

Trial Hearing

(Open Session)

ICC-01/04-02/06

1 International Criminal Court

2 Trial Chamber VI

3 Situation: Democratic Republic of the Congo

4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06

5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and Judge Chang-ho Chung

6 Trial Hearing - Courtroom 3

7 Wednesday, 16 November 2016

8 (The hearing starts in open session at 11.32 a.m.)

9 THE COURT USHER: [11:32:36] All rise.

10 The International Criminal Court is now in session.

11 Please be seated.

12 PRESIDING JUDGE FREMR: [11:33:10] Good morning, everybody.

13 Court officer, please call the case.

14 THE COURT OFFICER: [11:33:15] Thank you, Mr President.

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

16 versus Bosco Ntaganda, case reference ICC-01/04-02/06.

17 We are in open session.

18 PRESIDING JUDGE FREMR: [11:33:31] Thank you, court officer.

19 Appearances, starting with Prosecution.

20 MR IVERSON: [11:33:38] Good morning, your Honours. Kristy Sim,

21 Nicole Samson and Eric Iverson for the Prosecution.

22 PRESIDING JUDGE FREMR: [11:33:45] Thank you, Mr Iverson.

23 Defence now, please.

24 MR BOURGON: [11:33:52] (Interpretation) Good morning, Your Honour. For the

25 Defence this morning, Han Catherine Morin, Margaux Portier and myself, Stéphane

1 Bourgon. Thank you, your Honour.

2 PRESIDING JUDGE FREMR: [11:34:02] Thank you, Mr Bourgon.

3 And I also note for the record that Mr Ntaganda is present as well.

4 Legal Representatives Of Victims, please.

5 MS PELLET: [11:34:20] (Interpretation) Thank you, your Honour. The former child

6 soldiers are represented by Mohamed Abdou and by myself, Sarah Pellet, counsel

7 with the Office of Public Counsel for Victims.

8 MR SUPRUN: [11:34:34] (Interpretation) Good morning, your Honour, your

9 Honours. For the victims of the attacks this morning, Anne Grabowski, associate

10 lawyer; and myself, Dmytro Suprun, counsel with the Office of Public Counsel for

11 Victims.

12 PRESIDING JUDGE FREMR: [11:34:48] Thank you, Ms Pellet. Thank, Mr Suprun.

13 We will start by delivering our decision on Defence urgent request for stay of

14 proceedings. That request for stay of proceedings is contained in filing number 1629.

15 In May 2016, the Chamber became aware of the fact that the Prosecution had been

16 granted access to additional non-privileged calls of the accused, and since that time

17 has twice, in June and September 2016, urged the Prosecution to conclude its

18 investigations in an expeditious manner and make all relevant disclosure. The

19 Chamber emphasised that such investigations cannot be permitted to continue

20 indefinitely in a manner which could impact the proceedings in this case.

21 On 7 November 2016, the Prosecution filed a Communication of the Disclosure of

22 Evidence. This is filing number 1616, in which the Prosecution indicated that it was

23 disclosing to the Defence copies of the non-privileged contact and visitor logs, and

24 recordings of the non-privileged telephone conversations, of Mr Ntaganda and

25 Mr Lubanga from 22 March 2013 onwards. I will hereafter refer to this filing as the

1 "Prosecution notice." It was indicated in the Prosecution notice that the Prosecution
2 had obtained access to these records and recordings pursuant to a decision of the
3 Single Judge of Pre-Trial Chamber I dated 18 September 2015 in the context of
4 investigations conducted under Article 70 of the Statute.

5 On 14 November 2016, the Defence filed an urgent request for a stay of proceedings.

6 And I will refer hereafter to this as the request.

7 Having been directed to do so during the hearing on 14 November 2016, the

8 Prosecution filed a response opposing the request on 15 November 2016.

9 The Legal Representatives of Victims also filed a joint response on 15 November 2016,
10 in which they oppose the request.

11 The Chamber does not intend to repeat or summarise the submissions made by any of
12 the participants as these are fully on the record, but will address them to the extent
13 necessary in its reasoning.

14 As a preliminary matter, although the Defence application is titled as a request for a
15 stay of proceedings, the Chamber notes that the Defence made no submissions in the
16 request in relation to the Court's jurisprudence on the standard applicable to a request
17 for a stay of proceedings. The terms "adjournment", "suspension" and "stay" appear
18 to have been used almost interchangeably throughout the request. The Chamber
19 considers that what is in fact being requested is an immediate adjournment. It has
20 therefore considered the request on that basis and according to that standard, rather
21 than against the more stringent standard required to obtain a stay of proceedings.

22 The Chamber notes that an adjournment is a discretionary remedy arising from the
23 Chamber's power under Article 64 to control the conduct of proceedings in a fair and
24 expeditious manner.

25 In adjudicating the request, the Chamber emphasises that it has focused this ruling

1 only on the question of whether an immediate adjournment is warranted, and
2 nothing in this decision should be read as prejudicing any further request from either
3 party related to the matters raised in the Prosecution notice.

4 The request is founded on two grounds:

5 First, on an alleged potential prejudice in the cross-examination of Prosecution
6 witnesses in a context in which allegations of coaching of potential Defence witnesses
7 have been made; and

8 Second, to enable the Defence to assess the potential impact on the fairness of the
9 proceedings, and to identify appropriate remedies as soon as possible.

10 In relation to the first ground, the Chamber notes that the allegations of witness
11 coaching are based on the Prosecution's assessment of the accused's own conduct, as
12 reflected in certain of the disclosed recordings. In such circumstances, the Chamber
13 considers that the accused is best placed to advise the Defence team in relation to
14 these applications, including in respect of whether lines of cross-examination being
15 pursued may be compromised or prejudiced by his prior conduct. Or, should these
16 coaching allegations be inaccurate, the Chamber considers that the accused is equally
17 well-placed to assure the Defence team that any allegations of witness coaching are
18 not well-founded.

19 The Chamber further notes that allegations of the coaching of potential Defence
20 witnesses, based on the content of the accused's non-privileged telephone calls, have
21 previously been raised inter partes before this Chamber in the context of the litigation
22 on restrictions on Mr Ntaganda's contacts. The Defence team has therefore been on
23 notice in this regard since prior to the commencement of the trial. The Defence must
24 be presumed to have previously discussed the issue in some depth with Mr Ntaganda
25 and to have been conscious of it in conducting both its investigations and

1 cross-examinations to date. Even should that not be the case, the Defence cannot
2 now sustainably argue that a situation of the accused's own making unfairly
3 prejudices his rights.

4 In relation to the second ground, the Chamber acknowledges at the outset the
5 voluminous nature of the disclosed material. The Chamber further acknowledges
6 the fact that the Defence is understandably not currently in a position to identify
7 specific instances of concrete prejudice arising from the content of the disclosed
8 material. It is undisputed that the Defence must have the opportunity to review the
9 material to the extent relevant, as well as to consider the circumstances of the
10 Prosecution's access to the material and, thereafter, to seek remedies for any such
11 concrete prejudice which may have arisen. The question presently before the
12 Chamber, however, is whether this necessitates an immediate adjournment of the
13 proceedings. In the Chamber's view, and for the reasons which follow, the Chamber
14 does not consider that to be the case.

15 First, the Chamber notes that the disclosed material must be considered in its
16 appropriate context. The nature of the material is such that it does not relate directly
17 to the charges, and, as mentioned above, relates to allegations the nature of which the
18 Defence has been on notice of since prior to the commencement of trial.

19 From the Chamber's own review of a limited number of Mr Ntaganda's
20 non-privileged calls, in the context of the previous litigation on restrictions in this case,
21 it is apparent that significant portions of the recordings will not have any direct
22 materiality to these proceedings. To the extent that certain information may be
23 relevant, it appears at this stage, on the basis of the information currently before the
24 Chamber, that such relevance would relate to peripheral issues. The information
25 may of course, as already mentioned, impact aspects of Defence strategy. This,

1 however, does not provide a ground for immediate adjournment, and such
2 considerations could also, for example, be factored into the time granted for
3 preparation of the Defence case.

4 Indeed, the Chamber does not consider that the length of the Article 70 investigation,
5 or of the temporary nondisclosure, in itself supports the request for an immediate
6 adjournment. Such submissions could be considered at the time of arguing specific
7 instances of concrete prejudice. Similarly, even if it should in due course be
8 established that the fairness of the proceedings has already been impacted, including
9 as hypothesised by the Defence from the Prosecution having had access to aspects of
10 Defence strategy, the Chamber does not consider that this would be capable of being
11 remedied by an immediate adjournment.

12 The Chamber does, however, recognise the resource demands likely to be placed on
13 the Defence team in reviewing the disclosure and assessing potential prejudice. It is
14 therefore noted in this regard that should additional assistance be required, such a
15 request should first be addressed to the Registry. Further in this regard, the
16 Chamber finds incumbent upon the Prosecution to provide such reasonable
17 information as may assist the Defence.

18 The Chamber also notes that the Prosecution has now provided responses to the
19 majority of the queries raised in paragraph 17 of the request, or, as applicable, has
20 given an undertaking to provide the relevant information. In that regard, the
21 Chamber notes the Prosecution's undertaking to provide redacted copies of its related
22 ex parte filings and to disclose all available summaries of recordings on a rolling basis
23 between now and 25 November 2016. The Prosecution has additionally responded
24 to the Defence concern that members of the Defence team may have been subjected to
25 telephone surveillance, or been the target of the Article 70 investigation, by

1 confirming this has not been the case. The Prosecution has further responded to the
2 Defence queries regarding the degree of access which the Prosecution team in this
3 case had to the material, and whether the material was screened prior to such access,
4 and confirmed that the material does not include any phone calls made to privileged
5 persons.

