

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 Wednesday, 16 November 2016  
8 (The hearing starts in open session at 11.32 a.m.)  
9 THE COURT USHER: [11:32:36] All rise.  
10 The International Criminal Court is now in session.  
11 Please be seated.  
12 PRESIDING JUDGE FREMR: [11:33:10] Good morning, everybody.  
13 Court officer, please call the case.  
14 THE COURT OFFICER: [11:33:15] 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: [11:33:31] Thank you, court officer.  
19 Appearances, starting with Prosecution.  
20 MR IVERSON: [11:33:38] Good morning, your Honours. Kristy Sim,  
21 Nicole Samson and Eric Iverson for the Prosecution.  
22 PRESIDING JUDGE FREMR: [11:33:45] Thank you, Mr Iverson.  
23 Defence now, please.  
24 MR BOURGON: [11:33:52] (Interpretation) Good morning, Your Honour. For the  
25 Defence this morning, Han Catherine Morin, Margaux Portier and myself, Stéphane

1 Bourgon. Thank you, your Honour.

2 PRESIDING JUDGE FREMR: [11:34:02] Thank you, Mr Bourgon.

3 And I also note for the record that Mr Ntaganda is present as well.

4 Legal Representatives Of Victims, please.

5 MS PELLET: [11:34:20] (Interpretation) Thank you, your Honour. The former child  
6 soldiers are represented by Mohamed Abdou and by myself, Sarah Pellet, counsel  
7 with the Office of Public Counsel for Victims.

8 MR SUPRUN: [11:34:34] (Interpretation) Good morning, your Honour, your  
9 Honours. For the victims of the attacks this morning, Anne Grabowski, associate  
10 lawyer; and myself, Dmytro Suprun, counsel with the Office of Public Counsel for  
11 Victims.

12 PRESIDING JUDGE FREMR: [11:34:48] Thank you, Ms Pellet. Thank, Mr Suprun.  
13 We will start by delivering our decision on Defence urgent request for stay of  
14 proceedings. That request for stay of proceedings is contained in filing number 1629.  
15 In May 2016, the Chamber became aware of the fact that the Prosecution had been  
16 granted access to additional non-privileged calls of the accused, and since that time  
17 has twice, in June and September 2016, urged the Prosecution to conclude its  
18 investigations in an expeditious manner and make all relevant disclosure. The  
19 Chamber emphasised that such investigations cannot be permitted to continue  
20 indefinitely in a manner which could impact the proceedings in this case.

21 On 7 November 2016, the Prosecution filed a Communication of the Disclosure of  
22 Evidence. This is filing number 1616, in which the Prosecution indicated that it was  
23 disclosing to the Defence copies of the non-privileged contact and visitor logs, and  
24 recordings of the non-privileged telephone conversations, of Mr Ntaganda and  
25 Mr Lubanga from 22 March 2013 onwards. I will hereafter refer to this filing as the

1 "Prosecution notice." It was indicated in the Prosecution notice that the Prosecution  
2 had obtained access to these records and recordings pursuant to a decision of the  
3 Single Judge of Pre-Trial Chamber I dated 18 September 2015 in the context of  
4 investigations conducted under Article 70 of the Statute.

5 On 14 November 2016, the Defence filed an urgent request for a stay of proceedings.

6 And I will refer hereafter to this as the request.

7 Having been directed to do so during the hearing on 14 November 2016, the

8 Prosecution filed a response opposing the request on 15 November 2016.

9 The Legal Representatives of Victims also filed a joint response on 15 November 2016,  
10 in which they oppose the request.

11 The Chamber does not intend to repeat or summarise the submissions made by any of  
12 the participants as these are fully on the record, but will address them to the extent  
13 necessary in its reasoning.

14 As a preliminary matter, although the Defence application is titled as a request for a  
15 stay of proceedings, the Chamber notes that the Defence made no submissions in the  
16 request in relation to the Court's jurisprudence on the standard applicable to a request  
17 for a stay of proceedings. The terms "adjournment", "suspension" and "stay" appear  
18 to have been used almost interchangeably throughout the request. The Chamber  
19 considers that what is in fact being requested is an immediate adjournment. It has  
20 therefore considered the request on that basis and according to that standard, rather  
21 than against the more stringent standard required to obtain a stay of proceedings.

