

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 Monday, 21 November 2016
9 (The hearing starts in open session at 9.32 a.m.)
10 THE COURT USHER: [9:32:28] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: [9:33:01] Good morning, everybody.
14 Court officer, please call the case.
15 THE COURT OFFICER: [9:33:06] Thank you, Mr President.
16 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
17 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
18 We are in open session.
19 PRESIDING JUDGE FREMR: [9:33:21] Thank you, court officer.
20 Now appearances, please, in habitual order.
21 MS SAMSON: [9:33:27] Good morning, Mr President and your Honours, appearing
22 for the Prosecution today are Ms Kristy Sim, Ms Selam Yirgou, Ms Diane Luping and
23 myself, Ms Nicole Samson.
24 PRESIDING JUDGE FREMR: [9:33:43] Thank you, Ms Samson.
25 Defence please.

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WITNESS: DRC-OTP-P-0758

(Open Session)

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1 MR GOSNELL: [9:33:44] Good morning, Mr President. Good morning, your
2 Honours. Christopher Gosnell for Mr Ntaganda, assisted by Chloé Grandon and
3 Jules Guillaumé.
4 Thank you, Mr President.
5 PRESIDING JUDGE FREMR: [9:33:57] Thank you.
6 And for the record, Mr Ntaganda is present as well.
7 Legal Representative of Victims now, please.
8 MS PELLET: [9:34:07] (Interpretation) Thank you very much, your Honour, the
9 former child soldiers are represented by Mohamed Abdou and by myself, Sarah Pellet
10 at the OPCV.
11 MS GRABOWSKI: [9:34:20] Good morning, Mr President. Good morning, your
12 Honours. Anne Grabowski and Marine Corhay for the victims of the attacks.
13 Thank you.
14 PRESIDING JUDGE FREMR: [9:34:35] Thank you, Ms Pellet. Thank you,
15 Ms Grabowski. Ms Grabowski, maybe I overheard that, but did you provide also
16 the name of your colleague? You did, okay. Fine. Sorry, sorry.
17 Now, Madam Witness, good morning.
18 WITNESS: DRC-OTP-P-0758 (On former oath)
19 (The witness speaks Swahili)
20 THE WITNESS: [9:34:57] (Interpretation) Good morning.
21 PRESIDING JUDGE FREMR: [9:34:58] Madam Witness, welcome back. Are you
22 feeling okay to continue with your testimony today?
23 THE WITNESS: [9:35:07] (Interpretation) Yes.
24 PRESIDING JUDGE FREMR: [9:35:13] I am glad to hear it. It is my duty,
25 Madam Witness, to remind you to, two things, first one, which I guess you are aware

1 of, that you are still under oath, which means then you have to speak truth and
2 nothing but the truth, and the second thing that, but I think you did it very well, that
3 you always have to listen carefully to questions, to wait at least three seconds
4 between you provide your answer. And also important thing, if you would feel
5 unwell, feel free to let us know and we will break even earlier than we normally used
6 to plan our regular breaks.

7 Do you understand all that?

8 THE WITNESS: [9:36:10] (Interpretation) Yes.

9 PRESIDING JUDGE FREMR: [9:36:22] Good.

10 So now I will hand over floor to Ms Samson. And Ms Samson, also a regular
11 question, do you want to proceed in open or in private session?

12 MS SAMSON: [9:36:33] In private session please, Mr President.

13 PRESIDING JUDGE FREMR: [9:36:38] And in order to inform public, this witness is
14 protected witness, which means that her identity should not be revealed to public.

15 That is why as soon there is such a risk and as soon upcoming questions could lead to
16 revealing of her identity we have to move into private session, which is the case now.

17 So, court officer, let's move into private session.

18 (Private session at 9.37 a.m.)

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2 (Open session at 11.01 a.m.)

3 THE COURT OFFICER: [11:01:16] We're in open session, Mr President.

4 PRESIDING JUDGE FREMR: [11:01:20] Thank you, court officer.

5 So, Madam Witness, we will now take our regular morning, 30-minute break.

6 So I would like first ask court usher to assist Madam Witness to leave the courtroom

7 and then I would like to make an enquiry or update on time. But after

8 Madam Witness leaves the courtroom.

9 (The witness stands down)

10 PRESIDING JUDGE FREMR: [11:02:05] Ms Samson, according to information I just
11 have received, you used so far 2 hours and 46 minutes from 5 hours allotted to you.

12 My question is simple: Do you think that you will need all that time or do you think
13 that in the light of the course of testimony so far you would be able to finish earlier?

14 MS SAMSON: [11:02:29] I suspect I can finish slightly earlier, but the witness does
15 need repeated questions and she is not a witness for whom narrative has proven
16 particularly effective. So I -- I can't promise that I will be less than 5 hours, but
17 ordinarily I should be able to finish this in less than 5 hours.

