

Trial Hearing
WITNESS: DRC-OTP-P-0010

(Open Session)

ICC-01/04-02/06

1 International Criminal Court
2 Trial Chamber VI - 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 Judge Chang-ho Chung
6 Trial Hearing
7 Monday, 16 November 2015
8 (The hearing starts in open session at 9.33 a.m.)
9 THE COURT USHER: All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE FREMR: Good morning, everybody.
13 Court officer, please call the case.
14 THE COURT OFFICER: Thank you, Mr President.
15 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: Thank you.
19 Appearances now, starting with Prosecution, please.
20 MS SAMSON: Good morning, Mr President, your Honours. Appearing for the
21 Prosecution today are Mr James Pace, assistant trial lawyer; Ms Claudine Umurungi,
22 legal assistant; Ms Selam Yirgou, case manager; and myself, Nicole Samson, senior
23 trial lawyer.
24 PRESIDING JUDGE FREMR: Thank you, Ms Samson.
25 Defence now, please.

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1 MR BOURGON: (Interpretation) Good morning, Mr President. Good morning,
2 your Honours. And I greet all those who are present in the courtroom.

3 On behalf of Bosco Ntaganda, who is present in the adjacent room, and along with
4 Dennie Michielsens, there is Maître Isabelle Martineau, William St-Michel and myself,
5 Stéphane Bourgon. Thank you, Mr President.

6 PRESIDING JUDGE FREMR: Thank you.

7 Now, please, Legal Representatives of Victims.

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

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

13 PRESIDING JUDGE FREMR: Thank you, Ms Pellet. Thank you, Mr Suprun.

14 Today we should finish examination of Witness P-10. As I already said, according
15 our rules, the Defence was entitled to continue for one more session, but we granted,
16 under special circumstances, we granted to the Defence one more session, which
17 means, Mr Bourgon, that you are expected to finish your cross-examination by
18 1 o'clock.

19 Now, Mr Bourgon, you have the floor.

20 MR BOURGON: (Interpretation) Thank you, Mr President.

21 WITNESS: DRC-OTP-P-0010 (On former oath)

22 (The witness speaks Swahili)

23 QUESTIONED BY MR BOURGON: (Continuing)

24 Q. Good morning, Madam.

25 PRESIDING JUDGE FREMR: Sorry, Mr Bourgon, to stop you.

1 And Ms Witness, I hope that you are feeling well today; and as usually, it is my duty
2 to remind you that you are still under oath, you know it. So please do it as during
3 previous days. I think you are doing very well. So you have to speak the truth and
4 nothing but the truth.

5 Mr Bourgon, sorry for that. Now you have the floor.

6 MR BOURGON: (Interpretation) Thank you, Mr President.

7 Q. Good morning, Witness.

8 A. Good morning.

9 Q. This morning I would like to revisit quickly the video on the visit you said you
10 made to Rwampara. And you know what video I am referring to?

11 A. Yes.

12 Q. At some point in that video, the Prosecutor asked you to identify some person
13 who was very short, and you said that this person was one of Bosco Ntaganda's
14 escorts. Do you remember that part of your testimony?

15 A. Yes.

16 Q. Last Friday I forgot to ask you -- in fact, that person on the video, would that
17 person's name be Zakayo (phon). Do you know Zakayo?

18 A. Yes, the kadogo. Yes.

19 Q. You know that at the time Zakayo was more than 20 years old; is it not so?

20 A. That is not correct. He was a kadogo. In fact, he was younger than I.

21 THE INTERPRETER: Overlapping question, Mr President. We didn't get the
22 question.

23 THE WITNESS: (Interpretation) I don't know who you are referring to as Zakayo.

24 I know, however, that there was a kadogo who was Ntaganda's bodyguard. So

25 I don't know who you are referring to when you talk about Zakayo.

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1 MR BOURGON: (Interpretation) I'm not engaging in any debate with you, but you
2 have just said that you knew Zakayo, who was a bodyguard. Now, the question is
3 the following: The Zakayo whom you knew, how old was he?

4 PRESIDING JUDGE FREMR: Ms Samson.

5 MS SAMSON: Thank you, Mr President.

6 Just to be clear, I wasn't clear myself whether the witness had answered that this
7 person Zakayo is the individual that she saw in the video who was very short. It
8 wasn't clear to me. And right now, based on her answer, it seems that there is
9 confusion as to whether or not they're speaking of the same individual or if she, in
10 fact, knows Zakayo. Thank you.

