

Trial Hearing
WITNESS: DRC-OTP-P-0888

(Open Session)

ICC-01/04-02/06

1 International Criminal Court
2 Trial Chamber VI
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and Judge Chang-ho Chung
6 Trial Hearing - Courtroom 2
7 Tuesday, 21 June 2016
8 (The hearing starts in open session at 9.32 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 And for the record, we are in open session.
18 PRESIDING JUDGE FREMR: Thank you.
19 Now appearances. If they are the same, you can just refer to yesterday composition.
20 Prosecution first.
21 MS LUPING: Good morning, Mr President. It's the same members of the
22 Prosecution who are present this morning.
23 PRESIDING JUDGE FREMR: Thank you, Ms Luping.
24 Defence, there are some changes I see.
25 MR BOURGON: Indeed, Mr President. (Interpretation) Good morning, your

1 Honour. Representing Bosco Ntaganda, who is present this morning in the
2 courtroom, we have Margaux Portier, Elisa Binon, Dignité Bwiza and myself,
3 Stéphane Bourgon. Thank you, your Honour.

4 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

5 Legal Representatives of Victims.

6 MR ABDOU: Good morning, Mr President, your Honours. Same composition for
7 the former child soldiers as yesterday.

8 MS GRABOWSKI: Good morning, Mr President, your Honours. Also for the
9 victims of the attacks the same composition as yesterday. Thank you.

10 PRESIDING JUDGE FREMR: Thank you, Mr Abdou. Thank you, Ms Grabowski.

11 Good morning, Mr Witness. But before we move to the rest of your
12 examination-in-chief, Mr Witness, we will have to deliver one short oral ruling. And
13 this oral ruling on the Defence request for disclosure of the biographic data --
14 Mr Abdou.

15 MR ABDOU: Your Honours, I probably misunderstood the subject matter of your
16 decision because late yesterday, the Defence also filed --

17 PRESIDING JUDGE FREMR: Sorry, Mr Abdou. I have some problem. I can't
18 hear you. I don't know why because your mic is -- could you start again.

19 MR ABDOU: Is it -- okay. Now, I probably misunderstood the subject matter of
20 your oral ruling because I was late yesterday. The Defence has filed a request for
21 disclosure orders in respect of Witness 877 and we would like to inquire whether the
22 victims will have an opportunity to respond, be it orally or in writing.

23 PRESIDING JUDGE FREMR: Mr Abdou, this oral ruling I am going to pronounce
24 now contains a different witness, Witness P-315, so the matter you mentioned will be
25 solved during the day.

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1 So again, the Chamber will now deliver its oral ruling on the Defence request for
2 disclosure of the biographic data and security questionnaire, so-called BSQ, relating
3 to Witness P-315 contained in filing number 1395.

4 After the Chamber shortened the deadline by way of email, the Prosecution
5 responded on 17 June 2016 in filing number 1404.

6 The Chamber notes that the Defence request was based on speculative assessment of
7 the likely content of the BSQ, having reviewed an investigation note which had been
8 disclosed summarising certain of its content. However, having reviewed the
9 relevant material, the Chamber notes that although the investigation note summarises
10 the information provided by the witness, certain additional detail is contained in the
11 BSQ which the Chamber considers could be material to the preparation of the Defence.

12 In these circumstances, the Chamber directs the Prosecution to disclose the additional
13 security related information contained at pages 3 and 4 of the BSQ forthwith by way
14 of supplementary investigation note.

15 This concludes the Chamber's oral ruling.

16 And now, Mr Witness, we can devote to the second half, in fact, of your testimony.

17 Just to assure myself, are you feeling okay today, Mr Witness?

18 WITNESS: DRC-OTP-P-0888 (On former oath)

19 (The witness speaks Swahili)

20 THE WITNESS: (Interpretation) Yes, I feel well, but I did not hear the Swahili
21 interpretation.

22 PRESIDING JUDGE FREMR: Could we just verify that everything is okay with the
23 Swahili channel?

24 THE WITNESS: (Interpretation) Yes, I can now hear the interpreter.

25 PRESIDING JUDGE FREMR: Very well. So let's continue.

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1 Ms Luping, you have the floor. And as I indicated yesterday, you still have

2 29 minutes at your disposal.

