

1 International Criminal Court  
2 Trial Chamber VI  
3 Situation: Democratic Republic of the Congo  
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06  
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and  
6 Judge Chang-ho Chung  
7 Trial Hearing - Courtroom 2  
8 Friday, 8 July 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  
17 versus Bosco Ntaganda, case reference ICC-01/04-02/06.  
18 We are in open session.  
19 PRESIDING JUDGE FREMR: Thank you, court officer.  
20 Now appearances please in habitual order.  
21 MS SOLANO: Good morning, your Honours. The Prosecution is represented by  
22 Mr James Pace, assistant trial lawyer; Ms Laura Morris, assistant trial lawyer;  
23 Ms Selam Yirgou, case manager; and I am Julieta Solano, trial lawyer.  
24 PRESIDING JUDGE FREMR: Thank you, Ms Solano.  
25 Defence now please.

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(Open Session)

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- 1 MR GOSNELL: Good morning, Mr President. Christopher Gosnell for Mr Ntaganda,  
2 who is present in court this morning, assisted by Erik Cookson-Montin and  
3 Han Catherine Morin.
- 4 PRESIDING JUDGE FREMR: Thank you, Mr Gosnell.  
5 And Legal Representatives of Victims please.
- 6 MR ABDOU: Good morning, Mr President. Good morning, your Honours.  
7 Mohamed Abdou for the former child soldiers.
- 8 MS GRABOWSKI: Good morning, Mr President, good morning, your Honours.  
9 Anne Grabowski for the victims of the attacks. Thank you.
- 10 PRESIDING JUDGE FREMR: Thank you, Mr Abdou. Thank you, Ms Grabowski.  
11 And before we continue with testimony of Witness P-19, I would like to make one  
12 additional comment in relation to the request for guidance in relation to the possible  
13 admission of four investigator's notes discussed yesterday.
- 14 I wish to make clear that the indication that a Bar table motion could potentially be used  
15 does not replace in anyway the Chamber's instructions contained at paragraph 28 of the  
16 decision on the conduct of the proceedings; namely, that, "The cross-examining party is  
17 required to put to the witness any facts or evidence it intends to rely to impeach his/her  
18 credibility."
- 19 This requirement is applicable regardless of the means used to seek admission of a  
20 document. The Defence should therefore ensure it has put to the witness any and all  
21 information from these four investigator's notes that it wishes the Chamber to consider for  
22 impeachment purposes.
- 23 So it concludes our clarification and now we can devote ourselves to testimony.
- 24 Madam Witness, good morning. Are you feeling okay today?
- 25 WITNESS: DRC-OTP-P-0019 (On former oath)

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1 (The witness speaks Swahili)

2 THE WITNESS: (Interpretation) Yes.

3 PRESIDING JUDGE FREMR: I am glad to hear it. I can assure you, Madam Witness,  
4 that today your testimony should take much less time than yesterday and the day before  
5 yesterday. My estimation it will take 90 minutes at maximum and that, I believe, you  
6 will be released.

7 So, and it is my duty again to remind you that you are, Madam Witness, still under oath,  
8 which means that you have to speak the truth and nothing but the truth. Do you  
9 understand that?

10 THE WITNESS: (Interpretation) I understand.

11 PRESIDING JUDGE FREMR: Very well, Madam Witness.

12 And now I am -- hand over the floor to Defence, to Mr Gosnell. Mr Gosnell, for the rest  
13 of your cross-examination you have at your disposal 1 hour and 3 minutes. Do you want  
14 to proceed in open or in private session?

15 MR GOSNELL: I think it will have to be in private session, Mr President.

16 PRESIDING JUDGE FREMR: Just for the information of public in our public gallery, this  
17 witness is a protected one which means that she was guaranteed that her identity will not  
18 be revealed to the public, it's part of our legal framework, so it means that those questions  
19 that might reveal her identity should be made in private session, which is the case just  
20 now.

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

22 (Private session at 9.39 a.m.) \*(Reclassified partially in public)

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

24 PRESIDING JUDGE FREMR: Thank you, court officer.

25 Mr Gosnell, please proceed.

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1 MR GOSNELL: Thank you, Mr President.

2 QUESTIONED BY MR GOSNELL: (Continuing)

3 Q. Good morning, Madam Witness. Yesterday at page 65 of the transcript I asked you:

4 "Did you ever meet with (Redacted) and other witnesses in this case?"

5 And your answer was: "He went with us when we met in (Redacted)."

6 And my next question was: "You mean he went with you to meet with the investigators

7 of the Office of the Prosecutor in (Redacted)?"

8 And then you answered: "Yes."

9 And then I asked you: "And after that did you continue to have meetings with him?"

10 And you answered: "No."

11 So can I first ask you when you said that "He went with us when we met in (Redacted)", who

12 did you mean by "us"?

13 A. It was I alone. I put it badly. It was with me.

14 Q. So he did not accompany you with any other witnesses to the meeting with the

15 investigators of the Office of the Prosecutor?

16 A. We went to see the investigators.

17 Q. Just you and him, or was anybody else together with you?

18 A. When the investigators invited me to come and see them, I went to meet them.

19 Q. Madam, that wasn't my question. My question was: Was anybody else together

20 with you and (Redacted) when you meet, when you went to meet the investigators?

21 A. No, there were no other people.

22 Q. And just so that there's no misunderstanding and no possible misunderstanding, am

23 I correct that it's your testimony that you never met with anyone else whom you knew to

24 be a potential ICC witness?

25 A. (Redacted) accompanied us to the investigators.

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1 Q. Did you ever meet anyone in the presence of (Redacted) whom you knew to be a  
2 potential ICC witness?

3 A. No.

4 Q. Did you ever meet anyone with (Redacted) whom you knew to be a potential victim in  
5 any ICC case?

6 A. I didn't meet anyone else.

7 Q. Did you ever meet anyone in the presence of (Redacted) to discuss possible  
8 compensation for harms in relation to any ICC case?