11 PRESIDING JUDGE FREMR: I also agree that it's not 100 percent clear, Mr Bourgon.
12 Please, could you kindly try to clarify that?

13 And the one comment I got a message from the interpreters that sometimes you are
14 too fast. So I know you are under some time pressure, but still please observe
15 pauses between your question and, in fact, not -- not response, but translation on his
16 response, please.

17 MR BOURGON: Thank you, Mr President.

18 Q. Witness, the bodyguard whom you saw on the video who was putting a
19 weapon into the lorry, and you know who I am talking about, don't you?

20 A. He was a kadogo, in fact, a kadogo.

21 Q. Do you know who I am talking about? I'm talking about the person whom you
22 saw on the video who was putting a weapon into the lorry. You know that person,
23 don't you?

24 A. Yes, it was a kadogo who put weapons into a white lorry. Yes.

25 PRESIDING JUDGE FREMR: Mr Bourgon, sorry, I would rather for further

1 questions move into private session because maybe there is some relation between
2 some persons and -- so, court officer, please let's move into private session now.

3 (Private session at 9.42 a.m.)

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- 4 (Closed session at 11.04 a.m.)
- 5 (Redacted)
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- 9 (Open session at 11.04 a.m.)
- 10 THE COURT OFFICER: We are in open session, Mr President.
- 11 PRESIDING JUDGE FREMR: Thank you.
- 12 We break now and we will reconvene half past 11.
- 13 THE COURT USHER: All rise.
- 14 (Recess taken at 11.05 a.m.)
- 15 (Upon Resuming in open session at 11.39 a.m.)
- 16 THE COURT USHER: All rise. Please be seated.
- 17 PRESIDING JUDGE FREMR: So the Defence is going to continue in
- 18 cross-examination of Witness P-10. As we already indicated, the Defence has last 80
- 19 minutes to make it and as usually I'm asking you, Mr Bourgon, whether you think
- 20 you -- we can stay in open session or if you, and I guess it will be the case, if you
- 21 would like to continue in the line of questioning you followed before the break, then
- 22 we will have to go into private.
- 23 MR BOURGON: Private session please, your Honour.
- 24 PRESIDING JUDGE FREMR: Court officer, please move into private session now.
- 25 (Private session at 11.40 a.m.)

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Trial Hearing
WITNESS: DRC-OTP-P-0010

(Private Session)

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

2 PRESIDING JUDGE FREMR: Thank you. So we will break now and we will
3 reconvene at half past 2. But before doing that, for the sake of planning, Ms Samson,
4 you have indicated that you would like to make some re-examination-in-chief. How
5 much time you think you will need?

6 MS SAMSON: Mr President, I will be reevaluating that again over the lunch break.
7 I had reduced it over the weekend. So if I were to come back and request
8 re-examination time, it would be limited to 15 minutes. Thank you.

9 PRESIDING JUDGE FREMR: Thank you very much.
10 So now we break and we will reconvene half past 2.

11 THE COURT USHER: All rise.

12 (Recess taken at 1.10 p.m.)

13 (Upon resuming in open session 2.37 p.m.)

14 THE COURT USHER: All rise. Please be seated.

15 PRESIDING JUDGE FREMR: Good afternoon, everybody. We will continue with
16 testimony of Witness P-10 and we will continue by re-examination-in-chief made by
17 Prosecution.

18 Ms Samson, do you want to make it in private or in open session?

19 MS SAMSON: Thank you, Mr President. In private session, your Honours. And
20 just to give you an update, I don't think I will need more than five minutes.

21 PRESIDING JUDGE FREMR: Very well. So now let's move into private session.

22 (Private session at 2.38 p.m.)

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Trial Hearing
WITNESS: DRC-OTP-P-0010

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(Closed Session)

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(Closed Session)

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8 (Open session at 3.10 p.m.)

9 THE COURT OFFICER: We are in open session, your Honour.

10 PRESIDING JUDGE FREMR: So we moved into open session at the end of Witness

11 P-10 testimony because she asked explicitly the Chamber to have a chance to speak or

12 to say something on behalf of herself in public.

13 So, Ms Witness, you have the floor.

14 THE WITNESS: (Interpretation) The first thing I want to do is to thank you,

15 Mr President, your Honours, for the opportunity you gave me to testify here.

16 I came here to testify not in my own name alone, but on behalf of all the victims in my

17 country who did not have the opportunity to address the Judges. I am speaking

18 here on their behalf, particularly on behalf of the girls who were enlisted into the

19 armies and who have been victims of rape.

