

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Open Session)

ICC-01/04-02/06

1 International Criminal Court
2 Trial Chamber IV - Courtroom 2
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and
6 Judge Chang-ho Chung
7 Trial Hearing
8 Wednesday, 28 October 2015
9 (The hearing starts in open session at 9.31 a.m.)
10 PRESIDING JUDGE FREMR USHER: All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: Good morning everybody.
14 Court officer, please call the case.
15 THE COURT OFFICER: Thank you, Mr President.
16 The situation in the Democratic Republic of the Congo in the case of the Prosecutor
17 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
18 We're in open session.
19 PRESIDING JUDGE FREMR: Thank you, court officer.
20 Appearances as usually, please.
21 MS LUPING: Good morning, Mr President, your Honours. Appearing on behalf of
22 the Prosecution this morning is myself, Dianne Luping, trial lawyer; Kristy Sim, assistant
23 trial lawyer; Lois Mbafor, legal assistant; and Selam Yirgou, case manager. Thank you,
24 your Honours.
25 PRESIDING JUDGE FREMR: Thank you, Ms Luping.

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1 Defence.

2 MR BOURGON: (Interpretation) Good morning, Mr President. Good morning, your
3 Honours. I am here with the team representing Bosco Ntaganda, who is present this
4 morning in the courtroom; Mademoiselle Elodie Victor, an intern; William St-Michel;
5 and myself Stéphane Bourgon. Thank you, Mr President.

6 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

7 Legal Representatives of Victims, please.

8 MS PELLET: (Interpretation) Thank you, Mr President. The former child soldiers
9 are represented by Sarah Pellet, myself, counsel at the OPCV. Thank you.

10 MR SUPRUN: (Interpretation) Good morning, Mr President, your Honours. Victims
11 of the attacks are represented by myself, Dmytro Suprun, counsel at the OPCV.

12 PRESIDING JUDGE FREMR: I thank both of you.

13 Before we approach to the final part of testimony of Witness P-886, I would like to ask
14 parties whether they succeeded to reach agreement on the video excerpts.

15 Mr Bourgon.

16 MR BOURGON: Thank you, Mr President. Further to the Chamber's instructions, we
17 did perform the necessary work and we have identified part of the video excerpt as well
18 as the corresponding part of the transcript and the corresponding part of the translation.
19 We have communicated this information to the Prosecution. I submit that this matches
20 what they had initially proposed, but I believe my colleague wants to do further
21 verification before agreeing to the information I transmitted to her this morning.

22 I am ready, however, to mention the exact portions, or we can do this at least at the end
23 when this witness finishes. Thank you, Mr President.

24 PRESIDING JUDGE FREMR: Thank you.

25 Ms Luping, could you verify this.

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1 MS LUPING: Yes, Mr President, your Honours. We had the confirmation from the
2 Defence this morning shortly before the session started that they would agree to which
3 portion of the French translation that we agreed to. However, we just simply want to
4 ask a Swahili-French interpreter to double-check the precise time stamps of the videos
5 just simply for accuracy, your Honours, as none of us are fluent Swahili speakers. And
6 we should be able to do this at the break, confirm the precise time stamps.

7 PRESIDING JUDGE FREMR: I don't see any special urgency on that, so the Chamber
8 can wait and then please provide us with the precise list of excerpts and translations and
9 transcripts that should be tendered.

10 Now we can bring our witness in, please, court officer.

11 (The witness enters the courtroom)

12 PRESIDING JUDGE FREMR: Good morning, Mr Witness.

13 WITNESS: DRC-OTP-P-0886 (On former oath)

14 (The witness speaks Swahili)

15 THE WITNESS: (Interpretation) Good morning.

16 PRESIDING JUDGE FREMR: I hope Mr Witness you are feeling well.

17 THE WITNESS: (Interpretation) Yes, I feel well. I feel very well.

18 PRESIDING JUDGE FREMR: It's good to hear that. As usually, it's my duty to remind
19 you that you are still under oath which means, and you know it, that you will have to
20 speak the truth and nothing but the truth.

21 And I would also like to add our common guidance that you should listen carefully to
22 the questions, try to respond just precisely the question put to you, and to observe
23 pauses and also speak slowly to allow smooth interpretation. I guess you understood?

24 THE WITNESS: (Interpretation) Yes, that is very well.

25 PRESIDING JUDGE FREMR: Very well. So now I can move the floor to Mr Bourgon.

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1 Mr Bourgon, you have the floor. And should we remain in open session or what do
2 you prefer?

3 MR BOURGON: At this stage we can remain in open session, Mr President.

4 PRESIDING JUDGE FREMR: Very well.

5 QUESTIONED BY MR BOURGON: (Continuing)

6 Q. Good morning, sir. I have --

7 A. Good morning.

8 Q. -- quite a few questions remaining to ask you; however, I'm sure that we can get
9 through this quite easily. I would simply ask, sir, that when it's possible and where you
10 can, to answer my questions by yes or no. I will begin by my first topic and for this I'd
11 like to -- which is basically the time that you left Sayo to go to the bush.

12 I recall, sir, that you said in your statement, and I would like you to confirm this on
13 page 22, paragraph 16. "While we were standing at the church and looking, we did not
14 know that some of the UPC forces had already entered Sayo. They had surrounded the
15 village and taken up position. The UPC soldiers shot a gun called Nato. It makes a
16 very loud noise. They shot it once from the bush and people got scared and started
17 fleeing in different directions into the bush."

18 Can you please confirm by yes or no that you recall that this is information that is in
19 your statement?

20 A. That is correct. It was raining at the time.

21 Q. In the same paragraph, that is your statement, page 22, paragraph 16, you add
22 "Suddenly, I also heard gunshots coming from the factory Usine. This happened in the
23 afternoon, and I remember it was raining. It was a sudden attack with no warning at
24 all."

25 Sir, can you confirm by yes or no that this is information you provided in your

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1 statement?

2 A. Yes. When those gunshots were heard, some came from the factory and from
3 Sayo.

4 Q. Thank you. Now, in your testimony on 23 October, that is this Monday, you
5 stated the following, which matches in some way what is in your statement. There
6 was -- I quote the transcript on page 6, line 16 to 20: "There was a huge explosion and
7 people left their homes. People fled from their homes and left the homes empty. Then
8 we fled during the rains, leaving behind our houses, only to come back after three days."
9 Can you confirm that this testimony -- you stand by what you said at that time, if
10 possible, sir, by yes or no?

11 A. Yes. That is what I said. Yes. That is what I said.

12 Q. Now, I go back to your statement, and I will quote now from page 22, at paragraph
13 18, where you said the following: "When I heard the Nato explosion, I ran towards my
14 house, and I saw my wife fleeing with the children. I got into the house, grabbed the
15 children's clothes, as I realized that my wife didn't take anything with her. I then fled
16 to the bush. We fled in different directions. My family took one direction and I took
17 another direction."

18 Sir, can you confirm, if possible, by yes or no, that this is information you provided in
19 your statement?

20 A. Yes. I left alone.

21 Q. Now, sir, on the basis of what you said in your statement and your testimony, the
22 three parts or quotes that I just covered, I suggest to you, sir, that by the time the soldiers
23 of the UPC entered the town, you had already fled in the bush and that you did not see
24 them in the town; is that correct, sir?

25 A. We saw them a little further off when they entered the city, but when there were

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1 gunshots we fled to the forest and abandoned our homes.

2 Q. So I understand, sir, that your answer to my question is yes, did you not see them
3 in the town; is that correct?

4 MS LUPING: Mr President.

5 PRESIDING JUDGE FREMR: Ms Luping.

6 MS LUPING: Out of fairness to the witness that is not what he said. "We saw them a
7 little further off when they entered the city, but when there were gunshots we fled to the
8 forest ..." If we could just be fair to the witness and refer back to his exact words.

9 PRESIDING JUDGE FREMR: I think anyway it needs further clarification, so please,
10 Mr Bourgon, but I think Ms Luping is true that we should be careful with making
11 interpretation in this direction as you did.

12 MR BOURGON: Thank you, Mr President.

13 Q. Sir, I will read back exactly your answer to my question, which was the following:
14 "We saw them a little further off when they entered the city, but when there were
15 gunshots we fled to the forest and abandoned our homes."

16 My suggestion to you, sir, is simply that what you say there is you confirm that from the
17 church where you were in Sayo, you did not see the UPC soldiers coming into that area,
18 you had fled before; is that correct, sir?

19 MS LUPING: Mr President.

20 PRESIDING JUDGE FREMR: Ms Luping.

21 MS LUPING: Again, out of fairness to the witness because there are relevant aspects of
22 the testimony of this witness that are also not being cited to him because he also
23 described what he saw of UPC soldiers from his vantage point. And this is not what
24 the witness has said.

25 PRESIDING JUDGE FREMR: I feel the need to intervene. Mr Witness, what do you

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1 mean by words "further on"? Could you be more specific on that?

2 THE WITNESS: (Interpretation) We saw them from a distance of about 3 kilometres.

3 Shortly thereafter, they started firing. And it was raining at that time. So we saw

4 them from a distance, that is a distance of about 3 kilometres. And then we -- we -- we

5 fled to Kanga ville.

6 PRESIDING JUDGE FREMR: And I will just put the second question, okay. It was

7 this response clarified a lot, but from what place you see this? You said from the

8 distance of 3 kilometres, but at what place you were in this moment?

9 THE WITNESS: (Interpretation) They were on the other side and we were at the

10 church. We saw them come down. And it was raining heavily at that time. Then

11 they started to fire gunshots very close to the city. At that time we became scared, we

12 were very afraid and then we fled in different directions.

