

Article 56 Proceedings

(Closed Session)

ICC-02/04-01/15

WITNESS: UGA-OTP-P-0198

1 International Criminal Court

2 Pre-Trial Chamber II - Courtroom 1

3 Situation: Uganda

4 In the case of The Prosecutor v. Dominic Ongwen - ICC-02/04-01/15

5 Single Judge Cuno Tarfusser

6 Article 56 Proceedings

7 Wednesday, 18 November 2015

8 *(The proceedings start in closed session at 9.33 a.m.) Reclassified as open session

9 THE COURT USHER: All rise.

10 The International Criminal Court is now in session.

11 Please be seated.

12 SINGLE JUDGE TARFUSSER: Good morning. I hear we have big problems,

13 connection problems with the field. That is what I hear. We are trying to connect.

14 THE COURT OFFICER (Via video link): Good morning, your Honour. This is

15 Felipe speaking from Kampala.

16 SINGLE JUDGE TARFUSSER: Hello, Felipe.

17 THE COURT OFFICER (Via video link): Can I please ask my colleagues from the

18 Registry to send me the English feed.

19 And we hear you loud and clear.

20 SINGLE JUDGE TARFUSSER: We hear you loud and clear.

21 THE COURT OFFICER (Via video link): It seems the connection is back on and

22 everything is working, so we are ready to start.

23 SINGLE JUDGE TARFUSSER: Perfect, Felipe. Thank you very much. We have

24 heard about bigger major problems in the connection, but they seem to be solved.

25 THE COURT OFFICER (Via video link): Not exactly, your Honour, but for the

Article 56 Proceedings

(Closed Session)

ICC-02/04-01/15

WITNESS: UGA-OTP-P-0198

1 moment it's working. It may be that there may be some loss of connection
2 throughout the proceedings, but if that's the case, we will keep everyone updated.

3 SINGLE JUDGE TARFUSSER: Okay. So I think we should start quickly and try to
4 go as far as possible.

5 I see changes in the composition of the Prosecution, so I would just ask quickly to
6 introduce yourselves for the record.

7 MR ZENELI: Good morning, your Honour. Good morning, everyone. My name
8 is Shkelzen Zeneli and with me for the Prosecution today is Benjamin Gumpert,
9 Adesola Adeboyejo, Dayna Ziukelis, Ramu Bittaye and Lilian Asimwe. Thank you.

10 SINGLE JUDGE TARFUSSER: Okay. Now you know what consecutive
11 interpretation is. This is consecutive interpretation so we have to wait until the
12 interpreter finishes to interpret what we are saying.

13 I think there is nothing particularly new in the Defence composition. It's just a
14 change, but I think we don't need to go further because we have to hurry up.

15 So I would now turn immediately to the witness and first of all say good morning,
16 Madam Witness.

17 WITNESS: UGA-OTP-P-0198

18 (The witness speaks (Redacted))

19 (The witness gives evidence via video link)

20 THE WITNESS: (Interpretation) Good morning, your Honour.

21 SINGLE JUDGE TARFUSSER: Madam Witness, could you please first of all identify
22 yourself with the name and the date of birth.

23 THE WITNESS: (Interpretation) (Redacted)

24 (Redacted)

25 SINGLE JUDGE TARFUSSER: Okay. Thank you very much. I am the Judge in

Article 56 Proceedings
WITNESS: UGA-OTP-P-0198

(Closed Session)

