

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, 13 September 2016
9 (The hearing starts in open session at 10.11 a.m.)
10 THE COURT USHER: [10:11:54] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: [10:12:23] Good morning, everybody.
14 Court officer, call the case.
15 THE COURT OFFICER: [10:12:28] 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: [10:12:44] Thank you, court officer.
20 Now appearances, please, in habitual order.
21 MS SAMSON: [10:12:50] Good morning, Mr President, your Honours. Appearing for
22 the Prosecution today Ms Julieta Solano, trial lawyer; Ms Marion Rabanit, associate trial
23 lawyer; Ms Selam Yirgou, case manager; and myself, Nicole Samson, senior trial lawyer.
24 I note for the record, your Honours, that once we deal with the procedural matter this
25 morning, I wish to be excused. Thank you.

1 PRESIDING JUDGE FREMR: [10:13:13] Noted. Thank you, Ms Samson.

2 Mr Bourgon.

3 MR BOURGON: [10:13:18] (Interpretation) Good morning, your Honour. Good
4 morning, your Honours, and everybody else present in the courtroom today. In the
5 courtroom, Marlène Yahya Haage, Chloé Grandon, Christopher Gosnell, and myself,
6 Stéphane Bourgon. Thank you very much, your Honour.

7 PRESIDING JUDGE FREMR: [10:13:39] Thank you, Mr Bourgon.

8 Legal Representatives of Victims, please.

9 MS PELLET: [10:13:45] (Interpretation) Thank you, your Honour. The former child
10 soldiers are represented by Mohamed Abdou and by myself, Sarah Pellet, counsel with
11 the Office of Public Counsel for Victims.

12 MR SUPRUN: [10:14:02] (Interpretation) Good morning, your Honour, your Honours.
13 The victims of the attacks are represented by the Office of Public Counsel for Victims,
14 Anne Grabowski, associate lawyer, and myself, Dmytro Suprun, counsel.

15 PRESIDING JUDGE FREMR: [10:14:15] Thank you, Ms Pellet. Thank you,
16 Mr Suprun.

17 And we also have with us today representatives of Registry, so I would also ask you to
18 introduce yourself for the record.

19 MR DUBUISSON: [10:14:31] (Interpretation) Thank you, your Honour. For the
20 Registry with myself today there is Thomas Henquet, who is the legal adviser of the
21 Registry, and myself, Marc Dubuisson, Director of Judicial Services Division on behalf of
22 Herman von Hebel, who is the Registrar.

23 PRESIDING JUDGE FREMR: [10:14:54] Thank you very much, Mr Dubuisson.

24 First of all, I would like to read -- or, just to refer to the report we got from Registry that
25 we received this morning that there is a medical report indicating that Mr Ntaganda is not

1 fit to be transported to the courtroom, but he is medically fit to appear by way of video
2 link, which have been ready.

3 So I would like to start with, first of all, checking whether everything is okay with the
4 video link and also then I would like to address briefly Mr Ntaganda.

5 So, first of all, Mr Ntaganda, could you kindly confirm that you can hear us and you can
6 watch what is going on in the courtroom? And probably we will need some time to
7 manage it technically, so please all be patient.

8 So now I see that Mr Ntaganda took or put his headphones on his ears so I will repeat my
9 question: Mr Ntaganda, could you confirm that you can hear and watch us?

10 MR NTAGANDA: [10:16:54] (Interpretation) (via video link) Yes, your Honour, I can
11 follow you well. But I have health problems, which mean I am not able to follow exactly
12 as I should, but I do confirm that I am able to follow you.

13 PRESIDING JUDGE FREMR: [10:17:16] Mr Ntaganda, I would like to address you first
14 on the following issues: First of all, if you would feel unwell in a way that it would
15 require any medical assistance, let us know, we can break and it's possible not -- no
16 problem to arrange for a doctor to see you immediately.

17 Then your counsel explained to the Chamber last week that following our decision to
18 continue certain restrictions on your contacts, you had stated that you did not wish to
19 attend court on Thursday and Friday, and you had refused to sign a waiver in respect of
20 your absence and were also refusing food and medication.

21 As you are aware, the Chamber ordered the proceedings to continue, and to explain it to
22 you, we took the decision because it is not for an accused person to decide that they do
23 not want to attend court. There must be a legitimate reason why you cannot attend, and
24 the Chamber must grant an excusal.

25 Last week we were not presented with a legitimate reason why you were not present and,

1 therefore, we took the decision to continue.

2 However, and I would like to emphasise that, until last week your conduct in the
3 courtroom has been consistently cooperative and commendable and the Chamber has
4 noted that. And we are also aware that the trial experience and the experience of being in
5 detention can be very difficult. It is for those reasons we would like to give you an
6 opportunity this morning to address us if you wish to do so, either directly now or
7 through your counsel, and to explain any concerns you may have. And if you want, we
8 can even move to private session for that. So it is now up to you. Do you want to
9 address us directly?

