

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, 11 April 2016
9 (The hearing starts in open session at 9.33 a.m.)
10 THE COURT USHER: All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: Good morning, everybody.
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 in usual order, starting with Prosecution, please.
21 MS SOLANO: Good morning, your Honour. For the Prosecution this morning, behind
22 me is Ms Nicole Samson, senior trial lawyer; on my left, Ms Marion Rabanit, trial
23 lawyer -- assistant trial lawyer; behind her, Kristy Sim, assistant trial lawyer; on the back
24 row, Ms Dianne Luping, trial lawyer; Ms Selam Yirgou; and I am Julieta Solano, trial
25 lawyer.

1 PRESIDING JUDGE FREMR: Thank you, Ms Solano.

2 Now Defence, please.

3 MR BOURGON: (Interpretation) Good morning, your Honours. Good morning to
4 everyone here in the courtroom. Today representing Mr Ntaganda, present in the
5 courtroom with us, Sandrine De Sena, Dignité Bwiza, Isabelle Martineau and myself,
6 Stéphane Bourgon. Thank you very much, your Honour.

7 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

8 Before giving the floor to the Legal Representatives of Victims, the Chamber notes that the
9 Chamber granted a request by email from Mr Suprun to be excused from attending the
10 hearings of 11 and 12 April.

11 Legal Representatives of Victims, will you now please introduce yourself for the record.

12 MS PELLET: (Interpretation) Thank you, your Honour. Former child soldiers are
13 represented by myself, Sarah Pellet, counsel Office of Public Counsel for Victims. Thank
14 you.

15 MS GRABOWSKI: Good morning, Mr President, your Honours. The victims of the
16 attacks are today represented by myself, Ms Anne Grabowski, from the Office of Public
17 Counsel for Victims. Thank you.

18 PRESIDING JUDGE FREMR: Thank you very much, Ms Pellet. Thank you,
19 Ms Grabowski.

20 I also further note the presence of Ms Clément, the legal adviser appointed pursuant to
21 Rule 74 to assist the witness.

22 Ms Clément, please, could you state your name for the record.

23 MS CLÉMENT: (Interpretation) Yes, your Honours. Hélène Clément, legal adviser
24 assisting the witness.

25 PRESIDING JUDGE FREMR: Thank you very much, Ms Clément.

1 Before the witness can be called, I will be addressing a few procedural matters.

2 First, in terms of scheduling, we will commence with the testimony of Witness P-963

3 today and, as indicated last week, we will sit for five hours. This first session will last

4 until 11, then we will sit from 11.30 to 1 p.m., and reconvene after lunch from 2.30 to

5 4.30 p.m.

6 This should enable us to finish the testimony of this witness by the end of the week.

7 Second, the Chamber recalls that Witness P-963 has been granted in-court protective

8 measures in the form of image and voice distortion and the use of a pseudonym during

9 testimony.

10 In order to protect the identity of the witness from being disclosed to the public, the

11 Chamber will determine on case-by-case basis at the relevant time whether private or

12 closed sessions or redactions to public records are necessary.

13 Consistent with the recommendation from the VWU, the Chamber instructs the parties to

14 adopt a cautious approach with regard to what might be identifying.

15 On 6 April 2016, the VWU provided the vulnerability assessment in which it does not

16 recommend any special measures according to Rule 88 of the Rules.

17 The Chamber has also taken note of the objections to use or admission of certain

18 documents as raised by the Defence by way of email at 6 p.m. on Friday, and will rule on

19 them as necessary during the course of the testimony.

20 Next, as I mentioned, Ms Clément is present to assist the witness in respect of any

21 self-incrimination issues which may arise. We understand that Ms Clément has met with

22 the witness and explained Rule 74 to him.

23 Am I right, Ms Clément, on this point?

24 MS CLÉMENT: (Interpretation) Indeed, your Honour.

25 PRESIDING JUDGE FREMR: Ms Clément, the Chamber has not been seized of any

1 specific request for assurances pursuant to Rule 74 at this stage; however, we understand
2 that you would like to wish to address the Court now. Is it the case?

3 MS CLÉMENT: (Interpretation) Not particularly, your Honour. I believe that we will,
4 judging from what I've understood --

5 PRESIDING JUDGE FREMR: Sorry to interrupt you. Anyway, we have to move into
6 private session dealing with this matter, so please, first, move into private session.

7 (Private session at 9.40 a.m.)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

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Trial Hearing

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Trial Hearing

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15 (Redacted)

16 (Open session at 9.50 a.m.)

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

18 PRESIDING JUDGE FREMR: Thank you, court officer.

19 Mr Bourgon, you have the floor.

20 MR BOURGON: Thank you, Mr President. At this point in time, Mr President, the

21 Defence deems necessary to address the witness preparation session log and disclosure

22 note which we have received for the next witness, P-0963.

