

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
6 Judge Chang-ho Chung
7 Trial Hearing - Courtroom 3
8 Tuesday, 11 October 2016
9 (The hearing starts in open session at 9.33 a.m.)
10 THE COURT USHER: [9:33:53] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: [9:34:24] Defence, please, I would like to see your face.
14 Yes, thank you.
15 So good morning.
16 Court officer, please call the case.
17 THE COURT OFFICER: [9:34:39] Thank you, Mr President.
18 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
19 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
20 We are in open session.
21 PRESIDING JUDGE FREMR: [9:34:55] Thank you, court officer.
22 Now appearances in habitual order.
23 MR IVERSON: [9:35:02] Good morning, your Honours. Appearing today for the
24 Prosecution are Kristy Sim; Selam Yirgou; Nicole Samson; and myself, Eric Iverson.
25 PRESIDING JUDGE FREMR: [9:35:11] Thank you, Mr Iverson.

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1 Defence please.

2 MR GOSNELL: [9:35:15] No changes from yesterday afternoon, Mr President. Thank
3 you.

4 PRESIDING JUDGE FREMR: [9:35:19] Thank you, Mr Gosnell.

5 Legal Representatives for Victims.

6 MS PELLET: [9:35:27] (Interpretation) Thank you, your Honour. The former child
7 soldiers are represented by myself, Sarah Pellet, counsel with the Office of Public Counsel
8 for Victims.

9 MR SUPRUN: [9:35:38] (Interpretation) Good morning, your Honour, your Honours.
10 The victims of the attacks are represented by the Office of Public Counsel for Victims,
11 Anne Grabowski, associate lawyer, and myself, Dmytro Suprun, counsel.

12 PRESIDING JUDGE FREMR: [9:35:48] Thank you, Mr Suprun.

13 Good morning, Mr Witness. Are you feeling okay to testify?

14 WITNESS: DRC-OTP-P-0792 (On former oath)

15 (The witness speaks French)

16 THE WITNESS: [9:35:57] (Interpretation) Yes, good morning. Good morning,
17 your Honour. I feel well.

18 PRESIDING JUDGE FREMR: [9:36:01] Very well. Mr Witness, again it is my duty
19 first to remind you that you are still under oath, which means that you have to speak truth
20 and nothing but the truth.

21 And second reminder, which is, I would say almost useless in your case, just to remind
22 you that you should speak slowly, you should keep pauses between your answer and
23 question put to you, but I can say that yesterday you did it perfectly, so please just
24 continue testifying in a way you did it yesterday.

25 And now Mr Gosnell will continue in cross-examination of our witness. If my counting

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1 or measuring is well, you still have something about 90 minutes, you indicated that you
2 might need now, so in such a case before the end of this session make your request and I
3 can say that the Chamber will be open to consider such a request.

4 MR GOSNELL: [9:37:06] Thank you, Mr President.

5 QUESTIONED BY MR GOSNELL: (Continuing)

6 Q. [9:37:09] Good morning, Mr Witness. I'd like to return to something that you said
7 yesterday, and it is at page 88 of yesterday's transcript. And you said, and I quote:
8 "By 11.30 all of the bodies were buried. So I didn't really have an opportunity to see
9 other bodies."

10 And then a little bit further down you say:

11 "Of course I recall that there was indeed (Redacted)--

12 PRESIDING JUDGE FREMR: [9:37:59] Sorry, Mr Gosnell, I think we would rather
13 move into private session.

14 MR GOSNELL: [9:38:04] Well, as long as there's no -- well, now I think we should,
15 Mr President, yes, indeed.

16 PRESIDING JUDGE FREMR: [9:38:10] Let's move into private session.

17 (Private session at 9.38 a.m.)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

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24 (Open session at 11.00 a.m.)

