

1 International Criminal Court
2 Trial Chamber VI - Courtroom 1
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 Thursday, 17 September 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 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
16 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
17 For the record, we are in open session.
18 PRESIDING JUDGE FREMR: Thank you.
19 Now appearances starting with Prosecution, please.
20 MS SAMSON: Good morning, your Honours. Today for the Prosecution are
21 appearing Mr Eric Iverson and Julieta Solano, both trial lawyers; Ms Marion Rabanit,
22 associate trial lawyer; Mr Rens van der Werf, assistant trial lawyer; Mr James Pace,
23 assistant trial lawyer; Ms Selam Yirgou, case manager; and myself, Nicole Samson,
24 senior trial lawyer.
25 PRESIDING JUDGE FREMR: Thank you very much, Ms Samson. And I am very

1 glad to hear that your voice is much better today.

2 Defence now, please.

3 MR BOURGON: (Interpretation) Good morning, Mr President. Good morning,
4 your Honours. And good morning to all those present in the courtroom this
5 morning. Representing Mr Bosco Ntaganda we have this morning, who is in fact
6 with us this morning, we have Margaux Portier, we have William St-Michel and
7 myself Stéphane Bourgon. I thank you, Mr President.

8 PRESIDING JUDGE FREMR: Mr Bourgon, one observation from my part. You, on
9 Tuesday, you departed the courtroom during the session and maybe I understood
10 wrong, I don't know, but I understood it by your body language you asked for
11 permission to leave, but next time I would like if you would have a need to leave the
12 courtroom during the session to ask orally for my permission. It is, in my opinion,
13 for the sake of dignity of this hearing and also for the sake of course of the record.
14 So please have it in mind next time.

15 MR BOURGON: Thank you very much, Mr President. I will certainly abide by the
16 wishes of the Court. I thought that I indicated and asked permission and bowed my
17 respect to the Court before leaving, but I will gladly abide by your wishes. Thank
18 you, Mr President.

19 PRESIDING JUDGE FREMR: I think we clarified this, so it's fine with me.
20 Now LRVs, please.

21 MS PELLET: (Interpretation) Thank you, Mr President. The former child soldiers
22 are represented today by Mohamed Abdou, who is associate legal officer with the
23 OPCV, and myself, Sarah Pellet, counsel with the OPCV.

24 MR SUPRUN: (Interpretation) Good morning, Mr President. Good morning,
25 your Honours. The victims of the attacks on the civilian population are represented

1 by the OPCV by Ana Grabowski, assistant legal officer, and by myself,

2 Dmytro Suprun, counsel. Thank you.

3 PRESIDING JUDGE FREMR: I thank both of you.

4 And I further note the presence of the lawyer appointed pursuant to Rule 74 to assist
5 the upcoming witness. So welcome and please state your name for the record.

6 MR BAHOUGNE: (Interpretation) Good morning, Mr President. Good morning,
7 your Honours. My name is Maître Olivier Bahougne.

8 PRESIDING JUDGE FREMR: Thank you very much, Mr Bahougne, and again
9 welcome.

10 Now I have been informed, Mr Bourgon, if I am correct, that you would like to
11 address the Chamber before we start with proceedings today. If that is the case, you
12 have the floor.

13 MR BOURGON: Thank you, Mr President. I just wanted to know what was the
14 proper timing -- I would like to address the Chamber very quickly in respect of the
15 filing which is the submission which is due tomorrow afternoon. It is a short
16 submission. I can do it now or I can do it at any time the Chamber feels is
17 appropriate.

18 PRESIDING JUDGE FREMR: So I prefer if you can make it now.

19 MR BOURGON: Thank you, Mr President.

20 On Tuesday, 15 September, the Chamber issued an oral ruling requesting the Defence
21 and the parties to address in written submissions four issues, and that was on 15
22 September.

23 Yesterday the Chamber issued a ruling which, in our respectful opinion, addresses
24 three of those issues. Accordingly, we would like to either inform or seek leave, seek
25 leave from the Chamber not to make any submissions tomorrow.

1 Regarding the first issue, we understand the Chamber's point of view regarding the
2 courtesy meeting. We will show up and we will greet the incoming witnesses and
3 not say one word more.

4 With respect to the second issue, we will not call -- we will not seek to meet with any
5 expert witness called by the Prosecution.

6 With respect to the third issue, we will not seek to meet with any witness from the
7 Prosecution and we will keep our arguments for cross-examination.

8 I note in this regard that my colleague has nonetheless requested the audiotape of the
9 meeting that was conducted with Witness 901, although she was present and there
10 was no discussion, but it was ordered by the Chamber and we this morning disclosed
11 that audiotape to my colleague.

12 Regarding the fourth issue, and the timing of disclosure notes and logs, we concede
13 the issue. The Prosecution can give it to us whenever they feel it's appropriate.

14 Thank you, Mr President. If the Chamber agrees, we will not make any written
15 submissions tomorrow.

16 (Trial Chamber confers)

17 PRESIDING JUDGE FREMR: So it seems we don't need, you are right, and we even
18 appreciate the expeditious way how you inform us about this, so I think we don't
19 need any further submissions.

20 But maybe anyway I would like to ask Prosecution if you have any comments on
21 current Mr Bourgon's submissions.

22 MS SAMSON: Thank you, your Honour. We understand the Defence's position in
23 relation to the issues that it raised; however, as I had indicated to the Chamber earlier
24 this week, the Prosecution is making an independent filing in relation to inadvertent
25 contacts with Prosecution witnesses which may touch upon some of these issues,

1 where they overlap, so that filing we still intend to make. Thank you.

2 PRESIDING JUDGE FREMR: It's fine with us.

3 Any comments from the part of LRVs?

4 MR SUPRUN: (Interpretation) No, Mr President.

5 PRESIDING JUDGE FREMR: Thank you.

6 Mr Bourgon?

7 MR BOURGON: Thank you, Mr President. Just before we begin and we call

8 Witness 0901, I would simply like to recall that we have a pending submission

9 challenging the jurisdiction of the Court in respect of Counts 6 and 9 and as well we

10 ask the Chamber to rule on the -- any evidence that can be elicited in respect of these

11 two counts from any witness able to elicit such evidence -- to provide such evidence,

12 sorry. So I was just simply recalling that we have this pending filing, Mr President.

