

Trial Hearing
WITNESS: DRC-OTP-P-0768

(Open Session)

ICC-01/04-02/06

1 International Criminal Court

2 Trial Chamber VI - Courtroom 2

3 Situation: Democratic Republic of the Congo

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

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

6 Trial Hearing

7 Monday, 19 October 2015

8 (The hearing starts in open session at 9.35 a.m.)

9 THE COURT USHER: All rise.

10 The International Criminal Court is now in session.

11 Please be seated.

12 PRESIDING JUDGE FREMR: Good morning, everybody.

13 Court officer, please call the case.

14 THE COURT OFFICER: Thank you, Mr President.

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

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

17 We are in open session.

18 PRESIDING JUDGE FREMR: Thank you. As usual we will start with appearances.

19 Prosecution, please.

20 MS SAMSON: Good morning, Mr President, your Honours. Appearing for the

21 Prosecution today are Mr Rens van der Werf and Mr James Pace, both trial lawyers;

22 Ms Selam Yirgou, case manager; and myself, Nicole Samson, senior trial lawyer.

23 PRESIDING JUDGE FREMR: Thank you, Ms Samson.

24 Defence.

25 MR BOUTIN: Good day, Mr President, your Honours. Today for the Defence,

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1 Mr Ntaganda is here present. Dennie Michielsens, stagiaire; Isabelle Martineau,
2 assistant juridique; Chloé Grandon, (Interpretation) plus myself, Luc Boutin,
3 lead -- counsel, rather.

4 PRESIDING JUDGE FREMR: Thank you, Mr Boutin.

5 Now Legal Representatives of Victims, please.

6 MS PELLET: (Interpretation) Thank you, Mr President, your Honours. The child
7 soldiers are represented today by myself, Sarah Pellet, counsel at the OPCV. Thank
8 you.

9 MR SUPRUN: (Interpretation) Good morning, Mr President. Good morning,
10 your Honours. The team for attacks against the civilian population are represented
11 by Dmytro Suprun, myself, counsel at the OPCV. Thank you.

12 PRESIDING JUDGE FREMR: Thank you both of you.

13 I also note the presence of Mr von Bóné, the legal adviser appointed pursuant to
14 Rule 74 to assist the witness.

15 Welcome, Mr von Bóné, and please state your name for the record.

16 MR VON BÓNÉ: Good morning, Mr President, your Honours. My name is
17 Julius von Bóné and I am the counsel for the witness today.

18 PRESIDING JUDGE FREMR: Thank you.

19 As a preliminary matter I would like to address a couple of logistical issues. As the
20 parties and participants were informed by way of email, during this evidence block,
21 the Registry will only be able to provide edited transcripts in one language due to the
22 fact that simultaneous trials are running. We will therefore on most days only be
23 receiving the English edited transcripts immediately, with the French edited
24 transcripts following on a rolling basis from 20 November 2015, once the
25 simultaneous hearings end.

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1 Further, as previously indicated, for six days of this evidence block we will have
2 amended sitting hours in order to accommodate another Chamber. Those days are
3 from 2 to 5 November inclusive, and 16 and 17 November. On those days we will sit
4 in two two-hour blocks from 9 to 11 a.m., and then from 11.30 to 1.30 p.m.

5 Are there any questions about these housekeeping matters, Prosecution?

6 MS SAMSON: Just one issue, your Honour, today it appears as if I only have the
7 French transcript and I wonder if that's the same for everybody else in the courtroom.

8 PRESIDING JUDGE FREMR: It is obviously not the case as concerns Chamber
9 because I think we do have English transcript.

10 Court officer?

11 So I think we will -- I hope we will make it proper in a second.

12 I think in the meantime, Defence, any questions concerning this issue?

13 MR BOUTIN: No, your Honour. Thank you.

14 PRESIDING JUDGE FREMR: Legal Representatives, no questions?

15 And, Mr von Bóné, I guess no questions.

16 Okay, I see that I think -- Ms Samson, is everything okay now?

17 MS SAMSON: No. I still only have the French transcript. I can follow the French
18 transcript. I don't mind personally, if it's not an issue that anyone else is facing.

19 PRESIDING JUDGE FREMR: Thank you very much for your indulgence, but
20 anyway I think we will work on that and I hope we will make it as soon as possible as
21 it should be.

22 Then relatedly, the Chamber notes the Prosecution request, it's filing number 900, to
23 add an additional witness, Witness P-859, to the end of this block of evidence. The
24 Prosecution indicated that the Defence has agreed to this proposal.

25 Is that correct, Mr Boutin?

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1 MR BOUTIN: Yes, your Honour, we the Defence has agreed to the addition of one
2 witness.

3 PRESIDING JUDGE FREMR: Thank you. The Chamber generally welcomes such a
4 proposal in order to maximise use of the courtroom time available to us. The
5 Chamber therefore grants the request in principle. However, in order to keep to our
6 schedule and finish the testimony of all eight witnesses now by 20 November 2015,
7 the Chamber would like to remind the parties that it is of absolute importance to
8 strictly adhere to their time estimates for the questioning of witnesses. As was the
9 case during the first block of evidence, I have to reiterate that the Chamber will be
10 actively enforcing this.

11 Before the next witness can be called, we have to address some further matters related
12 to the witness's testimony. In particular, there is an outstanding request by the Legal
13 Representative of the former child soldiers to question the witness. In line with our
14 decision on the conduct of proceedings, the Chamber will rule on this request after
15 the examination-in-chief by the Prosecution, having heard whether the Legal
16 Representative maintains her application and having heard any objections from the
17 parties.

18 The Chamber does, however, note already at this stage that it will not allow any
19 examination of the witness which would be duplicative of the testimony elicited by
20 the Prosecution, and will only permit questioning if it considers that the line of
21 questioning is an area upon which the witness could usefully comment.

22 Ms Pellet, I think you have noted that. Okay.

23 Now, I have three further matters to address with respect to this witness: First, the
24 Chamber has noted the Defence's indication of objection to certain of the documents
25 the Prosecution may be using with this witness and the Prosecution's response

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1 provided by way of email yesterday evening.

2 The Chamber will address most of these objections if and when they arise throughout
3 the course of examination-in-chief. However, in respect of the objection to three
4 particular items, that is the video sought to be used, together with the related
5 transcript and translation, so documents 8, 9 and 10 of the Prosecution's list, the
6 Chamber recalls that the procedure for agreement of transcripts and translations of
7 audio visual material intended to be used in court was addressed by the Chamber's
8 decision on the Conduct Of Proceedings, concretely at paragraph 57.

9 Maybe I will quote that. Paragraph 57 reads as follows: "To facilitate the
10 presentation of audio visual in court the party intending to use the recording shall as
11 early as practicable indicate the section of the transcript corresponding to the excerpts
12 of the material it intends to use as well as if applicable the corresponding sections of
13 the translation. The parties shall then consult to try resolve any disagreement as to
14 the transcription of translation of the excerpts. If any disagreement cannot be
15 resolved, the parties shall notify the Chamber who may ask the Registry to advise on
16 the transcription or translation." Unquote.

17 So it is only in the case of concrete disagreement, I am emphasising, that between the
18 parties as to the transcript and translation and if the Chamber considers it necessary
19 that the assistance of the Registry would be requested.

20 So in light of that, Mr Boutin, is there anything additional you wish to add on this
21 point?

22 MR BOUTIN: Absolutely, Mr President. We think from the Defence point of view
23 that this is a very, very important matter, which goes to the core of the fairness of this
24 trial. Admission of transcript for the truth of their content, depending upon the
25 circumstances, but in some circumstances, is very, very tricky. And we have

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1 lengthy -- I wouldn't say lengthy, we have certainly remarks to produce to -- to make
2 to the Court, to the Chamber before the Chamber determine finally the course of
3 action with regards to what should be entered and authorised to be used and
4 tendered.

5 And with your permissions when the Prosecution reach the point where they will
6 request the witness to identify some documents and videos and whatnot, I would
7 raise an object and with your permission I will make my comment at this point.
8 Thank you.

9 PRESIDING JUDGE FREMR: Originally, I had the intention to ask Ms Samson also
10 to respond, but it seems that maybe it's not the best time because as Mr Boutin
11 indicated, he would make concrete objections later on.

