

1 International Criminal Court

2 Trial Chamber VI - Courtroom 2

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

7 Tuesday, 10 November 2015

8 (The hearing starts in open session at 9.34 a.m.)

9 THE COURT USHER: All rise.

10 The International Criminal Court is now in session.

11 Please be seated.

12 PRESIDING JUDGE FREMR: Good morning everybody.

13 Court officer, please call the case.

14 THE COURT OFFICER: Good morning. We are -- the Court is sitting in the

15 situation of the Democratic Republic of Congo in the case of The Prosecutor versus

16 Bosco Ntaganda.

17 PRESIDING JUDGE FREMR: Thank you.

18 Now appearances, as they are usually, starting with Prosecution.

19 MS SAMSON: Good morning, Mr President, and your Honours. Appearing for

20 the Prosecution today are Ms Kristy Sim and Mr James Pace, both assistant trial

21 lawyers; Ms Claudine Umurungi, legal assistant; Ms Selam Yirgou, case manager; and

22 myself, Nicole Samson, senior trial lawyer.

23 PRESIDING JUDGE FREMR: Thank you, Ms Samson.

24 Defence now.

25 MR BOURGON: Good morning, your Honour. Good morning, your Honours, and

1 all the people present in the courtroom this morning. Representing Bosco Ntaganda
2 this morning who is present, Maître St-Michel as well as myself, Stéphane Bourgon.
3 Thank you very much, your Honour.

4 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

5 Now Legal Representatives of Victims please.

6 MS PELLET: (Interpretation) Thank you very much, your Honour. The former
7 child soldiers are represented by myself, Sarah Pellet, counsel of the Office of Public
8 Counsel for Victims.

9 MR SUPRUN: (Interpretation) Good morning, your Honour, your Honours. The
10 victims of the attacks are represented by myself, Dmytro Suprun, counsel with the
11 Office of Public Counsel for Victims.

12 PRESIDING JUDGE FREMR: Thank you, Ms Pellet. Thank you, Mr Suprun.

13 Before we commence the testimony of the next witness, I will be addressing a couple
14 of procedural matters.

15 First, the Chamber would like to put on the record the fact that by way of email on
16 Friday, 6 November, the Defence requested a one-day postponement of the testimony
17 of Witness P-10 from Monday, 9 November 2015 to today, 10 November. The
18 Defence based its request on recent changes to schedule which have impacted internal
19 Defence preparations and the volume of disclosure.

20 Defence also noted that the postponement would be unlikely to impact the schedule
21 for the remainder of this evidentiary block.

22 The Prosecution responded by way of email on Friday afternoon indicating that it did
23 not oppose the request. The Chamber saw the views of the VWU, which were
24 provided by way of email that same day.

25 The VWU noted, amongst other things, the potential destabilizing impact of the

1 changes in schedule relating this witness's testimony.

2 Having considered all relevant factors, the Chamber granted the request by way of

3 email on Friday evening. In particular, the Chamber considered that VWU's

4 submissions, including that relevant support would be provided to the witness in

5 connection with the proposed change, the uncertainty which the parties had faced in

6 the preceding two days and the likely impact on scheduling, which I will return to in

7 a moment.

8 The Chamber does, however, recall that the parties had been given clear notice by the

9 Chamber on the morning of Wednesday, 4 November to be prepared for the

10 possibility of starting Witness P-10's testimony the following Monday and, therefore,

11 the granting of this request should be considered exceptional.

12 I would like to go briefly into private session now to address certain scheduling

13 matters, so court officer please.

14 (Private session at 9.38 a.m.) *(Reclassified partially in public)

15 THE COURT OFFICER: We are in private session, your Honour.

16 PRESIDING JUDGE FREMR: Thank you.

17 As indicated by the Chamber by way of email on Thursday, 5 November, we were

18 informed by the VWU that Witness (Redacted) would not be in a position to start

19 testifying on Friday

20 (Redacted)

21 (Redacted) We do not have further information at this time but understand that

22 VWU is continuing to seek to contact the witness with a view to obtaining greater

23 clarity.

24 For the time being, the Chamber does not intend to take any further action and directs

25 the VWU and Prosecution to provide an update to the Chamber, Defence and legal

1 representatives regarding the status of (Redacted) in due course.

2 The Chamber's intention is, therefore, to continue this evidentiary block with the
3 evidence of Witness P-10, followed by Witness P-859.

4 Any questions or observation on that issue, Prosecution?

5 MS SAMSON: No, your Honour. Thank you.

6 PRESIDING JUDGE FREMR: Defence?

7 MR BOURGON: Yes, Mr President. One quick observation: Everything that was
8 just mentioned by the Chamber is well noted and appreciated; however, in relation to
9 Witness (Redacted), the Defence believes it is important for us to receive what the
10 Chamber said it would provide to the Defence concerning its meeting with the
11 witness alone, which took place when the witness first appeared before the Chamber.
12 We believe, Mr President, that the contents of this meeting between the Chamber and
13 witness is something that we really need to have the contents thereof. The
14 Chamber's already indicated that it is willing to provide some part, and I would like
15 to have this disclosure, if I can use this word, regardless of the status for the witness,
16 whether he will or will not come in, in the near future. Thank you, Mr President.

17 PRESIDING JUDGE FREMR: Well noted. And the Chamber will proceed as we
18 have already indicated.

19 Next, the Chamber would like to commend the parties and participants for their
20 flexibility in dealing with the changes in scheduling during this block; however, just
21 as a gentle reminder, the Chamber draws your attention to the procedure set out in
22 the conduct of proceedings decision regarding items to be used during witness
23 testimony.

24 In particular, the Chamber notes that the Defence provided a list of items for potential
25 use during cross-examination of Witness P-106 only at 9.03 p.m. the night prior to its

1 cross-examination of this witness. The Chamber had eCourt access to only two
2 items on the list.

3 And I forgot now, I think nothing prevents us from returning back to the open session;
4 so court officer, please return back into open session.

5 (Open session at 9.42 a.m.)

6 THE COURT OFFICER: We are in open session, your Honour.

7 PRESIDING JUDGE FREMR: Thank you.

8 So I will proceed. In addition, the Prosecution sent to the Chamber its list of items to
9 be used during Witness P-10 only on Friday. As per the conduct of proceedings
10 decision, such list needs to be provided no later than five days prior to start of the
11 witness testimony.

12 While the Chamber is aware of the difficulties posed by scheduling during this block,
13 we request the parties to please be mindful of the provisions of paragraphs 32 and 33
14 of our decision on the conduct of proceedings for all future witnesses in order to
15 assist the Chamber and other parties and participants in preparations.

16 Next, the Chamber notes that according to the emails from the Defence received on 6
17 November, Defence objects to certain of documents the Prosecution may be using
18 with this witness. The Chamber considers that in this case these objections can be
19 best addressed if and when they arise throughout the course in the
20 examination-in-chief.

21 Are there any comments on that, Prosecution?

22 MS SAMSON: No, your Honour. That's acceptable to us. Thank you.

23 PRESIDING JUDGE FREMR: Defence?

24 MR BOURGON: Thank you, Mr President. It is acceptable to us, subject to one
25 preliminary objection I would like to make in respect of Witness P-10. I informed the

1 Chamber's legal officer earlier on this morning it is not something that is related to
2 this -- to the list of exhibits that the Prosecution intends to use, but it is an important
3 objection, which we believe should be made at the outset of the testimony of
4 Witness P-10.

5 Thank you, Mr President.

6 PRESIDING JUDGE FREMR: Okay. Then the next matter I will turn to is the
7 request by the legal representative of the former child soldiers to question this witness,
8 which was filed on 5 November 2015.

9 Again, as per the conduct of proceedings decision after the Prosecution's
10 examination-in-chief is completed, I shall ask Ms Pellet if she maintains her
11 application to question this witness and, if so, in relation to which topics. We can
12 then deal with any objections arising regarding this request. Are there any further
13 comments on this for now; noting we are in open session, especially legal
14 representatives?

15 MS PELLET: No, your Honour. I note that I will inform you afterwards.

16 PRESIDING JUDGE FREMR: All right. The Chamber further notes that on
17 10 August 2015, the Chamber ordered that the same protective measures with respect
18 to this witness as those ordered by Trial Chamber I in the Lubanga case would apply,
19 namely image and voice distortion, as well as the use of pseudonym during
20 testimony.

21 These measures were not objected to by the Defence, and the VWU maintains its
22 recommendation in this regard.

23 The Chamber confirms that these protective measures will be in use throughout the
24 witness's testimony.

25 The Chamber notes, in addition, that on 4 November 2015, the Prosecution made an

1 application pursuant to Rule 88 of the Rules for certain special measures for the
2 witness; namely, that the Chamber grant shielding from the accused as a special
3 measure to facilitate Witness P-10's testimony and the presence of a support person
4 from the VWU during her testimony. This request was supported by the legal
5 representative and was not opposed by the Defence.

6 As you are aware from the Chamber's email on Friday evening, the Chamber granted
7 this request. In doing so, the Chamber considered that in addition to the protective
8 measures it had previously ordered, the special measures requested by the
9 Prosecution were necessary in light of the particular vulnerability of this witness and
10 would, indeed, facilitate her testimony. The Chamber notes that such measures
11 were also ordered in the Lubanga case.

12 Therefore, today we'll manage things a little differently than usually; you will notice
13 that the accused is sitting in a different seat today so that he can't see the witness
14 when the curtain is drawn.

15 I shall also be requesting Mr Ntaganda to be escorted from the courtroom before I
16 request the witness to be brought in, and he will return after she has taken her seat.
17 The VWU support assistant will be present next to the witness at all times.

