

Trial Hearing  
WITNESS: DRC-OTP-P-0963

(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 Wednesday, 13 April 2016  
8 (The hearing starts in open session at 9.30 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, Mr President.  
15 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor  
16 versus Bosco Ntaganda, case reference ICC-01/04-02/06.  
17 And for the record, we are in open session.  
18 PRESIDING JUDGE FREMR: Thank you, court officer.  
19 Now appearances starting with Prosecution.  
20 MS SOLANO: Good morning, your Honours. For the Prosecution this morning  
21 appear Ms Marion Rabanit, associate trial lawyer sitting next to me; behind her  
22 Ms Kristy Sim, assistant trial lawyer; and Ms Dianne Luping, trial lawyer; on the back  
23 bench, Ms Selam Yirgou, case manager; and I am Julieta Solano, trial lawyer.  
24 PRESIDING JUDGE FREMR: Thank you, Ms Solano.  
25 Defence please.

- 1 MR BOURGON: (Interpretation) Good morning, Mr President. Good morning,  
2 your Honours. And good morning to all those present in the courtroom.  
3 Representing Bosco Ntaganda, who is present this morning with us, we have Madam  
4 Sandrine De Sena, Maître Dignité Bwiza, Isabelle Martineau, and myself,  
5 Stéphane Bourgon. I thank you, Mr President.
- 6 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.  
7 Legal Representative of Victims, please.
- 8 MS PELLET: (Interpretation) Thank you, Mr President. The former child soldiers  
9 are represented by myself, Sarah Pellet, counsel for the OPCV.
- 10 MR SUPRUN: (Interpretation) Good morning, Mr President. Good morning,  
11 your Honours. The victims of the attacks are represented by the OPCV, Anne  
12 Grabowski, associate jurist, and myself, Dmytro Suprun.
- 13 PRESIDING JUDGE FREMR: Thank you, Ms Pellet. Thank you, Mr Suprun.  
14 And at the end duty counsel, please.
- 15 MS CLÉMENT: (Interpretation) Good morning, Mr President, your Honours.  
16 Hélène Clément, legal adviser, duty counsel for the witness.
- 17 PRESIDING JUDGE FREMR: Thank you, Ms Clément.  
18 Before we approach to the rest of the examination-in-chief of our witness, the  
19 Chamber would like to deliver its oral ruling and its oral ruling has to be delivered in  
20 private session.  
21 So, court officer, please for this delivery let's move into private session, please.  
22 (Private session at 9.33 a.m.)  
23 (Redacted)  
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8 (Open session at 9.37 a.m.)

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

10 PRESIDING JUDGE FREMR: Thank you very much, court officer.

11 Mr Witness, once more, good morning. Is everything okay today?

12 WITNESS: DRC-OTP-P-0963 (On former oath)

13 (The witness speaks French)

14 THE WITNESS: (Interpretation) Good morning. Yes, everything is fine.

15 PRESIDING JUDGE FREMR: Very well then. So today in the morning Ms Solano

16 will continue in her examination-in-chief.

17 Ms Solano, I would like to reiterate that from 10 hours the Prosecution had been

18 allotted for examination-in-chief, you still have 2 hours and 25 minutes at your

19 disposal. So you may start. Do you want to start in open session or in private

20 session?

21 MS SOLANO: Private session, your Honour, please.

22 PRESIDING JUDGE FREMR: All right. Just for the information of public, this

23 witness is protected, so he was given guarantee that his identity will not be revealed

24 to the public. That is why if the questioning could reveal his identity, such part of

25 proceedings is conducted in private session. It is pretty possible that vast majority of

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1 this testimony will be or the rest of this testimony will be conducted in private  
2 session.

3 So, court officer, now let's move into private session.

4 (Private session at 9.39 a.m.)

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1 (Open session at 9.45 a.m.)

