

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
6 Judge Chang-ho Chung
7 Trial Hearing
8 Tuesday, 27 October 2015
9 (The hearing starts in open session at 9.33 a.m.)
10 THE COURT USHER: All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: Good morning, everybody.
14 Court officer, please call the case.
15 THE COURT OFFICER: Thank you, Mr President.
16 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
17 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
18 We are in open session.
19 PRESIDING JUDGE FREMR: Thank you.
20 Now appearances, please.
21 Starting with Prosecution.
22 MS LUPING: Good morning, Mr President, your Honours. Appearing on behalf of
23 the Prosecution, Dianne Luping, trial lawyer; Ms Kristy Sim, assistant trial lawyer;
24 Lois Mbafor, legal assistant; and Selam Yirgou, case manager.
25 PRESIDING JUDGE FREMR: Thank you, Ms Luping.

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Open Session)

ICC-01/04-02/06

1 Defence.

2 MR BOURGON: (Interpretation) Good morning, your Honour, your Honours.

3 And good morning to all those seated in the courthouse -- the courtroom. I'm

4 representing Mr Bosco Ntaganda, who is present this morning. Intern, Ms Braber;

5 Mr William St-Michel; and myself, Stéphane Bourgon. Thank you, your Honour.

6 PRESIDING JUDGE FREMR: Thank you.

7 Now Legal Representatives of Victims, please.

8 MS PELLET: (Interpretation) Thank you, your Honour. For the former child

9 soldiers, I, myself, am representing them, Sarah Pellet, for the OPCV.

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

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

12 OPCV.

13 PRESIDING JUDGE FREMR: Thank you, Ms Pellet. Thank you, Mr Suprun.

14 Before we approach to the further part of cross-examination of our witness, I would

15 like to touch one procedural issue. This morning we received courtesy copy of the

16 latest Defence filing, dated 26 October 2015, concerning our current witness.

17 I don't want at the moment to go into substance. We will do it -- we would like to do

18 it later on. So as to the position of the Defence is clear, I think it is fully covered by

19 this filing, but I would like to ask Prosecution.

20 And my question at the moment is how much time you need to respond? My idea

21 was that either you can respond immediately, or we are ready to give you some time,

22 and for us it would be pretty enough to get your respond in the end of this day.

23 So, Ms Luping, what is your position?

24 MS LUPING: Thank you, Mr President, your Honours. I'm -- I'm ready to make

25 the submissions now if that is convenient or the end of the day. How you wish.

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 Because I think the answers are very simple to be provided.

2 PRESIDING JUDGE FREMR: In that case, it would be better for us to get your

3 position immediately, but for that purpose, excuse me, for that purpose we will have

4 to move into private session.

5 So, court officer, let's move into private session.

6 (Private session at 9.37 a.m.)

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

8 PRESIDING JUDGE FREMR: Thank you.

9 So, Ms Luping, you may proceed.

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

11 First, just in response to the point from the outset that is made in the Defence filing

12 that the evidence of Witness 886 establishes that there was a substantive meeting with

13 the intermediary (Redacted), we'll just respond on that. First, we would just note

14 that there has not been a complete reference to all the relevant evidence of the witness,

15 and I would refer to all the relevant references to the transcripts of the evidence for

16 your Honours to look at.

17 The first is from transcript 38, page 75, line 24 to page 76, line 12. And I'd like to just

18 read that because I think that this is where some of the confusion first arises. And I

19 will quote the first question:

20 "I was referring to a meeting you had with a representative from the Court or with the

21 OTP, I don't know, (Redacted)

22 (Redacted). The response -- sorry. "And without referring to the

23 name of that individual, I'd like to know when that meeting took place."

24 Response: "Our meeting started in the morning. I had a discussion with that

25 person and we had a break at some point, and then we continued later, but I'm not

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 able to give you that person's name. I do not know the name."

2 Question: "I appreciate, Mr Witness, and I do not want to know the name. All

3 I want to know is how long before meeting with the Office of the Prosecutor did you
4 meet with this person?"

5 Answer: "I met him in the morning, (Redacted)."

6 The next transcript reference, page 79, lines 13 to page 80, line 3:

7 Question: "So he told you what they wanted to speak to you about the charges laid
8 against Mr Ntaganda; is that correct?"

9 Answer: "It all depended on the questions that I was asked. Now, when they
10 asked questions of me, they did not mention any names. They did not mention his
11 name."

12 Question: "So the name Bosco Ntaganda was not mentioned to you by this person; is
13 that your testimony, sir?"

14 Answer: "No, they did not. Now, today I'm answering the questions as they have
15 been put to me."

16 Question: "And when you met with this person, I suggest to you that he informed
17 you that they were looking for information about Sayo."

18 (Redacted)

19 (Redacted)

20 Next transcript reference, page 84, line 25, page 85, line 15.

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 I think that's enough for me to quote back, but the point of these three excerpts,
8 your Honours, Mr President, is just to indicate that contrary to the position of the
9 Defence, the Prosecution's position is it's far from clear that the witness was saying
10 that the intermediary, (Redacted)
11 (Redacted).

12 And in fact from the references that I just provided, it is clear that there is a confusion
13 as to who the witness understood he was being asked about. And this may have
14 arisen from the very first question which was: "I was referring to a meeting you had
15 with a representative from the Court or with the OTP," which was at page 75, lines 24
16 to 25.

17 So in *our submission, your Honours, there is confusion. This was not clarified.

18 You know, I invited the Defence -- when a summary was being provided, I invited the
19 Defence to provide the exact transcript references. That opportunity was not taken.
20 I'm happy to do that in re-direct. In fact, that was my intention.

21 And in our submission there is nothing from the -- in fact, it has not been established
22 from the witness (Redacted)

23 (Redacted). What I can confirm, again, after our -- you know, we've had a chance to
24 clarify this also with our investigators, (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 (Redacted)
2 (Redacted)
3 (Redacted). So in
4 our submission, that indeed is a reference to the very first screening that took place
5 and a reference to a meeting (Redacted)
6 (Redacted). This can be easily clarified by further questioning of the witness.
7 And the purpose of the contacts, as I said, with the intermediary (Redacted)
8 (Redacted). There is no missing screening note. There has been
9 no non-disclosure of any contacts of this intermediary with Witness 886. And in our
10 submission there will be ample opportunity, either by the Defence with further
11 questions of the witness on this issue, or by myself in re-direct, but I believe there has
12 been confusion, as I say. There may have been a level of problems also in
13 interpretation. It's hard to -- it's hard to say, but I think it arises from the very first
14 question that was posed to the witness and in the way it was posed.
15 That is all for now, your Honours.

16 PRESIDING JUDGE FREMR: Thank you very much, Ms Luping.

17 Mr Bourgon.

18 MR BOURGON: Thank you, Mr President.

19 The Prosecution's response or oral response to our motions raises -- raises at least two
20 issues: The first one, the Prosecution is trying to say that the questions put to the
21 witness do not establish that there was information provided to the intermediary by
22 the witness.

