

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, 12 December 2016
9 (The hearing starts in open session at 9.32 a.m.)
10 THE COURT USHER: [9:32:35] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: [9:33:02] Good morning, everybody. Court officer,
14 please call the case.
15 THE COURT OFFICER: [9:33:06] Thank you, Mr President.
16 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
17 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
18 For the record, we are in open session.
19 PRESIDING JUDGE FREMR: [9:33:22] Thank you, court officer.
20 Now appearances in habitual order, starting with Prosecution, please.
21 MS LUPING: [9:33:28] Good morning, Mr President, good morning your Honours.
22 Appearing today on behalf of the Prosecution are Nicole Samson, senior trial lawyer;
23 Selam Yirgou, case manager; Paola Sacchi, assistant legal officer; and myself,
24 Dianne Luping, trial lawyer.
25 PRESIDING JUDGE FREMR: [9:33:47] Thank you, Ms Luping.

1 Defence, please.

2 MS YAHYA: [9:33:50] Good morning, good morning, your Honours.

3 Mr Bosco Ntaganda is here present today, as well as Maître Stéphane Bourgon;

4 Sandrine De Sena, case manager; and Maria-Kim Vasconi, intern; as well as myself,

5 Marlene Yahya.

6 PRESIDING JUDGE FREMR: [9:34:09] Thank you, Ms Yahya. And legal

7 representative of the victims, please.

8 MS PELLET: [9:34:15] (Interpretation) Thank you, your Honour, the former child

9 soldiers are represented by myself, Sarah Pellet, counsel with the Office of Public

10 Counsel for victims.

11 MS GRABOWSKI: Good morning, Mr President, good morning, your Honours.

12 The victims of the attacks are today represented by myself, Anne Grabowski.

13 Thank you.

14 PRESIDING JUDGE FREMR: [9:34:35] Thank you, Ms Pellet, thank you,

15 Ms Grabowski.

16 Before proceeding with the testimony of the present witness, the Chamber shall

17 deliver a decision with respect to one of the two witnesses for whom the Prosecution

18 requested protective measures in filing number 1652.

19 The present decision concerns Witness P-868.

20 The Prosecution request in-court protective measures, pursuant to Rule 87

21 of the Rules, in the form of face and voice distortion during testimony and the use of

22 a pseudonym.

23 The Prosecution also seeks a variation in the time limit for requesting these measures

24 pursuant to Regulation 35 of the Regulations.

25 The legal representative of the victims of the attacks supports the request in filing

1 number 1672.

2 The Defence opposes the protective measures and the variation in the time limit
3 requested in filing number 1673.

4 The Defence submits that the Prosecution fails to demonstrate any objectively
5 justifiable risk regarding the security of Witness P-868 and has not shown good cause
6 justifying a variation of the time limit.

7 On the 9 December 2016, the Chamber received the VWU's in-court protective
8 measure report for Witness P-868 in which it was recommended that the same
9 measures sought by the Prosecution be granted.

10 Prior to addressing the merits of the request, the Chamber will rule on
11 the Prosecution's request under Regulation 35 to vary the time limit for the filing of
12 the request.

13 The Chamber notes that the Defence opposes this request, arguing that the
14 Prosecution has not shown good cause to justify a variation of the time limit as
15 evidenced by its concession that it "overlooked" the fact that it had not sought
16 protective measures for this witness.

17 The Chamber recalls that according to paragraph 50 of its decision of the conduct of
18 proceedings, which is filing number 619, request for in-court protective measures are
19 to be filed no later than four weeks before the scheduled commencement of testimony.

20 The Chamber notes the Prosecution submission that, first, the witness was not
21 scheduled to testify in the current evidentiary block until 2 November 2016, when it
22 became apparent that the testimony of other witnesses needed to be reschedule; and
23 second, since the inclusion of the witness in the list of this block, the Prosecution
24 overlooked the fact that it had not sought in-court protective measures for this
25 witness in its previous request.

1 The Chamber further notes that at this stage Witness P-868 is scheduled to testify on
2 around 13 December 2016, that is nearly three weeks after the filing of the request.

3 The late filing has not impacted the time period permitted for the Defence to respond
4 to the request, nor falls unduly close to the expected date of testimony of the witness.

5 On this basis and having particular regard to the Chamber's independent obligation
6 to ensure that security and well-being of witnesses and victims and their families,
7 the Chamber grants the request for variation of time limit for the filing of the request
8 as being in the interest of justice.

9 However, it emphasised that the Prosecution must be diligent in ensuring that future
10 requests are filed within the applicable time limit.

11 Turning now to the merits of the request in assessing whether there exists an
12 objectively justifiable risk, the Chamber observes that it has previously held that the
13 general security situation in a region may be a relevant consideration in respect of
14 specific witnesses.

15 In this instance, it is noted that the witness and his family currently reside in areas
16 where former UPC/FPLC militia members and supporters of the accused are present,
17 or continue to have influence.

18 Further, while noting the witness is not reported to have experienced any specific
19 security incidents, the Chamber recalls that threats to a witness or his or her family
20 are not a prerequisite to determining whether a witness facing an objectively
21 justifiable risk and that there are reported instances where other witnesses, including
22 crime base and inside witnesses, were allegedly threatened as a result of their
23 involvement with the Court.

24 And now, court officer, for the next part of this ruling we will have to move into
25 private session, please.

1 (Private session at 9.40 a.m.)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Open session at 9.42 a.m.)

19 THE COURT OFFICER: [9:43:01] We are back in open session, Mr President.

20 PRESIDING JUDGE FREMR: [9:43:05] Thank you, court officer.

21 And I will continue.

22 Finally, the Chamber notes that neither this witness nor his family are currently in the
23 ICC Protection Programme. In light of the factors mentioned, the Chamber is
24 satisfied that there exists an objectively justifiable risk with respect to the security and
25 well-being of this witness and his family warranting the protection of his identity

Trial Hearing
WITNESS: DRC-OTP-P-0810

(Open Session)

ICC-01/04-02/06

1 from the public.

2 The Chamber further finds that the in-court protective measures sought do not
3 unduly infringe upon the rights of the accused, given that the accused and
4 the Defence will be able to see the witness give evidence at trial and hear his voice
5 without distortion.

6 Accordingly, and pursuant to Rule 87 of the Rules, the Chamber grants the measures
7 of use of pseudonym for the purpose of the trial and voice and face distortion during
8 testimony for Witness P-868.

9 As usual, the Chamber instructs the parties and participants to file public redacted
10 versions of documents 1652, 1672 and 1673 within four weeks of today.

11 This concludes the Chamber's ruling.

12 And now we can invite Mr Witness into the courtroom and continue with his
13 testimony.

14 (The witness enters the courtroom)

15 PRESIDING JUDGE FREMR: [9:45:52] Good morning, Mr Bromley, welcome back.

16 I believe you will need your headphones. Can you find them?

17 WITNESS: DRC-OTP-P-0810 (On former oath)

18 (The witness speaks English)

19 THE WITNESS: [9:45:59] (Interpretation) Good morning. Thank you.

20 PRESIDING JUDGE FREMR: [9:46:02] Mr Bromley, welcome back. Before we
21 continue with your examination by Prosecution, allow me to remind you that you are
22 still under oath, which means that you have to speak truth and nothing but the truth.
23 I guess it is clear to you. All right.

24 And before we continue, Ms Luping, just update on timing, so according our
25 measuring, you still have 28 minutes for the rest of your examination.

Trial Hearing
WITNESS: DRC-OTP-P-0810

(Open Session)

ICC-01/04-02/06

1 Please proceed.

2 MS LUPING: [9:46:37] Thank you, Mr President.

3 QUESTIONED BY MS LUPING: (Continuing)

4 Q. Good morning, Mr Bromley.

5 A. [9:46:44] Good morning.

6 Q. [9:46:44] Before we continue with your visual presentation I just wanted to ask,
7 in relation to both your final and preliminary reports - so these are the reports at tabs
8 1 and 5 of the binder - do you have any corrections or clarifications that you wish to
9 make?

10 A. [9:46:58] For the final report, when I reviewed it one last time, I just wanted to
11 point out that in the table of contents, figures 3, 10, 21 and 22 are not listed in the table
12 of contents, but they are in the report. And figure 5 in the text, it references blue
13 arrows on the figure, but the arrows on the figure are actually yellow. And finally,
14 on figure 8, there is a large red circle in the middle of the figure which shouldn't be
15 there, and that's all.

16 Q. [9:47:38] Thank you for those clarifications. Another question I have, simply
17 just to clarify the differences between the two reports, just when one compares the
18 two reports, both the final and preliminary reports, the preliminary report appears to
19 have certain images that are not in the final report, for example, the two near infrared
20 examples that we discussed in your testimony last week.

21 My question is just simply whether, to the best of your knowledge, the images that
22 are contained also in the preliminary report that were not included in the final report,
23 whether they are true and accurate?

24 A. [9:48:19] Yes, all the images in the preliminary report are fine. Really, I was
25 under the impression that the final report was essentially, you know, a revised final

1 version based on what we had discussed over the months. And so I made some
2 changes along those lines but, in terms of substance, there is no major differences.

3 Q. [9:48:48] Thanks for that clarification as well. Now, if we could return to your
4 visual presentation and as we did last week, on Friday, if you could please present the
5 visual presentations. You had already shown to us the examples of Songolo and
6 I think we had completed Bambu as well.

7 If you could show us the next example that you had in your visual presentation.

8 A. [9:49:15] Certainly. So this is an area about 2 kilometres south of the Bambu
9 main thoroughfare location of interest. So, on the left-hand side you have this area
10 on 26 January; on the right-hand side, on 22 May 2003. There is clearly a road that
11 cuts through both images. So on 26 January 2003 image there is quite a number of
12 structures, a couple of dozen or so on either side of the road, both round structures
13 and square structures. There's some tree -- tree shadow on the bottom edge of the
14 road that you are seeing which makes the structures a little bit more difficult to see,
15 but they are there. For example, keep your eye on this little group here. When we
16 look at the same area 22 May 2003, pretty much all the -- all the structures have
17 disappeared between those two dates.

18 So this is figure 4 in the final report, figure 2 in the preliminary report, and there are
19 about 60 structures in this area which were identified as removed between those two
20 dates. This is with red arrows, without the red arrows, red arrows and without the
21 red arrows.

22 Moving on to the next example, this is the Kilo Mines area. Again, on the left-hand
23 side, 26 January 2003; on the right-hand side, 22 May 2003.

24 Not all the structures are indicated by arrows on this one. The arrows just basically
25 give a visual guide about where to look. But again in this area, around this arrow,

1 on 26 January, looking at the same area 22 May 2003, most of those structures have
2 been removed.

3 Same thing with the structures a little bit further up on the image, those have all been
4 removed. Now, some of the structures were not removed, for example, these two
5 here and then another two down here, and there are a couple others in the image
6 which weren't removed.

7 This was figure 9 in the final report, figure 6 in the preliminary report and there were
8 about 20 structures in this area that were removed between those two dates. With
9 the red arrows and without the red arrows. Without the red arrows.

10 Moving on, this is the last example where I have both a before and an after image.

11 This is the Bunia area. On the left-hand side, 26 January 2003; on the right-hand side,
12 19 June 2003.

13 Things are a little bit harder to see in this image just because of the quality of the
14 image and also the colours of the structures versus the vegetation but, for example,
15 down along the road, here you have multiple square structures, all of them casting
16 a shadow, relatively visible.

17 Looking at the same area 19 June 2003, the nice distinct structures have all basically
18 disappeared. Instead what you have are kind of vague outlines and likely remains
19 of the structures. If I had to say, I would say these structures had been burned and
20 what you are seeing was the, basically, the soot remains of the structures six months
21 later.

22 So this was figure 22 in the final report, figure 18 in the preliminary report, and in this
23 area I found about 219 destroyed structures. So this is with the red arrows, without
24 the red arrows. With the red arrows and without the red arrows.

25 Now, the next example is Bunia again, and this is where I only have one image to do

1 the analysis. So this is an image from 16 August 2002. I have nothing previous for
2 this area that I can compare with the 14 August 2002 image so I can't do that direct
3 comparison where I am identifying structures that are essentially disappearing.
4 This is an example, when I show it in the preliminary report I used false colour
5 infrared simply because it makes what I am seeing a little bit more clear. What is
6 visible in multiple portions of this 14 August 2002 image are basically blackened
7 structural remains. Again, I would say that these houses or these structures had
8 been burned. They are very, very difficult to see in this image but, for example,
9 down here is probably the clearest example. What we see there are the interior walls
10 of the structures, some blackened areas indicating they were probably burned.
11 There is also a tree right in the middle of it which does cause a little bit of confusion
12 but again, when doing the full analysis in the other GIS software and putting the
13 image into false colour infrared, the blackened areas are much more visible versus the
14 surrounding green vegetation and brown dirt.
15 This was an area where we did see, or I did see the structural remains, so that's
16 essentially what I was counting and marking when I analysed this particular area.
17 Moving on to Kobu centre. Again, all I have for this location is one image, the
18 22 May 2003. I don't have anything previous to compare it to. And so again
19 this -- this is where it gets a little bit more speculative but in the yellow arrows, what I
20 have indicated are what could be structural remains, again either the interior walls
21 and the exterior walls and pieces of the structure itself. And then we have a few
22 cleared patches of dirt marked with red arrows, which again may have been
23 structures that had been destroyed but didn't really leave any remains behind.
24 This was figure 10 in the final report, figure 8 in the preliminary report, and in the
25 Kobu area in general, I saw about 20 possibly removed structures like this.

Trial Hearing
WITNESS: DRC-OTP-P-0810

(Open Session)

ICC-01/04-02/06

1 The final example is Lipri. So this again 22 May 2003, with no previous image to
2 compare this to. Essentially in this area, when we had looked through it, when I had
3 looked through it quite a bit, you basically notice the pattern of how the settlement is
4 laid out and how structures appear alongside roads, in cleared areas, you know, it
5 follows a fairly logical pattern. And then you get to certain portions of the image
6 where you are seeing the cleared areas, you are seeing the roads, but you are not
7 seeing structures in all the locations that you would expect to see them.

8 So here we have multiple rooftops so here, here, here, here, here, here, here, et cetera,
9 but then we have also locations which look like they would be cleared for structures
10 but there are no structures there. So here, here, here and here. And then over here,
11 marked in the yellow arrow, would be a possible area of structural remains, again,
12 seeing the walls, the portions of the structure still there but without a rooftop,
13 basically.

14 And that is my final example.

15 Oh, this was figure 12 in the final report. It wasn't included in the preliminary
16 report, and in this area there is about 17 to 20 total areas where I saw possible
17 destruction.

18 Q. [9:58:14] Thank you, Mr Bromley. And just to be clear, for all of the examples
19 in your final and preliminary reports, do you have indications of the number of
20 structures that were detected within the body of the report?

21 A. [9:58:24] Yes, I do. The issue of where settlements actually start and end is an
22 issue when you are counting the structures for each area. But, yes, in general, I
23 would count the structures.

24 Q. [9:58:37] Thank you.

25 MS LUPING: And could we ask now the court officer or court usher if

Trial Hearing
WITNESS: DRC-OTP-P-0810

(Open Session)

ICC-01/04-02/06

1 the Prosecution can now be given the possibility to show the images from my
2 colleague's screen.

3 Mr President, your Honours, what we propose to do are now to show a couple of
4 examples from the final report, that is at tab 1, to be able to give the Chamber an
5 indication of what the images are like from the PDF versions. We are going to be
6 showing it from Ringtail. You also, everybody, the parties, participants and the
7 Chamber, should have an A3 version of the hard copy images. We wanted to simply
8 provide the examples for the witness to explain so that when you turn again after the
9 testimony to the reports, you will have a better idea of what you are looking at.

10 PRESIDING JUDGE FREMR: [9:59:25] Defence, any objection to that?

11 MS YAHYA: [9:59:28] No, there is no objection.

12 PRESIDING JUDGE FREMR: [9:59:31] All right. So let's proceed this way, as
13 proposed.

14 MS LUPING: [9:59:35] Thank you. I would ask that we first turn to --

15 THE COURT OFFICER: [9:59:38] I'm sorry, could we have the ERN number of the
16 document, please.

17 MS LUPING: [9:59:41] Yes, certainly. The ERN, which is at tab 1, is DRC-OTP --
18 one moment, please -- 2099-0166.

19 And if the court officer could just confirm whether my colleague, whether the image
20 that will be shown by her is going to be in evidence 1 or evidence 2.

21 THE COURT OFFICER: The document will be displayed on the evidence 1 channel.
22 And I would like you to confirm that the document is public or not.

23 MS LUPING: [10:00:27] The document indeed is public.

24 THE COURT OFFICER: [10:00:30] I'm sorry, I am corrected, the document will be
25 displayed on the evidence 2 channel.

1 MS LUPING: [10:01:17]

2 Q. [10:01:18] Now, Mr Bromley, obviously, we don't have the benefit of your
3 side-by-side analysis as we had initially. I am going to ask my colleague first to
4 scroll up to the very top so that we first see -- if you could please explain the initial
5 image. And I am going to ask her also to blow it up as much as she can while still
6 seeing there -- yeah, if we could stop there.

7 Now this is -- just this is at page 0204 of the final report at page, yes, so page 0204.

8 And if my colleague just briefly scrolls to the very top, you will see that this is figure
9 17 of the Sangi area. So, Mr Bromley, could you please describe the arrows and the
10 figures, the areas that you had pointed out in the body of your report for this
11 particular figure.

