

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Open Session)

ICC-01/04-02/06

1 International Criminal Court
2 Trial Chamber IV - Courtroom 2
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and
6 Judge Chang-ho Chung
7 Trial Hearing
8 Wednesday, 28 October 2015
9 (The hearing starts in open session at 9.31 a.m.)
10 PRESIDING JUDGE FREMR USHER: All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: Good morning everybody.
14 Court officer, please call the case.
15 THE COURT OFFICER: Thank you, Mr President.
16 The situation in the Democratic Republic of the Congo in the case of the Prosecutor
17 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
18 We're in open session.
19 PRESIDING JUDGE FREMR: Thank you, court officer.
20 Appearances as usually, please.
21 MS LUPING: Good morning, Mr President, your Honours. Appearing on behalf of
22 the Prosecution this morning is myself, Dianne Luping, trial lawyer; Kristy Sim, assistant
23 trial lawyer; Lois Mbafor, legal assistant; and Selam Yirgou, case manager. Thank you,
24 your Honours.
25 PRESIDING JUDGE FREMR: Thank you, Ms Luping.

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1 Defence.

2 MR BOURGON: (Interpretation) Good morning, Mr President. Good morning, your
3 Honours. I am here with the team representing Bosco Ntaganda, who is present this
4 morning in the courtroom; Mademoiselle Elodie Victor, an intern; William St-Michel;
5 and myself Stéphane Bourgon. Thank you, Mr President.

6 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

7 Legal Representatives of Victims, please.

8 MS PELLET: (Interpretation) Thank you, Mr President. The former child soldiers
9 are represented by Sarah Pellet, myself, counsel at the OPCV. Thank you.

10 MR SUPRUN: (Interpretation) Good morning, Mr President, your Honours. Victims
11 of the attacks are represented by myself, Dmytro Suprun, counsel at the OPCV.

12 PRESIDING JUDGE FREMR: I thank both of you.

13 Before we approach to the final part of testimony of Witness P-886, I would like to ask
14 parties whether they succeeded to reach agreement on the video excerpts.

15 Mr Bourgon.

16 MR BOURGON: Thank you, Mr President. Further to the Chamber's instructions, we
17 did perform the necessary work and we have identified part of the video excerpt as well
18 as the corresponding part of the transcript and the corresponding part of the translation.
19 We have communicated this information to the Prosecution. I submit that this matches
20 what they had initially proposed, but I believe my colleague wants to do further
21 verification before agreeing to the information I transmitted to her this morning.

22 I am ready, however, to mention the exact portions, or we can do this at least at the end
23 when this witness finishes. Thank you, Mr President.

24 PRESIDING JUDGE FREMR: Thank you.

25 Ms Luping, could you verify this.

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1 MS LUPING: Yes, Mr President, your Honours. We had the confirmation from the
2 Defence this morning shortly before the session started that they would agree to which
3 portion of the French translation that we agreed to. However, we just simply want to
4 ask a Swahili-French interpreter to double-check the precise time stamps of the videos
5 just simply for accuracy, your Honours, as none of us are fluent Swahili speakers. And
6 we should be able to do this at the break, confirm the precise time stamps.

7 PRESIDING JUDGE FREMR: I don't see any special urgency on that, so the Chamber
8 can wait and then please provide us with the precise list of excerpts and translations and
9 transcripts that should be tendered.

10 Now we can bring our witness in, please, court officer.

11 (The witness enters the courtroom)

12 PRESIDING JUDGE FREMR: Good morning, Mr Witness.

13 WITNESS: DRC-OTP-P-0886 (On former oath)

14 (The witness speaks Swahili)

15 THE WITNESS: (Interpretation) Good morning.

16 PRESIDING JUDGE FREMR: I hope Mr Witness you are feeling well.

17 THE WITNESS: (Interpretation) Yes, I feel well. I feel very well.

18 PRESIDING JUDGE FREMR: It's good to hear that. As usually, it's my duty to remind
19 you that you are still under oath which means, and you know it, that you will have to
20 speak the truth and nothing but the truth.

21 And I would also like to add our common guidance that you should listen carefully to
22 the questions, try to respond just precisely the question put to you, and to observe
23 pauses and also speak slowly to allow smooth interpretation. I guess you understood?