10 MR NTAGANDA: [10:20:39] (Interpretation) (via video link) I've already prepared
11 a statement that I have provided to my counsel and Maître Bourgon can explain it to you
12 because I don't feel able, physically able to speak myself.

13 PRESIDING JUDGE FREMR: [10:20:59] All right. So now we can move to
14 Mr Bourgon. And Mr Bourgon, you are invited to address the Chamber.

15 MR BOURGON: [10:21:12] Thank you, Mr President. Before I begin there are a few
16 submissions I would like to make, but would you like to hear those very general
17 submissions and then to go - proceed to the statement? Because I believe it is important
18 for you to understand the genesis of what I'm about to read.

19 PRESIDING JUDGE FREMR: [10:21:34] I leave it on you, so I believe that you will opt
20 for the best way, so it is up to you. And could we remain in open session?

21 MR BOURGON: [10:21:43] Yes, Mr President.

22 PRESIDING JUDGE FREMR: [10:21:44] All right.

23 MR BOURGON: [10:21:46] Mr President, we -- Mr Ntaganda of course is not present in
24 court. We have been informed that of course he was not medically fit to travel to court
25 this morning. And I spoke with Mr Ntaganda immediately following reception of the

1 report to confirm the matter.

2 A few minutes later Mr Ntaganda called again, saying that they wanted to do a video link
3 and that he did not feel well enough to attend this video link. I did not make -- provide
4 Mr Ntaganda at the time with any advice, other than to say, "You have to follow what
5 your body tells you and provide an answer."

6 I see that Mr Ntaganda is now present in the video room and it's a -- for us, I'm pleased to
7 see him there from a human perspective, however, I hope that as soon as if something
8 comes up, that he will be able to be excused.

9 He has provided me with a statement, handwritten statement, which we have translated.
10 The statement is handwritten in Kinyarwanda and we have translated this statement and
11 we have a -- we have also a typed copy of the statement.

12 Mr Ntaganda of course, as you know, Mr President, there's been no change to his
13 situation, he has not eaten since Wednesday, 7 September. However, he is drinking
14 water. He has lost weight and he has slowed down physically.

15 We had a visit on Friday. We had another visit on Saturday. On Sunday, Mr Ntaganda
16 was too sick, although the Registrar -- and I think it's the right time to say that we've been
17 getting very good cooperation from the Registry in terms of going through the situation,
18 they arranged for a visit on Sunday but Mr Ntaganda could not see us on Sunday.

19 We did, however, visit Mr Ntaganda yesterday for quite some time, and that's when he
20 provided us with the statement.

21 We'd like to address -- before I read this statement, I'd like, Mr President, to address the
22 possible way ahead with this situation and that's why -- I mean I'm even more glad that
23 Mr Ntaganda is able to hear exactly what I'm going to say.

24 What we would like to do, Mr President, and this is what we respectfully propose, is the
25 following: I would read Mr Ntaganda's statement on the record, we would then request

1 an ex parte hearing to provide you with further information, following which we intend
2 to -- to do an oral motion seeking a short adjournment.

3 What I wish to say before I do that is that, as counsel, you know very well, Mr President,
4 that my primary duty and interest goes to my client, Mr Ntaganda, to protect
5 Mr Ntaganda.

6 That being said, my team and I over the past few days have been focussing on finding a
7 way out, on finding a solution to resolve the present impasse which would allow the trial
8 to proceed.

9 In the statement you will see Mr Ntaganda will explain how he feels, what he believes and
10 it will provide the Chamber with preliminary answers as to why he has chosen the way to
11 act the way he is doing presently.

12 The ex parte hearing we will be requesting, actually I'm requesting the ex parte hearing at
13 this time, is because there are issues that are intimate to Mr Ntaganda and that can neither
14 be heard before the Prosecution, nor in public, and that are highly relevant to the
15 situation. There are also some solicitor-client matter which cannot be addressed before
16 the -- in the presence of the parties.

17 And, of course, the scope of our assignment and the instructions we have received from
18 Mr Ntaganda also need to be addressed, we believe, into an ex parte setting.

19 Should the Prosecution request, of course, a transcript of this -- of what will take place in
20 an ex parte setting, of course we would not object in any way for the Prosecution to get a
21 redacted version of whatever went on during this session, which would be short.

22 And following this, Mr President, we intend to present an oral motion seeking a short
23 adjournment, the aim of which, the primary aim of which --

24 PRESIDING JUDGE FREMR: [10:27:44] Sorry, Mr Bourgon, and short adjournment,
25 what should I understand under that?

1 MR BOURGON: [10:27:49] I'm not able, Mr President, to put a figure, but it would be
2 short because we believe that there is a way ahead, which is a legal way ahead, which is in
3 accordance with the proceedings of the Court. And I've already spoke to my colleague
4 from the Registry, Mr Dubuisson. We did not have time to discuss those issues, but this
5 is something that we feel that there is a way ahead.

