

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 3
8 Tuesday, 20 September 2016
9 (The hearing starts in open session at 9.35 a.m.)
10 THE COURT USHER: [9:35:09] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: [9:35:33] Good morning, everybody.
14 Court officer, please call the case.
15 THE COURT OFFICER: [9:35:37] Good morning.
16 The court is sitting in the case of The Prosecutor versus Mr Bosco Ntaganda.
17 PRESIDING JUDGE FREMR: [9:35:47] Thank you.
18 Appearances, starting with Prosecution.
19 MR IVERSON: [9:35:51] Good morning, your Honours. Appearing today for the
20 Prosecution are Claudine Umurungi, assistant legal officer; Selam Yirgou, case manager;
21 and myself, Eric Iverson, trial lawyer.
22 PRESIDING JUDGE FREMR: [9:36:04] Thank you, Mr Iverson.
23 Defence, please.
24 MR BOURGON: [9:36:09] (Interpretation) Good morning, your Honour. Good
25 morning, your Honours, as well as everybody else in the courtroom. For the Defence

1 this morning, Mr Jules Guillaumé, Isabelle Martineau and Stéphane Bourgon. Thank you,
2 your Honour.

3 PRESIDING JUDGE FREMR: [9:36:27] And I will add for the record that the situation
4 concerning Mr Ntaganda is the same like yesterday, so also like yesterday we will
5 continue in his absence under the same legal regime.
6 Legal Representatives of Victims now, please.

7 MS PELLET: [9:36:48] (Interpretation) Thank you, your Honour. The former child
8 soldiers are represented by Mohamed Abdou and by myself, Sarah Pellet, counsel with
9 Office of Public Counsel for Victims.

10 MR SUPRUN: [9:37:02] (Interpretation) Good morning, your Honour, your Honours.
11 The victims of the attacks are represented by the OPCV, Anne Grabowski, associate
12 lawyer and myself, Dmytro Suprun, counsel.

13 PRESIDING JUDGE FREMR: [9:37:16] Before we continue with testimony of our
14 witness, we were informed that Mr Bourgon would like to address us.

15 Mr Bourgon, I believe that it is something that couldn't be solved by email because you
16 know we would not like to make as a regular part of our hearing your morning
17 submissions, so I guess this is something that really is urgent and should be -- has to be
18 solved in this way; am I right?

19 MR BOURGON: [9:37:47] I believe so, Mr President.

20 PRESIDING JUDGE FREMR: [9:37:49] All right then.

21 MR BOURGON: [9:37:51] Mr President, of course I wish to entertain or to at least to
22 speak to the Chamber concerning the situation of Mr Ntaganda. I had a meeting this
23 morning with the Registrar and it is very likely, based on the conversation I had with the
24 Registrar, that Mrs Ntaganda would travel to The Hague tomorrow, arriving on Thursday
25 morning.

1 The Registrar, further to our discussions, informed me that he would need to meet with
2 the Chamber in order to ensure that the visit conditions fully meet the requirements of the
3 Chamber's decision on restrictions, but he was confident that this would be the case but he
4 wanted to make sure.

5 On my end, of course I need to meet with Mr Ntaganda in order to introduce to him these
6 conditions and the fact that his wife could be in The Hague very soon, that is on Thursday
7 morning.

8 Mr President, I'm confident that the efforts made by all will be sufficient to convince
9 Mr Ntaganda to start eating again and at a minimum, for the time being, to produce a
10 waiver authorising his Defence team to represent him in his absence until he's fit to come
11 back in the courtroom, which would be a matter of days.

12 An associated issue, Mr President, which is what I could not do by email, is the fact that
13 ever since we embarked on this situation we have not been able to obtain from
14 Mr Ntaganda any discussions on the -- or, instructions in relation to witnesses, and that
15 for us is a very important issue. Some of these witnesses we had already discussed with
16 him.

17 Now there's a witness coming up, which is P-0014, for whom we do require instructions.
18 The Chamber will recall its decision of the material admitted pursuant to the -- it intends
19 to admit pursuant to Rule 68(3), which is quite voluminous, and the fact that the
20 testimony of this witness at least appears for the Prosecution to be of a significant
21 importance.

22 So all this being said, Mr President, the -- what I wish to do this morning is to request
23 from the Chamber a change in the hearing schedule in the following way, to terminate the
24 cross-examination and the testimony of the present witness this morning and, if the
25 Chamber would be inclined to do so, I would like to have the rest of the day in order to

1 meet with Mr Ntaganda and meet with the Registry and to finalise the arrangements so
2 that the matter is sorted out and with a view to confirming to the Chamber that
3 Mr Ntaganda has -- or, will today start eating again.

