

Trial Hearing
WITNESS: (Redacted)

(Open Session)

ICC-01/04-02/06

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 Tuesday, 20 October 2015
8 (The hearing starts in open session at 9.32 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, everybody.
13 Court officer, please call the case.
14 THE COURT OFFICER: Thank you, your Honour.
15 We are sitting in the case The Prosecutor versus Bosco Ntaganda.
16 PRESIDING JUDGE FREMR: Thank you.
17 We will start as usual with appearances.
18 Prosecution, please.
19 MS SAMSON: Good morning, Mr President and your Honours. The Prosecution
20 today is represented by Mr James Pace to my left, assistant trial lawyer;
21 Mr Rens van der Werf, assistant trial lawyer; Ms Selam Yirgou, case manager; and
22 myself Nicole Samson, senior trial lawyer.
23 PRESIDING JUDGE FREMR: Thank you, Ms Samson.
24 Now Defence please.
25 MR BOUTIN: Good morning, Mr President, your Honours. This morning

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1 Mr Ntaganda is here present with us. Our presence are Dennie Michielsens; Isabelle
2 Martineau; Maître Chloé Grandon; and my name Luc Boutin, co-counsel. Merci.
3 PRESIDING JUDGE FREMR: Merci, Mr Boutin.
4 Now Legal Representatives, please.
5 MS PELLET: (Interpretation) Good morning, your Honours. The former child
6 soldiers are represented by myself Sarah Pellet, counsel for the OPCV.
7 MR SUPRUN: (Interpretation) Good morning, your Honours. The victims of the
8 attacks are represented by myself Dmytro Suprun, counsel for the OPCV.
9 PRESIDING JUDGE FREMR: Thank you both of you.
10 And duty counsel, please.
11 MR VON BÓNÉ: Good morning, your Honour. My name is Julius von Bóné. I'm
12 the duty counsel for the witness. Thank you.
13 PRESIDING JUDGE FREMR: Thank you.
14 Welcome, good morning, Mr Witness. So we will continue today with your
15 testimony. I would like to emphasise that we really appreciated yesterday the way
16 how you responded. You responded clearly, you observed pauses, you testified in
17 French, which also fundamentally facilitated the translation. So please continue in
18 the same way, okay?
19 Now, Ms Samson you have the floor. Do you want to continue in private or closed
20 session?
21 MS SAMSON: I ask, Mr President, that we move into private session.
22 PRESIDING JUDGE FREMR: All right.
23 Court officer, please let's move into private session.
24 (Private session at 9.36 a.m.)
25 (Redacted)

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22 (Closed session at 10.36 a.m.)

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7 (Open session at 10.36 a.m.)

8 THE COURT OFFICER: We are open session, your Honour.

9 PRESIDING JUDGE FREMR: Thank you, court officer.

10 Mr Boutin, you may proceed.

11 MR BOUTIN: (Interpretation) Thank you very much, your Honour. Your

12 Honours, if you would allow me at this time in the proceedings, the Defence believes

13 that it's of fundamental importance for fairness of the trial to determine that the

14 Defence knows exactly what the rules are that apply concerning admissibility of

15 evidence, video, audiovisual evidence.

16 Obviously the circumstances will vary, I suppose, depending on the type, type of

17 document that it presented to you. But one thing, several things are at stake here.

18 Firstly the rules obviously that the Court has established in the decision on the

19 conduct of the proceedings, paragraph 56, 57, if I'm not mistaken, and there is a

20 standard envisaged that a party must respect and meet for a audiovisual document to

21 be presented in the most complete way to a witness.

22 Our understanding thereof, your Honour, is that this procedure applies within the

23 framework of the examination-in-chief. It's not a matter that the Defence raises or

24 intends to challenge the decision already issued by this Court. We accept the

25 decision and we take note thereof. What we would like is to be sure without going

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1 further in the proceedings with a view obviously to ensuring that the proceedings can
2 continue in an appropriate way without problems, that any questions that the
3 Defence has with regards to the procedure and the admissibility of these audio/video
4 items be clearly set out by the Chamber.

5 Just to give you a simple example that we have before us. Our understanding is that
6 the video that is to be presented lasts around an hour, if my memory serves me well,
7 if not more. It's a composite of pictures and of frames taken in different places over
8 several days.

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 Here we're not in a situation where we have one piece of AV evidence, a continuous
15 film. Essentially what we have is a collage of several sequences. If we go back to
16 the test that the Chamber established, that is to say that there are two criteria which
17 have to be met, one, the person who is shown a short extract has to be a person who
18 participated in its making, so obviously can speak about its reliability, or it could be
19 somebody who has personal knowledge of what is shown in the AV material.