12 So do you want to add anything, Ms Samson, now?

13 MS SAMSON: No. Just a clarification that I understand that there is no objection to
14 the use of the video with the witness, only with the transcript and the translation.
15 I believe the Defence clarified that this morning. Otherwise we can -- we can
16 proceed as your Honour has suggested. However, there is an outstanding issue, I
17 think, of principle or process that will remain unresolved. It strikes me that the
18 Defence is raising an issue that isn't case by case, but rather a general process as to
19 how we tender transcripts, which may need to be resolved once and for all at some
20 stage. If it's not now, it can be later.

21 PRESIDING JUDGE FREMR: Thank you. As I have already said, you know, I
22 pointed out to our decision on conduct for proceedings which will be obviously the
23 leading rule for our prospective decision, but as I said also now, we will wait for
24 further, if any, concrete objections indicated by Mr Boutin.

25 Now, the second issue I would like to deal with is that the Chamber recalls its

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1 decision issued last week granting certain in-court protective measures to the witness
2 about to testify, specifically the use of a pseudonym for the purposes of the trial and
3 voice and face distortion during the testimony. In addition, private sessions will be
4 used to deal with potentially identifying information that could expose the witness or
5 those close to him.

6 The third issue concerns witness and possible decision on Rule 74.

7 Mr von Bóné, I understood that you have presented your request in this sense
8 yesterday evening. I guess you also met Mr Witness, you consult this issue with him.
9 Could you inform us about that.

10 MR VON BÓNÉ: Yes, your Honour, indeed. I've worked with the witness a couple
11 of days, and yesterday I filed it -- actually, I was a little bit caught off guard simply
12 because the Counsel Support Section asked me to relay to them when they would file
13 it for me, so I'm very sorry for the inconvenience, but such a -- such a filing I did
14 undertake; however, it was not to the appropriate organ of the Court apparently.
15 Having said that, I guess, at some point you will rule on that request. Thank you
16 very much.

17 PRESIDING JUDGE FREMR: Thank you.

18 Now, Prosecution, do you want to respond to that ex parte or inter partes, it is up to
19 you, and we will accommodate our next proceeding to that?

20 MS SAMSON: Your Honour, I haven't seen the filing. What I'm assuming is that
21 there is a request for an assurance under Rule 74(3)(c)(i) and (ii). What I can say in
22 open session is that the Prosecution submits assurances of that nature are appropriate,
23 that we ourselves do not intend to use the information provided by the witness in our
24 prosecution against him. Of course with the exception of any offences that may be
25 committed under Article 70 or 71.

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1 I can make a further submission ex parte in relation to other States, but for now I can
2 provide the Court with the information that we believe the assurances are
3 appropriate.

4 PRESIDING JUDGE FREMR: Defence, any statement to that?

5 MR BOUTIN: No comment, your Honour. We'll see how things evolve, but from a
6 Defence perspective we certainly have no position.

7 PRESIDING JUDGE FREMR: That is also a possibility and I understood that it was
8 some negotiation between the Chamber and Prosecution that if you want to make this,
9 you know, assurance from your part complete you would like to make it by email, so
10 we can even start by some, I would call it, informative part of the testimony now and
11 hopefully we will not approach this part of testimony that require this assurance
12 before the break, which would be at 11 o'clock, and then it's possible to make this
13 assurance from your part by email, and we then could render our decision under the
14 first break.

15 Would it be fine with you, Ms Samson?

16 MS SAMSON: Yes, thank you.

17 PRESIDING JUDGE FREMR: Okay, so I think we can proceed in this way.

18 Mr von Bóné, is it fine with you as well, I guess?

19 MR VON BÓNÉ: Absolutely, your Honour. Absolutely.

20 PRESIDING JUDGE FREMR: So please just guard that we will not approach any
21 issue which could lead to self-incrimination of your witness before this break.

22 And the third issue, it was this one. So I think at the moment we exhausted all
23 housekeeping matters that I do have on my list. And it means then we can now
24 move to the testimony itself.

25 So now we will bring the witness to the courtroom, and for that purpose we have to

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1 go to closed session, court officer, please.

2 (Closed session at 9.56 a.m.) *(Reclassified entirely in public)

3 THE COURT OFFICER: We are in closed session, Mr President.

4 PRESIDING JUDGE FREMR: Thank you.

5 So witness may be brought in.

6 (The witness enters the courtroom)

7 PRESIDING JUDGE FREMR: Court officer, please, let's move to open session now.

8 (Open session at 9.58 a.m.)

9 THE COURT OFFICER: We are in open session, Mr President.

10 PRESIDING JUDGE FREMR: Thank you.

11 Mr Witness, good morning. Mr Witness, you are going to testify before the

12 International Criminal Court and on behalf of this Chamber I would like to welcome

13 you to the courtroom and give you some introductory information.

14 This Chamber has been established to try the case of the Prosecutor against

15 Mr Bosco Ntaganda. You are called to testify to assist us in our search for the truth.

16 You will be asked questions both by the Judges and lawyers in this courtroom, and in

17 this connection, I would like to guide you in the following way:

18 Please listen carefully to those questions. It is very important that you make sure

19 that you understand the question before you answer. If you do not understand, feel

20 free to ask for the question to be repeated or rephrased.

21 We want you to tell the truth and tell us only what you really saw or heard or sensed

22 yourself. If you didn't see or hear it yourself, but you found out some other way,

23 then you should explain how.

24 You may be asked about events that happened many years ago. So it is natural that

25 you may not remember all details. It doesn't matter. Please testify just on that

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1 which you remember. Don't guess, don't make things up, please. There is nothing
2 wrong in saying, "I don't know," or "I don't remember."

3 Do you understand all this, Mr Witness?

4 WITNESS: DRC-OTP-P-0768

5 (The witness speaks French)

6 THE WITNESS: (Microphone not activated)

7 PRESIDING JUDGE FREMR: Fine.

8 Now, court officer, can you administer the solemn undertaking to tell the truth,
9 please.

10 THE COURT OFFICER: The solemn undertaking is on the desk.

11 PRESIDING JUDGE FREMR: So, Mr Witness, could you read the solemn
12 undertaking, which is in front of you.

13 THE WITNESS: (Interpretation) I solemnly declare that I will speak the truth, the
14 whole truth, and nothing but the truth.

15 PRESIDING JUDGE FREMR: So, thank you, Mr Witness. So it is not that you have
16 read it, but realizing that you also confirmed it, okay?

17 THE WITNESS: (Interpretation) Yes.

18 PRESIDING JUDGE FREMR: Fine. It means you are now under oath. The
19 representative of the Victim and Witness Unit and the lawyer appointed by the
20 Registry, Mr von Bóné, who is sitting by your side, who is here to assist you, have
21 both informed you about the importance of speaking the truth. Nevertheless, I want
22 to reiterate to you that as you have just promised, you have to speak the truth, and it
23 is an offence within the jurisdiction of the Court to give false testimony. Do you
24 understand that?

25 THE WITNESS: (Interpretation) I understand.

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1 PRESIDING JUDGE FREMR: Mr Witness, your duty counsel, Mr von Bóné, also
2 filed a request to give you an assurance, according Rule 74(3)(c) of the Rules of
3 Procedure and Evidence of the Court to assure you that there is no risk for -- of
4 self-incrimination in your case. But before we still need some further details from
5 the Prosecution, we will decide about this request just after our first break, so it means
6 in -- 11.30.
7 Nevertheless, we would like to start with your testimony now. It means that during
8 the first hour, we will just touch an informative part of your testimony, so we will
9 make our best not to deal with any issue which could lead to your self-incrimination,
10 which we possibly will touch after the break; but if there would be anything which,
11 according to your view or according to the view of your duty counsel could lead to
12 self-incrimination, please let us know. But as I emphasized during this first part of
13 your testimony, we will try just to deal with issues that shouldn't lead to such a risk.
14 Now, Mr Witness, in this connection, I would like to give you an explanation
15 concerning protective measures that we decided on in your case.
16 We firstly decided, or we ordered face distortion, which means that no one outside
17 the courtroom can see your face on the screen during your testimony.
18 We also decided to order voice distortion, which means that no one outside the
19 courtroom will be able to identify you by your voice, as it has been distorted.
20 The Chamber also decided on use of pseudonym. In accordance with that, we will
21 all refer to you only as "Mr Witness" to make sure that the public does not know your
22 name.
23 When you answer questions that will not give away who you are, we will do so in
24 open session, which means that the public can hear what is being said in the
25 courtroom. You can see that we are now in open session, and it means that the light

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1 in front of you is red.