25 THE COURT OFFICER: [11:00:36] We are in open session, Mr President.

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- 1 PRESIDING JUDGE FREMR: [11:00:54] Thank you, court officer.
- 2 So now we break and we will resume at 11.30, and then we will complete the testimony of
- 3 this witness.
- 4 So you will be back 11.30.
- 5 THE COURT USHER: [11:01:12] All rise.
- 6 (Recess taken at 11.01 a.m.)
- 7 (Upon resuming in open session at 11.31 a.m.)
- 8 THE COURT USHER: [11:31:25] All rise.
- 9 Please be seated.
- 10 PRESIDING JUDGE FREMR: [11:31:58] We will directly proceed with
- 11 cross-examination of our witness.
- 12 Mr Gosnell, do you want to remain in open or are you forced to move into private
- 13 session?
- 14 MR GOSNELL: [11:32:14] I think we can remain in open for at least one or two
- 15 questions, Mr President.
- 16 PRESIDING JUDGE FREMR: [11:32:19] All right.
- 17 MR GOSNELL: [11:32:21] May we not for broadcast have the document that was just
- 18 on the screen again on the screen, 0077-0002. If we could turn please to page 0004.
- 19 Q. About a third of the way up the page from the bottom, above the name that is
- 20 underlined, there is a phrase, Mr Witness, that appears in quotation marks, and this
- 21 phrase is purporting to be the message that was intercepted in Gutsi from the monitoring
- 22 of the Motorola communications. And the words that are recorded here, as you having
- 23 been provided, are the following, and I quote:
- 24 "(Interpretation) "Try to gazotter them and wisely attract them, and once they are
- 25 gathered we will know what to do with them."

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1 (Speaks English) Now, there is a word in here that is difficult for the French translators
2 to translate and it's the word, Mr Witness, "gazotter". Do you know what that word
3 means? Can you explain to us what it means?

4 A. [11:34:29] The author of the document -- well, I didn't pay attention to that word.
5 It is a good thing that you point it out. However, the idea remains the same.
6 The message, generally speaking, is about trying to cajole people into entering into the
7 compound. That's the meaning, I believe. And it's only my opinion. That's how I
8 understand it.

9 Because what actually happened or what we experienced is that people were expected to
10 be there and that they would be kind and gentle to them, to those who showed up. And
11 that's -- that's what I understand that word to mean. Yes, that's it.

12 PRESIDING JUDGE FREMR: [11:35:38] Mr Gosnell, sorry to interrupt you. Could
13 you kindly spell this word for our transcript because at least in the English version there is
14 many letters missing.

15 MR GOSNELL: [11:35:50] Yes, Mr President. As best I can read it, I believe that it is
16 G-A-Z-O-T-T-E-R.

17 PRESIDING JUDGE FREMR: [11:36:03] Thank you. My reading is the same. Please
18 proceed.

19 MR GOSNELL: [11:36:08]

20 Q. [11:36:08] Was the message that was overheard by the people at Gutsi on the
21 Motorola, as conveyed to you by those people, was the message that the people who came
22 to the meeting should be killed, or was the message that the people who came to the
23 meeting should be arrested and detained?

24 A. [11:36:40] Well, we were able to follow the story, but on that day itself, now, the
25 message that we're talking about today, on the eve of the events when the message was

1 delivered to us, and I said this before, that I told my family members that we had received
2 the message and I told them not to go there. We had been told not to go to the meeting
3 because it was not intended for pacification. So this message was frightening. And
4 because I was trembling, I told my family not to attend. And this is exactly what we
5 experienced following the message.

6 Q. [11:37:26] Yes, I understand that. And now all I'm asking you about is the content
7 of the message as you received it from Gutsi. And can you tell us that you recall whether
8 the message was that people should be killed or people should just be arrested and
9 detained? And Mr Witness, to clarify, I'm not talking about what you inferred later,
10 what you learned later, what happened later, just the content of the message itself.

11 A. [11:38:08] Well, the message we received from Gutsi was the following: "Do not
12 go to the pacification site because the idea is not pacification. There is great danger
13 awaiting you." So that is why we decided not to go because they said that they had
14 monitored what was being said and what was recommended therefore we should not go
15 there. That was what we understood.

16 Q. [11:38:49] A bit earlier today you referred to a video and you said that the first time
17 that you saw the photographs of the Kobu massacre was when a video was shown and
18 that there was a young man from your community who "returned with a delegation, a
19 MONUC delegation to Kobu. At that time a videotape had been produced and it is
20 through that video that I saw those images for the first time, the images which had been
21 developed."

22 Do I understand correctly you to be saying that you saw the photographs of the Kobu
23 massacre on a video?

24 A. [11:39:58] Well, if I said that I saw it on a video it was in Kobu. Well, I don't -- I
25 don't know where exactly, but I do recall seeing the image of a young man from Bunia

1 who was explaining to the MONUC delegation what had happened on site after. So he
2 came, and I think the purpose of the MONUC delegation was to visit the site, but this
3 happened later, several months after. And so they came. And I can still see the pictures
4 of that video because he was presenting the images of the area which had been cleared, or
5 something like that. I don't know whether it was in Bunia or in Kobu that I saw that. I
6 no longer recall.

