

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 2
7 Thursday, 19 October 2017
8 (The hearing starts in open session at 9.30 a.m.)
9 THE COURT USHER: [9:30:16] All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE FREMR: [9:30:42] Good morning, everybody.
13 Court officer, please call the case.
14 THE COURT OFFICER: [9:30:58] 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: [9:31:13] Thank you, court officer.
19 Appearances, Prosecution first.
20 MS LUPING: [9:31:17] Good morning, Mr President. Good morning, your
21 Honours. There's no change in the Prosecution's composition this morning.
22 PRESIDING JUDGE FREMR: [9:31:25] Thank you, Ms Luping.
23 Defence, please.
24 MR GOSNELL: [9:31:28] Good morning, Mr President and your Honours. The
25 appearances for the Defence are the same as yesterday.

1 PRESIDING JUDGE FREMR: [9:31:34] And as to the Legal Representatives, I can
2 also note that the composition is the same like in the morning yesterday, not in the
3 afternoon, because we have Ms Pellet back.

4 Now, before we invite Mr Witness for the rest of his testimony, the Chamber was
5 informed that Mr Gosnell would like to address us.

6 Mr Gosnell, you have the floor.

7 MR GOSNELL: [9:31:56] Yes, Mr President, there are two -- I see my colleague is
8 on her feet. I'm not sure -- there were just two transcript issues from yesterday,
9 matters that were put to the witness as impeachment based on things that he had
10 previously said. Partly because I didn't react quickly enough, and partly because it
11 may not have been worth interrupting the flow of questions, I did not address them at
12 the time, but I would like the opportunity to do so now. Also so that that gives the
13 Prosecution an opportunity if they want to revisit these issues to do so.

14 The first issue arose at page 50 of yesterday's transcript 250, which is starting about
15 line 8, and the proposition was put to the witness that he had said that

16 Nembe Kpaddingo had gone to Tchankwanzi. And having gone back and checked
17 the transcript from page 21, line 22, also transcript 250, the witness actually answered
18 the question about this person Nembe as follows, quote:

19 "He lives in Lopa. Before the war erupted he was living in a Lendu village, and
20 when his father died he moved to his elder brother's place, who lived in Lopa. He
21 was a nurse. And he actually finished his military service before me. Before that he
22 was in the APC. We went to Tchankwanzi whilst he was already a soldier."

23 So I would submit, Mr President, it's ambiguous as to whether he did or did not go to
24 Tchankwanzi.

25 The second issue, which arose at page 64, line 5 concerned Maki Lokana. The

1 proposition that was put to the witness was, quote: "You said that you did not know
2 whether this person Maki Lokana is the person that you know."

3 What the witness is recorded as having said, in fact, at DRC-D18-0001-6264 at
4 page 6267, which is the proofing note was, and I quote:

5 (Interpretation) "The witness is specifying that he is not sure that it's the person he
6 knows."

7 (Speaks English) And there is a significant difference between something that you say
8 you know and something that you say you're not certain about.

9 Thank you, Mr President.

10 PRESIDING JUDGE FREMR: [9:34:46] Ms Luping, do you want to react?

11 MS LUPING: [9:34:48] Yes, on the first issue, the transcript reference, I may or may
12 not go back. It's open to counsel to go back in re-examination if he wishes. It was
13 certainly our interpretation that, or we understood that what he was saying is that
14 this individual Nembe Kpaddingo had gone to Tchankwanzi as well, that it was plural,
15 we; he and the witness and the others had gone to Tchankwanzi, even though he was
16 already a soldier. And I don't -- we may not need to go back on that ourselves.

17 The second point, I had in fairness read the French excerpt from the witness
18 preparation note directly to the witness. Whether or not I may at some point have
19 not put it precisely as in the witness preparation note or not, I'm not certain, I'll have
20 to go back and check. But certainly I did quote directly from the witness preparation
21 note and he had the opportunity to hear his own words and he confirmed that that is
22 what he said. Again, if Defence counsel wishes to go back on that in re-examination
23 they're free to do so.

