

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 Judge Chang-ho Chung
6 Trial Hearing - Courtroom 3
7 Tuesday, 27 September 2016
8 (The hearing starts in open session at 1.32 p.m.)
9 THE COURT USHER: [13:32:51] All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE FREMR: [13:33:13] Good afternoon, everybody.
13 Court officer, please call the case.
14 THE COURT OFFICER: [13:33:33] Thank you, Mr President.
15 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
16 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
17 We are in open session.
18 PRESIDING JUDGE FREMR: [13:33:48] Thank you. Otherwise this court was
19 required because of some technical circumstances. Otherwise, are there any changes
20 in appearances? I don't see now, no. Okay. So then we can
21 directly continue with the rest of cross-examination.
22 Mr Gosnell, you still have 38 minutes. And do you want to proceed in open or
23 private session?
24 MR GOSNELL: [13:34:15] I believe we have to proceed in private session,
25 Mr President.

Trial Hearing
WITNESS: DRC-OTP-P-0127

(Private Session)

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- 1 PRESIDING JUDGE FREMR: [13:34:23] All right.
- 2 Court officer, let's move into private session.
- 3 (Private session at 1.34 p.m.)
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10 (Open session at 2.12 p.m.)
11 PRESIDING JUDGE FREMR: [14:12:49] Mr Gosnell.
12 THE COURT OFFICER: [14:12:51] We're in open session, Mr President.
13 PRESIDING JUDGE FREMR: [14:12:54] Mr Gosnell.
14 MR GOSNELL: [14:12:55] Mr President, there's the housekeeping matter
15 concerning the excerpts of the videos showed yesterday. We did send an email to
16 the Prosecution with the excerpts. We don't yet have a response. I could read them
17 out.
18 MS SAMSON: [14:13:06] We have no objection, your Honour, to the admission of
19 those excerpts.
20 PRESIDING JUDGE FREMR: [14:13:10] All right then, so I think we can just refer
21 to your yesterday's submissions, so those video excerpts yesterday specified by
22 Mr Gosnell are admitted into evidence as a further Defence exhibits.
23 MR GOSNELL: [14:13:23] Perhaps for the assistance of the Registry we'll provide a
24 hard copy of the email --
25 PRESIDING JUDGE FREMR: Court officer.

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1 MR GOSNELL: -- which may make it easier for --

2 PRESIDING JUDGE FREMR: [14:13:32] Okay. Appreciate it. Thank you,

3 Mr Gosnell.

4 And now, Mr Witness, I would like to thank you on behalf of this Chamber because
5 we appreciate that you made such a long journey and that you patiently testified to
6 many questions put to you by counsel. So thank you very much for that. And we
7 believe that your testimony will assist us in our effort to find the truth in this case.

8 So we thank you and we wish you safe journey home.

9 And now, please, court usher, you may guide Mr Witness out of the courtroom.

10 (The witness is excused)

11 PRESIDING JUDGE FREMR: [14:14:35] And before we continue with the next
12 witness, we will give you chance to make changes if necessary. Do you think that
13 five minutes, which is required also by the Registry, would be enough for you to
14 make those changes, Prosecution?

15 MS SAMSON: [14:14:51] It should be, your Honour. If we could have 10 minutes
16 it may be better. And it allows me also to make a further submission about the
17 schedule for this week.

18 We will of course commence 245 immediately and continue with his testimony
19 presumably into tomorrow. As we've already indicated P-939 must testify Thursday
20 and Friday. So the question was if we have any extra time tomorrow, do we start
21 Witness P-668 and interrupt that testimony? But we've received an indication from
22 the Registry that the video link won't be ready until Friday. So I wanted to give that
23 information to the Chamber.

24 PRESIDING JUDGE FREMR: [14:15:36] Yes. Thank you for that. Our idea
25 would be ideally to start with the second witness also in the afternoon and maybe we

1 also had in mind possibility not to then to interrupt and wait until the end of this
2 testimony of the expert witness, or maybe combine both of them, at least allow this
3 video witness for example to testify two hours a day and then give chance to the
4 expert witness, but we will update you clearly tomorrow.

5 So now we break for 10 minutes.

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

7 (Recess taken at 2.16 p.m.)

8 (Upon resuming in open session 2.27 p.m.)