7 Q. [11:40:47] Can you remember approximately when you saw this video? Was it
8 the same year as the events? Was it the next year?

9 A. [11:41:11] Well, it was not too far after the events. It was close, shortly after the
10 events, at least.

11 Q. [11:41:23] Did other people watch this video with you? Were you in the presence
12 of others?

13 A. [11:41:48] I am not sure that I can recall clearly. All I see is the young man and
14 whatever he was projecting it on, on his screen. All I remember is that I saw a young
15 man presenting -- and I don't know exactly where, I don't know who was there, but it all
16 happened around that young man.

17 Q. [11:42:10] I just have one last passage from this document to show you and then I'll
18 be finished.

19 MR GOSNELL: [11:42:18] And if we could turn please to page 0006.

20 Q. [11:42:36] Down at the bottom, the last question and answer, Mr Witness, I'm
21 going to try and read this as best I can. And the question that appears to be posed is:

22 (Interpretation) "Were there any written reports and photographs of the incidents?"

23 (Speaks English) And then the answer is:

24 (Interpretation) "Photographs were taken by (Redacted) whose name was (Redacted)."

25 (Speaks English) And then a little bit further down it says:

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1 (Interpretation) "Please, contact for more information (Redacted)"

2 PRESIDING JUDGE FREMR: [11:43:40] Hold on, Mr Gosnell.

3 Mr Iverson.

4 MR IVERSON: [11:43:49] I would ask that this be read in private session.

5 MR GOSNELL: [11:43:55] That's fine. That's fine, Mr President, out of an abundance
6 of --

7 PRESIDING JUDGE FREMR: [11:43:59] All right.

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

9 And for, to inform the public, it's because this witness is protected, so if there is a risk to
10 reveal his identity, we have to move into private session, which is the case just now.

11 (Private session at 11.44 a.m.)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

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4 (Open session at 11.52 a.m.)

5 THE COURT OFFICER: [11:52:17] We are back in open session, Mr President.

6 PRESIDING JUDGE FREMR: [11:52:31] Thank you, court officer.

7 Mr Iverson, please proceed.

8 MR IVERSON: [11:52:38] And I would ask that DRC-OTP-2058-0164 be displayed.

9 And this document cannot be displayed publicly. And I ask that it be displayed at 0167.

10 PRESIDING JUDGE FREMR: [11:53:16] And regular reminder, Mr Iverson, the issues

11 you will now deal with should have source or should be a reaction to the issues dealt by

12 Mr Gosnell.

13 MR IVERSON: [11:53:33] Of course, Mr President. I don't intend to go beyond the

14 scope of his questioning. And my question is actually relatively simple.

15 QUESTIONED BY MR IVERSON:

16 Q. [11:53:48] Sir, Defence counsel spent a considerable amount of time on this

17 notebook asking you questions about these meetings and discussions, so I want to ask you:

18 Did these meetings and discussions that you mentioned in these notes in anyway

19 influence your ability to tell the truth to the Chamber about your experiences?

20 A. [11:54:27] Well, when it comes to my experience and the meetings that we had

21 subsequently, those did not affect anything because everything that I experienced

22 remained intact. It was not affected or modified by subsequent meetings.

23 Q. [11:54:49] And in these meetings and discussions, did you ever try to tell anybody

24 else what to say or to influence any other person?

25 A. [11:55:05] Sorry, I didn't quite understand your question.

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1 Q. [11:55:08] In these meetings and discussions that are written down in these notes,
2 did you, yourself, ever try to influence any of the other participants or try to tell them
3 what to say?

4 A. [11:55:34] Well, we had a meeting, we had several meetings. Well, but I don't -- I
5 don't know, except you find them in the diary here. We had a meeting on the eve of the
6 arrival of the delegation to inspect the mass grave. That meeting simply sought to bring
7 us together as a team to provide proper information to those who were coming with
8 questions.

