

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 Tuesday, 13 September 2016
9 (The hearing starts in open session at 2.35 p.m.)
10 THE COURT USHER: [14:35:05] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: [14:35:31] Good afternoon, everybody.
14 Since we sat last time in the regime of ex parte hearing we have to call the case again.
15 So court officer, please call the case.
16 THE COURT OFFICER: [14:35:47] Thank you, Mr President.
17 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
18 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
19 We are in open session.
20 PRESIDING JUDGE FREMR: [14:36:03] Now as to the appearances are there any
21 changes compared to morning appearances, Ms Samson?
22 MS SAMSON: [14:36:10] No, your Honour.
23 PRESIDING JUDGE FREMR: [14:36:11] Thank you, Ms Samson.
24 Mr Bourgon?
25 MR BOURGON: [14:36:14] No change on the Defence side, Mr President. Thank you.

1 PRESIDING JUDGE FREMR: [14:36:18] Ms Pellet, no change.

2 Mr Suprun, no change.

3 MR SUPRUN: [14:36:25] (Interpretation) No change, Mr President.

4 PRESIDING JUDGE FREMR: [14:36:31] I note on the screen that Mr Ntaganda is still
5 not present, but I was informed that he had a medical appointment at 2 o'clock and should
6 be on his way from that appointment. But since we will start with his counsel, who is
7 expected briefly summarise something what was mentioned in the presence of
8 Mr Ntaganda, during the ex parte session, I believe we can at least continue with this part
9 of our session without Mr Ntaganda.

10 So, Mr Bourgon, you have the floor.

11 MR BOURGON: [14:37:23] Thank you, Mr President.

12 Mr President, as the Chamber knows, just before the lunch break the Chamber heard
13 some submissions on behalf of Mr Ntaganda. The aim of these submissions was to
14 provide some information to the Chamber of a private nature, to provide the Chamber
15 with information related to solicitor-client issues, as well as to the contours of the
16 instructions given to us by Mr Ntaganda.

17 We also used the opportunity to inform the Chamber that, in our view, not only should
18 we be looking for a way out of this impasse, we believe that there is a possibility to find a
19 way out.

20 At this point in time, as mentioned this morning, we would like to make a request for a
21 short adjournment and the argument will be presented by my colleague, Mr Gosnell.

22 Thank you, Mr President.

23 PRESIDING JUDGE FREMR: [14:38:23] Thank you, Mr Bourgon. And I also forgot to
24 add that we heard your submissions during the ex parte session and, once the transcript is
25 available, we will request you to propose redactions so that the redacted version can be

1 made available to the Prosecution and legal representatives.

2 MR BOURGON: [14:38:57] And we will do so as rapidly as we can, Mr President.

3 Thank you.

4 PRESIDING JUDGE FREMR: [14:39:06] Unfortunately, I still can't see Mr Ntaganda
5 and I believe that he should be present to have a chance to listen to the reactions of
6 Prosecution and legal representatives.

7 Could you please, madam court officer, try to find whether Mr Ntaganda is about to join
8 us.

9 MS PELLET: [14:39:41] (Interpretation) Mr President --

10 PRESIDING JUDGE FREMR: Ms Pellet, please.

11 MS PELLET: -- I'm sorry, but I avail myself of this opportunity, since
12 Mr Ntaganda -- since Mr Ntaganda is not yet here. You have just referred to a redacted
13 version of the transcript, but let me point out that the Defence counsel this morning
14 referred to an application for leave to appeal, and I think that was mentioned in the ex
15 parte confidential discussions. I don't know whether a discussion -- or, rather, a copy of
16 such document would be available for legal reps to respond to, if need be, subsequently.

17 PRESIDING JUDGE FREMR: [14:40:29] Mr Bourgon.

18 MR BOURGON: [14:40:29] If that public redacted version has not been filed yet, it will
19 be done this afternoon. So they will receive a copy indeed. Thank you, Mr President.

20 PRESIDING JUDGE FREMR: [14:40:39] Thank you. Very well.

21 And now I got a message from the detention facility that Mr Ntaganda is going, I am
22 quoting, "is going upstairs right now and he should be in the video link room in about
23 three minutes."

