

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, 7 December 2017
9 (The hearing starts in open session at 9.31 a.m.)
10 THE COURT USHER: [9:31:49] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: [9:32:20] Good morning, everybody.
14 Court officer, please call the case.
15 THE COURT OFFICER: [9:32:25] 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: [9:32:40] Thank you, court officer.
20 Now appearances please, starting with Prosecution.
21 MS RABANIT: [9:32:46] Good morning, Mr President. Good morning,
22 your Honours. Appearing today for the Prosecution are Selam Yirgou,
23 Charlotte Grippi, Nicole Samson, and I am Marion Rabanit.
24 PRESIDING JUDGE FREMR: [9:32:58] Thank you, Ms Rabanit.
25 Defence, please.

1 MR BOURGON: [9:33:04] (Interpretation) Good morning, your Honour.
2 Representing Bosco Ntaganda, who is present in the courtroom this morning,
3 Julia Jan, Isabelle Martineau, Didas Nyirinkwaya and myself, Stéphane Bourgon.
4 Thank you, your Honour.
5 PRESIDING JUDGE FREMR: [9:33:21] Thank you, Mr Bourgon.
6 And Legal Representatives of the Victims, please.
7 MS PELLET: [9:33:29] (Interpretation) Thank you, your Honour. The former child
8 soldiers are represented by Vony Rambolamanana and myself, Sarah Pellet, counsel
9 at the OPCV. Thank you.
10 MR SUPRUN: [9:33:42] (Interpretation) Good morning, your Honours. The victims
11 of the attacks are represented by Claire Lefevre and myself, Dmytro Suprun, counsel
12 with the OPCV. Thank you.
13 PRESIDING JUDGE FREMR: [9:33:54] Thank you, Ms Pellet. Thank you,
14 Mr Suprun.
15 Today we are going to hear the last witness of this evidentiary block, Witness D-251.
16 For the record, I recall that in our decision filed on 20 October 2017 bearing filing
17 number 2079, the Chamber granted the Defence request to add this witness to its list
18 of witnesses.
19 I further recall that pursuant to the Chamber's previous instructions, and in that
20 regard I refer to transcript numbers T-254 and T-257, the witness will testify via video
21 link from Democratic Republic of the Congo.
22 It's also recalled that on 6 December 2017, in a decision bearing filing number 2142,
23 the Chamber granted the Defence request for protective measures in relation to the
24 witness in the form of voice and face distortion during the witness testimony and the
25 use of a pseudonym for the purposes of the trial. Relatedly, I know that on

1 6 December 2017 the VWU provided its vulnerability assessment for the witness in
2 which no special measures are recommended.

3 And finally, and noting that the Chamber rejected the Defence request to admit the
4 prior recorded testimony of this witness under Rule 68(3) contained in the decision
5 bearing filing number 2114, I recall that the Defence has indicated that it estimates it
6 will require three and a half hours for its examination-in-chief of the witness.

7 The Chamber finds this estimation as realistic and reasonable, so we allotted Defence
8 three and a half hours, and the Prosecution, as per usual practice, will be entitled to
9 the same amount of time for its cross-examination.

10 I also have to say that we, the Chamber, received a request from Legal Representative
11 of Victims, Ms Pellet, and we will decide about that request after cross-examination
12 conducted by Prosecution.

13 So now nothing prevents us from turning to the scheduled testimony. So,
14 court officer, please connect us with transmission room in DRC. And we are -- okay.

15 So now I would like to ask court officer in the DRC to bring Madam Witness into the
16 transmission room.

17 (The witness enters the video-link room)

18 PRESIDING JUDGE FREMR: [9:38:29] Madam Witness, good morning.

19 Can you hear me and see me?

20 WITNESS: DRC-D18-D-0251

21 (The witness speaks Swahili)

22 (The witness gives evidence via video link)

23 THE WITNESS: [9:38:39] (Interpretation) Yes, I can see you.

24 PRESIDING JUDGE FREMR: [9:38:46] I also can confirm that we also can -- here in
25 The Hague, we can see and hear you well.

1 Madam Witness, allow me to provide you with some guidance. Today you are
2 called to testify in the case against Mr Bosco Ntaganda and you will be asked soon
3 questions both by the judges and lawyers who are sitting here in the courtroom in
4 The Hague.

5 And before you start, I would like to provide you with, first of all, guidance on how
6 you should answer those questions.

7 So please listen carefully to the questions, and if you do not understand, feel free to
8 ask for the questions to be repeated. We want you to tell the truth and tell us what
9 you saw, heard and sensed yourself.

10 It is natural that you may not remember all details and it doesn't matter. Please
11 testify just on that which you remember. Don't guess, don't make things up. There
12 is nothing wrong in saying, "I don't know" or "I don't remember".

