

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Open Session)

ICC-01/04-02/06

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 Judge Chang-ho Chung
6 Trial Hearing
7 Monday, 26 October 2015
8 (The hearing starts in open session at 9.33 a.m.)
9 THE COURT USHER: All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE FREMR: Good morning, everybody.
13 Court officer, please call the case.
14 THE COURT OFFICER: Thank you, Mr President.
15 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
16 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
17 We are in open session.
18 PRESIDING JUDGE FREMR: Thank you.
19 Now appearances, please.
20 Starting with Prosecution.
21 MS LUPING: Good morning, Mr President, your Honours. Dianne Luping, trial
22 lawyer for the Prosecution; Ms Kristy Sim, assistant trial lawyer; Lois Mbafor, legal
23 assistant; and Selam Yirgou, case manager, appearing for the Prosecution.
24 PRESIDING JUDGE FREMR: Thank you very much, Ms Luping.
25 Defence?

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1 MR BOURGON: (Interpretation) Good morning, Mr President, your Honours.

2 And good morning to all those seated in the courtroom. Representing Bosco

3 Ntaganda, who is present in the courtroom, Mademoiselle Elsje van Braber, intern;

4 Ms Elodie Victor, intern; Mr William St-Michel; and myself, Mr Stéphane Bourgon.

5 Thank you, your Honour.

6 PRESIDING JUDGE FREMR: (Interpretation) Thank you, Mr Bourgon.

7 And now Legal Representatives for Victims, please.

8 MS PELLET: (Interpretation) Thank you, your Honour. The former child soldiers

9 are represented by myself, Sarah Pellet, counsel for the OPCV.

10 MR SUPRUN: (Interpretation) Good morning, Mr President, your Honours. The

11 victims of the attacks are represented by myself, Dmytro Suprun, counsel for the

12 OPCV.

13 PRESIDING JUDGE FREMR: I thank you, both of you.

14 And before the witness will be brought to the courtroom, we want to render our oral

15 ruling. It's oral ruling on Defence's request for disclosure and lifting of redactions.

16 At the end of the hearing on Friday the Defence raised two oral requests, which the

17 Chamber will now rule upon.

18 As a preliminary matter, the Chamber would like to note the late timing of these two

19 applications, which were made only midway through the examination of the witness

20 and on a Friday afternoon. No explanation was provided by the Defence for why

21 these matters were only raised at that stage.

22 The Chamber notes that both the screening note and statement have been disclosed

23 for over seven months and that Witness 886 has been on the list of first witnesses the

24 Prosecution intended to call since April this year.

25 Turning to the request, first the Defence sought disclosure of information relating to

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1 the Prosecution intermediary P-743. The Chamber understands the request to
2 extend to the identity of Intermediary 743, the relationship between the intermediary
3 and the Prosecution, communications between the intermediary and the Prosecution
4 relating to Witness 886, and whether this intermediary was used in other cases to
5 contact other witnesses.

6 The Defence submits that the information sought is material to the preparation of its
7 cross-examination of Witness 886 on the basis that it relates to the credibility of
8 Witness 886 and is also necessary for the purpose of understanding differences
9 between Witness 886 screening note and his statement.

10 The Prosecution submits that the screening note and statement were both prepared by
11 Prosecution staff, not by the intermediary.

12 The Prosecution contends that the Defence has not met the test of materiality under
13 Rule 77 of the Rules and that the Defence request amounts to a fishing expedition.

14 The Prosecution submits that the security of the intermediary who lives in Ituri could
15 also be put at risk.

16 The Chamber recalls that in order to fall within the Prosecution's disclosure
17 obligations, information must either be potentially exculpatory within the meaning of
18 Article 67(2), material to the preparation of the Defence within the meaning of Rule 77,
19 or constitute a statement within the meaning of Rule 76.

20 The Chamber does not consider that potential inconsistencies between the screening
21 note and witness statement both taken by Prosecution staff are sufficient in
22 themselves to render either the identity of intermediary 743 or other information
23 relating to the intermediary's interaction with the Prosecution and the witness
24 material. The Defence has failed to provide any explanation for how such
25 inconsistencies could relate to the intermediary.

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1 The Chamber observes that the Defence is free to explore differences between the
2 screening note and the witness statement with Witness 886 directly during
3 cross-examination. The request for disclosure is therefore denied.

4 The Chamber notes, however, that the Prosecution had agreed to disclose to the
5 Defence a list of all of the Prosecution witnesses with whom intermediary 743 has had
6 contact and the Chamber trusts this has been done.

7 Second, the Defence requested lifting of the redactions at paragraphs 9, 10 and 24 of
8 Witness 886's statement that is document DRC-OTP-2077-0019. The Defence submits
9 that in order to challenge the witness's motivation for testifying, it wishes to explore
10 certain issues relating to his immediate family and consequently seeks the lifting of
11 these redactions.

12 The Chamber recalls that pursuant to paragraph 5 of the redaction protocol, the
13 burden is on the Prosecution to justify redactions applied to the statement.

14 The Prosecution submits that the redactions to the statement relate to the witness's
15 precise place of current residence, the precise location of relatives within the Nyali
16 area, the names of the witness's parents and the number of his children. The
17 Prosecution submits that none of this information is relevant to the points the Defence
18 indicates that it wishes to challenge.

19 The Chamber has reviewed the redactions applied to the witness statement in
20 paragraphs 9, 10 and 24. The Chamber can confirm that the information contained
21 in those paragraphs relates in paragraphs 9 and 10 to the witness's current place of
22 residence and in paragraph 24 to the specific location of the relative in Nyali and the
23 number of children and grandchildren in the witness's family.

24 Mindful of its obligation to ensure the protection and well-being both of witnesses
25 and others who may be impacted by the work of the Court, the Chamber considers

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1 that the redactions may be maintained.

2 The Chamber notes that information such as the number of children of the witness
3 and his current place of residence do not appear to have any prima facie relevance to
4 either the charges or the witness's credibility.

5 With respect to any connection or contact with Lendu people in the Nyali area, the
6 Defence is again free to raise this issue on cross-examination to the extent relevant.

7 That concludes the Chamber's ruling.

8 And now I think there is no problem, we can brought our witness in. Court officer,
9 please.

10 (The witness enters the courtroom)

11 PRESIDING JUDGE FREMR: Good morning, Mr Witness.

12 WITNESS: DRC-OTP-P-0886 (On former oath)

13 (The witness speaks Swahili)

14 THE WITNESS: (Interpretation) Good morning.

15 PRESIDING JUDGE FREMR: I hope, Mr Witness, you are feeling well.

16 THE WITNESS: (Interpretation) I don't speak English, but I feel fine. Thank you.

17 PRESIDING JUDGE FREMR: Thank you very much, Mr Witness.

18 So we will continue with your testimony concretely. Ms Luping will finish her
19 examination of you, and that is why I have to remind you, first of all, that you are still
20 under oath. It means that you have to speak the truth and nothing but the truth.

21 And the second thing, you might remember sometimes you gave last week very
22 interesting responses, but sometimes you even gave us more information than we
23 need or than we needed or maybe than Ms Luping needed, so please try to focus on
24 the question put to you. Try just to respond to the question Ms Luping will put to
25 you. Do you understand?

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1 THE WITNESS: (Interpretation) Yes, yes, indeed.

2 PRESIDING JUDGE FREMR: Very good.

3 Ms Luping, the last thing, according to my information, you -- until now so far you
4 have used 4 hours and 10 minutes, and according our principles I think we would like
5 to insist on it means that you should finish this examination in 1 hour, 50 minutes.

6 So please have it in mind. You have the floor.

7 MS LUPING: Thank you, Mr President.

8 QUESTIONED BY MS LUPING: (Continuing)

9 Q. Good morning, Mr Witness.

10 Mr Witness, indeed as the Presiding Judge has indicated, I have less than two hours
11 of time with you remaining and just a reminder please to listen very carefully to my
12 questions and only answer the precise questions that I put to you.

13 Now, Mr Witness, on Friday you said that in Sayo there were UPC child soldiers
14 called "kodogo," and I'm going to quote to you now, "who were bodyguards. Their
15 role was to protect the authorities. They were sent to carry out certain tasks. They
16 were called an escort."

17 My first question is this: Did you see these -- any of these escorts with your own
18 eyes?

19 A. Yes, those children were in charge of protecting their superiors when they
20 travelled and we called them escorts.

21 Q. My second question is these superiors that you say they were protecting, do you
22 remember any names of UPC superiors you saw who had such escorts?

23 A. I can't know their names. I saw them go by, but I didn't get close up to them.
24 I can't give you a name.

25 Q. Mr Witness, when describing these UPC soldiers who were children, you said,

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1 and I'm going to quote you now: "They were very bad. They caused a lot of terror
2 in the town," end of quote. That's at page 78, of transcript 37, lines 10 to 11.

3 My question is this: What do you mean when you say they were very bad and
4 caused a lot of terror?

5 A. Well, I can give you the following answer: Those people threatened others.
6 For example, if you were wearing rubber boots, they would take your boots and they
7 terrorized people. So no one dared go close to them. If someone was wearing a
8 pair of boots, they would be taken away. The boots would be taken away.

9 MS LUPING: Mr President, I just have one -- well, a few questions now to ask in
10 private session that are of an identifying nature. If we could please go into private
11 session.

12 PRESIDING JUDGE FREMR: All right.

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

14 (Private session at 9.51 a.m.) *(Reclassified partially in public)

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

16 PRESIDING JUDGE FREMR: Thank you, court officer.

17 Ms Luping, you may proceed.

18 MS LUPING: Thank you, Mr President.

19 Q. (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)?

24 PRESIDING JUDGE FREMR: (Redacted).

25 MR BOURGON: (Redacted)

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1 (Redacted)

2 (Redacted).

3 PRESIDING JUDGE FREMR: (Redacted)

4 (Redacted).

5 MS LUPING: (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted).

11 Your Honour, just to -- Mr President, your Honours, the point was -- there was that
12 the individual was a civilian being required to do work for the UPC. I can withdraw
13 the question -- the word "forced," but he was indeed asked to do the work by the
14 soldiers.