22 The Chamber notes that an adjournment is a discretionary remedy arising from the  
23 Chamber's power under Article 64 to control the conduct of proceedings in a fair and  
24 expeditious manner.

25 In adjudicating the request, the Chamber emphasises that it has focused this ruling

1 only on the question of whether an immediate adjournment is warranted, and  
2 nothing in this decision should be read as prejudicing any further request from either  
3 party related to the matters raised in the Prosecution notice.

4 The request is founded on two grounds:

5 First, on an alleged potential prejudice in the cross-examination of Prosecution  
6 witnesses in a context in which allegations of coaching of potential Defence witnesses  
7 have been made; and

8 Second, to enable the Defence to assess the potential impact on the fairness of the  
9 proceedings, and to identify appropriate remedies as soon as possible.

10 In relation to the first ground, the Chamber notes that the allegations of witness  
11 coaching are based on the Prosecution's assessment of the accused's own conduct, as  
12 reflected in certain of the disclosed recordings. In such circumstances, the Chamber  
13 considers that the accused is best placed to advise the Defence team in relation to  
14 these applications, including in respect of whether lines of cross-examination being  
15 pursued may be compromised or prejudiced by his prior conduct. Or, should these  
16 coaching allegations be inaccurate, the Chamber considers that the accused is equally  
17 well-placed to assure the Defence team that any allegations of witness coaching are  
18 not well-founded.

19 The Chamber further notes that allegations of the coaching of potential Defence  
20 witnesses, based on the content of the accused's non-privileged telephone calls, have  
21 previously been raised inter partes before this Chamber in the context of the litigation  
22 on restrictions on Mr Ntaganda's contacts. The Defence team has therefore been on  
23 notice in this regard since prior to the commencement of the trial. The Defence must  
24 be presumed to have previously discussed the issue in some depth with Mr Ntaganda  
25 and to have been conscious of it in conducting both its investigations and

1 cross-examinations to date. Even should that not be the case, the Defence cannot  
2 now sustainably argue that a situation of the accused's own making unfairly  
3 prejudices his rights.

4 In relation to the second ground, the Chamber acknowledges at the outset the  
5 voluminous nature of the disclosed material. The Chamber further acknowledges  
6 the fact that the Defence is understandably not currently in a position to identify  
7 specific instances of concrete prejudice arising from the content of the disclosed  
8 material. It is undisputed that the Defence must have the opportunity to review the  
9 material to the extent relevant, as well as to consider the circumstances of the  
10 Prosecution's access to the material and, thereafter, to seek remedies for any such  
11 concrete prejudice which may have arisen. The question presently before the  
12 Chamber, however, is whether this necessitates an immediate adjournment of the  
13 proceedings. In the Chamber's view, and for the reasons which follow, the Chamber  
14 does not consider that to be the case.

15 First, the Chamber notes that the disclosed material must be considered in its  
16 appropriate context. The nature of the material is such that it does not relate directly  
17 to the charges, and, as mentioned above, relates to allegations the nature of which the  
18 Defence has been on notice of since prior to the commencement of trial.

19 From the Chamber's own review of a limited number of Mr Ntaganda's  
20 non-privileged calls, in the context of the previous litigation on restrictions in this case,  
21 it is apparent that significant portions of the recordings will not have any direct  
22 materiality to these proceedings. To the extent that certain information may be  
23 relevant, it appears at this stage, on the basis of the information currently before the  
24 Chamber, that such relevance would relate to peripheral issues. The information  
25 may of course, as already mentioned, impact aspects of Defence strategy. This,

1 however, does not provide a ground for immediate adjournment, and such  
2 considerations could also, for example, be factored into the time granted for  
3 preparation of the Defence case.

4 Indeed, the Chamber does not consider that the length of the Article 70 investigation,  
5 or of the temporary nondisclosure, in itself supports the request for an immediate  
6 adjournment. Such submissions could be considered at the time of arguing specific  
7 instances of concrete prejudice. Similarly, even if it should in due course be  
8 established that the fairness of the proceedings has already been impacted, including  
9 as hypothesised by the Defence from the Prosecution having had access to aspects of  
10 Defence strategy, the Chamber does not consider that this would be capable of being  
11 remedied by an immediate adjournment.