13 Thank you.

14 PRESIDING JUDGE FREMR: Okay. Now, before the next witness can be called in

15 to start testifying we have to address some matters related to the testimony of this

16 witness. In particular there are two outstanding Defence requests, other outstanding

17 Defence request, one for disclosure of certain material relating to this witness, and the

18 second one related request for postponement of the cross-examination of the witness.

19 Both these requests have been opposed either in full or part by the Prosecution.

20 The Chamber clarifies that it will rule on the two requests together shortly.

21 It is noted that there are also two Defence requests for leave to reply on those matters.

22 They are filings 810 and 821.

23 The Chamber does not consider that it would be assisted by further submissions on

24 the matters identified and the leave requests are, therefore, rejected which will be

25 noted in the forthcoming decision.

1 The Chamber notes that on 15 September 2015, the Prosecution informed the
2 Chamber by email that would disclose, pursuant to Rule 77 of the Rules, the
3 transcript and audio recording of an interview which the Defence had sought in its
4 disclosure request.

5 So now I am turning to Prosecution. Prosecution, can you please confirm that the
6 announced disclosure has been effectuated, and if so, when?

7 MS SAMSON: Yes, your Honour, in respect of the transcripts of the two audio
8 interviews, those were disclosed yesterday and they will be formally disclosed today
9 with the audiotapes.

10 PRESIDING JUDGE FREMR: Mr Bourgon, can you confirm that?

11 MR BOURGON: Indeed, Mr President, I confirm with the minor caveat that there is
12 a difference between the courtesy copy we receive and the copy we will receive today.
13 One contains numbers which indicate under what reason redactions have been
14 applied, the other doesn't. Thank you, Mr President.

15 PRESIDING JUDGE FREMR: Thank you. Point taken.

16 I have two further matters to address: First, the Chamber recalls its decision issued
17 yesterday granting certain in-court protective measures to the witness about to testify,
18 specifically the use of a pseudonym for the purposes of the trial and voice and face
19 distortion during his testimony.

20 In addition, private sessions will be used to deal with potentially identifying
21 information that could expose this witness or those close to him.

22 Then secondly, as already noted a moment ago, a lawyer, Mr Bahougne, is present to
23 assist the witness pursuant to Rule 74 of the Rules. This advising lawyer was
24 appointed following an indication by the Prosecution that the issue of
25 self-incrimination might arise. As a result of a request by the witness submitted to

1 the Chamber by the advising lawyer, Mr Bahougne, on 15 September 2015, the
2 Chamber permitted Mr Bahougne to be physically present in the courtroom during
3 the witness's testimony.

4 In the aforementioned 15 September filing the witness further requested assurance
5 pursuant to Rule 74(3) of the Rules.

6 Yesterday the Prosecution provided the Chamber with ex parte observations
7 pursuant to Rule 74(4) accepting that such assurances would be appropriate.

8 Defence, you were notified of Mr Bahougne's filing. Do you have any observation in
9 this regard? And please be mindful that we are in open session and let us know
10 whether we need to move into private session to hear your observations.

11 MR BOURGON: We have no observations, Mr President.

12 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

13 In yesterday's decision on in-court protective measures, the Chamber noted that
14 Mr Bahougne, on behalf of the witness, had requested for the testimony or parts of it
15 to take place in closed session. The Chamber indicated in its decision that it would
16 rule on this issue separately when addressing the other request made in relation to
17 Rule 74.

18 Mr Bahougne, the Chamber just recalled that in-court protective measures have been
19 granted for the witness. I further note that if Rule 74(3)(c) assurances are provided
20 to the witness in order to give effect to these assurances, any answers by the witness
21 to matters that could incriminate him will be elicited only in closed sessions and the
22 relevant transcript will be kept confidential. Is that also how the Chamber should
23 see your request for closed session or in camera testimony?

24 MR BAHOUGNE: (Interpretation) Mr President, I have -- I am aware of those
25 comments and I have talked with the Prosecution. I believe that the decisions that

1 you have taken are the right ones because whenever my client might find himself in a
2 sense -- or in the position of maybe self-incriminating himself or being recognized, we
3 might go into private session. I also noted that you said that I was appointed of 15
4 September. It was in fact 8 September that I was appointed. It was a little mistake
5 there.

6 PRESIDING JUDGE FREMR: Thank you, Mr Bahougne. So we will correct that in
7 the transcript. It was an error from our part. Sorry for that.

8 So, Mr Bahougne, the Chamber then will provide the witness with the Rule 74(3)(c)
9 assurances at the start of his testimony and if any questions are asked that could lead
10 to self-incrimination, we will hear the witness's answer in private session. I
11 understood that you have been explained what is the difference between closed and
12 private session.

13 And in light of the Chamber decision on in-court protective measures, the Chamber
14 does not consider it necessary to grant a further measure in the form of fully closed
15 session. So we will try at least to conduct part of the testimony in open session,
16 but as soon as it will be even a risk of identification of your client, we will move to
17 private session, which is also your main role to keep eye on that.

18 So now I think we can have the witness brought in and I will explain to him that the
19 Chamber will provide him the requested assurances.

20 So, court officer, please have the witness brought in. And because of that we will go
21 into closed session for this purpose.

22 (Closed session at 9.51 a.m.)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 (Redacted)

2 (Open session at 9.53 a.m.)

3 THE COURT OFFICER: We are in open session, Mr President.

4 PRESIDING JUDGE FREMR: Thank you. I also would like to thank to

5 Mr Bahougne that he started his assistance to the witness from the very beginning of

6 his presence in the courtroom. So thank you. I saw you that instructed him when

7 he was entering. Thank you.

8 Mr Witness, good morning.

9 WITNESS: DRC-OTP-P-901

10 (The Witness speaks Swahili)

11 THE WITNESS: Jambo.

12 PRESIDING JUDGE FREMR: You are going to testify before the International

13 Criminal Court. On behalf of this Chamber I would like to welcome you to the

14 courtroom. This Chamber has been established to try the case of the Prosecutor

15 against Mr Bosco Ntaganda. You are called to testify to assist us in our search for the

16 truth.

