

Trial Hearing
WITNESS: DRC-OTP-P-0014

(Open Session)

ICC-01/04-02/06

1 International Criminal Court
2 Trial Chamber VI
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and Judge Chang-ho Chung
6 Trial Hearing - Courtroom 3
7 Friday, 23 September 2016
8 (The hearing starts in open session at 9.31 a.m.)
9 THE COURT USHER: [9:31:17] All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE FREMR: [9:31:44] Good morning, everybody.
13 Court officer, please call the case.
14 THE COURT OFFICER: [9:31:48] 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 For the record, we are in open session.
18 PRESIDING JUDGE FREMR: [9:32:02] Thank you.
19 Now appearances. I see, if I'm not wrong, just one minor change in appearances so
20 maybe you can just refer to those changes, if any, Prosecution.
21 MR PACE: [9:32:15] Yes, good morning, Mr President, your Honours. The change is
22 that Nicole Samson is not in the courtroom today.
23 PRESIDING JUDGE FREMR: [9:32:20] Exactly.
24 Defence, any changes?
25 MR BOURGON: [9:32:22] (Interpretation) Good morning, your Honour. No

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1 changes from the Defence side.

2 PRESIDING JUDGE FREMR: [9:32:26] Thank you, Mr Bourgon.

3 And legal representatives.

4 MS PELLET: [9:32:31] (Interpretation) Thank you, your Honour. No changes.

5 MR SUPRUN: [9:32:35] (Interpretation) Good morning, your Honour. No changes
6 in my team.

7 PRESIDING JUDGE FREMR: [9:32:40] Thank you very much, Ms Pellet and
8 Mr Suprun.

9 Now, good morning, Mr Witness. We will continue with the final part of your
10 cross-examination which will be conducted by Defence. So now I will give the floor to
11 Mr Bourgon.

12 And Mr Bourgon, usual question, do you want to start in open or in private session?

13 MR BOURGON: [9:33:06] Mr President, I would like to go in private session, but
14 before I do so I would like to inform the Trial Chamber that I will do my best to complete
15 my cross-examination within two sessions. I'm not sure that will be possible, but I will
16 try my best. In any event, we are ready to proceed with the next witness when this one is
17 over. If we can start in private session, please.

18 PRESIDING JUDGE FREMR: [9:33:33] Let's move into private session. And in the
19 meantime, from my part, you should know that we are in some relatively slight delay so
20 we would appreciate such a possibility, if it's feasible, but anyway it doesn't mean that we
21 want to make some strong pressure on you.

22 (Private session at 9:33 a.m.)

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- 11 (Open session at 10.08 a.m.)
- 12 THE COURT OFFICER: [10:08:32] We're in open session, Mr President.
- 13 PRESIDING JUDGE FREMR: [10:08:48] Thank you.
- 14 Mr Bourgon, please proceed.
- 15 MR BOURGON: [10:08:52] Thank you, Mr President.
- 16 Q. [10:08:54] (Interpretation) Witness, you can see the sketch before you. I believe
- 17 that this sketch can be published, I don't believe it's confidential. Colleague? No.
- 18 THE COURT OFFICER: [10:09:10] I need a proper confirmation because the metadata
- 19 states otherwise.
- 20 PRESIDING JUDGE FREMR: [10:09:20] Mr Pace.
- 21 MR PACE: [10:09:22] Your Honour, the document may be confidential in the metadata,
- 22 but I believe it can be used without a problem in public session.
- 23 PRESIDING JUDGE FREMR: [10:09:32] Looking at this, I also believe that it would be
- 24 made public.
- 25 MR BOURGON: (Interpretation)

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1 Q. [10:10:05] Witness, we're now in public session and your sketch is visible to those
2 who are following these proceedings. Can you confirm that you drew this sketch?

3 A. [10:10:18] Yes.

4 Q. [10:10:22] I'm looking now at the bottom of the sketch and I see that it says
5 entrance gate, "portier." That's the entrance that you indicated a moment ago; is that
6 right?

7 A. [10:10:37] Well, in fact there are two entrance points, there's the entrance gate,
8 "portier," so the big gateway which allowed access and through which large trucks could
9 travel and there's also an entrance where the word "Parking" is written and that was a
10 smaller entrance for visitors, et cetera. It's on the bottom-right of the sketch.

11 Q. [10:11:10] Indeed, Witness, I see the word "Parking." Was that an entrance just for
12 pedestrians or also for vehicles?

13 A. That was an entrance for pedestrians.

14 Q. [10:11:25] So you were telling us that at the bottom, at the right of the sketch, there
15 are two entrances, the entrance gateway and the entrance for visitors. Now --

16 PRESIDING JUDGE FREMR: [10:11:37] Please observe pauses, otherwise, we will not
17 get a precise transcript.

18 MR BOURGON: (Interpretation)

19 Q. [10:11:53] In the top right-hand corner of your sketch we see the word "bureau"
20 and "residence," so office and residence; is that correct?

21 A. [10:12:03] Yes, that's correct.

22 Q. [10:12:05] And a moment ago you told us that this was both the office and also the
23 sleeping quarters of a person called Lonema; is that correct?

24 A. [10:12:16] Yes.

25 Q. [10:12:20] If I turn now to the upper left-hand corner, we see the word "depot" and

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1 "dortoir et cuisine," so sleeping quarters and kitchen. Did you refer to this in the
2 information given?

