

1 International Criminal Court
2 Trial Chamber VI
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and
6 Judge Chang-ho Chung
7 Trial Hearing - Courtroom 2
8 Monday, 27 November 2017
9 (The hearing starts in open session at 9.15 a.m.)
10 THE COURT USHER: [9:15:40] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: [9:17:02] Good morning, everybody.
14 Court officer, please call the case.
15 THE COURT OFFICER: [9:17:06] Thank you, Mr President.
16 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
17 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
18 We are in open session.
19 PRESIDING JUDGE FREMR: [9:17:21] Thank you very much.
20 Now, appearances please, in habitual order.
21 MS LUPING: [9:17:28] Good morning, Mr President. Good morning, your Honours.
22 Appearing on behalf of the Prosecution this morning are myself, Dianne Luping,
23 Ms Nicole Samson, Marion Rabanit, Selam Yirgou and Ms Elin Engstrom.
24 PRESIDING JUDGE FREMR: [9:17:43] Thank you, Ms Luping.
25 Defence, please.

1 MR BOURGON: [9:17:49] (Interpretation) Good morning, your Honour.

2 Representing Bosco Ntaganda, who's present in the courtroom this morning,

3 Isabelle Martineau, Didace Nyirinkwaya, Mr Benjamin Nodet, and myself,

4 Stéphane Bourgon. Thank you, your Honour.

5 PRESIDING JUDGE FREMR: [9:18:05] Thank you, Mr Bourgon. And Legal

6 Representative of Victims, please.

7 MS PELLET: [9:18:16] (Interpretation) Thank you, your Honour. The former child

8 soldiers are represented by Vony Rambolamanana and by myself, Sarah Pellet, counsel

9 with the Office of Public Counsel for Victims. Thank you.

10 MR SUPRUN: [9:18:28] (Interpretation) Good morning, your Honour, your Honours.

11 The victims of the attacks are represented by Anne Grabowski, associate lawyer; and

12 Claire Lefevre, intern; and myself, Dmytro Suprun, counsel with the Office of Public

13 Counsel for Victims.

14 PRESIDING JUDGE FREMR: [9:18:43] Thank you, Ms Pellet. Thank you, Mr Suprun.

15 Before we start with our normal agenda, the Chamber has been informed that both

16 Prosecution and Defence would like to approach it in the absence of the upcoming

17 witness, so we will start with Prosecution.

18 Ms Luping, do you want to move into private session; can we remain in open?

19 MS LUPING: [9:19:11] Mr President, with your leave, if we could please move into

20 private session.

21 PRESIDING JUDGE FREMR: [9:19:16] All right.

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

23 (Private session at 9.19 a.m.) *(Reclassified partially in public)

24 THE COURT OFFICER: [9:19:35] We are in private session, Mr President.

25 PRESIDING JUDGE FREMR: [9:19:36] Thank you, court officer.

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1 And you, Ms Luping, you may proceed.

2 MS LUPING: [9:19:41] Thank you, Mr President, your Honours.

3 The Prosecution would like to make a request at this point for access to the audio or video
4 recording of the witness preparation session that was conducted with the upcoming
5 witness, Witness D-17, on 21, 23 and 24 November. Before starting with the request,
6 your Honours, I would also note for the record that even though the witness preparation
7 session appears to have ended on 24 November, the 19-page witness preparation note was
8 only disclosed on Sunday in the afternoon and within 20, 30 minutes of the Prosecution
9 requesting for disclosure of it.

10 I just note that, your Honours, because otherwise we would have hoped that we would
11 have been able to approach the Chamber perhaps even with submissions via email to
12 avoid wasting the Court's time this morning. However, we were only able to properly
13 review the note yesterday evening.

14 Your Honours, the Prosecution requests that pursuant to Article 3 of the Witness
15 Preparation Protocol that it have access to the audio-visual record or at least various
16 excerpts of it. It's the Prosecution's concern that there may have been potentially leading
17 questions posed to the witness, so we are wanting to see the manner and the method, the
18 questioning, that was used with D-17, to ascertain exactly how specific aspects of the
19 information contained in the note were elicited.

20 By way of example, your Honours, I would first refer to the new information concerning
21 this witness's name. We now have new information notwithstanding the fact that the
22 Prosecution also met with this witness and specifically asked him if he was known by any
23 new names. We now have a new name, (Redacted) and it did not appear to be any
24 surprise to the Defence because, according to the note, he was immediately referred to
25 and asked questions as to whether or not it was his identity contained in FPLC record,

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1 almost immediately after he revealed this information. So it did not appear to be a
2 surprise.
3 Similarly, there were various aspects of this witness preparation information that
4 appeared to more closely aligned to the accused's testimony during the course of the
5 preparation. Again, by way of example, we have, originally in his statement,
6 your Honours, a confirmation that it was Bosco Ntaganda who was using a camera, that
7 he was filming it. Now, just looking at the face of the preparation note itself, it appeared
8 that the only question that was asked was, essentially, in what locations in Mongbwalu
9 the -- there was filming. But apparently, without being prompted, or at least according to
10 the note, and this is why we want to be able to check this for ourselves, the witness stated
11 that he's now having a better memory; he confirms that it was not Bosco Ntaganda who
12 used the video camera, and that he, however, can't remember who was using it.
13 So this is a concern for us because, of course, this is an important issue as well. And this
14 information the witness originally gave actually corroborated a number of Prosecution
15 witnesses on the point.
16 Similarly, there are a number of questions related to Prosecution witnesses and, again, it's
17 a concern for the Prosecution to check exactly how the questions were posed to the
18 witness about Prosecution witnesses. And I'll give as an example questions relating to
19 (Redacted) Now, we have a reference at the very end of
20 the -- of the note when the witness is told what questions that the Prosecution -- sorry, the
21 questions that may be posed during the course of examination-in-chief. We have a
22 reference to la connaissance du témoin (Redacted) Now, giving the Defence the
23 benefit of the doubt, it may not be that he was informed that this is a Prosecution witness,
24 but we would like to check this. But of more concern is the manner in which questions
25 (Redacted) were posed. For example, at page 11, it is stated, and I quote

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1 (Interpretation): "He confirms that during the journey between (Redacted)
2 (Redacted)
3 Now, it appears as if, instead of an open-ended question being asked as to what the
4 witness may be carrying, whether he had any weapons between Mandro and Tchomia, it
5 was simply put to him, potentially a leading question, and here we have a response
6 recorded in the witness preparation note that he's confirming whatever question was
7 posed to him. So that's simply an example.
8 Similarly, a number of photos, the annexes that had apparently previously been shown
9 when the witness statement was taken, were shown to him again. And what is of
10 concern is the witness appears to be going back on what he previously said in his witness
11 preparation. So, for example, when he had confirmed the identity of an individual of
12 (Redacted) now, according to the preparation note, it simply states, "I don't think this is
13 (Redacted)" And, similarly, with (Redacted) when he had previously made a clear
14 identification, now he's saying the image is blurry. And I would note that, of concern,
15 this is now more closely aligning to the accused's testimony and is contrary to Prosecution
16 witnesses. Before, the witness was more aligned and corroborating what Prosecution
17 witnesses have said. And now it appears as if he is more closely aligning or changing his
18 testimony during the course of the preparation.
19 Similarly, with testimony about Zumbe, he had previously stated or claimed that many of
20 the houses had been destroyed during the ethnic conflict in 1999. Certainly, a question
21 we were asking as to his basis of knowledge, he appears to be changing his response and
22 saying: There must have been a misunderstanding; not what I said; I wasn't talking
23 about that at all; I was talking about something quite different; I was talking about what I
24 saw on the way between Mandro and Zumbe; it was not in what was in Zumbe itself.
25 Now, this apparent confusion, however, has not been rectified at a different paragraph of

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1 the same statement, at paragraph 75, where he's still talking about the number of
2 buildings destroyed in Zombe. So all of these are simply examples, your Honours.

3 There is another Prosecution Witness, P-290. (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 Your Honours, the Prosecution believes that it is in the interests of justice that we simply
9 have an opportunity to check the manner in which these questions have been posed.

10 Now, if, of course, there has been no impropriety, these will be also issues that we believe
11 it is appropriate for the Prosecution to raise with the witness himself as to why he
12 apparently seems to be changing entirely certain aspects of his witness statement,
13 especially considering that that statement was taken very recently, only completed as of 7
14 November of this year. So there does not appear to be any reason why there should be
15 such drastic changes at this stage. Thank you, your Honours.

16 PRESIDING JUDGE FREMR: [9:27:56] One additional question from my part,
17 Ms Luping, can you estimate how much time you would need to check the audio?

18 MS LUPING: [9:28:07] We would need to check with the Defence exactly how much
19 time was spent with the witness. It was apparently on 21, 23 and 24 November. We
20 would not want to spend very long, obviously, and it may be that we could simply find
21 the specific passages of concern to us, but perhaps we would be better guided by the
22 Defence as to how long that audio is. It may be only minute segments, though, that are
23 of concern.

24 PRESIDING JUDGE FREMR: [9:28:35] Thank you.

25 Now, Mr Bourgon, I suppose that your submission indicated probably concerned a

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1 different point, but at the beginning, I would prefer if you could comment, make your
2 comments to the submission made by Ms Luping.

3 MR BOURGON: [9:28:56] Thank you, Mr President.

4 I must admit that we are surprised by the Prosecution's submission this morning, given
5 the extent of the preparation session note that we disclosed to the Prosecution. So that's
6 my first reaction.

7 The second reaction is, according to the protocol, there is a test to be made where the
8 Chamber may authorise access to the video record. That test is found in paragraph 13 of
9 the protocol on the preparation of witnesses. The exact name, Witness Preparation
10 Protocol, paragraph 13.

11 And here we have, "Should the non-calling party wish to gain access to the video
12 recording of a witness preparation session, it shall apply to the Chamber orally or in
13 writing, setting out, number one, the reason why access to the video recording is
14 necessary."

15 I believe, Mr President, that even on the first prong of this test, any -- the examples given
16 by my colleague today can all be explored in cross-examination and there is no need to
17 revert to the recording of the session with the witness.

18 All of the names, if I look at the first example given, the fact that there is a name, a new
19 name, that came out, which is (Redacted) -- well, maybe I can address both legs at the same
20 time in order to try and save some time.

21 The second leg of the test is, "The information in its possession, evidentiary or other,
22 demonstrating that access to the video is warranted, if the Chamber considers it necessary,
23 it may review the recording itself or order a disclosure of the recording."

24 So access to the video, according to this second leg, to the Defence, which is the test of the
25 Chamber as applied when the Defence requested access to that video previously, is, is

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1 there any information of impropriety, of something wrong, having been done by the
2 Defence? Do they have any evidence? Do they have anything to show for that when we
3 look at: Is it necessary, and: Do they have any reason to doubt as to what the Defence
4 did? The first example given is the name (Redacted) Well, the name (Redacted) as the Chamber
5 will probably see during the examination of the witness, is a name that appears on a
6 Prosecution document disclosed to the Defence a long time ago.
7 When the Prosecution met with the witness, because the witness accepted to meet with
8 the witness, he was asked if he had any other names. And then he confirmed, and he
9 provided answers to the Prosecution. When the Defence met with the witness, we
10 showed him that document, which is the document that bears the name that we thought
11 could be his name. We showed the document to the witness, and he says, "Yeah, that
12 could be me, but there could be differences."
13 So, out of full disclosure, we know that the information. Now, this is what we said in the
14 proofing note, and the Chamber will be able to see the proofing note. The proofing note
15 on page -- on page, in terms of the corrections -- so on the proofing note, and that's on
16 page 7, we put the question to the witness during the proofing session, "Did you always
17 have the same names as are mentioned to your statement?"
18 The Prosecution drew our attention to the fact that there might be another name, so we
19 asked the witness. He says, "Yeah, I had another name and this name was (Redacted)"
20 Okay. So we found the document with a name (Redacted) and another name. We show it to
21 the witness: Is that you? And the witness answers that he did wear a different name
22 before and that this name was given -- the name that he has now was given to him when
23 he was in fifth grade of primary school. And he adds that when he went to (Redacted) to
24 join the training he gave the name (Redacted) So this is full disclosure to the Prosecution, full
25 disclosure. We can't be more forthcoming than giving all the information.

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1 The second aspect that is raised is about the camera. Now, the camera, if we go back, and
2 the Chamber in -- and I think at the end I will ask, Mr President, that before the Chamber
3 renders any ruling on this, that the Chamber compare the statement with the proofing
4 note to see if there is any sign that something wrong was done here.

5 The second example in the statement, the witness provided the following information,
6 and that is at paragraph, in the statement, on paragraph 131. And in the statement this is
7 what the witness said. I will read in French, and it can be translated so I will move to
8 French for paragraph 131: (Interpretation)

9 "On the way, between Bunia and the airport of Mongbwalu, we didn't encounter the
10 enemy. There was no fighting. I remember that Bosco Ntaganda had a video camera
11 and that he filmed our movements to several different places."

12 (Speaks English) In the -- during the preparation session, the question is put to the
13 witness, "Can you add which places were filmed by the -- in that video?" So we're trying
14 to get clarification of this paragraph 131 in the statement. The witness gives an answer
15 that is contrary to the statement. Again, out of full disclosure we provide the answer,
16 and he says, again in French, proofing note page 12: (Interpretation)

17 "The témoin states to the best of his knowledge that it wasn't Bosco Ntaganda who used
18 the video camera, but he does not remember who the person was who used the camera.
19 The witness can only clarify what part of the movements in Mongbwalu were taken by
20 video camera, but he did see the camera and saw that it was used on several occasions."

21 (Speaks English) Once again, Mr President, we put a question to the witness, we get a bad
22 response. I would have liked him to say what was filmed. We get a bad response, and
23 we disclose the same to the Prosecution. But it wasn't Ntaganda who was filming. They
24 had material on which to cross examine and challenge the credibility of the witness, and
25 we are forthcoming by giving the information that came out as to the fact that it wasn't

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1 Bosco Ntaganda and he saw the video being used many times.
2 The third example given by my colleague has to do by some of the pictures that were put
3 to the witness. So when he signed his statement, the witness was shown stills on the
4 computer, and not -- not the actual annexes. He was shown, because the pictures were
5 black and white, because we were in the field, we can't produce colour picture. So he is
6 shown a black-and-white picture but he is shown a still on the computer, and he identifies
7 a specific person. The first example that is given is paragraph 149(H), in which the
8 witness had identified a person by the name of (Redacted) who was an escort at the
9 etat-major general.
10 So during proofing session, we, of course, show him the material, because we have to
11 show him every document we are going to use. So we do that. And we show him the
12 picture, and he says, well, this is very, very -- in this case, what the preparation session
13 note says on page 5 is the following, in French: (Interpretation)
14 "The witness says that it wasn't (Redacted) who was in the photo. The witness does not
15 know the person on the photo."
16 (Speaks English) (Overlapping speakers) ...an answer that we were not expecting, we did
17 not expect to get. We thought he would say, yes, that's (Redacted) because this is the
18 information he gave when he gave his statement. So we get a bad answer. And, again,
19 we provide the information to the Prosecution that he provided a different answer.
20 Now, when the witness will testify, either, if that's important to us, we will take the video
21 and show him a better picture, and he will identify them, the person. If it's not important
22 to us, the Prosecution can challenge his credibility by saying: What do you mean? One
23 day you identify the witness; the next day you don't. What's wrong? And they can
24 challenge his credibility. So again, we have been forthcoming by giving more
25 information.

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1 The next example which is given is also something about (Redacted), and that was on
2 paragraph, I guess -- I'm not sure if my colleague gave a paragraph number for (Redacted)
3 but something did take place with (Redacted) in one of the pictures, and this is found in the
4 proofing note, and it's found on page 6 of the proofing note. In the statement the witness
5 had identified (Redacted) I believe, on two pictures, on two of the annexes. In the
6 statement on paragraph 167, India, or I, it reads as follows, this is the statement, in French:
7 (Interpretation)
8 "On the photo on annex W, Whiskey, which was shown to me, 19.50 minutes, I recognise
9 (Redacted) in the middle. (Redacted) was wearing -- (Redacted)
10 (Redacted)
11 (Overlapping speakers) (Speaks English)...the statement. In the proofing note, nothing is
12 mentioned about this annex because the witness recognised the same. But, of course, we
13 did say that we did show the annex to the witness.
14 In the second statement in which we find (Redacted) this is found at paragraph 167 letter J
15 for Juliette, and it reads as follows in French: (Interpretation)
16 "On the photo on annex X, X-ray, shown to me, 33.36, I recognised (Redacted) on this picture
17 and I recognise from right to left Tinanzabo, Thomas Lubanga, Bosco Ntaganda, (Redacted)
18 (Redacted)
19 (Overlapping speakers) (Speaks English)...statement. We show him the picture during
20 the preparation session, and -- according with what we have to do, and here he says, in
21 French on page 15: (Interpretation)
22 "Where it concerns the document DRC-D18-0001-6420, the witness recognises the people
23 and shows them on the photograph. The witness states, however, that as for (Redacted)
24 the -- where it concerns (Redacted) the photo is blurred. The photo is shown at 33.36 to the
25 witness says, who says that it is the same thing, that it is blurred where it concerns

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1 (Redacted)

2 (Overlapping speakers) (Speaks English)...picture, and he doesn't -- he recognises all the
3 people that are mentioned, and he says, "Well, for her it's not quite clear." We say,
4 "Okay"; we take the video, and we put the minute 33.36, and we show him the video.
5 And he says, "Still not clear that it's (Redacted)" We're not happy with the answer, but,
6 again, we are coming, forthcoming with the Prosecution, and we provide this information
7 to the Prosecution.

