

1 International Criminal Court
2 Trial Chamber VI - Courtroom 2
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 Judge Chang-ho Chung
6 Trial Hearing
7 Friday, 30 October 2015
8 (The hearing starts in open session at 1.41 p.m.)
9 THE COURT USHER: All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE FREMR: Good afternoon, everyone.
13 Court officer, please call the case.
14 THE COURT OFFICER: The situation in the Democratic Republic of the Congo, in
15 the case of The Prosecutor versus Bosco Ntaganda, case reference ICC-01/04-02/06.
16 We are in open session.
17 PRESIDING JUDGE FREMR: Since we have to start a new transcript, I will ask you
18 again for appearances, starting with Prosecution.
19 MS SAMSON: Good afternoon, Mr President, and your Honours. Appearing for
20 the Prosecution today are Mr Rens van der Werf, assistant trial lawyer;
21 Ms Marion Rabanit, associate trial lawyer; Ms James Pace, assistant trial lawyer;
22 Ms Selam Yirgou, case manager; and myself, Nicole Samson, senior trial lawyer.
23 PRESIDING JUDGE FREMR: Thank you, Ms Samson.
24 Defence, please.
25 MR BOURGON: (Interpretation) Good afternoon, your Honour. Representing

1 Bosco Ntaganda, who is present, for the Defence, Elodie Victor, William St-Michel,
2 and myself, Stéphane Bourgon. Thank you, your Honour.

3 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

4 Legal Representatives of Victims now please.

5 MS PELLET: (Interpretation) Thank you very much, your Honour. Former child
6 soldiers are represented by myself, Sarah Pellet, counsel with the Office of Public
7 Counsel for Victims.

8 MR SUPRUN: (Interpretation) Good afternoon, your Honour, your Honours.

9 The victims of the attacks are represented by myself Dmytro Suprun, counsel with the
10 Office of Public Counsel for Victims.

11 PRESIDING JUDGE FREMR: (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Private session at 1.45 p.m.) *(Reclassified partially in public)

22 THE COURT OFFICER: We are in private session, Mr President.

23 PRESIDING JUDGE FREMR: Thank you very much.

24 So I will continue. (Redacted)

25 (Redacted)

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted) Moreover,

5 protective measures have been granted for his testimony, including use of

6 pseudonym, face and voice distortion, and use of private session so that no one

7 outside the courtroom would know that he is testifying.

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 THE WITNESS: (Interpretation) (Redacted)

19 PRESIDING JUDGE FREMR: (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 THE WITNESS: (Interpretation) (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing

(Private Session)

ICC-01/04-02/06

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Trial Hearing

(Private Session)

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Trial Hearing

(Private Session)

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1 (Redacted)

2 PRESIDING JUDGE FREMR: (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 So do you think you have anything new? I think you are not satisfied with the
10 current--current treatment. I'm saying to you that the perspective of the upcoming
11 treatment is mainly again in the State concerned, that we will--but anyway, our
12 organs will do their best. But we simply can't go further.

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 THE WITNESS: (Interpretation) (Redacted)

17 PRESIDING JUDGE FREMR: (Redacted)

18 (Redacted)

19 THE WITNESS: (Interpretation) (Redacted)

20 PRESIDING JUDGE FREMR: All right. So then we will ask parties for their
21 submissions how to proceed, but in such a case I guess it will be better to escort
22 Mr Witness out of the courtroom.

23 So now, court officer, please we have to move into regime of the closed session first
24 and then to escort Mr Witness and we will ask parties for their submissions.

25 (Closed session at 2.02 p.m.) *(Reclassified entirely in public)

1 THE COURT OFFICER: We are in closed session, Mr President.

2 PRESIDING JUDGE FREMR: Thank you.

3 (The witness stands down)

4 PRESIDING JUDGE FREMR: Now let's move into the regime of private session
5 because I think there is no need to remain in regime of closed session.

6 (Private session at 2.03 p.m.) *(Reclassified partially in public)

7 THE COURT OFFICER: We are in private session, Mr President.

8 PRESIDING JUDGE FREMR: Thank you, court officer.

9 Now I am turning to the parties. You have heard my summary of the meeting held
10 earlier. You also had a chance to listen to the witness himself. So now we would
11 like to get your views on the procedural steps -- the procedural steps available at the
12 moment.

13 I will start with Prosecution, Ms Samson, please.

14 MS SAMSON: Thank you, Mr President. It's certainly regrettable that the witness
15 was not willing to testify, but I do understand the concerns. At this point I would
16 need to reflect very carefully on whether the Prosecution would request that the
17 Chamber compel the witness in the circumstances. So I'm not making that request at
18 the moment, but I recognize that it is an available option to the Chamber.

19 What I suggest is that we do have a postponement of his examination, that he
20 remain on the witness list for the moment while discussions are ongoing, and we see
21 whether or not there is an outcome that is suitable and permits him to testify and feel
22 at ease with the security situation of his family members.

23 Failing that, the Prosecution will certainly make an application to admit his prior
24 materials under Rule 68, but we remain hopeful that the issue can be resolved and
25 that the witness can come back voluntarily. Thank you.

1 PRESIDING JUDGE FREMR: (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 MS SAMSON: (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 PRESIDING JUDGE FREMR: And anyway, second additional issue, so I understood
13 well that at the moment the Prosecution is not in the favour to compel the witness for
14 the moment?

15 MS SAMSON: Perhaps, your Honour, but I think that in fairness I would need to
16 reflect and discuss internally as to whether or not that's a measure we wish to take.
17 It has potential consequences for the well-being of the witness and consequences to
18 the testimony itself. And with your permission I would like to reflect a bit more on
19 that and I could come back early next week with a position, if it's suitable to
20 your Honours.

