

Trial Hearing
WITNESS: DRC-OTP-P-0190

(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 Tuesday, 7 June 2016
8 (The hearing starts in open session at 9.30 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 We are in open session.
18 PRESIDING JUDGE FREMR: Thank you, court officer.
19 Now appearances please, starting with Prosecution.
20 MR IVERSON: Good morning, your Honours. Appearing today for the Office of the
21 Prosecutor are James Pace, assistant trial lawyer; Rens van der Werf, assistant trial lawyer;
22 Dianne Luping, trial lawyer; Selam Yirgou, case manager; Judith Boekstal, intern; and
23 myself, Eric Iverson, trial lawyer.
24 PRESIDING JUDGE FREMR: Thank you, Mr Iverson.
25 Defence please.

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1 MR BOURGON: (Interpretation) Good morning, your Honour, your Honours. On
2 behalf of the group representing Bosco Ntaganda, Chloé Grandon and myself,
3 Stéphane Bourgon. Thank you.

4 PRESIDING JUDGE FREMR: Legal Representative of Victims.

5 MS PELLET: (Interpretation) Good morning, your Honour. Thank you. The former
6 child soldiers are represented by Mr Abdou and myself, Sarah Pellet with the OPCV.

7 MR SUPRUN: (Interpretation) Good morning, your Honour, your Honours. The
8 victims of the attacks are represented by the OPCV, Anne Grabowski and myself,
9 Dmytro Suprun.

10 PRESIDING JUDGE FREMR: Thank you, Ms Pellet. Thank you, Mr Suprun.
11 And duty counsel, please.

12 MR LAUCCI: (Interpretation) Good morning, your Honours. Mr Laucci representing
13 Witness 190.

14 PRESIDING JUDGE FREMR: Thank you very much, Mr Laucci. And for the record I
15 add that Mr Ntaganda is present as well.

16 Now, good morning, Mr Witness.

17 WITNESS: DRC-OTP-P-0190 (On former oath)

18 (The witness speaks French)

19 THE WITNESS: (Interpretation) Good morning, your Honour.

20 PRESIDING JUDGE FREMR: Today, as announced, we will continue with your
21 testimony. So it's my duty to remind you that you are still under oath, which means that
22 you have to speak the truth and nothing but the truth. And I also repeat what I said
23 yesterday, that we appreciate that you observe our guidance concerning how to respond,
24 how to speak, pauses and so on, so please continue as yesterday. Yesterday you did it
25 very well.

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1 THE WITNESS: Thank you.

2 PRESIDING JUDGE FREMR: So now I am giving floor to Mr Iverson. And again as I
3 said yesterday he still has at his disposal four hours and five minutes.

4 Mr Iverson, the floor is yours.

5 MR IVERSON: Thank you, Mr President. I'd like to request to go into private session,
6 please.

7 PRESIDING JUDGE FREMR: All right.

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

9 (Private session at 9.34 a.m.)

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21 (Open session at 11.00 a.m.)

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

23 PRESIDING JUDGE FREMR: Thank you, court officer.

24 So we will break now for 30 minutes. But before doing that, Mr Iverson, do you think

25 you will be able to finish examination-in-chief by lunch break?

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1 MR IVERSON: It will be close, Mr President. I do believe that it's possible, but there's a
2 fair chance that I'll take just a bit of this afternoon as well.

3 PRESIDING JUDGE FREMR: Thank you. Just for the sake of planning, you still have
4 even more time, but it's good to know.

5 Okay. So we break now and we will resume at half past 11.

6 (Recess taken at 11.01 a.m.)

7 (Upon resuming in open session at 11.32 a.m.)

8 THE COURT USHER: All rise.

9 Please be seated.

10 PRESIDING JUDGE FREMR: So we are going to continue with examination-in-chief of
11 our witness conducted by Prosecution, by Mr Iverson.