6 Last week the Chamber was -- wanted to know and requested to know what did
7 Mr Ntaganda want. This is not easy to identify, despite the preliminary answers we will
8 find in his statement. But I think that based on the reading of his statement the Chamber
9 will see that there is very possibly a way out under which Mr Ntaganda could -- now
10 Mr Ntaganda is right there, he is hearing me, so I'm not saying anything that he's not
11 aware of because I really tried to discuss this issue with him in fulfilling my duties as
12 counsel.

13 My belief, Mr President, is that we should all strive at this point in time, despite the fact
14 that this situation is unpleasant, in the first place for Mr Ntaganda, but for all, everyone
15 involved, and I believe we should all strive in the interest of justice to find that solution.

16 So this is what I wanted to say as an introduction and I can now move to read

17 Mr Ntaganda's statement:

18 (Interpretation) "Statement of Mr Bosco Ntaganda. Monday, 12 September 2016.

19 Your Honours, it is Bosco Ntaganda that is speaking to you. My lawyer has told me that
20 you want to hear me, such that you may know why I refuse to participate in the hearings.

21 Even if I had wanted to be with you today, it is not possible. I feel too ill to come to the
22 Court, I am too weak to come to the Court. It's no longer Bosco who is before you. It
23 matters not what I do, I cannot overcome this ill feeling. Reading, religion, sport, work
24 do help to relieve me in short moments, but the ill feeling nevertheless comes back.

25 There is no way out.

1 I'm a revolutionary, I already told you, and I do not relinquish that term. I have fought
2 in the most difficult situations. I have survived extremely dangerous events that very
3 few people can even imagine. Many times I've almost died. I'm not afraid of dying.
4 However, despite the acceptable detention conditions in prison, I have never been
5 mistreated at a psychological level in the way that I have been since I have been in The
6 Hague. For me, it's worse than harassment. That's the reason why I prefer, rather, to
7 die than to suffer such treatment.

8 If you think that it's your decision of last week -- if you think that it is your decision of last
9 week that makes me act as I am doing presently, this is not the case. This decision is the
10 result of a situation which has been going on for over two years. This decision is the
11 proof that everything that happens here is a mere spectacle. This decision proves that
12 you have decided to separate me from my family in order to punish me. And your
13 decision proves that there's nothing that I can do to improve my lot.

14 It's not a question of morale, it's a question of hope. I no longer have any hope of seeing
15 my wife and children again under normal conditions. I no longer have any hope
16 concerning your decision, which makes me out to be an intimidator. And I no longer
17 have any hope concerning the result of the trial. Everything has already been decided.
18 I've been accused, tried and convicted for having intimidating witnesses without
19 investigation, without trial, and without being able to defend myself. I am no longer
20 capable of continuing.

21 You have decided that I participated in the intimidation of witnesses and, according to
22 you, I told potential witnesses what to say. Your decision was taken on the basis of lies,
23 from statements of lying witnesses who had an interest -- who had an interest in lying
24 in order to harm me. And you took this decision without even giving me the
25 opportunity to defend myself, without even investigating or verifying the accusations of

1 the Prosecutor and doing so whilst hiding the information that was obtained from these
2 people.

3 And today you are punishing me further on the basis of telephone conversations which
4 took place 30 months ago. Not only have I not done what you've decided that I did, I
5 have no possibility to demonstrate that to you because you refuse to address that
6 question.

7 Today I'm authorised to telephone my wife and my mother, one or the other, twice a
8 week, Tuesdays and Fridays, for a maximum duration of one hour per week. And this
9 has been the case for almost two years. But I can't speak about my trial or what I have
10 experienced in The Hague. That's notwithstanding the fact that the conversations are
11 listened into by an interpreter. There are three of us on the line. And if ever I have the
12 misfortune of saying a word that the interpreter does not understand, then the
13 conversation is cut. And even if after verification it's established that I did not try, nor
14 wish to disobey the directors, I am blamed and I am told that it's my fault, where still you
15 use the report of the chief custody officer, which blames me without reason, in order to
16 maintain the restrictions. And you even add that my wife is also responsible for that.

17 Well, it is the instructions given by the chief custody officer which are not clear. And you
18 haven't even listened to these conversations. And when I request the recording of my
19 own telephone conversations, those which are listened in on, my requests are ignored.

20 However, when I, myself, cut a conversation in order to avoid disobeying the directors,
21 then nothing is reported to the Judges. That's, furthermore, what happened last week
22 when my sister insisted on speaking to me on my mother's telephone, and myself, I hung
23 up. Once again, even if I demonstrate that there's no reason to cut a conversation,
24 nothing changes. And this is the case with regard to telephone conversations with took
25 place over 30 months ago, and I never had the opportunity to defend myself. You accept

1 the interpretation of the Prosecutor, and that is enough for you. It finishes there. Bosco
2 is an intimidator. It's not normal to stop there.

3 As you know, in the past detainees have personally threatened witnesses on the telephone
4 and, however, after a relatively short period of time they were permitted once again to
5 speak on the phone due to their good conduct.

