

1 International Criminal Court
2 Trial Chamber VI - Courtroom 1
3 Situation: Democratic Republic of Congo
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and
6 Judge Chang-ho Chung
7 Trial Hearing
8 Tuesday, 15 September 2015
9 (Upon resuming in open session at 11.33 a.m.)
10 THE COURT USHER: All rise.
11 Please be seated.
12 PRESIDING JUDGE FREMR: So I just observed for the record that Mr Witness has been
13 escorted in when blinds were down. So we can now continue in open session.
14 Mr Iverson, you have the floor.
15 MR IVERSON: Thank you, your Honour.
16 Q. Sir, when we left off, you told the Court where you were when the UPC entered
17 Mongbwalu. And I would just like to ask you do you know from where you were what the
18 UPC was doing in Mongbwalu?
19 A. The UPC was --
20 THE INTERPRETER: Message from the interpreters. Sorry for the mix-up with the
21 microphones. The witness said that the UPC had come in to wage war.
22 MR IVERSON: Could I ask the court officer to please display the fourteenth document on
23 the Prosecution list of documents. It's DRC-OTP-2080-0239. It's a map and it is a public
24 document.
25 (Viewing of document DRC-OTP-2080-0239)

1 MR IVERSON:

2 Q. Sir, are you able to clearly see the image on your screen?

3 A. Yes, I can see it.

4 Q. Are you able to read the place names on this document, sir?

5 A. Yes, I can read them. Yedi, Lodjo, Pluto, Tshiba-Tshiba, Andisa, Mongbwalu, Nzebi,
6 Wazabo, Kanga, Abelkoso, Bedzamagosa, Katsetse, Kama, Kilo, Kilomine, Wadza, Kobu,
7 Tchudja, Bambu, Bageni.

8 Q. Sir, are you familiar with the place names on this map?

9 A. Yes, I know all of these places.

10 Q. Sir, earlier today you mentioned the town of Yedi. Could you with the help of the
11 court usher, could you please mark the town of Yedi as where you were when the UPC
12 entered Mongbwalu? And if I could just ask you just to draw just a dot with a number,
13 Arabic numeral 1 next to it.

14 PRESIDING JUDGE FREMR: Mr Witness, you have the floor.

15 THE WITNESS: (Interpretation) You've asked me to indicate the place where I was? Is that
16 what you've asked me to indicate with the number 1? You want me to indicate where the
17 UPC was situated, and that would be number 2? Have I understood correctly?

18 PRESIDING JUDGE FREMR: Mr Iverson.

19 MR IVERSON:

20 Q. At this point I'm just asking you, sir, where you were, where you were when you were
21 aware that the UPC had entered Mongbwalu.

22 A. When the UPC entered Mongbwalu, I was here in Yedi, in Yedi.

23 Q. And just so it's memorialised on the record, could I just have you place an Arabic
24 numeral 1 next to the dot that you just drew, sir?

25 A. (Drawing)

1 Q. Thank you. And, sir, could you tell the Court what you were doing in Yedi on that
2 day?

3 A. Yes. I went to Yedi to sell my goods.

4 Q. Sir, did you have any indication that the UPC would enter Mongbwalu?

5 A. Yes.

6 Q. And could you please tell the Court what indications you had that the UPC would enter
7 Mongbwalu?

8 A. Okay. What led me to know that the UPC was already in Mongbwalu was that I saw
9 people who were fleeing Mongbwalu and going toward Yedi. And, secondly, we could hear
10 the bullets. We could hear a lot of noise from heavy weapons, and that's what indicated to
11 me that UPC had already entered into Mongbwalu.

12 Q. And, sir, did you learn any information from the people that you saw fleeing from
13 Mongbwalu?

14 A. Yes. These internal displaced persons told me the following, because I asked them,
15 "Why are you running away?" and they answered that the UPC had just gone into
16 Mongbwalu.

17 Q. Sir, can you describe for the Court, if you know, who the fleeing people were and if you
18 know their ethnicity?

19 A. All of the people who were fleeing Mongbwalu toward Yedi were Nande people. They
20 were going to the North Kivu. There were also Lendu people who were taking the road to
21 Yedi, and there were Lesse people as well.

22 Q. And since the Court may be generally unfamiliar with how one identifies someone from
23 a certain tribe, could you just tell the Court you were able to identify people as belonging to
24 those ethnicities that you mentioned?

25 A. Yes. I was able to identify these people because of the language they were speaking.

1 For example, the Nandes speak their own language. The Lesse also speak their own
2 language. And that's why I'm able to say that those people were from this or that ethnic
3 group.

4 PRESIDING JUDGE FREMR: Sorry to interrupt you. I just got a message that the number 1
5 mark on the map just disappeared. So, Mr Witness, could you kindly just repeat what have
6 you already done to again to mark Yedi by number 1. Maybe court officer will assist you.

7 MR IVERSON: And, Mr President, while we wait for that, if this is a reoccurring problem,
8 we also have a paper copy of the same map. So we could put it on the Elmo, and that
9 would -- the court officer could display it to all of us and he could mark that. I'm pretty sure
10 that mark wouldn't disappear.

11 PRESIDING JUDGE FREMR: Could court officer comment on that, what is easier way for
12 the Court?

13 So I was assured that, you know, this way could be okay, so hopefully this problem
14 will not repeat again.

15 So, Mr Witness, could you kindly mark Yedi by number 1, because at least myself, I
16 don't see anything on my map. So could you repeat what you already did to put
17 number 1 close to Yedi?

