

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 Tuesday, 30 May 2017
9 (The hearing starts in open session at 9.48 a.m.)
10 THE COURT USHER: [9:48:42] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: [9:49:10] Good morning, everybody.
14 Court officer, please call the case.
15 THE COURT OFFICER: [9:49:15] 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: [9:49:31] Thank you, court officer.
20 Now appearances, please. You can just focus on changes, if any, compared to
21 yesterday.
22 MR IVERSON: [9:49:41] Mr President, the same persons who were present
23 yesterday are once again present.
24 PRESIDING JUDGE FREMR: [9:49:45] Thank you, Mr Iverson.
25 Defence, please.

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- 1 MR GOSNELL: [9:49:48] Good morning, Mr President. No changes for the
2 Defence. Thank you.
- 3 PRESIDING JUDGE FREMR: [9:49:51] Thank you, Mr Gosnell.
4 Ms Pellet.
- 5 MS PELLET: [9:49:55] (Interpretation) Thank you, Mr President. No changes for
6 the former child soldiers.
- 7 PRESIDING JUDGE FREMR: [9:50:02] Mr Suprun.
- 8 MR SUPRUN: [9:50:04] (Interpretation) Good morning, Mr President,
9 your Honours. No change from this team since yesterday. Thank you.
- 10 PRESIDING JUDGE FREMR: [9:50:12] Mr Witness, good morning.
- 11 WITNESS: DRC-D18-D-0210 (On former oath)
12 (The witness gives evidence via video link)
13 (The witness speaks Swahili)
- 14 THE WITNESS: [9:50:20] (Interpretation) Good morning.
- 15 PRESIDING JUDGE FREMR: [9:50:21] We are going to continue with your
16 testimony. Today you will be examined by Prosecution. I have to remind you that
17 you are still under oath, which means that you have to speak the truth and nothing
18 but the truth, like yesterday; is it clear to you?
- 19 THE WITNESS: [9:50:49] (Interpretation) Yes.
- 20 PRESIDING JUDGE FREMR: [9:50:50] And as concerns practical matters, yesterday
21 you did it perfectly, you responded clearly, you kept pauses between the question and
22 answers. So please continue in this way today, all right?
- 23 THE WITNESS: [9:51:12] (Interpretation) Yes.
- 24 PRESIDING JUDGE FREMR: [9:51:15] Fine. And before I will give the floor to
25 Mr Iverson, just to inform him that yesterday Defence used for direct examination one

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1 hour four minutes, so generally you should use the same time. Is it fine with you,
2 Mr Iverson?

3 MR IVERSON: [9:51:36] Yes, that will be fine, Mr President.

4 PRESIDING JUDGE FREMR: [9:51:39] All right. So please you have the floor.

5 QUESTIONED BY MR IVERSON:

6 Q. [9:51:54] Good morning, sir.

7 A. [9:51:59] Good morning.

8 Q. [9:52:01] So yesterday you spoke about your friends who went with you to
9 Mandro and we heard a bit about them. One thing we didn't hear, though, was their
10 names, and I was wondering if I could get their names from you?

11 A. [9:52:28] Yes, I can.

12 PRESIDING JUDGE FREMR: [9:52:35] Hold on, Mr Iverson.

13 I was just reminded that we are in open session, but I don't believe that it is any
14 problem. So please, please proceed.

15 MR IVERSON: [9:52:52] I don't have any information that would indicate to me that
16 we should go into private session, otherwise I would have asked.

17 Q. [9:52:59] So, sir, excuse me, but could you give me the names, please?

18 A. [9:53:13] Tiba is the first, and Kisembo is the second.

19 Q. [9:53:19] All right. Could I ask you to give the full names of your friends and
20 the spellings, please?

21 A. [9:53:41] I don't have their names in full. The names that I know were Tiba and
22 Kisembo.

23 Q. [9:53:55] And do you know where these two individuals are today, at present?

24 A. [9:54:14] They are still around, but I don't know whether they both live in
25 Bunia. They might be living somewhere in that area.

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1 Q. [9:54:26] And how did you know these two friends? Did you go to school with
2 them, or were they your neighbours? How did you know them?

3 A. [9:54:48] We used to live in the same neighbourhood.

4 Q. [9:55:01] All right. So I'd like to ask you now, how did you come to be a
5 witness in this case? Who first contacted you about giving testimony in this case?

6 A. [9:55:33] Someone called me from here, someone who was a lawyer and who is
7 in charge of the case here. He sent my paternal --

8 PRESIDING JUDGE FREMR: [9:55:51] Mr Witness, hold on, hold on, and please
9 wait this translation.

10 Mr Gosnell.

11 MR GOSNELL: [9:55:53] Mr President, if the names of Defence team members are
12 going to be mentioned, then that should be, I submit, in private session. This was the
13 routine policy in respect of Defence investigators -- excuse me, Prosecution
14 investigators.

15 PRESIDING JUDGE FREMR: [9:56:09] No problem. So Prosecution, any objection
16 to that proposal?

17 MR IVERSON: [9:56:14] No, no objection.

18 PRESIDING JUDGE FREMR: [9:56:16] All right then. So court officer, please, let's
19 move into private session.

20 (Private session at 9.56 a.m.) *(Reclassified partially in public)

21 THE COURT OFFICER: [9:56:24] We are in private session, Mr President.

22 PRESIDING JUDGE FREMR: [9:56:34] Thank you.

23 And now I would like to ask interpreters to translate the first part of
24 the -- Mr Witness's answer, please.

25 THE INTERPRETER: [9:56:53] Message from the Swahili booth: Mr President,

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1 could the witness be asked to repeat his answer?

2 PRESIDING JUDGE FREMR: [9:57:03] Was I clear enough, because I just asked

3 Mr Witness to stop in the middle of his answer, so we -- I expect that we will get

4 translation of the first part. Is it feasible? It is a question to the interpreters.

5 THE INTERPRETER: [9:57:25] Message from the interpreters: We don't have the

6 question in memory, Mr President, the answer, rather. And message from the

7 Swahili booth: For purposes of clarity, it might be best for the witness to repeat his

8 answer, Mr President.

9 PRESIDING JUDGE FREMR: [9:57:40] All right. So please, Mr Iverson, to make it
10 easy, please put this question again.

11 MR IVERSON: [9:57:49]

12 Q. [9:57:49] Sir, who first contacted you about being a witness in this case?

13 A. [9:58:10] (Redacted) is the one who contacted me.

14 Q. [9:58:18] Okay. And what is the name of (Redacted)?

15 A. [9:58:33] (Redacted) is his name.

16 Q. [9:58:35] Could I ask for his full name, please?

17 A. [9:58:46] That is the only name I know, know him by. I don't know his -- his
18 other names. The only name I know is (Redacted).

19 Q. [9:59:09] Does the name (Redacted) ring a bell?

20 A. [9:59:26] It is a family which is settled in Bunia, the name of the family in Bunia.

21 Q. [9:59:39] Okay. But is (Redacted), is that your paternal uncle?

22 A. [9:59:50] No.

23 Q. [9:59:53] Okay. So what did (Redacted) tell you about this case, or

24 what was the nature of the conversation that you had about becoming a witness in this
25 case with (Redacted)?

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1 A. [10:00:25] He came to see me and told me that he was looking for people who
2 had been turned back from the training centre, and since I was one of those people
3 who was sent back, he asked me whether I could come and testify about it, and I said I
4 had no problem with that and that I was ready to come and testify.

5 Q. [10:01:07] And what's the profession of (Redacted)?

6 A. [10:01:33] He -- he is one of the staff of the ICC and I think he's the (Redacted)
7 (Redacted) I've been talking about.

8 Q. [10:01:48] Okay. What's the name of the (Redacted) you've been talking about?

9 A. [10:02:01] Mr (Redacted).

10 Q. [10:02:12] Okay, and that would be (Redacted)?

11 A. [10:02:23] Yes.

12 Q. [10:02:28] Okay. So in that initial contact you were told that they were looking
13 for people who were sent away; is that right?

