

Trial Hearing
WITNESS: DRC-D18-D-0207

(Open Session)

ICC-01/04-02/06

1 International Criminal Court
2 Trial Chamber VI
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and
6 Judge Chang-ho Chung
7 Trial Hearing - Courtroom 2
8 Monday, 29 January 2018
9 (The hearing starts in open session at 9.32 a.m.)
10 THE COURT USHER: [9:32:04] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: [9:32:47] Good morning, everybody.
14 Court officer, please call the case.
15 THE COURT OFFICER: [9:32:52] 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 For the record, we are in open session.
19 PRESIDING JUDGE FREMR: [9:33:14] Thank you, court officer.
20 Now appearances, please, in usual order.
21 MS MORRIS: [9:33:21] Good morning, Mr President. Good morning, your
22 Honours. My name is Laura Morris. On behalf of the Prosecution with me today,
23 Mr Eric Iverson, Ms Nicole Samson, Ms Marion Rabanit, and Ms Selam Yirgou.
24 Thank you.
25 PRESIDING JUDGE FREMR: [9:33:36] Thank you, Ms Morris.

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1 Defence, please.

2 MR BOURGON: [9:33:43] (Interpretation) Good morning, your Honour.

3 Representing Bosco Ntaganda, who is present in the courtroom this morning,

4 Daria Mascetti, Nour Saadi, Félix Gluckstein, Margaux Portier, Didas Nyirinkwaya,

5 and myself, Stéphane Bourgon. Thank you, your Honour.

6 PRESIDING JUDGE FREMR: [9:34:05] Thank you, Mr Bourgon.

7 Legal Representative of Victims, please.

8 MS PELLET: [9:34:12] (Interpretation) Thank you, your Honour. The former child

9 soldiers are represented by Vony Rambolamanana and by myself, Sarah Pellet,

10 counsel with the Office of Public Counsel for Victims.

11 MR SUPRUN: [9:34:24] (Interpretation) Good morning, your Honour, your Honours.

12 The victims of the attacks are represented by Anne Grabowski, ALO, Claire Lefevre,

13 intern, and myself, Dmytro Suprun, counsel with the Office of Public Counsel for

14 Victims.

15 PRESIDING JUDGE FREMR: [9:34:43] Thank you, Ms Pellet.

16 Thank you, Mr Suprun.

17 As I can see, both parties and participants have brought very numerous and strong

18 teams, so we did the same. Welcome back.

19 Today, we are going to commence the sixth evidentiary block. As you all know, due

20 to the few changes that have occurred compared to original schedule, we will not sit

21 for the whole time as we planned, because originally we were going to sit until

22 23 February 2018. However, under current circumstances we have only one witness

23 scheduled to testify; that is D-207, so we will finish this last evidentiary block of the

24 presentation of the evidence by the Defence much sooner than we originally expected.

25 Before we start with the witness testimony, I will address as usual a few procedural

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1 matters.

2 First, the issue of Witness D-80. I recall that pursuant to the decision with filing
3 number 2100, Witness D-80 was included in the first forthcoming witness list for the
4 sixth evidentiary block, which was circulated by the Defence on 22 December 2017.

5 On 24 January 2018 further to a Registry report in relation to Witness D-80,
6 the Defence filed a renewed request bearing filing number 2193 for admission of the
7 prior recorded testimony of Witness D-80 pursuant to Rule 68(2)(c). And in this
8 filing the Defence submits that the Witness D-80 should be found to be unavailable
9 pursuant to Rule 68(2)(c). This request is currently pending before the Chamber,
10 awaiting responses to be filed by the end of today. The Chamber will issue its
11 decision in due course.

12 As a related matter, the Chamber refers to the Prosecution request with filing number
13 2171, to use detention centre calls during the sixth evidentiary block, and more
14 specifically, for its cross-examination of Witness D-80. The Defence responded to
15 this request in filing number 2181, and the Prosecution, after having been granted
16 leave by the Chamber to do so, filed a reply with filing number 2109, noting that
17 Witness D-80 is now subject to the renewed Rule 68(2)(c) request and no longer
18 scheduled to appear before the Chamber in person. The Chamber hereby declares
19 the aforementioned Prosecution request moot.

20 Now I turn to matters related to Witness 207, whom I will refer to as "witness".

21 For the record, I recall that in our decision filed on 20 October 2017 bearing filing
22 number 2099, the Chamber granted the Defence request to add this witness to its list
23 of witnesses and rejected the request for admission of his prior recorded testimony
24 pursuant to Rule 68(2)(b) and directed that the witness's testimony be scheduled in
25 the sixth evidentiary block.

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1 I further recall that pursuant to the Chamber's decision bearing filing number 2175,
2 the witness will testify today via video link.

3 It is also recalled that on 26 January 2018 in decision bearing filing number 2195,
4 the Chamber granted the Defence request for protective measures in relation to the
5 witness in the form of voice and face distortion during the witness testimony and the
6 use of a pseudonym for the purpose of the trial.

7 Further, I note that on 26 January 2018 the VWU provided its vulnerability
8 assessment for the witness in which no special measures are recommended.

9 Finally, I recall that the Defence has indicated that it estimates it will require one and
10 a half hours for its examination-in-chief of the witness, and the Prosecution, as per
11 usual practice, will be entitled to the same amount of time for its cross-examination,
12 unless there would be some extraordinary circumstances.

13 Before we turn to the scheduled testimony, are there any requests for the floor from
14 the parties or participants? I don't see any sign of such a request.

15 So now, court officer, please start the video link, or I think we have already connected,
16 so please, I would like to ask court officer in the field to invite Mr Witness to come to
17 the video room.

18 (The witness enters the video-link room)

19 PRESIDING JUDGE FREMR: [9:42:17] Mr Witness, good morning. I confirm
20 that -- Mr Witness, good morning. I can confirm that we can see and hear you via
21 video link. Due to your greeting, I understand that you also can see and hear us. Is
22 it the case? Can you confirm that, that you can see and hear us?

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24 (The witness speaks Swahili)

25 (The witness gives evidence via video link)

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1 THE WITNESS: [9:42:47] (Interpretation) Good morning, yes, I can see.

2 (No interpretation)

3 PRESIDING JUDGE FREMR: [9:43:07] Very well, Mr Witness. You are called to
4 testify before us in the case against Mr Bosco Ntaganda. You will be soon asked
5 questions both by the Judges and lawyers here in the courtroom. In relation to that, I
6 would like to provide you with some guidance for answering those questions.

7 Please listen carefully to those questions that you will be asked. If you do not
8 understand, feel free to ask for the questions to be repeated.

9 We want you to tell the truth and tell us what you saw, heard or sensed yourself. If
10 you didn't see or hear it yourself but you found out some other way, then you should
11 explain how. You may not remember all details and it does not matter. Please
12 testify just on that which you really remember. Don't guess, don't make things up.
13 There is nothing wrong in saying "I don't know" or "I don't remember".

14 Do you understand all this, Mr Witness?

15 THE WITNESS: [9:44:26] (Interpretation) Yes, I understand.

16 PRESIDING JUDGE FREMR: [9:44:32] All right. Then we can move to the issue of
17 protective measures. Protective measures are put in place to ensure that your
18 identity is not revealed to the public. In practice, it means that on the video stream
19 available to the public, your face cannot be recognised and that your voice is being
20 disguised so that the public cannot recognise it. We all here in the courtroom will
21 refer to you as "Mr Witness" only and ensure that your name and any other
22 information that risks revealing who you are is not broadcast to the public.
23 Therefore, whenever you need to describe anything that might reveal your identity,
24 we will do so in regime of so-called private session so that no one, apart from the
25 court officer sitting with you and the persons here in The Hague in the courtroom can

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1 hear your answer.

2 Do you understand this, Mr Witness?

3 THE WITNESS: [9:45:54] (Interpretation) Yes.

4 PRESIDING JUDGE FREMR: [9:45:58] Fine. Now, Mr Witness, I would like to
5 approach to your solemn undertaking. So I will ask court officer which is with you
6 to provide you with the text of solemn undertaking, and please read out the text to
7 tell the truth from this paper.

8 Or if you don't have paper, I can just read it out myself and you will repeat after me.
9 So, court officer, I can facilitate it. I will read it out to the witness myself. All right.

10 So, Mr Witness, please repeat after me: I solemnly declare.

11 THE WITNESS: [9:46:52] (Interpretation) I solemnly declare.

12 PRESIDING JUDGE FREMR: [9:46:58] That I will speak the truth.

13 THE WITNESS: [9:47:10] (Interpretation) That I will speak the truth.

14 PRESIDING JUDGE FREMR: [9:47:12] The whole truth.

15 THE WITNESS: [9:47:16] (Interpretation) The whole truth.

16 PRESIDING JUDGE FREMR: [9:47:21] And nothing but the truth.

17 THE WITNESS: [9:47:25] (Interpretation) And nothing but the truth.

18 PRESIDING JUDGE FREMR: [9:47:35] Thank you, Mr Witness.

19 It means that now you are under oath and you need to be aware that it is an offence to
20 give false testimony.

21 Do you understand that?

22 THE WITNESS: [9:47:52] (Interpretation) Yes, I understand. I am here to tell the
23 truth and not lies.

24 PRESIDING JUDGE FREMR: [9:48:05] Very well, Mr Witness. The Chamber
25 appreciates that. And finally a few practical matters you should have in mind when

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1 giving your testimony: It's important to speak into the microphone - so far you have
2 been doing that very well - to speak clearly and to speak at a slow pace,
3 approximately like me, to allow the interpreters to translate everything. This is very
4 important for us to properly hear, translate and record what are you saying.

5 Have you understood all that, Mr Witness.

6 THE WITNESS: [9:48:59] (Interpretation) Yes, I have understood.

7 PRESIDING JUDGE FREMR: [9:49:01] And last guidance, you will be now
8 examined first by representative of the Defence, then by representative of
9 the Prosecution, then potentially by the Chamber or by Legal Representatives of
10 Victims. So now at the beginning I am giving floor to Mr Bourgon, lead counsel of
11 the Defence.

12 Mr Bourgon, you have the floor and we are in open session.

13 MR BOURGON: [9:49:36] (Interpretation) Thank you, your Honour.

14 QUESTIONED BY MR BOURGON:

15 Q. [9:49:47] Good morning, Witness.

16 A. [9:49:50] Good morning.

17 Q. [9:49:51] We had the opportunity to meet previously during the preparation
18 session last week. But for the purposes of the record, I will introduce myself again.
19 I am Stéphane Bourgon. I am the lawyer representing Bosco Ntaganda. Do you
20 understand that well?

21 A. [9:50:13] Yes, I have understood.

22 Q. [9:50:18] Today I am in the company of my collaborators, members of
23 Mr Ntaganda's team. Two of them you know very well, Margaux, who is with me,
24 and Félix. But together today we are going to put a few questions to you concerning
25 your knowledge of the events in 2002 and 2003. Do you understand that?

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1 A. [9:50:46] Yes, I understand.

2 Q. [9:50:52] So I am going to ask for leave from the Presiding Judge to go into
3 private session so that we can -- so that we may put questions to you concerning your
4 identity.

5 MR BOURGON: [9:51:05] (Interpretation) Your Honour, could we please go into
6 private session?

7 PRESIDING JUDGE FREMR: [9:51:09] Certainly. Before doing that, I would like to
8 inform public, especially public sitting in our public gallery, that this witness is
9 protected one, which means that he was granted that his identity will not be revealed
10 to the public. So in any part of his testimony where there is a risk that his identity
11 could be revealed, we will have to go to the private session, and I'm afraid a bit that it
12 will be for the most of this testimony. So just to give you this information.

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

14 (Private session at 9.52 a.m.) *(Reclassified partially in public)

15 THE COURT OFFICER: [9:52:05] We are in private session, Mr President.

16 PRESIDING JUDGE FREMR: [9:52:09] Thank you, court officer.

17 Mr Bourgon, you have the floor.

18 MR BOURGON: [9:52:14] (Interpretation) Thank you, your Honour. Before
19 starting, I would like to take this opportunity in order to inform the Chamber that my
20 examination-in-chief should not last for more than an hour. And I would like to
21 make my colleagues aware.

