

1 International Criminal Court
2 Trial Chamber VI - Courtroom 1
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and
6 Judge Chang-ho Chung
7 Trial Hearing
8 Wednesday, 16 September 2015
9 (The hearing starts in open session at 9.33 a.m.)
10 THE COURT USHER: All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: Good morning, everybody. Appearances please
14 starting with Prosecution.
15 MS SAMSON: Good morning, Mr President, your Honours. For the Prosecution
16 today we have Mr Eric Iverson and Ms Julieta Solano, both trial lawyers;
17 Ms Kristy Sim, assistant trial lawyer; Marion Rabanit, associate trial lawyer.
18 PRESIDING JUDGE FREMR: It was also -- I thought that it just my problem. I
19 can't hear anything in my headphones. So, please, sorry, Ms Samson, you probably
20 will have to repeat it again.
21 MS SAMSON: Has the issue been corrected? Because I also don't have sound. I
22 don't hear.
23 PRESIDING JUDGE FREMR: You can't hear as well?
24 MS SAMSON: No -- Okay. Sorry. Perhaps the problem is resolved, so I'll start
25 again. For the --

1 THE COURT OFFICER: Good morning to you all. I've been asked to make a test to
2 check if the sound is back.

3 THE INTERPRETER: English interpreters can hear you. French interpreters are
4 also signalling that they can hear what is being said on the floor of the courtroom.
5 (Pause in proceedings)

6 THE COURT OFFICER: Dear court reporter, can you hear me? Yes. Very well.
7 Thank you. Can we start now? Thank you very much.
8 We apologise for the inconvenience.

9 PRESIDING JUDGE FREMR: At least in my headphones now everything is okay.
10 May I just check the position of the parties? Ms Samson, okay. Mr Boutin, okay.
11 LRVs, okay, fine.

12 So after having solved this technical problem with microphones and headphones, I
13 will repeat myself and ask for appearances, starting with Prosecution.

14 MS SAMSON: Thank you, Mr President. For the Prosecution today are appearing
15 Mr Eric Iverson and Ms Julieta Solano, both of whom are trial lawyers; Ms Kristy Sim,
16 assistant trial lawyer; Ms Marion Rabanit, associate trial lawyer; Ms Lois Mbafor,
17 legal assistant; Ms Selam Yirgou, case manager; and myself, Nicole Samson, senior
18 trial lawyer.

19 PRESIDING JUDGE FREMR: Thank you.
20 Defence, please.

21 MR BOUTIN: (Interpretation) Good morning, President, ladies and gentleman of
22 the Chamber. We have Elodie Victor, intern; Madam Chloé Grandon, legal assistant;
23 myself, Luc Boutin, assistant counsel.

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

25 One question to you: Do you have -- do you know when Mr Bourgon will be

1 present?

2 MR BOUTIN: Yes, I know. Mr Bourgon is not expected to be present this morning,
3 your Honour. Obviously if the Chamber feels that he should be here, we can
4 certainly endeavour to contact him.

5 PRESIDING JUDGE FREMR: No. The thing is that I would like to make one
6 observation from my part concerning his yesterday departure from the courtroom.
7 But I will wait until he will be present, so that's okay. Thank you.
8 And now LRVs, please.

9 MR SUPRUN: Good morning, Mr President, ladies and gentleman. I am
10 Mr Suprun; Anne Grabowski, assistant legal office, and Dmytro Suprun, myself;
11 victims of the attacks.

12 MS PELLET: (No interpretation)

13 PRESIDING JUDGE FREMR: Thank you. Now, Witness may be brought in. The
14 way I haven't asked to witness to be brought in was that I wanted to discuss this issue
15 with Mr Bourgon without his presence, but now the witness may be brought in.
16 So we have to go to closed session.

17 (Closed session at 9.42 a.m.)

18 (Redacted)

19 (Redacted)

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16 (Redacted)
17 (Redacted)
18 (Redacted)
19 (Open session at 9.46 a.m.)
20 THE COURT OFFICER: We are back in open session.
21 QUESTIONED BY MR IVERSON:
22 Q. Good morning, sir. How are you?
23 A. Good morning. I'm fine, thank you.
24 Q. Sir, before I ask the court officer to bring the photographs back that we were
25 looking at yesterday, I'd like to ask the court officer to display another document, and

1 that is document 3 on the Prosecution's list, ERN DRC-OTP-2058-1105. It is a
2 confidential document, so it will not be displayed to the public, sir.

3 THE COURT OFFICER: Mr Iverson, would you like the Registry to publish the first
4 redacted version or the second redacted version of the document?

5 MR IVERSON: The second redacted version, please. Thank you very much.

6 Q. Sir, are you able to see this document clearly on your screen?

7 A. Yes, I can see it.

8 Q. Could I ask you, do you recognize this document, sir?

9 A. Yes, I recognize it.

10 Q. And could you tell the Court what this document is?

11 A. It's a map of the red village.

12 Q. And did you draw this document?

13 A. Yes, I -- I did.

14 Q. Now what I'd like to do is use the document on your screen
15 to allow you to walk the Court, walk the Chamber through the scenes in this
16 document to allow them to understand your testimony. So I'd like to go back in
17 your testimony where you first entered this area after having spoken to an old lady.
18 Could you tell the Court how you entered this area?

19 A. Yes.

20 Q. Please do so.

21 A. Thank you. First of all, I was in the red village and from there I fled and I went
22 to the green village. I didn't put the green village here in this sketch. The green
23 village starts from here --

24 THE INTERPRETER: The witness pointing to the screen.

25 A. -- and goes to here. When I met the woman, I had reached the green village

1 and gradually I moved forward and continued, and then I got to this spot here. And
2 here there is a house which was in fact a detention centre, a prison in fact. And then
3 I continued along and that's where the banana field was.

4 MR IVERSON:

5 Q. Sir, I'm sorry to interrupt you, but the Court can't see what you're pointing to
6 when you say "here." So there are a number of reference points on this sketch. If
7 you could refer to those when you're talking about where you were and when you
8 were there, it would be helpful for the Court to understand. Do you understand, sir?

9 A. I beg your pardon. I'm following you. Let me start again. I was in the green
10 village, and I went to find food for my family members and I went to the red village
11 for that purpose, and that's where I met the woman along the way on the path to the
12 red village, and she was going to the green village.

13 I continued along toward the red village, and when I got there I reached a place
14 where there was a prison. That was in the red village. And there I walked up to
15 the prison and I saw that there was a banana field where the plants had been cut, but
16 this was still in the red village, and that's where I saw the corpses.

17 Q. Sir, could you provide a, as you look at the sketch, a reference point where the
18 prison was and where the banana field was? And if not, if you can't provide a
19 reference point, please let the Court know.

20 A. Okay. I'm going to draw -- well, where you have the number "49" there is a
21 little circle and it says "banana field."

22 PRESIDING JUDGE FREMR: Mr Witness, I think it's good way how to do it. Now
23 I think you are perfect, so now we'll continue in this way. This is the way how we
24 should do it, because now we can see what you are saying on our maps. So please
25 continue in this way. Thank you.

1 THE WITNESS: (Interpretation) When I got to that spot, and we're still in the red
2 village, I saw the banana field and the plants had been cut, and there were corpses
3 spread out there. There were many corpses.

4 MR IVERSON:

5 Q. Okay, so we're in the banana field, you see corpses. Can you describe
6 the -- what the corpses looked like to the Court?

7 A. Thank you. When I got to that place I saw corpses. Some of them had been
8 tied up, their arms were tied, and some were wearing underwear only. And the
9 heads of those bodies had been crushed with the mortars that were there. There
10 were some bodies where their heads had been cut off, they were decapitated, women
11 had been disemboweled.

12 Q. Sir, how many corpses were in the banana field?

13 A. Thank you. I counted 49 corpses.

14 Q. Sir, you mentioned that there were women. Were there also men? Was there
15 anyone else? Could you describe the ages of the bodies that you saw?

16 A. There were the bodies of some children amongst the corpses, little children,
17 aged 2 or 3, some young people aged approximately 25 years, as well as women over
18 25.

19 Q. Sir, how did you conclude that mortars had been used to crush the heads of the
20 people in the banana field?

21 A. Thank you. I realised that they had used the pestle of a mortar because the
22 heads had been bashed in, the skulls had been broken and smashed.

23 Q. Did you see any pestle of a mortar at the banana field?

24 A. Yes, I saw them.

25 Q. And can you describe those pestles?

1 A. Yes. They were made out of wood, large pieces of wood, and they were -- they
2 were about the thickness of a bottle. And the pestles were about 1 metre long, a
3 metre and a few centimetres long.

4 Q. How did you go about counting the bodies? How did you know how many
5 bodies were in the banana field?

6 A. Thank you. I counted them when I got to the banana field and I saw the
7 corpses, and I thought to myself that I should count the number of corpses so I would
8 know how many people had been killed.