12 A. [10:02:18] Yes. So this is, this is the direct area of the Sangi Bodi church and the
13 Sangi Bodi school as of 22 May 2003, and again this is a single image analysis. There
14 is no previous image to compare this to, but the same methodology as I mentioned for
15 the Lipri area. As you go through the image you, you know, you see the pattern of
16 where structures are versus where roads are, where other buildings are, et cetera,
17 et cetera. So in this area what it was was several cleared areas which, I believe, could
18 have had structures removed prior, just based on how they are situated and where
19 they are situated and the fact that they are cleared.

20 Q. [10:03:17] And I will ask my colleague now to scroll down to the bottom half of
21 figure 17, also still relating to Sangi.

22 And again, if you could please describe the areas that are indicated by the arrows in
23 this image.

24 A. [10:03:34] So again, it is the area of the Sangi Nyinga centre as of 22 May 2003,
25 a single image analysis, and again I was noting cleared areas and areas which look

Trial Hearing
WITNESS: DRC-OTP-P-0810

(Open Session)

ICC-01/04-02/06

1 like they could have had structures but something, the structures were not visible as
2 of 22 May 2003.

3 Q. [10:04:02] And now turning to another example, again from the same report,
4 this time at page 0212. And this was the image, this was for the new satellite
5 imagery that you obtained, Mr Bromley, for the area known as either Ngongo, Ngogo
6 or Gogo.

7 A. [10:04:25] So this area --

8 Q. [10:04:26] Sorry, Mr Bromley, if we could just wait until my colleague slightly
9 enlarges. I think she could stop there, so it's a -- yes, scroll down a little bit so that
10 we can see all of the arrows. All right. Thank you. Yes?

11 A. [10:04:39] Yes, so this area again analysed with a single image. This area is
12 close to Lipri, to the south of it. So it is the same sort of settlement pattern that I saw
13 throughout this whole area. And again, here it is relatively quite clear, to me at least,
14 you have multiple cleared areas right along the road, these are all indicated by the red
15 arrows. You do still have structures there which are still visible but you also have
16 a fairly large number of cleared areas which could have contained structures
17 previously and then up near the top, with a yellow arrow marking it, are definitely
18 some sort of structural remains in that you can see shadows inside the structure
19 indicating that you are looking at walls inside the structure.

20 Q. [10:05:40] Thank you. And I am now going to just simply for the record refer
21 to the single image figures that are contained in both the final and preliminary report
22 versions and then I will be asking you some general questions relating to all of these
23 single image analyses.

24 So, for the record, we have for Buli or Bule, figure 21 of the preliminary report or
25 figure 5 of the final report.

1 Itende, figure 3 of the preliminary report or figure 6 of the final report. Kabakaba,
2 figure 4 of the preliminary report, figure 7 of the final report. Kilo or Vieux-Kilo at
3 figure 5 of the preliminary report, figure 8 in the final report.
4 We have five images related to Kobu, Kobu Centre, Kobu-Wadza, with the indication
5 for Hotel Paradiso; Kobu-Wadza again for the alleged detainee location; Kobu-Wadza
6 for the exhumation site. The first four of these Kobu images were contained at
7 figures 8 and 9 of the preliminary report and now at figure 10 of the final report, and
8 also indicated at map 4 of the final report. We also have the single image analysis of
9 Wadza church at figure 20 in the final report, 16 in the preliminary report.
10 The Lipri images that you showed were at figures 10 and 11 of the preliminary report,
11 figures 11 and 12 of the final report or at map 5.
12 Mongbwalu, there were three images relating to the main street, the Appartements
13 and Camp Goli contained at figure 13 of the final report or map 6 and figure 12 of the
14 preliminary report. Ngabuli at figure 14 of the final report, figure 22 of the
15 preliminary report.
16 Nzebi, figure 16 of the final report, figure 23 of the preliminary report.
17 For Sangi, there were various images relating to Nyinga, the Bodi church and the
18 health centre at figure 17 of the final report in map 4, figure 14 of the preliminary
19 report.
20 Sayo, there were images of the health centre and Sayo church at figure 18 of the final
21 report or map 6. Reflected also at figure 15 of the preliminary report, Tsili or Tsele at
22 figure 19 and map 5 of the final report.
23 Mambasa at figure 26 of the final report or figure 25 of the preliminary report.
24 Now, Mr Bromley, all of these were single images that you analysed. Could you just
25 confirm for the Chamber and explain to the Chamber whether the same process of

1 analysis was used for all of these images, not only the examples that you have now
2 shown in the courtroom, but for all of them.

3 A. [10:08:48] Yes, generally. Each, some of the areas were a bit different in how,
4 how structures appeared, but in general you are reviewing the image to see how
5 housing or structures look in the area and then looking for areas where those might
6 be missing.

7 Q. [10:09:10] And when you say that there were some differences, could you
8 explain what you mean by there were some differences?

9 A. [10:09:17] Some places were, you know, consolidated towns, so like the
10 Kobu-Wadza area is an identifiable town whereas other areas like the Lipri area, they
11 stretch out along roads, you may not have that, you know, town centre sort of
12 appearance of structures.

13 Q. [10:09:47] And have you conducted this type of single image analysis in your
14 previous work?

15 A. [10:09:54] Yes. It's necessary sometimes. Especially any, any event that took
16 place relatively a long time ago and in a relatively remote area. It is much less
17 frequent when we are looking at current events like Syria or something like that. But,
18 yes, it is something that we do have to do on occasion.

19 PRESIDING JUDGE FREMR: [10:10:18] Ms Luping. Ms Luping, sorry to interrupt
20 you, just a kind reminder, you have the last five minutes.

21 MS LUPING: [10:10:24] Thank you, Mr President. That shouldn't be a problem.

22 Q. [10:10:27] And in your experience in dealing with single image analysis, would
23 you consider this to be a valid form of analyst in your expert opinion?

24 A. [10:10:37] It is certainly valid. However, the uncertainty is higher for things
25 like that. Yes, there is just a much higher margin of error and it has to be understood

Trial Hearing
WITNESS: DRC-OTP-P-0810

(Open Session)

ICC-01/04-02/06

1 that, you know, without that previous image, it's a different sort of product.

2 Q. [10:10:57] Mr Bromley, I am now going to ask you a few questions relating to
3 the various documents that we have been discussing with you over the -- on Friday
4 and this morning so far.

5 To the best of your knowledge, are the contents of your two expert reports, those are
6 the two, the final and preliminary reports found at tab 1 and 5, and appendix B,
7 which sets out the conclusion regarding the results of your analysis, are they a true
8 and accurate reflection of your views, impartially stated?

9 A. [10:11:34] Yes.

10 Q. [10:11:37] And do you consent to the admission of these two expert reports and
11 appendix B into evidence?

12 A. [10:11:46] Yes.

13 MS LUPING: [10:11:53] And I would just refer again to appendix B to the ERN for
14 the record, that's DRC-OTP-2099-0284, and for the avoidance of doubt, the expert
15 report was at 2099-0166. And again at 2084-0443.

16 Mr Bromley, do you consent to being questioned by the parties, participants and the
17 Chamber in relation to these reports and their related appendices?

18 A. [10:12:34] Yes.

19 MS LUPING: [10:12:36] Mr President, your Honours, I note that the Defence did
20 state in their filing, and I refer to ICC-01/04-02/06-1032 at paragraph 1c as well as at
21 file 826 at paragraphs 31 to 34 that they do accept Mr Bromley's reports as being
22 expert reports. They did not challenge their relevance, although they took issue with
23 their probative value.

24 Now that the witness has answered questions in relation to both the reports, we
25 would ask that the preliminary and final reports with the ERNs as indicated, as well

Trial Hearing
WITNESS: DRC-OTP-P-0810

(Open Session)

ICC-01/04-02/06

1 as appendix A, the letters of instruction that the witness was questioned about on
2 Friday, and appendix B, which is the summary of the satellite imagery available, that
3 they now be admitted into evidence as further Prosecution exhibits pursuant to
4 Article 69(4) and Rule 68(3).

5 PRESIDING JUDGE FREMR: [10:13:40] Defence, your position?

6 MS YAHYA: [10:13:42] Mr President, as for the final report and its two appendices
7 we have no objection, but we submit that the previous preliminary report is not
8 necessary as he had -- he wrote a final report with making a choice and the
9 corrections necessary, so we believe that under 68(3) it should be his final report that
10 is only admitted.

11 PRESIDING JUDGE FREMR: [10:14:07] Ms Luping.

12 MS LUPING: [10:14:08] Mr President, your Honours, the purpose of the preliminary
13 report is simply because there are quite a number of additional images. Although
14 Mr Bromley chose not to include them, they include examples, for example, such as
15 the near infrared versions of images, they also include different areas of the same
16 satellite image in close-up that in our submission would be helpful for the Chamber's
17 analysis and they are not unnecessarily duplicative because essentially the heart of
18 the reports are indeed the satellite images themselves.

19 PRESIDING JUDGE FREMR: [10:14:42] Ms Yahya, do you insist on your, it was
20 probably objection concerning first, first report?

21 MS YAHYA: [10:14:49] Yes, we maintain our objection. In fact, if I refer you to
22 today's transcript line 9, Mr Bromley said that there was not a lot of differences made
23 between his previous report and this one and that this one is the more updated one,
24 so we believe that this should be -- the choice was made about which images would
25 be in the final report and we believe that that is what should remain.

Trial Hearing
WITNESS: DRC-OTP-P-0810

(Open Session)

ICC-01/04-02/06

1 PRESIDING JUDGE FREMR: [10:15:13] Give me a second. I will briefly consult my
2 colleagues.

3 (Trial Chamber confers)

4 PRESIDING JUDGE FREMR: [10:15:35] So after brief deliberation our ruling is that
5 the objection is overruled because we still believe it would be better for complete
6 reading of all evidence admitted through this witness to have complex picture of all
7 those evidence, including both, both reports. That is why all those documents, few
8 minutes specified by Ms Luping, which means two reports and two annexes,
9 appendix A and B are admitted into evidence as a further Prosecution exhibit.
10 Ms Luping, please proceed.

11 MS LUPING: [10:16:22] Thank you, Mr President, your Honours.

12 We have sought to have the presentation that the witness made. There were
13 assigned ERNs. Now obviously we really leave this to your Honours' decision.
14 I can refer to them. The revised presentation, which is simply a close-up or zoom-up
15 and better higher resolution of what is already contained in the reports has an ERN,
16 that is DRC-OTP-2099-0450. Now the ArcMap GIS presentation that was a live
17 presentation, the Defence had requested that essentially snapshots of that
18 presentation also be provided by the witness. The witness has provided this. There
19 is an ERN now for it and that is DRC-OTP-2099-0463.

20 Whilst the Prosecution had not intended to seek admission of these images, we do see
21 that they have been of use in providing further explanation of the locations and the
22 process that the witness used in conducting his analysis.

23 The presentation was provided on Friday so there has been some time for the Defence
24 to analyse the images. Indeed I have noticed they have been included in the list for
25 the Defence's possible cross-examination of the witness. So with your leave we

Trial Hearing
WITNESS: DRC-OTP-P-0810

(Open Session)

ICC-01/04-02/06

1 could also seek to have these images included for your Chamber's analysis
2 subsequently of this witness's testimony.

3 PRESIDING JUDGE FREMR: [10:18:04] What do you mean by --

4 MS LUPING: [10:18:07] We could have them admitted, your Honour, as Prosecution
5 further exhibits, although they are obviously images as contained in the reports, it's
6 simply because they are better quality, essentially zoom-up versions of the same thing.
7 It was just simply to aid your Honours' assessment of the witness's testimony.

8 PRESIDING JUDGE FREMR: [10:18:27] Ms Yahya?

9 MS YAHYA: [10:18:29] Your Honour, we object to the admission of both of these, for
10 the screen -- the PowerPoints that were provided on Friday for the same reasons -- on
11 Friday it was discussed and the Prosecution said that this was the exact same pictures
12 that are already in the report as well as the raw data, the satellite images have been
13 admitted. This is a presentation that was done spontaneously by the witness. We
14 do not seem that this is necessary to create evidence within the courtroom.
15 As for the second PowerPoint presentation, it was requested by the Defence that a
16 screen shot of the PowerPoint presentation be provided to the Defence over the
17 weekend so that we could prepare for the cross-examination. It was at the request of
18 the Defence and the evidence has been shown, your Honours have seen it. We do
19 not believe that this is an exhibit that has been disclosed and that should come into
20 evidence.

21 PRESIDING JUDGE FREMR: [10:19:26] All right. So in this case the objection is
22 sustained and the proposal or the request to also admit those exhibits, that they are
23 not admitted.

24 So now have you finished, Ms Luping? I'm afraid that you should be really very
25 close to the end of your examination.

Trial Hearing
WITNESS: DRC-OTP-P-0810

(Open Session)

ICC-01/04-02/06

1 MS LUPING: [10:19:50] Mr President, your Honours, I have no further questions for
2 the witness at this stage and I would just simply like to thank Mr Bromley.

3 PRESIDING JUDGE FREMR: [10:20:01] Very well. So now we can directly move to
4 cross-examination.

5 Ms Yahya, are you ready? Or take your time to prepare yourself.

6 And Ms Yahya, just again reminder, Defence have been allotted four hours for
7 cross-examination. Probably I am too early, but do you envisage that you will need,
8 for the sake of planning of the next witness, do you envisage that you will need all
9 that time, or at this moment if you are even able to provide us with any estimation?

10 MS YAHYA: [10:21:13] No, your Honour. If I had to give a rough estimate, I
11 would say around two hours.

12 PRESIDING JUDGE FREMR: [10:21:19] Thank you very much. And please
13 proceed.

14 QUESTIONED BY MS YAHYA:

15 Q. [10:21:22] Good morning, Mr Bromley.

16 A. [10:21:23] Good morning.

17 Q. [10:21:24] I know we have already met, but let me introduce myself again. My
18 name is Marlene Yahya and I will be asking you some questions for the Defence. Do
19 you know understand?

20 A. [10:21:33] Yes.

21 Q. [10:21:33] If there is anything I say that's unclear, don't hesitate to ask and I will
22 clarify my question.

23 A. [10:21:39] Okay.

24 Q. [10:21:40] I remind you, and as well to remind myself, that since we are both
25 speaking in English we should pause between a question and answer to let the

Trial Hearing
WITNESS: DRC-OTP-P-0810

(Open Session)

ICC-01/04-02/06

1 interpreters catch up. I will try to do the same.

2 Mr Bromley, I understand that you made four reports for the office of the Prosecution,
3 correct?

4 A. [10:22:05] Four? There was the preliminary report, there was a final report and
5 there was a report on imagery availability. I don't recall another report in addition
6 to that. There were some discussions quite some time ago where we may have been
7 emailing some materials back and forth, but I'm not sure.

8 Q. [10:22:35] I will -- I propose that I will now bring you through these reports.

9 A. [10:22:44] Okay.

10 MS YAHYA: [10:22:44] If we could have DRC-OTP-2059-0177, which is Defence tab
11 18.

12 THE COURT OFFICER: [10:23:01] The document will be displayed on the evidence
13 1 channel.

14 MS YAHYA: [10:23:06] Thank you.

15 Q. [10:23:46] Do you have it on your screen as well?

16 A. [10:23:48] Yes.

17 Q. This is your first preliminary report dated 1 November 2013, and for assistance
18 you have a paper copy with you. You should have the tab 18.

19 A. [10:24:05] I don't have the tab.

20 Q. [10:24:08] My apologies.

21 MS YAHYA: Sorry, your Honours, with leave.

22 PRESIDING JUDGE FREMR: [10:24:17] All right.

23 THE WITNESS: [10:24:25] Okay, yes, I remember now. Sorry about that. Yes, this
24 was essentially the kind of first, first review done more than three years ago.

25 MS YAHYA: [10:24:40] Okay. If we could have now DRC-OTP-20 --

Trial Hearing
WITNESS: DRC-OTP-P-0810

(Open Session)

ICC-01/04-02/06

1 Q. I'm sorry, Mr Bromley, can you -- have you gone through this 1 November 2013?

2 Do you recognise it?

3 A. [10:25:06] Yeah, I recognise it. I haven't gone through it in a few years.

4 I can -- yeah, this was upon receipt of an initial set of coordinates and this, you know,

5 this was intended to provide, I think, an example of what satellite imagery might

6 show what was available. It was a relatively quick, quick production. It was

7 almost for, I would say, discussion purposes.

8 Q. [10:25:42] Can you take a moment just to flip through the pages with me and

9 identify that these are the same --

10 A. [10:25:57] Yes.

11 Q. [10:25:57] -- raw data that has --

12 A. Exactly, exactly. Yeah. You will notice like a title location X1 because that

13 was the location names I was given at the, at the time. So in -- at that time there were

14 some, some discussions and changes and things like that, like what were these places

15 called essentially. I believe there were field missions going on at the same time, so

16 all that was kind of happening and I would receive updated data and updated names,

17 which then, you know, developed into the longer process of writing the other reports.

18 Q. [10:26:46] Okay. And at this point because there are -- in your report the

19 images had already been purchased, correct?

20 A. [10:26:52] Yes, yes. The -- if they were shown in the report, yeah, by

21 November 2013 then we would have already purchased them at that time.

22 Q. [10:27:07] If we can now have DRC-OTP-2062-0329 which is at Defence tab 19

23 and also at your -- the same folder you just received at tab 19.

24 A. [10:27:42] Right, okay.

25 Q. [10:27:44] It states here "Preliminary Report" so I will refer to this as your second

Trial Hearing
WITNESS: DRC-OTP-P-0810

(Open Session)

ICC-01/04-02/06

1 preliminary report. This is the report you produced on 13 December 2013; is that
2 correct?

3 A. [10:27:55] Correct.

4 Q. [10:27:57] And if you could just go through this one as well.

5 A. [10:28:07] Yes.

6 Q. [10:28:09] And I note that in the first few pages there is a bigger description,
7 a narrative than there was in the previous report, correct?

