

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 Tuesday, 12 April 2016
9 (The hearing starts in open session at 9.34 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. We will start with -- court officer, please
14 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, court officer.
20 Now appearances please in usual order.
21 MS SOLANO: Good morning, Mr President. For the Prosecution this morning appear
22 Ms Nicole Samson, senior trial lawyer; Ms Marion Rabanit, associate trial lawyer;
23 Ms Kristy Sim, assistant trial lawyer; Ms Dianne Luping, trial lawyer; Ms Selam Yirgou,
24 case manager; and I am Julieta Solano, trial lawyer.
25 PRESIDING JUDGE FREMR: Thank you, Ms Solano.

1 Defence, please.

2 MR BOURGON: (Interpretation) Good morning, Mr President. Good morning,
3 your Honours. Good morning to all those present in the courtroom. Representing
4 Bosco Ntaganda, who is present with us this morning, Ms Sandrine De Sena,
5 Maître Dignité Bwiza, and Maître Isabelle Martineau and myself, Stéphane Bourgon.
6 Thank you, Mr President.

7 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

8 Now Legal Representatives of Victims, please.

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

11 MS GRABOWSKI: Good morning, Mr President, your Honours. The victims of the
12 attacks are today represented by myself, Ms Anne Grabowski, from the Office of Public
13 Counsel for Victims.

14 PRESIDING JUDGE FREMR: Thank you, Ms Pellet. Thank you, Ms Grabowski.
15 And duty counsel, please.

16 MS CLÉMENT: (Interpretation) Yes, Mr President. Good morning, your Honours.
17 Héléne Clément, duty counsel for the witness.

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

19 We are starting today without witness because the Chamber would like to first render our
20 oral ruling or our, rather, oral rulings on three Defence requests. So this oral ruling
21 concerns Defence request number 1222, then number 1230 and request number 1233
22 regarding certain materials disclosed in relation to upcoming witnesses.

23 We will start with our decision on Defence request number 1222, dated 21 March 2016.

24 Pursuant to the redaction protocol adopted in this case, annex A to filing number 411, and
25 in accordance with our previous decision number 1241, the Chamber finds that the

1 redaction applied to the number of children of the witness must be lifted, and that the
2 names of the parents of the witness may remain redacted. In so deciding, the Chamber
3 considers that, given the number of children of the witness was left inadvertently
4 unredacted at paragraph 9 of the witness' statement, there is no need for this information
5 to remain redacted on page 1 of the statement.

6 With respect of the names of the parents of the witness, the Chamber notes that this is
7 included only as a part of the witness' biographical information, forms no part of the
8 witness' narrative of events and that their identity does not appear to be of relevance to
9 any known issue in the case.

10 In respect of request number 1230, dated 23 March 2016.

11 One, concerning document DRC-OTP-2082-1280, as noted in the Prosecution's response,
12 the information redacted at both pages 1298 and 1299 was already inadvertently disclosed
13 to the Defence. Given the information is therefore already known to the Defence, the
14 Chamber considers that the redactions may be lifted.

15 Second, concerning document DRC-OTP-2084-0969, the Chamber notes that the identity
16 of the witness' parents forms no part of his expected testimony and appears not to be
17 relevant to any known issue in the case. Accordingly, the redactions applied under the
18 standard category B at pages 0981 and 0982 may be maintained.

19 Third, concerning document DRC-OTP-2088-0579, the Chamber finds that the information
20 redacted at paragraphs 1 and 3 is covered by Rule 81(1) of the Rules and therefore is not
21 subject to disclosure. These two redactions may therefore be maintained.

22 And, fourth, concerning document DRC-OTP-2080-0287, the Chamber notes that the
23 information redacted at paragraphs 22 and 23 is indeed covered by standard category B as
24 it concerns identifying and contact information of family relatives of the witness who are
25 not related to any known issue in the case. These redactions shall therefore be

1 maintained.

2 The Chamber considers that the redactions applied at paragraphs 24 and 25 are not fully
3 covered by standard category B as the information redacted goes beyond identifying and
4 contact information. Nonetheless, the Chamber authorises non-disclosure as,
5 nothing that the information is not relevant -- I'm sorry, as noting - noting - that the
6 information is not relevant to any known issue in the case, it considers that the redaction
7 is necessary to protect these individuals' safety. The redactions applied at paragraphs 24
8 and 25 shall consequently be maintained at non-standard redactions.

9 Additionally, concerning the Defence's request seeking the disclosure of the document
10 referred to as 'Track 1,' and having regard to the information contained in its transcription,
11 which was provided to the Chamber as annex E to the Prosecution response, the Chamber
12 notes that the document consists of the witness' answers to the first part of a biographic
13 and security questionnaire during a one-hour interview conducted by representatives of
14 the Prosecution. The Chamber observes that this document is essentially confined to
15 issues such as the witness' current contact details, as well as details about his family
16 members and their current location, and that any disclosable information therein was
17 discussed in substance and in further detail during subsequent interviews, the recording
18 of which was provided to the Defence, referred to as 'Track 2' and 'substantive interview.'
19 Accordingly, the Chamber considers that the document referred to as Track 1 is not
20 subject to disclosure and rejects this part of the request.

21 In relation to Defence request number 1233, dated 24 March 2016, the Chamber will
22 address only the portions of the request which have not already been rendered moot by
23 the recent lifting of further redactions by the Prosecution.

24 Having reviewed the relevant material related to the outstanding redaction appearing on
25 page 5 of the witness' victim participation application form, the Chamber considers that

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1 the individual whose identity is redacted does not appear to form part of the witness'
2 narrative of events. Accordingly, on the basis that the individual is of no relevance to
3 any known issue in the case, the Chamber decides that the redaction may be maintained
4 at this stage. However, the Prosecution must take steps prior to the witness testifying to
5 ascertain whether this individual is indeed a child of the witness, and if not, must lift the
6 redaction to the name of this individual forthwith.

7 The Chamber further reminds parties to engage in consultations on all specific requests to
8 lift redactions and to only seize the Chamber where they cannot first resolve the matter
9 inter partes.

10 This concludes the Chamber's oral ruling.

11 So now we will continue with the testimony of our current witness. So, court usher,
12 please escort Mr Witness into the courtroom.

