

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 2
8 Thursday, 21 September 2017
9 (The hearing starts in open session at 9.32 a.m.)
10 THE COURT USHER: [9:32:08] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: [9:33:08] Good morning, everybody.
14 Court officer, please call the case.
15 THE COURT OFFICER: [9:33:14] 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: [9:33:30] Thank you, court officer.
20 Now appearances, please.
21 MS SIM: [9:33:37] Good morning, Mr President. Good morning, your Honours.
22 For the Prosecution today are Dianne Luping, Marion Rabanit, Nicole Samson,
23 Selam Yirgou and myself, Kristy Sim.
24 PRESIDING JUDGE FREMR: [9:33:50] Thank you, Ms Sim.
25 Defence, please.

1 MR GOSNELL: [9:33:52] Good morning, Mr President, your Honours.
2 Christopher Gosnell for Mr Ntaganda this morning, accompanied by Margaux Portier
3 and Benjamin Nodet. Thank you, Mr President.
4 PRESIDING JUDGE FREMR: [9:34:03] Thank you, Mr Gosnell.
5 And Legal Representatives of Victims, please.
6 MS PELLET: [9:34:10] (Interpretation) Thank you, your Honour. Representing
7 the former child soldiers, myself, Sarah Pellet.
8 MR SUPRUN: [9:34:20] (Interpretation) Good morning, your Honours.
9 Representing the victims of the attack, Anne Grabowski and myself, Dmytro Suprun.
10 PRESIDING JUDGE FREMR: [9:34:34] Thank you, Ms Pellet. Thank you,
11 Mr Suprun.
12 Today we are going to hear the last witness of this evidentiary block, Witness D-211.
13 The Chamber previously decided in our decision, with filing number 2011, to hear
14 this witness via video link.
15 For the next issue, court officer, let's move into private session.
16 (Private session at 9.35 a.m.)
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11 (Open session at 9.37 a.m.)

12 THE COURT OFFICER: [9:37:33] We are in open session, Mr President.

13 PRESIDING JUDGE FREMR: [9:37:52] Thank you, court officer.

14 The Legal Representative of former child soldiers has requested authorisation to
15 question the witness. This is filing number 2035, filed on 18 September 2017. And
16 as per our usual practice, the Chamber will deal with this request after the
17 Prosecution has finished his cross-examination.

18 Finally, I recall that the Defence estimates that it will need three and a half hours for
19 its examination-in-chief of this witness. As with other examinations, the Chamber
20 will remain vigilant to ensure that the examination is relevant to the facts of the case.
21 And now we can turn to the scheduled testimony. Mr Gosnell.

22 MR GOSNELL: [9:38:49] Mr President, I'm not sure if the Trial Chamber is
23 informed, but an email was sent, I don't have the email at hand, but an email was sent
24 subsequent to that initial estimate indicating, if I recall the words exactly, that we
25 believe that we can complete the examination in 2 to 2.5 hours and in my final

1 preparations I do think that's feasible.

2 PRESIDING JUDGE FREMR: [9:39:12] Thank you. It's mainly for Prosecution to
3 be warned.

4 Ms Sim.

5 MS SIM: [9:39:20] Thank you, your Honour. We're just checking because I
6 don't -- I haven't seen this email, but I take note of counsel's submission that it's two
7 to two and a half hour estimate. We of course planned that it was going to be three
8 and a half hours because that was the most recent estimate that we received, so it
9 might be the case that we need more time, but we'll have to see how it goes on that
10 basis.

11 PRESIDING JUDGE FREMR: [9:39:48] To be honest, I'm also not aware of this
12 amendment of the Defence request. But as usual I think it's nothing extraordinary.
13 Generally, general rule is that you should take the same time, but if you would come
14 with some reasonable request we can extend it according reasons which will persuade
15 us.

16 Mr Gosnell.

17 MR GOSNELL: [9:40:16] May I just say, or add to that, Mr President, I hope that I
18 have not provided incorrect information now. We are double-checking to see if this
19 email was sent. It could be it's the type of email that I composed in my mind and
20 didn't actually send. We're just double-checking and if we can find it, we will
21 re-send it. Thank you, Mr President.