14 A. [10:02:49] Yes, that's what he told me.

15 Q. [10:02:53] And when was that; do you remember?

16 A. [10:03:07] No, I no longer remember. I don't remember when they contacted
17 me.

18 Q. [10:03:20] Okay. So what happened after that? What was your second contact
19 with the Defence team about being a witness in this case?

20 A. [10:03:55] We -- we met one morning.

21 Q. [10:03:59] And who did you meet one morning? Who's "we"?

22 A. [10:04:14] The first person who called me was Mr (Redacted) who came to
23 fetch me and take me to meet with that person.

24 Q. [10:04:30] Okay. And what is the name of "that person"?

25 A. [10:04:45] I'm sorry, I've not understood your question.

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1 Q. [10:04:49] Well, I understood that (Redacted) took you to meet another person,
2 and I'm asking you what's the name of that other person that (Redacted) took you to
3 meet?

4 A. [10:05:16] I did not say that he took me to meet someone; he took me to meet
5 with Bosco's lawyers.

6 Q. [10:05:31] All right. And then what happened at that meeting with Bosco's
7 lawyers?

8 A. [10:05:54] When I arrived they put some questions to me about my identity, and
9 a few other questions. That's basically what we discussed at that meeting.

10 Q. [10:06:12] And did that meeting happen this year, in 2017?

11 A. [10:06:28] Yes, it was this year.

12 Q. [10:06:31] All right. So would that have been on or about (Redacted)?

13 A. [10:06:48] Yes, I would think so because this did not happen several months
14 ago.

15 Q. [10:06:56] All right. So present at that meeting were (Redacted) and
16 (Redacted); is that right?

17 A. [10:07:13] No, I had the meeting with (Redacted) only.

18 Q. [10:07:27] Okay. It couldn't have been with (Redacted) only because you just
19 said that you also met with Bosco's lawyers; right?

20 A. [10:07:41] Yes, there was (Redacted), as well as two white lawyers. So there
21 were three of them and I was the fourth person.

22 Q. [10:08:03] All right. Well, since I don't have a record of that meeting, could you
23 tell me what happened at that meeting?

24 A. [10:08:28] They asked me how I went there. I told them what had happened.
25 They asked me who I went there with and they asked me who had sent me back. So

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1 that's basically what we discussed. And yesterday the same questions were asked
2 and I provided the same answers.

3 Q. [10:08:57] But when you told them who you went there with, you must not
4 have told the Defence team the names that you just told me; right?

5 A. [10:09:23] Yes, I gave them those names.

6 Q. [10:09:33] But you, sir, you didn't mention those names in your statement, did
7 you?

8 A. [10:09:50] I gave them those names.

9 Q. [10:09:58] All right. So when you did give your statement in Swahili,
10 (Redacted) and (Redacted) were present; is that right?

11 A. [10:10:23] Yes.

12 Q. [10:10:23] Because I can see on your Swahili statement that all three of you
13 signed the statement several times on each page; right?

14 A. [10:10:42] Yes.

15 Q. [10:10:43] Now, I understand that you also speak French; right?

16 A. [10:10:56] Yes, I speak some French.

17 Q. [10:11:02] And members of the Defence team also speak French; right?

18 A. [10:11:20] Yes.

19 Q. [10:11:24] But you gave your statement in Swahili; right?

20 A. [10:11:39] Yes.

21 Q. [10:11:51] And so the people who must have interpreted your statement into
22 English or French must have been (Redacted) and (Redacted); right?

23 PRESIDING JUDGE FREMR: [10:12:08] Hold on, Mr Witness.

24 Mr Gosnell.

25 MR GOSNELL: [10:12:11] It calls for a conclusion, also probably provokes

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1 speculation, Mr President. So objection on that ground.

2 PRESIDING JUDGE FREMR: [10:12:21] Mr Iverson.

3 MR IVERSON: [10:12:23] Well, I don't think it does. The witness was present,
4 there's a record of who was present, so the inference is obviously that these must have
5 been the interpreters.

6 PRESIDING JUDGE FREMR: [10:12:36] All right. The objection is overruled.
7 Please proceed.

8 MR IVERSON: [10:12:50]

9 Q. [10:12:50] So is that right, did (Redacted) and (Redacted) serve as interpreters?

10 A. [10:13:10] No, it's only (Redacted) who was interpreting. (Redacted) was not
11 present.

12 Q. [10:13:19] All right. Well, the Defence disclosed a record to us that contradicts
13 what you're saying. The Defence says that (Redacted) was present, sir.

14 PRESIDING JUDGE FREMR: [10:13:36] Hold on, Mr Witness.
15 Mr Gosnell.

16 MR GOSNELL: [10:13:39] Mr President, I think, in fairness to the witness and the
17 Defence, the Prosecution should put a particular meeting at which it says that the
18 Defence says that he was present, because I think there is ambiguity and I can see that
19 there's ambiguity on the cover page as to which of the meetings he may or may not
20 have been present at.

21 PRESIDING JUDGE FREMR: [10:14:06] Yes. Mr Iverson, it would be probably fair
22 to refer to the concrete document.

23 MR IVERSON: [10:14:16] All right. Well, I am going to -- well, I don't see the need
24 to display the statement to the witness, although I can do so, but I'm referring to
25 DRC-D18-0001-5312, wherein it states:

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- 1 "Dates of Interviews: (Redacted). Names of Persons
2 Present During Interviews:" - plural - "(Redacted)"
3 So my questions are definitely with a basis.
4 PRESIDING JUDGE FREMR: [10:15:08] Mr Gosnell.
5 MR GOSNELL: [10:15:10] May we briefly cut the lead to the video transmission?
6 PRESIDING JUDGE FREMR: [10:15:14] No problem. So court officer, please, cut
7 the line.
8 Yes, just -- really just cut the audio, it's enough.
9 Court officer, is it ready?
10 So we can proceed now. Mr Witness can't hear us.
11 MR GOSNELL: [10:16:13] Thank you, Mr President. Mr President, I don't think it
12 is my place to tell you who was present at each of the three meetings and I won't do
13 that, and that's not the reason why I asked for the feed to be cut. But it is my place to
14 point out that there is ambiguity as to which of the persons listed at the bottom of the
15 page were present at each of the three interviews.
16 One reading is that this entire group was present at each of the three meetings.
17 Another reading is that these people were present at one or more of the three
18 meetings. I can only say that that is the ambiguity that is on the face of the document.
19 If your Honours want to know more and ask me to tell you more, and if the
20 Prosecution doesn't object, I'll provide that information. But on the basis -- or at least
21 in terms of the issue of the formulation of the question, there is that ambiguity and it
22 could easily lead the witness into confusion.
23 So that's my comment on the question and whether the question is properly
24 formulated.
25 PRESIDING JUDGE FREMR: [10:17:22] Point taken.

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1 Mr Iverson.

2 MR IVERSON: [10:17:27] Well, I don't see ambiguity in the document, but I trust
3 what Defence counsel is saying. I don't think Defence counsel -- I think it's correct
4 that he not testify as to who was present, but I will -- I will adjust my examination
5 according to what Defence counsel said.

6 PRESIDING JUDGE FREMR: [10:17:47] I think just enough to change slightly the
7 question and it will be fine, just to make further clarification, but not to put it as a
8 certain -- what is written in this document.

9 Now we can connect, to return back the audio.

10 You may proceed, Mr Iverson.

11 MR IVERSON: [10:18:37]

12 Q. [10:18:38] So, sir, could I just have you state at which interview or interviews
13 was (Redacted) present?

14 A. [10:19:00] (Redacted) was at the meeting when (Redacted) and I
15 signed. However, when I met with the lawyers, (Redacted) wasn't there, only
16 (Redacted)

17 Q. [10:19:27] All right. So your testimony is that (Redacted) was not present at
18 the first two initial interviews; is that right?

19 A. [10:19:45] Yes.

20 Q. [10:19:59] And do you know whether (Redacted) is certified to
21 interpret? Do you know if that's part of his job description?

22 A. [10:20:28] You want my opinion?

23 Q. [10:20:33] Well, I -- I'm going to assume that (Redacted), as a Defence
24 resource person or an investigator, is not actually a certified interpreter; am I wrong
25 about that, to your knowledge?

