

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 Friday, 20 January 2017
9 (The hearing starts in open session at 9.31 a.m.)
10 THE COURT USHER: [9:31:26] All rise. The International Criminal Court is now in
11 session. Please be seated.
12 PRESIDING JUDGE FREMR: [9:31:48] Good morning, everybody.
13 Court officer, please call the case.
14 THE COURT OFFICER: [9:31:54] Thank you, Mr President. The situation in the
15 Democratic Republic of the Congo, in the case of The Prosecutor versus Bosco
16 Ntaganda, case reference ICC-01/04-02/06. We are in open session.
17 PRESIDING JUDGE FREMR: [9:32:08] Thank you.
18 Now appearances, and you can just limit on changes, if any.
19 MS SAMSON: [9:32:14] Good morning, Mr President, your Honours. There has
20 been no change to the composition of the Prosecution team today.
21 PRESIDING JUDGE FREMR: [9:32:20] Thank you, Ms Samson.
22 Defence, please.
23 MR BOURGON: [9:32:23] (Interpretation) Good morning, your Honour. No change
24 on the side of the Defence, your Honour.
25 PRESIDING JUDGE FREMR: [9:32:28] Thank you, Mr Bourgon.

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1 Legal Representatives of Victims, please.

2 MS PELLET: [9:32:38] (Interpretation) Thank you, your Honour. No change for the
3 team of the former child soldiers.

4 MR SUPRUN: [9:32:47:] Good morning, your Honours. For the victims of attacks,
5 there are no changes since yesterday.

6 PRESIDING JUDGE FREMR: [9:32:53] Thank you, Ms Pellet.

7 Thank you, Mr Suprun.

8 WITNESS: DRC-OTP-P-0005 (On former oath)

9 (The witness speaks French)

10 (The witness gives evidence via video link)

11 PRESIDING JUDGE FREMR: [9:33:03] Mr Witness, good morning. Can you hear
12 me and can you see me?

13 THE WITNESS: [9:33:10] (Interpretation) I can hear you, yes.

14 PRESIDING JUDGE FREMR: [9:33:14] Good. Mr Witness, today we are going to
15 continue with your examination by the Prosecution. Our plan is to conduct two
16 sessions, one hour each, but if you would -- in case that you would feel tired, let me
17 know and we can make some short break even during those two one-hour sessions.

18 Second issue, it is my legal duty to remind you that today again you are still under
19 oath, which means that you have to speak the truth and nothing but the truth.

20 Have you understood all that, Mr Witness?

21 THE WITNESS: [9:33:59] (Interpretation) I've understood that well.

22 PRESIDING JUDGE FREMR: [9:34:14] Very well, Mr Witness. So it means we can
23 move to the testimony itself.

24 And I'm asking Ms Samson whether, subject to upcoming questions, there is still
25 possibility to remain in the regime of open session; or because this witness is a

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1 protected one, there is a need to move into the regime of private session.

2 MS SAMSON: [9:34:32] Mr President, I can ask several questions in open session
3 now and seek permission to move to private session shortly thereafter.

4 PRESIDING JUDGE FREMR: [9:34:46] Very well, Ms Samson. So now please
5 proceed.

6 QUESTIONED BY MS SAMSON: (Continuing)

7 Q. [9:34:56] Good morning, sir.

8 A. [9:35:00] Good morning.

9 Q. [9:35:02] I will continue asking you some session -- some questions now in
10 open session, starting with an area I'd like to clarify further to your testimony
11 yesterday, which is the armed group or groups in control of Bunia between April
12 2002 and August 2002.

13 A. [9:35:35] Yes, madam.

14 Q. [9:35:37] Yesterday you referred to the death of a man named Claude Kiza
15 whom you had stated was a commander in the APC and, you said, RCD political
16 party. Can you recall in which month Claude Kiza was killed?

17 A. [9:36:19] Claude Kiza, known as Claude, Claude, if I'm not wrong, was killed
18 in the month of April. If I'm not mistaken, I think it was the 18th of April, 2003.

19 Q. [9:36:38] And, sir, you just referred to a specific date. You said 18 April 2003
20 and I just want to ask you whether or not that is, indeed, the date that you just gave?

21 A. [9:37:04] Yes, madam.

22 Q. [9:37:07] Sir, we'll come back to that in a moment, but you also referred
23 yesterday to a man named Governor Lompondo, and to clarify, which armed group
24 or military group --

25 A. [9:37:26] Yes, madam.

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1 Q. [9:37:28] -- to which armed or political group did he belong?

2 A. [9:37:42] Lompondo, he was in -- he was working for the government. He
3 worked for the Congolese government.

4 Q. [9:37:51] And was he associated with any group that was in control of Bunia
5 in the April to August 2002 period?

6 A. [9:38:22] I don't think so. But whatever the case, when the UPC took Bunia,
7 we were informed that many Lendu groups of civilians went to take shelter in the
8 neighbourhood at his residence.

