

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 Monday, 1 February 2016
9 (The hearing starts in open session at 9.38 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.
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 And for the record, we are in open session.
19 PRESIDING JUDGE FREMR: Thank you.
20 Now appearances, please, starting with Prosecution.
21 MS LUPING: Good morning, Mr President, your Honours. The same people are
22 appearing on behalf of the Prosecution as last week: Nicole Samson, senior trial lawyer;
23 Selam Yirgou, case manager; James Pace and Rens van der Werf, assistant trial lawyers;
24 and myself Dianne Luping, trial lawyer.
25 PRESIDING JUDGE FREMR: Thank you, Ms Luping.

1 Defence now.

2 MR BOURGON: (Interpretation) Good morning, Mr President. Good morning,
3 your Honours. Representing Bosco Ntaganda, who is present in the courtroom this
4 morning, Sandrine De Sena, intern, and myself Stéphane Bourgon. Thank you,
5 Mr President.

6 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

7 Now Legal Representatives of Victims, please.

8 MS PELLET: (Interpretation) Thank you, Mr President. Former child soldiers are
9 represented by Mohamed Abdou and myself, Sarah Pellet, counsel at the OPCV.

10 MR SUPRUN: (Interpretation) Good morning, Mr President, your Honours. Victims
11 of the attacks are represented by the OPCV., namely, Anne Grabowski and myself,
12 Dmytro Suprun, counsel.

13 PRESIDING JUDGE FREMR: Thank you, Ms Pellet. Thank you, Mr Suprun.
14 And duty counsel, please.

15 MR NÈVE: (Interpretation) Good morning, Mr President. Good morning,
16 your Honours. Marc Nève, duty counsel, to assist the witness. Thank you.

17 PRESIDING JUDGE FREMR: Thank you, Mr Nève.

18 We, as you can see, we are starting this morning without the witness because the
19 Chamber was informed that the Prosecution would like to make some submissions.
20 So, Ms Luping, you have the floor.

21 MS LUPING: Thank you, Mr President. If we could please go into private session.

22 PRESIDING JUDGE FREMR: Certainly.

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

24 (Private session at 9.41 a.m.)

25 (Redacted)

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(Private Session)

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20 (Open session at 9.45 a.m.)

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

22 PRESIDING JUDGE FREMR: So now, Mr Bourgon, you may proceed.

23 MR BOURGON: Thank you, Mr President. This issue deals with basically an

24 adjustment which requires to be made to the new building. When we meet with

25 Mr Ntaganda in the back of the courtroom, the door does not have a window and for this

1 reason the door has to remain open when we are meeting with Mr Ntaganda. I was told
2 a couple of weeks back that the door would be changed so to put one with a window, but
3 this has not taken place. I have a very good relationship with all the security officers
4 back there, but it would be better if we could work with the door closed when we are
5 speaking with Mr Ntaganda and I think it should be able -- to change this door, to put one
6 with a window on it should not be too difficult.

7 So I did mention to the security officers if I could -- if it could help if I would mention the
8 issue and they said yes, so this is why I take this opportunity to mention this to the Trial
9 Chamber. Thank you, Mr President.

10 PRESIDING JUDGE FREMR: Thank you. Yes, for sure we got your point and we
11 are -- I hope I can say on behalf of the whole Chamber we support your idea, but
12 generally I would like to say that this kind of problems should be really solved without
13 the intervention of the Chamber because we would like to focus on primarily on legal
14 issues, on issues which are really belonging to us. So it's just even a message to the
15 Registry that it would be really highly desirable to try to make both parties comfortable
16 and not to complicate proceedings with those kind of matters.

17 And then one comment from my part. We, at the last part of Friday session, have been
18 informed about troubles with French edited transcript due to unforeseen circumstances,
19 that Court Management Services are currently unable to provide edited French
20 transcripts. The reaction; the Chamber has urged the Registry, in fact immediately, to
21 make arrangements to facilitate such transcripts in the immediate future.

22 We will have to see what measures can be taken, but for now we understand that the
23 edited versions of the French transcripts of last week will only be available this coming
24 Wednesday.

25 The Chamber appreciates that this is not a desirable situation, for sure, and hopes that the

1 parties can nonetheless work with the unedited French transcripts or the edited English
2 version.

3 To avoid miscommunications, please always clearly refer to the specific transcript you are
4 using, the edited or unedited version.

5 So if there are no more requests for the floor, we can bring the witness in.

6 Court officer please.

7 (The witness enters the courtroom)

8 PRESIDING JUDGE FREMR: Mr Witness, good morning. Welcome back.

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

10 (The witness speaks French)

11 THE WITNESS: (Interpretation) Good morning.

12 PRESIDING JUDGE FREMR: I believe, we believe, that you took some rest during the
13 weekend and we would like to continue with your testimony today, so I would like to
14 assure myself that you are feeling okay today?