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

3 PRESIDING JUDGE FREMR: Thank you, court officer.

4 You may proceed, Ms Solano.

5 MS SOLANO: Thank you, your Honour.

6 Q. Sir, what ethnic group or ethnic groups did the population in Kilo belong to?

7 A. There were a number of ethnic groups in Kilo. Most of them were Nyali.

8 There were also Lendu. In fact, it was a mixture of Nyali, Lendu and others, most of  
9 whom were Nyali.

10 Q. What was the UPC's position with respect to the Nyali ethnic group?

11 A. They were not enemies. We were only due to attack Kilo and leave the  
12 population in place, especially the Nyali. The objective was to drive out the Lendu.

13 Q. Were the Lendu driven out of Kilo?

14 A. Yes.

15 Q. Do you know how this was accomplished?

16 A. No. I did not take part in the fighting in Kilo, but it was war.

17 Q. Do you know whether anyone was killed at Kilo?

18 A. I did not take part in the fighting in Kilo. I do not know how they went about  
19 it.

20 Q. Very well. Sir, I'm going to ask you for some clarifications on the evidence that  
21 you gave yesterday.

22 MS SOLANO: And, your Honour, for this we need to return to private session,  
23 please.

24 PRESIDING JUDGE FREMR: All right. Let's move into private session now,  
25 please.

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- 11 (Open session at 9.52 a.m.)
- 12 THE COURT OFFICER: We're back in open session, Mr President.
- 13 PRESIDING JUDGE FREMR: Thank you.
- 14 Ms Solano, you may proceed.
- 15 MS SOLANO: Thank you, your Honour.
- 16 Q. Sir, was there a particular word that was used in the UPC to refer to children in
- 17 the ranks of the UPC?
- 18 A. They were kadogos.
- 19 Q. And how was that word used in the UPC?
- 20 A. I didn't quite understand. Could you put your question again?
- 21 Q. What did the term mean?
- 22 A. "Kadogo" means child soldier.
- 23 Q. Were girl child soldiers also called kadogo?
- 24 A. They were kadogo PMF.
- 25 Q. And what does PMF mean?

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1 A. PMF meant military -- feminine or female military personnel or military police.  
2 They were female soldiers or girls. All of the girls or women were called PMF,  
3 women soldiers that is.

4 Q. What was the age range of the kadogos and PMFs, how old were they?

5 A. I'm talking about the PMF. For us the PMF was all military girls. It didn't  
6 depend on their age.

7 Q. How about kadogos, what ages were they?

8 A. Less than 15 years of age.

9 MS SOLANO: Your Honour, private session, please.

10 PRESIDING JUDGE FREMR: Court officer, let's move into private session now,  
11 please.

12 (Private session at 9.56 a.m.)

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- 18 (Open session at 10.22 a.m.)
- 19 THE COURT OFFICER: We are back in open session, Mr President.
- 20 PRESIDING JUDGE FREMR: Thank you.
- 21 Please proceed, Ms Solano.
- 22 MS SOLANO: Thank you, your Honour.
- 23 Q. Sir, you mentioned in that song that if you have a soldier the army is a place of
- 24 happiness and joy, you will have women for free. Can you explain what that meant
- 25 in the UPC, sir?

1 PRESIDING JUDGE FREMR: Mr Bourgon.

2 MR BOURGON: I think the question should be more complete. There wasn't only  
3 one part to the song, there was many parts, and focus just on this one part, it should  
4 be seen as a context and ask the complete sentence.

5 PRESIDING JUDGE FREMR: I think that's up to the calling party to focus on any  
6 part of the song, so objection overruled.

7 MS SOLANO:

8 Q. Sir, can you please answer my question. This reference to "women for free" in  
9 this song that was taught to the recruits, what did it mean?

10 A. Soldiers do not pay dowry, that's what it meant. It's free, I think. You get a  
11 free woman. I don't know what to say. That is how it was in the UPC. I don't  
12 know whether soldiers who got married had to pay any dowry. Everything was free.  
13 You would get a free house. I had a free house in Mongbwalu. That was their joy,  
14 that was the joy of being a soldier.