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1 PRESIDING JUDGE FREMR: [10:20:56] Mr Witness, it's not about your opinion.

2 The question is, which is relevant, whether you know or you don't know.

3 THE WITNESS: [10:21:23] (Interpretation) He was assisting the lawyers.

4 MR IVERSON: [10:21:32]

5 Q. [10:21:32] And (Redacted), to the best of your knowledge, is not an

6 interpreter either, is he?

7 A. [10:21:54] I don't know if he -- if it's his job. No, I don't know.

8 Q. [10:22:00] I mean, actually (Redacted) is a politician; right?

9 A. [10:22:21] As I learnt that he is or was a member of parliament, but I don't have
10 any further information regarding that.

11 Q. [10:22:32] Were you aware that he was a member of parliament for the UPC?

12 A. [10:22:50] No, I didn't know that.

13 Q. [10:22:54] And would it be fair to say that he's a pretty influential member of
14 the community?

15 A. [10:23:15] I don't know.

16 Q. [10:23:18] And what about at the time of the events, were you aware that
17 (Redacted) was the deputy national secretary for justice within the UPC/RP?

18 A. [10:23:47] No, I don't know anything about the UPC.

19 Q. [10:23:54] But would you agree that a man of his position, a politician, would
20 have an interest in making sure that no bad information comes out about the UPC?

21 PRESIDING JUDGE FREMR: [10:24:07] No need. This -- I will not allow this. It is
22 about the opinion, not about the knowledge of what he had seen. So prohibited.

23 MR IVERSON: [10:24:17] I'll move on.

24 Q. [10:24:25] So going back to June or July of 2002, so you wanted to join the UPC,
25 the armed wing of the UPC; is that right?

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1 A. [10:24:54] When do you mean?

2 Q. [10:25:00] Back when you say you tried to join the UPC, back in June or July
3 of 2002, you don't really know exactly when, but you anchored in time as the time that
4 Lompondo was still in charge or still in power in Bunia. You wanted to join the UPC,
5 the armed group, the armed wing of the UPC; is that right?

6 A. [10:25:34] Yes.

7 Q. [10:25:44] And so one morning you start walking with your friends from Bunia
8 to Mandro and it took about five hours; is that right?

9 A. [10:26:08] Yes, we made the journey together.

10 MR IVERSON: [10:26:11] Mr President, I think I'm finished with naming Defence
11 investigators and personnel, so I think we can go back into open.

12 PRESIDING JUDGE FREMR: [10:26:21] Exactly.

13 Court officer, let's move into open session now.

14 (Open session at 10.26 a.m.)

15 THE COURT OFFICER: [10:26:30] We are back in open session, Mr President.

16 PRESIDING JUDGE FREMR: [10:26:38] Thank you, court officer.

17 Mr Iverson, please proceed.

18 MR IVERSON: [10:26:52]

19 Q. [10:26:52] All right, and it's about, depending on where you are in Bunia, it's
20 about 15 -- or 12 to 15 kilometres from Bunia to Mandro; is that fair?

21 Sir, the distance that you walked that day was about 12 to 15 kilometres; is that about
22 right?

23 A. [10:28:01] I haven't been able to measure the number of kilometres we covered.

24 Q. [10:28:12] Did you stop anywhere along the route, or did you go directly from
25 Bunia to Mandro without stopping?

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1 A. [10:28:35] We were making the journey and we would stop from time to time.

2 Q. [10:28:46] All right. And your intent was to become a soldier to protect your
3 community; is that right?

4 A. [10:29:14] We wanted to join the army just as everybody else was doing.

5 Q. [10:29:24] And when you say "everybody else", you mean friends of yours?

6 A. [10:29:45] There were other people, others who had already joined the army,
7 and we did the same.

8 Q. [10:29:58] And these were friends from -- from your school; is that right?

9 A. [10:30:20] No, they were people living in neighbourhoods in the various
10 localities in which we were living, people who we knew.

11 Q. [10:30:51] And so you wanted to protect your community, particularly from
12 Lompondo's group; is that right?

13 A. [10:31:23] I don't know their intentions, but our intention was to join the army
14 and to become soldiers. But I still don't know what their objectives were.

15 Q. [10:31:40] Well, and I'm not asking about their objectives or information that
16 would be outside of your personal knowledge, I'm just asking, your motivation was to
17 join this army to protect your community against attacks by Lompondo's group; is that
18 fair?

19 A. [10:32:08] Yes.

20 Q. [10:32:11] And to protect your community against attacks by the Lendu; is that
21 right?

22 A. [10:32:37] When Lompondo was still in power, there were no Lendu in town.

23 Q. [10:32:50] And when we're talking -- but when we're talking about your
24 community, you're talking about the Gegere community; right?

25 A. [10:33:07] Yes, I'm talking about our community, the Gegere.

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1 Q. [10:33:15] I mean, this is happening in the midst of an ethnic armed conflict;
2 right? The Hendu versus the Lema -- versus the Lendu -- the Hema -- the Gegere
3 versus the Lendu; is that right?

4 A. [10:33:48] Ethnic conflict was taking place outside of town. When we were in
5 town the conflict there was more of a political nature.

6 Q. [10:34:05] So your testimony is that in the midst of this ethnic conflict, there was
7 no ethnic dimension to what was going on in Bunia; is that your testimony, sir?

8 A. [10:34:24] Yes, that's right. In Bunia, we didn't experience an ethnic conflict at
9 that point in time.

10 Q. [10:34:40] All right. So you arrived on that day in Mandro at 1300; right?

11 A. [10:34:56] Yes.

12 Q. [10:34:58] How is it that you -- that you know or remember the times so
13 distinctly, but you're having difficulty with dates, months, years? Could you explain
14 that?

15 A. [10:35:31] When we left the locality that we had been in to go to our destination,
16 we looked at the sun and my friend said to me, "Ah, it's 1 o'clock."

17 Q. [10:35:49] So you distinctly remember that conversation from June/July 2002,
18 your friend saying it must be 1 o'clock, looking at the sun; is that right?

19 A. [10:36:17] Yes, they're the ones who looked at the sun and who said that to me.

20 Q. [10:36:26] Do you remember other conversations that you had with your friends
21 on the way to Mandro?

22 A. [10:36:49] No. All that we were saying is we want to, or we've got to go to
23 military training. We didn't talk about anything else.

24 Q. [10:37:05] All right. Now, when you got to Mandro you met Mugisa and
25 Didier, right, two people you mentioned?

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1 A. [10:37:24] Yeah.

2 Q. [10:37:25] And did they belong to the same tribe as you?

3 A. [10:37:39] No.

4 Q. [10:37:39] Okay, what tribe did they belong to?

5 A. [10:37:59] Mugisa was Hema-Sud by origin. As regards Didier, I don't really
6 know what his ethnic origin was.

7 Q. [10:38:11] And what are their full names?

8 A. [10:38:30] I don't know their other names. All I know are the names that I've
9 given you.

10 Q. [10:38:37] And what were their military ranks?

11 A. [10:38:58] All the soldiers there came from various ethnic backgrounds.

12 Q. [10:39:13] All right. I wasn't asking about various ethnic backgrounds, but I
13 was asking what Mugisa and Didier's military ranks were.

14 PRESIDING JUDGE FREMR: [10:39:26] Hold on, Mr Witness.

15 Mr Gosnell.

16 MR GOSNELL: [10:39:29] It seems a fact not in evidence, Mr President. I think
17 there should be a preliminary question.

18 PRESIDING JUDGE FREMR: [10:39:37] Mr Iverson.

19 MR IVERSON: [10:39:40] I don't think it assumes anything. He says that they were
20 in this armed group. Armed groups routinely have ranks so I'm asking him if he
21 knows their military ranks.

22 PRESIDING JUDGE FREMR: [10:39:53] Mr Gosnell.

23 MR GOSNELL: [10:39:54] Could we cut the feed, Mr President, to the witness?

24 PRESIDING JUDGE FREMR: [10:39:57] All right. Court officer, please cut the
25 audio.

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1 It has been done. You may proceed, Mr Gosnell.