23 I disagree with the Prosecution's position and I guess that the Trial Chamber will be
24 able to assess all of the transcript and all of the questions to determine whether there
25 was, indeed, some conversations about the substance of the matter between the

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 intermediary and with Witness 886. Now that is the first issue.

2 The second issue is just as a matter of example, I will quote to the transcript of
3 yesterday on page 80 and this is from lines 13 to 16, where the question was:

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 I think that in itself establishes that that meeting (Redacted)

9 (Redacted).

10 But it is -- will be up for -- of course, I could give you all of the other references which
11 my colleague did not refer to, but I will simply refer to the Trial Chamber with all the
12 questions that were put about (Redacted)

13 (Redacted) and that also establishes that there were substantive contacts between the
14 intermediary and Witness 886. That's the first issue, Mr President.

15 The second issue has to deal with what is the duty of the Prosecution with substantive
16 information obtained by the intermediary from the witness? Our submission in the
17 motion is that this information amounts to a statement pursuant to Rule 76. And as
18 such, it is the duty of the Prosecution to obtain that information from the
19 intermediary and to disclose this information to the Defence. This is clearly
20 questions that were put to him regarding the substance of his testimony and about the
21 facts of this case.

22 Now, Mr President, assume for the sake of argument that, as we put in the motion,
23 this does not meet the threshold of Rule 76. We would disagree with that position,
24 but assume for the sake of argument that it doesn't, then information communicated
25 by Witness 886 to the intermediary at the minimum falls within the purview of Rule

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 77. And the Defence made a request pursuant to 76 and to 77, this information must
2 be disclosed.

3 Now, I'm not sure if the Prosecution's position is that they have no record, but at a
4 minimum they have to be ordered to say if they have any records coming from the
5 intermediary as to his dealings with the witness.

6 The third issue, Mr President, has to do with what my colleague puts on the record
7 this morning that instructions were given to the witness -- to the intermediary not to
8 have any substantive contact.

9 Now, this is exactly what we were looking for, when we received the information and
10 when we reacted to the preparation session material that was disclosed to us.

11 When we put this material together, the Chamber said we were untimely in raising
12 this information. But all I can say in response to this is that we reacted, and we put
13 the pieces together when receiving the preparation session disclosure note. That's
14 when we reacted.

15 Were we late? The Trial Chamber says yes, so I guess we were. But I think the
16 Trial Chamber should know that we reacted as a result of the preparation note.

17 Now, this information that is given to the Chamber on the record this morning, if it
18 had been given to the Defence when we asked for it, we would not have wasted all
19 this time. I would probably have avoided an hour of questioning with the witness.

20 The Defence is consistently being told that it is untimely, despite the fact of all the
21 issues that we raised in front of the Trial Chamber. Now here we have an issue that
22 can save time simply by having straightforward disclosure, and this is not happening.

23 We're saying, Mr President, that in this case, even having heard the Prosecution this
24 morning, that they should be ordered to disclose any information in their possession
25 that they have concerning their instructions that they gave to Witness 743 and

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 to -- sorry, to Intermediary 743. These instructions must have been given in writing.
2 If they were not, there must have been an investigation note prepared by someone
3 reporting the instructions given to the intermediary.
4 Now, as you see from our motion, Mr President, it is also significant that this
5 intermediary had meetings with other witnesses. So, for us, it is important.
6 I -- it's my understanding, Mr President, that this Trial Chamber is well aware that the
7 issue of intermediary was a major issue in the Lubanga case. That's why we insist on
8 it. And we will try -- and we will continue insisting on it because we figure that it is
9 very important.
10 If somebody meets with a witness and that person has been sent by the Prosecution
11 and that person obtains any information from the witness, this has to be disclosed.
12 One last comment, Mr President: I cannot stop but noticing that the resources
13 deployed by the Office of the Prosecutor for this witness -- I'm not referring to the
14 other witnesses, but later on I will -- the number of meetings they had with three
15 people and the resources deployed for this single witness.
16 Now, when you compare this, Mr President, to our position when we do not even
17 have an investigator on the ground and we are being asked to proceed with
18 cross-examination.
19 Last night we worked and we were wondering should we ask to postpone this
20 cross-examination. We said we won't do that because the Chamber will be mad at
21 us, so we won't do that.
22 The real position is, of course, is we figure we have enough information to proceed
23 with the cross-examination, and we decided we're not going to do that. So at least
24 we request respectfully, Mr President, information or disclosure of information
25 regarding Intermediary 743.

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 Thank you, Mr President.

2 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

3 Ms Luping, any further reaction?

4 MS LUPING: Simply to say that if there is no information to disclose that there is no
5 information to disclose, regardless of whether it's under Rule 76, Rule 77, or

6 Article 67(ii). *I just reiterated the point that there is no missing screening note that
7 is being withheld by the Prosecution.

8 Thank you, your Honours.

9 PRESIDING JUDGE FREMR: Thank you.

10 And my last question goes to Mr Bourgon. Ms Luping also proposed to solve
11 because, in my understanding, in fact, resolution of the issue one, as you named those
12 three issues, would be decisive for -- mainly for the issue number two. And she
13 proposed to try to solve issue number one by either further cross-examination or
14 re-examination of the witness. Do you share this view, or do you still insist on your
15 request?

16 MR BOURGON: I do not insist on our request, Mr President. I don't think it is
17 necessary. But if the Chamber believes it is necessary, my respectful submission
18 would be for the Trial Chamber to put the questions to the witness so that we avoid
19 any waste of time and go straight to the point with the Judges asking the witness to
20 clarify whether -- and it should be quite clear -- (Redacted) the
21 statement and on the screening note whether he did meet with an intermediary and
22 whether he did discuss his case, as he said yesterday. I think that's the question that
23 should be somehow formulated by the Chamber, and this would avoid the kind of
24 confrontation that we have. Thank you, Mr President.

25 MS LUPING: Mr President.

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 PRESIDING JUDGE FREMR: Ms Luping.

2 MS LUPING: Just as a reaction to that, whilst obviously the Prosecution has no
3 problem with the Chamber resolving this issue itself, on the proposed question,
4 however, just a concern that there has been some confusion, it appears from the
5 transcript, by posing it in that way, by saying (Redacted)

6 because it doesn't appear clear from the transcript that the witness really
7 understands the difference between the different individuals that he has met.

8 He appears to -- he can't tell, you know, and it is quite common for witnesses not to
9 be able to tell whether individuals that they are meeting come from different parts
10 of -- you know, what organs of the Court, let alone whether they all work for the
11 Office of the Prosecutor, to distinguish between a consultant and a staff member.

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 Because I think by then you avoid getting embroiled in further confusion by using
20 terms such as (Redacted). That's just in my
21 submission, your Honours.

