

1 International Criminal Court
2 Trial Chamber VI
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor versus 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 2
8 Tuesday, 17 January 2017
9 (The hearing starts in open session at 9.31 a.m.)
10 THE COURT USHER: [9:31:47] The International Criminal Court is now in
11 session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: [9:32:07] Good morning, everybody.
14 Court officer, please call the case.
15 THE COURT OFFICER: [9:32:12] Thank you, Mr President. The situation in
16 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
18 session.
19 PRESIDING JUDGE FREMR: [9:32:26] Thank you, court officer.
20 Now appearances, please, and you can limit to changes compared to
21 yesterday, if any.
22 MS SOLANO: [9:32:33] Good morning, your Honours. Same composition for
23 the Prosecution.
24 PRESIDING JUDGE FREMR: [9:32:38] Thank you, Ms Solano.
25 Defence.

1 MR GOSNELL: [9:32:39] Good morning, Mr President. No changes. Thank
2 you.

3 PRESIDING JUDGE FREMR: [9:32:42] Thank you, Mr Gosnell.

4 Legal Representatives for Victims, please.

5 MS PELLET: [9:32:50] (Interpretation) Thank you, Mr President. No
6 changes for the former child soldiers.

7 MR SUPRUN: [9:33:57] Good morning, Mr President, your Honours. No change
8 for the team dealing with the attacks. Thank you.

9 PRESIDING JUDGE FREMR: [9:33:03] Thank you, Ms Pellet, Mr Suprun.

10 Before proceeding with the testimony of the present witness, the Chamber
11 shall deliver a decision with respect to one of the 11 witnesses for whom
12 the Prosecution requested protective and special measures in filing
13 number 1579. The present decision concerns Witness P-773, whose
14 testimony is going to start tomorrow. For this witness the Prosecution
15 requests in-court protective measures, pursuant to Rule 87 of the Rules
16 in the form of face and voice distortion during testimony and the use of
17 a pseudonym. The Prosecution also seeks special measures under Rule 88
18 for the witness in the form of regular breaks and in-court assistance.
19 The Legal Representative for former child soldiers supports the request
20 in filing number 1599. The Defence opposes the protective measures
21 requested in filing number 1593. The Defence submits that the
22 Prosecution fails to demonstrate any objectively justifiable risk of
23 post-testimonial retaliation. It does not oppose the special measures of
24 regular breaks or in-court assistance, if and when necessary.
25 On 13 and 16 January 2017, the Chamber received respectively the VWU's

1 in-court protective measures and vulnerability assessments for P-773, in
2 which it was recommended that the same protective measures sought by the
3 Prosecution be granted. No special measures were recommended.
4 The Chamber recalls that an oral decision was issued on 17 November 2016,
5 granting in-court protective measures for Witnesses P-758 and P-761 and
6 the Chamber has had regard to the interrelated nature of those measures
7 and the ones sought for Witness P-773.
8 In assessing whether there exists any objectively justifiable risk, the
9 Chamber observes that it has previously held that the general security
10 situation in the region may be a relevant consideration in respect of
11 specific witnesses.
12 In this instance, it's noted that the witness and her family currently
13 reside in an area where former UPC/FPLC militia members and supporters of
14 the accused are present or continue to have influence.
15 While the witness is not reported to have faced any direct threats, the
16 Chamber recalls that threats to a witness or his or her family are not a
17 prerequisite to determining whether a witness faces an objectively
18 justifiable risk and that there are reported instances where other
19 witnesses, crime base as well as insider witnesses, were allegedly
20 threatened as a result of their involvement with the Court.
21 The Chamber further notes that given the nature of Witness P-773's
22 expected testimony, revealing the identity of this witness would also
23 risk exposing Witnesses P-758 and P-761, in respect of whom in-court
24 protective measures have already been granted as previously mentioned.
25 In this regard, the Chamber has also had regard to the VWU's assessment

