

1 International Criminal Court
2 Trial Chamber VI - Courtroom 2
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and
6 Judge Chang-ho Chung
7 Trial Hearing
8 Monday, 11 April 2016
9 (The hearing starts in open session at 9.33 a.m.)
10 THE COURT USHER: All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: Good morning, everybody.
14 Court officer, please call the case.
15 THE COURT OFFICER: Thank you, Mr President.
16 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
17 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
18 For the record, we are in open session.
19 PRESIDING JUDGE FREMR: Thank you.
20 Now appearances in usual order, starting with Prosecution, please.
21 MS SOLANO: Good morning, your Honour. For the Prosecution this morning, behind
22 me is Ms Nicole Samson, senior trial lawyer; on my left, Ms Marion Rabanit, trial
23 lawyer -- assistant trial lawyer; behind her, Kristy Sim, assistant trial lawyer; on the back
24 row, Ms Dianne Luping, trial lawyer; Ms Selam Yirgou; and I am Julieta Solano, trial
25 lawyer.

1 PRESIDING JUDGE FREMR: Thank you, Ms Solano.

2 Now Defence, please.

3 MR BOURGON: (Interpretation) Good morning, your Honours. Good morning to
4 everyone here in the courtroom. Today representing Mr Ntaganda, present in the
5 courtroom with us, Sandrine De Sena, Dignité Bwiza, Isabelle Martineau and myself,
6 Stéphane Bourgon. Thank you very much, your Honour.

7 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

8 Before giving the floor to the Legal Representatives of Victims, the Chamber notes that the
9 Chamber granted a request by email from Mr Suprun to be excused from attending the
10 hearings of 11 and 12 April.

11 Legal Representatives of Victims, will you now please introduce yourself for the record.

12 MS PELLET: (Interpretation) Thank you, your Honour. Former child soldiers are
13 represented by myself, Sarah Pellet, counsel Office of Public Counsel for Victims. Thank
14 you.

15 MS GRABOWSKI: Good morning, Mr President, your Honours. The victims of the
16 attacks are today represented by myself, Ms Anne Grabowski, from the Office of Public
17 Counsel for Victims. Thank you.

18 PRESIDING JUDGE FREMR: Thank you very much, Ms Pellet. Thank you,
19 Ms Grabowski.

20 I also further note the presence of Ms Clément, the legal adviser appointed pursuant to
21 Rule 74 to assist the witness.

22 Ms Clément, please, could you state your name for the record.

23 MS CLÉMENT: (Interpretation) Yes, your Honours. Hélène Clément, legal adviser
24 assisting the witness.

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

1 Before the witness can be called, I will be addressing a few procedural matters.

2 First, in terms of scheduling, we will commence with the testimony of Witness P-963

3 today and, as indicated last week, we will sit for five hours. This first session will last

4 until 11, then we will sit from 11.30 to 1 p.m., and reconvene after lunch from 2.30 to

5 4.30 p.m.

6 This should enable us to finish the testimony of this witness by the end of the week.

7 Second, the Chamber recalls that Witness P-963 has been granted in-court protective

8 measures in the form of image and voice distortion and the use of a pseudonym during

9 testimony.

10 In order to protect the identity of the witness from being disclosed to the public, the

11 Chamber will determine on case-by-case basis at the relevant time whether private or

12 closed sessions or redactions to public records are necessary.

13 Consistent with the recommendation from the VWU, the Chamber instructs the parties to

14 adopt a cautious approach with regard to what might be identifying.

15 On 6 April 2016, the VWU provided the vulnerability assessment in which it does not

16 recommend any special measures according to Rule 88 of the Rules.

17 The Chamber has also taken note of the objections to use or admission of certain

18 documents as raised by the Defence by way of email at 6 p.m. on Friday, and will rule on

19 them as necessary during the course of the testimony.

20 Next, as I mentioned, Ms Clément is present to assist the witness in respect of any

21 self-incrimination issues which may arise. We understand that Ms Clément has met with

22 the witness and explained Rule 74 to him.

23 Am I right, Ms Clément, on this point?

24 MS CLÉMENT: (Interpretation) Indeed, your Honour.

25 PRESIDING JUDGE FREMR: Ms Clément, the Chamber has not been seized of any

1 specific request for assurances pursuant to Rule 74 at this stage; however, we understand
2 that you would like to wish to address the Court now. Is it the case?

3 MS CLÉMENT: (Interpretation) Not particularly, your Honour. I believe that we will,
4 judging from what I've understood --

5 PRESIDING JUDGE FREMR: Sorry to interrupt you. Anyway, we have to move into
6 private session dealing with this matter, so please, first, move into private session.

7 (Private session at 9.40 a.m.)

8 THE COURT OFFICER: We're in private session, Mr President.

9 (Redacted)

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Trial Hearing

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Trial Hearing

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16 (Open session at 9.50 a.m.)

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

18 PRESIDING JUDGE FREMR: Thank you, court officer.

19 Mr Bourgon, you have the floor.

20 MR BOURGON: Thank you, Mr President. At this point in time, Mr President, the

21 Defence deems necessary to address the witness preparation session log and disclosure

22 note which we have received for the next witness, P-0963.

23 Mr President, this session log and disclosure note was received on Saturday morning

24 around 9 a.m. and it is a 15-page document, which is quite detailed. I must, first of all, of

25 course, express my appreciation to the Prosecution for making a detailed document.

1 However, and leaving aside the timing at which we received the preparation note and
2 leaving aside also the fact that it lasted 11 days, the manner in which the session was
3 conducted is an issue of concern for the Defence and it is our respectful submission this
4 morning that the way it was conducted goes beyond the objectives set out in the witness
5 preparation protocol.

6 First, Mr President, when the session was conducted, the witness was shown material
7 related to his previous dealings with the Prosecution and investigators. As mentioned in
8 our submission, that is submission 1217 of 17 March, we agree that this can be helpful,
9 that a witness can be shown his material, especially if it goes back in time, in order to
10 refresh his memory and focus his testimony. So that's not a problem.

11 Second, the witness was provided with an opportunity to bring corrections and
12 clarifications to this material. So having read the material, the witness is asked: Do you
13 wish to make any clarifications or corrections? And the witness did. Again, as
14 mentioned in our submissions, we believe that this is appropriate and that it can be useful
15 to prepare for the testimony and in order to make the testimony of the witness shorter and
16 more focused.

17 Third, and here we come to the first problem, the witness was asked the following
18 question on no less than 34 occasions. Now, that is after having been given the
19 opportunity to clarify and after making such clarifications. The question was to read
20 selected portions of his material, either paragraph by paragraph or a certain number of
21 lines or a certain number of pages, and then the exact question was to read and then to
22 confirm the accuracy of what the witness had read. This was done on at least 34
23 occasions, based on the proofing note that we have received.

24 Mr President, the idea is the witness read his material, made the corrections and the
25 clarifications that he thought was necessary, and then we ask him again section by section:

1 Do you confirm the accuracy of this and this part?

2 More importantly is, of course, the information we are provided in this regard. We are
3 provided with the information in the proofing note that says "witness confirms, witness
4 confirms," and here and there we have a few comments which were added by the witness.
5 It must be recalled, Mr President, that this is a Rule 55(2) witness and who was signed not
6 one but three agreements for the limited use of his statement in which he undertakes to
7 tell the truth at all times. So why do we need in a session such as a preparation session to
8 go back to 34 different portions of his material and ask him to confirm whether this is
9 accurate?

10 This is an indirect way to, again, continue the investigations of the Prosecution. And, of
11 course, because of the matter, the way proofing sessions are organised and based on the
12 protocol, we've addressed this, I'm not going to say more, but we are not in a position
13 where we have the possibility to address any issue with this witness, with any witness, in
14 a confidential manner because either there will be somebody from the Prosecution present
15 or there will be the need to provide the Prosecution with a recording of that session as a
16 must.

17 So that's an issue that we wish to bring to the attention of the Chamber and we feel that
18 this is inappropriate and that we are actually in all of these days, we are basically making
19 sure what the witness will say.

20 Fourthly, Mr President, is the second problem, and it has to do with some material that
21 was shown to the witness. Now, before any questions were put to him and before he was
22 given an opportunity to make any corrections or clarifications to his material, he was
23 provided with an opportunity to, for the first time, to watch an audio-video without
24 sound, I add, and he was allowed to look and listen to audio material, audio material
25 which of course were not mentioned in his previous dealings with the Prosecution, at least

1 to the best of our understanding, and we spent quite a bit of time to look at whether this
2 material had ever been shown or been provided to the witness.

3 I'm referring here, Mr President, to the following items: First one is DRC-OTP-0082-0016.

4 This is a video which was filmed in a location called Mandro, and it is a location which
5 based on the material provided by the witness, the events pictured on that video are not
6 part of his -- of the information he provided to the Prosecution, and yet we show him
7 these pictures and then we ask questions on this material to see if he does recognize one
8 or try to make a link between this and the information he provided.

9 Again, we say, Mr President, that this is going beyond preparing a witness for his
10 testimony within the spirit and the letter of the preparation protocol.

