

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
6 Judge Chang-ho Chung
7 Trial Hearing - Courtroom 3
8 Monday, 10 October 2016
9 (The trial hearing starts in open session at 9.34 a.m.)
10 THE COURT USHER: [9:34:37] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: [9:35:07] Good morning.
14 Court officer, please call the case.
15 THE COURT OFFICER: [9:35:11] Thank you, Mr President. The situation in the
16 Democratic Republic of the Congo, in the case of the Prosecutor versus Bosco
17 Ntaganda, case reference ICC-01/04-02/06.
18 We are in open session.
19 PRESIDING JUDGE FREMR: [9:35:25] Thank you, court officer.
20 Now appearances, please, starting with Prosecution.
21 MR IVERSON: [9:35:32] Good morning, your Honours. Appearing today for the
22 Prosecution are James Pace, assistant trial lawyer; Selam Yirgou, case manager; Nicole
23 Samson, senior trial lawyer; and myself, Eric Iverson, trial lawyer.
24 PRESIDING JUDGE FREMR: [9:35:47] Thank you, Mr Iverson.
25 Defence, please.

1 MR GOSNELL: [9:35:50] Good morning, Mr President. Good morning, your
2 Honours. Christopher Gosnell for Mr Ntaganda this morning, assisted by Chloé
3 Grandon, Margaux Portier, Han-Catherine Morin and Dignité Bwiza.

4 PRESIDING JUDGE FREMR: [9:36:06] Thank you, Mr Gosnell.

5 And Legal Representatives of Victims, please.

6 MS PELLET: [9:36:13] (Interpretation) Thank you, Mr President. The former child
7 soldiers are recommended by myself, Sarah Pellet, counsel at the OPVC.

8 MR SUPRUN: [9:36:23] (Interpretation) Good morning, Mr President. Good
9 morning, your Honours. The victims of the attacks are represented by the OPCV,
10 Anne Grabowski and myself, Dmytro Suprun, counsel.

11 PRESIDING JUDGE FREMR: [9:36:35] Thank you, Ms Pellet. Thank, Mr Suprun.

12 Before we start with the rest of cross-examination of our witness, just to remind you
13 that Prosecution completed its examination-in-chief and used 2 hours and 32 minutes
14 while the Defence started its cross-examination and used 52 minutes, which means
15 that Mr Gosnell still has at his disposal 1 hour and 40 minutes. That is why if he will
16 need all that time, I would rather prolong the first session just to complete this
17 cross-examination and then break and allow you to prepare for the next witness and
18 to shorten the second session.

19 Now, Mr Gosnell, you have the floor.

20 MR GOSNELL: [9:37:24] Understood, Mr President. Thank you for that direction.

21 WITNESS: DRC-OTP-P-0301 (On former oath)

22 (The witness speaks Swahili)

23 QUESTIONED BY MR GOSNELL: (Continuing) [9:37:33]

24 Q. [9:37:35] Good morning, Mr Witness. I have a clarification to start with in
25 respect of the testimony on Friday and it concerns the potential ambiguity of a

1 Swahili word which I understand is the word kucamusha, K-U-C-A-M-U-S-H-A,
2 which could alternatively be translated as to sharpen or to place something over a
3 fire.

4 And you'll remember, Mr Witness, that this had to do with the message that you say
5 that you heard over the Motorola, and on two occasions during your testimony, at
6 page 48, line 21, and at page 67, line 22, the words that are as they are translated says
7 that you heard a message saying that machetes should be sharpened. And then later,
8 at page 97, line 6, is when you said, quote, "I did not want to say sharpen."

9 So I just want to make sure that we understand, when you used this -- when you
10 referred to this message, you didn't hear a message saying that machetes should be
11 sharpened, you heard a message saying that machetes should be placed in fire; is that
12 correct? Just for the clarity of the record.

13 A. Yes.

14 Q. [9:39:33] And I don't seem to have any translation coming out of my box. I
15 heard the witness say "yes" in Swahili. But I see it on the transcript so I'll just
16 proceed.

17 PRESIDING JUDGE FREMR: [9:40:06] Mr Witness, what was your answer to the
18 previous question?

19 THE WITNESS: [9:40:22] (Interpretation) What I said is that we heard a message
20 on the Motorola base and it was said kucamusha, meaning put something on the fire,
21 and not sharpen.

22 PRESIDING JUDGE FREMR: [9:40:43] All right.

23 MR GOSNELL: [9:40:45] Thank you.

24 Q. [9:40:45] And I'd like to ask you about another word that has not come up so far
25 and I'll start by asking you about the item -- an item of clothing. In English I would

1 refer to it as a wrap; in French it would be referred to as a pagne, and in Kihema it
2 would be referred to as a shuka. Do you know what I'm describing when I use these
3 words?

4 A. [9:41:45] I know that in the Swahili we speak in my area it is referred to as
5 kikwembe, meaning a wrap, or "pagne" in French.

6 Q. [9:41:59] Is this an item of clothing that is characteristically worn by Hema men?

7 A. Well, I am not sure that I understood what type of clothing you are referring to.
8 Now, when we say kikwembe, in our area, this is not an attire that is worn by men.
9 It is instead worn by women.

10 Q. [9:42:58] And when you say "in our area," you are speaking of an area that is
11 principally Lendu; is that correct?

12 A. [9:43:16] Yes.

13 Q. [9:43:18] So, in general, according to you, a Lendu man would not wear such an
14 item of clothing, correct?

15 A. [9:43:35] No, no. In our area, no.

16 Q. [9:43:39] Now, you spoke yesterday about having seen with your own eyes this
17 Motorola base. Can you tell us how large, approximately, was this Motorola base,
18 which you said also had a rectangular shape? How large was it, in approximate
19 terms?

20 A. [9:44:26] I would estimate the object to be rectangular in shape. Now, when it
21 comes to its length, it would be something like 3 decimetres, and when it comes to its
22 width, it would be about 1.5 decimetres, or something in that range.
23 Now, about its height, I would put it at 5 to 6 decimetres or something like that, but
24 I'm not able to provide you with the specific dimensions because I didn't have the
25 opportunity to take the measurements of the said item.