4 This brings the issue of the next witness, P-14, which we would have to begin on
5 tomorrow, Wednesday, rather than today. I've had a conversation with my colleague
6 from the Prosecution. The issue for us is that of instructions, although I do understand
7 that we need to use all court time available. That is why we propose to begin the
8 testimony of P-14 tomorrow morning with the Prosecution's side of the testimony, and
9 then we would request respectfully, Mr President, time to meet with Mr Ntaganda
10 tomorrow after he has eaten again and we will start our -- we would start our
11 cross-examination on Thursday morning.

12 To us, we submit that it is in the interests of justice that we get the views of Mr Ntaganda
13 based on the preparation note and that we receive from the Prosecution concerning this
14 witness and that we do have the opportunity to discuss with him our strategy for
15 cross-examination.

16 If we do begin Witness P-14's cross-examination on Thursday morning, the time allotted
17 so far is 8 hours. I have told my colleague I'm not sure I would use all 8 hours, which
18 will allow us to begin the next witness, which is P-0127, on Friday.

19 Lastly, Mr President, I just take this opportunity to provide some information. This block
20 is quite heavy in terms of witnesses and we, at the beginning, made a kind of an estimate
21 as to where we should be every day based on the time estimates and that we have on both
22 sides, and our evaluation of the situation is that, as of today, we are two hours late, the
23 two hours that I will do this morning. According to the schedule that we had prepared,
24 we thought that we would be finished with P-105 yesterday, and we are not.

25 I think this is significant, Mr President, because everyone has been doing their best to try

1 and cut their time and to try to meet the schedule despite some quite unusual
2 circumstances.

3 So that's my request this morning, to finish the cross-examination of P-105, have the rest
4 of the day to finalise arrangements with the Registry and Mr Ntaganda, start the
5 examination-in-chief of P-14 tomorrow morning and start the cross-examination of P-14
6 on Thursday morning.

7 Those are my submissions and my request, Mr President. Thank you very much.

8 PRESIDING JUDGE FREMR: [9:44:53] Before I comment that I would like to listen to
9 Prosecution. Mr Iverson, your position?

10 MR IVERSON: [9:45:04] The Prosecution's position is as is -- was stated by Defence
11 counsel. We spoke before the hearing. Under the circumstances, we agree that it would
12 probably be best to start with the next witness tomorrow morning. I do want to
13 underline though that the lack of instructions appear to be voluntary on the part of the
14 accused, that it is a situation of his own making. But under the circumstances, we
15 wouldn't oppose the Defence request.

16 PRESIDING JUDGE FREMR: [9:45:41] All right then.

17 Two issues: First one, as concerns this meeting with Registry, you rightly, Mr Bourgon,
18 said that all made a big effort to solve the problem we all face here in order to get our
19 proceedings to the normal regime.

20 And I can't at this moment predict what will be the outcome of our meeting, but generally
21 the main issue is to find such a way of visit of Mrs Ntaganda that wouldn't spoil the
22 purpose of our restrictions which are still in force. But it's mainly a technical issue, so we
23 all, including the Chamber, believe that it would be feasible.

24 As to the possible change of our time schedule, it's true that we can afford maybe some
25 slight delay compared to our previous or original schedule, but to start with

1 cross-examination on Thursday morning seems to me that maybe it is useless, a long
2 delay. I am thinking, and I will discuss it with my colleagues, and with the coordinator
3 of the case during our break.

4 I am also thinking about another alternative because the main -- I see the main purpose is
5 to allow you, Mr Bourgon, which I can understand, to discuss or prepare for
6 cross-examination with Mr Ntaganda, including the possibility to read thoroughly this
7 material from Lubanga proceedings. So wouldn't be such an aim also met if we would
8 start this witness, but just direct today and then we would adjourn and give you some
9 time and, for example, start with cross-examination tomorrow afternoon, because I believe
10 that you would have enough time to -- both to read and to study those materials and
11 consult Mr Ntaganda either this afternoon or tomorrow morning. And if you would start
12 tomorrow, 2.30, it, for me, would not be such a big loss compared to your proposal.