9 THE COURT USHER: [14:27:57] All rise.

10 Please be seated.

11 PRESIDING JUDGE FREMR: [14:28:17] Since I see some obvious changes in
12 appearances I will ask you for an update. Prosecution first.

13 MS SOLANO: [14:28:26] Good afternoon, your Honours. The Prosecution is
14 currently represented by Ms Nicole Samson, senior trial lawyer; Kristy Sim, assistant
15 trial lawyer; Selam Yirgou, case manager; and I am Julieta Solano, trial lawyer.

16 PRESIDING JUDGE FREMR: [14:28:45] Thank you, Ms Solano.

17 Defence please.

18 MR BOURGON: [14:28:48] (Interpretation) Good afternoon, your Honour, your
19 Honours and to all those present in the courtroom. I'm representing
20 Bosco Ntaganda, who is absent, with the permission of the Chamber this afternoon.
21 Mademoiselle Margaux Portier; Mr Jules Guillaumé; and myself, Stéphane Bourgon.
22 Thank you, your Honour.

23 PRESIDING JUDGE FREMR: [14:29:10] And as concerns Legal Representatives I
24 note that there are no changes.

25 We are also told that Mr Bourgon would like address the Chamber. Is it the case,

1 Mr Bourgon?

2 MR BOURGON: [14:29:24] Indeed, Mr President, I would like to address the
3 Chamber.

4 PRESIDING JUDGE FREMR: [14:29:28] So please, and briefly if you can.

5 MR BOURGON: [14:29:29] Thank you, Mr President. There are two quick issues
6 I wish to briefly address the Chamber on. One relates to the return date of
7 Mr Ntaganda. This was brought to my attention this morning. We're not sure
8 whether the document we filed included the 29th of --

9 PRESIDING JUDGE FREMR: [14:29:54] Mr Bourgon, I can cut you and clarify it
10 was included. So you can -- Mr Ntaganda is expected to come on Friday.

11 MR BOURGON: [14:30:03] He will be there. First issue solved, Mr President.
12 Thank you.

13 Second issue has to do with the way in which the preparation session was conducted
14 with the witness about to testify. I wish to bring your attention, Mr President, that
15 we received a list of items to be used or expected to be used by the Prosecution with
16 Witness P-0245 on Friday.

17 This, of course, included, in accordance with the decisions issued by the Chamber, a
18 number of documents that the witness had not seen before, but we were informed
19 that they would show him some documents. So that was not a problem.

20 However, we received the preparation session disclosure log, log or disclosure note
21 I believe it's called, yesterday afternoon, that is on 26 September.

22 When we looked at the preparation note, we learned for the first time that a number
23 of documents were shown to the witness during the preparation session and these
24 documents were not on the list that we received on Friday. And the problem with
25 this is twofold: First of all is the number of such documents. There were -- 26

1 documents were shown to the witness, which we were not informed of before.

2 These are, to the best of our knowledge, all documents that were disclosed previously,
3 it's just that we learned of the fact that these documents were shown to the witness
4 yesterday afternoon. We're talking about 26 documents and which come out to
5 some 490-some pages.

6 So that's the first issue.

7 The second issue, Mr President, is I would like to seek guidance from the Chamber.

8 We believe that the manner in which these documents were used with the witness
9 during the preparation session does not fulfil the requirements of the supplementary
10 decision on the conduct of proceedings.

11 The Chamber did confirm that the Prosecution could show to a witness a document
12 not on the list in order for him to ascertain whether he is in the position to testify or to
13 provide evidence on such a document. That is -- the Chamber's order is very clear.

14 However, the manner in which this was done we believe does not -- is not
15 appropriate. All the documents were placed into a binder, and my colleague can
16 correct me if that's not the case, but this is our understanding, all the documents were
17 placed into a binder and given to the witness for him to familiarise with the
18 documents. Of course the witness commented during questioning by the
19 Prosecution that many of these documents he was not aware or had limited
20 knowledge thereof. But the issue is we give to the witness documents and we put
21 him in a room for hours and hours to look at documents he is not familiar with and of
22 course these documents are likely to have a bearing on the testimony that he will
23 deliver before the Chamber.