13 (The witness enters the courtroom)

14 PRESIDING JUDGE FREMR: Good morning, Mr Witness.

15 WITNESS: DRC-OTP-P-0963 (On former oath)

16 (The witness speaks French)

17 THE WITNESS: (Interpretation) Good morning.

18 PRESIDING JUDGE FREMR: Mr Witness, welcome back. Are you feeling okay today?

19 THE WITNESS: (Interpretation) Not really.

20 PRESIDING JUDGE FREMR: But I understand that you will be able to testify, so even if
21 not you feeling perfect, are you ready to testify?

22 THE WITNESS: (Interpretation) I think that maybe my counsel has something to say to
23 you.

24 PRESIDING JUDGE FREMR: Ms Clément.

25 MS CLÉMENT: (Interpretation) Mr President, maybe we could go into private session.

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- 1 Are we in private session, Mr President?
- 2 PRESIDING JUDGE FREMR: No, no. We will move there.
- 3 So, court officer, please let's move into private session now.
- 4 (Private session at 9.49 a.m.)
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13 (Open session at 10.01 a.m.)

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

15 PRESIDING JUDGE FREMR: Thank you, court officer.

16 So according our schedule, we should today continue in examination of Witness

17 number 963 by Prosecution. For the information of public, because this witness is a

18 protected one, it's pretty possible that whilst part of his testimony could be conducted in

19 private session, it depends on questions that will be put to him because in fact he got

20 guarantee that his identity will not be revealed by the Court, so depending on questions,

21 we could be either in open or private session.

22 So now, Ms Solano, my question goes to you, subject to questions you would like to put to

23 the witness, could we remain in open session or it's safer to go to private one?

24 MS SOLANO: Your Honour, I request private session please.

25 PRESIDING JUDGE FREMR: All right.

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17 (Open session at 11.05 a.m.)

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

19 PRESIDING JUDGE FREMR: Thank you.

20 Two points from my part: First one, concerning the issue we have been informed about
21 at the beginning of this session, I will not be more concrete.

22 So it's just a guidance to Mr Witness and Ms Clément, in case that the same problem of the
23 same kind would repeat, please contact immediately VWU because it is them who are
24 primarily in charge of those issues. So don't wait until the next session.

25 Please, and the same for you, Mr Witness, you have, I guess, even telephone contact on

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1 VWU, so if the same kind of problems would repeat, please contact VWU immediately.

2 Do you understand? Because, I guess, they could be of assistance to you.

3 THE WITNESS: (Interpretation) Yes. Yes, I had already contacted them before
4 coming here and even before informing my lawyer.

5 PRESIDING JUDGE FREMR: Then very well.

6 The second issue concerns way of examination. Ms Solano, you said that your questions
7 will just -- would reveal identity of Mr Witness. I can't agree because if I look back to the
8 issues; for example, topic of pillaging, vast majority of that concerned just pillaging made
9 by the UPC and commanders and only small part of that concerned Mr Witness. The
10 same with the issue of killing the priest. Again, I don't see any reason why 80 percent of
11 this issue couldn't be conducted or couldn't be examined in open session.

12 You very well know that Prosecution requested for conducting this testimony totally in
13 private session and, according our decision, we rejected this request. We said only those
14 parts who really need such a regime. And it really seems that there is some attempt to
15 circumvent this decision, so please be careful in further part of examination, make
16 distinction between those parts that clearly could be made in open session because it's
17 obvious that it's in the interest of the justice and in the interest of fair trial. So please
18 have it in mind.

19 Now we will break and we will continue 11.40.

20 THE COURT USHER: All rise.

21 (Recess taken at 11.08 a.m.)

22 (Upon resuming in open session at 11.44 a.m.)

23 THE COURT USHER: All rise.

24 Please be seated.

25 PRESIDING JUDGE FREMR: We will now continue with the further part of testimony of

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1 Witness P-963. Ms Solano, open or private session?

2 MS SOLANO: Private session, your Honour, please. And, your Honour, with your
3 leave I would like to ask for authorisation to make a brief submission in private session.

4 PRESIDING JUDGE FREMR: Before the session?

5 MS SOLANO: In private session.

6 PRESIDING JUDGE FREMR: In private session, okay. So let's move into private
7 session.

8 (Private session at 11.45 a.m.)

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- 10 (Open session at 12.07 p.m.)
- 11 THE COURT OFFICER: We're in open session, Mr President.
- 12 PRESIDING JUDGE FREMR: Thank you.
- 13 Ms Solano, please proceed.
- 14 MS SOLANO: Thank you, your Honour.
- 15 Q. Sir, do you recognize any features of this map, and if so, can you say -- can you
- 16 point them out?
- 17 A. I haven't really understood. What do you mean "features? Can you replace it by
- 18 another word, please?
- 19 Q. For example, any of the roads or if you see any buildings on it, could you please
- 20 explain to the Judges what they are? All you need to do is say the names. You don't
- 21 need to give any information about them.
- 22 A. Yes.
- 23 Q. Please go ahead. Can you tell us about the roads? Can you tell us where the
- 24 roads lead?
- 25 PRESIDING JUDGE FREMR: But, Ms Solano, shouldn't we start with the first question,

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1 what is this picture showing, what village or --

2 MS SOLANO: Yes, your Honour. He answered that question in private session, so
3 I can ask him that question again.

4 PRESIDING JUDGE FREMR: Sorry. I have omitted that. So please proceed.

5 MS SOLANO: But I can say, your Honour, for the benefit of the public that the witness
6 said that this is an image of the city of Mongbwalu.

7 PRESIDING JUDGE FREMR: Very well.

8 MS SOLANO:

9 Q. Sir, do you see any roads on this document, and if so, can you tell us where they
10 lead?

11 A. Could I use a pen possibly? Otherwise, how can I do it here?

12 MS SOLANO: Could we place a copy.

13 Q. Yes. Can you just put the stylo over the image so we can see, if we can see, what
14 you're doing on our screens.

15 A. I know this road here.

16 Q. We cannot see that.

17 MS SOLANO: So maybe if the usher can assist.

18 THE INTERPRETER: Message from the English booth: Could counsel please be
19 requested to observe the pause so that there is no further overlapping. Thank you.

