

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, 6 February 2017
9 (The hearing starts in open session at 9.35 a.m.)
10 THE COURT USHER: [9:35:55] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: [9:36:24] Good morning.
14 Court officer, please call the case.
15 THE COURT OFFICER: [9:36:30] The situation in the Democratic Republic of the
16 Congo, in the case of The Prosecutor versus Bosco Ntaganda, case reference
17 ICC-01/04-02/06.
18 PRESIDING JUDGE FREMR: [9:36:45] Good morning, everyone. We resume the
19 testimony of Witness P-317, but before that usual enquiry about composition of the
20 teams, if there are any change compared to Friday, Prosecution?
21 MS LUPING: [9:37:06] Good morning, Mr President, your Honours. No changes in
22 the Prosecution's composition.
23 PRESIDING JUDGE FREMR: [9:37:12] Thank you, Ms Luping.
24 Defence.
25 MR GOSNELL: [9:37:15] Good morning, Mr President, composition of the Defence

1 is the same with the addition of Maître Bourgon. Thank you.

2 PRESIDING JUDGE FREMR: [9:37:22] Thank you, Mr Gosnell.

3 Legal Representative of Victims, please.

4 MS PELLET: [9:37:30] (Interpretation) Thank you, your Honour. The composition

5 of the team for the former child soldiers is the same. Thank you.

6 MR SUPRUN: [9:37:40] (Interpretation) Good morning, your Honour, your Honours.

7 For the victims of the attacks there is no change since Friday.

8 PRESIDING JUDGE FREMR: [9:37:49] Thank you, Ms Pellet.

9 Thank you, Mr Suprun.

10 I also note for the record presence of Mr Lavigne, representative of the UN.

11 Now, Madam Witness, good morning and welcome back.

12 WITNESS: DRC-OTP-P-0317 (On former oath)

13 (The witness speaks French)

14 THE WITNESS: [9:38:07] (Interpretation) Good morning.

15 PRESIDING JUDGE FREMR: We will continue with your testimony so it's my duty

16 to remind you that you are still under oath and you have to speak the truth and

17 nothing but the truth.

18 And I also would like you to keep in mind the practical considerations I have

19 mentioned on Friday, to speak clearly, to speak at slow pace for the interpreters and,

20 what is also very important, to observe pauses of at least three seconds between

21 question put to you and your answer.

22 Have you understood all that, Madam Witness?

23 THE WITNESS: [9:39:00] (Interpretation) I have well understood, your Honour.

24 PRESIDING JUDGE FREMR: [9:39:02] Thank you. So now I am giving floor to

25 Ms Luping, and if I am not wrong you still have at your disposal 1 hour 31 minutes.

1 MS LUPING: [9:39:18] Thank you, Mr President.

2 QUESTIONED BY MS LUPING: (Continuing)

3 Q. [9:39:22] So, good morning, Ms Bakar.

4 A. [9:39:25] Good morning.

5 Q. [9:39:26] Ms Bakar, I would ask that you turn to tab 17 of your first trial binder.

6 It is the original form of the spreadsheet.

7 That is DRC-OTP-0195-2366, and my question is -- my questions will be brief on this.

8 This is, as I say, the original form of the spreadsheet and really this is a response to

9 the query from Defence counsel.

10 And Defence counsel had raised the issue of the fact that the spreadsheet, your

11 Honours, had been used with a prior witness and although the Prosecution originally

12 indicated it was simply going to switch out the correctly formatted spreadsheet with

13 this former version of the spreadsheet, in response to Defence counsel's concern, we

14 are simply going to have the original spreadsheet, the incorrectly formatted one, and

15 then adding the new spreadsheet as an item 84 to the list.

16 But, Ms Bakar, just to aid the Chamber's assessment of the spreadsheet, if you look at

17 page 2437, so it's 2437, the ERN of this document, it's about the middle -- if you look

18 at it, it's about the middle of this document, this PDF document that starts at 2366. If

19 you flip to 2437.

20 A. [9:41:18] Yes.

21 Q. [9:41:19] And if you look at 2437, is that simply a -- just so we understand how

22 this document reads, is this a continuation of page 2366? So you've got the front

23 page, 2366, and then you have 2437 and you see the columns running along the top, is

24 this a continuation of the first page?

25 A. [9:41:45] Yes, this is a continuation of the first page.

1 Q. [9:41:49] And if you see the pages running from 2437 onwards, is that simply
2 that - the pages that run sequentially on from -- the pages from 2366 that are
3 a continuation in a sequence?

4 A. [9:42:10] Yes, indeed.

5 Q. [9:42:14] Thank you. You can close that binder now. I am going to change
6 topics.

7 And, Ms Bakar, I am going to refer to your testimony from Friday, when you
8 had -- when you stated that the special investigation team that you headed conducted
9 nine investigations in Ituri and, in addition to that, met with a number of witnesses,
10 approximately 1,600 in total, and you stated that amongst these witnesses they also
11 spoke about other incidents that were not being specifically investigated by your team;
12 is that correct?

13 PRESIDING JUDGE FREMR: [9:42:59] Ms Luping, please slightly slow, slow down.

14 THE WITNESS: [9:43:11] (Interpretation) Yes.

15 MS LUPING: [9:43:13]

16 Q. [9:43:13] And amongst the witnesses that you personally met, do you recall
17 speaking to any witnesses about events in Mongbwalu?

18 A. [9:43:28] Yes.

19 Q. [9:43:31] And can you describe for the Chamber what you can recall, if anything,
20 of discussions you had with any witnesses about events in Mongbwalu?

21 A. [9:43:46] Very well. Mongbwalu is the second biggest town in Ituri, that is
22 where the gold mines are. It is majority inhabited by the Lendu, working in the
23 mines, but also by the Bira and Hema. There were two significant attacks in the
24 month of June 2002 where the Hema paid the APC forces, the soldiers, to attack the
25 Lendu and the Lendu drove them back.

1 And from there to November, the UPC tried to get this town. It was considered as
2 a place from which you could get gold, and so on.

3 At the start of November, they came together with the RCD -- with the MLC,
4 I'm sorry, of Jean-Pierre Bemba that was in the region which attacked Mambasa.
5 They bombarded the town for two days. And towards the 16th and 17th they
6 entered Mongbwalu. We had a list of 200 people, but there could have been a lot
7 more people who had died. And the infrastructure was half destroyed. And the
8 head of UPC operations at the time, that was Mr Bosco Ntaganda.

9 Q. [9:45:27] And first to clarify, the witness or witnesses that you spoke to, what
10 information did they specifically provide to you about these incidents?

11 A. [9:45:43] As regards the information that they provided us with, as they were
12 witnesses who lived in Mongbwalu, that was the way in which the town had been
13 bombed, or bombarded. And afterwards, it was attacked, people had died. They
14 gave us the number, 200 victims who had been killed. And there were also
15 massacres in a church, killings within a church, where a priest was killed. Boniface,
16 I think, a Lendu priest. That created a lot of tension and concern among the Lendu.

17 Q. [9:46:29] You have mentioned a list of approximately 200 victims who were
18 killed. Can you clarify how that list was compiled?

19 MR GOSNELL: [9:46:41] Objection, Mr President.

20 PRESIDING JUDGE FREMR: [9:46:43] (Microphone not activated).

21 MR GOSNELL: [9:46:43] The witness has not made reference to a list but to
22 a number.

23 PRESIDING JUDGE FREMR: [9:46:49] Ms Luping.

24 MS LUPING: [9:46:50] I'm going to try to find the transcript reference because I did
25 hear, at least in the translation, a reference to a list. I am going to find it now, your

1 Honours.

2 MR GOSNELL: [9:46:59] I withdraw my objection, Mr President, it is line 17, page 5.

3 PRESIDING JUDGE FREMR: [9:47:03] Thank you, Mr Gosnell.

4 MS LUPING: [9:47:08]

5 Q. So, Ms Bakar, I will repeat my question: You referred to a list of approximately
6 200 victims who were killed. Can you clarify how that list was compiled?

7 A. [9:47:24] This list was compiled through the interviews that we'd had in
8 different places; in Bunia, as well as in Beni in the month of November.

9 Q. [9:47:44] And again simply to clarify, were these named victims and was this the
10 same methodology that you had used to put together lists of named victims in your
11 other investigations?

12 A. [9:48:09] Yes, the same methodology was used. It was the witnesses or the
13 family members who gave the names.

14 Q. [9:48:29] And the information received that Bosco was the head of operations at
15 the time, what was the source for this information?

16 A. [9:48:44] That was the witness who we discussed these matters with, the people
17 from Mongbwalu, it was them.

18 Q. [9:48:55] And you have mentioned the name of a specific victim, a priest who
19 you referred to as Boniface. Do you recall anything about the information or the
20 circumstances surrounding the killing of this victim?

21 A. [9:49:11] What I remember -- well, I don't remember the number very well,
22 maybe approximately 15 people in a church were killed by the UPC, but as regards
23 the conditions, that's something I don't remember, but one of the victims was the
24 priest.

25 Q. [9:49:39] And did you receive any information about who killed the priest?

1 A. [9:49:46] No. Apart from the UPC, I don't remember having received that.
2 But it was a known case, lots of people spoke about that in Bunia, the case of the
3 priest.

4 Q. [9:50:07] And after you received the information from the various individuals
5 that you spoke to about events in Mongbwalu, did you record the information in the
6 same manner in which you have recorded other incidents?

7 A. [9:50:24] Yes, indeed. Now, I don't know if it was in the database or in the
8 Excel sheet or in both.

9 Q. [9:50:36] Could I ask you please to turn to tab 38 in your second trial binder, I
10 refer to DRC-OTP-2082-2038.

11 Ms Bakar, do you recognise this document, if you just take a moment, once you have
12 had a chance to look at it?

13 A. [9:52:00] Yes, I recognise it.

14 Q. [9:52:02] And can you please explain what it is?

15 A. [9:52:07] This is a case in the database, SIT0040, that means it is number 40 of the
16 special investigation team. This is about what happened in Mongbwalu.

17 Apparently we spoke with this witness -- we spoke to these seven witnesses and they
18 gave us the eight victims. This was investigations that we carried out in Beni.

19 Q. [9:52:48] And if you could turn to page 2039, and we have "Noms des
20 Enquêteur(s)" there, it is written "Sonia Bakar".

21 A. [9:53:02] Yes.

22 Q. [9:53:03] Who entered this information into the database?

23 A. [9:53:07] (Speaks English) It's me.

24 Q. [9:53:20] And we had "Date de l'incident", 20 November 2002, "Date de l'entrée",
25 13 December 2003.

1 A. [9:53:34] Mm-hmm.

2 Q. [9:53:36] So is that the date of the incident and the date that you entered the
3 information, just so that we understand this correctly?

4 A. [9:53:51] (Interpretation) Yes, date of investigation, that's when we were in Beni,
5 26 November to 5 December. And the violation -- well, in fact, because there were
6 two attacks, so the date of the incident, that was 20 November when they went into
7 Mongbwalu.

