

Trial Hearing
WITNESS: DRC-OTP-P-0888

(Open Session)

ICC-01/04-02/06

1 International Criminal Court
2 Trial Chamber VI
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 Judge Chang-ho Chung
6 Trial Hearing - Courtroom 2
7 Wednesday, 22 June 2016
8 (The hearing starts in open session at 9.33 a.m.)
9 THE COURT USHER: All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE FREMR: Good morning, everybody.
13 Court officer, please call the case.
14 THE COURT OFFICER: Thank you, Mr President.
15 The situation in the Democratic Republic of the Congo in the case of the Prosecutor
16 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
17 And for the record, we are in open session.
18 PRESIDING JUDGE FREMR: Thank you, court officer.
19 Now appearances. Prosecution first.
20 MS LUPING: Good morning, Mr President. Good morning, your Honours. Same
21 appearances for the Prosecution as yesterday and the day before, Mr President.
22 PRESIDING JUDGE FREMR: Thank you, Ms Luping.
23 Defence.
24 MR BOURGON: (Interpretation) Good morning to everyone in the courtroom.
25 Good morning, your Honours. Representing Mr Bosco Ntaganda: Ms Elisa Binon,

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1 Margaux Portier and myself, Stéphane Bourgon. Thank you, your Honour.

2 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

3 And Legal Representatives of Victims, please.

4 MR ABDOU: Good morning, Mr President, your Honours. For the former child
5 soldiers, same as yesterday.

6 MS GRABOWSKI: Good morning, Mr President, your Honours. The victims of the
7 attacks are today represented by myself, Ms Anne Grabowski, from the OPCV.
8 Thank you.

9 PRESIDING JUDGE FREMR: Thank you, Mr Abdou. Thank you, Ms Grabowski.
10 Mr Witness, can you hear me? Are you feeling okay today?

11 WITNESS: DRC-OTP-P-0888 (On former oath)
12 (The witness speaks Swahili)

13 THE WITNESS: (Interpretation) Yes, I can hear you just fine.

14 PRESIDING JUDGE FREMR: Are you feeling okay today?

15 THE WITNESS: (Interpretation) Yes, I feel fine.

16 PRESIDING JUDGE FREMR: Very well. Then we can directly move to the rest of
17 cross-examination, which is conducted by Mr Bourgon.

18 Mr Bourgon, you may proceed. Usual question, do you want to proceed in open or
19 in private session?

20 MR BOURGON: I would like to begin private session, Mr President.

21 PRESIDING JUDGE FREMR: All right then.

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

23 (Private session at 9.35 a.m.)

24 (Redacted)

25 (Redacted)

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10 (Open session at 11.40 a.m.)

11 THE COURT OFFICER: We are in open session.

12 PRESIDING JUDGE FREMR: Thank you, court officer.

13 So, Mr Witness, it concludes your testimony. So on behalf of the Chamber I would
14 like to thank you, because we can imagine that it was not easy for you, even to travel
15 here, to spend a lot, a long time in The Hague in this really awful, awful weather.

16 But we believe that your testimony will assist us in our effort to find the truth.

17 So I thank you very much, Mr Witness, and we wish you safe journey home.

18 Now the witness may be escorted out of the courtroom.

19 THE WITNESS: (Interpretation) I thank you, your Honour.

20 (The witness is excused)

21 PRESIDING JUDGE FREMR: And as concerns our further time schedule, first of all,
22 my apologies go to all of you who were involved in this too long session. But simply
23 we wanted to conclude this testimony, not to break just shortly before, before the end.

24 So now we will react accordingly. We will for sure shorten the next session, but I
25 would, because to take it for 45 minutes isn't really reasonable, so we will take one

1 hour, one hour session after this 30-minute break, and then we will accordingly
2 shorten the afternoon, afternoon session.

3 So to make it clear, we will now reconvene at quarter past 12 and we will continue to
4 quarter past 1 and then we will break for 90 minutes as usual. So see you at quarter
5 past 11 -- quarter past 12, sorry.

6 THE COURT USHER: All rise.

7 (Recess taken at 11.43 a.m.)

8 (Upon resuming in open session at 12.16 p.m.)

9 THE COURT USHER: All rise.

10 Please be seated.

11 PRESIDING JUDGE FREMR: I see some new faces. Good afternoon. So we will
12 start with changes in appearances.

13 Prosecution, please.

14 MR IVERSON: Good afternoon, your Honours. Appearing this afternoon for the
15 Prosecution are Kristy Sim, assistant trial lawyer; Claudine Umurungi, assistant legal
16 officer; Selam Yirgou, case manager; and myself, Eric Iverson, trial lawyer.

17 PRESIDING JUDGE FREMR: Thank you, Mr Iverson.

18 Defence.

19 MR GOSNELL: Good afternoon, Mr President and your Honours. This afternoon
20 it is Christopher Gosnell, myself, appearing on behalf of Mr Ntaganda; Stéphane
21 Bourgon, lead counsel is still here; and we are accompanied and assisted by Isabelle
22 Martin know and Erik Cookson-Montin. Thank you, Mr President.

23 PRESIDING JUDGE FREMR: Thank you, Mr Gosnell.

24 And for the record I note that the presence of Legal Representatives for appearances
25 remain the same.

1 Before we move to upcoming testimony, we, the Chamber will deliver one oral ruling,
2 but it has to be done in private session.

3 So, court officer, please let's move into private session

4 (Private session at 12.18 p.m.)

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11 (Open session at 12.28 p.m.)

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

13 PRESIDING JUDGE FREMR: Thank you, court officer.

14 Now I believe we could start directly with the scheduled testimony. But before
15 doing that, I would like to recall that the Chamber issued a preliminary oral decision
16 on 20 June 2016 in respect of the Prosecution's request for admission of certain prior
17 recorded testimony and associated documents relating to this witness under Rule
18 68(3).

19 The parties are directed to proceed accordingly. The Chamber had indicated that the
20 Prosecution would be granted one hour, Mr Iverson, to complete its
21 examination-in-chief and then Defence will be provided with four hours to
22 cross-examine this witness.

23 The Chamber has also noted the Defence objections to certain documents intended to
24 be used with the witness. They were received by email of 19 June 2016 and we'll
25 address them if and when relevant during the testimony.

1 With regard to the Prosecution notes of meetings with the witness, means documents
2 DRC-OTP-2061-0719 and DRC-OTP-2078-2804, the Chamber recalls that in its Rule
3 68(3) decision it ruled that these documents were not admissible as documents
4 associated with the witness statement under Rule 68(3).

5 It is suggested that if the Prosecution wishes to rely on information contained in them,
6 it should seek to elicit viva voce testimony from the witness on the relevant aspects.

7 Now, court officer, please have the witness brought in the courtroom.

8 Mr Iverson.

9 MR IVERSON: Mr President, I just was asked to bring a piece of information to the
10 Chamber's attention and it has to be given in private session.

11 PRESIDING JUDGE FREMR: All right. Let's return back into private session.

12 Yes. And we will have to wait until we solve this issue, so don't bring Mr Witness in
13 at the moment.

14 Mr Iverson, please proceed. So wait, Mr Iverson.

15 (Private session at 12.31 p.m.)

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22 (Redacted)

23 (Redacted)

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(Open Session)

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3 (Open session at 12.32 p.m.)

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

5 PRESIDING JUDGE FREMR: Thank you, court officer.

6 (The witness enters the courtroom)

7 PRESIDING JUDGE FREMR: Madam, first I would ask you to take headphones.

8 Good afternoon, Madam Witness, can you hear me?

9 WITNESS: DRC-OTP-P-0315

10 THE WITNESS: Yes, I can, thank you.

11 PRESIDING JUDGE FREMR: Very well. On behalf of this Chamber I would like to
12 welcome you to the courtroom. You are called to testify in the case against Mr Bosco
13 Ntaganda, and at the beginning I have a few practical matters to address with you.

14 It's very important that you make sure that you understand the question asked to you.

15 If you do not understand, feel free to ask for the question to be repeated. We want
16 you to tell the truth and tell us what you saw, heard and sensed yourself.

17 If you didn't see or hear it yourself but you found out some other way, then you
18 should explain how.

19 You may not remember all details, and it does not matter, please testify just on that
20 which you remember. Don't guess. Don't make things up.

21 Do you understand all this?

22 THE WITNESS: Yes, I do.

23 PRESIDING JUDGE FREMR: As you are aware, you will be testifying publicly
24 without protective measures. We may, however, move into private session for
25 discreet portions of your testimony should that be necessary.

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(Open Session)

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1 Now I would like to ask you to please make your solemn undertaking to tell the truth
2 by reading out the declaration on the piece of paper which I believe is in front of you.

3 THE WITNESS: I solemnly declare that I will speak the truth, the whole truth and
4 nothing but the truth.

5 PRESIDING JUDGE FREMR: Thank you, madam. So now you are under oath.
6 You also need to be aware that it is an offence within the jurisdiction of this Court to
7 give false testimony. Do you understand that?

8 THE WITNESS: Yes, I do.

9 PRESIDING JUDGE FREMR: Now a few additional practical matters. It's
10 important to speak clearly and at a slow pace, approximately like me now. And
11 what is the most important among those practicalities, you should only start speaking
12 when the person asking you the question has finished, and not only that, but also wait
13 for approximately 3 seconds, because this pause is essential for us to properly
14 translate and record what you are answering. So please just have it in mind after
15 each question, please wait just for roughly 3 seconds and only then give your answer.
16 Now I think we -- the last point, if you have any questions during your testimony or if
17 you feel that you need a break, do not hesitate to let us know by raising your hand
18 and we will then give you opportunity to speak. Have you understood all that?

19 THE WITNESS: Yes, I have. Thank you very much.

20 PRESIDING JUDGE FREMR: Very well. And as to the timing, because we got
21 some delay during the first morning session, we have to adjust our further timing to
22 that. So as I already indicated, we will take this session just for total one hour, which
23 means that we will have to finish quarter past 1.

24 So now I am giving floor to Prosecution, who can start his examination-in-chief. Mr
25 Iverson, you have the floor.

1 MR IVERSON: Thank you very much, Mr President.

2 QUESTIONED BY MR IVERSON:

3 Q. Good afternoon, Ms Van Woudenberg. We've met previously, but I just want
4 to introduce myself again. My name is Eric Iverson and I'm a trial lawyer and I
5 work for the Office of the Prosecutor here at the Court and I'll be asking you
6 questions.