18 We will go into private session now for the next matter, so, court officer, please
19 change the mode.

20 (Private session at 9.48 a.m.) *(Reclassified partially in public)

21 THE COURT OFFICER: We're in private session, your Honour.

22 PRESIDING JUDGE FREMR: Thank you.

23 As you all are aware, the VWU also made recommendations with respect to special
24 measures under Rule 88 having conducted a vulnerability assessment of the witness
25 as per the protocol of vulnerable witnesses. The first recommended measure was

1 that the witness should testify via video link from the seat of the Court. As you are
2 aware, the Chamber informed you via email on Friday evening that this measure
3 would not be granted. The Chamber noted that the Prosecution, Defence and Legal
4 Representative all opposed this measure, and we considered that the testimony in
5 person, to the extent possible, would better serve the interest of justice as well as the
6 ability of the parties to appropriately modify their questioning as may be necessary.
7 However, the Chamber will closely monitor the witness' demeanour and well-being,
8 and should the Chamber finds it appropriate at any point during her testimony, it
9 may direct the use of video link, which can be set up at short notice.

10 The Chamber notes that the rest of the special measures recommended by the VWU
11 were generally not opposed, therefore, the Chamber orders the following additional
12 special measures and requests the parties and participants to take them into account
13 when conducting their questioning:

14 First, that the Swahili-speaking familial support assistant be able to sit next to the
15 witness in the witness box, which the Chamber has already ordered as part of the
16 Prosecution request. Then to use short, simple questions and language which is easy
17 to understand avoiding legal terms, long sentences and double negations; then to put
18 questions in a non-confrontational, non-pressuring manner.

19 Next, to be sensitive in questioning the witness, including avoiding unnecessarily
20 intrusive or repetitive questions, although the Chamber notes the Defence submission
21 in relation to effectively challenging the evidence expected to be provided by this
22 witness. Then to allow for breaks for the witness where necessary; and, finally, to
23 provide reading assistance to the witness and to refrain from asking her to read or
24 write anything in Swahili in the courtroom. I'm hoping that the VWU assistant will
25 also be vigilant in assisting the witness in this regard should it be necessary.

1 Any comments on that, Prosecution?

2 MS SAMSON: No, your Honour. Thank you.

3 PRESIDING JUDGE FREMR: Mr Bourgon, maybe it is the right time for you to
4 submit the objection you have indicated.

5 MR BOURGON: (Interpretation) Thank you, your Honour.

6 MS PELLET: Pardon. Excusez-moi.

7 PRESIDING JUDGE FREMR: Ms Pellet.

8 MS PELLET: (Interpretation) I just have a comment to make with regards to your
9 intervention, I just wanted to know if I had to do it before Mr Bourgon.

10 MR BOURGON: Mr President, on what the Chamber just said, we have no
11 observations. So maybe it is better for my colleague from the LRV to proceed first
12 and then I can make my objection. Thank you.

13 PRESIDING JUDGE FREMR: Well then, Ms Pellet, you have the floor.

14 MS PELLET: (Interpretation) I'm sorry. Thank you, your Honour. With regard
15 to your observations with regard to your decision concerning the possibility for the
16 witness to testify via video link, if that proves to be necessary, I would just like to
17 indicate to you that on Friday it wasn't possible to ask the question directly to the
18 witness taking into account the deadline. But I did speak to her with regards to this
19 possibility, and she does not wish to testify via video link.

20 Within the framework of familiarization in the courtroom, the witness saw the room
21 in which she would have to -- she would be to testify, if you were to order video link,
22 and she reiterated her wish not to testify via video link and to do it in the courtroom.
23 Thank you, your Honour.

24 PRESIDING JUDGE FREMR: Thank you very much, Ms Pellet, for this valuable
25 piece of information.

1 Now, Mr Bourgon, you have the floor.

2 MR BOURGON: Thank you, Mr President. I will try to be as brief as possible.

3 The Defence would like to make a preliminary objection at this time seeking a ruling

4 from the Chamber that the Prosecution (Redacted)

5 (Redacted)

6 (Redacted).

7 Mr President, this issue is an ongoing issue which has begun quite some time ago.

8 The Defence first raised the issue during opening statements and explained to the

9 Chamber that it would be contrary to the rights of the accused as well as prejudicial to

10 the accused to elicit evidence on charges that are not in the updated Document

11 Containing the Charges.

12 The issue continued, Mr President, with Witness 901, during which the Prosecution

13 elicited some evidence from this witness that the Defence during the testimony raised

14 an objection which was overruled by the Chamber. Pursuant to the Chamber's

15 ruling, the Defence sought clarification of the ruling in terms of what would be

16 happening in other cases to ensure that all parties were aware of what would be the

17 applicable standard.

18 The Chamber ruled on the Defence request for clarification, and further to this ruling,

19 the Defence yesterday sought leave to appeal that decision, which was rendered by

20 the Chamber.

21 Mr President, the issue continued with Witness 886, during which the Prosecution

22 sought to elicit evidence related to a crime that was not charged. In this case we

23 were not talking about rape or sexual slavery, but we were talking about a murder

24 allegedly committed, according to the information provided by the Prosecution,

25 directly by Mr Ntaganda, whereas he is not charged with having committed that

1 specific murder.

2 In ruling on this objection, after deliberating, the Chamber held as follows, this was
3 on page 43 of the transcript of 23 October, where the Chamber said that:

4 "The Chamber has noted the Defence objection, including on the question of notice
5 and on the potential prejudice that could arise from the leading of such evidence.

6 Based on the Chamber's understanding of the evidence which this witness is likely to
7 provide, as indicated by the Prosecution prior to the break, the Chamber considers
8 that the objection is premature. It is the Chamber's understanding that this
9 particular witness will not testify as to the identity of the direct perpetrator of this
10 alleged murder and, therefore, the question of prejudice does not arise. The
11 objection is, therefore, overruled and the Prosecution may continue to read evidence
12 from the witness regarding the bodies that he personally encountered in Sayo village
13 as the Chamber considered this to be relevant to the charges."

14 And the Chamber concluded its decision by saying, "The Chamber will revisit this
15 issue should it be necessary at the later stage in the proceedings."

16 Mr President, without prejudice to our request for leave to appeal which was
17 submitted yesterday, it is our understanding that the governing criteria at this point
18 in time is the Chamber's decision on this issue. I'm referring to a decision which was
19 issued on 30 October 2015, the relevant part of the number is 968. And I simply
20 quote from paragraph 14, second line, where the Chamber said:

21 "In the Chamber's view, the key determination is whether the relevance and probative
22 value of such evidence is outweighed by considerations such as unfair prejudice or
23 undue delay." The Chamber went on and to highlighting a test or a balance to be
24 struck between probative value and any potential prejudicial effect which was within
25 its discretionary power.

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 The issue, Mr President, is of course the same in the sense that these are crimes for
6 which Mr Ntaganda is not charged. So if we go through the Chamber's decision of
7 30 October, our respectful submission is that this decision, or at least the evidence
8 about to be elicited from Witness P-10, raises indeed considerations of unfair
9 prejudice as well as considerations of undue delay.

10 If I may turn first to unfair prejudice. (Redacted)

11 (Redacted) So

12 that is the first step. There is not -- there is no such crime for which he is charged.

13 And the second point is, of course, that when we look at the witness who is about to
14 testify, we can look at the witness from two points of view. First, the witness is
15 beyond any doubt, and I think this is beyond dispute, (Redacted)

16 (Redacted)

17 (Redacted)

18 In addition, Mr Ntaganda is charged, of course, as an indirect perpetrator with the
19 crime of rape of child soldiers. It is the Defence's understanding that the Chamber is
20 also well aware that the status of this witness, P-10, as a child soldier or not -- and
21 when I say "child soldier," I weigh my word in the sense of someone who is below the
22 age of 15 and who was a member of the FPLC. So it is her status as such is disputed.
23 Considering that this status is disputed, even if the charge of rape of child soldiers
24 was to remain in the indictment, without prejudice of course to our appeal on the
25 jurisdiction of the Court, (Redacted).

1 So all this to say, Mr President, that here we have a crime for which the accused is not
2 charged (Redacted)

3 (Redacted)

4 (Redacted)

5 To ask or to permit this evidence to commit will place the Defence in a position of
6 having to present a Defence to a charge that doesn't exist, and we believe,

7 Mr President, that this is highly prejudicial.

8 The prejudice, of course, arises from two things: First, there is no charge, so that
9 evidence cannot be relevant to a charge that doesn't exist.

10 Then the second prong is the Prosecution's likely argument that the evidence is
11 relevant to prove an essential element of another crime, which is a crime for which he
12 would be charged as an indirect perpetrator.

13 Well, we say, Mr President, that even if there is some relevance in that regard, which
14 we think -- we say there is none, but should the Chamber say there is relevance here,
15 then we say that it would be highly prejudicial regardless of the status of the
16 Chamber as professional judges because whether the evidence comes in, it places the
17 accused in a position of having to raise a defence, of having to respond to a charge
18 that doesn't exist.

19 So these are our submissions regarding the considerations of unfair prejudice.

20 Turning to considerations of undue delay. I very rapidly summarize the number of
21 times this issue has come up to this day. It is an ongoing issue, and we have already
22 spent quite a bit of court time on this issue, as well as a bit of out-of-court time in
23 pleadings, and it is not likely to end soon.

