

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 Judge Chang-ho Chung
6 Trial Hearing - Courtroom 2
7 Friday, 15 July 2016
8 (The hearing starts in open session at 9.32 a.m.)
9 THE COURT USHER: All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE FREMR: Good morning, everybody.
13 Court officer, please call the case.
14 THE COURT OFFICER: Thank you, Mr President.
15 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
16 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
17 We are in open session.
18 PRESIDING JUDGE FREMR: Thank you, court officer.
19 Now appearances in usual order, Prosecution starting.
20 MS SOLANO: Your Honour, same composition as yesterday.
21 PRESIDING JUDGE FREMR: Thank you, Ms Solano.
22 Defence.
23 MR BOURGON: (Interpretation) Good morning, your Honours. Good morning
24 to everybody in the courtroom. There is no change to the Defence team, and
25 Mr Ntaganda is present in the courtroom. Thank you, your Honour.

1 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

2 Legal Representatives of Victims, please.

3 MS PELLET: (Interpretation) Thank you, your Honour. No changes for the
4 former child soldiers.

5 MR SUPRUN: (Interpretation) Good morning, your Honours. No changes for the
6 victims of the attack. Thank you.

7 PRESIDING JUDGE FREMR: And duty counsel finally.

8 MR VON BÓNÉ: Good morning, Mr President and the Chamber. No changes as
9 far as I'm concerned.

10 PRESIDING JUDGE FREMR: Thank you, Mr von Bóné.

11 Before we continue with testimony of our witness, we were informed that Defence
12 would like to address the Chamber.

13 So, Mr Bourgon, you have the floor.

14 MR BOURGON: Thank you, Mr President. Very briefly, I have an oral application
15 I wish to make this morning. The Chamber will recall, Mr President, that yesterday,
16 I refer here to the transcript 121 in the French version --

17 THE COURT OFFICER: I just would like to remind you that we are in open session.

18 MR BOURGON: Yes, I think it's -- thank you. Transcript 121 French version on
19 page 54, line 18 I began a series of questions to the witness concerning a video that
20 was shown to him. At one point in time I asked the witness whether he had
21 reviewed or had been asked questions by the Prosecution concerning this video
22 extract. I refer here, Mr President, to -- first to page 57, line 8 where I confirm that he
23 had seen the video during his preparation session. And then starting at line 20 I
24 asked the following, and I think we can remain in public session for this. The
25 question was as follows:

1 (No interpretation)

2 PRESIDING JUDGE FREMR: Sorry, Mr Bourgon, I have to note that we don't have
3 at the moment English translation of the last part of your submission.
4 English booth?

5 THE INTERPRETER: Could he repeat it, please, your Honour?

6 PRESIDING JUDGE FREMR: Yes. So, Mr Bourgon, could you just repeat again this
7 quotation in French because I think it was not translated to our headphones.

8 MR BOURGON: My pleasure, Mr President. It starts at line 20 of page 57 of
9 transcript 121, the French version. The question was as follows in French:

10 (Interpretation) "After seeing the video with the people from the OTP, did they ask
11 you questions about it?"

12 (Speaks English) The witness did not understand the question and he asked me to
13 repeat, which I did at line 24 in French:

14 (Interpretation) "Last week you met with the Prosecution. You were shown this
15 video. I'd like to know whether you discussed it, the video, with the people from the
16 OTP."

17 (Speaks English) Answer from the witness starting at line 28:

18 (Interpretation) "Yes, we discussed it and I also asked that they put on the sound,
19 but they didn't want to. They said that that was part of the procedures not to have
20 the sound."

21 (Speaks English) Question line 4:

22 (Interpretation) "Did they ask you questions about different places? In other words,
23 did you recognize certain places or certain individuals that you could see in the
24 video?"

25 (Speaks English) Answer for the witness, line 7:

1 (Interpretation) "Yes, they asked me those questions."

2 (Speaks English) Mr President, we were of course informed of the holding of the
3 preparation session with the witness. This preparation session took place on 4, 6, 7
4 and 11 July 2016. I believe the first day was a very short day, however. And as I've
5 mentioned previously we have confirmation in the preparation session note that the
6 witness did watch or look at the video, but we have no record whatsoever of
7 questions being asked to him as to whether he did or did not recognize persons or
8 places.

9 Mr President, I believe that this is in contradiction with the protocol on preparation
10 sessions and on this basis we would like to have access to the audio video to the
11 proofing session to see exactly what questions were put to the witness in respect of
12 the Mandro video.

13 Thank you, Mr President.

14 PRESIDING JUDGE FREMR: Ms Solano.

15 MS SOLANO: Good morning, your Honours. The reason there is no record in the
16 witness preparation note about questions or answers about this video is because there
17 weren't any. I understand very well that the Defence has quoted the witness
18 accurately. That's not what he said. But I can assure your Honours that the witness
19 was not asked any questions about the video and he did not volunteer any
20 information about it. Had that been the case, it would have duly been recorded in
21 the witness preparation note.

22 The sole exchange that the Prosecution had with the witness concerning this video,
23 apart from the physical act of playing it in front of him without sound, was that while
24 he was viewing the video at some point in the presence solely of the video technician
25 with none of the lawyers in the room, he sent a message to me, I was the lawyer

1 responsible for that preparation session, inquiring why we had not allowed him to
2 play -- why we had not played the video with sound.

3 When I came back in the room I said to him, "I understand that you have asked a
4 question about this, but it's just not the procedure." And that was -- that was it, your
5 Honours. There was nothing more to it.

6 I think the witness is just perhaps confused. I understand why the Defence want to
7 see the video. If your Honours think it's necessary, we will provide it to the
8 Chamber for the Chamber's review. I do think, your Honours, it's going to be a
9 waste of time, but I recognize that there is a contradiction between what I'm telling
10 you and what the witness said, so if your Honours wish to view the video, of course
11 we'll provide it promptly.

12 PRESIDING JUDGE FREMR: All right. We will have to deliberate briefly, but
13 outside of the courtroom. So now we will break for a short time.

14 MR BOURGON: Mr President, if I can?

15 PRESIDING JUDGE FREMR: Yes.

16 MR BOURGON: I think we are ready to proceed. Whatever the decision of the
17 Chamber is, I think it should not delay the end of the testimony of the witness and we
18 are ready to proceed.

19 PRESIDING JUDGE FREMR: But anyway we will deliberate just briefly.

20 MR BOURGON: Thank you.

21 THE COURT USHER: All rise.

22 (Recess taken at 9.44 a.m.)

23 (Upon resuming in open session at 9.46 a.m.)

24 THE COURT OFFICER: All rise.

25 PRESIDING JUDGE FREMR: The Chamber deliberated briefly on the submission

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1 brought by the Defence and according our ruling we direct Prosecution to deal with
2 this matter in re-examination-in-chief.

3 So, Ms Solano, we will ask you to try to clarify that after Defence finish its
4 cross-examination. I don't know whether you will have some further points for
5 re-examination, but we are directing you to take this issue. Then Defence will have
6 also chance to re-cross witness on this point. And then we will see whether it's really
7 necessary to watch this video or not.

8 MS SOLANO: I'm guided, your Honour. Thank you.

9 PRESIDING JUDGE FREMR: So now witness may be brought into the courtroom.

10 (The witness enters the courtroom)

11 PRESIDING JUDGE FREMR: Good morning, Mr Witness.

12 WITNESS: DRC-OTP-P-0769 (On former oath)

13 (The witness speaks French)

14 THE WITNESS: (Interpretation) Good morning, your Honour.

15 PRESIDING JUDGE FREMR: Mr Witness, today should be the last day of your
16 testimony. The Defence will continue in its cross-examination.

17 And just two points of my guidance as yesterday, I'm obliged to remind you that you
18 are still under oath, which means that you have to speak truth and nothing but the
19 truth; and the second issue is practical one, please don't forget to observe pauses
20 between question put to you by Mr Bourgon and your answer, at least three seconds
21 in between.