22 PRESIDING JUDGE FREMR: Mr Bourgon, because I would rather wait to clarify
23 this issue by the Chamber because I have to say that our position shouldn't be

24 necessarily the same like yours. So sometimes things that don't look clear to you

25 could be clear to us. So I would rather prefer not to -- and even our approach could

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 be a bit subjective, so I would rather prefer if you would try to clarify issues which,
2 according to you, are not clear enough for you, and then we will see if you will
3 succeed. And maybe there will even be some chance during the re-examination.
4 We still can decide on that. But for the moment, I would like to postpone our
5 decision and give you a chance to clarify the issue because, as Ms Luping says, it still
6 could be really a misunderstanding.

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 MR BOURGON: Yes, Mr President. Of course I was just trying to save time, but I
12 will take up the issue with the witness once again. Thank you, Mr President.

13 PRESIDING JUDGE FREMR: No problem.

14 So now we can move into open session again, and the witness may be escorted in the
15 courtroom.

16 (Open session at 9.58 a.m.)

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

18 PRESIDING JUDGE FREMR: Thank you.

19 We will have to wait for the witness.

20 (The witness enters the courtroom)

21 PRESIDING JUDGE FREMR: Good morning, Mr Witness.

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

23 (The witness speaks Swahili)

24 THE WITNESS: (Interpretation) Good morning.

25 PRESIDING JUDGE FREMR: I hope you are feeling well, at least you look so.

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Open Session)

ICC-01/04-02/06

1 THE WITNESS: (Interpretation) I feel well, like every day.

2 PRESIDING JUDGE FREMR: That's good to hear that.

3 Mr Witness, today we will continue or, to be exact, Defence will continue with your
4 cross-examination. I have to remind you again that you are under oath so that you
5 have to speak the truth and nothing but the truth.

6 And maybe I would also like to emphasise that take your time when you are
7 responding because sometimes the questions asked you to recollect things that occur
8 a long time ago, so -- and each detail here, you know, is important. So don't hurry
9 up. Take your time and, as we told you yesterday, focus on the question. Just try
10 to respond exactly what the question is asked for, okay?

11 THE WITNESS: (No interpretation)

12 PRESIDING JUDGE FREMR: Thank you very much.

13 And now I give the floor to Mr Bourgon.

14 QUESTIONED BY MR BOURGON: (Continuing)

15 Q. Good morning, sir.

16 A. Good morning.

17 Q. As the Presiding Judge explained to you, we will proceed with your
18 cross-examination this morning, and I would like to clarify one issue at the beginning
19 and to very shortly come back on the meeting you had with a person who was not a
20 Prosecution investigator. Do you recall talking about meetings with a person other
21 than Prosecution investigators?

22 A. I only met people from the ICC. I don't know why you were asking me about
23 other people who I allegedly met.

24 Q. The person I'm referring to, sir, is the person (Redacted)

25 (Redacted). Do you recall this person?

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 A. Yes, I remember.

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 PRESIDING JUDGE FREMR: A good point. So let's move into private session.

22 (Private session at 10.06 a.m.)

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

24 PRESIDING JUDGE FREMR: Thank you, court officer.

25 Mr Bourgon, you may proceed.

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 MR BOURGON: Thank you, Mr President. It's my mistake, I thought we were still
2 in private session. I did not realize, I did not see the light.

3 Q. Sir, this -- the question was -- I think you did provide an answer to the question,
4 and I'll just say it again: (Redacted)

5 (Redacted)

6 (Redacted)

7 Now, yesterday when I asked you a question about (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 (Redacted)

2 (Redacted)

3 (Redacted). We didn't discuss these events, not one word.

4 Q. I'm just curious, sir, because yesterday you appeared to have said the opposite.

5 I'm just -- I will leave it at that after this question. And my question was, at that

6 point: "I appreciate, Mr Witness," that was my question. "I appreciate, Mr Witness,

7 and I do not want to know the name. (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 A. It was with the investigators of the ICC that I was interviewed (Redacted) here

13 at the Court.

14 Q. And my last question, sir, yesterday when we were looking (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 Q. And how did he describe the authorities to you, sir?

13 A. I don't know. I just know that it was the authorities because they came to
14 speak to the victims in (Redacted). I know that it was ICC officials who talked to
15 the people. That was it.

16 Q. Now, yesterday, sir, you said that you are aware that the person who gave your
17 name to the Prosecution is (Redacted) Do you recall saying that
18 yesterday?

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

- 1 (Redacted)
- 2 (Redacted)
- 3 (Redacted). We didn't
- 4 have other exchanges. That would be a lie.
- 5 It was only in (Redacted) that I was able to make communications.
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted). We had no other exchanges with each other.
- 25 Q. Sir, my last question on this topic, and then I'll move on. Earlier I --

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 A. And later I fell ill.

2 Q. One last question and I'll move on, sir: (Redacted), who
3 informed you that he had given your name to the Prosecution?

4 A. Yeah, him again. (Redacted)

5 Q. So he is the one who contacted you, and he said, "I gave your name to the OTP";
6 is that what you're saying?

7 A. He was the person who gave my name to the westerners from MONUSCO, but
8 I don't know who gave my name to the Office of the Prosecutor. I know nothing
9 about that.

10 Q. But, sir, yesterday you did say --

11 MS LUPING: Mr President.

12 PRESIDING JUDGE FREMR: Ms Luping.

13 MR BOURGON: It is a new topic, Mr President, so --

14 MS LUPING: Okay. It was just if we were going over the same issue again,
15 I would say asked and answered.

16 PRESIDING JUDGE FREMR: Mr Bourgon, frankly, I think you also gave the
17 impression that you exhausted the topic, but do you have something we would -- a
18 question that could bring something new? If yes, please go ahead, but I'm really of
19 the impression that you exhausted any possible questions.

20 MR BOURGON: Thank you, Mr President. I have moved on already, and I am
21 now exploring the issue of who provided his name to the Prosecution and how he
22 learned that information because yesterday he did say that he learned that his name
23 had been given.

24 Q. So the question is clear, who informed you that (Redacted) had given your name to
25 the Prosecution?

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 MS LUPING: Mr President, sorry. Objection. The witness has already been asked
2 the question. He's made it clear -- you know, his answer has been clear. In fact, he
3 has said three times it was to MONUSCO, and he's now been asked does he know
4 who gave the name to the Prosecution, and he has very clearly said he does not.
5 Asked and answered, your Honours.

6 PRESIDING JUDGE FREMR: Exactly. Objection sustained.

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page redacted – Private session

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page redacted – Private session

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page redacted – Private session

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 Q. Thank you, sir. I would appreciate if you could just limit yourself to
7 answering my question because I have additional questions on what happened with
8 every one of these incidents. But for now I'd like you to confirm that, in fact, before
9 you fled to the bush you did not, yourself, see anyone being killed in Sayo; is that so,
10 sir?

11 A. In Sayo before I left it was raining, it was raining very heavily. They shot with
12 a heavy weapon. It surprised everyone and people began running every which way.
13 Some people, they took their children and they ran away. I myself went into my
14 house and took my children's clothing and that was it, I had to leave the rest of my
15 belongings. I spent three days in the bush before I came back. I had nothing to eat,
16 I had no water to drink, I had no cigarettes, and so all I could do was to hide under
17 the trees for three days while it was raining so heavily. And then I took the main
18 road to the Ituri river. The Ituri river is a large river.