24 PRESIDING JUDGE FREMR: [9:35:55] Thank you.

25 I believe that for the Chamber it's enough. It's no need to go back because I think we

Trial Hearing
WITNESS: DRC-D18-D-0038

(Open Session)

ICC-01/04-02/06

1 now have everything at our disposal and it's up to the Chamber to adjudicate to what
2 extent the proposition fully reflected the transcript or, or the note and it's up to us to
3 adjudicate whether it could have or not influence on his, on his response.

4 Now, Mr Gosnell, one point of organisation, I believe that you still don't have any
5 news as concerns the arrival of the next witness?

6 MR GOSNELL: [9:36:36] Mr President, I understand that an email is being sent or
7 has been sent or is on the verge of being sent which does provide a timeline or an
8 indication about the next witness. I can say that the arrival of the person is not
9 imminent.

10 PRESIDING JUDGE FREMR: [9:36:56] All right.

11 And the last issue before we invite the witness, I think it's fair to inform you that the
12 Chamber has been informed that there were some troubles with witness, I believe that
13 yesterday late afternoon, yesterday evening, that he even for some time he refused to
14 come today. We don't have -- we don't have -- and he insisted to leave the Court and
15 to return back home. It seems that in the morning now his mood again is fine.

16 But I would like to provide you with this caveat and please have it in mind, especially
17 it's for Ms Luping. Because, frankly saying, if he would refuse to complete his
18 testimony, you know that we have some legal tools and we can then try to compel
19 him to complete. But, frankly saying, I am not sure that they will, they will work.
20 So I think it's better to use really some approach that would avoid such a risk.

21 So Ms Luping, please have it in mind.

22 And now, court usher, we can invite Mr Witness to enter the courtroom.

23 (The witness enters the courtroom)

24 PRESIDING JUDGE FREMR: [9:39:28] Good morning, Mr Witness. Welcome
25 back. And, Mr Witness, usual question, are you feeling okay to complete your

Trial Hearing
WITNESS: DRC-D18-D-0038

(Open Session)

ICC-01/04-02/06

1 testimony today?

2 WITNESS: DRC-D18-D-0038 (On former oath)

3 (The witness speaks Swahili)

4 THE WITNESS: [9:39:50] (Interpretation) Yes.

5 PRESIDING JUDGE FREMR: [9:39:51] All right. I was informed that you had
6 some problems, but I would like to highlight that we are aware of the fact that the
7 testimony is sometimes very tiring experience. At the same time, I would like to
8 stress that it's very important for us to have testimony of witnesses who can
9 importantly assist us to find the truth. So I would like to ask you to remain patient
10 and I can also guarantee that we will complete your testimony this morning.

11 All right?

12 THE WITNESS: [9:40:34] (Interpretation) Yes.

13 PRESIDING JUDGE FREMR: [9:40:36] And as usually - too fast - as usually I have
14 to remind you, it's my legal duty to remind you that you are under oath, which means
15 that you have to speak truth and nothing but the truth. Do you understand?

16 THE WITNESS: [9:40:53] (Interpretation) Yes.

17 PRESIDING JUDGE FREMR: [9:40:55] Very well. And now I can give floor to
18 Ms Luping for the rest of cross-examination and, Ms Luping, you have still 1 hour 31,
19 if I am not wrong, minutes.

20 MS LUPING: [9:41:11] Thank you, Mr President.

21 QUESTIONED BY MS LUPING: (Continuing)

22 Q. [9:41:15] And good morning, Mr Witness.

23 Mr Witness, I'm just going to go back to the last part of your testimony yesterday and
24 we were talking about the peace committees. And I'm going to refer to your
25 testimony in examination-in-chief when Defence counsel was questioning you on the

1 first day, and that's transcript 249 at page 64, lines 21 to 24 and you were explaining
2 what General Kisémbó had told your group in Mandro. And I quote:

3 "And he said that it was all over with the committee, the committee was a matter of
4 the past and that henceforth we would be under military service."

5 Now, sir, my question is this: Isn't it right that the peace committees were no longer
6 responsible for the defence of the villages?