15 THE WITNESS: (Interpretation) Yes, I'm feeling very fine.

16 PRESIDING JUDGE FREMR: Very good.

17 So now Prosecution will finish their examination. Just as concerns timing, Ms Luping,
18 according to my estimation you have exhausted so far 7 hours and 50 minutes, which
19 would mean that you should finish your -- or you still have at your disposal 2 hours and
20 10 minutes, so please adhere to this time limit. You have the floor.

21 MS LUPING: Thank you, Mr President.

22 QUESTIONED BY MS LUPING: (Continuing)

23 Q. Good morning, Mr Witness.

24 A. Good morning.

25 Q. Now, Mr Witness, just following on from your testimony on Friday, I do have a first

1 question to clarify some information you provided to us. You described an operation in
2 the area of Kobu, Lipri and Bambu. And my first question is: What senior commanders
3 were involved in the planning of that operation in the area of Kobu, Lipri and Bambu?

4 A. What I know is that the general chief of staff was involved in this operation.

5 THE INTERPRETER: Correction from the interpreters: The general staff, the état-major,
6 not the chief of staff.

7 MS LUPING:

8 Q. And which commanders from the état-major were involved in the planning?

9 A. Each movement within our troops for every attack needed the authorisation from
10 the chief of staff -- from the general staff, rather, and the authorisation would come from
11 that person who was in charge of operations, Commander Bosco, the G3.

12 Q. And how do you know that every attack needed the authorisation from the person
13 in charge of operations, Commander Bosco?

14 A. The idea was to avoid any conflicts between our troops, any confrontations within
15 our troops and also to facilitate collaboration between units from various brigades. It is
16 for this reason that there was always need to revert to a senior officer, a higher ranking
17 person, so that operations are facilitated through commands from hierarchy.

18 Q. And just to be clear for this specific attack in the area of Lipri, Kobu and Bambu, was
19 it the same as you've described just now that it needed the authorisation from
20 Commander Bosco?

21 A. Yes, indeed. The order was clear that this operation had to proceed following
22 orders from the general staff.

23 Q. Now, Mr Witness, turning to the information you provided in relation to Papa Oscar
24 and the fact that he was leaving for negotiations with different units before, with and after
25 him, my first question is: Where did they go? Do you know where they went to?

1 A. They mentioned a village, but I don't remember the village because I didn't go there.

2 Q. And do you recall at what distance it was from your location in Kobu?

3 A. Since I didn't go to that location myself, I am not able to give you an estimated
4 distance to the -- to the location.

5 Q. And did you learn what happened when they went to -- when Papa Oscar reached
6 this place for negotiations?

7 A. (Redacted) Commander Eric, Echo Charlie, and when the
8 gunfire began to rattle that is when he started discussions with the commander on the
9 other side. (Redacted) and I was able to understand what was going on on
10 the other side through the radio.

11 MS LUPING: Mr President, I think just for a couple of my following questions they
12 should be asked in private session.

13 PRESIDING JUDGE FREMR: All right.

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

15 (Private session at 9.58 a.m.)

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8 (Open session at 10.00 a.m.)

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

10 PRESIDING JUDGE FREMR: Thank you.

11 Ms Luping.

12 MS LUPING:

13 Q. Now, Mr Witness, you've indicated you were able to hear what was happening over
14 the radio. Could you explain what you heard as to -- and explain what was happening?

15 A. The troops that were close to Papa Oscar intervened when it was being said that
16 there had been some sudden movements which appeared to be seeking to surround them.
17 So there was panic reaction and fighting started and some prisoners were taken.

18 Q. Now, first of all you said that troops close to Papa Oscar intervened. Whose troops
19 were they?

20 A. These were our UPC troops.

21 Q. Now, you explained on Friday which specific UPC troops went out together with
22 Papa Oscar. Which specific UPC unit are you referring to that intervened?

23 A. The unit that was there to protect Papa Oscar was the Romeo Whiskey unit.

24 Q. And you said you heard that they were discussing sudden movements. Would do
25 you mean by that?

1 A. They talked of the fact that the people who were not opposite them, those who were
2 behind them, were adopting a posture as which they -- as if they wanted to surround
3 them. So this is why the unit protecting Papa Oscar acted so that he should not be
4 captured by the enemy.

5 Q. And you said that prisoners -- some prisoners were taken. Can you describe what
6 was discussed over the radio about the taking of these prisoners?

7 A. On the spot I heard over the radio that there were prisoners. Afterwards, however,
8 Echo Charlie left the camp, came out of the camp and then they returned and it was then
9 that I saw those prisoners for the first time.

10 Q. And before you saw the prisoners, can you recall anything discussed about the
11 prisoners on the radio before you saw them return to the camp?

12 A. The person who was with me was persistently asking the question as to whether
13 they had given our heavy weaponry, he wanted to know the numbers of these people.
14 And he started getting excited in the conversation because there was fighting going on
15 and he was discussing with the other commanders who had also come out. That is what
16 I heard.

17 MS LUPING: Could we go back into private session, Mr President.

18 PRESIDING JUDGE FREMR: All right.

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

20 (Private session at 10.06 a.m.)