24 THE WITNESS: (Interpretation) Yes, that is very well.

25 PRESIDING JUDGE FREMR: Very well. So now I can move the floor to Mr Bourgon.

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1 Mr Bourgon, you have the floor. And should we remain in open session or what do
2 you prefer?

3 MR BOURGON: At this stage we can remain in open session, Mr President.

4 PRESIDING JUDGE FREMR: Very well.

5 QUESTIONED BY MR BOURGON: (Continuing)

6 Q. Good morning, sir. I have --

7 A. Good morning.

8 Q. -- quite a few questions remaining to ask you; however, I'm sure that we can get
9 through this quite easily. I would simply ask, sir, that when it's possible and where you
10 can, to answer my questions by yes or no. I will begin by my first topic and for this I'd
11 like to -- which is basically the time that you left Sayo to go to the bush.

12 I recall, sir, that you said in your statement, and I would like you to confirm this on
13 page 22, paragraph 16. "While we were standing at the church and looking, we did not
14 know that some of the UPC forces had already entered Sayo. They had surrounded the
15 village and taken up position. The UPC soldiers shot a gun called Nato. It makes a
16 very loud noise. They shot it once from the bush and people got scared and started
17 fleeing in different directions into the bush."

18 Can you please confirm by yes or no that you recall that this is information that is in
19 your statement?

20 A. That is correct. It was raining at the time.

21 Q. In the same paragraph, that is your statement, page 22, paragraph 16, you add
22 "Suddenly, I also heard gunshots coming from the factory Usine. This happened in the
23 afternoon, and I remember it was raining. It was a sudden attack with no warning at
24 all."

25 Sir, can you confirm by yes or no that this is information you provided in your

1 statement?

2 A. Yes. When those gunshots were heard, some came from the factory and from
3 Sayo.

4 Q. Thank you. Now, in your testimony on 23 October, that is this Monday, you
5 stated the following, which matches in some way what is in your statement. There
6 was -- I quote the transcript on page 6, line 16 to 20: "There was a huge explosion and
7 people left their homes. People fled from their homes and left the homes empty. Then
8 we fled during the rains, leaving behind our houses, only to come back after three days."
9 Can you confirm that this testimony -- you stand by what you said at that time, if
10 possible, sir, by yes or no?

11 A. Yes. That is what I said. Yes. That is what I said.

12 Q. Now, I go back to your statement, and I will quote now from page 22, at paragraph
13 18, where you said the following: "When I heard the Nato explosion, I ran towards my
14 house, and I saw my wife fleeing with the children. I got into the house, grabbed the
15 children's clothes, as I realized that my wife didn't take anything with her. I then fled
16 to the bush. We fled in different directions. My family took one direction and I took
17 another direction."

18 Sir, can you confirm, if possible, by yes or no, that this is information you provided in
19 your statement?

20 A. Yes. I left alone.

21 Q. Now, sir, on the basis of what you said in your statement and your testimony, the
22 three parts or quotes that I just covered, I suggest to you, sir, that by the time the soldiers
23 of the UPC entered the town, you had already fled in the bush and that you did not see
24 them in the town; is that correct, sir?

25 A. We saw them a little further off when they entered the city, but when there were

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1 gunshots we fled to the forest and abandoned our homes.

2 Q. So I understand, sir, that your answer to my question is yes, did you not see them
3 in the town; is that correct?

4 MS LUPING: Mr President.

5 PRESIDING JUDGE FREMR: Ms Luping.

6 MS LUPING: Out of fairness to the witness that is not what he said. "We saw them a
7 little further off when they entered the city, but when there were gunshots we fled to the
8 forest ..." If we could just be fair to the witness and refer back to his exact words.

9 PRESIDING JUDGE FREMR: I think anyway it needs further clarification, so please,
10 Mr Bourgon, but I think Ms Luping is true that we should be careful with making
11 interpretation in this direction as you did.

12 MR BOURGON: Thank you, Mr President.

13 Q. Sir, I will read back exactly your answer to my question, which was the following:
14 "We saw them a little further off when they entered the city, but when there were
15 gunshots we fled to the forest and abandoned our homes."

16 My suggestion to you, sir, is simply that what you say there is you confirm that from the
17 church where you were in Sayo, you did not see the UPC soldiers coming into that area,
18 you had fled before; is that correct, sir?

