

Trial Hearing
WITNESS: DRC-OTP-P-0898

(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 Thursday, 10 November 2016
9 (The trial hearing starts in open session 9.30 a.m.)
10 THE COURT USHER: [9:30:41] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: [9:30:57] Good morning, everybody. Court officer,
14 please call the case.
15 THE COURT OFFICER: [9:31:03] 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 PRESIDING JUDGE FREMR: [9:31:19] Thank you, court officer.
19 Now appearances, please, prosecution first.
20 MR IVERSON: [9:31:23] Good morning, your Honours. Appearing today for the
21 Prosecution are Laura Morris, Selam Yirgou, Claudine Umurungi, and myself, Eric
22 Iverson.
23 PRESIDING JUDGE FREMR: [9:31:34] Thank you, Mr Iverson.
24 Defence, please.
25 MR BOURGON: [9:31:37] Good morning, your Honour. No change on the side of

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- 1 the Defence. Thank you.
- 2 PRESIDING JUDGE FREMR: [9:31:43] Thank you, Mr Bourgon.
- 3 Legal Representatives of Victims.
- 4 MS PELLET: [9:31:51] (Interpretation) Thank you, your Honour. The former child
- 5 soldiers are represented by Mohamed Abdou and by myself, Sarah Pellet, counsel
- 6 with the Office of Public Counsel for Victims.
- 7 MR SUPRUN: [9:32:03] (Interpretation) Good morning, Your Honour, your Honours.
- 8 For the victims of the attacks today Anne Grabowski and myself, Dmytro Suprun,
- 9 counsel with the Office of Public Counsel for Victims.
- 10 PRESIDING JUDGE FREMR: [9:32:16] Thank you, Ms Pellet. Thank you,
- 11 Mr Suprun.
- 12 Now let's move directly to the rest of cross-examination of our witness.
- 13 Mr Witness, good morning. Are you feeling okay today?
- 14 WITNESS: DRC-OTP-P-0898 (On former oath)
- 15 (The witness speaks Swahili)
- 16 THE WITNESS: [9:32:37] Ndiyo.
- 17 PRESIDING JUDGE FREMR: [9:32:38] Very well. Again my usual duty, I have to
- 18 remind you that you are still under oath, so it's your duty to speak the truth and
- 19 nothing but the truth. Do you understand?
- 20 THE WITNESS: [9:32:50] (Interpretation) Yes.
- 21 PRESIDING JUDGE FREMR: [9:32:55] So now I'm giving the floor to Mr Bourgon.
- 22 And Mr Bourgon, a kind reminder, as we decided yesterday, you have at your
- 23 disposal two morning sessions, so you are expected to finish by 1 o'clock.
- 24 MR BOURGON: [9:33:09] Thank you, Mr President.
- 25 QUESTIONED BY MR BOURGON: (Continuing)

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1 Q. [9:33:18] Good morning, Mr Witness

2 A. [9:33:22] Jambo.

3 Q. [9:33:22] (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 PRESIDING JUDGE FREMR: [9:33:55] Excuse me, Mr Bourgon. I understand that
8 Mr Ntaganda has some technical problem. Please verify.

9 MR BOURGON: [9:34:16] I'm informed that he is not able to see the witness on the
10 screen.

11 PRESIDING JUDGE FREMR: [9:34:35] So I would ask the court usher to solve this
12 problem as soon as possible.

13 I was informed now it should be fine.

14 Mr Bourgon, please proceed.

15 MR BOURGON: [9:35:13] Thank you, Mr President.

16 Q. [9:35:18] (Redacted)

17 (Redacted)

18 (Redacted)

19 PRESIDING JUDGE FREMR: [9:35:39] Mr Bourgon, we are in open session so
20 I guess we have to move into private one.

21 MR BOURGON: [9:35:44] Indeed, Mr President.

22 PRESIDING JUDGE FREMR: [9:35:47] So, please, and redact the beginning of
23 Mr Bourgon's question.

24 And in order to inform the public, this witness is a protected one so he was given
25 guarantee that his identity will not be revealed. That is why as soon there is such a