9 Now, whether there was an influence as such, no, I don't think anyone was influenced.
10 Not at all.

11 Q. [11:56:10] All right. Thank you, sir.

12 MR IVERSON: [11:56:13] I don't have any other questions, Mr President. Thank you.

13 PRESIDING JUDGE FREMR: [11:56:16] Thank you, Mr Iverson.

14 Mr Gosnell, any need for re-cross?

15 MR GOSNELL: [11:56:22] No, Mr President. However, I forgot to seek to tender a
16 document.

17 PRESIDING JUDGE FREMR: [11:56:29] So now you may go ahead.

18 MR GOSNELL: [11:56:32] Well, it's actually the same document that was tendered in
19 part by the Prosecution that we ended on. And now I would suggest, Mr President, that
20 there have been, I think, a total of five passages from this document that have been used.
21 The Defence, I would suggest, is not subject to the same restrictions in terms of the scope
22 of an admission of a prior statement, which we say is inconsistent and therefore is being
23 tendered for impeachment purposes, so for that reason I would request the entire
24 document be admitted. And for the record it's 0077-0002.

25 PRESIDING JUDGE FREMR: [11:57:14] Mr Iverson, any objection to that?

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1 MR IVERSON: [11:57:22] So I understand that Defence counsel is seeking to admit the
2 exhibit that I previously sought to admit; is that correct? Then of course Prosecution has
3 no objection to the admission of that exhibit.

4 PRESIDING JUDGE FREMR: [11:57:40] All right. So document specified now by
5 Mr Gosnell is admitted into evidence as a further Defence exhibit.

6 Now Judge Chung would like to put questions. Please. And we have to move into
7 private session for that purpose. Court officer, please.

8 (Private session at 11.58 a.m.)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

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14 (Redacted)

15 (Redacted)

16 (Redacted)

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Trial Hearing
WITNESS: DRC-OTP-P-0792

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0792

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0792

(Private Session)

ICC-01/04-02/06

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10 (Open session at 12.07 p.m.)

11 THE COURT OFFICER: [12:07:04] We are in open session, Mr President.

12 PRESIDING JUDGE FREMR: [12:07:18] Thank you, court officer.

13 Mr Witness, it concludes your testimony so, on behalf of this Chamber, I would like to ask
14 you that you underwent such a long journey, that you came and that you testified. I can
15 imagine that some parts of your testimony could be really difficult experience for you,
16 especially those parts that could lead to some traumatisation, but that is why we very
17 much appreciate that you came and testify. And we believe that your testimony will
18 assist us in our effort to find the truth in this case. So Mr Witness, I thank you once more
19 very much and we wish you safe journey home.

20 Now, court usher, please assist Mr Witness to leave the courtroom.

21 (The witness is excused)

22 PRESIDING JUDGE FREMR: [12:08:44] And now since today's the last day of our
23 evidentiary block, is there anything the parties or participants wish to raise before we
24 conclude this hearing?

25 I have also some issues that I will mention, but now I'm asking parties whether they have

1 anything they would like to present.

2 MR IVERSON: [12:09:14] Nothing from the Prosecution, Mr President.

3 PRESIDING JUDGE FREMR: [12:09:16] Defence?

4 MR GOSNELL: Yes, Mr President. And I didn't raise it at the time of the testimony of
5 the second last witness because we were pushing quickly and I knew your Honours
6 wanted to move quickly so I didn't raise it then.

7 It has to do with the disclosure of the investigation note and the, what we thought were
8 photographs that were related to the investigation note and then, in the course of
9 questioning, the Prosecution suggested that that had not been established.

10 As a preliminary matter the Defence cannot operate effectively if it's receiving material
11 that really does fall within Article 67(2) on the morning of a witness's appearance. And I
12 suggest that that was the nature of that material, however strong or not it may be. And
13 that's not the first time.

14 So I would simply say that we would request that the Prosecution do everything possible,
15 especially now that we're at the beginning of an interval before the next sequence of
16 witnesses to try to make sure that we get that material as far in advance as possible.

17 The second thing is is that if it's going to be the case that questions are raised about the
18 basis for the connection between different materials that are being disclosed to us, then I
19 would ask then that the Prosecution be more specific in indicating to us what is the
20 connection between materials disclosed of this kind, for example, at least telling us the
21 Rule under which it's being disclosed, in particular, most importantly whether it's coming
22 to us under Article 67(2).

23 So I understand that it's a difficult job, I understand that disclosure lapses occur, I
24 understand that things do come late, but it is very difficult for the Defence to operate
25 without receiving timely disclosure of this material, especially then when after the fact the

1 Defence raises doubts about what may be the connection or relevance of the material.

2 So my submission would simply be now that we have several weeks before the next block
3 that we can receive those materials in advance as much as possible of the next set of
4 witnesses.

