

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
6 Judge Chang-ho Chung
7 Trial Hearing
8 Wednesday, 10 February 2016
9 (The hearing starts in open session at 9.33 a.m.)
10 THE COURT USHER: All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: Good morning, everybody.
14 Court officer, please call the case.
15 THE COURT OFFICER: Thank you, Mr President.
16 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor versus
17 Bosco Ntaganda, case reference ICC-01/04-02/06.
18 We are in open session.
19 PRESIDING JUDGE FREMR: Thank you.
20 Now appearances as usually, starting with Prosecution.
21 MR IVERSON: Good morning, your Honours. Appearing on behalf of the Office of the
22 Prosecutor this morning are the same persons as were in last session.
23 PRESIDING JUDGE FREMR: Thank you.
24 Defence please.
25 MR BOURGON: (Interpretation) Good morning, your Honour. Good morning,

1 your Honours. And to everybody else present in the courtroom today.

2 Representing Bosco Ntaganda, who is present in the courtroom this morning, Elisa Binon,
3 intern; Counsel Isabelle *Martineau, legal assistant; and myself Stéphane Bourgon. Thank
4 you very much, your Honour.

5 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

6 Now Legal Representatives of Victims, please.

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

10 MS GRABOWSKI: Good morning, your Honours. The victims of the attacks are today
11 represented by myself, Ms Anne Grabowski, from the Office of Public Counsel for Victims.
12 Thank you.

13 PRESIDING JUDGE FREMR: Thank you, Ms Pellet. Thank you, Ms Grabowski.
14 And duty counsel, please.

15 MS DOUCERAIN: (Interpretation) Good morning, your Honour, your Honours.
16 Duty counsel for the Witness P-290, Karine Doucerain.

17 PRESIDING JUDGE FREMR: Thank you, Ms Doucerain.

18 The Chamber was told that Mr Bourgon would like to make a submission. So,
19 Mr Bourgon, you have the floor.

20 MR BOURGON: (Interpretation) Thank you very much, your Honour.

21 May it please the Court.

22 (Speaks English) My objective in addressing the Chamber this morning, Mr President, is
23 three fold: First I would like to provide the Chamber with a quick update regarding the
24 health situation of my friend and co-counsel, Maître Boutin. I spoke to Maître Boutin on
25 Sunday night and the good news is that further to the medical examinations, the initial

1 tests which were performed on him, it appears that the worst possible outcome --

2 PRESIDING JUDGE FREMR: Sorry, maybe we should move into private session?

3 MR BOURGON: No, Mr President.

4 PRESIDING JUDGE FREMR: No problem? Okay. Then let's proceed.

5 MR BOURGON: It appears, Mr President, that the worst possible outcome, I'm referring
6 here to the C word, has been discounted. So this is not the issue.

7 However, Maître Boutin has begun specialised treatment which will last a minimum of
8 four weeks, which means that the soonest that he can be back with the Defence team
9 would be the second week of March.

10 I will keep the Chamber, of course, informed of any further developments concerning his
11 situation.

12 The second issue I wish to address with the Chamber this morning very briefly is of course
13 my own medical situation. On Sunday I had a repeat of what happened to me in Court
14 last Wednesday and it did not really alarm me. And I was attending -- I was planning to
15 attend the court session on Monday afternoon. However, again it happened just shortly
16 before the hearing, around lunch time on Monday, which prompted me to the clinic with
17 the result that we have missed two days or at least a full day and a half of court hearing.

18 Mr President, while my own situation does not appear to be alarming, I met with the
19 doctor, I am nonetheless worried about my health situation on the long term and of course
20 I will take the necessary steps to undergo the necessary tests myself. I was supposed to
21 have an appointment with the doctor tomorrow morning to get the results of the tests
22 performed yesterday. I managed to cancel those so that I could be in court today, but I
23 will -- and I have an appointment with the doctor hopefully tomorrow, maybe in the
24 afternoon. As soon as I get a confirmation I will inform the Chamber.

25 The only thing I can say in this regard is that this is quite tough for me to have these

1 problems because anyone who knows me knows that I always work double than
2 everyone else throughout my career, so to have these kind of issues is not something that
3 is of any pleasure to me.

4 The third issue I would like to inform the Chamber about and that's, I guess, is the
5 more -- most important issue, that I would like to provide the Chamber very quickly with
6 an update regarding the state of preparation of the Defence at this particular stage, bearing
7 in mind the witnesses scheduled to testify in the coming weeks.

8 It needs to be recalled quickly, Mr President, that further to Maître Boutin being forced out
9 of play for medical reasons, the Chamber has denied our request to postpone the testimony
10 of two five-day witnesses, although one five-day witness was postponed, and then the
11 Chamber further rejected our request for reconsideration of this decision whereby we had
12 proposed to remove a smaller two-to-three day witness rather than a five-day insider.

13 Mr President, when the -- when these requests were put forward we thought that we were
14 adopting a constructive approach, which, of course, the Chamber denied or partially
15 granted, and I guess that's the nature of the game. But it also needs to be recalled that the
16 three witnesses about to testify, at least according to the existing schedule, P-790 who has
17 testified, P-290 and P-038, had been assigned to the co-counsel to prepare.

18 It is true, Mr President, that I'm able to rely on small but highly qualified and motivated
19 legal assistants. I cannot deny that. They are simply outstanding and performing really
20 outstanding work; however, they are not in a position to cross-examine a witness at this
21 stage, especially an insider witness, and it would be unfair to the accused for -- as well as to
22 them and as well as to the Court to ask them to do so at this time.

23 The plan is to get them up on their feet as soon as possible so that they can pick up the
24 situation if some unfortunate situation happens again.

25 In these circumstances, Mr President, I wish to inform the Chamber that the Defence is not

1 in the position to cross-examine Witness P-290 at the end of his examination-in-chief.

2 This is two reasons behind this fact and that is: First of all the time allotted since the end
3 of the testimony of P-0017. So basically, Mr President, since Maître Boutin was forced out
4 of play I had to do 790 and then I moved on to of course P-17, who was almost ready, but I
5 did not have any time until last Thursday, early afternoon, to start preparing for P-290.

6 I also, due to what happened on Wednesday, decided to take a day off on Saturday and I
7 did and I took a full day off on Saturday, and I don't want to make you cry, but it was -- I
8 have to say that it was my first day off since the beginning of January and I was hoping
9 that this -- everything would be okay.

10 The second issue is in addition to the fact that I have not had enough time to prepare is the
11 fact that there is some investigation leads that we are pursuing, we have been pursuing
12 these leads for some time and we were hoping to have some results had the necessary time
13 been devoted to this matter in the last couple of weeks. We have not been able to do this,
14 and this is a significant issue dealing with Witness 290, which I can address with the
15 Chamber in an ex parte manner should the Trial Chamber wish to hear me on this.

16 Mr President, I don't want to mix apples and oranges. What I just said about my own
17 medical situation is one thing. It is related to our state of preparations for this witness,
18 290, but in fact this is exactly what I was intending on saying on Monday afternoon,
19 regardless of the medical situation.

20 The fact of the matter is, Mr President, that for the number of reasons and these reasons
21 were set out on many occasions by the Defence, both orally and in writing, we believe that
22 we have expressed these reasons, we believe that we were trying to adopt a constructive
23 approach to ensure that trial proceedings would proceed expeditiously. From the first
24 day I was appointed in this case I informed the Trial Chamber that Mr Ntaganda was and
25 is interested in a speedy trial, but the fact is we are not able to proceed with certain step at

1 this time.

2 Now, the kind of -- what I'm informing you of this morning is not -- is not said lightly and
3 this decision was of course discussed with Mr Ntaganda and it was discussed with the
4 members of my team, and we have reached the stage, Mr President, where in our
5 respectful opinion this trial is not heading in the right direction with regards to our ability
6 to effectively represent Mr Ntaganda and it is my duty to take measures to prevent this.

7 If I may add a last small detail: When I -- just shortly before opening statements took
8 place in this case, the day before there was a press conference and during which I
9 mentioned, I guess the Trial Chamber is aware because I repeated the same in a shorter
10 version during opening statements, I told that we were not ready to proceed to trial. I was
11 asked by one of the journalists present: So what, what are you going to do about it? My
12 answer then was, Mr President, was we are professionals, we've been ordered to be in
13 court and we will because the Chamber has decided and we will do our best, and should
14 the breaking point come around, then we will take the necessary actions.

15 Unfortunately, Mr President, this -- we believe that the breaking point has come. I'm not
16 going to repeat all the difficulties we've had, but we have been encountering numerous
17 difficulties which prevent us from doing the work. We feel that the Chamber's
18 truth-seeking function is impaired by our inability to do our work properly.

19 It may appear to the Chamber that we have done at least thorough cross-examinations to
20 this day and we feel that what we've done so far matches our expectations, but we are
21 more and more facing difficulties. And for all these reasons I simply wish to inform the
22 Chamber that at the end of the examination-in-chief of P-290 we will not conduct any
23 cross-examination and we will be asking to recall him at a later point to conduct
24 cross-examination.

25 I respectfully submit that, Mr President. Thank you.

1 PRESIDING JUDGE FREMR: Thank you.

2 Now I would like to know Prosecution position especially on the point three of
3 Mr Bourgon's submission.

4 MR IVERSON: Absolutely, your Honour. First of all, just I'd like to express the Office
5 of the Prosecutor's relief that Mr Boutin will be back the second week in March, we're
6 happy to hear that, of course. And we hope that Mr Bourgon's health improves. We
7 hope you get better.

8 As to the third point, your Honour, we would oppose any delay in the cross-examination
9 of this witness. I listened to Mr Bourgon, I don't think that I heard any compelling or
10 cogent reasons why that needs to happen. Your Honours have expressed the possibility
11 that witnesses could be recalled if there was a compelling or cogent reason to do so. We
12 haven't crossed that bridge, but in what I heard from Mr Bourgon he's had quite a number
13 of days to prepare for this cross-examination.

14 And I don't want to try to make it seem like I want to micromanage Mr Bourgon's
15 preparation style or anything, but I know from -- you know, I've cross-examined many
16 witnesses myself, I know it doesn't take days and days and days to prepare. Generally
17 most of the cross-examination preparation comes after you've listened to what the witness
18 has said on direct examination because then you can key in on the areas that you need to
19 cover in your examination so it's within the scope of the -- of the direct examination.

20 That's where I feel most of the preparation happens. Of course different counsel prepare
21 differently, but I think it's unreasonable to ask for multiple days to prepare for witnesses
22 when this material has been available for the Defence to prepare for a very long time.