15 PRESIDING JUDGE FREMR: Ms Luping, I would rather avoid any interpretation
16 because the, I think, exact precise word was "asked".

17 Mr Bourgon.

18 MR BOURGON: Mr President, we -- it is our respectful submission that such
19 suggestion and interpretation is highly inappropriate. Damage is done. This was
20 done in front of witness. He knows the suggestion -- or, now he knows what to
21 answer. This is highly inappropriate, Mr President, and this should not be permitted.
22 The question should be withdrawn. And the topic itself should not be able -- the
23 Prosecution should not be able to explore this topic any further.

24 PRESIDING JUDGE FREMR: Mr Bourgon -- Ms Luping, do you want to respond to
25 this objection?

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1 MS LUPING: Mr President, your Honours, I would simply say I withdraw the term
2 I used. It was certainly an interpretation of what the witness said on the basis of the
3 context of the events as he described them. I'm happy to withdraw that, but as to the
4 topic I do think that it is unnecessary to say that the topic is unable to be explored at
5 all, I think that goes too far.

6 PRESIDING JUDGE FREMR: Mr Bourgon, you have the last word and then we will
7 decide, so please be brief.

8 MR BOURGON: Thank you, Mr President. I wanted to raise that objection on
9 Friday, I did not do so, in order to try to expedite the testimony of this witness. The
10 topic itself again goes to a previous objection I made on Friday. The Prosecution is
11 trying to elicit information from this witness about conduct that is not charged in the
12 indictment in the Documents Containing the Charges.

13 There is no reference whether in the Documents Containing the Charges about any
14 types of forced labour. We let the evidence go in anyway because we have issues
15 to -- which we can cross-examine. But this area in itself, again, the Prosecution is
16 trying to extend the scope of the Documents Containing the Charges by raising new
17 conduct and new charges which are simply not there.

18 This is inappropriate, Mr President, and the Prosecution should not be able to explore
19 this topic any further. Thank you.

20 PRESIDING JUDGE FREMR: Thank you. We will briefly deliberate with my
21 colleagues silently.

22 MS LUPING: Sorry, Mr President, to interrupt --

23 PRESIDING JUDGE FREMR: Ms Luping.

24 MS LUPING: -- but I would disagree with the Defence that this conduct does not
25 come within the scope of existing charges. I think it's inappropriate for me to

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1 explain precisely which charge it is in the presence of the witness, but I would submit,
2 indeed, it does fall within conduct that is relevant to existing charges. But then if
3 you would wish to me to submit further it should not be done in the presence of the
4 witness.

5 PRESIDING JUDGE FREMR: I don't think that it is necessary.

6 (Trial Chamber confers)

7 PRESIDING JUDGE FREMR: So after silent deliberation, our ruling is that the
8 objection is overruled. In fact we found two issues within the objection:

9 The first one is whether this question is beyond the charges. We don't think so. We
10 still see some relevance and linkage with the charge brought against the accused;
11 And as to the second issue, we think that Mr Bourgon was right because the question
12 was, I would say, put in a rather stronger -- stronger way than the real response of the
13 witness was given. But still, we, as I several times reiterated in the past, we are
14 professional Judges so it's up to us and we will really be on alert to evaluate to what
15 extent the response of the witness had been influenced by this unprecise, unprecise,
16 previous, previous question.

17 Ms Luping, you may proceed.

18 MS LUPING: Thank you, Mr President, your Honours.

19 Q. I'm now going to rephrase my question to you, Mr Witness.

20 (Redacted)

21 (Redacted)

22 (Redacted)?

23 PRESIDING JUDGE FREMR: (Redacted).

24 MR BOURGON: (Redacted)

25 (Redacted)

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1 (Redacted).

2 MS LUPING: (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted).

7 PRESIDING JUDGE FREMR: Mr Bourgon.

8 MR BOURGON: Mr President, the fact that the answer can answer yes or no in itself

9 makes the question -- very much shows that it has a leading -- in French we say

10 "question tendancieuse". She can ask the witness what he did, what he saw,

11 what -- what happened, but she cannot say, "Did we ask you to do something?" (Redacted)

12 (Redacted)

13 (Redacted)

14 This is a leading question, Mr President, and should not be allowed.

15 PRESIDING JUDGE FREMR: Objection is overruled. According to my

16 understanding what does it mean, a leading question is that the response, in fact, is

17 contained in the question. In this case, it's true that the question asked for either yes

18 or no, but the proposition is absolutely general. Anything else, I don't see any

19 aspects of leading question in this one.

20 Ms Luping, you may proceed.

21 MS LUPING: Thank you, Mr President, your Honours. I'm going to repeat the

22 question.

23 Q. (Redacted)

24 (Redacted)?

25 A. (Redacted)

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1 (Redacted).

2 Q. (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted).

6 PRESIDING JUDGE FREMR: Mr Bourgon.

7 MR BOURGON: Thank you, Mr President. I'd like to reiterate my objection to this

8 new question which is leading. (Redacted)

9 (Redacted). This is leading the witness. Thank you, Mr President.

10 PRESIDING JUDGE FREMR: And I have to repeat myself, the objection is

11 overruled.

12 Ms Luping.

13 MS LUPING: Thank you, Mr President.

14 Q. (Redacted)

15 (Redacted)

16 (Redacted)?

17 A. (Redacted)

18 (Redacted)

19 (Redacted).

20 Q. (Redacted)?

21 A. (Redacted).

22 Q. (Redacted)?

23 A. (Redacted).

24 MS LUPING: Mr President, we can go back into public session.

25 PRESIDING JUDGE FREMR: All right.

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1 Court officer, let's return back into open session now.

2 (Open session at 10.06 a.m.)

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

4 PRESIDING JUDGE FREMR: Thank you, court officer.

5 Ms Luping, you may proceed.

6 MS LUPING:

7 Q. Now, Mr Witness, you've explained that you were asked to build a house, a
8 thatched house. You said, "We worked on it and we had to build that house in one
9 day. And there were very few of us." My question is this: Who is "we"? Who
10 were the other people that were being asked to build a house?

11 A. We were in the company of two young persons of Bira ethnicity and two other
12 persons who were of Lugbara ethnicity. It is with these people that we built the
13 house, so only three ethnic groups were represented: The Alur, the Lugbara and the
14 Babira.

15 Q. Now, you explained last week that there were very few people left in Sayo after
16 the attack. My question is this: After the UPC moved into Sayo, what were the
17 ethnicities of the civilians still living in Sayo? What were the ethnicities of people
18 still remaining?

19 A. There were other ethnic groups which were not involved in any conflict with
20 them. These were the Lugbara, the Babira who had conflict with them, as well as the
21 Balulu. They were with them, but they did not have to do much work. Only three
22 ethnic groups were there.

23 Q. You mentioned one ethnic group is the Lugbara. Could you spell that for us,
24 please.

25 A. L-U-B-G-A-R-A.

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1 Q. Now, you said the Lugbara, Bira and Balulu were the only three ethnic groups
2 there. What do you mean?

3 A. Yes. Only those three ethnic groups were present or represented. It is those
4 three tribes that were in the majority. The other ethnic groups had already fled.
5 They were absent.

6 Q. Now, you've said that they were Lendu in Sayo before the attack. Were there
7 any other Lendu that came back to Sayo after the attack whilst the UPC were still
8 present?

9 A. At that time all the Balendu who had built houses at that location, in fact, had
10 come back. In fact, they came back and they are still living there.

11 Q. And these Lendu who came back, when did they come back?

12 A. Some of them returned shortly after the war, others have still not returned even
13 to this day. Only the youth returned to take up residence in the houses they had
14 abandoned during the war.

15 Q. And when you say "some of them returned shortly after the war," did any of
16 them return whilst the UPC soldiers were still there?

17 A. No, no. No one returned at that time. It was only two years after that they
18 began to return.

19 Q. And did you ever learn why any of your Lendu neighbours did not return
20 whilst the UPC was still there?

21 A. The reason for which they did not come back or return is because there was
22 disagreement. They did not agree with each other and that is why they were afraid
23 of coming back.

24 Q. What do you mean "they were afraid of coming back"?

25 A. After the war, the Lendu had a disagreement with them.

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1 Q. What do you mean by "a disagreement"?

2 A. The two ethnic groups were enemies. Enemies have disagreements, do not
3 agree with each other. You see, the Hema were afraid of the Balendu while the
4 Balendu were afraid of the Hema. When the Bahema came, the Lendu then began to
5 come back one by one.

6 Q. Mr Witness, I just want to read back something in the transcript. It may just
7 simply be an error of interpretation, but it says, "When the Bahema came, the Lendu
8 then began to come back one by one." Is that what you said?

9 A. When the Hema came, the Balendu also came and they now live together
10 peacefully.

11 Q. Now, Mr Witness, I'm going to go back to what you were telling us about how
12 you and others were asked to build a thatched house. My question is this: How
13 did -- how did they find the people to do this work? How did the UPC find people
14 to do this work?

15 A. They took people forcibly. If you didn't come to do the community work, you
16 were severely punished. You could even be beaten to death, and that is what we
17 were afraid of.

18 Q. And when you say, and I quote, "If you didn't come to do the community work,
19 you were severely punished. You could even be beaten to death, and that is what
20 we were afraid of," and -- how do you know this?

21 A. Well, it is because when we were building the house, a young Mubira (phon)
22 did not come for the salongo and one woman told us that this young man had
23 received a terrible beating, and that is why all the young men -- all the young people
24 were afraid of such beating because if you did not come to work, you could be beaten
25 up. Even if you were ill, you had to do the salongo. You did not have to remain at

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1 home because that was the rule.

2 Q. Mr Witness, there is a word that is being used by the interpreter, the word is
3 "salongo". Could you explain what the word "salongo" means?

4 A. Salongo, salongo is community work. And during that type of work people
5 would be shouting "Salongo, salongo." It is President Mobutu who started that type
6 of community work which is known as salongo. It is work that is done collectively
7 in a group.

8 Q. Now you've explained that there were civilians from Sayo who did this salongo
9 work. Do you know if there was anybody else in Sayo asked to do work by UPC
10 soldiers?

