

Trial Hearing
WITNESS: *DRC-OTP-P-0859

(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 Wednesday, 18 November 2015
8 (The hearing starts in open session at 9.32 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.
19 Appearances now starting with Prosecution, please.
20 MS SOLANO: Good morning, your Honours. For the Prosecution today appear
21 Ms Nicole Samson, senior trial lawyer; Mr James Pace, assistant trial lawyer;
22 Ms Laura Morris, assistant trial lawyer; Ms Selam Yirgou, case manager; and I am
23 Julieta Solano, trial lawyer.
24 PRESIDING JUDGE FREMR: Thank you, Ms Solano.
25 Defence now, please.

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1 MR BOUTIN: Good morning, Mr President, your Honours. Appearing for the
2 Defence this morning, Mr Ntaganda is here present; we have Elsje van Braber present,
3 intern; we have Ms Margaux Portier, case manager; Elodie Victor, intern; Maître
4 Chloé Grandon, legal assistant; and myself, Luc Boutin, co-counsel. Thank you.

5 PRESIDING JUDGE FREMR: Thank you very much, Mr Boutin.

6 MS PELLET: (Interpretation) Thank you, your Honour. The former child soldiers
7 are represented by myself, Sarah Pellet, from the OPCV.

8 MR SUPRUN: (Interpretation) Good morning, your Honour, your Honours. The
9 victims of the attacks are represented by myself, Dmytro Suprun, from the OPCV.

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

11 Before we continue with the witness's testimony, I wish to deal with one pending
12 matter, which is the Prosecution request seeking the admission of the four pieces of
13 paper on which the witness wrote down names of individuals and locations
14 yesterday during his testimony.

15 I recall the Defence indicated they did not oppose this request. Mr Boutin, I think
16 you remain in this position?

17 MR BOUTIN: Absolutely, Mr President.

18 PRESIDING JUDGE FREMR: Thank you.

19 So the Chamber finds it appropriate to admit them into evidence as confidential
20 exhibits. And the eCourt metadata should be updated accordingly.

21 So now, court officer, are you able to provide us with ERN numbers for these four
22 documents?

23 THE COURT OFFICER: Indeed, Mr President. The four documents will bear the
24 following ERN numbers: DRC-REG-0001-0008; DRC-REG-0001-0009;

25 DRC-REG-0001-0010, and finally DRC-REG-0001-0011.

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1 The documents are already uploaded and released to the party under eCourt.

2 PRESIDING JUDGE FREMR: Thank you very much, court officer. So all the four
3 pieces of paper specified now by the court officer are admitted into evidence as
4 Prosecution exhibits.

5 So unless the parties or participants have anything they wish to raise at this point, we
6 can now return to our witness and to his testimony.

7 So good morning, Mr Witness. Welcome back. I hope you are feeling well today.

8 WITNESS: DRC-OTP-P-0859 (On former oath)

9 (The witness speaks Swahili)

10 THE WITNESS: (Interpretation) Yes, I feel fine.

11 PRESIDING JUDGE FREMR: I am glad to hear it.

12 We are going to continue with your testimony today, and it's my duty to remind you
13 that you are still under oath, and you have to speak the truth and nothing but the
14 truth. And, as yesterday, I would like to remind you to keep in mind my practical
15 guidance I have mentioned yesterday. Please speak clearly and at a slow pace for
16 the interpreters, wait a few seconds before you start speaking and do not speak at the
17 same time as anybody else.

18 Today you will be questioned first by your legal representative, Mr Suprun, and then
19 by the Defence. You should answer their questions in the same manner in which
20 you answered the questions of the Prosecution.

21 And, Mr Suprun, before I give you the floor, I recall that the Chamber partially
22 granted your request seeking to question the witness. We decided that the witness
23 may only be questioned on topics A, C and D as identified in your request, which was
24 filing 986, and under the condition that you will not repeat questions having been
25 already put to the witness by the Prosecution. And you have 20 minutes granted for

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1 your examination.

2 Mr Suprun, you may proceed.

3 MR SUPRUN: (Interpretation) Thank you, your Honour.

4 QUESTIONED BY MR SUPRUN:

5 Q. Good morning, Witness.

6 A. Good morning.

7 Q. Let me introduce myself for the transcript. My name is Dmytro Suprun. I
8 represent the victims of attacks against the civilian population who were allowed to
9 participate in the trial against Bosco Ntaganda. I have a number of questions to put
10 to you in order to clarify certain aspects of your testimony in order to obtain further
11 details concerning your experience and that of your family.

12 Your Honour, for my first questions I would like us to be in private session, please.

13 PRESIDING JUDGE FREMR: All right. Court officer, let's move into private
14 session now.

15 (Private session at 9.40 a.m.) *(Reclassified partially in public)

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

17 PRESIDING JUDGE FREMR: Thank you.

18 Mr Suprun, you may proceed.

19 MR SUPRUN: (Interpretation) Thank you, your Honour.

20 Q. Witness, what was your family situation before the attack against Mongbwalu?
21 Were you married? Did you have children?

22 A. Before the war (Redacted).

23 Q. And with whom (Redacted)?

24 A. (Redacted)

25 (Redacted)

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1 Q. According to yesterday's testimony, (Redacted)

2 (Redacted)

3 A. (Redacted)

4 (Redacted)

5 (Redacted)

6 PRESIDING JUDGE FREMR: Mr Suprun, sorry, I have to interrupt you because I
7 have a problem with the transcript.

8 Court officer, could you kindly assist me?

9 Thank you very much, court officer.

10 And, Mr Suprun, you may proceed please.

11 MR SUPRUN: (Interpretation)

12 Q. Witness, you were talking about (Redacted)

13 (Redacted)

14 (Redacted)

15 A. We don't know. We've tried praying for him, but it's perhaps because (Redacted)

16 (Redacted). And to date

17 we've been doing our best by praying in church.

18 Q. Witness, you also said that (Redacted)

19 (Redacted) Do you know what happened to your (Redacted)

20 (Redacted) after the attack against Mongbwalu?

21 A. (Redacted) He had not had the

22 opportunity to say to anybody where his money was. So we had no information
23 concerning his property.

24 Q. You also said that (Redacted) was killed during the war. My

25 question is as follows: What happened to (Redacted)?

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1 A. (Redacted) has already died. There's just (Redacted) who's still alive. There's nothing
2 more to be said because the (Redacted)
3 (Redacted).

4 MR SUPRUN: Your Honour, could we perhaps go back into public session, please?

5 PRESIDING JUDGE FREMR: All right. Court officer, let's return back into open
6 session now.

7 (Open session at 9.46 a.m.)

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

9 PRESIDING JUDGE FREMR: Thank you.

10 And, Mr Suprun, you may proceed.

11 MR SUPRUN: (Interpretation)

12 Q. Witness, you said during your testimony that when you went back home after
13 the attacks against Mongbwalu, your house was empty and you also added that your
14 clothes had been looted. Aside from the clothes, was there anything else that was
15 looted from your house?

16 A. Yes, they looted everything in the house. There was no way of prosecuting
17 them. Our living conditions changed. We no longer lived the life that we led
18 before the war.

19 Q. And what happened to your house? Was your house itself damaged?

20 A. One part of it was destroyed by a shell, but for the time being we've rebuilt the
21 house and there are tenants in the house. In fact, it's thanks to the house that the
22 children can study and that my mother can manage to survive.

23 Q. And when you went back home after the attacks and you discovered that all of
24 your goods had been pillaged, what did you do? What happened to you and your
25 family?

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1 A. There was nothing to be done. We started to muddle through. What had
2 gone had gone. We managed to carry on living. We live now from one day to the
3 next.

4 Q. Witness, because of the 2002-2003 events that you lived through, aside from the
5 goods that were looted and aside from the injury that you referred to during
6 yesterday's testimony, did you suffer any other harm, be it physical, psychological or
7 emotional?

8 A. Yes, sometimes we have problems. Whenever we have difficulties, for instance,
9 the child is chased out of school because of the inability to pay school fees, we suffer
10 from that. I mean, we used to live better. But what happened happened, we can't
11 do anything else.

12 Q. And in general, Witness, the events that you lived through in 2002-2003, would
13 you say that those events subsequently had an effect on your life and on the life of
14 your family? Did you manage to rebuild your life after the events?

15 A. No, not at all. Our living conditions changed. We lost pretty much half of
16 everything we had.

17 Q. Witness, as far as you know or in your opinion, why did the UPC elements
18 attack Mongbwalu? What was their objective?