15 Q. And in this context, sir, what -- your Honour, I'm just waiting for the French  
16 transcript.

17 Thank you, sir. Can you describe the military uniforms worn by the UPC between  
18 September 2002 and February 2003?

19 A. September? Let me correct. In September there was no uniform in the UPC.  
20 When we went there were no uniforms. We only received uniforms later when we  
21 were in (Redacted).

22 Q. What colour were the uniforms, sir?

23 A. However--well, you interrupted me. Let me continue. After us, we-- other persons  
24 received the camouflage and they were green with yellowish bright spots and  
25 these tache-tache or camouflages were given along with other -- boots known at

1 gumbutier (phon) which were dark green in colour. They were produced in Uganda.  
2 The gumboots -- not gumbutier -- gumboots were made in Uganda. The  
3 distinguishing factor between us and those who were in Congo is that we had the  
4 gumboots which were green -- olive green, rather, and they were made in Rwanda.  
5 So that was a distinguishing colour between those trained in Uganda and those  
6 trained in the DRC. That's the difference.

7 MS SOLANO: Your Honour, may we return to private session, please.

8 PRESIDING JUDGE FREMR: All right.

9 Court officer, let's move into private session, please.

10 (Private session at 10.28 a.m.)

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3 (Recess taken at 11.05 a.m.)

4 (Upon resuming in open session at 11.36 a.m.)

5 THE COURT USHER: All rise.

6 Please be seated.

7 PRESIDING JUDGE FREMR: So we will finish in this session examination of  
8 witness.

9 I can just add to the record that as to the appearances Ms Samson joined us.

10 Otherwise, Ms Solano, you may proceed. And subject to your prospective questions,  
11 do you want to remain in open session or move into private one?

12 MS SOLANO: Private session, your Honour, please.

13 PRESIDING JUDGE FREMR: All right.

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

15 (Private session at 11.38 a.m.)

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(Private Session)

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9 (Open session at 12.36 p.m.)

10 THE COURT OFFICER: We're in open session, Mr President.

11 PRESIDING JUDGE FREMR: Thank you, court officer.

12 So now we have still 25 minutes before we will break. So we will now continue with  
13 cross-examination of witness.

14 Defence, and concretely Mr Bourgon will do it, so Mr Bourgon, you have the floor.

15 QUESTIONED BY MR BOURGON: (Interpretation)

16 Q. Good afternoon, Witness.

17 A. Good afternoon.

18 Q. Let me introduce myself. My name is Stéphane Bourgon. I'm a Canadian  
19 lawyer. I have with me here a team which represents the accused person in this case,  
20 namely Bosco Ntaganda.

21 Mr Witness, you do remember that we met each other briefly a few days ago, don't  
22 you?

23 A. Yes.

24 Q. I have several questions to put to you relating to the testimony you have  
25 just given and the information you have provided to the Prosecutor. The rules are the

1 same. If you do not understand a question, please do not hesitate to ask me to repeat  
2 the question. Do you understand that?

3 A. Yes.

4 Q. Similarly, several of the questions that I will put to you might only call for a yes  
5 or no answer, and I urge you to do so whenever possible, to say yes or no, and that  
6 will enable us to save a lot of time. Do you understand that?

7 A. Yes.

8 Q. Now, having said that, if you have any comments to make, please do not  
9 hesitate to do so because we are here to listen to you. Do you understand that as  
10 well?

11 A. Yes, indeed.

12 Q. Let me start by addressing some general issues. On several occasions over the  
13 last few days, you were asked to provide precisions on a number of names. Do you  
14 remember those questions?

15 A. Yes, I do.

16 Q. A number of times you answered that you were not able to recall the names.  
17 Do you remember those answers?

18 A. Yes.

19 Q. You mentioned as well that this was in part due to the fact that these events  
20 which you have been talking about happened some 13 or more years ago; is that  
21 correct?

22 A. Yes.

23 Q. But on some instances you mentioned a number of names. Do you remember  
24 that?

25 A. Yes.

1 Q. Would you agree with me then that the names that one remembers are names  
2 that relate to a specific striking event relating to the name; is that correct?