23 I also just as an observation, I also have noticed a number of motions and requests coming
24 from the Defence. Of course that all takes time and that's time not spent in preparing for
25 the cross-examination of witnesses. So again, I don't want to make it seem like I'm

1 micromanaging Mr Bourgon's affairs, but it's just my observation that some pretty routine
2 preparation could be happening that maybe is not happening and that notwithstanding
3 the fact that he's expressed that he's been ill. So all that to say that we would oppose any
4 delay in the examination of this witness. Thank you.

5 PRESIDING JUDGE FREMR: Thank you, Mr Iverson.

6 Mr Bourgon, do you want to make any comment on that?

7 MR BOURGON: Yes, Mr President, very briefly. My colleague says I had a number of
8 days to prepare for this witness. I respectfully submit this is incorrect. We finished on
9 last Thursday midday and I have been out of play for some time.

10 My colleague says that routine preparations should have been made up until this day and
11 he is right, and these preparations had been made, but as we said in some of our
12 submissions over the past weeks, once it's time to do the cross-examination then the
13 material must be read by the cross-examiner. There is no shortcut in order to do a proper
14 examination.

15 I -- of course it is a matter of style and I'm not going to argue with my colleague as to
16 which style is better, but to me it is incorrect that cross is determined only by
17 examination-in-chief. When there are issues in a case such as this one where an accused
18 is facing some very, very serious charges and that in our opinion there are witnesses who
19 are coming forward with false evidence, this evidence must be investigated and that does
20 not come from -- only from direct examination. It needs to be prepared in advance.

21 And this is what we have been unable to do.

22 Regarding investigations, Mr President, the Chamber knows from the number of notices
23 that we have filed that we have just resumed exam -- our investigations here a short while
24 ago in January, and I can say, Mr President, that the information flowing in from this
25 investigation is -- there's a lot of information flowing in that we need to consider.

1 I was waiting for my -- for this comment about motions and requests. Of course -- and I'm
2 not surprised with this comment. We have been filing a number of motions. We believe
3 these motions are necessary. This is an issue that we are debating within the team
4 constantly whether to bow and focus solely on the witnesses. We believe that this cannot
5 be done in a Court such as this one, that the issues must be brought forward.

6 And these issues, Mr President, are not the reason why we lack time to prepare
7 adequately for cross-examination. The reason is twofold: It's the preparation time in
8 terms of investigations and it is the last-minute time with the cross-examiner being able to
9 prepare.

10 Mr President, in the past trials I've -- I took part in, usually both counsel are in court all the
11 time together. They have the luxury to do that because they are ready and when one falls
12 down the other one stands up and just takes on from that moment on because both counsel
13 are in court.

14 I look at the other side, I look at the quantity of people they have over there, I look at the
15 number of counsels working on the case on the other side, I look at the senior trial lawyer
16 being present all the time. We just don't have that luxury. It's just not possible for us.
17 That's why when Mr Boutin was taken out of play it became difficult for us to continue
18 with the current schedule. What we wanted to do was we wanted to take a constructive
19 approach in this regard.

20 So these are not regular circumstances, but all this said, Mr President, I want to ensure and
21 to convey to the Chamber our will to proceed with this trial in an expeditious manner.
22 We want this. But we would like to do this by a constructive approach with all the parties
23 being involved. Right now we feel very much alone. We're not surprised about the
24 Prosecution objecting all the time. That's their role. That's -- they want to put sticks in
25 the wheel. And that's one kind -- one way to do a trial, but there are other ways,

1 Mr President. That's what we would like to do, take a constructive approach, discuss the
2 witnesses and to bring the evidence before the Chamber. That's what we want to do. We
3 would like to do it as quickly as possible, but honestly we have not been -- the conditions
4 have not been conducive or at least have not allowed us to do so to this day. Thank you,
5 Mr President.

6 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

7 Now we will break for 10 minutes because I would like to deliberate with my colleagues
8 how to proceed.

9 So we will be back in 10 minutes.

10 THE COURT USHER: All rise.

11 (Recess taken at 9.56 a.m.)

12 (Upon resuming in open session at 10.05 a.m.)

13 THE COURT USHER: All rise.

14 Please be seated.

15 PRESIDING JUDGE FREMR: So we deliberated on, mainly on the second issue and the
16 third issue of the submission made now by Mr Bourgon.

17 As concern the first point, I think, we are glad to hear there is hopefully a good prospective
18 and then that Mr Boutin will return back in the second week of March, which is -- we are
19 aware of that, which is not ideal to the Defence, but still I think it is a generally good
20 prospective.

21 As to the second point, we fully respect that Mr Bourgon faced some health problems. I
22 don't want to make impression that we don't believe you, or that we have some suspicion
23 that it should be an obstruction, it's not the case, but as concerns your next appointment,
24 Mr Bourgon, we would highly appreciate if you could arrange it in a way that wouldn't
25 prevent us from sitting in our typical schedule. And I don't want to, as I said before, to

1 offend you. There is no suspicion, but because we had to in fact repeatedly adjourn and it,
2 you know, it has some consequences, also some budgetary consequences, so we would like
3 to have a very brief medical report just given us some days saying, okay, there were some
4 problems. So we don't need any detail report, just some confirmation from the doctor that
5 there are some reasons that would prevent you from participating.

6 As to the third point, it's a very sensitive issue. We see that the situation of Prosecution is
7 not easy, but at the same time it's us who are responsible for -- responsible to guarantee
8 that this trial will be fair and expeditious, so we really deeply considered all troubles that
9 currently Defence team is facing, and we still believe that it should be possible to conduct
10 cross-examination as intended.

11 Obviously, we can't force Defence. All of us, and even myself, I've been a Judge for more
12 than 30 years, so I also have an idea what preparation for cross-examination should mean.
13 In my view there are, as Mr Iverson said, two parts: One part including preparation in
14 advance. The programme of this schedule was known to the Defence some time in
15 advance. I believe that it should be made some written preparation regardless whether it
16 was made by Mr Boutin or Mr Bourgon. And then the second part should be based on the
17 listening to the witness in the courtroom.

18 We respect that the ideal preparation for Defence maybe would require more days, but we
19 still believe that the proceedings still will be fair even if the cross-examination will be based
20 on current situation and would be starting immediately after examination-in-chief.

21 So it's -- we will just leave it -- we will just leave it on Mr Bourgon's, in fact, approach
22 attitude. We will ask him again after the end of examination whether he is ready or under
23 what conditions.

24 It is true that it is still some, I'm not saying to what extent likely the possibility that we -- or
25 Defence could ask to call this witness again. And as I said, I'm not -- I can't confirm that

1 we will grant such a request because generally the reasons for such a measure should be
2 very, very strong, and it -- even Mr Bourgon I think knows that it's not common.
3 So at the moment we will continue. And because we are obviously in some time pressure,
4 so at least for today we would like to compensate slightly some delay we already do have
5 by sitting until 1 o'clock as usually, but then start quarter past 2 and finish quarter past 4
6 because we also have plenary of Judges from half past 4, so we don't have any further
7 space to sit in more extended hours.
8 Before we call the witness, I also would like to address a few procedural issues.
9 So first I believe you have noticed our decision on in-court protective measures issued last
10 week, and the Chamber ordered face and voice distortion, as well as use of pseudonym
11 during the testimony of Witness 290. The Chamber has subsequently received the VWU's
12 protective measures assessment, and having reviewed it finds no reason to change our
13 existing decision.
14 Next, Ms Doucerain is present to assist the witness in respect of any self-incrimination
15 issues which may arise. The Chamber notes that she was able to meet with the witness
16 and explained matters of self-incrimination to him.
17 On behalf of the witness the duty counsel has seized the Chamber of a request for
18 assurance pursuant to Rule 74, it's filing number 1150.
19 As instructed the Prosecution provided ex parte observations on Friday by way of email.
20 It does not object to the granting of assurances to this witness, subject to the usual caveat
21 of the witness telling the truth during his testimony.
22 Now I turn to Defence counsel. Defence counsel, do you want to make any further
23 observations?
24 MR BOURGON: Just one quick point, Mr President.
25 PRESIDING JUDGE FREMR: Yes, Mr Bourgon.

1 MR BOURGON: Regarding the assurances as to whether these assurances will apply as
2 we did for the previous witness, P-0017, throughout the testimony or should the
3 assurances be triggered only in certain parts of the testimony? The Defence would prefer
4 the latter. Thank you, Mr President.

5 PRESIDING JUDGE FREMR: Yes, but we would like to be consistent with our previous
6 decision, so our preference and our decision is to keep it throughout the whole testimony.
7 Ms Doucerain, do you have any further submissions concerning your client?

8 MS DOUCERAIN: (Interpretation) No, your Honour.

9 PRESIDING JUDGE FREMR: Then we have already deliberated and there are no new
10 submissions, so I can just pronounce now that the Chamber grants the request and will
11 provide the witness with the requested assurances.

12 And finally, the Chamber notes that only small sections of Witness P-17's testimony were
13 in public session and that much of these public sessions in fact were not broadcasted
14 because of large number of redaction orders.

15 The Chamber, therefore, asks the parties where possible to group questions, it's now a
16 message mainly to Mr Iverson, to group questions to avoid having to continuously go in
17 and out of private session and exercise appropriate discretion as to whether or not private
18 session is actually required.

19 Similarly, while we have to take the time limits for asking for redactions into account,
20 please be considerate when applying for redactions and mindful our guidance provided
21 last week that in case of events of locations where a large number of persons are present
22 the information given will generally not be identifying.

23 The Chamber, however, notes the nature of *Witness P-290's expected testimony and
24 acknowledges that it may be necessary on an exceptional basis to go into private session
25 even for a substantial part of his testimony.

1 And I forgot one further point. I would like to address concerning the objection raised by
2 the Defence on the use of the glossary. I think we started to discuss that during the last
3 session. And I'm referring here to item DRC-OTP-2090-0369.

4 The Chamber notes that the Prosecution sought to modify its submissions via email
5 yesterday whereby it indicated that the glossary, point one, is not exclusively based on
6 information provided by the witness in his previous statements, but on occasions directly
7 taken from the logbook and additionally, it's point two, that the attribution of one call sign
8 listed is actually information provided by another witness.

9 The Chamber notes for the record that the Prosecution indicates that it will not seek to have
10 the information relating to this call sign admitted through Witness P-290 and, therefore,
11 proposes to redact this information from the glossary to be used with the witness.

12 From the outset, the Chamber notes that it's unfortunate that this information was
13 presented as such to the witness during the witness preparation session.

14 The Chamber considers that the presentation of such material to a witness compiled by the
15 Prosecution itself and not drawn entirely from the witness's own statements would have
16 had the potential to be inappropriately leading. If such a document was considered
17 necessary, it would have been more appropriate for the Prosecution to request the witness
18 to himself complete the information in it.

19 Mr Bourgon, now we turn to you because we got an email saying that you would like to
20 respond to Prosecution's submission. So if you want you have the floor.

