

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
6 Judge Chang-ho Chung
7 Trial Hearing
8 Tuesday, 2 February 2016
9 (The hearing starts in open session at 9.34 a.m.)
10 THE COURT USHER: All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: Good morning, everybody.
14 Court officer, please call the case.
15 THE COURT OFFICER: 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: Thank you.
20 Now appearances starting with Prosecution.
21 MS LUPING: Good morning, Mr President, your Honours. Appearing on behalf of the
22 Prosecution today are Ms Nicole Samson, senior trial lawyer; Selam Yirgou, case manager;
23 Rens van der Werf and James Pace, assistant trial lawyers; and myself, Dianne Luping,
24 trial lawyer.
25 PRESIDING JUDGE FREMR: Thank you, Ms Luping.

1 Defence now.

2 MR BOURGON: (Interpretation) Good morning, your Honour. Good morning,
3 your Honours, and all people present in the courtroom this morning. Representing
4 Mr Bosco Ntaganda, who is present this morning, we have Sandrine De Sena, who is the
5 intern; Margaux Portier; Chloé Grandon; and myself, Stéphane Bourgon. Thank you
6 very much, your Honour.

7 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

8 Legal Representatives of Victims, please.

9 MS PELLET: (Interpretation) Thank you very much, your Honour. The former child
10 soldiers are represented by myself, Sarah Pellet, counsel with the Office of Public Counsel
11 for Victims.

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

15 PRESIDING JUDGE FREMR: Thank you both of you.

16 And duty counsel, please.

17 MR NÈVE: (Interpretation) Good morning, your Honour. Good morning,
18 your Honours. Marc Nève, I am assisting the witness.

19 PRESIDING JUDGE FREMR: Thank you, Mr Nève.

20 Before we continue with testimony of our witness, I would like to inform you that the
21 Chamber is aware of our tight schedule because until now, according to my information,
22 Defence exhausted 1 and a half hours and they are granted 10 hours, so it means, if I am
23 counting well, that they still have at their disposal, 8 and a half hours.

24 We have roughly, if we would insist on normal schedule, 9 hours at our disposal, which
25 means that we take into account the possibility of re-examination from the part of

1 Prosecution and also keeping some reserve for questions put by the Chamber, so then we
2 could get to some time pressure. That is why we are intending, if necessary, to shorten
3 our lunch break today, which would mean that we should have a break at 1, but continue
4 at 2 o'clock.

5 But I will, anyway, double-check the progress made by Mr Bourgon at 11 o'clock and we
6 will decide subject to that.

7 It doesn't mean, Mr Bourgon, that we are forcing you to be shorter. As I said, this is a
8 principle that this Chamber really respect that you are granted the same time like
9 Prosecution.

10 So now we can continue with testimony.

11 Ms Luping.

12 MS LUPING: Apologies for the interruption, Mr President. It's just simply a request.

13 If -- well, before my learned colleague begins, if we could start with a clarification of the
14 transcript. When I was reviewing it yesterday when the -- this particular witness
15 provides information as to others with him it would need to be elicited in private session.
16 There is one of the names missing and I can explain that in private session with your
17 leave.

18 PRESIDING JUDGE FREMR: Okay. But before that I will still finish my mission.

19 So, Mr Witness, are you feeling okay today, just to check it?

20 WITNESS: DRC-OTP-P-0017 (On former oath)

21 (The witness speaks French)

22 THE WITNESS: (Interpretation) Yes, I'm very well.

23 PRESIDING JUDGE FREMR: So as usually, I have to remind you that you are under
24 oath and you have to speak the truth and nothing but the truth.

25 Now we will move into private session, court officer, please.

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- 25 (Open session at 9.45 a.m.)

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

2 PRESIDING JUDGE FREMR: Thank you. Mr Bourgon, you may proceed.

3 MR BOURGON: Thank you, Mr President.

4 Q. (Interpretation) Witness, we will continue from where we were at the end of the
5 day yesterday, that is to say that you recognized the map which is next to you as being a
6 map of Bunia; is that correct?

7 A. Yes.

8 Q. And I would ask you to look at the screen which is in front of you and the same map
9 will appear, but it will appear in electronic form. And I will give the following number
10 DRC-OTP-0207-0330. If the exhibit could be shown on the screen to the witness, we
11 would like to be able to control it so that we can move it.

12 THE COURT OFFICER: You now have the floor, Mr Bourgon. And I would invite the
13 parties and participants to switch on the evidence 2 channel.