22 THE INTERPRETER: [9:52:32] The interpreter points out there is a lot of background
23 noise so it is difficult to hear what is being said.

24 MR BOURGON: [9:52:40] (Interpretation)

25 Q. [9:52:41] Witness, now we are in private session and people cannot hear or see

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- 1 you, would you be so kind as to tell us your full name.
- 2 A. [9:53:00] I haven't understood the question.
- 3 Q. [9:53:03] Please could you be so kind as to give us your full name.
- 4 A. [9:53:15] (Redacted).
- 5 Q. [9:53:25] (Redacted)
- 6 (Redacted)?
- 7 A. [9:53:46] Yes.
- 8 Q. [9:53:50] What is your date of birth, Witness?
- 9 A. [9:53:57] (Redacted).
- 10 Q. [9:54:13] (Redacted)
- 11 (Redacted)?
- 12 A. [9:54:27] (Redacted).
- 13 Q. [9:54:33] (Redacted)?
- 14 A. [9:54:47] (Redacted)
- 15 (Redacted)
- 16 (Redacted).
- 17 Q. [9:55:18] According to the information that I have, you speak and write French,
- 18 Swahili and Kilendu; is that correct?
- 19 A. [9:55:33] Yes, that's correct.
- 20 Q. [9:55:42] And which ethnic group do you belong to?
- 21 A. [9:55:49] I am from the Hema Nord group.
- 22 Q. [9:55:53] (Redacted)?
- 23 A. [9:56:04] (Redacted).
- 24 Q. [9:56:11] (Redacted)
- 25 (Redacted)?

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- 1 A. [9:56:22] (Redacted).
- 2 Q. [9:56:26] (Redacted)?
- 3 A. [9:56:30] (Redacted).
- 4 Q. [9:56:45] What is your current occupation, Witness?
- 5 A. [9:56:59] I'm a businessman. And I work as a gold digger or as a trader.
- 6 Q. [9:57:09] Are you married?
- 7 A. [9:57:15] Yes.
- 8 Q. [9:57:18] Do you have any children? If so, how many?
- 9 A. [9:57:28] (Redacted).
- 10 Q. [9:57:38] And what gender are your children, Witness?
- 11 A. [9:57:48] (Redacted).
- 12 Q. [9:57:51] (Redacted)?
- 13 A. [9:58:06] (Redacted)
- 14 (Redacted).
- 15 Q. [9:58:20] In 2002/2003, where were you living at that time?
- 16 A. [9:58:31] I was living in (Redacted) in Bunia.
- 17 Q. [9:58:38] What was your occupation at that time in 2002 and 2003?
- 18 A. [9:58:51] I was a businessman.
- 19 Q. [9:58:57] Do you currently have a residence in (Redacted)?
- 20 A. [9:59:08] Yes, I have a compound there.
- 21 Q. [9:59:14] (Redacted)
- 22 (Redacted)?
- 23 A. [9:59:26] (Redacted).
- 24 Q. [9:59:39] Could you give us a general description of where your compound is in
- 25 (Redacted)?

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1 A. [10:00:00] (Redacted).

2 THE INTERPRETER: [10:00:07] Your Honour, could we ask the witness to repeat the
3 last part of the answer. The Swahili booth was not able to fully catch the last answer.

4 PRESIDING JUDGE FREMR: [10:00:17] Mr Witness, the interpreters haven't caught
5 the last part of your response. Could you kindly repeat it again.

6 THE WITNESS: [10:00:36] (Interpretation) This is what I said: (Redacted)
7 (Redacted).

8 PRESIDING JUDGE FREMR: [10:00:57] Thank you, Mr Witness. Mr Bourgon,
9 please proceed.

10 MR BOURGON: [10:01:00] (Interpretation) Thank you, Mr President.

11 Q. [10:01:02] (Redacted)?

12 A. [10:01:13] (Redacted)
13 (Redacted).

14 Q. [10:01:33] Your residence in the neighbourhood which you have just described,
15 how far is it from (Redacted)?

16 A. [10:01:56] (Redacted).

17 Q. [10:02:09] Mr Witness, are there any schools in (Redacted)?

18 A. [10:02:16] Yes, there are many schools there.

19 Q. [10:02:23] (Redacted)?

20 A. [10:02:39] (Redacted).

21 Q. [10:02:48] (Redacted)?

22 A. [10:03:06] (Redacted)
23 (Redacted).

24 Q. [10:03:26] (Redacted)
25 (Redacted)?

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1 A. [10:03:43] (Redacted)

2 (Redacted)

3 (Redacted).

4 Q. [10:04:03] The house you are referring to, Mr Witness, is it the same house you
5 used to live in in 2002/2003?

6 A. [10:04:14] Yes.

7 Q. [10:04:19] The (Redacted) school, did it serve the same purpose in 2002/2003?

8 A. [10:04:37] Even before then it was a school and it is still a school to this day;
9 children continue to attend it.

10 Q. [10:04:51] How old are the children who go to (Redacted) school?

11 A. [10:05:11] The ages range from 6 to 12 years.

12 Q. [10:05:20] A little earlier on you said that there were a number of schools in
13 (Redacted). Which other schools do we have in (Redacted)?

14 A. [10:05:39] You have the (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted).

18 Q. [10:06:11] You have just mentioned some four schools. How far are those
19 institutions from your house, if you are able to tell the Court?

20 A. [10:06:30] I cannot provide specific details, (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted).

24 But I can't, I can't be more specific than that. (Redacted)

25 (Redacted).

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1 Q. [10:07:13] Thank you, Mr Witness. Now, let us move on or let us move back to
2 public session, and I will attempt to put a few questions to you. But if at any time
3 whatsoever you feel that your answer might reveal your identity, please raise your
4 hand and indicate that we go back into private session.

5 Mr President, can with go back to open session?

6 PRESIDING JUDGE FREMR: [10:07:42] Certainly.

7 Court officer, let's return back into open session.

8 (Open session at 10.07 a.m.)

9 THE COURT OFFICER: [10:07:55] We are back in open session, Mr President.

10 PRESIDING JUDGE FREMR: [10:08:01] Thank you, court officer.

11 Mr Bourgon, you have the floor.

12 MR BOURGON: [10:08:06] (Interpretation) Thank you, Mr President.

13 Q. [10:08:13] Mr Witness, during the period 2002/2003, what was your occupation?

14 And please don't mention the place where you exercised that occupation.

15 A. [10:08:39] I am sorry, I have not understood your question.

16 Q. [10:08:44] I will rephrase.

17 PRESIDING JUDGE FREMR: [10:08:46] Mr Bourgon, I have to interrupt you,

18 because for the moment we lost video. We can hear the witness, but we can't see

19 him. So we will get hopefully some short time to fix it. Until that, we can't

20 continue.

21 Now, I can, yeah, we all I think can see a picture of Mr Witness -- disappeared again.

22 Our court officer is working on that.

23 So now I think we can see, we all can see Mr Witness on all our screens. Thank you,

24 court officer.

25 Mr Bourgon, please proceed.

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1 MR BOURGON: [10:10:27] (Interpretation) Thank you, Mr President.

2 Q. Now, Witness, let me repeat my question, because we had a few, we ran into
3 a few technical issues. Now, without mentioning the location where you used to
4 work, what was your occupation in 2002/2003?

5 A. [10:11:01] I was a trader, a businessman.

6 Q. [10:11:09] During the period 2002/2003, did you belong to any armed group
7 whatsoever?

8 A. [10:11:23] No, I did not join any armed group.

9 Q. [10:11:31] Without telling us where you used to live, was there any armed
10 fighting in that area in 2002/2003?

11 A. [10:11:54] Yes. There was fighting in the area.

12 Q. [10:12:00] Now, still without telling us the location where you used to live, can
13 you tell us who were the attackers in that area?

14 A. [10:12:20] It was the Lendu who attacked that area.

15 Q. [10:12:25] Still without telling us where you used to live, who defended, if you
16 know, as the case may be, who defended the area where you used to live?

17 A. [10:12:50] We, we fled.

18 Q. [10:13:01] Still without mentioning the name of the location, was there an armed
19 group which protected that area and was fighting the attacker in that area?

20 A. [10:13:24] Before there was a peace committee in place made up of young people
21 who were defending the area.

22 Q. [10:13:38] After the peace committee, was there any other group whatsoever set
23 up for the Defence of the area where you used to live? And please don't mention the
24 name of the area.

25 A. [10:13:56] Yes, the UPC.

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1 Q. [10:14:06] Now, going beyond 2002 and 2003, and speaking about yourself, did
2 you ever at any time belong to an armed group?

3 A. [10:14:34] I have never joined an armed group, even to this day.

4 MR BOURGON: [10:14:44] Mr President, can we again return to private session.

5 PRESIDING JUDGE FREMR: [10:14:46] Understandable.

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

7 (Private session at 10.14 a.m.) *(Reclassified partially in public)

8 THE COURT OFFICER: [10:14:51] We are in private session.

9 PRESIDING JUDGE FREMR: [10:15:02] Thank you, court officer.

10 Mr Bourgon, please.

11 MR BOURGON: [10:15:07] (Interpretation) Thank you, Mr President.

12 Q. [10:15:12] Now, Mr Witness, a little earlier on you testified that during the
13 fighting you fled. Where did you go? What did you do when there was fighting in
14 the area where you used to live?

15 A. [10:15:44] We fled to (Redacted) -- or, rather, we fled to the bush.

16 Q. [10:16:00] (Redacted)

17 (Redacted).

18 A. [10:16:25] (Redacted)

19 (Redacted).

20 Q. [10:16:47] (Redacted)

21 (Redacted)?

22 A. [10:17:10] (Redacted).

23 Q. [10:17:25] (Redacted)?

24 A. [10:17:47] (Redacted).

25 Q. [10:17:51] (Redacted)

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1 (Redacted).

2 A. [10:18:16] (Redacted).

3 Q. [10:18:20] (Redacted)?

4 A. [10:18:33] (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted).

8 Q. [10:19:01] (Redacted)?

9 A. [10:19:23] (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted).

13 Q. [10:19:57] Thank you very much. When the fighting came to an end or was
14 over, what would you do at that time?

15 A. [10:20:13] When we heard that fighting had ceased, we would go back to our
16 homes (Redacted).

17 Q. [10:20:29] When you got home (Redacted), what did you do at that time?

18 A. [10:20:42] We would be watching out to see whether the war would continue or
19 not. If not, then we would stay on.

20 Q. [10:20:55] Was there a lot of destruction (Redacted)during the fighting?

21 A. [10:21:09] You know that when there is war people die and things are burnt as
22 well.

23 Q. [10:21:28] A little earlier on in answer to my question you said "we", what you
24 did as a group. Who is "we"? Who are those who fled and came back to (Redacted)
25 subsequently? Who does "we" refer to?

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1 A. [10:21:59] When I say "we fled" it means that I was not the only one who fled.

2 So when the war started everybody looked for a hiding place somewhere, and people
3 went in different directions.

4 Q. [10:22:20] What was the ethnic composition of those who fled (Redacted) when
5 there was fighting?

6 A. [10:22:39] Mostly those from our tribe, Hema, as well as people from our smaller
7 tribes who were neutral.

8 Q. [10:22:55] A little earlier on you said that there was a group called the UPC.
9 What did you know about that group UPC in 2002 and 2003?

10 A. [10:23:29] You have asked me what I know, or what I knew. What do you
11 mean? I don't -- I have not understood your question.

12 Q. [10:23:42] Were you aware of the activities of the group called the UPC?

13 A. [10:23:57] Well, I was taking care of my business and I did not know much
14 about their activities.

15 Q. [10:24:09] Mr Witness, I want to move on now to today, the period of today. (Redacted)
16 (Redacted)
17 (Redacted).

