

1 Criminal Court
2 Trial Chamber VI - Courtroom 1
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 Wednesday, 20 January 2016
8 (The hearing starts in open session at 9.37 a.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 morning.
13 Court officer, please call the case.
14 THE COURT OFFICER: Thank you, Mr President.
15 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
16 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
17 We are in open session.
18 PRESIDING JUDGE FREMR: Thank you.
19 Now, appearances, please, in the usual order.
20 MS SAMSON: Good morning, Mr President, and your Honours. The Prosecution
21 today is represented by Ms Marion Rabanit, associate trial lawyer;
22 Ms Claudine Umurungi, legal assistant; Ms Selam Yirgou, case manager; and myself,
23 Nicole Samson, senior trial lawyer.
24 PRESIDING JUDGE FREMR: Thank you, Ms Samson.
25 Defence, please.

1 MR BOURGON: (Interpretation) Good morning, your Honours. Good morning to
2 everyone here in the courtroom.

3 Representing Mr Bosco Ntaganda, who is present today, we have Ms Margaux Portier,
4 Ms Berta Casas-Rochel, and myself. My name is Stéphane Bourgon. Thank you very
5 much, your Honour.

6 PRESIDING JUDGE FREMR: Thank you.

7 Legal Representatives for Victims please.

8 MS PELLET: (Interpretation) Thank you, your Honour. The former child soldiers are
9 represented by Mohamed Abdou and myself, Sarah Pellet, from the Office for Victims.

10 MR SUPRUN: (Interpretation) Good morning, your Honours. The victims of the
11 attack are represented by Anne Grabowski and myself, Dmytro Suprun, counsel.

12 PRESIDING JUDGE FREMR: Thank you.

13 Originally we planned to continue with testimony of the Witness 790, but we have been
14 informed by the Defence that there are some problems especially concerning -- health
15 problems especially concerning Mr Boutin. So now I would like to ask Mr Bourgon to
16 make submission on that. Mr Bourgon, you have the floor.

17 MR BOURGON: Thank you very much, Mr President. If we can move in closed session,
18 please -- in private session, please, Mr President.

19 PRESIDING JUDGE FREMR: And what are the reasons for that?

20 MR BOURGON: Simply to discuss because the matters I wish to bring forward to the
21 Court this morning deal with the health situation of my co-counsel.

22 PRESIDING JUDGE FREMR: Okay. Then court officer please move into private
23 session now.

24 (Private session at 9.40 a.m.) *(Reclassified partially in public)

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

1 PRESIDING JUDGE FREMR: Thank you.

2 Mr Bourgon, you may proceed.

3 MR BOURGON: Thank you, Mr President.

4 Mr President, I was informed this morning shortly after 8 o'clock that my colleague, who
5 was responsible to conduct the cross-examination of Prosecution Witness 790 was unable
6 to continue with this cross-examination, which he began yesterday, (Redacted).

7 As a preliminary matter, on his behalf, I would like to express his sincere regrets for not
8 being here this morning.

9 (Redacted)

10 (Redacted)

11 I take this opportunity, Mr President, to inform the Chamber that I was informed by my
12 colleague this past Monday that he was not feeling well, (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 While I have already started to examine what can be done to avoid disrupting the
20 proceedings scheduled to take place in this block, that is until 26 February, in the event of
21 course my colleague has to be absent for a prolonged period of time, no such measures
22 were taken in order to see or to step in for him on short notice this week.

23 My colleague's absence this morning was unforeseeable, and I did not take any such
24 measures.

25 In this regard, Mr President, I wish to underscore that Prosecution witnesses in general, as

1 the Chamber has witnessed since the beginning of this case, are assigned to one of counsel
2 on the team who is responsible to be present and to conduct a cross-examination of each
3 witness. And when a block begins, of course, as soon as we are informed by the
4 Prosecution that the witnesses who will appear during a given block, then the
5 responsibility to conduct a cross-examination is assigned specifically either to my
6 colleague or to myself.