1 that public testimony would expose Witness P-773 to significantly
2 enhanced levels of risk and could trigger retaliation and that protective
3 measures would reduce such risk.
4 Finally, the Chamber notes that Witness P-773 is not currently in the ICC
5 Protection Programme.
6 In light of the above, the Chamber is satisfied that there exists an
7 objectively justifiable risk with respect to the security and well-being
8 of Witness P-773 and her family, warranting the protection of her
9 identity from the public. The Chamber further finds that the in-court
10 protective measures sought do not unduly infringe upon the rights of the
11 accused, given that the Defence will be able to see the witness give
12 evidence at trial and hear her voice without distortion via video link.
13 Accordingly, and pursuant to Rule 87 of the Rules, the Chamber grants the
14 measures of use of a pseudonym for the purposes of the trial and voice
15 and face distortion during testimony for Witness P-773.
16 Turning to the request for special measures for P-773. In light of the
17 assessment and recommendations provided by the V WU, the Chamber does not
18 find it necessary to order any special measures at this stage but will
19 monitor the situation during testimony carefully.
20 This concludes the Chamber's ruling.
21 And now, court usher, please bring the witness into the courtroom.
22 (The witness enters the courtroom)
23 WITNESS: DRC-OTP-P-0863 (On former oath)
24 PRESIDING JUDGE FREMR: [9:41:14] Good morning, Mr Witness. Welcome back.
25 THE WITNESS: [9:41:24] (Interpretation) Thank you.

1 PRESIDING JUDGE FREMR: [9:41:26] Mr Witness, before we continue with the
2 rest of your testimony, I would like to -- it's my duty to remind you of
3 a few things.

4 The first one, the fact that you are still under oath which means that
5 you have to speak the truth and nothing but the truth. Is it clear to
6 you?

7 THE WITNESS: [9:41:53] (Interpretation) Yes.

8 PRESIDING JUDGE FREMR: [9:41:55] I would also like to highlight the fact
9 that today you will be cross-examined by the representative of the
10 Defence, and in this connection I want to stress that this Court is
11 governed by the principle of fair trial which, among the other things,
12 also means that both parties should be treated equally, which for you
13 means that you are expected to respond to questions put to you by the
14 Defence in the same way like you did yesterday with Prosecution.
15 And finally, a reminder concerning practical matters. Please don't
16 forget to keep pauses, at least three seconds, between the question put
17 to you and your answer. And also please don't forget to speak loudly
18 enough since it will facilitate the work of our interpreters.

19 Have you understood all that, Mr Witness?

20 THE WITNESS: [9:43:13] (Interpretation) Yes, I have understood.

21 PRESIDING JUDGE FREMR: [9:43:16] Very well. So now I am giving the floor
22 to Mr Gosnell.

23 Mr Gosnell, you may proceed. At the moment we are in the regime of the
24 open session. Can we remain in open session?

25 MR GOSNELL: [9:43:34] Yes, at least for the first subject, Mr President,

1 I think.

2 PRESIDING JUDGE FREMR: [9:43:37] All right. Please proceed.

3 MR GOSNELL: [9:43:40] Thank you, Mr President.

4 QUESTIONED BY MR GOSNELL:

5 Q. [9:43:41] Good morning, Mr Witness. My name is Christopher Gosnell.

6 I'll be asking you some questions today for the Defence, and I'd like to

7 start by showing you a couple of photographs. And the first of these

8 photographs is tab 27 of our list, DRC-D18-0001-2928. And I note for the

9 record that the problem yesterday in respect of the consoles continues to

10 occur right now, since I don't seem to be able to pull up either of the

11 evidence channels. Oh, it does -- I do have a copy off my screen but

12 I'm --

13 PRESIDING JUDGE FREMR: [9:44:42] Maybe I can just check. Today the

14 problem is still pending with channels?

15 THE COURT OFFICER: [9:44:49] No, Mr President. This morning the testing

16 was done and everything was working. I guess it's solved now. Yes,

17 the --

18 PRESIDING JUDGE FREMR: [9:44:57] So, Mr Gosnell, hopefully you should be

19 also able to manage it yourself.

20 MR GOSNELL: [9:45:09] It seems to be fine, Mr President. Thank you very

21 much to the Registry for all the work that I know they've probably had to

22 overnight.

23 MS SOLANO: [9:45:20] Your Honour.

24 PRESIDING JUDGE FREMR: [9:45:22] Ms Solano, any objection?

25 MS SOLANO: [9:45:24] No, your Honour, but I do want to note that because

1 this and other photographs are not yet in eCourt, we don't have metadata
2 that the Defence are required to provide for the photographs, including
3 the date on which the photographs were taken, and that may hamper my
4 ability to make timely interventions if any are required. Thank you.