ICC-02/04-01/15

1 this proceedings and you are a witness, and I will -- I have the duty to make sure that
2 these proceedings run well.
3 If at any moment you have some problems, just tell me so we will try to accommodate
4 to solve your problems.
5 THE WITNESS: (Interpretation) (Redacted)
6 SINGLE JUDGE TARFUSSER: (Redacted)
7 (Redacted)
8 THE WITNESS: (Interpretation) (Redacted)
9 (Redacted)
10 SINGLE JUDGE TARFUSSER: That is no problem.
11 THE WITNESS: (Interpretation) Thank you.
12 SINGLE JUDGE TARFUSSER: So now I just have to tell you that as a witness you
13 have the duty, the obligation to tell the truth.
14 THE WITNESS: (Interpretation) Yes, your Honour, I will speak the truth.
15 SINGLE JUDGE TARFUSSER: Okay. Before starting you have to make, this is
16 provided by law, as solemn undertaking. And therefore I ask you to speak with me
17 the following words: I solemnly declare that I will speak the truth.
18 THE WITNESS: (Interpretation) I solemnly declare that I will speak the truth.
19 SINGLE JUDGE TARFUSSER: The whole truth and nothing but the truth.
20 THE WITNESS: (Interpretation) The whole truth and nothing but the truth.
21 SINGLE JUDGE TARFUSSER: I must also inform you that giving false testimony,
22 not saying the truth, is an offence before the Court and that you have the right to
23 object to answer questions if those questions -- or if the response might tend to
24 incriminate you. If necessary, I can provide you with legal advice, with a counsel
25 who gives you legal advice.

Article 56 Proceedings
WITNESS: UGA-OTP-P-0198

(Closed Session)

ICC-02/04-01/15

1 Now, the connection is very bad. Can you hear me, Kampala?

2 Well, the problem also if you say yes or no, we can't hear you, so it's a useless
3 question I would say.

4 (Video link disconnected)

5 MR ZENELI: Your Honour, just to make use of this moment, we could not -- I could
6 not hear anything of what the witness was saying in the translation as well during the
7 whole time.

8 SINGLE JUDGE TARFUSSER: Yes, I don't -- she didn't say very much. She just
9 said yes or no.

10 MR ZENELI: Well, then I did not hear the yes or no.

11 SINGLE JUDGE TARFUSSER: For the moment she didn't say very much and what
12 is important for us to hear is the translator. But I think until a minute ago we heard
13 the translation properly. Well, I did in any case.

14 (Pause in proceedings)

15 SINGLE JUDGE TARFUSSER: I was told that the problem is a country-wide
16 problem, first. And second, that a possibility could be to limit the connection to the
17 voice because obviously -- technically I don't know how to works, but limiting to the
18 voice needs less, what? I don't know what, something less. It could be easier to
19 have a better connection, but as a last resort. I think we should try first to do it
20 properly and then decide how to proceed further.

21 (Pause in proceedings)

22 SINGLE JUDGE TARFUSSER: Felipe, can you hear me?

23 THE COURT OFFICER (Via video link): Yes, your Honour, we can hear you and see
24 you now.

25 SINGLE JUDGE TARFUSSER: Okay. So we go ahead hoping that -- we go ahead

1 quickly, as quick as possible, hoping that we resist as long as possible with the
2 connection.

3 So, Madam Witness, you have understood what I said?

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

5 SINGLE JUDGE TARFUSSER: So I will now give the floor to the Prosecutor and
6 when the Prosecutor has finished, to the Defence.

7 THE WITNESS: (Interpretation) Yes, your Honour.

8 SINGLE JUDGE TARFUSSER: Okay. The floor is to the Prosecutor for his
9 questioning. Thank you.

10 MR ZENELI: Thank you, your Honour.

11 QUESTIONED BY MR ZENELI:

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

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24 (Redacted)

25 (Redacted)

Article 56 Proceedings
WITNESS: UGA-OTP-P-0198

(Closed Session)

ICC-02/04-01/15

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Article 56 Proceedings
WITNESS: UGA-OTP-P-0198

(Closed Session)

ICC-02/04-01/15

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Article 56 Proceedings
WITNESS: UGA-OTP-P-0198

(Closed Session)

ICC-02/04-01/15

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- 23 (Redacted)

24 SINGLE JUDGE TARFUSSER: I think we have problems again.

25 Felipe, we have problems again to hear you. Your sound comes through

1 intermitting.

2 THE COURT OFFICER (Via video link): I understand, your Honour. For us the

3 sound is coming nice and clear, loud and clear.

4 SINGLE JUDGE TARFUSSER: Now it's better again. Now we continue, we

5 continue because I can hear you now better.