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7 (Open session at 10.11 a.m.)

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

9 PRESIDING JUDGE FREMR: Thank you.

10 Ms Luping, please.

11 MS LUPING:

12 Q. Mr Witness, you've explained how Echo Charlie returned with prisoners. Could
13 you explain, first of all, how many prisoners were brought back?

14 A. When I finally saw them there were about 40 of them.

15 Q. And were they male, or female, or both?

16 A. There were only male prisoners in good health, very sturdy, but there was one of
17 them who was shot and who a small hump on his back. But there were only men.

18 Q. And what were they wearing? What clothing were they wearing?

19 A. They were all wearing civilian clothing.

20 Q. And were they armed or unarmed?

21 A. They were not armed.

22 Q. And did you ever learn later, when Papa Oscar first met with them, did you ever
23 learn whether they were armed or unarmed at the time they met?

24 A. The troops who were taken and made prisoner were not armed.

25 Q. And what ethnicity were these men?

1 A. When I saw them and (Redacted), the majority of them were of the
2 Lendu ethnic group.

3 Q. You said the majority were Lendu. What were the other ethnicities?

4 A. We could see amongst them some who looked like Nyali. There was also an Alur
5 that I saw. (Redacted) and he was withdrawn from the group. I also said
6 that the majority were Lendu.

7 Q. And what was the age range of this group of prisoners from the youngest to the
8 oldest?

9 A. Well, there were some of them who were older than myself at the time. And I
10 would say the youngest one amongst them was between 18 and 20 years old.

11 Q. And the man with the hump on his back, roughly how old was he?

12 A. He was also an adult and he was quite possibly older than 20 years.

13 MS LUPING: Mr President, could we move back into private session for my next
14 questions?

15 PRESIDING JUDGE FREMR: Certainly.

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

17 (Private session at 10.17 a.m.)

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8 (Open session at 10.33 a.m.)

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

10 PRESIDING JUDGE FREMR: Thank you.

11 Ms Luping, you may proceed.

12 MS LUPING:

13 Q. Mr Witness, you explained how there were -- you were told seven prisoners from
14 this group of 40 were released, one of them were Alur. Do you know what the ethnicities
15 were of the others who were released?

16 A. No.

17 Q. You explained that you learnt of executions of the others who were not released.
18 First of all, could you give us the names of the individuals who were involved in the
19 killing of these prisoners?

20 (Redacted)

21 (Redacted)

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- 1 (Private session at 10.35 a.m.)
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- 14 (Open session at 10.42 a.m.)
- 15 THE COURT OFFICER: We're in open session, Mr President.
- 16 PRESIDING JUDGE FREMR: Thank you.
- 17 Ms Luping.
- 18 MS LUPING:
- 19 Q. Mr Witness, you've just explained that you saw Romeo Whiskey return with a
- 20 group of prisoners. First of all can you recall how many prisoners there were with
- 21 Romeo Whiskey?
- 22 A. I am not able to tell you an exact figure, but there were more than 20 prisoners.
- 23 Q. And were they male, female, or both?
- 24 A. Well, in that case there were more female and child prisoners than men.
- 25 Q. And what was the age range of this group? What was the youngest and the oldest

1 you saw?

2 A. Well, there were some in that group who were less than 10 years old.

3 Q. And can you recall roughly the oldest among them?

4 A. The women who were in wrappers might have been older, about 30 years old or
5 thereabouts.

6 Q. And in French we have the word "pagne" that you've explained what that means.
7 So their clothing, were they wearing civilian clothing or military clothing? Were any of
8 them wearing military clothing?

9 A. I did not see any military uniforms or anyone wearing military uniform in that
10 group.

11 Q. And this group, were they armed or unarmed?

12 A. I did not see any arms.

13 Q. And what was their ethnicity?

14 A. As far as I'm concerned, they were Lendu.

15 Q. And what is it about them that means that you can -- you could indicate that they
16 were Lendu?

17 A. As I have explained before, their looks, their size, their hairdo, their complexion.
18 All of these things since I grew up in the Ituri, I'm able to determine by observation
19 whether somebody is Lendu or not.

20 Q. And were there any fighters amongst this group?

21 A. I have already stated that the majority of that group was made up of women and
22 children.

23 Q. And when you saw them arrive with Romeo Whiskey, were they walking freely?
24 How is it that they appeared when you saw them?

25 A. They were also escorted.

1 Q. And do you know what happened to this group of prisoners?

2 A. After Kobu, we went to Kilo-État, and on that very day Commander Mugisa's group,
3 which was in the location where those prisoners were, joined us in Kilo, and they also
4 informed us that they had executed those prisoners. Then when we got to Bunia, the
5 commander who had carried out the looting from Kobu to Bunia also (Redacted) that
6 those persons had actually been executed.

7 MS LUPING: Mr President, could we go into private session, please.

8 PRESIDING JUDGE FREMR: Certainly.

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

10 (Private session at 10.48 a.m.)