11 The second issue is more important, it has to do with the audio. The Chamber is very
12 familiar with this audio. It is the audio of an intercepted audio which was amongst
13 members or allegedly amongst members of the FPLC during the operations which took
14 place in the Kobu area. To the best of our knowledge this material was never shown to
15 the witness before, he never mentioned that he was privy either to the intercepts or to
16 specific conversations between, on the radio, between members of the FPLC.

17 He did say at one point that he was privy to conversations on the radio between a man
18 called Kitembo and a man called Salumu, but that is not part of this audio material.

19 The evidence you are about to hear, Mr President, of course, deal with what happened in
20 the Kobu area, so he did provide evidence. And now before he answers any question, we
21 allow him to listen to an audio, an intercept, which of course the Prosecution's position is
22 what was happening at the time at the place before any questions are put to him.

23 We feel, Mr President, that this is inappropriate because he never -- he was not aware of
24 these intercepts and he did not say that he did listen to these intercepts. Yet the
25 information provided therein can easily influence the witness in terms of what he will

1 testify about because he has already provided information in his statements about the
2 events of Kobu, but without any reference to this, to these conversations.

3 Mr President, to conclude, we believe that there is a need for the Chamber to address the
4 issue of the proofing sessions, which are getting -- going beyond the preparation protocol,
5 beyond what we, everybody here agreed to do by -- when we agreed to these preparation
6 sessions, which is to make the witness testimony easier and more focused. We are going
7 way beyond that. And we need -- we respectfully submit that the Chamber should take a
8 position on this issue. We made some recommendations and suggestions in our
9 submission 1217 of 17 March that the witness preparation should be limited to showing
10 the material, asking for clarification and stopping there. This would be much easier,
11 there would be no questions and it would be much easier for both parties.

12 If there are going to be questions, then both parties should be there so we hear what he
13 will respond to these questions and the focusing of the testimony also benefits the Defence
14 or the party not calling the witness. This would be much better.

15 In these circumstances, Mr President, we ask that the audio video of the last portion of the
16 session which I believe, based on what we have, is day 11, that day 11 be disclosed to us
17 so that when we know that when he was asked that specific question confirmed the
18 accuracy of a certain number of lines or a certain number of pages, that what he did
19 answer then is provided to the Defence so we have the same benefit as they had and we
20 are on an equal footing to address the testimony of this witness. Thank you,
21 Mr President.

22 That being said, we think we can proceed with the testimony, but we would like to have
23 this day 11 of the audiovisual recording of that day. Thank you, Mr President.

24 PRESIDING JUDGE FREMR: Thank you.

25 Ms Solano, please.

1 MS SOLANO: Thank you, your Honour. I will first submit that in the Prosecution's
2 submissions there was no impropriety whatsoever in the conduct of this witness
3 preparation session and that there is no basis for disclosure of the tape of the 11th to the
4 Defence.
5 I should start, your Honour, by pointing out that this witness, the materials that the
6 witness had to read for his preparation session was -- were about 1200 pages, a good
7 proportion of which dated from his first interview with -- first interview with the
8 Prosecution in (Redacted) and that's just to put into context as to why the witness
9 preparation session lasted so long.
10 Mr Bourgon knows through the witness preparation note that the days during which the
11 witness provided corrections or clarifications or answered questions from the Prosecution
12 were two, Thursday and Friday of last week.
13 Your Honour, as to the reasons why the Prosecution asked the witness to confirm portions
14 of his -- of his evidence, I refer to paragraph 19 of the witness preparation protocol which
15 says that during preparation sessions the questioning lawyer must provide the witness
16 with an opportunity to confirm whether his or her prior statements are accurate and to
17 explain any changes as necessary.
18 Given that this witness provided -- has provided -- has been interviewed by the
19 Prosecution (Redacted) , your Honour, (Redacted)
20 (Redacted) and the areas of the evidence that he -- that he is intending to testify on are so
21 wide-ranging the Prosecution thought it not only appropriate but also fair to the witness
22 to ensure that he had read particular portions of his evidence and all we did was ask him
23 to read them in our presence and confirm their accuracy. Here and there, the exercise
24 showed to have been worthwhile because the witness did make additional corrections and
25 clarifications.

1 And, your Honour, we did -- if Mr Bourgon wants to point to any areas of the witness
2 preparation note that indicate that the Prosecution used the witness preparation session to
3 continue its investigations, I invite him to do so, but I -- I don't believe that that was the
4 case.

5 As for the material that my friend submits has been shown to the witness for the first time
6 during the witness preparation session, I'll address first the radio intercept, your Honour,
7 and this intercept was in fact played to the witness during one of his interviews with the
8 Prosecution and he provided lengthy comments on it, these comments are contained in
9 items 18 to 24 of the Prosecution's list of documents for use with the witness which are
10 transcripts from his (Redacted) interview. So from the very first interview with the
11 witness, the Prosecution played this radio intercept to the witness.

12 I believe that there might be some -- it might be that it's not at first glance evidence that
13 this audio recording was played to the witness because in the witness's materials it is
14 referred to by an ERN which is not the same ERN with which the document is listed on
15 the witness preparation note or on the Prosecution -- the documents the Prosecution
16 intends to use with the witness and that is because in between (Redacted) when the recording
17 was first played to the witness and now the Prosecution enhanced the audio recording.

18 The Defence is I believe in possession of both, the one that was the originally played to the
19 witness as well as the enhanced version. And I believe, your Honour, that the Defence
20 had the means to establish the link between the original ERN and the enhanced version,
21 but if that's not the case, of course I stand to be corrected.

22 In relation to the video filmed at Mandro which Mr Bourgon rightly says was shown to
23 this witness for the first time, and that is the video identified with ERN
24 DRC-OTP-0082-0016, your Honours are aware of the Prosecution's position on this issue.
25 It is not inappropriate and it's not inconsistent with the witness preparation protocol to

1 show potential exhibits to the -- to a witness for the first time during his preparation
2 session. Indeed, paragraph 24 of the witness preparation protocol says that during the
3 witness preparation session the questioning lawyer must show the witness potential
4 exhibits and ask him or her to comment on them for the purpose of determining the utility
5 of using the exhibits in court. And that is precisely what we did. We asked the witness
6 very limited questions. We asked him two questions: First whether he recognized the
7 people and place, and he said he did not; and second whether he recognized some
8 weapons that are visible towards the end of the excerpts of the video that were played to
9 him, and he confirmed that he did recognize them. And on that basis the Prosecution has
10 made a decision to show this video to the witness during his testimony.

11 Your Honours, and I will return to the point I mentioned when I first began, which is that
12 the Defence should not get access to the video recording of the 11th day of Witness 963's
13 witness preparation session. We believe that this request is not supported by the
14 decisions that your Honours have made in similar cases to date. The Defence has not
15 raised any argument that the witness preparation note does not reflect accurately what
16 transpired during the session and the rules of the game are not, your Honour, as the
17 Defence would wish, that the Defence gets exactly the same access to what the witness
18 says during a witness preparation session. The Defence gets access to the witness
19 preparation note which should be accurate and we submit is accurate and there is
20 absolutely no reason raised by Mr Bourgon or otherwise to doubt its accuracy.

21 Those are my submissions, your Honour.

22 PRESIDING JUDGE FREMR: Thank you.

23 Mr Bourgon, do you want to react?

24 MR BOURGON: Very briefly, Mr President. Regarding the audio material, we will
25 verify. We did check all the material and we had not seen these paragraphs and we will

1 verify and get back to the Chamber.

2 With respect to the video exhibit, of course as the Chamber is well aware in our respective
3 submissions of March 2016, there is a disagreement on the interpretation to be given to
4 paragraph 24 of the witness preparation protocol. Prosecution believes that they can
5 show an exhibit for the first time. We say that, no, it only applies to -- it only applies to
6 exhibits that were already shown to him or that were used during his investigation or
7 meeting with Prosecution investigation. And we explain why, because this has to do
8 with preparation in terms of refreshing memory and not to get further information.

9 More importantly, the issue of the questioning to the witness. Of course we are well
10 aware of paragraph 19 of the witness preparation protocol which reads as follows:

11 "Provide the witness with an opportunity to confirm whether his or her prior statements
12 are accurate and to explain any changes as necessary."

13 As mentioned, this was done and the witness did provide those changes as necessary, and
14 he was given that opportunity. So we say read all our material, then we give him the
15 opportunity and he does so.

16 Now, once that is done that's where we move into uncharted territory, that's where we
17 move in areas where both parties should be present or this should not take place at all
18 because we are obtaining further information.

19 There is a difference with the Prosecution asking the following question, I'll provide just
20 one example to the Chamber and I will use the example -- for example, on page 11, where
21 it says, this has to do with one interview, the interview that they are dealing with at that
22 particular time, is a (Redacted) interview and the number is DRC-OTP-016-2535. And then
23 the witness is asked, it says, at 2552, that is the page number, from lines 561 to 574, the
24 witness is asked to read this portion of his evidence, so we draw his attention specifically
25 to a section and to indicate whether it is accurate. Now, this is done after that first part

1 of the witness proofing session which -- which then was explained.