7 I just want to reiterate something the Presiding Judge said. Because you'll be
8 testifying in English and because I'll be asking questions in English, it's really
9 important to observe that 3-second pause. I'm saying that also for myself because
10 when things get going, people tend to speak a little bit more naturally and so I just
11 want it make sure that we're not going too fast for the interpretation.
12 So first I will ask a series of background questions, and then I would like to ask you
13 about any corrections and clarifications you have to exhibits that you have previously
14 seen and then I will seek to submit a certain number of exhibits and I will ask a few
15 supplementary questions. The examination should last around an hour.

16 So could I have you please state your full name for the record please?

17 A. My full name is Anny-Aleida Van Woudenberg and I'm commonly known as
18 Anneke.

19 Q. And could you give your date of birth and place of birth please?

20 A. So date of birth is October 16, 1968 and I was born in Purmerend, Holland.

21 Q. And could you tell the Chamber which languages you speak?

22 A. I speak Dutch badly, I speak English and I speak French.

23 Q. And what is your current marital status?

24 A. I am married.

25 Q. And what is your current occupation and job title, please?

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1 A. I am the deputy Africa director at Human Rights Watch.

2 Q. And how long have you had that particular job title?

3 A. I became deputy Africa director a year and a half ago.

4 Q. Do you remember meeting with investigators from the Office of the Prosecutor
5 in October 2013 from 7 to 22 October and providing them with a statement?

6 A. Yes, I do.

7 MR IVERSON: Mr President and your Honours, with the Chamber's leave, the way
8 I propose that we go about doing this is we've prepared a physical binder which
9 contains a bundle of exhibits, and I think that that would facilitate the testimony more
10 than showing the documents on the computer screen because I think it's faster. So I
11 would ask for the Chamber's leave to provide the witness with a bundle of documents.
12 And that same bundle of documents have already been provided to your Honours
13 and the parties and participants.

14 PRESIDING JUDGE FREMR: All right. Let's try and we will see whether it's really
15 more efficient.

16 MR IVERSON:

17 Q. So I would ask that you turn to the first tab in the binder.

18 And for the record the ERN number is DRC-OTP-2058-0990.

19 Now we're looking at the first page of this document. Can you tell the Chamber
20 what this document is, please?

21 A. Yes. This is my witness statement that I gave to the OTP.

22 Q. And do you see your name and signature on this page of the document?

23 A. Yes, I do.

24 Q. And I'll just ask you very openly, what corrections, if any, need to be made in
25 order to make this page accurate?

1 A. So there are two corrections that would need to be made relating to the
2 questions you just proposed, which is my marital status, which has since changed, as
3 well as my current occupation, whereas my title has just changed to the Africa deputy
4 director.

5 Q. And could I ask you to turn to the last page of the document, which in the
6 document itself is page 30. The last ERN number for this document is 1019.
7 What do you see on this page?

8 A. I see my signature again and the witness acknowledgment.

9 Q. Did you previously have an opportunity to fully review this statement and to
10 check it for any corrections or clarifications?

11 A. Yes, I did. I had that opportunity on Monday.

12 Q. Are there any additional clarifications or changes that you would like to make
13 to this statement?

14 A. No, there are none.

15 Q. And is the statement true and accurate to the best of your belief and
16 knowledge?

17 A. Yes, it is.

18 MR IVERSON: Mr President and your Honours, at this time the Prosecution
19 submits this document, except for paragraphs 142 to 151 in accordance with the
20 Chamber's previous ruling.

21 PRESIDING JUDGE FREMR: Defence, any objection?

22 MR GOSNELL: Yes. The formulation in 68(3) has not been put to the witness.

23 PRESIDING JUDGE FREMR: Yes, Mr Iverson, you should also try to explore
24 whether this witness is in agreement with, and you know.

25 MR IVERSON: I can do that. My reading of the rule was that it wasn't expressed

1 consent, it was implied, and it was for a witness to raise an objection, but I can ask the
2 question, of course, Mr President.

3 PRESIDING JUDGE FREMR: Please.

4 MR IVERSON: So I think it was just a different interpretation of the same rule.

5 Q. Do you have any objection to the submission and admission of this statement?

6 A. No, I do not.

7 PRESIDING JUDGE FREMR: And one additional question from my part: And
8 after being examined by Prosecution, are you also ready to undergo
9 cross-examination by Defence? Am I right?

10 THE WITNESS: Yes.

11 PRESIDING JUDGE FREMR: Very well. So now conditions for admission are met.
12 So document specified by Mr Iverson is admitted and also in the extent he has
13 mentioned to the evidence as a further Prosecution exhibit.

14 MR IVERSON:

15 Q. So could I ask you to turn to the document at tab 2, and that is
16 DRC-OTP-2058-1020, and could you please tell the Chamber what is this document?

17 A. This document is the written research methodology of Human Rights Watch
18 which is publicly available on our website.

19 Q. And did you also have an opportunity to review this document for accuracy?

20 A. Yes, I have. And this document is accurate.

21 Q. Do you object to its admission?

22 A. No, I do not. It can be submitted.

23 Q. And I assume, I don't want to ask this question for every exhibit, unless it's
24 necessary, but I assume you'll be available for cross-examination on this particular
25 exhibit and all the rest of the exhibits as well?

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1 A. Indeed, I'm available to answer questions on all of it.

2 Q. Very well.

3 MR IVERSON: The Prosecution submits this exhibit as well.

4 PRESIDING JUDGE FREMR: So, in other words, Madam Witness, if you would
5 have any objection to the admission of any documents which will be tendered by Mr
6 Iverson, please let us know.

7 To that request, Mr Gosnell, any objection?

8 MR GOSNELL: None.

9 PRESIDING JUDGE FREMR: In such a case, this document specified by Mr Iverson
10 is admitted into evidence as a further Prosecution exhibit.

11 Mr Iverson, please proceed.

12 MR IVERSON:

13 Q. Could I ask now that you turn to the document at tab 4, please, and that is
14 DRC-OTP-0074-0797.

15 THE COURT OFFICER: Mr Iverson, could you please indicate the level of
16 confidentiality of each document?

17 MR IVERSON: Yes. This is a public document.

18 PRESIDING JUDGE FREMR: Again, maybe more efficient, we will take as normal
19 that it is public. If not, let us know that it is confidential, for the further documents I
20 mean, okay?

21 MR IVERSON: Yes, Mr President. I have that noted and I will of course let the
22 Chamber know when we're looking at a confidential document.

23 Q. So what is this document you see before you?

24 A. This is a Human Rights Watch report called "Ituri: 'Covered in Blood'" and it
25 is a report that I researched and wrote.

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1 Q. And is this the same report that you also mention in your statement that was
2 just admitted?

3 A. Yes, it is.

4 Q. Did you have an opportunity to review this document for accuracy?

5 A. Yes, I have, and it is accurate.

6 MR IVERSON: Mr President and your Honours, the Prosecution now submits this
7 exhibit into evidence, DRC-OTP-0074-0797.

8 PRESIDING JUDGE FREMR: Mr Gosnell.

9 MR GOSNELL: We object. I would ask that your Honours reserve your ruling on
10 the admission of this report until after the cross-examination for some of the reasons
11 that have been set out in our written objections.

12 I would also perhaps assist with a clarification. Our view is that exhibits of this
13 nature that are attached to a 68(3) statement are not independently subject to 68(3),
14 only the report itself, which is the testimonial substitute, so to speak, or the statement,
15 only that statement is the testimonial substitute. Therefore, that is the only portion
16 that actually needs to comply with 68(3).

17 This is just a document in the same way that if the witness were testifying viva voce,
18 it could or could not be admitted depending upon what she said and what your
19 Honours' ruling might be.

20 So in respect of this document, I would ask, first of all, we are not applying 68(3) to it
21 and, secondly, that you reserve your decision on admissibility until after the
22 cross-examination.

23 PRESIDING JUDGE FREMR: Mr Iverson, any reaction?

24 MR IVERSON: My understanding of the admissibility decision is that this document
25 is -- would be admissible contingent on the technical requirements of Rule 68(3) being

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1 satisfied.

2 Also, in a normal testimony, I would ask additional questions about the document,
3 but those questions are answered in the statement which has already been admitted,
4 which serves as the testimony in this instance. And so the Prosecution's position is it
5 is admissible right now in accordance with the ruling that you've already provided.

6 PRESIDING JUDGE FREMR: Yes. Objection is overruled. And I can just refer to
7 our previous decision, which means -- but I will then add something important. So
8 this document is also in accordance with 68(3) admitted into evidence as a further
9 Prosecution exhibit. But as we already expressed some reservation, and we insist on
10 that, that we will exercise really high caution in relation to this document because in
11 fact it's mainly based on anonymous sources. And as we already expressed in I
12 would say similar case concerning the previous similar witness, we really see very
13 low relevance on this kind of information coming from that kind of sources.

14 Now, Mr Iverson, please proceed.

15 MR IVERSON: Of course, the Prosecution hopes that the Chamber will review the
16 evidence in its totality at the end rather than -- I -- I understand what you've said,
17 Mr President, but it's our position that the evidence should be reviewed in its totality
18 again.

19 PRESIDING JUDGE FREMR: Exactly. It was the point, Mr Iverson.

20 MR IVERSON: And so that has been admitted.

21 Q. I'd like to ask you to look at the document at tab 5 and that is
22 DRC-OTP-0074-0628.

23 A. This is a report entitled "The Curse of Gold" again by Human Rights Watch and,
24 again, authored and written by me.

25 Q. And did you have an opportunity to review this document for accuracy?

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1 A. Yes, I did.

2 Q. And is it accurate -- true and accurate to the best of your belief and knowledge?

3 A. Yes, it is.

4 Q. And is this report also referred to in this statement that was just admitted?

5 A. Yes, it is.

6 MR IVERSON: At this time, the Prosecution submits DRC-OTP-0074-0628 for the
7 Chamber's consideration into evidence.

8 PRESIDING JUDGE FREMR: Defence.

9 MR GOSNELL: In full awareness of the inevitable outcome, we nevertheless object,
10 Mr President.

11 PRESIDING JUDGE FREMR: Very well. Same case, same reasoning that you
12 rightly expected.

13 So this item is admitted into evidence as a further Prosecution exhibit and, as I said,
14 with reservation I have already expressed.

15 Now please proceed, Mr Iverson.

16 MR IVERSON: Thank you, Mr President. And just please bear with me. I'm
17 suffering through a bit of a Dutch summer cold, so I'm trying -- being careful not to
18 cough or sneeze into the microphone.

19 PRESIDING JUDGE FREMR: I fully understand that point, yes.

20 MR IVERSON: For the next set of documents, they are all confidential, we have a
21 series of exhibits, there are 12 of them, they're located at tabs 7 to 18.