8 A. [10:28:24] Correct.

9 Q. [10:28:30] And if we look at the images, once again, these are the same images,
10 the same raw data that you were asked to analyse?

11 A. [10:28:40] Yes, there may -- yeah, I think in this version it was mostly the text
12 was written, a lot of the text was written and then maybe we're not -- we've gotten rid
13 of the X1 and X2 titles for locations. Yes. But, yeah, essentially the imagery would
14 be, would be much the same or would be the same as far as I can tell flipping through
15 it quickly.

16 Q. [10:29:11] You were the author of this report?

17 A. [10:29:13] Yes.

18 Q. [10:29:17] Can we now go to DRC-OTP-2084-0443, which is prosecution tab 5, so
19 it's tab 5 on both your folders?

20 A. [10:29:41] Okay.

21 Q. [10:29:47] Now we've already seen this one. This is your third report dated
22 17 April 2015, correct?

23 A. [10:29:55] Correct.

24 Q. [10:29:56] And once again, we have a narrative here.

25 A. [10:30:08] Yes.

Trial Hearing
WITNESS: DRC-OTP-P-0810

(Open Session)

ICC-01/04-02/06

1 Q. [10:30:14] As well as the imagery?

2 A. [10:30:18] Yes, I think the, the main change from the previous at this point was I
3 had received multiple new, new locations to either locate and/or get the imagery for.
4 But, yes, again the imagery will, will be the same.

5 Q. [10:30:43] And you are the author of this report, as you mentioned, correct?

6 A. [10:30:48] Yes.

7 Q. [10:30:54] Can we now go to your final report, which is Prosecution tab 1,
8 DRC-OTP-2099-0166.

9 Now on your screen this is the last and final report from 14 November 2016, correct?

10 A. [10:31:36] Correct.

11 Q. [10:31:39] And once again here there were some updates?

12 A. [10:31:47] Right. So this version -- I mean the previous versions had all kind of,
13 you know, built on, on each other. So, you know, they, they were just expansions.
14 When I had the opportunity to do the final report, basically I felt the previous
15 versions had, had -- or the final previous -- final preliminary report that I had done
16 was essentially not organised in the best fashion, so I reorganised the document
17 a little bit. I added overview maps for several of the areas. Things like that. It
18 was, you know, intended to make it an easier read, essentially.

19 Q. [10:32:42] Do you recall if, going from the first report to the final report,
20 anything changed in your methodology concerning the identification of structures in
21 the images?

22 A. [10:32:56] No. I mean that's -- I do this work all the time very, very frequently.
23 So, you know, I have my methodology for identifying structures. It wouldn't really
24 have changed from the first preliminary report to the final.

25 Q. [10:33:41] If we could go back to your second report, which is

Trial Hearing
WITNESS: DRC-OTP-P-0810

(Open Session)

ICC-01/04-02/06

1 DRC-OTP-2062-0329, and I am at page 0331, which for you would be the first page.

2 MS YAHYA: [10:34:17] If I could have the court officer's assistance to enlarge the
3 first paragraph at the end, please. Perfect.

4 Q. [10:34:27] I am reading here from the last sentence:

5 "A more robust analysis of the LoIs will also be undertaken based on these
6 preliminary results in order to more fully count, map, and document the potential
7 instances of possibly destroyed structures in this area of DRC."

8 Is this correct?

9 A. [10:34:55] Yeah, and that's what was done in the subsequent couple of years
10 after this report was done. The main change you will notice would be things like
11 identifying specific counts of destroyed structures. So when, for example, when I
12 give my presentation and in the document when I say 60 structures were counted in
13 this area, that's the more robust analysis you refer to.

14 Q. [10:35:26] And why was it necessary to have a more robust analysis?

15 A. [10:35:30] The time that this first report was done and then the first preliminary
16 report which was done about a month before this, basically this gets into what my
17 office does and what our normal job is, which is crisis response, conflict response,
18 disaster response, stuff like that.

19 So at this time, November/December 2013, there were a lot of other things going on in
20 the world that we were brought into, so I basically did as much as I could for the
21 office of the Prosecution doing these reports, but I simply had to, had to have more
22 time for the more quantified analysis.

23 Remember, I mean from my perspective there is a lot of work that goes into this
24 report, probably, you know, hundreds of hours by the time we're all done. I am
25 looking at 20 different satellite images covering hundreds of square kilometres.

1 These aren't things that you just, you know, snap your fingers and you get them done.
2 They take time, I have to schedule them in, et cetera, et cetera. So, yes, that'
3 essentially why more time was needed for that -- the counting of the structures,
4 making the map, stuff like that.

5 Q. [10:37:01] So by robust analysis, it's only a question of time?

6 A. [10:37:08] Well, yes, that's a big part of it. If I need -- if I have 25 satellite
7 images or 20 satellite images to go through, and if I need an hour for each one at least,
8 you know, it starts to add up. In addition, we were then -- we were actually making
9 datasets or our findings, so when I, when I show the points on the map or the arrows
10 on the figures, those are datasets that we're creating. Every time we see a structure
11 that's been removed and I click on it, that is also part of the analysis.

12 Q. [10:37:51] Did you then look for more structures?

13 A. [10:37:57] I was instructed to stay pretty close to where the locations of interest
14 were, the coordinates that I was given. So I did not, you know, free range out into
15 the imagery so much and look for just things that were interesting because I mean (a),
16 that's more work that I needed to do and so I was trying to maximise my time. But
17 yeah, I was generally -- every time I received new coordinates and we had new
18 coordinates to look at, yes, then I would had look in those areas, but mostly what
19 I was doing was taking a more careful look and attempting to make the dataset that
20 identified where the destroyed structures were so that we could provide the count of
21 destroyed structures and stuff like that.

22 Q. [10:38:51] So if I understand correctly, this robust analysis would be a more
23 careful look and a count?

24 A. [10:38:56] Yes. Just instead of a rapid review with, you know, screenshots,
25 which are kind of what you're seeing in these first couple of reports, I was doing

Trial Hearing
WITNESS: DRC-OTP-P-0810

(Open Session)

ICC-01/04-02/06

1 things like, you know, identifying how many structures I thought were destroyed,
2 et cetera, et cetera.

3 Q. [10:39:16] So before in the first reports it was a more or less an estimate or?

4 A. [10:39:23] I don't know if I even say -- if I really give numbers. I may say many,
5 which I would then later on say 60, for example. So, yeah, the first review was just
6 to look at the imagery, look at these locations and say, hey, are we seeing anything of
7 interest? After that, that's when we start counting and really trying to be a bit more
8 precise.

9 MS YAHYA: [10:40:01] Can we please have DRC-OTP-2099-0216, which is tab 2. I
10 would like to take you from the start, the source, and then to your last report and the
11 methodology therein.

12 This, as we discussed just a moment ago, you have attached to your -- is appendix A
13 to your final report, correct?

14 A. [10:41:13] Correct.

15 Q. [10:41:13] And this letter dated 18 October 2013 is the first mandate you received
16 from the office of the Prosecution, correct?

17 A. [10:41:23] Oh, boy. There were several.
18 Yes.

19 Q. [10:41:33] There was nothing before this date?

20 A. [10:41:36] No. Nothing formal. The -- yes, this was the first, the first letter of
21 instruction that I received.

22 MS YAHYA: [10:41:54] If we can just scroll up a bit on the document.
23 Sorry, scroll down. Thank you.

24 Q. [10:42:07] I am reading from the centre of the page, second paragraph:

25 "You are requested to provide a written report of your analysis, describing the

Trial Hearing
WITNESS: DRC-OTP-P-0810

(Open Session)

ICC-01/04-02/06

1 following:"

2 And I read number 2, (ii):

3 "The status of the physical objects depicted in satellite images. In particular, whether
4 the objects that can be seen were potentially subject to acts of destruction or burning
5 on or around the dates of the satellite images. In addition, for certain locations as
6 listed in the attached annex, can you please describe if there is any sign of soil
7 disturbance."

8 This is the mandate that was provided to you, correct?

9 A. [10:42:54] Yes.

10 Q. [10:42:56] It says here that there is chart annexed to this letter. Can we now
11 turn to page DRC-OTP-2099-0218, and for those following on paper copy, it is just the
12 next page.

13 Now I see from this annex that you were requested to collect and analyse satellite
14 imagery in order to assist in the determination as to whether or not any of the
15 following had taken place within the periods or dates provided. And here we have
16 a:

17 "Alleged destruction or burning of buildings. If so, indicate to the extent possible,
18 the number of buildings affected and the nature of those buildings (e.g. whether they
19 are residential, hospital, worship or religious buildings)

20 B, Alleged grave sites/soil disturbance. If so, identify to the extent possible, the
21 location of each area of soil disturbance." This is, in other terms, your mandate,
22 correct?

23 A. [10:44:22] Correct.

24 Q. [10:44:25] If we can go back to the previous page which is at 0216. Now, just
25 a moment ago -- scroll up a bit. Thank you. Just a moment ago I read that in

Trial Hearing
WITNESS: DRC-OTP-P-0810

(Open Session)

ICC-01/04-02/06

1 addition, it says here:

2 "In addition, for certain locations as listed in the annex, as listed in the attached annex,
3 can you please describe if there is any sign of soil disturbances."

4 Now, I don't see from this letter of instruction which locations you were asked to do
5 this, but we do find them in your second report, which we will take a look at.

6 If I could please have DRC-OTP-2062-0329, which is tab 19.

7 This is what we refer to as your second report. If we could please go to page 0331,
8 which is the first page of the report.

9 So right here in the first paragraph, just in the middle of the paragraph I will read
10 from "UNOSAT":

11 "UNOSAT acquired satellite images for ICC locations of interest and subsequently
12 sought to document evidence of potential destruction, burning, or damage to
13 structures occurring on a certain date, and in some cases to document potential soil
14 disturbance in relation to areas of possible mass graves."

15 And there is a footnote there. If we could scroll down to footnote four.

16 Footnote -- do you see where I am?

17 A. [10:47:35] Yes, yes.

18 Q. [10:47:35] So footnote 4: "Subsequent communication from the ICC received 26
19 October 2013 indicated that Kobu locations, Wadza, Lipri, Bambu, Sangi, Mongbwalu
20 and Saio should be the focus of the soil disturbance analyses."

21 Is this correct?

22 A. [10:48:04] Yes. I mean, the only location that we ended up analysing was the
23 Kobu-Wadza or around the Wadza church. At the time, so far as I understood, there
24 was a field mission going to the Wadza church area, and that was the only area we
25 did, I did a lot of analysis on indicating the areas of bare soil, so it was to support that

Trial Hearing
WITNESS: DRC-OTP-P-0810

(Open Session)

ICC-01/04-02/06

1 field mission. That was the only location we ended up doing it. I can't quite recall
2 why.

3 But I did do an awful lot of location -- or an awful lot of analysis on the Wadza church
4 area. Whatever happened with the field mission, I never really, really learned. But
5 yes, and then in I think the November 2015 report I basically indicate -- or, no, the
6 17 April 2015, the final sentence says: "Note, the initial request in 2013 also
7 requested analysis of soil disturbances in relation to potential mass graves and the
8 ICC indicated that such information was not necessary for this final report."
9 So at that point I dropped it just in the interest of time.

10 Q. [10:49:42] In this footnote, it is on 26 October 2013, the OTP asked you to do, to
11 focus on those locations?

12 A. [10:50:02] Yes. I would assume that would have been via email or perhaps
13 a phone call. We did have several.

14 Q. [10:50:19] I would now like to go to your, to talk about your methodology in
15 your report. So if we could have the final report, which is DRC-OTP-2099-0166.
16 If we could go to page 0168, which is the first page of your report. You talked a bit
17 about this on Friday but essentially, if I understand correctly, the first step that you
18 were required to do was to confirm GPS coordinates, correct?

19 A. [10:51:44] Correct, yes. I think we did -- yes, I would say that that was a first
20 step.

21 Q. [10:51:53] I would like to take an example so that we can go through the steps.
22 Let's take Bunia as an example. It is fairly simple. So the first thing you had to do
23 is to confirm that the coordinates are Bunia, correct?

24 A. [10:52:09] Correct.

25 Q. [10:52:10] And you check this with the two databases, the GNS and the RGC,

1 correct?

2 A. [10:52:19] Correct. I think Bunia was done just with the GNS. It is a relatively
3 large, well-known town. So I didn't discover the RGC one, the RGC database until
4 a little bit after the initial assessment, so.

5 Q. [10:52:48] I'm sorry, if we could have page 0171-page 4 of this report.

6 If we could scroll down a little bit, a bit more centred.

7 Do you see Bunia centre and Bunia alleged former UPC headquarters?

8 A. [10:53:29] Correct. Yes, I do.

9 Q. [10:53:30] Would you not say that they were confirmed by GNS and RGC?

10 A. [10:53:36] Yes, I confirmed using both. GNS would just have been the first one
11 that I used.

12 Q. [10:53:42] So you would initially start running it through GNS and then verify it
13 through RGC?

14 A. [10:53:49] Yes. For anything like this, the more verification you get, the better.
15 It may sometimes -- yes, there is at least one, like Nizi is confirmed in RGC but I
16 couldn't find it in GNS. So, yes, any of these locations, you're happy if you can
17 confirm them in one. You are happier if you can confirm on the two.

18 Q. [10:54:14] And just so I can follow you, these were the coordinates provided to
19 you by the OTP, correct?

20 A. [10:54:22] Yes, except in some of the areas where they weren't able to find them
21 at all and so then I was just searching in these databases to see if they were in the
22 databases.

23 Q. [10:54:38] Now, Bunia is a fairly simple example but there were others that were
24 more difficult?

25 A. [10:54:52] Yes.

1 Q. [10:54:52] And at page 0169, which is page 2 of your report, in the fourth
2 paragraph, second sentence, it says: "Given that the area in question in the DRC is
3 one of the most remote areas in the world, and likely features multiple ethnic groups,
4 dialects, and languages, it is not surprising that some locations can be difficult to
5 precisely identify using external information sources like the GNS and RGC."

6 Is this correct?

7 A. [10:55:38] Correct.

8 Q. [10:55:47] If we can now turn to page 5 of your report, which is 0172.

9 If we could please focus on the map at the top, if possible. This is the mapping of the
10 ICC locations of interest, correct?

11 A. [10:56:26] Yes, the ones that we were able to develop or either had coordinates
12 for or could find coordinates for.

13 Q. [10:56:42] For example, here I don't see Goy, and if we look, for those who have
14 a paper copy, I don't see Goy in this chart. Is that correct, do you agree with me?

15 A. [10:56:59] Yes, I don't see it either and I don't recall spending much time on Goy,
16 so I don't know where it would have -- so that one, according to the document, this
17 was one of several where we had a possible match. So I, I wasn't given coordinates
18 for these and I had to try and find them in the GNS and RGC datasets. So I came up
19 with several where I had found a location that was similarly spelled to G-O-Y, but I
20 think what happened during the subsequent discussions with the Office of the
21 Prosecutor, there was so much uncertainty about these that we just basically excluded
22 them. I couldn't tell you just from the coordinates but some of these may have been,
23 you know, a hundred kilometres away or something like that. So rather than chase
24 after them, we didn't pursue them, basically.

25 Q. [10:58:04] And would you say that it is a possible match, just so that we can

Trial Hearing
WITNESS: DRC-OTP-P-0810

(Open Session)

ICC-01/04-02/06

1 follow you at page 3 of your report?

2 A. [10:58:11] Yes, yes, in the table.

3 Q. [10:58:13] That's, for the record, 0170.

4 MS YAHYA: [10:58:28] Mr President, I see the time but maybe if I just have two
5 more questions in this topic?

6 PRESIDING JUDGE FREMR: [10:58:36] Even if it really isn't five minutes, it is still
7 fine, so.

8 MS YAHYA: [10:58:47]

9 Q. [10:58:47] Now, if we look at that table, the third one says Buli/Bule. Do you
10 see that?

11 A. [10:58:56] Yes.

12 Q. [10:59:01] And it says "location unconfirmed," correct?

13 A. [10:59:06] Correct.

14 Q. [10:59:08] Now this, if we go back to page 5 of your report, 0172, which is your
15 map, can you see right in the middle where it says Buli/Bule?

16 A. [10:59:42] Yes.

17 Q. [10:59:44] Even though it was unconfirmed, you still included it in your map
18 based on the coordinates provided to you by the Prosecution, correct?

19 A. [10:59:53] Yes.

20 MS YAHYA: [10:59:57] I think this is a good place to pause, Mr President.

21 PRESIDING JUDGE FREMR: [11:00:02] All right. So we will break now. We take
22 our regular 30 minutes break and we will reconvene half past 11.

23 THE COURT USHER: [11:00:11] All rise.

24 (Recess taken at 11.00 a.m.)

25 (Upon resuming in open session at 11.30 a.m.)

Trial Hearing
WITNESS: DRC-OTP-P-0810

(Open Session)

ICC-01/04-02/06

1 THE COURT USHER: [11:30:11] All rise. Please be seated.

2 PRESIDING JUDGE FREMR: [11:30:41] Before I will hand over floor to Ms Yahya to
3 continue with cross-examination of our expert witness, just for your information so
4 far, Ms Yahya, you have used 38 minutes, so as we said, you, as the Defence you were
5 allotted four hours but you indicated that maybe two hours would be fine to cover
6 everything you want. So if you would be able to finish this, or finish your
7 cross-examination by 1 o'clock, it will be fine. If it would be even few minutes over
8 1 o'clock, it would be better for us, I believe, to extend slightly this session and then
9 break and then in the afternoon continue with the rest of the testimony of P-31, if I am
10 not wrong. Just to give you great picture. But it is up to you, please.

11 MS YAHYA: [11:31:42] Thank you, Mr President. I will try.

12 Q. [11:31:49] Just before the break, Mr Bromley, we were looking at your final
13 report and at the GPS coordinates you confirmed.