5 PRESIDING JUDGE FREMR: [12:11:44] Who wants to react from -- I hope that
6 somebody will react from Prosecution.

7 MR IVERSON: [12:11:52] A few things. Initially, the reason I objected wasn't
8 necessarily because the photographs and the film, it was that Defence counsel was putting
9 a confusing question to the witness that he had received a photograph when the
10 information indicated that he had received a roll of film. So that was the initial objection.
11 This was not disclosed under Article 67(2), it is not 67(2). We always indicate the nature
12 of the -- the Rule under which we're disclosing, so I don't think that that should be unclear
13 to the Defence in anyway.

14 But I do understand what Defence counsel said as far as disclosing as soon as possible. I
15 think in this instance, I may be mistaken, but I think it was pursuant to a Chamber's order
16 having to do with P-154, which was the reason why it was disclosed as it was on the
17 courtesy copy given I believe on 5 October, six days ago, but I understand what Defence
18 counsel is saying.

19 PRESIDING JUDGE FREMR: [12:13:13] Yes, I am glad to hear it because I would say
20 generally, at this stage, it seems to me that in this case the cooperation between parties it's
21 at a very solid level, but always, as in all areas of human activities, there is still some room
22 for improvement. I can understand that especially this block was conducted in a rather
23 hectic style, sometimes to the well-known -- because of well-known circumstances, but
24 especially issue of timing, I think you should be very careful about that. I believe that it
25 is not some -- some sign of wrong faith, it's just, I think, I believe that still Prosecution is

1 doing its best but, at the same time, I also see that the material in its possession is very
2 voluminous, so sometimes such problems could occur, but it should be really exceptional.
3 But as I said, generally I find so far mutual relationship between parties is a very good
4 one, so I believe that it will continue, at least at the same level.

5 And now just two issues from my part. The Chamber itself wishes to address those
6 issues before closing this evidentiary block:

7 In July, in filing number 1471, the Prosecution indicated that it intends to make five
8 requests for the admission of witness evidence under Rule 68(2)(b) of the Rules. And as
9 the adjudication of these requests will need to occur in the near future, I would like now
10 seek an update from the Prosecution in this regard and to get information how soon do
11 you foresee being in a position to file them? Probably, Ms Samson?

12 MS SAMSON: [12:15:46] Yes, Mr President, I will address this question.

13 I have to verify the exact number that remain. I do know that there are several. It is
14 likely that we can file at least one of them this week. And shortly thereafter, in the
15 coming weeks, we'll assess how many more will come. But as I understand the
16 Chamber's concern, it would be that these applications are made soon. And I can update
17 the Chamber by way of email and the parties as well with an exact figure today.

18 PRESIDING JUDGE FREMR: [12:16:19] Very well. You know, the sooner the better
19 because we are, even if we now just finished this block, we are in a phase of planning the
20 next one, so and it could play a very important role how many witnesses will be presented
21 under this Rule. Thank you very much, Ms Samson.

22 And, in fact, at the very end of this block, I wish on behalf of the whole Chamber to thank
23 everyone for their cooperation during this really very demanding evidentiary block. I
24 thank the Defence, Prosecution, and legal representatives teams, as well all the service
25 providers of the Registry, particularly for their flexibility, especially with respect to

1 accommodating last-minute changes in the schedule and especially for sitting extended
2 hours for many days, which was, I can understand, extremely tiring for everybody,
3 including the Chamber.
4 Despite some unexpected matters, as well as challenges in terms of scheduling and
5 bringing the witnesses to The Hague, with the assistance and efforts of everyone involved,
6 we were able to hear 16 witnesses, which is the same number as was originally planned,
7 despite of some challenges we faced.
8 The Chamber hopes that during the next block we can proceed with the same -- at least
9 the same efficiency.

10 We will resume for the seventh evidentiary block on 7 November. And this block is
11 going to last until 16 December 2016.

12 And in the near future, the Chamber would like also address a number of procedural
13 issues, including indicating the sitting schedule for the start of 2017, as well as set certain
14 deadlines related to the end of the Prosecution case. And it will do so by way of formal
15 order.

16 So this concludes my message to the parties and participants. And this also concludes
17 today's hearing and our sixth evidentiary block.

18 And now court is adjourned.

19 THE COURT USHER: [12:16:45] All rise.

20 (The hearing ends in open session at 12.16 p.m.)