

Trial Hearing  
WITNESS: DRC-OTP-P-0886

(Open Session)

ICC-01/04-02/06

1 International Criminal Court  
2 Trial Chamber VI - Courtroom 2  
3 Situation: Democratic Republic of the Congo  
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06  
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and  
6 Judge Chang-ho Chung  
7 Trial Hearing  
8 Tuesday, 27 October 2015  
9 (The hearing starts in open session at 9.33 a.m.)  
10 THE COURT USHER: All rise.  
11 The International Criminal Court is now in session.  
12 Please be seated.  
13 PRESIDING JUDGE FREMR: Good morning, everybody.  
14 Court officer, please call the case.  
15 THE COURT OFFICER: Thank you, Mr President.  
16 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor  
17 versus Bosco Ntaganda, case reference ICC-01/04-02/06.  
18 We are in open session.  
19 PRESIDING JUDGE FREMR: Thank you.  
20 Now appearances, please.  
21 Starting with Prosecution.  
22 MS LUPING: Good morning, Mr President, your Honours. Appearing on behalf of  
23 the Prosecution, Dianne Luping, trial lawyer; Ms Kristy Sim, assistant trial lawyer;  
24 Lois Mbafor, legal assistant; and Selam Yirgou, case manager.  
25 PRESIDING JUDGE FREMR: Thank you, Ms Luping.

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1 Defence.

2 MR BOURGON: (Interpretation) Good morning, your Honour, your Honours.

3 And good morning to all those seated in the courthouse -- the courtroom. I'm

4 representing Mr Bosco Ntaganda, who is present this morning. Intern, Ms Braber;

5 Mr William St-Michel; and myself, Stéphane Bourgon. Thank you, your Honour.

6 PRESIDING JUDGE FREMR: Thank you.

7 Now Legal Representatives of Victims, please.

8 MS PELLET: (Interpretation) Thank you, your Honour. For the former child

9 soldiers, I, myself, am representing them, Sarah Pellet, for the OPCV.

10 MR SUPRUN: (Interpretation) Good morning, your Honour, your Honours. The

11 victims of the attacks are represented by myself, Dmytro Suprun, counsel for the

12 OPCV.

13 PRESIDING JUDGE FREMR: Thank you, Ms Pellet. Thank you, Mr Suprun.

14 Before we approach to the further part of cross-examination of our witness, I would

15 like to touch one procedural issue. This morning we received courtesy copy of the

16 latest Defence filing, dated 26 October 2015, concerning our current witness.

17 I don't want at the moment to go into substance. We will do it -- we would like to do

18 it later on. So as to the position of the Defence is clear, I think it is fully covered by

19 this filing, but I would like to ask Prosecution.

20 And my question at the moment is how much time you need to respond? My idea

21 was that either you can respond immediately, or we are ready to give you some time,

22 and for us it would be pretty enough to get your respond in the end of this day.

23 So, Ms Luping, what is your position?

24 MS LUPING: Thank you, Mr President, your Honours. I'm -- I'm ready to make

25 the submissions now if that is convenient or the end of the day. How you wish.

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1 Because I think the answers are very simple to be provided.

2 PRESIDING JUDGE FREMR: In that case, it would be better for us to get your  
3 position immediately, but for that purpose, excuse me, for that purpose we will have  
4 to move into private session.

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

6 (Private session at 9.37 a.m.)

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- 16 (Open session at 9.58 a.m.)
- 17 THE COURT OFFICER: We are in open session, Mr President.
- 18 PRESIDING JUDGE FREMR: Thank you.
- 19 We will have to wait for the witness.
- 20 (The witness enters the courtroom)
- 21 PRESIDING JUDGE FREMR: Good morning, Mr Witness.
- 22 WITNESS: DRC-OTP-P-0886 (On former oath)
- 23 (The witness speaks Swahili)
- 24 THE WITNESS: (Interpretation) Good morning.
- 25 PRESIDING JUDGE FREMR: I hope you are feeling well, at least you look so.

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1 THE WITNESS: (Interpretation) I feel well, like every day.

2 PRESIDING JUDGE FREMR: That's good to hear that.

3 Mr Witness, today we will continue or, to be exact, Defence will continue with your  
4 cross-examination. I have to remind you again that you are under oath so that you  
5 have to speak the truth and nothing but the truth.

6 And maybe I would also like to emphasise that take your time when you are  
7 responding because sometimes the questions asked you to recollect things that occur  
8 a long time ago, so -- and each detail here, you know, is important. So don't hurry  
9 up. Take your time and, as we told you yesterday, focus on the question. Just try  
10 to respond exactly what the question is asked for, okay?

11 THE WITNESS: (No interpretation)

12 PRESIDING JUDGE FREMR: Thank you very much.

13 And now I give the floor to Mr Bourgon.

14 QUESTIONED BY MR BOURGON: (Continuing)

15 Q. Good morning, sir.

16 A. Good morning.

17 Q. As the Presiding Judge explained to you, we will proceed with your  
18 cross-examination this morning, and I would like to clarify one issue at the beginning  
19 and to very shortly come back on the meeting you had with a person who was not a  
20 Prosecution investigator. Do you recall talking about meetings with a person other  
21 than Prosecution investigators?

