

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 Monday, 7 November 2016
8 (The hearing starts in open session at 9.34 a.m.)
9 THE COURT USHER: [9:34:21] All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE FREMR: [9:34:45] Good morning, everybody.
13 Court officer, please call the case.
14 THE COURT OFFICER: [9:35:07] 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're in open session.
18 PRESIDING JUDGE FREMR: [9:35:20] Thank you, court officer.
19 Now appearances please in the usual order.
20 MS SOLANO: [9:35:26] Good morning, your Honours. The Prosecution is
21 represented by Ms Nicole Samson, senior trial lawyer; Mr James Pace, assistant trial
22 lawyer; Ms Claudine Umurungi, assistant legal officer; Ms Selam Yirgou, case
23 manager. And I am Julieta Solano, trial lawyer.
24 PRESIDING JUDGE FREMR: [9:35:44] Thank you, Ms Solano.
25 Defence now.

1 MR GOSNELL: [9:35:47] Good morning, Mr President. Good morning, your
2 Honours. Christopher Gosnell for Mr Ntaganda this morning, assisted by
3 Isabelle Martineau and Maria-Kim Vasconi. Thank you.

4 PRESIDING JUDGE FREMR: [9:36:00] And I just add for the record that
5 Mr Ntaganda is present. Thank you, Mr Gosnell.
6 And now Legal Representatives of Victims, please.

7 MS PELLET: [9:36:11] (Interpretation) Thank you, Mr President. The former
8 child soldiers are represented by Mohamed Abdou and by myself, Sarah Pellet, for
9 the OPCV.

10 MS GRABOWSKI: [9:36:26] Good morning, Mr President, your Honours, the
11 victims of the attacks are today represented by myself, Ms Anne Grabowski. Thank
12 you.

13 PRESIDING JUDGE FREMR: [9:36:34] Thank you, Ms Pellet. Thank you,
14 Ms Grabowski.

15 I want to at the beginning welcome everybody back to the courtroom for the seventh
16 evidentiary block, and I hope that we can have another efficient and productive block
17 and I also note we are very well aware in that regard of the heavy workload of all
18 concerned. Before the next witness is called I have a number of administrative
19 matters to briefly address.

20 First, I recall that the dates for this block are today, 7 November 2016, until
21 16 December 2016 and the Chamber shall not be sitting on 18 November 2016.

22 I also record that we will be sitting in courtroom 3 for the duration of this evidentiary
23 block.

24 Second, on 2 November 2016 the Chamber received an updated witness list for this
25 block and provided guidance on this by way of email on 3 November 2016. The

1 Chamber indicated that 16 witnesses, for one of whom arose 68(2)(b) application is
2 expected, and one reserve witness should be retained for this evidentiary block.

3 The Chamber wishes to thank the parties for their efforts to agree the list inter partes,
4 while it's recognized that certain matters may unexpectedly arise warranting changes
5 to the list. The Chamber also reiterates the importance of a calling party settling its
6 witness list sufficiently in advance of scheduled evidentiary blocks.

7 Next, the Chamber notes for the record that on 17 October 2016 it granted by way of
8 email a Prosecution request pursuant to regulation 42 to lift a redaction to document
9 DRC-OTP-0210-0027.

10 Further, for the purposes of timing for this witness, as indicated in the Chamber's
11 Rule 68(3) decision which bears the filing number 1602, the Prosecution shall have
12 one hour to examine the witness, which shall include the process of seeking
13 admission of the witness material under Rule 68(3) as well as its supplementary
14 examination of the witness.

15 The Defence has been permitted four hours for cross-examination of the witness.

16 Now we need to go into private session for the next part, so court officer, please.

17 (Private session at 9.40 a.m.)

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11 (Open session at 9.41 a.m.)
12 THE COURT OFFICER: [9:42:02] We are in open session, Mr President.
13 PRESIDING JUDGE FREMR: [9:42:09] Thank you, court officer.
14 (The witness enters the courtroom)
15 PRESIDING JUDGE FREMR: [9:43:09] Good morning, Mr Witness. Can you hear
16 me?
17 WITNESS: DRC-OTP-P-0976
18 (The witness speaks French)
19 THE WITNESS: [9:43:16] (Interpretation) Yes, I can hear you perfectly.
20 PRESIDING JUDGE FREMR: [9:43:19] Very well. Mr Witness, on behalf of this
21 Chamber I would like to welcome you to the courtroom. You are called to testify in
22 the case against Mr Bosco Ntaganda. You will be soon asked questions both by the
23 Judges and lawyers in this courtroom and in this connection I would like to guide you
24 as follows:
25 Please listen carefully to those questions. If you do not understand, feel free to ask

1 for the question to be repeated. We want you to tell the truth and tell us what you
2 saw, heard and sensed yourself. If you didn't see or hear it yourself but you found
3 out some other way, then you should explain how. Please testify just on that which
4 you remember. Don't guess. Don't make things up. There is nothing wrong in
5 saying "I don't know" or "I don't remember." Do you understand all this,
6 Mr Witness?