2 And then of course we have the answer, the witness confirms it is correct.

3 Of course we -- when the witness says it's correct, did he add anything, or was any

4 information given that the Prosecution believes is, as they say, not exactly the same, but

5 that's the rules of the game? That's where we get in -- fair play should see that if we are

6 present during this questioning, there would be no problem and we would not waste this

7 time in Court, or we just forget this part of the proofing session and we move on with the

8 testimony of the witness who has been given an opportunity to check his material.

9 Again, there's a difference where the Prosecution at other places, then they say, for

10 example, same statement, it says at 2558, that's the page number, line 775 to 779, the

11 witness is asked to clarify where là, the word "là" as L-A, in quote unquote, is when the

12 witness said (Redacted) That's a clarification. And even

13 though we don't agree with that, that, at a limit, that could be entertained. But then we

14 go on again and we say -- we ask to read this portion and indicate whether it is accurate.

15 If it wasn't accurate, the witness would not be with the Prosecution. The question in

16 itself begs the issue that they are trying to either bring the witness's attention to a specific

17 part of his testimony, or that they are trying to get more information or simply to know

18 what the witness reaction will be to a specific question that will be asked of him. That's

19 where, in our respectful opinion, we -- we go beyond the witness -- the spirit and letter of

20 the protocol.

21 And some of these questions were asked about material to which he had already brought

22 corrections. So we finish the issue of the clarification and corrections, then we go back

23 and we say, well, is this really accurate? And we don't have the answer. That's the

24 biggest issue, Mr President. Thank you. I'll stop here.

25 PRESIDING JUDGE FREMR: Thank you.

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1 Ms Solano, any further reaction?

2 MS SOLANO: No, your Honour. Just to point out, as I said before, that the witness did
3 have 1200 pages of materials to read and the Prosecution does not see any impropriety or
4 deviation from the protocol.

5 PRESIDING JUDGE FREMR: Thank you.

6 So I think I can at this moment conclude that we will thoroughly consider both Defence
7 request and response given by Prosecution. We will probably divide issues that I guess
8 can wait because we are anyway intending to make or to present our position on
9 submissions that we asked from parties on issues concerning conduct of proceedings. I
10 meant submission made by Defence on 16 March, if I'm not wrong, and corresponding
11 submission made by Prosecution, and issues that probably requires some more immediate
12 reaction; for example, like a request for disclosure of audio video of day 11. So those
13 urgent issues we will decide on in due course.

14 Now we can continue with testimony, so please bring witness into the courtroom.

15 Just for the record, we will still -- we are still remaining in open session because witness
16 even if protected is coming below the public gallery so it can't be visible to the public.

17 (The witness enters the courtroom)

18 PRESIDING JUDGE FREMR: Good morning, Mr Witness. Can you hear me?

19 WITNESS: DRC-OTP-P-0963

20 (The witness speaks French)

21 THE WITNESS: (Interpretation) Yes.

22 PRESIDING JUDGE FREMR: Very well. Mr Witness, you are going to testify before the
23 International Criminal Court, so on behalf of this Chamber I would like to welcome you to
24 the courtroom.

25 THE WITNESS: (Interpretation) Thank you.

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1 PRESIDING JUDGE FREMR: This Chamber has been established to try the case of the
2 Prosecutor against Mr Bosco Ntaganda, and you are called to testify to assist us in our
3 search for the truth. You will be asked questions posed by the Judges and lawyers in the
4 courtroom, and in this connection I would like to guide you.
5 Please, Mr Witness, listen carefully to those questions. It is very important that you make
6 sure that you understand the question before you answer it. If you do not understand,
7 feel free to ask for the question to be repeated or rephrased.
8 We want you to tell the truth and tell us only what you really saw or heard or sensed
9 yourself. If you didn't see or hear it yourself, but you found out some other way, then
10 you should explain how. You may be asked about events that happened many years
11 ago, so it is natural that you may not remember all details. It doesn't matter, please
12 testify just on that which you remember. Don't guess, don't make things up. There is
13 nothing wrong in saying, "I don't know" or "I don't remember." Do you understand all
14 this, Mr Witness?

15 THE WITNESS: (Interpretation) Yes.

16 PRESIDING JUDGE FREMR: Very good.

17 Mr Witness, let me now explain to you how the protective measures work that the
18 Chamber has put in place for your testimony. As you see, you are sitting in a place
19 where the public here in this building cannot see you. In addition, face distortion is
20 applied, which means that your face is blurred on the camera images and the public
21 cannot see your face during the testimony. We also decided to order voice distortion,
22 which means that the public will not be able to identify you by your voice as it has been
23 disguised. And we ordered the use of pseudonym. This means that we will all refer to
24 you only as "Mr Witness" to make sure that the public does not know your name.
25 When you answer questions that will not give away who you are, we will do so in open

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1 session, which means that the public can hear what is being said in the courtroom.

2 When you are asked to describe anything that relates specifically to you, we will do this in
3 a private session. For example, at the very start when a few general questions about you
4 as a person will be asked or when you are asked to mention facts that might reveal your
5 identity, where you live or your profession, then there is no broadcast and no one outside
6 the courtroom can hear your answer.

7 Please do not refer to these details later on during your testimony whenever we are in
8 open session. If ever anything gets said during open session which should have been
9 said in private session, we will do our best to protect this information.

10 Your testimony will be broadcast on a delay and we can remove any such remarks from
11 the broadcast which will be heard by the public and from the public transcript of the
12 proceedings.

13 The Chamber recognizes that your security and well-being is important during the course
14 of this trial. If at any point you feel that you would like a brief break from giving your
15 testimony or you feel unwell, do not hesitate to let us know by raising your hand. Do
16 you understand, Mr Witness?

17 THE WITNESS: (Interpretation) Yes.

18 PRESIDING JUDGE FREMR: Mr Witness, you have been assigned, it is also an
19 important point, you have been assigned a lawyer to provide you with legal advice about
20 possible self-incrimination. Ms Clément, who is present here in the courtroom, has
21 requested that you be given certain assurances by the Chamber. The Chamber will
22 decide on that request this morning, and until it has been decided, the lawyers will not be
23 permitted to ask you any questions that relate to self-incriminating information. Do you
24 understand?

25 THE WITNESS: (Interpretation) Yes.

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1 PRESIDING JUDGE FREMR: Now we have to move to solemn undertaking. You will
2 find a piece of paper in front of you with the solemn undertaking. Yes, that is that.
3 Please now make your solemn undertaking to tell the truth by reading out the declaration
4 on the piece of paper you have in your hands.

5 THE WITNESS: (Interpretation) I solemnly undertake to speak the truth, the whole
6 truth and nothing but the truth.

7 PRESIDING JUDGE FREMR: Thank you very much, Mr Witness. So it means you are
8 now under oath. You will have already been informed by representatives of the Victims
9 and Witnesses Unit and afterwards by representatives of the Prosecution about the
10 importance of speaking the truth. You need to be aware that it is an offence within the
11 jurisdiction of this Court to give false testimony. Do you understand that?

12 THE WITNESS: (Interpretation) Yes.

13 PRESIDING JUDGE FREMR: Good.

14 Now a few practical matters you should have in mind when giving your testimony.
15 Everything we say here in the courtroom is written down and what you say is interpreted
16 for us into English. It is, therefore, important for you to speak clearly and to speak at a
17 slow pace, approximately like me now. We want to make sure that your words can be
18 well understood by the interpreters and then by the rest of us. Please speak into the
19 microphone and only start speaking when the persons asking you the question has
20 finished.

21 To allow for the interpretation everyone here has to wait a few seconds before starting to
22 speak. So I recommend to you when the lawyer has asked his or her question, please
23 count in your head to three and only then give your answer.

24 If you have any questions yourself, raise your hand so we know that you wish to say
25 something, we will then give you the opportunity to speak. Have you understood all

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1 that, Mr Witness?

2 THE WITNESS: (Interpretation) Yes.

3 PRESIDING JUDGE FREMR: Very well. So thank you. And now we can start with
4 your testimony.

5 Ms Solano, you have the floor.

6 MS SOLANO: Thank you, your Honour. May we go into private session, please.

7 PRESIDING JUDGE FREMR: For sure.

8 Court officer, let's move into private session now.

9 (Private session at 10.26 a.m.) *(Reclassified partially in public)

10 THE COURT OFFICER: We are in private session, Mr President.

11 PRESIDING JUDGE FREMR: Thank you, court officer.

12 Ms Solano, you may proceed.

13 MS SOLANO: Thank you, your Honour.

14 QUESTIONED BY MS SOLANO:

15 Q. Good morning, sir. Can you hear me well?

16 A. Yes.

17 Q. We have met before, but I'll repeat for the record my name is Julieta Solano and I
18 will ask you questions on behalf of the Prosecution.

