

Trial Hearing
WITNESS: DRC-OTP-P-0018

(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
6 Judge Chang-ho Chung
7 Trial Hearing - Courtroom 3
8 Wednesday, 29 June 2016
9 (The hearing starts in open session at 9.34 a.m.)
10 THE COURT USHER: All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: Good morning, everybody.
14 Court officer, please call the case.
15 THE COURT OFFICER: Thank you, Mr President.
16 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
17 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
18 And for the record, we are in open session.
19 PRESIDING JUDGE FREMR: Appearances, please.
20 MS LUPING: Good morning, Mr President, your Honours. Appearing on behalf of the
21 Prosecution this morning is the same team as yesterday, so that's myself, Dianne Luping,
22 Ms Marion Rabanit, Ms Selam Yirgou and Ms Laura Morris.
23 PRESIDING JUDGE FREMR: Thank you very much. And if the appearances are the
24 same there is no need to repeat, but I appreciate your preciseness.
25 Now Defence, please.

1 MR GOSNELL: Good morning, Mr President. Good morning, your Honours. Same
2 appearances as yesterday for Mr Ntaganda, and he is, himself, present as well.

3 PRESIDING JUDGE FREMR: Thank you, Mr Gosnell.

4 And Legal Representative of Victims.

5 MR ABDOU: Good morning, Mr President. Good morning, your Honours. For the
6 former child soldiers same as yesterday.

7 MS GRABOWSKI: Good morning, Mr President, your Honours. For the victims of the
8 attacks today Ms Alyssa Carrier, intern, and myself, Anne Grabowski, associate legal
9 officer with the Office of Public Counsel for Victims. Thank you.

10 PRESIDING JUDGE FREMR: Thank you, Mr Abdou. Thank you, Ms Grabowski.
11 Before we move to the rest of cross-examination of Witness P-18, I would like to inform
12 you that the Chamber just got recent information that the next witness on our list, which
13 is Witness P-850, very likely will not testify today as we planned. To be absolutely open,
14 we don't have any detailed information and we ask to be provided with more detailed
15 information. So we will then inform you as well and to find a solution it will be mainly
16 driven by those information. So please be patient. As soon as we will get more
17 information we will inform you and we will see what we can do in order not to get any
18 further delay.

19 Now, Mr Gosnell, I note that I am repeating myself, but just to remind you, you still have
20 at your disposal 1 hour 37 minutes.

21 And as usually, Ms Luping, again, it's a bit premature, but anyway, do you envisage any
22 need for re-examination?

23 MS LUPING: Mr President, your Honours, at this stage the Prosecution does not intend
24 to conduct any re-examination. Obviously it will depend on the remaining
25 cross-examination this morning.

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- 1 PRESIDING JUDGE FREMR: All right.
- 2 And, Madam Witness, good morning. Are you feeling well today?
- 3 WITNESS: DRC-OTP-P-0018 (On former oath)
- 4 (The witness speaks Lingala)
- 5 THE WITNESS: (Interpretation) Good morning, your Honour. I feel very well.
- 6 PRESIDING JUDGE FREMR: I am really glad to hear that.
- 7 It's again my legal duty to remind you that you are still under oath, which means that you
- 8 have to speak the truth and nothing but the truth. Do you understand?
- 9 Very well.
- 10 THE WITNESS: (Interpretation) I've understood you well, your Honour.
- 11 PRESIDING JUDGE FREMR: Well, so now, Mr Gosnell, you have the floor, and habitual
- 12 question: Do you want to or do you need to continue in private or in open session?
- 13 MR GOSNELL: Initially in private session, Mr President.
- 14 PRESIDING JUDGE FREMR: All right then.
- 15 Court officer, let's move into private session.
- 16 (Private session at 9.39 a.m.)
- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 (Redacted)
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21 (Open session at 11.44 a.m.)

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

23 PRESIDING JUDGE FREMR: So the update of our schedule for this afternoon: So as I

24 said, and I hope that situation hasn't changed in the meantime, our next witness 850

25 should be available to testify half past 1. So our idea, at the moment, is to sit first

1 afternoon session 1.30 till 3 o'clock and the second one 3.30 to 5. This plan has been
2 confirmed by the Registry and hopefully the health condition of the witness will allow us
3 to really realise this plan.

4 So it's for the moment and then we will see accordingly with the progress we will make in
5 the afternoon what will be our plan for Thursday and Friday. So now we adjourn and
6 we will reconvene half past 1.

7 THE COURT USHER: All rise.

8 (Recess taken at 11.45 a.m.)

9 (Upon resuming in open session at 1.36 p.m.)

10 THE COURT USHER: All rise.

11 Please be seated.

12 PRESIDING JUDGE FREMR: Good afternoon, everybody.

13 Court officer, please call the case.

14 Sorry, in fact no need to call the case. But what is necessary, I see many changes in
15 appearances so I ask counsel to put those changes on the record, starting with Prosecution

16 MR IVERSON: Good afternoon, your Honours. Appearing today for the Prosecution
17 are Kristy Sim, assistant trial lawyer; Selam Yirgou, case manager; and myself, Eric
18 Iverson, trial lawyer.

19 PRESIDING JUDGE FREMR: Thank you, Mr Iverson.

20 Now Defence, please.

21 MR ST-MICHEL: (Interpretation) Good afternoon, Mr President. For Bosco Ntaganda,
22 who is present in the courtroom today, Sandrine de Sena, intern; and Maître Chloé
23 Grandon, legal assistant; Stéphane Bourgon, lead counsel; and William St-Michel, legal
24 assistant, myself. Thank you.

25 PRESIDING JUDGE FREMR: Thank you, St-Michel.

1 And as concerns Legal Representative of Victims, I can just note that the composition
2 remain the same.

3 First of all, I would like to provide parties with explanation requested by Ms Luping
4 before the break. And this clarification concerns certain document that was admitted as
5 a Defence exhibit earlier today during testimony of Witness P-18. Having considered the
6 submissions of the parties, the nature of the document and the way in which this
7 document was used with the witness, the Chamber clarifies that, although not specified at
8 the time, DRC-OTP-2090-0407 was, like other similar documents admitted during the last
9 session, admitted for the truth of its content.