8 Q. [9:54:28] And if you look at the front page, so that's 2038, could you explain
9 what the significance is of this reference to "Supérieur hiérarchique Bosco, Chef des
10 Operations", what is meant by that?

11 A. [9:54:50] The hierarchical superior, that's perhaps not the person who
12 committed the violation but who gave the order for it.

13 MS LUPING: [9:55:06] Mr President, your Honours, at this point I would seek to
14 have this document admitted as a further Prosecution exhibit.

15 PRESIDING JUDGE FREMR: [9:55:14] Defence, any objection?

16 MR GOSNELL: [9:55:15] No, Mr President.

17 PRESIDING JUDGE FREMR: [9:55:17] So document specified by Ms Luping is
18 admitted into evidence as a further Prosecution exhibit.

19 MS LUPING: [9:55:31]

20 Q. [9:55:31] And, Ms Bakar, if I could ask you now to turn to tab 5 and if you could
21 look at paragraphs 98 to 102 first of this report, that is, at pages of the ERN is 0451 to
22 0452.

23 It is the section of the report entitled "Mongbwalu: A town to conquer for its natural
24 resources".

25 If you could indicate when you are at this passage of the report.

1 Now, Ms Bakar --

2 A. (Speaks English) Yes.

3 Q. -- you have got it in front of you. You previously indicated on Friday that you
4 wrote all sections of this special report except for the passages on child soldiers that
5 you stated were written by Ms Peduto and the political analysis section at the
6 beginning of the report. But first to clarify, did you write this section of the report as
7 well?

8 A. [9:57:11] Yes, I did.

9 Q. [9:57:18] And can you clarify what the basis of the information was when you
10 drafted these paragraphs 98 to 102, what were your sources of information?

11 A. [9:57:39] The interviews that we had in Bunia and Beni. And we also put the
12 information together with information from national -- information that international
13 and national NGOs had.

14 Q. [9:58:09] And I want to refer to paragraph 101, and I'm going to read three of the
15 sentences:

16 "An eyewitness met by MONUC went to the Lendu camp to seek protection at that
17 time. While there, the witness saw a wounded Lendu combatant returning from
18 Watsa who said that UPC was advancing under the command of Bosco."

19 My question is this, Ms Bakar: Do you recall whom from within the special
20 investigation team spoke to that witness that said UPC troops were advancing under
21 the command of Bosco?

22 A. [9:59:10] I don't remember.

23 Q. [9:59:12] Do you recall if this information would -- well, it states here it was an
24 eyewitness, eyewitness met by MONUC. When there is a reference here to the
25 witness being met by MONUC, was that your special investigation team or a different

1 section of MONUC?

2 A. [9:59:44] I can't say that a hundred percent, but I think it was another unit
3 because all the reports that I had either it was special investigations or it was the
4 human rights section in Bunia.

5 Q. [9:59:58] And turning to page 102, it is stated, and I'm going to quote from
6 a passage: "During its stay, UPC tried to exploit the gold mines. They called on the
7 Lendu to return because they had the expertise in gold digging. Since the Lendu
8 refused to go back, they forced the remaining Nyali population and the Hema who
9 went back to work for them." End of quote.

10 Do you recall where this information was drawn from?

11 A. [10:00:35] Well that was stated by several different Lendu that we met, but
12 I don't remember where that came from.

13 Q. [10:00:58] I am now going to move topics, Ms Bakar. I am going to ask you
14 some questions about the investigations that you described that the special
15 investigation team conducted in Bunia in relation to events in Bunia. You explained
16 on Friday that your team carried out investigations into attacks that occurred in
17 August 2002, March and May 2003. Just first starting with the attacks in Bunia of
18 August 2002, can you recall what, if anything, you learnt about the attacks in
19 August 2002, first of all?

20 A. [10:01:54] These were not attacks because the UPC was already there, but they
21 were still working with RCD-K/ML Nyamwisi and there was confrontations and they
22 repulsed the forces of RCD-K/ML and they remained. And then they sought people
23 out. We learnt of this through the interviews we had in Bunia, Beni and Eringeti,
24 maybe some in Lipri as well. And also, as we talked through with -- the subject with
25 national, international NGOs as well.

1 Q. [10:03:01] Again, turning to tab 5, that is DRC-OTP-0074-0422, this is the still the
2 special report, could you turn to paragraphs 46 to 49. And that's at pages 0439 to
3 0440. And there is a heading there "Bunia: Ethnically targeted massacres for the
4 control of the capital city".

5 Now, for this part of the report, what was the basis of information? Was there
6 anything other than the witnesses that you and your team met that formed the basis
7 for your drafting of this section of the report?

8 A. [10:04:05] The human rights section had sent a team into the field,
9 in September-October time, I don't remember exactly when, and they had made a
10 report which was not comprehensive but which included already some information
11 and then the rest came from interviews and again through discussions with NGOs
12 and discussions with certain family members of the victims in Beni who had had to
13 flee, the Lendu and Bira leaving Bunia because of the UPC.

14 Q. [10:04:48] And I would ask that you turn to paragraph 47, and it is the first
15 sentence: "On 7 and 8 August, UPC militias and civilian vigilante groups under the
16 command of Bosco roamed mostly the neighbourhoods of Mudzipela, Bigo I, II and
17 III and Sayo, killing those suspected of belonging to "opposing" ethnic groups. In
18 Mudzipela, they completely destroyed all houses belonging to Bira, Lendu and
19 Nande community members. Around 110 civilians, mostly Bira, Lendu and Nande
20 were killed." End of quote.

21 First focusing on this part of the report, Ms Bakar, you have referred to quite
22 a number of different sources of information. Do you recall from what sources you
23 specifically received the information about groups acting under the command of
24 Bosco?

25 A. [10:06:00] We met professors, we met family members in Beni, people who lived

1 in Bunia, as I said, and we met family members -- as well as teachers, rather than
2 professors.

3 THE INTERPRETER: [10:06:25] Interpreter's correction.

4 THE WITNESS: [10:06:31] (Interpretation) People who had been abducted, people
5 who had been abducted when there was no information, but most people were in
6 Beni, Eringeti in the camp for the displaced and Beni, all over the place.

7 MS LUPING:

8 Q. [10:06:52] And at paragraph 49 there is a reference to, "On 9 August, UPDF and
9 UPC attacked Governor Lompondo's residence using heavy weapons." Were these
10 the same sources of information, Ms Bakar, or different sources for this particular
11 information?

12 A. [10:07:19] No, the same sources. But we also had discussions with Mbusa, who
13 was in Beni, and he was the chief of RCD-K/ML.

14 PRESIDING JUDGE FREMR: [10:07:42] Ms Luping, sorry, allow me one additional
15 clarifying question from my part.

16 Madam Witness, have you ever faced situation that you or your team did receive
17 different information from different sources on the same incident?

18 And if yes, how did you proceed? If one witness said "UPC attacked our village on
19 23 August," another on 25th, or somebody said "I have never heard about
20 cannibalism" another said, "Yeah, I know about three cases of cannibalism" so if
21 you -- I guess it's even natural that you sometimes receive different information.

22 How do you proceed in such a situation?

23 THE WITNESS: [10:08:54] (Interpretation) This is why we would never trust one
24 single testimony. Needed about 20 witnesses of victims, but that did happen, but we
25 had information, for example, information about Drodro where the figure was

1 elevated, but was that done on purpose? I don't know whether people who had fled,
2 but we didn't just take it as the truth, we conducted investigations ourselves, we
3 compared lists, but normally we talked to more than three or four people. So we
4 take the information, which is then corroborated by a number of people. And after
5 all the cases we checked with people from the national and international NGOs. So
6 most of the cases here are cases which are well known and which were also reported
7 to us by people. We talked a lot with university professors, doctors, people from the
8 Red Cross, even we didn't want to put them into our report, we did have these
9 discussions. People from the Red Cross, for example, collected a lot of information
10 in May 2003, we had discussions with them with a view to confirming figures, so we
11 never trusted information from one individual.

12 PRESIDING JUDGE FREMR: [10:10:39] Thank you.

13 Ms Luping, please proceed.

14 MS LUPING: [10:10:40] Thank you.

15 Q. [10:10:43] Ms Bakar, turning again to paragraph 47, and there is a reference to
16 complete destruction of houses belonging to Bira, Lendu and Nande community
17 members. From the investigations that you conducted, what information, if any, did
18 you receive regarding the treatment of Bira and Nande by the Hema militia groups,
19 the UPC in particular?

20 A. [10:11:18] It was clear that what had happened is there had been some expulsion
21 of certain ethnic groups that they didn't want to have in the city. It was
22 known -- Mudzipela was known as a Hema community. They were doing a sort of
23 cleansing of 200 Lendu and this was a continuation, and then with the Bira it was
24 a continuation, they were the majority group in Mudzipela and they were seen as
25 assisting sometimes the Lendu, sometimes the Hema, but it was that case in Bunia

1 and also people none originally from Ituri. And so there were people there. And
2 there were people there with firearms, people with machetes. And from the Hema
3 side, there were also, of course, child soldiers who had been recruited. Mr Bosco had
4 created self-defence groups and these self-defence groups would go into the areas
5 where there were Lendu, Bira and Nande. Nande, they were against them because
6 they were from Mbusa Nyamwisi. And they also arrested quite a lot of people.
7 They had a military camp in Bigo, I think, another military camp in Muhito. And
8 after the UPC left, MONUC found mass graves near the Bigo camp.

9 Q. [10:13:31] Now, at page 16, it's lines 11 to 13, you stated "Mr Bosco had created
10 self-defence groups and these self-defence groups would go into the areas where
11 there were Lendu, Bira and Nande."

12 Now, from the investigations that you conducted, what, if anything, did you learn
13 about the relations between Bosco and what you have described as self-defence
14 groups?

15 A. [10:14:11] I don't recall any further details, simply that Bosco had created these
16 self-defence groups.

17 Q. [10:14:19] And do you recall the ethnicity of these self-defence groups.

18 A. [10:14:30] Yes, they were Hema, Hema-Gegere.

19 Q. [10:14:39] If you turn to paragraph 24 of the same special report, that is at page
20 0433, I am just going to refer to a specific passage in here:

21 "August 2002, UPDF forced the RCD/ML military forces out of Bunia. As UPC was
22 temporarily in a position to benefit from supply from both Uganda and Rwanda, it
23 was able to attack and to take control of the Mahagi territory."

24 And it's continuing on:

25 "The Mahagi territory then suffered from massive human rights abuses, included

1 destruction of villages, forced recruitment of child soldiers by UPC and Jérôme's
2 militia, as well as sexual violence that UPC notably resorted to in order to terrorise the
3 local elite and population." End of quote.

4 Ms Bakar, for this particular section, was this the same sources of information as you
5 have described previously or were there any additional sources or specific sources
6 that you would add?

7 A. [10:15:56] No. This is not based on our investigations, though perhaps some
8 people did talk about this in a general way, this was a separate background matter.
9 We had reports from human rights, from political affairs, from Human Rights Watch
10 and international NGOs. But we went to Mahagi.

