

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 3
8 Friday, 2 December 2016
9 (The hearing starts in open session at 9.36 a.m.)
10 THE COURT USHER: [9:36:59] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: [9:37:35] Good morning, everybody. Court officer,
14 please call the case.
15 THE COURT OFFICER: [9:37:40] Thank you, Mr President.
16 The situation in the Democratic Republic of the Congo, in the case the Prosecutor
17 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
18 We are in open session.
19 PRESIDING JUDGE FREMR: [9:37:54] Thank you, court officer.
20 Now appearances in habitual order and you can just limit on changes, if any,
21 compared to yesterday.
22 MS SOLANO: [9:38:03] No changes for the Prosecution, your Honour.
23 PRESIDING JUDGE FREMR: [9:38:05] Thank you, Ms Solano. Defence.
24 MS GRANDON: [9:38:09] (Interpretation) Good morning, your Honour, your
25 Honours. No change from the Defence.

1 PRESIDING JUDGE FREMR: [9:38:14] Thank you, Ms Grandon.

2 Legal Representatives of Victims.

3 MS PELLET: [9:38:22] (Interpretation) Thank you, your Honour. Mohamed Abdou
4 has joined the team for the former child soldiers.

5 MS GRABOWSKI: [9:38:30] Good morning, Mr President, good morning, your
6 Honours, there are no changes for the victims of the attacks today.

7 PRESIDING JUDGE FREMR: [9:38:36] Thank you, Ms Pellet.

8 Thank you, Ms Grabowski.

9 Before we have invite Madam Witness into the courtroom, the Chamber will deliver
10 its oral decision, and we can start in open session.

11 It's oral decision on in-court protective measures for Witness P-121. Before
12 proceeding with the testimony we will deliver this decision with respect to one of the
13 11 witnesses for whom the Prosecution requested protective measures in filing
14 number 1579.

15 The present decision concerns Witness P-121, for whom the Prosecution requests
16 in-court protective measures pursuant to Rule 87 of the Rules, in the form of face and
17 voice distortion during testimony and the use of a pseudonym.

18 The Defence opposed the protective measures in filing number 1593. The Defence
19 submits inter alia that the Prosecution fails to demonstrate any objectively justifiable
20 risk of post-testimonial retaliation.

21 On 29 November 2016, the Chamber received the VWU's in-court protective measures
22 assessment for this witness, in which the VWU recommended the same protective
23 measures as sought by the Prosecution.

24 The Chamber notes that the Prosecution in its request has provided a limited basis to
25 support the need for in-court protective measures. The Chamber, however, has an

1 independent duty to protect the safety and well-being of witnesses and, as referred to
2 in the following reasoning, has also had particular regard to the VWU's assessment.

3 In assessing whether there exists an objectively justifiable risk for Witness P-121, the
4 Chamber recalls that it has previously held that the general security situation in the
5 region may be a relevant consideration in respect of specific witnesses. In this
6 instance, it's noted that the witness and the witness's family reside in an area where
7 former UPC/FPLC militia members and supporters of the accused are present or
8 continue to have influence.

9 The Chamber further recalls that actual threats to a witness or his or her family are
10 not a prerequisite to determining whether a witness faces an objectively justifiable
11 risk and that there are reported instances where other witnesses were allegedly
12 threatened as a result of their involvement with the Court.

13 And for the next part of the decision we need to move into private session.

14 Court officer, please.

15 (Private session at 9.42 a.m.)

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7 (Open session at 9.44 a.m.)

8 THE COURT OFFICER: [9:44:09] We are in open session.

9 PRESIDING JUDGE FREMR: [9:44:11] Thank you, court officer.

10 And in light of the circumstances just mentioned, the Chamber is satisfied that there
11 exists an objectively justifiable risk with respect to the witness's security and
12 well-being and that of the witness's family warranting the protection of Witness
13 P-121's identity from the public.

14 The Chamber further finds that the in-court protective measures sought do not
15 unduly infringe upon the rights of the accused, given that the accused and the
16 Defence will be able to see the witness give evidence at trial and hear his voice
17 without distortion.

18 Accordingly, and pursuant to Rule 87 of the Rules, the Chamber grants the measures
19 of use of pseudonym for the purposes of the trial and voice and face distortion during
20 testimony. This concludes the Chamber's ruling.