5 PRESIDING JUDGE FREMR: [9:45:45] All right.

6 MR GOSNELL: [9:45:48] I'll provide the information in the course of my
7 questions, Mr President.

8 PRESIDING JUDGE FREMR: [9:45:52] I appreciate that.

9 MR GOSNELL: [9:45:58]

10 Q. Mr Witness, do you recognise what is pictured on this photo?

11 A. [9:46:08] Yes.

12 Q. [9:46:10] These are the stands of the Bambu football stadium;
13 correct?

14 A. [9:46:24] Yes.

15 Q. [9:46:27] You said yesterday, did you not, that the structure, the
16 roof over these stands had been destroyed during a UPC attack, didn't
17 you?

18 A. [9:46:46] Yes.

19 Q. [9:46:48] And to be precise, at page 31 of yesterday's transcript,
20 you said, and I quote:

21 "The roof of the stadium in Bambu was destroyed by a bomb."

22 And then at line 17 of page 31 of yesterday's transcript, it reads:

23 "Interpreter correction in the previous reply: The witness made mention
24 of the roof of the tribune, the stands of the stadium being destroyed."

25 Now, do you remember having spoken those words yesterday under oath?

1 A. [9:47:35] Yes.

2 Q. [9:47:37] Now, this photograph was taken yesterday. Can you explain
3 to us why you said that the roof over the stands of the Bambu stadium had
4 been destroyed?

5 A. [9:48:04] This photograph, as you can see to my right, you can see
6 there is a hole. That hole wasn't there before.

7 PRESIDING JUDGE FREMR: [9:48:15] Just hold on, Mr Witness. We face some
8 technical problem because we can hear your voice from our assistant
9 equipment.

10 Now please proceed, Mr Witness.

11 THE WITNESS: [9:48:57] (Interpretation) To the right of the photograph, I
12 can see a hole which was caused by the bomb that I was referring to.
13 That hole didn't exist before. Then you can also see towards the centre,
14 the same arises. There was no hole there before.

15 MR GOSNELL: [9:49:44] Mr President, should I just pause while this issue
16 is resolved?

17 PRESIDING JUDGE FREMR: [9:49:47] Maybe, please. Hopefully we at least
18 find some temporary solution, just to block off the equipment because
19 it's a little bit disturbing, frankly saying.

20 THE COURT OFFICER: [9:50:12] I apologise for this inconvenience. We are
21 going to try, I think, to unplug the cable since the problem cannot be
22 fixed now. A technician is on his way to fix the problem.

23 PRESIDING JUDGE FREMR: [9:50:26] Is it possible to cover this by
24 something that would at least lower --

25 THE COURT OFFICER: [9:50:33] We're going to try, Mr President.

1 PRESIDING JUDGE FREMR: [9:50:43] Yeah, I think legal text would be fine.

2 So now please proceed. I hope it's not disturbing too much. Legally

3 it's not a problem, it's only about some disturbance, but I think -- I

4 believe that we will make the final solution soon. But at the moment I

5 think please proceed.

6 MR GOSNELL: [9:51:03]

7 Q. Are you saying that you see a hole in the roof in the centre of this

8 structure?

9 Mr Witness, you've just given an answer, and you say:

10 "You can also see towards the centre, the same arises. There was no hole

11 there before."

12 Are you saying that you see a hole in the centre of this structure which

13 you are saying was caused by a bomb fired during a UPC attack?

14 A. [9:51:07] Well, what I said is that you can see a hole to my right,

15 and then in the middle, the borders are not -- they don't have the same

16 structure as before, so slightly to the centre and to the left.

17 MR GOSNELL: [9:52:30] May we have DRC-D18-0001-2929, tab 28. And I'm

18 still waiting for the document. It's D18-0001-2929, tab 28.

19 PRESIDING JUDGE FREMR: [9:53:23] Court officer, we are calling the next

20 document.

21 THE COURT OFFICER: [9:53:41] Just before the document being displayed, to

22 inform the Chamber, we can fix the problem in one minute. I've just been

23 informed that for that we need to pause because the whole system for the

24 problem has to be reset. So I don't know if you want to continue this

25 way or if you prefer to pause one minute and then the problem can be

1 fixed.

2 PRESIDING JUDGE FREMR: [9:54:00] We will prefer to pause one minute. So

3 we can stay in the courtroom and just wait for one minute. It's fine.

4 All right.

5 (Pause in proceedings)

6 THE COURT OFFICER: [9:55:47] I have been informed that it has been solved

7 now. We can resume.

8 PRESIDING JUDGE FREMR: [9:55:53] Every morning there's some surprise

9 ready for us. All right.

10 Mr Witness, could you say: 1, 2, 3, through your mic. Mr Witness,

11 please say: 1, 2, 3.