23 Mr President, this session log and disclosure note was received on Saturday morning

24 around 9 a.m. and it is a 15-page document, which is quite detailed. I must, first of all, of

25 course, express my appreciation to the Prosecution for making a detailed document.

1 However, and leaving aside the timing at which we received the preparation note and
2 leaving aside also the fact that it lasted 11 days, the manner in which the session was
3 conducted is an issue of concern for the Defence and it is our respectful submission this
4 morning that the way it was conducted goes beyond the objectives set out in the witness
5 preparation protocol.

6 First, Mr President, when the session was conducted, the witness was shown material
7 related to his previous dealings with the Prosecution and investigators. As mentioned in
8 our submission, that is submission 1217 of 17 March, we agree that this can be helpful,
9 that a witness can be shown his material, especially if it goes back in time, in order to
10 refresh his memory and focus his testimony. So that's not a problem.

11 Second, the witness was provided with an opportunity to bring corrections and
12 clarifications to this material. So having read the material, the witness is asked: Do you
13 wish to make any clarifications or corrections? And the witness did. Again, as
14 mentioned in our submissions, we believe that this is appropriate and that it can be useful
15 to prepare for the testimony and in order to make the testimony of the witness shorter and
16 more focused.

17 Third, and here we come to the first problem, the witness was asked the following
18 question on no less than 34 occasions. Now, that is after having been given the
19 opportunity to clarify and after making such clarifications. The question was to read
20 selected portions of his material, either paragraph by paragraph or a certain number of
21 lines or a certain number of pages, and then the exact question was to read and then to
22 confirm the accuracy of what the witness had read. This was done on at least 34
23 occasions, based on the proofing note that we have received.

24 Mr President, the idea is the witness read his material, made the corrections and the
25 clarifications that he thought was necessary, and then we ask him again section by section:

1 Do you confirm the accuracy of this and this part?

2 More importantly is, of course, the information we are provided in this regard. We are
3 provided with the information in the proofing note that says "witness confirms, witness
4 confirms," and here and there we have a few comments which were added by the witness.
5 It must be recalled, Mr President, that this is a Rule 55(2) witness and who was signed not
6 one but three agreements for the limited use of his statement in which he undertakes to
7 tell the truth at all times. So why do we need in a session such as a preparation session to
8 go back to 34 different portions of his material and ask him to confirm whether this is
9 accurate?

10 This is an indirect way to, again, continue the investigations of the Prosecution. And, of
11 course, because of the matter, the way proofing sessions are organised and based on the
12 protocol, we've addressed this, I'm not going to say more, but we are not in a position
13 where we have the possibility to address any issue with this witness, with any witness, in
14 a confidential manner because either there will be somebody from the Prosecution present
15 or there will be the need to provide the Prosecution with a recording of that session as a
16 must.

17 So that's an issue that we wish to bring to the attention of the Chamber and we feel that
18 this is inappropriate and that we are actually in all of these days, we are basically making
19 sure what the witness will say.

20 Fourthly, Mr President, is the second problem, and it has to do with some material that
21 was shown to the witness. Now, before any questions were put to him and before he was
22 given an opportunity to make any corrections or clarifications to his material, he was
23 provided with an opportunity to, for the first time, to watch an audio-video without
24 sound, I add, and he was allowed to look and listen to audio material, audio material
25 which of course were not mentioned in his previous dealings with the Prosecution, at least

1 to the best of our understanding, and we spent quite a bit of time to look at whether this
2 material had ever been shown or been provided to the witness.

3 I'm referring here, Mr President, to the following items: First one is DRC-OTP-0082-0016.

4 This is a video which was filmed in a location called Mandro, and it is a location which
5 based on the material provided by the witness, the events pictured on that video are not
6 part of his -- of the information he provided to the Prosecution, and yet we show him
7 these pictures and then we ask questions on this material to see if he does recognize one
8 or try to make a link between this and the information he provided.

9 Again, we say, Mr President, that this is going beyond preparing a witness for his
10 testimony within the spirit and the letter of the preparation protocol.

11 The second issue is more important, it has to do with the audio. The Chamber is very
12 familiar with this audio. It is the audio of an intercepted audio which was amongst
13 members or allegedly amongst members of the FPLC during the operations which took
14 place in the Kobu area. To the best of our knowledge this material was never shown to
15 the witness before, he never mentioned that he was privy either to the intercepts or to
16 specific conversations between, on the radio, between members of the FPLC.

17 He did say at one point that he was privy to conversations on the radio between a man
18 called Kitembo and a man called Salumu, but that is not part of this audio material.