18 A. [10:24:43] Yes, I know him.

19 Q. [10:24:47] Who is that individual?

20 A. [10:25:06] I have a question: Are we in private session, before I answer the
21 question?

22 PRESIDING JUDGE FREMR: [10:25:13] Yes, Mr Witness, I can confirm we are at the
23 moment in private session, so you -- feel free to mention any name.

24 MR BOURGON: [10:25:33] (Interpretation)

25 Q. [10:25:33] Do you want me to repeat my question?

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- 1 A. [10:25:37] Thank you. Please go ahead and put the question to me.
- 2 Q. [10:25:55] (Redacted)?
- 3 A. [10:26:15] (Redacted)
- 4 (Redacted).
- 5 Q. [10:26:31] (Redacted)?
- 6 A. [10:26:46] (Redacted)
- 7 (Redacted)
- 8 (Redacted).
- 9 Q. [10:27:03] Did you know (Redacted) in 2002/2003?
- 10 A. [10:27:16] Yes. I knew him very well at that time. Very well.
- 11 Q. [10:27:26] (Redacted)
- 12 (Redacted)?
- 13 A. [10:27:54] (Redacted).
- 14 Q. [10:27:57] (Redacted)
- 15 (Redacted).
- 16 A. [10:28:16] (Redacted)
- 17 (Redacted)
- 18 (Redacted).
- 19 Q. [10:28:39] Before 2002/2003 did you know (Redacted)?
- 20 A. [10:28:54] Yes, I knew him very well. (Redacted)
- 21 (Redacted).
- 22 Q. [10:29:02] (Redacted)
- 23 (Redacted).
- 24 A. [10:29:22] (Redacted).
- 25 Q. [10:29:38] (Redacted)

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1 (Redacted)?

2 A. [10:29:55] (Redacted)

3 (Redacted)

4 (Redacted).

5 Q. [10:30:21] Have you seen him recently?

6 A. [10:30:38] Yes, when I come to Bunia sometimes we run across one another.

7 We say hello to each other. He might be on a motorcycle, or a motorbike, so yes,

8 sometimes I see him when I'm in Bunia.

9 Q. [10:30:53] And how often do you go to your plot of land (Redacted) in Bunia?

10 A. [10:31:13] Once a month, I would say. I would -- I go there, I spend a day, and

11 then I go back to where I work.

12 Q. [10:31:22] (Redacted)?

13 A. [10:31:44] I can't be more specific than that.

14 THE INTERPRETER: [10:31:46] Interpreter correction: In the last reply the witness

15 said he spent four days.

16 MR BOURGON: (Interpretation)

17 Q. [10:31:58] (Redacted)?

18 A. [10:32:05] (Redacted).

19 Q. [10:32:23] (Redacted)

20 (Redacted)

21 (Redacted)?

22 A. [10:32:57] He was always chubby but now he is much bigger. If you were to

23 see him now you would think that he is older than me, because, you see, he is

24 much bigger.

25 Q. [10:33:19] Mr Witness, do you know Facebook? Do you know of this network

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1 called Facebook?

2 A. [10:33:35] Yes. What's more -- well, I actually have a Facebook account myself
3 and I use it.

4 Q. [10:33:48] Are you in touch with people living in (Redacted) via your Facebook
5 account?

6 A. [10:34:01] Yes. I have some friends from (Redacted). I'm friends with them on
7 Facebook. I know some people there.

8 Q. [10:34:14] (Redacted)?

9 A. [10:34:34] (Redacted)
10 (Redacted).

11 Q. [10:34:48] (Redacted)
12 (Redacted)?

13 A. [10:35:13] (Redacted)
14 (Redacted)
15 (Redacted)
16 (Redacted).

17 Q. [10:35:47] What church, what church do you go to in (Redacted)?

18 A. [10:36:04] (Redacted)
19 (Redacted).

20 Q. [10:36:16] (Redacted)
21 (Redacted)?

22 A. [10:36:37] (Redacted)
23 (Redacted).

24 Q. [10:36:55] At this point in the proceedings I would like to show you
25 a photograph that's going to be displayed on your screen. And then -- please don't

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1 say anything until I put my question to you. Mr --

2 (Speaks English) We see the witness on one screen, not on the big screen.

3 PRESIDING JUDGE FREMR: [10:37:16] Yes, if it lasts for maybe five minutes,

4 Mr Bourgon. But are you fine with that, because I hope that you can see Mr Witness

5 on your own screen and on the smaller one. So I just didn't interrupt you because I

6 don't believe it is such a big, big problem.

7 But because we will show the picture, Prosecution, any objection to the use of that

8 picture?

9 MS MORRIS: [10:37:39] No, your Honour.

10 PRESIDING JUDGE FREMR: [10:37:41] All right.

11 So, Mr Bourgon, please proceed.

12 MR BOURGON: [10:37:50] (Interpretation) Thank you, your Honour. I would like

13 to show a photograph to the witness. This is number 5 on our list, and the reference

14 number is D-18-0001-6607.

15 Q. [10:38:21] Now, Mr Witness, this photograph will be up on the screen in just

16 a moment and then I will be putting some questions to you. Can you see the photo

17 on the screen?

18 A. [10:38:56] No. I don't see any photograph on my screen. What number was

19 it?

20 Q. [10:39:19] I think it is up on the screen now. Can you see that? Can you see

21 the picture now?

22 A. [10:39:25] Yes, I can see it.

23 Q. [10:39:27] Now before telling us about this photograph, have you already seen it

24 before? Did you ever see it in the past?

25 A. [10:39:46] Yes. I was shown this photograph recently here.

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1 Q. [10:39:50] Who showed you the photograph?

2 A. [10:40:04] Your assistant counsel, Véronique is the person's name.

3 Q. [10:40:20] Can you identify the person who is depicted here?

4 A. [10:40:33] Yes. (Redacted).

5 Q. [10:40:48] (Redacted)

6 (Redacted)?

7 A. [10:41:13] This is a recent photograph of him. Because, you see -- well, at the
8 time he didn't look like this.

9 MR BOURGON: [10:41:26] (Interpretation) Your Honour, I would like this
10 photograph to be admitted into evidence as an item of Defence evidence.

11 PRESIDING JUDGE FREMR: [10:41:37] Prosecution, any objection?

12 MS MORRIS: [10:41:39] No objection, Mr President.

13 PRESIDING JUDGE FREMR: [10:41:41] So this picture is admitted into evidence as
14 a further Defence exhibit.

15 Mr Bourgon, please proceed.

16 MR BOURGON: [10:41:54] (Interpretation)

17 Q. [10:41:55] I would like to show you a second photograph now, Mr Witness, and
18 we will proceed in the same manner.

19 Now this is number 6 on our list of items, D-18-0001-6608.

20 Please wait until the photograph comes up on the screen and then I will ask you some
21 questions.

22 I think we have it up on the screen.

23 My first question to you is this: Have you already seen this photograph?

24 A. [10:43:12] I was shown this photograph, yes. Ms Véronique showed it to me
25 last Thursday.

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1 Q. [10:43:22] Can you recognise the people here on this photograph?

2 A. [10:43:32] Yes. (Redacted).

3 Q. [10:43:44] (Redacted)

4 going by your own knowledge?

5 A. [10:44:02] This photograph was taken recently. It wasn't taken in 2002/2003.

6 MR BOURGON: [10:44:12] I would like this item to be admitted into evidence,

7 your Honour.

8 PRESIDING JUDGE FREMR: [10:44:20] Prosecution?

9 MS MORRIS: [10:44:21] No objection, Mr President.

10 PRESIDING JUDGE FREMR: [10:44:24] So again this photograph specified by

11 Mr Bourgon is admitted into evidence as a further Defence exhibit.

12 Mr Bourgon, please proceed.

13 MR BOURGON: [10:44:44] (Interpretation) Thank you, your Honour.

14 Q. [10:44:46] Mr Witness, when you met with represents of the Defence were you

15 (Redacted)?

16 A. [10:45:11] I haven't understood your question. Could you ask your question

17 again?

18 Q. [10:45:18] Certainly. You just identified two photographs and I was wondering

19 whether when you met with representatives of the Defence team of Mr Ntaganda,

20 (Redacted)

21 rephrase. Were you shown other photographs? Were you asked to identify certain

22 photographs?

23 A. [10:46:06] Yes, other photographs were shown to me for identification purposes,

24 but I was not able to identify them.

25 Q. [10:46:16] And where did these photographs come from, if you recall?

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1 A. [10:46:39] I have no idea where the photographs came from. They were shown
2 to me, and I did not identify some of them.

3 MR BOURGON: [10:46:56] Mr President, I would like to address the Chamber
4 without the witness hearing, to avoid any --

5 PRESIDING JUDGE FREMR: [10:47:02] No problem.

6 So, court officer, please cut the audio between us and the field.

7 So now I was told that since the witness took his headphones off he can't hear us, but
8 I would rather test it.

9 Mr Witness, can you hear me? Mr Witness, can you hear me?

10 THE WITNESS: [10:48:27] (No interpretation)

11 PRESIDING JUDGE FREMR: [10:48:28] I haven't got translation of Mr Witness, so
12 he said what?

13 THE WITNESS: [10:48:35] (Interpretation) Yes, we can hear you.

14 PRESIDING JUDGE FREMR: [10:48:37] So now I was assured by court officer that
15 sound was cut, so I hope that this information is correct.

16 Mr Bourgon, please proceed.

17 MR BOURGON: [10:48:47] Thank you, Mr President. I just wanted to inform
18 the Chamber, as the Chamber is aware, at least this witness provided a statement
19 based on three pictures that were shown to him, and he answered some questions in
20 his statement. I would like to show him those three pictures, and I just wanted to
21 inform the Chamber as to the source of the pictures before doing so without the
22 witness responding to my questions.

23 The three pictures are in evidence. They were shown to Witness D-898. They were
24 used by the Prosecution with Witness P-0898 and (Redacted).

25 And when those three -- (Redacted)

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1 the Prosecution representative (Redacted)

2 (Redacted)

3 (Redacted). But I did not want to say all of this with the witness

4 hearing it.

5 PRESIDING JUDGE FREMR: [10:50:12] Just to be absolutely clear, what item on

6 your list it represents?

7 MR BOURGON: [10:50:21] On the list this represents item number 3, and it's the

8 (Redacted)

9 (Redacted)

10 (Redacted).

11 PRESIDING JUDGE FREMR: [10:51:01] Thank you, Mr Bourgon.

12 (Redacted), Ms Morris, any objection?

13 MS MORRIS: [10:51:12] No, Mr President.

14 PRESIDING JUDGE FREMR: [10:51:14] All right. So let's proceed, Mr Bourgon.

15 MR BOURGON: [10:51:16] Thank you, Mr President. If we can return with the

16 witness, please.

17 PRESIDING JUDGE FREMR: [10:51:19] Yes. Court officer, please connect us again

18 with Mr Witness and video room.

19 Mr Witness, can you hear us again?

20 THE WITNESS: [10:52:05] (Interpretation) I can hear the people speaking in English,

21 but I don't know what they are talking about.

22 PRESIDING JUDGE FREMR: [10:52:25] Well I believe you really, now you will be

23 provided with translation. If not, please let us know.

24 Now, Mr Bourgon, please proceed.

25 MR BOURGON: [10:52:42] (Interpretation) Thank you, your Honour.

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1 Q. [10:52:44] Mr Witness, I have three photographs that I would like to show to
2 you, and then I will ask you some questions.

3 Your Honours, if I could take control of the evidence channel because these images
4 Come from video footage.

5 PRESIDING JUDGE FREMR: [10:53:05] I believe it will not be a problem; am I
6 correct, court officer?

7 THE COURT OFFICER: [10:53:16] You now have the floor. And for the parties and
8 participants, the document will be displayed on the evidence 2 channel.