14 If we could have the final report, which is DRC-OTP-2099-0166, back on the screen
15 and if we could go to your table which is at 0171, which is page 3 of your report, table
16 1.

17 Towards the bottom of the page you see that it reads "Kobu-Wadza (Hotel Paradiso),
18 Kobu-Wadza (Alleged Detainee Location(s))" and "Kobu-Wadza (Exhumation Site)".
19 Do you see that?

20 A. [11:32:48] Yes.

21 Q. [11:32:49] And beside all three it says, "Location confirmed as Kobu-Wadza area
22 in the RGC and the GNS."

23 Now, just so it's clear, for me, does this mean that it is one location Kobu-Wadza area
24 that you have confirmed?

25 A. [11:33:15] Yes, essentially the Hotel Paradiso, alleged detainee location and

Trial Hearing
WITNESS: DRC-OTP-P-0810

(Open Session)

ICC-01/04-02/06

1 exhumation site would not be in any database, of course, but they were all GPS
2 coordinates I was given and then they were located in the vicinity of the Kobu-Wadza
3 points that were in those databases.

4 Q. [11:33:37] So I understand that you cannot separate, the confirmations,
5 you cannot separate from all these three?

6 A. [11:33:47] Well, they were different locations but, yeah, I didn't -- the only other
7 thing I could have done is exclude them from the table since they weren't, they
8 weren't town names, they were highly specific locations.

9 Q. [11:34:03] And these coordinates that were provided, were provided to you by
10 the OTP, correct?

11 A. [11:34:10] Correct.

12 Q. [11:34:23] Sorry, if we could go to the first page of the report. I would like to
13 look at footnote 3, and this is your definition for structure:

14 "A structure in this case refers to any building or similar object created by a human
15 for shelter, agriculture, storage, and similar purposes and comprised of walls and
16 a roof. Houses, sheds, barns, community buildings, and other such structures would
17 all qualify."

18 Is this the definition?

19 A. [11:35:17] Yes.

20 Q. [11:35:28] If we go to the next page, 0169, which is page 2. I am reading at the
21 end of paragraph 3 which reads: "Once the location of settlement was finalised by
22 UNOSAT then that location could be used to determine what relevant satellite
23 imagery was available."

24 So once this initial step was completed, you move on to the next; is that correct?

25 A. [11:36:11] Yes, you, you need to know a precise location to get satellite imagery

1 for that location and then you can provide with the analysis.

2 Q. [11:36:25] If I could just come back to the definition of structure we were
3 discussing. Just so I am completely clear, according to you, unless there a roof and
4 walls, it would not be considered a structure?

5 A. [11:36:44] I mean, it -- yeah, generally, it would have to be something raised up
6 above the ground, you know, that would help, that would cast a shadow, for example.
7 Obviously, where some of the difficulties might be would be things like what we
8 would call animal paddocks or places where you keep your cow or your goats or
9 something. Those might just be fences. But, yes, generally, a structure is going to
10 have roofs, a roof and a wall -- a roof and walls.

11 Q. [11:37:24] And in this case we are talking of any size from small to large?

12 A. [11:37:28] Yes, it would have to be a certain size before it would be visible in the
13 satellite imagery, but you know, that's less than a metre across, basically. So, yeah,
14 any, almost any structure, you are going to be able to see.

15 Q. [11:37:43] So, for example, outdoor toilets or outhouse would qualify?

16 A. [11:37:53] Yes. What I did was mark any structure which, for example, had
17 disappeared. But, yeah, that would have included large and small. They generally
18 weren't tiny, or they weren't, you know, outdoor toilets or of that size, they were
19 generally bigger than that.

20 Q. [11:38:17] If you were to have a house and an outdoor toilet of a bigger, of a one
21 metre size, you would count that as two structures?

22 A. [11:38:31] Correct.

23 Q. [11:38:37] So then you move on to the next step, which is to search in the
24 catalogues and find the images that are available. In this case they were from
25 QuickBird and IKONOS satellite dishes, correct?

Trial Hearing
WITNESS: DRC-OTP-P-0810

(Open Session)

ICC-01/04-02/06

1 A. [11:38:53] Correct.

2 Q. [11:38:55] And there are no better images available to match your criteria,
3 correct?

4 A. [11:39:00] Not publicly. The nonpublic stuff, we would never know about.
5 But, yeah, from the commercial archives, from satellites that were operating at that
6 time, that's what was available.

7 Q. [11:39:17] How much would one satellite cost?

8 A. [11:39:20] A satellite?

9 Q. [11:39:21] Image.

10 A. [11:39:24] For areas like this, when we are buying the minimum areas, so we are
11 buying 25 square kilometres, I can't remember precisely, but it would probably be
12 a little less than US\$400 for that one image.

13 Q. [11:39:46] And you purchased 32 images, or UNOSAT purchased 32?

14 A. [11:39:52] I would have to count, but yes, we purchased many.

15 Q. [11:40:04] You just mentioned that there is a minimum 25 square kilometres that
16 you have to purchase, and that it could be larger?

17 A. [11:40:16] Yes. And then also the price for the image is what we call the
18 archival price, so this is an image that was already collected and exists in the archives.
19 The other pricing would be if we had requested that new imagery be collected for an
20 area and then the price is about five or six times as much, but you get a hundred
21 square kilometres. So if I wanted to look at Bunia, when we started this analysis, I
22 could have directed the satellite companies to acquire an image for me. But for the
23 archival images, yeah, it's, I would say around 40.

24 Q. [11:40:56] When you say directed the satellite, that cannot be done retroactively?

25 A. [11:41:02] Right. We have no time machine.

Trial Hearing
WITNESS: DRC-OTP-P-0810

(Open Session)

ICC-01/04-02/06

1 Q. [11:41:07] And you stated on Friday that each image was reviewed at least two
2 times or multiple times?

3 A. [11:41:15] Yes, they, we spent -- I spent a lot of time on the analysis, that's for
4 sure. At least two times for each image, some of them more than that, just to be sure
5 of what I was seeing.

6 Q. [11:41:30] Earlier today you said it would take about a hundred hours. Is that
7 for one image?

8 A. [11:41:35] No, not for one image, no. But, yeah, there were, there were a lot of
9 hours, weeks and weeks spent on the report writing on all the imagery.

10 Q. [11:41:49] Roughly speaking, for one image, how much time would it take to
11 analyse?

12 A. [11:41:54] I would want at least an hour to be comfortable with it, maybe two
13 hours. There is also -- we talked a little bit about the orthorectification and the
14 rectification and stuff like that. Honestly, sometimes that can take the majority of the
15 time, maybe an hour or two, to even get the imagery ready to where you are
16 analysing it. So, you know, for each location, you know, four or five hours of work
17 for each one is not out of the question.

18 Q. [11:42:35] And you mentioned on Friday that the initial review was done by
19 a colleague of yours and then you supervised.

20 A. [11:42:43] Yes, basically when we first started getting the imagery, I had
21 a colleague basically get it all set up and start doing the initial reviews, but then I took
22 over pretty quickly and, you know, that was three years ago and it's pretty much been
23 me looking at the imagery since then.

24 Q. [11:43:09] Earlier this morning you said, "We didn't have much choice about
25 what we could get with the images" and this is in the transcript --

Trial Hearing
WITNESS: DRC-OTP-P-0810

(Open Session)

ICC-01/04-02/06

1 A. [11:43:19] Yes, so whatever imagery was collected back in 2002 and 2003, for
2 whatever reasons, it was collected by these commercial companies; that's what we
3 have to choose from. It's a pretty simple, simple process of saying, "Okay, here's our
4 locations, what imagery was collected back then?" And again, this would change if
5 we were looking at something actively today where I could tell the satellite to start
6 collecting imagery. But when you are dealing with a relatively old issue like this one,
7 yes, you are stuck with what was collected back then.

8 Q. [11:44:13] You describe in your report what you call the best candidate pictures
9 as the ones that are closest to the time frame provided to you by the OTP; is that
10 correct?

11 A. [11:44:24] Yes.

12 Q. [11:44:26] So after acquiring all of these images, this is -- there are no better
13 pictures available, in sum?

14 A. [11:44:36] Correct, not for this time frame. Yes.

15 Q. [11:44:42] Then after you're collected all the images, it is the last step of analysis;
16 is that correct?

17 A. [11:44:57] Yes. Then you actually do the analysis and then you start
18 developing the report basically. And even the report is a very long process, as you
19 have to export all the image samples and make your pages. And, yeah, we are
20 a relatively small office so I don't have a dozen assistants helping me with this, this
21 was generally me.

22 Q. [11:45:22] I want to talk first about the single image analysis. So when we take
23 a single image, I understand from your report that the biggest drawback in this
24 exercise is that you cannot tell when a structure was there, correct?

25 A. [11:45:51] Correct.

1 Q. [11:45:52] And when it could have been destroyed, correct?

2 A. [11:45:55] Correct.

3 Q. [11:45:58] But you will agree with me that this is a lot of speculation?

4 A. [11:46:06] It is a range of -- I mean, in some areas you are quite comfortable with
5 it. Bunia, some other areas, you feel better about it, but, yes, there is -- I mean,
6 without that previous image to indicate what had been there, yes, you're you are
7 basing your analysis on recognising certain patterns and features in a single image.
8 But, yeah, as I say in the report, there is speculation there.

9 Q. [11:46:39] We will get to Bunia later, but generally in the single image analysis, it
10 is unavoidably speculative?

11 A. [11:46:51] Except in areas where you are seeing like the actual burned remains of
12 structures. In the other areas, if you see structural remains, then it is less speculative,
13 but, yes, there is certainly speculation without that, that previous image, to guide you.

14 Q. [11:47:12] But you wouldn't know when it was destroyed, for example?

15 A. [11:47:17] No, no.

16 Q. [11:47:18] And you wouldn't know how?

17 A. [11:47:22] I mean, again, when you are seeing the burned structural remains
18 because those tend to be black and are pretty distinctive honestly. But, yes, in
19 general, you are just seeing the possibility of removed structures.

20 Q. [11:47:37] So putting aside the burnt, for the other ones, in general, you cannot
21 tell when or how?

22 A. [11:47:45] Correct.

23 Q. [11:47:46] When it comes to burnt structures, you are not in a position to tell
24 whether it was arson or not?

25 A. [11:48:00] With the burning, generally, when you see structures burned in

Trial Hearing
WITNESS: DRC-OTP-P-0810

(Open Session)

ICC-01/04-02/06

1 isolation of everything else, so in Bunia, for example, you have dozens of burned
2 structures, however, the structures next to them are not burned and then the
3 landscape in between them is not burned, and that is important because it means that
4 somebody walked the fire from, from building to building.

5 When we look at other parts of the world, you do see towns destroyed by wildfire,
6 but it will, it will burn everything, basically, all, everything between the buildings, all
7 the buildings, not just select buildings.

8 Q. [11:48:44] But you can't know the cause of the fire?

9 A. [11:48:47] No, I mean we -- if you are saying dozens of buildings burned, I
10 wouldn't go beyond that, but I mean, there's only a few things or one thing that is
11 going to do that when they are burned in isolation of each other like that with no fire
12 in between.

13 Q. [11:49:16] This morning at page -- sorry, Friday, at page 117, line 23 to 25, this is
14 for the record, you say you cannot, you know, say for certain that a destructive event
15 took place versus some sort of, you know, town development project, for example.
16 Coming back to destruction.

17 A. [11:49:48] Right. Yes, I mean, we didn't get into researching what might have
18 happened there. It was -- it was all just assessing whether structures were, were
19 gone and destroyed.

20 Q. [11:50:12] Now in the -- you also --

21 So the other option is that you find cleared areas with no remains of structures in
22 a single image, and here, once again, you cannot know if there was an image, a
23 structure?

24 A. [11:50:47] Correct.

25 Q. [11:50:49] Now in a cleared area, just to -- there's no structures, no structural

1 remains?

2 And then you conclude that possibly there was something before; that's the first step?

3 A. [11:52:12] Correct. So, yeah, what I am doing is I am looking at the area in

4 general, so nearby areas and you are seeing the patterns of structures and housing.

5 And then you are noticing the areas where that pattern is broken, where it -- areas are

6 cleared, there is all the indications of a settlement, however, no structures.

7 Q. [11:52:38] Yes. Let me just -- I want to go through the logic step by step. The

8 first step is that there is an assumption that there was something there, correct?

9 A. [11:52:49] No. Because you are seeing lots of other areas. Again, you are

10 looking for a certain pattern: the roads, the paths connecting to the roads and the

11 cleared, the cleared areas. And you are saying, okay, this could have been a series of

12 structures.

13 Q. [11:53:08] And once you have identified those clearings that have nothing there,

14 then you say there could have been a structure there?

15 A. [11:53:19] Yes, so then I am essentially counting what I would guess would be

16 the, the homestead or where the structures were and doing my best to determine, yes,

17 how many structures could have been there if it had been cleared.

18 Q. [11:53:37] But then the second thing that one must assume is that the structures

19 were removed?

20 A. [11:53:43] Yes. That's the, again, the pattern, where you are seeing cleared

21 areas with no structures in them, essentially.

22 Q. [11:53:59] We are going to take an example. But just to be clear, there is two

23 assumptions to be made, one that any structure existed and a second that then it was

24 removed.

25 Correct?

Trial Hearing
WITNESS: DRC-OTP-P-0810

(Open Session)

ICC-01/04-02/06

1 A. [11:54:16] Yes.

2 Q. [11:54:20] If we can go to DRC-OTP-2062-0329, which is tab 19, Defence tab 19,
3 which is your second report, please.

4 If we could have page 0339, which is page 9 of your report, for those following on
5 hard copies. Now you see here the fourth row, it says "Saio village."

6 And beside that -- do you see?

7 A. [11:55:57] Yes, yes.

8 Q. [11:56:03] Beside that it says, at the very end on the third column, "Evidence is
9 unclear and uncertain due to lack of pre-event image."

10 Do you see that?

11 A. [11:56:18] Yes.

12 Q. [11:56:22] Now, if we could go back to the final report, DRC-OTP-2099-0166,
13 Prosecution tab 1, at page 0183.

14 If we can just look at Saio there as well, which is the fourth and fifth one. The first
15 one says "Saio/Sayo (Health Centre)", and if we go to the fourth row it says "Multiple
16 possible indications". There is no more "uncertain" or "speculative" on this table.

17 A. [11:57:55] I think what, what I had done was standardise the language a bit so
18 everything that was a single image analysis, then I would put in the single image
19 analysis, which is how that statement begins, "Single image analysis period." And
20 since I had mentioned previously that the limitations of the single image analysis,
21 what I was doing there was just kind of standardising the language. Frankly, I was
22 cutting and pasting some of those statements from entry to entry. And again this
23 was just part of the, part of the process of going from the initial rough report to
24 a more standardised final version, but since it says "single image analysis" and there
25 is a paragraph probably previously that indicates the uncertainty of the single image

1 analysis, for myself I had accounted for that uncertainty adequately.

2 Q. [11:59:00] So wherever we see "single image analysis," we can assume that the
3 same speculative -- criteria that is speculative applies?

4 A. [11:59:14] Yes. I believe I have a whole paragraph on that at some point
5 because, yes, the single image analysis is a different thing than the dual image
6 analysis.

7 Q. [11:59:32] There is another issue with the single image analysis. In some cases,
8 your conclusions talk about possibly destroyed structures and this is again in clear
9 areas -- in clearings where you're saying that there is possibly destroyed structures
10 because you see structures that are partial, correct?

11 A. [12:00:14] Yes, I think in general that would apply.

12 Q. [12:00:58] Can we please have DRC-OTP-2084-0443, which is Prosecution tab 5,
13 just to have a look at an example at 0473.

14 Sorry, there is no page number, but it is figure 15, Saio.

15 If I could have the court officer's assistance to focus on the bottom picture, please.

16 And if we look at the caption under this picture, you mention that: "Analysed with
17 a single image and therefore speculative, this area shows about 10 cleared areas (red
18 arrows), ... which could have been structures."

19 Do you see that?

20 A. [12:02:18] Yes. Well, I guess I would have to -- can you scroll down a little.

21 Yes, now I see it.

22 Q. [12:02:38] Each of those red arrows are pointing to a cleared area?

23 A. [12:02:45] Yes.

24 Q. [12:02:47] With no remains?

25 A. [12:02:49] I do see one or two which may have, at least one that may have

1 remains.

2 Q. [12:03:05] At the bottom where we were just reading, if we could just scroll
3 down, it says, "this area shows about 10 cleared areas" which were reflected by the
4 red arrows?

5 A. [12:03:22] Yes.

6 Q. [12:03:25] If you had seen some remains, it would be reflected maybe by another
7 colour?

8 A. [12:03:29] I wasn't a hundred per cent. the arrows are more of a guide,
9 essentially. I wasn't, you know, always marking with yellows and blues and reds.
10 I didn't think it was necessary all the time so -- and yes, I would want to go to the
11 image on this one and give you a very certain answer. But just looking on the
12 scanned PDF, it is possible that there is a set of structural remains in there.

13 Q. [12:04:10] Well for now we will focus on what you mentioned at the bottom, the
14 other 10 cleared areas.

15 If you pick the centre arrow, for example, the analysis here is, first, that it was a clear
16 area, that is a certain size?

17 A. [12:04:56] Yes. So this is, this is useful. I mean, if you look below it next to the
18 two red arrows below it, to the right of those you see a rooftop, another structure
19 down there. It is kind of a grey/silver colour. So if you could imagine simply
20 removing that, what the patch of dirt that it sits on would look like would indicate,
21 yes, why some of these other locations may have also had structures.

22 Q. [12:05:42] But once again, after making the assumption that there could have
23 been structures, you have to then make the assumption that they were removed?