22 A. I only met people from the ICC. I don't know why you were asking me about  
23 other people who I allegedly met.

24 (Redacted)

25 (Redacted)

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21 PRESIDING JUDGE FREMR: A good point. So let's move into private session.  
22 (Private session at 10.06 a.m.)  
23 (Redacted)  
24 (Redacted)  
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10 (Open session at 10.59 a.m.)  
11 THE COURT OFFICER: We are in open session, Mr President.  
12 PRESIDING JUDGE FREMR: Thank you, court officer.  
13 And I'm just announcing that now we break for 30 minutes, which means that -- no.  
14 Mr Bourgon, please.  
15 Okay, then. As I said, we break now for 30 minutes, and we will reconvene at half  
16 past 11.  
17 THE COURT USHER: All rise.  
18 (Recess taken at 10.59 a.m.)  
19 (Upon resuming in open session at 11.33 a.m.)  
20 THE COURT USHER: All rise.  
21 Please be seated.  
22 PRESIDING JUDGE FREMR: Mr Bourgon, you maybe sit down for a while because  
23 I would like to start with two procedural issues: The first one is that we now  
24 formally received filing -- it is Defence filing number 948 that we, I think, the parties  
25 discussed any change of views on that -- the beginning of our morning session. So

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1 after doing that, I am asking Defence whether you still insist on the request, or  
2 whether you withdraw that; if not, we will decide. So it is up to you, please,  
3 Mr Bourgon.

4 MR BOURGON: Mr President, our position is that through the questionings that  
5 were put to the witness, we have established more than a sufficient basis to establish  
6 the importance of the role of the intermediary in this case. And on this basis, we  
7 would like to insist that the Prosecution be ordered to disclose the information related  
8 to the intermediary, which is P-743, in terms of his relationship with this witness and  
9 other witnesses. We feel that the questioning, although there maybe some doubts as  
10 to exactly whether there was an extent of discussions between the witness and the  
11 intermediary, we did establish the role of the intermediary and the importance for the  
12 Defence to obtain such information. And on this basis, this is the part that we insist  
13 on, Mr President. Thank you.

14 PRESIDING JUDGE FREMR: All right then. So the Chamber will for sure decide.  
15 Prosecution, any comment on that?

16 MS LUPING: Mr President, your Honours, only to say that we will -- we still  
17 maintain our opposition to the request. We do not believe that there has been any  
18 sufficient basis established. It has not been established that this information is  
19 material to the -- the -- to the Defence and, in fact, to the contrary. The witness's  
20 answers have established. There have been no substantive contacts. That was all.  
21 Thank you, your Honours.

22 PRESIDING JUDGE FREMR: Thank you. So the Chamber will certainly decide  
23 before the departure of this witness because in case we decide positively, it will have  
24 some impact on the timing.

25 And the second issue was current timing, so I would just like to inform the parties



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1 that until so far, Defence used 2 hours and 24 minutes for cross-examination. So  
2 pursuant to our principles, we try to observe, it should still have 4 hours and 20  
3 minutes for the rest of cross-examination.

4 Mr Bourgon, you may proceed. And do you want to proceed in private or in open  
5 session?

6 MR BOURGON: In open session, Mr President.

7 PRESIDING JUDGE FREMR: Okay. Then you may proceed.

8 MR BOURGON:

9 Q. Welcome back, sir. I'd like to move now to an issue which is directly related to  
10 what you said at the end of the last session concerning the instructions that were  
11 given to the population in Sayo and other places, as well as the harsh conditions  
12 imposed. And I would like at this stage to show you a video.

13 Mr President, the video I would like to show to the witness is video number on our  
14 list DRC-OTP-2058-0251. And this video, Mr President, the part I would like to  
15 show to the witness goes from 02 hours 01 minute 47 -- sorry 01 hour, 47 minute, 07  
16 seconds until 02 hours, 01 minute, 47 seconds.

17 The transcript that go along this video recording go into the following exhibits: The  
18 first one is the transcription of that video extract, and this can be found at  
19 DRC-OTP-2062-2023, starting at page 45, lines 1622 until page 55, line 1957.

20 The translation of this extract can be found in DRC-OTP-2062-1333. It starts at page  
21 1383, line 1751, until page 1393, lines 2109.

22 Mr President, the witness is not present during this video that I would like to show  
23 him; but, according to the ruling that was issued by the Chamber on 20 October, my  
24 position, Mr President, is as follows: That the witness has just testified at length  
25 about the conditions or the harsh conditions imposed by the Lendu -- by the Lendus

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1 in Sayo and in Mongbwalu.

2 And that video shows -- is relevant to this. I'm not going to say what is in the video  
3 because the witness is present, but the purpose of showing the video is to -- for the  
4 witness to confirm whether what he will see in this video matches his testimony. So  
5 it's a matter of cross-examination, and a matter that goes also to confirming his own  
6 testimony. So it is material that is submitted to the witness as a suggestion that what  
7 he will see matches what he testified about pursuant to the Chamber's decision of  
8 20 October.

