

1 International Criminal Court
2 Trial Chamber VI
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and Judge Chang-ho Chung
6 Trial Hearing - Courtroom 3
7 Wednesday, 5 October 2016
8 (The hearing starts in open session at 9.31 a.m.)
9 THE COURT USHER: [9:31:08] All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE FREMR: [9:31:26] Good morning, everybody.
13 Court officer, please call the case.
14 THE COURT OFFICER: [9:31:30] Thank you, Mr President.
15 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
16 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
17 We are in open session.
18 PRESIDING JUDGE FREMR: [9:31:44] Thank you, court officer.
19 Appearances, starting with Prosecution.
20 MS RABANIT: [9:31:52] Appearing for the Prosecution today is Nicole Samson, senior
21 trial lawyer; Selam Yirgou, case manager; and myself, Marion Rabanit, associate trial
22 lawyer.
23 PRESIDING JUDGE FREMR: [9:32:04] Thank you, Ms Rabanit.
24 Defence, please.
25 MR BOURGON: [9:32:10] (Interpretation) Good morning, your Honour. Good

1 morning, your Honours, and everybody else present in the courtroom. Representing
2 Bosco Ntaganda, who is present this morning, Han-Catherine Morin, Margaux Portier,
3 Maître Dignité Bwiza; and myself, Stéphane Bourgon.

4 PRESIDING JUDGE FREMR: [9:32:32] Thank you, Mr Bourgon.

5 And Legal Representative of Victims, please.

6 MR ABDOU: [9:32:37] Good morning, Mr President. Good morning, your Honours.
7 Mohamed Abdou for the former child soldiers.

8 MR SUPRUN: [9:32:44] (Interpretation) Good morning, your Honour, your Honours.

9 The victims of the attacks are represented by the Office of Public Counsel for Victims,
10 Anne Grabowski, associate lawyer; and myself, Dmytro Suprun, counsel.

11 PRESIDING JUDGE FREMR: [9:32:58] Thank you, Mr Abdou. Thank you,
12 Mr Suprun.

13 Before we invite the witness into the courtroom, the Chamber was informed that
14 Mr Bourgon would like to address us.

15 So, Mr Bourgon, you have the floor, but please briefly because you very well know that
16 our schedule is tight.

17 MR BOURGON: [9:33:14] Thank you, Mr President. At this point in time, following
18 the work performed by the Defence team yesterday, I would like to make an oral request
19 to postpone the cross-examination of Witness P-365 until tomorrow morning, which
20 means that we would proceed with the examination-in-chief and then do
21 cross-examination tomorrow morning.

22 This request is grounded on Statute Article 67(1)(a) which states that the accused should
23 be informed promptly and in detail of the nature, cause and contents of the case he has to
24 meet. It is also grounded on Article 67(1)(b) of the Statute, which provide that the
25 accused should be provided with adequate time and facilities to prepare for his defence.

1 The argument, Mr President, is divided into two parts: Firstly, on Monday, 3 October we
2 received a preparation note concerning the preparation of this witness for her testimony,
3 and the note was received at 18.24 on Monday.

4 This, the main reason for our request, is the content of the preparation note itself. The
5 preparation note, Mr President, includes -- it is of course 10 pages long, but it includes
6 seven pages at least of what is referred to therein as clarifications and/or corrections
7 brought by the witness to her statement. Seven full pages.

8 Mr President, this witness has been on the Prosecution records for many, many years.

9 Her first contact with the Prosecution goes back to 2006, where the Prosecution obtained
10 detailed interview notes. The Prosecution then conducted again another interview with
11 her and produced an investigation report, and that was in April 2013. All of this
12 material, of course, was not used when the Prosecution proceeded with the confirmation
13 of charges.

14 In November 2014, as the preparations were ongoing before this Chamber, the
15 Prosecution again met with the witness and produced a screening note, basically there
16 was a screening of the witness, and at that point in time again there were some notes were
17 received on the contacts between the Prosecution and the witness.