24 The Chamber, as on numerous occasions, rendered numerous decisions highlighting
25 the importance of the expeditious conduct of the proceedings. And to that extent,

1 Mr President, we agree that this is -- that this is a topic that is taking time, which
2 could be better used in another matter, in other -- for other purposes.
3 So it is raising also an issue of undue delay because it is being discussed and every
4 time the Prosecution will attempt to raise such evidence, the Defence will necessarily
5 have to, again, raise an objection.
6 In closing, Mr President, we understand that this is a very sensitive issue. We
7 understand that it is an issue that is not easy to deal with (Redacted)
8 (Redacted)
9 (Redacted) We understand this. (Redacted)
10 (Redacted) the fairness of the proceedings requires that (Redacted) not give evidence on
11 a charge that does not exist and that raises considerations of both unfair prejudice as
12 well as considerations of undue delay.
13 For this reason, Mr President, we request, respectfully, the Chamber to rule that the
14 witness is not to adduce any evidence related to the crime of rape personally
15 committed by Mr Ntaganda.
16 And I'll simply say in closing that this is an issue in principle that has to do with fair trial
17 and that it is important to the Defence to get a ruling on this issue.
18 Thank you, Mr President.
19 PRESIDING JUDGE FREMR: Thank you.
20 Prosecution.
21 MS SAMSON: Yes. Thank you, Mr President.
22 Not surprisingly, the Prosecution opposes this request rather than objection on the part
23 of the Defence based really on five key areas. The first is that as the Chamber has
24 already ruled, of course, the Prosecution has charged Mr Ntaganda with rape and
25 sexual slavery, the rape and sexual slavery of both civilians and as well as children

1 under the age of 15 who were within his armed group. So to characterise this as
2 uncharged conduct is inaccurate in our submission.

3 Mr Ntaganda is charged as an indirect co-perpetrator for these crimes. He's also
4 charged as a perpetrator acting with a common purpose and as a superior military
5 commander, which takes me to my second point. The Chamber has already ruled on
6 numerous occasions as the Defence has cited of the relevance of the evidence of
7 Mr Ntaganda's own rape and sexual slavery to the charges. It is relevant to his
8 essential contribution as an indirect co-perpetrator. It is relevant to his contributions
9 as a person acting with a common purpose to commit these crimes, and it is certainly
10 relevant to his responsibility as a superior military commander if he, himself, were
11 committing the very crimes that he is undoubtedly going to suggest he knew nothing
12 about and did not condone.

13 Thirdly, your Honours, this is an application filed by the Defence on the morning of
14 the witness's testimony, and it is far too late for this Chamber to be able to address the
15 issue yet again when the witness, (Redacted) is
16 sitting outside the courtroom waiting to begin her testimony.

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted) is just too late in our submission.

22 And lastly on the point of vulnerability, recalling this witness at a later stage when the
23 decision of the Chamber is rendered on the leave to appeal application does not, in
24 my respectful submission, adequately address her vulnerability and the amount of
25 time that she has already spent here preparing for her testimony, preparing in terms

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 Postponing that testimony is not in the interests of this witness, nor is it in the
6 interests of expeditiousness of the proceedings or in the interests of justice.

7 And, your Honour, that really concludes our submission, but we are strongly
8 opposed to this late request. Thank you.

9 PRESIDING JUDGE FREMR: Thank you very much, Ms Samson.

10 In this case I would also like to listen to Ms Pellet if she has any comment.

11 MS PELLET: (Interpretation) Yes. I thank you, Mr President. I would support
12 the points raised by my colleague from the Prosecution, but I would quite simply like,
13 as the Defence said earlier, to say that in view of the fact that we have responded in
14 writing to many of the issues raised by the Defence on a number of occasions, as my
15 learned colleague from the Defence mentioned, this concerns not only the challenges
16 relating to jurisdiction, but also the filings pertaining to charges 6 and 9. So I shall
17 not go into my submissions on this issue once again, but I would reiterate that they
18 have been filed and would request that the Chamber bear them in mind when making
19 a determination in this regard were the case to be necessary.

20 I would also like to note that the request submitted by the Defence is very belated in
21 nature and it would also deprive us of the ability of filing an appeal, and I would also
22 like the Chamber to bear this in mind.

23 Of course, I would also like to support the various observations raised by the
24 Prosecution with regard to (Redacted)

25 (Redacted)

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted) Thank you, Mr President.

8 PRESIDING JUDGE FREMR: Thank you, Ms Pellet.

9 Mr Bourgon, I would like also if you just also focus your response also on the issue of
10 timing because we saw at times highlighted that proper timing is important and that
11 coming with objections in very last minute complicates our work, please.

12 MR BOURGON: Thank you, Mr President. With all due respect, I do not believe
13 that this complicates the matter. I think we raised this point at this time out of
14 consideration for the witness, and let me explain why, Mr President. It is our
15 understanding, first I highlighted the fact that the Chamber said in its oral ruling of
16 23 October "The Chamber will revisit this issue should it be necessary at a later stage."
17 Well, we respectfully submit that this later stage is now necessary to address the
18 issue.

19 More importantly, the decision rendered by the Chamber, in our respectful
20 submission, is a decision that allows us to raise an objection at the time we feel
21 appropriate based on what the Chamber labelled as key determination and
22 considerations of unfair prejudice and unfair -- and undue delay.

23 We had two choices, Mr President: We can wait in the middle of the testimony of
24 the witness and then raise this objection as a normal objection and then have the
25 witness wait outside not knowing what is happening in the courtroom, or we can

1 raise it --

2 PRESIDING JUDGE FREMR: Sorry to interrupt you, Mr Bourgon. Do you think
3 that the third option would be, for example, to submit this objection yesterday
4 morning?

5 MR BOURGON: Well, the idea, Mr President, is we do it during the testimony or at
6 the beginning of the testimony. We were not in Court yesterday and we did not feel
7 it was necessary because really what we should do is to raise it as the witness is
8 testifying. And now we are taking the step of raising it at the beginning so that we
9 rule before she begins so that there is no stress imposed on the witness.

10 There is another factor, very important factor, Mr President, we are now asking -- I
11 say "we," but I should say the Prosecution is now using a witness who will testify
12 about evidence that is not charged and not relevant. I wonder, Mr President, who is
13 asking too much on the part of the witness? Because the witness then, if she is
14 entitled to of course speak about those events, which are not relevant to the charges,
15 will then be cross-examined, I wonder, Mr President, what is more important for the
16 well-being of the witness, for her to speak about relevant matters and be
17 cross-examined on relevant matters, or for her to speak on irrelevant matter and be
18 cross-examined on irrelevant matters? Who is putting the greater burden on a
19 vulnerable witness? We feel, Mr President, that it is not the Defence. Thank you,
20 Mr President.

21 PRESIDING JUDGE FREMR: Thank you. So now we, the Chamber, will have to
22 deliberate outside of the courtroom. My estimation is that we will need at least
23 20 minutes, so we will adjourn now and we will hopefully reconvene at 10.30 or,
24 rather, 10.40.

25 THE COURT USHER: All rise.

Trial Hearing
WITNESS: DRC-OTP-P-0010

(Open Session)

ICC-01/04-02/06

1 (Recess taken at 10.16 a.m.)

2 (Upon resuming in open session at 10.43 a.m.)

3 THE COURT USHER: All rise.

4 Please be seated.

5 PRESIDING JUDGE FREMR: So we will continue by rendering our oral decision.

6 And before we would like to continue with witness's testimony not immediately, so

7 we will probably break a little bit earlier, but we also then will commence also a bit

8 earlier as well.

9 So we have deliberated and our oral decision is following:

10 It's oral decision on admissibility of evidence on rape and sexual slavery with respect

11 to Witness P-10.

12 As the Chamber previously indicated it's clear that such incidents are not directly

13 charged. The Chamber has already ruled that such evidence is potentially relevant

14 and it's indicated the applicable test.

15 The evidence is not in principle inadmissible, but the Chamber recalls that it may

16 intervene on unnecessarily lengthy examination on such matters; the Chamber,

17 therefore, indicates that the Prosecution may lead such evidence, however, the focus

18 of such examinations must remain confined to the scope of the charges.

19 The Chamber also directs the parties to remain mindful of the vulnerability of the

20 witness and, in this instance, a balance must also be struck between obtaining

21 relevant evidence and avoiding unnecessarily intrusive testimony.

22 The Chamber would like to emphasise that it does not consider this objection to be

23 timely. Court time shouldn't be used for such general requests upon which the

24 Chamber has already ruled.

25 It concludes our ruling.

Trial Hearing
WITNESS: DRC-OTP-P-0010

(Open Session)

ICC-01/04-02/06

1 And as I indicated, now it is quarter to 11, so we will break now and we will continue
2 quarter past 11.

3 THE COURT USHER: All rise.

4 (Recess taken at 10.45 a.m.)

5 (Upon resuming in open session at 11.22 a.m.)

6 THE COURT USHER: All rise.

7 Please be seated.

8 PRESIDING JUDGE FREMR: Good morning, Ms Witness. Can you hear me?

9 I'm sorry. I haven't received any translation. So I understand there is some
10 technical problem because I could hear the response given by the witness but not
11 translation of that.

12 THE INTERPRETER: Message from the English booth: Your Honour, could the
13 witness be requested to repeat her answer so we could try the various channels again.
14 We did not hear it here on the relay. Thank you.

15 PRESIDING JUDGE FREMR: All right. Mr Witness, I would like to ask you again,
16 even if you have already given this response, but to repeat it. So can you hear me?
17 I'm afraid we still do have a problem because it seems to me that the mic is, the
18 witness mic is switched on, but we again, we haven't been provided with any
19 translation of her response. So I guess court officer is dealing with that. So please
20 be patient everybody.

21 THE INTERPRETER: Message from the English booth: Your Honour, I've just
22 checked with the Swahili booth. They cannot hear the witness, so they're not able to
23 provide us with an interpretation. I think we need to call a technician. Thank you.

24 PRESIDING JUDGE FREMR: So please be patient. We will have to wait. There is
25 something wrong with our technology, but I was informed that technicians are

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1 coming, so we will have to wait still.