9 A. No.

10 MR GOSNELL: May we have DRC-OTP-2092-0229, tab 50.

11 Q. This document says that information was received from (Redacted). And the  
12 information says, in pertinent part, that there were discussions with victims during a visit  
13 that brought together a number of people, in fact nine people in total. And you are  
14 identified as one of those nine people. Do you deny that you came together with eight  
15 other people?

16 MS SOLANO: Your Honour.

17 PRESIDING JUDGE FREMR: Yes, Ms Solano.

18 MS SOLANO: Can I request that counsel for Defence please indicate to the witness the  
19 date on which she allegedly participated in this meeting.

20 PRESIDING JUDGE FREMR: Mr Gosnell, I guess it would be fair.

21 MR GOSNELL:

22 Q. At the end of (Redacted), Madam Witness.

23 PRESIDING JUDGE FREMR: Ms Solano.

24 MS SOLANO: Your Honour, if it's a meeting with eight or nine people it must have  
25 taken place on a specific date, so if counsel can put that information to the witness it will

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1 be more fair rather than a whole year.

2 MR GOSNELL: \*I said in November at the end of (Redacted).. At the end of -- I didn't  
3 say November, I said at the end of (Redacted).

4 PRESIDING JUDGE FREMR: I believe, taking the capability of this witness, that  
5 specification of November (Redacted) is fine.

6 MR GOSNELL: Thank you, Mr President.

7 Q. Any recollection of that, Madam Witness, meeting with (Redacted) and eight other  
8 individuals at the end of (Redacted)?

9 A. I don't know the identity of the others. (Redacted)

10 (Redacted) But this was at

11 the request of the investigators.

12 Q. (Redacted)

13 (Redacted)?

14 A. He came to fetch me alone. I was alone.

15 Q. Right. So you don't know anything about any information that says that you met  
16 with eight other people together with him, eight other people who were victims?

17 A. I don't know that.

18 Q. And it doesn't jog your memory if I suggest to you that there was discussion about  
19 the expectations of victims, including that there would be justice for them and reparations  
20 for moral and physical harms?

21 A. I know nothing about that. All that I know is that somebody came to collect me, to  
22 take me to the hospital.

23 MR GOSNELL: I tender this document, Mr President.

24 PRESIDING JUDGE FREMR: And for what purpose, for the purpose of --

25 MR GOSNELL: Impeachment.

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1 PRESIDING JUDGE FREMR: Ms Solano, your position?

2 MS SOLANO: Your Honour, in our submission, this document does not demonstrate  
3 that the witness was present at a meeting with the number of people the Defence is  
4 suggesting to her so, in my submission, there is no basis for impeachment. I want to note  
5 that the document refers to the Prosecution having received the information about this  
6 meeting on (Redacted) but that the document doesn't state any date on which the  
7 meeting had allegedly taken place.

8 PRESIDING JUDGE FREMR: Give me a second, we will silently deliberate.

9 (Trial Chamber confers)

10 PRESIDING JUDGE FREMR: So I can refer to clarification I presented this morning.

11 And according our view now, conditions contained in our decision on conduct of  
12 proceedings were met, so this document is admitted into evidence as a further Defence  
13 exhibit for the purpose of potential impeachment. Whether it will really have such an  
14 affect or not, it's just a reaction to comment made by Ms Solano, it depends on further  
15 proceedings.

16 Now, Mr Gosnell, you may proceed.

17 MR GOSNELL: Thank you, Mr President.

18 Q. Madam Witness, do you know someone by the name of (Redacted)? I'll say  
19 that again hopefully better, (Redacted). The last name is spelt (Redacted).

20 A. No, I do not know that person.

21 MR GOSNELL: Could we have DRC-OTP-0198-0072 please, it's tab 77.

22 Just in relation to the last document in the absence of date, Mr President, it should be  
23 noted the reason why we don't have more information is because that was what was  
24 disclosed to us by the Prosecution.

25 MS SOLANO: Your Honour --

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1 PRESIDING JUDGE FREMR: Ms Solano.

2 MS SOLANO: -- I object to this document being shown to the witness. If it can please  
3 be removed from the screen until I have a chance to make my objection.

4 PRESIDING JUDGE FREMR: All right.

5 MS SOLANO: And I would prefer to make the objection without the witness listening.

6 PRESIDING JUDGE FREMR: Yes.

7 Please, madam assistant or court officer -- maybe it's easier, madam assistant, could you  
8 just take headphones off Madam Witness's head.

9 Now Ms Solano, you may proceed.

10 MS SOLANO: Thank you, your Honour. In its present form this document contains  
11 information about various individuals. And the one mentioned by the Defence is not the  
12 only one, it contains these individuals' signatures, thumbprints and some indication of the  
13 concerns that these individuals seem to have when the intermediary met them.

14 In my submission, it's not appropriate for the witness to be shown any of this. For that  
15 reason, I object to the document used in its present form.

16 PRESIDING JUDGE FREMR: Mr Gosnell.

17 MR GOSNELL: I suggest that the witness's screen should be turned off so that  
18 your Honours can see the document.

19 PRESIDING JUDGE FREMR: All right. I think let's proceed this way to give us chance  
20 to --

21 MR GOSNELL: And I'll just say this, which will be apparent when you see the  
22 document: The witness's signature is on this document. Now, that means that the  
23 witness saw the document when she signed it. And unless she was the very last person  
24 to sign it she's already seen the information on this page.

25 At the very least, I suggest to your Honours it's extremely likely that she's seen the

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1 information that appears in the lines above her signature. Why do I say that? Because  
2 they're numbered sequentially and that means that probably the signatures were collected  
3 in the order that they appear on the chart.