3 A. Yes.

4 Q. Let's take an example. Let's take an example. Earlier on today you testified  
5 about a member of your brigade who returned from Kilo with a stolen motorbike.  
6 Do you remember that?

7 A. Yes, a looted bike, motorbike.

8 Q. Do you make a distinction between steal and loot?

9 A. Yes.

10 Q. And what is that distinction?

11 A. To steal means as you know, is defined, at least the way I understand it, is in a  
12 war context is case where you live with the owner of the property in the same place  
13 and then you undertake to take away that property without his knowledge, that is  
14 without the knowledge of the owner. That is my understanding of stealing in the  
15 context of fighting.

16 But to loot means to drive out the owner and then take possession forcibly of the  
17 property.

18 Q. So that is your distinction between stealing and looting?

19 A. Yes.

20 Q. Now let me repeat my question. I believe your answer was yes, but let us  
21 make sure that we have your right answer. Do you remember that this morning you  
22 talked about a member who came back with a motorbike that had been looted; is that  
23 correct?

24 A. Yes.

25 Q. You said and if I understood you properly, you said that this person was a

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1 friend; is that correct?

2 A. Yes, a friend, someone with whom we were at the training centre together.

3 Q. (Redacted)

4 A. I think we are in open session, aren't we?

5 Q. Yes. I wanted to avoid that. Maybe we should (Speaks English) I will avoid  
6 mentioning any time any --

7 PRESIDING JUDGE FREMR: Okay.

8 MR BOURGON: -- because I would like to stay into public session.

9 PRESIDING JUDGE FREMR: All right.

10 MR BOURGON: (Interpretation)

11 Q. So do not hesitate --

12 PRESIDING JUDGE FREMR: Mr Bourgon, you have Ms Solano, Ms Solano on her  
13 feet.

14 Ms Solano.

15 MS SOLANO: I'm sorry to interrupt, your Honour, it was just to propose that the  
16 Defence, if the Defence is going to ask the witness to go back to topics on which he's  
17 testified, that they bear in mind whether the question was originally asked and  
18 answered in private session.

19 PRESIDING JUDGE FREMR: You know, because, Mr Bourgon, in case of this  
20 witness, there is not only issue of information which could directly identify or reveal  
21 his identity, but also questions of some overlapping, you know, you know what I  
22 mean. So it's up to you, I will be also very cautious and alert, but it's up to you really  
23 to put questions in a way that would really avoid both those concerns.

24 MR BOURGON: Mr President, am I to take it as a ruling that if it was elicited in  
25 private session, now I can only cross-examine in private session; or if there is no risk,

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1 do you leave it up to me, Mr President?

2 PRESIDING JUDGE FREMR: I think it depends. I think it should be necessarily  
3 the same regime. But it depends on the character of your question. As I said, you  
4 should be careful not to put in danger both those concerns.

5 MR BOURGON: Then we better move into private session, Mr President.

6 PRESIDING JUDGE FREMR: I also think that is safer.

7 So let's move into private session now.

8 (Private session at 12.44 p.m.)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

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13 (Redacted)  
14 (Recess taken at 1.01 p.m.)  
15 (Upon resuming in open session at 2.32 p.m.)  
16 THE COURT USHER: All rise.  
17 Please be seated.  
18 PRESIDING JUDGE FREMR: Good afternoon, everybody. We will continue this  
19 afternoon in cross-examination of Witness 963 by the Defence.  
20 But before doing that, the Chamber would like to deliver another ruling orally and it's  
21 a ruling on the Prosecution's request regarding the need to record preparation  
22 sessions with expert witnesses.  
23 In light of the imminently scheduled testimony of Dr John Yuille, the Chamber will  
24 address the parties' submissions regarding the applicability of certain aspects of the  
25 witness preparation protocol, which is contained in annex A to our decision 652, to

1 expert witnesses. Those submissions are contained in filings number 1214 and  
2 number 1229.