2 (Pause in proceedings)

3 PRESIDING JUDGE FREMR: We are still waiting for final confirmation that
4 everything is okay so please be patient.

5 So it seems everything is okay.

6 So Ms Witness, please take my apology for this inconvenience. I will start once more.

7 So I would like to welcome you to the courtroom on behalf of this Chamber.

8 You were called to testify before the International Criminal Court. And I know that
9 you have been here before and some of the things maybe that now I will be telling
10 you may already be familiar to you, but I, anyway, urge you to still pay close
11 attention.

12 This Chamber has been established to try the case of the Prosecutor against
13 Mr Bosco Ntaganda and you are called to testify to assist us in our search for the
14 truth.

15 You will be asked questions both by the Judges and lawyers in the courtroom, so
16 please listen carefully to those questions. It's very important that you make sure that
17 you understand the question before you answer it. If you don't understand, please
18 feel free to ask for the question to be repeated or rephrased.

19 We want you to tell the truth and tell us only what you really saw or heard or sensed
20 yourself. If you didn't see or hear it yourself but you found out some other way,
21 then you should explain how.

22 You may be asked about events that happened many years ago, so it's natural that
23 you may not remember all details. It doesn't matter. Please testify just on that
24 which you remember. Don't guess. Don't make things up. There is nothing
25 wrong in saying "I don't know" or "I don't remember." Do you understand all this,

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1 Ms Witness?

2 I'm sorry, but may I get, again, indication from Swahili booth whether they were able
3 to hear Ms Witness because, again, we haven't received any translation.

4 THE INTERPRETER: Message from the Swahili booth via the English booth,
5 Mr President, the Swahili interpreters did not hear anything from the witness.

6 PRESIDING JUDGE FREMR: So it seems we still have a problem.

7 THE COURT USHER: Test 1, 2. Test 1, 2.

8 PRESIDING JUDGE FREMR: My decision is we will break now because I feel that
9 the witness is not very well now, so we will break now and we will come back as soon
10 as everything will be okay.

11 So please, court officer, check it and call us when everything is perfect.

12 So first now Mr Ntaganda has to be escorted out of the courtroom.

13 PRESIDING JUDGE FREMR: And now we can escort out Ms Witness. And we
14 have to go into closed session. Yes, sorry for that.

15 (Closed session at 11.38 a.m.) *(Reclassified entirely in public)

16 THE COURT OFFICER: We are in closed session, your Honour.

17 PRESIDING JUDGE FREMR: Thank you.

18 So now Ms Witness may be escorted out of the courtroom. And I ask assistant
19 please explain what are the troubles and that we are making -- doing our best to
20 improve that, please, to keep Ms Witness in good condition.

21 (The witness stands down)

22 PRESIDING JUDGE FREMR: So the Chamber will leave now. Please, you please
23 remain on your seat because I believe that the problem will be solved soon. But we
24 will get -- we would like to get before that clear assurance that everything is okay.

25 So please remain on your seats and hopefully we will proceed soon.

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1 THE COURT USHER: All rise.

2 (Recess taken at 11.39 a.m.)

3 (Upon resuming in open session at 12.13 p.m.)

4 THE COURT USHER: All rise. Please be seated.

5 PRESIDING JUDGE FREMR: At the beginning I have to repeat myself and ask

6 Ms Witness whether, Ms Witness, can you now hear me well? And please, if you are

7 giving your responses, please try to be maybe a bit closer to the mic and maybe if

8 you -- I would like to ask you to speak a bit louder because I guess it will facilitate the

9 interpretation. So can you hear me now?

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11 (The witness speaks Swahili)

12 THE WITNESS: (Interpretation) Yes, I can hear you.

13 PRESIDING JUDGE FREMR: Wonderful. It seems that everything is okay now.

14 Before we -- because we lost a large amount of time, so in the meantime the Chamber

15 would like to take a decision to amend our normal schedule a bit and we would like

16 to sit now not by until 1, but by until 1.30, and then to shorten our lunch-break just for

17 one hour and continue from 2.30 to 4. I understood that it's generally fine with our

18 interpreters and technicians. So I would like just to verify there is no obstacle on the

19 part of the parties and participants. Prosecution?

20 MS SAMSON: No objection, your Honour.

21 PRESIDING JUDGE FREMR: Defence.

22 MR BOURGON: (Interpretation) No objection, your Honour. Thank you.

23 PRESIDING JUDGE FREMR: Thank you. And Legal Representatives for Victims?

24 MS PELLET: (Interpretation) No objection, your Honour.

25 PRESIDING JUDGE FREMR: So thank you very much for your understanding and

26 once more we apologize for those technical troubles.

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1 Mr Witness, we started or I started by giving you the first part of the guidance, so
2 have you understood all of that what I told you at the beginning?

3 THE WITNESS: (Interpretation) Yes, I've understood you.

4 PRESIDING JUDGE FREMR: Very well. Then I may continue with the other part
5 of my guidance. Ms Witness, the Chamber very well understands that testifying
6 might be a difficult experience for you. That is why we have ordered special
7 measures to be put into place here today to make sure you are as comfortable as
8 possible.

9 The Chamber has ordered that the person be seated next to you while you testify to
10 provide support for you.

11 Thirdly, you can see that there is a curtain around you so that you don't have to look
12 at the accused.

13 In addition, I will make sure that you don't have to enter or leave the courtroom while
14 Mr Ntaganda is present. So there will never be any chance that you may see him.
15 Do you understand?

16 THE WITNESS: (Interpretation) Yes, I understand.

17 PRESIDING JUDGE FREMR: Very good. The Chamber is aware that you may
18 have to talk about some very difficult and personal issues during the course of your
19 testimony. Please know that if you need to break for whatever reason, you just need
20 to raise your hand and ask me. I will then tell everyone that we need to stop for a
21 little while. I have also told the persons who are questioning you to be careful in
22 asking you certain types of questions. So please know that we understand that this
23 will be a difficult process for you and we want to make you as comfortable as possible
24 in testifying.

25 Let me now explain to you how the protective measures work that the Chamber has

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1 put in place for your testimony. It was decided to order face distortion, which

2 means that no one outside the courtroom can see your face on the screen during the

3 testimony.

4 We also decided to order voice distortion, which means that no one outside the

5 courtroom will be able to identify you by your voice as it has been distorted.

6 The Chamber also decided on use of pseudonym. In accordance with that we will all

7 refer to you only as "Ms Witness" to make sure that the public does not know your

8 name.

9 When you answer questions that will not give away who you are, we will do so in

10 so-called open session, which means that the public can hear what is being said in the

11 courtroom. You can see that we are in open session now, and in such a case the light

12 in front of you is red.

13 When you are asked to describe anything that relates specifically to you or you are

14 asked to mention facts that might reveal your identity, for example, any locations

15 where you live or persons close to you, we will do this in a private session. Then the

16 light in front of you will be green. Then there is no broadcast and no one outside the

17 courtroom can hear your answer.

18 If ever anything gets said in open session which should have been said in private

19 session, we will do our best, we will do our best to protect this information. Your

20 testimony will be broadcast on a delay, and we can remove any such remarks from

21 broadcast which will be heard by the public and from the public transcript of the

22 proceedings.

23 The Chamber recognizes that your security and well-being is important during the

24 course of this trial. As I said earlier, if at any point you feel that you would like a

25 brief break from giving your testimony or you feel unwell, do not hesitate to let us

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1 know by raising your hand.

2 Have you understood all of that?

3 THE WITNESS: (Interpretation) Yes, I have.

4 PRESIDING JUDGE FREMR: Very well. And finally a few practical matters you
5 should have in mind when giving your testimony. Everything we say here in the
6 courtroom is written down and interpreted in your case from Swahili into French and
7 English.

8 It's, therefore, important to speak clearly and to speak at a moderate or rather slow
9 pace like me now. We want to make sure that your words can be well understood
10 by the interpreters and then by the rest of us. Please speak into the microphone and
11 only start speaking when the person asking you the question has finished.

12 To allow for the interpretation, everyone has to wait a few seconds before starting to
13 speak, so I recommend to you when the lawyer has asked his or her question, please
14 count in your head to three and only then give your answer.

15 If you have any questions yourself, raise your hand so we know that you wish to say
16 something. We will then give you the opportunity to speak.

17 Have you understood all of that?

18 THE WITNESS: (Interpretation) Yes, I have.

19 PRESIDING JUDGE FREMR: Fine. Now, court officer, can you please administer
20 the solemn undertaking to tell the truth to the witness?

21 Excuse me. Is the witness able to read it or not? So maybe we should ask Swahili
22 booth, it's in Swahili, so Swahili booth to read it and then Ms Witness could repeat
23 after them.

24 So, Ms Witness, now our Swahili interpreters will read the text of the solemn
25 undertaking for you, and you will repeat this after them. But it doesn't mean that

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1 you are just repeating what have you heard. It means that you are confirming what
2 you will be saying. Do you understand?

3 THE WITNESS: (Interpretation) Yes.

4 PRESIDING JUDGE FREMR: Very well, very well.

5 So Swahili booth, if you are provided with the text in Swahili, please read it slowly
6 and maybe with some short breaks to the witness.

7 THE WITNESS: (Interpretation) I solemnly declare that I will tell the truth, the
8 whole truth, and nothing but the truth.

9 PRESIDING JUDGE FREMR: Thank you very much, Ms Witness.

10 So, Ms Witness, now you are under oath. You have already been informed by
11 representatives of the Victim and Witness Unit and afterwards also by representatives
12 of the Prosecution about the importance to speak the truth. Nevertheless, I want to
13 reiterate to you that as you have just promised, you have to speak the truth and
14 nothing but the truth and that it is an offence within the jurisdiction of this Court to
15 give false testimony. Do you understand that?