4 PRESIDING JUDGE FREMR: Ms Solano.

5 MS SOLANO: Your Honour, I have one additional submission, it is that this document  
6 is entitled -- well, something like presences in the month of July --

7 PRESIDING JUDGE FREMR: Please, give us a moment. Could we -- could the  
8 Chamber also have this document on our screens. It's evidence channel number -- yes,  
9 now, I can see it. Fine.

10 Now you may proceed, Ms Solano.

11 MS SOLANO: Thank you, your Honour. This document is entitled "Presences in the  
12 month of (Redacted)". There is no indication of the specific day within that month to  
13 which this document relates so, in fairness to the witness, I just want to ensure that any  
14 suggestions that the Defence are going to put to her relate to the month and not to a  
15 specific date.

16 And to be perfectly clear, your Honour, in my submission this document does not provide  
17 a basis to suggest to the witness that she had contact with any of the people on the  
18 document on any given day during that month, although I recognize that it provides a  
19 basis for asking questions about potential meetings in that month.

20 PRESIDING JUDGE FREMR: But now should I understand that now you are not  
21 objecting the use with the witness with those reservations you now have expressed?

22 MS SOLANO: Now, your Honour, I maintained my objection to the use of the document  
23 in its present form. I recognize that it is possible that she may have seen the information  
24 that appears only above her name, but I have no information that I can provide the  
25 Chamber to -- to confirm that that was so. I don't know how this list was prepared and

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1 the circumstances in which it was put to her for her signature, so I would urge  
2 your Honours not to take a course of action that would result in her learning, you know,  
3 confidential information about these individuals who were either trial witnesses or  
4 innocent third parties.

5 PRESIDING JUDGE FREMR: Now, Ms Solano, in my view, perfectly summarised  
6 potential doubts that could be connected with this document, but I believe that it is better  
7 to use this document and it would be up to Mr Gosnell to clarify or not. So the objection  
8 is overruled.

9 And Mr Gosnell you may proceed.

10 MR GOSNELL: Thank you, Mr President.

11 Could the monitor for the witness be turned on.

12 Q. Madam Witness, if you look down the second column you'll see your name,  
13 (Redacted).

14 MR GOSNELL: If we could please move the page a little bit to the right so we can see  
15 the signature. To the right please. Well, there seems to be a problem displaying the  
16 signature. I have a hard copy. The only notation on it is the number "77" and I have  
17 actually circled the signature that I'd like to have looked at. If the Prosecution doesn't  
18 object, we could give my copy.

19 PRESIDING JUDGE FREMR: Prosecution, any objection to that proposal?

20 And in the meantime, it's really technically impossible to shift our picture? So we  
21 will -- okay, so it seems we really don't have the chance to see the signature on our  
22 screens.

23 MS SOLANO: Your Honour, I don't have an objection, but I do request to be shown the  
24 document simply because I want to make sure that I --

25 PRESIDING JUDGE FREMR: Yes, yes.

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1 MS SOLANO: -- understand exactly --

2 PRESIDING JUDGE FREMR: It's fair. It's fair.

3 MS SOLANO: -- what it is when looking at it rather than --

4 PRESIDING JUDGE FREMR: Fully understandable.

5 MS SOLANO: Thank you. Thank you, no objection.

6 PRESIDING JUDGE FREMR: Very well.

7 Mr Gosnell, please.

8 MR GOSNELL:

9 Q. Is that your signature in the blue circle on the page?

10 A. It's my signature. But I recognize one thing, \*I was taken there simply (Redacted)

11 (Redacted)

12 Q. Can you remember anything about the circumstances in which you signed this piece  
13 of paper?

14 A. I signed this paper when they came to get me. They accompanied me (Redacted)

15 (Redacted)

16 Q. Who is "they"?

17 A. The investigators came. They're the ones who took me (Redacted) They

18 said I had (Redacted)

19 Q. Did the investigators give you this document to sign?

20 A. (Redacted) came to get me. He told me that I had to (Redacted)

21 Q. And was it (Redacted) who gave you this document to sign?

22 A. (Redacted) \*I have anything else to add.

23 Q. Who was present when you signed the document?

24 A. I don't know.

25 Q. Was it just (Redacted) or were there other people?

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1 A. There was no other person.

2 Q. And you signed quite a number. You've signed \*seven forms like this, didn't you,  
3 over the course of (Redacted)

4 MS SOLANO: Your Honour.

5 PRESIDING JUDGE FREMR: Ms Solano.

6 MS SOLANO: Your Honour, I object to the question. The Defence has no basis to put  
7 this suggestion to the witness.

8 PRESIDING JUDGE FREMR: Mr Gosnell.

9 MR GOSNELL: Well, that's just incorrect. I do have a basis and I have a basis based on  
10 the documents I have from the Prosecution.

11 PRESIDING JUDGE FREMR: And the witness could easily say not.

12 Ms Solano.

13 MS SOLANO: Your Honour, perhaps the Defence can tell us which other documents  
14 have been signed by the witness.

15 MR GOSNELL: I didn't say that Mr President, and I don't need to have other documents  
16 that have been signed by the witness, I just need indications that other documents of this  
17 nature exist.

18 PRESIDING JUDGE FREMR: It's fair.

19 Please continue, Mr Gosnell.

20 MR GOSNELL:

21 Q. Let me broaden the question or make it more general: Can you recall ever, at any  
22 time, signing other documents? And this document, for your information, says that it is  
23 July 2006. Can you recall signing more than one such form at any time?

24 A. I was told that I had (Redacted) under those circumstances I had to  
25 sign. Because I was (Redacted) indeed, at that time.

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1 Q. So it was explained to you that it was required to sign in order to (Redacted)

2 (Redacted) is that correctly understood?

3 A. Yes.

4 Q. No discussion with (Redacted) at the time of signing the document about the content of  
5 your potential testimony, or about future contacts with the OTP, or about anyone else  
6 being a witness?