24 A. [12:05:54] Correct.

25 Q. [12:05:54] If you look at the top right image, you can see, at the top corner of that

1 image - sorry - you can see what is the resemblance of a town, correct?

2 A. [12:06:04] Yes.

3 Q. [12:06:05] And you have not identified any destruction there, correct?

4 A. [12:06:11] In this, in this report I didn't show any of it. I believe in the final
5 report from November of this year, it looks more in the town. However, I would
6 want to review and confirm that.

7 Q. [12:06:36] For this image right here, the town?

8 A. [12:06:42] Correct, yes, yes, for this image right here I didn't detect any, any
9 visible location of the town visible in this image where I indicated destruction.

10 Q. [12:07:00] In your final report you didn't include Saio; is that correct?

11 A. [12:07:09] I believe I did. Yes, it should be figure 18 in the final.

12 Q. [12:08:00] Figure 18 is not the same -- wouldn't you agree that figure 18 is not
13 the same figure as --

14 A. [12:08:07] Correct, yes, it is a different area. I believe it is a little bit to the east,
15 like literally, if you just slid the image to the east. But again I would have to
16 double-check that.

17 Q. [12:08:19] And once again for the one you are referring to, which we are in your
18 first report, your final report, to DRC-OTP-2099-0166, at page 0250, which is page 38
19 of your report. If we could have it on the screen.

20 So this is not the same location and this is also not the same dates; am I correct?

21 A. [12:09:16] What were the --

22 Q. [12:09:19] So the original date that we were looking at is 6 August 2003. We
23 can go back and forth, if you want to take a look. And this one is 22 May 2003.

24 A. [12:09:32] Okay.

25 Yes, that may be an error, I'm sorry. The -- the labels on this page may be wrong

1 because in the metadata table it indicates it is 6 August 2003. And I think, looking at
2 the image, I can tell what satellite it comes from and I would say it is the
3 6 August 2003.

4 Q. [12:10:43] If we could just enlarge this image that's on the screen. Once again,
5 there is red arrows pointing at clearings, correct?

6 A. [12:10:59] Correct.

7 Q. [12:11:01] But there is nothing destroyed there, correct?

8 A. [12:11:07] Right. On all of these it looks like cleared areas.

9 Q. [12:11:19] This morning you said that you did not go to the locations of interest
10 in DRC; is that correct, yourself?

11 A. [12:11:28] Correct.

12 Q. [12:11:30] Or other members of UNOSAT?

13 A. [12:11:38] Correct.

14 Q. [12:11:38] If we can have DRC-OTP-2084-0 --

15 PRESIDING JUDGE FREMR: [12:11:52] Ms Luping.

16 MS LUPING: [12:11:53] It is just simply to ensure that the precise image being
17 shown to Mr Bromley is actually captured on the record so there is no confusion.

18 If Defence counsel could just note for the record that we are referring to the top image
19 at figure 18, because it's a different image below. I just wanted to make sure it was
20 clear for the record when we go back to look at the record.

21 PRESIDING JUDGE FREMR: [12:12:17] All right.

22 Ms Yahya.

23 MS YAHYA: [12:12:21] So I will move on from this image.

24 If we could now have DRC-OTP-2084-0443, which is your third report. And if we
25 could go to page 0470, and this is figure 2. If we could just focus on the bottom

Trial Hearing
WITNESS: DRC-OTP-P-0810

(Open Session)

ICC-01/04-02/06

1 image and the caption.

2 Sorry, for the record, this is the Mongbwalu area.

3 The description here says:

4 "This is highly speculative but could indicate structures were destroyed. It's also
5 possible this is an industrial or logging facility with other reasons for apparent
6 damage."

7 Do you see that?

8 A. [12:13:42] Yes.

9 Q. [12:13:46] In some other of your images where you -- of your analysis, you
10 sometimes say that it is military, here you don't.

11 A. [12:13:56] I sometimes say it's what?

12 Q. [12:13:59] Military or for military purposes?

13 A. Okay.

14 Q. (Microphone not activated) Sorry, in this case you can't know if the
15 image -- sorry, if we could maybe focus back on the image.

16 PRESIDING JUDGE FREMR: [12:14:30] Ms Luping.

17 MS LUPING: [12:14:31] Mr President, if Defence counsel could be more clear as to

18 the precise question that she is putting to Mr Bromley. This is confusing to simply

19 say at some point in time you may have referred to the term military. The question

20 should be put more precisely. Here we have language that has been set out by the

21 expert in relation to the specific image and, to be clear, we need to be talking about

22 the precise image. There has been no reference to military in relation to this image.

23 Unless the Defence counsel can correct me, I am not aware of where the term military

24 was used in relation to Mongbwalu and in particular this specific image.

25 PRESIDING JUDGE FREMR: [12:15:16] Noted.

Trial Hearing
WITNESS: DRC-OTP-P-0810

(Open Session)

ICC-01/04-02/06

1 Ms Yahya.

2 MS YAHYA: [12:15:18] Mr President, we will get to the next image concerning
3 military, but in this case my question is in regards to what has been described as an
4 industry or a lodging facility.

5 A. [12:15:35] Logging.

6 Q. [12:15:36] Logging facility. You did not indicate here that -- military?

7 A. [12:15:40] Correct. Yes, there is no, there is no fortifications, there is no access
8 control that are visible in this part of the image.

9 Q. [12:15:57] I would now like to move on to the pre- and post-pictures that you
10 have discussed this morning. This exercise based on a picture before and a picture
11 after, you would agree with me that the biggest problematic is the range of time
12 between these two pictures, correct?

13 A. [12:16:26] Yes. I mean ideally we want an image collected the day before and
14 the day after or the day of an event in question. But, again, back during 2002 and
15 2003, with the number of satellites available, that's just not, not likely in an area like
16 this.

17 Q. [12:16:50] And you would agree with me that the bigger the range and time
18 between the pictures the less certain we are as to when anything could have
19 occurred?

20 A. [12:17:00] Yes. I mean you can -- with blackened remains, with anything
21 burned, there is a certain time frame where those, that evidence is going to remain.
22 But after a couple of rainstorms or a few windy days or something, then yes, the
23 environment has changed quite a bit.

24 Q. [12:17:22] And putting aside the one, the burnt, just an image of destruction
25 between an image where there is remains between -- before and after, you can't know

1 when in that range?

2 A. [12:17:38] Correct, I only have those two dates to look at.

3 Q. [12:17:43] (Overlapping speakers) -- be the day after the first picture?

4 A. [12:17:46] Theoretically, yes.

5 Q. [12:17:47] Or it could be the day before the second picture?

6 A. [12:17:52] Unless it was burning, in which case it would be still quite clear and it
7 might still be smoking.

8 Q. [12:18:01] And for most of your pre- and post-images it happened within a
9 time -- you have a time frame of about five months; is that accurate?

10 A. [12:18:17] Yes, a lot of them were January to May 2003. That that sort of time
11 frame.

12 Q. [12:18:31] I would like to look at -- now I would like to look at certain of the
13 examples you have provided in your report.

14 And we will now, if we could go to page 0208, and this is in your first report -- in
15 your last report, figure 21.

16 Now this is a single image analysis, but you say, you state that there is -- confidence is
17 higher as burnt structures are visible, correct?

18 A. [12:19:47] Correct.

19 Q. [12:19:48] Now if we could go to your first report, DRC-OTP-2059-0177, which is
20 tab 18, at 0197.

21 In this report, just to be clear, this is the infrared colour?

22 A. [12:21:06] Right, the false colour infrared, and the top image is the one shown in
23 the figure 21 in the final report.

24 Q. [12:21:17] And if we look at the caption, at this point you saw what you say
25 signs of burning, of burnt structure, and you say is "therefore highly speculative".

Trial Hearing
WITNESS: DRC-OTP-P-0810

(Open Session)

ICC-01/04-02/06

1 A. [12:21:33] No, I say it's "therefore speculative" not, not "highly".

2 Q. [12:21:49] And you say, you say it is therefore speculative, "analysed with
3 a single image and therefore speculative"?

4 A. [12:21:58] Correct.

5 Q. [12:21:59] And at this point you had already identified signs of burning, correct?

6 A. [12:22:06] yes.

7 MS YAHYA: [12:22:08] If we could go back to tab, prosecution tab 1, at 0208. Sorry,
8 if we could have DRC-OTP-2099 ...

9 Q. We just looked at this caption, why did you go from "single image is therefore
10 speculative" to "confidence is much higher" from your reports?

11 A. [12:23:51] I mean in the two or three years, I think, or in the, the long period of
12 time having looked at this image many more times, yes, my, my confidence increased
13 with the more I was able, able to look at the image, basically. And again, this is, yes,
14 this is getting to my history as an image analyst and when, when you feel comfortable
15 with things versus less, comfortable. But yes, having looked at this image enough
16 I was more and more certain about the likelihood that these were burned structural
17 remains.

18 Q. [12:24:53] You are familiar with the MODIS detection fire. You spoke at the
19 beginning of a programme that you used that you, you are familiar with, called
20 MODIS to detect fires, correct?

21 A. [12:25:12] Correct, yes.

22 Q. [12:25:12] This wasn't used in this case?

23 A. [12:25:15] No, the MODIS sensor is generally detecting very large fires. It is
24 more for forest fire monitoring, or understanding how much carbon ends up in the
25 atmosphere from large-scale burning. In some cases it may detect smaller fire events

1 like this one, but in this case I am fairly certain I looked at it and there wasn't
2 a detection at the time.

3 If the entire area had been lit on fire at the same time, then it would be more likely to
4 see a detection. However, if individual houses were burned one after the other then
5 the likelihood of a detection would decrease.

6 Also, if there was any cloud cover or anything overhead the detection would have
7 been blocked, or if the burning happened essentially out of sync with when the
8 MODIS satellites go overhead, then it might have been missed as well.

9 Generally what I say is if a fire was detected by MODIS you can be confident that it
10 did occur, however, if a fire was not detected by MODIS, it does not mean that the fire
11 did not occur.

12 Q. [12:26:36] And you said that you looked at MODIS?

13 A. [12:26:38] Yes, I believe I did that right at the beginning. And I use MODIS
14 every day or very frequently for different applications. And, yes, I don't recall. If
15 there was a MODIS detection here I am certain I would have included it, simply
16 because that's, that's what we do with valid -- with relevant MODIS detections.

17 Q. [12:27:15] And you would agree with me that in many parts of the world, or
18 even the region, fire has also been used for agriculture?

19 A. [12:27:27] Yes, agriculture, land clearing, wildfires, that that's what we see when
20 we look for fire.

21 Q. [12:28:28] Is it correct that certain buildings, structures can appear destroyed
22 because of the vegetation?

23 A. [12:28:37] What do you mean?

24 Q. [12:28:42] Vegetation around a structure can give the illusion of --

25 A. [12:28:51] Not -- I wouldn't say in this Bunia example. The only time that

1 might be a factor is if I have a before and an after image. And, for example, if there
2 is a tall tree next to a structure and the image is acquired at a slightly different angle
3 so the tree then blocks the structure or the tree is between the structure and the
4 satellite, or even on windy days if a branch blows over a structure and can obscure it.
5 I think that might be, that might occasionally cause someone to identify a structure as
6 destroyed.

7 In a single image analysis, though, if the vegetation was blocking the structure you
8 wouldn't really see the structure to begin with so there is, you know, you wouldn't,
9 you wouldn't note the structure as destroyed if you are not seeing it.

10 Q. [12:29:54] Would it give the image of burnt?

11 A. [12:30:02] I don't think so. Again, because when we put it into the false colour
12 infrared, the red image, healthy vegetation will then appear red in that. And so you
13 wouldn't, you wouldn't confuse the vegetation with a structure because you can
14 confidently identify it as vegetation.

15 Q. [12:30:25] If we can look at the image here, we can see that there is a lot of
16 structures that remain intact, correct?

17 A. [12:30:44] Correct.

18 Q. [12:30:47] Did you count the structures that were not, that were untouched?

19 A. [12:30:54] No.

20 Q. [12:30:59] So then I can conclude that you did not look at the ratio of ...

21 A. [12:31:09] No. I mean, again, I do have time constraints with, with other work.
22 I gave this, this report as much time as I could. But, yes, calculating intact versus
23 possibly destroyed, or distance between destroyed or, you know, things like that,
24 I didn't have any choice, I had to move forward as efficiently as I could.

25 Q. [12:31:36] And if we look at this image now, with your expertise eye, would you

1 agree with me that the arrows is less than 5 per cent of the structures?

2 A. [12:31:49] I wouldn't be able to say. My guess would be 10 per cent.

3 Q. [12:32:08] Can we please go to page 0189 of this report.

4 You see here that you have Bunia centre and Bunia alleged former UPC HQ, do you
5 see that?

6 A. [12:32:41] Correct.

7 Q. [12:32:44] And at the top you have indicated, there is a square where it says "see
8 figure" -- sorry, let's start with the bottom one. The blue dots all the way at the south,
9 it says "see figure 21"; is that correct?

10 A. [12:33:05] Correct.

11 Q. [12:33:06] The image we were looking at is there in relation to Bunia centre?

12 A. [12:33:13] Correct.

13 Q. [12:33:22] And if we go all the way to the top, the other rectangle, with the red
14 dots, this is figure 22 of Bunia and you see this is northeast, far from the Bunia centre,
15 correct?

16 A. [12:33:45] Correct.

17 Q. [12:33:48] Now just for clarity on this map, you have two different types of
18 analysis on the same map. You have a single image analysis with the blue dots and
19 a before and after analysis with the red dots on the same map; is that correct?

20 A. [12:34:15] Correct.

21 Q. [12:34:26] Now help me understand, in figure 22, what would the image be like
22 on 14 August 2002, which is the date of the single image?

23 A. [12:34:49] Can you repeat that?

24 Q. [12:34:55] My understanding is that there is three sets of dates of pictures in this
25 one map?

Trial Hearing
WITNESS: DRC-OTP-P-0810

(Open Session)

ICC-01/04-02/06

1 A. [12:35:00] Yes.

2 Q. [12:35:02] At the bottom you have the 14 August 2002, with the blue dots, the
3 single image analysis, and at the top you have a pre and post-image analysis from
4 26 January 2003 to then 19 June 20003?

5 A. [12:35:24] Correct.

6 Q. [12:35:25] It would be the red dots. My question is: For the red dots would
7 you also have had the image of 14 August 2002?

8 A. [12:35:35] Yes, we -- yes, we would have.

9 Q. [12:35:41] But you did not look at it in the analysis of this report?

10 A. [12:35:45] No, we did. There was just, as of 14 August 2002, there was no
11 destruction up in that area where the red dots are. The 14 August 2002 destruction
12 you are seeing as the blue dots at the bottom. There was a second area to the west,
13 so to the left off the map frame, that also showed destruction as of 14 August 2002.
14 We didn't include it in the map simply because it made for an ugly map, basically.
15 The two images covered different extents, so they weren't, they weren't exact matches
16 in the area that they covered, so 14 August 2002, essentially went further west than
17 the images from 2003. So yes, the map got a little confusing and we could get the
18 same message, you know, get the same message into the map just showing these two
19 areas and then accounting in the text for other destroyed, the number of destroyed
20 structures.

21 Q. [12:37:15] So it would have been better to consider first map with the blue and
22 then map with the red?

23 A. [12:37:24] Yes, that's, that's one way to do it.

24 You know, I should note that the process of getting satellite imagery into the court is
25 an ongoing lesson for I think everyone involved in it. As I am doing these maps and

1 these reports it's, you know, I am doing my best to understand the best way to convey
2 the message. What I don't want to do is produce a map that, you know, is extremely
3 confusing and difficult to understand and so, yes, in this case I made the decision to
4 focus on this particular area and show these particular dates for the sake of clarity.
5 All I was doing really was excluding some of the damage that we located to the, to the
6 west of the city as of August 2002.

7 Q. [12:38:20] Why are there no images of Bunia centre?

8 A. [12:38:27] You mean no figures in the report of the Bunia centre? Simply
9 because we, in those areas, we saw very little destruction. As you can see from the
10 map, the large majority of destruction is essentially on the outskirts.

11 MS YAHYA: [12:38:56] Can we go to page 0202.

12 Q. Now in this image, which is figure 15 of Niza, Nizi area, in the caption you say:
13 "This location may be a military or militia camp of some sort as evidenced by the
14 trench surrounding the structures, and by the apparent control of the intersecting
15 roadway."

16 Correct?

17 A. [12:39:58] Correct.

18 Q. [12:40:02] Now starting from the top picture, if we could focus on the top
19 picture, on the left bottom side down the road you see that there are some structures
20 there?

21 A. [12:40:25] Yes.

22 Q. [12:40:26] And similarly, on the right side under the road outside the trench you
23 see that there are some structures there as well?

24 A. [12:40:36] Yes.

25 Q. [12:40:39] If we could scroll down to the bottom image, please.

1 Now doing the same exercise, if we go down the road towards the left of the picture
2 at the bottom you see that those structures remain?

3 A. [12:41:01] Yes.

4 Q. [12:41:02] And to the right under the road you see that those structures also
5 remain?

6 A. [12:41:09] Yes.

7 MS YAHYA: [12:41:12] I would now like to look at another figure, if we could have
8 page 0210.

9 Q. Now on Friday, when you talked about the single image analysis and you were
10 talking about it being speculative, you said that a before and after picture is more
11 confident; is that correct?

12 A. [12:42:13] Correct.

13 Q. [12:42:14] Now here, if we are looking at the top picture, what you conclude is
14 that based on a single image analysis, which is this top picture of 14 August 2002, you
15 would say that widespread damage is visible, correct?

