

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 Tuesday, 7 February 2017
9 (The hearing starts in open session at 9.32 a.m.)
10 THE COURT USHER: [9:32:52] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: [9:33:20] Good morning, everyone.
14 Court officer, please call the case.
15 THE COURT OFFICER: [9:33:25] 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 For the record, we are in open session.
19 PRESIDING JUDGE FREMR: [9:33:41] Thank you, court officer.
20 We resume hearing for the last part of the testimony of Witness P-317. And before
21 starting, is there any change in the composition of the teams. Prosecution?
22 MS LUPING: [9:33:57] Good morning, Mr President, your Honours. There is no
23 change in the composition for the Prosecution this morning.
24 PRESIDING JUDGE FREMR: [9:34:03] Thank you, Ms Luping.
25 Defence.

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1 MR GOSNELL: [9:34:07] Good morning. No changes, Mr President. Thank you.

2 PRESIDING JUDGE FREMR: [9:34:11] Legal Representatives? I see no changes. All
3 right.

4 And I also for the record note that Mr Lavigne, representative of the UN, is also present.

5 Good morning, Madam Witness.

6 WITNESS: DRC-OTP-P-0317 (On former oath)

7 (The witness speaks French)

8 THE WITNESS: Bonjour.

9 PRESIDING JUDGE FREMR: We will continue with the last part of your testimony. A
10 usual reminder, you are still under oath, you are aware of the consequences. I don't see
11 any reason to repeat particular guidance because you observed my guidance perfectly.
12 Now, Mr Gosnell, you have the floor. You still have 2 hours 18 minutes. At the moment
13 we are in the regime of open session. Can we remain in that regime?

14 MR GOSNELL: [9:35:06] No, Mr President.

15 PRESIDING JUDGE FREMR: [9:35:08] All right. Court officer, let's move into private
16 session.

17 And for information or to inform public, this witness also could in some parts of her
18 testimony reveal identity of persons that in fact are granted not -- that the identity will not
19 be revealed, that is why for some parts of testimony we will have to move into regime of
20 private session, which is the case now.

21 Court officer.

22 (Private session at 9.35 a.m.)

23 (Redacted)

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10 (Open session at 10.49 a.m.)
11 THE COURT OFFICER: [10:49:10] We're in open session, Mr President.
12 PRESIDING JUDGE FREMR: [10:49:26] Thank you, court officer.
13 Mr Gosnell, please.
14 MR GOSNELL: [10:49:28]
15 Q. [10:49:29] You testified yesterday at page 37 of the English transcript that there
16 was an individual from OCHA who was, to use your words, and I'll quote them, "also
17 trying to ensure that there was the distribution of humanitarian aid, he was also
18 threatened alongside everybody else."
19 My question is this, it's very focused: Did you ever hear whether this person from
20 OCHA was involved in any improper activities. or perhaps --
21 PRESIDING JUDGE FREMR: [10:50:10] Hold on, Mr Gosnell. Ms Luping.
22 MS LUPING: [10:50:14] Mr President, your Honours, we've now got a question that's
23 been moved out of private into public session, but this may be a question that is more
24 appropriate for in fact private session, depending on what answers may be received from
25 the witness.

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- 1 I'm not sure if Mr Lavigne has any specific views on this.
- 2 MR LAVIGNE: [10:50:34] Yes, thank you, Mr President.
- 3 Ms Luping beat me to it, but I think if we could move to private session please.
- 4 PRESIDING JUDGE FREMR: [10:50:43] All right.
- 5 So court officer, let's return back into private session.
- 6 (Private session at 10.50 a.m.)
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3 (Recess taken at 10.59 a.m.)

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

5 THE COURT USHER: [11:31:09] All rise.

6 Please be seated.

7 PRESIDING JUDGE FREMR: [11:31:17] So let's continue with the rest of

8 cross-examination of our witness.