19 The evidence you are about to hear, Mr President, of course, deal with what happened in
20 the Kobu area, so he did provide evidence. And now before he answers any question, we
21 allow him to listen to an audio, an intercept, which of course the Prosecution's position is
22 what was happening at the time at the place before any questions are put to him.

23 We feel, Mr President, that this is inappropriate because he never -- he was not aware of
24 these intercepts and he did not say that he did listen to these intercepts. Yet the
25 information provided therein can easily influence the witness in terms of what he will

1 testify about because he has already provided information in his statements about the
2 events of Kobu, but without any reference to this, to these conversations.

3 Mr President, to conclude, we believe that there is a need for the Chamber to address the
4 issue of the proofing sessions, which are getting -- going beyond the preparation protocol,
5 beyond what we, everybody here agreed to do by -- when we agreed to these preparation
6 sessions, which is to make the witness testimony easier and more focused. We are going
7 way beyond that. And we need -- we respectfully submit that the Chamber should take a
8 position on this issue. We made some recommendations and suggestions in our
9 submission 1217 of 17 March that the witness preparation should be limited to showing
10 the material, asking for clarification and stopping there. This would be much easier,
11 there would be no questions and it would be much easier for both parties.

12 If there are going to be questions, then both parties should be there so we hear what he
13 will respond to these questions and the focusing of the testimony also benefits the Defence
14 or the party not calling the witness. This would be much better.

15 In these circumstances, Mr President, we ask that the audio video of the last portion of the
16 session which I believe, based on what we have, is day 11, that day 11 be disclosed to us
17 so that when we know that when he was asked that specific question confirmed the
18 accuracy of a certain number of lines or a certain number of pages, that what he did
19 answer then is provided to the Defence so we have the same benefit as they had and we
20 are on an equal footing to address the testimony of this witness. Thank you,

21 Mr President.

22 That being said, we think we can proceed with the testimony, but we would like to have
23 this day 11 of the audiovisual recording of that day. Thank you, Mr President.

24 PRESIDING JUDGE FREMR: Thank you.

25 Ms Solano, please.

1 MS SOLANO: Thank you, your Honour. I will first submit that in the Prosecution's
2 submissions there was no impropriety whatsoever in the conduct of this witness
3 preparation session and that there is no basis for disclosure of the tape of the 11th to the
4 Defence.

5 I should start, your Honour, by pointing out that this witness, the materials that the
6 witness had to read for his preparation session was -- were about 1200 pages, a good
7 proportion of which dated from his first interview with -- first interview with the
8 Prosecution in (Redacted) and that's just to put into context as to why the witness
9 preparation session lasted so long.

10 Mr Bourgon knows through the witness preparation note that the days during which the
11 witness provided corrections or clarifications or answered questions from the Prosecution
12 were two, Thursday and Friday of last week.

13 Your Honour, as to the reasons why the Prosecution asked the witness to confirm portions
14 of his -- of his evidence, I refer to paragraph 19 of the witness preparation protocol which
15 says that during preparation sessions the questioning lawyer must provide the witness
16 with an opportunity to confirm whether his or her prior statements are accurate and to
17 explain any changes as necessary.

18 Given that this witness provided -- has provided -- has been interviewed by the
19 Prosecution (Redacted), your Honour, he has (Redacted)
20 (Redacted) and the areas of the

21 evidence that he -- that he is intending to testify on are so wide-ranging the Prosecution
22 thought it not only appropriate but also fair to the witness to ensure that he had read
23 particular portions of his evidence and all we did was ask him to read them in our
24 presence and confirm their accuracy. Here and there, the exercise showed to have been
25 worthwhile because the witness did make additional corrections and clarifications.

1 And, your Honour, we did -- if Mr Bourgon wants to point to any areas of the witness
2 preparation note that indicate that the Prosecution used the witness preparation session to
3 continue its investigations, I invite him to do so, but I -- I don't believe that that was the
4 case.

5 As for the material that my friend submits has been shown to the witness for the first time
6 during the witness preparation session, I'll address first the radio intercept, your Honour,
7 and this intercept was in fact played to the witness during one of his interviews with the
8 Prosecution and he provided lengthy comments on it, these comments are contained in
9 items 18 to 24 of the Prosecution's list of documents for use with the witness which are
10 transcripts from his (Redacted) interview. So from the very first interview with the
11 witness, the Prosecution played this radio intercept to the witness.

12 I believe that there might be some -- it might be that it's not at first glance evidence that
13 this audio recording was played to the witness because in the witness's materials it is
14 referred to by an ERN which is not the same ERN with which the document is listed on
15 the witness preparation note or on the Prosecution -- the documents the Prosecution
16 intends to use with the witness and that is because in between (Redacted) when the
17 recording was first played to the witness and now the Prosecution enhanced the audio
18 recording. The Defence is I believe in possession of both, the one that was the originally
19 played to the witness as well as the enhanced version. And I believe, your Honour, that
20 the Defence had the means to establish the link between the original ERN and the
21 enhanced version, but if that's not the case, of course I stand to be corrected.

