

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 Friday, 27 January 2017
9 (The hearing starts in open session at 9.31 a.m.)
10 THE COURT USHER: [9:31:32] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: [9:31:56] Good morning, everybody.
14 Court officer, please call the case.
15 THE COURT OFFICER: [9:32:00] 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 We are in open session.
19 PRESIDING JUDGE FREMR: [9:32:12] Thank you, court officer.
20 Now appearances.
21 MS SAMSON: [9:32:17] Good morning, Mr President and your Honours. No
22 change for the Prosecution team.
23 PRESIDING JUDGE FREMR: [9:32:21] Thank you Ms Samson.
24 Defence, please.
25 MR BOURGON: [9:32:27] (Interpretation) Good morning, your Honour.

1 No change for the Defence. Thank you.

2 PRESIDING JUDGE FREMR: [9:32:31] Thank you, Mr Bourgon.

3 Legal Representatives of Victims, please.

4 MS PELLET: [9:32:37] (Interpretation) Thank you, your Honour. No change for
5 the former child soldiers either.

6 MR SUPRUN: [9:32:47] (Interpretation) Good morning, your Honour, your
7 Honours. For the victims of the attacks, there is no change either since yesterday.

8 PRESIDING JUDGE FREMR: [9:32:56] Thank you, Ms Pellet.

9 Thank you, Mr Suprun.

10 Before we approach the rest of the testimony of our witness, the Chamber was
11 informed that Mr Bourgon would like to address it.

12 So, please, Mr Bourgon, you have the floor.

13 MR BOURGON: [9:33:10] Thank you, Mr President. Very briefly.

14 Pursuant to the Chamber's decision regarding the agenda and notebooks provided
15 to the Prosecution by Witness P-005, we received yesterday the submission of
16 the Prosecution concerning the parts thereof they would like to have admitted in
17 evidence. We will be responding, as requested by the Chamber, by the end of the
18 day and I only take the floor at this time to inform the Chamber that we would like
19 to at the same time propose in the same document the parts of the diaries and
20 agenda that we would like to have admitted in evidence. That is my only
21 submission this morning, Mr President.

22 PRESIDING JUDGE FREMR: [9:33:55] All right.

23 Ms Samson, any comment?

24 MS SAMSON: [9:33:59] Only to correct that the material was provided not
25 yesterday but the day before yesterday.

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 PRESIDING JUDGE FREMR: [9:34:04] Yes, I can confirm.

2 Now let's connect us with the field.

3 (Video link connected)

4 PRESIDING JUDGE FREMR: [9:35:22] Good morning, Mr Witness. Can you hear
5 me and see me?

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

7 (The witness speaks French)

8 (The witness gives evidence via video link)

9 THE WITNESS: [9:35:32] (Interpretation) I can hear you very well. I can see you
10 too. Yes.

11 PRESIDING JUDGE FREMR: [9:35:36] Good. Mr Witness, we will continue in
12 your cross-examination by Defence represented by Mr Bourgon. We formally plan
13 to have two one-hour sessions, but there is some chance, if we would prolong those
14 sessions a bit, that we could finish today, but we will see how the things will be.

15 Now, Mr Bourgon, you have the floor.

16 MR BOURGON: [9:36:07] Thank you, your Honour.

17 QUESTIONED BY MR BOURGON: (Continuing)

18 Q. [9:36:08] Good morning, Witness.

19 A. [9:36:12] Good morning.

20 MR BOURGON: [9:36:13] I'd like to move into private session, please.

21 PRESIDING JUDGE FREMR: [9:36:15] For sure.

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

23 (Private session at 9.36 a.m.)

24 (Redacted)

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Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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13 Page redacted – Private session

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Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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13 Page redacted – Private session

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Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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- 17 (Redacted)
- 18 (Upon resuming in open session at 11.15 a.m.)
- 19 THE COURT USHER: [11:15:47] All rise.
- 20 Please be seated.
- 21 PRESIDING JUDGE FREMR: [11:16:17] Welcome back, Mr Witness. We will
- 22 directly continue with your cross-examination by Mr Bourgon. But then I have to
- 23 disappoint people in the public gallery because we will have to move into private
- 24 session.
- 25 So now, court officer, let's move into private session.

