

Trial Hearing
WITNESS: (Redacted)

(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 Thursday, 22 October 2015
8 (The hearing starts in open session at 10.43 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: The Court is sitting in the case of the Prosecutor versus
15 Bosco Ntaganda.
16 PRESIDING JUDGE FREMR: Thank you.
17 Now appearances starting with the Prosecution.
18 MS SAMSON: Good morning, Mr President, your Honours. For the Prosecution
19 today are Mr James Pace and Mr Rens van der Werf, both assistant trial lawyers.
20 Ms Selam Yirgou, case manager. And myself Nicole Samson, senior trial lawyer.
21 PRESIDING JUDGE FREMR: Thank you very much, Ms Samson.
22 Defence.
23 MR BOUTIN: (Interpretation) Good morning, your Honour. This morning
24 Mr Ntaganda is here with us. We have Maître Isabelle Martineau, legal assistant;
25 Mr William St-Michel, legal assistant; Madam Chloé Grandon, legal assistant; and

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1 myself, Luc Boutin, co-counsel. Thank you.

2 PRESIDING JUDGE FREMR: Thank you very much, Mr Boutin.

3 Legal Representatives of Victims.

4 MS PELLET: (Interpretation) Thank you, your Honour. The former child soldiers
5 are represented by myself Sarah Pellet, counsel with the OPCV. Thank you.

6 MR SUPRUN: (Interpretation) Good morning, your Honours. The victims of the
7 attacks are represented by myself Dmytro Suprun, counsel for the OPCV. Thank
8 you.

9 PRESIDING JUDGE FREMR: Thank you, Ms Pellet. Thank you, Mr Suprun.
10 Duty counsel.

11 MR VON BÓNÉ: (Interpretation) Good morning, your Honour. My name is
12 Maître von Bóné and I'm legal counsel for the witness.

13 PRESIDING JUDGE FREMR: Thank you, Mr von Bóné.

14 First of all, I would like to apologise for this delay. You know, until now the human
15 factor was very reliable, but high technology betrayed us, so hopefully we overcame
16 our technical problems and now we will continue smoothly.

17 It, in effect, forced us to change a bit our time schedule for today, so we would like to
18 sit now till 12 o'clock, then we will have to cut a bit the lunch break, so we will
19 shorten the lunch break only for one hour, and then from 1 o'clock we should have
20 two classical sessions by 90 minutes each with 30 minutes' break, and that would
21 mean that we are going to finish today at half past 4, if I am not wrong in my
22 counting. So I believe that parties are and participants are fine with that.

23 Prosecution, no problem?

24 MS SAMSON: No problem, your Honour.

25 PRESIDING JUDGE FREMR: Defence?

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1 MR BOUTIN: No problem, your Honour.

2 PRESIDING JUDGE FREMR: Participants?

3 MR SUPRUN: (Interpretation) No objection, your Honour.

4 PRESIDING JUDGE FREMR: So thank you all of you for your understanding. And
5 before we start or before we start the final part of witness testimony I would like also
6 to report two housekeeping matters, or organisational matters, rather two small
7 reminders.

8 First -- it's a reminder to parties mainly. First, be careful when referring to
9 documents to ensure that you refer to the correct document number. This both assist
10 the Chamber and the others in the courtroom in finding the documents and ensures
11 that the transcript will be understandable in the future.

12 And the second issue is if the transcript does not catch a name, please ask for it to be
13 repeated or to be spelt if necessary to ensure it is properly recorded. You have been
14 doing this to some extent and please continue to watch for that and to do so. So
15 generally, if there is no -- it's obvious there is no name or it's obviously wrong, then it
16 will be probably mainly my role to ask for repetition of such a name. But it would
17 be maybe some small, small mistake in wording, it should be mainly up to the parties
18 who are familiar with the correct wording to ask for correction or to ask for spelling.
19 So that's it, all for the moment from our part. It means that we can finish or continue
20 with the final part of the cross-examination of the witness.

21 Maybe before doing that, one question to Prosecution. Ms Samson, do you expect
22 any re-examination and, if yes, for what extent?

23 MS SAMSON: No at the moment, your Honour. I will be listening attentively to
24 this session and I can update the Chamber when the cross-examination is completed.

25 PRESIDING JUDGE FREMR: All right. So it means we can move finally to

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1 Mr Boutin who probably will finish the cross-examination.

2 Mr Boutin, you have the floor.

3 And sorry, my fault. Mr Witness, I know it's routine almost, but I again have to
4 remind you that you are still under oath, so it means that you will still have to speak
5 the truth and nothing but the truth, but you know that I guess.

6 Mr Boutin.

7 MR BOUTIN: Thank you, Mr President. Just to follow up on my comments with
8 regards to timings yesterday, obviously I was probably over-optimistic, but not that
9 much to be honest. I essentially expect that, considering the schedule that you have
10 put in place, that we will be able to complete my cross-examination within probably
11 two hours, maybe a bit more.

12 PRESIDING JUDGE FREMR: Mr Boutin, it would be fine because it would be still
13 within the limit we generally set out. It seems you will not ask for more time than
14 was exhausted for examination-in-chief. So you may proceed.

15 MR BOUTIN: (Interpretation) Thank you.

16 WITNESS: (Redacted) (On former oath)

17 (The witness speaks French)

18 QUESTIONED BY MR BOUTIN: (Continuing)

19 Q. Good morning, Witness. Mr Witness, when we left off yesterday, you were
20 testifying regarding the mines in Mongbwalu. Do you -- do you recall that subject?
21 I assume you do.