21 PRESIDING JUDGE FREMR: It is surely suitable. Point taken.

22 Now Defence, please.

23 MR BOURGON: Thank you very much, Mr President. Mr President, in the
24 circumstances and taking into consideration the proceedings as they have unfolded so
25 far with this witness since this morning, the Defence prefers not to make any

1 observations on this issue. However, Mr President, of course we reserve our right to
2 make submissions if and when the Prosecution decides on a position. Thank you,
3 Mr President.

4 PRESIDING JUDGE FREMR: Fair enough.

5 Legal Representatives of Victims, do you want to make any comment on this issue?

6 MR SUPRUN: (Interpretation) Your Honour, I would prefer not to take a position
7 on this issue because I'm in a sensitive position (Redacted)
8 (Redacted) so I don't have a position to take on that question.

9 Thank you.

10 PRESIDING JUDGE FREMR: All right. So the Chamber now will -- sorry,
11 Ms Pellet. Sorry for omitting you. Sorry.

12 MS PELLET: (Interpretation) I'm sorry, your Honour. Because I asked to
13 question this witness, I do not have a specific observation with regard to the
14 discussions which are taking place now. However, I also reserve my right to
15 respond to submissions of the parties on this issue in writing. Thank you.

16 PRESIDING JUDGE FREMR: All right. So we will break now for a short
17 deliberation outside of the courtroom. My estimation it will be somewhere between
18 10 and 15 minutes. So now we will break and we will return back soon.

19 THE COURT USHER: All rise.

20 (Recess taken at 2.10 p.m.)

21 (Upon resuming in private session at 2.22 p.m.) *(Reclassified partially in public)

22 THE COURT USHER: All rise.

23 Please be seated.

24 PRESIDING JUDGE FREMR: The Chamber has considered submission of the
25 Prosecution on this issue, and we decided to make our ruling on this issue on

1 Tuesday in order to give, mainly to Prosecution, some time to get some more concrete
2 standpoint, as has been requested.

3 So we believe that Prosecution should, and we encourage Prosecution to do it, to try
4 to find some solution. (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted) It's up to the Prosecution to come with its

8 submission; and for this submission, we are giving the deadline at the end of Monday
9 morning session because our idea is to use Monday for starting testimony of

10 Witness 0106; that according to our estimation shouldn't take more than Monday and
11 Tuesday.

12 And in the case that we would be able to get some further progress, maybe we could
13 even continue with the current witness on Wednesday.

14 But, anyway, the Chamber would like to decide on the submission of Prosecution on
15 Tuesday morning, which means that we will like to get your submission orally at the
16 end of Monday morning session and then submissions of the Defence and Legal
17 Representative of Victims at the end of afternoon session on Monday, and on Tuesday
18 we will make our ruling.

19 And as I said, we believe, and I would rather assure that it is right, that there is no
20 obstacle to start with Witness 0106 on Monday morning. At least we were informed
21 that the witness should be ready.

22 Prosecution, any position to that intended decision of the Chamber?

23 MS SAMSON: (Redacted), we have no -- no objection to the
24 course of action the Chamber has taken.

25 In relation to P-106 I will confirm, but my understanding is that he should be ready to

1 proceed on Monday morning.

2 I have taken the opportunity, however, to advise the Defence that on Monday start
3 could be possible, and I understand that the Defence wishes to commence on Tuesday
4 morning. We have no difficulty with a Tuesday morning start should the Chamber
5 be minded to grant the Defence's request. And perhaps, if you want to hear more
6 about that, I don't have any more information, but we don't oppose that if the
7 Chamber accepts it.

8 PRESIDING JUDGE FREMR: Thank you, Ms Samson.

9 Defence?

10 MR BOURGON: Thank you, Mr President. Indeed, it is the request of the Defence
11 to begin with Witness 106 on Tuesday morning. The reasons for this request,
12 Mr President, is that in the circumstances in which the Defence works, which I believe
13 the Defence is well aware of, we work witness by witness and we have different
14 people working on different witnesses. The change in schedule over the recent days
15 have made it so that it would be not possible to start on Monday morning and be
16 ready. And the main reason for this is that some of the people working on witness
17 106 have -- we have commitments -- professional commitments over the weekend in
18 order to prepare for this witness.

19 So we would ask respectfully, Mr President, that we start with 106 on Tuesday
20 morning and -- but then everything else that was mentioned by the Chamber we fully
21 agree, and we are willing to contribute to the best of our ability. But Monday
22 morning would be difficult to start with 106.

23 Thank you, Mr President.

24 PRESIDING JUDGE FREMR: We will deliberate on that. Give us a second.

25 (Trial Chamber confers)

1 PRESIDING JUDGE FREMR: So we just verified that this postponement to Tuesday
2 shouldn't create any crucial problem. We still have some time preserved compared
3 to our schedule for this evidentiary block. So we accept this request, and we adjourn
4 our hearing to Tuesday morning, but it means that -- because originally we asked
5 parties for oral submissions. So in such a case, you will have to make these
6 submissions in writing.

7 So Ms Samson, it means by, yeah, 1 o'clock on Monday and then by 4 o'clock it is time
8 for Defence and legal representatives.

9 So that's it. Thank you very much. And we reconvene again on Tuesday, 9.30.

10 THE COURT USHER: All rise.

11 (The hearing ends in private session at 2.30 p.m.)

12 RECLASSIFICATION REPORT

13 Pursuant to the Trial Chamber VI's Order, ICC-01/04-02/06-1887, dated 4 May 2017,
14 the public reclassified and lesser redacted version of this transcript is filed in the case.