13 PRESIDING JUDGE FREMR: Thank you.

14 Mr Bourgon, you may proceed.

15 MR BOURGON: Thank you, Mr President.

16 Q. I come back very shortly, sir, to the loud explosion that you heard. My case is that

17 there was, indeed, such a large explosion when the attack began, but what can you tell

18 us about your knowledge of this Nato weapon or the so-called Nato weapon that you

19 put in your statement?

20 A. Well, you see, people who carry weapons refer to the weapon as Nato. And those

21 who heard the explosion said it was the explosion of the Nato weapon. That's all I

22 know. And thereafter we left and each person went in their own direction. We did

23 not all disperse or go in the same direction together.

24 After the loud explosion, we fled and I think it is only the soldiers who can provide you

25 with further details as to the nature of this explosion, but I was told that this explosion

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1 came from a weapon known as Nato.

2 Q. Thank you, sir. Now, this loud explosion, I suggest to you, sir, that you did not
3 see the impact of that explosion or where the explosion landed exactly; is that correct?

4 A. They shot into the air while they were in the -- while we were in the bush. They
5 were firing into the air. They weren't aiming at anybody. They simply aimed it or
6 fired into the air in order to frighten people.

7 Q. I move to my next topic, sir, which has to do with the moment that you left in the
8 bush. I quote from your statement and that is on page 22, at paragraph 19: "After
9 three days in the bush, sleeping under trees, without food, I decided to search for my
10 family."

11 So I suggest to you, sir, or I would like you to confirm that first you spent three days and
12 then you searched for your family. Is that how it happened?

13 A. I was in the bush over those three days. You see, in the forest -- I left the forest
14 from the Ituri river and I started to look for my family. It's only three days after that I
15 left the forest to go back to the road.

16 Q. What I would like to know, sir, and my proposition to you is that you stayed in the
17 bush more than three days because you looked for your family starting after three days;
18 is that so, sir?

19 A. I spent three days, and it is on the third day that I went to the Ituri road close to
20 Mahagi. Now, while the others went by, I remained in the bush around Ituri. And,
21 yes, it was on the third day.

22 Q. Thank you, sir. You just mentioned, and I will quote now from the transcript at
23 lines 8 to 10: "I spent three days, and it is on the third day that I went to the Ituri road
24 close to Mahagi."

25 Sir, in your statement, you mentioned the following, and this is paragraph 19, on page 22:

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1 "I decided to go to Andisa to look for my family, but I could not find them there, so I
2 went back to Sayo."

3 I simply would like to confirm that where is Andisa?

4 A. Andisa is close to the Ituri river. It is a big river and people cross the river in
5 boats in order to go to Yedi.

6 Q. Thank you, sir. Based on what you said, I take it that Andisa then is close to
7 Mahagi?

8 A. No. Yedi -- or, rather, Andisa is towards Mahagi. So Andisa is close to Mahagi.

9 Q. Thank you, sir. That's exactly what I was looking for. And these --

10 THE INTERPRETER: A comment from the Swahili booth: The interpreter in the
11 Swahili booth did not quite follow the witness' answer. Could the witness be kindly
12 asked to repeat his answer? Thank you.

13 PRESIDING JUDGE FREMR: Mr Bourgon, have you --

14 MR BOURGON: I thought the witness would repeat his answer.

15 PRESIDING JUDGE FREMR: I had the same opinion. Okay, you may proceed.

16 MS LUPING: Sorry, Mr President. I heard the interpreter asking the witness to repeat
17 his answer. It was not properly captured as we understood it.

18 PRESIDING JUDGE FREMR: Okay. To be safe, please ask -- or Mr Witness, could
19 you repeat your question because we are not sure whether we captured all your answer,
20 please.

21 THE WITNESS: (Interpretation) Well, I said Mahagi is very far away from Andisa.
22 It takes about four days to travel on foot to Andisa. Mahagi is at the border with
23 Uganda. It is far away.

24 PRESIDING JUDGE FREMR: Thank you. Now we have your answer complete.
25 Mr Bourgon.

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1 MR BOURGON: Thank you, sir.

2 Q. Now, Andisa that you just referred to, let me quote from your testimony on 26

3 October, that is on Monday, on page 32, lines 8 to 13. The question was the following:

4 "And do you know where they left to, what direction they were going in? You saw
5 them leave. Did you see what direction they left in?"

6 Your answer was the following: "They took the road to Andisa and they crossed the
7 river. There's a road that goes from Nzebi to Andisa. It crosses the Ituri river and then
8 you get -- one word missing -- it's a shortcut."

9 Now, before my colleague says, "Who is they," because I see her standing up, this
10 question, sir, related to the members of the Lendu and the FNI leaving after the attack.
11 Can you confirm this, sir?

12 MS LUPING: I'm sorry, Mr President.

13 PRESIDING JUDGE FREMR: Ms Luping first, yeah.

14 MS LUPING: In fact, this is not relating to the Lendu. If I'm looking at the same
15 transcript reference, it was a reference to an individual that had been pointed out to the
16 witness as a person called Bosco. And if you read the question that came with it and
17 who these individuals were, this is not a group of Lendu in this portion of the transcript.
18 Perhaps if the question could please -- the question that I had asked please be put to the
19 witness before the relevant portion.

20 But we're not talking about a group of Lendu, we're talking about an individual with six
21 other individuals, an individual identified as a person called -- with the UPC called
22 Bosco together with six other individuals.

23 PRESIDING JUDGE FREMR: Mr Bourgon.

24 MR BOURGON: My colleague is right, Mr President, and I made a mistake, so I will
25 rephrase my question.

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1 PRESIDING JUDGE FREMR: Okay.

2 MR BOURGON:

3 Q. Sir, my question to you is, Andisa, where you travelled to look for your family, this
4 area is an area traditionally inhabited by Lendus; is that correct, sir?

5 A. It's the Babira who live there and who mine gold. They are the ones who build in
6 this area. The Lendu do not live there.

7 Q. Now, sir, you mentioned going to Andisa to look for your family. My question is,
8 did you make it to Andisa? Did you reach Andisa?

9 A. They arrived in Andisa. And I returned via the road. And I didn't find my
10 family. I returned to the town. But I didn't find my family. After two days, my
11 family arrived when we had already returned to the town.

12 Q. Thank you, sir. What is the distance between Sayo and Andisa?

13 A. Between Sayo and Andisa, it's about 24 kilometres. 24 kilometres.

14 Q. And how long, sir, did you need to go to Andisa and return to Sayo?

15 A. From when I took the road from the bush during the three days I was in the bush,
16 the third day I came off the main road. I didn't take the main road. I took the road in
17 the bush next by -- next to a stream and people had started to cross the river Ituri to go to
18 Mahagi and I said, "Well, as I haven't found my family, I can't go there." So I stayed
19 where I was.

20 Q. Sir, I move to the day on which you returned to Sayo. And I would simply like to
21 confirm what you said in your statement. And you said, I quote from your statement
22 on page 24 in paragraph 24: "I went home, and there was no one there, and I was afraid.
23 I spent the night in Nyali" -- transcript unclear -- "with a friend and it was only the night
24 after that I found my family members and we went home together."

25 (Redacted)

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1 (Redacted)

2 PRESIDING JUDGE FREMR: Ms Luping?

3 MS LUPING: Mr President, just a question because the reference given for this
4 quotation is from the witness's -- witness statement and a paragraph number, but it
5 doesn't correlate. Perhaps it's just an error in the outline, the examination outline, but I
6 believe it must be a transcript reference, so if we could please have the transcript
7 reference. It's not from the witness statement.

8 PRESIDING JUDGE FREMR: Mr Bourgon?

9 MR BOURGON: Indeed, Mr President, it is a transcript of the testimony and it is on
10 23 October on page 19, lines 12 to 15.

11 Q. (Redacted)

12 (Redacted)

13 (Redacted)

14 A. Yes. When I left the bush, I met other people who were looking for members of
15 their family. We returned to the town and we found soldiers there. They asked us
16 who we were. (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 PRESIDING JUDGE FREMR: Mr Witness, as I told you, please try to focus on given
23 response exactly to the question put to you because you are sometimes having tendency
24 to go further, and even Mr Bourgon is limited by time, so please respect that.

25 Mr Bourgon.

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- 1 THE INTERPRETER: The interpreter corrects: It wasn't a necklace but a package.
- 2 MR BOURGON: Thank you, Mr President.
- 3 Q. Sir, the only question in that was (Redacted)
- 4 (Redacted). Can you confirm, sir,
- 5 please, by yes or no if you can?
- 6 A. (Redacted)
- 7 (Redacted).
- 8 Q. Sir, in your statement, and I quote on page 24, paragraph 24, you mention: (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 MS LUPING: (Redacted)
- 12 PRESIDING JUDGE FREMR: (Redacted)
- 13 MS LUPING: (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 PRESIDING JUDGE FREMR: Good point.
- 17 Court Officer, please, let's move into private session now.
- 18 (Private session at 10:11 a.m.) *(Reclassified partially in public)
- 19 THE COURT OFFICER: We're in private session now, Mr President.
- 20 PRESIDING JUDGE FREMR: Thank you.
- 21 Mr Bourgon, you may proceed.
- 22 MR BOURGON: Thank you, Mr President.
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)

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1 (Redacted)

2 A. (Redacted)

3 (Redacted)

4 Q. Thank you, sir. I will have one last question on this issue. Simply to suggest, sir,
5 that the time you spent to look for your family and the time that you spent in the bush,
6 you were away from Sayo more than three days. Can you confirm by yes or by no,
7 please, if you can?

8 A. I spent three days in the bush. And then I came back on the main road on the
9 third day to find my family. I didn't find them. I hadn't found them. When I came
10 into town the next day, then I did find my family.