22 A. Yes, I remember.

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 A. Thank you. Yes, that's correct. But I'm a human being and it can occur that I
2 forget something. In fact, today I would also like to add something compared to
3 what I said yesterday when I saw the telegram --

4 Q. I'm asking you a precise question that is "Yes" or "No." Did you speak about
5 the mines with the investigators?

6 PRESIDING JUDGE FREMR: Sorry. Ms Samson. Ms Samson.

7 MS SAMSON: Yes, your Honour, I don't think it's fair to the witness to interrupt if
8 he has a clarification to bring to some of the evidence he's given at some stage.

9 Thank you.

10 PRESIDING JUDGE FREMR: I think it's true.

11 Mr Boutin, please, try to avoid that next time.

12 MR VON BÓNÉ: We'd just like to call attention for parties that when it is necessary
13 to ask for closed session or private session.

14 MR BOUTIN: Certainly. Mr President, I'm attune to this issue. I do not expect
15 that for some time, at least this morning, it will be necessary to go into closed session.
16 I will certainly advise when things change. Thank you.

17 PRESIDING JUDGE FREMR: All right. You may proceed.

18 MR BOUTIN: (Interpretation)

19 Q. Yes, Witness, go ahead and we're listening.

20 A. Thank you. It's been a long time since I left Ituri, and I wasn't really prepared
21 to testify and therefore certain events may have escaped me.

22 Q. And, therefore, it was only when you met with the OTP in October of this year,
23 that is a few weeks ago, that you raised the issue of the mines; is that correct?

24 A. Yes, that's correct.

25 Q. I have another point of clarification to ask you regarding the map that you

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1 annotated. You recall that yesterday I went back over the map that you annotated
2 where you had indicated the itinerary that you had taken to go from Aru to
3 Mongbwalu. Do you recall that?

4 A. Yes, I remember.

5 Q. When you refer to Aru on the map -- let me start over again. When you
6 mention Aru in your testimony, is it not correct that you're referring to Aru, that is,
7 the capital of the Aru territory?

8 A. Yes, I was referring to Aru, the chef-lieu of the territory of Aru.

9 Q. And again, simply to clarify, the map that you were given is a map that does not
10 cover the territory of Aru. Aru, that is the capital or chef-lieu, is in fact much further
11 north than what you indicated on the map?

12 A. Thank you. I don't know exactly which map you're referring to.

13 MR BOUTIN: Your Honour, perhaps we could show the map to the witness. That
14 would help him better understand what I'm saying. The document is
15 DRC-REG-0001-0004. And this is the map that was annotated by the witness.

16 PRESIDING JUDGE FREMR: Ms Samson.

17 MS SAMSON: Thank you. Your Honour, no objection to showing the witness the
18 document, but the itinerary in the document was elicited in private session for very
19 good reason. And if it has to be shown to the witness now, either we remain in
20 public session and the document is not transmitted publicly, or we move into private
21 session, in my submission. Thank you.

22 PRESIDING JUDGE FREMR: But before doing that, I would like to ask Mr Boutin,
23 because we spent some time yesterday on -- or, you spent some time yesterday in
24 questioning witness about, you know, details of the map. Is it really so relevant -- I
25 guess that you would like to probably target credibility of the witness, but do you

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1 really mean that, you know, his geographical familiarity with -- and showing that on
2 the map is really something very relevant to your case?

3 MR BOUTIN: I think it's not a matter of being relevant to the Defence case or not;
4 it's a matter of being accurate for the Chamber. I'm not suggesting that the witness
5 was in bad faith at all. I think that mistakes obviously can be done. But clearly,
6 after reviewing the evidence last night, the map on which the capital of Aru appear
7 has not been shown to the witness. I think it is a matter of fairness to the witness, at
8 the end of the day, and that's what I'm trying to do today, both for the (Redacted)
9 (Redacted)

10 (Redacted).

11 (Redacted) capital

12 of Aru, is much further north. And this is the only point I want to make. I'm not
13 suggesting that the witness is trying to mislead.

14 PRESIDING JUDGE FREMR: Then okay, this explanation is satisfactory I think to
15 the Bench. But as Ms Samson recommended, I think we share this view, let's move
16 into private session now.

17 (Private session at 10.59 a.m.)

18 (Redacted)

19 (Redacted)

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- 16 (Closed session at 11.52 a.m.)
- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 (Open session at 11.53 a.m.)
- 21 THE COURT OFFICER: We are in open session, your Honour.
- 22 PRESIDING JUDGE FREMR: Thank you.
- 23 I would like to devote remaining time to the issue of in-court protective measures
- 24 concerning the upcoming witness.
- 25 As indicated by way of email yesterday evening, we would like the Defence to please

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1 give its response to the Prosecution filing number 913 orally in order to enable us to
2 decide upon any potential protective measures for the next witness and we would
3 like to make it during the lunch break.

4 You will recall that in filing 913 the Prosecution requested an extension of a deadline
5 to make its application and then sought face and voice distortion and use of a
6 pseudonym for Witness P-0886.

7 So, Defence, are you in a position to respond now, please. Even briefly it would be
8 enough I guess.

9 MR BOUTIN: Thank you, Mr President. My colleague, Mr William St-Michel, is
10 here and he can certainly assist the Court.

11 PRESIDING JUDGE FREMR: Okay. Thank you.

12 MR ST-MICHEL: Good afternoon, Mr President, your Honours. So I shall be very
13 brief. I would just like to address both the Prosecution request for variation of the
14 time limit and --

15 PRESIDING JUDGE FREMR: Sorry, Mr St-Michel. As the last time, please, you
16 know I also have a tendency to speak -- normally to speak fast. Please try little bit
17 slow down for the sake of our precise transcript. Thank you.