17 You will be soon going to be questioned both by the Judges and lawyers in the

18 courtroom and in this connection I would like to guide you. Please listen carefully to

19 those questions. It is very important that you make sure that you understand the

20 question before you answer it. If you do not understand, please feel free to ask for

21 the question to be either repeated or rephrased. We want you to tell the truth and

22 tell us only what you really saw or heard or sensed yourself. If you did not see or

23 hear it yourself, but you found out some other way, then you should explain how.

24 You may be asked about events that happened many years ago, so it is natural that

25 you may not remember all details. In such a case, please testify just on that which

1 you really remember. Don't guess, don't make things up, please. There is nothing
2 wrong in saying "I don't know" or "I don't remember." Do you understand that,
3 Mr Witness?

4 THE WITNESS: (Interpretation) Yes.

5 PRESIDING JUDGE FREMR: Fine. Then now, court officer, can you please
6 administer the solemn undertaking to tell the truth.

7 Mr Witness, do you prefer to swear in French or Kiswahili? What is your
8 preference?

9 THE WITNESS: (Interpretation) I would like to swear the oath in Swahili.

10 PRESIDING JUDGE FREMR: Fine. Then let's proceed this way.

11 THE WITNESS: (No interpretation)

12 PRESIDING JUDGE FREMR: And, Mr Witness, you should rise please.

13 Thank you.

14 THE WITNESS: (Interpretation) I solemnly declare that I will speak the truth, the
15 whole truth and nothing but the truth.

16 PRESIDING JUDGE FREMR: Thank you very much, Mr Witness. You can sit
17 down.

18 So it means, Mr Witness, that now you are under oath. The representative of the
19 Victim and Witness Unit and the lawyer appointed by Registry, Mr Bahougne, who is
20 here to assist you, have both, I guess, informed you about the importance to speak the
21 truth. Nevertheless, I have to reiterate to you that as you have just promised you
22 have to speak the truth and that it's an offence within the jurisdiction of this Court to
23 give false testimony. Do you understand that?

24 THE WITNESS: (Interpretation) Yes.

25 PRESIDING JUDGE FREMR: All right. Now, Mr Witness, you have been assigned

1 the lawyer Mr Bahougne to provide you with legal advice about self-incrimination.

2 This lawyer has requested that you be given certain assurance by the Chamber.

3 There may be questions asked to you for which you fear that answering them

4 truthfully may incriminate you because these questions relate to your own conduct.

5 In such cases we will require you to answer the question, but we can assure you that

6 your answer will be kept confidential and will not be disclosed to the public or to the

7 government of any country.

8 The Prosecution has further assured that they will not themselves use this

9 information to prosecute you before the ICC provided that you tell the truth. I think

10 it's very important information for you. Have you understood that?

11 THE WITNESS: (Interpretation) Yes, I do.

12 PRESIDING JUDGE FREMR: Fine.

13 And in this connection, I request the parties and participants to be vigilant about

14 going into private sessions for areas of evidence that are likely to elicit responses that

15 might self-incriminate this witness.

16 Now, Mr Witness, let me explain to you how the protective -- in-court protective

17 measures work that the Chamber has put in place for your testimony.

18 We decided to order face distortion, which in practice means that no one outside the

19 courtroom can see your face on the screen during testimony. We also decided to

20 order voice distortion, which means that no one outside the courtroom will be able to

21 identify you by your voice as it has been distorted. The Chamber also decided on

22 use of pseudonym. In accordance with that, everybody in the courtroom will refer

23 to you only as "Mr Witness" to make sure that the public does not know your name.

24 When you answer questions then you will not give away who you are. We will do

25 so in open session, which means that the public can hear what is being said in the

1 courtroom. You can see that we are in open session now and you can recognize that
2 according the light in front of you which is red.

3 When you are asked to describe anything that relates specifically to you, or you are
4 asked to mention facts that might reveal your identity, for example any locations
5 where you live or persons close to you, we will do this in a private session.

6 As I explained already, we will also go into private session for any evidence which
7 might self-incriminate you. The light in front of you will then be green. Then there
8 is no broadcast and no one outside the courtroom can hear your answer. If ever
9 anything gets said during open session which should have been said in private
10 session, we will do our best to protect this information. Your testimony will be
11 broadcast on a delay and therefore we can remove any such remarks from the
12 broadcast which will be heard by the public and from the public transcript of the
13 proceedings.

14 The Chamber recognizes that your security and well-being is important during the
15 course of this trial. If at any point you feel that you would like a brief break from
16 giving your testimony, or you feel unwell, do not hesitate to let us know.

17 Is it clear to you?

18 THE WITNESS: (Interpretation) Yes.

19 PRESIDING JUDGE FREMR: All right then, now a few practical matters you should
20 have in mind when giving your testimony.

21 Everything we say here in the courtroom is written down and interpreted into
22 English and French. It is therefore important to speak clearly and to speak at a
23 moderate or, rather better, slow pace. We want to make sure that your words can be
24 well understood by the interpreters and then by the rest of us.

25 Please speak into the microphone and only start speaking when the person asking

1 you the question has finished. And to allow for the interpretation, everyone has to
2 wait a few seconds before starting to speak. So I recommend to you when the
3 lawyer or the Chamber has asked his or her question, please count in your head to
4 three and then only then give your answer.

5 If you have any questions yourself, raise your hand so we know that you wish to say
6 something. We will then give you the opportunity to speak.

7 Have you understood all of that?

8 THE WITNESS: (Interpretation) Yes.

9 PRESIDING JUDGE FREMR: I know that is a lot of information, but I think we will
10 try our best to assist you.

11 Okay, then we can start your testimony.

12 So, Prosecution, who will be leading this examination?

13 MS SAMSON: I will, your Honour.

14 PRESIDING JUDGE FREMR: Okay then, Ms Samson, you have the floor.

15 QUESTIONED BY MS SAMSON:

16 Q. Good morning, sir.

17 A. Good morning.

18 Q. We've had a chance to meet already, but I'll repeat that my name is
19 Nicole Samson and that I'll be asking you questions today and tomorrow on behalf of
20 the Office of the Prosecutor.

21 A. Okay.

22 Q. I just wanted to ensure that you understand where the red and green light is
23 that the Presiding Judge made reference to to designate open session or closed session.
24 Can you see that light?