3 MS LUPING: Thank you, Mr President. And I would ask for my preliminary

4 questions if we could please with your leave move into private session.

5 PRESIDING JUDGE FREMR: All right.

6 Court officer, please let's move into private session.

7 (Private session at 9.39 a.m.)

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6 (Open session at 9.57 a.m.)

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

8 PRESIDING JUDGE FREMR: Thank you.

9 Ms Luping, please proceed.

10 MS LUPING: Thank you, court officer. Thank you, Mr President.

11 Court officer, the Prosecution would like to seek the floor to show the videos. And
12 the first video excerpt that we'll be showing, and it can be shown publicly, is tab 10,
13 video DRC-OTP-0082-0016 and it is -- the first excerpt will be played without sound
14 from 00.29.39 to 00.31.28.

15 Q. Now, Mr Witness, as I said in private session I will be showing you a number of
16 excerpts that, some with sound, some without sound. You have paper and pens
17 right by you. What I would ask you to do, because we have limited time, is I'm
18 going to be showing you these excerpts only once. So whilst you're watching it, if
19 you could please note down anything or anybody that you recognize, because then I'll
20 be asking you the questions after the video excerpt is shown. I will also be stopping
21 at certain points to ask you if there is anybody or anything you recognize.

22 Is that clear?

23 A. Yes, I've understood.

24 Q. All right. We're now going to be playing this excerpt without sound.

25 PRESIDING JUDGE FREMR: Hold on, Ms Luping.

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1 Mr Bourgon, any objection?

2 MR BOURGON: I just wanted to confirm whether there was sound or no sound.

3 PRESIDING JUDGE FREMR: No sound. I think it was clear.

4 (Viewing of the video excerpt)

5 MS LUPING:

6 Q. Mr Witness, can you describe for the Judges what you recognize in terms of
7 anything or anybody in this very short excerpt that was just played to you without
8 sound.

9 A. (No interpretation)

10 THE INTERPRETER: Could the witness be asked to repeat asks the Swahili booth.
11 The line was cut.

12 PRESIDING JUDGE FREMR: Sorry, Mr Witness, I'm sorry to interrupt you.

13 Because of some problem the interpreters haven't captured the beginning of your
14 response. So please, I'm sorry, but please start again from the beginning of your
15 response. Thank you.

16 THE WITNESS: (Interpretation) Very well. In the first video I saw soldiers who
17 are at a rally. I recognized a soldier with a jacket, Commander Kitembo. I also
18 recognize Bosco. He has a stick in his hand.

19 PRESIDING JUDGE FREMR: And, Mr Witness, have you recognized the place?

20 THE WITNESS: (Interpretation) Yes. The place is Mandro, the training centre,
21 but it's not at the training centre, it's just next to it, next to the training centre. I
22 recognize it. It's in Mandro.

23 PRESIDING JUDGE FREMR: Thank you.

24 MS LUPING:

25 Q. Now, Mr Witness, you said you recognized Commander Bosco as the person

1 with the stick in his hand. Could you describe the individual you have identified as
2 being Commander Kisémbó? Can you recall what he was wearing in this short clip,
3 or do you want to see this again?

4 A. Kisémbó was wearing a military jacket with a red beret.

5 Q. We're now going to move on to the second clip, and that is the same video,
6 same tab, still at tab 10 and the excerpt is from timestamps 32.04 to 32.08. It's a very
7 short clip. Mr Witness, again, if there is anything you recognize within this excerpt.

8 A. In this video I can see soldiers during a parade, but I don't recognize anyone
9 among them. But it's the same place in Mandro as was in the case of the other video
10 that was shown.

11 Q. I'm going to ask that it be played just one more time for you. And this time
12 could you pay attention to the weapon that is being carried to see if you can recognize
13 or identify what that weapon is. It will be played one more time.