2 MR GOSNELL: [10:40:28] Thank you, Mr President. Of course I formulated the
3 objection neutrally so that I wouldn't project to the witness the issue, but of course it is
4 a contested issue in this case, when ranks were introduced. Therefore, I think it's, for
5 the elicitation of a good record, it would be best to first ask did they have ranks and
6 then to ask them whether they had ranks. Thank you, Mr President. Or what their
7 ranks were.

8 PRESIDING JUDGE FREMR: [10:40:56] Mr Iverson.

9 MR IVERSON: [10:40:59] That's fine. I mean, I can ask that.

10 PRESIDING JUDGE FREMR: [10:41:04] Yeah, please rephrase because it's true that
11 some witnesses, there were some doubts whether there were ranks or not, so please
12 proceed this way.

13 MR IVERSON: [10:41:13] All right.

14 PRESIDING JUDGE FREMR: [10:41:13] Now, court officer, restore the audio,
15 please.

16 Audio restored, so Mr Iverson, please proceed.

17 MR IVERSON: [10:42:00]

18 Q. [10:42:00] So, sir, yesterday when you referred to Mugisa and Didier, you kept
19 on referring to them as commanders. Do you know if they had military ranks?

20 A. [10:42:22] I know that they were called commanders, but I don't know what
21 their rank was.

22 Q. [10:42:40] All right. So you say you left early in the morning the next day;
23 right?

24 A. [10:43:01] Yes.

25 Q. [10:43:02] And someone called Lonjiringa led you out through or around

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1 Katoto; is that right?

2 A. [10:43:17] Yes.

3 Q. [10:43:23] So you probably went back to Bunia through Centrale; does that
4 sound right?

5 A. [10:43:45] I don't recall whether we took the road via Centrale. He was leading
6 us. I don't recall right now whether we passed via Centrale.

7 Q. [10:44:05] Well, in any case, all told, you spent less than a day at Mandro, at the
8 training camp; right?

9 A. [10:44:28] Could you repeat your question? I didn't understand.

10 Q. [10:44:34] Just all told, the entire time you were at Mandro is less than one day,
11 from around 1300, one day, until the early morning the next day; is that right?

12 A. [10:44:57] Yes.

13 Q. [10:44:59] And you've already named all the people that you either recognised
14 or you knew; is that right?

15 A. [10:45:19] Yes.

16 Q. [10:45:20] All right. You didn't leave anybody out, you didn't mention -- you
17 didn't fail to mention somebody who you either knew or recognised while you were at
18 Mandro during that time?

19 A. [10:45:49] The only person I saw whom I recognised is the person who came
20 towards us. As for the others, I did not know their names. Some of them I was able
21 to recognise facially, but I did not know their names.

22 Q. [10:46:12] All right. And while you were there, you say you saw
23 Bosco Ntaganda; is that right?

24 A. [10:46:28] Ndiyo.

25 Q. [10:46:30] But Bosco Ntaganda didn't speak to you, did he?

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- 1 A. [10:46:49] Yes, when we arrived at the site we saw him.
- 2 Q. [10:46:57] But he never spoke to you; right?
- 3 A. [10:47:06] No.
- 4 Q. [10:47:09] And you never spoke to him; right?
- 5 A. [10:47:21] No.
- 6 Q. [10:47:21] And since you were 15 to 20 metres away, you have no idea what he
- 7 was saying or what words he may have used; right?
- 8 A. [10:47:47] Yes, that's correct, we were not able to hear what they were saying to
- 9 each other.
- 10 Q. [10:47:57] So you don't know whether Bosco Ntaganda said, "Well, I know -- I
- 11 know him, he's my neighbour, send him back home"? You wouldn't have known if
- 12 Mr Ntaganda would have said something like that; right?
- 13 A. [10:48:26] Yes, but I do not know what the two commanders were saying to
- 14 each other. They came towards us, but I'm not aware of what they were discussing.
- 15 Q. [10:48:46] So you also wouldn't know, for instance, if Mr Ntaganda said, "Well,
- 16 he's too small to carry a weapon, send him home"; right?
- 17 A. [10:49:18] Well, that is what the commanders told us. They said, "You are still
- 18 small, go back home."
- 19 Q. [10:49:34] So, really, it would be fair to say that you weren't exposed to the
- 20 inner workings of the UPC, you were essentially a visitor for that day; is that right?
- 21 A. [10:50:02] No. Our intention was to join the training so as to join the army.
- 22 Q. [10:50:13] And I understand that was your intention, but truth be told, you
- 23 don't really know much about the UPC because you weren't in the UPC; right?
- 24 A. [10:50:37] That's correct.
- 25 Q. [10:50:40] All right. So you -- you said that Bosco Ntaganda was your

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1 neighbour; correct?

2 A. [10:50:57] Yes.

3 Q. [10:50:59] And Mr Ntaganda, he lived on a -- on a big compound with a house;
4 right?

5 A. [10:51:19] Yes.

6 Q. [10:51:19] And on that compound there were several outbuildings, if you want
7 to call them that; is that right?

8 A. [10:51:35] No, on that property there was only one big house.

9 Q. [10:51:46] All right. And did -- did he live right next door to you and your
10 family?

11 A. [10:52:15] What I can say is that the distance was about 10 metres. There was a
12 road separating us.

13 Q. [10:52:28] Okay. So you're essentially next door neighbours to
14 Bosco Ntaganda? I don't know if that translates well in Swahili, but that's what I
15 would say in English.

16 A. [10:52:50] Yes.

17 Q. [10:52:55] All right. So from time to time you would see Bosco Ntaganda and
18 Bosco Ntaganda would see you; right?

19 A. [10:53:13] Yes.

20 Q. [10:53:14] And you would have seen soldiers coming in and out of his
21 compound; right?

22 A. [10:53:35] What did you say, that I saw who?

23 Q. [10:53:39] Well, you would have seen soldiers, combatants, going in and out of
24 his compound because he was a military leader; right?

25 A. [10:54:07] Yes, it was his residence, it was guarded by soldiers who provided

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1 security.

2 Q. [10:54:24] All right. And you mentioned that Mr Ntaganda would come over
3 to your house from time to time; is that right?

4 A. [10:54:44] Yes.

5 Q. [10:54:46] And he would come over to your house and he would talk to your
6 father; right?

7 A. [10:55:04] Yes, he would come to greet us and then leave.

8 Q. [10:55:08] Now, what was your father's profession?

9 A. [10:55:22] He was a trader.

10 Q. [10:55:24] Okay. And now I assume that living in this neighbourhood, it was
11 a -- he must have been a pretty successful trader. You come from a wealthy family; is
12 that right?

13 A. [10:55:54] No, that I don't know.

14 Q. [10:56:01] Well, the houses in that neighbourhood are generally pretty big,
15 they're pretty nice houses; right?

16 A. [10:56:22] No, there were no beautiful houses. They were simple houses that
17 had been built, but I wouldn't say that they were beautiful houses.

18 PRESIDING JUDGE FREMR: [10:56:36] Mr Witness, please, you want to say
19 something, please go ahead.

20 THE WITNESS: [10:56:45] (Interpretation) I would like to have some water,
21 please.

22 PRESIDING JUDGE FREMR: [10:56:51] Yes, we will provide you with that. Could
23 I ask our field officer to provide Mr Witness.

24 Are you fine to proceed, Mr Witness?

25 THE WITNESS: [10:57:31] (Interpretation) Yes.

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1 PRESIDING JUDGE FREMR: [10:57:32] Mr Iverson, please.

2 MR IVERSON: [10:57:49]

3 Q. [10:57:49] And did your father have political affiliations?

4 A. [10:58:05] No.

5 Q. [10:58:13] And how well did your father know other senior UPC people other
6 than Mr Ntaganda?

7 A. [10:58:44] It was Bosco who had the habit of coming to our house. As for the
8 others, he could have greeted them when they met along the road.