12 Mr Iverson, you may proceed. Do you want to proceed in open or private session?

13 MR IVERSON: I'd like to proceed in open session, Mr President. I do have just a
14 clarification question that came to my attention from the last session. It was given -- the
15 answer was given in private, but I think it can be clarified safely in open session without
16 referring to --

17 PRESIDING JUDGE FREMR: All right.

18 MR IVERSON: -- the identity of the witness.

19 PRESIDING JUDGE FREMR: And for the information of the public, this witness is a
20 protected witness, so he was given assurance that within this protection his identity will
21 not be revealed to the public and that is why those portions of his testimony that may lead
22 to his identification have to be conducted in private session, that is pretty possible that
23 some parts of his testimony you will have no chance to listen to. Just to -- it is such a
24 caveat.

25 So now, Mr Iverson, please proceed.

1 MR IVERSON: Thank you, Mr President.

2 Q. So the clarification involves -- I had asked you whether there were child soldiers
3 involved in the attack in Mongbwalu and that's today's transcript, page 18, line 25, and
4 page 19, lines 1 and 2. In the English transcript it says on line 7 that -- 6 and 7 that: "I
5 saw them with my own eyes, with my own naked eyes."

6 And in the French transcript, French transcript, excuse me, page 18, line 2, it says that
7 the -- you saw naked or nude children. And so I just wanted to clarify what is your
8 testimony on that particular point.

9 A. Thank you, Mr Prosecutor you have read out the excerpt in English. My naked
10 eyes. That is it. That is correct. So in the French is with a naked eye, so that means
11 that I saw it -- I saw them with my own eyes. That's the detail I can provide.

12 Q. All right. Well, thank you for that clarification.

13 Sir, I'd like to ask you questions now we're in open session, but I'd like to ask you
14 questions about child soldiers within the UPC. Now, you mentioned yesterday at -- and
15 if at any point you need to answer a question and reveal your identity, please then raise
16 your hand before you answer the question so that you can alert the Presiding Judge to
17 that and then he can order the session be turned into a private session; do you understand
18 that, sir?

19 A. Yes, I have understood you.

20 Q. Thank you for your cooperation on that point.

21 So yesterday in the English transcript, at page 42, lines 12 and 13, you referred to
22 Mr Ntaganda's involvement in recruiting children from schools. So I'd like to ask what
23 children did Mr Ntaganda recruit from schools? How was he involved in that
24 recruitment process?

25 A. Would you please kindly rephrase somewhat your question because the last part I

1 did not quite understand.

2 Q. I'll rephrase the question, sir. You had mentioned yesterday Mr Ntaganda's
3 involvement in recruiting children from schools, so I would -- I'm asking you now to
4 elaborate on that, what do you mean that he was recruiting children from schools? If
5 you could explain that to the Chamber, please.

6 A. Thank you very much, now I understand your question. Mr Ntaganda and his
7 group went to a school, the Mudzipela primary school. There are two schools in
8 Mudzipela, there is a boy's primary school and then there is a girl's primary school. He
9 went with his group to the boy's primary school in Mudzipela. When he arrived the
10 children were still in their classrooms, then he took forcibly some teachers and asked them
11 to open the doors to the classrooms where the children were and he took some children
12 out of the fifth year, children in the fifth year. They forcibly took those children and
13 immediately took off by road to Mandro. That is what I can tell you regarding the
14 forcible recruitment that he carried out at the boy's primary school in Mudzipela. I was
15 there. I saw it with my own eyes. And all those who were present also saw it and
16 people thereafter were clamouring, asking for their children to be returned in the various
17 neighbourhoods.

18 Q. And what I'd like to do is what -- the same thing we did yesterday, is stay in open
19 session, I'll pose questions and then I'll ask the Presiding Judge to go into private session
20 and then I can ask you the basis of your knowledge so that you can explain where you
21 were, who you were with, things of that nature; do you understand that, sir?

22 A. Yes, I do.

23 Q. Why did Mr Ntaganda forcibly recruit these children from the Mudzipela primary
24 school?

25 A. First of all, the boy's primary school in Mudzipela, geographically speaking is

1 situated not far away from Mandro. That's first.