6 THE COURT OFFICER (Via video link): The call is still on.

7 SINGLE JUDGE TARFUSSER: Okay.

8 THE COURT OFFICER (Via video link): And it can go.

9 SINGLE JUDGE TARFUSSER: Okay. Good. Good.

10 Go ahead, Mr Prosecutor.

11 MR ZENELI:

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

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Article 56 Proceedings
WITNESS: UGA-OTP-P-0198

(Closed Session)

ICC-02/04-01/15

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- 8 (Redacted)
- 9 (Video link disconnected)
- 10 SINGLE JUDGE TARFUSSER: Now it's disconnected. Who is in this case trying to
- 11 reconnect? It's from here? From there? Okay.
- 12 Felipe, I can hear you.
- 13 THE COURT OFFICER (Via video link): Yes.
- 14 SINGLE JUDGE TARFUSSER: Slowly you're coming back.
- 15 THE COURT OFFICER (Via video link): Yes, from our side it's okay. We can hear
- 16 you loud and clear.
- 17 SINGLE JUDGE TARFUSSER: Okay. Now we can hear you.
- 18 Mr Prosecutor, please continue. I would ask -- you are doing it already, but make
- 19 short questions, short answers so we have to answer to the point, so I think we can try
- 20 to manage this way without -- going faster in this way by being short and to the point.
- 21 Thank you.
- 22 MR ZENELI:
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)

Article 56 Proceedings
WITNESS: UGA-OTP-P-0198

(Closed Session)

ICC-02/04-01/15

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6 SINGLE JUDGE TARFUSSER: We have again a problem because the sound does not
7 come through properly and obviously it can't be -- we can't understand everything
8 from the translation.

9 I ask the interpreters, could you please repeat the last -- the last answer the witness
10 gave so in order to find out if it's better now.

11 THE (Redacted) INTERPRETER (Via video link): (Redacted)

12 (Redacted)

13 SINGLE JUDGE TARFUSSER: Well, we continue. Hopefully we can manage.

14 MR ZENELI:

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

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Article 56 Proceedings
WITNESS: UGA-OTP-P-0198

(Closed Session)

ICC-02/04-01/15

- 1 (Redacted)
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25 SINGLE JUDGE TARFUSSER: It's still difficult. The connection -- the connection is

1 very difficult. We need some patience I think.

2 Felipe, you can hear us perfectly I guess?

3 THE COURT OFFICER (Via video link): Yes, your Honour, I can.

4 SINGLE JUDGE TARFUSSER: Yes, it's us that we cannot hear you or the witness
5 because the connection is very intermitting and sometimes we don't understand, we
6 don't get the whole sentence or we get the reply only partly. So it's quite a difficult
7 situation I would say.

8 THE COURT OFFICER (Via video link): (Indiscernible)

9 SINGLE JUDGE TARFUSSER: Yeah, I cannot hear you. I can hear that you are
10 speaking, but I can't understand what you are saying.

11 THE COURT OFFICER (Via video link): No, no. I was just saying, your Honour,
12 that maybe we can give it another try. The interpreters will speak a little bit further
13 from the microphone and louder in order to see if the quality improves.

14 SINGLE JUDGE TARFUSSER: Okay. Okay.

15 THE COURT OFFICER (Via video link): Because if you can understand me, it seems
16 in principle --

17 SINGLE JUDGE TARFUSSER: Okay. I can understand only partly what you are
18 saying, but if we get another try, we disconnect and reconnect, maybe it could work.

19 THE COURT OFFICER (Via video link): Okay, your Honour. I will disconnect and
20 reconnect.

21 SINGLE JUDGE TARFUSSER: Okay. Thank you, Felipe.

22 (Video link disconnected)

23 (Pause in proceedings)

24 SINGLE JUDGE TARFUSSER: Yes.

25 THE COURT OFFICER (Via video link): Your Honour, it seems the connection is

1 established again.

2 SINGLE JUDGE TARFUSSER: Okay. I can hear you much better now. Can you
3 hear me?

4 THE COURT OFFICER (Via video link): Yes, I can hear you loud and clear, your
5 Honour.

6 SINGLE JUDGE TARFUSSER: Okay. So I give back the floor to the Prosecution.
7 Please.

8 MR ZENELI:

9 Q. Who was ordering the abductors?

10 THE (Redacted) INTERPRETER (Via video link): The interpreter begs for your pardon,
11 Counsel, please. The interpreter requests for your pardon, please.