3 A. [10:12:45] Information dating from when?

4 Q. [10:12:49] Well, I'm trying to phrase my questions so that we can remain in open
5 session. I'm referring to the information that you provided earlier to the Prosecution.
6 Did you refer to this point in the sketch?

7 A. [10:13:04] Yes, I'm sure I did. Yes.

8 Q. [10:13:16] Well, now that we have this sketch, is it indeed your testimony that this
9 was the UPC HQ when you were in Bunia in July 2002?

10 A. [10:13:30] Affirmative.

11 Q. [10:13:36] Well, Witness, what I'd like to do with you is now try to locate this place
12 on the map of Bunia. Would you be able to point out what this place is if I show you a
13 map of Bunia?

14 A. [10:13:50] No problem.

15 Q. [10:13:52] Well, we'll do this in two stages. First of all, I'm going to show you a
16 large map of Bunia which will be placed just beside you and I'm going to ask you to have
17 a look and to confirm if you know what the map is of. This is DRC-OTP-0207-0330.

18 MR BOURGON: [10:14:21] (Interpretation) And I'd like the assistance of the court
19 clerk to place the exhibit on the tripod next to the witness.

20 PRESIDING JUDGE FREMR: [10:14:30] Court usher, please assist.

21 MR BOURGON: [10:14:56] (Interpretation) You can move the exhibit right next to the
22 witness.

23 Q. [10:15:07] Witness, do you recognize the map to your right?

24 A. [10:15:20] Yes, indeed.

25 Q. [10:15:27] Now, this is a large exhibit to allow you to locate this location on the

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1 map. Now, I'm going to put the same exhibit on the screen in front of you. Please let
2 me know if what you see on your screen is the same as what you see to your right.

3 A. [10:15:53] Yes, it seems to be exactly the same.

4 MR BOURGON: (Interpretation) I'd like a close-up, please, on the centre of the map.

5 Q. [10:16:09] And tell me if you can see the place which figures on your sketch.

6 MR BOURGON: (Interpretation) Could we move to the left, please, and zoom in, a 200
7 percent zoom, please.

8 THE INTERPRETER: [10:16:53] Microphone, please.

9 PRESIDING JUDGE FREMR: [10:16:57] Mr Bourgon, was your mic switched on?

10 MR BOURGON: [10:17:01] I'm not sure it was, Mr President.

11 PRESIDING JUDGE FREMR: [10:17:04] Please repeat.

12 MR BOURGON: [10:17:06] I will say again for the record. I was asking for the -- to
13 bring the map up. Actually, I meant the other way, down. Now the other way a bit
14 more, a bit more again, a bit more. Stop. Yeah.

15 Q. [10:17:24] (Interpretation) Do you recognize what you see on the screen?

16 A. [10:17:30] Yes, very well.

17 Q. [10:17:33] If you prefer or if you need to, you can also consult the larger map
18 beside you. That's what it's there for. Do you see the place where what you refer to as
19 the UPC HQ is located?

20 A. [10:17:51] Yes, I do.

21 MR BOURGON: [10:17:54] Are we able to mark the exhibit the way it is now? Yes,
22 we are.

23 Q. [10:18:02] (Interpretation) Then, Witness, I'm going to ask you to take a pen, and
24 the court usher will assist you with this. I'm going to ask you to put a circle around the
25 place where the UPC HQ was located, and I would ask that the circle be sufficiently big to

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1 encircle the two buildings we've referred to, so not just the buildings that you showed us
2 on the sketch a moment ago, but also the first building we spoke of. And if you like, you
3 could enlarge the view again.

4 There I see two circles, so you could put the number 1, please, beside the one you refer to
5 as being the joinery, the "menuiserie," and number 2, in relation to the building that you
6 refer to being -- as being the purely military building. I would also ask you to write the
7 date on the bottom, to the left, and I request that this sketch be admitted in evidence.

8 A. [10:19:33] Do you mean today's date?

9 Q. [10:19:37] Yes.

10 A. [10:19:38] Your Honour, I don't recall what today's date is.

11 Q. [10:19:43] Neither do I.

12 PRESIDING JUDGE FREMR: [10:19:47] 23rd September. And in the meantime,
13 Mr Pace, any objection to the admission?

14 MR PACE: [10:19:57] No, your Honour.

15 PRESIDING JUDGE FREMR: [10:19:57] All right. In such a case, this sketch
16 annotated by Mr Witness is admitted into evidence as a further Defence exhibit.
17 Mr Bourgon, please proceed.

18 MR BOURGON: [10:20:09] Thank you, Mr President.

19 PRESIDING JUDGE FREMR: [10:20:12] Sorry, just we will have to give a moment to
20 Madam Registrar.

21 THE COURT OFFICER: [10:20:17] Thank you, Mr President. Just to inform the
22 parties and participants that the document will bear the number DRC-REG-0001-0044.
23 Thank you.

24 PRESIDING JUDGE FREMR: [10:20:29] Thank you, court officer.

25 MR BOURGON: [10:20:34] (Interpretation)

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1 Q. [10:20:37] Witness, I have prepared an enlargement of the part of town where you
2 put your two circles. We're going to show that to you and you can tell me, you confirm
3 whether that is indeed the right place.

4 MR BOURGON: (Interpretation) Now, this exhibit that I prepared has been sent to the
5 court usher, I believe. Could we please display it on the screen?

6 THE COURT OFFICER: [10:21:18] Just to be 100 percent sure, can you confirm that it is
7 the document entitled Extract of DRC-OTP-0207-0330? (Speaks French). Thank you.

