

Trial Hearing
WITNESS: DRC-OTP-P-0019

(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 2
8 Thursday, 7 July 2016
9 (The hearing starts in open session at 9.32 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
17 of The Prosecutor v. Bosco Ntaganda, case reference ICC-01/04-02/06.
18 We are in open session.
19 PRESIDING JUDGE FREMR: Thank you, court officer.
20 Now appearances please in the usual order.
21 MS SOLANO: Good morning, your Honour. The Prosecution is represented by
22 Mr James Pace, assistant trial lawyer; Ms Laura Morris, assistant trial lawyer;
23 Ms Selam Yirgou, case manager; and I am Julieta Solano, trial lawyer.
24 PRESIDING JUDGE FREMR: Thank you, Ms Solano.
25 Defence now.

Trial Hearing
WITNESS: DRC-OTP-P-0019

(Open Session)

ICC-01/04-02/06

1 MR GOSNELL: Good morning, Mr President. Appearances are the same as
2 yesterday, with the addition of William St-Michel. Thank you.

3 PRESIDING JUDGE FREMR: Thank you, Mr Gosnell.

4 And Legal Representative of Victims, please.

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

7 MS GRABOWSKI: Good morning, Mr President. Good morning, your Honours.

8 The appearances haven't changed since yesterday for the victims of the attacks.

9 Thank you.

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

11 Good morning, Madam Witness. Can you hear me?

12 WITNESS: DRC-OTP-P-0019 (On former oath)

13 (The witness speaks Swahili)

14 THE WITNESS: (Interpretation) Good morning, I can hear you.

15 PRESIDING JUDGE FREMR: I hope that you are feeling a bit better than yesterday
16 afternoon.

17 THE WITNESS: Yes.

18 PRESIDING JUDGE FREMR: Madam Witness, the Chamber is aware of the fact that,
19 especially for you, giving testimony is very tiring. So, as I said yesterday, if you feel
20 really tired, if you feel need for break, short break, just let us know, raise your hand
21 and we will try to accommodate your need.

22 Normally, we used to sit for 90 minutes, but if you really would feel that you would
23 like to get a break, just let us know and I think we will do our best to make it. Do
24 you understand?

25 THE WITNESS: (Interpretation) Yes.

1 PRESIDING JUDGE FREMR: All right. Otherwise we will continue with your
2 examination conducted by the Prosecution.

3 So, Ms Solano, you have the floor. According our measuring you still have at your
4 disposal 46 minutes.

5 MS SOLANO: Thank you, your Honour.

6 QUESTIONED BY MS SOLANO: (Continuing)

7 Q. Good morning, madam. Can you hear me well?

8 A. Yes, I can hear you.

9 Q. Madam, yesterday we spoke about the time that you were detained by the UPC
10 in Sangi, outside of the church. And you told us that when you arrived in Sangi
11 there was already a group of people who had been detained before you.

12 The question I want to ask you today is whether your group was the last group to be
13 arrested and brought to this place in Sangi?

14 A. No, my group was not the last group. Others were arrested who came and
15 found us there.

16 Q. Did you see these people when they were brought?

17 A. I saw them.

18 Q. Who were they?

19 A. They were Lendu.

20 Q. And can you describe what you saw?

21 A. They were brought there and then they were also tied up where we were.

22 Q. Who tied them up?

23 A. UPC soldiers did it.

24 Q. Do you know where these people came from? Do you know where they had
25 been captured?

1 A. There were different names, Jeanne, Élise, and the UPC said, "Come, prepare
2 food for your children." They left this message, but it was a lie. They said, "The
3 UPC have gone, you can come back. Come and prepare food for your children."
4 That's what they were saying.

5 Q. Madam, did you mention some names just now?

6 A. They said some names, just seemingly at random, that's what I heard. And
7 sometime afterwards they came with other people who'd been arrested.

8 Q. Were these names of the prisoners?

9 A. No. These were random names. If you think somebody were to be hidden in
10 the bush you might think that you were being called to come and make food for your
11 children, and then you would come forward and then you would be captured and
12 tied up and put with the others.

13 Q. Madam, and these additional people, these additional people who arrived in
14 Sangi after you, how were they treated by the UPC soldiers?

