

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 Tuesday, 5 December 2017
9 (The hearing starts in open session at 9.30 a.m.)
10 THE COURT USHER: [9:30:33] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: [9:30:59] Good morning, everybody.
14 Court officer, please call the case.
15 THE COURT OFFICER: [9:31:03] Good morning, Mr President, your Honours.
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 And for the record, we are in open session.
19 PRESIDING JUDGE FREMR: [9:31:23] Thank you, court officer.
20 Now appearances, and you can focus on changes, if any, compared to yesterday,
21 Prosecution.
22 MR IVERSON: [9:31:30] Good morning, your Honours. For the Prosecution, the
23 same persons present at the last session are once again present.
24 PRESIDING JUDGE FREMR: [9:31:37] Thank you, Mr Iverson.
25 Defence, please.

1 MR BOURGON: [9:31:43] (Interpretation) Good morning, your Honour.
2 Representing Bosco Ntaganda, there is absolutely no change in the Defence part.
3 PRESIDING JUDGE FREMR: [9:31:53] Thank you, Mr Bourgon.
4 And Legal Representatives of Victims, please.
5 MS PELLET: [9:31:57] (Interpretation) Thank you, your Honour.
6 No change for the former child soldiers, please.
7 MR SUPRUN: [9:32:10] (Interpretation) Good morning, your Honour, your Honours.
8 The victims of the attacks are represented by Anne Grabowski, associate legal officer,
9 and myself, Dmytro Suprun, counsel with the OPC. Thank you.
10 PRESIDING JUDGE FREMR: [9:32:24] Thank you, Ms Pellet.
11 Thank you, Mr Suprun.
12 Before we continue with our ordinary agenda, the Chamber has been informed that
13 Prosecution, namely Mr Iverson, would like to address the Chamber.
14 So, Mr Iverson, you have the floor and we are in open session.
15 MR IVERSON: [9:32:46] Thank you for the Court's indulgence, Mr President.
16 I asked to make submissions this morning because when I came in this morning, I
17 noticed that I had received the witness preparation note from the Defence after 9 p.m.
18 last night for the upcoming witness.
19 I wasn't able to work much last night because I had illness in the family so I had to
20 come in this morning. So I am still kind of collecting my thoughts. But as I was
21 able to go through the witness preparation note, I noticed on pages 7 and 8 that there
22 is a lot of new information obviously made pursuant to new enquiry or investigation,
23 and we all know that the witness preparation protocol prohibits such ostentatious
24 new investigation. And I am not entirely familiar with all of it, I'm still reviewing it,
25 but it appears to be voluminous in nature, and it is difficult for me to ascertain

1 the -- all of the information based on the log itself.

2 And it appears to me that, you know, this witness preparation session was a bit
3 irregular because of the timing. But not only the timing, but because of the
4 information that I now see in the witness preparation note. It -- I think it makes
5 everybody's job quite a bit more difficult, yours and mine, in deciding the relevant
6 questions and line of questions to ask this witness.

7 So what I would like to ask for this morning is that the Prosecution be provided
8 access to the video recording. This situation doesn't appear to be that much different
9 from Prosecution Witness 800, where the Chamber ruled that information was
10 voluminous and new in nature and there is an open question as to the propriety of the
11 questions.

12 And, to me, looking at pages 7 and 8 of this witness preparation note, it suggests to
13 me that I need to understand the information more fully than is provided. I
14 understand the Defence likely wanted to get the information to the Prosecution
15 quickly, but, I'm sorry, but this is not good enough for me to operate from. So I
16 would like to request that the Chamber order the video go to the Prosecution.

17 Second, I would like to ask, regardless of whether the Chamber provides -- orders
18 the Defence to provide the video recording, I would ask for an overnight
19 adjournment before I start my cross-examination. I don't think I'll be fully prepared,
20 based on all the information contained in the note, to start the cross-examination
21 today. I would prefer the evening to look at the video, if your Honours choose to
22 provide it to the Prosecution. And if not, then at least thoroughly go through the
23 preparation note so I understand what it is that the Defence were getting at with this
24 witness, what new information is contained in it, so I can prepare my
25 cross-examination effectively.