21 And now we can bring Madam Witness into the courtroom. And I will ask the
22 guards again to shield, for this short moment when Madam Witness is entering the
23 room, the accused, just to protect or avoid risk that the witness will see the accused.
24 (The witness enters the courtroom)

25 PRESIDING JUDGE FREMR: Madam Witness, good morning.

1 WITNESS: DRC-OTP-P-0883 (On former oath)

2 (The witness speaks Lingala)

3 THE WITNESS: [9:46:54] (Interpretation) Good morning.

4 PRESIDING JUDGE FREMR: [9:46:56] At the beginning I would like to assure
5 myself, Madam Witness, that you are okay to conclude your testimony today and,
6 according to my estimation, it should be concluding during the first session.

7 So are you feeling okay to continue?

8 THE WITNESS: [9:47:20] (Interpretation) Yes. Today I feel well.

9 PRESIDING JUDGE FREMR: [9:47:27] Very good. As yesterday and day before
10 yesterday, it's my duty to remind you, Madam Witness, that you are still under oath,
11 which means that you have to speak the truth and nothing but the truth. Do you
12 understand?

13 THE WITNESS: [9:47:48] (Interpretation) I understand.

14 PRESIDING JUDGE FREMR: [9:47:53] Very well.

15 So now I will hand over the floor to Ms Grandon, representing Defence.

16 Ms Grandon, you still have, if I am not wrong, 41 minutes to conclude your
17 cross-examination. And usual question, do you want to proceed in open or in
18 private session?

19 MS GRANDON: [9:48:16] (Interpretation) I think we can stay in open session for the
20 moment.

21 PRESIDING JUDGE FREMR: [9:48:22] All right, but please be vigilant. So,
22 Ms Grandon, please proceed.

23 QUESTIONED BY MS GRANDON: (Continuing) (Interpretation)

24 Q. [9:48:32] Good morning, madam.

25 A. [9:48:37] Good morning.

1 Q. [9:48:39] At the end of the day yesterday I was asking you a question on the
2 basis of what you explained yesterday to my colleague, and I checked my reference.
3 It was correct. Page 22 of transcript T-168, you explained that when Bosco Ntaganda
4 came to Buli he addressed you and you stated the following:
5 (Speaks English) "When he arrived he saluted everyone and, at that time when he was
6 talking to everybody, he said the kadogos have to be well treated, the soldiers have to
7 be well treated. We are going to Djugu to get reinforcement to go and fight in
8 Langu."

9 (Interpretation) Those are lines 16 to 21, as indicated yesterday. As I wanted to
10 remind you yesterday, you mentioned in your statement of 2014 to the investigators
11 of the Office of the Prosecutor that the commander addressed you in Lingala and
12 sometimes in French.

13 Madam Witness, I put it to you that Mr Ntaganda doesn't speak Lingala, and when he
14 did address soldiers of the FPLC, he spoke Swahili. Does that refresh your memory?

15 A. [9:50:44] Yes. When he spoke in Swahili, somebody translated for us into
16 Lingala.

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 PRESIDING JUDGE FREMR: [9:52:05] Sorry, hold on, Madam Witness. We will
23 have to move into private session and redact the last answer of the witness.

24 (Private session at 9.52 a.m.)

25 (Redacted)

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2 (Open session at 10.55 a.m.)

3 THE COURT OFFICER: [10:55:46] We are in open session, Mr President.

4 PRESIDING JUDGE FREMR: [10:55:48] Thank you, court officer.

5 Madam Witness, it concludes your testimony. So on behalf of the Chamber, I would
6 like to thank you, that you underwent such a long journey and you spent a relatively
7 long time with us in the courtroom and that you had to answer so many, so many
8 questions which, as I understand, was even sometimes bothering you, but it's part of
9 the proceedings, that not all questions are really pleasant to the witness.

10 So I would like to thank you for that. I hope that your testimony will assist us in our
11 effort to find the truth in this case, and I wish you save journey home.

12 Now, court usher, please assist to --

13 THE WITNESS: [10:56:52] (Interpretation) Thank you.

14 PRESIDING JUDGE FREMR: [10:56:59] -- assist the witness to leave the courtroom.

15 (The witness is excused)

16 PRESIDING JUDGE FREMR: [10:57:21] Ms Solano, please.

17 MS SOLANO: [10:57:22] Your Honour, I would like to make a brief submission in
18 relation to the disclosure matter that arose yesterday on which there has not been the
19 expected result yet.