19 I didn't see how those people were killed. (Redacted). I didn't see
20 with my own eyes those people getting killed. It would be lying to say so and lying
21 is not right.

22 Q. Now my question, sir, was a little more precise than this, and I think you can
23 answer this with a yes or a no. You did not see -- I'm not talking about those people
24 only, but you did not see anyone yourself being killed in Sayo before you fled?

25 A. I didn't see, with my own eyes I didn't see that, no, exactly.

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 Q. And that's all I'm interested in, sir.

2 After you came back, after fleeing to the bush you came back to Sayo and you spent
3 some time there. Now, during that period it is my understanding that you did not
4 see anybody being killed, you yourself personally during that period; is that correct?

5 A. When I came back I couldn't walk around because the road was blocked.

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 Q. Now, sir, again my question is much more precise than this and it is simply
10 from the time you come back to Sayo until the UPC leaves, you did not see yourself
11 anyone being killed. Do you agree with this statement?

12 A. With my own eyes, I did not see anyone getting killed. With my own eyes, no,
13 I didn't see that.

14 Q. Thank you, sir. That's all I was getting at and I move to a different topic.
15 I'd like to come back briefly on part of your testimony regarding the FNI. First you
16 can confirm that the FNI, they were defending the Lendus; is that correct?

17 A. The FNI were all together, they were waiting for their enemy. They were all
18 part of the same group. You couldn't tell if they were soldiers or not. They were all
19 combatants, men and women. They were all armed. They had knives, machetes,
20 arrows. That's what they were doing. They were all like that.

21 Q. And you mentioned, sir, that they -- FNI, they were based in Sayo before the
22 UPC arrived?

23 A. Yes, yes. They were there. They were from Mongbwalu and some of them
24 came from Kpandroma, Djugu, Fataki, Lipri, and they all came together in
25 Mongbwalu. They were all there, the Lendus.

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 Q. Now, sir, exactly on this point --

2 MS LUPING: Sorry, Mr President.

3 PRESIDING JUDGE FREMR: Yes, Ms Luping.

4 MS LUPING: It's just to request that we have spellings -- spelling errors corrected as
5 we go along. Yesterday there was a whole passage with problems with spelling in
6 the transcript of place names. So if my learned colleague could address that as we
7 go along. At the moment we do not have a spelling for Kpandroma.

8 PRESIDING JUDGE FREMR: It is true.

9 MR BOURGON: This is my next question, Mr President, and I will get a spelling
10 from the witness.

11 Q. Now, sir, you will agree with me that the people from the FNI they came from
12 Fataki, Kpandroma, Djugu and Lipri, you agree with that?

13 A. I know that. I know that when they arrived they made threats. They came
14 from different places. When they got to Mongbwalu, they didn't cause much
15 disorder. When they came, they attacked people to get food.

16 Q. I would just like to confirm, sir, that you know that they came from this area
17 and we will spell those names together. And I would like to spell that name for you.
18 The first name is Fataki, and that's F-A as in apple, T as in tango, A as in alpha, K as in
19 kilo and I as in India. Fataki. So some of those FNI came from Fataki. You agree
20 with that?

21 A. That's correct.

22 Q. And some of them, sir, also came from Kpandroma. And I spell P as in papa,
23 A as in alpha, N as in November, D as in delta, R as in Romeo, O as in Oscar, M as in
24 Mike, and A as in alpha. Is that so, sir?

25 A. Kpandroma. It is called Kpandroma.

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 PRESIDING JUDGE FREMR: Ms Luping, I saw you were on your feet.

2 MS LUPING: No, it was just a correction of the spelling. That's an incorrect
3 spelling being provided to the witness. As you'll see from the witness preparation
4 note, there was a clarification from the witness as to the spelling of Kpandroma. It
5 starts with a K.

6 MR BOURGON:

7 Q. So the name that you see probably on the screen before you, sir, with a K, that's
8 the correct spelling?

9 Now you also said that some of those FNI came from Djugu. And I will spell Djugu
10 as D as in delta, J as in Juliette, U as in uniform, G as in golf, and U as in uniform.
11 Djugu. Do you agree with that, sir?

12 A. Yes.

13 Q. And some of them came from Lipri. And that's easy, but let's spell it just for
14 the -- to be sure: L as in Lima, I as in India, P as in papa, R as in Romeo, and I as in
15 India?

16 A. That's correct.

17 Q. So all of these people who are in Sayo, they do not come from Sayo; is that
18 correct, sir?

19 MS LUPING: Mr President.

20 THE WITNESS: (Interpretation) All of those people, most of them went to Sayo, to
21 the hill.

22 PRESIDING JUDGE FREMR: Ms Luping. Sorry.

23 MS LUPING: It was just a request for greater clarity in the question, your Honours.
24 So instead of saying "all of these people," it would be useful if Mr Bourgon could
25 explain -- be more precise as to which people he's referring to. And I see from the

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 answer that it wasn't clear to the witness.

2 PRESIDING JUDGE FREMR: I think it is clear to me that we are still talking about
3 this group of people coming from those four places, so I think it was clear enough,
4 I would say.

5 Mr Bourgon, you may proceed.

6 MR BOURGON: Thank you, Mr President.

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 (Redacted)

2 (Redacted)

3 Q. I understand, sir. And those people who are not part of the FNI, they were still
4 wearing the traditional gri-gri and the grass that all the Lendus wore; is that correct?

5 A. The people who were there from the FNI, they didn't use what you just
6 mentioned. That was not part of their culture. They were afraid. But in the end,
7 they had to when some people began cutting off the ears of some people, they had no
8 choice. They had to use those things. They were forced to do so, so they wore
9 those things you just referred to around their neck and around their wrists, their
10 arms.

11 Q. And they wore these things because they were forced to and because they were
12 scared of the Lendu combatants; is that correct, sir?

13 A. Yes, yes, yes, yes, that's it.

14 Q. So we can say, sir, that those civilians, they were, in fact, under the orders of the
15 FNI; is that correct?

16 A. No. They were enemies. They caused a lot of disorder. No one was with
17 them, but they were cruel. They caused a lot of trouble.

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 MS LUPING: Mr President, your Honours.

23 PRESIDING JUDGE FREMR: Ms Luping.

24 MS LUPING: My objection is based on the fact that, again, Mr Bourgon is seeking to
25 introduce evidence that is actually not before us at this stage. It is not for him to

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 introduce evidence. He's asserting a fact as if it is already a matter of evidence -- and
2 to be fair to the witness, it is not a fact.

3 He needs to be clear that he's not -- he shouldn't be putting it as if it is simply a fact
4 that is accepted before this Chamber, to be fair to the witness. He may seek to
5 suggest this position or this information, but he shouldn't be misleading the witness
6 by suggesting it is a fact before this Chamber.