19 Please state your name.

20 A. (Redacted)

21 Q. (Redacted)

22 A. (Redacted)

23 Q. (Redacted)

24 A. (Redacted)

25 Q. (Redacted)

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- 1 Q. (Redacted)
- 2 A. (Redacted)
- 3 Q. (Redacted)
- 4 (Redacted)
- 5 A. (Redacted)
- 6 Q. What does UPC stand for?
- 7 A. The Union of Congolese Patriots.
- 8 Q. And what was the UPC, sir?
- 9 A. I haven't understood your question.
- 10 Q. What kind of a group was the UPC? What did the UPC do?
- 11 A. It was a political/military movement. *Its armed branch was called FPLC.
- 12 Q. Did this armed branch have a name?
- 13 A. I said UPC had a military branch and that was the FPLC.
- 14 Q. You say it was a military movement. Was the UPC involved in fighting?
- 15 A. Yes.
- 16 Q. Who was the UPC fighting?
- 17 A. Well, there were several fronts. The first front was the Lendu group.
- 18 PRESIDING JUDGE FREMR: Mr Bourgon.
- 19 Please hold on, Mr Witness.
- 20 MR BOURGON: Thank you, Mr President. I have the English transcript, I'm not sure
- 21 about the French, but what I heard is that he said -- the witness said FPLC was a
- 22 political/military movement and that the armed part of that movement was FPLC. The
- 23 question was then put to him that whether UPC was involved in fighting and of course
- 24 the question should be FPLC. He said clearly that the military branch was FPLC and not
- 25 UPC. Thank you, Mr President.

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1 PRESIDING JUDGE FREMR: Ms Solano.

2 MS SOLANO: I can rephrase the question --

3 PRESIDING JUDGE FREMR: Please.

4 MS SOLANO: -- rephrase the question, your Honour.

5 Q. Sir, was it -- was the -- who was the FPLC fighting?

6 A. The FPLC was fighting the Lendu, first of all, and then they were fighting the APC
7 army, who were fighting us.

8 THE INTERPRETER: Inaudible.

9 MS SOLANO:

10 Q. Sir, the transcript didn't catch the last word you said. You said that the FPLC was
11 fighting the Lendu, first of all, and then they were fighting the APC army which was
12 fighting from the Commandment front." Did you say anything after that word?

13 A. The Komanda, Komanda front. Komanda, it is a village on the road between Bunia
14 and Beni.

15 Q. Did the UPC and the FPLC have leaders? And if so, do you know their names?

16 A. Yes. I know the presidents of the movement. Well, the president's name is
17 Thomas Lubanga. He was the number one guy. And then I know another chief of staff,
18 General Kisémbu. I also know the chief of staff responsible for operations, his
19 name -- well, he's with us, I believe, Mr Bosco Ntaganda. I know our minister of defence,
20 his name was Chief Kahwa. And then there were other people.

21 PRESIDING JUDGE FREMR: Ms Solano, you moved from personal questions to general
22 questions. Depending on the further questions, do you think, couldn't we move
23 into -- but it's up to you, couldn't we move into open session?

24 MS SOLANO: Your Honour, we could for approximately three questions, if you please,
25 and then I will need to go back to private session.

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1 PRESIDING JUDGE FREMR: At least we will enjoy those three questions in open
2 session.

3 Court officer, please, let's move into open session.

4 (Open session at 10.44 a.m.)

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

6 PRESIDING JUDGE FREMR: Thank you.

7 Ms Solano, please continue.

8 MS SOLANO: Thank you, your Honour.

9 Q. Just to confirm, these leaders that you've just mentioned, were they leaders of the
10 UPC and FPLC at the time when you joined?

11 A. I beg your pardon? Your Honour, if you could increase the volume, please, the
12 volume of the microphone. I don't hear too well.

13 Q. Can you hear me now?

14 A. Oui, ça va.

15 Q. Sir, you mentioned Mr Lubanga, Mr Kisembo, Mr Ntaganda and Mr Kahwa. Were
16 these individuals leaders of the UPC and FPLC at the time?

17 A. Yes.

18 PRESIDING JUDGE FREMR: Mr Bourgon.

19 MR BOURGON: My colleague just asked a question at the time, but may we be a bit
20 more precise what time she's talking about because all we know is 2002 that he
21 interrupted his studies. We know nothing else. Thank you.

22 PRESIDING JUDGE FREMR: Ms Solano.

23 MS SOLANO: Your Honour, I will return to that question when we move back into
24 private session if that's okay.

25 PRESIDING JUDGE FREMR: Okay.

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1 MS SOLANO:

2 Q. Sir, where was the UPC based in 2002 if you know?

3 A. Well, it depended. The various bases were in places. It depended on the month.
4 If I could give you a summary. We didn't begin in Bunia.

5 Q. At this stage can you please tell me where, if you can, where was Mr Lubanga based
6 in 2002?

7 A. Lubanga was in Bunia in 2002.

8 THE INTERPRETER: Interpreter correction: In the previous reply the witness said that
9 in general terms the group was based in Bunia, but we did not begin in Bunia.

10 MS SOLANO:

11 Q. Sir, who was in control of the town of Bunia in 2002?

12 A. Well, it would depend on the month and the period.

13 Q. In August 2002.

14 A. Thank you. In August 2002, we regained the town of Bunia.

15 Q. Who did you regain it from?

16 A. From the APC.

17 Q. Were you already with the UPC when you regained Bunia?

18 A. I was not amongst the people who took part in that, but I was at the training centre.

19 MS SOLANO: May we move into private session, your Honour, please?

20 PRESIDING JUDGE FREMR: Certainly.

21 Court officer, let's move into private session now.

22 For the public, it is because this witness is protected, so he was given a guarantee that no
23 fact that could reveal his identity could be made public.

24 (Private session at 10.48 a.m.) *(Reclassified partially in public)

25 THE COURT OFFICER: We are in private session, Mr President.

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1 PRESIDING JUDGE FREMR: Thank you.

2 Ms Solano, please proceed.

3 MS SOLANO: Thank you, your Honour.

4 Q. What training centre was that?

5 A. The one in Mandro.

6 Q. (Redacted)

7 A. (Redacted)

8 (Redacted)

9 Q. (Redacted)

10 A. (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 Q. (Redacted)

15 (Redacted)

16 A. (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 Q. (Redacted)

24 (Redacted)

25 (Redacted)

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- 1 A. (Redacted)
- 2 Q. Sir, did you in fact go to Mandro training camp?
- 3 A. Yes.
- 4 Q. (Redacted)
- 5 (Redacted)
- 6 A. (Redacted)
- 7 Q. (Redacted)
- 8 (Redacted)
- 9 A. (Redacted)
- 10 Q. (Redacted)
- 11 A. (Redacted)
- 12 Q. (Redacted)
- 13 A. (Redacted)
- 14 Q. (Redacted)
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- 18 Q. (Redacted)
- 19 A. (Redacted)
- 20 Q. (Redacted)
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- 22 A. (Redacted)
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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 MS SOLANO:

5 Q. Sir, in addition to you, did any others from (Redacted), Mabanga, go to Mandro
6 training camp (Redacted)?

7 A. Yes, there were many of us.

8 Q. How old were you at the time?

9 A. I was (Redacted) in the year 2002.

10 Q. Relative to your age, what were the ages of the others who went with you from
11 Mabanga to Mandro?

12 A. There were some who were younger than me. There were all different ages; some
13 were 16, 15, 14, 13.

14 Q. Were some of these young persons known to you before you went to Mandro?

15 A. Yes.

16 Q. (Redacted)

17 A. (Redacted)

18 Q. Do you remember the names of any of those who went with you who were aged 13
19 or 14 at the time?

20 A. No. That was a long time ago.

21 Q. Where in Mandro was the training centre located?

22 A. Well, there's Mandro where the collectivity, where--where the collectivity is. And
23 you see Chief Kahwa is also the traditional chief, that's where his office is. We were
24 there. And then there is the trading centre. We were at the training centre in--c'était not
25 too far from--and, you see, we called it Saikwa (phon), that was what we called the

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1 training centre.

2 Q. Can you spell that Saikwa, please?

3 A. I beg your pardon?

4 Q. I think you said you called Saikwa, you called the place where the training centre
5 was Saikwa. That's what I understood. Is that correct, Saikwa, was that a place?

6 A. It is a village not far from the Mandro centre. There are several villages, but the
7 training centre was always--was still in Mandro towards the training--correction,
8 towards the trading centre.

9 MS SOLANO: Your Honour, I'm mindful of the time. We can break now if it suits
10 Your Honours.

11 PRESIDING JUDGE FREMR: It is a good point. For one moment, please, let's move
12 into open session now.

13 (Open session at 11.00 a.m.)

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

15 PRESIDING JUDGE FREMR: Thank you, court officer.

16 So we will break now for 30 minutes, but before doing that I would like to assure myself,
17 Ms Solano, you, the Prosecution, you asked to use for examination of this witness 10
18 hours; am I right?

19 MS SOLANO: Yes, your Honour.

20 PRESIDING JUDGE FREMR: So just to say that from the Chamber's point of view this
21 estimation seems reasonable in the light of prospective extent of this testimony, so you, or
22 we granted you those 10 hours, so please do your best to keep this time limit.

23 Now we break and we will reconvene half past 11.

24 THE COURT USHER: All rise.

25 (Recess taken at 11.01 a.m.)

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1 (Upon resuming in open session at 11.33 a.m.)