9 Q. [10:59:05] All right.

10 MR IVERSON: [10:59:07] Your Honours, I have a request. I don't think that the
11 witness needs to be present when I make the request or needs to hear it, but it will be a
12 short request and then I would propose we could take the break, cut the transmission,
13 make the request and take the break, and then I would come back at half past 11 to
14 finish the cross-examination.

15 PRESIDING JUDGE FREMR: [10:59:34] All right then.

16 So now, Mr Witness, we will break and we will continue after 30 minutes in -- at half
17 past 11.

18 So we can cut the line.

19 And if I understood well, you want to make this request after the break or now?

20 MR IVERSON: [11:00:01] I would prefer to make it just now. That way, the
21 Chamber would have some time to deliberate if necessary.

22 PRESIDING JUDGE FREMR: [11:00:09] Yes, I see.

23 So let's wait for cutting the line.

24 (The witness stands down)

25 PRESIDING JUDGE FREMR: [11:00:40] So we didn't cut the line, but both the field

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1 officer and the witness are away from this room so they can't hear us. So, Mr Iverson,
2 please proceed.

3 MR IVERSON: [11:00:53] If I could, I'm unsure, so I think I would prefer to ask in
4 private session.

5 PRESIDING JUDGE FREMR: [11:00:59] All right.

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

7 (Private session at 11.01 a.m.) *(Reclassified partially in public)

8 THE COURT OFFICER: [11:01:08] We are in private session, Mr President.

9 PRESIDING JUDGE FREMR: [11:01:16] Thank you, court officer.

10 Mr Iverson.

11 MR IVERSON: [11:01:19] (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 PRESIDING JUDGE FREMR: [11:02:55] Mr Gosnell.

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 Thank you, Mr President.

13 PRESIDING JUDGE FREMR: [11:03:46] Mr Iverson.

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 PRESIDING JUDGE FREMR: [11:05:22] Mr Gosnell, does it change in any way your
5 previous position?

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 PRESIDING JUDGE FREMR: [11:06:23] All right. Give me a second. I will
16 consult my colleagues.

17 (Trial Chamber confers)

18 PRESIDING JUDGE FREMR: [11:07:02] So after a short silent deliberation, the
19 Chamber grants lifting the redaction of the name of that person specified by

20 Mr Iverson since we really, at least, due to the statement made by Mr Iverson, see this
21 material to the case. And there is no reason to protect, in our view, this person by
22 hiding its name and, moreover, Mr Gosnell also is not opposing that. So it is our
23 ruling.

24 Now we will break and we will continue 11.35.

25 THE COURT USHER: [11:07:54] All rise.

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1 (Recess taken at 11.07 a.m.)

2 (Upon resuming in open session at 11.38 a.m.)

3 THE COURT USHER: [11:38:14] All rise.

4 Please be seated.

5 PRESIDING JUDGE FREMR: [11:38:36] We will continue with the rest of

6 cross-examination of our witness.

7 Now, according our measuring, Mr Iverson, you should still have five minutes only,

8 but in the light of the -- this new information, I can imagine that you can come with

9 some request for some limited extension of your time. So, if yes, please go ahead.

10 MR IVERSON: [11:39:05] I would like to request an additional 15 minutes,

11 Mr President.

12 PRESIDING JUDGE FREMR: [11:39:10] All right. So 15 minutes is fine. So you

13 have in total 20 minutes to finish this cross-examination. Please proceed.

14 MR IVERSON: [11:39:24]

15 Q. [11:39:24] All right, sir, could you please tell the Chamber the name of your

16 father, the full name please?

17 A. [11:39:43] Yes.

18 Q. [11:39:52] Please do so.

19 A. [11:40:02] Bochu Dhekana.

20 PRESIDING JUDGE FREMR: [11:40:06] And sorry, sorry to interrupt you,

21 Mr Iverson. I forgot to put on the record the names of persons who represent

22 Registry. So may I ask you to introduce yourself for the record, please.

23 MR PERALTA LOSILLA: [11:40:25] Yes, your Honour. Good morning. My name

24 is Esteban Peralta Losilla and I am the chief of the Counsel Support Section in the

25 Registry.

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1 MS SCHAUDER: [11:40:33] Good morning, your Honours. For the Victim and
2 Witnesses Unit, Lejla Komarica and Natacha Schauder.

3 PRESIDING JUDGE FREMR: [11:40:49] Could the third person -- or could you just
4 introduce her or --

5 MS KOMARICA: [11:40:55] Good morning, your Honour. My name is
6 Lejla Komarica and I'm the planning officer for the Victims and Witnesses Section.

7 PRESIDING JUDGE FREMR: [11:41:03] I thank all of you.
8 Now, Mr Iverson, please proceed.

9 MR IVERSON: [11:41:07] Thank you, Mr President.

10 Q. [11:41:12] Now, sir, we did some open-source searching of the name of your
11 father and it showed the -- the results showed that he has a number of businesses. So
12 I just wanted to ask you about those. Is your father the owner of a company called
13 Service Petro (phon), a transport company?

14 A. [11:41:59] Yes. They sell fuel.

15 Q. [11:42:03] And he also --

16 PRESIDING JUDGE FREMR: [11:42:05] Sorry, sorry, hold on, Mr Iverson.
17 Mr Gosnell.

18 MR GOSNELL: [11:42:09] Mr President, I would like to request at this time that we
19 move into private session. I appreciate my colleague having come and spoken to me
20 before the start of session, and I already advised him that I would be submitting that
21 out of an abundance of caution, private session is warranted, in particular because I
22 have not had an opportunity since the VWU report to understand in any way what the
23 concerns are of the witness. And I think especially now that we're moving into
24 matters of -- really private matters, I'm not saying that it's irrelevant matters, but
25 matters that are private to a third person, that it would really be prudent to move into

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1 private session. So that would be my request, Mr President.

2 PRESIDING JUDGE FREMR: [11:42:59] Mr Iverson, any problem to move into
3 private?

4 MR IVERSON: [11:43:02] Well, yes, actually, Mr President. This is open-source
5 material. I also -- the reason I asked Defence counsel before the hearing to get his
6 views was to let -- so I could listen to his concerns, if he had any. I don't see any
7 concrete reasons to move into private session. And absent any reason, we shouldn't
8 be going into private session just because of abundance of caution. The general rule
9 should be public. That said, of course, if there is a reason, I would be willing to
10 accept that we should go into private.

11 PRESIDING JUDGE FREMR: [11:43:41] My ruling is that we will move into private
12 session because I am taking into account the concern, even if it didn't lead to use of
13 protective measures, but at least to make witness more comfortable when speaking
14 about his personal, personal matters. So now let's move into private session.

15 (Private session at 11.44 a.m.) *(Reclassified partially in public)

16 THE COURT OFFICER: [11:44:13] We are in private session, Mr President.

17 PRESIDING JUDGE FREMR: [11:44:17] Thank you, court officer.

18 Mr Iverson, please proceed.

19 MR IVERSON: [11:44:23]

20 Q. [11:44:23] All right, sir, your father also owns the New Cosmos Hotel in Bunia;
21 is that right?

22 A. [11:44:43] Yes.

23 Q. [11:44:49] And he also leads or owns, I'm not quite sure, and you can correct
24 me, an organisation called (Speaks French) in Bunia; is that right?

25 A. [11:45:19] I'm afraid I haven't followed.

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1 Q. [11:45:24] All right. So it's a company, and I'm under the impression that the
2 name is (Speaks French). Does that ring a bell?

3 A. [11:45:50] No.

4 Q. [11:45:50] All right. Apparently that would be at (Speaks French) in Bunia.
5 Does that ring a bell?

6 A. [11:46:13] I have no information about that.

7 Q. [11:46:16] All right. And it's true that your father is the head of the (Speaks
8 French), the Petroleum Society of Ituri?

9 A. [11:46:45] No. He has his own petrol station, a private petrol station.

10 Q. [11:46:59] All right. And is he the president (Speaks French), the president of
11 Importers of Petroleum Products in Ituri?

12 A. [11:47:21] No.

13 Q. [11:47:26] All right. So at the time of the events back in 2002 you say you left
14 Bunia to go to Goma either one month or not more than three months after you tried
15 to join the UPC; is that right?