11 A. We had remained in the village with groups of Babira and Lugbara people, as
12 well as the Alur, and we did this kind of work together. We were all in the village
13 and we all used to do this work together.

14 Q. And do you know if there was anybody not from Sayo, from outside the village
15 but present in Sayo when the UPC were there who were asked to do any work?

16 A. I have not understood your question. Please kindly repeat it.

17 Q. You've said that civilians from Sayo were asked to do salongo. Do you know if
18 the UPC soldiers asked anybody else to do work for them whilst they were there in
19 Sayo?

20 A. Well, the main work here was to build and for that reason young people were
21 asked to go fetch water. And this was the only work at the time, that is until we
22 finished the building. We didn't do anything else until they left.

23 Q. Now, when the UPC occupied Sayo or stayed in Sayo, do you know if they
24 captured anybody?

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1 Mr Witness, hold on.

2 MR BOURGON: Straight leading question, Mr President. It's a clear suggestion
3 that somebody was captured. I don't see why this question should be allowed. He
4 can say what happened, what he saw, what he did, what he heard, but not a question
5 that suggests the answer. Thank you, Mr President.

6 MS LUPING: Mr President.

7 PRESIDING JUDGE FREMR: Yes, Ms Luping.

8 MS LUPING: Your Honours, I would simply say that the question is not seeking to
9 suggest the answer to the witness, it's simply a question, as you would expect during
10 a military attack, that if two forces are engaging, certain individuals may be captured.
11 The witness may say if he knows that this occurred or if this did not occur. It's not
12 an unusual situation or event in the context of a military attack.

13 PRESIDING JUDGE FREMR: The observation is sustained.

14 Ms Luping, try to rephrase it a little bit -- maybe a more general -- in a little bit more
15 general way.

16 MS LUPING:

17 Q. Mr Witness, you've explained that after the UPC attacked Sayo, there were three
18 groups of civilians from Sayo living in Sayo. My question is this: Do you know if
19 there was anybody else in Sayo other than residents of Sayo during the UPC's
20 presence there?

21 MR BOURGON: This question was asked, Mr President, already and it was
22 answered. Thank you.

23 PRESIDING JUDGE FREMR: Ms Luping.

24 MS LUPING: Mr President, your Honours, this question has not been asked. This
25 is a new question. I'm rephrasing the question and this is the rephrasing of the

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1 question. It has not been asked and answered.

2 PRESIDING JUDGE FREMR: Mr Bourgon.

3 MR BOURGON: Mr President, I refer you to line -- page 19, at line 4, "And do you
4 know if there was anybody not from Sayo from outside the village, but present in
5 Sayo when the UPC were there..."

6 That question -- the first -- the witness then says I don't understand.

7 Then she repeats the question, then she gets the answer at lines 12 to 16.

8 I mean, why are we doing this over and over and over again?

9 MS LUPING: Mr President, at line 9, page 19, my question was: "You've said that
10 civilians from Sayo were asked to do salongo. Do you know if UPC soldiers asked
11 anybody else to do work for them..."

12 That is a very different question to the question I have just posed, which was
13 asking -- where I mentioned that he had said "... there were three groups of civilians
14 from Sayo living in Sayo ... Do you know if there was anybody else in Sayo other than
15 residents of Sayo during the UPC's presence?" That is a different question and it
16 hasn't been answered yet.

17 PRESIDING JUDGE FREMR: I do agree. The objection is overruled.

18 Ms Luping, it would probably be better to repeat the question to the witness.

19 MS LUPING: Thank you, Mr President. I'll repeat the question.

20 Q. Now, Mr Witness, you explained that after the UPC attacked Sayo, there were
21 three groups of civilians from Sayo living in Sayo. My question is this: Do you
22 know if there was anybody else living in Sayo, or present in Sayo other than residents
23 of Sayo during the UPC's presence there?

24 A. (Redacted)

25 (Redacted)

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5 (Redacted).

6 MS LUPING: Mr President, if I could briefly go into private session because my next
7 line of questions are of an identifying nature.

8 PRESIDING JUDGE FREMR: All right.

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

10 (Private session at 10.28 a.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 Luping, you may proceed.

14 MS LUPING:

15 Q. (Redacted)

16 (Redacted).

17 A. (Redacted).

18 Q. (Redacted)?

19 A. (Redacted)

20 (Redacted).

21 Q. (Redacted)?

22 A. (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted).

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- 1 (Redacted)
- 2 (Redacted).
- 3 Q. (Redacted)?
- 4 A. (Redacted).
- 5 Q. (Redacted)
- 6 (Redacted)?
- 7 A. (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted).
- 13 Q. (Redacted)
- 14 (Redacted)?
- 15 A. (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted).
- 20 MS LUPING: Mr President, we can return to public session for my additional
- 21 questions.
- 22 PRESIDING JUDGE FREMR: Well, court officer, let's return back into open session.
- 23 (Open session at 10.42 a.m.)
- 24 THE COURT OFFICER: We're in open session.
- 25 PRESIDING JUDGE FREMR: Thank you.

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1 Ms Luping, you may proceed.

2 MS LUPING:

3 Q. Now, Mr Witness, you said that there were many people in the pit in the
4 underground prison. Do you know who they were?

5 A. No, I don't know because I didn't see them, I didn't see them with my own eyes.
6 It was that person who was in the pit who told us. He told us that there were many
7 people in the pit underground and that at night they had some of them come out and
8 those people never came back. That's what this man told us.

9 Q. And when these people came out, did you ever see any of them outside of the
10 pit?

11 A. No. You know, it was covered with corrugated iron and the guard was
12 watching over the pit. How could you be next to it, next to this underground pit?
13 It was impossible. You could walk along the road near the pit, you could see the
14 guards who were standing above the prison.

15 Q. The UPC soldiers by the pit, were they carrying anything in their hands?

16 A. Each one had a weapon. But we didn't hear the sound of gunfire. There were
17 no gunshots. We didn't hear gunshots anymore. That's what we noticed.

18 Q. Now, Mr Witness, you've explained how there were corpses in Sayo. After the
19 UPC left Sayo, were there ever any other corpses found?

20 A. After they left Sayo -- after they left Sayo, there were corpses that had already
21 begun decomposing. And the people who covered them up were school children
22 who went to get straw to build their toilets and they had found skeletons that were
23 decomposing.

24 Q. And did you ever see these skeletons with your own eyes?

25 A. When we burned the bush you could find skulls because wild animals had

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1 already eaten away the bodies, but it was difficult to see how many bodies there were.
2 You could find skulls and human bones here and there. It was behind the Catholic
3 church in Sayo.

4 Q. And how many of these skeletons did you find behind the Catholic church in
5 Sayo?

6 A. It was difficult to count them because it was several days later. All the bodies
7 were decomposing. It was very difficult to count them. This was several days later.
8 I can't tell you that I counted them. I saw the bones here and there when I walked
9 along the road to go to the fields.

10 Q. And these human remains that you saw, could you see any injuries on these
11 remains?

12 A. They were skeletons. You couldn't see. You know, a skeleton is a corpse
13 where the body has already decomposed, so you can't tell what had happened. You
14 can't tell whether bones were broken or what. You know we have wild animals that
15 would eat human corpses, wild bores and other wild animals that prey on dead
16 bodies. They eat corpses, human corpses. So it was very difficult, it was hard to
17 look at.

18 Q. Now, these bodies that were found by the children, did you ever find out who
19 they were?

20 A. I couldn't identify them. It was difficult to go behind the houses. We would
21 walk along the road and we would come and go. We couldn't get close up to the
22 church. It was only afterwards, several days later, when the children went back to
23 school and they went off to collect straw and the children found those skeletons in the
24 back.

25 Q. Now, Mr Witness, you explained to us that the UPC left Sayo, that all of them

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1 left. Do you remember how long that was after they first attacked Sayo, when they
2 left Sayo?

3 A. One month, a month later. They left at night. The day they left they didn't
4 say that they were going to leave, but it was sudden. They left at night. At the time
5 I was in Nzebi, and I saw 6,000 soldiers who were going to Andisa and I wondered who
6 they were (Redacted). We were in Nzebi and he was
7 dressed in civilian clothes. You couldn't tell that they were soldiers. It was hard to say what
8 was going on. And (Redacted)
9 (Redacted).

10 At night they all left, but we didn't know in which direction they went. The next day
11 we discovered the camp was empty, but we had no idea in which direction they went.
12 It was at that time --

13 PRESIDING JUDGE FREMR: Mr Witness.

14 THE WITNESS: (Interpretation) -- that we saw --

15 PRESIDING JUDGE FREMR: Mr Witness.

16 THE WITNESS: (Interpretation) -- that the pots and pans and the plates had been
17 stolen.

18 PRESIDING JUDGE FREMR: Mr Witness, please, as I had told you in beginning of
19 today's session, please limit your response just to the question put to you, either by
20 Ms Luping and maybe then next by Defence, okay? Thank you.

21 MS LUPING:

22 Q. Mr Witness, I have some follow-up questions. You said, "At the time I was in
23 Nzebi and I saw 6,000 soldiers who were going to ..." Now, there's a name of a place
24 and it's not captured here in the transcript. Can you repeat the name of the place
25 and spell it for us.

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1 A. N-Z-E-B-I, Nzebi.

2 MS LUPING: Mr President, I have a couple of questions of an identifying nature, if
3 we could please move to private session.

4 PRESIDING JUDGE FREMR: All right.

5 Ms Court Officer, please let's move into private session.

6 (Private session at 10.54 a.m.) *(Reclassified partially in public)

7 THE INTERPRETER: Comment from the interpretation booth: In the previous
8 answer it was 6 soldiers and not 6,000.

9 THE COURT OFFICER: We're in private session.

10 PRESIDING JUDGE FREMR: Thank you.

11 Ms Luping, you may proceed.

12 MS LUPING:

13 Q. Mr Witness, there's been a correction in the transcript. So I'll just read the
14 passage to you again.

15 At the time I was in Nzebi, and I saw 6 soldiers who were going to Nzebi and I
16 wondered who they were (Redacted)

17 A. (No interpretation)

18 Q. -- please listen. Mr Witness, I haven't finished. I haven't finished, sorry.

19 ... and I wondered who they were (Redacted).