13 What is your position?

14 MR BOURGON: [9:48:29] Mr President, I respectfully submit that I am -- I take the
15 view that this afternoon is critical in order of meeting with Mr Ntaganda to put this
16 behind us, hopefully, and I think it can be done and I'm confident that I can be successful.
17 Now, once that is back and then Mr Ntaganda, I -- we can give him back his computer
18 because, as you know, he has sent back his computer, which will allow him tonight to
19 have a meal, if he starts again - and I'm confident he will - look at the material tonight,
20 and then to meet. So we'll have time to prepare him, to discuss with him this material.
21 Now, this material is quite voluminous. We have discussed the material with him before,
22 it's not the first time. I'm not going to say that we never discussed this material before,
23 but in the circumstances, once he's had -- he has had a meal and once he has looked at the
24 material again, including the preparation session note, then getting his instructions is in
25 the interest of justice, it will make our cross-examination better, more focused, and it will

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1 allow the Chamber to benefit from I -- we believe, better evidence.

2 I think that the option that you proposed, Mr President, would not allow us any time,
3 although we would maybe meet with him, but will not allow -- meet the purposes of
4 getting the instructions in the proper conditions. Those are my submissions,
5 Mr President. Thank you.

6 PRESIDING JUDGE FREMR: [9:50:08] All right. I take this clarification and we will
7 consider it during the break and then we will inform you what is our decision.
8 Now, court officer, please bring witness in.

9 And in the meantime, Mr Iverson, even if it's a bit premature, do you envisage at this
10 moment any need for some extensive re-direct?

11 MR IVERSON: [9:50:41] No, Mr President. At the moment I don't have any questions
12 for re-direct.

13 PRESIDING JUDGE FREMR: [9:50:46] Thank you.

14 (The witness enters the courtroom)

15 PRESIDING JUDGE FREMR: [9:51:28] Good morning, Mr Witness. Can you hear me?

16 WITNESS: DRC-OTP-P-0105 (On former oath)

17 (The witness speaks Swahili)

18 THE WITNESS: [9:51:35] (Interpretation) I can hear you.

19 PRESIDING JUDGE FREMR: [9:51:40] Mr Witness, even if you are coughing, I hope
20 that you are able to finish your testimony because according my estimation it shouldn't
21 take more than two hours today?

22 THE WITNESS: [9:51:57] Ndiyo.

23 PRESIDING JUDGE FREMR: [9:52:02] All right, Mr Witness. Anyway, if you would
24 need some break in order to be okay, just let us know, otherwise we will continue and, in
25 fact, Mr Bourgon will finish or hopefully finish his cross-examination.

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1 And it's my duty again to remind you that you are still under oath, which means that you
2 have to speak the truth and nothing but the truth.

3 And again, I would like to remind you though practical -- this practical guidance to speak
4 clearly, to speak with necessary pauses and also please try to focus exactly on the question
5 because yesterday sometimes even if those information were interesting, as I highlighted,
6 both counsel are limited by the Chamber so they have to put all those questions in some
7 time, so please just to respond specifically on what you are asked.

8 Now, Mr Bourgon, you have the floor.

9 MR BOURGON: [9:53:17] Thank you, Mr President.

10 QUESTIONED BY MR BOURGON: (Continuing)

11 Q. [9:53:23] Good morning, Mr Witness.

12 A. [9:53:28] Good morning.

13 Q. [9:53:32] I will move to a different topic this morning and go straight into the
14 events of January and February of 2003.

15 I take it that you recall these two months; is that correct?

16 A. [9:53:58] Yes.

17 Q. [9:53:59] The issue I would like to address, of course, is the fighting between the
18 Lendu combatants and members of the UPC. And we've heard your testimony on this.
19 The first thing I'd like to talk about, of course, is the weapons used. I'd like you to
20 confirm that unlike what the situation was at the beginning of this conflict in 1999, by 2002,
21 at the end, in 2003, the Lendu combatants did have firearms; can you confirm this, sir?

22 A. [9:54:52] Yes, they did have firearms.

23 (Redacted)

24 (Redacted)

25 (Redacted)

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9 PRESIDING JUDGE FREMR: [9:56:32] Sorry, Mr Bourgon, we are in open session. I

10 guess it was the reason why Mr Iverson's on his feet.

11 So first of all, let's move into private session, court officer.

12 (Private session at 9.56 a.m.)

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16 (Redacted)

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- 25 (Open session at 11.03 a.m.)

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1 THE COURT OFFICER: [11:04:10] We're in open session, your Honour.

2 PRESIDING JUDGE FREMR: [11:04:12] Thank you, court officer.

3 First of all, I would like to make a minor correction of the transcript, page 30, lines 20 and
4 24, I didn't say 15 minutes, 1-5, but 50, 5-0 minutes.

5 And the second issue, now we break and we will reconvene at 11.35.

6 And Mr Bourgon will be given opportunity to conclude his cross-examination, which, in
7 my view, should take a bit less than 50 minutes, 5-0.