2 Second, the Mandro neighbourhood is one which has people who are more of Hema
3 ethnicity as well as people of the Bira ethnic group. That's the second point.

4 Third, I do not know how he found himself at that school to carry out that recruitment.

5 Well, you know that when there are recruitments it is because a need has to be met. The
6 patriotic forces needed troops, needed people to fight alongside with them in their camp
7 or their site. But I'm not able to tell you why he specifically chose that school and why he
8 chose the children of a primary school, whereas there was also a secondary school located
9 not far away from Mandro and whereas there was also a secondary school in Bunia. So I
10 don't know why he made that choice, but the three reasons that I have provided for you
11 are the ones I can offer.

12 In any event, I don't know why he decided to choose that school and for what reason he
13 decided to go to the primary school, whereas there was also a secondary school in that
14 area. That is the explanation I can offer.

15 Q. And what eventually happened with these children at the Mudzipela primary
16 school, to the best of your knowledge, after they were taken by Mr Ntaganda?

17 A. Mr Bosco Ntaganda took all of them to Mandro, to a camp. When I talk about a
18 camp it is not a well-constructed camp, I'm referring to an empty piece of grounds where
19 cows were being grazed, which was used as a camp, with a few huts here and there put
20 up in that area which was known as a camp. And some people slept outside in the open
21 air. And that is the camp to which he took those children for what was referred to as
22 training, but it was, strictly speaking, not military training as such, they were simply
23 taught basics in weapons handling and how to shoot, how to threaten people, and in some
24 instances if anyone was found attempting to escape they would be shot, they wouldn't
25 simply be arrested. So this training also involved threatening and intimidation. It

1 wasn't really military training, they were simply shown the basics in how children could
2 handle weapons. And then quite strangely he also said that, and according to him using
3 his words, in all revolutions one must know one's enemy. And the first enemy, get this
4 straight in your head, your first enemy is the Lendu in all revolutions. That is the word
5 he used. Those are the words he used. That was a sentence that was repeated by all the
6 soldiers who were present in Mandro. So that is how things happened when it came to
7 those child soldiers in the camps and when it comes to their training.

8 Q. And do you recall when this event happened, when the children were taken from
9 the Mudzipela primary school by Mr Ntaganda?

10 A. I'm not able to give you an exact date, but I can give you a time frame, a time frame.
11 It was before the UPC became active. It was before the creation of the UPC, that was
12 before August 2002, but I cannot give you a specific date. You see these things happened
13 a very long time ago and I may have forgotten some dates.

14 Q. And I understand that you can only offer an approximation, but how many -- how
15 much time was it in your estimation before the UPC was actually created, or was it -- are
16 you talking in terms of weeks, or months, or years, just so it's clear for the Chamber how
17 much time this was before the UPC was created?

18 A. I would put it at about a month. A month before the creation. You see, when
19 Thomas Lubanga came from Kinshasa with the government delegation, with Ntumba
20 Luaba, minister of human rights, the children were still being trained. The first
21 operation in which the children participated was the Songolo operation which took place
22 at the end of the month of August, so I will put it at one to two months, an approximation
23 that I can offer.

24 Q. And do you recall how many children were taken by Mr Ntaganda from the
25 Mudzipela primary school?

1 A. I'm not able to give you the figure or number of children because all along the way
2 from -- all the way to Mandro they picked up children along the way, so the number of
3 children in Mandro was not only of the children from the Mudzipela primary school, it
4 included other children who had been picked up along the way. They picked up
5 children who were fetching water, they picked up little girls who were fetching water,
6 they would be kidnapped as they went to fetch water. And this happened along the way,
7 but I started by mentioning those who were taken from the primary school in Mudzipela.
8 So we can address that and maybe talk about the others at some other point.

9 In any event, I'm not able to give you the exact number. There were many children,
10 about a hundred children including those who were picked up along the way.