18 PRESIDING JUDGE FREMR: [11:02:59] All right. No pressure, just to have
19 a -- some idea of our perspective.

20 So now we break and we will resume half past 11.

21 THE COURT USHER: [11:03:10] All rise.

22 (Recess taken at 11.03 a.m.)

23 (Upon resuming in open session at 11.31 a.m.)

24 THE COURT USHER: [11:32:00] All rise.

25 Please be seated.

1 PRESIDING JUDGE FREMR: [11:32:33] We are starting without our witness and in
2 open session because the Chamber would like to now deliver its ruling concerning
3 another witness. It's preliminary ruling on the Prosecution application in filing
4 number 1600 seeking the admission of Witness P-12's prior recorded testimony under
5 Rule 68(3).

6 The Defence responded in filing number 1634 opposing certain aspects of the
7 application.

8 Prior to addressing the merits of the application, the Chamber rule on
9 the Prosecution's request under Regulation 35 to vary the time limit for the filing of
10 the application. The Chamber notes that this request is opposed by the Defence,
11 which argues that the witness P-12 ought not to testify prior to 29 November 2016.

12 In relation to the Defence submission regarding the untimely disclosure of three of the
13 documents sought to be admitted under Rule 68(3) of the Rules at annexes J, K and L,
14 which were only disclosed to the Defence at the time of filing of the application,
15 the Chamber notes that almost identical versions of these documents were disclosed
16 to the Defence in May and July 2013.

17 The Chamber notes further that the Defence does not object to the admission of these
18 documents under Rule 68(3). The Chamber did not therefore consider this to be
19 a significant factor in its assessment of the Regulation 35 request in relation to the
20 application.

21 The Chamber notes further that according to paragraph 41 of its decision on the
22 conduct of proceedings, a request under Rule 68(3) must be filed, quote, "no later than
23 four weeks before the relevant witness is scheduled to testify." Unquote.

24 However, consistent with its decision with filing number 1640, considering that at this
25 stage Witness P-12 is scheduled to testify around 24 November 2016, and in light of

1 the scheduling issues faced by the Prosecution during this evidentiary block, due to
2 reported circumstances outside its control, the Chamber is satisfied that good cause
3 exists to vary the time limit for the filing of the application.

4 In so finding, the Chamber also notes that the Prosecution was not in a position to
5 request the extension prior to the deadline for filing of the application. Given that
6 the application only falls short of the required four-week deadline by approximately
7 five days and that the late filings has not impacted the time period permitted for
8 the Defence to respond to the request, the Chamber is persuaded that no undue
9 prejudice will be occasioned to the accused in so ruling.

10 Turning to the substance of the Rule 68(3) request, the Chamber incorporates by
11 reference the applicable law as most recently set out in its decision bearing filing
12 number 1640.

13 Noting the Defence objections to certain parts of the material tendered, the Chamber
14 hereby renders a preliminary ruling on the application. As per its usual practice,
15 a formal decision on admission will be rendered when the witness appears before
16 the Chamber and if the relevant requirements are satisfied.

17 I shall go now into private session for the next part of the ruling.

18 Court officer, please.

19 (Private session at 11.37 a.m.)

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20 (Open session at 11.41 a.m.)

21 THE COURT OFFICER: [11:41:18] We are in open session, Mr President.

22 PRESIDING JUDGE FREMR: [11:41:22] Thank you, court officer.

23 So, third, the Chamber notes that the Prosecution seeks admission under Rule 68(3) of

24 45 paragraphs of witness's 2005 statement contained at annex F of the application, as

25 well as admission of one document as an associated exhibit which is contained at

1 annex L.

2 The Chamber recalls that it has previously ruled on the question of whether portions
3 of the statement may, subject to the fulfilment of the requirements of Rule 68(3), be
4 admitted in such circumstances. In finding that it is appropriate in this instance,
5 the Chamber has had regard to the fact that: One, the statement is signed and
6 attested to by the witness as having been given voluntarily and in the knowledge that
7 it may be used in a legal proceedings before the Court; two, it was given in 2005 and
8 therefore has relative temporal proximity to the events described therein; three, it was
9 made in a language which the witness understands and therefore without the need
10 for translation; four, the specified paragraphs are not duplicative with the other prior
11 recorded testimony being tendered; five, the majority of the information goes to
12 contextual matters; and six, the witness identifies the sources of his information
13 where he did not have direct knowledge; and seven, such introduction would
14 significantly contribute to the efficient conduct of proceedings.

15 Noting further that annex L is used and explained in the relevant paragraphs of his
16 statement and refers to the witness's direct involvement in the creation of the
17 documents, the Chamber shall consider it as an associated document to the witness's
18 prior recorded testimony for admission under Rule 68(3), together with the 45
19 paragraphs of the witness's statement.