12 The Chamber does, however, recognise the resource demands likely to be placed on  
13 the Defence team in reviewing the disclosure and assessing potential prejudice. It is  
14 therefore noted in this regard that should additional assistance be required, such a  
15 request should first be addressed to the Registry. Further in this regard, the  
16 Chamber finds incumbent upon the Prosecution to provide such reasonable  
17 information as may assist the Defence.

18 The Chamber also notes that the Prosecution has now provided responses to the  
19 majority of the queries raised in paragraph 17 of the request, or, as applicable, has  
20 given an undertaking to provide the relevant information. In that regard, the  
21 Chamber notes the Prosecution's undertaking to provide redacted copies of its related  
22 ex parte filings and to disclose all available summaries of recordings on a rolling basis  
23 between now and 25 November 2016. The Prosecution has additionally responded  
24 to the Defence concern that members of the Defence team may have been subjected to  
25 telephone surveillance, or been the target of the Article 70 investigation, by

1 confirming this has not been the case. The Prosecution has further responded to the  
2 Defence queries regarding the degree of access which the Prosecution team in this  
3 case had to the material, and whether the material was screened prior to such access,  
4 and confirmed that the material does not include any phone calls made to privileged  
5 persons.

6 Relatedly, the allegations in the Prosecution notice must be presumed to be based on  
7 the content of the recordings which the Prosecution has reviewed to date. This  
8 apparently amounts to a much more limited volume of recordings than the total  
9 number disclosed, of approximately 450, none of which were made after the  
10 commencement of trial. In addition to the forthcoming disclosure of all summaries,  
11 the Chamber considers that the Prosecution should forthwith identify for the Defence  
12 the reviewed recordings in question, in order to assist the Defence in prioritising its  
13 review. Further, to the extent that this is not already apparent from the manner in  
14 which the recordings are categorised in TRIM, the Prosecution should provide the  
15 Defence with any information it has which may assist to catalogue and identify calls,  
16 including, for example, based on the identity of the caller and counterpart and/or the  
17 date on which the call was made.

18 In summary, in the Chamber's view, a substantiated submission of ongoing prejudice  
19 which would be remedied by immediate adjournment -- as opposed to possible other  
20 remedial measures -- has not been established at this time and the Defence request is  
21 therefore rejected.

22 Finally, the Chamber notes that it is reviewing its decisions bearing filing numbers  
23 1364 and 1494 with a view to reclassifying them or providing lesser redacted versions.  
24 That concludes the Chamber's ruling.

25 And in light of this ruling, we will be proceeding with the cross-examination of

1 Witness P-911 today. We now will take a short break in order for the witness to be  
2 brought to the courtroom and for the parties to amend the composition of their teams,  
3 if necessary. I believe that ten minutes should be enough for that.

4 And Mr Bourgon, you would like to address the Chamber on --

5 MR BOURGON: [11:52:25] Yes, I would like to address the Chamber, with the leave  
6 of the Chamber, Mr President.

7 PRESIDING JUDGE FREMR: [11:52:29] All right, please proceed.

8 MR BOURGON: [11:52:33] Thank you very much.

9 Mr President, the Defence is of course grateful to the Chamber for taking the time to  
10 deliberate and to render this ruling. That being said, further to the decision that we  
11 have just heard on the Defence urgent request for stay of proceedings, understood  
12 now to be a request for immediate adjournment, the Defence intends to, bearing in  
13 mind the nature and the importance of the issues raised in this request, as well as,  
14 more importantly, the serious prejudice alleged therein, of course the Defence will be  
15 seeking leave to appeal the decision at the earliest opportunity.

16 Mr President, at this time, given the urgency of the matter, the Defence makes an oral  
17 application for suspensive effect of the Trial Chamber's decision.

18 Mr President, such relief has been granted in the past by this Chamber. I refer to  
19 filing or decision 415 dated 18 December 2014. The title of that decision,

20 Mr President, was "Decision on urgent request on behalf of Mr Ntaganda seeking  
21 partial suspensive effect of the decision on the Prosecution request for restrictions on  
22 contact and the Defence request for access to logs."