9 PRESIDING JUDGE FREMR: [10:53:29] Thank you, court officer.

10 MR BOURGON: [10:53:36] (Interpretation) Thank you.

11 Q. [10:53:40] Witness, in a few moments the first photograph will be displayed on
12 the screen, (Redacted).

13 So my first question is this: Have you seen this photograph before?

14 A. [10:54:15] Yes. Véronique already showed me this photograph. And what is
15 more, Mrs Chloé also showed it to me.

16 Q. [10:54:32] Are you able to tell us -- well, to identify the person here in this
17 photograph?

18 A. [10:54:44] No.

19 Q. [10:54:49] Do you remember the question that was put to you when you were
20 shown this photograph for the first time?

21 A. [10:55:05] Yes.

22 Q. [10:55:11] And what was that question?

23 A. [10:55:18] I was asked whether I could identify the photograph and I said no.
24 And what is more, up until now I still cannot identify this photograph.

25 Q. [10:55:34] We'll now move on to a second photograph. This is the same item,

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1 (Redacted). If you could kindly look at the photograph, Mr Witness, and then

2 I will ask you a question.

3 Have you already seen this photograph?

4 A. [10:56:05] I was shown this photograph, yes, indeed.

5 Q. [10:56:10] And what question were you asked when you were shown the
6 photograph?

7 A. [10:56:26] I was asked whether I could identify this photograph and my answer
8 was no. And today I still cannot identify this photograph. I don't know who this
9 person is.

10 Q. [10:56:41] And who showed you this photograph?

11 A. [10:56:56] The first time it was Claude who showed it to me, the second time it
12 was Chloé, and recently it was Véronique, and each time I was unable to identify the
13 person.

14 Q. [10:57:21] I would like to show you one more photograph, the third one. (Redacted)
15 (Redacted). And we will proceed in
16 the same manner.

17 Here is the photograph. First of all, have you already seen this photograph in the
18 past and, if so, who showed it to you?

19 A. [10:58:25] Yes, I have seen this photograph before. The members of the same
20 team showed it to me, Chloé, Claude and Véronique. They showed me this
21 photograph, but I was not able to identify the person.

22 Q. [10:58:51] Do you remember, Mr Witness, whether you were shown - when
23 the people you just mentioned met with you - whether they showed you some
24 video footage? Did they have you listen or watch, rather, a piece of video footage?

25 A. [10:59:12] Yes. I was shown a video, but I was not able to identify most of

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1 the people who were on the video. It seemed to me that they were Lendu
2 combatants, judging by their size and the way they looked.

3 Q. [10:59:40] Do you remember whether the three photographs we've just looked at
4 were part of the video that you were asked to view?

5 A. [10:59:56] Yes. The photographs appeared in the video that was shown to me.

6 Q. [11:00:08] (Redacted)

7 (Redacted)?

8 A. [11:00:36] (Redacted).

9 Q. [11:00:49] (Redacted)

10 (Redacted)?

11 A. [11:01:14] (Redacted)

12 (Redacted)

13 (Redacted).

14 MR BOURGON: [11:01:53] Mr President, I see that it is 11 o'clock. I have about
15 10 minutes left. I can finish right now or we can finish after the break.

16 PRESIDING JUDGE FREMR: [11:02:00] I would prefer to continue and then we will
17 change our schedule accordingly.

18 So please complete.

19 MR BOURGON: [11:02:07] Thank you, Mr President.

20 Q. [11:02:22] (Interpretation) (Redacted)

21 (Redacted)?

22 A. [11:02:35] (Redacted)

23 (Redacted)

24 (Redacted).

25 Q. [11:02:59] Witness, to the best of your recollection, were members of the UPC

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1 group you spoke about a bit earlier -- or did members of that group wear a uniform?

2 A. [11:03:17] Yes. The UPC did have military uniform.

3 Q. [11:03:27] Do you know a person by the name of Bosco Ntaganda?

4 A. [11:03:37] Yes, I had heard people speak about him. And I had seen him. I
5 heard people speak about him as one of the UPC generals responsible for operations.

6 Q. [11:04:00] Had you spoken to -- or have you had the opportunity to speak to
7 Bosco Ntaganda?

8 A. [11:04:10] No, I never spoke with him. This was a person of high authority. I
9 couldn't approach him. I saw him from afar only.

10 Q. [11:04:28] Now, you spoke a moment ago about the school (Redacted), which is
11 (Redacted). Had you already seen in 2002/2003 a soldier from
12 the UPC go to the school (Redacted)?

13 A. [11:04:57] I never heard anyone speak of that and I never saw soldiers enter that
14 school.

15 Q. [11:05:11] Who was the first person that you met representing Bosco Ntaganda?

16 A. [11:05:35] First of all, Maître Ngadjole Jean-Claude came to me.

17 Q. [11:05:45] How long have you known Jean-Claude Ngadjole?

18 A. [11:06:07] Maître Ngadjole is (Redacted). This was a state civil servant.

19 I was a trader. This is somebody we didn't see often because I lived within the
20 country.

21 THE INTERPRETER: [11:06:25] The interpreter corrects: (Redacted)

22 (Redacted). I was living in the countryside, corrects the interpreter.

23 MR BOURGON: [11:06:36] (Interpretation)

24 Q. [11:06:37] Do you remember what happened the first time that

25 Jean-Claude Ngadjole went to meet you?

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1 A. [11:06:53] Yes, I remember. That's what I wanted to explain. In fact, he
2 showed me a paper with three photographs. He asked me if I could recognise
3 a person on these three photographs. I answered that I didn't recognise anyone, and
4 that was it.

5 Q. [11:07:35] To the best of your recollection, what was the question put to you by
6 Jean-Claude Ngadjole concerning the three photos? What questions did he put to
7 you?

8 A. [11:07:55] That's what I just told you. He showed me photos. I looked at the
9 photos and he asked me, "Is there somebody that you recognise on these
10 photographs?" and I answered, "No."

11 Q. [11:08:13] So Jean-Claude Ngadjole, did he tell you why he was asking you to
12 carry out this identification exercise?

13 A. [11:08:25] I have forgotten.

14 Q. [11:08:38] Did he see you again afterwards when you met other members of the
15 Defence team?

16 A. [11:09:10] When I'm -- when he had me meet Maître Véronique and
17 Maître Chloé as well, Maître Kaswara took me and brought me here.

18 Q. [11:09:25] What was the role of Maître Ngadjole during the meetings that you
19 had with Maître Chloé and Maître Véronique?

20 A. [11:09:46] He told me that they were in Bosco's Defence team. He brought me
21 there and then left. I stayed with Maître Chloé, and that's what they told me too.

22 Q. [11:10:03] Have you already had discussions about your testimony or what you
23 were going to discuss with Maître Chloé and Maître Véronique? Did you speak
24 about all that with Jean-Claude Ngadjole?

25 A. [11:10:21] No. After the interview I went to work directly. I was taken to the

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1 car park, where I took a taxi and I went directly to my place of work.

2 Q. [11:10:47] (Redacted)

3 (Redacted)?

4 A. [11:10:58] (Redacted)

5 (Redacted)

6 (Redacted).

7 Q. [11:11:23] (Redacted)

8 (Redacted)?

9 A. [11:11:38] (Redacted)

10 (Redacted).

11 Q. [11:11:54] Jean-Claude Ngadjole, has he tried to influence you in any way

12 whatsoever concerning the content of your testimony?

13 A. [11:12:08] No. Not at all.

14 Q. [11:12:14] Thank you, Witness.

15 MR BOURGON: [11:12:16] (Speaks English) Thank you, Mr President. This is all

16 the questions I have for the witness.

17 PRESIDING JUDGE FREMR: [11:12:20] Very well. Thank you very much,

18 Mr Bourgon.

19 Now, court officer, let's return back into open session.

20 (Open session at 11.12 a.m.)

21 THE COURT OFFICER: [11:12:30] We are back in open session.

22 PRESIDING JUDGE FREMR: [11:12:42] Mr Witness, it means that you completed

23 first part of your testimony, questioning by Defence. After break, which we will

24 now take, you will be questioned by Prosecution.

25 So now, court officer in Bunia, you may discharge Mr Witness for next 30 minutes,

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1 because we will reconvene at quarter to 12. And in the meantime, court officer,
2 could you provide me with information about exact time used by Defence for
3 examination of this witness.

4 THE COURT OFFICER: [11:13:18] The Defence has used one hour and 14 minutes.

5 PRESIDING JUDGE FREMR: [11:13:25] One 14. So, Ms Morris, you are generally
6 expected to take the same time. Do you at this moment envisage that you would
7 need more time?

8 MS MORRIS: [11:13:37] No, Mr President, I will aim to complete within that time
9 period.

10 PRESIDING JUDGE FREMR: [11:13:42] Very well. And before we break, one
11 minor correction to the transcript, page 35, line 11. Instead of "or", it should be "our",
12 as a Chamber's. So not "or" but "our".

13 So that's it. And now we break and we will reconvene at quarter to 12.

14 THE COURT USHER: [11:14:07] All rise.

15 (Recess taken at 11.14 a.m.)

16 (Upon resuming in open session at 11.46 a.m.)

17 THE COURT USHER: [11:46:32] All rise.

18 Please be seated.

19 PRESIDING JUDGE FREMR: [11:47:03] After our regular break we will continue
20 with cross-examination of Defence witness through via video link between
21 The Hague and Bunia. Cross-examination will be conducted by Ms Morris, who
22 represents Prosecution.

23 So now, Ms Morris, you have the floor. And just highlighting, we are in open
24 session.

25 Just for the information of public, because this witness is a protected one, there is still

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1 a relatively high likelihood that most of the testimony will have to be conducted in
2 private session in order to protect his or not, not reveal his identity.

3 Ms Morris, you have the floor.

4 MS MORRIS: [11:47:57] Thank you, Mr President.

5 QUESTIONED BY MS MORRIS:

6 Q. [11:48:04] Hello, Mr Witness. My name is Laura Morris. We met briefly on
7 Friday. I will be asking you a few questions on behalf of the Office of the Prosecutor.
8 Please let me know if you don't understand any questions and I can rephrase them.

9 Mr President, I would like to move into private session, and I fear we may remain
10 there.

11 PRESIDING JUDGE FREMR: [11:48:24] All right, court officer, let's move into
12 private session now.

13 (Private session at 11.48 a.m.) *(Reclassified partially in public)

14 THE COURT OFFICER: [11:48:44] We are in private session.

15 PRESIDING JUDGE FREMR: [11:48:46] Thank you, court officer.

16 Ms Morris, please proceed.

17 MS MORRIS: [11:48:51]

18 Q. [11:48:51] Mr Witness, you were born in (Redacted), correct?

19 A. [11:49:01] Yes.

20 Q. [11:49:04] So in August 2002 you would have been (Redacted) years old, correct?

21 A. [11:49:23] If that's what has been calculated, then that's the way it is.

22 Q. [11:49:31] (Redacted)?

23 A. [11:49:51] (Redacted).

24 Q. [11:49:59] (Redacted)

25 (Redacted)?

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- 1 A. [11:50:20] (Redacted)
- 2 (Redacted).
- 3 Q. [11:50:32] (Redacted)?
- 4 A. [11:50:48] (Redacted).
- 5 Q. [11:50:54] (Redacted)?
- 6 A. [11:51:10] (Redacted).
- 7 Q. [11:51:14] (Redacted)?
- 8 A. [11:51:30] (Redacted)
- 9 (Redacted).
- 10 (Redacted).
- 11 Q. [11:52:08] (Redacted)?
- 12 A. [11:52:30] (Redacted)
- 13 (Redacted).
- 14 Q. [11:52:45] (Redacted)
- 15 (Redacted)?
- 16 A. [11:53:06] That's not correct. It's false. He finished at the (Redacted)
- 17 (Redacted)
- 18 (Redacted).
- 19 Q. [11:53:33] Mr Witness, earlier this morning you testified that you were a trader,
- 20 a businessman by profession. What kind of trading or business did you conduct?
- 21 A. [11:53:53] At that time I was selling clothing, but for the moment I am a gold
- 22 trader.
- 23 Q. [11:54:06] Where did you get your clothes to sell in 2002/2003?
- 24 A. [11:54:31] We bought these clothes from (Redacted)
- 25 (Redacted).

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1 Q. [11:54:43] So you would go places to get the clothing and also go places to sell
2 the clothing; is that right?