22 In relation to the video filmed at Mandro which Mr Bourgon rightly says was shown to
23 this witness for the first time, and that is the video identified with ERN
24 DRC-OTP-0082-0016, your Honours are aware of the Prosecution's position on this issue.
25 It is not inappropriate and it's not inconsistent with the witness preparation protocol to

1 show potential exhibits to the -- to a witness for the first time during his preparation
2 session. Indeed, paragraph 24 of the witness preparation protocol says that during the
3 witness preparation session the questioning lawyer must show the witness potential
4 exhibits and ask him or her to comment on them for the purpose of determining the utility
5 of using the exhibits in court. And that is precisely what we did. We asked the witness
6 very limited questions. We asked him two questions: First whether he recognized the
7 people and place, and he said he did not; and second whether he recognized some
8 weapons that are visible towards the end of the excerpts of the video that were played to
9 him, and he confirmed that he did recognize them. And on that basis the Prosecution has
10 made a decision to show this video to the witness during his testimony.

11 Your Honours, and I will return to the point I mentioned when I first began, which is that
12 the Defence should not get access to the video recording of the 11th day of Witness 963's
13 witness preparation session. We believe that this request is not supported by the
14 decisions that your Honours have made in similar cases to date. The Defence has not
15 raised any argument that the witness preparation note does not reflect accurately what
16 transpired during the session and the rules of the game are not, your Honour, as the
17 Defence would wish, that the Defence gets exactly the same access to what the witness
18 says during a witness preparation session. The Defence gets access to the witness
19 preparation note which should be accurate and we submit is accurate and there is
20 absolutely no reason raised by Mr Bourgon or otherwise to doubt its accuracy.

21 Those are my submissions, your Honour.

22 PRESIDING JUDGE FREMR: Thank you.

23 Mr Bourgon, do you want to react?

24 MR BOURGON: Very briefly, Mr President. Regarding the audio material, we will
25 verify. We did check all the material and we had not seen these paragraphs and we will

1 verify and get back to the Chamber.

2 With respect to the video exhibit, of course as the Chamber is well aware in our respective
3 submissions of March 2016, there is a disagreement on the interpretation to be given to
4 paragraph 24 of the witness preparation protocol. Prosecution believes that they can
5 show an exhibit for the first time. We say that, no, it only applies to -- it only applies to
6 exhibits that were already shown to him or that were used during his investigation or
7 meeting with Prosecution investigation. And we explain why, because this has to do
8 with preparation in terms of refreshing memory and not to get further information.

9 More importantly, the issue of the questioning to the witness. Of course we are well
10 aware of paragraph 19 of the witness preparation protocol which reads as follows:

11 "Provide the witness with an opportunity to confirm whether his or her prior statements
12 are accurate and to explain any changes as necessary."

13 As mentioned, this was done and the witness did provide those changes as necessary, and
14 he was given that opportunity. So we say read all our material, then we give him the
15 opportunity and he does so.

16 Now, once that is done that's where we move into uncharted territory, that's where we
17 move in areas where both parties should be present or this should not take place at all
18 because we are obtaining further information.

19 There is a difference with the Prosecution asking the following question, I'll provide just
20 one example to the Chamber and I will use the example -- for example, on page 11, where
21 it says, this has to do with one interview, the interview that they are dealing with at that
22 particular time, is a (Redacted) interview and the number is DRC-OTP-0161-2535. And
23 then the witness is asked, it says, at 2552, that is the page number, from lines 561 to 574,
24 the witness is asked to read this portion of his evidence, so we draw his attention
25 specifically to a section and to indicate whether it is accurate. Now, this is done after that

1 first part of the witness proofing session which -- which then was explained.
2 And then of course we have the answer, the witness confirms it is correct.
3 Of course we -- when the witness says it's correct, did he add anything, or was any
4 information given that the Prosecution believes is, as they say, not exactly the same, but
5 that's the rules of the game? That's where we get in -- fair play should see that if we are
6 present during this questioning, there would be no problem and we would not waste this
7 time in Court, or we just forget this part of the proofing session and we move on with the
8 testimony of the witness who has been given an opportunity to check his material.
9 Again, there's a difference where the Prosecution at other places, then they say, for
10 example, same statement, it says at 2558, that's the page number, line 775 to 779, the
11 witness is asked to clarify where là, the word "là" as L-A, in quote unquote, is when the
12 witness said (Redacted) That's a clarification. And even
13 though we don't agree with that, that, at a limit, that could be entertained. But then we
14 go on again and we say -- we ask to read this portion and indicate whether it is accurate.
15 If it wasn't accurate, the witness would not be with the Prosecution. The question in
16 itself begs the issue that they are trying to either bring the witness's attention to a specific
17 part of his testimony, or that they are trying to get more information or simply to know
18 what the witness reaction will be to a specific question that will be asked of him. That's
19 where, in our respectful opinion, we -- we go beyond the witness -- the spirit and letter of
20 the protocol.
21 And some of these questions were asked about material to which he had already brought
22 corrections. So we finish the issue of the clarification and corrections, then we go back
23 and we say, well, is this really accurate? And we don't have the answer. That's the
24 biggest issue, Mr President. Thank you. I'll stop here.
25 PRESIDING JUDGE FREMR: Thank you.