2 THE COURT USHER: All rise.

3 Please be seated.

4 PRESIDING JUDGE FREMR: We will now continue with oral decision on Rule 74
5 request. And our decision is the following:

6 The Chamber has received the Prosecution's observations in relation to the question of
7 assurances pursuant to Rule 74(3)(c), noting in particular that the Prosecution considers
8 that assurances are appropriate in this case.

9 Defence, do you have any further observations you would like to make at this point?

10 MR BOURGON: No observation, Mr President.

11 PRESIDING JUDGE FREMR: Okay.

12 So our decision is, and it's addressed mainly to the witness and Ms Clément, that the
13 Chamber will provide the witness with the Rule 74(3)(c) assurances.

14 Therefore, Ms Clément, if any questions are asked that could lead to self-incrimination of
15 your client we will hear the witness answers in private session.

16 And, Mr Witness, there may be questions -- wait a minute, please, Ms Clément. I will
17 give you the floor.

18 Mr Witness, there may be questions asked to you for which you feel that answering them
19 truthfully may incriminate you because these questions relate to your own conduct. In
20 such cases, we will require you to answer the question, but we can assure you that your
21 answer will be kept confidential and will not be disclosed to the public or to the
22 government of any country. The Prosecution has further assured that they will not
23 themselves use this information to prosecute you before the ICC provided that you tell the
24 truth.

25 Mr Witness, do you understand all this?

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1 THE WITNESS: (Interpretation) Yes.

2 PRESIDING JUDGE FREMR: Ms Clément, do you want to say anything?

3 MS CLÉMENT: (Interpretation) No, Mr President. And I thank you.

4 PRESIDING JUDGE FREMR: Very well.

5 Anyway, in this connection, I request the parties to be vigilant about going into private
6 session for areas of evidence that are likely to elicit responses that might self-incriminate
7 this witness.

8 Now, we can continue with examination of the witness.

9 Ms Solano, is there a need to go into private session for your prospective questions?

10 MS SOLANO: Your Honour, I can ask one question in public session, if that assists.

11 PRESIDING JUDGE FREMR: Okay, please.

12 MS SOLANO:

13 Q. Sir, before the break you spoke about the UPC and the FPLC and its leaders. Was
14 there a difference between the UPC and the FPLC, and if so, what was the difference?

15 A. Well, according to my knowledge, the UPC -- well, it was written "UPC/FPLC." We
16 considered that the UPC/FPLC -- well, to my mind I do not believe that there was any
17 difference apart from the fact that the FPLC was the military wing.

18 Q. The leaders you mentioned earlier, Mr Lubanga, Mr Ntaganda, Mr Kahwa,
19 Mr Kisembo, were they leaders of the UPC or the FPLC?

20 A. I believe that the UPC/FPLC is one and the same thing.

21 MS SOLANO: Your Honour, may we go into private session, please.

22 THE INTERPRETER: Overlapping speakers. Could counsel please be requested to
23 observe the five-second pause. Thank you.

24 PRESIDING JUDGE FREMR: Ms Solano, you are a bit fast. Please keep the three
25 seconds pause. Thank you.

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1 MS SOLANO: I will do so, your Honour. Thank you.

2 PRESIDING JUDGE FREMR: So probably you need to repeat -- now we are moving to
3 private. Okay, let's move into private.

4 (Private session at 11.39 a.m.) *(Reclassified partially in public)

5 THE COURT OFFICER: We're in private session, Mr President.

6 PRESIDING JUDGE FREMR: All right.

7 Ms Solano, you may proceed.

8 MS SOLANO: Thank you, your Honour.

9 Q. Sir, you said that when you joined the UPC after (Redacted) there were
10 some 13 and 14-year-olds with you. How did you know their ages?

11 A. Well, if I could come back a little bit on what I said. As to the number of times, well, I
12 believe -- could you clarify somewhat, I think it was when I enlisted or enrolled. *I tried to
13 join (Redacted). I think I underscore
14 that fact somewhere in my testimony. And when the UPC/FPLC started, well, there was
15 some time before it was able to fight and regain Bunia. There were a number of training
16 courses that were provided by the Ugandans. (Redacted)
17 (Redacted).

18 In 2002, when things finally came together, we went to Mandro. And most of the
19 children who were there, we know them and we were in a position to ask them their ages
20 because, well, by virtue of their appearance and their size, this indicated that they were of
21 a given age.

22 Q. And when you say "we," do you mean you or do you mean others?

23 A. Could you please repeat your question?

24 Q. Of course. You've said that "we knew the children" and "we were in a position to
25 ask them their ages." So I'm trying to clarify, does that "we" mean you, yourself, you

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1 were able to ask them their ages?

2 A. Yes. Myself and the others, and the other friends.

3 Q. Did these 13 and 14-year-olds go from Mabanga to Mandro training camp
4 voluntarily?

5 A. Yes. There were those who did go of their own volition, and then there were those
6 who were obliged to go because we were told that if you did not go, if we did not go to
7 the training, *"we are not going to defend your village". We were told that we were
8 *ourselves the defenders of our villages and that we should go.

9 Q. How exactly were they forced?

10 A. Well, according to the rallies that were held by Mr Kahwa, he said that each family
11 should give at least one child up to be trained.

12 Q. Did the families have a choice not to send their children, or could the children
13 choose not to go to the training camp at Mandro?

14 A. I'm not in a position to answer that specifically, but this is a question to be addressed
15 to their families. What I do know is that we left with the children, we ended up at the
16 training centre, but what I heard Chief Kahwa say was that each family should give at
17 least one child, one person should give up at least one person to be trained. Of course it
18 depended on your family, whether there was *an older member or not.

19 PRESIDING JUDGE FREMR: Mr Bourgon.

20 MR BOURGON: Thank you, Mr President.

21 Just before the page moves off the screen, there is an important correction I would like to
22 bring and this is on page 44. And page 44, and this is at lines 7, 8 and 9, where it says in
23 the English transcript there were a number of training courses that were provided by the
24 Ugandans."

25 There is no such thing as training being provided by the Ugandans in the original French

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1 version, and this is a significant area that -- to see who was giving the training at the camp
2 and I think we need to correct this. Thank you, Mr President.

3 PRESIDING JUDGE FREMR: (Microphone not activated) So according to you, in
4 French transcript there is just a sentence finished "There were a number of training
5 courses that were provided" and that's it or what is the French wording?

6 MR BOURGON: In the French it says, Mr President, (Interpretation) "The Ugandans
7 came to drive us out and we went home. Each time we were at the training centre, the
8 Ugandans came to drive us out."

9 And before that the witness said that there were a number of trainings that were
10 interrupted.

11 (Speaks English) At no time did the witness say that there were training provided by the
12 Ugandans. And we can ask the witness to clarify this. I think we will be glad to do so.

13 PRESIDING JUDGE FREMR: Yes, Ms Solano, please take this point. Thank you.

14 MS SOLANO: Of course, your Honour.

15 Q. Sir, did the Ugandans provide you with training at Mandro training camp?

16 A. No.

17 Q. Who trained you at Mandro training camp?

18 A. Our elders, that is to say our elder brothers who were former soldiers under Mobutu,
19 Kabila. And the APC there were those who had gone for training in Uganda in the
20 years 2000, 1999/2000, and they are the ones who trained us in Mandro in the year 2002.

21 THE INTERPRETER: Message from the English interpreter, could the witness please be
22 requested to enunciate so that we understand what he is saying. Thank you.

23 MS SOLANO:

24 Q. What are their names?

25 A. Yes, I do remember the name of the chief of centre, of the centre who was

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1 called (Redacted).

2 THE INTERPRETER: There were overlapping speakers.

3 MS SOLANO:

4 Q. Who trained you at Mandro?

5 A. Yes, there were many of them. There are names that I have forgotten with the
6 exception of the head of the centre, of the training centre. That's the name that I
7 remember, his name is (Redacted).

8 Q. Did any of the UPC's or the FPLC's leaders have a role in relation to the training
9 centre at Mandro?

10 A. They were chiefs, they were in town, and they came to visit us at the training centre
11 as well.

12 Q. Who came to visit you at Mandro training centre?

13 A. The president himself, that is to say Mr Thomas Lubanga, Chief Kahwa,
14 Bosco Ntaganda. There were three of them on the day when they came to visit us.

15 Q. Do you remember whether they spoke to you when they visited the camp?

16 A. Yes. The introduction was provided by Chief Kahwa and then the president
17 himself, Thomas Lubanga, talked to us. However, Bosco did not take the floor.

18 Q. Do you remember what Mr Lubanga said?

19 A. Yes, I, in a few words, I can tell you. He just gave us a morale boost, told us not to
20 be become discouraged and to continue with our training. That was just the sense of
21 what he said. As to any more details, I can't really provide any, but he spoke for at least
22 an hour.

23 Q. How were Misters Lubanga, Mr Ntaganda and Mr Kahwa dressed when they
24 addressed you at Mandro training camp?

25 A. Chef Kahwa and Mr Bosco Ntaganda were in military garb and the

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1 president, Thomas Lubanga, was in civilian attire.

2 Q. What if anything did you learn while you were at Mandro training camp?

3 A. Well, it was military training. We learned virtually everything; how to handle
4 weapons, how to use weapons, how to salute our officers, how to enter combat. So
5 everything was provided with a view to preparing us for war.

