

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, 8 December 2016  
9 (The hearing starts in open session at 9.31 a.m.)  
10 THE COURT USHER: [9:31:04] All rise.  
11 The International Criminal Court is now in session.  
12 Please be seated.  
13 PRESIDING JUDGE FREMR: [9:31:33] Good morning, everybody.  
14 Court officer, please call the case.  
15 THE COURT OFFICER: [9:31:38] 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 And for the record, we are in open session.  
19 PRESIDING JUDGE FREMR: [9:31:53] Thank you, court officer.  
20 Now appearances, starting with Prosecution.  
21 MS SAMSON: [9:31:59] Good morning, Mr President and your Honours. For  
22 the Prosecution today are Mr James Pace, Ms Selam Yirgou and myself,  
23 Nicole Samson.  
24 PRESIDING JUDGE FREMR: [9:32:09] Thank you, Ms Samson.  
25 Defence, please.

1 MR BOURGON: [9:32:18] (Interpretation) Good morning, your Honour. For  
2 the Defence this morning, Han Catherine Morin, Isabelle Martineau and myself,  
3 Stéphane Bourgon. Thank you.

4 PRESIDING JUDGE FREMR: [9:32:37] Thank you, Mr Bourgon.  
5 And Legal Representative of Victims, please.

6 MS PELLET: [9:32:42] (Interpretation) Thank you, your Honour. Former child  
7 soldier are represented by Mohamed Abdou and myself, Sarah Pellet, counsel with  
8 the Office of Public Counsel for Victims.

9 MR SUPRUN: [9:32:55] (Interpretation) Good morning, your Honour, your Honours.  
10 The victims of the attacks are represented by myself, Dmytro Suprun, counsel with  
11 the Office of Public Counsel for Victims.

12 PRESIDING JUDGE FREMR: [9:33:07] Thank you, Ms Pellet. Thank you,  
13 Mr Suprun.  
14 Before we start we were informed that the Defence would like to address the  
15 Chamber.

16 Mr Bourgon, you have the floor. And we are in open session.

17 MR BOURGON: [9:33:22] Thank you, Mr President.  
18 Mr President, I would like to, with the leave of the Chamber, address one document  
19 to which we objected in our list of objections. We believe that it is important to make  
20 this objection at this time in the absence of the witness because this document was  
21 actually used during the preparation session with the witness and we believe that if  
22 the document is raised or is even mentioned in his presence it could influence what  
23 he would have to say on this document.  
24 I am talking about the document, Mr President, DRC-OTP-0138-0112.  
25 Mr President, this document has been in the possession of the Prosecution since

1 December of 2005. This document was not on the Prosecution's list of exhibit in  
2 March 2015 and it was only disclosed to the Defence on 11 November and added to  
3 the Prosecution's list of exhibits to be used on 10 November.

4 Mr President, I would like to recall that in respect of Witness P-31 he was first  
5 interviewed by the Prosecution in November of 2005 for four days. This was  
6 followed by a nine-month interval and then he was interviewed again for five days in  
7 August of 2006. The document we are talking about now was obtained during the  
8 interval between the first series of interviews in November 2005 and the second series  
9 of interviews in August 2006. Mr President, I would like to also add that from 2005  
10 to 2008, based on the information that we have, witness -- I think we need to move  
11 into private session, Mr President.

12 PRESIDING JUDGE FREMR: [9:35:51] Court officer, let's move into private session.

13 (Private session at 9.35 a.m.)

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6 (Open session at 9.59 a.m.)

7 THE COURT OFFICER: [9:59:18] We are in open session, Mr President.

8 PRESIDING JUDGE FREMR: [9:59:20] Thank you, court officer.

9 (The witness enters the courtroom)

10 PRESIDING JUDGE FREMR: [10:00:06] Good morning, Mr Witness, can you hear  
11 me?

12 WITNESS: DRC-OTP-P-0031

13 (The witness speaks French)

14 THE WITNESS: [10:00:11] (Interpretation) Yes, I can hear you. Good morning.

15 PRESIDING JUDGE FREMR: [10:00:14] Very well. Mr Witness, on behalf of the  
16 Chamber, I would like to welcome you to the courtroom. You are called to testify in  
17 the case against Mr Bosco Ntaganda. You will be asked questions soon, both by the  
18 Judges and lawyers in the courtroom, and in this connection I would like to guide you  
19 as follows. Please listen carefully to those questions. If you do not understand, feel  
20 free to ask for the question to be repeated. We want you to tell the truth and tell us  
21 what you saw, heard or sensed yourself. If you did not see or hear it yourself but  
22 you found out some other way, then you should explain how.