7 A. No, no. We didn't discuss that.

8 MR GOSNELL: Mr President, I tender this document. And I think the version that the  
9 witness looked at should be the one that's actually admitted.

10 PRESIDING JUDGE FREMR: And again for the purpose of impeachment?

11 MR GOSNELL: That's right, Mr President.

12 PRESIDING JUDGE FREMR: Ms Solano, your position?

13 MS SOLANO: No objection, your Honour.

14 PRESIDING JUDGE FREMR: Very well.

15 So this document is admitted into evidence as a further Defence exhibit for the purpose of  
16 witness impeachment.

17 Now Mr Gosnell, please proceed.

18 MR GOSNELL:

19 Q. And I'll just ask one final question on this document before it's retrieved by Madam  
20 Registrar: Madam Witness, do you recall whether the document looked the same at the  
21 time you signed it as it looks now? Do you have any recollection of that? I know it's  
22 been a long time.

23 A. I don't remember. That happened a long time ago. And even when I signed the  
24 document I was accompanied (Redacted)

25 Q. Thank you, Madam Witness.

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1 MR GOSNELL: The document can now be retrieved.

2 Mr President, I have four documents that are related to this document, they are OTP notes  
3 reflecting the existence of, in one case, this document, and then three other notes  
4 indicating other listes de présence.

5 Now, I heard your ruling this morning and I wish to follow it. I also think there's very  
6 little chance, and we discussed this yesterday, that the witness, if I were to show these  
7 notes, would be in a position to make any comment on them, so I'm happy to proceed if  
8 you wish with tendering those four documents, we can put them on the screen and I can  
9 ask a question that would be time consuming, but of course I will do that, if that's  
10 your Honours' wish.

11 PRESIDING JUDGE FREMR: You know, that's not about the wish. You know, we set  
12 up some rules so we have to observe them, so.

13 MR GOSNELL: That's fine, Mr President. I --  
14 (Trial Chamber confers)

15 PRESIDING JUDGE FREMR: We made an exception if those documents would be in fact  
16 as concerns regards their content almost the same, so could we -- could we --

17 MR GOSNELL: Yes, perhaps I could just start with the first one and then there are three  
18 more that are almost identical. And maybe we could do it that way if there's no  
19 objection.

20 PRESIDING JUDGE FREMR: Ms Solano, it's rather premature, we will have to first view,  
21 see the document, but your position at the moment?

22 MS SOLANO: Your Honour, as you've just said, we'll have to see which documents the  
23 Defence has in mind, but I have at least three documents in front of me that I believe are  
24 part of the ones the Defence want to deal with. And I can tell that they are not signed by  
25 the witness. They contain a column that says "signature", but there are no signatures.

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1 PRESIDING JUDGE FREMR: All right. Anyway, let's look at them and we will see.

2 MR GOSNELL: Actually, those are not the documents I intend to tender. And I should  
3 say that the document that has just been admitted was disclosed yesterday - just  
4 yesterday - and the other documents that my friend is -- my colleague from the  
5 Prosecution is referring to was also disclosed yesterday, but I have other documents that  
6 we had a little bit longer and that's the reason why I'm only in a position to tender these  
7 other documents that we had a little bit longer.

8 So we'll start without further elaboration DRC-OTP-2092-0325, tab 55.

9 THE COURT OFFICER: Mr Gosnell, may the witness see the document?

10 MR GOSNELL: Yes.

11 MS SOLANO: Your Honour.

12 PRESIDING JUDGE FREMR: Yes, Ms Solano.

13 MS SOLANO: Well, this document, this investigation note, relates to the handwritten  
14 document that your Honours have just seen and that the witness has been asked questions  
15 about. The handwritten document, which serves as a basis for this investigation note has  
16 been admitted into evidence for potential impeachment, so I see no reason whatsoever to  
17 seek to tender this particular document into evidence. It's of course the time of the  
18 Defence, they can choose how they use it but I wonder whether the exercise is worth the  
19 Court's time.

20 PRESIDING JUDGE FREMR: So Ms Solano finds it superfluous. Mr Gosnell.

21 MR GOSNELL: Not superfluous. Two reasons: One, this gives an indication as to the  
22 identity of the person who is redacted from the previous document; and secondly, it  
23 confirms that other people present, (Redacted)

24 PRESIDING JUDGE FREMR: All right then, but still I -- Ms Solano.

25 MS SOLANO: Your Honour, can the witness please have her earphones removed.

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1 PRESIDING JUDGE FREMR: Madam assistant, please. Thank you.

2 Ms Solano.

3 MS SOLANO: Well, your Honour, I regret that it's quite likely that the witness now  
4 likely knows that some of the people on the list she previously saw are in fact Prosecution  
5 witnesses. It's something that, in my submission, she did not need to know for the  
6 purposes of the Defence suggesting to her that she had meetings even with people that  
7 she knew or thought to have been potential Prosecution witnesses.

8 This document contains witness codes, it refers to the identity, it refers to the intermediary  
9 but by code and I really don't know how this witness can assist your Honours in relation  
10 to a document that is full of codes that she doesn't know anything about and shouldn't be  
11 told anything about because they are the codes for Prosecution witnesses and an  
12 intermediary. The Defence can perfectly well put any additional questions by abstaining  
13 from referring to codes or from confirming the status as Prosecution witnesses of these  
14 individuals.

15 PRESIDING JUDGE FREMR: Mr Gosnell, your position.

16 MR GOSNELL: I don't disagree with my colleague's submission that the witness will  
17 probably not be able to assist in particular with the information on this document, but it is  
18 nevertheless highly relevant for impeachment.

19 PRESIDING JUDGE FREMR: All right. And then I don't know whether it was,  
20 probably it was objection. It's overruled.