1 Q. [9:45:39] And according to you, am I correct, there was a built-in cassette deck, a
2 built-in place where cassettes could be placed to record transmissions sent or received
3 on this base?

4 A. [9:46:03] Yes.

5 Q. [9:46:09] And was it, based upon your observations, a heavy item? Did you
6 yourself lift it or see anyone lifting it such that you could infer whether it was heavy?

7 A. [9:46:27] It wasn't a heavy item. It wasn't a very heavy item, but I didn't carry
8 it myself.

9 Q. [9:46:35] And without going into all the details, can you tell us the name or
10 otherwise identify who it was who brought this Motorola base to Gutsi, according to
11 you?

12 A. [9:47:06] I do not know who exactly brought that Motorola base, but I think it
13 arrived during the battle. Or, rather, it fell during the battle and it was dropped by
14 UPC troops and the others then picked it up.

15 Q. Well, what you say in your statement from 2005, at paragraph 26, for those who
16 have a hard copy, and for the witness I'll ask that the statement be put on the screen.
17 It's DRC-OTP-0073-0397. This is tab 1. It will be ERN page 402.

18 Mr Witness, this is what you told the investigators in 2005, quote, and I'll read French:
19 (Interpretation) "A few days after I arrived in Gutsi, and in circumstances unknown to
20 me, a displaced person from Mongbwalu who was in Gutsi set up a base Motorola
21 system in the classroom at a primary school in the village."

22 (Speaks English) Is it correct that the Motorola was installed in the primary school in
23 Gutsi by a displaced person from Mongbwalu?

24 A. Well, you know that a lot of time has gone by since I gave that statement, but I
25 think that it is true.

1 Q. [9:49:42] Was this person a -- well, let me put it a different way. Is it correct
2 that two people were operating this Motorola base?

3 A. [9:50:11] Operating the Motorola base? What do you mean by that? I don't
4 understand. All that I know, which I have already stated, is that there were two
5 people - one of them being Mateso - who were responsible for disseminating the
6 information that it was received at the Motorola base.

7 Q. [9:50:44] Were those two people also responsible for listening to the messages on
8 the Motorola base?

9 A. [9:51:00] The Motorola base was in a room and it's not everyone who had access
10 to the room to listen to the messages. It was a small room, and not everyone was
11 given permission to enter that room. Now, among those two people, one of them
12 used to regularly provide us with information and on one occasion, I had the
13 opportunity to enter into that room myself as well.

14 Q. [9:51:41] What you say in your statement further down the page, Mr Witness, at
15 paragraph 28, in French:

16 (Interpretation) "The two persons who were in charge of listening to the message sent
17 messages to Bule."

18 (Speaks English) So in your statement in 2005, you indicate that there were two
19 people responsible for listening to the Motorola. Was one of those two people
20 Mateso?

21 A. [9:52:22] Yes.

22 Q. [9:52:22] Another was named Ide, correct?

23 A. [9:52:31] No.

24 Q. [9:52:33] What about someone named Tchadien?

25 A. [9:52:45] I do not know anyone called Tchadien.

1 Q. [9:52:51] The people who were monitoring communications on the Motorola
2 base were combatants, correct?

3 A. [9:53:08] No, they were not combatants. The messages were meant for the
4 entire population.

5 Q. [9:53:23] And this Motorola base, according to you, was able to intercept
6 messages emanating from Kilo?

7 A. [9:53:40] Yes. Messages came in from Kilo as well, yes.

8 Q. [9:53:48] Kilo is approximately 13, 15 kilometres from Gutsi as the crow flies; is
9 that approximately correct?

10 A. [9:54:10] Did you say Kilo? Well, I think the distance between Kilo and Gutsi is
11 much longer than what you have mentioned.

12 Q. [9:54:23] And hilly terrain between Kilo and Gutsi, correct?

13 A. [9:54:42] Yes. However, I would say that Gutsi is not located on a hill, and Kilo
14 is somewhat further down the slopes from Gutsi.

15 Q. [9:55:08] Am I right that the day after you arrived in Gutsi there was an UPC
16 attack on Gutsi?

17 A. [9:55:30] This is what I said, when I arrived in Gutsi, an UPC attack had
18 effectively taken place.

19 Q. [9:55:41] I think this was -- is a question that you could answer yes or no. Was
20 there an attack on Gutsi the day after you arrived there, according to you?

21 A. [9:56:07] In my statement I indicated that when we arrived in Gutsi it was on a
22 Tuesday. The next day, Wednesday, the UPC attacked. The attack took place on
23 the Gutsi road and neighbouring localities.

24 Q. [9:56:37] And the day after the day scheduled for the pacification meeting there
25 was another attack towards Gutsi by UPC forces, correct?

1 A. [9:57:01] What I said was that, on Saturday, there was a second attack on the
2 Gutsi road.

3 Q. [9:57:14] And then there was, according to you, a third attack on the following
4 Monday, correct?

5 A. [9:57:34] On Monday in the week following, I do not think so. However, what
6 I remember or what comes to mind is the attack of Saturday. I do not remember any
7 attack other than that one, any other attack, any other attack.

8 Q. [9:58:09] If we look at paragraph 32 of your statement, page 404, ERN page 404,
9 you describe the attack on the Saturday. You say that the young Lendu blocked
10 UPC forces at Roy, R-O-Y, and then you say, and I quote in French:
11 (Interpretation) "On Monday, the UPC launched other attacks on Gutsi."
12 (Speaks English) Is that correct what you say in your statement from 2005, that there
13 was a third attack against Gutsi on the Monday?

14 A. Well, that's true. You know, I do not have the memory of a computer that can
15 keep data for years. I may forget some events. And I made this statement in -- I
16 gave this statement in 2005 and it is possible that I may have forgotten a thing or two
17 here and there. Yes, in 2005, when I gave this statement, it was two years after the
18 events and things were still quite fresh in my mind.