22 Q. If I could have you -- and I'm going to identify each by the ERN number, but if I
23 could have you just start with the exhibit at tab 7. And for the sake of expediency,
24 the ERN at tab 7 is DRC-OTP-2058-1058, and then the ERNs are all in sequence until
25 the last four, 1069, and that covers the entirety of the 12 exhibits, I believe that that

1 captures the relevant information for the record.

2 Could I have you please review these 12 exhibits, take a look at them carefully.

3 When you are finished just look up at me, please.

4 And could you please tell the Chamber what are these exhibits?

5 A. These are photographs that I took in Bunia in February 2004.

6 Q. And at paragraph 140 of your statement, you refer to 12 photographs. Are the
7 photographs that you've just viewed the same photographs that you mention in your
8 statement?

9 A. Yes, they are.

10 Q. And could I ask you now to turn to tab 23 in your bundle.

11 MR IVERSON: Sorry, I was just corrected. I just want to make sure that I submit
12 all of those 12 exhibits into evidence.

13 PRESIDING JUDGE FREMR: Defence.

14 MR GOSNELL: No objection to these, Mr President.

15 PRESIDING JUDGE FREMR: Very well then. So those 12 photographs are
16 admitted according Rule 68(3) into evidence as a further Prosecution exhibit.

17 Mr Iverson, you may proceed.

18 MR IVERSON:

19 Q. Now, I wasn't sure if this was going to be clear or not, but at tab 23 can you tell
20 the Chamber what you see?

21 A. This is a photocopy of a DVD.

22 Q. And what does the photocopy of the DVD correlate to, if you know?

23 A. So this correlates to a DVD of events in Mongbwalu in 2002, and it is a DVD I
24 handed over to the Prosecution during my meeting with them.

25 Q. And have you had an opportunity to verify the contents of the video and that it

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1 is in fact the same video that you provided to the Prosecution?

2 A. Yes, I have.

3 Q. And is this the same video that you refer to in your statement at paragraph 139?

4 A. Yes, it is.

5 Q. And just so there is no confusion, was this the only video that was referred to in
6 your statement as far as you know?

7 A. As far as I recall, it's the only one I referred to.

8 Q. And I'd just like to ask, could you describe for the Chamber the circumstances
9 of how you came into possession of this video?

10 A. So this video was given to me by someone who was also conducting research on
11 the situation in Ituri. It came into my possession years after we had published the
12 two Ituri reports. The individual was not Congolese but felt it was important we
13 also have access to this information and so gave it to me and I kept it in my files.

14 Q. And what purpose, if any, or for what reason, if any, did you use this video?

15 A. So Human Rights Watch used a small clip of this video in a public film that we
16 used about Mr Ntaganda a number of years ago. It was only perhaps a 15 or
17 20-second clip that we used.

18 Q. And do you recall if you've ever used or played the video in any other context?

19 A. No. Human Rights Watch has not used the video in any other context, though
20 I did review the video with members of the Prosecution team when I gave my witness
21 statement.

22 MR IVERSON: Your Honours, at this time the Prosecution submits

23 DRC-OTP-2058-0251, the video entitled Mongbwalu Après la Guerre.

24 PRESIDING JUDGE FREMR: Yes. One additional question from my, Madam

25 Witness: Do you know who recorded this video?

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1 THE WITNESS: I do not know specifically. I know from having watched the video
2 that it's a Ugandan journalist with a cameraman. My understanding is that the
3 cameraman was Congolese, but I do not know that person's identity, nor have I ever
4 met them.

5 PRESIDING JUDGE FREMR: Thank you.

6 Mr Gosnell, your position?

7 MR GOSNELL: Objection to the admissibility of this document, Mr President. And
8 we have set forth to some extent the basis of that objection in the written submissions.
9 It's important to recall this is a video of more than two hours length. Neither of the
10 two conditions that are set out in the conduct of proceedings decision are satisfied in
11 respect of this entire video.

12 And perhaps on a smaller or more technical note, I'm a little surprised you have
13 heard the witness at page 76, line 10 say that she provided this DVD to the
14 Prosecution, whereas it has an ICC logo on the top.

15 So there is also doubt about the chain of -- even the chain of custody.

16 So objection to the entirety of the video.

17 PRESIDING JUDGE FREMR: Mr Iverson.

18 MR IVERSON: Well, I don't -- I'll address the chain of custody issue first. I don't
19 think that there is a question as to the chain of custody or no reasonable question.
20 And to the extent that the Chamber has a question about the chain of custody, the
21 witness is available for those questions.

22 As you -- if you, if you watch the video or as you watch the video, it's apparent how
23 relevant it is to the proceedings and the prima facie probative value of this exhibit.

24 The Defence in the Defence submissions just moments ago, there was really no
25 mention of the actual admissibility standards, relevance, probative value, potential

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1 prejudice, and that's what this -- the Chamber should be looking at in order to
2 determine whether or not the exhibit is admissible. If you watch the video, it's
3 apparent that it's filmed in Mongbwalu. It contains the accused, several of the
4 co-perpetrators at the time of the charges, and because of that, it's a highly relevant
5 exhibit and it contains lots of information that is generally corroborative of other
6 witness testimony. So it contains prima facie probative value as well.

7 PRESIDING JUDGE FREMR: Mr Gosnell.

8 MR GOSNELL: With your leave, Mr President, one brief follow-up, but I'm in a bit
9 of a dilemma because I'm not sure that I can say what I wish to say with the witness
10 present.

11 PRESIDING JUDGE FREMR: Then it will be better to ask Madam Witness to leave
12 us for a while.

13 Court officer, please assist Madam Witness.

14 (The witness stands down)

15 PRESIDING JUDGE FREMR: And before giving floor to Mr Gosnell, one correction
16 from my part, in several cases I said that the document is admitted according 68(3),
17 but in some cases that we already indicated in our previous decision it was admitted
18 as associated document with the statement.

19 Now, Mr Gosnell, please.

20 MR GOSNELL: And I'm afraid we have to go into closed session for this.

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

22 (Private session at 1.06 p.m.)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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13 Page redacted – Private session

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15 (Redacted)

16 (Redacted)

17 (Open session at 1.12 p.m.)

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

19 PRESIDING JUDGE FREMR: Thank you, court officer.

20 Madam Witness, sorry for this inconvenience, but you know it's procedure rules and
21 if there is some litigation concerning your testimony, normally it should be made
22 without the presence of witness. Thank you for your understanding.

23 Mr Iverson, you have the floor.

24 MR IVERSON:

25 Q. So can I ask you to turn to tab 22 in the bundle. And the ERN number is

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1 DRC-OTP-0136-0161. And could you please tell the Chamber what is this document,
2 if you recognize it.

3 A. I do recognize it. This is a letter from the director general of OKIMO, which is
4 the Kilo-Moto gold mining company. An initial letter plus a memo attached. And I
5 collected a letter -- this letter during my research in Ituri.

6 Q. And did you have an opportunity to previously review this exhibit?

7 A. Yes, I did.

8 Q. Did you have any clarifications that you would like to add based on your
9 review?

10 A. No.

11 Q. And this letter and memo and this exhibit, are they the same that you
12 mentioned in your statement at paragraph 138, page 1015?

13 A. Correct. This letter is in my statement and it's also referenced in the Human
14 Rights Watch report, The Curse of Gold.

15 PRESIDING JUDGE FREMR: Sorry, Mr Iverson, to interrupt you. Maybe it's just
16 problem of my computer, but my transcript, it's frozen.

17 So if it's just my problem, court officer, could you please double-check my computer.
18 No, it's not just my problem?

19 MR IVERSON: It's my computer as well, Mr President.

20 PRESIDING JUDGE FREMR: Okay. Let's continue. Hopefully we will not face
21 any problem with that.

22 MR IVERSON: Now, your Honours, I would like to submit this exhibit. It's
23 DRC-OTP-0136-0161.

24 PRESIDING JUDGE FREMR: Mr Gosnell.

25 MR GOSNELL: Well, objection on grounds of relevance and not being necessary to

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1 understand the witness's statement, Mr President.

2 PRESIDING JUDGE FREMR: Mr Iverson.

3 MR IVERSON: I believe that the Chamber has already ruled on this exhibit. It is
4 relevant. It relates to her statement. It's relevant to show the UPC interest in gold
5 mining. And the Chamber has previously ruled on this and it's just subject to the
6 technical -- from Prosecution's understanding, subject to the technical rules of Rule 68.
7 And it's for that reason that we're submitting it as per the Chamber's previous ruling.

8 PRESIDING JUDGE FREMR: All right. So this document is also admitted into
9 evidence as a further Prosecution exhibit.

10 Mr Iverson.

11 MR IVERSON: I believe we've come to the time where it's time for a break so I
12 would ask that we break for lunch now, your Honour.

13 PRESIDING JUDGE FREMR: You're absolutely right. So now we will break for
14 usual 90 minutes lunch break, which means that we will start the afternoon session,
15 and now please correct me if I am wrong, we will start quarter to three; am I right? I
16 hope so. And we will then continue until 4.20 because some members of the
17 Chamber has some further commitment. So we will have to finish a bit earlier at
18 4.20.

19 And last issue concerning timing, Mr Iverson, according my information at the
20 moment, you have exhausted 26 minutes, so you still have at your disposal 34
21 minutes.

22 THE COURT USHER: All rise.

23 (Recess taken at 1.17 p.m.)

24 (Upon resuming in open session at 2.50 p.m.)

25 THE COURT USHER: All rise.

1 Please be seated.

2 PRESIDING JUDGE FREMR: I am very sorry, I forgot my glasses, so I will ask you
3 for patience, and we will break and we will start after 5 minutes. Sorry for that.

4 THE COURT USHER: All rise.

5 (Recess taken at 2.51 p.m.)

6 (Upon resuming in open session at 2.54 p.m.)

7 THE COURT USHER: All rise.

8 Please be seated.

9 PRESIDING JUDGE FREMR: So once again good morning, good morning
10 everybody. We will continue with examination-in-chief of our witness. And since
11 we direct Prosecution before the break to provide us with this short excerpt of video
12 connected to the testimony of our witness, I will give floor soon to representative of
13 Defence, but before doing that, I would like to focus attention of both parties of our
14 decision on Conduct of Proceedings, para 56, where we said:

15 "If a party wishes to present audiovisual material to a witness, it must establish that
16 the witness has personal knowledge of the making of the recording or its contents."

17 And now it depends, having in mind Defence objection against admission of this
18 video what should be understood under term "personal knowledge of its contents."

19 So would be then ideal, Mr Iverson, if you would present this excerpt that would
20 demonstrate that witness has a knowledge of events that are recorded in order to
21 prove that conditions for admission as we understand them are met. Mr Iverson.