18 Now, the Prosecution at that time did not yet decide to include the witness in its list of
19 witnesses to be called, so as a result of course on 15 January, which is the date that the list
20 of witnesses was supposed to be provided, the name of that witness did not appear
21 therein.

22 However, on 19 February 2015, Prosecution conducted an interview and produced a
23 statement which is of some 10 pages or so, the exact number might not be accurate, and
24 that was produced on 19 February 2015.

25 All of this material, Mr President, was disclosed to the Defence on 2 March, in accordance

1 with the Trial Chamber's direction. And the disclosure was then complete.

2 Mr President, we received further information, as we do for all witnesses in the days or
3 the weeks prior to her testimony, and, for example, in her specific case we received two
4 important documents on 1 September. But that is not the issue, we could prepare with
5 this material received on 1 September, although it was in our view untimely.

6 Then comes the time to prepare for this witness and we get the preparation note. If I look
7 at the contents of the preparation note, which I had the chance to work on last night, the
8 topics would appear to be the same as what is covered in the statement, but it goes way
9 further and requires us to do further work in order to prepare for the cross-examination of
10 the witness.

11 To provide but one example, questions were asked to the witness concerning the
12 Commission de Pacification de l'Ituri using a document that had not been used with the
13 witness before. We're not saying that this is improper, we're simply saying that this was
14 done very late in time before the testimony of the witness.

15 Mr President, that's the first part of the argument. And we say that, in and of itself, the
16 preparation note and the date at which it was disclosed is sufficient for us to request a
17 short delay of a few hours in order to make some verifications, at least with a couple of
18 names mentioned therein. We are in private -- in open session so I cannot mention the
19 names, but there are one name mentioned therein that we need to run verification. It was
20 not possible to do so before this morning.

21 The second part of our request, Mr President, has to do with the context.

22 Our request must be considered in the context of this specific block and the changes that
23 have been brought to the schedule of witnesses.

24 Last week the Chamber will recall that Witness P-0668 did not testify. We're not sure yet
25 whether the witness has withdrawn or will testify, but the fact remains that the witness

1 did not testify.

2 We wanted to accommodate the -- and we know how important it is for the Chamber to
3 complete all witnesses in this block. And I gave instructions to my team who were in
4 contact with the Prosecution to say let's try and find a way to do it, to nonetheless do the
5 next witness, which was P-0030, so that we succeed in getting all the witnesses in for this
6 block. That was last week.

7 The preparation time for P-0030 was cut down to the bare minimum and, as the Chamber
8 knows, we had to work in difficult conditions trying to view videos, or at least get
9 information from Mr Ntaganda on videos over the phone during the weekend.

10 Nonetheless, we did so and we -- and we -- we were willing to do so in order to, again,
11 accommodate the Trial Chamber and the schedule.

12 Over the weekend, Mr President, I contacted my colleague by email and we were talking
13 about the order in which the remaining witnesses would appear, and we kind of agreed
14 that Witness 792, the alternate witness for this block, would indeed come last because of
15 the changes and that we could not accommodate P-792 coming before Witness P-031. In
16 the same request I entertained my colleague and I said we need a short delay to prepare
17 for P-365, because I'm doing the witness, and the change in the schedule for P-30 we
18 cannot at the last minute change and say I was supposed to do this witness, we'll now
19 hand the witness to someone else in the team, so I said we need a short delay.

20 My colleague's response was I'm not sure this can fit in the schedule, I'll check the
21 numbers. And I checked the numbers myself and we looked and we said, well, okay,
22 let's proceed without the delay.

23 Yesterday, as we finished P-0030, the Chamber will see that my colleague behind me,
24 Mademoiselle Han-Catherine Morin, was present and we were hoping and ready to
25 proceed at the minute P-0030 was -- terminated his testimony. We were ready and we

1 wanted to, despite my conversation and exchange of correspondence with my colleague
2 about Witness 365. But the fact remains, Mr President, that this preparation note, I did
3 not and could not read it until last night.