8 If the Prosecution would like to benefit from this paragraph, they can certainly do it in
9 cross-examination. If it is important for us, we will show either the same minute or a
10 different one and ask the witness to confirm. There is no, absolutely no need to go back
11 to the audio recording session, having such a detailed information given to the
12 Prosecution.

13 Next example has to do with Witness P-0290. So, in the statement there is no reference.
14 The only reference we can find in the statement to this witness is found in paragraph 117.
15 The Chamber has already read this paragraph, so I don't think there's any prejudice in
16 reading the paragraph, which goes like this, in French: (Interpretation)

17 "In Bosco Ntaganda's plot, that was completely fenced, there was Ntaganda's house and
18 there was also an annex with three doors: The left door led to the kitchen, the right door
19 to the office of Signora, and the middle door to the place where I was sleeping, with the
20 other escorts. In the room that was used as a bedroom, we had ammunition but no
21 weapons. (Redacted)

22 (Redacted)

23 (Redacted)

24 (Overlapping speakers) (Speaks English)...before the preparation session note. So here
25 we have a man in the statement called (Redacted) So we put the question to the

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1 witness -- this is on page 11 of the proofing note. It says in French: (Interpretation)
2 "The witness was asked if he can give more information on (Redacted) because ..."
3 (Speaks English) (Overlapping speakers)...we would like to know more about him.
4 Answer from the witness: (Interpretation) "The witness explains that, to the best of his
5 knowledge and unlike what is mentioned in his witness statement, (Redacted)
6 (Redacted)
7 (Redacted)
8 (Speaks English) (Overlapping speakers) ...we don't get an answer to our question. I
9 wanted to know who (Redacted) was. I still don't know. So the Prosecution can certainly
10 put questions on that to the witness and challenge his credibility.
11 Moreover, here we -- the witness changed his answer from his statement, and he says that
12 the one -- the first one to come was (Redacted) and then he was joined by (Redacted) And
13 in his statement, he had said that it was (Redacted) who was met by another one called
14 (Redacted) So, again, we get a different answer from the statement. We're not happy
15 with the -- with this response. And the Prosecution can put this and challenge the
16 credibility of the witness on this basis in cross-examination.
17 I believe this is all the example. There's an example about Zumbe that we need to
18 address also, so that there is nothing left out. In Zumbe, the witness said the following in
19 his statement at paragraph 73. I will read at the end. I will read paragraph 73, which is
20 in French: (Interpretation)
21 "The battle started in Ezekere between Mandro and Zumbe. At this occasion, we had a
22 heavy weapon called recoilless, and it was a very powerful weapon that is very noisy, but
23 not as much as the B10. When we shot, fired the shot on the Lendu combatants, they
24 immediately left for Zumbe. Zumbe is a small village where there are only a few houses,
25 most of -- most of them having been destroyed during ethnic violence. That was

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1 wreaking havoc since 1999. Zumbe, in fact, was an important base for Lendus."

2 (Overlapping speakers) (Speaks English)... for the preparation session. So we put

3 questions to the witness regarding paragraph 73 -- no, this was not a question, or was it a

4 question? A question that was put to the witness. And the question is the following, in

5 French: (Interpretation)

6 "The witness was asked on what basis is he capable of saying that Zumbe is a small village

7 where there are only a few houses remaining, most of them having been destroyed during

8 the ethnic violence that was wreaking havoc since 1999. Zumbe in fact was an important

9 base for Lendus."

10 (Overlapping speakers) (Speaks English)...read out the exact part of the statement, the last

11 four lines, and we ask the witness, "What's your basis?" which is absolutely a proper

12 question to ask to the witness. And the witness responds -- this is on page 10 of the

13 preparation note, witness mentions, in French: (Interpretation)

14 "The witness mentions that he was misunderstood on the subject. He first of all asked

15 that he's not capable of saying that most of the houses in Zumbe have been destroyed

16 during the ethnic violence as he wasn't there during that point in time."

17 (Speaks English) (Overlapping speakers)...the response, the witness is quite honest

18 because he is saying, "Listen, I wasn't there, so I cannot say that." And then he says,

19 "What I was referring to is, I was referring to houses being destroyed on the way." I will

20 read in French, Mr President, second paragraph of page 10: (Interpretation)

21 "The witness specifies that he was referring to the houses that were destroyed by the

22 Lendu combatants when they were retiring on the Mandro road towards Zumbe with the

23 cattle that they'd stolen. The Lendu combatants were burning the houses on their way to

24 Zumbe, on their way back to Zumbe."

25 (Overlapping speakers) (Speaks English)...that we provided to the Prosecution. The first

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1 one he says, "Well, it's close to one of these houses that I saw the lady with the stick
2 between her legs who was killed," and he says she was close to one of those houses. So
3 no information of specific interest here, but we do mention it in our note.

4 But then the witness adds something which is negative for the Defence. He says "at
5 Zumbe" (Interpretation) "one was actually burnt by our force and this was of the Safari
6 commander."

7 (Overlapping speakers) (Speaks English)...that was burnt by us. So again, out of full
8 disclosure, we provide this information to the Prosecution.

9 One more about the -- yes, one more. I have to answer all of them, Mr President,
10 because...

11 PRESIDING JUDGE FREMR: [9:53:29] It's fine with the Chamber, please proceed.

12 MR BOURGON: [9:53:36] In the next case, my colleague mentions something about an
13 individual, and here we need to go -- we are in private session? We are.

14 So at paragraph 102 in the statement we have the following information, (Redacted).

15 In French -- I apologise. (Interpretation)

16 (Redacted) was part of the troops (Redacted) who was supposed to

17 (Redacted) This was refused at the last minute just

18 (Redacted)

19 (Speaks English) (Overlapping speakers)...during the preparation session we asked the
20 witness to clarify paragraph 102 and we ask him (Interpretation):

21 "It was asked to the witness on what basis can he say that."

22 (Overlapping speakers) (Speaks English)...which is in quotation marks in the witness
23 preparation session note.

24 Now, the answer provided by the witness is the following, in French: (Interpretation)

25 "The witness confirms that he saw (Redacted) and he was

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1 part of the (Redacted)
2 (Redacted) He also confirms that during the trip between (Redacted)
3 (Redacted)
4 (Overlapping speakers) (Speaks English)...in his statement, so we're not surprised by this
5 information. And then he had something new, which basically is the answer to the
6 question, I believe, which was put to him, what was his basis, and he says, he adds that, in
7 French (Interpretation):
8 "He adds in the last that (Redacted) after having (Redacted)
9 (Redacted)
10 (Redacted)
11 (Overlapping speakers) (Speaks English)... (Redacted) and the witness provided
12 everything that he knows or at least on this information. Information is provided to the
13 Prosecution, and the Prosecution can, of course, challenge the credibility of the witness
14 and challenge as well the information in the preparation session note.
15 All this to say, Mr President, I am surprised this morning to have to explain this to the
16 Chamber, because when we look at the test for access to -- the test for access to the video
17 recording, we have no information that is being submitted by the Prosecution to gain
18 access to the video recording other than to say we'd like to know how the question was
19 posed. We'd like to know if there was a leading question. Well, I don't think that's part
20 of the test at all. And that these two questions can certainly be put to the witness during
21 cross-examination.
22 So we decided at the beginning of the case -- I say "we", I mean the Chamber -- decided to
23 put this protocol into place, and we, we, the Defence, asked for access to the video on
24 three occasions, I believe. I guess on one occasion the Chamber granted the Defence
25 request. When the Chamber granted the Defence request, it was because a number of

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1 questions had been put to the witness concerning an event that was not in his statement
2 whatsoever. And if the Chamber will recall, I don't have the number, the specific
3 number of the witness, but that witness had said nothing in his statement about events in
4 Kobu, Bambu and Lipri. And, suddenly, during his examination-in-chief, a lot of
5 questions were put by the Prosecution, and these questions had been put in the
6 preparation session note. So on that basis, we asked the Chamber, well, we want to
7 know how it is that all these additional questions were put to the witness, not how they
8 were put, but why they were put contrary to the -- what is not permitted in the protocol,
9 which is for the Prosecution to dig for new evidence. That's not permitted. We thought
10 that there was evidence of this, we requested access to the video, and the Chamber
11 granted this request. That was on one occasion.

12 In this particular case -- I'm sorry for all the time that I'm using in responding to this
13 request, but I do ask, Mr President, that the Chamber compare the preparation session
14 note, which is -- it goes, in my personal view, way beyond what is requested by the
15 protocol. The protocol mentions what needs to be disclosed, and the information here in
16 the preparation session goes way beyond that. Whether it's good or bad, we made a
17 point of being -- giving the information, all the information that could be required for
18 them, that could be useful to them, even when it was not in our interest. So I don't see
19 any reasons why we should go to this video recording or audio for the sake of answering
20 the needs mentioned by the Prosecution a few minutes ago.

21 Thank you, Mr President.

22 PRESIDING JUDGE FREMR: [10:00:02] Please, please, hold on, Ms Luping, because I
23 have two additional questions to Mr Bourgon. Thank you, Mr Bourgon.

24 First question is about the questions. So you are saying that it's not relevant whether you
25 put or not leading questions, but I would like to ask whether you are sure that you didn't

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1 put questions, as you say, digging for new information. Can you exclude that?

2 MR BOURGON: [10:00:27] Absolutely, Mr President. We -- the questions that were
3 put are indicated in the session. So -- so if the Chamber believes that there is a question
4 that is inappropriate, what is in the preparation session note includes the question and the
5 answer.

6 PRESIDING JUDGE FREMR: [10:00:45] And --

7 MR BOURGON: [10:00:46] So the Chamber is in a position to judge whether it is
8 information that went beyond or was conduct not permitted by the Protocol.

9 PRESIDING JUDGE FREMR: [10:00:55] Fine.

10 And the second one is of technical nature. How much time, according to your
11 estimation, would checking the audio recording session require?

12 MR BOURGON: [10:01:12] Well --

13 PRESIDING JUDGE FREMR: [10:01:13] In total.

14 MR BOURGON: [10:01:14] It's likely to take -- technique is not my -- I'm not very good
15 at technical matters. I can probably say that it will take some time because we have to go
16 and find the exact places where these questions and answers were put and disclose the
17 same.

18 PRESIDING JUDGE FREMR: [10:01:34] Just roughly, rough estimation?

19 MR BOURGON: [10:01:39] Hours, hours, Mr President. Probably hours to go
20 and -- because the session itself, as the Chamber will see if the Chamber looks at the note,
21 there was the three different days. And I -- we did not count the total number of hours
22 but it was quite a long session. And the reason is explained also in the preparation
23 session note, which is the fact that when we had hope to produce for the witness a Swahili
24 version, and for reasons that I would prefer not mention this morning, we did not get a
25 Swahili version. So the interpreter present had to go line by line and read both lines, so it

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1 was a lengthy process. We can remove all of that from the session, go straight to the
2 question, but it will still take hours to find the exact places where these questions were put.

3 Thank you, Mr President.

4 PRESIDING JUDGE FREMR: [10:02:37] Thank you, Mr Bourgon.

5 Now, Ms Luping, Mr Bourgon tried to provide you with explanations concerning
6 examples you have mentioned. Is this explanation satisfactory to you or do you maintain
7 your request?

8 MS LUPING: [10:02:53] Mr President, your Honours, the Prosecution does maintain its
9 request for disclosure and, in fact, it may be that it warrants full disclosure of the video,
10 and I will explain to your Honours.

11 First of all, just to deal with Defence counsel's explanation of the test that you need to
12 consider as to whether disclosure is warranted or not under the protocol, as Defence
13 counsel mentioned the test in fact is set out in Article 13, which makes no mention of the
14 words impropriety or otherwise. The test is simply whether or not disclosure is
15 necessary and warranted. That is the test. And referring to one of your previous
16 decisions, previous decisions of the Chamber, relating to Witness P-119 regarding Article
17 13, that the test was whether there was some indication of impropriety in the conduct of
18 the session or other material reasons warranting such access.

19 Now, in the Prosecution's submissions, your Honour, cross-examination simply will not
20 be sufficient. It's not only the what the witness has now stated during the course of his
21 witness preparation session, but it's also how that information was elicited. That is going
22 to be absolutely critical for the Prosecution to assess for itself so that it's best placed to be
23 able to better conduct a proper and effective cross-examination of the witness on these
24 points.

25 The first dealing with the what, what was changed. I won't repeat the examples that I've

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1 already given to your Honours, but I would simply state that whilst we did hear Defence
2 counsel state very often, in fact, that those changes, that they were not happy with those, I
3 would simply express some surprise that the Defence would not be happy that, in the
4 examples given, in fact, the witness was more closely assigning his answers to that of the
5 accused and was no longer corroborating Prosecution witnesses on those points. And I
6 would simply give the example again of the video camera, where he previously stated it
7 was Bosco Ntaganda himself doing the filming and simply reversed completely his
8 response to say it wasn't him. But surprise, surprise, he can't actually remember who
9 was actually doing the filming.

10 Now, as to Defence counsel's statement that all of the questions that were put to this
11 witness are clearly set out in the preparation note, I would simply state that we do
12 disagree with that. And I will simply give two examples. The first is at pages 9 and 10
13 of the preparation note. The Defence counsel stated that the question after being
14 referred -- the witness being referred to where he had previously stated that Zombe had
15 been destroyed in 1999, that the question posed after that was: What's your basis of
16 knowledge? Now, maybe I am missing something here, but straight after the quote we'll
17 have the witness simply saying that, oh, well, look, he was badly understood on the
18 subject. There's no question set out, and we don't see examples of all the questions set
19 out in the witness preparation note, and this is the reason why we have to see it,
20 your Honours. And even the question, what's your basis of knowledge, even that, we
21 would submit on the -- on the relevant topic, may be seen, in fact, as leading.

22 Now because this, of course, this was right for cross-examination. How could a witness
23 state that he knew that a Lendu headquarters, all the buildings, were practically destroyed
24 in 1999, if he himself was not present? So, of course, it is a valid question, but we would
25 like to see exactly how that question was posed, and it's relevant for us to know, because

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1 it is interesting that the witness should immediately respond when prompted with a
2 question, well, how do you know that, as saying, well, I must have been badly understood;
3 of course, I wouldn't know that because I wasn't there. Anyway.
4 So, but, those are the, you know, what changes he made. One aspect that we're
5 apparently -- you know, the Defence counsel will say that they won't be happy with, he's
6 now admitting, well, okay, we may have destroyed or burnt one building which is where
7 the animals were kept. That's one aspect that he apparently gave, which is no longer of
8 use to the Defence. But all of the examples given, your Honours, we state do closely
9 align to that of the accused.

10 But very critically for us, your Honours, it's not just what changes were made, it's how
11 those changes were made. For the purposes of the cross-examination, we need to know
12 exactly how were those completely different answers elicited from this witness. It's also
13 relevant if a leading question was not posed, and, in fact, if a question was: Where in
14 Mongbwalu was the filming done by Bosco Ntaganda, it's relevant that the witness
15 responds to that question: Oh, it wasn't Bosco; it was somebody completely different.

16 PRESIDING JUDGE FREMR: [10:08:05] I think it's clear, Ms Luping. No need to
17 elaborate on that.

18 MS LUPING: [10:08:11] Okay. I will shift to my second point, your Honours, which is
19 reading the note. One of my colleagues has actually tallied the time. It was 18 hours in
20 witness preparation. Defence counsel has explained that some of those hours were spent
21 on reading the statement, the 50-page statement, back to him. But, your Honours, that in
22 itself we would argue is a ground for full disclosure, bearing in mind the witness was met
23 for 13 days, one-three days, in 2017, 14 days in total, in fact. So that's two weeks he was
24 met, both in 2014, and 13 days in 2017, including a 50-page statement taken, as we stated,
25 only as at November 2017. So we would question why such a lengthy witness

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1 preparation session was needed.