7 A. [9:42:26] When the FPLC occupied the region, the peace committees no longer
8 had the role to protect the population.

9 Q. [9:42:50] And it was the FPLC then, the UPC/FPLC who had that role instead;
10 is that correct?

11 A. [9:43:04] Yes.

12 Q. [9:43:07] And the peace committees had to rely on the FPLC/UPC for
13 protection?

14 A. [9:43:26] Could you please repeat the question?

15 Q. [9:43:35] The peace committees of the different villages, they would ask the
16 UPC/FPLC for help, for protection, when they needed to; is that right?

17 A. [9:43:54] They weren't asking for protection. When the UPC was controlling
18 Ituri there was no longer anything to be asked. It was actually their voluntary work.
19 They did not have to wait for people to come and ask for protection. It was their
20 duty to do so.

21 Q. [9:44:40] And the peace committees of the villages, they reported to the
22 UPC/FPLC hierarchy?

23 A. [9:45:06] What relation, what report are you talking about?

24 Q. [9:45:16] Well, perhaps you could explain just so it's clearer, you explained
25 yesterday that the peace committees were mediators or facilitators, that was a

1 relationship they had with the UPC/FPLC. Just to understand, is it correct that they
2 reported to the UPC/FPLC?

3 A. [9:45:45] Perhaps the question is not properly worded. The FPLC was the
4 armed branch of UPC. The peace committee were not part of the army. There was
5 no reporting at all to the military structure. Perhaps I haven't understood the
6 question, but since the peace committees were not part of the armed branch, they
7 weren't reporting to the military structure. It was basically -- it was a non-armed,
8 non-military setup.

9 Q. [9:46:50] Did the peace committees in their role as mediators or facilitators, did
10 they communicate however, would they have communicated with the FPLC in that
11 role?

12 A. [9:47:06] You see, the peace committees were an old structure before the UPC
13 occupied Ituri. Once Ituri was occupied the peace committees were transformed.
14 You had a purely political structure of the UPC branch. I forgot how it was called.
15 They were working with the politicians and not the army. In fact, the FPLC was the
16 armed branch of the UPC and it's UPC that controlled the entire structure. This
17 peace committee weren't reporting to FPLC. The FPLC wasn't reporting to the peace
18 committees either.

19 MS LUPING: [9:48:35] Mr President, for my next question I would ask that we
20 please move into private session as it may identify the witness.

21 PRESIDING JUDGE FREMR: [9:48:43] Certainly.

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

23 (Private session at 9.48 a.m.)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1