23 Mr President, in this decision, the Chamber held that the power to confer suspensive  
24 effect was only given to the Appeals Chamber in accordance with Article 82(3) of the  
25 Statute and Rule 156(5). However, the Trial Chamber also held that pursuant to



1 Article 64(3)(a) of the Statute, the Chamber has the power to suspend execution of  
2 certain orders if this is necessary to facilitate the fair and expeditious conduct of the  
3 proceedings.

4 Mr President, we respectfully submit that this is exactly the situation we are in.

5 Should leave to appeal be granted as the Defence will request, the relief sought in its  
6 motion, a partial stay or an immediate adjournment regardless of the name, will  
7 become moot as further witnesses will be heard in the meantime. This is precisely  
8 the aim of the Defence oral application this morning for suspensive effect.

9 Mr President, although the Chamber has now denied the Defence request, it  
10 nonetheless recognised earlier in week the apparent and prima facie nature of the  
11 request by delaying any further cross-examination until the request was adjudicated  
12 upon.

13 The apparent prima facie prejudice to the accused remains unchanged, despite the  
14 Defence gaining access to the TRIM, because we now have access to the TRIM, and  
15 despite the Prosecution disclosing some of its draft summaries.

16 Mr President, it is well established that in adjudicating the Defence request for leave  
17 to appeal, the merits of the request itself is unrelated. No matter how confident the  
18 Chamber is with the merits of its own decision or no matter how much the Chamber  
19 is confident that the Defence appeal is likely to succeed or to fail, these matters are not  
20 related to our request this morning. Our request this morning is a request for  
21 suspensive effect so that we have time to request leave to appeal.

22 What is important is what happens now if we proceed with witnesses and then leave  
23 to appeal is granted? And what happens now if we proceed with witnesses and  
24 ultimately the Defence appeal succeeds? Then we will find ourselves in a situation  
25 where the trial itself in its entirety will be jeopardised. The prejudice to the accused

1 of conducting cross-examinations in these circumstances will be increased and might  
2 very well lead to a full stay of proceedings.

3 Mr President, request for stay of proceedings are not ordinary requests. Even if we  
4 call it a request for immediate adjournment, these are not ordinary requests and they  
5 are not submitted without careful consideration. These are requests of the utmost  
6 seriousness and they are not submitted lightly. The one we submitted is no different.  
7 The little time requested now with this oral application to suspend the effect of the  
8 Trial Chamber's decision is very little compared to the potential, the possibility of  
9 stopping the entire trial on this basis.

10 The Defence request, Mr President, was not frivolous. The Defence request rests on  
11 a real situation which the facts of which are fully established. The Prosecution has  
12 gained access to 20,000 audio files of conversations involving the accused. The  
13 Prosecution has compiled 450 summaries of these conversations.

14 Mr President, it simply cannot be said that the Prosecution summarised the first 450  
15 conversations it came upon. The Prosecution of course made a selection. The  
16 selection of all of this information which was exactly comes from the accused. This  
17 is what the prejudice is related to, and we understand that the Trial Chamber initially  
18 recognised this potential prejudice, regardless of whether the Trial Chamber now  
19 agrees with it or not.

20 Mr President, what we are dealing with is a violation of the right of the accused to  
21 remain silent by obtaining his telephone conversation every day. This is not an  
22 everyday violation. It is not -- it's not an everyday matter when the Defence must  
23 now cross-examine, knowing that the Prosecution has millions -- millions, well, I  
24 don't want to -- let's not get carried away -- thousands of pages of material involving  
25 Mr Ntaganda and we don't know what is in these pages and we are expecting to

1 continue to cross-examine.

2 I don't want to say more on the merits of the application. All I'm submitting at this  
3 time is that it is necessary to suspend the decision of the Trial Chamber, at least until  
4 we make a request for leave to appeal, and we can take it at that time.