22 Do you understand?

23 THE WITNESS: (Interpretation) Yes, that's very clear.

24 PRESIDING JUDGE FREMR: Very well.

25 Now, Mr Bourgon, you may proceed.

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1 MR BOURGON: Thank you, Mr President.

2 QUESTIONED BY MR BOURGON: (Continuing) (Interpretation)

3 Q. Good morning, Witness.

4 A. Good morning, Counsel.

5 Q. I'd like to begin this morning by referring to the events that you described when
6 you were in Mandro. I'd like to begin by confirming that you know a person who
7 was a member of the UPC called Tchaligonza?

8 A. Yes.

9 Q. In your statement, and here I'm going to quote DRC-OTP-2067-2565, page 2567,
10 in particular lines 105 to 107.

11 In that statement you state the following:

12 Question: "And Commander Tchaligonza?"

13 Answer: "Tchaligonza. Tchaligonza as well, I knew him in Mandro. He was
14 strong and he had a loud voice.

15 What was he doing in Mandro?"

16 Answer: "Well, he was one of the men who was there around Bosco."

17 Can you confirm what you stated, Witness?

18 A. Yes.

19 Q. Witness, I would suggest to you that Mr Tchaligonza was never in Mandro, in
20 particular during the period of time when you were there; does that refresh your
21 memory?

22 A. Before I answer that question, would the Presiding Judge allow me to say
23 something?

24 PRESIDING JUDGE FREMR: It depends, Mr Witness. What do you want to say?

25 THE WITNESS: (Interpretation) The time and the period that we spent in Mandro

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1 and in the militia left us with sequelae. In other words, because of the lack of sleep,
2 and in my case in particular I had serious problems with insomnia, lack of sleep, loss
3 of memory sometimes, forgetfulness. And some events, in particular questions
4 regarding time and space, it's difficult for me to answer those questions precisely.
5 Thank you.

6 PRESIDING JUDGE FREMR: Understood.

7 Now, Mr Bourgon, I don't know, it depends, but do you think it's still possible to
8 remain in open session, or wouldn't it be safer to move into private?

9 MR BOURGON: I believe, Mr President, we can stay in open session simply because
10 many people were in Mandro. I don't think --

11 PRESIDING JUDGE FREMR: Yes, if the level of questioning will be in this level, no
12 problem, you are right.

13 MR BOURGON: Thank you, Mr President.

14 Q. (Interpretation) Witness, I'd like to go back to my question. I would put to
15 you that contrary to what you stated in your statement, Tchaligonza was never in
16 Mandro and that you did not know him there; does that refresh your memory?

17 A. It is possible that I saw him in camp Ndromo amongst those who passed by, but
18 in Mandro many commanders came by, they came in a jeep and then they left. They
19 didn't necessarily live there with Commander Bosco on site.

20 MR BOURGON: Mr President, if we can move into private session, please.

21 PRESIDING JUDGE FREMR: All right.

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

23 (Private session at 9.55 a.m.) *(Reclassified partially in public)

24 THE COURT OFFICER: We are now in private session.

25 PRESIDING JUDGE FREMR: Thank you, court officer.

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1 Mr Bourgon, please proceed.

2 MR BOURGON: Thank you.

3 Q. (Interpretation) Witness, I'd like to speak rapidly about a person called
4 (Redacted). This is a person you mentioned in your statement; is that correct?

5 A. Yes.

6 Q. (Redacted)

7 A. Yes, that's correct.

8 Q. And you spoke about him on several occasions in your -- both in your statement
9 and in your oral testimony; is that correct?

10 A. Yes.

11 Q. I'd like to come back to what you said in your statement, this is
12 DRC-OTP-2067-2467, in particular page 2475.

13 And I'd like to read to you what you stated at lines 295 to 298.

14 Question put to you: "And just to clarify that point, people like (Redacted)

15 (Redacted)

16 (Redacted); is that correct?"

17 A. Yes.

18 Q. The person interviewed: "Yes, yes." Can you confirm that statement?

19 A. Yes, I confirm that.

20 Q. Witness, I would suggest to you that you were not able to see (Redacted) in
21 Mandro; does that refresh your memory?

22 A. I have just said that many commanders came and went to Mandro. They
23 didn't live on site but they would come and go.

24 Q. But the question that was put to you in your statement was as follows: "Those
25 were individuals that you saw there at camp Mandro." So my question is: Did you

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1 see them, as you say in your statement, did you see (Redacted) in Mandro?

2 A. Yes, I saw him at least once.

3 PRESIDING JUDGE FREMR: Mr Witness, I am told to please have it in mind

4 observe pauses. You are sometimes too fast with responding.

5 THE WITNESS: (Interpretation) Thank you, your Honour.

6 MR BOURGON: (Interpretation)

7 Q. Witness, I would put it to you that you knew that (Redacted)

8 (Redacted) and that you could not have seen him in Mandro,

9 (Redacted); does that refresh your memory?

10 A. I remember that (Redacted) at a given point in time, but I do not

11 remember when. I know he was (Redacted).

12 Q. Do you maintain therefore that you saw him in Mandro when you were there?

13 A. I don't know anymore. I'm sorry.

14 Q. Let me go on to another topic, a person named (Redacted) whom you mentioned

15 both in your statement and in your testimony; is that correct?

16 A. Yes.

17 MS SOLANO: Your Honour.

18 PRESIDING JUDGE FREMR: Ms Solano.

19 MS SOLANO: Before we move on to another topic I just want to put on the record

20 that the lines that Mr Bourgon has read to the witness from his statement are part of a

21 slightly longer excerpt that in fact begins at line 283 on the previous page where the

22 witness is also saying some things about (Redacted).

23 PRESIDING JUDGE FREMR: Mr Bourgon.

24 MR BOURGON: If my colleague can give me a line number in the statement that

25 she's referring, I have the page here, so that we know what she's referring to, please.

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1 PRESIDING JUDGE FREMR: Yes, because you know the objection is that, you know,
2 Mr Bourgon just took something from the context. I think it's up to us to then
3 evaluate that. But if it would be something really concrete that was missed to
4 mention to witness that could change his or have impact on his answer, then okay,
5 but if this is just general, general objection that the text for cross-examination was
6 only taken from some part, I think.

7 So, Ms Solano, what was your objection about?

8 MS SOLANO: Your Honour, of course I've only had a moment to read this because I
9 didn't know what lines of this statement Mr Bourgon was going to put to the witness
10 until a moment ago, and I'm still reading, but basically in the page that precedes the
11 page from which Mr Bourgon has cited, the witness is already talking about Mandro
12 as line 263, and then from line 283 he's talking about different commanders who he
13 had referred to as being the executors of Mr Ntaganda's orders. And then after that
14 come lines 295 which the Defence has put to the witness.

15 PRESIDING JUDGE FREMR: All right. Noted.

16 MR BOURGON: Well, Mr President, I hope this time will not be counted in my time,
17 but I will make the necessary correction so that the record is clear.

18 At page 2474, which is the page before the one I referred to, a question was put to the
19 witness at line 283, 284. And the witness confirms -- I will read it for the record
20 because the Chamber will not have access to the statement.

21 It says here:

22 (Interpretation) "Person interviewed: (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Speaks English) The reference brought forward by the Prosecution confirms two
2 things: On that day (Redacted) was not there, but it reaffirms my proposition to
3 the witness that (Redacted) was seen in Mandro by the witness.

4 So I think we are really wasting time by these questions, Mr President, because it only
5 reaffirms and makes stronger my suggestion to the witness that the witness said he
6 saw (Redacted) in Mandro.

7 Thank you, Mr President.

8 PRESIDING JUDGE FREMR: All right. Move on.

9 MR BOURGON: (Interpretation)

10 Q. Witness, we're now going to (Redacted). You knew (Redacted) well, did you not?

11 A. Yes.

12 Q. So if I've well understood what you said in your statement, (Redacted)

13 (Redacted) Do you remember that?