14 MR BOURGON: (Interpretation) Thank you.

15 Q. Witness, you can confirm that the map that's on your screen is the same as the one
16 that is next to you?

17 A. Yes, but it doesn't appear entirely, it's not all of it.

18 Q. Indeed. Yes, but we can move it if we need to. And what I would like to do at
19 this stage is get you to mark on the map different places which have been mentioned
20 yesterday. Without mentioning how or why these places are important, I would like to
21 start with camp Epo. So in front of you there is a pen.

22 (Speaks English) I'm sorry, Mr President, there is a little hiccup. The number I gave is a
23 screenshot that cannot be moved. I was looking for the original number of the map. It's
24 my mistake. I apologise.

25 So I'm told it's the same number, but what I was looking at was the original map that

1 we -- that can be moved on the screen.

2 (Interpretation) Witness, the map that's now in front of you, well, this map we can move
3 it and we can indicate where it is, so you can write on the map. So I think that the court
4 officer can show you the pen that you can use. So I would like you to find on the map
5 where camp Epo is. And please mark a cross at that point.

6 A. Before starting, I would just like to say that on this map there are detailed points
7 where there are houses -- we speak about houses, it's not all the houses of Bunia that are
8 represented on this map and I can -- I can represent -- I can show sectors where these
9 houses are.

10 Q. There are no difficulties with that. What I would like to say, this is a map of Bunia
11 and the place where camp Epo is, if you could just mark a cross with the pen that's before
12 you as to where camp Epo is. If you need to move the map, please, you can move it left,
13 you can -- right you can move it .

14 A. I would like you to move the map a bit more. Could you just move it up a bit more,
15 please?

16 MS LUPING: Mr President.

17 PRESIDING JUDGE FREMR: Ms Luping.

18 MS LUPING: It's just that to be fair to the witness if he can be reminded he does have
19 the map to his right so he can situate himself a bit more easily. It must be a little bit
20 confusing as he's being shown only very small portions of the map.

21 I understand the exercise Mr Bourgon is seeking to undertake, which is to have an easier
22 map to see by having an enlarged image on the screen, but it can be confusing if he's only
23 being shown a very small segment on the actual screen.

24 It's just a reminder to look at the map on the right before situating or seeking to mark this
25 particular camp.

1 PRESIDING JUDGE FREMR: Yes, I think I'm seeing how to technically solve this issue.
2 Maybe we should make this exercise in a way that Mr Witness would first indicate this
3 point on the paper map and then we can just focus our electronic map on the place he has
4 already indicated.

5 Or, what do you think, Mr Bourgon?

6 MR BOURGON: Mr President, the aim of course of the exercise of having the large map
7 is to assist him because the map on the screen has the same zoom as the map beside him,
8 so he has the larger version and he has a shorter version and he can move the map as he
9 wants.

10 PRESIDING JUDGE FREMR: But I agree with Ms Luping that it could be a really very
11 complicated task, so maybe to facilitate it, it's in your own interest to speed up this
12 exercise, you should allow him to point first on the big map and then maybe you can just
13 focus our electronic map on the place he has already indicated. Do you agree with this?
14 Okay.

15 MR BOURGON: Indeed, Mr President. A very good idea.

16 PRESIDING JUDGE FREMR: So, Mr Witness, you can first try to show this point on the
17 big map.

18 MR BOURGON: (Interpretation)

19 Q. Witness, on the map before you on the screen do you see the same point?

20 A. As I said, there is this sector where these houses are. The camp, camp Epo, it was
21 in this sector what I have just shown.

22 Q. And you can note the same sector on the map in front of you by marking an X.

23 PRESIDING JUDGE FREMR: At the moment we can't see anything.

24 MR BOURGON: Mr President, we ran a bunch of tests before to try and make this
25 happen quickly to be sure that it would work. It had never been done at the previous

1 location of the Court, but now we have the technology, there is a picture on his screen, we
2 should be able to see the X appear where he is going to put the X.

3 PRESIDING JUDGE FREMR: Just for the court officer information, we can see a map,
4 but we can't see any X on the map, I mean on the electronic version.

5 MR BOURGON: (Interpretation) I see the witness has made a cross, but it is not on the
6 map, it is on an empty screen which appears in front of me.

7 Your Honour, so as to avoid wasting any time perhaps it's preferable just to make a short
8 adjournment so that the technology can be made to work. I did it before but perhaps we
9 can do it again because I have several maps that I need to show him and several marks
10 that need to be made today. So I do think that it would be a time well invested,
11 your Honour.