11 Q. I will leave it at that, sir. I will move to another topic.

12 In your statement, and I refer you to page 29, at paragraphs 54 and 55 and 51, and I will
13 quote from these paragraphs. In paragraph 54 you stated that the UPC had one group.
14 I will quote, sorry: "One group was in the Catholic church, one in Adidi mine, one in
15 Adidi mountain, one in Sayo canteen and one in Sayo Gale." Can you confirm that this
16 is information you provided to the Prosecution in your statement?

17 A. Yes. That's what I said.

18 Q. Sir, out of those five places, two are in town and three are away from the town; is
19 that correct, sir?

20 A. Two of these places are in one place, the canteen, the -- at the church and the police
21 officers, their superiors were there in the canteen and other soldiers were also at the
22 Catholic church. There was one group who were living in one place. Their superiors
23 were living in another.

24 Q. Thank you, sir. I have to say, sir, that you are not answering my questions.
25 Maybe it's just because my questions are not clear, and I will try, sir. If you don't

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1 understand the question, please ask me because I would like to get through this and I'm
2 really trying to ask simple questions.

3 In paragraph 55 of your statement it says the following: "The Catholic church in Sayo,
4 the UPC soldiers surrounded the whole church area and dug trenches around it." Is
5 that information you provided in your statement?

6 A. Yes. Yes. Yes. That's what I stated and that's the way it was.

7 Q. And, sir, in your paragraph 61 of the statement, you stated that all commanders
8 were stationed at Sayo canteen; is that information correct?

9 A. Yes. That's correct. That's the truth.

10 Q. And you also said in the same paragraph that you saw four heavy weapons, one in
11 front of the canteen, another one behind the canteen, one in front of the Catholic church,
12 and one behind the Catholic church. Do you stand by what you said then, sir?

13 A. Yes, yes. That's what I stated. I was an ocular witness. It was visible.

14 Q. Now, I suggest to you, sir, that most of the soldiers you saw when you returned to
15 Sayo, and I insist on the word "most," that they were stationed away from the centre of
16 town in Adidi mountain, in Sayo Gale and in Adidi mine. Do you agree, sir, with this
17 proposition?

18 A. I agree because they were in three places, Adidi mountain, they were at the hill,
19 and they were also above, they were looking down on Mongbwalu, and they were also
20 looking at us from below, and the superiors were at the canteen surrounding and all
21 around the Catholic church.

22 Q. Now, sir, I suggest to you that you and the others who had returned to Sayo were
23 not disturbed or intimidated by the soldiers that were in and around Sayo; is that a fair
24 statement, sir?

25 A. That's correct. They didn't intimidate us. They didn't torture us. We lived

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1 together. Even until they left they didn't arrest anyone or whip anyone. I can't lie
2 because lying is not good.

3 Q. Thank you, sir. In fact, sir, based on information that I have from other persons, I
4 suggest to you that some commanders walked around the town to reassure the people
5 during that period. Is that how it happened, sir?

6 A. Yes. They said that to the people, "Don't be afraid. Don't be afraid." And we
7 lived together. They took their alcohol there and we lived in harmony. There weren't
8 troubles. When one of their soldiers committed abuses, that person was punished.
9 That's how we lived together.

10 Q. Sir, during your testimony, you said that when you came back from the bush, you
11 found that your house had been looted. You referred to this in your statement -- sorry,
12 in -- on 23 October in your testimony, at page 19, lines 16 to 24. I will quote the
13 question and the answer and ask you then a follow-up question.

14 Question: "And when you went back home to your own home, what did you find
15 there?"

16 Answer: "Yes. When I got to my house, I found that the house had been attacked.
17 The goats and chicken and zinc and pots and a bag of beans that I own had all been
18 taken away. They had taken those things to cook close to the church. I had some
19 white beans and all of these things had been taken away, including the clothing of my
20 children, my daughters. They took everything."

21 Sir, my first follow-up question to this is: You never saw who took anything from your
22 house; is that correct, sir?

23 A. I didn't see anyone. I was absent from the town when they entered. And we
24 fled. And when we came back, we found that our house was empty. My goats had
25 been taken, my radio, and my personal items had been taken.

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1 Q. Now, sir, later in your testimony on 23 October, on page 20, at lines 12 to 18, you
2 added the following:

3 "All the houses were empty on all sides of the road. The houses were all empty. No
4 one was in any house."

5 And then you add:

6 "All the houses had been looted in the village. There was no one in the village, and the
7 doors of the houses were open."

8 Sir, my first question is can you confirm that you, yourself, did not go and look into the
9 houses and that is information that you did not see for yourself, that the houses had been
10 looted?

11 A. There was nobody in the town. All the people had left the town. All the doors
12 of houses were open, wide open. From the start until the end, all of the town, all the
13 houses, from the beginning to end were empty with their doors wide open.

14 Q. Sir, I will say my question over again. You did not, yourself, go into the houses?
15 You saw the doors open, but you did not go in the houses; is that correct, sir?

16 A. All the houses had been pillaged. Even my house was open. Both doors had
17 been opened. In my house there was nothing apart from the mattress, but all the items
18 in the house had been taken, even my clothing. That didn't concern me, but what I was
19 most worried about was the food for the children, the beans.

20 PRESIDING JUDGE FREMR: Mr Witness, the question was whether you saw those
21 other houses on your own eyes, whether you, and maybe I will be more specific. Had
22 you entered -- entered any of those other houses?

23 THE WITNESS: (Interpretation) Well, at the start I entered my house, and afterwards
24 I saw the door of the neighbouring house was also opened. There was nothing. They
25 had taken the curtains. It was empty, my immediate neighbour's house and the same

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1 building as well. But we didn't see it -- we didn't find anyone that would be lying there
2 pillaged. We didn't find anyone. It was empty. All the town, there was no nobody
3 there.

4 PRESIDING JUDGE FREMR: But as concerns houses, you all that had seen from
5 outside through windows or through doors; am I right?

6 THE WITNESS: (Interpretation) That could be seen from far away. You could see
7 the doors which were open, so you could see that -- those houses in a line, you could see
8 all the doors were open. There was nobody. You couldn't see anybody.

9 PRESIDING JUDGE FREMR: Fine. Thank you.

10 Mr Bourgon.

11 MR BOURGON: Thank you, Mr President.

12 Q. Sir, one last question on this is you, in your testimony, you referred to corrugated
13 iron sheets. My question to you is that you did not see for yourself any soldiers take
14 iron sheets from any of the roofs; is that correct, sir?

15 A. Well, I can't put it like that. I didn't see anyone. I can't accuse anyone. But they
16 did pillage and they did take my corrugated iron sheets from the house, (Redacted). I
17 didn't know if it was soldiers or what type of people. I can't accuse anyone, but they
18 did take that.

19 Q. Thank you, sir. I move to a different topic. (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 A. (Redacted)

24 Q. Now, sir, when you had finished performing this work, can you confirm that you
25 were given, as a result of the work you did, that you were given a wrap and two bags of

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1 salt -- or, rather, two kilos of salt? Can you confirm this, sir?

2 A. Well, going by your question, the answer is that I had helped to build their tent.

3 It is true they said, "Yes, you look tired, please go home."

4 And then they called for someone who was referred to as "escadre." He's the one who
5 cooked for them. They asked him to give this person some salt, that is, to give me some
6 salt. It was difficult to find salt at the time, so they gave me two kilograms of salt and
7 two wraps to cover myself with because it was cold, yes. That is the pay I received.

8 And thereafter, I went back to my house. It was in the evening. It was in the evening.

9 Q. (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 A. (Redacted)

14 Q. (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 A. (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 Q. (Redacted)

3 A. (Redacted)

4 (Redacted)

5 (Redacted)

6 Q. Thank you, sir. You testified and you explained the term "salongo" during your
7 testimony. Now, I suggest to you, sir, that the term "salongo," as you described it, that
8 it was normal for the inhabitants of Sayo or any other village to perform community
9 work in their village. Do you agree with this statement, sir?

10 A. Yes.

11 Q. And as a matter of fact, sir, the situation regarding salongo, it was much worse
12 when the Lendus were there than when the soldiers were there?

13 MS LUPING: Mr President, your Honours.

14 PRESIDING JUDGE FREMR: Ms Luping.

15 MS LUPING: I do realize this is cross-examination; however -- sorry, Mr Witness, if
16 you could please wait before answering. Mr Witness.

17 PRESIDING JUDGE FREMR: Mr Witness, hold on, please. Mr Witness.

18 MS LUPING: Please wait.

19 PRESIDING JUDGE FREMR: Hold on, please.

20 Ms Luping.

21 MS LUPING: However, as I have stated previously, and this is a similar objection that I
22 have had to raise previously, it is not for Mr Bourgon to give evidence.
23 He shouldn't stipulate a fact as if it is simply a fact established before this Chamber. If
24 he could please rephrase his question out of fairness to the witness. He can put the
25 suggestion but not simply state it as a fact, as if it's established before this Chamber.

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1 PRESIDING JUDGE FREMR: Mr Bourgon, I think it could be easily phrased whether it
2 was worse in this time or that time.

3 MR BOURGON: I will do so, Mr President, but I disagree with my colleague. I think
4 it was a straightforward question, and I think the witness answered, but I will rephrase.

5 Q. Sir, you mentioned salongo, and I've been asking a few questions about this. My
6 proposition to you is that the situation regarding salongo, it was much worse when the
7 Lendus were there than when the soldiers were there. Would you agree with that, sir?

8 PRESIDING JUDGE FREMR: Mr Witness, have you heard the question put to you by
9 Mr Bourgon?

10 THE WITNESS: (Interpretation) Yes. Even when the Lendu were there, we still did
11 the salongo, but it was not in the same manner. Before they forced people, but then
12 they left.