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7 (Open session at 10.54 a.m.)

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

9 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon, for this correction.

10 Ms Luping, you may proceed.

11 MS LUPING: Thank you, Mr President.

12 Q. Mr Witness, you explained that you learnt from certain individuals, first in Kilo, that
13 the second group of prisoners, the one with mostly women and children, that they were
14 executed. My question is: What did this individual or individuals in Kilo tell you about
15 their execution?

16 A. When they arrived in the camp there were a number of rumours going around, but I
17 preferred to go and talk to an individual, someone who could tell me what had actually
18 happened. (Redacted) that the prisoners that
19 they had brought back had also been executed by their unit.

20 Q. Mr Witness, I just want to remind you you're in open session, so if you could please
21 exercise caution as to who are these individuals who told you, that's why I managed to get
22 that information from you in private session.

23 Focusing just first on what information that person told you, did he tell you how they
24 were executed?

25 A. He also talked about kafuni.

1 Q. And you have already explained what that means. You explained that this was
2 execution by arme blanche; is that correct?

3 A. That is correct.

4 Q. And did this person tell you where they were killed?

5 A. He said that it was at that junction also, at that banana farm where there was a cliff.
6 Yeah, he talked about that place too.

7 Q. And did he explain how many of the prisoners were killed, if they were all killed, or
8 if any survived?

9 A. Well, I didn't put that particular question to him.

10 Q. And the other person, when you were in Bunia who told you about the executions,
11 without saying who that person was, can you explain what the person told you about the
12 executions? What did he say happened?

13 A. He simply said that the -- that group of prisoners had been executed. Then I asked
14 him whether all the prisoners had been executed and he said most of them had been
15 executed. Yeah, that is what he told me.

16 Q. And did he also talk about how they were killed?

17 A. He also made reference to kafuni.

18 Q. And had he explained where they were killed?

19 A. Well, I did not put that question to him about the location because I was already
20 aware of it from Kilo, before linking up with him in Bunia.

21 Q. And did you learn if any of these prisoners were buried after they were killed?

22 A. He did not talk about burials. However, he showed me one person only with
23 whom they had travelled who apparently was one who belonged to that group.

24 MS LUPING: Mr President, could I make that my last question before the break and
25 have that asked in private session.

1 PRESIDING JUDGE FREMR: Yes. But also think about breaks, so I think it will be the
2 last question before the break; am I right?

3 MS LUPING: Indeed the last question before the break.

4 PRESIDING JUDGE FREMR: Fine.

5 So let's move into private session now.

6 (Private session at 11.01 a.m.)

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5 (Open session at 11.03 a.m.)

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

7 PRESIDING JUDGE FREMR: Thank you, court officer.

8 So we break now and we are going to continue at half past 11.

9 THE COURT USHER: All rise.

10 (Recess taken at 11.04 a.m.)

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

12 THE COURT USHER: All rise.

13 Please be seated.

14 PRESIDING JUDGE FREMR: So we have before us the last 60 minutes of examination of
15 this witness.

16 Ms Luping, as I said, you are supposed to adhere to this schedule, 60 minutes. Please.

17 MS LUPING:

18 Q. Mr Witness, you explained -- you explained that -- sorry, I'm not sure if this mic is
19 working. It is.

20 Mr Witness, you explained that -- you heard about the executions of the group of largely
21 women and children from two different individuals. My question is: Did either of them
22 ever tell you who gave you the order -- who gave them, sorry, the orders to execute this
23 group of prisoners?

24 A. No.

25 Q. And do you know if any of the soldiers involved in these executions, either of the

1 first group of prisoners who were largely male, or the second group of prisoners who
2 were mostly women and children, did you learn if anybody was ever punished for these
3 killings?

4 A. As far as I know, no one was bothered or prosecuted or punished regarding what
5 happened in Kobu.

6 MS LUPING: Mr President, if we could go into private session for my next questions.

7 PRESIDING JUDGE FREMR: Let's move into private session now.

8 And, Ms Luping, I guess it is just very politely, I think it is in your interest to try to
9 accumulate questions for private and then questions for open session because otherwise
10 you are wasting some time by jumping.

11 (Private session at 11.35 a.m.)

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9 (Open session at 11.45 a.m.)

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

11 PRESIDING JUDGE FREMR: Thank you.

12 Ms Luping, you may proceed.

13 MS LUPING:

14 Q. Now, Mr Witness, you said previously that there was an order for the UPC to go to
15 Bunia and you also said there was an operation in Bunia. My first question is: When
16 was that? When was the operation in Bunia?

17 A. It was the battle against the Ugandan army that took place in Bunia.

18 Q. And who won that battle?

19 A. The Ugandan army drove us out of the -- out of Bunia town.

20 Q. Now, you say the UPC were driven out of Bunia. Where did the état-major go to
21 after they were ousted from Bunia, the general staff?