9 Q. How did this impact you? What was your mental and physical reaction to
10 seeing this?

11 A. Thank you. When I saw the dead bodies, I was sick to my stomach. I was
12 traumatised. It really -- it really upset me to -- I was very upset to see these dead
13 bodies.

14 Q. Who -- who were these people, if you know? Who were -- if you know people
15 among the 49 people who were killed?

16 MR BOUTIN: Excuse me, your Honour, I object to the way the question is submitted.
17 I think that what my colleague is doing is asking an opinion. I think that there is
18 other ways to address the issues in a proper fashion rather than asking an opinion
19 from the witness, who is not entitled to provide.

20 PRESIDING JUDGE FREMR: Give me a second. According my reading,
21 Mr Iverson is asking witness about the identity -- about the knowledge of identity,
22 if -- of some casualties, if any.

23 Am I right, Mr Iverson, is this the purpose of your question, to ask witness whether
24 he knew some people killed?

25 MR IVERSON: I'm asking him if he knows any of the people who were killed or

1 knows about them. Essentially what he knows about them. I'm not asking what is
2 his opinion about the people. I'm asking for a fact, your Honour.

3 PRESIDING JUDGE FREMR: So my understanding was right, so I decide, and my
4 colleagues are nodding, that this objection is overruled.

5 Please proceed, Mr Iverson.

6 MR IVERSON:

7 Q. Who were these people, sir?

8 A. Thank you. Amongst these people there were a number whom I recognized
9 and I know their names.

10 Q. Who did you recognize and what were their names?

11 PRESIDING JUDGE FREMR: Sorry, maybe, I don't know, but it would be better to
12 go to private session because if it would be somebody close to the witness, it would
13 probably reveal his identity, okay.

14 MR IVERSON: Sure.

15 PRESIDING JUDGE FREMR: So now let's move to private session.

16 (Private session at 10.08 a.m.)

17 (Redacted)

18 (Redacted)

19 (Redacted)

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24 (Redacted)

25 (Redacted)

1 (Redacted)

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7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Open session at 10.13 a.m.)

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

18 PRESIDING JUDGE FREMR: You may proceed, Mr Iverson.

19 MR IVERSON:

20 Q. Sir, how long did you spend in the banana field among these corpses?

21 A. I spent about 20 minutes there.

22 Q. Other than the weapons, the mortars used to kill the people, did you see any
23 other weapons on the scene?

24 A. I did not see any other weapons. I just saw how peoples' throats had been slit.

25 Q. And did everybody have their hands bound or just some of the bodies?

1 A. Amongst them none had -- some of them had not been tied up.

2 Q. Sir, after you're spending about 20 minutes in the banana field, where did you
3 go? First of all, let me ask a question before I ask that: Was there anyone else you
4 saw who was still alive at the banana field?

5 A. When I got to the banana field, I did not see any people who were still alive.

6 Q. And after spending the about 20 minutes at the banana field, where did you go
7 next?

8 A. Thank you. After seeing the bodies and after counting the bodies, I went
9 towards the centre of the red village and I headed towards the market.

10 Q. And could you tell the Chamber, on the sketch in front of you, is that designated
11 by the word "Marche"?

12 A. Yes, there is this place and it is a market.

13 Q. And what did you observe at the market?

14 A. Thank you. At the market, well, at the square, right beside the square I saw
15 three other bodies.

16 Q. And could you describe how you found those bodies? How did they appear?

17 A. Yes. The bodies -- the bodies were lying on the ground off to the side of the
18 market at a place where there was a sort of a shed, but that shed wasn't there
19 anymore.

20 Q. Just -- it's not that clear at least on the English transcript, were these people alive
21 or were they dead? And if so, could you see any injuries on the bodies?

22 A. Right beside the market there were a number of dead bodies, people who had
23 been killed.

24 Q. And who were these people, were they women, were they men, were they
25 children, were they elderly? How did they appear? How did they die, if you

1 know?

2 A. Thank you. I saw the bodies of three women there. All three had had their
3 throats slit with knives and they had been disembowelled.

4 Q. Did you recognize -- keeping in mind that we're in public session, so not
5 naming names, but were you able to recognize any of those people who were killed?

6 A. Yes, I recognized one lady, but I don't know what her name was. I just knew
7 the name of her husband.

8 Q. Did you encounter anyone else who was alive, any other living person, while
9 you were walking this route that you're describing to the Chamber?

10 A. Yes. We met some people who had fled from the red village and they had
11 gone to the yellow village and when they realised that the fighting was over they had
12 come out to look for food.

13 Q. And just to ask another question about the -- the women who were killed who
14 you saw at the market: Do you know what ethnicity these women were?

15 A. Yes. They were all from the Lendu ethnic group. But the lady whose
16 husband I knew was not a Lendu person.

17 Q. And do you know what ethnicity she was?

18 A. That's what I just said, the lady was from the Lendu ethnic group, but her
19 husband was not Lendu. The lady I recognized was Lendu, but her husband was
20 not Lendu.

21 Q. Sir, in walking through this area, did you encounter any other dead bodies?

22 A. Yes.

23 Q. Tell the Chamber the same types of things about these that you've said about
24 the others, so where you found them, if you knew who they were, how they were
25 killed, what ethnicity they were.

1 A. Thank you. When I left the market square I went on to the main road and
2 when I was on my way back I saw two other dead bodies on a terrace along the road.

3 Q. Sir, is there a landmark on the sketch that you can refer to so that the Judges
4 may know approximately where you found these two bodies?

5 A. Yes. Yes, I can show you that. The two bodies were here at the red village,
6 right here where I just drew a circle.

7 PRESIDING JUDGE FREMR: Sorry, Witness, but we can't see it. Could you try to
8 describe that by words what's on the bow of the sketch.

9 THE WITNESS: (Interpretation) Okay. When I left the market I headed towards
10 this side here, and this is the place where there's a circle. That's where I saw the
11 dead bodies.

12 MR IVERSON:

13 Q. Sir, when you point to the screen nobody can see what you're pointing at. If
14 you could draw the Chamber's attention to something that's on the sketch that you
15 can refer to so that they may know what you're referring to, if there is anything. If
16 there isn't anything on the sketch that you can refer to please let me know.

17 A. Thank you.

18 THE INTERPRETER: Message from the interpreters: No interpretation coming
19 from the Swahili booth.

20 THE WITNESS: (Interpretation) There is a mango tree and that is a mosque there.

21 PRESIDING JUDGE FREMR: Mr Witness, at least we can see you referred to some
22 circle, we can see --

23 THE WITNESS: Ndiyo.

24 PRESIDING JUDGE FREMR: -- also some numbers, 1, 2, 3. Could you just help
25 yourself with something which is visible, or maybe some name which is visible on the

1 map because we unfortunately can't see what you are pointing on, so we need some
2 description using either names or numbers we can see on the map, on the sketch.

3 THE WITNESS: (Interpretation) Thank you. You can see a circle here, this is
4 where the bodies were. This place here. I marked a number, I put "2" here, that's
5 where the bodies were. And the mango tree was here where I put a dot. I wanted
6 to draw the two mango trees, but I didn't have enough time to sketch it. I put a dot.
7 And that's where you can find the two mango trees. If you move forward a bit from
8 those two mango trees, you can see a little rectangle and that is where the mosque is
9 located.

10 PRESIDING JUDGE FREMR: I think now it seems clear at least to the Chamber.
11 Thank you, Mr Witness.

12 MR IVERSON:

13 Q. Thank you, sir. Yes, that is -- that is clear.

14 PRESIDING JUDGE FREMR: Mr Iverson, sorry to interrupt you. I have to remind
15 you you have last 13 minutes, so please utilise your time efficiently. You will have
16 to finish at quarter to 11.

17 MR IVERSON: Thank you, your Honour. I'm trying to be as efficient as I can be.

18 Q. Sir, could I ask did you have a chance to observe the houses in this area while
19 you were going around this area?

20 A. Yes. There were some houses the roof had been taken off, and others were
21 undamaged. These were -- there were straw huts that had been burned.

22 Q. Sir, in the -- just on the sketch at number 2 where you found the two bodies,
23 could you describe how you found them, and how they died, and who they were and
24 what their ethnicity was, if you know?

25 A. Thank you. The two bodies had been disembowelled with a bladed weapon

1 and they were from the Lendu ethnic group.

2 PRESIDING JUDGE FREMR: Sorry to interrupt again, just correction to the
3 transcript. I said last 13, one three, minutes, not 30 minutes. So please correct that.
4 Sorry for the interruption.

5 MR IVERSON: Could I ask the court officer to show on the Elmo the photographs.
6 So we have -- there are seven photographs remaining, it is document 7 to 13 on the
7 Prosecution's list. And if I could ask the first one to be shown, the last four of the
8 ERN 1107.

9 Actually for the sake of time, could I just ask that the photograph number 10, 1110 be
10 shown to the witness and displayed on Elmo. Sorry about that.