19 Q. [10:00:01] And the UPC forces in these three attacks were using guns, correct?

20 A. [10:00:16] Yes.

21 Q. [10:00:19] Were they well organised?

22 A. [10:00:28] Who do you mean?

23 Q. [10:00:31] The UPC attackers in these three attacks that you have mentioned.

24 A. [10:00:58] The UPC soldiers were already very organised because when I left
25 Bunia in August 2000, the UPC soldiers were already organised. They were already

1 well organised and already had structure in place.

2 Q. [10:01:19] And in respect of each of these three attacks involving gunfire and
3 well-organised forces, the Lendu forces prevailed, correct?

4 A. [10:01:48] Now, when I say that the UPC was organised, I say that because when
5 I was in Bunia they had leaders and that's what leads me to say that they were
6 organised. Now, when it comes to war and combat in the field, I can't really give an
7 opinion on the UPC because I wasn't there.

8 Q. [10:02:18] It's very possible that my question wasn't correctly translated to you.
9 My question was simply this: Am I correct that in respect of these three attacks on
10 Gutsi that the Lendu fighters were successful in repulsing these attacks?

11 A. [10:02:58] You're referring to the Lendu and then defending themselves against
12 the UPC; is that correct?

13 Q. [10:03:04] In respect of these three attacks on Gutsi, correct.

14 A. [10:03:32] You know, the situation was not good and during those attacks we
15 tried to repel the enemy, but it was difficult. People were injured and some were
16 killed.

17 Q. [10:03:55] Can you tell us the name of any Lendu combatant?

18 A. [10:04:13] When I arrived here, I first said that there were Lendu leaders and
19 that each time that there was an attack on a village, the Lendu leaders would raise the
20 alert by either using drums or blowing into cow horns, and that would lead the
21 inhabitants to flee. But this was all done on a voluntary basis.

22 Q. [10:04:53] Sir, do you remember my question?

23 A. [10:05:09] You asked if I could give the name of a given Lendu fighter amongst
24 those that fought the UPC. I think that that was your question.

25 Q. [10:05:24] So you did understand my question. Can you answer it, please?

1 A. [10:05:44] I would say this, there wasn't an organisation as such. One can't
2 really cite particulars. Rather, there was a group of people who volunteered and
3 each time that there was an attack or there was gunfire, those volunteers would pick
4 up clubs, machetes, et cetera, and head off in the direction of the attack.

5 Q. [10:06:14] Was it with clubs and machetes that the three attacks by the UPC on
6 Gutsi were repelled?

7 A. [10:06:34] Yes. Yes, at the time that's what people had and used.

8 Q. [10:06:42] I see. And no guns?

9 A. [10:06:57] At the time the Lendu did not have a structure as such. They were
10 gathering rifles in the field, but at the time there was no organisation as such.

11 Q. [10:07:19] So they did have some guns after all?

12 A. [10:07:35] Where? Where would they have found rifles? They were simply
13 gathering rifles here and there in the field. At one point in time I saw that a rifle had
14 been abandoned on the Kilo road because some people were not able to use a rifle
15 that they had picked up.

16 Q. [10:08:13] So they just left it lying by the side of the road and you picked it up, I
17 assume?

18 A. [10:08:33] It was when they were fleeing.

19 Q. [10:08:38] Can you give us the name of any of these volunteers who, as you say,
20 from the Lendu side would step in to fight when the need arose?

21 A. Well, I would say when they heard gunfire, the leaders would make noise to call
22 the people to go to the place from which the attack had been launched. But I
23 couldn't cite a name, not a specific name. I don't have a name to give you.

24 Q. [10:09:37] Was the man who you spoke about on Friday named Butsoro a
25 fighter?

1 MR GOSNELL: For my colleague, that's page 37.

2 THE WITNESS: [10:10:05] (Interpretation) Oh, yes, Butsoro was a young man from
3 Kobu who was injured in an attack.

4 MR GOSNELL:

5 Q. [10:10:16] Was Dyikpanu, Dyikpanu, a fighter?

6 A. [10:10:31] Dyikpanu was not a soldier. He didn't fight. I don't know where
7 Dyikpanu was apprehended. I just know about his body, but I don't know where he
8 was apprehended.

9 Q. [10:10:57] And you deny, do you, that Mateso was a fighter or a combatant?

10 A. [10:11:16] Mateso was not a fighter. Mateso was one of the leaders in the
11 village. He was a businessman. He's no longer a businessman now. He is a
12 village leader. He was one of the elders, a wise man. In the village he was also
13 considered to be one of the intellectuals, one of those who had studied.

14 Q. [10:11:51] Now, you testified about the invitation to the pacification having been
15 brought to Gutsi by a young man who had been arrested by UPC soldiers. And am I
16 correct that you were personally present when this man arrived and delivered the
17 invitation to the meeting, yes or no?

18 A. [10:12:39] I simply received the information, I wasn't an eyewitness to this.

19 Q. Well, paragraph 24 of your statement, ERN page 401, French:

20 (Interpretation) "I was present personally when the messenger delivered the message
21 to the Lendu community."

22 So you were personally present, weren't you?

23 A. [10:13:41] (No interpretation)

24 THE INTERPRETER: Message from the Swahili interpreter, could the witness be
25 asked to repeat his answer?

1 PRESIDING JUDGE FREMR: [10:13:51] Mr Witness, sorry, it seems that your last
2 answer was not captured by the interpreters. Could you kindly repeat that?

3 MR GOSNELL: [10:14:05] It may help the witness if the --

4 THE WITNESS: (No interpretation)

5 MR GOSNELL: -- it may assist the witness if paragraph 24 is enlarged.

6 PRESIDING JUDGE FREMR: [10:14:20] Court officer, please.

7 MR GOSNELL: [10:14:27]

8 Q. [10:14:27] You see that just four lines from the bottom, Mr Witness, there's a
9 sentence that says, quote:

10 (Interpretation) "I personally was present."