21 And you may proceed, Mr Gosnell.

22 MR GOSNELL: Well, yes, there we see it. Could the witness put her headphones back  
23 on.

24 And could I request that I just for a moment be able to see the last document? I think the  
25 Registry has a copy of it.

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1 PRESIDING JUDGE FREMR: You meant what document?

2 MR GOSNELL: The hard copy that I handed over to the Registry to give to the witness.

3 PRESIDING JUDGE FREMR: So court officer, please assist, yes.

4 MR GOSNELL:

5 Q. Madam Witness, can you recall whether at the time that you've signed the last  
6 document that you were just looking at you were told that someone else would be the  
7 person through whom you would be contacted; in other words, that someone else would  
8 be the person that would come to you, for example, if (Redacted) wanted to contact you, do  
9 you have any recollection of that?

10 A. I don't remember.

11 MR GOSNELL: I tender this document, Mr President.

12 PRESIDING JUDGE FREMR: Ms Solano.

13 MS SOLANO: No objection, your Honour.

14 PRESIDING JUDGE FREMR: All right then, this document is admitted into evidence as  
15 a further Defence exhibit for the purpose of witness impeachment.

16 Mr Gosnell.

17 MR GOSNELL: Could we have DRC-OTP-2092-0207, it is tab 74. If we could go please  
18 to 0210, please. Fortunately there's no date on the document.

19 Q. Madam Witness, can you see your name there?

20 A. I see it.

21 MR GOSNELL: And then column on the far right if we can blow that up.

22 Perhaps the interpreter could read that to the witness.

23 PRESIDING JUDGE FREMR: So I may ask the French interpreter to read the part  
24 concerned for the witness. Just let's highlight the part which is --

25 MR GOSNELL: Yes, perhaps we can zoom in.

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1 PRESIDING JUDGE FREMR: Yes.

2 MR GOSNELL: I can take care of it, Mr President.

3 PRESIDING JUDGE FREMR: It would be more efficient, yes.

4 MR GOSNELL: It says:

5 (Interpretation) Following the -- (Redacted)

6 Do you remember at any time having expressed such (Redacted) complaints to (Redacted)

7 (Redacted)

8 MS SOLANO: Your Honour.

9 PRESIDING JUDGE FREMR: Ms Solano.

10 MS SOLANO: Both in the transcript and in the interpretation that I heard the

11 information does not appear to have been interpreted in full. I don't know if that was the

12 case also in Swahili, but I request --

13 PRESIDING JUDGE FREMR: Yes, I have the same request. Please could we just get

14 complete interpretation of Madam Witness' response. In English transcript it is page 21,

15 line 1, and there is obviously missing something.

16 MR GOSNELL: Should I read again, Mr President?

17 PRESIDING JUDGE FREMR: Please.

18 MR GOSNELL:

19 Q. What it says, Madam Witness, is:

20 (Interpretation) "(Redacted)

21 (Redacted)"

22 Other than July 2006, which is the date of the last document, do you remember a time

23 when you met (Redacted)?

24 A. I repeat, when I met (Redacted) it was so that (Redacted)

25 (Redacted) it was not about anything else.

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1 MR GOSNELL: I tender this document, Mr President.

2 PRESIDING JUDGE FREMR: Ms Solano.

3 MS SOLANO: Your Honour, I note that the only part of this six-page document that was  
4 put to the witness was the entry concerning her. I do not object to -- I would not object to  
5 the admission of this particular entry. I do object to the admission of the document in  
6 full. Her -- I note that the entry has been read to the witness and so I see no point in  
7 duplicating the record by tendering the document as well.

8 PRESIDING JUDGE FREMR: Mr Gosnell, do you agree?

9 MR GOSNELL: No, Mr President, I do think we need a documentary record of this.

10 PRESIDING JUDGE FREMR: Give me a second.

11 (Trial Chamber confers)

12 THE INTERPRETER: The interpreter would also like to correct the interpretation, which  
13 is: "(Redacted)  
14 (Redacted)"

15 PRESIDING JUDGE FREMR: So to make it short, we share Prosecution's view;  
16 Madam Witness just commented this part of the document, has no knowledge about the  
17 other parts, so this entry only is admitted into evidence as a further Defence exhibit for the  
18 purpose of witness impeachment.

19 Mr Gosnell.

20 MR GOSNELL: Thank you, Mr President.

21 Mr President, at this time, I would request an additional 15 minutes to question the  
22 witness. I'm not sure precisely where I stand. I know that I started at 9.40.

23 PRESIDING JUDGE FREMR: I can also verify that according my -- it should be roughly  
24 last 10 minutes for you at the moment, so how much, according your estimation, you will  
25 need to complete from this moment?

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1 MR GOSNELL: I would be most grateful if I could have 20 -- if I could -- from this  
2 moment, if I could have 25 minutes from this moment.

3 PRESIDING JUDGE FREMR: In fact I was now told that you still have 25 minutes.

4 MR GOSNELL: Well, I hope in 25 I can finish, Mr President. I thought I had less.

5 PRESIDING JUDGE FREMR: I think we can -- I think finish as we normally finish at 11  
6 o'clock, so just let's --

7 THE INTERPRETER: Microphone.

8 PRESIDING JUDGE FREMR: Just to summarise that we obviously -- that examination of  
9 this witness is not easy task, so I think I see some extraordinary reasons that we could be a  
10 bit generous, but anyway you still have 25 minutes till -- you can just continue till 11,  
11 that's fine.

12 MR GOSNELL: Thank you very much, Mr President.

13 Could we have DRC-OTP-0918-0068 please, it is tab 28. And I'll be asking questions on  
14 this document based upon the witness's (Redacted) statement, for your Honours that's tab 4.