20 And that takes us to the difficulty that there is. With the Prosecution, for example, in
21 this case, they're presenting three short extracts to the witness. (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted) further does that mean that the

25 entire video is covered, that the entire video can be shown to the witness as a whole

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1 and does -- can the Prosecution ask that the video be admitted into evidence to
2 establish the veracity of its content? And in addition to that, there's the transcript of
3 the video as prepared by the Prosecutor with clear indications as to who is speaking
4 when, in which scene, who is not speaking, certain comments, editorial comments, for
5 example, not translated, not interpreted because it's irrelevant, not relevant.
6 In this video there are five languages that are used. I think there's a minimum
7 degree of fairness requires that if the Prosecution intends to tender the video into
8 evidence, the witness, before being shown the video, has to be able to say whether he
9 was present or participated in its making because essentially it is leading, a type of
10 leading. Well, you show a picture to the witness with persons who are speaking,
11 persons making comments, for example, a journalist, who explains, according to him,
12 how the extraction of gold was carried out in Mongbwalu.
13 So the question that there is ultimately is if this video is admissible to be tendered into
14 evidence in its entirety? Is it only for part thereof? Can the Prosecutor choose
15 sections which accord with their vision of things and leave the rest aside?
16 You see, this type of process brings up fundamental questions, not just about
17 admissibility but also about procedural fairness and equity.
18 In the final analysis, when the Court or if the Court decides, for example, that the
19 video is admissible as a whole, does the Court accept the video in evidence for its
20 veracity, that is to say that the words that one hears, that they have to be considered
21 as true when Mr Arereng the journalist -- and I'll just take this example, there are
22 dozens of others. It's a video that's very long.
23 The comments that Mr Arereng makes on the way in which gold is mined in
24 Mongbwalu, who transports it where, et cetera, does that become evidence, reliable
25 evidence upon which the Court can base its decisions, or is this video tendered into

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1 evidence not due to the veracity of its content but only to demonstrate that there were
2 exchanges, verbal exchanges which form part of a narrative, but they are not
3 considered part of the evidence or that they have been seen as reliable?

4 This question I would submit with a greatest respect has to be resolved at this stage of
5 the proceedings so that during the proceedings we can on the Defence side at least
6 not be in a vague situation because procedural fairness isn't just a question of
7 understanding of what is fair or not. For the accused, the accused has to know what
8 the rules of the game are, what evidence can be admitted against him.

9 This takes me to my second part, I'll try and be brief here, my second question. Does
10 the test established by the Chamber or is it applicable to the Defence in
11 cross-examination as well? So does it also apply to the Defence in cross-examination?

12 In the system where I'm from in Canada, as you know I'm sure, the Chamber is
13 international so they know a lot about different national laws, in cross-examination in
14 Canada when evidence is relevant it can be presented to the witness. It can be
15 presented in a very different way. And it can come from different places. It could
16 be Google Maps, photos, newspaper articles, et cetera, including videos, without the
17 Defence being restricted to establish a test with a witness, that is to say, that you can
18 go into a cross-examination when a question is a question related to the credibility of
19 the witness and the cross-examining party can submit any document or any video
20 while it's relevant obviously to the question being addressed.

21 And then there is the issue afterwards of admissibility, probative value, et cetera,
22 which comes afterwards.

23 So we would like to know if the test that the Chamber has established is a test that
24 applies to both parties in the cross-examination as well. And with the greatest
25 respect, your Honour, this question hasn't been specifically addressed in the

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1 guidelines of the Chamber. And I think if the Chamber took this opportunity to
2 clarify the procedure and to clarify, for example, what it understands in the decision
3 on the Conduct of the Proceedings, Article 57, at the end the Chamber makes a
4 commentary with regards to the admissibility of AV evidence, for veracity of its
5 content.

6 I think there are distinctions to be made and the Court and the Chamber must use this
7 opportunity to clarify once and for all what the rules of the game are.

8 Do we go towards a system where the Prosecution can present a video to a witness
9 and just ask admissibility for certain portions of the video, or should the entire video
10 be taken in?

11 This way of proceeding obviously has an impact a major impact on the way in which
12 not only the cross-examination is carried out, but also the way in which the Defence
13 presents its own case.

14 So thank you, your Honour. Unless you have any questions at this time, that's the
15 nature of my comments.

16 The procedure set up by the Chamber is something we have noted, we accept it, but
17 unfortunately the Rules aren't sufficiently clear for the Defence to be able to carry out
18 work which respects the Rules. And this is a fundamental question which goes to
19 the very heart of the rights of the accused to know how the evidence is administered
20 against him.

21 Unless you have any questions that is it, your Honour.

22 PRESIDING JUDGE FREMR: Thank you, Mr Boutin.

23 I can say that we vary, first all of, because both parties indicated there is some -- there
24 are some different opinion how to proceed in this concrete case of this case of this
25 video and connected transcript and translation. And we were also ready to provide

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1 with some general clarification connected with this concrete issue, but today even you
2 went -- or, now you went even beyond the previous scope of disagreement between
3 you and Prosecution.

4 And frankly saying, I think the Defence have enough time to come with any request
5 for clarification concerning this part of our decision on Conduct of Proceedings in the
6 time of issuing this decision.