8 THE INTERPRETER: [10:21:38] The last words were "DRC high resolution Bunia."

9 MR BOURGON: [10:21:54] (Interpretation)

10 Q. [10:21:54] Witness, do you recognize the image in front of you?

11 A. [10:22:11] Could you reduce the scale slightly?

12 Q. [10:22:16] I'm afraid not. This was pre-prepared at this scale.

13 A. [10:22:20] Yes, I can see it.

14 Q. [10:22:22] Could you put a circle around what you refer to as being the joinery and
15 write the number 1 beside it.

16 I would also ask you now to be careful and to look closely in order to identify the second
17 building. If need be, you can consult the other map beside you. If and when you locate
18 it, I would ask you to put a circle around it and write the number 2, and also write the
19 date, please.

20 Witness, before this sketch is taken down, you referred to the café de la paix a little while
21 ago as a place where meetings would take place?

22 A. [10:23:47] I don't recall.

23 MR BOURGON: (Interpretation) Well, then we'll leave the exhibit there. And I think
24 that we can return to private session, your Honour.

25 PRESIDING JUDGE FREMR: [10:24:02] All right.

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- 1 Court officer, let's return back into private session.
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5 (Open session at 10.48 a.m.)

6 THE COURT OFFICER: [10:48:47] We are in open session, Mr President.

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

8 Mr Bourgon, please proceed.

9 MR BOURGON: [10:48:58] Thank you, Mr President.

10 Q. [10:49:03] (Interpretation) Witness, I was reading the text here where it states the
11 following:

12 (Speaks English) "In the same room the recruits would sometimes do firing practice."

13 (Interpretation) Are those your words?

14 A. [10:49:21] Yes, I indeed said that.

15 Q. [10:49:23] So if I understand well, and here I'm looking at your sketch which we
16 have on the screen, I can see in the upper right corner there's a place where it says "office"
17 and "residence," and there, if I understand your testimony, in the basement there were
18 prisoners, but sometimes in this small building there, there were recruits who were
19 carrying out firing exercises in the basement; is that your testimony?

20 A. [10:49:56] Yes.

21 Q. [10:49:59] And you state, and I don't know -- you don't know what the
22 commanders were doing with the prisoners when the recruits were practising; is that your
23 testimony?

24 A. [10:50:11] If you just ask me the question, I respond.

25 Q. [10:50:16] I would like to know if you saw, with your own eyes, prisoners entering

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1 and leaving to make it possible for the recruits to carry out real firing in this small
2 building, in the basement.

3 A. [10:50:36] Indeed, that's what's happened. There were prisoners who were taken
4 out of the basement and they would practice their firing in the basement.

5 Q. [10:50:48] And you saw the prisoners being taken out to make it possible for the
6 recruits to go and fire?

7 A. [10:50:56] The commanders asked the recruits to leave and the recruits would do
8 that, yes, I saw that.

9 Q. [10:51:03] Now, when you saw that, how many prisoners did you see leave?

10 A. [10:51:09] I told you a moment ago that I never counted the prisoners.

11 Q. [10:51:16] Well, you could at least help us. Five, 10, 15, 50?

12 A. [10:51:23] Well, sometimes -- it wasn't the same every time or the number. The
13 number of prisoners would vary. So, if you asked me for an estimate, I could say 10.
14 That's the average that I can give you.

15 Q. [10:51:45] Witness, you have information, I would imagine -- well, I'll ask you if
16 you had information to the effect that, when the town was separated in two, there were
17 clear instructions that were given by the UPDF to the effect that the parties mustn't use
18 firearms. Did you have any information in that regard?

19 A. [10:52:16] If you ask me if this information was followed or not, I would be able to
20 answer that, to answer that question, yes. I knew that there were conditions which had
21 been put by one or other of the parties.

22 Q. [10:52:34] Well, you had information that one of these conditions there was that
23 not to use firearms.

24 A. [10:52:47] I say, unfortunately, it was never respected because from 5th, 6th, 7th,
25 8th, the same UPC, accompanied by the UPDF, they always shot weapons, fired weapons.

1 So I don't know why you insist when it is written on a paper which were never respected
2 in practice.

3 Q. [10:53:14] If I understand your testimony, Witness, there are firing exercises in the
4 basement carried out by recruits. So the prisoners are taken out despite the received
5 instructions and the directives not to use firearms; that's all regularly happening while
6 you were there?

7 A. [10:53:36] By -- for your information, when an officer, an intelligence officer in the
8 UPDF, went to visit the HQ of the UPC.

9 Q. [10:53:50] Witness, I put it to you that the place where you went, I don't know on
10 how many occasions, but you say almost every day, that in that place, Witness, it wasn't
11 even an HQ, it was nothing more than Thomas Lubanga's residence, where Lonema lived,
12 and neither was their training there, nor were there prisoners in that place, nor firing in
13 that place, and that what you say is quite simply not the truth. Does that refresh your
14 memory?

15 A. [10:54:40] Sometimes I have the impression that we're just part of a comedy here.
16 I'm telling you what I saw and everything that I am answering you with regard to your
17 question, I am saying before this Court, your Honour, what I saw. Please excuse me for
18 my remark but it does shock me. But the reality is that everything that I say is what I
19 was able to see. And I spoke with, among others, the individuals that I mentioned,
20 your Honour.

21 PRESIDING JUDGE FREMR: [10:55:25] Mr Witness. Mr Witness, I would like you to
22 watch your language because, you know, to say that this is a comedy is probably not the
23 best word you can use.