11 Q. [10:16:31] And turning to paragraph 37 of the report, that's at page 0436:
12 "UPC forces shelled hundreds of Lendu villages without making any distinction
13 between armed combatants and civilians. Some villages in Djugu territory were the
14 objects of repeated attacks when the inhabitants returned and rebuilt during calmer
15 periods. Each time that they took control of Bunia - August 2002 and
16 May 2003 - UPC forces conducted a manhunt for Lendu, Bira, Nande and
17 non-Iturians whom they considered opponents: many persons were killed, many
18 others disappeared or chose to leave Bunia. UPC soldiers also committed large-scale
19 rape in the different areas of the town, sometimes abusing girls as young as 12." End
20 of quote.

21 Q. [10:17:32] Now, for this information, was it the same sources of information that
22 you used, was this witnesses, or were there additional sources and, if so, if you could
23 clarify what your sources of information were?

24 A. [10:17:52] This part of the report summarises a bit what came from inquiries and
25 from the information that we have from the MONUC. What we investigated in

1 greater detail was, once we were able to have access to Ituri in December 2002
2 through the IDP, et cetera, but the very beginning of the conflict, well, okay, for the
3 whole beginning period the information came from people who had been displaced
4 to Beni and Bunia. So this is a kind of summary of that.

5 Q. [10:18:51] And the reference to large-scale rape in the different areas of the town,
6 with abuse of girls as young as 12, was this also coming from witnesses that you or
7 your team met?

8 A. (Speaks English) Some witnesses, some --

9 Q. [10:19:18] Sorry, just -- in French. In French, if you please, for consistency.
10 Thank you, Ms Bakar.

11 A. [10:19:28] (Interpretation) Some information came from witnesses and some
12 information came from medical NGOs.

13 Q. [10:19:43] And you already explained how you, yourself, arrived in the DRC
14 and started in this role in December 2002. But did you have the opportunity to also
15 read reports written by colleagues related to events including in August 2002 in Bunia
16 on your arrival, do you recall reading any such reports?

17 A. [10:20:14] Of course. Of course, I read all the reports. I didn't get the chance
18 to read everything immediately because I didn't have time, but I read everything
19 written by MONUC and the NGOs once I actually started working on the
20 investigations in Ituri.

21 Q. [10:20:34] Could I ask you to turn to the second trial binder at tab 52 and that is
22 DRC-OTP-0185-0879.

23 A. [10:20:51] Could you repeat that for me, please.

24 Q. [10:20:56] That is tab 52, 52, ERN 0185-0879.

25 Do you recognise this document?

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

2 Q. [10:21:25] And there is handwriting written on the front page of this document.

3 Whose handwriting is that?

4 A. [10:21:34] That's my writing.

5 Q. [10:21:38] And can you explain what this document is?

6 A. [10:21:46] It's a document which is a report compiled after a mission to Bunia by
7 colleagues from the human rights section of the -- MONUC and the colleagues from
8 the human rights section from -- there from the 16th to 18th, I think, July 2002.

9 THE INTERPRETER: The "I think", sorry, is the interpreter's think.

10 MS LUPING: [10:22:30] Mr President, could we move briefly into private session for
11 my next question.

12 PRESIDING JUDGE FREMR: [10:22:36] Certainly.

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

14 (Private session at 10.22 a.m.)

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-0317

(Private Session)

ICC-01/04-02/06

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- 23 (Open session at 10.28 a.m.)
- 24 THE COURT OFFICER: [10:28:21] We are in open session, your Honour.
- 25 PRESIDING JUDGE FREMR: [10:28:28] Thank you.

1 Ms Luping, please proceed.

2 MS LUPING: [10:28:32] Mr President, at this point in time I would ask that the
3 report 0185-0879 be admitted as a further Prosecution exhibit. The witness has
4 confirmed that this is a report that she read in the course of her work as the head of
5 the special investigation team, she is familiar with the report, the report has her
6 annotated handwriting on it. In the special report on Ituri, which the witness has
7 confirmed she wrote the bulk of, there is the section relating to events in Bunia in
8 August 2002 and prior to that period. On this basis we would ask that this be
9 a further exhibit.

10 PRESIDING JUDGE FREMR: [10:29:21] Defence?

11 MR GOSNELL: [10:29:23] No objection.

12 PRESIDING JUDGE FREMR: [10:29:25] So this document is admitted into evidence
13 as a further Prosecution exhibit.

14 Ms Luping, please proceed.

15 MS LUPING: [10:29:37]

16 Q. [10:29:38] Now, Ms Bakar, at paragraphs 70 to 74 of the report, if you could turn
17 to that please, sorry, of the special report on Ituri at tab 5, if you could -- that's the first
18 binder. Perhaps if you could keep out the special report, because I will be making
19 reference to it on a number of occasions now.

20 A. [10:30:16] Which paragraph?

21 Q. [10:30:18] Well before we turn to the paragraphs that I want to ask you further
22 questions about, can you please describe what you learnt during the course of your
23 investigations about events in Bunia of March 2003, 6 March 2003 during the fighting
24 in Bunia?

25 A. [10:30:43] Yes. We went to Bunia at the end of the month of May, just before

1 the end, what happened was from -- well, with regard to the agreements that were
2 signed with Uganda, Uganda left Ituri, and 20,000 civilians who were afraid, they
3 went towards the lake. And with the departure of the Ugandans there were the
4 Lendu and Hema who started fighting. That lasted for several days. There was
5 a lot of destruction of infrastructure. A lot of people were killed. A lot of people
6 were killed between two fires, a lot of ethnic groups were killed due to their ethnic
7 group. There were cases of rapes by the UPC.

8 Now, in a church they killed approximately 15 people, including two priests, two
9 Hema priests, by way of revenge for the killing of the Lendu priest in Mongbwalu.

10 And even in the hotel where we were staying, that was completely pillaged. We
11 were with Kristine. Everybody stayed in the office. And the United Nations were
12 picking up the bodies that were in the streets. It was a catastrophic situation.

13 About 500 people died. People were fleeing. And that's why we went to Beni and
14 Eringeti in order to have discussions with them.

15 Q. [10:32:52] Thank you, Ms Bakar. You have referred to -- you stated these are
16 events that occurred in May following the departure of the Ugandans from Bunia.
17 I was first asking -- and I will ask about events in May 2003, but first focusing on
18 events on 6 March 2003 when there was fighting taking place in Bunia, this is before
19 the May 2003 incident I am focusing on first, do you recall speaking to witnesses
20 about events of March 2003.

21 A. [10:33:37] You said May before, did you not?

22 Q. [10:33:39] I believe I stated March, but I am referring to March 2003.

23 A. [10:33:41] No, I heard May. Very well. So I heard May.

24 Now, the month of March 2003, okay, I have to come back to that. Very well.

25 There was an attack, the Ugandans told us there was an attack of the UPC on their

1 forces in Dele. The Ugandans, with the Lendu forces attacked the UPC to drive them
2 out of Bunia. Approximately 50 people died. That's it. Oh, and the Lendu came
3 into the town.

4 Q. [10:34:42] I would now like to ask you to turn to paragraph 73 and 74 of the
5 special report, first focusing at page 0445, paragraph 73. I will read a relevant
6 sentence that I would like to ask you a question about:

7 "On 6 and 7 March 2003, during and after fighting between UPC and UPDF in Bunia,
8 several civilians from killed, houses and shops were looted and civilians were
9 wounded by gunshots." End of quote.

10 My first question is this: Did you learn of any instances of civilians being killed by
11 the UPC or houses being looted by UPC?

12 A. [10:35:39] Civilians killed by the UPC, yes. Civilians were killed by both sides.
13 The aim was to drive them away. There wasn't time to go and kill civilians on an
14 ethnic basis. They were fighting against the Lendu and the UPDF. So a lot of
15 people died because they were there while there was firing going on. Pillaging was
16 carried out by pretty much everybody. But I don't remember if it was by the UPC
17 combatants. But in this type of situation the population also took advantage of the
18 situation in order to pillage.

19 Q. [10:36:34] Now you have also mentioned your investigations into events in
20 May 2003 and the events that occurred there. Can you recall writing a report
21 relating to events of May 2003 in Bunia following the departure of the Ugandan
22 army?

23 A. [10:37:01] Yes, I remember.

24 Q. [10:37:15] I would ask that you turn to tab 16 of your binder, the first binder,
25 and that is DRC-OTP-0065-0148.

1 And I would just ask if you look through it and let me know if you recognise it.

2 A. [10:37:59] Yes.

3 Q. [10:38:01] And can you explain to the Chamber what this is?

4 A. [10:38:08] This is a report, a preliminary report which we drafted just having
5 been to Bunia in order to carry out investigations on what had happened on 6 May
6 and the following days in Bunia. This was a preliminary report and the final report
7 was drafted later once we had analysed the information that we had in greater detail.

8 Q. [10:38:34] And I ask that you turn to the last page of this document at 0157, and
9 written in a square box are the words "Drafter: Sonia Bakar". Can you clarify who
10 did draft this report?

11 A. [10:39:02] I did.

12 Q. [10:39:05] And can you briefly explain the sources of your information for this
13 preliminary report?

14 A. [10:39:18] The information came from, as you could see, from 234 people that we
15 interviewed in Bunia. And also from local NGOs and the administrative authorities
16 who were among these 234 people. In the month of November we went to Beni and
17 there were other witnesses we saw who shared information with us about what had
18 happened in Bunia.

19 Q. [10:40:01] And at page 0152 at paragraph 15, it is stated: "The team received
20 reports of 18 cases of rape, some of the victims being as young as 11. All abuses
21 were committed by UPC soldiers after the ceasefire was signed. The youngest
22 victim was reportedly raped by four UPC soldiers."

23 And then the rest of the paragraph includes further details regarding the rape victims.

24 Can you clarify when it is stated here "received reports" where did the reports, or
25 where did this information regarding the rape victims come from?

1 A. [10:40:54] From a medical association, but if I have to give the name, perhaps we
2 could go into closed session.

3 MS LUPING: [10:41:10] Mr President, if we could briefly go into private session.

4 PRESIDING JUDGE FREMR: [10:41:15] For sure.

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

6 (Private session at 10.41 a.m.)

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18 (Open session at 10.42 a.m.)

19 THE COURT OFFICER: [10:42:29] We are in open session, your Honour.

20 PRESIDING JUDGE FREMR: [10:42:37] Thank you.

21 Ms Luping, you may proceed.

22 MS LUPING: [10:42:45]

23 Q. [10:42:46] Ms Bakar, moving to a different subject within the same document,
24 there is a reference at paragraph 7 to arbitrary -- it's a heading, "Arbitrary Killing of
25 Civilians," at page 0150, "A total of 438 cases of arbitrary killing have been reported to

1 the team, 150 of them by the UPC." Now can you clarify the basis of the information
2 regarding the numbers killed arbitrarily by the UPC?