Trial Hearing
WITNESS: DRC-OTP-P-0963

(Open Session)

ICC-01/04-02/06

1 Ms Solano, any further reaction?

2 MS SOLANO: No, your Honour. Just to point out, as I said before, that the witness did
3 have 1200 pages of materials to read and the Prosecution does not see any impropriety or
4 deviation from the protocol.

5 PRESIDING JUDGE FREMR: Thank you.

6 So I think I can at this moment conclude that we will thoroughly consider both Defence
7 request and response given by Prosecution. We will probably divide issues that I guess
8 can wait because we are anyway intending to make or to present our position on
9 submissions that we asked from parties on issues concerning conduct of proceedings. I
10 meant submission made by Defence on 16 March, if I'm not wrong, and corresponding
11 submission made by Prosecution, and issues that probably requires some more immediate
12 reaction; for example, like a request for disclosure of audio video of day 11. So those
13 urgent issues we will decide on in due course.

14 Now we can continue with testimony, so please bring witness into the courtroom.

15 Just for the record, we will still -- we are still remaining in open session because witness
16 even if protected is coming below the public gallery so it can't be visible to the public.

17 (The witness enters the courtroom)

18 PRESIDING JUDGE FREMR: Good morning, Mr Witness. Can you hear me?

19 WITNESS: DRC-OTP-P-0963

20 (The witness speaks French)

21 THE WITNESS: (Interpretation) Yes.

22 PRESIDING JUDGE FREMR: Very well. Mr Witness, you are going to testify before the
23 International Criminal Court, so on behalf of this Chamber I would like to welcome you to
24 the courtroom.

25 THE WITNESS: (Interpretation) Thank you.

1 PRESIDING JUDGE FREMR: This Chamber has been established to try the case of the
2 Prosecutor against Mr Bosco Ntaganda, and you are called to testify to assist us in our
3 search for the truth. You will be asked questions posed by the Judges and lawyers in the
4 courtroom, and in this connection I would like to guide you.

5 Please, Mr Witness, listen carefully to those questions. It is very important that you make
6 sure that you understand the question before you answer it. If you do not understand,
7 feel free to ask for the question to be repeated or rephrased.

8 We want you to tell the truth and tell us only what you really saw or heard or sensed
9 yourself. If you didn't see or hear it yourself, but you found out some other way, then
10 you should explain how. You may be asked about events that happened many years
11 ago, so it is natural that you may not remember all details. It doesn't matter, please
12 testify just on that which you remember. Don't guess, don't make things up. There is
13 nothing wrong in saying, "I don't know" or "I don't remember." Do you understand all
14 this, Mr Witness?

15 THE WITNESS: (Interpretation) Yes.

16 PRESIDING JUDGE FREMR: Very good.

17 Mr Witness, let me now explain to you how the protective measures work that the
18 Chamber has put in place for your testimony. As you see, you are sitting in a place
19 where the public here in this building cannot see you. In addition, face distortion is
20 applied, which means that your face is blurred on the camera images and the public
21 cannot see your face during the testimony. We also decided to order voice distortion,
22 which means that the public will not be able to identify you by your voice as it has been
23 disguised. And we ordered the use of pseudonym. This means that we will all refer to
24 you only as "Mr Witness" to make sure that the public does not know your name.

25 When you answer questions that will not give away who you are, we will do so in open

1 session, which means that the public can hear what is being said in the courtroom.

2 When you are asked to describe anything that relates specifically to you, we will do this in
3 a private session. For example, at the very start when a few general questions about you
4 as a person will be asked or when you are asked to mention facts that might reveal your
5 identity, where you live or your profession, then there is no broadcast and no one outside
6 the courtroom can hear your answer.

7 Please do not refer to these details later on during your testimony whenever we are in
8 open session. If ever anything gets said during open session which should have been
9 said in private session, we will do our best to protect this information.

10 Your testimony will be broadcast on a delay and we can remove any such remarks from
11 the broadcast which will be heard by the public and from the public transcript of the
12 proceedings.