1 Pending any questions from the Chamber, those are my submissions this morning.

2 PRESIDING JUDGE FREMR: [9:37:12] Thank you, Mr Iverson. I don't have any
3 question in this regard for you.

4 Defence, your position?

5 MR BOURGON: [09:37:25] Good morning, Mr President.

6 Once again, I am very surprised by the requests coming from the Prosecution this
7 morning. I made a point of providing as much information as I could so to -- so as to
8 make it easy for the Prosecution.

9 The Chamber has the proofing note. Mr President, we met the witness yesterday for
10 two hours and 10 minutes. We ended the preparation session. It was 10 minutes
11 after 5, and we provided the preparation note as soon as we could thereafter, working
12 non-stop, and myself being away on other duties. And then we, as soon as we could,
13 we sent the information both to the Chamber and the Prosecution.

14 So in terms of timing, there is absolutely no, no issue of the Defence providing the
15 information late. This has happened in the past, with the Prosecution providing us
16 with very lengthy preparation session notes late the night before a witness. In this
17 case, it's the night that we did complete the preparation.

18 PRESIDING JUDGE FREMR: [9:38:43] Mr Bourgon, I believe that the Prosecution
19 submission is not about the timing but about the new information. So maybe please
20 focus on that.

21 MR BOURGON: [9:38:53] Okay. Thank you very much, Mr President. I will
22 focus on that.

23 I do not believe that the preparation session -- first of all, the preparation session was
24 conducted in accordance with the protocol. And the information that is there is
25 information which was -- we asked the witness in order to prepare for his testimony.

1 This is not even information that we intend to elicit from the witness. But, of course,
2 it is the role of the Defence before we put a witness on the stand to know what he
3 knows about Prosecution evidence.

4 So a few questions were put to the witness, and the Chamber will see from pages 7
5 and 8 referred to by my colleague --

6 PRESIDING JUDGE FREMR: [9:39:42] Now, anyway, we will have -- probably, I
7 guess, move into private session because we will deal with some details from
8 the -- could reveal identity of the witness. So let's move into private session now.

9 MR BOURGON: [9:39:57] Thank you, Mr President. I was --

10 (Private session at 9.40 a.m.)

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7 (Recess taken at 9.50 a.m.)

8 (Upon resuming in open session at 10.01 a.m.)

9 THE COURT USHER: [10:02:00] All rise. Please be seated.

10 PRESIDING JUDGE FREMR: [10:02:25] Before the break we have heard submission

11 and I believe that because I will not go in any detail that could reveal identity of our

12 witness, so I believe that we can remain in open session.

13 So before, before the break Prosecution made submission asking for disclosure of the

14 video recording of the preparation session of Witness D-243, whom I will refer to as

15 "witness" and because according Prosecution there is some clue that, that could be

16 some irregularities during conducting this session. The Defence opposed that

17 request on the basis that it does not fulfil the requirements set out in the witness

18 preparation protocol.

19 I can briefly refer to the law concerned. We believe that there is no need for

20 the Chamber to watch, at the moment, the video. I also recall that paragraph 2 of the

21 protocol provides that, and now I quote: "Witness preparation should not, should

22 not be conducted for the purpose of seeking new evidence or continuing the calling

23 party's investigations." Unquote.

24 And I also can quote paragraph 3 of the protocol, quote: "Any attempt to influence

25 a witness to testify to factual events that the witness did not observe or perceive is

1 prohibited. Coaching, training or practising are not allowed." Unquote.

2 And I can finish those quotations by reference to Article 13 of the protocol, according
3 with the witness preparation session are recorded, quote, "as a safeguard and if
4 the Chamber considers it necessary may review the recording itself".