18 MR ST-MICHEL: I will.

19 So as I was saying, Mr President, I shall first address the request for variation of time
20 limit following by our estimations regarding the merits of the in-court protective
21 measures sought themselves.

22 With respect to the request for variation of the time limit, the Prosecution argues that
23 the need to implement in-court protective measures during the testimony of Witness
24 P-886 arises from circumstances that were outside its control.

25 The Defence challenges that the Prosecution has shown good cause which would

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1 justify an (Speaks French) variation of the time limit because it clearly, clearly stems
2 from the Prosecution request that Witness P-886 purported security concerns do not
3 arise from a situation that was unknown to the Prosecution, but rather they appear to
4 arise from the Prosecution's negligence in ensuring that the witness fully understood
5 all the implications of testifying publicly before the Court.

6 Had the Prosecution exercised greater care in ensuring that the witness properly
7 understood all the implications of testifying publicly before the Court, it would have
8 been in a position to timely submit its request.

9 That being said, Mr President, your Honours, considering that what is at stake is the
10 witness -- I think we should move to private session considering that there will be
11 some related matters -- security related matters.

12 PRESIDING JUDGE FREMR: All right. Let's move into private session. Sorry, I
13 just have read some message.

14 (Private session at 11.58 a.m.)

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- 22 (Recess taken at 12.04 p.m.)
- 23 (Upon resuming in open session at 1.04 a.m.)
- 24 THE COURT USHER: All rise.
- 25 Please be seated.

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1 PRESIDING JUDGE FREMR: Good afternoon, everybody.

2 We will continue with the final part of the testimony of our witness.

3 And Mr Boutin, do you prefer to continue in open or private session?

4 MR BOUTIN: Mr President, I would prefer to stay in private session. I would
5 expect that it would be necessary for my next line of questioning.

6 PRESIDING JUDGE FREMR: Yes. It's fully understandable. So court officer, let's
7 move into private session.

8 (Private session at 1.05 p.m.)

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Trial Hearing
WITNESS: (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Closed session at 2.35 p.m.)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Open session at 2.36 p.m.)

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

10 PRESIDING JUDGE FREMR: Thank you. So now we will adjourn. We will
11 reconvene at 3 o'clock.

12 Mr Boutin?

13 MR BOUTIN: Yes. I'll be brief. With regard to the last witness, Mr President, the
14 Defence reserve its right to make a request to the Court at a later stage so that the
15 witness could be recalled. And the basis for this would be twofold: The first one is
16 that evidence with regards to the use of anti-personnel mine in Mongbwalu was
17 raised for the first time by the witness when he met the Prosecution about two weeks
18 ago; and the second basis would be with regards to the UN reports pertaining to the
19 trafficking in arms of weapons which stated that someone who may be the witness
20 could be involved in armed trafficking, which obviously is relevant to the
21 impeachment of the witness's credibility; and the third basis obviously would be that
22 in terms of investigation capacity, the Defence would not have been able to
23 investigate those matters because obviously they were not raised and that we have
24 no -- a very limited investigation capabilities.

25 So on those grounds, we reserve our rights to file a motion to this regard. Thank

1 you.

2 PRESIDING JUDGE FREMR: Thank you. Thank you. Point noted.

3 Ms Samson, any comment at the moment for you? No. Okay. No comment.

4 Fine.

5 MS SAMSON: No comment. Thank you.

6 PRESIDING JUDGE FREMR: Mr von Bóné, I also wanted to thank you, but if you
7 want to say something, please, go ahead.

8 MR VON BÓNÉ: Yes, your Honour. I just wanted to say that apparently as the
9 witness has testified completely and he's no longer necessary, I think that concludes
10 my work here too.

11 One thing that I want to tell you is that I have been provided with the documents
12 obviously to prepare the witness and -- well, myself, and during the court session
13 there were some documents distributed, the photographs, the log file and the -- what
14 is it? -- the photographs and the extract of the UN report. And with your permission
15 I'll hand that back to the court management directly after this session has been broken
16 up.

17 And then I wish all parties all the best in the continuance of this trial.

18 PRESIDING JUDGE FREMR: Thank you very much for this, but as I also indicated, I
19 would like to thank you very much for your assistance. It was very helpful. Thank
20 you very much, Mr von Bóné.

21 And now we will adjourn because we will need some time -- some time to manage
22 things and I am just indicating that we will start very likely without witness because
23 we would like first to render one or two procedural rulings. But anyway, we will
24 start quarter past 3, yeah, but it doesn't mean we will prolong the last session. That
25 means that the last session will last only one and quarter -- 75 minutes. So we will

1 finish anyway as we promised, half past 4.

2 Now it's adjourned court and we will resume quarter past 3.

3 THE COURT USHER: All rise.

4 (Recess taken at 2.40 p.m.)

5 (Upon resuming in open session at 3.20 p.m.)

6 THE COURT USHER: All rise.

7 Please be seated.

8 PRESIDING JUDGE FREMR: Good morning, everybody. We will continue, but
9 before that I see some changes in our appearances, composition of teams. So I will
10 ask for appearances first.

11 Prosecution, please.

12 MS LUPING: Good afternoon, Mr President, your Honours. My name is
13 Dianne Luping. I'm a trial lawyer with the Prosecution division. And with me
14 today are Kristy Sim, assistant trial lawyer; Lois Mbafor, legal assistant; and
15 remaining with the Prosecution are Nicole Samson, senior trial lawyer; and
16 Selam Yirgou, our case manager. Thank you.