9 Q. [9:38:52] And in the period of April to August 2002, which military forces
10 were present in Bunia? Can you name all of the military forces present in Bunia in
11 that time period?

12 A. [9:39:14] In this period the UPC was there, the FNI had pretty much
13 withdrawn because the UPC took the town when Lompondo fled. It was under the
14 UPC's control.

15 Q. [9:39:42] Yes. And when the UPC took Bunia, which forces were they
16 fighting against? And I'm referring to August 2002.

17 A. [9:40:12] The UPC was in the town. There was also the FNI with the Lendu
18 combatants. They withdrew to the hills.

19 Q. [9:40:26] Now, you referred to Commander Kiza as being part of the APC, at
20 least until his death in April 2000 -- in April. And were the APC elements also in
21 Bunia at this time, April to August 2002, or not?

22 A. [9:40:54] The APC wasn't visible as such in Bunia, but it supported the group
23 of Lendu combatants. The APC was not visible in the town, nor the FNI. The FNI
24 withdrew to the hills, towards the south of Bunia.

25 Q. [9:41:28] And what about the RCD/K-ML, was it still operational from April to

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1 August 2002?

2 A. [9:41:44] No, RCD/K-ML, had its HQ in Beni. It wasn't visible in the town
3 either.

4 Q. [9:42:03] And coming back to the death of Claude Kiza, did that happen
5 before or after the UPC took control of Bunia in August 2002?

6 A. [9:42:27] The UPC, I don't remember. I don't remember very well.

7 Q. [9:42:47] And I have another series of questions that I can ask you in open
8 session. You mentioned yesterday that Mr Lubanga had been in Kinshasa in or
9 around August 2002. Do you know --

10 A. [9:43:09] Yes.

11 Q. [9:43:10] Do you know who was in charge of the UPC while he was in
12 Kinshasa?

13 A. [9:43:31] When he was in Kinshasa, he led the UPC -- well, the person who led
14 the UPC was Djokaba Lambi. That was on the executive side. On the other side,
15 for the army, it was Kisembo, Kisembo and Bosco Ntaganda.

16 MS SAMSON: [9:44:15] Mr President, may we move into private session for my next
17 series of questions, please.

18 PRESIDING JUDGE FREMR: [9:44:19] Certainly.

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

20 (Private session at 9.44 a.m.)

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5 (Open session at 10.25 a.m.)

6 THE COURT OFFICER: [10:25:22] We are in open session, Mr President.

7 PRESIDING JUDGE FREMR: [10:25:26] Thank you, court officer.

8 Ms Samson, please proceed.

9 MS SAMSON: [10:25:29]

10 Q. [10:25:31] Sir, what can you recall? How was the UPC political branch
11 structured? Who was at the top and thereafter what positions followed?

12 A. [10:26:12] Very well. The leader of the UPC was Thomas Lubanga. Then
13 you have the presidency at the top of the organisational chart. After the presidency
14 you have the executive and its members, who were the national secretaries, and
15 below that you had the support staff. But when it comes to the military wing, that
16 wing was under Thomas Lubanga. The executive did not communicate or
17 exchange views with the military wing, that is, so to speak, the preserve of
18 Mr Lubanga all to himself.

19 Q. [10:27:19] And other than Mr Lubanga, were there any other persons or
20 groups within the -- on the political side who would meet with the military?

21 A. [10:27:49] Apart from Lubanga, I don't see any other. I don't see any
22 relationship. But in any event I would not have been aware of it officially. It was
23 not allowed that there should be official contact with the military branch. That
24 matter was the exclusive preserve of Lubanga.

25 Q. [10:28:20] Did Mr Lubanga have any advisors, formal or informal?

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1 A. [10:28:38] Yes. He had advisors. Political advisor, diplomatic advisor,
2 security advisor, yes, he had such advisors.

3 Q. [10:28:58] Who was his security advisor?

4 A. [10:29:08] Yes. His security advisor was Rafiki.

5 Q. [10:29:18] And who was his political advisor or advisors?

6 A. [10:29:38] Political advisor, it was Honourable Ondini.

7 Q. [10:29:53] And diplomatic advisors?

8 A. [10:29:56] The diplomatic advisor was Dhetchuvi.

9 Q. [10:30:17] Who financed the UPC?

10 A. [10:30:26] Financing the UPC? I forget the name.

11 Q. [10:30:37] Did the UPC ever get money from individuals or how did the
12 UPC -- how was it funded.

13 A. [10:31:09] Please repeat your question.

14 Q. [10:31:11] Yes. How was the UPC funded? From where did the UPC get
15 money?

16 A. [10:31:22] Well, that was a private matter and I know nothing about it. We
17 never discussed finances in the UPC.

18 Q. [10:31:38] The name that --

19 A. [10:31:42] So I don't know where Lubanga got his funding from. I don't
20 know.

21 Q. [10:31:47] The name that you provided --

22 PRESIDING JUDGE FREMR: [10:31:48] Hold on.

23 Mr Bourgon, are you --

24 MR BOURGON: [10:31:51] I can wait until the end of this session.

25 PRESIDING JUDGE FREMR: [10:31:54] Very well.

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1 MS SAMSON: [10:31:54]