20 PRESIDING JUDGE FREMR: And, Ms Solano, please observe pauses. I got this
21 message from the interpreter's booth.

22 THE WITNESS: (Interpretation) It's not working.

23 MS SOLANO: Your Honour, I've given the usher a paper copy of this image. I've
24 folded the top and the bottom of the document. And if the usher can remain next to the
25 witness, that should ensure that as the Defence wants he does not yet see the top or the

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- 1 bottom of the document.
- 2 PRESIDING JUDGE FREMR: All right.
- 3 MS SOLANO: Should we be on the same channel to see?
- 4 PRESIDING JUDGE FREMR: Give us a moment.
- 5 THE COURT OFFICER: The document will be displayed on the evidence 2 channel.
- 6 PRESIDING JUDGE FREMR: So the process is still ongoing?
- 7 MS SOLANO: Your Honour, it might just take too long, so if I can move to another topic
- 8 and then perhaps over the lunch hour we can try to resolve the technical difficulty.
- 9 PRESIDING JUDGE FREMR: Yes, good idea. Thank you very much.
- 10 MS SOLANO: But I regret that we have to go into private session, your Honour, please.
- 11 PRESIDING JUDGE FREMR: So let's move into private session now, please.
- 12 (Private session at 12.15 p.m.)
- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 (Redacted)
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1 (Redacted)

2 (Redacted)

3 (Open session at 12.21 p.m.)

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

5 PRESIDING JUDGE FREMR: Thank you.

6 Ms Solano, please proceed.

7 MS SOLANO:

8 Q. Sir, what can you tell the Court about this failed operation in Lipri in February 2003
9 by Linganga? Who was Linganga?

10 A. Linganga was our UPC officer who was in Bunia. And we were told that he was at
11 Bosco's headquarters because it was Bosco who at the time was in Bunia, and Kisembo
12 was in Mongbwalu. Linganga was away. We were told that he had not respected the
13 orders and that he had gone to attack Lipri alone, and he lost the battle. And he also lost
14 an item of heavy weaponry, notably the grenade launcher, so he was beaten.
15 And the Lendu, the enemy, recuperated or retrieved this grenade launcher. And it was
16 said that the grenade launcher was to be found in Kobu. And we were due to go and
17 pick up or seek for that weapon at all costs.

18 Q. (Microphone not activated)

19 THE INTERPRETER: Microphone, please counsel.

20 PRESIDING JUDGE FREMR: Microphone, please.

21 MS SOLANO:

22 Q. Sir, you said the FNI had established their état-major at Kobu. What was supposed
23 to happen to the Lendu population in those villages during the UPC attack?

24 A. I didn't really understand your question. What do you mean "what happened to"?
25 Could you replace that word? Could you please change that word?

1 Q. You've said that the operation was intended to attack the Lendu état-major at Kobu.
2 What, if anything, was supposed to happen with the Lendu civilians at Kobu and at the
3 other villages that you mentioned, Lipri and Bambu?

4 A. Well, they were to drive them all out. It was up to us to occupy the location and for
5 them to leave, whether they would either leave or they would be killed.

6 Q. Who planned this attack?

7 A. It was General Kisembo who was in Mongbwalu. He was the one who ordered us
8 to leave for Kobu.

9 Q. Were any other members of the UPC état-major involved in the planning of this
10 operation to your knowledge?

11 A. Well, the operation was a coordinated one. We were due to attack Kobu, and there
12 were troops that were supposed to attack Bambu via the Nizi road. So they were ready
13 in Nizi and they attacked Bambu. And there were the third group of troops that were in
14 Bunia and they attacked Lipri. So the same operation was due to take place on the very
15 same day.

16 Q. Who led the troops in the attack on these three locations? Who led the troops at
17 Kobu? Who led the troops at Bambu? Who led the troops at Lipri?

18 A. In Kobu it was Commander Salumu with his brigade. In Nizi it was the
19 commander by the name of Mai Mai who attacked Bambu. I don't know his real name.
20 He was called Mai Mai. He attacked Bambu with his brigade. I don't know whether it
21 was a brigade or a battalion, let me say with his troops. And then in Lipri, I think I
22 forgotten the name of the commander. It might come back to me at a later stage.

23 Q. To your knowledge, was Bosco Ntaganda involved in this attack?

24 A. I believe so because there were troops, there was a brigade of troops that had come
25 from Bunia, and at the time it was said that Bosco Ntaganda was the defence minister,

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1 something like that.

2 So in view of the fact that he was also in charge of operations, he had both hats if you like,
3 both minister of defence and commander of operations, to my knowledge the -- it might
4 have been his brigade because he was the superior leader in Bunia. There was no other
5 chief apart from the president, who was not a military man, of course. I believe it was he
6 who organised things there. And on our side in Mongbwalu it was General Kisembo
7 himself who was there.

8 PRESIDING JUDGE FREMR: Mr Bourgon.

9 MR BOURGON: Thank you, Mr President. There appears to be a material error in the
10 transcript at page 54, at line 15. The witness began his answer by saying, at least in the
11 English transcript "In Kobu it was Commander Salumu with his brigade," whereas in the
12 French transcript the answer begins with "À Lipri, c'était le commandant Salumu avec sa
13 brigade."

14 PRESIDING JUDGE FREMR: Mr Witness, just to clarify this point, so you have been
15 previously asked about those three groups of troops. And Commander Salumu,
16 according to your knowledge, was at what place? Was it Kobu or another place?
17 Commander Salumu.

18 THE WITNESS: (Interpretation) I thank you, Mr President. I believe that before
19 answering you, I think I already underscored this point during my preparatory session in
20 the documents. It was a problem of translation. I believe that -- I don't know whether
21 you gave these instructions to the Defence. I said that the Kobu operation was
22 Commander Salumu. He was not in Lipri. I think I already rectified this with regard to
23 the location during my preparation.

24 PRESIDING JUDGE FREMR: Thank you, Mr Witness. Now it's clear.

25 Ms Solano, please.

1 MS SOLANO: Thank you, your Honour.

2 Q. How many troops did the UPC send for the attack on Lipri, Bambu, Kobu?

3 A. I haven't quite understood your question.

4 Q. How many UPC soldiers went to attack Lipri, Bambu and Kobu?

5 A. Each time it was at least one brigade. We were one brigade on the other side.

6 Nizi there was one brigade and in Lipri there was another brigade. And there were
7 different people leading the brigades, different heads.

8 Q. You said that the attack was coordinated and that it was -- and that it happened on
9 the same day. How did the UPC achieve this coordination?

10 A. Things had been organised. We were organised. Each headquarters, the various
11 commanders, they spoke to one another using the communications equipment, Motorolas,
12 Thurayas. And we ourselves, our brigades, we had communications amongst the three
13 brigade commanders, Salumu and the one other in Lipri, you see, those commanders
14 communicated with one another. And even at the time of the attack, the time of the
15 attack was very clear. It was stressed.