22 PRESIDING JUDGE FREMR: [9:40:41] All right.

23 So now we can move to our witness. So I would like to ask our court officer in Bunia
24 to invite Madam Witness into the transmission room, please.

25 (The witness enters the video-link room)

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(Open Session)

ICC-01/04-02/06

1 PRESIDING JUDGE FREMR: [9:42:03] Madam Witness, good morning. At the
2 beginning I would like to assure myself that you can see me and hear me.

3 WITNESS: DRC-D18-D-0211

4 (The witness speaks Swahili)

5 (The witness gives evidence via video link)

6 THE WITNESS: [9:42:21] (Interpretation) Yes, I can hear you. I can see you and
7 I can hear you.

8 PRESIDING JUDGE FREMR: [9:42:35] Very well. May I continue.

9 Madam Witness, you are --

10 THE WITNESS: [9:42:46] (Interpretation) I beg your pardon.

11 PRESIDING JUDGE FREMR: [9:42:50] Sorry, is there any problem? Because I see
12 that, Madam Witness, you are asking our officer for something. What is the issue?

13 THE WITNESS: [9:43:05] (Interpretation) I'd like to know about my protective
14 measures. Were they approved?

15 PRESIDING JUDGE FREMR: [9:43:23] Yes, they were. And I will deal with that
16 during my introductory notes. So please listen carefully and I will speak about all
17 measures which are connected with your testimony.

18 So first of all, Madam Witness, I will start with saying that you are called to testify in
19 the case against Mr Bosco Ntaganda. You will be asked questions both by the Judges
20 and lawyers here in the courtroom in The Hague and that is why I would like to
21 provide you with some guidance for answering questions first.

22 So please listen carefully to the questions. If you do not understand, feel free to ask
23 for the question to be repeated. We want you to tell the truth and tell us what you
24 saw, heard or sensed yourself. Please testify just on that which you really remember.
25 Don't guess, don't make things up. There is nothing wrong in saying "I don't know"

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1 or "I don't remember".

2 Do you understand this part of my guidance, Madam Witness?

3 THE WITNESS: [9:44:53] (Interpretation) Yes, I've understood.

4 PRESIDING JUDGE FREMR: [9:44:55] Fine.

5 Now, Madam Witness, I will focus on protective measures. So protective measures
6 are put in place to ensure that your identity is not revealed to the public. In practice,
7 it means that on the video stream available to the public your face cannot be
8 recognised and that your voice is being disguised so that the public cannot recognise
9 it.

10 We all here in the courtroom will refer to you as "Madam Witness" only, so we will
11 not use your name, and ensure that your name and any other information that risks
12 revealing who you are is not broadcast to the public. Therefore, whenever you need
13 to describe anything that might reveal your identity, we will do so in private session
14 so that no one apart from the court officer sitting with you and the persons here in the
15 courtroom can hear your answer.

16 So did you understand all that?

17 THE WITNESS: [9:46:18] (Interpretation) Yes, I've understood.

18 PRESIDING JUDGE FREMR: [9:46:21] So is it okay with you? Are you feeling
19 safe with those protective measures?

20 THE WITNESS: [9:46:34] (Interpretation) Okay.

21 PRESIDING JUDGE FREMR: [9:46:40] Fine.

22 So I can move to the next part of my guidance, which is request for you to make your
23 solemn undertaking. So to facilitate this, I'm ready to read it out. And please repeat
24 it after me. So I start now, and please repeat after me: I solemnly declare --