13 The Chamber recognizes that your security and well-being is important during the course
14 of this trial. If at any point you feel that you would like a brief break from giving your
15 testimony or you feel unwell, do not hesitate to let us know by raising your hand. Do
16 you understand, Mr Witness?

17 THE WITNESS: (Interpretation) Yes.

18 PRESIDING JUDGE FREMR: Mr Witness, you have been assigned, it is also an
19 important point, you have been assigned a lawyer to provide you with legal advice about
20 possible self-incrimination. Ms Clément, who is present here in the courtroom, has
21 requested that you be given certain assurances by the Chamber. The Chamber will
22 decide on that request this morning, and until it has been decided, the lawyers will not be
23 permitted to ask you any questions that relate to self-incriminating information. Do you
24 understand?

25 THE WITNESS: (Interpretation) Yes.

1 PRESIDING JUDGE FREMR: Now we have to move to solemn undertaking. You will
2 find a piece of paper in front of you with the solemn undertaking. Yes, that is that.
3 Please now make your solemn undertaking to tell the truth by reading out the declaration
4 on the piece of paper you have in your hands.

5 THE WITNESS: (Interpretation) I solemnly undertake to speak the truth, the whole
6 truth and nothing but the truth.

7 PRESIDING JUDGE FREMR: Thank you very much, Mr Witness. So it means you are
8 now under oath. You will have already been informed by representatives of the Victims
9 and Witnesses Unit and afterwards by representatives of the Prosecution about the
10 importance of speaking the truth. You need to be aware that it is an offence within the
11 jurisdiction of this Court to give false testimony. Do you understand that?

12 THE WITNESS: (Interpretation) Yes.

13 PRESIDING JUDGE FREMR: Good.

14 Now a few practical matters you should have in mind when giving your testimony.
15 Everything we say here in the courtroom is written down and what you say is interpreted
16 for us into English. It is, therefore, important for you to speak clearly and to speak at a
17 slow pace, approximately like me now. We want to make sure that your words can be
18 well understood by the interpreters and then by the rest of us. Please speak into the
19 microphone and only start speaking when the persons asking you the question has
20 finished.

21 To allow for the interpretation everyone here has to wait a few seconds before starting to
22 speak. So I recommend to you when the lawyer has asked his or her question, please
23 count in your head to three and only then give your answer.

24 If you have any questions yourself, raise your hand so we know that you wish to say
25 something, we will then give you the opportunity to speak. Have you understood all

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1 that, Mr Witness?

2 THE WITNESS: (Interpretation) Yes.

3 PRESIDING JUDGE FREMR: Very well. So thank you. And now we can start with
4 your testimony.

5 Ms Solano, you have the floor.

6 MS SOLANO: Thank you, your Honour. May we go into private session, please.

7 PRESIDING JUDGE FREMR: For sure.

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

9 (Private session at 10.26 a.m.)

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4 (Open session at 10.44 a.m.)

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

6 PRESIDING JUDGE FREMR: Thank you.

7 Ms Solano, please continue.

8 MS SOLANO: Thank you, your Honour.

9 Q. Just to confirm, these leaders that you've just mentioned, were they leaders of the
10 UPC and FPLC at the time when you joined?

11 A. I beg your pardon? Your Honour, if you could increase the volume, please, the
12 volume of the microphone. I don't hear too well.

13 Q. Can you hear me now?

14 A. Oui, ça va.

15 Q. Sir, you mentioned Mr Lubanga, Mr Kisembo, Mr Ntaganda and Mr Kahwa. Were
16 these individuals leaders of the UPC and FPLC at the time?

17 A. Yes.

18 PRESIDING JUDGE FREMR: Mr Bourgon.

19 MR BOURGON: My colleague just asked a question at the time, but may we be a bit
20 more precise what time she's talking about because all we know is 2002 that he
21 interrupted his studies. We know nothing else. Thank you.

22 PRESIDING JUDGE FREMR: Ms Solano.

23 MS SOLANO: Your Honour, I will return to that question when we move back into
24 private session if that's okay.

25 PRESIDING JUDGE FREMR: Okay.

1 MS SOLANO:

2 Q. Sir, where was the UPC based in 2002 if you know?

3 A. Well, it depended. The various bases were in places. It depended on the month.
4 If I could give you a summary. We didn't begin in Bunia.

5 Q. At this stage can you please tell me where, if you can, where was Mr Lubanga based
6 in 2002?

7 A. Lubanga was in Bunia in 2002.

8 THE INTERPRETER: Interpreter correction: In the previous reply the witness said that
9 in general terms the group was based in Bunia, but we did not begin in Bunia.