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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13 Page redacted – Private session

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Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

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19 (Open session at 12.07 p.m.)

20 THE COURT OFFICER: [12:08:00] We are in open session, Mr President.

21 PRESIDING JUDGE FREMR: [12:08:06] Thank you, court officer. First of all, one
22 minor correction to the transcript page, of the English version, 44 line 12, instead of
23 "leading" it should be "reading".

24 And now the main issue, we will now deliver our oral decision on in-court

25 protective measures for Witness P-0043, which is going to start his testimony on

1 Monday.

2 It is the oral ruling on the Prosecution request for protective measures for

3 Witness P-0043 contained in filing number 1686. The Prosecution requests face and

4 voice distortion as well as the use of a pseudonym.

5 In filing number 1703, the Defence opposes the protective measures requested on

6 two bases: First, that the Prosecution fails to demonstrate any objectively

7 justifiable risk of post-testimonial retaliation and, second, due to the Prosecution's

8 alleged late disclosure of investigation notes referring to confidential security

9 related information of the witness.

10 On 26 January 2017 the Chamber received the VWU's in-court protective measures

11 assessment for P-0043 in which it recommends that the same protective measures

12 sought by the Prosecution be granted. No special measures were recommended in

13 the VWU's vulnerability assessment which was received by the Chamber on

14 24 January 2017.

15 The Chamber incorporates by reference the applicable law set out in its first

16 decision on protective measures which has filing number 824 and which I shall refer

17 to as the first decision. In assessing whether there exists an objectively justifiable

18 risk, the Chamber recalls that it has previously held that the general security

19 situation in a region may be a relevant consideration in respect of specific witnesses.

20 In so doing, the Chamber has frequently referred to Registry reports outlining the

21 security issues in the Ituri region as it did in its first decision, noting this to be an

22 area where former UPC/FPLC militia members and supporters of the accused are

23 present or continue to have influence.

24 The Chamber observes that the witness is stated to live in an area which appears to

25 be reasonably removed from this region. The Chamber therefore does not consider

1 that the risk to the witness based on his current area of residence has been
2 sufficiently substantiated. The Prosecution puts forward certain alleged
3 security-related incidents which had occurred in 2002 in support of its current
4 request.

5 However, although the witness's prior involvement with the Court is publicly
6 known, the Chamber notes that no allegations of threats or interference have been
7 made in relation to the witness since his 2005 statement was given.

8 Indeed, while the Chamber has previously held that the level of risk to witnesses
9 may fluctuate over time and in relation to the specificities of different cases and
10 therefore need to be assessed on case-by-case basis, the Chamber notes that
11 the Prosecution's submissions as to the current level of risk to the witness contained
12 in annex D to the request are also based solely on the witness's own assessment and
13 opinion.

14 The Chamber considers further that the VWU assessment also appears to be
15 primarily based on the witness's own assessment of his security situation. While
16 the subjective fears and opinions of the witness may be relevant to the Chamber's
17 assessment of risk, they are not determinative and the Chamber does not consider
18 that in the present situation these submissions show an objectively justifiable risk in
19 the absence of any additional supporting material.

20 In this connection, while noting the unique nature of the witness's anticipated
21 evidence and stated position, the Chamber does not consider that the Prosecution
22 has adequately demonstrated the way in which these factors will impact on his level
23 of risk.

24 Therefore, while the Chamber recalls that a prior direct threat is not a prerequisite
25 to determining that a witness faces an objectively justifiable risk, the Chamber does

1 not consider, in light of the material before it and given the witness's current
2 location and the nature of the expected testimony, that it has been established that
3 an objectively justifiable risk to the witness or his family exists.
4 In the present circumstances, the Chamber rejects the request. In so finding,
5 the Chamber acknowledges the courage required to testify publicly before it and is
6 grateful for witnesses who are in a position to do so.
7 This concludes the Chamber's ruling.
8 So now we exhausted the agenda for today. If there are no further requests for the
9 floor, and I don't see any request for the floor, we can now adjourn till tomorrow
10 9.30, when we will continue with testimony of the witness -- sorry, Monday, 9.30,
11 when we will continue with testimony of the Witness P-0043.
12 And now court is adjourned.
13 THE COURT USHER: All rise.
14 (The hearing ends in open session at 12.15 p.m.)