11 Q. And when you say "children", just so it's clear for the Court, what were their ages
12 based on your estimation?

13 A. I would estimate that in a primary school, or specifically from that school they
14 would take children who may have entered primary school at age six in the first year, and
15 if you go 6, 7, 8, 9, by the time they get to the fifth year a child who has not repeated a
16 class would be around 10 years old. So the children who were taken were in the fifth
17 year of primary school and some may be from the sixth year of primary school. You can
18 then estimate that the children would have been 10, 11, 12, 13 years old. That would be
19 my estimation. But again, along the way they picked up other children whose ages I am
20 not able to approximate because I did not see them, however I heard that he picked up
21 some children along the way as well.

22 Q. And in addition to Mr Ntaganda, do you recall if there were others from the UPC
23 present on that day when the children were taken from the Mudzipela primary school?

24 A. Well, I am not able to recall right now. Even if I could, this happened a long time
25 ago. Well, Bosco Ntaganda was such a key figure that one could not forget. As for the

1 other commanders, one may forget, but when it comes to Bosco Ntaganda, who was the
2 leader, I cannot forget those things.

3 Q. But I do take it from your answer that there were others present you just don't
4 remember who they were; is that right? That there were others from UPC present; is that
5 correct?

6 A. Yes, that is correct. Bosco Ntaganda never did anything or operated or conducted
7 an operation single-handedly, he always had other commanders with him, that is why I
8 said there must have been other commanders.

9 Secondly, Bosco Ntaganda is not a native of Bunia and he is not particularly from the
10 neighbourhood in which that school was located. What I'm saying, therefore, is there
11 must have been some commanders who knew about this school, who were familiar with
12 the environment and who must have been instrumental in choosing that specific school.
13 So, yes, indeed, he was with other commanders, but I cannot mention them right now off
14 the cuff because I -- I have already forgotten, these things happened several years ago.

15 Q. And do you know whether there was any reaction from the families of these
16 children after the children were taken from the Mudzipela primary school by
17 Mr Ntaganda?

18 A. Yes, certainly there were reactions, very negative reactions, first from the officials of
19 the school and then from the families. All along the road they were in an Indian file, so
20 to speak, and you could hear all along the road family members crying out, crying out.
21 And that didn't mean a thing to Commander Bosco because everyone feared Mr Bosco,
22 even children feared him. When they heard that Bosco was in a neighbourhood they
23 would go into hiding. What I'm saying, therefore, is that the families were crying and
24 wailing but they couldn't do anything.

25 Q. And you say they were in what you call an Indian file. Did these children walk

1 from Mudzipela to Mandro? Is that what we should understand from your testimony?

2 A. Yes, they travelled on foot, but the distance is not very long; 7, 6, 8 kilometres or
3 thereabouts.

4 Q. And could you tell the Chamber what was -- what is the primary ethnicity in that
5 area in Mudzipela of the people who live in Mudzipela?

6 A. Well, at that time I cannot say that one tribe or one ethnic group was present. What
7 I can confirm is that there were several ethnic groups there. Mudzipela is a Bira village
8 to begin with. But there were also some Hema people there, and several other tribes
9 were also present. So I cannot confirm to you that that school had people only from one
10 tribe. There were many people from different tribes at that school, people from Ituri or
11 who were from elsewhere, people who were natives of Mudzipela or who came from the
12 city. There were people from everywhere.

13 However, it was a Bira village with many Hemas. But the school was attended not only
14 by Bira people, but by people from all tribes.

15 Q. And what, if anything, did the UPC as an organisation do in response to the
16 complaints of the parents of these children from Mudzipela?

17 A. Mr Prosecutor, I do not think that the UPC at that time was an organisation; it was a
18 disorganisation of militia. So there was no possibility of any reaction whatsoever,
19 because Bosco was not accountable to anyone whosoever. He was a small lord or God,
20 and when he said A, it was A, and when he said B, it was B, final.

21 Q. And are you aware whether any of these parents of the children taken from
22 Mudzipela primary school by Mr Ntaganda complained to Mr Ntaganda himself?

23 A. Yes, Mr Prosecutor. When I told you that there was crying and wailing, it is
24 because they saw that Indian file or that single file, and at the head of it was the boss.