5 As I said, we don't find if necessary at the moment, but what we concluded is that the
6 fact that there are some new piece of information and that the nature really requires
7 some time to adjudicate all connections with the other evidence, so the request for
8 giving some more time to prepare cross we found well-founded.

9 So to make it short, our ruling is that we will start direct examination of this witness
10 now, but the cross will start tomorrow 9.30, in order to provide, provide Prosecution,
11 namely Mr Iverson, who got under circumstances, which we can't blame him for,
12 under strong time pressure.

13 In this connection -- so it completes our ruling.

14 And in this connection the Chamber would like again to -- not to waste any time. So
15 we are thinking that in case that we will complete direct at the beginning, hopefully of
16 the afternoon session, there will be still some time in the afternoon and we thought
17 about taking this opportunity and moving status conference which we believe will
18 not take too much time, which we originally planned for Friday, then for Wednesday,
19 and we are thinking about moving this conference even earlier for this afternoon.

20 But before deciding on that I am asking parties whether they would be ready to hold
21 status conference this afternoon, I can estimation around 3 o'clock.

22 Prosecution?

23 MR IVERSON: [10:07:22] We would prefer tomorrow, Mr President, but we would
24 be prepared this afternoon. But we would prefer tomorrow.

25 PRESIDING JUDGE FREMR: [10:07:32] Thank you.

Trial Hearing
WITNESS: DRC-D18-D-0243

(Open Session)

ICC-01/04-02/06

1 Defence, what is your position?

2 MR BOURGON: [10:07:37] Thank you, Mr President. This afternoon is quite early
3 for us, but we can be ready if the chamber so desires. Thank you.

4 PRESIDING JUDGE FREMR: [10:07:45] All right. So we will see also how we will
5 move on with this testimony and before, before the lunch break we can just provide
6 you with our ultimate decision on that issue.

7 Now, court usher, please bring Mr Witness into the courtroom.

8 (The witness enters the courtroom)

9 PRESIDING JUDGE FREMR: [10:09:21] Good morning, Mr Witness.

10 Can you hear me well?

11 WITNESS: DRC-D18-D-0243

12 (The witness speaks Swahili)

13 THE WITNESS: [10:09:29] (Interpretation) I can hear you very well, but it would be
14 better for me if again the volume were turned up, please.

15 PRESIDING JUDGE FREMR: [10:09:41] I am sure our court usher will assist you in
16 that regard. Now is it better or is it all right, Mr Witness, now?

17 THE WITNESS: [10:09:56] Sawa.

18 PRESIDING JUDGE FREMR: [10:09:58] All right, sawa.

19 THE WITNESS: [10:10:02] (Interpretation) That's good.

20 PRESIDING JUDGE FREMR: [10:10:04] Before we, before we move to your

21 testimony I will have to deliver oral ruling concerning your testimony. And I will, I
22 will for the ruling itself move into private session.

23 But before that I have to reiterate that the Chamber recalls its oral decision of

24 4 December 2017 in which it granted the Defence request to reconsider the decision

25 bearing filing number 2136 and granted protective measures for Witness D-243.

1 And now I will deliver our reasoning. But for that purpose we have to move into
2 private session.

3 Court officer, please.

4 (Private session at 10.11 a.m.)

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(Private Session)

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23 (Open session at 10.16 a.m.)

24 THE COURT OFFICER: [10:16:07] We are back in open session, Mr President.

25 PRESIDING JUDGE FREMR: [10:16:20] Thank you, court officer.

1 And as regards timing of upcoming testimony, the Defence has the original estimated
2 three hours for its examination-in-chief of the witness. The Chamber found this
3 estimation reasonable and granted three hours to Defence for that purpose, and
4 the Prosecution is expected, in accordance with our general rule, to use the same time
5 in maximum for the cross, unless there are some specific, specific reasons to extend
6 this time limit of three hours.