11 Q. Sir, I know you went through each and every photograph and were able to
12 recognize them yesterday, so I won't go into that, but I would just like to ask you
13 what -- what are we able to see in this photograph? Could you describe the
14 photograph for the Court, please?

15 A. Yes. Yes, I can describe this photograph. First of all, the corpses that you can
16 see there, I can recognize the first one. As for the second one, it had been
17 disembowelled, the body had been slit open. And these bodies were in the banana
18 field.

19 Q. Sir, do you recognize anyone in this photograph?

20 A. Yes. The man, I recognize the dead body and I even know his name.

21 Q. And is it the name that begins with D as in Delta, or N as in November?

22 A. His name starts with the letter D cum Delta. D as in Delta.

23 Q. And is this D person the same person that you identified in private session?

24 A. Yes, indeed, that's the man.

25 MR IVERSON: Could I ask the court usher to display document 11, last four of the

1 ERN 1111, please.

2 Q. Sir, could you explain to the Chamber what we can see in this photograph?

3 A. Yes, in this photograph, there are the corpses of a number of people who had
4 been killed and there are children amongst them as well. There were families who
5 had -- families who had gone hunting for their other family members.

6 MR IVERSON: Your Honour, I'm having transcript difficulties, but I think I'll just
7 attempt to continue. I'm not able to look at the transcript at all.

8 PRESIDING JUDGE FREMR: It is true because I was focused on the picture I haven't
9 noticed, but if you don't mind, please proceed.

10 MR IVERSON:

11 Q. Sir, could I ask you to explain what you just mentioned that families had gone
12 looking for people at this site?

13 A. Yes. Well, I don't really have a lot of explanations to give. The people who
14 are here had come to identify other family members, but this happened after I had left
15 the place.

16 Q. Sir, we're very close to being finished with my part of the questioning. I just
17 wanted to ask you a few follow-up questions from yesterday. At times you
18 mentioned the term "displaced people." Can you describe to the Chamber what you
19 mean when you say "displaced people"?

20 A. I was referring people -- to people who had been displaced by the war. They
21 were fleeing because of the war.

22 Q. And did the displaced people include men, women and children?

23 A. Yes. Amongst the displaced there were men, women and children.

24 Q. And to the best of your knowledge, did this include Lendu and other ethnicities,
25 civilians?

1 A. Yes. Amongst the displaced there were people from other ethnic groups.

2 Q. Sir, and to the best of your knowledge, were these displaced persons civilians?

3 A. Yes, the displaced were civilians.

4 MR IVERSON: Your Honour, I don't have any more questions, but I would like to
5 submit for the record a number of exhibits into evidence.

6 PRESIDING JUDGE FREMR: It's okay, but maybe it will be better to do it in the
7 absence of the witness, because maybe there might be some, you know, objections.
8 So we will do it just in a minute. So, please, thank you very much.

9 And now one clarifying question from my part, Mr Witness, at this stage.

10 Mr Witness, had you seen among dead bodies any person either wearing uniform or
11 any person bearing any kind of weapon?

12 THE WITNESS: (Interpretation) No, I didn't see any dead bodies with weapons or
13 wearing military uniforms.

14 PRESIDING JUDGE FREMR: Thank you, Mr Witness.

15 So for the moment I think Witness could be excused. Your testimony will continue
16 after the break, Mr Witness. So thank you. Now we will move to the closed
17 session and Witness is going to be escorted out of the courtroom.

18 (Closed session at 10.47 a.m.)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Open session at 10.48 a.m.)

24 THE COURT OFFICER: We are back in open session.

25 PRESIDING JUDGE FREMR: Thank you, court officer.

1 And now, Mr Iverson, you can proceed with your request on admission of evidence.

2 MR IVERSON: Thank you, your Honour.

3 The Prosecution would like to tender into evidence number 3 on the Prosecution's list
4 of documents. And I don't know if you want me to list each ERN.

5 PRESIDING JUDGE FREMR: Sorry. Please, make a whole list and then we will ask
6 Defence for their position.

7 MR IVERSON: Yes, your Honour.

8 So number 3, numbers 6 through 14.

9 THE COURT OFFICER: Mr Iverson, for the record, could you please give the ERN
10 numbers.

11 MR IVERSON: I shall do so. Yes.

12 So it's the first document we wish to tender is DRC-OTP-2058-1105; second document,
13 DRC-OTP-2058-1106; next document, the same prefix, last four 1107; and then 1108;
14 1109; 1110; 1111; 1112; 1113; and DRC-OTP-2080-0239. And then the last two
15 documents, the maps that were marked for identification, so they're numbers are
16 DRC-REG-0001-0001; and then the second exhibit is last four 0002.

17 PRESIDING JUDGE FREMR: Thank you, Mr Iverson.

18 Mr Boutin, any objections?

19 MR BOUTIN: No, Mr President. No objection from the Defence.

20 PRESIDING JUDGE FREMR: Any comments from LRV?

21 MR SUPRUN: (Interpretation) No, your Honour.

22 PRESIDING JUDGE FREMR: So then it's easy, all those documents have been
23 admitted as Prosecution exhibits and they will be given a number, but as we already
24 indicated, there is still under some, you know, discussion. So as soon we will just
25 agree on one of the alternatives of giving numbers, we will inform you. But what is

1 important, what is relevant, all of those documents have been admitted into evidence.

2 And now because we have still 10 minutes, I would like to discuss another procedural
3 issue, it's the issue of request of the LRV to question this witness.

4 So, Mr Suprun, I am just asking you to make your request. Actually do you find
5 some reason to change your request or maybe just repeat it? It is up to you.

6 MR SUPRUN: (Interpretation) Mr President, I would like to indeed maintain my
7 request to question this witness, in particular dealing with the themes that I
8 mentioned in my written submission, the issues related to the prejudice that the
9 witness himself suffered and his family, the circumstances of the other victims, that is
10 the displaced by the war that the witness has just mentioned, because these
11 circumstances involved the interests of hundreds of other victims who underwent the
12 same events.

13 I understand that the Defence intends to object to certain topics that I intend to deal
14 with with the witness, and with the Chamber's authorisation, I would like to make a
15 number of submissions once the Defence has presented its own objections. Thank
16 you, your Honour.

17 PRESIDING JUDGE FREMR: All right. Now the floor goes to Defence.

18 MR BOUTIN: With your permission, your Honour, my colleague will address this
19 issue. Thank you.

20 PRESIDING JUDGE FREMR: All right.

21 MS GRANDON: Yes, Mr President, regarding the request of the LRV, the Defence
22 does oppose to point B and C of the paragraph 7 of their request, mainly, asking the
23 question about the other victims. As you mention yesterday in the hearing, we
24 believe that the LRV are only allowed to ask question about the individual and his
25 family; namely, P -- Witness P-805 and his family, because asking question about

1 other victims will be just asking general question and this should not be allowed by
2 the Chamber.

3 PRESIDING JUDGE FREMR: Thank you very much.

4 And now, Mr Suprun, you have a chance to respond if you want.

5 MR SUPRUN: (Interpretation) Thank you, Mr President, your Honours.

6 For the Legal Representatives of Victims to question the witness is provided for under
7 Rule 94(3) of the Rules of Procedure and Evidence. From the beginning of the ICC,
8 the various chambers as well as the Appeals Chamber have shown a very unanimous
9 approach as regards this rule. And we have quite a lot of case law which is quite
10 constant, in particular as regards the scope of the questions that the Legal
11 Representatives of Victims may ask to the witnesses. I'm not going to repeat all of
12 the case law principles, which is indeed very constant case law of the ICC, but there
13 are a number of fundamental principles, one of them states that the participants -- the
14 participation of the victims before the ICC must be effective and significant and not
15 just symbolic.

16 At the trial stage the participation of victims may only be considered effective and
17 significant if the victims actually have the effective possibility of participating in the
18 determination of the truth, in the finding of the truth, and participate in the
19 examination of evidence that are part of that procedure.

20 The fact that Legal Representatives of Victims be able to present evidence before the
21 Chamber as witnesses or be able to present the concerns of certain peoples, the
22 majority of participating victims will not be able to participate actively in the
23 manifestation of the truth other than through the Legal Representatives of Victims.

24 The ability of being able to ask questions to witnesses on events that they have
25 experienced is the main, if not the only way most of the victims will be able to actively

1 participate in the manifestation of the truth.

2 Another fundamental principle involves the interpretation of the concept of interest of
3 the -- personal interest of the victims. This was dealt with during the first case
4 before the Court, which was again repeated and developed in the other cases before
5 the Court. This principle states clearly that as regards the scope of the participation
6 of victims, and let me quote, "The mention of personal interest must be understood in
7 a fairly wide-ranging meaning. Each and every time the victims must be allowed to
8 express their concerns by making statements and legal representatives should be able
9 to question witnesses and make written submissions." End of quote.