- 1 risk we have to move into private session, which is the case just now.
- 2 (Private session at 9.36 a.m.)
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11 (Open session at 11.01 a.m.)
12 THE COURT OFFICER: [11:01:59] We are in open session, your Honour.
13 PRESIDING JUDGE FREMR: [11:02:01] Thank you, court officer.
14 So we will break now for our regular break. And just to indicate what should be the
15 next schedule, so we will resume again at 11.30.
16 Mr Bourgon, just a caveat, we will ask you to finish by 1 o'clock, regardless of the
17 stage of your cross-examination, and then we would like rather then to continue on
18 Friday, rather to prolong this session slightly.
19 Mr Iverson, you still insist that you will need 10 minutes in maximum for your
20 re-direct?
21 MR IVERSON: [11:02:46] I would actually ask for 15 minutes at this point.
22 PRESIDING JUDGE FREMR: [11:02:49] But I think it still will be feasible to finish in
23 30 minutes, we can't go further with your re-direct, and I guess there will be some
24 questions from the Chamber. So it's current plan, we will see whether it's feasible.
25 So now we break and we will resume 11.30.

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1 (Recess taken at 11.03 a.m.)

2 (Upon resuming in open session at 11.32 a.m.)

3 THE COURT USHER: [11:32:19] All rise.

4 Please be seated.

5 PRESIDING JUDGE FREMR: [11:32:44] We will directly continue with

6 cross-examination of our witness, but since the witness is protected one, it means that

7 we will have to continue, because of the character of the questions, we have to

8 continue in private session.

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

10 (Private session at 11.33 a.m.)

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6 (Open session at 1.10 p.m.)

7 THE COURT OFFICER: [13:10:53] We are in open session, Mr President.

8 PRESIDING JUDGE FREMR: [13:10:56] Thank you.

9 Mr Witness, you have mentioned in your testimony cases of sexual relationships
10 between the UPC commanders and female soldiers. Have you ever observed any
11 sign of resistance or disagreement or dissatisfaction on the part of those female
12 soldiers?

13 THE WITNESS: [13:11:26] (Interpretation) At that time I was not in a position to
14 know what those young girls were really thinking about, but I believe that if
15 a commander wants your favours it's very difficult to turn them down. Those girls
16 were not in a position to do so.

17 PRESIDING JUDGE FREMR: [13:12:06] And my second question: You also
18 testified, and please correct me if I am wrong, about looting committed by civilian
19 combatants but, if I am not wrong, you haven't testified about looting committed
20 either by UPC soldier or neither by UPC commanders; am I right?

21 THE WITNESS: [13:12:40] (Interpretation) Mr President, yes, there were UPC troops
22 who looted, but they didn't loot as much as the civilians. The civilians looted, they
23 took away chairs, spoons, everything they would find. But with regard to the troops,
24 we would use the term 'Kushugulika' (phon), which meant that some of the troops
25 looted, but I was not an eyewitness to that.

1 PRESIDING JUDGE FREMR: [13:13:21] And my last question concerns
2 Mr Ntaganda. Do you have any knowledge whether he was in any way involved in
3 looting?

4 THE WITNESS: [13:13:54] (Interpretation) Looting where?

5 PRESIDING JUDGE FREMR: [13:13:59] Anywhere. If you have, if you have no
6 knowledge then that is fine. I am just asking whether do you have any knowledge
7 that would lead to a conclusion that Mr Ntaganda was involved in any kind of
8 looting or pillaging?

9 THE WITNESS: [13:14:26] (Interpretation) Yes, Mr President. Mr Bosco himself
10 said that a good soldier is somebody who does not loot, that the army was not there
11 to loot. From a personal standpoint, I never saw him looting because he was a major,
12 high-ranking commander, but there were rumours being mongered that he only
13 looted vehicles and cows, but I was not an eyewitness to this.

14 PRESIDING JUDGE FREMR: [13:15:13] Thank you, Mr Witness. I don't have
15 further questions for you. What about my colleagues? Judge Ozaki? No.
16 Judge Chung? Please.