12 PRESIDING JUDGE FREMR: The problem is that according to my knowledge we have
13 these annotations on evidence 1 screen but without map, and then on the evidence 2
14 screen we have just the map but without annotations, so it would be nice to merge those
15 two pictures in one.

16 THE COURT OFFICER: Mr President, I've just been informed that the marking should
17 be visible if the document is displayed from the court usher computer. So if the Defence
18 could send us the document by email, we will then publish it ourselves.

19 MR BOURGON: I believe, Mr President, this document, it is already -- because it is a
20 Prosecution exhibit and so it should already be available to the court usher.

21 PRESIDING JUDGE FREMR: Okay. We will break for 10 minutes and we will allow
22 the court officer and Defence and maybe in cooperation with Prosecution to solve the
23 issue.

24 So we will rise and we will return back in 10 minutes and hopefully the problem will be
25 solved in the meantime.

- 1 THE COURT USHER: All rise.
- 2 (Recess taken at 9.58 a.m.)
- 3 (Upon resuming in open session at 10.08 a.m.)
- 4 THE COURT USHER: All rise.
- 5 Please be seated.
- 6 PRESIDING JUDGE FREMR: So we got good news that we can proceed.
- 7 So, Mr Bourgon, you have the floor.
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- 25 (Private session at 10.10 a.m.)

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4 (Open session at 11.01 a.m.)

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

6 PRESIDING JUDGE FREMR: Since I was informed that the numbers assigned to some of
7 the exhibits in this session was not correct, I think there is now a good chance to correct
8 those numbers, so now I would like to ask the court officer to read out the proper
9 numbers, please.

10 THE COURT OFFICER: Thank you, Mr President.

11 The document with the marks 1 and 2 will bear the number DRC-REG-0001-0013.

12 The document with the mark 3 will bear the number DRC-REG-0001-0014.

13 And finally, the document with the marks 1, 2 and 4 will bear the number
14 DRC-REG-0001-0015. Thank you.

15 PRESIDING JUDGE FREMR: Thank you.

16 Mr Bourgon, you would like to say anything because you are still on your feet?

17 MR BOURGON: (Interpretation) A point, your Honour, I would like to know how
18 much time will be accorded in the session. Because of technical reasons, we'd like to
19 know how much time I have available to me because of the technical difficulties that were
20 encountered. If we can go over that when coming back, but I'd just like to have an idea.

21 THE COURT OFFICER: Mr Bourgon, you have used 1 hour and 6 minutes this session,
22 so for a total of 2 hours and 40 minutes.

23 PRESIDING JUDGE FREMR: But Mr Bourgon the only issue is whether you, and I will
24 ask this question before the lunch break, whether you will need the full 10 hours. If yes,
25 it is your right, no problem. So the only issue is whether there is some chance to shorten

1 your cross-examination, that could, you know, have some impact on our further schedule.

2 But if you are, which you are fairly entitled, you will insist on your 10 hours, then we will
3 have to shorten the launch break. But I will ask, as I said, before the lunch break.

4 Now we will break for 25 minutes and we will adjourn and come back at half past 11.

5 THE COURT USHER: All rise.

6 (Recess taken at 11.04 a.m.)

7 (Upon resuming in open session at 11.32 a.m.)

8 THE COURT USHER: All rise.

9 Please be seated.

10 PRESIDING JUDGE FREMR: Before we start I was told, Ms Luping, you would like to
11 add something. No? Okay, that's fine. So maybe it is just some miscommunication.
12 Then, Mr Bourgon, you may proceed. And we are at the moment in open session. Do
13 you want to move into private? I assume it would be about some, you know, personal
14 involvement of Mr Witness that could reveal his identity that would be for sure better to
15 move into private, subject to your further questions.

16 MR BOURGON: (Interpretation) I do not think so, your Honour, for the next set of
17 questions.

18 PRESIDING JUDGE FREMR: Okay. Then let's proceed in open session.

19 MR BOURGON: (Interpretation)

20 Q. Mr Witness, before the break we were saying that all the soldiers assembled in Lalu
21 and Commander Salumu addressed them; is that correct?

22 A. Yes.

23 Q. He then explained the purpose and functioning of the operation; is that correct?

24 A. Yes.

25 Q. In your testimony you used a term kupiga na kuchaji. I'm sorry if my

1 pronunciation is incorrect, but did you use that term?