9 Mr Gosnell, we are in open session. Can we remain in open session?

10 MR GOSNELL: [11:31:31] We can at least start in open session, Mr President.

11 PRESIDING JUDGE FREMR: [11:31:35] Ms Luping, did you want anything or?

12 MS LUPING: [11:31:37] No, Mr President, your Honours, I apologise for my delay.

13 PRESIDING JUDGE FREMR: [11:31:41] No problem.

14 So please proceed.

15 MR GOSNELL: [11:31:46] Thank you, Mr President.

16 Q. [11:31:53] Madam Witness, on Friday you were asked about child soldiers whom

17 you saw in Bunia in May and June 2003 and at page 103 of the English provisional

18 transcript and page -- well, page 103 of the English transcript you were specifically asked,

19 quote: "Could you clarify more precisely the age range of these people that you saw who

20 appeared to be below 18?"

21 And then your answer was:

22 "I would say between 14 and 17 years."

23 And at the French transcript, page 96, line 16, we see that you used the expression

24 (Interpretation) "I would say between 14 and 16 years old."

25 Do I understand that this age range that you gave in your testimony on Friday is an

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1 estimate?

2 A. [11:33:11] Yes, that's an estimate.

3 Q. [11:33:14] So these individuals whom you saw could have been a little bit younger
4 or a little bit older; is that correct?

5 A. [11:33:25] Yes.

6 Q. [11:33:28] Now, if we could look please at, again, your 2004 secretary-general's
7 report, DRC-OTP-0074-0422.

8 Madam Witness, it will come up on the screen in front of you and I would request, please,
9 that you look at the version on the screen.

10 If we could turn please to page 0444. That would be page 0444. Thank you. And
11 paragraph 68 you are discussing Nyangarai and here's what you say in this report:

12 "On 13 January 2003, around two UPC battalions coming from Mongbwalu arrived in
13 Nyangarai at around 5.00 a.m. They forced the population out of their homes and forced
14 15 to go into the chapel. They reportedly chopped all of them to death with machetes
15 and burned their bodies."

16 How many sources did you have for this very serious allegation?

17 A. [11:35:35] Yes.

18 Q. [11:35:39] How many sources did you have for this allegation?

19 A. [11:35:48] I can't tell you how many sources. I don't remember. More than one.

20 Q. [11:35:54] Why do you say more than one?

21 A. [11:36:00] To corroborate the incident.

22 Q. [11:36:05] Well, I won't take you to your table but I can tell you that I've been
23 through your table carefully and I found only a single source for this allegation. Is it
24 possible that you would include such an allegation in your report with only one source?

25 A. [11:36:30] I don't think so.

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1 PRESIDING JUDGE FREMR: Hold on. Hold on.

2 A. We saw other people, as I said, in Beni and in Bunia. There are cases which are in
3 the database.

4 PRESIDING JUDGE FREMR: [11:36:41] Ms Luping.

5 MS LUPING: [11:36:43] The witness has answered. I just wanted clarification from
6 Defence counsel. He's referred to the table, but indeed the witness had previously
7 referred to both the spreadsheet and the database so it wasn't clear to which table he was
8 referring.

9 PRESIDING JUDGE FREMR: [11:36:58] Noted.

10 MR GOSNELL: [11:36:59] Actually that's a question I wanted to come on to.

11 Q. [11:37:05] Madam Witness, is it possible that you relied in your 2004 report, and I
12 believe that you've said this in your direct testimony, that for that report you could have
13 relied in some cases on information that was in your database but that was not on the
14 Excel spreadsheet because you collected certain information after you stopped using the
15 Excel spreadsheet; is that correctly understood?

16 A. [11:37:33] I haven't understood.

17 Q. [11:37:35] Sorry, my question was probably complex. It's possible that certain
18 allegations in this report would be based on information that is not included in the Excel
19 table because you stopped using the Excel table in June or July 2003; is that correct?

20 A. [11:38:05] Yes. Not everything is in the Excel sheet.

21 Q. [11:38:13] But your report that is attached to the 20 June 2003 code cable does not
22 rely, does it, on any information that was gathered after you stopped using the Excel
23 spreadsheet; is that correct?

24 A. [11:38:39] I saw somewhere. Now I don't know in which report that the figure
25 that we had given, for example, Bambu, Kobu Bambu we said approximately 250 went up

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1 once we saw displaced persons in Beni and in Eringeti.