16 A. [11:48:06] You are saying when we left Mandro to go to Bunia, and you're
17 asking me if I left and in which month?

18 Q. [11:48:16] No. And I'll just try to rephrase my question. You left Bunia
19 sometime in 2002 to go to Goma with your family; right?

20 A. [11:48:41] That's right.

21 Q. [11:48:45] And we know that your father had contact with Bosco Ntaganda, do
22 you know -- did your father have contact with a person named (Redacted)?

23 A. [11:49:23] I don't know. There were people whose names I didn't know. I
24 don't know at all.

25 Q. [11:49:31] All right. So I would just like to show you a list of phone numbers

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1 from (Redacted) and ask you if you recognise a name.

2 And that is DRC-OTP-0014-0295, at page 0313.

3 All right, sir, in the third column, about 10 or 12 rows down, do you see the name

4 "Dhekana Bochu/Goma"?

5 A. [11:51:24] No, I can't read clearly.

6 MR IVERSON: [11:51:36] Could I just ask the court officer just to zoom in on the

7 third column about 10 to 12 rows from the top just so the names are legible for

8 everybody to read. I'm sorry, it's just to verify, this is 0313.

9 PRESIDING JUDGE FREMR: [11:52:38] And court officer, would it be possible to
10 highlight the name specified by Mr Iverson just to facilitate Mr Witness?

11 MR IVERSON: [11:52:48] I can -- I -- I'm sorry, I didn't mean to interrupt,

12 Mr President.

13 PRESIDING JUDGE FREMR: [11:52:54] No, I wanted to highlight it by some marker
14 just to facilitate the witness's role to find the name in this column. It says "Dhekana
15 Bochu/Goma".

16 MR IVERSON: [11:53:24] On my screen I can clearly see it. There we go.

17 Q. [11:53:33] All right. Sir -- sir, are you able to see your father's name there,

18 "Dhekana Bochu/Goma"?

19 A. [11:53:46] Yes.

20 Q. [11:53:49] And do you recognise that phone number next to your father's name?

21 A. [11:54:09] I don't know that phone number. That's an old number. I don't
22 know that one.

23 Q. [11:54:24] Do you recall ever while you were in Goma your father mentioning a
24 person named (Redacted)?

25 A. [11:54:47] I don't recall at all.

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1 Q. [11:54:49] All right.

2 MR IVERSON: Could I ask the court officer to display DRC-OTP-0112-0669, at
3 page 0670.

4 Q. [11:55:36] So, sir, what we're looking at here is a UN MONUC document. I
5 doubt that you'll have ever seen it before, I don't intend to ask you questions about the
6 document itself, but about information contained in it.

7 Do you see at the bottom it appears the name of your father misspelled
8 "To-Dhekana-Mbuchu"? Do you see that sir?

9 A. [11:56:25] I can't see it. I don't see it.

10 Q. [11:56:36] I'm able to see it on my screen.

11 A. [11:56:41] (No interpretation)

12 Q. [11:56:43] Do you see it, sir?

13 A. [11:56:44] Yes, I can see it now.

14 Q. [11:56:49] And so I want to ask you, you know, do you know whether your
15 father was giving money to the UPC, providing them with -- with any kind of
16 resources, assets?

17 A. [11:57:17] I didn't know anything about that.

18 Q. [11:57:24] Okay. But your family did have enough assets to move from Bunia
19 to Goma during the conflict; is that right?

20 A. [11:57:53] I'm afraid I haven't understood your question fully.

21 Q. [11:58:07] Well, not every family was wealthy enough to move out of the
22 conflict area; is that fair?

23 A. [11:58:32] That's right, not every family could.

24 Q. [11:58:34] But your family had the means to move out of the conflict area, out of
25 Bunia, to go to Goma; right?

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1 A. [11:58:58] Yes.

2 MR IVERSON: [11:59:00] Your Honours, I would like to tender the two documents
3 that I just showed with regard to the name of the father, also so that it's understood in
4 what context that name falls. It's important to have the surrounding information, so
5 I'd submit both of these documents, as a matter of completeness, for the record.

6 PRESIDING JUDGE FREMR: [11:59:26] Defence, any objection?

7 MR GOSNELL: [11:59:28] The needs of the record are satisfied by the names having
8 been mentioned. I'll say for the record that these documents were put on the
9 Prosecution's list after 11.28 a.m. this morning. That's how much time we've had to
10 review them.

11 They -- no comment has been made at all by the witness about the origin of the
12 documents. No comment has been made about the witness suggesting he has ever
13 seen them before. Your Honours don't even know the authors of these documents,
14 what sources they may have relied on, whether or not the name in the first
15 document -- in the second document actually refers to the witness's father. There are
16 numerous reasons why these documents certainly should not be admitted for the truth
17 of their content, which is, I can only imagine, is the reason that they're being tendered,
18 because otherwise they'd have no value whatsoever.

19 So on that basis, Mr President, they are objected to.

20 PRESIDING JUDGE FREMR: [12:00:26] Mr Iverson.

21 MR IVERSON: [12:00:32] Well, this is an issue of establishing the truth for the
22 Chamber. If it is true that -- and it -- there's plenty of information to suggest that the
23 father was a wealthy person and continues to be a wealthy person to this day.
24 There's information suggesting that he was a financier for the UPC and that he was in
25 contact with one of the main organisers of the UPC when he was in Goma.

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1 So all of this goes -- is definitely germane, relevant, material to his testimony about the
2 potential reasons why he was rejected when he was at Mandro.

3 PRESIDING JUDGE FREMR: [12:01:09] So my ruling is that the objection is
4 sustained since, to be brief, I mainly share argumentation presented by Defence,
5 because, in fact, everything relevant have been confirmed orally by the witness.
6 Please proceed, Mr Iverson.

7 MR IVERSON: [12:01:33]

8 Q. [12:01:34] Sir, did you have any other meetings in connection with becoming a
9 witness in this case with anyone prior to 12 April 2017?

10 A. [12:02:07] No.

11 Q. [12:02:07] So 12 April 2017 is the first anyone ever contacted you about this case;
12 is that right, is that your testimony?

13 A. [12:02:28] Yes.

14 Q. [12:02:30] All right. I try to be punctual, so I will finish there. Thank you very
15 much, sir.

16 MR IVERSON: [12:02:38] Thank you, your Honours.

17 PRESIDING JUDGE FREMR: [12:02:39] Thank you for being punctual, Mr Iverson.
18 Now, Mr Gosnell, any request for re-direct?

19 MR GOSNELL: [12:02:48] Yes, there is a request for re-direct, Mr President.

20 PRESIDING JUDGE FREMR: [12:02:51] For how much time?

21 MR GOSNELL: [12:02:53] I would estimate approximately ten minutes.

22 PRESIDING JUDGE FREMR: [12:02:57] Ten minutes. All right. And is there still
23 a need to remain in private session?

24 MR GOSNELL: [12:03:09] No, Mr President.

25 PRESIDING JUDGE FREMR: [12:03:10] So court officer, let's return back into open

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1 session.

2 (Open session at 12.03 p.m.)

3 THE COURT OFFICER: [12:03:20] We're in open session, Mr President.

4 PRESIDING JUDGE FREMR: [12:03:29] Thank you, court officer.

5 Mr Gosnell, please.

6 QUESTIONED BY MR GOSNELL:

7 Q. Good afternoon, Mr Witness, again. Yesterday you were asked a question by
8 his Honour, Mr President, about your height at the time that you went to Mandro.

9 Can you tell us relative to your own height how tall were the two other people with
10 you who were also rejected? Were they taller, were they shorter, were they the same
11 height?

12 A. [12:04:22] They were taller than both of us.

13 Q. [12:04:26] Just to clarify your answer, I'm asking you now about the two people
14 who accompanied you from Bunia and tried to join in the training at Mandro. Those
15 two people who went with you there, were they taller than you, were they the same
16 height or were they shorter, if you can recall?