12 SINGLE JUDGE TARFUSSER: Yes, Madam Interpreter?

13 THE (Redacted) INTERPRETER (Via video link): Counsel, the interpreter requests
14 for your pardon, please.

15 THE ACHOLI INTERPRETER: Can I help? Can you please repeat the question.

16 SINGLE JUDGE TARFUSSER: Okay. We repeat the question, okay.
17 Please, Prosecutor.

18 MR ZENELI:

19 (Redacted)

20 (Redacted)

21 (Redacted)

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Article 56 Proceedings

(Closed Session)

ICC-02/04-01/15

WITNESS: UGA-OTP-P-0198

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8 (Redacted)

9 SINGLE JUDGE TARFUSSER: Felipe, can you please say something because I think
10 we are again in trouble.

11 THE COURT OFFICER (Via video link): Yes, Mr President, we still hear you loud
12 and clear. At least I do through the English channel.

13 SINGLE JUDGE TARFUSSER: Yes, please try to go ahead, Prosecutor, because
14 maybe it's a bit better.

15 (Video link disconnected)

16 SINGLE JUDGE TARFUSSER: No. It's disconnected. Now it's disconnected.

17 (Pause in proceedings)

18 SINGLE JUDGE TARFUSSER: Should we try to go only with the voice and without
19 the video? Would that be an option?

20 MR OBHOF: Will her reaction still be recorded so we can view them at a later date,
21 your Honour?

22 SINGLE JUDGE TARFUSSER: I don't know. I don't know how technically this
23 is -- I think -- I'm afraid there is no reaction -- I've never seen a reaction of any witness
24 in this -- in these last days because they are really emotionally quite flat, I would say,
25 so -- probably because of what they are telling us.

Article 56 Proceedings

(Closed Session)

ICC-02/04-01/15

WITNESS: UGA-OTP-P-0198

1 Prosecutor?

2 MR GUMPERT: Your Honour, my submission is that given this ultimately is to be
3 presented to the Trial Chamber for their consideration as to whether to admit it into
4 evidence in any eventual trial, the material which is submitted ought to be parallel
5 across the -- across the different witnesses, so I would submit that the answer to
6 Mr Obhof's question is the material one. Provided that there's a video recording of
7 what's taking place there, then for our part, for the Prosecution, we'd be happy to go
8 ahead with voice alone, but there must be a video record which ultimately the Judges
9 and other parties can consult.

10 SINGLE JUDGE TARFUSSER: Well, I do again disagree with you because in the
11 sense that it's not compulsory that they have also the same material. I mean, the trial
12 Judges would assess what they would have. If it's different, it's different. They
13 would give another type of assessment. But obviously it's better I agree, it's better,
14 but I think -- for the benefit of the Trial Chamber, but in any case, they assess what
15 they will receive from this Article 56 proceedings, whatever it is.
16 I don't know if -- in any case if we go only on the basis of the voice, if there is still a
17 video recording in the field? No. So if we go in voice, that's it?
18 So we will not have any video material.

19 MR GUMPERT: Well, then our submission is we should not go ahead with voice.

20 SINGLE JUDGE TARFUSSER: Well, that's what I thought it would be.

21 MR OBHOF: I mean, the Defence does note that we did look up this -- when you
22 mentioned it, I did look it up in the Statute. It does say audio or video.

23 SINGLE JUDGE TARFUSSER: Yes.

24 MR OBHOF: But I mean for the same reasons as my learned colleague has
25 said -- you know, we would go forward of course if the Judge wants to, we would just

Article 56 Proceedings

(Closed Session)

ICC-02/04-01/15

WITNESS: UGA-OTP-P-0198

1 prefer that a video record be kept as well.

2 SINGLE JUDGE TARFUSSER: No, I do perfectly agree that this would be the best

3 option, and we are also lucky to have the whole next week for one witness, so we

4 can -- we have space to manage in any case. But it depends on what from the

5 technical point of view is said by our technicians. And obviously it's also a problem

6 for the witness who is in Kampala and not at her house with the problems she has

7 with children. So I mean we have to see all these different things.