13 And when the others came, we still had the salongo, except that they would beat people
14 up for failing to show up for the salongo.

15 This is what we experienced.

16 MR BOURGON:

17 Q. Sir, I take up on your answer that you just provided, and I will quote what you
18 said. "When the others came, we still had the salongo, except that they could -- they
19 would beat people up for failing to show up for the salongo."

20 Sir, my question is you did not see for yourself anyone being beaten up for failing to
21 report to salongo; is that correct?

22 A. They flogged one Bira who had not participated in the salongo in Sayo Gale.
23 They whipped him with large sticks, and they beat him up severely.

24 Q. Sir, I put it to you that this is something you heard, but that you didn't see for
25 yourself. That is my question, sir.

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1 A. Well, these things happened during the Salongo. They beat him up at his home,
2 and (Redacted) told us that a man had just been seriously beaten up. It (Redacted) who told us
3 about it.

4 Q. And when you said earlier, sir, that the -- before when the FNI and the Lendus
5 were there that they forced you to do salongo, how did they force you?

6 A. Salongo was organised in different ways. Sometimes one had to go look for work
7 or, rather, for food with the -- for the soldiers, and they also asked us, from time to time,
8 to come and clean up the places where they -- they used to live. We also could be asked
9 to come and remove the bad weed around the premises. And if you didn't do so, they
10 would flog you. That is what they did.

11 Q. I would like you to confirm, sir, that the flogging you just mentioned, those were
12 the Lendus or the FNI flogging the people in Sayo; is that correct, sir?

13 A. The Lendu of the FNI flogged people.

14 If they asked you to go look for food in the bush and you didn't do so, they would beat
15 you up seriously and even until death. Quite seriously.

16 Q. (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 A. (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 Q. (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 A. (Redacted)

7 Q. (Redacted)

8 (Redacted)

9 (Redacted)

10 THE WITNESS: (Redacted)

11 MS LUPING: (Redacted)

12 PRESIDING JUDGE FREMR: (Redacted)

13 (Redacted)

14 THE INTERPRETER: (Redacted)

15 PRESIDING JUDGE FREMR: (Redacted)

16 (Redacted)

17 (Redacted)

18 MS LUPING: (Redacted)

19 (Redacted)

20 (Redacted)

21 MR BOURGON: I will, Mr President. I'm trying to proceed step by step. I'm looking
22 for yes or no. Those are things in the statement. I cannot provide him with his
23 statement to read because it's not his language. I'm quoting from the statement and all
24 I'm asking for, Mr President, is a yes or no, but I will quote exactly where the reference is.
25 But I need the cooperation of the witness and right now I'm not getting the cooperation

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1 of the witness, Mr President. And I'm trying to be very fair and very nice. All I'm
2 asking is yes or no.

3 MS LUPING: Mr President.

4 PRESIDING JUDGE FREMR: Ms Luping.

5 MS LUPING: It's just a question of fairness to the witness. I don't believe he's
6 deliberately trying to be uncooperative, not at all. I think though that if we want to
7 make sure that we don't sort of lead him into error, it's important that we get the precise
8 reference. We're giving -- we've been given a location here (Redacted), and there's
9 simply a request that the witness be read out exactly where he has stated that this is
10 located near the canteen. I'm not saying that that's not accurate. I'm just asking for
11 where is the reference because I'd like to check it.

12 PRESIDING JUDGE FREMR: First of all, I would like to add it's also my guidance for
13 future to avoid both parties to make any evaluation of the witness in his presence.
14 Secondly, I think Ms Luping is fully right to ask for that, you know, so please respect it,
15 Mr Bourgon.

16 MR BOURGON: Thank you, Mr President.

17 Q. (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 PRESIDING JUDGE FREMR: (Redacted)

22 (Redacted)

23 THE WITNESS: (Interpretation) (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 Q. Thank you, sir. What I'm trying to do, sir, is I am putting to you your own words,
5 either from testimony or from your statement. And I'm telling you where this can be
6 found, either in the statement or in the testimony. I would just like to say -- to get from
7 you whether you still agree with what you said. So all I'm looking for at this stage is a
8 yes or a no.

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 A. (Redacted)

14 (Redacted)

15 Q. (Redacted)

16 (Redacted)

17 (Redacted)

18 A. (Redacted)

19 (Redacted)

20 Q. (Redacted)

21 (Redacted)

22 A. (Redacted)

23 (Redacted)

24 (Redacted)

25 Q. (Redacted)

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1 (Redacted)

2 (Redacted)

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4 (Redacted)

5 A. (Redacted)

6 (Redacted)

7 (Redacted)

8 Q. (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 PRESIDING JUDGE FREMR: (Redacted)

14 MS LUPING: (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 PRESIDING JUDGE FREMR: Mr Bourgon, but anyway from my point of view, you are
22 in effect trying again to summarize this previous, previous answer, so I don't see any
23 relevance on that to make such a summary because we have single -- single responses to
24 your questions, so ...

25 MR BOURGON: Mr President, I -- the witness will not answer by yes or no things he

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- 1 said before. That's fair with him. He doesn't want to do that, okay. I will summarize.
- 2 I make a proposition and then he can say or he can say no.
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 PRESIDING JUDGE FREMR: (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 MS LUPING: (Redacted)
- 17 PRESIDING JUDGE FREMR: (Redacted)
- 18 MS LUPING: (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 PRESIDING JUDGE FREMR: (Redacted)
- 25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 A. (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 Q. (Redacted)

8 (Redacted)

9 (Redacted)

10 A. (Redacted)

11 Q. (Redacted)

12 (Redacted)

13 (Redacted)

14 A. (Redacted)

15 (Redacted)

16 (Redacted)

17 Q. (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 MR BOURGON: Mr President, I have no more questions before the break.

22 PRESIDING JUDGE FREMR: Thank you. Now we can escort Mr Witness out of the
23 courtroom. And I will say that normally we should finish by 11.00, but because of the
24 special circumstances, special topic, we just exceptionally took more time.

25 So now please escort witness out of the courtroom, but we will still keep our break for 30

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1 minutes, which means that we will continue at quarter to -- quarter 12.00.

2 And for the issue of timing, I would like to just briefly return back into regime of open
3 session.

4 (Open session at 11.12 a.m.)

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

6 PRESIDING JUDGE FREMR: Thank you very much, Court Officer. My following
7 question will be put to you because OTP used for examination-in-chief 6 hours and
8 45 minutes. Do we have at our disposal the total time so far used by the Defence?

9 THE COURT OFFICER: Yes, Mr President. The Defence has used 6 hours and
10 2 minutes.

11 PRESIDING JUDGE FREMR: So I recognize with our principles you should have
12 43 minutes. How much time do you think you will need, Mr Bourgon, to complete?

13 MR BOURGON: I will need the 43 minutes, but I will finish in that time, Mr President.

14 PRESIDING JUDGE FREMR: And my question to Ms Luping, your estimation as to
15 how much time you will need to -- for your re-examination?

16 MS LUPING: It should easily be done within an hour. It could be less than that.

17 PRESIDING JUDGE FREMR: Frankly, it seems to me a bit too much, but we will see.
18 Okay. We will then give you a clear -- clear indication how much time we found
19 sufficient for examination in chief.

20 Okay. Now we will break and we will reconvene at quarter to 12.

21 THE COURT OFFICER: All rise.

22 (Recess taken at 11.13 a.m.)

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

24 THE COURT USHER: All rise.

25 Please be seated.

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- 1 PRESIDING JUDGE FREMR: So let's continue. And I would like only to emphasise
- 2 that we, the Chamber, would like to finish this witness before the lunch break because,
- 3 as you may know, we planned to start with the further witness after the lunch break.
- 4 So please try to do your best, Mr Bourgon.
- 5 MR BOURGON: Thank you, Mr President.
- 6 (Redacted)
- 7 (Redacted)
- 8 MS LUPING: Mr President, we're in open session.
- 9 PRESIDING JUDGE FREMR: Yes, let's move into private.
- 10 Thank you, Ms Luping.
- 11 (Private session at 11.48 a.m.) *(Reclassified partially in public)
- 12 THE COURT OFFICER: We are in private session, Mr President.
- 13 PRESIDING JUDGE FREMR: Thank you.
- 14 Mr Bourgon, you may proceed.
- 15 MR BOURGON: Thank you, Mr President.
- 16 Q. (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 A. (Redacted)
- 24 Q. (Redacted)
- 25 (Redacted)

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1 A. (Redacted)

2 Q. (Redacted)

3 (Redacted)

4 MS LUPING: (Redacted)

5 PRESIDING JUDGE FREMR: (Redacted)

6 MS LUPING: (Redacted)

7 PRESIDING JUDGE FREMR: Mr Bourgon.

8 MR BOURGON: I disagree with my colleague. I am putting propositions to the

9 witness. He can correct me if that is incorrect. I can say what I -- what his testimony

10 came out and he can tell me whether he agrees or disagree.

11 MS LUPING: Mr President, I disagree. Out of fairness to the witness, it is not

12 appropriate to seek to mislead him or lead him into error by misquoting him. If there

13 are going to be sections or portions of testimony provided, it must *be accurate.

14 PRESIDING JUDGE FREMR: I disagree too.

15 Mr Bourgon, you as a non-calling party you have a privilege of putting leading

16 questions, so if you use this tool, then you have to be precise. You also have a chance to

17 put non-leading questions. Then you will be free. But if you are making some

18 propositions to the witness, you have to be precise.