2 And we would refer your Honours again to both Articles 3 and 4 of the protocol. It's
3 incumbent upon Defence counsel, indeed, not to ask leading questions, including during
4 the witness preparation session, and there should be no hint at all of any form of
5 practising or training or coaching conducted through that. So we are concerned also by
6 the sheer number of hours spent with the witness in relation to his witness preparation.

7 Finally, your Honours, we would look at -- we would refer you, of course, to the
8 alternative. Whilst the Prosecution for the sake of being able to conduct an effective
9 cross-examination, asks for disclosure of the audio video material. Of course, there is the
10 alternative that your Honours yourselves may look at this material and judge for yourself
11 as to whether there is any inappropriate form of questioning, be it leading or otherwise.

12 Thank you, your Honours.

13 PRESIDING JUDGE FREMR: [10:09:54] Thank you, Ms Luping.

14 Mr Bourgon, please, for a brief reply.

15 MR BOURGON: [10:10:01] Once again, I must admit, Mr President, how surprised I
16 am by this debate this morning.

17 I can refer the Chamber to a number of Prosecution witnesses who were met up to 10, 12
18 and more times. We never raised this to say, well, the witness was met a number of
19 times, therefore, a long preparation session indicates impropriety. We never said this to
20 the Prosecution.

21 If we look at the preparation notes given by the Prosecution, they were much less
22 forthcoming than our preparation session notes are. And I refer the Trial Chamber to,
23 again, the preparation session note that was given to the Prosecution for Witness 38.
24 Now, the Prosecution says they want material to conduct a proper cross-examination.
25 We have to also go back to the Defence obligation of disclosure. There was no obligation

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1 of the Defence to put a statement, but we did because we were hoping to use, to
2 accelerate, the proceedings and to use Rule 68(3) in order to have the witness put the
3 statement and get the Prosecution to cross-examine on the statement. That was refused
4 by the Chamber. So now the witness must answer all questions on the content of a quite
5 lengthy statement. So that in itself explains, of course, the length of the preparation
6 session in addition to what I mentioned already.
7 What is more, the Prosecution, having in its possession a detailed statement as to
8 everything that the witness put in his statement, now has a preparation session note
9 which provides more material to the Prosecution in terms of changes made to the
10 statement by the witness. So I see no point whatsoever, no reason whatsoever, no
11 necessity to go beyond the material which is now in the possession of the Prosecution.
12 Saying that they are surprised by the duration, they are surprised by this question, they
13 would like to know how a question was put, Mr President, this simply is contrary to what
14 we've been doing in this case so far, and I believe that it is not necessary to go beyond this
15 point and to simply deny the Prosecution motion.
16 That being said, should the Prosecution cross-examination reveal issues, then maybe at
17 that time there might be a reason then, but for now we think, we believe, and we
18 respectfully submit that we should proceed with the testimony of the witness.
19 The number of hours of a preparation session is certainly not a reason to say, well, it
20 was -- it took a long time, so therefore we'd like to know what happened. It's not what
21 happened; they are given everything that happened, good or bad. They are given
22 material, they have what they need to cross-examine, more than for any other Defence
23 witness, and there's no reason to go beyond that point. They have cross-examination.
24 They have a full statement, a full preparation -- (Overlapping speakers)
25 PRESIDING JUDGE FREMR: [10:14:15] Mr Bourgon, you are in fact repetitive, so do

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1 you have anything new to add?

2 MR BOURGON: [10:14:22] Well, the new information is, there is absolutely no need
3 and it's completely to give this audio recording at this stage as a matter of principle would
4 simply be contrary to what we've done in this case so far. And we -- I'm not happy with
5 being challenged this way by the Prosecution in terms of what I would have done in the
6 preparation session. Thank you, Mr President.

7 PRESIDING JUDGE FREMR: [10:14:47] Thank you, Mr Bourgon.

8 We, the Chamber, will deliberate on the request during upcoming break, but before doing
9 that, I just notice that at the moment the Chamber doesn't have a copy of the preparation
10 note, so I would like to ask Defence to provide by email the Chamber with copy of the
11 preparation note. Feasible? Feasible.

12 So we can conclude this item, and if I understood well, the Defence wanted to address
13 Chamber with another issue, so if that's the case, please, Mr Bourgon, you may proceed
14 with this.

15 MR BOURGON: [10:15:34] Thank you, Mr President. The -- there are two issues to
16 raise with the Chamber at this time, and I thought it was better to do so in the absence of
17 the witness and I think we need to remain in private session.

18 The first issue is -- concerns Defence Witness D-0038. There were submissions made in
19 writing by electronic correspondence to the Chamber. And the last we heard on 31
20 October 2017 is that the Defence would be invited or will be invited to put the
21 submissions below on the record in court at the beginning of the next evidentiary block.
22 So I would like to do so at this time, Mr President.

23 PRESIDING JUDGE FREMR: [10:16:26] All right.

24 MR BOURGON: [10:16:31] The information, Mr President, deals with -- how simply is
25 the best is to read the electronic correspondence, which was forwarded to the Chamber,

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1 which reads as follows. It was sent to the Chamber on 30 October 2017.

2 "To the honourable Judges of Trial Chamber VI, I hereby refer to the testimony of Defence
3 witness D-0038 on 17, transcript 249; 18, transcript 250; and 19, transcript 251,
4 October 2017.

5 On 19 October 2017, at the beginning of the third day of Witness 0038's testimony, the
6 Presiding Judge informed the parties and participants that the Chamber had been
7 informed that there were trouble" – sorry -- "there were some troubles with witness, that
8 he even, for some time, refused to come today.

9 The Presiding Judge went on to say, inter alia, 'Frankly saying if he would refuse to
10 complete his testimony, you know that we have some legal tools and we can then try to
11 compel him to complete, but frankly saying I am not sure that they will, they will work, so
12 I think it's better to use really some approach that would avoid such a risk.'

13 It does appear, based on the information provided by the Presiding Judge, that
14 Witness D-0038's reluctance to complete his testimony had something to do with the
15 manner in which his cross-examination had been conducted up to that moment.

16 At this particular moment, the Defence was not aware of the information which had been
17 communicated to the Chamber by the VWS.

18 However, when meeting with Witness D-0038, in the presence of VWS representatives,
19 after the completion of his testimony, in accordance with the usual procedure, D-0038
20 confirmed that his reluctance to come to court was not related to the manner in which he
21 was cross-examined.

22 Witness D-0038 explained that his reluctance to complete his testimony resulted from the
23 fact that the failure to complete his testimony on Wednesday evening, 18 October, meant
24 that he would not be able to get back home until Monday or Tuesday of the following
25 week, whereas if his testimony had been completed on Wednesday he would have been

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1 back in Bunia by Friday.

2 This genuinely appeared as a source of great concern for the witness who insisted that he
3 needed to go back to (Redacted) as soon as possible in order to supervise the persons working
4 for him for the purpose of mitigating the losses incurred as a result of his travel to The
5 Netherlands.

6 The witness repeatedly underscored his unhappiness that he would not, given flight
7 schedules, be able to get back to (Redacted) until the following week.

8 Subsequent to this meeting, the Defence sought confirmation from the VWS that the
9 concerns expressed by Witness D-0038 during this meeting were the same as those before
10 returning to court on 19 October 2017.

11 The VWS confirm that this was, indeed, the concern raised by D-0038 at that time based
12 on his frustration at having to testify for an increased period of time and in so doing
13 delaying his journey home and preventing him looking for money to support his business.
14 He was also angry that he had not been compensated for his loss of income before giving
15 his testimony.

16 In light of the foregoing, the Defence understands that Witness D-0038 did not express at
17 any time reluctance to testify and/or unwillingness to answer questions during
18 cross-examination or even discomfort at the manner in which his cross-examination was
19 conducted.

20 The Defence is not privy to the information that was provided to the Chamber by the
21 VWS on 19 October. Nevertheless, taking into consideration that Witness D-0038's
22 reluctance to complete his testimony might impact the Chamber's assessment of his
23 credibility, the Defence respectfully request the reasons expressed by Witness D-0038
24 when meeting with the VWS and the Defence be placed on the record as clearly as
25 possible so that the parties have an equal opportunity to make submissions thereon in

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1 their final trial brief.

2 Respectfully submitted on this 30th day of October 2017 by myself."

3 This concludes, Mr President, the reading of the reasons on the record and the issue
4 concerning Witness D-0038.

5 PRESIDING JUDGE FREMR: [10:22:50] Thank you, Mr Bourgon.

6 Any comments from the Prosecution to this issue?

7 MS LUPING: [10:22:57] Mr President, your Honours, we're not privy to this
8 information so it's hard for us to comment on it, except to say that obviously it's for
9 your Honours to make the final assessment as to what the reasons ultimately genuinely
10 may have been or not based on your own assessment as to the witness's credibility.

11 Thank you.

12 PRESIDING JUDGE FREMR: [10:23:14] You're right. Anyway, Legal Representatives,
13 any request to comment this?

14 MS PELLET: [10:23:21] (Interpretation) No, Mr President.

15 MR SUPRUN: [10:23:26] (No interpretation)

16 PRESIDING JUDGE FREMR: [10:23:30] I thank you both.

17 And then still is the second issue remaining. Mr Bourgon, you have the floor.

18 MR BOURGON: [10:23:36] Thank you, Mr President. I'm not -- just returning on the
19 last issue, I'm not sure if my colleague was mentioning that the Prosecution was not aware
20 of the conversations or of the email, but the correspondence itself was distributed at large.

21 The second issue I would like to raise this morning, Mr President, refers to a request that
22 was put to the Prosecution last week concerning Prosecution Witness P-0290.

23 This request was sent to the Prosecution last week on 23 November and we have not
24 received a response to this day. This request, Mr President, is for the Prosecution to

25 disclose whether they have met with Witness P-0290 since he concluded his testimony

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1 before the Chamber and whether they obtained any information from him.
2 It is our position, Mr President, that this information is disclosable pursuant to Rule 76 or
3 Rule 77 or Article 67(2).
4 The Trial Chamber has recently indicated that it was considering recalling
5 witness -- Prosecution Witness P-0290. And the Defence requested from the Chamber,
6 respectfully, some information because, in our view, this is an exceptional procedure,
7 which may impact the rights of the accused. And we requested to have information
8 because to us proceeding with the presentation of the case for the Defence without this
9 information, whether the witness will be recalled and whether -- what information the
10 Chamber is looking for from this witness.
11 But in the meantime, we actually considered requesting a delay of this witness today until
12 we obtain this information, but we decided not to.
13 Regardless, Mr President, we believe that the Prosecution must disclose whether they
14 have met with this witness following his testimony and whether they have obtained any
15 information from the witness which is, of course, disclosable and material to the
16 preparation of the Defence if they did.
17 Mr President, on a couple of occasions previously, the Chamber is aware that the
18 Prosecution has met with certain witnesses, has obtained information from witnesses
19 which was only disclosed much later and in -- which was justified according to the
20 Prosecution by the time required to prepare a transcript, or to translate, or to put a copy in
21 good order.
22 We don't believe that this is proper justification, but today this is not the point, the point is
23 the Prosecution must be in a position to at least inform the Defence immediately whether
24 they have met with Witness 290 and whether they have obtained any information from
25 him that is disclosable so that we are able to prepare meaningful submission should that

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1 be the case at the proper time.

2 So I wrote to my colleague last night, indicated that we were hoping to get at least this
3 quick response and then bind the material following very, very quickly thereafter.

4 Now, Mr President, I cannot but underscore the difference between this request and the
5 request put by the Prosecution this morning concerning that preparation session note.

6 Here we have a disclosure issue that goes straight to the rights of the accused. It's
7 completely different and we require a quick answer to this question, whether it's yes or no.
8 That's my request, Mr President, at this time. Thank you.

9 PRESIDING JUDGE FREMR: [10:28:16] Prosecution, who is ready to reply?

10 MS LUPING: [10:28:21] Mr President, your Honours, whilst the Prosecution is able to
11 confirm that we have no record of any contact with P-290 and the Prosecution at this stage,
12 we are continuing to review our records.

13 We would simply state that we are aware of our disclosure obligations, we are not
14 disputing that, we are simply saying that we are still in the process of reviewing it.

15 We do not see how the request relating to disclosure of contacts with a different
16 Prosecution witness is frankly of relevance to the upcoming Defence Witness D-17, we
17 don't see any correlation.

18 As regards the decision concerning P-290, we also consider it is rather premature at this
19 stage as the Chamber has not come to its final discussion concerning recalling him as a
20 witness. But regardless of that, we are looking in our records and we have not found
21 anything at this stage, but we will continue to search, your Honours.

22 PRESIDING JUDGE FREMR: [10:29:18] Thank you.

23 Mr Bourgon.

24 MR BOURGON: [10:29:22] Mr President, this is wholly unsatisfactory and not helpful.

25 The question is very easy: Did they obtain more information since he last testified?

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1 They know this. This is not something that you dig in the records. They must know
2 this. They know this and they can answer the questions right away, whether it's a yes or
3 no. Saying that we are looking into our records is simply doesn't answer the question.
4 My colleague says there is no correlation between this request and the witness.
5 Mr President, the Witness 290, the Chamber is considering recalling the witness, we don't
6 know the reason, but we expect it must be some important reason. If the Prosecution has
7 obtained any additional information from the witness since he testified, considering that
8 Mr Ntaganda testified and that the information related to Witness P-0290 was mentioned
9 during the testimony of the accused, they have to disclose, it is part of their disclosure
10 obligation. I understand they know their disclosure obligation. And the answer can be
11 very easy, yes, we did or no, we did not. There is no need to look into records for this.
12 It is not a premature request, it is a valid request because if they did meet, regardless of
13 the Chamber's request to recall P-0290 it would be a violation of the Prosecution's
14 disclosure obligation if they have not disclosed anything to this day that they have
15 obtained from that witness.
16 The answer can be given, Mr President, and we respectfully request the Chamber to
17 obtain a firm answer from the Prosecution quickly, yes or no, did they meet, do they have
18 additional information from a witness who has testified and who is material to the
19 Defence case? Thank you.
20 PRESIDING JUDGE FREMR: [10:31:22] Ms Luping.
21 MS LUPING: [10:31:25] I can state, your Honours, that there has been no interview of
22 P-0290 subsequent to his testimony. We have no substantive contact with him. There
23 has been no substantive contact with the witness following his testimony.
24 PRESIDING JUDGE FREMR: [10:31:40] Thank you.
25 Now we will need, we normally should break for 30 minutes but we will need, I guess, at

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1 least one hour to deliberate on the submission made by Prosecution, so we will reconvene
2 and then we will have to adjust the remaining plan of this day accordingly, but at the
3 moment we will break and we will reconvene at half past 11.

4 THE COURT USHER: [10:32:16] All rise.

5 (Recess taken at 10.32 a.m.)

6 (Upon resuming in open session at 11.32 a.m.)

7 THE COURT USHER: [11:32:48] All rise.

8 PRESIDING JUDGE FREMR: [11:33:21] So we are opening our second session today.

9 And I have to announce how our time schedule for today will change due to some
10 unexpected submissions in the morning. So this session will take from now till
11 1 o'clock p.m., and then we have to, because of logistical reasons, we have to shorten a bit
12 lunch break and we will have to start at quarter past 2, and to have as a usually two-hour
13 session, which means finish at quarter past 4.

14 Now we will have for a few minutes, move into private session, because I would like to
15 deliver the Chamber's ruling concerning the morning submission, which also were issued
16 or were made in private session, so I also have to render this ruling in private session.
17 Court officer, let's move into private.

18 (Private session at 11.34 a.m.) *(Reclassified partially in public)

19 THE COURT OFFICER: [11:34:42] We are in private session, Mr President.

20 PRESIDING JUDGE FREMR: [11:34:54] Thank you, court officer.

21 So our oral decision concerns request relating to the testimony of the current witness, who
22 is Witness D-0017, and whom I will refer to as "Witness".

23 At the beginning of the hearing of today, 27 November 2017, the Prosecution made a
24 request for disclosure of the video recording of the preparation session of Witness D-0017,
25 and I will refer to this request as "Request".

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1 The Defence opposed the request on the basis that it does not fulfil the requirements set
2 out in paragraph 13 of the Witness Preparation Protocol. This is found at the annex to
3 filing 652. And I will hereafter refer to it as "the Protocol".

4 As a preliminary matter the Chamber notes that it would have been assisted by timely
5 transmission of the relevant preparation note prior to the commencement of today's
6 hearing and directs the parties to ensure such timely transmission for all future witnesses.

7 Turning to the Request, the Chamber recalls that paragraph 2 of the Protocol provides
8 that, and I quote, "Witness preparation should not be conducted for the purpose of
9 seeking new evidence or continuing the calling party's investigations."

10 And then paragraph 3 provides that:

11 "Any attempt to influence a witness to testify to factual events that the witness did not
12 observe or perceive is prohibited. Coaching, training or practising are not allowed."