7 PRESIDING JUDGE FREMR: Objection sustained.

8 MR BOURGON:

9 Q. Sir, I will repeat my question.

10 PRESIDING JUDGE FREMR: Repeat or rephrase?

11 MR BOURGON: Rephrase.

12 PRESIDING JUDGE FREMR: Rephrase.

13 MR BOURGON: I apologise, Mr President.

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 (Redacted)

2 (Redacted)

3 MR BOURGON: Mr President, I have a few minutes, but maybe we can take the
4 break at this stage because I'm moving on to a completely different topic.

5 PRESIDING JUDGE FREMR: I find it reasonable. Yeah. We will break if you
6 want -- would like to change topic.

7 So first we will escort witness out of the courtroom, please.

8 (The witness stands down)

9 PRESIDING JUDGE FREMR: Now let's move into open session, please.

10 (Open session at 10.59 a.m.)

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

12 PRESIDING JUDGE FREMR: Thank you, court officer.

13 And I'm just announcing that now we break for 30 minutes, which means that -- no.

14 Mr Bourgon, please.

15 Okay, then. As I said, we break now for 30 minutes, and we will reconvene at half
16 past 11.

17 THE COURT USHER: All rise.

18 (Recess taken at 10.59 a.m.)

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

20 THE COURT USHER: All rise.

21 Please be seated.

22 PRESIDING JUDGE FREMR: Mr Bourgon, you maybe sit down for a while because
23 I would like to start with two procedural issues: The first one is that we now
24 formally received filing -- it is Defence filing number 948 that we, I think, the parties
25 discussed any change of views on that -- the beginning of our morning session. So

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Open Session)

ICC-01/04-02/06

1 after doing that, I am asking Defence whether you still insist on the request, or
2 whether you withdraw that; if not, we will decide. So it is up to you, please,
3 Mr Bourgon.

4 MR BOURGON: Mr President, our position is that through the questionings that
5 were put to the witness, we have established more than a sufficient basis to establish
6 the importance of the role of the intermediary in this case. And on this basis, we
7 would like to insist that the Prosecution be ordered to disclose the information related
8 to the intermediary, which is P-743, in terms of his relationship with this witness and
9 other witnesses. We feel that the questioning, although there maybe some doubts as
10 to exactly whether there was an extent of discussions between the witness and the
11 intermediary, we did establish the role of the intermediary and the importance for the
12 Defence to obtain such information. And on this basis, this is the part that we insist
13 on, Mr President. Thank you.

14 PRESIDING JUDGE FREMR: All right then. So the Chamber will for sure decide.
15 Prosecution, any comment on that?

16 MS LUPING: Mr President, your Honours, only to say that we will -- we still
17 maintain our opposition to the request. We do not believe that there has been any
18 sufficient basis established. It has not been established that this information is
19 material to the -- the -- to the Defence and, in fact, to the contrary. The witness's
20 answers have established. There have been no substantive contacts. That was all.
21 Thank you, your Honours.

22 PRESIDING JUDGE FREMR: Thank you. So the Chamber will certainly decide
23 before the departure of this witness because in case we decide positively, it will have
24 some impact on the timing.

25 And the second issue was current timing, so I would just like to inform the parties

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Open Session)

ICC-01/04-02/06

1 that until so far, Defence used 2 hours and 24 minutes for cross-examination. So
2 pursuant to our principles, we try to observe, it should still have 4 hours and 20
3 minutes for the rest of cross-examination.

4 Mr Bourgon, you may proceed. And do you want to proceed in private or in open
5 session?

6 MR BOURGON: In open session, Mr President.

7 PRESIDING JUDGE FREMR: Okay. Then you may proceed.

8 MR BOURGON:

9 Q. Welcome back, sir. I'd like to move now to an issue which is directly related to
10 what you said at the end of the last session concerning the instructions that were
11 given to the population in Sayo and other places, as well as the harsh conditions
12 imposed. And I would like at this stage to show you a video.

13 Mr President, the video I would like to show to the witness is video number on our
14 list DRC-OTP-2058-0251. And this video, Mr President, the part I would like to
15 show to the witness goes from 02 hours 01 minute 47 -- sorry 01 hour, 47 minute, 07
16 seconds until 02 hours, 01 minute, 47 seconds.

17 The transcript that go along this video recording go into the following exhibits: The
18 first one is the transcription of that video extract, and this can be found at
19 DRC-OTP-2062-2023, starting at page 45, lines 1622 until page 55, line 1957.

20 The translation of this extract can be found in DRC-OTP-2062-1333. It starts at page
21 1383, line 1751, until page 1393, lines 2109.

22 Mr President, the witness is not present during this video that I would like to show
23 him; but, according to the ruling that was issued by the Chamber on 20 October, my
24 position, Mr President, is as follows: That the witness has just testified at length
25 about the conditions or the harsh conditions imposed by the Lendu -- by the Lendus

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Open Session)

ICC-01/04-02/06

1 in Sayo and in Mongbwalu.

2 And that video shows -- is relevant to this. I'm not going to say what is in the video
3 because the witness is present, but the purpose of showing the video is to -- for the
4 witness to confirm whether what he will see in this video matches his testimony. So
5 it's a matter of cross-examination, and a matter that goes also to confirming his own
6 testimony. So it is material that is submitted to the witness as a suggestion that what
7 he will see matches what he testified about pursuant to the Chamber's decision of
8 20 October.

9 And I can reply to my colleague, as I see she's on her feet, I can reply to those
10 arguments, but it is our submission that the decision of 20 October talking about
11 cross-examination and giving leeway to the Defence. And I can say more after my
12 colleague provides the Chamber with her objection. Thank you, Mr President.

13 PRESIDING JUDGE FREMR: Ms Luping, before you start, do you think it's better to
14 keep the witness in or better to escort him for this exchange of views?

15 MS LUPING: I think it is better to have the exchange of views without the witness
16 present. I would not to want influence his answers.

17 PRESIDING JUDGE FREMR: It was just my concern, so please, court officer, please
18 escort the witness out of the courtroom.

19 Mr Witness, we will call you back soon.

20 (The witness stands down)

21 PRESIDING JUDGE FREMR: Ms Luping, you may proceed. My last question it's
22 for you okay to make this objectional comment in the regime of open session?

23 MS LUPING: I will want to make some observations that are of an identifying
24 nature. If we could move into private session briefly, Mr President.

25 PRESIDING JUDGE FREMR: Well, court officer, let's move into private session.

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 (Private session at 11.44 a.m.)

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

3 PRESIDING JUDGE FREMR: Thank you.

4 Ms Luping, you have the floor.

5 MS LUPING: Thank you, Mr President, your Honours. The Prosecution does
6 object to the presentation of this video evidence to Witness 886.

7 Now, whilst paragraph 56 of the decision on the conduct of proceedings allows for
8 presentation of video evidence to a witness on the basis that the witness has either
9 personal knowledge of the making of the recording or its contents and we
10 acknowledge that if the witness is able to recognize a specific location or individuals
11 that it would be appropriate to show the video for that limited purpose.