5 The Defence request for suspensive effect, Mr President, as the request that was filed  
6 for an immediate adjournment, does deserve careful consideration. This is why we  
7 argue that suspensive effect at this time is the proper course of action and we  
8 undertake, if such suspensive effect is granted, to submit our leave to request  
9 application as soon as possible and within any delay set by the Trial Chamber.

10 Respectfully submitted, Mr President. Thank you.

11 PRESIDING JUDGE FREMR: [12:01:35] Thank you, Mr Bourgon.

12 Now I would like to hear counter-party and participants on that. Prosecution,  
13 Ms Samson, please.

14 MS SAMSON: [12:01:45] Thank you, Mr President. The Prosecution opposes the  
15 request for suspensive effect of the Chamber's decision today on several bases.  
16 Importantly the Defence has not established that there's a risk of irreparable prejudice  
17 should the trial continue while the Defence makes its application for leave to appeal.  
18 There is nothing that would be rendered moot should we hear the testimony  
19 of -- continued testimony of Witness 911 and witnesses thereafter on the basis that the  
20 Chamber has already articulated.

21 First of all, the information that the Defence seeks to access is information that they  
22 already have access to in the best possible form. They have at their disposal the  
23 accused, who participated in the conversations that the Prosecution has been able to  
24 listen to in some very small part. So, to the extent that the Defence needs to know  
25 how and whether their cross-examination of witnesses to come has been affected in

1 any way, they ought to immediately and ought to have already spoken directly to  
2 Mr Ntaganda to understand those very issues. And receiving the summaries that  
3 the Prosecution has prepared of a very small number of those conversations, some 5  
4 percent in total, will only give them a very small piece of an intricate puzzle to which  
5 Mr Ntaganda has all the answers.

6 So, in our submission, there is no prejudice to the accused himself of continuing and  
7 there is every available avenue for Defence counsel to understand the scope of any  
8 implications to cross-examination questions it wishes to put to Witness 911 and  
9 witnesses coming thereafter.

10 Additionally, there is still a large measure of speculation in what the Defence has put  
11 forward today, and we heard comments such as, there may very well be an issue for  
12 them to understand more fully, what happens if we were to continue today and the  
13 appeal -- leave to appeal why granted or eventually the application -- the appeal itself  
14 granted and this is all speculative. There is no concrete prejudice that the Defence  
15 has put forward and none that can in any event not be remedied in full by having full  
16 and frank discussions with counsel's client.

17 So, in summary, Your Honour, the Prosecution strongly opposes the request for  
18 suspensive effect and we request that the application be denied.

19 Thank you.

20 PRESIDING JUDGE FREMR: [12:05:01] Thank you, Ms Samson.

21 And as I indicated, now Legal Representatives Of Victims. Ms Pellet first.

22 MS PELLET: [12:05:13] (Interpretation) Thank you very much, your Honour. To  
23 not make the Chamber lose any time I'd like to reiterate the arguments which were in  
24 the written statements, and we continue to be opposed to the suspension, for the  
25 reasons outlined therein, "whether in the short term to prepare a request for leave to

1 appeal or in the longer term as set out in its application. I would also reiterate that  
2 this application also violates the rights of victims to see this trial finally come to an  
3 end. This is a trial they've been waiting for, for a very long time, and they have been  
4 waiting all the more impatiently for the decision. Thank you very much your Honour.

5 PRESIDING JUDGE FREMR: [12:06:14] Thank you, Ms Pellet. Mr Suprun.

6 MR SUPRUN: [12:06:16] (Interpretation) Thank you very much, your Honour. I'm  
7 also opposed to the Defence application concerning suspensive effect, because any  
8 party requesting suspensive effect, there has to be a very significant risk of irreparable  
9 prejudice for the parties, as well as for the proceedings in a general way if they are to  
10 do so.

11 We haven't heard this morning any element, any objective real element which would  
12 demonstrate what type of prejudice the accused and Defence could have if suspensive  
13 effect is not granted.

14 Now, where it concerns in a general way, even if the Appeals Chamber will reverse  
15 the decision of your Chamber, it's up to the Trial Chamber to assess at the end of the  
16 trial the probative value of the evidence presented during this period until the  
17 decision of the Appeals Chamber.

18 So I therefore join the comments made by my colleague concerning the prejudice that  
19 the victims would suffer if the proceedings in this case are delayed on a speculative  
20 and unfounded basis.