14 (Viewing of the video excerpt)

15 MS LUPING:

16 Q. Now we just stopped the video this time at timestamp 32.07. Do you recognize
17 that weapon?

18 A. Yes, I recognize that weapon. We call it RPG or a rocket launcher.

19 Q. Next video excerpt, third video excerpt, timestamp 36.38 to 37.27. If you could
20 please when you're watching this excerpt, Mr Witness, see if there's anybody and
21 anything that you recognize in it.

22 MS LUPING: We're just having a few technical difficulties, Mr President.

23 (Viewing of the video excerpt)

24 MS LUPING:

25 Q. Mr Witness, actually I'm stopping at timestamp 37.22. Just focussing on the

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1 individual in the middle, I know it's extraordinarily fuzzy, but can you see who that
2 is?

3 A. Yes. The person in the middle with a baton and a Motorola is Bosco.

4 Q. I'm going to move on to the next clip, and that is at 38.30 to 38.35. I want to see
5 if there is anything that you can recognize in this clip.

6 (Viewing of the video excerpt)

7 MS LUPING:

8 Q. The clip, sorry, is just going to be shown to you again. I'd like you to focus
9 actually on the weapon and indicate if you recognize it. It's just a five-second clip.
10 Focus on the weapon.

11 (Viewing of the video excerpt)

12 MS LUPING:

13 Q. We stopped at 38.32. Do you recognize the weapon, Mr Witness? And if so,
14 can you explain to the Judges what it is?

15 A. This is the weapon on a bipod. It also has an ammunition belt which is there.

16 Q. The next clip, this one will have to be played with sound, your Honours, it's
17 from 41 to 43, and you will understand why it has to be played with sound in a
18 moment. There is singing to be heard, and the question for the witness will be if he
19 can explain or described what is being sung.

20 PRESIDING JUDGE FREMR: And, Ms Luping, it should be the last one because
21 your time is almost over.

22 MS LUPING: Understood. Understood, Mr President.

23 (Viewing of the video excerpt)

24 MS LUPING:

25 Q. Mr Witness, my first question actually relates to the singing. Do you recognize

1 the songs that were being sung in this clip, and if so, could you explain what they
2 were singing?

3 A. Yes. In these songs Afande Bosco and Kisembo are saying that the young
4 people have gone to the bush, that's to say that young people have gone into the bush,
5 that's the sense or the meaning of the song.

6 Q. Did you recognize any of the songs being sung?

7 A. Yes. I remember this song and the second one, I remember it well.

8 Q. And how do you remember it? From where or when do you recognize it?

9 A. I recognize the song because we also sung it when we were at training.

10 MS LUPING: Mr President, I would ask that all of these video excerpts that have
11 been shown to the witness be admitted as evidence for the Prosecution.

12 PRESIDING JUDGE FREMR: They were five, am I right? Or more?

13 MS LUPING: That is correct, five excerpts.

14 PRESIDING JUDGE FREMR: Defence, your position?

15 MR BOURGON: Is my colleague seeking to admit any transcript or just the videos?

16 MS LUPING: In fact, we will not be seeking to admit any transcripts or translations
17 for these excerpts, as all of them were played without sound, and the one with sound,
18 the songs, there were no transcriptions for the songs themselves.

19 MR BOURGON: Then we have no objection, Mr President.

20 PRESIDING JUDGE FREMR: Very well. Then those five excerpts of video used
21 with this witness are admitted into evidence as a further Prosecution exhibit.

22 MS LUPING: Mr President, I had one question, but it would need to be asked in
23 private session. But it's only with your leave, if that was possible.

24 PRESIDING JUDGE FREMR: Is this question really so important for you?

25 MS LUPING: It would simply be helpful I think to, for the Chamber to assess this

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1 witness, but it's only with your leave.

2 PRESIDING JUDGE FREMR: All right. Please proceed. And let's move into
3 private session.

4 (Private session at 10.15 a.m.)

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22 (Open session at 10.17 a.m.)

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

24 PRESIDING JUDGE FREMR: Thank you.

25 Mr Witness, now we will move into cross-examination, which means that you will be

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1 now examined by representative of Defence. And I would like to remind you that
2 this Court is governed by the principle of fair trial, which means that both parties are
3 treated equally. And for you it means that, because I can say that you responded
4 very clearly and patiently all questions put to you by Prosecution, so you are expected
5 to do it in the same way when you are questioned by Defence.