14 A. No.

15 Q. So I'm going to show you a statement so there is no ambiguity.

16 If you would be so kind, I would like to have DRC-OTP-2067-2456 and I would like to
17 have page 2463.

18 On this page, Witness, we can see what you say in your statement. And I'm going to
19 read a longer paragraph to make sure that we manage to include all of the important
20 words. So if we look at line 230:

21 "Person interviewed: Yes. (Redacted)."

22 Question: "Can you tell us a bit about how it happened?"

23 Answer: "Yes. The night ... in the evening we were there normally as we remained
24 and we decided with the friends there, the students, we said to ourselves: (Redacted)

25 (Redacted).' But we didn't know when. So on the second

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1 day we saw that (Redacted)

2 (Redacted)

3 Do you confirm these words, Witness?

4 A. If I said that (Redacted) motivated me, the fact that (Redacted)

5 That's what I meant. That reassured me that there was (Redacted). He didn't

6 encourage me (Redacted)

7 (Redacted). And with friends (Redacted). So,

8 I don't know. Please excuse me. For example, certain (Redacted) from camp Ndromo

9 and from Mandro. Thank you.

10 Q. Thank you, Witness. I'm going to read what you say a bit further down on the
11 same page so that it's clear for the record. Line 242:

12 "Person interviewed: That was the first day on our arrival.

13 Mm-mm."

14 Question: "In Mandro?"

15 Answer: "In Mandro, yes."

16 "Interviewer: "Yes."

17 Now you say:

18 "Person interviewed: 'You also know our secret. (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 Do you confirm these words in your statement, Witness?

23 A. Yes, I remember.

24 Q. What I don't explain well is that during your testimony you say (Redacted)

25 (Redacted); is that correct?

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1 A. That's the reason why I just said I don't know whether it's (Redacted)

2 (Redacted). I must have been confused there. My apologies for that.

3 Q. When I asked you, Witness, if you confirmed your statement, there was no
4 doubt you were asked the question in Mandro and you speak about the first day, do
5 you not?

6 A. Yes, Prosecutor. I think that I said I couldn't link it precisely to Mandro or to
7 camp Ndromo. And why? (Redacted)

8 (Redacted)

9 That's the one which really affected me the most.

10 Q. And do you know what has happened to (Redacted) since?

11 A. Yes. (Redacted)

12 (Redacted)

13 Q. Witness, I put it to you that you know that (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted). Were you aware of that? Are you aware of that?

17 A. But he was with us, and (Redacted)

18 Q. You were the one who was there, not me. The question is as follows: What
19 happened to (Redacted)? Do you know as I put it to you that he himself (Redacted)
20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 Q. I'm going on to a new subject, Witness. I'm going to show you two photos and
25 I'm going to ask you if you're able to recognize what we see. I don't have the

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1 number.

2 MR BOURGON: Mr President, I do not have a specific DRC number. These
3 pictures were obtained this week, were communicated to the Prosecution yesterday
4 and they were then added to our list as picture number 1, 2 and a third one was
5 added yesterday. I would like to show the picture number 1.

6 MS SOLANO: Your Honours.

7 PRESIDING JUDGE FREMR: Ms Solano.

8 MS SOLANO: May I see the photograph before it's shown to the witness, please.

9 Given I would normally have an ERN which I can use to pull it up quickly.

10 PRESIDING JUDGE FREMR: All right. So please switch off Mr Witness's screen.

11 MR BOURGON: Mr President, the pictures were provided to the Prosecution, but
12 they are identified as picture number 1, 2 and 3 because they are not yet into the
13 eCourt system. So I think my colleague has both the picture that is referred to as
14 picture number 1.

15 PRESIDING JUDGE FREMR: So, Ms Solano, can you see those three pictures?

16 MS SOLANO: Your Honour, I have no objection to picture number 1 being shown.

17 I do note that because it's not in eCourt we have no information -- well, we don't have
18 the metadata that would normally have to be provided with disclosure which would
19 tell us when it was taken, who it was taken by, who it was obtained from, et cetera.

20 PRESIDING JUDGE FREMR: Mr Bourgon.

21 MR BOURGON: Mr President, this picture was taken this week. It was
22 communicated to the Prosecution as soon as we received it. As a matter of fact it
23 took about more than 20 hours to download the picture and to have it sent here. But
24 it was taken by members of the Defence team this week.

25 PRESIDING JUDGE FREMR: So do you still object to use this?

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1 MS SOLANO: No, your Honour. As I had said, I don't actually have an objection.

2 I just wanted to put on the record that we didn't have information that may

3 sometimes prevent the -- or make it difficult for the Prosecution to comment on the

4 photograph or react to propositions that are put to the witness about the document.

5 But I have no objection.

6 PRESIDING JUDGE FREMR: I see. Okay. Then let's proceed.

7 So we can switch on Mr Witness's computer.

8 MR BOURGON: (Interpretation)

9 Q. Witness, a photo will appear on your screen. Now my question is very simple:

10 Do you recognize this photograph? Do you recognize the place and/or the building?

11 Do you have an answer? Did you hear my question?

12 A. Yes, I heard it. I'm just looking at the picture. I don't recognize it.

13 Q. Witness, I'm now going to show you a second photograph. (Speaks English)

14 This picture, Mr President, is labelled as "photo numéro 2" or "picture number 2", and

15 it was provided to the Prosecution and it was also taken this week by members of the

16 Defence.

17 THE INTERPRETER: Your Honour, where switches are made between languages,

18 there will be overlapping speakers.

19 MR BOURGON: (Interpretation) The photograph will appear on --

20 THE COURT OFFICER: Mr Bourgon, when you're switching languages, could you

21 please wait for 3 seconds for the interpretation to be done. Thank you very much.

22 PRESIDING JUDGE FREMR: And Ms Solano also was on her feet.

23 MS SOLANO: Because I thought I would have an opportunity, your Honour, to say

24 that I have no objection to the use of this photo.

25 PRESIDING JUDGE FREMR: Thank you.

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1 MR BOURGON: (Interpretation)

2 Q. Witness, you see the photograph in front of you?

3 A. Yes, I see it.

4 Q. Do you recognize the place and where the building on the photograph is?

5 A. I don't recognize the house where it's written "école primaire Mandro."

6 Apparently it was rebuilt or renovated. But the countryside does remind me of
7 something, the setting.

8 Q. I put it to you that these two photos that I've just shown you are in Mandro next
9 to the residence of Chef Kahwa. Does that refresh your memory concerning the facts
10 that you saw or the events that saw or not?

11 A. Yes, it does refresh my memory indeed.

12 Q. When did you see this building?

13 A. A long time ago.

14 Q. According to your presence in Mandro did you see this when you were in
15 Mandro?

16 A. Well, I don't know if it was in that state there.

17 Q. Witness, I put it to you that these two buildings that we've just seen did not
18 exist in Mandro at the time when you went through there. Does that refresh your
19 memory?

20 A. But what are the buildings that were set on fire by the APC?

21 Q. Is that your answer?

22 A. It was a question.

23 Q. I'm going to show you a third photograph.

24 MR BOURGON: Mr President, if I can have picture number 3 also provided to the
25 Prosecution and also taken this week by members of the Defence.

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1 PRESIDING JUDGE FREMR: Ms Solano, any objection?

2 MS SOLANO: No objection, your Honour.

3 PRESIDING JUDGE FREMR: All right then.

4 MR BOURGON: (Interpretation)

5 Q. Witness, do you recognize this building?

6 A. I don't recognize it at all.

7 Q. If I put it to you, Witness, that it is the centre of the collectivity of Mandro in its
8 current state, in exactly the same place the building had been destroyed by the APC
9 and it wasn't used at the time, does that refresh your memory?