22 MR IVERSON: If I could propose that I ask those questions after the witness views
23 the portions of the video, because at this point it would be difficult for me to make
24 those submissions without being seen as influencing the answers of the witness. So
25 either the witness would have to leave the courtroom or, what I propose is, just

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1 simply I show the excerpts and then I ask the questions. And at that time it is then
2 clear to the Chamber this witness's level of personal knowledge about the events in
3 the video.

4 PRESIDING JUDGE FREMR: Mr Gosnell.

5 MR GOSNELL: No comment on that.

6 I just wanted to put on record that unfortunately Maître Bourgon is no longer with us.

7 PRESIDING JUDGE FREMR: Thank you very much for this clarification. All right.

8 So it means that we can move to play this video. Is this video confidential? Should
9 we make it in private or open session?

10 MR IVERSON: The video exhibit is a confidential exhibit. However, my
11 understanding is it has been played before in public, and the excerpts that we intend
12 to show don't tend to reveal any protected information. And so my suggestion is
13 that it can be played in public session, your Honour.

14 PRESIDING JUDGE FREMR: All right then. Court officer, please.

15 THE COURT OFFICER: The video will be played on --

16 THE INTERPRETER: Microphone, please.

17 PRESIDING JUDGE FREMR: Court officer, your mic was not switched on, I would
18 say.

19 THE COURT OFFICER: It was.

20 PRESIDING JUDGE FREMR: It was? Okay then. Number 2, okay.

21 MR IVERSON: So yes, I can see on my screen that it's on evidence 2.

22 And I would just ask, Ms Van Woudenberg, are you able to see an image on your
23 screen? No.

24 PRESIDING JUDGE FREMR: Court officer, please assist Madam Witness.

25 THE WITNESS: I think I've managed it. I've pushed the evidence 2 button. It's

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1 good.

2 PRESIDING JUDGE FREMR: Thank you for your cooperation.

3 MR IVERSON: So I would just like to play a short excerpt from the beginning until
4 roughly, for roughly about 16 to 17 seconds. So we'll play that now.

5 (Viewing of the video excerpt)

6 MR IVERSON: Unfortunately I'm not able to see the timestamp where it ended.

7 Okay, so I'm told by my colleague that it was at the 26-second mark, just for the
8 record.

9 So what I'd like to do is just play a few excerpts and then ask you a series of questions.

10 So if we could play the next excerpt whenever you're ready, please.

11 (Viewing of the video excerpt)

12 MR IVERSON: And that was 17.26 to 18 minutes.

13 And just as I look back in the transcript I realise that I failed to give the ERN number
14 so we can identify this video. It's DRC-OTP-2058-2051.

15 PRESIDING JUDGE FREMR: Sorry to interrupt you, Mr Iverson, do you have
16 realtime at the moment, working transcript, because I --

17 MR IVERSON: Yes, Mr President.

18 PRESIDING JUDGE FREMR: Because I don't.

19 Court officer, may I ask you to check my computer?

20 Now it's in order. So thank you very much, court officer.

21 Mr Iverson, please proceed.

22 MR IVERSON: And then I would just like to play one last excerpt of the video, and
23 that's at minute mark 1.53.40 and if we could play that one please.

24 (Viewing of the video excerpt)

25 MR IVERSON: And that was stopped at 1.54.05.

1 Q. So those are the only excerpts I intend to show you. Could you tell the
2 Chamber what it is that we saw in those excerpts, please?

3 A. So this is a film that was made in Mongbwalu. What we see in those excerpts
4 at the beginning is what appears to be a Ugandan journalist describing what he's
5 about to do. He's at an airport. And I assume that that's the airport of Bunia.
6 In the second clip we see footage of Bosco Ntaganda. We also see the OKIMO gold
7 mining area. We see here some of the buildings that were connected, are connected
8 to the Kilo-Moto gold mines, which is the main gold mining area in Mongbwalu. So
9 we see the laboratory and some of the other installations.

10 And then in the third clip we see Bosco Ntaganda again with numerous other
11 individuals, including Kisembo, who is one of the other senior leaders in the UPC as
12 well as other soldiers.

13 And if you have further specific questions I can answer those, but that's roughly what
14 we have seen.

15 Q. And abiding with the Chamber's instructions not to simply ask you questions
16 that are already covered in the statement that has been admitted, I just want -- and,
17 first of all, let me ask you this, were you present during these events which were
18 filmed?

19 A. I was not present in Mongbwalu when this film was made, but I have of course
20 interviewed dozens and dozens of victims and witnesses who attest to what
21 happened during these events. And when I saw this video years later, I felt like I
22 was seeing again through their eyes because so much of what they had described to
23 me was on this video.

24 Q. Okay. And so what I would ask you to do then is explain to the Chamber how
25 it is that you know these things about the video without having been present?

1 A. So I personally have been to Mongbwalu on a number of occasions, especially in
2 2004, as well as throughout 2005, 2006 and in the years that followed. I have been at
3 the airport in Mongbwalu and visited many of the locations that appear in the video.
4 So I myself have been to the gold mines and have toured around that area repeatedly.
5 So I personally have seen Mongbwalu and seen many of these locations that are in the
6 film.

7 But also it again coincides very closely with the dozens and dozens of victim
8 testimony I took, both when I was in Mongbwalu as well as in the years that followed.
9 So when I saw the film, I knew it to be Mongbwalu, because I had been there.

10 Q. And how is it that you were able to identify the people who are featured in the
11 video?

12 A. Well, I have met Bosco Ntaganda on a number of occasions, so I know what he
13 looks like. I have also met General Kisembo, who is also in the film. I've met him
14 also on a number of occasions. And of course, these were also names that victims
15 and witnesses repeated to me on a number of occasions. And of course, I've also
16 seen their photographs and asked for positive identification by individuals who point
17 at the same pictures.

18 MR IVERSON: Your Honours, on the basis of these questions and answers and on
19 the basis of her explanation of her knowledge, I submit that the video
20 DRC-OTP- 2058-0251, the very same video that's also mentioned in her admitted
21 statement.

22 PRESIDING JUDGE FREMR: And, Mr Iverson, one additional question from me to
23 you, am I right saying that you also have, I mean Prosecution have on your list
24 another witness who has relation to this video?

25 MR IVERSON: All I can say while we're in open session is yes, that that is true.

1 PRESIDING JUDGE FREMR: It's enough, yes.

2 Mr Gosnell, now please I'm looking for your position.

3 MR GOSNELL: Mr President, there is no objection to the admission of the excerpt
4 that have been shown to the witness, but there is objection to any portion that has not
5 been shown to the witness. And I'll bring your Honours back to your own ruling,
6 which was on 20 June 2016, page 118 of the provisional transcript, line 20.

7 "The Chamber does not consider" and I quote:

8 "The Chamber does not consider that the video which is DRC-OTP-2058-0251, which
9 is only briefly mentioned in the statement is necessary to understand the witness's
10 testimony." End of quote.

11 That was the standard that your Honours applied and that's the correct standard, we
12 say. And I would add, your Honours, that this video has been introduced piecemeal
13 already in respect of other witnesses in the same way, namely, on an
14 excerpt-by-excerpt basis. So I would suggest that that is the appropriate manner to
15 proceed.

16 And it's more than just an issue of admissibility or non-admissibility. It has to do
17 with the connection and foundations of the witness who is in front of you. So those
18 are our submissions, and we don't oppose the admission of the excerpts.

19 PRESIDING JUDGE FREMR: Mr Iverson, do you want to add anything?

20 MR IVERSON: Well, I would only add that if it were not -- if it were in my
21 estimation not a waste of time, I would certainly show the entire video in court. But
22 I deem that to be a waste of time because she's already verified the contents and she
23 can testify that she's done so. She can testify that she can verify the contents after
24 viewing them as well in court, the excerpts. And I think that it would defy the
25 expeditiousness of the proceedings. It would defy common sense, in a way, to

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1 require an entire video, lengthy video to be shown in court. I think it's not a good
2 use of court time.

3 PRESIDING JUDGE FREMR: Thank you. Give us a moment, we will deliberate
4 silently within the courtroom.

5 (Trial Chamber confers)

6 PRESIDING JUDGE FREMR: So our decision, our ruling is that objection is
7 sustained and this video is not admitted into evidence. And we would like to
8 remain consistent with our previous decisions.

9 And as I indicated, in our view, it's not your fault, Madam Witness, but the
10 knowledge of this witness, of this video in our view is not in fact direct personal
11 knowledge. She -- it was vigorous through watching that, she was vigorous through
12 interviews made sometime after events recorded. So in such a case we don't believe
13 that conditions that we establish for admission had been met.

14 And moreover, as you, Mr Iverson, confirm, if generally it's not the reason to -- not
15 to -- maybe that you have a better witness, but in this case I think it also, it
16 contributed to our decision that you have a witness which should be much proper to
17 present this, for admission of this video.

18 So it concludes our ruling and you may proceed.

19 MR IVERSON: I understand your ruling, Mr President and your Honours. I just
20 want to address briefly one Prosecution concern is that, in this instance, we do expect
21 that we have another witness who may be in a better placed position to discuss
22 personal knowledge about the video. But more broadly speaking and as a general
23 matter in all Prosecution cases, the standard should be relevance, probative value,
24 and that's what we would submit.

25 And I would be a bit concerned if the standard became must have witness who was

1 very closely connected to the video in order to admit video evidence. That that's the
2 Prosecution concern in this instance with the ruling. So I just wanted to address that.

3 PRESIDING JUDGE FREMR: In fact, Mr Iverson, I agree with you, the issue is how
4 closely was witness connected. In this instance we didn't find a right proximity if I
5 could take your term.

6 MR IVERSON: Understood, Mr President. Thank you.

7 Q. You mention that you have met the accused in this case several times. And I'd
8 like to ask you about that. Do you recall when you first met the accused in this case?

9 A. Yes. The first time I met Mr Ntaganda was in November of 2010.

10 Q. And could you explain to the Chamber what were the circumstances of that
11 meeting?

12 A. So Human Rights Watch had published information connected to individuals
13 that Mr Ntaganda was targeting in the city of Goma. Human Rights Watch have an
14 office in Goma and we were receiving information through trusted sources, people
15 we knew telling us that Mr Ntaganda was extremely angry with Human Rights
16 Watch and was threatening us, and that we should be careful.

17 We then in the days that followed receiving that information, there was what I would
18 term a suspicious visit to our office in Goma. At the time Mr Ntaganda was a
19 general in the Congolese army, he was one of the most powerful men in the city, and
20 he and two Jeeps drew up to our office in Goma, our office is on the second floor of a
21 three-storey building. The Jeep stopped exactly outside our office filled with
22 soldiers. Our office staff quickly locked the doors and observed from the windows,
23 the windows were tinted so you could not see in, but you could see out, that's the
24 standard for buildings in Goma, and our staff noticed that Mr Ntaganda and those
25 who were with him were pointing up towards our office.