8 But now I think we should just try to go ahead as soon as the connection -- a

9 successful connection is established -- as it seems, although not really, not really in a

10 very optimistic way. I always ask Felipe if he can hear me.

11 THE COURT OFFICER (Via video link): Yes, your Honour, I can hear you loud and

12 clear. The connection is re-established.

13 SINGLE JUDGE TARFUSSER: And I can hear you loud and clear as well now.

14 So I ask the Prosecutor just to go ahead with the questioning.

15 MR ZENELI:

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 SINGLE JUDGE TARFUSSER: No, I'm afraid we are -- we are not hearing what

20 comes from Kampala in a way we deem appropriate. I mean, we hear only half of

21 what is said.

22 I'm a little bit in the hand of the technique, not of the law. That's the problem. And

23 due to my age, I'm not a good technician. So I'm waiting for some inspiring news.

24 I will propose to make a break now so in order for the technician to try to fix or to

25 make the connection work better. And I think half an hour, would that be okay or

Article 56 Proceedings

(Closed Session)

ICC-02/04-01/15

WITNESS: UGA-OTP-P-0198

1 do you need more?

2 So I think we make half an hour now, but the Registry will keep us informed as soon

3 as we have a solution to this problem. Say in any case half an hour and then after

4 half an hour we will see where we stay. Thank you very much.

5 THE COURT USHER: All rise.

6 (Recess taken at 10.33 a.m.)

7 *(Upon resuming in closed session at 11.05 a.m.) Reclassified as open session

8 THE COURT USHER: All rise.

9 Please be seated.

10 SINGLE JUDGE TARFUSSER: So, good morning again. We had this break. We

11 keep fingers crossed. This is what the message I received from the Registry.

12 So, Felipe, you can hear me?

13 Madam Witness, you can hear me?

14 The interpreters can hear me, right?

15 THE WITNESS: (Interpretation) Yes, your Honour.

16 THE COURT OFFICER (Via video link): Correct, your Honour.

17 SINGLE JUDGE TARFUSSER: Okay. So straight away with the questions by the

18 Prosecutor.

19 You have the floor.

20 MR ZENELI: Thank you, your Honour.

21 (Redacted)

22 (Redacted)

23 (Redacted)

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Article 56 Proceedings

(Closed Session)

ICC-02/04-01/15

WITNESS: UGA-OTP-P-0198

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4 A. (Indiscernible)

5 SINGLE JUDGE TARFUSSER: What can I say? It's dispiriting, but nothing has
6 improved in this period. We still get a very bad sound, the connection is very bad

7 from Kampala to here. So I do not -- really don't know what to do now because I

8 don't see any solution in this. We cannot just go with this approach of one question

9 every half an hour and one answer every half an hour. So I don't know what to --

10 MR GUMPERT: The Prosecution would submit that we've given it a proper try, that

11 there really isn't any point in flogging a dead horse, and it might be worth coming

12 back say this afternoon at 2 o'clock to see if it's any better. And if not -- and I suspect,

13 having talked to the staff, to the Registry staff, that it isn't going to be any better today.

14 Apparently it's a region-wide problem --

15 SINGLE JUDGE TARFUSSER: Yeah, yeah, that's it.

16 MR GUMPERT: -- that affects the network, is expected to affect the network for the

17 whole day. Well, we're lucky that we've got some time in hand and we can be doing

18 other better things and hope for better reception for tomorrow. That would be my

19 submission, rather than going, as you say, a question every half an hour. That's just

20 frustrating and pointless.

21 SINGLE JUDGE TARFUSSER: No, it's also for the witness -- can I ask how it is in

22 Kampala. Can I talk with Felipe in order to understand how the logistic situation is

23 with the witness, because as you know we have today and tomorrow and then we

24 have to go to Monday.