2

3

4

5

6

7

8

9

10

11

12

13 Page redacted – Private session

14

15

16

17

18

19

20

21

22

23

24

25

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1

2

3

4

5

6

7

8

9

10

11

12

13 Page redacted – Private session

14

15

16

17

18

19

20

21

22

23

24

25

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1

2

3

4

5

6

7

8

9

10

11

12

13 Page redacted – Private session

14

15

16

17

18

19

20

21

22

23

24

25

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1

2

3

4

5

6

7

8

9

10

11

12

13 Page redacted – Private session

14

15

16

17

18

19

20

21

22

23

24

25

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1

2

3

4

5

6

7

8

9

10

11

12

13 Page redacted – Private session

14

15

16

17

18

19

20

21

22

23

24

25

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1

2

3

4

5

6

7

8

9

10

11

12

13 Page redacted – Private session

14

15

16

17

18

19

20

21

22

23

24

25

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1

2

3

4

5

6

7

8

9

10

11

12

13 Page redacted – Private session

14

15

16

17

18

19

20

21

22

23

24

25

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1

2

3

4

5

6

7

8

9

10

11

12

13 Page redacted – Private session

14

15

16

17

18

19

20

21

22

23

24

25

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1

2

3

4

5

6

7

8

9

10

11

12

13 Page redacted – Private session

14

15

16

17

18

19

20

21

22

23

24

25

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1

2

3

4

5

6

7

8

9

10

11

12

13 Page redacted – Private session

14

15

16

17

18

19

20

21

22

23

24

25

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1

2

3

4

5

6

7

8

9

10

11

12

13 Page redacted – Private session

14

15

16

17

18

19

20

21

22

23

24

25

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1

2

3

4

5

6

7

8

9

10

11

12

13 Page redacted – Private session

14

15

16

17

18

19

20

21

22

23

24

25

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1

2

3

4

5

6

7

8

9

10

11

12

13 Page redacted – Private session

14

15

16

17

18

19

20

21

22

23

24

25

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1

2

3

4

5

6

7

8

9

10

11

12

13 Page redacted – Private session

14

15

16

17

18

19

20

21

22

23

24

25

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1

2

3

4

5

6

7

8

9

10

11

12

13 Page redacted – Private session

14

15

16

17

18

19

20

21

22

23

24

25

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1

2

3

4

5

6

7

8

9

10

11

12

13 Page redacted – Private session

14

15

16

17

18

19

20

21

22

23

24

25

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1

2

3

4

5

6

7

8

9

10

11

12

13 Page redacted – Private session

14

15

16

17

18

19

20

21

22

23

24

25

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1

2

3

4

5

6

7

8

9

10

11

12

13 Page redacted – Private session

14

15

16

17

18

19

20

21

22

23

24

25

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

- 1 (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 (Open session at 10.46 a.m.)
- 16 THE COURT OFFICER: [10:46:58] We're in open session, Mr President.
- 17 PRESIDING JUDGE FREMR: [10:47:00] Thank you, court officer.
- 18 Ms Luping, please proceed.
- 19 MS LUPING: [10:47:06]
- 20 Q. [10:47:06] Now, Mr Witness, you described how not long after a massacre at
- 21 Drodro the FPLC took over Bunia in May 2003; isn't that right?
- 22 A. [10:47:30] Yes, it was in 2003. But I can't give you any additional information
- 23 on the date, but I know it was in 2003.
- 24 THE INTERPRETER: [10:47:47] The Swahili booth is requesting the witness to
- 25 speak louder.

Trial Hearing
WITNESS: DRC-D18-D-0038

(Open Session)

ICC-01/04-02/06

1 PRESIDING JUDGE FREMR: [10:47:53] Mr Witness, there is a message from the
2 interpreters whether you could speak a bit louder. All right?

3 MS LUPING: [10:48:01]

4 Q. [10:48:02] Now, many people were killed in Drodoro; isn't that correct?

5 A. [10:48:10] Yes.

6 Q. [10:48:19] And it was the Lendu who killed these Hema victims; is that right?

7 A. [10:48:37] Yes.

8 Q. [10:48:41] And even small children were killed; is that correct, sir?

9 A. [10:48:55] Yes.

10 Q. [10:48:57] In fact, there are some reports that up to 408 people were killed
11 during that attack; is that correct?

12 A. [10:49:14] I can't give you the exact figure with respect to the number of people
13 who were killed.

14 Q. [10:49:22] There would have been some who would have been angry against
15 the Lendu for this very large killing, isn't that correct, sir?

16 A. [10:49:39] Is that a question or a statement?

17 Q. [10:50:08] It's a question for you, sir.

18 A. [10:50:22] Well, interpretation is taking time to reach me. If anyone, if
19 someone, in fact, loses kith and kin, the person is going to be very sad. He'd be
20 remembering the times they spent together, they were living together.

21 Q. [10:50:49] And isn't it correct that some may also be angry, sir?

22 A. [10:50:57] Could you rephrase your question, please?

23 Q. [10:51:18] Isn't it correct that some who may have lost their loved ones may
24 have been angry?

25 A. [10:51:42] I have already answered this question. Someone who loses a loved

1 one, a member of his family, he will be deeply sad. If you lose your child, you
2 definitely would be deeply moved. It's something natural.

3 Q. [10:52:05] Now, on the first day of your testimony, sir, you stated, that's at
4 transcript 249, page 102, line 7, to page 103, line 2, that the pillaging was by the Lendu
5 in Bunia and not the FPLC soldiers. This is the Bunia operation of 2003.