20 Now, My question is as follows: (Redacted).

21 (Redacted)?

22 A. (Redacted).

23 Q. (Redacted)

24 (Redacted)?

25 A. (Redacted).

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1 (Redacted)

2 (Redacted).

3 Q. And you said there were others who had heavy burdens. Who were these
4 other people?

5 A. There were six of them, six individuals.

6 Q. And do you know where they left to, what direction they were going in? You
7 saw them leave. Did you see what direction they left in?

8 A. They took the road to Andisa and they crossed over. There's a road that goes
9 from Nzebi to Andisa. It crosses the Ituri River and then you get to Yedi. It's a
10 shortcut.

11 Q. And did you learn where they were going to?

12 A. I know they took the Nzebi road and that they had left, but I didn't know where
13 they were going because I didn't go there.

14 Q. Now, Mr Witness, you've used the word -- said the word Yedi. If you could
15 spell that. It will be the last thing before the break. If you could spell Yedi.

16 A. Y-E-D-I. That's it.

17 Q. Thank you, Mr Witness. I will have more questions after the break.

18 We can break now.

19 PRESIDING JUDGE FREMR: Okay, we will break now.

20 So first we have to escort Mr Witness out of the courtroom. Court officer, please.

21 (The witness stands down)

22 PRESIDING JUDGE FREMR: Ms Luping, how much time you think you would
23 need to wrap up, including tendering of photographs?

24 MS LUPING: Mr President, I will need to use up the maximum time remaining for
25 me.

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1 PRESIDING JUDGE FREMR: May I ask, do we have at the moment -- yes, I've been
2 provided. So until now, so far, you used 5 hours 25 minutes, which means that you
3 should have at your disposal 35 minutes. Do you think it will sufficient for -- 35
4 minutes, would it be sufficient for completing examination-in-chief?

5 MS LUPING: It might be tight with the -- with the exhibits as well, Mr President. I
6 may need a little bit extra time for the exhibits, not too long though because we have
7 narrowed the number of exhibits that we were seeking to show to him.

8 PRESIDING JUDGE FREMR: But even for future, please, next time just be ready
9 that even time needed for tendering exhibits is included. So I can promise we maybe
10 will give you, because there are some obvious problems with witness, even not
11 caused by you, because he also sometimes really responded at a larger -- extended, I
12 mean, requested, but still I think you should finish in 45 minutes.

13 MS LUPING: Thank you, Mr President.

14 PRESIDING JUDGE FREMR: Now we break and we'll come back at half past 11.

15 THE COURT USHER: All rise.

16 (Recess taken at 11.04 a.m.)

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

18 THE COURT USHER: All rise.

19 Please be seated.

20 PRESIDING JUDGE FREMR: All right. So we will continue with the testimony of
21 our witness. Prosecution has 45 minutes to wrap it up.

22 Ms Luping, do you want to proceed in private or open session?

23 MS LUPING: We can proceed in public session, Mr President.

24 PRESIDING JUDGE FREMR: Okay. Then you -- then you may proceed.

25 MS LUPING:

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1 Q. Mr Witness, you explained that all the UPC soldiers left Sayo. My question is
2 this: After the UPC soldiers left, did you stay in Sayo or not?

3 A. The UPC soldiers left at night and we do not know where they went to. We
4 remained at our locations without going anywhere, meaning that we remained in
5 Sayo.

6 Q. And for how long did you remain in Sayo after the UPC soldiers left? Was
7 there any time that you had to leave Sayo?

8 A. After the UPC soldiers left, there was calm, so we remained in Sayo until the
9 Lendu began to return. They learned that calm had returned, and so they gradually
10 returned to settle since they had been living there before.

11 Q. And without saying where you worked, did you continue working once there
12 was calm in Sayo?

13 A. After they left, we went back to our farming activities. You see, all the crops
14 we had planted before had been destroyed. So that is what we did, that is, go to our
15 farms.

16 MS LUPING: Mr President, if I could ask a question in private session, please.

17 PRESIDING JUDGE FREMR: All right.

18 Court Officer, let's move into private session.

19 (Private session at 11.37 a.m.) *(Reclassified partially in public)

20 THE COURT OFFICER: We're in private session.

21 PRESIDING JUDGE FREMR: Thank you.

22 Ms Luping, you may proceed.

23 MS LUPING:

24 Q. (Redacted)

25 (Redacted)?

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(Private Session)

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1 (Redacted)

2 (Redacted)

3 A. (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted).

8 (Redacted).

9 Q. And this war in Bunia, who was it between, which groups?

10 A. It was the war between the Lendu, the Ngiti and the UPC because the

11 Lendu/Ngiti were fighting against the UPC.

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 Q. And who was blocking the roads?

17 A. The area was under the control of the UPC troops, Mudzipela was under UPC
18 control and all the roads were blocked. It was not possible to go anywhere.

19 Q. And what would happen if you tried to cross the blockade?

20 A. If you tried to cross the bridge, you could have been killed and your body
21 would be thrown into the Chari river. It was also possible that one attempting to
22 cross could be killed, and that is what frightened us.

23 Q. Could have been killed by who?

24 A. By the UPC soldiers.

25 (Redacted)

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(Private Session)

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1 (Redacted)?

2 A. (Redacted).

3 Q. (Redacted)

4 (Redacted)?

5 A. (Redacted).

6 Q. (Redacted)?

7 A. (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted).

12 Q. (Redacted)

13 (Redacted)

14 (Redacted)?

15 A. (Redacted)

16 (Redacted)

17 (Redacted).

18 Q. (Redacted)?

19 A. (Redacted).

20 Q. (Redacted)?

21 A. (Redacted)

22 (Redacted).

23 MS LUPING: Mr President, we can now go into public session. I will be asking for

24 two documents to be shown to the witness, but they are confidential, so they -- it can

25 be brought up but it would not be able to be seen by the public even though we've

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1 move to public session.

2 PRESIDING JUDGE FREMR: And you're asking that they are -- there are no
3 real -- no risk to use them even in open session?

4 MS LUPING: I think it's fine for my questions to be in open session, but it's just the
5 document itself will not be able to be seen in open session.

6 PRESIDING JUDGE FREMR: Okay. Well noted. So you may proceed. Sorry,
7 and we have to move into open session.

8 (Open session at 11.53 a.m.)

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

10 PRESIDING JUDGE FREMR: Court officer, thank you.

11 Ms Luping, please proceed.

12 MS LUPING: Yes. May the court officer be -- please bring out as a confidential
13 document DRC-OTP-2077-0035. This is in tab 4 of your Honours' binders. And if
14 the court usher could ensure that this document is also before the witness, that he can
15 see it, please.

16 PRESIDING JUDGE FREMR: So in order to hide this document from the public
17 gallery, please put down the blinds behind the witness.

18 So blinds are down now, so we can show this document on the witness screen.

19 MS LUPING:

20 Q. Mr Witness, can you see a document before you?

21 A. (No interpretation)

22 Q. And do you recognize it? Sorry, I'll repeat my question.

23 A. (No interpretation)

24 Q. Do you -- do you recognize the document before you?

25 A. Yes, very well.

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1 Q. And how do you recognize it?

2 A. I can see what is written on it, and that's how I recognize it.

3 PRESIDING JUDGE FREMR: Mr Bourgon.

4 MR BOURGON: Thank you, Mr President. Mr President, my colleague has asked
5 for this document not to be shown or to be kept confidential, and I would like to have
6 the reasoning or the rationale for maintaining this document confidential. I don't see
7 what -- maybe there's something I'm missing, but I don't see why the document
8 should be kept confidential.

9 MS LUPING: Mr President, perhaps if my learned colleague could look further
10 down at the page to see what name and signature is there. That was going to be my
11 next question. And then perhaps it's more obvious as to why this needed to be seen
12 on a confidential basis.

13 PRESIDING JUDGE FREMR: That may be -- the solution also could be that we
14 could just -- but it's probably not easily to make it on the screen to hide --

15 MR BOURGON: We don't mind, Mr President. We don't mind.

16 PRESIDING JUDGE FREMR: Okay.

17 MR BOURGON: Let's just proceed. Thank you.

18 PRESIDING JUDGE FREMR: Even better.

19 Then Ms Luping, you may proceed.

20 MS LUPING: Thank you, Mr President, your Honours.

21 Q. Now, Mr Witness, do you recognize your signature at the bottom of the page?

22 MS LUPING: There does not appear to be any interpretation, Mr President.

23 PRESIDING JUDGE FREMR: Interpreters, we would like to get your translation.

24 THE INTERPRETER: Mr President, there seems to be a problem with one of our
25 microphones. We don't know which one.

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1 PRESIDING JUDGE FREMR: But we -- I think we haven't got any translation, so
2 maybe please try to repeat all translation.

3 THE INTERPRETER: Mr President, maybe counsel could repeat her question?

4 MS LUPING:

5 Q. I'll be repeating my question, Mr Witness. Your answer was not captured, so
6 please listen to my question again.

7 Mr Witness, do you recognize your signature at the bottom of the page?

8 A. Yes, I recognize the signature without any problem.

9 Q. And did you draw this sketch that we're looking at now?

10 A. Yes, I drew it myself. You can even see my name on it.

11 Q. Now, Mr Witness, I'm going to just simply read out the place names written on
12 this. And I would just -- I will ask you a question after reading these place names.

13 Written here we have "Adidi Montagne." Is this the Adidi mountain that you
14 referred to in your testimony?

15 A. Yes. Yes. (Redacted)

16 (Redacted).

17 Q. And, Mr Witness, I see here "Saio Cantine," "Adidi mines," "Saio gale." You've
18 mentioned these as places where UPC were based. Are these the locations on this
19 map here?

20 A. Yes.

21 Q. And there's a location "Eglise." Is this the Catholic church that you've been
22 describing?

23 A. Yes, yes, yes. Yes, that's the Catholic church, and the police camp is right next
24 to it.

25 Q. And here we have written "prison." Is that the underground prison that you

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1 described?

2 A. Yes, yes, yes, yes.

3 Q. And there is a location "Brique," B-R-I-Q-U-E. Is that also the place Brique that
4 you described during your testimony?