17 A. [12:05:02] One of the two was the same height as me, and the other was taller
18 than both of us.

19 Q. [12:05:16] What were their fathers' professions at the time? What kind of jobs
20 did they have, if you know?

21 A. [12:05:39] I couldn't know that precisely. One of their mothers sold milk, and
22 the other one was a housewife. I don't know what she did in addition to that.

23 Q. [12:06:00] Did they come from rich families?

24 A. [12:06:18] I couldn't know that precisely. We lived in the same neighbourhood.
25 But I didn't have much information about their family life.

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1 Q. [12:06:34] Is your Swahili better than your French?

2 A. [12:06:51] Yes, I speak Swahili fluently.

3 Q. [12:06:56] You speak Swahili fluently. How do you speak French and how do
4 you read French and how do you write French compared to Swahili?

5 A. [12:07:26] If somebody speaks to me in French, I can answer that person. I can
6 read too.

7 Q. [12:07:36] Do you feel more comfortable expressing yourself in Swahili than in
8 French?

9 PRESIDING JUDGE FREMR: [12:07:45] Hold on, Mr Witness.

10 Mr Iverson.

11 MR IVERSON: [12:07:49] Objection. Leading. He's trying to make the witness say
12 he's more comfortable in Swahili.

13 PRESIDING JUDGE FREMR: [12:08:02] Objection sustained. Please proceed.

14 MR GOSNELL: [12:08:07]

15 Q. [12:08:07] Did you prior to the commencement of the interview with me express
16 the wish to our investigator, who I will refer to by the initials (Redacted), did you express the
17 wish to speak in Swahili rather than in French?

18 A. [12:08:47] Yes.

19 Q. [12:08:48] On the day that you signed your statement, did you read it in
20 Swahili?

21 A. [12:09:06] Yes, I read it in Swahili.

22 Q. [12:09:10] Did you need anyone to interpret for you that statement in Swahili
23 that you signed?

24 A. [12:09:36] No.

25 Q. [12:09:36] Did anyone pressure you on the occasion that you signed your

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1 statement to alter its content before you signed it?

2 A. [12:10:02] No, nobody.

3 Q. [12:10:06] Last Friday, did you read that statement again in my presence by
4 video link?

5 A. [12:10:28] Yes.

6 Q. [12:10:29] Did you have plenty of time to read it, understand it and make any
7 corrections that you deemed necessary on that occasion?

8 A. [12:10:47] Yes, I read it.

9 Q. [12:10:53] Did the Defence investigator, (Redacted) at any time tell you how you should
10 respond to questions being posed by me during our interviews? Did he tell you that
11 before or at any time after those interviews with me took place?

12 PRESIDING JUDGE FREMR: [12:11:22] Hold on, Mr Witness.

13 Mr Iverson.

14 MR IVERSON: [12:11:25] It's a compound question. There are several questions
15 included in that one and it will create a bit of confusion.

16 PRESIDING JUDGE FREMR: [12:11:32] It is a common law, common law objection.
17 If the witness is capable to, which I believe this witness is capable to answer such a
18 question, I have no problem with that.

19 Mr Gosnell, please proceed.

20 MR GOSNELL: [12:11:47] Thank you.

21 Q. [12:11:48] Mr Witness, you can answer my question: Did (Redacted) at any time
22 encourage you as to how you should answer my questions?

23 A. [12:12:15] No.

24 Q. [12:12:21] Thank you very much, Mr Witness, for your testimony.

25 MR GOSNELL: [12:12:24] Mr President, I came in well inside the ten minutes, I

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1 think. Thank you for your indulgence.

2 PRESIDING JUDGE FREMR: [12:12:30] Thank you, Mr Gosnell.

3 Mr Iverson, any request for re-cross?

4 MR IVERSON: [12:12:36] No, your Honour.

5 PRESIDING JUDGE FREMR: [12:12:37] All right.

6 So, Mr Witness, it concludes your testimony. I would like to thank you very much for
7 patiently answering and clearly answering all questions put to you. And I believe
8 that your testimony will assist us in our effort to find the truth in this case. So I thank
9 you and we wish you safe journey home.

10 THE WITNESS: [12:13:18] (Interpretation) Yes, thank you.

11 PRESIDING JUDGE FREMR: [12:13:20] Now, court officer, the line may be cut.

12 (The witness is excused)

13 PRESIDING JUDGE FREMR: [12:13:40] And the rest of the session I would like to
14 devote to two organisational matters. The first one is the testimony of Witness 0172
15 and the second one is setting up time for tomorrow to listen to your submissions on
16 filings 1915 and 1924.

17 We will start with the issue of testimony of D-0172.

18 So according our information, recent information, at the moment, the Defence is
19 saying that they are not able to complete preparation of the witness. At the same
20 time, Prosecution is opposing that it should be, should be feasible, subject to some
21 further cooperation with the Registry, that is why we invited representatives of the
22 Registry.

23 But my first question will go to Mr Gosnell: Is there still any chance to prepare
24 witness and, if yes, what the Registry should do in order to allow that?

25 MR GOSNELL: [12:15:00] I'm not sure whether -- may we go into private session

1 because I will need to refer to some matters pertaining to the witness?

2 PRESIDING JUDGE FREMR: [12:15:12] Certainly.

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

4 (Private session at 12.15 p.m.) *(Reclassified partially in public)

5 THE COURT OFFICER: [12:15:16] We are in private session, Mr President.

6 PRESIDING JUDGE FREMR: [12:15:30] Thank you, court officer.

7 Mr Gosnell, please.

8 MR GOSNELL: [12:15:34] (Redacted)

9 (Redacted)

10 (Redacted) So that's

11 an important contextual point to understand in terms of making arrangements.

12 We'd initially foresaw the potential of being able to speak with him today, and I must

13 underscore that the Defence previously indicated that we had not completed our

14 substantive interviews with the witness, we needed to have more substantive

15 interviews in order to be fully aware of his testimony and to be in a position

16 responsibly to present his testimony before the Court.

17 The Prosecution has said that that should already have been completed by April 26th,

18 but the Prosecution itself continued its interviews with its witnesses well after the date

19 of filing its witness list.

20 And your Honours in decision 1900 said, and I quote:

21 "For the witnesses scheduled to testify during the third evidentiary block, all

22 summaries shall be finalised and transmitted to the Chamber, Prosecution and LRVs

23 by the filing deadline of 17 July 2017."

24 Up until last week this particular witness was, indeed, going to be a witness for the

25 third evidential block. And we were working towards this particular deadline.

1 Now, we tried to move that up, but there was a need for, as I say, substantive
2 interviews in order to fully appreciate and understand and comprehend the witness's
3 testimony and then make a final decision as to whether the person should or could be
4 called.

5 Now, as I say, originally the idea was that time was available today to have a video
6 link with the witness (Redacted)
7 (Redacted)

8 Now, we knew when we received the information, especially in conjunction with
9 yesterday not finishing the cross-examination, that the 9 to 10 a.m. time slot was not
10 going to be possible. We also believe that there was a good chance that the time slot
11 that we're in right now also would be, at the very least, encroached upon, if not
12 actually impossible to satisfy, given the fact that there are also certain security
13 arrangements and so forth that need to be completed before the witness can walk into
14 the video room.

15 We were not clear on the exact amount of time that we would need with the witness,
16 but we knew that it was going to be more than an hour and a half, so that already
17 pushed it into Wednesday.

18 The Prosecution also has a request that the witness has accepted to speak with the
19 Prosecution. The period of time of that interview is not entirely clear. And all of this
20 is against the backdrop of the witness having to leave the place where he lives, which
21 is outside of Bunia, and come down to Bunia and await these preparations.

22 PRESIDING JUDGE FREMR: [12:18:55] Mr Gosnell, I will interrupt you because I
23 would like to stress that the Chamber does not blame you that you violated any of
24 your obligation, I would like to highlight that.

25 At the moment my only concern is whether you see some realistic chance to conduct

1 such a testimony by the -- Friday at the latest because the Chamber, under current
2 commitments, is not available for the next week, so this is the only issue. And it's up
3 to you to say.

4 MR GOSNELL: [12:19:26] I'm sorry for going on at length, Mr President. I'll just
5 say the answer is, realistically, I think the answer is no.

