

Trial Hearing
WITNESS: DRC-OTP-P-0898

(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 Wednesday, 9 November 2016
8 (The hearing starts in open session at 9.32 a.m.)
9 THE COURT USHER: [9:32:56] All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE FREMR: [9:33:20] Good morning, everybody.
13 Court officer, please call the case.
14 THE COURT OFFICER: [9:33:37] 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 We are in open session.
18 PRESIDING JUDGE FREMR: [9:33:52] Thank you, court officer.
19 Now appearances and please limit just on changes, if any.
20 Prosecution.
21 MR IVERSON: [9:34:02] Good morning, your Honours. Appearing today for the
22 Prosecution are the same persons who were present at the last session with the
23 exception of Julieta Solano.
24 PRESIDING JUDGE FREMR: [9:34:13] Thank you, Mr Iverson.
25 Defence, please.

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1 MR BOURGON: [9:34:17] (Interpretation) Good morning, your Honour. No
2 change on the side of the Defence.

3 PRESIDING JUDGE FREMR: [9:34:23] Thank you, Mr Bourgon.
4 Legal Representatives of Victims.

5 MS PELLET: [9:34:28] (Interpretation) Thank you, your Honour. No change for
6 the child soldiers.

7 MR SUPRUN: [9:34:36] (Interpretation) Good morning, your Honour, your
8 Honours. The victims of the attacks are represented by the Office of Public Counsel
9 for Victims Anne Grabowski; associate lawyer, Marine Corhay, intern; and myself,
10 Dmytro Suprun, counsel.

11 PRESIDING JUDGE FREMR: [9:34:50] Thank you, Ms Pellet. Thank you,
12 Mr Suprun.

13 Mr Witness, good morning. Are you feeling okay to testify, to finish your testimony
14 today?

15 Mr Witness, could you hear me? Anyway, I have to correct myself because I said
16 that whether you are okay, it's the first question. And I also said that whether you
17 are okay to finish your testimony today, which probably will not be the case.

18 So now, Mr Witness, can you hear me, first of all?

19 WITNESS: DRC-OTP-P-0898 (On former oath)
20 (The witness speaks Swahili)

21 THE WITNESS: [9:35:38] (Interpretation) Yes, I can hear you.

22 PRESIDING JUDGE FREMR: [9:35:41] And I believe you are okay to continue your
23 testimony.

24 THE WITNESS: [9:35:48] (Interpretation) Yes.

25 PRESIDING JUDGE FREMR: [9:35:49] Very well. So it's my duty to remind you

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1 that you are still under oath, which means that you have to speak truth and nothing
2 but the truth. Do you understand?

3 THE WITNESS: [9:36:05] (Interpretation) Yes, I understand.

4 PRESIDING JUDGE FREMR: [9:36:08] Very well. Which means that we will now
5 hand floor over to Mr Iverson.

6 Mr Iverson, you still have almost two hours remaining from time allotted to you.

7 Please proceed. And do you want to proceed in open or in private session?

8 MR IVERSON: [9:36:26] I would ask that we proceed in private session,
9 Mr President.

10 PRESIDING JUDGE FREMR: [9:36:31] All right.

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

12 (Private session at 9.36 a.m.)

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- 18 (Open session at 10.26 a.m.)
- 19 THE COURT OFFICER: [10:26:30] We're in open session, Mr President.
- 20 PRESIDING JUDGE FREMR: [10:26:36] Thank you, court officer.
- 21 Mr Iverson, please proceed.
- 22 MR IVERSON: [10:26:40]
- 23 Q. [10:26:43] And so did Commander Américain do anything to stop the acts of
- 24 the civilian combatants that you've described?
- 25 A. [10:27:14] Yes, because he gave the order to the military police to take away all

1 the looted possessions, the possessions that had been looted by the civilians.

