

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, 9 February 2017
9 (The hearing starts in open session at 11.31 a.m.)
10 THE COURT USHER: [11:31:33] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: [11:31:47] Good morning, everybody.
14 Court officer, please call the case.
15 THE COURT OFFICER: [11:31:52] 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 For the record, we are in open session.
19 PRESIDING JUDGE FREMR: [11:32:08] Thank you, court officer.
20 Now appearances please in usual order.
21 MS SIM: [11:32:14] Good morning, Mr President, good morning, your Honours. For
22 the Prosecution today are Dianne Luping, trial lawyer; Nicole Samson, senior trial lawyer;
23 Selam Yirgou, case manager; and myself, Kristy Sim, assistant trial lawyer.
24 PRESIDING JUDGE FREMR: [11:32:29] Thank you, Ms Sim.
25 Defence please.

1 MR GOSNELL: [11:32:32] Good morning to one and all. Christopher Gosnell for

2 Mr Ntaganda this morning, joined by Marlène Yahya Haage and Sara Levac.

3 Thank you, Mr President.

4 PRESIDING JUDGE FREMR: [11:32:43] Thank you, Mr Gosnell.

5 And Legal Representative of Victims, please.

6 MS PELLET: [11:32:49] (Interpretation) Thank you, your Honour. The former child

7 soldiers are represented by me, Sarah Pellet.

8 MR SUPRUN: [11:33:00] (Interpretation) And good morning, your Honours, the

9 victims of the attacks are represented by me, Dmytro Suprun.

10 PRESIDING JUDGE FREMR: [11:33:10] Thank you, Ms Pellet.

11 Thank you, Mr Suprun.

12 Before we start with the testimony of our witness, the Chamber will address a few

13 procedural matters briefly.

14 First, for the purpose of timing in accordance with Chamber's decision contained in

15 transcript 191, the Prosecution shall have one and a half hours to examine the witness,

16 which shall include the process of seeking admission of the witness' material under Rule

17 68(3), as well as any supplementary examination.

18 The Defence will have three hours to complete its cross-examination.

19 Now let's move into private session, court officer, please.

20 (Private session at 11.34 a.m.)

21 (Redacted)

22 (Redacted)

23 (Redacted)

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4 (Open session at 11.35 a.m.)

5 THE COURT OFFICER: [11:35:07] We are back in open session, Mr President.

6 PRESIDING JUDGE FREMR: [11:35:25] Thank you, court officer.

7 Further, the Chamber has taken note of the Defence notice of objections to the use or
8 admission of certain documents and, as usually, it will address them if and when they
9 arise. It's noted that guidance has already been provided in relation to certain of the
10 objections in our preliminary ruling on Rule 68(3).

11 And now we can turn to the scheduled testimony.

12 Mr Witness, can you hear me?

13 WITNESS: DRC-OTP-P-0116

14 (The witness gives evidence via video link)

15 (The witness speaks French)

16 THE WITNESS: [11:36:14] (Interpretation) Yes, I can hear you well.

17 PRESIDING JUDGE FREMR: [11:36:16] Good. Mr Witness, on behalf of our Chamber
18 I would like to welcome you. You are called to testify in the case against
19 Mr Bosco Ntaganda. You will be soon asked questions both by the Judges and lawyers
20 over here in the courtroom. If you do not understand, feel free to ask for the question to
21 be repeated. We want you to tell the truth and tell us what you saw, heard or sensed
22 yourself. Please testify just on that which you remember, don't guess, don't make things
23 up. Do you understand all this, Mr Witness?

24 THE WITNESS: [11:37:06] (Interpretation) Yes, your Honour. I've understood well.

25 PRESIDING JUDGE FREMR: [11:37:11] Fine. Mr Witness, protective measures are

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1 put in place to ensure that your identity is not revealed to the public, this means that the
2 public cannot see your face today and that your voice is being disguised so that the public
3 cannot recognise it. We will refer to you as "Mr Witness" only and ensure that your
4 name and any other information that risks revealing who you are is not broadcast to the
5 public; therefore, whenever you need to describe anything that might reveal your identity
6 we will go to private session so that no one apart from the court officer sitting with you
7 and us here in the courtroom can hear your answer.

8 Do you understand, Mr Witness?

9 THE WITNESS: [11:38:20] (Interpretation) Yes, yes, your Honour, I understand well.

10 PRESIDING JUDGE FREMR: [11:38:24] Very well. Mr Witness, now you should find
11 a piece of paper in front of you with the text of solemn undertaking. Do you have it?

12 THE WITNESS: [11:38:39] (Interpretation) Yes, your Honour, I do.

13 PRESIDING JUDGE FREMR: [11:38:42] So please now make your solemn undertaking
14 to tell the truth by reading out that text.