13 Do you understand all this, Madam Witness?

14 THE WITNESS: [9:40:36] (Interpretation) Yes.

15 PRESIDING JUDGE FREMR: [9:40:40] Good. Now I will move to other topic and it
16 is protective measures. Those protective measures are put in place to ensure that
17 your identity is not revealed to the public. This, in practice, means that on the video
18 stream available to the public your face cannot be recognised and that your voice is
19 being disguised so that the public also cannot recognise it.

20 We, during the proceedings, we will refer to you as "Madam Witness" only and
21 ensure that your name and any other information that risks revealing who you are is
22 not broadcast to the public. Therefore, whenever you need to describe anything,
23 Madam Witness, that might reveal your identity we will do so in private session so
24 that no one, apart from the court officer sitting with you and apart of the persons here
25 in The Hague, in the courtroom to be precise, can hear your answer.

- 1 Do you understand all that, Madam Witness?
- 2 THE WITNESS: [9:42:13] (Interpretation) Yes.
- 3 PRESIDING JUDGE FREMR: [9:42:14] Very well, Madam Witness.
- 4 Now I ask you to make your solemn undertaking to tell the truth, so I will read it out
- 5 and please repeat after me.
- 6 So I am starting to read out: I solemnly declare.
- 7 THE WITNESS: [9:42:44] (Interpretation) I solemnly declare.
- 8 PRESIDING JUDGE FREMR: [9:42:50] That I will speak the truth.
- 9 THE WITNESS: [9:42:54] (Interpretation) That I will speak the truth.
- 10 PRESIDING JUDGE FREMR: [9:43:05] The whole truth.
- 11 THE WITNESS: [9:43:09] (Interpretation) The whole truth.
- 12 PRESIDING JUDGE FREMR: [9:43:11] And nothing but the truth.
- 13 THE WITNESS: [9:43:19] (Interpretation) And nothing but the truth.
- 14 PRESIDING JUDGE FREMR: [9:43:28] All right, Madam Witness. So it means that
- 15 now, from now you are under oath, so you also need to be aware that it is an offence
- 16 to give false testimony.
- 17 Do you understand that, Madam Witness?
- 18 THE WITNESS: [9:43:52] (Interpretation) Yes.
- 19 PRESIDING JUDGE FREMR: [9:43:54] Fine. And finally a few practical matters
- 20 you should have in mind when giving your testimony. It's important to speak into
- 21 the microphone, but so far you are doing it very well. Also to speak clearly, and to
- 22 speak at a slow pace, like me, to allow the interpreters to translate everything.
- 23 Have you understood all that, Madam Witness?
- 24 THE WITNESS: [9:44:35] (Interpretation) Yes.
- 25 PRESIDING JUDGE FREMR: [9:44:37] So it's everything I wanted you, you to say

1 before we start with your testimony. And now I will go -- I will give floor to
2 representative of Defence, since the Defence will start with your examination.

3 I guess it will be Mr Bourgon; am I correct? Okay, so Mr Bourgon, you have the
4 floor and we are in open session.

5 QUESTIONED BY MR BOURGON: (Interpretation)

6 Q. [9:45:19] Good morning, are you well?

7 A. [9:45:27] Yes, I'm very well.

8 Q. [9:45:30] When we met yesterday you did not feel very well. Are you feeling
9 better today?

10 A. [9:45:48] I'm still not quite recovered, but I'm here ready to offer my services to
11 you today and see how things -- and then afterwards I will return to medical care.

12 PRESIDING JUDGE FREMR: [9:46:07] Sorry to interrupt, Mr Bourgon.

13 Madam Witness, just to provide you with information in that regard. Normally our
14 session used to take 90 minutes, but if you would feel tired we can even make a short
15 break earlier, so it's up to you. Our goal is to complete your testimony today and
16 tomorrow.

17 Mr Bourgon, please proceed.

18 MR BOURGON: [9:46:44] (Interpretation) Thank you, your Honour.

19 Q. [9:46:48] Madam Witness, I would first like to introduce myself. We have
20 already met, but you can see me I think now. My name is Stéphane Bourgon. We
21 met in Bunia. And I am here with my colleagues. This morning we are going to
22 ask you some questions about Bosco Ntaganda. Do you understand that?

23 A. [9:47:20] Yes, I have understood.

24 MR BOURGON: [9:47:24] Mr President, could we please move to private session.

25 PRESIDING JUDGE FREMR: [9:47:28] Certainly.

1 Court officer, let's move into private session now.
2 And before doing that, in order to inform public, this witness is a protected one,
3 which means that this witness has been granted that her identity will not be revealed
4 to the public, so as soon there is a risk that potential questions could reveal her
5 identity we will have to move into private session, which is the case now. And it's
6 very likely, since we know something about the potential testimony that most of the
7 time of this testimony will be spent in the regime of private session.