15 PRESIDING JUDGE FREMR: Ms Solano.

16 MS SOLANO: Your Honour, if I may have a moment. I believe that we are all in  
17 possession of a better copy of this document. I just want a moment to find it because I  
18 think it would be --

19 PRESIDING JUDGE FREMR: All right. It would be of common interest, so please take  
20 your time, we will wait for you.

21 MR GOSNELL: Mr President, there is a better version, but there is a reason why I have  
22 to use this version.

23 PRESIDING JUDGE FREMR: All right then.

24 MR GOSNELL: And you'll see why if you look at paragraph 21 of the witness's  
25 statement from (Redacted).

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1 Q. Madam Witness, this is a document with a title (Interpretation) \*(Redacted)

2 (Redacted) Medical attestation.

3 And at the top it says:

4 (Interpretation) "I the undersigned (Redacted)"

5 And he says that he is attesting by the present document that he treated

6 (Redacted) And at the bottom it's signed on some day in (Redacted)

7 Now, in (Redacted) when you were interviewed by the Prosecution this is what you said about

8 this document, and I quote:

9 "I have been shown the document DRC-OTP-0198-0068. I have never met with a medical

10 assistant called (Redacted) I have never attended a hospital called (Redacted)

11 (Redacted)"

12 Do you deny that you visited (Redacted)?

13 A. No, I didn't refuse, but we didn't understand well. (Redacted) I received this care.

14 There's a communication problem, rather.

15 Q. (Microphone not activated)

16 THE INTERPRETER: Microphone.

17 MR GOSNELL:

18 Q. You didn't tell the Prosecution during your interview in (Redacted) that you did not attend

19 (Redacted)? And that you never met with a medical assistant called (Redacted)?

20 A. I didn't know the name of the doctor, the treating doctor. He took me to his place

21 but I didn't know his name.

22 Q. So you're saying now that you did go to the (Redacted) is

23 that correct?

24 A. He took me to the hospital but I didn't remember the name of the doctor that treated

25 me.

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1 Q. \*Do you remember the name of the hospital being the (Redacted)

2 (Redacted)?

3 A. I was -- I went there (Redacted)

4 (Redacted)

5 Q. Why did you tell the investigators in (Redacted) that "I have never attended (Redacted)

6 (Redacted)"?

7 A. I didn't know the name of the doctor.

8 Q. Your statement was not that you denied only the name of the doctor, you denied

9 knowing -- you denied having visited the hospital which was identified by name. Why  
10 did you do that?

11 A. I didn't know the name of the doctor who treated me.

12 MR GOSNELL: I tender the document on the screen, please.

13 PRESIDING JUDGE FREMR: Ms Solano.

14 MS SOLANO: No objection, your Honour.

15 PRESIDING JUDGE FREMR: Then this document is admitted into evidence as a further  
16 Defence exhibit for the purpose of witness impeachment.

17 Mr Gosnell, please proceed.

18 MR GOSNELL: Could we have DRC-OTP-2094-0289, please, it's tab 35. Disclosure of  
19 this document was received on 1 July 2016.

20 MS SOLANO: Your Honour.

21 PRESIDING JUDGE FREMR: Ms Solano.

22 MS SOLANO: Since the Defence are putting on the record the dates of the disclosure, I  
23 want to also note for the record now that, as your Honours know, this witness was added  
24 to the Prosecution's list for this block only recently as a result of the unavailability of  
25 another witness that we had planned to bring.

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1 PRESIDING JUDGE FREMR: All right. Noted.

2 MR GOSNELL: I won't enter into a debate on this now, Mr President.

3 PRESIDING JUDGE FREMR: Yes, I would prefer it as well.

4 MR GOSNELL:

5 Q. In about -- and I'll read what it says, Madam Witness, at paragraph 1:

6 "In about (Redacted)

7 (Redacted)

8 (Redacted)"

9 So what this is saying, Madam Witness, is that the Prosecution has asked someone else in  
10 (Redacted) and that corresponds to the date that we just  
11 saw on the last document as when you (Redacted) Do you remember  
12 anything about this?

13 A. I've forgotten.

14 Q. And you don't know whether -- well, let me ask you this: Do you know whether  
15 (Redacted)  
16 (Redacted)  
17 (Redacted)

18 A. I've forgotten. (Redacted)  
19 (Redacted)

20 MR GOSNELL: May I ask the Registry's assistant to assist Mr Ntaganda. There's a  
21 problem with his computer screen.

22 Q. Is it possible that the reason that you denied in your (Redacted) statement that you had  
23 gone to (Redacted) you did not tell people in the ICC that  
24 you had already gone for treatment on your own because you wanted their assistance  
25 with such medical care?

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1 A. I didn't follow your question.

2 Q. I'll move to my next question.

3 PRESIDING JUDGE FREMR: Just for the record, I was now told that the problem with  
4 Mr Ntaganda's computer has been solved.

5 MR GOSNELL: May we turn please to page -- the next page, 0290 in this document.

6 Q. And Madam Witness, this document explains (Redacted)

7 (Redacted)

8 (Redacted)

9 PRESIDING JUDGE FREMR: Ms Solano.

10 MS SOLANO: Your Honour, I object to the way in which this question has been put.

11 This document does not suggest (Redacted)

12 (Redacted)

13 PRESIDING JUDGE FREMR: Mr Gosnell.

14 MR GOSNELL: I said various steps in receiving. Various steps in, towards seeking  
15 medical treatment.

16 PRESIDING JUDGE FREMR: But still it's cross-examination, Madam Witness has full  
17 chance to clarify that.

18 MR GOSNELL: Yes.

19 Q. And I won't be asking you questions about the specific steps, but I want you to be  
20 aware that that's the context of this document.

21 And then at paragraph 10 it says the following:

22 "... (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 Now in (Redacted) do you remember having met someone for a discussion about your  
6 mental state, about your psychological state, about your emotional state, someone from  
7 the ICC?