16 THE WITNESS: (Interpretation) Yes.

17 PRESIDING JUDGE FREMR: Very good. So we can now start with your testimony.
18 You will be first questioned by a representative of Prosecution.

19 Prosecution, you have the floor.

20 MS SAMSON: Thank you, Mr President.

21 QUESTIONED BY MS SAMSON:

22 Q. Good afternoon. We have already met.

23 A. Good afternoon.

24 Q. We've already met, but I will repeat for you that my name is Nicole Samson,
25 and I will be asking you questions today and tomorrow on behalf of the Prosecution.

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- 1 We will go through your evidence slowly, and all you need to do is focus on each of
2 my questions as I ask them and in that way when we're done you will have finished
3 giving all of your evidence to the Chamber one question at a time.
4 For my first series of questions I will ask the Chamber to move into private session
5 because I would like to ask you questions about your identity.
6 Mr President, may we move into private session, please.
7 PRESIDING JUDGE FREMR: I was waiting for the end of interpretation.
8 Court officer, let's move into private session now.
9 (Private session at 12.29 p.m.) *(Reclassified partially in public)
10 THE COURT OFFICER: We're in private session, your Honour.
11 PRESIDING JUDGE FREMR: Ms Samson, you have the floor.
12 MS SAMSON: Thank you.
13 Q. Ms Witness, can you please state your full name?
14 A. Yes. My name is (Redacted)
15 Q. When were you born?
16 A. I was born on (Redacted)
17 Q. Where were you born?
18 A. I was born in (Redacted)
19 Q. To which ethnic group do you belong?
20 A. I'm from the (Redacted) ethnic group.
21 Q. Have you ever been to school?
22 A. Yes, I went to school, but I stopped in the (Redacted) of primary school.
23 Q. Why did you stop school?
24 A. Because I joined the army.
25 Q. Which army did you join?

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1 A. The army of the UPC.

2 Q. I would like now to ask you some questions about how you joined the UPC and
3 for that I'm going to ask Mr President to move into public session, but we will not
4 reveal your identity.

5 Mr President, may we please move into public session.

6 PRESIDING JUDGE FREMR: All right. Let's move into open session now.

7 (Open session at 12.33 p.m.)

8 THE COURT OFFICER: We're in open session, your Honour.

9 PRESIDING JUDGE FREMR: Thank you.

10 You may proceed, Ms Samson.

11 MS SAMSON:

12 Q. Ms Witness, how did you join the UPC?

13 A. There was a conflict in Bunia and we were enlisted in the army.

14 Q. Where were you exactly at the time that you were enlisted?

15 A. I was fleeing. I was going to Beni.

16 Q. Who were you with when you were fleeing?

17 A. I was with my mother and my brothers and other people as well.

18 Q. Do you remember what year it was that you were enlisted?

19 A. It was between 2002 and 2003.

20 Q. How did it happen that you were enlisted?

21 A. I didn't really understand your question.

22 Q. Let me ask it a bit differently. Who enlisted you into the UPC?

23 A. It was UPC elements.

24 Q. How did you know that it was UPC elements?

25 A. I knew that because they were fighting against elements of the APC.

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1 Q. Did they tell you that they were UPC, or did you understand that in a different
2 way?

3 A. I don't remember. All I know is that I knew that they were UPC elements.

4 Q. How many people from the UPC enlisted you?

5 A. I don't know how many because I didn't count them. I just know that they
6 were elements of the UPC.

7 Q. And what did they say to you when they enlisted you?

8 A. I didn't understand your question.

9 Q. Did they say anything to you when they enlisted you?

10 A. I don't remember.

11 Q. Where did they take you after they enlisted you?

12 A. I was running away, fleeing to Beni. We were running away from the fighting.

13 Q. Let me ask you one question about the fighting that you were running away
14 from. Do you remember who was involved in that fighting?

15 A. It was the UPC against the APC.

16 Q. And do you know a person by the name of Lopondo?

17 A. He was the leader of the APC.

18 Q. At the time when you were enlisted by the UPC, was Mr Lopondo still the chief
19 of the APC?

20 A. I didn't really understand your question. Could you ask again?

21 Q. Certainly. When the UPC enlisted you, was Mr Lopondo still in power at the
22 head of the APC, do you remember?

23 A. At that time I didn't yet know Lopondo, but people said that he was the chief of
24 the APC, the leader.

25 Q. Okay. And after you were enlisted by the UPC, where did you go? Where

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1 did they take you?

2 A. I was taken to Rwampara.

3 Q. Because not everybody in the courtroom knows about Rwampara, can you
4 explain what Rwampara is?

5 A. Rwampara was a training camp.

6 Q. And the UPC elements who enlisted you, did they carry anything or not?

7 A. Please could you explain your question? I didn't understand it.

8 Q. Yes, of course. When you were enlisted by the UPC elements, did they have
9 weapons or did they not have weapons?

10 A. They were carrying arms.

11 Q. Were you the only person who was enlisted at that time?

12 A. No, there were a number of us.

13 Q. Do you remember how old you were at the time you were enlisted?

14 A. I was aged 13.

15 Q. And the other people who were enlisted at the same time as you, were they
16 your age, or older than you, or younger than you?

17 A. Some were younger, and some were older than me and there were others of my
18 age. So there was a mix of different ages.

19 Q. And did the UPC elements give you a choice as to whether you and the others
20 accepted to go with them?

21 A. No, we had no choice. We had just to obey them and follow their orders.

22 Q. When you arrived at the Rwampara training camp, what happened next?

23 A. We underwent training.

24 Q. Can you explain a bit of the training that you received?

25 A. We were taught how to go on military parade, how to roll on the ground like

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1 soldiers. We had military exercises to carry out. I can't really describe them here.

2 Q. Where did you sleep at the camp?

3 A. The girls slept together to one side, a little bit higher.

4 Q. Do you remember the name of any of the chiefs of the camp?

5 A. It was Commander Pepe.

6 Q. Did Commander Pepe instruct the recruits on the military training you
7 received?

8 A. He was the chief of the camp, but there were instructors.

9 Q. Do you remember the names of any of the instructors?

10 A. For instance, there was the name of a commander Abelanga.

11 Q. Could you repeat the name of that instructor one more time, please.

12 A. Commander Abelanga.

13 Q. Did you have any special clothes to wear while you were training?

14 A. We were wearing the clothes that we had before we started the training.

15 Q. Were you given any equipment during your training?

16 A. I didn't understand your question.

17 Q. Did the instructors ever give you any equipment to help you train in military
18 exercises?

19 A. I have to admit that I still haven't understood your question when you're talking
20 about "equipment." All that I know is that we were given certain equipment, but
21 that was after the training.

22 Q. What type of equipment were you given after the training?

23 A. We were given guns and military uniform.

24 Q. What kind of gun were you given, do you remember?

25 A. SMG.

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1 Q. For the training that you received in Rwampara, how long did a typical training
2 day last?

3 A. I don't remember, but I know that we started in the morning and the training
4 lasted until the evening.

5 Q. Before going to bed, what did you, the recruits, do?

6 A. Before going to bed, we would sing.

7 Q. What kind of songs would you sing?

8 A. They were songs that helped us to boost our morale.

9 Q. Were you ever told during your training what you were training was for, what
10 the ultimate purpose was?

11 A. The purpose of the training was to turn you into soldiers capable of going to the
12 front at the end of the training session.

13 Q. Were you ever told who you would be fighting at the front?

14 A. After the training, we were often facing the Lendu.

15 Q. During your training at Rwampara were you ever informed who the UPC
16 leaders were?

17 A. No, we were told nothing about that, but we knew that the UPC was a military
18 group.

19 Q. Do you recall whether any UPC leaders visited you while you were at the
20 Rwampara training camp?

21 A. The chief of the UPC at the time was Thomas Lubanga and he came to visit us.

22 Q. Did he come alone to visit you?

23 A. I don't remember. I've already forgotten.

24 Q. When he came to visit you at the training camp, did he say anything to you or
25 the other recruits?

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1 A. He did say things to us, but I don't remember. I have no recollection of that.

2 Q. Do you remember if any other leaders of the UPC came to visit you and the
3 recruits at Rwampara?

4 A. Yes, even Mr Bosco came.

5 Q. Did Mr Bosco come one time while you were training or more than one time?

6 A. I don't remember.

7 Q. And the time that you do remember when Mr Ntaganda came, what did he do
8 at the training camp?

9 A. I didn't understand your question.

10 Q. That's no problem. I can ask it again. You said that Mr Bosco came to the
11 Rwampara training camp when you were training. What did he do there? What
12 did you see him do?

13 A. I don't remember. That was a long time ago and I can't remember it all.

14 Q. The trainers that you had at the Rwampara training camp, do you remember
15 what ethnicity they were?

16 A. As far as I know, the instructors were Hema.

17 Q. You mentioned that the girls slept separately at the Rwampara camp. Was the
18 training that you undertook the same for the boys and the girls or was it different?