1 They then went through the ground floor of the office to the back of our building, and
2 again our staff followed and watched from inside the office as Mr Ntaganda and
3 some of his bodyguards went to the back of our office to a small shopping precinct
4 that was there and again turned around, looked at our office and pointed at it.

5 These two events together led us to believe that we were walking a tightrope, if I
6 could put it that way, in terms of our security. Human Rights Watch is very aware
7 of our security. We are from time to time threatened by the individuals whose
8 crimes we are exposing. And so we became concerned.

9 One of the standard things that I have done over my 17 years of working in Congo in
10 doing this type of work is I always feel it's best to permit an opportunity to talk or to
11 try to talk to those who are threatening us. And so in this particular case I felt we
12 should reach out to Mr Ntaganda to see if he wanted to meet with Human Rights
13 Watch to discuss any concerns he might have about what we had published and to
14 talk through why we had published such information and why we believed he had
15 been responsible either directly or indirectly to attacks on his critics in Goma.

16 And so that's how the meeting was set up. I contacted a trusted source who I knew
17 Mr Ntaganda who agreed to set up a meeting between the two of us, and we then
18 indeed had the meeting. The meeting was Mr Ntaganda, myself and my colleague
19 Ida Sawyer.

20 Q. And do you recall the specific date of that meeting?

21 A. Apologies. I would need to just refresh my memory. If I could look at the, at
22 my witness statement, I remember it was November 2010.

23 Q. All right. For my purposes month and year are fine. That's what I was
24 looking to establish.

25 And could you please then tell the Chamber what happened during this meeting that

1 you had with Mr Ntaganda?

2 A. So we did what we at Human Rights Watch would normally do, which is
3 present ourselves to Mr Ntaganda. We explained that we wanted to ask him a range
4 of questions related to events that we had documented in which he had played a role
5 and where we believed he had committed potentially serious human rights abuses.
6 We explained very carefully that the meeting was on the record, that we would take
7 notes, and that this was also an opportunity for him to ask us any questions.

8 So I, I had a list of things I wanted to discuss with Mr Ntaganda. At this stage I had
9 been documenting crimes in eastern Congo for many years, and I have to say my list
10 was rather long because Mr Ntaganda had been a member of an armed group in Ituri,
11 but also in the Kivus. So there was a long list of things I wanted to have his view on
12 to have his side of the story on. And having all sides of the story is important for our
13 work.

14 So we talked about a range of issues. Mongbwalu was one of them. We also talked
15 about other issues in Ituri. And we talked about issues in the Kivus.

16 We went through all of this item by item. The meeting lasted about three hours. It
17 was what I would call courteous. And there were then, following the meeting, he
18 asked some questions of us as well.

19 Q. And you mentioned that you took notes, and I want to get to that. But first I'd
20 like to know if you're able to describe what was Mr Ntaganda's demeanour during
21 this interview?

22 A. So during my time at Human Rights Watch, I've probably interviewed over 30
23 or 40 what I would term warlords, armed group leaders, senior individuals who are
24 responsible for human rights abuses, though I was able to certainly compare this
25 meeting I had with Mr Ntaganda to many others I had done in the past.

1 I found him nervous at the beginning. He didn't want to make eye contact. He was
2 very hunched over at the table in which we were meeting. But I also found that
3 every time I put a question to him his answer was extremely evasive.

4 I'll give you an example. So when I first asked him about the situation in
5 Mongbwalu, Mr Ntaganda's initial response was "I wasn't there."

6 Then when I said "Well, we have numerous witnesses who say you were there, plus I
7 have seen a video that shows you were there" he then backtracked and said "Well, I
8 was but not on that day. I was there a bit later."

9 And this was the pattern throughout the discussion, is that initially the answer was
10 denial, denial. And then as I pushed with further information I had, the answers
11 would change.

12 I can give another example. I was surprised, for example, when I asked him about
13 Abbé Boniface Bwanalongba. His immediate and very quick reaction was "I don't
14 know him." When I said "the Abbé of Mongbwalu" who was extremely well-known
15 in the area who had been arrested by his troops, he again repeated very quickly "I
16 don't know him."

17 And I remember at the time and in fact I did note down in my handwritten notes of
18 the meeting "evasive" or, to specific questions I even recall writing in the margins of
19 my notebook, "lying".

20 Q. And you say you took handwritten notes. What did you do then with the
21 handwritten notes, if anything?

22 A. So there were two of us at the meeting, myself and my colleague Ida Sawyer.
23 We both took handwritten notes and after the meeting we then typed-up those notes.
24 Now, this is not a verbatim question and answer type of notes. These are summary
25 notes of that meeting. And we typed those up and they were part of our files of

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1 what occurred on that day.

2 Q. I'd like to ask you to turn to tab 19 in the bundle that was provided and look at
3 document DRC-OTP-2062-0363. And could you tell the Court what is that document
4 that you see in front of you?

5 A. So this is, these are our typed-up notes of the summary of that meeting.

6 Q. And have you had an opportunity to review these notes for accuracy?

7 A. Yes, I have.

8 Q. And are these notes true and accurate to the best of your knowledge and belief?

9 A. Yes.

10 MR IVERSON: Your Honours, the Prosecution now submits this exhibit
11 DRC-OTP-2062-0363. And just so you know, this did not form part of your
12 admissibility decision, and that's why I asked additional questions about this exhibit.

13 PRESIDING JUDGE FREMR: Yes, you are right.

14 Defence, we understood that Defence indicated objections. Do you insist on that?

15 MR GOSNELL: There is one particular objection that is in our written objections
16 which I would prefer not to explore in front of the witness.

17 PRESIDING JUDGE FREMR: Okay.

18 MR GOSNELL: But they're written down, your Honour. And so I would simply
19 ask that the decision be deferred until the end of the cross-examination.

20 PRESIDING JUDGE FREMR: Give me a second.

21 (Trial Chamber confers)

22 PRESIDING JUDGE FREMR: Our ruling is that we will postpone decision on that
23 after the cross-examination. We have already indicated that -- yes, that's it for the
24 moment.

25 MR IVERSON: If that is the Chamber's decision, of course the Prosecution expects

1 that, but then we would, if there is any, in the Chamber's view, defect in the
2 questioning to support admissibility, we would ask that we be allowed to cure that
3 during redirect, if necessary.

4 PRESIDING JUDGE FREMR: For sure. I can guarantee that.

5 MR IVERSON: Thank you, Mr President.

6 Q. And I'd like to move on to another topic. Are you familiar with a person
7 named Chief Kahwa?

8 A. Yes.

9 Q. And have you ever met Chief Kahwa in the past?

10 A. Yes.

11 Q. Can you please explain to the Chamber the circumstances of that meeting with
12 Chief Kahwa?

13 A. I've met Chief Kahwa several times. I first met Chief Kahwa when he was
14 detained. Actually, no, that wasn't the first time, sorry. I first met Chief Kahwa in
15 Kampala in 2003, if my memory of the years is correct, and I interviewed him at
16 length about the situation in Ituri. At the time he was of course a senior Hema
17 individual. He had had a falling-out with the UPC at that time and was launching
18 his own armed group.

19 We spoke for a considerable length of time during our first meeting where he
20 explained the background, his point of view and also wanted to provide me with
21 context about the UPC as well as other armed groups.

22 I met him again several times afterwards, so I'm happy to answer questions on any
23 other meetings, but certainly my first meeting with him was in February 2003.

24 Q. All right. And do you recall whether you took notes at that meeting?

25 A. Yes, I did. I take notes at all meetings and I took notes at that meeting too.

1 Q. And I don't know this, but was it the same process where it was handwritten
2 and then later typed or did you type the notes while in the interview?

3 A. So this interview was done by myself personally. It was just myself and Chief
4 Kahwa in the room. I took detailed notes and then I typed up those notes
5 afterwards.

6 Q. And could I ask you in your bundle to turn to tab 21, please. And that is
7 DRC-OTP-0172-0296. If I could just ask you to turn to the second page, which is
8 0297 and could you tell the Chamber what document you see?

9 A. So these are my typed-up notes of that particular meeting with Chief Kahwa.

10 Q. And have you had an opportunity to review these notes for accuracy?

11 A. Yes, I have.

12 Q. And are these notes true and accurate to the best of your belief and knowledge?

13 A. Yes.

14 Q. And I would like to ask, are you familiar with a person named Thomas
15 Lubanga?

16 A. Yes, I am.

17 Q. And could you tell the Chamber whether you've met Mr Lubanga?

18 A. So I also met Mr Lubanga in February of 2003. Again, this is part of the
19 methodology of Human Rights Watch. We would meet such individuals in order to
20 ensure we're getting a full picture of what is happening. In this particular case we
21 needed to meet with Mr Lubanga because we had collected quite a lot of information
22 about abuses being committed by the UPC. We had also collected information about
23 abuses committed by other armed groups. But we always feel that it's critical to get
24 a point of view of those in positions of responsibility. At that time that was Mr
25 Lubanga. So he agreed to meet with Human Rights Watch, and we put to him a

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1 number of the allegations during that meeting and we typed up notes of that meeting
2 as well. I participated in that meeting along with another colleague of mine, Carina
3 Tertsakian.

4 Q. In that same document, in that same exhibit, rather, if I could have you turn to
5 page 4, and the ERN last four is 0299. And could I ask you to tell the Chamber what
6 is this document or what is this part of the exhibit?

7 A. So this is our typed-up notes of that meeting with Mr Lubanga. As you will
8 see from the note itself, there were others from the UPC present during that meeting,
9 and they are also listed, including Jean-Baptiste Detchuvi and this, these are our
10 typed-up notes of that meet.

11 MR IVERSON: At this time, your Honours, I would submit this exhibit into
12 evidence, it's DRC-OTP-0172-0296. And it's one of those documents that is the same
13 as the last, so it was not decided on by the Chamber at this point.

14 PRESIDING JUDGE FREMR: Yes, you are right. It is the same like the last, so I
15 also expect the same nature of objections. Mr Gosnell, am I right?

16 MR GOSNELL: Maybe slightly different, Mr President. It's not often that your
17 Honours get two witness statements in a single document, but that's what you have
18 before you now, two witness statements unsigned by the originators, alleged
19 originators of the statement. And so we rely on the submissions we've made in
20 writing. But it's particularly interesting to imagine what would happen if the
21 Prosecution were itself to try to tender two unsigned statements to your Honours.
22 What would be the outcome in terms of admissibility? So on that ground we object.