24 You know Mr Bourgon is doing his job, he is Defence counsel, he is cross-examining you.

25 So if he is putting to you that you are even lying, it is easy to say, "No, I am not lying and I

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1 am insisting on my either today or previous statement." So please try to limit yourself
2 on -- not using any improper language. Thank you.

3 Mr Bourgon.

4 MR BOURGON: [10:56:07] Thank you, Mr President.

5 Q. [10:56:09] (Interpretation) Witness, you mentioned yesterday that you saw a
6 prisoner -- that there was a prisoner who was waterboarded. Did that happen in that
7 place?

8 A. [10:56:27] Indeed.

9 Q. [10:56:29] And where did you see that?

10 A. [10:56:40] (No interpretation)

11 Q. This punishment of simulated drowning, you never mentioned that previously; is
12 that correct?

13 A. [10:56:57] I don't know if I mentioned it or not previously.

14 Q. [10:57:00] Witness, let's go on to the other place. In the information that you gave,
15 and here I'm going to read from your statement of 2006, perhaps it's preferable
16 your Honour if we take the pause now (Speaks English) because next topic will take more
17 than five minutes?

18 PRESIDING JUDGE FREMR: [10:57:27] Yeah, I agree, it is a reasonable proposal. So
19 we will break now, we will take our regular break which means we will resume at half
20 past 11.

21 THE COURT USHER: [10:57:40] All rise.

22 (Recess taken at 10.57 a.m.)

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

24 THE COURT USHER: [11:31:28] All rise.

25 Please be seated.

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1 PRESIDING JUDGE FREMR: [11:31:53] Before we continue, just inquiry on current
2 situation. Mr Bourgon, do you still see some real chance to finish your cross-examination
3 by 1 o'clock?

4 MR BOURGON: [11:32:07] Unfortunately not, Mr President.

5 PRESIDING JUDGE FREMR: [11:32:09] All right, then let's continue.

6 MR BOURGON: [11:32:20] (Interpretation)

7 Q. [11:32:23] Good morning again, Witness.

8 A. [11:32:29] Good morning.

9 Q. [11:32:32] We're in open court right now so as I indicated before, if you feel that
10 any one of my questions would cause you to identify yourself, please just raise your hand
11 and we'll move into private session.

12 MR BOURGON: [11:32:49] Apparently, we need to go into private session,
13 Mr President.

14 PRESIDING JUDGE FREMR: [11:32:52] Certainly.

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

16 (Private session at 11.33 a.m.)

17 (Redacted)

18 (Redacted)

19 (Redacted)

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- 13 (Redacted)
- 14 (Open session at 11.35 a.m.)
- 15 THE COURT OFFICER: [11:35:16] We are back in open session, Mr President.
- 16 PRESIDING JUDGE FREMR: [11:35:18] Thank you, court officer.
- 17 Mr Bourgon, please proceed.
- 18 MR BOURGON: [11:35:23] Thank you, Mr President.
- 19 Q. [11:35:24] (Interpretation) So, Witness, on the basis of the description that
- 20 I've just read out to you, was that a description of the place that is located on the
- 21 upper right-hand corner of your sketch; (Redacted)
- 22 (Redacted)
- 23 A. [11:35:47] Yes, that's right.
- 24 Q. [11:35:51] The first thing I want to ask you on this topic is whether during the
- 25 period where you had these meetings, did you see people -- or, in fact, I could be more

1 precise: Did you see Thomas Lubanga's wife and children?

2 A. [11:36:27] She merely visited.

3 Q. [11:36:37] And she visited over what period of time, based on what you know?

4 A. [11:36:42] I only saw her once.

5 Q. [11:36:49] And if I were to put it to you, Witness, that Thomas Lubanga's wife and
6 children were there for much more than one visit, would you feel that that is indeed
7 possible, based on the information you have?

8 A. [11:37:06] Based on what I saw, Thomas Lubanga's wife and children never spent
9 the night there, nor did they spend the day there.

10 Q. [11:37:15] But I would put it to you, Witness, that despite what you may have been
11 able to see, Thomas Lubanga's wife and children did spend nights and days there, and it
12 is therefore not possible that prisoners were held in the same place where Mrs Lubanga
13 and the children were; does that refresh your memory?

14 A. [11:37:47] No, that's wrong, that's utterly wrong.

15 Q. [11:37:51] In the following paragraph of your statement you've referred to the fact
16 that at that place that you refer to as being the UPC headquarters -- actually, this is the
17 same paragraph, paragraph 150, that there were guards outside and that there were
18 checks, entrance checks, on visitors. Do you recall saying that?

19 A. [11:38:22] Yes.

20 Q. [11:38:24] You mentioned that some people could answer easily without being
21 searched, whereas others would be questioned and had to provide a reason for their visit;
22 is that correct?

23 A. [11:38:38] Correct.

24 Q. [11:38:41] And you, yourself, when you had access to the place, how did the
25 guards react when you would arrive in?

1 A. [11:38:59] Well, the very first time I came, they put me through the same exercise
2 just as any other unknown person. The other times, I entered without any difficulty.

3 Q. [11:39:17] When you say that you could enter without any difficulty, does that
4 mean that you had become a regular, if you like, a known person there; is that correct?