10 This reference regarding the participation of Legal Representatives of Victims, which
11 was in the Lubanga case under 1119, paragraph 18.

12 The Chambers and Appeals Chambers have been unanimous on numerous occasions
13 that the Legal Representatives of Victims may be authorised to question witnesses if
14 the Chamber considers that this will indeed contribute to the manifestation of the
15 truth, not only as regards questions relating to reparations, but other matters in
16 particular relating to the innocence or guilt of the accused.

17 So in light of this constant case law of the Court in all of the different cases before the
18 Court, Legal Representatives of Victims have been systematically allowed to ask
19 questions to the witnesses on a wide-ranging scope that go far beyond matters related
20 solely to reparations, in particular, including general interest questions, questions
21 related to the context of the case, as well as relating to the guilt of the accused.

22 Let me give you some examples where Legal Representatives of Victims were allowed
23 to ask questions of the witnesses, in particular related to reparations. In the first case,
24 that is the Lubanga case, which is similar to this case, in that case Legal
25 Representatives of Victims were allowed to ask questions on the following aspects,

1 amongst others: The source of financing of the UPC and the persons involved; the
2 military structure of the UPC; the structure and role of the intelligence services within
3 the UPC; the role of children within those different services; the origin, the ethnic
4 framework and the overall situation in Ituri; the exploitation of natural resources in
5 Ituri; weapons trade in Ituri; matters relating to the names, how names were used in
6 the DRC.

7 Now, the Defence would want to limit the role of Legal Representatives of Victims to
8 the minimum, to a symbolic role in spite of the constant and in-depth case law of the
9 Court which would go in the opposite direction. And, indeed, this participation is
10 significant.

11 Today the Defence has not presented any particular reason for the case law, which is
12 extensive, not apply in today's case, in this case. And I would like to reassure my
13 colleagues from the Defence our role is not to do the job of the OTP. The victims are
14 not here to be a second prosecutor. But at the same time the victims are not here to
15 just sit and wait for the truth to become apparent, nor are we here to play a symbolic
16 role.

17 The victims are here because we have a legitimate interest to contribute to the
18 manifestation of the truth and the facts in light of events that they have been involved
19 and where they have been personally involved in. It is in the interest of the victims
20 and this interest of the victims is part and parcel of the goal that we all share here in
21 this courtroom, in other words, the manifestation of the truth.

22 As for the Defence's interpretation regarding the personal interest of victims, I'd like
23 to make one point clear. I made my request to put questions to the witness not only
24 as a Legal Representative of Victims, but also as the representative of hundreds of
25 other victims who have been given leave to take part in the trial.

1 We have at least 300 victims of the Mongbwalu attack, at least 300 victims who were
2 affected by the attack on the village mentioned earlier. So the interest of these
3 victims are very much at play here. The witness is providing information and
4 evidence regarding the events that led to these people being victimized. These
5 victims found themselves in very similar, if not identical circumstances to those of
6 this witness.

7 Now, if all these victims were to come before the Judges, well, they can only make
8 their views known through the Legal Representative of Victims. We are entitled to
9 put questions to the witness to adduce details relating to the various attacks.

10 In actual fact, the Defence seems to be saying that the personal interest of victims
11 should be interpreted as being personally directly affected by the evidence in place.

12 Now, these arguments, along with an extremely narrow interpretation of personal
13 interest, was -- these arguments were brought forward by the Lubanga Defence team
14 and dismissed by the Trial Chamber in that particular case. Thus, your Honours, I
15 wish to continue with my request to put questions to this witness. I thank you.

16 PRESIDING JUDGE FREMR: Defence.

17 MS GRANDON: Yes, I would like to respond to my colleague on this.

18 PRESIDING JUDGE FREMR: Please go ahead.

19 MS GRANDON: My colleague mentioned the jurisprudence of the Lubanga case.

20 There has been also many jurisprudence in the Bemba case and the Katanga case
21 where the scope of the question asked by the LRV was very restricted, and I'd like to

22 mention a few ruling on this. The Katanga case, where it's been said that when

23 examining the witness LRV need to focus on interest of the person they represent, so,

24 namely, witness P-805; that they also have to concentrate question on precise area of

25 concern and not to ask broad question. I believe then when asking about 300 alleged

1 victims of the attacks, it's going to be broad question.

2 And in the Bemba case, it's been a ruling that Chamber grants LRV to question the
3 witness, however, Chamber does not grant question asking for witness opinion on
4 state of mind of third person and why the witness think they took certain decision.

5 So, I mean, it's not a class action trial. We are in a criminal trial. And I believe then
6 when authorised to ask question about financing of the UPC or military structure in
7 the Lubanga case, that would just make the victims to be a second Prosecution and
8 that's what the Defence does not want in this trial.

9 PRESIDING JUDGE FREMR: Thank you very much.

10 Now we will break. But normally we used to break for 30 minutes. Because we
11 also have during this break to deliberate and prepare some oral ruling, we will need a
12 little bit more time, so we will reconvene at quarter to 12.

13 THE COURT USHER: All rise.

14 (Recess taken at 11.05 a.m.)

15 (Upon resuming in open session at 11.48 a.m.)

16 THE COURT USHER: All rise.

17 Please be seated.

18 PRESIDING JUDGE FREMR: So now we will, we are in open session and we will
19 continue by rendering of our oral ruling on the LRV request for questioning of the
20 witness.

21 Over the break we deliberated with my colleagues, and having heard the submissions
22 of Mr Suprun and of the Defence, we have made a decision on the permissible scope
23 of the Legal Representative's questions to be put to this witness. In so doing, the
24 Chamber notes that the jurisprudence of this -- at this Court on the permissible scope
25 of questioning of witnesses by legal representatives is varied. This Chamber would

1 like to emphasise that while questions by the legal representative must be carefully
2 tailored to elicit responses on the concrete harm suffered by the witness, such
3 questions may also extend to the harm suffered by other victims of the same attack as
4 that of the witness.

5 Therefore, Mr Suprun, we will allow you to question the witness on the topics you
6 have identified in your request to the extent that they comply with this guidance.

7 In addition, please try not to be repetitive of any of the Prosecution's questions on the
8 issues you have identified in your request.

9 The Chamber wishes to give you in principle approximately 30 minutes in which to
10 question the witness.

11 So now, court officer, can we please revert to closed session to bring witness in.

12 (Closed session at 11.50 a.m.)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Open session at 11.52 a.m.)

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

25 PRESIDING JUDGE FREMR: Thank you, court officer.

1 Mr Suprun, you may proceed.

2 QUESTIONED BY MR SUPRUN: (Interpretation)

3 Q. Good morning, Mr Witness.

4 A. Good morning.

5 Q. I shall be representing -- I shall -- I am introducing myself for the dossier. I am
6 a Legal Representative for the Victims of the attack on the civilian population who
7 were admitted to take part in this case against Mr Bosco Ntaganda, and I shall be
8 putting a number of questions to you with a view to seeking clarification as to a
9 number of aspects of your testimony.

10 I will request that you do not provide us with names of individuals or locations when
11 we are in open session. If the need arises, we will move into private session in order
12 to allow you to provide us with names.

13 In view of the fact that I shall be mentioning a number of locations during my
14 questions, I will suggest that we use the codes that were used with my learned
15 colleague from the Prosecution yesterday and this morning.

16 Now, Mr Witness --

17 PRESIDING JUDGE FREMR: Sorry, sorry, Mr Witness, do you have still this paper
18 in front of you with codes, colour?

19 THE WITNESS: (Interpretation) Yes.

20 PRESIDING JUDGE FREMR: Fine. Thank you.

21 MR SUPRUN: (Interpretation)

22 Q. Mr Witness, you indicated during your testimony that after the attack on
23 Mongbwalu you hid in the bush, and you also indicated that the displaced persons
24 who were in the bush and yourself suffered a great deal.

25 Now my first question to you is: Were you in the bush alone, or were you in the

1 company of some of the members of your family?

2 A. I thank you for that question. I was in the company of members of my family.

3 Q. Could you furnish us with some details as to the conditions in which you and
4 the members of your family found yourselves in the bush?

5 A. Yes, I can give you some details. My family and myself suffered a great deal.
6 We did not have access to any medication. And we found it very difficult to find
7 anything to eat, because we needed to move around in order to find food in the fields.
8 We were scavengers. Those were the conditions that we were living in.

9 Q. And could you specify which members of the family were in your company in
10 the bush, without providing us with any names, of course?

11 A. I was in the company of my wife, my children, my mother and my brothers and
12 sisters.

13 Q. And what age were the children in your company?

14 A. You must remember that this was in the year 2003. I did not have many
15 children at that time in the year 2003, I only had two children.

16 Q. And could you provide us with the ages of those two children, please?

17 A. I no longer recall.

18 Q. That's not serious, Mr Witness.

19 Now, aside from the difficulty in finding food that you encountered out in the bush,
20 did you come up against any other type of difficulties?

