

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, 5 December 2016
8 (The hearing starts in open session at 9.33 a.m.)
9 THE COURT USHER: [9:33:59] All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE FREMR: [9:34:25] Good morning, everybody.
13 Court officer, please call the case.
14 THE COURT OFFICER: [9:34:33] Thank you, Mr President.
15 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
16 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
17 We are in open session.
18 PRESIDING JUDGE FREMR: [9:34:47] Thank you.
19 Now appearances, starting with Prosecution.
20 MR VAN DER WERF: [9:34:53] Good morning, Mr President, your Honours.
21 The Prosecution is represented by Dianne Luping, trial lawyer; Nicole Samson, senior
22 trial lawyer; Selam Yirgou, case manager; James Pace, assistant trial lawyer; and
23 myself, Rens van der Werf, assistant trial lawyer. Thank you.
24 PRESIDING JUDGE FREMR: [9:35:14] Thank you, Mr van der Werf.
25 Defence now, please.

1 MR BOURGON: [9:35:19] (Interpretation) Good morning, your Honour.

2 For the Defence this morning, Jules Guillaumé, Dignité Bwiza, and myself

3 Stéphane Bourgon. Thank you.

4 PRESIDING JUDGE FREMR: [9:35:29] Thank you, Mr Bourgon.

5 Legal Representatives of Victims, please.

6 MS PELLET: [9:35:33] (Interpretation) Thank you, your Honour. The former

7 child soldiers are represented by Mohamed Abdou, and myself Sarah Pellet, counsel

8 with the Office of Public Counsel for Victims.

9 MR SUPRUN: [9:35:48] (Interpretation) Good morning, your Honour, your

10 Honours. The victims of the attacks are represented today by myself Dmytro

11 Suprun, counsel with the Office of Public Counsel for Victims.

12 PRESIDING JUDGE FREMR: [9:36:00] Thank you, Ms Pellet.

13 Thank you, Mr Suprun.

14 I have to note for the record that Mr Ntaganda is not present at the moment, but

15 according our information he is going to join us in 10 minutes hopefully.

16 And the Chamber would like to utilise this time just to deliver oral ruling concerning

17 Witness P-31.

18 Parties, do you have any objection to proceed for those 10 minutes without

19 Mr Ntaganda? Prosecution?

20 MR VAN DER WERF: [9:36:39] No, Mr President.

21 PRESIDING JUDGE FREMR: [9:36:42] And it's mainly for Defence.

22 MR BOURGON: [9:36:44] No, Mr President.

23 PRESIDING JUDGE FREMR: [9:36:45] All right. We appreciate your

24 understanding.

25 So now I will deliver preliminary oral rulings on Prosecution's Rule 68(3) request for

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1 Witness P-31 seeking the admission of Witness P-31's prior recorded testimony under
2 Rule 68(3).

3 I will refer to this as the "request" and we can start delivery of this ruling in open
4 session.

5 On 16 November 2016, the Chamber granted a Defence request for extension of
6 deadline in which to respond. Accordingly, the Defence responded on

7 22 November 2016 in filing number 1643, opposing the request in its entirety.

8 In filing number 1647, the Prosecution sought leave to reply to the Defence response
9 on two issues. This was opposed by the Defence in filing number 1650. On

10 25 November 2016, the Chamber ruled, by way of email, that it would not be assisted
11 by further submissions on either of the issues identified.

12 Turning to the substance of the request, the Chamber incorporates by reference the
13 applicable law as recently set out in its decision bearing filing number 1640.

14 Noting the Defence objections, the Chamber hereby renders a preliminary ruling on
15 the request. In line with usual practice, any formal decision on admission would be
16 rendered when the witness appears before the Chamber and would depend upon
17 whether the relevant requirements are satisfied.

18 And now we have to move into private session for the next part of the ruling.

19 (Private session at 9.39 a.m.)

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2 (Open session at 9.53 a.m.)

3 THE COURT OFFICER: [9:53:33] We're in open session, Mr President.

4 PRESIDING JUDGE FREMR: [9:53:40] Thank you, court officer.

5 In summary, the Chamber not found it appropriate to admit the specified paragraphs
6 of the witness's 2006 statement as prior recorded testimony, but notes that the
7 Prosecution remains free to elicit these further elements viva voce, should it wish to
8 do so. The Chamber will consequently also not consider annexes 23 to 41 for
9 introduction as associated documents.