2 Q. [11:38:57] I'm not asking about that, Madam Witness. All I'm asking is whether
3 your report that is attached to 20 June 2003 code cable, 20 June 2003, that report is not
4 based on information that is not included in the Excel spreadsheet; is that correct?

5 A. [11:39:32] Yes.

6 Q. Now, I'd like to show you a document, which is DRC-OTP-0171-0434, it's tab 121.
7 And you were asked some questions by the Prosecution about a certain judicial official
8 who had been in Bunia and who left Bunia. And before I get to those questions, can you
9 tell us whether you recognise this document, have you seen it before, do you know what
10 it is?

11 A. [11:40:48] I don't recognise it.

12 Q. [11:40:51] Did you ever hear about a strategy for rapid re-establishment of a
13 criminal justice capacity being produced by any organ of MONUC in 2003?

14 A. [11:41:16] Yes, we had a section which dealt with justice, a rule of law section.

15 Q. [11:41:22] May we turn please to page 0436. According -- and this is about
16 halfway down the page, it says:

17 "According to those interviewed, no staff in Bunia have been paid salaries since" --

18 MR LAVIGNE: [11:41:48] Forgive me, Mr President. I'm not entirely clear on the
19 status of this document, but I think where this questioning may be going it might be
20 prudent to move into private session.

21 PRESIDING JUDGE FREMR: [11:42:00] Court officer.

22 THE COURT OFFICER: [11:42:02] The document is not being broadcasted outside of
23 the courtroom.

24 PRESIDING JUDGE FREMR: [11:42:08] All right then.

25 MR GOSNELL: [11:42:10] Mr President, just to be safe, may we go into private session.

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- 1 PRESIDING JUDGE FREMR: [11:42:13] Yeah, yeah, certainly.
- 2 Court officer, let's move into private session.
- 3 (Private session at 11.42 a.m.)
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25 (Open session at 12.22 p.m.)

1 THE COURT OFFICER: [12:22:16] We are in open session, Mr President.

2 PRESIDING JUDGE FREMR: [12:22:37] Thank you, court officer.

3 Ms Luping, please proceed.

4 MS LUPING: [12:22:40] Thank you, Mr President.

5 QUESTIONED BY MS LUPING:

6 Q. So Ms Bakar, I have four topics that I want to cover with you and the first topic

7 relates to questions put to you about names appearing in the spreadsheet.

8 Now, yesterday you were asked in cross-examination what you would do if you had

9 different names for the same person. And your response was that you would review the

10 table and try to eliminate duplications but did not change the table. And I refer to

11 yesterday's transcript T-192, page 95, line 25, to page 96, line 11.

12 You were then asked what you would do with the list of victims in your spreadsheet if

13 you received information about the same person but with different spellings. I refer to

14 transcript 192, lines -- yeah, page 95, line 25, to page 96, line 11 and, in particular, page 96,

15 lines 21 to page 97, line 1, when you responded and I quote, "That's indeed how we

16 corroborate information when you get it from various people."

17 Now, my question is this, Ms Bakar: Now, when talking about information or names of

18 people with - sorry, with the same person but with different spellings, when you said

19 that's how you corroborate information, when you get it from various people, first of all,

20 could you clarify what you meant by that?

21 A. [12:24:34] What I mean is that if several people gave us the same name of a victim

22 that would consolidate the fact that that victim existed. However, we would see

23 differences in spelling. Now, one can use the table, one can put it in alphabetical order,

24 for instance, and this would allow us to better identify duplications in names where there

25 was some repetition.

1 Q. [12:25:07] If you identified this repetition, so same person but different spelling,
2 what did you do then in terms of your list of victims that you said that you were keeping?
3 Would this person's -- the same person then appear a number of times in your list of
4 victims, or what would you do then (Overlapping speakers)?