5 A. Yes, yes, yes, yes, yes.

6 Q. And similarly "usine Kanga," is that the factory you described, Kanga factory
7 you described during your testimony?

8 A. (No interpretation)

9 THE INTERPRETER: Microphone, please.

10 MS LUPING:

11 Q. Mr Witness, if I can please stop you and please remember just answer the
12 question I asked. My question was only if this was the Kanga factory that you
13 mentioned in your testimony. That was all.

14 A. Yes. That's the factory. It's there.

15 Q. And the "Centre de santé," is that the health centre that you were describing
16 during your testimony?

17 A. Yes.

18 MS LUPING: Mr President, your Honours, if an EVD number could please be
19 assigned to this document.

20 PRESIDING JUDGE FREMR: So you want to mark it for identification only?

21 MS LUPING: No. I would like it --

22 PRESIDING JUDGE FREMR: Or tendered.

23 MS LUPING: -- to actually be tendered as evidence, please.

24 PRESIDING JUDGE FREMR: Okay. Sorry.

25 Mr Bourgon, any objection to that?

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1 MR BOURGON: No objection, Mr President.

2 PRESIDING JUDGE FREMR: Then this sketch is admitted into evidence as a

3 Prosecution's exhibit.

4 Ms Luping, you may proceed.

5 MS LUPING: Thank you. I have a next document to put before the witness, the

6 same category. It's also confidential, although the questions can be asked in public.

7 It is DRC-OTP-2077-0036.

8 Q. Now, Mr Witness, do you recognize this document that is currently in front of
9 you?

10 A. Yes, I recognize it. I recognize it very well.

11 Q. And do you recognize your signature on this document?

12 A. Yes. I see my name and my signature.

13 Q. And did you draw it? And could you --

14 A. Yes. I'm the one who drew it.

15 Q. And could you explain what the place is that you have marked as *Trou, T-R-O-U?

16 A. The pit is next to the police office. That's where there was the underground
17 prison. That's what I referred to there. That's what's mentioned between the
18 church and the police office.

19 MS LUPING: Mr President, your Honours, if this could also be admitted as
20 evidence and an EVD assigned.

21 PRESIDING JUDGE FREMR: Mr Bourgon, any objection to that?

22 MR BOURGON: No objection, Mr President.

23 PRESIDING JUDGE FREMR: Thank you. Then this document which ERN number
24 is ending 0036, sketch, is also admitted into evidence as a Prosecution exhibit.

25 Ms Luping, you may proceed.

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1 MS LUPING: I would like to now show a series of photographs, four photos. The
2 first one, court officer, is DRC-OTP-2069-0258. It's at tab 7 of your Honours' binders
3 and this may be seen -- this image may be -- may be seen publicly.

4 PRESIDING JUDGE FREMR: I think is there any -- Ms Luping, is there any need to
5 keep the blinds down?

6 MS LUPING: Actually, your Honours, actually out of an abundance of caution,
7 whilst the *images themselves could be seen publicly, my questions in fact may be
8 identifying, so perhaps if we just -- if we could move to private session, I'll ask the last
9 sessions relating to these series of photos in private session to be on the safe side.

10 PRESIDING JUDGE FREMR: Okay.

11 So, Mr Bourgon?

12 MR BOURGON: Thank you, Mr President. Before this picture is actually used
13 with the witness and that questions are put to him, we would appreciate knowing
14 where the picture comes from, who took the picture, in what year the picture was
15 taken and to establish a minimum foundation before the witness can be asked any
16 question. Thank you, Mr President.

17 PRESIDING JUDGE FREMR: Yes. I find this request fully legitimate.

18 Ms Luping, please.

19 MS LUPING: Mr President, your Honours, I would refer you to paragraph 56 of
20 your decision on -- relating to the conduct of the proceedings. It is not -- in terms of
21 the year in which these images were taken, which was 2014, in our submission it is
22 not necessary that the person to whom we are presenting the imagines actually be the
23 source or the person who took the images in our submission. And pursuant to
24 paragraph 56 of your decision, it would be sufficient if the witness recognized the
25 contents. And in this case we'll be simply asking the witness if he recognizes the

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1 location. That is all.

2 PRESIDING JUDGE FREMR: Mr Bourgon.

3 MR BOURGON: Thank you, Mr President. Paragraph 56 and 57 of course relate
4 specifically to video evidence, but in respect of pictures, it says that the witness must
5 have personal knowledge of the making of or the contents of and that before the
6 picture can be shown at least there has to be a foundation established.

7 In the case of a video, the Trial Chamber explained that the witness must be shown a
8 short extract that he -- he can recognize and relate to the video.

9 In the case of a picture, the same thing must be done mutatis mutandis, which simply
10 is that we have to establish the basis. (Redacted)

11 (Redacted), but all I'm asking for, Mr President, is at least to know when this
12 picture was taken, by whom and in what context, so this way he can say whether he
13 was there at the time and whether he's able to recognize that picture when it was
14 taken.

15 I think that's a sufficient basis before questions are put to the witness. Thank you,
16 Mr President.

17 THE COURT OFFICER: Mr Bourgon, I wish to remind you that we were in open
18 session.

19 PRESIDING JUDGE FREMR: Yeah.

20 Ms Luping, I would like to finish this exchange of views. I think for us it would be
21 enough even if you would just say, okay, we already said the year and that we
22 don't -- we don't know exact name of the person who produced this picture but that it
23 was in the framework of your investigation or something like that just to have deeper
24 knowledge of the circumstances of production of this picture.

25 MS LUPING: Yes, Mr President, your Honours. These photos were indeed taken

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1 during the course of the Prosecution's investigations. They were not taken by this
2 witness, he is not the source, but we believe that there is a sound basis for showing
3 them to him, if he recognizes the contents.

4 PRESIDING JUDGE FREMR: It's sufficient for us, so now we will move to private.

5 Am I right? Did you ask that?

6 MS LUPING: Yes, please, in private session.

7 PRESIDING JUDGE FREMR: So let's move to private session.

8 (Private session at 12.12 p.m.) *(Reclassified partially in public)

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

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

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23 (Redacted)

24 (Redacted)

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12 Page 53 redacted

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25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 Q. (Redacted)

5 (Redacted)

6 (Redacted)?

7 A. (Redacted)

8 PRESIDING JUDGE FREMR: (Redacted)

9 (Redacted)

10 THE WITNESS: (Interpretation) (Redacted)

11 (Redacted).

12 PRESIDING JUDGE FREMR: (Redacted)

13 THE WITNESS: (Interpretation) (Redacted).

14 MR BOURGON: (Redacted).

15 PRESIDING JUDGE FREMR: (Redacted).

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)?

20 MS LUPING: Thank you, Mr President. Thank you, your Honours. I have no
21 further questions of this witness.

22 Q. Thank you, Mr Witness. I have finished my questions.

23 PRESIDING JUDGE FREMR: Okay. So we will break, Mr Witness. Now you will
24 be -- you will be given 90 minutes to take your lunch and to refresh a bit and then, in
25 the afternoon, we will continue with cross-examination by Defence, but maybe before

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1 that I should assure myself that there are no requests for returning from the part of
2 Legal Representatives of Victims. Am I right?

3 MS PELLET: (Interpretation) Thank you, Mr President. No, we have no requests
4 to question this witness. No, we didn't apply to question him.

5 PRESIDING JUDGE FREMR: Okay. Okay then, we will first escort Mr Witness out
6 of the courtroom.

7 (The witness stands down)

8 PRESIDING JUDGE FREMR: And before we move, I know that this is rather
9 premature but, anyway, Mr Bourgon, do you have at least any rough estimation of
10 how much time you will need?

11 MR BOURGON: Indeed, Mr President, I will require the full 6 hours.

12 PRESIDING JUDGE FREMR: Okay with us.

13 So now we break and we will reconvene at half past 2.

14 THE COURT: All rise.

15 (Recess taken at 12.56 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.

20 Mr Witness, so far you were questioned by the Prosecution, and now it is time for the
21 Defence. It means that you will be questioned by, I guess, Mr Bourgon.

22 Please, I would like to emphasise that this Court is governed by the principle of fair
23 trial, but also means that both parties shall be treated equally. So, for you, it means
24 that you should answer the Defence questions in the same way, in the same style as

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1 you did it in case of questions put by Prosecution. Do you understand this?

2 THE WITNESS: (Interpretation) Yes, I understand.

3 PRESIDING JUDGE FREMR: That's good.

4 So Defence, you have the floor.

5 MS LUPING: Mr President.

6 PRESIDING JUDGE FREMR: Ms Luping.

7 MS LUPING: Mr President, your Honours, I'm just referred to paragraph 33 of your
8 decision on the conduct of proceedings where any objections are to be raised orally
9 prior to the start of cross-examination in relation to the use of any documents.

10 I don't need to deal with the specific objections now, your Honours, but just to bring
11 to your attention that the Prosecution does object to the items 9 to 31 on the list of this
12 witness, but I'm able to deal with those if and when they are actually, in fact, used.

13 PRESIDING JUDGE FREMR: I think it would be necessary anyway. Thank you.

14 And now, Mr Bourgon, you have the floor.

15 MR BOURGON: (Interpretation) Your Honour, if I may.

16 QUESTIONED BY MR BOURGON:

17 Q. Good afternoon, Witness.

18 A. Good afternoon.

19 Q. During the last hours in the last few days, we have listened to the questions that
20 were put to you as well as to your responses and, of course, we found it all very
21 interesting. However, Witness, of course we feel compassion for the events that you
22 described during your testimony. This being said, we do have a number of
23 questions to put to you in order to clarify what you've said before this Chamber.
24 Let me begin by introducing myself. My name is Stéphane Bourgon, and I'm here
25 with three of my co-counsels and colleagues, and together we represent the accused

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1 in this case, Mr Bosco Ntaganda.