7 So it's your current request and we will deal with that, not that we will not, but it's
8 rather untimely. But we will deal with that.

9 And before doing that, I would like also to ask Prosecution on their position, but also
10 maybe before that I would like just to put one concrete question: What is your
11 intention, Ms Samson, with his concrete video?

12 MS SAMSON: Thank you, Mr President. There are four, in fact, brief excerpts that
13 we wanted to play for the witness. The first is 2 minutes; the second is 5 minutes;
14 the third is approximately a minute and a half; and the last is approximately
15 6 minutes.

16 We intend to follow the instruction of the Chamber in the Conduct of Proceedings
17 decision, paragraph 56, that we will first show a small section of the video to the
18 witness to establish his connection to it, his knowledge of its contents and, thereafter,
19 assuming that he answers positively and that he's familiar with its contents
20 sufficiently, we will show the -- each excerpt and then have -- ask the witness
21 supplementary questions about those excerpts.

22 The Prosecution will only seek to admit into evidence those excerpts at this time.
23 There may be other witnesses who are able to authenticate the video more fully at a
24 later stage, but for now with this witness we are admitting those specific -- seeking to
25 admit those specific excerpts.

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1 The issue of the translation and transcript my friend didn't really touch upon it. Of
2 course, my intention is not to show the transcript or the translation to the witness, but
3 to have it available for the Chamber, and then ultimately to seek to admit the excerpt
4 sections of the transcript and the corresponding translation because it's my
5 anticipation that the witness will confirm the accuracy of the discussions that were
6 taking place as they were being filmed at the time.

7 And in my submission, there's no need to create a wholly different standard of
8 admissibility for a video than there would be for any other piece of documentary
9 evidence.

10 Subject to any questions that you have, your Honour, those are my answers.

11 PRESIDING JUDGE FREMR: I am fine with your response concerning this concrete
12 exhibit. And do you want to make any comments because Mr Boutin was rather,
13 you know, more general and he came with some, you know, ideas concerning the
14 system as a whole. Do you have any comments on his submission?

15 MS SAMSON: Not too many, your Honour, except not to make the admission of
16 video evidence or audio evidence wholly separate to other documentary evidence.

17 The procedure that the Chamber has set out is sufficiently clear, in my view, to enable
18 the parties to proceed in showing video or audio evidence to a witness, ascertaining
19 his or her connection to it, to find out whether there's a sufficient foundation to
20 continue to show that video or hear the rest of that audio with the witness, and to
21 obtain the witness's knowledge and confirmation of the accuracy of the contents of
22 that piece of evidence and, thereafter, it should be admitted into evidence.

23 And on that particular issue, I just don't see how the Chamber's decision is
24 particularly unclear or requires a lot of explanation.

25 On the issue of the transcripts or translations, it's very much what I set out in our

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1 email in response to the objection in that it's the first time that we are hearing the
2 proposal that there be Registry-certified translations and transcriptions of videos.

3 And my friend knows how many videos and audio material there are. It takes an
4 enormous amount of time to translate -- to transcribe and translate that material.

5 And this could very well have the effect of delaying the trial quite a lot, by a
6 significant amount of time if we now have to go to an independent entity to
7 retranscribe and retranslate everything that's been done already.

8 What will have to be determined is how to provide resources to the Defence so that
9 they can achieve the review that they will be required to do, whether it is by way of
10 provision of a translator or translators who could assist. It will be important to find
11 a solution that doesn't materially impact on the timing of the trial now that we're on
12 the eve of calling witnesses, and we are calling witnesses, who are here now available
13 to provide evidence in relation to material that the Defence has known for a very long
14 time, the Prosecution intends to seek to admit.

15 So we will need to find practical solutions to this transcription issue because, as I say,
16 it has the potential to cause great many delays if we can't find a solution.

17 PRESIDING JUDGE FREMR: Thank you very much, Ms Samson.

18 MR BOUTIN: Am I allowed --

19 PRESIDING JUDGE FREMR: Mr Boutin.

20 MR BOUTIN: -- to respond, Mr President. Some of the comment that my friend
21 made are absolutely inaccurate.

22 Of course we know the volume of videos that have been disclosed to the Defence.
23 What we don't know until just recently is what videos would be used by the
24 Prosecution.

25 The notice of intent to use documents or videos was received, what, about two weeks

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1 ago. This is at this point that the Defence was put on notice that, among those
2 hundreds of videos disclosed, that the Prosecution intended to tender into evidence.
3 Secondly, with regards to the argument made that obviously the Prosecution would
4 be put in a position where they would have to send everything to a third party for
5 certification, well, I suggest that this is for the party who intend to tender a piece of
6 evidence to ensure that the other party, well in advance, is put on notice and can at a
7 proper time, in a timely fashion, make its comment, its verification and so on and so
8 forth.