19 MS LUPING: Mr President.

20 PRESIDING JUDGE FREMR: Ms Luping.

21 MS LUPING: Again, out of fairness to the witness because there are relevant aspects of
22 the testimony of this witness that are also not being cited to him because he also
23 described what he saw of UPC soldiers from his vantage point. And this is not what
24 the witness has said.

25 PRESIDING JUDGE FREMR: I feel the need to intervene. Mr Witness, what do you

1 mean by words "further on"? Could you be more specific on that?

2 THE WITNESS: (Interpretation) We saw them from a distance of about 3 kilometres.
3 Shortly thereafter, they started firing. And it was raining at that time. So we saw
4 them from a distance, that is a distance of about 3 kilometres. And then we -- we -- we
5 fled to Kanga ville.

6 PRESIDING JUDGE FREMR: And I will just put the second question, okay. It was
7 this response clarified a lot, but from what place you see this? You said from the
8 distance of 3 kilometres, but at what place you were in this moment?

9 THE WITNESS: (Interpretation) They were on the other side and we were at the
10 church. We saw them come down. And it was raining heavily at that time. Then
11 they started to fire gunshots very close to the city. At that time we became scared, we
12 were very afraid and then we fled in different directions.

13 PRESIDING JUDGE FREMR: Thank you.

14 Mr Bourgon, you may proceed.

15 MR BOURGON: Thank you, Mr President.

16 Q. I come back very shortly, sir, to the loud explosion that you heard. My case is that
17 there was, indeed, such a large explosion when the attack began, but what can you tell
18 us about your knowledge of this Nato weapon or the so-called Nato weapon that you
19 put in your statement?

20 A. Well, you see, people who carry weapons refer to the weapon as Nato. And those
21 who heard the explosion said it was the explosion of the Nato weapon. That's all I
22 know. And thereafter we left and each person went in their own direction. We did
23 not all disperse or go in the same direction together.
24 After the loud explosion, we fled and I think it is only the soldiers who can provide you
25 with further details as to the nature of this explosion, but I was told that this explosion

1 came from a weapon known as Nato.

2 Q. Thank you, sir. Now, this loud explosion, I suggest to you, sir, that you did not
3 see the impact of that explosion or where the explosion landed exactly; is that correct?

4 A. They shot into the air while they were in the -- while we were in the bush. They
5 were firing into the air. They weren't aiming at anybody. They simply aimed it or
6 fired into the air in order to frighten people.

7 Q. I move to my next topic, sir, which has to do with the moment that you left in the
8 bush. I quote from your statement and that is on page 22, at paragraph 19: "After
9 three days in the bush, sleeping under trees, without food, I decided to search for my
10 family."

11 So I suggest to you, sir, or I would like you to confirm that first you spent three days and
12 then you searched for your family. Is that how it happened?

13 A. I was in the bush over those three days. You see, in the forest -- I left the forest
14 from the Ituri river and I started to look for my family. It's only three days after that I
15 left the forest to go back to the road.

16 Q. What I would like to know, sir, and my proposition to you is that you stayed in the
17 bush more than three days because you looked for your family starting after three days;
18 is that so, sir?

19 A. I spent three days, and it is on the third day that I went to the Ituri road close to
20 Mahagi. Now, while the others went by, I remained in the bush around Ituri. And,
21 yes, it was on the third day.

22 Q. Thank you, sir. You just mentioned, and I will quote now from the transcript at
23 lines 8 to 10: "I spent three days, and it is on the third day that I went to the Ituri road
24 close to Mahagi."

25 Sir, in your statement, you mentioned the following, and this is paragraph 19, on page 22:

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1 "I decided to go to Andisa to look for my family, but I could not find them there, so I
2 went back to Sayo."

3 I simply would like to confirm that where is Andisa?

4 A. Andisa is close to the Ituri river. It is a big river and people cross the river in
5 boats in order to go to Yedi.

6 Q. Thank you, sir. Based on what you said, I take it that Andisa then is close to
7 Mahagi?

8 A. No. Yedi -- or, rather, Andisa is towards Mahagi. So Andisa is close to Mahagi.

9 Q. Thank you, sir. That's exactly what I was looking for. And these --

10 THE INTERPRETER: A comment from the Swahili booth: The interpreter in the
11 Swahili booth did not quite follow the witness' answer. Could the witness be kindly
12 asked to repeat his answer? Thank you.