25 A. Yes, I've understood well. Thank you.

1 Q. As the Presiding Judge has just indicated, if at any time any of my questions are
2 unclear to you, simply ask me to repeat and I'll do my best. Do you understand?

3 A. Yes.

4 Q. And if at any time that we are in open session you feel that giving the answer
5 would reveal your identity, please raise your hand and indicate that to the Chamber.
6 Do you understand?

7 Sir, I don't think the interpreters captured your answer. Could you answer if you
8 understood what I just asked you?

9 A. Yes, I've understood.

10 Q. Thank you. Sir, could you please tell the Court your --

11 MS SAMSON: Your Honour, can we please move into private session for my first
12 series of questions.

13 PRESIDING JUDGE FREMR: Yes. Let's move to the private session.

14 (Private session at 10.07 a.m.)

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- 12 (Redacted)
- 13 (Open session at 10.45 a.m.)
- 14 THE COURT OFFICER: We are in open session, Mr President.
- 15 PRESIDING JUDGE FREMR: Thank you.
- 16 Ms Samson, you have the floor.
- 17 MS SAMSON: Thank you.
- 18 Q. Sir, you were describing some APC dissidents in 1999 and beginning of 2000
- 19 and you had mentioned an individual by the first name Bosco. Can you please
- 20 indicate and repeat again if you know any other names of that individual?
- 21 A. We all knew him by the name of Afande Bosco Ntaganda. If he has any other
- 22 names apart from those I am not aware of them, with the exception of his call sign.
- 23 Q. And you mentioned a second APC dissident whom you referred to as Kisembo.
- 24 Are you aware of any of his other names?
- 25 A. Yes.

1 Q. Can you please tell the Court which names those are?

2 A. Very well. Afande Floribert Kisembo Bahemuka.

3 Q. Sir, could you please spell Bahemuka for the record.

4 A. B-A-H-E-M-U-K-A.

5 Q. Thank you. You also mentioned an APC dissident named Kasangaki. If you
6 know any of his other names, could you please tell us what they are?

7 A. I was not aware of any other names for Kasangaki, any other names that he
8 might have borne apart from his call sign.

9 Q. Do you know any other names of Zairois?

10 A. No.

11 Q. Do you know any other names of Mugabo?

12 A. Well, it was at a later stage that I gleaned Mugabo's first name.

13 Q. And what was it?

14 A. Res (phon).

15 THE INTERPRETER: Correction from the Swahili booth: Prince.

16 MS SAMSON:

17 Q. Do you know any other names for Bagonza?

18 A. No, with the exception of the call sign that he used, I do not know any other
19 name that he might have borne.

20 Q. Do you know any other names for Tchaligonza?

21 A. Yes.

22 Q. Could you please tell us what other names he had?

23 THE INTERPRETER: Message from the Swahili booth: Mr President, could the
24 witness please repeat the name. The interpreter did not grasp it.

25 PRESIDING JUDGE FREMR: Mr Witness, could you please repeat the last name

1 because the interpreters did not catch that, please.

2 THE INTERPRETER: Message from the English booth: Could the witness please
3 be requested to move towards the microphone.

4 THE WITNESS: (Interpretation) His name was Nduru.

5 PRESIDING JUDGE FREMR: Sorry, one more remark, Mr Witness: It seems to be
6 some problem that your voice probably is not loudly enough transferred to the
7 interpreter's booth. There are two possibilities, either you can move a little bit closer
8 to microphone, which maybe I can understand you don't want, or you then should, if
9 you want to stay at the place you are now, you have to speak a little bit more loudly.
10 So what do you prefer?

11 Thank you very much.

12 Now, Ms Samson, you can proceed.

13 MS SAMSON:

14 Q. Sir, do you know the ethnicity of those individuals whom you just mentioned?

15 A. I know the ethnic origin of some of them, but as to the others I do not.

16 Q. Do you know Bosco Ntaganda's ethnic origin?

17 A. Yes, I do.

18 Q. Can you please tell the Court what his ethnicity is?

19 A. To my mind he hails from Masisi territory in the North Kivu.

20 Q. Is he Hema?

21 A. No, in Masisi there are no Hemas.

22 Q. Do you know to which ethnic group he belongs?

23 A. In Congo they are described as being Rwandan speaking, that is to say the
24 ethnic groups that reside in that territory.

25 Q. And Floribert Kisembo, do you know his ethnicity?

1 A. Yes, he was of Gegere ethnic origin.

2 Q. Is Mr Kisembo still living?

3 A. No, he is already deceased.

4 Q. And can you tell us, please, what Kasangaki's ethnicity is?

5 A. Yes. Kasangaki was of the Hema South ethnic group.

6 Q. And can you tell us the ethnicity of Zairois?

7 A. Zairois also hailed from North Kivu and he was Rwandan speaking, but I do
8 not know from which territory he hailed because we did not continue with him.

9 Q. Can you please tell us the ethnicity of Prince Mugabo?

10 A. Prince Mugabo was also Rwandan speaking. I do not know from which
11 province he hailed or of what origin he was.

12 Q. Can you tell us the ethnicity of Bagonza and Tchaligonza?

13 A. Both of them were of Hema South ethnic origin.

14 Q. You had mentioned a term called the "Chui mobile force". Can you explain
15 what that term means?

16 A. Yes. The Chui mobile force, to my mind, to my knowledge, to my limited
17 knowledge -- well, you know that "chui" is an animal, do you not? "Mobile" can
18 mean people who move about. And "force" is the name that the group gave itself.

19 Q. Did the group have a leader?

20 A. At that moment in time it was Afande Bosco who was in charge of that group.

21 Q. How did this group come about? What were the circumstances of its creation,
22 if you know?

23 A. During the ethnic war there were APC soldiers who wanted to fight against the
24 Hema, with the Lendu and against the Hema, and some of the Hema commanders
25 within the APC did not understand why it was that the APC joined the Lendu during

1 the ethnic war between the Lendus and the Hema. So the Hema commander was
2 unhappy about this. Afande Bosco was in town at that moment in time. He left
3 town in order to seek medical care and he met those commanders, and that was the
4 beginning of the movement.