13 The Chamber also recalls that the witness preparation sessions are recorded, "As a
14 safeguard" and that pursuant to Article 13 of the protocol, the Chamber, if it considers
15 necessary, may review the recording itself or order the disclosure of the recording.

16 The Chamber has reviewed the witness preparation note for D-0017 and notes that it
17 contains detailed information. In relation to the allegations regarding the way in which
18 the witness preparation session was conducted and having considered the explanations
19 provided by the Defence, in relation to the examples cited, the Chamber does not find any
20 well-founded reasons for suspicion of impropriety on the part of Defence counsel,
21 including within the meaning of Articles 2 and 3 of the Protocol.

22 Accordingly, the Chamber considers that the issues raised by the Prosecution in relation
23 to the witness preparation note may be most appropriately explored through
24 cross-examination.

25 Taking two examples referred to by the parties, the Chamber is of the view that any

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1 discrepancies in the witness's knowledge of whether or not Mr Ntaganda filmed certain
2 events near Mongbwalu, referred to in the witness preparation note and statement, or
3 identification of certain individuals such as (Redacted) can be adequately
4 explored through the questioning of the witness.

5 Accordingly, the Chamber is of the view that the manner in which the preparation was
6 conducted is in line with the permitted scope and thus rejects the request.

7 Notwithstanding, if, on the basis of matters arising during the witness's testimony, the
8 Chamber considers that recourse to the video recording of the witness preparation session
9 is warranted, it shall consider the issue further at the relevant time.

10 That concludes the Chamber's ruling.

11 And now we can return back into open session.

12 Court officer, please.

13 (Open session at 11.39 a.m.)

14 THE COURT OFFICER: [11:39:58] We are back in open session, Mr President.

15 PRESIDING JUDGE FREMR: [11:40:05] Thank you, court officer.

16 So I can start with saying that today we are going to commence the fifth evidentiary block
17 of the presentation of evidence by the Defence, which is scheduled to run from today
18 until 15 December 2017. And today, we will begin with the testimony of D-0017. But
19 before that, I will address a few pending matters, including certain email submissions and
20 rulings to be placed on the record.

21 I will commence with the ruling on the Prosecution request for the Chamber to decline to
22 hear the testimony of Witness D-0214, filed on 6 October 2017 and bearing filing
23 number 2055, which I will refer to as the "Request".

24 On 19 October 2017, the Defence responded to the request in filing number 2077.

25 Therein, while opposing the request, the Defence indicated that on 17 October 2017, it was

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1 informed by the witness that he is no longer willing to testify and that, as a result, the
2 witness shall not be called. The Defence therefore requests that the Chamber declare the
3 request moot.

4 Thus, in light of this, the Chamber hereby declares the request moot. This concludes the
5 Chamber's ruling.

6 Now, the other issue, which pertains to the reclassification of evidence.

7 On 22 August 2017, the Chamber directed via email the parties and participants to
8 coordinate with each other, review the case record and indicate, by 31 October 2017, any
9 items that can be reclassified as public and to provide reasons for any admitted items to
10 remain confidential.

11 On 31 October 2017, the Legal Representative of Victims of the attacks and the Prosecution
12 filed their submissions, bearing filing numbers 2089 and 2091 respectively. By email of 3
13 November 2017, the Defence informed the Chamber that it does not have any proposal for
14 the reclassification of items admitted into evidence from confidential to public at this stage
15 and intends to submit as soon as practically possible its observations on the Prosecution's
16 and LRV's recommendations.

17 Defence, could you now indicate at what time we can expect your submission on that?

18 MR BOURGON: [11:43:48] Thank you, Mr President. We have begun working on this
19 matter. I do not have an exact estimate for the Chamber, but I would advance the
20 possibility that at the same time at the end of this block is the time we would be able to file
21 our submissions, so no later than 15 December, but hopefully at least a week sooner, but I
22 cannot make that a firm submission at this time. Thank you.

23 PRESIDING JUDGE FREMR: [11:44:21] Understood and well noted.

24 I turn now to matters related to today's witness, D-0017.

25 First the, Chamber notes for the record that via email on 20 October 2017, the Chamber

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1 granted the Defence request to postpone the witness's testimony from the fourth to the
2 current fifth evidentiary block on the basis that the Defence had encountered unforeseen
3 scheduling difficulties in relation to meeting with this and with other Defence witnesses.
4 Second, the Chamber recalls its decision dated 22 November 2017, bearing filing
5 number 2125, granting the Defence request for protective measures in relation to the
6 witness in the form of voice and face distortion during the witness's testimony and the use
7 of a pseudonym for the purposes of the trial.

8 Third, the Chamber indicates that in accordance with the vulnerability assessment for the
9 witness provided by the VWU on 21 November 2017, no special measures are
10 recommended for the witness.

11 And finally, and noting that the Chamber rejected the Defence request to admit the prior
12 recorded testimony of this witness under Rule 68(3) contained in the decision bearing
13 filing number 2124, I recall that the Defence has indicated that it estimates it will require
14 six hours for its examination-in-chief of the witness, which has been accepted by the
15 Chamber.

16 So that completes the preliminary matters for this morning, and if there are no further
17 matters, we can now start with testimony of Witness D-17. Ms Luping, please.

18 MS LUPING: [11:46:39] Yes, Mr President, your Honours, just simply to note for the
19 record that Ms Marion Rabanit has left the courtroom and Mr Rens van der Werf has
20 joined the team.

21 PRESIDING JUDGE FREMR: [11:46:49] Thank you very much, Ms Luping, for this
22 update.

23 And now I'm asking court officer to bring Mr Witness into the courtroom.
24 Mr Bourgon.

25 MR BOURGON: [11:47:03] If I may very quickly, Mr President. Regarding the

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1 transmission of preparation session notes to the Chamber, I stand to be corrected. I did
2 not know that this was a requirement to automatically provide the Chamber with this
3 note. We thought it was better for the Chamber not to have this note and, actually, we
4 were not -- we were -- we did not like the Prosecution's practice of doing so. So I
5 apologise, and we will ensure that we send those notes to the Chamber has requested.
6 We thought it wasn't necessary. I apologise. Thank you.

7 PRESIDING JUDGE FREMR: [11:47:38] Very well. And apology accepted.

8 (The witness enters the courtroom)

9 PRESIDING JUDGE FREMR: [11:47:53] Mr Witness, good morning. Can you hear me
10 well?

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12 (The witness speaks Swahili)

13 THE WITNESS: [11:48:06] (Interpretation) Yes, I can hear you.

14 PRESIDING JUDGE FREMR: [11:48:10] Now I got the translation. Fine.

15 Mr Witness, allow me to start by saying that you are called to testify in the case against
16 Mr Bosco Ntaganda and you soon will be asked questions both by the Judges and lawyers
17 here in the courtroom. And at the beginning I would like to provide you with some
18 guidance for answering the questions.

19 Please listen carefully to the questions. If you do not understand, feel free to ask for the
20 question to be repeated. We want you to tell the truth and tell us what you saw, heard or
21 sensed, yourself. Please testify just on that which you really remember. Don't guess,
22 don't make things up. There is nothing wrong in saying "I don't know" or "I don't
23 remember".

24 Mr Witness, do you understand all this?

25 THE WITNESS: [11:49:33] (Interpretation) Yes, I've understood you well.

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1 PRESIDING JUDGE FREMR: [11:49:36] Good.

2 Now, another issue, Mr Witness, protective measures are put in place to ensure that your
3 identity is not revealed to the public. This means that the public cannot see your face
4 today and that your voice is being disguised so that the public cannot recognise it. We
5 will refer to you as "Mr Witness" only and ensure that your name and any other
6 information that risks revealing who you are is not broadcast to the public. Therefore,
7 whenever you need to describe anything that might reveal your identity, we will do so in
8 private session so that no one can hear your answer, no one outside the courtroom. Do
9 you understand that, Mr Witness?

10 THE WITNESS: [11:50:42] (Interpretation) Yes, I've understood you well.

11 PRESIDING JUDGE FREMR: [11:50:45] Very well. Now, Mr Witness, I would like
12 you to take your solemn undertaking, so I will read out the text of that undertaking and
13 you can repeat after me. So I'm starting, and please repeat after me: I solemnly
14 declare --

15 THE WITNESS: [11:51:14] (Interpretation) I solemnly declare --

16 PRESIDING JUDGE FREMR: [11:51:16] -- that I will speak the truth --

17 THE WITNESS: [11:51:20] -- that I will speak the truth --

18 PRESIDING JUDGE FREMR: [11:51:29] -- the whole truth --

19 THE WITNESS: [11:51:38] -- the whole truth.

20 PRESIDING JUDGE FREMR: [11:51:41] Sorry -- and nothing but the truth.

21 THE WITNESS: [11:51:49] -- and nothing but the truth.

22 PRESIDING JUDGE FREMR: [11:51:52] Thank you, Mr Witness. Now your
23 undertaking is completed. And it means that from now -- you can put your hand down.
24 And now you are under oath, so you also need to be aware that it is an offence to give
25 false testimony. Do you understand that?

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1 THE WITNESS: [11:52:23] (Interpretation) Yes, I understand.

2 PRESIDING JUDGE FREMR: [11:52:26] All right. And finally, a few practical matters
3 you should have in mind when giving your testimony.

4 It's important to speak into the microphone, and you are doing it well so far, to speak
5 clearly and to speak at a slow pace in order to allow the interpreters to translate
6 everything. When a question is asked, please do not respond immediately. Wait at least
7 for three seconds and only then give your answer. This pause of three seconds is
8 essential for us to properly translate, hear and record what you will be saying.

9 Have you understood all that?

10 THE WITNESS: [11:53:22] (Interpretation) Yes, I've well understood.

11 PRESIDING JUDGE FREMR: [11:53:27] Very good. So we now can start with your
12 testimony. And I will give floor to Mr Bourgon, which is counsel of the Defence, who
13 will start with your examination.

14 Mr Bourgon, you have the floor. And we are in open session.

15 MR BOURGON: [11:53:54] (Interpretation) Thank you, your Honour.

16 QUESTIONED BY MR BOURGON: (Interpretation)

17 Q. [11:53:59] Good morning, Witness.

18 A. [11:54:07] Good morning, Counsel.

19 Q. [11:54:09] We know each other, but allow me for the record to introduce myself.
20 My name is Stéphane Bourgon and with my colleagues present here, together we are
21 representing Bosco Ntaganda in this case. Do you understand that?

22 A. [11:54:32] Yes, I understand.

23 Q. [11:54:35] So we are going to start, Witness, by asking certain questions concerning
24 your personal information. In order to do so, we will go into private session, as
25 indicated by the Presiding Judge.

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1 MR BOURGON: [11:54:56] (Interpretation) Your Honour, we can go into private
2 session, if you would be so kind

3 PRESIDING JUDGE FREMR: [11:55:01] Mr Bourgon, for the interest of public, could
4 you estimate how much time we will spend in private, just roughly, now at the
5 beginning?

6 MR BOURGON: [11:55:15] (Interpretation) I think that the first section on
7 identification shouldn't be longer than 15 minutes.

8 PRESIDING JUDGE FREMR: [11:55:21] Thank you.
9 Court officer, now let's move into private session.

10 (Private session at 11.55 a.m.) *(Reclassified partially in public)

11 THE COURT OFFICER: [11:55:35] We are in private session, Mr President.

12 PRESIDING JUDGE FREMR: [11:55:42] Thank you, court officer.
13 Mr Bourgon, please proceed.

14 MR BOURGON: [11:55:50] (Interpretation) Thank you, your Honour.

15 Q. [11:55:53] Witness, in this session related to the hearing, we're going to ask for
16 some personal information from you. First of all, I would like you to tell us, for the
17 purposes of the record, your full name.

18 A. [11:56:28] Very well. My (Redacted)

19 Q. [11:56:42] As you know, Witness, we will be speaking together during your
20 testimony about events that occurred when you were with a particular armed group.

21 And I would like to know if you had another name, a nickname that was given to you for
22 use within that context?

23 A. [11:57:14] Yes. I can give you the nickname that was used at that time.

24 Q. [11:57:26] What is that nickname?

25 A. [11:57:34] (Redacted)

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- 1 A. [12:02:21] (Redacted)
- 2 Q. [12:02:27] (Redacted)
- 3 (Redacted)
- 4 A. [12:02:49] (Redacted)
- 5 Q. [12:03:00] (Redacted)
- 6 (Redacted)
- 7 A. [12:03:22] (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 Q. [12:03:45] (Redacted)
- 11 A. [12:04:04] (Redacted)
- 12 (Redacted)
- 13 Q. [12:04:25] What's your level of education? What's the last year you attended at
- 14 school?
- 15 A. [12:04:47] I went to second grade in primary school -- in secondary school, sorry.
- 16 Q. [12:04:58] And where did you study, the second year of the secondary school?
- 17 A. [12:05:13] I studied in Mongbwalu.
- 18 PRESIDING JUDGE FREMR: [12:05:22] Sorry to interrupt. One additional question
- 19 from my part. So at what age you finished the secondary education? What was your
- 20 age when you finished?
- 21 THE WITNESS: [12:05:48] (Interpretation) When I dropped out of school, in fact I
- 22 was actually trading as well, and I was 16. I had a small shop and I was 16 when I
- 23 dropped out of school.
- 24 PRESIDING JUDGE FREMR: [12:06:10] Thank you.
- 25 Mr Bourgon, sorry to interrupt you. Please proceed.

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1 MR BOURGON: [12:06:18] (Interpretation) Thank you, your Honour.

2 Q. [12:06:21] After having dropped out of secondary school, what were you doing at
3 that time?

4 A. [12:06:34] I had to drop out of school. Even though my father wanted me to
5 continue my studies, I had to drop out and I started as a shopkeeper. And this is why I
6 dropped out of school. I was actually attending to the shop with (Redacted)

7 Q. [12:07:11] What is your current profession as of today, Witness?

8 A. [12:07:17] I dropped out of school, and this is why I started a business or a shop,
9 and I'm still running the business as of today.

10 Q. [12:07:40] Amongst your children, do any of them work in your business?

11 A. [12:07:57] Yes, my second child does not go to school because he has to help out his
12 mother, who is pregnant.

13 Q. [12:08:19] How old is she?

14 A. [12:08:26] My daughter is (Redacted)

15 Q. [12:08:32] (Redacted)

16 (Redacted)

17 A. [12:09:03] (Redacted)

18 (Redacted)

19 Q. [12:09:20] For the clarity of the transcript, could you please spell out the name that
20 you just said. The name that you just mentioned, could you please spell it out. If need
21 be, I can provide you with a piece of paper or you could just spell it out right from there.

22 PRESIDING JUDGE FREMR: [12:09:53] Mr Witness, to facilitate this task, the court
23 usher will provide you with a piece of paper and pencil.

24 THE WITNESS: [12:10:39] (Interpretation) If you allow me, your Honour, I can spell
25 out my name.

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- 1 PRESIDING JUDGE FREMR: [12:10:49] (Overlapping speakers)
- 2 THE WITNESS: [12:10:59] (Interpretation) (Redacted)
- 3 (Redacted)
- 4 MR BOURGON: [12:12:07] (Interpretation)
- 5 Q. [12:12:07] At what point in time, Witness, did you use this name?
- 6 A. [12:12:27] This name was given to me when I was born in (Redacted) I only changed
- 7 it when I was baptised.
- 8 Q. [12:12:45] Do you remember the date when you were baptised?
- 9 A. [12:13:03] No, I cannot recall this date.
- 10 Q. [12:13:11] Last question with regards to your personal information. Where did
- 11 you meet the mother of your first child?
- 12 A. [12:13:36] In a nutshell, I would say that I met her when I was doing military
- 13 service.
- 14 Q. [12:13:49] With which armed group were you doing your military service?
- 15 A. [12:14:06] I would say that I was part of the UPC.
- 16 Q. [12:14:19] Do you know what UPC stands for?
- 17 A. [12:14:36] Yes.
- 18 Q. [12:14:45] Could you please tell me what UPC stands for?
- 19 A. [12:15:02] It's an abbreviation which means union des patriotes congolais pour la
- 20 libération, which means the Union of Patriotic Congolese for Freedom.
- 21 Q. [12:15:22] We are now going to move to public hearing, but as I explained when
- 22 we met for the preparation, if you feel that a question or an answer could allow a person
- 23 to identify you, please raise your hand so that we can move to private session. Do you
- 24 understand what I just said?
- 25 A. [12:15:58] Yes, I understand.

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1 MR BOURGON: [12:16:02] (Interpretation) Your Honour, can we now move into
2 public session with the possibility of coming back to a private session?

3 PRESIDING JUDGE FREMR: [12:16:13] Certainly.

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

5 (Open session at 12.16 p.m.)