2 MR IVERSON: [10:27:41] Mr President, I would like just a moment, if I could, just
3 to co-ordinate an issue.

4 PRESIDING JUDGE FREMR: [10:27:47] All right.

5 (Counsel confers)

6 MR IVERSON: [10:28:24]

7 Q. [10:28:30] And what, if any, information did you hear or observe personally
8 about having -- pertaining to sexual violence in the second attack in Mongbwalu?

9 A. [10:28:59] Yes, on the occasion of the second attack, as I said, we had remained
10 in that location where our staff headquarters was. However, all around I had heard
11 that the civilians, especially the civilian combatants were raping women, especially
12 Lendu women or women who're cooperating with the Lendu. And if these women
13 had not managed to escape, they were being raped, especially the young girls, the
14 young Nyali girls, and there were certain places where they burnt down houses with
15 people inside them.

16 But as to actually seeing a soldier raping a woman or a girl, this I did not see
17 personally, but we did hear that rapes were taking place.

18 Q. [10:30:19] And are you aware of any UPC soldier or commander taking any of
19 these women, Lendu women or other ethnicity in the second attack on Mongbwalu as
20 what you had previously called wives? So are you aware of whether any wives,
21 so-called wives were taken by any UPC combatants?

22 A. [10:31:05] As I said, we heard such things being said, but I did not see it with
23 my very own eyes because we were told that if we did not want to be killed or injured,
24 we should not loot or take women. Personally I respected that rule to the letter.
25 However, we did hear that there were rapes taking place and that there were people

1 taking women.

2 Q. [10:31:50] Do you remember these events as clearly now as you remembered
3 them when you gave your statement to Prosecution investigators?

4 A. [10:32:40] Yes, yes.

5 Q. [10:32:43] That is to say do you remember -- did you remember better when
6 you gave your statement to Prosecution investigators or do you remember the events
7 better now in court?

8 A. [10:33:16] You know, I'm trying to tell you what I saw with my own eyes and
9 what my friends have told me because you can be in the same place and not see
10 anything.

11 Q. [10:33:49] And that's fair and I understand that, but that's -- that's not really
12 what I'm asking. I'm asking whether you remember -- remembered the events
13 you're describing better when you spoke to Prosecution investigators when you gave
14 your statement or whether you remember better -- the events better now while you're
15 testifying in court.

16 A. [10:34:19] Yes, I'm trying to remember because these are events that happened
17 a long time ago. I'm trying to remember this and put everything in the right order.

18 Q. [10:34:48] Okay. So I just want to ask this one more time. Did you
19 accurately remember these events when you spoke to OTP investigators when you
20 gave them your statement?

21 A. [10:35:19] Yes.

22 Q. [10:35:23] And did you remember the events better when you gave your
23 statement than you remember the events now during your testimony?

24 A. [10:35:43] What, for example?

25 PRESIDING JUDGE FREMR: [10:35:56] Mr Iverson, asked and answered. He

1 said that he's trying, trying to remember, and so I think in fact it was clear, if not
2 maybe clear as you would wish, but it was just respond to your question.

3 MR IVERSON: [10:36:13] All right, I'll move on. I do see though that the answer
4 is not responsive at all to the questions that I've been asking, but I don't know if it's a
5 misunderstanding or what the issue --

6 PRESIDING JUDGE FREMR: [10:36:27] Please, please move on.

7 MR IVERSON: [10:36:28] I'll move on.

8 Q. [10:36:36] Do you know whether there were any women, Lendu women, who
9 were taken as wives who stayed at any camps?

10 A. [10:36:57] Yes. It was said that there were women who cooperated "AS",
11 Lendu, and they were responsible for giving information and they were imprisoned,
12 yes.

13 Q. [10:37:30] So -- and I'm confused by the answer because were these Lendu
14 women prisoners or were they taken as so-called wives?

15 A. [10:38:01] Well, the idea was to put them in prison in Mongbwalu village.
16 Well, there wasn't a prison in Mongbwalu village. They were taken to a house that
17 was an apartment in Camp Goli. That's where these women were questioned.