11 A. [10:15:11] Yes, I was present when Mateso gave us the message. It was Mateso
12 who brought the message or gave the message.

13 Q. [10:15:27] What this paragraph says is that you were present when the
14 messenger delivered the message. Are you now saying it was Mateso who was the
15 messenger?

16 A. [10:15:56] The message was given to us in front of everyone. You know Mateso
17 was, if you like, an elder in the village and it was usual for him to provide
18 information to us. Each time that a message was passed on to the community, the
19 whole community congregated in front of the concession of the village leader and
20 that's where we were given the message.

21 Q. [10:16:24] A little bit higher up in this paragraph, it says, in French:

22 (Interpretation) "He was sent by the UPC soldiers to Gutsi with an oral message for
23 the prominent personalities and the whole Lendu community."

24 Is that correct, the message was oral?

25 A. [10:16:54] Well, what I'm saying is that I heard that message orally. Someone

1 passed the message to us. It was Mateso. I didn't see a written message. Rather,
2 we were told that the message had been sent. I didn't see a letter of any sort.

3 Q. [10:17:36] I just want to be absolutely clear about this, Mr Witness. Are you
4 now saying that you did not personally see the messenger from the UPC or who had
5 been sent by the UPC deliver the message from the UPC?

6 A. [10:18:03] What I'm saying is that I heard the message from Mateso. He
7 delivered it in front of everyone.

8 Q. [10:18:11] So you did not -- the answer to my question is that you are now
9 denying that you saw the messenger who had been sent directly from the UPC
10 deliver the message?

11 A. [10:18:42] The message was delivered to us by someone. It's possible.

12 Q. [10:18:46] Someone other than Mateso now?

13 A. [10:18:57] I'm telling you that it was Mateso. It's Mateso who delivered the
14 message to us. And he received the message from that person, but I don't know who
15 was sent. I don't know that person, that messenger.

16 Q. [10:19:17] I'd like to take you to paragraph 27 of your 2005 statement, which is
17 still the document on the screen, the next page. It concerns the message heard over
18 the Motorola base on the Friday. And I'm going to read a good part of this
19 paragraph for you, Mr Witness. It says the following, in French:

20 (Interpretation) "On the eve of the Friday which had been set as the date for the
21 meeting regarding pacification, the two people in charge of the Motorola base station
22 received a radio message between UPC troops stationed in Kobu and those stationed
23 in Kilo in which the Kilo military leader recommended to a certain Commander
24 Salumu of Kobu to send a soldier disguised as a civilian leader, a dignitary more
25 specifically, by dressing him in suit and tie and sent him to the reconciliation meeting

1 and to introduce him as Thomas Lubanga. The message also said that that disguise
2 would draw the attention of the prominent Lendu people and the community in
3 general who would have turned out in large numbers at the Sangi meeting. The
4 message continued to order that the Lendu dignitaries be captured and taken to Kilo.
5 And the Motorola base station had also mentioned that Lubanga was located there in
6 Kilo."

7 (Speaks English) Is what's in this paragraph true, or false?

8 A. [10:21:48] What is written here in this paragraph is in relation to a message that
9 we were given. It says that clearly here that it is a message that was given to us.
10 We had gone there to hear the information and this is the information that was
11 provided to us.

12 Q. [10:22:08] What this paragraph says that is different, at least in one particular
13 from your testimony, is that the message that was passed on to you as having been
14 received on the base Motorola is not that the individuals should be killed but that
15 they should be captured. Do you recall whether the message was that people should
16 be captured only, or whether they should be captured and killed?

17 A. The message didn't mean capture people and kill them, no, just to capture them.
18 And to take them to Kilo.

19 Q. [10:23:06] And are the parts of this paragraph concerning Thomas Lubanga true
20 in respect of what you were told was the content of the message?

21 A. [10:23:32] This message that was relayed to us did say that, but I don't know if
22 he was there personally. Perhaps he was represented. It was said that somebody
23 should be dressed and introduced as being Thomas Lubanga.

24 Q. [10:24:06] On the day scheduled for the pacification meeting, which you have
25 said is a Friday, am I right that you heard gunshots coming from the direction of

1 Sangi throughout the day?

2 A. [10:24:39] Yes, there was intense fire that day.

3 Q. [10:24:43] Approximately at what time did this intense firing begin?

4 A. [10:25:09] I can't give the exact time from memory, but it's possible that that was
5 at about noon or 1 o'clock because that day when we got up in the morning there was
6 no gunfire. It started later. It then continued past 12 o'clock into the night.

7 Q. [10:25:47] Let's see if I can refresh your memory. Can we turn, please, to page
8 403, paragraph 30 of your 2005 statement which you signed, which is written in a
9 language that you read. And it says the following in French:

10 (Interpretation) "The Friday that had been set for the reconciliation meeting with the
11 UPC, Gutsi woke up to a calm day, but from 10 a.m. in the morning or a little bit later,
12 I heard gunfire breaking out in the vicinity of Buli and Sangi." (Speaks English)
13 Does that refresh your memory that, as best you can recall, the firing started at 10
14 o'clock in the morning or thereabouts, according to you?

15 A. [10:26:53] Yes, the time is mentioned there and that is true, what you say is right,
16 but, you know, time has passed, it's very difficult to recall. This was back in 2003
17 and now it's 2016. So quite a number of years have passed in between so I may have
18 forgotten some details.

19 MR GOSNELL: [10:27:20] Mr President, I think we need private session for the next
20 series of questions.

21 PRESIDING JUDGE FREMR: [10:27:25] Certainly.

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

23 (Private session at 10.27 a.m.)

24 (Redacted)

25 (Redacted),

Trial Hearing
DRC-OTP-P-0301

(Private Session)

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21 (Open session at 11.23 a.m.)