16 A. [12:42:33] Correct. In this particular area, what I saw frequently was, was
17 again both blackened remains and then ash. Ash is pretty distinctive in that it's, you
18 know, a pale grey thing that you see, so the road that you see to the right of the red
19 arrows goes on for quite some time, of course, and in many locations along that road
20 that's where I was seeing the blackened remains and the ashes. And it was, yeah,
21 again it was an area where I was quite confident in saying that.

22 It wasn't really the point of this analysis. The point was comparing August 2002 to
23 the 22 May 2003 image, but just in case it was of interest I mentioned it.

24 Q. [12:43:43] But you would agree with me that having the choice between a single
25 image analysis and a before and after analysis, it's better to have the before and after

1 as a single image is speculative, correct?

2 A. [12:43:59] Correct. Although, yeah, some of -- you can, you know, you can
3 determine some things from a single image if it's very, very clear. So if there was
4 actually a fire burning in the single image, for example, that would be, that would be
5 clear and I would certainly, you know, be confident in that. But, yes, for the
6 destruction of structures, the before and the after image analysis is the standard way.

7 Q. [12:44:36] And if you were to see what you say before ashes and burning, it
8 could also be agricultural burning; is that correct?

9 A. [12:44:49] No, I mean again when you see structures burned individually with
10 nothing burned in between them, then to me that indicates that someone went from
11 structure to structure to burn it. Agricultural, agricultural fires growing out of
12 control is something that you see if you look through enough imagery in certain parts
13 of the world, but instead of just structures burned you will see all vegetation burned
14 between everything. It's a much more complete burning than just the individual
15 structures being burned.

16 Q. [12:45:28] But when you then compare the two image analysis, so with the
17 second picture, you mention several structures have disappeared, but additionally
18 and I read, you say: "Notably in the same period much of the area sees a large
19 number of new structures."

20 A. [12:45:58] Correct. A little bit to the northwest of what is shown in this figure
21 was an area with, I don't want to say it was kind of a displaced persons settlement,
22 but it looked relatively chaotic and informal shall we say. But yes, you had dozens
23 of small new structures that had been, been erected between the two image dates.

24 Q. [12:46:41] And you indicate that this may be a displacement in the area?

25 A. [12:46:45] Yes, I mean you have to think why else would dozens of new

1 structures suddenly appear? And, yeah, there is, there is other possible reasons, but
2 it could indicate displacement.

3 Q. [12:47:10] Displacement can also be the other way around, people leaving areas?

4 A. [12:47:17] But then they wouldn't be buildings structures.

5 Q. [12:47:20] Correct. But --

6 A. [12:47:23] It can also, I mean one of the --

7 Q. [12:47:24] In this case.

8 A. [12:47:25] Yeah, an issue that we might have in some parts of the world are
9 where nomadic people are still very common and so if, if they are moving through an
10 area as part of their, you know, nomadic patterns, then that might be a confusing
11 factor.

12 MS YAHYA: [12:47:52] Can we please have page 0211.

13 Q. Which is page 44 of your report. Now the first image here is 15 June 2002 and
14 the second image is 22 May 2003. This is a time frame of 11 months, correct?

15 A. [12:49:16] Correct.

16 Q. [12:49:17] And so any changes or alterations could be within the whole span of
17 those 11 months, correct?

18 A. [12:49:26] Yes, I mean I would say it's probably closer to the May, May 2003
19 image just because you can, you can see some of the areas have not overgrown with
20 vegetation, which they would do after a certain amount of time. But, yeah, it could
21 be any time in that 11-month period.

22 MS YAHYA: [12:50:02] Mr President, I have another exercise, but it might take
23 a little bit more, so I follow your guidance if you prefer to pause here.

24 PRESIDING JUDGE FREMR: [12:50:13] No, we still have 10 minutes until our
25 normal time for break, so we will for sure continue until 1 o'clock. Then it will

Trial Hearing
WITNESS: DRC-OTP-P-0810

(Open Session)

ICC-01/04-02/06

1 depend how much time you would need after 1 o'clock. So could you make such an
2 estimation now? If you would need more than 10 minutes after 1 o'clock, then we
3 would break as normally at 1.

4 MS YAHYA: [12:51:05] Okay. I will try to continue and we will see in 10 minutes
5 how far I get.

6 PRESIDING JUDGE FREMR: [12:51:13] All right, please.

7 MS YAHYA: If I could have the court officer's assistance to have a split screen. If
8 we could have DRC-OTP-2072-0211 on the left side.

9 THE COURT OFFICER: [12:52:24] Ms Yahya, the second ERN number doesn't
10 appear yet on the transcript. Would you mind to repeat it, please.

11 MS YAHYA: [12:52:33] 0211 -- no, sorry, the second, that's the correct first document.

12 If we could have the right side DRC-OTP-2099-0166, which is the final report.

13 (Microphone not activated) ...report, if we could have the left image which is the
14 report of Derek Congram at page 0215, which is page 5 of the report. And if we
15 could zoom in on the image, please. And if we could have on the right side,
16 page 0207.

17 Q. Would you agree with me that these are the same image from 22 May 2003?

18 A. [12:54:49] Yes.

19 Q. [12:55:00] You understand that this picture on my left is the area called Wadza
20 church, around the Wadza church?

21 A. [12:55:11] Yeah. I have never seen the report on the left of course, but it looks
22 like that image comes from one of my earlier reports.

23 MS YAHYA: [12:55:27] (Microphone not activated) ...if there is any way of making
24 the left report a bit bigger. Yes, thank you.

25 Q. Do you see the part where it's marked -- the rectangle where it's marked KOB1

Trial Hearing
WITNESS: DRC-OTP-P-0810

(Open Session)

ICC-01/04-02/06

1 in the left image?

2 A. [12:55:52] Yes.

3 Q. [12:55:56] Do you see the structure, the metal roof right before it?

4 A. [12:56:02] You mean right below it?

5 Q. [12:56:05] Right below it.

6 A. [12:56:06] Yes.

7 MS YAHYA: [12:56:09] Now, I would like us to turn to the picture on the right, if we
8 can have a close-up there as well.

9 And can we look at that rectangle image that would be in the same location.

10 Q. If we take from the roundabout up north, the same rectangles, image where
11 KOB1 is, it's right behind?

12 A. [12:57:17] Yes.

13 Q. [12:57:20] Now, if we can -- now that you have identified it clearly, I just ask you
14 to take note of that location.

15 MS YAHYA: If we could change the page of the left document to page 10, which is
16 0220.

17 THE COURT OFFICER: [12:59:08] Would you also like to change the page on the
18 right side?

19 MS YAHYA: [12:59:18] No.

20 THE COURT OFFICER: No.

21 MS YAHYA: (Microphone not activated)

22 THE COURT OFFICER: [12:59:21] Thank you.

23 MS YAHYA: (Microphone not activated)

24 THE COURT OFFICER: Thank you.

25 MS YAHYA: [12:59:39] Mr President, I believe this demonstration may take

Trial Hearing
WITNESS: DRC-OTP-P-0810

(Open Session)

ICC-01/04-02/06

- 1 approximately 20 to 25 minutes, so I leave it in your hands.
- 2 PRESIDING JUDGE FREMR: [12:59:50] Okay. Thank you for this announcement.
- 3 It means that we will have to break now. So we take our regular break for
- 4 90 minutes, and will reconvene at half past 2.
- 5 THE COURT USHER: [13:00:05] All rise.
- 6 (Recess taken at 1.00 p.m.)
- 7 (Upon resuming in open session at 2.30 p.m.)
- 8 THE COURT USHER: [14:30:45] All rise.
- 9 Please be seated.
- 10 PRESIDING JUDGE FREMR: [14:31:07] Good afternoon, everybody.
- 11 I don't see any changes in appearances. Or, yes, I was wrong, Ms Luping, please.
- 12 MS LUPING: [14:31:18] Yes, Mr President, your Honours, just to note that Mr James
- 13 Pace, assistant trial lawyer, has joined the Prosecution team this afternoon.
- 14 PRESIDING JUDGE FREMR: [14:31:26] Thank you for this correction. So
- 15 now -- and Mr Suprun.
- 16 MR SUPRUN: [14:31:32] (Interpretation) Good afternoon, your Honours. I would
- 17 like to add that, for the record, I am here this afternoon, Dmytro Suprun for the OPCV,
- 18 and with me Ms Anne Grabowski.
- 19 THE INTERPRETER: [14:31:56] Correction, Ms Anne Grabowski has left of the
- 20 court.
- 21 PRESIDING JUDGE FREMR: [14:32:01] Okay, I was a little bit curious, now it's fine.
- 22 So now we have a precise record, we can continue with the rest of cross-examination
- 23 of our expert witness.
- 24 Before doing that, Ms Luping, do you envisage any questions for re-direct?
- 25 MS LUPING: [14:32:15] At this stage, Mr President, I have one question for the

Trial Hearing
WITNESS: DRC-OTP-P-0810

(Open Session)

ICC-01/04-02/06

1 expert witness, it shan't take me long.

2 PRESIDING JUDGE FREMR: [14:32:21] Just for the sake of planning, it's up to you,

3 but then we will have to make a 30-minute break before, to continue with the next

4 witness because that one is protected. So to make all arrangements will require us to

5 break for 30 minutes.

6 Now, Ms Yahya, you have the floor.

7 MS YAHYA: [14:32:51] Thank you, Mr President.

8 Q. [14:32:52] Mr Bromley, welcome back.

9 Can we look at the screen, we can go back to those two pictures we were just

10 discussing. So we have on the left-hand side, DRC-OTP-2072-0211, at page 0215, and

11 on the right-hand side, your final report, DRC-OTP-2099-0166, at page 0207.

12 Just so we can replace where we were being looking at before the break, you see on

13 the left-hand side where it says, "KOB1" in the rectangle?

14 A. [14:33:57] Yes.

15 Q. [14:33:57] And we see the little rectangle metal roof in front of it?

16 A. [14:34:05] Yes.

17 Q. [14:34:06] Okay. Now, if you could move your eyes over to your image, your

18 report on the right, and I would like to try to zoom in as much as possible just behind

19 that same metal rectangle in that area.

20 Maybe we could bring it down a little bit. Would it be possible to zoom more on the

21 right-hand side of the picture and then slide it down a bit more? Sorry, slide it down

22 a bit to the -- slide it back up a bit to the, to the right now. Okay.

23 Do you still see the small rectangle metal?

24 A. [14:35:25] Yes.

25 Q. [14:35:28] Now keep your eyes on that, and if we could have on the left-side

Trial Hearing
WITNESS: DRC-OTP-P-0810

(Open Session)

ICC-01/04-02/06

1 hand, we could just move to page, same document, but if we could just move to page
2 0220. And if we could just enlarge the image as much as possible.

3 You see the rectangle where it says "F1, F2, F3, F4"?

4 A. [14:36:26] Yes.

5 Q. [14:36:27] And now you see if you go down to the bottom of the image, on the
6 left, that there is the rectangle house there?

7 A. Yes.

8 Q. [14:36:37] Okay. So this is the edge of the same house we are looking at in your
9 picture; do you see that?

10 A. [14:36:50] I can't verify it, but I'll take your word for it.

11 Q. [14:36:54] Okay. And if we could, maybe on the right picture, try to centre it a
12 bit more. And we could try to maybe zoom in a little bit more, if at all possible.

13 Okay.

14 So do you see relative to that house what we are looking at?

15 If we could slide it down. Yes, thank you. Okay.

16 So now we are all looking at the specific location behind that house.

17 A. [14:37:50] Yes.

18 Q. [14:37:52] Now looking at your image and applying your expertise, can you see
19 any indication of soil disturbance specific to this location we have on our left, and
20 different from the rest of the terrain?

21 A. [14:38:14] So for the image on the right, I think we need to move it down slightly
22 just a little bit.

23 No, no, no, other way, you just had it. Up, up, up, up, stop. So right there, that
24 brown patch near the top is what, is the soil disturbance that I would have identified.

25 Q. [14:38:41] Now, you see on the right-hand side, you see where the small, the

1 building is?

2 A. [14:38:50] Yes.

3 Q. [14:38:53] Now, if we look on the right-hand side, the distance is significantly
4 closer, wouldn't you agree?

5 A. [14:39:04] Basically, the imagery on the left looks like it was collected by a small
6 drone or some remote control camera. I would have to see the original imagery and
7 spend some time with it, honestly. Photo lenses can distort distance very commonly,
8 basically. This is something we get into in other work. I wouldn't really be
9 comfortable comparing these two for something like distance simply because I don't
10 know anything about the source of the left-hand one.

11 Q. [14:39:50] Okay. If we could maybe have the left-hand picture, go back to page
12 0215.

13 Now, do you see the bottom of that rectangle of KOB1 --

14 A. [14:40:50] Yes.

15 Q. [14:40:52] -- is aligned with the little house we're looking at?

16 A. [14:40:56] Correct.

17 Q. [14:40:56] And specifically, in that triangle now in the right, would that make
18 it -- in that specific area, do you see --

19 A. [14:41:11] No. Yeah, so the brown, brown patch I see would be just outside of
20 that or outside of it, above it.

21 Now, I can tell you that it's likely that within that box the vegetation is not as
22 vigorous as you would see around it. So this is the false colour infrared method
23 where the red vegetation -- or the red areas are more vigorous vegetation than the
24 darker, whether you call that a soil disturbance or not is up to you, but, yeah, there is
25 less intense vegetation inside the box. You can see that on the right-hand image in

1 that it is slightly, I would say browner or reddish brown right behind that house, as
2 opposed to the varying green vegetation all around it.

3 Q. [14:42:23] But you see vegetation nonetheless in your image on --

4 A. [14:42:30] Yeah, it's -- whether it's dense vegetation or, I mean, there might be
5 small soil areas in there that are visible that cause it to appear a bit browner. But it's
6 nothing I could really say for certain off of images like, you know, represented like
7 they are here.

8 Q. [14:42:57] But this vegetation that you are seeing here is not similar to the
9 picture I just showed you. If you want, we can go back.

10 A. [14:43:08] To the drone photo?

11 Q. [14:43:10] Yes, exactly.

12 A. Well, this, what you have in front of me now is from over a decade ago. So,
13 yeah, back in, I guess this would be the 2003 image, so I would expect a lot of things
14 to change.

15 Q. [14:43:31] If you were told that approximately 8 cubic metres covering a surface
16 of about 8 square metres had been dug in this specific area we are looking at, the
17 bottom of the rectangle and in the rectangle, had been dug within that -- in that area
18 involving soil down to a depth of more than 1 metre within the three months prior to
19 this photo being taken, would you expect to be able to see it?

20 A. [14:44:07] I can't, I wouldn't want to speculate on that. It really -- yeah, I'm
21 sorry, I can't say. I mean, I guess what you're seeing inside the box with degraded
22 vegetation, we can call it, would be consistent with something like that, but it's not
23 something I would want to base off these two shots, these two pictures.

24 Q. [14:44:51] And in the right -- sorry, the left-hand picture in KOB1, in that square,
25 the infrared picture depicts vegetation, correct?

1 A. Yeah. I mean, as a general rule, the redness indicates the vegetation, healthy
2 vegetation specifically. Now, there would be additional steps beyond this to really
3 classify the vegetation, but, yeah, in a general sense, red is active vegetation. You
4 can obviously see what the buildings are and what the roads are, those are not red.
5 And then the areas that look like vegetation but are darker, that may be something
6 like a tree that has lost its leaves at the time that the image was collected, or
7 vegetation which is less -- less green, less healthy than the red vegetation. But again,
8 that's kind of a deeper analytical question that would take some time to resolve.

9 Q. [14:46:20] But you don't see recently moved soil?

10 A. No, no, I wouldn't say there's anything within the yellow box as shown on the
11 left that is like open -- open earthworks or anything like that.

12 Q. [14:46:35] Would your answer be different if the area in the soil was
13 removed -- was hard packed and not used for any agriculture? If it was hard
14 packed?

15 A. Well, I'm looking here only at the vegetation. I'm not -- I mean, if it was -- if it
16 looked like the road just to the south of it, then, yes, obviously I would say something
17 different. Like that's hard-packed soil, I would guess, on the road and that clearly
18 looks different than the green vegetation.

19 Q. [14:47:17] Thank you. Now, on the left-hand image, if we can now look at
20 where it says "KOB2", and if we can now -- on the right-hand side I want to look at
21 the same area, so maybe we could slowly direct.

22 Now you see where that pathway is, towards the intersect?

23 A. Mm-hm.

24 Q. To be able to place it directly there. And if we're looking exactly at the same
25 location that you were just talking about, can you see any removed earth in this area?

1 A. [14:48:23] What I have a red arrow pointing to on the right I called "possible
2 structural remains". It's tough to tell what might be there. You can see the top-left
3 corner of that is a bit darker. I mean, it's theoretically possible that that's a hole in
4 addition to the structural remains. But, yeah, there's not enough detail in the
5 imagery to see. I mean, that area certainly has no vegetation, it's all just brown,
6 brown soil.

7 Q. [14:49:05] Now, correct me if I'm wrong but just the area, the rectangle of KOB2
8 would be right to the right of your --

9 A. [14:49:14] Ah, yes.

10 Q. [14:49:15] -- red arrow?

11 A. Right. Right.

12 Q. [14:49:18] Where the -- and where the road is coming --

13 A. Yes, yeah.

14 Q. [14:49:24] Now in that specific area?

15 A. [14:49:25] Yeah, it's much less likely that I would -- because, yeah, there's not
16 any shadowing. Maybe at the top left corner of the yellow rectangle, that would be
17 the only place I would see there in the satellite image that might indicate
18 some -- something. But again, it's not -- the satellite image isn't going to answer that
19 question, I would think.

20 Q. [14:50:20] Now still looking at that KOB2 that we have placed on the right-hand
21 side beside the arrow and by the road, my question is: If there had been digging of 8
22 cubic metres squared and 8 metres squared in that area within three months, would
23 you be able to see a discolouration between the soils?