25 And he could hear the cries from the parents and relatives. So this was happening live as

1 they left Mandro.

2 Now, when it happened were the parents there? No. But as they moved along the way,
3 the parents were there and they saw how they had lined up on their way to Mandro.

4 Q. And what, if anything, did Mr Ntaganda do in response to the cries, the complaints
5 of the parents of these children?

6 A. He could not react because that was not his problem. His problem was to achieve
7 his purpose, and that is what he wanted to do. He had achieved his purpose. Whether
8 people were crying or not, he didn't care about it.

9 MR IVERSON: Mr President, I'd like to ask that we move into private session now.

10 Thank you.

11 PRESIDING JUDGE FREMR: All right.

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

13 (Private session at 11.58 a.m.)

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14 (Recess taken at 12.58 p.m.)
15 (Upon resuming in open session at 2.39 p.m.)
16 THE COURT USHER: All rise.
17 Please be seated.
18 PRESIDING JUDGE FREMR: Good afternoon, everybody.
19 Before we continue with the testimony of our witness, the Chamber will render its
20 explanation on the objection made by Defence just before the lunch break. And its
21 objection that reputation of Mr Ntaganda is not relevant and shouldn't be explored.
22 The Defence stated that the reputation is not what a criminal trial is based on unless the
23 accused has put in play his reputation. I would like to clarify that this Chamber certainly
24 will not judge Mr Ntaganda by his reputation. His reputation is neither mitigating, nor
25 an aggravating fact, but it doesn't mean that it can have no relevance.

1 But I would like to state that we are not really talking about Mr Ntaganda's character,
2 instead this was about Mr Ntaganda's reputation as a military commander, which in our
3 view relates to the manner in which he could exercise authority over others.
4 So in our view it can be therefore relevant for the modes of liability he's charged with, but
5 it may also be relevant for understanding the way, the way in which Mr Ntaganda was
6 perceived by people who interacted with him, mainly by his subordinates within the
7 UPC, also by the other UPC commanders, and also by his superior, but it well may be also
8 by those who fought against the UPC.

9 I can even imagine that this could be relevant for evaluation of testimony of victims that
10 could be negatively affected by alleged reputation of Mr Ntaganda. So also in evaluation
11 of credibility of witnesses, we also, in my view, would have taken into account whether
12 the testimony of witnesses was not influenced by Mr Ntaganda's alleged reputation.
13 So for those reasons, the Chamber finds that questions on Mr Ntaganda's reputation are
14 not per se to be excluded.

15 Now, please, court officer, bring Mr Witness into the courtroom.

16 Mr Bourgon.

17 MR BOURGON: Thank you, Mr President. We will be seeking leave to appeal this
18 decision. We disagree completely with the fact that evidence can be relevant and will not
19 be considered by the Chamber.

20 But I was on my feet for another purpose, Mr President. It is to inform you that two
21 members of the Defence team have joined the Defence, have joined this side,
22 Mademoiselle Margaux Portier and Maître Dignité Bwiza. Thank you, Mr President.

23 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon. Well noted.

24 (The witness enters the courtroom)

25 PRESIDING JUDGE FREMR: Good morning, Mr Witness. We will continue with your

1 testimony, but before that I see Mr Laucci on his feet.

2 Mr Laucci, please.

3 MR LAUCCI: (Interpretation) Thank you, your Honour. (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

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8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 . Thank you.

17 PRESIDING JUDGE FREMR: Thank you, Mr Laucci. I have to admit that this

18 information is not new for us, we have been also informed about this, even a few minutes

19 ago. I was also assured that in fact the measures you are proposing will be taken. So

20 even now everything will be double-checked and verified. And also, as you proposed, if

21 we -- in fact, it would be up to the Registry to check whether this problem really occurred

22 before and for sure then in such a case we will ask VWU to take appropriate measures to

23 fix this problem and also to have some preventative measures to avoid any problem in the

24 future.