5 A. [12:25:31] We would only count the person once.

6 Q. [12:25:37] Now, moving to my second topic, and that is in relation to the questions
7 put to you in cross-examination about the destroyed villages that you personally saw on
8 your way to and from Lipri, Kobu and Bambu, and back again on your way to Bunia.
9 You were referred in particular during cross-examination to paragraph 69 of the special
10 report on Ituri, and I'll refer to the ERN, that's DRC-OTP-0074-0422, and particularly at
11 page 0444. And as you may recall, from that report there are a number of villages
12 referred to in two footnotes, 31 and 32, first 15 villages and then eight villages.

13 And yesterday's transcript, that's T-192, page 113, line 23, to page 117, line 7, there was an
14 exchange of questions regarding what you personally saw, and it was finally put to you
15 whether or not you could say the villages that you saw had been destroyed in early 2003,
16 between February and March 2003, as is confirmed in the report you wrote, or whether, in
17 fact, it could have been destroyed earlier between 2000 and 2002.

18 Now, my question is this, Ms Bakar: Because when previously asked about the sources
19 of information about the destruction of these villages at this paragraph of your report, and
20 I refer Defence counsel to page 82, line 18, to page 83, line 3 of yesterday's transcript, you
21 stated that the information came from the witnesses that you met.

22 Now, when you said the information came from the witnesses that you met, and when
23 you talk about the destroyed villages in this paragraph that you were questioned about,
24 can you clarify that the witnesses informed you or not that the destruction of these
25 villages took place in early 2003? Otherwise, what was your source of information for

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1 the timing of that destruction that you included in your report?

2 A. [12:28:28] It was the victims who told us that the period was 2003, January to
3 March, in fact.

4 Q. [12:28:40] Now, after your personal mission to this area, to Lipri, Kobu and Bambu,
5 and when you saw destruction with your own eyes in this area, including in the
6 surrounding villages, did you learn whether there was any reconstruction or rebuilding
7 done in the area, including in Lipri or Bambu or Kobu?

8 A. [12:29:12] No, not at all. That wasn't reported to us. And what we saw did not
9 include any rebuilt buildings, at least not from the road. Rather they would complain
10 that nobody had come, no administrators, no policy makers in the province to assist.

11 Q. [12:29:54] Sorry, one moment. I'm just trying to have access to my transcript to
12 understand your response.

13 Now, you've stated it wasn't reported to you. Now, when you state "And what we saw
14 did not include any rebuilt buildings, at least ... from the road", first of all, just to clarify
15 that response, are you talking about what you saw with your own eyes when you went on
16 mission with the special investigation team?

17 A. [12:30:37] Yes, what I saw with my own eyes, but we didn't see all of the villages.
18 We were later given a list of all the villages which had been attacked.

19 Q. [12:30:52] And when you state "Rather they would complain that nobody had
20 come, no administrators, no policy makers in the province to assist", who is "they" and are
21 you referring to people you met during this mission in the field with the special
22 investigation team or not?

23 PRESIDING JUDGE FREMR: [12:31:10] Hold on, Madam Witness.
24 Mr Gosnell.

25 MR GOSNELL: [12:31:14] It is a very -- it may not be that consequential, but it is quite

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1 leading to, first of all, ask who is they and then give the answer.

2 PRESIDING JUDGE FREMR: [12:31:23] Ms Luping.

3 MS LUPING: [12:31:24] Just simply seeking to be directed, your Honours. I can
4 rephrase because the witness has already confirmed when she met people --

5 PRESIDING JUDGE FREMR: [12:31:29] Please do. Please do, rephrase.

6 MS LUPING: [12:31:32]

7 Q. [12:31:33] When you state that "Rather they would complain that nobody had
8 come, no administrators, no policy makers in the province to assist", can you clarify who
9 is "they" and what's the timing?

10 A. [12:31:50] The people that we'd seen in Bambu, the director of Kilo-Moto, and
11 somebody who we had seen at the hospital, who I don't remember, the people that we
12 saw in Kobu, and the witnesses and victims, or some of them, not all of them, that we had
13 seen in Lipri. People were very happy when they saw us because they were awaiting the
14 visit of the United Nations.

