

Trial Hearing
WITNESS: DRC-OTP-P-365

(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 Thursday, 6 October 2016
8 (The hearing starts in open session at 9.03 a.m.)
9 THE COURT USHER: [9:03:55] All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE FREMR: [9:04:21] Good morning, everybody.
13 Court officer, please call the case.
14 THE COURT OFFICER: [9:04:32] 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: [9:04:48] Thank you, court officer.
19 Appearances, Prosecution first.
20 MS RABANIT: [9:04:53] Your Honour, the Prosecution today, appearing for the
21 Prosecution is Nicole Samson, senior trial lawyer; Selamawit Yirgou, case manager,
22 and I am Marion Rabanit, associate trial lawyer.
23 PRESIDING JUDGE FREMR: [9:05:11] Thank you. Defence, please.
24 MR BOURGON: [9:05:17] (Interpretation) Good morning, your Honours. Good
25 morning to all those in the courtroom. Representing Bosco Ntaganda, who is

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1 present in the courtroom, is Han-Catherine Morin, Margaux Portier, Dignité Bwiza,
2 and myself, Stéphane Bourgon. Thank you, your Honour.

3 PRESIDING JUDGE FREMR: [9:05:32] Thank you, Mr Bourgon.

4 And Legal Representatives of Victims, please.

5 MR ABDOU: [9:05:41] Good morning, Mr President. Good morning, your
6 Honours. Mohamed Abdou for the former child soldiers.

7 MR SUPRUN: [9:05:47] (Interpretation) Good morning, your Honours. The
8 victims of the attacks are represented by the Office of Public Counsel for Victims,
9 Anne Grabowski and myself, Dmytro Suprun, counsel.

10 PRESIDING JUDGE FREMR: [9:06:03] Thank you, Mr Abdou. Thank you,
11 Mr Suprun.

12 Madam Witness, good morning. Are you feeling okay to finish your testimony
13 today?

14 WITNESS: DRC-OTP-P-0365 (On former oath)

15 (The witness speaks French)

16 THE WITNESS: [9:06:16] (Interpretation) Yes.

17 PRESIDING JUDGE FREMR: [9:06:18] Very well. So usual reminder, don't forget
18 that you are still under oath, which means that you have to speak truth and nothing
19 but the truth, and also please don't forget to observe pauses between question put to
20 you by Defence and your answer. It shouldn't take long because Mr Bourgon has
21 48 minutes to finish conclude cross-examination made by Defence.

22 Mr Bourgon, you have the floor.

23 MR BOURGON: [9:06:47] Thank you, Mr President.

24 QUESTIONED BY MR BOURGON: (Continuing) [9:06:50] (Interpretation)

25 Q. [9:06:57] Good morning, madam. Are you ready to go?

1 A. [9:07:01] Yes.

2 Q. [9:07:03] I'd like to return to your answers regarding children of under the age
3 of 18 years old in armed groups. You referred to this in your testimony yesterday.
4 I would refer to transcript 147 in French, lines 12 to 17, and you said that the matter of
5 children in the armed groups aged under 18 years old was one that was dealt with by
6 the participants at the Ituri Pacification Commission; do you recall that?

7 A. [9:07:46]

8 THE INTERPRETER: [9:07:48] Note from the interpreter: This is at page 106 in
9 that transcript.

10 MR BOURGON: [9:07:53] (Interpretation)

11 Q. [9:07:54] I'd like to also now refer to your statement, your statement of
12 February 2015.

13 For the purposes of the transcript, this is document 2080-0085. I'd like to draw your
14 attention more specifically to page 0091, paragraph 41. Madam, your statement, as
15 you know, is in English but I'm going to read some extracts from it which will be
16 translated for you. And I'd just like to establish whether you still agree with these
17 statements from your statement. So now in paragraph 41 you say, and I cite:

18 (Speaks English) "Every armed group in Ituri had child soldiers within their armies."

19 A. [9:09:06] Yes, I can explain that statement. To my knowledge, the
20 phenomenon of child soldiers came into being in Ituri with the event of the AFDL of
21 Laurent Kabila. That was the first point in time that we saw children acting as
22 soldiers, and they were referred to as kadogos. Kadogo is a Swahili word and means
23 "the little ones."

24 Now, later there were child soldiers in other armed groups, but I didn't document it,
25 but what I saw and what I encountered were ones in the UPC after the kadogos which

1 came with the AFDL.

2 Q. [9:10:26] As I don't have much time this morning, it would be helpful for me if
3 you could concentrate as far as possible on the questions that I need to put to you. I
4 have a series of very short questions to put to you regarding your statement. Of
5 course, if you feel you need to provide extra explanation, I wouldn't want to stop you,
6 but I have very little time so it would be good to focus on the individual question.

7 A. [9:10:56] Fine.

8 Q. [9:10:58] Now, in the same paragraph, paragraph 41 of your statement, you
9 refer to the reasons why children may - that is to say persons under the age of
10 18 years - may have voluntarily enlisted or have been forced to join an armed group.
11 So I would like to confirm in some of the examples you gave. It's in English. "Some
12 children thought it was something to be proud of when joining a military group or
13 joined because of peer pressure."

14 (Interpretation) Do you still affirm that statement?

15 A. [9:11:50] Yes.

16 Q. [9:11:55] You then go on to say: "Some children joined to revenge the death
17 of their family members."

18 (Interpretation) Do you still believe that to be correct?