24 A. [14:50:57] It's possible but not certain. It would basically probably depend on
25 how much it had rained recently prior to the image being collected. Certainly, if you

1 just dug a large hole there and then filled it back in, that's going to be almost -- in
2 certain circumstances it might be visible and in some other circumstances it wouldn't.
3 Again, if it had rained heavily and the water drained away from one patch of soil
4 versus the other at a different rate, then you would notice that difference. You might
5 notice like a puddle of water or a pool of water where the hole had been. But yeah, if
6 the conditions were predominantly dry, then it's all going to be basically the same
7 appearance would be my guess.

8 Q. [14:52:01] A bit earlier when we were talking about the KOB1, you mentioned
9 that this area down here by the road seems to be packed soil?

10 A. I said I -- yeah, I would think it would be packed since it's a road.

11 Q. [14:52:16] Now, if you were to dig in just, just the area of KOB2, just that little
12 square, would you then see the difference of moved soil only in that square?

13 A. [14:52:28] I would really have to be there looking at the soil to understand it. I
14 mean, yeah, with a -- with an image like this, if it's all the same colour, then you're
15 really not going to see it with any certainty.

16 Q. [14:52:49] So in this image it's all the same colour?

17 A. Well, the brown soil in the yellow box of KOB2 generally appears to be the same
18 colour except the possible upper left, and there's certainly some shadowing, you
19 know, there's some texture, some colour changes in the soil, but I can't -- I wouldn't
20 say what those are or are not.

21 Q. [14:53:19] The shadowing you're referring to would be in the top --

22 A. So the top --

23 Q. [14:53:26] -- right corner?

24 A. Well, the top left where the red arrow is pointing at it and then as you see just
25 slight colour changes as it goes into the path leading southeast of there, there's some

Trial Hearing
WITNESS: DRC-OTP-P-0810

(Open Session)

ICC-01/04-02/06

1 sort of darker stretch, darker line as it goes into the path, but, yeah, it's tough to say
2 what those things are. I mean, that could be, you know, just differences in moisture
3 on top of the soil. It could be that people walk on the right but not on the left. Yeah,
4 it's nothing I'm really going to be able to say from looking at this image.

5 MS YAHYA: [14:54:50] Mr President, I have no further questions. And I would
6 seek at this point to tender the two first reports of Mr Bromley for the purpose of
7 assessing the probative value attached to the reports. So this would be
8 DRC-OTP-2059-0177 and DRC-OTP-2062-0329.

9 This is the report of 1 November 2013 at Defence tab 18 and the report of 13 December
10 2013 at Defence tab 19.

11 PRESIDING JUDGE FREMR: [14:55:35] Ms Luping, what is the Prosecution
12 position?

13 MS LUPING: [14:55:37] Mr President, we would object to the admission of these
14 reports. The relevant passages from the prior drafts, what essentially are prior drafts
15 of the witness, have been put to him. He has been shown the relevant extracts.
16 Whatever is relevant has already been admitted into the record. There's no
17 impeachment as such. He's been able to provide explanations as to the differences.
18 So we see no value for simply providing two superfluous additional versions of the
19 reports at this stage, your Honours.

20 PRESIDING JUDGE FREMR: [14:56:07] Ms Yahya, could you react on this objection?
21 What is the value of having those two reports?

22 MS YAHYA: [14:56:15] Mr President, there is quite differences between each
23 individual report. We have gone through some of them here, when you -- when it's
24 analysed in its -- there is quite a few differences between each reports, including of
25 the topic that we were just discussing of the soil disturbances.

Trial Hearing
WITNESS: DRC-OTP-P-0810

(Open Session)

ICC-01/04-02/06

1 PRESIDING JUDGE FREMR: [14:56:40] Ms Luping, anything more?

2 MS LUPING: [14:56:42] Well, just simply to add, your Honours, if there are any
3 additional passages that the Defence seeks to obtain clarification from the witness,
4 he's here, he's present and in fairness to the witness, if there are any differences or any
5 points that they're wishing to raise, they should be raised with the witness while he is
6 here rather than simply admitting two drafts without the benefit of the witness's
7 explanations.

8 PRESIDING JUDGE FREMR: [14:57:08] Ms Yahya, but please just briefly.

9 MS YAHYA: [14:57:10] Just briefly, earlier when we spoke of the last final report
10 and the preliminary one, there was even from the Prosecution's perspective images
11 that were not in the same and conclusions have altered throughout, so it is necessary
12 for the Chamber to obtain all four reports in its entirety.

13 PRESIDING JUDGE FREMR: [14:57:32] Give me a second. I will deliberate with
14 my colleagues briefly.

15 (Trial Chamber confers)

16 PRESIDING JUDGE FREMR: [14:57:52] So according our ruling, the objection is
17 overruled. We don't see any real prejudice if we admit those reports and we still
18 agree, even Mr Witness didn't admit it would be some discrepancies or some big
19 changes, so to have a complex view on the issue, we don't see any problem with
20 admission of those two documents.

21 Could you please again specify the ERN numbers, Ms Yahya?

22 MS YAHYA: [14:58:30] Yes. So the first report of 1 November 2013 is
23 DRC-OTP-2059-0177 at Defence tab 18, and the second report of 13 December 2013 is
24 DRC-OTP-2062-0329 at Defence tab 19.

25 PRESIDING JUDGE FREMR: [14:58:59] All right. So those two documents

1 specified now by Ms Yahya are admitted into evidence as a further Defence exhibits.

2 And minor correction to our transcript, page 90, line 12, I believe I said the objection is
3 overruled, not overviewed.

4 Now, Ms Luping, if you want, please, you can start your redirect.

5 MS LUPING: [14:59:30] Thank you, Mr President. I do have only one topic or
6 question to cover with Mr Bromley.

7 QUESTIONED BY MS LUPING:

8 Q. [14:59:37] Mr Bromley, I'm going to refer to questions that were posed to you by
9 Defence counsel today. I'm going to refer to transcript 176 first at page 72, lines 17 to
10 18. At that point you were referred to a figure from your report, that is

11 DRC-OTP-2099-0166, so your final report at tab 1 and in particular you were referred
12 to the image of Mwanga.

13 And a question was put to you by Defence counsel, you were asked about the fact
14 that this was a double image analysis from 14 August 2002 and 22 May 2003 and then
15 you were asked to explain the caption where there was a reference to single image
16 analysis for the 14 August 2002 image.

17 I'm now going to refer to a question and answer sequence at page 73, lines 25. The
18 question was put to you: "And if you were to see what you say before ashes and
19 burning, it could also be agricultural burning; is that correct?"

20 At page 74, lines 3 to 11 this was your response, the answer: "No. I mean again
21 when you see structures burned individually with nothing burned in between
22 them" --

23 PRESIDING JUDGE FREMR: [15:00:59] Ms Luping, please slightly slow down.

24 MS LUPING: [15:01:02] Understood, Mr President. My apologies.

25 Q. [15:01:05] "Then to me that indicates that someone went from structure to

Trial Hearing
WITNESS: DRC-OTP-P-0810

(Open Session)

ICC-01/04-02/06

1 structure to burn it. Agricultural fires growing out of control is something that you
2 see if you look through enough imagery in certain parts of the world, but instead of
3 just structures burned, you will see all vegetation burned between everything. It is a
4 much more complete burning than just the individual structures being burned." End
5 of quote.

6 Now my question is this, Mr Bromley: I'm now going to refer to all the satellite
7 imagery analysis that you conducted that are contained in both the final report, so
8 that's figures 1 to 26 at 2099-0166 as well as the imagery analysis that you did in the
9 preliminary report, that's at tab 5, figures 1 to 25. My question is: In terms of the
10 image analysis in both the preliminary and the final report, did you find any
11 examples of any such agricultural fires growing out of control as you described it?

12 A. [15:02:26] No.

13 MS LUPING: [15:02:28] Thank you, Mr President, Your Honours. I have no further
14 questions for Mr Bromley.

15 Thank you, Mr Bromley.

16 PRESIDING JUDGE FREMR: [15:02:34] Thank you, Ms Luping.

17 Thank you, Ms Luping.

18 Now, Ms Yahya, any request for recross?

19 MS YAHYA: [15:02:57] Yes, just one question following up.

20 PRESIDING JUDGE FREMR: [15:02:59] All right then.

21 QUESTIONED BY MS YAHYA:

22 Q. [15:03:02] Mr Bromley, you will agree with me that brown dirt over damaged
23 structures may also give the impression of burning?

24 A. [15:03:10] Can you repeat that?

25 Q. [15:03:12] Brown dirt, seeing brown dirt over damaged structures will also

Trial Hearing
WITNESS: DRC-OTP-P-0810

(Open Session)

ICC-01/04-02/06

1 give the impression of -- may give, may give the impression of --

2 A. [15:03:25] Brown dirt over damaged structures? What is -- I don't understand.

3 I'm sorry.

4 Q. [15:03:30] On it or in the air.

5 A. [15:03:35] I don't know if I've ever seen something like that. I would say
6 generally no simply because burning, if the image -- I mean, when we see burning, we
7 are either seeing black or we are seeing that light grey ash. I don't usually associate
8 brownish with burning in the analysis.

9 Q. [15:04:02] But it would depend on the colour of the soil?

10 A. If the soil was very -- well, yeah, I mean, you could also paint a structure black if
11 you're talking something like that, so I mean if it was coated in a black dirt it's
12 possible, but, yeah, I mean, it isn't something I could verify from an image, really.

13 Q. [15:04:26] Thank you.

14 PRESIDING JUDGE FREMR: [15:04:30] All right. And now I would like to note
15 that Defence, Ms Yahya used in fact in total 2 hours 30 minutes from the allotted time,
16 so thanks to the efficient way in which Ms Yahya conducted her examination, she in
17 fact spared a significant amount of the Court's time. So thank you also for that,
18 Ms Yahya.

19 Judge Chung would like to put a question, please.

20 JUDGE CHUNG: [15:05:08] So we have four different version of report. So is this
21 your normal way of process, working process, or this is unique for this case?

22 THE WITNESS: [15:05:24] This case was certainly special. I mean, for example, the
23 first preliminary report that I did I was unaware would be still referenced several
24 years later.

25 Since we primarily work with UN partners and other international partners, what we

Trial Hearing
WITNESS: DRC-OTP-P-0810

(Open Session)

ICC-01/04-02/06

1 try and do is give an initial indication of what we're seeing, of what the imagery can
2 show. And so that's what we were trying to do, what I was trying to do three years
3 ago at this point.

4 So, no, it's not the normal way we would do this. This is a unique sort of venue for
5 us to work on. I do not believe you'll see major diversions from those first reports,
6 from the first report to the last report. They certainly are expanded, the last report
7 gets a lot longer and has many more locations in it, but at the time of the first report, I
8 think what we were going through with the Office of the Prosecutor was much more
9 about can UNOSAT provide an input on this and can the imagery provide any
10 information, and so I was trying to show that has quickly and as efficiently as possible.
11 Were I to do it all over again, I now realise that perhaps four reports, I should have
12 done something different there.

13 JUDGE CHUNG: [15:06:59] Thank you. That's it.

14 PRESIDING JUDGE FREMR: [15:07:01] Judge Ozaki, any question? No. All right.
15 (Microphone not activated)

16 I have to switch my mike, sorry. So once more, it concludes your testimony,
17 Mr Bromley, and I would like at this moment to thank you very much on behalf of
18 this Chamber that you shared your expertise with us and I firmly believe that your
19 reports and your testimony will assist us in our deliberation and in our effort to find
20 the truth in this case.

21 So I thank you for that and we wish you safe journey home.

22 THE WITNESS: [15:07:46] Thank you.
23 (The witness is excused)

24 PRESIDING JUDGE FREMR: [15:07:47] And now, as I already indicated, we will
25 have to make 30 minutes' break to allow for the changeover for the testimony of the

1 next witness.

2 But before that, I see Mr Bourgon on his feet.

3 Mr Bourgon, we are in open session.

4 MR BOURGON: [15:08:05] Yes, thank you, Mr President. Good afternoon to you,

5 Mr President, and the Judges. I'd like to make a request for additional time to

6 cross-examine the next witness. I'd like to know if the Chamber wishes me to make

7 this request now or after the break with the protective measures.

8 PRESIDING JUDGE FREMR: [15:08:27] (Microphone not activated)

9 MR BOURGON: [15:08:36] I'm not sure, I think your microphone was not on,

10 Mr President, or I didn't hear it.

11 PRESIDING JUDGE FREMR: [15:08:41] Just now please.

12 Sorry, maybe you are right, so we will (Overlapping speakers)

13 MR BOURGON: [15:08:43] Thank you. So I'd like to make an oral request for a

14 limited amount of additional time to cross-examine Witness P-0031, who is on the

15 stand now and will appear in a few minutes.

16 PRESIDING JUDGE FREMR: [15:08:55] Sorry to interrupt you, Mr Bourgon, do you

17 know what time you still have?

18 MR BOURGON: [15:08:59] I have, according to the last count, I have 1 hour and 39

19 minutes and this is a request for 30 additional minutes.

20 PRESIDING JUDGE FREMR: [15:09:06] Exactly. Okay.

21 MR BOURGON: [15:09:08] Mr President, the Chamber ruled that six hours should

22 be sufficient and that any extension of time will require a well-motivated request.

23 This is the request I am making at this time for the following reasons: The first

24 reason is, over the past four days the Prosecution has disclosed no less than eight

25 additional documents, documents which raise additional issues which I want to

Trial Hearing
WITNESS: DRC-OTP-P-0031

(Open Session)

ICC-01/04-02/06

1 explore on cross-examination, one in particular which happened in December 2006.

2 I wouldn't say more.

3 PRESIDING JUDGE FREMR: [15:09:40] Mr Bourgon, I guess you may stop there,

4 because I see we will be probably very positive to your request. So give me a second,

5 I will consult my colleagues.

6 (Trial Chamber confers)

7 PRESIDING JUDGE FREMR: [15:10:44] So sorry to break or to interrupt you,

8 Mr Bourgon, but since even myself I see some further reasons, apart of those you

9 mentioned, so your request is granted, so which means that you will have in fact two
10 hours nine minutes, if I am counting well.

11 MR BOURGON: [15:11:05] Thank you, Mr President.

12 PRESIDING JUDGE FREMR: [15:11:07] So now we break and we will reconvene at
13 3.40.

14 THE COURT USHER: [15:11:18] All rise.

15 (Recess taken at 3.11 p.m.)

16 (Upon resuming in open session at 3.40 p.m.)

17 THE COURT USHER: [15:40:05] All rise.

18 Please be seated.

19 PRESIDING JUDGE FREMR: [15:40:34] Good afternoon, everybody.

20 Good afternoon, Mr Witness.

21 Since I see some changes in composition of the parties, I would like to ask for the
22 update.

23 Prosecution first, please.

24 MS SAMSON: [15:40:51] Good afternoon, Mr President and your Honours. The
25 composition of the Prosecution team remains the same as prior to the break but for

1 the departure of Ms Luping and Ms Sacchi.

2 PRESIDING JUDGE FREMR: [15:41:05] Thank you, Ms Samson.

3 Defence, please.

4 MR BOURGON: [15:41:08] Good afternoon, Mr President. For the Defence this
5 afternoon, Mademoiselle Han-Catherine Morin, Maître Isabelle Martineau
6 (Interpretation) and myself, Stéphane Bourgon. Thank you, your Honour.

7 PRESIDING JUDGE FREMR: [15:41:23] Thank you, Mr Bourgon.

8 And as concerns Legal Representatives I see that composition is the same. We have
9 Ms Pellet and Mr Suprun.

10 Now, Mr Witness, welcome back. We will continue today or, rather, Defence will
11 continue with your cross-examination, so it's my duty as the Presiding Judge to
12 remind you of two aspects of your testimony:

13 First of all, that you are still under oath, which means that you have to speak the truth
14 and nothing but the truth.

15 And technical issue: Don't forget to observe pauses because both Defence counsel
16 and you are speaking in the same language, but it's also translated so the interpreters
17 need some time between the question and the answer, at least three seconds, please
18 have it in mind.

19 And the last issue: We, I think both will remember that during the last session you
20 felt, it was my understanding, almost offended by some questions put to you by
21 Defence counsel. So I would like to explain to you again that even if Defence
22 counsel or any counsel is saying to witness that he or she put to him that he fabricate
23 his or her testimony or even he was lying, it could be in some cases part of their case.
24 So in fact even such way of questioning may be legitimate, so please don't feel
25 offended. You either can make some explanation why you insist on your previous

Trial Hearing
WITNESS: DRC-OTP-P-0031

(Open Session)

ICC-01/04-02/06

1 testimony or even say strictly that you are maintaining your statement and that's it.

2 So please have it in mind and don't get in any polemics with Defence counsel.

3 Do you understand, Mr Witness?

4 WITNESS: DRC-OTP-P-0031 (On former oath)

5 (The witness speaks French)

6 THE WITNESS: [15:43:36] (Interpretation) Thank you very much. I've

7 understood well, your Honour.

8 PRESIDING JUDGE FREMR: [15:43:41] Very well, Mr Witness. And now I hand

9 over the floor to Mr Bourgon.

10 Mr Bourgon, we are in open session.

11 MR BOURGON: [15:43:50] I believe we can remain in open session for one or two

12 questions, Mr President.

13 PRESIDING JUDGE FREMR: [15:43:54] All right.

14 QUESTIONED BY MR BOURGON: (Continuing)

15 Q. [15:44:01] (Interpretation) Good afternoon, Witness.

16 A. [15:44:03] Thank you. Good afternoon, Counsel.

17 Q. [15:44:06] We are in open session so if you think that an answer to one of my

18 questions could identify you, please do not hesitate to raise your hand so that we can

19 immediately go into private session.