9 And I can reply to my colleague, as I see she's on her feet, I can reply to those  
10 arguments, but it is our submission that the decision of 20 October talking about  
11 cross-examination and giving leeway to the Defence. And I can say more after my  
12 colleague provides the Chamber with her objection. Thank you, Mr President.

13 PRESIDING JUDGE FREMR: Ms Luping, before you start, do you think it's better to  
14 keep the witness in or better to escort him for this exchange of views?

15 MS LUPING: I think it is better to have the exchange of views without the witness  
16 present. I would not to want influence his answers.

17 PRESIDING JUDGE FREMR: It was just my concern, so please, court officer, please  
18 escort the witness out of the courtroom.

19 Mr Witness, we will call you back soon.

20 (The witness stands down)

21 PRESIDING JUDGE FREMR: Ms Luping, you may proceed. My last question it's  
22 for you okay to make this objectional comment in the regime of open session?

23 MS LUPING: I will want to make some observations that are of an identifying  
24 nature. If we could move into private session briefly, Mr President.

25 PRESIDING JUDGE FREMR: Well, court officer, let's move into private session.

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1 (Private session at 11.44 a.m.)

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20 (Recess taken at 11.57 a.m.)  
21 (Upon resuming in open session at 12.09 p.m.)  
22 THE COURT USHER: All rise.  
23 Please be seated.  
24 PRESIDING JUDGE FREMR: So after -- so my mic is still on? So -- sorry, it was my  
25 fault.



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1 So after thorough deliberation outside the courtroom, the Chamber decided to  
2 overrule the objection made by Prosecution, which means we grant Defence the  
3 possibility to use this exhibit with this witness.

4 And very briefly, as concerns reasoning of our ruling, I would like to refer to part of  
5 our decision on conduct of proceedings, concretely to paragraph 56, when we  
6 said -- where we said, "If a party wishes to present audio-visual material to a witness,  
7 it must establish that the witness has personal knowledge of the making of the  
8 recording or its contents. This may be achieved by playing a brief excerpt of the  
9 audio-visual material only to the extent strictly necessary for the witness to confirm  
10 his/her personal knowledge of it.

11 Once this has occurred, the party may play the excerpts or the recording it intended  
12 to present to the witness. Regardless of whether the party's allowed to present such  
13 a recording to the witness, the audio-visual material itself will not be considered for  
14 the truth of its contents unless it is admitted into evidence, but we still mean that we  
15 are not establishing by our decision any exception from this because still we believe  
16 that it has, as Defence mentioned, also connection to -- to the issue of credibility, and  
17 which means there are also some differences that are applied to cross-examination,  
18 and because of that we decided as today. Moreover, we believe that it's also  
19 Prosecution -- or exhibit produced originally by Prosecution. We fully believe in its  
20 authenticity, and we don't see any prejudice if Defence will use this exhibit.

21 So now we can call Mr Witness back to the courtroom, and Mr Bourgon may proceed.

22 MR BOURGON: Thank you, Mr President. We have, I'm sorry to say, an  
23 additional difficulty that was not anticipated. We contacted the translation services  
24 during the break; and, of course, our position was that there was no need for the  
25 translation to say anything as the video was played because we have a transcript.

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1 However, the transcript is in French. So is the Trial Chamber interested in getting  
2 translation maybe only for the Chamber in English while the witness is listening to  
3 the original? We don't need a translation. We can -- we have French on this side,  
4 and I take it that the Prosecution can live with the French translation. So I'm not sure  
5 about the Chamber, sir, Mr President.

6 PRESIDING JUDGE FREMR: First of all, Prosecution as concerns translation, any  
7 position from your part?

8 MS LUPING: Mr President, your Honours, it is as you wish. If you prefer to have  
9 English translation as the video is being shown, we do not have a problem with that.

10 PRESIDING JUDGE FREMR: Fine. I think it will be obviously preferable to the  
11 Chamber.

12 Okay. Then, we can move --

13 THE INTERPRETER: Mr President, from the English booth, but the interpreters  
14 have not been provided with a transcript.

15 PRESIDING JUDGE FREMR: Is there a possibility to provide interpreters with a  
16 written transcript?

17 MR BOURGON: We have a hard copy, and I think it can also be put on the screen  
18 for them, I'm not sure. No? But we have a hard a copy.

19 THE COURT OFFICER: We will give the copy to the interpreters, but we can't put  
20 the transcript on the screen, as you will be playing the video.

21 MR BOURGON: So maybe -- here's a hard copy. It is a French one, and I think the  
22 English booth requires it. The other booth will not require.

23 PRESIDING JUDGE FREMR: So I believe that in other -- those conditions it will be  
24 fine with all of us. Another question, I guess, Mr Bourgon, it will be better to present  
25 this video with -- in the regime of private session?