9 Not knowing what the Prosecution intend to do, and actually until this morning, it
10 was still unclear whether the Defence -- the Prosecution intended to enter part of the
11 video, the whole video and so on.

12 So I take object -- objection with my friend's comment about putting the whole
13 burden on the Defence in this case. It is very easy obviously for the Prosecution, this
14 is something that they have been doing for some time but, at the end of the day,
15 I think in all fairness we are all professionals, or we're all supposed to be professionals,
16 and we intend to act in a proper fashion, not for delaying things just because it make
17 common sense that before a party go forward and ask a Court to tender evidence, like
18 the transcript, for example, that come from its own party, it makes sense that at least
19 the other party will be put on notice so you could make a determination as to whether
20 it is acceptable or not and then carry on.

21 If there is a disagreement, obviously a third party will have to be engaged. This is
22 how things are done everywhere in the world. I don't see why it is different in this
23 Court or should be different in this Court. Thank you, Mr President.

24 PRESIDING JUDGE FREMR: Thank you.

25 I would like to finish this, but still, Ms Samson, you have also the right to reply

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1 please.

2 MS SAMSON: Thank you, Mr President. Just on two points. My point simply
3 was that the decision from the Chamber was issued in June with a decision of the
4 Chamber that points a need to be raised prior to the start of trial to be raised a certain
5 date in August and irrespective of when the first witness coming to hear video
6 evidence is going to come if these are, and I quote, "fundamental issues," then they
7 need to be resolved or needed to be resolved well in advance of the date of the
8 appearance of the first witness who is going to be dealing with these issues.

9 And on the translations, I'm unclear now from my friend's submission whether they
10 agree with the Chamber's order that if there's a disagreement a third party decides, or
11 whether they maintain that only a third party can certify translations and
12 transcriptions of evidence because that will make a big difference to how we resolve
13 the issue.

14 PRESIDING JUDGE FREMR: Thank you. I think it's enough at least for the
15 Chamber for the moment.

16 We will now break, but because probably you need some additional time to discuss
17 those recent issues, we will come back or we will resume at -- we will now make the
18 break a little bit longer than usual, so we will come back at 12 o'clock. And then
19 please be ready, we will have to compensate it a bit, so the next session will be from
20 12 to quarter past 1.

21 So now we will break and we will resume at 12 o'clock.

22 THE COURT USHER: All rise.

23 (Recess taken at 11.06 a.m.)

24 (Upon resuming in open session at 12.02 p.m.)

25 THE COURT USHER: All rise.

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1 Please be seated.

2 PRESIDING JUDGE FREMR: Before we continue with testimony, the Chamber will
3 render its oral decision, and it's decision on the Defence objection to the use of
4 transcripts and translations of audio and material.

5 The Chamber has noted the Defence's objection to use of the transcript and translation
6 of audio and visual material that is identified at numbers 9 and 10 of the Prosecution's
7 list of items it intends to use with this witness.

8 The basis of the Defence's initial objection, being that these documents were not
9 prepared by a neutral and independent entity, such as the Registry, appears to extend
10 beyond the particular items at issue and to potentially extend to the transcript and
11 translation of all audio or visual material which may be used in the course of this trial.

12 The Chamber therefore considers it necessary to go through on this particular
13 objection and provide guidance on the appropriate procedure more generally.

14 The Chamber has further noted the Prosecution's response received by way of email
15 at 17.31, on 18 October 2015, the Defence reply by way of email at 9.01, on
16 19 October 2015, and the oral submissions made in the courtroom both yesterday and
17 today. The Chamber also noted the Defence's filing on this issue, it is filing number
18 907.

19 As already mentioned by the Chamber, the decision on the Conduct of Proceedings
20 sets out a procedure for agreement of transcripts and translations pursuant to which
21 it's only in the event of concrete disagreement and if the Chamber considers it
22 appropriate that the Registry may be requested to assist with the process of
23 transcribing and/or translating.

24 The purpose of setting out this procedure in the decision on the Conduct of
25 Proceedings was to facilitate the presentation of audio or visual material in the

1 courtroom and to avoid courtroom time being occupied with such disagreements.

2 To the extent, the Defence now challenges the appropriateness of this procedure.

3 The Chamber considers the Defence submission to be untimely. At no point during
4 the period when submissions on the Conduct of Proceedings were sought did the
5 Defence raise this issue.

6 Moreover, following the direction given by the Chamber at paragraph 57 of the
7 decision on the Conduct of Proceedings, the Defence neither sought reconsideration
8 nor leave to appeal on this point.

9 While the Chamber notes the Defence's submissions regarding resources, this was
10 known the Defence at the time of the decision on the Conduct of Proceedings.

11 The Chamber, therefore, reaffirms its direction regarding the procedure relating to
12 transcripts and translations of audiovisual material for use in the courtroom as set out
13 at paragraph 57 of the decision on the Conduct of Proceedings.