8 A. Yes, I remember.

9 Q. And did you understand that that -- the purpose of that interview was to assess  
10 whether you were fit to be interviewed by investigators?

11 A. I didn't understand that.

12 Q. You didn't understand my question, or you didn't understand that the psychological  
13 assessment would determine whether you would subsequently be interviewed by the  
14 Prosecution investigators?

15 MS SOLANO: Your Honour.

16 PRESIDING JUDGE FREMR: Ms Solano.

17 MS SOLANO: Your Honour, the witness said she didn't understand. It's counsel's  
18 burden to explain and not to test the witness on what it is that she didn't understand  
19 when what she's saying is she didn't understand. And I mention in particular  
20 your Honours' orders that the question be adapted to the capabilities of the witness.

21 PRESIDING JUDGE FREMR: Yes, I share this view.

22 Mr Gosnell.

23 MR GOSNELL: Sorry, Mr President, but the witness's answer was ambiguous and all  
24 I'm trying to do is understand whether her answer was I don't understand your question,  
25 or whether her answer meant no, I didn't understand that the test was for the purpose of

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1 proceeding to the OTP interview.

2 PRESIDING JUDGE FREMR: Which is fair, but please try to make it in a way which will  
3 be really understandable to the capability of this witness.

4 MR GOSNELL: Yes, Mr President.

5 Q. Did you know, Madam Witness, that whether you would later be interviewed by the  
6 investigators depended on the assessment of the psychologist?

7 A. Could you ask your question in another way, please?

8 Q. Madam Witness, I'm actually going to leave this question and ask you a question  
9 about the next paragraph, which reads as follows:

10 "... (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 A. No.

15 MR GOSNELL: I tender this document, Mr President.

16 PRESIDING JUDGE FREMR: Ms Solano.

17 MS SOLANO: Your Honour, I note that the Defence have put questions to this witness  
18 regarding, I think, three paragraphs. In relation to the two first paragraphs the Defence  
19 desisted from their question, either the witness didn't understand or didn't provide an  
20 answer and the Defence decided to move on. So in fact the witness has not provided  
21 anything in relation to the initial two paragraphs. I have no objection to the tendering of  
22 the last paragraph for impeachment purposes.

23 PRESIDING JUDGE FREMR: Mr Gosnell.

24 MR GOSNELL: Mr President, if I tried to go through this document with the witness I  
25 would need an additional 45 minutes. I do still think it is valuable for your attention and,

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1 under the particular circumstances, I believe it would be justifiable to admit this  
2 document.

3 PRESIDING JUDGE FREMR: Give me a second.

4 (Trial Chamber confers)

5 PRESIDING JUDGE FREMR: So after a brief silent deliberation, our ruling is that only  
6 the last paragraph is admitted into evidence as a further Defence exhibit for the purpose  
7 of Madam Witness' impeachment.

8 MR GOSNELL: Thank you, Mr President.

9 PRESIDING JUDGE FREMR: Mr Gosnell.

10 MR GOSNELL: We're down to our last document now, Mr President, I'm very close to  
11 being finished.

12 Could we have DRC-OTP-2094-0323.

13 (Redacted)

14 (Redacted)

15 MR GOSNELL: It's tab 36, it may not be in eCourt. The number again is  
16 DRC-OTP-2094-0323.

17 THE COURT OFFICER: Mr Gosnell, could you kindly confirm that the document is  
18 entitled "Witness preparation session log and disclosure note"?

19 MR GOSNELL: That is correct.

20 THE COURT OFFICER: Thank you.

21 MR GOSNELL:

22 Q. Now, Madam Witness, this is a notation of your interview with the Prosecutors on  
23 the 1st and 4th July 2016. And one of the things that is indicated here is an exchange  
24 about the village where you currently live. And I will not ask you to mention the name  
25 where you -- of the village where you currently live, but what you say according to this or

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- 1 what you said during the session, was that you would not mention the village at all  
2 because of your security, but that you then suggested that you would mention the name  
3 of another village instead.  
4 Now, is it correct that you suggested that you would do that, that you would mention the  
5 name of another village other than the one that you really live in?  
6 A. This was for my own safety.  
7 Q. And for your own safety you were suggesting that you would lie; correct?  
8 A. No, I do not tell a lie.  
9 Q. Could we turn to page 4, please, of this document, which is ERN page 0326.  
10 And what this says is that you ask what you should answer if the Defence asks you if she  
11 saw Ntaganda during the events, to which the response by the Prosecution was that you  
12 should answer with the truth irrespective of who is asking the question and that if you do  
13 not know something you should just say so.  
14 And then they asked you whether you understood, and then you say, according to this,  
15 you responded "It is because they were together but that when this was written down he  
16 is not mentioned because he had not yet been arrested."  
17 You were then told again that you have to tell the truth.  
18 Do you remember that exchange?  
19 A. Yes, I said that.  
20 Q. And why would you need to ask the Prosecution what to say if you were asked  
21 about Mr Ntaganda?  
22 A. I asked this because in the previous documents they had included the names of the  
23 people who had already been arrested. He was arrested later.  
24 Q. You don't know that Mr Ntaganda had surrendered by the time of your second  
25 interview into the custody of the Court?

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1 A. I knew it.

2 Q. And do you remember that the reason why the Prosecutors came to see you in (Redacted)  
3 was specifically to ask questions about the case against Mr Ntaganda?

4 A. Yes, I know that. The first document was read to me.

5 Q. We're talking about the second document, second interview.

6 A. That's what I told them. Everything I told them was in the first statement. With  
7 regard to him would it be any different?

8 Q. And Mr Linganga was not under arrest in (Redacted), was he, and yet you mentioned his  
9 name in your (Redacted) statement?