7 THE WITNESS: [9:44:39] (Interpretation) Yes, I have understood.

8 PRESIDING JUDGE FREMR: [9:44:42] Fine.

9 Mr Witness, protective measures are put in place to ensure that your identity is not
10 revealed to the public. It means in practice that the public cannot see your face and
11 that your voice is being disguised so that the public cannot recognize it. We will
12 refer you as "Mr Witness" only and ensure that your name and any other information
13 that risks revealing who you are is not broadcast to the public. Therefore, whenever
14 you need to describe anything that might reveal your identity, we will do so in
15 private session so that no one outside the courtroom can hear your answer.
16 Do you understand, Mr Witness?

17 THE WITNESS: [9:45:44] (Interpretation) Yes, I have understood.

18 PRESIDING JUDGE FREMR: [9:45:46] Very well. Now, Mr Witness, you will be
19 provided with a piece of paper, which you now have in your hand, and it contains the
20 solemn undertaking. So please now make your solemn undertaking to tell the truth
21 by reading out the declaration from the paper.

22 THE WITNESS: [9:46:13] (Interpretation) I solemnly declare that I shall speak the
23 truth, the whole truth and nothing but the truth.

24 PRESIDING JUDGE FREMR: [9:46:23] Very good, Mr Witness. It means that now
25 you are under oath and you need to be aware that it's an offence within the

1 jurisdiction of this Court to give false testimony. Do you understand that,

2 Mr Witness?

3 THE WITNESS: [9:46:45] (Interpretation) Yes, indeed.

4 PRESIDING JUDGE FREMR: [9:46:47] All right. And finally a few practical
5 matters you should have in mind when giving your testimony:

6 It's important to speak into the microphone, to speak clearly and to speak at a slow
7 pace. When a question is asked, it's very important, please do not respond
8 immediately but, rather, count in your head to at least three and only then give your
9 answer. This pause of three seconds is essential for proper interpretation and the
10 transcript.

11 If you have any questions during your testimony or if you feel that you need a break,
12 do not hesitate to let us know by raising your hand. We will then give you the
13 opportunity to speak.

14 Have you understood all that, Mr Witness?

15 THE WITNESS: [9:47:49] (Interpretation) Yes, I have understood.

16 PRESIDING JUDGE FREMR: [9:47:52] Very well. Then we will then start your
17 testimony and we will first give the Prosecution the floor so that it can take the
18 witness through the material it seeks to have admitted pursuant to Rule 68(3) of the
19 Rules.

20 Prosecution, please proceed.

21 MS SOLANO: [9:48:12] Thank you, your Honour.

22 QUESTIONED BY MS SOLANO:

23 Q. [9:48:18] Good morning, sir. Can you hear me well?

24 A. [9:48:24] Good morning. Yes, I can hear you.

25 Q. [9:48:30] My name is Julieta Solano. I represent the Prosecution. We have

1 met in the past.

2 MS SOLANO: [9:48:38] Your Honours, I will follow the procedure that has been
3 used before in relation to Rule 68(3) applications. And because my initial questions
4 are identifying, can we please move into private session, your Honour.

5 PRESIDING JUDGE FREMR: [9:48:54] Certainly.

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

7 (Private session at 9.49 a.m.)

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1 (Open session at 10.55 a.m.)

2 THE COURT OFFICER: [10:55:49] We're in open session, Mr President.

3 PRESIDING JUDGE FREMR: [10:55:51] Thank you, court officer.

4 So we have finished direct examination conducted by Prosecution. Now my
5 question goes to Ms Pellet, who is Legal Representative of Victims. Ms Pellet, you
6 have made a request for questioning of the witness. Could you provide us with the
7 update, if any?

8 MS PELLET: [10:56:23] (Interpretation) Yes, Mr President. Thank you.

9 I would like to retain my request with regard to point B of my request and the efforts
10 of demobilisation and reintegration of the child soldiers. I think I will need a little
11 bit longer than 5 minutes, unfortunately, but it will depend of course on the manner
12 in which the witness responds. I can't really give you a precise indication of the
13 required time, but in any case it will be longer than 5 minutes.