15 A. They were whipped. They were tied up.

16 Q. What were they whipped with?

17 A. What were they flogged with? Some were being hit with sticks, others with
18 their belts, and some were using their rifle butts to hit them.

19 Q. And what happened to this group of people who arrived at Sangi after you?

20 A. Once a large number of people had been collected together, they took some
21 people, took them into the bush where they abused them. And then there was a lot
22 of shouting, a lot of confusion. And after that we were taken to Wadza.

23 Q. What do you mean that they were abused?

24 A. They were raped.

25 Q. Were these -- are you now talking about the same group of women who you

1 told us yesterday were raped in the bush, or are you talking about other persons?

2 A. I'm talking about all the group that were there in Sangi. Some had their
3 genitals cut off and they were hung around their necks like necklaces, some had their
4 ears cut off and were forced to eat them.

5 Q. Did you witness this?

6 A. I was an actual witness to these events.

7 Q. Madam, who was it that had their genitals cut off and who cut the genitals off?

8 A. The UPC were carrying out these mutilations, cutting off the genitals and
9 making them into necklaces. And the UPC troops were cutting the ears, making the
10 Lendu eat these ears.

11 Q. The people who had their genitals cut off, were they men or women?

12 A. They were men who were subjected to these acts.

13 Q. Madam, and what happened to these men after their genitals had been
14 mutilated?

15 A. After these events they died.

16 Q. How do you know that they died?

17 A. This happened while we were there. I saw it happen. I was there. I saw it
18 with my own eyes.

19 Q. Did you learn why the UPC did these things? Did the UPC soldiers explain
20 why they had done this?

21 A. They said that "In three days we are going to exterminate you Lendu."

22 Q. Thank you, madam.

23 MS SOLANO: Your Honour, for the next few questions can we please go into
24 private session?

25 PRESIDING JUDGE FREMR: Certainly.

Trial Hearing
WITNESS: DRC-OTP-P-0019

(Private Session)

ICC-01/04-02/06

- 1 Court officer, please move into private session now.
- 2 (Private session at 9.52 a.m.)
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Trial Hearing
WITNESS: DRC-OTP-P-0019

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0019

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0019

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0019

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0019

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0019

(Private Session)

ICC-01/04-02/06

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6 (Upon resuming in open session at 10.36 a.m.)

7 THE COURT USHER: All rise.

8 Please be seated.

9 PRESIDING JUDGE FREMR: After short break forced by some technical problems
10 we faced, we will now continue until 11 o'clock and we will continue with
11 cross-examination of our witness by Defence.

12 Mr Gosnell, you have the floor. And do you want to proceed in open or in private
13 session?

14 MR GOSNELL: I'm afraid we'll have to stay in private session for a while,
15 Mr President.

16 PRESIDING JUDGE FREMR: All right then.
17 Court officer, let's move into private session.

18 (Private session at 10.37 a.m.)

19 (Redacted)

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Trial Hearing
WITNESS: DRC-OTP-P-0019

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0019

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0019

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0019

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0019

(Private Session)

ICC-01/04-02/06

1 (Upon resuming in open session at 11.31 a.m.)

2 THE COURT USHER: All rise.

3 Please be seated.

4 PRESIDING JUDGE FREMR: So we will continue with cross-examination of our
5 witness conducted by Defence.

6 I suppose, Mr Gosnell, since you had to break in the mode of private session, I guess
7 you would like to continue in private as well now?

8 MR GOSNELL: Yes, I believe we need to, Mr President.

9 PRESIDING JUDGE FREMR: All right.

10 So, court officer, let's move into private session now.

11 (Private session at 11.32 a.m.)

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Trial Hearing
WITNESS: DRC-OTP-P-0019

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0019

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0019

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0019

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0019

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0019

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0019

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0019

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0019

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0019

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0019

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0019

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0019

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0019

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0019

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0019

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0019

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0019

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0019

(Private Session)

ICC-01/04-02/06

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23 (Open session at 1.01 p.m.)