21 MR BOURGON: Thank you, Mr President. I'm picking up from the last words of the
22 Trial Chamber. We definitely maintain our objection to both the use and the admission
23 of this document.

24 As a matter of fact, Mr President, I'm really wondering why we are having this debate in
25 the first place. This document, what we -- what we did say initially in our objections that

1 it was an internal Prosecution document, which was shown to the witness during the
2 preparation session, but the information in the document does not arise solely from the
3 witness, does not arise solely from the statements.

4 Now, the first issue I'd like to address is the fact that the Prosecution of course responded
5 to our objection in writing. We still don't know if this is the practice which is encouraged
6 by the Chamber. Undoubtedly by doing so the Prosecution wants to expedite the process
7 so that the Chamber's already aware of both sides of the coin before the hearing takes
8 place, but in this particular case you had the Chamber receive information before the
9 hearing in writing, by email, then the Chamber received further information at the
10 beginning of the hearing, information which was then corrected later on in a further email.

11 All this, when this kind of debate should take place, Mr President, in our respectful
12 submission, in an adversarial setting or at least in open court.

13 The issue here is that the information in the document itself, it goes further than what the
14 information that's available to the Trial Chamber at this point in time. The document
15 itself, for example, includes, at the end, a series of code names attributed to units. This,
16 according to the information that we have, does not come from the witness, it was never
17 asked of the witness during -- when taking statements from him, and in addition, I stand to
18 be corrected, but it appears to us that the witness, although he saw the document during
19 proofing, did not make any comments on this part of the document.

20 I'm referring to the third page where you have the names such as PERROQUET and
21 OKAPI and BELIER and CANARD and LAPIN and the rest. This is entirely Prosecution
22 information which does not come from -- was not drawn from the witness statements.

23 PRESIDING JUDGE FREMR: Mr Bourgon, I see that the court officers are getting
24 nervous because of maybe the risk of identification of the witness, but still I believe that
25 those three names are not so closely connected with Mr Witness, but please be careful if

1 you in the rest of your submission would reveal some information that could identify a
2 witness. In such a case we should move into private session. So it's up to you.

3 MR BOURGON: Well, I'll try to remain in public session simply by saying that, of course,
4 I believe the Chamber is aware of the main aim of calling this witness. With that in mind,
5 information provided on this document was taken from what is called the big log or the
6 log of messages which would have been taken from the UPC or FPLC.

7 These words taken from this log were never, to our knowledge, put to the witness at any
8 time for him to comment or to confirm other than maybe in the proofing session when they
9 were shown to him, the document was shown to him, and he made no comments. But
10 there is nothing specific whereas the first time he would have seen this list and that he
11 would have said this is accurate or not accurate.

12 Now, Mr President, when the witness sees this document in the proofing session and
13 assuming that he recognizes all of these -- all of these acronyms or variations, then the
14 question is what the Prosecution intends to do with it, and then comes the question of
15 leading in open court because as was mentioned in the initial response from the
16 Prosecution to our objection it was said that this would only be used to refresh the memory
17 of the witness. Well, refreshing a memory of a witness during examination-in-chief is, of
18 course, appropriate for a witness statement, but there is a procedure.

19 First you ask the witness: Do you remember? No, I don't remember. You don't
20 remember? Well, okay, if I show it to you, would that help you? Yes. Okay, then I
21 show it to you.

22 That's the proper procedure for working with a witness statement. Here we're not
23 talking about witness statement; we're talking about an internal document which does not
24 stem from the statements provided by the witness to the Prosecution.

25 So for all these reasons we feel that this document should not be used and should not be

1 admitted. However, I think it's very easy for my colleague to elicit that information from
2 the witness, and the Chamber as well as the Defence, we're able to do our own list of all
3 acronyms and abbreviations that he will or will not recognize.

4 I understand that there is some merit to the Prosecution's argument that this is tedious and
5 that this will take time. Yes, it might take a bit more time to do that, but that's the process,
6 that's the way we want the information from the witness. We don't want the information
7 from an analyst within the Office of the Prosecution.

8 For all these reasons, Mr President, we say that this document should not be either used
9 and should not be admitted in evidence, but most of these -- of course we have done our
10 homework and most of these acronyms will not be opposed by the Defence because a lot
11 of them are correct, but it should come from the witness's mouth in -- during his
12 examination-in-chief and not from a document prepared by an analyst. Thank you,
13 Mr President.

14 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon. And I also thank you for the
15 fact that you adjust the rest of your testimony to the need to protect the witness.

16 Mr Iverson, any reaction from your part?

17 MR IVERSON: Yes, briefly, your Honour.

18 To the extent the Defence doesn't oppose, the Prosecution would be curious as to what
19 could be agreed upon. I just want to state at the onset that -- and I'll be mindful that we
20 are in open session, but the challenge for me in preparing for this particular witness
21 examination was voluminous technical information, and then how to bring that across to
22 your Honours for the witness to elicit that information from the witness in a way that
23 makes sense is timely, doesn't waste your time, doesn't waste the Defence's time or the
24 Prosecution's time or the Legal Representatives of Victims, of course. And so
25 what -- what I came up with was the idea of a glossary.

1 Of course there was no intent on my part *to be in any way suggestive to the witness.

2 The idea was to take information that he had already provided, technical information,
3 code words, things of that nature, and information that was already unambiguously
4 stated in the logbook; so, for example, that --

5 PRESIDING JUDGE FREMR: Be careful this example.

6 MR IVERSON: Let me just use an -- that the word giraffe it will state in the logbook
7 would mean for instance mortar. And it says that expressly in that document. So no
8 real interpretation would be necessary. That was my intent from the onset.

9 And what I stated to you on Monday was my error and no one else's error. The
10 information does not entirely come from Prosecution Witness 290 but is both from him,
11 from statements, and from the -- from the other documents. And then with the exception
12 of the one example, which we have redacted and would not propose to present to the
13 witness.

14 Now, of course I can ask questions to try to elicit this information. You know, testimony
15 is a lot of -- I've heard a lot of counsel and Judges here say testimony is not a memory
16 exercise and we don't expect it necessarily to be a memory exercise and I don't intend to try
17 to quiz the witness. My intent, like I said, was to try to convey that information in a
18 convenient way, but also that attempts to get to the truth and the accuracy of the
19 information.

20 So my intent was to show the document to the witness and allow him to take a careful
21 look at it and let him decide if the document is accurate, if it's truthful or not. And
22 depending on his answers, then offer that information for the Chamber's consideration
23 into evidence. So that was the intent.

24 I think Defence counsel may have gotten a bit confused. I don't think we ever stated that
25 the intent was to refresh his recollection with this document. I don't think in any of our

1 responses we ever stated that. And that was -- that was also not my intent. If that were
2 the case I would probably use an original document.

3 So it's a compilation of technical words and I think I can leave it at that. I think
4 your Honours understand what I'm trying to say. Thank you.

5 PRESIDING JUDGE FREMR: Thank you, Mr Iverson.

6 Mr Bourgon, please briefly because I think we have almost the full picture, but still you
7 have the floor.

8 MR BOURGON: Thank you, Mr President. Just to -- I mean my colleague, maybe, I'm
9 not sure who does these -- who wrote these responses to our objections, but I refer the
10 Trial Chamber to the email sent by the Prosecution at paragraph 2, where it says: The
11 document will be used only in the event that it may refresh the witness's recollections.
12 The witness expects that he would be able to testify and the truth and accuracy of the
13 information contained therein.

14 So what my colleague ignores here, Mr President, is the leading nature. So I'm not going
15 to say more on the leading nature. And as to the unambiguous, it's very easy to get the
16 information from the witness as we proceed. Of course my colleague, I assume, will go
17 document by document and will get the information the witness can provide on these
18 documents, at which point in time he can build his list as we go along.

19 I don't think it is that time-consuming, but there is a process and the witness should not be
20 led into providing information. He will see a message, he will see a document and he
21 will provide, confirm or not what is in there. Thank you, Mr President.

22 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

23 It is not an easy issue. It requires some time for Judges to deliberate, but I don't want to
24 break again so we will deliberate during our regular break. So for the moment I have to
25 say that the Prosecution is therefore not at the moment authorised to use item

1 DRC-OTP-2090-0369 until the Chamber has ruled on the related Defence objection, which I
2 guess will be done during this upcoming break.

3 Mr Bourgon.

4 MR BOURGON: Thank you, Mr President. There is a further issue with that document
5 before we begin. The document is the number 6 on the Prosecution list of exhibits or
6 items it intends to use with the witness. In our initial submission to the Chamber, we
7 said that we oppose the admission of this document, but not its use should it be necessary.
8 Now, there is an issue concerning the use. We oppose the use of the document. I
9 brought the matter to the attention of my colleague at the beginning of this session and it's
10 my understanding that he agrees that he will not be using this document. So I'll leave it at
11 that to avoid a lengthy debate so that we can proceed.

12 PRESIDING JUDGE FREMR: Okay. Thank you.

13 So if there are no further requests for the floor we can now bring the witness in and start.

14 Mr Iverson.

15 MR IVERSON: I'm sorry, I would just like to clarify that last issue, your Honour,
16 because I don't think we agreed that it wouldn't be used, I think we agreed that the pages
17 that do not relate to the witness would not be used. So to the extent that the pages relate
18 to the witness, he may be asked questions about those pages for the document 6 on the list,
19 but not that we would, you know, have voluntarily barred ourselves from using this
20 document. That was not the nature of the agreement.

21 And also just to clarify one other issue, and it's a bit pedantic, but I do want it clear on the
22 record, is that Mr Bourgon stated again that we intended to use the glossary somehow to
23 refresh the witness's recollection. That's not the case. What he's referring to in this
24 email pertains to a different document and not to the glossary. So just for clarification on
25 that. Thank you.

1 PRESIDING JUDGE FREMR: Thank you. So now really I would like to move to the
2 testimony itself.

3 So please bring witness in. We still have 25 minutes so at least we can start with those
4 formal requirements and guidance.

5 Mr Bourgon.

6 MR BOURGON: Mr President, my colleague is correct regarding this last, I use the word
7 pedantic or something like that, but it is true that I took out of context the line that I read
8 in the document.

9 However, we do oppose the use of the document because there are pages added to it that
10 were not there before and should not be there. And so if he intends to use the document
11 at all we will oppose the use of this document. Thank you, Mr President.

12 PRESIDING JUDGE FREMR: Point taken. Thank you.

13 (Pause in proceedings)

14 PRESIDING JUDGE FREMR: Mr Bourgon, another point?

15 MR BOURGON: Just for ease of understanding of the Chamber, the document we're
16 talking about is document number 6, which is a modified version of document number
17 1 -- of item number 1. So if you look at number 1 we have no problems with this one, but
18 number 6 is a modified version, that's the one we oppose, the use and admission. Thank

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Open Session)

ICC-01/04-02/06

1 you.