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1 MR BOURGON: Mr President, the video itself is labeled by the Prosecution as a  
2 confidential exhibit, so I think, yes, per se, it should go into private session.  
3 However, I'm not -- I don't understand why the Prosecution made it a confidential  
4 exhibit, and I would prefer if it was played in public session. Maybe we can hear the  
5 Prosecution as to why they made this into a confidential exhibit, Mr President.

6 PRESIDING JUDGE FREMR: We don't know the content, so it is always better to  
7 ask Prosecution. Ms Luping, please.

8 MS LUPING: Mr President, your Honours, there are a number of individuals that  
9 are depicted in this. We cannot say exactly who they are. And for the security of  
10 unknown individuals, it would be better if it is not shown publicly.

11 PRESIDING JUDGE FREMR: All right. I also think it would be safer. So we will  
12 now move into the regime of private session.

13 (Private session at 12.16 p.m.)

14 (Redacted)

15 (Redacted)

16 (Redacted)

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18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

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- 14 (Open session at 12.36 p.m.)
- 15 THE COURT OFFICER: We are in open session, Mr President.
- 16 PRESIDING JUDGE FREMR: Thank you.
- 17 Mr Bourgon, you may proceed.
- 18 MR BOURGON: Thank you, Mr President.
- 19 Q. Sir, I just have a few questions to ask you following your viewing of this video.
- 20 And I will try to do it into one question and maybe if that doesn't work, then I can
- 21 split it up, but just to gain some time I will try to make it into one question.
- 22 I would like you to recall what you saw in this video, which was mentioned by the
- 23 two ladies. So maybe my first question is: Did you understand what was said by
- 24 those two ladies when you viewed the video?
- 25 A. I understood.

1 Q. Now, these two ladies, to paraphrase what they said, because that's the aim of  
2 my question, they mention the difficult conditions they were living in, they mention  
3 being threatened, they mention having been beaten up for two weeks, they mention  
4 having to walk around topless, they mention that they were living very difficult times  
5 and they mention having been intimidated by those who were there before the UPC  
6 arrived, which is the Lendus.

7 What you heard in this video from those two ladies on these specific issues, does that  
8 match, sir, what you describe as what was happening in Sayo and Mongbwalu?

9 PRESIDING JUDGE FREMR: Ms Luping.

10 MS LUPING: Just simply to ask if the question can be broken down because now  
11 this is a very long list and it's a bit unfair I think for the witness. So if it could just be  
12 broken down for the witness, it would make it simpler.

13 PRESIDING JUDGE FREMR: Yes, I support that.

14 Mr Bourgon, please try.

15 MR BOURGON: I was trying to gain time, Mr President, but I agree.

16 Q. The lady who was speaking in this video, sir, she mentioned that they were  
17 living in very difficult conditions. Now, does that match what you said about the  
18 difficult conditions being imposed?

19 A. Not at all. Not at all. These women said that they couldn't eat the manioc  
20 leaves, they couldn't carry out any work, they couldn't even get wood. So in these  
21 conditions which they described, well, those are the conditions they experienced.

22 Q. My question, sir, is these conditions that they describe, does that match what  
23 you testified about and what you personally saw being imposed on the population in  
24 Sayo?

25 A. Yes, exactly. That is correct.

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1 Q. And, sir, the first woman indicated that she had been threatened. Does that  
2 match your testimony that the Lendus and the population of Sayo and Mongbwalu  
3 was being threatened by the FNI?

4 A. Yes. That's correct because it didn't even have -- they didn't have the means to  
5 eat, whether in Mongbwalu or Sayo. Everywhere where the Balendu were the  
6 conditions were the same.

7 Q. And, sir, the lady said that she was personally beaten up for a period of two  
8 weeks. Now, are you aware and does that match your testimony that the people  
9 were being beaten up?

10 MS LUPING: Mr President, if the question --

11 PRESIDING JUDGE FREMR: Ms Luping.

12 MS LUPING: -- could be a bit clearer because it -- was he aware that the people were  
13 being beaten up, what people?

14 MR BOURGON: I will make my question more clear, Mr President.

15 Q. So the lady, the first lady, who was breastfeeding her child, she said that she  
16 had been beaten up for a period of two weeks. Are you aware of other cases of  
17 people who were beaten up at that time by the Lendus?

18 A. The Balendu, between them, they had refused to eat -- to drink, and when  
19 somebody was drinking in the evening, they'd cut their ear off. That was the  
20 condition that the Balendu had imposed.

21 THE INTERPRETER: Microphone, please.

22 THE WITNESS: (No interpretation)

23 THE INTERPRETER: The microphone of the witness was off.

24 PRESIDING JUDGE FREMR: Mr Witness, could you kindly repeat the final part of  
25 your response because it was not captured by the interpreters. Please repeat that.

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1 THE WITNESS: (Interpretation) The way in which these women suffered, in fact  
2 bad conditions were imposed on them, bad living conditions. The Balendu didn't  
3 accept that people could drink alcohol. If somebody drank alcohol that person's ear  
4 would be cut off.