24 Mr President, we feel that if the Prosecution is going to show a document never seen
25 by the witness during the preparation session, it should go document by document,

1 show the document, find out whether the document -- the witness is familiar with the
2 document or can offer evidence. If so, look at the document and maybe ask a few
3 questions. But to give the document and especially a number of documents in this
4 way is simply trying to basically give information to the witness so that he gets a
5 background to his testimony, and we feel that this is very likely to influence the
6 evidence he will deliver.

7 So at this point in time we are asking the Chamber to clarify the matter in terms of
8 whether this is an appropriate procedure and it is our submission that it is not an
9 appropriate procedure to be used when preparing a witness. Thank you,
10 Mr President.

11 PRESIDING JUDGE FREMR: [14:34:56] Thank you, Mr Bourgon.

12 Ms Solano.

13 MS SOLANO: [14:34:58] Your Honour, as to the number of documents and the fact
14 that, according to my counterpart's calculation, they add up to about 490 pages, what
15 I can say is that of course the Defence, like the Prosecution, are able to run electronic
16 searches through these documents to determine where the witness is mentioned, and
17 for the bulk of these material what such searches will reveal is that, you know,
18 perhaps at times there are long documents where the witness is mentioned once or
19 maybe twice so it's not particularly time consuming to review them.

20 In relation to the manner, we are of course open to your Honour's guidance as to how
21 the documents should be -- the potential exhibits should be shown to the witness
22 during witness prep. I note of course that for Prosecution lawyers to be present in
23 the room and show document by document to the witness is -- would prove to be an
24 extremely time-consuming task. It would consume a lot of resources, not only from
25 the lawyers in the team, but also from the interpreters when interpreters do need to

1 be ready. Witnesses read at their own pace and it's a little difficult to expect that the
2 Prosecution is there throughout.

3 If the Defence have a concrete problem with any of the documents that were shown in
4 this manner with this particular witness, I'm sure they will point it out in due course,
5 but for now I don't really see that there's any harm done.

6 PRESIDING JUDGE FREMR: [14:36:35] So at the moment I am not sure that is
7 clarification. First of all, I would like just to quote from para 11 of our supplemental
8 decision on matters related to the conduct of proceedings, which says:

9 "Potential exhibits may be shown to a witness during preparation regardless of
10 whether or not the witness has previously seen such materials to ascertain whether
11 the witness can usefully comment on them during testimony. However, the
12 Chamber emphasises that the scope of any questioning conducted in relation to the
13 materials must be narrowly tailored to the purpose."

14 It's true that we are not specifically dealing with the issue presented by Mr Bourgon,
15 but in my view in my interpretation the purpose behind this part of the protocol is
16 clear that those documents should be shown just to verify whether witness has some
17 knowledge that could be relevant for his testimony but not to give him chance to get
18 such knowledge through reading those materials.

19 So at the moment I can't go further because then probably we will have to evaluate
20 any objection on a case-by-case basis because it's possible that in a case of some
21 documents even such approach could be appropriate, but I also can imagine good
22 examples of cases when such approach would be really harmful and would mean
23 prejudice to the non-calling party.

24 So we will see as soon as we will get objection on that, we will decide, as I said, with
25 the knowledge of the concrete document involved.

1 So now before we invite our next witness, some usual introductory remark.

2 So the Chamber yesterday granted in-court protective measures for Witness P-245 in
3 the form of face and voice distortion and the use of a pseudonym. As per our usual
4 practice, any objections to use of material with this witness will be addressed if and
5 when they arise throughout the course of the examination.

6 With regard, however, to the Defence objections that no material relationships exist
7 between the witness and certain of the items the Prosecution intends to use the
8 Chamber recalls that documents may be shown to a witness whose testimony has a
9 connection with that item in order to have the witness comment on it. The Chamber
10 will therefore assess on a case-by-case basis whether the Prosecution has sufficiently
11 established relationship between the item concerned and the witness or his testimony
12 before allowing the Prosecution to use the item with the witness.

13 In terms of timing, the Chamber indicated last week that the examination-in-chief for
14 this witness is to be completed within three hours and that the Defence will have
15 equal time.

