

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 Judge Chang-ho Chung
6 Trial Hearing - Courtroom 2
7 Thursday, 19 January 2017
8 (The hearing starts in open session at 1.39 p.m.)
9 THE COURT USHER: [13:39:24] All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE FREMR: [13:39:48] Good afternoon, everybody.
13 Court officer, please call the case.
14 THE COURT OFFICER: [13:40:04] Thank you, Mr President. The situation in the
15 Democratic Republic of the Congo, in the case of The Prosecutor versus Bosco
16 Ntaganda, ICC case reference 01/04-02/06. We are in open session.
17 PRESIDING JUDGE FREMR: [13:40:14] Thank you, court officer.
18 Now I will ask appearances in habitual order, starting with the Prosecution.
19 MS SAMSON: [13:40:23] Good afternoon, Mr President, your Honours. For the
20 Prosecution today is Mr James Pace; Ms Selam Yirgou; and myself, Nicole Samson.
21 PRESIDING JUDGE FREMR: [13:40:37] Thank you, Ms Samson.
22 Defence please.
23 MR BOURGON: [13:40:41] (Interpretation) Thank you, your Honour. Representing
24 Mr Bosco Ntaganda we have Sara Eve Levac from the -- who is in the courtroom for
25 the first time; Margaux Portier; and myself, Stéphane Bourgon. Thank you very

1 much.

2 PRESIDING JUDGE FREMR: [13:40:58] Thank you, Mr Bourgon.

3 Now Legal Representatives of Victims, please.

4 MS PELLET: [13:41:08] (Interpretation) Thank you, your Honour. Former child
5 soldiers are represented by Mohamed Abdou; and myself, Sarah Pellet, counsel
6 OPCV.

7 MR SUPRUN: [13:41:33] (Interpretation) Good afternoon, your Honours. The
8 victims of the attacks are represented by myself, Dmytro Suprun, counsel OPCV.

9 PRESIDING JUDGE FREMR: [13:41:35] Thank you, Ms Pellet.

10 Thank you, Mr Suprun.

11 Mr Bourgon, sorry, because I see that the name of a new member of your team is not
12 appearing in the -- at least in the English version of the transcript correctly. Could
13 you repeat that?

14 MR BOURGON: [13:41:58] (Interpretation) Sara Eve Levac is the name of my
15 colleague. I thank you indeed, your Honour.

16 PRESIDING JUDGE FREMR: [13:42:02] Thank you. So, Madam Levac, welcome.

17 Now I would like before we move to the testimony of our witness, who is in the
18 field, and we will do this -- we will conduct this examination through video-link.

19 So for the purposes of timing for this witness, as indicated in the Chamber's email of
20 4th May, 2016, both parties shall have six hours each for their respective
21 examinations. I also recall that the adjusted sitting hours will apply during the
22 testimony of this witness, meaning that the witness will testify for two one-hour
23 court sessions per day, with a 30-minute break in between because of circumstances
24 that are well known to the parties. With the exception of today, we will hear this
25 witness during the morning sessions. In view of this specific schedule, the

1 Chamber strongly encourages the parties and participants to endeavour to minimise
2 any interruptions to the witness' testimony on procedural matters and - to the extent
3 possible - save any submissions until after the witness has taken a break.

4 With this in mind, the Chamber has taken note of the Defence's notice and
5 supplemental notice of objections to the use or admissions of certain documents, and
6 as usual it will address any such objections if and when they arise.

7 So now we can turn to the scheduled testimony. I can note that we already have
8 our video-link connected, so I can address Mr Witness directly.

9 WITNESS: DRC-OTP-P-0005

10 (The witness speaks in French)

11 (The witness testifies via video-link)

12 PRESIDING JUDGE FREMR: [13:44:26] Mr Witness, can you hear and see me okay?

13 THE WITNESS: [13:44:30] (Interpretation) Very well.

14 PRESIDING JUDGE FREMR: [13:44:33] Good. On behalf of the Chamber, I would
15 like to welcome you. You are called to testify in the case against Mr Bosco
16 Ntaganda. You will be asked by questions both by the Judges and lawyers here in
17 the courtroom. In this connection, I would like to guide you as follows:

18 Please listen carefully to those questions. If you do not understand, feel free to ask
19 for the question to be repeated. We want you to tell the truth and tell us what you
20 saw, heard, or sensed yourself. If you didn't see or hear it yourself but you found
21 out some other way, then you should explain how. Please testify just on that which
22 you remember. Don't guess. Don't make things up. There is nothing wrong in
23 saying, "I don't know" or "I don't remember."