25 THE WITNESS: [9:47:16] (Interpretation) I solemnly declare --

1 PRESIDING JUDGE FREMR: [9:47:22] -- that I will speak the truth --
2 THE WITNESS: [9:47:28] (Interpretation) -- that I shall speak the truth --
3 PRESIDING JUDGE FREMR: [9:47:36] -- the whole truth --
4 THE WITNESS: [9:47:43] (Interpretation) -- the whole truth --
5 PRESIDING JUDGE FREMR: [9:47:46] -- and nothing but the truth.
6 THE WITNESS: [9:47:53] (Interpretation) -- and nothing but the truth.
7 PRESIDING JUDGE FREMR: [9:47:59] Thank you, Madam Witness. It means that
8 now you are under oath. And you also need to be aware that it is an offence to give
9 false testimony. Do you understand that?
10 THE WITNESS: [9:48:17] (Interpretation) Yes.
11 PRESIDING JUDGE FREMR: [9:48:23] Good.
12 And finally, a few practical matters you should have in mind in giving your
13 testimony.
14 It is important to speak into the microphone, which you're doing very well so far, to
15 speak clearly and to speak at a slow pace to allow the interpreters to translate
16 everything. This is essential for us to properly hear, record and translate what you
17 are saying. Have you understood all that, Madam Witness?
18 THE WITNESS: [9:49:05] (Interpretation) Yes, I've heard and I understand.
19 PRESIDING JUDGE FREMR: [9:49:12] Very well, Madam Witness. That's it for
20 the moment from my part and we can then start your testimony. And I will give
21 floor to representative of Defence, Mr Gosnell.
22 Mr Gosnell, you have the floor and we are in open session at the moment.
23 MR GOSNELL: [9:49:33] Thank you very much, Mr President. Just before
24 we -- just before I begin and before we leave open session, may I just apologise for
25 what I said earlier, which is actually not correct. The email that was sent on Sunday

1 at 14.21 did not contain the information about the estimate. It had been in a prior
2 draft of the email, but the final version that was sent out did not contain that
3 information. So I apologise for having said otherwise. And I also apologise to the
4 Prosecution for not having provided that courtesy of an advance notice, because it is
5 helpful, Mr President, and we know that and we do try to provide that information.
6 So I do apologise for not having provided that in advance.

7 May we move into private session, Mr President.

8 PRESIDING JUDGE FREMR: [9:50:21] Yes. And before doing that on behalf of
9 the Chamber apology accepted. And I can still insist what I have already said to
10 Ms Sim.

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

12 (Private session at 9.50 a.m.)

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17 (Redacted)

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25 (Open session at 9.51 a.m.)

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1 THE COURT OFFICER: [9:51:43] We are in open session, Mr President.

2 PRESIDING JUDGE FREMR: [9:51:52] Thank you, court officer.

3 We are returning back into open session just in order to inform public that according
4 to information provided by Defence counsel, this testimony is most likely be
5 conducted totally in the regime of private session because this witness is a protected
6 one and that is why she was granted that her identity will not be revealed. And in
7 practice, it means that this testimony which is planned for today and tomorrow will
8 be probably mostly conducted in private session.

9 Now, let's move in private session, court officer, please.

10 (Private session at 9.52 a.m.)

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- 9 (Recess taken at 11.06 a.m.)
- 10 (Upon resuming in open session at 11.37 a.m.)
- 11 THE COURT USHER: [11:37:03] All rise.
- 12 Please be seated.
- 13 PRESIDING JUDGE FREMR: [11:37:37] We are starting the second session today.
- 14 At the moment we are in open session, but having taken into account the testimony of
- 15 our witness so far, I guess that we will have to move into private session. Yes.
- 16 All right, court officer, let's move into private session.
- 17 (Private session at 11.37 a.m.)
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- 25 (Open session at 12.59 p.m.)

Trial Hearing
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(Open Session)

ICC-01/04-02/06

1 THE COURT OFFICER: [12:59:30] We are in open session, Mr President.

2 PRESIDING JUDGE FREMR: [12:59:33] Thank you.

3 First, slight correction of our transcript, page 66, line 8, I said I wouldn't, wouldn't
4 have a big problem. So the word "not" is missing in line 7.

5 And now, court officer, may I ask you to provide us with information concerning how
6 much time the Defence used so far within the direct examination.

7 THE COURT OFFICER: [13:00:06] The Defence has used 2 hours and 12 minutes.

8 PRESIDING JUDGE FREMR: [13:00:11] Two hours and 12 minutes. So which
9 means that, Ms Sim, you, for sure, will have at your disposal whole afternoon session.
10 Do you think still that you will need -- after having listened to Mr Gosnell's questions,
11 that you will need more time than those two hours?