12 If there's a recognition of buildings, a recognition of individuals, we would accept
13 that that would be appropriate, but we do not agree that it would be appropriate for
14 the witness to be asked to comment on the actual events depicted in this portion of
15 the video. (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 He is not in a position, your Honours, in our submission, to comment on the precise
23 events being shown in this part of the video.

24 He is able to comment on his knowledge, and he has already done so in general terms
25 about the FNI. But this particular portion of the video, your Honours, is showing

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 (Redacted) the UPC
2 occupation, and it is depicting an exchange purportedly, because this is a UPC-made
3 video, between individuals and UPC soldiers.
4 And in our submission, the witness is not well placed to comment on those events.
5 He may be shown to -- the video to talk about do you recognize the building, do you
6 recognize the location (Redacted)
7 (Redacted). Those are our
8 submissions, your Honours.

9 PRESIDING JUDGE FREMR: Thank you. Mr Bourgon, we would appreciate if you
10 could be more specific about the content of the excerpts you would like to present.

11 MR BOURGON: Thank you, Mr President.

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 Now, Mr President, this brings two issues, in our views, from a legal point of view:

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 The first issue has to do with the transcript. And there was ample debate on this and
2 it is certainly not our intention to come back on this issue, other than to say that
3 pursuant to the decision, we have contacted the Registry and we have informed the
4 Registry of the number of pages of video that is in our possession. We are talking
5 about 4,000 pages of video transcript and translation that require translation.
6 Maybe there was a misunderstanding earlier on, I'm not sure about this, because in its
7 decision the Chamber said whether the existing resources are sufficient, but the thing
8 is we have no resources of a translation nature. This is not provided for to any of the
9 Defence team. The only resource we can ask for is asking the Registry to translate
10 material for us. So that's not provided in our -- on our team. So we have no one
11 who speaks Swahili on our team other than the accused.
12 So maybe -- maybe the Chamber did understand this, I'm not sure, but because of the
13 sentence says whether the current resources are sufficient.
14 So we have approached the Registry and we are working in finding a solution. And
15 to make this topic short, what we propose to do at the end is to mark the transcript for
16 identification until this has been sorted out, until we have sorted out the issue of
17 translation.
18 The more important issue is in its decision, the Chamber stated, and I quote from
19 your decision, Mr President, in terms of -- at page 31 of the transcript on 20 October,
20 and the Chamber said, "The Chamber observes that while a cross-examining party
21 may have certain broader leeway in terms of material presented to a witness for the
22 purpose of testing credibility, the same Rules of Evidence apply to both parties when
23 it comes to admission of evidence, including audio and video recordings for the truth
24 of its contents."
25 Mr President, we have no difficulty with that decision. This is what we say we are

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 following. We say that we are requesting the additional leeway. But first of all,
2 Mr President, we have -- there is no question in our mind that what applies to
3 Prosecution applies to the Defence, but actually I should not be using the words
4 Prosecution and Defence. The words I should be using is calling party and
5 responding party.

6 So when it is the calling party, then the -- whatever applies to the Prosecution today
7 will apply to us when we present our case. Whatever is the responding party, or the
8 cross-examining party, any argument I make today will be the same argument that
9 will apply to the Prosecution when they are cross-examining -- when they will
10 cross-examine a Defence witness. So we know that it's the same rules that apply.
11 Our argument is that when you do cross-examine, which is what the Chamber
12 referred to as a certain broader leeway, if I have an issue that I can show the witness
13 that will establish his credibility or at least impeach his credibility, that's what we'd
14 like to know, then we should be able to present a video.

15 I personally am very surprised by the Prosecution's position because if we follow
16 what they say, they will be foreclosed from saying -- from showing videos to Defence
17 witnesses later on. So I'm surprised by their objection, but that's not for me to
18 comment upon.

19 All I say is that we feel that showing this particular video does fit within the Trial
20 Chamber's decision and that the witness should be allowed to see it in order to make
21 comments on those specific topic, not features, no identity of anyone. But there's a
22 lady from the population who will be answering questions about what the conditions
23 were at the time, and he can say are those the conditions that he was talking about.
24 That is the aim of this video, Mr President. Thank you very much.

25 PRESIDING JUDGE FREMR: Two additional questions to you, Mr Bourgon. First

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 of all, (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted).

5 MR BOURGON: No, Mr President, (Redacted)

6 (Redacted)

7 (Redacted); the matter is exactly what my colleague said, knowledge of the

8 conditions, do they meet the conditions which are highlighted by this lady who is a

9 member of the population? She is the key to this video and not anything else,

10 Mr President.

11 PRESIDING JUDGE FREMR: It is clear. And my second question: Do you intend

12 to use this video only, or also to admit this into evidence?

13 MR BOURGON: Well, at this point in time it all depends what the witness says

14 about the video, Mr President. If it is his -- if the answers provided by the

15 witness -- and I have very few questions because the issue is does he relate -- the

16 conditions explained by this lady, do they meet exactly what he was talking about?

17 And if he can confirm that, then I would like to enter the video into evidence,

18 Mr President, indeed.

19 PRESIDING JUDGE FREMR: Thank you.

20 Ms Luping.

21 MS LUPING: Mr President, your Honours, what the Defence is asking is essentially

22 for Witness 886 to comment on the evidence or the information provided by a third

23 party, which in our submission is not appropriate.

24 If the purpose of the Defence's questions is, as they suggest, that they want to have an

25 understanding as to what conditions this witness relates to, it is open for them to

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 simply ask additional questions of this witness suggesting some of the aspects that
2 this woman describes. If that is what their intention is, there is no need to show a
3 video for that purpose.

4 But our main -- the thrust of our objection is really that it is not appropriate for a
5 witness to comment on a description of somebody else's experience. It would be like
6 a witness being asked to comment on the evidence of another witness, which is not
7 allowable. Thank you.

8 PRESIDING JUDGE FREMR: Thank you. I think in this case it will not
9 be -- Mr Bourgon, any further comment?

10 MR BOURGON: Mr President, it's a Prosecution video, not a Defence video, so it's
11 an exhibit that is a Prosecution exhibit. (Redacted).

12 Thank you, Mr President.

13 PRESIDING JUDGE FREMR: Yes. I would like to finish. My idea that in this case
14 it won't be sufficient to have just a silent deliberation in the courtroom. We will need,
15 even if for a few minutes, to leave the courtroom. So please I estimate we will begin
16 maybe in 10 minutes.

17 So now we break for a while in order to us to allow to deliberate thoroughly on that
18 proposal.

19 THE COURT OFFICER: All rise.

20 (Recess taken at 11.57 a.m.)

21 (Upon resuming in open session at 12.09 p.m.)

22 THE COURT USHER: All rise.

23 Please be seated.

24 PRESIDING JUDGE FREMR: So after -- so my mic is still on? So -- sorry, it was my
25 fault.

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Open Session)

ICC-01/04-02/06

1 So after thorough deliberation outside the courtroom, the Chamber decided to
2 overrule the objection made by Prosecution, which means we grant Defence the
3 possibility to use this exhibit with this witness.