7 And for this reason, of course, although * we do of course work together, but we don't
8 necessarily share with each other how our cross-examination will be conducted,
9 preparations for Witness P-790 were handled by my colleague, and I'm not able to step in
10 for him on short notice this morning.

11 While I could possibly replace him on short notice with a few hour's preparation, my
12 situation is such, Mr President, that it would not be possible to complete
13 cross-examination of this witness today.

14 The reason being, of course, that I would need at least a few hours, and there's still at least
15 four hours to go in this -- in the cross-examination of this witness.

16 So in these circumstances, I respectfully seek the indulgence of the Court in adjourning
17 the proceedings for today.

18 Now, I understand that my request implies having Witness P-790 remain in The Hague
19 for an extended period of time, something like an additional week, and I know, of course,
20 that this is not ideal. However, this would allow me to know exactly what is the medical
21 situation or the health situation of my colleague and whether he will have to go back to
22 Canada and whether he will be able to finish his cross-examination of the witness 790
23 before going to Canada, which was of course the situation I was aware of.

24 If not, then of course if he's not able to do so, then as the proceedings resume next week,
25 we don't know whether it is going to be Monday, Tuesday or Wednesday, I will then be

1 ready to take over and to complete this cross-examination. And I believe, Mr President,
2 that it would still be possible to complete all the witnesses scheduled for this block before
3 26 February. So I don't think there would be a prejudice to the proceedings.

4 I have discussed this briefly with my colleague this morning, and we have agreed to meet
5 as soon as possible to discuss how we can avoid having any further disruption of the
6 proceedings regardless of the answer or the information we are provided today regarding
7 the health situation of my colleague.

8 Another possibility, Mr President, would be to maybe return the witness home today and
9 to call him back later to complete his testimony in a -- in a further block.

10 So we have a number of options. And I think that in the circumstances it is necessary
11 and it will be in the interest of justice not to proceed today and to continue with the
12 proceedings next week.

13 So my request at this time is to adjourn the proceedings for the day and to resume
14 whenever the Chamber is ready to resume with either my colleague or myself proceeding
15 with the cross-examination of Witness P-790.

16 So these are my submissions this morning, Mr President. Thank you very much.

17 If the Chamber has any questions, I will gladly answer any such questions.

18 PRESIDING JUDGE FREMR: It may be the case, but we will start first with asking

19 *Prosecution and Legal Representative of Victims for their position. And I think we can
20 now move into -- because in my -- it's an important procedural issue which also influences
21 prospective conduct of these proceedings so we can I think move into open session, (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted) But I would like to keep the rest of this discussion in the open

25 session.

1 And as I said, we all can just omit any notice on health reasons.

2 So now, court officer, let's move into open session, please.

3 (Open session at 9.48 a.m.)

4 THE COURT OFFICER: We are back in open session, Mr President.

5 PRESIDING JUDGE FREMR: Now I would like, Ms Samson, for position of the
6 Prosecution.

7 MS SAMSON: Yes. Certainly, your Honour.

8 In light of the explanations given by counsel for the Defence and the unexpected nature of
9 the issue this morning, the Prosecution does not oppose the request to postpone the
10 examination -- cross-examination of this witness.

11 It does have the consequence of having the witness stay here into next week.

12 As I understand it, the Ongwen confirmation hearing has been scheduled for five days,
13 which would mean resuming on Thursday. There may be a possibility of resuming on
14 *Monday. I suppose we'll have to wait and see.

15 In the Prosecution's view, it would be preferable to have this witness conclude
16 immediately following the termination of the Ongwen confirmation rather than
17 postponing to a subsequent block.

18 And given that it will only take one day, there should be enough room in this block to
19 accommodate that. It may be best for the witness and victims unit to also discuss this
20 with the witness to ensure that that is something he's -- that will be acceptable to him.