15 Q. [12:32:21] Now, again, just to be very clear for the record, you said "The people
16 that we had seen in Bambu ... the people we saw in Kobu, and ..." then again, the people
17 "we had seen in Lipri." Are you talking about the special investigation team when you
18 refer to "we"?

19 A. [12:32:42] Members of the special investigation team present during the mission.

20 Q. [12:32:50] And again, just for the sake of clarity, it -- as you've referred to Lipri,
21 Kobu and Bambu, presumably you're referring to the mission at the end of March and
22 through to early April 2003?

23 A. [12:33:15] Yes, we were there in April, 3 April I think.

24 Q. [12:33:24] Now, Ms Bakar, I'm going to turn to my fourth topic and it's my last
25 topic, but I'll be asking you a series of questions and this is in relation to a number of

1 video excerpts that you have been shown during your cross-examination by defence
2 counsel.

3 PRESIDING JUDGE FREMR: [12:33:40] Madam Luping, and please have in mind that
4 you have five minutes, so series of questions is up to you, of the most relevant.

5 MS LUPING: [12:33:49] Understood, Mr President. And I refer to
6 DRC-OTP-1033-0221. We're including at 16 -- the excerpt at 16.00 to 16.56 where you
7 said that you recognised the -- an individual. I'm now going to actually ask that we
8 move into private session for these series of questions.

9 Mr President, with your leave, could we move into private session please?

10 PRESIDING JUDGE FREMR: [12:34:21] For sure.

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

12 (Private session at 12.34 p.m.)

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- 13 (Upon resuming in open session at 2.32 p.m.)
- 14 THE COURT USHER: [14:32:49] All rise.
- 15 Please be seated.
- 16 PRESIDING JUDGE FREMR: [14:33:28] Good afternoon, everybody. Since I see many
- 17 changes compared to morning composition of the teams I will ask for update, starting
- 18 with Prosecution.
- 19 MS SIM: [14:33:57] Good afternoon, Mr President, good afternoon, your Honours. For
- 20 the Prosecution today are Eric Iverson, trial lawyer; Nicole Samson, senior trial lawyer;
- 21 Selam Yirgou, case manager; Janine Ensing, intern in the Prosecution division; and myself,
- 22 Kristy Sim, assistant trial lawyer.
- 23 PRESIDING JUDGE FREMR: [14:34:17] Thank you, Ms Sim.
- 24 Defence now.
- 25 MR GOSNELL: [14:34:19] Good afternoon, Mr President. I am now accompanied by

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1 Erik Cookson-Montin and Josué Iglesias. Thank you.
2 PRESIDING JUDGE FREMR: [14:34:27] Thank you, Mr Gosnell.
3 Legal Representatives of Victims, please.
4 MR ABDOU: [14:34:32] Good afternoon, Mr President, good afternoon, your Honours.
5 Mohamed Abdou for the former child soldiers.
6 MR SUPRUN: [14:34:41] (Interpretation) There is no change to this morning as regards
7 the victims of the attack, your Honour.
8 PRESIDING JUDGE FREMR: [14:34:52] Thank you, Mr Abdou. Thank you, Mr Suprun.
9 Mr Witness, on behalf of this Chamber, I would like to welcome you to the courtroom, but
10 before we start with your testimony, I recall for the parties that both shall have two hours
11 each for their respective examinations.
12 Further, the Chamber has taken note of the Defence notice of objections to the use or
13 admission of certain documents and, as usual, it will address any such objections if and
14 when they arise.
15 And now we can turn to the scheduled testimony.
16 Mr Witness, can you hear me?
17 WITNESS: DRC-OTP-P-0857
18 (The witness speaks Swahili)
19 THE WITNESS: [14:35:42] (Interpretation) Yes.
20 PRESIDING JUDGE FREMR: [14:35:43] Right. So, Mr Witness, you are called to testify
21 in the case against Mr Bosco Ntaganda. You will be soon asked questions both by the
22 Judges and lawyers here in the courtroom. In this connection, I would like to guide you
23 as follows:
24 Please listen carefully to those questions. If you do not understand, feel free to ask for
25 the question to be repeated. We want you to tell the truth and tell us what you saw,

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1 heard or sensed yourself. If you didn't see or hear it yourself, but you found out some
2 other way, then you should explain how.