22 THE COURT OFFICER: [11:23:47] We are in open session, Mr President.

23 PRESIDING JUDGE FREMR: [11:23:50] Thank you, court officer.

24 Mr Witness, it means that your testimony is concluded, so on behalf of the Chamber I

25 would like to thank you that you came and testified before this Court, that you

1 patiently answered all questions put to you, and I believe that your testimony will
2 assist us in our effort to find the truth in this case.

3 So once more, thank you very much and we wish you safe journey home.

4 And now court usher, please assist Mr Witness to leave the courtroom.

5 (Witness excused)

6 PRESIDING JUDGE FREMR: [11:24:44] Mr Gosnell.

7 MR GOSNELL: [11:24:45] Mr President, we do not yet have an ERN number for the
8 last -- the second last document I showed, but I would seek to tender this document.

9 PRESIDING JUDGE FREMR: [11:24:56] You mean this e-mail?

10 MR GOSNELL: [11:24:57] Yes, Mr President, the investigation note.

11 PRESIDING JUDGE FREMR: [11:25:01] Yes. Mr Iverson, any objection to that?

12 MR IVERSON: [11:25:07] Well, the only objection would be to relevance. I don't
13 think that Defence counsel established anything with this witness about that note
14 based on the witness's answers.

15 PRESIDING JUDGE FREMR: [11:25:19] Mr Gosnell, maybe a question from my part.
16 It's intended as an admission for the purpose of the truth or the content, or is it for the
17 purpose of impeachment of the witness?

18 MR GOSNELL: [11:25:33] Well, it is for impeachment, Mr President, but of course,
19 in order for you to accord it any impeachment value, you would have to accept it for
20 the truth of its content. You may not wish to. You may decide at the end it's not
21 true, you may decide it's not reliable, but it certainly clears, in my view, the threshold
22 required for impeachment.

23 PRESIDING JUDGE FREMR: [11:25:51] All right. As usual, I have to recall our, I
24 would say rather generous approach to the admissibility of documents, so this
25 document is admitted into evidence as a further Defence exhibit.

1 And court officer, please assign the -- could you just at this moment inform us what
2 the number will be assigned to it?

3 So I was informed it is not possible to inform you about the number at this moment
4 but it will be done in good course.

5 Now we break. We will take our regular 30-minute morning break, and since we
6 exceeded the first session, we will continue at 11.55, but we will continue only until 1
7 o'clock. So the next session will be shorter.

8 THE COURT USHER: [11:26:58] All rise.

9 (Recess taken at 11.26 a.m.)

10 (Upon resuming in open session at 11.59 a.m.)

11 THE COURT USHER: [11:59:41] All rise.

12 Please be seated.

13 PRESIDING JUDGE FREMR: [12:00:08] Good morning again. Since I see some
14 changes in composition of the teams I would like to ask for update.

15 Mr Iverson.

16 MR IVERSON: [12:00:17] So for the Prosecution, James Pace is now absent, and
17 Kristy Sim, assistant trial lawyer, is now present. And for the rest, the composition
18 is unchanged.

19 PRESIDING JUDGE FREMR: [12:00:33] Thank you, Mr Iverson.

20 Defence, please.

21 MR GOSNELL: [12:00:36] Mr President, I am here now accompanied only by
22 Isabelle Martineau and Jules Guillaumé. Thank you.

23 PRESIDING JUDGE FREMR: [12:00:46] Why only?

24 And as concerns Legal Representatives, I don't see any changes.

25 Mr Witness, good morning. Can you hear me?

1 WITNESS: DRC-OTP-P-0792

2 (The witness speaks French)

3 THE WITNESS: [12:01:20] (Interpretation) Good morning.

4 PRESIDING JUDGE FREMR: [12:01:21] Good morning again, Mr Witness.

5 THE WITNESS: [12:01:26] (Interpretation) Good morning, your Honour. And
6 good morning to all of the Judges.

7 PRESIDING JUDGE FREMR: [12:01:34] We appreciate, Mr Witness. Mr Witness,
8 you are called to testify in the case against Mr Bosco Ntaganda. And I would like on
9 behalf of this Chamber welcome you to the courtroom.

10 You will be soon asked questions both by the Judges and lawyers in the courtroom
11 and in this connection I would like to guide you as follows:

12 Please listen carefully to those questions. If you do not understand, feel free to ask
13 for the question to be repeated. We want you to tell the truth and tell us what you
14 saw, heard and sensed yourself. If you didn't see or hear it yourself but you found
15 out some other way, then you should explain how.

16 Please testify just on that which you remember. Don't guess, don't make things up.

17 There is nothing wrong in saying "I don't know" or "I don't remember".

18 Do you understand all this, Mr Witness?

19 THE WITNESS: [12:02:59] (Interpretation) Yes, I've understood perfectly.

20 PRESIDING JUDGE FREMR: [12:03:02] Very good.

21 Mr Witness, on Friday the Chamber granted in-court protective measures for your
22 testimony. These protective measures have been put in place to ensure that your
23 identity is not revealed to the public. In practice it means that the public cannot see
24 your face today and that your voice is being disguised so that the public cannot
25 recognize it.

1 We will refer to you as "Mr Witness" only and ensure that your name and any other
2 information that risks revealing who you are is not broadcast to the public.
3 Therefore, whenever you need to describe anything that might reveal your identity or
4 the identity of your family members, we will do so in private session so that no one
5 outside the courtroom can hear your answer.

6 Do you understand, Mr Witness?

7 THE WITNESS: [12:04:26] (Interpretation) Yes. Thank you very much.

8 PRESIDING JUDGE FREMR: [12:04:27] Fine. Now, Mr Witness, you should find
9 piece of paper in front of you with the text of solemn undertaking. Do you have it?

10 THE WITNESS: [12:04:42] (Interpretation) Yes, I see it here.

11 PRESIDING JUDGE FREMR: [12:04:43] So please now make your solemn
12 undertaking to tell the truth by reading out the declaration on the piece of paper you
13 have at your disposal.

14 THE WITNESS: [12:05:02] (Interpretation) I declare solemnly that I shall tell the
15 truth, the whole truth and nothing but the truth.