6 THE COURT OFFICER: [12:16:21] We are back in open session, Mr President.

7 PRESIDING JUDGE FREMR: [12:16:32] Thank you, court officer.

8 And to inform public, there is a high likelihood that we will deal with some information
9 that could reveal witness identity and if it will be the case, we will again have to move
10 into private session.

11 Now we are in open session, and Mr Bourgon, please proceed.

12 MR BOURGON: [12:17:06] (Interpretation) Thank you, your Honour.

13 Q. [12:17:08] Witness, you said that you'd already been part of the UPC group. Did
14 you undergo any military training with this group?

15 A. [12:17:38] Yes, I did. I can tell you where. I did undergo military training.

16 Q. [12:17:48] Where did you undergo military training?

17 A. [12:17:54] I underwent my military training in a place called Mandro.

18 Q. [12:18:03] When you started your military training, where were you living at that
19 point in time?

20 A. [12:18:23] Before I started my military training I was living in Mongbwalu.

21 Q. [12:18:32] Could you tell us why you underwent a military training at that point of
22 time?

23 A. [12:19:19] I can say that the reason why I underwent this military training was as
24 follows: We were told that everyone who were in small business could undertake
25 military training because we were told that there's going to be killings in our village, and

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1 this is precisely why I underwent the military training.

2 Q. [12:19:52] Could you tell us the security situation in Mongbwalu when you
3 decided to do this military training?

4 A. [12:20:16] In the place where I was living, they -- it was some -- there was some
5 calm, even though we heard rumours about troubles out and about.

6 Q. [12:20:38] You just mentioned rumours. Can you tell us what these rumours were,
7 some of the rumours, at least?

8 A. [12:21:01] According to the rumours, there was some insecurity, there were people
9 who were killed and there were meetings held in Sayo, and it's because of all these
10 rumours that I mustered up the courage to go and follow a military training. There were
11 vehicles of businesses that were confiscated.

12 Q. [12:21:39] Let's start off with Sayo. What was happening in Sayo? Who was
13 holding these meetings that you spoke about in Sayo?

14 A. [12:22:09] Where -- I was working in the (Redacted) and there was a group of
15 people in Sayo, and these people were meeting so that we could join the army. And they
16 forewarned of imminent attacks in our region.

17 Q. [12:22:53] In your last answer you said that there were people who were meeting
18 so that you could join the army. Who were these people who were meeting to help you
19 join the army, who were these people?

20 A. [12:23:26] I would say that according to what was said, first of all, where -- the
21 place I was living when my parents heard these rumours, they decided that we had to go
22 and do this military training in order to ensure the safety of our village.

23 Q. [12:23:59] That's in your family. But you also said earlier that there were people
24 who were meeting to help you join the army.

25 Who were these people who were meeting?

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1 A. [12:24:26] Why did I speak about my family members? It's because there was a
2 group that was there in our village who heard of these rumours and who heard of the
3 people who were meeting.

4 Q. [12:24:44] Were you part of this group?

5 A. [12:24:52] No, I wasn't part of this group.

6 Q. [12:24:56] To come back to Sayo, who were meeting in Sayo and what were
7 precisely these rumours that you heard?

8 A. [12:25:28] I don't know. I don't know if it would be -- I would -- I don't know if
9 it's necessary to move into a private session before I can answer this question.

10 MR BOURGON: [12:25:41] Your Honour, can we move to private session, please?

11 PRESIDING JUDGE FREMR: [12:25:45] (Overlapping speakers) court officer, let's
12 move into private session.

13 (Private session at 12.25 p.m.) * Reclassified entirely in public

14 THE COURT OFFICER: [12:25:57] We're in private session, Mr President.

15 PRESIDING JUDGE FREMR: [12:26:05] Thank you, court officer.

16 And, Mr Bourgon, you may proceed.

17 MR BOURGON: [12:26:11] (Interpretation) Thank you, your Honour.

18 Q. [12:26:17] Witness, we're in private session. My question was, what rumours did
19 you hear in Sayo? Who were these people who were meeting in Sayo?

20 A. [12:26:40] I would like to say that since businessmen were killed in broad daylight
21 and their goods and their belongings were pillaged, and this was done by the Lendus in
22 the village of Nyangarai, and this is precisely why the groups were meeting, because we
23 feared that the killings would actually come to our doorstep.

24 Q. [12:27:15] And what was exactly happening in Sayo?

25 A. [12:27:35] It will be hard for me to describe what was happening in Sayo because I

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1 wasn't there, but people who had information told that there were people who were
2 gathering there and their intention was to attack us.

3 Q. [12:28:02] According to what you heard, who were these people who were
4 gathering with the intention of attacking you and who were looking for weapons,
5 machetes?

6 A. [12:28:24] I would say that it was the Lendu groups.

7 Q. [12:28:35] When you say "Lendu", could you be more specific? All Lendus or a
8 part of them? Could you please give more information about what you mean when you
9 say "Lendus".

10 PRESIDING JUDGE FREMR: [12:28:55] Hold on, Mr Witness.

11 Ms Luping.

12 MS LUPING: [12:29:03] Just a question as to whether these questions and answers
13 really have to be listed in private session. We've moved beyond what appear to be
14 identifying information.

15 PRESIDING JUDGE FREMR: [12:29:17] Mr Bourgon, at least, two last questions I think
16 could be responded in open session. I don't know what is your further plan or further
17 questions, whether does it really make sense to move, if just for one question, it wouldn't
18 make sense, so I don't know what is your further plan of questioning.

19 MR BOURGON: [12:29:45] (Interpretation) I agree with the Chamber, your Honour.
20 I have one question that must be asked in private session, and then I will move to open
21 session for the answer that -- for the answer of the question I just asked. My colleague is
22 right, the last information is confidential, so can I just ask two or three questions
23 immediately in closed session and -- in private session and then move on to public
24 session.

25 PRESIDING JUDGE FREMR: [12:30:14] (Overlapping speakers)...for the three

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1 questions continue in private.

2 MR BOURGON: [12:30:31] (Interpretation) Thank you, your Honour.

3 Q. [12:30:37] Mr Witness, we're still in private session, and I would like to know
4 among the members of your family, your brothers and sisters, did any of them also join
5 the UPC?

6 A. [12:31:12] Among my brothers and sisters, nobody joined the UPC.

7 Q. [12:31:22] And when you re-joined the UPC, what did your parents think of this,
8 did they agree or not?

9 A. [12:31:44] My parents were in favour because at the time we were being told we
10 would follow military training, after which we would return home to ensure the security
11 of our village. So they had no problem with that.

12 Q. [12:32:15] And is there a reason, Mr Witness, why you were the only member of
13 your family to have undertaken military training?

14 A. [12:32:34] The first reason was that the first or the eldest children in the family
15 were girls and we were three boys. One was at school in Bunia, and the other was not
16 suited to military training, which is why I was the only one to follow this military
17 training.

18 Q. [12:33:14] And one final question in private session. You said there on page 54,
19 line 15 in French, you said that traders were robbed in broad daylight and this was -- that
20 goods were taken and this is why they were attacked by the Lendus in Nyangarai and this
21 is why we joined -- we in our group joined. When you say "our group", who do you
22 mean?

23 A. [12:34:09] I would say Hema.

24 MR BOURGON: [12:34:16] (Interpretation) Your Honour, we can now return to
25 public session.

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1 PRESIDING JUDGE FREMR: [12:34:22] Court officer, please return back into open.

2 (Open session at 12.34 p.m.)

3 THE COURT OFFICER: [12:34:31] We are in open session.

4 PRESIDING JUDGE FREMR: [12:34:42] Thank you, court officer.

5 Mr Bourgon, please proceed.

6 MR BOURGON: [12:34:53] (Interpretation) Thank you, your Honour.

7 Q. [12:34:55] A little while ago, Mr Witness, I asked a question which I don't think
8 you answered. You said that in Sayo it was the Lendu. Can you give any further
9 clarification. When you say "the Lendu", who do you actually mean?

10 A. [12:35:28] I don't know whether this is an ambiguous term. I can't describe them
11 any other way. I would just say it was Lendu who were opposed to the Hema.

12 Q. [12:35:49] Okay. Now I'd like to move on to discussing your training. You told
13 us you undertook military training in Mandro. Where did you go first when you went to
14 Mandro?

15 A. [12:36:18] I'm afraid I didn't quite understand your question. Are you talking
16 about the training centre?

17 Q. [12:36:31] Yes, I will make this clearer. And it is quite good that you asked me.
18 Please, do ask for any clarification when you need it.

19 When you arrived in Mandro, at the Mandro training camp, to undertake your military
20 training, where was the first place that you went?

21 A. [12:36:55] I will try to answer your question. In order to enrol in this training, we
22 went to the office of the Mandro collectivity.

23 Q. [12:37:35] You said that you were in this place for the enrolment. Who was in
24 charge of the -- of this enrolment, if you can remember?

25 A. [12:37:56] Where we were enrolling there was a sergeant Peter.

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1 Q. [12:38:08] What questions did Peter ask when he was carrying out the enrolment?

2 PRESIDING JUDGE FREMR: [12:38:17] (Overlapping speakers) Ms Luping.

3 MS LUPING: [12:38:22] Yes, your Honours, just a request for clarity on dates, please.

4 This will be very important for the Prosecution at the time of cross-examination, but at
5 this stage we don't have any indication as to the time period.

6 PRESIDING JUDGE FREMR: [12:38:39] Mr Bourgon, I think it will be even beneficial
7 for the Chamber. Could you put one or two additional questions on that aspect.

8 MR BOURGON: [12:38:59] (Interpretation) I can indeed, but I do believe the date will
9 become clear in my further questions, but to assist my colleague, I will ask the witness.

10 Q. [12:39:11] Mr Witness, can you recall a date or a period for when you went to
11 Mandro to start your military training?

12 A. [12:39:40] I can only reply in terms of the year. The month or the date itself I can't
13 give you because we're talking about a very long time ago. And I didn't -- I don't have in
14 my head either the month or the date.

15 Q. [12:40:09] So in terms of the year, can you give us an indication of which year this
16 was?

17 A. [12:40:32] If I recall correctly, this would have been 2001.

18 PRESIDING JUDGE FREMR: [12:40:42] An intervention from my part.

19 Mr Witness, just to guide you, it's absolutely correct if you don't remember. Please do
20 not fabricate these things. It's really a long time ago. It's better to say, "I don't
21 remember those details" and that's it. So there's nothing wrong.

22 Mr Bourgon, please proceed.

23 MR BOURGON: [12:41:14] (Interpretation) Thank you, your Honour.

24 Q. [12:41:16] Mr Witness, the year you started training in Mandro, was that the same
25 year in which you took part in your first fighting?

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1 A. [12:41:50] I'm not sure I've completely understood your question. Would you
2 please repeat it for me.

3 Q. [12:42:00] Do you have any way of remembering which year it could have been
4 that you joined the training?

5 A. [12:42:38] I'm sorry, I still do not understand your question.

6 Q. [12:42:43] I will tackle it differently. Do you know anyone called Lompondo?

7 A. [12:42:56] Yes. I have heard of him, but I've never met him. I was told that he
8 was the governor of Ituri and he was in charge of the APC.

9 Q. [12:43:24] And when -- was it during the period that he was in this position that
10 you went to join military training?

11 A. [12:43:39] Yes. Yes, I would say it was then.

12 Q. [12:43:46] So I come back now to the question I was asking earlier. You
13 mentioned Peter. What questions did Peter ask during the enrolment process for this
14 military training?

15 A. [12:44:16] I will try and recall what he asked us. Firstly, our names, the names of
16 our parents and where we came from.

17 Q. [12:44:30] Were there any questions relating to your physical fitness or any other
18 subjects?

19 A. [12:44:56] Questions about our physical fitness or illnesses, no, there were no
20 questions regarding those topics.

21 PRESIDING JUDGE FREMR: [12:45:07] Ms Luping.

22 MS LUPING: [12:45:09] Mr President, could I just ask that the witness be asked to
23 remove his headphones for my next submission.

24 PRESIDING JUDGE FREMR: [12:45:15] For sure.

25 Mr Witness, could you kindly get off your headphones because we don't want to escort

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1 you out of the courtroom, but you shouldn't listen to what now will be said.

2 So please. Yes.

3 Now, Ms Luping, please proceed.

4 MS LUPING: [12:45:35] Mr President, I would just ask that Defence counsel be

5 reminded not to ask any leading questions. He can simply ask in a more open-ended

6 way the types of questions that were put to the witness and the context of enrolment.

7 We are getting close to a part relating to his statement, and it would be useful to see how

8 the witness responds more spontaneously as to the precise types of questions put to him,

9 rather than putting a set list of questions that are simply listed off to the witness.

10 PRESIDING JUDGE FREMR: [12:46:08] Mr Bourgon, your position.

11 MR BOURGON: [12:46:21] (Interpretation) Thank you, your Honour. (Overlapping

12 speakers)

13 PRESIDING JUDGE FREMR: [12:46:27] (Overlapping speakers) so I am asking for your

14 position, but maybe I can be brief. I don't find those questionings wrong because, you

15 know, if you started to speak about, ask Mr Witness about enrolment procedure, you just

16 proposed one of the possible questions put to him. I don't find this question leading.

17 Please proceed.

18 And, Mr Witness, you can get your headphones back.

19 MR BOURGON: [12:47:01] (Interpretation) Thank you, your Honour.

20 Q. [12:47:12] Mr Witness, were you asked to present any documents during this

21 enrolment procedure?

22 A. [12:47:36] No. No documents were required in order to enroll.

23 Q. [12:47:44] As far as you can recall, the recruits who were there with you, did they

24 have any documents?

25 A. [12:48:06] No. As far as I can recall, no. I would say that there were no

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1 such documents.

2 Q. [12:48:14] Could you explain to us how this procedure took place, when Peter
3 asked you the questions. Can you explain to us what happened?

4 A. [12:48:39] Once we'd had the questions about our names, the names of our parents
5 and our origins had been asked, he asked us to put our arm -- we were asked to put our
6 arm around our head to touch our ears.

7 Q. [12:49:03] And why did he do that?

8 A. [12:49:23] If I understood the purpose correctly, it was to try and assess
9 somebody's age because there were no documents. This exercise was required of us so
10 that he could tell.

11 Q. [12:49:43] And what would have been expected to have been the correct age for
12 this so that you could be admitted to the centre?

13 A. [12:50:05] Before we left our homes to go to the training centre, we knew that one
14 had to be 18 to undertake the training. So this is why we went there, taking account of
15 the required age.

16 Q. [12:50:35] Mr Witness, in the training centre what information were you given
17 relating to age in relation to the training?

18 A. [12:51:07] Apart from the exercise that I just described, we were asked nothing
19 further with regard to inquiring about our age.

20 Q. [12:51:25] And as far as you can recall, what happened to those who were unable
21 to perform this task, who failed this test?

22 A. [12:51:50] As I have just said, the group I was part of, well, we all knew that we
23 met the age criterion and in our group nobody failed this test.

24 PRESIDING JUDGE FREMR: [12:52:09] Sorry to interrupt you, Mr Bourgon, I would be
25 personally interested. Could you, Mr Witness, just show us this test, this exercise

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1 yourself? You know, could you show it to us, this test, with hands and ears now?

2 THE WITNESS: [12:52:36] (Interpretation) That was what we were asked to do.

3 PRESIDING JUDGE FREMR: [12:52:40] Thank you very much. Now I fully
4 understand.

5 Mr Bourgon, please proceed.

6 MR BOURGON: [12:52:48] (Interpretation) Thank you, Mr President.

7 For the purpose of the transcript, the witness with his right arm touched his left ear.

8 Q. [12:53:00] What did this test prove? What was it -- what was its purpose?

9 A. [12:53:18] As I said earlier, I think that this test made it possible to determine
10 somebody's age since there were no documents that could be used for that.

11 Q. [12:53:44] During your training, were all the recruits of the age you mentioned
12 earlier?

13 A. [12:54:15] As I said, in my group everyone was confident about their age, but with
14 regard to other groups from elsewhere, we couldn't be sure about their ages, we couldn't
15 be too sure about their ages.

16 PRESIDING JUDGE FREMR: [12:54:42] Sorry to interrupt, Mr Bourgon. I have to put
17 another additional question again at this moment.

18 So you said there were no documents. It's clear. You said there was this test with hand.

19 And my question is: Were there any questions put explicitly to recruits on their age?

20 Did anybody ask a single recruit, "What is your age?"

21 THE WITNESS: [12:55:30] (Interpretation) I would say that this exercise whereby one
22 had to put one's arm over one's head to touch the ear was the means of determining
23 whether somebody's age, whether they were suited or whether they were capable of
24 undertaking the military training.

25 PRESIDING JUDGE FREMR: [12:56:02] So to be 100 percent --

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1 THE WITNESS: [12:56:05] (Interpretation) No further questions were asked.