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

6 THE WITNESS: [14:36:49] (Interpretation) Yes.

7 PRESIDING JUDGE FREMR: [14:36:50] Fine. Mr Witness, protective measures are put
8 in place to ensure that your identity is not revealed to the public. It means that the
9 public cannot see your face today and that your voice is being disguised so that the public
10 cannot recognise it. We will refer to you as "Mr Witness" only and ensure that your
11 name and any other information that risks revealing who you are is not broadcast to the
12 public. Therefore, whenever you need to describe anything that might reveal your
13 identity, we will do so in private session so that no one outside the courtroom can hear
14 your answer. Do you understand, Mr Witness?

15 THE WITNESS: [14:37:47] (Interpretation) Yes, I have understood.

16 PRESIDING JUDGE FREMR: [14:37:52] Good. Now, Mr Witness, you will be provided
17 with a piece of paper with the text of solemn undertaking. Please now make your
18 solemn undertaking to tell the truth by reading out the declaration you have in your
19 hands.

20 THE WITNESS: [14:38:14] (Interpretation) I solemnly declare that I shall tell the truth,
21 the whole truth and nothing but the truth.

22 PRESIDING JUDGE FREMR: [14:38:33] Thank you, Mr Witness.

23 You are now under oath, so you need to be aware that it is an offence within the
24 jurisdiction of this Court to give false testimony. Do you understand that?

25 THE WITNESS: [14:38:51] (Interpretation) Yes.

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1 PRESIDING JUDGE FREMR: [14:38:53] All right. And finally, few practical matters
2 you should have in mind when giving your testimony.
3 It's important to speak into the microphone, to speak clearly and to speak at a slow pace to
4 allow the interpreters to translate everything. You should only start speaking when the
5 person asking you the question has finished. When a question is asked, please do not
6 respond immediately but, rather, please count in your head to three and only then give
7 your answer. This pause is essential for us to properly hear, translate and record what
8 you are saying.

9 If you have any questions during your testimony, do not hesitate to let us know by raising
10 your hand. Have you understood all that, Mr Witness?

11 THE WITNESS: [14:39:59] (Interpretation) Yes, I have understood.

12 PRESIDING JUDGE FREMR: [14:40:04] Very well.

13 So now I am giving floor to Prosecution, namely to Ms Sim.

14 Ms Sim, you may proceed. And just to remind you that we are in open session.

15 QUESTIONED BY MS SIM:

16 Q. [14:40:34] Good afternoon, Mr Witness. We have met before, but I will remind you
17 that my name is Kristy Sim and I am going to be the one asking you questions today for
18 the Prosecution.

19 Mr President, as my first questions are identifying, could we please move into closed
20 session.

21 PRESIDING JUDGE FREMR: [14:40:53] For sure.

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

23 (Private session at 2.41 p.m.)

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Trial Hearing
WITNESS: DRC-OTP-P-0857

(Private Session)

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Trial Hearing
WITNESS: DRC-OTP-P-0857

(Private Session)

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Trial Hearing
WITNESS: DRC-OTP-P-0857

(Private Session)

ICC-01/04-02/06

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- 8 (Open session at 4.35 p.m.)
- 9 THE COURT OFFICER: [16:35:11] We are in open session, Mr President.
- 10 PRESIDING JUDGE FREMR: [16:35:16] Thank you, court officer.
- 11 Mr Witness, thank you very much for patiently responding all questions put to you today.
- 12 We will continue tomorrow morning at 9.30. And please have in mind that in the
- 13 meantime, till tomorrow, you must not discuss your testimony with anybody else. Do
- 14 you understand that?
- 15 THE WITNESS: [16:35:41] (Interpretation) Yes.
- 16 PRESIDING JUDGE FREMR: [16:35:45] We break and we will reconvene tomorrow,
- 17 9.30.
- 18 THE COURT USHER: [16:35:49] All rise.
- 19 (The hearing ends in open session at 4.35 p.m.)