4 And very briefly, as concerns reasoning of our ruling, I would like to refer to part of
5 our decision on conduct of proceedings, concretely to paragraph 56, when we
6 said -- where we said, "If a party wishes to present audio-visual material to a witness,
7 it must establish that the witness has personal knowledge of the making of the
8 recording or its contents. This may be achieved by playing a brief excerpt of the
9 audio-visual material only to the extent strictly necessary for the witness to confirm
10 his/her personal knowledge of it.

11 Once this has occurred, the party may play the excerpts or the recording it intended
12 to present to the witness. Regardless of whether the party's allowed to present such
13 a recording to the witness, the audio-visual material itself will not be considered for
14 the truth of its contents unless it is admitted into evidence, but we still mean that we
15 are not establishing by our decision any exception from this because still we believe
16 that it has, as Defence mentioned, also connection to -- to the issue of credibility, and
17 which means there are also some differences that are applied to cross-examination,
18 and because of that we decided as today. Moreover, we believe that it's also
19 Prosecution -- or exhibit produced originally by Prosecution. We fully believe in its
20 authenticity, and we don't see any prejudice if Defence will use this exhibit.

21 So now we can call Mr Witness back to the courtroom, and Mr Bourgon may proceed.

22 MR BOURGON: Thank you, Mr President. We have, I'm sorry to say, an
23 additional difficulty that was not anticipated. We contacted the translation services
24 during the break; and, of course, our position was that there was no need for the
25 translation to say anything as the video was played because we have a transcript.

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Open Session)

ICC-01/04-02/06

1 However, the transcript is in French. So is the Trial Chamber interested in getting
2 translation maybe only for the Chamber in English while the witness is listening to
3 the original? We don't need a translation. We can -- we have French on this side,
4 and I take it that the Prosecution can live with the French translation. So I'm not sure
5 about the Chamber, sir, Mr President.

6 PRESIDING JUDGE FREMR: First of all, Prosecution as concerns translation, any
7 position from your part?

8 MS LUPING: Mr President, your Honours, it is as you wish. If you prefer to have
9 English translation as the video is being shown, we do not have a problem with that.

10 PRESIDING JUDGE FREMR: Fine. I think it will be obviously preferable to the
11 Chamber.

12 Okay. Then, we can move --

13 THE INTERPRETER: Mr President, from the English booth, but the interpreters
14 have not been provided with a transcript.

15 PRESIDING JUDGE FREMR: Is there a possibility to provide interpreters with a
16 written transcript?

17 MR BOURGON: We have a hard copy, and I think it can also be put on the screen
18 for them, I'm not sure. No? But we have a hard a copy.

19 THE COURT OFFICER: We will give the copy to the interpreters, but we can't put
20 the transcript on the screen, as you will be playing the video.

21 MR BOURGON: So maybe -- here's a hard copy. It is a French one, and I think the
22 English booth requires it. The other booth will not require.

23 PRESIDING JUDGE FREMR: So I believe that in other -- those conditions it will be
24 fine with all of us. Another question, I guess, Mr Bourgon, it will be better to present
25 this video with -- in the regime of private session?

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 MR BOURGON: Mr President, the video itself is labeled by the Prosecution as a
2 confidential exhibit, so I think, yes, per se, it should go into private session.
3 However, I'm not -- I don't understand why the Prosecution made it a confidential
4 exhibit, and I would prefer if it was played in public session. Maybe we can hear the
5 Prosecution as to why they made this into a confidential exhibit, Mr President.

6 PRESIDING JUDGE FREMR: We don't know the content, so it is always better to
7 ask Prosecution. Ms Luping, please.

8 MS LUPING: Mr President, your Honours, there are a number of individuals that
9 are depicted in this. We cannot say exactly who they are. And for the security of
10 unknown individuals, it would be better if it is not shown publicly.

11 PRESIDING JUDGE FREMR: All right. I also think it would be safer. So we will
12 now move into the regime of private session.

13 (Private session at 12.16 p.m.)

14 MR BOURGON: Thank you, Mr President.

15 THE COURT OFFICER: We are in private session.

16 PRESIDING JUDGE FREMR: Now you may proceed, Mr Bourgon.

17 MR BOURGON: Thank you, Mr President.

18 Q. Welcome back, sir.

19 At this point in time, we will ask you to watch a short video. And I will not say at
20 this point in time what is on the video; but following this showing, I will ask you
21 briefly a few questions. So if we can proceed, Mr President, I ask to -- I believe to ask
22 the floor or control -- or I'm not sure what words to use -- my colleague here, my
23 assistant Maître St-Michel will play the video with your leave.

24 PRESIDING JUDGE FREMR: You may proceed.

25 MR BOURGON: Thank you, Mr President.

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 THE INTERPRETER: Interpretation into English will be done from a transcript, and
2 the interpreters do not guarantee full compliance if there are overlapping speakers.

3 PRESIDING JUDGE FREMR: Thank you.

4 (Viewing of the video excerpt)

5 THE INTERPRETER: Mr President, if the interpreters could be provided with the
6 relevant numbers or references, then we might be able to attempt to figure out how to
7 coordinate the French to the Swahili we are listening to. Otherwise, it's impossible to
8 interpret from the English booth.

9 PRESIDING JUDGE FREMR: Sorry, I didn't understand. What is the problem?

10 THE INTERPRETER: We would need -- if we have the references, the specific lines,
11 the document the interpreters have is in French, and the video is in Swahili, and we
12 can't make the links ourselves.

13 PRESIDING JUDGE FREMR: Now I see.

14 Defence, have you listened to the interpreters?

15 MR BOURGON: Indeed, Mr President. All we can provide is to go along -- to
16 provide them also with a Swahili transcript, but I don't think that will be of much
17 assistance. I think, Mr President, that the best way for them would be to simply
18 translate the transcript as we go along, regardless of what is shown, so at least the
19 Trial Chamber can follow with the full understanding that it -- it is not going to be a
20 perfect match with the voices and the faces.

21 What is important, Mr President, is for the witness to see in his language, to see and
22 hear in his language the video.

23 THE INTERPRETER: Mr President --

24 THE COURT OFFICER: Mr Bourgon, if you could only indicate from which page,
25 which line until which page, please.

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 MR BOURGON: Yes, in order to assist, the transcript that was provided, we
2 begin -- the translation into French begins at page 48, line 1750, until -- until page 1393,
3 line 2109. So basically, it is almost the entire document that was given to the
4 translation booth.

5 PRESIDING JUDGE FREMR: Ms Luping, do you want to add anything?

6 MS LUPING: No. The -- I was simply going to say what the court officer indicated,
7 that it may be simply helpful just to provide the page and line references for the
8 interpreters. That's what I understood they were requesting.

9 PRESIDING JUDGE FREMR: And I can assure the interpreters that probably for
10 Chamber it is not strictly necessary to keep the same timing, so I think it would
11 be -- there will be some difference between the speech in the video and the translation.
12 I think we can live with that, so I think it will not be a big, big issue.