14 As to the Defence submission that it is not in a position to review the transcripts
15 and/or translations with its present resources, the Chamber directs the Defence to
16 consult about this with the Registry, and the Prosecution to see how use can be made
17 of existing Defence and Registry resources, and what time frames would be necessary
18 for transcript and/or translation reviews.

19 If the current resources would appear to be too limited, the Defence is instructed to
20 first liaise with the Registry with a view to obtaining assistance on this discrete matter.

21 It should be noted that such review is solely for the purpose of identifying any
22 significant points of concrete disagreement. Nonetheless, the Chamber emphasizes
23 that it is of importance that consultations between the parties, where required, take
24 place in a timely manner to enable resolution of any disagreement prior to the
25 relevant testimony.

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1 As also stated in the decision on the conduct of proceedings, the party seeking to use
2 material shall, as early as practicable, indicate the sections of the transcript
3 corresponding to the excerpts of the material it intends to use as well as, if applicable,
4 the corresponding sections of the translation.

5 The Chamber emphasizes here that in the case of long recordings, the specific extracts
6 intended to be used should be identified. The Chamber additionally considers that
7 in most cases providing such notice should be possible well in advance of the
8 notification of the list of items the calling party intends to use, which only occurs five
9 days in advance of the testimony of the relevant witness.

10 On this particular occasion, noting that there is no longer an objection to use of the
11 video, the Chamber will authorise the Prosecution to use the video. It's noted that
12 the Prosecution intends to seek admission only of particular extracts of the recording.

13 In line with the Chamber's prior ruling on admission of an audio excerpt on
14 25 September 2015, the Chamber remains conscious that an excerpt may only
15 represent a particular segment of events.

16 Regarding the transcript and translation, the Chamber will further allow their use
17 with this witness. However, should admission be requested, the Chamber will, on
18 this one occasion, defer consideration of admission of the transcript and translation to
19 permit the Defence to identify any specific portions for which it contests the transcript
20 or translation. It is noted that going forward, any such issues should be addressed
21 well in advance of the testimony of a witness.

22 Finally, noting the submissions made by the Defence before the break, the Chamber
23 recalls paragraph 56 of the decision on the conduct of proceedings, which establishes
24 a procedure for the presentation of audio or visual material to a witness. It's
25 sufficient that a witness have personal knowledge of either the recording or content of

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1 the material. The Chamber observes that while a cross-examining party may have
2 certain broader leeway, in terms of material presented to a witness for the purpose of
3 testing credibility, the same rules of evidence apply to both parties when it comes to
4 admission of evidence, including audio and video recordings for the truth of its
5 contents.

6 That concludes the Chamber's ruling.

7 So that was our decision, now we can continue with testimony. And I guess the
8 Prosecutor hasn't changed its plans, which means that we will continue with excerpts
9 of video?

10 MS SAMSON: Yes, your Honour. I propose to ask a few questions first and then,
11 with your leave, I would ask that we play the video.

12 PRESIDING JUDGE FREMR: And should we remain open, or should we move to
13 private session for those questions?

14 MS SAMSON: I ask that we move to private session, please.

15 PRESIDING JUDGE FREMR: All right. Court officer, let's move into private
16 session.

17 (Private session at 12.12 p.m.)

18 (Redacted)

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21 (Redacted)

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Trial Hearing
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- 24 (Redacted)
- 25 (Closed session at 1.18 p.m.)

Trial Hearing
WITNESS: (Redacted)

(Open Session)

ICC-01/04-02/06

- 1 (Redacted)
- 2 (Redacted)
- 3 (Open session at 1.19 p.m.)
- 4 THE COURT OFFICER: We are in open session, your Honour.
- 5 PRESIDING JUDGE FREMR: Thank you.
- 6 So we break now and we will continue with the testimony of the witness half past 2.
- 7 THE COURT USHER: All rise.
- 8 (Recess taken at 1.20 p.m.)
- 9 (Upon resuming in open session at 2.31 p.m.)
- 10 THE COURT USHER: All rise.
- 11 Please be seated.
- 12 PRESIDING JUDGE FREMR: So we will continue with the further part of the
- 13 testimony of the current witness, but before doing that I would like to make an
- 14 inquiry on the Prosecution part, how much time you expect you will need to finish
- 15 this examination-in-chief?
- 16 MS SAMSON: Your Honour, I think I will need approximately an hour to conclude.
- 17 PRESIDING JUDGE FREMR: Thank you.
- 18 And I guess that now we will have to continue because I think we finished in that
- 19 regime so we will have to continue again in the regime of private session; am I right?
- 20 MS SAMSON: Yes, your Honour, and then after a few questions, which I don't think
- 21 will last more than 10 minutes, we could move into open session.
- 22 PRESIDING JUDGE FREMR: All right.
- 23 So, court officer, let's move into private session.
- 24 (Private session at 2.33 p.m.)
- 25 (Redacted)

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Trial Hearing
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- 15 (Open session at 2.47 p.m.)
- 16 THE COURT OFFICER: We are in open session.
- 17 PRESIDING JUDGE FREMR: Thank you.
- 18 Ms Samson, you may proceed.
- 19 MS SAMSON:
- 20 Q. Sir, you mentioned that there were other small ones, and can you explain what
- 21 you mean by that?
- 22 A. Yes. They were young children, minors, under the age of 15, who had been
- 23 trained in a training centre, a training camp in Mandro, and they were amongst our
- 24 units. And others were amongst the bodyguards of the commander at the time.
- 25 I'm referring to the commander of the UPC at the time.