2 PRESIDING JUDGE FREMR: Thank you for this clarification.

3 (The witness enters the courtroom)

4 PRESIDING JUDGE FREMR: Mr Witness, good morning. I would like to welcome you
5 on behalf of this Chamber to the courtroom.

6 WITNESS: DRC-OTP-P-0290

7 (The witness speaks French)

8 THE WITNESS: (Interpretation) Thank you. Good morning.

9 PRESIDING JUDGE FREMR: Mr Witness, you are going to testify before the
10 International Criminal Court. And this Chamber has been established to try the case of
11 the Prosecutor against Mr Bosco Ntaganda.

12 You will be soon asked questions both by the Judges and lawyers in the courtroom. In
13 this connection, I would like to guide you.

14 Please listen carefully to those questions. It is very important that you make sure that you
15 understand the question before you answer it. If you do not understand, feel free to ask
16 for the question to be repeated or rephrased.

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

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

24 Do you understand all this, Mr Witness?

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

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Open Session)

ICC-01/04-02/06

1 PRESIDING JUDGE FREMR: Very well.

2 Mr Witness, let me now explain to you how the protective measures work that the

3 Chamber has put in place for your testimony.

4 As you see, you are sitting in a place where the public here in this building cannot see you.

5 In addition, face distortion is applied, which in practice means that your face is blurred on

6 the camera images and the public cannot see your face during the testimony. We also

7 decided to order voice distortion, which means that the public will not be able to identify

8 you by your voice as it has been disguised. And we ordered the use of pseudonym. This

9 means that we will all refer to you only as "Mr Witness" to make sure that the public does

10 not know your name.

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

12 session, which means that the public can hear what is being said in the courtroom. When

13 you are asked to describe anything that relate specifically to you, we will do this in a

14 private session.

15 Facts that might reveal your identity, for example, then there is no broadcast and no one

16 outside the courtroom can hear your answer. Please do not refer to such details later on

17 during your testimony whenever we are in open session.

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

19 will do our best to protect this information. In such a case your testimony will be

20 broadcast on a delay, so we can remove any such remarks from the broadcast which will be

21 heard by the public and from the public transcript of the proceedings.

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

23 of this trial. If at any point you feel that you would like a brief break from giving your

24 testimony or you feel unwell, do not hesitate to let us know by raising your hand.

25 Mr Witness, do you understand this?

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Open Session)

ICC-01/04-02/06

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

2 PRESIDING JUDGE FREMR: All right.

3 Now, Mr Witness, you will find a piece of paper that is now in front of you with the solemn
4 undertaking. So please now make your solemn undertaking to tell the truth by reading
5 out the declaration on the piece of paper in front of you, please.

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

8 PRESIDING JUDGE FREMR: Thank you, Mr Witness.

9 It means that you are now under oath. You will have already been informed by
10 representatives of the Prosecution and by the duty counsel about the importance of
11 speaking the truth.

12 You need to be aware that it is an offence within the jurisdiction of this Court to give false
13 testimony.

14 Do you understand that?

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

16 PRESIDING JUDGE FREMR: (Microphone not activated)

17 THE INTERPRETER: Microphone, please.

18 PRESIDING JUDGE FREMR: Fine.

19 Mr Witness, you have been assigned a lawyer to provide you with legal advice about
20 possible self-incrimination. She's present, you can see her on your right. And if any
21 concerns arise during the course of your testimony, she will be able to advise you and to
22 raise those concerns with the Chamber.

23 She has requested that you be given certain assurances by the Chamber. There may be
24 questions asked to you for which you fear when answering them truthfully may
25 incriminate you because these questions relate to your own conduct.

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Open Session)

ICC-01/04-02/06

1 In such cases we will require you to answer the question, but we can assure you that your
2 answer will be kept confidential and will not be disclosed to the public or to the
3 government of any country.

4 The Prosecution has further assured that they will not themselves use this information to
5 prosecute you before the ICC provided that you tell the truth.

6 Do you understand all this, Mr Witness?

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

8 PRESIDING JUDGE FREMR: Good.

9 Anyway, for the duration of the witness testimony, I request the parties to be vigilant
10 about going into private session for areas of evidence that are likely to elicit responses that
11 might self-incriminate the witness.

12 And now a few practical matters, Mr Witness, you should have in mind when giving your
13 testimony:

14 Everything you say here in the courtroom is written down and interpreted into English. It
15 is therefore important to speak clearly and to speak at a slow pace like me at the moment.

16 We want to make sure that your words can be well understood by the interpreters and
17 then by the rest of us. Please speak into the microphone and only start speaking when the
18 person asking you the question has finished. To allow for the smooth interpretation

19 everyone has to wait a few seconds before starting to speak. So it's important,

20 Mr Witness, and I recommend to you, when anybody has asked his or her question, please
21 count in your head to three and only then give your answer.

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

24 Have you understood all that, Mr Witness?

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

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Open Session)

ICC-01/04-02/06

1 PRESIDING JUDGE FREMR: Very well. Thank you very much, Mr Witness.

2 And now we will start your testimony. And first you will be examined by the

3 Prosecution.

4 Mr Iverson, you have the floor.

5 MR IVERSON: Thank you very much, your Honour.

6 QUESTIONED BY MR IVERSON:

7 Q. Good morning, sir. How are you doing this morning?

8 A. Fine.

9 Q. So we've met before, but I just wanted to introduce myself again. My name is
10 Eric Iverson and I'm a trial lawyer here on behalf of the Office of the Prosecutor, do you
11 understand?

12 A. Yes, I understand.

13 Q. Sir, I know that walking into a room where most people are strangers is a bit
14 nerve-racking. Just stay seated and if I could ask you just to -- just look around the room,
15 this courtroom just so you get a sense of the dimensions of the room and you understand
16 the number of people sitting in the room. I know that you may seem that -- feel uneasy
17 about sitting. Just feel free just to look around the courtroom for a moment to try to
18 make yourself feel a little bit more comfortable.

19 All right. Sir, I'll be asking you questions today. And as the Presiding Judge has already
20 told you, remember to keep the -- a pause in between the question and the answer so that
21 the interpreters can understand what we're saying and correctly interpret the words. I
22 say this not only for you, but also to remind myself because sometimes it's difficult to do,
23 you're thinking about the question, or you're thinking about the answer, and you skip that
24 part. But it's really important that we try to move at a slow, deliberate pace so that the

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

1 interpreters can interpret everything. Do you understand that, sir?

2 A. Yes, I understand.

3 Q. And also, sir, if -- if I ask a question and it's just not clear to you what I'm asking,
4 please feel free to ask me to rephrase the question. And as the Presiding Judge said, if
5 you don't know the answer to the question, and that's the truth, it's completely acceptable
6 to say that "I don't know" or "I don't remember" if that is in fact the truth. Do you
7 understand that, sir?

8 A. Yes, I understand.

9 Q. All right. Thank you.

10 Mr President, could I ask that we move into private session.

11 PRESIDING JUDGE FREMR: All right.

12 And, Mr Witness, now you can see a practical example what I said to you before. Now
13 Mr Iverson asked to move into private session because I guess he will deal with questions
14 that could -- or, rather, responses to those questions could reveal your identity. So now
15 we will move to the private session which means that nobody outside of this courtroom
16 can hear your responses.

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

18 (Private session at 10.50 a.m.) *(Reclassified partially in public)

19 THE COURT OFFICER: We are in private session, Mr President.

20 PRESIDING JUDGE FREMR: Thank you, court officer.

21 Mr Iverson, you may proceed.

22 MR IVERSON: Thank you, your Honour.

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

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10 (Redacted)

11 (Redacted)

12 (Redacted)

13 A. I haven't -- haven't understood.

14 Q. Sir, I'll rephrase the question so you can understand.

15 PRESIDING JUDGE FREMR: Mr Witness, do you want to -- please, you have the floor.

16 THE WITNESS: (Interpretation) I haven't understood the question. (Redacted)

17 (Redacted)

18 (Redacted)

19 PRESIDING JUDGE FREMR: No problem, Mr Witness. Mr Iverson even indicated he
20 was ready to rephrase his question.

21 Mr Iverson, please.

22 MR IVERSON:

23 Q. I just wanted to ask you to tell the Chamber just approximately (Redacted)

24 (Redacted)

25 PRESIDING JUDGE FREMR: Mr Witness, a rough estimate would be sufficient.

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

1 THE WITNESS: (Interpretation) It is a very large distance which I couldn't guess.

2 PRESIDING JUDGE FREMR: Okay, no problem.

3 Mr Iverson.

4 MR IVERSON: Okay.

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

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21 (Redacted)

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Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

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10 Q. Thank you, sir.

11 Your Honours, I would -- just wondering whether it might be a good time to break, or
12 what you would prefer?

13 PRESIDING JUDGE FREMR: Mr Iverson, if you will need maybe still more 10 minutes
14 to finish this introductory part concerning personal details, we can then adjust break to
15 that, so it's up to you. If you would just -- if you would like just to continue with these
16 questions concerning Mr Witness, his personal details, we can give you, it's up to you, 10
17 minutes, and then we can -- I don't know what is your plan of questions.

18 MR IVERSON: I'll target the quarter past 11, if that's all right with your Honours.

19 PRESIDING JUDGE FREMR: Very well. Let's proceed.

20 MR BOURGON: Mr President, if my colleague wants to lead the witness for this part, I
21 mean we have no objection, this is not contested. So maybe we can go quicker.

22 PRESIDING JUDGE FREMR: By the way, one thing now you allow Mr Witness to make
23 narrative. I find it absolutely reasonable and even sometimes better than to practice this
24 way question answer, question answer, so it depends on circumstances, but if you find a
25 topic that is better to leave witness to make his narrative, we strongly support that

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

1 because it's much less time-consuming than the system question, response, question,
2 response. Anyway, you have the next 10 minutes for your disposal. Please proceed.
3 MR IVERSON: Thank you. I take note of Mr Bourgon's comment and of course your
4 comment, Mr President. All right.

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

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12 (Redacted)

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Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

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22 (Redacted)

23 (Redacted)

24 Q. All right.

25 Well, I think I would ask now that we do take that break, your Honours, and then return

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Open Session)

ICC-01/04-02/06

1 for additional questions with this witness.

2 Thank you very much, sir.

3 PRESIDING JUDGE FREMR: All right.

4 So, Mr Witness, we will break now for 30 minutes and I would just like to say that you
5 started very well. You just observed all my instructions, so please after break please
6 continue in the same way.

7 Now I would like to ask court officer to take Mr Witness out from the courtroom and then I
8 will move for a very brief time into open session.

9 (The witness stands down)

10 (Open session at 11.18 a.m.)