6 Relatedly, the allegations in the Prosecution notice must be presumed to be based on
7 the content of the recordings which the Prosecution has reviewed to date. This
8 apparently amounts to a much more limited volume of recordings than the total
9 number disclosed, of approximately 450, none of which were made after the
10 commencement of trial. In addition to the forthcoming disclosure of all summaries,
11 the Chamber considers that the Prosecution should forthwith identify for the Defence
12 the reviewed recordings in question, in order to assist the Defence in prioritising its
13 review. Further, to the extent that this is not already apparent from the manner in
14 which the recordings are categorised in TRIM, the Prosecution should provide the
15 Defence with any information it has which may assist to catalogue and identify calls,
16 including, for example, based on the identity of the caller and counterpart and/or the
17 date on which the call was made.

18 In summary, in the Chamber's view, a substantiated submission of ongoing prejudice
19 which would be remedied by immediate adjournment -- as opposed to possible other
20 remedial measures -- has not been established at this time and the Defence request is
21 therefore rejected.

22 Finally, the Chamber notes that it is reviewing its decisions bearing filing numbers
23 1364 and 1494 with a view to reclassifying them or providing lesser redacted versions.
24 That concludes the Chamber's ruling.

25 And in light of this ruling, we will be proceeding with the cross-examination of

1 Witness P-911 today. We now will take a short break in order for the witness to be
2 brought to the courtroom and for the parties to amend the composition of their teams,
3 if necessary. I believe that ten minutes should be enough for that.

4 And Mr Bourgon, you would like to address the Chamber on --

5 MR BOURGON: [11:52:25] Yes, I would like to address the Chamber, with the leave
6 of the Chamber, Mr President.

7 PRESIDING JUDGE FREMR: [11:52:29] All right, please proceed.

8 MR BOURGON: [11:52:33] Thank you very much.

9 Mr President, the Defence is of course grateful to the Chamber for taking the time to
10 deliberate and to render this ruling. That being said, further to the decision that we
11 have just heard on the Defence urgent request for stay of proceedings, understood
12 now to be a request for immediate adjournment, the Defence intends to, bearing in
13 mind the nature and the importance of the issues raised in this request, as well as,
14 more importantly, the serious prejudice alleged therein, of course the Defence will be
15 seeking leave to appeal the decision at the earliest opportunity.

16 Mr President, at this time, given the urgency of the matter, the Defence makes an oral
17 application for suspensive effect of the Trial Chamber's decision.

18 Mr President, such relief has been granted in the past by this Chamber. I refer to
19 filing or decision 415 dated 18 December 2014. The title of that decision,

20 Mr President, was "Decision on urgent request on behalf of Mr Ntaganda seeking
21 partial suspensive effect of the decision on the Prosecution request for restrictions on
22 contact and the Defence request for access to logs."

23 Mr President, in this decision, the Chamber held that the power to confer suspensive
24 effect was only given to the Appeals Chamber in accordance with Article 82(3) of the
25 Statute and Rule 156(5). However, the Trial Chamber also held that pursuant to

1 Article 64(3)(a) of the Statute, the Chamber has the power to suspend execution of
2 certain orders if this is necessary to facilitate the fair and expeditious conduct of the
3 proceedings.

4 Mr President, we respectfully submit that this is exactly the situation we are in.

5 Should leave to appeal be granted as the Defence will request, the relief sought in its
6 motion, a partial stay or an immediate adjournment regardless of the name, will
7 become moot as further witnesses will be heard in the meantime. This is precisely
8 the aim of the Defence oral application this morning for suspensive effect.

9 Mr President, although the Chamber has now denied the Defence request, it
10 nonetheless recognised earlier in week the apparent and prima facie nature of the
11 request by delaying any further cross-examination until the request was adjudicated
12 upon.

13 The apparent prima facie prejudice to the accused remains unchanged, despite the
14 Defence gaining access to the TRIM, because we now have access to the TRIM, and
15 despite the Prosecution disclosing some of its draft summaries.

16 Mr President, it is well established that in adjudicating the Defence request for leave
17 to appeal, the merits of the request itself is unrelated. No matter how confident the
18 Chamber is with the merits of its own decision or no matter how much the Chamber
19 is confident that the Defence appeal is likely to succeed or to fail, these matters are not
20 related to our request this morning. Our request this morning is a request for
21 suspensive effect so that we have time to request leave to appeal.

22 What is important is what happens now if we proceed with witnesses and then leave
23 to appeal is granted? And what happens now if we proceed with witnesses and
24 ultimately the Defence appeal succeeds? Then we will find ourselves in a situation
25 where the trial itself in its entirety will be jeopardised. The prejudice to the accused

1 of conducting cross-examinations in these circumstances will be increased and might
2 very well lead to a full stay of proceedings.

3 Mr President, request for stay of proceedings are not ordinary requests. Even if we
4 call it a request for immediate adjournment, these are not ordinary requests and they
5 are not submitted without careful consideration. These are requests of the utmost
6 seriousness and they are not submitted lightly. The one we submitted is no different.
7 The little time requested now with this oral application to suspend the effect of the
8 Trial Chamber's decision is very little compared to the potential, the possibility of
9 stopping the entire trial on this basis.

10 The Defence request, Mr President, was not frivolous. The Defence request rests on
11 a real situation which the facts of which are fully established. The Prosecution has
12 gained access to 20,000 audio files of conversations involving the accused. The
13 Prosecution has compiled 450 summaries of these conversations.

14 Mr President, it simply cannot be said that the Prosecution summarised the first 450
15 conversations it came upon. The Prosecution of course made a selection. The
16 selection of all of this information which was exactly comes from the accused. This
17 is what the prejudice is related to, and we understand that the Trial Chamber initially
18 recognised this potential prejudice, regardless of whether the Trial Chamber now
19 agrees with it or not.

20 Mr President, what we are dealing with is a violation of the right of the accused to
21 remain silent by obtaining his telephone conversation every day. This is not an
22 everyday violation. It is not -- it's not an everyday matter when the Defence must
23 now cross-examine, knowing that the Prosecution has millions -- millions, well, I
24 don't want to -- let's not get carried away -- thousands of pages of material involving
25 Mr Ntaganda and we don't know what is in these pages and we are expecting to

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1 continue to cross-examine.

2 I don't want to say more on the merits of the application. All I'm submitting at this
3 time is that it is necessary to suspend the decision of the Trial Chamber, at least until
4 we make a request for leave to appeal, and we can take it at that time.

5 The Defence request for suspensive effect, Mr President, as the request that was filed
6 for an immediate adjournment, does deserve careful consideration. This is why we
7 argue that suspensive effect at this time is the proper course of action and we
8 undertake, if such suspensive effect is granted, to submit our leave to request
9 application as soon as possible and within any delay set by the Trial Chamber.

10 Respectfully submitted, Mr President. Thank you.

11 PRESIDING JUDGE FREMR: [12:01:35] Thank you, Mr Bourgon.

12 Now I would like to hear counter-party and participants on that. Prosecution,
13 Ms Samson, please.

14 MS SAMSON: [12:01:45] Thank you, Mr President. The Prosecution opposes the
15 request for suspensive effect of the Chamber's decision today on several bases.
16 Importantly the Defence has not established that there's a risk of irreparable prejudice
17 should the trial continue while the Defence makes its application for leave to appeal.
18 There is nothing that would be rendered moot should we hear the testimony
19 of -- continued testimony of Witness 911 and witnesses thereafter on the basis that the
20 Chamber has already articulated.

21 First of all, the information that the Defence seeks to access is information that they
22 already have access to in the best possible form. They have at their disposal the
23 accused, who participated in the conversations that the Prosecution has been able to
24 listen to in some very small part. So, to the extent that the Defence needs to know
25 how and whether their cross-examination of witnesses to come has been affected in

1 any way, they ought to immediately and ought to have already spoken directly to
2 Mr Ntaganda to understand those very issues. And receiving the summaries that
3 the Prosecution has prepared of a very small number of those conversations, some 5
4 percent in total, will only give them a very small piece of an intricate puzzle to which
5 Mr Ntaganda has all the answers.

6 So, in our submission, there is no prejudice to the accused himself of continuing and
7 there is every available avenue for Defence counsel to understand the scope of any
8 implications to cross-examination questions it wishes to put to Witness 911 and
9 witnesses coming thereafter.

10 Additionally, there is still a large measure of speculation in what the Defence has put
11 forward today, and we heard comments such as, there may very well be an issue for
12 them to understand more fully, what happens if we were to continue today and the
13 appeal -- leave to appeal why granted or eventually the application -- the appeal itself
14 granted and this is all speculative. There is no concrete prejudice that the Defence
15 has put forward and none that can in any event not be remedied in full by having full
16 and frank discussions with counsel's client.

17 So, in summary, Your Honour, the Prosecution strongly opposes the request for
18 suspensive effect and we request that the application be denied.

19 Thank you.

20 PRESIDING JUDGE FREMR: [12:05:01] Thank you, Ms Samson.

21 And as I indicated, now Legal Representatives Of Victims. Ms Pellet first.

22 MS PELLET: [12:05:13] (Interpretation) Thank you very much, your Honour. To
23 not make the Chamber lose any time I'd like to reiterate the arguments which were in
24 the written statements, and we continue to be opposed to the suspension, for the
25 reasons outlined therein,* "whether in the short term to prepare a request for leave to

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1 appeal or in the longer term as set out in its application. I would also reiterate that
2 this application also violates the rights of victims to see this trial finally come to an
3 end. This is a trial they've been waiting for, for a very long time, and they have been
4 waiting *all the more impatiently for the decision. Thank you very much your Honour.