12 MS SIM: [13:00:34] It's hard to estimate right now just because I don't know how
13 my questions are going to be responded to, your Honour.

14 PRESIDING JUDGE FREMR: [13:00:42] I see. So in order not to surprise you at
15 the end of the session, please, you can just remind me 30 minutes before the end of
16 the afternoon session, we can just return back to that issue and we will then decide
17 about the potential request, if any, for extension of time.

18 Now we break and we will reconvene half past 2.

19 THE COURT USHER: [13:01:11] All rise.

20 (Recess taken at 1.01 p.m.)

21 (Upon resuming in open session at 2.31 p.m.)

22 THE COURT USHER: [14:31:34] All rise.

23 Please be seated.

24 PRESIDING JUDGE FREMR: [14:31:58] Good afternoon, everybody.

25 Good afternoon, Madam Witness.

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1 Mr Gosnell, the Chamber was informed that you would like to address us and that it's
2 necessary to cut audio for that submission. All right.

3 So now, court officer, please disconnect audio connection between us and Bunia.

4 Now, I was informed you may proceed, Mr Gosnell.

5 MR GOSNELL: [14:32:42] Thank you, Mr President. Since this concerns
6 transcript issues that were heard in private session, I believe we need to move into
7 private session.

8 PRESIDING JUDGE FREMR: [14:32:50] Court officer, let's move into private now.

9 (Private session at 2.33 p.m.)

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ICC-01/04-02/06

1 (Recess taken at 2.46 p.m.)

2 (Upon resuming in open session at 2.58 p.m.)

3 THE COURT USHER: [14:58:51] All rise.

4 Please be seated.

5 PRESIDING JUDGE FREMR: [14:59:11] At the moment we are in open session, but

6 I will limit myself on announcement that after resolution of our technical problems,

7 we will continue with cross-examination of our witness. And for that purpose, we

8 have to move into private session because our witness is protected one.

9 So now, court officer, let's move into private.

10 (Private session at 2.59 p.m.)

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8 (Open session at 4.29 p.m.)

9 THE COURT OFFICER: [16:29:56] We're in open session, Mr President.

10 PRESIDING JUDGE FREMR: [16:30:08] Thank you, court officer.

11 Madam Witness, we have to break now. We will continue with your testimony
12 tomorrow, but I can assure you that tomorrow you will not be -- you will not be with
13 us whole day. I can guarantee that by noon you will be free. But I would like to
14 thank you very much for today's testimony. I know it was very tiring exercise, but I
15 appreciate that you remained patient, that you tried to clearly respond all the
16 questions put to you.

17 And before you leave, I have to give you one guidance: In the meantime till
18 tomorrow, you must not discuss your today's testimony, what you said today, with
19 anybody else. Do you understand that?

20 THE WITNESS: [16:31:13] (Interpretation) Yes, I have understood. It's even
21 difficult to talk about these things with anyone else, even -- no one from my side
22 knows that I am here. So I would like to ask whether we can start at 10 tomorrow.
23 Can we start at 10 tomorrow? I have a baby and I have abandoned this child the
24 whole day with a feeding bottle. I didn't know that we were going to sit till this
25 time.

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1 So please give me time to get my child ready in the morning, to prepare a bottle for
2 the child, and to get the other children ready for the school. I have four children
3 who have to go to school. I will need some time.
4 I respected time you gave me today. I left my child with my younger sister who
5 is -- my child who is ill. So tomorrow I will only be available from 10 a.m. because I
6 have a three-month-old child. I will only be here from 10.

7 PRESIDING JUDGE FREMR: [16:32:17] Give me second.

8 Court officer in Bunia, may I consult you on that request.

9 Madam Witness saying 10 o'clock. I understand she means 10 o'clock of the Bunia
10 time? What is the time at the moment in Bunia?

11 THE COURT OFFICER: [16:32:42] (Via video link) (Interpretation) Mr President,
12 we are at the same time. We have the same time as The Hague.