5 THE INTERPRETER: The Swahili interpreter corrects himself: It is not free mobile
6 force, but Chui mobile force.

7 PRESIDING JUDGE FREMR: Mr Bourgon?

8 MR BOURGON: Thank you, Mr President. At the beginning of his testimony the
9 witness was informed by the Chamber to ensure that he would keep his answers to
10 what he saw personally, what he heard personally, or what he sensed and that if he
11 gained knowledge of a fact otherwise, to provide where he obtained the knowledge
12 from. I would appreciate if my colleague could ask her questions in order to elicit
13 information from the witness and to make a clear difference between what he did
14 experience himself and what he obtained from other sources, and then I can address
15 the Chamber regarding hearsay. Thank you, Mr President.

16 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon. I think you are right, but I
17 guess that now it's 11.03. Maybe it's a good time to break and then we will come
18 back to this issue after the break. Is that fine with you? Okay.
19 So we are breaking now and we will return back at half past 11.

20 THE COURT USHER: All rise.

21 (Recess taken at 11.03 a.m.)

22 (Upon resuming in open session at 11.34 a.m.)

23 THE COURT USHER: All rise.

24 Please be seated.

25 PRESIDING JUDGE FREMR: Before I move the floor to Ms Samson, I would like to

1 pronounce one oral guidance of the Chamber, and it's oral guidance on questions
2 related to Count 6 and 9.

3 At the start of the first session today, the Defence recalled its pending filing in which
4 it challenges the jurisdiction of the Court in respects of Counts 6 and 9 and in which it
5 requests the Chamber to rule that no evidence in relation to these Counts can be
6 elicited in this case.

7 The Chamber has taken note of that filing, which the Chamber observes was filed
8 only the day before the start of trial, and the responses received last week from the
9 Legal Representative of Victims of former child soldiers, to be exact, and the
10 Prosecution.

11 The Chamber will issue a decision on the Defence request in due course, but pending
12 the decision it will allow the Prosecution to ask question, if any, and thus to elicit
13 evidence on Counts 6 and 9.

14 In this regard the Chamber notes not only the interrelatedness of any evidence
15 regarding the alleged involvement of children, but in particular, it stresses that the
16 Bench is composed of professional judges. Therefore, should the Defence request be
17 granted, as with any information that at a later moment would turn out to be
18 irrelevant in relation to the charges against the accused, the Chamber can then
19 exclude that information from the evidence without any prejudice arising to the
20 accused.

21 Now we can move to the in fact last issue we faced before the break, so in effect the
22 Chamber supports Mr Bourgon's request asking Ms Samson to be more specific about
23 how witness got the knowledge he mentioned at the end of his testimony before the
24 break.

25 So, Ms Samson, you have the floor.

1 Mr Bourgon.

2 MR BOURGON: Thank you, Mr President. I take the opportunity to intervene at
3 this time before my colleague begins. I note that the witness has some notes or some
4 paper in front of him for the purpose of his testimony, and to the best of my
5 knowledge there has been no request, and we have no idea what these notes are and
6 whether they are -- what is the purpose for a witness of fact to have some notes with
7 him when he testify.

8 PRESIDING JUDGE FREMR: Mr Witness, have you heard the Defence counsel?
9 Do you use any notes?

10 THE WITNESS: (Interpretation) I do not have any notes, except for document 74
11 that you gave me. This is the Rule 74 it is.

12 PRESIDING JUDGE FREMR: Just my guidance, if you need -- feel a need to make
13 your own notes, for example, in order to record some complex question or to make it
14 but in the courtroom as a preparation for your upcoming response, it's fine, but
15 shouldn't -- you shouldn't in the future to come with some, you know, prepared notes.
16 Do you understand?

17 THE WITNESS: Ndiyo.

18 PRESIDING JUDGE FREMR: Fine. So now we can move to Ms Samson.
19 Ms Samson, please.

20 Sorry. Mr Bourgon, I think you have some doubts about, you know, statement of
21 Mr Witness?

22 MR BOURGON: I just want to make clear, Mr President, if a witness comes into the
23 courtroom with notes, I'm not sure if it was his own initiative, that of his counsel or
24 that of counsel for Prosecution. I would just appreciate that if something like that is
25 bound to happen, that counsel will come to the Defence and will say why a witness

1 has a piece of paper in front of him and basically show us the paper. That's how I
2 proceeded in past cases. If I wanted a witness to bring a piece of paper with him,
3 I simply by courtesy approach my colleague and show the piece of paper and show
4 what it is to avoid any waste of time. Thank you, Mr President.

5 MR BAHOUGNE: (Interpretation) Your Honour.

6 PRESIDING JUDGE FREMR: Duty counsel, please.

7 MR BAHOUGNE: (Interpretation) I gave the witness a copy of Rule 74, because it
8 was my duty to inform him of the issue at hand and to allow him to give testimony
9 calmly and with an untroubled mind.

10 And I believe my learned friend opposite is quite familiar with the provision in
11 question. So really it is just the actual text, the actual wording of this Rule and
12 nothing more than that. It is not notes.

13 PRESIDING JUDGE FREMR: Thank you very much, Mr Bahougne.

14 And I can confirm because just now court officer brought to me those two pages, and
15 I can assure, Mr Bourgon, that really it is French text of Rule 74.

16 But anyway otherwise I can just confirm we agree with the approach proposed by
17 Mr Bourgon if something like he described should occur in the future.

18 So you can, court officer, you can just return back this paper to Mr Witness.

19 And thank you, Mr Witness.

20 So hopefully now lastly for the third time I am giving the floor to Ms Samson.

21 MS SAMSON: Thank you, Mr President. Mr President, may I ask that we return to
22 private session just for one -- one or two questions.

23 PRESIDING JUDGE FREMR: Court officer, let's move to private session.

24 (Private session at 11.42 a.m.)

25 (Redacted)

Trial Hearing

(Open Session)

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4 (Open session at 11.46 a.m.)

5 THE COURT OFFICER: We are back in open session, Mr President.

6 PRESIDING JUDGE FREMR: Ms Samson, please proceed.

7 MS SAMSON: Thank you.

8 Q. You've mentioned, Mr Witness, the events that were occurring in the town.

9 Could you please tell the Court which town you're referring to?

10 A. The town of Bunia.

11 Q. And could you explain for the Court why the Chui mobile force was very close
12 to the Hema ethnic group?

13 A. As I said before, there were officers and commanders in the APC who were in
14 the Chui mobile force. They were unhappy, discontented with the system within the
15 APC army. Some were collaborating with Lendu fighters, and the mobile force was
16 thought of as an army fighting for the Hema people's rights. And you see the Hema
17 people were well informed of the activities of the Chui mobile force.