2 I will do my best to ask you questions slowly and clearly in order to avoid any
3 ambiguity.

4 PRESIDING JUDGE FREMR: Sorry to interrupt you, Mr Bourgon. I have some
5 problems with my transcript.

6 Court officer, please, could you assist me.

7 (Pause in proceedings)

8 PRESIDING JUDGE FREMR: Thank you. You may proceed, Mr Bourgon.

9 MR BOURGON: Thank you, Mr President. Maybe to make it easier for everyone, I
10 will switch to English.

11 Q. Sir, I will now ask my questions to you in English, of course, and you will have
12 the translation to each of my questions. Can you hear me in a language that you
13 understand?

14 A. Yes, I understand what you're saying.

15 Q. Thank you. As mentioned earlier, I will do my best to speak slowly and clearly
16 so that you understand every one of my questions. Most of my questions can be
17 answered by an answer of "yes" or "no." And I invite you, whenever you feel it's
18 appropriate, to answer by "yes" or "no"; however, if you wish to add anything to any
19 of your answers, by all means, feel free to do so. Do you understand these
20 instructions?

21 A. Yes, I understand.

22 Q. Now, in the event that you do not understand any of my questions, please do
23 not hesitate and ask me to repeat, and I will put the question in a way to ensure that
24 you do understand the question.

25 If you do not remember something or an answer to a question that I ask of you, that's

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1 perfectly all right, and do not hesitate to say so. Are you ready to begin, sir?

2 A. Yes. You can begin asking me your questions. I can hear you.

3 Q. Thank you. I'd like to begin by referring to your meeting with the Prosecution
4 last week, and that was on Monday and Tuesday, 19 and 20 October of this year. Do
5 you recall meeting the Prosecution on those two days?

6 A. Yes, I remember.

7 Q. Now, during this meeting, it's my understanding that you were shown a
8 statement that you provided to the Office of the Prosecutor. Do you recall being
9 shown this statement?

10 A. Yes, that declaration was shown to me.

11 Q. For the record, I refer to document number DRC-OTP -- I
12 apologise -- DRC-OTP-2077-0019. It says on the first page of this statement, sir, that
13 you actually met with representatives of the Prosecution on five days, on
14 10 October 2014 --

15 MS LUPING: Mr President.

16 PRESIDING JUDGE FREMR: Ms Luping.

17 MS LUPING: I apologise for interrupting, but just a reminder to my learned friend
18 that we are in open session, and this is not usually the type of information that we
19 would disclose publicly, the precise days on which a witness meets with the
20 Prosecution as that may also be revealing.

21 PRESIDING JUDGE FREMR: Mr Bourgon, any objection to move to -- into private
22 session?

23 MR BOURGON: I take it, Mr President, that unless we are revealing where an
24 interview took place or any other information redacted on the statement, we should
25 go into private session; but if it pleases the Court, I have no problem in going into

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1 private session.

2 PRESIDING JUDGE FREMR: You know, I guess that Ms Luping is right that even,
3 you know, timing of meetings could lead, at least as it concerns some persons, to
4 reveal of the identity. So I would rather also move to private session.

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

6 (Private session at 2.45 p.m.) *(Reclassified partially in public)

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

8 PRESIDING JUDGE FREMR: Thank you.

9 Mr Bourgon, you may proceed.

10 MR BOURGON: Thank you, Mr President.

11 Q. And, sir, as I was saying, on the first page of this statement, it says that you met
12 with the Office of the Prosecutor on (Redacted); namely, (Redacted)
13 (Redacted)

14 (Redacted). Do you recall meeting with the Office of the Prosecutor on those
15 dates?

16 A. If you're referring to the meetings in (Redacted), I do remember because in (Redacted) I
17 met with them (Redacted). If that's what you're referring to, yes, I
18 agree with what you said.

19 Q. Thank you, sir. I did not know that the meetings had taken place in (Redacted), but
20 you can recall that on those occasions you met with (Redacted) from the Office of the
21 Prosecution; is that correct?

22 A. If you're referring to the meeting I had with the representatives of the OTP that
23 took place here, yes.

24 Q. Let me rephrase my question. I'm referring to the meetings that took place
25 immediately before you signed your statement, and that, as you mentioned, in (Redacted).

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1 And from the information I have on this statement, (Redacted)

2 (Redacted). You recall meeting with the Office of the Prosecutor (Redacted)

3 (Redacted)?

4 A. I remember very well.

5 Q. Now, (Redacted) when you met with the Prosecution, you were also shown
6 another document, which is identified --

7 A. Yes, yes, I was shown that document.

8 PRESIDING JUDGE FREMR: Mr Witness, please always wait because, I guess,
9 Mr Bourgon hasn't finished yet his question. So, please be patient and always wait
10 until the question is completed.

11 Mr Bourgon.

12 MR BOURGON: Thank you, Mr President.

13 Q. A second document you were shown (Redacted) is called a "Screening Note."
14 Do you recall seeing a document called "Screening Note" (Redacted)?

15 A. I am not familiar with that kind of document, especially if it's referred to in
16 English.

17 Q. This document --

18 THE INTERPRETER: I do remember now says the witness.

19 MR BOURGON:

20 Q. For the record, Mr President, I'm referring to document number
21 DRC-OTP-2077 -- sorry, 2075-0425.

22 According to the first page of this document, sir, you met with the Office of the
23 Prosecution, the OTP, as you call it, (Redacted), which is the same day you had
24 your first meeting for your statement. Do you recall such a meeting?

25 MS LUPING: Sorry, Mr President, just to note a -- perhaps it's just an error, but the

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1 screening note refers to a different date, (Redacted).

2 PRESIDING JUDGE FREMR: To object -- Ms Luping, if you just -- you can correct
3 the date.

4 MS LUPING: The screening note, it says (Redacted), so it is the day before the
5 statement.

6 PRESIDING JUDGE FREMR: Thank you.

7 Mr Bourgon, is it right?

8 MR BOURGON: Indeed, Mr President. I'm grateful to my colleague.

9 Q. Sir, this first meeting with the Office of the Prosecution was on (Redacted). Do
10 you recall this meeting?

11 A. Yes, I remember.

12 Q. Now, during the meeting (Redacted), when you were shown both of these
13 documents, you were given an opportunity to bring clarifications to both of them.
14 Do you recall that?

15 A. This document was written in a foreign language. There was an interpreter
16 into Swahili and so I was, therefore, able to understand what was written, but some of
17 the things that were written in the document were -- I was not able to understand
18 simply because it was written in a foreign language.

19 Q. I understand, sir. But, in fact, according to the information I have, you did
20 make corrections or clarify -- clarifications to both documents, did you not?

21 A. There were not many changes. I did make a few minor corrections. There
22 were certain difficulties with the spelling of names. They had trouble transcribing
23 them correctly. It was that kind of change that was made.

24 Q. So it is my understanding, sir, that the -- at the end of this meeting you were
25 satisfied that the contents of both documents represented, to the best of your

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1 recollection, the events as you lived through them; is that correct?

2 A. No, no, that's not correct.

3 Q. So do you wish to make further changes to both of these documents, or your
4 documents represent, to the best of your recollection, what happened in 2002, two
5 thousand -- when you -- the events you testified about?

6 A. I can't make any changes because I've described events that I lived through.
7 I've told you everything that I saw and what happened, and that's it.

8 Q. And that is exactly my point, sir. These documents represent what you believe
9 to be your recollection of the events you lived in 2002-2003.

10 A. The content of this document corresponds exactly to what I told the
11 investigators.

12 Q. And today you stand by the answers you provided to the Office of the
13 Prosecutor on both of these occasions?

14 A. Yes. What I said corresponds to the content of this document and, therefore, it
15 corresponds to what I -- to the statement I made to the investigators.

16 Q. And during this same meeting with the Prosecutor -- Prosecution, you were also
17 asked additional questions to which you provided answers; is that correct?

18 A. I was asked some questions, and some of them were very difficult. I answered
19 the questions that I was able to answer when I had answers to give, and if I didn't
20 understand the question, I asked them for clarification. And that was how I
21 responded to the questions.

22 Q. Would I be right in saying, sir, that one of the reasons why it was difficult to
23 answer some of these questions is because it is difficult to recall with detail what
24 happened almost 14 years ago?

25 A. Yes. Well, since the year 2002, up until today, that's quite a few years. As a

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1 human being you can't remember everything. I'm not an angel. So I said what
2 I remembered. I can't tell lies. I can't say things that I have no knowledge of, or
3 don't remember.

4 Q. Now, to give you but one example, sir, at one point in your statement you did
5 inform the OTP that you did not remember the months exactly in which the village of
6 Sayo was attacked; is that correct?

7 A. Yes, that's true. I had forgotten because many years had gone by. This was
8 combat that took place during five days. How do you expect me to remember all the
9 details? I wasn't able to recall the date.

10 Q. I appreciate the fact, sir, that you could not recall the date, but on a number of
11 occasions in your statement we have information that you described events which are
12 preceded by the words "a few days later". Now, when you said "a few days later,"
13 that could be any number of days, right?

14 A. Yes.

15 Q. Now, the first issue I'd like to get into regarding the preparation for your
16 testimony today is that before meeting with the OTP, you also met with another
17 person working for the Court (Redacted). Do you recall this,
18 sir?

19 A. Yes, I remember.

20 Q. And can you provide us with the name of that individual?

21 MS LUPING: Objection, Mr President, your Honours.

22 PRESIDING JUDGE FREMR: On what basis?

23 MS LUPING: On the basis that at this --

24 THE WITNESS: (No interpretation)

25 MS LUPING: Sorry, if you would not respond at this stage --

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1 PRESIDING JUDGE FREMR: Mr Witness --

2 MS LUPING: -- if you would not respond, Mr Witness.

3 PRESIDING JUDGE FREMR: -- hold on, wait.

4 Ms Luping.

5 MS LUPING: On the basis, Mr President, your Honours, if this is the individual who
6 is intermediary 743, if we're being asked for the name, then this is simply going to be
7 another way of obtaining information that your Honours have already ruled upon,
8 that the identity of the intermediary is not necessary, and it would be information that
9 could put this individual at risk.

10 PRESIDING JUDGE FREMR: Mr Bourgon.

11 MR BOURGON: Mr President, we are in private session. Nothing that is
12 mentioned here will go anywhere else. I'm exploring a meeting with an individual.
13 I don't know -- I'm just exploring pursuant to the Chamber's instructions, and
14 whether he knows the name or not is, in our view, relevant, whether he remembers
15 the person he met with.