25 MR LAUCCI: (Interpretation) Thank you very much, your Honour.

1 PRESIDING JUDGE FREMR: Now, Mr Iverson, please proceed. Do you want to
2 proceed in open or in private session?

3 MR IVERSON: I'd like to request private session, Mr President.

4 PRESIDING JUDGE FREMR: All right.

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

6 (Private session at 2.47 p.m.)

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21 (Open session at 2.59 p.m.)

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

23 PRESIDING JUDGE FREMR: Thank you.

24 Mr Bourgon, please.

25 MR BOURGON: Thank you, Mr President.

1 The Defence objects to the use of these documents with the witness for the following
2 reason:

3 Firstly, pursuant to the supplemental decision on the conduct of proceedings issued by
4 the Chamber on 27 May 2016, I refer to submission -- or to decision 1342, at paragraph 11,
5 which reads as follows, I read directly to the relevant part:

6 "Potential exhibits may be shown to a witness during preparation regardless of whether
7 or not the witness has previously seen such material to ascertain whether the witness can
8 usefully comment on them during testimony."

9 Of course we are bound by this decision, but when the time comes to use a document, it is
10 our submission that this must be a document that figures on the list of items or the list of
11 exhibits the Prosecution intends to use at trial. If not, it amounts to continuing
12 investigations and it amounts to a violation of the protocol.

13 In this specific case, of course the -- before I move into the specific case, I need to add one
14 detail, which is the Chamber has authorised the Prosecution to add any document at any
15 time for whatever reason and they can do what they want. That's fine with us. We can
16 live with that. But the Chamber has also said that the Defence could raise an objection at
17 any time whenever such a document was added. Well, this is one such time,
18 Mr President.

19 The document my colleague intends to use here, which is the document ending with 0345,
20 was obtained by the Prosecution on 6 September 2004. So they've had this document for
21 12 years. It was disclosed to the Defence on 27 May 2013. I note that there's a mistake in
22 the mail that we forwarded to the Chamber when we responded to the list of exhibits the
23 Prosecution submitted.

24 So it was disclosed 27 May 2013. So we've had the document for some three years.

25 That's correct. However, that's not the issue; the issue is the Chamber issued a clear

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1 decision that the Prosecution, if it intends to use some documents, it was supposed to put
2 them on its list of 2 March 2015. This document was not added on that list.

3 On this basis it is not a document that we looked at, it is not a document that we work
4 with, it is not a document that we considered.

5 The Prosecution then is working with this witness and we know that there's been a
6 number of meeting with this witness, a number of opportunities during which they could
7 have maybe raised that document with him, or maybe that they could have included that
8 document on their list of documents they intend to use at trial; however, as of 30

9 May 2016, to the best of my knowledge, this is the last list we have from the Prosecution,
10 this document is still not there.

11 In these circumstances, Mr President, we respectfully submit, one, that the document
12 should not be used and should not be neither used nor admitted, and also we highlight
13 the fact that if the Prosecution is going into documents back from 2004 and from 2006,
14 then that they are showing these documents to a witness who has never seen these
15 documents, they are in fact continuing their investigation. This is what is happening in
16 this case.

17 Our objection, to avoid having to repeat this argument over again, also applies to the next
18 document my colleague probably intends to use, which is a document ending with -- the
19 last numbers are 0311, which is labelled by the Prosecution as a financial document or
20 invoice.

21 These are our submissions, Mr President. Thank you.

22 PRESIDING JUDGE FREMR: One additional question, Mr Bourgon. So what time did
23 the Defence realise that the Prosecution is intending to use this document with the
24 witness?

25 MR BOURGON: On 27 May 2016.

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1 PRESIDING JUDGE FREMR: Thank you.

2 Mr Iverson.

3 MR IVERSON: Mr President, I just want to make sure that I understand the objection
4 because I think that there was -- there were a lot of things stated that weren't necessarily
5 part of the objection, but as far as I understand it, the objection is that these two
6 documents were placed on the list of evidence late essentially is the Defence's claim.