10 Turning to the time, notwithstanding the fact that the request is only being partially
11 granted, the Chamber considers that two hours should be sufficient for both the
12 completion of the formalities associated with Rule 68(3) and any supplementary
13 examination. In so finding, the Chamber has had regard to the nature and subject
14 matter of the witness's testimony, the extent to which these topics have already been
15 addressed in the prior recorded testimony, and the areas identified by the Prosecution
16 for further examination.

17 The Defence has requested 10 hours for cross-examination, however, this appears
18 excessive to the Chamber. As previously mentioned, the length of the prior recorded
19 testimony does not reflect its relatively focussed scope in terms of subject matter.
20 The Chamber considers that six hours should be sufficient and any extension of time
21 will require a well-motivated request.

22 As usual, the parties are further directed to file public redacted versions of filings
23 1615, 1643, 1647 and 1650 within five weeks of today.

24 This concludes the Chamber's ruling and we now can proceed with the rest of
25 cross-examination of our witness.

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1 So, court usher, please bring Mr Witness into the courtroom. And in the meantime
2 update on timing. Mr Bourgon, according our measuring, you so far have used
3 16 minutes only from time allotted to you.

4 MR BOURGON: [9:56:48] Mr President, with your leave I would like to address
5 the Chamber regarding the time allotted for this witness. The Chamber has allotted
6 the Defence six hours for this witness. I have used so far 16 minutes. I intend to do
7 everything possible to complete the cross-examination within the time that was
8 allotted, however, as the Trial Chamber will see today a lot of the cross-examination
9 has to do with the playing of videos and it is very difficult to assess whether this will
10 be sufficient. So, Mr President, I ask for the Chamber's indulgence in assessing the
11 time required to play these videos if and when I make an application for additional
12 time later today.

13 (The witness enters the courtroom)

14 PRESIDING JUDGE FREMR: [9:57:40] All right. Well noted, Mr Bourgon.

15 Mr Witness, good morning. Are you feeling okay to continue with your testimony?

16 WITNESS: DRC-OTP-P-0002 (On former oath)

17 (The witness speaks Swahili)

18 THE WITNESS: [9:58:01] (Interpretation) Good morning, yes.

19 PRESIDING JUDGE FREMR: [9:58:02] Very well, I am glad to hear it. And it's
20 my duty as usual to remind you that you are still under oath, which means that you
21 must say the truth and nothing but the truth. And also allow me to remind you
22 those practical aspects of your testimony, mainly the fact that you shouldn't respond
23 to questions put to you immediately but wait at least for three seconds, because this
24 pause is essential for proper recording and translating of your testimony.

25 Do you understand that?

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1 THE WITNESS: [9:58:52] (Interpretation) Yes.

2 PRESIDING JUDGE FREMR: [9:58:53] Thank you, Mr Witness.

3 And since this witness is protected witness, which means that his identity shouldn't

4 be revealed during testimony, so depending on questions which Mr Bourgon is

5 intending to put to the witness, I'm asking you, Mr Bourgon, whether we can remain

6 in open session or whether it's necessary to move into private session?

7 MR BOURGON: [9:59:19] It is better to remain in private session, Mr President.

8 Please.

9 PRESIDING JUDGE FREMR: [9:59:25] So let's move into private session, court

10 officer, please.

11 MR BOURGON: [9:59:32] Mr President.

12 PRESIDING JUDGE FREMR: [9:59:35] Yes.

13 (Private session at 9.59 a.m.)

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23 (Open session at 10.57 a.m.)

24 THE COURT OFFICER: [10:57:09] We are in open session, Mr President.

25 PRESIDING JUDGE FREMR: [10:57:10] Thank you, court officer.

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1 Mr Bourgon, you have the floor.

2 MR BOURGON: [10:57:13] Thank you, Mr President.

3 Just in respect of Witness P-31, who is scheduled to testify this week, we have been in
4 contact with the Prosecution for some time regarding some redactions applied to
5 material. And these redactions, more specifically there are two so-called F
6 redactions which are redactions that were authorised by another Trial Chamber at
7 another time. We have been informed by the Prosecution that they had made a
8 request to the Chamber for these redactions to be lifted, and I even think -- I'm not
9 sure if the Chamber has ruled or not -- but my only point, Mr President, is we would
10 like to have these redactions lifted as soon as possible if the Chamber so agrees with
11 the Prosecution's request because we are in the midst of preparing for Witness P-31.
12 That's the only thing I'd like to say at this time, Mr President. I have the two
13 documents here. I believe the document I'm talking about, DRC-OTP-0162-0056,
14 which is the English version, and the French version is DRC-OTP-0193-0074.
15 That's all I want to say, Mr President.