3 A. [10:43:26] Through the interviews with 234 witnesses, however, these figures
4 changed. Once we were in Beni and we were able to meet other people, then the
5 figures went up somewhat.

6 Q. [10:43:48] Now, other than these instances of rapes, the instances of arbitrary
7 killings, can you recall any other types of ill-treatment by the UPC of civilians in
8 Bunia during this period of time? This is the period of May 2003.

9 A. [10:44:12] Yes, cases of torture.

10 Q. [10:44:16] And do you recall the ethnicity of the individuals who were subjected
11 to alleged instances of torture?

12 A. [10:44:29] In the cases of torture, the ones that I remember, it was the police that
13 the central government had sent in order to make the town safe, non-Iturians. The
14 cases that I remember was a non-Iturian policeman who had tortured people.

15 Q. [10:44:51] And other than these instances of torture, was there any other form of
16 ill-treatment of civilians in the Bunia area that you can recall?

17 A. [10:45:13] I don't -- I don't remember.

18 Q. [10:45:14] Were there any instances of threats or intimidation of civilians in the
19 area?

20 A. [10:45:21] (Speaks English) Yeah.

21 Q. [10:45:25] Can you describe what categories of civilians were affected by this?

22 A. [10:45:33] The categories that were intimidated, that was intellectuals, Lendu
23 intellectuals, but also non-Iturians, taxi drivers who were considered as having
24 helped the Lendu to flee, police sent by the central government, the Lendu who were
25 chefs de localités, or teachers, journalists who reported on cases of violations.

1 THE INTERPRETER: [10:46:14] And the interpreter would like to --

2 THE WITNESS: (Interpretation) And who -- and also intellectuals.

3 THE INTERPRETER: And the interpreter would like to make a correction to the
4 transcript with regards to a non-Iturian policeman. It says a non-Iturian policeman
5 who had been tortured.

6 MS LUPING: [10:46:39]

7 Q. [10:46:39] And can you recall any names of individuals -- sorry, I think we need
8 to move into private session for this.

9 PRESIDING JUDGE FREMR: [10:46:47] Court officer, let's move into private session.

10 (Private session at 10.47 a.m.)

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Trial Hearing
WITNESS: DRC-OTP-P-0317

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Trial Hearing
WITNESS: DRC-OTP-P-0317

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Trial Hearing
WITNESS: DRC-OTP-P-0317

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Trial Hearing
WITNESS: DRC-OTP-P-0317

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Trial Hearing
WITNESS: DRC-OTP-P-0317

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Trial Hearing
WITNESS: DRC-OTP-P-0317

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Trial Hearing
WITNESS: DRC-OTP-P-0317

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Trial Hearing
WITNESS: DRC-OTP-P-0317

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5 (Open session at 11.08 a.m.)

6 THE COURT OFFICER: [11:08:34] We are in open session.

7 PRESIDING JUDGE FREMR: [11:08:35] Thank you.

8 Ms Luping, please.

9 MS LUPING: [11:08:39] Thank you.

10 Q. [11:08:41] Ms Bakar, you have explained the number of investigations that your
11 team carried out. If you look to paragraph 62 and 63 of the special report that you
12 wrote, and it describes attack at Bedu-Ezekele, including in Zumbe. Can you
13 confirm whether or not you conducted any mission to Zumbe yourself?

14 A. [11:09:13] I went to Zumbe once, yes, in December 2003.

15 Q. [11:09:31] And at this point, your Honours, I would like to turn to tab 75, at
16 0109-0268.

17 And, Ms Bakar, I would ask that you turn to paragraph 20 of this report where it
18 refers to a visit of the team to Zumbe.

19 Is this the investigation to which you are referring or the mission, sorry, the visit to
20 which you are referring?

21 A. [11:10:18] Tab 75?

22 Q. [11:10:22] Tab 75, 0109-0268 and if you could turn please to page 0273,
23 paragraph 20, my question is whether this is the investigation or the visit to which
24 you just referred.

25 A. [11:10:40] Yes, indeed.

1 Q. [11:10:42] And looking at the front of this document, this Human Rights Section
2 Kinshasa weekly report of 21 to 27 December 2003, can you confirm whether or not
3 this is the typical form of a weekly Human Rights Section report?

4 A. [11:11:04] The form has changed several times. That's the new format. We
5 had a new person who was drafting the reports.

6 MS LUPING: [11:11:15] Mr President, your Honours, at this point I would seek to
7 have this document admitted but only paragraph 20 of this weekly report.

8 PRESIDING JUDGE FREMR: [11:11:26] And why just paragraph 20?

9 MS LUPING: [11:11:28] Because that is the only paragraph that deals with the visit
10 to Zumbe. I am happy for other paragraphs to be admitted, but that was the
11 particular paragraph of interest.

12 PRESIDING JUDGE FREMR: [11:11:41] Thank you for clarification.
13 Mr Gosnell.

14 MR GOSNELL: [11:11:44] Mr President, objection at this stage because no evidence
15 has been elicited about what the witness learned and she hasn't actually even verified
16 that the information is the same as what she learned.

17 PRESIDING JUDGE FREMR: [11:11:58] Ms Luping, could you at least put one or
18 two questions.

19 MS LUPING: [11:12:01] Certainly.

20 Q. [11:12:02] Ms Bakar, can you clarify whether this paragraph 20 reflects the
21 information that was learned during your visit to Zumbe?

22 A. [11:12:16] We had information through the victims that we had seen in camps of
23 displaced persons in Eringeti and Beni. And we never went to Zumbe. There were
24 people who had been in Lipri, there were displaced persons from Zumbe there as
25 well. So before finishing the report I wanted to go there. I spoke to some people.

1 The information about what happened there doesn't come from that visit. The only
2 thing is the administrator that we had.

3 Q. [11:12:57] And the information that's contained in this paragraph, is it accurate,
4 to your knowledge, of the information learnt?

5 A. [11:13:07] It reflects the information that was collected by other NGOs, et cetera,
6 but we ourselves were not able to check that there were 250 villages that had been
7 destroyed.

8 For Lipri, we were able to check that there were approximately 20 villages, but when
9 we speak about information received from other persons we said according to
10 Human Rights Watch, for example, but that was according to -- it stated it appears.

11 MS LUPING: [11:13:46] Mr President --

12 A. [11:13:48] I'm sorry. We met the chief of Walendu Pitsi and that's the person
13 who gave us these figures.

14 PRESIDING JUDGE FREMR: [11:14:02] Enough.

15 So having heard these additional questions the objection is overruled, and the
16 paragraph 20 of the report specified by Ms Luping is admitted into evidence as
17 a further Prosecution exhibit.

18 Last four minutes, Ms Luping.

19 MS LUPING: [11:14:21] Thank you, Mr President.

20 Q. I have very little time, Ms Bakar. Last Friday you described your
21 investigations of your team in the area of Mambasa, Komanda and Eringeti. My
22 questions will be brief: first of all, if you can clarify what information you learnt, if
23 anything, about the role of the UPC in this incident?

24 A. [11:14:54] Now when it concerns the MLC forces of Jean-Pierre Bemba, they
25 came together with RCD and the UPC and the aim was to try to get to Beni. They

1 advanced on the two roads, one of them on Komanda -- via Komanda, the MLC was
2 going to come from Mambasa to Komanda and then together we were going to attack
3 Beni. And the Komanda road was under the responsibility of the UPC and so we
4 were able to meet people who were in Komanda, in the four places that we visited
5 after these attacks, Oicha, Eringeti, Butembo and Beni. Approximately 50 people
6 were killed in Komanda. We had their names -- we were given their names. There
7 were also women who had been abducted and raped, some of them. But the highest
8 number of rapes occurred in Mambasa.

9 Q. [11:16:07] And focusing on events in Komanda, you have described killings and
10 rapes. By which armed group where these crimes committed, or alleged crimes?

11 A. [11:16:21] By the UPC.

12 Q. [11:16:24] And do you recall a report being written by your team in relation to
13 events in this area in relation to this incident?

14 A. [11:16:46] That must be in the report on Mambasa. Not a special report on
15 Komanda. I don't remember.

16 Q. [11:17:01] And I would like to refer you now to a document, I have just got to
17 find the tab reference, one moment, please.

18 My apologies, Mr President, your Honours, if I could be just given a brief moment -- I
19 have found it now, it's tab 22, 0100-0314.

20 I would ask that when you have the document, Ms Bakar, if you can just confirm
21 whether you recognise it and, if you do, who wrote it?

22 A. [11:18:18] I recognise it. I wrote it, apart from paragraphs on political
23 background and child victims of abuse.

24 Q. [11:18:29] And just to clarify, you said you did not write the draft -- sections
25 relating to child protection or the political analysis. But who compiled the report,

1 who brought it together as a final document?

2 A. [11:18:46] I did.

3 Q. [11:18:47] And when you did so did you discuss these other sections with your
4 colleagues that drafted these other two sections?

5 A. [11:18:58] Yes, indeed.

6 MS LUPING: [11:19:00] Mr President, your Honours, at this point I would seek to
7 have this report regarding events in Mambasa, Komanda, Eringeti admitted as
8 a further Prosecution exhibit.

9 PRESIDING JUDGE FREMR: [11:19:15] Defence?

10 MR GOSNELL: [11:19:18] Objection to admission, Mr President, this is
11 a 160-paragraph report. It is almost as long as the special report that we were
12 looking at earlier that appears at tab 5 and on which there were many questions asked
13 and to which the witness directed her attention to many passages. We have not yet
14 had a single passage from this document drawn to the witness's attention. She has
15 not commented on a single passage in this document. She has not confirmed the
16 credibility or reliability of any particular passage in this document.

17 At this stage, Mr President, it is a question of proportionality and I would say it is not
18 proportionate to admit a document of this volume without having any testimony
19 from the witness affirming its substantive accuracy.

20 PRESIDING JUDGE FREMR: [11:20:08] Ms Luping.

21 MS LUPING: [11:20:10] Mr President, your Honours, it is simply a case of, issue of
22 efficiency and time in the courtroom. I could certainly have spent an hour on the
23 Mambasa report. But as your Honours are aware this is not a charged incident, it's
24 an incident that's relevant to contextual elements for crimes against humanity. And
25 for that reason this report is of relevance to your Honours. It may be a long

1 document but, your Honours, in the Prosecution submission it is of relevance and if
2 I was to have to take the witness through every paragraph I don't believe it would be
3 a good use of your time, your Honours, because all I would be doing is simply asking
4 her to repeat what's contained in there. And I don't need to ask any further
5 elaboration of what's stated. I can ask one question of her in relation to the report,
6 further question.

7 Q. Ms Bakar --

8 PRESIDING JUDGE FREMR: [11:21:00] No, no, Ms Luping, allow me to deliberate
9 with my colleagues. It is in my view a matter of principle.