24 So I guess the best way now how to proceed is wait. Hopefully just two minutes should
25 remain, and then I guess we will continue in normal way.

1 PRESIDING JUDGE FREMR: [14:42:29] And, Mr Bourgon, as concerns -- you
2 mentioned that Mr Gosnell will present those arguments in favour of your request for
3 adjournment. Are they different from what you said during the ex parte session?

4 MR BOURGON: [14:42:46] No, they are not, Mr President. However, there is some
5 legal support to our submission.

6 PRESIDING JUDGE FREMR: [14:42:52] But still I believe that -- I think we can proceed
7 with this now because I think it is nothing new for Mr Ntaganda, so even if we still don't
8 have him with us I think Mr Gosnell may proceed.

9 MR BOURGON: [14:43:07] Thank you, Mr President. We wanted to offer that, but
10 thank you.

11 MR GOSNELL: [14:43:13] Good afternoon, thank you very much, Mr President, I'm
12 grateful for the opportunity to offer the submissions in support of the request for a short
13 adjournment.

14 And if we can add some specificity to the request for your Honours' assistance, we would
15 propose an adjournment until this coming Monday, for the reasons that I will now
16 express. And I would suggest to your Honours there are two separate reasons why an
17 adjournment should be granted: The first is more of what I would describe as a
18 mandatory and procedural factor, and the second is a factor that is more discretionary and
19 that is subject to your Honours' appreciation of all the circumstances.

20 And the mandatory issue and procedural issue has to do with how fitness is to be
21 determined. And the Prosecution, I believe quite rightly, mentioned this morning that as
22 of now we don't yet have a full assessment of Mr Ntaganda's fitness. In fact, as I
23 understand it, the medical advice that has been provided this morning says only that the
24 medical officer does not object to proceeding in a certain way. My understanding is that
25 the legal officer in question is not a specialist in psychology or psychiatry, is a general

1 practitioner and therefore, as of now, your Honours do not have a full and proper
2 psychological assessment to determine his fitness to participate in proceedings.

3 The complexity of such a determination and the relationship between psychological
4 fitness and physical well-being is amply illustrated by a case with which your Honours
5 may be familiar, and that is the Stanišić & Simatovic case at the ICTY, in which these
6 matters were litigated and discussed extensively.

7 But I will bring to your attention just three decisions of importance that summarise the
8 law as it was applied, and the procedure that was applied at the ICTY. And the three
9 decisions are dated 8 May 2008 of the Trial Chamber; 16 May 2008 by the Appeals
10 Chamber, in which a three-month adjournment was granted; and another decision of the
11 Trial Chamber of 29 May 2009.

12 And these decisions together, if your Honours have an opportunity to review them, and I
13 won't do so in court extensively, reveal the extent to which proper medical assessment
14 does require some time. And the reason for that is -- or, the reasons are multiple for that.
15 For one reason, my understanding is, and this is certainly the practice at the ICTY, is that
16 it is not considered appropriate for the treating physician to provide an assessment to
17 your Honours about fitness. That means that a non-treating physician must be engaged
18 in order to provide the assessment of fitness.

19 The second reason is because there are specialisations that are required to be consulted.
20 Indeed, my recollection is, and it's purely a personal recollection, is that the current
21 medical officer who signed the note this morning was in fact also the medical officer at the
22 time of these events that are mentioned in the Stanišić & Simatovic case. And you will
23 see in these decisions that their Honours appointed experts who were not the medical
24 officer to advise their Honours on the state of -- the condition of the accused in that case.
25 And of particular note is the fact that depression was a major aggravating factor in respect

1 of the accused's physical ailments.

2 There was considerable discussion and debate in this case as to whether or not the
3 accused in question was sincerely ill, whether he was exaggerating, whether his condition
4 perhaps went up and down over time, such that he might be fit on one day but not fit on
5 another day. These, your Honours, are the complexities that I would suggest if you wish
6 to be fully -- that you should be fully apprised of in order to know whether or not
7 Mr Ntaganda is medically and psychologically fit to participate in the proceedings. And
8 we say that it's clear from the law that that is a precondition for proceeding at all.