23 Please testify just on that which you remember, don't guess, don't make things up.

24 There is nothing wrong in saying, "I don't know" or "I don't remember." Do you  
25 understand all this, Mr Witness?

1 THE WITNESS: [10:01:21] (Interpretation) Yes, I have understood you well.

2 PRESIDING JUDGE FREMR: [10:01:26] Fine.

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

11 THE WITNESS: [10:02:16] (Interpretation) Yes, I understand.

12 PRESIDING JUDGE FREMR: [10:02:21] Good. Now, Mr Witness, you will be  
13 provided with piece of paper containing text of solemn undertaking, so please make  
14 your solemn undertaking to tell the truth by reading out the declaration on the piece  
15 of paper you have in your hands.

16 THE WITNESS: [10:02:52] (Interpretation) I solemnly declare that I shall tell the  
17 truth, the whole truth and nothing but the truth.

18 PRESIDING JUDGE FREMR: [10:03:00] Thank you. So you are now under oath  
19 and you need to be aware that it is an offence within the jurisdiction of this Court to  
20 give false testimony. Do you understand, Mr Witness?

21 THE WITNESS: [10:03:19] (Interpretation) Yes, I understand.

22 PRESIDING JUDGE FREMR: [10:03:21] And finally, a few practical matters you  
23 should have in mind when giving your testimony: It is important to speak into the  
24 microphone, to speak clearly, and to speak at a slow pace to allow the interpreters to  
25 translate everything. You should only start speaking when the person asking you

1 the question has finished. When a question is asked, please count in your head to  
2 three and only then give your answer because this pause of three seconds between the  
3 question and your answer is essential to properly translate and record what you are  
4 saying. If you have any questions during your testimony, do not hesitate to let us  
5 know by raising your hand. We will then give you the opportunity to speak.

6 Have you understood all that, Mr Witness?

7 THE WITNESS: [10:04:21] (Interpretation) Perfectly.

8 PRESIDING JUDGE FREMR: [10:04:26] Very well. And before we move to the  
9 testimony itself, two procedural issues: First, for the purpose of timing for this  
10 witness as indicated in the Chamber's preliminary Rule 68(3) oral decision, delivered  
11 on 5 December 2016, the Prosecution shall have two hours to examine the witness,  
12 which shall include the process of seeking admission of the witness material under  
13 Rule 68(3), as well as any supplementary examination.

14 The Defence has been permitted six hours for cross-examination.

15 Now, for the rest, we will have to move into private session.

16 Court officer, please.

17 (Private session at 10.05 a.m.)

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6 (Open session at 10.06 a.m.)

7 THE COURT OFFICER: [10:06:44] We are back in open session, Mr President.

8 PRESIDING JUDGE FREMR: [10:06:52] Thank you, court officer.

9 The Chamber also has taken note of the Defence notice

10 of objections, including the recent one to the use or admission of certain documents,

11 and it will address any such objections if and when they arise. It is noted that

12 guidance has already been provided in relation to the majority of the objections in

13 the Chamber's preliminary ruling on Rule 68(3).

14 And now we can move to examination of our witness.

15 Prosecution, Ms Samson. You have the floor.

16 MS SAMSON: [10:07:28] Thank you, Mr President.

17 QUESTIONED BY MS SAMSON:

18 Q. [10:07:32] Good morning, Mr Witness.

19 A. [10:07:36] Good morning, Madam.

20 Q. [10:07:38] We have had a chance to meet before. My name is Nicole Samson

21 and I will be asking you questions today on behalf of the Prosecution. My initial set

22 of questions will be about your personal identity and some of your background

23 information.

24 MS SAMSON: And so for that purpose I will ask, Mr President, if we can please

25 move into private session.



- 1 PRESIDING JUDGE FREMR: [10:08:03] Certainly.
- 2 Court officer, let's move into private session.
- 3 (Private session at 10.08 a.m.)
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14 (Open session at 10.19 a.m.)  
15 THE COURT OFFICER: [10:19:33] We are in open session.  
16 PRESIDING JUDGE FREMR: [10:19:48] Ms Samson, please proceed.  
17 MS SAMSON: [10:19:50] Thank you, Mr President.  
18 Q. [10:19:52] Sir, I will just repeat for the public that you have consented to your  
19 prior recorded testimony and associated materials being admitted as evidence in this  
20 case and you have consented to being questioned by the parties, the participants and  
21 the Chamber, as necessary.  
22 And on the basis of those formalities, in addition to your confirmation of the accuracy  
23 and truthfulness of the prior record testimony and documents, the Prosecution now  
24 makes a request to the Chamber to admit the first 12 items on the Prosecution's list of  
25 documents it may use, as well as items number 14, 15, 16, 17, 18, 20 and 21 pursuant

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1 to the Chamber's decision on the preliminary ruling.

2 Thank you.

3 PRESIDING JUDGE FREMR: [10:20:52] Defence, your position?

4 MR BOURGON: [10:20:56] No objection, Mr President.

5 PRESIDING JUDGE FREMR: [10:20:59] Give me a second, we will, even if we have  
6 made preliminary decision, but we will have to make final decision.