23 PRESIDING JUDGE FREMR: All right. We also noted some additional reasons,
24 but anyway, we will in the same, in the same case like in the first case, we will defer
25 this decision after the cross-examination, which again guarantee to Prosecution if he

1 would reject this request for re-examination in-chief.

2 Mr Iverson, according my information, just to provide you with update on time still
3 available to you, so give me a second. According my information, you should finish
4 in effect in eight minutes.

5 MR IVERSON: Okay. Thank you very much, Mr President.

6 I don't know how to respond to that last Defence objection honestly because it wasn't
7 clear to me what the objection actually is. There was a rhetorical question that was
8 posed to the Chamber but I don't know that that is actually an objection. I'd like to
9 ask just one or two questions based on that objection, just to satisfy --

10 PRESIDING JUDGE FREMR: All right. Yes, yes.

11 MR IVERSON: -- what I think it might be driving at.

12 PRESIDING JUDGE FREMR: Please go ahead.

13 MR IVERSON:

14 Q. In all of the interviews that you've talked about with Mr Ntaganda, Chief
15 Kahwa, Mr Lubanga and others, were any of those people you interviewed coerced or
16 not present on a voluntary basis at those interviews?

17 A. Not at all. These were all meetings they agreed to. These were also meetings
18 where they agreed to go on the record, which means that they were also notes we
19 would use where we cited them by name. This was very clear at the beginning of
20 the meeting. I always make it extremely clear that a meeting is on the record, not off
21 the record, that it is therefore not confidential, that their names might be cited in our
22 reports.

23 All these individuals wanted to speak to Human Rights Watch and were very keen
24 that we hear their side of the story.

25 PRESIDING JUDGE FREMR: And allow me one additional question, Mr Iverson.

1 Madam Witness, did you explain to those who were interviewed the purpose of your
2 report?

3 THE WITNESS: Yes, this is part of the methodology of Human Rights Watch, we
4 would explain that any information they gave to us during such a meeting could be
5 used for publication, that we would cite them by name in any potential future
6 publication. This was all very -- made very clear. They also knew that we were
7 taking notes of the meeting. We asked their permission to take notes and they
8 would have seen us taking notes during the meetings.

9 PRESIDING JUDGE FREMR: And did you explain, I understood that you
10 introduced themselves as a representative of Human Rights Watch, but do you
11 think -- did you explain them what is the, in effect, the main goal or task, you know,
12 you are in effect trying to fulfil there?

13 THE WITNESS: Yes, in each, in each of these meetings I would introduce myself. I
14 would introduce Human Rights Watch. I would say that we wanted to get an
15 accurate picture of what was happening, including their side of the story. I would
16 say that we had troubling issues we wanted to raise with them. For example, in the
17 case of Mr Lubanga, that we wanted to raise with him violations we believed the UPC
18 were committing and wanted to get their side of the story. All these individuals
19 knew Human Rights Watch already. Some of them already knew me because they
20 had probably heard me speaking on the radio or knew the type of work that I did. It
21 was very clear that they were -- that they were happy for these discussions to go
22 ahead. And in many cases these discussions were an hour, two hours or sometimes
23 longer.

24 PRESIDING JUDGE FREMR: Interesting information to me, you said you spoke to
25 radio. You mean Congolese radio? And do you remember still name of the radio

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1 station?

2 THE WITNESS: So I'm interviewed very frequently. It's again part of my work at
3 Human Rights Watch is that we both document the crimes that are happening and
4 also expose them, which means that we put out public reports, public press releases,
5 and I'm often interviewed on the back of those publications. So, for example, in Ituri,
6 I was frequently on I would say probably the two most listened to radio stations,
7 which are actually Radio France International in French and BBC Africa in French and
8 English. But I have also been interviewed on some of the local radio stations.

9 PRESIDING JUDGE FREMR: Thank you.

10 Sorry to interrupt you, Mr Iverson. You may proceed. This time will not be
11 included to your time.

12 MR IVERSON: Of course. No apologies necessary, Mr President.

13 Q. So I'd like to ask you a few supplemental questions. In your statement, and
14 that's DRC-OTP-2058-0990 at paragraphs 28 and 29 on page 0995, you mention that
15 you had conducted some research for a report entitled "Seeking Justice: the
16 Prosecution of Sexual Violence in the Congo War".

17 So I want to ask what research did you do with regard to that report?

18 A. So for the report Seeking Justice I conducted interviews with victims and
19 witnesses about sexual violence. I was not the lead author of that report, but I did
20 contribute research and then reviewed the bits of my research that were used for
21 publication.

22 It was about sexual violence and that particular report was about the difficulties for
23 many Congolese women and girls to get justice for crimes of sexual violence.

24 Q. And what research, if any, did you conduct pertaining to the UPC, if you recall?

25 A. So for the report Seeking Justice we were looking at sexual violence by all

1 armed actors in Ituri, and we indeed documented crimes of sexual violence by
2 members of the UPC as well as by other armed groups.

3 So as with all our research we always look at all sides. But indeed, we did find that
4 there were combatants of the UPC who had also committed sexual violence and rape.

5 Q. I would just ask you to please turn to tab, I believe that it is tab 6 in your bundle.
6 And this is DRC-OTP-2003-0497. And if you could turn to page 19 in this document.
7 First of all, just to identify the document, could you please tell the Chamber what this
8 document is?

9 A. So this document is our report entitled, the report from Human Rights Watch
10 entitled "Seeking Justice: The Prosecution of Sexual Violence in the Congo War."

11 Q. And it is a public document.

12 So just on page 19, and the last four of the ERN is 0517, I want to focus on the
13 headline where it says "Attacks by the UPC in Ituri." So this page and then the next
14 page, page 20 and page 21. I'd like you just to take a look at those pages, and I want
15 to ask a general question about these pages.

16 So do you recall whether you played a role in developing these particular pages
17 pertaining to the UPC?

18 A. Yes. These pages are based upon my research into sexual violence in Ituri.

19 Q. And did you have an opportunity to review these particular pages for their
20 accuracy?

21 A. Yes.

22 Q. And are these pages true and accurate to the best of your belief and knowledge?

23 A. Yes.

24 MR IVERSON: Your Honours, at this time we seek to admit partially, so not the
25 entire report, but just the report as it pertains to attacks by the UPC in Ituri, so that

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1 would be from ERN number DRC-OTP-2003-0517 until 0513. It's less than three
2 pages. Excuse me, the last four, the last one was 5019.

3 PRESIDING JUDGE FREMR: Defence, your position.

4 MR GOSNELL: Mr President, even in respect of these limited pages the witness has
5 not given any additional information to what your Honours had in front of you when
6 you decided that this document was not admissible. She's not gone any further than
7 what's in paragraphs 29 and 28, even in respect of these pages. So they're not
8 admissible, Mr President.

9 PRESIDING JUDGE FREMR: Mr Iverson, any reaction?

10 MR IVERSON: Well, she's now testified that she's had a role in creating these
11 particular pages. They pertain specifically to the UPC. They're directly relevant to
12 this case. And the additional information in the report, as the Chamber has pointed
13 out, doesn't bear on issues in dispute or other issues. That's why we're not seeking
14 to admit the rest of the document. But on the portion related to the UPC, it's of
15 particular relevance, and just like the other reports, this witness has had a hand in
16 creating those, that portion, and we've established that through her testimony.

17 PRESIDING JUDGE FREMR: Yes. Give us a second.

18 (Trial Chamber confers)

19 PRESIDING JUDGE FREMR: So our ruling after brief silent deliberation is that
20 objection is overruled and this document as specified, which in effect means three
21 pages as specified by Mr Iverson is admitted into evidence as a further Prosecution
22 exhibit and we can just refer to arguments presented by Prosecution which we share.
23 Now please proceed.

24 MR IVERSON: And I believe my time is almost coming to an end. I think I have
25 one or two questions and then I'll be able to finish.

1 PRESIDING JUDGE FREMR: Two questions and that should be the end.

2 MR IVERSON:

3 Q. So in paragraph 104 of your statement and that's on page 1007 of your statement,
4 I'd like to just read out the relevant portion because I have a question about it:

5 "As we drove into the compound, both Carina Tertsakian and I individually and
6 independently commented upon how young some of the armed guards at Lubanga's
7 compound appeared to be. There were four or five of them who looked like they
8 were between 12 and 15 years old. They were wearing uniforms and carrying
9 weapons."

10 So my question is how was it that you were able to determine that the age was
11 between 12 and 15?

12 A. So this occurred as we were coming into the meeting with Mr Lubanga. We
13 were stopped at the entrance to his compound and of course had to identify ourselves.
14 And I was sitting in the front seat, my colleague was sitting in the back seat and we
15 were looking, both of us very carefully, at the children that surrounded our car, and
16 we did think that they were children.

17 They were asking us about the meeting, and it was part of the protocol for entering
18 the compound. They were small in stature. They looked extremely young. I had
19 a close look at a couple of them because they were right beside me as I was sitting in
20 the car and they were outside the door. I remember personally thinking, "Gosh,
21 these children look very young."

22 We then drove into the compound and we waited for approximately 45 minutes to an
23 hour before the meeting occurred, and we watched the children again. At this stage
24 I'd already had considerable number of years working in Africa. I conferred with
25 my colleague who had even greater numbers of years working in Africa. Both of us

1 felt that the children looked extremely young. We did not ask their ages. We
2 couldn't. It was not a circumstance in which we could do so.
3 We had the meeting with Mr Lubanga where we also referred to this, because he
4 claimed there were no child soldiers in the ranks of the UPC, and near the end of the
5 meeting we could see the children outside the window. And as we were leaving, we
6 pointed them out to him, saying, "Are you sure those are not children?" to which he
7 laughingly said "These are all over 18", which was clearly not the case in my view.
8 As we then left the meeting we again passed these young soldiers on the way out, and
9 I asked the driver who was with us, who was Congolese, who was an adult, and
10 asked his opinion of the age of the children, and he also independently said "In my
11 view, these are very young children."

12 Q. Thank you very much. I have no other questions for the time being.

13 MR IVERSON: Thank you, your Honours. Thank you, Mr President.

14 PRESIDING JUDGE FREMR: Fine. Now we can move to the second part, which
15 will be more extensive.

16 Mr Gosnell, as you know, we allotted you four hours. I know that again, just for the
17 sake of planning, because it seems that we will have a chance also to start with the
18 next witness, do you at this moment envisage that you will need all whole four
19 hours?

20 MR GOSNELL: At this moment it's genuinely hard to say, Mr President, but I think
21 by now you've seen me with a couple of witnesses and you know that I do my best to
22 go through it as quickly as I can and that I usually do end upcoming in under the
23 allotted time. So I'll say that I'll try to do that again.

