

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 Thursday, 17 November 2016
9 (The hearing starts in open session at 9.32 a.m.)
10 THE COURT USHER: [9:32:54] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: [9:33:25] Good morning, everybody.
14 Court officer, please call the case.
15 THE COURT OFFICER: [9:33:30] 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. We are in open session.
18 PRESIDING JUDGE FREMR: [9:33:44] Thank you, court officer.
19 Now appearances, Prosecution.
20 MR IVERSON: [9:33:50] Good morning, your Honours. Kristy Sim and Eric
21 Iverson for the Prosecution.
22 PRESIDING JUDGE FREMR: [9:33:55] Thank you, Mr Iverson. Defence, please.
23 MR BOURGON: [9:34:05] Good morning, Your Honour, no change on the Defence
24 side.
25 PRESIDING JUDGE FREMR: [9:34:09] Thank you, Mr Bourgon.

1 Legal Representatives of Victims, please.

2 MS PELLET: [9:34:16] (Interpretation) Thank you, your Honour. The former
3 child soldiers are represented by Mohamed Abdou and myself, Sarah Pellet, counsel
4 with the Office of Public Counsel for Victims.

5 MR SUPRUN: [9:34:27] (Interpretation) Good morning, your Honour, your
6 Honours. For the victims of the attacks, Anne Grabowski, associate lawyer; and
7 myself, Dmytro Suprun, counsel with the Office of Public Counsel for Victims.

8 PRESIDING JUDGE FREMR: [9:34:38] Thank you, Ms Pellet.

9 Thank you, Mr Suprun.

10 I have not invited Mr Witness into the courtroom yet because I would like first to
11 deliver our oral decision on in-court protective and special measures for Witnesses
12 P-758 and P-761.

13 And it will be issued in open session, but for the part of the decision we will have to
14 move to private session.

15 So we will now deliver the decision with respect to two of the 11 witnesses for whom
16 the Prosecution requested protective and special measures in filing number 1579.

17 The present decision concerns Witnesses P-758 and P-761.

18 For both these witnesses, the Prosecution requests in-court protective measures
19 pursuant to Rule 87 of the Rules in the form of face and voice distortion during
20 testimony and the use of a pseudonym. The Prosecution also seeks various special
21 measures under Rule 88. In relation to P-758 it requests that; first, the witness be
22 shielded from the accused in the courtroom; second, the parties and participants
23 adapt their questioning in accordance with the needs and capacities of the witness;
24 and third, the witness be granted regular breaks, in-court assistance and reading
25 assistance. For P-761, the Prosecution requests that the witness be granted regular

1 breaks.

2 The Legal Representative for former child soldiers supports the request in filing
3 number 1599.

4 The Defence opposes the protective measures and part of the special measures
5 requested in its filing number 1593.

6 The Defence submits that the Prosecution fails to demonstrate any objectively
7 justifiable risk of post-testimonial retaliation. The Defence also objects to P-758 being
8 shielded from the accused, arguing that the Prosecution failed to provide any
9 justification for such an extreme measure, which is to be considered only in special
10 circumstances.

11 On 10 and 14 November 2016, the Chamber received, respectively, VWU's in-court
12 protective measures and vulnerability assessments for P-758, in which it was
13 recommended that the same protective and special measures sought by the
14 Prosecution be granted. And on 15 November 2016, the Chamber received the
15 VWU's in-court protective measures assessment for P-761, in which the same
16 requested measures were recommended.

17 On the basis of the information and submissions provided, the Chamber has
18 conducted an individual assessment in respect of the two witnesses, while being
19 cognisant of the interrelated nature of the protective measures sought in relation to
20 them. In assessing whether there exists an objectively justifiable risk, the Chamber
21 observes that it has previously held that the general security situation in a region may
22 be a relevant consideration in respect of specific witnesses. In this instance, it is
23 noted that each of the witnesses and their families currently reside in areas where
24 former UPC/FPLC militia members and supporters of the accused are present or
25 continue to have influence.

1 The Chamber recalls that threats to a witness, or his or her family, are not a
2 prerequisite to determining whether a witness faces an objectively justifiable risk, and
3 that there are reported instances where other witnesses, including crime base and
4 insider witnesses, were allegedly threatened as a result of their involvement with the
5 Court.