2 Q. [10:31:55] The name that you provided for the diplomatic advisor was not
3 captured in our transcript. Could you repeat the name you provided, please?

4 A. [10:32:04] What should I repeat?

5 Q. [10:32:13] The name of the diplomatic advisor.

6 A. [10:32:22] Yes. The diplomatic advisor, Dhetchuvi was his name.

7 MS SAMSON: [10:32:39] Thank you. Mr President, given that it's 10.30.

8 PRESIDING JUDGE FREMR: [10:32:42] All right. And before we break for 30
9 minutes, let's move to private session because I would like to make -- to put one
10 additional question. So let's move into private session.

11 (Private session at 10.33 a.m.)

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19 (Redacted)

20 (Open session at 10.33 a.m.)

21 THE COURT OFFICER: [10:33:52] We are in open session.

22 PRESIDING JUDGE FREMR: [10:33:59] Thank you.

23 And now I will give the floor to Mr Bourgon.

24 Mr Bourgon, please.

25 MR BOURGON: [10:34:05] The question was answered. I was just looking for the

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1 name of the diplomatic advisor. Thank you, Mr President.

2 PRESIDING JUDGE FREMR: [10:34:12] All right. So now we will take our regular
3 break for 30 minutes, and then, Mr Witness, we will conclude for today by another
4 session which is going to take, again, one hour.

5 So now we break and we will reconvene at 11.05.

6 (Recess taken at 10.35 a.m.)

7 (Upon resuming in open session at 11.05 a.m.)

8 THE COURT USHER: [11:06:02] All rise.

9 Please be seated.

10 PRESIDING JUDGE FREMR: [11:06:18] Let's directly continue with the further piece
11 of examination-in-chief of our witness.

12 Ms Samson, you have the floor. And do you want to proceed in private or in open
13 session?

14 MS SAMSON: [11:06:36] Your Honour, I can ask one or two questions in open
15 session.

16 PRESIDING JUDGE FREMR: [11:06:42] Very well. So you may proceed.

17 MS SAMSON: [11:06:45]

18 Q. [11:06:48] Sir, did you know anybody by the name Mafuta Savo?

19 A. [11:06:58] Mafuta Savo, yes.

20 Q. [11:07:09] Who is or was Mafuta Savo?

21 A. [11:07:21] Mafuta Savo is somebody I often saw with President Thomas
22 Lubanga, at Thomas Lubanga's residence, but I don't know the relationship he had
23 with Thomas Lubanga.

24 Q. [11:07:47] To your knowledge, did Mr Savo have any formal or informal
25 function with the UPC?

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1 A. [11:08:09] Formal function? No. Informal function, I don't know that either,
2 but he came often.

3 MS SAMSON: [11:08:19] Mr President, may I seek your leave to move into private
4 session for my next questions.

5 PRESIDING JUDGE FREMR: [11:08:26] Certainly.

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

7 (Private session at 11.08 a.m.)

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- 12 (Redacted)
- 13 (Open session at 11.35 a.m.)
- 14 THE COURT OFFICER: [11:35:50] We are in open session, Mr President.
- 15 PRESIDING JUDGE FREMR: [11:35:50] Thank you, court officer.
- 16 Ms Samson, please proceed.
- 17 MS SAMSON: [11:36:03]
- 18 Q. [11:36:05] Sir, I would like now to focus on the security section that you spoke
- 19 to us about as being headed by Mr Rafiki. Are you able to explain the structure of
- 20 that security section?
- 21 A. [11:36:51] The structure -- please repeat the question. Please.
- 22 Q. [11:36:57] Certainly. How was the security section subdivided? Who was
- 23 under Mr Rafiki? What was their position? If you can provide that, please.
- 24 A. [11:37:30] Who worked for -- what was the question?
- 25 (Redacted)

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10 A. [11:39:19] Well, I think so. I think so. He was in charge of security, and
11 therefore he must have known something about it.