16 THE INTERPRETER: Interpreter correction: Commander Mai Mai was also mentioned
17 in that reply.

18 MS SOLANO:

19 Q. Sir, may I remind you not to provide any information of an identifying nature.
20 But did the troops receive any instructions or orders before they left for the operation?

21 A. Yes, indeed. The first Foren, the first gathering, was in Mongbwalu, that was head
22 by the chief of staff himself at Appartements camp. And then the second Foren, the
23 second gathering, the first time that we had that, that the head of staff, that was to
24 encourage the troops, that was in Appartements. And they told the troops what the
25 objectives were and many other things.

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1 He talked to us about the Kobu attack. The same day in the evening the troops left for
2 fungua musururu, and the infantry, well, the infantry left and we -- the infantry had left
3 on foot and we, we left with the commander and the vehicle, at least three vehicles with
4 munitions and (Redacted), and we went all the way to Kilo. We spent the night in
5 Kilo, and the next morning before the attack, because we had begun the attack at about 8
6 to 9, there was another Foren, a gathering at 6 in the morning, and the Kobu objective was
7 explained to us and, once again, it was the same piga na kuchaji as ever, the same thing,
8 and at 8 in the morning -- well, once again, the --

9 THE INTERPRETER: The witness lapses into Swahili.

10 THE WITNESS: (Interpretation) -- for the attack and our friends were supposed to attack
11 Bambu. And Lipri had already begun the operation, and so we had to make haste. And
12 we had to move quickly so that we not -- we didn't want one of the brigades to be overrun
13 by the enemy. You see there were the -- we were conducting operations in the three
14 localities, the three locations.

15 MS SOLANO:

16 Q. You said the chef état-major told you at Mongbwalu what the objectives of the
17 operations were. What did he say?

18 A. "You're going to Kobu to fight and destroy the headquarters in Kiza, take weapons,"
19 take --

20 THE INTERPRETER: No, correction.

21 THE WITNESS: -- "get the (Redacted) that Kiza has and open the road because we
22 can't do anything, Kabakaba is far away. We need that road. We need to go that way.
23 Drive out of Lendu. Drive the Lendu out of that place, push them out of there." That
24 was the message. That is what the general said to us. That's my summary. That's my
25 summary. Because he actually spoke for 30 to 45 minutes.

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1 Q. Who addressed you at the second Foren and what did that person say?

2 A. That was in Kilo, the second time. It was Commander Salumu. He explained to
3 us what the objective was. And also munitions were distributed. He talked about the
4 position of each company, each unit, each platoon on the front.

5 Q. Did Salumu say what, if anything, you were to do when you encountered the
6 civilian population?

7 A. It was the same operation piga na kuchaji. And we were fighting the Lendu. The
8 orders were clear: Shoot at everyone.

9 MS SOLANO: Your Honour, may we return to private session, please.

10 PRESIDING JUDGE FREMR: All right. Let's move into private session now.

11 (Private session at 12.39 p.m.)

12 (Redacted)

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6 (Open session at 1.05 p.m.)

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

8 PRESIDING JUDGE FREMR: Thank you.

9 So we will break now and we will reconvene again at half past 2.

10 THE COURT USHER: All rise.

11 (Recess taken at 1.06 p.m.)

12 (Upon resuming in open session at 2.31 p.m.)

13 THE COURT USHER: All rise.

14 Please be seated.

15 PRESIDING JUDGE FREMR: Good afternoon, everybody.

16 We are starting without witness because the Chamber has been informed that the Defence
17 would like to approach us with some submission and in the absence of the witness.

18 So Mr Bourgon, you have the floor.

19 MR BOURGON: Thank you, Mr President. The first issue does not concern this
20 witness, but needs to be raised at this time because it's a matter of scheduling. We have
21 been notified today with a submission from the Legal Representative of Victims, and this
22 is -- the filing is number 1212 -- no, this is a -- I'm looking at the exact --

23 MS SOLANO: 1224.

24 MR BOURGON: Okay. It is a confidential redacted response of the common legal
25 representatives and it is --

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1 PRESIDING JUDGE FREMR: Sorry, so if this is confidential it is better to move into
2 private session. I guess --

3 MR BOURGON: Not really, Mr President. I think we're just dealing with numbers.

4 PRESIDING JUDGE FREMR: Okay. Then let's remain in open, okay.

5 MR BOURGON: The submission itself bears a number 1262, and it is a response filed by
6 the Common Legal Representative to a filing that we never received. And the deadline
7 for filing the response would be tomorrow. So it's probably an oversight or a mistake. I
8 approached my colleague, I mentioned to the Prosecution that we have never received the
9 original motion. The number of the original request would be 1224, and it is a
10 confidential redacted version, but we never received it.

11 So I simply ask, Mr President, that we be given a few more days in order to respond to
12 this submission. And I would say, Mr President, that by Monday of next week, we
13 should be able to do the response, yes, by Monday of next week at the latest.

14 PRESIDING JUDGE FREMR: Okay. So we will consider this issue.
15 What next?

16 MR BOURGON: The second issue, Mr President, deals with this witness. This morning
17 the witness brought to our attention a matter --

18 MS SOLANO: Your Honour.

19 PRESIDING JUDGE FREMR: Ms Solano, sorry, I --

20 MR BOURGON: We should go into private session, yes.

21 PRESIDING JUDGE FREMR: Ms Solano, you wanted to react on the first issue?

22 MS SOLANO: I can just confirm, your Honour, that my friend is right, we overlooked
23 filing a confidential redacted version. We're proceeding to file one today.

24 PRESIDING JUDGE FREMR: Very well. We'll just decide on the deadline accordingly.
25 Mr Bourgon, please proceed.

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1 MR BOURGON: Thank you, Mr President. The issue deals with what the --

2 MS SOLANO: Sorry.

3 MR BOURGON: Sorry, we're not in private session yet.

4 (Private session at 2.35 p.m.)

5 (Redacted)

6 (Redacted)

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8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

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- 8 (Redacted)
- 9 (Open session at 2.44 p.m.)
- 10 THE COURT OFFICER: We're in open session, Mr President.
- 11 PRESIDING JUDGE FREMR: Thank you, court officer.
- 12 Mr Witness, good afternoon. We will continue with your examination conducted by Ms
- 13 Solano representing Prosecution.
- 14 Ms Solano, do you want to proceed in open or private session?
- 15 MS SOLANO: Private session, please, your Honour.
- 16 PRESIDING JUDGE FREMR: All right.
- 17 Court officer, let's move into private session.
- 18 (Private session at 2.44 p.m.)
- 19 (Redacted)
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23 (Open session at 3.13 p.m.)