3 A. [11:55:06] No. We would buy them from (Redacted), and we would
4 take them to (Redacted). We sent young people to go and sell
5 these clothes.

6 Q. [11:55:29] You just said you sent young people to go, was it sell these clothes?
7 So is it right that you weren't conducting your business alone?

8 A. [11:56:00] I had a shop where I sold clothes. But we sent children to go and sell
9 some other clothes at the market. They would leave by bike. But I stayed in my
10 shop selling clothing. That's what I'm trying to tell you.

11 Q. [11:56:23] Thank you for the clarification.

12 So is it right that you were coordinating the various people to sell your clothes for
13 you?

14 A. [11:56:46] I had a shop in Bunia. The children would sell clothing in the market
15 and would come back to the shop where they would report to me.

16 MS MORRIS: [11:57:04] Mr President, I would just like to correct something in the
17 transcript. At page 43, line 3, the witness was recorded to having had said that "We
18 bought clothes from the Balendu", when in fact I believe it should be he bought
19 clothes from the Nande.

20 PRESIDING JUDGE FREMR: [11:57:29] Mr Witness, have you heard Ms Morris's
21 attempt to correct the transcript? So I might you ask again, did you say that you
22 bought clothing from Balendu or, or Nande?

23 THE WITNESS: [11:57:55] (Interpretation) We would buy the clothing from the
24 Banande, people from North Kivu. We had no relationship with the Balendu.

25 PRESIDING JUDGE FREMR: [11:58:16] Thank you, Mr Witness.

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1 Ms Morris, please proceed.

2 MS MORRIS: [11:58:24]

3 Q. [11:58:24] So, Mr Witness, is it right that you spent your days in your shop in
4 Bunia?

5 A. [11:58:37] Yes, that's where I carried out all my activities. I would stay in my
6 shop in (Redacted).

7 Q. [11:58:50] Mr Witness, I am a bit confused. You said your shop was
8 in Bunia, (Redacted). Could you just clarify where exactly your shop was
9 located?

10 A. [11:59:14] My shop was in Bunia, (Redacted). I worked and I would go
11 home to (Redacted).

12 Q. [11:59:31] Thank you for the clarification.

13 And you supported yourself selling clothing, correct?

14 A. [11:59:49] I'm sorry, could you repeat the question?

15 Q. [11:59:52] Certainly. You supported yourself selling clothing during this time
16 period, correct?

17 A. [12:00:11] Yes. During that period I was selling clothes.

18 Q. [12:00:20] Did you support your family with this business?

19 A. [12:00:35] That was my line of business, the same until I began to sell gold. I
20 never engaged in any other activity.

21 Q. [12:00:54] How many people did you support with the income that you
22 generated from selling clothing in your shop?

23 A. [12:01:26] Well, (Redacted)
24 (Redacted).

25 Q. [12:01:47] How many days a week did you work in your shop?

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1 A. [12:01:59] Well, one goes to work every day at the shop. Not only for one week
2 or one month; one goes to work every day.

3 Q. [12:02:32] You said earlier this morning that you didn't know much about the
4 UPC activities as you were taking care of your business. That's correct, isn't it?

5 A. [12:02:49] Yes. I was not supposed to be very informed on such activities,
6 because those were military activities. I was engaged in business.

7 MS MORRIS: [12:03:13] Mr President, I believe we can go into open session for the
8 next few questions.

9 PRESIDING JUDGE FREMR: [12:03:17] All right. So now, Mr Witness, be cautious,
10 we will move into open session.

11 Court officer, let's move there.

12 (Open session at 12.03 p.m.)

13 THE COURT OFFICER: [12:03:29] We are back in open session, Mr President.

14 PRESIDING JUDGE FREMR: [12:03:40] Thank you, court officer.

15 Ms Morris, please proceed.

16 MS MORRIS: [12:03:46] Thank you, Mr President.

17 Q. [12:03:49] (Redacted)

18 correct?

19 A. [12:04:08] I have not understood your question.

20 Q. [12:04:14] (Redacted)

21 living there, correct?

22 A. [12:04:37] Well, I am not in a position to give you a specific answer as to the
23 number of inhabitants. That information could have been obtained from the
24 chef de quartier, because they were the ones in charge of conducting censuses
25 whenever there was a vaccination campaign or any such activity. So I can't provide

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1 you with a specific answer to that question.

2 Q. [12:05:16] Mr Witness, in 2002/2003 many people from nearby villages went to
3 (Redacted)?

4 A. [12:05:42] Well, you see, during the war people fled to the different areas where
5 they felt safer. We also fled to seek refuge in other areas. Now, you have talked
6 about neighbouring villages. Which villages are you talking about?

7 Q. [12:06:14] Mr Witness, if you don't know the answer, that's fine. I can move on.
8 On 8 August 2002 Mudzipela was attacked, correct?

9 A. [12:06:35] Well, these things happened a long time ago and I don't remember
10 specific dates. I know that in those years there were a number of attacks, but I don't
11 know which attack took place on what date and at what location. Because, you see,
12 these things happened a very long time ago.

13 Q. [12:07:00] I understand, Mr Witness. Let me put it this way: When
14 Lompondo was chased away in 2002, Mudzipela was attacked; is that correct?

15 A. [12:07:32] I'm sorry, I don't -- I don't remember. It's such a long time ago.

16 Q. [12:07:41] Mr Witness, earlier today you said that when the war started,
17 everybody looked for a hiding place somewhere. So many people fled (Redacted) in
18 2002/2003, correct?

19 A. [12:08:06] Yes. When there is war, everybody does what is necessary to flee in
20 order to avoid death.

21 Q. [12:08:22] And during the fighting you yourself fled to seek refuge on a few
22 (Redacted)?

23 A. [12:08:43] Yes. During the war we fled to those locations.

24 Q. [12:08:54] (Redacted)

25 This is about (Redacted) correct?

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1 A. [12:09:16] I cannot be specific when it comes to that, but you might be correct.

2 Q. [12:09:25] How did you get there?

3 A. [12:09:43] On foot. Most of the people would go on foot.

4 MS MORRIS: [12:09:54] Mr President, I believe we need to go back into private
5 session.

6 PRESIDING JUDGE FREMR: [12:09:58] All right. Court officer, let's return back
7 into private session.

8 (Private session at 12.10 p.m.) *(Reclassified partially in public)

9 THE COURT OFFICER: [12:10:07] We are in private session, Mr President.

10 PRESIDING JUDGE FREMR: [12:10:16] Thank you.

11 Ms Morris, please proceed.

12 MS MORRIS: [12:10:22]

13 Q. [12:10:23] Mr Witness, you said you fled by foot. Who did you flee with to
14 (Redacted)?

15 A. [12:10:37] There were many people, many people fleeing. A lot of people.
16 Whenever something happened, many people would flee. So I am not able to
17 identify all those who were there. I was only able to identify my wife and a few
18 other people, but not everybody.

19 Q. [12:11:09] Thank you. Mr Witness, can you tell the Chamber when you fled to
20 (Redacted)?

21 A. [12:11:31] Is that question for me?

22 Q. [12:11:39] Yes, Mr Witness.

23 A. [12:11:50] (Redacted)

24 the war, people returned to their homes, but during the war everybody attempted to
25 flee.

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1 Q. [12:12:12] Thank you, Mr Witness. If you can't provide a month, I would like
2 (Redacted).

3 A. [12:12:41] Whenever things returned to calm, we would go back to our homes
4 maybe one or two months after an attack. And whenever there was another attack,
5 we will flee to seek refuge at another location, as the case may be. That's what was
6 happening at that time.

7 Q. [12:13:13] (Redacted)
8 (Redacted)?

9 A. [12:13:34] (Redacted)
10 (Redacted).

11 Q. [12:13:51] (Redacted)
12 (Redacted)
13 (Redacted)?

14 A. [12:14:19] Well, again, these things happened a long time ago. Many years
15 have gone by. And as I said before, Madam Prosecutor, I don't remember. I don't
16 have any specific answers to give you in relation to those events.

17 Q. [12:14:41] I understand it's difficult to recall time, given the context, Mr Witness.
18 Would it be fair to say that you fled for months?

19 A. [12:15:02] Yes. On some occasions we were gone for more than a month, so
20 that might be correct.

21 Q. [12:15:16] Thank you, Mr Witness. (Redacted)
22 (Redacted)?

23 A. [12:15:38] (Redacted)
24 (Redacted)
25 (Redacted).

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1 Q. [12:16:20] Mr Witness, this is the first time you've mentioned this. Why is that?

2 A. [12:16:43] Sorry, I have not understood your question.

3 Q. [12:16:48] (Redacted)

4 (Redacted)?

5 A. [12:17:10] Madam Prosecutor, I simply answered your question. You didn't

6 ask me that question before. You have just asked me the question and I have

7 answered it.

8 Q. [12:17:21] (Redacted)

9 (Redacted)?

10 A. [12:17:40] Maybe I said so and you did not quite follow. I said that many

11 people were fleeing at that time, (Redacted). So I could not mention the names of all

12 those who fled along with me in the same group.

13 Q. [12:18:05] (Redacted)

14 (Redacted)?

15 A. [12:18:27] (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 Q. [12:19:15] (Redacted)

21 (Redacted)

22 (Redacted)?

23 A. [12:19:48] (Redacted).

24 Q. [12:19:53] (Redacted)

25 (Redacted)

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1 (Redacted).

2 Q. [12:24:04] (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)?

6 A. [12:24:39] (Redacted)

7 (Redacted)

8 (Redacted).

9 Q. [12:25:02] Mr Witness, I understand that you are not clear on dates of fleeing,
10 but I would just like to ask you whether 2002/2003 was a chaotic time for you.

11 A. [12:25:30] Sorry, I have not quite understood your question. You have talked
12 about a chaotic year, what do you mean by that?

13 Q. [12:25:43] I said I understand that you cannot recall the time period during
14 which you fled because it was a chaotic time and I'm asking if that is an accurate
15 representation.

16 A. [12:26:06] Yes, it was a chaotic year, because things weren't going well. There
17 was peace for a short while and then there would be attacks. And at that time the
18 children were still in school, as far as I can remember.

19 Q. [12:26:31] Did you ever go to Lubanga's residence in Bunia in 2002 to see the
20 training centre?

21 A. [12:26:53] No, I couldn't go to the president's residence. I did not have the
22 capacity to do so. It was not open to everybody. And, by the way, I did not used to
23 work there.

24 Q. [12:27:13] Did you ever go to Mandro to see the UPC training centres there?

25 A. [12:27:27] No. Even today I have never been there. I have never been there.

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1 Mandro, well, I have been to Mandro for a burial, but never to the Kuya training
2 centre, no, I have never been there.

3 Q. [12:27:57] Did you ever go to Rwampara to see the UPC training centre there?

4 A. [12:28:11] No, I have never gone there.

5 Q. [12:28:15] And did you ever go to Bule to see the UPC training centre there?

6 A. [12:28:29] No, not at all. I had heard about that centre, but I never went there.

7 Q. [12:28:39] So you never went to any of the UPC training centres to see who was
8 being trained, did you?

9 A. [12:29:01] No. I never went to any of those places, the places you have
10 mentioned. That's what I'm referring to.

11 Q. [12:29:11] So you wouldn't necessarily know who joined the UPC, would you?

12 A. [12:29:36] Those who joined the military service were recognisable through their
13 military uniforms. Anyone who went for military training, upon returning to the
14 village, we were able to recognise them because of their uniforms. Those who had
15 not gone for training were also recognised or recognisable.

16 Q. [12:30:08] The UPC uniforms, were they green tache-tache?

17 A. [12:30:32] They were like American fatigues.

18 Q. [12:30:43] And what colour, can you recall?

19 A. [12:30:55] They were green, tache-tache pattern.

20 Q. [12:31:03] Thank you. Mr Witness, you sometimes attended the meetings of
21 the peace committee in (Redacted), correct?

22 A. [12:31:31] I did not go to the peace meetings. I would not go there.

23 Q. [12:31:40] Mr Witness, in your witness preparation you said that you could
24 attend the meetings but then you were trying to hide.