18 THE INTERPRETER: Correction from the interpreter: That is why I was very
19 much informed of the activities of the Chui mobile force.

20 MS SAMSON:

21 Q. Sir, do you have any knowledge of the relationship between Bosco Ntaganda
22 and Wamba Dia Wamba?

23 A. Yes. When we were in (Redacted) some people were aware of the
24 relationship between the two, Bosco Ntaganda and Wamba Dia Wamba.

25 Q. Can you please tell the Court what you knew of their relationship?

1 A. Well, as for the colleagues that we had the training with, that is to say the
2 people who were familiar with the story of Afande Bosco, in actual fact Bosco was the
3 bodyguard of Wamba Dia Wamba. During the war between the Rwandans and the
4 Uganda, he was Wamba Dia Wamba's bodyguard. That was in Kisangani. He
5 defended him and in actual fact he was injured. That is what I know.

6 Q. Who was injured?

7 A. Afande Bosco was injured.

8 Q. And do you know whether Bosco Ntaganda remained Wamba Dia Wamba's
9 bodyguard?

10 A. That was at the time of the RCD. I believe that was in 1998 or 1999. That was
11 when the Rwandan army and the Ugandan army squared off in Kisangani.

12 PRESIDING JUDGE FREMR: Pardon.

13 Mr Bourgon.

14 MR BOURGON: Thank you, Mr President. I think I would like to make an
15 objection without the witness hearing the argument, Mr President.

16 PRESIDING JUDGE FREMR: All right. Court officer, please could you escort
17 Mr Witness out of the courtroom for a while. And for that reason we have to go to
18 the closed session and put the blind down.

19 MR BOURGON: Mr President, with a view to avoiding any waste of time, maybe he
20 can just take his earphones off. I don't think he speaks English. I think we can save
21 some time.

22 MS SAMSON: Your Honour, I think it would be preferable for the witness to leave
23 if the Defence needs to make an objection in his absence.

24 PRESIDING JUDGE FREMR: Yes, I think I also share the view of Ms Samson.

25 So please, court officer, escort Mr Witness out of the courtroom. It will be just for a

1 short time. And we have to go to closed session for that purpose.

2 (Closed session at 11.53 a.m.)

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(Closed Session)

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(Closed Session)

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(Private Session)

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(Private Session)

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Trial Hearing

(Private Session)

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6 (Open session at 12.29 p.m.)

7 THE COURT OFFICER: We are in open session, Mr President.

8 PRESIDING JUDGE FREMR: Thank you.

9 Ms Samson, you have the floor.

10 MS SAMSON: Thank you.

11 Q. Sir, can you see the photograph in front of you?

12 A. Yes.

13 Q. Do you recognize anybody in the photograph?

14 A. Yes.

15 Q. Starting from the left-hand side of the photograph, do you recognize the person
16 who is sitting down with a green military cap holding a gun?

17 A. Yes, I recognize the person.

18 Q. Can you please tell the Court what the person's name is?

19 A. I don't recognize the person, the first person who is seated.

20 Q. Thank you. And the person who is seated to the right of that individual, so the
21 second person to the left of the photo who is sitting with a bandana, white bandana
22 around his head, do you recognize that person?

23 A. Yes.

24 Q. Can you give the Court that person's name, please?

25 A. It is Kasangaki.

1 Q. And the person sitting next to Mr Kasangaki holding a stick of some sort and a
2 blue-colour beret and a weapon, do you recognize that person?

3 A. Yes.

4 Q. Can you please tell the Court his name?

5 A. Afande Bosco.

6 Q. And when you use the term "Afande" to describe Mr Ntaganda and Mr Floribert
7 Kisembo, what does that term mean?

8 A. Well, ever since I've known him he's been called Afande and I've always used
9 that name right up until the present, up until now.

10 Q. And what does the term denote? Is it part of his name or does it denote
11 something else?

12 A. I don't know what the word means. All I know is that in Swahili, in the army,
13 that is what you call a commander or a high-ranking person.

14 Q. And coming back to the photograph, do you recognize and can you give the
15 Court the name of the person sitting to the left of Mr Ntaganda? He's in blue jeans
16 and a blue button-down shirt.

17 A. Yes, that person is Rafiki.

18 Q. And what is Mr Rafiki holding in his hand?

19 A. He has a Motorola.

20 Q. And going back to Mr Ntaganda, what is he holding in his hands?

21 A. He has a spear in one hand and he also has a Motorola in the other hand.

22 Q. Do you recognize the weapon that he's holding, the weapon that looks like a
23 gun?

24 A. The one he has slung around his chest?

25 Q. Yes. I'd like to know if you could tell me and the Court what type of weapon

1 that is?

2 A. In English? It is an SMG in English, or it's also known as an AK-47.

3 Q. And turning now to the person who's sitting to the left of Mr Rafiki, with his leg
4 crossed over the other and in a green beret, do you recognize that person, and if so,
5 could you please give his name to the Court?

6 A. I recognize that person, it is Afande Kitembo.

7 Q. Do you recognize the person sitting to Mr Kitembo's left, so the person on the
8 far right hand of the photo sitting?

9 A. No.

10 Q. Are you able to identify the person in the back row of the photograph in the
11 white shirt and tie?

12 A. Yes.

13 Q. Who is that person?

14 A. It is Mr Thomas Lubanga.

15 Q. And lastly, do you recognize the person who's also in the back row wearing a
16 green military shirt and with a green beret?

17 A. Yes.

18 Q. Who is he?

19 A. That is Abelanga.

20 Q. Do you recognize where this photograph was taken?

21 A. This photograph was taken in the town of Bunia after leaving the bush.

22 Q. Do you know which part of Bunia this photograph was taken? Are you able to
23 identify the building behind the men in the photo?

24 A. He was living in a house that was opposite the Azanga movie house and the
25 owner of that house was Chui Nyanga (phon).

1 Q. You said he was living in the house. Who are you referring to? Who was
2 living in that house? It wasn't captured by the interpreters.