13 PRESIDING JUDGE FREMR: Mr Bourgon, have you --

14 MR BOURGON: I thought the witness would repeat his answer.

15 PRESIDING JUDGE FREMR: I had the same opinion. Okay, you may proceed.

16 MS LUPING: Sorry, Mr President. I heard the interpreter asking the witness to repeat
17 his answer. It was not properly captured as we understood it.

18 PRESIDING JUDGE FREMR: Okay. To be safe, please ask -- or Mr Witness, could
19 you repeat your question because we are not sure whether we captured all your answer,
20 please.

21 THE WITNESS: (Interpretation) Well, I said Mahagi is very far away from Andisa.
22 It takes about four days to travel on foot to Andisa. Mahagi is at the border with
23 Uganda. It is far away.

24 PRESIDING JUDGE FREMR: Thank you. Now we have your answer complete.
25 Mr Bourgon.

1 MR BOURGON: Thank you, sir.

2 Q. Now, Andisa that you just referred to, let me quote from your testimony on 26
3 October, that is on Monday, on page 32, lines 8 to 13. The question was the following:
4 "And do you know where they left to, what direction they were going in? You saw
5 them leave. Did you see what direction they left in?"
6 Your answer was the following: "They took the road to Andisa and they crossed the
7 river. There's a road that goes from Nzebi to Andisa. It crosses the Ituri river and then
8 you get -- one word missing -- it's a shortcut."
9 Now, before my colleague says, "Who is they," because I see her standing up, this
10 question, sir, related to the members of the Lendu and the FNI leaving after the attack.
11 Can you confirm this, sir?

12 MS LUPING: I'm sorry, Mr President.

13 PRESIDING JUDGE FREMR: Ms Luping first, yeah.

14 MS LUPING: In fact, this is not relating to the Lendu. If I'm looking at the same
15 transcript reference, it was a reference to an individual that had been pointed out to the
16 witness as a person called Bosco. And if you read the question that came with it and
17 who these individuals were, this is not a group of Lendu in this portion of the transcript.
18 Perhaps if the question could please -- the question that I had asked please be put to the
19 witness before the relevant portion.

20 But we're not talking about a group of Lendu, we're talking about an individual with six
21 other individuals, an individual identified as a person called -- with the UPC called
22 Bosco together with six other individuals.

23 PRESIDING JUDGE FREMR: Mr Bourgon.

24 MR BOURGON: My colleague is right, Mr President, and I made a mistake, so I will
25 rephrase my question.

1 PRESIDING JUDGE FREMR: Okay.

2 MR BOURGON:

3 Q. Sir, my question to you is, Andisa, where you travelled to look for your family, this
4 area is an area traditionally inhabited by Lendus; is that correct, sir?

5 A. It's the Babira who live there and who mine gold. They are the ones who build in
6 this area. The Lendu do not live there.

7 Q. Now, sir, you mentioned going to Andisa to look for your family. My question is,
8 did you make it to Andisa? Did you reach Andisa?

9 A. They arrived in Andisa. And I returned via the road. And I didn't find my
10 family. I returned to the town. But I didn't find my family. After two days, my
11 family arrived when we had already returned to the town.

12 Q. Thank you, sir. What is the distance between Sayo and Andisa?

13 A. Between Sayo and Andisa, it's about 24 kilometres. 24 kilometres.

14 Q. And how long, sir, did you need to go to Andisa and return to Sayo?

15 A. From when I took the road from the bush during the three days I was in the bush,
16 the third day I came off the main road. I didn't take the main road. I took the road in
17 the bush next by -- next to a stream and people had started to cross the river Ituri to go to
18 Mahagi and I said, "Well, as I haven't found my family, I can't go there." So I stayed
19 where I was.

20 Q. Sir, I move to the day on which you returned to Sayo. And I would simply like to
21 confirm what you said in your statement. And you said, I quote from your statement

22 on page 24 in paragraph 24: (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 PRESIDING JUDGE FREMR: Ms Luping?

3 MS LUPING: Mr President, just a question because the reference given for this
4 quotation is from the witness's -- witness statement and a paragraph number, but it
5 doesn't correlate. Perhaps it's just an error in the outline, the examination outline, but I
6 believe it must be a transcript reference, so if we could please have the transcript
7 reference. It's not from the witness statement.