19 A. [9:12:10] Yes, what I said there is true. In the case of some child soldiers,
20 others joined because of their enthusiasm, if you like, of fanaticism. That was the
21 case with FADL for instance.

22 Another case was where children were all family members of the children had been
23 killed and those children would want to take revenge, and I believe that those
24 children were very tough.

25 In the case of other children, they had nothing to eat, having been displaced right and

1 left; they were hungry. And there are even cases where children were encouraged to
2 join by their relatives.

3 Even if those specific scenarios I've just explained are not -- were not general cases,
4 they would come about.

5 Q. [9:13:22] Okay. Thank you very much for that. You deal with the same
6 topic on paragraph 45 on the same page, that's page 0091, and there you say the
7 following:

8 (Speaks English) "I personally did not see that a group went to take a child by force
9 from homes to the military camp."

10 (Interpretation) Do you still believe that to be correct, that statement from your
11 witness statement?

12 A. [9:13:59] Yes, indeed. I have never seen a child being taken from its family by
13 force to become a soldier. I never saw that.

14 Q. [9:14:17] And remaining with the same topic, in paragraph 43 of your
15 statement you say the following: (Speaks English) "I personally did not interview or
16 meet child soldiers. (Redacted) --

17 MR BOURGON: [9:14:34] I apologise, Mr President, I believe we need to go into
18 private session.

19 PRESIDING JUDGE FREMR: [9:14:39] Exactly.

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

21 (Private session at 9.14 a.m.)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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11 (Open session at 10.05 a.m.)

12 THE COURT OFFICER: [10:05:51] We're in open session, Mr President.

13 PRESIDING JUDGE FREMR: [10:05:54] Madam Witness, it concludes your
14 testimony. On behalf of this Chamber I would like to thank you very much that you
15 made such a long journey to testify, because I really believe that your testimony will
16 significantly assist us in our deliberation and will assist us in our effort to find the
17 truth. So thank you very much, Madam Witness, and we wish you safe journey
18 home.

19 THE WITNESS: [10:06:29] (Interpretation) Thank you.

20 PRESIDING JUDGE FREMR: [10:06:33] Now, please, court usher, assist Madam
21 Witness to leave the courtroom.

22 (The witness is excused)

23 PRESIDING JUDGE FREMR: [10:06:56] And now we break, we will take short
24 break in order to allow you to prepare for the upcoming witness. So as soon you
25 will be ready the court officer will inform us. We will be in the deliberation room.

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1 So now we break.

2 THE COURT OFFICER: [10:07:18] All rise.

3 (Recess taken at 10.07 a.m.)

4 (Upon resuming in open session at 10.18 a.m.)

5 THE COURT USHER: [10:18:04] All rise.

6 Please be seated.

7 PRESIDING JUDGE FREMR: [10:18:25] Good morning again.

8 Since I see many changes in appearances, I would like to ask for updates, starting
9 with Prosecution.

10 MS LUPING: [10:18:36] Yes, good morning Mr President, your Honours. There
11 have been a number of changes. In addition to Nicole Samson and Marion Rabanit
12 and Selam Yirgou, there is myself Dianne Luping, trial lawyer; Claudine Umurungi,
13 assistant legal officer; and Ms Kristy Sim, assistant trial lawyer.

14 PRESIDING JUDGE FREMR: [10:18:58] Thank you, Ms Luping.

15 Now Defence, please.

16 MS GRANDON: [10:19:04] (Interpretation) Good morning, your Honours. The
17 Defence is now represented by Stéphane Bourgon, Maria-Kim Vasconi, Christopher
18 Gosnell, Isabelle Martineau and myself Chloé Grandon. Thank you.

19 PRESIDING JUDGE FREMR: [10:19:25] And I can note for the record that as
20 concerns Legal Representatives of Victims there are no changes.

21 Now before the witness can be called, I will briefly address a few procedural matters.

22 First, the Chamber recalls its decision on in-court protective measures for Witness

23 P-912. This was filing number 1277 ordering face and voice distortion and the use of
24 a pseudonym during testimony.

25 The Chamber also granted the Prosecution's request for special measures including

1 that, one, the witnesses be provided with reading and writing assistance during her
2 testimony, if required; two, that the questioning be adapted to the needs and
3 capacities of the witness, and I highlight this point to the parties; and, third, that the
4 witness be assisted in court by Swahili speaking support assistant.

5 I note that these same protective measures were recommended by the VWU on
6 4 October 2016. The Chamber also received the VWU vulnerability assessment on
7 the same date, and having taken into consideration decided that, one, questions
8 should be short and straightforward and framed in a manner that takes into account
9 the sensitive nature of the evidence to be elicited and, two, breaks be taken, if
10 necessary, during the witness testimony.

11 Also as already indicated by the Chamber in its decision, the Chamber will assess on a
12 case-by-case basis whether certain evidence will have to be heard in private session in
13 order to protect the witness's dignity and well-being.

14 The Chamber notes the Defence notice of objection to the use and/or admission of
15 certain items the Prosecution may seek to use with this witness sent via email on
16 4 October. Any objections to use of material with this witness will be addressed if
17 and when they arise throughout the course of the examination-in-chief.

18 Finally, in terms of timing, the Prosecution has three hours for its
19 examination-in-chief of this witness, however, having regard to the scope of the
20 expected testimony, the Chamber would expect that the Prosecution could complete
21 its examination in less time and encourages it to do so, if possible.