10 A. It doesn't refresh my memory.

11 Q. I'm now going to another subject.

12 MR BOURGON: Well, Mr President, I would like to have these three pictures
13 admitted in evidence.

14 PRESIDING JUDGE FREMR: Prosecution, your position?

15 MS SOLANO: No objection, your Honour.

16 PRESIDING JUDGE FREMR: All right. So those three pictures are admitted into
17 evidence as a further Defence exhibit.

18 And, court officer, as to the numbers, I guess you will assign them to some numbers.

19 THE INTERPRETER: In the previous answer the witness added that it did not
20 refresh his memory because he had no idea about it.

21 PRESIDING JUDGE FREMR: All right. So you may proceed, Mr Bourgon.

22 MR BOURGON: Thank you, Mr President.

23 Q. (Interpretation) Witness, I would like to go on to a different subject, camp
24 Ndromo. Now, you will remember having testified that you went through there
25 before going to Mandro, did you not?

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1 A. Yes.

2 Q. If I have well understood your testimony, there were a lot of other soldiers who
3 were already there?

4 A. There were indeed some militia who were there.

5 Q. Which -- was it a lot of militia or a lot of other people?

6 A. Well, I can't say how many people there were there.

7 Q. During your testimony, and here I'm referring to transcript 120 in French, that's
8 page 37, it starts on line 7:

9 "What did you find in camp Ndromo when you arrived there?"

10 Answer: "First of all, it was a massive building, massive building which was well
11 built with a large courtyard where the military exercises and parades were carried
12 out."

13 Question: "Were there people there?"

14 Answer: "Yes, there were a lot of other soldiers that were there who were already
15 there."

16 Would you like to change this answer or do you maintain it?

17 A. I maintain it.

18 Q. Could you tell us where the people who were already there came from when
19 you arrived in Ndromo?

20 A. Well, they must have been young people who came to enlist in the UPC in
21 Bunia. And there were also militia who had already been trained who were there as
22 well.

23 Q. We have already discussed, when you speak about militia who go for
24 recruitment, you're speaking about your group, are you not?

25 A. Yes.

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1 Q. What I'm interested in is the other group, the other people. Did you have the
2 time or the opportunity to know where these came from -- where these people came
3 from?

4 A. Some of them came in the jeep from the town, I think. They left them there.
5 The commander dropped them there. But I don't know exactly where they came
6 from.

7 Q. You didn't speak with those people during the period in which you were at
8 camp Ndromo?

9 A. You don't speak to everybody. You just speak with the people you're used to.

10 Q. Witness, I put it to you that the people who were in Ndromo during the period
11 you're referring to when you allegedly were there, they were people who came from
12 Nyankunde who had lost the battle against the APC. They were there to reorganise
13 themselves. Do you know that, Witness?

14 A. I wasn't aware of that.

15 Q. You do know about the massive battle in Nyankunde though?

16 A. Yes. At the time, well, the news about the battle in Nyankunde, at the time
17 I was still a civilian at home.

18 Q. Witness, you know a lot of witnesses have been heard here, lots of words are
19 used, but I think that the word that I'm going to use here, and I would ask you if you
20 are in agreement with me, about what happened in Nyankunde. According to the
21 information that you have, it was a terrible massacre; would you agree with that?

22 A. There were clashes. First of all, there were clashes between the UPC and the
23 APC. At the time it was said that they were supported by the government. I
24 remember even certain names were given, names of Iturian commander who had
25 come into the government group who was in the enemy camp, enemy of the UPC.

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1 THE INTERPRETER: Microphone, please. Microphone, please.

2 MR BOURGON: (Interpretation)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 Q. Can you confirm, Witness, that the APC set fire to Nyankunde, they set it ablaze
9 and hundreds, even thousands of victims resulted from that?

10 A. Well, with regards to these clashes, all I can confirm is that we heard that
11 General Kisémbu had been hit by a bullet in the leg. We also heard that Commander
12 Germain had also been hit by a bullet. There was a massacre at the hospital indeed,
13 in that area, when the APC and the Bangiti had invaded.

14 Q. Witness, if we return now to Ndromo, you told us about songs that were sung
15 in Ndromo; isn't that right?

16 A. Yes.

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

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25 (Redacted)

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- 1 PRESIDING JUDGE FREMR: All right. Mr Bourgon, you may proceed.
- 2 MR BOURGON: Thank you, Mr President.
- 3 Q. (Interpretation) Witness, we were talking about songs and in fact you also
- 4 sang for us. You sang something that you had heard in Ndromo; is that right?
- 5 A. Yes.
- 6 Q. At page 39 of the transcript 120 at line 24:
- 7 Question: "If you can, go ahead, please."
- 8 Answer: "But it was in Kilendu. They were songs in Kilendu."
- 9 Do you confirm that, Witness?
- 10 A. Yes.
- 11 Q. Witness, do you know that (Redacted) didn't understand Kilendu?
- 12 A. Yes -- I don't know, but he had (Redacted) in Kilendu.
- 13 Q. Do you know whether (Redacted) did not understand and did not speak
- 14 Kilendu?
- 15 A. I don't know. I don't know if he understood or if he spoke Kilendu.
- 16 Q. I have two questions regarding the child soldiers that you allegedly saw in
- 17 Ndromo. The first is this: I'll start off by reminding you of your answer to a
- 18 question from the Presiding Judge on page 46.
- 19 This is transcript 120, page 46 at line -- or lines 5 to 9:
- 20 The question is put to you:
- 21 "Witness, we cannot oblige you" --
- 22 (Speaks English) Mr President, the French version is very, very -- has a lot of
- 23 mistakes, so please --
- 24 PRESIDING JUDGE FREMR: You are authorised to correct it.
- 25 MR BOURGON: Thank you, Mr President.

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1 Q. (Interpretation) -- "an estimation of the age or ages, but could you at least give
2 us an understanding of what meaning you give to the word 'child' is."

3 Answer at line 9 was: "A child is zero to 17."

4 Do you recall that answer?

5 A. Yes, I remember.

6 Q. Now, if I have understood your testimony correctly, you were trained in
7 Ndromo to carry out drills by 9-year-old children in civilian clothing; is that your
8 testimony, Witness?

9 A. There were not only child soldier instructors but also adults.

10 Q. Witness, I will repeat my question. Do you recall your testimony that you
11 were -- you were trained to carry out drills by 9-year-old children who were dressed
12 in civilian clothing; is that correct?

13 A. I didn't specify 9 years. I gave -- I estimated the age and yes, indeed, we did
14 have child soldier instructors.

15 Q. Well, I'll leave it to the Chamber to evaluate your testimony regarding the exact
16 age.

17 Now, my second question is this: Is it indeed your testimony today that there were
18 9-year-old children who were undergoing the same training as you in both physical
19 and technical terms?

20 A. Yes, there were.

21 Q. Well, I have no other questions on that topic.

22 Now, according to your testimony, when you left Ndromo you stated that you left
23 Ndromo and at that time five companies left Ndromo.

24 A. We were in large number. We spoke of Coy: A-Coy, B-Coy, like that, C-Coy,
25 E-Coy.

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1 Q. Witness, despite your very short military career in the UPC, do you know how
2 many soldiers there are in a company?

3 A. I see. One company consists of three platoons. Maybe I was wrong when I
4 referred to Coy. I think I should have referred to platoons, not companies.

5 Q. I'm now going to refer to your statement, which is DRC-OTP-2067-2456, at page
6 2458. At the last line the following question is put to you:

7 "And how many were you approximately?"