3 A. The Chui mobile force soldiers. It was a house that had been occupied by the
4 Chui mobile force soldiers once they had come back from the bush. And that house
5 was initially occupied by Lubanga.

6 Q. So, sir, are you able to tell the Chamber approximately when this photograph
7 was taken? You mentioned it was after the Chui mobile force left the bush?

8 A. It was early in the year 2000, and the people who were moving towards
9 Kyankwanzi used that house. That was their departure point.

10 Q. And when you say "the people who were moving towards Kyankwanzi," are
11 you referring to people (Redacted) and other recruits who were going to training or
12 are you referring to somebody else?

13 A. The recruits were first taken to that house before they left for Kyankwanzi.
14 They were taken to the airport for transportation towards Entebbe.

15 Q. Thank you.

16 MS SAMSON: May I have a second?

17 PRESIDING JUDGE FREMR: Sorry to interrupt. One question from my part on
18 this photo. May I?

19 Mr Witness, do you have any knowledge why Mr Ntaganda is keeping this spear on
20 his right -- in his right hand?

21 THE WITNESS: (Interpretation) No, I'm not in a position to know that. All
22 I know was that he was in the habit of holding a stick in his hand.

23 PRESIDING JUDGE FREMR: Fine. Thank you.

24 MS SAMSON: I would like now, please, to turn to a second photograph, which is in
25 your binders at number 45 on the Prosecution's list of documents. It should be tab

1 45 in your binders as well. The ERN is DRC-OTP-0137-0713.

2 PRESIDING JUDGE FREMR: Is it also public?

3 MS SAMSON: Yes.

4 Q. Sir, can you see the photograph?

5 A. Yes.

6 Q. I have similar questions in relation to this photograph. First, do you recognize
7 anybody in the photograph?

8 A. Yes, I recognize a few of them.

9 Q. I will ask you to identify a few of the individuals and then afterwards you can
10 let me know if there are additional individuals that you recognize.

11 So starting first with the individual to the extreme left of the photograph in the back
12 row who is holding a weapon and has a white bandana around his head, do you
13 recognize that person?

14 A. Yes, that is Kasangaki.

15 Q. Do you recognize the person standing to Mr Kasangaki's left?

16 A. Yes, that is Mbavazi.

17 Q. Are you able to spell Mbavazi?

18 A. M-B-A-V-A-Z-I.

19 Q. Thank you. Do you recognize the person standing in the back row at the far
20 right of the photograph? You can see the person's head and a bit of his shoulders,
21 but not much else.

22 A. What is that person wearing?

23 Q. It looks like a white shirt, but much of the person's body is hidden behind a
24 soldier standing in front of him. It is the person standing in the back row to the far
25 right of the photograph?

1 A. That is Mr Thomas Lubanga.

2 Q. Do you recognize the person who's to Mr Lubanga's right wearing a green
3 beret?

4 A. Yes, that is Afande Kisémbó.

5 Q. Do you recognize the person to Mr Kisémbó's right in a blue buttoned-down
6 shirt?

7 A. Yes, that is Rafiki.

8 Q. Do you recognize the person who is just in front of Mr Rafiki in what looks like
9 a blue beret?

10 A. Yes, that is Afande Bosco.

11 Q. And do you recognize a person who's sitting down in the very front row, the
12 third person from the left who has a beige-coloured beret with a white bandana
13 around his forehead?

14 A. Yes, that is Abelanga.

15 Q. Do you recognize anybody else in that photograph?

16 A. Yes, there's a young man who I recognize.

17 Q. Can you please tell the Court where that young man is positioned on the
18 photograph and what his name is?

19 A. He is crouched down, he's beside Mbavazi. He's wearing a bandana around
20 his head. I have the impression that he has a weapon in his hand. And his first
21 name is Olivier.

22 Q. And are you able to tell the Court where this photograph was taken? Do you
23 recognize the place?

24 A. No, I don't know, but I think it was in the town of Bunia, either in the
25 compound where he was living, but I can't be very specific.

1 Q. And as for the time frame of this photograph, do you have any idea of the time
2 frame, and if so, how do you base your conclusions?

3 A. When the Chui mobile force soldiers entered the town, they were all wearing
4 bandanas, white bandanas around their heads. That's why I think that.

5 Q. Thank you.

6 MS SAMSON: I have no more questions on these photographs, unless the Chamber
7 has a question.

8 PRESIDING JUDGE FREMR: We don't.

9 Defence, any question? Well, no questions.

10 Maybe one question concerning possible tendering this document into evidence. Do
11 you intend to tender those two photographs?

12 MS SAMSON: Yes, your Honour. Yes.

13 PRESIDING JUDGE FREMR: Defence, any objection to that?

14 MR BOURGON: We'll have no objection, Mr President, but we will have a lot of
15 questions on cross-examination for the witness. Thank you.

16 PRESIDING JUDGE FREMR: Okay. So those two documents, the first one ending
17 with 0711 and the second one ending with 0713, are admitted into evidence as a
18 Prosecution exhibit.

19 So now, Ms Samson, you still have 6 minutes. You may proceed if you want.

20 MS SAMSON: Thank you very much.

21 Your Honour, may I request that we go into private session for a few questions.

22 PRESIDING JUDGE FREMR: Court officer, please let's move to private session.

23 PRESIDING JUDGE FREMR: Mr Bourgon?

24 MR BOURGON: Thank you, Mr President. Concerning that we have only about
25 five minutes left --

1 (Private session at 12.54 p.m.)

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14 (Closed session at 12.55 p.m.)

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24 (Open session at 12.56 p.m.)

25 THE COURT OFFICER: We are in open session, Mr President.

1 PRESIDING JUDGE FREMR: So, Mr Bourgon, you have the floor.

2 MR BOURGON: Thank you, Mr President.

3 My objection is that I wanted to raise objections to a few of the questions that were
4 put by my colleague during the last hour or so, but at the same time I want to avoid
5 interrupting the work of the Court so I kept it for the last few minutes.

6 One of the issues is the relevance of the questions being asked. On the one hand, if
7 my colleague is looking for a confirmation of the identity of some persons, we can
8 provide that and we don't need to go through all this work, and I could identify the
9 pictures for her.

10 I note that the witness was not present on either of these two pictures, so he is talking
11 from knowledge that he gained from some other source.