5 MR BOURGON:

6 Q. And, sir, the lady also mentioned at one point that the -- that they were -- that  
7 they had to walk about topless. Does that match what you testified about and are  
8 you familiar that the ladies had to walk topless because they were forced to do so?

9 A. Yes, they were bare-chested, they walked around bare-chested, they couldn't  
10 wear blouses, they just had pagnes around their waist. These women told the truth.

11 Q. Now, these women also said that they were being intimidated. Is that  
12 something you can relate to based on your own knowledge of what was happening?

13 A. That was done everywhere.

14 THE INTERPRETER: Microphone, please.

15 THE WITNESS: (No interpretation)

16 PRESIDING JUDGE FREMR: We haven't received, I think, a translation of the last  
17 witness's response. Any problem on the part of the interpreters?

18 THE INTERPRETER: Your Honour, the Swahili booth indicated they weren't able to  
19 hear the witness. We're not sure what the technical issue is.

20 PRESIDING JUDGE FREMR: I'm sorry, Witness, but I have to again repeat my  
21 request to you to repeat your last response, please.

22 THE WITNESS: (Interpretation) Even among the Balendu, when a woman got  
23 drunk, her ear was cut off. They were struck, they were hit when they were found  
24 on the road. If they had drunk, if they had drunk, they would be seriously punished  
25 and whipped.

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1 MR BOURGON:

2 Q. Thank you, sir.

3 My next question is -- was not mentioned in the video, but you testified to that effect.

4 And I refer to the transcript on 23 October, at page 11, lines 1 to 4. So I will quote  
5 your words:

6 When they arrived, they imposed very bad conditions. A woman could not fold her  
7 arms when they went off to war.

8 I stop here to say, what did you mean by a woman could not fold her arms when they  
9 went off to war?

10 A. This is what I meant to say: The women couldn't cross their arms, they could  
11 not leave their arms out, they had to stay standing up until people left the battle.  
12 You couldn't cross your arms, you couldn't stretch your arms. In the case if you did  
13 that, you were whipped and you could even be killed.

14 Q. And I have one last question, sir, which relates in some parts of the video  
15 that -- this might be a difficult question. Are you familiar with the facts, sir, that at  
16 the time there was actually cannibalism practised by the Lendus over the Hemas?

17 A. Well, I didn't see them practising that, but what I did hear was that they had  
18 eaten an Alur soldier. I didn't see it with my own eyes, but I did -- never see it. But  
19 I never saw them eating human flesh, but I did hear that they had eaten a soldier who  
20 was Alur.

21 Q. Thank you, sir.

22 Before I move on to my next question, Mr President, I would like to ask if the video be  
23 admitted into evidence. And I would like to reserve my comments regarding the  
24 transcript which was used during the hearing because we have a different position  
25 regarding the transcript; we do not believe that a transcript should go into evidence.

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1 What should go into evidence, in our respectful submission, Mr President, is the  
2 video and the comments of the witness. This is what, in our view, should go into  
3 evidence and not the transcript. Thank you.

4 PRESIDING JUDGE FREMR: Ms Luping.

5 MS LUPING: Mr President, your Honours, now, on the basis of your ruling, my  
6 objection is not to the admission of the -- the video being entered into evidence, but to  
7 the entirety of the excerpt what was shown because indeed there's only a -- the earlier  
8 part of the portion of the excerpt was shown to the witness that he was questioned on.  
9 So we would -- I would submit that it is only up to the part on which the witness was  
10 actually questioned about that should be admitted into evidence and the rest -- the  
11 rest of it that followed, because the excerpt does go on for quite some time, should not  
12 be admitted into evidence.

13 PRESIDING JUDGE FREMR: Mr Bourgon.

14 MR BOURGON: Mr President, we -- we tried to limit the excerpt to what was  
15 relevant to those conditions. What I propose, Mr President, is that I can -- to save  
16 some time, I will meet with my colleague and we can agree on an exact timing that  
17 will suit their purposes and our purposes.

18 Our purpose in showing the video is clear and explained, and we are not trying to go  
19 anywhere beyond what we explained we would do.

20 PRESIDING JUDGE FREMR: So we will postpone the decision on this until after the  
21 lunch-break. And please meet and try to find the precise excerpt that should be  
22 admitted.

23 And I understood that the request is only concerning only video, no transcripts?

24 MR BOURGON: At this point in time there is no request for the transcript,  
25 Mr President.

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1 PRESIDING JUDGE FREMR: So please come again after the lunch-break with this  
2 request in a more specific way.

3 Now you may proceed.

4 MR BOURGON: Thank you, Mr President.

5 Q. Sir, we'll move on to a completely different topic which has to do with questions  
6 that were put to you yesterday asking you to identify a -- certain features on sketches  
7 that you made with your statement. And what I would like to do is to call upon -- to  
8 have the following exhibit called up, which is DRC-OTP-0077-0035, which was  
9 admitted yesterday with the witness.