19 A. We underwent the same training, both boys and girls.

20 MS SAMSON: Mr President, for a brief series of questions may I please move into
21 private session?

22 PRESIDING JUDGE FREMR: Certainly.

23 Court officer, please move into private session now.

24 (Private session at 12.59 p.m.) *(Reclassified partially in public)

25 THE COURT OFFICER: We are in private session, your Honour

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- 1 PRESIDING JUDGE FREMR: Thank you.
- 2 You may proceed, Ms Samson.
- 3 MS SAMSON: Thank you.
- 4 Q. While you were at the Rwampara camp, (Redacted)
- 5 (Redacted)
- 6 A. I didn't grasp your question. Could you please repeat it?
- 7 Q. Certainly. (Redacted)
- 8 A. (Redacted)
- 9 Q. Yes. And how did he treat you?
- 10 A. I didn't understand your question.
- 11 Q. I can ask it differently. (Redacted)
- 12 (Redacted)
- 13 A. He was not my friend. (Redacted)
- 14 (Redacted)
- 15 Q. Did (Redacted) something that you didn't like to
- 16 do?
- 17 A. Yes.
- 18 Q. Can you tell the Judges what that was?
- 19 A. He raped me. I was a virgin and he took my virginity.
- 20 Q. I know this is very difficult, so if you need a break at any time, you just let the Judges
- 21 know. Are you able to tell the Judges what part of (Redacted) body touched what
- 22 part of your body?
- 23 A. He slept with me. He penetrated me with his penis.
- 24 Q. Would you like to have a break?
- 25 A. Yes.

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1 PRESIDING JUDGE FREMR: Okay. So I will change our previous decision. We
2 will break for our lunch now. And now it's 5 minutes past 1 o'clock, so we will start
3 quarter, yes, quarter past 2.

4 So first, Mr Accused has to be escorted out of the courtroom.

5 Ms Witness, we will give you now some time to take your lunch, to take some rest
6 and also, we recommend that you should also consult your assistant, which we hope
7 can help you to recover.

8 So now we have to move into regime of closed session and the witness may be
9 escorted out of the courtroom.

10 (Closed session at 1.06 p.m.) *(Reclassified entirely in public)

11 THE COURT OFFICER: We are in closed session, your Honour.

12 (The witness stands down)

13 PRESIDING JUDGE FREMR: Thank you. And now let's return back into regime of
14 open session for a second.

15 (Open session at 1.07 p.m.)

16 THE COURT OFFICER: We're in open session, your Honour.

17 PRESIDING JUDGE FREMR: And before we adjourn, I see Mr Bourgon on his feet.
18 Mr Bourgon.

19 MR BOURGON: Thank you, Mr President. Just one quick comment. We,
20 towards the end of the testimony of the witness before the break, we went into closed
21 session and to hear some evidence related to an incident that took place at a training
22 camp. I fail to see, Mr President, how this incident would reveal the identity of the
23 witness, unless there are many people who are aware of what she's testifying about.
24 I would prefer if that evidence could be heard in public session so that this is part of
25 the evidence that she is leading, and it is important to hear that into public session.

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1 Thank you, Mr President.

2 PRESIDING JUDGE FREMR: Ms Samson, any comment on that?

3 MS SAMSON: Yes, your Honour. I went into private session out of an abundance
4 of caution until I elicit from the witness whether she knows of other girls who were
5 subjected to the same treatment or if she was the only one and because the subject
6 matter is particularly sensitive for her, so I thought it best to move into private session
7 for that, that evidence. Of course I'm guided by your Chamber and the Chamber's
8 decision on the issue, but that was the reasoning for moving into private session.

9 PRESIDING JUDGE FREMR: I guess I personally believe that it -- that this move
10 into private session even helped the witness to tell the truth because I think it was
11 easier for her to describe this very delicate event.

12 Okay. So now for the information of public, we break and we will reconvene at a
13 quarter past 2.

14 THE COURT USHER: All rise.

15 (Recess taken at 1.10 p.m.)

16 (Upon resuming in open session at 2.21 p.m.)

17 THE COURT USHER: All rise.

18 Please be seated.

19 PRESIDING JUDGE FREMR: Good afternoon.

20 And good afternoon, Ms Witness. Are you -- Ms Witness, are you feeling better
21 now?

22 THE WITNESS: (Interpretation) I am doing well.

23 PRESIDING JUDGE FREMR: Very well. So then we can continue with your
24 examination-in-chief, which would be conducted by Ms Samson.

25 Ms Samson, do you want to proceed in private or open session?

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1 MS SAMSON: In private session, your Honours, just for a few questions, please.

2 PRESIDING JUDGE FREMR: All right.

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

4 (Private session at 2.22 p.m.) *(Reclassified partially in public)

5 THE COURT OFFICER: We are in private session, your Honour.

6 PRESIDING JUDGE FREMR: Thank you.

7 Ms Samson, you may proceed.

8 MS SAMSON: Thank you.

9 Q. Ms Witness, I have just one or two more questions to ask you about

10 (Redacted) You described an occasion where (Redacted) raped you.

11 Was that the only time that he raped you? Was it only one time?

12 A. No.

13 Q. How often would (Redacted) rape you?

14 A. I no longer recall how many times, but I know that it was on several occasions.

15 Q. Do you know if other girl recruits were also raped at Rwampara?

16 A. Yes, all of the girls.

17 Q. How did you know that they were raped?

18 A. It was a habit. They all went through it.

19 Q. Did the other girls tell you about it, or how did you hear about the rape of the
20 other girls?

21 A. When we went to bed and there were a few girls missing we knew only too well
22 that the commander had taken them.

23 Q. Did you ever discuss it with the other girls?

24 A. Yes.

25 Q. You mentioned that it was commanders that had taken the girls. Do you know

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1 which commanders?

2 A. It was the UPC commanders.

3 MS SAMSON: Mr President, with your leave, we can move into open session,
4 please.

5 PRESIDING JUDGE FREMR: All right.

6 Court officer let's move into open session now.

7 (Open session at 2.26 p.m.)

8 THE COURT OFFICER: We are in open session, your Honour.

9 PRESIDING JUDGE FREMR: Thank you.

10 Ms Samson, you may proceed.

11 MS SAMSON:

12 Q. Ms Witness, were you free to leave the Rwampara training camp if you wanted
13 to?

14 A. I didn't really follow your question.

15 Q. Could you leave the Rwampara training camp if you didn't want to stay there
16 anymore?

17 A. No.

18 Q. What would happen to somebody who wanted to leave, or who tried to leave?

19 A. The person might be punished. And the others could not see what type of
20 punishment had been inflicted upon them.

21 Q. Could the recruits refuse to do military exercises?

22 A. No, they were not allowed to refuse.

23 Q. Did you ever see what happened if a person refused to do the military
24 exercises?

25 A. I had heard speak about three individuals who had fled, but they were caught

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1 up with later. At the end of our training we no longer saw them.

2 Q. And if a recruit refused to do military training, did you ever see that happen?

3 A. No, I never saw such an occurrence. I never saw anybody refusing.

4 Q. Were you ever punished while you were at the Rwampara training camp?

5 A. Yes.

6 Q. What were you punished for?

7 A. That was at the time when people were singing and I chose not to sing with
8 them. And I was severely punished when I was caught.

9 Q. How were you punished?

10 A. They beat me with some truncheons, and they asked me to lie on the ground
11 and they asked me to do some press-ups, and then they also poured water on my
12 head.

13 Q. And who did this to you?

14 A. It was the leaders of those training camps.

15 Q. While you were at the Rwampara training camp, was there any particular name
16 for girl recruits and boy recruits?

17 A. There were many people that I knew, but I have already forgotten their names.

18 Q. Yes. I'm not asking you for the names of the recruits, I'm just asking whether
19 the leaders referred to girls in a particular way, all the girls.

20 A. We were referred to as recruits. And it was when we became soldiers that we
21 were called "PMF," which is militaire -- personnel militaire féminin, women soldiers.

22 Q. Was there a name for -- used for any recruits or soldiers who were young or
23 little?

24 A. The boys were referred to as "kados." These were the smaller boys who
25 were referred to as kados, the shorter ones.

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1 Q. You told the Judges this morning that after the training you were often facing
2 the Lendu, but before your training was over, while you were still in Rwampara, did
3 the instructors ever teach you who the enemy was?

4 A. Whilst we were completing our training, we knew that the enemy was the
5 Balendu because we were fighting against the Lendu.

6 Q. Earlier you also said that Thomas Lubanga was the chief of the UPC. Did you
7 learn what Mr Bosco's title was?

8 A. He was deputy chief of staff.

9 Q. Did you learn who the chief of staff was?

10 A. Yes, that was Kisembo.

11 Q. Other than the Rwampara training camp, did you go to any other UPC training
12 camps?

13 A. Yes.

14 Q. Which other training camp did you go to?

15 A. Mandro.

16 Q. What type of training did you receive in Mandro?

17 A. At the Mandro camp I was taught to fire a weapon and to handle a weapon, a
18 gun.

19 Q. Who brought you to the Mandro training camp?

20 A. I no longer recall.

21 Q. Do you remember who was the chief of the Mandro training camp?

22 A. It was Chief Kahwa.

23 Q. When you went for training at Mandro camp, did you go alone or with others?

24 A. We left as a group.

25 Q. And were the recruits in your group your age, or were they older than you, or

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1 were they younger than you? Do you remember?

2 A. They were of all ages; some were younger than me, others were the same age as
3 me and some were older than me.

4 Q. Did any UPC leaders visit the Mandro camp while you were there?

5 A. I really don't remember.

6 Q. And when you completed your training in Mandro, where did you go next?

7 A. We then went to Rwampara and subsequently we were allowed to carry
8 weapons.

9 Q. Did you go back to Rwampara with any UPC leaders?

10 A. Yes.

11 Q. Which leaders did you go back to Rwampara with?

12 A. Could you please repeat your question?

13 Q. Certainly. You said that you went back to Rwampara camp with some UPC
14 leaders. Who were they?

15 A. I have forgotten.

16 Q. Do you remember who gave you a weapon and a uniform when your training
17 was completed?

18 A. I really don't remember.

19 Q. And when you got back to the Rwampara training camp, what did you do
20 there?

21 A. At the Rwampara camp we were supplied with weapons and military uniform.

22 Q. Did you stay at Rwampara long after you received a uniform and weapon -- a
23 weapon?

24 A. We did not remain in Rwampara. On the contrary, we went out into the
25 battlefield.

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1 Q. Did you go to the battlefield with any UPC leaders or commanders?