17 JUDGE CHUNG: [13:15:23] Thank you. For my questions, private session, please.

18 PRESIDING JUDGE FREMR: [13:15:29] All right, let's move into private session,
19 court officer, please.

20 (Private session at 1.15 p.m.)

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7 (Open session at 1.27 p.m.)

8 THE COURT OFFICER: [13:27:46] We are in open session, Mr President.

9 PRESIDING JUDGE FREMR: [13:27:50] Mr Bourgon, why are you now --

10 MR BOURGON: [13:27:50] I just forgot to have one document admitted which I
11 used with the witness called the palmarès.

12 PRESIDING JUDGE FREMR: [13:27:58] Go ahead.

13 MR BOURGON: [13:27:58] And the number of the exhibit is DRC-D18-0001-2428.

14 PRESIDING JUDGE FREMR: [13:28:05] To be clear, it was what, in fact?

15 MR BOURGON: [13:28:08] The palmarès indicating something had to do with
16 schooling records.

17 PRESIDING JUDGE FREMR: [13:28:13] Mr Iverson, any objection to that request?

18 MR IVERSON: [13:28:21] Could you just give me one moment, your Honour?

19 Thank you.

20 PRESIDING JUDGE FREMR: [13:28:30] In the meantime, Mr Witness, I would like
21 to thank you very much because your testimony is concluded. It was very long time
22 you spent with us, so thank you very much. We really appreciate that you patiently
23 responded all those questions and I believe that your testimony will assist us in our
24 effort to find the truth. So thank you very much and we wish you safe journey
25 home.

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1 Now, court officer, you may assist -- Mr Witness, please.

2 THE WITNESS: [13:29:00] (Interpretation) I would also like to thank you. And
3 after these words of thanks, well, I am saying thank you to you because I really
4 wanted the truth to be told with regard to what occurred in my country.

5 And apart from that, I did raise a question before the OTP. I said that behind me
6 there were those --

7 PRESIDING JUDGE FREMR: Mr Witness --

8 THE WITNESS: (Interpretation) -- people who were --

9 PRESIDING JUDGE FREMR: Mr Witness, hold on.

10 THE WITNESS: (Interpretation) -- looking for my record of --

11 PRESIDING JUDGE FREMR: [13:29:50] It would be safer to, for the rest of your
12 speech to move into private session.

13 Court officer, let's move into private.

14 (Private session at 1.29 p.m.)

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4 (Open session at 1.33 p.m.)

5 THE COURT OFFICER: [13:33:40] We are in open session, Mr President.

6 PRESIDING JUDGE FREMR: [13:33:42] Thank you, court officer.

7 It is a decision on protective measures for Witness P-911. Before proceeding with the
8 testimony of the next witness, the Chamber shall deliver its decision on
9 the Prosecution request for protective measures for Witness P-0911 contained in filing
10 number 1579.

11 The Defence opposed the measures requested in filing 1593.

12 I note for the record that the protective measures assessment for this witness was
13 transmitted to the Chamber by the VWU on 8 November 2016. In assessing whether
14 there exist an objectively justifiable risk, the Chamber has previously held that the
15 general security situation in the region may be a relevant consideration in respect of
16 specific witnesses.

17 In this instance, it is noted that the witness and his family currently reside in areas
18 that former UPC, FPLC militia members and supporters of the accused are present, or
19 continue to have influence.

20 The Chamber further recalls that there are reported instances where other witnesses,
21 including crime base and inside witnesses, were allegedly threatened as a result of
22 their involvement with the Court.

23 Now we will have to go into private session.

24 (Private session at 1.35 p.m.)

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8 (Open session at 1.36 p.m.)

9 THE COURT OFFICER: [13:36:23] We are back in open session, Mr President.

10 PRESIDING JUDGE FREMR: [13:36:27] Thank you. In relation to the Defence
11 argument that the Prosecution has not produced any investigation notes to justify the
12 measures requested, the Chamber notes that no specific incidents or threats in relation
13 to Witness P-0911 have been alleged by the Prosecution and that indeed the existence
14 of such threats, it is not a prerequisite to finding that there is an objectively justifiable
15 risk.