10 MS LUPING: Your Honours.

11 PRESIDING JUDGE FREMR: Ms Luping.

12 MS LUPING: Just a reminder, it is a confidential exhibit.

13 PRESIDING JUDGE FREMR: So we will now move into private session.

14 MR BOURGON: If it's at all --

15 PRESIDING JUDGE FREMR: Please hold on, Mr Bourgon.

16 (Private session at 12.54 p.m.)

17 (Redacted)

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19 (Redacted)

20 (Redacted)

21 (Redacted)

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- 18 (Redacted)
- 19 (Open session at 12.56 p.m.)
- 20 THE COURT OFFICER: We are back in open session.
- 21 PRESIDING JUDGE FREMR: Thank you.
- 22 So you may proceed, Mr Bourgon. And please have in mind that you have
- 23 approximately last 5 minutes before the break.
- 24 MR BOURGON: Thank you, Mr President.
- 25 Q. Sir, you recognize this -- this sketch which was used yesterday during your

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1 testimony?

2 A. I remember very well.

3 Q. Sir, I draw your attention to the left part of your sketch where we see

4 Mongbwalu, and there is an arrow. So my understanding is that this indicates that

5 Mongbwalu is to the left of your sketch; is that correct?

6 A. Mongbwalu is situated on both sides, on the left and on the right. That's where  
7 you see the offices.

8 Q. Sir, the -- you can confirm that Mongbwalu, at least the part that is on the  
9 right -- on the left, sorry, is much lower than Sayo. Do you agree with this?

10 A. Yes, yes. Sayo is on a hill, while Mongbwalu is in the valley.

11 Q. And if I look at your arrow pointing towards Mongbwalu, would I be right that  
12 if I go --

13 A. Ndiyo.

14 Q. -- further left I would reach the airport of Mongbwalu?

15 A. Yes, you would get to Mongbwalu airport because the camp was on -- also on  
16 that side. Mongbwalu was in the valley, while the airport was on the hill.

17 Q. Thank you, sir. I appreciate this because that's exactly my point. The airport  
18 was also much higher than Mongbwalu, which is in the valley between the airport on  
19 one side --

20 A. Ndiyo.

21 Q. -- and Sayo on the other.

22 A. Sayo is a bit higher. You found -- Mongbwalu is found a bit in front. You can  
23 climb up the mountain in order to go to Sayo.

24 Q. And my last question before we break for -- sir, is that Mongbwalu is actually in  
25 the valley in between, on one side the airport and on the other side --

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1 A. Ndiyo.

2 Q. -- with Sayo?

3 A. Yes, Sayo is a bit further away. To go to Mongbwalu, Sayo is 7 kilometres  
4 away.

5 Q. Thank you, sir. We'll take up with this sketch again when we come back from  
6 the break, sir. Thank you very much.

7 Mr President.

8 PRESIDING JUDGE FREMR: Thank you.

9 So now Mr Witness should be escorted out of the courtroom.

10 (The witness stands down)

11 PRESIDING JUDGE FREMR: We will break now for 90 minutes to have a  
12 lunch-break, but before we do that I would like to express on behalf of the Chamber  
13 our special thanks to the interpreters because they succeeded to provide us with  
14 translation even regardless very hard circumstances. So thank you very much for  
15 that.

16 Now we break and we will reconvene at half past 2.

17 THE COURT OFFICER: All rise.

18 (Recess taken at 1.02 p.m.)

19 (Upon resuming in open session at 2.33 p.m.)

20 THE COURT OFFICER: All rise.

21 PRESIDING JUDGE FREMR: Mr Bourgon, we still -- we still don't have witness here,  
22 so please be patient because we would like to start with two procedural issues.

23 The first one is our decision on Defence request seeking disclosure orders and leave to  
24 recall Witness P-886 for further cross-examination.

25 So the Chamber will now render its oral ruling on the Defence request seeking disclosure

1 orders and leave to recall Witness P-886 for further cross-examination filed earlier this  
2 morning. It's filing number 948 confidential.

3 The Defence submits that the cross-examination of Witness P-886 establishes that the  
4 witness had substantive contacts with Prosecution's intermediary P-743. The Defence  
5 requests that the Prosecution be ordered to disclose any information  
6 provided -- provided by the witness to this intermediary in its possession as well as any  
7 reports provided to the Prosecution by the intermediary containing information that he  
8 received from the witness.

9 The Defence requests leave to further cross-examine the witness at a later stage if  
10 necessary. The Defence also requests that the Prosecution be ordered to disclose any  
11 similar information relating to contacts between P-743 and other Prosecution witnesses.  
12 This morning, the Prosecution responded orally to the request. Afterwards, with leave  
13 of the Chamber, the Defence asked the witness additional questions to clarify his  
14 contacts with the intermediary.

15 When subsequently asked whether the Defence maintains its disclosure request, the  
16 Defence stated that it insists on the Prosecution being ordered to disclose the information  
17 related to the intermediary which is P-743 in terms of his relationship with the witness  
18 and other witnesses.

19 In this regard, the Defence submitted that it had established during its cross-examination  
20 of the witness a more than sufficient basis to establish the importance of the role of the  
21 intermediary in this case and the importance for the Defence to obtain such information.