19 MR BOURGON: Thank you, Mr President.

20 Q. (Redacted)

21 (Redacted)

22 (Redacted)

23 A. (Redacted)

24 Q. (Redacted)

25 (Redacted)

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1 (Redacted)

2 PRESIDING JUDGE FREMR: Mr Witness, if you agree with Mr Bourgon, then it's
3 really enough to say "yes." If you disagree, then you could add some explanation why
4 you disagree. But if your answer could be just yes, please prefer that.

5 THE WITNESS: (Interpretation) Very well.

6 (Redacted)

7 Q. (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 THE WITNESS: (Interpretation) (Redacted)

14 PRESIDING JUDGE FREMR: (Redacted)

15 MS LUPING: (Redacted)

16 (Redacted)

17 MR BOURGON: (Redacted)

18 (Redacted)

19 (Redacted)

20 PRESIDING JUDGE FREMR: (Redacted)

21 MS LUPING: (Redacted)

22 (Redacted)

23 MR BOURGON: (Redacted)

24 PRESIDING JUDGE FREMR: (Redacted)

25 (Redacted)

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1 (Redacted)

2 A. (Redacted)

3 Q. (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 A. (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 Q. (Redacted)

13 (Redacted)

14 (Redacted)

15 MS LUPING: Excuse me, Mr President, your Honours. If counsel could just indicate
16 what is this document. It doesn't appear to be the list that we were provided.

17 MR BOURGON: (Redacted)

18 (Redacted)

19 MS LUPING: (Redacted)

20 PRESIDING JUDGE FREMR: And, Ms Luping, one comment from my part: I have to
21 particularly say that several times I omitted or I haven't seen you that you are on your
22 feet, but still please remain patient with due respect and wait until I will give you the
23 floor, okay? Thank you.

24 Mr Bourgon.

25 MR BOURGON: Thank you, Mr President.

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1 PRESIDING JUDGE FREMR: I think we shouldn't be so strict in -- if the proposition is
2 not exactly perfect as in this case, I think the witness is fully ready to correct that.
3 Before we continue, Mr Bourgon, I would like to inform you that you have last 15
4 minutes and will like to -- we would like to complete this part of examination sharp, so
5 I'm saying that not to surprise you and give you a chance to utilise those last 15 minutes
6 in the most efficient way, please.

7 MR BOURGON: Thank you, Mr President.

8 Q. (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 A. (Redacted)

15 Q. (Redacted)

16 (Redacted)

17 (Redacted)

18 A. (Redacted)

19 (Redacted)

20 (Redacted)

21 Q. (Redacted)

22 A. (Redacted)

23 (Redacted)

24 Q. (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 A. (Redacted)

4 (Redacted)

5 (Redacted)

6 Q. Sir, I would like to read you information which was provided by another

7 Prosecution witness.

8 PRESIDING JUDGE FREMR: Ms Luping.

9 MS LUPING: Mr President, I would just object to evidence of another witness being
10 provided to this witness. It's not appropriate, your Honours, for this witness to
11 comment on the evidence of another witness.

12 PRESIDING JUDGE FREMR: Objection sustained. But you have to -- you can make or
13 to put questions but not with this, you know, reference to other witness.

14 (Redacted)

15 Q. (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 A. (Redacted)

20 (Redacted)

21 (Redacted)

22 Q. Sir, I move on to a different topic.

23 It is your evidence, right, that the UPC troops left about 1.5 months after they had
24 arrived; is that your testimony, sir?

25 A. They left and did not come back. Shortly thereafter, the Balendu began to

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1 gradually return. (Redacted)

2 Q. Sir, I simply suggest to you that the UPC were there in Sayo much longer than a
3 month and a half. Do you agree with this proposition?

4 A. They were there for one month and two weeks and then they left.

5 Q. Thank you, sir. We have information to the contrary, and more importantly it is
6 my case that Mr Ntaganda never returned to Sayo after the UPC was in the town and
7 that you did not see him, sir.

8 A. Well, I did not know him. I saw him from afar and I was told "There he is." And
9 so I asked, "Who is he?" And I saw him from a distance. It is people who pointed him
10 out to me. I did not know him.

11 Q. Thank you, sir. I move to another topic which is the issue of young people or
12 kadogo that you refer to. Now, you mentioned having seen kadogos on two occasions.
13 I'm not going to ask any questions about what you saw before the attack because now
14 we know that when you saw them. My question is simply -- one moment, please,
15 Mr President.

16 My script has disappeared, Mr President.

17 But I will ask the question anyway, sir. You referred to having seen kadogo in Sayo
18 after you returned. My proposition, sir, to you is that these kadogo could have been
19 any age right up until 18 years old; is that correct, sir?

20 A. What I observed was that those who were referred to as the kadogo were children
21 14 and a little above, but anyone who was above 18 was not referred to as kadogo. So
22 the kadogo were young people who were 15 to 14 years -- or, rather, 14 to 15 years old.
23 They are the ones who are referred to as the kadogo.

24 Q. So, sir, my proposition to you is that these kadogos that you saw in Sayo you never
25 saw them and you never verified their age; is that correct, sir?

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1 A. I could not talk to them, but when I saw them I knew that they were children.

2 They were the same age as my children, (Redacted) for example, and so I used to see
3 them.

4 Q. So that's exactly my proposition, sir, is that you did not verify their age and that is
5 only your opinion that they were 14 or 15 years old; is that correct, sir?

6 A. Yes, they were more or less of the same age as my children, (Redacted)
7 (Redacted)

8 (Redacted) They, therefore, were about the same age as my children.

9 Q. Sir, I move to a different topic. You testified --

10 PRESIDING JUDGE FREMR: Sorry, Mr Bourgon, your time is over. Or maybe if I'm
11 looking at the watch, you have last 2 minutes really exactly, please.

12 MR BOURGON: Thank you, Mr President.

13 Q. (Redacted) Now, I simply ask you to
14 confirm that (Redacted) the

15 majority of the people living in Sayo were actually Hema and that they were chased out
16 by the Lendus and that you're fully aware of this, sir; is that correct?

17 A. (Redacted)
18 (Redacted)

19 Q. I simply asked you to confirm that when the Bahemas left, they were chased out by
20 force by the Lendus and that you know about this, sir, and that (Redacted)
21 (Redacted)

22 A. That was before the war. You see, in the end there was a decision taken and the
23 (Redacted)
24 (Redacted)

25 Q. (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 A. (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 PRESIDING JUDGE FREMR: Okay. Thank you, Witness.

15 Thank you, Mr Bourgon, for being almost sharp.

16 Now, Ms Luping, we consider your request for -- to be granted by 60 minutes for

17 re-examination, but we consider all relevant factors and we decided to grant you 30

18 minutes. So please take it as a fact you have the next 30 minutes.

19 MS LUPING: Thank you, Mr President, your Honours.

20 QUESTIONED BY MS LUPING:

21 Q. (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 PRESIDING JUDGE FREMR: Mr Bourgon.

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1 MR BOURGON: Thank you, Mr President. Re-examination is not to come back on
2 what was discussed in cross, it's to come back to something that was discussed in cross if
3 it's new. But what was discussed in cross, if it was discussed in examination-in-chief,
4 you can't come back on this. This is not re-examination, Mr President.
5 Re-examination is limited to new issues which arose on cross-examination, and I don't
6 think that this is a new issue that arose on cross-examination.

7 PRESIDING JUDGE FREMR: Ms Luping.

8 MS LUPING: Mr President, your Honours, I do believe the objection is premature. I
9 have not even posed my first question. Perhaps the question can be put and then you
10 can determine whether it is a matter that arises from the cross-examination, if it's new or
11 not.

12 PRESIDING JUDGE FREMR: All right. Proceed, please.

13 MS LUPING: Thank you. Thank you, your Honours.

14 Q. (Redacted)

15 (Redacted). My

16 question is this: Were there any Lendu present in Sayo and Mongbwalu when the UPC
17 occupied the area, and if so, how many?

18 PRESIDING JUDGE FREMR: Mr Bourgon.

19 MR BOURGON: Mr President, I think the situation which is described by the question
20 in what is being asked of the witness was covered at length in terms of who is there, who
21 is doing what. It was covered in chief, it was covered in cross and there is nothing new
22 for the witness to add anything. I don't think this is proper re-examination,
23 Mr President.

24 PRESIDING JUDGE FREMR: Objection sustained.

25 MS LUPING:

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1 Q. I'll rephrase my question: How were any Lendu treated by the UPC? (Redacted)

2 (Redacted). How were Lendu treated by UPC present there?

3 MR BOURGON: Objection, Mr President.

4 PRESIDING JUDGE FREMR: I guess on the same --

5 MR BOURGON: Same basis, Mr President. This was discussed at length.

6 PRESIDING JUDGE FREMR: Also my decision is the same. Objection sustained.

7 MS LUPING:

8 Q. Mr Witness, I will refer you to transcript 38 then. It is of your testimony, it's part
9 of the cross-examination, it's page 83, lines 7 to 18, where you stated: We heard the
10 soldiers saying that it was Jérôme's group. We were told about that.

11 My question is who told you it was Jérôme's group?

12 PRESIDING JUDGE FREMR: Mr Bourgon.

13 MR BOURGON: Objection, Mr President. Who was attacking was covered in chief.

14 The witness testified about it. And who was attacking was covered in
15 cross-examination. This is not proper re-examination. Re-examination, Mr President,
16 is for new issues arising on cross that were not covered in examination-in-chief.

17 MS LUPING: Mr President.

18 PRESIDING JUDGE FREMR: Ms Luping.

19 MR BOURGON: Who attacked and when and what was amply covered, Mr President.

20 PRESIDING JUDGE FREMR: Enough.

21 Ms Luping.

22 MS LUPING: Mr President, your Honours, during the cross-examination the witness
23 has provided additional new information that he was in fact informed by soldiers as to
24 who Jérôme's soldiers were. I'm simply asking him to clarify which soldiers, who told
25 him this. And this is new. This did not arise in examination-in-chief.