18 THE WITNESS: (Drawing)

19 PRESIDING JUDGE FREMR: Very good. Thank you very much.

20 Mr Iverson, the floor is yours.

21 MR IVERSON:

22 Q. Sir, after you were aware of the fighting in Mongbwalu, what -- what steps did you take?
23 What did you do when you were in Yedi?

24 A. Okay. When I -- I knew that the battle had started in Mongbwalu and I was in Yedi, I
25 tried to run away.

1 Q. And where did you try to run to?

2 PRESIDING JUDGE FREMR: Mr Witness, you have the floor, please.

3 THE WITNESS: (Interpretation) I wanted to answer that question in private session, your
4 Honour.

5 PRESIDING JUDGE FREMR: Okay, please let's move to private session.

6 (Private session at 11.51 a.m.)

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Trial Hearing

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Trial Hearing

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Trial Hearing

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Trial Hearing

(Private Session)

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13 Page 9 - Private session

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12 (Open session at 12.11 p.m.)

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

14 PRESIDING JUDGE FREMR: Thank you, court officer.

15 Mr Iverson, please proceed.

16 MR IVERSON:

17 Q. Sir, on the journey that you took, were you able to travel on the main roads?

18 A. During my journey, I went through the forest and, for some very short distances, I went
19 by the main roads.

20 Q. And could you explain or tell the Chamber why you didn't take the main road, the main
21 roads for this journey.

22 A. I didn't take the main road because the UPC was already occupying the region that I
23 was supposed to go through using the main road by way of the main road. The place where
24 I went by the main road was the place where the UPC had not yet arrived. The UPC was not
25 yet occupying that area.

1 Q. And this may seem obvious to you, sir, but I need to ask, why was it important for you
2 to avoid the UPC?

3 A. I was avoiding the UPC because I feared that they might kill me because, you see, I'm
4 from the Lendu tribe.

5 Q. And as far as you know, why was that significant that you were part of the Lendu tribe?
6 What did that mean to the UPC?

7 A. They might kill me because there was a tribal war underway between the UPC and the
8 Lendu tribe. It was a tribal war.

9 Q. Okay. So back to your journey. These questions of course are not intended to elicit
10 your identity, but if you feel at any moment that you need to answer with a response that
11 reveals your identity, please let the Presiding Judge know. Excuse me.

12 You mentioned that you were in Kilo among other places in your journey. What
13 was in Kilo at that time?

14 A. I went to Kilo at that time because the UPC had not yet got there. The UPC was still in
15 Mongbwalu.

16 Q. And who lived in Kilo? Just generally, what tribe of people or peoples lived in Kilo?

17 A. In principle, Kilo was a village belonging to the Nyale tribe.

18 Q. And, sir, did you regard this as a safe haven for you to stay for a short time?

19 PRESIDING JUDGE FREMR: Witness, you have the floor.

20 THE WITNESS: (Interpretation) Could you repeat your question.

21 MR IVERSON:

22 Q. Sir, did you regard Kilo as being safe for you to stay there?

23 A. Thank you for the question. Kilo was not safe for me as such. I just went by that
24 particular place. That's all.

25 Q. And who were the Nyale tribe? Could you tell the Chamber that?

1 A. The Nyale tribe is a tribe made up of people living in Kilo.

2 Q. Sir, do you know the tribal component of the UPC? Are you familiar with that?

3 A. Yes. The UPC was made up of people from the Hema tribe.

4 Q. And how were people from the Hema tribe distinguishable from people from your tribe,
5 for example, the Lendu tribe?

6 A. You can tell our tribe from the Hema because of the various collectivities. That's how
7 you distinguish us from the Hema tribe, from the two tribes.

8 Q. So is it fair -- is my under -- I just want to know if my understanding of what you said is
9 fair; it's based on geography, it is based on where people are actually located and where they
10 live? Is that right?

11 A. They lived in different collectivities, different communities.

12 Q. Okay. And back to your journey, sir. How long were you in Kilo during that
13 particular journey that you described?

14 A. I just spent one night in Kilo and then the next morning I left.

15 Q. And I won't mention the name of the village, but rather I'll refer to it as your final
16 destination. Once you reached your final destination, what did you -- what did you do?

17 A. Thank you. At the last village, I set up operations as if it were the normal place for me
18 to live.

19 Q. And did you feel safe? Were you secure where you were at your final destination, sir?

20 A. Once I got to the final destination I was worried because I said to myself that the war
21 might continue and go all the way to those places. So I was still very worried.

22 Q. What gave you a reason to be worried? What gave you cause for concern, sir?

23 A. I was worried because there were rumours, people were saying that the war would
24 continue and reached the place where we were.

25 Q. Where were these rumours coming from, if you know?

1 A. These rumours came from Kilo. People were saying that the war was going to
2 leave -- rather, was going to continue from Mongbwalu and reach the place where we were.

3 Q. Sir, did you have any means of obtaining information about what the UPC's activities
4 were? What they were up to and planning?

5 A. We learned about the UPC activities. We heard about them because the war was in
6 Mongbwalu. They had fought there and they had lost. They had lost their walkie-talkie.
7 And, you see, it was using the walkie-talkie, it was by way of the walkie-talkie that people
8 could find out what was going on.

9 Q. Sir, did you personally see this walkie-talkie?

10 A. No, I didn't see that myself, but I heard that the equipment had been found.

11 Q. And did you hear about UPC information from others who knew of the walkie-talkie?

12 A. Yes. The people who were listening to the communications on that equipment told me
13 what was going on, and they also sent messages to other people so that they would be aware
14 of what was going on as well.