8 THE COURT USHER: [11:04:52] All rise.

9 (Recess taken at 11.05 a.m.)

10 (Upon resuming in open session at 11.38 a.m.)

11 THE COURT USHER: [11:38:32] All rise.

12 Please be seated.

13 PRESIDING JUDGE FREMR: [11:38:59] Before we continue with cross-examination of
14 our witness, the Chamber will deliver its oral ruling on the Defence request for a short
15 postponement of Witness P-14's testimony. And we can make it in public session.

16 This morning the Defence requested to postpone the examination-in-chief of Witness P-14
17 until tomorrow morning and to then commence the cross-examination of Witness P-14
18 only on Thursday morning.

19 The Chamber reiterates its guidance of 1 August 2016 contained in email communication
20 at 16.51 to the parties and participants that scheduling arrangements and related
21 preparations should be done in a manner which ensures that the further witness will
22 always be ready to start immediately upon completion of the examination of the previous
23 witness in order to maximise the use of courtroom time.

24 It's further noted that notably such consultations with a client should occur outside of
25 court hours. Nonetheless, in the particular circumstances, the Chamber considers it

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1 appropriate for lead counsel to meet with Mr Ntaganda as soon as possible in order to
2 ensure that he's properly informed of relevant developments and receives the necessary
3 legal advice.

4 Noting also that the Prosecution does not oppose a brief postponement, the Chamber
5 indicates that Witness P-14 shall commence testifying tomorrow, on 21 September 2016, at
6 1 p.m.

7 The Chamber will sit in two sessions of one and a half hours each in order to complete the
8 examination-in-chief and any questions by the legal representative for former child
9 soldiers.

10 The cross-examination shall commence on Thursday morning.

11 That concludes the Chamber's ruling.

12 And allow me one caveat connected with this ruling: As soon we granted this request, it
13 means that we got some delay in our schedule for this block that has to be compensated.

14 So, there are several possibilities how it may be done. It's also in your hands; if you will
15 be shorter compared to your original estimation of time you will need, it also would be
16 helpful. We also -- the Chamber will also have to think about sitting in extended hours.
17 So we will see. But what is really firm, that we can't sit -- the last day of our block should
18 be 11 October. We simply have no, because of some further commitments, we simply
19 can't go further. So please have it in mind. And I believe that even so far this block
20 started in a very efficient way, so we also believe that we all can contribute to
21 compensation of this current delay.

22 Now we will continue with the rest of cross-examination of our witness. Mr Bourgon,
23 you still have a bit less than 50 minutes.

24 MR BOURGON: [11:43:13] Thank you, Mr President.

25 Q. [11:43:19] Welcome back, Mr Witness.

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1 A. [11:43:28] Thank you.

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 PRESIDING JUDGE FREMR: [11:43:50] Sorry, again, let's move into private session.

6 (Private session at 11.43 a.m.)

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11 (Open session at 12.41 p.m.)

12 THE COURT OFFICER: [12:42:13] We're in open session, your Honour.

13 PRESIDING JUDGE FREMR: [12:42:15] Thank you, court officer.

14 So, Mr Witness, your testimony, it's concluded. So, on behalf of the whole Chamber I
15 would like to thank you that you made such a long journey, that you patiently answered
16 all questions put to you. So thank you. I believe that your testimony will assist us in
17 our effort to find the truth in this case. And we also wish you a safe journey home.

18 THE WITNESS: [12:42:55] (Interpretation) Thank you very much as well.

19 PRESIDING JUDGE FREMR: [12:43:01] And now we will adjourn. And in
20 accordance with our decision granting some short postponement of the next testimony,
21 we will reconvene tomorrow, 1 o'clock, in order to have two sessions, 90 minutes each.
22 Mr Bourgon.

23 MR BOURGON: One quick issue: I wanted to inform the Trial Chamber that in light of
24 everything that we said, there's one issue that was not touched upon and that is the
25 medical information, which we are still not getting and that we insist on obtaining, and

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- 1 we either have already filed or will be filing an application to obtain this information.
- 2 Thank you, Mr President.
- 3 PRESIDING JUDGE FREMR: [12:43:53] Well noted.
- 4 Mr Iverson, I saw you on your feet.
- 5 MR IVERSON: [12:43:59] I thought we were rising, yes.
- 6 PRESIDING JUDGE FREMR: [12:44:02] We appreciate. So, again, adjourned and we
- 7 will reconvene tomorrow at 1 o'clock.
- 8 THE COURT USHER: [12:44:10] All rise.
- 9 (The hearing ends in open session at 12.45 p.m.)