21 PRESIDING JUDGE FREMR: [12:07:38] Thank you, Mr Suprun.

22 And before we break, I give the floor to Mr Bourgon. Please.

23 MR BOURGON: [12:07:44] Thank you, Mr President.

24 I did not envisage replying to the arguments of the first legal representative of victims,  
25 but I will answer and reply to the arguments put forward by the second legal

1 representative.

2 Mr President, what we hear in terms of argument is that there is no real prejudice that  
3 he has heard about. Of course, this has to do with the merits of the motion, but I  
4 really fail to see what more my colleague requires to understand that the Prosecution  
5 being in possession of thousands of pages of conversation of the accused of which the  
6 Defence is unaware, at the time when the Defence needs to cross-examine, I don't  
7 know what more my colleague requires.

8 Mr President, we set out upon doing a cross-examination. This is explained in the  
9 motion, but I guess my colleague needs me to go over this again. We set out to do  
10 cross-examination. We rely on Defence investigations. Defence investigations  
11 relate to potential witnesses. When we meet with potential witnesses, we need to  
12 assess whether the information we get from potential witnesses is reliable enough to  
13 be raised during cross-examination, because we know that whatever we say in a  
14 cross-examination might very well come back and bite us, so we have to do a careful  
15 assessment. Now we do not know which of our potential witnesses have been  
16 involved in this alleged overall scheme.

17 I come, Mr President, to -- well, maybe one last point before turning to the  
18 Prosecution.

19 The violation of the rights of the victims to have this trial heard expeditiously.

20 Mr President, we have said on many occasions we have the utmost of respect for the  
21 victims. If this trial is taking place, to a large extent it is in order to allow the victims  
22 to understand and to know what happened.

23 But, Mr President, I don't think that any victim is interested in getting a trial or the  
24 result of a trial that is based on an unfair proceedings. So I don't think that this  
25 argument should be given any weight at this time. We always, and the Chamber

1 always tries to get an expeditious trial.

2 I turn quickly to the Prosecution. My colleague says that we have not established a  
3 risk of prejudice. Well, the risk of prejudice has been established very clearly, and I  
4 just described it a few seconds ago, in the sense of the information in the possession of  
5 the Prosecution that we are not aware of. Do we have access to the accused? Yes  
6 we do. Do we ask the accused who he spoke to and what he might have said in  
7 conversation? Of course we do. Does that mean that we know and that the  
8 accused remembers what he might have said in 20,000 conversations? No, it does  
9 not. Does it mean that the accused understood what -- the implications of what he  
10 was discussing and when he did it had? No, it does not.

11 The issue of witness coaching, the way it is brought forward by the Prosecution is, in  
12 our view, absolutely wrong. Witness coaching has nothing to do with what has  
13 happened in the past. But now we are told that there is witness coaching, so we  
14 need to know what is in this material before we can continue with our investigations.  
15 We need to know why the investigators working for the Defence, if that will change  
16 the way they do their business. That is the issue at hand, Mr President. And it is  
17 no small issue.

18 The last thing, of course, is the issue of speculation. There is no speculation. The  
19 Chamber very well addressed the issue by saying we have not been able to identify a  
20 concrete prejudice based on any one conversation. Of course, we don't have the  
21 material, how can we do that? But is there a possibility that the Prosecution in all of  
22 this material, whether it's 5 per cent, 10 per cent, or 20 per cent, is there any possibility  
23 that they have information that they should not have, that comes from the strategy of  
24 the Defence and that changes this whole case? Yes, there is a strong possibility. It's  
25 no speculation on the part of the Defence, Mr President. It is necessary, in our view,

1 to grant this application for suspensive effect so that we can get a decision on leave to  
2 appeal. And, of course, should that decision be denied, we will abide with the  
3 decision of the Chamber, but the Chamber needs to see our arguments before.  
4 Should that application be granted, the Chamber knows very well that the first thing  
5 we will do, it's no surprise, we will apply to the Appeals Chamber for suspensive  
6 effect.