2 When you are asked to describe anything that relates specifically to you, or you are
3 asked to mention facts that might reveal your identity, for example, any locations
4 where you live or persons close to you, we will do this in a private session.

5 And as I also indicated, we will, subject to our decision, also go into private session
6 for any evidence which might self-incriminate you. In that case we will decide
7 positively on a request made by Mr von Bóné. And in such a case, the light in front
8 of you will be green. Then there is no broadcast and no one outside the courtroom
9 can hear your answer.

10 If ever anything gets said in open session which should have been said in private
11 session, we will do our best to protect this information. Your testimony will be
12 broadcast on a delay, and we can remove any such remarks from the broadcast,
13 which will be heard by the public, and from the public transcript of these
14 proceedings.

15 The Chamber recognizes that your security and well-being is important during the
16 course of this trial. If at any point you feel that you would like a brief break from
17 giving your testimony or you feel unwell, do not hesitate to let us know. Do you
18 understand that?

19 THE WITNESS: (Interpretation) I understand.

20 PRESIDING JUDGE FREMR: And now a few practical matters you should have in
21 mind when giving your testimony. Everything we say here in the courtroom is
22 written down and interpreted into English and French. It is, therefore, important to
23 speak clearly and to speak at a moderate or rather slow pace like me at the moment.
24 This may be not very natural, but it is very, very important for our need.

25 We want -- it is the purpose of that, we want to make sure that your words can be

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1 well understood by the interpreters and then by the rest of us.

2 I would also like to ask you to speak into the microphone and only start speaking
3 when the person asking you the questions has finished.

4 And to allow for the interpretation, everyone here in the courtroom has to wait a few
5 seconds before starting to speak. So I recommend to you when the lawyer has asked
6 his or her question, please count in your head to three and then only give your
7 answer.

8 If you have any questions yourself, raise your hand so we know that you wish to say
9 something. We will then give you the opportunity to speak.

10 Have you understood all that?

11 THE WITNESS: (Interpretation) I've understood.

12 PRESIDING JUDGE FREMR: Very well. So I think it's all from my part at the
13 moment, and we can start with your testimony.

14 So, Prosecution, you have the floor. Ms Samson, it will be you. Okay. Please, go
15 ahead.

16 MS SAMSON: Yes. Thank you, your Honour.

17 QUESTIONED BY MS SAMSON:

18 Q. Good morning, sir.

19 A. Good morning.

20 Q. We've met previously, but I'll repeat for you that my name is Nicole Samson,
21 and I'll be asking you questions today and tomorrow on behalf of the Office of the
22 Prosecutor. I'll first start with some questions relating to your background.

23 And for that I would ask, Mr President, if I may move into private session.

24 PRESIDING JUDGE FREMR: All right. Court officer, let's move to -- into private
25 session. I'm sorry.

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1 (Private session at 10.10 a.m.) *(Reclassified partially in public)

2 THE COURT OFFICER: We are in private session, Mr President.

3 PRESIDING JUDGE FREMR: Thank you. Ms Samson, you may proceed.

4 MS SAMSON: Thank you.

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

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25 (Redacted)

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1 PRESIDING JUDGE FREMR: Mr Boutin, any objection to the use of this document?

2 MR BOUTIN: Yes, your Honour. As we provided notice a few days ago, we object
3 to the tendering of this document and the use of this document. With regard to the
4 use, obviously the witness can be shown the document. We don't have much issue
5 with this. But with regard to whether the Prosecution want to tender the document
6 for the truth of its content, we do have an objection.

7 PRESIDING JUDGE FREMR: Thank you. I understood that at the moment we are
8 not at the point to decide about possible admission. At the moment we are just
9 asking you whether you have against to use that. I understood that you don't have;
10 so I think as to the use, we can proceed.

11 MS SAMSON:

12 Q. Sir, can you see the document on your screen?

13 A. Yes, I can see it.

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 Q. Perhaps we can move to show the rest of the pages to the witness and then I'll
19 ask him if he recognizes the document.

20 Do you recognize the document?

21 A. I know this document.

22 Q. Can you tell us what it is, please.

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 A. I'm sorry, please, could you ask the question again?

2 Q. Certainly. Does this document relate to you at all?

3 A. Yes. I'm concerned by it, yes.

4 Q. Could I ask the court officer to move back to page 2, please.

5 Could you tell the Court, please, how this document concerns you?

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 MS SAMSON: Mr President, I seek admission of the document into evidence.

14 PRESIDING JUDGE FREMR: Mr Boutin.

15 MR BOUTIN: (Interpretation) Yes, your Honour, we object to the admissibility of

16 this document for very simple reasons: (Redacted)

17 (Redacted)

18 (Redacted). The Defence doesn't contest that.

19 (Redacted)

20 (Redacted)

21 (Redacted). If this document is admitted for the veracity of its content, which

22 the Defence can no longer contest, what the Defence can't verify in an independent

23 way either, this would prejudice the accused, or it could prejudice the accused.

24 (Redacted)

25 (Redacted) The question is, therefore, on what

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1 grounds should this document be tendered into evidence, taking into account that it
2 does cause prejudice to the accused? If the Court accepts this document, the Defence
3 can no longer contest it, and it would be considered the truth.

4 The Defence is being put in a position, but we can't establish yes or no if the
5 information that appears in this document is true and should be accepted as true by
6 the Chamber.

7 Those are our representations. The foundation is that this document is not only
8 useless for the proceedings, if I understand the reason why it is being submitted, but
9 secondly accepting it for the veracity of its content would prejudice the accused.

10 Thank you.

11 PRESIDING JUDGE FREMR: Ms Samson, any reaction on that?

12 MS SAMSON: Yes, your Honour. (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 PRESIDING JUDGE FREMR: Thank you. Give us a minute. We will deliberate in
25 the courtroom. I will deliberate and consult with my colleagues.

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1 (Trial Chamber confers)

2 PRESIDING JUDGE FREMR: So after silent deliberation in the courtroom, I can
3 deliver our oral ruling on this objection: The objection is overruled and the
4 document is admitted into evidence as a Prosecution exhibit.

5 And just briefly, to our reasoning, if I can be brief and I can refer to Prosecution
6 argumentation, it's admitted just for the limited -- a limited purpose, and we don't see
7 any prejudice in this sense to Defence. (Redacted)

8 (Redacted)

9 (Redacted). So it was very briefly our reasoning.

10 Ms Samson, you may proceed.

11 MS SAMSON: Thank you.

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

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- 1 (Redacted)
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- 13 (Redacted)
- 14 Q. Thank you. Sir, were you ever in the CNDP armed group?
- 15 A. No, I was never in the CNDP.
- 16 (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 (Redacted)
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4 PRESIDING JUDGE FREMR: Sorry to interrupt you, Ms Samson.

5 Court officer, could we kindly provide Mr Witness, as we did it last time, with a piece
6 of paper and pencil to facilitate further spelling. Thank you.

7 Ms Samson, you may proceed.

8 THE INTERPRETER: Correction: There is an N before the name that was just
9 spelled.

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

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5 THE INTERPRETER: The end of the witness's answer was not clear. Would you
6 please ask him to repeat.

7 MS SAMSON:

8 Q. Sir, could you please repeat the last part of your answer. It wasn't captured by
9 the interpreters.

10 (Redacted)

11 (Redacted)

12 MS SAMSON: Mr President, given the time, it may be appropriate to have our
13 break.

14 PRESIDING JUDGE FREMR: You are right. Thank you very much.

15 Now we will break for 30 minutes so you can, Mr Witness, can take some rest.

16 So first we have to go to closed session to allow us to escort the witness out of the
17 courtroom, please, court officer.

18 (Closed session at 11.02 a.m.) *(Reclassified entirely in public)

19 THE COURT OFFICER: We are in closed session, Mr President.

20 (The witness stands down)

21 PRESIDING JUDGE FREMR: Thank you.

22 We can return back to open session.

23 (Open session at 11.02 a.m.)

24 THE COURT OFFICER: We are in open session, Mr President.

25 PRESIDING JUDGE FREMR: Thank you. So we will break now for 30 minutes.

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1 We will continue at half past 11 with this testimony.