16 Thank you.

17 PRESIDING JUDGE FREMR: [10:58:43] Yes, noted. And I can confirm that we
18 are going to decide on that either by today or in the morning tomorrow at the latest.
19 So now we break and we will take our regular 30 minutes break and will resume half
20 past 11.

21 THE COURT OFFICER: [10:59:04] All rise.

22 (Recess taken at 10.59 a.m.)

23 (Upon resuming in open session at 11.30 a.m.)

24 THE COURT USHER: [11:30:39] All rise.

25 Please be seated.

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1 PRESIDING JUDGE FREMR: [11:31:12] So we will continue directly with the further
2 part of the cross-examination of our witness. And since we broke in the regime of
3 private session, I guess that we will return back to private again.

4 MR BOURGON: [11:31:32] Yes, Mr President, please.

5 PRESIDING JUDGE FREMR: [11:31:34] All right. So -- Mr Van der Werf.

6 MR VAN DER WERF: [11:31:38] Yes, Mr President. I would just like to note that
7 Nicole Samson and James Pace have left the courtroom.

8 PRESIDING JUDGE FREMR: [11:31:43] Thank you very much for this correction of
9 our transcript or record.

10 Now let's move into private session.

11 (Private session at private 11.31 a.m.)

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23 (Open session at 12.59 p.m.)

24 THE COURT OFFICER: [12:59:28] We are in open session, Mr President.

25 PRESIDING JUDGE FREMR: [12:59:31] Thank you, court officer.

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1 We take our 90 minutes lunch break and it means that we will reconvene at half past

2 2.

3 THE COURT USHER: [12:59:44] All rise.

4 (Recess taken at 12.59 p.m.)

5 (Upon resuming in open session at 2.34 p.m.)

6 THE COURT USHER: [14:34:58] All rise.

7 Please be seated.

8 PRESIDING JUDGE FREMR: [14:35:24] Good afternoon, everybody.

9 Any changes in appearances? I see some changes in the Prosecution team.

10 MR VAN DER WERF: [14:35:34] Yes, Mr President. Nicole Samson and James Pace
11 are back this afternoon.

12 PRESIDING JUDGE FREMR: [14:35:39] All right. Otherwise I don't see any further
13 changes.

14 Mr Bourgon, we were told you would like to address us, so please briefly.

15 MR BOURGON: [14:35:50] Thank you, Mr President. At this point in time, based
16 on the progress achieved to date with the videos covered with the witness I would
17 like to make a substantiated request for additional time. It simply will not be
18 possible for me to cover the material that I intended to cover in the six hours allocated
19 for this witness.

20 Mr President, the Prosecution in its material had seven extracts that were admitted
21 and out of these seven extracts we come to a total of 16 different short pieces of videos.
22 I myself would like to address eight of the -- six of these videos that were admitted by
23 the Prosecution. I also have 11 new segments, very short segments that I wish to
24 add to those that were already admitted in evidence.

25 That's the first part.

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1 In addition to that, I have videos that I started to cover this morning. I have eight
2 left. Most of them are pretty short, other than for one video involving Chief Kahwa,
3 which is longer, but that's a total of 25 that I have left, extracts that I intend to use
4 with this witness.

5 And I also intended to spend quite a bit of time on the Mongbwalu video, which in
6 itself lasts for two hours, and I have a series of questions that I wish to ask this
7 witness on the Mongbwalu video.

8 Mr President, when the Prosecution initially scheduled this witness, they indicated
9 that they would need eight hours for their examination-in-chief of this witness, which
10 of course with the rule in principle would have given the Defence eight hours to
11 complete its examination -- its cross-examination.

12 The Prosecution has since moved to Rule 68(3), which was granted. Of course by
13 going with Rule 68(3), it relieves the Prosecution of having to show videos, but then it
14 puts the burden on the Defence of having to show those videos that I would like to
15 ask questions on. So it increases the time and the burden on the Defence.

16 The eight hours were reduced by the Chamber to six hours. Mr President, I would
17 like to ask the Chamber to stick with the eight hours that were planned for this
18 witness. That will allow me sufficient time. If I cannot use all the videos that I
19 intend to use, I will make a selection. I have been working on this over the lunch
20 break to see which one I could do away with, and with eight hours I would be able to
21 complete a cross-examination of this witness.