6 As myself, what have I done to have continuous restrictions imposed on me? It's been
7 over 18 months that I've been waiting patiently. I respect the restrictions imposed to the
8 letter. My lawyer tells me to be patient, to respect the Court, that things will change and
9 there, restrictions are continuously imposed.

10 Where it concerns family visits you know that I'm in The Hague, have been since
11 March 2013, over 36 months, and I have not seen my children since. Despite the efforts
12 of my lawyer, everybody helps to ensure that my children do not obtain the necessary
13 passport in order to come to The Hague.

14 Recently, I was told that the Court had communicated with the Kinshasa government and
15 that my children should be able to obtain their passports, but that is far from having been
16 done.

17 And what is even more serious is that the visit which could perhaps have taken place in
18 December, if my children were able to obtain a passport, well, that's not a family visit.
19 Firstly, only three of my seven children could come, for budgetary reasons, if I have
20 understood well.

21 Secondly, an interpreter and a security guard would be present during the entire visit and
22 there would -- and he would have a device in order to record everything that's said. All
23 this in front of my children. Visits would be limited to four hours a day. And this for
24 just a few days.

25 And what is even worse is that every day a visit, once the short visit is finished I can't

1 even speak to my children while they're at the hotel, which is a few hundred metres away
2 from me. My children have never come to Europe, they don't speak the languages they
3 speak here, they don't have family in The Hague or in the surrounding area. There can
4 be no doubt that a visit under such conditions would traumatise my children.

5 As for myself, people are trying to destroy me by getting my children to come near me
6 without me being to see them for more than four hours per day, knowing that the rest of
7 the time they are at the hotel without being able to do anything.

8 And there's my wife who I can't see privately. We are husband and wife, but I am
9 forbidden from looking for support and comfort in the arms of my wife in private. And
10 why? On the basis of telephone conversations 30 months ago, the real meaning of which
11 was never subject to a true evaluation or a trial, on the basis also of allegations by the
12 Prosecutor which were taken from statements made by lying witnesses who
13 never -- which have never been investigated and have never been subject to a trial and
14 which I have never been able to defend myself against, where still a large part of what
15 these witnesses said to the Prosecutor or might have said to the Prosecutor has been
16 hidden from me, and this is done with the aim of protecting them while there was no
17 intimidation.

18 And under these conditions having my children travel without their mother is not an
19 option. And having my children travel with their mother without me being to see her in
20 private is also unacceptable. It is not a family visit. Clearly there is a wish to separate
21 me from my family.

22 Patiently I was waiting for the decision on the revision of the restrictions that are imposed
23 on me in the hope that a family visit could finally be organised in the month of December.
24 Now I know, I have understood, it is the end, there is no way out. My despair is directly
25 linked to the fact that you the Judges have taken all these decisions on the basis of

1 non-investigated allegations which are unverified, unadjudicated for which there have
2 been no trial and against which I've never been able to defend myself. I don't even have
3 the right to see the allegations of these witnesses.

4 The result is clear, the Prosecutor only has to gather allegations from these witnesses
5 without carrying out the slightest investigation and to present everything to the Judges
6 and you the Judges, you accept these allegations without verification.

7 In one of your decisions you have considered that I intimidated witnesses and that you
8 believe that I told them what to say. I was never able to defend myself. Accused, tried,
9 convicted without a trial, then punished without a possibility to return backwards. Your
10 decision is based on allegations without the possibility for myself to defend myself.

11 When allegations of witness subordination were put before the Prosecutor -- by the
12 Prosecutor against Mr Bemba, he was accused and he had the opportunity to defend
13 himself. Furthermore, after a short period of time, Mr Bemba continued to receive visits
14 from members of his family normally.

15 It's completely the opposite of my case. The Prosecutor doesn't want to officially accuse
16 me because he doesn't want me to be able to defend myself. The Prosecutor has found
17 Judges that -- to make that right, to punish me, to separate me from my family, to hide
18 information from me so that the trial happens almost entirely without the population
19 being able to participate or know what is happening. And all that is done without
20 accusation, without investigation and without a trial.

21 As for myself, I want to defend myself. I want to demonstrate that the allegations of the
22 Prosecutor are false. I want to demonstrate that the witnesses of the Prosecutor have lied
23 concerning intimidation, as many have lied on the subject of the facts when they testified
24 before you. I want to prove that I never tried to intimidate witnesses. I want to
25 demonstrate that I never tried to tell Defence witnesses what to say, but it's impossible.

1 You have decided without a trial and this is finished.

2 If my trial continues without anything changing until the end, you will consider me as a

3 witness intimidator, you will separate me from my family, you will continue to hide

4 information from me and you will continue to carry out a trial which is not public. That

5 is why I am not able and cannot and do not want to continue. When I decided to

6 surrender voluntarily over three years ago, I thought I could defend myself, but I now

7 know it's not the case. There is no way out and I no longer have any hope.

8 I do not understand why, when you say that your decision has a limited scope, I do not

9 understand that, you've decided that I am a witness intimidator, you have said that it is

10 very serious. You have said that you are very concerned by my conduct, conduct which

11 is linked to witnesses in my own case, in my own trial, conduct which is led -- or conduct

12 which is put towards witnesses who have testified or who will testify before you and you

13 say that this has no impact on my trial.