22 The Chamber notes that the Prosecution stated that intermediary P-743 had no  
23 substantive contact with P-886 and that no further screening notes exist.

24 The Chamber considers that the answers provided by the witness to the Defence further  
25 questions appear to confirm the limited nature of the interaction between the witness

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1 and the intermediary.

2 The Chamber does not consider that the testimony of the witness has provided a basis to  
3 reconsider its previous oral decision of 26 October 2015 on the Defence disclosure  
4 request relating to intermediary P-743 nor to grant additional disclosure of the nature  
5 described either in Defence filing number 948 or in the oral submissions this morning.

6 The request is, therefore, rejected.

7 This concludes the Chamber's ruling.

8 And the second issue concerns the last point before our break, we encouraged the parties  
9 to have some negotiation as concerns possible admission of video, especially to specify  
10 those excerpts which are really relevant.

11 Have you made any progress in this, Mr Bourgon?

12 MR BOURGON: Thank you, Mr President. There were some inter partes consultation  
13 during the lunch break. We have not reached an agreement, a final agreement, but we  
14 are close to doing so. The excerpts shown to the witness will be much reduced in the  
15 time -- in the time frame of the excerpt because I want to stick with exactly what I  
16 intended to show and nothing more. And it is my submission, Mr President, that by  
17 tomorrow morning we should agree on the specific timing for this excerpt.

18 PRESIDING JUDGE FREMR: Ms Luping, could you kindly confirm this perspective.

19 MS LUPING: Thank you, Mr President, your Honours. The Prosecution has indicated  
20 to the Defence the specific time stamps or, rather, the specific excerpt of the video that  
21 we would be able to agree to. We have not yet had a response to that. If Mr Bourgon  
22 believes that we're able to reach agreement, that we're close, then we'll certainly seek to  
23 endeavour do so. We'll be able to inform you in the morning as to the result of those  
24 discussions.

25 PRESIDING JUDGE FREMR: Thank you very much. Even if the agreement hasn't

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1    been reached yet, we anyway appreciate some cooperative spirit.

2    Okay, so now the witness may be escorted into courtroom.

3    And Mr Bourgon, what kind of regime your upcoming questions require?

4    MR BOURGON:   The same regime as when we left before the lunch-break, which is to  
5    testify in public session; however, the exhibit itself, which is the sketch that the witness  
6    prepared, should not be shown outside of the courtroom.   So if we can maybe close the  
7    blinds immediately to ensure that the sketch does not appear to the public.

8    (The witness enters the courtroom)

9    PRESIDING JUDGE FREMR:   Okay.   Court officer, please make the same arrangement  
10   like before the break.

11   Mr Witness, good afternoon.   I know that it is a long day.

12   THE WITNESS:   (Interpretation)   Good afternoon.

13   PRESIDING JUDGE FREMR:   I know that it is a long day today for you, but we're now  
14   approaching the last part of the trial today, so please continue.   You were doing very  
15   well.   So please continue in the same way.

16   Okay.   Now Mr Bourgon you may proceed.

17   MR BOURGON:   Thank you, Mr President.   I would like to call up exhibit number  
18   DRC-OTP-2077-0035.   And as indicated previously, the exhibit should not be available  
19   or should not be -- the public should not be able to see the exhibit itself.

20   Q.   Sir, this exhibit that will appear in front of you is the sketch we were working with  
21   this morning just before the break.   You recall this?

22   Sir, if you could confirm by yes or no whether you recognize this sketch as being your  
23   own sketch?

24   A.   I recognize the diagram and, by the way, I saw it yesterday.   It's the same sketch.

25   Q.   Now, just before we left for the lunch-break, I was trying to establish with you the

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1 position of Mongbwalu, which is indicated by an arrow to the left of your sketch, and I  
2 suggested to you that if you position yourself in Mongbwalu, on one side you will have  
3 Sayo, which is higher on a hill, and on the other side you will have the airport which is  
4 also higher on a hill. Can you confirm this?

5 A. Yes, indeed. Sayo is up the hill because Mongbwalu lies in a valley. However,  
6 the airport is at another location, which is to the left of Mongbwalu on an elevated piece  
7 of land.

8 Q. Thank you, sir. That is exactly what I was trying to establish with you.

9 Now, I understand, sir, that you are, of course, very familiar with the road that goes  
10 from Mongbwalu to Sayo, which is indicated on your sketch.

11 A. Well, you can see on the sketch a road going down to Mongbwalu centre. The  
12 sketch, which I drew, shows you how to go to Mongbwalu by going through a number  
13 of villages.

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 MS LUPING: Mr President, your Honours.

19 PRESIDING JUDGE FREMR: Ms Luping.

20 MS LUPING: I didn't want to interrupt previously, but just a reminder, we are in  
21 public session. Perhaps it was the -- it was the nature of the question. I let it go, but  
22 clearly from the answer we're going to come into problems. We may need to go into  
23 private session.