11 THE COURT OFFICER: We are back in open session, Mr President.

12 PRESIDING JUDGE FREMR: Thank you, court officer.

13 So we will break now and we will reconvene at quarter to 12, and then we will break again
14 from 1 to quarter past 2.

15 But before we leave I would like to repeat as usually that we considered proposal made
16 by -- or request made by Prosecution to be allotted 10 hours for this witness. We
17 considered the alleged amount of his testimony and its importance and we found it
18 reasonable.

19 So please, Mr Iverson, keep in mind we would strongly encourage you to remain in those
20 10 hours. If not, then you would have request for additional time and it would depend
21 what would be our decision in such a case.

22 So now we break.

23 THE COURT USHER: All rise.

24 (Recess taken at 11.19 a.m.)

25 (Upon resuming in open session at 11.50 a.m.)

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Open Session)

ICC-01/04-02/06

1 THE COURT USHER: All rise.

2 Please be seated.

3 PRESIDING JUDGE FREMR: So before we continue with the testimony, I will

4 pronounce our ruling on the Defence objection that, I guess, we can remain in open

5 session because in our brief ruling there is nothing I guess that could reveal identity of the

6 witness. We just use general, general terms.

7 So our ruling concerns objection to the use of (Redacted). And the

8 Chamber does not consider it appropriate for the document to be used with the witness.

9 The information should be elicited in testimony. If the Prosecution considers that this

10 would be assisted by providing this witness with a numbered list of terms, for example by

11 redacting the right-hand column, it may do so.

12 And just a few words for the reasoning: The Chamber appreciates Mr Iverson's attempt

13 to speed up our trial, but because there still will remain some uncertainty about what

14 single acronyms really came from the witness, and we in fact should verify it, in any case,

15 which also would be time-consuming, so in order to guarantee a fair trial and to avoid any

16 leading aspect of this document, we decided in this way.

17 So now, Mr Iverson, you may proceed. Do you want to move into private session or you

18 want to stay in open?

19 MR IVERSON: I would ask to move into private session, your Honour.

20 PRESIDING JUDGE FREMR: All right.

21 Court officer, please, let's move into private session.

22 And for the interest of public, can you estimate for what time you would remain in

23 private?

24 MR IVERSON: Well, it's a bit difficult to estimate. As I was preparing the questions for

25 this examination, your Honour, I strove to, as you say, include all the questions that could

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

1 possibly be asked in open session to include those together in a group. However, what I
2 struggled with was the unique nature of this witness's testimony and most of it, the vast
3 majority of it, is uniquely identifying. And so I found it very difficult to structure the
4 questions in any way that would make sense to try to include a large portion of the
5 testimony in open session. So --

6 PRESIDING JUDGE FREMR: No problem, Mr Iverson. It's no problem. It's fully
7 understandable.

8 So let's move into private session now.

9 (Private session at 11.54 a.m.) *(Reclassified partially in public)

10 THE COURT OFFICER: We are in private session, Mr President.

11 PRESIDING JUDGE FREMR: Thank you.

12 Mr Iverson, you may proceed.

13 MR IVERSON: Thank you, your Honour.

14 Q. (Redacted)

15 (Redacted). Were you at that time familiar with who Mr Ntaganda
16 was?

17 A. Yes. At this time Mr Ntaganda was the chief of general staff -- deputy chief of
18 general staff responsible for operations.

19 Q. And do you remember how you -- how you knew that information, how you were
20 aware of Mr Ntaganda's position?

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

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10 Q. I'd like to ask you to describe these young soldiers that you mentioned. If you
11 could describe these -- the young soldiers to the Chamber.

12 A. How can I describe them? Maybe using their age. In that connection, I would say
13 that they were very young, they were too young. They were not yet adults. They had
14 not reached the age of adulthood.

15 PRESIDING JUDGE FREMR: Mr Witness -- sorry, Mr Iverson, for breaking your
16 examination, but I would like to put some additional questions -- you said "They had not
17 reached the age of adulthood." And what concrete age you meant by "adulthood"?

18 THE WITNESS: (Interpretation) When one talks about an adult one is referring to
19 somebody who is 18 and above, 18 years and above. But those who can be referred to as
20 minors are less than 18, so from 17 years downward.

21 PRESIDING JUDGE FREMR: Thank you.

22 Mr Iverson, you may proceed.

23 MR IVERSON:

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

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7 (Redacted)

8 Q. And can you describe for the Chamber how these young soldiers behaved? What
9 leads you to say that they lacked maturity?

10 A. Their conduct, the manner in which they behaved. Their actions were not really in
11 line with the conduct of someone who is ready or willing to learn. (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 Q. Could you estimate, and you can -- if you need to, you can use your hand, how tall
18 the shortest young soldier was?

19 A. Well, how tall? Well, you might have a 13-year-old child who is even taller than
20 myself, some who might be taller than I but is still 13 years old or 15 years old. (Redacted.)

21 (Redacted)

22 So going by height is a little bit difficult given that height, well, that's how things are.

23 PRESIDING JUDGE FREMR: Again, sorry to interrupt you.

24 Mr Witness, how tall are you?

25 THE WITNESS: (Interpretation) I cannot give you a specific height, but I must be more

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

1 (Redacted)

2 PRESIDING JUDGE FREMR: And at least some of them, were they taller than you or
3 were they smaller than you?

4 THE WITNESS: (Interpretation) Well, going by height some of them were shorter than
5 me and some were taller than me.

6 PRESIDING JUDGE FREMR: Okay then.

7 Mr Iverson, you may proceed.

8 MR IVERSON:

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

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Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

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Page redacted – Private session

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

1 (Redacted)

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15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 Q. Could you describe for the Chamber the clothes that these young people were
21 wearing?

22 (Redacted)

23 (Redacted) uniforms.

24 Q. And could you tell the Chamber whether those uniforms fit those young people?

25 A. Well, when it comes to size, some of the children, as I just said earlier, could have

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

1 been tall but young, so when you looked at the way in which the uniforms sat on them
2 you would notice that among (redacted) the uniforms did not quite fit; they
3 were oversized and long.

4 Q. What about footwear? Did they wear any shoes or boots?

5 A. Well, yeah, they had -- what do you call those again? Those boots that you wear
6 during the rainy season. Yes. Known as jambière. Rubber boots. Jambière in French.
7 I think that's what they had.

8 Q. And could you tell the Chamber whether they had boots that fit them, rubber boots?

9 A. (Redacted) They really did not
10 wear those types of boots as such, but they only put them (redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

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Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

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13 Page redacted – Private session

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Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

1 (Redacted)

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4 PRESIDING JUDGE FREMR: Mr Bourgon.

5 MR BOURGON: Mr President, we are belabouring the point with the witness. I think
6 he has made his response clear and now we are entering into leading questions and
7 opinion questions. These questions should not be permitted. I think we've heard what
8 the witness has to say on this topic, Mr President. Thank you. He has given his opinion
9 already on this topic.

10 PRESIDING JUDGE FREMR: Objection sustained.

11 MR IVERSON:

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

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Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

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12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 PRESIDING JUDGE FREMR: Mr Bourgon.

19 MR BOURGON: Thank you, Mr President. Maybe we can move into public session for
20 some of these questions because they are kind of technical in nature, if at all possible.

21 PRESIDING JUDGE FREMR: (Redacted)

22 (Redacted)

23 What do you think, Mr Iverson? It also depends on your prospective questions.

24 MR IVERSON: From my part, your Honour, I can say that the -- potentially the

25 questions would be capable of being answered in open session, but I think I estimate that

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

1 the risk is pretty high that we would get into identity-type information in a lot of these
2 questions.

3 PRESIDING JUDGE FREMR: All right. Under those circumstances, let's remain in
4 private.

5 MR IVERSON:

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 MR BOURGON: Thank you, Mr President. I don't think we need to have recourse to a
19 previous sketch unless the witness does not remember what he has drawn before. He is
20 here and he can use the Elmo and produce a sketch out of his -- right here in the
21 courtroom. I think this would be much better to proceed this way, Mr President, unless
22 he doesn't remember what he has drawn before. Thank you.

23 PRESIDING JUDGE FREMR: My guess question was put properly, but it would assist to
24 him, so you may proceed, Mr Iverson.

25 MR IVERSON: Thank you, your Honour. And the ERN of that document is

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

1 (Redacted)

2 PRESIDING JUDGE FREMR: Otherwise is there any objection against the use of this?

3 MR BOURGON: Mr President, the witness should answer the question before --

4 PRESIDING JUDGE FREMR: You are right.

5 MR BOURGON: -- whether it is of assistance to him.

6 PRESIDING JUDGE FREMR: You are right.

7 Mr Witness, the question was put to you whether you would -- able to just describe it

8 yourself, the -- (redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

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Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

1 (Redacted)

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7 (Redacted)

8 PRESIDING JUDGE FREMR: Mr Bourgon.

9 MR BOURGON: Maybe we can go quicker and use the sketch.

10 PRESIDING JUDGE FREMR: It was just my idea at the moment. I think it would assist.

11 It seems that Mr Witness has some problems, so move on and please use -- you can use
12 this sketch. We have even approval of Defence.

13 MR IVERSON: All right. Could I ask that the sketch be displayed.

14 Q. Sir, do you see a document on your screen in front of you?

15 A. Yes. Yes, I see the document.

16 Q. And could I ask you to explain to the Chamber what we're looking at in this
17 document?

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

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Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

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13 Page redacted – Private session

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Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

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13 Page redacted – Private session

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Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

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11 MR IVERSON: Your Honours, I think it would be a good time to take a break now for
12 lunch. Thank you.

13 PRESIDING JUDGE FREMR: Thank you for your punctuality, Mr Iverson. So we break
14 now and, as I said in the morning, because we are trying to compensate a delay we are
15 facing, we will reconvene at half past 2 -- sorry, quarter past. Sorry. Everybody corrected
16 me. You are right, quarter past 2.

17 THE COURT USHER: All rise.

18 (Recess taken at 1.01 p.m.)

19 (Upon resuming in open session at 2.16 p.m.)

20 THE COURT USHER: All rise.

21 Please be seated.

22 PRESIDING JUDGE FREMR: Good afternoon, everybody.

23 Good afternoon, Mr Witness. We will continue with your testimony.

24 Mr Iverson, do you want to start in open or in private?

25 MR IVERSON: I believe that we can stay in open at least for the first set of questions,

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

1 your Honour.

2 PRESIDING JUDGE FREMR: Okay. So you may proceed, Mr Iverson.

3 And, as I said, we will have to finish today quarter past 4 because we have a plenary half
4 past 4.

5 MR IVERSON: I'm sorry, I'm going to have to correct myself. As I look at these
6 questions, I mean, there -- it's possible they could be answered in open session but the risk
7 is pretty high.