4 When I looked at the preparation note last night and work with the members of my team
5 who had been preparing for the witness, we saw that there are verifications that need to
6 be made. We understand that the Trial Chamber is pressed for time, that we want to get
7 all the witnesses in, but we also understand, Mr President, that we need at least the
8 minimum time to prepare for the cross-examination of witnesses.

9 All this put together, our request is simply to proceed with the examination-in-chief of
10 Witness P-365 and then to do the cross-examination tomorrow. And we are willing to
11 work in any -- to cooperate with the Chamber and the Prosecution in any way thereafter
12 to ensure still that all witnesses can be heard during the present block.

13 Thank you, Mr President.

14 PRESIDING JUDGE FREMR: [9:43:20] Thank you, Mr Bourgon.

15 Ms Rabanit, position of the Prosecution?

16 MS RABANIT: [9:43:25] Thank you, Mr President. The Prosecution opposes this
17 request. The Prosecution considers that there is no good cause for a delay to
18 cross-examination. I will respond to the two points by two points, but very quickly
19 because I do not want to waste the Court's time.

20 First, we would like to say that on the prep notes, the prep note is nine pages, it has been
21 disclosed on Monday, 24 hours before the witness appears. It has been done in
22 concordance with the witness preparation protocol, the questions are only questions of
23 clarification, and we are ready to provide it to the Chamber for the Chamber's review.
24 Your Honour, the material of this witness is no more than 50 pages altogether. It is
25 extremely limited. I will just respond to one reference that Defence counsel has made to

1 one substantive information contained in the prep note, it concerned the reference to the
2 Commission de Pacification de l'Ituri. Your Honour, this information was already
3 contained in the statement which was disclosed to Defence according to the schedule
4 in 2015.

5 On the second point raised by the Defence, the Defence had asked for the postponement
6 of Witness 365's appearance originally because it wanted to be able to meet with the
7 witness, a request which was conveyed to the witness and which was refused by her;
8 therefore, there was no reason to delay her appearance as she was -- we were all ready to
9 proceed.

10 Your Honour, our main request at this point is to -- for you to reject this request. In the
11 alternative we propose that the Defence cross-examination be delayed to after 3. Most
12 importantly, your Honour, we believe that if this request is granted we will not have time
13 to finish all the witnesses that are scheduled for this block.

14 PRESIDING JUDGE FREMR: [9:45:43] Thank you.

15 We will now briefly deliberate in the deliberation room, so I guess we will be back in five
16 minutes.

17 THE COURT USHER: [9:45:52] All rise.

18 (Recess taken at 9.45 a.m.)

19 (Upon resuming in open session at 9.53 a.m.)

20 THE COURT USHER: [9:53:08] All rise.

21 Please be seated.

22 PRESIDING JUDGE FREMR: [9:53:27] So the Chamber has deliberated about the
23 Defence request and our ruling is that the request is rejected.

24 Brief reasoning, and I have in my hands a copy of witness preparation session log. We
25 again came through this text and according our issue, at the moment, we don't see any

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1 reason to, or not strong reason to postpone cross-examination. Anyway, we will very
2 carefully observe examination-in-chief and we are ready to reconsider our decision subject
3 to the outcome of examination-in-chief.

4 And one last remark, our decision was not influenced by the fact that we are at the
5 moment in some tight schedule, so even if we will not be able to cover all witnesses
6 planned for this block by Prosecution, it will not be the reason why we should reject
7 request of this kind.

8 So now we can continue with our testimony.

9 Court usher, please bring madam witness into the courtroom.

10 (The witness entered the courtroom)

11 PRESIDING JUDGE FREMR: [9:55:47] Good morning, Madam Witness. Are you
12 feeling okay today to testify?

13 WITNESS: DRC-OTP-P-0365 (On former oath)

14 (The witness speaks French)

15 THE WITNESS: [9:55:55] (Interpretation) Good morning.

16 Yes, I am ready to testify.

17 PRESIDING JUDGE FREMR: [9:55:59] Very well. Madam Witness, again it's my duty
18 to remind you that you are still under oath, which means that you have to speak the truth
19 and nothing but the truth.