14 I'm not a lawyer, but for me it's impossible and incredible. And I have no possibility to

15 defend myself. I have no possibility to have you change your view. And I have no

16 possibility to see my wife and children again under normal conditions. That is the

17 reason why I have lost all hope. That is why I am ready to die. What has been imposed

18 on me before this Court is not a normal trial, that is also why I have given instructions to

19 my lawyer to no longer represent me and to cease all actions on my behalf in my absence."

20 (Speaks English) This, Mr President, is the statement which was handwritten by

21 Bosco Ntaganda and finalised yesterday in my presence at the ICC detention centre.

22 I can't provide any observations or comment on the statement provided by my own client,

23 but I can say, because I did tell him that there was a lot of repetitions in there, and I did

24 tell him that I hope that it would assist the Judges in understanding where he is today and

25 what he is doing.

1 At this point in time, Mr President, there is some additional information that I think I
2 could provide the Chamber in an ex parte setting, which would be of assistance in finding
3 a solution to this situation.

4 Unless you have any questions, those are my submissions for this morning.

5 PRESIDING JUDGE FREMR: [10:50:47] All right. Thank you very much, Mr Bourgon.

6 I really, I can confirm that it was helpful for us that we got some personal explanation
7 from Mr Ntaganda explaining what are the reasons of his current position.

8 Before I'll give floor to Prosecution and to Legal Representatives, I would like to give floor
9 to Registry in order to take advantage of the presence of their representatives because
10 apart of some legal issues there are also issues mentioned by Mr Ntaganda that also fall
11 within the responsibility of Registry.

12 So if Registry wishes, you also could make some comment on this submission, if you want.

13 If not, I don't want to force you. Mr Dubuisson.

14 MR DUBUISSON: [10:51:44] (Interpretation) Thank you, Mr President. We really
15 do not have much to say today. We simply want to reassure everyone by saying that we
16 have a protocol at the detention centre and we are complying with that protocol. So
17 Mr Ntaganda was consulted by a doctor on a regular basis, he's being also consulted by a
18 psychologist and for the time being everything is going on well. Of course we are
19 monitoring the situation very closely.

20 But I would like to comment on what has been said in this statement regarding family
21 visits. It is true that Mr Ntaganda's children have so far not been here to see him. We
22 have been working on that for several months, but it is complicated getting passports and
23 visas, but we are trying and we believe that this can be resolved by the end of the year.
24 We also have right now the support of the Congolese government, so I believe that we are
25 really making progress.

1 Regarding the organisation of visits, usually it is three visits by the spouse or by the wife
2 during the year and these visits, the wife can be accompanied by some other members of
3 the family. So for the Christmas period we are thinking of a visit from his wife and some
4 of the children designated by the wife. It is on that basis that we are working.

5 Now, as it was discussed at one point with the Defence, irrespective of the financial
6 difficulties to fund the entire family, we have set aside a certain amount of money for this
7 visit. In any case, we are going to find solutions for that visit. But due to monitoring
8 requirements, we cannot allow the visits to last the entire day because we would need
9 interpreters, we need transcripts, and this would require huge human and financial
10 resources. So we need to limit family visits or spousal visits. They are not recorded in
11 video form or audio form, so organising such conjugal visits will not be in compliance
12 with the instructions of the Court. It will be limited to family visits which will be actively
13 monitored as has been the case so far.

14 I do not have any further comments, except you have additional questions.

15 PRESIDING JUDGE FREMR: [10:55:19] No, I don't. Thank you.

16 Now Prosecution please.

17 MS SAMSON: [10:55:23] Thank you, Mr President. The Prosecution will respond to
18 three main topic areas this morning: The first is on Mr Ntaganda's request to be excused
19 from the hearing; the second area I'd like to touch upon is this statement that
20 Mr Ntaganda gave this morning through his counsel; and the third area I'd like to address
21 is the request for an adjournment and the proposed way forward.

22 On the request to be excused, while it appears that the Registry has provided some
23 medical report to the Chamber, the Prosecution has not been apprised of this report, and
24 we would request to be able to see it in even a redacted form to be able to make
25 meaningful submissions on the request itself.

1 We note that the medical condition that Mr Ntaganda appears to suffer from is one that is
2 to a degree self-imposed and that he is himself refusing to eat on the basis of a
3 disagreement or a dissatisfaction with the Chamber's decision and I think that that's an
4 important thing to note.

5 But we cannot make any further submissions on the legitimacy of the request to be
6 excused without further foundation of the medical condition that he's suffering from.

7 On the second issue, which has to do with the statement itself, what appears clear to the
8 Prosecution from the statement is that Mr Ntaganda's refusal to attend is a voluntary one.

9 As I mentioned, it is based on a disagreement or a dissatisfaction with the Chamber's
10 decision regarding restrictions to his communications from the detention centre. That in
11 and of itself as the Chamber has noted is not a proper basis or a legitimate one for refusing
12 to attend.

