

Trial Hearing
WITNESS: DRC-OTP-P-0017

(Open Session)

ICC-01/04-02/06

1 International Criminal Court
2 Trial Chamber VI - Courtroom 2
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and
6 Judge Chang-ho Chung
7 Trial Hearing
8 Friday, 29 January 2016
9 (The hearing starts in open session at 9.30 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.
14 Court officer, please call the case.
15 THE COURT OFFICER: Thank you, Mr President.
16 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
17 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
18 For the record, we are in open session.
19 PRESIDING JUDGE FREMR: Thank you.
20 Now appearances, please, in a usual order.
21 MS LUPING: Good morning, Mr President, your Honours. The same people are in the
22 courtroom presenting -- representing the Prosecution: Myself, Dianne Luping, trial
23 lawyer; Nicole Samson, senior trial lawyer; Selam Yirgou, case manager; James Pace and
24 Rens van der Werf, both assistant trial lawyers.
25 PRESIDING JUDGE FREMR: Thank you, Ms Luping.

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1 Defence now.

2 MR BOURGON: (Interpretation) Good morning, your Honour. Good morning,
3 your Honours. All the people in the courtroom. Representing Bosco Ntaganda, who is
4 present this morning, Sandrine De Sena, who is an intern; Margaux Portier;
5 Chloé Grandon; and myself, Stéphane Bourgon. Thank you, your Honour.

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

7 MR SUPRUN: (Interpretation) Good morning, your Honour. Good morning,
8 your Honours. The victims are represented by the Office of Public Counsel for Victims,
9 associate juriste and myself, Dmytro Suprun, who is counsel.

10 MR ABDOU: Good morning, Mr President, your Honours. The former child soldiers
11 are today represented by myself, Mohamed Abdou, associate legal officer at the Office of
12 Public Counsel for Victims.

13 PRESIDING JUDGE FREMR: Thank you both of you.

14 And duty counsel.

15 MR NÈVE: (Interpretation) Good morning, your Honour, your Honours. Marc Nève,
16 I am a lawyer and I am assisting the witness.

17 PRESIDING JUDGE FREMR: Thank you very much, Mr Nève.

18 Mr Witness, good morning again. Are you feeling well today?

19 WITNESS: DRC-OTP-P-0017 (On former oath)

20 (The witness speaks French)

21 THE WITNESS: (Interpretation) Yes, very well.

22 PRESIDING JUDGE FREMR: Very good. So we will continue with your testimony.

23 As I said yesterday, we appreciate that you had followed all our instructions, so please
24 proceed in the same way today. And as usually it is my duty to remind you that you are
25 still under oath which means that you have to speak the truth and nothing but the truth.

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1 Do you understand?

2 THE WITNESS: (Interpretation) Yes.

3 PRESIDING JUDGE FREMR: Very well.

4 So, Ms Luping, you have the floor.

5 MS LUPING: Thank you, Mr President.

6 QUESTIONED BY MS LUPING: (Continuing)

7 Q. Good morning, Mr Witness.

8 A. Good morning.

9 Q. Mr Witness, I wanted to start off by asking some questions to clarify some of the
10 information that you provided yesterday. Now, first of all you described some corpses
11 of men that you saw as you were moving through Mongbwalu towards Sayo. Could you
12 tell what ethnicity they were?

13 A. I couldn't tell what ethnicity, but I know it wasn't the UPC.

14 Q. And were you able to tell whether they were civilians or fighters?

15 A. They were in civilian clothing.

16 Q. And could you see any wounds on their bodies? Could you tell how they had been
17 killed?

18 A. The bodies that were close to the road had marks of shots that -- they had been shot
19 at with weapons.

20 Q. Now, you described yesterday that when you arrived in Sayo and you were by the
21 dispensary you saw the body of a woman outside. What was -- could you tell what her
22 ethnicity was?

23 A. I couldn't tell you what her ethnicity was, no.

24 Q. And what kind of clothing did she have on her body? Was it civilian or military
25 clothing?

1 A. She was wearing civilian clothing.

2 Q. Could you see what wounds she had on her body? Could you tell how she had
3 died?

4 A. Well, they weren't very open wounds.

5 Q. You explain that when you were on your way back and you passed the dispensary
6 again that you saw the body of a dead baby on the ground. You also explained that you
7 saw blood on the wall. Could you see any wounds on the body of the baby, the dead
8 baby?

9 A. Marks of wounds? No. But seeing the blood which was on the wall, that made
10 me think that the baby had been thrown against that wall.

11 Q. And what made you think that?

12 A. Because as I said yesterday there was no sign of life and these marks were just at a
13 particular level which was very visible and leaving they weren't there --

14 Q. And --

15 A. -- on the way they weren't there.

16 Q. And the baby, did the baby have any blood on it?

17 A. On the ground where the body was lying there was blood there.

18 Q. Now, you described how when you were in Sayo there was a group of people who
19 were fleeing that Bosco Ntaganda ordered somebody to fire on and you said that it was
20 possible to see the trousers for the men and the pagne cloth that the women were wearing.
21 Could you clarify this clothing that you could see, was it civilian or military clothing?

22 A. They were dressed in civilian clothing.

23 Q. And could you see what or determine what ethnicity these people were?

24 A. To the best of my knowledge, Mongbwalu was occupied by the Lendu for the
25 majority. And there were other ethnic groups, but I couldn't say who that was by the

1 ethnic group.

2 PRESIDING JUDGE FREMR: Ms Luping, sorry, I would like to put one additional
3 question: As to the ethnicity of single persons, were there any signs that would help you
4 to recognize a Lendu ethnicity of single people, or it was mainly about the village they
5 used to live?

6 THE WITNESS: (Interpretation) Well, the way that person looks, their body shape, size,
7 the language they speak, those three points will help you easily identify if that person is a
8 Lendu. And the other people who were in Mongbwalu as well who were not from Ituri
9 they had lighter skin than us people from Ituri. So it was easy to identify them.

10 PRESIDING JUDGE FREMR: Thank you.

11 Ms Luping, you may continue.

12 MS LUPING: Thank you, Mr President.

13 Q. Mr Witness, you said that the majority of people living in Mongbwalu were Lendu.
14 What was the majority of the ethnicity of the people living in Sayo?

15 A. I don't know what ethnic -- or, what ethnic group remained who was in Sayo. I
16 couldn't say what ethnic group took refuge in Sayo.

17 Q. Before the Mongbwalu operation, are you aware what the majority of the ethnicity
18 of people living in Sayo were?

19 A. No.

20 Q. Now, you described yesterday how a man came out of the church in Sayo and that
21 he was shot by a bodyguard of Bosco Ntaganda. Were you able to tell what ethnicity he
22 was?

23 A. He was with -- that's part of the characteristics, size, and the person's looks, their
24 hair, and I would say that person was a Lendu.

25 Q. Now, just going back to the information you provided about the people in the

1 church, you said that it was a person called Paulo who accompanied Bosco Ntaganda who
2 told you about the executions. Could you explain what Paulo's role was within
3 Bosco Ntaganda's group? What was his role?

4 PRESIDING JUDGE FREMR: Mr Bourgon.

5 MR BOURGON: Thank you, Mr President. Many of these issues were not only
6 revisited, but they were already answered. The individual who was mentioned now, the
7 witness answered yesterday that he was an escort to Bosco Ntaganda. So I want to leave
8 my colleague, I'm not intervening, but she should please stick to the specifics of what was
9 not answered. Thank you.

10 PRESIDING JUDGE FREMR: I hope that I'm not wrong like yesterday, but I believe I
11 also remember that this response had been given to you. But, you know, if you would
12 put some repetitive questions, it's even, frankly saying, wasting of your time which we
13 will insist upon, so please take it in your mind.