2 And before leaving the courtroom, I would like to remind the Prosecution of its
3 commitment to provide the Chamber with their position to the request on Rule 74 by
4 email.

5 The Court is adjourned now.

6 THE COURT USHER: All rise.

7 (Recess taken at 11.03 a.m.)

8 (Upon resuming in open session at 11.33 a.m.)

9 THE COURT USHER: All rise.

10 Please be seated.

11 PRESIDING JUDGE FREMR: We will continue now by rendering of our oral
12 decision on Rule 74 request concerning Witness P-0768.

13 This morning, the Chamber was seized of a request of Mr von Bóné for assurances
14 pursuant to Rule 74(3)(c) to be provided to this witness.

15 The Chamber has received the Prosecution's observations, noting in particular that
16 the Prosecution considers that assurances are appropriate in this case. The Defence
17 made no objection.

18 Mr von Bóné, the Chamber has considered the request and are providing the witness
19 with the Rule 74(3)(c) assurances; therefore, if any questions are asked that could lead
20 to self-incrimination, we will hear the witness's answer in private session.

21 And Mr Witness, for you, just providing you with further qualification, there may be
22 questions that you feel answering them truthfully may incriminate you because these
23 questions relate to our own conduct. In such cases, we will require you to answer
24 the question, but we can assure you, and we are doing that formally, that your answer
25 will be kept confidential and will not be disclosed to the public or to the government

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1 of any country.

2 The Prosecution has further assured that they will not, themselves, use this
3 information to prosecute you before the ICC provided that you tell the truth. Do
4 you understand all this?

5 THE WITNESS: (Interpretation) Yes, I do.

6 PRESIDING JUDGE FREMR: Very well. It means that we can proceed with your
7 testimony.

8 And before doing that, I would like to express your appreciation, I mean, from the
9 part of the Chamber, that you during the first block that you respected fully our
10 instructions, meaning that you responded clearly and you observed pauses. So
11 please proceed in the same way.

12 Ms Samson, you have the floor.

13 MS SAMSON: Thank you.

14 Mr President, for my next series of questions, I would ask that we move into private
15 session, please.

16 PRESIDING JUDGE FREMR: Court officer, let's move into private session.

17 Maybe before doing that, for the interest of public, can you estimate how much time
18 you will need for staying in this kind of regime?

19 MS SAMSON: Yes, your Honour; quite a bit of time, I think.

20 PRESIDING JUDGE FREMR: Okay.

21 (Private session at 11.37 a.m.) *(Reclassified partially in public)

22 THE COURT OFFICER: We are in private session, your Honour.

23 PRESIDING JUDGE FREMR: Thank you.

24 Ms Samson, you may proceed.

25 MS SAMSON:

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14 A. Well, we were supposed to go and take over Mongbwalu. That's it.

15 Q. Did you discuss at this time or any later time any of the operational strategy
16 about how you were going to do that?

17 A. Yes. We were supposed to drive out the RCD troops which had come to attack
18 us in order to capture Aru and Ariwara, and we also had to drive them out in order to
19 recapture Mongbwalu. That, indeed, was the nature of the instructions we received
20 at that time.

21 Q. Who, in particular, instructed you to go to Mongbwalu?

22 A. The instructions came from Bosco Ntaganda.

23 Q. What was his role within the UPC, to your knowledge?

24 A. He was the chief of general staff, deputy chief of general staff in charge of
25 operations and training.

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1 Q. And who was above him in the UPC structure?

2 A. On the side of the army, he was the second in command after Kisembo; and at
3 the top of the army, Mr Thomas Lubanga was in charge.

4 (Redacted)

5 (Redacted)

6 (Redacted)

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8 (Redacted)

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15 (Redacted)

16 Q. Did you have weapons for the Mongbwalu operation?

17 A. Yes, we had weapons.

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

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22 Q. And you indicated that Mr Ntaganda came with his team. Who did he come
23 with?

24 A. He was accompanied with his bodyguard. He also had a team of civilians who
25 transported ammunition and weapons that they had. There was also a small unit, a

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1 small support unit.

2 Q. And what can you tell the Chamber about the team of civilians? Who were
3 they?

4 A. Well, they were civilians from the Hema tribe who accompanied them and
5 helped them to transport weapons, ammunition and heavy weapons.

6 Q. Do you know or recall what type of heavy weapons Mr Ntaganda had with
7 him?

8 A. Yes. He had a 75-millimetre cannon, grenade launchers. He had a B10
9 cannon. He also had 12.7 millimetre. If I can also add, RPG number 7 machine
10 gun.

11 (Redacted)

12 (Redacted)

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7 A. Well, the object of the attack was to get Mongbwalu back, because the UPC
8 considered Mongbwalu as a strategic place for them.

9 Q. And what made Mongbwalu a strategic place?

10 A. Mongbwalu is a place from which gold is extracted, there is a major company
11 there, Kilo-Moto, which exploits the gold-mining in Mongbwalu.

12 Q. And do you know what the ethnic composition of Mongbwalu was at the time
13 of the attack?

14 A. Yes, there were lots of ethnic groups. There were an ethnic group called Nyali,
15 there were -- almost all the ethnic groups in Ituri were there because most of the
16 population of Mongbwalu was composed of Kilo-Moto employees and the young
17 people who came to work in the mines or quarries -- mines.

18 Q. And earlier today you mentioned that there were Lendu militia in Mongbwalu.
19 Did you see Lendu militia on the first day of the attack?

20 A. Yes, I saw them.

21 Q. Do you remember how they were dressed?

22 A. They didn't really have specific dress. Some were wearing RCD-K/ML military
23 uniform and others were in civilian clothing.

24 Q. Did they ever wear anything else that could identify them?

25 A. Yes. In order to identify them -- well, they bore weapons, firearms, some had

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1 machetes, others had spears and arrows.

2 Q. Did Mr Ntaganda at the eve of the first day, the evening of the first day, did he
3 give you any instructions in relation to the specific object of the attack in terms of who
4 you were attacking?

5 A. Yes, the order was to attack all the RCD-K/ML soldiers who were in
6 Mongbwalu and the Lendu militia. They told us -- they spoke about the Lendu.
7 They didn't speak about the militia, they just said Lendu.

8 Q. Do you know if there were any Lendu civilians in Mongbwalu at that time?

9 A. Yes. As I mentioned, there were Lendu civilians. Lendu are also part of the
10 population of Ituri.

11 Q. And when you say that Mr Ntaganda gave instructions about who to attack in
12 terms of the Lendu, do you recall if he distinguished between attacking Lendu
13 military or combatants and attacking Lendu civilians?

14 A. He didn't make a difference between civilians -- Lendu civilians and the militia.
15 He spoke about Lendus, only Lendus, and everybody had to assess that in their own
16 way.

17 (Redacted)

18 (Redacted)

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1 Can you describe Mongbwalu geographically for us. How many hills are there in
2 Mongbwalu?

3 A. Yes. So Mongbwalu is surrounded by several hills. So the hill which I was
4 speaking about is situated towards the south, south-west of Mongbwalu -- south-west
5 of the centre of Mongbwalu. And the factory that I spoke about in Sayo, they are
6 situated towards the north-west of Mongbwalu.

7 Q. I'd like to show you a document.

8 (Redacted)

9 (Redacted)

10 THE COURT OFFICER: Ms Samson, which redacted version would you like to have
11 to be published, please?

12 MS SAMSON: The latest redacted version.

13 Q. Sir, does the document appear on your screen?

14 A. Yes, I can see it. Thank you, it's on the screen.

15 Q. Do you recognize it?

16 A. Yes, I'm familiar with this document.

17 Q. What is it, please?

18 A. It is a sketch of the town of Mongbwalu.

19 Q. Did you draw this sketch?

20 A. Yes, I did. I did it myself.

21 Q. Is that your signature on the bottom right-hand corner of the document?

22 A. Yes, that is my signature.

23 Q. And I see that there are markings on the sketch, letter markings, A, B, C, D, E, F,
24 G, H, I, J. Would you be able to take the Court through this sketch and explain what
25 it is with reference to the letter markings, starting with A?