6 Is that correct, that that was your testimony, that there was no pillaging done by any
7 FPLC soldiers in Bunia during the takeover of Bunia in May 2003?

8 A. [10:52:46] Could you ask your question once again.

9 Q. [10:53:13] Well, I'm just going to refer first to your prior testimony and then
10 I'm going to ask my question. You previously stated, and I provided the transcript
11 references, that during the takeover of Bunia by the FPLC, and that was in May 2003,
12 your testimony was that it was the Lendu who were pillaging in the town and not the
13 FPLC.

14 Now, my first question is this, sir, isn't it correct that the reality is the FPLC soldiers
15 were in fact given orders to pillage, to kill when they entered Bunia during that
16 operation? Isn't that the truth, sir?

17 A. [10:54:09] You haven't asked your question properly. You said that the UPC
18 soldiers were ordered to pillage and you also said that I would have said that the
19 Lendu commanders who did the pillaging, so your question obviously is not very
20 well, not very well worded. Could you please rephrase it.

21 Q. [10:54:38] You were involved in the operation in Bunia; is that correct, sir?

22 A. [10:54:49] Yes.

23 Q. [10:54:50] Isn't it correct that you and your forces received orders to pillage
24 and to kill the enemies in Bunia?

25 A. [10:55:08] Who gave us those orders? What time? When? We don't get

Trial Hearing
WITNESS: DRC-D18-D-0038

(Open Session)

ICC-01/04-02/06

1 orders like: Go and kill people. Which army are you talking about? This is a
2 statement that I never did. You have just made it up right now.

3 Q. [10:55:33] I'm going to read to you, sir, an extract from a UN MONUC report
4 dated 13 May 2003. It's DRC-OTP-2078-0285. I'm simply going to read one part of
5 it to you and then I'm going to ask you for your comments.

6 "It is worth mentioning the UPC elements have embarked in widespread looting in
7 the town, notably at the market, where all shops have been systematically pillaged".
8 End of quote.

9 Now, sir, were you aware of these reports that UPC were also engaged in pillaging in
10 Bunia during this operation?

11 PRESIDING JUDGE FREMR: [10:56:40] Hold on, Mr Witness. And please take
12 off your headphones.

13 MR GOSNELL: [10:56:45] Mr President, it won't be a substantive objection.

14 PRESIDING JUDGE FREMR: [10:56:51] All right. So go ahead.

15 MR GOSNELL: [10:56:52] May I have a tab number and a page number? Neither
16 has been provided.

17 PRESIDING JUDGE FREMR: [10:56:56] Ms Luping, please.

18 MS LUPING: [10:56:58] The page number, and I apologise for that, is page 286,
19 and it is at tab 58.

20 PRESIDING JUDGE FREMR: [10:57:19] And in the meantime, because Ms Luping
21 is referring to MONUC report, Mr Witness, do you know what MONUC was?
22 Mr Witness, I'm asking you, because Ms Luping is referring to MONUC report,
23 whether you know what MONUC was, what kind of organisation?

24 THE WITNESS: [10:57:57] (Interpretation) Yes, I've heard of MONUC, but I don't
25 know this organisation very well.

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1 PRESIDING JUDGE FREMR: [10:58:15] All right.

2 Ms Luping, please proceed.

3 MS LUPING: [10:58:17]

4 Q. And just to repeat my question, I read to you the extract.

5 Now, you would have heard of those allegations, isn't that right, sir? You were still
6 a company commander at this stage? You would have heard allegations of UPC
7 pillaging in the market?

8 PRESIDING JUDGE FREMR: [10:58:38] Hold on, Mr Witness.

9 MR GOSNELL: [10:58:40] Again not a substantive objection, but I would request a
10 page and line reference for the assertion that was just made about his position.

11 PRESIDING JUDGE FREMR: [10:58:52] Ms Luping.

12 MS LUPING: [10:58:54] I can ask the witness to clarify.

13 Q. [10:58:55] Were you still a company commander, sir, when you were involved
14 in the operation in Bunia?

15 PRESIDING JUDGE FREMR: [10:59:09] We are in private session, so let's move
16 into -- in open session. Let's move into private session at least for this response.