14 MS LUPING: Understood, Mr President. Just to clarify, I too thought I had heard the
15 witness use the word "escort" yesterday, but it was only upon revisiting both the French
16 and English transcripts I saw that what was actually transcribed was that he was within a
17 group accompanying Bosco Ntaganda, and this is why I'm seeking clarification now,
18 Mr President. I certainly will not want to be repeating questions and answers that I've
19 had before.

20 PRESIDING JUDGE FREMR: All right.

21 MS LUPING: So it's simply for clarification.

22 Q. Now, Mr Witness, indeed if you could indeed clarify what was his role.

23 A. He was part of the escort of Mr Bosco Ntaganda.

24 Q. Now, yesterday you explained that when you were in Kilo-État there was a person
25 named Lonema who would decode radio messages, and one of the particular messages

1 you explained that he discussed with you was an event where a father was arrested by the
2 UPC on suspicion of collaborating with the enemy. And you explained that the enemy
3 in this instance was viewed as the APC, the Lendu and the Ngiti.

4 My question is this: What do you mean that the Lendu and Ngiti were viewed as the
5 enemy?

6 A. After the APC left from Bunia they took refuge around Bunia or other areas that
7 they still occupied. And these areas were for the most part occupied by ethnic groups
8 which were in conflict with the Hema. And that's how they were with the Ngiti, they
9 were considered as an enemy of the UPC. And on the other side, if they were with the
10 Lendu, the APC. And the Lendu were considered as the enemy of the UPC.

11 Q. And you refer to ethnic groups which were in conflict with the Hema. Now,
12 you've mentioned the Ngiti and the Lendu. Can you explain this conflict between these
13 ethnic groups and the Hema?

14 A. Well, in the region since '98, in the Djugu area, the Hema and the Lendu were in
15 conflict. There had been attacks by the Lendu on the Hema and the Hema-Sud organised
16 themselves to attack Lendu, or to defend themselves. And over the years before the UPC
17 took the town of Bunia we had already auto-defence, self-defence committees which could
18 carry out attacks or defend our territory against the Lendu.

19 Q. Mr Witness, you described in fact yesterday a group of Hema Gegere civilians that
20 you said the UPC referred to as combatants who were also present during the Mongbwalu
21 and Sayo operation, and you described how some of these Hema civilians or combatants
22 were, and I quote, "called upon to go to Sayo to bury the bodies," end of quote, of the
23 people in the church.

24 My question is this: Who called upon these Hema combatants to bury the bodies of the
25 people in the church?

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1 A. It was Bureau Five who was responsible for relations between the army and the
2 population, and he called upon them.

3 Q. And to be clear, when you say the Bureau Five, is this a position within the UPC?

4 A. Yes.

5 Q. And was this the -- when you say Bureau Five you mean the T5 within the Salumu
6 brigade?

7 A. In the staff HQ we have a G5 in the brigade, you have a T5, and in the units you
8 have an S5.

9 PRESIDING JUDGE FREMR: Mr Bourgon.

10 MR BOURGON: Thank you, Mr President. Before we go any further I'd like to come
11 back to an interpretation error in the transcript.

12 I refer here to the English transcript, which is on page 8, at lines 18, and I compare
13 the -- where it says that the Hema and the Hema-Sud organised themselves to attack
14 Lendu.

15 In the French transcript, which is on page 7, at lines 20, it says "les Hema." It doesn't say
16 les Hema-Sud. So I would like to clarify or at least to have the correct version. Thank
17 you, Mr President.

18 PRESIDING JUDGE FREMR: Ms Luping, I know it's not very pleasant to come back, but
19 maybe to be safe could you please repeat or clarify this detail because it seems very, very
20 important.

21 MS LUPING: I will do so, Mr President.

22 Q. Mr Witness, when you were referring to the ethnic conflict and you talked about
23 Hema, and it's been translated as Hema-Sud organising themselves to attack Lendu, were
24 you referring only to the Hema-Nord or both Hema-Nord and Hema-Sud?

25 A. In the area of Djugu the Hema Nord organised themselves to defend themselves

1 against the Lendu. In Irumu the Hema-Sud organised themselves to defend themselves
2 against the Ngiti.

3 PRESIDING JUDGE FREMR: I think now it is clear. Thank you.

4 MS LUPING:

5 Q. Now, just going back to my question about the person who was within the Bureau
6 Five and you were explaining the different positions within the brigade, units and within
7 the état-major, the general staff, which Bureau Five were you referring to, was it within
8 the brigade or within the état-major, the person who called on the Hema combatants to
9 bury the bodies from the church?

10 A. The person who came out with the group of soldiers, which he controlled, was the
11 T5 who was within our brigade. He was the person who went to call upon these people
12 to go to Sayo.

13 Q. And when you say the T5 from the Salumu brigade came out with the group of
14 soldiers which he controlled, which group of soldiers are you referring to?

15 A. The UPC of Thomas Lubanga.

16 Q. Now, are you aware of any other instances where the UPC asked Hema combatants
17 to do things for them, and if so, if you can give examples?

18 A. When we went from Lalu towards Mongbwalu there were civilians. They helped
19 us transport ammunition cases, military rations and pots, and they travelled with us along
20 the road, 10 of them. And after Mongbwalu was taken, each time that a soldier had to
21 get water or carry out other household tasks such as washing up at the camp they would
22 get civilians to come and carry out those tasks in their stead.

23 Q. Now, first turning to the group of civilians who helped transport these materials
24 from Lalu to Mongbwalu, what ethnicity were they?

25 A. They were Hema.

1 Q. And when they helped you move these things, are you aware if this was voluntary
2 or not?

3 A. Those who I travelled with I know they were compelled to do so.

4 Q. And how do you know this?

5 A. Because I spoke with them and we were on the road all the way to the camp. And
6 one was even wounded. And we talked about it and I knew that they were forced, they
7 were taken by force in order to carry on that road with us.

8 Q. And you said that once Mongbwalu was taken if soldiers had to get water or carry
9 out other household tasks, they would get civilians to come and carry out the tasks in
10 their stead. Which civilians? What ethnicity or ethnicities were these different
11 civilians?

12 A. The two first weeks in Mongbwalu the Hema were in the majority. They were the
13 ones who were travelling around. It was the Hema.

14 Q. And after these first 2 weeks were there any other ethnic group or groups returning
15 to Mongbwalu or Sayo?

16 A. The non-ethnic groups from Ituri, non-original groups of Ituri, didn't feel concerned
17 by this conflict. They came back to Mongbwalu. Others even took shelter in their
18 homes, but the first 2 weeks they didn't travel around, they were in their homes.

19 Q. And when you refer to the non-originaires, can you be more specific about what
20 ethnic groups you're referring to?

21 A. When I say non-originaires, non-natives, the people who came from Kisangani,
22 Kinshasa, Lubumbashi, people who could easily be identified.

23 Q. And these different groups from these different areas, what ethnic groups do they
24 belong to, the names of their ethnic groups?

25 A. What I know is that most spoke in Lingala, but to say -- well, there was people from

1 Kisangani, but there are many different tribes in Kisangani, Katanga. I couldn't know
2 from what group they were from.

3 Q. And you said the first 2 weeks the majority were Hema. Do you recall the other
4 ethnic groups that were still remaining in Mongbwalu in the first 2 weeks?

5 A. I said that there were also people there who did not come from Ituri who were
6 sheltering in their houses. They had not fled Mongbwalu, but they were not moving
7 around, they were keeping to their houses.

8 Q. Now, you explained that before the operation the majority living in Mongbwalu
9 were Lendu. Were there any Lendu remaining in either Mongbwalu or Sayo after the
10 UPC took over?

11 A. When we attacked Mongbwalu, the Lendu and together with the Hema, if there was
12 a chance to flee, then it was a chance they took.

13 Q. And did any of the -- do you know of any Lendu returned to Mongbwalu or Sayo
14 whilst the UPC were still occupying it?

15 A. Personally, until I left Mongbwalu I didn't see any civilian Lendu in the streets.

16 Q. And why would there not be Lendu remaining in Mongbwalu? You said if they
17 had a chance to flee, then it was a chance they took. What do you mean by that?