8 PRESIDING JUDGE FREMR: Mr Bourgon?

9 MR BOURGON: Indeed, Mr President, it is a transcript of the testimony and it is on
10 23 October on page 19, lines 12 to 15.

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 A. Yes. When I left the bush, I met other people who were looking for members of
15 their family. We returned to the town and we found soldiers there. They asked us
16 who we were. (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 PRESIDING JUDGE FREMR: Mr Witness, as I told you, please try to focus on given
23 response exactly to the question put to you because you are sometimes having tendency
24 to go further, and even Mr Bourgon is limited by time, so please respect that.
25 Mr Bourgon.

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1 THE INTERPRETER: The interpreter corrects: It wasn't a necklace but a package.

2 MR BOURGON: Thank you, Mr President.

3 Q. Sir, the only question in that was (Redacted)

4 (Redacted). Can you confirm, sir,

5 please, by yes or no if you can?

6 A. (Redacted)

7 (Redacted).

8 Q. Sir, in your statement, and I quote on page 24, paragraph 24, you mention:

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 PRESIDING JUDGE FREMR: Good point.

17 Court Officer, please, let's move into private session now.

18 (Private session at 10:11 a.m.)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

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4 (Open session at 11.12 a.m.)

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

6 PRESIDING JUDGE FREMR: Thank you very much, Court Officer. My following
7 question will be put to you because OTP used for examination-in-chief 6 hours and
8 45 minutes. Do we have at our disposal the total time so far used by the Defence?

9 THE COURT OFFICER: Yes, Mr President. The Defence has used 6 hours and
10 2 minutes.

11 PRESIDING JUDGE FREMR: So I recognize with our principles you should have
12 43 minutes. How much time do you think you will need, Mr Bourgon, to complete?

13 MR BOURGON: I will need the 43 minutes, but I will finish in that time, Mr President.

14 PRESIDING JUDGE FREMR: And my question to Ms Luping, your estimation as to
15 how much time you will need to -- for your re-examination?

16 MS LUPING: It should easily be done within an hour. It could be less than that.

17 PRESIDING JUDGE FREMR: Frankly, it seems to me a bit too much, but we will see.
18 Okay. We will then give you a clear -- clear indication how much time we found
19 sufficient for examination in chief.

20 Okay. Now we will break and we will reconvene at quarter to 12.

21 THE COURT OFFICER: All rise.

22 (Recess taken at 11.13 a.m.)

23 (Upon resuming in open session at 11.46 a.m.)

24 THE COURT USHER: All rise.

25 Please be seated.

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1 PRESIDING JUDGE FREMR: So let's continue. And I would like only to emphasise
2 that we, the Chamber, would like to finish this witness before the lunch break because,
3 as you may know, we planned to start with the further witness after the lunch break.

4 So please try to do your best, Mr Bourgon.

5 MR BOURGON: Thank you, Mr President.

6 (Redacted)

7 (Redacted)

8 MS LUPING: Mr President, we're in open session.

9 PRESIDING JUDGE FREMR: Yes, let's move into private.

10 Thank you, Ms Luping.

11 (Private session at 11.48 a.m.)

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- 10 (Open session at 1.16 p.m.)
- 11 THE COURT OFFICER: We are in open session, Mr President.
- 12 PRESIDING JUDGE FREMR: Thank you.
- 13 And sorry for shortening your lunch-break, so we will break now and we will reconvene
- 14 at half past 2.
- 15 Mr Bourgon.
- 16 MR BOURGON: Would you like to handle the video excerpt because there will be a
- 17 change of teams and it will be better if we could finalise and enter into evidence the
- 18 video excerpt?
- 19 PRESIDING JUDGE FREMR: I guess we will do it after the break, okay.
- 20 MR BOURGON: Thank you, Mr President.
- 21 THE COURT USHER: All rise.
- 22 (Recess taken at 1.17 p.m.)
- 23 (Upon resuming in open session at 2.38 p.m.)
- 24 THE COURT USHER: All rise.
- 25 Please be seated.

1 PRESIDING JUDGE FREMR: Good morning, everybody. I see some changes in
2 appearances, so I guess we will have to amend our record, so I will start with
3 Prosecution, please.

4 MR IVERSON: Good afternoon, your Honours. To my left is Laura Morris, assistant
5 trial lawyer; and in the back row today on behalf of the Office of the Prosecutor we have
6 Claudine Umurungi, legal assistant; Nicole Samson, senior trial lawyer; and
7 Selam Yirgou, case myself; and myself, Eric Iverson, trial lawyer.