17 PRESIDING JUDGE FREMR: Thank you, Ms Luping.

18 Defence now.

19 MR BOURGON: (Interpretation) Good morning, your Honour. Good morning,
20 your Honours, and all the people here in the courtroom. Bosco Ntaganda, for the
21 Witness P-886, Elsje van Braber, who is an intern; Mademoiselle Elodie Victor, also an
22 intern; Counsel William St-Michel; and myself, Stéphane Bourgon. Thank you very
23 much, your Honour.

24 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

25 I like to note for the record that we have Ms Pellet and Mr Suprun as Legal

1 Representatives of Victims with us in the courtroom.

2 Now, before the witness can be called, the Chamber will address two procedural
3 matters. The first one is oral ruling on admissibility of documents used during
4 Witness P-0901's cross-examination.

5 The Chamber will first deliver its oral ruling on the Defence request for admission of
6 documents used during cross-examination of Witness P-0901.

7 P-0901 was cross-examined between 22 and 25 September 2015. At the conclusion of
8 the cross-examination the Defence requested the admission into evidence of a number
9 of items referred to during cross-examination. I can refer to transcript number 32,
10 page 60.

11 On the same day, by way of email, the Prosecution indicated that it had no objection
12 to the admission of said documents. However, noting that the scope of admission
13 requested was not entirely clear, the Chamber directed the Defence to file a request
14 identifying per item for which admission is sought the scope of admission. I can
15 refer to transcript number 32, page 64.

16 On 2 October 2015, the Defence did so amending the scope of its initial request: First,
17 it withdrew its request for admission into evidence of four items. Second, it
18 amended the scope of admission sought with regard to one item, which it now seeks
19 to tender for the purpose of impeachment solely, rather than for the truth of its
20 content. And, third, it limited its request for admission of other items to portions
21 rather than to the documents in full.

22 On 6 October 2015, the Prosecution by way of email responded that it does not object
23 to the Defence's request.

24 Having reviewed the materials and noting that the Prosecution does not object to
25 their admission, the Chamber considers that they meet the requirements for

1 admission for the purposes specified in the Defence request.

2 The Chamber notes in particular, in this regard, that the excerpts of prior statements
3 for which admission for impeachment purposes is sought had been put to the witness
4 during cross-examination.

5 Accordingly, the following items shall be admitted into evidence for the limited
6 purpose of impeachment: Pages 1568 and 1569 of DRC-OTP-2079-1557, then pages
7 1775 to 1779 of DRC-OTP-2079-1770, then page 1937 of DRC-OTP-2079-1921, then
8 page 0008 of DRC-OTP-0017-0003, and the translation thereof, namely page 0056 of
9 DRC-OTP-2055-0050. In addition, DRC-OTP-0151-0299 and DRC-OTP-0016-0260
10 shall be admitted in full for the truth of their content.

11 This concludes the Chamber's ruling.

12 And the Chamber will further deal with the Prosecution's request for in-court
13 protective measures filed on 20 October 2015. And for this decision we have to -- we
14 can stay in public session. Sorry, I was wrong.

15 So the ruling is following: On 20 October 2015, the Prosecution filed a request for
16 extension of time to submit a request for in-court protective measures for Witness
17 P-0886, it was filing 913.

18 The Prosecution indicates that it was not in a position to request in-court protective
19 measures for Witness P-0886 at an earlier stage as the witness indicated that he was
20 seeking in-court protective measures only during the witness preparation session
21 held shortly before the witness scheduled start of testimony.

22 The Prosecution seeks in-court protective measures in the form of facial and voice
23 distortion and use of a pseudonym during testimony.

24 The VWU, by way of email, transmitted its observations to the Chamber. The VWU
25 recommends that the measures sought be granted by the Chamber.

1 At the end of this morning's session, in accordance with the Chamber's instruction,
2 the Defence made an oral submission on the request.

3 The Defence submits that the Prosecution did not show good cause justifying
4 granting an extension of time limit to submit the request, as failure to do so timely
5 results from the Prosecution's own negligence.

6 Nevertheless, the Defence admits that since the request relates to the security and
7 safety of the witness, the Chamber should entertain the merits of the request.

8 In this regard, the Defence submits that granting in-court protective measures in the
9 case of this witness, which sets a very low standard, as the risk to the witness security
10 is low, if non-existent.

11 The Defence submits that the request should thus be rejected. However, it does not
12 object to the use of a pseudonym.

13 As the witness expressed his concerns very shortly prior to the start of his testimony,
14 the Chamber is satisfied that the Prosecution, for reasons outside its control, was not
15 able to file its request sooner.

16 Accordingly, and mindful of its obligations to protect witnesses pursuant to Article 68
17 of the Statute, the Chamber grants the requested variation of time limit.

18 In its observations, the VWU recommends that the measures sought by
19 implemented -- sought be implemented inter alia in order to obviate the need for
20 other intrusive protection measures subsequent to P-0886's testimony.

21 In this regard, it's noted that VWU stressed the challenges that it would incur as a
22 result of the present circumstances of the witness if any need would arise to set up
23 protective measures as a result of the witness's testimony.

24 The Chamber recalls that the granting of protective measures is an exceptional
25 measure which, in principle, requires a showing of an objectively justifiably risk.

1 In this case, the Chamber notes that the basis of the request appears to be the
2 subjective fears of the witness together with uncertainty of the level of risk at this
3 early stage of proceedings, and the preference to take measures now which could
4 obviate the need for more intrusive measures subsequent to the witness's testimony.
5 Bearing in mind its obligations under Article 68 of the Statute to protect witnesses as
6 well as the principle of publicity procedure of proceedings, the Chamber partially
7 grants the request and decides that Witness P-0886 shall only be designated by way of
8 his pseudonym, but will testify without face and voice distortion.