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

9 (Private session at 9.48 a.m.)

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- 14 (Open session at 11.01 a.m.)
- 15 THE COURT OFFICER: [11:01:28] We are in open session, Mr President.
- 16 PRESIDING JUDGE FREMR: [11:01:30] Thank you, court officer. Now,
- 17 Madam Witness, we will take our regular break for 30 minutes. So you can take
- 18 some rest and we will continue at half past 11.
- 19 THE COURT USHER: [11:02:34] All rise.
- 20 (Recess taken at 11.02 a.m.)
- 21 (Upon resuming in open session at 11.31 a.m.)
- 22 THE COURT USHER: [11:31:05] All rise.
- 23 Please be seated.
- 24 PRESIDING JUDGE FREMR: [11:31:24] Before we continue with the next part of
- 25 examination of our witness, I see some changes, if I am not wrong, in appearances.

1 Ms Grabowski, please go ahead.

2 MS GRABOWSKI: [11:31:37] Yes, thank you, Mr President. Mr Suprun had to
3 attend to an urgent matter, so I will be replacing him in this session. Thank you.

4 PRESIDING JUDGE FREMR: [11:31:44] Well, noted, Ms Grabowski. And a part of
5 that also we were informed that Mr Bourgon would like to address us with request
6 for corrections of the transcript and we found better to make it in the absence of
7 witness not to -- at least to avoid any impact on her testimony.

8 Mr Bourgon, you have the floor.

9 MR BOURGON: [11:32:05] Thank you, Mr President. Indeed it is preferable to
10 have these corrections request.

11 PRESIDING JUDGE FREMR: [11:32:12] Sorry, and we are in open session so it
12 depends what will be kind of your request, if -- but I guess only of a technical nature
13 so probably we still can remain in open.

14 MR BOURGON: [11:32:25] Yes, Mr President, I believe so.

15 The first request for correction is page 9, lines 12 and 13 in English, compared with
16 page 8, lines 24 and 25 in French. This issue has to do with "before I went" or "after I
17 went" and it is material, Mr President. We heard that -- a specific version.

18 The second request has to do with page 10, lines 22 to 25 in English, and page 9, lines
19 25 to 28 in French. The issue is the word "Uganda".

20 The third request is on page 22, lines 19 and 20 in English, and page 21, lines 10 to 11
21 in French. We believe that one name is missing in the list of names that was
22 mentioned by the witness.

23 Fourth request is page 24, line 20 in English, and page 23, line 12 in French. And the
24 issue was just to -- without the -- I think I can say this in open session, is "joined APC"
25 and then "left APC". We heard that the second term was not APC, but UPC. This is

1 the fourth request.

2 The fifth and last request is page 27, line 19 in English compared with page 26, line 6
3 in French. Here what we have on the transcript is "younger sister", what we heard
4 from what the witness said was simply that the, that the person, the name mentioned
5 there was younger than the witness and not sister.

6 So we would like to have these five issues listened to again from the audio.

7 PRESIDING JUDGE FREMR: [11:34:44] Thank you, Mr Bourgon.

8 Any comment on details of the request now submitted by Mr Bourgon, Ms Rabanit?

9 MS RABANIT: [11:34:57] We have no objection to the audio review. Thank you.

10 PRESIDING JUDGE FREMR: [11:35:00] And the Chamber also fully supports that
11 request.

12 And now I ask court officer in DRC to bring Madam Witness to her chair in the
13 transmission room.

14 (The witness enters the video-link room)

15 PRESIDING JUDGE FREMR: [11:36:13] Madam Witness, welcome back. Can you
16 hear me and see me?

17 THE WITNESS: [11:36:24] (Interpretation) Yes.

18 PRESIDING JUDGE FREMR: [11:36:31] Madam Witness, now we are going to have
19 another 90-minute session. And at the beginning I would like to say that I
20 appreciate that you fully obeyed my guidance that you spoke clearly, that you spoke
21 in a right pace, so please proceed in the same style.

22 THE WITNESS: [11:36:59] (Interpretation) Very well, thank you.

23 PRESIDING JUDGE FREMR: [11:37:01] All right. And now I am giving floor to
24 Defence, to Mr Bourgon. And, Mr Bourgon, we are in open session at the moment.

25 MR BOURGON: [11:37:12] (Interpretation) I am going to go into private session,

- 1 your Honour.
- 2 PRESIDING JUDGE FREMR: [11:37:21] Sure.
- 3 Court officer, let's move into private session.
- 4 (Private session at 11.37 a.m.)
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15 (Open session at 12.19 p.m.)
16 THE COURT OFFICER: [12:19:48] We are in open session, Mr President.
17 PRESIDING JUDGE FREMR: [12:19:50] Thank you, court officer.
18 So for the remainder of this session, till 1 o'clock, we are going to continue with
19 testimony of our witness, D-251. She now will be cross-examined by Prosecution,
20 namely, by its representative, Ms Rabanit.
21 Ms Rabanit, usual caveat, generally you should use the same time as Mr Bourgon.
22 Court officer, could you just publicly say how much time Mr Bourgon has used.
23 THE COURT OFFICER: [12:20:29] Yes, Mr President. The Defence has used 1 hour
24 and 32 minutes for its questioning of the witness.
25 PRESIDING JUDGE FREMR: [12:20:36] Thank you, court officer.