25 This is at page 6, paragraph 5 of the witness preparation note, to which there is no

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1 ERN at this moment.

2 Do you recall telling the Defence that, in witness preparation, you sometimes would
3 attend the meetings of the peace committee?

4 A. [12:32:29] I don't think you have understood me. I said that there were some
5 young people who were there and they were reporting if something happened, at
6 night. I remember sometimes I would come back to the house and then I would go
7 back to do that work. If you had understood, you will realise that's what I said.
8 I didn't change anything in my statement.

9 PRESIDING JUDGE FREMR: [12:33:12] Hold on, Mr Witness. Mr Bourgon, can
10 we --

11 MR BOURGON: [12:33:17] Yes, Mr President.

12 PRESIDING JUDGE FREMR: [12:33:18] -- no problem with Mr Witness. Okay,
13 please proceed.

14 MR BOURGON: [12:33:22] The document my colleague referred to was never
15 shown to this witness. He is not aware of what is in, in writing. So just to avoid
16 any misunderstanding, if we can quote from what the Defence -- the information
17 provided by the Defence to the Prosecution, and maybe that would make it easier for
18 the witness to comment on this information. Thank you.

19 PRESIDING JUDGE FREMR: [12:33:44] Understood.

20 Ms Morris, please proceed.

21 Mr Witness, Mr Witness, are you feeling well, because I was informed that, that you
22 feel hungry?

23 THE WITNESS: [12:34:25] (Interpretation) Yes, yes. I'd be -- I'd rather that you give
24 me a minute or two so I can have something to eat.

25 PRESIDING JUDGE FREMR: [12:34:44] All right. Just question to court officer in

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1 Bunia. There is obviously a possibility to take our lunch break now, but it would be
2 possible to provide Mr Witness with some meal in 10 minutes; is it possible, just to
3 avoid his concern?

4 THE COURT OFFICER: (Via video link) [12:35:09] (No interpretation)

5 THE INTERPRETER: [12:35:20] Message from the interpreters. Could the
6 courtroom officer in the remote location repeat what he said. There was overlapping
7 channels because of the lag.

8 PRESIDING JUDGE FREMR: [12:35:31] Court officer in Bunia, could you kindly
9 repeat your answer. You haven't been captured by the interpreters.

10 THE COURT OFFICER: (Via video link) [12:35:46] I was saying 15 minutes would
11 be possible for the witness.

12 PRESIDING JUDGE FREMR: [12:35:50] Give me a second.

13 Before we rule on that, Ms Morris, what is your estimation how much time you will
14 need to complete?

15 MS MORRIS: [12:36:19] I may be able to finish in 30 minutes, but I may also,
16 depending on the answers, request a few additional minutes, Mr President.

17 PRESIDING JUDGE FREMR: [12:36:33] Thank you.

18 All right, so after silent deliberation, we the Chamber prefer to take the lunch break
19 now, which will give Mr Witness enough time to take his, in fact, not only some small
20 meal, but lunch. So at the moment we have roughly quarter past 12, which means
21 that we will reconvene for the rest of the cross-examination at 2 o'clock.

22 Now Court is adjourned.

23 THE COURT USHER: [12:37:13] All rise.

24 (Recess taken at 12.37 p.m.)

25 (Upon resuming in open session at 2 p.m.)

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1 THE COURT USHER: [14:00:11] All rise.

2 Please be seated.

3 PRESIDING JUDGE FREMR: [14:00:24] Good afternoon, everybody.

4 Before we continue with next part of cross-examination of our witness, I can see

5 Mr Bourgon on his feet. Mr Bourgon, you have the floor. And we are in open
6 session.

7 MR BOURGON: [14:00:50] Thank you, Mr President. Just to put on the record that
8 one of my colleague, Ms Daria Mascetti, is no longer in the courtroom. Thank you.

9 PRESIDING JUDGE FREMR: [14:00:59] Thank you very much, Mr Bourgon.

10 Now, Mr Witness, again, can you hear me and see me and my colleagues well? At
11 the moment, just me?

12 THE WITNESS: [14:01:13] (Interpretation) Yes, I can hear you and I can see you.

13 PRESIDING JUDGE FREMR: [14:01:25] So are you feeling okay to continue with
14 your testimony?

15 THE WITNESS: [14:01:29] (Interpretation) Yes.

16 PRESIDING JUDGE FREMR: [14:01:39] So as I said before, generally Prosecution,
17 namely Ms Morris, should take the same time like Mr Bourgon. I would like to ask
18 our court officer that 10 minutes before the expiration of the time generally allotted to
19 Ms Morris, please indicate it for us, and then I will ask Ms Morris whether she is
20 requesting some extension or not. Extension within the range of 10 minutes, no need
21 to make a request. But if you would like to get more, you will have to approach us.

22 Now, Ms Morris, you have the floor and we are in open session.

23 MS MORRIS: [14:02:22] Thank you, Mr President.

24 Q. [14:02:27] Good afternoon, Mr Witness.

25 Mr President, I believe we would need to go back to private session, please.

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1 PRESIDING JUDGE FREMR: [14:02:33] Before doing that, brief information for the
2 public, especially in the public gallery. Probably to your disappointment, this
3 witness is protected one, which means that he is guaranteed that his identity will not
4 be revealed to the public. And if there is a risk that as responses to questions
5 potentially put to him, it might be the case we have to move into private session,
6 which is going -- which will be the case just now.

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

8 (Private session at 2.03 p.m.) *(Reclassified partially in public)

9 THE COURT OFFICER: [14:03:19] We are in private session, Mr President.

10 PRESIDING JUDGE FREMR: [14:03:28] Thank you, court officer.

11 Ms Morris, please proceed.

12 MS MORRIS: [14:03:35] Thank you, Mr President.

13 Q. [14:03:38] Mr Witness, on Thursday you met with the Defence for what we call a
14 witness preparation session. And during that meeting, Mr Bourgon asked
15 you -- and for the Chamber's reference, this is page 6, paragraph 5 of the witness
16 preparation note, which is item number 10, and I'll read in French the relevant section
17 (Interpretation):

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Speaks English) Mr Witness, do you recall telling the Defence what I just read back to
22 you?

23 A. [14:04:54] (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted).

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

3 (Redacted)?

4 A. [14:05:44] (Redacted)

5 (Redacted)

6 (Redacted)?

7 Q. [14:06:17] Thank you. And the peace committee had a youth group, correct?

8 A. [14:06:22] Yes. I said that there was the president, a secretary. There was also
9 the secretary. So it was a well organised group.

10 Q. [14:06:46] And you sometimes attended the meetings of the committee; is that
11 correct?

12 A. [14:06:50] I didn't go. I didn't say that.

13 Q. [14:07:07] (Redacted)

14 (Redacted)?

15 A. [14:07:12] That's what I said, yes. (Redacted)

16 (Redacted). People couldn't sleep at home otherwise. So, you see,

17 (Redacted). That's what I explained to you. That's how it came to be that

18 (Redacted).

19 Q. [14:07:46] And whenever the UPC was protecting the population, like in

20 (Redacted), the youth group was integrated into the UPC, correct?

21 A. [14:07:54] No. When the UPC came, it was now the UPC men who guarded
22 the place. At that time the peace committee could no longer do that. There was
23 now groups of soldiers.

24 Q. [14:08:30] The accused in this case has testified - and I'm referring to
25 transcript 213, page 51, lines 19 to 22 - the accused testified:

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1 "After Kisembo proposed that the young people" --

2 PRESIDING JUDGE FREMR: [14:08:48] I'm sorry to interrupt you, Ms Morris.

3 MS MORRIS: [14:08:51] Apologies.

4 PRESIDING JUDGE FREMR: [14:08:52] Mr Bourgon.

5 MR BOURGON: [14:08:54] Thank you, Mr President. Before going to the
6 testimony of another witness in this case, usually the counsel for the cross-examining
7 party should ask permission, according to Article 34 of the order on the conduct of
8 proceedings.

9 PRESIDING JUDGE FREMR: [14:09:11] Ms Morris.

10 MS MORRIS: [14:09:15] Mr President, since this was public testimony, I didn't think
11 permission was required. But correct me if I am wrong.

12 PRESIDING JUDGE FREMR: [14:09:23] And, Mr Bourgon, your position to that
13 step?

14 MR BOURGON: [14:09:27] No issue, Mr President.

15 PRESIDING JUDGE FREMR: [14:09:28] All right then. So please proceed.

16 MS MORRIS: [14:09:31]

17 Q. [14:09:31] Mr Witness, the accused in this case testified, quote:

18 "... Kisembo proposed that the young people who were working with the peace
19 committees be brought back for training so that they could return and provide
20 protection for members of the population ..."

21 Do you agree with that?

22 A. [14:09:52] The young people would voluntarily enrol in the army. That didn't
23 mean that they took people and took them to the training centres. The people went
24 voluntarily. I didn't hear that.

25 Q. [14:10:23] Thank you. Earlier you said you lived (Redacted)

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1 school in (Redacted); is that correct?

2 A. [14:10:30] I said that I couldn't be specific. I said that those were estimated
3 distances. That's what I said.

4 Q. [14:10:49] Thank you. And school was disrupted because of the war, wasn't it?

5 A. [14:10:53] Yes, at the time of the war, yes, the school was closed. But
6 afterwards, once things had calmed down, the children went back to the schools to
7 study. As I explained earlier, that is what was done.

8 Q. [14:11:27] Thank you. And teachers and students periodically fled as well,
9 didn't they?

10 A. [14:11:33] Often the fighting would begin very early in the morning, and the
11 children were still at home. And even the teachers were at home too, at 4 in the
12 morning, very, very early sometimes. So that's the way -- that was the way of it. So
13 the children didn't go to school during those times.

14 Q. [14:12:08] And your work as a clothes trader didn't take you inside (Redacted)
15 school, did it?

16 A. [14:12:14] I haven't understood your question.

17 Q. [14:12:37] My question was, for work, would you go inside the (Redacted)
18 school to sell clothing?

19 A. [14:12:43] Counsel, you know the way things work. Do you think that you can
20 go into a school and sell clothing there?

21 PRESIDING JUDGE FREMR: [14:13:15] Mr Witness, please don't put questions to
22 Ms Morris. It's her domain. So please, answer clearly.

23 MS MORRIS: [14:13:31]

24 Q. [14:13:31] And you didn't have children attending --

25 A. [14:13:40] No, I didn't go to the school to sell anything. My answer is no.

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1 Q. [14:13:48] Thank you. You didn't have children attending (Redacted)school in
2 2002/2003, did you?

3 A. [14:14:02] (Redacted)
4 (Redacted).

5 Q. [14:14:26] You had no reason to enter the (Redacted)school at that time, did you?

6 A. [14:14:34] There were reasons. (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted).

12 Q. [14:15:22] I meant that you had no reason to be inside the school on a day to day
13 in 2002/2003; correct?

14 A. [14:15:33] I couldn't go every day. If necessary, we would go, for example, to
15 attend meetings of mutual assistance groups, for example, or if someone was being
16 buried, a funeral, that sort of thing. It could be on a Monday or another day.

17 Q. [14:16:10] Sorry to interrupt. I just, I think we're speaking of different things,
18 Mr Witness. I meant that while school was ongoing, while class was ongoing, you
19 would not be going into the school for any reason; correct? I don't mean after school
20 for community meetings.

21 A. [14:16:34] That's right. During the teaching, well, when the children were
22 being taught, I didn't have any reason to go to the school.

23 Q. [14:16:56] So you cannot provide firsthand information about what was
24 happening in that school, can you?

25 A. [14:17:02] Even if I didn't have a reason to go to that school, I was in a position

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1 to know what was going on (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted).

7 Q. [14:18:05] But, Mr Witness, you testified earlier that during the day you were in
8 Bunia centre at your clothes shop; isn't that right?

9 A. [14:18:18] Yes. But in the evenings, when we would go home, if something was
10 happening in our area, in our neighbourhood, we would know about it because we
11 would be told once we had gone back home. So we could hear about things. We
12 would know about things.