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1 A. Yes. A, the letter A corresponds to the Kilo-Moto office, in the triangle of roads
2 that go toward the centre of Mongbwalu and the road that goes to the apartments, the
3 Kilo-Moto apartments.

4 B, the letter B corresponds to the Kilo-Moto apartments.

5 The letter C corresponds to the housing where the managers of Kilo-Moto lived.

6 I think that the letter D corresponds to the office, the Kilo-Moto office. And above
7 that you have the factory, the Kilo-Moto factory.

8 The letter E is a roundabout where you have a road to the village of Sayo and Nzebi.

9 The letter F, to the left of the sketch, is the Mongbwalu airport.

10 The letter I is the Catholic convent in Kilo-Moto where the Catholic priest was.

11 H is the hospital, the Kilo-Moto hospital.

12 And then the letter J is camp Goli.

13 And I think that's all. I don't know if I skipped any of the letters.

14 Q. Sir, I -- I think I heard you say a different letter for camp Goli. What was the
15 letter on the map to represent camp Goli?

16 A. It's the letter G.

17 Q. And do you see just above your signature on the lower right-hand corner there
18 is a J as well. Do you know what the J stands for?

19 A. The letter J here represents a place where there are two homes where Kilo-Moto
20 managers lived -- no, sorry, I -- I'm mistaken, I beg your pardon. There's a little hill
21 toward the bottom of this sketch and that's what the letter J corresponds to, that hill.

22 Q. And so, sir, on the second day of the Mongbwalu operation, where did you
23 indicate Mr Ntaganda and Mr Salumu were with reference to the map?

24 A. It's here on this hill where you see the letter J.

25 (Redacted)

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21 Q. Certainly. You mentioned that when Mr Ntaganda arrived in Mongbwalu, he
22 had brought with him some civilians who were helping carry weapons. What
23 happened, to your knowledge, to those civilians during the operation in Mongbwalu?
24 A. The civilians had been given Kalashnikovs, and they were in the town in
25 Mongbwalu.

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1 Q. Do you know who gave them those weapons?

2 A. Yes. It was Bosco. He was the one who gave out the weapons.

3 Q. Were you ever present when he provided any instructions to those civilians?

4 A. No, I was not present. I don't know what kind of instructions were given.

5 Q. Did you see those Hema civilians, or did you know what they were doing in
6 Mongbwalu?

7 A. Yes. Right after the operations, the civilians were spread out around the town
8 of Mongbwalu, and they committed crimes and they killed people. They killed
9 Lendu people.

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 Q. And you said that these Hema civilians killed Lendu people. Can you explain
17 that a bit more?

18 A. Yes. Before we arrived in Mongbwalu, we were told that they'd been driven
19 out by the Lendu and the members, the soldiers of the RCD-K/ML -- it was a way of
20 getting revenge. They were attacking the Lendus, and they broke down the houses,
21 they destroyed the Lendu houses in Mongbwalu.

22 Q. I just have a few questions about that. You said that you were told that they
23 had been driven out by the Lendu. Who had been driven out?

24 A. It was the Hema civilians.

25 MR BOUTIN: Excuse me, your Honour. Just a comment. We have been in

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1 private session for quite some time, and I think this line of questioning could be done
2 in open session. It has been so for some time. So I suggest, obviously, here, if the
3 Court agrees, that we move into open session.

4 PRESIDING JUDGE FREMR: Ms Samson, I would tend to agree with Mr Boutin. Is
5 it okay with you?

6 MS SAMSON: Yes, your Honour, it is. If I could ask one more follow-up question
7 before we move.

8 PRESIDING JUDGE FREMR: Okay. Go ahead.

9 MS SAMSON:

10 Q. Sir, who told you the fact that these civilians were driven out by the Lendu?

11 A. It was the civilians I mentioned. The civilians. The Hema civilians.

12 PRESIDING JUDGE FREMR: Court officer, now let's move to open session.

13 (Open session at 12.52 p.m.)

14 THE COURT OFFICER: We are in open session, Mr President.

15 PRESIDING JUDGE FREMR: Thank you.

16 Ms Samson, you may proceed.

17 MS SAMSON: Thank you.

18 Q. And, sir, talking again about the Lendu people who were killed by the Hema
19 civilians, can you describe these Lendu people? Were they combatants?

20 A. When we took back Mongbwalu, there were no more Lendu combatants in
21 Mongbwalu. All the combatants had run away. There were only civilians.

22 Q. How did you get to know that the Hema civilians had killed these Lendu
23 civilians?

24 A. When that kind of crime was committed, since I was there as a military
25 commander, people came to me to report, and I went on site to see what had been

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1 done. And in addition, the intelligence agents, the military intelligence people came
2 to report to me as well.

3 Q. And in that capacity, did you ever get to know of such killings by UPC soldiers
4 of Lendu?

5 A. Would you be so kind as to repeat your question, please.

6 Q. Certainly. You mentioned getting to know of the killing of Lendu civilians by
7 Hema civilians, and I would like to know if you had ever got to know or learned of
8 killings of Lendu civilians by the UPC soldiers who were in Mongbwalu?

9 A. Yes. There were such events that occurred on the part of UPC soldiers.

10 Q. Did you ever witness such events? And before answering, if you think that
11 this could be difficult for you to answer in public session, just raise your hand and tell
12 the Judges.

13 A. Yes. Could you repeat the question, please.

14 Q. Certainly. Did you ever witness any killings of Lendu civilians by anyone in
15 the UPC?

16 A. Yes. There were civilians who were assassinated by UPC members.

17 Q. Were you present? Did you witness these killings yourself?

18 A. Yes, I saw Lendu civilians assassinated by UPC soldiers.

19 Q. Are you able to describe the circumstances of what you witnessed, what
20 happened?

21 A. Yes. At a point in time, we realised that the war was becoming an ethnic
22 conflict, and it occurred that the Hema would attack the Lendus, and there were
23 killings, killings of that nature.

24 Q. And what did you witness during the Mongbwalu operation, in terms of
25 killings of civilians?

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1 A. For example, I could mention the example of Sayo village.

2 PRESIDING JUDGE FREMR: Mr Witness -- and I think it would be better to -- for
3 this moment to move to private session, and then you can continue.

4 (Private session at 12.58 p.m.) *(Reclassified entirely in public)

5 THE COURT OFFICER: We are in private session.

6 PRESIDING JUDGE FREMR: So Mr Witness, please try to finish your response.

7 Sorry to interrupt you.

8 You started that you would like to give some example of one village, so please
9 continue this.

10 THE WITNESS: (Interpretation) Thank you.

11 For example, the village of Sayo here. After that village was taken over, I received
12 an order from Mr Ntaganda to go to the village of Sayo and Nzebi. When I got there,
13 I was supposed to stay and control those two villages since -- because it was a
14 possible route where the enemy was fleeing, they were taking that road.

15 So when I got there, to that village, I found that many civilians had been killed by the
16 UPC members in the battle that took place in Sayo and Nzebi.

17 And we would come upon civilians who had been killed inside their own homes. It
18 was really very serious.

19 MS SAMSON:

20 Q. Sir, in Sayo and in Nzebi, what was the majority ethnicity of the people there?

21 A. Those two villages were inhabited for the most part by Lendu civilians who
22 worked at Kilo-Moto, at the Kilo-Moto company.

23 Q. And you mentioned that you found many civilians that had been killed by the
24 UPC. How did you know that they had been killed by the UPC?

25 A. Well, first of all, there were civilians who were killed by shelling, and the ones

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1 who were not lucky enough to run away, and there were also civilians who were
2 killed by gunshot. And we saw that when we got there because the villages there
3 had been looted. Even the church, even the church that's nearby here in the village
4 of Sayo had been looted. And the village Nzebi as well had undergone the same
5 fate.

6 MS SAMSON: Mr President, I see it's time to break for lunch. I see --

7 PRESIDING JUDGE FREMR: Ms Samson, it's up to you. If you want to -- just to
8 finish this issue, maybe we can just continue for the next 10 minutes and then we will
9 shift the break. It's up to you. If you've finished with this topic we can break, but if
10 you want to continue with this topic, maybe it would be better to continue for the
11 next 10 minutes.

12 MS SAMSON: I could continue now. I wouldn't finish the topic now, so I'm happy
13 to continue now and finish it after the lunch-break, if you wish, but I won't finish in
14 10 minutes.