5 PRESIDING JUDGE FREMR: [12:06:14] Thank you, Ms Pellet. Mr Suprun.

6 MR SUPRUN: [12:06:16] (Interpretation) Thank you very much, your Honour. I'm
7 also opposed to the Defence application concerning suspensive effect, because any
8 party requesting suspensive effect, there has to be a very significant risk of irreparable
9 prejudice for the parties, as well as for the proceedings in a general way if they are to
10 do so.

11 We haven't heard this morning any element, any objective real element which would
12 demonstrate what type of prejudice the accused and Defence could have if suspensive
13 effect is not granted.

14 Now, where it concerns in a general way, even if the Appeals Chamber will reverse
15 the decision of your Chamber, it's up to the Trial Chamber to assess at the end of the
16 trial the probative value of the evidence presented during this period until the
17 decision of the Appeals Chamber.

18 So I therefore join the comments made by my colleague concerning the prejudice that
19 the victims would suffer if the proceedings in this case are delayed on a speculative
20 and unfounded basis.

21 PRESIDING JUDGE FREMR: [12:07:38] Thank you, Mr Suprun.

22 And before we break, I give the floor to Mr Bourgon. Please.

23 MR BOURGON: [12:07:44] Thank you, Mr President.

24 I did not envisage replying to the arguments of the first legal representative of victims,
25 but I will answer and reply to the arguments put forward by the second legal

1 representative.

2 Mr President, what we hear in terms of argument is that there is no real prejudice that
3 he has heard about. Of course, this has to do with the merits of the motion, but I
4 really fail to see what more my colleague requires to understand that the Prosecution
5 being in possession of thousands of pages of conversation of the accused of which the
6 Defence is unaware, at the time when the Defence needs to cross-examine, I don't
7 know what more my colleague requires.

8 Mr President, we set out upon doing a cross-examination. This is explained in the
9 motion, but I guess my colleague needs me to go over this again. We set out to do
10 cross-examination. We rely on Defence investigations. Defence investigations
11 relate to potential witnesses. When we meet with potential witnesses, we need to
12 assess whether the information we get from potential witnesses is reliable enough to
13 be raised during cross-examination, because we know that whatever we say in a
14 cross-examination might very well come back and bite us, so we have to do a careful
15 assessment. Now we do not know which of our potential witnesses have been
16 involved in this alleged overall scheme.

17 I come, Mr President, to -- well, maybe one last point before turning to the
18 Prosecution.

19 The violation of the rights of the victims to have this trial heard expeditiously.

20 Mr President, we have said on many occasions we have the utmost of respect for the
21 victims. If this trial is taking place, to a large extent it is in order to allow the victims
22 to understand and to know what happened.

23 But, Mr President, I don't think that any victim is interested in getting a trial or the
24 result of a trial that is based on an unfair proceedings. So I don't think that this
25 argument should be given any weight at this time. We always, and the Chamber

1 always tries to get an expeditious trial.

2 I turn quickly to the Prosecution. My colleague says that we have not established a

3 risk of prejudice. Well, the risk of prejudice has been established very clearly, and I

4 just described it a few seconds ago, in the sense of the information in the possession of

5 the Prosecution that we are not aware of. Do we have access to the accused? Yes

6 we do. Do we ask the accused who he spoke to and what he might have said in

7 conversation? Of course we do. Does that mean that we know and that the

8 accused remembers what he might have said in 20,000 conversations? No, it does

9 not. Does it mean that the accused understood what -- the implications of what he

10 was discussing and when he did it had? No, it does not.

11 The issue of witness coaching, the way it is brought forward by the Prosecution is, in

12 our view, absolutely wrong. Witness coaching has nothing to do with what has

13 happened in the past. But now we are told that there is witness coaching, so we

14 need to know what is in this material before we can continue with our investigations.

15 We need to know why the investigators working for the Defence, if that will change

16 the way they do their business. That is the issue at hand, Mr President. And it is

17 no small issue.

18 The last thing, of course, is the issue of speculation. There is no speculation. The

19 Chamber very well addressed the issue by saying we have not been able to identify a

20 concrete prejudice based on any one conversation. Of course, we don't have the

21 material, how can we do that? But is there a possibility that the Prosecution in all of

22 this material, whether it's 5 per cent, 10 per cent, or 20 per cent, is there any possibility

23 that they have information that they should not have, that comes from the strategy of

24 the Defence and that changes this whole case? Yes, there is a strong possibility. It's

25 no speculation on the part of the Defence, Mr President. It is necessary, in our view,

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1 to grant this application for suspensive effect so that we can get a decision on leave to
2 appeal. And, of course, should that decision be denied, we will abide with the
3 decision of the Chamber, but the Chamber needs to see our arguments before.
4 Should that application be granted, the Chamber knows very well that the first thing
5 we will do, it's no surprise, we will apply to the Appeals Chamber for suspensive
6 effect.

7 But, Mr President, I ask you respectfully to consider the importance of what we have
8 before us; thousands of pages of material coming from the accused in the possession
9 of the Prosecution that the Defence is not aware of. That in itself says it all,
10 Mr President.

11 Thank you very much.

12 PRESIDING JUDGE FREMR: [12:13:46] Thank you, Mr Bourgon.

13 And before we break, one comment from my part. To be fair to Ms Samson, when
14 you quote her, you omitted one important word, because if you look at page 14, line
15 16, she said:

16 "Defence has not established that there is a risk of irreparable prejudice." So you
17 omitted this word and, in my view, this word is relevant.

18 Now we break.

19 THE COURT USHER: [12:14:24] All rise.

20 (Recess taken at 12.14 p.m.)

21 (Upon resuming in open session at 12.39 p.m.)

22 THE COURT USHER: [12:39:02] All rise.

23 Please be seated.

24 PRESIDING JUDGE FREMR: [12:39:37] I will first deliver the Chamber's decision on
25 Defence recent request for suspensive effect.

1 The Chamber has previously set out its position on the applicable law relating to a
2 request for suspensive effect. This is contained in the decision with filing number
3 415. Therein, at paragraph 5, the Chamber noted that the power to grant suspensive
4 effect should be exercised if it is necessary to facilitate the fair and expeditious
5 conduct of proceedings.

6 The Chamber has considered the oral submissions this morning in the context of the
7 submissions made on the underlying request. In the Chamber's view, the Defence
8 has not established a risk of irreparable harm. Indeed, in the Chamber's view, the
9 Defence has largely repeated its submissions regarding potential prejudice as made in
10 the context of the underlying request. The immediate effect of the relief requested
11 would be equivalent to the Chamber granting reconsideration of its decision not to
12 immediately adjourn the proceedings.

13 In this regard, the Chamber also notes that the risk of such irreparable harm was
14 clearly within its consideration when rejecting the Defence request for an immediate
15 stay of proceedings. The Chamber therefore rejects the request for suspensive effect.
16 This ruling is, of course, without prejudice to the Chamber's position on the Defence's
17 foreshadowed request for leave to appeal, as well as any further request arising from
18 the recent disclosure of audio recordings.

19 This concludes the Chamber's ruling, and the Registry should please bring the
20 witness to the courtroom.

21 Mr Bourgon.

22 MR BOURGON: [12:42:12] Thank you, Mr President.

23 The Defence is it grateful for the Chamber's decision. Before the witness is brought
24 in, there is one issue I would like to submit to the Chamber.

25 PRESIDING JUDGE FREMR: [12:42:22] So, court officer, please hold on.

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1 Mr Bourgon.

2 MR BOURGON: [12:42:26] Mr President, I don't think this will be a problem, but
3 considering that the Prosecution team today is different from the one that was present
4 with the Witness 918, I just want to make sure that the same ruling will apply, and the
5 Defence is submitting an application pursuant to paragraph 34 of the decision on
6 conduct of proceedings, and our application is to use the statements and the
7 testimony of witnesses P-11 -- P-911, P-898 and P-918 as a means to challenging each
8 other's credibility and ascertaining the truth. This was already discussed before the
9 Chamber. Reference is transcript 157, page 36 to page 44.

10 If we can move into private session for a brief moment, Mr President.

11 PRESIDING JUDGE FREMR: [12:43:24] Certainly.

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

13 (Private session at 12.43 p.m.) *(Reclassified partially in public)

14 THE COURT OFFICER: [12:43:45] We are in private session, Mr President.

15 PRESIDING JUDGE FREMR: [12:43:47] Thank you, court officer. Mr Bourgon,
16 please.

17 MR BOURGON: [12:43:49] Thank you, Mr President. (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

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11 (Redacted)

12 (Redacted)

13 (Redacted)

14 So that's our submission. I don't think that will be a problem because it was agreed
15 already, but I just wanted to make sure this was on the record before I begin.

16 And lastly, Mr President, once this issue, then there's an issue of timing which I think
17 will be best addressed in the absence of the witness. Thank you.

18 PRESIDING JUDGE FREMR: [12:46:50] It was, if I remember well, Ms Solano who
19 represented Prosecution during this litigation I don't know to what extent Mr Iverson
20 is informed.

21 But anyway, what is your position, Prosecution?

22 MR IVERSON: [12:47:05] I was informed, Mr President.

23 For many propositions the Defence can simply put the question to the witness rather
24 than saying witness so-and-so said such-and-such. I don't see the probative value in
25 stating that witness A said such-and-such rather than just asking the question. So to

1 illustrate, if during cross-examination counsel says "It was sunny that day, wasn't it?"
2 and Witness A says "Yes" and Witness B says "No, it was cloudy," what probative
3 value does it have to say "Well, Witness A said it was sunny, what do you have to say
4 about that?"

5 And so it's just a matter of -- it doesn't add anything to the question for the Chamber's
6 evaluation of the testimony. And what it risks is that it throws a witness off balance
7 or that it somehow intimidates or influences that witness. So I think that that
8 practice should be discouraged. I understand what Defence counsel is saying, but
9 we would ask that he proceed on that basis.