8 PRESIDING JUDGE FREMR: Thank you, Mr Iverson.
9 Now Defence, please.

10 MR BOUTIN: (Interpretation) Good afternoon, Mr President, your Honours. This
11 afternoon present with me are Mr Ntaganda, obviously; Mr Dennie Michielsen, intern;
12 Maître Chloé Grandon, legal assistant. Maître Stéphane Bourgon will be joining us
13 shortly in order to address a preliminary matter relating to producing evidence. And I
14 am Luc Boutin, co-counsel. Thank you.

15 PRESIDING JUDGE FREMR: Legal Representatives of Victims, please.

16 MS PELLET: (Interpretation) Thank you, Mr President. No change when it comes to
17 Legal Representatives. Thank you.

18 PRESIDING JUDGE FREMR: Thank you. Well noted.

19 Before we start with our next witness, I would rather solve the issue already indicated, I
20 mean excerpts of video that are intended to be tendered into evidence.

21 So, Defence, could you make a submission on that? Mr Bourgon, please.

22 MR BOURGON: Thank you, Mr President. As mentioned at the end of the last
23 session we would like to seek that the video excerpt, at least part of the video excerpt
24 that was shown to Witness P-886 be admitted into evidence and I would like to also
25 make further comments and ask for the transcript of the said video to be admitted in

1 video -- in evidence.

2 I would like to begin by the video, and the number of the video is DRC-OTP-2058-0251,
3 and the exact time reference of the excerpt we would like to enter into evidence starts at
4 01.47.08 until 01.50.20.

5 The Chamber will note that this excerpt is quite shorter than what was shown to the
6 witness, and this is by agreement with the Prosecution. And we would like to ask that
7 the video be admitted into evidence.

8 PRESIDING JUDGE FREMR: Prosecution, any objection to that?

9 MR IVERSON: No objection.

10 PRESIDING JUDGE FREMR: In such a case, the video as proposed by the Defence is
11 admitted into evidence as a Defence exhibit.

12 You may proceed, Mr Bourgon.

13 MR BOURGON: Thank you very much, Mr President.

14 Moving on, the transcript that relates to this specific video excerpt is the following:

15 DRC-OTP-2062-2023. It starts at page 2069, line 1622 until page 2072, line 1718.

16 The translation of this transcript, Mr President, bears the following number:

17 DRC-OTP-2062-1333. It starts at page 1383, line 1751 until page 1386, line 1853.

18 The reason I wanted to make a separate observation regarding the transcript and the
19 translation is for two reasons: Firstly, Mr President, we on the Defence side have a
20 different position concerning transcript. We do not believe that the default position for
21 transcript is that they should go into evidence. And I said so at page 64 of the transcript
22 already on 27 October, lines 20 to 25.

23 On that occasion I said the following: "... we have a different position regarding the
24 transcript; we do not believe that a transcript should go into evidence. What should go
25 into evidence, in our respectful submission, Mr President, is the video and the comments

1 of the witness. This is what, in our view, should go into evidence and not the
2 transcript."

3 In this specific case, Mr President, we would like to deviate from this position for the
4 following reasons: Following the viewing of the video the witness P-886 was asked
5 some questions and these questions can be found in the transcript of 27 October, and it
6 begins at page 59, at line 18 until page 64, at line 19.

7 Based on the answers provided by the witness to these questions, and based specifically
8 or in particular to one of these answers where the witness said, at page 63, lines 1 to 2,
9 where the witness said, "These women told the truth."

10 On this basis we'd like to deviate from our position and we believe that since the witness
11 has confirmed not only that -- what he heard on the video, but since the witness
12 confirmed that to the best of his recollection what he heard was the truth, in this specific
13 case we would like to have the transcript and the translation admitted into evidence.

14 Mr President, that's the first issue. Of course then there is a second issue, which is our
15 standing objection over the verification of the transcript and the translation which we are
16 not able to provide to the Chamber at this time. Accordingly, Mr President, until this
17 issue has been resolved with the Registry, I simply propose that if the Chamber can give
18 us a decision that it agrees that the transcript and the translation be admitted into
19 evidence, then I would propose that they be admitted or marked for identification until
20 we resolve the issue of the proper translation and proper transcript. And those are my
21 submissions, Mr President. Thank you.