6 Is it clear to you?

7 THE WITNESS: (Interpretation) Yes, I understand you, your Honour.

8 PRESIDING JUDGE FREMR: And before I hand over floor to the Defence, according
9 our measuring, Prosecution in fact used for examination-in-chief four hours and
10 38 minutes, so in accordance with our principles, the Defence is entitled to utilise the
11 same time.

12 Now, Mr Bourgon, you have the floor.

13 MR BOURGON: Thank you, Mr President. Before I begin my cross-examination
14 I would like to, to make arguments in the absence of the witness. Thank you.

15 PRESIDING JUDGE FREMR: All right.

16 Court usher, please take Mr Witness out of the courtroom for a while.

17 (The witness stands down)

18 PRESIDING JUDGE FREMR: For your submission shall we remain in open session
19 or there is a need to move into private?

20 MR BOURGON: We need to stay in private session, Mr President, if we are or we
21 need to move into private session.

22 PRESIDING JUDGE FREMR: All right.

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

24 (Private session at 10.20 a.m.)

25 (Redacted)

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- 11 (Redacted)
- 12 (Open session at 10.32 a.m.)
- 13 THE COURT OFFICER: We're into open session, Mr President.
- 14 PRESIDING JUDGE FREMR: Thank you, court officer.
- 15 Mr Witness, sorry for inconvenience, but during your absence we had to solve one
- 16 procedural issue that had to be solved in your absence. So it was the reason.
- 17 Now, as I indicated, we would continue with your cross-examination by Defence.
- 18 Now, Mr Bourgon, you may proceed.
- 19 THE WITNESS: (Interpretation) Thank you.
- 20 QUESTIONED BY MR BOURGON:
- 21 Q. Good morning, Mr Witness.
- 22 A. Good morning.
- 23 Q. Allow me to begin by introducing myself. My name is Stéphane Bourgon and
- 24 I am counsel representing the accused in this case, Bosco Ntaganda. Do you
- 25 understand this?

1 A. Yes.

2 Q. Now, this morning, together with members of the Defence team of
3 Mr Ntaganda, I will of course ask you a number of questions for the next four hours
4 or so in order to basically cover many of the areas that you've already answered
5 questions to with the Prosecution. Do you understand that?

6 A. Yes, I've understood.

7 Q. Now, you and I have not had the opportunity to meet up to this day, but I'd like
8 to -- you to confirm that you remember meeting with two of my colleagues last week.
9 Do you remember this?

10 A. Yes, I remember.

11 Q. Then we can proceed with my questions with the only caveat that of course, as
12 you have been doing since the beginning, to ensure that you wait before I finish my
13 question until you answer; and I will do the same, I will wait for the end of your
14 answer before I say another question. Do you understand this?

15 A. Yes, I understand.

16 Q. Very well. Let's proceed. I'd like to begin by confirming with you that
17 throughout your testimony yesterday and today you have identified a number of
18 UPC officers. Can you confirm this?

19 A. Yes, I can confirm that. The ones that I remembered.

20 PRESIDING JUDGE FREMR: Ms Luping.

21 MS LUPING: Yes, I'm sorry to interrupt my learned colleague, I just wanted to
22 gently remind him that we are in public session. I'm not sure, of course, what the
23 next succession of questions will be. This first is fine, I have no objection to this
24 question as such, but just as a reminder we're in public.

25 PRESIDING JUDGE FREMR: I will be vigilant. And I guess Mr Bourgon as well.

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1 Mr Bourgon, please proceed.

2 MR BOURGON: Thank you, Mr President.

3 Q. Mr Witness, at this point in time I would just like you to confirm that during
4 your testimony you did identify on a number of occasions Bosco Ntaganda; is that
5 correct?

6 A. Yes, yes, I identified him. I know him very well.

7 Q. Now, all I want to confirm at this time that you did mention these names during
8 your examination-in-chief and you also identified Kisembo; is that correct?