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1 PRESIDING JUDGE FREMR: I do agree. The objection is overruled.

2 MS LUPING:

3 Q. So I'll now repeat, Mr Witness. You stated when you were being asked about

4 Jérôme's groups -- Jérôme's group, rather: We heard the soldiers saying that it was

5 Jérôme's group. This is the group that was part of the attackers. We were told about

6 that.

7 My question is this: What soldiers told you that it was Jérôme's group?

8 A. Many of the soldiers (Redacted) and some of them would

9 say that it was Jérôme's group. These were soldiers from the UPC and others from

10 Watsa as well, so I wasn't able to determine exactly which group they belonged to.

11 However, I heard mention that they were being referred to as effacer le tableau.

12 Q. I'm now going to --

13 A. It's Jérôme's group known as effacer le tableau.

14 Q. And these soldiers (Redacted), which group did

15 they belong to, what soldiers?

16 A. It was a mixture of soldiers. There was one group, for example, that used to live

17 in Goli and that was the effacer group, then there was also the UPC group which came to

18 Sayo and Nzebi. Then there was another group in Adidi, but they had all merged

19 although they lived in different locations and different camps.

20 Q. So I just want to understand when you say they were different -- the soldiers

21 (Redacted) who told you to which group Jérôme's -- that, sorry, that Jérôme's group

22 was part of the attack, you said you heard that then from soldiers who were part of the

23 effacer group based in camp Goli and UPC; is that what you're saying? You heard it

24 from UPC and effacer le tableau soldiers?

25 A. Yes, it was the UPC soldiers with whom we lived together in Sayo. Nzebi there

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1 was the UPC group as well. There were other groups in Adidi. So it was a group
2 from Watsa and among the members of that group there were people who spoke
3 Lingala.

4 (No interpretation)

5 Q. Thank you. Now, Mr Witness, I'm just going to read another passage from the
6 section, it says where you said, at transcript 38, page 83, this is still part of the portion,
7 lines 7 to 18, "Yes, we saw ... they were the ones referred to as 'effacer le tableau.' They
8 did not have bad intentions as such, but they attacked the FNI. They only attacked the
9 FNI and they didn't attack anyone else. There was another group, the Nande from Beni.
10 You see, the Nande from Beni were together with the UPC, they ... rather did not agree
11 with the UPC."

12 Mr President, if I can just be asked -- allowed to ask my question before my colleague
13 formulates his objection. I do believe this is premature. He doesn't know what my
14 question is going to relate to.

15 PRESIDING JUDGE FREMR: Mr Bourgon, if you would object to any question put by
16 Ms Luping, I will have to grant her some additional time. So if this is part of the tactics,
17 please, it will not work.

18 Ms Luping, please continue.

19 MS LUPING: Thank you, Mr President.

20 Q. Now, when you say that the Nande from Beni who were together with the UPC,
21 that they did not agree with the UPC, what do you mean? What did they disagree
22 about?

23 (Redacted)

24 (Redacted)

25 (Redacted)

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4 (Redacted)

5 PRESIDING JUDGE FREMR: Mr Bourgon.

6 MR BOURGON: Thank you, Mr President. My objection has nothing to do with
7 tactics, I respectfully submit, Mr President. Simply that the issue raised and being
8 discussed is an issue that I raised because there was an answer in examination-in-chief
9 that those who were attacking did not have bad intentions. That was my question,
10 I wanted to clarify that, that they had no bad intentions and that their attack was limited
11 to attacking the FNI. Then I got into a series of objection about 1, 2, 3, 4 groups, 2
12 groups, and in the end we clarified the matter. Coming back on this is not proper
13 re-examination, Mr President. It's not a matter of tactics and it's not a matter of time.
14 Thank you.

15 PRESIDING JUDGE FREMR: I find it is a clarification which could be beneficial for the
16 Chamber.

17 Ms Luping, you may proceed.

18 MS LUPING: Thank you, Mr President. I'm actually going to move to a different
19 topic now though. I received the response.

20 Q. Now, Mr Witness, you were asked in cross-examination who did the FNI defend?
21 I have a question in relation to this which is relating to the UPC. Who did the UPC
22 defend?

23 A. The UPC defended the UPC movement, but the Lendu they had their movement
24 which was called the FNI. I don't know how to say anymore about it. I don't know
25 why they were fighting. I don't know why they were killing each other. I don't know.

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1 PRESIDING JUDGE FREMR: Mr Bourgon.

2 MR BOURGON: Thank you, Mr President. For the record, I know that I never put
3 any questions to the witness as to who the UPC was protecting, so this is not something
4 that arises from cross-examination. Thank you, Mr President.

5 PRESIDING JUDGE FREMR: Ms Luping.

6 MS LUPING: Thank you. There was a question relating to the FNI and as the
7 attacking group I thought it was appropriate to clarify the opposing side.

8 Q. I have another question for you, Mr Witness, it is a question of clarification because
9 you talked -- you explained the groups that were attacking. My question is this, again
10 relating to the UPC: What was the main ethnic group or groups within the UPC?

11 A. The UPC was made up of Hema. It was just the Hema. It was their movement.
12 What do you want me to say in addition to that?

13 Q. Thank you. I have a different question now.

14 PRESIDING JUDGE FREMR: Mr Bourgon.

15 MR BOURGON: I know for the record this was not an issue raised in
16 cross-examination. Thank you.

17 PRESIDING JUDGE FREMR: Just my comment, from my part. You know, this
18 permanent dispute between parties, please take into account that, you know, if you look
19 at the statutory framework of the ICC you will find almost nothing about, you know,
20 limits of examination-in-chief, cross-examination, it -- yeah, it got to the ICC through
21 jurisprudence which was mainly influenced by common law lawyers, but I guess the
22 source of the -- our law is composed or based on both systems, and we all should respect
23 that, so the main issue is to find the truth, at the same time we shouldn't waste time, but
24 also the rules of, you know, cross-examination, examination-in-chief should be applied
25 in a reasonable way. It is also our intention.

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1 Ms Luping, you may proceed.

2 MS LUPING: Thank you, Mr President, your Honours.

3 Q. I have a new topic I'd like to cover and it is relating to -- sorry, it's at transcript 39,
4 page 76, lines 24 to page 77, line 1. I'm just going to focus in on one specific answer
5 from the witness that I want to be able to clarify. At lines 12 to 14: Initially it was the
6 FNI troops that came to Mongbwalu but they did not touch that factory. Later on other
7 soldiers came and destroyed the factory.

8 My question is this, Mr Witness, when you say later on other troops came and destroyed
9 the factory, what other troops came and destroyed the factory? Of which group?

10 A. It was the FNI. They didn't touch -- the others, they left. The ones who came
11 they were the UPC, and they set themselves up in Mongbwalu and they started
12 attacking the factory, and they did that because they were looking for gold. And then
13 they left, the Lendu arrived, and the FNI came back and they attacked the factory and
14 destroyed it completely.

15 Q. Moving on to a different topic, Mr Witness, and for this I will need to go into
16 private session, or are we still in private session?

17 PRESIDING JUDGE FREMR: We are still in private.

18 MS LUPING: Sorry. Okay.

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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25 PRESIDING JUDGE FREMR: Give me a second.

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4 THE WITNESS: (Interpretation) (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 PRESIDING JUDGE FREMR: Thank you. I know that we spent a substantive part of
9 time that were given to you by objections and even by our intervention; but anyway,
10 I think maybe we are of the opinion that this re-examination does not move us forward.
11 So, please, you have last 5 minutes, Ms Luping.

12 MS LUPING: Thank you, Mr President, your Honours. I just have one last topic
13 I want to cover or question.

14 Now, I'm going to refer to transcript 39, it is page 85, lines 1 to 17 and to read back
15 three -- two passages, and then I will ask my questions. One of them, in fact, is just
16 going to be a request for a spelling.

17 There were three groups. The first group came from Aru, and that is Jérôme's group,
18 and they're referred to as effacer. The second group is the UPC group from Berunda.
19 And the third group came from Watsa. Now, my first -- my question on this is if you
20 could please spell effacer because it's not been spelt at all.

21 A. Effacer, it's a French term.

22 PRESIDING JUDGE FREMR: Mr Witness, could you just kindly spell each letter at a
23 time.

24 THE WITNESS: (Interpretation) A-F-A-C-E -- E-F-A-C-E-L.

25 THE INTERPRETER: Can the witness be asked to repeat the Swahili booth asks.

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1 PRESIDING JUDGE FREMR: Mr Witness, sorry, our Swahili booth has not captured.

2 Could you kindly repeat it again.

3 THE WITNESS: (Interpretation) E-F-A-C-E space L-E space T-A-B-L-E-A-U.

4 Tableau.

5 PRESIDING JUDGE FREMR: Ms Luping.

6 MS LUPING: Thank you for clarifying that. There was a problem with the transcript.

7 Now, my next portion, I'm going to read to you a portion of the -- of your testimony that

8 was during cross-examination. I'll read what you said, and then I will explain what my

9 questions are. "They and the Balendu were the ones who were attacked, but because

10 they did not have weapons, they fled. The UPC and the APC of Mont Awa entered and

11 massacred people; however, later on they did not kill anyone. There were no gunshots

12 later on."

13 PRESIDING JUDGE FREMR: Mr Bourgon --

14 MS LUPING: Perhaps I can explain what the new information is.

15 PRESIDING JUDGE FREMR: Yeah, yeah. Just --

16 MS LUPING: -- to preempt the objection that, no doubt, my learned friend is about to

17 make --

18 MR BOURGON: I just wanted a transcript reference so I could read it, and I found it.

19 PRESIDING JUDGE FREMR: Okay, fine.

20 MR BOURGON: I was just seeing if she could give me a transcript reference so I can

21 read it.