9 And your Honours, we suggest, must satisfy yourselves that that precondition exists
10 before deciding that there has been a voluntary waiver, if your Honours will ultimately go
11 in that direction, of the right to be present.

12 Now, the degree to which -- or the extent of this analysis is also reflected in the document
13 that the Defence has just received this morning from the Registry, which is entitled "ICC
14 Detention Centre Protocol for the Management of Voluntary Protest Fasts".

15 This document is marked "confidential," so I would request that we briefly go into private
16 session.

17 PRESIDING JUDGE FREMR: [14:49:12] All right then.

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

19 (Private session at 2.49 p.m.)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing

(Private Session)

ICC-01/04-02/06

1

2

3

4

5

6

7

8

9

10

11

12

13 Page redacted – Private session

14

15

16

17

18

19

20

21

22

23

24

25

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Open session at 2.55 p.m.)

18 THE COURT OFFICER: [14:55:05] We are back in open session, Mr President.

19 PRESIDING JUDGE FREMR: [14:55:22] Thank you, court officer.

20 Mr Gosnell, you may proceed.

21 MR GOSNELL: [14:55:27] The second consideration, your Honours, is more
22 discretionary and it falls under the rubric of the interests of justice and it's our submission
23 that it is in the interests of justice that the case proceed with Defence counsel fully
24 instructed to cross-examine witnesses. And if there is an adjournment that permits
25 opportunity for certain matters to be resolved, including in respect of the spousal visit and

1 including resolution of certain matters, including the possibility of whether there will be a
2 chance of an appeal, there is a possibility that instructions could change.

3 And that's important, your Honours, even considering the medium term implications of a
4 situation that could arise where there are no instructions from counsel -- from the accused
5 to cross-examine and counsel are required to make a decision about how to proceed.

6 And Mr Bourgon said it well when he said it was a gray area.

7 And I can tell your Honours based upon a review of a number of decisions at the
8 international level that this is one of the least well-established and settled areas of the law.

9 And I'll just cite one or two examples for your Honours so that you can see the dilemma
10 that the Defence is in and the potential consequences.

11 There are some cases where counsel against the wishes of their clients have proceeded
12 actively to engage in all manner of measures on behalf of the client, sometimes with
13 diminishing levels of instruction and diminishing levels of cooperation and involvement
14 by the accused. And one such case is the Blagojevic case, and there is a decision that
15 reveals the circumstances dated 7 November 2003 by the Appeals Chamber in the
16 Blagojevic case.

17 But there are also a great many decisions going in the other direction. And I cite for
18 your Honours a case, a decision by the Ordre des avocats de Paris, the Conseil de
19 discipline, dated 17 November 2015, dossier number 300/263629. And I just came into
20 possession of this precedent over lunch and I will make it available by email. And this
21 decision concerns a refusal by counsel to be present at the Extraordinary Chambers for
22 Cambodia following instructions of the accused.

23 The barreau decided that that behaviour was not only not a violation of the deontological
24 standards binding on those lawyers, but was in fact required.

25 Now, the circumstances are not precisely the same as here, but there are plenty of

1 indications in this decision as to how wide is the difference between, on the one hand, the
2 way in which the lawyer in Blagojevic proceeded and, on the other hand, the way in
3 which the lawyers proceeded in Cambodia. There are many examples in which lawyers
4 have, as a result of an ostensibly breakdown of the relationship with the accused because
5 of defiance of instructions, have been compelled or did withdraw. And those had
6 substantial consequences for the serene and efficient and expeditious conduct of
7 proceedings.

8 So there is that consideration to bear in mind in considering whether or not essentially a
9 short adjournment is worth it, whether there are benefits to the interests of justice in doing
10 so, and whether or not there are real tangible benefits in the medium term for ensuring the
11 expeditious conduct of proceedings.