15 THE WITNESS: [11:38:58] (Interpretation) I solemnly declare that I shall speak the
16 truth, the whole truth and nothing but the truth.

17 PRESIDING JUDGE FREMR: [11:39:07] Thank you.

18 It means, Mr Witness, that now you are under oath, and you need to be aware that it is an
19 offence within the jurisdiction of this Court to give false testimony. Do you understand
20 that?

21 THE WITNESS: [11:39:31] (Interpretation) Yes, your Honour.

22 PRESIDING JUDGE FREMR: [11:39:34] Good.

23 And finally, a few practical matters. It is important to speak into the microphone, to
24 speak clearly and to speak at a slow pace. When a question is asked, please do not
25 respond immediately, rather, count in your head to at least three and only then please

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1 give your answer because this pause between the question and answer is essential to
2 properly hear, record and translate what you are saying. If you have any questions, do
3 not hesitate to let us know. Have you understood all that, Mr Witness?
4 THE WITNESS: [11:40:25] (Interpretation) Yes, your Honour. I've understood well.
5 PRESIDING JUDGE FREMR: [11:40:29] All right. So now we can start with your
6 testimony.
7 Prosecution, Ms Sim, you have the floor. And I'm just highlighting that we are in open
8 session.
9 MS SIM: [11:41:07] Thank you, Mr President.
10 QUESTIONED BY MS SIM:
11 Q. [11:41:11] Mr Witness, we have already met but I will remind you that my name is
12 Kristy Sim and I will be the one asking you questions today on behalf of the Office of the
13 Prosecutor. As I previously explained to you, the Prosecution is seeking to admit your
14 prior recorded testimony into evidence rather than asking you many questions in court
15 today, so this application requires me to go through a process with you that I will begin
16 now.
17 Mr President, I request that we move into private session to deal with some identifying
18 questions.
19 PRESIDING JUDGE FREMR: [11:41:47] Certainly.
20 Court officer, let's move into private session.
21 (Private session at 11.41 a.m.)
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1 (Open session at 11.51 a.m.)

2 THE COURT OFFICER: [11:51:39] We are in open session, Mr President.

3 PRESIDING JUDGE FREMR: [11:51:52] Thank you.

4 Ms Sim, please proceed.

5 MS SIM: [11:51:54]

6 Q. [11:51:55] Mr Witness, I'm now going to get you to turn to tab 7 of this binder, and
7 that is document DRC-OTP-0174-0025. And if the court officer could also display that
8 document in the courtroom.

9 THE COURT OFFICER: [11:52:23] The document will be displayed on the evidence 1
10 channel.

11 MS SIM: [11:52:31] And just to be certain, the document is confidential, so it shouldn't
12 be displayed to the public.

13 Q. [11:53:11] Are you able to see the document on your screen, sir?

14 A. [11:53:17] Yes, indeed, I can see it here on the screen.

15 Q. [11:53:21] And do you recognise this document?

16 A. [11:53:27] Yes, I recognise it, madam.

17 Q. [11:53:31] And are you able to see your name and your signature on the first page?

18 A. [11:53:45] Yes, that's my name and my signature.

19 Q. [11:53:50] I would ask that we now display page 26 of this document, which is
20 DRC-OTP-0174-0050.

21 And are you able to see your signature on this page, sir?

22 A. [11:54:42] Yes, madam, I can see the signature.

23 Q. [11:54:46] And when you met with the investigators at the time you gave this
24 statement, did you provide them with truthful and accurate information to the best of
25 your knowledge and belief?

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1 A. [11:55:07] Yes, madam, I can confirm that I did.

2 Q. [11:55:13] Thank you, sir.

3 We're now going to move to make some -- any corrections or clarifications that you may
4 have to these documents.

5 Do you recall being given an opportunity to review these documents that you have just
6 gone through before us?

7 A. [11:55:39] Yes, I can confirm that I looked through the documents and that I made
8 some small changes.

9 Q. [11:55:47] All right. We're going to go through those changes and corrections that
10 you made now, but I will note that not all of the information that you provided to myself
11 and my colleague yesterday was to correct or to change your prior testimony, some of it
12 was additional information that you were offering. So I'm not going to ask about every
13 change or piece of additional information that you gave, but simply those that will change
14 the content of the documents that we're seeking to tender into evidence.

15 I suggest we move back into private session now, Mr President, in case information comes
16 out that may be identifying.

17 PRESIDING JUDGE FREMR: [11:56:40] Understandable.

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

19 (Private session at 11.56 a.m.)