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

25 PRESIDING JUDGE FREMR: Thank you, court officer.

1 Ms Solano, you may proceed.

2 MS SOLANO: Thank you, your Honour.

3 Q. Sir, how many prisoners were taken?

4 A. Going by the information that became available to me in Kobu, given that I was not
5 in charge of all that, at least 46 to 47 persons were taken prisoner. When we returned to
6 Kobu, I was able to see the prisoners who had been brought by a company commander
7 who was assigned to escort those prisoners from Buli to Kobu. But I only saw them in
8 Kobu because I was busy after the operation doing something else, and there were people
9 transporting (Redacted), and I had to travel with them all the way to Kobu.

10 Q. What is the name of the commander who escorted the prisoners to Kobu?

11 A. I don't know. I have forgotten the name. And this happened a long time ago.

12 Q. Do you know his -- what his position was, what his role was in the UPC?

13 A. I think he was a captain in Salumu's brigade. The captain, he may have used a
14 platoon. I don't know how many people he may have used to accompany the prisoners.
15 All I know is that the prisoners arrived in Kobu at around 4 or 5 p.m.

16 Q. Did you know that the UPC had taken prisoners before they arrived in Kobu?

17 A. No, I was not informed of that. I was at the front, and the prisoners were in
18 another company.

19 PRESIDING JUDGE FREMR: Mr Bourgon.

20 MR BOURGON: Thank you, Mr President. The question put by my colleague at line 17,
21 on page 84, is "Did you know that the UPC had taken prisoners before they arrived in
22 Kobu?" The witness answered that he's not informed of that.

23 But the difficulty is I don't know who, who is "they arrived in Kobu"? The prisoners
24 arrived in Kobu? I'd like to have clarification so I understand the answer from the
25 witness.

1 PRESIDING JUDGE FREMR: Ms Solano please.

2 MS SOLANO: Of course, your Honour, with pleasure.

3 Q. Sir, when was the first time that you learnt about the UPC having taken these people
4 prisoners? Was it when you saw them at Kobu, or did you already know that they were
5 being brought to Kobu?

6 A. I found out in Kobu.

7 Q. And can you describe to the Court what you saw when you saw the prisoners?

8 A. I saw men and women prisoners.

9 Q. You say they were civilians. How do you know that?

10 A. They were not armed and they were shouting, screaming saying that they were
11 civilians. They did not have any weapons. You see, when we arrived in Kobu, they
12 were asked where their weapons were, where are the weapons that you had recovered in
13 Lipri, and they said that the weapon was with Kiza. So they were civilians. They did
14 not have the weapon. The weapon was with Kiza.

15 Q. How were the prisoners being held?

16 A. They were held in a house. There were some commanders there questioning them.

17 Q. What commander was this?

18 A. Pigwa. Pigwa was there with the others.

19 Q. Who else was there apart from Pigwa?

20 A. I have forgotten the names. The only name I remember is Pigwa because he was
21 the S2 of our brigade.

22 Q. Sir, what were the ages of these prisoners?

23 A. All ages.

24 Q. How young was the youngest amongst them?

25 A. I don't have any details.

1 Q. Were they all adults?

2 A. No. I said that they were of all ages. But I don't have any details as to how many
3 people were how old. I know that there were a number of prisoners lined up and
4 counted. And the person who was guarding the prisoners was Simba. His name was
5 Simba, the commander. He was the one in charge. And I had the opportunity to see
6 them.

7 Q. Where did you see them?

8 A. In Kobu.

9 Q. Where in Kobu did you see them? Was it at this house or somewhere else?

10 A. Before they were put into the house they were outside, and I saw them when they
11 were outside and lined up.

12 Q. Where in Kobu was this house that they were taken into?

13 A. It was within Kobu, within the market.

14 Q. Sir, and you say they were outside and they were line -- in a line. Could they have
15 run away?

16 A. No.

17 Q. Why not?

18 A. Because of the number of soldiers who were there.

19 Q. How were these people dressed?

20 A. They were in civilian attire.

21 Q. Did you know any of these people?

22 A. I'm sorry?

23 Q. Do you know any of the prisoners?

24 A. I have no specifics for you. And I don't remember. These things happened a long
25 time ago.

1 Q. You say that the prisoners were taken into a house to be interrogated. Do you
2 know whether in fact they were interrogated?

3 A. I don't know how to answer your question because you are -- you are, sort of,
4 leading me to an answer, but my answer might have been different.

5 Q. Please feel free to respond in whatever way you like.

6 A. Thank you. What I know is that the prisoners were lined up. Pigwa's group was
7 there, the S2, and I saw him. I saw the soldiers who were there to see what was
8 happening as well. And everyone then returned to their position, just like I did. And I
9 did not pay attention any further to what happened subsequently. However, I don't
10 know how I can answer you. I knew that Pigwa was there, and he was able to question
11 them. You see, they were looking for a heavy weapon and they needed information to
12 find out where the heavy weapon had been taken to. So I don't know whether I can give
13 you a yes or a no answer to that question.

14 Q. Sir, what happened to these prisoners?

15 A. They were all killed at night.

16 Q. Who shot them?

17 A. Our soldiers.

18 PRESIDING JUDGE FREMR: Mr Witness, the question was a bit leading because you
19 said just -- the question was about killing, and then Ms Solano asked you, "Who shot
20 them?" So you had some knowledge about the way how they be killed?

21 THE WITNESS: (Interpretation) They were killed at night by soldiers, our soldiers who
22 were in charge of executing them. But this task was for lower ranking soldiers. So
23 Commander Simba and his troops were in charge of executing these people. And the
24 execution took place at night. I was bound to not leave the position of (Redacted) because we
25 were always expecting any attack. And so at night we were on (Redacted). All I

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1 saw was the dead bodies in the morning.

2 PRESIDING JUDGE FREMR: Please prevent yourself from talking about your own, you
3 know, position because you may reveal your identity. But my question was, okay,
4 you're answering that they were executed, but whether you knew how they were
5 executed?

6 THE WITNESS: (Interpretation) By machetes and knives. I should say by bladed
7 weapons, as is the case.

8 PRESIDING JUDGE FREMR: Thank you.

9 Ms Solano, you may proceed.

10 MS SOLANO: Thank you, your Honour.

11 Q. Sir, how do you know that this is how they were killed?

12 A. Because during the night there were no gunshots, and the manner in which they
13 were killed was obvious when one saw the bodies because they were not shot with any
14 bullets.