19 A. I'm not in a position to know because I'm not a politician. That's something
20 that I have no way of knowing. Before when you -- that it was a tribal war, there
21 were conflicts about land. That's all we knew.

22 Q. When you went back home after the Mongbwalu attack, as far as you know, did
23 all of the villagers go back after the attack?

24 A. Some went back to the village, but others moved. They said they were no
25 longer going to live in their former village. So not everybody went back to the

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1 village. Some had bad memories of the village and they moved. They preferred to
2 go and live somewhere else because they felt that they would have a better life.

3 Q. And those villagers who didn't go back, what happened to their abandoned
4 possessions, do you know?

5 A. When they abandoned their property, their property no longer belonged to
6 them. It's like when water's been poured out, you can no longer collect it. It's no
7 longer there. It's gone.

8 Q. Witness, since the 2002-2003 events that you lived through, have you or any
9 members of your family received any assistance or help, be it material, psychological
10 or medical, from the Congolese authorities, the NGOs, or any other source?

11 A. During the war, the NGOs didn't provide any assistance to us. NGOs have
12 only recently started to come to Mongbwalu. During the war, people didn't get any
13 help from the NGOs. It's as of 2007 or 2008 that the NGOs started to help. But
14 during the war there was no NGO assistance, no medication, no food, nothing.

15 Q. Well, my question's actually to do with the period after the war. What
16 assistance have you received from the NGOs or the Congolese authorities?

17 A. There's no assistance or, shall we say, they had given us blankets, some beans,
18 maize flour, but that's all. No other assistance provided.

19 Q. Following the events that you experienced, Witness, do you currently suffer
20 from psychological difficulties, or do you have any other health problems?

21 A. Well, these are things that have happened. I don't really think about them.
22 And as regards my health, I try to do my best to feed my children and my wife and to
23 help my parents out, but I still have problems with my arm. Sometimes it hurts.
24 But I have to work because I risk not having anything to eat, or my children won't be
25 able to go to school.

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1 Q. Witness, as a victim of the war, what do you expect from the International
2 Criminal Court at the end of the trial against Bosco Ntaganda?

3 A. I'm not obliging them to anything. It depends on them. There's no obligation
4 on my part. Everything depends on them.

5 Q. Of whom are you talking? You're saying "Everything depends on them."
6 About whom are you talking?

7 A. Well, I would hope that they would give me something, but it all depends on
8 the ICC. If the ICC says it can assist me, then it would be able to do so according to
9 its resources; but if I say what I want them to give me, then it's as if I'm forcing them
10 to assist me.

11 Q. And what exactly do you expect from the ICC? What assistance would you
12 like to obtain?

13 A. What's important for me was to be able to make my testimony and to say what
14 happened. I don't know what's going to happen when I get back home. I came
15 with no difficulty, and I'm sure I'll get back with no difficulty. In fact, it's really up
16 to the ICC to decide what has to be done for my safety. Personally, I have nothing
17 else to say on that.

18 Q. Thank you, Witness.

19 MR SUPRUN: Your Honour, I no longer have questions for the witness.

20 PRESIDING JUDGE FREMR: Thank you very much, Mr Suprun. I have to say that
21 we appreciate that you fully respected our decision both as concerns timing and
22 topics granted for your questioning. Thank you for that.

23 Now we can move to Defence. Mr Boutin, who will be questioning the witness?

24 MR BOUTIN: Thank you, Mr President. If you allow me a few seconds so I can set
25 up my desk.

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1 PRESIDING JUDGE FREMR: No problem. Take your time.

2 (Pause in proceedings)

3 MR BOUTIN: Thank you, Mr President.

4 QUESTIONED BY MR BOUTIN: (Interpretation)

5 Q. Good morning, Witness.

6 A. Good day.

7 Q. We've had the opportunity briefly last week to meet, and I introduced myself.

8 I'll do it again. My name is Luc Boutin. I'm counsel or one of the counsel

9 representing Mr Bosco Ntaganda, and I have a number of questions to put to you for
10 the purpose of clarification.

11 Do you understand what I'm saying?

12 A. Thank you.

13 Q. Witness, perhaps to pick up immediately on what Mr Suprun was saying, he
14 was putting questions to you about your family situation, inter alia, concerning
15 problems, the problems, the health problems affecting the son of your brother. And
16 without giving any names of the latter, let me say the following: When your brother
17 died, his son, the son we're talking about, how old was he?

18 A. It was his second child. If I'm not mistaken, he was seven or six.

19 Q. You also said, in answering Mr Suprun's questions, that your house had been
20 destroyed. Now, if I understand correctly --

21 And perhaps it would be wise, your Honour, at this point to go into private session.

22 PRESIDING JUDGE FREMR: All right.

23 Court officer, let's move into private session now.

24 (Private session at 10.04 a.m.) *(Reclassified partially in public)

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

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1 PRESIDING JUDGE FREMR: Thank you.

2 Mr Boutin, you may proceed.

3 MR BOUTIN: (Interpretation) Thank you.

4 Q. So if I understand correctly, Witness, (Redacted)

5 (Redacted); is that correct?

6 A. Yes.

7 Q. And (Redacted), during the conflict, if I understand correctly, (Redacted)

8 (Redacted); is that

9 correct?

10 A. The first attack (Redacted) in Mongbwalu. On the occasion of the second

11 attack -- no. The first attack, the first -- well, the UPC came to attack, and the UPC

12 didn't succeed. There was a plane that arrived. And then when there was the

13 second attack, (Redacted).

14 (Redacted), and we stayed there.

15 Q. And you correct me if I'm wrong, but (Redacted); is that

16 correct?

17 A. Yes.

18 Q. When you say that life was difficult following the conflict, it remains,

19 nonetheless, that (Redacted)

20 (Redacted) as was the case before the war; is that correct?

21 A. Well, that's a bit confusing. You're talking about (Redacted), about myself.

22 I don't really understand your question.

23 Q. Perhaps I should ask you a shorter question. When (Redacted) returned after

24 the conflict, was (Redacted)? Is that

25 correct?

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1 A. When (Redacted)

2 (Redacted)

3 now.

4 Q. As regards yourself, were you able to continue living (Redacted)

5 (Redacted)?

6 A. Yes. Yes, we were there, all of (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 Q. And to be perfectly clear, Witness, when you mention (Redacted), that is your
11 place of residence, if I understand correctly, it was within the same compound; is that
12 correct?

13 A. Yes.

14 Q. Where exactly is (Redacted)?

15 A. (Redacted)

16 (Redacted)

17 MS SOLANO: Your Honour.

18 PRESIDING JUDGE FREMR: Ms Solano.

19 MS SOLANO: Your Honour, I'm very sorry to interrupt, but I just want to note that
20 the place of residence of the witness is redacted. Now, I realize that the witness has
21 provided some information about where he lives, but I just query the relevance of this
22 line of questioning.

23 PRESIDING JUDGE FREMR: Mr Boutin, could you provide us with intended
24 relevance of your questioning in this direction.

25 MR BOUTIN: Yes, absolutely, Mr President. I understand that the witness can

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- 1 provide an answer. And the reason for my question is with regards to the fact that
- 2 his house or his compound, as he said, (Redacted), and I want to know
- 3 regarding to the location of this compound in -- (Redacted)
- 4 (Redacted) I think it is
- 5 relevant, because obviously (Redacted), the location of that house
- 6 within a certain area is relevant, certainly in a situation of conflict.
- 7 PRESIDING JUDGE FREMR: Ms Solano, any objection to this argumentation?
- 8 MS SOLANO: No, your Honour. That clarifies. Thank you.
- 9 PRESIDING JUDGE FREMR: Thank you.
- 10 Mr Boutin, you may proceed.
- 11 MR BOUTIN: Thank you. (Interpretation)
- 12 Q. I'm going to repeat my question, Witness. Where exactly is (Redacted)
- 13 (Redacted)?
- 14 A. Well, if you go (Redacted), I would say the following: You have the
- 15 (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted), even a small child will tell you.
- 20 Q. For clarification, aside from your family living in (Redacted), there were other
- 21 families, there were other people living in (Redacted); is that correct?
- 22 A. Yes, there are houses all around.
- 23 MR BOUTIN: I think at this point, Mr President, we can move into open session.
- 24 PRESIDING JUDGE FREMR: Very well.
- 25 Court officer, let's move into open session.