13 PRESIDING JUDGE FREMR: [16:32:50] All right. So 10 in Bunia means 10 here.
14 Give me a second. I will consult court officer and my colleagues about that request.
15 (Trial Chamber confers)

16 PRESIDING JUDGE FREMR: [16:33:30] So, Madam Witness, the Chamber
17 consulted your request. We fully understand your reasons, and in order to make
18 you comfortable we will change the beginning of our session tomorrow and we will
19 start at 10 o'clock. So I thank you for today. See you tomorrow at 10. And now
20 you may leave the transmission room.

21 And we can cut the line because I would like to consult one last procedural issue.
22 And now so according my information, Ms Sim, you so far used 1 hour 14 minutes
23 while Defence used 2.14, I guess, before noon, and then Mr Gosnell had been
24 provided with next roughly 5 minutes, so it was 2.19, something like that. How
25 much time you estimate you will need to complete your examination tomorrow?

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1 MS SIM: [16:34:41] Thank you, Mr President. Again, it's hard to estimate entirely
2 but, but I think an hour is not enough, but easily an hour and a half would do it.

3 PRESIDING JUDGE FREMR: [16:34:56] You are reading my thought. I will
4 consult my colleagues.

5 (Trial Chamber confers)

6 PRESIDING JUDGE FREMR: [16:35:10] Mr Gosnell, you are opposing that?

7 MR GOSNELL: [16:35:12] Yes, Mr President. The request is that the Prosecution,
8 as was so often the case with the Defence, be limited to the amount of time that was
9 used during the direction examination.

10 PRESIDING JUDGE FREMR: [16:35:23] Yes, we said that it's a general rule which
11 could be in some well-founded cases adjusted for some specific reasons. Ms Sim
12 would be then in accordance with this general rule good for the Chamber to hear
13 your reasons to ask for more time that has been given to the Defence.

14 MS SIM: [16:35:48] Well, as we discussed this morning, we were under the
15 impression that this examination was going to go on for three and a half hours.

16 PRESIDING JUDGE FREMR: [16:35:59] This is not relevant, I told you.

17 MS SIM: [16:36:02] We certainly didn't prepare on that basis but my submission to
18 you at this point is that the capabilities of the witness have made it seem prudent to
19 go slowly and sometimes read over portions of the transcript and so for that reason it
20 may take a bit longer.

21 PRESIDING JUDGE FREMR: [16:36:21] Madam Sim, again my comment from my
22 part, you are right, but it is also up to you, as I said, to adjust the way of the
23 questioning to the capability of the witness. I will consult my colleagues. There
24 were also some technical problems, I must admit. I will consult my colleagues on
25 that.

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1 (Trial Chamber confers)

2 PRESIDING JUDGE FREMR: [16:37:15] So after brief deliberation in the courtroom,
3 silent deliberation, our ruling is that you, Ms Sim and the Prosecution, will be given
4 in fact 15 minutes extra, which means that you will have at your disposal
5 tomorrow 1 hour 15 minutes. Am I correct? Because the Defence used 2.15 and
6 you will be given 2.30, which means it's correct. Because also Chamber at the
7 moment has idea to put some additional questions, it is possible there will be some
8 redirect, and generally we believe that in one session lasting two hours we should
9 complete this witness. So it's in accordance with this estimation.

10 Mr Gosnell.

11 MR GOSNELL: [16:38:16] May I make one request, Mr President.

12 PRESIDING JUDGE FREMR: [16:38:20] Please.

13 MR GOSNELL: [16:38:20] If there is going to be a reference to something the
14 witness has previously said in a prior transcript or even in this transcript, that we be
15 provided with a line and page reference. That actually may reduce the number of
16 objections that need to be made. Thank you, Mr President.

17 PRESIDING JUDGE FREMR: [16:38:36] Yes, I agree because for the first thought it
18 seems that it would be more time consuming, but I agree with Mr Gosnell that in the
19 outcome it will be less time consuming.

20 So, Ms Sim, please have it in mind in preparation of your tomorrow examination.

21 All right? Fine.

22 That's it, and see you tomorrow 10 o'clock.

23 THE COURT USHER: [16:39:01] All rise.

24 (The hearing ends in open session at 4.39 p.m.)