14 PRESIDING JUDGE FREMR: [10:57:01] Defence, any objection?

15 MR GOSNELL: [10:57:03] We do object, Mr President, mainly on the basis -- two
16 basis, Mr President: First, that the subject matter as defined is quite vague and,
17 second, the matter has already been discussed extensively (Redacted)
18 (Redacted)

19 Perhaps we need to go into private session, Mr President.

20 PRESIDING JUDGE FREMR: [10:57:26] Now let's move into private session, court
21 officer, please.

22 (Private session at 10.57 a.m.)

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- 15 (Open session at 11.15 a.m.)
- 16 THE COURT OFFICER: [11:15:21] We're in open session, Mr President.
- 17 PRESIDING JUDGE FREMR: [11:15:29] So now we also finished examination
- 18 conducted by Legal Representatives of Child Soldiers. We prolonged a bit this
- 19 session, so as I indicated we will now take our regular 30-minute break and we will
- 20 continue quarter to 12, but the last session will last only till 1 o'clock.
- 21 THE COURT USHER: [11:15:54] All rise.
- 22 (Recess taken at 11.15 a.m.)
- 23 (Upon resuming in open session at 11.47 a.m.)
- 24 THE COURT USHER: [11:47:07] All rise.
- 25 Please be seated.

1 PRESIDING JUDGE FREMR: [11:47:34] Before we continue with
2 cross-examination of our witness, I will deliver the Chamber's guidance in relation to
3 paragraph 33 of the decision on the conduct of proceedings.
4 On 6 November 2016, the Chamber provided a clarification via email on the conduct
5 of proceedings in response to submissions which had been made by the parties. The
6 Chamber now puts that clarification and the reasons therefore on record.
7 In its decision on the conduct of proceedings of 2 June 2015, the Chamber directed, at
8 paragraph 33, that, quote:
9 "As regards the use of documents that have not previously been admitted into
10 evidence the party intending to make use of the documents during cross-examination
11 shall provide a list, by email, no later than 24 hours before the commencement of the
12 cross-examination. ... Objection to the use of any other documents during
13 cross-examination shall be raised orally, prior to the start of the cross-examination."
14 Unquote.
15 Subsequently on 26 June 2016 the parties made further submissions in relation to the
16 appropriate timing for disclosure of this list.
17 The Defence submitted that the 24-hour period is not triggered until it is informed of
18 when examination-in-chief will be completed and, in any event, only commences after
19 the witness has taken the oath. It submitted that otherwise Defence strategy would
20 be revealed and that the Prosecution, quote, "has access to the witness right up until
21 the moment that the witness takes the stand." Unquote. The Defence referred to
22 certain ICTY jurisprudence adopting a similar procedure.
23 Submissions from the parties addressing this issue were also received via email on 11
24 and 13 October 2016.
25 The Chamber notes that its decision on the conduct of proceedings did not

1 incorporate the caveat that the witness must have taken the oath. Indeed, noting the
2 direction that objections to documents intended to be used on cross-examination be
3 raised prior to the start of cross-examination, it's clear that the Chamber's intention
4 was for the calling party to have 24 hours to review such material. The Chamber
5 therefore considers the Defence request to amount to a request for reconsideration.
6 In the Chamber's view the requisite standard has not been met. First, no new facts or
7 arguments have been raised which were not already known to the Chamber at the
8 time of rendering its decision.
9 Second, no clear error of reasoning has been demonstrated.
10 And third, the Chamber does not consider that reconsideration is to prevent injustice.
11 The Chamber notes in this regard that, contrary to the Defence submissions, the
12 calling party is, pursuant to Familiarisation Protocol, not permitted to have
13 substantive contact with the witness in the 24 hours preceding the witness's
14 testimony, unless otherwise ordered by the Chamber.
15 Further, the Chamber notes that the timing of provision of such a list is a matter upon
16 which practice varies among different Chambers. The Ntaganda Trial Chamber, for
17 example, directed that such list be provided three full working days in advance, and
18 Trial Chamber IX has directed that such list be provided 24 hours prior to the
19 testimony starting rather than just prior to the cross-examination starting.
20 In these circumstances the Chamber finds no reason to reconsider its decision and
21 reaffirms the requirements set out in paragraph 33 of the decision on the conduct of
22 proceedings; namely, that in principle the cross-examining party shall provide a list of
23 the documents it intends to use with a witness at least 24 hours before the
24 commencement of its cross-examination, including in cases where this would entail
25 transmitting the list when the testimony of the witness is yet to commence. A

1 cross-examining party may, however, apply to the Chamber to delay provision of
2 such a list in particular circumstances, for example, where, exceptionally, witness
3 preparation may not have completed.