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1 (Open session at 10.14 a.m.)

2 THE COURT OFFICER: We are in open session.

3 PRESIDING JUDGE FREMR: Mr Boutin, you may proceed.

4 MR BOUTIN: Thank you, Mr President. (Interpretation)

5 Q. Witness, in your deposition yesterday you mentioned that the APC troops were
6 in Mongbwalu before the conflict. Do you remember mentioning that?

7 A. Yes.

8 Q. If I understand correctly, you had lived in Mongbwalu for quite some time and,
9 therefore, you have personal knowledge of the presence or arrival of the APC in
10 Mongbwalu during the conflict, or at least you know when they came to the region of
11 Mongbwalu?

12 A. Were you referring to the APC or the UPC?

13 Q. I was mentioning the APC, Lopondo's men.

14 A. The APC that was Mbusa's soldiers, even Lopondo's was one of Mbusa's
15 soldiers. That's what we called the APC. That was a group that had existed for
16 quite some time. There was another group. Maki was in the APC and he left the
17 APC to join the Hema group. They were rebelling against the government, and then
18 they left that group and they set up the UPC, some of them set up the FNI and that's
19 it.

20 Q. Well, my actual question regarded the arrival of APC in Mongbwalu. Can you
21 give me an estimate of when -- when the UPC took over Mongbwalu, how long the
22 APC had been in the area?

23 A. I don't know exactly how long they had been there, but I know it was quite
24 some time after Kabila's death. Well, we would see them in the village, and we
25 knew they were APC soldiers. But I can't give you a precise date as to when they

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1 arrived. I'm not a politician and I don't know those details.

2 Q. The APC had military installations in Mongbwalu, didn't they? Before the
3 UPC attack, in other words, before the UPC attack was the APC on site, did they have
4 a military camp in the area?

5 A. I'm not a soldier. I never went to a camp to see this or that. You're saying
6 that the APC was in Mongbwalu. Well, when we saw soldiers go by, we knew they
7 were APC soldiers. I cannot tell you what kind of weapons they had. I wasn't a
8 soldier. I don't know exactly what kind of military equipment they had.

9 Q. Well, as a resident of Mongbwalu you had to know that the APC controlled the
10 airport and, therefore, that they had military presence?

11 A. Mongbwalu is a small village. Even the gold miners could go to the airport.
12 And all around the airport there were gold diggers, gold miners. We would see
13 soldiers everywhere. Even when we would be walking around town we would see
14 soldiers. We knew that there were soldiers there.

15 Q. And there were also APC soldiers near the centre of Mongbwalu at Camp Goli;
16 is that correct?

17 A. There were several camps at the time, several at the time of APC. But at the
18 time of Goli, in fact, there wasn't a camp in Goli. It was only when there were
19 workers from Kilo-Moto and retirees.

20 Q. The Lendu combatants that you referred to, they had a commander, didn't they?
21 They had superior officers; is that correct?

22 A. Well, a group always has a chief.

23 Q. Do you know some of those chiefs at the time when Mongbwalu was taken over
24 by the UPC, that is the -- who fought against the Lendu combatants? You know the
25 names of them, don't you?

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1 A. Well, yes, I can identify one or two of the chiefs who were there at the time with
2 the Lendu. In fact, all of those chiefs are in prison. There's Kung Fu, who's in
3 prison in Kinshasa, and there's President Njabu, I think he's also in detention in
4 Makala or in Kinshasa, or maybe he's here at the ICC. I don't know. Those are the
5 chiefs that I know of at the time.

6 Q. When you mention Commander Kung Fu, is that Mateso, who was known also
7 under the name of Kung Fu?

8 A. I don't know whether his name was Mateso. I knew him by the name of Kung
9 Fu.

10 Q. You know that Commander Kung Fu was a member of APC before becoming a
11 commander of the Lendu combatants; do you not?

12 A. That's incorrect. He was a gold miner. He was not a soldier. He was a gold
13 miner.

14 If the Lendu are alive today, it is because of that sort of person.

15 Q. Now, Mr Witness, on another line of questioning, and for the purposes of
16 clarification, you mentioned that following the first attack, you and your family left
17 for Sayo; is that correct?

18 A. Yes, that is correct. That's true.

19 Q. Now, in fact, and please confirm if you're aware of this: Other persons, apart
20 from your family, also left for Sayo in order to escape the approaching conflict. Is
21 that not the case?

22 A. Yes. Yes. People ran for their lives in great numbers.

23 Q. Part of this population ended up in Sayo alongside the Lendu combatants and
24 their leader, Kung Fu; is that not the case?

25 A. Kung Fu is an inhabitant of Sayo. He was born in Sayo, and he grew up in

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1 Sayo.

2 Q. Now, witness, to be more specific, when the inhabitants moved to Sayo, the
3 Lendu combatants also went to Sayo alongside the inhabitants; is that not so?

4 A. The combatants asked the inhabitants or the population to fall back to Sayo in
5 order to protect themselves from the advancing UPC troops. Now, those who were
6 courageous went to fight the enemy, to confront the enemy while others fled.

7 Now, at that time there were no combatants as such. It was people of courage or
8 courageous people who stood up to defend the village. At that time everybody was
9 civilian; and those who were courageous were determined not to abandoned their
10 village and to fight for their village. That's why they went to fight.

11 Q. During the first UPC attack, Lendu combatants and some other persons
12 succeeded to ward off the UPC; is that not so?

13 A. Yes, that is true.

14 Q. They were so successful, isn't it, that they were able to seize some weapons and
15 rifles and other such weaponry from the UPC; is that correct?

16 A. No, it's not about success. It's about defending the people from the UPC, but
17 the UPC attacked again.

18 Q. Mr Witness, if I understand you properly, between the two UPC attacks, you
19 and your family remained in Sayo. You stayed in Sayo, but you were able to travel
20 around in Mongbwalu; is that correct?

21 A. During the first attack, we fled to Sayo, the UPC was defeated, and we returned
22 to Mongbwalu. Then the UPC attacked again, and we fled to Andisa. And when
23 things became difficult in Andisa, when we were suffering there, we decided to go
24 back. Not everyone decided to go back. It was only those who were courageous
25 enough who decided to go back.

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1 Q. Before leaving Sayo in a bid to go further away from approaching fighters, you
2 remained in Sayo for some time; isn't it?

3 A. During the attack -- now, for example, if we are here and you hear gunshots,
4 you definitely would think that the attack is coming nearer, and then you flee.
5 Now, when there is gunfire and there are gunshots, one becomes aware that the
6 fighting is coming nearer and one flees. Now, whether one is a few kilometres away
7 from one's village or not, sometimes one -- one would travel quickly, or one would
8 travel slowly, but one is on the lookout at all times because if there is fighting, one
9 flees; and if there is no fighting, one might stop.

10 Q. Isn't it true, Witness, that during your stay in Sayo, Lendu combatants -- and I'm
11 referring here to the second attack, the second attack, the Lendu combatants at that
12 time again attempted to fight off the UPC as it attacked; is that not the case?

13 A. That is correct.

14 Q. Witness, correct me if I'm mistaken, but it would appear, isn't it, that there were
15 two attempts or two attacks. One failed, but another group also attempted to ward
16 off the UPC, and they also ended up withdrawing; is that not the case?

17 A. The fighting was quite intense. When they attacked, they realized that the
18 enemy was rather strong, then they fell back. On the second attack, the UPC troops
19 understood that the enemy was strong, and some came to the decision that it was
20 necessary to withdraw.

21 So one could see, for example, a soldier who had been at the front and who came back.
22 And if that soldier were asked whether they were able to resist the enemy, he would
23 say no, the enemy is stronger, so we had to flee.

24 And so we then fled towards Nzebi and moved on to other places.

25 Now, you say there were two attempts to ward off the enemy, but the fact is that the

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1 enemy was strong. You see, Mongbwalu is a small town. Mongbwalu was a small
2 town, but the attack did not last only a single day.

3 Q. When you left Sayo with your family and with other -- along with other
4 members of the population you went through Nzebi, a village which is nearby; is that
5 not correct?

6 A. These villages are all very close to each other. From Sayo, you go to Nzebi;
7 and from Nzebi, you can go quickly to Sodomomo; and from Sodomomo, you can get to
8 Andisa. From Nzebi, you cross a stream, and you're already in Andisa.