16 PRESIDING JUDGE FREMR: Please give us a second. We will silently deliberate.
17 (Trial Chamber confers)

18 PRESIDING JUDGE FREMR: Objection is sustained. And for explanation I would
19 like to quote part of our oral ruling that had been rendered this morning. The
20 Chamber does not consider that potential inconsistencies between the screening note
21 and witness statement both taken by Prosecution staff are sufficient in themselves to
22 render either the identity or Intermediary 743 or the information relating to the
23 intermediary's interaction with the Prosecution and the Witness material.
24 The Defence has failed to provide an explanation for how such inconsistencies could
25 relate to the intermediary.

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1 The Chamber observed that the Defence is free to explore differences, but now I am
2 emphasising differences between the screening note and the witness statement, this
3 Witness 886 directly during cross-examination, but we are not saying the same about
4 the identity of the intermediary. The request for disclosure is, therefore, denied.

5 Mr Bourgon.

6 MR BOURGON: Thank you, Mr President.

7 Q. Mr Witness, without giving me the name of the individual (Redacted),
8 when did this meeting take place?

9 A. I have not understood the question. Please, kindly repeat it.

10 Q. Yes, I will. I was referring to a meeting you had with a representative from the
11 Court or from the OTP, I don't know, (Redacted)
12 (Redacted). And without referring to the name of
13 that individual, I'd like to know when that meeting took place.

14 A. Our meeting started in the morning. I had a discussion with that person and
15 we had a break at some point, and then we continued later, but I am not able to give
16 you that person's name. I do not know the name.

17 Q. I appreciate, Mr Witness, and I do not want to know the name. All I want to
18 know is how long before meeting with the Office of the Prosecutor did you meet with
19 this person?

20 A. I met him in the morning, (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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4 (Redacted).

5 (Redacted)

6 (Redacted)

7 MS LUPING: Mr President.

8 PRESIDING JUDGE FREMR: Ms Luping.

9 MS LUPING: Out of fairness to the witness, if Mr Bourgon could please read the
10 precise words of the witness. (Redacted)

11 (Redacted).

12 PRESIDING JUDGE FREMR: Take your time, Mr Bourgon, but I guess your
13 assistants will provide you with the specific quotation.

14 MR BOURGON: The reference is at page 76, line 12. And my transcript is not
15 working, so I think I need to reboot the system. However, if I look in terms of the
16 answer, "I met him in the morning (Redacted)."

17 PRESIDING JUDGE FREMR: Yeah. It is true, I have it just in front of me. It is
18 exactly correct.

19 So then you may proceed, Mr Bourgon.

20 MR BOURGON:

21 Q. So I'd like to know, sir, simply what you discussed with this man -- if we're
22 talking about a man, of course, because I don't know the identity -- but what you
23 discussed (Redacted).

24 A. He asked me if all that I told him was from my memory, and I said, "Yes."

25 However, when it came to questions for which I had no answers, I told him that I had

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1 no answers and that I knew nothing about that.

2 Q. I take it, sir, that he informed you of why you -- did the OTP want to meet with
3 you; did he not?

4 A. Yes.

5 Q. I'm not sure if you provided an answer, sir, but I did not hear it, and there's
6 nothing in the transcript.

7 PRESIDING JUDGE FREMR: I heard he said "Yes," and that the English
8 transcript -- we do have it.

9 THE WITNESS: (Interpretation) We did not write down anything. He asked me
10 a number of questions about what I had already said, and I told him that I was ready
11 to repeat that which I had already previously said because I was aware of all those
12 things.

13 MR BOURGON:

14 Q. So he told you what -- that they wanted to speak to you about the charges laid
15 against Mr Ntaganda; is that correct?

16 A. It all depended on the questions that I was asked. Now, when they asked
17 questions of me, they did not mention any names. They did not mention his name.

18 Q. So the name Bosco Ntaganda was not mentioned to you by this person; is that
19 your testimony, sir?

20 A. No, they did not. Now, today I am answering the questions as they have been
21 put to me.

22 Q. And when you met with this person, I suggest to you that he informed you that
23 they were looking for information about Sayo.

24 A. (Redacted)

25 (Redacted)

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1 (Redacted)?

2 A. (Redacted)

3 (Redacted).

4 Q. Thank you, sir. I will move on to a different topic, and this has to do with
5 some of your knowledge related to the events about which you testified. And the
6 first thing I would like to ask you about is the FNI, Foxtrot, November, India. Now,
7 you will agree with me that the FNI is an armed group; is that correct?

8 A. In the beginning, they didn't have weapons. I don't know about later on, but in
9 the beginning they had arrows, and machetes, and bladed weapons, and spears.
10 They had lots of arrows.

11 Q. What I meant to say, sir, is that the FNI was a group whose objective was to
12 fight. It was a fighting group; is that correct?

13 A. Yes, yes, yes, yes. They were combatants. They were -- they used arrows.

14 Q. And when we talk about the FNI, this group is composed of Lendus known as
15 "combatant" or "Lendu combatants"; is that correct?

16 A. No, no, that's not correct.

17 Q. So the term, sir, (Speaks French) "combatant Lendu," those are the members of
18 the FNI; right?

19 A. Yes. They were only Lendus the FNI.

20 Q. Now, if I refer to the FNI, we're talking about a group that is kind of a tribal
21 group living back on traditions; is that correct, sir?

22 MS LUPING: Objection, Mr President, your Honours.

23 PRESIDING JUDGE FREMR: Ms Luping.

24 MS LUPING: With all due respect, it is not for Mr Bourgon to give testimony
25 through his questions to the witness. I'll repeat his question. "I refer to the FNI.

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1 We're talking about a group, a kind of tribal group living back on traditions." If he
2 can simply -- he's going to put a question to the witness based on the witness's
3 testimony, he can base it on the witness's testimony, but he's not here to provide
4 testimony through his questions, your Honours.

5 PRESIDING JUDGE FREMR: Mr Bourgon.

6 MR BOURGON: Mr President, I fail to understand my colleague's objection. I'm
7 on cross-examination. I'm here to test the credibility, and I'm here to obtain all of the
8 evidence that can be good for my case, and that's perfectly okay. I don't see any
9 problems with that, Mr President.

10 PRESIDING JUDGE FREMR: I think we can try, even if you're not aware that it's
11 really not typically questions for the witness, but I would like to remind you that also
12 Defence, I think, made the same kind of objections in the past, but okay. For this
13 case, you may proceed.

14 MR BOURGON: Thank you, Mr President.

15 Q. Sir, the Lendus, who are part of the FNI, you mention in your testimony, and
16 I'm not going to quote you, I want you to describe that they wear specific clothing.
17 You agree with that?

18 A. Yes. Yes, I understand what you're saying.

19 Q. And this specific clothing includes, for example, something called gri-gri?

20 A. Yes.

21 Q. Can you explain for the benefit of the Trial Chamber what is gri-gri?

22 A. They were leaves that they wrapped around their arms and others that they
23 wrapped around their necks, and they would put sand around their hips and around
24 their neck and their hips. Those were signs that enabled them to identify each other
25 as combatants.

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1 Q. And their dress included, I think, also animal skin; is that correct?

2 A. Yes. That was the sign that was distinctive amongst themselves. Yes, that's
3 what they did.

4 Q. And the reason why they wore these, I'll use the word "d'accoutrement", was so
5 that they could recognize themselves and come back and not shoot each other; is that
6 correct?

7 A. Yes, that's correct. That was how they recognized each other.

8 Q. Now, if I look to the events of 2002, the events that you describe without
9 knowing which month it took place, but you said that these events started one
10 morning at 6.30 when you heard some shots being fired in Mbidjo; is that correct?

11 A. No. That's -- yes, it was Mbidjo. They fought for three days, and then they
12 moved on to get to the airport.

13 Q. I will take you step by step, sir, but the first sign that you saw the fighting,
14 according to your testimony, is the shots that you heard coming from Mbidjo; is that
15 correct?

16 A. Yes.

17 Q. And at that point, you were in Sayo --

18 Mr President, I think we can move into public session now.

19 PRESIDING JUDGE FREMR: Good point.

20 Court officer, let's move into open session.

21 (Open session at 3.45 p.m.)

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

23 PRESIDING JUDGE FREMR: Court officer, thank you.

24 Mr Bourgon, you may proceed.

25 MR BOURGON: Thank you, Mr President.

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1 Q. At that point in time, sir, I just ask you the question that you were in Sayo when
2 you heard these shots. Now, more specifically, it's my understanding that you were
3 around the church, around the Catholic church in Sayo; is that correct?

4 A. (Redacted). We heard
5 gunshots and I left. And, in fact, I heard shooting all day along, the same thing the
6 next day, and then it became even more intense. During three days, I no longer went
7 to work because the situation was getting worse. We couldn't go to work. And the
8 next day they came in from the airport, and people began to flee.

9 Q. Now, again, sir, I will take you step by step, but I appreciate if you want to give
10 more details. My question relates to the fact that on that first day when you heard
11 the gunshots, you just mentioned that the work stopped. What was the atmosphere
12 like in Sayo at that very specific moment?

13 A. When we could hear the shooting all around the town in Mongbwalu, people
14 went to Sayo. And the people who were in the bush went back to Sayo to wait for
15 nightfall, and there were only Lendu in Sayo. And even today they call it "Sayo
16 Rwenzori." They're the ones who gave the name to this place. We were there, and
17 we were waiting for the battle. We were waiting for war. We could no longer go to
18 work.

19 Q. And I suggest to you that during those three days of fighting that the families
20 started to leave immediately; is that correct, sir?

21 A. When they were fighting for three days in Pluto with the UPC soldiers, the
22 Lendu combatants were there, and they were fighting, but the situation became
23 unbearable. They began to retreat, to go from Pluto to Sayo, because they were
24 running away. They were retreating.

25 Q. And sir, when you say that "They were retreating," you are talking about those

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1 who were fighting in Mbidjo and Pluto, and you're referring to APC and the FNI; is
2 that correct, sir?