7 But, Mr President, I ask you respectfully to consider the importance of what we have  
8 before us; thousands of pages of material coming from the accused in the possession  
9 of the Prosecution that the Defence is not aware of. That in itself says it all,  
10 Mr President.

11 Thank you very much.

12 PRESIDING JUDGE FREMR: [12:13:46] Thank you, Mr Bourgon.

13 And before we break, one comment from my part. To be fair to Ms Samson, when  
14 you quote her, you omitted one important word, because if you look at page 14, line  
15 16, she said:

16 "Defence has not established that there is a risk of irreparable prejudice." So you  
17 omitted this word and, in my view, this word is relevant.

18 Now we break.

19 THE COURT USHER: [12:14:24] All rise.

20 (Recess taken at 12.14 p.m.)

21 (Upon resuming in open session at 12.39 p.m.)

22 THE COURT USHER: [12:39:02] All rise.

23 Please be seated.

24 PRESIDING JUDGE FREMR: [12:39:37] I will first deliver the Chamber's decision on  
25 Defence recent request for suspensive effect.



1 The Chamber has previously set out its position on the applicable law relating to a  
2 request for suspensive effect. This is contained in the decision with filing number  
3 415. Therein, at paragraph 5, the Chamber noted that the power to grant suspensive  
4 effect should be exercised if it is necessary to facilitate the fair and expeditious  
5 conduct of proceedings.

6 The Chamber has considered the oral submissions this morning in the context of the  
7 submissions made on the underlying request. In the Chamber's view, the Defence  
8 has not established a risk of irreparable harm. Indeed, in the Chamber's view, the  
9 Defence has largely repeated its submissions regarding potential prejudice as made in  
10 the context of the underlying request. The immediate effect of the relief requested  
11 would be equivalent to the Chamber granting reconsideration of its decision not to  
12 immediately adjourn the proceedings.

13 In this regard, the Chamber also notes that the risk of such irreparable harm was  
14 clearly within its consideration when rejecting the Defence request for an immediate  
15 stay of proceedings. The Chamber therefore rejects the request for suspensive effect.  
16 This ruling is, of course, without prejudice to the Chamber's position on the Defence's  
17 foreshadowed request for leave to appeal, as well as any further request arising from  
18 the recent disclosure of audio recordings.

19 This concludes the Chamber's ruling, and the Registry should please bring the  
20 witness to the courtroom.

21 Mr Bourgon.

22 MR BOURGON: [12:42:12] Thank you, Mr President.

23 The Defence is it grateful for the Chamber's decision. Before the witness is brought  
24 in, there is one issue I would like to submit to the Chamber.

25 PRESIDING JUDGE FREMR: [12:42:22] So, court officer, please hold on.

1 Mr Bourgon.

2 MR BOURGON: [12:42:26] Mr President, I don't think this will be a problem, but  
3 considering that the Prosecution team today is different from the one that was present  
4 with the Witness 918, I just want to make sure that the same ruling will apply, and the  
5 Defence is submitting an application pursuant to paragraph 34 of the decision on  
6 conduct of proceedings, and our application is to use the statements and the  
7 testimony of witnesses P-11 -- P-911, P-898 and P-918 as a means to challenging each  
8 other's credibility and ascertaining the truth. This was already discussed before the  
9 Chamber. Reference is transcript 157, page 36 to page 44.

10 If we can move into private session for a brief moment, Mr President.

11 PRESIDING JUDGE FREMR: [12:43:24] Certainly.

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

13 (Private session at 12.43 p.m.)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

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17 (Open session at 12.56p.m.)

18 THE COURT OFFICER: [12:56:15] We are back in open session, MrPresident.

19 PRESIDING JUDGE FREMR: [12:56:19] Yes. So since the Chamber doesn't find any  
20 sense in starting cross-examination of the witness for two or three minutes, we will  
21 break now and we will continue with cross-examination. We will resume after the  
22 lunch-break, at half past 2.

23 THE COURT USHER: [12:56:43] All rise.

24 (Recess taken at 12.56p.m.)

25 (Upon resuming in open session at 2.31 p.m.)

Trial Hearing  
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(Open Session)

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1 THE COURT USHER: [14:31:25] All rise.