5 A. [11:39:33] Indeed. And for your information, Thomas -- or, rather, (Redacted)
6 (Redacted)

7 (Redacted)

8 Q. [11:39:54] You've just said "bodyguards." Indeed, there were some bodyguards
9 there and they were Thomas Lubanga's bodyguards who were there during his absence;
10 do you agree with me?

11 A. [11:40:13] Well, I don't have those details.

12 Q. [11:40:18] Well, I would put it to you that there were approximately, more or less,
13 10 bodyguards; would you agree with that?

14 A. [11:40:30] No, I don't agree. Not at all.

15 Q. [11:40:34] Well, how many bodyguards were there in your view?

16 A. [11:40:38] Well, based on what I saw, there was always more than 20 guards.

17 Q. [11:40:49] Well, let's return to what you say you saw at this place. You refer to
18 training taking place there, isn't that right?

19 A. [11:41:03] Yes, that is right.

20 MR BOURGON: [11:41:13] We need to go back into private session, Mr President.

21 PRESIDING JUDGE FREMR: [11:41:14] For sure.

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

23 MR BOURGON: [11:41:27] Mr President, I note for the --

24 (Private session at 11.41 a.m.)

25 (Redacted)

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- 1 (Redacted)
- 2 (Upon resuming in open session at 2.31 p.m.)
- 3 THE COURT USHER: [14:31:38] All rise.
- 4 Please be seated.
- 5 PRESIDING JUDGE FREMR: [14:31:57] Good afternoon, everybody.
- 6 Let's move directly to the rest of cross-examination of our witness.
- 7 Mr Bourgon, open or private session?
- 8 MR BOURGON: [14:32:18] Private session, Mr President, please.
- 9 PRESIDING JUDGE FREMR: [14:32:24] All right. And you still have 1 hour
- 10 13 minutes, one-three.
- 11 Now court officer, let's move into private session.
- 12 (Private session at 2.32 p.m.)
- 13 (Redacted)
- 14 (Redacted)
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WITNESS: DRC-OTP-P-0014

(Private Session)

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- 16 (Open session at 3.22 p.m.)
- 17 THE COURT OFFICER: [15:22:43] We're in open session, Mr President.
- 18 PRESIDING JUDGE FREMR: [15:22:45] Thank you, court officer.
- 19 So, Mr Bourgon, you may proceed.
- 20 MR BOURGON: [15:22:49] Thank you, Mr President.
- 21 Q. (Redacted)
- 22 (Redacted)
- 23 (Redacted) So I
- 24 am just going to show you three photographs.
- 25 MR PACE: [15:23:08] Your Honour.

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1 PRESIDING JUDGE FREMR: [15:23:10] Mr Pace.

2 MR PACE: [15:23:13] Sorry, I apologise. And just if we could avoid referring to the
3 profession of the witness and if we could redact that. Thank you.

4 PRESIDING JUDGE FREMR: [15:23:18] Yes, exactly. So, court officer, please just
5 redact the last sentence said by Mr Bourgon. Otherwise, we can continue in the regime
6 of open session, but Mr Bourgon, please have it in mind.

7 MR BOURGON: [15:23:33] Thank you, Mr President.

8 But at the end of this session, I would like to make some submissions on this. I think this
9 is -- we're going beyond the line with just a small observation in terms of identifying,
10 especially with the nature of the testimony, but I'll just proceed with the way we're going
11 now.

12 Q. [15:23:53] (Interpretation) Witness, I'm going to show you three photographs,
13 and the question is quite simple. The question is -- so looking at the first photograph,
14 I think that I gave the number a moment ago. Do I have to give it once again? So
15 there's a photo which is going to appear on your screen.

16 MR BOURGON: [15:24:30] If it is at all possible, to increase the size of the picture.

17 Q. [15:24:43] (Interpretation) Witness, can you see the photo of the person in front of
18 you?

19 A. [15:24:50] Yes, clearly.

20 Q. [15:24:56] If I give you a paper copy of the photo, would it assist you more?

21 A. [15:25:03] I don't have any problem with that.

22 MR BOURGON: [15:25:06] Well, with the assistance of the court usher, I would like to
23 give a paper copy of the picture so that he can really see it better than on the screen.

24 PRESIDING JUDGE FREMR: [15:25:15] Court usher, please assist.

25 MR BOURGON: [15:25:17] If you can show it to my colleague, please.

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1 Q. [15:25:37] (Interpretation) Witness, are you able to help us to know if the person
2 appearing on this photograph is aged under 15, 15, or over? In your experience.

3 A. [15:25:54] He's aged under 15.

4 Q. [15:25:59] I'm going to show you a second photo. And on the screen if I could
5 have DRC-D18-0001-1322, page 1324.

6 Witness, I'm also going to give you a paper copy of this photograph.

7 MR BOURGON: [15:26:43] (Speaks English) If I have the assistance of the court usher,
8 please, to give a paper of this picture and to show it to my colleague.

9 Q. [15:27:15] (Interpretation) Witness, the person who appears on the photograph in
10 your hands and on the screen, is that person under 15, or 15 and above, according to your
11 experience?

12 A. [15:27:34] Around 15 years old.

13 Q. [15:27:40] Do I have to conclude that you're not able to distinguish whether it's
14 under or over 15?

15 A. [15:27:48] It could be 14, 15 or 16.

16 Q. [15:27:52] I'm going to show you a third photograph, DRC-D18-0001-1337, and
17 I would like to go to page 1338.

18 Witness, I'm going to give you a paper copy of the photograph as well and you also have
19 the photograph as well as a hard copy. You've got it on screen and a hard copy.