3 The Chamber recalls that it has already provided some guidance on the extent to  
4 which various protocols apply to expert witnesses. I am referring here to transcript  
5 26, at pages 45 to 48. The Chamber indicated then that, first, the witness preparation  
6 protocol is applicable to a calling party's contacts with its own expert witnesses;  
7 second, the familiarization protocol is applicable to expert witnesses, save where it  
8 explicitly indicates otherwise; and three, the contact protocol is applicable to an  
9 opposing party's contacts with expert witnesses of the other party.

10 The Chamber notes that both the Prosecution and Defence have now submitted that  
11 the requirement for recording of witness preparation sessions, as provided for in the  
12 witness preparation protocol, should not apply to expert witnesses. The Defence  
13 further submits that both parties should have the right to meet independently with  
14 expert witnesses ahead of their testimony, and without the presence of the other  
15 party. Although the Chamber recognizes that concerns regarding rehearsal of  
16 testimony may be significantly lessened in the case of expert witnesses, the Chamber  
17 is not persuaded that the need for recording of preparation sessions is entirely  
18 obviated.

19 In respect of the upcoming witness, the Chamber notes that Mr Yuille is scheduled to  
20 testify by video link and, in these specific circumstances, considers that an audio  
21 recording of any preparation session may be made in place of a video recording.

22 The Chamber does not, however, see any reason to amend the witness preparation  
23 protocol with respect to expert witnesses at this stage.

24 Similarly, the Chamber does not see any reason to amend the contact protocol with  
25 respect to expert witnesses. The Chamber considers it appropriate to maintain the

1 regime whereby the consent of a witness is required to a meeting with an opposing  
2 party.

3 That concludes the Chamber's ruling.

4 And now, as I already indicated, we can continue with cross-examination of the  
5 witness by Defence.

6 Mr Bourgon, do you want to remain in open session or the character of your  
7 questions will require to move into private?

8 MR BOURGON: (Microphone not activated)

9 THE INTERPRETER: Microphone, please.

10 PRESIDING JUDGE FREMR: Mr Bourgon, just for the record you said that you  
11 require to go into private. Because you haven't switched --

12 MR BOURGON: Yes, the microphone was not on. We do require to move into  
13 private session, please.

14 PRESIDING JUDGE FREMR: Very well.

15 So, court officer, let's move into private session.

16 (Private session at 2.38 p.m.)

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18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Open session at 4.00 p.m.)
- 24 THE COURT OFFICER: We're in open session, Mr President.
- 25 PRESIDING JUDGE FREMR: What channel?

- 1 THE COURT OFFICER: The video will be displayed on the channel 2 evidence.
- 2 PRESIDING JUDGE FREMR: Thank you.
- 3 MR BOURGON: (Interpretation) Are we now in open session, Mr President?
- 4 PRESIDING JUDGE FREMR: I think so.
- 5 Am I right?
- 6 Yes, it has been confirmed by court officer.
- 7 MR BOURGON: (Interpretation)
- 8 Q. So, Mr Witness, please do not answer any questions. It's just that we wanted to
- 9 go into open session for you to be able to watch this video. It is a brief excerpt
- 10 drawn from what was shown to you during your preparatory session.
- 11 And the excerpt that I would like to show to the witness, Mr President, is from 34.00
- 12 to 34.55. And without the sound, just the images.
- 13 MR BOURGON: I believe we can proceed, Mr President, with this 55-second extract.
- 14 PRESIDING JUDGE FREMR: All right.
- 15 (Viewing of the video excerpt)
- 16 MR BOURGON: Thank you.
- 17 PRESIDING JUDGE FREMR: Mr Bourgon, if you want to put questions, we
- 18 probably have to move into private again, I guess.
- 19 MR BOURGON: I would like to ask just one question and then move to private
- 20 session.
- 21 PRESIDING JUDGE FREMR: All right then.
- 22 MR BOURGON: (Interpretation)
- 23 Q. Mr Witness, I'm going to come back to the question that was put to you in
- 24 English and it will be translated into French for you in addition to your answer.
- 25 (Speaks English) The witness was asked if he recognized the place or places shown