10 Having so clarified, we can now move to matters concerning the next witness, and I
11 understood that Prosecution would like to address the Chamber on that.

12 So, Mr Iverson, you have the floor.

13 MR IVERSON: Thank you, Mr President. Shortly before we started today I just briefly
14 asked the Defence if they intended on sending a list of documents for this witness.

15 And to my surprise, Defence had a different interpretation of your conduct of proceedings
16 decision than the Prosecution. My understanding is that the Defence must provide their
17 list of documents to be used for cross-examination 24 hours before the cross-examination
18 in accordance with paragraph 33 of the conduct of proceedings decision. And I believe
19 that the Defence have a different interpretation, I was told that I would not receive the list
20 of documents until the witness took the oath today. And so I just ask the Chamber for
21 clarification.

22 PRESIDING JUDGE FREMR: I would ask Defence for clarification of this interpretation.
23 Who will take the floor?

24 MR BOURGON: Good afternoon, Mr President. Although my colleague
25 Maître St-Michel will be handling the witness today, for this part of this argument I would

1 be making submissions on behalf of the Defence.

2 Mr President, it is indeed our interpretation of the decision in the conduct of proceedings
3 that the 24-hour deadline, or at least time period to submit documents to be used for
4 cross-examination, when we are talking with a witness who will begin within less than
5 24 hours, as in this case, a short witness, that the list is to be communicated to
6 the Prosecution the minute that the witness takes the stand. Now, in order to make this
7 submission clear, Mr President, we have to first address the decision on the conduct of
8 proceedings and that is the Chamber's decision at -- of 2 June 2015 with respect to
9 paragraph 33.

10 So the first thing we need to look at is of course this list, this only applies to documents
11 which are not already admitted in evidence. That is the beginning of paragraph 33
12 which reads: "As regards the use of documents that have not previously been admitted
13 into evidence, the party intending to make use of the documents in cross-examination".
14 So that's the first caveat, is that of course this list does not apply to documents which
15 are -- have already been admitted in evidence.

16 Nonetheless, despite this provision, Mr President, since the beginning of this case we have
17 been submitting our list and we have included all the material, regardless of whether it
18 was admitted or not, in order to make it easier for the Prosecution to be sure that they
19 would have all the material and simply out of fairness.

20 The second part of this paragraph reads that we need to provide a list by email no more
21 than 24 hours before the commencement of the cross-examination.

22 Now, of course, this second provision is subject to footnote 22 and footnote 22 says:

23 "Of course, in order to allow this provision, the calling party is to indicate to the Chamber
24 and the opposing party sufficiently in advance when it expects to conclude its
25 examination-in-chief."

1 Now, of course, the calling party, the Prosecution, has not and of course was not invited to
2 say when it would complete its examination-in-chief. So until we have been informed as
3 to when the examination-in-chief will be completed, then the 24-hour, in our respectful
4 submission, is not triggered. This, Mr President, is an interpretation that is also based on
5 our submissions to the Chamber on at least two occasions.

6 The first occasions was in our written submissions. I refer the Chamber to filing number
7 548 and this filing was submitted on 15 April 2015.

8 I refer to paragraph 33 of our submissions, we said on that occasion the following:

9 "With respect to documents to be used during cross-examination, the Defence submits
10 that the cross-examining party should provide the Chamber, the calling party and the
11 participants 24 hours prior to the start of cross-examination with a list of material it
12 intends to use, with the caveat that happen such notification can only be provided once
13 the examination-in-chief has commenced."

14 This is what we said in our written submission.

15 A week later we were invited by the Chamber to make oral submissions on the conduct of
16 proceedings before the Chamber issued its decision on 2 June.

17 This was made at transcript 19, one nine in English version. This was on the exact
18 page number -- I don't have the exact page number, but it was at the end of -- page 41, I
19 apologise, I have the page number. So on page 41, lines 21 to 25, we said the following.

20 First we said:

21 "More importantly, what really matters of course is that once the cross-examination begins
22 we put in our submission that the 24-hour rule depends, of course, on -- that the
23 testimony must have begun. The examination-in-chief must have begun. If we would
24 go with the three-day rule, in many respect it would not be practical."

25 So we recognised at the time that if we put a three-day rule it was simply not practical.

1 And then we stated the following, lines 21 to 25:

2 "So examination-in-chief must have begun and documents be provided 24 hours in
3 advance. This is, in our view, the best way to facilitate the proceedings. The best way
4 to ensure also the fairness of the proceedings for the calling party as well as for the
5 cross-examining party. Being understood, Mr President, that whatever we say here will
6 apply to us when we will be the calling party."

7 So earlier in the same page we refer to the same issue, which is that the list for
8 cross-examination should not be communicated if we don't know when
9 examination-in-chief is going to be completed, such as in this case; that we should give
10 this list once we know, once -- as soon as the witness takes the oath. The rationale
11 behind this, Mr President, is simply to ensure that the Prosecution has access to the
12 witness right up until the moment that the witness takes the stand. And the issue behind
13 this is simply of course not to reveal our defence strategy until the witness has taken the
14 stand and has begun testimony. Now, in a long witness it's not a problem because the
15 witnesses had begun by the time we give our list. But with a short witness, if we would
16 submit the 24-hour rule. For example in this case, we knew that the witness could begin
17 as early as this morning, 11 o'clock, so we would have given our list yesterday at
18 11 o'clock, 24 hours before the witness actually begins, almost, the examination-in-chief,
19 his testimony. So we would reveal to the Prosecution any arguments or any documents
20 we might have in respect of this witness.

21 Mr President, this has also been the practice. I am not sure, I've attempted to verify in
22 the Lubanga case whether this was the practice or not, I was not able to do so. But it was
23 certainly the practice in past cases I have been involved in.

24 I would like to refer the Chamber to a decision of 31 May 2007 and that was, of course,
25 before the ICTY, and this was a decision on notification of cross-examination material.

1 In that decision of course it was decided by the Chamber in that case that
2 cross-examination documents should be given 24 hours, but of course once the testimony
3 has begun.