12 Your Honours, that concludes the submissions on the adjournment.

13 There is one other matter which has been mentioned intermittently during the
14 proceedings today and it has to do with whether or not Mr Ntaganda should or could be
15 forced to physically be present either in this courtroom or in front of a video camera at the
16 UNDU.

17 Now, we do not have indications that Mr Ntaganda is present involuntarily at the
18 moment or that he has been brought there by force by any means and your Honours'
19 decision of Friday last was conditional in nature and, therefore, that is why the matter has
20 not yet been fully argued by the Defence. We stand ready to make submissions on that,
21 if your Honours wish to hear it, but also we -- we would refrain from those submissions at
22 this time if you wish because it's not clear whether or not such a decision or such a
23 measure would be adopted in the future, nor the circumstances in which it might be
24 adopted. So we stand ready to make those submissions, but we also are deferring to
25 your Honours as to whether now is the right time to do so. Thank you very much,

1 your Honours.

2 PRESIDING JUDGE FREMR: [15:01:18] Give me a second, I will consult by colleagues
3 on the last point of your submissions if they want to hear this additional point.

4 (Trial Chamber confers)

5 PRESIDING JUDGE FREMR: [15:02:34] So after our brief silent deliberation, we agreed
6 that at the moment we don't see that this time would be the right timing for such a
7 submission. We don't need to hear it now. So thank you, Defence, for all your
8 submissions.

9 Now, and my question goes mainly to Prosecution, do you think are you able to reply
10 immediately, or would you like to get some additional time to -- in order to cover all those
11 even legal issues mentioned by Mr Gosnell now?

12 MS SAMSON: [15:03:14] Thank you, Mr President. Indeed, as I was listening to the
13 submissions I certainly failed to understand why all of that submission could not have
14 been made prior to the break earlier this morning. Nothing confidential really came out
15 of it and I think in fairness to the Prosecution and the participants we ought to have been
16 given some advance notice of the type of arguments that were going to be made, and for
17 jurisprudence that came into the hands of the Defence team over the lunch period that
18 ought to, in my submission, have been communicated before arriving at the hearing.
19 I will not speak to the facts of those decisions cited by Defence counsel now. I seek leave
20 to be able to do that in a supplementary fashion later.

21 However, what I can respond to now is this request for an adjournment in general terms.

22 We maintain the position that that request should not be granted. A short adjournment
23 of five days, or however long it is between now and Monday, it's unclear to me what that
24 is going to bring to the table, except for the suggestion that possibly it will allow

25 Mr Ntaganda to get from the Chamber -- to negotiate with the Chamber to a certain extent

1 a change to visitation rights and/or confirmation that they will seek -- that they will grant
2 leave to appeal. And again in our submission that is not a proper way for this litigation
3 to play out.

4 I effect what I'm understanding from Defence counsel's submission is that a medical
5 officer of some qualification appears to indicate that Mr Ntaganda is fit to proceed in
6 some capacity, but Mr Ntaganda himself takes issue with that and wishes to be assessed
7 by a different medical expert. And so as of this point in time we do not have access, it
8 appears, to any medical notes supporting his suggestion that he's unfit to proceed.

9 And on that basis I refer back to your Honours' decision of Friday, which is that in the
10 absence of any justified reason, the trial should continue and Mr Ntaganda will be
11 compelled to attend, to attend that hearing.

12 And again there was a suggestion of possibly depression. This is the first that we've
13 heard of it. And given Mr Ntaganda's own statement today that his actions are linked to
14 the Chamber's decision of last Wednesday, then the onset of depression seems to have
15 been a fairly speedy one and again appears in our submission to date based on having no
16 information about this medical condition to be a manipulative tactic aimed at halting the
17 proceedings and negotiating a decision from the Chamber through means that are not a
18 legitimate litigation avenue.

19 In our submission, Mr Ntaganda has certainly voluntarily waived his right to be here.

20 Again, that was clear from the statement he gave today. And we submit that we should
21 be continuing the proceeding and hearing the next witness.