20 Mr President, I thank you very much for having given me the floor.

21 PRESIDING JUDGE FREMR: Thank you, Witness. And as I said, and I will repeat

22 it also for public, we thank you a lot that you came, that you testify sometimes on

23 very difficult topics for you. Thank you very much, and we save you -- we wish you

24 safe journey home. Thank you very much.

25 And now we can move into closed session and escort the witness out of the

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1 courtroom.

2 (Closed session at 3.13 p.m.)

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8 (Open session at 3.15 p.m.)

9 PRESIDING JUDGE FREMR: Now we will continue with few procedural issues; but
10 before doing that, I would like, again, to thank to the Defence and Mr Ntaganda for
11 the constructive approach, for the consent to move Mr Ntaganda out of the courtroom
12 for the duration of this testimony, which obviously helped witness to speak more
13 freely. And I think, I hope, it was for the benefit of both parties because there were
14 significant difference between the way how she testified first day and the other days.
15 So thank you very much for that.

16 And now, as a first issue before us is the pending request made by Prosecution on
17 admission of video DRC-OTP-0120-0293 and connected or related transcripts and
18 translations, Ms Samson, you have already made this submission. Do you want to
19 add anything at this moment?

20 MS SAMSON: No, thank you, your Honour.

21 PRESIDING JUDGE FREMR: Well, then Mr Bourgon, you asked us it was the reason
22 why we postponed ruling on that, that you would rather make your submission on
23 this request after or at the end of testimony of Witness P-10. So now, if you want,
24 you have the floor.

25 MR BOURGON: (Interpretation) Thank you, Mr President. I will be very brief.

1 It is our position that the testimony of the witness does not allow for a sufficient
2 reliability, in terms of her identification of the video, for the video to be admitted
3 through her.

4 We believe that the evidence, which was led by the Prosecution and cross-examined
5 by the Defence, does not establish sufficiently that the Witness was present when this
6 video was made. So the making of the video and, for this reason, we believe that the
7 video itself should not, at this stage, be admitted into evidence.

8 That being said, Mr President, should the Chamber decide to admit the video, we
9 believe that the position in respect of the transcript is different. And I was
10 wondering whether the Chamber would like to hear me now on this issue or after the
11 Chamber takes a decision whether to admit the video or not.

12 PRESIDING JUDGE FREMR: I guess you may continue because we also have been
13 informed of some progress in the meantime, but please continue.

14 MR BOURGON: Thank you, Mr President. The idea behind the admission of
15 transcript -- and this has been an ongoing issue between the Prosecution and the
16 Defence and which -- or the Chamber has been involved into, it is our position,
17 Mr President, that we are dealing with two issues. The first one is straightforward
18 an issue of transcription and translation. And that's straightforward a question of
19 the Defence having the possibility to agree with the Prosecution. And regardless of
20 the decision that is taken whether to admit a transcript or a translation, until we can
21 reach this agreement on the verification of the -- of a transcript, then it should be
22 marked for identification.

23 We have informed already the Chamber that we have consulted with the Registry.

24 We are awaiting an answer so that we have the capability to do so.

25 As soon as we do have this capability, we will immediately embark on verifying these

1 transcriptions and these translations and then consult with our -- with the Prosecution
2 so that we can have these exhibits admitted.

3 In the meantime, I think they should just be marked for identification until this issue
4 takes place. So that's one issue.

5 The other issue is the transcript itself. It is our submission, Mr President, that a
6 decision on the conduct of the proceedings is not -- does not provide specifically in
7 terms of what will happen to a transcript when admission is requested by a party.

8 It is our submission, Mr President, that when we request admission of a transcript, it
9 is important to state what is the purpose of such admission because a transcript and a
10 translation of an audiovisual exhibit is an exhibit of a special category. It is our

11 submission that there are three purposes for admitting a transcript. A transcript can
12 be admitted if for -- straightforward for impeachment purposes, which poses no
13 difficulty in terms of whether it is the truth of the matter or whether the words were
14 pronounced. It is straightforward an issue of impeachment. That is the first level.