16 PRESIDING JUDGE FREMR: [12:05:11] Thank you, Mr Witness. It means that
17 now you are under oath. So you need to be aware that it is an offence within the
18 jurisdiction of this Court to give false testimony. Do you understand that?

19 THE WITNESS: [12:05:34] (Interpretation) Yes, I understand that perfectly.

20 PRESIDING JUDGE FREMR: [12:05:38] Good. And finally few practical matters
21 you should have in mind when giving your testimony:

22 It's important to speak clearly and to speak at a slow pace. When a question is asked,
23 please do not respond immediately but rather count in your head to three and only
24 then give your answer. This pause is essential for us to get proper interpretation and
25 transcript.

1 If you have any questions during your testimony or if you feel that you need a break,
2 do not hesitate to let us know by raising your hand. We will then give you the
3 opportunity to speak.

4 Have you understood all that, Mr Witness?

5 THE WITNESS: [12:06:43] (Interpretation) Yes, I understand everything.

6 PRESIDING JUDGE FREMR: [12:06:45] Very well, Mr Witness. Then we can start
7 your testimony and the Prosecution will start asking their questions.

8 Mr Iverson, I see it will be you so you have the floor.

9 MR IVERSON: [12:06:59] Thank you, Mr President.

10 PRESIDING JUDGE FREMR: [12:07:01] And just reminder for all of us, you have
11 been, as Prosecution, you have been allotted 3 hours to examine this witness.

12 MR IVERSON: [12:07:10] As always, I'll keep that in mind, Mr President.

13 QUESTIONED BY MR IVERSON: [12:07:16]

14 Q. [12:07:18] Good afternoon, sir. My name is Eric Iverson and I will be asking
15 you questions today on behalf of the Office of the Prosecutor. Now, we met before,
16 if you recall last week, but it was on a video link, so I just wanted to introduce myself
17 in person.

18 And for the first several minutes of your testimony I will ask to go into private session
19 because many of the questions touch on your identity, and then when we can we'll go
20 back into open session, but I ask when we're in open session make sure when you're
21 answering questions to be mindful that the public can hear, so don't give any
22 indicators that would tell the public your identity.

23 PRESIDING JUDGE FREMR: [12:08:09] Now, court officer, let's move into private
24 session.

25 (Private session at 12.08 p.m.)

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Trial Hearing
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8 (Open session at 12.31 p.m.)

9 THE COURT OFFICER: [12:31:15] We're in open session, Mr President.

10 PRESIDING JUDGE FREMR: [12:31:20] Thank you, court officer.

11 Mr Iverson, please proceed.

12 MR IVERSON: [12:31:24]

13 Q. [12:31:25] So could you tell the Chamber in what context did you hear this
14 term "effacer le tableau"?

15 A. [12:31:38] Okay. Yes. When the expression effacer le tableau was used, I
16 belonged to the teaching profession. Now, when you say effacer le tableau, it
17 happens when a teacher has written something on the blackboard, he has used some
18 sentences and some words. And after he has used those sentences and words to
19 express his ideas, he then wipes it clean, he wipes the blackboard clean.

20 Now, this war between my tribe and the Hema tribe was one in which the intent was
21 to get rid of all the Lendu in the areas where they were fighting. So effacer means to
22 wipe out, to clean, to clean out so that none is left. That was the meaning.

23 Q. [12:32:51] And do you recall where you were when you heard about an attack
24 or fighting in Mongbwalu in November 2002?

25 A. [12:33:09] I heard mention of it and I saw people of our tribe fleeing from

1 Mongbwalu to join us. We received them and they explained to us everything that
2 was happening there until the group that was fighting on our behalf was defeated.
3 It is at that time that I became aware of what had been happening. We were told
4 exactly what was happening in Mongbwalu by those who had left Mongbwalu.
5 People of my tribe left Mongbwalu because they were afraid of death. They had to
6 be cleansed or wiped out. That is what they told us and we shared those ideas
7 together. We talked about those things together.

8 Q. [12:34:06] So after hearing from -- the news from people who had left
9 Mongbwalu, what did you do in response to hearing about that news?

10 A. [12:34:28] We were all frightened. We were all afraid. And since people
11 were coming our way, we too became frightened. And as the war was coming closer,
12 we wondered where we would flee to. Well, in the end things happened that way,
13 people fled from Mongbwalu, came to where we were and that militia, which was
14 wiping the board, so to speak, ended up in our area and we also felt the danger and,
15 therefore, had to leave the areas where we were in those villages to seek refuge in the
16 bush along with all those who had come from Mongbwalu.
17 Well, our enemies, indeed, followed us all the way to the villages and then that's how
18 we ended up being blocked in the bush.

19 Q. [12:35:28] Now, do you recall whether you fled in November 2002 or later?

20 A. [12:35:44] I remember clearly that the war broke out in Mongbwalu in
21 November and reached -- spread to our area very quickly in the same month in
22 November. So we went into the bush in November as well.

23 Q. [12:35:59] And when you say "we", could you approximate the number of
24 people that were with you in the bush when you fled in November 2002?

25 A. [12:36:19] Many people, more than 10,000 people.

1 Q. [12:36:29] And where did you flee to?

2 A. [12:36:47] We had been at the centre and some people left there and went to
3 various areas of their choice. I and my family we went to Buli, Buli.

4 Q. [12:37:09] And could you describe for the Chamber the conditions that you
5 lived in in Buli?

6 PRESIDING JUDGE FREMR: [12:37:30] I think it would be better -- or mister -- do
7 you think we can stay in open session still because as soon as Mr Witness would like
8 to describe some details concerning his family it could be a bit unsafe?

9 Mr Witness, if you will still remain at general level, it will be fine. If you want to
10 share with us some personal details, then we should move into private session. So
11 please have it in mind. Just raise your hand if you would think that we have to
12 move into private session.