21 A. Yes, there were other difficulties, indeed; we did not have any money and we
22 did not have a roof over our heads.

23 Q. And could you provide us with more details as to the conditions in which other
24 displaced persons found themselves, those displaced persons who were in the same
25 location as yourselves?

1 A. The displaced persons who were in our company were in the same conditions
2 as us. We did not have any house to shelter in. We tried to put up a few huts in the
3 bush. Those were the conditions that we found ourselves in.

4 Q. And you also made mention of the fact during your testimony that the
5 displaced persons were also suffering from illnesses. Could you provide us with
6 further details, please.

7 A. Yes. There was malaria, because there were many mosquitos around in the
8 bush, and the children were malnourished. They also had -- they had vitamin C
9 deficiency.

10 Q. So these children had health issues. What kind of treatments did they give
11 these children?

12 A. Well, I'm not in a position to tell you what they did in order to provide
13 treatment to their children.

14 Q. Mr Witness, you indicated that after the attack on the red village you went in
15 the company of your family to the green village. You also said that people in the
16 green village were living in very difficult conditions. My first question to you is:
17 Who of the members of your family fled with you to the green village?

18 A. I thank you. When we fled in the direction of the green village, we were in the
19 company of my mother, my wife, children and other members of the family.

20 Q. Could you furnish us with additional details as to the conditions you were
21 living with -- you were living in, you and the members of your family in the green
22 village?

23 A. Very well. The living conditions in the green village were not good. We
24 left -- we would leave the green village with a view to seeking something to eat.
25 Conditions were not easy. We found it difficult to have access to medication.

1 There was no money to be spoken of.

2 Q. Could you provide us further details as to the conditions in which the other
3 displaced persons in the green village were living?

4 A. Thank you. The living conditions of the other displaced persons were the
5 same as ours. We had all left our villages.

6 Q. Were there any particular difficulties, any health difficulties amongst those
7 individuals in that village?

8 A. Yes, we had health issues. We did not have access to any medical care. It was
9 difficult.

10 Q. Mr Witness, you said that when you returned home to the red village,
11 subsequent to the attacks, you discovered that your possessions had been looted.
12 Now, what happened to your house in the village?

13 A. In the red village my possessions had been looted and my house had been
14 destroyed.

15 Q. What happened to your business in the red village?

16 A. The money that I had earned through my business activities had been looted in
17 addition to the goods that I was selling and also clothes.

18 Q. Did you have a shop back in the village?

19 A. I had a shop in (Redacted). And when I went to the red village I no longer had a
20 shop.

21 Q. Witness in view of the fact that you told us about your possessions in the red
22 village -- well, what happened to your possessions in (Redacted)

23 A. In (Redacted) I did have possessions. And when war broke out I was in (Redacted)

24 Q. And with regard to those possessions that were in (Redacted), what happened
25 to them when you came back to see what had happened to them?

1 A. The war broke out when I was in (Redacted) and my possessions were in (Redacted)
2 I did not go back to (Redacted) to check. I left (Redacted) to go to the red village. And
3 all my possessions in (Redacted) were looted.

4 Q. You also had a house in (Redacted) What happened to it?

5 A. The house in (Redacted) was rented. I used it for -- to house my shop. It
6 remained intact.

7 Q. You also indicated during your testimony that you also had a business or a shop
8 in (Redacted). What happened to it?

9 THE INTERPRETER: Request from the English booth: Could counsel please be
10 requested to observe the pause between question and answer. Thank you.

11 THE WITNESS: (Interpretation) This shop was looted with the entirety of its
12 contents.

13 MR SUPRUN: (Interpretation)

14 Q. And when you discovered that all your possessions had been looted in the red
15 village and in (Redacted), what did you do?

16 A. After the looting in (Redacted), I went -- I went to the red village and I started
17 working in the fields.

18 Q. And what happened to you and your family?

19 A. My family remained in poverty in a precarious situation.

20 Q. Mr Witness, in view of the events in 2002 and 2003 that you survived, did you
21 and the members of your family, apart from the economic loss, did you suffer -- did
22 you have any further suffering, whether it be psychological, emotional or physical to
23 speak of?

24 A. Thank you. I was emotionally affected by the war and so were the members of
25 my family because we all suffered together. That is the suffering that we endured.

1 MR SUPRUN: (Interpretation) (Redacted)

2 (Redacted). And I thank

3 you.

4 PRESIDING JUDGE FREMR: (Redacted)

5 (Redacted)

6 MR SUPRUN: (Interpretation)

7 Q. Mr Witness, did you or any members of your family endure any physical
8 suffering in terms of health issues?

9 A. Yes, we did endure physical suffering, that is to say we had health issues.

10 Q. Could you provide us with any additional details in this regard?

11 A. Well, many members of my family suffered a great deal. They fell ill.

12 Q. And do those health issues still exist today?

13 A. Yes, they do. These health issues still exist today.

14 Q. You said during your testimony that when you saw the bodies of the
15 individuals who had been killed in the banana field, you were traumatised. Could
16 you provide us with further details, please?

17 A. Yes, I can give you further details, indeed. When I saw the corpses, I was
18 traumatised because I saw the manner in which those people had found their death.
19 They had died in a horrible way. They had been disembowelled, and that troubled
20 me, disturbed me deeply.

21 Q. Now, this trauma that you suffered, did it continue thereafter?

22 A. Yes, this trauma continued for a long time.

23 Q. And now when you recall these images, these events, do you find yourself in a
24 difficult emotional and psychological state?

25 A. When these images or events come back to me, I find it difficult to think about

1 them. But it is not as difficult for me to think about as it was in the past because this
2 happened a long time ago now.

3 PRESIDING JUDGE FREMR: Mr Suprun, just one comment from my part. Be
4 careful about the questioning, because I think the last question, according to my view,
5 was almost, almost leading. So be careful about that.

6 MR SUPRUN: (Interpretation) I thank you, Mr President.

7 Q. Mr Witness, the events of 2002-2003 that you survived, did they have any
8 impact on the life of your family members and your life?

9 A. Yes, those events did have an effect on me and my family.

10 Q. Could you provide us with further details, please?

11 A. Well, our life situation got worse. Before, in the past, we had a business and
12 we no longer have a business and we have to make do with working in the fields.

13 Q. And were you able to build a new house, or were you able to open another
14 business since the events?

15 A. Thank you. Since the events, since the war, I have not started up any business
16 activities again, but I was able to build another house due to my activities, my
17 farming activities.

18 Q. In general terms, were you able to restore life to the way it was before the
19 events?

20 A. No. No, not at all. I have not been able to restore the life I had before.

21 Q. Did you receive any aid or help since the 2002-2003 events, material, or
22 psychological, or medical aid of any kind?

23 A. Thank you. I was helped because I was given tools to cultivate with. I -- and
24 I was cared for medically speaking before I came to testify before the Chamber.

25 MR SUPRUN: (Interpretation) Your Honour, I'd like to go into private session for

- 1 the next few questions, please.
- 2 PRESIDING JUDGE FREMR: All right, let's go to private session.
- 3 (Private session at 12.17 p.m.)
- 4 (Redacted)
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Trial Hearing

(Private Session)

ICC-01/04-02/06

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Trial Hearing

(Private Session)

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9 (Open session at 12.28 p.m.)

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

11 MR SUPRUN: (Interpretation)

12 Q. Witness, as a victim of the war, what do you, yourself, expect from the

13 International Criminal Court in the present case against Mr Bosco Ntaganda?

14 A. Thank you. Well, I would like the Court to decide on reparations for the
15 events that occurred.

16 Q. Thank you very much, Witness.

17 MR SUPRUN: (Interpretation) Mr President, I have no further questions.

18 PRESIDING JUDGE FREMR: Thank you very much, Mr Suprun.

19 And thank you very much, Mr Witness. You are doing really very well.

20 Now it is time for cross-examination by the representatives of Defence. So I would

21 like to remind you that, for the sake of fair trial, both parties are equal, so please don't

22 make any difference between answering questions to Defence; you should make it in

23 the same style like you perfectly did it answering questions from the Prosecution and

24 from Legal Representative of Victims.

25 Mr Boutin, may I know your estimation of time needed for cross-examination.

1 MR BOUTIN: Excuse me, Mr President. I expect, Mr President, probably roughly
2 two hours.

3 PRESIDING JUDGE FREMR: Fine. Thank you. Please proceed.

4 MR BOUTIN: And I'll do my best to -- to be short.

5 PRESIDING JUDGE FREMR: We would appreciate.

6 MR BOUTIN: Before I start, your Honour, may we go in private session?

7 PRESIDING JUDGE FREMR: All right. Let's move to private session.

8 (Private session at 12.31 p.m.)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

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16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 (Redacted)

2 (Redacted)

3 (Redacted)

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5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Open session at 12.34 p.m.)