9 This is the conclusion of our ruling.

10 Now we can bring witness to the stand, and for that reason we have to go to closed
11 session.

12 Sorry. I am wrong. We can stay in private session. Sorry. Sorry. It would be a
13 contrary to our decision. Sorry.

14 Ms Luping.

15 MS LUPING: Mr President, I just wanted to indicate that the -- or reiterate that the
16 witness did indicate that his willingness to testify would also be on the basis of being
17 granted face and voice distortions as well as a pseudonym. So I would ask that this
18 matter be clarified with him and to, indeed, ascertain whether he's still willing to
19 testify on the basis of this decision. He may not be willing to do so. He may not
20 want to proceed if face and voice distortions are not granted. Thank you.

21 PRESIDING JUDGE FREMR: We will do our best, but, you know, there are
22 competing interests. I think is obvious it is in the interest to safe -- or, make the
23 witness safe. At the same time, it is competing interest to make testimony public, if
24 possible. It is part of the rights of the accused. So we will try to explain it to
25 Mr Witness, and we will see.

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(Open Session)

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1 (Pause in proceedings)

2 (The witness enters the courtroom)

3 PRESIDING JUDGE FREMR: So I think the witness will need headphones, or not?

4 Mr Witness, good afternoon. Can you hear me, or can you hear the translation of my
5 speech?

6 Mr Witness, if you can hear me, please say that, "Yes."

7 Court officer, could you maybe check whether everything is okay with the
8 headphones because -- I will speak for you -- for the purpose of whether the
9 headphones are okay. Okay.

10 Now, Mr Witness, could you tell me through the microphone whether you can hear
11 me, or whether you can hear the translation of what I am saying to you?

12 WITNESS: DRC-OTP-P-0886

13 (The witness speaks Swahili)

14 THE WITNESS: (Interpretation) I understand very well.

15 PRESIDING JUDGE FREMR: Thank you very much, Mr Witness.

16 I would like to welcome you on behalf of our Chamber. You have been called to
17 testify before this International Criminal Court as a witness in the case of the
18 Prosecutor against Mr Bosco Ntaganda.

19 And before moving to the testimony, I would like to inform you and discuss with you
20 one important issue.

21 You expressed when contacted by our unit called VWU, a unit which is responsible
22 for taking care of witnesses, that you would like to get some in-court protective
23 measures. And after consultation with this unit, you asked for measures called a
24 pseudonym, which in practice means that everybody should call you not by your real
25 name, but only by title "Mr Witness." And then you also asked for the use of

1 distortion of your picture on the screens that broadcast our trial, and distortion of
2 your -- of your voice.

3 The Chamber granted this request, which has been made by the Prosecution only
4 partially and decided to grant you the use of a pseudonym.

5 On the other hand, we decide not grant you this distortion of facial and voice -- of
6 your face picture and voice. The reason was that according our information, there is
7 no immediate risk and we believe that this protective measure of pseudonym should
8 be sufficient to your protection because even your testimony, it's not, I think, in direct
9 connection, at least as we had a chance to read your previous statement, it is not in
10 direct linkage to Mr Ntaganda, or it is very, very tiny, the linkage. So according to
11 us, there is not any sufficient risk. And even according to our Rules and according
12 to our decisions of this Court, the fear itself of the witness, it's not enough to grant
13 these kind of protective measures. It should be something objective, something like
14 concrete intimidation and concrete attempts either to intimidate or bribe the witness.
15 So it was our decision, and we believe that it's -- in your case it's sufficient to grant or
16 to grant your safety.

17 Do you understand?

18 THE WITNESS: (Interpretation) For the moment, I am not afraid, as you've just
19 explained. I have just understood that nobody knows me here, (Redacted)
20 (Redacted)

21 PRESIDING JUDGE FREMR: Yeah, yeah, it is true. And I believe that not many
22 people -- because it is true, I don't want to make it as a secret. If somebody wants to
23 follow this trial by, for example, by computer, it's possible, but I don't believe that
24 many people in -- especially your friends and your acquaintances have a chance to in
25 this -- especially in this time, we also have that the time in Africa difference, have a

1 chance to follow our stream. So is it fine with you to testify?

2 THE WITNESS: (Interpretation) Please continue. I'm listening to you.

3 PRESIDING JUDGE FREMR: Ms Luping, I'm open to listen to you, but, you know,
4 you shouldn't interfere with our process. So if it's such a case, please go ahead, but
5 don't please ruin what we started to build, please.

6 MS LUPING: Mr President, it's certainly not my intention to ruin the process that
7 you're trying to build. It's just a question of clarification because this is indeed the
8 difficulty we faced when we met with Mr Witness and seeking to explain whether or
9 not his image would be seen, whether it's transmitted publicly.

10 As we understand it, certainly in the -- I won't say the name of the place because it's a
11 matter of a filing and we're in public session right now, but the -- the particular city or
12 location that he was concerned about, as we are aware, his image would indeed be
13 transmitted to that location. Please correct me if I'm wrong, but as I understand it
14 that particular city or area where supporters of the accused may be located, the
15 proceedings are transmitted and they can -- and in our submission it would not
16 be -- it cannot be assumed that the supporters would not be following the
17 proceedings.

18 I think the concerns raised by the witness with us were not in relation to his family
19 members but indeed supporters of the accused. Those were his concerns. And
20 I was just wanting to ensure that the witness fully understands the implications of the
21 fact that his image will indeed possibly be seen through the internet by individuals,
22 including supporters of the accused, in the city that he named and that we mentioned
23 in the filing.