20 And my second reminder, don't forget to observe pauses between question put to you and
21 your answer, at least three seconds in between.

22 So now Ms Rabanit you have the floor.

23 MS RABANIT: [9:56:29] Thank you, Mr President.

24 QUESTIONED BY MS RABANIT: (Continuing) [9:56:32]

25 Q. [9:56:41] (Interpretation) Good morning, madam.

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1 A. [9:56:43] Good morning.

2 Q. [9:56:44] (Redacted)

3 A. [9:56:49] (Redacted).

4 PRESIDING JUDGE FREMR: [9:56:59] Sorry, we are in open session so we have to
5 move into private session and redact the last answer. And I am also noting for the record
6 there is nobody at the moment in the public gallery.

7 MS RABANIT: [9:57:15] Apologies, Mr President.

8 (Private session at 9.57 a.m.)

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12 (Redacted)

13 (Redacted)

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16 (Open session at 10.07 a.m.)

17 THE COURT OFFICER: [10:07:22] We are in open session, Mr President.

18 PRESIDING JUDGE FREMR: [10:07:30] Thank you.

19 Ms Rabanit, please proceed.

20 MS RABANIT: [10:07:39] (Interpretation)

21 Q. [10:07:47] You were speaking about the war. Could you explain to us who the
22 parties at war were?

23 A. [10:08:01] The parties to the war were the Hema and the Lendu. The war began
24 in Djugu territory. At the time the individual farmers and those who were landowners
25 were involved, it was a matter of dispute over the land that was being farmed by

1 peasants.

2 But very rapidly it became a community-based matter and I imagine that there was no
3 arbitration at the time, so perhaps the peasants saw that they couldn't get justice and
4 violence broke out. When the people turned to violence, the Lendu rallied behind the
5 peasants and the Hema behind the landowners.

6 Q. [10:09:22] From the year 2000 onwards were there groups that were associated
7 with those ethnic groups and, if so, which?

8 A. [10:09:31] Yes, the armed groups were initially set up for community auto-defence
9 or self-defence. The Hema needed to be defended so that they were not exterminated,
10 and it was the same for the Lendu people. And so it was that armed groups came about
11 on the Hema side, it was the UPC which later split into different political parties. And
12 then there was armed political group on the Lendu side, and that was the FNI, that is to
13 say the Lendu north. And currently there's the FRPI, that's for the Lendu Bindi from
14 Irumu.

15 Q. [10:10:26] Do you recall when UPC emerged as an armed group?

16 A. [10:10:32] As an armed group, I think that the war began in 1999, between the
17 tenant farmers, so this was a peasant movement. The peasants then tried to defend
18 themselves using machetes and spears and arrows. It was then in 2001 that things
19 worsened and that people began to obtain weapons. I would say that things were not
20 very clear because there was also the UPDF in play. Exactly with whom the UPDF was
21 aligned was not clear, but per times they would support and arm the Lendu and per times
22 the Hema.

23 There was also the FARC, that is to say the Congolese armed forces, and they were more
24 supportive of the Lendu.

25 And later, well, that was already later, but later again there was the RCD-K/ML of Mbusa

1 Nyamwisi, which backed the Lendu. But the UPDF was playing a double game and I
2 believe the UPDF was also one of those parties that controlled the city. I can't give you
3 exact dates, but this was happening during that period.

4 Q. [10:12:18] I'm not sure if you've answered the question exactly. My question was:
5 Do you recall when the UPC group emerged, more specifically?

6 A. [10:12:36] I would say 2001.

7 Q. [10:12:41] You talked about conflict between the Hema and the Lendu. Are there
8 other ethnic groups in Ituri and, if so, how were they positioned in relation to this
9 conflict?