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

11 MR BOUTIN: Thank you, Mr President.

12 QUESTIONED BY MR BOUTIN: (Interpretation)

13 Q. Witness, yesterday you mentioned that you were familiar with the UPC; is that
14 correct?

15 A. Yes, I know some things about the UPC.

16 Q. Of course there were other groups or militias in the region at the time, including
17 the APC. Are you familiar with the APC?

18 A. Yes, that's correct, there was also the APC.

19 Q. You were living in the black village. You had a business and a home there.
20 So during the period 2003 you knew that the APC was present in the black village?

21 A. At the time when I was in the black village, the APC was not fighting anybody.

22 Q. But were they present in the black village? They had a camp, didn't they?

23 A. Yes, that's correct, the APC was present in the black village.

24 Q. There were also Lendu militias, weren't there, young people and adults, older
25 individuals, who had taken up weapons to defend their village; is that correct?

1 A. Yes.

2 Q. Did you, yourself, participate in these militias?

3 A. No, I was not involved, I was not a member of the militias.

4 Q. You mentioned that when you were displaced, when you moved, when you
5 went from the black village, in fact war broke out when you were there?

6 A. Would you be so kind as to repeat your question, please.

7 Q. Yes, of course, Witness. You mentioned when you answered previous
8 questions that when the fighting broke out you were in the white village?

9 A. Yes. When the fighting broke out in the black village, I left and went to the
10 white village.

11 Q. So if I understand correctly, when the fighting took place either in the black
12 village or the white village or close to the white village, you were not near the place
13 where the fighting was occurring, you were further away, but you could hear the
14 noise of the fighting from afar; have I understood you correctly?

15 A. Well, let me repeat what I said in brief: I was involved in my business
16 activities in the black village and I went to the white village, and it's at that point in
17 time that fighting broke out in the black village, but I was in the white village.

18 Q. Therefore you, yourself, and your family, you were not actually near the place
19 where the fighting was taking place; is that correct?

20 A. Yes. I left the red village and, in fact, I was lucky in that respect because I went
21 to the black village and I had left my family in the red village.

22 Q. And when you, yourself, and your family went to the red village, you did so to
23 avoid the fighting, so in fact the fighting took place at a certain distance from where
24 you were actually situated; is that correct?

25 A. Initially, the fighting took place far from the red village, but later on there was

1 fighting in the red village as well where we actually were.

2 Q. Witness, you know that as regards the fighting, the Lendu militias and the
3 militiamen, the Lendu militiamen, left with the population and they ended up in the
4 bush.

5 PRESIDING JUDGE FREMR: Mr Iverson.

6 MR IVERSON: Yes, your Honour, I'd just like to object. The question itself
7 contains a purported fact that's not in evidence.

8 (Trial Chamber confers)

9 PRESIDING JUDGE FREMR: Objection sustained.

10 MR BOUTIN: (Interpretation)

11 Q. Witness, given that you're familiar with the Lendu militias, you know that some
12 of these militias wore insignias or uniforms that enabled them to recognize each
13 other?

14 A. The Lendu militiamen did not wear any particular uniform, but they recognized
15 each other.

16 Q. And to your knowledge, therefore, they did not wear any bracelets or any
17 animal hides in order to be able to recognize each other easily during the fighting, did
18 they?

19 A. No, they did not wear anything distinctive. They just cover themselves with
20 leaves.

21 Q. You spent a good part of that period within the refugee community at the green
22 village; is that true?

23 A. Yes, I lived with the displaced persons who were in the green village, indeed.

24 Q. And you will be aware that in the green village there was a Lendu combatant
25 camp, were you not?

1 A. It is true that there was a Lendu combatant camp in the green village, yes.

2 Q. And the information that was circulated amongst the civilian population came
3 from that camp, did it not?

4 A. No, the information did not come from that camp.

5 Q. So the information that you received within your community, where did it come
6 from then?

7 A. With regard to the information that we received, well, we got it through the
8 walkie-talkies that we had found at the time of the fighting.

9 Q. And the walkie-talkie that you are referring to was in the possession of the
10 Lendu combatants, was it not?

11 A. No.

12 Q. In fact, you do not know who possessed that walkie-talkie, do you?

13 A. The walkie-talkie was in the hands of the members of the community, the
14 Lendu community. They had found them during the fighting. But these
15 walkie-talkies were not in the camp.

16 Q. So they were in the possession of the Lendu dignitaries at the time, were they?

17 A. Yes, I could call them dignitaries indeed because they were the individuals who
18 were following everything that was said over the walkie-talkies.

19 Q. And when I say "dignitaries" I am referring to those individuals who have a
20 certain status within the Lendu community, so these are people who are wise men, or
21 people who are well considered, elders.

22 A. Those who were talking over the walkie-talkies were people who were taking
23 care of the security amongst the population.

24 MR BOUTIN: I do apologise, Mr President. If you will please give me a moment
25 for me to catch up to where I am in my notes and then continue.

1 PRESIDING JUDGE FREMR: You know, it is up to you. Generally we should
2 finish by 1 o'clock roughly, so five minutes doesn't matter, so it is up to you to find
3 the most convenient moment to break, okay.

4 MR BOUTIN: I mention one minute, Mr President, on place so I can review my
5 notes and then carry on.

6 PRESIDING JUDGE FREMR: That's fine.

7 (Pause in proceedings)

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

9 Q. When you went to the red village you said yesterday that at a certain moment in
10 time you were obliged to leave and flee, because the Lendu combatants could not
11 hold the enemy back and they had to retreat -- they had to retreat; is that correct?

12 A. Yes. When I was in the red village I went home, and that is when war broke
13 out. The Lendus were overcome and they fled.

14 Q. And when you are referring to the Lendus you are referring to the members of
15 the combatant community who were tasked with defending the village, are you not?

16 A. They were combatants, yes.

17 Q. And to your mind, if you are in a position to say, where did those combatants
18 go once they had withdrawn?

19 A. The combatants fled and they scattered in the bush.

20 Q. With your leave, if I might change the subject at this juncture. You mentioned
21 that your residence or home in the red village had been demolished; is that correct?

22 A. That is correct. My house in the red village had its iron-sheeting roof removed.

23 Q. It had its iron-sheeting roof removed, but was the rest of the structure still intact,
24 if you are able to recall, of course?

25 A. Yes, the walls were in a good state of repair, however, the metal sheeting had

1 been taken away.

2 Q. Had the houses been burnt down in anyway, or destroyed in such a manner?

3 A. Thank you for the question. My house was not burnt down, it was only the
4 metal sheeting that had been removed.

5 Q. Mr Witness, do you remember having filed a request to participate in the
6 victims, in your capacity as a victim? Do you recall?

7 A. Yes, I do.

8 Q. And do you remember when precisely this request or application to participate
9 in the proceedings was submitted?

10 PRESIDING JUDGE FREMR: Mr Witness?

11 THE WITNESS: (Interpretation) Could you please put your question again?

12 MR BOUTIN: (Interpretation)

13 Q. Mr Witness, do you recall at what period in time you submitted your
14 application to participate in the proceedings as a victim?

15 A. Yes, I do remember.

16 Q. Was it in fact in the year 2013?

17 A. Yes, that is correct, 2013.

18 Q. And were I to put it to you, Mr Witness, that in this application you specified
19 that your house had been burnt down, is that a possibility?

20 A. No. It may be that the individual who noted down my testimony made a
21 mistake. I said that my house had had its metal-sheeting roof removed.

22 MR BOUTIN: (Interpretation) Mr President, I would like to show a document to
23 the witness, a document that was adduced into evidence by the Prosecution. It is, in
24 fact, the victim's or the witness's request for participation as a victim. And in order
25 to do so I believe that we should go into closed session. In view of the hour, of

1 course it behoves the Court to decide on the matter, but to my mind I think it might
2 be the right moment for us to adjourn for lunch and I shall continue this afternoon
3 at 2.30.

4 PRESIDING JUDGE FREMR: Absolutely. So we will adjourn now and we will
5 reconvene at half past 2.

6 THE COURT USHER: All rise.

7 (Recess taken at 1.01 p.m.)

8 (Upon resuming in open session at 2.35 p.m.)

9 THE COURT USHER: All rise.

10 Please be seated.

11 PRESIDING JUDGE FREMR: Good afternoon, everybody.

12 First of all, we probably have some bad luck today, but problems with transcript are still
13 ongoing, so it means that it's pretty possible that there is -- be some, again, some shortcomings
14 in the morning. We hope that, you know, you will be able to work in, under those
15 complicated conditions, but if you would say that you are not -- you don't agree with
16 continuing, we can -- we will have to adjourn.

17 Also, there was also, to be honest, there was also proposal from court management to
18 keep full session in the regime of private session, which would much more facilitate
19 the possible -- or, possible or necessary redactions, if any, but in case that we will be
20 extremely cautious, I think we can avoid that.

21 So at the moment I am asking parties whether are they ready to work under those
22 rather complicated conditions. Prosecution?