24 It's just for the sake of clarity because indeed when we checked his views originally
25 this was not clear to him and I would just want to ensure there is clarity now as well.

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1 Thank you.

2 That was all, Mr President.

3 PRESIDING JUDGE FREMR: Yeah, it is pretty fair. Obviously, we cannot make
4 any censorship for certain cities or certain parts, so, you know, hypothetically
5 everybody on this planet could watch this trial. It is true.

6 But as I said, Mr Witness, we still believe and I can assure you that we really consider
7 it very thoroughly that we believe there is no real risk, and it's even our obligation to
8 follow Rules of this Court and previous decision of -- in the case of the witnesses in
9 the similar situations, and we try to follow this. And, according our opinion, it's no
10 chance to change our decision. So we have to stay within -- by the decision we have
11 already made.

12 So are you now ready to testify, Mr Witness?

13 THE WITNESS: (Interpretation) I'm ready.

14 PRESIDING JUDGE FREMR: Thank you very much, Witness. And we appreciate
15 it a lot because, you know, the one of the main principles governing this Court is to
16 find the truth, and we deeply believe that your testimony could assist to this purpose.
17 So now I will give you some information or guidance how you and us as a Chamber
18 will proceed during the next days of your testimony.

19 I would first of all ask you to listen carefully to the questions that will be put to you.
20 It is very important for us that you make sure that you understand the question
21 before you answer it. It's pretty possible that you don't understand. In such a case
22 feel free to ask for the question to be repeated or rephrased.

23 We want you to tell the truth and tell us only what you really saw or heard or sense
24 yourself. If you did not see or hear it yourself, but you found out some other way,
25 then you should explain how. You may be asked about events that happened many

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1 years ago, so it is natural that you may not remember all details. It doesn't matter.

2 Please testify just on that which you remember. Don't guess. Don't make things up,

3 please. There is nothing wrong in saying, "I don't know" or "I don't remember."

4 Do you understand all this, Mr Witness?

5 THE WITNESS: (No interpretation)

6 PRESIDING JUDGE FREMR: Sorry, I haven't got interpretation.

7 THE WITNESS: (No interpretation)

8 PRESIDING JUDGE FREMR: English booth, sorry, I still have no translation of

9 witness's answer.

10 THE INTERPRETER: There seems to be a technical issue in the English booth with

11 the microphone switching off, your Honour. We'll try and resolve it.

12 PRESIDING JUDGE FREMR: So should I ask the witness to repeat his answer, or

13 you haven't captured his answer?

14 THE WITNESS: (Interpretation) I have understood.

15 PRESIDING JUDGE FREMR: Thank you.

16 So now, Mr Witness, we will ask the court officer to administer your solemn

17 undertaking as is normal before any court.

18 So, court officer, please administer the solemn undertaking to tell the truth with this

19 witness.

20 Yeah, you can stand up. We appreciate, Mr Witness.

21 THE WITNESS: (Interpretation) I solemnly declare that I will tell the truth, the

22 whole truth and nothing but the truth.

23 PRESIDING JUDGE FREMR: Thank you very much, Witness. You may now sit

24 down, yes.

25 So now I will continue in my guidance. I will give you further instructions.

1 So now you are under oath and you have already been informed by representatives of
2 the Victim and Witness Unit and afterwards by representatives of the Prosecution
3 about the importance to speak the truth. Nevertheless, I want to reiterate to you that,
4 as you have just promised, you have to speak the truth and that it's an offence within
5 the jurisdiction of this Court to give false testimony.

6 Do you understand that?

7 THE WITNESS: (Interpretation) Yes, I have understood.

8 PRESIDING JUDGE FREMR: Very well.

9 Now, Mr Witness, let me explain to you how the protective measure works that the
10 Chamber has put in place for your testimony.

11 As I have already said, we decided to order the use of pseudonym. This means that
12 we will all in the courtroom refer to you only as "Mr Witness" to make sure that the
13 public does not know your name.

14 When you answer questions that will not give away who you are, we will do so in
15 open session, which means then the public can hear what is being said in the
16 courtroom. You can see that we are in open session if the light in front of you is red.

17 When you are asked to describe anything that relates specifically to you, we will do
18 this in a private session; for example, at the very start when a few general questions
19 about you as a person will be asked, or when you are asked to mention facts that
20 might reveal your identity, for example, any locations where you live or persons close
21 to you, the light in front of you will be then green.

22 Then there is no broadcast and no one outside the courtroom can hear your answer.

23 If ever anything gets said during open session which should have been said in private
24 session, we will do our best to protect this information.

25 Your testimony will be broadcast on a delay and we can remove any such remarks

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1 from the broadcast which will be heard by the public, and from the public transcript
2 of the proceedings.

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

6 And now a few practical matters you should have in mind when giving your
7 testimony.

8 Everything we say here in the courtroom is written down and interpreted into
9 English and French. It is, therefore, important to speak clearly and to speak at a
10 moderate or rather slow pace like me. It is not very natural, but it is very important
11 for us to have a precise transcript and precise translation.

12 Please speak into the microphone and only start speaking when the person asking
13 you the question has finished.

14 To allow for the interpretation, everyone has to wait a few seconds before starting to
15 speak, so I recommend to you when the lawyer has asked his or her question, please
16 count in your head to three and only then give your answer.