21 But in my assessment, it will be.

22 We will, of course, discuss the rest of the witnesses in the block with the Defence. Any
23 accommodation we can make, we will certainly do our best to accommodate.

24 Certain practical and logistical arrangements are already in place in relation to the next
25 witnesses that will make it a bit difficult to move, but I'm confident that we can reach a

1 practical arrangement and inform the Chamber of that. Thank you.

2 PRESIDING JUDGE FREMR: Thank you.

3 Mr Suprun, do you want to comment on the issue?

4 MR SUPRUN: (Interpretation) Thank you, your Honour. I certainly understand the
5 circumstances that we are dealing with. It's important for the Defence to be in a position
6 to continue its cross-examination. Now we must consider the interests of the witness,
7 and I believe cross-examination should continue as soon as possible, and then he will be
8 done, and he will be able to go home. I believe that the witness should remain here, and
9 his cross-examination should be concluded as quickly as possible. Thank you,
10 your Honour.

11 PRESIDING JUDGE FREMR: Thank you.

12 One question from my part to Mr Bourgon. Mr Bourgon, and I'm just thinking loudly,
13 is -- would it be feasible for you and, for example, now to try to contact Mr Boutin to have
14 some consultation about the -- yesterday's part of cross-examination and to start, for
15 example, at 1 o'clock with the rest of cross-ex?

16 MR BOURGON: Thank you, Mr President. This is exactly the situation I was referring
17 to a little earlier, but I would need a few hours to prepare for the cross-examination of this
18 witness.

19 I believe, Mr President, that, first of all, it will not be possible for me to discuss the issue,
20 the matter with Mr Boutin during these hours, but I think that 1 o'clock would be too soon
21 for me to be able to resume.

22 I could -- I mean, I want to do whatever is possible to avoid disrupting the proceedings. I
23 would envisage, Mr President, it would not be possible for me to resume before at least
24 3 o'clock this afternoon. Given that it is now 10 o'clock, we're talking five hours. I think
25 five hours is the minimum I need to immediately go and to be ready to resume and

1 complete the cross-examination.

2 I would then need, of course, the four hours, which means we would have to sit later
3 tonight. If that is the position of the Chamber and if that is such -- of that importance,
4 then this is what I can offer to the Chamber.

5 I would, however, much prefer the first option, which would be to complete the
6 cross-examination as soon as proceedings remain after the Ongwen confirmation
7 hearings. Thank you, Mr President.

8 PRESIDING JUDGE FREMR: Thank you.

9 Any questions from the part of my colleagues? There are no questions. No questions?
10 Okay.

11 So now we will break for maybe 10, 15 minutes. We will deliberate, and we will come
12 back and inform you about our decision.

13 (Recess taken at 9.54 a.m.)

14 (Upon resuming in open session at 10.06 a.m.)

15 THE COURT USHER: All rise.

16 Please be seated.

17 PRESIDING JUDGE FREMR: The Chamber discussed orally the current situation, which
18 is unacceptable, and we -- I would like to start in emphasising that we fully appreciate
19 Mr Bourgon's approach and his offer to be flexible and to try his best to solve the problem
20 because what we really like to avoid is to postpone this testimony, which would mean a
21 big inconvenience to the witness, which also would create some useless costs.

22 So just when we have taken all the possible solutions, we also consulted Registry about
23 the possibility to sit in late afternoon hours, and we decided in the following way: We
24 will sit tomorrow, which is Wednesday, from 2.30 -- so sorry, today. I had to correct
25 myself.

1 So Mr Bourgon proposed to sit from 3 o'clock, but we -- because we would like to sit for
2 two-and-a-half hours today, so we will sit from 2.30 till 5. And it is true that we will start
3 30 minutes earlier than Mr Bourgon proposed, but it will just be first part of testimony,
4 which in our view will put a bit lesser demands on him. And then we would like to
5 finish this testimony tomorrow.