15 Q. Where were you, in what part of -- well, where did you see the bodies the next
16 morning?

17 A. At the location where they were killed. There is a hotel in Kobu known as Paradiso,
18 and behind the hotel there is a banana field, and that is where they were massacred.

19 Q. Can you describe to the Court what you saw when you arrived at the banana field?

20 A. There were dead bodies there. But I don't know how to explain this to you. Some
21 of them were disembowelled, some were beheaded with machetes.

22 Q. How many bodies did you see in the banana field?

23 A. I did not count. I only saw the bodies.

24 Q. Were there any weapons lying around?

25 A. No.

1 Q. How were the bodies that you saw in the banana field, how were they dressed?

2 A. I don't know how to explain this to you. I don't have any details to tell you, except
3 that I saw people who were dead, executed by machete. I don't know what the colour of
4 their clothing was. I don't know what position they were lying in. But these were dead
5 people, and it was frightening.

6 Q. Sir, do you know why these civilians were executed?

7 A. Because they were Lendu.

8 Q. Was Salumu aware that these prisoners were executed?

9 A. Yes, because he visited them too. We were together. He was there, and so he saw
10 the dead bodies also.

11 Q. Sir, in between the time that you saw the prisoners at the house and the next
12 morning where you saw them dead in the field, apart from those two times, did you see
13 them at any other time?

14 A. I'm not sure I understood your question.

15 Q. You said you saw the prisoners inside the house, you said you saw the prisoners
16 lined out outside the house, you saw them the next morning. So my question is, did you
17 see the prisoners after they had been put in the house and before you saw them murdered
18 in the banana fields?

19 A. When they were taken to be executed at night, some of them were shouting, and we
20 were in the back. It was night-time, it was dark, but we could see people passing, but we
21 could not see them continually, but as the to and fro movement continued, we were able
22 to see something.

23 Q. Could you hear what they were shouting?

24 A. Yes.

25 Q. What was that?

1 A. I cannot explain what those screams were, but some of them were crying, and they
2 were being taken away by groups of soldiers while we were busy doing what we were
3 doing. But that task was for some other people who were there for that purpose, and we
4 were there for our own purposes, and each party or each person had to play his or her
5 role.

6 Q. When they were being taken to the banana field to be executed, could these
7 prisoners have run away?

8 A. No.

9 Q. Why not?

10 A. Those who were taking them away were armed. And if anybody attempted to flee,
11 they would have been shot dead anyway.

12 Q. Did Mulenda's superiors learn that these prisoners had been executed?

13 A. I do not know.

14 Q. Was Simba punished for killing these civilians?

15 A. No.

16 Q. Did he continue to work as a commander in the UPC?

17 A. Yes.

18 Q. How about Mulenda, sir, was he punished?

19 A. I do not know because when we left for Bunia, we fought. Well, a week later we
20 went from Kobu, and everybody was occupied fighting against the Ugandans. So I do
21 not know what happened subsequently. And then the Ugandans drove us out, and each
22 person went their own way. However, nobody was punished as such.

23 Q. Sir, was there any sexual violence committed in Kobu?

24 A. I do not have any details in that regard, but when we were in Bunia at the camp,
25 there were soldiers who were talking about what they had done, and that is how we came

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1 to hear that they committed violent acts before killing people in Kobu. Those people are
2 in Kobu.

3 Q. Can you tell the Court what these soldiers said to you?

4 A. I beg your pardon?

5 Q. Can you tell the Court what these soldiers told you in Bunia about the rapes
6 perpetrated in Kobu?

7 A. Well, when they were commenting on this, they said that -- well, I could say, in
8 summary, that they raped some people before they executed them, before they killed
9 them.

10 Q. Do you know the gender of these people who were raped?

11 A. I do not know. I don't quite know how to answer that. One can only rape a
12 woman. I do not know whether the contrary was the case.

13 Q. Were these women who were raped, do you know if they were among the 47 or 48
14 prisoners?

15 A. Yes.

16 Q. How do you know that?

17 A. The soldiers talked to us about this in Bunia. They were women who were
18 captured amongst those 47 individuals.

19 Q. Sir, what is the name or what are the names of the soldiers from whom you heard all
20 this?

21 PRESIDING JUDGE FREMR: Mr Witness, it probably could reveal your identity, so let's
22 move into private session.

23 (Private session at 3.39 p.m.)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Open session at 3.43 p.m.)

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

4 PRESIDING JUDGE FREMR: Thank you.

5 Ms Solano, please proceed.

6 MS SOLANO: Thank you, your Honour.

7 Q. Sir, just to -- I'm going to repeat my question to make sure that it's clear what you
8 have answered. Was anyone punished for raping the female prisoners?

9 A. No.

10 Q. Sir, was there any pillaging in Kobu?

11 A. Yes.

12 Q. Can you describe it, please?

13 A. We hadn't really found any subsequent possessions. But apparently -- important
14 possessions. Apparently they had moved things before we entered Kobu. But there
15 were some commanders who were removing the sheet roofing from the houses, and it
16 was taken to Kilo.

17 Q. Sir, did the fighting stop once you controlled Kobu?

18 A. No. Kobu centre, well, there was still operations in other neighbouring villages
19 around Kobu. There were operations not on a grand scale, but the commanders were
20 sent elsewhere in order to attack other villages.

21 Q. Which other villages did they attack?

22 A. The neighbouring villages. I might have forgotten the names now. The names
23 don't seem to be coming back to me. But everyday there were at least two companies
24 that were sent to the neighbouring villages with a view to destroying their forces, because
25 they were still attacking us. It was very unstable in the centre, because at any time we

1 might be mobilised, we might be told that they were arriving, that we would be coming
2 under attack. We wanted to protect Kobu centre and attack them at their location in the
3 various villages. That was our strategy.

4 Q. And do you know what the UPC did in those other villages?

5 A. I did not take part in that operation, but it was with a view to driving them out still.
6 Sometimes they would come back with prisoners, two, three, four individuals to Kobu.

7 THE INTERPRETER: Addition to his answer: Those who were killed were killed.

8 MS SOLANO:

9 Q. So what state was Kobu in at the end of the UPC's attack?

10 A. Kobu was intact. There had not been any torching of houses. There were only
11 sheet-roofed houses. There was no straw houses. But all the doors had been broken
12 down. And there were commanders who were removing the sheet roofing from the
13 houses, not all of the houses, just some of them, those people who needed sheet roofing.
14 And we were there. There were not many things to be looted. Otherwise the place was
15 empty.