8 PRESIDING JUDGE FREMR: It's your choice. We get the point.

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

10 (Private session at 2.18 p.m.) *(Reclassified partially in public)

11 THE COURT OFFICER: We are in private session, Mr President.

12 PRESIDING JUDGE FREMR: Thank you.

13 Mr Iverson you may proceed.

14 MR IVERSON:

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

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Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

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24 PRESIDING JUDGE FREMR: Mr Bourgon.

25 MR BOURGON: Thank you, Mr President. I see that my colleague is trying to revisit

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

1 an issue that was raised at length in the first part. I'd like to address the Chamber
2 without the presence of the witness, Mr President, please.

3 PRESIDING JUDGE FREMR: So, court officer, please take Mr Witness out of the
4 courtroom.

5 (The witness stands down)

6 PRESIDING JUDGE FREMR: Mr Bourgon, could we -- should we, rather, move into
7 open session or would it be better to remain in private?

8 MR BOURGON: I think on the nature of what I will say, I think it's better to remain in
9 private session.

10 PRESIDING JUDGE FREMR: All right.

11 Mr Bourgon, you may proceed.

12 MR BOURGON: Thank you, Mr President. Mr President, as the Trial Chamber will be
13 well aware, the last question posed by my colleague is but an attempt to revisit the issue
14 (Redacted)

15 who could maybe provide some kind of hearsay evidence as to what was discussed
16 between him and that witness.

17 This witness has made clear what he knows about the age, the demeanour, what he -- or,
18 what he knows, what he doesn't know, (Redacted)

19 (Redacted) I think we went the full circle regarding
20 this issue.

21 I think we should -- my colleague should be asked to proceed to a different topic,
22 Mr President, to avoid wasting the Court's time. Thank you.

23 PRESIDING JUDGE FREMR: Mr Iverson?

24 MR IVERSON: Well, I think I disagree with the notion that I'm wasting the Court's time,
25 respectfully. We allotted 10 hours for this witness because we believed that it would

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

1 take 10 hours. That said, I am asking him questions, additional questions about the issue
2 of the age of the children obviously because that is a critical issue for the Prosecution's
3 case.

4 We have charged Mr Ntaganda with charges related to children under the age of 15.

5 And in his statements he unequivocally states that the children were under the age of 15.

6 And so it's critical that the Chamber understands what his testimony is on this issue.

7 PRESIDING JUDGE FREMR: Objection sustained because, you know, if -- to me it was
8 not at the very beginning clear what is the goal of your question. It's true that it is
9 indicating and now you are confirming that you are targeting again the issue of the age.
10 Really, this question has been repeatedly, in fact asked. Witness answered that,
11 according to him, it's true that it's different response compared to his previous statement,
12 but we can't -- or, you cannot solve it by repeating, in effect, the same question because
13 I was under the impression maybe you would like to elicit some further circumstances of
14 the training. But if your question is targeting the age, please move on.

15 MR IVERSON: May I be heard on this, your Honour?

16 PRESIDING JUDGE FREMR: Yes, please.

17 MR IVERSON: Also just to make the Chamber aware, we've noticed the apparent
18 discrepancy between the statement and the testimony. I would like an opportunity to
19 explore that to see if the witness has an explanation for that. So to the extent that I want
20 to just verify that those types of questions would be allowed by the Chamber.

21 PRESIDING JUDGE FREMR: You can even read to him this part of the statement.

22 Mr Bourgon, your position to this proposal?

23 MR BOURGON: Well, Mr President, the use of *a statement, I referred to that earlier this
24 morning. When we want to use a statement with a witness, first he has to be asked
25 whether he remembers what he said in his statement, and if he does remember and he

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

1 answers the question, then there's no use to refer to the statement.

2 If he doesn't remember what he said, then the part of that statement can be put to him and

3 to see if that helps -- if this is of assistance in remembering what he said previously. But

4 that's one issue.

5 But the issue here is not this. The issue is that we went on and on and on with this issue.

6 There were a number of questions asked. The testimony of the witness is not ambiguous.

7 It is very clear what he said, what his understanding was, and now we're trying to revisit

8 the issue.

9 So it's not an issue of wasting the Court's time in the sense of going at it in the 10 hours of

10 the Prosecution, it is asking over and again an answer until we get what we want. And

11 that's not the issue.

12 If my colleague would have started by this approach, maybe it could have been allowed.

13 I'm saying maybe, I'm not saying yes. Maybe it could have been allowed. But at this

14 point in time, based on what is on the record already, there is no point in going back and

15 having him change his testimony now. Thank you, Mr President.

16 PRESIDING JUDGE FREMR: I think it was clear from my previous statement that we

17 are also against the -- *prohibited Mr Iverson to ask the same question, even if slightly

18 different manner again. But just to confront a witness with his previous statement,

19 which is really completely different, I think it's -- it's possible.

20 So now, court officer, please bring witness back.

21 Mr Bourgon.

22 MR BOURGON: If I may just add, Mr President: This issue is part of the Chamber's

23 ruling on the conduct of proceedings, whether there is going to be a witness who will be

24 declared hostile and whether there is an issue of refreshing the memory. This is part of

25 the decision on the conduct of proceedings. Thank you, Mr President.

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

1 PRESIDING JUDGE FREMR: Mr Iverson.

2 MR IVERSON: Your Honour, we're not seeking to have the witness declared hostile.

3 We're also not seeking to refresh his recollection. At no point did he state "I don't

4 remember," which would be the predicate for refreshing the recollection.

5 What we're asking to do is to explore the apparent inconsistency and allow the witness to

6 explain. We're also not asking to ask leading questions. My intent is just to ask if he's

7 able to explain. And if he is, then that is his answer. And that would be my intent, your

8 Honour.

9 PRESIDING JUDGE FREMR: Give me a second, I will also consult my colleagues.

10 Mr Bourgon.

11 MR BOURGON: Mr President, my colleague just said it himself. He's not looking at

12 refreshing and he is not looking at declaring the witness hostile. In these circumstances,

13 there is no issue in going back and contradicting the witness with his own statement.

14 That can be done in cross-examination when he will be cross-examining the Defence

15 witnesses. That he can do it then, like I'm -- like I intend to do it in this -- when I

16 cross-examine this witness if and when.

17 But the issue is that's not something that can be done. It's not the way it works. He's

18 not refreshing. He said it himself. And he's not declaring the witness hostile. Those

19 are the two circumstances when an examining party should be able to refer to the

20 statement of a witness.

21 So this plus the fact that we are revisiting the issue over and over again, for those two

22 reasons, this should not be permitted. Thank you, Mr President.

23 PRESIDING JUDGE FREMR: Thank you.

24 (Trial Chamber confers)

25 PRESIDING JUDGE FREMR: So after our silent deliberation, we insist, or the Chamber

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

1 insists what I have already said that, in our view, it's also -- it's a different situation
2 compared to declaring witness hostile, which would allow even to put leading questions
3 to the party calling the witness, but still we consider it as, in effect, a way of refreshing his
4 memory because today he testified in different way, while in the written statement he
5 testified and there are no, at least according this statement, no doubt on his part, so I think
6 this discrepancy should be clarified.

7 Mr Iverson, you want to say something before the witness is brought in?

8 MR IVERSON: No, it was just out of habit, your Honour. I was standing because I was
9 getting ready to ask questions.

10 PRESIDING JUDGE FREMR: Then okay.

11 (The witness enters the courtroom)

12 PRESIDING JUDGE FREMR: And one, my additional comment, you know, as concerns
13 the institute of hostile witness, in fact it's not in the statutory framework of the Court, it's
14 just part of this jurisprudence strongly influenced by common law system. And I don't
15 think that, you know, this hostile witness method should be used in a way that would
16 prevent the Chamber to find the truth which is our main - main - role.

17 Mr Iverson, you may proceed.

18 MR IVERSON:

19 Q. Sir, I'd like to ask you now about an apparent discrepancy between your testimony
20 and -- your testimony today and a previous statement that you made in 2007. Do you
21 understand that?

22 A. Yes, I understand.

23 Q. So this morning, and this today's transcript, page 51, line 25, I asked you a question,
24 and I'm going to restate my question, but I'm going to also provide it in its proper context.
25 I asked you:

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

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8 So that was your testimony.

9 And in your statement from 2007, and for the record that is (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 Now, whether it's 16 or 17 years, what I said is that I cannot be specific as to their age.

20 My -- but they were minors. They were minors. And these things happened a long
21 time ago.

22 PRESIDING JUDGE FREMR: Mr Witness, the question or the issue doesn't stand in a
23 way that we would ask you repeatedly on the same thing. You are right, you said clearly
24 that according your opinion you were not able to find some clear signs that would
25 indicate their age, but the question now is that you are saying this today, but in your

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

1 written statement you provided, and you signed, you were more specific, you said clearly
2 that those were under 15. So we are just asking you to clarify, if possible, this difference
3 between your previous statement and your today testimony.

4 THE WITNESS: (Interpretation) Those young people were less than 15 years old.
5 That is true. And I said this loudly before God and before the nation. These people
6 were not of age. Maybe 15, 16 or 17, as I said. They were -- they were too young. Too
7 young, less than 15 years old. They were too young. I repeat they were too young.
8 Maybe not 15, 16 or 17, no, no.

9 PRESIDING JUDGE FREMR: And Mr Witness, one follow-up question: Do you have
10 any legal knowledge about or whether this age is relevant for our case, or has anybody
11 explained to you whether the age of those young people has any impact on this case?

12 THE WITNESS: (Interpretation) Well, this is what I can say, Mr Presiding Judge: The
13 difference that you have just explained to me about 16, 17 years in relation to the age
14 being under 15, what I know in fact is that it was not easy to determine their ages. You
15 could look at someone's size and height, but it was not easy to determine their age.
16 However, their appearance and their behaviour led me to the conclusion that they were
17 too young, they were not mature. A 15 year old child is not as mature as a 17 year old
18 child.

19 PRESIDING JUDGE FREMR: Okay.

20 Mr Iverson, you may proceed.

21 MR IVERSON: Thank you, your Honour.

22 PRESIDING JUDGE FREMR: Mr Bourgon.

23 MR BOURGON: Thank you, Mr President. Of course I have to put on the record that
24 we will be seeking leave to appeal the decision of the Trial Chamber in the way it is
25 assisting the Prosecution in eliciting evidence. Thank you, Mr President.

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

1 PRESIDING JUDGE FREMR: Well noted.

2 Mr Iverson, you may proceed.

3 MR IVERSON: All right. Thank you, your Honour.

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

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11 (Redacted)

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Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

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13 Page redacted – Private session

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Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

1 Q. Yes sir, just one moment, please.

2 PRESIDING JUDGE FREMR: Mr Bourgon.

3 MR BOURGON: Thank you, Mr President. Before we get into this exercise, the issue of
4 refreshing a witness's memory with his statement is not an issue that goes to the whole
5 statement and goes to a specific answer and to a specific question.