16 Having regard to the nature of the anticipated testimony of the witness and to the
17 content of the VWU assessment on protective measures which recommends granting
18 the same measures requested by the Prosecution, the Chamber is satisfied that the
19 request is sufficiently supported.

20 In light of the above, the Chamber is satisfied that there exists an objectively
21 justifiable risk with respect to the security and well-being of the witness and related
22 persons warranting the protection of his identity from the public.

23 The Chamber further finds that the in-court protective measures sought do not
24 unduly infringe upon the rights of the accused, given that the accused and
25 the Defence will be able to see the witness give evidence at trial and hear his voice

1 without distortion. Accordingly, and pursuant to Rule 87, the Chamber grants the
2 measures of use of a pseudonym for the purposes of the trial and voice and face
3 distortion during testimony for Witness 0911.

4 This concludes the Chamber's ruling.

5 So we will break now and I would like to thank you, all of you, including interpreters,
6 guards and recorders, that you supported us in this very, very long session, but the
7 idea was -- because maybe Mr Iverson may confirm, but I understood that Witness
8 0911 will not be able to testify tomorrow morning.

9 MR IVERSON: [13:38:42] That's correct, Mr President.

10 PRESIDING JUDGE FREMR: [13:38:44] So we will not be sitting tomorrow morning,
11 but I would like to just remind you that we will have this video witness today from
12 four to six and tomorrow from four to five.

13 Now court is adjourned.

14 THE COURT USHER: [13:39:04] All rise.

15 (Recess taken at 1.39 p.m.)

16 (Upon resuming in open session at 4.02 p.m.)

17 THE COURT USHER: [16:02:51] All rise.

18 Please be seated.

19 PRESIDING JUDGE FREMR: [16:03:15] Good afternoon, everybody. Since I see
20 some important changes in appearances, I would like to ask for update.

21 Prosecution first.

22 MS SOLANO: [16:03:32] Good afternoon, your Honours. The Prosecution is
23 represented by Ms Nicole Samson, senior trial lawyer; Ms Kristy Sim, assistant trial
24 lawyer; Selam Yirgou, case manager; and I'm Julieta Solano, trial lawyer.

25 PRESIDING JUDGE FREMR: [16:03:49] Thank you, Ms Solano.

1 Defence.

2 MR BOURGON: [16:03:52] (Interpretation) Good afternoon, your Honour. For
3 the Defence, Margaux Portier and myself, Stéphane Bourgon. Thank you.

4 PRESIDING JUDGE FREMR: [16:04:03] And as concerns Legal Representatives for
5 Victims, I see no changes, am I correct?

6 I see nodding. Okay.

7 So the Chamber recalls that in its request number 1579, the Prosecution has sought
8 that certain special measures be put in place for the testimony of our next witness.

9 In its response number 1593, the Defence did not oppose these measures, and having
10 now received the related VWU vulnerability assessment, the Chamber directs that the
11 parties adapt their questioning to the needs of the witness including by keeping
12 questions short and straightforward and giving adequate time for responses.

13 The Chamber will continue to monitor the situation in relation to any further
14 assistance which may be needed.

15 The Chamber has also taken note of the Defence notice of objections to the use of -- or
16 admission of certain documents received yesterday via email and it will address any
17 such objections if and when they arise.

18 So now we can turn to the scheduled testimony. In this regard, the Chamber recalls
19 that in line with decision number 1612, the witness will testify by way of video link.

20 So, court officer, can you please connect the video link.

21 I see they are already connected. Fine.

22 So, Madam Witness, good evening. Can you hear me?

23 WITNESS: DRC-OTP-P-0918

24 (The witness speaks Swahili)

25 (The witness gives evidence via video link)

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1 THE WITNESS: [16:06:02] (Interpretation) Yes, I can hear you.

2 PRESIDING JUDGE FREMR: [16:06:04] Very well. Madam Witness, I'm Robert
3 Fremr, Judge of the International Criminal Court, and my colleagues are Judge Ozaki
4 and Judge Chung. They are beside me here in the courtroom. So I can confirm that
5 we can fully see and hear you by way of video link. Can you please confirm that
6 you can hear and see us.