6 And because Judge Chung has other commitments sitting in Ongwen case, we can only
7 start after the end of the first day of hearing in Ongwen hearing case, which means that
8 we will sit from 4.30 to 6.30.

9 We also, as I said, checked the feasibility from the point of view of the Registry. We have
10 been assured that they, because of those really exceptional circumstances, they also will
11 do maximum in order to satisfy our concern.

12 And I also, or we also are aware of the fact that it will also mean some inconvenience to
13 you, but I think we all understand what the problem is, and I guess that all of us are
14 expected to do maximum to solve it.

15 So just to make a summary, we will sit tomorrow from 2.30 till 5 -- sorry, today. I am
16 completely confused. So again, today from 2.30 till 5, and tomorrow from 4.30 to 6.30.

17 So, once more, thank you for your understanding, and see you 2.30 in this courtroom.

18 THE COURT USHER: All rise.

19 (Recess taken at 10.10 a.m.)

20 (Upon resuming in open session at 2.56 p.m.)

21 THE COURT USHER: All rise.

22 Please be seated.

23 PRESIDING JUDGE FREMR: Good afternoon.

24 As discussed this morning, the Chamber notes that Mr Boutin is unavailable today to
25 continue his cross-examination of Witness 790. The Prosecution did not oppose an

1 adjournment in this circumstances.

2 The Chamber was grateful to Mr Bourgon for his indication this morning that he thought
3 he might be able to step in to resume the examination this afternoon in Mr Boutin's place.
4 Mr Bourgon has since informed the Chamber by way of email that having reviewed the
5 material, he's not after all going to be able to start immediately today.

6 In the circumstances, which are unexpected and exceptional, the Chamber considers
7 Mr Bourgon's request to not resume the examination until 4.30 tomorrow to be
8 reasonable.

9 The Chamber nonetheless remains of the view that it is preferable to complete the
10 testimony of this witness as soon as possible.

11 Having consulted with the Registry, the Chamber proposes to proceed as follows: We
12 will sit from 4.30 to 6.30 tomorrow, which means Thursday, 21 January; and again from
13 4.30 till 7 o'clock on Monday, 25 January.

14 The Chamber would not be minded to further adjourn this schedule, therefore are there
15 any issues parties wish to now raise in relation to it?

16 Prosecution, please.

17 MS SAMSON: No issues. Thank you.

18 PRESIDING JUDGE FREMR: Mr Bourgon?

19 MR BOURGON: Thank you very much, Mr President. The Defence is grateful. And
20 we are okay with the proposed schedule.

21 PRESIDING JUDGE FREMR: Mr Suprun?

22 MR SUPRUN: (Interpretation) No observations, your Honour.

23 PRESIDING JUDGE FREMR: Allow me additional comment from my part. I would
24 like to highlight that, as you can see, this further change of our schedule will require
25 maximum effort from Judges, for example, Judge Chung will be in a fixed sitting almost

1 10 hours for two days, for the interpreters, for those who are recording the transcript,
2 which in my view also means that it will require maximum effort from you, Mr Bourgon.
3 I know that you are not in an easy situation, but in my view you are very experienced
4 counsel.
5 Moreover, we also have to take into account the character of the testimony. I will not
6 comment it further, but we all know to what extent the testimony changed compared to
7 written statement, whether there are some strong points for you, so I think it also has to be
8 taken into account.

9 So I am just highlighting that in order -- not to come tomorrow and to listen again that
10 you are not ready again. So I think there would be no way to go in this direction, am I
11 right?

12 MR BOURGON: Thank you, Mr President. I've already expressed that I was grateful to
13 the Chamber for the new schedule and that I will abide by the new schedule. Thank you,
14 Mr President.

15 PRESIDING JUDGE FREMR: I appreciate that, Mr Bourgon.

16 So we can now conclude and we will resume tomorrow 4.30.

17 THE COURT USHER: All rise.

18 (The hearing ends in open session at 3.01 a.m.)

19 RECLASSIFICATION REPORT

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