9 Q. Now, when you were in Nzebi, or when you went through Nzebi, you found
10 out that the inhabitants of Nzebi were also fleeing from the fighting; is that not the
11 case?

12 A. The courageous ones attempted to put up some kind of resistance. You see,
13 when you talk about a tribal war, it is, indeed, a tribal war. A Gegere, for example,
14 would have to flee. A Lokele or an Alur would have to flee, or if you are a Lugbara.
15 You cannot say I am not Lendu and, therefore, because the UPC -- the UPC is coming,
16 I will tell them I am not Lendu. And if they ask me if my mother is Lendu, I would
17 say I am not Lendu.

18 No, this is how these things happen during the war. So what I'm saying is it is not
19 every inhabitant who would flee. Some went to locations that were nearby and then
20 would come back; others would say, no, I cannot live alongside with the Lendu, and
21 others would have different positions. That's how things were at the time.

22 Q. Thank you for your clarification. So you end up at your final destination in
23 Andisa with your family; is that correct?

24 A. Yes.

25 Q. This, of course, happens with other members of the population who followed

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1 the same itinerary as they fled the fighting; is that not so?

2 A. Yes. There were many of us.

3 Q. Now, speaking specifically to the duration of your stay in Andisa when the
4 Prosecutor asked you a question, you answered her saying that you were there for
5 about one week, four to five days. Do you remember that answer you provided to
6 her?

7 A. Yes, I do remember and I can confirm it to you.

8 Q. Would it be possible that you stayed there for up to two weeks, not one week in
9 Andisa?

10 A. Well, you know these are the things I've been talking about. It is not possible
11 for me to say with precision that it was one day or two days. These things happened
12 a long time ago. So I'm not sure whether we spent one week there or two weeks.
13 And these are not things that one thinks about all the time, often. Anything relating
14 to dates, I -- I cannot remember exactly at what time one went here and at what time
15 one came back and so on and so forth. It's very difficult for me to remember.

16 Q. In any event, Witness, you remember, don't you, that you and your family
17 stayed in Andisa for several days, at least for several days before going back to
18 Mongbwalu? Is that not so?

19 A. No, things did not happen that way. We did not stay in Andisa for a long time.
20 Andisa is not our village. I can tell you that we were there for a few days and while
21 there we felt that as soon as peace returned and as soon as those who had gone to
22 Mongbwalu told us that security had returned, then we would go back, which is what
23 happened. But I'm not able to tell you that we stayed in Andisa for this many days.
24 I cannot. All I can say is that we were in Andisa for some time, but not for many
25 days.

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1 Q. During your stay in Andisa, people and the inhabitants were sharing
2 information, particularly about what was going on in Mongbwalu and that would
3 have helped you to decide whether or not to return to Mongbwalu; is that correct?

4 A. Yes, that was the case. You see, if there are four or six members in a family, the
5 courageous one could go looking for food and would say to themselves, "I am
6 responsible for my family, therefore, I need to go and get some food." And in those
7 circumstances, that courageous person could go to Mongbwalu and fetch some food.
8 And that person could also come back and bring some information, at which point it
9 could be decided that the life we are leading here is not easy at all, so there's need to
10 go to our family garden to harvest some potatoes and what have you, and so on and
11 so forth. These are the things that happened at that time.

12 Q. Mr Witness, on another line of questioning, the Hema inhabitants of
13 Mongbwalu. Now, when the Prosecutor asked you a question, your answer was
14 that the Hema people had already left Mongbwalu a while ago. Do you remember
15 that answer?

16 A. Yes, I do remember.

17 Q. Before the UPC attack, are you able to give us a time frame within which the
18 Hema inhabitants left Mongbwalu?

19 A. I am not able to provide the Court with a specific date on which the Hema left
20 Mongbwalu. But, in any event, you must know that the Hema cannot live together
21 with the Lendu and the Lendu could not live together with the Hema because there
22 was a tribal war going on at the time. Mongbwalu is inhabited by the Lendu as well
23 as surrounding villages. The Lendu are the majority in that area. So most of the
24 workers at Kilo-Moto are Lendu. Some of them moved to Bunia, others went to the
25 areas inhabited by their fellow tribesmen. That is what happened during the war.

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1 Q. Witness, you had been living in Mongbwalu for a long time at that time. Can
2 you tell us what happened to the houses and residences that were occupied by the
3 Hema after they, the Hema, left?

4 A. People took over their houses. Today, even the Hema have taken back their
5 houses. You see, in Bunia, for example, Lendu houses were destroyed by the Hema
6 and Hema property was destroyed by the Lendu. However, people were asked to
7 rebuild the houses that they had destroyed by law. That was the law and it had to
8 be upheld. So today everybody has recovered their property.

9 Q. During the conflict, Mr Witness, during the events that happened in
10 Mongbwalu, during the time of the UPC attack, isn't it true that at that time and for
11 some time the Hema inhabitants -- or, the Hema houses were actually taken over by
12 other inhabitants of Mongbwalu; is that not correct?

13 A. I am really not in a position to know. We had our own house, our own
14 compound. How were we then to move or live in a Hema person's house? In any
15 event, because of the hard times at the time some people were renting from others.
16 You see, the Hema houses were there, but the houses were abandoned. Maybe a
17 courageous Lendu could force open the doors of that house and live in that property.
18 But with the return of peace, everybody recovered or went back to their houses.
19 Those who had fled to other locations came back and when they came back they
20 would claim their houses and would recover their houses and would go back and live
21 in their houses.

22 Q. Mr Witness, on another line of questioning. When you returned to
23 Mongbwalu were you able to go back to your business, to your normal activities with
24 your uncle?

25 A. (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted); is that not the case?

15 A. Please, could you specify which period you're talking about? Please, are you
16 talking about today, or after the fighting, or at the time we left Andisa? Could you
17 be more specific.

18 Q. Yes, I will specify my question. Now, when you returned to Mongbwalu from
19 Andisa, how much time did it take you and your family to resume (Redacted)
20 (Redacted)

21 A. Well, a trader is a trader and each trader has his or her trade secrets. Now, if
22 you flee from war you might know where you hid your gold and after the war you
23 could also start up your business of (Redacted)
24 (Redacted). You see, a business person or a trader is someone who can resume their
25 activities once life returns to normal because, you see, a trader in a village can (Redacted)

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1 (Redacted) and resume his business and sell it. That's how it happens.

2 Q. Witness, I have understood your answer, but what I'm trying to elicit from you
3 is the following: At some time you were free enough to move about to the extent
4 that it became possible to resume or to start your (Redacted)
5 (Redacted); is that not the case?

6 A. Those were hard times, tough times indeed. One could not find gold except
7 for government offices. Life was very difficult at that time.

8 Q. Moving on, Mr Witness, to another line of questioning that is relating to Father
9 Bwana Lungwa. You remember answering a number of questions from the
10 Prosecutor regarding that event, do you?

11 A. Yes.

12 Q. The disappearance of Father Bwana Lungwa is common knowledge in the
13 population, everybody knows about it, everybody in Mongbwalu knows about it; is
14 that not so?

15 A. Yes.

16 Q. In your testimony you said that at some point you saw Father Bwana Lungwa.
17 Do you remember saying that?

18 A. Yes, I did see him at some point. The UPC troops were passing by in the -- at a
19 location at which we were, and they were with Bwana Lungwa. So I saw them
20 taking him away. In your question you did not specify the time. If you are
21 referring to the present, to the future, or to some other unknown time, then things can
22 be perceived differently. However, what I can say is that I saw him. The APC
23 troops went by at a location where we were present and he was with them.

24 Q. For purposes of clarification, where specifically were you in Mongbwalu village
25 when you saw Father Bwana Lungwa in a vehicle with some soldiers?

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1 A. I was at the centre, at Mongbwalu centre.

2 Q. (Redacted)

3 A. (Redacted)

4 Q. (Redacted)

5 (Redacted)

6 PRESIDING JUDGE FREMR: Ms Solano.

7 MS SOLANO: Your Honour, I apologise for rising, your Honour, but a lot of this
8 information was elicited yesterday in private session.

9 PRESIDING JUDGE FREMR: Yeah, I fully agree.

10 Court officer, let's move into private session now.

11 (Private session at 10.57 a.m.) *(Reclassified partially in public)

12 THE COURT OFFICER: We are in private session.

13 PRESIDING JUDGE FREMR: And before I give floor back to Mr Boutin, Mr Witness
14 it is line 1, at page 30, you said "The APC troops went by at the location where we
15 were present and" - I mean father - "he was with them" or UPC troops were with the
16 father? APC or UPC?