6 Even assuming we were somehow to get him down tomorrow and try to do all of the
7 preparations tomorrow, there would still be uncertainty, money would be expended
8 and spent, there's always the possibility we still wouldn't make it in time, and then
9 you add in the inconvenience to the witness, who, by the way, had already expressed
10 that he did not wish to testify by video link and wished to do it in person. And I
11 think there are very, very good reasons for him wishing to do so.

12 So when you look at all of those factors combined I think there's simply not time
13 available in order to get him on the stand by Friday.

14 And may I just say one more thing, Mr President, before I sit down, and that is to say
15 that there's no attempt whatsoever here to blame the Registry for not providing all the
16 available or possible resources in order to try to make this happen. They do bend
17 over backwards to help us with these things. The time that was available today was
18 the time that was available today and there was, as far as we knew, no option in that
19 regard.

20 As far as Wednesday, the information we had was, as of last night when I left the
21 office, we didn't know how much time could be available on the Wednesday and we
22 didn't yet have a confirmation about the availability of interpretation. That may have
23 changed since last night, but at some point a decision had to be made and we had to
24 notify everyone as to what the position was so that they could have some certainty.

25 Thank you, Mr President.

1 PRESIDING JUDGE FREMR: [12:21:10] And before I will give floor to
2 representatives of the Registry, does the Prosecution want to make any comment?
3 MS SAMSON: [12:21:21] Yes, your Honour. I'll just respond very quickly to
4 Defence's suggestion that the Prosecution continued to take substantive witness
5 statements after it had disclosed its witness list and final disclosure, because when the
6 Prosecution had put witnesses on its witness list it did so after having made
7 evaluations as to whether or not a witness should come, testify for the Prosecution
8 with full information in relation to what the witness will say.
9 What I understand Defence counsel to be saying today is that they have proposed
10 Witness D-0172 as a witness, had the Chamber, the Prosecution, the Legal
11 Representative of Victims prepare without knowing what the witness was in fact
12 going to say and whether having done an evaluation as to whether he should be called
13 at all.
14 And this, in my submission, is, indeed, too late and it does fly in the face of the
15 Defence counsel's obligations and the decisions of the Chamber on this point.
16 Witness preparation is one thing, which is permitted, but deciding whether or not you
17 can in all -- with all ethical reasoning call a witness because you don't know what
18 they're going to say is an insufficient reason for not being able to proceed with now a
19 scheduled witness this week.
20 It had been clear for some time, towards the end of the last week, that this witness
21 could potentially testify on Friday. Not having him move into Bunia earlier, it
22 doesn't seem that proper preparations or planning were done whatsoever in relation
23 to this witness.
24 We do expend time planning, we have to prepare for the testimony of the accused
25 which, in our submission, was notified fairly late, and we certainly do not wish to see

1 this repeated many times in the future.

2 And I would ask the Chamber to order the Defence to have met with its witnesses far
3 in advance of proposing them for a forthcoming witness list so that we avoid
4 last-minute meetings for them to decide whether they can call a witness after he's been
5 placed on their list and late disclosure of witness statements or any other documents.

6 Thank you.

7 PRESIDING JUDGE FREMR: [12:23:49] Thank you, Ms Samson.

8 I, again, will steal floor, even if it seems that for this issue it will not be probably
9 relevant, but I also will give floor to the Registry representatives, and the main
10 purpose is what Ms Samson mentioned at the end of her submission that we, the
11 Chamber, would like to avoid repetition of such situation in future.

12 However, I have to admit that this first block was conducted under special
13 circumstances, we all faced some unexpected troubles, but we believe that the second
14 block is also very specific, we will have just one witness, but there would be enough
15 time for the third block to organise things in a way which would avoid repetition of
16 such situation which we really don't like.

17 So, at the moment, I would like to give floor to the representatives of the Registry
18 maybe to present their view and maybe even to come with some recommendations,
19 what party and even Chamber should do in order to avoid repetition of troubles we
20 are facing, We are facing today.

21 MR PERALTA LOSILLA: [12:25:19] Thank you very much, your Honour. The
22 present -- the present case is -- the situation we are is due to basic reason: The first
23 one, the existence of (Redacted)
24 (Redacted) and the second one is
25 the lateness of the request by the Defence.

1 Only yesterday the Defence requested to have this interview with video link and
2 interpreter at 11.36. We received the request for the video link to be facilitated today,
3 and we replied immediately and we found those time slots, of course, depending on
4 the development of the hearing, and at 14.23 the Defence team replied to us that -- I
5 mean, they took note and they were grateful for the booking of the video link, but also
6 if we could book also for Wednesday.

7 Unfortunately, the reply of the field office (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 PRESIDING JUDGE FREMR: [12:27:03] (Redacted)

12 (Redacted)

13 (Redacted)

14 MR PERALTA LOSILLA: [12:27:18] (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted) So I think

18 that it would be reasonable that at least 48 hours would be given to us to try to
19 arrange. Of course it would be ideal if we had more time, but 48 hours would be the
20 bear minimum.

21 PRESIDING JUDGE FREMR: [12:27:51] Good to know. Please proceed.

22 MR PERALTA LOSILLA: [12:27:54] Yes, so I was just finishing that to -- I mean, to
23 explain that the reply of the field office didn't include the availability for Wednesday.
24 And we are trying to find out if that is possible. And we, of course, are always open
25 to liaise with the Defence team, they know it very well, we are always ready to find

1 and to go beyond the strict deadlines and the strict requirements to find solution to the
2 problems, so just this is all I can say at this moment. Thank you very much,
3 your Honours.

4 PRESIDING JUDGE FREMR: [12:28:36] But I will ask you another question because
5 the second issue we are facing is problem with interpretation. It was also mentioned
6 in this case that in the past you -- I guess you know, we had to give up testimony of
7 two witnesses who were Kilendu, Kilendu interpretation was needed because lack of
8 the interpreters, so I hope that the Registry will make some arrangements to avoid
9 such a problem in the future?

10 MR PERALTA LOSILLA: [12:29:07] Thank you very much, your Honour. And
11 you are very right. There are some languages, and Kilendu is one of them, that
12 simply there are not enough interpreters anywhere to -- to ensure that --

13 PRESIDING JUDGE FREMR: [12:29:21] Sorry, not enough or known interpreters?

14 MR PERALTA LOSILLA: [12:29:26] No, there are not enough interpreters
15 sometimes to -- to give all the services that we -- that we need to provide to the teams.
16 So I know that the Language Services Section does a great job identifying and training
17 those interpreters, but chances are that since they are languages for which there are
18 not so many interpreters that sometimes there is a -- there is a lack of them. But this
19 I'm -- I cannot speak with authority because I -- that -- the only section that can do that
20 is the Language Services Section, but we always liaise with them and they are
21 definitely also very helpful and they do more than what is reasonably expectable.
22 Thank you very much, your Honour.

23 PRESIDING JUDGE FREMR: [12:30:17] Thank you. I agree that it's not your cup of
24 tea, but anyway I'll -- just would like to put on the record that I will contact those who
25 are responsible for interpretation, and would like to again highlight that it is obviously

1 not the last time we will need Kilendu interpreters, so I will really strongly ask the
2 Registry to make such arrangements that would avoid the same problems in the
3 future. We are starting at the end of the -- August, the third block, and we don't, the
4 Chamber don't want to face the same problem anymore.

5 So any further request for the floor on this topic? If not, we can conclude by saying
6 that tomorrow we would like to hear submissions of the parties concerning
7 filings 1915 and 1924, as we indicated.

8 The Chamber would like to sit from 2 o'clock. We indicated it should be either
9 Wednesday afternoon or Thursday morning, so 2 o'clock, just to assure myself, no
10 problem with the parties? 2 o'clock in the -- tomorrow, all right.

11 So now the Court is adjourned and we will resume tomorrow 2 o'clock in this
12 courtroom.

13 THE COURT USHER: [12:31:48] All rise.

14 (The hearing ends in private session at 12.31 p.m.) *(Reclassified partially in public)

15 RECLASSIFICATION REPORT

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