2 Please be seated.

3 PRESIDING JUDGE FREMR: [14:32:05] Good afternoon, everybody. I don't see

4 any -- with one ex-exception, I don't see any changes in appearances. If yes, please

5 correct me, but I have to know note for the record presence of Mr Raimondo, legal

6 adviser according to Rule 74 to our witness. Otherwise, if I am not wrong,

7 appearances are the same. All right.

8 So, Mr Witness, welcome back. We will continue today with your cross-examination

9 conducted by Defence, I believe by Mr Bourgon. And it's my duty again to remind

10 you that you are still under oath, which means that you have to speak the truth and

11 nothing but the truth.

12 If we would touch some facts that could lead to your self-incrimination, you have

13 been also instructed that you got guarantee according to Rule 74 and moreover, if you

14 would be unsure, you can also consult your legal adviser. Do you understand?

15 WITNESS: DRC-OTP-P-0911 (On former oath)

16 (The witness speaks French)

17 THE WITNESS: [14:33:35] (Interpretation) Yes, I understand.

18 PRESIDING JUDGE FREMR: [14:33:36] So now I am giving the floor to Mr Bourgon.

19 Mr Bourgon, usual question: do you want to proceed in open or in private session?

20 MR BOURGON: [14:33:44] I would like just to introduce myself first and then to

21 move into private session.

22 QUESTIONED BY MR BOURGON:

23 Q. [14:33:57] Good morning, Witness.

24 A. [14:33:59] Good morning.

25 Q. [14:34:01] We had an opportunity to meet each other beforehand, in fact last



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1 year I was with my colleague, who is sitting next to me now, but I would like to  
2 introduce myself once again. My name is Stéphane Bourgon and I am a Canadian  
3 counsel representing the accused in this case, Bosco Ntaganda. Do you understand  
4 that?

5 A. Yes.

6 Q. [14:34:31] I have a number of questions quite obviously today and we will be  
7 concluding tomorrow. I will endeavour to go as shortly as possible through the  
8 materials to enable you to return home in a swift fashion.

9 So we are going to be moving into private session and this will enable you to avoid  
10 being identified?

11 MR BOURGON: Mr President, if we can move into private session, please.

12 PRESIDING JUDGE FREMR: [14:34:51] And before we do that, I would like to  
13 inform public that this witness is a protected one, he was guaranteed that his identity  
14 will not be revealed by the Court, so that is why we will probably spend a large part  
15 of his testimony in the regime of private session.

16 Now, court officer, let's move into private session.

17 (Private session at 2.35 p.m.)

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14 (Open session at 4.28 p.m.)

15 THE COURT OFFICER: [16:28:03] We are in open session, Mr President.

16 PRESIDING JUDGE FREMR: [16:28:05] Thank you, court officer.

17 Mr Witness, I thank you for today. We will continue tomorrow at 9.30 and, as usual,

18 it is my duty to remind you that in the meantime you must not discuss your

19 testimony with anybody else, except with your legal adviser, Mr Raimondo.

20 Do you understand that?

21 THE WITNESS: [16:28:31] (Interpretation) Yes.

22 PRESIDING JUDGE FREMR: [16:28:32] Very well. So now I would like to ask

23 court usher to guide Mr Witness out of the courtroom.

24 (The witness stands down)

25 PRESIDING JUDGE FREMR: [16:29:06] And before we break, for the sake of

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- 1 planning, Mr Bourgon, so far you exhausted one hour, 51 minutes. In my view you
- 2 covered a lot of areas, so my question is, do you think that you will need all those
- 3 remaining three hours really for the rest of your examination?
- 4 MR BOURGON: [16:29:23] Mr President, I believe that I can complete the
- 5 examination in four hours as was recommended by the Chamber.
- 6 PRESIDING JUDGE FREMR: [16:29:30] All right, thank you for this.
- 7 MR BOURGON: [16:29:31] I will do my best.
- 8 PRESIDING JUDGE FREMR: [16:29:33] Thank you for this positive indication.
- 9 So we break at the moment and we will resume tomorrow, 9.30.
- 10 THE COURT OFFICER: [16:29:46] All rise.
- 11 (The hearing ends in open session at 4.29 p.m.)