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1 Q. And for the sake of the record, which commander do you mean?

2 A. Well, almost all of them; Bosco had some, Kisembo, (Redacted)
3 (Redacted).

4 Q. And again not to seem repetitive, but how are you able to assess or conclude
5 that those other children were under the age of 15?

6 A. Well, I can distinguish a child, a minor, from an adult. And there were many
7 of them in our units. I know a number of them.

8 Q. To your knowledge then were there any age limits for recruitment in the UPC?

9 A. To my knowledge, there was no age limit. There was no particular criterion
10 for the recruitment of children. There were young people, old people. Anyone
11 who came to the training camp was welcome in our different units.

12 Q. Were there any particular terms that were used to describe child soldiers in the
13 UPC?

14 A. Yes. We used the Swahili language in that army, and they were referred to as
15 "kadogo," which means the smallest ones, to translate it into French.

16 Q. And how do you know that there were children trained at the Mandro training
17 camp?

18 A. Yes, at first we took them into our units when we carried out the integration and
19 the physical examinations. We -- in fact, (Redacted)
20 (Redacted)
21 (Redacted), in fact.

22 Q. Could you estimate approximately how many children under the age of 15 were
23 in your unit?

24 MR VON BÓNÉ: Your Honour, may I intervene for a second?

25 PRESIDING JUDGE FREMR: Yes, please go ahead, Mr von Bóné.

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1 MR VON BÓNÉ: (Inaudible)

2 PRESIDING JUDGE FREMR: Sorry, we can't hear you. Maybe if you go closer to
3 the microphone.

4 MR VON BÓNÉ: Just before the question being answered, I was wondering
5 whether it would be wise to go into private session.

6 PRESIDING JUDGE FREMR: And maybe could you be more specific. What risk
7 do you see in answering this question for --

8 MR VON BÓNÉ: It is specifically about the unit of the witness concerned.

9 PRESIDING JUDGE FREMR: I don't think so because it is just about the number at
10 the moment at least. So I think you will be --

11 MS SAMSON: It's an issue of self-incrimination, your Honour. And if it could
12 work, I'm happy to move on from that question right now while we remain in public
13 session, and I'll come back to that question when we move into a private session.

14 MR VON BÓNÉ: I was wondering about exactly the same issue.

15 PRESIDING JUDGE FREMR: Well, it's the best solution so I agree. It will be fine.

16 MS SAMSON:

17 Q. Did you ever travel to the Mandro training camp yourself?

18 A. I went there once when I came from Kampala.

19 Q. And can you describe what you saw when you visited the Mandro training
20 camp?

21 A. Yes, it was a UPC training camp where the recruits were trained. There were
22 recruits who received training there, and amongst those recruits there were -- there
23 was a variety of ages and they were all together.

24 Q. And can you give a bit more detail about the variety of ages that you yourself
25 witnessed in training at the camp?

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1 A. Yes; there were adults, there were young people, there were children, and there
2 were boys and girls. There were even children who were 12 or 11 years old, 15,
3 et cetera.

4 Q. Were the young recruits undertaking the same training as the older recruits?

5 A. Yes, they underwent the same training. There was no distinction in the
6 training.

7 Q. And as between the girls and the boys, were they undergoing the same training,
8 or was it different?

9 A. They undertook the same training. They were all amongst the ranks and they
10 received the same training without any distinction of age or gender.

11 Q. What was the purpose of your visit?

12 A. (Redacted)
13 (Redacted) and I went to that training camp out of curiosity. I didn't have any
14 particular goal.

15 Q. Were there other UPC commanders present on the day that you visited?

16 A. Yes, the training camp commander was there. There were several
17 commanders.

18 Q. Do you recall the name of the camp -- training camp commander?

19 A. Yes, it was Mugisa Muleke. According to what I was told at the time his name
20 was Mugisa Muleke.

21 Q. Would you be able to say that name again, perhaps pronouncing it slowly so
22 that we can capture it for the transcript.

23 A. Mugisa Muleke. M-U-G-I-S-A and then Muleke is spelt M-U-L-E-K-E.

24 Q. Who was in charge of training within the UPC?

25 A. Within -- within the UPC, Bosco Ntaganda was responsible for the training

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1 operations.

2 Q. Was he one of the commanders present in Mandro on the day that you visited
3 or not?

4 A. I'm sorry, I didn't understand your question well.

5 Q. Certainly. I'll rephrase. Was Bosco Ntaganda one of the commanders present
6 at the Mandro camp when you visited or not?