4 A second decision I'd like to refer the Trial Chamber to is a decision of the ICTY in a case
5 I was personally involved in, on 26 May 2008, an order concerning the presentation of
6 evidence and the conduct of parties during the Defence case.

7 And again this applied to the Prosecution and with this document, although it comes
8 from another tribunal, it's just to explain our interpretation. It was said in this document
9 that when the examination-in-chief begins, that's the point where documents for
10 cross-examination must be submitted.

11 So we say, Mr President, based on footnote 23 that accompanies Article 23 of the decision
12 on the conduct of proceedings, and in order to make these proceedings fair for both
13 parties, we feel that when it's a short witness then we submit our list the minute that the
14 witness takes the stand. And we say that there is no prejudice to either side if we do take
15 such, such a position. And so far we've been doing this for short witnesses and we never
16 had any feedback or any comeback from the Prosecution.

17 Now, last week of course something happened where we did give one document when
18 the witness began his testimony. And the Chamber will recall that was the document
19 about the witness not having the proper age, because we gave to the Prosecution at the
20 beginning of the testimony, I believe it was Witness P-888, that we provided the document
21 that the witness was baptised on a date which established that he did not have the age put
22 forward by the Prosecution.

23 So, yes, on that occasion the Prosecution was taken by surprise, because they got this
24 document after the witness had begun his testimony, but I think that is in the -- proper
25 and appropriate in the course of, what we say, "procédure contradictoire."

1 So that's our submission, Mr President, and I think that the Chamber -- we ask
2 the Chamber to rule that this is an appropriate interpretation of Rule -- of Article 33 of
3 your decision. Thank you, Mr President.

4 PRESIDING JUDGE FREMR: Mr Bourgon, I guess because you brought many
5 arguments it probably will also need thorough consideration and probably also extensive
6 reaction from the Chamber, but to make it more practical at this moment, when you are
7 ready to provide Prosecution with your list of documents?

8 MR BOURGON: Immediately, Mr President. Immediately. As soon as the
9 witness -- we can do it before, if the Chamber so orders. We can press the button
10 immediately and send it to the Prosecution. I note in this regard that concerning the
11 present list there is absolutely nothing that was not already very well known to
12 the Prosecution on that list.

13 PRESIDING JUDGE FREMR: Mr Iverson.

14 MR IVERSON: I just wanted to briefly point out that what Defence counsel is doing is
15 asking for reconsideration. He is making arguments to ask the Chamber to reconsider
16 the ruling already laid down in paragraph 33. A trial is not an ambush. It's not either
17 in the letter or the spirit of your decision, and this is -- I'm simply asking for this in order
18 to -- in keeping with the fairness and expeditiousness, just to determine whether or not I
19 have an objection to any of these documents in accordance with the conduct of
20 proceedings, which all of that is envisioned in your previous decision.

21 PRESIDING JUDGE FREMR: So for the time being, Mr Bourgon, we are ordering
22 Defence to provide Prosecution with this list now. And as to the -- all complex
23 arguments we will then deliver our ruling in due course, just to give maybe broader
24 interpretation to the principle stipulated in paragraph 33 on our decision on conduct of
25 proceedings.

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1 MR BOURGON: Thank you very much, Mr President. We will immediately send the
2 list over to the Prosecution. And I can see my colleague at the break if there is any issue
3 that he has with any item on the list. Thank you, Mr President.

4 PRESIDING JUDGE FREMR: All right. Then what next before we invite witness in
5 here? So give me a second.

6 So just briefly, before this witness is brought into the courtroom, I recall that on
7 27 June 2016 by way of an oral ruling the Chamber indicated that the Prosecution's
8 application under Rule 68(3) is appropriate in principle for Witness P-850, and that the
9 witness statement in its entirety and the accompanying sketch shall be admitted into
10 evidence, provided the requirements of Rule 68(3) are met. The Chamber had indicated
11 that any supplemental examination by the Prosecution is to be completed within
12 a maximum of one hour and invited the Prosecution to use less than one hour to complete
13 its examination, if feasible.

14 And on 23 June 2016 the Prosecution indicated by email that it only intends to use the
15 statement and sketch with the witness. In this regard, the Chamber considers that
16 the Defence views on the use of these items which were received by email on 27 June 2016
17 prior to the Chamber made its provisional Rule 68(3) ruling have already been addressed
18 in the said ruling.

19 So now, court officer, please have the witness brought into the courtroom.

20 PRESIDING JUDGE FREMR: And I am reiterating that for today we are planning to sit
21 now until 3 o'clock and then the second session should be held from 3.30 until 5 o'clock.

22 (The witness enters the courtroom)

23 PRESIDING JUDGE FREMR: Good morning, Mr Witness. Can you hear me?

24 WITNESS: DRC-OTP-P-0850

25 (The witness speaks Swahili)

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1 THE WITNESS: (Interpretation) Yes, I hear you.

2 PRESIDING JUDGE FREMR: Mr Witness, on behalf of this Chamber I would like to
3 welcome you to the courtroom. You are called to testify in the case against
4 Mr Bosco Ntaganda.

5 You will be soon asked questions both by the judges and lawyers in the courtroom, and in
6 this connection I would like to guide you as follows: Please listen carefully to those
7 questions. If you don't understand, feel free to ask for the question to be repeated. We
8 want you to tell the truth and tell us what you saw, heard or sensed yourself. If you
9 didn't see or hear it yourself but you found out some other way, then you should explain
10 how.

11 Please testify just on that which you remember, don't guess, don't make things up. There
12 is nothing wrong in saying "I don't know" or "I don't remember". Do you understand all
13 this, Mr Witness?

14 THE WITNESS: (Interpretation) Yes, I've understood, your Honour.

15 PRESIDING JUDGE FREMR: Very well. Mr Witness, protective measures are put in
16 place to ensure that your identity is not revealed to the public. It means that the public
17 cannot see your face and that your voice is being disguised so that the public cannot
18 recognize it. We will refer you as "Mr Witness" and ensure that your name and any other
19 information that risks revealing who you are is not broadcast to the public.
20 Therefore, whenever you need to describe anything that might reveal your identity, or the
21 identity of your family members, we will do so in private session so that no one outside
22 the courtroom can hear your answer.