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- 14 (Open session at 1.01 p.m.)
- 15 THE COURT OFFICER: [13:01:14] We are in open session, Mr President.
- 16 PRESIDING JUDGE FREMR: [13:01:31] Thank you, court officer.
- 17 Ms Sim, just to be clear, according our measuring, you so far used 1 hour 11 minutes,
- 18 which means that you still have 19 minutes at your disposal.
- 19 Now, we will break, we will take our regular lunch break for 90 minutes, which means
- 20 that we will reconvene at half past two.
- 21 THE COURT USHER: [13:02:01] All rise.
- 22 (Recess taken at 1.02 p.m.)
- 23 (Upon resuming in open session at 2.42 p.m.)
- 24 THE COURT USHER: [14:42:09] All rise.
- 25 Please be seated.

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1 PRESIDING JUDGE FREMR: [14:42:31] Good afternoon, everybody. One
2 announcement at the beginning, due to this delay and also in accordance with plans of the
3 Chamber to have tomorrow just one session of two hours, so we will prolong this session
4 till 4.30 and we hope that it would allow us tomorrow just to have one session of two
5 hours.

6 Now, Ms Sim, you have your 18 minutes, please proceed.

7 MS SIM: [14:43:00] Thank you, Mr President.

8 Q. [14:43:02] Can you --

9 PRESIDING JUDGE FREMR: [14:43:03] We are in open session, so -- sorry.

10 MS SIM: [14:43:07]

11 Q. [14:43:07] Can you hear me, Mr Witness?

12 PRESIDING JUDGE FREMR: [14:43:41] For the record, it seems that the witness can hear
13 us, but we can't hear him.

14 (Pause in proceedings)

15 PRESIDING JUDGE FREMR: [14:46:02] So to inform you, it seems that there is some
16 problem with microphone at remote place. The technician there is going to fix it up. So
17 we will see.

18 At the moment I don't want to break, but it will depend on the progress made with this
19 issue.

20 (Pause in proceedings)

21 THE COURT OFFICER: [14:48:27] Kinshasa field office, can you hear us?

22 (No interpretation)

23 PRESIDING JUDGE FREMR: [14:49:34] So unfortunately it seems that there is a need to
24 make a break, so we break and hopefully we will get good news soon.

25 THE COURT USHER: [14:49:47] All rise.

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1 (Recess taken at 2.49 p.m.)

2 (Upon resuming in open session at 3.01 p.m.)

3 THE COURT USHER: [15:01:48] All rise.

4 Please be seated.

5 PRESIDING JUDGE FREMR: [15:02:07] So we are back, don't waste time. It seems that
6 now line is fine.

7 Ms Sim, you have the floor.

8 MS SIM: [15:02:22]

9 Q. [15:02:23] Can you hear me, Mr Witness?

10 A. [15:02:29] Yes, I can hear you clearly. Thank you.

11 Q. [15:02:33] Good. When we left off at the break I was asking you about whether you
12 knew the position that Bosco Ntaganda held. I was repeating to you a part of your
13 previous answer about Bosco Ntaganda holding a position at the side of the Lubanga and
14 I was wanting to know if you knew the actual position that he held?

15 A. [15:03:16] Yes, but I -- we learned that Bosco Ntaganda was the chief of staff of the
16 UPC.

17 MS SIM: [15:03:29] I'm going to ask that we go into private session for my next question,
18 Mr President.

19 PRESIDING JUDGE FREMR: [15:03:34] All right.

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

21 (Private session at 3.03 p.m.)

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Trial Hearing
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19 (Open session at 4.30 p.m.)

20 THE COURT OFFICER: [16:30:19] We are in open session, Mr President.

21 PRESIDING JUDGE FREMR: [16:30:24] So first information about timing. So far

22 the Defence used 57 minutes, which means that you, Mr Gosnell, still have 2 hours 3

23 minutes. So it's probably not likely that we will be able to finish in one even extended

24 session, or are you of a different opinion?

25 MR GOSNELL: [16:30:46] I am optimistic but non-committal.

Trial Hearing
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- 1 PRESIDING JUDGE FREMR: [16:30:49] No problem. Mr Witness, we will adjourn now
- 2 and we will continue tomorrow 9.30. So it's my duty to remind you that in the meantime
- 3 till tomorrow you must not discuss your testimony with anybody else.
- 4 Do you understand that?
- 5 THE WITNESS: [16:31:17] (Interpretation) Yes, your Honour, I have understood that
- 6 correctly.
- 7 PRESIDING JUDGE FREMR: [16:31:21] So I thank you for today and we will reconvene
- 8 tomorrow 9.30.
- 9 THE COURT USHER: [16:31:26] All rise.
- 10 (The hearing ends in open session at 4.31 p.m.)