7 A. No, he wasn't there on that day. I think he was in Aru, in fact.

8 Q. And following training, do you know how the recruits were deployed?

9 A. After the training they were organised into units, platoons, companies and they
10 were sent to the front.

11 Q. Do you know who organised the recruits into units and who was in charge of
12 deciding on deployments?

13 A. Yes, I said it was Bosco Ntaganda who was responsible for operations and the
14 training. He was the person who was responsible for everything, and deployments
15 and operations.

16 Q. When you visited the Mandro training camp, are you able to estimate
17 approximately how many recruits you saw that were under the age of 15?

18 A. Yes. There were many of them. I didn't really count.

19 MR BOUTIN: (Overlapping speakers)

20 PRESIDING JUDGE FREMR: Mr Boutin.

21 MR BOUTIN: Mr President, I suggest that this line of questioning is improper.

22 Essentially, Madam Prosecutor is asking the -- an opinion, a general opinion as to
23 how many if he can evaluate. I think this is absolutely of no evidentiary value
24 whatsoever.

25 PRESIDING JUDGE FREMR: But in my view, even witness he responded that he

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1 couldn't count so I don't see anything wrong.

2 Ms Samson.

3 MS SAMSON: Thank you, your Honour. I'm not asking the witness to speculate or
4 give an opinion; I'm asking him to provide an estimate of what he was able to
5 perceive. And things that witnesses perceive are perfectly within the realm of
6 appropriate questions. But, your Honour, I am moving on to another question given
7 the answer of the witness.

8 PRESIDING JUDGE FREMR: Please proceed.

9 MS SAMSON:

10 Q. Sir, did you have an opportunity to visit any other training camps while you
11 were in the UPC?

12 A. (Redacted)

13 MS SAMSON: Mr President, may I move just briefly into private session.

14 PRESIDING JUDGE FREMR: All right.

15 Court officer, let's move into private session now.

16 (Private session at 3.05 p.m.)

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15 (Open session at 3.08 p.m.)

16 THE COURT OFFICER: We are in open session, your Honour.

17 PRESIDING JUDGE FREMR: Thank you.

18 Ms Samson, you may proceed.

19 MS SAMSON:

20 Q. And you mentioned earlier, or we saw together, the image of one child soldier

21 that you indicated was part of Mr Ntaganda's escort. Did you observe any other

22 children under the age of 15 in Mr Ntaganda's escort?

23 A. Yes, they were numerous. There were these colleagues of the same age as him,

24 and even the smallest one -- then smaller ones.

25 Q. Can you explain, please, what was the role of children under the age of 15

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1 during the Mongbwalu operation?

2 A. Yes. They were soldiers as others. They operated at the same level as all
3 soldiers who were in operations. They didn't have a particular role.

4 Q. Did they have weapons?

5 A. Yes, they were armed, and they even had military uniform.

6 Q. Did you ever get to know or witness any child under the age of 15 who was
7 injured or killed during the Mongbwalu operation?

8 A. Yes, as they were in operations with everyone, there were people who were
9 injured; and within the operations, some people were injured, some people were
10 killed.

11 Q. Were the girls who were in escorts or in operations treated any differently than
12 the boys?

13 A. No, I didn't see that. They were treated like all the soldiers. There was
14 no -- no particular aspect to the way they were treated.

15 Q. And were they used in any ways that were differently, for instance, by the
16 commanders?

17 A. No. They worked like all the boys in the ranks. There was no particularity.

18 Q. Did you ever hear of instances of rape of child soldiers within the UPC?

19 A. Yes, I heard about cases in Mongbwalu itself. The person who is the chief of
20 the escort of Bosco Ntaganda, he raped one of the young girls who had been in his
21 bodyguard. That's what happened.

22 Q. How did you get to know about this?

23 A. I found out about that when I found the young girl in the apartment, at Bosco's
24 apartment. She was crying, and the others were saying that Museveni had abused
25 her.

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1 Q. Did you get to know the age of this girl?

2 A. She was a minor. She was small, under 15. She was really small.

3 Q. Do you know whether Mr Ntaganda was made aware of this incident?

4 A. Yes, for certain he was informed. It was his close guard.

5 Q. Are you aware of any punishment or discipline that was meted out on
6 Museveni for having raped this girl?

7 A. No. Until the day he left, he was free. He wasn't punished.

8 Q. Were you aware of other instances of the rape of soldiers in the UPC?

9 A. Yes. Similar cases were frequent. It was considered as a normal act.

10 Q. How did you get to know of these cases?

11 A. We lived in a community, and we spoke about everything and -- so we learnt
12 about the situation, the war situation, which was developing in the different units
13 within the movement.

14 Q. And are you familiar with recruitment in the UPC?

15 A. Yes. There were officers who went into villages, they raised awareness, and in
16 towns. And when they got recruits, they brought them to the centre, the training
17 centre, and some officers also from the UPC.