15 The second level of admitting a transcript in our respectful submission is when you
16 admit a transcript for the proof of the words that were mentioned, and in this
17 category then if that is the request, then if the transcript is admitted, it proves that
18 these words were mentioned by the persons who are depicted in the video. This is
19 the second level.

20 The third level, Mr President, is when a transcript is admitted for the proof of its
21 content. And to us that is a very sensitive area and that we should only enter into
22 when we have evidence coming from the witness that what is depicted in the video in
23 terms of the words represents the truth, and that should be the exception rather than
24 the rule.

25 On this issue, the Chamber will recall that when Witness 886 was on the stand, we

1 requested admission of a transcript for the truth of its content. The reason for this
2 was simply because the witness through his answers to the questions that were put to
3 him on the video basically establish the truth of what could be seen and heard on the
4 audiovisual exhibit. And in this exceptional circumstances, we decided to ask for
5 admission of this transcript for the truth of its content.

6 My colleague in her objections -- in her response to the Defence objection mentioned
7 that the Defence had requested admission of this transcript, and she's right, we did
8 exceptionally request admission of that transcript for the truth of its content.

9 But I will recall -- the Chamber will recall, Mr President, that even then we had
10 mentioned to the Chamber, regardless of your decision, it should still be marked for
11 identification until the first issue is sorted out, which is the issue of transcription and
12 translation.

13 So that's our submission, Mr President. So if in this case we -- I'd like to hear what
14 the Prosecution's request is. What is the purpose of admitting this transcript so that
15 it is clear for everybody what can be done with a transcript once it's admitted, of
16 course, if the video itself is admitted. Thank you, Mr President.

17 PRESIDING JUDGE FREMR: Thank you.

18 Ms Samson, could you comment the second issue mentioned by Mr Bourgon now?

19 MS SAMSON: Certainly, your Honour. There were two issues that Mr Bourgon
20 had addressed in relation to the transcripts. The first is procedurally whether or not
21 the transcript should receive an MFI code now while we await the Defence being able
22 to review the material in full. That is indeed how we proceeded with Witness 901
23 and Witness 768. The Prosecution has no objection to proceeding in that way.
24 The concern that I have expressed in an email and I will express now is simply the
25 length of time that that seems to be taking. However, in principle, no objection,

1 because it is in line with the Chamber's decision on how admission of transcripts
2 should take place.

3 On the second issue, the purpose of admission of the transcripts, the Prosecution is
4 seeking to admit the video in this case for the truth of its contents to represent to the
5 Chamber and for the use of the parties and participants what occurred on a given day,
6 in this case a visit to the Rwampara training camp and who was present, what was
7 said, what was taking place to corroborate the account of this witness, eventually to
8 corroborate the account of other witnesses who will come forward on behalf of the
9 Prosecution. The transcript and accompanying translation are provided as
10 accompanying documents to the video in order to assist the Chamber, the parties and
11 the participants in using that material to the fullest now or at a later stage.

12 The video is in this case in Swahili, so the translation is provided so that everyone can
13 understand what has taken place. And the transcript is for ease of use of that facility
14 really, of use of the material later.

15 So the transcript and translation in our submission is sought to be introduced into
16 evidence for the truth of the content, the words spoken, just as the video is as well in
17 case there's any difficulty with that or any -- if it wasn't clear already, I make that
18 clearer.

19 And with Witness P-886, the witness was not present when the video put to him was
20 shot. He could not verify the accuracy of the account on the day in question.

21 However, the Defence had suggested that what was being spoken seemed generally
22 to accord with his understanding of the situation at the time, to which he answered
23 yes, and on that basis the Defence made an application to admit the video and
24 corresponding transcript and translation into evidence for the truth of its contents.

25 Here we have a Witness who has indicated being present when the video was filmed.

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1 She has confirmed that what took place is an accurate description of what she herself
2 witnessed.

3 There is a large difference in my submission between the position of this witness
4 vis-à-vis the video we're seeking to admit and P-886's position vis-à-vis the video that
5 was admitted through him. And there are no obstacles in our submission to
6 admitting the video and the corresponding transcript and translations into evidence.

7 Thank you.

8 PRESIDING JUDGE FREMR: Thank you.

9 Now give me a minute, I will deliberate with my colleagues.

10 (Trial Chamber confers)

11 PRESIDING JUDGE FREMR: So after silent deliberation, I can render the following
12 ruling on admission of video DRC-OTP-0120-0293 and related transcripts and
13 translations DRC-OTP-0120-0318, DRC-OTP-0120-0298 and DRC-OTP-0120-0335.