13 THE WITNESS: [12:38:15] (Interpretation) I have understood the question. I have
14 understood.

15 MR IVERSON: [12:38:32]

16 Q. [12:38:33] So could I have you just explained generally what were
17 the -- describe to the Chamber the living conditions that you found in Buli?

18 A. [12:38:46] Yes, I can do that. When we went to that place, we found that
19 other villages which had not been as exposed as we were had already gone there.
20 And some of the inhabitants welcomed us, sometimes six -- five to six families would
21 be lodged in one house. And during the day we would be able to cook food under
22 the trees. And at night several families would have to sleep in one house. It was
23 war times and that's how we used to live at the time.

24 Q. [12:39:36] And how long, for what length of time did you live in these
25 conditions?

1 A. [12:39:51] Right now I can clearly remember that we arrived there in
2 November, November 2002 and we left in March 2003.

3 Q. [12:40:20] Now, before you left -- or, first of all, in March 2003 what caused
4 you to leave or what allowed you to leave, if you could tell the Chamber that?

5 A. [12:40:52] We left that camp because the enemies had left the area where we
6 were. It is at that time that we felt comfortable enough to go back to our normal
7 places of living. They had left. So what I'm saying is that our area was under siege
8 throughout that period.

9 Q. [12:41:27] All right. And so I'd like to focus on the month of February 2003
10 and you said that your area was under siege during that period. Could you explain
11 to the Chamber what was happening in and around Buli during that time,
12 February 2003?

13 A. [12:41:57] Yes. We went back after they had left, but we were crying because
14 we had lost people. In February, the UPC army and its commander sent us a letter
15 that a sieging army sent us a so-called pacification letter. It was delivered to the
16 council of elders, which tried to analyse it, (Redacted)
17 (Redacted). The council of elders attempted to do so and it asked -- the military
18 official was asked to withdraw his troops because you cannot proceed to pacification
19 while the soldiers are still occupying.

20 MR IVERSON: [12:43:06] Mr President, could I ask that we go into private session
21 please.

22 PRESIDING JUDGE FREMR: [12:43:10] Certainly.
23 Court officer, let's move into private session.

24 (Private session at 12.43 p.m.)

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- 22 (Upon resuming in open session at 2.35 p.m.)
- 23 THE COURT USHER: [14:35:15] All rise.
- 24 Please be seated.
- 25 PRESIDING JUDGE FREMR: [14:35:37] Good afternoon, everybody.

1 I guess nothing prevents us from continuation of direct examination of our witness.

2 Mr Iverson, do you want to proceed on, in open or in private session?

3 MR IVERSON: [14:36:00] I would ask to proceed in open session, Mr President.

4 PRESIDING JUDGE FREMR: [14:36:04] Very well. So then you may proceed.

5 MR IVERSON: [14:36:10]

6 Q. [14:36:15] Sir, welcome back. I saw at the end of last session that you got
7 quite emotional.

8 A. [14:36:24] Yes, good afternoon.

9 Q. [14:36:26] So I just want to emphasise that if at any point you think you would
10 like to ask for a break, you can ask the Presiding Judge to take a break if you need to
11 do that.

12 A. [14:36:47] Everything's fine.

13 Q. [14:36:48] All right. So I would like to proceed --

14 PRESIDING JUDGE FREMR: [14:36:51] Mr Iverson, I'm very sorry but I now just
15 got a message that there is still some maintaining technical problem, that we will have
16 to break, I was told, for few minutes. So I'm sorry, we will have to break now and
17 hopefully the problem will be solved soon.

18 THE COURT USHER: [14:37:12] All rise.

19 (Recess taken at 2.37 p.m.)

20 (Upon resuming in open session at 2.45 p.m.)

21 THE COURT USHER: [14:45:29] All rise.

22 Please be seated.

23 PRESIDING JUDGE FREMR: [14:45:43] So it's our second and hopefully the last
24 attempt to start our afternoon session.

25 Mr Witness, just to follow what Mr Iverson just said, I can confirm if you would feel,

1 as he said, any personal reason to break, we will do it. So we will just follow your
2 wish.

3 Mr Iverson, you have the floor.

4 MR IVERSON: [14:46:17]

5 Q. [14:46:23] Sir, so I'd like to go back to where we left off before lunch, questions
6 pertaining to the so-called pacification meeting at Sangi. Did you ever find out what
7 had occurred at the pacification meeting at Sangi?

8 A. [14:46:53] Yes. We were informed, in fact, when the people began to
9 assemble or congregate there. There were people who had the good fortune to turn
10 back while they were on the road, and there were also people who had the good
11 fortune of, although getting there, of turning away and escaping. They said that
12 when they -- that those who did actually get there could not leave again. Those who
13 actually went there were told not to return to the camp where we were. That's what
14 we learnt about what had happened there.

15 Q. [14:47:38] And did you find out what happened to the people who stayed at
16 the pacification meeting at Sangi?

17 A. [14:47:59] Yes, of course. Those who were there and those who had stayed
18 there, had been taken from Sangi, they went back to where Commander Salumu
19 resided. And it was the two days after the events that we went and saw the bodies
20 of those who had been killed in the village there.

21 Q. [14:48:44] And how far approximately is Buli from Sangi?

22 A. [14:49:00] Well, I think that the distance is the equivalent of about one hour by
23 foot. So if you travel one hour by foot, that covers the distance.

24 Q. [14:49:20] During the time of the pacification meeting or immediately
25 thereafter, were you able to hear anything from the direction of Sangi?

1 A. [14:49:40] Yes. Furthermore, when they succeeded in surrounding some
2 people, they were able to take them away. We could hear gunfire, and gunfire in
3 our direction, so we were obliged to move further away from the village and further
4 into the bush.

5 Q. [14:50:13] And how long did you stay in that location further into the bush?

6 A. [14:50:34] Well, the gunfire started to sound at about 2 p.m., whereas the
7 people had begun congregating at 7 o'clock in the morning. But the gunfire was
8 loud where we were at around 2 p.m., and we headed into the bush, where we stayed
9 until late. We stayed in the bush and whilst we were there other soldiers arrived in,
10 other UPC soldiers who had come in from different areas. They were close to our
11 hiding place and therefore we were obliged to flee further, to leave that place and to
12 move away from them. Some of them had been quite close to us. We fled further
13 in the night, the same night.