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

19 It was a lot of information, but I hope that you have understood all of that. Is it the
20 case?

21 THE WITNESS: (Interpretation) Yes, I have understood.

22 PRESIDING JUDGE FREMR: Thank you very much, Mr Witness. It means that we
23 can start with your testimony.

24 So, Ms Luping, I guess it will be you, so you have the floor, please.

25 MS LUPING: Thank you, Mr President, your Honours.

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1 QUESTIONED BY MS LUPING:

2 Q. Good afternoon, Mr Witness. We met some days before.

3 A. Good afternoon.

4 Q. My name is Dianne Luping, as I explained to you previously, and I'm a trial
5 lawyer with the Office of the Prosecutor.

6 Before I start, Mr Witness, with asking my questions I just wanted to remind you that
7 if any of my questions are at all unclear, please do not hesitate to ask me to repeat
8 them, or I can clarify anything that's not clear.

9 I would also say that, as the Presiding Judge has explained, if there are any questions
10 that might reveal your identity, I will ask to go into private session, which means that
11 nobody outside the courtroom will hear your answers that might identify you. Is
12 that understood?

13 A. Yes, it is clear and I'm very happy to hear you say that.

14 Q. Thank you, Mr Witness.

15 Mr President, I would be asking some questions initially of an identifying nature. If
16 we could move into private session.

17 PRESIDING JUDGE FREMR: Court officer, please, let's move into private session.

18 (Private session at 3.58 p.m.)

19 (Redacted)

20 (Redacted)

21 (Redacted)

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23 (Open session at 4.04 p.m.)

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

25 PRESIDING JUDGE FREMR: Thank you, court officer.

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1 Ms Luping, you may proceed.

2 MS LUPING:

3 Q. Mr Witness, you explained that there was a company called Kimin that closed
4 in the village of Sayo with the onset of the war. You said it closed in 2002; is that
5 correct?

6 A. Yes.

7 Q. What was that war that you referred to?

8 A. The tribal war. The tribal war.

9 Q. What tribal war are you referring to?

10 A. The war between the Lendu and the Hema. The war that started between
11 those two and then pulled in everyone else.

12 Q. How is it that the war between the Lendu and the Hema meant that the Kimin
13 company had to close in Sayo? Why was that?

14 A. I can answer that question briefly because we did not know why the war started.
15 However, we saw them come to attack us in Sayo. So the war broke out in Sayo and
16 then spread out, but they started the attacks in Sayo.

17 Q. You said there was an attack in Sayo. When was that?

18 A. Well, the attack on Sayo started when there was a five-day war. Before they
19 fought in Sayo they had been fighting for five days, and then Sayo was captured,
20 everyone fled and we all went to the bush. It is at that time that they attacked the
21 entire town and they looted everything, they took everything away. They killed
22 people. Many people died. Those who remained, well, died. Those who -- some
23 people died because they were killed.

24 Q. You said before they fought in Sayo they had been fighting for five days. Can
25 you explain exactly where the fighting was?

1 A. Well, when it started, we heard gunshots in Mbidjo and they -- there was
2 fighting in Mbidjo. The APC and the people from Lopondo (phon) had blocked the
3 road. Fighting had been going on there for three days and at that time all we could
4 hear was the noises from the gunshots.

5 And then they came and captured the airport, and thereafter people fled, and that is
6 how they came from the airport to Sayo. And they even came as far as where we
7 were on the hill. And it is at that time that everyone fled from the city.

8 Q. You said they came and they captured the airport. The airport where?

9 A. The Mongbwalu airport, which is at some distance from Sayo.

10 Q. Now, you said that they captured the airport. Who is "they?"

11 A. Well, there were three groups; Mont Awa's soldiers, the Berunda, that is UPC,
12 and then the APC as well, and then there was Jérôme's group, they were known as
13 the FAC and they merged with the APC to attack Mongbwalu.

14 PRESIDING JUDGE FREMR: Ms Luping, it seems we will have to come back to the
15 name of the first group because we probably haven't captured it in our transcript.
16 Please try to clarify that.

17 MS LUPING: Yes.

18 Q. Just to explain, Mr Witness, there does appear to be a problem with the
19 transcript. You said there were three groups. The first group you said somebody's
20 soldiers and then the Berunda, that is the UPC. Could you clarify who the first
21 group was?

22 A. Well, they all met in Mbidjo at the centre. Berunda's people, Watsa's
23 people -- and they all met, those three groups, in Mbidjo and then came from Mbidjo
24 to Mongbwalu. So there is Berunda, there is Mont Awa and then on the other side
25 there was Watsa. They all came together in Mbidjo and that is how they became a

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1 force.

2 So here some of them came by vehicles, some of them came on foot. They were
3 progressing very fast and that is how it all happened, those three groups.

4 Q. Could you spell Watsa.

5 PRESIDING JUDGE FREMR: Sorry to interrupt again. Maybe we -- you don't
6 know it, but we use such, you know, an improvement that we used to provide the
7 witnesses with paper -- yes, paper and pen to facilitate spelling. Yes.

8 Okay, we can even use this method I think. Nothing wrong with that.

9 MS LUPING: Sorry, if the court usher could assist us. We're having problems with
10 bringing the image up on our screen.

11 PRESIDING JUDGE FREMR: Sorry, at what channel is it visible? I also have some
12 problems with that.

13 Maybe it would be easier to use the old-fashioned method.

14 Mr Witness, could you just read for us each letter by letter? One at a time.

15 THE WITNESS: (Interpretation) I'll say it in French: W-A-T-S-A.

16 PRESIDING JUDGE FREMR: Thank you very much, Witness, for your assistance.

17 MS LUPING:

18 Q. Now you said the Watsa and Berunda soldiers, those were the UPC; is that
19 correct?

20 A. They were together, mixed up together.

21 Q. Can you explain what Watsa and Berunda are?

22 A. Watsa is in another territory towards Isiro, but the area of Aru is where you
23 have Mont Awa, and the Watsa area that's a different area. They came together, but
24 they were living in different areas. Watsa is far away from Ituri. It's in Haut-Uele.