13 It is certainly clear that Mr Ntaganda does not understand the limited nature of the
14 Chamber's decision or even the findings that the Chamber made in that decision. The
15 basis upon which the Chamber ruled that his restrictions should be monitored or
16 restricted, his communications be monitored or restricted was in part based on
17 information from third parties but, indeed, also from Mr Ntaganda's own telephone
18 communications with third parties.

19 And to the extent that Mr Ntaganda refutes any of the allegations that were made in those
20 conversations, then the proper avenue for him to be opposing or challenging that is in the
21 context of the litigation before this Chamber as opposed to on his own seeking in some
22 way to hold the Court hostage to his getting effectively his own way in changing in some
23 aspects the Chamber's decision.

24 So Mr Ntaganda through his counsel had every opportunity to oppose, challenge the
25 Prosecution's application to restrict his communications in the relevant litigation. He has

1 now, I understand, sought leave to appeal the decision, and that in our submission is the
2 appropriate place for his disagreement or dissatisfaction to be played out. And we
3 strenuously oppose any suggestion on his part that this is the appropriate way to do it
4 because it is, as I say, seeking to boycott the hearing in some illegitimate way.

5 And as the Registry has already noted, Mr Ntaganda is able to speak to his family.

6 Indeed, he noted it himself in his statement. There is no absolute prohibition. He has
7 some time per week to speak to family members. Visits are, in fact, permitted. That
8 they have not yet taken place is -- has very little to do with the Chamber's decision
9 because they are in fact -- they are in fact permitted.

10 Thirdly, your Honours, on the proposed adjournment and request on how to deal with
11 the process going forward, while the request for adjournment remains unsubstantiated,
12 we have heard no reasons to support any adjournment, no request or indication as to how
13 long that adjournment would take or before or why indeed an adjournment is necessary.

14 Mr Ntaganda continues to refuse to provide a mandate to his counsel to appear on his
15 behalf, that, as the Chamber held on Friday, is akin to obstructing the proceedings in some
16 way or violating the Court's order and in our submission this trial should continue.

17 Mr Ntaganda ought to be either compelled to attend should the medical report not be
18 satisfactory and legitimate or be compelled to attend via the video-link option, which is in
19 fact in place and working quite well today.

20 Counsel should be ordered to have a mandate to represent his interests while the trial
21 continues today and going forward. And Mr Ntaganda has already been warned that
22 sanctions could apply and perhaps maybe a moment to consider whether or not there are
23 practical sanctions that can be put in place, which is fines or something else to try to get
24 the proceedings back on the appropriate track.

25 Mr Ntaganda can also be given a means by which he can communicate with counsel, such

1 as a telephone next to the counsel's space, but in our submission what we have here is
2 Mr Ntaganda's deliberate refusal to attend, comply with the Court's order, he's
3 obstructing the proceedings, he's doing so voluntarily with -- and improperly in our
4 submission, and this should not be permitted to continue.

5 The Chamber needs to limit this type of behaviour to ensure that it has proper control
6 over the proceedings and we ought to continue. We have a number of witnesses who are
7 here ready to present their evidence in the main case. And subject to any further
8 questions you have, your Honours, those are the submissions I would like to make this
9 morning.

10 PRESIDING JUDGE FREMR: [11:02:33] Thank you very much, Ms Samson.

11 Now, Ms Pellet, do you want to make also -- to present your position?

12 MS PELLET: [11:02:41] (Interpretation) Thank you, Mr President. As I said last
13 week, I would like to reiterate that this issue is extremely important and directly concerns
14 the interests of the victims. It is all the more important for the victims because there
15 cannot be any obstruction on the part of the accused. The victims have the right to see
16 justice done. They have the right to see the accused tried and defended for the alleged
17 crimes. This is why it appears to us that, pending the resolution of a certain number of
18 issues that have been raised today, we believe that we should continue on the basis of the
19 procedures adopted last week, that the Chamber should grant the mandate for the counsel
20 of the accused and the accused is not granting that mandate himself.

21 The accused can still request leave to appeal your decisions. And based on the
22 information in the possession of the victims, because we still have redacted versions, we
23 believe that he can still request leave to appeal and he can also request a review of the
24 decisions within the legal frameworks of the instruments of the Court, which is why we
25 really do not understand the current attitude of the accused.

1 Lastly, Mr President, regarding the hearing requested by Defence counsel, that is the ex
2 parte hearing, once again this is of direct interest to the victims. If the Chamber grants
3 the Defence's request, we will also want to have access to a redacted transcript of the
4 proceedings. Thank you, your Honour.

5 PRESIDING JUDGE FREMR: [11:05:25] Mr Suprun, please.

6 MR SUPRUN: [11:05:27] (Interpretation) Thank you, your Honour. I would like to
7 inform the Chamber that over the last few days I have contacted many of the victims who
8 are my clients to inform them of the current situation. I asked them questions on what
9 they thought about the decision of the accused. I really do not want to repeat all the
10 answers given to me by my clients, but all the victims that I talked to find it scandalous
11 that the accused refuses to come to the courtroom.