18 A. They were in a conflict with the Hema and they could be taken or arrested, which
19 would mean death.

20 Q. I will ask you more questions about that, but not right now.

21 Just returning to the Hema civilians or combatants, as you refer to them, do you recall any
22 coordinator of the group of Hema civilians or combatants, a person who coordinated this
23 group?

24 A. (No interpretation)

25 Q. And who was -- who was -- it's not working. Who was Commander Roy?

1 PRESIDING JUDGE FREMR: Ms Luping, I think there is a -- there is a common problem,
2 I guess. Now it's okay, so probably please repeat your last question because it was not
3 audible.

4 MS LUPING:

5 Q. My apologies, Mr Witness, there's a problem with the mic. It seems to be now
6 working.

7 My question was: Who was Commander Roy? Can you explain who he was?

8 A. He was a trader from Bambu mine. After the attack on the Bambu mine he'd come
9 to Mabanga and he was with the self-defence committee in Mabanga.

10 Q. And in his role as a coordinator of this group of Hema civilians, and you say he was
11 at Mabanga, what precisely did he do in this coordination role?

12 A. He was able to supply people to help the army. He was able to facilitate certain
13 logistic tasks for the army in this area that they were in control of.

14 Q. And which army are you referring to?

15 A. UPC of Thomas Lubanga.

16 Q. And you referred to this coordinator of these Hema civilians, people you've also
17 referred to as combatants, you refer to him as Commander Roy. At what point in time
18 did he become commander?

19 A. When he was in Mabanga he even dressed in military dress. He was escorted as
20 well. And people called him Commander Roy. I don't know whether he was, when he
21 was made a commander, but that's what people called him.

22 Q. You said he was with the self-defence committee. Did he ever become part of the
23 UPC?

24 A. This self-defence committee was the rearward base of the UPC in fact.

25 Q. What do you mean by rearward base of the UPC?

1 A. When the UPC was reformed most of the combatants were integrated into the UPC.

2 Q. And when was that?

3 A. After Bunia had been taken.

4 Q. And which battle in Bunia are you referring to? Are you referring to the one that
5 you have spoken about yesterday, the one where Lompondo was ousted?

6 A. Indeed.

7 Q. Mr Witness, yesterday you referred to one of the groups also involved in the
8 Mongbwalu operation as coming from Aru and led by Jérôme Kakwavu. Can you recall
9 the names of any other senior commanders within Kakwavu's group?

10 A. After Mongbwalu had been taken, Commander Jérôme Kakwavu arrived,
11 Commander Manu arrived, but there was also the commander I called Seyi, there was
12 Commander Kazungu with whom I was in contact. Those are the ones I can recall.

13 Q. Now, you had said that the Aru group of Jérôme Kakwavu arrived on the second
14 day of the operation; is that correct?

15 A. In the night. They arrived at the gates of Mongbwalu, but we saw them for the first
16 time on the second day.

17 Q. And these commanders that you have mentioned, Kazungu, Seyi and Manu, do you
18 know if they were with the rest of the Aru group who arrived at the gates of Mongbwalu?

19 A. Seyi and Kazungu were part of the attack on Mongbwalu, but after the battle Jérôme
20 and Manu arrived.

21 Q. And what is the -- do you know what the other name is for Manu?

22 A. I don't know any other name. He was called Commander Manu, that's all.

23 Q. Now, when you say that they arrived after the battle, I mean, how do you know that?
24 You said that was the first time you saw them.

25 A. On the first day we didn't see these people, but on the second day their wounded

1 were brought back to our camp. And when I moved towards the factory that's when I
2 saw Seyi and Kazungu. I still hadn't seen Manu and Jérôme. Once I had returned from
3 Sayo, from the camp where I was, then I saw Jérôme arrive. I saw him for the first time
4 there. And Manu was when I went to Commander Bosco's camp, that's when I saw
5 Manu for the first time.

6 Q. But just to clarify, your basis of knowledge as to who was participating from the Aru
7 group, is that based on what -- when you saw them, or what you learnt in another way?

8 A. There I've been talking about where I actually saw them.

9 Q. All right.

10 MS LUPING: I just have a couple of questions, Mr President, that I need to ask in private
11 session.

12 PRESIDING JUDGE FREMR: All right.

13 Court officer, please move into private session.

14 (Private session at 10.17 a.m.)

15 (Redacted)

16 (Redacted)

17 (Redacted)

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17 (Open session at 10.27 a.m.)

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

19 PRESIDING JUDGE FREMR: Thank you, court officer.

20 Ms Luping, you may proceed.

21 MS LUPING:

22 Q. Now, Mr Witness, you described yesterday how everything was pillaged in

23 Mongbwalu, you described various pillaged goods at the location of Salumu Mulenda,

24 you described goods that were with Bosco Ntaganda at his camp. My question is this:

25 At any time are you aware if an order was given to stop pillaging?

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1 A. Yes.

2 Q. And where were you when you heard the order to stop pillaging? Where were you
3 located at this time?

4 A. In Mr Salumu's camp.

5 Q. And who gave that order to stop pillaging?

6 A. We were there and were in Foren and the Brigade Commander Salumu said that
7 Commander Bosco had requested that we stop pillaging. And David Pigwa, who was
8 present, said that anyone found pillaging would be arrested.

9 Q. And when you say Commander Bosco, what is the last name of Commander Bosco?

10 A. We are talking of Bosco Ntaganda.

11 PRESIDING JUDGE FREMR: Allow me one comment on this because it's not the first
12 time you are asking Mr Witness to be -- to complete the name.

13 Please let's take this agreement, Mr Witness, if you are talking about Mr Bosco Ntaganda,
14 for us it's even enough if you say Mr Bosco. But if it would be another Bosco, then please
15 add also the family name. So for the future if you are saying it's now Mr Bosco or
16 Afande Bosco, we will understand that this means Bosco Ntaganda, okay? If it would be
17 another Bosco, then please call him by the whole name, okay? Because I don't want to
18 force Ms Luping repeatedly ask you whether it was really Bosco Ntaganda. Have you
19 understood?

20 THE WITNESS: (Interpretation) Yes.

21 PRESIDING JUDGE FREMR: You may proceed.

22 MS LUPING: Thank you, Mr President.

23 Q. Now, Mr Witness, do you know why the order was given to stop pillaging?

24 A. No.

25 Q. And this order was given when you were at Commander Salumu's camp. So to be

1 clear was this before you moved to Bosco's camp and saw the pillaged goods there?

2 A. After the order was given people continued to pillage as if no order had been given
3 regarding pillaging.

4 Q. And which people were still pillaging?

5 A. On the same day, I saw Brigade Commander Salumu returning to the camp with
6 office equipment in his vehicle, and those of -- of his number two or -- would have been
7 asked not to, but I think that what he brought back was actually for them and that was my
8 observation.

9 Q. And other than Brigade Commander Salumu did any other commanders continue
10 pillaging?

11 A. After that order was issued, we went to Mr Bosco's camp and it is there that I saw
12 the vehicle he was travelling in. And I saw in that vehicle, as I have mentioned, some
13 equipment that had been taken from the hospital.

14 Q. And in addition to Commander Salumu and Bosco Ntaganda himself, were there
15 any other commanders who were still pillaging after the order was given?

16 A. Over a three-to-four day period the pillaging was centred on Mongbwalu town
17 where you have the stores and shops and a few houses. Now, once all the items in that
18 area were pillaged, the soldiers, commanders and even the combatants with whom we
19 were now went from house to house and continued to loot or to pillage.

20 Q. And this period you're referring to, is this before or after the order to stop pillaging
21 was given?

22 A. After, after the order. Because I said that it is after the order that people went
23 pillaging from house to house.