25 THE COURT OFFICER (Via video link): Yes, your Honour. I will have to consult

Article 56 Proceedings
WITNESS: UGA-OTP-P-0198

(Closed Session)

ICC-02/04-01/15

1 with the members of the VWU to see how the organisation has been done, but -- and
2 I can get back to you either by email or by telephone or through the court officer and
3 inform you. But the logistics can be I imagine accommodated.
4 SINGLE JUDGE TARFUSSER: Yes. Please come back to me, also to the others, but
5 also to me directly with an email or by phone, as you did yesterday.
6 So I just would first of all give it a try in the afternoon, in the early afternoon, 2 o'clock
7 we will say. And if this doesn't work, we'll see. We have to go to tomorrow
8 morning. I was quite confident that we could between today and tomorrow finish,
9 but this seems not the case. So we will have first try in the afternoon at 2 o'clock and
10 then we see also how the network situation in the area is.
11 The next attempt is for tomorrow morning and then we have to go unfortunately to
12 Monday. And then if by then, by 2 o'clock I know how the logistics is with the
13 witness, I'm very sorry to create these problems, but that's it.
14 So I would adjourn to 2 o'clock, ask Felipe to inform us by 2 o'clock what the logistics
15 is and then we decide further step by step, okay?
16 MR ODONGO: Although, your Honour, it would appear the connection has
17 hearkened your concern. It seems to have stabilized a bit. From the way it is --
18 SINGLE JUDGE TARFUSSER: Yes, it seems, but for how long? We just are sitting
19 here, we give it a try and then at the first inconvenience, the first problem, we stop it.
20 Okay?
21 MR ODONGO: Yes.
22 SINGLE JUDGE TARFUSSER: So just try it again, Prosecutor, because effectively it
23 seems stable at least from the picture.
24 MR ODONGO: For five minutes now.
25 SINGLE JUDGE TARFUSSER: Yes.

Article 56 Proceedings
WITNESS: UGA-OTP-P-0198

(Closed Session)

ICC-02/04-01/15

- 1 MR ZENELI:
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Article 56 Proceedings

(Closed Session)

ICC-02/04-01/15

WITNESS: UGA-OTP-P-0198

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Page redacted.

Article 56 Proceedings

(Closed Session)

ICC-02/04-01/15

WITNESS: UGA-OTP-P-0198

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Page redacted.

Article 56 Proceedings

(Closed Session)

ICC-02/04-01/15

WITNESS: UGA-OTP-P-0198

- 1
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Article 56 Proceedings

(Closed Session)

ICC-02/04-01/15

WITNESS: UGA-OTP-P-0198

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Article 56 Proceedings

(Closed Session)

ICC-02/04-01/15

WITNESS: UGA-OTP-P-0198

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Article 56 Proceedings

(Closed Session)

ICC-02/04-01/15

WITNESS: UGA-OTP-P-0198

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Article 56 Proceedings

(Closed Session)

ICC-02/04-01/15

WITNESS: UGA-OTP-P-0198

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Article 56 Proceedings

(Closed Session)

ICC-02/04-01/15

WITNESS: UGA-OTP-P-0198

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Article 56 Proceedings
WITNESS: UGA-OTP-P-0198

(Closed Session)

ICC-02/04-01/15

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20 So that's all. Thank you very much. See you at 2 o'clock.

21 THE COURT USHER: All rise.

22 (Recess taken at 11.51 a.m.)

23 *(Upon resuming in closed session at 2.01 p.m.) Reclassified as open session

24 THE COURT USHER: All rise.

25 Please be seated.

Article 56 Proceedings

(Closed Session)

ICC-02/04-01/15

WITNESS: UGA-OTP-P-0198

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Page redacted.

Article 56 Proceedings

(Closed Session)

ICC-02/04-01/15

WITNESS: UGA-OTP-P-0198

1 Therefore, I adjourn the hearing formally for tomorrow morning, but it's not said that
2 tomorrow we sit here. If you don't receive any communication in the meanwhile
3 until tomorrow, then we will definitely be here and see how we continue, okay?

4 Thank you.

5 MR GUMPERT: And your Honour said 9 rather than 9.30?

6 SINGLE JUDGE TARFUSSER: I said 9 because we have two double two hours,
7 twice two hours. So that's it. Okay. Thank you very much.

8 THE COURT USHER: All rise.

9 *(The hearing ends in closed session at 2.04 p.m.) Reclassified as open session

10 RECLASSIFICATION REPORT

11 Pursuant to Trial Chamber IX 's Order, ICC-02/04-01/15-584-Conf, dated 4 November

12 2016, the version of the transcript with its redactions becomes Public.