22 PRESIDING JUDGE FREMR: Thank you.

23 Prosecution, your position?

24 MR IVERSON: Your Honour, I don't have anything to add, just that we have no
25 objection in this instance to the Defence's submission of evidence.

1 PRESIDING JUDGE FREMR: Okay. So if I understood well, we should deal with the
2 second issue in due course. But as concerns current -- a current case, your proposal is
3 to admit both translation and transcript into evidence; am I right, Mr Bourgon?

4 MR BOURGON: That is correct, Mr President, and subject to our resolving the issue of
5 the proper translation and the proper transcription.

6 PRESIDING JUDGE FREMR: Okay, we noted that. So for the moment those -- the
7 proposal of the Defence is approved. It means that those transcripts -- this transcript
8 and translation are admitted into evidence as a Defence exhibit as proposed by Defence.

9 MS SAMSON: Thank you, Mr President. I just wanted to get one clarification perhaps
10 from the Defence.

11 As I understood the Chamber's decision last week I believe it was, the Chamber has
12 further endorsed the conduct of proceedings decision in relation to the admission of
13 evidence in relation to transcripts and translations, and I'm unclear if Mr Bourgon is
14 suggesting that it doesn't apply to the Defence in some way and that when they seek to
15 admit transcripts and translations, it does apply; when we seek to admit transcripts and
16 translations, a different regime applies.

17 I may have misunderstood it, but I would like to understand a bit better if he is objecting,
18 again, to the principle of the admission of transcripts and translations. Thank you.

19 PRESIDING JUDGE FREMR: Mr Bourgon.

20 MR BOURGON: Thank you, Mr President. I provided this -- these submissions
21 earlier on during the testimony of P-886, and we reviewed on that occasion the decision
22 that had been rendered by the Chamber on 20 October and, of course, we said that we
23 have no -- it is not our intention to move to reconsider that decision in any way.

24 What we did say, however, is that this decision -- the part that was mainly concerned in
25 this case is the fact that we were in cross-examination and that the witness -- we wanted

1 to argue whether the witness fulfilled the guidance of the Chamber provided in
2 paragraphs 56 and 57 of the decision on conduct of proceedings, and the decision of
3 20 October. And so it is not our intention at all to review that decision.

4 However, what we did say is that we had, further to the 20 October decision, contacted
5 the Registry, and we had informed them of our difficulties in being able to provide a
6 verification or to confirm or to agree on a translation in a transcript in the absence of any
7 resources.

8 And the Chamber will recall, Mr President, I did mention this, that we have no resources
9 whatsoever that allows us to do this. That is why we are now discussing with the
10 Registry to see how we will come about so that we adopt a position that will not delay
11 the proceedings.

12 Now, I'm not sure what my colleague is -- whether she's referring to something different,
13 which is the admission of transcript. In our respectful submission, the admission of
14 transcript is not something that is covered whether in the decision on conduct of
15 proceedings or in the decision of 20 October. And that's why we say our submission on
16 the admission of transcript is something that we say transcript should not be admitted
17 into evidence, per se, and then -- that's the issue. That's why we say we would not
18 normally even seek to have these transcripts admitted, but here we have a different
19 situation where the witness confirmed the truth of the contents of that excerpt of video
20 that he saw, and it's on that basis that we sought to admit the transcript and the
21 translation, which is, I believe, Mr President, an issue different.

22 Thank you, Mr President.

23 PRESIDING JUDGE FREMR: Okay. Well noted.

24 Now we still have another procedural issue I would like to touch before the testimony,
25 and it's the fact that in line with our decision number 897, the next witness will testify by

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1 way of video link.

2 But still before that, I would like to mention another issue concerning timing of our next
3 sessions. As has been previously indicated, the Chamber would have adjusted sitting
4 hours between 2 and 5 -- from 2 to 5 November 2015. However, as the parties and
5 participants were informed by way of email, I confirm that the Chamber can now, again,
6 have normal sitting hours during those days, that is, from 9.30 to 4 p.m. And we will
7 continue to also sit for normal hours on 6 November 2015.

8 Second issue: The next witness is a dual status witness, and the Legal Representative of
9 Victims of the attacks has requested to examine him. In accordance with the decision
10 on the conduct of the proceedings, the Chamber will rule on that request after the
11 Prosecution's examination-in-chief.