24 Q. And can you think of any reason why an order would need to be given to stop
25 pillaging?

1 PRESIDING JUDGE FREMR: Mr Bourgon.

2 MR BOURGON: Objection, Mr President. Question of opinion.

3 PRESIDING JUDGE FREMR: Objection sustained.

4 MS LUPING: I will seek to rephrase my question, Mr President.

5 Q. You described the pillaging in Mongbwalu centre, both combatants and
6 commanders pillaging. What was the atmosphere like at the time?

7 A. There was absolute chaos; soldiers were no longer based in their camps attending to
8 their duties, they rather engaged in pillaging. People were fighting over property. And
9 this is how the chaos was created. Everything had gone out of control and, yes.

10 MS LUPING: Mr President, I need to ask some questions now in private session.

11 PRESIDING JUDGE FREMR: But allow me --

12 MS LUPING: Sorry.

13 PRESIDING JUDGE FREMR: -- one additional question at this moment.

14 You are saying people were fighting. You mean that the soldiers were fighting amongst
15 them, or it meant that soldiers were fighting with civilians from the village?

16 THE WITNESS: (Interpretation) Well, as I was able to see the combatants were also
17 there and they were pillaging as well. Now, if a soldier saw a combatant with an item
18 that they wanted for themselves, this soldier would then automatically want to get the
19 item from that -- that combatant. And it -- it happened that I saw with my own eyes a
20 soldier with a motorcycle and the motorcycle was taken away from the soldier by the -- by
21 a commander. So it was the case that anyone with a higher rank could take items from
22 people of lower ranks if they were in possession of those items.

23 PRESIDING JUDGE FREMR: Thank you for this clarification.

24 Now, court officer, let's move into private session.

25 (Private session at 10.39 a.m.)

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- 23 (Recess taken at 11.04 a.m.)
- 24 (Upon resuming in open session at 11.31 a.m.)
- 25 THE COURT USHER: All rise.

1 Please be seated.

2 PRESIDING JUDGE FREMR: Before we continue with the testimony I would like to
3 mention three minor issues or just to make some clarification about the issues that have
4 been touched at the end of the previous session.

5 The first one, the issue of charges. As we already said in our previous decision we are
6 aware of the fact that in this case mentioned before the break there is no charge for direct
7 murder or direct perpetration of the murder in this case, but as we already said there is a
8 charge for indirect, indirect committance of this crime. And as we said in another more
9 general context we found it relevant. So we still insist or would like to be consistent with
10 our previous decision.

11 As to the issue of what question is leading or is not leading, I can quote both dictionary
12 and I guess our or at least my understanding is in harmony with that that: A leading
13 question is a question that suggests the answer to the person being interrogated that may
14 be answered by a mere yes or no.

15 I have to admit that sometimes questions put this morning was not clearly leading or not
16 leading, because sometimes, and I think I even expressed this opinion, had some leading
17 aspects. So sometimes it's not easy to decide, but we are trying to do our best.

18 And as I already said, if Mr Bourgon thinks that it is an issue to be appealed it is his
19 procedural right.

20 And my last comment also to one of Mr Bourgon's comment that you, Mr Bourgon, said it
21 is not submission because I said I don't want to hear any further submission on this issue,
22 said it is not submission, it is just objection. In my view objection is also kind of a
23 submission.

24 Now we can continue with the testimony. Ms Luping, do you want to remain in private
25 session probably because you would like to elaborate the issue.

1 MS LUPING: Yes, please, Mr President.

2 PRESIDING JUDGE FREMR: Then, court officer, let's move into private session now.

3 Mr Bourgon.

4 MR BOURGON: Yes, Mr President, just a quick point. Just at the break I had a
5 conversation with the counsel representing the witness and the Prosecution and maybe
6 there is an issue that we should address at the end of this hearing regarding the
7 assurances when they -- when they kick in and when they apply or not. I think we have
8 a misunderstanding or a difference of opinion on this view and I think it would be worth
9 it for us to address the Chamber in this regard at the end of this hearing or at any other
10 time the Chamber feels appropriate. Thank you, Mr President.

11 PRESIDING JUDGE FREMR: Maybe just to clarify this point for me, you mean the issue
12 of application of Rule 74 in this specific case or generally? This specific case?

13 MR BOURGON: Well, Mr President, maybe it's not the right topic to discuss before the
14 witness, so that's why I suggest maybe we wait for later not to --

15 PRESIDING JUDGE FREMR: Okay, so maybe a good point, so we will start the
16 afternoon session with this issue.

17 Now, let's move into private session.

18 MS LUPING: Thank you, Mr President.

19 (Private session at 11.36 a.m.)

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- 14 (Open session at 12.10 p.m.)
- 15 THE COURT OFFICER: We are in open session, Mr President.
- 16 PRESIDING JUDGE FREMR: Thank you.
- 17 Ms Luping, you may proceed.
- 18 MS LUPING:
- 19 Q. Mr Witness, you've just stated that there was reference to high numbers of people
- 20 suffering from sexually transmitted diseases at Kilo-État. Can you explain what -- sorry,
- 21 who these people were that who were suffering from the sexually transmitted diseases?
- 22 A. Some of the UPC soldiers.
- 23 Q. And when you arrived in Kilo-État did you learn more about the circumstances in
- 24 which these soldiers were contracting these sexually transmitted diseases?
- 25 A. I heard talk of many things, but I didn't hear everything that was reported. But I

1 heard a lot about what was happening in Kilo.

2 Q. And can you explain what you heard was happening in Kilo.

3 A. Kilo, which is a Nyali location, there were Itende, Kabakaba, this Nyali population
4 was not in conflict with the Hema or the UPC and therefore had not fled.
5 When I arrived the -- I went up to Itende. The population was still there. And what I
6 heard was that our soldiers had, how can I put it, exploited, used their influence in order
7 to have sexual relations with the women, but what I saw was how the commander of the
8 camp where I was behaved. Once we intervened Commander Americain, because
9 another commander wanted to take by force a young girl, and then I said what the
10 situation was, what I had heard.

11 Q. Now when you say that the soldiers were using their influence to have sexual
12 relations with the women, what do you mean by that?

13 A. Personally, what I saw was that we were in the camp with the other commanders
14 and the Commander Echo Charlie, Eric, and kadogo saw a girl -- if they saw a girl passing
15 in front of the camp along the road, if she -- if they thought they liked the look of her, they
16 would call her. This happened two or three times when I was there. I saw another
17 woman who had fled Kilo and whose husband had fled -- sorry, she was a beautiful
18 woman, a big woman, and I saw her with Echo Charlie with -- also with
19 Commander Americain and even another command -- brigade commander, and these
20 were soldiers who were daring to do such things.

21 Q. And these situations where girls were being called, what would happen to them?

22 A. I didn't go into the rooms to know what was happening, but -- well, they talked
23 about it in my presence, Echo Charlie, and it was to have sexual relations with these
24 women.

25 Q. And from what you saw or what you heard, did these relations appear to be

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1 voluntary?

2 A. At that time what I observed was more a case of influence being exerted and the
3 person did not have an option but had to obey.

4 Q. And why did it appear that they had no option but to obey?

5 A. Fear.

6 Q. Fear of what?

7 PRESIDING JUDGE FREMR: Mr Bourgon.

8 MR BOURGON: Thank you, Mr President. The witness was asked a question about
9 whether he could have an opinion, whether something is voluntary or not. I think this is
10 quite appropriate. I think any normal individual is able to say if something is voluntary
11 or not. Once we get as to why, then we get into the field of opinion and the question
12 should not be permitted. Thank you.

13 PRESIDING JUDGE FREMR: Ms Luping.

14 MS LUPING: Mr President, the witness has already confirmed that he was present when
15 he saw women, and he, you know, saw women being called in this way, he was able to
16 see them for himself and he also heard about various encounters. He has expressed what
17 he saw and heard that these women were fearful. My question is not seeking to elicit an
18 opinion from him; it is seeking simply to clarify the basis on which he could assess that
19 these women were fearful. This is not seeking an opinion, it is seeking a clarification as
20 to the basis on which he could see that women were fearful. In the same way it is also, as
21 Mr Bourgon stated, appropriate for a witness to indicate the basis on which he could see
22 whether a woman was having sexual relations or going to have sexual relations
23 voluntarily or not. I see no difference, Mr President.