22 With your leave I may make supplementary submissions once I've had a chance to review
23 the jurisprudence that my friend has cited, in which case based on a very quick review of
24 the Appeals Chamber decision seems to have been a mental incapacity that surpassed a
25 disagreement with the Chamber's decision and for which there was actually some medical

1 support provided to the Chamber and not as I understand it here medical reports that
2 actually support the continuing -- continuation of the hearing and Mr Ntaganda's ability
3 to be present.

4 The last issue that I would like to speak to has to do with whether or not the Chamber has
5 the power to compel Mr Ntaganda to either attend the hearing or to follow the hearing via
6 video link. The Prosecution's position last week is that the Chamber does have that
7 capacity within the statute and the Rules, and last Thursday Defence counsel conceded
8 that point. So that today they wish to make submissions changing their position is
9 certainly of some surprise, but, again, if the Chamber wishes to hear argument on that
10 point, I submit that we be permitted to do so in writing or in some way after we've been
11 fully briefed on the issue. Thank you.

12 PRESIDING JUDGE FREMR: [15:08:33] Thank you, Ms Samson. Obviously any
13 additional submission in writing from your part will be welcome.

14 And one aspect I don't know whether you also want to comment which was maybe
15 more -- on more details mentioned by Mr Bourgon in ex parte session, the fact that
16 Defence lawyers obtained instruction from Mr Ntaganda not to cross-examine witnesses
17 until, at least until sometime that he will change this instruction.

18 MS SAMSON: [15:09:16] Well, your Honour, all I respond to on that account is that
19 when this issue arose previously in relation to the cross-examination of Witness 290, at
20 which time Mr Ntaganda had also provided instructions not to proceed, the Chamber
21 took an approach that the Prosecution suggests we adopt it again, which is Mr Ntaganda
22 be reminded by his counsel that cross-examination is something that he's entitled to do
23 surely, but he's also entitled to waive and, therefore, not cross-examining the witness is
24 something that should not be taken lightly, however, we can still proceed without
25 cross-examination if that's -- if that's the position he wishes to take. Thank you.

1 PRESIDING JUDGE FREMR: [15:10:08] Thank you, Ms Samson.

2 Now Ms Pellet.

3 MS PELLET: [15:10:12] (Interpretation) Thank you, Mr President. I'll come back to
4 what I said this morning. If the presence of the accused -- in fact, the presence of the
5 accused is very important for our client. I think that we can continue on the basis of the
6 protocol that you established last week. It would be of course preferable for
7 Mr Ntaganda to be personally present or give a mandate to his counsel to continue with
8 proceedings until he is consulted by an expert, if necessary.

9 Concerning the adjournment, this would undermine once again not only the rights of the
10 accused to a fair and expeditious trial, but also the rights of the victims to the
11 ascertainment of the truth. I would like to add, Mr President, your Honours, that it is
12 rather complicated for those of us who were not present in the ex parte hearing to fully
13 understand the scope of the problems that have to be resolved during the adjournment
14 requested.

15 It seems to me paradoxal, after listening to the Defence, that they are asking for a brief
16 adjournment of five days to resolve certain issues, possibly including the outcome of their
17 request for leave to appeal. Even if the Chamber is very fast, a decision can only be taken
18 perhaps as from next Monday, so such a brief adjournment would seem to us not to be
19 necessary. Thank you, Mr President.

20 PRESIDING JUDGE FREMR: [15:12:48] Thank you, Ms Pellet.

21 And now Mr Suprun.

22 MR SUPRUN: [15:12:52] (Interpretation) Thank you, Mr President. The Defence
23 have based their arguments on ad hoc international tribunal jurisdictions. I believe it
24 should be important for me to answer those legal arguments in writing after -- within a
25 brief deadline.

1 Secondly, as my learned colleague has just said, we do not have any access to the medical
2 and psychological information of the accused. But we heard the statement of the accused
3 himself. But we know that the main reason for which the accused does not want to
4 attend the hearing is simply his disagreement and frustration with the orders and
5 decisions of the Chamber, and because of that he started a hunger strike that aggravated
6 his physical condition.