12 Q. [11:39:40] Did the UPC have sections dealing with migration and
13 immigration?

14 A. [11:40:11] Yes, I think so. Rafiki was also in charge of intelligence and
15 migration, especially by air.

16 Q. [11:40:38] And can you recall who was in charge of migration and
17 immigration in 2002 and 2003?

18 A. [11:41:03] No, I can't remember.

19 Q. [11:41:26] I will ask you questions now about the structure of the FPLC. Who
20 was at the top of the FPLC in 2002/2003?

21 A. [11:41:49] The military general staff was under Kitembo Bahemuka, and his
22 deputy was Bosco Ntaganda who was in charge of operations.

23 Q. [11:42:15] And did the UPC have a minister of defence?

24 A. [11:42:31] Minister of defence? If I'm not mistaken, it was the president
25 himself.

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1 Q. [11:42:47] Who was under Mr Kisémbó and Mr Ntaganda in the military
2 structure? How was the FPLC organised as far as you know?

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13 (Private session at 11.44 a.m.)

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(Private Session)

ICC-01/04-02/06

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17 (Open session at 12.18 p.m.)

18 THE COURT OFFICER: [12:19:13] We are in open session, Mr President.

19 PRESIDING JUDGE FREMR: [12:19:17] And first one point concerning organisation

20 of this testimony of Witness P-0108. Originally we thought we would examine him

21 in two sessions in the afternoon, one hour each, but we would rather prefer to sit just

22 for one session of two hours. But we are still waiting for a report of VWU, so if

23 there will be no obstacles on, for example, health of the witness, we would rather

24 prefer this scheduling, to sit for two hours in one session. And now I will move to

25 delivery of this oral decision.

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1 The Chamber now will deliver an oral decision with respect to Witness P-0108 for
2 whom the Prosecution requested protective measures pursuant to Rule 87 of the
3 Rules in the form of face and voice distortion during testimony and the use of a
4 pseudonym in filing number 1475. In the same filing, the Prosecution also
5 foreshadowed the need for special measures pursuant to Rule 88 for this witness,
6 deferring to the VWU assessment in relation to this issue.

7 The Defence opposed the request for in-court protective measures in filing number
8 1487. The Defence submits that the Prosecution failed to provide an objective basis
9 for the measures requested. It does not oppose ordering of special measures.

10 On 19 January 2017, the Chamber received the in-court protective measures
11 assessment for the witness in which the VWU recommends the same protective
12 measures sought by the Prosecution.

13 The Chamber recalls that in assessing whether there exists an objectively justifiable
14 risk, it has previously held that the general security situation in the region may be a
15 relevant consideration in respect of specific witnesses.

16 With regard to Witness P-0108, the Chamber notes that the witness and his family
17 currently reside in an area where former UPC, FPLC militia members and
18 supporters of the accused are reportedly present or continue to have influence. The
19 Chamber further notes the Prosecution's submissions about the witness' personal
20 situation and limited mobility.

21 Regarding the Defence's submission that the request for in-court protective measures
22 is not based on any direct or specific threats received by the witness and lacked
23 substantiation, the Chamber finds that similar to scope on previous occasions, the
24 present request is poorly substantiated by the Prosecution. Nevertheless, the
25 Chamber recalls that threats to a witness or his or her family are not a prerequisite to

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1 determining whether a witness faces an objectively justifiable risk and that there are
2 reported instances where other witnesses, crime base as well as insider witnesses,
3 were allegedly threatened as a result of their involvement with the Court.

4 In assessing the witness' security situation, the Chamber has given particular
5 consideration to the protective measures assessment of the VWU in relation to the
6 witness. Therein, it is noted that the witness is well-known in his area due to his
7 personal situation and may be, therefore, easily identifiable, and that there are
8 realistic concerns that if his involvement with the Court becomes known, it would
9 present a realistic threat to him and his family and that protective measures would
10 reduce this risk.

11 Finally, the Chamber notes that Witness P-0108 is not currently in the ICC Protection
12 Programme.

13 In light of the above, the Chamber is satisfied that there exists an objectively
14 justifiable risk with respect to the security and well-being of the witness and his
15 family warranting the protection of his identity from the public. The Chamber
16 further finds that the in-court protective measures sought do not unduly infringe
17 upon the rights of the accused, given that the Defence will be able to see the witness
18 give evidence at trial and hear his voice without distortion via the video link.

19 Accordingly, and pursuant to Rule 87 of the Rules, the Chamber grants the measures
20 of use of a pseudonym for the purposes of the trial and voice and face distortion
21 during testimony for Witness P-0108. The Chamber postpones any ruling on
22 special measures pending receipt of the VWU's assessment.

23 This concludes the Chamber's ruling.

24 Now, are there any further requests for the floor? I think it's not the case, so I wish
25 you a relaxed weekend.

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1 Now we adjourn and we will reconvene on Monday, 9.30.

2 (The hearing ends in open session at 12.25 p.m.)

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