22 Thank you, Mr President.

23 PRESIDING JUDGE FREMR: [14:38:55] Thank you, Mr Bourgon.
24 Prosecution.

25 MR VAN DER WERF: [14:39:00] Yes, Mr President. We do oppose the request for

1 two additional hours. We want to be reasonable, but at the same time the Defence
2 has spent quite some time on video material this morning that is of remote relevance
3 to the case. Therefore, we would encourage or suggest that more careful selection of
4 video excerpts and shortening of video excerpt be done prior to any decision on
5 additional time be made. So we do oppose this request, your Honour.

6 PRESIDING JUDGE FREMR: [14:40:00] All right.

7 I would rather conduct our deliberations in the deliberation room, so even if it will be
8 relatively brief, we will for a while leave the courtroom. So we will be soon back.

9 THE COURT USHER: [14:40:15] All rise.

10 (Recess taken at 2.40 p.m.)

11 (Upon resuming in open session at 2.43 p.m.)

12 THE COURT USHER: [14:43:10] All rise.

13 Please be seated.

14 PRESIDING JUDGE FREMR: [14:43:33] So the Chamber has deliberated and our
15 ruling is that we will give one more hour to Defence, so the complete time allotted
16 to -- or total time allotted to the Defence is seven hours.

17 But at the same time I would like to add strict caveat, Mr Bourgon. First of all, really
18 it's up to you and it's the main thing in this exercise really to select the most relevant
19 excerpt and in this connection I have to say that I share partially what Mr van der
20 Werf said, that in the morning session I am not saying that they didn't -- those
21 excerpts were not relevant, but really connection between those excerpts and charges
22 was even to me relatively, relatively remote.

23 Moreover, it was mainly about the general situation in Ituri, about the fact that also
24 Lendus committed, allegedly, some atrocities, which in my view also have been
25 presented by numerous witnesses.

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1 So I would strongly encourage you really to make -- and I can imagine that it won't be
2 an easy ask for you, but really to make a strict selection and simply avoid even some
3 relevant excerpts but take those most relevant because really after seven hours sharp I
4 will have to take floor from you and I will simply finish your cross-examination,
5 regardless of at what stage you will be at this moment. So please take it into
6 account.

7 Now you have the floor and I guess we can invite Mr Witness into the courtroom and
8 I guess we will continue in private session.

9 Mr Bourgon?

10 MR BOURGON: [14:45:52] Thank you, Mr President.

11 PRESIDING JUDGE FREMR: [14:45:57] So in the meantime we can move into
12 private session.

13 (Private session at 2.46 p.m.)

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19 (Open session at 4.31 p.m.)

20 THE COURT OFFICER: [16:31:37] We are in open session.

21 PRESIDING JUDGE FREMR: [16:31:38] Thank you, court officer.

22 So, first of all, Mr Witness, thank you very much. Today you clearly and patiently
23 responded to all questions put to you.

24 We will continue tomorrow 9.30 and, again, it is my duty to remind you that in the
25 meantime you must not discuss your testimony with anybody else. Do you

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1 understand, Mr Witness?

2 THE WITNESS: [16:32:05] (Interpretation) Yes, I do.

3 PRESIDING JUDGE FREMR: [16:32:14] Fine.

4 So court usher, please assist Mr Witness to leave the courtroom.

5 (The witness stands down)

6 PRESIDING JUDGE FREMR: Court officer, may I ask you for update on the timing
7 because I got some information, so hopefully that it's correct, according my
8 information.

9 THE COURT OFFICER: [16:32:35] The Prosecution has used so far 4 hours and
10 12 minutes.

11 PRESIDING JUDGE FREMR: [16:32:39] Twelve minutes, which means, Mr Bourgon,
12 you still have 2 hours 48 minutes at your disposal.

13 Before we leave the courtroom I would like to pay compliment to you, Mr Bourgon.

14 It is not very common, you know, but today really I have to highlight the way how
15 you organised your cross-examination, especially precise references to so many
16 excerpts. I believe that also this compliment should be also paid to your colleagues
17 who helped you to prepare it, but it was really excellent. So I would encourage
18 strongly any further examiners to proceed in such a way when using videos.

19 So now we adjourn and we will resume tomorrow, 9.30.

20 THE COURT USHER: [16:33:33] All rise.

21 (The hearing ends in open session at 4.33 p.m.)