6 Q. And what war were you preparing for?

7 THE INTERPRETER: Overlapping speakers again.

8 PRESIDING JUDGE FREMR: Ms Solano, a gentle reminder, please observe pauses.

9 MS SOLANO: I apologise, your Honour.

10 PRESIDING JUDGE FREMR: Please repeat your question.

11 MS SOLANO:

12 Q. Sir, what war were you preparing for while you were at Mandro?

13 A. We were preparing to go to war anywhere that we would be sent to.

14 Q. Who were you going to fight in this war?

15 A. The Lendu and the APC.

16 Q. How many of you were there at Mandro, how many recruits?

17 A. There were between 2500 and 3000 individuals. I do not have the precise figures.
18 This is an approximation.

19 Q. Did the UPC keep track of how many soldiers were there, how many recruits?

20 A. I do not know. This is a question --

21 Q. Did anyone identify you at Mandro, by which --

22 A. -- for (Redacted).

23 Q. -- I mean did anyone write down your name and your personal details?

24 A. I do not have any details. I no longer recall.

25 Q. Were there girls as well as boys among the recruits at Mandro?

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1 A. Yes.

2 Q. Were they treated any different?

3 A. *No.

4 Q. How long did you spend at the Mandro training camp?

5 A. I spent from three weeks to a month there.

6 Q. You said earlier that in August the UPC recovered Bunia. At this time, in
7 August 2002, were you still at the Mandro training camp?

8 A. Yes.

9 Q. Sir, I would like to show you --

10 PRESIDING JUDGE FREMR: Mr Bourgon.

11 MR BOURGON: Thank you, Mr President. Something about the translation. In the
12 English transcript, the question at page 49, line 25 to page 50, line 1, talking about girls,
13 recruits or girls at Mandro, the question was, "Were they treated any different?" This is
14 what appears in the English transcript. And the answer is: "Yes."
15 However, the question in French is here we have "Étaient-elles traitées de la même façon,"
16 two different things altogether. So I believe we need to clarify, were they treated the
17 same or not the same? Because it appears on the English that they were not treated the
18 same, whereas in the French transcript it appears that they were treated the same. Thank
19 you.

20 PRESIDING JUDGE FREMR: It's important point so I guess that in your future questions
21 you will avoid on that.

22 MS SOLANO:

23 Q. Sir, just to clarify, the boys and girls at Mandro, did they receive the same treatment
24 and training?

25 A. Yes.

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11 (Redacted)

12 Q. Sir, you said you were at Mandro for approximately one month in training. Did
13 anything happen to mark the end of your training?

14 A. Yes.

15 Q. And what was that?

16 A. It was the provision of weapons.

17 Q. Can you explain what you mean? Did you personally receive a weapon?

18 A. Yes.

19 Q. What weapon did you receive?

20 A. An AK-47.

21 Q. Whom did you receive it from?

22 A. It was Chief Kahwa.

23 Q. Sir, the transcript did not catch that name. Can you please repeat it; who did you
24 receive the weapon from?

25 A. From Chief Kahwa.

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1 Q. Thank you. Did you receive anything else apart from the weapon?

2 A. No.

3 Q. Sir, at this point, how were you dressed?

4 A. I was in civilian attire. We didn't have any military clothes.

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

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13 (Redacted)

14 (Redacted)

15 (Redacted)

16 Q. And did people in fact come to train at Mandro as a result of Kahwa's exhortations?

17 A. Yes, there were a number of trainings dispensed in Mandro. So if your group would
18 come, you would finish your training and then other groups would come to complete
19 their training. And if they did complete their training, they were given weapons and
20 others would come. So the training centre was constantly open. It was open for those
21 young people who would come.

22 Q. How did Chief Kahwa dress in this period when you were based at this quartier
23 général?

24 A. Well, he was wearing military uniform.

25 Q. Was he armed?

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1 A. Yes.

2 Q. How about when he visited the villages to encourage people to join the UPC? Was
3 he armed then?

4 A. Well, he didn't transport the weapons. He had his guards who would hold his
5 weapons because he is the leader, he was the leader, he was not the one who would carry
6 a weapon. His guards would. He had his closest entourage who would hold the
7 weapons for him.

8 Q. After you finished your training at Mandro, did you return to the training centre?

9 A. Well, I didn't quite understand your question. To the training centre in Congo?

10 Q. I'll rephrase my question. Did you provide training to any other recruits while you
11 were in Mandro?

12 A. Well, the training centre was constantly open and there were young people at the
13 centre. We had finished and we were given a weapon, *and we left. I was lucky
14 enough to remain at the headquarters, others went off to the front. And the centre was
15 always open and people were completing their training there.

16 Q. Did you help train these people?

17 A. In Mandro, no.

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 Q. And where and when were you supposed to use these weapons?

2 A. At the front, on the battle ground, wherever you would be sent in Ituri.

3 MS SOLANO: Your Honour, I'm mindful of the time and if it pleases the Chamber this
4 would be a convenient place to stop.

5 PRESIDING JUDGE FREMR: All right.

6 Let's move into open session for the end of this session.

7 (Open session at 12.58 p.m.)

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

9 PRESIDING JUDGE FREMR: Thank you.

10 So we will break now for our lunch break till 2.30. And again I am reiterating that the
11 afternoon session will take two hours, so we will finish our afternoon session at half past
12 4.

13 So now Court is adjourned.

14 THE COURT USHER: All rise.

15 (Recess taken at 12.59 p.m.)

16 (Upon resuming in open session at 2.33 p.m.)

17 THE COURT USHER: All rise.

18 Please be seated.

19 PRESIDING JUDGE FREMR: Good afternoon, everybody. Before we continue with
20 examination of Witness P-963, the Chamber will deliver its ruling on the Defence request
21 for access to a portion of the witness preparation session of session with this Witness
22 P-963.

23 The Chamber was this morning seized of a request for access to a portion of the video
24 recording of the witness preparation session with Witness P-963, and heard oral
25 submissions on the matter from the parties. The Chamber has also received a copy of the

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1 witness preparation note.

2 The Chamber does not consider that the Defence submissions raise issues warranting
3 disclosure of the recording of the witness preparation session. Regarding the request for
4 the witness to confirm the accuracy of prior statements, the Chamber considers that this
5 falls within the scope of permitted witness preparation. It's noted that on a number of
6 occasions the Prosecution specifically drew the witness' attention to particular portions of
7 the statements, and even to particular words or phrases. In such circumstances, even
8 where the question is put neutrally, care should be taken not to have the effect of seeming
9 to emphasise the importance of specific issues. The Prosecution should take this into
10 account in future. The Chamber notes, however, that predominantly the witness'
11 attention was drawn to portions where there were apparent errors, especially on technical
12 matters.

13 Further, consistent with previous rulings, the Chamber considers that documents may be
14 presented to a witness in order to ascertain whether he can usefully comment on them
15 during his testimony. Provided the scope of any questioning is narrowly tailored to that
16 purpose, the Chamber finds that it falls within the scope of permitted witness preparation.
17 In this instance, that appears to have been the case.

18 That concludes the Chamber's ruling.

19 And in addition, the Chamber notes that it has received additional written submissions,
20 they are submissions number 1214, then 1217, then 1227 and 1229, regarding witness
21 preparation more generally from the parties and participants, and will address those
22 submissions separately to the extent necessary at a subsequent time.

23 Now we can continue with examination of the witness.

24 And one comment to Prosecution: Ms Solano, I am fully aware of the fact that you are
25 probably a bit pressed by time, but you still have a lot of time. I checked it and you have

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1 more than eight hours, so I think there is no need to hurry up, because sometimes I felt
2 that maybe you tried to be most efficient, but sometimes it had even opposite effect
3 because we had to repeat, so please again observe pauses, okay? Thank you very much.

4 And you may proceed, Ms Solano.

5 MS SOLANO: Thank you, your Honour.

6 Q. Good afternoon, sir. In November 2002 when you returned -- your Honour, may
7 we go into private session please?

8 PRESIDING JUDGE FREMR: Important point. Thank you.

9 Court officer, let's move into private session now.

10 (Private session at 2.38 p.m.) *(Reclassified partially in public)

11 THE COURT OFFICER: We're in private session, Mr President.

12 PRESIDING JUDGE FREMR: Thank you, court officer.

13 Ms Solano, you may proceed.

14 MS SOLANO: Thank you, your Honour.

15 Q. Sir, in November 2002 (Redacted) what was the
16 structure of the UPC?

17 A. The president was Thomas Lubanga. The chief of staff was General Kisembo.
18 The chief of staff in charge of operations was General Bosco Ntaganda.

19 Q. How about the soldiers and officers in the UPC, how were they divided and
20 organised?

21 A. Apart from those three, in addition to the minister of defence, who was Chief
22 Kahwa, we had some colonels, majors, and captains and lieutenants. There was a well
23 organised structure in place, and there was always one chief over and above the next.

24 Q. Was there a staff attached to the d'état-major general?

25 A. Yes.

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1 Q. Who were they? Who were they, what were their functions?