23 Do you understand, Mr Witness?

24 THE WITNESS: (Interpretation) Yes, I've understood well, your Honour.

25 PRESIDING JUDGE FREMR: Good.

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1 Mr Witness, now you will be provided with a piece of paper with the solemn undertaking.
2 Please now make your solemn undertaking to tell the truth by reading out the declaration
3 in your hands.

4 THE WITNESS: (Interpretation) I solemnly declare that I shall tell the truth, the whole
5 truth and nothing but the truth.

6 PRESIDING JUDGE FREMR: Thank you, Mr Witness. It means that you are now
7 under oath, so you need to be aware that it's an offence within the jurisdiction of this court
8 to give false testimony. Do you understand that?

9 THE WITNESS: (Interpretation) Yes, I've understood.

10 PRESIDING JUDGE FREMR: And finally, a few practical matters you should have in
11 mind. It's important to speak into microphone, to speak clearly and to speak at a slow
12 pace. What is very important, you should only start speaking when the person asking
13 you the question has finished and then please don't respond immediately, but please
14 count in your head to three and only then give your answer. This pause is essential for
15 us to properly interpret and record what you are saying.

16 If you have any questions during your testimony or if you feel that you need a break, do
17 not hesitate to let us know by raising your hand like this. We will then give you the
18 opportunity to speak.

19 Have you understood all that, Mr Witness?

20 THE WITNESS: (Interpretation) Yes, very well.

21 PRESIDING JUDGE FREMR: Very good, Mr Witness. So now I can give floor to
22 Prosecution so that it can take the witness through the material it seeks to have admitted
23 pursuant to Rule 68(3) of Rules.

24 Prosecution, Mr Iverson, you have the floor.

25 MR IVERSON: Thank you very much, Mr President.

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1 QUESTIONED BY MR IVERSON:

2 Q. Good afternoon, sir. We have met previously. My name is Eric Iverson, and I'm
3 a trial lawyer with the Office of the Prosecutor, and I'll be asking you some questions
4 today.

5 Before I start asking questions I just want to reminded you or let you know, if there's
6 anything that's unclear to you in my question, please just ask me to repeat. We're not in
7 any hurry, so I want you to take your time, listen carefully and then provide the answer.
8 Will you be able to do that?

9 A. Yes, I can make that promise.

10 Q. Now, if I intend on asking you a question that may reveal your identity, I'll first ask
11 the Presiding Judge to move into private session. But if we're in open session and you
12 would like to say something in your testimony that reveals who you are, please just let the
13 Presiding Judge know and then I can ask to move into private session. Is that clear, sir?

14 A. Yes, it is.

15 MR IVERSON: Mr President, I would like to ask some identifying, or questions that
16 reveal identifying information, so I'd like to go into private session, please.

17 COURT: Certainly.

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

19 (Private session at 2.04 p.m.)

20 (Redacted)

21 (Redacted)

22 (Redacted)

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20 (Open session at 3.34 p.m.)

21 THE COURT OFFICER: (Interpretation) Mr President, we are now in open session.

22 PRESIDING JUDGE FREMR: Thank you, court officer.

23 Mr Witness, you have been questioned by representative of Prosecution. Now it's turn

24 for Defence, so you now will be examined by a representative of Defence. And I would

25 like to remind you that this Court is governed by a principle of fair trial, which means that

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1 both parties has to be treated equally and it means for you that you should respond to
2 questions put to you by Defence in the same way like you did it in -- as concerns questions
3 put to you by Prosecution. Do you understand that?

4 THE WITNESS: (Interpretation) Yes, I have understood you very clearly.

5 PRESIDING JUDGE FREMR: Very well. I guess it will be you, Mr St-Michel.

6 MR ST-MICHEL: Yes, indeed, Mr President.

7 PRESIDING JUDGE FREMR: So just a reminder, you have three hours allotted and my
8 initial question is whether you would like to proceed in open or private session?

9 MR ST-MICHEL: We can remain in open session for my first questions.

10 PRESIDING JUDGE FREMR: All right then. Please proceed.

11 QUESTIONED BY MR ST-MICHEL: (Interpretation)

12 Q. Good afternoon.

13 A. Yes, I'm fine. Thank you.

14 Q. Let me start by introducing myself. My name is William St-Michel, I'm counsel for
15 the Defence in this case. Today I have a few questions for you which will enable the
16 Judges to understand your narration of the events that you say you experienced. Most of
17 the questions are quite direct and simple and the answers can simply be yes or no. I am
18 limited to the amount of time I can use and I urge you to please listen carefully to my
19 questions and answer as concisely as possible. Like my colleague from the Prosecution
20 pointed out to you, if you do not understand any of my questions, please ask me to
21 rephrase.

22 Have you understood?

23 A. Yes, clearly.

24 Q. Mr Witness, in your statement you refer to what you experienced in 2002 and 2003;
25 is that correct?

1 A. Yes, that is correct.

2 Q. We will not be talking about those events right away, but let us talk about the
3 situation as it was before the year 2002. I would like first of all to draw your attention to
4 paragraph 10 of your statement, and for the record it is document DRC-OTP-0067-1825 at
5 paragraph 10, which is on page 1826.

6 Now, Witness, I'll read out the first sentence of that paragraph to you in English and what
7 I will read out will be interpreted to you and you will hear it in your ears in Swahili.

8 That first sentence reads as follows, in English:

9 (Speaks English) "In about 1998 or 1999, trouble started between the Hema and Lendu
10 tribes."

11 (Interpretation) Now, Witness, to understand ourselves clearly, my next questions will
12 focus on the situation in the Ituri from 1998 to '99 to 2000. Are you with me?

13 A. Yes, I am.

14 Q. I note that in your statement you refer to trouble between the Hema and the Lendu.
15 Now, Witness, would you agree with me, wouldn't you agree with me that it was more
16 than trouble, that it was a matter of conflict rather than trouble?

17 A. There was a conflict between two tribes.

18 Q. Witness, I put it to you that the conflict between the Hema and the Lendu went
19 beyond the framework of Hemas and Lendus and involved other tribes such as the Alur,
20 the Bira, the Nande and such tribes. Would you agree with me, Mr Witness, if I put that
21 to you?