12 THE WITNESS: [9:56:15] (Interpretation) 1, 2, 3.

13 PRESIDING JUDGE FREMR: [9:56:18] It's fine. Thank you very much, and we

14 now can proceed, Mr Gosnell. Sorry for that.

15 MR GOSNELL: [9:56:27] That's fine. Thank you, Mr President.

16 Q. [9:56:31] Now, Mr Witness, this photograph is a little bit more

17 close-up. Are you saying that there's some kind of structural damage to

18 the centre of this structure that you say is attributable to a bomb or,

19 in fact, by any munition fired during a UPC attack?

20 A. [9:57:07] On the photograph, if you look at the right, I think it's

21 visible but not in the centre. In any event, the impact of the bomb is

22 visible in the stands where people sit.

23 Q. [9:57:36] So you now would agree with me -- and I'm just focusing on

24 the centre for starters, Mr Witness, we're proceeding step by step. And

25 in your initial answer you asserted that you saw structural damage to the

1 centre of this structure. Now having the benefit of this photograph, am
2 I right that you now agree that there's no visible damage to the centre
3 of this structure?

4 A. [9:58:12] In the middle, the damage was done to the place where
5 people sit, not to the roof.

6 Q. [9:58:24] And you've mentioned there's a hole on the right-hand side
7 of the roof, but we can see that the structure is largely intact;
8 correct?

9 A. [9:58:44] The hole is to my right on the roof, and you can see that,
10 to my right.

11 Q. [9:58:54] And the structure is largely intact; correct?

12 A. [9:58:06] To the right it is not intact. The roof is destroyed and
13 some of the seats or the places where people sit, some of those places
14 are destroyed, as one can at least see.

15 Q. [9:59:26] So you weren't exaggerating yesterday deliberately when
16 you said that the roof had been destroyed; is that your position?

17 A. [9:59:44] Exaggerating may actually be exaggerating. It may be too
18 much. What matters basically is to demonstrate that a bomb was launched
19 in that direction. I think that's what matters.

20 Q. [10:00:03] So are you admitting that you did exaggerate in order to
21 convey what matters, in your words?

22 A. [10:00:19] No, I did not exaggerate. If I said that in my
23 testimony, the idea was to demonstrate that bombs had effectively been
24 launched from the other side, from the UPC militia who launched those
25 bombs towards Bambu. That is evidence in the course of my testimony in

1 that regard.

2 MR GOSNELL: [10:00:50] Mr President, I seek to tender these two
3 documents.

4 PRESIDING JUDGE FREMR: [10:00:55] Prosecution, any objection?

5 MS SOLANO: [10:00:57] No, your Honour.

6 PRESIDING JUDGE FREMR: [10:01:01] So those two photographs specified by
7 Mr Gosnell are admitted into evidence as a further Defence exhibit.

8 MR GOSNELL: [10:01:12]

9 Q. Yesterday, Mr Witness, you described an attack on Bambu and Kobu by
10 UPC combatants that occurred in January 2003 when they did not withdraw
11 after the initial attack, whereas up until that point there had been a
12 series of attacks followed by withdrawals. Do I understand that
13 testimony correctly, in general terms?

14 A. [10:02:04] Please can you repeat your question.

15 Q. [10:02:07] Yes. So you understand the purpose of my question, I'm
16 trying to establish a chronology with you, a sequence of events. And am
17 I correct that there was a period during which there were a series of UPC
18 attacks followed by retreats and that that occurred prior to January
19 2003; and then there was what you would describe as the last attack which
20 occurred in January 2003, when the UPC attacked and did not withdraw but
21 took up positions in Bambu and Kobu. Does that fairly summarise the
22 sequence of events that you described yesterday?

23 A. [10:03:12] If I talked about the last attacks, it was to point out
24 that thereafter there were no other attacks after the militia of the UPC
25 withdrew. Now, when it comes to chronology, these things happened a very

1 long time ago and I don't have a clear recollection. But I recall that
2 it was in the month of February that the UPC forces withdrew from Kobu,
3 Bambu, and Kilo. But the exact date, I don't have it with me here, nor
4 in my mind. And this was actually marked by the killings in Kobu and
5 thereafter the war ended.

6 (Redacted)

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Trial Hearing
Witness: DRC-OTP-P-0863

(Private Session)

ICC-01/04-02/06

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- 4 THE COURT OFFICER: [10:06:30] We are in private session, Mr President.
- 5 (Private session at 10.06 a.m.)
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Trial Hearing
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(Private Session)

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18 (Open session at 11.07 a.m.)