16 Q. How about Buli, sir, what state was Buli in after the UPC's attack?

17 A. Everything was torched.

18 Q. And who caused the burning?

19 A. The commanders would give the orders.

20 Q. Which commander?

21 A. Salumu, Salumu had given the order for us to torch the villages.

22 Q. Was there any pillaging in Buli?

23 A. Yes.

24 Q. Had that also been ordered?

25 A. I didn't quite understand.

1 Q. Why did the UPC pillage in Buli?

2 A. Well, it was piga na kuchaji.

3 Q. Sir, was there a reason why the houses were burnt?

4 A. It was for them not to return.

5 Q. Who do you mean by "they"?

6 A. So that the Lendus would not return. It was also an act of revenge. They had
7 torched our villages and it was our turn to torch theirs.

8 Q. Sir, you told us about a commander called Linganga who had carried out a failed
9 attack in Lipri. Was Linganga part of the attack on Lipri, Bambu, Kobu?

10 A. I do not have any details, but he was not in Kobu and nor was he in Bambu. I do
11 not know whether he was in Lipri. I do not have any details as to what attack or where
12 he was when the attack took place and as to whether he took part. But he wasn't with us
13 in Kobu.

14 Q. How do you know that he was not in Bambu?

15 A. On one occasion we went to Bambu to give some ammunition. And there was only
16 Mai Mai present in Bambu. Linganga was not there. They had run out of ammunition
17 or they were running out of ammunition, so a group of people went there, and I went out
18 of curiosity with a view to walking around Bambu a bit, and there was just Mai Mai
19 present, no Linganga.

20 Q. Did you return to Kobu after this visit to Bambu?

21 A. It was a return journey, a return journey, because it's 5 or 7 kilometres from Bambu
22 to Kobu. It's not far.

23 Q. Sir, did the UPC recover the weapon that had been lost, the grenade launcher?

24 A. No. We had gone to Buli with a view to seeking out that weapon. We searched
25 everywhere. And we put the question to the captured prisoners and nothing. They

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1 said that they had left with the weapon to see Kiza, but we didn't find Kiza. Apparently
2 he had left before we arrived in Buli.

3 Q. What did you see in Bambu when you went there? What had happened in Bambu?

4 A. Well, Bambu is bigger than Kobu, and it's more built up, even more so than
5 Mongbwalu. And we could see soldiers who were looting or who had looted and who
6 were guarding those things that they had looted. We went to see Commander Mai Mai,
7 and, well, it was an entire company who had gone out, and we gave him some
8 ammunition, (Redacted)
9 (Redacted). And there wasn't much there.

10 Can I add something?

11 Q. Please. Just be reminded that we're in public session.

12 A. And when we were in Bambu, well, we went -- we didn't go everywhere in Bambu.
13 We had a specific objective, which was to go and see Mai Mai and come back. Bambu is
14 even bigger than Mongbwalu. So we had a specific route to go there and come back.
15 That's all.

16 Q. What had the soldiers looted in Bambu?

17 A. I do not know what actually happened in Bambu. This was just an observation.

18 Q. What were the goods that the soldiers were guarding?

19 A. We were at Commander Mai Mai's place and we saw some foam. That's all. It
20 was about an hour and a half.

21 THE INTERPRETER: Inaudible -- correction: We spent about an hour and a half there.

22 MS SOLANO:

23 Q. Sir, do you know what happened during the UPC attack on Lipri, the successful
24 attack?

25 A. No.

1 Q. Sir, have you heard the expression "shika na mukono"?

2 A. To take the hand?

3 Q. Did you hear that expression where you were in the UPC?

4 A. Yes.

5 Q. Please explain in what context did you hear it?

6 A. It is to take people who do not have -- well, if the person is not armed, then one
7 should not use a weapon. One should not waste ammunition. You should take them
8 by hand. And if a combatant has run out of ammunition, then one should take him by
9 hand. One should not waste any ammunition.

10 Q. What language is that expression in?

11 A. It's in Swahili.

12 Q. And who in the UPC did you hear using that expression?

13 A. Commander Salumu.

14 Q. Can you explain when and where?

15 A. In Buli.

16 Q. What did he say?

17 A. That we had to capture people during the operation on Buli.

18 PRESIDING JUDGE FREMR: Ms Solano, at least in English transcript we don't have a
19 correct spelling of this term. Would it be possible to clarify or maybe to ask Witness to
20 spell it? Thank you.

21 MS SOLANO:

22 Q. Sir, can you repeat the expression very slowly, please?

23 A. Shika na mukono, shika na mukono.

24 PRESIDING JUDGE FREMR: Could we have the transcript allowing us to check it? Yes,
25 it seems that it's correct.

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1 MS SOLANO:

2 Q. Sir, I'm sorry if this perhaps is obvious to you, but most people in this courtroom
3 don't speak Swahili. So can you explain more what this expression means and why
4 Salumu used it?

5 I can finish my question perhaps?

6 PRESIDING JUDGE FREMR: Mr Bourgon.

7 MR BOURGON: Mr President, I believe the witness was asked to provide the context.
8 He was asked to provide the definition. He was asked to provide who said it. He was
9 asked to say when it was used. All these questions have been dealt with, Mr President.
10 We have the spelling. I believe we can move on.

11 PRESIDING JUDGE FREMR: Ms Solano, it seems a bit repetitive. Could you just
12 explain what you are intending to get?

13 MS SOLANO: Your Honour, the witness has explained that it was intended as some sort
14 of an instruction to save bullets. But that doesn't really explain what the soldiers were
15 supposed to do with their hands.

16 PRESIDING JUDGE FREMR: I think we have it. I don't want to read it again. But not
17 waste bullets, to take persons by hands. So you would like to get more details, but --
18 Mr Bourgon.

19 MR BOURGON: Well, Mr President, the Prosecution might not like the answer they got,
20 but the answer is on the record on page 98 at lines 23 to 25 and page 99, lines 1 and 2. "So
21 please explain in what context did you hear it?" And the context was explained.
22 And so we've been dealing with this term, and we have all left, right, centre, back,
23 forward. Now I think it's time to move on.

24 PRESIDING JUDGE FREMR: You are right, maybe just last question from my part, not
25 from Ms Solano, "take by hands" means what? "Take by hands"? Because it's rather

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1 vague, "take by hands."