22 And one additional comment: I still believe that the examination should focus on
23 those parts of testimony that are really unique for this witness, which in other words
24 means that the Chamber doesn't see necessary to spend too much time on
25 examination concerning some general matters like history of the conflict and tension

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1 between ethnics and so on but, rather, to focus on that part which is really unique for
2 this witness.

3 Now we can turn to the scheduled testimony. So, court officer, please have the
4 witness brought into the courtroom.

5 Mr Suprun.

6 MR SUPRUN: [10:22:59] (Interpretation) Your Honour, I would like to remind
7 the Chamber that I filed a request seeking authorisation to question this witness. I
8 did so in April. That was because this testimony was originally planned for April.
9 Thank you.

10 PRESIDING JUDGE FREMR: [10:23:17] Mr Suprun, you are right. Sorry that I
11 omitted that. And as usually we will after the Prosecution examination allow you
12 again to submit your request or maybe update that and then we will decide on that.
13 Thank you for this reminder.

14 (The witness enters the courtroom)

15 PRESIDING JUDGE FREMR: [10:24:21] Madam, good morning. Can you hear
16 me?

17 WITNESS: DRC-OTP-P-0912

18 (The witness speaks Swahili)

19 THE WITNESS: [10:24:30] (Interpretation) Yes, I can hear you.

20 PRESIDING JUDGE FREMR: [10:24:34] Madam Witness, I would like to welcome
21 you on behalf of this Chamber to the courtroom. You are called to testify in the case
22 against Mr Bosco Ntaganda. You will be soon asked questions both by the Judges
23 and lawyers in the courtroom. In this connection, I would like to guide you as
24 follows:

25 Please listen carefully to those questions. If you do not understand, feel free to ask

1 for the question to be repeated. We want you to tell the truth and tell us what you
2 saw, heard and sensed yourself. If you didn't see or hear it yourself but you found
3 out some other way, then you should explain how.

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

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

6 Do you understand all this, Madam Witness?

7 THE WITNESS: [10:25:55] (Interpretation) Yes, I understand.

8 PRESIDING JUDGE FREMR: [10:25:58] Very good. Madam Witness, protective
9 measures are put in place to ensure that your identity is not revealed to the public. It
10 in practice means that the public cannot see your face and that your voice is being
11 disguised so that the public cannot recognize it. We will refer you only as "Madam
12 Witness" and ensure that your name and any other information that risks revealing
13 who you are is not broadcast to the public. Therefore, whenever you need to
14 describe anything that might reveal your identity, we will do so in private session so
15 that no one outside the courtroom can hear your answer.

16 The Chamber also recognizes that your security and well-being is important during
17 the course of this trial, so if at any point you feel that you would like a brief break
18 from giving your testimony or you feel unwell, do not hesitate to let me know by
19 raising your hand.

20 Do you understand, Madam Witness?

21 THE WITNESS: [10:27:25] (Interpretation) Yes, I understand.

22 PRESIDING JUDGE FREMR: [10:27:28] Very good. Madam Witness, now I will
23 ask you to take the solemn undertaking to tell the truth and you can just repeat the
24 text of this undertaking after me. So I will start now: I solemnly declare that I will
25 speak the truth.

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1 Could you just repeat it after me. I will start again: I solemnly declare --

2 THE WITNESS: [10:28:03] (Interpretation) I solemnly swear that I shall say the
3 truth.

4 PRESIDING JUDGE FREMR: [10:28:10] And I will continue: The whole truth.

5 THE WITNESS: [10:28:20] (Interpretation) The whole truth.

6 PRESIDING JUDGE FREMR: [10:28:22] And nothing but the truth.

7 THE WITNESS: [10:28:27] (Interpretation) And nothing but the truth.

8 PRESIDING JUDGE FREMR: [10:28:32] Very well, Madam Witness. Thank you.

9 So it means that now you are under oath. So you also need to be aware that it's an
10 offence within the jurisdiction of this Court to give false testimony. Do you
11 understand that, Madam Witness?

12 THE WITNESS: [10:28:54] (Interpretation) Yes, I understand.

13 PRESIDING JUDGE FREMR: [10:28:56] Very well. And finally, few practical
14 matters you should have in mind when giving your testimony:

15 It's important to speak into the microphone, which you are doing very well so far, to
16 speak clearly and to speak at a slow pace approximately like me now to allow the
17 interpreters to translate everything.

18 And when a question is asked, please do not respond immediately, but please count
19 in your head to three and only then give your answer, because this pause between the
20 question and answer is essential for us to properly transcribe and interpret what you
21 are saying.

22 Have you understood all that, Madam Witness?

23 THE WITNESS: [10:30:04] (Interpretation) Yes, I understand.

24 PRESIDING JUDGE FREMR: [10:30:05] Fine. So now we can start with your
25 testimony. I am giving floor to Ms Luping.

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1 MS LUPING: [10:30:10] Thank you, Mr President. Thank you, your Honours.

2 QUESTIONED BY MS LUPING:

3 Q. [10:30:22] Good morning, Madam Witness. Can you hear me?

4 A. [10:30:24] Yes. Good morning. I can hear you.

5 Q. [10:30:26] Madam Witness, we've met once before. My name is Dianne

6 Luping and I will be asking you questions on behalf of the Prosecution this morning.

7 Now, Madam Witness, when we met before as I explained, our time unfortunately is

8 very short. I have only about three hours with you and possibly, possibly even less

9 than that.