10 MS SOLANO:

11 Q. Sir, who was in control of the town of Bunia in 2002?

12 A. Well, it would depend on the month and the period.

13 Q. In August 2002.

14 A. Thank you. In August 2002, we regained the town of Bunia.

15 Q. Who did you regain it from?

16 A. From the APC.

17 Q. Were you already with the UPC when you regained Bunia?

18 A. I was not amongst the people who took part in that, but I was at the training centre.

19 MS SOLANO: May we move into private session, your Honour, please?

20 PRESIDING JUDGE FREMR: Certainly.

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

22 For the public, it is because this witness is protected, so he was given a guarantee that no
23 fact that could reveal his identity could be made public.

24 (Private session at 10.48 a.m.)

25 (Redacted)

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13 (Open session at 11.00 a.m.)
14 THE COURT OFFICER: We are back in open session, Mr President.
15 PRESIDING JUDGE FREMR: Thank you, court officer.
16 So we will break now for 30 minutes, but before doing that I would like to assure myself,
17 Ms Solano, you, the Prosecution, you asked to use for examination of this witness 10
18 hours; am I right?
19 MS SOLANO: Yes, your Honour.
20 PRESIDING JUDGE FREMR: So just to say that from the Chamber's point of view this
21 estimation seems reasonable in the light of prospective extent of this testimony, so you, or
22 we granted you those 10 hours, so please do your best to keep this time limit.
23 Now we break and we will reconvene half past 11.
24 THE COURT USHER: All rise.
25 (Recess taken at 11.01 a.m.)

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1 (Upon resuming in open session at 11.33 a.m.)

2 THE COURT USHER: All rise.

3 Please be seated.

4 PRESIDING JUDGE FREMR: We will now continue with oral decision on Rule 74
5 request. And our decision is the following:

6 The Chamber has received the Prosecution's observations in relation to the question of
7 assurances pursuant to Rule 74(3)(c), noting in particular that the Prosecution considers
8 that assurances are appropriate in this case.

9 Defence, do you have any further observations you would like to make at this point?

10 MR BOURGON: No observation, Mr President.

11 PRESIDING JUDGE FREMR: Okay.

12 So our decision is, and it's addressed mainly to the witness and Ms Clément, that the
13 Chamber will provide the witness with the Rule 74(3)(c) assurances.

14 Therefore, Ms Clément, if any questions are asked that could lead to self-incrimination of
15 your client we will hear the witness answers in private session.

16 And, Mr Witness, there may be questions -- wait a minute, please, Ms Clément. I will
17 give you the floor.

18 Mr Witness, there may be questions asked to you for which you feel that answering them
19 truthfully may incriminate you because these questions relate to your own conduct. In
20 such cases, we will require you to answer the question, but we can assure you that your
21 answer will be kept confidential and will not be disclosed to the public or to the
22 government of any country. The Prosecution has further assured that they will not
23 themselves use this information to prosecute you before the ICC provided that you tell the
24 truth.

25 Mr Witness, do you understand all this?

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1 THE WITNESS: (Interpretation) Yes.

2 PRESIDING JUDGE FREMR: Ms Clément, do you want to say anything?

3 MS CLÉMENT: (Interpretation) No, Mr President. And I thank you.

4 PRESIDING JUDGE FREMR: Very well.

5 Anyway, in this connection, I request the parties to be vigilant about going into private
6 session for areas of evidence that are likely to elicit responses that might self-incriminate
7 this witness.

8 Now, we can continue with examination of the witness.

9 Ms Solano, is there a need to go into private session for your prospective questions?

10 MS SOLANO: Your Honour, I can ask one question in public session, if that assists.

11 PRESIDING JUDGE FREMR: Okay, please.

12 MS SOLANO:

13 Q. Sir, before the break you spoke about the UPC and the FPLC and its leaders. Was
14 there a difference between the UPC and the FPLC, and if so, what was the difference?

15 A. Well, according to my knowledge, the UPC -- well, it was written "UPC/FPLC." We
16 considered that the UPC/FPLC -- well, to my mind I do not believe that there was any
17 difference apart from the fact that the FPLC was the military wing.

18 Q. The leaders you mentioned earlier, Mr Lubanga, Mr Ntaganda, Mr Kahwa,
19 Mr Kisembo, were they leaders of the UPC or the FPLC?

20 A. I believe that the UPC/FPLC is one and the same thing.

21 MS SOLANO: Your Honour, may we go into private session, please.

22 THE INTERPRETER: Overlapping speakers. Could counsel please be requested to
23 observe the five-second pause. Thank you.

24 PRESIDING JUDGE FREMR: Ms Solano, you are a bit fast. Please keep the three
25 seconds pause. Thank you.

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1 MS SOLANO: I will do so, your Honour. Thank you.

2 PRESIDING JUDGE FREMR: So probably you need to repeat -- now we are moving to
3 private. Okay, let's move into private.

4 (Private session at 11.39 a.m.)