8 Answer at 2459: *"I don't know the number. There was E Coy, B Coy, C Coy,
9 E Coy, approximately five companies."

10 Do you want to change your answer or do you maintain what you stated in your
11 statement?

12 A. I'd very much like to change that answer.

13 Q. And what is the correct answer?

14 A. I now -- I know why I made that mistake. There were songs which we sung
15 when we were carrying out drills. We would talk about Coys, so companies, but we
16 were not operating in companies there, we were in platoons. That is to say, there
17 was a song for instance:

18 (Witness sings)

19 Where we're moving ahead and that's why it was that word that came to mind. But I
20 rectify, in fact it's a matter of platoons and I sincerely apologise.

21 Q. Witness, do you agree with me that there's a big difference between five
22 platoons and five companies.

23 A. Absolutely.

24 Q. There's a difference of 150 to more than 600, isn't there?

25 A. Yes.

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8 (Redacted)

9 (Redacted)

10 Q. I'm now going to swiftly move to the journey that you undertook between
11 Mandro and Tchomia. Do you recall what you told us about that?

12 A. Yes, I recall.

13 Q. Now, there are some aspects of that journey that I'd like to look into with you.
14 First of all, can you confirm that when you arrived in Tchomia, you received more or
15 less a hero's welcome because you were officers that were leaving for Rwanda; is that
16 right?

17 A. Well, I didn't say we had a hero's welcome, but we were well-treated.

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 Q. You say that there in Tchomia you recognized an officer called Safari; is that
22 right?

23 A. Yes, that's right.

24 (Redacted)

25 (Redacted)

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9 (Redacted)

10 (Redacted)

11 Q. Now, when you personally left Mandro in your group you were escorted by
12 armed soldiers; is that correct?

13 A. Yes, armed soldiers.

14 Q. But you personally did not have a weapon during that journey, did you?

15 A. No. We had no weapons. We were not armed.

16 Q. Could you repeat the end of your answer?

17 A. We had nothing. We were not bearing arms.

18 Q. I would put it to you, Witness, that the reason why you did not have weapons
19 was because you had not yet been trained to use weapons; is that correct?

20 A. We had not yet had the time to be trained on the firing range, but we knew how
21 to assemble -- disassemble and reassemble a weapon.

22 Q. Before you left there were others who had left for Tchomia before you; is that
23 correct?

24 A. Yes, I can confirm here that we encountered other groups who had already
25 arrived into Rwanda.

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10 (Redacted)

11 (Redacted)

12 Q. Can you confirm that you didn't see Bosco Ntaganda in Tchomia?

13 A. I don't believe I saw him there.

14 MR BOURGON: Mr President, I think it's 11 o'clock, we better stop here. If I can
15 have a time count, please, Mr President. Thank you.

16 PRESIDING JUDGE FREMR: Yes, according -- let's move into public session first.

17 (Open session at 11.01 a.m.)

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

19 PRESIDING JUDGE FREMR: Thank you, court officer.

20 So according our measuring you have already taken 4 hours 12 minutes, and if taken
21 into account time exhausted by Prosecution, which was 5 hours 5 minutes, according
22 to my counting you still have 53 minutes for the rest.

23 Now we will break and we will continue half past 11.

24 THE COURT USHER: All rise.

25 (Recess taken at 11.02 a.m.)

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1 (Upon resuming in open session at 11.30 a.m.)

2 THE COURT USHER: All rise.

3 Please be seated.

4 PRESIDING JUDGE FREMR: Well, let's proceed with the last part of
5 cross-examination of our witness.

6 Mr Bourgon, we are in open session at the moment. Could we remain here or
7 should we move into private?

8 MR BOURGON: I'd like maybe to stay in public session to try it, and if it doesn't
9 work, then we will move immediately. I will be addressing the topic of the training
10 in Rwanda and there are many people who were trained there.

11 PRESIDING JUDGE FREMR: All right, but please be vigilant.

12 MR BOURGON: Mr President, just during the break I had a piece of paper
13 circulated to parties and participants in the courtroom. This refers to a question I
14 asked in today's transcript on page 30 at lines 11 to 15. So this information is
15 provided in accordance with the guidance from the Chamber before the testimony of
16 the witness.

17 PRESIDING JUDGE FREMR: All right.

18 MS SOLANO: Your Honour.

19 PRESIDING JUDGE FREMR: Ms Solano.

20 MS SOLANO: I do have an objection to the use of this document if that's what the
21 Defence are doing right now. No? Thank you.

22 MR BOURGON: It's for information purposes, so that's where it comes from.

23 PRESIDING JUDGE FREMR: That was my understanding.

24 MR BOURGON: (Interpretation)

25 Q. Witness, we're going to come to the last part of your cross-examination. I'd

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1 like to discuss your arrival in Rwanda for training. You know what period I'm
2 referring to, don't you?

3 A. Yes, I do.

4 Q. We are now in open session. If you need to mention a name that might
5 identify you, please let me know and we will go into private session, but I'm going to
6 be asking you general questions about your training in Rwanda; is that okay?

7 A. Yes, fine.

8 Q. I'd like to confirm with you that when you arrived in Rwanda you met Captain
9 Charles Sibomwa, who was the chief of the camp; is that correct?

10 A. Yes. He introduced himself as being in charge of our training, the number one
11 person in charge.

12 Q. I'd like to confirm that he is the one who explained why you were in Rwanda; is
13 that correct?

14 A. Yes. He said, "You've been sent here to be trained in artillery."

15 Q. And I understand from your testimony that he explained that the reason was
16 that the UPC had weapons but nobody knew how to use them and that's why he was
17 going to train you in the use of those weapons; is that correct?

18 A. I don't remember him saying that. I don't remember saying that.

19 Q. Well, I don't know whether this was an answer that was made in open session
20 or in private session, but I'm going to quote your answer in the English version on
21 page 120 of the transcript, 170 in the English versions, lines 1 to 15, but I know you
22 understand English, it will be interpreted nonetheless into French:

23 (Speaks English) "We're going to learn to use heavy weapons, to assemble them and
24 to disassemble them, to set them up, and that was because there are weapons that you
25 have with you, but you have nobody who can use them and that's the reason why we

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1 have to help you train so that you can use these weapons there."

2 (Interpretation) Do you maintain that statement?

3 A. Yes. Yes, I do.

4 Q. As regards training with weapons, I'd like to come back to your statement. It's
5 DRC-OTP-2067-2480, page 2484, starting lines 131. I beg your pardon, it starts line
6 153. And this is what it says in your statement:

7 "During the training sessions, they explained to us about the dangers of each weapon,
8 the capacity of each weapon. And it could fall -- well, if it falls here, it can destroy as
9 much -- as many square kilometres, so, like the perimeter here."

10 Do you remember stating this in your interview?

11 A. Yes.

12 Q. Am I right to understand from what you've said that you were given training,
13 you were taught about the weapons so that you'd be familiar with the firing power of
14 the weapons, as well as the range and the destructive power of these weapons; is that
15 correct?

16 A. Yes, yes.

17 Q. It's quite normal in a professional army to be familiar with weapons in order to
18 be able to use them properly in keeping with the law; is that correct?

19 A. Yes.

20 Q. During your training you received instruction in international humanitarian law
21 or international law of war; do you agree with me?

22 A. Yes.

23 Q. In your statement, the very same statement 2067-2480, page 2484, line 130 -- I
24 beg your pardon, my mistake, 2487, page 2487, line 246 where it says as follows:

25 "Person interviewed: We were taught a few notions in passing, not like in a major

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1 course. For example, they said to us: 'If you catch a war prisoner, you don't kill him.
2 You keep them for such and such a reason. Number one, to get any intelligence
3 from him he may have, secondly, because he may help you find other enemies. But
4 also because humanitarian law forbids one from killing war prisoners.' They taught
5 us that. They also said we were not allowed to rape. We were not permitted to
6 rape women. And there was a course on HIV/AIDS."