10 One thing that I would simply add to the reminders that the Presiding Judge gave to

11 you is that when you answer my questions, if you could please try to keep your

12 sentences as short as possible so it would help the work of the interpreters and the

13 transcribers just to make sure that they capture everything that you say.

14 Now, for my first series of questions, Mr President, I would ask that we please move

15 into private session, with your leave.

16 PRESIDING JUDGE FREMR: [10:31:25] For sure.

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

18 (Private session at 10.31 a.m.)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

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WITNESS: DRC-OTP-P-912

(Private Session)

ICC-01/04-02/06

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- 13 (Open session at 10.45 p.m.)
- 14 THE COURT OFFICER: [10:45:07] We're in open session, Mr President.
- 15 PRESIDING JUDGE FREMR: [10:45:10] Thank you, court officer.
- 16 Ms Luping, please proceed.
- 17 MS LUPING: [10:45:15] Thank you, Mr President.
- 18 Q. [10:45:16] Now, Madam Witness, you've just explained that in 2002 when you
- 19 were living in the area of Mongbwalu that you recalled that there were a number of
- 20 battles, and my question relates to the very first battle, the first battle that you can
- 21 remember. Can you please describe for the Judges what happened, from the
- 22 moment that you first became aware that there was an attack or a battle taking place
- 23 in Mongbwalu? Please describe, what did you see? What did you hear?
- 24 A. [10:46:12] We were at home and we saw people going by, passing by and
- 25 saying that the UPC troops had just entered our area.

1 Q. [10:46:35] And after you heard people going by saying the UPC troops had
2 just entered, can you describe what happened next? What did you see or hear?

3 A. [10:47:00] I saw people running away, fleeing. So we also left our house.

4 Q. [10:47:12] Okay, Madam Witness, now without giving the name of any person
5 now, can you explain where did you and your family flee to?

6 A. [10:47:47] From Gangala we went to Depot.

7 MS LUPING: [10:48:02] Mr President, I think just to make matters a little bit easier
8 for the witness, I might just ask that we just briefly go into private session for a
9 moment for one question.

10 PRESIDING JUDGE FREMR: [10:48:14] Fully understandable. You can stay
11 longer because, you know, the issue is really very complex.

12 Let's move into private session now.

13 (Private session at 10.48 a.m.)

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23 (Open session at 10.57 a.m.)

24 THE COURT OFFICER: [10:57:35] We're in open session.

25 PRESIDING JUDGE FREMR: [10:57:40] Thank you, court officer.

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1 Ms Luping, please proceed.

2 MS LUPING: [10:57:43] Thank you, Mr President.

3 Q. [10:57:45] Now, Madam Witness, you've just described how some soldiers
4 came by the house that you were at during this first battle. Could you clarify
5 whether you could actually see the soldiers with your own eyes?

6 A. [10:58:17] Yes, I saw them with my own eyes.

7 Q. [10:58:22] And the soldiers that you could see, can you recall roughly how
8 many there were?

9 A. [10:58:33] There were many of them on the road. Some had come to ask for
10 water and maybe I had -- I could have been able to count how many had come to ask
11 for water, but at that time I did not count.

12 Q. [10:58:58] And you said that there were many also by the road. Could you
13 describe, first of all, whether -- what they were wearing? Were they wearing
14 uniforms?

15 PRESIDING JUDGE FREMR: [10:59:12] Ms Grandon.

16 MS GRANDON: [10:59:15] (Interpretation) It would appear to me that the
17 question is very leading.

18 PRESIDING JUDGE FREMR: [10:59:24] No need I think to -- I will just say that this
19 objection is overruled because there was some soldiers were mentioned, so I think the
20 logical attribute of soldiers is that they should have uniforms.
21 Please proceed.

22 MS LUPING: [10:59:43] Thank you, Mr President.

23 Q. [10:59:44] So, Madam Witness, if you could respond to my question as to what
24 you saw the soldiers wearing.

25 A. [11:00:00] They were wearing military uniforms referred to as tache-tache.

1 Q. [11:00:07] And the soldiers that you saw that were wearing tache-tache
2 uniform, did you see that they had anything distinctive on their uniforms?

3 A. [11:00:41] Yes.

4 Q. [11:00:45] Can you please describe what you saw?

5 A. [11:00:51] The uniforms were brand-new and they had their ranks on -- they
6 were bearing ranks on the shoulders.

7 Q. [11:01:15] And when you say "they were bearing ranks on their shoulders," can
8 you describe what you saw on the shoulders?

9 A. [11:01:38] Well, on some of those ranks you had metal items, you had animals
10 and effigies of animals.

11 Q. [11:01:56] And also just to clarify, when you said tache-tache, what colours
12 were the uniforms?

13 A. [11:02:19] It was a mixture of green and black.

14 Q. [11:02:29] Now, Mr President, I do have a few more questions relating to the
15 identities of these individuals, but I know we are at the break.

16 PRESIDING JUDGE FREMR: [11:02:38] Yes. I highly recommend to continue
17 until you just conclude this issue. Just it's up to you to find the convenient time to
18 break within 10, 15 minutes because taking into account character of testimony, I
19 don't find it necessary to break and to respect strictly our normal timing. So please
20 go ahead.