2 A. Yes.

3 Q. My first question is to put it to you is that that expression is neither Swahili, Lingala,
4 Kinyarwanda; is that correct?

5 A. I do not know the origin of those words, but they were used in the UPC.

6 Q. It was not the first time you heard that expression in Lalu; is that correct?

7 A. With regard to the operation that we had to carry out it was in Lalu that I heard that
8 expression.

9 Q. I put it to you that you had already heard that expression before.

10 A. Those who were members of the UPC used those words, yes.

11 Q. And when you look at the structure of that word you agree that it can be split into
12 two parts; isn't that correct?

13 A. If you look at it that way, yes.

14 Q. I put it to you that the word "kupiga" means to strike or to attack; is that correct?

15 A. Yes.

16 Q. And would you agree that "na kuchaji" can mean to charge; is that correct?

17 A. Yes, indeed.

18 Q. And when you put the two words together it does not in any way relate to pillaging;
19 isn't that so?

20 A. Wh1en I heard that expression and the way it was used, it alluded to pillaging.

21 Q. My question concerns the words. Which part of that word refers to pillaging?

22 A. I am saying that I do not know the etymology or the origin of the word, but when I
23 was in the UPC they used that expression to mean strike and pillage.

24 Q. Mr Witness, I have information provided -- that will be provided by other witnesses
25 during this trial who will say that pillaging was not part of that expression "kupiga na

1 kuchaji." Would you agree with them?

2 PRESIDING JUDGE FREMR: Ms Luping.

3 MS LUPING: Mr President, I think I -- I did let my colleague continue with his questions,
4 but at this stage we're getting argumentative with the witness. The question has been
5 asked, it has been answered, and frankly it is not for this witness to comment on the
6 information that apparently is going to be brought by subsequent witnesses which may or
7 may not, in fact, be brought by subsequent witnesses. And it should not be simply also
8 presented as if it is fact.

9 PRESIDING JUDGE FREMR: May I take it as an objection?

10 MS LUPING: Indeed, Mr President.

11 PRESIDING JUDGE FREMR: Yes, I sustain this objection. In my view, Mr Witness
12 explained how this term was understood, at least my him.

13 And I think the further -- the last question from you, Mr Bourgon, I found it
14 argumentative, so please move on.

15 MR BOURGON: (Interpretation)

16 Q. Mr Witness, the expression "kupiga na kuchaji" we can see that it is in two parts, and
17 I put it to you that it is a military expression referring to the various phases of the attack?

18 A. As I have already pointed out, I learnt about that expression in the UPC. And
19 when it was used, not only by me, but even senior officers were using that word, it simply
20 meant pillage, pillaging, that is to attack and pillage.

21 Q. Would you be surprised to hear that other people have a different understanding of
22 that word?

23 MS LUPING: Objection.

24 PRESIDING JUDGE FREMR: Sustained.

25 Mr Bourgon, you are not respecting my previous order. Please move on. Please leave

1 this issue. Otherwise we have completely new angle from which you can put the
2 question, but otherwise you were just, in fact, repeating the same question in a slightly
3 different matter, but in the substance it was the same question like in the past.

4 MR BOURGON: For the record -- Mr President, I will of course move on and I will abide
5 by the Chamber's guidance. For the record, I must say that I believe it is appropriate for
6 me to suggest to the witness that other soldiers beside him might have had another
7 understanding and he can answer yes or no.

8 But I will move on, Mr President.

9 Q. (Interpretation) Mr Witness, when you referred to the words used by Salumu to
10 indicate that there were women in Mongbwalu, I put it to you that you misunderstood
11 those words and they never referred to rapes. Would you agree with me?

12 A. If I wanted to talk about rapes, I -- I would have used the word "rape." He just said
13 that there you will have women. He didn't add any other thing. That is all I heard.

14 Q. Lastly, the Presiding Judge asked you a question during your testimony relating to
15 the fact that you did not receive any salary from the UPC. Do you remember the
16 question?

17 A. Yes.

18 Q. And I put it to you that the words used by Salumu to the effect that you will become
19 rich were not in any way related to pillaging; do you agree with me?

20 A. When Salumu used those words he was the only one who knew what he meant by
21 them, and considering that we had different levels of education and although we were
22 from different regions, each person interpreted those words in their own way.