6 The Chamber further notes; first, the nature of Witness P-758's expected testimony,
7 particularly in light of her role and experiences during the events; second, the extent
8 to which Witness P-758 may be identifiable; and third, the alleged contacts already
9 reported by this witness. The Chamber notes the Prosecution's submissions that
10 given Witness 758's expected testimony, there is a high risk of stigmatisation and
11 retaliation, and that given the nature of Witness P-761's expected testimony, revealing
12 the identity of this witness would also expose Witness P-758.

13 In this regard, the Chamber has had particular regard to the VWU's assessment that a
14 "realistic threat" exists independently for both witnesses, that public testimony would
15 expose them to significantly enhanced level of risk and might trigger retaliation, and
16 that protective measures would reduce such risk.

17 Finally, it notes that neither of the witnesses are currently in the ICC Protection
18 Programme.

19 In light of the above, the Chamber is satisfied that there exists an objectively
20 justifiable risk with respect to the security and well-being of each of the two witnesses
21 and their family, warranting the protection of their identity from the public. The
22 Chamber further finds that the in-court protective measures sought do not unduly
23 infringe upon the rights of the accused, given that the Defence will be able to see the
24 witnesses give evidence at trial and hear their voices without distortion.

25 Accordingly, and pursuant to Rule 87 of the Rules, the Chamber grants the measures

1 of use of pseudonym for the purpose of the trial and voice and face distortion during
2 testimony for Witnesses P-758 and P-761.

3 And now, court officer, for the next part of our ruling, please let's move into private
4 session, briefly.

5 (Private session at 9.43 a.m.)

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15 (Open session at 9.44 a.m.)

16 THE COURT OFFICER: [9:44:25] We are back in open session, Mr President.

17 PRESIDING JUDGE FREMR: [9:44:28] Thank you, court officer.

18 And I continue with the rest of our reasoning.

19 Therefore, on the basis of VWU's assessment and pursuant to Rule 88, the Chamber
20 decides that the special measures previously mentioned shall be granted.

21 Regarding the special measures requested in respect of P-761, the Chamber defers its
22 decision until receipt of the pending VWU assessment.

23 This concludes the Chamber's ruling.

24 And now we can continue with cross-examination of our witness, so I ask court usher
25 to bring Mr Witness into the courtroom.

Trial Hearing
WITNESS: DRC-OTP-P-0911

(Open Session)

ICC-01/04-02/06

1 (The witness enters the courtroom)

2 PRESIDING JUDGE FREMR: [9:46:06] Good morning, Mr Witness.

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

4 (The witness speaks French)

5 THE WITNESS: [9:46:13] (Interpretation) Good morning.

6 PRESIDING JUDGE FREMR: [9:46:15] Are you feeling well to continue with your
7 testimony, Mr Witness?

8 THE WITNESS: [9:46:24] (Interpretation) Yes.

9 PRESIDING JUDGE FREMR: [9:46:31] Very well, Mr Witness. Before we continue,
10 two reminders from my part: The first one, it's my duty to remind you that you are
11 still under oath, which means that you have to speak the truth and nothing but the
12 truth. And one practical reminder, you may remember yesterday we several times
13 faced the situation that you were giving your response too early. I know it's a bit
14 unnatural, but as I said to you yesterday please don't forget to wait. I understand
15 that you would like to provide your answer as soon as possible, but again simply, as I
16 advised you yesterday, even count in your head to three and only then please provide
17 your answer. Otherwise, the interpreters are not able to translate your answer and
18 then we would have to ask you to give your answer again. So please have it in mind.
19 Do you understand?

20 THE WITNESS: [9:47:31] (Interpretation) Yes.

21 PRESIDING JUDGE FREMR: [9:47:36] Thank you, Mr Witness. So now I am giving
22 the floor to Mr Bourgon, who will be continuing with cross-examination.

23 MR BOURGON: [9:47:49] Thank you, Mr President.

24 PRESIDING JUDGE FREMR: [9:47:50] And I forgot to ask you, Mr Bourgon,
25 whether you prefer to remain in open or whether you are forced to move into private

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(Private Session)

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1 session.