22 PRESIDING JUDGE FREMR: All right, Ms Luping. Please proceed.

23 MS LUPING:

24 Q. Thank you.

25 My first question is when you say, "The UPC and the APC of Mont Awa entered and

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1 massacred people," the first question is into what area did these two groups enter and
2 massacre people? It's just not clear from the transcript. Into what area did the UPC
3 and APC of Mont Awa enter and massacre people?

4 A. All these people came from the same locality. They came from Ndjugu territory,
5 and they fought between each other. The people who came from far away were effacer
6 le tableau, but all the other people came from the same area, from Ndjugu. They came
7 all from Ndjugu territory.

8 Q. Mr Witness, I don't know if there's an interpretation problem. I'm going to repeat
9 my question slowly and ask that you focus on the question I'm asking. I'm going to
10 first quote you again, and then I'll repeat my question. "The UPC and the APC of
11 Mont Awa entered and massacred people." My question is as follows: Where did the
12 UPC and APC of Mont Awa enter when they massacred people? What area did they go
13 to when they massacred people?

14 A. They took the Mbidjo road towards Pluto to go to Mongbwalu. From
15 Mongbwalu, they took the road to Sayo and then Mongbwalu. Some were there, others
16 were in Sayo over on the hill, and others were in Mongbwalu.

17 Q. So, to be clear, you're referring to both Mongbwalu and Sayo?

18 A. Yes. They're two different places. There's a group in Mongbwalu, and there was
19 another one in Sayo a bit further away. Sayo is next to Adidi. It's far from
20 Mongbwalu. Mongbwalu is next to camp Goli.

21 Q. Mr Witness, there is, I think, some confusion and, as I say, I don't know if it is
22 interpretation or not, but that was not my question.

23 PRESIDING JUDGE FREMR: Mr Bourgon.

24 MR BOURGON: Thank you, Mr President. The answer -- the witness is being asked
25 questions on an answer he provided, and the answer should be put to him in full

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1 because the answer says massacred people. "However, later on they did not kill anyone.
2 There were no gunshots later on." This must be part of the question because that's his
3 answer in full, and this is what he should be questioned about.

4 Now, all of this issue, this answer he gave was not even explored in cross-examination
5 because if you see, immediately after I told the witness "I will move on to a different
6 topic, sir, because I see that we are kind of mixed up in the groups here."

7 So I left it alone. So it was not even -- I left it alone in cross, and now we're trying to
8 again re-examine and dig further. I don't think it is appropriate, Mr President.

9 PRESIDING JUDGE FREMR: Ms Luping, anyway, we are also over our time, so please
10 try to wrap in 2, 3 minutes.

11 MS LUPING: Yes.

12 Q. Mr Witness, I'm going to try to repeat my question, and I'd ask you to focus on the
13 question. I'm not asking you where the groups are from, just so we're clear. I'm not
14 asking where they came from. My question is different. I'm focusing on the part
15 where you said "both UPC and the APC of Mont Awa entered and massacred people."
16 I've already given you the subsequent quote at the very beginning. I'm focusing on this
17 portion alone. Now, when the UPC and the APC of Mont Awa entered and massacred
18 people, where did they enter? Where did they go and massacre people? That is my
19 question.

20 And if the witness can please be given an opportunity to respond. I mean, I don't
21 appreciate these delaying tactics.

22 PRESIDING JUDGE FREMR: It will be your last response, so please Mr Bourgon let
23 us -- the witness respond and then we will break.

24 THE WITNESS: (Interpretation) They started massacring the people in the centre of
25 Mongbwalu parking, and then they went further and they massacred people too -- what

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1 we saw. So people -- some people were killed in Sayo.

2 MS LUPING: Thank you, Mr President, your Honours, I have no further questions of
3 the witness.

4 PRESIDING JUDGE FREMR: Thank you, Ms Luping.

5 Mr Bourgon, looking at the outcome of the re-examination, are you -- do you have any
6 need to come with re-cross?

7 MR BOURGON: One, only one question, Mr President, if you will allow with the last
8 answer.

9 PRESIDING JUDGE FREMR: I think it would be, yeah, corresponding to the outcome
10 of re-examination-in-chief, so you have just one question granted. Please.

11 MR BOURGON: Thank you, Mr President.

12 QUESTIONED BY MR BOURGON:

13 Q. Sir, you were asked a question by my colleague and in response you said the
14 following: They started -- of course, the transcript -- it says to massacre the people in
15 the centre of Mongbwalu parking, and then they went further and then they massacred
16 people, I believe must have been some people were killed in Sayo.

17 Now, this was covered at length in your testimony already. My only question is that
18 what happened in Mongbwalu are issues that you heard about from other sources and
19 that you did not see yourself; is that correct, sir?

20 A. I didn't see the massacres in Mongbwalu myself because the population in
21 Mongbwalu fled and they went to Sayo. They all came where we were in the hill -- on
22 the hill, and it was these people who told us that several people had been killed. They
23 had been shot. Personally, I was not an eyewitness. I heard this from other people.
24 And it was the truth.

25 Q. Thank you, sir. And all the bodies of those people who had been killed you never

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1 saw any bodies either; is that correct, sir?

2 A. I didn't go there when the war broke out.

3 PRESIDING JUDGE FREMR: Okay, I think -- I would like now to thank you very much,
4 Mr Witness. We reached the end of your testimony. I firmly believe that your
5 testimony will assist us in our effort to find the truth. So thank you very much and we
6 wish you a safe journey home.

7 And now Mr Witness may be escorted out of the courtroom.

8 (The witness is excused)

9 PRESIDING JUDGE FREMR: Now court officer, please let's move into open session.

10 (Open session at 1.16 p.m.)

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

12 PRESIDING JUDGE FREMR: Thank you.

13 And sorry for shortening your lunch-break, so we will break now and we will reconvene
14 at half past 2.

15 Mr Bourgon.

16 MR BOURGON: Would you like to handle the video excerpt because there will be a
17 change of teams and it will be better if we could finalise and enter into evidence the
18 video excerpt?

19 PRESIDING JUDGE FREMR: I guess we will do it after the break, okay.

20 MR BOURGON: Thank you, Mr President.

21 THE COURT USHER: All rise.

22 (Recess taken at 1.17 p.m.)

23 (Upon resuming in open session at 2.38 p.m.)

24 THE COURT USHER: All rise.

25 Please be seated.

1 PRESIDING JUDGE FREMR: Good morning, everybody. I see some changes in
2 appearances, so I guess we will have to amend our record, so I will start with
3 Prosecution, please.

4 MR IVERSON: Good afternoon, your Honours. To my left is Laura Morris, assistant
5 trial lawyer; and in the back row today on behalf of the Office of the Prosecutor we have
6 Claudine Umurungi, legal assistant; Nicole Samson, senior trial lawyer; and
7 Selam Yirgou, case myself; and myself, Eric Iverson, trial lawyer.

8 PRESIDING JUDGE FREMR: Thank you, Mr Iverson.
9 Now Defence, please.

10 MR BOUTIN: (Interpretation) Good afternoon, Mr President, your Honours. This
11 afternoon present with me are Mr Ntaganda, obviously; Mr Dennie Michielsen, intern;
12 Maître Chloé Grandon, legal assistant. Maître Stéphane Bourgon will be joining us
13 shortly in order to address a preliminary matter relating to producing evidence. And I
14 am Luc Boutin, co-counsel. Thank you.

15 PRESIDING JUDGE FREMR: Legal Representatives of Victims, please.

16 MS PELLET: (Interpretation) Thank you, Mr President. No change when it comes to
17 Legal Representatives. Thank you.

18 PRESIDING JUDGE FREMR: Thank you. Well noted.

19 Before we start with our next witness, I would rather solve the issue already indicated, I
20 mean excerpts of video that are intended to be tendered into evidence.

21 So, Defence, could you make a submission on that? Mr Bourgon, please.

22 MR BOURGON: Thank you, Mr President. As mentioned at the end of the last
23 session we would like to seek that the video excerpt, at least part of the video excerpt
24 that was shown to Witness P-886 be admitted into evidence and I would like to also
25 make further comments and ask for the transcript of the said video to be admitted in

1 video -- in evidence.

2 I would like to begin by the video, and the number of the video is DRC-OTP-2058-0251,
3 and the exact time reference of the excerpt we would like to enter into evidence starts at
4 01.47.08 until 01.50.20.

5 The Chamber will note that this excerpt is quite shorter than what was shown to the
6 witness, and this is by agreement with the Prosecution. And we would like to ask that
7 the video be admitted into evidence.

8 PRESIDING JUDGE FREMR: Prosecution, any objection to that?

9 MR IVERSON: No objection.

10 PRESIDING JUDGE FREMR: In such a case, the video as proposed by the Defence is
11 admitted into evidence as a Defence exhibit.

12 You may proceed, Mr Bourgon.

13 MR BOURGON: Thank you very much, Mr President.

14 Moving on, the transcript that relates to this specific video excerpt is the following:

15 DRC-OTP-2062-2023. It starts at page 2069, line 1622 until page 2072, line 1718.

16 The translation of this transcript, Mr President, bears the following number:

17 DRC-OTP-2062-1333. It starts at page 1383, line 1751 until page 1386, line 1853.

18 The reason I wanted to make a separate observation regarding the transcript and the
19 translation is for two reasons: Firstly, Mr President, we on the Defence side have a
20 different position concerning transcript. We do not believe that the default position for
21 transcript is that they should go into evidence. And I said so at page 64 of the transcript
22 already on 27 October, lines 20 to 25.