25 Q. And how do you know that these UPC forces came from these two areas?

1 A. Well those who came from there spoke Lingala. People who speak Berunda
2 speak Ugandan Swahili. But there there were also young people who had fled.
3 There were numerous. So the young people from there.

4 Q. But just to be clear, how did you learn that the UPC who came and attacked
5 came from Watsa and Berunda? How do you know that?

6 A. To answer your question, it is as follows: We spent three days in the bush.
7 When they entered into the town, they found a girl who was 13 years old who was
8 closed up in a house. They freed her. They didn't kill her. And they said to her,
9 "Go and find your parents." And we were in the bush.
10 This child left in order to look for her parents. And later this child came to see us,
11 she said, "Father" -- she didn't find her parents. You know, these were people who
12 came from Kinshasa. And this girl, her parents came from Kinshasa. I told her,
13 "Yes, we're also looking for family members, even me. I've spent several days
14 without having eaten and having drunk anything. I'm also looking for members of
15 my family." And she said, "All the soldiers had said that people should return to the
16 town." So I took up my courage, I found people, I went to the road and then I
17 walked in order to get to the town.
18 Now, when I arrived I asked them and they said, "Who are you?" And I said, "We're
19 civilians." And they said we -- they asked us to carry their equipment and we
20 climbed up the hill. And we arrived at the summit of the hill and then they gave us
21 the work of setting up the tents.
22 So I set up the tents and I finished with that work, and then it was then their friends
23 who wanted to maltreat us, but their chief refused, he said, "No, this old person has
24 worked a lot. Leave him alone."
25 And when we arrived to the house there was nothing. And I was given 2 kilos of

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1 salt. I returned with it to my house. And I arrived at home. There weren't people
2 there. I was going to spend the night with another family, the Nyali, and then I
3 returned the next day to my house. And it was at that time they came and they
4 attacked. We were there. That was the first time.

5 PRESIDING JUDGE FREMR: Ms Luping, I'm very sorry, but our -- according our
6 time schedule we should finish half past 4. So I'm aware of the fact that it is not a
7 very convenient moment for you to break the examination, but we'll have to do so.
8 If you want you can maybe have one more minutes maybe to wrap up, but it's up to
9 you, but we will have to finish briefly.

10 MS LUPING: Thank you, Mr President.

11 I think I can explore this question tomorrow morning to clarify. I don't think I need
12 to ask.

13 There's just one question for the sake of the record though, it is to ask the witness to
14 spell Mont Awa because it is not correctly spelt at the moment in the transcript.

15 Q. Could you spell it for us, please, Mr Witness? When you were talking about
16 the area where the UPC groups came from, and I'm going to read from the transcript:
17 "Watsa is in another territory towards Isiro, but the area," you said -- it's on the
18 transcript currently "of Aru is where you have Mont Awa and the Watsa area that's a
19 different area."

20 Could you spell Mont Awa or Mont Awa.

21 PRESIDING JUDGE FREMR: Mr Witness, maybe could you try kindly to read it,
22 Mr Witness? Thank you. You did it perfectly last time, so ...

23 THE WITNESS: (Interpretation) M-O-N-T-T-A-W-A. Between the two -- with a
24 line between the two.

25 MS LUPING: Thank you, Mr President. I will have no further questions today.

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1 And we can continue tomorrow morning.

2 Q. Thank you, Mr Witness.

3 PRESIDING JUDGE FREMR: Thank you very much, Ms Luping.

4 Mr Witness, I would like to thank you, I would like to thank you before -- you started
5 very well. You fully observed our instruction, you responded clearly, you spoke
6 slowly, so I hope that you will continue tomorrow in the same way. Thank you very
7 much. Take some rest, we will continue tomorrow 9.30.

8 And before you leave I have to emphasise that you must not discuss your testimony
9 in the meantime with anybody else. Have you understood all of that?

10 THE WITNESS: (Interpretation) (Redacted)

11 (Redacted). And I don't even know the

12 language here. Who am I going to speak to? I only speak to the friend who
13 accompanies me. There's no other person who speaks Swahili where I am.

14 PRESIDING JUDGE FREMR: We appreciate, Mr Witness. So now, court officer,
15 please escort Mr Witness out of the courtroom.

16 And have a nice evening, Mr Witness.

17 THE WITNESS: (Interpretation) Thank you very much.

18 (The witness stands down)

19 PRESIDING JUDGE FREMR: And before we adjourn, probably your colleagues
20 informed you, we are trying to establish a very strict timing policy within this case.
21 Ms Luping, what is your estimation for total time needed for this
22 examination-in-chief?

23 MS LUPING: Mr President, we estimated 6 hours. It will depend on how the
24 witness responds in questioning tomorrow, maybe less, but at this stage it could be
25 the full 6 hours.

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- 1 PRESIDING JUDGE FREMR: Yeah, for sure I would like to hear that it will be not
- 2 more because we found this estimation as a realistic, so only under some exceptional
- 3 circumstances we would grant you more time, so please try to keep this -- this time.
- 4 Thank you very much.
- 5 Now, we will adjourn and we will reconvene tomorrow at 9.30.
- 6 THE COURT USHER: All rise.
- 7 (The hearing ends in open session at 4.37 p.m.)