10 PRESIDING JUDGE FREMR: [12:48:20] Allow me to quote from our decision on
11 Conduct of Proceedings. It's para 34:

12 "When referring to another witness's testimony of previous statements, the parties
13 and participants shall quote directly the relevant passages and give the precise
14 references, including the relevant lines. These references should only be used when
15 appropriate and after seeking permission of the Chamber to do so".

16 We, as I said, came to the conclusion that, at least as concerns the relationship
17 between two previous witnesses, there was no risk of any negative consequences if
18 they knew that the other one was in front of as a witness. I don't see, frankly saying,
19 having heard Mr Bourgon's argumentation, any risk also in this case.

20 It's true that this approach shouldn't be regular, it should really be used only
21 exceptionally.

22 Mr Bourgon, do you really see such a need to use -- maybe it's also, in my view, a
23 possibility to start just with referring to the information that is coming from, and they
24 if you will see such a need to emphasise that this information was even given under
25 oath. (Redacted)

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(Private Session)

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1 (Redacted) What do you think

2 about that?

3 MR BOURGON: [12:50:03] Mr President, of course, we, the Defence is fully aware

4 that, depending on the manner in which we ask our questions, this might have a

5 bearing on the probative value that the Chamber will attach to the testimony. We

6 only do it when it is necessary. However, when a witness in this case, (Redacted)

7 (Redacted)

8 once -- when one of these (Redacted) witnesses takes a clear-cut position contrary to

9 the other, we believe it is important to ensure that (Redacted) witness are able to

10 comment on this very clear-cut position.

11 That's when we do it, Mr President. And I wanted to avoid wasting time during the

12 testimony by making my application at this time.

13 PRESIDING JUDGE FREMR: [12:50:49] Well, I think it's fine, but as you even said,

14 we will approve that only in case of some clear contradiction and, moreover,

15 concerning some really serious and most relevant issues, not about some peripheral

16 details.

17 And as to the timing, Mr Bourgon, please go ahead.

18 MR BOURGON: [12:51:14] Thank you, Mr President. When we ended the previous

19 day, I'm not sure if it was yesterday or the day before, with Witness 911, the Trial

20 Chamber, without taking any position, just informed the Defence that some two

21 hours, and I don't know exactly how many minutes had been used by the

22 Prosecution.

23 I understand, Mr President, the one-for-one rule that is in principle applied by the

24 Chamber, in this case, I believe, Mr President, that it would be prejudicial to impose a

25 one-to-one rule. The reason is simply because, first of all, the Prosecution had

1 intended for this witness six hours at the beginning. The Chamber advised the
2 Prosecution that five should be enough, to which both the Defence and the
3 Prosecution didn't say anything, and I think I can certainly do it within five hours.

4 Now, my colleague used a little more than half of his time, (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted) But what I can say is, when the Prosecution decides to cut his or her time

8 significantly, that should not be also imposed on the Defence or else timing for

9 cross-examination will become a tactical weapon where I say five and they prepare

10 for five and then I do two and then they are in a problem.

11 Mr President, the issues to be raised with this witness, there are a number of issues

12 and we would like to be able to use the five hours that were planned by the Chamber

13 at the beginning of this evidentiary block.

14 Thank you, Mr President.

15 PRESIDING JUDGE FREMR: [12:53:11] Prosecution, any position on that? Not

16 necessarily, it's up to you.

17 MR IVERSON: [12:53:16] We would just ask that he be restricted to the same time

18 that the direct examination was done in. And if the Chamber is inclined to grant

19 additional time, that it take into account whether counsel is going into peripheral

20 matters or not.

21 PRESIDING JUDGE FREMR: [12:53:35] All right, I will provide you with some -- I

22 believe the whole Chamber agree on that, we did it even in the past, all such a request

23 should be decided on a case-by-case basis. Generally, it's true that we allotted some

24 time, and if the calling party concludes in a shorter time, it would generally imply

25 that the counterparty will make the same. But, as I said, it just relate generally,

1 because first of all, according to our decision on Conduct of Proceedings, the
2 cross-examination shouldn't be necessarily limited only to the issues opened or
3 touched during the direct examination and, moreover, there also could be some other
4 circumstances.

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 But in this case though, Mr Bourgon, you are still granted 5 hours but still I believe, in
10 the light of the real content of the testimony orally provided by this witness, that it
11 should be possible, and I encourage you - I am not ordering but I am encouraging
12 you - to try to shorten the testimony of this cross-examination. I believe that four
13 hours would be fine, but as I said, it's still encouragement, not the other.

14 And now I don't see any sense to start for 2, 3 minutes with testimony of the witness
15 so we will -- with testimony, with the cross-examination. So we will now break.

16 Sorry, let's move into open session for the remaining part.

17 (Open session at 12.56 p.m.)

18 THE COURT OFFICER: [12:56:15] We are back in open session, Mr President.

19 PRESIDING JUDGE FREMR: [12:56:19] Yes. So since the Chamber doesn't find any
20 sense in starting cross-examination of the witness for two or three minutes, we will
21 break now and we will continue with cross-examination. We will resume after the
22 lunch-break, at half past 2.

23 THE COURT USHER: [12:56:43] All rise.

24 (Recess taken at 12.56 p.m.)

25 (Upon resuming in open session at 2.31 p.m.)

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(Open Session)

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WITNESS: DRC-OTP-P-0911

1 THE COURT USHER: [14:31:25] All rise.

2 Please be seated.

3 PRESIDING JUDGE FREMR: [14:32:05] Good afternoon, everybody. I don't see

4 any -- with one ex-exception, I don't see any changes in appearances. If yes, please

5 correct me, but I have to know note for the record presence of Mr Raimondo, legal

6 adviser according to Rule 74 to our witness. Otherwise, if I am not wrong,

7 appearances are the same. All right.

8 So, Mr Witness, welcome back. We will continue today with your cross-examination

9 conducted by Defence, I believe by Mr Bourgon. And it's my duty again to remind

10 you that you are still under oath, which means that you have to speak the truth and

11 nothing but the truth.

12 If we would touch some facts that could lead to your self-incrimination, you have

13 been also instructed that you got guarantee according to Rule 74 and moreover, if you

14 would be unsure, you can also consult your legal adviser. Do you understand?

15 WITNESS: DRC-OTP-P-0911 (On former oath)

16 (The witness speaks French)

17 THE WITNESS: [14:33:35] (Interpretation) Yes, I understand.

18 PRESIDING JUDGE FREMR: [14:33:36] So now I am giving the floor to Mr Bourgon.

19 Mr Bourgon, usual question: do you want to proceed in open or in private session?

20 MR BOURGON: [14:33:44] I would like just to introduce myself first and then to

21 move into private session.

22 QUESTIONED BY MR BOURGON:

23 Q. [14:33:57] Good morning, Witness.

24 A. [14:33:59] Good morning.

25 Q. [14:34:01] We had an opportunity to meet each other beforehand, in fact last

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(Private Session)

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1 *week I was with my colleague, who is sitting next to me now, but I would like to
2 introduce myself once again. My name is Stéphane Bourgon and I am a Canadian
3 counsel representing the accused in this case, Bosco Ntaganda. Do you understand
4 that?

5 A. Yes.

6 Q. [14:34:31] I have a number of questions quite obviously today and we will be
7 concluding tomorrow. I will endeavour to go as shortly as possible through the
8 materials to enable you to return home in a swift fashion.

9 So we are going to be moving into private session and this will enable you to avoid
10 being identified?

11 MR BOURGON: Mr President, if we can move into private session, please.

12 PRESIDING JUDGE FREMR: [14:34:51] And before we do that, I would like to
13 inform public that this witness is a protected one, he was guaranteed that his identity
14 will not be revealed by the Court, so that is why we will probably spend a large part
15 of his testimony in the regime of private session.

16 Now, court officer, let's move into private session.

17 (Private session at 2.35 p.m.) *(Reclassified partially in public)

18 THE COURT OFFICER: [14:35:23] We are in private session, Mr President.

19 PRESIDING JUDGE FREMR: [14:35:27] Thank you, court officer. Mr Bourgon,
20 please proceed.

21 MR BOURGON: [14:35:32] Thank you, Mr President.

22 Q. (Interpretation) So, Mr Witness, let me start by addressing my first topic.
23 (Redacted) isn't that right?

24 A. [14:35:52] Yes, I do.

25 Q. [14:35:55] Do you remember that when the Prosecution put questions to you,

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1 a number of questions were put to you about (Redacted); isn't that right?

2 A. [14:36:08] Yes.

3 Q. [14:36:09] (Redacted)

4 (Redacted)

5 (Redacted)

6 Q. [14:36:23] (Redacted)

7 (Redacted)

8 (Redacted)

9 Q. [14:36:34] Now in 2002, Mr Witness, well, upon looking at your statement,

10 I think you were a (Redacted)

11 (Redacted) is that right ?

12 A. [14:37:03] No.

13 Q. [14:37:03] Well, have you already been (Redacted)

14 (Redacted)

15 A. [14:37:11] Not in 2002.

16 Q. [14:37:13] In another year?

17 A. [14:37:14] No.

18 Q. [14:37:22] Well, I'll return to that topic because this was an item of information

19 that we had. We didn't have the exact reference at my fingertips, or perhaps -- well,

20 I'll return to that point later on.

21 So you would confirm at no point in time have you ever been responsible (Redacted)

22 (Redacted)

23 A. [14:37:55] No.

24 Q. [14:38:05] (Redacted)

25 (Redacted)

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1 (Redacted)

2 Q. [14:38:33] Okay. Well, let me just take this opportunity that I appreciate what
3 you do currently. In other words, you provide short answers and no doubt almost
4 the entirety of my questions will elicit from you a very succinct answer.