15 I also want to admit the sketch from the witness into evidence.

16 PRESIDING JUDGE FREMR: Okay, then we will break.

17 As to the sketch, Mr Boutin, your position?

18 MR BOUTIN: No objection, your Honour.

19 PRESIDING JUDGE FREMR: Okay, so this sketch is admitted into evidence as a
20 Prosecution exhibit.

21 And we will break now and we will then continue half past 2.

22 But, first Mr Witness is to be escorted out of the courtroom in closed session. Court
23 officer, please.

24 (Closed session at 1.04 p.m.) *(Reclassified entirely in public)

25 THE COURT OFFICER: We are in closed session, Mr President.

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1 (The witness stands down)

2 PRESIDING JUDGE FREMR: Thank you.

3 Let's move to open session now and I will just announce our previous announcement.

4 (Open session at 1.05 p.m.)

5 THE COURT OFFICER: We are in open session, Mr President.

6 PRESIDING JUDGE FREMR: Thank you. We break now and we will reconvene at
7 half past 2.

8 THE COURT USHER: All rise.

9 (Recess taken at 1.05 p.m.)

10 (Upon resuming in open session at 2.36 p.m.)

11 THE COURT USHER: All rise.

12 Please be seated.

13 PRESIDING JUDGE FREMR: Good afternoon, everybody.

14 So I think we can continue in examination-in-chief of our witness. So Prosecution
15 will get the floor, and my question is whether we -- I guess we will continue in private
16 session?

17 MS SAMSON: Your Honour, I may be able to ask several questions in public
18 session.

19 PRESIDING JUDGE FREMR: Okay. We appreciate that. Okay.

20 You may proceed, Ms Samson.

21 MS SAMSON: Thank you.

22 Q. Sir, before the break we were describing some events in Sayo, and you had
23 indicated that you witnessed many civilians who were killed. How did you know
24 that they were civilian?

25 A. Thank you. In fact, how can one distinguish civilians from combatants? Well,

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1 it was easy to do. Combatants had weapons, particularly Lendu combatants who,
2 from time to time, would be found to have animal skins on their bodies and a few
3 other items which would be like a fetish.
4 Now, when it came to civilians there was nothing, you didn't find any fetishes on
5 them, they had nothing on them, and their attire was such that combatants sometimes
6 had military uniforms as well as other military items, whereas civilians did not have
7 any such items, those types of items which I just mentioned. They didn't carry any
8 of them and none of such items would be found next to their bodies. That is how we
9 were able to distinguish civilians from combatants.

10 PRESIDING JUDGE FREMR: Hold on for a second, Ms Samson.

11 Court officer, my transcript is frozen I'm afraid. Could I ask you for assistance.

12 THE COURT OFFICER: It seems to be a general issue, Mr President. Our
13 technician is working on it.

14 PRESIDING JUDGE FREMR: Then Ms Samson, you may continue.

15 MS SAMSON: Thank you.

16 Q. And, sir, among the civilian bodies that you saw, did you see men, or women,
17 or children?

18 A. Yes, all categories were found; such as civilians and children and women.
19 There were young people as well as old people. All of those were found.

20 Q. And could you remind the Court which day of the attack this was on, your visit
21 to Sayo?

22 A. I went to Sayo on the third day.

23 Q. Was there fighting that you participated in in Sayo on that day?

24 A. There was no more fighting on the day on which I went to Sayo, except for a
25 few small-scaled attacks, but there was no fighting face to face as such.

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1 Q. Where was Mr Ntaganda on this third day of the attack?

2 A. On that third day he was at the Kilo-Moto apartments. Unfortunately, I don't
3 have that map on my screen any longer.

4 PRESIDING JUDGE FREMR: Ms Samson, I'm sorry but I have been advised -- I
5 have been advised that it will be better for us to go to private session because there
6 will be a problem to make any redaction in this regime. So sorry for that part, we
7 have to move to private session now.

8 Please, court officer.

9 (Private session at 2.42 p.m.) * (Reclassified partially in public)

10 THE COURT OFFICER: We are in private session, Mr President.

11 PRESIDING JUDGE FREMR: Thank you, Ms Samson. You may proceed.

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 PRESIDING JUDGE FREMR: Court officer, please.

16 Ms Samson.

17 MS SAMSON:

18 (Redacted)

19 (Redacted)

20 (Redacted)

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24 (Redacted)

25 (Redacted)

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6 (Redacted)

7 (Redacted)

8 (Redacted)

9 Q. Okay. And did you ever hear of or witness Mr Ntaganda take prisoners
10 during the Mongbwalu operation?

11 A. In any event, on that day I did not see any prisoners and I did not hear mention
12 of any war prisoners. I did not see any war prisoners on that day.

13 Q. Thank you. You also mentioned just before the break that the village of Sayo
14 had been looted, and you said even the church had been looted. Can you explain a
15 bit more what you saw?

16 A. Yes. If you look at location J that is where Mr Bosco Ntaganda had set up his
17 heavy weaponry, and from there that unit was able to shell Sayo and Nzebi villages
18 from that location. At the same time, Mr Ntaganda's troops were also advancing
19 along that road and went to Sayo village as you can see. And it is at that location
20 that they killed civilians and looted that village as well as the church which you see
21 here, the church which is close to -- to Sayo village.

22 At the same time, after having finished the attack on Sayo, they advanced towards
23 Nzebi, and in Nzebi they did the same thing again.

24 Q. And in relation to, first, Sayo, what did you observe that allowed you to
25 conclude that there had been looting in Sayo?

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1 A. Yes. When I arrived in Sayo village I found dead bodies outside and inside
2 some houses. These were people who had been killed by shelling and gunshots. I
3 found that houses had been destroyed by the shells. I also found broken doors,
4 items scattered here and there all across the village. And when I went to the church
5 it was the same scene, the doors of the church were broken open, all the items and
6 pews and benches within the church were strewn outside. It was absolute serious
7 disorder all over the place. It was horrible, come to think of it.

8 Q. And how did you know or conclude that it was the UPC who had done the
9 pillaging?

10 A. You see, when I arrived at that location, I found -- well, there were some
11 soldiers already -- or, who had already set up a camp on the piece of land between the
12 church and the village. I asked some questions to those soldiers, and they are the
13 ones who told me that all these things that I had seen were the result of the actions of
14 the UPC soldiers.

15 Q. Do you know if there is a health centre or hospital in Sayo?

16 A. I no longer remember but, no, I have no -- no recollection.

17 Q. And you mentioned earlier that you also went to Nzebi and that the village of
18 Nzebi had undergone the same fate. Can you please explain to the Court what you
19 witnessed in Nzebi.

20 A. In Nzebi the situation was almost the same as what had obtained in Sayo;
21 houses were also -- the doors of houses were also broken, even windows. The
22 village had been looted as well just as in Sayo.

23 Q. And I had asked you earlier about the ethnic composition of Sayo. Do you
24 know what the ethnic composition was of Nzebi?

25 A. Going by information that was available to me at that time, those two villages

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1 were inhabited in majority by people of Lendu ethnicity, of the -- of the Lendu tribe.

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

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9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

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15 (Redacted)

16 (Redacted)

17 PRESIDING JUDGE FREMR: Ms Samson. Thank you for your patience.

18 Court officer, please.

19 THE COURT OFFICER: I have been informed that the transcript issue is resolved.

20 If you could all restart your Transcend. Thank you.

21 (Pause in proceedings)

22 PRESIDING JUDGE FREMR: Now, Ms Samson, shall we continue in private or in
23 open session? What do you prefer?

24 MS SAMSON: Private session, please.

25 PRESIDING JUDGE FREMR: Okay. Then we will stay in the regime of private

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1 session, and you may proceed.

2 MS SAMSON: Thank you.

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 MR BOUTIN: Your Honour, Mr President.

21 PRESIDING JUDGE FREMR: Mr Boutin, please.

22 MR BOUTIN: I object to the way the question was put to the witness. I think it is
23 leading. There is ways to ask the same questions in a more appropriate fashion.

24 PRESIDING JUDGE FREMR: Ms Samson?

25 MS SAMSON: I understand it is a very difficult area of the evidence for my friend.

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1 I can try to rephrase it in a different way. I don't think it is particularly leading,
2 however.