21 MS LUPING: [11:02:58] Thank you, Mr President. I appreciate that. I think that
22 would indeed be easier.

23 Q. [11:03:06] Now, these soldiers that you saw, Madam Witness, were any of
24 them carrying any weapons?

25 A. [11:03:27] Yes, some of them had firearms.

1 Q. [11:03:29] And other than firearms, did you see any other types of weapons
2 that were being carried?

3 A. [11:03:51] They also had heavy weapons.

4 Q. [11:04:02] And the soldiers that you heard speaking, do you recall what
5 language they were speaking in?

6 A. [11:04:23] When they came to ask for water, I heard them speaking Lingala.

7 Q. [11:04:32] And could you tell what ethnicity these soldiers were?

8 A. [11:04:50] Those soldiers were of Hema ethnicity.

9 Q. [11:05:01] And when you say they were of Hema ethnicity, how could you tell
10 they were Hema?

11 A. [11:05:12] I came to the conclusion that they were Hema because when they
12 finished drinking the water, they spoke among themselves in their Hema language,
13 and then they went to -- towards Parking.

14 Q. [11:05:41] And when you say that they spoke amongst themselves in their
15 Hema language, are you able to recognize the Hema language?

16 A. [11:05:51] Well, I did not know that, but it is my father who told me that they
17 were Hema. In fact, it is, it is papa who says that they were Hema.

18 Q. [11:06:22] And these Hema soldiers that you saw, for how long were they near
19 the house that you were at? Did they stay there for very long?

20 A. [11:06:51] No. They did not stay there for long. They were relaying each
21 other, taking over from each other. Some would come and go while others would
22 come again. But they did not spend much time there.

23 Q. [11:07:14] Now, you said before, this was in private session, that you had at
24 one point heard some crackling of gunshots. At any other time the same day did
25 you ever hear gunshots again?

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1 A. [11:07:53] There were some gunshots which we could hear coming from far
2 away.

3 MS LUPING: [11:08:03] Mr President, I think that this is a convenient moment to
4 break with your leave.

5 PRESIDING JUDGE FREMR: [11:08:08] Very well.

6 So we will now take our regular morning 30 minutes break. Now it's 11.10, which
7 means that we will resume at 11.40.

8 THE COURT OFFICER: [11:08:26] All rise.

9 (Recess taken at 11.08 a.m.)

10 (Upon resuming in open session at 11.41 a.m.)

11 THE COURT USHER: [11:41:55] All rise. Please be seated.

12 PRESIDING JUDGE FREMR: [11:42:24] Before we continue, I see Ms Grandon on
13 her feet. Maître Grandon.

14 MS GRANDON: [11:42:33] (No interpretation)

15 THE INTERPRETER: Mr President, the interpreters didn't get what Ms Grandon
16 was saying. The microphone was occupied.

17 PRESIDING JUDGE FREMR: [11:42:43] Madam Grandon just announced or
18 informed that Mr Bourgon has left.

19 All right. So we can now continue with examination-in-chief of our witness.

20 And before we continue, Madam Witness, allow me to say that I really appreciate that
21 you fully follow my guidance, you clearly or you listened carefully to the questions,
22 you responded clearly. You also observed pauses between the answer and your
23 response, so you are doing very well. So please continue in the same way. Thank
24 you.

25 And now, Ms Luping, you have the floor.

1 MS LUPING: [11:43:29] Thank you, Mr President. I believe we can still remain in
2 open session for my further questions. I will have to move shortly though into
3 private session.

4 Q. Now, Madam Witness, just before the break, you explained that when the Hema
5 soldiers finished drinking water, that they went towards the Parking in Mongbwalu.
6 Now, when the Hema soldiers left, can you describe what was happening at that
7 time?

8 A. [11:44:14] We heard some gunshots coming from Parking and there was gun
9 firing all over the place.

10 Q. [11:44:27] And do you know who the Hema soldiers were fighting against?

11 A. [11:44:52] Yes. They were fighting against the Lendu.

12 Q. [11:45:00] And did you see any of these Lendu fighters at any point that day?

13 A. [11:45:24] We saw them later on. We saw some Lendu combatants, not Lendu
14 soldiers.

15 Q. [11:45:34] And these Lendu combatants that you've referred to, can you describe
16 what those that you saw were wearing?

17 A. [11:46:01] They were wearing civilian clothes. They did not have military
18 uniforms. They were wearing the ordinary clothes that everyone wears.

19 Q. [11:46:12] And these Lendu combatants, can you recall if they were wearing
20 anything distinctive other than civilian clothing?

21 A. [11:46:38] I saw them. They were wearing civilian attire, shirts and trousers.
22 They were dressed like any ordinary person would be dressed.

23 Q. [11:46:51] And the Lendu combatants that you saw, did you see any carrying
24 weapons?

25 A. [11:47:16] They were carrying arrows, arrows and machetes.

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1 PRESIDING JUDGE FREMR: [11:47:25] Sorry to interrupt, but allow me one
2 additional question. And among those Lendu combatants, had you seen just men or
3 also women?

4 A. [11:47:48] Only men.

5 PRESIDING JUDGE FREMR: [11:47:50] Thank you. Ms Luping, please proceed.

6 MS LUPING: [11:47:55]

7 Q. [11:47:55] And the Lendu combatants that you saw, did you hear any of them
8 speaking?

9 A. [11:48:13] When we saw them, they asked members of the population to go to
10 Sayo, and they were speaking in Swahili.

11 Q. [11:48:39] And when they told the population to go to Sayo, can you remember
12 any other instructions that they gave the population?

13 A. [11:49:05] He asked everyone to go towards Sayo and we all went towards Sayo.
14 We all went there.

15 MS LUPING: [11:49:20] Mr President, my next series of questions are of an
16 identifying nature, so with your leave, if we could move into private session, please.