14 Q. [14:51:27] And during that time did you actually have an opportunity to see
15 any UPC soldiers?

16 A. [14:51:41] Well, during that period it was difficult. We were hiding, but we
17 could hear the soldiers, we could hear them speaking in loud voices and follow what
18 was going on from our hiding place.

19 Q. [14:52:00] Do you recall specifically anything that the UPC soldiers said?

20 A. [14:52:11] Yes, I do, very well. Furthermore, in the evening while we were
21 hiding in the bush, those that came towards us built a big fire and they spoke, saying
22 that the next day, that they would raid the village -- or sorry, that they would raid
23 and that we would have to flee from the bush. So what they were saying was that
24 the next day they would raid through the bush to drive us out. And we followed
25 that; quite clearly it was said.

1 Q. [14:52:56] And what, if anything, did you do in response to hearing this
2 coming from the UPC soldiers?

3 A. [14:53:15] We were fearful. We knew that we had to flee further, I had to
4 move with my family. We had to go further into the forest to move away from the
5 area they were talking about. That same night we moved out, myself and my family.
6 That was my reaction.

7 Q. [14:53:39] And how long did you stay hidden in the bush, if you can
8 approximate that time?

9 A. [14:53:59] From that evening, the evening where we left, we had to leave the
10 bush that self same evening because we heard them speaking around their fire about
11 driving us out of the bush, and they did that the next day. Now, we knew that they
12 were going to do that, they were going to drive us out of the bush and therefore we
13 pulled further into the forest. That meant that they did go through the forest, trying
14 to drive people out, but we stayed in our hiding place. About 4 p.m. in the evening
15 we could ascertain that they had left, that they had left the vicinity, and that is when
16 we withdrew, that we left the bush.

17 MR IVERSON: [14:54:49] And could I ask to go into private session, Mr President?

18 PRESIDING JUDGE FREMR: [14:54:53] Certainly.

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

20 (Private session at 2.55 p.m.)

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12 (Open session at 2.56 p.m.)

13 THE COURT OFFICER: [14:56:29] We are back in open session, Mr President.

14 PRESIDING JUDGE FREMR: [14:56:34] Thank you, court officer.

15 Mr Iverson, please.

16 MR IVERSON: [14:56:38]

17 Q. [14:56:41] And do you know of any persons who were actually captured by
18 the UPC during this -- the time that you were hiding in the bush?

19 A. [14:57:00] Well, while I was hiding I didn't know anything about those who
20 were being captured, but the upshot, what we learned later, was that many were
21 captured in the bush and many were killed, but I didn't know who. It's only at the
22 end that we heard stories of who had been killed and that they had been captured in
23 the bush. This is when we went and visited the scenes of the crime. As I said
24 earlier, those who refused to go, left, but those that did go never returned, and I
25 myself went and -- to recover the bodies. Other than that, I don't know who was

1 captured the next day. I only have information secondhand, if you like. I don't
2 have any direct information.

3 Q. [14:58:14] Just to be clear, where did you go to recover the bodies? When you
4 said that you went to recover the bodies, where, what specific -- what was the name
5 of the village?

6 A. [14:58:37] When they left the place, we were told that there were bodies there,
7 particularly there was that boy who was with me. He had left in the morning and
8 his brother had found a body. And we went there, we found the body there. It was
9 in the centre of Kobu, and we buried the bodies there. There were a lot of people
10 there, burying bodies. We needed to bury the bodies but we were also fearful that
11 the forces would return. So I buried my son together with a maman - a
12 mama - whose family was not there, so I buried the two together in one grave.

13 MR IVERSON: [14:59:36] Could I ask that we go into private session now,
14 Mr President?

15 PRESIDING JUDGE FREMR: [14:59:44] Court officer, let's move into private
16 session.

17 (Private session at 2.59 p.m.)

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24 (Open session at 3.56 p.m.)

25 THE COURT OFFICER: [15:56:47] We're in open session, Mr President.

1 PRESIDING JUDGE FREMR: [15:56:49] Thank you. May I be provided with the
2 time used by Mr Iverson.

3 So as I was told, it was 1 hour 57 minutes. So, first of all, I would like to appreciate
4 the time efficient way in which Mr Iverson conducted examination of our witness.

5 It's also indication for Mr Gosnell that he is expected also to conduct
6 cross-examination in the same time, generally. And now we can move directly to
7 that cross-examination.

8 Mr Gosnell, do you want to remain in open session or return back into private?

9 MR GOSNELL: [15:57:52] I'd like to start with a subject that will require private
10 session, Mr President.

11 PRESIDING JUDGE FREMR: [15:57:58] No problem.

12 Court officer, let's return back into private session.

13 And just a reminder concerning timing, we have to finish half past 5 sharp because, as
14 I said, we have some other professional commitments just after -- sorry, I said half
15 past 4, sorry. I was wrong. It was my error.

16 (Private session at 3.58 p.m.)

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19 (Open session at 4.31 p.m.)

20 THE COURT OFFICER: [16:31:58] We're in open session, Mr President.

21 PRESIDING JUDGE FREMR: [16:32:05] Mr Witness, thank you very much. It

22 concludes your testimony for today. We will continue tomorrow morning. And it's

23 my duty to remind you that in the meantime till tomorrow, you must not discuss

24 your testimony with anybody else. Do you understand that?

25 THE WITNESS: [16:32:25] (Interpretation) Yes.

- 1 PRESIDING JUDGE FREMR: [16:32:27] Very well. So now we break, and we will
- 2 continue tomorrow, 9.30. Court is adjourned.
- 3 THE COURT USHER: [16:32:36] All rise.
- 4 (The hearing ends in 4.32 p.m.)