7 (Trial Chamber confer)

8 PRESIDING JUDGE FREMR: [10:21:27] After brief silent deliberation in the  
9 courtroom, the Chamber now formally decides that the Prosecution's request for use  
10 of Rule 68(3) with this witness, that is filing number 1615, is partially granted in  
11 accordance with the Chamber's preliminary ruling of 5 December 2016. And here I  
12 refer to transcript 171.

13 And for the remainder of our ruling we will have to go into private session to rule on  
14 the specific materials.

15 (Private session at 10.22 a.m.)

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4 (Open session at 11.02 a.m.)

5 THE COURT OFFICER: [11:02:41] We are in open session, Mr President.

6 PRESIDING JUDGE FREMR: [11:02:44] Thank you, court officer.

7 First, update on timing. Ms Samson, so far you have used 48 minutes so you still  
8 have one hour 12 minutes at your disposal. And we will break now and we will  
9 reconvene half past 11.

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

11 (Recess taken at 11.03 a.m.)

12 (Upon resuming in session at 11.31 a.m.)

13 THE COURT USHER: [11:31:33] All rise.

14 Please be seated.

15 PRESIDING JUDGE FREMR: [11:32:03] Before Prosecution will continue with  
16 examination of our witness, I will deliver Chamber's oral ruling concerning the use of  
17 document DRC-OTP-0138-0112, which is item 41 in the Prosecution's list.

18 The Chamber notes that the document appears to have been in the possession of the  
19 Prosecution since 2005 but was only disclosed to the Defence on 11 November 2016,  
20 and the Chamber is not convinced by the Prosecution's justification for delayed  
21 disclosure.

22 The Chamber also notes the content of the information contained in the document,  
23 including a list of names, and therefore finds that the Defence may have been  
24 prejudiced in its preparation by this late disclosure.

25 Accordingly, the Defence objection is sustained and the Prosecution will not be

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1 allowed to use this item.

2 Now, Ms Samson, please proceed.

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 PRESIDING JUDGE FREMR: [11:33:50] Sorry, we are in open session.

8 MS SAMSON: [11:33:58] Yes, Mr President, we will require a redaction.

9 PRESIDING JUDGE FREMR: [11:34:01] I believe we have to move into --

10 MS SAMSON: [11:34:04] I can continue in open session for these questions if I could  
11 have a redaction to the reference I made earlier, please.

12 PRESIDING JUDGE FREMR: [11:34:10] Okay. So maybe the best way how to  
13 continue, let's redact the previous question and then Ms Samson, aware of the risk,  
14 will safely continue hopefully in open session.

15 MS SAMSON: [11:34:26] Yes, thank you.

16 Q. [11:34:29] And so, sir, you had mentioned that there had been killings at the  
17 residence of Governor Lompondo, you mentioned a date of 9 August 2002, and you  
18 said that's where people were killed and they were buried in a mass grave there at the  
19 residence.

20 I would like you, please, to provide some more detail as to who was taking refuge at  
21 Governor Lompondo's residence and who was involved in the attack on that  
22 residence, please.

23 A. [11:35:13] All right. Thank you very much, madam. I can explain that from  
24 the 6th the UPC sought to take control of the city with the support of the Ugandan  
25 army. In that connection the UPC elements who came out started on the 6th and the

1 7th with what we refer to as the Mudzipela massacre, which was against the people in  
2 Mudzipela, the Lendu in Sayo neighbourhood, in Bigo near in the hospital. And  
3 that's how many people ended up fleeing from their residences to seek refuge at  
4 Governor Lompondo's residence on the other side. That is in the sous-région  
5 Yambi-Yaya neighbourhood, that's where they went to seek refuge, believing that the  
6 situation would not spread to that part of town.

7 Then on the 6th and 7th and 8th it continued until the UPC captured the city on the  
8 9th, with the help of the Ugandan army, the UPDF, and that is where the massacre of  
9 all those people took place, that is the non-natives, the Lendus, who had gone to seek  
10 refuge in that area. They were killed.

11 Q. [11:36:47] Now, you mentioned the neighbourhood in which Governor  
12 Lompondo's residence was located. Could you repeat the name of the  
13 neighbourhood, please?

14 A. [11:37:01] Lumumba neighbourhood, which is generally referred to as  
15 sous-région because the district offices are located there. It's called sous-région  
16 neighbourhood.

17 Q. [11:37:17] And do you have information as to who attacked Governor  
18 Molondo's residence and attacked the people who had sought refuge there?