24 PRESIDING JUDGE FREMR: I think in my view it will depend on the response given, so
25 I will not -- I will permit the question, but as I said before, we will adjudicate this response

1 very carefully, and as soon as it will be mostly the opinion of the witness based just on his
2 speculation, then we will take it with very great reserve.

3 MS LUPING:

4 Q. Now, Mr Witness, you said that you saw fear. What is it about the demeanour of
5 these women that made you believe they were fearful?

6 A. What I saw, after this woman had come to Kisembo, in Kilo, Kisembo, spent two
7 nights, he spoke, and then the population was no longer afraid. He had spoken to the
8 elders. There was a man who came and complained, which would not have been
9 possible before Kisembo came, or this girl who had resisted the commander in the market,
10 Americain called me and we went to intervene. This could not have happened before
11 Kisembo came. The -- and within the camp where I was we had the prison and the
12 person that was in prison, well, it was a lost cause.

13 Q. Now, you refer to complaints being made. You said "this could not have happened
14 before Kisembo came." What do you mean by that?

15 A. General Kisembo, of the general staff, his mother is of Nyali ethnicity. When he
16 came he spoke to the elders of the area, they spoke of all the facts, all the events that had
17 taken place and he invited these elders to encourage their children to join the UPC so they
18 would no longer be victims of this form of crime. And he had people arrested for the
19 acts that had been committed in Kilo.

20 Q. Now, Mr Witness, you described before an incident where a Nyali woman's
21 husband had come and complained and a UPC soldier had been punished for rape. Is
22 this the same Nyali man that you're referring to here who complained after Kisembo
23 came?

24 A. The person I'm talking of is a soldier from Bara (phon) who went to drink alcohol
25 with this woman and left there with the woman with whom he spent the night. He took

1 her to the camp in order to rape this woman.

2 Q. You've just referred to a complaint a man made and you said it would not have been
3 possible before Kisémbó came. Is this the same incident you described where you said a
4 man came to complain about the rape of his Nyali wife? Is this the same incident you're
5 referring to?

6 A. This woman left in the morning and as Kisémbó had been there, this husband was
7 brave enough to come back. They were no longer so afraid, so he came back in order to
8 explain the situation to Commander Américain, the battalion commander.

9 Q. And before Kisémbó came are you aware of any UPC soldiers being punished for
10 rape in Kilo?

11 A. I didn't hear of any, nor see any.

12 Q. Now, Mr Witness, when you were describing what you saw of UPC soldiers calling
13 women, women that they -- or girls that they liked the look of you used a certain word
14 and the word that's been captured in the transcript is "kadogo". Could you explain what
15 language that is.

16 A. The young soldiers, the underage soldiers were known as kadogo.

17 Q. And when you say "underage soldiers." what do you mean by that?

18 A. Yes, he was in the bodyguard. We were in the same camp. I can say that he was a
19 minor, that he was too young.

20 Q. And can you indicate how old he was?

21 A. I think 13 years old at most.

22 Q. And what is it about him that enables you to indicate that age?

23 A. All the time spent there he was with us until we left, I saw how he behaved. As I
24 said, I saw his physiognomy. Most of the time he was outside the camp. There were
25 civilians living outside the camp and he tended to go and shelter with this family where

1 there was better care or at least he was treated better there than he was in the camp.

2 Q. Now, Mr Witness, you explained that when General Kisémbu came to Kilo he spoke
3 to the elders and you said that he, amongst other things, he encouraged children to join
4 the UPC. Are you aware if any of the children from Kilo did join the UPC after this
5 appeal?

6 A. The day that Kisémbu left Kilo we saw that recruits started to arrive in the camp.
7 There were even pygmies among these recruits, and that's when we saw these people
8 arriving in the camp.

9 Q. And amongst these recruits did you see children?

10 A. There were others who seemed quite young, but there was one whom I found
11 interesting because his mother came for two days before he was sent for training in
12 Mongbwalu. For two days his mother came to ask to have her son back because he was
13 only 12.

14 Q. And did she get her son back?

15 A. No.

16 Q. And do you recall seeing any other young children amongst these recruits?

17 A. I said already that I saw some, but I wasn't interested in them except for that
18 particular case which caught my attention regarding that boy whose mother came back to
19 the camp for two days and she was driven away. That is what actually struck me.

20 Q. And you say it was because he was only 12. How did you learn he was only 12?

21 A. We did not have a senior officer of Bureau Five on the spot in Kilo. So there was
22 the Bureau Two officer who was in charge of recruits, and I was present once when that
23 mother came to the camp crying for her son to be released. It is from her mouth that I
24 was able to learn from what she said that her son was only 12 years old.

25 Q. Now after Kilo-État were you sent on operation elsewhere?

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- 1 MS LUPING: Sorry, Mr President, I think this needs to be asked in private session?
- 2 PRESIDING JUDGE FREMR: Exactly.
- 3 Court officer, let's move into private session.
- 4 (Private session at 12.32 p.m.)
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- 22 (Open session at 12.35 p.m.)
- 23 THE COURT OFFICER: We are in open session, Mr President.
- 24 PRESIDING JUDGE FREMR: Thank you.
- 25 And one point of organisation: Ms Luping, I would like you to wrap up this part of

1 examination at quarter to 1 because I would like to devote the remaining 15 minutes to
2 submissions on Rule 74 issues. So please arrange it in this way. Thank you.

3 MS LUPING: Understood, Mr President.

4 Q. Now, Mr Witness, you stated that you were involved in an operation in Kobu in
5 February 2003. Did you learn what the purpose of the operation in Kobu was?

6 A. We all knew that Kobu was a Lendu village and that the APC had sought refuge
7 there. There was also Lipri which had been occupied by the APC, as well as Bambu.

8 And so this happened after the Kilo Mission incident which failed. And when we got to
9 Lipri, in all of that, we lost some heavy weapons.

10 So Salumu informed us that we were going to have an operation in Kobu and at the same
11 time in Lipri and Bambu in order to destroy that triangle which was a pocket of resistance
12 to the UPC.

13 Q. Now, you've said that there was a Kilo Mission incident that had failed. Could you
14 explain what happened in that Kilo Mission incident.

15 A. The failed operation on Lipri which I was talking about is one about which I heard.

16 And what I heard is that a UPC commander who was based in Bunia had taken some
17 heavy weapons and a small number of troops to Lipri and was ambushed and that he
18 even lost his life. And the enemy was able to capture those heavy weapons, including a
19 grenade launcher, a rocket launcher and a G2.

20 And at Kilo Mission, Mangaino had gone to get some copper, some electric wires, and he
21 was going to Kilo -- he was going to lose a soldier and another is said to have disappeared
22 when they made that effort. And so (Redacted) -- that effort to Mangaino, rather, and
23 (Redacted) with Commander Americain and again ran into an ambush, our commander
24 was wounded and another person was wounded as well, but we were able to dislodge
25 them and we were then able to return to Kilo Mission. That is the incident I was talking

1 about. We, rather, returned to Kilo-État.

2 THE INTERPRETER: Correction from the interpreter.

3 MS LUPING:

4 Q. Now, you stated that in Lipri the enemy was able to capture those heavy weapons.
5 Could you explain who the enemy was who captured these heavy weapons?

6 A. The enemy at that time included many members of the APC who had sought refuge
7 in Lipri and then there were also the Lendu who were fighting the UPC and who had
8 linked up with the APC in Lipri. So all of those people were considered to be our
9 enemies.

10 Q. And do you recall the name of the UPC commander who lost his life in that
11 ambush?

12 A. No.

13 Q. And you said at Kilo Mission Mangaino was going to lose a soldier and another said
14 to have disappeared when they made that effort. Which soldier was he going to lose?