15 Q. Sir, could you tell the Chamber what you remember about being told about these
16 communications? So did the people who were talking from the UPC, if you know?

17 A. What I remember about all this was they were talking about the UPC, they were saying
18 that they were going to follow the displaced people all the way to the place where they had
19 gone.

20 Q. Do you recall if there was any talk of hearing about specific people or persons?

21 A. I've forgotten what they were saying because it was during the war and many people
22 had been displaced.

23 MR IVERSON: Your Honour, I would ask that we could briefly go into private session. I
24 just -- I need to work out a detail that I hadn't anticipated, and then hopefully we can move
25 back into open session. Thank you.

- 1 PRESIDING JUDGE FREMR: All right. Let's move to private session.
- 2 (Private session at 12.30 p.m.)
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1 (Open session at 12.32 p.m.)

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

3 PRESIDING JUDGE FREMR: Mr Iverson, please proceed.

4 MR IVERSON:

5 Q. Sir, you stated earlier that you were worried about a UPC attack or you were worried
6 about your security. Did the UPC actually attack the red village?

7 A. Yes, the red village was indeed attacked by UPC soldiers.

8 Q. And do you recall approximately when this was, in what month and year, if you
9 remember, sir?

10 PRESIDING JUDGE FREMR: Mr Witness, have you heard this question? Yes. You have
11 the floor, Mr Witness.

12 THE WITNESS: (Interpretation) Could you repeat your question, please?

13 PRESIDING JUDGE FREMR: Mr Iverson.

14 MR IVERSON:

15 Q. Yes, sir, I can repeat the question. Do you recall approximately when the UPC
16 attacked the red village?

17 A. Thank you. I remember the year. It was in 2013 -- correction, it was in 2003. I beg
18 your pardon. It was 2003. I remember well. It was during the war, and that's why I'm not
19 able to remember the exact date. It was in February, February 2003. But just now I can't
20 remember the exact date. It was war time, we were fleeing, and it was difficult to remember
21 dates.

22 Q. Sir, do you remember where you were when the UPC attacked the red village?

23 A. Thank you. When the red village was attacked by the UPC, and in fact even before I
24 was already there, I lost my child and I took the child's body from the red village and I went
25 back with the child's body to 2 kilometres from the red village where my parents lived.

1 We buried the child, and we were 2 kilometres away with my family, and I wanted to go back
2 to the red village to see what the situation of (Redacted) was and that's when
3 people already began to flee. The people who lived in the red village started to run away.

4 Q. Sir, and I understand it may be difficult to talk about personal loss but, I would ask,
5 could you tell the Chamber how the child died?

6 A. Yes, I can tell you the story. My child did not die during the attack. He died of
7 natural causes. And, therefore, I took his body 2 kilometres away from the red village, and
8 in the red village I had a house, and after the burial, I left my family members there at the
9 house to go back to the red village to see (Redacted). And that's when I
10 saw people running away.

11 (Redacted) the centre of the town, and that's where I saw people
12 running away. And I was asking them, "Why are you running away?" And they
13 said, "Well, the UPC soldiers have just come into the town."

14 Q. And at that moment when you are 300 metres away from the centre of town, what did
15 you hear, if anything?

16 A. Thank you. I heard people saying the following: UPC soldiers have already come to
17 the red village. And those who were guarding the road were not able to resist, and they ran
18 away at the entrance to the red village. And I wanted to go to the centre to see if that was
19 true or not. And therefore, at that point I heard a lot of gunshots, very loud gunshots and I
20 ran, I ran away.

21 Q. And where did you run to?

22 A. First of all, I went 2 kilometres from there where my family was staying because it was
23 close to the centre of town. And then from there I continued my road, my way.

24 MR IVERSON: Your Honour, could I ask again briefly to go into private session? Thank
25 you.

- 1 PRESIDING JUDGE FREMR: All right. Let's go to private session now.
- 2 (Private session at 12.42 p.m.)
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20 (Open session at 12.48 p.m.)

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

22 MR IVERSON:

23 Q. Sir, how long were the UPC in red village?

24 A. I don't remember anymore how long they spent there because we were fleeing. And
25 just now I can't remember.

1 Q. And the question wasn't limited to that particular day. Maybe I can ask -- I can
2 rephrase the question: How long did you stay away from red village?

3 A. Well, I can't tell you exactly how many days I spent away from the red village.

4 Q. Right. And could you give the Court an approximation in terms of weeks or months?

5 A. I can give an estimate, about two and a half weeks. But this is an estimate.

6 Q. And when you left red village, were you able to bring any of your belongings, were you
7 able to pack anything?

8 PRESIDING JUDGE FREMR: Mr Witness, you have the floor.

9 THE WITNESS: (Interpretation) Could you repeat your question, please?

10 PRESIDING JUDGE FREMR: Mr Iverson, please.

11 THE WITNESS: (Interpretation) And ask it clearly so that I can understand your question,
12 please.

13 MR IVERSON:

14 Q. I'll do my best. Were you able to bring any of your belongings when you left red
15 village?

16 A. Thank you. When I left the red village, I had some property, some things at my home,
17 and I took some of it, but I couldn't -- I had to leave other things.

18 Q. And what were you able to take with you when you left red village?

19 A. When I left the red village, I was fleeing, and I took with me some cooking equipment,
20 some clothing, just part of my clothes, and the rest I had to leave. I left the beds at home and
21 other clothes. I only took a few pieces of clothing, and the remainder I was not able to take
22 along.