20 Do you see the photograph, Witness?

21 A. [15:29:28] Very well.

22 Q. [15:29:31] On the basis of the photograph in your hands, I would ask you, the
23 person on the photograph, is that person under 15, or 15, or over?

24 A. [15:29:46] 15 and over.

25 Q. [15:29:50] Thank you very much, Witness.

1 MR BOURGON: [15:29:58] Mr President, I believe that these three pictures are already
2 in evidence, but I would like to make sure, to ensure that this is the case.

3 PRESIDING JUDGE FREMR: [15:30:06] We will verify. Court officer, could you
4 assure us or tell us that those photographs have been already admitted or not.
5 So I was told that not, so I guess you would like to have them --

6 MR BOURGON: [15:30:21] I would like to have them admitted in evidence,
7 Mr President.

8 PRESIDING JUDGE FREMR: [15:30:29] Mr Pace, any objection?

9 MR PACE: [15:30:32] No, your Honour. We objected to the exercise, but now that it's
10 been conducted, no objection to admission.

11 PRESIDING JUDGE FREMR: [15:30:36] We took note of the substance of the objection.
12 So those three photographs are admitted into evidence as a further Defence exhibit.
13 Mr Bourgon, have you finished with this exercise --

14 MR BOURGON: Yes.

15 PRESIDING JUDGE FREMR: -- because I would like to make my comment. For future,
16 maybe, if you would like to repeat such exercise, I would at least prefer if you could just
17 add something that would allow us to -- the witness, allow to evaluate or so the tallness of
18 the person because such a person, we don't have any measuring scale. He or she could
19 be 1 metre high, he or she could be 1 metre 80 centimetres high. So, please, next time, if
20 you would like to repeat something like that, please think about my guidance.

21 MR BOURGON: [15:31:27] We will certain do so, Mr President.

22 PRESIDING JUDGE FREMR: [15:31:30] Now you may proceed.

23 MR BOURGON: [15:31:32] (Interpretation)

24 Q. [15:31:33] Witness, I informed you that the three photos of the three people that
25 you had seen had -- they were 16, if I informed you of that, would that surprise you?

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1 A. [15:31:52] If you have evidence and you can show me the evidence, then I will
2 believe you.

3 Q. [15:31:57] Yes, indeed, I do have evidence and I can show you the evidence. Now,
4 regarding the first person, let us go to page --

5 MR BOURGON: [15:32:21] Mr President, I do have a paper copy but this material has
6 not been entered into eCourt yet and I think it has not yet been given to the Prosecution,
7 so I will keep it for later.

8 PRESIDING JUDGE FREMR: [15:32:33] All right.

9 MR BOURGON: [15:32:34] (Interpretation)

10 Q. [15:32:36] Mr Witness, I am not in a position to provide you with the written
11 evidence, although I have it before me, but we have a system in place here, an eCourt
12 system, and I am not in a position to show you that evidence yet, but I can tell you,
13 however, that the three persons whom you saw on those photographs were 16 years old.
14 Now my question is the following.

15 THE COURT OFFICER: [15:33:05] Just a suggestion to use the retro projector if you
16 wish to.

17 MR BOURGON: [15:33:21] I prefer not, Mr President, because there's an issue of
18 confidentiality, but I will definitely at a later time.

19 PRESIDING JUDGE FREMR: [15:33:28] All right.

20 MR BOURGON: [15:33:38] For the benefit of the Court, Mr President, these pictures
21 were obtained with the consent of the parents and we have a consent form signed by the
22 parent, and we also --

23 PRESIDING JUDGE FREMR: [15:33:58] Mr Pace.

24 MR PACE: [15:34:00] Yes, your Honour. I'm not sure if this is the appropriate same to
25 make these submissions. If the Defence wishes to introduce evidence to bolster the

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1 credibility of this exercise it is free to do so.

2 But I don't think it is up to the Defence counsel to make these assertions in the abstract.

3 And as Defence counsel mentioned, the Prosecution has not seen any of this allegedly
4 supportive documentation.

5 PRESIDING JUDGE FREMR: [15:34:21] Mr Bourgon, do you see it necessary?

6 MR BOURGON: [15:34:23] My colleague is right, I was just informing the Chamber as
7 to how we proceeded and what we will be introducing, in terms of a consent form, ID
8 cards and the like.

9 PRESIDING JUDGE FREMR: [15:34:34] Point taken. Please proceed.

10 MR BOURGON: [15:34:36] (Interpretation)

11 Q. [15:34:39] Mr Witness, based on what I have shown you, if what I have told you is
12 correct, will you be surprised?

13 A. [15:34:54] I would not be surprised for several reasons, including the fact that there
14 is always an exception to any rule. Secondly, I have several questions about the source
15 and the authority who may have issued the documents ascertaining the ages of the
16 persons you have just shown me. I do express a lot of doubt regarding the issuing
17 authority of the document you are relying on for the age of those people. I will have to
18 be convinced a hundred percent without asking any further question to be able to agree
19 with you. But for now, I have no comment to make.

20 Q. [15:35:50] I therefore conclude that in the absence of concrete evidence relating to
21 those photos, you are surprised to see that those people are 16 years old?

22 A. I did not say that I was surprised. I said that I would not be surprised.

23 Q. [15:36:13] I just want to be specific. I don't know if I have understood your
24 answer. Are you surprised that these people are 16 years old or is it normal for you that
25 they would be 16 years old?