20 PRESIDING JUDGE FREMR: [10:57:33] Please go ahead.

21 MS SOLANO: [10:57:35] Well, actually, that said, your Honour, your Honours gave
22 guidance, the Defence sent an email last night saying that they had sought the
23 VPRS's...

24 PRESIDING JUDGE FREMR: [10:57:53] Consent.

25 MS SOLANO: Consent.

1 PRESIDING JUDGE FREMR: We are aware of that.

2 MS SOLANO: [10:57:54] Well, we still don't have a document, your Honours, and
3 we would like to have it. We don't understand why it was necessary to consult the
4 VPRS after the Chamber had already spoken and we don't understand what the delay
5 is. And also, as the information is now, we've been told, supposedly publicly, we
6 really don't understand the delay, and request that the Chamber --

7 PRESIDING JUDGE FREMR: [10:58:16] Yes, as I said before, I would give the floor
8 to Defence to respond. That as to the matter, I don't find it really of high relevance,
9 but as to the procedure, I think it's really necessary to clarify what are the obstacles on
10 the Defence part.

11 MS GRANDON: [10:58:39] (Interpretation) No obstacle, your Honour, it's just that
12 we considered that as VPRS had written this note, it was necessary to consult them
13 before the document was communicated. But if the Chamber considers that we can
14 communicate this note before this agreement is given, it will be done.

15 PRESIDING JUDGE FREMR: [10:59:00] I am ordering that. Okay? Fine. Now --

16 MS GRANDON: [10:59:07] (Interpretation) The document shall be therefore
17 communicated just after the end of the session.

18 I have a question. We've mentioned several errors in the transcript, would you like
19 that to be resolved in writing?

20 PRESIDING JUDGE FREMR: [10:59:21] Yes, we would prefer that.

21 MS GRANDON: [10:59:22] (Interpretation) Thank you, your Honour.

22 PRESIDING JUDGE FREMR: [10:59:26] Now we take our regular break and we will
23 continue at 11.30 with our upcoming witness which, if I'm not wrong, should be P-2.
24 Now we have break.

25 THE COURT USHER: [10:59:43] All rise.

1 (Recess taken at 11.00 a.m.)

2 (Upon resuming in open session at 11.31 a.m.)

3 THE COURT USHER: [11:31:50] All rise.

4 Please be seated.

5 PRESIDING JUDGE FREMR: [11:32:22] Good morning again. Since I see many
6 changes in composition of the teams, I would like to ask you for update on
7 appearances. Starting with Prosecution.

8 MR VAN DER WERF: [11:32:34] Good morning, your Honours. For this session
9 the Prosecution is represented by Dianne Luping, trial lawyer; James Pace, assistant
10 trial lawyer; Nicole Samson, senior trial lawyer; Selam Yirgou, case manager;
11 Claudine Umurungi, assistant legal officer; and myself, Mr Rens van der Werf,
12 assistant trial lawyer.

13 Thank you, Mr Rens van der Werf.

14 PRESIDING JUDGE FREMR: [11:33:01] Thank you.
15 Defence.

16 MR BOURGON: [11:33:04] (Interpretation) Good morning, your Honour. For
17 the Defence this morning, Mr Jules Guillaumé, Madam Dignité Bwiza and myself,
18 Stéphane Bourgon.

19 Thank you, your Honour.

20 PRESIDING JUDGE FREMR: [11:33:21] Thank you.

21 And as to the Legal Representatives, I note that there are no changes.

22 Before we start with the testimony of the upcoming witness, the Chamber will
23 address some procedural matters.

24 First, for the purposes of timing for this witness, as indicated in the Chamber's
25 preliminary Rule 68(3) oral decision delivered on 29 November 2016, the Prosecution

1 shall have two and a half hours to examine the witness, which shall include the
2 process of seeking admission of the witness material upon Rule 68(3), as well as its
3 supplementary examination of the witness.

4 The Defence has been permitted six hours for cross-examination of the witness and
5 will need to make a motivated request for any additional time.

6 Now I will go into private session for the next part.

7 Court officer, please.

8 (Private session at 11.34 a.m.)