1 So generally you should be -- you should complete your examination in 1 hour 32. If
2 you feel that you would need more, you have to address us with your request. So
3 I believe that at the beginning of the afternoon session you will have clear picture.
4 Then you can update us on that.

5 At the time moment we are in open session, do you want to conduct your, at least the
6 beginning of your cross in private or in open session?

7 MS RABANIT: [12:21:12] Thank you, Mr President. Your guidance is well noted
8 and I will need to go directly into private session.

9 PRESIDING JUDGE FREMR: [12:21:19] Mr Bourgon, before doing that, I have seen
10 you. A request for corrections?

11 MR BOURGON: [12:21:25] Indeed, Mr President. Just for a quick transcript
12 correction, because it is a material correction.

13 PRESIDING JUDGE FREMR: [12:21:33] Go ahead.

14 MR BOURGON: [12:21:34] Page 40, lines 6 to 7 in English and same page in French,
15 page 40, lines 7 to 8, there was some words that were not captured in the transcript.
16 I won't say more at this stage. Thank you.

17 PRESIDING JUDGE FREMR: [12:21:50] Noted and verification also supported by
18 the Chamber.

19 And caveat to the public, this witness is protected one so she was guaranteed that her
20 identity will not be revealed to the public, and because in this case there is very likely
21 that most of the questions could reveal her identity, it's very likely that most of this
22 examination will be done in private session.

23 So now let's move into private session, as requested.

24 (Private session at 12.22 p.m.)

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20 (Open session at 1.10 p.m.)

21 THE COURT OFFICER: [13:10:11] We're in open session, Mr President.

22 PRESIDING JUDGE FREMR: [13:10:15] Thank you, court officer. And please could
23 you inform us about the time so far used by Ms Rabanit. It will not be, probably, too
24 much time.

25 THE COURT OFFICER: [13:10:24] The Prosecution has used 20 minutes so far.

1 PRESIDING JUDGE FREMR: [13:10:27] So in according with our general rule you
2 still have one hour 10 minutes, roughly. Could you at this moment, Ms Rabanit,
3 envisage whether it will be enough for you to complete your cross?

4 MS RABANIT: [13:10:40] I can't. I can do that when I come back from the break. I
5 just want to stress that there is quite a large part of the statement that hasn't been
6 covered by the Defence for reasons that are of use to us. But this part may be of
7 interest for us. So just, just for this it may be I need the whole time or a little bit more,
8 but I will inform the Chamber as I come back from the break.

9 PRESIDING JUDGE FREMR: [13:11:06] All right.

10 So now we break and we will reconvene at half past 2.

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

12 (Recess taken at 1.11 p.m.)

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

14 THE COURT USHER: [14:31:56] All rise.

15 Please be seated.

16 PRESIDING JUDGE FREMR: [14:32:22] I believe there are no changes in
17 appearances, so we, then we can continue with the last part of cross-examination of
18 our witness, D-251, by Prosecution. Namely, by Ms Rabanit.

19 So, Ms Rabanit --

20 And Madam Witness, good afternoon. And I believe that it will be the last session
21 you have to be with us, so I believe that in two hours you will be free.

22 Now, Ms Rabanit, you have the floor, and I am just highlighting that we are in open
23 session. So I'm directing asking do you want to move into private?

24 MS RABANIT: [14:33:06] (Interpretation) Yes, your Honour. Thank you.

25 PRESIDING JUDGE FREMR: [14:33:11] And before that, still in open session, are

1 you able to provide us with some estimation that you will be fine with the remaining
2 time or not? You believe so? You hope so?

3 MS RABANIT: [14:33:29] (Interpretation) I think the remaining time will be
4 sufficient. But I will not try -- I will not make any promises, but that is definitely my
5 intention to stick within the remaining time.

6 PRESIDING JUDGE FREMR: [14:33:54] All right. All right then. Let's move -- I
7 can't hear myself -- can you hear me? Now it's fine. All right.

8 Then let's move into private session.

9 (Private session at 2.34 p.m.)

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Trial Hearing
WITNESS: DRC-D18-D-0251

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-D18-D-0251

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-D18-D-0251

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-D18-D-0251

(Private Session)

ICC-01/04-02/06

- 1 (Redacted)
- 2 (The hearing ends in private session at 4.36 p.m.)