2 A. Apart from the president, the FPLC army had an entire administration in place.

3 You had the G1, the G2, the G3, G4 and G5. The G1 was in charge of the administration
4 and all administrative issues of the FPLC. The G2 was in charge of intelligence. G3,
5 operations. G4 and G5, public relations.

6 So we had a leader and its -- and his structure, our -- and a structure under him at every
7 level.

8 Q. What was the function of the G4?

9 A. G4 was in charge of food and store, food and ammunitions and the arms depots, so
10 to speak, generally speaking.

11 Q. Who occupied the positions G1, G2, G3, G4 and G5 in November 2002?

12 A. I may have forgotten some names, but the G3 was the chief of general staff in charge
13 of operations, and that was Bosco. G5 was -- well, I think I have forgotten some of the
14 names. Maybe I'll remember them in the course of my testimony.

15 Q. How were the soldiers divided and organised? Were they in different units?

16 A. Now, the G5 was Eric Mbavazi. I've just remembered his name. Now, the
17 soldiers were divided into sections. One section has 12 persons. Then there was the
18 platoon, platoon is made up of at least 36 soldiers, including the commanders and the
19 three bodyguards, that would make a total of about 39 persons. And there were three
20 sections in each platoon.

21 After the platoon you had the company. The company is made up of three platoons. So
22 if you take 40 times 3, you have around 120 to 130 persons. And sometimes it went as
23 high as 150 soldiers.

24 Then after the company you had the battalion. A battalion is made up of three
25 companies. So you're looking at at least 500 persons per battalion. And sometimes you

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1 have more because the numbers were not always respected.

2 Then you had the brigade which is made up of three battalions.

3 Q. Can you please repeat the name of the G5 which has not been captured in the
4 English transcript?

5 A. The name is Eric Mbavazi if I am pronouncing it right.

6 Q. How many brigades were there in the FPLC at this time in the UPC?

7 A. I don't know the exact number of brigades in the UPC at that time. However, I
8 know a few brigades including the one to which I was assigned, my brigade. I am also
9 aware of the *Celio brigade, that was the other, on Jérôme's side. And there were other
10 brigades towards Komanda. I know at least three brigades, but there were more than
11 three brigades at the time.

12 Q. (Redacted)

13 A. (Redacted)

14 Q. (Redacted)

15 (Redacted)

16 A. (Redacted)

17 Q. (Redacted)

18 A. (Redacted)

19 Q. (Redacted)

20 (Redacted)

21 A. (Redacted)

22 (Redacted)

23 (Redacted)

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25 (Redacted)

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1 Q. (Redacted)

2 A. (Redacted)

3 Q. How many soldiers were there in a brigade?

4 A. If I were to calculate, it would add up to something like *1,000, 1,500, if the numbers
5 were respected. *So we were about 1,300, 1,400, thereabouts, but I can't give you a
6 specific number. It's only an approximation that I'm providing.

7 Q. Were UPC soldiers paid?

8 A. No.

9 Q. Was it possible, sir, to tell apart the soldiers from the commanders, and if it was
10 possible, how so?

11 A. It was possible to distinguish because commanders always had bodyguards and
12 people carrying their weapons. That was a way by which it was possible to identify the
13 commander. However, there were many known commanders.

14 Q. What ages do you know were the bodyguards attached to UPC commanders?

15 A. All ages.

16 Q. Did they include children under the age of 15 years?

17 A. Yes.

18 Q. Which commanders to your knowledge had children under the age of 15 in
19 their -- among their bodyguards?

20 A. Several of them, but I don't remember their names. But maybe I will subsequently. There were
21 commanders who had bodyguards who were less than 15 years old, *like Commander Liévin.

22 Q. Sir, how did commanders in the UPC communicate with each other?

23 A. There were communication instruments such as the Motorola, the phonie, and the
24 supreme commander had the Thuraya, which was a satellite phone device I believe.

25 Q. Was it only the supreme commander who had a Thuraya satellite phone or did

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1 some others, some other commanders also have Thurayas?

2 A. What I saw is that the chief of staff had a Thuraya. The president also had one, *I
3 am sure of that. I saw Bosco's Thuraya. And I think Chief Kahwa also had a Thuraya.
4 Commander Salumu as well. Those are the people whom I saw with Thuraya sets.

5 Q. How do you know that they had Thuraya phones?

6 A. I saw it with my own eyes.

7 Q. Sir, do you recall the name of the G4 in the general staff?

8 A. No, not yet. Well, these things happened 13 years ago, you know.

9 Q. What was Bosco Ntaganda's role as chef d'état-major responsible for operations?

10 A. I think that in your very question there are the words "operations commander"
11 meaning that he is the one who commanded the operations.

12 Q. Were Mr Ntaganda's orders obeyed by UPC commanders and troops in your
13 experience?

14 A. Yes.

15 Q. Did he play a role in relation to the training of UPC soldiers?

16 A. He was the chief. He was the chief. And when we arrived in Mandro, the first
17 two persons were there, President Thomas Lubanga and Kisembo. We did not know
18 them at the time, but we knew two people, Chief Kahwa and Bosco Ntaganda. The
19 others we only got to know them specifically later on.

20 Q. Sir, you said this morning that at one point you had been to Mongbwalu with the
21 UPC. In what context did you go to Mongbwalu?

22 A. It was for the purpose of fighting, for combat. We had finished our training and
23 we had to go to fight the war.

24 (Redacted)

25 (Redacted)

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15 (Redacted)

16 Q. How did you get from Bunia to Mongbwalu?

17 A. (Redacted).

18 Q. What happened in (Redacted)? Did you stop there?

19 A. Yes, because we had met up with the brigade of Salumu, and then after we did a
20 strategic withdrawal. And, you see, we met up with him there (Redacted) to prepare
21 for our departure to Mongbwalu.

22 Q. Sir, where was -- where were you making a strategic withdrawal from?

23 A. I haven't understood. Could you put your question again?

24 Q. You mentioned repli stratégique. Can you explain what you meant?

25 A. (Redacted)

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16 (Redacted)

17 (Redacted)

18 Q. How long after Salumu's first unsuccessful attack did you go to Mongbwalu?

19 A. I have no specific information because when we -- when the first attack occurred, we
20 were -- well, I really can't give you specific information. I don't know when they
21 attacked. The first time we were in Rwanda.

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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15 (Redacted)

16 (Redacted)

17 Q. Who gave you the instructions to chase the Lendu?

18 A. *(Redacted), it was first at the Foren you see we were fighting. It was a civil war.

19 We were fighting the Lendu. Also at the training centre, we were taught that already.

20 We knew who the enemy were. Even before we went to the training centre, we knew.

21 We were Hema. We knew. The Hema people knew who their enemies were.

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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25 A. Well, (redacted) I cannot give you much detail on how they

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16 Q. Apart from the airport and the centre, the city centre and the apartments, did you
17 recover other locations in Mongbwalu?

18 A. We recaptured all of Mongbwalu.

19 Q. Did you recover the Lendu état-major? Did you recover the Lendu état-major?

20 A. Yes.

21 Q. And where in Mongbwalu was that?

22 A. The headquarters of -- I'm not sure I understood your question. Can you repeat it?

23 Q. Did the Lendu have a camp in Mongbwalu -- sorry, I mean did the Lendu fighters
24 commanded by Kiza, did they have a camp in Mongbwalu?

25 A. Yes, they had camps. And when they found out that they were losing the war, they

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1 went to get -- to mix up with the civilian population.

2 Q. Where in Mongbwalu were their camps located?

3 A. They were at the airport, at some apartment, at Appartements and also in Sayo and
4 other areas.

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 Q. Sir, can you please repeat the names of the --

15 THE INTERPRETER: Microphone, please.

16 MS SOLANO:

17 Q. Can you please repeat the names of the Lendu camps in Mongbwalu that were taken
18 over by the UPC. They were not captured by the transcript.

19 A. There was the airport camp, the Appartements camp and then the camp at Sayo.
20 That is where they had the highest concentrations of their troops. But apart from those,
21 they had other camps and I don't remember them. In any event, the enemy was spread
22 out all across Mongbwalu.

23 Q. Had the civilian population of Mongbwalu and Sayo remained in the town after the
24 UPC's first attack?

25 A. Yes.

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1 Q. And how did --

2 PRESIDING JUDGE FREMR: Sorry.

3 Mr Bourgon, please.

4 MR BOURGON: Thank you, Mr President. Unless we hear a source for this
5 information. He was not there at the first attack. How would the witness know that the
6 population remained in Mongbwalu? So we need to know the source of this information
7 or the question should be withdrawn. Thank you.

8 PRESIDING JUDGE FREMR: Ms Solano.

9 MS SOLANO:

10 Q. Sir, how do you know that the civilian population remained in Mongbwalu and
11 Sayo after Salumu's first attack?

12 A. After the first attack, we were able to gather some of this information. When we
13 drove them out of Mongbwalu, some other tribes had remained in the area. These are
14 tribes that were not concerned with the tribal war. They are the ones who explained to
15 us, after Salumu failed to enter, the Lendu were celebrating a victory and all those who
16 had fled to the bush had returned and life had returned to normal.
17 We were learned -- we were able to learn these things from the other tribes which had
18 remained in the city upon talking with them. They even told us that we were lucky to
19 even find a significant amount of property in Mongbwalu because people had not been
20 smart enough to empty their shops and their stores because they believed that
21 Mongbwalu was not going to be recaptured.