4 That concludes the Chamber's ruling.

5 Now we can move to cross-examination of the witness.

6 Mr Gosnell, do you want to start in open session, or is there any reason that forces
7 you to start in closed session or private session?

8 MR GOSNELL: [11:54:30] I will be starting, Mr President, with some biographical
9 details, so private session will be required.

10 PRESIDING JUDGE FREMR: [11:54:39] Clear to me. All right.

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

12 (Private session at 11.54 a.m.)

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11 (Open session at 1.03 p.m.)
12 THE COURT OFFICER: [13:03:11] We are in open session, Mr President.
13 PRESIDING JUDGE FREMR: [13:03:27] Thank you, court officer.
14 So we are taking our regular lunch break. We will continue at 2.30.
15 And before we break, I would like to express my special thanks to the English
16 interpreter for his excellent job, regardless of really complex circumstances. Thank
17 you very much. Now we break and we will resume half past 2.
18 (Recess taken at 1.03 p.m.)
19 (Upon resuming in open session at 2.31 p.m.)
20 THE COURT USHER: [14:31:03] All rise.
21 Please be seated.
22 PRESIDING JUDGE FREMR: [14:31:28] Good afternoon, everybody. Before we
23 continue with cross-examination of our witness, I will deliver the Chamber's oral
24 decision, and it's oral decision on in-court protective and special measures for
25 Witnesses P-898 and P-918. It will be issued in open session but with a short

1 recourse to private session as concerns a small part of this decision.

2 On 11 October 2016, the Prosecution filed a request seeking in-court protective
3 measures pursuant to Rule 87 of the Rules, in the form of face and voice distortion
4 and the use of a pseudonym during testimony, for a number of witnesses scheduled
5 to testify during the seventh evidentiary block, as well as various special measures
6 under Rule 88 for certain of those witnesses. It's filing number 1579.

7 At this time, the Chamber will address the request in respect of two witnesses,
8 namely P-898 and P-918.

9 The Prosecution submits that the requested protection measures are necessary on the
10 basis of objectively justifiable risks to the security and well-being of the witnesses and
11 their family members. In relation to P-898, the Prosecution further requests a special
12 measure under Rule 88, namely that the witness be shielded from the accused in the
13 courtroom. For P-918, the Prosecution requests that the witness be granted in-court
14 assistance and reading assistance.

15 On 25 October 2016, the Defence filed its response, it's filing number 1593, in which it
16 opposes the requested protective measures for both witnesses. Emphasising that
17 accused's rights to a public hearing, it submits that the Prosecution fails to
18 demonstrate any objectively justifiable risk of post testimonial retaliation. In this
19 regard it argues that, first, the Prosecution's reliance on approaches to P-898 is
20 misguided; second, P-898's story is already widely known; and third, P-918 didn't
21 raise any security concerns and her mere wish to avoid talk from the community or
22 criticism from colleagues is insufficient to meet the threshold for protective measures.
23 The Defence also objects to P-898 being shielded from the accused, arguing that the
24 Prosecution failed to provide any justification for such an extreme measure which is
25 to be considered only in special circumstances.

1 The Legal Representative of former child soldiers filed a response on 28 October 2016,
2 it's filing number 1599, in which she requests that the Prosecution's request be
3 granted.

4 On 3 November 2016, the Chamber received the VWU's assessment for P-898, in
5 which it was recommended that the same requested protective measures be granted.

6 On 7 November 2016, the Chamber received a vulnerability assessment for P-898
7 from the VWU, in which it is recommended that, first, direct eye contact between the
8 witness and the accused be avoided by use of a screen; second, a familiar support
9 assistant be able to sit next to the witness; third, questions to be put in a
10 non-confrontational, non-pressuring manner, and fourth, the witness be observed
11 closely and additional breaks be taken, if necessary.

12 On the basis of the information and submission provided, the Chamber has
13 conducted an individual assessment in respect of each of the two witnesses. In
14 assessing whether there exists an objectively identifiable risk, the Chamber recalls that
15 there are reported instances where other witnesses, including both insider and crime
16 base witnesses, were allegedly threatened as a result of their involvement with the
17 Court. In that regard, the Chamber has previously held that the general security
18 situation in a region may be a relevant consideration. In this instance, it is noted that
19 both P-898 and P-918 presently reside in an area where former UPC militia members
20 are present or continue to have influence. In addition, P-898 and P-918 are not
21 currently in the ICC Protection Programme.