9 A. Yes.

10 Q. And I take it that you do remember mentioning the name Salumu; is that
11 correct?

12 A. Yes.

13 Q. And you also remember, I take it, mentioning the name "Rafiki"; is that correct?

14 A. Yes, I remember.

15 Q. I would like to confirm, Mr Witness, that you did not mention the names of any
16 other UPC officer during your examination-in-chief; is that correct?

17 A. That is true. I did not mention any other officers because I didn't remember
18 their names.

19 Q. Now, earlier this morning you mentioned the name --

20 PRESIDING JUDGE FREMR: Sorry, sorry Mr Bourgon.

21 Ms Luping.

22 MS LUPING: Mr President, there was a name given by the witness in private
23 session, it could be highly identifying and I had warned the witness not to mention
24 the identity of this officer. It was an officer whose named in the context of the
25 Mandro training. But we are in public session now. I'm standing simply as, just to

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1 note that out of fairness of this witness that his prior testimony is being put to him,
2 but in fairness to him it's not entirely correct.

3 PRESIDING JUDGE FREMR: All right, matter clarified.

4 Mr Bourgon.

5 MR BOURGON: Thank you, Mr President. If my colleague can bring the name to
6 my attention at the break, then I will indeed make the necessary correction, unless she
7 was talking about somebody mentioned this morning in private session, but that
8 person was not referred to as an officer of the UPC. So I'm not sure if that's the
9 person we're referring to.

10 Q. Mr Witness, you mentioned this morning the name of a member of the UPC
11 called Santos who would have been the chief escort of Rafiki. Do you recall this?

12 A. Yes, I remember.

13 Q. So you will agree with me that this man called Santos was not an officer in the
14 UPC and certainly not a senior officer; do you agree with me?

15 A. Santos did not have any rank within the UPC army. He was the head
16 bodyguard of Commander Rafiki.

17 Q. Thank you, sir.

18 MR BOURGON: Mr President, if we can move in private session, please.

19 PRESIDING JUDGE FREMR: Certainly.

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

21 (Private session at 10.41 a.m.)

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23 (Redacted)

24 (Redacted)

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WITNESS: DRC-OTP-P-0888

(Private Session)

ICC-01/04-02/06

- 1 (Redacted)
- 2 (Redacted)
- 3 (Recess taken at 11.01 a.m.)
- 4 (Upon resuming in open session at 11.33 a.m.)
- 5 THE COURT USHER: All rise.
- 6 Please be seated.
- 7 PRESIDING JUDGE FREMR: Before break we finished in private session.
- 8 Mr Bourgon, do you want to continue in private?
- 9 MR BOURGON: Yes, Mr President.
- 10 PRESIDING JUDGE FREMR: All right then.
- 11 Court officer, let's move into private session.
- 12 (Private session at 11.34 a.m.)
- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 (Redacted)
- 17 (Redacted)
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- 20 (Redacted)
- 21 (Redacted)
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- 24 (Redacted)
- 25 (Redacted)

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Trial Hearing
WITNESS: DRC-OTP-P-0888

(Open Session)

ICC-01/04-02/06

1 (Redacted)

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3 (Open session at 1.04 p.m.)

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

5 PRESIDING JUDGE FREMR: Thank you, court officer.

6 Now we will break for 90 minutes which means that we will resume again at 2.35.

7 THE COURT USHER: All rise.

8 (Recess taken at 1.05 p.m.)

9 (Upon resuming in open session at 2.36 p.m.)

10 THE COURT USHER: All rise.

11 Please be seated.

12 PRESIDING JUDGE FREMR: Good afternoon, everybody. We will continue with
13 cross-examination of the witness conducted by Defence.

14 One announcement concerning scheduling. As you know, we will have -- continue
15 until half past 4, but in fact I will be ready for that Mr Bourgon, I will have to
16 interrupt you, break your cross-examination quarter past 4, because in the remaining
17 time I would like to orally deliver two decisions. And anyway, I guess you will
18 anyway continue until tomorrow because you still have some time and I guess, as
19 usual, you would like to utilise all time allotted to you, am I right?