17 THE WITNESS: (Interpretation) Are you referring to the incident relating to Father
18 Bwana Lungwa?

19 PRESIDING JUDGE FREMR: Yes.

20 THE WITNESS: (Interpretation) What I said is they were UPC troops, not APC
21 troops.

22 PRESIDING JUDGE FREMR: Thank you.

23 Mr Boutin, you may proceed, but you have last 3, 4 minutes maximum.

24 MR BOUTIN: (Interpretation) Yes, Mr President, I'm aware of the time limits.

25 Q. Now, to repeat my question: When you talked about (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 A. Yes.

5 Q. Did you know the father before that incident or those events, Mr Witness?

6 A. (Redacted) so I know him.

7 Q. So it was easy for you to identify him.

8 Now, in terms of time, when you saw Father Bwana Lungwa in a vehicle with some
9 soldiers, (Redacted)

10 (Redacted)

11 A. It was shortly after Mongbwalu was captured by the UPC, a few days after.

12 But again, I cannot remember with exact precision because these things, once again,
13 happened a long time ago. They took the father away to kill him. This incident
14 happened (Redacted). But I cannot recall specifically at
15 what time.

16 MR BOUTIN: Mr President, at this point, I still have a few questions. I expect to be
17 relatively short though after the break. If you wish to take the break now, I will
18 review my notes. And I expect that I will be able to wrap up my cross-examination
19 probably within 15 minutes when we return.

20 PRESIDING JUDGE FREMR: Sorry, it's good news. Anyway, but I thought that,
21 you know, I was just forcing you to finish this topic. So it was not my idea that you
22 have to finish in five minutes because otherwise you still have enough time compared
23 to -- if we have to take into the account the time used by Prosecution. So my
24 understanding is that at the moment you will need further 15 or 20 minutes to finish
25 your cross-examination?

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1 MR BOUTIN: Yes, Mr President. With regard to this specific topic I'm done. I'm
2 prepared to move to another topic which I expect will take probably 10 to 15 minute
3 to cover.

4 PRESIDING JUDGE FREMR: And then it will be the end of your cross-examination?

5 MR BOUTIN: Yes. Obviously, I will review my notes, make sure that there's
6 nothing -- nothing else, but I will expect that it will certainly be relatively short.

7 PRESIDING JUDGE FREMR: Very well.

8 So we can break now. First Mr Witness has to be escorted out of the courtroom, and
9 for this purpose we have to move into closed session.

10 (Closed session at 11.03 a.m.) *(Reclassified entirely in public)

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

12 PRESIDING JUDGE FREMR: Thank you.

13 (The witness stands down)

14 PRESIDING JUDGE FREMR: Now let's move into open session for a while.

15 (Open session at 11.04 a.m.)

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

17 PRESIDING JUDGE FREMR: Thank you.

18 Ms Solano, having listened to Mr Boutin, do you suppose any need for
19 re-examination-in-chief?

20 MS SOLANO: Your Honour, I do, but very brief, perhaps in the region of 5 minutes.
21 And I will re-evaluate during the break.

22 PRESIDING JUDGE FREMR: All right.

23 So we break now and we will reconvene at half past 11.

24 THE COURT USHER: All rise.

25 (Recess taken at 11.05 a.m.)

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1 (Upon resuming in open session at 11.34 a.m.)

2 THE COURT USHER: All rise. Please be seated.

3 PRESIDING JUDGE FREMR: We will continue with cross-examination of the
4 witness. Mr Boutin, do you prefer to continue in open or in private session?

5 MR BOUTIN: I would prefer in private session, Mr President. And for the record,
6 Mr President, there are some changes to the Defence appearances. Ms Elodie Victor
7 and van Braber have left and Maître Stéphane Bourgon and Maître William St-Michel
8 are in the courtroom.

9 PRESIDING JUDGE FREMR: Thank you for this clarification.

10 So now let's move into private session.

11 (Private session at 11.35 a.m.) *(Reclassified partially in public)

12 THE COURT OFFICER: We're in private session Mr President.

13 PRESIDING JUDGE FREMR: Mr Boutin, you may proceed.

14 MR BOUTIN: Thank you, Mr President. (Interpretation)

15 Q. Mr Witness, I would like to briefly revisit the events involving (Redacted)
16 (Redacted) You remember that yesterday a number of questions were put to you
17 regarding that event, do you?

18 A. Yes, I do.

19 Q. From your testimony, Mr Witness, if I understand you correctly, (Redacted)
20 (Redacted)
21 (Redacted); is that correct?

22 A. Yes. I follow you.

23 Q. (Redacted)

24 (Redacted)

25 (Redacted)

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1 A. When they arrived, they told us that (Redacted)

2 (Redacted)

3 (Redacted) We were surprised and we asked them, (Redacted)

4 (Redacted)

5 Then they answered saying that (Redacted)

6 (Redacted)

7 So we then said that we were not involved in that type of decision, and that if they

8 decided to make such a decision, it was up to them to do so. That is what we told

9 them. We are not the ones (Redacted)

10 (Redacted)

11 Q. Now, regarding these events, were you informed, for example, that

12 (Redacted) and that he made an illegal

13 use, so to speak, of a firearm and, therefore, did not follow or obey the instructions of

14 his superiors regarding his movements? Were you involved -- were you informed of

15 any such details?

16 A. No. They didn't tell us any such thing.

17 Q. Now, regarding (Redacted), I think it has been your

18 testimony that you are not aware of the exact date on which this happened; is that

19 correct? Well, in any event, there is information available (Redacted)

20 (Redacted)

21 (Redacted) in the morning. According to you, would

22 that date correspond to the incident that you have been testifying about?

23 A. I have difficulty with that date and the time at which these things may have

24 happened. I have a difficulty remembering the date and the time at which it

25 happened.

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1 Q. So if I understand you properly, you don't have an exact recollection of the
2 precise or approximate time at which (Redacted);
3 is that correct?

4 A. Well, these things happened a long time ago, and they do bring back a lot of
5 thoughts, but these are things that I haven't thought about much and they're things
6 that happened a long time ago. Now when you put these questions to me, the things
7 begin to come back to my mind very gradually.

8 But regarding that specific situation, it is very difficult for me to remember the exact
9 day and the exact time on which these things happened. Once again, today we are
10 in 2015, and these things happened a very long time ago.

11 Q. I can understand that, Mr Witness. But you also testified that some UPC
12 soldiers (Redacted) for example. Do you remember
13 that you said so?

14 A. No, that is not what I said. I said that when they arrived, they asked us
15 whether (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 Q. Did they also (Redacted)?

21 A. I have already told you what they told us and what they asked of us. They
22 asked us whether (Redacted)

23 (Redacted)

24 Q. Last question, Mr Witness, for clarification purposes. Earlier on -- and I'm
25 referring here, Mr President, Madam Prosecutor, to page 17, line 14 of the transcript,

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1 the English transcript.

2 You mentioned earlier on, Mr Witness, that there was a certain (Redacted) who allegedly
3 joined the APC at some point in time. Do you remember that part of your
4 testimony?

5 A. What (Redacted) are you talking about? You say that I said he was a
6 member of the APC. Please, I don't think I said that. Could you look at the
7 transcript again? I do not agree with that statement.

8 Q. I'll read out the transcript to you, Mr Witness.

9 PRESIDING JUDGE FREMR: And including question, Mr Bourgon, please.

10 MR BOUTIN: I'm sorry. I was switching a channel. Sorry, Mr President, I was
11 confused because it is indicated on the transcript that it is a question, but actually it
12 was the answer.

13 PRESIDING JUDGE FREMR: But my idea is to read to Mr Witness both question
14 and the answer.

15 MR BOUTIN: Yes. Very well, Mr President. The question was, "Were you
16 referring to the APC or the UPC?"

17 And the answer was, "I was mentioning the APC, Lopondo's men. The APC, that was
18 Mbusa's soldiers. Even Lopondo's was one of Mbusa's soldiers. That's what we
19 call the APC. That was a group that had existed for quite some time. There was
20 another group. (Redacted)

21 They were rebelling against the government and then they left that group and they
22 set up the UPC. Some of them set up the FNA -- FNI, and that's it."