23 On that occasion I said the following: "... we have a different position regarding the
24 transcript; we do not believe that a transcript should go into evidence. What should go
25 into evidence, in our respectful submission, Mr President, is the video and the comments

1 of the witness. This is what, in our view, should go into evidence and not the
2 transcript."

3 In this specific case, Mr President, we would like to deviate from this position for the
4 following reasons: Following the viewing of the video the witness P-886 was asked
5 some questions and these questions can be found in the transcript of 27 October, and it
6 begins at page 59, at line 18 until page 64, at line 19.

7 Based on the answers provided by the witness to these questions, and based specifically
8 or in particular to one of these answers where the witness said, at page 63, lines 1 to 2,
9 where the witness said, "These women told the truth."

10 On this basis we'd like to deviate from our position and we believe that since the witness
11 has confirmed not only that -- what he heard on the video, but since the witness
12 confirmed that to the best of his recollection what he heard was the truth, in this specific
13 case we would like to have the transcript and the translation admitted into evidence.

14 Mr President, that's the first issue. Of course then there is a second issue, which is our
15 standing objection over the verification of the transcript and the translation which we are
16 not able to provide to the Chamber at this time. Accordingly, Mr President, until this
17 issue has been resolved with the Registry, I simply propose that if the Chamber can give
18 us a decision that it agrees that the transcript and the translation be admitted into
19 evidence, then I would propose that they be admitted or marked for identification until
20 we resolve the issue of the proper translation and proper transcript. And those are my
21 submissions, Mr President. Thank you.

22 PRESIDING JUDGE FREMR: Thank you.

23 Prosecution, your position?

24 MR IVERSON: Your Honour, I don't have anything to add, just that we have no
25 objection in this instance to the Defence's submission of evidence.

1 PRESIDING JUDGE FREMR: Okay. So if I understood well, we should deal with the
2 second issue in due course. But as concerns current -- a current case, your proposal is
3 to admit both translation and transcript into evidence; am I right, Mr Bourgon?

4 MR BOURGON: That is correct, Mr President, and subject to our resolving the issue of
5 the proper translation and the proper transcription.

6 PRESIDING JUDGE FREMR: Okay, we noted that. So for the moment those -- the
7 proposal of the Defence is approved. It means that those transcripts -- this transcript
8 and translation are admitted into evidence as a Defence exhibit as proposed by Defence.

9 MS SAMSON: Thank you, Mr President. I just wanted to get one clarification perhaps
10 from the Defence.

11 As I understood the Chamber's decision last week I believe it was, the Chamber has
12 further endorsed the conduct of proceedings decision in relation to the admission of
13 evidence in relation to transcripts and translations, and I'm unclear if Mr Bourgon is
14 suggesting that it doesn't apply to the Defence in some way and that when they seek to
15 admit transcripts and translations, it does apply; when we seek to admit transcripts and
16 translations, a different regime applies.

17 I may have misunderstood it, but I would like to understand a bit better if he is objecting,
18 again, to the principle of the admission of transcripts and translations. Thank you.

19 PRESIDING JUDGE FREMR: Mr Bourgon.

20 MR BOURGON: Thank you, Mr President. I provided this -- these submissions
21 earlier on during the testimony of P-886, and we reviewed on that occasion the decision
22 that had been rendered by the Chamber on 20 October and, of course, we said that we
23 have no -- it is not our intention to move to reconsider that decision in any way.

24 What we did say, however, is that this decision -- the part that was mainly concerned in
25 this case is the fact that we were in cross-examination and that the witness -- we wanted

1 to argue whether the witness fulfilled the guidance of the Chamber provided in
2 paragraphs 56 and 57 of the decision on conduct of proceedings, and the decision of
3 20 October. And so it is not our intention at all to review that decision.

4 However, what we did say is that we had, further to the 20 October decision, contacted
5 the Registry, and we had informed them of our difficulties in being able to provide a
6 verification or to confirm or to agree on a translation in a transcript in the absence of any
7 resources.

8 And the Chamber will recall, Mr President, I did mention this, that we have no resources
9 whatsoever that allows us to do this. That is why we are now discussing with the
10 Registry to see how we will come about so that we adopt a position that will not delay
11 the proceedings.

12 Now, I'm not sure what my colleague is -- whether she's referring to something different,
13 which is the admission of transcript. In our respectful submission, the admission of
14 transcript is not something that is covered whether in the decision on conduct of
15 proceedings or in the decision of 20 October. And that's why we say our submission on
16 the admission of transcript is something that we say transcript should not be admitted
17 into evidence, per se, and then -- that's the issue. That's why we say we would not
18 normally even seek to have these transcripts admitted, but here we have a different
19 situation where the witness confirmed the truth of the contents of that excerpt of video
20 that he saw, and it's on that basis that we sought to admit the transcript and the
21 translation, which is, I believe, Mr President, an issue different.

22 Thank you, Mr President.

23 PRESIDING JUDGE FREMR: Okay. Well noted.

24 Now we still have another procedural issue I would like to touch before the testimony,
25 and it's the fact that in line with our decision number 897, the next witness will testify by

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1 way of video link.

2 But still before that, I would like to mention another issue concerning timing of our next
3 sessions. As has been previously indicated, the Chamber would have adjusted sitting
4 hours between 2 and 5 -- from 2 to 5 November 2015. However, as the parties and
5 participants were informed by way of email, I confirm that the Chamber can now, again,
6 have normal sitting hours during those days, that is, from 9.30 to 4 p.m. And we will
7 continue to also sit for normal hours on 6 November 2015.

8 Second issue: The next witness is a dual status witness, and the Legal Representative of
9 Victims of the attacks has requested to examine him. In accordance with the decision
10 on the conduct of the proceedings, the Chamber will rule on that request after the
11 Prosecution's examination-in-chief.

12 And now, court officer, please let's move into private session briefly for the next matter.

13 (Private session at 2.55 p.m.)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

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

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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17 (Recess taken at 4.04 p.m.)

18 (Upon resuming in open session at 4.11 p.m.)

19 THE COURT USHER: All rise.

20 Please be seated.

21 PRESIDING JUDGE FREMR: I have to be brief because there is another proceedings,

22 another session very soon.

23 So and first of all I would like to also put on the record that we are in the regime of

24 open session, but the face of the witness is not broadcast outside. Am I right, court

25 officer?

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1 THE COURT OFFICER: I confirm indeed, Mr President.

2 PRESIDING JUDGE FREMR: So we deliberated, but we came to a conclusion there
3 is no reason of -- we haven't found strong reasons to reconsider to change our
4 previous decision.

5 I can briefly just to refer you to our arguments contained in our decision and to the
6 reasoning mentioned on that.

7 According to us, the in-court protective measures we decided upon was adequate to
8 the level of the risk concerning this witness.

9 I would like to say that, according to us, the threshold is for use, the whole menu, I
10 mean face distortion and voice distortion, is a bit higher than in case of this concrete
11 witness, so we are insisting on our decision. And we really mean that it would be a
12 little bit wrong precedence to change the decision and to lower this threshold.

13 Just how for the future. We don't force -- I have to say that as to the proposal made
14 by Prosecution, we don't find proper and even we don't find it efficient to compel this
15 witness to testify, but we don't force witness to draw this witness from the list of
16 evidence.

17 Either you can think about other legal measures how to get this testimony into
18 evidence, or it is also possible that in the future if there could be some change of
19 situation on the part of the witness, maybe some concrete threats to him, then it
20 would be may be the right time, maybe, to come with another request to reconsider
21 our previous decision.

22 I think that's all I can say at the moment. And I would like also to thank Mr Witness
23 even though if he did not testify, it is his full right, but again I have to, even to him, to
24 repeat that there is some jurisprudence, which means previous decision, especially of
25 our Appeals Chamber which clearly says that it should be some -- that we even found

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1 some objective risk, but the level of that risk should be corresponding to the measures
2 taken by the Chamber, and we hope that we followed this decision.

3 So that is all. Thank you very much, Mr Witness. You will not testify if you don't
4 want under current circumstances and we will continue tomorrow with the further
5 witness.

6 Court is adjourned.

7 MR BOUTIN: Mr President, if I may.

8 THE COURT USHER: All rise.

9 PRESIDING JUDGE FREMR: Mr Boutin.

10 MR BOUTIN: If I may, Mr President, I just received a communication from
11 Mr Bourgon who has been following the proceedings from the office. With regard to
12 the next witness, Mr Bourgon he is the counsel in charge of that witness for
13 cross-examination. It is my understanding that the week has been pretty -- pretty
14 long with the previous witness. Mr Bourgon kindly asks if it would be possible to
15 start P-55 Friday rather than tomorrow.

16 PRESIDING JUDGE FREMR: Prosecution?

17 MS SAMSON: No objection, your Honour, as there are several issues outstanding in
18 relation to P-55, which will impact on the Prosecution's examination of the witness,
19 notably whether or not we have to examine him on the totality of his evidence or only
20 on the matters that are not subject to his -- the Rule 68 application. And the
21 Prosecution's submission in relation to the Defence's request are -- or, our response to
22 the Defence request to postpone his cross-examination is only currently due
23 tomorrow at noon. So all that to say, your Honour, we do not object to the request.

24 PRESIDING JUDGE FREMR: Give me a second, I will deliberate with my
25 colleagues.

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1 (Trial Chamber confers)

2 PRESIDING JUDGE FREMR: So after silent deliberation our ruling is that we
3 accepted the common proposal of both parties and our -- which means that our
4 proceedings is adjourned to Friday. So we will continue on Friday, 9.30 in this
5 courtroom.

6 The Court is adjourned.

7 THE COURT USHER: All rise.

8 (The hearing ends in open session at 4.16 p.m.)

9 RECLASSIFICATION REPORT

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