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

25 PRESIDING JUDGE FREMR: Thank you, court officer.

Trial Hearing
WITNESS: DRC-OTP-P-0019

(Open Session)

ICC-01/04-02/06

1 So, Madam Witness, we will now break for 90 minutes so you will have an
2 opportunity to take some rest. So we see you again at half past 2.

3 And now please, court officer, you may escort Madam Witness out of the courtroom.
4 (The witness stands down)

5 PRESIDING JUDGE FREMR: And for the sake of planning, I received information
6 that Mr Gosnell so far used 1 hour 47 minutes, which means he still has at his disposal
7 2 hours 13 minutes.

8 In the light of the progress you have made, is there any chance that you should finish
9 this cross-examination today in two hours?

10 MR GOSNELL: I wish I could say yes to that, Mr President, but it's not looking
11 promising, I'm afraid.

12 PRESIDING JUDGE FREMR: Fully understandable. So we will continue half past
13 2. We have two hours at our disposal, but having taken into account yesterday's
14 problems Madam Witness faced, it's possible, depending on her condition, that we
15 will maybe make a short break within those two hours for 10 minutes. But we will
16 see.

17 So now court is adjourned, we will continue half past 2.

18 Mr Gosnell.

19 MR GOSNELL: I'm sorry, Mr President. Just for planning purposes, I wonder if
20 the Prosecution could give us an indication about the timing of the appearance of the
21 next witness?

22 MS SOLANO: Your Honour, I don't know if there have been further exchanges with
23 the Chamber this morning. The latest information I had available yesterday was that
24 we were -- we had assessed that we would most likely need the witness's preparation
25 to continue into tomorrow and that therefore she would not, according to the

Trial Hearing
WITNESS: DRC-OTP-P-0019

(Private Session)

ICC-01/04-02/06

1 normally applicable rules, be available for testimony earlier than planned.

2 PRESIDING JUDGE FREMR: I have to say I am not very happy with that, but I have
3 to confirm, according my recent information, witness, just because of those
4 practicalities connected with preparation of the witness, will not be available on
5 Friday. So at the moment it's most likely that we will have then break and to
6 continue with the next witness on Monday morning.

7 Now court is adjourned.

8 THE COURT USHER: All rise.

9 (Recess taken at 1.05 p.m.)

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

11 THE COURT USHER: All rise.

12 Please be seated.

13 PRESIDING JUDGE FREMR: Good afternoon, everybody.

14 Before we invite Madam Witness back into the courtroom, I will deliver one oral
15 ruling and it is oral ruling on the Prosecution request for -- first of all we have to
16 move into private session for that purpose.

17 (Private session at 2.33 p.m.)

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Trial Hearing
WITNESS: DRC-OTP-P-0019

(Private Session)

ICC-01/04-02/06

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13 Page redacted – Private session

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Trial Hearing
WITNESS: DRC-OTP-P-0019

(Private Session)

ICC-01/04-02/06

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- 12 (Open session at 2.38 p.m.)
- 13 THE COURT OFFICER: We're back in open session, Mr President.
- 14 PRESIDING JUDGE FREMR: Thank you, court officer.
- 15 (The witness enters the courtroom)
- 16 PRESIDING JUDGE FREMR: Madam Witness, good afternoon. Can you hear me?
- 17 THE WITNESS: (Interpretation) Yes.
- 18 PRESIDING JUDGE FREMR: Madam Witness, Defence counsel will continue in
- 19 your cross-examination, so I know that it is a very tiring exercise, but I would like to
- 20 ask you if you as much as possible could concentrate on questions put to you, try to
- 21 respond clearly and briefly, which could maybe lead to the termination of your
- 22 testimony today. If not, we have still time, we will continue tomorrow, but it
- 23 depends how much you will be concentrated and focused on questions put to you.
- 24 So please try to do your best.
- 25 Now, Mr Gosnell, you have the floor. Do you want to proceed in private or in open

Trial Hearing
WITNESS: DRC-OTP-P-0019

(Open Session)

ICC-01/04-02/06

1 session?