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1 and the people in the video recording that was played for him earlier --

2 PRESIDING JUDGE FREMR: Sorry, Mr Bourgon. Ms Solano is on her feet.

3 Ms Solano, any problem with this question?

4 MS SOLANO: Your Honour, no. It's just that I don't have confirmation that we're  
5 in private session.

6 MR BOURGON: We're not.

7 MS SOLANO: (Microphone not activated)

8 PRESIDING JUDGE FREMR: The idea was this question will be safe, it will be put  
9 in open, and then we will move into private. Is it okay with you?

10 MS SOLANO: I apologise for the interruption. It's my mistake.

11 PRESIDING JUDGE FREMR: So, Mr Bourgon, probably start again.

12 MR BOURGON: Thank you, Mr President.

13 Q. (Interpretation) So I shall repeat the question in English, Mr Witness, that will  
14 be translated for you. There are initials and then it was said: (Speaks English) "asks  
15 the witness if he recognized the place or places shown and the people in the video  
16 recording that was played for him earlier during his witness preparation. The  
17 witness responds that he did not."

18 (Interpretation) So I'll stop here and we shall come back to public -- private session.

19 PRESIDING JUDGE FREMR: All right. Let's move into private session now.

20 (Private session at 4.06 p.m.)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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Trial Hearing  
WITNESS: DRC-OTP-P-0963

(Private Session)

ICC-01/04-02/06

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17 (Open session at 4.24 p.m.)

18 THE COURT OFFICER: We're in open session, Mr President.

19 PRESIDING JUDGE FREMR: And, Mr Bourgon, I would like to excuse witness for  
20 the rest of day. I guess you will not need him for your submission? Okay.

21 So, Mr Witness, for this moment it is the end of your testimony for today. I thank  
22 you very much. I can imagine it was very tiring, but I appreciate that you remained  
23 focused and that you patiently answered all questions put to you. We will continue  
24 tomorrow and, as usually, it's my obligation to remind you that you must not discuss  
25 content of your testimony with anybody else. Is it clear to you?

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1 THE WITNESS: (Interpretation) Yes.

2 PRESIDING JUDGE FREMR: So have some rest and we will see you tomorrow 9.30.

3 So now the witness may be escorted out of the courtroom.

4 (The witness stands down)

5 PRESIDING JUDGE FREMR: Mr Bourgon, you have the floor.

6 MR BOURGON: Thank you, Mr President. Very briefly. I asked to speak to the

7 Chamber yesterday in reference to a filing that had not been communicated to the

8 Defence. We have now received this submission from the Prosecution.

9 Yesterday I requested the Chamber to delay the response time to Monday at a

10 minimum. We have now received the submission. It is quite detailed and it does

11 contain some allegations that need to be examined more carefully. So for this reason,

12 I kindly ask that we have a longer time to respond and I respectfully suggest

13 Thursday, 21 April. The Chamber will be able to -- basically to assess the issues

14 therein. And it is my understanding also that the Chamber must have received my

15 email in which we seek some -- we seek some information that was redacted in that

16 submission. That's all I wanted to say, Mr President.

17 PRESIDING JUDGE FREMR: Yes, you are right.

18 Ms Solano, your position.

19 MS SOLANO: No objection, your Honour. And I just wanted to inform the

20 Chamber that we will be lifting the redactions in that document that Mr Bourgon

21 requested. It was an oversight on our part.

22 PRESIDING JUDGE FREMR: All right. So we will not react immediately, but I

23 guess we will react in due course probably via email.

24 If there are no further requests for the floor, we will break now and we will continue

25 tomorrow in the same time regime like today, which means from 9.30 to 11, then from

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- 1 11.30 to 1, and then from 2.30 to 4.30.
- 2 Now Court is adjourned.
- 3 THE COURT USHER: All rise.
- 4 (The hearing ends in open session at 4.27 p.m.)