15 A. There was a PMF, as they were referred to among the UPC soldiers, who went
16 missing. Then there was another soldier whose body was found mutilated. And
17 Ayo Gali (phon) was wounded. The soldier who was wounded during the second
18 ambush also died and we buried him at Kilo-État.

19 Q. And you gave the name of the soldier who was wounded. Could you spell that
20 name, please?

21 A. I referred to officer Ayo Gali who was wounded, the officer in charge of intelligence.
22 G-A-L-I.

23 THE INTERPRETER: Says the witness.

24 MS LUPING:

25 Q. Now, Mr President, I just want to note for the record in French the term PMF was

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1 actually explained by the witness (Interpretation) "There was a PMF as we referred to
2 them, these were -- this was a military woman, a female soldier of the UPC."

3 (Speaks English) This is not captured in the English. I just wanted that noted. It's
4 important it is recorded.

5 PRESIDING JUDGE FREMR: So even myself I just order to add this to the English
6 transcript which in effect has been made.

7 MS LUPING: Thank you, Mr President.

8 Q. Now, for this operation you said that the -- there was a triangle of Kobu, Lipri and
9 Bambu. I think I only have one more question I'm able to fit in in this short time, but
10 starting with Kobu what groups were involved for the specific operation in relation to
11 Kobu?

12 A. It was the UPC soldiers belonging to Salumu's brigade. They were headed
13 to -- towards Kobu.

14 MS LUPING: Mr President, as you did request that we end at this time, I will leave my
15 questions at that for now.

16 So if we can break and I would say thank you, Mr Witness, I have no questions then until
17 after the lunch break.

18 PRESIDING JUDGE FREMR: Thank you very much, Ms Luping.

19 Now, court officer, please escort Mr Witness out of the courtroom.

20 Thank you very much, Mr Witness. You will now take your lunch and some rest and we
21 will continue at half past 2.

22 (The witness stands down)

23 PRESIDING JUDGE FREMR: So I can just sum up that Mr Bourgon in the morning he
24 indicated some need to make a submission on Rule 74 issue ideally in the absence of the
25 witness.

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1 So now, Mr Bourgon, and probably then Mr Nève, but at the moment, Mr Bourgon, you
2 have the floor.

3 MR BOURGON: Thank you, Mr President.

4 I'll try to make this short, but the reason I intervened on this particular issue is that it is
5 important for the witness to know exactly that the answers he is providing, whether the
6 assurances are in fact in force.

7 Yesterday the Chamber said the following to the witness:

8 Mr Witness, I quote from the transcript, the page I have of course might not be -- it was
9 page 13, line 20, but this may have changed.

10 The Chamber said as follows: "Mr Witness, you have been assigned a lawyer to provide
11 you with legal advice about possible self-incrimination. He has requested that you have
12 been given certain assurances by the Chamber and that there may be questions asked to
13 you that you feel that answering them truthfully may incriminate you because these
14 questions relate to your own conduct."

15 The Chamber then said: "In such cases, we will require you to answer the question, but
16 we can assure you that your answer will be kept confidential and will not be disclosed to
17 the public or to the government of any country.

18 The Prosecution has further assured that they will not themselves use this information to
19 prosecute you before the ICC provided that you tell the truth."

20 And the witness said: Yes, I do understand.

21 Just before the witness began his testimony, I intervened and I asked you, Mr President,
22 and I quote from the transcript: "I would just like to seek some clarification regarding the
23 assurances provided to the witness. My understanding, based on what the Trial
24 Chamber just said to the witness and based on the motion which was granted earlier, is
25 that these assurances fall into play only if and when the witness identifies the question as

1 being one which will self-incriminate him, either himself or his lawyer, but not all of his
2 testimony. I'd like to clarify this point, Mr President. Thank you."
3 The response given by the Presiding Judge was: "I think we are on the same page. My
4 understanding is absolutely the same so I can confirm."

5 (Redacted)

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13 (Redacted)

14 PRESIDING JUDGE FREMR: Mr Bourgon, sorry, one, my mistake. I think we should
15 deal with this in private session. My mistake. So let's move into private session.

16 (Private session at 12.50 p.m.)

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14 (Recess taken at 1.01 p.m.)
15 (Upon resuming in open session at 2.31 p.m.)
16 THE COURT USHER: All rise.
17 Please be seated.
18 PRESIDING JUDGE FREMR: Good afternoon. We will start in open session, but
19 without the witness because we are going to deliver our oral clarification on the issue of
20 Rule 74 that have been discussed before the lunch break.
21 So during the lunch break the Chamber deliberated on the issue of Rule 74 assurances
22 and, having considered the submissions of the parties and of Mr Nève, issues the
23 following guidance:
24 The Chamber notes that, following the request of Mr Nève, Rule 74 assurances were
25 granted, that I meant request contained in filing 1109, so Rule 74 assurances were granted

1 yesterday and given to the witness at the commencement of the witness's testimony. The
2 Chamber clarifies that it considers that such assurances extend throughout the witness's
3 testimony. The suggestion of the Defence that a fresh assurance ought to be provided for
4 each and every utterance that may give rise to issues of self-incrimination is, in the
5 Chamber's view, unnecessary.

6 The Chamber considers it to be the duty of the witness's appointed counsel to ensure that
7 Rule 74 has been explained adequately to the witness, a duty which Mr Nève has
8 indicated that he has discharged. Should Mr Nève so require, he may meet with the
9 witness and reiterate such assurances or discuss with him any specific issues arising from
10 his testimony.

11 During the proceedings, if Mr Nève has any concerns in relation to questions posed or
12 possible answers the witness may provide, or otherwise with respect of utterances made
13 by the witness in public session, Mr Nève may request the Chamber to go into private
14 session.

15 The assurance provided to the witness was that responses which may tend to result in
16 self-incrimination would not be disclosed to the public or to the government of any
17 country. The Chamber considers this to have been carefully complied with in the
18 proceedings so far. Any possible order as to sealing of the record is a matter which can
19 be addressed after the witness testifies, if necessary, upon request of duty counsel.

20 The Chamber notes that, in any case, certain information will remain confidential on the
21 basis of its protective measures decision. The Defence is of course free to raise any
22 relevant issues it wishes during cross-examination.

23 This ends the Chamber's guidance on this issue.

24 Now maybe especially Mr Nève, do you have any questions or comments to this
25 guidance?

1 MR NÈVE: (Interpretation) No thank you, your Honour.

2 PRESIDING JUDGE FREMR: Very well. Then we now can bring Mr Witness in the
3 courtroom.

4 And before doing that, may I ask, just to follow, I will just ask Ms Luping about her
5 progress in her plan of examination because according to my information you utilised
6 until now 6 and a half hours from 10 hours in fact we have granted Prosecution for this
7 witness.

8 Do you think it will be enough for you because, frankly saying, you know, especially now,
9 having in mind our amended schedule, it is very tight so we firmly hope that you will be
10 able to keep this.

11 MS LUPING: Understood, Mr President. Certainly I'm endeavouring to expedite the
12 process as much as possible. I will certainly need all 10 hours. There is absolutely no
13 doubt about that. What we will also be doing over the weekend is carefully reviewing
14 the various exhibits that we had hoped to show the witness to really make a fine priority
15 selection in relation to what we should show him and what we may have the time to show
16 him.

17 We may also need to consider whether there are any other alternative possibilities in
18 particular in terms of one item or one exhibit as to whether there may be alternative ways
19 to seek to have it admitted and whether it is truly necessary to show every aspect of it, but
20 perhaps we can discuss that on Monday when we come to that and once we have a better
21 idea of exactly how much time is left.

22 I shan't bother the -- bother the Chamber now with making any such application because
23 it really is moot until I know how much time I have left.