2 MR GOSNELL: We can stay in open session for at least a few questions,

3 Mr President.

4 PRESIDING JUDGE FREMR: Very well.

5 MR GOSNELL: And may we please have, and this would not be for broadcast,

6 DRC-OTP-0108-0142. For your Honours, in the English version, that's tab 2,

7 DRC-OTP-0171-1511. And we're looking at paragraph 30, page 7 of the document in

8 English. And in the French it would be ERN page 0148.

9 Q. Now, Madam Witness, while this is coming up on the screen we left off before
10 lunch and you told us that you could not recall when it was that you arrived in Sangi.
11 Am I correct that you left Sangi after only one night there.

12 Let me see if I can ask it a different way: Is it right that you left early on the morning
13 the day after you arrived in Sangi? Perhaps first if you could just tell us if you
14 remember that.

15 A. Yes, I do remember.

16 Q. And then is it right, and do you remember, that you arrived in Kobu sometime
17 in the afternoon of that same day that you left Sangi?

18 A. Yes.

19 Q. And then you spent one night only, am I correct, in Kobu before the UPC left for
20 Bunia; correct?

21 A. We spent the night there, but we were in different houses.

22 Q. Yes. At this point I'm just interested in timing and chronology, so is it correct
23 that it was the next day after one night there that the UPC forces, according to you,
24 left Kobu?

25 A. No, not the next day.

1 Q. Then when was it?

2 A. They left after receiving a phone call to the effect that Bunia had been attacked
3 by Ugandans. First of all, they said that it was the Lendus from Zumbe who had
4 attacked; whereas it was the Ugandans who had arrived in Bunia.

5 Q. Madam Witness, I'm just asking you now about timing. And my question is
6 whether the UPC left Kobu after you had spent only one night in Kobu?

7 A. We did not spend the night there. We did not spend one night there.

8 Q. How many nights did you spend there?

9 A. I have forgotten.

10 Q. But you remember that it was more than one night?

11 A. More than one night.

12 Q. Can you recall if it was more than two nights?

13 A. I have forgotten.

14 Q. But you do remember it was more than one night, so to your recollection it was
15 at least two nights, if not more; is that correct?

16 A. I really don't have a clear recollection.

17 Q. And on the day that you did arrive in Kobu, do you have any general
18 recollection as to what time of day it was?

19 A. It was in the afternoon.

20 MR GOSNELL: Could we please have DRC-OTP-2054-0060, tab 4. If we could start
21 with page 0062, paragraph 8.

22 Q. Madam Witness, this is what you said in your 2013 statement:

23 "We arrived there sometime in the afternoon."

24 And then if we turn over to paragraph 11, you say:

25 "We were prisoners in the compound where that house was and we could not leave

1 because we were surrounded by soldiers. We only spent one night there: the
2 following day the UPC left for Bunia, for the battle."

3 Does that remind you that you spent only one night in Kobu before the departure of
4 the UPC forces?

5 A. The night we spent was spent at a location from which they took us
6 subsequently to another house.

7 Q. So are you telling us that there are two houses and two different nights, at least
8 two different night?

9 A. First of all, they took us to the first house which was full of people and it was
10 not possible to breathe there, that is when they took us to another house at which we
11 spent the night, one night.

12 Q. And that one night, was that the only night before the UPC soldiers left?

13 A. Yes.

14 Q. So now just so we're clear, does that mean that you remember now that you
15 were in Kobu only one night before the UPC soldiers left?

16 A. We spent one night in the house to which they took us because when they took
17 us to the first house there were too many people there, and then they took us to a
18 second house where we spent the night. Then the next day they left.

19 Q. Thank you very much for that. So all of the events that you've described as
20 having taken place in Wadza, which is a part of Kobu, took place between the
21 afternoon that you arrived and the following day that the UPC soldiers left, correct?