23 Q. And how were you able to eat or find food after you left red village?

24 A. Thank you. It was very difficult to find food. I knew the red village very well, and I
25 went to the forest to find food in various different fields, and I took what was necessary for

1 my family members because I was very familiar with the place.

2 Q. And what happened to the belongings that you left behind in the red village, if you
3 know?

4 A. The property that I left in the village was looted. The enemies took it.

5 Q. And just so its explicit, what do you mean if you can tell the Court when you say
6 "enemies"?

7 A. The enemy were UPC soldiers.

8 Q. And can you tell the Court what -- what belongings of yours the UPC took?

9 PRESIDING JUDGE FREMR: Mr Witness, you have the floor.

10 THE WITNESS: (Interpretation) In my answer do you want me to list all of the belongings
11 that I left in Mongbwalu to go to the red village? Is that what you mean?

12 PRESIDING JUDGE FREMR: Mr Iverson, could you be more specific on that.

13 MR IVERSON: Absolutely. The witness is correct, I will be more specific.

14 Q. Could you tell the Court what belongings of yours the UPC took in the red village?

15 PRESIDING JUDGE FREMR: So I guess, Mr Witness, it's not necessary to give exhaustive
16 list, but maybe the main valuable things you lost.

17 THE WITNESS: (Interpretation) Thank you. In general, well, I lost money, the amount of
18 \$4920. I also lost gold, 53.5 grams of gold. So I lost gold, 9.3 grams of gold alloy, 12 pairs of
19 trousers, 14 shirts. I lost 7 pairs of shoes. I lost 5 pairs of sandals. I lost a Phoenix bicycle,
20 the brand was Phoenix, and my house was demolished, a house that was built with some
21 22-tonnes of materials.

22 PRESIDING JUDGE FREMR: Mr Iverson, allow me just one question for my part, and as
23 concerns money and gold, were they hidden somewhere, or where they were?

24 THE INTERPRETER: Correction. The previous answer was 22 pieces of tin roofing.

25 THE WITNESS: (Interpretation) Thank you. Thank you. All of the gold was in a piece of

1 clothing inside a suitcase. So it wasn't easy to see.

2 PRESIDING JUDGE FREMR: Thank you, Mr Witness.

3 Mr Iverson, you may proceed.

4 MR IVERSON: Your Honour, I notice that we're very close to the lunch-break, so at this
5 point I would just propose that I put my questioning on hold and come back after lunch.

6 Thank you.

7 PRESIDING JUDGE FREMR: Thank you, Mr Iverson.

8 So we will now break, but before rising we will have to go to closed session in order to allow
9 court officer to escort Mr Witness out of the courtroom. So let's go to closed session now.

10 Maybe just announcement for public, we will resume half past 2.

11 (Closed session at 1.00 p.m.)

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16 (Recess taken at 1.02 p.m.)

17 (Upon resuming in open session at 2.37 p.m.)

18 THE COURT USHER: All rise.

19 Please be seated.

20 PRESIDING JUDGE FREMR: Good afternoon, everybody. Before we approach to the next
21 part of the witness testimony, I would like to make a few announcements.

22 As noted in the first session today, the Defence raised five issues in an email that was sent to
23 the Chamber yesterday evening and upon which it requests clarification from the Chamber.

24 This morning it made further submissions on these issues. We also heard some
25 submissions by the parties and participants on these issues.

1 A number of the issues appear to relate to understanding the parties have of certain
2 parts of the protocols related to witnesses, the enter play between these protocols and
3 their application to certain types of witnesses.

4 It therefore appears that the parties could benefit from receiving clarification by the Chamber
5 on the relevant sections of the protocols.

6 For that reason, the Chamber considers it useful to receive brief submissions by the
7 parties on these matters being, firstly, courtesy meetings with the witnesses, secondly
8 the interpretation of the applicable protocol provisions on meeting witnesses of the
9 opposing party, and thirdly, on which protocols apply to expert witnesses, if any, and
10 in what way.

11 The Defence is to file these submissions by coming Thursday. The Prosecution
12 response is to be filed coming Monday, 22 September.

13 The Chamber also instructs the VWU to make observations on the issues raised by the
14 Defence. These observations should also be filed coming Monday.

15 The Chamber considers that it does not require further extensive submissions on the
16 fourth issue raised by the Defence, it means the disclosure of witness preparation
17 session logs and disclosure notes. The Chamber recalls that the parties already made
18 submissions on the type and format of the information that must be provided by the
19 calling party to the non-calling after it has conducted a preparation session.

20 In its decision on witness preparation of 16 June 2015, the Chamber decided on the
21 issue and as a result an additional article was added to the witness preparation
22 protocol. However, the Chamber will consider any further submissions on the issue
23 strictly relating to what constitutes a witness preparation session, that is, whether it's
24 to be construed as occurring on a daily basis or whether it pertains to the witness as a
25 whole regardless of how many days the preparation session takes with respect to any

1 witness.

2 As to inadvertent contacts by Defence investigators with Prosecution witnesses, the
3 Chamber notes that the dispute does not appear to relate to the protocol applicable to
4 contacts with witnesses of the other party and the procedure to be followed when
5 such contacts happens. Indeed, the Defence appears to have notified the Prosecution
6 of these contacts. The dispute appears to relate to the extent such contacts take place
7 and the manner in which such contacts are handled by the relevant investigator.