10 (Trial Chamber confers)

11 PRESIDING JUDGE FREMR: [11:21:30] So our ruling is that this document is not
12 admitted into evidence.

13 Just briefly, first of all, we see really very low relevance of this document. Moreover,
14 really, to be brief, we share, we share arguments raised by Mr Gosnell, for such
15 a voluminous document one question is not enough. It is in fact, in my view,
16 circumvention of the rules for admission.

17 I know that you are in time, time pressure, but it doesn't mean that we will just ignore
18 our rules and principles concerning admission of evidence.

19 So, in fact, it is conclusion of your examination. Do you want to say anything at the
20 end?

21 MS LUPING: [11:22:22] Well, I am not going to seek reconsideration of your
22 decision, your Honours. I would just note that this report does detail information
23 that may have been of interest in relation to Komanda. I can revise my request to
24 only ask for admission of those sections relating to Komanda alone and I can bring
25 your Honours to the relevant paragraphs. The witness has referred to specific

1 alleged crimes committed by UPC forces in Komanda and I can limit admission to
2 those paragraphs.

3 PRESIDING JUDGE FREMR: [11:22:56] What paragraphs it would be?

4 MS LUPING: [11:23:12] The relevant paragraphs for the lines that she referred to is
5 at paragraph 6. And then in terms of the relevant specific paragraphs in relation to
6 UPC-led attacks, we have paragraphs 57 to 61, paragraph 118, and then we have the
7 conclusion at paragraph 158 and recommendations at -- sorry, conclusion at 158 and
8 159, recommendations at paragraph 160 which relates to the entirety of the incident.

9 PRESIDING JUDGE FREMR: [11:24:46] Mr Gosnell.

10 MR GOSNELL: [11:24:48] I maintain the objection, Mr President, now for more
11 reasons than before. First, it is now apparent that we are now apparently admitting
12 this document just for context, it apparently is going to be used to attribute certain
13 actions directly to the UPC. That's point one.

14 Point two is that paragraphs 57 through 61, just to take one example, appears to be
15 just a recitation of the consequences or the results of several interviews. Again, we
16 do not have the database or the indications of the notes of these interviews, we don't
17 know who took these interviews, we don't have any information about whether or
18 not the witness affirms the substantive correctness of those interviews or their
19 accuracy, and it follows from that that both the conclusion and the introduction that
20 refers to those substantive paragraphs should not be admitted either.

21 Thank you, Mr President.

22 PRESIDING JUDGE FREMR: Ms Luping.

23 MS LUPING: [11:25:44] Mr President, your Honours, on Friday the witness has
24 already testified that she conducted, together with Ms Peduto, specific investigations
25 in relation to incidents in Mambasa, Komanda, Eringeti. She has confirmed that she

1 wrote this report. I can ask one follow-up question as to whether she can confirm
2 that the paragraphs as cited are an accurate reflection of the investigations that she
3 headed and that she herself carried out.

4 PRESIDING JUDGE FREMR: [11:26:10] Ms Witness, you have heard the yes, could
5 you just respond directly?

6 THE WITNESS: [11:26:19] (Interpretation) Yes, I did it myself. It wasn't
7 Kristine Peduto, it was our person responsible for child protection. We were a team,
8 a human rights team, protection of children and humanitarian worker and policy
9 officer, people responsible for public information. We interviewed over 500 people,
10 Oicha, Eringeti, Butembo, Beni, Mambasa, one of the investigations where we
11 interviewed the most people.

12 However, in these cases they are not in the database, they are not in the Excel sheet; at
13 the time there wasn't one or the other. So there were just questionnaires that were
14 used at the time and it was on the basis of the questionnaires that I drafted the report
15 thereafter.

16 PRESIDING JUDGE FREMR: [11:27:10] Give me a second again.
17 (Trial Chamber confers)

18 PRESIDING JUDGE FREMR: So now we agreed to overrule the objection and admit
19 in the limited extent specified by Ms Luping this document into evidence as a further
20 Prosecution exhibit.

21 Now we break. We will reconvene at 12 o'clock and the second session will take just
22 one hour and we will start in this session with cross-examination.

23 Now we break.

24 THE COURT USHER: [11:28:01] All rise.

25 (Recess taken at 11.28 a.m.)

1 (Upon resuming in open session at 12.01 p.m.)

2 THE COURT USHER: [12:01:22] All rise.

3 Please be seated.

4 PRESIDING JUDGE FREMR: [12:01:40] We will now move to cross-examination of
5 our witness by the Defence.

6 Before doing that, just a brief reminder, but I even believe it is useless in your case

7 Madam Witness because you are quite experienced testifying before the Court, but I

8 would like just to highlight that even if you are called as a Prosecution witness, since

9 both parties has to be treated equally, you are expected also to testify in the same way

10 how you did it when answering the questions put to you by Prosecution.

11 Now Mr Gosnell you have your five hours to cross-examine the witness.

12 MR GOSNELL: [12:02:32] Thank you, Mr President.

13 QUESTIONED BY MR GOSNELL:

14 Q. [12:02:34] And good afternoon now, Ms Bakar. My name is Chris Gosnell, I

15 will be asking you some questions today and tomorrow.

16 Just a small reminder that when I ask you questions that may cause you to mention

17 the names of any of your colleagues, please do not mention any of those names before

18 going into private session and, hopefully, I will try to avoid prompting you from

19 doing that. Of course, it will be quite proper for you to mention Ms Peduto's name,

20 but no one else's name please.

21 Now, Madam Witness, the information that caused or precipitated you to undertake

22 the mission starting on 24 March 2003 was information about a massacre in Bogoro; is

23 that correct?

24 A. [12:03:44] The first investigation after my arrival was further to the Mambasa

25 attack, but it is correct that the specific mission to Bunia was with regards to Bogoro

1 and other attacks, but we didn't have information other than that regarding the
2 Bogoro attack.

3 Q. [12:04:06] (Overlapping speakers) about the mission that started on 24
4 March 2003, and so I ask the question again: Is it correct that the information that
5 caused you or that precipitated your mission, leaving aside what you learned later,
6 the information that precipitated that mission was the information about a massacre
7 in Bogoro?

8 A. [12:04:32] Yes.

9 Q. [12:04:33] And that was a massacre committed, am I correct, by Lendu armed
10 groups against Hema civilians that occurred on or about 24 February 2003?

11 A. [12:04:54] That is correct; Hema civilians, but also the Hema armed group that
12 was there.

13 Q. [12:05:00] (Overlapping speakers) based in Kinshasa at the time that you
14 received that information; correct?

15 A. [12:05:09] Yes, that's correct.

16 Q. [12:05:09] And from whom did you receive that information while you were in
17 Kinshasa?

18 A. [12:05:24] The reports of the military observers were available to us. And we
19 were also in contact with Congolese NGOs.

20 Q. [12:05:30] And then once you arrived in Bunia for this mission, only once you
21 arrived for this mission in Bunia, is when you received information about an alleged
22 massacre in Kobu; is that correct?

23 A. [12:05:50] That's correct.

24 Q. [12:05:50] And this information was conveyed to you, am I right, by a Lendu
25 man with a Motorola?

1 A. [12:06:03] Well, the information was provided to us by a local NGO who put
2 us in contact with that Lendu man. And he asked us to go and see for ourselves
3 what had happened.

4 Q. [12:06:19] (Overlapping speakers) this information both from the local NGO
5 and the Lendu man with the Motorola; correct?

6 A. [12:06:31] That's correct.

7 Q. [12:06:32] And prior to that information having been given to you by the local
8 NGO and the man with the Motorola, you had no information about that alleged
9 massacre in Kobu; correct?

10 A. [12:06:49] No, because we had been in Kinshasa and we had no human rights
11 person with us.

12 Q. [12:06:57] (Overlapping speakers) in the case of Bogoro, in respect of which
13 you received information from MILOBS and from Congolese NGOs, you didn't
14 receive any such information while you were in Kinshasa from those sources about a
15 massacre in Kobu; is that right?

16 A. [12:07:20] We did not receive information when we were in Kinshasa, we
17 received information only when we arrived in Bunia.

18 Q. [12:07:27] (Overlapping speakers) or anyone else in MONUC tell you that they
19 had information about an attack in Kobu or a massacre in Kobu?

20 A. [12:07:41] Well, I should point out that there were six military observers at the
21 time in Bunia and they were afraid to leave town. They had some vague information
22 regarding attacks on the villages but no direct information.

23 Q. [12:07:59] (Overlapping speakers) that any information about a massacre in
24 Kobu had been reported to them; is that right?

25 A. [12:08:14] I don't believe so.

1 Q. [12:08:17] And the information from the local NGO and the Lendu man with
2 the Motorola, did you receive that information after or before you made a site visit to
3 Mandro?

4 A. [12:08:42] I believe that it was afterwards.

5 Q. [12:08:44] And does it correspond with your recollection that the date of your
6 visit to Mandro was 28 March 2003?

7 A. [12:08:58] Yes, it was the end of March. Indeed, I don't recall at what date.

8 Q. [12:09:03] Perhaps I can come at it from the other direction. How many days
9 prior to your travel to Kobu did you receive the information from the local NGO or
10 the Lendu man with a Motorola about the alleged massacre in Kobu?

11 A. [12:09:30] Now, we organised the visit the day after having met the man.
12 However, we received the information from the NGOs before that. I don't recall
13 how many days before.

14 Q. [12:09:43] At page 50 of Friday's transcript you said, and I quote:
15 "He had a Motorola radio and he was able to inform people that we were arriving."
16 Can you describe this Motorola radio that he had?

17 A. [12:10:12] Well, it's a radio which is about that big, with a little screen there
18 and with buttons, a standard Motorola.

19 Q. [12:10:22] So you made some gestures with your hands. I -- would I be
20 correct in saying that you've described a handheld device that's about eight or 12
21 inches long; is that fair to say?

22 A. [12:10:43] Well, I don't know exactly what the relationship is between an inch
23 and a centimetre but, yes, it's certainly handheld with press buttons and a rectangular
24 pad where there are numbers.

25 Q. [12:11:01] And did he tell you where he had obtained this Motorola radio

1 from?

2 A. [12:11:07] No.

3 Q. [12:11:08] Did he say whom he was going to inform in advance of your visit
4 with this Motorola radio?

5 A. [12:11:21] No. He told us that he would inform people in the area, but he
6 didn't specify who.

7 MR GOSNELL: [12:11:36] If we could have, just for a moment on the screen -- but
8 before I put that up perhaps I can ask you Madam Witness:

9 Q. You did not and no one on your team, am I correct, radioed anyone with a
10 Motorola to advise them of your visit, did you?

11 A. [12:12:07] No. We just discussed the matter with the Ugandan soldiers.

12 MR GOSNELL: Can we have DRC-OTP-0152-0286, tab 4. And this is the report
13 attached to 20 June 2003 code cable.

14 It should be coming up.

15 And the least redacted version if there is more than one version. Yes, thank you.

16 And if we could turn please to page 0300, paragraph 51, it says, and I quote:

17 "The Team had informed the population by radio that they would be visiting the
18 region. Therefore, several local officials had prepared letters describing the problems
19 of the localities."