22 A. We, after spending the night in Centrale, went to Mongbwalu and from Mongbwalu
23 all the way to Alombi.

24 Q. I'm talking now about the état-major, where did they establish their base after the
25 defeat in Bunia?

1 A. The same day we spent the night where the chief of general staff was, that was in
2 Centrale. The chief of general staff asked us to go to Mongbwalu and he himself went to
3 Mongbwalu.

4 Q. After the defeat of the UPC in Bunia, what was the state of organisation like within
5 the UPC? What was the situation like?

6 A. Many people withdrew and went back to their villages. And some who had joined
7 the UPC from Jérôme Kakwavu's group went back to Aru. The chief of general staff,
8 Kisembo, had a reduced number of men with him and they went towards Mamedì. The
9 general staff which was with him was in Mamedì.

10 Q. During this period of time, after the defeat of Bunia, what happened to the kadogos
11 within the UPC? Did they stay within their units? What happened to them?

12 A. Those who were in Mamedì all came together under kadogos unit.

13 Q. And how many were within this kadogo unit?

14 A. More than 30.

15 Q. And what was the age of the youngest amongst them?

16 A. Well, the same as we had known before; aged 11 to 12 years.

17 Q. And how many of them amongst this kadogo unit would you assess were below the
18 age of 15?

19 A. I would say all of them.

20 Q. And these kadogos within the kadogo unit, what were their duties?

21 A. They all belonged to that unit at the general staff. They received training, they
22 were provided with food and taken care of, and they were always within the
23 headquarters or within the general staff. Wherever it moved to, that is where you would
24 find the kadogo unit.

25 Q. And were they armed or unarmed?

1 A. In Mamedì they were armed.

2 Q. And were they wearing military uniforms or civilian clothing?

3 A. Most of them had UPC military uniforms.

4 Q. And were they males, or females, or both?

5 A. There were a few females, but most of them were males.

6 Q. And when you said that they were all under the age of 15 what was your basis of
7 concluding that? What is it about them that made you believe they were all below the
8 age of 15?

9 A. When the kadogo unit was created the idea was to only have young people to that
10 unit. They were young and they were more exposed and so to my mind they were all
11 less than 15 years old.

12 Q. Mr Witness, in your time with the UPC did you ever hear any orders given to
13 demobilise any of the UPC soldiers?

14 A. After we returned to Bunia that is when the chief of general staff, Foren, would ask
15 the commander in charge of the kadogo to disarm them and to ensure that they no longer
16 wore any uniforms.

17 Q. And this order from the chief of staff, when was this order given?

18 A. We are talking about June, July 2003 when we had returned to Bunia, when the UPC
19 returned to Bunia and the general staff -- and the chief of general staff were in Bunia.

20 Q. And do you know if these children remained disarmed?

21 A. Not for long.

22 Q. When were they rearmed?

23 A. When once again we were attacked in Bunia, at that time the chief of general staff
24 ordered that their weapons be returned to them. So they were rearmed, they were
25 indeed rearmed at that time and committed to combat on the same day.

1 MS LUPING: Mr President, if we could go into private session for two questions, please.

2 PRESIDING JUDGE FREMR: Okay.

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

4 (Private session at 11.55 a.m.)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

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1 (Redacted)

2 (Open session at 12.05 p.m.)

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

4 PRESIDING JUDGE FREMR: Thank you.

5 Ms Luping, you may proceed.

6 MS LUPING:

7 Q. Mr Witness, you have previously described a number of UPC military training
8 camps and you mentioned Bule, Rwampara, Mongbwalu and Mandro. Do you know
9 who amongst the senior commanders was responsible for training at UPC military
10 training camps?

11 A. I know commander that I spoke about from Mandro and the one from Bule, I know
12 their names, and Mongbwalu as well. Yes, that's the one I know as well. I know the
13 name of the person.

14 Q. And can you give us the names of these people?

15 PRESIDING JUDGE FREMR: I think you can make it in open session because I think
16 there is no direct connection between them and you. So if you just mention the name, I
17 think it will be fine.

18 THE WITNESS: (Interpretation) Well, Commander Americain, in Mandro, he was
19 called centre commander because he was called centre commander because that was the
20 training centre there. In Bule there was commander Christian Banga Layi, also called
21 De Gaulle. And in Mongbwalu, Moise, who was called Moses who was centre
22 commander.

23 MS LUPING:

24 Q. And were there any other senior commanders, more senior than these commanders,
25 who had overall responsibility for training?

1 A. These commanders that I spoke about, they were the commanders of the centre
2 because the tasks, the daily tasks they had, they were the commanders all the time were in
3 the camp with the recruits. Those are the ones I'm talking about.

4 Q. Was there anybody more senior than them responsible for training?

5 A. The highest one could go -- well, when they were passing the arms, when there
6 was -- there would be an official -- when they finished their training what they would do
7 is you could see them come, yes, but during the training itself then he could come when
8 he wanted to and as he wanted to.