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 PRESIDING JUDGE FREMR: [14:40:41] Mr Bourgon, I will not permit this question.

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1 It's purely speculative. In fact the core of the question has been asked and answered.

2 MR BOURGON: [14:40:57] (Interpretation)

3 Q. Mr Witness, based on the information that we have, (Redacted)

4 (Redacted) Would you confirm that?

5 A. [14:41:08] No, I don't confirm that.

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)

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- 1 (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Interpretation) Does that ring a bell?
- 11 A. [14:44:30] I don't remember those words.
- 12 (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 Q. [14:44:51] Are you familiar with Facebook, means of communication?
- 16 A. [14:44:56] Yes, I'm familiar with that.
- 17 Q. [14:44:59] You yourself have a Facebook page; is that right?
- 18 A. [14:45:03] I have had one in the past, yes.
- 19 Q. [14:45:06] And on your Facebook page you have got friends?
- 20 A. [14:45:13] There are quite a few of them.
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 Q. [14:45:59] Let's go step by step. Now, you confirmed that you had a Facebook
6 page and that you had a number of friends. And you answered a number of my
7 questions and throughout your oral evidence (Redacted). My question is
8 a straightforward one. (Redacted), is he one of your Facebook friends?

9 A. [14:46:23] I say no.

10 MR BOURGON: [14:46:32] I'd like to address the Chamber, Mr President. I am
11 not sure if the witness can understand English.

12 PRESIDING JUDGE FREMR: [14:46:39] Then it will be safer to ask him for a while to
13 leave the courtroom.

14 Mr Witness, since there will be some litigation concerning personally you, we will ask
15 you, with the assistance of court usher to leave the courtroom for a short while,
16 please.

17 (The witness stands down)

18 PRESIDING JUDGE FREMR: [14:47:19] So witness is away of the courtroom.

19 You may proceed, Mr Bourgon.

20 MR BOURGON: [14:47:25] Thank you, Mr President. Very briefly I did not anticipate
21 this answer and we did not add the Facebook page of either Witness 911 (Redacted)
22 (Redacted) on the list of the items to be used in cross-examination, but now of course
23 we will do so so that it can be -- it can be used tomorrow with the witness. So I will
24 not contradict him today with this exhibit.

25 The Prosecution has already received the Facebook page of (Redacted), if my

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1 colleague can confirm.

2 PRESIDING JUDGE FREMR: [14:48:00] Mr Iverson.

3 MR IVERSON: [14:48:04] That is correct, we have the Facebook page of (Redacted).

4 I think that we would object based on relevance and potential probative value. I

5 mean, if -- I don't know what this would bring. If there's any delay caused or

6 confusion, I would ask that Defence counsel just move on to another topic, but I will

7 leave it in the Chamber's hands.

8 PRESIDING JUDGE FREMR: [14:48:35] Mr Bourgon, could you just clarify, but it's

9 properly clear to me but especially for Prosecution, the relevance of that exercise.

10 MR BOURGON: [14:48:44] Well, Mr President, the witness just denied (Redacted)

11 (Redacted), so

12 we will just tomorrow show him his Facebook page just to contradict him and

13 nothing else.

14 PRESIDING JUDGE FREMR: [14:48:57] So even if my decision is rather preliminary,

15 I overrule the objection.

16 MR BOURGON: [14:49:06] We can continue, Mr President.

17 PRESIDING JUDGE FREMR: [14:49:09] Court usher, please bring Mr Witness back.

18 (The witness enters the courtroom)

19 PRESIDING JUDGE FREMR: [14:49:45] Mr Bourgon, please proceed.

20 MR BOURGON: [14:49:48] Thank you, Mr President.

21 Q. [14:49:51] (Interpretation) Mr Witness, let me read out an extract of some

22 information that we've received. (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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(Private Session)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Interpretation) Does that refresh your memory, Mr Witness?

5 A. [14:50:42] Sorry? What are you saying?

6 Q. [14:50:48] You heard the interpretation?

7 A. [14:50:51] Yes, I heard.

8 Q. [14:50:53] Well, are you going to change your answer to the effect that (Redacted)
9 indeed one of your Facebook friends?

10 A. [14:51:02] Yes, he can, he can appear on Facebook without necessarily accepting
11 an invitation, that's possible.

12 Q. [14:51:15] Yes, but you know, Mr Witness, (Redacted)

13 (Redacted)

14 (Redacted)

15 A. [14:51:31] I don't know anything about that.

16 Q. [14:51:34] (Redacted)

17 (Redacted) and you are one of his sources; is that right?

18 A. [14:51:46] I've got no idea.

19 Q. [14:51:50] (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 A. [14:53:04] I don't remember. Because that's contradictory with my profile, if
5 you like. (Redacted)

6 (Redacted)

7 Q. [14:53:23] Mr Witness, do you know (Redacted)?

8 A. [14:53:30] No, I don't know her.

9 Q. [14:53:38] Have you already spoken with (Redacted)?

10 (Redacted)

11 (Redacted)

12 A. [14:53:53] I don't know her. Because I knew him as an escort at that particular
13 period of time.

14 Q. [14:54:04] Well, do you remember having spoken to the investigators from the
15 OTP going to a telephone conversation that you had with (Redacted)?

16 (Redacted)

17 (Redacted)

18 A. [14:54:30] No, I don't remember very well.

19 Q. [14:54:33] Well, here I am making reference, Mr Witness, to your own interview
20 when you met with the Prosecutor's representative, and this is what you say. This is
21 your statement. This is just for the record, let me give you the number of the
22 statement. It is (Redacted). And I'm going to cite from (Redacted) and let me begin
23 at (Redacted), and this time it's in French.

24 "Person interviewed," obviously it is you, Mr Witness.

25 "Yes, yesterday as well. The Defence (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 Let me just stop at that point, Mr Witness. Does this jog your memory to the effect
16 that you did indeed speak with (Redacted) at that particular time?

17 A. [14:57:32] Yes, I do recognise my statement there.

18 Q. [14:57:39] Do you remember what you said to the investigators at that point
19 when questions were put to you on this point?

20 A. [14:57:45] Yes, you have just jogged my memory in fact. Yes, I do acknowledge
21 what I said.

22 (Redacted)

23 (Redacted)

24 Q. [14:58:03] How long ago?

25 A. [14:58:11] Well, that was the last time, 2015.

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 Q. [14:58:33] Do you remember having had -- having said something to the
5 investigators about your relationship with (Redacted)?

6 A. [14:58:41] I don't really remember. If you could just remind me.

7 Q. [14:58:49] Well, let me just quote from the same page then, Mr Witness. This is
8 page (Redacted), still on the same page, and I stopped earlier on but let me just
9 resume what I was reading. The question, (Redacted), was the following:

10 (Redacted)

11 (Redacted)

12 (Redacted) I'm going to ask very accurately a question so I can get as much
13 information as possible. Yes, that's it."

14 Mr Witness, do you remember having said that?

15 A. [14:59:49] Yes.

16 Q. [14:59:50] So if I'm following this, you were used to talking with (Redacted)
17 (Redacted)?

18 A. [15:00:02] Well, not at night, because where I was there was a problem with
19 communication. (Redacted)

20 Q. [15:00:19] And when she rang you, if I am following your evidence, on that
21 particular occasion it was to talk about (Redacted); is that right?

22 A. [15:00:28] She just was telling me about what was going on because I wasn't
23 there.

24 Q. [15:00:34] Did (Redacted) say why she wanted to have that information?

25 A. [15:00:44] No, she didn't say.

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1 Q. [15:00:48] Is it correct to say that you are quite close to (Redacted)

2 (Redacted)

3 A. [15:01:01] Yes, indeed.

4 Q. [15:01:05] Still on the same page, it says on line (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 Do you recall having said that?

10 A. [15:02:06] Yes, I do.

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 PRESIDING JUDGE FREMR: [15:03:13] Mr Bourgon, I have to interrupt you, and I

19 would like to ask both of you to keep, observe pauses, because I got message that you

20 both in fact several times shorten this at least three-second pause and it causes

21 troubles to the interpreters. So, please, have it in mind, at least three seconds

22 between question and answer and on the opposite.

23 MR BOURGON: [15:03:42] (Interpretation) Thank you, Mr President. I will try to

24 slow down and to pay attention to the three-second rule.

25 Q. [15:03:55] Mr Witness, in reply, on page (Redacted), you say the following: "I

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1 only gave this as an example. (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted) In that case, I can confirm."

5 Do you remember having said that?

6 A. [15:04:57] Yes, I do.

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 PRESIDING JUDGE FREMR: [15:05:31] Mr Witness, while Mr Bourgon perfectly

12 followed my guidance, you did not. Please, don't hurry up. Always wait at least

13 three seconds after Mr Bourgon finishes his question and only then please give your

14 response. Thank you.

15 MR BOURGON: [15:05:52] (Interpretation)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 Q. [15:06:42] Mr Witness, do you know anybody called Katekpa?

24 A. [15:06:56] Please, could you repeat the name.

25 Q. [15:06:59] I will spell it. I think it's K-A-T-E-K-P-A, Katekpa. Do you know

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1 this person?

2 A. [15:07:09] No.

3 Q. [15:07:21] And the name Mbuna, M-B-U-N-A, do you know that name?

4 A. [15:07:24] No, I do not.

5 Q. [15:07:38] I have an additional reference to show you but I will in the meantime
6 move on to another subject.

7 So you say you know neither Mr Katekpa nor Mr Mbuna; is that correct? A yes or
8 no answer will do. Do you know Mr Mbuna or Mr Katekpa?

9 A. [15:08:22] No.

10 Q. [15:08:26] I will now move on to a different subject. When you met the
11 investigators for the first time, according to the information that I have, this was on
12 (Redacted), can you confirm that?