7 Can you confirm what you said in this statement?

8 A. Yes, I can confirm that.

9 Q. During that training there was ideology training. And it's the same statement
10 but a different page, page 2486, line 202 and it reads as follows:

11 Question: "Did you have courses on ideology as well?"

12 "Person interviewed: Yes. Yes, there were classes on ideology. They told us 'We
13 are -- we are not training you to go kill people that you're in conflict with in your
14 country, but we are training you as real soldiers with a humanitarian mission, to
15 protect therefore. We are not sending you to or we're not encouraging you to go and
16 kill a tribe or an ethnic group.' That's what it was." End of quote.

17 Do you remember those words during your training?

18 A. Yes.

19 Q. Can you also confirm, Witness, that the chief of staff, Commander Kisembo,
20 came to visit with Mr Jean-Baptiste and explained the importance for an army, in
21 particular for revolutionaries, that you had to win over the hearts and minds of
22 people? Do you remember hearing that? Do you remember that Kisembo
23 explained that?

24 A. I don't remember those words exactly any more.

25 Q. Did Kisembo explain to you that it was important to be with the civilian people

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1 and not against the civilian people during military operations?

2 A. Well, there was an expression that was often repeated as far back as I remember,
3 which was the role of a soldier is to protect a civilian and that's good. Those were
4 words that they always repeated.

5 Q. Yesterday you testified about a letter, the content of which was shared with you,
6 I'm not going to mention the exact place because we're in open session, but this letter
7 was shared with you. It was a letter from Thomas Lubanga, but it was India Queen
8 who shared it with you, who shared the content of that letter with you. Do you
9 remember it?

10 A. Not with me individually, but with us in general, those who were in the same
11 position.

12 Q. I'd like to come back to your statement regarding the content of that letter, this
13 is document DRC-OTP-2067-2577, page 2597. And I'm referring to line 733 to 744.
14 "Interviewed person: In any case, I remember well once there was a parade with the
15 colonel, Commander India Queen" --

16 PRESIDING JUDGE FREMR: Ms Solano.

17 MS SOLANO: I apologise, your Honours, but we seem to have some serious
18 problems with the French transcript.

19 PRESIDING JUDGE FREMR: Court officer, is it possible to check that?

20 (Pause in proceedings)

21 PRESIDING JUDGE FREMR: At the moment I don't have any satisfactory answer.
22 Let's wait for a while.

23 (Pause in proceedings)

24 PRESIDING JUDGE FREMR: So I was told that it was back. Am I right?

25 MS SOLANO: It seems to be back, your Honour. Thank you.

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1 PRESIDING JUDGE FREMR: Fine.

2 So, Mr Bourgon, you may proceed.

3 MR BOURGON: I'm not sure where the letter was cut off. I will start again the
4 citation.

5 Q. (Interpretation) Witness, I'm going to read out to you the passage from your
6 statement that is starting line 733:

7 "Interviewed person: In any case, I remember well once there was a parade with the
8 colonel, Commander India Queen, who came from Bunia."

9 MR BOURGON: If we can move in private session, Mr President, please.

10 PRESIDING JUDGE FREMR: All right.

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

12 (Private session at 11.47 a.m.) *(Reclassified partially in public)

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

14 PRESIDING JUDGE FREMR: Thank you, court officer.

15 Mr Bourgon, please.

16 MR BOURGON: Thank you.

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

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9 Q. Let me go on to another topic, that is when you came back from Rwanda.

10 Yesterday I asked you to point out on a map the place where you came back to Bunia

11 when you returned from Rwanda. And I would like to confirm -- rather, I'd like to

12 make a suggestion and ask you to confirm that the place that you went to was called

13 Epo; does that ring a bell?

14 A. Yes. Yes, indeed, it does ring a bell.

15 Q. When you refer to what had happened at Epo, you referred to people who

16 spoke to you at that time; do you remember that?

17 A. Yes, I remember.

18 Q. Can you confirm, Witness, that Bosco Ntaganda was not present at that time?

19 A. Well, in any case, I didn't see him. That day I saw President Thomas and

20 General Kisembo, that's all.

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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Trial Hearing
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(Private Session)

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17 (Redacted)

18 Q. Thank you, Witness. I have no further questions.

19 A. Thank you.

20 PRESIDING JUDGE FREMR: But next time, Mr Bourgon, because I said last

21 question, you put five questions. I don't know if there's some difference in French,

22 but the question I think is clear term. So next time don't rely on my generosity.

23 Now let's move into open session for a while.

24 (Open session at 12.35 p.m.)

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

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1 PRESIDING JUDGE FREMR: Thank you, court officer.

2 Now my question goes to Ms Solano. Apart from the issue the Chamber ordered
3 you to clarify, do you have any further issues for re-direct?

4 MS SOLANO: I do, your Honour, with your leave. And I do expect that I should
5 be able to cover them before the lunch break.

6 PRESIDING JUDGE FREMR: Please try to make it in 20 minutes because I don't find
7 reasonable to adjourn because of 5, 10 minutes. So please try to make it in
8 20 minutes. Go ahead.

9 MS SOLANO: Very well, your Honour. Thank you.

10 PRESIDING JUDGE FREMR: And I guess we should move into private. All right.

11 MS SOLANO: Yes. Thank you.

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

13 (Private session at 12.36 p.m.) *(Reclassified partially in public)

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

15 PRESIDING JUDGE FREMR: Thank you.

16 Ms Solano, please proceed.

17 MS SOLANO: Thank you, your Honour.

18 QUESTIONED BY MS SOLANO:

19 Q. Sir, can you hear me?

20 A. Yes, I can.

21 Q. I have limited time, so as before, I would be grateful if you could try to answer
22 my questions in a very focused manner.

23 In cross-examination Defence counsel asked you whether you had seen the video

24 showing the primary school at Mandro during your preparation session with the

25 Prosecution last week. Do you remember being asked about that by the Defence?

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1 A. There were a lot of questions, a lot of questions have been put to me, but
2 I believe that that was indeed one of them.

3 Q. The Defence asked you whether the Prosecution, and that means me, whether
4 the Prosecution asked you questions about the video, the Mandro video, during your
5 witness preparation session last week. Do you remember that the Defence asked
6 you that?

7 A. Yes, I recall.

8 Q. Do you remember what your answer was?

9 A. No.

10 Q. Sir, I want to take you back to the witness preparation session last week. Do
11 you remember viewing the video that shows the primary school at Mandro?

12 A. The video which I saw and which I called Mandro primary school, yes. But the
13 one that I was shown today as being Mandro primary school, that really confused me.

14 Q. Sir, I'm asking you only about the video that you saw during your witness
15 preparation session. Do you remember whether the Prosecution, meaning me,
16 whether I asked you any questions about what you saw on that video during your
17 witness preparation session?

18 A. Yes, I recall.

19 Q. And what questions do you remember being asked?

20 A. "Do you recognize this place? Who are these people here -- or there, rather?
21 Can you identify some of the people there?"

22 Q. Do you remember what your answer was?

23 A. Yes.

24 Q. What was your answer?

25 A. I said that is Mandro primary school and I recognized Commander Bosco.

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1 And in those days I wasn't quite sure about the other people on the photo.

2 Q. Thank you. I'm going to move on to a different topic.

3 Did you use a radio while you were in the UPC?

4 PRESIDING JUDGE FREMR: Mr Bourgon.

5 MR BOURGON: This was never raised in cross-examination. I did not use the
6 word "radio".

7 MS SOLANO: Your Honour, it is correct that the Defence perhaps didn't use that
8 word, but the Defence asked the witness a question about call signs, so I think it's
9 relevant for this Chamber to understand this witness's evidence that he answered this
10 question. I have no more questions on this particular --

11 PRESIDING JUDGE FREMR: All right. Objection overruled. Please proceed.

12 MS SOLANO:

13 Q. Sir, did you use a radio while you were in the UPC?

14 A. I never used a radio or a telephone or a Motorola or a Thuraya. I never used
15 one. Indeed to date I still don't know how to use Thurayas.