9 Q. And who is the "he" you're referring to?

10 A. The highest rank, I'm speaking about the état-major, the chef d'état-major, and the
11 staff who go with it. It was the highest ranking people in the UPC I'm talking about.

12 Q. And who amongst the staff of the general staff was involved in training?

13 A. Well, this was a process which was long for recruitments, and at the time I know
14 that everything that was being done with regards to the -- there was Bureau Three of the
15 general staff, which always had to watch what was going on in the training camps.

16 Q. And when you say "Bureau Three of the general staff," what is the name of the
17 commander you're referring to?

18 A. The G3 responsible for operations. And the commander was Bosco Ntaganda.

19 MS LUPING: Mr President, the Prosecution would now like to begin with its first exhibit
20 to be shown to this witness. It is from an audio. I'll give the ERN. And if we could
21 ask the court officer for the floor for this exhibit. It is DRC-OTP-0162-0115.

22 THE COURT OFFICER: You now have the floor. I just would like to know if the
23 document is public?

24 MS LUPING: Yes, this is public, the document.

25 And just for the record we will be playing from track 1, and the minutes that we'll be

1 playing from are from 00.06.50 to 00.13.38. We will be playing the entirety of this
2 segment and then I'll be following with the specific questions.

3 Q. Now, Mr Witness, what I would ask you to do is also to pay attention. If there are
4 any voices that you recognize whilst you're listening to this excerpt, and also I'll be asking
5 you if you recognize the events that you're listening to.

6 So I will only be playing this the one time. If you could listen and, as I say, indicate the
7 names you -- the voices you recognize, rather, and the events that you're listening to.
8 Thank you.

9 (Playing of the audio excerpt)

10 MS LUPING: I'm sorry, could I just have clarification as to whether it's actually being
11 heard?

12 Q. Mr Witness, can you hear the excerpt? Can you hear it? Because I'm not -- I'm not
13 hear anything. You cannot hear anything?

14 PRESIDING JUDGE FREMR: Mr Bourgon.

15 MR BOURGON: Thank you, Mr President. Which number is this on the Prosecution's
16 list of evidence, please?

17 MS LUPING: It is item 14 of the -- on the list of evidence and I will refer Mr Bourgon to
18 the email we sent where we indicated specific selections from the audio intercept. This is
19 the third extract that we had indicated to Mr Bourgon via email.

20 MR BOURGON: Thank you.

21 MS LUPING: Apologies, Mr President. We appear to be having some technical
22 difficulties.

23 PRESIDING JUDGE FREMR: No problem. Take your time.

24 MS LUPING: Although time is limited, so we hope this can be rectified.

25 PRESIDING JUDGE FREMR: We will not count this time because it's really of a different

1 nature.

2 THE COURT OFFICER: A technician is on his way, Ms Luping.

3 MS LUPING: Thank you, court officer.

4 (Pause in proceedings)

5 PRESIDING JUDGE FREMR: So just for clarification from my part, we are still waiting
6 for a technician who would fix up our technical problems, and I am also repeating that
7 this time needed for that will not be counted to time used by Prosecution for examination
8 of the witness.

9 (Playing of the audio excerpt)

10 PRESIDING JUDGE FREMR: So now we could hear something, so I guess we can start
11 with audio.

12 MS LUPING:

13 Q. Mr Witness, we are now going to try again to play you this extract. Just a reminder
14 again if you could just pay attention to voices you recognize and the events, if any, that
15 you recognize.

16 (Playing of the audio excerpt)

17 PRESIDING JUDGE FREMR: Ms Luping, I guess it would be better to move into private
18 having taken into account the questions you indicated you would like to --

19 MS LUPING: To save time it might be better indeed, Mr President.

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

21 (Private session at 12.26 p.m.)

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23 (Redacted)

24 (Redacted)

25 (Redacted)

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10 (Recess taken at 12.48 p.m.)

11 (Upon resuming in open session 2.17 p.m.)

12 THE COURT USHER: All rise.

13 Please be seated.

14 PRESIDING JUDGE FREMR: Good afternoon, everybody. We begin with delivery

15 of ruling on admissibility based on request made by Prosecution before lunch break.

16 During this break the Chamber deliberated on admissibility of DRC-OTP-0162-0115

17 and associated transcripts and translations. And having considered the submissions

18 of the parties, issues the following oral decision:

19 The Chamber decides to admit the three discrete excerpts of DRC-OTP-0162-0115

20 used with the witness, being from track 1, first, minutes from 6.50 to 13.38; second,

21 minutes from 23.45 to 25.44; and from track 2, the third, minutes starting from 5.20 to

22 6.25 to the extent that such excerpts are not already in evidence having been admitted

23 through another witness.

24 The Chamber considers that admission of excerpts only rather than the items as a

25 whole is consistent with its approach to date with respect of admission of audiovisual

1 material into evidence, whereby only the specific excerpts used with the witness have
2 been admitted.

3 In admitting these excerpts, the Chamber considers that the requisite connection to
4 the present witness has been established with respect to all three excerpts.