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7 (Open session at 11.37 a.m.)

8 THE COURT OFFICER: [11:37:09] We're in open session, Mr President.

9 PRESIDING JUDGE FREMR: [11:37:11] Mr Bourgon, please, and we are in open
10 session so I hope that we can remain there.

11 MR BOURGON: [11:37:17] I believe that we can, Mr President. I would simply
12 like to address our notice of objections to the use and admission of certain documents.
13 There is one overriding objection which you find in this document concerning the
14 admission of transcripts and translations of audiovisual material, and this overriding
15 objection has to do with the names which appear at the beginning of such transcripts.
16 It is our position, and the Chamber has already ruled in the past on this objection, that
17 whenever a transcript or a translation is entered into evidence, it should be without
18 the page which says who is speaking in such extract.

19 And so that's for all of the material to be used. It is our submission that this page
20 should be removed, the page that says who is speaking, because the evidence in this
21 respect has to be that of the witness and not that of a document which is submitted in
22 evidence.

23 Thank you, Mr President.

24 PRESIDING JUDGE FREMR: [11:38:30] Prosecution, your position on that
25 submission.

Trial Hearing
WITNESS: DRC-OTP-P-0002

(Open Session)

ICC-01/04-02/06

1 MR RENS VAN DER WERF: [11:38:36] I remember the Chamber's previous ruling
2 on this matter, and that is indeed correct what the Defence has stated on the matter.
3 I note that the translations and transcriptions of the relevant video excerpts will, in
4 any event, not be admitted today. They will only be marked for identification
5 pending the finalisation of discussions with the Defence in case the Defence has any
6 objection or any comment on the accuracy of the translation or the transcription.

7 (The witness enters the courtroom)

8 PRESIDING JUDGE FREMR: [11:39:07] Yes, it used to be our regular approach so I
9 guess we can still maintain that.

10 Now, Mr Witness, can you hear me?

11 WITNESS: DRC-OTP-P-0002

12 (The witness speaks Swahili)

13 THE WITNESS: [11:39:34] (Interpretation) Yes.

14 PRESIDING JUDGE FREMR: [11:39:36] Mr Witness, on behalf of this Chamber
15 I would like to welcome you to the courtroom. You are called to testify in the case
16 against Mr Bosco Ntaganda and I would like to give you guidance that you will need
17 when giving your testimony.

18 You will be asked soon questions both by the Judges and lawyers in this courtroom.
19 Please listen carefully to those questions. If you do not understand, feel free to ask
20 the question to be repeated. We want you to tell the truth and tell us what you saw,
21 heard and sensed yourself. If you didn't see or hear it yourself but you found out
22 some other way, then you should explain how.

23 You may not remember all details and it doesn't matter, please testify just on that
24 which you remember. Don't guess. Don't make things up. There is nothing
25 wrong in saying "I don't know" or "I don't remember."

1 Do you understand all this, Mr Witness?

2 THE WITNESS: [11:41:08] (Interpretation) Yes, I understand.

3 PRESIDING JUDGE FREMR: [11:41:10] Good.

4 Mr Witness, protective measures are put in place to ensure that your identity is not
5 revealed to the public. This means that the public cannot see your face and that your
6 voice is being disguised so that the public cannot recognize it. We will refer to you
7 as "Mr Witness" only and ensure that your name and any other information that risks
8 revealing who you are is not broadcast to the public. Therefore, whenever you need
9 to describe anything that might reveal your identity, we will do so in private session
10 so that no one outside the courtroom can hear your answer.

11 Do you understand, Mr Witness?

12 THE WITNESS: [11:42:17] (Interpretation) Yes, I understand.

13 PRESIDING JUDGE FREMR: [11:42:22] Now, Mr Witness, you will be provided
14 with a piece of paper containing text of the solemn undertaking. So please now
15 make your solemn undertaking to tell the truth by reading out the text of the
16 declaration.

17 THE WITNESS: [11:42:40] (Interpretation) I declare solemnly that I will state the
18 truth, the whole truth and nothing but the truth.

19 PRESIDING JUDGE FREMR: [11:42:57] Thank you, Mr Witness.

20 So you are now under oath and you also need to be aware that it's an offence within
21 the jurisdiction of this Court to give false testimony. Do you understand that?