6 In this case, I would like my colleague to provide the exact paragraph he intends to read
7 or show to the witness and that we can at least make some observations on this issue,
8 Mr President. Thank you.

9 PRESIDING JUDGE FREMR: All right.

10 Mr Iverson, are you able to provide the reference?

11 MR IVERSON: Yes, absolutely, your Honour. And of course it wasn't my intend to
12 have him read the entire statement. I'm just limiting this to paragraphs 46 and 47 of the
13 document 1 on the Prosecution's list of documents, (Redacted)

14 PRESIDING JUDGE FREMR: I guess Defence got it, so you may proceed.

15 MR IVERSON: Could I ask the court officer to please display the French translation of
16 that document which is (Redacted)
17 (Redacted)

18 PRESIDING JUDGE FREMR: Mr Bourgon.

19 MR BOURGON: Thank you, Mr President. I respectfully ask the Trial Chamber to look
20 at these paragraphs 46 and 47. I believe paragraph 46 might be an answer to what my
21 colleague is looking for, but 47 goes further.

22 May I recall in this respect -- I think I need to address the Trial Chamber in the absence of
23 the witness, Mr President.

24 PRESIDING JUDGE FREMR: Court officer, please take Mr Witness out of the courtroom.
25 (The witness stands down)

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

1 PRESIDING JUDGE FREMR: Mr Bourgon, you may proceed.

2 MR BOURGON: Thank you, Mr President. It is significant in this regard: When we
3 start with refreshing a witness's memory with his own statement that we bear in mind
4 that the witness (Redacted) that this witness had a lot of time
5 to read every single one of his statements, that the Prosecution had an opportunity to
6 engage and ask questions to the witness about clarifying his statement.

7 It is true that testifying before the International Criminal Court is not an exercise in
8 memory, but we have to be very careful because now what we are entering into is the
9 witness, especially with what just happened with the previous paragraph. Now he
10 knows, now he is "I cannot say anything different because they'll put my statement to
11 me."

12 Now the witness is searching to provide exactly the same thing he said before regardless
13 of what he believes because the Trial Chamber told him you have to give what is in your
14 statement and nothing else. And that is the danger, Mr President.

15 So in this case, if we are going to use a statement like this, the paragraph must be limited
16 to the specific part and the specific issue.

17 That's why in this case I respectfully submit that it should be limited to paragraph 46, and
18 that if this is going to be an ongoing exercise, because I feel it will become an ongoing
19 exercise, we might as well go home and submit the statement. That will be much easier.
20 Why are we wasting our time to be in the Court. Mr President, we have to be very
21 careful in the way we are allowing the Prosecution to lead its case. Thank you very
22 much.

23 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

24 First of all, you said "... the Trial Chamber told him you have to give what is in your
25 statement and nothing else." I don't believe we said something like this because it would

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

1 be really unfair.

2 Then, you are right, we will obviously take into account all those circumstances that you
3 now summarised, but at the same time I believe that you do not ask us to prohibit this
4 refreshment of Mr Witness's memory.

5 MR BOURGON: No, I do not, Mr President. There are circumstances but we have to be
6 careful and this has to be an exercise limited in quantity and in exactly what is put to the
7 witness.

8 As for -- Mr President respectfully submitted this is entirely different than what happened
9 with a contradiction that was done before, but I will leave that aside. We will put that in
10 writing. Thank you, Mr President.

11 PRESIDING JUDGE FREMR: Okay then. So now we can bring witness back.

12 Mr Iverson you want to add anything?

13 MR IVERSON: Yes, your Honour. Because this is happening continually, I would just
14 like to ask Mr Bourgon, out of professional courtesy, if he has an objection, state his
15 objection succinctly. If there is no objection, then there is no reason to waste time on the
16 record. Court time is valuable and we shouldn't be wasting time if there are actually no
17 opposition or no objection to the issue.

18 PRESIDING JUDGE FREMR: Mr Iverson, one point: This time when Mr Bourgon is
19 making objection it's not counted in your time, so it will be subtracted. But at the same
20 time, I would say, okay, Mr Bourgon, if there is some criticism, so really I think no -- no
21 need to listen to it repeatedly. If there is an objection, then you please go ahead.

22 So now witness may be brought into courtroom.

23 (The witness enters the courtroom)

24 PRESIDING JUDGE FREMR: Mr Iverson, you have the floor.

25 MR IVERSON: So I believe my previous request was to just display those two

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

1 paragraphs, 46 and 47, to the witness on the computer screen. And I'm sure someone
2 will correct me if I'm wrong, but I think I've already stated the identifying ERN number of
3 the document and the paragraphs.

4 PRESIDING JUDGE FREMR: Mr Bourgon.

5 MR BOURGON: Thank you, Mr President. I stand to be corrected, but I did ask that
6 the question be limited to 46 and I did respectfully ask the Chamber to look at the two
7 paragraphs to see if they should both be displayed or only one of the two. And I don't
8 think there's a ruling on the record, Mr President. Thank you.

9 PRESIDING JUDGE FREMR: Give us a minute.

10 Court officer, I can't see it on my screen. Would it be possible to?

11 THE COURT OFFICER: Indeed, Mr President. We removed the document until the
12 decision of the Chamber on which paragraph to be shown to the witness.

13 PRESIDING JUDGE FREMR: Yes, but now the question is whether we should look at it
14 in advance and then decide.

15 MR IVERSON: To save time, I think I can safely --

16 PRESIDING JUDGE FREMR: Yes.

17 MR IVERSON: -- just show paragraph 46.

18 PRESIDING JUDGE FREMR: But I think Mr Bourgon is right, I think 46 should be
19 directly relevant, which is not the case of 47. So please limit yourself on 46.

20 MR IVERSON: Forty-seven contains a few extra words but those aren't necessary for the
21 purposes here.

22 PRESIDING JUDGE FREMR: Fine.

23 MR IVERSON:

24 Q. Sir, are you able to see the document on the screen?

25 PRESIDING JUDGE FREMR: Please.

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

1 MR IVERSON:

2 Q. Sir, are you able to see paragraph 46 on your screen?

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 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 Q. At this time I would ask the -- if the court officer could show the witness the original
8 exhibit, I believe that it's in the courtroom, which (Redacted)

9 And I previously asked members of the Defence to take a look at it, but if they have not
10 yet seen it, I'd ask that the court officer show the Defence as well.

11 PRESIDING JUDGE FREMR: Mr Bourgon.

12 MR BOURGON: Mr President, we have indeed been informed by our colleague earlier
13 that (Redacted)

14 (Redacted) But for the time being this is

15 not something that can prevent us from going on. Thank you.

16 PRESIDING JUDGE FREMR: Appreciated.

17 So Mr Iverson, you may proceed.

18 MR IVERSON: Now, since this is an original piece of evidence, I would just ask, court
19 officer, could you just stay put for the time being.

20 Q. Sir, I'd like you to take a close look at this exhibit. Please open it up and look at a
21 few of the pages. When you're finished looking, please just look up at me.

22 Just feel free to take a close look at (Redacted) and then when you're finished
23 doing that, please just look up at me.

24 Sir, my intent is not to ask you (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

1 (Redacted)

2 (Redacted)

3 Q. Sir, do you recognize this exhibit?

4 A. Yes.

5 Q. Could you please tell the Court what this is, this exhibit?

6 A. (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 Q. All right. Thank you.

14 I would just ask the court officer to take the original exhibit back at this point.

15 PRESIDING JUDGE FREMR: Mr Bourgon.

16 MR BOURGON: Thank you, Mr President. I would appreciate if my colleague could
17 just clarify the answer of the witness when he was -- his answer in English is at page 90,
18 lines 15 to 17. I'm not sure if he's talking that he discovered here in the courtroom, or if
19 he initially discovered it when in Bunia. I mean, that answer is not clear. Of course I
20 could take it up in cross-examination at some point, but it would be nice to clarify what
21 the witness meant. Thank you.

22 PRESIDING JUDGE FREMR: I think it's a good point, Mr Iverson, please.

23 MR IVERSON: I will do that, your Honour.

24 Q. Sir, what the Defence counsel just asked is if I could ask you to clarify something
25 you just stated and, indeed, to me it is a bit confusing as well.

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

1 I asked you:

2 "Could you please tell the Court what this is, this exhibit?"

3 And you stated, in English, the English interpretation:

4 "This is a collection of messages that I wrote myself in my own hand. And this is a
5 document that I discovered here at the very beginning when I started off."

6 And I think the confusing part, and I'm sure Defence counsel will correct me if I'm wrong,
7 is when you say, "... I discovered here at the very beginning when I started off."

8 Could you just tell the Court what -- if that's a miscommunication or explain what
9 that -- what you meant by that?

10 A. Well, talking about the document which was here, when I opened it up, at the very
11 beginning, there is a page on which the word "in" is written at the very beginning. (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 Q. Thank you for that clarification, sir.

17 Now I would like to ask the court officer to display DRC-OTP-0017-0003. And I'm not
18 sure if you have the original of that exhibit. Okay. Also I'd ask that you show the
19 original of that exhibit. And first, since the Defence has not seen it, please bring it to
20 Defence counsel table. Thank you.

21 PRESIDING JUDGE FREMR: Mr Bourgon.

22 MR BOURGON: Mr President, we will look at this exhibit at a later point. For now we
23 can proceed.

24 PRESIDING JUDGE FREMR: We just shortly look at this.

25 Okay. Thank you.

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

1 MR IVERSON:

2 Q. And again, sir, I'd ask that you do the same thing. Just carefully, because it's an
3 original exhibit, but please just take a look at this exhibit to become familiar with it, and
4 then when you're finished just please look up at me.

5 Sir, same question: Do you recognize this exhibit that you've just looked at?

6 A. Yes.

7 Q. And could you tell the Court what this exhibit is?

8 A. There are messages and reports that were sent by other commanders. And these
9 were reports and messages from commanders of various units, either sent to
10 Mr Ntaganda or to Mr Kisembo, may his soul rest in peace, or among themselves in
11 various battalions and brigades. This is what is contained in this document.

12 MR IVERSON: Thank you very much, court usher. We're finished looking at the
13 original exhibit.

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 MR IVERSON: Can I ask the court officer to now display DRC-OTP-2057-0281, which is
19 an electronic document, and show page 0283?

20 PRESIDING JUDGE FREMR: Mr Bourgon.

21 MR BOURGON: Thank you, Mr President. We did object to the use of this document.
22 This is a statement. Actually, we did not oppose the use of the document if it was used
23 for purposes of refreshing the memory of the witness or for declaring the witness hostile.
24 But in its present form, this is the version of a document which was examined by the
25 witness and on which he made markings. These markings are in fact his initials. As

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

1 such, Mr President, this becomes a statement. And unless there's a reason to show it to
2 the witness, it should not be used in this format. Thank you, Mr President.