18 Q. How do you know of these recruitment campaigns or these raising awareness
19 initiatives?

20 A. So you saw them in the towns. I even knew some of them who were
21 responsible for recruiting, in fact.

22 Q. Do you recall their names?

23 A. (Redacted)

24 (Redacted). He went to the villages to recruit, the surrounding villages, and he
25 recruited young people from there.

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1 Q. And earlier when you described that the UPC would go or raise awareness in
2 villages, would they go to all villages to raise awareness, to your knowledge?

3 A. Yes, all villages, apart from the Lendu villages because he detested the Lendu.
4 He didn't recruit Lendu.

5 Q. Who detested the Lendu?

6 A. The movement itself. The movement itself, rather.

7 Q. I would like to show you a document, please. It's number 4 on the
8 Prosecution's list of documents. The ERN is DRC-OTP-2058-0667.

9 Before the image is broadcast, may we move into private session, please.

10 PRESIDING JUDGE FREMR: All right.

11 Court officer, let's move into private session now.

12 (Private session at 3.22 p.m.)

13 (Redacted)

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- 24 (Closed session at 3.40 p.m.)
- 25 (Redacted).

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- 16 (Private session at 3.47 p.m.)
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Trial Hearing
WITNESS: (Redacted)

(Private Session)

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Trial Hearing
WITNESS: (Redacted)

(Closed Session)

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- 1 (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Closed session at 3.55 p.m.)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 (Open session at 3.56 p.m.)
- 15 THE COURT OFFICER: We are in open session, your Honour.
- 16 PRESIDING JUDGE FREMR: Thank you.
- 17 As I said, the next point on our agenda would be examination by Ms Pellet, but before
- 18 that we have to decide or rule on the request made by Ms Pellet.
- 19 So, Ms Pellet, I would like to utilise the remaining five minutes for doing that.
- 20 Ms Pellet, you filed a request, number 901, so my first question to you is whether do
- 21 you want to insist on four items you put in your request, or whether you are ready to
- 22 make some changes because you have listened to Ms Samson, so if there are some
- 23 overlappings, you can reduce this list. So the floor is yours.
- 24 MS PELLET: (Interpretation) Thank you, your Honour. Keeping in mind the
- 25 recommendations that you expressed yesterday and having heard the questions and

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1 answers given by the witness, I no longer wish to examine the witness, your Honour.

2 Thank you.

3 PRESIDING JUDGE FREMR: Thank you very much. We appreciate because it is
4 for the sake of expeditiousness of our proceedings. So there is no reason to ask the
5 parties for their statements.

6 So we will start tomorrow with cross-examination.

7 And in this connection, Mr Boutin, is it possible at least roughly estimate duration of
8 your cross-examination because even at the moment we don't have at our disposal the
9 total time used by Ms Samson.

10 Do we have, court officers or our assistants, do we have at our disposal the time used
11 by Ms Samson? My estimation is something around 8 hours because I think
12 yesterday it was 3 and a half, so plus the time used today it will be something around
13 8 hours.

14 THE COURT OFFICER: If you give me a minute I will give you the exact amount of
15 time.

16 PRESIDING JUDGE FREMR: Okay.

17 Anyway, Mr Boutin, you know our rule, our rule is that generally you should use in
18 maximum the same time, if less even better, and only under some particular
19 circumstances, extraordinary circumstances and upon request the Chamber could
20 decide that we will give you more. Do you have an estimation for us at the moment?

21 MR BOUTIN: Thank you, Mr President. Obviously the Prosecution has cover a lot
22 of ground quickly I would say because the Defence obviously decided not to object
23 and let the evidence go, and obviously this will be open for cross-examination.

24 Having said that, based on your estimation, which is close to mine, about 8 hours,
25 I would think that this is -- this is certainly pretty close to target, your Honour, and I

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1 will certainly try my best to stay within those limits.

2 PRESIDING JUDGE FREMR: Thank you. We would appreciate.

3 Court officer, do we have the exact number?

4 THE COURT OFFICER: Yes, your Honour. The exact number is 6 hours and 42
5 minutes.

6 PRESIDING JUDGE FREMR: So it was even better than I expected, better, shorter
7 than I expected.

8 So as I said, Mr Boutin, generally you should try to organise your questions, your
9 cross-examination within this time limit. And I cannot promise, but if you will not
10 be able to do it, then you can make a request to the Chamber and the Chamber will
11 rule whether there are some special circumstances giving the reason to prolong time
12 given to you, okay?

13 MR BOUTIN: Thank you. Thank you, Mr President, your Honours.

14 PRESIDING JUDGE FREMR: So if there are no further submissions, we can adjourn
15 and we will meet tomorrow again at 9.30 in this courtroom. Thank you.

16 THE COURT USHER: All rise.

17 (The hearing ends in open session at 4.01 p.m.)