17 MS LUPING: [10:59:35] Whilst we're doing that, Mr President, if I could ask the
18 court usher to provide this document to save time.

19 (Private session at 10.59 a.m.)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1

2

3

4

5

6

7

8

9

10

11

12

13 Page redacted – Private session

14

15

16

17

18

19

20

21

22

23

24

25

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1

2

3

4

5

6

7

8

9

10

11

12

13 Page redacted – Private session

14

15

16

17

18

19

20

21

22

23

24

25

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1

2

3

4

5

6

7

8

9

10

11

12

13 Page redacted – Private session

14

15

16

17

18

19

20

21

22

23

24

25

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1

2

3

4

5

6

7

8

9

10

11

12

13 Page redacted – Private session

14

15

16

17

18

19

20

21

22

23

24

25

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1

2

3

4

5

6

7

8

9

10

11

12

13 Page redacted – Private session

14

15

16

17

18

19

20

21

22

23

24

25

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1

2

3

4

5

6

7

8

9

10

11

12

13 Page redacted – Private session

14

15

16

17

18

19

20

21

22

23

24

25

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1

2

3

4

5

6

7

8

9

10

11

12

13 Page redacted – Private session

14

15

16

17

18

19

20

21

22

23

24

25

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1

2

3

4

5

6

7

8

9

10

11

12

13 Page redacted – Private session

14

15

16

17

18

19

20

21

22

23

24

25

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1

2

3

4

5

6

7

8

9

10

11

12

13 Page redacted – Private session

14

15

16

17

18

19

20

21

22

23

24

25

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1 (Redacted)
2 (Redacted)
3 (Redacted)
4 (Redacted)
5 (Redacted)
6 (Redacted)
7 (Redacted)
8 (Redacted)
9 (Redacted)
10 (Redacted)
11 (Redacted)
12 (Redacted)
13 (Redacted)
14 (Open session at 11.27 a.m.)
15 THE COURT OFFICER: [11:27:58] We're in open session, Mr President.
16 PRESIDING JUDGE FREMR: [11:28:02] Thank you, court officer.
17 Mr Gosnell, please proceed.
18 MR GOSNELL: [11:28:05]
19 Q. [11:28:07] Sir, you've been asked a number of questions about the killing of the
20 chief of Risasi. Can you describe briefly the nature of the attack on Risasi in which
21 he was beheaded?
22 A. [11:28:27] Even if I wasn't present at the time the events occurred, Risasi is a
23 village which borders another Lendu village and the attackers came from a
24 groupement close to Risasi. They went through Bodi and they came straight
25 through and from there there's a path that goes towards there. They came on that

Trial Hearing
WITNESS: DRC-D18-D-0038

(Open Session)

ICC-01/04-02/06

1 path. His house is next to the path and they found him there.

2 Q. [11:29:40] Did this incident occur after the UPC had taken control of Ituri?

3 A. [11:30:00] Yes. The UPC had already taken control of Ituri. But such
4 regrettable events occurred everywhere -- or occur everywhere where there are
5 human beings.

6 MR GOSNELL: [11:30:24] One last question, Mr President. And for this I will
7 need DRC-OTP-0141-009 -- excuse me, 0009. That's Prosecution tab 35. And if we
8 could turn please to page 0111.

9 Q. [11:31:14] Now, sir, the page that's coming up in front of you was shown to
10 you during your testimony by the Prosecution.