12 It is extremely important for the victims that the accused should be present during the
13 hearings when testimony is being given. As we know, the ICC is an international
14 criminal tribunal, not like the others, it is quite particular, and its role is not only to try the
15 most serious crimes, but to administer justice to the victims also. So the presence of the
16 accused during the trial is not only the right of the accused, but it is also an obligation for
17 justice and an obligation in favour of the victims, because the victims would like the
18 accused to be present when evidence is given.

19 It is for this reason that I believe that it is not acceptable to continue the trial in the absence
20 of the accused when concrete evidence is being given. For example, the next witness is
21 also a victim, so it is unacceptable that he should do that in the absence of the accused
22 because it is against the interests of justice and against the interest of the victims.

23 So if your Chamber has to decide that the trial can go on in the absence of the accused,
24 only expert witnesses should be allowed to testify until the issue of the appearance of the
25 accused in the courtroom is resolved. Thank you, Mr President.

1 PRESIDING JUDGE FREMR: [11:08:03] Thank you, Mr Suprun.

2 Now my question goes to court officer because I can't see at the moment Mr Ntaganda on
3 my screen.

4 (Pause in proceedings)

5 PRESIDING JUDGE FREMR: [11:08:53] Because I can't see Mr Ntaganda, I was told by
6 the court officer it is pretty possible that he's still in the room and following us with his
7 headphones on his head, but I would like to verify that. So please, Mr Ntaganda, could
8 you hear us?

9 (Pause in proceedings)

10 PRESIDING JUDGE FREMR: [11:12:12] So now I got information that Mr Ntaganda is
11 in the bathroom so we will have to wait a few minutes.

12 (Pause in proceedings)

13 (Trial Chamber confers)

14 PRESIDING JUDGE FREMR: [11:14:12] I can see now Mr Ntaganda, so I believe that
15 we can continue. And before we break, I would like just to address Mr Ntaganda. And
16 one important thing I heard from several speakers but not from Mr Bourgon, Mr Bourgon
17 I guess you are about to make a request for leave to appeal the restriction decision; am I
18 correct?

19 MR BOURGON: [11:14:41] Mr President, we have filed the request for leave to appeal
20 and a courtesy copy has been provided to the parties and to the Chamber, of course.

21 PRESIDING JUDGE FREMR: [11:14:50] Thank you very much. So now, Mr Ntaganda,
22 I would like to address you at this moment just on the basis what we heard so far, and we
23 listened very carefully, especially to what you have said and what was also in fact
24 contained in your statement presented by Mr Bourgon, and at this moment I would like to
25 respond by mentioning two things, and as I -- first, in relation to the decision to maintain

1 restrictions on your contacts, we do understand that this decision has a very big impact on
2 you and on your daily life. We didn't take it lightly, and the reasons why we decided to
3 maintain the restrictions for the moment are set out in this decision.

4 A decision on restrictions is, and I have to highlight that, is different to other types of
5 decisions and because it's aimed at preventing - preventing - potential harm, a lower
6 standard of proof applies. And I should also note that the decision will be reviewed
7 again in due course, also it seems by the Appeals Chamber but also anyway by our
8 Chamber, especially having particular regard to the stage of proceedings.

9 To put it more understandably to you, the situation may change, for example, after the
10 end of Prosecution case, for example, or depending how many witnesses still will be
11 called, how many witnesses have been heard and so on, and what witnesses as well.

12 However, as we mentioned in court last week, I would also like to stress that this decision
13 relates to a discrete matter, it does not relate to the substance of the charges against you
14 before our Chamber. And this last statement brings me to my second point.

15 Mr Ntaganda, you are granted the right to a fair and impartial trial and also expeditious
16 trial. And I can assure you that you benefit from a full presumption of innocence before
17 this Chamber. We are professional Judges and we will judge you only - only - on the
18 evidence presented.

19 The Prosecution has been mainly presenting evidence so far, but you and your team,
20 Defence team, will also have the opportunity to do so, and we will only decide after we
21 have carefully considered all of the evidence before us, both that of the Prosecution and of
22 the Defence.

23 Moreover, the Prosecution must prove - it's part of the ICC law - must prove the charges
24 beyond reasonable doubt. That is a high standard and the Chamber will strictly apply it.
25 Therefore, although there may be some decisions which you find difficult during the trial,

1 which is understandable to the Chamber, and also it is not always easy to go through this
2 experience, it's in your best interest to continue to follow these proceedings carefully and
3 to provide as much assistance as you can to your counsel, as you did so far, so that he can
4 put forward the best possible defence for you. So take it into account, Mr Ntaganda.

5 And as I said, we will not decide on the charges until we have heard all the evidence and
6 we will do so then based only - only - on the evidence.