23 Q. After Salumu's speech you left to go and attack Mongbwalu; is that correct?

24 A. Yes.

25 Q. You travelled from Lalu to Mongbwalu on foot?

1 A. Yes.

2 Q. And this road was difficult, that is the road between Lalu and Mongbwalu; is that
3 correct?

4 A. Yes.

5 Q. And, in fact, can you confirm that you had to cross a forest just before reaching the
6 (Redacted)?

7 A. Yes.

8 Q. And at the time of the events it was the rainy season; isn't that correct?

9 A. Yes.

10 PRESIDING JUDGE FREMR: Ms Luping.

11 MS LUPING: (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted). It's just a request

15 for caution for the subsequent questions. Otherwise if, with your leave, if we could go
16 into private session.

17 PRESIDING JUDGE FREMR: Yes. First of all, (Redacted)

18 (Redacted).

19 And for the future, subject to your further questions, you know, we have to be very
20 vigilant, Mr Bourgon, so do you think it is maybe better for you maybe not to break your
21 examination to move into private?

22 MR BOURGON: I disagree, Mr President. There's a lot of soldiers moving from Lalu to
23 Mongbwalu. The fact that the road is difficult, the fact that it is rainy season, the fact
24 that -- all this has nothing to do with identifying the witness. And I disagree. But I will
25 gladly move into private session and stay there for the remainder of the testimony. I

1 have no problem, Mr President.

2 PRESIDING JUDGE FREMR: Ms Luping.

3 MS LUPING: Mr President, the concern was not with the journey between Lalu and
4 Mongbwalu, which is why I allowed those questions, or I did not object. The concern or
5 the objection relates to the precise location in Mongbwalu. I'm not going to repeat it
6 again. The precise location in Mongbwalu. The witness indicated where in Mongbwalu
7 he reached. A question was asked about that location in Mongbwalu that was reached.
8 That is what I would like to indicate is identifying of the -- with this witness because it is
9 not so many units indeed that were ordered to go to this precise location.

10 PRESIDING JUDGE FREMR: Okay. So if you are not sure, Mr Bourgon, I think it will
11 be maybe better to move into private just to keep your hands free.

12 So let's move into private session now.

13 (Private session at 11.46 a.m.)

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9 (Recess taken at 1.01 p.m.)

10 (Upon resuming in open session at 2.04 p.m.)

11 THE COURT USHER: All rise.

12 Please be seated.

13 PRESIDING JUDGE FREMR: Good afternoon.

14 Mr Bourgon, you can sit down for a while because I would like to start with some short
15 guidance before we continue with cross-examination because, in light of some even minor
16 litigations, we faced during the morning sessions, I would like to make two observations.
17 First, bearing in mind the principle of the publicity of proceedings and the desirability of
18 conducting as much of this trial as possible in open session, where this is appropriate, the
19 Chamber reiterates that the parties should carefully consider that the information is in fact
20 likely to be identifying or, for the present witness, self-incriminatory before requesting
21 either private session or redactions to the public transcript.

22 Events in which a large number of people participated, or places where a large number of
23 persons gathered, may not be sufficiently unique so as to be identifying.

24 And if I am saying large number, you have to make your own adjudication in the context
25 of our case.

1 Second, the Chamber reminds parties to identify with precision and in full the ERN
2 numbers of the items used with the witness, including any relevant line or paragraph
3 numbers therein. This, we believe, will greatly assist the Chamber and indeed the parties
4 and participants in identifying the relevant portions of the items used and to be able to
5 understand at a later stage, when returning to the transcripts, the witness's comments on
6 such items.

7 Thank you.

8 And now, Mr Bourgon, you may proceed.

9 MR BOURGON: Thank you, Mr President.

10 PRESIDING JUDGE FREMR: So we are at the moment in the open session, so do you
11 think we can stay, or should we move into private in the light of my guidance?

12 MR BOURGON: Yes, Mr President, we should move in private session.

13 PRESIDING JUDGE FREMR: Okay.

14 Court officer, let's move into private session.

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Trial Hearing

(Private Session)

ICC-01/04-02/06

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12 Page redacted – Private session

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Trial Hearing

(Private Session)

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12 Page redacted – Private session

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Trial Hearing

(Private Session)

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12 Page redacted – Private session

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Trial Hearing

(Private Session)

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12 Page redacted – Private session

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Trial Hearing

(Private Session)

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- 1 (Redacted)
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- 3 (Redacted)
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- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 (The hearing ends in private session at 4.21 p.m.)