11 If we could zoom in a little bit, please.

12 And your attention was drawn to item number 53. I would like to scroll down,
13 please, to item 99.

14 Sir, do you see the name Salex Comando?

15 A. [11:31:58] On my screen this name does not appear.

16 MR GOSNELL: [11:32:04] Could we ensure that we are on channel 2, evidence 2
17 for the witness?

18 PRESIDING JUDGE FREMR: [11:32:09] Court usher, please assist.

19 MR GOSNELL: [11:32:12] I'm sorry, it should be evidence 1.

20 PRESIDING JUDGE FREMR: [11:32:15] Evidence 1, yeah, channel.

21 MR GOSNELL: [11:32:35]

22 Q. [11:32:35] Sir, it's number 99.

23 A. [11:32:49] Yes, I see Salex Comando.

24 Q. Have you ever met anyone or have you ever heard of anyone named
25 Salex Comando?

Trial Hearing
WITNESS: DRC-D18-D-0038

(Open Session)

ICC-01/04-02/06

1 PRESIDING JUDGE FREMR: [11:33:03] Hold on, Mr Witness.

2 Ms Luping.

3 MS LUPING: [11:33:05] Mr President, if I could ask that the Witness remove his
4 headphones for a moment.

5 PRESIDING JUDGE FREMR: [11:33:11] Mr Witness, yes.

6 Ms Luping.

7 MS LUPING: [11:33:13] Mr President, I have during cross-examination not asked
8 any questions relating to this individual. I do not see how this arises from the
9 cross-examination and I would object to this question as not being an appropriate
10 question for re-examination.

11 PRESIDING JUDGE FREMR: [11:33:30] Mr Gosnell.

12 MR GOSNELL: [11:33:30] Has to do, Mr President, with the reliability of the list.
13 And I can tell your Honour the question I'm going to ask him, if you wish.

14 PRESIDING JUDGE FREMR: [11:33:38] Because I believe that Mr Witness can't
15 hear it, so please.

16 MR GOSNELL: [11:33:42] The question that I will ask is whether he has in his life
17 ever met anyone named Salex.

18 PRESIDING JUDGE FREMR: [11:33:50] I think it's not a big point. Please go
19 ahead.

20 Mr Witness.

21 Mr Gosnell, please.

22 MR GOSNELL: [11:34:03]

23 Q. [11:34:03] Sir, in your life have you ever met anyone named Salex?

24 A. [11:34:13] I'm sorry, could you repeat the question? You were asking in my
25 whole life?

Trial Hearing
WITNESS: DRC-D18-D-0038

(Open Session)

ICC-01/04-02/06

1 Q. [11:34:37] Have you ever heard of someone named Salex in your entire life?

2 A. [11:34:59] Salex? I have never heard such a name where we live. Maybe

3 Alex. You do have people called Alex where I'm from. Names like Salex in our

4 area don't exist.

5 Q. [11:35:21] Thank you very much, sir, for your patience.

6 MR GOSNELL: [11:35:26] Thank you, Mr President.

7 PRESIDING JUDGE FREMR: [11:35:27] Ms Luping, any request for re-cross?

8 MS LUPING: [11:35:30] No, Mr President. No questions.

9 PRESIDING JUDGE FREMR: [11:35:32] Very well. So let's move into open
10 session -- we are in open session. Fine.

11 So, Mr Witness, it concludes your testimony. I would like on behalf of the whole
12 Chamber to thank you. I know it was a tiring experience, but we believe that your
13 testimony could assist us in our effort to find the truth. So I thank you very much
14 and we wish you safe journey home.

15 And now, court usher, you may escort Mr Witness out of the courtroom.

16 (The witness is excused)

17 PRESIDING JUDGE FREMR: [11:36:15] Mr Gosnell.

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-D18-D-0038

(Open Session)

ICC-01/04-02/06

1 (Redacted)

2 (Redacted)

3 PRESIDING JUDGE FREMR: [11:36:58] All right. And the last point, unless there
4 are requests for the floor, which I would like to deal with very briefly.

5 Yes, and we will have to redact the last submission made by Mr Gosnell.

6 But otherwise we can remain in open session and I would like to deal with the recent
7 information we got in fact from Defence because before we adjourn we got via email
8 sent at 10.09 update from Defence concerning the appearance of Witness D-17. The
9 Defence indicates that due to the events beyond its control, it has been unable to
10 complete the review of evidence that can be provided by Witness D-17 and that in
11 these circumstances it is not possible to hand him over to VWU on Friday, 20 October
12 as initially planned. In view of this situation, the Defence requests leave to postpone
13 the testimony of Witness D-17 to the fifth evidentiary block.