12 This happened in 2000, in the year 2000. This happened -- those pictures were taken,
13 at least according to the information we now have, would have been taken at a time
14 which is outside of the temporal scope of the charges laid against the accused. At
15 least my colleague could establish a foundation as to why she is looking for this
16 witness to identify these pictures.

17 One of the reasons I did not object of course is this information is bound to come into
18 evidence at some point during the trial, but is it the right witness to ask for
19 recognition and then to ask the witness for his opinion as to when that picture would
20 have been taken? I think there is a different way to -- a different approach that can
21 be taken to accelerate the proceedings in order to have the Court benefit from
22 valuable information that is relevant. Thank you, Mr President.

23 PRESIDING JUDGE FREMR: And just to be clear, Mr Bourgon, so your objection is
24 targeting admittance into evidence or even questioning witness on the photographs?

25 MR BOURGON: No, we do not object the admittance into evidence. I have said so

1 and the two pictures have been admitted. And as I've mentioned those pictures are
2 bound to be admitted at some point.

3 Now, what I'd like to know, which has not been established, is why these questions
4 are being put to this witness. Is it just to confirm the identity of those -- of the people
5 on the pictures or is it to confirm something else? Is it -- is she trying to establish by
6 having the witness identify those persons on the picture is -- what is the relevance to
7 identifying these people to the charges laid against the accused? This is not relevant,
8 at least with this witness. It might be relevant for the case, but why this witness?

9 And of course the questions are very often put in a leading fashion and I want to
10 leave -- I want my colleague to get all the possibility to ask the questions she want,
11 but she should focus or at least provide the foundation before doing so. Thank you.

12 PRESIDING JUDGE FREMR: Ms Samson, do you have a response for Mr Bourgon?
13 I guess you have.

14 MS SAMSON: Well, I do to the extent that the Prosecution's position on the period
15 prior to 6 August 2002 is quite clear in my submission in our pre-trial brief, in our
16 Document Containing the Charges, in our opening statement. And I'll remind
17 Mr Bourgon and perhaps if it is of assistance to the Chamber that the Lubanga Trial
18 Chamber held that matters and events prior to the start of the charges, as they relate
19 to the common plan, is relevant and necessary and appropriate to be adduced and
20 admitted into evidence during the course of the trial.

21 Accordingly, I'm not quite clear on what the objection is precisely. I have a witness
22 here who in 2000 happens to have been present at places where these pictures were
23 taken and has given his assessment and basis as to why he dates the photographs at a
24 certain time. Perfectly appropriate in my view, your Honour. He is not an
25 inappropriate witness to ask those questions of. There may be other witnesses who

1 were also at those locations at those times, but as the first witness, in my submission,
2 it was appropriate to have asked this one who was well placed to give the evidence he
3 gave. Thank you.

4 PRESIDING JUDGE FREMR: Thank you, Ms Samson. I can confirm I think on
5 behalf of all the Chamber that we also don't find your questions concerning those
6 photographs inappropriate. If it would be the case, we would just stop you from our
7 own initiative. So for the moment, thank you very much.
8 We will now break for the lunch and we will resume half past 2.

9 THE COURT USHER: All rise.

10 (Recess taken at 13.02 p.m.)

11 (Upon resuming in open session at 2.32 p.m.)

12 THE COURT USHER: All rise.

13 Please be seated.

14 PRESIDING JUDGE FREMR: Good afternoon, everybody. We will continue in our hearing
15 by testimony of our second witness. So I am giving floor to Ms Samson. Ms Samson, do
16 you want to continue in private or open session?

17 MS SAMSON: With your leave, your Honour, I would like to move into private session,
18 please.

19 PRESIDING JUDGE FREMR: Okay. So let's move to private session, court officer, please.

20 (Private session at 2.34 p.m.)

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Trial Hearing

(Private Session)

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23 (Open session at 2.54 p.m.)

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

25 PRESIDING JUDGE FREMR: Thank you.

1 Ms Samson, you may proceed.

2 MS SAMSON: Thank you.

3 Q. And, sir, when you were in Bunia at this time in March or April 2002, can you describe
4 the political situation at that time?

5 A. When we arrived, the political atmosphere wasn't good. There were -- there was a lot
6 of misunderstanding amongst the political leaders at that point in time.

7 Q. Sir, did you remain a member of the APC?

8 A. When we left Watsa to go to Bunia, I was still a member of the APC. A few months
9 later I left the armed group of the APC.

10 Q. Are you able to describe the circumstances of your departure from the APC? If you
11 think that might identify you, please let the Judges know.

12 A. It's better to go into private session if you want me to tell that story.

13 PRESIDING JUDGE FREMR: Okay then, court officer, please move into private session.

14 (Private session at 2.57 p.m.)

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Trial Hearing

(Private Session)

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- 18 (Closed session at 3.47 p.m.)
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Trial Hearing

(Closed Session)

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14 (Open session at 3.54 p.m.)

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

16 PRESIDING JUDGE FREMR: Thank you very much, court officer.

17 We are about to finish our today's session. I'm very sorry; I saw that there is some
18 people in public gallery trying to follow our -- to the hearing, but it was impossible.

19 I can just stress that really there were very serious reasons and well-founded why we
20 had to stay in either private or closed session. So sorry for that.

21 Now we will not, just for your information, continue with witness testimony because
22 it's almost 4 o'clock, and moreover he asked to be taken to toilet.

23 Before we finish, I would like to ask Ms Samson, I know maybe it's rather premature,
24 but I know that your original estimation was that you would need approximately
25 10 hours for examination-in-chief of this witness. I guess you exhausted today

- 1 something around maybe 4 o'clock -- 4 hours, sorry. Could you just tell us, if you
2 just check your time schedule, how far are you?
- 3 MS SAMSON: At this point, your Honour, I think I will be using the full 10 hours. So
4 certainly all day tomorrow. If there is a change by the end of the day tomorrow I will let you
5 know, but at this point I have to maintain the 10-hour time.
- 6 PRESIDING JUDGE FREMR: All right. Thank you, Ms Samson.
7 It means we can just finish today. We will adjourn and we will convene
8 tomorrow 9.30.
- 9 THE COURT USHER: All rise.
- 10 (The hearing ends in open session at 3.55 p.m.)