2 MR BOURGON: [9:47:58] I believe we need to move into private session

3 immediately.

4 PRESIDING JUDGE FREMR: [9:48:04] Understandable.

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

6 (Private session at 9.48 a.m.)

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23 (Open session at 10.59 a.m.)

24 THE COURT OFFICER: [10:59:32] We are in open session, Mr President.

25 PRESIDING JUDGE FREMR: [10:59:36] Thank you, court officer.

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(Private Session)

ICC-01/04-02/06

1 So we will take our regular break now for 30 minutes, which means that we will
2 resume at 11.30.

3 THE COURT USHER: [10:59:46] All rise.

4 (Recess taken at 10.59 a.m.)

5 (Upon resuming in open session at 11.33 a.m.)

6 THE COURT USHER: [11:33:02] All rise.

7 Please be seated.

8 PRESIDING JUDGE FREMR: [11:33:30] Now let's directly continue with the rest of
9 cross-examination of our witness. But I see Mr Suprun.

10 Mr Suprun, and we are in open session.

11 MR SUPRUN: [11:33:55] (Interpretation) Thank you very much, your Honour.

12 Just for the record, Marine Corhay, intern, has joined our team for this hearing.

13 PRESIDING JUDGE FREMR: [11:34:08] Thank you. Well noted.

14 So, Mr Bourgon, I guess we have to move again into private, am I right?

15 MR BOURGON: [11:34:17] Indeed, Mr President, please.

16 PRESIDING JUDGE FREMR: [11:34:21] Court officer, let's move into private session,
17 please.

18 (Private session at 11.34 a.m.)

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(Open Session)

ICC-01/04-02/06

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3 (Open session at 12.48 p.m.)

4 THE COURT OFFICER: [12:48:47] We are in open session, Mr President.

5 PRESIDING JUDGE FREMR: [12:48:51] Thank you, court officer.

6 JUDGE CHUNG: [12:48:53] Mr Witness, now we are in open session, so please be
7 cautious that you should not give any information about yourself while you are
8 answering my questions. Can you understand this?

9 THE WITNESS: [12:49:10] (Interpretation) Yes.

10 JUDGE CHUNG: [12:49:12] Mr Witness, you testified several times about the child
11 soldier's role as escort or bodyguard. And my question is: Do you recall any other,
12 any other roles at the UPC that were mainly played by child soldiers under the age of
13 15?

14 THE WITNESS: [12:49:46] (Interpretation) I have no information.

15 JUDGE CHUNG: [12:49:49] Then the child soldiers you saw during the UPC were
16 only played as escort, not other role you witnessed?

17 THE WITNESS: [12:50:09] (Interpretation) They were only there playing the role of
18 escort, indeed.

19 JUDGE CHUNG: [12:50:17] And what about during the combat, do you recall any
20 specific role that were mainly played by the child soldiers under 15 during combat?

21 THE WITNESS: [12:50:32] (Interpretation) I don't have any such recollection.

22 JUDGE CHUNG: [12:50:46] Then was there any principles or practices at the UPC
23 that the UPC treated such child soldiers differently from adult soldiers?

24 THE WITNESS: [12:51:11] (Interpretation) Could you reformulate your question,
25 please?

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(Private Session)

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1 JUDGE CHUNG: [12:51:17] So child soldiers under the age of 15, they were treated
2 the same way as adult soldiers?

3 THE WITNESS: [12:51:31] (Interpretation) As I said earlier, there was a matter of
4 clemency for children, which was why we asked to put them into the transit centres
5 together with the human rights association and there was some resistance and they
6 were treated in the same way as adults.

7 JUDGE CHUNG: [12:52:07] Thank you, Mr Witness, that's it from me.

8 PRESIDING JUDGE FREMR: [12:52:10] Thank you, Judge.

9 Now let's move into open session.

10 Mr Bourgon.

11 MR BOURGON: [12:52:17] Mr President.

12 PRESIDING JUDGE FREMR: [12:52:18] We are in open session, sorry.

13 MR BOURGON: [12:52:19] Well, if we can go in private session. There is one
14 question I am not sure the witness's answer was in the transcript. I would just like to
15 verify this.