22 THE WITNESS: [11:43:20] (Interpretation) Yes.

23 PRESIDING JUDGE FREMR: [11:43:21] Good.

24 Now finally a few practical matters you should have in mind when giving your
25 testimony. It's important to speak into the microphone, to speak clearly and to speak

1 at a slow pace to allow the interpreters to translate everything precisely. You should
2 only start speaking when the person asking you the question has finished. And
3 what is also very important, when a question is asked, please do not respond
4 immediately but count in your head to three at least and only then give your answer,
5 because this pause of at least three seconds is essential for us to properly translate and
6 record what you are saying.

7 If you have any questions during your testimony, do not hesitate to let us know by
8 raising your hand. We will then give you the opportunity to speak.

9 Have you understood all that, Mr Witness?

10 THE WITNESS: [11:44:44] (Interpretation) Yes.

11 PRESIDING JUDGE FREMR: [11:44:46] So we can now start your testimony.

12 Prosecution, Mr van der Werf, you have the floor.

13 MR VAN DER WERF: [11:45:15] Thank you, Mr President.

14 QUESTIONED BY MR VAN DER WERF: (Interpretation)

15 Q. [11:45:23] We've already met, but let me remind you that my name is Mr van
16 der Werf. I'm going to be asking you questions on behalf of the Prosecution. And
17 before we begin, I would like to repeat that if at some point there's a question you
18 don't understand, feel free to let me know and I will clarify the question.

19 If you feel that there's something that might identify you, you can also request that we
20 go into private session. What that means is that anyone outside of this courtroom
21 cannot hear what is being said inside the courtroom.

22 MR VAN DER WERF: [11:46:10] Mr President, I will follow the procedure which
23 has been adopted thus far in relation to witnesses for whom Rule 68 applications have
24 been made. I will then conduct a brief supplementary examination, as your Honours
25 permitted in the 29 November 2016 oral ruling.

1 PRESIDING JUDGE FREMR: Exactly.

2 MR RENS VAN DER WERF: I will do all of this in the two and a half hours that the
3 Prosecution has been granted.

4 PRESIDING JUDGE FREMR: [11:46:33] Yes, I can confirm it's fine with the
5 Chamber.

6 MR VAN DER WERF: [11:46:38] Since my first questions are of an identifying
7 nature and the witness has been granted protective measures, I would like to move
8 into private session, please.

9 PRESIDING JUDGE FREMR: [11:46:49] All right.
10 Court officer, let's move into private session.

11 (Private session at 11.46 a.m.)

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Trial Hearing
WITNESS: DRC-OTP-P-0002

(Private Session)

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Trial Hearing
WITNESS: DRC-OTP-P-0002

(Private Session)

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16 (Upon resuming in open session at 2.31 p.m.)
17 THE COURT USHER: [14:31:18] All rise.
18 Please be seated.
19 PRESIDING JUDGE FREMR: [14:31:50] Good afternoon. We will continue with
20 testimony of our witness, but since we now are going to play video that could reveal
21 identity of our witness and our witness is protected one, we have to move into private
22 session. And for the information of public, it's very likely that we will have to
23 remain in the regime of private session for most of the time of this session.
24 Now, court officer, let's move into private session.
25 (Private session at 2.32 p.m.)

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16 (Open session at 4.29 p.m.)

17 THE COURT OFFICER: [16:29:26] We are in open session, Mr President.

18 PRESIDING JUDGE FREMR: [16:29:29] Thank you, court officer.

19 Mr Witness, we have to break now. We will continue on Monday, 9.30. Anyway, I

20 thank you that you started very well. You followed my instruction how you should

21 respond, you observed pauses and you were focussed adequately to the questions put

22 to you. So thank you for that.

23 And it's my duty to remind you that in the meantime, till Monday, you must not

24 discuss your testimony with anybody else. Do you understand that?

25 THE WITNESS: [16:30:12] (Interpretation) Yes.

Trial Hearing
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(Open Session)

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- 1 PRESIDING JUDGE FREMR: [16:30:18] So I thank you and we will now adjourn and
- 2 we will reconvene on Monday, 9.30.
- 3 THE COURT USHER: [16:30:26] All rise.
- 4 (The hearing ends in open session at 4.30 p.m.)
- 5