2 MS SAMSON: The witness's last answer wasn't interpreted. I'm not sure if there's
3 an issue. I could hear her, but I don't know if there's an issue with the interpretation.

4 PRESIDING JUDGE FREMR: Ms Witness, could you kindly repeat your last
5 response because probably the interpreters have not captured that.

6 THE WITNESS: (Interpretation) I no longer recall the answer.

7 MS SAMSON: I'll ask the question again.

8 Q. Did you go to the battlefield with any UPC leaders or commanders?

9 A. Yes.

10 MS SAMSON: It sounded like more than "Yes" from the witness.

11 Q. But, Witness, could you -- could you say that again please what you said?

12 A. I said, yes, we left in the company of the UPC commander.

13 Q. And which commander was that? What was the commander's name?

14 A. I have not understood correctly.

15 Q. Who did you leave with? What was the name of the UPC commander or
16 commanders that you went to fight with?

17 A. I don't remember the other commanders, but I remember that we were also with
18 Commander Bosco. And as for the others I don't remember their names.

19 Q. Did Commander Bosco issue any orders to you and the other soldiers about the
20 fighting?

21 A. Well, I don't remember anything about that.

22 Q. Do you remember where you went to fight?

23 A. I can no longer remember the names of the villages.

24 Q. Can you remember about the ethnic communities that lived in the villages
25 where you fought? What ethnicity was the population in those villages?

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1 A. I can't remember.

2 MS SAMSON: Mr President, may we move into private session for a few questions,
3 please?

4 PRESIDING JUDGE FREMR: All right.

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

6 (Private session at 2.48 p.m.) *(Reclassified entirely in public)

7 THE COURT OFFICER: We are in private session, your Honour.

8 PRESIDING JUDGE FREMR: Thank you.

9 Ms Samson, you may proceed.

10 MS SAMSON:

11 Q. Ms Witness, we're now in private session. Other than fighting in battles, did
12 you have any other role or tasks in the UPC?

13 A. I don't really understand what you're saying.

14 Q. Let me ask it differently. You said that you fought in battles in the UPC. Did
15 you have any other duties or any other job while you were there?

16 A. I really don't understand what you're saying.

17 Q. I'll ask it a bit differently. After you finished your training, did some of the
18 recruits become bodyguards of commanders to your knowledge?

19 A. No, it wasn't recruits who could be the bodyguards for the commander. It was
20 when you became a soldier that you could become the commander's bodyguard.

21 PRESIDING JUDGE FREMR: Mr Bourgon, sorry for my late reaction because I have
22 really some problems to see you. Sorry. You have the floor, Mr Bourgon.

23 MR BOURGON: Thank you, Mr President. Maybe it is better to address this
24 objection in the absence of the witness, Mr President.

25 PRESIDING JUDGE FREMR: So -- but in that case we have to escort Mr Ntaganda

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1 out of the courtroom first.

2 And now we will excuse Ms Witness for a while. So please escort her -- and my
3 colleagues rightly remind me that we have to move into closed session for that
4 purpose.

5 (Closed session at 2.51 p.m.) *(Reclassified partially in public)

6 THE COURT OFFICER: We are in closed session, your Honour.

7 (The witness stands down)

8 PRESIDING JUDGE FREMR: Mr Bourgon, you may now proceed.

9 MR BOURGON: Thank you, Mr President. I thought it would be better to address
10 the Chamber in the absence of the witness.

11 Since the beginning of the afternoon session my colleague has been asking a number
12 of leading questions which I have simply let go because I'm as much interested as the
13 Prosecution in getting the testimony --

14 PRESIDING JUDGE FREMR: Sorry, Mr Bourgon, could you just give me one
15 example of such a leading question. Maybe our understanding what leading
16 question means is different.

17 MR BOURGON: Yes, Mr President, I will give you one example. When -- when
18 my colleague asked, and I'll give you one very specific example. When my colleague
19 asked about -- she was trying to get from the witness whether she had been employed
20 in another capacity when -- in relation to the fighting she participated in, and because
21 she could not get the answer that she was looking for, then she suggested that some
22 of the recruits became escorts or bodyguards. That was a clear leading question, in
23 our view, Mr President.

24 In addition to leading questions, there's also the fact that questions are being repeated.

25 I'll give you again one example of a question that was repeated: Earlier this morning

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1 in the session the question was put to the witness as to who the leaders were, and
2 there was an answer saying that she did not recall. We ask again the answer
3 this -- the question this afternoon and we got further information as to who the
4 leaders were.

5 The point, Mr President, is simply that leading questions and asking questions over
6 and over again I think should be at least under some kind of control.

7 We are -- the Chamber has approved guidelines, and these guidelines include, under
8 3.1, which was (Redacted)

9 (Redacted) When we responded to make -- to our -- when we provided
10 the Chamber our observations on these measures, we made a point of saying that,
11 and I quote from the answer that we sent to the Chamber, "However, the Defence
12 insists that despite the prima facie vulnerability of the witness, P-10, no leading
13 questions should be put to her during her examination-in-chief. If this is what is
14 meant by (Redacted) the
15 Defence opposes the same."

16 We want the testimony, Mr President, but at some point I'm -- I cannot -- and I don't
17 want to get up and down all the time every time I feel a question is either leading or
18 asked and answered, but I kindly ask my colleague to try and refrain from asking
19 such questions to the best of her ability. Thank you, Mr President.

20 PRESIDING JUDGE FREMR: I think I don't feel, I don't see any need for response
21 from Ms Samson because, in my view, a leading question is a question which contains
22 the response and the example you gave us I think maybe could be partially leading.
23 The other issue as concerns guiding questions, you are right. We, the Chamber, also
24 was strongly against giving such instruction. You may notice -- note that we did not
25 accept (Redacted)

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1 And as to the repetition of some questions, frankly saying, we all know what will be
2 or what is the characteristics of the witness, that she deserves special treatment, that
3 the question should be put in a very simple way.

4 And regardless of that, sometimes the witness is responding, she does not remember,
5 which seems really very strange because sometimes she has been asked on absolutely
6 basic facts, so I think in such a case it is even doubt whether the witness really
7 understood the question. And many times she also responded I didn't understand.
8 So in such a case, I and the Chamber, I guess, find fully proper try rephrase this
9 question in order to get some facts from the witness.

10 So now the witness may be escorted in the courtroom first.

11 (The witness enters the courtroom)

12 PRESIDING JUDGE FREMR: Now, please escort the accused in.

13 And Ms Samson, now in what regime you request to proceed?

14 MS SAMSON: Briefly in private session, please your Honours, your Honour.

15 PRESIDING JUDGE FREMR: All right.

16 So court officer, let's change our mode from closed to private session.

17 (Private session at 3.00 p.m.) *(Reclassified partially in public)

18 THE COURT OFFICER: We are in private session, your Honour.

19 PRESIDING JUDGE FREMR: Thank you.

20 Ms Samson, you may proceed.

21 MS SAMSON: Thank you.

22 Q. Before our break you mentioned that soldiers would become or could become
23 bodyguards of commanders. Who did you report to while you were in the UPC?

24 A. (Redacted)

25 Q. And what were your duties (Redacted)

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1 A. I was his bodyguard.

2 Q. Were you the only bodyguard?

3 A. No.

4 Q. How many other bodyguards were there of (Redacted)?

5 A. We were quite numerous.

6 Q. Were you the only girl?

7 A. No.

8 Q. How many girl bodyguards were there?

9 A. There were a lot of them. There were a lot of us.

10 Q. Do you remember the names?

11 PRESIDING JUDGE FREMR: Ms Witness, you have the floor.

12 THE WITNESS: (Interpretation) Yes, I don't feel very well.

13 PRESIDING JUDGE FREMR: Ms Witness, do you think that a short break would be
14 fine with you to -- if we would break for 15 minutes, do you think you would be able
15 then continue for some further 30 minutes after the break? And it would be enough
16 for today? So I am proposing to you now take break for 15 minutes, and then have
17 the last portion today for 30 minutes. Would it be okay with you?

18 MS SAMSON: Your Honour.

19 PRESIDING JUDGE FREMR: Ms Samson.

20 MS SAMSON: I'm assisted by somebody who speaks Swahili and they understood
21 the witness to say "I didn't understand." Could the interpreter just check or perhaps,
22 Mr President, you could ask the witness if she said she doesn't feel well or if she
23 doesn't understand? Thank you.

24 PRESIDING JUDGE FREMR: Witness, we are now not sure whether your answer
25 was interpreted or translated correctly. So you asked for the floor and then you said

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1 what, that you are not feeling well, or that you don't understand?

2 THE WITNESS: (Interpretation) I said I don't feel well.

3 PRESIDING JUDGE FREMR: And have you heard my proposal? I'm proposing
4 you now to take break and then finish today's programme by the last portion of 30
5 minutes of examination. Do you think you'll be able to accept that?

6 THE WITNESS: (Interpretation) Yes.

7 PRESIDING JUDGE FREMR: Well, so we will break now for 15 minutes, which
8 means that we will return back 15.20, and then we will continue for last 30 minutes.

9 So again, first, Mr Accused has to be escorted out of the courtroom.

10 Now we will escort Ms Witness, but we have to move into closed session for that
11 purpose.

12 (Closed session at 3.06 p.m.) *(Reclassified entirely in public)

13 THE COURT OFFICER: We are in closed session, your Honour.

14 PRESIDING JUDGE FREMR: Thank you.

15 And as soon as Ms Witness leaves we will move into the regime of open session. I
16 will just inform the public about our decision.

17 (The witness stands down)

18 (Open session at 3.06 p.m.)