17 PRESIDING JUDGE FREMR: [11:49:28] Certainly. And for the information of the
18 public, this witness is protected one, so she was guaranteed, too, that her identity will
19 not be revealed to the public, that is why we now have to move into private session.
20 Court officer, let's move into private session.

21 (Private session at 11.49 a.m.)

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14 (Open session at 12.14 p.m.)

15 THE COURT OFFICER: [12:14:38] We are in open session, Mr President.

16 PRESIDING JUDGE FREMR: [12:14:40] Thank you, court officer. Ms Luping,
17 please proceed.

18 MS LUPING: [12:14:43] Thank you, Mr President. Thank you, court officer.

19 Q. [12:14:45] Madam Witness, now, you've confirmed that you were present when
20 there was a second battle in Mongbwalu. I'm now going to ask you if you can please
21 describe, with as much detail as possible, what happened, from the moment you first
22 became aware that there was this second battle taking place in Mongbwalu.

23 A. [12:15:42] We were at the house and we heard people say that war had broken
24 out. People were starting to flee. And then they said, "Well, war is coming and the
25 enemies are coming." And we said "Who are these enemy?" And we were there.

1 We stayed there.

2 Q. [12:16:15] And you said people were saying that the enemies are coming. Who
3 were these people that you heard saying that the enemies were coming?

4 A. [12:16:31] It was the Lendu who said that.

5 Q. [12:16:43] And you said that you stayed at the house. Can you describe what
6 happened, what you saw or you heard as the battle was unfolding?

7 A. [12:17:17] We heard gunshots and we saw people running. People were fleeing
8 and we could hear gunfire. That's what we heard. That's what I personally heard,
9 gunfire.

10 Q. [12:17:38] And at any point did you see the enemies that the Lendu were
11 referring to?

12 A. [12:17:57] At that time I hadn't yet seen them. I saw them later, a while
13 afterwards.

14 Q. [12:18:13] And when you saw them afterwards, can you describe what
15 happened?

16 I'm just noting for the record that Madam Witness has raised her hand.

17 Madam Witness, are you concerned that your answer might identify you? I'm just
18 noting that she's nodding her head.

19 With your leave, Mr President, if we could move into private session?

20 PRESIDING JUDGE FREMR: [12:18:47] Court officer, let's move into private session.

21 (Private session at 12.18 p.m.)

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9 (Open session at 12.24 p.m.)

10 THE COURT OFFICER: [12:24:25] We are in open session.

11 PRESIDING JUDGE FREMR: [12:24:27] Thank you.

12 Ms Luping, please proceed.

13 MS LUPING: [12:24:31] Thank you, Mr President.

14 Q. Now, Madam Witness, these soldiers that came to the house and who spoke to
15 somebody in the house, can you describe what they were wearing, the ones that you
16 saw?

17 A. [12:24:58] They were wearing military uniforms. Some didn't have uniforms.

18 Others had uniforms on lower part, others the top part, and others had both. So they
19 all had military uniforms.

20 Q. [12:25:18] And the military uniforms that they were wearing, could you describe
21 what colour they were?

22 A. [12:25:37] They were tache-tache uniforms. They were green and black, mixed.
23 That's tache-tache.

24 Q. [12:25:48] And the soldiers that you saw, were they males or females, or both?

25 A. [12:26:11] At that time there were only men, that I saw. When they went

1 towards Parking. Those people were just men.

2 Q. [12:26:22] And did you see any other groups of soldiers at another time that day,
3 other than these soldiers?

4 A. [12:26:49] After there were other soldiers. There was a woman. He was in the
5 guava field with other soldiers. There were three of them, they were in the guava
6 field and it was those who we were able to see.

7 Q. [12:27:12] So you said you saw a woman amongst soldiers; is that correct?

8 A. [12:27:26] That's right, there was a woman among them.

9 Q. [12:27:30] And was she one of the soldiers?

10 A. [12:27:43] Yes, that girl was a soldier.

11 Q. [12:27:51] And could you estimate how old she was?

12 A. [12:28:15] I think when she went -- she was a bit older than me. She wasn't
13 much older than me. She could have been my age, I think, but not very much older.

14 Q. [12:28:33] And was she still part of this group that the Lendus had referred to as
15 the enemies?

16 A. [12:28:55] Yes. They arrived together. She was with them.

17 Q. [12:29:01] And these soldiers that were described as the enemies by the Lendu
18 combatants, do you know what ethnicity they were?

19 A. [12:29:26] I heard them say that they were from the UPC. That's what I heard.
20 They were from the UPC. They were UPC. They said UPC had already entered
21 into the town; that's what I heard.

22 Q. [12:29:46] And when you say that you heard that they were UPC, who did you
23 hear that from?

24 A. [12:30:04] From the people who were fleeing, they were going through the door.
25 They said UPC troops have already taken the locality. It was people who were

1 fleeing, without stopping. They were fleeing.

2 Q. [12:30:28] Now, you've mentioned a girl about your age amongst these UPC
3 soldiers. Did you see any other young soldiers amongst them and, if so, how many?

4 A. [12:31:08] I saw kadogos, two or three of them, kadogo soldiers. They came to
5 the guava trees. They were with the girl, and they came to the guava trees. And
6 afterwards, to collect them. And then they left.