13 A. [15:08:45] Yes, I can.

14 Q. [15:08:50] Can you also confirm that between the conflict in Ituri and your
15 interview on (Redacted), you were not contacted by the Prosecution representatives at
16 any time; is that correct?

17 A. [15:09:20] No, I don't remember.

18 Q. [15:09:24] But you seem to be able to say that the ICC, that that is a Court with
19 which you are familiar; is that correct?

20 A. [15:09:39] Yes.

21 Q. [15:09:41] This is a Court with which -- of which you have been aware since
22 what time?

23 A. [15:09:52] I couldn't give you an exact year, but I do know that there is an
24 International Criminal Court.

25 Q. [15:10:19] And when did you first hear about the International Criminal Court?

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1 (Redacted)

2 Q. [15:10:31] And what year would that have been?

3 A. [15:10:36] About 2009, 2010, (Redacted)

4 (Redacted)

5 Q. [15:10:57] When the investigators contacted you in (Redacted) to talk about the
6 conflict that took part at the beginning of the century, 2000, were you surprised?

7 A. [15:11:18] No, I was not surprised.

8 Q. [15:11:22] And why were you not surprised?

9 A. [15:11:27] Because I already had information about the ICC.

10 Q. [15:11:32] What information?

11 A. [15:11:35] Different crimes, because the ICC had been involved in investigating
12 certain crimes.

13 Q. [15:11:52] And what was the link between the ICC and yourself, which meant
14 that you were not surprised?

15 A. [15:12:00] Please could you reformulate your question.

16 Q. [15:12:03] Yes, indeed. You said that when you met the investigators to talk
17 about the conflict that took place at the beginning of 2000 you were not surprised.
18 Was there a reason why you were not surprised?

19 A. [15:12:21] Yes, there was a reason. Because the president of the UPC had been
20 arrested for having committed certain crimes, and during the outreach campaign we
21 were shown images relating to the ICC and that is why I was not surprised.

22 Q. [15:12:50] Were you afraid when you met the ICC investigators in terms of your
23 own actions in the conflict?

24 A. [15:13:00] Yes, most certainly.

25 Q. [15:13:04] Why?

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1 A. [15:13:10] Because we had to reply about certain things.

2 Q. [15:13:18] Did you ask the investigators how they had got hold of your name?

3 A. [15:13:29] Yes, I was first surprised, I was surprised to receive a call. (Redacted)

4 (Redacted) "Could you come and talk to us?" And I

5 said, "What about?" And they said, "Come and see us and then we'll have a chat."

6 And that is how it happened.

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 Q. [15:14:40] What happened then? Can you tell us how things went?

18 A. [15:14:44] The investigators asked me certain questions about the

19 Bosco Ntaganda case. Initially I refused because I said I could never go and testify

20 and then I was pushed until I accepted. "Can we get everything sorted so that you

21 can go?" And I said "Yes" and then I said "I will just talk -- I will speak only the

22 truth" and that is what I said to them.

23 PRESIDING JUDGE FREMR: [15:15:21] Mr Bourgon, sorry I have to interrupt you.

24 Court officer, my English transcript is frozen. I see it's a common problem so it

25 seems that we are trying to fix the things.

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1 Now it's fine.

2 Okay, please proceed, Mr Bourgon. Problem has been fixed.

3 MR BOURGON: [15:15:49] (Interpretation)

4 Q. [15:15:51] Mr Witness, before we go any further, according to the information
5 we have, you met the investigators (Redacted); does that refresh your memory?

6 A. [15:16:09] I don't remember.

7 Q. [15:16:14] The question is fairly simple. Do you recall having met the
8 investigators in (Redacted)?

9 A. [15:16:23] I said yes.

10 Q. [15:16:32] So I come now to the content of the interview. Did the investigators
11 indicate what information they hoped to get from you?

12 A. [15:16:46] Yes, they did.

13 (Redacted)

14 (Redacted)

15 Q. [15:17:02] Do you know today, Mr Witness, who invited the Prosecution
16 investigators to meet with you?

17 A. [15:17:13] That I don't know.

18 Q. [15:17:20] So you didn't know that it (Redacted)? Because that is the
19 information that we have (Redacted) your name or who directed the Prosecution
20 investigators towards you. You did not know that?

21 A. [15:17:38] I know nothing about this information. I was simply invited and I
22 was asked whether I (Redacted) and it was this, this and this. That's
23 what I know.

24 Q. [15:18:00] I come back to the question of your telephone conversation (Redacted)
25 (Redacted). I got the information I was looking for earlier. According to our

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- 1 information, which we have obtained (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted) So I would like to know whether that
- 13 refreshes your memory as to whether she did indeed give you the names during the
- 14 phone call that she had with you on that day.
- 15 A. [15:20:11] No, she didn't give me the names.
- 16 (Redacted)
- 17 (Redacted)
- 18 A. [15:20:24] She did not give the names. I have never heard the names that you
- 19 just mentioned.
- 20 Q. [15:20:35] Mr Witness, I would like to move on to another subject. Or, rather,
- 21 one final question on this subject. (Redacted); is
- 22 that correct?
- 23 A. [15:20:58] Yes.
- 24 (Redacted)
- 25 (Redacted)

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1 Q. [15:21:15] In order to avoid any confusion, (Redacted);

2 is that so? And you know that he (Redacted); is that correct?

3 A. [15:21:32] Yes.

4 Q. And you have in fact been to (Redacted)?

5 A. [15:21:44] No, at the moment.

6 Q. [15:21:50] What time frame are we talking about?

7 A. [15:21:54] Two years about.

8 Q. [15:21:58] When was your last conversation (Redacted)?

9 A. [15:22:08] I don't recall a conversation.

10 Q. [15:22:14] Thank you. Let us move on to a different subject and I'm going to go
11 to the end of the examination-in-chief led by the Prosecution. So that was two days
12 ago, so it is possible that you have forgotten some details, but do not hesitate to ask
13 me if that is the case.

14 Towards the end of your examination, the representative of the Prosecution asked
15 you what was the call sign of Innocent Zimulinda. And that was 158, page 16, lines
16 9 to 11. The first time that the question was put to you, because it was asked twice,
17 you said that you could not recall this information. Do you remember that?

18 A. [15:23:22] Yes, I remember that.

19 Q. [15:23:30] Since you had no recollection of this information, the Prosecution
20 reminded you of the information through your statement; do you recall that?

21 A. [15:23:46] Yes, I do.

22 Q. [15:23:47] So that was transcript 158, page 16, lines 9 to 11. And at that point
23 you replied "India Queen"; is that correct?

24 A. [15:24:04] Yes.

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 Q. [15:25:48] Now, Mr Witness, I would like to say that the call sign of Zimulinda
13 was not India Queen, it was 04 Golf. Does that mean anything to you?

14 A. [15:26:08] His name was Innocent, so it was -- jumped immediately into my
15 head to mention India Queen.

16 Q. [15:26:21] So are you now saying that India Queen was not his call sign?

17 A. [15:26:30] I am saying that I don't remember that, but I do remember his name,
18 Innocent Zimulinda, (Redacted)

19 Q. [15:26:42] And if I say that India Queen was assigned to Innocent Kaina, does
20 that mean anything to you?

21 A. [15:26:50] Yes.

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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- 1 (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 Q. [15:28:52] Let's move on to a different subject. Let us together look at the (Redacted)
- 14 (Redacted) that you were shown during your examination by the Prosecution. Do
- 15 you remember (Redacted)? In your statement when we were talking about (Redacted),
- 16 you said the following. This is the statement, first page, (Redacted), and it's on (Redacted)
- 17 (Redacted)
- 18 And that is the question which says: (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 Do you recall giving this reply?
- 24 A. [15:30:52] Yes, I do.
- 25 (Redacted)

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2 (Redacted)

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6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 Q. [15:35:57] Now, this attack, well, I'm looking at the information that I have.

15 Does that correspond with the attack when the training centre was attacked?

16 A. [15:36:09] Well, which part in my statement? There was the attack and there

17 was the camp in the training centre. There was the outbreak of cholera at the

18 training centre; is that what you mean?

19 (Redacted)

20 (Redacted)

21 Q. [15:36:41] I would now like to confirm with you with the information that I have on

22 the attack, that would be the attack when the training centre was attacked; is that right?

23 *A. Yes.

24 Q. I think that you give details about the attack and I am going to confirm that with

25 you. Now here we are looking at your statement, (Redacted)

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1 (Redacted) -- I have made a mistake once again. I am confusing two numbers on
2 the same page, but I have to take the lower number. So the number is (Redacted),
3 and here I am going to quote from page (Redacted)

4 The question was put to you:

5 "You say that firstly you were attacked by the enemy in Mandro." Person
6 interviewed, that's you: "Yes, yes.

7 Interviewer: And what enemy, who was the enemy?"

8 Answer: "Yes, it was still the FNI.

9 Interviewer: And if I have understood well, you managed, how do I put this, to
10 drive back or repulse the enemy.

11 Interviewee: Yes, and to take control of the situation."

12 And then you ask a question: "to take control of the situation, that attack, when did
13 that happen?"

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 Do you confirm that?

20 A. [15:40:10] Yes.

21 Q. [15:40:11] There is a question that I'd like to put to you which is quite important,
22 because the attack, according to the information that I have, it happened in the month
23 (Redacted)

24 (Redacted) Perhaps you

25 could explain that to me.

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1 A. [15:40:44] Can you put the question to me again.

2 Q. [15:40:47] Of course. (Redacted)

3 (Redacted)

4 A. [15:41:02] Yes, the attack took place before.

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 Q. [15:42:39] Witness, I know two attacks in Mandro. I know an attack in (Redacted)

19 when the training camp was attacked and another attack in (Redacted), but you

20 confirmed a few days ago that had you no knowledge of that attack. And my

21 question is: Do you know another attack in Mandro that I am not aware of?