16 PRESIDING JUDGE FREMR: [12:52:30] So some clarification.

17 All right, let's move into private session.

18 (Private session at 12.52 p.m.)

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- 20 (Upon resuming in open session 2.33 p.m.)
- 21 THE COURT USHER: [14:33:53] All rise.
- 22 Please be seated.
- 23 PRESIDING JUDGE FREMR: [14:34:12] Good afternoon, everybody.
- 24 Court officer, please call the case. Sorry, we don't need to call the case, but yes, sorry
- 25 for that, but what we really need is to update appearances.

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WITNESS: DRC-OTP-P-0758

(Open Session)

ICC-01/04-02/06

1 So I will start with Prosecution, please.

2 MS SAMSON: [14:34:48] Good afternoon, Mr President. For the Prosecution this
3 afternoon are Kristy Sim, assistant trial lawyer; Dianne Luping, trial lawyer; and
4 myself, Nicole Samson, senior trial lawyer.

5 PRESIDING JUDGE FREMR: [14:34:59] Thank you very much, Ms Samson.
6 Defence, please.

7 MR GOSNELL: [14:35:05] Good afternoon, Mr President. Good afternoon, your
8 Honours. Christopher Gosnell for Mr Ntaganda this afternoon, accompanied by
9 Chloé Grandon and Jules Guillaumé.

10 PRESIDING JUDGE FREMR: [14:35:23] And as for Legal Representatives, I see no
11 changes, am I right? Fine.

12 Once more, good afternoon. Madam Witness, can you hear me?

13 Witness: DRC-OTP-P-0758

14 (The witness speaks Swahili)

15 THE WITNESS: [14:35:47] (Interpretation) Yes.

16 PRESIDING JUDGE FREMR: [14:35:49] Very well. Madam Witness, on behalf of
17 this Chamber, I would like to welcome you to the courtroom. You are called to
18 testify in the case against Mr Bosco Ntaganda. You will be soon asked questions
19 both by the Judges and lawyers in the courtroom and in this connection I would like
20 to guide you as follows:

21 Please listen carefully to those questions. If you do not understand, feel free to ask
22 for the question to be repeated. We want you to tell the truth and tell us what you
23 saw, heard or sensed yourself. If you didn't see or hear it yourself, but you found
24 out some other way, then you should explain how.

25 Please testify just on that which you remember. Don't guess. Don't make things up.

Trial Hearing
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1 There is nothing wrong in saying, "I don't know" or "I don't remember." Do you
2 understand all this, Madam Witness.

3 THE WITNESS: [14:37:10] (Interpretation) Yes.

4 PRESIDING JUDGE FREMR: [14:37:11] Good. Madam Witness, protective
5 measures are put in place to ensure that your identity is not revealed to the public. It
6 means in practice that the public cannot see your face and that your voice is being
7 disguised so that the public cannot recognise it. We will refer to you as "Madam
8 Witness" and ensure that your name and any other information that risks revealing
9 who you are is not broadcast to the public.
10 Therefore, whenever you need to describe anything that might reveal your identity,
11 we will do so in private session so that no one outside of this courtroom can hear your
12 answer.

13 Do you understand, Madam Witness?

14 THE WITNESS: [14:38:13] (Interpretation) Yes.

15 PRESIDING JUDGE FREMR: [14:38:15] Good. Madam Witness, now you will be
16 provided with a piece paper with the text of the solemn undertaking. Now I am
17 asking you to read out the text of the solemn undertaking to tell the truth.

18 THE WITNESS: [14:38:38] (Interpretation) I solemnly swear that I will tell the truth,
19 the whole truth and nothing but the truth.

20 PRESIDING JUDGE FREMR: [14:39:11] Thank you, Madam Witness. So now you
21 are under oath. So you need to be aware that it is an offence within the jurisdiction
22 of this Court to give false testimony. Do you understand that?

23 THE WITNESS: [14:39:32] (Interpretation) Yes.

24 PRESIDING JUDGE FREMR: [14:39:37] Fine. And finally, a few practical matters
25 you should have in mind when giving your testimony:

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(Open Session)

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1 It's important to speak into the microphone, which you are doing very well so far, to
2 speak clearly and to speak at a slow pace to allow the interpreters to translate
3 everything. What is very important, when a question is asked, please do not
4 respond immediately but rather count in your head to 3 and only then give your
5 answer because this pause is essential for us to properly hear, translate and record
6 what you are saying.

