

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, 26 January 2017
9 (The hearing starts in open session at 9.31 a.m.)
10 THE COURT USHER: [9:31:57] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: [9:32:58] But, it is fine. We will start, yes. Okay.
14 Mr Witness, you can still take some rest for next five minutes.
15 Now, court officer, call the case, please.
16 THE COURT OFFICER: [9:33:10] Thank you, Mr President.
17 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
18 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
19 We are in open session.
20 PRESIDING JUDGE FREMR: [9:33:20] Thank you, court officer.
21 Now appearances if change. Prosecution first.
22 MS SAMSON: [9:33:29] Good morning, Mr President, your Honours. There has
23 been no change in the composition of the Prosecution's team today.
24 PRESIDING JUDGE FREMR: [9:33:37] Thank you, Ms Samson.
25 Defence now, please.

1 MR BOURGON: [9:33:41] (Interpretation) Good morning, your Honour.
2 No change for the Defence. Thank you.
3 PRESIDING JUDGE FREMR: [9:33:44] Thank you, Mr Bourgon.
4 And Legal Representative of Victims, please.
5 MS PELLET: [9:33:49] (Interpretation) Thank you, your Honour. No change for the
6 former child soldiers.
7 MR SUPRUN: [9:33:56] Good morning, your Honour, your Honours, for the victims
8 of the attacks there is no change. Thank you.
9 PRESIDING JUDGE FREMR: [9:34:06] Thank you, Ms Pellet.
10 Thank you Mr Suprun.
11 And the reason why start just for a while without Mr Witness is that I will deliver
12 oral ruling on prosecution Rule 68(3) request for Witness P-0043.
13 This is request on -- or this is the ruling on the Prosecution request in filing number
14 1700 seeking the admission of Witness P-0043's prior recorded testimony under
15 Rule 68(3), and I will refer to this as the request.
16 On 4 January 2017 the Chamber granted by way of email a Defence request for
17 extension of deal line in which to respond. Accordingly, the Defence responded in
18 filing number 1718 on 16 January 2017 opposing certain aspects of the request.
19 I shall now go into private session for the next part of the ruling.
20 So, court officer, please.
21 (Private session at 9.35 a.m.)
22 (Redacted)
23 (Redacted)
24 (Redacted)
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3 (Open session at 9.42 a.m.)

4 THE COURT OFFICER: [9:42:38] We are in open session, Mr President.

5 PRESIDING JUDGE FREMR: [9:42:40] Thank you.

6 Having considered the material and submissions received, the Chamber is of the
7 view that use of Rule 68(3) is, in principle, appropriate for this witness's prior
8 recorded testimony, but has decided not to admit a document tendered as an
9 associated document. As per its normal practice, a formal decision on admission
10 will be render when the witness appears before the Chamber and it will depend
11 upon the relevant requirements of Rule 68(3) being satisfied.

12 Finally, in terms of timing, the Prosecution seeks 30 minutes to conduct the
13 formalities associated with Rule 68(3) and one hour for supplemental examination
14 on four areas identified in the request, making one and a half hours in total.

15 The Defence objects to the timing and areas of the proposed supplemental
16 examination and argues that the Prosecution's total time should be limited to
17 30 minutes as the witness has, in the opinion of the Defence - already
18 comprehensively described all the information within his knowledge on these areas
19 when during a lengthy supplemental examination - inappropriate, particularly on
20 areas the Defence has not received advance notice of.

21 The Defence also objects to the Prosecution being allowed to tender additional
22 documents through the witness.

23 The Chamber has reviewed the witness's prior recorded testimony and considers
24 that the Prosecution has not adequately established the way in which the proposed
25 supplementary examination is required in the circumstances of the present case and

1 that, regardless, it appears the witness would only be in a position to provide
2 a limited amount of further relevant evidence on the four supplemental areas of
3 examination identified in the request.

4 Accordingly, the Chamber authorises the Prosecution a total of one hour to conduct
5 the Rule 68(3) formalities as well as its supplementary examination of the witness.

6 In doing so, the Chamber recalls its observation in oral decision transcript 142 that
7 there is nothing in its conduct of proceedings decisions that would limit the scope of
8 supplementary examination in the manner proposed by the Defence, as long as the
9 witness preparation protocol and attendant disclosure obligations are adhered to.

10 The Chamber considers further that on this basis there is nothing precluding
11 the Prosecution from seeking admission of further documents through a witness
12 whose testimony has been partially admitted under Rule 68(3) of the Rules.

13 As for cross-examination, the Defence is strongly encouraged to complete its
14 examination of the witness within three hours. This reflects the Prosecution's
15 estimate of time examination-in-chief would take without the application of
16 Rule 68(3). And, as usual, the parties are further directed to file public redacted
17 versions of filings 1700 and 1718 within two weeks of today.

18 This concludes the Chamber's ruling.

19 And now, please, court officer, we can start with the testimony. So please call the
20 witness to the video room.

21 (The witness enters the video link room)

22 PRESIDING JUDGE FREMR: [9:48:13] Good morning, Mr Witness. Can you hear
23 me and see me?

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

25 (The witness speaks French)

1 (The witness gives evidence via video link)

2 THE WITNESS: [9:48:21] (Interpretation) Yes.

3 PRESIDING JUDGE FREMR: [9:48:29] Mr Witness, welcome back. Sorry for this
4 slight delay. We had to solve one procedural issue. Now we would like to start
5 with the next piece of your testimony. Are you fine, okay, to continue for two
6 sessions, one hour each with your testimony?