2 PRESIDING JUDGE FREMR: [12:56:07] Now I got the last piece of translation, so
3 it's -- my question was fully responded. Fine.

4 Mr Bourgon, please proceed.

5 MR BOURGON: [12:56:30] (Interpretation)

6 Q. [12:56:32] According to your experience, Mr Witness, how could one judge from
7 that whether somebody was capable of undergoing military training?

8 A. [12:57:03] After the exercise that I've just described to you -- well, I can say what I
9 can recall. We were then asked to take our shirts off, and we received a tap on the back
10 and then we were invited to begin our military training.

11 Q. [12:57:39] So I come back to my earlier question. During your training there,
12 taking into account not only of your group, but of all the recruits in Mandro, did you see
13 any recruits who you believe would have been aged under 18?

14 A. [12:58:11] No. As far as I know, I never saw any recruits aged under 18.

15 Q. [12:58:29] As far as you can recall, did you see anyone who was rejected on the
16 basis of their age?

17 A. [12:58:49] Yes. I can recall a group of four young people who were rejected in
18 front of me. I was there at the time.

19 Q. [12:59:09] This is my last question before the lunch break. Tell us what you
20 actually saw. Who was rejected by whom and how? Tell us what happened please.

21 A. [12:59:23] I can recall names among -- of the four. There was Ngwape, and the
22 person who rejected them was Mugisa.

23 Q. [12:59:51] And who was Mugisa?

24 A. [13:00:02] Mugisa was one of the instructors and commanders of the UPC.

25 MR BOURGON: [13:00:14] (Interpretation) Your Honour, I think we've now reached

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1 the lunch break. I think we could break here and I will continue after the break with the
2 content of the training.

3 PRESIDING JUDGE FREMR: [13:00:31] Yes, Mr Bourgon, but I would like you to
4 return back a bit to the last information, maybe to try to get more specific details on what
5 basis Mugisa rejected those four persons, some, maybe, for details. So we will now break,
6 but I would like you to continue still with this last topic a bit. Not now because we will
7 have to take our break, but after the break, because it will probably require more than two,
8 three minutes.

9 Ms Luping.

10 MS LUPING: [13:01:06] Mr President, I don't believe this would take very long, but
11 could the witness also spell the name of the recruit that he is saying was rejected, because
12 it doesn't seem to have been captured on the records.

13 PRESIDING JUDGE FREMR: [13:01:17] We will deal with all of that after the break.
14 Now we break. And as I already indicated, we have to a bit shorten our lunch break.
15 So we will reconvene at quarter past 2 and the last session will take till quarter past 4.

16 THE COURT USHER: [13:01:39] All rise.

17 (Recess taken at 1.01 p.m.)

18 (Upon resuming in open session at 2.16 p.m.)

19 THE COURT USHER: [14:16:23] All rise.

20 Please be seated.

21 PRESIDING JUDGE FREMR: [14:16:53] Good afternoon, everybody.

22 Good afternoon, Mr Witness. We will continue with --

23 THE WITNESS: [14:17:01] Jambo sana.

24 PRESIDING JUDGE FREMR: [14:17:02] -- examination of our witness and before --

25 THE WITNESS: [14:17:06] (Interpretation) Good afternoon.

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1 PRESIDING JUDGE FREMR: [14:17:07] -- and a brief update about timing for the
2 Defence, even if Mr Bourgon doesn't listen to me.

3 Yeah, Mr Bourgon, just it is a minor point that so far you, according my information, used
4 one hour two minutes so you still have almost five hours at your disposal. And you
5 have the floor and we are in open session.

6 But I see Ms Pellet on her feet. Ms Pellet, please.

7 MS PELLET: [14:17:35] (Interpretation) Thank you, your Honour, I just wanted to say
8 some things, that Madam Rambolamanana has left the session. I just want it to go on the
9 records.

10 PRESIDING JUDGE FREMR: [14:17:50] Thank you very much for the update. Well
11 noted.

12 And, Mr Bourgon, the floor is yours.

13 MR BOURGON: [14:18:01] Thank you, Mr President. I apologise if I was not looking
14 at the Chamber but I was listening. Thank you.

15 Q. [14:18:18] (Interpretation) Good afternoon, Witness.

16 A. [14:18:20] Good afternoon to you, too.

17 Q. [14:18:22] We are going to continue with the question that was raised before the
18 lunch break. We asked you, first of all, to spell out the name that you mentioned this
19 morning, and this was page 65, line 20, 21 of the transcript, where it says, where it says,
20 the team amongst the four. And you mentioned a name. Would you like to repeat that
21 name, please.

22 A. [14:19:42] The first one is Kabagambe, K-A-B-A-G-A-M-B-E. And the next one is
23 Byarufu, B-Y-A -- B-Y-A-R-U-F-U.

24 Q. [14:20:17] Thank you for this clarity. I'd like to now come back to the question or
25 the demand of the Presiding Judge requesting more information. When these four

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1 people went back, what exactly happened?

2 A. [14:20:59] As far as my memory goes, these four people were rejected because they
3 were not of the required age. And then I don't know what happened.

4 MR BOURGON: [14:21:34] Mr President (Overlapping speakers)

5 PRESIDING JUDGE FREMR: [14:21:37] (Overlapping speakers) I think your additional
6 questioning, in fact, met my expectations.

7 MR BOURGON: [14:21:43] Thank you, Mr President.

8 Q. [14:21:47] (Interpretation) Witness, with regards to Mandro, I just want to -- I
9 want precision on your answer. In the French transcript, page 65, line 19 and 20, your
10 answer is read as follows:

11 "Not to the best of my knowledge, I've never seen recruits who were less than 18."

12 So I would like to know, what constitutes the basis of this statement?

13 A. [14:22:44] The reason why I said that in our group there was no one below 18 years
14 of age, because there was no one, and this is precisely why I was saying there was no one
15 below 18.

16 Q. [14:23:16] What I'd like to know, Witness, is that how can you say that no one was
17 below 18? What's your reference point? What's the criteria that you're using to make
18 this statement?

19 A. [14:23:51] These four young people, the way the instructor knew their age, and he
20 knew their age, and that's precisely why they were rejected. And it's also based on the
21 training we have. I don't think that -- I don't think that anyone who is below 18 could
22 have done this training.

23 Q. [14:24:33] Just a last point for clarity reasons. I'm not talking of the four people
24 who went back. I'm talking about your statement. Amongst all the people who were
25 recruited in Mandro, and you said on page 65 that there was no one who was below 18.

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1 How do you know this?

2 A. [14:25:16] As I said, given our background, I did not find anyone who was
3 below 18.

4 Q. [14:25:37] I'm talking of a different subject, the content of the training, now. What
5 was the ideology that was taught in Mandro in this training programme?

6 A. [14:26:02] At this point of time, we were told that we should be capable of
7 protecting the population and their belongings and their property.

8 Q. [14:26:30] When we say "protecting the population", were you given any
9 information on the ethnicity of the population?

10 A. [14:26:48] No. No, we weren't told which ethnic races were to be protected. We
11 had to protect all of the population.

12 Q. [14:27:17] What instruction was given at Mandro? To whom -- whom could you
13 shoot at and whom you could not shoot at?

14 A. [14:27:40] The instructions we received during the training programme with
15 regards to warfare, and if my memory doesn't fail me, we were supposed to fire at the
16 enemy who was firing at us or who were -- was throwing bombs at us.

17 Q. [14:28:10] Now, in your last answer -- in French, I just wanted to check something.
18 It is said -- it is written that:

19 "The enemy that was throwing lances at us." Is this what you said, "lances"?

20 A. [14:28:47] The enemies were using different types of weapons. Some were using
21 firearms. And the others were actually using bladed weapons, such as arrows and
22 machetes.

23 Q. [14:29:10] What was your -- what was the instruction to be followed if you were
24 faced with an enemy who was not firing at you?

25 PRESIDING JUDGE FREMR: [14:29:24] Hold on, Mr Witness.

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1 Ms Luping.

2 MS LUPING: [14:29:27] Yes, if the witness first could be asked to remove his
3 headphones.

4 PRESIDING JUDGE FREMR: [14:29:31] For sure.

5 Mr Witness, as usual, the exercise with headphones, please, get it off.

6 Ms Luping, you may proceed.

7 MS LUPING: [14:29:45] Mr President, your Honours, this is the not the first time. I
8 haven't intervened before, but if Defence counsel could please be asked to build up the
9 questions one step at a time. Here, we're immediately going to the instructions for those
10 who are not firing. If we could just simply ask more open-ended style questions as to
11 what precisely were the instructions vis-à-vis the civilians or not. Here, we have a very
12 guided, effectively, leading question which presumes that such instruction is given.

13 Thank you.

14 PRESIDING JUDGE FREMR: [14:30:17] Mr Bourgon, in this case I agree with
15 Ms Luping.

16 MR BOURGON: [14:30:23] Thank you, Mr President. I much prefer the question
17 posed by my colleague and I will ask that question, Mr President. It is very helpful. I
18 thank my colleague.

19 PRESIDING JUDGE FREMR: [14:30:36] Mr Witness, you can take your headphones
20 back.

21 And now, Mr Bourgon, please proceed.

22 MR BOURGON: [14:30:52] (Interpretation)

23 Q. [14:30:52] Witness, what was the instruction given at Mandro with regards to
24 civilians? Did you have the right to fire at civilians?

25 A. [14:31:16] No. I say no because during combat there was someone leading the

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1 troops, and he was giving us orders and instructions, and he gave us instructions to fire in
2 the direction from where the fire was coming.

3 Q. [14:31:44] I'm now going to a different subject. When you were in Mandro --

4 PRESIDING JUDGE FREMR: [14:31:49] Sorry, Mr Bourgon. I would like to put one
5 additional question.

6 As concerns instructions, you mentioned about firing on civilians, have you received any
7 instruction during the training, or you received instruction before the battle from your
8 commander?

9 THE WITNESS: [14:32:24] During the training, we were taught to use arms, weapons,
10 arms made of wood. We were also taught combat tactics. And here we haven't actually
11 fought a real war. We were being trained before we were sent to the battlefield.

12 PRESIDING JUDGE FREMR: [14:32:53] So now I --

13 THE WITNESS: [14:32:55] (Interpretation) These were simulations.

14 PRESIDING JUDGE FREMR: [14:32:57] So now I am not sure I understand you fully.
15 So does it mean that the concrete, the instructions, saying that you can't fire on somebody
16 was given before the battle, not during the training?

17 THE WITNESS: [14:33:31] (Interpretation) Let me explain. It was during the
18 training session. We had, actually, wooden guns, basically. And we were taught
19 combat tactics. We had a trainer who showed us how the warfare happened in the
20 battlefield. And we were trained before we were sent out to the battlefield for war.

21 PRESIDING JUDGE FREMR: [14:34:16] I'm sorry, Mr Witness, but I have to insist on
22 further clarification.

23 So you have been taught how to use your training gun. Even if it was from wood, you
24 were trained about tactics, how to move during the battle, but did you also discuss or
25 were you instructed whether to fire on some people or not during this training in Mandro,

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1 or this instruction you were given from your commander at the battlefield? It's my
2 question.

3 THE WITNESS: [14:35:14] (Interpretation) I would say during the training because
4 it's during the training that we learnt combat tactics. We learnt how to use our wooden
5 rifles. So it was during the training.

6 PRESIDING JUDGE FREMR: [14:35:33] Thank you.

7 Mr Bourgon, please proceed.

8 MR BOURGON: [14:35:41] (Interpretation) Thank you, your Honour.

9 Q. [14:35:43] Witness, let me come back to this point. During the training, what was
10 told about the civilians? What could you do to the civilians? What did we say about
11 the civilians during the training?

12 A. [14:36:12] As I explained previously, the enemy is the person who is firing at us,
13 who is firing, and that's the enemy who must be shot at.

14 Q. [14:36:35] And during the combat, did we remind you of this instruction?

15 A. [14:36:53] Yes, we were reminded. There was a leader and he was the one giving
16 us instructions in the battlefield.

17 Q. [14:37:11] Moving on to a different subject. How was the food at Mandro?

18 A. [14:37:30] During the training programme, we were eating corn mixed with beans,
19 and it was called mvungure.

20 Q. [14:37:49] Was there enough food for everybody?

21 PRESIDING JUDGE FREMR: [14:37:58] Mr Witness, hold on.

22 MS LUPING: [14:38:03] If the witness could please be asked to remove his headphones.

23 PRESIDING JUDGE FREMR: [14:38:11] Mr Witness took his headphones off.

24 Ms Luping.

25 MS LUPING: [14:38:18] Thank you, Mr President, your Honours. Objection, again,

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1 for a leading question. It's not -- it shouldn't be "was there enough food" because the
2 question is loaded with a response. It should simply be what was the nature of the food,
3 what were the supplies like, more open-ended, more general questions, your Honours. I
4 didn't jump up earlier on but we also had a leading question as to were there reminders
5 given in the field. There have been a number of leading questions, your Honours. I
6 don't believe it should be too difficult to rephrase the questions to get the understanding
7 in a more open-ended way and eliciting this information from the witness as to what
8 conditions were like in Mandro.

9 PRESIDING JUDGE FREMR: [14:38:57] Objection overruled. It's just a question about
10 the quantity of the meal. I don't see anything wrong on that.

11 Mr Bourgon, please proceed. Probably, you're going to have to repeat your question.

12 MR BOURGON: [14:39:20] (Interpretation) Thank you, your Honour.

13 THE INTERPRETER: Your Honour, the witness is not wearing his headset.

14 PRESIDING JUDGE FREMR: [14:39:31] Sorry, Mr Bourgon. We forgot to ask Mr
15 Witness. Now you may proceed.

16 MR BOURGON: (Interpretation) Thank you, your Honour.

17 Q. [14:39:47] Witness, in page 60 -- page 73, page 73 you described what you were
18 eating. My question is, was there enough food available?

19 A. [14:40:16] I can give you my previous answer: There was enough food available,
20 as I told you before. In fact, the food came from different places. The shopkeepers
21 would bring us food. So there was absolutely no problem with regards to any shortage
22 of food.

23 Q. [14:40:48] What would the officers and instructors eat at Mandro?

24 A. [14:41:08] If I recall, during the training programme, when I went and met with the
25 other instructors -- I don't know if I can give the name of one of these instructors. One of

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1 these instructors -- and you're going to give me the permission if I can speak out the name
2 or not.

3 Q. [14:41:30] I think you can speak the name, Mr Witness.

4 A. [14:41:33] Right. So if I remember, when we were introduced to Mzee Bosco,
5 what really surprised me was he would take a plate and he would eat the same meal,
6 mvungure, that we would eat. And he was actually eating the same food as we would
7 eat.

8 Q. [14:42:08] So at that point of time, what did you think when Bosco Ntaganda also
9 had the same food as you?

10 A. [14:42:27] Personally, I was surprised to see such an eminent personality eating the
11 same food as I did. And that really kept our morale up.

12 Q. [14:42:44] What were the sanitary conditions like in Mandro?

13 A. [14:43:00] With regards to sanitary conditions and hygiene, I would say that it
14 wasn't really easy to change clothes every day, but we could go to the river. We could
15 clean ourselves; we could also wear clean clothes. And we'd actually dug holes in the
16 ground that were used as toilets. And I would say that the sanitary conditions were very
17 good.

18 Q. [14:43:46] What were the rules in Mandro?

19 A. [14:44:05] I haven't understood your question. What rules are you talking about?

20 Q. [14:44:13] Were there rules that the recruits had to comply with during the
21 training?

22 A. [14:44:30] Yes, there were rules; for instance, no one could leave during duty hours.
23 It was forbidden to destroy the property of the population, such as the agricultural
24 produce.

25 Q. [14:45:12] What happened if a recruit failed to comply with a rule?

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1 A. [14:45:35] It really depends on who was deciding. There were different types of
2 punishments, such as doing push ups, rolling. So it really depended on the instruction.
3 Forward rolls.

4 Q. [14:46:01] Do you know a punishment called target?

5 A. [14:46:19] So there was a punishment. I never heard of a punishment called target
6 during the training.

7 Q. [14:46:29] Was execution by firing squad the punishment you heard talk of during
8 training?

9 A. [14:46:54] During the training I never heard any talk of that.

10 Q. [14:47:00] And during the period where you were serving with the UPC, did you
11 come across any execution or punishment of this type?

12 A. [14:47:19] Yes. I can say that I was once part of this type of execution.

13 Q. [14:47:35] Could you tell us where that happened?

14 A. [14:47:42] If I recall correctly, a soldier had stolen something quite close to
15 Mr Bosco's residence. He was not happy, and so to make an example of him to the
16 soldiers and to the civilians and that this was not the way to behave, he was executed at
17 Camp Ndromo.