7 So as I subscribe to the position of the Prosecutor, according to which the Chamber
8 already has all the information necessary to ensure the presence of the accused in the
9 courtroom without waiting for the assessment of his medical situation in the future.

10 Thirdly, I will also like to reiterate my position of this morning. It is essential for my
11 clients that the accused be present in his trial, especially when it comes to the presentation
12 of fact-based evidence. And the interests of justice does not only concern the rights of
13 the accused or the Prosecutor, but also the rights and the interests of the victims, and this
14 is provided for in the Rome Statute. So this should be taken into consideration when
15 your Chamber takes its decision, that is take on board the rights of the victims as well as
16 the rights of the other parties.

17 Now, regarding the request of the Defence for an adjournment, I believe that such an
18 adjournment is not necessary. I respectfully submit that we can continue with the
19 witnesses, but only with expert witnesses, not fact-based witnesses, including the witness
20 who was supposed to appear this morning, because he is also a victim and he should
21 provide his evidence directly in the presence of the accused.

22 So I subscribe to the proposal of my colleague that we can continue with the testimony of
23 experts under the same circumstances of last Friday, such that even if Mr Ntaganda is not
24 present, his counsel or Defence team can continue to represent his interests. And once
25 the physical and medical situation is resolved, then we will determine how the

1 proceedings should continue. Thank you, your Honour.

2 PRESIDING JUDGE FREMR: [15:17:03] Thank you, Mr Suprun.

3 Any reaction from the Defence? Mr Gosnell, please.

4 MR GOSNELL: [15:17:09] Extremely briefly, Mr President, if I may.

5 And it concerns the issue of the notion that this is all a manipulation and that the fact that

6 legal issues are in the mix shows that it is just a way of engaging in bargaining and

7 achieving a particular result, the two are not mutually exclusive. It is possible that there

8 are genuine issues, medical and psychological, that need to be addressed.

9 I'm not a doctor, I can't provide that advice or that information to your Honours, but it is

10 possible that the two can co-exist at the same time, and that is the reason why I would

11 suggest your Honours need that information on the basis of a proper medical

12 examination. Thank you.

13 PRESIDING JUDGE FREMR: [15:18:00] Thank you, Mr Gosnell.

14 So now the Chamber will deliberate. Because we had some preliminary discussions

15 during the lunch break, I suspect it will not take too much time. So we break now.

16 THE COURT USHER: [15:18:14] All rise.

17 (Recess taken at 3.18 p.m.)

18 (Upon resuming in open session at 4.03 p.m.)

19 THE COURT USHER: [16:03:19] All rise.

20 Please be seated.

21 PRESIDING JUDGE FREMR: [16:03:53] So now in light of the submissions I received,

22 the Chamber gives these further directions:

23 First, we encourage the Registry to continue to make arrangements for Mr Ntaganda to be

24 seen as soon as possible by an appropriately qualified medical professional to the extent

25 possible also being someone with who Mr Ntaganda can easily converse;

1 Second, the Chamber notes that nothing in the Chamber's decision on restrictions
2 prevents family visits from taking place. Indeed, recognising the importance of such
3 contact, the Chamber has always expressly authorised Mr Ntaganda to have family visits.
4 We therefore also direct the Registry, in consultation with the Defence, to expedite its
5 efforts to arrange such a visit for Mr Ntaganda as soon as possible and note the Registry's
6 submission that it is doing so.

7 The Chamber further encourages the Registry to show maximum flexibility regarding the
8 logistical arrangements for such visits while acting within the scope of the Chamber's
9 orders.

10 Third, Defence counsel has mentioned the pending request for leave to appeal the
11 decision to maintain restrictions. The Chamber notes that a public redacted version of
12 this filing has been notified. The Chamber also hereby shortens the deadline for
13 responses to that request for leave to appeal to be filed by the end of the day tomorrow.
14 Again, if it is not possible to submit the responses by 4 o'clock, courtesy copies of the filing
15 should please be provided by email.

16 For its part, the Chamber undertakes to address the request as a matter of priority and
17 will rule upon it expeditiously once all submissions have been received.