7 PRESIDING JUDGE FREMR: It's also my understanding that is the core of the objection.

8 MR IVERSON: Well, we abided by the Chamber's directions on this matter. The
9 Defence has had this document, as the Defence stated, for over three years now. And
10 this is -- I think it's a gross overstatement to say that this is continuing investigation.
11 These are what amounts to two documents that pertain to this witness because they
12 mention him or have some connection with him. And that was -- the document that he's
13 objecting to right now was shown to the witness during the taking of his witness
14 statement as well and he commented upon that in his statement. So that's further notice
15 to the Defence of the existence of the document, which they had, and that the witness was
16 capable of commenting upon that document.
17 Nothing that the Prosecution has done violates either the letter of the Chamber's order on
18 the list of evidence or the spirit of it because the Defence has had these documents for
19 years. That I think is the response to the objection.

20 PRESIDING JUDGE FREMR: Mr Bourgon.

21 MR BOURGON: I would just like to add, Mr President, that the list -- that those two
22 documents I mentioned 27 May, it is actually 30 May. So until 30 May we did not
23 know --

24 PRESIDING JUDGE FREMR: Sorry, three-zero?

25 MR BOURGON: Three-zero May, 30 May. Until 30 May we did not have any

1 knowledge that these two documents would be used. We received a proofing note,
2 the -- what is called, sorry, I keep using the words "proofing note," but it is the witness
3 preparation session log and disclosure note. The preparation session was conducted
4 between 23 May and 1 June, and I believe we received it on the same day or the following
5 day, I'm not sure, but in terms of knowing when these documents -- not that they could be
6 used with the witness, but the first time we see these documents appearing is when they
7 are added to the list of documents the Prosecution intends to use at trial and that is on 30
8 May 2016. This is a year and three months, if not more, after the deadline of 2 March,
9 whereas they've had these documents since 2004 and 2006. That's the objection,

10 Mr President. It's an objection.

11 The contents of the documents has nothing to do with it. We have rules, these are rules
12 that it is the only that way we can enforce any type of control, any type of judicial control
13 over what the Prosecution is doing because this Chamber has allowed the Prosecution to
14 add documents as they wish and that's what they're doing, they are constantly adding
15 documents. We alerted the Chamber at the beginning, we said this is not the way it's
16 done in other trials, but of course the Chamber decided otherwise and the Chamber
17 authorised the Prosecution to do what it wants, when it wants, how it wants it. The only
18 judicial control is when they miss a deadline. And that's one occasion, Mr President.

19 Thank you.

20 PRESIDING JUDGE FREMR: And Mr Iverson, you also may reply, but anyway, one, my
21 question at the beginning was what's the reason to put this document so late on the list?

22 MR IVERSON: Can I have just a moment to make sure that -- I want to make sure I give
23 the full and correct answer.

24 PRESIDING JUDGE FREMR: Yes, all right.

25 (Counsel confer)

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1 MR IVERSON: The adding it to the list was inadvertent, an oversight. And the
2 additional point I wanted to make is in the case where the evidence were to be voluminous
3 and it would take the Defence lots and lots of time to understand, digest and comprehend
4 the documents, the Defence counsel may have a point, but what we're talking about here
5 are two pages and not even -- the pages aren't even really full with information, so it's
6 not -- it is quite the opposite of voluminous information, they are two small documents
7 that relate to this witness's testimony.

8 PRESIDING JUDGE FREMR: Thank you.

9 The Chamber now will deliberate -- sorry, Judge Chung, you have a question? Please.

10 JUDGE CHUNG: So do you just want to use this, or also want to tender to the Chamber?

11 MR IVERSON: Your Honour, depending on the witness's testimony and his ability to
12 provide the context about what -- how these documents relate to the case or how they
13 bear significance we would seek to admit those documents. So it depends on the
14 witness's answers. I anticipate that he will offer some substantive information making
15 these documents admissible.

16 PRESIDING JUDGE FREMR: Thank you.

17 So the Chamber will now briefly deliberate outside the courtroom. So please wait, I think
18 we will be back in 10 minutes.