13 Q. [14:18:46] And during the months that you physically fled (Redacted), you
14 would have no way of knowing what was happening inside the school, would you?

15 A. [14:18:56] No. If there was fighting, everyone would flee. So what could
16 happen? There were only Lendu people and the fighting. So if we -- if someone
17 was found, they might be killed. So there were no longer any activities going on at
18 the time of the fighting.

19 Q. [14:19:32] (Redacted)
20 (Redacted)?

21 A. [14:19:44] (Redacted)
22 (Redacted).

23 Q. [14:20:10] (Redacted)?

24 A. [14:20:14] (Redacted).

25 Q. [14:20:34] (Redacted)

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1 (Redacted)?

2 A. [14:20:41] (Redacted).

3 Q. [14:20:56] (Redacted)?

4 A. [14:21:03] (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted).

9 Q. [14:21:54] (Redacted)

10 (Redacted)?

11 A. [14:22:08] (Redacted)

12 (Redacted)

13 (Redacted).

14 THE COURT OFFICER: [14:22:43] Ms Morris, you have 10 minutes left.

15 PRESIDING JUDGE FREMR: [14:22:44] So last 10 minutes, if we take the principle

16 that there is equal time for Defence. So how do you see things, Ms Morris?

17 MS MORRIS: [14:22:55] Mr President, out of precaution, I would ask for 10 minutes

18 in addition to the 10 minutes remaining, if that pleases your Honour.

19 PRESIDING JUDGE FREMR: [14:23:04] I even said that if you'd be extra 10 minutes,

20 no need for request. But it's even better to have clear perspective. So I think plus

21 10 minutes will be fine with us. Please, go ahead.

22 MS MORRIS: [14:23:17] Thank you, Mr President.

23 I'd like the court officer to call up item number 3 on the Prosecution list of

24 documents. That's ERN, (Redacted) and this has already been admitted

25 into evidence.

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1 PRESIDING JUDGE FREMR: [14:23:47] Defence, I guess no objection?

2 MR BOURGON: [14:23:49] No objection, Mr President.

3 PRESIDING JUDGE FREMR: [14:23:51] Thank you, Mr Bourgon.

4 MS MORRIS: [14:23:54]

5 Q. [14:23:55] Mr Witness, can you see a photograph on your computer screen?

6 A. [14:24:01] Yes, I can see this photograph.

7 Q. [14:24:18] Now that we see the full picture of the cropped photograph that you
8 were --

9 A. [14:24:29] Pardon?

10 Q. [14:24:29] I'll start again. Mr Witness, now that you can see the full picture of
11 the cropped picture that the Defence showed you, I would like to ask you, do you see
12 (Redacted)?

13 A. [14:24:53] Yes, I can see them. And I have the photograph right here in front of
14 me.

15 Q. [14:25:02] And (Redacted) combatants are wearing green tache-tache uniforms,
16 correct?

17 A. [14:25:08] Yes.

18 Q. [14:25:19] And you have no information about the filming of this video that you
19 were shown, do you?

20 A. [14:25:29] I was shown this photograph as well. I even saw the video footage.
21 It's part of what I was shown in the video footage.

22 Q. [14:25:51] And these green tache-tache uniforms are the same uniforms worn by
23 the UPC, aren't they?

24 A. [14:25:57] Yes. They're kind of like UPC uniforms. Sometimes when they
25 were fighting the UPC, or when the Lendus were killing UPC men, they too wore the

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1 UPC uniforms because, well, judging from what I see here, it's as if those people were
2 Lendus, if you go by their, their looks.

3 Q. [14:26:45] But you don't have concrete information about the filming of this
4 video, do you?

5 A. [14:26:52] Where could I get that information from? I don't have any.

6 Q. [14:27:17] (Redacted)

7 (Redacted)?

8 A. [14:27:35] I don't know. But we're friends on Facebook. Sometimes we
9 see -- well, if someone posts something new, you see it; or if someone is online you
10 see that and then you say, "Oh, that person just posted that photograph." That's all.

11 MS MORRIS: [14:28:17] Mr President, if I could ask the witness to remove his
12 headphones for a moment, please.

13 PRESIDING JUDGE FREMR: [14:28:22] (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)?

17 (Redacted).

18 (Redacted).

19 MS MORRIS: [14:29:39] (Redacted).

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted).

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted).

9 PRESIDING JUDGE FREMR: [14:30:52] (Redacted)

10 (Redacted)

11 (Redacted)?

12 MS MORRIS: [14:31:08] (Redacted)

13 (Redacted).

14 PRESIDING JUDGE FREMR: [14:31:24] Defence, your position?

15 MR BOURGON: [14:31:27] Mr President, we oppose these questions being asked to

16 the witness for the following reasons:

17 It is -- this information comes from a Prosecution witness, namely, Witness (Redacted).

18 Information coming from a Prosecution witness pursuant to Rule 76 must be

19 disclosed to the Defence in its entirety at the earliest opportunity.

20 Any information coming from a Prosecution witness, whether the witness has already

21 testified or before his testimony, must be disclosed to the Defence.

22 In this case we have a triple violation. First of all, the information was obtained on

23 19 January and it was not disclosed until 25 January, until after the Defence had

24 produced its preparation session note.

25 So as a matter to begin with, there is a timing violation. This information should

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1 have been disclosed to the Defence earlier.

2 Second, if the Prosecution is going to use information coming from information that is
3 not yet on the record and that is not part of its case, we have been through this on a
4 number of occasions and there is a specific procedure to be followed in order for the
5 Chamber to authorise or not the use of this material.

6 In this case, if the information comes from a witness, it must at least be in the form of
7 a statement, or if it is obtained by a Prosecution investigator, it must be at least
8 accompanied by some kind of an affidavit.

9 Here we have a Prosecution investigation note. The Prosecution has been aware that
10 this witness would testify; back in November, I believe, is when the decision was
11 rendered that this witness would testify. There is no reason for the Prosecution not
12 to have obtained this information before 19 January and not to have disclosed it and
13 not to have obtained it in the proper way and to follow the rules.

14 In this specific instance, there is no prejudice. But it is a matter of principle.

15 Prosecution must, first, disclose timely, second, disclose in the proper format, and
16 three, if it is information that was not part of its case, why did they not obtain this
17 information earlier so that the Defence could react?

18 So for all these three reasons, and although I do not see any major prejudice at this
19 point in time, the triple violation is sufficient for the Chamber not to authorise the use
20 of this document, because this, we don't know whether this is what the individual
21 called (Redacted), Witness (Redacted), did or did not say.

22 Thank you, Mr President.

23 PRESIDING JUDGE FREMR: [14:35:05] Ms Morris, your reaction on Mr Bourgon's
24 submission?

25 MS MORRIS: [14:35:11] Thank you, Mr President.

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1 The statement from (Redacted) was taken in Bunia -- sorry, the call was made in
2 Bunia on 19 January and had to go through normal mechanisms to become an
3 investigation note. This took a few days, as it always does, and the investigation
4 note was sent to the Defence as soon as practicable. We didn't sit on the material by
5 any means. It was sent, a courtesy copy was sent to the Defence and there is no
6 disclosure violation whatsoever. We got the information as soon as we could and
7 there is no prejudice, as Defence counsel admitted.

8 PRESIDING JUDGE FREMR: [14:36:04] Thank you.

9 Mr Bourgon, please.

10 MR BOURGON: [14:36:06] Thank you, Mr President.

11 Mr President, the Prosecution has two full-time investigators sitting in Bunia for
12 months. (Redacted).

13 The information was obtained on 19 January. The courtesy copy was disclosed on 28
14 January.

15 There is no -- Prosecution has used this kind of information to delay disclosure. In
16 this particular case it was clear cut that it could have been disclosed earlier.

17 But, again, I say this is not a statement unless it is either in the form of a statement or
18 by an investigator who accompanies the information with an affidavit. In the
19 absence of these, it is not a statement. And, of course, to use this at this point in time
20 is not in accordance with the practice of this Chamber so far.

21 Thank you, Mr President.

22 PRESIDING JUDGE FREMR: [14:37:12] Give me a second, I will -- it is a rather
23 specific issue, I will consult --

24 MS MORRIS: [14:37:17] Sorry, just --

25 PRESIDING JUDGE FREMR: [14:37:17] Ms Morris, but please briefly.

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1 MS MORRIS: [14:37:20] I just wish to clarify. We haven't known who the Defence
2 is actually going to call at the end of the day. So having two investigators sitting, as
3 you say, in Bunia with nothing to do is not really an issue.
4 Furthermore, we attempted for two weeks to contact Witness (Redacted), so the date
5 at which the call actually happened does not reflect the Prosecution's attempt to
6 contact (Redacted). We had been trying for numerous weeks in The Hague and then
7 decided to ask the Bunia investigators to assist.
8 Thank you.

9 PRESIDING JUDGE FREMR: [14:37:58] Mr Bourgon, okay, please briefly.

10 MR BOURGON: [14:38:00] One quick comment. I did not say that they had
11 nothing to do. These two investigators are two of my friends. I did not -- never
12 said they had nothing to do, but they are there. That's a fact.
13 Thank you, Mr President.

14 PRESIDING JUDGE FREMR: [14:38:12] I think it's not the core of the dispute. Give
15 me a minute, I will consult my colleagues.

16 (Trial Chamber confers)

17 PRESIDING JUDGE FREMR: [14:38:50] As you could see, our deliberation was brief.
18 We agreed unanimously on the fact that, because we see mostly argumentation of the
19 Defence, most or more persuasive. But, at the same time, we believe that it is not
20 impossible to refer to this information, but without disclosing the source. I don't
21 know how this information looks like, maybe it's even impossible to use it at all, but if
22 you will not reveal the source, if you will only say "We have information that da da
23 da da, what do you say to that?" Then it would be possible.
24 So, Ms Morris, you have the floor.

25 MS MORRIS: [14:39:42] Thank you, Mr President.

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1 PRESIDING JUDGE FREMR: [14:39:48] And now I would like to ask Bunia again to
2 allow Mr Witness to hear us.

3 Ms Morris, you may proceed.

4 MS MORRIS: [14:40:33]

5 Q. [14:40:34] (Redacted)

6 (Redacted)

7 (Redacted)?

8 A. [14:40:56] I know (Redacted). He also knows me (Redacted). (Redacted)

9 (Redacted).

10 PRESIDING JUDGE FREMR: [14:41:20] I'm sorry to interrupt. Maybe something
11 that we will not, because we even, the Chamber, prohibited Ms Morris to say what is
12 the source of this information, but at least at an absolutely general level I can say that
13 (Redacted).

14 (Redacted)?

15 THE WITNESS: [14:41:56] (Interpretation) (Redacted)

16 I know him (Redacted)

17 (Redacted).

18 PRESIDING JUDGE FREMR: [14:42:26] Ms Morris, please proceed.

19 MS MORRIS: [14:42:30] Thank you, Mr President.

20 Q. Mr Witness, you have known Jean Claude Ngadjole for a long time, haven't
21 you?

22 A. [14:42:44] Yes, I've known him for a long time.

23 Q. [14:43:03] When you were describing your relationship with Mr Ngadjole, you
24 failed to mention that (Redacted)

25 (Redacted)?

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1 A. [14:43:21] (Redacted)

2 (Redacted).

3 PRESIDING JUDGE FREMR: [14:43:47] Hold on, Mr Witness.

4 Mr Bourgon, nothing? All right.

5 In such a case, you may proceed, Ms Morris, because Mr Bourgon sat down. So
6 please proceed.

7 MS MORRIS: [14:44:00]

8 Q. [14:44:00] Sorry, Mr President, I was waiting to see --

9 PRESIDING JUDGE FREMR: [14:44:21] Mr Bourgon was on his feet but then he sat
10 down. So you may proceed.

11 MS MORRIS: [14:44:25] Okay. Thank you.

12 Q. [14:44:27] (Redacted)

13 (Redacted)?