8 We have heard some comments by the Prosecution in this regard and the Chamber
9 knows that the Prosecution indicated this morning that it will seize the Chamber of
10 this matter by way of formal filing outlining its use and including specifying whether
11 it has a request in this regard.

12 The Defence can then respond to this filing.

13 That concludes the Chamber guidance on this matter.

14 And I would like to follow with another announcement. I would like briefly address
15 the numbering of items that are admitted into evidence or then -- that will be
16 admitted into evidence.

17 There have been different approaches followed by the various Chambers of this Court, and
18 the Chamber is now considering whether it is better to have an EVD number assigned for
19 those items that are admitted into evidence, thereby indicating then an item has been
20 admitted or alternatively not assign an EVD number and give the number as the document
21 appears in eCourt and then have the Registry mention in the eCourt information, for the
22 document, that the document was admitted and by whom.

23 The Chamber notes in this regard that in the present case certain items were already
24 assigned EVD numbers during the pre-trial stage. Therefore, any EVD number
25 would be followed by EVD-T to designate that it was admitted during trial stage.

1 The Chamber would like to get your observations as to the preferred method. It also
2 requests such observations from the Court management service of the Registry.

3 Please send any observations by noon tomorrow to the Chamber's communication
4 email address.

5 For today, if any items would be admitted into evidence and mindful of the fact that
6 one of the items used today does not actually have any number yet, the Chamber will
7 only pronounce on whether or not it is admitted, and the item will for now continue
8 bearing the same number as it has in eCourt.

9 After the Chamber has decided which method to adopt, the Registry will be
10 requested to incorporate this method, also for items admitted today.

11 It is the end of my announcement. Any comments from the parties, starting from
12 Prosecution?

13 MS SAMSON: Yes, your Honour, just briefly. Thank you for the schedule setting out the
14 exchange of submissions on the matters that were addressed this morning.

15 One of the issues, however, may need to be resolved in advance of those deadlines. The
16 Defence has taken issue with the protocol to the extent that it may require audio or
17 videotaping of meetings between the Defence witness and Prosecution witnesses.

18 And although the issue is no longer a live one in relation to the current witness or the
19 next witness, the third witness in the list is scheduled to arrive at some stage this
20 week, and his familiarisation and witness preparation will commence shortly
21 thereafter, which means that there will be a meeting with the Defence as well since
22 the witness has, in principle, agreed to such a meeting.

23 The expert initially requested that a representative of the Prosecution be present and
24 the Defence objected. So the Prosecution revisited the issue with the expert, who has
25 agreed to meet with the Defence in the absence of the Prosecution on condition that

1 the protocol is respected and the meeting is audio or videotaped.

2 The Defence has indicated that it will not abide by that requirement in the protocol.

3 So it will - excuse me, your Honour - it will require clarification by the Chamber as to

4 whether or not a meeting between the Defence and a Prosecution expert witness

5 requires audio or videotaping as, in my submission, the protocol requires. Thank

6 you.

7 PRESIDING JUDGE FREMR: Defence, any comment from your part on this submission?

8 MR BOUTIN: Yes, your Honour. I agree with Madam Prosecutor that this is an issue that

9 would gain to be addressed at the earliest opportunity by this Chamber. As my colleague

10 mentioned, we have different views or different interpretations as to what is the requirement

11 for the recordings of a pre-trial or meetings with experts. We intend to record such a

12 meeting. The issues for us is to -- whether we are obliged to share this recording with the

13 Prosecution in the case of an expert witness.

14 PRESIDING JUDGE FREMR: Thank you. Just a minute.

15 (Trial Chamber confers)

16 PRESIDING JUDGE FREMR: So we agree we will decide and we will inform you about that

17 tomorrow morning. So I think it will be still enough time in advance of the upcoming

18 familiarisation of expert witness.

19 Now we can -- sorry, Mr Suprun. Sorry, maybe Madam Prosecutor first.

20 MS SAMSON: Thank you, Mr President. I don't know if it's the appropriate time, but since

21 my friend from the Defence has indicated that the Defence disputes the provision of the

22 audiotapes to the Prosecution where it relates to Prosecution expert witnesses, I seek

23 clarification from the Defence through your Honours as to whether its position remains that if

24 the Defence meets with a Prosecution fact or non-expert witness, it will provide the audiotape

25 of that meeting to the Prosecution because, as it stands, yesterday's meeting with Prosecution

1 Witness 901 was audiotaped but the Defence refuses to provide it to the Prosecution. If I
2 understood my friend correctly their dispute is only with Prosecution expert witnesses.

3 Thank you.

4 PRESIDING JUDGE FREMR: Mr Boutin, could you provide us with explanation of your
5 position?

6 MR BOUTIN: Yes, your Honour. I was addressing the issue of the expert witness because
7 obviously that was the specific issue we're dealing with. Our view, as I shared with our
8 colleagues, is that the preparation sessions when they are held here on location, on-site prior
9 to the testimony, as such, should be dealt with in a different ways than any contact with a
10 witness in the field, for example. And the reason is simple, is that there is absolutely no
11 benefit in meeting another party's witness if we have to share what we got from that witness,
12 or what we received with the other parties. It would basically defeat its own purpose. So
13 we -- our position right now is we do record the meetings that we carry on with the witnesses,
14 all witnesses. The issue is that are we bound -- is the Defence bound to share those recording
15 to the Prosecution prior to the witness being called before this Chamber?