7 If you have any questions during your testimony, do not hesitate to let us know by
8 raising your hand and we will then give you the opportunity to speak.

9 Have you understood all that, Madam Witness?

10 THE WITNESS: [14:40:59] (Interpretation) Yes.

11 PRESIDING JUDGE FREMR: [14:41:01] Very well. And before we start, two
12 minor issues for the parties: In terms of timing, the Chamber has already indicated
13 that the examination-in-chief of this witness should be completed in five hours and
14 the Defence will have equal time. But I still believe and in my view there is some
15 similarity with the previous witness, that this estimation might be a bit exaggerated,
16 so I would encourage parties at least to try to make this examination at least a bit
17 shorter. But still you have at your disposal five hours.

18 And further, the Chamber has taken note of the Defence notice of objections to the use
19 or admission of certain documents and it will address any such objections if and
20 when they arise.

21 And now we can turn to the scheduled testimony. I see it will be Ms Samson.

22 Ms Samson you have the floor.

23 MS SAMSON: [14:42:06] Thank you, Mr President.

24 QUESTIONED BY MS SAMSON:

25 Q. [14:42:12] Good afternoon. We've met previously and I'll repeat for you that

Trial Hearing
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(Private Session)

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1 my name is Nicole Samson, and I have questions for you today on behalf of the
2 Prosecution. I'll have a chance to ask you questions over the next hour and a half or
3 so, perhaps a bit longer, and then we'll break and I'll continue my questions on
4 Monday.

5 If there's anything that you don't understand, Madam Witness, feel free to ask me to
6 repeat or to clarify and I'll do so.

7 Now I'm going to ask the Chamber to move into private session so that I can ask you
8 questions about your background and identity.

9 MS SAMSON: [14:43:00] Mr President, if we could move into private session,
10 please.

11 PRESIDING JUDGE FREMR: [14:43:04] For sure.

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

13 And usual guidance, if you find it better, you can even use some leading questions for
14 some personal details.

15 (Private session at 2.43 p.m.)

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- 24 (Upon resuming in open session at 4 p.m.)
- 25 THE COURT USHER: [16:00:28] All rise.

Trial Hearing
WITNESS: DRC-OTP-P-0758

(Private Session)

ICC-01/04-02/06

1 Please be seated.

2 MS SAMSON: [16:00:37] Mr President, I'm sorry to interrupt, I just note that the
3 image of the witness is not distorted presently on the screen, and I'm not sure why.

4 THE COURT OFFICER: [16:01:03] We've been informed that it is only the screen in
5 the courtroom.

6 PRESIDING JUDGE FREMR: [16:01:07] Anyway, thank you very much,
7 Ms Samson, for this caveat.

8 Madam Witness, are you now feeling okay to continue for the next 25 minutes and
9 then we will break?

10 THE WITNESS: [16:01:35] (Interpretation) Yes.

11 PRESIDING JUDGE FREMR: [16:01:36] Thank you. The Chamber really
12 appreciate that.

13 So we will move again into private session.

14 Court officer, please.

15 (Private session at 4.02 p.m.)

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8 (Open session at 4.30 p.m.)

9 THE COURT OFFICER: [16:30:20] We are in open session, Mr President.

10 PRESIDING JUDGE FREMR: [16:30:28] Thank you, court officer.

11 Ms Samson, for your information according our measuring you so far used 1 hour

12 26 minutes.

13 Madam Witness, it concludes your testimony for today and because for some

14 particular reasons we can't sit tomorrow, we will continue on Monday. It's my duty

15 to inform you that you must not in the meantime until Monday discuss your

16 testimony with anybody else. Do you understand that?

17 THE WITNESS: [16:31:15] Ndiyo.

18 PRESIDING JUDGE FREMR: [16:31:17] Otherwise I wish you take some rest and

19 we will see you again on Monday morning at 9.30.

20 Now court is adjourned.

21 THE COURT USHER: [16:31:28] All rise.

22 (The hearing ends in open session at 4.31 p.m.)