2 THE WITNESS: (Interpretation) "Shika na mukono" was an expression used by or
3 within the UPC to mean capture.

4 PRESIDING JUDGE FREMR: Mr Witness, you have already -- you have already
5 explained that. I don't need to repeat what you have already said. My only question,
6 point of clarification, that in English transcript as a part of your responses, it meant "take
7 by hands." So to me it's rather vague, "take by hands." Could you be more specific
8 what did it mean?

9 THE WITNESS: (Interpretation) I provided a literal translation. "Shika" means to take,
10 but it could also mean capture.

11 PRESIDING JUDGE FREMR: Okay. Ms Solano, please move on.

12 MS SOLANO: Thank you, your Honour. I would like to now play an audio recording
13 for the witness, your Honour. And the ERN is DRC-OTP-0162-0115.

14 THE COURT OFFICER: Before playing the audio material, we would like to know the
15 level of confidentiality, please.

16 MS SOLANO: Public.

17 PRESIDING JUDGE FREMR: Defence, your position?

18 MR BOURGON: Thank you, Mr President. We were provided of course in the list of
19 items the Prosecution intends to use, we were provided with this item with a specific part.
20 My first question is, my colleague wants to go beyond the part that is in the list of items to
21 be used or just that part? That was the first question.

22 PRESIDING JUDGE FREMR: Ms Solano, maybe step by step.

23 MS SOLANO: Just the four excerpts that we gave you notice of.

24 MR BOURGON: And the second question, Mr President, is before the witness is
25 provided with an opportunity to listen to this audio recording, we know he did so during

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1 the preparation session, but first we should ask some questions as to establish the
2 necessary connection in line with the Trial Chamber's order on the conduct of proceedings,
3 which says personal knowledge of the making of the recording of this item.

4 So does he know when it was recorded, who recorded, how it was recorded, or does he
5 know what exactly when? Because there is a specific portion. And when did he hear?
6 We know he has some information about Motorola, some specific conversation, but
7 nothing about this specific situation. Thank you.

8 PRESIDING JUDGE FREMR: Ms Solano, on the second point.

9 MS SOLANO: Your Honour, I just seek guidance as to whether I should respond to
10 Defence in the presence of the witness. We do believe that the witness is in a position to
11 comment on the content of the audio recording on the basis of what he has said today,
12 including some of what Mr Bourgon has already said about his having testified about
13 having heard conversations between -- having heard conversations occurring on UPC
14 Motorola radios.

15 PRESIDING JUDGE FREMR: And is it audio of this conversation he allegedly should
16 listen to or another conversation?

17 MS SOLANO: Your Honour, I intend to play four excerpts. We believe that the witness
18 was privy to at least one of the conversations. I cannot confirm what the witness would
19 say about the others.

20 PRESIDING JUDGE FREMR: Okay.

21 Mr Bourgon.

22 MR BOURGON: Mr President, our respectful submission is that it is not sufficient for
23 the witness to say that he heard some conversations on Motorola between officers. My
24 colleague, who knows when this recording was allegedly, allegedly happened, when
25 these conversations took place, and we should establish that he has some knowledge

1 when the recordings took place. He knows and he heard it.

2 It's not sufficient to say, "Well, yes, I know they were talking on the radio." It's

3 insufficient, Mr President. When the recording -- where does this recording fit in the

4 Prosecution's case and then establish a sufficient basis with the witness. Thank you.

5 PRESIDING JUDGE FREMR: Ms Solano, I have to confirm that in fact Mr Bourgon refers

6 to our decision there should be some linkage, because otherwise you could just present

7 any conversation just made by Motorola and really it wouldn't meet our requirements.

8 So I guess you should really put some few questions proving that there is some linkage

9 between this audio and Mr Witness.

10 MS SOLANO: Your Honour, in my submission I have already asked the witness as

11 many questions as I can ask him to establish the link before he listens to the conversation.

12 Perhaps I could be permitted to play the audio and ask him questions, and then if your

13 Honours deem that the link is sufficiently established, then your Honours may wish to

14 entertain my, what would be my request to admit the excerpts into evidence. And I

15 would only point out, your Honour, that this recording, certainly parts of it has been

16 allowed by your Honours to be played to witnesses who had a similar relationship to this

17 one to the audio recording.

18 PRESIDING JUDGE FREMR: Give me a second. I will deliberate with my colleagues.

19 (Trial Chamber confers)

20 PRESIDING JUDGE FREMR: So after silent deliberation, our decision is that you can use

21 at least part of this audio in order to establish there is some connection between audio and

22 Mr Witness.

23 MS SOLANO: Thank you, your Honours. I wish to play, I will repeat the ERN for the

24 record, it's DRC-OTP-0162-0115. And we will be playing track 1, an excerpt that runs

25 from minute 0142 to minute 0350.

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1 Q. And, sir, sir, I'm going to play an audio recording for you in a moment. I'm just
2 going to play one part of it. I'd like you to listen carefully to it, please. If you need to,
3 you can take notes on the piece of paper that I believe is on your desk. And after you
4 have listened to it, I will be asking you whether you recognize what you've heard and
5 some supplementary questions.

6 PRESIDING JUDGE FREMR: And, Ms Solano, I guess we should remain -- move into
7 private, because I guess those questions could probably identify the witness or not?

8 MS SOLANO: Your Honour, we can certainly play the recording in public session, and
9 for the questions we should go into private session, please.

10 PRESIDING JUDGE FREMR: Very well. Okay.

11 MR BOURGON: My understanding of the Trial Chamber's ruling, Mr President, is that
12 we will not listen to all of the audio, but part of it sufficient for the witness to establish the
13 connection?

14 PRESIDING JUDGE FREMR: Exactly.

15 MR BOURGON: Thank you.

16 (Playing of the audio excerpt)

17 PRESIDING JUDGE FREMR: Stop, stop audio.

18 Mr Bourgon.

19 MR BOURGON: Mr President, I believe that that should be sufficient to establish the
20 material link in order to see if the witness recognizes when and where this conversation
21 was taken from.

22 PRESIDING JUDGE FREMR: Ms Solano proposed to listen to two minutes, which I
23 think should be a really short excerpt. Anyway I think we could now start with a
24 question proving or not whether there is some linkage between this audio and whether
25 Mr Witness has some knowledge of what's recording and so on.

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1 MS SOLANO:

2 Q. Sir, could you hear that well?

3 A. Yes.

4 MS SOLANO: Your Honour, may we go into private session, please?

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

6 (Private session at 4.14 p.m.)

7 (Redacted)

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- 6 (Redacted)
- 7 (Redacted)
- 8 (The hearing ends in private session at 4.34 p.m.)