24 Do you understand all this, Mr Witness?

25 THE WITNESS: [13:45:28] (Interpretation) Yes, your Honour.

- 1 PRESIDING JUDGE FREMR: [13:45:36] Fine. Mr Witness, another issue.
- 2 Protective measures are put in place to ensure that your identity is not revealed to
- 3 the public. In practice, it means that the public cannot see your face today and that
- 4 your voice is being disguised so that the public cannot recognise it. We will refer to
- 5 you as "Mr Witness" only and ensure that your name and any other information that
- 6 risks revealing who you are is not broadcast to the public. Therefore, whenever you
- 7 need to describe anything that might reveal your identity, we will do so in private
- 8 session so that no one outside the courtroom can hear your answer.
- 9 Do you understand, Mr Witness?
- 10 THE WITNESS: [13:46:33] (Interpretation) Yes, I've understood completely, your
- 11 Honour.
- 12 PRESIDING JUDGE FREMR: [13:46:44] Very well. Mr Witness, now you should
- 13 find in front of you a piece of paper with the text of the solemn undertaking. Do
- 14 you have it?
- 15 THE WITNESS: [13:46:52] (Interpretation) Yes, I do, your Honour.
- 16 PRESIDING JUDGE FREMR: [13:47:00] Fine. So please now make your solemn
- 17 undertaking to tell the truth by reading out the declaration you have in front of you.
- 18 THE WITNESS: [13:47:11] (Interpretation) I swear I shall tell the truth, the whole
- 19 truth, and nothing but the truth.
- 20 PRESIDING JUDGE FREMR: [13:47:28] Thank you, Mr Witness. You are now
- 21 under oath, so you need to be aware that it's an offence within the jurisdiction of this
- 22 Court to give false testimony. Do you understand that?
- 23 THE WITNESS: [13:47:46] (Interpretation) Yes, I have, your Honour, perfectly.
- 24 PRESIDING JUDGE FREMR: [13:47:57] And finally a few practical matters you
- 25 should have in mind when giving your testimony. It's important to speak into the

1 microphone - what you are so far doing very well - to speak clearly, and to speak at a
2 slow pace to allow the interpreters to translate everything. You should only start
3 speaking when the person asking you the question has finished. So when a
4 question is asked, please do not respond immediately but rather count in your head
5 to three and only then give your answer. This pause of three seconds at least is
6 essential for us to properly hear, record, and translate what you are saying. If you
7 have any questions during your testimony, do not hesitate to let us know. We will
8 then give you the opportunity to speak. In case you cannot hear us well or need to
9 take a break, please let the court officer, who is with you in the room, know.

10 Mr Witness, have you understood all that?

11 THE WITNESS: [13:49:14] (Interpretation) Of course, your Honour.

12 PRESIDING JUDGE FREMR: [13:49:16] Very well. It means that we now can start
13 your testimony, and I am giving the floor to the Prosecution. I guess it will be
14 Ms Samson who will conduct this examination.

15 Ms Samson, you have the floor. And I'm just reminding you that we are at the
16 moment are in open session and this is a protected witness.

17 MS SAMSON: [13:49:37] Thank you, Mr President.

18 QUESTIONED BY MS SAMSON:

19 Q. [13:49:44] Good afternoon, Mr Witness.

20 A. [13:49:48] Good afternoon, your Honour.

21 Q. [13:49:50] You will recall that we met last week, and my name is Nicole
22 Samson. I'll be asking you questions over the next several days on behalf of the
23 Prosecution.

24 MS SAMSON: [13:50:11] Mr President, if we may go into private session for the
25 initial questioning, which will be about the witness' biographical details.

1 PRESIDING JUDGE FREMR: [13:50:23] Understandable.

2 Now, court officer, let's move into the private session. And for the information of
3 the public, since this witness is a protected one, he was granted that his identity will
4 not be revealed to the public. So as soon as that there is upcoming questions that
5 could reveal his identity, we are obliged to move into private session, which is the
6 case just now.

7 (Private session at 1.50 p.m.)