18 Q. [10:38:46] All right. And to your knowledge, during the second attack in
19 Mongbwalu did the UPC take any other prisoners during that operation?

20 A. [10:39:10] Yes, there were prisoners who were captured and they were
21 interrogated. Yes, there were some.

22 Q. [10:39:27] And could you tell the Chamber if you know what happened with
23 these prisoners, whether they were ultimately released or otherwise?

24 A. [10:39:57] Some of them weren't freed, they were killed. Others could be
25 freed.

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1 Q. [10:40:12] And what was the ethnicity of these prisoners, if you know?

2 A. [10:40:34] Most of them were Lendu, Nyali. There were Lulu prisoners as

3 well. But in most cases the Lendu never came back. There was even a Lendu priest,

4 he didn't come back.

5 MR IVERSON: [10:41:04] Could I ask that we go briefly into private session.

6 Thank you.

7 PRESIDING JUDGE FREMR: [10:41:08] Certainly.

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

9 (Private session at 10.41 a.m.)

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

6 THE COURT USHER: [11:31:04] All rise.

7 Please be seated.

8 PRESIDING JUDGE FREMR: [11:31:20] So we will continue directly with the rest of
9 examination-in-chief of our witness, and now I got update on timing. So, Mr Iverson,
10 you still have 36 minutes at your disposal. Please proceed.

11 MR IVERSON: [11:31:59] Thank you, Mr President. Just a slight change in
12 Prosecution composition: All persons who were present in the last session are once
13 again present, with the exception of Rens van der Werf.

14 PRESIDING JUDGE FREMR: [11:32:10] Thank you, Mr Iverson.

15 MR IVERSON: [11:32:13]

16 Q. [11:32:14] Sir, welcome back.

17 MR IVERSON: I would ask that we go into private session, Mr President.

18 PRESIDING JUDGE FREMR: [11:32:27] All right. Court officer, let's move into
19 private session.

20 (Private session at 11.32 a.m.)

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23 (Open session at 12.14 p.m.)

24 THE COURT OFFICER: [12:14:44] We're in open session, Mr President.

25 PRESIDING JUDGE FREMR: [12:14:52] And my question goes now to Ms Pellet.

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1 Ms Pellet, you addressed the Chamber with your request to question this witness on
2 five topics. You specified, in my view, almost all of them have been, to some extent,
3 covered by Mr Iverson. Do you think that you will still find some questions that
4 wouldn't be repetitive?

5 MS PELLET: [12:15:23] (Interpretation) Mr President, no. Mindful of the
6 examination by Prosecutor and the answers provided by the witness, I will not be
7 needing that.

8 PRESIDING JUDGE FREMR: [12:15:40] Thank you, Ms Pellet. And I appreciate
9 your reasonable approach.

10 So now it's time for Defence to start cross-examination of the witness. Take your
11 time, Mr Bourgon. We are not in a hurry.

12 And in the meantime, Mr Witness, allow me to remind you that this Court is
13 governed by principle of fair proceedings, fair trial which, among other things, means
14 that both parties are treated equally, and that also concerns you. It means, in
15 practice, that you should respond all questions put to you by the Defence in the same
16 way how you did it as concerns questions put to you by Prosecution.

17 Do you understand?

18 THE WITNESS: [12:16:52] (Interpretation) Yes, I have understood you very well.

19 PRESIDING JUDGE FREMR: [12:17:05] All right. And we still can wait and give
20 Mr Bourgon chance to prepare himself properly for cross-examination.

21 Ms Pellet, should be blamed that she surprised you. Are you ready, Mr Bourgon?

22 MR BOURGON: (No interpretation).

23 PRESIDING JUDGE FREMR: Very well. Mr Bourgon, just for your information,
24 Mr Iverson used 5 hours 1 minute, so you are expected to make your
25 cross-examination in equal time. Please proceed.

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1 MR BOURGON: [12:18:13] Thank you, Mr President.