18 Q. [14:48:22] Were you present on that occasion?

19 A. [14:48:28] Yes, I was present.

20 Q. [14:48:31] How many people were there when this person was executed in Camp
21 Ndromo, approximately?

22 A. [14:48:54] I think I could say that all the groups of soldiers who were at Camp
23 Ndromo had been brought together. And then at the time this was being investigated,
24 the mother of the soldier wanted to defend her son, but this soldier was executed in front
25 of his mother and in front of the other soldiers.

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1 Q. [14:49:25] Did you come across any similar cases during the time you were serving
2 with the UPC?

3 A. [14:49:38] I didn't hear tell of any similar cases.

4 Q. [14:49:52] Coming back to Mandro, what was the sex of the recruits?

5 A. [14:50:14] There were two; there were men and there were women.

6 Q. [14:50:24] How many women were there among the recruits in Mandro?

7 A. [14:50:31] I don't have the exact number but there were not many girls there.

8 Q. [14:50:52] What was the training given to the female recruits?

9 MR BOURGON: [14:51:12] Mr President, the witness just raised his hand.

10 Maybe -- (Interpretation) Do you wish to move into private session, Mr Witness?

11 A. [14:51:28] No, that was not the request to go into private session. I would like, if I
12 may have authorisation, to go to the toilet. I was just asking to go to the toilet, please.

13 PRESIDING JUDGE FREMR: [14:51:47] Court usher, please assist to leave the
14 courtroom, Mr Witness. And we will have a short break.

15 (Witness stands down)

16 PRESIDING JUDGE FREMR: [14:53:02] If you will, I will take advantage of the break
17 to make short announcement, when the witness is absent, which doesn't mind.

18 Just to inform you that the Chamber is considering holding a status conference next week,
19 which is the week of 4 to 8 December. Most likely on Thursday or on Friday. And the
20 purpose of this status conference should be to address issues related to the timeline for the
21 conclusion of the presentation of evidence.

22 Before setting a date and taking into account the Defence email of 13 November 2017, sent
23 at 9.58, the Chamber would like to hear during the status conference from the parties and
24 participates. In particular, it invites the Defence to provide an update of the scheduling
25 of further witnesses expected to testify during this evidentiary block in order to have a

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1 clear idea how we will proceed.

2 So at this moment I would like to hear whether you're fine. In my estimation the status
3 conference should take two hours in maximum, so whether it would be fine and whether
4 you will be ready to discuss those issues either on next Thursday or Friday.

5 Prosecution?

6 MS LUPING: [14:55:11] Mr President, your Honours, we don't envisage any problem
7 for either Thursday or Friday for the scheduling.

8 PRESIDING JUDGE FREMR: [14:55:18] Thank you.

9 Mr Bourgon?

10 MR BOURGON: [14:55:20] We have no difficulties, and we expect that by the time
11 Friday arrives, we will have done the three witnesses planned for next week.

12 PRESIDING JUDGE FREMR: [14:55:31] (Overlapping speakers)

13 MR BOURGON: [14:55:32] (Overlapping speakers) as the Chamber wishes.

14 (The witness enters the courtroom)

15 PRESIDING JUDGE FREMR: [14:55:36] Do you have any update as regards the last
16 witness intended for the third week because there were some problems with documents.

17 MR BOURGON: [14:55:47] Mr President, all I can say for now is that the preparations
18 are ongoing and the situation is currently developing. I hope to have further information
19 prior to the Chamber, most likely by, I believe, by Wednesday. Two days from now I
20 should have further information concerning where we are. Thank you.

21 PRESIDING JUDGE FREMR: [14:56:08] We would appreciate that.

22 All right. So we can continue.

23 Mr Witness, are you fine to continue, no problems?

24 THE WITNESS: [14:56:26] (No interpretation)

25 PRESIDING JUDGE FREMR: [14:56:28] I saw you nodding, but I believe there's no

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1 problem. Even if I didn't get translation.

2 Mr Bourgon, please proceed.

3 MR BOURGON: [14:56:44] (Interpretation) Thank you, your Honour.

4 Q. [14:56:45] Mr Witness, the last question I asked you just before the break related to
5 the training given to the female recruits in Mandro.

6 A. [14:57:17] The boys and girls followed the same training at the same place. No
7 distinction was made.

8 Q. [14:57:26] What was the policy with regard to relationships between male and
9 female recruits?

10 A. [14:57:50] I'm not sure I've fully understood your question. Could you repeat it,
11 please?

12 Q. [14:57:58] Were relations -- with regards relations between male and female
13 recruits, was there any policy with regard to the existence of such relations?

14 A. [14:58:21] With regard to the relations outside training and outside military
15 training, I don't think there were any problems, as far as I could tell. There were no other
16 relations other than recruits following the training.

17 Q. [14:58:50] I'm going to try and clarify. Was it a -- was it permitted or prohibited
18 to have relations between male and female recruits?

19 A. [14:59:13] That was very much prohibited. Absolutely prohibited during training.

20 Q. [14:59:20] And what about relations between -- intimate relations between recruits
21 and instructors? Was that allowed or was that also prohibited?

22 A. [14:59:42] No, that was also prohibited.

23 Q. [14:59:47] During your training in Mandro, were you aware of any cases where
24 there were relations between recruits of different sexes or between recruits and instructors
25 of different sexes?

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1 A. [15:00:16] During training, I myself saw no such cases.

2 Q. [15:00:22] During your training, were you aware of any cases, real cases, or
3 rumours of rape?

4 A. [15:00:52] During that training I never heard anyone speak of rape and I didn't
5 hear of any rumours involving rape.

6 Q. [15:01:01] Do you know a place called Saikpa?

7 A. [15:01:10] Yes. I can say that Saikpa is the second location where we were
8 undergoing our military training.

9 Q. [15:01:26] Where is Saikpa, if you compare it with the collectivity that you
10 mentioned earlier?

11 A. [15:01:52] Saikpa was on the left, going towards the collectivity offices going
12 towards the hill. It was a bit further away.

13 Q. [15:02:08] How far in terms of distance, as far as you can recall?

14 A. [15:02:22] I'm finding it very difficult to give you a distance in terms of metres or
15 kilometres, but it took a while to walk there. You had to go up the hill and down again.

16 Q. [15:02:41] Could you give a rough number of kilometres, is it 5, 10, 15, 20, 25?

17 A. [15:03:05] I don't think I could even attempt an answer because the geographical
18 situation there is quite difficult to get a grasp on.

19 Q. [15:03:26] During your training in Saikpa, did you witness any event that was of
20 particular importance to you?

21 A. [15:03:53] There in Saikpa I -- whether I can remember anything in particular there,
22 there were some attacks that took place there, and it was very difficult for us there during
23 that attack.

24 Q. [15:04:16] Who attacked Saikpa?

25 A. [15:04:25] It was Lendu attacking Saikpa because they knew we were there.

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1 Q. [15:04:33] Do you know a place by the name of Kudja?

2 A. [15:04:45] Yes. We were attacked in Saikpa. We started in Mbidjo, and then
3 after Mbidjo we went to Kudja.

4 Q. [15:05:06] You weren't able to tell me how far it is from Mandro to Saikpa. Can
5 you say how far Kudja was from the centre of Mandro?

6 A. [15:05:26] The distance between Kudja and the centre of Mandro and
7 Saikpa -- Mandro was not actually that far from Saikpa -- from Kudja, excuse me.

8 Q. [15:05:42] Which is closer to Mandro, Saikpa or Kudja?

9 A. [15:06:01] If you take account of the distance between Mandro and Saikpa, I think I
10 can say that Kudja is actually closer to Mandro.

11 Q. [15:06:13] One final question on the content of training: Are you familiar with the
12 expression kitamaduni?

13 A. [15:06:33] Yes. If I recall correctly, kitamaduni often took place of an evening. It
14 would be the time when we sat together and people taught us to sing, taught us to dance.
15 It was also known as morale classes or morale.

16 Q. [15:07:07] You told us that you had a stick which you were using -- that it was used
17 as if it was a weapon. During your training, did you receive a real weapon at any time?

18 A. [15:07:33] Yes. If I remember correctly, at one point we were given real weapons
19 and we put aside the wooden arms we'd been using.

20 Q. [15:07:48] Do you remember how the real weapons arrived during the training to
21 you?

22 A. [15:08:04] I recall these weapons arriving.

23 Q. [15:08:11] Could you describe how they arrived and where?

24 A. [15:08:26] We were in Bidju when we saw a group of commanders arrive. They
25 told us not to be afraid and they said that there would be a time when the weapons would

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1 arrive. And then when we left Bidju and arrived in Kudja, on that day we got rid of our
2 wooden weapons and we were awaiting an aircraft which was coming, which was
3 bringing us weapons, but it was parachuting them, it was dropping them.

4 Q. [15:09:14] Do you know where these weapons were coming from?

5 A. [15:09:26] No. No, I don't know what the origin of these weapons was.

6 Q. [15:09:38] I'll now move on to a different subject. At what point -- or, rather, how
7 long did your training last, as best you can remember?

8 A. [15:10:05] I'll try to recall how long it took, but it's very difficult. I can't give you
9 an exact reply because I really don't remember exactly how long this training lasted.

10 Q. [15:10:22] And when you completed your training, what was your first assignment
11 or your first task within the UPC?

12 A. [15:10:57] Before I was given a weapon, the first task I was given was that I was
13 chosen as an escort to Mr Safari.

14 Q. [15:11:13] And who is Mr Safari?

15 A. [15:11:29] If I recall correctly, I was told -- well, I was -- there was a day when some
16 authorities, some commanders came to Bidju and that's the time I saw him for the first
17 time.

18 Q. [15:11:50] Do you know why you were chosen to be an escort to Safari?

19 A. [15:12:08] I think it was he who gave the order to choose for him some young
20 people who would be able to ensure his security, and I was chosen to be one of this group
21 of young people who would form his escort.

22 Q. [15:12:31] How many others were chosen to be escorts at the same time as you?

23 A. [15:12:49] The first time we were four. There were four of us, four who had been
24 given weapons.

25 Q. [15:13:10] As escort to Safari, did you take part in any combat operations?

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1 A. [15:13:31] Yes, I think I can say that before I became his escort, I was involved in
2 combat operations.

3 Q. [15:13:47] Do you recall the first operation in which you were involved?

4 A. [15:13:59] Yes, I can say that my first operation, the first I took part in was in Loga.

5 Q. [15:14:10] And where is Loga?

6 A. [15:14:25] In order to situate Loga, I can say that when you leave Mandro, you go
7 to Katoto, from Katoto to Lita, and then from Lita you then come to Loga.

8 Q. [15:14:50] Was there any reason that you can recall why you took part in an
9 operation in Loga?

10 A. [15:15:11] Yes. If I recall correctly, the Loga operations occurred because there
11 were Lendu there who were leaving Loga, going to Lita, and they came to Katoto. We
12 had to follow them. We wanted to destabilise the location where they were.

13 Q. [15:15:41] Can you recall who commanded this operation?

14 A. [15:15:57] If I recall correctly, the commander of this operation was a commander
15 that we called Americain.

16 Q. [15:16:16] What function or post did Americain hold before this operation, if you
17 know?

18 A. [15:16:35] Before the attack, he was firstly one of the instructing commanders. On
19 that day he was a battalion commander in the advanced party in which I was.

20 Q. [15:16:52] Was Safari present during the operation?

21 A. [15:17:00] Yes. Safari was there because I'd started to work with him. And as I
22 said, I was in that area and he too, he was with me.

23 Q. [15:17:28] Was Bosco Ntaganda present during the operation?

24 A. [15:17:34] If I remember well, I think he was there.

25 Q. [15:17:58] To the best of your knowledge and memory, was he wearing a uniform

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1 during the operation?

2 A. [15:18:11] No, there weren't military uniforms at that time.

3 Q. [15:18:20] What was the result of the operation?

4 A. [15:18:44] To sum up, I would say that we dislodged them and then we left.

5 Dislodged and destabilised them.

6 Q. [15:18:57] And afterwards, where did you go, if you remember?

7 A. [15:19:06] We returned to Mandro.

8 Q. [15:19:15] Among the forces you were part of, did they burn or destroy houses in
9 Loga -- on the way to Loga?

10 A. [15:19:28] No. When we went there, there was nobody who had destroyed or set
11 alight property.

12 Q. [15:19:39] To the best of your knowledge, were there civilian victims during that
13 operation?

14 A. [15:19:59] It was difficult, it was difficult to know.

15 Q. [15:20:03] Why was it difficult?

16 A. [15:20:19] In general, the enemy used to take the bodies that fell in the battlefield.
17 They would take them elsewhere.

18 Q. [15:20:42] And when you destabilised the enemy in Loga, did you find bodies
19 there of civilians or the enemy?

20 A. [15:21:09] No, I didn't note that.

21 Q. [15:21:19] Do you know a place called Ezekere Zumbe?

22 A. [15:21:29] Yes. I remember, yes.

23 Q. [15:21:35] When I say Ezekere Zumbe, is that one place or is that more than one
24 place?

25 A. [15:21:54] I would say that I know that place. I arrived there, but those are two

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1 different places.

2 Q. [15:22:06] So in your last answer you said you went to Ezekere Zumbe. Can you
3 tell us what happened there; how did that operation start?

4 A. [15:22:36] If I remember correctly what happened during the Ezekere-Zumbe
5 operation, I would say that the Lendu came to Mandro and they attacked and they stole
6 cattle, cows, and when we found out we chased them and we struck them, and that's the
7 reason how we arrived to Ezekere, and after Ezekere we got to Zumbe.

8 Q. [15:23:04] Was Safari present during the operation?

9 A. [15:23:15] Yes, he was with me.

10 Q. [15:23:20] Was Bosco Ntaganda present during the operation?

11 A. [15:23:38] I think he wasn't there.

12 Q. [15:23:39] Do you remember the names of other commanders present during that
13 operation?

14 A. [15:23:57] No, I don't remember the names of commanders who were there.

15 Q. [15:24:06] Do you remember other commanders other than Safari being present?

16 A. [15:24:22] Yes, there were. There were others who were leading the groups, but I
17 don't remember their names anymore.

18 Q. [15:24:37] So earlier, speaking about Loga, you mentioned that your uniforms
19 hadn't arrived at that time. Had the uniforms arrived when you carried out the
20 Ezekere-Zumbe operation?

21 A. [15:24:56] If I remember well, during the Ezekere-Zumbe operation the uniforms
22 had not arrived.

23 Q. [15:25:24] So when you struck or hit the enemy, what did they do, or what were
24 they doing between Mandro and Ezekere Zumbe?

25 A. [15:25:51] Our objective was to chase the enemy and to get back the cattle that

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1 they'd stolen, and then they saw that we were chasing them and struck, and that's the
2 reason why they took advantage of the situation to set fire to houses. And they also
3 killed cows. It was at that place that I was able to see a young girl who had been killed.
4 And a baton had been inserted into her vagina.

5 Q. [15:26:35] How many days did you stay in Ezekere or in Zumbe?

6 A. [15:26:49] We went through Ezekere and we arrived in Zumbe. We stayed there
7 for three days.

8 Q. [15:27:05] What did you eat during those three days?

9 A. [15:27:19] We were following the enemy who had stolen the cows. There were
10 cows that had been killed. We couldn't eat that meat. We had to eat chicken and goats.

11 Q. [15:27:45] Do you know a place called Komanda?

12 A. [15:28:00] Yes, I know that place.

13 Q. [15:28:08] According your memory, did you participate in an operation in
14 Komanda?

15 A. [15:28:30] Yes, I did take part in an operation which took place in Komanda.

16 Q. [15:28:37] Do you remember if you participated in just one operation or more
17 operations in Komanda?

18 A. [15:29:00] The operation or operations in which I participated concerning
19 Komanda, or, well, there were two of them.

20 Q. [15:29:18] So we're going to speak about the first operation in Komanda. Do you
21 remember if Safari was present at that time?

22 A. [15:29:38] Yes, he was there with us. He participated in the operation.

23 Q. [15:29:45] And where was Komanda; where is Komanda? How do you get to
24 Komanda?

25 A. [15:30:04] If you come from Bunia, you go through Marabo Irumu, and you will

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1 get to a small trading centre. There are two roads towards North Kiva and Beni, and
2 another road going towards Kisangani. That's what I remember with regards to that
3 route.

4 Q. [15:30:35] Who was the enemy in Komanda during this first operation?

5 A. [15:31:00] The enemy was the APC; they were mixed with Ngiti rebels.

6 Q. [15:31:18] In French I heard "Ngiti rebels". Could you give some more
7 information? Who were these Ngiti rebels?

8 A. [15:31:46] The Ngiti are a people who live in Songolo and Aveba. Those locations
9 are inhabited by this ethnic group.