5 With respect of the first excerpt, the Chamber observes that the Defence has no
6 objection to its admission into evidence and notes that the witness was able to
7 recognize the events being discussed in the recording and identified the speakers, as
8 well as being present at the time of the conversation in question.

9 With respect to second two excerpts, the Chamber notes that the Defence objects to
10 their admission on the basis that the witness indicated that he did not hear the
11 conversations at the time and that the fact that he was present during those events,
12 according to his testimony, is not sufficient to admit these excerpts into his evidence.

13 In this connection, the Chamber recalls that, at paragraph 56 of the Conduct of
14 Proceedings Decision, it is noted that the calling party must establish that the witness
15 has personal knowledge of the making of the recording or its contents. The
16 Chamber has subsequently confirmed on several occasions that it is sufficient that the
17 witness have personal knowledge of either the recording or content of the material.

18 The Chamber, therefore, considers that the remaining two excerpts may be admitted
19 on this basis: that the witness recognized the events being discussed in the excerpt
20 and identified the speakers.

21 Following the guidance provided by the Chamber in relation to the Defence's
22 objections to items that the Prosecution intended to use with this witness on
23 28 January 2016, and I refer here to transcript number 58, page 6, lines 18 to 22, the
24 transcripts and translations associated with the audio recording will be marked for
25 identification at this stage.

1 Accordingly the Chamber marks for identification DRC-OTP-0203-0270; then
2 DRC-OTP-0204-0056; then DRC-OTP-0203-0236; and finally, DRC-OTP-0204-0036.
3 Following the further guidance provided by the Chamber, including on
4 28 January 2016, and I refer here to transcript number 58, page 7, lines 4 to 6, the
5 Chamber would appreciate it that when one party indicates to another party which
6 specific excerpts of an item will be used with the witness that the Chamber and Legal
7 Representatives are also alerted.

8 That concludes the Chamber's oral ruling.

9 And now we can continue with testimony of our witness, more precisely with his
10 cross-examination.

11 Before where start, Mr Witness, I would like just repeat my guidance that you are still
12 under oath, which means that you have to speak the truth and nothing but the truth,
13 and I also would like to emphasise that this Court is governed by principle of fair trial,
14 which means that both parties are equally treated which, in your case, means that you
15 should speak, you should respond even if you are a witness called by Prosecution,
16 but any way, you should respond to all questions put to you by Defence in the same
17 way how you did so far. Do you understand?

18 THE WITNESS: (Interpretation) Yes.

19 PRESIDING JUDGE FREMR: Very well.

20 Duty counsel, please.

21 MR NÈVE: (Interpretation) Your Honour, if you would allow me before --

22 PRESIDING JUDGE FREMR: Do you -- sorry, do you want to speak in open or in
23 private session? It depends on the character of your submission.

24 MR NÈVE: In open session.

25 PRESIDING JUDGE FREMR: Okay, then you may proceed.

1 MR NÈVE: (Interpretation) Before the Defence takes the floor, I would like a
2 response given by the witness be corrected, we're talking about an answer that he
3 gave to a question that was put to him on Friday.
4 You personally asked him a question as follows: It's on page 83, line 8. You asked
5 him the question: Have you drawn this conclusion that all Lendu were an enemy?
6 And he answered to that, and this is lines 12 and following: The Lendu weren't part
7 of us as us, the Hema, they also weren't part of the Lendu.
8 I was a bit surprised by the use of the expression of my client who spoke about ne
9 faisait pas de partie, didn't give them a chance.
10 After discussion with him, he made a mistake with regards to the words and what he
11 wanted to say, they didn't give us any quarter, and not they didn't give us a part.
12 The expression "doesn't give us any part" has no sense. It has no meaning here.
13 But on the other hand, the expression that "they left us no room" is something that
14 does.
15 PRESIDING JUDGE FREMR: Mr Bourgon, how should I understand your position?
16 Are you standing or not? You are standing, I guess.
17 MR BOURGON: Yes, Mr President. I'm somewhat surprised by the intervention of
18 the duty counsel. In my view what matters is what is on the record. If there's an
19 error in translation and a word that was missing or a word that appears different
20 from the French to the English, then I can see that this would be the role of duty
21 counsel.
22 However, to make a correction to what the witness intended to say, when this is not
23 what he said, I believe it is not appropriate in the circumstances.
24 That's all I have to say on this issue, Mr President. Thank you.
25 PRESIDING JUDGE FREMR: I think we can't take it as a new version of Mr Witness

1 testimony, so otherwise some comment or some announcement to the Chamber, and
2 then I think in your cross-examination or in potential re-examination we can return
3 back or parties should come back to that.

4 Ms Luping, what is your position?

5 MS LUPING: I just wanted to point out to your Honours that actually in the English
6 transcript for the exact same -- the response to same question, the -- what was actually
7 transcribed in the English was -- the response was "And the Lendus didn't spare the
8 others while they too did not spare the Lendus."