16 So I think that the issue is, to make it short, the issue becomes how should
17 we -- should a witness be dealt with when he is here on locations as opposed to for
18 preparation sessions or contacts that may occur in the field or in other circumstances?
19 Obviously we discussed and there is a clear disconnect between the parties, and this
20 is certainly an issue that we believe the Chamber should address at the earliest,
21 supporting this, so at least we know on -- where to stand. Thank you, your Honour.

22 PRESIDING JUDGE FREMR: Thank you, Mr Boutin.

23 Mr Suprun, do you want to also make some comment.

24 MR SUPRUN: (Interpretation) Yes, thank you, Mr President. You have just requested the
25 Defence that it make submission on a number of issues that also regard the victims, notably

1 the modalities of the conduct of courtesy visits and also the modalities of the contacts entered
2 into with the witnesses of the opposite party.

3 Now, of course there are some victims that fall into that and I would represent that the Legal
4 Representatives for Victims be also able to make submissions with regard to those comments
5 made by the Defence also within the same time span as provided to the Office of the
6 Prosecution.

7 PRESIDING JUDGE FREMR: I think it's a good point, so I think the deadline will be the
8 same for Prosecution. Please focus on those issues while really pertaining victims, okay?
9 Thank you very much, Mr Suprun.

10 MR SUPRUN: (Interpretation) Thank you, Mr President.

11 PRESIDING JUDGE FREMR: As concerns, in fact, those two issues, as I already said, we will
12 address them tomorrow, tomorrow morning.

13 So now we, I guess, can continue with testimony of witness. So we have to first go to
14 the closed session and then bring witness in.

15 (Closed session at 2.53 p.m.)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Open session at 2.54 p.m.)

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

22 PRESIDING JUDGE FREMR: Thank you, court officer.

23 Mr Witness, good afternoon. Mr Witness, now Mr Iverson will continue with --

24 THE WITNESS: Jambo sana.

25 PRESIDING JUDGE FREMR: -- thank you, with your cross-examination before I will move

1 the floor to him. I would like to thank you that in the morning you really perfectly observed
2 my guidance so that you listened carefully to the questions, you responded clearly, you also
3 kept the slow pace of the answers, and you also observed necessary pauses between questions
4 and your replies. So thank you for that and please continue in the same style.

5 Now, Mr Iverson, you have the floor.

6 MR IVERSON: Thank you, your Honour. And I would request that we immediately go
7 into private session to deal with a few matters. Thank you.

8 PRESIDING JUDGE FREMR: All right. Let's move to the private session now.

9 (Private session at 2.56 p.m.)

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12 (Open session at 3.18 p.m.)

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

14 PRESIDING JUDGE FREMR: Mr Iverson, please.

15 MR IVERSON: Thank you, your Honour. And my thanks to the Court for bearing with
16 that exercise. It was a bit cumbersome, but I think we achieved something.

17 Q. Sir, how did you move from red village? And where did you go to from red village?

18 A. Thank you. When I left the red village I fled and I went to the blue village.

19 Q. And how long did you stay in the blue village? And if you left the blue village, where
20 did you go from the blue village?

21 A. I left the red village and I went to the blue village. I didn't spend the night because
22 there were still -- there was still fighting, and we left the same night, that is myself and my
23 whole family, and we went to the green village.

24 Q. Once you arrived in the green village, what did you do next?

25 A. When I got to the green village, the first thing I did was to find a place to settle with my

1 family for shelter.

2 Q. And could you describe for the Court the conditions that you found in the green village?

3 A. Thank you. When I got to the green village, I saw that conditions were difficult.

4 There were many people there, displaced persons everywhere, and there weren't
5 enough -- there wasn't enough housing for all of those people.

6 Q. Where did people have to stay in the green village since there wasn't enough housing?

7 A. Thank you. The local people stayed in their own homes, but the displaced persons
8 were welcomed by the villagers. But some displaced persons didn't have any place to go,
9 and so the ones who didn't have a place to stay built their own straw huts.

10 Q. And what ethnicity were these displaced peoples?

11 A. The displaced persons were Lendu.

12 Q. Sir, what were the UPC doing in the area? What was their objective, if you know?

13 MR BOUTIN: I object to this line of questioning, your Honour. Basically my friend is
14 asking the witness to speculate.

15 (Trial Chamber confers)

16 PRESIDING JUDGE FREMR: Objection sustained, because in our view, no, it's about the
17 opinion of the witness, which is not -- I think that maybe you should rephrase your question,
18 Mr Iverson.

19 MR IVERSON: I will rephrase, your Honour.

20 Q. Sir, do you know if there were Lendu fighters in the area?

21 A. Yes, there were Lendu fighters in the area.

22 Q. And where were they, if you know?

23 A. The Lendu fighters were in the village, in the red village.

24 Q. And where else, other than the red village, was the UPC?

25 A. Thank you. The UPC soldiers were in the village of Kilo and also in Bambu.

1 Q. Sir, are you familiar with the village called Sangi?

2 A. Yes, I know that village. I'm familiar with Sangi.

3 Q. Are you aware if the UPC was ever in or around that village of Sangi?

4 A. They were not in the village of Sangi. They may have gone there from the red village
5 and then back.

6 Q. If you know, what, if anything, did the UPC do in or around Sangi?

7 A. Thank you. In Sangi, when the UPC soldiers left the red village, they stopped for a
8 while in Sangi and they called -- they convened the local people to a meeting.

9 Q. And could you tell the Court how it is that you're aware of this meeting that the UPC
10 convened?

11 A. Thank you. I found out that the UPC soldiers had arrived in Sangi and had convened
12 the people to a meeting, and I heard this through the talkie-walkies that were collected during
13 the battle, that were found during the battle.