10 Q. [15:32:07] Are you speaking about civilians, soldiers, others?

11 A. [15:32:22] The APC was made up of soldiers. When I speak about the Ngiti, those
12 are the Ngiti combatants.

13 Q. [15:32:35] Who was in Komanda when you arrived there?

14 A. [15:32:56] Nobody was in Komanda because the enemy had already fled.

15 Q. [15:33:01] So what was the result of this operation?

16 A. [15:33:32] During the operation, some people had carried out pillaging and some
17 of us did that, and there was an order that everybody who had involved in pillaging must
18 be taken to the crossroads and must be burnt.

19 Q. [15:33:56] So when you say that people had been pillaged, were there -- were there
20 still people in the houses in Komanda?

21 A. [15:34:17] The members of the population, the civilian population, they fled, and
22 the enemy who was mixed up with the population had also fled.

23 Q. [15:34:33] To the best of your memory, when you were in Komanda, did the
24 inhabitants of Komanda flee at that time or at another time?

25 A. [15:35:03] As I said before, those who lived with the enemy that we were fighting,

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1 when they saw that our enemy was fleeing, they didn't stay there; they also followed
2 them.

3 Q. [15:35:25] So among the forces you were part of, did they destroy or burn houses
4 during the operation in Komanda?

5 A. [15:35:47] No, houses weren't set alight. All I was able to see was the pillaged
6 property and, which I mentioned before, all that property was taken to the crossroads in
7 order to be burnt.

8 Q. [15:36:13] So if we continue, how did that happen, to the best of your memory,
9 how were these goods brought together and pillaged? Could you tell us what you
10 remember there on the subject? I'm sorry, I said -- may be a lapse. I said that they were
11 brought together, and I'm trying to go back to take your words. They were brought
12 together and burnt. How did it happen that they were taken to a place and then burnt?

13 A. [15:37:12] The objective of bringing the goods together was to set them alight and
14 to ban the troops from pillaging, and that was in the middle of the operation, so that these
15 acts would not distract the soldiers from their objective. And that's the reason why the
16 objective was given, to bring all the goods together and to burn them.

17 Q. [15:37:45] Was Bosco Ntaganda present when these goods were burnt?

18 A. [15:37:58] Yes, he was present.

19 Q. [15:38:05] To the best of your knowledge, was Kisembo present on that occasion?

20 A. [15:38:29] I no longer remember if he came after that, but on the day that we took
21 the town I don't think that he was there then.

22 Q. [15:38:47] And during the operation, do you remember if there were people
23 wounded?

24 A. [15:39:08] Yes. On our side, one person was wounded. I remember on that day,
25 on the day that the pillaged property was burnt, Commander Americain was hit in the leg

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1 and he asked for authorisation to take the pillaged motorbike in order to use it as
2 transport in order to take him to the hospital.

3 Q. [15:39:45] And a last question concerning Komanda. At that time, did you receive
4 the uniforms?

5 A. [15:39:59] Yes, at that time we had already received the military uniforms.

6 Q. [15:40:39] When the goods or property was burnt, I'd like to know how did that
7 happen. To the best of your memory, who spoke to the soldiers? What was the
8 message that was given when this happened, as you said earlier?

9 A. [15:41:15] If I remember well, the person who said that the people who took the
10 decision to take the pillaged goods in order to burn them, that they should be burnt, and
11 to warn everybody who would carry out such acts would be punished, that was Mr Safari
12 and Mr Bosco.

13 Q. [15:41:55] So when I asked you a question earlier concerning the uniforms, you
14 answered that the uniforms had arrived at that time. Now, do you remember having
15 spoken about this attack on Komanda in your statement?

16 A. [15:42:17] Yes.

17 Q. [15:42:31] Do you remember what you said on the subject of the first operation in
18 Komanda concerning the arrival or not of uniforms, or the wearing or not of uniforms?

19 A. [15:42:54] You're speaking about having worn uniforms or not? I don't
20 understand your question.

21 Q. [15:43:21] I'm going to go on to another subject, Witness, because I see that the
22 statement doesn't refer to that point that I thought it did.

23 What's your basis for saying that during the first operation in Komanda you wore
24 uniforms? When did the uniforms arrive?

25 A. [15:44:03] With regard to the military uniforms, I would say that they came when

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1 we went from Mandro to Tchomia. It was in Tchomia where we went to get these
2 uniforms.

3 Q. [15:44:28] Are you able to tell us, to the best of your memory, if the first time you
4 were in Komanda, the first operation, that happened before going to Tchomia or was it
5 after Tchomia?

6 A. [15:45:00] I'm sorry, could you repeat your question. I haven't understood it well,
7 Counsel.

8 Q. [15:45:06] Certainly. You just said that the uniforms came when you were
9 travelling to Tchomia. Now, I was asking, to the best of your memory, was it the first
10 time you went to Komanda, was that before or after Tchomia?

11 A. [15:45:43] I'm just trying to remember the time frames. It was during the second
12 operation where we were already wearing the military uniforms.

13 Q. [15:46:04] During the second operation, what second operation are you referring
14 to?

15 A. [15:46:17] Well, with respect to the second operation, it was when I was hurt by
16 fragment of mortars.

17 Q. [15:46:55] You were hurt during this operation. And where did this happen?

18 A. [15:47:06] When we reached Irumu we actually retreated, and we continued with
19 this group and we headed to the centre.

20 Q. [15:47:31] I'm just trying to see the time frames. The operation in which you were
21 hurt and when you actually had a fragment hurt -- the fragment with a mortar shell?

22 A. As I just explained, we left Irumu and we crossed a bridge before arriving at the
23 centre, and it's here where the combat intensified. There was mortar shell firing, and it
24 was here I was hurt when a fragment hit me. In fact, a bodyguard of Kisémbé was also
25 shot in the intestines and his intestines actually came out.

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1 Q. [15:48:48] You've told me everything. You said that you went to Irumu in order
2 to go to the centre. Now, I'm asking you, the centre of which village?

3 A. [15:49:10] When I said we left Irumu, in fact, we crossed several villages. I forget
4 the names. But I know that I crossed a bridge, we crossed a bridge. And there was a
5 turn. And before actually going to the Komanda centre, I can't remember the names of
6 the village we crossed.

7 Q. [15:49:47] I was just looking for Komanda because which operation were you
8 referring to -- that's what I wanted to know.

9 Now, the operation where you got hurt in Komanda, is it the same operation where the
10 property and belongings were burnt by Bosco Ntaganda and his family?

11 A. [15:50:20] No. It was the first operation. It was during the first operation that
12 property and belongings were burnt. I was hurt during the second operation.

13 Q. [15:50:46] Do you know a place that bears the name Songolo?

14 A. [15:51:01] Yes, I do. I remember Songolo well.

15 Q. [15:51:05] Where is Songolo?

16 A. [15:51:22] When you leave Bunia you cross Marabo and you -- when you go
17 further down you take a left before you reach Songolo, if I'm not mistaken.

18 Q. [15:51:45] Do you remember having taken part in an operation where you went to
19 Songolo?

20 A. [15:51:59] Yes, I remember this operation well.

21 Q. [15:52:04] Was Safari present during this operation?

22 A. [15:52:15] Yes, Safari was with us during this operation.

23 Q. [15:52:23] Was Kisembo present during this operation?

24 A. [15:52:28] Yes. I remember that Kisembo was also present during this operation.

25 Q. [15:52:41] Was Bosco Ntaganda present during this operation?

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1 A. [15:52:47] No. However, I would say that our commander was present during the
2 operation and it was Commander Didier.

3 Q. [15:53:15] I've just realised, Witness, that I have asked you two or three questions
4 on Kisembo without actually asking who is Kisembo. So my next question is, who is
5 Kisembo?

6 A. [15:53:30] Kisembo was the chief of staff of UPC. That's how I knew him.

7 Q. [15:53:48] I'm coming back to Songolo where you took part in an operation. Do
8 you remember any event which will remind you of the day you left for Songolo?

9 A. [15:54:25] Well, with respect to the date, the only thing I can tell you is that
10 Lompondo was made to flee from Bunia; he was driven out, and this is why we went to
11 Songolo. I don't remember the date.

12 Now, with respect to the date when Lompondo was driven out of Bunia, it was actually
13 close to this period, but I can't give you the exact date.

14 Q. [15:55:10] When you left for Songolo, where did you leave for Songolo? What
15 was your departure point?

16 A. [15:55:33] As I said, we took the main road and we turned left and we reached a
17 place that can be considered as savannah. And we went through a municipality and we
18 reached a military camp that was controlled by the APC.

19 Q. [15:56:08] Now, let me just come back to the military camp, but before that, from
20 where did you leave to Songolo -- where were you when you left for Songolo?

21 A. [15:56:45] If I recall well, we left Mandro, we went to Bunia to recover Kisembo,
22 the chief of general staff, and from there we went to Marabo.

23 Q. [15:57:15] Safari's escorts, where were they housed? Where were they staying?

24 A. [15:57:27] When we were in Mandro, we were in a residence that belonged to the
25 Chief Kahwa. The escorts were staying in a little hut near this residence that we called

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1 manyata. So these were positions that were occupied by the escorts in order to keep the
2 place safe.

3 Q. [15:58:15] Who is Chief Kahwa?

4 A. [15:58:19] Before I can -- before I could go to this place, I knew that Chef Kahwa
5 was the head of collectivity of Bakwonga and Banywagi. At least, that's what my father
6 told me before I arrived here, and this is how I knew.

7 Q. [15:59:01] Do you remember with whom you were when you left Mandro to go to
8 the chief of staff and then Songolo?

9 A. [15:59:33] From Mandro, we went with Safari and his bodyguards.

10 Q. [15:59:42] Earlier, you mentioned that there is a military camp when arrived near
11 Songolo, so to the best of your knowledge, where is this military camp located from the
12 village of Songolo?

13 A. [16:00:04] I spoke to you about a place that I called the savannah. From there, we
14 take the main road to go to the centre. And from there we reach the military camp where
15 there were these huts called manyata that were erected, and the uniforms were left there.
16 These were makeshift huts.

17 Q. [16:00:54] And the village of Songolo, how far is it from this military camp?

18 A. [16:01:14] The military camp is in Songolo, but it was a bit further from the civilian
19 residence. It was actually at the foot of a hill.

20 Q. [16:01:32] When you reach this place, the inhabitants of Songolo, were they in the
21 village.

22 A. [16:01:55] I'm just going to repeat what I just said. We were attacking the enemy
23 and every time the enemy fled, the members of the population left with them. They did
24 not leave -- they did not stay behind.

25 Q. [16:02:14] Explain to us what happened when you reached the military camp.

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1 What happened in that place, to the best of your recollections?

2 A. [16:02:32] I'm just trying to jog my memory. Didier was the chief and he was in
3 charge of this operation. The operation involved burning these makeshift huts and this
4 manyata, and this was during the rains. Now, since it was raining, there was some
5 smoke that set off an alert because the enemy saw that something was going on. And the
6 enemy retaliated and drove us out.

7 Q. [16:03:30] When you were driven out by the enemy that saw the smoke and that
8 retaliated, where did you go?

9 A. [16:03:55] We left the centre and we took the main road and we headed towards
10 this empty ground where there was -- where there were plantations. And this actually
11 led us to the main road.

12 Q. [16:04:24] When these manyatas or makeshift huts were burnt and the enemy was
13 retaliating, now, during this period, the group that you belonged to, did they burn houses
14 or destroy houses in Songolo?

15 A. [16:04:50] As I said, we did burn down the makeshift huts of the camp that
16 belonged to the soldiers.

17 Q. [16:05:05] Did you cross the village of Songolo?

18 A. [16:05:11] No, we did not travel through Songolo; we took a different path that was
19 near the village, and we had to actually cross the fields before we reached the main road.

20 Q. [16:05:40] Where did you sleep that night, do you remember?

21 A. [16:05:47] Yes. If my memory does not fail me, I spent the night in Nyankunde.

22 Q. [16:06:12] Where is Nyankunde with respect to the main road and Songolo?

23 A. [16:06:24] If you take the main road that comes from Bunia, you -- and you will
24 reach Marabo, and once you're in Songolo you cross Marabo and then you reach Songolo.
25 Nyankunde, in fact, is to the left of the main road.

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- 1 Q. [16:07:06] Do you remember the events that happened the following day, after the
2 night? What did you do the following day?
- 3 A. [16:07:18] Yes, I remember that Safari and the chief of general staff, Kisembo, left
4 whilst we went to Irumu, to the airport in Irumu.
- 5 Q. [16:07:57] I do not understand your answer. Safari and Kisembo left? Where
6 did they go on that day?
- 7 A. [16:08:15] As I just said, the following day we went to Irumu. The purpose of this
8 trip was to inspect the airport in Irumu.
- 9 Q. [16:08:45] When you say "we", whom do you mean? Who are the members of the
10 group that went to Irumu?
- 11 A. [16:09:05] If I say "we" left for Irumu, I am talking about the group of escorts of
12 Kisembo and Safari.
- 13 Q. [16:09:20] Did Commander Didier come with you to Irumu?
- 14 A. [16:09:32] No, Commander Didier did not come with us to Irumu.
- 15 Q. [16:09:43] What happened once you reached Irumu? Do you remember the
16 events that took place on that particular day?
- 17 A. [16:10:07] Our objective was to inspect the airport in Irumu. We realised that the
18 grass had grown, and since we did not have anything to cut the grass, to mow the grass,
19 Kisembo told us to go to Sota to ask the civilians to come and help us accomplish this task,
20 that is to say to cut the grass growing in the airport.
- 21 Q. [16:10:45] So what happened then?
- 22 A. [16:10:51] Safari said that Kisembo must leave first and we should go and seek
23 help from the civilians. Now, when he went to Sota, it was at that time that we heard the
24 sounds, the explosions.
- 25 Q. [16:11:32] So when Kisembo left for Sota, you heard these explosions, the shelling?

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1 So what happened then?

2 A. [16:11:45] When we heard the shellings, we realised that Kisembo was ambushed
3 by the enemy. And we had jerry cans of fuel, and this caused a fire and that spread to
4 his vehicle and the explosions -- and then the vehicle exploded.

5 Q. [16:12:40] What happened to Kisembo when these events unfolded?

6 A. [16:12:57] He was hurt in the leg. And two of his escorts were also hurt, were
7 wounded; one near the foot and the other in the hand.

8 Q. [16:13:17] Did you with Safari take action -- any action at that point of time with
9 regards to Kisembo?

10 A. [16:13:28] We were forced to bring him to Bunia so that he can be given treatment.

11 Q. [16:13:40] And where did you take Kisembo to in Bunia?

12 A. [16:13:46] Once we reached Bunia, we left him in his residence and then we -- I
13 think then he was taken to the hospital for medical treatment.

14 Q. [16:14:13] Last question, Witness: Where was Kisembo staying at that time?
15 Where was his residence?

16 A. [16:14:37] Kisembo was staying in this house, and the house is located in a place
17 where a service station has been built now.

18 Q. [16:15:04] Thank you so much, Witness, for your cooperation for this deposition.
19 Yes, we haven't finished, so please have a restful night so that we can continue with your
20 statement tomorrow.

21 PRESIDING JUDGE FREMR: [16:15:23] Mr Witness, I also on behalf of the Chamber
22 thank you for patiently answering all questions put to you. I also appreciate that you
23 followed my guidance how to respond.

24 I have for you one important caveat: During the break till tomorrow, you must not
25 discuss your today's testimony with anybody else, neither with your relatives, with

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1 anybody else. Do you understand that?

2 THE WITNESS: [16:16:00] (No interpretation)

3 PRESIDING JUDGE FREMR: [16:16:04] Very well. So now I ask court usher to assist

4 Mr Witness to leave the courtroom. So thank you and we will see you tomorrow at

5 quarter past 9.

6 THE WITNESS: [16:16:19] Asante.

7 (The witness stands down)

8 PRESIDING JUDGE FREMR: [16:16:27] And before we break, a last piece of

9 information, particularly for Defence. According our measuring, Mr Bourgon, so far you

10 have exhausted two hours 48 minutes. So you are almost in the half of your

11 cross-examination. And that is why, for the sake of planning, I would like to verify

12 whether it is the case or whether you can estimate that three remaining hours and 12

13 minutes should be enough for you to complete.

14 MR BOURGON: [16:17:07] Yes, Mr President, it will be enough.

15 PRESIDING JUDGE FREMR: [16:17:10] All right.

16 So now we break and we will return back tomorrow 9.15.

17 THE COURT USHER: [16:17:22] All rise.

18 (The hearing ends in open session at 4.17 p.m.)

19 RECLASSIFICATION REPORT

20 Pursuant to the Trial Chamber VI's Order, ICC-01/04-02/06-1887, dated 4 May 2017,

21 the public reclassified and lesser redacted version of this transcript is filed in the case.