20 Now, Madam Witness, that's not quite correct, is it, it is a small error, you did not
21 inform anyone in the population by radio that you would be coming, it was this
22 gentleman, the Lendu gentleman with the Motorola radio who did that; correct?

23 A. [12:13:52] Yes, that is to say that we informed them through him.

24 Q. [12:13:59] And what instructions, if any, did you tell him to convey to the
25 population who you would be visiting?

1 A. [12:14:22] Well, rather it was simply to announce that the human rights section
2 would be making a visit, escorted by the Ugandans and we were coming to the area.

3 Q. [12:14:33] (Overlapping speakers) inform local leaders that they should
4 organise people to whom you could speak about the events?

5 A. [12:14:41] No, that initial visit was simply to appraise the situation in the
6 villages. We did not have much time. And that is why we told the people that day
7 to go to Lipri so that we could speak to them the following day.

8 Q. [12:14:59] And when you went the next day and you travelled through Lipri,
9 and then Bambu and then Kobu, did you see anyone else from the Lendu community
10 with Motorolas?

11 A. [12:15:23] I don't recall.

12 Q. [12:15:26] On Friday, at page 29, you said and I quote:
13 "It didn't seem that he was from an armed group, but you never know." End quote.
14 Did he say anything to you about what his position was in the Lendu community?

15 A. [12:15:54] No, he did not say.

16 Q. [12:15:57] When you went to Bogoro, did you see any Lendu with Motorola?

17 A. [12:16:15] I don't want to be imprecise. I saw Lendu with weapons, but I
18 don't recall Motorolas specifically.

19 Q. [12:16:26] So you don't recall for example whether Commander Dark, who
20 was a member of the Lendu armed forces, did he have a Motorola?

21 A. [12:16:41] No, I do not recall.

22 MR GOSNELL: May we have on the screen please DRC-D18-0001-3245, which is tab
23 120. And I will only be showing the first page of this document.

24 Q. [12:17:39] While that's coming up I can ask you a couple of other questions,
25 Ms Bakar. Am I right that this Lendu man to whom you were speaking about events

1 in Kobu, he complained to you that MONUC was only investigating killings of Hema
2 by Lendu and was not investigating killings of Lendu by Hema; is that correct?

3 A. [12:18:17] That is correct.

4 Q. [12:18:18] And did he tell you how he knew what investigations MONUC was
5 or was not carrying out at this time period?

6 A. [12:18:36] Well, in fact, he referred to visits by the MONUC. It's true that
7 when there were attacks on Bogoro and Mandro MONUC had visited the area.
8 However, MONUC had not visited Kobu or Lipri, and that's why, when we arrived in,
9 people were very enthusiastic about it. He didn't know the details, but I think what
10 he meant is that MONUC was not interested in what was happening to the Lendu.

11 Q. [12:19:11] (Overlapping speakers) answer to mean that he knew that you had
12 gone to Bogoro for a site visit there?

13 A. [12:19:17] He knew that MONUC had gone. He didn't differentiate between
14 human rights and military.

15 Q. [12:19:25] And this man with whom you made contact in Bunia who had the
16 Motorola, am I correct that he accompanied you, and when I say "you" I mean your
17 entire convoy, your entire team, did he accompany you when you travelled from
18 Bunia to Lipri, Bambu and then Kobu on the first day?

19 A. [12:19:51] He did.

20 Q. [12:19:52] And was he also there on the second day when you went to Lipri
21 only?

22 A. [12:19:59] No, I believe not.

23 Q. [12:20:05] And on the first day were you also speaking with him as you were
24 looking at various locations when you went to Lipri, Bambu and Kobu?

25 A. [12:20:23] Yes, I talked with him.

1 Q. [12:20:25] Is the photograph on the screen a picture of the person who
2 accompanied you and who spoke to you and who had the Motorola?

3 A. [12:20:39] (Speaks English) I don't remember. Really, I -- (Interpretation)
4 I'm afraid I can't say with 100 percent certainty that it is him.

5 Q. [12:20:47] (Overlapping speakers) we can finish with this, that picture can be
6 removed.

7 A. [12:20:53] Yes.

8 Q. [12:20:54] Just out of an abundance of caution, perhaps we should --

9 PRESIDING JUDGE FREMR: [12:20:57] Hold on. Hold on.
10 Ms Luping.

11 MS LUPING: [12:21:00] There's just two things, I think. First of all, Defence
12 counsel has preempted one of the concerns I was going to raise, he's asked to move
13 into private session.
14 But the second question I was going to raise is whether the -- whether the -- I believe
15 there will be a series of photographs shown, whether they are being shown as
16 confidential rather than public and, if so, if they could, but if not, if they could please
17 be shown as only confidential.

18 PRESIDING JUDGE FREMR: [12:21:22] All right.

19 And one reminder from my part, Mr Gosnell, please observe pauses consistently
20 because sometimes there were overlapping.
21 Please proceed.

22 MR GOSNELL: [12:21:34] So may we have private session, Mr President?

23 PRESIDING JUDGE FREMR: [12:21:37] Certainly.

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

25 (Private session at 12.21 p.m.)

- 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 (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 (Open session at 12.23 p.m.)
- 21 THE COURT OFFICER: [12:23:39] We're back in open session.
- 22 PRESIDING JUDGE FREMR: [12:23:42] Thank you.
- 23 Mr Gosnell, please.
- 24 MR GOSNELL: [12:23:44] Thank you, Mr President.
- 25 Q. [12:23:45] Now, Madam Witness, on Friday in your testimony you said at page

1 53 --

2 PRESIDING JUDGE FREMR: [12:23:51] Mr Gosnell, are you referring to English or
3 French transcript?

4 MR GOSNELL: [12:23:55] That is the English transcript, Mr President.

5 PRESIDING JUDGE FREMR: [12:23:58] Just to be clear.

6 MR GOSNELL:

7 Q. [12:24:00] And you were speaking about the occasion in which you arrived in
8 Kobu and you said the following, and I quote:

9 "We told them that we haven't -- have a lot of time to speak to everybody, that the
10 next day that we had to be in Lipri, that people had to speak to us in Lipri. And the
11 next day we went to Lipri in order to speak to the victims and witnesses."

12 And then you said at page 57 of the transcript, quote:

13 "We didn't actually do many interviews on that particular day, but we spoke to
14 everybody very, very quickly and we got across the message that we were going to
15 return the following day."

16 Now, first of all, do you remember having said those things on Friday?

17 A. [12:25:01] No, when we were in Kobu and Bambu we said we would be in
18 Lipri the next day.

19 Q. [12:25:08] And am I right that you told people in Kobu and Bambu that they
20 could come to Lipri the next day to be interviewed; is that right?

21 A. [12:25:26] That is correct.

22 Q. [12:25:31] Now, you say that you spoke to people in Kobu on that first day
23 very, very quickly. Can you remember how long, how much time did you actually
24 spend in Kobu when you went there?

25 A. [12:25:51] A maximum of a half an hour. It was already late in the day and

1 we should already have returned. And the soldiers were quite nervous.

2 Q. [12:26:01] And during that interview or during that half an hour, did you or
3 Ms Peduto conduct what you would describe as an interview of anyone?

4 A. [12:26:24] We spoke to one person, a person who was amongst the 50 persons
5 who had gone to the meeting and who had been able to escape, that is the person who
6 reported to us what had happened. And what he told us was confirmed the next
7 day through other interviews.

8 Q. [12:26:45] And you said on Friday that your practice was to have one-on-one
9 interviews. Was this a one-on-one interview, or were you speaking to this person in
10 front of a large crowd?

11 A. [12:27:05] Now, in the case of Kobu it was not a one-on-one interview because
12 we did not have enough time and that person had already recounted to the entire
13 village what had happened. And together they showed us the place which was the
14 grave site. However, the following day we were able to speak one-on-one to a
15 number of people.

16 Q. [12:27:36] (Microphone not activated)

17 THE INTERPRETER: [12:27:41] Microphone, please.

18 PRESIDING JUDGE FREMR: [12:27:42] Your mic was not activated.

19 MR GOSNELL: [12:27:45] Just for the purposes of the transcript, the witness used
20 the expression "fosse commune".

21 Q. And I do want to ask you about this location. And you said on Friday, at page
22 61, and I quote:

23 "The only thing I can tell you is that the earth had been freshly turned over. Apart
24 from that it was all sealed. It was sealed but there was a heap of fresh earth on it. It
25 hadn't yet hardened." End quote.

1 Now, when you say "freshly turned over", can you give us an idea, based on your
2 experience, as to how long previous it was that the earth had been turned over, if you
3 can?

4 A. [12:28:45] I'm afraid I can't.

5 Q. [12:28:47] Did anyone tell you how long before that day the burials had
6 occurred?

7 A. [12:29:02] It wasn't the burials, I believe it was the -- the same day, I believe the
8 25th, that the bodies were put in the ground.

9 Q. [12:29:12] (Overlapping speakers) the 25th, or are you drawing that
10 information from having reviewed materials last week during your preparation?

11 A. [12:29:35] Well, in fact, there had been a call to attend a meeting and it was the
12 evening of the day of the meeting that the people were killed and were put in a pit,
13 based on the witnesses who we questioned.

14 Q. [12:29:50] (Overlapping speakers) small point, Madam Witness, but just so you
15 understand why I pose the question to you in a particular way, I asked you whether
16 the individuals to whom you spoke had told you how long before the burials had
17 taken place and you answered by giving me an account based upon what you know
18 you were told later.

19 So if I can ask you, please, to cast your mind back to the time when you were standing
20 in Kobu during this period of half an hour and I'm asking you whether anyone told
21 you how many days or weeks prior to that moment had the burials taken place? Did
22 anyone say that to you and, if so, what did they say?

23 A. [12:30:40] Someone who was there did mention the date, they said that the day
24 they were killed they were buried in the same pit.

25 Q. [12:30:50] And do I correctly understand that you saw a single heap of earth

1 over this same hole, or did you see several heaps of earth?

2 A. [12:31:12] One only, but it was fairly big. I was told that there was another
3 one in the forest, but I didn't have time to go and see that.

4 Q. [12:31:22] Did the people tell you that the victims had been killed at the
5 location of the grave site, or whether they had been killed at some distance from that
6 grave site?

7 A. [12:31:41] No, they said that they were killed where the mass grave was.

8 Q. [12:31:48] Precisely on that spot, according to them?

9 A. [12:31:53] (Speaks English) If it's not precisely, if you -- (Interpretation) If it
10 wasn't exactly there, a few centimetres away, it was there, it was opposite where the
11 UPC had their office.

12 Q. [12:32:08] And this building where there was the UPC office, was it a
13 single-storey building, or did it have two storeys or more?

14 A. [12:32:24] More than one storey.

15 Q. [12:32:27] Were the graves marked in any way?

16 A. [12:32:36] No.

17 MR GOSNELL: [12:32:38] May we have please tab 4, DRC-OTP-0152-0286.

18 Q. Again, this is the report attached to the code cable, dated 20 June 2003, the
19 report that you wrote.

20 If we could turn please to page 0302, paragraph 61. And I quote:

21 "The inhabitants who buried the bodies put crosses on the graves to identify them."