20 MR BOURGON: Yes, Mr President.

21 PRESIDING JUDGE FREMR: All right. And now we are in open session. Should
22 we move into private?

23 MR BOURGON: Yes, Mr President.

24 PRESIDING JUDGE FREMR: All right.

25 Court officer, please let's move into private session.

Trial Hearing
WITNESS: DRC-OTP-P-0888

(Private Session)

ICC-01/04-02/06

- 1 (Private session at 2.38 p.m.)
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8 (Open session at 4.18 p.m.)

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

10 PRESIDING JUDGE FREMR: So, Mr Witness, I would like to thank you. For you
11 it's finished for today. So we will for maybe one, two hours continue tomorrow, but
12 at the moment you will be made free.

13 So court officer, please guide Mr Witness.

14 And one important caveat, Mr Witness, in the meantime you must not discuss your
15 testimony with anybody else as I said to you yesterday. Do you understand that?

16 THE WITNESS: (Interpretation) Yes, I understand.

17 PRESIDING JUDGE FREMR: Thank you. Take some rest and we see you
18 tomorrow.

19 (The witness stands down)

20 PRESIDING JUDGE FREMR: Information concerning timing, so far Defence
21 exhausted 3 hours 25 minutes which means that, Mr Bourgon, you still have at your
22 dispose for tomorrow 1 hour 13 minutes.

23 Usual question to calling party, Ms Luping, do you envisage any need for redirect at
24 this moment?

25 MS LUPING: It will be limited at this stage. I really need to have a proper look at

1 the transcript from today. I envisage approximately 15 minutes at this stage.

2 PRESIDING JUDGE FREMR: All right. We will decide tomorrow. And for the
3 rest of the session I will utilise it for delivery of two oral rulings.

4 The first one is oral ruling on the Prosecution request for protective measures for
5 Witness P-877 in the form of face and voice distortion as well as the use of
6 pseudonym, contained in filing number 1336.

7 On 30 May 2016, in filing number 1344, the Legal Representative for Victims of the
8 Attacks supported the request.

9 After the Chamber shortened the deadline by way of email, the Defence responded on
10 14 June 2016 with filing number 1394. The Defence opposes the request.

11 On 20 June the Chamber received the VWU's protective measures assessment, which
12 recommends granting the same protective measures in the request.

13 The Chamber incorporates by reference the applicable law set out in its first decision
14 on protective measures, which is filing number 824.

15 In ruling on the request, the Chamber has considered, particularly: The place of
16 residence of the witness and his family, the prevailing unstable security situation in
17 the area, the minimal degree of protection currently provided and the witness's
18 personal circumstances, including his professional responsibilities, which bring him
19 in contact with a large number of people in the community. In this connection, the
20 Chamber has also noted the Prosecution submissions regarding the witness's
21 previous involvement with certain organs of the Court.

22 Although the Chamber has not been made aware of any direct threat to the witness, it
23 notes the reported instances where other witnesses, including crime-based witnesses,
24 were allegedly threatened as a result of their involvement with the Court. The
25 Chamber also had particular regard to the VWU's assessment in respect of the

1 witness's security situation.

2 In light of the above, the Chamber is satisfied that there exists an objectively
3 justifiable risk with respect to the witness's security, and that of his family, that
4 warrants the protection of the witness's identity from the public. The Chamber
5 further finds that the in-court protective measures sought do not unduly infringe
6 upon the rights of the accused and, accordingly, grants the measures of use of a
7 pseudonym for the purposes of the trial and voice and face distortion during
8 testimony pursuant to Rule 87 of the Rules.

9 Finally, the Chamber orders the filing of public redacted versions of the request and
10 both responses by 7 July 2016.

11 This concludes this Chamber's ruling.

12 And the second ruling is ruling on Prosecution request number 1335 seeking the
13 admission, under Rule 68(3) of the Rules, of the prior recorded testimony of Witness
14 P-877, together with associated documents.

15 The Prosecution seeks to admit parts of the witness's two statements, their five
16 accompanying sketches, as well as seven entries of the witness's notebook. It further
17 seeks permission to use leading questions to elicit corrections or clarifications from
18 the witness during its preparation session and requests one and a half hours to
19 conduct a non-leading supplementary examination, specifically on alleged crimes
20 committed in Kilo.