24 PRESIDING JUDGE FREMR: Mr Bourgon, your position?

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 PRESIDING JUDGE FREMR: Which means that they are of what nature?

4 MR BOURGON: They -- they are of nature of identifying features like we did yesterday,  
5 like the Prosecution did, some features along that road. So it's his knowledge of the  
6 sketch that he draw -- that he drew.

7 PRESIDING JUDGE FREMR: I still believe that we are remaining in a relatively general  
8 level, so if there would be --

9 THE WITNESS: (Interpretation) I recognize the sketch very well. And as I explained  
10 to you yesterday, you can crosscheck everything that I have told you. And it appears  
11 on this sketch.

12 PRESIDING JUDGE FREMR: Mr Witness, hold on.

13 So I just would like to conclude that at the moment I don't see any urgent reason to move  
14 into private session, but if there would be any question which could identify the witness,  
15 please let us know Mr Bourgon; otherwise, I still believe that the knowledge of the place,  
16 even including details, should not identify or put our witness at risk.

17 So you may proceed, Mr Bourgon.

18 MR BOURGON: Thank you, Mr President.

19 Q. Sir, my first question is: I see on your sketch to the left "Usine Kanga." Now,  
20 you're very familiar with that feature are you not, sir?

21 A. The Kanga factory is near the road. However, it was destroyed. Only the ruins  
22 remain. Nothing else stands there. It had been built close to the road in any event.

23 Q. And I take it, sir, that you are aware that this factory was destroyed long before the  
24 events you describe in your testimony; is that correct?

25 A. That factory was destroyed by the attackers.



1 Q. By which attackers, sir?

2 A. By -- the FNI troops, who used to work in that factory, were driven out by the UPC  
3 when they arrived and destroyed everything.

4 Q. And when was this, sir, so that there is no misunderstanding?

5 A. Initially, it was the FNI troops that came to Mongbwalu, but they did not touch  
6 that factory. Later on other troops came and destroyed the factory. When they left,  
7 the FNI soldiers then came back. And the factory was attacked and everything that  
8 remained was destroyed. And the corrugated roofing sheets from the factory were  
9 taken away and everything else.

10 Q. I would just like to know, sir, the destruction you are talking about, is it close in  
11 time to the events you describe which happened in Sayo or long before that?

12 A. There had been clashes previously. The UPC troops clashed with the government  
13 forces and the FNI. Then later on, when the UPC soldiers left, the FNI troops came  
14 back and destroyed everything.

15 Q. I'll move on and maybe with some other -- maybe we can have a more -- to  
16 establish when in time this took place.

17 Let me ask you, on your sketch that is before you, I want to know if there is a feature that  
18 you are aware of called the appartement and whether this appears on that sketch.

19 A. I know that place.

20 Q. Is that place -- does it appear in your sketch?

21 A. No. On the sketch you can see the location where the factory was built right up to  
22 Sayo going through Adidi mine and Adidi montagne.

23 Q. And, sir, the appartement, what is that? What do you know about the  
24 appartement?

25 A. The location known as appartement was a large compound in which the white

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1 people who used to work for that factory lived. It was a factory that was located there  
2 in that very place and that is what was referred to as appartement.

3 Q. And the appartement, sir, did they still exist when the events took place in Sayo  
4 that you describe?

5 A. Yes. Appartement has always existed, before the fighting and even after the  
6 fighting. White people used to live at that location, but at the time of the war, they left.

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 PRESIDING JUDGE FREMR: All right. To be safer, court officer, let's move into  
16 private session.

17 (Private session at 2.56 p.m.)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

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9 (Open session at 16.05 p.m.)

10 THE COURT OFFICER: We're in open session, Mr President.

11 PRESIDING JUDGE FREMR: Thank you. And before we adjourn, I would like to  
12 make an inquiry for the sake of planning of the next witness. First of all, Court Officer,  
13 could you provide me with time used so far by the Defence for cross-examination of this  
14 witness?

15 THE COURT OFFICER: Yes, Mr President. The Defence team has used 4 hours and  
16 30 minute in total.

17 PRESIDING JUDGE FREMR: So because according to my notes, time used by  
18 Prosecution was 6 hours 45 minutes. So in accordance with our policy you still have at  
19 your disposal 2 hours 15 minutes. Mr Bourgon, do you think it will be sufficient for  
20 you to finish your cross-examination?

21 MR BOURGON: The maximum time that you just stated will be, for sure, sufficient,  
22 but I will endeavor to use less time.

23 Thank you, Mr President.

24 PRESIDING JUDGE FREMR: Even better.

25 At the last tribunal question to Mr Luping: Ms Luping, do you presume any need for



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- 1 direct examination of this witness?
- 2 MS LUPING: There had been some, but it will not be for a considerable amount of time,
- 3 your Honours.
- 4 PRESIDING JUDGE FREMR: Okay, then. Thank you very much. We adjourn, and
- 5 we will reconvene tomorrow at 9.30.
- 6 THE COURT USHER: All rise.
- 7 (The hearing ends in open session at 4.06 p.m.)