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10 (Open session at 2.36 p.m.)
11 THE COURT OFFICER: [14:36:25] We are in open session, Mr President.
12 PRESIDING JUDGE FREMR: [14:36:27] Thank you, court officer. Because of the
13 special schedule approved for our witness, we will break now and we will
14 reconvene after 30 minutes, which means at 3.05. And for the public gallery, I am
15 afraid that even after the break, most of the questions could be revealing -- might be
16 revealing the identity of the witness, so it's very likely we will also proceed in the
17 regime of private session.
18 Now we will break for 30 minutes.
19 THE COURT USHER: [14:37:20] All rise.
20 (Recess taken at 2.37 p.m.)
21 (Upon resuming in open session at 3.06 p.m.)
22 PRESIDING JUDGE FREMR: [15:07:15] We are going to continue with the next piece
23 of direct examination of our witness by the Prosecution for the next hour.
24 Ms Samson, habitual question and I suppose you will have to continue in the regime
25 of private session; am I right?

1 MS SAMSON: [15:07:41] Mr President, I can try to do one brief section in open
2 session with the next document I'd like to show, but we may have to move into
3 private session depending on the answers, with your leave.

4 PRESIDING JUDGE FREMR: [15:07:52] Understood. So currently we can remain in
5 open?

6 MS SAMSON: [15:07:56] Yes.

7 PRESIDING JUDGE FREMR: [15:07:56] All right. So you have the floor.

8 MS SAMSON: [15:07:00]

9 Q. [15:08:01] Sir, I would like to show you another document. Please note that,
10 as Mr President has just said, we are in open session so I would ask that you not give
11 an answer that may identify you. The document I would ask you to look at is
12 number 26 in the Prosecution's materials. The registration number is
13 DRC-OTP-0113-0133. Please take a look at that document.

14 THE COURT OFFICER: (Via video-link) [15:08:01] (Interpretation) Yes, madam, I
15 will show you the document on the screen first before showing it to the witness.

16 MS SAMSON: [15:09:12] Thank you. I confirm that that is the correct document.

17 THE COURT OFFICER: (Via video-link) [15:09:26] (Interpretation) The witness can
18 now see the document.

19 MS SAMSON: [15:13:15]

20 Q. [15:13:42] Sir, do you recognise this document?

21 A. [15:13:51] I no longer remember this document, but the signature is Lubanga's
22 signature.

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- 11 PRESIDING JUDGE FREMR: [15:15:31] For sure.
- 12 Court officer, let's move into private session now.
- 13 (Private session at 3.15 p.m.)
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21 (Open session at 3.44 p.m.)

22 THE COURT OFFICER: [15:44:50] We are in open session, Mr President.

23 PRESIDING JUDGE FREMR: [15:44:54] Thank you.

24 Ms Samson, please proceed.

25 MS SAMSON: [15:44:57]

1 Q. [15:44:59] Sir, I'll repeat my question: I wanted you to explain what you
2 know about the circumstances and creation of the UPC.

3 A. [15:45:28] Very well. The UPC, to the best of my knowledge, didn't come
4 into being in Bunia; it came into being in Uganda. And I didn't understand very
5 well the circumstances which led to the UPC being created, to this party being
6 created. But to the best of my knowledge, the UPC defended the Hema, generally.
7 I think that can be considered one of the circumstances for the UPC's creation. It
8 was about the reorganisation of the Hema because already in 1999, there was already
9 a conflict between the UPC, who were the Hema generally, and the Lendu. And in
10 order to better structure and organise the ethnic group, it was necessary to have
11 something that would bring together the Hema in a party.

12 Q. [15:46:54] Now, in very general terms, in 2000, which political group was
13 controlling Ituri, and who were its leaders?

14 A. [15:47:19] I'm sorry, from what year?

15 Q. [15:47:21] 2000.

16 A. [15:47:37] In 2000, the Hema were organising themselves into the UPC and the
17 Lendu were organising themselves as well, but it was the UPC who controlled Ituri
18 in general.

19 Q. [15:47:53] Well, then, let's move a bit further forward to 2002, and I'm
20 interested in the period after March 2002, April 2002. Can you describe the climate
21 in Bunia and what was happening in Bunia in or about April 2002 from a political
22 perspective? Who was in control? What was happening in the town?

23 A. [15:48:37] In 2002 there was terror, psychosis, terror in town. That was from
24 April, if my memory serves me well, from April 2002; and people were getting ready
25 to leave the town in order to go into the rural areas.

1 Q. [15:49:10] And who at that time was in control of Bunia, in April 2002?

2 A. [15:49:28] In April 2002 the UPC were in control of Bunia.

3 Q. [15:49:32] And have you heard of a person named Claude Kiza?

4 A. [15:49:47] I remember well. I remember Claude well. If I'm not mistaken,
5 Claude was a commander in the APC, in the RCD political party, RCD/KML.