23 Q. Do you remember (Interpretation) Witness, do you remember now that
24 excerpt?

25 A. Yes, I do remember. But you referred to (Redacted) are you talking

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1 about? This is what I said: I had a discussion with the members of the OTP, and I
2 know what we discussed. You have talked about (Redacted)
3 (Redacted) So on that issue, on that question, what I can tell you is
4 that Bosco was an APC soldier at the time when Wamba Dia Wamba was in power in
5 Kisangani. So from Kisangani they came to our location, and at that time one of the
6 brave combatants of Wamba Dia Wamba was Bosco Ntaganda, and there was talk
7 about it. People said that he belonged to the APC and that he was the chief of
8 general staff of the APC. This is what we came to find out later.

9 Q. Mr Witness, you have understood the thrust of my question for clarification.

10 But when you talk about (Redacted), who are you referring to, Mr Witness?

11 PRESIDING JUDGE FREMR: Ms Solano.

12 MS SOLANO: Your Honour, I just want to note that as far as I can tell, in the
13 passage that my friend has referred, to the name (Redacted) appears in the English
14 transcript, but not in the French transcript, at least not that I can find, so depending
15 on whether what the witness is saying is being interpreted first into French and then
16 into English, we may be in fact talking about a problem of interpretation.

17 PRESIDING JUDGE FREMR: Mr Witness, at least have you mentioned any (Redacted)
18 who would be a soldier?

19 THE WITNESS: No. I didn't say that.

20 PRESIDING JUDGE FREMR: So, Mr Boutin, I guess that explanation given by
21 Ms Solano seems very, very likely.

22 MR BOUTIN: That's quite possible, Mr President. That's why I was asking to
23 clarify -- clarification. Sorry. It has been a long night. It was a long night -- a
24 clarification question.

25 This completes my cross-examination, Mr President. I have no further questions.

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1 PRESIDING JUDGE FREMR: Thank you very much.

2 So, Ms Solano, you have indicated a need for some short re-ex, so having taken into
3 account the extent of -- or examination, you are granted ten minutes in maximum.

4 You may proceed.

5 MS SOLANO: Thank you, your Honour. I just have one section of the transcript
6 that I would like to clarify with the witness. And for my friends I am referring to the
7 English transcript, page 22, from lines 12 to 20, and the French transcript, page 22
8 from lines 14 to 22.

9 QUESTIONED BY MS SOLANO:

10 Q. Sir, according to the transcript, you said that "On the second attack, that UPC
11 troops understood that the enemy was strong and so came to the decision that it was
12 necessary to withdraw. So one could see, for example, a soldier who had been at the
13 front and who came back, and if that soldier were asked whether they were able to
14 resist the enemy, he would say, 'No. The enemy is stronger, so we had to flee. And
15 so we then fled towards Nzebi and moved on to other places.'"

16 Now, you say there were two attempts to ward off the enemy, but the fact is that the
17 enemy was strong. My question is, sir, during the second attack on Mongbwalu,
18 according to you, which side understood that the enemy was strong?

19 A. During the second attack, it was the UPC troops that were stronger. That is
20 why people fled. That is why we fled. And they occupied the territory. During
21 the second attack, the UPC was the stronger, the stronger group. You see, there
22 were a number of attacks. On the first attack, the UPC troops were warded off. On
23 the second attack, the UPC troops were successful and they occupied the territory.

24 MS SOLANO: Thank you, sir.

25 Your Honour, I have no further questions.

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1 PRESIDING JUDGE FREMR: Very well. So, Mr Witness, it means it concludes
2 your testimony. You have been answering questions for almost two days. So now I
3 am asking you whether you on your behalf want to say anything to the Chamber?

4 Do you want to say anything on your behalf?

5 THE WITNESS: (Interpretation) I have nothing to say. All I want to do is thank
6 you. Thank you very much. Everything went well, calmly throughout this
7 testimony. I am very happy. I have nothing further to add.

8 MR BOUTIN: Excuse me, Mr President. I think we're still in closed session, are
9 we?

10 PRESIDING JUDGE FREMR: It's my fault.

11 Court officer, please, let's move into open session.

12 (Open session at 11.55 a.m.)

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

14 PRESIDING JUDGE FREMR: So at this moment I would like to thank you very
15 much, Mr Witness, because you are doing very well. You answered all questions
16 put to you directly. You also observed guidance I gave you. So thank you very
17 much. This Chamber strongly believes that your testimony will help us to find the
18 truth. And now we wish you safe journey home. So thank you very much and
19 that's it.

20 And now we have to move into closed session in order to escort Mr Witness out of the
21 courtroom.

22 (Closed session at 11.57 a.m.) *(Reclassified entirely in public)

23 THE COURT OFFICER: We're in closed session, Mr President.

24 PRESIDING JUDGE FREMR: Thank you.

25 (The witness is excused)

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1 PRESIDING JUDGE FREMR: Now we can move back into open session, please,
2 court officer.

3 (Open session at 11.58 a.m.)

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

5 PRESIDING JUDGE FREMR: Thank you.

6 Before we adjourn, there are few pending issues we would like to solve. The first
7 one is a follow-up comment from the part of the Chamber concerning this witness.
8 Having listened to the examination of this witness, the Chamber has made the
9 following conclusion. In our opinion, this witness could be examined for
10 significantly shorter time if Rule 68(3) were applied. We would find this fully
11 appropriate and we strongly encourage parties to come with this request to apply
12 Rule 68(3) when this kind of witnesses are going to testify.

13 Any comment on that, Prosecution?

14 MS SOLANO: Your Honour, we have no immediate reaction to what your Honour
15 has just said. Some of our requests under Rule 68, two of them have been rejected
16 recently, and we try to glean from the Chamber's decisions on those requests what is
17 the right approach. So if your Honours were minded to say anything more about
18 why this witness in particular in your view would have been well suited for an
19 application under Rule 68(3), that would be helpful guidance, if it is a fact that he is a
20 crime-based witness or that he had just one statement or anything else your Honours
21 could say would be helpful.

22 PRESIDING JUDGE FREMR: It's not easy to go into details, but first issue, you are
23 right, that crime-based witness it's the first I think indication that the consideration
24 about a request for 68(3) should be possible, but it always depends on concrete
25 testimony also on the position of Defence. It was even clear now from the relatively

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1 short cross-examination, there were no -- no big dispute about this testimony. So we
2 can't give you any exact guidance. But while indeed you were right, we rejected
3 your Prosecution requests in the previous case, but in our view, the previous case
4 really was not appropriate for application of 68(3), while this one was ideal for
5 application of 68(3).

6 But I guess that's enough from our part. So next time, please, because we all know
7 there are many witnesses on your list, and one of the commitments of this Chamber is
8 to go as expeditiously as possible. We all know that this Court is criticized for
9 delays and according to our common view, the use of 68(3) could be very helpful.
10 Defence, any comment on this?

11 MR BOUTIN: Not at this point, Mr President. Obviously if the case arise, we will
12 certainly be prepared to provide our views. Thank you.

13 PRESIDING JUDGE FREMR: And now as concerns remaining issues, the Chamber
14 also was informed that we, in fact, postponed our decision on some exhibits that the
15 Defence would like to tender into evidence. We understood there is no agreement
16 and that Defence would like to approach the Chamber with submission. Am I right?

17 MR BOUTIN: Mr President, with your leave, Mr Bourgon is prepared to address the
18 Chamber on this issue.

19 PRESIDING JUDGE FREMR: Mr Bourgon, you have the floor.

20 MR BOURGON: Thank you, Mr President.

21 Mr President, as mentioned in my electronic correspondence addressed to the
22 Chamber this morning, when we proposed at the end of the hearing on Monday of
23 this week to approach the Prosecution for the purpose of agreeing on the documents
24 which we would seek to have admitted for the sole purpose of impeachment of
25 Witness P-10, we did not expect to enter into or to experience any difficulties.

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1 However, based on our exchange of correspondence, issues of principles -- of
2 principle have arisen which we believe required the Chamber's intervention.

3 I will address three of these issues and I will try to do it as quickly as I can.

4 The first issue deals with the Prosecution objection --

5 PRESIDING JUDGE FREMR: Mr Bourgon, one question in advance. How
6 extensive you think will be your submission as concerns time?

7 MR BOURGON: I believe, Mr President, around ten minutes.

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

9 MR BOURGON: Thank you, Mr President.

10 Mr President, the issue deals with the admission of documents for the sole purpose of
11 impeachment. And the question that arises is whether the complete document can
12 be admitted or whether only the excerpt that was shown to the witness can be
13 admitted for the purpose of impeachment.