22 A. [15:43:06] Well I just mentioned the different attacks which took place in

23 Mandro and after that I added the case of cholera, (Redacted)

24 (Redacted)

25 Q. [15:43:23] Witness, are you able to specify at what time the attack on Mandro

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1 that you speak about happened?

2 A. [15:43:31] I'm not able to give the date precisely. To the best of my knowledge

3 there was an attack on Mandro.

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 Q. [15:45:11] You were asked a question on the subject of an attack in the month of

21 March. Transcript 157, page 59, lines 9 to 12. This is what you said at the time.

22 The question was as follows: "Do you remember an attack or battle in March or

23 approximately March 2003?" Your answer on line 12: "No idea."

24 Do you remember this answer?

25 A. [15:46:07] Yes, I said that, because I can justify my answer as well because that

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1 date is from a long time ago. Even yesterday I was clear. (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 Q. [15:46:34] So my question is as follows: In the month of March I put it to you in

6 March there were clashes between the UPC on the one side and the UPDF and the

7 Lendu on the other. And it was at that time that the UPC was driven out of Bunia.

8 Does that mean something to you?

9 A. [15:47:01] Yes, it does.

10 Q. [15:47:05] In the framework of that attack, just before, there was indeed an

11 attack on Mandro, did you know that?

12 A. [15:47:21] There was an attack on Mandro and Rwampara, just to be clear in my

13 answer.

14 Q. [15:47:31] But you do confirm, if I put it to you, that there was an attack on

15 4 March in Mandro; can you confirm that?

16 A. [15:47:43] Yes, that's just a reminder for me.

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 PRESIDING JUDGE FREMR: [15:48:19] Mr Witness, again, please don't hurry up.

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1 Wait always at least 3 seconds after the question was put to you and only then please
2 respond. Thank you.

3 THE WITNESS: [15:48:34] (Interpretation) Thank you.

4 MR BOURGON: [15:48:37] (Interpretation)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 Q. [15:48:55] (Redacted). But before
9 that, you were trained in Mandro, were you not?

10 A. [15:49:19] Yes.

11 Q. [15:49:22] That's a subject that I would like to explore a bit later with you. You
12 will remember at the time you carried out your training you were registered in
13 Mandro, were you not?

14 A. [15:49:39] In Saikpa.

15 Q. [15:49:44] In Saikpa. Where is Saikpa.

16 A. [15:49:50] Saikpa is a locality which is also in Mandro.

17 Q. [15:49:54] So at the time when you were being trained, that was at a place called
18 Saikpa?

19 A. [15:50:00] At the very start, we received our initial training there at Saikpa.

20 Q. [15:50:07] And I'm referring to your statement, this is (Redacted).

21 Now the question is put to you: "And when you arrived in Mandro" -- I'm sorry, this
22 is on (Redacted)

23 "And when you arrived in Mandro, you spoke to whom? Who instructed you?"

24 And you answer: "Yes, there was *..."

25 The interviewer: "How to register people, was there a register? Was there

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1 a registration?"

2 Your answer: "Yes, there was an instructor there who was registering names."

3 Interviewer: "What was the name of the instructor?" Interviewee, that's you: "The
4 name, well, it was just one name 'admin', called him 'admin' because he was
5 responsible for administration. He was the person who registered the names of all
6 the recruits."

7 Do you confirm that, your words?

8 A. Yes, I confirm them.

9 Q. [15:52:00] You were asked the name of this admin, were you not? Do you
10 remember if you were asked a question if you knew the name of admin?

11 A. [15:52:17] Yes. I don't know.

12 Q. [15:52:21] So when your name was registered, where did that happen?

13 A. [15:52:31] That was in Mandro still.

14 Q. [15:52:35] Could you be more precise, in what place in Mandro?

15 A. [15:52:43] Mandro is a locality. From Bunia, it's 11 kilometres from Bunia.

16 And just going after the chef's house there's a building with a small dispensary and
17 that's where the names were registered, and when we came, we were registered there.

18 That's for the first training. And from there, we went down to Saikpa. That's
19 where we received our training. And some time later, two weeks later, we left.

20 Q. [15:53:21] So you confirm that you were there for the first training, or initial
21 training?

22 A. [15:53:26] Yes.

23 Q. [15:53:30] But the name of admin, you didn't know that?

24 A. [15:53:36] It was difficult to know, because we just called him "admin," "admin."

25 Q. [15:53:46] At that time what uniform did you wear?

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- 1 A. [15:53:48] There wasn't a uniform.
- 2 Q. [15:53:51] Uniforms, when did they arrive?
- 3 A. [15:53:57] It was afterwards.
- 4 Q. [15:54:00] Could you be more precise?
- 5 A. [15:54:07] I can't be more precise as to the date. It was just that the uniforms
- 6 came afterwards.
- 7 Q. [15:54:14] And weapons, did you have a weapon during training?
- 8 A. [15:54:22] No, there were just two weapons we were shown how to use during
- 9 the training, how to take them apart and so on.
- 10 Q. [15:54:37] Did you receive a weapon at any time?
- 11 A. [15:54:40] Yes, just after the training, we went to Mandro to receive the
- 12 weapons.
- 13 Q. [15:54:46] Do you remember how the weapons arrived in Mandro?
- 14 A. [15:54:51] I have no information in that regard.
- 15 Q. [15:54:56] You never saw weapons arriving by parachute in Mandro?
- 16 A. [15:55:02] I never saw that.
- 17 Q. [15:55:06] You never saw the organisation of an operation to receive a dropping
- 18 of weapons by parachute in Mandro?
- 19 A. [15:55:23] No.
- 20 Q. [15:55:26] And you said you went to get the weapons from a hill. So you had
- 21 no idea how the weapons managed to get to the hill?
- 22 A. [15:55:38] What I said is that we used to receive weapons in Mandro. When I
- 23 say the training centre, and that is at the bottom, and when we finished the training
- 24 session, we went up to Mandro, five to six kilometres, and that's where we got our
- 25 weapons from.

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1 Q. [15:55:59] Did you receive your uniform or your weapons first?

2 A. [15:56:05] Arms, weapons first.

3 Q. [15:56:09] And the uniforms, do you know how they got to Mandro?

4 A. [15:56:16] I'm not sure about that.

5 Q. [15:56:20] Do you have an idea of the date when the uniforms arrived in

6 Mandro?

7 A. [15:56:26] No, I don't have any idea.

8 Q. [15:56:31] Do you remember the name of the commander of Mandro when you

9 carried out your training there?

10 A. [15:56:50] Commander? Yes, I was trained by Abelanga.

11 Q. [15:57:09] Do you remember the role or the post that Abelanga held?

12 A. [15:57:13] He was an instructor.

13 Q. [15:57:21] Do you remember the name of a camp commander, the commander of

14 the camp?

15 A. [15:57:28] Could you ask me the question again, please.

16 Q. [15:57:35] Well, I'm going to make it short, it's a question you have already

17 answered. The question was put to you on page 20, transcript 157, you were asked:

18 "And when you were in Mandro during your training, do you remember the name of

19 the camp commander at the time?"

20 You already answered, "No, I don't remember." So no need to go further into that.

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 Q. [15:58:46] But according to your testimony, (Redacted) was the Mandro
3 commander, that's what you are saying?

4 A. [15:58:53] Yes.

5 Q. [15:58:55] Witness, it's important both for you and for me that we take pauses
6 and that's why I'm slowing down to take -- to put the next question, to be certain that
7 we've got all the information in the transcript. And I am going to ask the last
8 question again.

9 According to you, what you say, (Redacted) was the commander in Mandro?

10 A. [15:59:22] Yes, at the time that I was there.

11 Q. [15:59:32] Witness, I put it to you that (Redacted) was not the camp commander
12 in Mandro and that the name of the camp commander when you were there for
13 training was (Redacted). Does that name mean anything to you?

14 A. [15:59:53] Yes, it does make me think of something. It does remind me of
15 something, now I remember, with his name, (Redacted).

16 Q. [16:00:14] Does that refresh your memory concerning the name of other
17 instructors?

18 A. [16:00:21] (Redacted), I see that person, the name that you've just given, that's
19 somebody I see.

20 Q. [16:00:31] And do you know when (Redacted) left his duties at Mandro?

21 A. [16:00:39] (Redacted). But I haven't got a clear
22 cut time frame in my mind. (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted) Does that jog your memory?

3 A. [16:01:27] No, (Redacted), I don't know.

4 Q. [16:01:33] Do you remember, Mr Witness, that when you met the Prosecutor's

5 representative (Redacted) for the preparatory phase for your oral

6 evidence, you were shown a video? Do you remember that?

7 A. [16:01:48] Yes, I saw that.

8 Q. [16:01:51] Do you remember having identifying (Redacted) on the film?

9 A. [16:01:57] Yes.

10 Q. [16:02:00] Did you know him or did you just recognise him on the film footage?

11 A. [16:02:05] Yes, I knew him when he was at Mandro, (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

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6 (Redacted)

7 Q. [16:04:13] And that's the same admin then, that particular individual?

8 A. [16:04:16] The one I mentioned his name but I don't know his real name, and we
9 called him "admin" and that was that. (Redacted)

10 (Redacted)

11 Q. [16:04:33] And this is the same admin that took your name; is that right?

12 A. [16:04:42] Yes, that's him.

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

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8 (Redacted)

9 Q. [16:09:02] Right. So you remember about the attack on Mandro when the
10 training had to be interrupted for quite a while. You know about that attack, don't
11 you?