24 PRESIDING JUDGE FREMR: Very well, Ms Luping. And I would really recommend to
25 try maybe to make some selection because we can hardly promise that we would give you

1 some additional time, so it would be probably most safe for you to be ready that we really
2 will ask you to finish, in fact, it means in the middle of this second session on Monday.

3 So now you may proceed.

4 MS LUPING: Understood, Mr President. Thank you. Thank you, your Honours.

5 Q. Good afternoon, Mr Witness.

6 A. Good afternoon.

7 Q. Now, Mr Witness, before we took our break I was asking you questions in relation
8 to the operation in the triangle of the area of Kobu, Lipri and Bambu. And the last
9 question I had asked you was what groups were involved in the specific operation in
10 relation to Kobu and you explained that it was UPC soldiers belonging to Salumu's
11 brigade.

12 My question is this: What specific units within Salumu's brigade were involved in the
13 Kobu operation?

14 A. There was the infantry and also the heavy weapons units.

15 Q. And what were the battalion commanders involved in this operation?

16 A. Following the arrest of Americain, the commander, Echo Charlie, Eric, became
17 battalion commander. And we also had battalion commander Pascal.

18 Q. And what was the last name for Pascale?

19 A. Pascal Okito if my memory serves me well.

20 Q. And is this the same Pascal you mentioned before who had the call sign Papa Oscar?

21 A. Indeed, it's the same person.

22 Q. And roughly how many were involved then from the Salumu brigade and the Kobu
23 operation?

24 A. There were the two battalions, they were present in that operation.

25 Q. And could you spell the last name for Pascal, that's the Okito, please.

1 A. O-K-I-T-O.

2 Q. And Lipri, which UPC groups were involved in that operation?

3 A. What I know the UPC unit in Lipri came from Bunia, but (Redacted)
4 (Redacted) and Nyangarai was on stand-by in order to help them should there be any
5 difficulty.

6 Q. And which brigade did this group from Bunia belong to, do you know, or which
7 group did they belong to if not any particular brigade?

8 A. It was or they were units from Bunia. Indeed, there was the UPC soldiers first, and
9 the sector was controlled by Commander Tchaligonza.

10 Q. And the reinforcements at Kabakaba, Nyangarai and Shari, what UPC groups were
11 they, which sector or brigade or other group did they belong to?

12 A. In Kabakaba (Redacted) which was part of Salumu's brigade, which was there,
13 but in Nyangarai it was the unit which came from Shari, which was also part of
14 Tchaligonza's brigade.

15 Q. And do you recall the names of any commanders who were involved in the Lipri
16 operation?

17 A. There were too many commanders. There were a lot of them. Those who were
18 with me where I was are the ones I remember.

19 Q. And Bambu, which UPC groups were involved in the Bambu operation?

20 A. The attack was launched from Nizi by the unit which wasn't from our brigade.
21 They belonged to Tchaligonza's, but they had to be supported by our unit, by another unit
22 which was in Mabanga, but following the difficulties met -- encountered in the field, one
23 of our commanders, company commanders went to help Bambu.

24 Q. And which company commander was that?

25 A. The company commander was André and Aigle Vipère, Aigle Vipère.

1 Q. Yes, you've mentioned this commander before, so to be clear André's call sign is
2 Aigle Vipère; is that what you mean?

3 A. Yes.

4 MS LUPING: Now, I'm going to ask a question in private session, Mr President.

5 PRESIDING JUDGE FREMR: All right.

6 Court officer, let's move into private session now.

7 (Private session at 2.46 p.m.)

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15 (Redacted)

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1 (Open session at 2.51 p.m.)

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

3 PRESIDING JUDGE FREMR: Thank you.

4 Ms Luping, you may proceed.

5 MS LUPING: Thank you, Mr President.

6 Q. Now, Mr Witness, you've explained that there was a three-pronged operation in
7 Lipri, Bambu and Kobu in a triangle. Were there any other villages that were also
8 affected during this operation and if so, can you recall any of their names?

9 A. These three places, which were the main targets, were also surrounded by small
10 villages which were around them, and so where I was involved in Kobu, I went from
11 Kobu to everywhere around, you can see little villages. There are a lot of little villages
12 there, a lot, around Kobu.

13 Q. And can you recall the name of any of the villages that were effected during this
14 operation?

15 A. To the best of my knowledge, all these small villages around Kobu were effected
16 during this operation.

17 Q. Now, Mr Witness, just before the break I asked you to clarify who the enemy was
18 who captured the heavy weapons at Lipri, and you explained that there were -- "The
19 enemy at that time included many members of the APC who had sought refuge in Lipri
20 and then there was also the Lendu who were fighting the UPC and who had linked up
21 with the APC in Lipri. So all these people were considered to be our enemies."
22 Now, my first question is: In terms of the Lendu, when you refer to the Lendu, who were
23 these Lendu that were viewed as the enemy?

24 A. For me, all the Lendu, whether man or woman. When they were part of the ethnic
25 group called Lendu it was considered as an enemy of the UPC, including children.

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1 Q. And to your knowledge, did at any time the UPC commanders give any instructions
2 about how Lendu civilians should be treated?

3 A. No.

4 MS LUPING: Mr President, I need to ask the next few questions in private session.

5 PRESIDING JUDGE FREMR: Okay.

6 Court officer, let's move into private session now.

7 (Private session at 2.56 p.m.)

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12 (Redacted)

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14 (Redacted)

15 (Redacted)

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11 (Open session at 3.09 p.m.)

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

13 PRESIDING JUDGE FREMR: Thank you, court officer.

14 Ms Luping, please proceed.

15 MS LUPING:

16 Q. Now, Mr Witness, you've explained that the operation in Kobu was in
17 February 2003. At the start of the operation can you recall roughly when that was, what
18 time of day it was when it first started?

19 A. There was the problem with Americain which delayed us somewhat, but we left
20 around 10 o'clock. It was broad daylight. It was sunny. It was good weather. And
21 we started marching towards Kobu.

22 Q. And you've mentioned that there were groups from Kilo-État that moved towards
23 Kobu. Were there any other forces coming from other directions that converged on Kobu
24 when the operation started?

25 A. The two battalions from Kilo which set off towards Kobu.

1 Q. And did any other forces join you at Kobu from any other areas?

2 A. No.

3 Q. And when you reached Kobu, did you encounter any enemy forces there?

4 A. There was a small amount of resistance, but they quickly fled once we arrived in the
5 centre of Kobu. By that time there was nobody there.

6 Q. And this resistance that you encountered, this small resistance, what enemy forces
7 did you encounter when you arrived at Kobu?

8 A. At that point, we considered that the people on the other side, Lendu or whatever
9 they were, and the APC on the other side, which we were firing against as an enemy, we
10 felt those were our targets. So we were firing at them.

11 Q. And what do you mean when you say the "Lendu or whatever they were"? What
12 do you mean by that?

13 A. Because we knew that in the -- among the Nyali recruits, who had gone from Kilo to
14 be trained at Mongbwalu, some had returned to work at Kilo with us, and others had fled
15 with weapons and ammunition and had joined up with the APC and the Lendu on the
16 other side.

17 Q. Now, you said that when the forces arrived in Kobu that there was nobody there.
18 Do you know where the inhabitants of Kobu had gone?

19 A. Well, this territory was empty. There was no one there. There were not even any
20 corpses there. The first day there weren't any -- no one was killed on either side. There
21 were some wounded, but at that point there was nobody there at all, even the houses were
22 empty.

23 Q. But do you know where the inhabitants of Kobu had gone to? Did you learn where
24 they had gone to?

25 A. When they started their counteroffensive that's when we started to see people and

1 then we could see people moving from one hill to another, so we knew that they were in
2 the area surrounding Kobu.

3 MS LUPING: Mr President, if I can ask some questions first in private session now.

4 PRESIDING JUDGE FREMR: All right.

5 Court officer, please let's move into private session.

6 (Private session at 3.16 p.m.)

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9 (Open session at 3.39 p.m.)