19 THE COURT OFFICER: Your Honour, we are in open session now.

20 PRESIDING JUDGE FREMR: Thank you.

21 So the Chamber decided to break now for 15 minutes in order to allow the witness,
22 who is not feeling well, to recover, and we will then continue after the break for last
23 30 minutes.

24 THE COURT USHER: All rise.

25 (Recess taken at 3.07 p.m.)

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1 (Upon resuming in open session at 3.33 p.m.)

2 THE COURT USHER: All rise.

3 Please be seated.

4 PRESIDING JUDGE FREMR: During the break, the Chamber was informed that
5 Ms Pellet would like to make a submission.

6 So Ms Pellet, you have the floor.

7 MS PELLET: (Interpretation) Thank you, your Honour. In the light of the way in
8 which my client's cross-examination is proceeding, I actually went to see her and she
9 told me that she's in a complicated situation, she finds herself in one and the same
10 room as the accused and that is a problem for her.

11 Yesterday she was of the opinion that she wouldn't want to go into the room in order
12 to testify via video link, but today she feels that it might assist her, allowing her to
13 concentrate on the questions that are put to her.

14 This being said, I ask of the Bench that this be noted, but I myself am not entirely
15 convinced of the result this will have because I feel, and I'm convinced that there are
16 other reasons, that would argue in favour of her testifying in the courtroom, but in the
17 light of this afternoon, and what's happened this afternoon, perhaps we could make
18 an attempt via video link. Thank you, your Honour.

19 PRESIDING JUDGE FREMR: Thank you, Ms Pellet.

20 We know that this proposal has already been on the table and both parties opposed
21 that, but it is my duty to ask you again what is your position at the moment.

22 Ms Samson?

23 MS SAMSON: Your Honour, we support the suggestion of moving into the video
24 link. I've been able to note that the witness is experiencing some difficulty over
25 certain areas of testimony, particularly (Redacted), and she's not at all

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1 times concentrating fully perhaps on the -- on the questions. And if it could help her,

2 I fully support the suggestion. Thank you.

3 PRESIDING JUDGE FREMR: Mr Bourgon?

4 MR BOURGON: Thank you, Mr President. We maintain our position to the fact
5 that the witness should testify by way of video link.

6 We made our submissions in the email addressed to the Chamber last week. We
7 made the arguments therein. I haven't seen any signs that the presence of the
8 accused in the same courtroom because she cannot even see him, I can't see how this
9 is -- what is preventing her from giving responses.

10 I do note, however, and it is not a surprise that my colleague is not getting the
11 answers that she is looking for, I understand that, I think there are ways to get these
12 answers. And I don't think it is appropriate for the witness to move to a different
13 location and based on what we have seen in the courtroom so far. Thank you,
14 Mr President.

15 PRESIDING JUDGE FREMR: Thank you.

16 Now I would like anyway to hear something maybe from the assistant and also
17 maybe from the witness. But for that reason, first, Mr Accused has to be escorted out
18 of the courtroom. So please escort Mr Witness -- the accused, sorry. Please escort
19 the accused for a while out of the courtroom.

20 And now let's move into closed session and escort the witness and her assistant into
21 the courtroom.

22 (Closed session at 3.38 p.m.) *(Reclassified partially in public)

23 THE COURT OFFICER: We are in closed session, your Honour.

24 PRESIDING JUDGE FREMR: So please bring witness in.

25 (The witness enters the courtroom)

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1 PRESIDING JUDGE FREMR: Ms Witness, are you feeling better now?

2 Maybe I should -- I will also highlight that for this short dialogue with the witness, we
3 would like to keep Mr Ntaganda out of the courtroom because it is possible that it has
4 some influence on the previous witness's trouble, so we would like to make this
5 inquiry in his absence.

6 So Ms Witness, are you feeling better because I haven't caught your response?

7 THE WITNESS: (Overlapping speakers)

8 PRESIDING JUDGE FREMR: And Ms Witness, (Redacted)

9 (Redacted)

10 (Redacted) in order to get your testimony and in order to create the best
11 conditions for you to speak the truth we would like now to hear, and I am
12 highlighting that Mr Ntaganda is not at the moment in the courtroom, so you can
13 speak absolutely freely.

14 We understood that you had some problems to testify. So could you be more
15 specific what is the trouble you are facing?

16 THE WITNESS: (Interpretation) I am afraid. (Redacted)

17 (Redacted). That's

18 why I'm afraid.

19 PRESIDING JUDGE FREMR: Ms Witness, according our information, yesterday you
20 were also offered to see the special room within the Court, where we do have a
21 camera, and you also have been informed about the possibility, depending on the
22 decision of this Chamber, to testify through video. That camera would make your
23 picture and it will transfer it -- or, will transfer all your testimony to our screens, and
24 but I understood that yesterday you, in fact, refused and you had told that you didn't
25 feel comfortable there. So after today's experience you would prefer to testify

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1 through video?

2 THE WITNESS: (Interpretation) Yes.

3 PRESIDING JUDGE FREMR: Could I also ask madam assistant for -- madam
4 assistant for your comments. Could you just also comment this, or to add some
5 further information for the Chamber before we decide.

6 VWU ASSISTANT: (Interpretation) Yes, indeed, the witness would like to testify
7 in the room next door in order to feel more at ease.

8 PRESIDING JUDGE FREMR: So I guess that the parties are insisting on their
9 positions, so I will not ask you again.

10 Or any change of your position, Mr Bourgon, in the presence of the witness?

11 MR BOURGON: Yes, Mr President. In order to maybe facilitate and make it easier
12 for everyone, I would need of course to consult with my client first, but I think we
13 could proceed in the main setting, in the main courtroom here with Mr Ntaganda
14 watching the proceedings from the outside. And I can probably get his consent that
15 he can watch the proceedings from the outside, but we can all stay here in the
16 courtroom and proceed with the testimony of the witness.

17 I think this would be much better because this would allow, of course, somebody who
18 is representing the accused, myself, at least to be able to examine in direct and in the
19 presence of the witness without -- and this would alleviate her fears (Redacted)
20 (Redacted)

21 If the Chamber will allow, I would consult with my client and come back in a very
22 short period of time.

23 PRESIDING JUDGE FREMR: Please do, Mr Bourgon. We permit you to leave the
24 courtroom and please consult your client now.

25 (Pause in proceedings)

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1 PRESIDING JUDGE FREMR: So just to inform parties, Mr St-Michel is still

2 representing the Defence, so we have some representative of the Defence.

3 Court officer also now is trying to consult the technical aspects of this proposal,

4 whether it would be feasible for the ICC to make arrangement proposed by

5 Mr Bourgon.

6 (Trial Chamber confers)

7 (Pause in proceedings)

8 PRESIDING JUDGE FREMR: Mr Bourgon, you have the floor.

9 MR BOURGON: Thank you, Mr President. I have consulted with the accused and,

10 for the purposes of facilitating the work of everyone, he agrees to sit outside of the

11 courtroom and to watch the proceedings from a television screen so that we can all

12 proceed in the courtroom with the testimony of the witness.

13 Thank you, Mr President.

14 PRESIDING JUDGE FREMR: Prosecution, your position?

15 MS SAMSON: No objection, your Honour, so long as the witness understands and

16 feels comfortable testifying in those conditions. Thank you.

17 PRESIDING JUDGE FREMR: I would say that, Ms Witness, is not entirely up to her

18 to decide, it is up to the Chamber. But according our understanding, the main fear

19 comes from the fact (Redacted)

20 Ms Pellet, your position?

21 MS PELLET: (Interpretation) I thank you, Mr President. My understanding of

22 the issue is (Redacted) but of course

23 I can't speak for the witness herself.

24 PRESIDING JUDGE FREMR: Anyway, Ms Witness, as I said it, it will be up to us to

25 decide about the arrangement, but you may heard that there is a proposal that you

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1 will stay in the courtroom, but Mr Ntaganda will be for whole of your testimony
2 outside of the courtroom. (Redacted)

3 THE WITNESS: (Interpretation) Yes.

4 PRESIDING JUDGE FREMR: Very well.

5 So now the only issue is whether this arrangement is technically feasible for the ICC.

6 So do we have any response at the moment, court officer?

7 Okay, I think it doesn't -- it doesn't mind, we will anyway conclude this session.

8 The Chamber will wait for, in the meantime, for the response from the Registry.

9 And obviously there are two possible options: Either if such a technical solution will
10 be feasible, then we will decide accordingly; if not, then very likely, the Chamber
11 would opt for the option having the witness outside of the courtroom. But we will
12 inform parties accordingly, so hopefully tomorrow morning everything will be clear
13 on that issue.

14 So now Ms Witness may be escorted out of the courtroom and then we will move for
15 a short while into open session to inform the public.

16 (The witness stands down)

17 PRESIDING JUDGE FREMR: Now let's move into open session and also please
18 escort Mr Ntaganda into the courtroom.

19 (Open session at 3.53 p.m.)

20 THE COURT OFFICER: We are in open session, your Honour.

21 PRESIDING JUDGE FREMR: So for the information of the public, we had to solve
22 some arrangements which will influence tomorrow's witness testimony, but because
23 we still need to get some more information about some technical feasibility of such a
24 solution, we will decide either today or tomorrow morning but, anyway, now we will
25 adjourn and the proceedings will continue tomorrow 9.30.

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- 1 THE COURT USHER: All rise.
- 2 (The hearing ends in open session at 3.54 p.m.)
- 3 RECLASSIFICATION REPORT
- 4 Pursuant to the Trial Chamber VI's Order, ICC-01/04-02/06-1887, dated 4 May 2017,
- 5 the public reclassified and lesser redacted version of this transcript is filed in the case.