7 So do you understand all this, Mr Ntaganda?

8 It seems Mr Ntaganda is saying something but -- now it's fine.

9 Mr Ntaganda, could you kindly repeat it.

10 MR NTAGANDA: [11:20:13] (Interpretation) (via video link) Your Honour, I have
11 listened to you. Maybe I will have something to say after you have completed what you
12 wanted to say; otherwise, I can follow you 100 percent.

13 PRESIDING JUDGE FREMR: [11:20:39] If you want, you may just add anything what
14 you want now.

15 MR NTAGANDA: [11:20:58] (Interpretation) (via video link) I really do not have much
16 to add because my counsel has told you everything in my statement. However,
17 your Honours, I would like to insist on the fact that I have not been able to see my wife
18 and my children for several years. I have not had the opportunity to defend myself
19 against the charges of the Prosecutor. As counsel has said, I am always dreaming of my
20 wife and my children. I do not feel at peace because I'm thinking of my wife and my
21 children every single day. And you took a decision, I do not know when that decision
22 will be rescinded. But other detained persons were in the same situation, but my own
23 problems are even more complicated. I can give the example of Jean-Pierre Bemba and
24 Katanga, they can receive members of their family, so I'm wondering what I did to
25 deserve this type of decision.

1 Your Honours, I respect you. Apart from your being Judges, you are my elders, you are
2 older than me, that is why I owe you a lot of respect, but I will like to say that I cannot
3 continue following this trial without the possibility of seeing my wife and my children,
4 especially since no charges against me have yet been proven. So frankly, I really do not
5 know, I do not think I can continue to support such a situation. Thank you.

6 PRESIDING JUDGE FREMR: [11:23:08] All right, Mr Ntaganda, your point was well
7 noted by the whole Chamber. I can just advise you to reflect upon what I have already
8 said.

9 And now, in order to give to your -- Mr Bourgon, you have another, because I will -- had
10 the idea to adjourn because of having this --

11 MR BOURGON: [11:23:32] Well, yes, Mr President, very briefly.

12 PRESIDING JUDGE FREMR: -- ex parte hearing.

13 MR BOURGON: Very briefly, Mr President, to respond to -- to my colleagues, and I
14 want to make this very short: First is we have not made any argument regarding our
15 request for adjournment yet. We can do so now, but that's why we were asking first for
16 the ex parte session before we can argue the need for an adjournment, the reasons and the
17 support in terms of legal argument.

18 The second thing, Mr President, is of course, in a situation where we are now, it's possible
19 and open for all involved to take a hard-line approach. But from what I've heard from
20 the Prosecution and the Legal Representatives I'm not surprised by what they say, but
21 there's two points: First is I'd like to underscore what was said by my colleague
22 representing the victims of the attacks, where he says the presence of the accused is very
23 important in the courtroom for his clients. And we agree with that.

24 The other issue is of course being present in the courtroom, there are two things about
25 being present; there is physical presence and there is a mental presence and ability to be

1 present in the courtroom. Of course we don't like what's happening. Of course we may
2 feel in some way hostage to this situation, but we still have a man who is not eating and
3 that we have to care for, because people do not make these kinds -- take these kinds of
4 steps easily. And we need to look into the psychological aspects of what is happening.
5 So we might take a hard line, but we might take a way to try and solve the issue. And I
6 think that's what we would like to put forward, a matter to try and solve this issue in
7 respect of the law and in respect and the protection of the rights of the accused.
8 And I think we can enter into some private details about Mr Ntaganda in an ex parte
9 session. Thank you, Mr President.

10 PRESIDING JUDGE FREMR: [11:25:55] All right.

11 So we will now break because we need also some time to prepare an ex parte session
12 which normally requires 30 minutes. So we will now break and we will continue at five
13 to 12.

14 And, Mr Bourgon, and do you -- your request is granted. The only issue, don't you think
15 that the presence of Registry could be helpful, or not?

16 MR BOURGON: [11:26:31] I believe there is no objection to Registry representatives
17 being present. I will call Mr Ntaganda, just to be sure, but I don't see a problem with
18 them being present during the ex parte session, so it could be ex parte Chamber, Registry.

19 PRESIDING JUDGE FREMR: [11:26:47] It's not about the objection, it depends on the
20 content of your submission whether it would be helpful to have or not, than just to
21 approach again Registry with your submission, so it would at least make things easier. It
22 depends what will be in your submission.

23 MR BOURGON: [11:27:04] You are correct, Mr President, their presence is likely to be
24 helpful. And during the break that we are taking for technical reasons I will endeavour
25 to meet with the Registry so that we can continue now, now that we have more

1 information, both from his part and from my part. For example, we were not aware of
2 this protocol until this morning that they were following and he said something and I -- I
3 gave Mr Ntaganda's position, and we will immediately meet. And their presence might
4 indeed be helpful during this ex parte session. Thank you.

5 PRESIDING JUDGE FREMR: [11:27:40] All right. So then I will just change a bit my
6 previous ruling: So we will meet in ex parte hearing with Defence and Registry and we
7 will start 12 o'clock.

8 THE COURT USHER: [11:27:58] All rise.

9 (Hearing adjourned in open session at 11.28 a.m.)