16 That's it and now we can turn to the scheduled testimony.

17 Mr Bourgon.

18 MR BOURGON: [14:40:17] Thank you, Mr President. Just to bring to the
19 Chamber's attention, we do maintain our objections on the list that we provided to the
20 Chamber, other than for four documents which we found out later that had been
21 provided to the Prosecution by the witness. So when we said there was no material
22 relationship, for four documents and these are items number -- there are four such
23 documents. But if the issue comes up, Mr President, we'll brief the Chamber, but I
24 wish to clarify that on four occasions a document was given to the Prosecution by the
25 witness, which of course changes our approach. Thank you.

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1 PRESIDING JUDGE FREMR: [14:40:59] Very well.

2 So now, please, court usher, bring Mr Witness into the courtroom.

3 And just mainly for Ms Solano because our schedule today is a bit different, so Ms

4 Solano, we will have to break at 3 o'clock this session.

5 (The witness enters the courtroom)

6 PRESIDING JUDGE FREMR: [14:42:11] Good afternoon, Mr Witness. Can you

7 hear me?

8 WITNESS: DRC-OTP-P-0245

9 (The witness speaks French)

10 THE WITNESS: [14:42:21] (Interpretation) I can hear you very well. Thank you,

11 your Honour.

12 PRESIDING JUDGE FREMR: [14:42:24] Good. In that case, Mr Witness, on behalf

13 of this Chamber I would like to welcome you to the courtroom.

14 Mr Witness, you are called to testify in the case against Mr Bosco Ntaganda and you

15 will be soon asked questions both by the Judges and lawyers in the courtroom. In

16 this connection I would like to guide you as follows:

17 Please listen carefully to those questions. If you do not understand, feel free to ask

18 for the question to be repeated. We want you to tell the truth and tell us what you

19 saw, heard and sensed yourself. If you didn't see or hear it yourself but you found

20 out some other way, then you should explain how. Please testify just on that which

21 you remember. Don't guess, don't make things up. There is nothing wrong in

22 saying "I don't know" or "I don't remember." Do you understand all this,

23 Mr Witness?

24 THE WITNESS: [14:43:34] (Interpretation) Yes, I've understood perfectly well.

25 Thank you.

1 PRESIDING JUDGE FREMR: [14:43:39] Good. Mr Witness, protective measures
2 are put in place to ensure that your identity is not revealed to the public. It means
3 that the public cannot see your face and that your voice is being disguised so that the
4 public cannot recognize it. We will refer you only as "Mr Witness" and ensure that
5 your name and any other information that risks revealing who you are is not
6 broadcast to the public. Therefore, whenever you need to describe anything that
7 might reveal your identity we will do so in private session so that no one outside the
8 courtroom can hear your answer. Do you understand, Mr Witness?

9 THE WITNESS: [14:44:32] (Interpretation) Yes, I do, your Honour.

10 PRESIDING JUDGE FREMR: [14:44:34] Fine. Now, Mr Witness, you will be
11 provided with piece of paper with the solemn undertaking. So please now make
12 your solemn undertaking to tell the truth by reading out the declaration you have in
13 your hand.

14 THE WITNESS: [14:45:01] (Interpretation) Thank you. I solemnly declare that I
15 will tell the truth, the whole truth and nothing but the truth.

16 PRESIDING JUDGE FREMR: [14:45:10] Thank you, Mr Witness. It means that
17 now you are under oath and you also need to be aware that it's an offence within the
18 jurisdiction of this Court to give false testimony. Do you understand that?

19 THE WITNESS: [14:45:32] (Interpretation) Yes, I've understand.

20 THE INTERPRETER: [14:45:35] Your Honour, would you be so kind as to ask the
21 witness to speak a bit louder and closer to the microphone perhaps.

22 THE WITNESS: [14:45:46] (Interpretation) Yes, I did understand, your Honour.

23 PRESIDING JUDGE FREMR: [14:45:50] Very well. And finally, a few practical
24 matters you should have in mind. It's important to speak into the microphone, to
25 speak clearly and to speak at a slow pace to allow the interpreters to translate

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1 everything. You should only start speaking when the person asking you the
2 question has finished. So when a question is asked, please do not respond
3 immediately but wait at least 3 seconds before you give your answer because it will
4 allow us to hear and record precisely what you are saying.

5 And if you have any questions during your testimony or if you feel that you need a
6 break, do not hesitate to let us know by raising your hand and we will then give you
7 the opportunity to speak. Have you understood all that, Mr Witness?