3 A. Yes, it was the APC, FNI who had failed, and they began retreating toward Sayo.
4 And that's what enabled the UPC soldiers to advance from Pluto.

5 Q. So my suggestion to you, sir, is that during those three days, you have in Sayo
6 not only Sayo inhabitants, but you also have members of the FNI, and you also have
7 members of the APC retreating from Mongbwalu. Is that the situation how it was?

8 MS LUPING: Your Honours.

9 PRESIDING JUDGE FREMR: Ms Luping.

10 MS LUPING: I've tried not to interrupt my colleague, but we're seeing a series of
11 compound questions that may lead the witness to be confused. If he could please
12 separate his questions more, in particular this last one. As I said, I've let quite a few
13 compound questions go by, but I think it can simply confuse the witness.

14 PRESIDING JUDGE FREMR: I do agree.

15 Mr Bourgon, try to separate those issues.

16 MR BOURGON: I will endeavour, Mr President.

17 Q. Sir, during those days of fighting, members of the APC who had been fighting
18 in Pluto made their way to Sayo; is that correct?

19 A. (No interpretation)

20 THE INTERPRETER: Overlapping speakers. No microphone.

21 MR BOURGON:

22 Q. Sir, can you repeat your answer over again, please?

23 A. The FNI and APC soldiers left Pluto to go to Sayo and they all met up in Sayo.
24 And their combatants went to Sayo and they went to Gale at the top of the hill, Sayo
25 Gale. They were not with the other members of the population. Where they were,

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1 there were only combatants.

2 Q. And I suggest to you, sir, that in fact the situation during those three days in
3 Sayo was chaos, was it not?

4 A. There wasn't even anything to eat, or there was no way we could go get food
5 from the fields. We were there, we couldn't do anything. We couldn't do anything.
6 We weren't even hungry. People were there. And they couldn't do anything.

7 Q. And to come back to my earlier question, the families started to leave
8 immediately from the first day; is that correct?

9 A. Well, let me tell you, when -- as regards the families, when they came it was
10 around 1 o'clock in the afternoon, it was raining and they took over Sayo, and at that
11 point the families fled without knowing where they were going. They didn't have
12 any specific address to go to. It was a Thursday.

13 Q. Now, sir, according to the information that I have about the dates, but I
14 certainly don't want to reveal it to you, but I'll suggest to you that the Thursday is
15 actually the first day on which the fighting began down in Mbidjo and that the
16 families immediately left before there was any fighting in Sayo?

17 MS LUPING: Mr President.

18 PRESIDING JUDGE FREMR: Ms Luping.

19 MS LUPING: Again we have a very long question. It's a bit hard actually to
20 discern what the question is amongst it, but it's both compound and complicated. If
21 we could please ask Mr Bourgon to break it up for the witness so there's no confusion.

22 PRESIDING JUDGE FREMR: But I have to admit that in this case it seems to me
23 clear. Mr Bourgon is only asking whether Thursday was the first day of those three
24 days. So I think it's fine. But I think it will be better to repeat this question to the
25 witness.

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1 MR BOURGON: Thank you, Mr President.

2 Q. Sir, you mentioned that the fighting between the time it started and the time it
3 reached Sayo, according to your testimony, is around five days; is that correct, sir?

4 A. On the fifth day they took over the airport and they came into Sayo.

5 Q. My -- what I would like to know from you and what I suggest to you is that the
6 families who were in Sayo, they left as soon as the shooting began and they did not
7 wait for the fifth day; is that correct, sir?

8 A. The women fled on the fourth day, they went to Nyali. And the next day we
9 began going out to the bush.

10 Q. Sir, you mention that the families went to Nyali. As an aside to what I'm
11 asking about, I'd like to know because Nyali to me is a collectivity, so it's quite a wide
12 area. When you say "Nyali," what exactly are you referring to that the families went
13 to?

14 A. Yes, the collectivity is in fact in Kilo, and the groupement is around. That's
15 what we refer to as Nyali. It's the Mali-Binge (phon) groupement. It's spread out in
16 the bush. That's where the women fled. They went to that bush area. We lived
17 with those people.

18 Q. And how do you get to that area, sir, from Sayo to the place you say in Nyali
19 close to Kilo and the groupement? How do you get there?

20 A. To get to Kilo you have to go to Mongbwalu, and then you get to Matete
21 groupement and then you get to Chari groupement, and you continue on the main
22 road that goes to Bunia. And then you get to Mali Mata, that's another groupement,
23 which is alongside the road. And then you get to Kilo Leta (phon). And in Kilo
24 Leta, that's where the collectivity is. That's the road to go to Bunia. The -- and
25 Nyali, et cetera, it's all part of the Banyali-Kilo collectivity.

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1 Q. Now, sir, the area that you describe that you have to go to Mongbwalu, isn't
2 that where the fighting is taking place and where the UPC is coming up the hill?

3 A. The UPC came from the west and they arrived in Mongbwalu from the west.
4 Not the east, the west. They took the Mbidjo road to Pili Pili and from Pili Pili to
5 Tshibi-Tshibi and from Tshibi-Tshibi they got to Pluto. So it's the main road from
6 Watsa Birunja (phon) toward Aru. That's the main road.

7 Q. So am I to understand that the families did not go through Mongbwalu or they
8 did go through Mongbwalu?

9 PRESIDING JUDGE FREMR: Ms Luping.

10 MS LUPING: Yes, Mr President, we are continuously having a reference to the
11 families. The witness has said three times the women fled. So if we could have the
12 correct quote back to witness as to what he said.

13 PRESIDING JUDGE FREMR: Mr Bourgon.

14 MR BOURGON: The witness described the families fled and he said which way
15 they took and he said they went to Mongbwalu. So I want to know from the witness
16 simply that when they went to Mongbwalu, isn't there where the fighting was taking
17 place. That's all I'm taking -- I want to know from the witness.

18 MS LUPING: My objection doesn't relate to the issue of the directions or the
19 clarifications that Mr Bourgon is seeking to make in relation to that. It's the
20 continuous reference to families as opposed to the language that the witness himself
21 has used which is a reference to women.

22 PRESIDING JUDGE FREMR: Mr Bourgon, please be precise.

23 MR BOURGON: I will, Mr President, but I could suggest that the monkeys are
24 going to Mongbwalu. This is cross-examination. I'm simply saying "families." If
25 the witness doesn't believe families went there, he can correct me.

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1 Q. Sir, when you say that the women left, did that include the families and the
2 children and everyone?

3 A. The women were with children and there were other families who left first.
4 And the men stayed back to see how the situation was going to evolve. The women
5 left first and then -- so we weren't together with them until they got to Banyali
6 Misabango (phon).

7 Q. Thank you, sir. So as a matter of fact, it's when you say that the -- as part of
8 your testimony that your family left in one direction and you left in the other, you're
9 actually referring that your family left before you; is that correct, sir?

10 A. Yes. They left before me. They went to Banyali, Misabango and I fled toward
11 the Ituri forest. It took me three days. After three days they went to the village, but
12 they left first before me.

13 PRESIDING JUDGE FREMR: Mr Bourgon, I think even your assistants I saw -- had
14 signalled to you that we are over the time, so please try as soon as possible the
15 convenient moment to wrap up.

16 MR BOURGON: If you allow, Mr President, two questions.

17 PRESIDING JUDGE FREMR: Yes.

18 MR BOURGON:

19 Q. Sir, you said the UPC who attacked, that they were -- that included Jérôme
20 coming from the north; is that correct, sir?

21 A. Yes, Jérôme came from the Watsa road, Watsa-Aru road. It was the same line.
22 One group came from Watsa and the other from the Aru road and they all came
23 together at Mbidjo. The UPC came from Berunda and they all came together at the
24 Mbidjo centre. There were many, many soldiers, many soldiers. A huge number of
25 soldiers.

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1 Q. Now, sir, I suggest to you that as a matter of fact this is information that you
2 obtained from someone else and that you did not see that yourself because Jérôme
3 was not there; is that correct, sir?

4 A. Well, I saw -- I saw there were many of them, some in Adidi, some in camp Goli
5 and some elsewhere, (Redacted)
6 (Redacted). Very many of them.

7 Q. Sir, my question is Jérôme, you did not see Jérôme because he was not there.
8 Somebody told you that, right?

9 A. Well, we heard the soldiers saying "effacer le tableau." That was Jérôme's
10 group. We were told about that. I did not see them with my own eyes. If I said so,
11 I would be lying. But the -- they were referred to as "effacer le tableau".

12 Q. Now, sir, once again, "effacer le tableau" has nothing to do with the attack on
13 Mongbwalu, this is information you obtained from other sources; is that correct?

14 A. Yes, we saw that they were the ones referred to as "effacer le tableau." They
15 did not have bad intentions as such, but they attacked the FNI. They only attacked
16 the FNI and they didn't attack anyone else. There was another group, the Nande
17 from Beni. You see, the Nande from Beni were together with the UPC, they
18 rather -- they rather did not agree with the UPC.

19 THE INTERPRETER: Correction from the interpreter.

20 MR BOURGON:

21 Q. Thank you very much, sir. And we can continue tomorrow morning. I have
22 many other questions for you, sir. Thank you very much.

23 PRESIDING JUDGE FREMR: Thank you.

24 And thank you mainly to you, Mr Witness. We will finish today and we will
25 continue with you tomorrow 9.30.

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1 So now, court officer, please escort Mr Witness out of the courtroom.

2 And Mr Witness, as usual, I know that you already promised to stand by this

3 commitment, but I have to, it is my duty, I have to remind you that in the meantime

4 you must not discuss your testimony with anybody else. Thank you.

5 (The witness stands down)

6 PRESIDING JUDGE FREMR: Mr Bourgon, I see you are on your feet.

7 That's even better.

8 So thank you all of you. We finish today and then see you tomorrow at 9.30.

9 THE COURT OFFICER: All rise.

10 (The hearing ends in open session at 4.07 p.m.)

11 RECLASSIFICATION REPORT

12 Pursuant to the Trial Chamber VI's Order, ICC-01/04-02/06-1887, dated 4 May 2017,

13 the public reclassified and lesser redacted version of this transcript is filed in the case.