10 A. [10:12:59] Yes, there's a large number of ethnic groups in Ituri, and there are also
11 others who are not from Ituri but who live in Ituri. So amongst the ethnic groups of Ituri
12 or in Ituri you have the Ndo-Okebo and the Mambisa, who are affiliated with the Hema.
13 When I refer to the Hema, the Hema, the UPC, that's one and the same. And the rest
14 tended to support the Lendu. Sometimes in their declarations, however, they would say
15 that they are neutral. But to my knowledge nobody was neutral, one way or the other.
16 Each ethnic group had a position. And the basis for this or the justification for this was
17 that during the fighting there were the pro-Hema who would flee together, towards the
18 UPC, and you had the pro-Lendu who would flee to where the UPC -- or, rather, the FNI
19 were. Because at that point in time the city was divided in two, the northern part was
20 UPC, the Hema and their associates, and the southern part was the Lendu and their
21 associates.

22 Q. [10:14:38] What city are you referring to?

23 A. [10:14:40] Bunia. Bunia. We refer to Bunia as being a city.

24 Q. [10:14:50] You refer to ethnic groups who are not from Ituri but who live there.
25 Can you tell us if they were given a particular name?

1 A. [10:15:01] Well, let me start off with the ethnic groups. I refer to those that were
2 associated with the Hema. But regarding the Lendu there were the Lugbara, there were
3 the Alur, the Bira, the Nyali, the Lese, they were all aligned with the Lendu. And then
4 regarding those who didn't live there, well, I'm referring here to all those people who
5 came in from Kisangani, the Kivus, Kinshasa and elsewhere, but who lived in the city.

6 Q. [10:15:36] Those ethnic groups from elsewhere, were they referred to by a
7 particular name or term in Ituri?

8 A. [10:15:48] Yes, in Ituri they are referred to as the jajambu. Jajambu basically
9 means non-natives. And that term was used to refer to, for instance, Mukongo or
10 Moluba, Mabudu, Maboia (phon). All kinds of ethnic groups or all individuals who fell
11 under that category were referred to as being jajambu in Ituri, that means non-native.

12 Q. [10:16:23] Were they considered to be affiliated to one party or the other during the
13 conflict?

14 A. [10:16:30] In the case of the Hema, and I'm more familiar with them, aside from
15 Mambisa and Ndo-Okebo, all were against them and were affiliated with the Lendu.
16 That was the feeling.

17 Q. [10:16:55] A moment ago you were saying that the conflict -- I'm sorry, I think I
18 will have to go back into private session for this series of questions.

19 PRESIDING JUDGE FREMR: [10:17:06] For sure. Court officer let's return back into
20 private session.

21 (Private session at 10.17 a.m.)

22 (Redacted)

23 (Redacted)

24 (Redacted)

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- 21 (Open session at 11.00 a.m.)
- 22 THE COURT OFFICER: [11:00:54] We are in open session, Mr President.
- 23 PRESIDING JUDGE FREMR: [11:01:07] Thank you, court officer.
- 24 So now we take our regular break.
- 25 And just update on timing, Ms Rabanit, so far, according our measuring, you took 1 hour

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- 1 10 minutes, so you still have 1 hour 50, five-zero, 50 minutes at your disposal.
- 2 And we will reconvene at half past 11.
- 3 THE COURT USHER: [11:01:32] All rise.
- 4 (Recess taken at 11.01 a.m.)
- 5 (Upon resuming in open session at 11.30 a.m.)
- 6 THE COURT USHER: [11:30:50] All rise.
- 7 Please be seated.
- 8 PRESIDING JUDGE FREMR: [11:31:12] Let's directly continue with examination of our
- 9 witness.
- 10 Ms Rabanit, open or private session?
- 11 MS RABANIT: [11:31:21] Private session, your Honour.
- 12 PRESIDING JUDGE FREMR: [11:31:23] All right.
- 13 Court officer, let's move into private session.
- 14 (Private session at 11.31 a.m.)
- 15 (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 (Redacted)
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- 10 (Redacted)
- 11 (Upon resuming in open session at 3.02 p.m.)
- 12 THE COURT USHER: [15:02:38] All rise.
- 13 Please be seated.
- 14 PRESIDING JUDGE FREMR: [15:03:01] Good afternoon, everybody.
- 15 We will continue directly with examination of our witness, but now it will be Defence
- 16 who will cross-examine her, and since Prosecution used 2 hours 50 minutes, so the
- 17 Defence is expected to use the same time in maximum. And this session is going to last
- 18 till 5 o'clock.
- 19 So now, Mr Bourgon, you have the floor.
- 20 MR BOURGON: [15:03:46] Thank you, Mr President.
- 21 QUESTIONED BY MR BOURGON: (Interpretation)
- 22 Q. [15:04:03] Good afternoon, Madam.
- 23 A. [15:04:05] Good afternoon.
- 24 Q. [15:04:09] You were given some instructions earlier by my colleague regarding the
- 25 importance of just pausing slightly before you answer questions. I'd like you to do that