7 And now, Mr Witness, I would like to provide you with some guidance before you
8 start giving your testimony. So to sum it up, you are called to testify in the case
9 against Mr Bosco Ntaganda. You will be asked soon questions both by the judges
10 and lawyers here in the courtroom. Please listen carefully to the questions. If you
11 do not understand, feel free to ask for the question to be repeated. We want you to
12 tell the truth and tell us what you saw, heard and sensed yourself. You may not
13 remember all details and it does not matter. Please testify just on that which you
14 remember. Don't guess. Don't make things up. There is nothing wrong in saying,
15 "I don't know" or "I don't remember".

16 Do you understand all this, Mr Witness?

17 THE WITNESS: [10:18:24] (Interpretation) Yes, I have understood. Thank you.

18 PRESIDING JUDGE FREMR: [10:18:30] Good. Now, Mr Witness, protective
19 measures are, as you could hear, are put in place to ensure that your identity is not
20 revealed to the public. This means that the public cannot see your face today and
21 that your voice is being disguised so that the public cannot recognise it.

22 We all in the courtroom will refer to you as "Mr Witness" only and ensure that your
23 name and any other information that risks revealing who you are is not broadcast to
24 the public. Therefore, whenever you need to describe anything that might reveal
25 your identity, we will do so in private session so that no one can hear your answer.

1 Do you understand all that, Mr Witness?

2 THE WITNESS: [10:19:36] (Interpretation) I understood that very well. Thank you.

3 PRESIDING JUDGE FREMR: [10:19:45] Very well, Mr Witness.

4 Now, Mr Witness, you shall make your solemn undertaking to tell the truth. So I
5 will read out the text and you please repeat it after me. So I am starting with quoting
6 the text of solemn undertaking: I solemnly declare.

7 THE WITNESS: [10:20:18] (Interpretation) I solemnly declare.

8 PRESIDING JUDGE FREMR: [10:20:23] That I will speak the truth.

9 THE WITNESS: [10:20:31] (Interpretation) That I will speak the truth.

10 PRESIDING JUDGE FREMR: [10:20:34] And nothing but the truth.

11 THE WITNESS: [10:20:41] (Interpretation) The whole truth and nothing but the
12 truth.

13 PRESIDING JUDGE FREMR: [10:20:54] Thank you, Mr Witness. It means that now
14 you are under oath. So you also need to be aware that it is an offence to give false
15 testimony. Do you understand that?

16 THE WITNESS: [10:21:12] (Interpretation) I understand that very well.

17 PRESIDING JUDGE FREMR: [10:21:24] All right. And finally, I will address a few
18 practical matters that you should keep in mind when giving your testimony. It is
19 important to speak into the microphone, to speak clearly, and to speak at a slow pace
20 to allow the interpreters to translate everything. So far you did it perfectly, so please
21 just proceed in the same style.

22 Now, one important caveat: When a question is asked, please do not respond
23 immediately. Please count in your head to three and only then give your answer.
24 Because this pause of three seconds is essential for us to properly hear and record
25 what you are saying.

1 Have you understood all that, Mr Witness?

2 THE WITNESS: [10:22:32] (Interpretation) Yes, I have understood.

3 PRESIDING JUDGE FREMR: [10:22:36] Very well. So now I am giving floor to
4 the Defence and I am highlighting that we are in open session.

5 MR BOURGON: [10:22:48] Thank you, Mr President. Just before I begin, I would
6 like to know if should we keep the same timing in the sense that the first session will
7 end at 11 or does the Chamber wish to adjust the timing?

8 PRESIDING JUDGE FREMR: [10:23:02] Yes, we will just keep our regular time
9 schedule. So we will break this session at 11.

10 MR BOURGON: [10:23:12] Thank you, Mr President.

11 QUESTIONED BY MR BOURGON: (Interpretation)

12 Q. [10:23:22] Good morning, Mr Witness.

13 A. [10:24:16] Good morning.

14 Q. [10:23:30] We have already met on a number of occasions so we know each
15 other already. But for the purposes of the Court record, I will introduce myself.

16 My name is Stéphane Bourgon and I am counsel for Bosco Ntaganda. And with the
17 members of my team here today, we will be asking you some questions.