3 PRESIDING JUDGE FREMR: Mr Iverson.

4 MR IVERSON: Your Honour, this document was shown to the witness during the
5 investigation phase. He did initial, as Defence counsel pointed out, pages on this copy.
6 He could have just as easily marked it with any other marking (Redacted)
7 (Redacted) And so it serves an important
8 purpose for the Chamber in looking at this particular piece of evidence.

9 PRESIDING JUDGE FREMR: Mr Bourgon.

10 MR BOURGON: Mr President, this should be argued in the absence of the witness,
11 please.

12 PRESIDING JUDGE FREMR: Okay.

13 Then, court officer, please take Mr Witness out of the courtroom.

14 (The witness stands down)

15 PRESIDING JUDGE FREMR: Mr Bourgon, you asked the for the floor.

16 MR BOURGON: Thank you, Mr President. Mr President, this is -- this document is a
17 copy of document -- of document which ends with the numbers 0033, which is the second
18 item on the list of the items that may be used during the testimony of Witness P-0290.
19 Mr President, what -- by showing this document to the witness during the taking of his
20 statement, which is of course a proper procedure, (Redacted)
21 (Redacted)

22 By doing so he provided information that becomes a statement in and of itself. If it is
23 going to be a statement, then the statement cannot be used unless the witness does not
24 remember again, if it's a matter of refreshing the memory, or a matter of declaring the
25 witness hostile.

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

1 By showing this exhibit to the witness along with this -- these initials, we are actually
2 leading the witness with a document that provides to him the suggested answer (Redacted)
3 (Redacted)
4 (Redacted) It's not even a matter of refreshing his
5 memory (Redacted) So there's no
6 point in showing him this document which bears the initials.
7 So the issue here is completely different. If the witness was to be shown a picture
8 during -- while providing his witness statement and he would make some markings on
9 the picture, then that picture could be annexed to his statement. Would that picture be
10 used with that witness then in Court? Well, that's one of the questions.
11 But this is completely different. It's not a picture on which he placed a marking. It is a
12 statement on which he provided personal information (Redacted)
13 (Redacted)
14 So it is different from an exhibit. It is different from witness memory refreshing. And it
15 is leading with information provided when the witness was giving his statement to the
16 Prosecution.
17 So, as such, we respectfully submit that the Prosecution should show the original
18 document and, by showing the original document, could direct the witness to each
19 message and he can say yes, this one I recognize, no, this one I do not recognize. And
20 that would be the proper procedure without leading the witness. Thank you,
21 Mr President.
22 PRESIDING JUDGE FREMR: Mr Iverson.
23 MR IVERSON: I'm not -- it seems like a very technical argument. I'm not entirely sure I
24 follow, but as far as I understand Mr Bourgon's position is that it is tantamount to his
25 statement.

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

- 1 The Prosecution doesn't agree that it's a statement. It was a way for him to annotate
2 (Redacted)
3 (Redacted) before he saw the second exhibit with the initials.
4 And my understanding is the Chamber has previously ruled in transcript 58, page 5, lines
5 3 through 7, that annotations are, in principle, fine as long as the annotation was made by
6 the witness. If I'm reading that correctly.
7 I don't think that the Chamber should be constrained by overly technical rules that are
8 fashioned by, in this case, Defence counsel claiming that something is a statement in order
9 to effectively reduce the -- the degree of efficiency with which the Chamber can operate.
10 If we have to go through every (Redacted)
11 (Redacted) I can certainly do that but that will take a lot of time. So what -- why I
12 did this exercise is first I wanted him (Redacted) which he
13 did, and then I wanted him to take a look at the annotated version and then explain, in his
14 own words, to the Chamber what the significance of that annotation is. (Redacted)
15 (Redacted)
16 (Redacted)
17 PRESIDING JUDGE FREMR: Thank you. Give us a moment. We will silently
18 deliberate in the courtroom.
19 (Trial Chamber confers)
20 PRESIDING JUDGE FREMR: So unlike Mr Bourgon, we don't see difference between
21 this case and the case of opinions on -- we have already ruled, I think I referred to our
22 previous ruling on piece of evidence annotated by witnesses. So objection is overruled.
23 We can bring the witness into courtroom again, and Mr Iverson may proceed then.
24 (The witness enters the courtroom)
25 PRESIDING JUDGE FREMR: Mr Iverson, please.

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

1 MR IVERSON:

2 Q. Where we left off was with there was a copy of the exhibit on the screen. It was
3 DRC-OTP-2057-0281 at page 0283.

4 Sir, are you able to see this document on your computer screen?

5 A. Yes, I can see it.

6 Q. If you look at the upper left-hand corner of the document, you will see some type of
7 mark and next to it you'll see another mark. Can you tell the Chamber what those marks
8 represent?

9 A. On the right -- on the right there's the date, 20 September 2013 and then there are my
10 initials in my hand.

11 Q. Do you recall making those initials?

12 A. Yes, I recognize it. Those are my initials. When I initial, I initial like that in all of
13 my documents.

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

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13 Page redacted – Private session

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Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 So my objection is we should proceed page by page (Redacted)

9 That's the objection. If there's another way to do it, well, I leave that open to the Trial

10 Chamber. Thank you.

11 PRESIDING JUDGE FREMR: I understood.

12 Mr Iverson.

13 MR IVERSON: Well, I would ask if my Defence colleague can pinpoint or specify at any

14 point he thinks that the information is inaccurate. I'm at a loss to -- the witness has

15 verified that he has previously looked through (Redacted)

16 (Redacted) Like I said

17 before, that exercise can be done in the courtroom certainly. It's time-consuming and

18 I would submit totally unnecessary. Not every single issue in trial has to be peered at

19 through a microscope. It goes to the weight, of course (Redacted)

20 (Redacted)

21 The Defence can use its time, if it chooses to, during cross-examination to try to identify

22 any issue of manipulation or inaccuracy, but I would submit that it's really not a necessary

23 exercise.

24 PRESIDING JUDGE FREMR: Thank you. I can -- Mr Bourgon, I don't need any further

25 submission on that. I can be brief. I don't see really -- objection is overruled. And for

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

1 me it's purely issue for cross-examination.

2 Please bring witness back into courtroom.

3 And just a reminder, Mr Iverson, we really need to finish today 4.15 sharp because, as I
4 said, we have to -- we have another professional commitment at half past 4.

5 (The witness enters the courtroom)

6 PRESIDING JUDGE FREMR: Mr Iverson, please proceed.

7 MR IVERSON: Thank you, your Honour. And I will certainly be mindful of the time.

8 As a matter of fact I may just propose that we end a few minutes prior to quarter past
9 because then I'll be moving into a slightly different area of testimony.

10 PRESIDING JUDGE FREMR: Okay.

11 MR IVERSON:

12 Q. Sir, you can verify that this is (Redacted) is
13 that right?

14 A. Yes, I confirm that it's identical.

15 MR IVERSON: Your Honours, at this time I would like to submit documents 1, 2 and 5
16 to the Chamber for their admission into evidence. I will also be asking for the admission
17 of item 6 -- and I'll read out the ERN numbers -- but I want to wait until I can more -- go
18 into more detailed examination with the witness before I submit that document because
19 I believe the Defence have identified an issue that is -- with that document that we need to
20 discuss before it's actually shown to the witness.

21 So the documents that I'm submitting into evidence are DRC-OTP-0017-0003,
22 DRC-OTP-0017-0033 and DRC-OTP-2057-0281. And the number -- item number 6 which
23 I will be submitting I will -- I will co-ordinate with Defence counsel after this hearing to
24 work out any details on that one.

25 PRESIDING JUDGE FREMR: So at the moment you would like to tender three

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

1 documents; am I right?

2 MR IVERSON: Yes, your Honour.

3 PRESIDING JUDGE FREMR: Mr Bourgon, Defence position?

4 MR BOURGON: We have no objections to items 1 and 2, the numbers ending in 0003
5 and 0033. However, we do object to document or item number 5, 0281, which is the copy
6 of document 0033 with the initials of the witness. Thank you, Mr President.

7 PRESIDING JUDGE FREMR: Okay. Give me a second. I will consult my colleagues.

8 (Trial Chamber confers)

9 PRESIDING JUDGE FREMR: So objection concerning item 3 -- or, rather, item 5 in fact, if
10 I refer to the list of items presented by Prosecution, is overruled. All three documents are
11 admitted into evidence as a further Prosecution exhibit. In discussing the number 5, as
12 we already expressed, (Redacted) It was
13 annotated but again by him, himself, so in accordance with our previous Chambers
14 jurisprudence we don't see any obstacle to admit this document.

15 Mr Iverson, you may proceed.

16 MR IVERSON: At this point, your Honours, I can move to a different area of testimony,
17 but I think that I would propose that we end right now rather than doing 10 minutes of a
18 new line of questioning.

19 PRESIDING JUDGE FREMR: It makes sense. Even normally we are in favour to speed
20 up as much as possible, but I think we get the point and it really wouldn't be reasonable to
21 open a completely new topic for five minutes.

22 So, Mr Witness, thank you very much. For today we have to break. I would like to
23 thank you for patiently responding to all questions put to you. I have to remind you
24 because we will continue tomorrow that in the meantime you must not discuss contents of
25 your testimony with anybody else. Do you understand that?

Trial Hearing
WITNESS: DRC-OTP-P-0290

(Private Session)

ICC-01/04-02/06

1 THE WITNESS: (Interpretation) Yes, I have understood.

2 PRESIDING JUDGE FREMR: Thank you.

3 And now Mr Witness may be escorted out of the courtroom and I would like then just
4 briefly continue in open session for just one or two minutes.

5 (The witness stands down)

6 (Open session at 4.07 p.m.)

7 THE COURT OFFICER: We are in open session, Mr President.

8 PRESIDING JUDGE FREMR: Thank you.

9 I would like to indicate the intention of the Chamber tomorrow to sit in I would say
10 almost the same time schedule like today. But before deciding on that I would like to
11 assure myself, Mr Bourgon, have you succeeded to arrange your medical appointment in
12 a way that would allow you to sit in such a schedule?

13 MR BOURGON: I have not been able to do so, Mr President, but I will do it any time
14 other than the hearing. This was my intention from the beginning when I cancelled
15 tomorrow's appointment. So I will make sure that it is outside of court hours whenever
16 that takes place. Thank you.

17 PRESIDING JUDGE FREMR: We would appreciate a lot, Mr Bourgon.

18 So we break now and we will reconvene tomorrow 9.30.

19 THE COURT USHER: All rise.

20 (The hearing ends in open session at 4.07 p.m.)

21 RECLASSIFICATION REPORT

22 Pursuant to the Trial Chamber VI's Order, ICC-01/04-02/06-1887, dated 4 May 2017,
23 the public reclassified and redacted version of this transcript is filed in the case.