22 Further, with regard to P-898, the Chamber has had particular regard to the VWU's
23 assessment that public testimony would expose the witness to significantly enhanced
24 levels of risk and might trigger retaliation, and that protective measures would
25 reduce such risk. The Chamber also notes the witness's profile and the extent to

1 which he may be recognisable in his community, and the alleged contacts already
2 reported by the witness. With reference to the Defence submissions that the
3 witness's story is already widely known, the Chamber notes that the witness is not
4 currently known as a Prosecution witness.

5 Concerning P-918, the Chamber notes the witness's current occupation as well as the
6 witness's close family connection with other individuals, including with former UPC
7 members and other protected witnesses in this case.

8 In light of the above, the Chamber is satisfied that there exists an objectively
9 justifiable risk with respect to the security and well-being of each of the two witnesses
10 and their family members, warranting the protection of their identity from the public.

11 The Chamber further finds that the in-court protective measures sought do not
12 unduly infringe upon the rights of the accused, given that the Defence will be able to
13 see the witnesses give evidence at trial and hear their voices without distortion.

14 Accordingly, and pursuant to Rule 87 of the Rules, the Chamber grants the measures
15 of use of pseudonym for the purposes of the trial and voice and face distortion during
16 testimony for Witness P-898 and P-918. For P-918, this decision is without prejudice
17 to any reconsideration that might be warranted by the outcome of the pending VWU
18 assessment.

19 And now for the next part of this ruling, I would like to ask the court officer to please
20 briefly go into private session.

21 (Private session at 2.40 p.m.)

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15 (Open session at 2.42 p.m.)
16 THE COURT OFFICER: [14:42:30] We are back in open session, Mr President.
17 PRESIDING JUDGE FREMR: [14:42:33] I think we can continue even without
18 witness.
19 Therefore, on the basis of the VWU's assessment and pursuant to Rule 88, the
20 Chamber decides that the special measures recommended by the VWU shall be
21 granted. Regarding the special measures requested in respect of P-918, the Chamber
22 defers its decision until receipt of the pending VWU assessment. This concludes the
23 Chamber's ruling.
24 Now, for the record, Mr Witness is back and we can then continue with his
25 cross-examination.

1 Mr Gosnell, just for your information, according to our measuring, you so far
2 exhausted one hour six minutes, which means that you still have at your disposal
3 almost three hours, so now please proceed.

4 And habitual question, do you want to proceed in private, or in open session?

5 MR GOSNELL: [14:43:34] I don't think I have any choice, Mr President, but to
6 remain in private session.

7 PRESIDING JUDGE FREMR: [14:43:38] Just for information of public, this witness is
8 a protected one, which means that he was granted that his identity will not be
9 revealed to public within the framework of his protection, which means as soon the
10 question could reveal his identity, which is now the case, we will have to move into
11 private session. And unfortunately, in this case, it probably will take most of the
12 time needed for this cross-examination.

13 Now, court officer, please move into private session.

14 (Private session at 2.44 p.m.)

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15 (Open session at 4.30 p.m.)
16 THE COURT OFFICER: [16:30:27] We're in open session, Mr President.
17 PRESIDING JUDGE FREMR: [16:30:37] Thank you, court officer. So first update on
18 our time measuring so far, Mr Gosnell used two hours and 52 minutes, which means
19 that for tomorrow there is still one hour and eight minutes remaining.
20 Mr Gosnell, for the sake of planning, do you think you will need all that time?
21 MR GOSNELL: [16:30:58] Probably, Mr President.
22 PRESIDING JUDGE FREMR: [16:31:01] All right. Just to prepare Prosecution for
23 their next witness. All right.
24 Mr Witness, it's the end of your testimony for today. We will continue tomorrow.
25 And it's my duty to remind you that in the meantime until tomorrow you must not

- 1 discuss your testimony with anybody else. Do you understand that?
- 2 THE WITNESS: [16:31:29] (Interpretation) I do perfectly.
- 3 PRESIDING JUDGE FREMR: [16:31:34] So thank you very much for your today
- 4 testimony and we will continue tomorrow 9.30.
- 5 Now court is adjourned.
- 6 THE COURT USHER: [16:31:48] All rise.
- 7 (The hearing ends in open session at 4.31 p.m.)