12 And now, court officer, please let's move into private session briefly for the next matter.

13 (Private session at 2.55 p.m.)

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Trial Hearing
WITNESS: DRC-OTP-P-0039

(Open Session)

ICC-01/04-02/06

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(Open Session)

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(Open Session)

ICC-01/04-02/06

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17 (Recess taken at 4.04 p.m.)
18 (Upon resuming in open session at 4.11 p.m.)
19 THE COURT USHER: All rise.
20 Please be seated.
21 PRESIDING JUDGE FREMR: I have to be brief because there is another proceedings,
22 another session very soon.
23 So and first of all I would like to also put on the record that we are in the regime of
24 open session, but the face of the witness is not broadcast outside. Am I right, court
25 officer?

1 THE COURT OFFICER: I confirm indeed, Mr President.

2 PRESIDING JUDGE FREMR: So we deliberated, but we came to a conclusion there
3 is no reason of -- we haven't found strong reasons to reconsider to change our
4 previous decision.

5 I can briefly just to refer you to our arguments contained in our decision and to the
6 reasoning mentioned on that.

7 According to us, the in-court protective measures we decided upon was adequate to
8 the level of the risk concerning this witness.

9 I would like to say that, according to us, the threshold is for use, the whole menu, I
10 mean face distortion and voice distortion, is a bit higher than in case of this concrete
11 witness, so we are insisting on our decision. And we really mean that it would be a
12 little bit wrong precedence to change the decision and to lower this threshold.

13 Just how for the future. We don't force -- I have to say that as to the proposal made
14 by Prosecution, we don't find proper and even we don't find it efficient to compel this
15 witness to testify, but we don't force witness to draw this witness from the list of
16 evidence.

17 Either you can think about other legal measures how to get this testimony into
18 evidence, or it is also possible that in the future if there could be some change of
19 situation on the part of the witness, maybe some concrete threats to him, then it
20 would be may be the right time, maybe, to come with another request to reconsider
21 our previous decision.

22 I think that's all I can say at the moment. And I would like also to thank Mr Witness
23 even though if he did not testify, it is his full right, but again I have to, even to him, to
24 repeat that there is some jurisprudence, which means previous decision, especially of
25 our Appeals Chamber which clearly says that it should be some -- that we even found

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1 some objective risk, but the level of that risk should be corresponding to the measures
2 taken by the Chamber, and we hope that we followed this decision.

3 So that is all. Thank you very much, Mr Witness. You will not testify if you don't
4 want under current circumstances and we will continue tomorrow with the further
5 witness.

6 Court is adjourned.

7 MR BOUTIN: Mr President, if I may.

8 THE COURT USHER: All rise.

9 PRESIDING JUDGE FREMR: Mr Boutin.

10 MR BOUTIN: If I may, Mr President, I just received a communication from
11 Mr Bourgon who has been following the proceedings from the office. With regard to
12 the next witness, Mr Bourgon he is the counsel in charge of that witness for
13 cross-examination. It is my understanding that the week has been pretty -- pretty
14 long with the previous witness. Mr Bourgon kindly asks if it would be possible to
15 start P-55 Friday rather than tomorrow.

16 PRESIDING JUDGE FREMR: Prosecution?

17 MS SAMSON: No objection, your Honour, as there are several issues outstanding in
18 relation to P-55, which will impact on the Prosecution's examination of the witness,
19 notably whether or not we have to examine him on the totality of his evidence or only
20 on the matters that are not subject to his -- the Rule 68 application. And the
21 Prosecution's submission in relation to the Defence's request are -- or, our response to
22 the Defence request to postpone his cross-examination is only currently due
23 tomorrow at noon. So all that to say, your Honour, we do not object to the request.

24 PRESIDING JUDGE FREMR: Give me a second, I will deliberate with my
25 colleagues.

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- 1 (Trial Chamber confers)
- 2 PRESIDING JUDGE FREMR: So after silent deliberation our ruling is that we
- 3 accepted the common proposal of both parties and our -- which means that our
- 4 proceedings is adjourned to Friday. So we will continue on Friday, 9.30 in this
- 5 courtroom.
- 6 The Court is adjourned.
- 7 THE COURT USHER: All rise.
- 8 (The hearing ends in open session at 4.16 p.m.)