9 So it appears that it was captured in the English but not in the French.

10 PRESIDING JUDGE FREMR: Yes, as I said, for me, at the moment, it seems so, but
11 parties are free, if they want, to return back to this issue. It's up to you.

12 So now, Mr Bourgon, you can start with cross-examination.

13 MR BOURGON: Thank you, Mr President. Allow me to begin, Mr President, by
14 confirming that I have two members of the Defence team who were not present this
15 morning who are with me at this point in time; mademoiselle Margaux Portier and
16 Maître Chloé Grandon, who were not present this morning.

17 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

18 MR BOURGON: (Interpretation) May it please the Court.

19 QUESTIONED BY MR BOURGON:

20 Q. Good morning, Witness.

21 A. Good morning.

22 Q. So we have already met since you arrived at the Court. Do you remember our
23 meeting? You do, don't you?

24 A. Yes.

25 Q. If you would allow me to introduce myself again, Stéphane Bourgon, and I'm

1 accompanied by my team this afternoon, and together we represent the interests of
2 Mr Bosco Ntaganda.

3 My role this afternoon is to review the testimony and to ask you questions with a
4 view to help the Court. This is something you understand?

5 A. Yes.

6 Q. So you will understand that, just like the Prosecution, I have questions to put to
7 you, for at least 10 hours, and it's important for the proper functioning of the trial that
8 if you don't understand a question, please do not hesitate to ask me to repeat it. Do
9 you understand that?

10 A. Yes.

11 Q. Also with a view of facilitating the proceedings, I would very much appreciate
12 it, if it's possible for you, to answer the questions that I put to you in the most precise
13 way as possible. Listen well to the question so that it -- so you don't go into too long
14 answers. Having said that, I'm not going to prevent you from speaking either, but if
15 we could do that.

16 A. Yes.

17 Q. So I would like to start firstly with your involvement, your involvement with
18 the Office of The Prosecutor. I know it's commonly known by the word "accusation,"
19 in French, Office of The Prosecutor, could you confirm that the first time that you met
20 the Office of The Prosecutor, the representative of the Office of The Prosecutor, that
21 was in 2006; is that correct?

22 A. Yes.

23 Q. And the first time, according to the information that I have, the first interview
24 took place --

25 PRESIDING JUDGE FREMR: (Microphone not activated) Sorry, I guess I didn't

1 switch on my mike.

2 So once again, because we probably will approach issue of concrete meetings between
3 this witness and Prosecution, which could hypothetically reveal his identity, that is
4 why I now will order to move into private session mode.

5 Court officer, please.

6 (Private session at 2.33 p.m.)

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- 16 (Redacted)
- 17 (Open session at 2.53 p.m.)
- 18 THE COURT OFFICER: We're in open session, Mr President.
- 19 PRESIDING JUDGE FREMR: Thank you.
- 20 Mr Bourgon, you may proceed.
- 21 MR BOURGON: (Interpretation) Thank you, Mr President.
- 22 Q. Witness, can you confirm that at the time of your training with (Redacted) that
- 23 this was in (Redacted), if I'm not mistaken; is that the case?
- 24 A. Yes.
- 25 Q. Can you confirm that at that time there was already intense and violent clashes

1 within the Ituri; is that the case?

2 A. Yes.

3 Q. The movement you belonged to at the time was set up to check or engage in this
4 violence that took place at that time?

5 A. It was set up to control the Ituri, but I don't know whether it was for the
6 purpose of warding off the violence as such.

7 Q. You know that there was another group in place at that time known as the
8 RCD-K/ML?

9 A. Yes.

10 Q. You know that the RCD-K/ML at some point took control of Bunia among other
11 areas?

12 A. Yes.

13 Q. I would like to put it to you that -- and I'm -- I think I know the answer to this
14 question. In any event, from the information available to me, are you aware of a
15 group known as the Chui mobile force?

16 A. I heard mention of that group, but I didn't have contact with them.

17 Q. Very well. Now, let me move on to another line of questioning relating to
18 what happened after your (Redacted).

19 In your testimony you quickly stated that you went through the (Redacted)
20 (Redacted); is that correct?

21 A. Yes.

22 Q. (Redacted), can you confirm that the purpose of a (Redacted)
23 (Redacted) is to protect?

24 PRESIDING JUDGE FREMR: Ms Luping, please.

25 MS LUPING: Mr President, I've tried not to interrupt Mr Bourgon, it's just when

1 certain information is being sought that relate to this witness's own military
2 experience if this could be please obtained via private session. I had taken every
3 precaution during his examination-in-chief to do so to avoid him being identified. If
4 this could be -- these questions could be raised instead in private session.

5 PRESIDING JUDGE FREMR: I agree. It is better we be a little bit more cautious
6 and not to make any -- or, not to put the witness in any risk of being identified. So
7 let's move into private session, rather, now.

8 (Private session at 2.56 p.m.)

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Trial Hearing

(Private Session)

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- 3 (Redacted)
- 4 (Redacted)
- 5 (The hearing ends in private session at 4.02 p.m.)