14 Q. What is it that you learned, what information did you learn at this meeting, if you could
15 describe that to the Chamber, please?

16 A. I obtained the following information about those meetings. The people who attended
17 those meetings were arrested and they were taken to the red village.

18 Q. Do you know what happened to those people who were arrested?

19 A. They went back with them to the red village and they killed them.

20 Q. What do you know about these people? Do you know who they were?

21 A. Most of them were displaced persons from Mongbwalu. They gathered them together
22 with other individuals from the red village and they were also put together with people from
23 Mongbwalu, but most of them were displaced persons.

24 Q. And if you know, what was the ethnicity or ethnicities of these people who were killed?

25 A. I know only too well. The people who were killed were of Lendu ethnic origin.

1 Q. And, sir, could you explain to the Court how you know that these Lendu people were
2 killed?

3 A. Yes. I know that they were Lendu because the other ethnic groups had fled to other
4 places, and they only met Lendu people in that location. Most people who came from
5 Mongbwalu fled towards their villages.

6 Q. Sir, I'm not sure if that last question went through. What I'm asking is if you can tell
7 the Court how you know that these people were killed?

8 A. Thank you. I knew or I came to know that they were Lendu because after having killed
9 those people -- after they were killed, I went to observe their corpses and it was then that I
10 could see or that I noted that they were of Lendu ethnic origin.

11 Q. And I note that you -- you say you observed their corpses. I would just like to back up
12 just a little bit before you observed the corpses and ask you how did you come to learn that
13 people had been killed?

14 A. Thank you. I came to know that people had been killed subsequently. We were at or
15 in the green village, and I came out that morning, it was raining, and I was going to get some
16 food in the garden within my compound. And I was looking around, and upon my return,
17 when it had stopped raining, it was about 9.30 in the morning, I saw a woman who was
18 coming from the red village, and she was on her way to the green village. I was surprised
19 and I took fright and I hid.

20 Then I saw the lady make her way towards me. And I thought that it was a trap
21 being laid for me. I did not see anybody walking behind that lady. So I met the
22 lady and I asked her how it was that she had come to be in that location that morning,
23 to which she responded: "My son, I shall not speak at length, but I shall tell you
24 briefly..." and then she went on to tell me how she had been one of the individuals
25 who had been invited to attend peace talks. And when they went -- or "...when we

1 went to the red village, we were put into a house, we were, in effect, taken prisoners
2 in a house, and we sat down in that house. And at the break of dawn, people were
3 taken out of the house one by one and they were killed. Once I got home, I was told,
4 'Madam, go and tell the members of your community'" --

5 MR BOUTIN: Your Honour, I'll let the witness go on his way. Obviously he is reporting
6 what other people have told him. I don't know to what degree this type of evidence is of any
7 usefulness for this Court. It is clearly hearsay and I don't think that it is proper to allude
8 some of this evidence.

9 PRESIDING JUDGE FREMR: I think general hearsay is not -- it is allowed. But, Witness,
10 one question, are you speaking spontaneously, or aren't you reading anything?

11 THE WITNESS: (Interpretation) I'm not reading anything. I only have the list of the names
12 of the villages before me.

13 PRESIDING JUDGE FREMR: Fine.

14 Mr Prosecution, please. So I think you may proceed, but you know we just -- you'll
15 take into account obviously that the difference between, you know, direct witness and
16 witness who just interpreting some hearsay. So I think we will take it into account
17 but, generally, I think we can say that hearsay should be completely disallowed.
18 Mr Iverson, please.

19 MR IVERSON: Well, not to push the issue at all, your Honour, but even in common law it
20 could be qualified as an excited utterance, so it may not actually, you know, be hearsay or
21 inadmissible hearsay. But I think that's beside the point.

22 Q. Sir, could you describe the behaviour of the woman as she talked? How would -- how
23 did she seem to you?

24 A. Thank you. The lady was crying and tears were running down her cheeks and she was
25 shaking when she was talking to me.

1 Q. Sir, could you describe to the Court what you did in response to this lady's story?

2 What did you do?

3 A. Thank you. In order to reassure myself that this lady was telling the truth, I went to
4 the location where the people had been killed.

5 Q. And could you describe the location? Where was it? Not necessarily the village, but
6 describe the scene if you could for the Court.

7 A. Thank you. As to the location where the people were killed, well, there was a banana
8 field where the banana trees had been cut down and people had been killed there.

9 Q. Had you seen the banana field before you saw the corpses there? Had you previously,
10 in the past, seen that location? Were you familiar with it?

11 A. Yes, I had already seen that banana field because it was located next to the house of a
12 certain individual.

13 Q. And could you estimate how large of an area are you talking about? How -- what was
14 the size of the banana field?

15 A. I cannot be specific as to the size of the banana field, only to say that the banana field
16 was located next to a house that was approximately 20 metres in length. But I cannot specify
17 as to the dimensions or the size of the banana field itself.

18 MR IVERSON: Your Honour, at this time I would ask that the court usher provide eight
19 exhibits, they're photographs, to the witness. And I would ask that before they're shown
20 publicly, they are public documents, I would ask that the witness would be able to look at all
21 eight documents, because I have a series of questions that relate to all eight of the documents,
22 and then I see that I probably won't have enough time today, but get as far as I can with going
23 through each photograph and then tomorrow I would like to finish with looking at the
24 photographs.

25 And just for everybody in the courtroom and those watching, they are graphic

1 photographs. They contain pretty disturbing images. They're difficult to look at.