14 Our understanding from the Prosecution's submission is that they say that we can
15 only seek to have admitted the specific portion that was shown to the witness for
16 impeachment purposes.

17 We respectfully disagree with this position for the following reasons: First of all, any
18 document admitted for the sole purpose of impeachment is not evidence and is not
19 being admitted as evidence for the truth of its contents, and that's very important.

20 Secondly, the purpose of admitting these documents is to provide the Chamber with
21 information that will assist in assessing the credibility of Witness P-10 and, by the
22 same token, to evaluate the weight, if any, that can be attributed to her testimony.

23 In our respectful submission, there are many ways to do this. The classical situation,
24 of course, is to -- is where the witness provided evidence that is clearly contrary to
25 what she said in the previous statement. In such a case, of course we would identify

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1 the exact portion of her previous statement that contradicts what she said in her
2 testimony. That's important, because in a case like that, the witness must be given
3 an opportunity to explain the difference between the two. That is the approach that
4 we took for Witness 901.

5 In this case it's a different matter. Another way to assist the Chamber in assessing
6 the credibility of a witness is to provide contextual information in which the evidence
7 can be -- in which the evidence was obtained and that will assist in evaluating the
8 credibility of the witness.

9 In this case the evidence sought to be admitted does not necessarily highlight a
10 contradiction. The evidence that is sought to be admitted provides the connection.
11 What matters in a case like this is the proposition that was put to the witness and
12 whether the material sought to be admitted for impeachment purposes provides
13 information that will assist the Chamber.

14 In this case, Witness P-10 was -- many propositions were put to Witness P-10. I will
15 only highlight three. It was proposed to her that she was a member of the APC -- I
16 think we need to go into private session, Mr President.

17 PRESIDING JUDGE FREMR: Just my idea. Court officer let's move into private
18 session now.

19 (Private session at 12.07 p.m.) *(Reclassified partially in public)

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

21 PRESIDING JUDGE FREMR: Thank you.

22 You may proceed, Mr Bourgon.

23 MR BOURGON: Thank you, Mr President. It was proposed to the witness,
24 amongst other things, first that (Redacted)

25 that she was not less than (Redacted) when she joined the UPC and that she was not

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1 (Redacted). Those are, amongst other, propositions that were put to her.

2 The witness did not agree with these propositions. And in her statements,
3 interviews, as well as in her testimony in the Lubanga case, she did not provide
4 evidence that clearly contradicts these propositions; however, it is our respectful
5 submission that the answers provided by the witness during her testimony support
6 the Defence propositions that (Redacted)

7 (Redacted) and that (Redacted).

8 And our submission is that the statement, interviews, as well as her testimony in the
9 Lubanga case provide the necessary contextual information that will assist the
10 professional Judges that compose this Chamber to assess the credibility of the
11 witness.

12 All material we seek to have admitted in full, which the Prosecution opposes, was
13 mentioned to the witness. It was -- she recognized that this was her material, she
14 recognized that in each case she had been asked whether she wanted to make changes
15 and that in each case she confirmed that she was satisfied with the contents of this
16 material.

17 Accordingly, Mr President, especially since this material does not become evidence
18 for the truth of its content and that it will assist the Chamber in evaluating her
19 testimony, we say that there is no need to identify specific passages that were shown
20 to her and that is -- it is up to the cross-examining party, and this will apply also to
21 the Prosecution when they will be in a cross-examination mode, that they can decide
22 to ask for admission of material for the sole purpose of impeachment based on what
23 they feel will be of assistance to the Chamber.

24 That's the first issue.

25 The second issue is -- deals with a similar topic and it has to do with item 52 on our

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1 list. Item 52 is the log of what the Prosecution disclosed to us further to its
2 preparation session with Witness P-10. This session, as we know from the testimony
3 of the witness, lasted many days, and it was put to the witness that she made a
4 number of changes and that she recognized having done so. As a matter of fact,
5 even when -- when she was not solicited, she said "I made all these changes last week
6 when I met with the Prosecution."

7 So we feel it is important for the Chamber to assess her credibility, to have this
8 document in full, which highlights the changes she made two weeks before her
9 testimony and changes to material that goes back to 2005 for the first statement.
10 Now, Mr President, in order for the Chamber to be able to assess a change that was
11 made, the Chamber also requires the original material, which is one of our main
12 reasons for asking for the original material, statements, interviews and testimony, to
13 be admitted in full. Again, I insist for the sole purpose of impeachment. This is the
14 second issue.

15 And I move to the third issue, which is the item number 19, the video. And under
16 item number 19, this raises two different issues. One, the Prosecution would like us
17 to admit only the portions that were shown to the witness.

18 That can be done, Mr President, and we really do not have any objections in doing so,
19 but the Chamber will recall that with respect to item 19, she was shown the new
20 minutes, meaning what happened before the Prosecution exhibit or video, she was
21 shown what happened at the end of the video, which is the part that was not again in
22 the Prosecution video, but she was also shown at different points in time parts of
23 video which come from the Prosecution video.

24 So we can separate it if the Chamber so wishes, but we feel it would be
25 counter-productive and that it would be much better to enter the complete video.

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1 Lastly, there's an issue that arises with respect to the source of this video. The
2 metadata that accompanies video that is disclosed to the Prosecution includes where
3 the source or where we obtained the video from. At this point in time, we do not
4 wish to reveal this information and -- because we feel it is covered by the protocol on
5 standard redactions.

6 The protocol on standard redactions, and I quote from paragraph 38 to 40 of the
7 protocol on redactions. Category D5 "Deals with identifying and contact
8 information of leads and sources."

9 At this point in time, Mr President, the person who provided us with this video is a
10 source that we would like to use to obtain further information and that we do not
11 want to reveal the name of this source. This person is not a witness, is not a Defence
12 witness. Admittedly, the person could become a Defence witness. So can I use the
13 term "Potential Defence witness"? Maybe. But we feel that this name should
14 be -- is covered by the standard redaction in category D5.

15 And the idea, of course, is that it is important to note, Mr President, that when we
16 have the name of a person who is not a Defence witness as specifically defined in the
17 protocols, then that person is not covered by the protocols and is not covered by what
18 the party must do to contact the witnesses of an opposing party.

19 So for us, it would be very difficult. We don't know if that person is a witness, but
20 we don't want to reveal the source. And we feel that this is covered by the protocol.
21 And we recognize that when the time will come to admit the video in evidence, if we
22 so desire, then, of course, at that point in time when the Prosecution's case is over, we
23 would reveal that information if we intend to admit this video into evidence. But at
24 this point in time we do not feel that there is an obligation on our part to do so
25 because it is a source covered by category D5.

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1 Mr President, we can come back in public session and I -- this is the end of my
2 submissions. So if we have at least the Chamber's guidance on those three issues,
3 and I think my colleague will make submissions also, then it will be much easier and
4 then we can agree as to what material can be admitted for Witness P-10. Thank you
5 very much, Mr President.

6 PRESIDING JUDGE FREMR: Let's move into open session now.

7 (Open session at 12.15 p.m.)

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

9 PRESIDING JUDGE FREMR: Thank you. One follow-up question, Mr Bourgon.

10 As concerns the list of exhibits you would like to tender, do you want to specify it
11 now orally, but do you want to refer to any of your previous submissions?

12 MR BOURGON: Yes, Mr President. We have a list that was sent to the Prosecution,
13 and I can provide the Chamber with the list. We are seeking to have admitted the
14 following items on our list: Item 13; item 14, there was no objection; item 15, no
15 objection. Then we reach the items for which the Prosecution disagrees, including 19,
16 34, 36, 37, 38, 39, 40, 42, 43, 44, 46, 47, 48, and 52.

17 We also, of course, seek the admission for some documents for which there was no
18 objection, including items 32, 35 and item 50.

19 Now, in respect of items 41 and 45, there was the specific objection which I covered in
20 my submissions.

21 So these are the numbers that we'd like to have admitted and if we can admit all of
22 these documents in full, then we can proceed immediately. If not, if the Chamber
23 would give a decision that is contrary to our submission, then we will endeavour to
24 identify the specific portions. But we believe, Mr President, that this would defeat
25 the purpose of admitting this material for the purpose -- the sole purpose of

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1 impeachment. Thank you, Mr President.