10 A. I've gave his name because it was he who raped me.

11 Q. Let's move to the next page please, the very last passage that I will bring to your  
12 attention.

13 It was only afterwards, this is apparently what you are saying during your discussion  
14 with the Prosecution:

15 "It was only afterwards when Bosco was arrested, that she was asked about him. That is  
16 why the statement only talks about Lubanga. The witness states that maybe someone  
17 should have asked about Bosco as well - someone might have asked about Bosco as well.  
18 The witness asks what she should 'respond to that'. The lawyer tells the witness that she  
19 does not have to tell her anything there and then and explains that during her testimony  
20 the lawyer will not be limited by what it says in her statement. Asked if she understands,  
21 the witness asks, 'sorry? To do what?' The lawyer explains that when she asks the  
22 witness questions in court, she will also ask her questions about Bosco. The witness asks  
23 what she should respond, because 'they were together'."

24 Now, it seems to me from this exchange that you're probing or asking the Prosecution  
25 what to say about Bosco; am I incorrect about that?

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1 A. I asked all these questions because I thought there were two different documents. I  
2 had problems with these documents \*because they were talking about a single document,  
3 but in my mind I was thinking of two documents.

4 Q. What does that have to do with asking the Prosecution what you should say about  
5 Bosco?

6 A. I was thinking more of the first statement, the very first one. And then we were  
7 talking about starting another statement.

8 Q. Thank you, Madam Witness.

9 MR GOSNELL: No further questions, Mr President.

10 PRESIDING JUDGE FREMR: Very well.

11 Ms Solano, any request for re-direct?

12 MS SOLANO: Your Honour, no, however, I do have a clarification request to make in  
13 relation to something your Honour said yesterday. I think the potential for it to affect  
14 my -- for it to determine my requesting re-examination is extremely limited, so I leave it to  
15 your Honours whether you want to let the witness go now and I can make my  
16 clarification request after she's gone or I can just make it quickly if she takes her  
17 headphones off.

18 PRESIDING JUDGE FREMR: All right. Again please, madam assistant, could you take  
19 her, Madam Witness', headphones off?

20 Ms Solano.

21 MS SOLANO: Thank you, your Honour.

22 Your Honour, yesterday when we were dealing with the photo board and the witness was  
23 asked whether she could identify anybody on it, your Honour said at transcript page 70,  
24 line 18 that, in your view, in any legal system it's part of the proceedings concerning rape  
25 that the victim is expected to identify the perpetrator.

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1 So the nature of my clarification request is the following, your Honours: We understand  
2 your Honour to have meant that where identification is possible because, you know, there  
3 is -- there are suitable means to do it, the witness is in a position to do it, it happened  
4 recently, that it can be attempted but not that this is a requirement in law. And of course  
5 we seek this clarification in particular because of the modes of liability that are relevant to  
6 the rape of this witness.

7 PRESIDING JUDGE FREMR: Exactly. Probably I was not clear enough. My idea was  
8 that it's not condition of -- or, conviction, for sure definitely, but that always the part of the  
9 proceedings concerning rape should be the attempt or the chance for the victim to identify  
10 perpetrator, if possible.

11 So I said nothing that if she did not identify that it means that it will lead to verdict of  
12 innocence. So am I now clear enough?

13 MS SOLANO: Thank you, your Honour, that assists us. And I have no re-examination.

14 PRESIDING JUDGE FREMR: All right.

15 So Madam Witness, I have for you good news that your testimony is over. I guess you  
16 are happy, aren't you?

17 THE INTERPRETER: The witness is not wearing headphones.

18 PRESIDING JUDGE FREMR: Sorry, I have to repeat again: Madam Witness, I just  
19 wanted to inform you that now your testimony is finished, so I believe, because I can  
20 understand it was very exhaustive and tough task for you, that, I believe, you are now  
21 happy. And I would like to thank you because it was very long three days for you, but I  
22 believe that you were trying to do your best and I also believe that your testimony will  
23 assist us in our effort to find the truth.

24 By the way, we should move into open session.

25 (Open session at 11.09 a.m.)

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

2 PRESIDING JUDGE FREMR: So I'll repeat it in order to make it public: Thank you  
3 very much, Madam Witness, for your testimony, we believe it will be very helpful in our  
4 deliberations and now we wish you a safe journey home. Thank you very much.  
5 And now court officer, please assist Madam Witness to leave our courtroom.

6 (The witness is excused)

7 PRESIDING JUDGE FREMR: And before we adjourn, before I summarise our upcoming  
8 programme, are there any requests for the floor from the parties? Prosecution? Defence?  
9 No, very well.

10 So as I already informed you and it was confirmed, the upcoming witness, Witness P-113,  
11 will be ready on Monday morning, so that is why we will have to adjourn now.  
12 Just a gentle reminder to both parties, according Chamber's decision, each party is allotted  
13 four hours for examination and cross-examination respectively, which means that roughly  
14 we should conduct examination-in-chief on Monday and cross on Tuesday.

15 And one additional comment: I think this witness was a classical example of a very  
16 complicated witness for you to examine her. And I expect that the upcoming witness  
17 will be of the very similar nature, so please take it into account during your preparation.  
18 I really believe that this example showed that only very simple and streamlined questions  
19 really can bring some beneficial responses.

20 And it's rather premature, but I'm afraid that even part of the responses made by this  
21 witness would be affected by the fact that sometimes I have a doubt that she really  
22 understood what she had been asked for, so please have it in mind in preparation for the  
23 upcoming witness. It's true that it would be also affected by some scruples to testify on  
24 some topics but, in my view, the main problem was the previous one.

25 That's it, so we finish today and we will continue Monday, 9.30.

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- 1 THE COURT USHER: All rise.
- 2 (The hearing ends in open session at 11.12 a.m.)
- 3 RECLASSIFICATION REPORT
- 4 Pursuant to the Trial Chamber VI's Order, ICC-01/04-02/06-1887, dated 4 May 2017,
- 5 the public reclassified and lesser redacted version of this transcript is filed in the case.