7 THE WITNESS: [16:06:40] (Interpretation) For the moment, I only see one Judge,
8 but I can hear your voice.

9 THE INTERPRETER: [16:06:55] The English booth would also like to point out the
10 50 cycle hum on the line. There's a noise on the line, your Honour.

11 PRESIDING JUDGE FREMR: [16:07:07] All right, the Judge, it's me. And now
12 I would like to give you some guidance, Madam Witness.

13 You are called to testify in the case of against Mr Bosco Ntaganda and you will be
14 soon asked questions both by the Judges and lawyers here in the courtroom, and in
15 addition to the Judges, the -- you can't see them at the moment, but there are also
16 lawyers for the Prosecution, there is Mr Ntaganda and his lawyers, and there are also
17 Legal Representatives of Victims.

18 And I would like to provide you with some further guidance, especially as concerns
19 answering the questions. So, Madam Witness, please listen carefully to the questions,
20 and if you don't understand, feel free to ask for the question to be repeated.

21 We want you to tell the truth and tell us what you saw, heard and sensed yourself.

22 If you didn't see or hear it yourself but you found out some other way, then you
23 should explain how. Please testify just on that which you really remember. Don't
24 guess. Don't make things up. There is nothing wrong in saying, "I don't know" or
25 "I don't remember."

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1 So, Madam Witness, do you understand all this?

2 THE WITNESS: [16:08:55] (Interpretation) I have understood what you said. And
3 I would say that what I say to you is something that's already written and all the
4 things that you're going to ask me about have already been written. Are you going
5 to give me some guidance with regards to the document that's already written?

6 PRESIDING JUDGE FREMR: [16:09:24] Madam Witness, we are aware of the fact
7 that you have already testified and that your previous statement is recorded in
8 writing, but then lawyers in the courtroom will put to you questions that will concern
9 your previous testimony.

10 And now, Madam Witness, I would like to provide you with further piece of
11 guidance concerning protective measures. Because protective --

12 THE WITNESS: (No interpretation)

13 PRESIDING JUDGE FREMR: -- because protective measures -- because protective
14 measures are put in place to ensure that your identity is not revealed to the public. It
15 means that the public cannot see your face and that your voice is even being
16 disguised so that the public cannot recognize it. We will refer to you only as
17 "Madam Witness," so without mentioning your name, and ensure that your name and
18 any other information that risks revealing who you are is not broadcast to the public.
19 Therefore, whenever you need to describe anything in giving your testimony that
20 might reveal your identity or that of your family members, we will do so in private
21 session so that no one outside the courtroom can hear your answer.

22 Madam Witness, have you understood this guidance?

23 THE WITNESS: [16:11:28] (Interpretation) I have understood well. I'd like to add
24 something. Is there somebody here that doesn't know my identity? In that case,
25 how can I remember all these people?

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1 PRESIDING JUDGE FREMR: [16:11:51] Sorry, Madam Witness. I probably didn't
2 understand. Could you repeat that?

3 THE WITNESS: [16:12:12] (Interpretation) Well, I was asking a question. In my
4 statement there are times when I'm told not to reveal my identity, but how can I
5 remember not to reveal my identity? How am I going to remember that I can't
6 reveal my identity? I trust you, I'm going to answer the questions that you ask.

7 PRESIDING JUDGE FREMR: [16:12:41] Madam Witness, it's easy. Most of your
8 testimony probably will be conducted in private session, which means that nobody
9 from public can even hear what you are saying, only those people who are present in
10 the courtroom, which means Prosecution lawyers, the accused and his lawyers. And
11 if we would be in open session, we will just deal with some general matters, but as
12 soon we would be in open session and you would approach some fact that could
13 reveal your identity, just stop your answering and say, "Judge, please, I would like to
14 move into private session because otherwise I would reveal my identity." But I am
15 afraid -- I believe that most of your testimony will be done in private session so there's
16 no risk that your identity will be revealed.

17 Now, Madam Witness, I would like you to make solemn undertaking, so you should
18 have somewhere in front of you paper, piece of paper with the text of solemn
19 undertaking.