8 THE WITNESS: [14:46:52] (Interpretation) Your Honour, yes, I've understood
9 what you've just said.

10 PRESIDING JUDGE FREMR: [14:46:55] Very well, Mr Witness. Which means
11 that we can now start with your testimony which will be first conducted by
12 Prosecution.

13 Ms Solano, do you want to start in open or in private session?

14 MS SOLANO: [14:47:10] Private session, your Honour. Thank you.

15 PRESIDING JUDGE FREMR: [14:47:14] Understandable.

16 Court officer, let's move into private session.

17 (Private session at 2.47 p.m.)

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4 (Open session at 3.01 p.m.)

5 THE COURT OFFICER: [15:01:29] We're in open session, Mr President.

6 PRESIDING JUDGE FREMR: [15:01:37] Thank you, court officer.

7 So we will now break and we will resume at half past 3 for our last session today.

8 THE COURT USHER: [15:01:47] All rise.

9 (Recess taken at 3.01 p.m.)

10 (Upon resuming in open session at 3.35 p.m.)

11 THE COURT USHER: [15:35:43] All rise.

12 Please be seated.

13 PRESIDING JUDGE FREMR: [15:36:11] And before we continue with our testimony,

14 I would like to return back to a submission made by Ms Samson concerning our

15 further timing.

16 Since the expert Witness P-939, his testimony is just firmly fixed to Thursday and

17 Friday, but I also understood and now I got similar information from the Registry that

18 P-668, which is a video link witness, is only ready to start on Friday.

19 Am I right, Ms Samson?

20 MS SAMSON: [15:36:56] That's also the information that we've been provided by the

21 Registry today. And Witness 939 has two days available for her testimony,

22 Thursday and Friday. However, it's unlikely that we will require two full days for

23 that testimony. We expect it is likely to conclude in about one day, but because it

24 may spill over to Friday, the preference is to start P-939 on Thursday and then start

25 P-668 on Friday morning or as soon after on Friday as -- when 668 is completed.

1 PRESIDING JUDGE FREMR: [15:37:44] Point taken, but the question was -- in our
2 consideration was whether it still makes any sense to sit in extended hours tomorrow
3 because it seems that if even if you would finish by the second session, obviously
4 there would be no witness available for the third session; am I right?

5 MS SAMSON: [15:38:02] That's right. In our submission, it's unlikely that we'll
6 need to sit in extended hours tomorrow.

7 PRESIDING JUDGE FREMR: [15:38:08] All right. So we even discuss it within
8 the Chamber, so it means that we now change our schedule. And tomorrow there is
9 obviously no reason to sit in extended hours, which means that we will tomorrow sit
10 in normal regime, starting with 9.30, having classical two 90-minute sessions and
11 third two-hour session, if necessary.

12 Now we can continue with the testimony of the witness. Ms Solano, in the time you
13 had to break, you conducted testimony in the regime of private session. Do you
14 want to proceed in the same regime?

15 MS SOLANO: [15:38:58] Yes, your Honour, I'm afraid I need to.

16 PRESIDING JUDGE FREMR: [15:39:02] You don't have to be afraid, it's -- if it is in
17 the interests of the protection of the witness, there is no need to apologise.
18 So now let's move into private session.

19 (Private session at 3.39 p.m.)

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WITNESS: DRC-OTP-P-0245

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12 (Open session at 5.03 p.m.)

13 THE COURT OFFICER: [17:03:33] We are in open session, Mr President.

14 PRESIDING JUDGE FREMR: [17:03:35] Thank you, court officer. So, first update
15 on timing. Ms Solano, you so far, 1 hour 38 minutes, which means that she still has
16 at her disposal for tomorrow 1 hour 22 minutes.

17 Mr Witness, I would like to thank you for your today testimony. We will continue
18 tomorrow, 9.30. And it's also my duty to remind you that in the meantime till
19 tomorrow, you must not discuss your testimony with anybody else. Do you
20 understand that?

21 THE WITNESS: [17:04:13] (Interpretation) I have fully understood you,
22 Mr President.

23 PRESIDING JUDGE FREMR: [17:04:19] Very well, Mr Witness. If there are no
24 further requests for the floor, we will adjourn. And we will resume tomorrow, 9.30.

25 THE COURT USHER: [17:04:35] All rise.

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1 (The hearing ends at 5.04 p.m.)

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