7 Q. [12:31:25] And these, these kadogos, were they boys and girls or -- I'm sorry,
8 boys, or girls, or both?

9 A. [12:31:47] There was just one girl, and small boys. I saw the girl, but the others
10 were boys.

11 Q. [12:31:59] And were they wearing uniforms, or not?

12 A. Well, one of them -- or, some of them were wearing uniform tops or uniform
13 trousers, but then the sleeves or the trousers would be rolled up, for those who were
14 wearing trousers because the trousers were too long for them. They had to roll them
15 up.

16 Q. [12:32:54] Now, you've mentioned that you saw soldiers going towards an area
17 called Parking in Mongbwalu. Could you explain where in Mongbwalu this area
18 called Parking is located?

19 A. [12:33:37] Parking is somewhere below the Bemu school, a few metres from the
20 Bemu school.

21 Q. [12:33:50] And what is in this area that people called Parking? What's located
22 there?

23 A. [12:34:08] Parking is the area where rallies and meetings take place and that
24 place is called Parking. There are several shops in the area, and the area is known as
25 Parking.

1 Q. [12:34:29] Now, you've described how you saw the UPC soldiers who'd come to
2 your house leaving and heading towards Parking. Could you see what they were
3 doing?

4 A. [12:35:01] I was not in Parking and I did not see what they were doing. I only
5 saw them go by as they were headed to Parking.

6 Q. [12:35:39] And when you saw soldiers go by and heading towards Parking, did
7 you see them carrying anything?

8 A. [12:36:02] When they went by, some of them were carrying weapons while
9 others were not, but on their way back, they were carrying many items, some of them
10 in bags, and they went towards Kavu.

11 Q. [12:36:24] Now, you said that on their way back they were carrying many items,
12 some of them in bags. What types of items, Madam Witness?

13 A. [12:36:51] I do not know what the contents of those bags were, but as they went
14 back we were told that they had looted and it was those looted items that they were
15 taking to the camp.

16 Q. [12:37:08] And when you said that you were told that they had looted, who told
17 you that?

18 A. [12:37:33] They themselves were saying it. They said that the time had come to
19 loot, and they were saying so as they went by.

20 Q. [12:37:46] And these soldiers who were saying it was time to loot, what
21 language were they speaking in?

22 A. [12:38:06] Some of them were speaking Swahili, while others were speaking
23 Lingala.

24 Q. [12:38:21] And at any point did you see any of these soldiers looting, with your
25 own eyes?

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1 A. [12:38:45] It is when they came to loot in our village that I saw them with my
2 own eyes.

3 MS LUPING: [12:38:56] Mr President, I believe my next series of questions may be
4 of an identifying nature. With your leave, if we could please move back into private
5 session.

6 PRESIDING JUDGE FREMR: [12:39:04] All right.

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

8 (Private session at 12.39 p.m.)

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20 (Open session at 1.33 p.m.)

21 THE COURT OFFICER: [13:33:15] We are in open session, Mr President.

22 PRESIDING JUDGE FREMR: [13:33:17] Thank you. So before we break for our

23 regular lunchbreak, update on timing. So far Ms Luping used two hours 26 minutes,

24 which means that she still has at her disposal 34 minutes.

25 Ms Luping, do you think you will need all that time or is there any chance that you

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1 would finish earlier?

2 MS LUPING: [13:33:43] I don't believe I'll need all of that time, Mr President. I'm
3 loath to confine myself at this point, though, to a definitive answer, but I don't believe
4 I'll use all that time.

5 PRESIDING JUDGE FREMR: [13:33:56] All right.

6 So now we break and we will continue at 3 o'clock, and our last session should take
7 two hours.

8 THE COURT USHER: [13:34:05] All rise.

9 (Recess taken at 1.34 p.m.)

10 (Upon resuming in open session at 3.02 p.m.)

11 THE COURT USHER: [15:02:14] All rise.

12 Please be seated.

13 PRESIDING JUDGE FREMR: [15:02:44] Good afternoon, everybody.

14 Good afternoon, Madam Witness.

15 We can directly continue with the rest of examination-in-chief of our witness. Ms
16 Luping, you have the floor, as you still have 34 minutes.

17 MS LUPING: [15:02:58] Thank you, Mr President.

18 Q. [15:03:00] And good afternoon, Madam Witness. We can stay in open session
19 for my next two questions or so. Now, Madam Witness, before the break, we were
20 talking about events during a second battle in Mongbwalu. And my first question is
21 this: Did the UPC soldiers leave Mongbwalu at some point following this second
22 battle?

23 A. [15:03:33] The UPC troops remained there. Even after the looting, they
24 remained there.

25 Q. [15:03:59] And at some point, I'm talking about after the fighting, at some

1 point did the UPC soldiers leave Mongbwalu, the Mongbwalu area?

2 A. [15:04:12] After the battle, there was looting, but then they remained in the town
3 and only left later.

4 Q. [15:04:33] And when the UPC left later, what happened when they left? Do
5 you know what was the cause for them to leave?

6 A. [15:04:46] By the time they left, (Redacted), but they came back and they said
7 that the Lendu had taken over the town. In that situation they then escaped and
8 they were fleeing.

9 Q. [15:05:17] Madam Witness, just a reminder, we're in open session now, public
10 session, which just means that the people outside can hear you. But I'm just -- just to
11 give you some peace of mind, we are going to ask that the mention of the name that
12 you just gave be redacted.