6 Q. [15:50:18] And what happened to Claude Kiza?

7 A. [15:50:29] Claude Kiza - I heard people speak about him after - he died in
8 Bunia; he was shot. He was shot by the UPC in the town centre of Bunia, and it was
9 then that I heard people talk about Claude. He was named by the name of Claude.

10 Q. [15:50:57] In April 2002 were you in --

11 MS SAMSON: [15:51:05] Mr President, perhaps it is better to go into private session.

12 PRESIDING JUDGE FREMR: [15:51:08] I do agree.

13 Court officer, please let's move into private session.

14 (Private session at 3.51 p.m.)

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18 (Open session at 4.07 p.m.)

19 THE COURT OFFICER: [16:07:11] We are in open session, Mr President.

20 PRESIDING JUDGE FREMR: [16:07:17] Thank you, court officer.

21 So now we will adjourn. Mr Witness, I would like to thank you for your today's
22 involvement. You perfectly followed my guidance so there was no problem with
23 transcription, no problem with translation of your testimony. We will continue
24 tomorrow morning, and again we will hold two sessions, one hour each.

25 So now we adjourn -- oh, Mr Bourgon.

1 MR BOURGON: [16:07:56] Mr President, in line with the Chamber's guidance, there
2 are a few issues I would like to raise after this session. Thank you.

3 PRESIDING JUDGE FREMR: [16:08:02] So now we can cut the connection with the
4 field, and we will -- in the remainder we will deal with some procedural issues.

5 Thank you very much, Mr Witness. See you tomorrow morning.

6 Sorry, before we cut -- oh, okay. Could we -- forget about it. We will -- so now are
7 we back in open session? Still in open session. Okay.

8 Mr Bourgon, please, you have the floor.

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1 And I'd like also to -- we will, of course, compare both transcripts, but I would like, if
2 we would be very, very careful when moving from French to English, and especially
3 with documents.

4 And the last thing I'd like to say is I would have liked to raise a few objections of
5 leading questions. I did not do so because the Chamber asked us not to interrupt
6 the testimony, but there are some examples. I will bring -- raise those with my
7 colleague. And we have the documents, we have the witness, we're moving very
8 slowly. I don't think there is no need to go to leading question. We can elicit the
9 information from the witness.

10 Just one last part I'd like to say, and I think my colleague will understand -- will
11 agree with me: The testimony of the witness in this -- those last 15 minutes in terms
12 of who was in control of Bunia, who was fighting between April and August, is far
13 from being clear, at least from our understanding in terms of really who was in
14 control or who was fighting or who was committing those crimes, is far from clear.
15 I think we can, without leading the witness, at least confirm what the period we are
16 talking about so that the testimony is clear and it's easier for us to cross-examine, but
17 also - and more importantly - easier for the Chamber to assess the testimony.

18 Thank you.

19 PRESIDING JUDGE FREMR: [16:11:46] Thank you. Also, a comment on your
20 submission, but before that I also will give the floor to Ms Samson, if she wants to
21 also make -- respond.

22 MS SAMSON: [16:11:57] No. In relation to translation issues, well, of course, we
23 leave it to the final review of the transcripts.

24 In relation to leading questions, I think Defence counsel is going to -- we're going to
25 discuss this issue later. And naturally, I don't believe that they were -- that they

1 were used or they were used at times, as I alluded to, to the Court, in order to review
2 a document.

3 In terms of the confusion that may result from the last 15 minutes, I will review the
4 transcript carefully and see if there are clarifications that could be made tomorrow
5 morning.

6 PRESIDING JUDGE FREMR: [16:12:39] Yes. And now, before we adjourn, a
7 comment from my part, Mr Bourgon. I appreciate that you maybe too strictly
8 followed our guidance because it doesn't mean you are prohibited to make
9 objections or even to put -- to draw our attention to some discrepancy in the
10 translation, especially if it should have some immediate impact on the answer of the
11 witness. So please feel free. This guidance was made in general way, but for sure
12 it doesn't mean that you should be prohibited for making it during the testimony.
13 So please take this -- take this guidance within those limits. So feel free. If there is
14 a leading question, if there is some discrepancy in translation which really may have
15 some, as you said, crucial impact on the answer, please raise it immediately. No
16 problem with us.

17 Now we adjourn and we will, as I said, hold two one-hour sessions, first one from
18 9.30 tomorrow.

19 (The hearing ends in open session at 4.14 p.m.)