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1 A. [15:36:31] I said clearly that I am not surprised, first because there is always an
2 exception to every rule so I am not surprised for that reason.

3 Q. [15:36:40] We'll stop there. But I have one last question for you, Mr Witness.
4 During your testimony you stated that Mr Ntaganda at some point was a commander in
5 Mongbwalu; is that correct?

6 A. [15:36:51] Yes, correct.

7 Q. [15:36:55] I put it to you, Mr Witness, that your sources in that connection are
8 inaccurate, because Mr Ntaganda has never been a commander in Mongbwalu. Does
9 that lead you to change your testimony or does it refresh your memory?

10 PRESIDING JUDGE FREMR: [15:37:14] Hold on, Mr Witness.
11 Mr Pace.

12 MR PACE: [15:37:16] I have no objection to the question, your Honour. Just to warn
13 the witness, we've referred to sources. If he needs to refer to particular sources to
14 respond we should move into private session.

15 PRESIDING JUDGE FREMR: [15:37:27] Mr Witness, your answer will be just general,
16 or if you want to make some specifics that could reveal your identity, we have to move
17 into private. If you just insist on your previous testimony, there is no need to move into
18 private.

19 THE WITNESS: [15:37:55] (Interpretation) Thank you, Mr President, I would like us to
20 go into private session.

21 PRESIDING JUDGE FREMR: [15:38:00] All right.
22 Court officer, let's move into private session.

23 (Private session at 3.38 p.m.)

24 (Redacted)

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11 (Open session at 4.02 p.m.)

12 THE COURT OFFICER: [16:02:54] We're in open session, Mr President.

13 PRESIDING JUDGE FREMR: [16:02:57] Thank you, court officer.

14 Mr Witness, it means that your testimony is concluded. You spent a long time with us,
15 three days. You answered I'm sure hundreds of questions. I would like to thank you
16 very much because I can imagine it was very tiring exercise, but I appreciate, all Chamber
17 appreciate that you remained focussed and that you patiently responded, clearly
18 responded all questions put to you. So thank you very much, Mr Witness. We believe
19 that your testimony will assist us in our effort to find the truth in this case. And now we
20 wish you a safe journey home.

21 Court usher, please assist Mr Witness to leave the courtroom.

22 THE WITNESS: [16:03:48] (Interpretation) Thank you.

23 (The witness is excused)

24 PRESIDING JUDGE FREMR: [16:04:01] Now I would like to allow teams to change
25 their composition if such a need. Is there?

1 MR PACE: [16:04:09] Yes, your Honour. I'm informed that it's my colleague who is
2 examining my next witness is either outside the door or on the way, so five minutes
3 would be --

4 PRESIDING JUDGE FREMR: [16:04:23] All right. So we will break for five minutes.

5 THE COURT OFFICER: [16:04:28] All rise.

6 (Recess taken at 4.04 p.m.)

7 (Upon resuming in open session at 4.10 p.m.)

8 THE COURT USHER: [16:10:25] All rise.

9 Please be seated.

10 PRESIDING JUDGE FREMR: [16:10:45] Good afternoon. Since I see some important
11 changes in appearances, I would like to update on that.

12 Ms Samson.

13 MS SAMSON: [16:10:56] Good afternoon, Mr President and your Honours. For the
14 Prosecution this afternoon Ms Selam Yirgou remains, and the Prosecution team has been
15 joined by myself, Nicole Samson, and Kristy Sim.

16 PRESIDING JUDGE FREMR: [16:11:11] Defence I also see some changes.

17 MR GOSNELL: [16:11:16] Good afternoon, Mr President. The Defence for
18 Mr Ntaganda now consists of Isabelle Martineau, Maria-Kim Vasconi and Christopher
19 Gosnell for Mr Ntaganda, who is not present this afternoon.

20 PRESIDING JUDGE FREMR: [16:11:29] Thank you, Mr Gosnell.

21 As concerns Legal Representatives, I note for the record there is no changes; am I right?

22 Yes, I see nodding.

23 And before the witness can be called, I will be just briefly addressing a few matters.

24 First, the Chamber recalls its oral decision on 9 September 2016 granting in-court
25 protective measures for Witness P-127 in the form of face and voice distortion and the use

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1 of a pseudonym. I note that the same protective measures were recommend by the VWU
2 on 21 September.

3 On 22 September, the Chamber received the VWU's vulnerability assessment for this
4 witness informing the Chamber that no special measures according to Rule 88 are
5 recommended.

6 As to the objections, according to my current information, there were no objections from
7 the Defence's part. Mr Gosnell, I mean, objections concerning the materials which are
8 intended to be used with this witness.

9 MR GOSNELL: [16:12:45] Subject only, I think, Mr President, to the following of the
10 proper procedure for the videos there was no objection.

11 PRESIDING JUDGE FREMR: [16:12:57] All right.

12 So in such a case we can then address them during the proceedings.

13 And third, in terms of timing, the examination-in-chief for this witness is to be completed
14 within four hours. And the Defence will have equal time as usually. However, having
15 regard to the scope of the expected testimony and also the fact that witness will be
16 testifying in French, the Chamber would expect that the Prosecution could complete the
17 examination-in-chief in a lesser time and encourages it to do so if possible. Ms Samson,
18 so it's not just order, it's rather encouragement.