16 Q. Sir, during your cross-examination today you mentioned an individual called
17 (Redacted) and you said that you saw this individual in Kinshasa. Did you meet
18 him in Kinshasa for the first time or was he known to you before then?

19 A. I knew him before.

20 Q. Where did you know him from?

21 A. (Redacted). I think that he may also be (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 Q. Please finish -- finish what you were saying.

2 A. Yes. (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 Q. To your knowledge, does this individual -- did this individual ever have any
8 connection with the UPC?

9 A. (Speaks English) Which person, please?

10 Q. (Redacted)

11 A. (Redacted)

12 (Redacted)

13 Q. Thank you, sir. I want to ask you a series of questions about the circumstances
14 in which you left the UPC and specifically the issue of your date of birth and the role
15 played by Save the Children.

16 The Defence showed you an investigation note created by the Prosecution. It is
17 DRC-OTP-2093-0132.

18 Can it please be displayed.

19 And I'm going to re-read to you part of what that investigation note says, part of what
20 was read to you by the Defence already. Can we focus on the second paragraph,
21 please.

22 And it says on the third line:

23 "I had to lie about my age to Save the Children in order to get out of the UPC."

24 Can you see that in front of you?

25 A. Yes, I see that line.

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1 Q. Is it correct, as you said to the Defence, is it correct that you had to lie about
2 your age to Save the Children in order to get out of the UPC?

3 A. I think that with the assistance of the Save the Children officer, it was he who
4 asked that I review or reduce my age. I recall I believe.

5 Q. Sir, let me put the question to you in a different way. Was Save the Children
6 aware that you were not under the age of 18?

7 A. Save the Children as an NGO, no, but the person who dealt with me at the office
8 and who spoke with my maternal aunt (Redacted), he knew.

9 MS SOLANO: Can we zoom out so that the witness can see the whole document,
10 please. Can I -- can we zoom on the bottom of the document now, please. Can we
11 zoom back out and show the next page. Please zoom out. Just the whole page is
12 fine.

13 Q. Sir, had you seen this investigation note before your witness preparation session
14 last week?

15 PRESIDING JUDGE FREMR: Mr Bourgon.

16 MR BOURGON: Mr President, this is quite leading. We asked the witness to read
17 and it wasn't read to him and then we ask him were you aware. She can ask the
18 question and then put the document, if she wants, but -- thank you, Mr President.

19 PRESIDING JUDGE FREMR: Ms Solano.

20 MS SOLANO: I regret that I don't understand the nature of the Defence's objection.
21 My question is not leading. I'm asking him whether he had seen this document
22 before he saw it last week.

23 PRESIDING JUDGE FREMR: Yes, objection is overruled. Please proceed.

24 MS SOLANO:

25 Q. Sir, had you seen this document before last week?

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1 A. Yes.

2 Q. When had you seen this document?

3 A. Do you want me to say the day?

4 Q. Well, in what circumstances had you seen this document?

5 A. I think that these were the documents that were added to all those which I had
6 before, these were missing documents which I added I believe.

7 Q. Do you mean last week or do you mean before last week? Had you seen this
8 document before you came to The Hague to testify?

9 A. No, I never saw that document before coming to The Hague.

10 Q. Thank you. Sir, were you ever in a transit centre for children, for demobilised
11 children?

12 A. No. I was in Save the Children offices but not in a DDRR office, per se.

13 Q. Sir, why was it necessary for -- with the involvement of Save the Children for
14 you to lie about your age on this particular piece of paper? What did you need that
15 paper for?

16 A. In fact, I wasn't really involved with receiving these documents. It was (Redacted)
17 (Redacted) Save the Children who organised or facilitated our journey
18 and made it possible to reunite with family in (Redacted). I didn't individually take
19 steps myself. I didn't know the Save the Children office or not exactly where it was,
20 I didn't know (Redacted), I had never met him before. It was (Redacted),
21 (Redacted), who had taken steps. And the day that I was there when I met
22 (Redacted) and he said, "Well, you're
23 not a child. I know that you were with the UPC. I'm going to help you, I'm going
24 to help you to be reunited with your family." He did it simply out of compassion
25 and pity.

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1 Q. Sir, how did you use this document after -- after you obtained it? What did
2 you use it for?

3 A. *I didn't use it. I didn't hold it by hand and use it. It was done between the NGO
4 and (Redacted). The only document my parents signed was when they went to the airport,
5 they signed for it and the next day or a few days later they had been to the Save -- Save
6 the Children office and had signed there to say that there had been a family reunification.

7 Q. You -- you were questioned by the Defence about a letter from Thomas Lubanga
8 which you learnt about through India Queen, and according to the letter it was
9 prohibited to attack civilians who were not bearing weapons.

10 PRESIDING JUDGE FREMR: Mr Bourgon.

11 MR BOURGON: Thank you, Mr President. This topic was raised during
12 examination-in-chief, I raised it in cross-examination. No use to return to this in
13 re-examination. Re-examination is to cover issues that were not covered during
14 examination-in-chief. In this case these questions and this information was elicited
15 from the witness. Thank you.

16 PRESIDING JUDGE FREMR: Ms Solano.

17 MS SOLANO: Your Honour, this is my last line of inquiry and the Defence doesn't
18 actually know exactly where I'm going yet. The next question I'm going to ask is
19 going to make it clear that this issue did arise in cross-examination.

20 PRESIDING JUDGE FREMR: If the purpose is clarification, that is fine.

21 MS SOLANO: Thank you.

22 PRESIDING JUDGE FREMR: So objection is overruled. Please proceed.

23 MS SOLANO:

24 Q. Sir, the Defence put it to you and you confirmed that this instruction not to
25 attack unarmed civilians was consistent with the training you received in Rwanda.

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1 Remember that?

2 A. Yes, I remember that perfectly.

3 Q. Was this instruction not to attack civilians who were not armed put in practice
4 while you were in the UPC? Was it -- was it implemented?

5 MR BOURGON: This is not --

6 PRESIDING JUDGE FREMR: Mr Bourgon.

7 MR BOURGON: -- clarification, Mr President.

8 PRESIDING JUDGE FREMR: I find it as a clarification. Please proceed.

9 MS SOLANO: Thank you, your Honour.

10 THE WITNESS: (Interpretation) On our front line from Tchayi through to Marabo
11 we never attacked civilians.

12 MS SOLANO:

13 (Redacted)

14 (Redacted)

15 PRESIDING JUDGE FREMR: Mr Bourgon.

16 MR BOURGON: Asked and answered. She did ask the question, it was allowed by
17 the Chamber, the witness answered the question, no need to move on.

18 PRESIDING JUDGE FREMR: Ms Solano.

19 MS SOLANO: Your Honour, the witness answered about the front line and I'm
20 asking him a question about an incident that he describes taking place inside a UPC
21 position. I don't think my question has been answered.

22 PRESIDING JUDGE FREMR: Mr Bourgon.

23 MR BOURGON: It's an incident I did not even cover in cross-examination. She
24 had all the latitude to cover it in chief and she did. I did not even approach that in
25 cross-examination. Thank you.

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- 1 PRESIDING JUDGE FREMR: This objection is sustained.
- 2 MS SOLANO: I have no more questions, your Honour.
- 3 PRESIDING JUDGE FREMR: All right then.
- 4 Now, Mr Bourgon, your turn. Do you also request any re-cross?
- 5 MR BOURGON: No re-cross, Mr President. I just want to admit the document that
- 6 the witness recognized.
- 7 PRESIDING JUDGE FREMR: Very well. And about your previous request that
- 8 you requested to watch -- to be provided with the video, do you insist on that? Do
- 9 you maintain --
- 10 MR BOURGON: I withdraw the request, Mr President.
- 11 PRESIDING JUDGE FREMR: Very well.
- 12 MR BOURGON: I think we have -- we have all the answers we need.
- 13 PRESIDING JUDGE FREMR: So could you just specify what document you have in
- 14 your mind.
- 15 (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 Now, Mr President, I do have one question in re-cross because --
- 19 PRESIDING JUDGE FREMR: (Overlapping speakers) ... okay, so let's first --
- 20 MR BOURGON: One question.
- 21 PRESIDING JUDGE FREMR: -- do this -- deal with this request.
- 22 Any objection to this request, Ms Solano?
- 23 MS SOLANO: Your Honour, I object to the admission of this document because the
- 24 Defence didn't really put the contents of this document to the witness. They just
- 25 showed him the document and asked him one very general question.