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15 (Recess taken at 12.59 p.m.)
16 (Upon resuming in open session at 2.33 p.m.)
17 THE COURT USHER: All rise.
18 Please be seated.
19 PRESIDING JUDGE FREMR: Good afternoon, everybody. Before we continue with
20 examination of Witness P-963, the Chamber will deliver its ruling on the Defence request
21 for access to a portion of the witness preparation session of session with this Witness
22 P-963.
23 The Chamber was this morning seized of a request for access to a portion of the video
24 recording of the witness preparation session with Witness P-963, and heard oral
25 submissions on the matter from the parties. The Chamber has also received a copy of the

1 witness preparation note.

2 The Chamber does not consider that the Defence submissions raise issues warranting
3 disclosure of the recording of the witness preparation session. Regarding the request for
4 the witness to confirm the accuracy of prior statements, the Chamber considers that this
5 falls within the scope of permitted witness preparation. It's noted that on a number of
6 occasions the Prosecution specifically drew the witness' attention to particular portions of
7 the statements, and even to particular words or phrases. In such circumstances, even
8 where the question is put neutrally, care should be taken not to have the effect of seeming
9 to emphasise the importance of specific issues. The Prosecution should take this into
10 account in future. The Chamber notes, however, that predominantly the witness'
11 attention was drawn to portions where there were apparent errors, especially on technical
12 matters.

13 Further, consistent with previous rulings, the Chamber considers that documents may be
14 presented to a witness in order to ascertain whether he can usefully comment on them
15 during his testimony. Provided the scope of any questioning is narrowly tailored to that
16 purpose, the Chamber finds that it falls within the scope of permitted witness preparation.
17 In this instance, that appears to have been the case.

18 That concludes the Chamber's ruling.

19 And in addition, the Chamber notes that it has received additional written submissions,
20 they are submissions number 1214, then 1217, then 1227 and 1229, regarding witness
21 preparation more generally from the parties and participants, and will address those
22 submissions separately to the extent necessary at a subsequent time.

23 Now we can continue with examination of the witness.

24 And one comment to Prosecution: Ms Solano, I am fully aware of the fact that you are
25 probably a bit pressed by time, but you still have a lot of time. I checked it and you have

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1 more than eight hours, so I think there is no need to hurry up, because sometimes I felt
2 that maybe you tried to be most efficient, but sometimes it had even opposite effect
3 because we had to repeat, so please again observe pauses, okay? Thank you very much.

4 And you may proceed, Ms Solano.

5 MS SOLANO: Thank you, your Honour.

6 Q. Good afternoon, sir. In November 2002 when you returned -- your Honour, may
7 we go into private session please?

8 PRESIDING JUDGE FREMR: Important point. Thank you.

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

10 (Private session at 2.38 p.m.)

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9 (Open session at 4.29 p.m.)

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

11 PRESIDING JUDGE FREMR: Thank you, court officer.

12 Mr Witness, we will adjourn for today. I would like to thank you because you are doing
13 really very well. You remained concentrated for whole day. You responded diligently
14 to all questions put to you. And you also followed all our guidance, including keeping
15 pauses. So please tomorrow I hope you will proceed in the same way. For today it's the
16 end of your testimony, so you can take some rest. And one important instruction from
17 my part, you must not discuss your testimony, content of this testimony with anybody
18 else, neither with your family, nor with your friends. Do you understand?

19 THE WITNESS: (Interpretation) Yes, your Honour.

20 PRESIDING JUDGE FREMR: Very well.

21 So please now, court usher, escort Mr Witness out of the courtroom.

22 (The witness stands down)

23 PRESIDING JUDGE FREMR: And my last question goes, as usually to calling party, to
24 Ms Solano. Ms Solano, I just got information you still have enough time at your disposal,
25 more than six hours, but my impression was that you succeeded to cover a lot of areas.

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1 So may I for the sake of getting just your rough estimation, do you think that you will
2 really need all those 6 and almost a half hour or do you think it would be feasible to finish
3 maybe by tomorrow, because today you had five hours? What do you think? How do
4 you see it at the moment?

5 MS SOLANO: Your Honour, at this point I do think I will need all day tomorrow and
6 that I will need my full ten hours because I am intending to play to the witness the radio
7 intercept, which is -- it will take some time. I will have to play it for him once and then
8 come back to it with questions. So at this stage, your Honour, I do still think I will need
9 my ten hours.

10 PRESIDING JUDGE FREMR: It's okay. You are entitled to it. Please be careful and
11 not, as some of your colleagues, don't leave those videos at the very end of your time,
12 because it could make some pressure to all of us.

13 So we adjourn now and we will continue in the same time regime like today, tomorrow
14 9.30.

15 THE COURT OFFICER: All rise.

16 (The hearing ends in open session at 4.32 p.m.)