22 A. The conflict was between the Hema and the Lendu, but later on it involved other
23 tribes, including our tribe the Nyali. Nyali, we were involved it. But at the onset it was
24 a conflict between the Hema and the Lendu.

25 Q. Mr Witness, the conflict you have just described to us as having evolved was a

1 bloody conflict, wasn't it?

2 A. Yes.

3 Q. Houses were burnt, isn't it?

4 A. Yes.

5 Q. People in villages attacked each other with machetes; is that correct?

6 A. Yes, with machetes. That is correct.

7 Q. Mr Witness, you also know that at that time there was not an organised armed
8 forces; is that correct?

9 A. At the beginning the groups were not organised, they used machetes and sticks and
10 things of that nature.

11 Q. In each village there was a village defence committee that was in charge of planning
12 the attacks, wasn't there?

13 A. Things broke out between the Lendu and the Hema and they started killing each
14 other using machetes and other types of weapons.

15 Q. Mr Witness, let me say that what I was referring to here was the peace committees
16 as they were known. Are you aware of them?

17 A. I am not aware of that, I don't remember.

18 Q. Now, still talking about this conflict, you know that it is only subsequently that the
19 organised army intervened in the conflict; isn't it so?

20 A. An organised army according to me would be the UPC, which was a well organised
21 army.

22 Q. Witness, before the existence of the UPC there was the RCD-K/ML in place, wasn't
23 it?

24 A. I really don't know. I heard mention of it, but I did not know those things very
25 well. The K/ML issues, I really do not master them and I am not able to explain those

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1 things to you.

2 Q. However, Witness, earlier in answer to a question from my learned colleague you
3 testified that you were familiar with the APC or that you knew the APC. Do you
4 remember that?

5 A. The APC was before all of those things happened. They were the soldiers of the
6 army. I don't know whether it was the K/ML troops or what have you. The APC was
7 there before the war between the Hema and the Lendu.

8 Q. Witness, I put it to you that the APC intervened in the conflict in an attempt to bring
9 back peace to the Ituri. Does that jog your memory?

10 A. So far I really don't know what answer to give to your question. I don't -- I don't
11 know. I don't have an answer for your question. I have no idea.

12 Q. But, Witness, you know that the APC was allied or was in an alliance with the
13 Lendu combatants; is that correct?

14 A. I was not aware of that.

15 Q. Witness, we have just talked about the ethnic conflict that was raging in the Ituri
16 between 1998, 1999 and 2000. Now, let me take you to the year 2000 in Mongbwalu,
17 where you were, and that was prior to the attack by the UPC. Are you with me?

18 A. Yes.

19 Q. Let me read another segment of paragraph 10 of your statement. And it will be
20 interpreted to you and then I will put a few questions to you thereafter:

21 (Speaks English) "When I was working in Mongbwalu in 2000, this conflict between the
22 Hema and the Lendu was still going on."

23 (Interpretation) Do you stand by what is contained in your statement, Mr Witness?

24 A. Please proceed.

25 Q. Mr Witness, this is my question: You know that in 2002 the Hema had been driven

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1 out of Mongbwalu by Lendu combatants; is that correct?

2 A. Yes.

3 Q. The Hema who remained in Mongbwalu were actually killed by the Lendus; is that
4 correct?

5 A. Yes.

6 Q. The Lendu combatants and the APC had control over Mongbwalu; is that correct?

7 A. That's so.

8 MR IVERSON: My objection is just to the use of the term APC. I was just looking
9 through the witness's statement, there's no mention of the APC. None of my questions
10 pertained to the APC and I don't find in any answer any reference to the APC. If I'm
11 wrong I'm happy to be corrected, but then I ask if Defence could provide a reference to
12 that.

13 PRESIDING JUDGE FREMR: Mr St-Michel, your explanation, your position to his
14 objection.

15 MR ST-MICHEL: Yes, Mr President, my colleague is indeed right, there is no mention of
16 APC in the witness statement, but in answer to his question, and I will be quoting from
17 the French transcript, page 77, lines 22 to 27, and I'll be quoting in French:

18 (Interpretation) "That person who just arrived, what did they tell you?"

19 Answer: "Edmond did not hide the truth or the news from me. He told me everything.
20 He told me that the airport had already been captured and that the members of the APC
21 were at the airport."

22 THE WITNESS: (Interpretation) It was not the APC. It was the UPC.

23 PRESIDING JUDGE FREMR: So now we got spontaneous clarification.

24 Mr St-Michel, you may proceed.

25 MR ST-MICHEL: Thank you, Mr President.

1 (Interpretation) Mr President, can I have a few moments?

2 PRESIDING JUDGE FREMR: For sure. Take your time.

3 (Counsel confers)

4 MR ST-MICHEL: (Interpretation)

5 Q. Mr Witness, to clarify the situation, is it your testimony today that there were no
6 APC troops in Mongbwalu in 2002 or members of the APC in Mongbwalu in 2002?

7 A. In 2002, in 2002, well, I have no answer for you because I was a gold digger at the
8 time. All I know is that there were Lendus there and if there were any APC soldiers,
9 well, that, that might be possible, but I don't know what role they might have been
10 playing there at the time. What I know is that the Lendus were in control of Mongbwalu
11 at that time.

12 Q. Thank you, Mr Witness. Now, when you say that it was the Lendu who had
13 control of Mongbwalu, isn't it true that they put in place or they imposed a tribal regime
14 in Mongbwalu. Let me give you a few examples to make the point. You know, for
15 example, that the Lendus forced women to go about topless?

16 A. That is true, that that is what happened.

17 Q. You also know that women could not cross their arms?

18 A. They had many rules, too many rules that they imposed on the people.

19 THE INTERPRETER: Interpreter corrects: They had many rituals.

20 MR ST-MICHEL:

21 Q. Those rituals imposed by the Lendu also included forced labour for community
22 work such as repairing roads which was known as the salongo; is that correct?

23 A. The salongo was an order, it was one of the rules.

24 Q. Absence from salongo was punishable by ears being cut off or flogging; is that
25 correct?

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1 A. There was a lot of extortions. Many excesses and abuses. Yes, those things did
2 happen at that time.