18 Do you understand that, Mr Witness? Do you understand?

19 A. [10:24:23] I understand, Monsieur Stéphane.

20 MR BOURGON: [10:24:31] Mr President, if we can move in private session, please.

21 PRESIDING JUDGE FREMR: [10:24:34] Certainly.

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

23 (Private session at 10.24 a.m.)

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(Private Session)

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3 (Open session at 10.29 a.m.)

4 THE COURT OFFICER: [10:29:39] We are back in open session, Mr President.

5 PRESIDING JUDGE FREMR: [10:29:44] Thank you.

6 Mr Bourgon, please proceed.

7 MR BOURGON: [10:29:50] (Interpretation) Thank you, your Honour.

8 Q. [10:29:53] Witness, have you followed military training and, if so, where and
9 when?

10 A. [10:30:05] Thank you for the question. Personally I have already followed
11 military training. But I didn't continue. It was at the time of the AFDL,
12 Laurent Kabila's government, at that time, in the town of Watsa in the sub-region of
13 Haut-Uele.

14 Q. [10:31:00] Following your military training were you a member of an armed
15 group or an armed force?

16 A. [10:31:28] Since that time, since I stopped military training, I was never the
17 member of any armed group.

18 Q. [10:31:43] For what reason did you not joined an armed group after the training?

19 A. [10:32:02] Thanks for the question. If I remember correctly, I was able -- if
20 I was able to work as a soldier, I wouldn't stop after military training. I think that it
21 was because of family problems, that's the reason why I left the army. I couldn't join
22 any military group of any kind.

23 MR BOURGON: [10:32:43] To be on the safe side, Mr President, we will move back
24 into private session, please.

25 PRESIDING JUDGE FREMR: [10:32:47] Understandable.

- 1 Court officer, let's move into private session.
- 2 (Private session at 10.32 a.m.)
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4 (Recess taken at 10.35 a.m.)

5 (Upon resuming in open session at 11.02 a.m.)

6 THE COURT USHER: [11:02:53] All rise.

7 Please be seated.

8 PRESIDING JUDGE FREMR: [11:03:21] For the sake of planning, so this session is
9 going to take two hours, we will break at 1 o'clock. And as regards possibility to
10 hold status conference today, we agreed that we will hold status conference, and also
11 for you, guidance for you, only if we could start at the latest at 3.30, which would
12 mean that we will have one hour for the status conference because we believe there
13 are four items but in fact all of them are not of the legal nature, they are rather of the
14 technical and organisational nature, so we believe that it shouldn't be very much
15 time-consuming, the status conference. But as soon as we get over 3.30 we will then
16 hold the status conference tomorrow, on Wednesday. I mean get with, with direct
17 examination.

18 Now, Mr Bourgon, please proceed with the next part of direct examination of our
19 witness and we are in open session at the moment.

20 MR BOURGON: [11:04:41] Thank you, Mr President. If we can move into private
21 session, please.

22 PRESIDING JUDGE FREMR: [11:04:46] Yes. And before doing that I would like to
23 inform public who are following us either at the public gallery or on our stream that
24 this witness is protected one, which means that as soon as there is a risk that his
25 identity will be revealed we have to move into private session, which is the case just

1 now. And frankly saying, it's very likely that it will be for the most part of his
2 testimony.

3 Now let's move into private session.

4 (Private session at 11.05 a.m.)

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- 23 (Recess taken at 1.03 p.m.)
- 24 (Upon resuming in open session at 2.32 p.m.)
- 25 THE COURT USHER: [14:32:45] All rise.

1 Please be seated.

2 PRESIDING JUDGE FREMR: [14:33:15] Good afternoon, everybody.

3 Good afternoon, Mr Witness.

4 Before we proceed with the last part of direct examination of our witness, two points
5 concerning organisation:

6 First of all, I indicated that I had been informed that a 30-minute break is necessary to
7 change the transcript between our ordinary hearing and status conference. We
8 verified during the break, lunch break, and we got good news that such a break is not
9 necessary, so we will break only for five minutes just to allow parties to change
10 composition, if necessary, for the status conference, but the break will be much
11 shorter than we expected.