13 PRESIDING JUDGE FREMR: [15:05:33] Yes, I can confirm.

14 MS LUPING: [15:05:45]

15 Q. [15:05:47] Now, Madam Witness, you said that you were still at a certain place,
16 and then you said, "But they came back and they said that the Lendu had taken over
17 the town. They then escaped and they were fleeing."

18 Could you clarify who is "they"?

19 A. [15:06:08] When the UPC troops started to flee, they said that it is because the
20 Lendu had taken over the city. They started to flee. Those from the camp went by
21 road, along with other persons. The women who used to live there were all -- they
22 all left rather hastily at the same time.

23 MS LUPING: [15:07:00] Mr President, I think it might be safer for my next two
24 questions if they are in private session, with your leave.

25 PRESIDING JUDGE FREMR: [15:07:06] Certainly. Court officer please, let's move

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- 1 into private session.
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6 (Open session at 4.53 p.m.)

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

8 PRESIDING JUDGE FREMR: [16:54:04] Thank you, court officer.

9 Madam Witness, thank you very much. I understand that it was not easy for you to
10 answer so many questions today, and obviously some of them were not easy for you
11 to answer. But I appreciate that. Now you will be free till tomorrow morning,
12 when we will continue with the rest of your testimony. And it's my duty to remind
13 you not to discuss your testimony in the meantime until tomorrow with anybody else.
14 Do you understand that, Madam Witness?

15 THE WITNESS: [16:54:44] (Interpretation) Yes, I've understood.

16 PRESIDING JUDGE FREMR: [16:54:55] So now thank you, and we will see you
17 tomorrow. I would like to ask court usher to assist Madam Witness to leave the
18 courtroom.

19 (The witness stands down)

20 PRESIDING JUDGE FREMR:

21 And now as concerns timing for tomorrow, don't take it, Ms Grandon, as any kind of
22 threat or pressure for, before the Chamber's ultimately whether to start at 9.00 or 9.30,
23 which means 5 and a half or 6 hours schedule. At the moment I got information you
24 used 1 hour, 1 minute, so you still have 1 hour, 53 minutes. Do you think that you
25 will need all that time or there is some chance that you will need less?

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1 MS GRANDON: [16:55:46] (Interpretation) I hope that I will have finished before
2 the amount of time that has been allocated to me.

3 PRESIDING JUDGE FREMR: [16:55:59] Ms Grandon, it's, for me, for the sake of
4 planning, a rather weak answer. If you intend to finish 2, 3 minutes before this limit,
5 it will not be very helpful. So could you at least, I know it's not easy to indicate, but
6 at least some rough estimation what time you think you will need tomorrow?

7 MS GRANDON: [16:56:20] (Interpretation) I think 1 hour would be feasible.

8 PRESIDING JUDGE FREMR: [16:56:26] So we rely on your estimation, which means
9 that we can afford to start at 9.30. And we will then keep our 5 and a half hour
10 schedule, which means first session 9.30 to 11 and then, as usually, two 2-hours
11 sessions. And for today I would like to thank all those who supported us during this
12 long day, to the interpreters, to the recorders, and also to the guards. So thank you
13 very much. And see you tomorrow 9.30.

14 Thank you for the reminder. Even I had this reminder in front of me. I also have to
15 deliver this oral ruling. Sorry for that. It will be just 5 minutes.

16 So this oral decision concerns Prosecution request for in-court protective measures for
17 Witness P-301, whose testimony is expected to start tomorrow morning, contained in
18 filing number 1500.

19 On 21 September 2016, the Defence opposed the request in filing number 1527.

20 The Chamber incorporates by reference the applicable law set out in its first decision
21 on in-court protective measures, which was filing number 824.

22 In assessing whether there exists an objectively justifiable risk, the Chamber has had
23 regard to the VWU's assessment of today, 6 October 2016, that public testimony by
24 this witness might trigger retaliation and that protective measures will minimise such
25 risks.

1 The Chamber further recalls that there are reported instances where other witnesses,
2 including crime base witnesses, were allegedly threatened as a result of their
3 involvement with the Court. In that regard, the Chamber has previously held that
4 the general security situation in a region may be a relevant consideration in respect of
5 specific witnesses. In this connection the Chamber knows that the witness resides
6 with his family in a remote area where former UPC/FPLC militia members and
7 supporters of the accused are present and that he's not in the ICCPP.

8 The Chamber has also taken into account the position of the witness and the extent to
9 which he is known within the community. As the Chamber has held before, this
10 may increase the risk faced by the witness and his family.

11 As to the Defence submission that the witness's expected testimony is too generic and
12 would not be liable to antagonise particular individuals, the Chamber considers that
13 the risks may arise not only as a result of the content of a witness's testimony, but
14 may also arise by the fact that he or she testified as part of the Prosecution's case
15 against the accused.

16 In light of the foregoing, the Chamber is satisfied that there exists an objectively
17 justifiable risk with respect to the security and well-being of Witness P-301 and his
18 family, warranting the protection of the witness's identity from the public.

19 The Chamber further finds that the in-court protective measures sought do not
20 unduly infringe upon the rights of the accused, noting that the Defence and the
21 accused will be able to see the witness give evidence at trial and to hear his voice
22 without distortion.

23 Accordingly, the Chamber grants the measures of use of a pseudonym for the
24 purposes of the trial and voice and face distortion during testimony pursuant to Rule
25 87 of the Rules.

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- 1 This concludes the Chamber's ruling and this session.
- 2 THE COURT USHER: [17:00:59] All rise.
- 3 (The hearing ends in open session at 5.00 p.m.)