3 Q. You also know that people could only produce alcohol Kaikpo, Kilo -- K-A-I --

4 THE INTERPRETER: Overlapping speakers.

5 THE WITNESS: (Interpretation) Yes, that's a local drink which would get you drunk
6 very easily.

7 MR ST-MICHEL: (Interpretation)

8 Q. I take you to paragraph 13 of your statement, Mr Witness, on page 1827 of the
9 document which I already cited. I will read the first sentence of that paragraph, which
10 will then be interpreted to you:

11 (Speaks English) "In November or December 2002, the UPC came to Mongbwalu to
12 chase the Lendu away."

13 (Interpretation) Now, Mr Witness, in November or December 2002, when you talk about
14 the Lendu am I to understand that you are talking about Lendu combatants and the APC
15 combatants, according to what we have just talked about?

16 PRESIDING JUDGE FREMR: Hold on, Mr Witness. Hold on.
17 Mr Iverson.

18 MR IVERSON: I'm just objecting again to the use of the term APC. I think that that
19 term may lend itself to confusion for the witness. Defence counsel hasn't established that
20 the witness is actually familiar with APC. So it's a terminology question and so I think it
21 would be clearer if we refrain from using terms that the witness may not be familiar with.

22 PRESIDING JUDGE FREMR: Mr St-Michel.

23 MR ST-MICHEL: I can move on.

24 PRESIDING JUDGE FREMR: Yes, because otherwise I would sustain the objection.
25 Because from the last answers from Mr Witness it was really as that Mr Iverson described.

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1 So please move on.

2 MR ST-MICHEL: (No interpretation)

3 THE INTERPRETER: The question -- the interpreters did not get the first part of
4 counsel's question. Could he be asked to repeat it, Mr President?

5 PRESIDING JUDGE FREMR: Mr St-Michel, the beginning of your question was not
6 captured by the interpreters. Please repeat it.

7 MR ST-MICHEL: (Interpretation) Yes, Mr President. I'm obliged.

8 Q. Mr Witness, you know that during the two attacks of the UPC on Mongbwalu in
9 2002, the UPC first attacked the airport; is that correct?

10 A. Yes, that is correct.

11 Q. Mr Witness, you also know that the Mongbwalu airport is a strategic position from
12 which the region can be controlled; is that correct?

13 A. Please kindly repeat your question.

14 PRESIDING JUDGE FREMR: Mr St-Michel, I will not permit this question. You know,
15 it's for an expert maybe, but not for the witness to make such an evaluation, whether it's
16 somebody from the strategic point of view is important or not, so please move on.
17 You can ask whether it's the only airport, for example, it's for the witness, but to evaluate
18 strategic importance is not for him.

19 MR ST-MICHEL: (Interpretation) Thank you, Mr President.

20 Q. Mr Witness, are there any other airports in the Mongbwalu area?

21 A. There is only one airport in Mongbwalu.

22 MR ST-MICHEL: (Interpretation) Mr President, I would like to go to private session.

23 PRESIDING JUDGE FREMR: All right.

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

25 (Private session at 3.58 p.m.)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Open session at 4.28 p.m.)

6 THE COURT OFFICER: (Interpretation) We're in open session, your Honour.

7 PRESIDING JUDGE FREMR: Thank you, court officer.

8 Mr St-Michel, please proceed.

9 MR ST-MICHEL: (Interpretation) Thank you very much, your Honour.

10 Q. Witness, still talking about the time that the UPC was present in Kilo, I'd like to take
11 you to paragraph 46 in your statement. It's page 1831. In this paragraph, Witness, you
12 speak about people allegedly killed by the UPC at the beginning of the time when the
13 UPC was present; do you remember that?

14 A. Yes, I remember.

15 Q. Witness, I'm going to read an excerpt from this paragraph:

16 (Speaks English) "But in the days and weeks following the taking of Kilo by the UPC, we
17 heard about these killings. People were talking about it, but I did not witness these
18 incidents and I do not know the names of the people killed."

19 THE INTERPRETER: Mr President, we didn't get the first part of counsel's question.

20 PRESIDING JUDGE FREMR: Sorry, Mr Witness. Please hold on.

21 THE WITNESS: (Interpretation) Please kindly repeat your question.

22 PRESIDING JUDGE FREMR: And yes, counsel, please repeat because your question
23 hasn't been fully captured by the interpreters, so please be so kind and repeat the
24 question.

25 MR ST-MICHEL: (Interpretation)

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1 Q. Very well. I will read out the excerpt of your statement again and then put my
2 question to you thereafter:

3 (Speaks English) "But in the days and weeks following the taking of Kilo by the UPC, we
4 heard about these killings. People were talking about it, but I did not witness these
5 incidents and I do not know the names of the people killed."

6 (Interpretation) Mr Witness, my question is simple: Do you stand by your version of
7 the facts?

8 A. I still do not understand your question. I am somewhat totally confused. Please
9 repeat your question.

10 Q. Mr Witness, I'm sorry. I'll rephrase the question so that you can properly
11 understand it. I have read an excerpt of your statement out to you and does this
12 correspond to your version of the facts?

13 A. I know the full content of my statement. Now, which part of the statement do you
14 want to ask me a question on? And if you did that, I will be able to answer you.

15 Q. Mr Witness, I simply want to confirm from you the following: You say that people
16 were supposedly killed by the UPC at the very beginning of their presence in Kilo. You
17 heard mention of people who had been killed. It is people around you who were talking
18 about it. But you yourself did not see those things and you do not know the names of
19 the people who were killed; is that correct?

20 A. No, that's not correct. I personally was a witness. For example, those of us who
21 were digging the trenches, we were witnesses of the first execution. (Redacted)
22 (Redacted)

23 Q. We will revisit that incident later on.

24 A. Okay. I'm sorry.

25 Q. Mr Witness, I will now move on to another issue that is dealt with in your statement

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1 and about which my learned colleague from the opposition put -- from the Prosecution
2 put some questions to you. And I'm referring here to paragraph 50 of your statement,
3 which is at page 1832. My colleague read out that -- a sentence from that paragraph for
4 you and I want to jog your memory by reading it again out:

5 (Speaks English) "About 4-7 days after my return to Kilo, I saw Bosco Ntaganda there.
6 He came from the direction of Mongbwalu and was escorted by soldiers."