2 QUESTIONED BY MR BOURGON:

3 Q. [12:18:20] Good morning, sir.

4 A. [12:18:22] Good afternoon.

5 Q. [12:18:34] We did not have the opportunity to meet before, so allow me to
6 introduce myself. My name is Stéphane Bourgon, I'm a lawyer from Canada and,
7 together with my colleagues, I represent the accused in this case, Bosco Ntaganda.
8 Do you understand this?

9 A. [12:18:54] Yes, I understand.

10 Q. [12:19:06] Now, sir, it's my understanding that you have been in The Hague.

11 MR BOURGON: Well, I believe, Mr President, we should move immediately into
12 private session.

13 PRESIDING JUDGE FREMR: [12:19:17] Certainly.

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

15 (Private session at 12.19 p.m.)

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- 15 (Upon resuming in open session at 2.31 p.m.)
- 16 THE COURT USHER: [14:31:41] All rise.
- 17 Please be seated.
- 18 PRESIDING JUDGE FREMR: [14:32:13] Good afternoon, everybody.
- 19 We can directly continue with cross-examination of our witness.
- 20 Mr Suprun.
- 21 MR SUPRUN: [14:32:22] (No interpretation)
- 22 THE INTERPRETER: [14:32:28] Overlapping speakers, Mr President. We didn't
- 23 hear the first part of Mr Suprun's statement.
- 24 PRESIDING JUDGE FREMR: [14:32:34] Mr Suprun, may I ask you to repeat
- 25 because there was some overlapping and it was not captured by the interpreters.

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1 MR SUPRUN: [14:32:42] (Interpretation) Mr President, Marine Corhay is not
2 with us this afternoon. Thank you.

3 PRESIDING JUDGE FREMR: [14:32:49] Thank you, Mr Suprun. Well noted.

4 Now, Mr Bourgon, you may proceed with your cross-examination. Do you want to
5 proceed in open or private session?

6 MR BOURGON: [14:33:00] In private session, Mr President.

7 PRESIDING JUDGE FREMR: [14:33:02] Certainly.

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

9 (Private session at 2.33 p.m.)

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- 11 (Open session at 4.37 p.m.)
- 12 THE COURT OFFICER: [16:37:13] We are in open session, Mr President.
- 13 PRESIDING JUDGE FREMR: [16:37:30] Thank you, court officer.
- 14 Mr Witness, I would like to thank you because it was a pretty long day and you
- 15 remained, regardless of that, concentrated and you patiently responded all the
- 16 questions. So thank you very much for that. We will continue tomorrow 9.30.
- 17 And it's my duty to remind you that in the meantime you must not discuss your
- 18 testimony with anybody else. Do you understand?
- 19 All right.
- 20 THE WITNESS: [16:38:15] (No interpretation)
- 21 PRESIDING JUDGE FREMR: [16:38:18] So now, court officer, please assist
- 22 Mr Witness to leave the courtroom.
- 23 And as concerns schedule for tomorrow. So far Mr Bourgon exhausted 2 hours and
- 24 41 minutes, which means that he still has at his disposal 2 hours 19 minutes for
- 25 tomorrow. We are planning to sit in three sessions tomorrow, but examine two

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witnesses, so examination of this witness hopefully will be completed in two morning sessions, first 9.30 till 11, and the second one 11.30 till 1 p.m. Then we will have a bit longer break than usually and we are going to continue in the late afternoon from 2 to -- sorry, from 4 to 6 p.m. by examination of Witness P-918 via video link, if everything will be ready and we hope that everything will be ready.

Mr Bourgon.

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PRESIDING JUDGE FREMR: [16:40:12] Mr Bourgon, sorry, we are in open session.

So we will have to redact most part of Mr Bourgon's submission. I'm going to have to move into private session for the rest of his submission.

(Private session at 4.40 p.m.)

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- 12 (The hearing ends in private session at 4.47 p.m.)