14 A. [14:44:40] (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted).

20 THE INTERPRETER: [14:45:43] Corrects the interpreter.

21 MS MORRIS: [14:45:46]

22 Q. [14:45:47] And you know that Mr Ngadjole was a member of the UPC, don't
23 you?

24 A. [14:45:55] At that time we were in different centres. I have no precise
25 information to give you with regards to that.

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1 Q. [14:46:25] So, Mr Witness, is it your evidence that you have no idea that Mr
2 Ngadjole was a member of the UPC?

3 A. [14:46:37] What I know is that during the war, when the UPC arrived, everyone
4 who lived in Ituri joined the UPC because that was the party which protected the
5 members of the population. Everybody wanted to join. Perhaps he was a member
6 of the party. But I never heard his name said by the members of the party, UPC.

7 Q. [14:47:20] Thank you.

8 No further questions.

9 PRESIDING JUDGE FREMR: [14:47:26] Thank you, Ms Morris.

10 Mr Bourgon, any question for redirect?

11 MR BOURGON: [14:47:35] Three specific questions, Mr President.

12 PRESIDING JUDGE FREMR: [14:47:37] Go ahead.

13 Should we remain in private? Probably yes.

14 MR BOURGON: [14:47:43] Indeed, yes, Mr President.

15 PRESIDING JUDGE FREMR: [14:47:45] So you may proceed.

16 MR BOURGON: [14:47:46] Thank you.

17 Q. [14:47:52] (Interpretation) Mr Witness, I've got three questions to put to you by
18 way of follow-up to those questions put by my colleague. First of all, I would like to
19 refer to the question put to you on page 42, line 5. (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)?

25 A. [14:48:56] (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted).

4 Q. [14:49:22] Thank you. My next question, I'm referring here to the question that
5 was put to you by my colleague, and this is on page 65. She asked you or she put it
6 to you that you were not or had no need to go to the school close to you when the
7 school day was underway.

8 Now, you answered on page 65 that you could hear things, even if you weren't
9 there. Now, my question is as follows: At any time, did you ever hear anyone in
10 (Redacted) say that there was recruitment in the schools (Redacted)?

11 A. [14:50:27] No. I never heard anyone speak of that. The recruitment, this was
12 something official. Everybody was aware of that, so I could also be aware of that.
13 When I went to work in the evening, I had the information about what was
14 happening. And I left my home between 9.30 and 10 o'clock. I never heard anyone
15 speak about any such recruitment within the school of (Redacted), no.

16 Q. [14:50:59] And my last question, Mr Witness. This is page 67, lines 19 to 21.
17 My colleague showed you a photograph, a different photograph to the one that I
18 showed you, but it is of the same person. Now, in this photograph there are other
19 people who are present.

20 Now, my question is as follows: When you saw this photo, this new one, did that
21 make it possible for you to identify the person that I asked you about today?

22 A. [14:51:40] No. The person who you asked me to identify and the person who
23 the Prosecutor showed me are different. I answered a question about that. You
24 (Redacted).

25 (Redacted)

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1 that photo, and I answered the Prosecutor saying that.

2 Q. [14:52:25] Thank you, Witness. No further questions.

3 PRESIDING JUDGE FREMR: [14:52:29] Ms Morris, any recross?

4 MS MORRIS: [14:52:34] No, Mr President.

5 PRESIDING JUDGE FREMR: [14:52:36] All right. Then I have just one issue,
6 maybe with more questions to Mr Witness.

7 Mr Witness, and now I would like to be clear; I am interested in young people, if any,
8 joining the UPC. But rather to be precise, joining UPDF, because mostly people say
9 to join UPC, but its armed wing was called UPDF. So I'm in fact interested in joining
10 of this army who served the UPC.

11 Do you still remember some young people, the names of young people, who in 2002,
12 in 2003 joined the armed wing of the UPC?

13 MS MORRIS: [14:53:24] Mr President, sorry.

14 PRESIDING JUDGE FREMR: [14:53:25] Yes.

15 MS MORRIS: [14:53:26] I don't wish to correct you, but the transcript says UPDF
16 and I believe you meant FPLC.

17 PRESIDING JUDGE FREMR: [14:53:33] Absolutely. So please, take this correction
18 as my own words: FPLC. Sorry, I was wrong. UPDF was absolutely different,
19 armed wing.

20 So now I would like to speak about armed wing of the UPC, FPLC, whether you still
21 remember some concrete names of concrete young people who in 2002/2003 joined
22 this armed wing of the UPC.

23 THE WITNESS: [14:54:15] (Interpretation) Yes, I knew some who joined the
24 ranks of the UPC, and I said that to the Defence. But I didn't give a lot of
25 importance to that. I mentioned the names (Redacted), who was -- is still in the

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1 army. I also mentioned (Redacted).

2 PRESIDING JUDGE FREMR: [14:54:52] Have you finished with this list?

3 THE WITNESS: [14:54:59] (Interpretation) There were several people. I don't
4 know all their names. But those are the names of those that I remember for the
5 moment.

6 PRESIDING JUDGE FREMR: [14:55:17] All right. And according your knowledge
7 or according your estimation, what was the age of the youngest person you
8 personally knew who joined the FPLC, armed wing of the UPC?

9 THE WITNESS: [14:55:39] (Interpretation) I cannot tell you precisely the age of the
10 youngest, but I know that most of them were over 17 years old, even 20 among those
11 who I knew.

12 PRESIDING JUDGE FREMR: [14:56:09] So according your, I take it as estimation,
13 the youngest among them were around 17; am I correct in understanding your
14 response?

15 THE WITNESS: [14:56:18] (Interpretation) Yes, that's what I said.

16 PRESIDING JUDGE FREMR: [14:56:36] Thank you, Mr Witness.

17 I don't have any further questions.

18 Do my colleagues have? They don't.

19 So now it seems that we completed the examination of this witness. For that
20 purpose, let's move into open session now.

21 (Open session at 2.56 p.m.)

22 THE COURT OFFICER: [14:57:01] We're in open session, Mr President.

23 PRESIDING JUDGE FREMR: [14:57:10] Thank you very much.

24 Mr Witness, your testimony now was completed. So I would like to thank you very
25 much that you came and provide us with your testimony, and I hope that your

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1 testimony will assist us in our goal to find the truth in this case.

2 Thank you very much, and I wish you a safe journey home.

3 THE WITNESS: [14:57:45] (Interpretation) Thank you very much as well for
4 having accepted my request for protection. I would like to thank you for the work
5 that you are carrying out.

6 PRESIDING JUDGE FREMR: [14:58:07] We also thank you for that. And now, this
7 is just message to court officer in Bunia, Mr Witness may be freed, because the
8 testimony is completed and we will continue without witness with remainder.
9 (The witness is excused)

10 PRESIDING JUDGE FREMR: [14:58:35] So at the moment I have, as I said, that that
11 concludes the sixth, and in fact last, evidentiary block. However, it's important to
12 stress that this does not still conclude the presentation of evidence by the Defence,
13 because I recall that a Defence request for admission of items from the Bar table is
14 currently pending. We are in process, I guess in final stage of deliberation on that
15 issue, and I believe that we will decide in the coming days in due course.

16 In addition, in line with the Chamber's order bearing filing number 2166, any further
17 Defence requests for admission of items from the Bar table shall be filed within one
18 week after completion of the testimony of last Defence witness.

19 Once we receive responses from the Prosecution and legal representatives in relation
20 to the Defence request seeking admission of the prior recorded testimony of Witness
21 D-80, pursuant to Rule 68(2)(c), we will also render our decision in due course.

22 So, before we adjourn, are there any further requests for the floor? Mr Bourgon?

23 MR BOURGON: [15:00:14] Thank you, Mr President.

24 I'd like to refer to the Chamber's order just referred to a moment ago by the Chamber,
25 and that was the order 2166, which, as the Chamber just mentioned, in paragraph 12

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1 opened the possibility for the Defence to seek the admission of further material via
2 the Bar table one week following the presentation of the evidence of the last witness.
3 So it's our understanding that the maximum deadline for us to seek admission of such
4 material would be one week from now.

5 I can at this stage inform the Trial Chamber that we do have a very limited new
6 request to submit. What we propose to do, and before I say, talk about procedure,
7 this material stems from what I mentioned earlier on; those were audio records that
8 recently came into our possession from a Radio Candip. And this material, this is
9 the main part of our request.

10 What I suggest is that we can provide this material, as we did for the previous Bar
11 table motion, to the Prosecution tomorrow and, hopefully, by the end of
12 business -- but hopefully they can answer by the end of the week and then we would
13 put the request no later than Monday of next week. And that would be the end of
14 the presentation of the case for the Defence.

15 So this is what I suggest at this time for this very limited -- and this material has
16 already been disclosed to the Prosecution already.

17 PRESIDING JUDGE FREMR: [15:02:00] Ms Samson or Ms Morris, do you want to
18 comment? Ms Samson, please.

19 MS SAMSON: [15:02:05] Thank you. The proposal of the Defence is perfectly
20 acceptable to the Prosecution. We've started the review of the material in any event,
21 and we can respond by Friday.

22 PRESIDING JUDGE FREMR: [15:02:16] I'm very glad to hear it.
23 So as -- Mr Bourgon.

24 MR BOURGON: [15:02:23] I have a further issue, Mr President, but it's not unrelated
25 to the evidence. It's more I'd just like to make one clarification to something that was

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1 mentioned by my colleague today to the witness, where at page 76, lines 6 to 9 -- are
2 we in private session or public?

3 PRESIDING JUDGE FREMR: [15:02:43] No. We are in open session.

4 MR BOURGON: [15:02:45] I need to go into private session please, Mr President.

5 PRESIDING JUDGE FREMR: [15:02:48] No problem.

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

7 (Private session at 3.02 p.m.) *(Reclassified partially in public)

8 THE COURT OFFICER: [15:03:00] We're in private session.

9 PRESIDING JUDGE FREMR: [15:03:05] Thank you, court officer.

10 Mr Bourgon, please.

11 MR BOURGON: [15:03:07] (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted).

22 PRESIDING JUDGE FREMR: [15:03:59] (Redacted)

23 (Redacted)?

24 MS MORRIS: [15:04:08] (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted).

3 PRESIDING JUDGE FREMR: [15:04:29] So it seems, at least to me, that parties are on
4 the same page on this issue.

5 So if there are no further requests for the floor, as I used to do it, but normally I am
6 doing that after four, five weeks, that I thank all parties and participants.

7 For sure, my fault, let's move into open session.

8 (Open session at 3.05 p.m.)

9 THE COURT OFFICER: [15:05:04] We are back in open session.

10 PRESIDING JUDGE FREMR: [15:05:07] So I will start again because I think it should
11 be mentioned publicly.

12 So normally I used to thank parties and participants and Registry staff for their
13 cooperation, but normally it takes four, five weeks, what we usually spent in the
14 courtroom for our single evidentiary block. This one was, due to the special
15 circumstances, very short. Nevertheless, it will not prevent me for doing the same.

16 So I would like to thank you, first of all, parties for the very cooperative approach
17 today. It's a pity that it was just the last day. But at least I think we can see that we
18 make some progress during those almost two years in the courtroom.

19 I also thank to participants, I also thank to our interpreters, our court reporters, our
20 guards who saved our security.

21 And otherwise, until further notice, we adjourn.

22 Is some possibility that we will hold a status conference, but it will depend on some
23 adjudication of filings concerning, especially concerning possibility to hold a closing,
24 presentation of closing statements outside of The Hague. But in such a case that we
25 will decide on that, we will inform you shortly.

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- 1 For the moment, I thank you very much and I wish everyone a good week.
- 2 Now court is adjourned.
- 3 THE COURT USHER: [15:06:48] All rise.
- 4 (The hearing ends in open session at 3.06 p.m.)
- 5 RECLASSIFICATION REPORT
- 6 Pursuant to the Trial Chamber VI's Order, ICC-01/04-02/06-1887, dated 4 May 2017,
- 7 the public reclassified and lesser redacted version of this transcript is filed in the case.