7 (Interpretation) Mr Witness, I understand your testimony and in answer to my learned
8 colleague you said you were some 80 to 100 metres away when you saw Bosco Ntaganda
9 for the first time in Kilo; is that correct?

10 A. No, that is not correct. The distance between (Redacted) and their headquarters
11 was about a 100 metres and I went to see him out of curiosity.

12 Q. Witness, is it people who were nearby who told you that he was Bosco Ntaganda?

13 A. Yes. He stood out from among the others who were with him. He was the tallest
14 and the biggest of them all. That is, of all those who were with him. And that is why it
15 was easy to distinguish him from the others and it was being said that he was the one.

16 Q. When you say that he was coming from Mongbwalu, did you see him coming in
17 himself or is it others who told you that Bosco had come in from Mongbwalu?

18 A. (Redacted). However, it was
19 very close to the headquarters and I saw him. He was surrounded by other soldiers.
20 And it is out of curiosity that I wanted to see him. So those who were there
21 confirmed that he was the one and that was the first time that I saw him ever.

22 Q. Mr Witness, I do understand that you did not see Bosco Ntaganda in Mongbwalu
23 town; is that correct?

24 A. I saw him at the headquarters. When he came from Mongbwalu he travelled on
25 the main road, but I saw him close to the headquarters and he was there with a group of

1 other soldiers. And I was not the only one who saw him at that time. There were many
2 people there to see him.

3 Q. So, Mr Witness, how did you know then that Bosco Ntaganda was coming from
4 Mongbwalu?

5 A. I knew it because the soldiers of the UPC who had come to Kilo were coming from
6 Mongbwalu. There was no other road which they could use to get to Kilo, except the
7 road from Mongbwalu. You see, the road between Bambu and Bunia was not motorable
8 during the war, but there was a road between Mongbwalu and Kilo which was motorable.

9 Q. Mr Witness, according to information that is available to us based on information
10 over military radios I know that a few days after the attack on Sayo, Bosco Ntaganda
11 returned to Bunia by air. And that in 2002, in December 2002 Bosco Ntaganda did not go
12 to Kilo or he did not pass through Kilo. Mr Witness, you would agree with me, wouldn't
13 you, that the person who was pointed out to you as being Bosco Ntaganda may have been
14 simply another officer. Would that be correct?

15 A. No. That's not true.

16 Q. Mr Witness, when you met the Prosecutor on Monday, did you at any point talk
17 about the presence of Bosco Ntaganda in Kilo?

18 A. Please kindly repeat your question.

19 Q. When you met with the representatives of the OTP last Monday, you talked about
20 certain aspects of your statement. Did you in that discussion with the Prosecutor talk
21 about Bosco Ntaganda's presence in Kilo?

22 A. I do not think so. Please put questions to me arising from the statement that I
23 made to -- that I made in Bunia. But I do not think that I had any discussion with
24 the -- any discussion about Bosco Ntaganda at Monday's meeting.

25 Q. Mr Witness, let's move to another paragraph of your statement, paragraph 51:

1 (Speaks English) "During the UPC occupation, I noticed that, among the UPC soldiers,
2 there were children of 14-18 years of age."

3 (Interpretation) Do you remember that assertion in your statement?

4 A. Yes, and I can confirm it.

5 Q. Now I read the second sentence:

6 (Speaks English) "There were fewer than 10 of these children."

7 (Interpretation) Mr Witness, when you say that, you must recall that there were several
8 hundreds of UPC soldiers in Kilo; isn't that the case?

9 A. UPC soldiers in Kilo, well, there were not up to a hundred of them. Less than a
10 hundred I think. Maybe 20 or 30. Not a hundred, no.

11 Q. Mr Witness, let us attentively look at the figures that you have mentioned.

12 A. Well, it's an estimation that I'm putting forth here. I cannot confirm that the figures
13 I am talking about are exact. It is just an approximation that I'm offering.

14 Q. Well, let us go step by step, Mr Witness. Let us proceed step by step. Now, when
15 you say 18 years, I understand that you're trying to distinguish between an adult and a
16 minor; is that the case?

17 A. A minor can be recognized by their facial traits and an adult can also be identified
18 by their physiognomy.

19 Q. I understand from your testimony, Mr Witness, that when you use the figure 14, it is
20 not one that you're putting forth with certainty; is that correct?

21 A. I have provided you with an estimation based on stature, size, facial appearance.
22 And if one said that they were 15 or 16 years old, that would only be an approximation
23 because I cannot confirm those figures with specificity.

24 Q. Now, Mr Witness, you're excluding the possibility that they were more than
25 15 years old; isn't that what it is?

1 A. Well, if I told you that there were minors in the, in the troops, well, that would be an
2 estimation and you would have to bear with me. Because that was my assessment, that
3 they were minors, they were present but not, not many of them. I have mentioned the
4 figure 10. But it is not an exact figure. It was an approximation of their number. The
5 simple point I was trying to make was that there were some minors among the soldiers.

6 Q. Mr Witness, before we move on to another area, I want you confirm the following,
7 as you testified that there were not more than 30 UPC soldiers in Kilo between
8 December 2002 and March 2003; is that correct?

9 A. I cannot give you a concise exact number, I cannot confirm that. But I can confirm
10 that they were not more than 30. But if you ask me for their effective total number, I am
11 not able to give you a specific answer.

12 Q. Mr Witness, let us now address another issue, and that is the departure of the UPC
13 from Kilo.

14 You do recall that the UPC left Kilo in March 2003; is that correct?

15 A. Yes.

16 Q. The UPC left Kilo to go fight the Ugandans in Bunia; is that correct?

17 A. Yes. But they did not all leave Kilo. A few soldiers remained behind in Kilo, but
18 the majority of them went to Bunia.

19 Q. And the Lendu combatants availed themselves of that opportunity to attack Kilo,
20 isn't it?

21 A. When the UPC was pushed back or warded off in Bunia, the attack on Kilo was
22 launched on that very day. So the Lendu took advantage of it to loot. In fact, they
23 attacked some of the few UPC soldiers who had remained in Kilo and then went on to
24 loot.