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1 PRESIDING JUDGE FREMR: Mr Bourgon, any comment from --

2 MR BOURGON: Well, the witness not only recognized the document, he recognized

3 the situation in the document, which is (Redacted)

4 (Redacted) I think we have all information.

5 Of course this a document that comes from the Prosecution, that was disclosed

6 to the Defence by the Prosecution. So in terms of reliability, I don't think we

7 can discuss this. And the witness recognized both contents and the situation

8 described therein.

9 PRESIDING JUDGE FREMR: Ms Solano.

10 MS SOLANO: Your Honour, what the witness recognized was Mr Bourgon's

11 purported summary of what the document says, but as your Honours know, the devil

12 is in the details and the Defence just did not put questions to the witness on this

13 document. The Defence always has the option to seek to tender this document for a

14 Bar table motion at a later point in time, but I don't think that the information elicited

15 from this witness in particular is sufficient to tender the document into evidence.

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 PRESIDING JUDGE FREMR: Objection is overruled. I found foundation sufficient,

21 so this document is admitted into evidence as a further Defence exhibit.

22 And now, Mr Bourgon, your question.

23 MR BOURGON: Thank you, Mr President.

24 QUESTIONED BY MR BOURGON: (Interpretation)

25 (Redacted)

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22 PRESIDING JUDGE FREMR: All right. Now let's move into open session, please.

23 (Open session at 1.01 p.m.)

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

25 PRESIDING JUDGE FREMR: Thank you, court officer.

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1 Now, Mr Witness, it concludes your testimony. So on behalf of this Chamber

2 I would like to thank you. I can imagine that it was very, very tiring to testify for

3 three days, but nevertheless we believe that your testimony will assist us in our effort

4 to find the truth in this case. So thank you very much and we wish you safe journey

5 home.

6 And I also thank Mr von Bóné for his legal assistance.

7 Now, court officer, you may escort Mr Witness out of the courtroom.

8 THE WITNESS: (Interpretation) Thank you very much, your Honour.

9 (The witness is excused)

10 PRESIDING JUDGE FREMR: And before we adjourn, allow me one final -- or final

11 remarks on future progress of this case.

12 Now we have reached the end of the fifth evidentiary block and have now heard the

13 viva voce testimony of 31 Prosecution witnesses and have admitted the testimony of 3

14 further witnesses under Rule 68(2).

15 And as you are aware, in the decision of 27 May 2016 with filing number 1342, the

16 Chamber requested the Prosecution to review its number of witnesses as well as their

17 time estimates and modes of testimony with a view to significantly reducing the size

18 of its remaining case.

19 These revised estimates are expected by 29 July 2016.

20 Considering those directions and in light of the progress that has already been made

21 and the number of scheduled hearings for the remainder of this year, the Chamber

22 would now like to give some indications regarding the future progress of this case.

23 The Chamber would envisage the Prosecution completing its case within the first

24 couple of months of 2017 and directs the Prosecution to plan accordingly. In that

25 regard, the Chamber emphasises that the Defence should also be making ongoing

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1 preparations for any Defence case it may wish to present, including identifying
2 potential witnesses.

3 Later this year the Chamber will be requiring the Defence to indicate its intentions in
4 that regard.

5 The Legal Representatives of Victims should also be making relevant preparations for
6 any applications they may be intending to bring, including any victims they may seek
7 to have heard.

8 The Chamber is raising the matter at this stage in order to provide advanced notice to
9 the parties and participants that it is not minded to grant extensive breaks for
10 preparation. There will be an expectation of readiness to proceed smoothly with
11 only a limited time between the separate parts of the case and you should please plan
12 accordingly.

13 Any comments on this remark?

14 Prosecution.

15 MS SOLANO: No, your Honour.

16 PRESIDING JUDGE FREMR: Defence.

17 MR BOURGON: We are doing our best, Mr President. We will continue to do so.

18 PRESIDING JUDGE FREMR: We believe so.

19 And Legal Representatives of Victims?

20 MS PELLET: (Interpretation) No, your Honour.

21 PRESIDING JUDGE FREMR: Mr Suprun?

22 MR SUPRUN: (Interpretation) No, nothing, your Honour.

23 PRESIDING JUDGE FREMR: So it means that we are really at the end of this
24 evidentiary block, and since there is some recess in front of all of us -- Mr Bourgon,
25 please.

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1 MR BOURGON: Well, in connection with the Trial Chamber's message, we are in
2 contact with the Prosecution, we hope to get the list of witnesses for the next block.
3 The Chamber expects us to work and to be ready at all times. This list is necessary.
4 We are in contact with the Prosecution. We hope to get the list, but it would really
5 assist to get the list of all remaining witnesses or if any witnesses are dropped so that
6 we can focus our work on the right witnesses. When I wrote to the Prosecution, the
7 answer I received was "We'll be able to provide you the names of the next block, but it
8 might be problematic for the second block."

9 I think at least the names of the witnesses and then further information as it comes
10 available in terms of timing would be of great assistance for us in preparing for
11 these -- for the next two blocks, which I believe will be probably, if not the last ones,
12 very close to the end. Thank you, Mr President.

13 I also have a request, but I can make it by email, concerning disclosure of the BSQ.
14 My colleague referred to a note which is an extract from the BSQ, so the questions
15 indicate that there seems to be a discrepancy between the extracts that were
16 provided --

17 PRESIDING JUDGE FREMR: Mr Bourgon.

18 MR BOURGON: -- and the BSQ, so I will be making a request by email. Thank
19 you.

20 PRESIDING JUDGE FREMR: Please, please do so.

21 And, Ms Solano, are you at the moment in position to comment Mr Bourgon's
22 proposal request?

23 MS SOLANO: Your Honour, as always, we will endeavour to give Mr Bourgon
24 advance -- as much advance notice as we can. We haven't been able to do it so far
25 for -- in relation to this last request that he has sent us, but we -- we will continue to

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1 deal with on an inter partes basis .

2 And, your Honour, just in case this saves time, because I want to make sure that
3 there's no confusion, in relation to the BSQ, the note that I was referring to was the
4 investigation note that contains the excerpts of the BSQ which both the Defence and I
5 showed to the witness. So I don't know if there is really need for anything further in
6 that regard, but I was not speaking about a different note.

7 PRESIDING JUDGE FREMR: Mr Bourgon.

8 MR BOURGON: We will -- we will be seeking disclosure because it is indicated that
9 the witness would have provided information that will be incorrect, so on the basis of
10 these discrepancies, we believe we are entitled to see the full BSQ and the transcript of
11 the interview. Thank you, Mr President.

12 PRESIDING JUDGE FREMR: All right. Let's deal with that in this email.

13 So I will now repeat myself. As I said, there is some recess in front of all of us, so
14 I would like first to thank all those who supported us during the last block and even
15 during the previous blocks, I mean court reporters, interpreters. And I have to
16 admit that sometimes I can imagine it was not easy task when we were too fast and
17 when we or people under my supervision did not fully respect those 3-seconds rule,
18 so we are glad that you made it.

19 And otherwise, because I believe I can conclude that all of you, you were working
20 hard, so we wish you some relax and we are looking forward to continue on
21 5 September with our sixth evidentiary block.

22 Now court is adjourned.

23 THE COURT USHER: All rise.

24 (The hearing ends in open session at 1.10 p.m.)

25 RECLASSIFICATION REPORT

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