20 Finally, in terms of timing, the Chamber authorises the Prosecution to conduct
21 a supplementary examination of a maximum of one and a half hours with the witness
22 as requested. In terms of the appropriate scope of examination, the Chamber
23 observes that there is nothing in its conduct of proceedings decision that would limit
24 the scope of supplementary examination in the manner proposed by the Defence as
25 long as the witness preparation protocol and attendant disclosure obligations are

1 adhered to.

2 As for the Defence, cross-examination, having considered the scope and nature of the
3 evidence presented by the Prosecution through this witness, the Chamber has
4 decided to authorise 6 hours for the Defence cross-examination.

5 As usual, the parties are further directed to file public redacted versions of filings
6 1600 and 1634 within two weeks of today.

7 This concludes the Chamber's ruling.

8 And now, court usher, please bring the witness into the courtroom.

9 (The witness enters the courtroom)

10 PRESIDING JUDGE FREMR: [11:46:48] Welcome back, Madam Witness. Are your
11 headphones okay? Can you hear me clearly?

12 THE WITNESS: [11:46:58] (Interpretation) Ndiyo.

13 PRESIDING JUDGE FREMR: [11:47:00] Very well. So, Madam Witness, we will
14 continue with your examination-in-chief conducted by Prosecution.

15 Ms Samson, in the light of your previous questions, I suppose you would like to
16 continue in the regime of private session.

17 MS SAMSON: [11:47:16] Yes, please, your Honour.

18 PRESIDING JUDGE FREMR: [11:47:19] All right.

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

20 (Private session at 11.47 a.m.)

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- 18 (Open session at 1.02 p.m.)
- 19 THE COURT OFFICER: [13:02:16] We are in open session, Mr President.
- 20 PRESIDING JUDGE FREMR: [13:02:20] Thank you, court officer.
- 21 So we will now take our regular lunch break till 2.30.
- 22 And update on timing, Ms Samson, according our measuring you exhausted so far 4,
- 23 4 hours sharp, so you still have 1 hour at your disposal.
- 24 THE COURT USHER: [13:02:45] All rise.
- 25 (Recess taken at 1.02 p.m.)

1 (Upon resuming in open session at 2.30 p.m.)

2 THE COURT USHER: [14:30:55] All rise.

3 Please be seated.

4 PRESIDING JUDGE FREMR: [14:31:18] Good afternoon, everybody.

5 Good afternoon, Madam Witness. We can directly continue with

6 examination-in-chief of our witness. And I suppose that we will proceed as we

7 finished, in the regime of private session, or not?

8 MS SAMSON: [14:31:48] Yes, with your leave, Mr President.

9 PRESIDING JUDGE FREMR: [14:31:51] All right.

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

11 (Private session at 2.31 p.m.)

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10 (Open session at 3.29 p.m.)
11 THE COURT OFFICER: [15:30:00] We're in open session, Mr President.
12 PRESIDING JUDGE FREMR: [15:30:01] Just for the record, we made a 10-minute
13 break because our witness felt a bit unwell.
14 Now, Madam Witness, are you feeling again okay to continue in your testimony?
15 THE WITNESS: [15:30:18] (Interpretation) That's okay. I'm feeling fine.
16 PRESIDING JUDGE FREMR: [15:30:35] Very well. We appreciate that.
17 And update on measuring. I understood that there was 15 minutes remaining
18 for -- 15 minutes. So just caveat for you, Ms Samson, last 15 minutes. Please go
19 ahead.
20 And we will move into private session.
21 (Private session at 3.30 p.m.)
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8 (Open session at 4.28 p.m.)

9 THE COURT OFFICER: [16:28:38] We're in open session, Mr President.

10 PRESIDING JUDGE FREMR: [16:28:47] Thank you, court officer.

11 Madam Witness, I would like to thank you. It was a long day. You patiently
12 answered all questions put to you and some of them concerned very sensitive topics.
13 And even as I told you at the beginning of your testimony, or in advance, if you don't
14 remember do not apologise. It's fully understandable. It's better than to fabricate
15 things or make things up, so no problem if you don't remember.

16 It's also again my duty to remind you that in the meantime till tomorrow, since we
17 will continue tomorrow morning 9.30, you must not discuss your testimony with
18 anybody else. Have you understood all that?

19 THE WITNESS: [16:29:44] Ndiyo.

20 PRESIDING JUDGE FREMR: [16:29:46] So have some rest and we will see you
21 tomorrow morning.

22 And just update on timing, so far, Mr Gosnell, you used only 22 minutes so you have
23 plenty of time at your disposal.

24 THE WITNESS: [16:30:02] (Interpretation) Yes.

25 PRESIDING JUDGE FREMR: [16:30:02] So now Court is adjourned.

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- 1 THE COURT USHER: [16:30:05] All rise.
- 2 (The hearing ends in open session at 4.30 p.m.)