22 Q. When the UPC attacked Mongbwalu a second time, was the civilian population free
23 to leave the town?

24 A. Free to leave? I don't understand.

25 Q. Were they -- were they allowed to decide whether they wanted to stay in

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1 Mongbwalu or leave Mongbwalu?

2 A. I still don't understand your question. Decided how? I think the question should
3 be rephrased because I'm having trouble understanding what to think about what the
4 population may have been thinking.

5 Q. Could the civilian population -- was the civilian population able to escape the UPC's
6 attack on Mongbwalu?

7 A. Well, we had attacked Mongbwalu. We fought their soldiers. It was a hard fight.
8 But I still don't understand your question because you're putting me in the situation
9 where I feel as if I were part of the inhabitants of Mongbwalu. Please, can you rephrase
10 your question so that I can understand it. Do you want my opinion about the population
11 of Mongbwalu? What is it? I don't understand.

12 Q. Let me try to ask in a different way. What happened to the civilian population of
13 Mongbwalu when the UPC attacked? Did they stay in Mongbwalu? Did they go?
14 What happened to them?

15 A. Thank you for rephrasing your question. That is how the question should have
16 been put. Well, we attacked them. We shot at everything. We shot at anything that
17 moved.

18 Q. What happened in Mongbwalu to any civilians who tried to escape if they were
19 found by the UPC?

20 A. Our mission in Mongbwalu was to shoot at anything that moved. Now it was for
21 the population to decide what to do. I don't know. I -- we were there to shoot at
22 everybody. Piga na kuchaji.

23 PRESIDING JUDGE FREMR: Ms Solano, sorry, I would like now to intervene because I
24 would like to put few additional questions on this topic, not to come back to that just at
25 the end of your examination.

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1 Q. (Redacted)

2 (Redacted)

3 A. (Redacted)

4 Q. (Redacted)

5 (Redacted)

6 A. (Redacted)

7 Q. Did you see any civilians being killed by the UPC in Mongbwalu?

8 A. Yes. When we fired, we fired at everyone and then we would come across bodies.

9 Q. What was the age range of these people? And were they men or women? Were
10 they young or old?

11 A. Various ages. I can't give you exact ages, but all different ages.

12 PRESIDING JUDGE FREMR: Mr Bourgon.

13 MR BOURGON: Thank you, Mr President. Could the witness clarify whether the "we"
14 is him himself or who is he talking about, the "we"? It would need some clarity for
15 further questioning. Thank you.

16 PRESIDING JUDGE FREMR: Mr Witness, have you heard the question from
17 Mr Bourgon?

18 THE WITNESS: (Interpretation) (Redacted)

19 (Redacted)

20 (Redacted)

21 PRESIDING JUDGE FREMR: All right.

22 Ms Solano, you may proceed.

23 MS SOLANO: Thank you, your Honour.

24 Q. How did you know that some of the people killed by the UPC were civilians?

25 A. Some people -- well, among -- we -- you see, in some cases we were able to retrieve

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1 weapons. Some people had military uniforms on amongst the dead. Others did not
2 have a military uniform on.

3 Q. Can you estimate whether the people that you saw dead were mostly civilians or
4 mostly combatants?

5 A. Well, I couldn't really estimate, but some of the dead people were civilians and some
6 were combatants. I couldn't tell you how many were combatants or how many were
7 civilians.

8 PRESIDING JUDGE FREMR: Again, allow me to put a qualifying question.

9 Mr Witness, have you seen among the dead bodies also dead bodies of elder people or
10 dead bodies of children?

11 THE WITNESS: (Interpretation) Yes.

12 PRESIDING JUDGE FREMR: Which I take as both, both elder people and children; am I
13 right?

14 THE WITNESS: (Interpretation) Yes.

15 PRESIDING JUDGE FREMR: Thank you, Mr Witness.

16 MS SOLANO:

17 Q. What happened to the bodies? Were they, were they left lying around?

18 A. They were buried.

19 Q. Where did you bury them?

20 A. I did not take part in the burying of the dead, but some soldiers were responsible for
21 that, for burying those corpses. Often they were buried in mass graves or in toilet holes,
22 latrines. The bodies would be thrown in and then they would be covered in some dirt.
23 I did not take part in that myself. I was not at the level. That was not my level, my kind
24 of work, burying bodies.

25 Q. How do you know that the soldiers buried the bodies?

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1 A. Some companies had been deployed to go and criss-cross all the various
2 neighbourhoods and streets, and their task was to find the civilian population, the Hemas,
3 and help them bury those bodies.

4 Q. Were these Hema civilians, were they from Mongbwalu?

5 A. No. They were brought from Mabanga. They followed us. They would work
6 transporting munitions, that sort of thing. There were many of them.

7 Q. Whose orders did they act under?

8 A. There were company commanders, battalion commanders who are responsible for
9 that.

10 Q. Did these Hema civilians pillage Mongbwalu?

11 A. Yes. They took advantage of the situation quite a bit. Sometimes they did more
12 looting than the soldiers did.

13 Q. Did the UPC remain in Mongbwalu after it captured the town?

14 A. Yes. *We spent many days in Mongbwalu, December, January, February and part
15 of March. *We spent the Christmas of 2002 there in Mongbwalu.

16 Q. What happened in March to cause the UPC to leave Mongbwalu?

17 A. We were driven out by the Ugandans and, well, once again we're speaking of the
18 Lendu. After the battle of 6 March, we took refuge in Mongbwalu. That was our
19 headquarters with -- that's where the military headquarters were. The Ugandans
20 attacked again. That was mid-March 2003, they drove us out, (Redacted)
21 (Redacted)

22 Q. Where did the battle of 6 March that you were referring to take place?

23 A. In Bunia.

24 Q. (Redacted)

25 A. (Redacted)

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1 (Redacted). In February, *the operation Kobu-Bambu-Lipri occurred. This was a
2 coordinated operation also. After Mongbwalu was taken, some friends
3 were sent to recover Kilo. I didn't go with them. (Redacted)
4 (Redacted). Then we were deployed again because the Lendu had set up
5 a headquarters in Kobu. (Redacted)
6 (Redacted). They were to go and destroy this headquarters in
7 Kobu. That was in February 2003.
8 (Redacted)
9 (Redacted)
10 (Redacted)
11 (Redacted)
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- 1 (Redacted)
- 2 PRESIDING JUDGE FREMR: (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted) ?
- 6 MS SOLANO: (Redacted)
- 7 PRESIDING JUDGE FREMR: (Redacted)
- 8 (Redacted)
- 9 (Open session at 4.29 p.m.)
- 10 THE COURT OFFICER: We're in open session, Mr President.
- 11 PRESIDING JUDGE FREMR: Thank you, court officer.
- 12 Mr Witness, we will adjourn for today. I would like to thank you because you are doing
- 13 really very well. You remained concentrated for whole day. You responded diligently
- 14 to all questions put to you. And you also followed all our guidance, including keeping
- 15 pauses. So please tomorrow I hope you will proceed in the same way. For today it's the
- 16 end of your testimony, so you can take some rest. And one important instruction from
- 17 my part, you must not discuss your testimony, content of this testimony with anybody
- 18 else, neither with your family, nor with your friends. Do you understand?
- 19 THE WITNESS: (Interpretation) Yes, your Honour.
- 20 PRESIDING JUDGE FREMR: Very well.
- 21 So please now, court usher, escort Mr Witness out of the courtroom.
- 22 (The witness stands down)
- 23 PRESIDING JUDGE FREMR: And my last question goes, as usually to calling party, to
- 24 Ms Solano. Ms Solano, I just got information you still have enough time at your disposal,
- 25 more than six hours, but my impression was that you succeeded to cover a lot of areas.

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1 So may I for the sake of getting just your rough estimation, do you think that you will
2 really need all those 6 and almost a half hour or do you think it would be feasible to finish
3 maybe by tomorrow, because today you had five hours? What do you think? How do
4 you see it at the moment?

5 MS SOLANO: Your Honour, at this point I do think I will need all day tomorrow and
6 that I will need my full ten hours because I am intending to play to the witness the radio
7 intercept, which is -- it will take some time. I will have to play it for him once and then
8 come back to it with questions. So at this stage, your Honour, I do still think I will need
9 my ten hours.

10 PRESIDING JUDGE FREMR: It's okay. You are entitled to it. Please be careful and
11 not, as some of your colleagues, don't leave those videos at the very end of your time,
12 because it could make some pressure to all of us.

13 So we adjourn now and we will continue in the same time regime like today, tomorrow
14 9.30.

15 THE COURT OFFICER: All rise.

16 (The hearing ends in open session at 4.32 p.m.)

17 RECLASSIFICATION REPORT

18 Pursuant to the Trial Chamber VI's Order, ICC-01/04-02/06-1887, dated 4 May 2017,
19 the public reclassified and lesser redacted version of this transcript is filed in the case.