22 A. Yes.

23 MR GOSNELL: We'll need private session, Mr President.

24 PRESIDING JUDGE FREMR: All right.

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

Trial Hearing
WITNESS: DRC-OTP-P-0019

(Private Session)

ICC-01/04-02/06

- 1 (Private session at 2.55 p.m.)
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Trial Hearing
WITNESS: DRC-OTP-P-0019

(Private Session)

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Trial Hearing
WITNESS: DRC-OTP-P-0019

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Trial Hearing
WITNESS: DRC-OTP-P-0019

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Trial Hearing
WITNESS: DRC-OTP-P-0019

(Private Session)

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Trial Hearing
WITNESS: DRC-OTP-P-0019

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Trial Hearing
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Trial Hearing
WITNESS: DRC-OTP-P-0019

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Trial Hearing
WITNESS: DRC-OTP-P-0019

(Private Session)

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Trial Hearing
WITNESS: DRC-OTP-P-0019

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Trial Hearing
WITNESS: DRC-OTP-P-0019

(Private Session)

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Trial Hearing
WITNESS: DRC-OTP-P-0019

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Trial Hearing
WITNESS: DRC-OTP-P-0019

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Trial Hearing
WITNESS: DRC-OTP-P-0019

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Trial Hearing
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Trial Hearing
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Trial Hearing
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Trial Hearing
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Trial Hearing
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17 (Open session at 4.26 p.m.)

18 THE COURT OFFICER: We are now in open session.

19 PRESIDING JUDGE FREMR: Okay.

20 Please proceed.

21 MR GOSNELL: Mr President, I am -- I am not sure what would be the proper

22 procedure for seeking the admission of the four investigation notes that are all in

23 form identical to the last one that I showed. I'm not sure whether it's appropriate in

24 light of the fact that the witness of course cannot give any personal information about

25 this document, whether to do it now or to seek its admission by some other means. I

Trial Hearing
WITNESS: DRC-OTP-P-0019

(Open Session)

ICC-01/04-02/06

1 do think it's important for your Honours to have it, but it's a question of procedure
2 and efficiency and timing.

3 PRESIDING JUDGE FREMR: You know, if we look at our decision on conduct of
4 proceedings and to the conditions of admission of evidence, I am not very optimistic
5 because the witness in fact has no idea about this document.

6 MR GOSNELL: Well, that may be and that may be a very good reason not to admit
7 the document through this particular witness, but there will be a time when of course
8 this document will be highly relevant for your Honours' assessment of the witness's
9 credibility. I assume the Prosecution will admit that this document has the
10 minimum threshold of reliability to be worthy of evidence before your Honours. So
11 if it's something to be left to a Bar table motion, then so be it, but I just thought I
12 should seek guidance now.

13 PRESIDING JUDGE FREMR: Ms Solano, any comment from your part to the
14 potential admission of those notes?

15 MS SOLANO: Your Honour, if the Defence do not find a suitable witness for whom
16 to admit these documents, of course it's open to them to seek to admit them as part of
17 a Bar table motion. In that case we will respond when and if that happens. I just
18 want to note that for the Prosecution's part we have not seen anything in the
19 cross-examination so far in relation to this document to bear on an assessment of this
20 witness's credibility. She was asked a number of questions, she readily provided the
21 full identity of the intermediary. She accepted that she met with him, she just didn't
22 remember the further details that the Defence put to her.

23 PRESIDING JUDGE FREMR: Yes, I can just -- it's even from my part a bit premature
24 and unofficial that Bar table seems to me as a most likely way how this document
25 may be admitted if ever.

1 Now, if there are no requests for the floor, I have one question targeting Mr St-Michel.

2 Mr St-Michel, as far as I am informed you are going to leave the Defence team, so

3 today is your last day before us, isn't it?

4 MR ST-MICHEL: This is indeed the case, Mr President.

5 PRESIDING JUDGE FREMR: All right. In such a case I would like on behalf of this

6 Chamber, I would like to say good-bye. You spent quite a long time with us and just

7 my personal view that, in my observation, you made great professional progress

8 because if I remember your participation, opening statements, and if I compare it with

9 cross-examination you led last week, which in my view was conducted in a highly

10 professional manner, so as I said, you made great professional progress.

11 So on behalf of this Chamber, we are saying to you good-bye, and we wish you all the

12 best both in your professional further career and your personal life.

13 MR ST-MICHEL: Thank you very much, Mr President, for your kind words. It has

14 been a real pleasure and privilege to be involved in this case and I will truly miss

15 being in this courtroom. Thank you very much.

16 PRESIDING JUDGE FREMR: You are welcome.

17 Now we adjourn and we will continue tomorrow 9.30.

18 THE COURT USHER: All rise.

19 (The hearing ends in open session at 4.30 p.m.)