7 THE WITNESS: [9:48:54] (Interpretation) I think so.

8 PRESIDING JUDGE FREMR: [9:48:58] Thank you very much, Mr Witness. And as
9 usual, it is my legal duty to remind you that you are still under oath so you have to
10 speak truth and nothing but the truth. And now I am giving floor to Mr Bourgon,
11 representative of Defence, who will continue in his cross-examination.

12 Mr Bourgon, habitual question: Do you prefer to continue in open session or to
13 move into private one?

14 MR BOURGON: [9:49:30] (Interpretation) I would like to start in open session,
15 your Honour, for one question.

16 PRESIDING JUDGE FREMR: [9:49:35] All right. Please proceed.

17 QUESTIONED BY MR BOURGON: (Continuing)

18 Q. [9:49:40] Good morning, Witness.

19 A. [9:49:44] Good morning.

20 Q. [9:49:44] Are you well this morning?

21 A. [9:49:47] Very well.

22 Q. [9:49:50] Yesterday when we finished the session we spoke about Thomas
23 Lubanga, who was in constant communication with several people, including
24 MONUC, nongovernmental organisations, and others -- Museveni and others. And
25 we also spoke about the decision-making process within the UPC and the fact that

1 Thomas Lubanga, to the best of your knowledge, always consulted his advisers
2 before taking a decision.

3 Do you remember your words in this regard yesterday?

4 A. [9:50:40] Yes.

5 MR BOURGON: [9:50:45] We can now move into private session, Mr President,
6 please.

7 PRESIDING JUDGE FREMR: [9:50:48] For sure.

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

9 MR BOURGON: [9:50:59] Witness, we are now in private session.

10 PRESIDING JUDGE FREMR: [9:51:01] We are still not there.

11 (Private session at 9.51 a.m.)

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25 (Open session at 10.59 a.m.)

- 1 THE COURT OFFICER: [10:59:12] We are in open session, Mr President.
- 2 PRESIDING JUDGE FREMR: [10:59:14] Thank you, court officer.
- 3 Now we take our regular break for 30 minutes and we will reconvene at half past 11.
- 4 THE COURT USHER: [10:59:25] All rise.
- 5 (Recess taken at 10.59 a.m.)
- 6 (Upon resuming in open session at 11.32 a.m.)
- 7 THE COURT USHER: [11:32:14] All rise.
- 8 Please be seated.
- 9 PRESIDING JUDGE FREMR: [11:32:38] Welcome back, Mr Witness.
- 10 We will directly continue with your cross-examination by representative of
- 11 the Defence, Mr Bourgon.
- 12 Mr Bourgon, I guess we will have to move into private session again, am I right?
- 13 MR BOURGON: [11:32:55] Yes, Mr President.
- 14 PRESIDING JUDGE FREMR: [11:32:56] So, court officer, please let's move into
- 15 private session.
- 16 (Private session at 11.33 a.m.)
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16 (Open session at 12.39 p.m.)

17 THE COURT OFFICER: [12:39:07] We are in open session, Mr President.

18 PRESIDING JUDGE FREMR: [12:39:11] Thank you, court officer. And could you

19 kindly provide us with the update on timing, the time used so far by Defence.

20 THE COURT OFFICER: [12:39:20] Yes, Mr President. The Defence used so far four
21 hours and 45 minutes.

22 PRESIDING JUDGE FREMR: [12:39:25] For the sake of planning for tomorrow,

23 Mr Bourgon, how far you got in your examination? Because you have been allotted
24 six hours, so normally you should have still one hour, 15 minutes.

25 MR BOURGON: [12:39:42] I will need the one hour 15 minutes, Mr President.

1 PRESIDING JUDGE FREMR: [12:39:46] All right.

2 Ms Samson, do you envisage any need for redirect?

3 MS SAMSON: [12:39:51] I do, Mr President. Yes.

4 And to be fair to the Defence counsel, since I did request - and was

5 granted - additional time, as much as I would like it to be over in six hours, I have to

6 acknowledge that I asked for additional time which in fairness ought to be granted

7 to the Defence as well. But in any event, I will ask for re-examination time and I

8 will ask for 35 minutes, which seems excessive, it is a lot, but we have covered a lot

9 so far, I expect we will cover more, and I genuinely have that much time to cover if

10 the Chamber would grant it.

11 PRESIDING JUDGE FREMR: [12:40:35] But be ready then to bring some grounds

12 that will really make such a request well-founded.

13 Mr Bourgon, just to be clear, yes, you have one hour, 15 minutes. Ms Samson is

14 defending your rights. Obviously, if you would come with request to get the same

15 time which was actually used by the Prosecution, it is most likely that you will get it.

16 So please have it in mind, but it doesn't mean that I force you at any price to use the

17 same time as Prosecution.

18 MR BOURGON: [12:41:17] I hope that I will not have to do so, Mr President.

19 PRESIDING JUDGE FREMR: [12:41:19] We would appreciate it, frankly saying.

20 Now we break and we will reconvene tomorrow 9.30.

21 THE COURT USHER: [12:41:28] All rise.

22 (The hearing ends in open session at 12.41 p.m.)