22 You're saying that's not correct?

23 A. [12:33:41] Sorry? I don't recall the crosses. It might be right, but I don't
24 recall them now.

25 Q. [12:34:02] Did you take any notes when you were there in Kobu that day?

1 A. [12:34:08] Yes, I did take notes.

2 Q. [12:34:11] And where are those notes today?

3 A. [12:34:16] They -- notes that I took in small notebooks, I passed on to the
4 MONUC when I left.

5 Q. [12:34:35] Now, how many people, taking either that day that you were in
6 Kobu, or the next day when you went to Lipri, how many people in total told you that
7 they had seen the bodies who were the victims of the massacre, that is to say how
8 many people told you that they had participated in the burials or otherwise had seen
9 the aftermath of this massacre?

10 A. [12:35:11] I can't give any figures. We talked to 70 people. But I would have
11 to look at my spreadsheet to give you an exact figure. But these six -- 70 people
12 talked about the attacks and some of them also spoke of what happened in Kobu.
13 But one person had been among the people who had buried the bodies, but a number
14 of people reported it. I can't tell you how many.

15 Q. [12:35:45] And we'll come to the Excel table in due course, but for the time
16 being what you can remember is that there was one person at least who told you that
17 they saw that scene, correct, of the dead bodies?

18 A. [12:36:10] One person who put them into the pit and another person who had
19 fled, but afterwards I -- there was not -- the people -- I'm not saying I didn't talk to
20 people who said that, I'm just saying I don't under -- I don't know how many.

21 Q. [12:36:36] (Overlapping speakers) the one person whom you can recall at the
22 moment having provided this information to you, namely, that they saw the bodies
23 and participated in the burials, did that person tell you whether there was a
24 photographer present at any time during that burial or when the bodies were
25 exposed?

1 A. [12:37:13] I don't recall.

2 Q. [12:37:14] Did that person or anyone else during your investigation, as far as
3 you can recall, tell you that there were photographs in existence of the corpses who
4 were the victims of this massacre in Kobu?

5 A. [12:37:37] I really can't remember. If I had been told that, I would have tried
6 to get hold of the photos.

7 Q. [12:37:46] And is that something you also would have noted down in your
8 interview notes?

9 A. [12:37:54] Yes, I'm sure I would.

10 Q. [12:37:58] May we turn now please to 0074-0422, which is tab 5, and this is the
11 special report on the events in Ituri, which is attached to a letter dated 16 July 2004
12 from the secretary-general to the president of the Security Council. And if we could
13 turn please to page 0444, paragraph 69. And I'll draw your attention please to a
14 sentence, two sentences in the middle of this paragraph 69, quote:

15 "According to the persons who buried the bodies, there were" 57 "victims. They
16 reportedly found another 53 corpses in the bush around Kobu and buried them in
17 two other mass graves."

18 Now, you've told us that the other --

19 PRESIDING JUDGE FREMR: [12:39:41] Hold on. Hold on.

20 Ms Luping.

21 MS LUPING: [12:39:45] Yes, Mr President, I believe it's just a mere slip of the
22 tongue, but Defence counsel just referred to a figure of 57 and 53. I believe he meant
23 to refer to "47".

24 PRESIDING JUDGE FREMR: [12:39:58] I also think so.

25 MR GOSNELL: [12:40:01] Absolutely. Thank you.

1 Q. [12:40:06] Now, you've told us that the two other, or that any other graves that
2 were mentioned to you were too far away to visit that day; is that right?

3 A. [12:40:23] Yes.

4 Q. [12:40:25] Was any indication as far as you can recall provided as to how far
5 away these two other mass graves were, if you can recall?

6 A. [12:40:41] No, I don't remember, but we couldn't even go five minutes away
7 because we really didn't have enough time.

8 Q. [12:40:49] And you arrived back in Bunia, am I correct, before just around dark;
9 is that correct?

10 A. [12:40:59] (Speaks English) Yes. (Interpretation) Yes, that's correct.

11 Q. [12:41:03] And after this occasion when you visited Kobu, did you ever return
12 to Kobu?

13 A. [12:41:14] No, never.

14 Q. [12:41:16] Did you ever send anyone back to Kobu?

15 A. [12:41:25] Maybe MILOBS went, but I don't know. What we did later we
16 went to Bambu, but in any case, the people had been displaced from that people, so I
17 tried to talk to these people in places that were safe.

18 Q. [12:41:43] So is it fair to say you don't remember ever anyone else from the
19 special investigation team having gone back to Kobu?

20 A. [12:41:50] (Speaks English) I don't remember, no.

21 Q. [12:41:55] I would like please now to look at an extract from your Excel table.

22 MR GOSNELL: And, Mr President, with your permission I request that you receive
23 and that the witness be given an extract from that table that we have created on a very
24 large size format which I hope will be legible to everyone, and certainly will be of
25 more assistance than if we tried to show the Excel table on the screen?

1 PRESIDING JUDGE FREMR: [12:42:22] Yes, appreciate it.

2 MR GOSNELL: [12:42:30] And for the record just so we ensure that this is on the
3 record, it is DRC-D18-0001-3249, that's tab 88.

4 PRESIDING JUDGE FREMR: [12:42:51] Ms Luping, any objection to that?

5 MS LUPING: [12:42:53] Just a question really of clarification, Mr President,
6 your Honours. On Friday the Prosecution provided a large printout of document
7 DRC-OTP-0195-2366, 001 as the correctly formatted version of the spreadsheet. It
8 doesn't appear if there is any difference between the document that we provided on
9 Friday and this Defence exhibit, but if Defence counsel could please clarify.

10 MR GOSNELL: [12:43:23] Yes, I can clarify. Yes, Mr President, what we have
11 done is we have taken the Prosecution's table as they provided it to us, and then we
12 added a column down the left-hand side, which starts with the number 1 and then
13 goes down sequentially to the end, to the very last data entry.
14 So we started out by making that modification on the table, and then what we did
15 was we extract -- so in other words, there were no changes whatsoever to the
16 substance of the table. And then what we did was we took sub-extracts from that
17 table in order to focus on particular pieces of information. And the extract that you
18 now have in your hands, I can tell you, is produced on the basis of doing a search for
19 the word "Kobu" and then removing -- I believe we removed one hit that clearly did
20 not relate to the events in question. So these are all of the hits, so to speak, to use
21 common parlance for the word "Kobu" in the Excel spreadsheet that was provided by
22 the Prosecution with a column down the left-hand side that will I hope help
23 your Honours later to cross-reference from these lines to the full Excel table.
24 PRESIDING JUDGE FREMR: [12:45:05] So those changes are noted. Please next
25 time you should provide us with this information about any change of the

1 counter-party document in advance.

2 Ms Luping, do you have any problem with using this slightly changed document?

3 MS LUPING: [12:45:24] It's hard to comment at this stage. We don't want to

4 complain about receiving documents late for cross-examination, but it's a little bit

5 hard. I need to be able to have a chance to review the changes or modifications that

6 have been against the original to ensure there's no changes in numbering, for example,

7 that might simply cause any further confusion. So at this stage, is the Defence

8 counsel simply asking the witness to comment to entries specifically relating to Kobu,

9 subject to the numbering, potential numbering issue, I have no objection at this stage.

10 PRESIDING JUDGE FREMR: [12:45:57] All right then.

11 MR GOSNELL: [12:46:06]

12 Q. [12:46:06] Now, before we get into details, Madam Witness, I just would like to

13 confirm that you started using this Excel -- not this particular Excel spreadsheet but

14 the Excel spreadsheet from which this information is drawn, you started using that

15 Excel spreadsheet in March 2003 and then you stopped using it in June or July 2003; is

16 that correctly understood?

17 Let me rephrase my question because it's not entirely clear. You stopped inputting

18 information into the Excel spreadsheet after June or July 2003 and you started

19 inputting information sometime in March 2003; is that correctly understood?

20 A. [12:47:02] Yes, that's correct. But I would like to say one word about the table.

21 There's one bit that's missing on this table and that's the witness part, that was

22 removed by the MONUC.

23 Q. [12:47:17] So on the original version of the Excel spreadsheet, which we do not

24 possess, you are telling us that the name of the source is listed in a column; is that

25 correct?

1 A. [12:47:31] No, the name of the witness and everything relating to the witness
2 was removed before this table was given to the Court.

3 Q. [12:47:43] Yes, thank you for that clarification.

4 And in your statement in 2013 you said the following at paragraph 32, and I will read
5 it. I don't believe there is any need to call it up. You said as follows, quote:

6 "As soon as possible after the interviews, everyone put their notes in an electronic
7 Excel spreadsheet. In April 2003 we used the Excel spreadsheets, but at a later stage
8 in July 2003 a database was established and all the data was registered into it. For
9 the investigations into incidents into Kobu, Bambu and Lipri we used the Excel
10 spreadsheets only."

11 Now, you've clarified a little bit about subsequent investigations, but is it at least
12 correct that in respect of the mission that you conducted to Kobu, Bambu and Lipri in
13 early April, all of that information in principle should have been recorded on the
14 Excel table, the Excel spreadsheet?

15 A. [12:49:09] Yes, just the investigations done in Kobu, Lipri, Bunia. For later
16 investigations, there's some that are not included, we may have seen people from
17 Kobu in Lipri or Beni later, I don't know, but for that period, yes, everything should
18 be included.

19 Q. [12:49:33] And the information that was inputted on the Excel spreadsheet is
20 based, am I correct, on interviews conducted by you and your colleagues on the
21 special investigation team?

22 A. [12:50:00] But it's much more than that, it wasn't just Christine and I who
23 carried out the interviews. There were other people. I can only see here those
24 conducted by Kristine and by myself.

25 Q. [12:50:14] And I believe you've discussed that a little bit already. You had

1 certain people assisting you in the field, and so is it correct, and we won't mention
2 any names, but other individuals who were associated with MONUC who assisted
3 you, they would also have their information inserted onto this spreadsheet; is that
4 correct?

5 A. [12:50:39] Indeed, yes.

6 Q. [12:50:41] Would the information arising from interviews that are recorded on
7 this spreadsheet, were those interviews conducted one-on-one?

8 A. [12:50:58] Yes.

9 Q. [12:50:59] And then do I correctly understand, and maybe I don't correctly
10 understand, but did -- was each interviewer responsible for inputting the notes from
11 their interviews onto this spreadsheet?

12 A. [12:51:28] Yes.

13 Q. [12:51:29] So that goes not only for you and Ms Peduto but also those
14 collaborators who assisted you from time to time on those missions?

15 A. [12:51:41] Yes.

16 Q. [12:51:47] And then you relied on this spreadsheet, am I correct, to write your
17 20 June 2003 report, what has been called the first report that was attached to the code
18 cable, as well as the second report, which was the special report from 2004?