19 THE COURT USHER: All rise.

20 (Recess taken at 3.11 p.m.)

21 (Upon resuming in open session at 3.27 p.m.)

22 THE COURT USHER: All rise.

23 Please be seated.

24 PRESIDING JUDGE FREMR: So the Chamber deliberated on the objection made by the
25 Defence against the use of a document brought by Prosecution and we decided to allow

1 the use.

2 And I will try to give you our reasoning briefly:

3 For us the main criteria how we approach this issue, whether if any Rule is violated or if
4 any provision or requirements are not fully met, to what extent it means prejudice to the
5 other party, it in our view should be the main criterion. And in this case we -- even if in
6 the past we several times said and we asked Prosecution to be perfect and not to come
7 with notification of any document which is intended to be used too late, but at the same
8 time it has been explained as an oversight and we don't have any reason not to believe
9 that.

10 But I am coming back to my main idea. We focused on potential prejudice that could be
11 created by the use of this document, and we have taken into account that is absolutely a
12 brief document, that even content of this document is not complex. So even if Defence
13 had just five days, five days I guess, to consider this document, it was in our view
14 sufficient time and wouldn't -- the use of this document wouldn't create any prejudice to
15 the Defence.

16 At the same time, I am saying it could be important for repetition of such a situation in
17 future if you would like to avoid forever repetition of such situation, but rather as a caveat
18 this time, caveat to the Prosecution that if such a document would be either extensive or
19 more complex than this document, or if the case would be that it would be higher number
20 of documents notified in such a short time, then we will decide that the use will not be
21 allowed.

22 So only because in this case the document is very short, in fact the content seems to be
23 very simple, that is why we decided like we decided.

24 So now you may proceed.

25 Mr Bourgon.

1 MR BOURGON: Thank you, Mr President. I'm grateful for the Chamber's decision. I
2 do note for the record, however, that this document is a letter handwritten by the
3 president of UPC and we will be seeking leave to appeal and we will file in an ex parte
4 motion all the investigation we had to do over the past five days on the basis of this
5 particular document. Thank you, Mr President.

6 PRESIDING JUDGE FREMR: All right.

7 Mr Iverson.

8 MR IVERSON: Thank you, Mr President. I just want to say to the Chamber we will
9 definitely take those comments on board. Our intent is never to create an ambush
10 situation or anything like that. We want to make sure that the Defence has the
11 information in a timely manner so they can do their jobs. So I just want to make it clear
12 that it's -- I don't want any misunderstanding, it's of course not our intent to create any
13 kind of situation like that, but of course we will take your ruling on board and we
14 understand the Chamber's position.

15 PRESIDING JUDGE FREMR: We appreciate that. And I also have to emphasise that
16 we are -- it is not only about this issue, but simply the beginning of our proceedings is
17 long time behind us, so we are ready to be stricter and stricter as to the meeting of
18 provisions governing our proceeding, so it's also part of the caveat. So you may now
19 proceed. Do you want to proceed in open or in private session? We are already in
20 private? Okay.

21 We don't have the witness. Thank you. So now please bring the witness. I completely
22 forgot.

23 Mr Iverson, do you want to proceed in open or in private?

24 MR IVERSON: I would ask to continue in private session, Mr President.

25 PRESIDING JUDGE FREMR: It means we have to move into private session.

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Trial Hearing
WITNESS: DRC-OTP-P-0190

(Private Session)

ICC-01/04-02/06

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22 (Open session at 4.16 p.m.)

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

24 PRESIDING JUDGE FREMR: Thank you, court officer.

25 First, it doesn't make any sense to start cross-examination now, so we will start with the

Trial Hearing
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- 1 cross-examination tomorrow. And also tomorrow morning we will deliver our ruling on
- 2 the Defence request for amount of time needed for cross-examination.
- 3 So now we adjourn, and we will reconvene tomorrow 9.30.
- 4 THE COURT USHER: All rise.
- 5 (The hearing ends in open session at 4.16 p.m.)