23 MR IVERSON: It's fine for the Prosecution, your Honour.

24 PRESIDING JUDGE FREMR: Thank you very much.

25 Defence?

1 MR BOUTIN: Yes, I think it is as well, your Honour. Obviously, if we are facing some
2 issues of significance, we'll let you know. Thank you.

3 PRESIDING JUDGE FREMR: We appreciate.
4 And LRVs?

5 THE INTERPRETER: Mr Suprun, inaudible.

6 PRESIDING JUDGE FREMR: I also see Ms Pellet nodding for the record. So thank you
7 very much for your understanding.

8 Now we will continue by rendering our oral decision on certain aspects of protocols
9 concerning witnesses.

10 Yesterday, the parties raised a number of issues concerning the applicability and
11 interpretation of the various protocols relating to witnesses in this case. The
12 Chamber invited the Defence to make a formal filing with respect to certain of the
13 issues by the filing deadline on Friday, 18 September, inviting any responses from the
14 Prosecution, Legal Representatives and VWU by the filing deadline on Tuesday,
15 22 September.

16 However, due to their urgency, two issues raised will be ruled on today. These
17 include the dispute between the parties as to: First, whether there is a need to
18 provide an audio or video recording of the meeting between the opposing party and a
19 witness, where the calling party is not present in such a meeting, regardless of where
20 the meeting takes place and; the second, which protocols, if any, apply to expert
21 witnesses.

22 In adjudicating these issues, the Chamber notes that the parties were not particularly
23 explicit as to which protocols they consider to be applicable in the present
24 circumstances. A number of protocols regulate contacts between a witness and
25 parties and participants in various circumstances; namely, number one, the protocol

1 on the handling of confidential information during investigations and contact
2 between a party or participant and witnesses of the opposing party or of a participant.

3 It's Annex A of number 412, which I shall refer to as the Contacts Protocol.

4 Number 2, the witness preparation protocol, Annex A of number 652.

5 And number 3, the protocol on the practices to be used to familiarise witnesses for
6 giving testimony at trial. It's Annex A of number 656, which I shall refer to as the
7 Familiarisation Protocol.

8 The Chamber considers that the most relevant for present purposes is the Contacts
9 Protocol, which contains an explicit section regulating contacts between a party or
10 participant and a witness of the opposing party or participant which requires,
11 amongst other things: (a) Consent of the witness to the interview that the opposing
12 party seeks to conduct. It's contained in para 33;

13 (b) Notification of the calling party or participant of the intention to interview the
14 witness. It's in paras 34 and 35;

15 (c) That the interview is recorded via video or audio and that this recording is
16 provided to the calling party. It's para 45.

17 The Chamber has noted the Defence argument that there ought to be a different
18 approach to contact with a calling party's witness in the field compared to contact
19 with the witness at the Court just prior to a witness testifying, and that there is
20 otherwise no benefit to meeting the witness of an opposing party.

21 However, the Chamber does not see any basis for such a distinction, noting that there is
22 nothing limiting the temporal application of the Contacts Protocol to the period before which
23 the witness arrives at the location of testimony. The Chamber considers that the protocol
24 applies equally to meetings with witnesses occurring shortly before they testify as to contact
25 with witnesses during investigations in the field.

1 Therefore, the Chamber confirms that a non-calling party or participant is required to
2 provide an audio or video recording of any interview with a witness of the calling
3 party in accordance with paragraph 45 of the Contacts Protocol. It is recalled that
4 any deviation from the Contacts Protocol requires the prior authorisation of the
5 Chamber.

6 Noting the definition of 'witness' contained at paragraph 3(f) of the Contacts Protocol,
7 the Chamber considers this requirement to be equally applicable to expert and
8 non-expert witnesses.

9 Accordingly, the Chamber confirms that the Defence is required to provide any
10 recordings made of interviews conducted with witnesses so far in these proceedings
11 and must record and disclose the recording of its prospective interview with the
12 Prosecution's third witness, who is an expert witness.

13 In so finding, the Chamber notes that notwithstanding this requirement, the Defence
14 shall have the opportunity to cross-examine Prosecution witnesses in court, and
15 therefore does not consider its application to cause any undue prejudice to the
16 Defence. Indeed, the very aim of the Contacts Protocol is to ensure the safety of
17 witnesses in a manner consistent with the rights of the accused. The Chamber also
18 observes that the Contacts Protocol applies equally with respect to any Defence
19 witnesses. Further, the Defence had the opportunity to make submissions on the
20 protocol in December last year prior to its adoption. The Contacts Protocol, as it
21 stands, is binding on the parties and participants.

22 In terms of the second issue raised by the parties, namely the applicability of
23 witness-related protocols to expert witnesses, the Chamber shall now turn to the
24 witness-preparation protocol.

25 The Chamber notes that the witness-preparation protocol is only applicable to the

1 calling party insofar as it regulates the contacts of a calling party with its own
2 witnesses prior to them testifying. Accordingly, it is not relevant to the Defence
3 contact with any Prosecution expert witnesses or, indeed, any Prosecution witnesses
4 at all. Of course, it's clearly applicable to a calling party's contacts with its own
5 expert witnesses.

6 Turning to the applicability of the Familiarisation Protocol to expert witnesses, the
7 Chamber notes a number of paragraphs in which the specific situation of expert
8 witnesses is addressed, including paragraphs 33, 38 and 42. It's apparent that, save
9 where explicitly indicated otherwise, the provisions of the Familiarisation Protocol
10 apply equally to expert witnesses to the extent relevant.

11 The Chamber notes that the Familiarisation Protocol also regulates the so-called
12 'courtesy meetings' between witnesses and those who may examine them in Court.
13 You can refer to para 70 to 74. The Chamber finds that, to the extent that courtesy
14 meetings are solely an opportunity for witnesses to acquaint themselves with the
15 people who may examine them in Court, as provided for in the Familiarisation
16 Protocol, they are not required to be audio or video recorded. However, the
17 Chamber considers that such courtesy meetings, which are based on the witness'
18 consent and are organised for his or her benefit by the VWU, ought only to be for the
19 purposes of the witness making the acquaintance of those who may examine him or
20 her.

21 That concludes the ruling of the Chamber.

22 So now we can move to the rest of the testimony of the witness. So we will first have
23 to go to the closed session and then we can bring witness in.

24 (Closed session at 2.47 p.m.)

25 (Redacted).

Trial Hearing

(Close Session)

ICC-01/04-02/06

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16 (Open session at 2.50 p.m.)

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

18 PRESIDING JUDGE FREMR: Thank you, court officer.

19 Mr Boutin, you may proceed.

20 MR BOUTIN: Thank you, Mr President. My intent is to show to the witness a document

21 that is on the list of documents that the Defence intended to use, which is called a Demande

22 de participation pour les victimes, which bears the number DRC-OTP-2062-2248. And

23 obviously this document is protected. The name of the witness appear on it, so it should not

24 be displayed to the public.

25 PRESIDING JUDGE FREMR: Well noted. Please proceed.

1 MR BOUTIN: (Interpretation)

2 Q. I think you'll see, Mr Witness, I think you shall see --

3 MR BOUTIN: I'm sorry, Mr President, I have the wrong channel. Okay.

4 Q. Now, Witness, I believe you have a document before you with your name on it. Could
5 you glance at the document and tell the Chamber whether you recognize this document?

6 A. Yes, I do recognize this document.

7 Q. Now, this is the document that you mentioned earlier saying that you had not filled out
8 the document; is that correct?

9 A. Someone wrote this -- someone wrote this document for me.

10 Q. Now, is this your signature at the bottom, Mr Witness?

11 A. I forgot who it was who wrote the document for me.

12 Q. Did you have an opportunity to read over this document before you signed it?

13 A. There were several people who were requesting to take part. And this is a document
14 entitled victim participation request, so I was sure that it had been filled out properly. And I
15 didn't have an opportunity to read over it.

16 Q. Now, if I understand your testimony, on the first two lines in the paragraph, you say
17 that your house was burnt down. And you believe that this is an error on the part of the
18 person who filled out the form; is that correct?

19 A. That's right. The person who prepared this document made a mistake because in
20 actual fact my house was not -- my house was not burnt down. The roof was taken off it.

21 THE INTERPRETER: Message from the interpreters, could counsel please observe the
22 five-second rule.

23 MR BOUTIN: (Interpretation)

24 Q. So your house had the roof removed?

25 A. The person who filled out this form made a mistake. The house had the roof removed.

1 The metal sheeting was taken off the roof.

2 Q. Very well.

3 PRESIDING JUDGE FREMR: Mr Boutin, you got a message from the interpreters asking you
4 to be more cautious about this five-seconds rule, just to make some pauses between the
5 answer and your question, okay? Thank you.

6 MR BOUTIN: Thank you, Mr President. I apologise.

7 Q. (Interpretation) Witness, you were shown a series of photographs today. You gave
8 testimony to the effect that you had reviewed the photographs, you had looked at them and,
9 in your opinion, they were photographs of the events you witnessed in February 2003; is that
10 correct?