14 Before the Chamber -- yes. So before we, before we deliberate on that, I would like
15 to hear from Prosecution and Legal Representatives their position.

16 Ms Samson.

17 MS SAMSON: [11:38:45] Thank you, Mr President. First, the Prosecution notes
18 that D-17 was intended to be called during the first evidentiary block and so the delay
19 in taking whatever necessary information it needed to take from the witness on the
20 side of the Defence is certainly surprising.

21 Secondly, the Defence has not indicated whether or not it could seek to call the
22 witness via video link and hand him over to the Victims and Witnesses Unit several
23 days after 20 October, given that this current evidence block doesn't end until
24 10 November.

25 And so it appears at first blush, having just read the email ourselves at the same time

Trial Hearing
WITNESS: DRC-D18-D-0038

(Open Session)

ICC-01/04-02/06

1 as the Chamber, that there are unexplored possibilities that may allow the witness to
2 be heard during this evidence block so as not to find ourselves in a situation where
3 we have one witness appearing in a four-week block.

4 PRESIDING JUDGE FREMR: [11:39:57] Sorry to interrupt you, because I forgot
5 also to quote one important part of the email announcing that Defence also informs
6 the Chamber that witness D-214 currently scheduled to testify in the fifth block will
7 not be called to testify and provides a witness list for the fifth block.

8 Sorry to interrupt you. Please proceed, Ms Samson.

9 MS SAMSON: [11:40:20] Thank you, Mr President. So in summary, the
10 Prosecution submits that the Chamber may seek additional information from the
11 Defence as to why October 20 needs to be the handover date and not a week later,
12 given that we still are sitting until 10 November. And why, if any travel is going to
13 be difficult, video link wouldn't be an option?

14 So those are the preliminary comments that the Prosecution can provide at this time.
15 But we certainly would seek to have a witness come this block, preferably D-17 since
16 that's the witness we've prepared. Thank you.

17 PRESIDING JUDGE FREMR: [11:40:59] Thank you, Ms Samson.

18 Legal Representatives of the victims, do you want also to comment that?

19 MS PELLET: [11:41:07] (Interpretation) Thank you, your Honour. Quite simply
20 I would like to subscribe to the position of the Prosecution and say that the list made
21 by the Defence change -- or are changing every two days and we prepare in
22 accordance with the list. Without more information it's difficult to make further
23 comment, but I would just like to express to the Chamber that we work with these
24 repeated changes and they're sent to us as well. Thank you, your Honour.

25 PRESIDING JUDGE FREMR: [11:41:52] Mr Suprun?

Trial Hearing
WITNESS: DRC-D18-D-0038

(Open Session)

ICC-01/04-02/06

1 MR SUPRUN: [11:41:54] (Interpretation) I don't have a submission to make on
2 this issue, your Honour.

3 PRESIDING JUDGE FREMR: [11:41:59] All right.

4 And, Mr Gosnell, do you want to respond to submissions made by Ms Pellet and
5 Ms Samson?

6 MR GOSNELL: [11:42:06] Mr President, I'm not sure that I'm in a position to add
7 anything to what has been conveyed in the email. Thank you.

8 PRESIDING JUDGE FREMR: [11:42:13] So it's my opinion that we will probably
9 need some further information which will allow us to decide, so we will not react
10 immediately. But as soon we will be provided with further information, then we
11 will decide and inform you in due course.

12 Are there any further requests for the floor? I don't see that is the case. So again
13 I would like to thank court reporters, interpreters and court officers that they had
14 again to spend with us more than two hours which is a normal duration of the session.
15 Thank you very much.

16 At the moment we adjourn. At the moment, as you can understand, it's not clear
17 whether we will meet still within the time planned for this evidentiary block or at the
18 time planned for the next block. Anyway, thank you very much and we, at the
19 moment we adjourn.

20 THE COURT USHER: [11:43:13] All rise.

21 (The hearing ends in open session at 11.43 a.m.)