3 PRESIDING JUDGE FREMR: Frankly, I think I have the same impression because it
4 is very general how they are treated, but if you can rephrase, maybe try, just to make
5 Mr Boutin satisfied.

6 MS SAMSON: Yes, I will.

7 Q. Sir, I'll ask my question a little bit differently.

8 Did Mr Ntaganda explain to the troops how they should treat the Lendu if they came
9 across them during this part of the operation?

10 A. Yes. He explained, in fact, in several different meetings that he had with the
11 troops and with the commanders, he explained the Lendu were the enemies, the APC.
12 So the troops of the RCD-K/ML were the enemy, and you had to kill them and
13 eliminate them. That's what it was. That's what he said.

14 Q. And you mention that he explained this in several different meetings. Can you
15 give any indication as to how many times you heard him say this?

16 A. Well, on several occasions. Every time he held a meeting, these words were
17 said again and again. He said the same thing every time.

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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7 (Redacted)

8 Q. Now, sir, I want to go back to something you said earlier as well, when you

9 were explaining some of the locations on the map. And you had pointed to a

10 location that's identified on the map with the letter I. You indicated it was the

11 Catholic convent where the priest was. Do you know who the priest was at that

12 Catholic convent?

13 A. Yes. In the convent, there was a priest, a Lendu priest. His name was Bwana

14 Lungwa.

15 Q. Would you be able to spell the last name of the priest for the record?

16 A. Bwana Lungwa. That is B-W-A-N-A, new word, separate, L-U-N-G-W-A.

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

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8 PRESIDING JUDGE FREMR: Ms Samson, may I interrupt you. Just one question
9 for clarification.

10 Mr Witness, you said that a part of -- or besides of Lendu in that area there are also
11 other tribes, other ethnic groups, and you also said that the Lendu were perceived as
12 an enemy and even now you said that (Redacted). How
13 is it possible to recognize Lendu or distinguish them from the other tribes for UPC
14 soldiers?

15 THE WITNESS: (Interpretation) Thank you. In fact, in Ituri they recognize each
16 other, the tribes recognize each other. When a Hema sees a Lendu he recognizes him
17 easily by the language and also by the body shape. Also a Lendu when he sees a
18 Hema, he will also recognize him by his body shape and language, dialect as well.

19 PRESIDING JUDGE FREMR: Thank you.

20 Ms Samson, you have the floor.

21 MS SAMSON:

22 Q. And, sir, you've indicated that you witnessed the killing or the death of civilians
23 in Sayo and in Nzebi, and you mention the priest in Mongbwalu. Did you witness
24 any other killing of civilians in Mongbwalu itself?

25 A. Yes. When our troops went from point C, where I indicated the letter C,

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1 towards Sayo, all the way there are houses along the way. The civilians who were
2 along that road -- well, there were civilians who were killed. And even after the
3 battle their brothers came to get their bodies in order to bury them. There were also
4 bodies of combatants, UPC combatants -- APC, in fact.

5 (Redacted)

6 (Redacted)

7 Q. And on the map, at the location that's marked with a letter H, you indicated it
8 represented the hospital in Mongbwalu. Did anything happen to the hospital during
9 the operation to take Mongbwalu or afterwards?

10 A. Thank you. Yes. After the operations, the hospital -- Bosco went to get all the
11 medicine at the hospital. He took everything to Bunia.

12 Q. How do you know that, sir?

13 A. When he left for Bunia he loaded the things that he had pillaged from
14 Mongbwalu, and among them there were medicine and other materials from the
15 hospital. (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 Q. You mention that when Mr Ntaganda left Mongbwalu for Bunia he loaded
23 things he obtained -- loaded things that he had pillaged from Mongbwalu. Onto
24 what were these things loaded? How did he transport them to your knowledge?

25 A. He had his jeep, four-by-four, which he had taken from Bunia and he loaded the

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1 items onto the jeep. And there was also a Land Cruiser jeep, a cream-coloured one,
2 which he had taken from the priest and he also loaded items on to that. And he left
3 with two jeeps which were full of things from Bunia. And then he also sent his jeep
4 to get the remaining items which had been left.

5 Q. And did you see the jeeps --

6 MR BOUTIN: Excuse me, my colleague.

7 Sir, again, we have been in private session for a lengthy period of time. Based on the
8 most recent questions, I wonder if it is still necessary.

9 PRESIDING JUDGE FREMR: Ms Samson, it would be a little concerning your
10 further questions. Do you think you could move to open session?

11 MS SAMSON: I think we could try, your Honour, yes, and then we'll see whether
12 we need to move back at a later time.

13 PRESIDING JUDGE FREMR: I appreciate it.

14 So let's move to open session now and we will see.

15 (Open session at 3.31 p.m.)

16 THE COURT OFFICER: We are in open session, Mr President.

17 PRESIDING JUDGE FREMR: Thank you.

18 Ms Samson, you may proceed.

19 MS SAMSON: Thank you.

20 Q. Sir, did you ever witness any of the loading of the goods into the jeeps, or could
21 you tell the Court how it is that you know that this was happening?

22 A. Yes, when he left I was there. When the soldiers loaded those things into the
23 jeep. And afterwards, when the jeep came back to pick up the remaining items, I
24 wasn't there, but I nonetheless learned that the jeep came back to retrieve the
25 remaining items because we were in communication with radios. And we knew

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1 about all of the events that were taking place. We communicated. When X spoke
2 to Y, everybody could follow it on their radio very easily.

3 Q. What types of goods did you observe being loaded into the vehicles?

4 A. There were suitcases with clothing inside. There were boxes with medicine in
5 them. There were generators and chairs, armchairs in fact.

6 Q. And what about the -- the gold from Mongbwalu, was that being used by the
7 UPC or not?

8 A. Yes. They had a group of people who would go into the quarries to retrieve
9 the gold from the gold diggers and they also -- there were quarries that were -- where
10 they exploited the gold. And when it was ready, when the molten gold was ready,
11 there was someone called Kubi who was with Bosco who took it to Bunia. Bosco's
12 cousin.

13 Q. Can you please spell the name of the man that you mentioned, Mr Ntaganda's
14 cousin.

15 A. His name a Kubi, K-U-B-I.

16 Q. Do you know what the gold was used for, or who -- who took the gold, what
17 happened to it when it reached Bunia?

18 A. According to what I was told, the gold was for Bosco and it was his cousin who
19 took it to his place. I don't know what happened thereafter.

20 Q. And similar to the looting that you described involving Mr Ntaganda, did you
21 ever witness or learn of other commanders who were involved in pillaging in
22 Mongbwalu?

23 A. In fact, the pillaging at the time of the UPC, the looting, was perpetrated by
24 several individuals; for example, there was a hospital in Nyankunde which covered
25 most of the subregion. That hospital was looted by UPC members.

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1 PRESIDING JUDGE FREMR: Mr Boutin.

2 MR BOUTIN: Objection. I understand that the witness left Mongbwalu to
3 Nyankunde. The source of his knowledge for what he's about to say has not been
4 explored. So I think it is fair to the Defence, at least, to know where he got this
5 information from. Thank you.

6 PRESIDING JUDGE FREMR: I fully agree. And maybe you also could ask
7 Mr Witness, because he said he was told that the gold was for Mr Ntaganda, also in
8 respond to this so clarify the source of this, you say. But again, Mr Witness, if you
9 would be more specific, be careful not to reveal your identity, or if it would be such a
10 risk, we will go to private session.

11 So, Ms Samson, please clarify those issues.

12 MS SAMSON: Certainly, your Honour.

13 Q. Sir, the Chamber would like to know how you know, or from whom you heard
14 that the gold that was transported from Mongbwalu to Bunia was meant for
15 Mr Ntaganda. If you would prefer to answer that question in private session you
16 can just tell the Chamber that you would like to go into private session.

17 A. Okay. In fact, the gold -- or, rather, Mr Bosco asked his cousin, Kubi, to collect
18 the gold in Mongbwalu. And Kubi was in charge of a team who was set up -- which
19 was set up, rather, by Bosco. But as to whether or not or what exactly happened to
20 the gold I don't know. What I was saying regarding the Nyankunde hospital, I
21 learned that from commanders who were involved in the operations in that region.
22 They were the ones who told me that the hospital had been looted.