24 PRESIDING JUDGE FREMR: Very well. So you have the floor.

25 And another reminder, as I already said, because of some other commitments we

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1 have to finish today 4.20.

2 MR GOSNELL: Thank you very much.

3 PRESIDING JUDGE FREMR: I'm sorry, Mr Gosnell.

4 Mr Iverson?

5 MR IVERSON: I realise it may be considered bad form to object before the Defence
6 even gets started, but I would ask that -- I would like a ruling from the Chamber on
7 this. We only received the list of documents to be used by the Defence I believe after
8 I started with my examination. And some of those documents had been disclosed
9 today. And so I haven't had an opportunity to actually look at the list, understand
10 what's on the list, understand what's been disclosed. My only request is that counsel
11 not be entitled to use any exhibit today, because I'd like tonight to be able at least to
12 review the documents to determine whether or not I might have an objection. And
13 so I'm just not in a position to formulate an objection if he were to use an exhibit.

14 PRESIDING JUDGE FREMR: It seems to me pretty reasonable.

15 But anyway, Mr Gosnell, your reaction?

16 MR GOSNELL: Very briefly, Mr President, the vast majority of documents on our
17 list were actually documents from the Prosecution list, and I can affirm those are the
18 only ones I would use today in any event. There is a point of principle, I understand
19 it, as to precisely when the distribution of the exhibit list for cross-examination should
20 be made available in the case of very short witnesses. I could present those
21 arguments now but I'd really prefer not to do that at the moment. I'd prefer to get
22 on with the cross-examination and I can address this either in writing, perhaps with
23 the assistance of Maître Bourgon, if that's acceptable to your Honours.

24 PRESIDING JUDGE FREMR: It's a general issue, but at least I would like to ask you
25 not to deal with those items on the list which are really new for Prosecution today.

1 MR GOSNELL: Certainly, Mr President. That's not a problem.

2 PRESIDING JUDGE FREMR: Fine.

3 MR GOSNELL: Thank you. May I proceed?

4 PRESIDING JUDGE FREMR: Yes, please.

5 MR GOSNELL: Thank you, Mr President.

6 QUESTIONED BY MR GOSNELL:

7 Q. Good afternoon, Ms Van Woudenberg. My name is Christopher Gosnell. We
8 have met briefly. I'll be asking you a few questions today and tomorrow. If any of
9 my questions are not clear, please do ask me to clarify and I'll do my best to do that.
10 Do you understand?

11 A. Yes, I do. And good afternoon to you as well.

12 Q. Thank you. Let's just start with where you finished, and that was to the
13 compound of Mr Lubanga and your impression of children who were very young to
14 your eyes. And I'd just like it read what you said in your statement at paragraph 108,
15 and I see you have your binder there in front of you, so it should be tab 1, if I'm not
16 mistaken. And the very last sentence of paragraph 108, you describe the reaction of
17 the Congolese driver when you mentioned the age of these individuals, and
18 according to you, quote, "He stated that he believed that these children looked well
19 under 18." Unquote.

20 Does that mean he did not express the view that they were under 15?

21 A. At Human Rights Watch we use the definition, the UN definition of a child,
22 which is under 18. We did not go into details with him as to whether the children
23 were younger in age than 15. I recall him saying that he believed the children looked
24 young, very young.

25 Q. Well, I'm not so much interested at the moment with the standard, although I

1 will come to it later, with the standard that Human Rights Watch applies to the
2 definition of a child. I'm just interested in the answer of your driver on this occasion.
3 And what you've written here at paragraph 108 of your statement is that he said that
4 they looked well under the age of 18.
5 Now, was it he who mentioned the age 18 or was it you who mentioned the age 18
6 and he gave a response to that?

7 A. I don't recall how the question was put. What I recall from that discussion is
8 that all of us agreed, including him, that they looked like children.

9 Q. But he didn't positively assert that they were under the age of 15, did he?

10 A. I certainly don't recall using a specific number for the age, no.

11 Q. And you don't recall him using a specific number for the age, do you?

12 A. No, I don't recall him using a specific number for the age. I, however, certainly
13 believed that these were very young children under the age of 15.

14 Q. The reason I mention this is because at your statement at paragraph 104, you
15 specify that it was your point of view specifically that they were between the ages of
16 12 and 15, and that appears to contrast with the language that you cite in paragraph
17 108 from the Congolese driver, which is that they were looking only under 18. Is
18 that a distinction that sticks in your mind, and is that why there is that distinction in
19 your statement?

20 A. No, it's not a distinction that sticks in my mind. I don't recall specifically of the
21 conversation with the driver whether we mentioned a particular age range. As I say,
22 what I recall is we all agreed that the children looked extremely young. My
23 perception was between the ages of about 12 and 15.

24 Q. Let's go, if we could, please, Ms Van Woudenberg, to paragraph 123 of your
25 statement.

1 And for the record, Mr President, this is DRC-OTP-2058-0990, and it is ERN page 1010.

2 That's Prosecution tab 1.

3 And here at the beginning of this paragraph 123, it says:

4 "In respect of the attacks in February 2003 Lipri, Bambu, Kobu, I did however
5 interview one individual, a Lendu, who explained that some notables had been
6 invited to a 'pacification meeting' by Commander Salumu Mulenda."

7 Now, am I correct, and I have looked through your statement, so I suggest to you that
8 it is correct, am I correct that this is the only individual upon whom you rely to
9 describe the events in Lipri, Bambu and Kobu in February 2003 in your statement?

10 A. Well, we at Human Rights Watch did not do detailed investigations into what
11 happened at Lipri, Kobu and Bambu. During my first mission to Ituri in February
12 2003 I arrived, in fact, just before the events of Lipri, Kobu and Bambu. So this was
13 one witness statement I took at a later date. And as I say, we did not do much
14 research into this in part, as you will see in my statement, because we knew the UN at
15 a later stage were looking into it. And you must remember there were many
16 massacres occurring in Ituri at the time and we certainly didn't document all of it.

17 What I recall about this particular individual that we interviewed is I was struck by
18 both the seriousness of what he alluded to, but also this is a witness that stands out in
19 my mind as having been a particularly strong witness, and his testimony was strong.

20 Q. So just coming back to my question, is this the only person source upon whom
21 you rely in your statement in respect of the events, the attacks in Kobu, Bambu, Lipri
22 in February 2003?

23 A. As I said, no, it wasn't just this statement. It was also the research being
24 conducted by the investigators from the UN human rights section. And we footnote
25 that in our report, The Curse of Gold.

1 Q. I'm asking about your statement. Is this the only source upon whom you rely
2 in your statement before this Court in respect of these events, this event?

3 A. Well, if I recall correctly, I actually when looking through all my notes, I had
4 two particular sources on Lipri, Kobu, Bambu. So this was a particular one that I
5 interviewed at length. There was another source. I don't recall this at the moment.
6 And then of course there were the investigations by the UN human rights section.

7 Q. And that's actually what I did want to come to, that this is the only source
8 whom you mention or describe in terms of an interview, but if we were to turn back
9 to paragraph 37, here is what you say, quote:

10 "For the Ituri reports we researched human rights abuses committed by the different
11 political or military actors" et cetera. "In terms of the events discussed, we
12 interviewed the following number of individuals" and then the third hyphen down,
13 "Attacks in Lipri, Bambu, Kobu in February 2003: Two victims and eyewitnesses
14 who witnessed crimes committed by the UPC; and one witness who provided
15 information on the general context."

16 So my question really is I only see one source being discussed in your statement in
17 respect of these attacks, but here in this paragraph there appear to be two sources.
18 Can you explain to us, if you can, about why there is only one source referenced in
19 your report, but you seem to be aware of two sources?

20 A. Are you asking me the question about in the report or in the witness statement?

21 Q. Witness statement.

22 A. Well, the answer to that is easy. It was what the Prosecutor requested of me or
23 the Prosecution team requested of me during the interview for the witness statement.
24 And it was a particular testimony that still stands out in my mind. You will see as
25 you look through my statement that I have taken dozens and dozens of witness

1 accounts to deal with the research that we published. I don't by any means mention
2 all of them.

3 Q. So you're saying that you had others at your disposal relevant to this event that
4 you did not include in your statement; is that your testimony?

5 A. What you have in my statement is the numbers of interviews that we conducted.
6 You will see in an earlier paragraph that I allude to over 251 witness accounts that we
7 had typed up and for which I had statistics. This statement covers the general
8 conclusions on the basis of all that research. It provides some details on some, but
9 by no means does it go into every single one of the 251 witness accounts.

10 Q. Well, actually, you say in your statement at paragraph 34 that you conducted
11 300 interviews in total, but paragraph 2 specifically says that there were only 2
12 victims and eyewitnesses to the events whom you interviewed; is that correct?

13 A. Well, you see from my witness statements that we allude to about 300
14 interviews, 251 of which were typed up, so for which I could give appropriate
15 statistics. Of those statistics I can then look through and see on each particular
16 incident we were documenting how many witnesses and contextual witnesses we had.
17 I don't have it for all 300, but I have it for 251.

18 Q. I presume that you, in fact, checked before you wrote paragraph 37; is that
19 correct? In other words, how many statements concerned which events, did you
20 check?

21 A. I checked in relation to the 251, yes, I did.

22 Q. Right. And after that checking, your testimony, because that is what it is, it's
23 your testimony, your testimony is that only two victims and eyewitnesses who
24 witnessed crimes committed by the UPC gave you information about the attacks at
25 Lipri, Bambu and Kobu, and here I'm reading from paragraph 37; is that correct?

1 A. That is correct, plus one contextual witness, yes.

2 Q. And in respect of the one source who is described in your statement at
3 paragraph 123, what's the name of that person?

4 A. So Human Rights Watch is not able to divulge the names of individuals who
5 spoke to us under strict confidentiality and so I cannot tell you who the name of that
6 person is.

7 Q. When was the interview conducted?

8 A. This particular interview was conducted in March 2004.

9 Q. What language was the person speaking during the interview?

10 A. I remember this interview very clearly. The language was in French.

11 Q. And how did you come into contact with this person?

12 A. So this interview took place in the town of Mongbwalu. I spent about a week
13 there. There were numerous people who I interviewed during that time. Some
14 came to me voluntarily. Some came to me through partners that we work with, civil
15 society and others. This particular individual actually came to me of their own
16 volition. They came in fact quite close to the last few days that I was there and had
17 heard that Human Rights Watch was documenting what had happened in Ituri, and
18 this particular individual seemed to want to tell their story.

19 Q. Had they heard that you were documenting specifically what had happened in
20 Kobu, Bambu and Lipri in February 2003? Had they heard that?