12 A. [16:09:18] Yes, if my memory serves me well.

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

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1 (Redacted)

2 (Redacted)

3 PRESIDING JUDGE FREMR: [16:10:29] Again, both of you, you are too fast. Please
4 don't hurry up. And both please keep at least 3 seconds, which probably in your
5 case, especially Mr Witness, you, you are really too fast.

6 Really wait for a while and only then please respond, because otherwise we will have
7 to repeat the questions, we will have to ask to correct the transcript, so in fact it means
8 delay even if you are in a hurry.

9 MR BOURGON: [16:11:05] (Interpretation)

10 Q. [16:11:06] So, Mr Witness, the last answer, let me just look at that, see if it was
11 captured, captured on the Court record. (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)

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1 (Redacted)

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5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 Do you remember your oral evidence to that effect?

10 A. [16:14:13] Yes.

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) Do you

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1 remember that?

2 A. [16:15:37] Yes.

3 Q. [16:15:40] So, Mr Witness, in your statement now, I mention of your statement
4 (Redacted). This is a statement of (Redacted) and I'm looking at page (Redacted).

5 All right. This is the question that was put to you, and I'm going to start with line
6 (Redacted) to dissipate any potential ambiguity:

7 So interviewee: "I know (Redacted)."

8 Interviewer: "And can you provide more details?"

9 Interviewee: "Yes."

10 Interviewer: "Your knowledge of this particular individual?"

11 Interviewee: "(Redacted), well, we were in the army together and we went through
12 training together."

13 Interviewer: "What training?"

14 Interviewee: "Military training. Yes."

15 Interviewer: "For which army?"

16 Interviewee: "The UPC."

17 Interviewer: "Ah ..."

18 Interviewee: "What I've been talking about."

19 Interviewer: "And where did you follow that training with that particular
20 individual?"

21 Interviewee: "Yes, it was in Mandro."

22 Do you confirm that, Mr Witness?

23 A. [16:17:42] Yes, I had already corrected that particular page.

24 Q. [16:17:49] What do you mean?

25 A. [16:17:51] When the investigators asked questions to me, those questions about

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1 (Redacted), instead of correcting what I'd said, well, it hadn't been corrected in fact.

2 There was a malentendu, if you like, we are at cross-purposes.

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 A. [16:18:35] Well, this is what I am saying, there was a confusion here. (Redacted)

7 (Redacted), we never went through basic training together. He was a recruit when I

8 had already finished my training. That's what I was saying.

9 Q. [16:18:55] So you would confirm then that -- the training you did with him?

10 A. [16:19:01] No, I'm saying I did the training before him.

11 Q. [16:19:07] Yes, but that doesn't change the fact that he was a recruit here.

12 A. [16:19:14] According to the statement it's changing.

13 Q. [16:19:19] Let's go step by step. The name is on the list, so he's a recruit. If his

14 name is on the list he is a recruit, is that what you said?

15 A. [16:19:29] Yes, well that's what I mean.

16 Q. [16:19:31] Well it follows then that everything that you have said and everything

17 that I have just read out from line 119, all the way through to line 128, going to the

18 fact that you did your training together, that's not true then?

19 A. [16:19:56] Well it's the error of the person who was writing up the statement

20 because I did say he was my recruit, and even until we see proof to the contrary.

21 Q. [16:20:11] Mr Witness, when you arrived (Redacted) ago in The Hague, in view

22 of your oral evidence, you went through a training session -- or, rather, preparatory

23 session with the Prosecution; that's right, isn't it?

24 A. [16:20:28] Yes.

25 Q. [16:20:30] And during that preparatory session you were given your entire

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1 statement to peruse; isn't that right?

2 A. [16:20:45] Yes.

3 Q. [16:20:46] So you had an opportunity then to reread your statement?

4 A. [16:20:51] During that period I even drew attention to this very issue.

5 Q. [16:21:02] So you noted down that error during this training or this preparatory
6 session?

7 A. [16:21:08] Yes, during the preparatory session, yes.

8 Q. [16:21:12] Mr Witness, when you read your statement you would no doubt have
9 seen that it was a transcript. It's not a drafted -- drafted transcript. It's something
10 that was a re-transcription of an audio interview; that's right, isn't it?

11 A. [16:21:38] Yes.

12 Q. [16:21:39] Well, the information that I have from the Prosecution doesn't go to
13 suggest you made such a correction?

14 A. [16:21:44] No, but I just wrote it down on a Post-it note.

15 Q. [16:21:53] All right. Let's move on to another area.

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 Q. [16:22:42] Well, you have already provided evidence to that effect. And this
25 was about being in a parade, isn't it?

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- 1 A. [16:22:59] Yes.
- 2 Q. [16:22:59] And where did that parade take place?
- 3 A. [16:23:07] In front of the primary school at Mandro.
- 4 Q. [16:23:10] Where is that primary school in Mandro located, Mr Witness?
- 5 A. [16:23:16] Well, I can't picture in my mind's eye the map, but it is just in front of
- 6 the chief's office.
- 7 Q. [16:23:26] What chief is that?
- 8 A. [16:23:29] Man -- it's the chiefdom of Mandro.
- 9 Q. [16:23:35] Do you know the chief personally?
- 10 A. [16:23:38] Yes, and his name is Mandro.
- 11 Q. [16:23:42] You have another name for him?
- 12 A. [16:23:45] Mandro Panga.
- 13 Q. [16:23:48] Earlier on you confirmed that you had seen the footage of Mandro
- 14 with the Prosecution; is that right?
- 15 A. [16:23:56] Yes.
- 16 Q. [16:23:59] Do you recall on that footage having seen a parade with everybody
- 17 assembled there and with instructors speaking? Do you remember that?
- 18 A. [16:24:09] Yes, there was the defence minister.
- 19 Q. [16:24:16] Do you remember that on the film you identified this person as being
- 20 American?
- 21 A. [16:24:23] Well, *the screen was really dark, it was difficult to identify him.
- 22 Q. [16:24:32] Well, let me just return to the primary school. Are you telling me
- 23 that it is near the chief's house?
- 24 A. [16:24:40] Yes.
- 25 Q. [16:24:40] So the chief's house, did you spot that on the film as well?

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1 THE INTERPRETER: [16:24:46] Interpreter comment: The witness's statement was
2 missed.

3 PRESIDING JUDGE FREMR: [16:24:49] Mr Witness, I am sorry to repeat myself but
4 really I can even understand that you are keen on giving your answer, but you are
5 simply too fast. So please, for this response, you have to repeat it because we haven't
6 captured that, and for future please have it in mind don't haste, it still -- it even will
7 allow you to consider a bit your response, so wait for a while and only then please
8 give your response. So please now repeat the last response.

9 THE WITNESS: [16:25:30] (Interpretation) Thank you.

10 Yes, I was saying this, the chief's house is on the right-hand side as you go down and
11 the school, the primary school, is on the left-hand side when you go up.

12 MR BOURGON: [16:25:52] (Interpretation)

13 Q. [16:25:52] Well, I am going to show you the photos in a second so you can
14 properly situate things. But the primary school, is it located where you saw the
15 parade on the film?

16 A. [16:26:04] Yes, that is the primary school in question.

17 Q. [16:26:07] And it's near the chief's house; is that right?

18 A. [16:26:11] Yes.

19 Q. [16:26:14] And the dispensary is around there or --

20 A. [16:26:19] The dispensary is located in the same vicinity.

21 Q. [16:26:25] And do you know the place where the municipality was located?

22 A. [16:26:35] The municipality office was behind, was behind. The primary school
23 was here, look, and the office was behind. In front of the office there was -- there
24 was just one house in brick.

25 (Redacted)

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3 (Redacted)

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6 MR BOURGON: [16:27:16] Mr President, I move to a different topic so I prefer to, if
7 we can stop here. I can continue for a few minutes, but I think it's better not to split
8 the topic.

9 PRESIDING JUDGE FREMR: [16:27:32] No, it is reasonable, and hopefully in the
10 meantime Mr Witness will, you know, think about my guidance because, Mr Witness,
11 really, one, two, three, three seconds, please have it in mind for tomorrow.
12 Now let's move into open session.

13 THE WITNESS: [16:27:56] (Interpretation) Okay, thank you.

14 (Open session at 4.28 p.m.)

15 THE COURT OFFICER: [16:28:03] We are in open session, Mr President.

16 PRESIDING JUDGE FREMR: [16:28:05] Thank you, court officer.

17 Mr Witness, I thank you for today. We will continue tomorrow at 9.30 and, as usual,
18 it is my duty to remind you that in the meantime you must not discuss your
19 testimony with anybody else, except with your legal adviser, Mr Raimondo.
20 Do you understand that?

21 THE WITNESS: [16:28:31] (Interpretation) Yes.

22 PRESIDING JUDGE FREMR: [16:28:32] Very well. So now I would like to ask
23 court usher to guide Mr Witness out of the courtroom.

24 (The witness stands down)

25 PRESIDING JUDGE FREMR: [16:29:06] And before we break, for the sake of

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1 planning, Mr Bourgon, so far you exhausted one hour, 51 minutes. In my view you
2 covered a lot of areas, so my question is, do you think that you will need all those
3 remaining three hours really for the rest of your examination?

4 MR BOURGON: [16:29:23] Mr President, I believe that I can complete the
5 examination in four hours as was recommended by the Chamber.

6 PRESIDING JUDGE FREMR: [16:29:30] All right, thank you for this.

7 MR BOURGON: [16:29:31] I will do my best.

8 PRESIDING JUDGE FREMR: [16:29:33] Thank you for this positive indication.

9 So we break at the moment and we will resume tomorrow, 9.30.

10 THE COURT OFFICER: [16:29:46] All rise.

11 (The hearing ends in open session at 4.29 p.m.)

12 RECLASSIFICATION REPORT

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