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

11 PRESIDING JUDGE FREMR: Thank you.

12 Ms Luping, you have the floor.

13 MS LUPING: Thank you, Mr President. Now in the English transcript there is a

14 reference to an instruction or the response to the question as to whether there were any

15 instructions from Salumu Mulenda after the occupation of Kobu. The answer was:

16 "What I know is that after we built our camp our unit started to mop up the surrounding
17 areas in Kobu."

18 Now, I notice in the French transcript there is a reference to (Speaks French). Now this

19 French expression "ratissage," can you explain what that means?

20 A. The soldiers would leave the camp and would go to the villages or hills,

21 neighbouring hills where some hut -- some thatched huts and houses were still standing

22 and they would have to search all those houses looking for the weapon that was lost in

23 Lipri, and if they didn't find any weapons or anything, they would bring back anything

24 that they found. So whenever they came back, you would see behind them fire from the

25 houses that had been torched. This is what we referred to as the mop-up operation or

1 ratissage in French.

2 Q. And you say that -- you said they were burning houses or they were to torch the
3 houses so that no one should return to live in them. Who was torching the houses then?

4 A. I'm referring here to the UPC soldiers who went out on those operations. When
5 they left those places they would torch the houses.

6 Q. And are these soldiers within Salumu's brigade?

7 A. Yes.

8 Q. Now, you said that if they didn't find any weapons, and you referred to the ones
9 that were lost in Lipri, they would bring back anything that they found. (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 PRESIDING JUDGE FREMR: Mr Nève.

16 MR NÈVE: (Interpretation) I would like to request that we go back to private session,
17 Mr President.

18 PRESIDING JUDGE FREMR: Yes, it's accepted. So let's move into private session now.

19 (Private session at 3.43 p.m.)

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20 (Open session at 3.46 p.m.)

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

22 PRESIDING JUDGE FREMR: Thank you.

23 Ms Luping, we believe that you will be vigilant, please.

24 MS LUPING: Indeed, Mr President.

1 Q. Mr Witness, you stated there was a Nyali person from the other side who had come
2 for negotiations. Could you explain what happened when you saw this Nyali person?

3 A. I went to see him in person because I was curious myself. He was dressed in
4 civilian clothing, he was protected and kept in a house near Salumu, he was not
5 authorised to travel within the camp or to go about within the camp and he mentioned
6 this idea of negotiations to the effect that our enemies, the other party, had wanted to
7 initiate or start up some kind of negotiation with us.

8 Q. And do you know what the response was to this proposal of some kind of
9 negotiation from the UPC side?

10 A. I knew that each evening the brigade commander was communicating with
11 General Kisémbu in Mongbwalu, so he must have authorised such negotiations and
12 probably insisted that if Kabuli could be located, then he, Kisémbu, would be ready to
13 meet him in Mongbwalu and have some discussions with him.

14 PRESIDING JUDGE FREMR: Mr Bourgon.

15 MR BOURGON: Speculation, Mr President. "He must have." The witness has no
16 knowledge other than he knows about communications between Kisémbu and Mr Salumu.
17 Nothing else. I would like this response to be struck from the record. Thank you.

18 MS LUPING: Mr President.

19 PRESIDING JUDGE FREMR: Ms Luping.

20 MS LUPING: If we can go into private session I will clarify the basis of this witness's
21 knowledge.

22 PRESIDING JUDGE FREMR: Okay, let's try. Let's move into private session now.

23 (Private session at 3.49 p.m.)

24 (Redacted)

25 (Redacted)

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4 (Open session at 3.57 p.m.)

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

6 PRESIDING JUDGE FREMR: Thank you.

7 Ms Luping, please proceed.

8 MS LUPING:

9 Q. Mr Witness, you explained that these civilian leaders from Bunia never showed up.

10 What did the UPC do after these leaders didn't show up? What steps, if any, were taken
11 after that?

12 A. The brigade commander, Salumu, had to select Commandant Pascal, Papa Oscar, as
13 the person to attend the negotiations if such negotiations were to take place and that he
14 would have those discussions with them then.

15 Q. And you say Commander Papa Oscar or Pascal was selected. What was the basis
16 for selecting him? Were you told about this?

17 A. The brigade commander took into account the fact that he was a non-native of Ituri;
18 therefore, he had lighter skin, lighter complexion, he spoke Swahili, which was not the
19 same brand as the Swahili of Ituri, and if he were to dress up in civilian attire, the party
20 opposite may be led to believe that he came as a neutral party for the negotiations.

21 Q. And did he go for the negotiations?

22 A. Yes, on that day they left. Yes, he went. Actually, he did.

23 Q. Now, in the English transcripts it says: "Yes, on that day they left. Yes, he went."

24 Did Papa Oscar leave with anybody else? Was there any other group or groups that
25 went with him.

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1 A. There was the unit that went before him, and when he went out he was also in the
2 company of others, and then there was another unit that followed.

3 MS LUPING: Mr President, with your leave, may I just clarify the unit and the
4 companies and then we'll leave it at that for the day.

5 PRESIDING JUDGE FREMR: Yes, please.

6 MS LUPING: Thank you.

7 Q. I just have my last two questions before we break then for today and I will have
8 more questions for you on Monday. You said there was the unit that went before him.
9 What was the unit that went before him, first of all?

10 A. We had the battalion commander, the Rwandan battalion commander, Romeo
11 Whisky, who left first. They were in front, along with Commander Mugisa and
12 Mangaino. All of them belonged to the same battalion. They were the ones who went
13 first. Then Papa Oscar was next. Sierra Mike, Samy, then left also following him. And
14 then there was another unit that came out to follow them.

15 Q. My last question: What other unit went out to follow them?

16 A. It was still a unit from within the UPC, but it was made up of people from the Echo
17 Charlie battalion in the camp where we were. I should have gone with them, but I
18 remained with Commander Niwa (phon).

19 Q. Mr Witness, I'll just remind you that we are in public session right now, and I won't
20 ask you any more questions in any event. I'll ask you more about that on Monday
21 morning.

22 So thank you very much, Mr Witness. I hope you have a good weekend and I will be
23 asking you more questions on Monday.

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

25 PRESIDING JUDGE FREMR: Thank you.

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1 Mr Witness, I will join Ms Luping in her thanks and in her wish to you. So we will
2 adjourn and we will continue with your testimony on Monday. So have a rest during the
3 weekend and as usual I have to remind you, it's my legal duty that in the meantime you
4 must not discuss your testimony with anybody else, neither with your family nor with
5 your friends. Do you understand this guidance?

6 THE WITNESS: (Interpretation) Yes, I do.

7 PRESIDING JUDGE FREMR: Okay. Now the witness may be escorted out of the
8 courtroom.

9 And after that I would like briefly to address two procedural issues. Moreover, I see
10 Mr Bourgon is -- but please maybe wait. I think it will be better to wait until the witness
11 is escorted out.

12 (The witness stands down)

13 PRESIDING JUDGE FREMR: So let's start with Mr Bourgon's submission.

14 Mr Bourgon.

15 MR BOURGON: Thank you, Mr President. Just a quick point. We have not to this
16 moment received the transcript from yesterday, which means that we -- of course today's
17 transcript neither and we'll be preparing of course over the weekend for next week. I'm
18 not sure if somebody can be of assistance in order for us to get the proper transcript which
19 would be easier when we conduct cross-examination next week.

20 I also take this opportunity to -- of course to inform everyone in the courtroom that of
21 course we will be working from the French transcript as we proceed with our
22 cross-examination next week. Thank you, Mr President.

23 PRESIDING JUDGE FREMR: I'm afraid I got information that there are some serious
24 troubles with the French transcript to be edited. Could the court officer maybe give us
25 some at least general update?

1 So we will first move into private session and then the court officer will give you some
2 update on that issue.

3 (Private session at 4.05 p.m.)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

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9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

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(Private Session)

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- 1 (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (The hearing ends in private session at 4.10 p.m.)