14 The Chamber originally deferred consideration of the admission of video
15 DRC-OTP-0120-0293 until after cross-examination of this witness.

16 Notwithstanding the challenges made on cross-examination, the Chamber considers
17 that the prima facie relevance and probative value of the video has been established at
18 this time, noting that the witness maintained her testimony, that she was present at
19 the time the video was made and testified as to its contents.

20 As with the admission of all evidence, the ultimate weight to be attached will be a
21 matter for consideration at the end of the case in light of all other relevant evidence.

22 The portion of DRC-OTP-0120-0293 used with the Witness may, therefore, be
23 admitted without subtitles.

24 With respect of the translation and transcription as previously addressed by the
25 Chamber at paragraph 57 in the decision on the conduct of proceedings and its oral

1 decision of 20 October 2015, the Chamber has already established the procedure with
2 respect to transcripts and translations pursuant to which in the event of concrete
3 disagreement I am highlighting concrete disagreement, and if the Chamber considers
4 it appropriate, the Registry may be requested by the Chamber to assist with particular
5 transcription or translation issues. The transcripts and translations do not otherwise
6 require verification or certification.

7 The Defence indicated on 12 November 2015 that it had approached the Registry with
8 respect to the transcription and translation issue and that this was awaiting a
9 response. The Chamber has been provided with this correspondence and notes that
10 the response was given on Friday and that further discussions may need to be
11 ongoing.

12 While the Chamber considers that further guidance is not required on this issue at
13 this stage, it emphasizes that the purpose of any such review by the other party is the
14 identification of concrete disagreement and not a full verification and certification of
15 translations and transcriptions already made.

16 In light of this, the transcripts and translations DRC-OTP-0120-0318, then
17 DRC-OTP-0120-0298 and DRC-OTP-0120-0335 will be marked for identification at this
18 time. However, the Chamber would like to emphasize that the Defence must liaise
19 further with the Registry and the Prosecution and bring the issue back to the attention
20 of the Chamber when the matter is resolved. Otherwise, should it become necessary,
21 the Chamber will impose a deadline for the raising of any objections to transcripts
22 and translations for which admission has so far been deferred pending Defence
23 review. Since translation and transcript had not been admitted at the moment to the
24 evidence, this ruling does not touch the second issue mentioned by Mr Bourgon in his
25 submission.

1 It concludes our ruling, and now I think we have all indicated that we don't see
2 reasonable to start a witness, the next witness within the last 25 minutes, but we also
3 understood that Mr Bourgon would like to make any or some further procedural
4 submission or not?

5 MR BOURGON: Indeed, Mr President, I have a number of documents that I would
6 like to have admitted for the purpose of impeachment further to the
7 cross-examination that was conducted by the Defence.

8 PRESIDING JUDGE FREMR: Before you will start with the list, one general question
9 to Ms Samson. If those proposed or tendered documents are intended to be
10 admitted only for -- only for purpose of impeachment, what will be your position?

11 MS SAMSON: I won't have an objection, your Honour, to that. I would just like to
12 know which documents my friend would like to introduce in this way, because he
13 didn't show all of the documents on his list to the witness. Thank you.

14 PRESIDING JUDGE FREMR: Thank you very much.

15 So now please, Mr Bourgon, start to present your list in a way which would allow
16 both Chamber and Ms Samson to catch all those documents and the parts which have
17 been used with this witness.

18 MR BOURGON: Mr President, maybe to save some of the Court's time, maybe I can
19 just liaise with my colleagues in the Prosecution and we can arrive with a list on
20 which we agree either even by email or at the next time that the Chamber will be
21 sitting, Mr President.

22 PRESIDING JUDGE FREMR: We would certainly appreciate and we generally
23 support this approach.

24 Would it be okay with Prosecution?

25 MS SAMSON: Certainly, yes.

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1 PRESIDING JUDGE FREMR: Are there any further submissions or issues,
2 comments, questions at this moment?

3 Mr Bourgon.

4 MR BOURGON: Thank you, Mr President. There is one issue that we would like
5 to raise at this time which is completely unrelated and I believe, Mr President, that we
6 need to go into private session to raise this issue.

7 PRESIDING JUDGE FREMR: All right. Let's move into private session now.

8 (Private session at 3.34 p.m.)

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- 13 (The hearing ends in private session at 3.40 p.m.)