21 The Defence responded in filing number 1387.

22 Having considered the materials and submissions received, the Chamber is of the
23 view that use of Rule 68(3) is, in principle, appropriate for this witness. It will
24 render its formal decision on the admission of the requested materials when the
25 witness appears before the Chamber and if the requirements of Rule 68(3) are

1 satisfied.

2 First, without prejudice to certain portions of the evidence being elaborated in more
3 detail viva voce in a manner which is not merely repetitive, the Chamber considers it
4 appropriate to admit the statements in full. Accordingly, and in line with the initial
5 guidance provided, the Chamber will authorise supplementary examination of a
6 maximum of one hour, which should include the Prosecution requesting the witness
7 to confirm the accuracy of the material sought to be admitted and addressing any
8 necessary corrections and/or clarifications. The Chamber considers that clarification
9 should be sought in a non-leading manner and may be elicited by discussing with or
10 showing to the witness certain portions of the prior reported testimony.

11 Additionally, the Chamber considers that the five sketches drawn by the witness are
12 appropriate for admission pursuant to Rule 68(3), together with the witness's
13 statements, given that they are used and explained therein and necessary to fully
14 understand his prior recorded testimony.

15 Similarly, the Chamber finds that the entries in the witness's notebook identified by
16 the Prosecution and sought to be admitted are also associated exhibits necessary to
17 read and understand parts of the witness's prior recorded testimony. Accordingly,
18 the Chamber considers that the seven entries from the notebook shall be considered
19 for admission under Rule 68(3), together with the witness's prior recorded testimony.
20 This is subject to the witness satisfactorily authenticating such items in court and
21 fulfilment of the requirements of Rule 68(3). If necessary, the Chamber will hear
22 further submissions prior to ruling on the Rule 68(3) request.

23 The Chamber notes the Prosecution's indication that it will request admission into
24 evidence of the corresponding portions of transcription and translations. The
25 Chamber hereby provides notice that, for ease of reference, the corresponding parts of

1 the transcription as identified by the Prosecution in annex A to its request will also be
2 considered for admission when issuing its formal ruling on the request. As the
3 relevant entries in the notebooks are in French, the Chamber hereby indicates that it
4 does not consider it necessary to admit the translations into evidence. The parties
5 should attempt to resolve any differences with regard to the transcriptions inter
6 partes in advance of the testimony.

7 The parties are further directed to file public redacted versions of filings 1335 and
8 1387 within two weeks.

9 This concludes the Chamber's ruling.

10 Are there any requests for the floor? I don't see any indication of that, which
11 means -- Ms Luping please:

12 MS LUPING: My apologies, Mr President. It's just in relation to this last or second
13 oral ruling where -- and I'm going to read the lines:

14 "First, without prejudice to certain portions of the evidence being elaborated in more
15 detail viva voce in a manner which is not merely repetitive, the Chamber considers it
16 appropriate to admit the statements in full."

17 Just a question really for clarification, the Prosecution had sought that certain aspects
18 of the testimony be able to be indeed provided by the witness viva voce, certain key
19 aspects of his testimony. Does this mean that indeed the Prosecution will be able to
20 elicit the, what it has identified as being those key aspects viva voce, if you like,
21 certain parts carved out viva voce?

22 PRESIDING JUDGE FREMR: Yes, we just consulted. Our interpretation or
23 explanation, how we meant it, is that it should be -- could be admitted in full but
24 probably it will be better to focus on those really, just on those key passages and to,
25 not to repeat them, but to examine the witness on those passages viva voce.

Trial Hearing
WITNESS: DRC-OTP-P-0888

(Open Session)

ICC-01/04-02/06

- 1 MS LUPING: Thank you for that clarification, Mr President.
- 2 PRESIDING JUDGE FREMR: If there are no further requests for the floor, we can
- 3 adjourn and we will resume tomorrow 9.30.
- 4 THE COURT USHER: All rise.
- 5 (The hearing ends in open session at 4.31 p.m.)