25 Q. During that attack by the Lendu combatants on Kilo, you and others were in

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1 (Redacted); is that correct?

2 A. Yes.

3 Q. And it is actually from (Redacted) that you were able to observe that the Lendu were
4 looting houses?

5 A. Yes.

6 Q. And that the Lendu were coming out of various -- of houses with various items such
7 as mattresses, chicken and radios; is that correct?

8 A. What saved us, the inhabitants of Kilo, is the fact that there were many items of high
9 value in our area and the Lendus engaged in looting those items and that is how we were
10 able to escape. It happened on 10 March.

11 Q. The Lendus took the stolen property towards Bambu; is that correct?

12 A. It is the Ugandans who chased out the Lendu after having driven out the UPC
13 troops from Bunia. They then followed the Lendu to Mongbwalu and drove them out,
14 and it is from that time that some measure of calm returned.

15 Q. Mr Witness, I don't think you answered my question. My question was the
16 following: Was it -- is it true that the Lendu who stole the items went towards Bambu?

17 A. Yes.

18 Q. Mr Witness, while you were in the forest you also learned that (Redacted) people
19 had been killed, correct?

20 A. Yes.

21 Q. And when you returned to Kilo a few days later you noticed that several items from
22 your house had disappeared, correct?

23 A. There was absolutely nothing there. Everything had been looted except a few
24 furniture items of no value or no significance.

25 Q. You also saw a Lendu combatant fleeing from one of the houses; is that correct?

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1 A. When I arrived at my house there was a Lendu combatant there and as soon as he
2 saw me coming, he left.

3 Q. A lot of property also disappeared from (Redacted) is that correct?

4 PRESIDING JUDGE FREMR: Mr Iverson.

5 MR IVERSON: I would ask that we move into private session.

6 THE WITNESS: (Interpretation) Everything had been taken away.

7 PRESIDING JUDGE FREMR: We are in open session, so first we will have to move
8 probably to make it safer to the private session.

9 (Private session at 4.52 p.m.)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

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25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Open session at 4.54 p.m.)

4 THE COURT OFFICER: (Interpretation) We are in open session, Mr President.

5 PRESIDING JUDGE FREMR: Thank you, court officer.

6 So, Mr Witness, I would like to thank you. We conclude your testimony -- we conclude

7 your testimony for today. We will continue tomorrow. It seems that it will be relatively

8 short, maybe not more than one hour. So in the meantime you can take some rest. And

9 it's also my duty to remind you that you must not in the meantime till tomorrow you

10 must not discuss your testimony with anybody else. Do you understand that?

11 THE WITNESS: (Interpretation) I understand you.

12 PRESIDING JUDGE FREMR: So I thank you and I see you tomorrow morning.

13 Now, court officer, please escort Mr Witness out of the courtroom.

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

15 (The witness stands down)

16 PRESIDING JUDGE FREMR: And I wanted to address the issue of scheduling, but I see

17 Mr Bourgon.

18 So, Mr Bourgon first, please.

19 MR BOURGON: Thank you, Mr President. Well, it is actually an issue of scheduling.

20 We have information coming from VWS according to which the Witness P-938 could be

21 ready to begin her testimony tomorrow.

22 Mr President, we did communicate with the Prosecution over the weekend and we kind

23 of were informed of a proposed schedule pursuant to which Witness P-938 would begin

24 on Friday. Mr President, we would like P-938 to begin on Friday and not to begin

25 tomorrow as per the schedule that we have been sent. We are splitting the witnesses

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1 amongst the people, members of the team. The P-938 is a witness whose material is quite
2 voluminous and we've actually received recently some very quite heavy disclosure of
3 hundreds of pages and we would prefer the witness to begin on Friday.

4 And I believe that pursuant to the schedule that was circulated by the Prosecution, this
5 does not put into peril completing all the witnesses scheduled for this block by the end
6 of -- by 15 July.

7 So for the these reasons, Mr President, we would prefer finishing up this witness
8 tomorrow morning and beginning with P-938 first thing on Friday morning. Thank you,
9 Mr President.

10 PRESIDING JUDGE FREMR: Prosecution, your position?

11 MR IVERSON: I understand the Defence's position. Court time being as valuable as it
12 is, I think as far as the Prosecution is concerned, we should just stick to the schedule and
13 use the time that we have tomorrow to commence with the next witness.

14 PRESIDING JUDGE FREMR: Give us a second, I will consult my colleagues.

15 (Trial Chamber confers)

16 PRESIDING JUDGE FREMR: So generally our ruling is that the request is not granted
17 and for following reasons:

18 First of all, we already promised to cut tomorrow's programme in order to accommodate
19 Defence further commitments. Moreover, according view we have now, it seems that
20 Defence will finish its cross-examination of this witness in 30 minutes and then we are
21 intending just to continue with examination-in-chief, so the Defence still will have a
22 chance to prepare for its cross-examination for the rest of the day and we will anyway
23 finish earlier.

24 And in the current circumstances we don't see the need to start at 9 o'clock since, as
25 Mr St-Michel indicated, the rest of cross-examination will not be time-consuming, so we

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- 1 will start 9.30. And we will anyway finish anyway first of all allowing the Defence to
2 meet their further commitments and also not to split to cross-examination.
3 So we will clarify the detailed schedule tomorrow, but what is sure for the moment, we
4 are starting 9.30 -- yes, we are in public session. We are starting 9.30 and we for sure will
5 not come to cross-examination. So that is for today.
6 (Trial Chamber confers)
7 PRESIDING JUDGE FREMR: And it's important comment to be made from the point of
8 the Chamber, so as we said, we will sit in two blocks and what is important, in fact, we
9 considered all factors, including the fact, which also has to be emphasised, that the
10 upcoming witness has a status as an expert witness, so the Chamber in light of that also is
11 waiving the requirement that there should be 24-hour period between completion of
12 witness preparation, which was conducted by the Prosecution today, and commencement
13 of testimony.
14 So that's it and see you tomorrow 9.30.
15 THE COURT USHER: All rise.
16 (The hearing ends in open session at 5.03 p.m.)