23 Q. Thank you. I'll just follow up with one further question in relation to the gold.
24 Is there somebody in particular who told you that the gold was for Bosco and that it
25 was his cousin Kubi who took the gold to his place in Bunia? Did somebody tell you

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1 that or could you tell the Chamber how it is you came to know that?

2 A. Well, it's -- it was Kubi himself who told me he was taking the gold to Bosco.

3 He didn't do it just once. Several times he took packages of gold to

4 Bosco Ntaganda's place. And when he came back, I asked him about the news,

5 Bosco's news, and he told me he was fine, he was in good health and he had received

6 the packages.

7 Q. Thank you. And in relation to the Nyankunde incident that you described, can

8 you tell the Court --

9 A. Yes, I wanted to provide a clarification about Kubi. Kubi was a civilian that

10 Bosco brought from Goma, because when we took over Mongbwalu he came

11 specifically for that particular task. He didn't participate in the Mongbwalu

12 operations.

13 He wasn't even a member of the UPC. He came solely for that task.

14 Q. Thank you for the clarification.

15 And I have a clarification question to ask you about Nyankunde as well. Did the

16 incident that you described in Nyankunde with the hospital, did that happen before

17 or after the Mongbwalu operation?

18 A. It was before the operations in Mongbwalu.

19 Q. And were you present during that event in Nyankunde?

20 A. No, I was not present myself, but I met the commanders who were in operations

21 in Nyankunde; Commander Kasangaki who was with us in Mongbwalu. He told

22 me about the events that took place in Nyankunde.

23 Q. Thank you. And going back to something you also said earlier, you mentioned

24 just earlier this afternoon that Mr Ntaganda had -- "had taken a Land Cruiser jeep, a

25 cream-coloured one, from the priest." Can you explain that a bit more, including

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1 how you know that he took a Land Cruiser from the priest?

2 A. In fact, on the day when he went to the convent where the priest was, it was the
3 day when he took that jeep. And when he left with the jeep, the civilians in
4 Mongbwalu told me, they're the ones who told me that that jeep, in fact, belonged to
5 the priest.

6 Q. And when you were giving your answer about the events and pillaging of the
7 hospital in Nyankunde, I had asked you whether you had witnessed or know of any
8 acts of pillaging by other UPC commanders in Mongbwalu during the Mongbwalu
9 operation.

10 A. Yes. After Mongbwalu was taken over, Bosco Ntaganda and Salumu, when he
11 returned from Sayo and Nzebi villages, they came to the centre where I
12 indicated -- the centre of Mongbwalu there were shops and traders there from
13 Mongbwalu, and they looted that centre. They took clothing and all of the items that
14 could be found in the shops in the centre of Mongbwalu.

15 Q. Did you witness this yourself, or is it something that you heard of later?

16 A. No. I wasn't there when the looting took place, but when they arrived after the
17 Nzebi battle and the battle in Sayo, they had suitcases. Their bodyguards were
18 carrying suitcases, and some of them were carrying -- they were carrying boxes of
19 beer, beer bottles. And I was told that those items came from the shops in the centre
20 of Mongbwalu.

21 Q. Were you aware of any military or other terminology used within the UPC to
22 describe acts of pillaging?

23 A. Yes. It was called kuchaji.

24 Q. And can you explain a little bit in greater detail what that term meant?

25 A. Yes. It means when you're involved in an operation and you manage to drive

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1 out the enemy, all of the property that belonged to the enemy automatically belongs
2 to you. That's how they used the term, but they also used it to attack civilians and
3 loot the property that belonged to civilians.

4 Q. Can you recall who, in particular, used this term? Was it the soldiers, or was it
5 commanders?

6 A. Yes, it was a term that was used by everybody. It wasn't just the commanders
7 or the soldiers. It was commonly used by soldiers and commanders.

8 Q. Did you ever hear Mr Ntaganda use the term?

9 A. Yes, he used it. It was very common place. Everyone used it. Everyone said
10 "kuchaji." Everyone used it.

11 Q. You mention that there were -- that Mr Ntaganda had asked for anti-personnel
12 mines to be placed around Mongbwalu. How did you know that he had ordered for
13 these mines to be placed around Mongbwalu?

14 (Redacted)

15 Q. Sorry to interrupt you, Mr Witness.

16 Mr President, may we move into private session for some of these questions?

17 PRESIDING JUDGE FREMR: All right. Court officer, let's move into private
18 session.

19 (Private session at 3.51 p.m.) *(Reclassified partially in public)

20 THE COURT OFFICER: We are in private session, Mr President.

21 PRESIDING JUDGE FREMR: Thank you.

22 Ms Samson, you may proceed.

23 MS SAMSON: Thank you.

24 Q. I'm sorry, sir, to have interrupted you. I was just concerned of the mention of
25 Aru. So could you please explain to the Court how you know that Mr Ntaganda had

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1 ordered for anti-personnel mines to be placed around Bunia -- I'm sorry, Mongbwalu?
2 (Redacted)
3 (Redacted)
4 (Redacted) When we finished
5 taking over Mongbwalu, Bosco came with a specialised unit, the experts in artillery,
6 and -- who knew about anti-personnel mines, and he sent people to deposit these
7 mines at the entry points of Mongbwalu.
8 (Redacted)
9 (Redacted)
10 (Redacted)
11 (Redacted)
12 (Redacted). And once the mines had been positioned, Bosco left, and
13 the civilians, who were going in or out of Mongbwalu, had to go through these areas,
14 and they were hit by the landmines. These mines led to a number of civilian deaths.
15 (Redacted)
16 (Redacted)
17 (Redacted)
18 (Redacted)
19 (Redacted)
20 (Redacted)
21 (Redacted)
22 (Redacted)
23 (Redacted)
24 (Redacted)
25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 Q. And to your knowledge, based on what you witnessed, who were -- who were
6 the casualties of these landmines predominantly?

7 A. Actually, after Mongbwalu was taken over, we -- there were relatively few
8 attacks on the part of Lendu militia. In fact there were no further attacks on the part
9 of the RCD-K/ML. When -- once they had been driven out, they simply left for good.
10 So the victims were civilians; mothers, children, and the general civilian population.

11 MS SAMSON: Mr President, this may be a convenient moment to break for today.
12 I wanted to move into another topic.

13 PRESIDING JUDGE FREMR: Thank you, Ms Samson.

14 So, Mr Witness, now I would like to thank you for answering all the questions put to
15 you.

16 Tomorrow we will continue with the further part of your testimony, but I would like
17 to emphasise that in the meantime you must not discuss your testimony with anyone,
18 including with family members or friends who you may be in contact with tonight.
19 Do you understand that?

20 THE WITNESS: (Interpretation) I understand, your Honour.

21 PRESIDING JUDGE FREMR: So, thank you. Now I wish you a good rest and we
22 will see you again tomorrow.

23 Court officer, please escort the witness out of the courtroom in -- and we have to
24 move to closed session for that purpose.

25 (Closed session at 3.59 p.m.) *(Reclassified entirely in public)

Trial Hearing
WITNESS: DRC-OTP-P-0768

(Closed Session)

ICC-01/04-02/06

1 THE COURT OFFICER: We are in closed session, Mr President.

2 (The witness stands down)

3 PRESIDING JUDGE FREMR: Thank you.

4 And now let's move back to open session.

5 (Open session at 4.00 p.m.)

6 THE COURT OFFICER: We are back in open session, Mr President.

7 PRESIDING JUDGE FREMR: Thank you.

8 Before we leave, I would like to ask Ms Samson how far Ms Samson you got in your
9 time schedule.

10 MS SAMSON: Yes, Mr President. I'd moved quite along in the examination. I
11 expect that I will be finished by lunchtime tomorrow. There is a chance that I will
12 ask a go a bit longer than that, but I would still be within the 10-hour estimate, but I
13 anticipate tonight that I will be finished by lunchtime tomorrow.

14 PRESIDING JUDGE FREMR: Excellent. We appreciate.
15 Otherwise, any further questions, comments from the parties?
16 Mr Boutin, no comments, no questions?

17 MR BOUTIN: No, Mr President.

18 PRESIDING JUDGE FREMR: Legal representatives? No. Okay.
19 So we can adjourn now and we will see you again tomorrow 9.30.

20 THE COURT OFFICER: All rise.

21 (The hearing ends in open session at 4.01 p.m.)

22 RECLASSIFICATION REPORT

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