2 PRESIDING JUDGE FREMR: Point taken. I guess when I see extent of your
3 submission and many arguments specified within, and according my current view,
4 our decision will be very important because it will also set up some standard for the
5 future of this case, so it seems to me most likely that we will anyway decide not today
6 and we will decide rather in writing to make it absolutely clear, to be absolutely
7 precise.

8 In light of this Prosecution, do you want to respond now orally, or if you want -- if
9 you would prefer to respond in writing, it would be even maybe better for Chamber,
10 so what do you prefer?

11 MS SAMSON: Your Honour, I can certainly respond in writing and be more
12 comprehensive in that form. I can also give your Honours an overview of the
13 Prosecution's position today, but -- orally, but in writing is perfectly acceptable as
14 well.

15 PRESIDING JUDGE FREMR: So I think it doesn't seem to me reasonable to separate
16 even any general overview and the concrete argumentation, so it would be better for
17 us to be provided with everything in one, so we are giving you for that deadline for
18 tomorrow -- the end of tomorrow, so it means today we have a Tuesday, so it means
19 the end of the Wednesday, if I'm not wrong.

20 Now --

21 Mr Bourgon.

22 MR BOURGON: Thank you, Mr President. Does -- the Chamber would also wish
23 to have our submissions in writing?

24 PRESIDING JUDGE FREMR: Frankly saying, it would be also better for us to
25 facilitate our aware because there are many numbers, many details, so if you are

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1 willing to do that we would prefer that as well.

2 MR BOURGON: We will do so. I apologize. I thought we could save time. I

3 realize that it's better in writing, so we will do so, Mr President.

4 I have one more issue that I would like to raise very briefly.

5 PRESIDING JUDGE FREMR: Mr Bourgon, so sorry to interrupt you. I was wrong.

6 Today is Wednesday, so the end of Thursday, in fact, is the deadline.

7 MS SAMSON: And, Mr President, would you like both parties to submit

8 observations at the same time, or will the Prosecution respond to the Defence's filing?

9 PRESIDING JUDGE FREMR: Maybe just to keep normal order, in fact, it's -- the
10 submission of the Defence now is coming first, so maybe let's make the deadline for
11 Defence the Thursday afternoon. Is it okay with you, Mr Bourgon?

12 MR BOURGON: Yes, Mr President.

13 PRESIDING JUDGE FREMR: And then Friday afternoon for Prosecution.

14 MS SAMSON: Yes.

15 PRESIDING JUDGE FREMR: Fine?

16 MS SAMSON: Thank you.

17 PRESIDING JUDGE FREMR: Very well.

18 So, Mr Bourgon, you said you have another issue. Please, go ahead.

19 MR BOURGON: Mr President, I think this is an opportunity to raise this issue. It is
20 not a formal submission at this time, but there is something that came up during the
21 testimony of witness P-10 that we were not aware of, and we still need to explore it
22 before we make a formal submission, but it is something that I was not aware of.

23 And this issue deals with the fact that the -- are we public session? Yes? Oh, we're
24 not in public session? We are?

25 PRESIDING JUDGE FREMR: We are in public.

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1 MR BOURGON: Sorry. I was told ...

2 So the issue, Mr President, is that the translators have been provided, and I think my

3 colleague can confirm this, have been provided -- I don't know how often or if it's

4 only some cases or all the time, it appears that the translators -- the interpreters, sorry,

5 I don't want to use the wrong word, the interpreters have been provided in the past

6 with statements of the witnesses who are on the stand. We feel that there's -- this is

7 an issue that we want to explore. It's something that I've never been aware of before

8 in all my years in this business, and we will be exploring this and making

9 submissions at some point in time, but we feel that this is an area that we will need to

10 look into whether it is appropriate. And I say "whether" because we do not have our

11 position first. We want to take the time and look and explore what are the

12 consequences of such a procedure, and we will be making submissions; but, as always,

13 we'd like to be forthcoming and be proactive in raising these issues before the

14 Chamber.

15 Thank you, Mr President.

16 PRESIDING JUDGE FREMR: Mr Bourgon, the Chamber would appreciate any

17 improvement of our proceedings; and if anything is used in the previous practice, it

18 doesn't mean that it couldn't be changed, so feel free to come with this submission.

19 So at the moment, I am not asking Prosecution for their reaction because, in fact, there

20 is an indication then this submission will be coming.

21 So now there are also two issues from our part. The first is that I would like just to

22 recall that the Chamber received two requests from the Prosecution seeking a notice

23 of possible recharacterization of the facts under regulation 55 of the regulations of the

24 Court be issued by the Chamber. These are filings number 501 and 646. These

25 requests are being given consideration, and the Chamber will respond in due course,

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1 noting that regulation 55 is a Chamber-driven process.

2 And the second issue, as was previously indicated provisionally by way of email, it is
3 intended that the next block of evidence will start on 18 January 2016. I can now
4 confirm that this start date is the firm intention of the Chamber.

5 I also would like to know that due to the commitments of one of my colleagues in the
6 Ongwen case, this Chamber will not be able to sit during the confirmation hearings in
7 that case.

8 Those confirmation hearings are currently scheduled for between 21 and 27 January
9 2016. The confirmation hearings may or may not last for all of the scheduled days,
10 but we can't provide you with the more information now. Thus, the parties and
11 participants in this case will be required to be flexible enough and to resume our
12 hearings as soon as the confirmation hearings in the Ongwen case are completed.

13 Relatedly, in scheduling witnesses for the next block, the Prosecution, in particular,
14 should please be mindful that we will have to break briefly after the first three days
15 for that confirmation hearing and, for that reason it would be desirable to plan first
16 witness or witnesses whose testimony could be completed in those first three days.
17 Otherwise, our intention is to sit as continuously as possible from 18 January 2016,
18 until 26 February 2016. So that is approximately six weeks; although, there may, of
19 course, be minor adjustments to accommodate other Chambers, such as pretrial
20 Chamber or the appeals Chamber or for similar logistical reasons.

21 After 26 February 2016, we will break for a period. We hope to then start with the
22 fourth evidentiary block on 4 April 2016, and to continue until 6 May 2016; again,
23 sitting as continuously as possible, though some flexibility may be required for
24 pretrial Chamber or appeals Chamber hearings.

25 At the moment, it appears that in spite of the fact that three courtrooms will be

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1 available in the new premises of the Court, the Registry does not currently have
2 sufficient resources to support the three simultaneous trials that are scheduled to run
3 next year. This regrettable fact necessitates some alternate sitting amongst the
4 different chambers.

5 I would like to emphasise that this is very unsatisfactory from the Chamber's
6 perspective, and we strongly hope that the solution will be found to avoid
7 proceedings being impeded for such reasons.

8 There is, of course, much work that will continue to be done outside of the courtroom
9 over the coming weeks.

10 Is there any comments on this set news? Prosecution?

11 MS SAMSON: No, your Honour. No comment on that in particular, except to say
12 that we recognize that with the upcoming holiday, the Prosecution will be
13 distributing its forthcoming witness list in advance of the four weeks that the
14 Chamber has set as the deadline. I'm hoping that we can submit that to the parties
15 and participants early next week.

16 Thank you.

17 PRESIDING JUDGE FREMR: Appreciate it.

18 Defence?

19 MR BOURGON: My colleague's words are much appreciated on this side of the
20 courtroom because this will be appreciated to have those names in advance. Thank
21 you very much, Mr President.

22 PRESIDING JUDGE FREMR: Legal representatives of victims.

23 MR SUPRUN: I have no comment to make, Mr President.

24 PRESIDING JUDGE FREMR: Ms Pellet, no comment?

25 MS PELLET: I do apologize, Mr President. No, I do not have any comment to

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1 make, and I thank you.

2 PRESIDING JUDGE FREMR: All right. I just didn't want to omit you.

3 So at this moment, I would like, on behalf of the Chamber, to thank you, I mean the
4 parties and the participants, for your constructive approach during these first two
5 evidentiary blocks, and we firmly hope that we will -- we all will continue in such a
6 manner next year.

7 Finally, I would also like to thank the court officer, the interpreters, and all other
8 Registry staff who have been providing courtroom support to us. It's much
9 appreciated, indeed.

10 So it concludes our hearing and concludes this evidentiary block, and we will
11 reconvene again in 2016.

12 THE COURT USHER: All rise.

13 (The hearing ends in open session at 12.31 p.m.)

14 RECLASSIFICATION REPORT

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