2 Thank you.

3 PRESIDING JUDGE FREMR: Okay. Court usher, provide Mr Witness with those
4 photographs first. You'll give him some time to make familiar with photographs.

5 MR IVERSON: And for the record those are documents 6 through 13 on the Prosecution's
6 list of documents. And I will just read through the ERNs generally and then the last four of
7 each so that they're on the record. So it's DRC-OTP-2058-1106, 1107, 1108, 1109, 1110, 1111,
8 and 1112 -- sorry, I missed one -- and 1113.

9 PRESIDING JUDGE FREMR: So now, Mr Witness, take some time to look at photographs
10 and then Mr Iverson will put some questions concerning each of them.

11 MR IVERSON:

12 Q. Sir, I would just ask you to look at each and every photograph and when you are
13 finished looking at all eight of them just please look up at me so I know you're finished.
14 Thank you.

15 A. Very well. Thank you. I have seen the photos.

16 PRESIDING JUDGE FREMR: For clarification, Mr Iverson, I understood those photographs
17 are public documents so we can also allow public to see the first one you will put questions on.
18 So what one will be -- which one will be the first one?

19 MR IVERSON: The first one is document 6 on the Prosecution's list of documents, 1106.
20 But before that I would just like to ask a series of questions to ensure that he's familiar with
21 the photographs, et cetera.

22 PRESIDING JUDGE FREMR: Okay, fine. Please proceed.

23 MR IVERSON:

24 Q. Sir, do you recognise these eight photographs?

25 A. Yes, I do recognise them. However, one of the photographs stands out somewhat.

1 Q. And, sir, you'll have an opportunity to answer questions about each and every
2 photograph. The one that stands out, are you able to recognise it?

3 A. Yes, I do recognise it.

4 Q. And are you familiar with the scene or scenes that those photographs depict?

5 A. Yes, I do recognise the location.

6 Q. And how is it that you're able to recognise the location and the scenes that those
7 photographs depict?

8 A. The reason why I recognise the location is because the banana field had been cut down,
9 and that is what reminds me that it is the location in question.

10 Q. And are all eight of those photographs fair and accurate depictions of the scene that you
11 yourself witnessed?

12 A. Yes, they do describe the location well, but there are some areas that are a little bit dark,
13 but I believe that that can be put down to the camera.

14 MR IVERSON: Could I ask the court usher to please display on the Elmo the document 6 on
15 the Prosecution's list of documents. It would be 1106, the last four of the ERN.

16 Q. Sir, could I ask you to look at this photograph and describe to the Chamber what we can
17 see in this photograph?

18 A. Thank you. On this photograph we can see corpses. We can see part of the banana
19 plantation that was cut down. You can see that there is a white section to this banana tree,
20 which means that it has been cut down.

21 Q. Sir, are you able to -- and we can go into private session if necessary -- but are you able
22 to recognise any person in this photograph?

23 A. I do not see anybody that I recognise in this photograph that has been brought up on the
24 screen. I do not recognise anybody on this first photograph.

25 MR IVERSON: Your Honour, could I just ask briefly to go into private session, please?

1 Thank you.

2 PRESIDING JUDGE FREMR: For sure.

3 Let's move to private session.

4 (Private session at 3.56 p.m.)

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- 13 (Closed session at 4 p.m.)
- 14 (Redacted)
- 15 (Redacted)
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- 22 (Open session at 4.02 p.m.)
- 23 THE COURT OFFICER: We're in open session, Mr President.
- 24 PRESIDING JUDGE FREMR: Thank you, court officer.

1 Mr Boutin, you have the floor.

2 MR BOUTIN: Thank you, Mr President. I will be brief. Technology being what it is these
3 days, I received an email during the proceedings from my lead counsel regarding your -- the
4 Chamber ruling pertaining to the filings that is required from the Defence on Thursday. And
5 Mr Bourgon asked, with all respect, if the Chamber would be prepared to entertain a request
6 to have the filing from the Defence delayed to Friday instead of Thursday.

7 PRESIDING JUDGE FREMR: And the reason is what?

8 MR BOUTIN: Well, the reason is, your Honour, that we are working hard on witness
9 preparations, including the next witness, which will require -- is requiring a tremendous
10 amount of work. Mr Bourgon, he is working on this witness because he is the one who will
11 be dealing with 901. So it is his request obviously presented with all respect.

12 PRESIDING JUDGE FREMR: Okay, Mr Boutin, give me a second. I have to consult, confer
13 my colleagues on that.

14 (Trial Chamber confers)

15 PRESIDING JUDGE FREMR: So it was brief indeed, okay. We have changed it, so the
16 deadline for the Defence is not Thursday but Friday.

17 MR BOUTIN: Thank you, Mr President.

18 (Trial Chamber confers)

19 PRESIDING JUDGE FREMR: I forgot and Judge Ozaki rightly reminds me that we should
20 do the same for the other parties. So I think the deadline obviously would be shifted to all of
21 you.

22 Before we leave, Mr Iverson, according my measuring you should be roughly in the
23 half of your examination-in-chief. What is your estimate how much time you will
24 need tomorrow to complete this witness?

25 MR IVERSON: Realistically, your Honour, I think probably one hour would be sufficient

- 1 tomorrow morning.
- 2 PRESIDING JUDGE FREMR: Okay. We appreciate. So if there are no further submissions,
- 3 thank you very much, and we now break and we will resume tomorrow 9.30.
- 4 THE COURT USHER: All rise.
- 5 (The hearing ends in open session at 4.05 p.m.)