19 A. [11:37:32] The clashes had lasted two days, two, three days, before reaching that  
20 residence. Those who carried out the attacks were the UPC, with the support of the  
21 Ugandan army. The UPC troops and -- there were two armed groups, Hema, who  
22 were committed and with the support of the UPDF. They are the ones who came to  
23 the residence and carried out the massacre. Even in the neighbourhood in some  
24 surrounding houses where there were non-natives, all those people also were killed  
25 over those three days.

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1 MS SAMSON: [11:38:23] And, Mr President, may we move into private session for  
2 my next question. Thank you.

3 PRESIDING JUDGE FREMR: [11:38:27] Certainly.

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

5 (Private session at 11.38 a.m.)

6 (Redacted)

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3 (Open session at 12.59 p.m.)

4 THE COURT OFFICER: [12:59:51] We are in open session, Mr President.

5 PRESIDING JUDGE FREMR: [12:59:54] Thank you, court officer. And before we

6 break, the Chamber would like to provide a short clarification for the record, or

7 correction of the record, and it's following today's realtime transcript on page 27, line

8 16 to 22, currently reads that the Chamber admits under Rule 68(3) of the Rules inter

9 alia annexes 19 to 22 of the Prosecution's request number 1615. In this regard the

10 Chamber would like to clarify, as set out in its preliminary ruling of 5 December,

11 which is transcript 171, that the document contained at annex 20, which is

12 DRC-OTP-0138-0106, has already been admitted into evidence and as such would not

13 be considered further. Accordingly, I would like to clarify that the documents

14 admitted under Rule 68(3) are the documents contained at annexes 2 to 13, 15 to 19

15 and 21 to 22 to the Prosecution's request.

16 It concludes our clarification.

17 Now we will take our regular lunch-break and we will reconvene at half past 2.

18 THE COURT USHER: [13:01:32] All rise.

19 (Recess taken at 1.01 p.m.)

20 (Upon resuming in open session at 2.35 p.m.)

21 THE COURT USHER: [14:35:00] All rise.

22 Please be seated.

23 PRESIDING JUDGE FREMR: [14:35:18] If there are no changes in appearances,

24 which I believe is the case, we can directly continue with cross-examination of our

25 witness.

1 Mr Bourgon, you have the floor and do you want to proceed in private or in open  
2 session?

3 MR BOURGON: [14:35:48] Private session, please, Mr President.

4 PRESIDING JUDGE FREMR: [14:35:52] All right.

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

6 (Private session at 2.36 p.m.)

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24 (Open session at 4.31 p.m.)

25 THE COURT OFFICER: [16:31:25] We're in open session, Mr President.

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

2 Mr Witness, it breaks your testimony. We will continue tomorrow, 9.30. I would  
3 any way like to thank you for today because you had to answer many questions and  
4 I believe you did your best to respond clearly and accurately to the questions. So I  
5 thank you. It's my duty to remind you that till tomorrow you must not discuss your  
6 testimony with anybody else. Do you understand?

7 THE WITNESS: [16:32:18] (Interpretation) Discuss my testimony with anyone?  
8 I'm not sure I've understood, Mr President.

9 PRESIDING JUDGE FREMR: [16:32:24] Simply you shouldn't now in the evening,  
10 for example, to call your family or call your friends and to discuss this testimony. So  
11 it's prohibited. Do you understand?

12 THE WITNESS: [16:32:40] (Interpretation) Yes, I understand. But I don't have  
13 any phone which I can use to call anyone and I'm not having any conversations with  
14 anyone.

15 PRESIDING JUDGE FREMR: [16:32:50] Then even better. So I thank you.

16 Please, court usher, please assist Mr Witness leave the courtroom.

17 And before we adjourn, update on timing, Mr Bourgon, so far you have used 2 hours  
18 and 6 minutes.

19 Am I right?

20 (The witness stands down)

21 PRESIDING JUDGE FREMR: [16:33:17] Sorry? Two hours and 57 minutes?

22 Because it was just 30 minutes before this session, now we had two-hour session, but  
23 there were some objections, so I would rather believe in this information. So we can  
24 correct tomorrow, but at the moment I believe that the right number is 2 hours  
25 6 minutes so far, which means you still have almost 4 hours, 3.56, in this connection.



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- 1 For the sake of planning, Mr Bourgon, do you envisage that you will need to use all
- 2 that remaining time?
- 3 MR BOURGON: [16:34:04] I do, Mr President.
- 4 PRESIDING JUDGE FREMR: [16:34:05] All right. But any way it seems that it's
- 5 some chance to finish this testimony before the end of tomorrow, so Prosecution,
- 6 please -- and we also get information that next witness, P-810, the expert witness, is
- 7 ready to start his testimony tomorrow, so please be ready for such a possibility.
- 8 Now we adjourn and we will proceed tomorrow, 9.30.
- 9 THE COURT USHER: [16:34:34] All rise.
- 10 (The hearing ends in open session at 4.34 p.m.)