11 A. I beg your pardon.

12 PRESIDING JUDGE FREMR: Witness?

13 THE WITNESS: (Interpretation) Please repeat your question.

14 MR BOUTIN: (Interpretation)

15 Q. Earlier today you were shown a series of photographs or -- no, rather, yesterday, a series
16 of photographs were shown to you, and you said that those photographs showed the place
17 where allegedly you saw in February 2003 certain events at the red village; is that correct?

18 A. Yes.

19 Q. Now, we understand that the photographs were shown to you by investigators from the
20 Court in October 2003; is that correct?

21 A. Yes. The investigators were the ones who showed me the photographs.

22 Q. In 2000 -- no, not 2002, I said 2013. To be more specific, during the meeting with the
23 investigators between 9 and 11 October 2013?

24 A. Repeat your question. I haven't understood.

25 Q. I'm sorry, I made a mistake with the dates myself. Now, the investigators -- now, you

1 remember meeting with investigators from the Court in October 2013?

2 A. Yes, I remember that.

3 Q. Now, do you remember that during the meeting a series of photographs were shown to
4 you, a number of photographs and, indeed, these were the photographs shown to you here in
5 this Court; is that correct?

6 A. Yes, that's right, those photographs, yes.

7 Q. Had you seen those photographs beforehand, before October 2013?

8 A. Before 2013 I had not seen those photographs, but I had remembered all the events that
9 had occurred there.

10 Q. Mr Witness, those photographs were shown throughout the Lendu community, the
11 community that you come from, and you are claiming that you never saw the photographs
12 before 2013? Is that what you are saying?

13 A. Yes, I'm telling you the truth. Before 2013, I had not seen those photographs.

14 Q. So, of course, you are not in the know as to who might have taken those photographs?

15 A. Yes, indeed. I do not know who took those photographs.

16 MR BOUTIN: (Interpretation) Mr President, I would like to show the witness photograph
17 DRC-OTP-2058-1106 because, of course, we are lacking an EVD number.

18 PRESIDING JUDGE FREMR: Court officer, can Mr Witness see the photograph?

19 MR BOUTIN: (Interpretation)

20 Q. Very well. So I understand, Mr Witness, you now have the photograph before you
21 bearing the number 2058-1106?

22 A. Yes.

23 Q. You can see a man to the right who is walking?

24 A. I can see an individual standing.

25 Q. And this person is clad in a certain manner. Do you recognize those clothes,

1 Mr Witness?

2 A. This or these -- these clothes are clothes worn by a woman.

3 Q. I would say, however, Mr Witness, that this -- these clothing, or this form of clothing is
4 called a souka. Do you know what a souka is, Mr Witness?

5 A. I do not know what a souka is.

6 Q. A souka is a traditional dress worn by Hema farmers or Hema shepherds in fact. Have
7 you never seen any such thing within your community?

8 A. No, I'm not familiar with this.

9 MR BOUTIN: (Interpretation) Question, Mr President, could we please present
10 photograph DRC-OTP-2058-1110 to the witness?

11 MR BOUTIN: (Interpretation)

12 Q. Mr Witness, can you see this photograph on your screen?

13 A. Yes.

14 Q. You have already identified this individual without providing us with their name. I
15 am seeking to ascertain, Mr Witness, how long you have known this individual for, the
16 person who you identified on the photograph.

17 A. Thank you. This individual resided in a neighbouring village to ours.

18 Q. And this individual whom you identified as a farmer, well, I would put it to you that in
19 fact he was a Lendu combatant.

20 A. No, he was not a Lendu combatant. He was a farmer, and he was also a gold-digger.

21 Q. I put it to you that this individual whom you identified was one of the Lendu
22 commanders in the region or area of the green village.

23 A. Well, I do not know whether he was a commander or not. All I know is that he was a
24 farmer and a gold-digger.

25 Q. So in the year 2003, how long had you known that individual for?

1 A. When we were dispersed because of the fighting, I only saw his body, his corpse.

2 Q. With respect, Mr Witness, I do not believe that you have answered my question. My
3 question was: In 2003, that is to say at the time at which you say you identified this
4 individual, how long had you known this person?

5 A. I thank you for the question. In 2003 I had known this person for many years.

6 Q. Could you qualify "many years"? Is that one, two years, 10 years?

7 A. I'm not in a position to tell you specifically in which year we initially met. All I can tell
8 you is that we had known each other for a long time.

9 Q. Very well. Could photograph DRC-OTP-2058-1112 please be shown to the witness.

10 PRESIDING JUDGE FREMR: Court officer, please.

11 THE COURT OFFICER: Mr Boutin, could you please confirm that the first four digits are
12 ending with an 8 and not with a zero, please?

13 MR BOUTIN: (Interpretation) I apologise, Mr President. In fact, it is photograph
14 2058-1112.

15 PRESIDING JUDGE FREMR: All right.

16 MR BOUTIN: Moi excuse.

17 Q. (Interpretation) Mr Witness, so you can see the photograph before you, can you not?

18 MR BOUTIN: The witness answered yes, did he?

19 THE WITNESS: (Interpretation) Yes, I can see the photograph on my screen.

20 MR BOUTIN: (Interpretation)

21 Q. So in response to the Prosecutor's questions, you stated that this location that you
22 identified was part of the banana field in the red village; is that correct?

23 A. Yes, that is correct. I told the Prosecution that this photograph was taken in the banana
24 field. Well, just next to the banana field, that's where this photograph was taken.

25 Q. So this location is adjacent to or in the neighbouring area to the banana field that

1 you -- or, the vicinity to the banana field that you describe; is that true?

2 A. Yes, it is a little further away. The photograph was not taken in the banana field itself,
3 it was taken adjacent to the banana field.

4 Q. And do you recall having seen this photograph when you met the investigators in 2013?

5 A. I have no recollection of that. I do not know whether I saw this photograph on the
6 occasion of that meeting. All that I do recall is that most of the photographs that I saw had
7 been taken in the banana field.

8 Q. Mr Witness, according to the investigator's report, when this photograph was presented
9 to you, you stated that you did not recognize this location as being part of the banana field in
10 question.

11 A. As I just told you, this photograph was not taken in the banana field itself, it was taken
12 in an adjacent location.

13 Q. And is it possible that in 2013 when this photograph presented to you by the
14 investigators that you might have said that you did not recognize that location as part of the
15 banana field?

16 A. As I just told you, this photograph was not taken in the banana field, rather in an
17 adjacent location, and I repeat that.

18 Q. That is not what you said to the investigators in October 2013, Mr Witness.

19 A. I remember having said that I could not specify the precise location where this
20 photograph was taken. I apologise.

21 THE INTERPRETER: Says the witness raising his hand.

22 THE WITNESS: (Interpreter) I raised my hand because I wanted to drink a little bit of
23 water.

24 PRESIDING JUDGE FREMR: It's fine.

25 So Mr Boutin, you may proceed.

1 MR BOUTIN: Thank you, your Honour. At this juncture I expect to have only a few other
2 questions. I suggest that those questions should be asked in closed session.

3 PRESIDING JUDGE FREMR: Court officer, let's move to closed session.

4 And sorry, you meant private session or closed session? You meant closed or
5 private session?

6 MR BOUTIN: Private, private session.

7 PRESIDING JUDGE FREMR: Blinds could be up, okay.

8 (Private session at 3.16 p.m.)

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Trial Hearing

(Open Session)

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Trial Hearing

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Trial Hearing

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Trial Hearing

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Trial Hearing

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Trial Hearing

(Open Session)

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3 (Open session at 3.41 p.m.)

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

5 PRESIDING JUDGE FREMR: Thank you very much. We still have 19 minutes remaining,
6 but the Chamber doesn't consider it reasonable to start with the second witness. We will do
7 it tomorrow morning. But before adjourning, I'm asking parties whether they have any
8 requests, questions, comments? Prosecution.

9 MS SAMSON: No, not at present. Thank you.

10 PRESIDING JUDGE FREMR: Defence?

11 MR BOUTIN: No, thank you, Mr President, your Honour.

12 PRESIDING JUDGE FREMR: Thank you.

13 Legal Representatives?

14 MR SUPRUN: (Interpretation) No, your Honour.

15 PRESIDING JUDGE FREMR: So before adjourning I would like to thank all of you and,
16 namely, to Mr Iverson, Mr Boutin and Mr Suprun because, at least in my view, you really
17 conducted exemplary way of questioning. I would like if your colleagues would follow your
18 example. Your way of questioning was very streamlined, focused on really relevant issues.
19 So I think we really appreciate that.

20 Otherwise we will continue tomorrow with the other witness at 9.30. So now court
21 is adjourned.

22 THE COURT USHER: All rise.

23 (The hearing ends in open session at 3.42 p.m.)