20 Witness, I will continue with my cross-examination going directly to the last question

21 that I put to you, I think it was on Friday.

22 My question is in transcript 115 -- 165 -- 175, lines 16 to 26. Now the major part of

23 my question is as follows: With your partner, have you worked analysing or

24 thought about the results of the pacification commission of Ituri where it concerns the

25 protection of child soldiers who were minors? That was my question. Now, you

Trial Hearing
WITNESS: DRC-OTP-P-0031

(Open Session)

ICC-01/04-02/06

1 answered that, but I would like to give a concrete example so we can directly go to
2 the very heart of the matter.

3 MR BOURGON: So I would like to have document -- the following document show
4 on the screen, document DRC-OTP-0107-0223, page 0262.

5 Q. This document, Witness, is the final report --

6 PRESIDING JUDGE FREMR: [15:45:59] Mr Bourgon, are you sure that no part of
7 this what we will see on the screen can reveal the identity of the witness?

8 MR BOURGON: [15:46:06] Not yet, Mr President. As soon as it does, I will
9 immediately go into private session.

10 PRESIDING JUDGE FREMR: [15:46:12] All right.

11 MR BOURGON: [15:46:16] The document itself is not a confidential document.

12 Q. [15:46:29] Witness, the document that will appear on the screen is the final
13 report of the pacification committee of Ituri and we saw last week that this is a
14 document adopted on 14 April 2003. I would like to draw your attention to three
15 provisions of the document in front of you. So in the final report, there were certain
16 annexes thereto and here I'm referring to one of these annexes, with the following title:
17 "Solemn call for the protection of the children of Ituri."

18 I'm going to read three provisions from this and in private session we can continue so
19 I can ask you certain questions about that. Do you understand?

20 A. [15:47:37] Yes.

21 Q. [15:47:37] So, Witness, according to this document adopted by the
22 sub-commission for security and consolidation in the cessation of hostilities, what we
23 see here is that there is a sub-commission which adopts this solemn call, which is
24 addressed both to the parents and communities in Ituri and which is also addressed
25 to the armed groups. And according to this solemn call, there is also for each armed

1 group, there are the obligations -- or, rather, the commitments which follow. So
2 what we see here is to sign a commitment to ensure the respect of preventive
3 measures and there is a number Décret-loi 066/2001. In particular, and I'll read the
4 first one so that it appears in the court record: "Stopping the recruitment or
5 re-recruitment of children under the age of 18, whether voluntarily or by force into
6 the armed forces and groups in militia and into the local self-defence forces."

7 Second point: "To stop sending minors who have already been recruited onto the
8 front line awaiting their demobilisation."

9 So I would like to take the document up a bit further so I can go a bit further down.

10 I'd like to draw your attention to this document once again. Now, there is a point at
11 which it says that this -- this is a prior act, Ceci est un préalable.

12 I will read you the sentence: "So this is prior to undertaking a true reinsertion process
13 which will have the opportunity of success only if there are guarantees of success for
14 the children and their families."

15 Now, what is of interest to me is the following point: In consultation with NGOs
16 responsible for child protection, the appropriate public services must ensure a
17 follow-up mechanism to ensure compliance with these preservative precautionary
18 measures in each community.

19 (Speaks English) Mr President, if we can now move into private session, please.

20 PRESIDING JUDGE FREMR: [15:50:56] And in order to inform public, this witness
21 is a protected one so he was given a guarantee that his identity will not be revealed to
22 the public, that is why, as soon the question could lead to such a result, which is the
23 case now and probably for most of the questions put to this witness by Defence
24 counsel, we will have to move in the regime of private session.

25 Now, court officer, let's move into private session.

Trial Hearing
WITNESS: DRC-OTP-P-0031

(Private Session)

ICC-01/04-02/06

- 1 (Private session at 3.51 p.m.)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0031

(Private Session)

ICC-01/04-02/06

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page redacted – Private session

Trial Hearing
WITNESS: DRC-OTP-P-0031

(Private Session)

ICC-01/04-02/06

1

2

3

4

5

6

7

8

9

10

11

12 Page redacted – Private session

13

14

15

16

17

18

19

20

21

22

23

24

25

Trial Hearing
WITNESS: DRC-OTP-P-0031

(Private Session)

ICC-01/04-02/06

1

2

3

4

5

6

7

8

9

10

11

12 Page redacted – Private session

13

14

15

16

17

18

19

20

21

22

23

24

25

Trial Hearing
WITNESS: DRC-OTP-P-0031

(Private Session)

ICC-01/04-02/06

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page redacted – Private session

Trial Hearing
WITNESS: DRC-OTP-P-0031

(Private Session)

ICC-01/04-02/06

1

2

3

4

5

6

7

8

9

10

11

12 Page redacted – Private session

13

14

15

16

17

18

19

20

21

22

23

24

25

Trial Hearing
WITNESS: DRC-OTP-P-0031

(Private Session)

ICC-01/04-02/06

1

2

3

4

5

6

7

8

9

10

11

12 Page redacted – Private session

13

14

15

16

17

18

19

20

21

22

23

24

25

Trial Hearing
WITNESS: DRC-OTP-P-0031

(Private Session)

ICC-01/04-02/06

- 1 (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 (Open session at 4.15 p.m.)
- 17 THE COURT OFFICER: [16:15:38] We are in open session, Mr President.
- 18 PRESIDING JUDGE FREMR: [16:15:40] Thank you, court officer.
- 19 So let's proceed.
- 20 MR BOURGON: [16:15:46] (Interpretation) Thank you, Mr President.
- 21 Q. [16:15:49] Mr Witness, we were talking about the White Father and you said that
- 22 he was driven out of Bunia by Thomas Lubanga. So my question is as follows:
- 23 Were you aware of the fact that he had been visited personally in the location where
- 24 he had the people living with him? Were you aware of this visit?
- 25 A. [16:16:27] It was not one single visit, it was two or three visits from the UPC,

Trial Hearing
WITNESS: DRC-OTP-P-0031

(Open Session)

ICC-01/04-02/06

1 from the authorities of the UPC, particularly the office.

2 Q. [16:16:41] I was trying to find out whether you were personally aware of a visit
3 by Thomas Lubanga to this house with the MONUC, where he spoke to the people
4 who had been taken in by this White Father.

5 A. [16:17:01] Yes. Yes, I was aware of this.

6 Q. [16:17:08] What happened on that occasion?

7 A. [16:17:14] Counsel, the idea was that these people should be freed, that they
8 could leave this house where they had shelter, and the priest had said that these were
9 people who had no homes to go to and therefore he had to keep them with him, and
10 there were discussions about that and that is why he was called into the office and
11 then expelled from the area.

12 Q. [16:17:48] Mr Witness, I would like to watch a short video extract of this with
13 you.

14 The video is not confidential, but let us of course bear in mind the same precautions.
15 Interrupt me, if necessary.

16 This is number D18-0001-2488, and then there is a second extract which is 2489.

17 These are 192, 193 on Defence documents. The first one goes from 00.30 -- sorry,
18 30.00 to 32.44.

19 For the court reporters, there is a transcript which has been prepared by the Defence
20 and the number is DRC-D18-0001-2490, and we also have a translation which is
21 DRC-D18-0001-2597.

22 The interpreters have been given the transcript and the translation so, with the
23 permission of the Chamber, we're going to play this.

24 PRESIDING JUDGE FREMR: [16:19:52] Before doing that, Prosecution?

25 MS SAMSON: [16:19:52] Yes, we have no objection, your Honour, to playing and

Trial Hearing
WITNESS: DRC-OTP-P-0031

(Open Session)

ICC-01/04-02/06

1 using the video. The Defence did provide the Prosecution with the transcription of
2 the video on Friday and today we received the English translation. So we will verify
3 the translation in accordance with the Chamber's decisions, so we ask that in terms of
4 admission, that it be marked for identification at the appropriate time.

5 And a question as to whether the interpreters will be reading the translation or
6 whether they will be interpreting afresh when they hear the video?

7 PRESIDING JUDGE FREMR: [16:20:35] I would -- sorry, I will consult the court
8 officer.

9 So now I was informed that the interpreters are provided with such a translation by
10 the party, they are just reading that, so it's not taken as official translation.

11 MS SAMSON: [16:21:07] Thank you.

12 PRESIDING JUDGE FREMR: [16:21:08] So there are no obstacles, we can proceed.

13 MR BOURGON: [16:21:13] Thank you, Mr President.

14 Of course, the translation does exist but we will simply mark it for identification and
15 then carry on from there at a later time.

16 PRESIDING JUDGE FREMR: [16:21:23] Yes, I would be fine with this way of
17 proceeding.

18 THE COURT OFFICER: [16:21:27] The video will be displayed on the evidence 2
19 channel. And I will take this opportunity to ask you if the documents have been
20 uploaded under eCourt?

21 MR BOURGON: [16:21:38] I am told that they have not yet been uploaded, but it is
22 in process of uploading the videos. We were not able to do it during the weekend.
23 It might be done by the time I'm speaking to you now, but... but you did receive it by
24 e-mail.

25 Q. [16:22:05] (Interpretation) Mr Witness, I would ask you to watch the video and

Trial Hearing
WITNESS: DRC-OTP-P-0031

(Open Session)

ICC-01/04-02/06

1 to listen. There's going to be a transcription (Speaks English) Mr President, I note
2 that the translation we provided is in English, but someone will translate it in French
3 for the witness.

4 PRESIDING JUDGE FREMR: [16:22:18] All right, with the reservation I have already
5 expressed.

6 MR BOURGON: (Interpretation)

7 Q. [16:22:22] The first extract from 30 minutes to 32.44.

8 (Viewing of the video excerpt)

9 THE INTERPRETER: (Interpretation of the video excerpt)

10 "I will give you space to speak. I would like to express my indignation as a human.
11 We have to help the people. I can take all these people here and take them with me,
12 if they face problems" --

13 THE INTERPRETER: [16:22:58] I'm sorry, the interpreter is not quite sure what she
14 is supposed to be reading out.

15 (Viewing of the video excerpt)

16 MR BOURGON: [16:24:02] I'm not hearing any sound.

17 PRESIDING JUDGE FREMR: [16:24:05] Yes, I heard some, but not translation.

18 MR BOURGON: No, I didn't hear any translation.

19 THE INTERPRETER: [16:24:10] Mr Bourgon, it was not possible to know where I
20 was. Did you want me to read the whole thing out? Because it would then have
21 not necessarily borne any relation to what was on the screen. Could we start with
22 the beginning line number because it was not clear to me what had to happen?
23 I do apologise.

24 MR BOURGON: [16:24:31] No, I apologise. The transcript that you have covers the
25 whole, the exact scene. And I would like you to start immediately from line 1, and

Trial Hearing
WITNESS: DRC-OTP-P-0031

(Open Session)

ICC-01/04-02/06

1 that corresponds and goes all the way to line 32, and that covers the extract. So this
2 is the transcript. And the translation, you have the same thing, from line 1 until line
3 31, same thing.

4 THE INTERPRETER: [16:25:12] And I'm just checking the number, the number I
5 have on the document is D18-0001-2517; is that correct? That's the document I was
6 given by the court officer.

7 MR BOURGON: Well, I have 2519 on my document for the translation.

8 THE INTERPRETER: Well, it goes from 2517, 2518, 2519.

9 MR BOURGON: Yes, that is correct.

10 THE INTERPRETER: Then I will read that as the video plays and we hope that it
11 will be clear. Thank you.

12 MR BOURGON: [16:25:45] I thank you. (Interpretation)

13 Q. [16:25:50] Mr Witness, part of the video is in French but we're going to replay it
14 now.

15 (Viewing of the video excerpt)

16 THE INTERPRETER: (Interpretation of the video excerpt)

17 "They use them. As I understand, these people are being used. I will give you
18 space to speak. I would like to express my indignation as a human being, and
19 mostly you as a pastor ...we should help people truly...

20 I can take all these people here and take them with me, if they face problems let them
21 stay in my house and we shall see whether any of them will die. I could... I can take
22 each one of you back to your houses and let's see whether any one among you will
23 die. Let's see who would dare kill you. Why would they keep ... lying to you, lie to
24 people here... This person with whom I travel everywhere, my 'Coordinator', he is
25 Ngiti. He is Ngiti, yet he eats at my place, I too eat at his place, I give him tasks and

1 he does his work of helping people. This one is the Secrétaire général. He is not
2 from our area, he is from Haut-Uélé from Bas U...
3 Several people speaking at the same time: from Haut-Uélé... Isiro.
4 He is of Logo ethnicity, he comes from Isiro. He works hard for peace to return.
5 That one is our minister of finances. He is from Aru, he is of Lugwara ethnicity, he
6 comes from Aru.
7 Yet he works hard to find funds so we find -- get means to bring peace back.
8 That one is our minister of pacification, he is of Bira ethnicity. He spends" I think
9 that must be "sleepless nights looking for ways to bring peace back. That's him.
10 ... Coordinator, he is of Alur ethnicity, he does everything he can to bring peace back
11 within our community. Our minister of information is from, from ... Wamba.
12 From Wamba ...he is of Budu ethnicity from over there. He is contributing to the
13 quest towards peace.
14 Charlie Bravo! Charlie Bravo!
15 Professor Dhetchuvi, you all know him. As for soldiers with whom we work and
16 who are here with me today, among them you can see Bira, Lendu, yet we work
17 together.
18 Nothing can happen to you, if it's not hiding as such."
19 MS BOURGON: [16:29:06] (Interpretation)
20 Q. [16:29:06] Mr Witness, that was the first extract and now we're going to play the
21 second extract in the same way. This starts at line 34 of the transcription in English
22 and goes to 79 in English. And this starts at 33.58 and goes until 37.40.
23 PRESIDING JUDGE FREMR: [16:30:07] Mr Bourgon, it's half past 4. How much
24 time do you think you would need to wrap up?
25 MR BOURGON: [16:30:14] Well, I think we can just watch this extract and finish and

Trial Hearing
WITNESS: DRC-OTP-P-0031

(Open Session)

ICC-01/04-02/06

1 stop here.

2 PRESIDING JUDGE FREMR: [16:30:18] All right then.

3 MS BOURGON: [16:30:24] (Interpretation)

4 Q. [16:30:25] Witness, I would ask you to watch this and listen to this second

5 extract from the video.

6 If everybody is ready then let us go.

7 (Viewing of the video excerpt)

8 THE INTERPRETER: (Interpretation of the video excerpt)

9 "Where are your husbands? The reason why I am asking is because I can see

10 children, women ... Tell me Mama Véro, where are your husbands?

11 My husband" then there's an inaudible part "was a soldier from Mobutu.

12 Umm. Yes but men, aren't there men here, do you only stay here with children?"

13 Then there's an inaudible part.

14 "The fathers of these children. Where are the fathers of these children?" More

15 inaudible parts.

16 "... daily jobs. Hein! They are doing daily work ...

17 They went to look for daily work to cover for our daily food. Where? Let the men

18 come here. You!"

19 And now there is a view of two MONUC militaries arriving and greeting Lubanga,

20 the priest and the members of Lubanga's delegation.

21 And it continues: "No, come here. We just sit, doing nothing. You just sit? You

22 just sit here? Yes. Where do you get food from? Despite daily work, we do not

23 receive ...

24 Where do you get daily jobs from?

25 We do tasks such as weeding, or unloading.

Trial Hearing
WITNESS: DRC-OTP-P-0031

(Open Session)

ICC-01/04-02/06

1 You do weeding out there?

2 Yes, out there.

3 They are held here because they were told that there is no security in Bunia.

4 Men go out of here to look for daily jobs in order to get money. Yet, there is no
5 insecurity at the places where they do daily jobs. ...that the UPC is not able to ensure
6 people's security.

7 Dear MONUC brothers, can you imagine the magnitude of lies?" Inaudible words.

8 "We weren't aware ..." More inaudible: "That these people are here?"

9 No.

10 The priest here... the priest.

11 Indeed, we need to help people. Yet, we need to help people with sincerity. We
12 shouldn't use the population for our own interests. What we are doing here is for
13 the wellbeing of the entire country, for all these people. All these kids. One can't
14 mock people in such a manner. It is a crime. I take MONUC as witness, I am going
15 to take care of my popul --

16 This is our population, they are our brothers, they are people with whom we grew up.
17 They are entitled to life, they have right to respect, they have right to food. From
18 now on, I will leave this place with you, none of you will be killed. MONUC is here
19 to witness what I say. I am taking you away from this place because I don't want
20 people to continue using you as a lab rat."

21 MS BOURGON: [16:34:28] (Interpretation)

22 Q. So, Mr Witness, that completes the second extract and I will ask you questions
23 on this tomorrow morning.

24 (Speaks English) Thank you very much, Mr President. If we stop here. We are of
25 course in public session.

Trial Hearing
WITNESS: DRC-OTP-P-0031

(Open Session)

ICC-01/04-02/06

1 PRESIDING JUDGE FREMR: [16:34:42] Very well.

2 So we will have to break now.

3 Mr Witness, I would like to thank you because you perfectly today, perfectly

4 observed my guidance. We will continue tomorrow, so I believe that we will

5 have -- we will be able to complete your testimony tomorrow morning. And as

6 usual, you know it, I have to instruct you that you must not in the meantime to

7 discuss your testimony with anybody else. Otherwise, we will see you tomorrow,

8 9.30.

9 And the update on timing, now I got information that Mr Bourgon so far used 5 hours

10 11 minutes, which means that he still has at his disposal, including the additional time,

11 so he still has 1 hour 49 minutes.

12 So now we break and we will reconvene tomorrow, 9.30.

13 THE COURT OFFICER: [16:35:51] All rise.

14 (The hearing ends in open session at 4.35 p.m.)