19 And now we can turn to the scheduled testimony. Court officer, please have the witness
20 brought into the courtroom.

21 (The witness enters the courtroom)

22 PRESIDING JUDGE FREMR: [16:14:53] Mr Witness, good afternoon. Can you hear
23 me?

24 WITNESS: DRC-OTP-P-0127

25 (The witness speaks French)

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1 THE WITNESS: [16:15:02] (Interpretation) I can hear you well.

2 PRESIDING JUDGE FREMR: [16:15:04] Fine. Mr Witness, I would like to welcome
3 you to the courtroom on behalf of this Chamber. You are called to testify in the case
4 against Mr Bosco Ntaganda. And you will be soon asked questions both by the Judges
5 and lawyers. Please listen carefully to those questions. If you do not understand, feel
6 free to ask for the question to be repeated.

7 We want you to tell the truth and tell us what you saw, heard and sensed yourself. If
8 you didn't see or hear it yourself but you found out some other way, then you should
9 explain how.

10 Please testify just on that which you remember. Don't guess, don't make things up.

11 There is nothing wrong in saying "I don't know" or "I don't remember."

12 Do you understand all this, Mr Witness?

13 THE WITNESS: [16:16:00] (Interpretation) Yes.

14 PRESIDING JUDGE FREMR: [16:16:02] Good. Mr Witness, protective measures are
15 put in place to ensure that your identity is not revealed to the public. It means that the
16 public cannot see your face today and that your voice is being disguised so that the public
17 cannot recognize it.

18 We will refer you only as "Mr Witness" and ensure that your name and any other
19 information that risks revealing who you are is not broadcast to the public. Therefore,
20 whenever you need to describe anything that might reveal your identity, we will do so in
21 private session so that no one outside the courtroom can hear your answer.

22 Do you understand, Mr Witness?

23 THE WITNESS: [16:16:54] (Interpretation) Very well.

24 PRESIDING JUDGE FREMR: [16:16:56] Very good. Mr Witness, you will be provided
25 with piece of paper with the solemn undertaking. Please now make your solemn

1 undertaking to tell the truth by reading out the declaration you have in your hands.

2 THE WITNESS: [16:17:18] (Interpretation) I solemnly declare that I will tell the truth,
3 the whole truth and nothing but the truth.

4 PRESIDING JUDGE FREMR: [16:17:30] Thank you, Mr Witness. So you are now
5 under oath. And you need to be aware that it's an offence within the jurisdiction of this
6 Court to give false testimony. Do you understand that?

7 THE WITNESS: [16:17:47] (Interpretation) Yes.

8 PRESIDING JUDGE FREMR: [16:17:49] Good. And finally, Mr Witness, few practical
9 matters you should have in mind when giving your testimony.
10 It's important to speak into the microphone, to speak clearly and to speak at a slow pace.
11 When a question is asked, please count in your head to three at least, and only then give
12 your answer. This pause is essential for proper recording and interpretation.
13 If you have any questions during your testimony or if you feel that you need a break, just
14 raise your hand and we will then give you the opportunity to speak.

15 Have you understood all that, Mr Witness?

16 THE WITNESS: [16:18:40] (Interpretation) Very well.

17 PRESIDING JUDGE FREMR: [16:18:41] All right. Then we can start with your
18 testimony.

19 Now, Ms Samson you have roughly 10, 12 minutes so please at least start with the
20 introductory part of your examination.

21 MS SAMSON: [16:19:00] Very well, Mr President. Thank you.

22 QUESTIONED BY MS SAMSON:

23 Q. [16:19:03] Good afternoon, sir.

24 A. [16:19:05] Good afternoon.

25 Q. [16:19:06] We've had the opportunity to meet before but I'll repeat for you that my

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1 name is Nicole Samson and I'll be asking you questions today and Monday on behalf of
2 the Prosecution.

3 A. [16:19:22] Please do.

4 MS SAMSON: Mr President, for my first questions may we please move into private
5 session?

6 PRESIDING JUDGE FREMR: [16:19:27] Understandable.

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

8 (Private session at 4.19 p.m.)

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17 (Open session at 4.31 p.m.)

18 THE COURT OFFICER: [16:31:52] We're in open session, Mr President.

19 PRESIDING JUDGE FREMR: [16:31:58] Thank you, court officer.

20 Mr Witness, at the moment I thank you, but unfortunately we have to break at this rather
21 inconvenient moment because of special circumstances, and we have no other option than
22 to break now and continue on Monday. So for the moment I thank you very much. We
23 will see you again Monday, 9.30. And I would like, it's my duty even, to remind you that
24 in the meantime, during the weekend, you must not discuss your testimony with anybody
25 else. Do you understand that?

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- 1 THE WITNESS: [16:32:36] (Interpretation) Very clearly.
- 2 PRESIDING JUDGE FREMR: [16:32:38] Very well. So I thank you. If there are no
- 3 further requests for the floor. Ms Samson.
- 4 MS SAMSON: [16:32:43] Just one request, Mr President, and it has to do with access to
- 5 a redacted version of the ex parte hearing that the Defence held with the Chamber last
- 6 week, I believe it was. We're still waiting for access to the transcript.
- 7 PRESIDING JUDGE FREMR: [16:33:03] All right. We will consider that. And for
- 8 Monday, we are still sitting in normal hours but be careful from Tuesday, there will be
- 9 some changes in our sitting schedule, but we will remind you anyway on Monday, late
- 10 afternoon.
- 11 So now we adjourn and we will reconvene Monday, 9.30.
- 12 THE COURT USHER: [16:33:27] All rise.
- 13 (The hearing ends in open session at 4.33 p.m.)