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1 as I question you. That is helpful to ensure that the transcript of what we say is complete;
2 is that okay?

3 A. [15:04:36] Yes.

4 Q. [15:04:38] Well, I have a few questions to put to you on your testimony and also on
5 some documents which you provided to the Prosecutor.

6 But first of all let me introduce myself, because we have not yet had an opportunity to
7 meet. My name is Stéphane Bourgon and I'm a lawyer from Canada and I'm
8 representing Bosco Ntaganda in this case, and I'm assisted by the colleagues beside me.
9 Do you understand?

10 A. [15:05:10] Yes.

11 Q. [15:05:16] I'd like to start off by putting some questions to you regarding your
12 preparatory meeting with the Prosecutors. When I say the Prosecutors, I'm referring to
13 the lawyers on the other side of the courtroom. So, first of all, do you recall meeting with
14 members of the Prosecution on 1 and 3 October, in other words, on Friday and Monday, if
15 I'm not mistaken? Do you recall that?

16 A. [15:05:51] Yes.

17 PRESIDING JUDGE FREMR: [15:05:57] Ms Rabanit, you think we should go into
18 private session because of that?

19 MS RABANIT: [15:06:00] I do, but I also just want to note for the record that the
20 meeting was actually on Saturday.

21 PRESIDING JUDGE FREMR: [15:06:08] Because I still believe that this, you know, if it
22 will be some date from the past, but I think that the fact that the witness said that she met
23 you, I think still shouldn't, in my view, reveal her identity. So at this moment I don't see
24 a reason to move into private session. Mr Bourgon, please proceed.

25 MR BOURGON: [15:06:31] Thank you, Mr President. Let's move into private session,

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- 1 please, to avoid any misunderstanding. Thank you.
- 2 PRESIDING JUDGE FREMR: [15:06:39] All right.
- 3 Court officer, let's move into private session.
- 4 (Private session at 3.06 p.m.)
- 5 (Redacted)
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Trial Hearing
WITNESS: DRC-OTP-P-0365

(Open Session)

ICC-01/04-02/06

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3 (Open session at 5.06 p.m.)

4 THE COURT OFFICER: [17:06:43] We're in open session, Mr President.

5 PRESIDING JUDGE FREMR: [17:06:50] Thank you, court officer.

6 So Madam Witness, we appreciate that you patiently responded so many questions put to
7 you today. It was a long day, but tomorrow it's most likely we will complete your
8 testimony during the morning session. And it's my duty to remind you that in the
9 meantime till tomorrow, you must not discuss your testimony with anybody else. Do
10 you understand that?

11 THE WITNESS: [17:07:22] (Interpretation) Yes.

12 PRESIDING JUDGE FREMR: [17:07:27] Very well.

13 And usual update on timing, Mr Bourgon so far used 2 hours and 2 minutes according
14 our measuring, which means that he still has at his disposal 48 minutes.

15 And another important announcement, tomorrow as we already indicated, it's probably
16 bad news for you, we have to start at 9 o'clock. And the Chamber is, because we are still
17 behind our schedule, intending to sit for six hours, which means from 9 to 11, 11.30 till
18 1.30 and then from 3 to 5. I hope I am right. It's correct, yes.

19 Otherwise, we adjourn now and we will continue tomorrow 9 o'clock.

20 THE COURT USHER: [17:08:27] All rise.

21 (The hearing ends in open session at 5.08 p.m.)