18 As for the remainder of the proceedings today, the Chamber has given careful
19 consideration to the Defence request for an adjournment. However, the Chamber does
20 not find that the basis for such an adjournment has been provided. The matters outlined
21 above are in accordance with the Chamber's directions to be addressed straightaway on
22 an expeditious basis. None of these matters, however, provide an impediment to the
23 continuation of the proceedings.

24 The Chamber has considered carefully the Defence submissions this afternoon raising the
25 question of Mr Ntaganda's fitness. At the present time the Chamber, by majority,

1 Judge Fremr partially dissenting - and I will issue my dissent and also dissent from the
2 previous decision soon, so the Chamber by majority, Judge Fremr partially
3 dissenting - does not see a basis to modify its earlier decision. In the majority's view the
4 circumstances are not such as to raise genuine questions as to Mr Ntaganda's fitness.
5 The Chamber has had careful regard to Mr Ntaganda's rights in this context. The
6 Chamber therefore instructs the Registry to monitor Mr Ntaganda's fitness and have its
7 medical services assess whether Mr Ntaganda is fit to be transported to the courtroom.
8 In case Mr Ntaganda may be unfit to travel to the courtroom, the Chamber directs the
9 Registry to continue to make video link facilities available from the detention centre from
10 where he may follow the proceedings.

11 The Chamber also notes that Mr Ntaganda has access to legal advice from Defence
12 counsel and can communicate with his counsel using a privileged phone line.

13 With regard to Mr Ntaganda's refusal to provide Defence counsel with instructions to
14 represent him during the examination of witnesses, the Chamber notes that counsel
15 cannot simply abide by such instructions and they may be seen as an attempt to obstruct
16 judicial proceedings. The Chamber therefore orders Defence counsel to be present in the
17 courtroom and to continue its representation of Mr Ntaganda's interests.

18 At the same time, the Chamber is, however, willing to partially grant the Defence request
19 to the extent of appointing a medical expert to assess Mr Ntaganda's fitness pursuant to
20 Rule 135 and in accordance with its obligation under Article 64.

21 The Registry is therefore directed to identify an appropriate medical expert for this
22 purpose as soon as possible, and in light of that assessment, the Chamber will remain
23 open to reconsidering its decision.

24 The request for an adjournment is, therefore, rejected, although the Chamber reiterates its
25 directions for expeditious action to be taken in parallel to the hearing with regard to the

1 matters I have already mentioned.

2 That concludes the Chamber's ruling. In light of the current time, the Chamber will now
3 break for today and will resume tomorrow morning, with the testimony of the next
4 witness. But before we break, I would like to make one guidance to Mr Ntaganda.

5 Mr Ntaganda, please consult this guidance, because it's also not easy to understand from
6 the legal point of view, but there are some indications that, in my view, could change your
7 mind. So please consult those issues with your counsel. I believe that they will explain
8 what this decision in fact brings to you, and in my view you should again reconsider your
9 decision because anyway, and I can even now insist on that, this decision you have made
10 is not for your benefit, for your health, even for your defence. So think about that and
11 again consult your Defence counsel on that.

12 Before we leave, any further requests for the floor? Prosecution? Defence?

13 MR BOURGON: [16:11:25] Thank you, Mr President. We are grateful for the
14 Chamber's decision. We will be making a request to meet with Mr Ntaganda tonight.
15 Of course, this is not in accordance with the usual procedure, so we would just like to put
16 that on the record that we will be asking. I did put in a request for a visit this afternoon,
17 not knowing what time we would be finishing. It is too late now to go but we will be
18 doing our best to meet with Mr Ntaganda tonight and discuss the Chamber's ruling with
19 him. Thank you, Mr President.

20 PRESIDING JUDGE FREMR: [16:11:57] Noted and appreciated.

21 Legal Representatives? No.

22 Okay, so it means we adjourn now, and we will resume tomorrow 9.30 and we will start
23 with testimony of the witness as planned.

24 THE COURT USHER: [16:12:13] All rise.

25 (The hearing ends in open session at 4.12 p.m.)