19 PRESIDING JUDGE FREMR: [11:07:26] Thank you. So now we will take our
20 regular break for 30 minutes. So, first of all, please, court usher,
21 assist Mr Witness to leave the courtroom because then I would like to
22 briefly discuss one issue in his absence.

23 (The witness stands down)

24 PRESIDING JUDGE FREMR: [11:08:01] This issue is an issue of timing, since
25 I now got information that so far, Mr Gosnell, you used one hour, 18

1 minutes, if I'm reading it -- that's 15, 15 minutes, which means roughly
2 that you still have at your disposal two hours because I'm including time
3 used by Prosecution plus time used by Mr Suprun generally. But we still
4 have before us the next session, for 90 minutes. But if you would be
5 able to finish your examination in 2 hours, then we would be open to
6 prolong the second session and not to adjourn just for the next 30
7 minutes. Do you have an estimation at the moment, Mr Gosnell?

8 MR GOSNELL: [11:08:56] I do hope that I could get through the -- may I
9 just ask what your Honour's proposal might be in terms of -- would it be
10 that your Honour would wish for me to extend even up to 30 minutes to
11 complete my cross-examination within the allotted time before lunch?

12 PRESIDING JUDGE FREMR: [11:09:21] Yeah, was to start and to -- normally
13 we have 90-minute session, but if you would be able to finish in two
14 hours, then you would like rather to take this two-hour session and not
15 to adjourn till the afternoon, because as I said the next witness is
16 anyway fixed for Wednesday. So not just to have 30 minutes in the
17 afternoon. If you would be available -- if you would be capable to
18 finish in those two hours, you would rather take this longer session.

19 MR GOSNELL: [11:09:47] I understand now, Mr President.

20 PRESIDING JUDGE FREMR: [11:09:49] At least please try and we will see.

21 MR GOSNELL: [11:09:51] Yes.

22 PRESIDING JUDGE FREMR: [11:09:51] If you will not be able to try, we will
23 simply adjourn.

24 MR GOSNELL: [11:09:54] I think the chances are very good. Perhaps we
25 could just come to the one hour and 30 mark, and I could provide your

- 1 Honour with an update at that point.
- 2 PRESIDING JUDGE FREMR: [11:10:01] Yes. It's absolutely fine with us.
- 3 MR GOSNELL: [11:10:03] Thank you, Mr President.
- 4 PRESIDING JUDGE FREMR: [11:10:04] So now we break, and since it's 11.10,
- 5 we will resume at 11.40.
- 6 THE COURT USHER: [11:10:14] All rise.
- 7 (Recess taken at 11.10 a.m.)
- 8 (Upon resuming in open session at 11.43 a.m.)
- 9 PRESIDING JUDGE FREMR: [11:43:12] We are in open session. We are going
- 10 to continue with cross-examination of our witness by Defence.
- 11 Mr Gosnell, can we remain in open session or is there a need to move into
- 12 private?
- 13 MR GOSNELL: [11:43:31] At least for starters we'll have to stay in
- 14 private, Mr President, or move into private. Sorry.
- 15 PRESIDING JUDGE FREMR: [11:43:37] All right. Court officer, let's move
- 16 into private session.
- 17 THE COURT OFFICER: [11:43:50] We are in private session, Mr President.
- 18 (Private session at 11.43 a.m.)
- 19 (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)

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Witness: DRC-OTP-P-0863

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11 (Open session at 1.29 p.m.)

12 PRESIDING JUDGE FREMR: [13:29:48] Thank you, court officer.

13 Mr Witness, this concludes your testimony. On behalf of this Chamber, I

14 would like to thank you because I can imagine that it was a rather

15 difficult experience. But I believe that your testimony will assist us

16 in our effort to find the truth in this case. So we thank you and we

17 wish you a safe journey home.

18 Now, court usher, please assist Mr Witness to leave the courtroom.

19 (The witness is excused)

20 PRESIDING JUDGE FREMR: [13:30:21] I see there are no further requests for

21 the floor.

22 Before we leave, I also have to thank the interpreters, court reporters,

23 and guards who supported us in this extended session. We will resume

24 tomorrow, 9.30, and we are going to hear Witness P-0773, who will, if I'm

25 not wrong, testify by video link.

- 1 And now court is adjourned.
- 2 (The hearing ends in open session at 1.31 p.m.)
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