21 A. No. And actually I wasn't documenting what was happening in Kobu, Lipri or
22 Bambu.

23 Q. Had you ever asked any of your local human rights organisation partners that
24 you were seeking information about these events?

25 A. No, because I wasn't researching Lipri, Kobu and Bambu.

1 One thing I recall after the interview finished, I remember being slightly struck
2 because I was near the end of my visit in Mongbwalu. I had only just come across
3 this information, and I was concerned that I might be missing something big. And I
4 simply didn't have the time to conduct further follow-up. It's one of those witness
5 accounts that haunt me -- haunted me afterwards because I wished I could have done
6 further follow-up, but at that time it wasn't what I was looking at in detail. And the
7 individual, as I said, came of his own volition.

8 Q. Did the person tell you his or her name?

9 A. Yes.

10 Q. Did they provide you with any identification document confirming their
11 identity?

12 A. No. Not unusual in Ituri at the time. Sometimes people showed me their
13 identifications. Sometimes they did not. There were very few identifying ID cards
14 in those days because it was before Congo's elections of 2006, whereafter people
15 generally speaking had voter cards. I sometimes asked. It wasn't a routine part of
16 our investigation, but I do recall in this particular case -- in fact, I don't specifically
17 recall whether he did or didn't, but I certainly don't recall seeing an identification
18 document of this particular victim.

19 Q. Did you take notes contemporaneous with the interview?

20 A. Yes, I did.

21 Q. Were those notes in English or in French?

22 A. A combination.

23 Q. Did you offer those notes to the witness, since they spoke French, to sign or to
24 check them for accuracy?

25 A. We take witness accounts. They're not signed witness statements. I'm not a

1 judicial investigator. I'm a Human Rights Watch researcher. So I double-checked
2 some of the information with him as I do often with individuals that I interview. It
3 was a witness account. It was not read out to him in full at the end.

4 Q. Which pieces of information in paragraph 123 did you double-check with the
5 witness?

6 A. That, I'm afraid I don't recall. I hope you will understand I take dozens and
7 dozens of testimonies.

8 Q. Did you preserve your notes of this interview?

9 A. Yes, I did.

10 Q. Do they still exist?

11 A. Yes, they do.

12 Q. Did you offer to provide these notes in redacted form to the Office of the
13 Prosecutor so as to remove the name or any identifying information in those notes?

14 A. No, we do not. And that is again a Human Rights Watch point of principle is
15 we do not provide notes of individuals that we've taken on a confidential basis.

16 Q. What would the reason be for that if you remove all identifying information?

17 A. Often there are still ways to identify a particular individual. I'd like to reiterate
18 that we're not judicial investigators. So part of my job is to conduct these interviews
19 to get the full picture of what happened, how it happened, who was responsible. I
20 interview dozens of people for such a process. But they are not notes that we readily
21 hand over as part of judicial investigations. They are confidential notes and they're
22 given by the victims and witnesses on the basis of confidentiality.

23 Q. If you do wish to get the most accurate and reliable record from the individuals
24 whom you're interviewing, would it not be helpful, especially with someone who
25 speaks the same language as you do, to present your notes to the person and have

1 them affirm their accuracy after having carefully read them, just in the same way as
2 you did with your own statement before this Court?

3 A. Well, if I was a judicial investigator, yes, but I'm not a judicial investigator. I'm
4 a human rights activist. I'm a human rights researcher. What we do is we carry out
5 methodical research looking at all sides, interviewing dozens and dozens of
6 individuals to get a full picture of what happens. These are witness accounts. They
7 were confidentially given to us. And we will respect that confidentiality.

8 Q. But nothing undermines that confidentiality surely by having the person read
9 over the notes that you've prepared?

10 PRESIDING JUDGE FREMR: Mr Gosnell, please move on, because, you know, we
11 are now disputing about the methods of -- the reason why witness is here to testify
12 what she saw, what she heard, what she wrote, but not to evaluate methods of HRW.

13 MR GOSNELL: Thank you, Mr President. I'll move on.

14 Q. At paragraph 35 of your statement you mention that some interviews were
15 conducted with other individuals present. Was this one of those 10 per cent of
16 interviews or was this a one-on-one interview?

17 A. It was one on one.

18 Q. Now, you say here in respect of this account in the second sentence, "The
19 witness learned about a radio conversation". Do you know from whom he learned
20 this information, he or she learned this information? Was that information provided
21 to you?

22 A. I don't recall. I would have to look at those notes again as to whether the
23 individual named the person who had recorded that.

24 PRESIDING JUDGE FREMR: Sorry to interrupt, minor correction to the transcript
25 caused by me, page 125, line 12, I meant HRW. Thank you. Please proceed.

1 MR GOSNELL: Thank you, Mr President.

2 Q. And do you know whether the person whom you were interviewing was
3 providing you with a verbatim account of what the source of the information had said?
4 Was that what he had overheard or she had overheard? In other words what was
5 being transmitted to you, was it characterised as being from the original source
6 verbatim what had been heard? Or are you not able to say and not able to recollect,
7 which is a perfectly appropriate answer as well?

8 A. Yeah, I'm afraid I don't recollect.

9 Q. Was anything at all said, if you can remember, and perhaps you can't, but was
10 anything at all said during this interview about how long -- or let me put it a different
11 way. The circumstances in which the radio had been obtained by the individuals
12 who were listening to it?

13 A. Sorry, I don't fully understand the question. How long the recording was?

14 Q. Let me -- well, let's just read what's said here. Third sentence, "The Motorola
15 radio had been stolen from the UPC." Any indication at all as to when that had
16 occurred, if you can recall?

17 A. Yes. I do recall that the witness told me the circumstances in which the
18 Motorola radio had been taken, stolen. But I don't recall precisely the details about
19 that.

20 Q. Was that information that was firsthand information from your source, or was
21 that information that your source obtained from the same person who overheard the
22 conversation on the radio?

23 A. I don't recall that the witness himself, certainly I don't recall the witness had
24 taken the radio. Precisely how he knew this, I would have to go back and check my
25 notes.

1 Q. Same question in respect of the note that was sent to people in Buli. Did your
2 witness or your source have direct information or did that come from someone else?

3 A. He had direct information.

4 Q. And that you remember?

5 A. Yes, I do.

6 Q. Did this person tell you whether they, he or she -- well, he had spoken to
7 anyone else about these events?

8 A. No. The person had not spoken to anyone else about the events. I know this
9 because he'd been waiting for some time to come and see me. Near the end of my
10 research in Mongbwalu there were quite a number of people who wanted to tell me
11 about what had happened.

12 He had waited for some time. He did not live in Mongbwalu, had come quite a
13 distance because he felt it was extremely important that he be able to give to me his
14 account of what had occurred.

15 It's one of the reasons why this particular incident is somewhat fresh in my mind,
16 because I remembered being quite astonished at how long he'd waited and the
17 distance he had travelled to come and tell me.

18 Q. Was it also astonishing because you had not heard this account from anyone
19 else in the year between the events allegedly occurred and the time that you had the
20 interview with this person? Was that another reason for astonishment?

21 A. Actually, it wasn't. You know, one of the things I learned during my time of
22 researching in Ituri is that there was very little movement between people from one
23 location to another. This was in a time before cell phones. This was in a time when
24 freedom of movement was seriously curtailed. And we knew that there were events
25 going on that often didn't make it to Bunia or information about them didn't make it

1 to Bunia.

2 So this was by no means the first time that that had happened. I had other incidents,
3 and in fact my notebook is littered with them, incidents where I have one, maybe two,
4 maybe three sources, but not further, always incidents I wanted to conduct further
5 follow up on. So it was not astonishing that I didn't know. It was astonishing the
6 effort he'd made to come and tell me.

7 Q. In this case we're talking about an event that occurred roughly the same region
8 as Mongbwalu; is that correct?

9 A. In Ituri, I don't know if you've been, but 10 kilometres could be 100 miles. It's
10 hard for people to walk those distances, most especially if there are roadblocks or
11 other kinds of barriers on the road. So in that sense, his attempt to come and see me
12 stood out.

13 Q. And you had 33 accounts in respect of events in Mongbwalu, but here, at least
14 as far as your statement reflects, we have just one account; is that correct?

15 A. Well, actually, it's not. In relation to Mongbwalu, we actually had some
16 70 accounts, if you also include contextual witnesses, about what occurred in
17 Mongbwalu during the research that we were conducting. So there were some
18 70 witness accounts, including contextual witnesses, who attest to Mongbwalu.

19 Q. Most of those, some of those, a great many of those collected more or less
20 contemporaneous with the events or shortly thereafter; is that fair to say?

21 A. I would say some were taken shortly thereafter. So the first accounts I took of
22 what occurred in Mongbwalu were done in February 2003. The events of
23 Mongbwalu were November 2002. I then continued to conduct research in 2004 and
24 2005.

25 Q. And last question for the day, Madam Witness. And yet it was a year, a year

1 before you heard the first account of the events in Kobu, Lipri, Bambu; correct?

2 A. That is correct. But again I don't -- in my experience, that was not unusual.

3 This was an area very cut off. I'll give you an example. When I did my research in

4 Mongbwalu in 2004, I had to look at the logistics of how to get there. In the end I

5 flew in, which was most unusual and only was -- I was able to do because Human

6 Rights Watch had some funds to be able to hire a plane to go into Mongbwalu, but I

7 sent a driver ahead of me. The driver took six days to get to Mongbwalu. It's only

8 80 kilometres. But it took six days because of the state of the roads, because of the

9 security situation. I'm afraid to say in my experience there were many things

10 happening in Ituri that few of us knew about at the time, sometimes even a year or

11 two or three later.

12 Q. Just before we leave for the day, perhaps I could just ask you, Madam Witness,

13 did you mean to say Mongbwalu in 2004 or Mongbwalu in 2003? There may have

14 been two separate missions. I just want to clarify.

15 A. No. So in February 2003, I did not go to Mongbwalu. It was not accessible

16 then. I went to Mongbwalu in 2004.

17 Q. Understood. Thank you very much for that.

18 Mr President, I see the clock.

19 PRESIDING JUDGE FREMR: Thank you very much for being almost punctual.

20 Madam Van Woudenberg, thank you very much. You perfectly observed our

21 guidance. So I found this part of your testimony very, very efficient.

22 Now we have to break and we will continue tomorrow morning, and it's my legal

23 duty to remind you that in the meantime you must not discuss your testimony with

24 anybody else. I guess it's clear to you. Otherwise we can now adjourn and we will

25 continue tomorrow 9.30.

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- 1 THE COURT USHER: All rise.
- 2 (The hearing ends in open session at 4.23 p.m.)