12 And the second issue concerns ruling initiated, rightly initiated by Mr Bourgon
13 concerning this 24-hour period for Witness D-251. So our ruling is that, noting the
14 present circumstances, the Chamber waives the 24-hour period provided for in the
15 witness preparation protocol and finds it appropriate for the Witness D-251 begin her
16 testimony on Thursday, 7 December 2017 at 9.30.

17 And now we can devote to the direct examination of our witness. Mr Bourgon, you
18 have the floor. And we are in open session.

19 MR BOURGON: [14:35:24] Thank you, Mr President. I will try at this point to do
20 part of the examination in public session without referring to either the identity of the
21 witness or to simply asking him -- no, I have no choice. I have to go in private
22 session, Mr President.

23 PRESIDING JUDGE FREMR: [14:35:39] I wanted to say appreciate it, but I can't.

24 All right. Let's move into private session.

25 (Private session at 2.35 p.m.)

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12 (Open session at 3.12 p.m.)

13 THE COURT OFFICER: [15:12:01] We're back in open session, Mr President.

14 PRESIDING JUDGE FREMR: [15:12:03] Thank you, court officer. And now

15 I would like to ask you, court officer, to provide us with total time used by

16 Mr Bourgon in order to give indication to Mr Iverson how much time he is expected

17 to use for cross generally.

18 THE COURT OFFICER: [15:12:19] Thank you, Mr President. The Defence has

19 used two hours and 27 minutes.

20 PRESIDING JUDGE FREMR: [15:12:25] So, yeah, I know that it at the moment

21 doesn't make any sense to ask you, Mr Iverson, whether this time will be sufficient to

22 you. As you indicated, you also have to study all the documents. But it will be fine

23 for the sake of planning if in the morning you can just provide us with update

24 whether you see feasible to conduct your cross in those two hours 30-something

25 minutes.

1 MR IVERSON: [15:12:58] Exactly, Mr President. I mean it's hard to predict, but
2 with the cooperation of the witness I think it might be possible to fit it within the,
3 around two and a half hours. I'll do my best.

4 PRESIDING JUDGE FREMR: [15:13:10] Thank you for that.

5 And now we will break for five minutes in order to allow parties to prepare for
6 upcoming status conference.

7 Mr Bourgon, a request for verification?

8 MR BOURGON: [15:13:25] Yes, Mr President, indeed: Page 75, line 18 in English
9 and compared with page 72, lines 14 to 16 in French. The issue is the word - same
10 that happened this morning -- the difference between before and after. We have
11 heard after and we would like that the audio be re-listened to.

12 PRESIDING JUDGE FREMR: [15:13:53] Prosecution, any comment on that
13 request?

14 MR IVERSON: [15:14:00] Nothing from the Prosecution at this moment.

15 PRESIDING JUDGE FREMR: [15:14:02] All right. Then, as usually, supported by
16 the Chamber. Now we will break for five minutes -- no, sorry.

17 Yes, I forgot fully to say good-bye for today to our Mr Witness.

18 Mr Witness, I would like to thank you for the moment because you now reached the
19 half of your testimony. Tomorrow you will be examined by Prosecution and it's my
20 legal duty to remind you that in the meantime till tomorrow you must not discuss
21 your testimony with anybody else. So I thank you and I am looking forward to see
22 you tomorrow at 9.30.

23 Court usher, please assist Mr Witness to leave the courtroom.

24 THE WITNESS: [15:15:03] (Interpretation) Thank you very much.

25 (The witness stands down)

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- 1 PRESIDING JUDGE FREMR: [15:15:06] And now we break for five minutes.
- 2 THE COURT OFFICER: [15:15:09] All rise.
- 3 (The hearing ends in open session at 3.15 p.m.)