19 A. [12:52:18] The Ituri special report, yes, I used this, but I also used the database.

20 Q. [12:52:26] And the information from this spreadsheet was never uploaded
21 onto the database, was it?

22 A. [12:52:37] No.

23 Q. [12:52:39] And this spreadsheet, unlike the database, contains no place for any
24 of the interviewers to note credibility, level of credibility, level of reliability? No
25 place for that; am I correct?

1 A. [12:53:00] No.

2 Q. [12:53:05] Did the investigators retain all of the notes that they took during
3 interviews with sources or witnesses?

4 A. [12:53:22] The notes that -- for themselves, the first initial notes, is that what
5 you're referring to?

6 Q. [12:53:31] Whatever notes were being kept contemporaneously with the
7 interviews themselves.

8 A. [12:53:42] Well, they were given questionnaires, incident reports and they
9 completed the questionnaires and then we collected all of those.

10 Q. [12:53:59] Let me take you, please, directly to your statement from 2013, tab 12,
11 DRC-OTP-2059-0287, please. And if we could turn please to page 0292, paragraph
12 32. Here's what you're recorded as having said, Ms Bakar:

13 "For the investigations into incidents in Kobu, Bambu and Lipri, we used the Excel
14 spreadsheets only. We destroyed all of the paper copies once the information had
15 been entered into the Excel spreadsheet or database."

16 Is that correct information what's recorded there in your statement?

17 A. [12:55:32] You asked me did we take notes, and I replied, as I did in my
18 statement, that we used questionnaire. You didn't ask me whether we kept the
19 questionnaires or not. We used the questionnaires and we used them for the
20 spreadsheet and thereafter we destroyed them, but we used these questionnaires.

21 Q. [12:56:05] When were these questionnaires -- well, first of all let me ask, before
22 I ask you what was destroyed, can I ask you when was it destroyed? And you say,
23 in French you used the expression, and I quote, "par la suite."

24 A. [12:56:23] Well, once we were in Kinshasa, that's when they were destroyed.

25 Q. [12:56:33] And what was destroyed in Kinshasa, just the questionnaires? Do I

1 understand that correctly?

2 A. [12:56:42] Simply the questionnaires.

3 Q. [12:56:46] And the contemporaneous notes that were kept by Ms Peduto or the
4 other investigators or you -- well, you've answered in respect of you, but let me just
5 ask in respect of Ms Peduto and the other investigators, what happened to their notes,
6 if you know?

7 A. [12:57:13] I don't know. I decided to destroy the questionnaires for security
8 reasons because we tried to put into Excel the most important information, but
9 personal notes, well, I don't know. Normally, the people who helped us would have
10 put everything on the questionnaire, so I don't think there would have been any other
11 notes. I took notes in my notebooks, that's certain.

12 Q. [12:57:50] Just to understand this factually in terms of what happened, do I
13 understand your answer to mean that you were not collecting the notes that were
14 being taken by persons other than yourself in the context of the SIT missions?

15 A. [12:58:09] No, because the people who came with us, their role was either to
16 translate or to fill in the questionnaire to have primarily the list of witnesses and
17 victims, so they were not there for the report. But we had civil police with us who
18 was there to carry out interviews like us and he -- they carried out a report which
19 came to the Court and I wasn't even actually aware of this report.

20 Q. [12:58:48] You say that you decided to destroy the questionnaires for security
21 reasons. Now, the Excel spreadsheet of course itself contains, according to you, in
22 the format that you had it, all of the names of all of the witnesses to whom you spoke.
23 Can you explain why it would enhance security to destroy all of the questionnaires?

24 A. [12:59:23] Because when it's on paper it's much less secure than when it's an
25 electronic document, which would have a password and so on.

1 MR GOSNELL: [12:59:41] Mr President, I see it's 1 o'clock.

2 PRESIDING JUDGE FREMR: [12:59:44] All right. So we will take our regular
3 break for 90 minutes and we will reconvene half past two.

4 THE COURT USHER: [12:59:59] All rise.

5 (Recess taken at 12.59 p.m.)

6 (Upon resuming in open session at 2.32 p.m.)

7 THE COURT USHER: [14:32:01] All rise.

8 Please be seated.

9 PRESIDING JUDGE FREMR: [14:32:29] Good afternoon, everyone.

10 Before we continue with cross-examination of our witness, I will have to deliver an
11 oral ruling since it's urgent on in-court protective measures for Witness P-857 who is
12 going to testify tomorrow.

13 The Chamber now delivers its oral ruling with respect to one of the three witnesses
14 for whom the Prosecution requested protective measures in filing number 1686, and I
15 will refer to this as "the request."

16 The present decision concerns Witness P-857. For this witness, the Prosecution
17 requests in-court protective measures pursuant to Rule 87 of the Rules in the form of
18 face and voice distortion during testimony and the use of a pseudonym.

19 The Legal Representative of the Victims of the attacks supports the request in filing
20 number 1697.

21 The Defence opposes the request in filing number 1703 for the following reasons:

22 First, that the Prosecution fails to demonstrate any objectively justifiable risk of
23 post-testimonial retaliation; second, that in his victims application form the witness
24 did not express any security concerns and only requested protective measures after
25 having been informed of this possibility by the Prosecution; third, the Prosecution's

1 failure to provide a signed statement from the witness substantiating his alleged
2 concerns; and the fourth, the Prosecution alleged late disclosure of investigation notes
3 referring to confidential security related information of the witness.

4 On 2 February 2017, the Chamber received the VWU's in-court protective measures
5 assessment for P-857 in which it was recommended that the same protective measures
6 sought by the Prosecution be granted.

7 No special measures were recommended in the VWU's vulnerability assessment,
8 which was received by the Chamber on the same day.

9 As a preliminary matter, the Chamber notes that out of the four documents referred
10 to by the Defence as having been disclosed late, only one document relates to P-857
11 and it does not include any direct reference to Mr Ntaganda.

12 Noting its limited scope and content, the Chamber does not, therefore, consider that
13 any prejudice arises to the accused, despite the timing of its disclosure.

14 Turning to the protective measures requested for P-857. The Chamber recalls that in
15 assessing whether there exists an objectively justifiable risk, it has previously held
16 that the general security situation in the region may be a relevant consideration in
17 respect of specific witnesses. In this instance, it's noted that the witness currently
18 resides in an area where former UPC/FPLC militia members and supporters of the
19 accused are stated to be present or continue to have influence.

20 The Chamber also notes the Defence argument that the witness' wish to be granted
21 protective measures is not based on any threats received by the witness or any
22 objective foundation for his fears. In this regard, the Chamber observes that the only
23 documentation provided by the Prosecution in support of the requested measures for
24 this witness contained at Annex E to the request appears to be based solely on the
25 witness' own assessment and opinion, and therefore finds, as it did already several

1 times before, that the request was purely substantiated by the Prosecution.

2 Notwithstanding, the Chamber recalls that threats to a witness or his or her family are
3 not a prerequisite to determining whether a witness faces an objectively justifiable
4 risk and that there are reported instances where other witnesses were allegedly
5 threatened as a result of their involvement with the Court.

6 In this regard, the Chamber has given particular consideration to the protective
7 measures assessment of the VWU in relation to the witness. While the VWU
8 assessment also appears to be primarily based on the witness' own assessment of his
9 security situation, the Chamber took note of the fact that the witness expressed fears
10 of retaliation from supporters of the accused, specifically on the basis of his particular
11 current location of residence. Moreover, the Chamber notes the VWU's conclusion in
12 relation to the witness location, including that there are realistic concerns that if the
13 witness' identity became known through public testimony, it would present a realistic
14 risk to him based on his location and then protective measures would reduce such
15 risk.

16 In this connection, the Chamber notes that Annex E to the request indicates that the
17 witness lives in a community in which he is well-known, which the Chamber
18 considers may heighten the risk to him should he testify without protective measures.
19 Finally, the Chamber notes that Witness P-857 is not currently in the ICC Protection
20 Programme.

21 In light of the foregoing, the Chamber is satisfied that there exists an objectively
22 justifiable risk with respect to the security and well-being of Witness P-857
23 warranting the protection of his identity from the public.

24 The Chamber further finds that the in-court protective measures sought do not
25 unduly infringe upon the rights of the accused given that the Defence will be able to

1 see the witness give evidence at trial and hear his voice without distortion.
2 Accordingly, and pursuant to Rule 87 of the Rules, the Chamber grants the measures
3 of use of a pseudonym for the purposes of the trial and voice and face distortion
4 during testimony for Witness P-857.
5 This concludes the Chamber's ruling.
6 And now we can turn to cross-examination of our witness conducted by Defence.
7 Mr Gosnell, do you want to proceed in open or in private session?
8 MR GOSNELL: [14:41:12] We can proceed in public session, Mr President.
9 PRESIDING JUDGE FREMR: [14:41:14] All right then.
10 MR GOSNELL: [14:41:17] And may I note for the record the absence of Maître
11 Bourgon.
12 PRESIDING JUDGE FREMR: [14:41:22] Thank you very much for this clarification.
13 MR GOSNELL: [14:41:26]
14 Q. [14:41:26] Good afternoon again, Madam Witness.
15 I'd like to pick up on something that you mentioned just before we broke before
16 lunch. And you said at today's transcript, page 77, that, quote:
17 "Normally, the people who helped us would have put everything on the
18 questionnaire, so I don't think there would have been any other notes."
19 May I ask that a video be played, it's tab 25, and this is DRC-OTP-1033-0221, this is
20 not for display, not for public display. And with any luck, the --
21 PRESIDING JUDGE FREMR: [14:42:26] I was instructed that there is a need in
22 such a case to go into private session.
23 MR GOSNELL: [14:42:31] Then by all means, Mr President.
24 PRESIDING JUDGE FREMR: [14:42:33] So court officer, please.
25 (Private session at 2.42 p.m.)

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Trial Hearing
WITNESS: DRC-OTP-P-0317

(Open Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0317

(Open Session)

ICC-01/04-02/06

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6 (Open session at 4.34 p.m.)

7 THE COURT OFFICER: [16:34:20] We're in open session, Mr President.

8 PRESIDING JUDGE FREMR: [16:34:22] And last thing is to make some update on
9 timing for the sake of planning the next witness. So, so far, Mr Gosnell, you have
10 used two hours 42 minutes, which means that you still have two hours 18 minutes
11 from the time allotted to you. How do you envisage your morning examination
12 from the perspective of time?

13 MR GOSNELL: [16:34:52] If we are lucky I may be able to finish in the first session,
14 but only if we are lucky.

15 PRESIDING JUDGE FREMR: [16:34:59] So we will hope that we will be lucky.
16 So otherwise thank you very much. Sorry to -- I'm sorry for interpreters and typists
17 because they have to stay even more than two hours, it was really extraordinary. I
18 believe that we will not repeat that.

19 Thank you, and we reconvene tomorrow 9.30.

20 THE COURT OFFICER: [16:35:28] All rise.

21 (The hearing ends in open session at 4.35 p.m.)