.

19 Given the issues raised by the parties, the Chamber considers it necessary to give the
20 following guidance on three points:

21 First, consistent with its prior rulings, most recently with respect to Witness P-190 and as
22 outlined in our decision with filing number 968, the Chamber recalls that the conduct of
23 an accused person, in particular during the temporal period of the charges, has sufficient
24 potential relevance, including in relation to various modes of liability and to mens rea.

25 The Chamber, therefore, rules that evidence on the murder of Colonel Lusala has prima

1 facie probative value and is not in principle inadmissible. However, the Chamber has
2 previously indicated that any examinations in chief in relation to such evidence should be
3 limited.
4 Consequently, rather than permitting viva voce examination specifically on this topic, the
5 Chamber shall admit the witness statement bearing the ERN DRC-OTP-2076-0194 in its
6 entirety, together with two accompanying sketches.
7 Second, on the basis of the foregoing, the Chamber sees no compelling reason why the
8 Prosecution needs to elicit evidence of Colonel Lusala's murder viva voce. The
9 supplementary examination of the witness shall therefore not exceed one hour and should
10 not be merely repetitive of the witness statement. While not forbidding leading
11 questions entirely, the Prosecution is directed to first aim to elicit any clarifications to the
12 witness statement in a non-leading fashion.
13 And, third, the Chamber does not consider that admission of the victim application form
14 for Witness P-894 is necessary to understand the witness statement, noting in particular
15 the clarification provided at paragraph 68 thereto.
16 Considering further that the Prosecution does not seek admission of the victim application
17 form, the Chamber does not consider it necessary to admit it at this stage as part of the
18 requested Rule 68(3) materials.
19 The granting of the request on the aforementioned basis will be contingent on the
20 requirements of Rule 68(3) being met; namely, first, Witness P-894 being present before
21 the Chamber; second, the witness being available for questioning by the parties and by the
22 Chamber; and, third, that the witness does not object to the submission of the materials in
23 question.
24 As a final matter, the Chamber orders that public redacted versions of filings 1326, 1365,
25 and 1373 be filed within two weeks.

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1 This concludes the Chamber's ruling.
2 And the second ruling we will now deliver is our ruling on the Defence request dated
3 10 May 2016, with filing number 1314.
4 Therein the Defence requested the admission of the first five pages of document
5 DRC-OTP-2090-0089, the victim application form of Witness P-887, for the sole purpose of
6 impeachment.
7 The Prosecution responded on 30 May 2016, its filing 1348, indicating that it did not
8 oppose the request provided that all six pages of the form are admitted.
9 The Legal Representative for Victims of the attacks also responded on 30 May 2016
10 opposing the request.
11 The Chamber observes that extensive questioning in relation to the form was conducted
12 during the examination-in-chief, cross-examination and re-examination of Witness P-887
13 and notes that the ambiguities concerning the form that were raised therein. Accordingly
14 the Chamber rules that the form may be admitted for impeachment purposes and in the
15 circumstances considers it appropriate to admit it in its entirety.
16 The Chamber orders further that public redacted versions of the request as well as the
17 responses be filed within two weeks.
18 This concludes this Chamber's ruling.
19 Now we can move to the rest of cross-examination of our witness.
20 So as I said, Mr Bourgon, you still have at your disposal 1 hour 5 minutes, if I'm not
21 wrong. So, please, you may proceed.
22 MR BOURGON: Thank you, Mr President.
23 Q. (Interpretation) Good afternoon, Witness.
24 A. Good afternoon, Counsel.
25 Q. Just before the break, the lunch break, we were talking about the abduction of

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1 Minister Ntumba Luaba by people from the UPC. First question: Can you confirm that
2 the purpose of the abduction was to seek the release of people who were prisoners in
3 Kinshasa and who belonged to the UPC?

4 PRESIDING JUDGE FREMR: Sorry, sorry, sorry. We have to move into private session.
5 We are still in open.

6 So now, court officer, let's move into private session.

7 (Private session at 2.43 p.m.)

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Trial Hearing
WITNESS: DRC-OTP-P-0190

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0190

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0190

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0190

(Private Session)

ICC-01/04-02/06

- 1 (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (The hearing ends in private session at 4.32 p.m.)