20 Do you have it?

21 THE WITNESS: [16:14:13] (Interpretation) Yes. So can I start?

22 PRESIDING JUDGE FREMR: [16:14:18] Yes, please read out this solemn
23 undertaking.

24 THE WITNESS: [16:14:45] (Interpretation) I solemnly declare that I will tell the
25 truth, the whole truth and nothing but the truth.

1 PRESIDING JUDGE FREMR: [16:14:56] Very well, Madam Witness. It means that
2 you are now under oath so you need to be aware that it's an offence within the
3 jurisdiction of this Court to give false testimony. Do you understand that?

4 THE WITNESS: [16:15:27] (Interpretation) I didn't know, but I'll tell you exactly
5 what I said before.

6 PRESIDING JUDGE FREMR: [16:15:37] Exactly. So make it simple. If you are
7 speaking true, you shouldn't be concerned about any possible consequences, is the
8 main thing, just to speak to the truth.

9 And now, finally, Madam Witness, a few practical matters you should have in mind
10 when giving your testimony. First, it's important to speak into the microphone.
11 You are doing it well so far. To stay in view of the camera, to speak clearly, to speak
12 at a slow pace. And what is also very important, not to respond to any question at
13 once immediately. Please always just wait at least 3 seconds and only then please
14 give your response because this break, this pause between the question and your
15 answer is important for us to translate and record everything properly. So do you
16 understand?

17 Main thing, wait always a few seconds and only then respond to the question. And
18 if you have any question during your testimony or if you feel that you need a break,
19 do not hesitate to let us know and we will then give you the opportunity to speak.
20 So I know it was a lot of information, but have you understood all that, Madam
21 Witness?

22 THE WITNESS: [16:17:27] (Interpretation) I've understood.

23 PRESIDING JUDGE FREMR: [16:17:30] Very good, Madam Witness. So now I
24 will hand over the floor to one of the Prosecutors who will be conducting your
25 examination.

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1 I see it will be Ms Solano. Ms Solano, you have the floor and I have to remind you
2 that we are in open session.

3 MS SOLANO: [16:17:49] Thank you, your Honour.

4 QUESTIONED BY MS SOLANO:

5 Q. [16:17:58] Good afternoon, madam. Can you hear me?

6 A. [16:18:03] Yes, I can hear you.

7 Q. [16:18:05] I am Julieta Solano. We've met before by video link. I will ask
8 you questions on behalf of the Prosecution.

9 MS SOLANO: [16:18:19] Your Honour, may we go to private session, please.

10 PRESIDING JUDGE FREMR: [16:18:23] Understandably.

11 And to inform the public, as I already indicated, this witness is protected one, and she
12 was given guarantee that her identity will not be revealed and since question,
13 upcoming questions could result in that, that is why we have to move in private
14 session and it's very likely that most of this examination will be for that purpose
15 conducted in the regime of private session.

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

17 (Private session at 4.18 p.m.)

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Trial Hearing
WITNESS: DRC-OTP-P-0918

(Private Session)

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13 (Open session at 6.01 p.m.)
14 THE COURT OFFICER: [18:01:19] The video link is cut and we are in open session,
15 Mr President.
16 PRESIDING JUDGE FREMR: [18:01:24] Thank you very much. So for your
17 information, Ms Solano, so far according our measuring you exhausted 1 hour
18 36 minutes, so for tomorrow you still have 54 minutes, if I am counting well, yes.
19 And please be careful, because we really need to finish at 5 o'clock sharp tomorrow
20 because of further commitments of all the Judges. And I would also like to thank
21 you that you really perfectly adjust the way of questioning to the capability of this
22 concrete witness which, in my view, fundamentally contributed to the smooth course
23 of examination.
24 So now we will break and we will resume because, as we said, tomorrow morning we
25 have no witness ready, so we will continue with this witness tomorrow at 4 o'clock till

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- 1 5 o'clock.
- 2 Now court is adjourned.
- 3 THE COURT USHER: [18:02:30] All rise.
- 4 (The hearing ends in open session at 6.02 p.m.)