13 THE INTERPRETER: Mr President, the only way we can proceed efficiently now is
14 to give the French document to the Swahili booth and they will be able to then
15 interpret along back into French based on the original video. And we the English
16 booth can pick up the French from the Swahili and convey it into English for your
17 attention. Thank you, sir.

18 PRESIDING JUDGE FREMR: Yes, it will be fine with us. We fully understand the
19 demanding circumstances of this case, so I think it would be absolutely okay with the
20 Chamber.

21 So I guess now we -- maybe it would be better to start again from the beginning.

22 (Viewing of the video excerpt)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page redacted – Private session

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page redacted – Private session

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1

2

3

4

5

6

7

8

9

10

11

12

13 Page redacted – Private session

14

15

16

17

18

19

20

21

22

23

24

25

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 MR BOURGON: This concludes the video, Mr President.

24 MS LUPING: Mr President.

25 PRESIDING JUDGE FREMR: Ms Luping.

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 MS LUPING: Just before any questions are asked, I will not explain to the witness
2 obviously in his presence what the Defence indicated the purpose of the questions are
3 going to be, but just an observation that the video does go beyond the specific
4 purpose that the Defence indicated that they would be questioning the witness on,
5 and I would certainly be asking that the Defence indeed cover the topic they said they
6 would be covering because otherwise it does go beyond what they had indicated they
7 wanted the video to be shown to the witness for.

8 PRESIDING JUDGE FREMR: All right.

9 I guess, Mr Bourgon, you have heard it and you will respect it.

10 MR BOURGON: I will endeavour to do so, Mr President.

11 Mr President, I believe we can go back into public session.

12 PRESIDING JUDGE FREMR: All right. Let's move into private session now. Into
13 closed session, sorry. My error. Into open session. Now I am finally right.

14 (Open session at 12.36 p.m.)

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

16 PRESIDING JUDGE FREMR: Thank you.

17 Mr Bourgon, you may proceed.

18 MR BOURGON: Thank you, Mr President.

19 Q. Sir, I just have a few questions to ask you following your viewing of this video.

20 And I will try to do it into one question and maybe if that doesn't work, then I can
21 split it up, but just to gain some time I will try to make it into one question.

22 I would like you to recall what you saw in this video, which was mentioned by the
23 two ladies. So maybe my first question is: Did you understand what was said by
24 those two ladies when you viewed the video?

25 A. I understood.

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Open Session)

ICC-01/04-02/06

1 Q. Now, these two ladies, to paraphrase what they said, because that's the aim of
2 my question, they mention the difficult conditions they were living in, they mention
3 being threatened, they mention having been beaten up for two weeks, they mention
4 having to walk around topless, they mention that they were living very difficult times
5 and they mention having been intimidated by those who were there before the UPC
6 arrived, which is the Lendus.

7 What you heard in this video from those two ladies on these specific issues, does that
8 match, sir, what you describe as what was happening in Sayo and Mongbwalu?

9 PRESIDING JUDGE FREMR: Ms Luping.

10 MS LUPING: Just simply to ask if the question can be broken down because now
11 this is a very long list and it's a bit unfair I think for the witness. So if it could just be
12 broken down for the witness, it would make it simpler.

13 PRESIDING JUDGE FREMR: Yes, I support that.

14 Mr Bourgon, please try.

15 MR BOURGON: I was trying to gain time, Mr President, but I agree.

16 Q. The lady who was speaking in this video, sir, she mentioned that they were
17 living in very difficult conditions. Now, does that match what you said about the
18 difficult conditions being imposed?

19 A. Not at all. Not at all. These women said that they couldn't eat the manioc
20 leaves, they couldn't carry out any work, they couldn't even get wood. So in these
21 conditions which they described, well, those are the conditions they experienced.

22 Q. My question, sir, is these conditions that they describe, does that match what
23 you testified about and what you personally saw being imposed on the population in
24 Sayo?

25 A. Yes, exactly. That is correct.

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Open Session)

ICC-01/04-02/06

1 Q. And, sir, the first woman indicated that she had been threatened. Does that
2 match your testimony that the Lendus and the population of Sayo and Mongbwalu
3 was being threatened by the FNI?

4 A. Yes. That's correct because it didn't even have -- they didn't have the means to
5 eat, whether in Mongbwalu or Sayo. Everywhere where the Balendu were the
6 conditions were the same.

7 Q. And, sir, the lady said that she was personally beaten up for a period of two
8 weeks. Now, are you aware and does that match your testimony that the people
9 were being beaten up?

10 MS LUPING: Mr President, if the question --

11 PRESIDING JUDGE FREMR: Ms Luping.

12 MS LUPING: -- could be a bit clearer because it -- was he aware that the people were
13 being beaten up, what people?

14 MR BOURGON: I will make my question more clear, Mr President.

15 Q. So the lady, the first lady, who was breastfeeding her child, she said that she
16 had been beaten up for a period of two weeks. Are you aware of other cases of
17 people who were beaten up at that time by the Lendus?

18 A. The Balendu, between them, they had refused to eat -- to drink, and when
19 somebody was drinking in the evening, they'd cut their ear off. That was the
20 condition that the Balendu had imposed.

21 THE INTERPRETER: Microphone, please.

22 THE WITNESS: (No interpretation)

23 THE INTERPRETER: The microphone of the witness was off.

24 PRESIDING JUDGE FREMR: Mr Witness, could you kindly repeat the final part of
25 your response because it was not captured by the interpreters. Please repeat that.

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Open Session)

ICC-01/04-02/06

1 THE WITNESS: (Interpretation) The way in which these women suffered, in fact
2 bad conditions were imposed on them, bad living conditions. The Balendu didn't
3 accept that people could drink alcohol. If somebody drank alcohol that person's ear
4 would be cut off.

5 MR BOURGON:

6 Q. And, sir, the lady also mentioned at one point that the -- that they were -- that
7 they had to walk about topless. Does that match what you testified about and are
8 you familiar that the ladies had to walk topless because they were forced to do so?

9 A. Yes, they were bare-chested, they walked around bare-chested, they couldn't
10 wear blouses, they just had pagnes around their waist. These women told the truth.

11 Q. Now, these women also said that they were being intimidated. Is that
12 something you can relate to based on your own knowledge of what was happening?

13 A. That was done everywhere.

14 THE INTERPRETER: Microphone, please.

15 THE WITNESS: (No interpretation)

16 PRESIDING JUDGE FREMR: We haven't received, I think, a translation of the last
17 witness's response. Any problem on the part of the interpreters?

18 THE INTERPRETER: Your Honour, the Swahili booth indicated they weren't able to
19 hear the witness. We're not sure what the technical issue is.

20 PRESIDING JUDGE FREMR: I'm sorry, Witness, but I have to again repeat my
21 request to you to repeat your last response, please.

22 THE WITNESS: (Interpretation) Even among the Balendu, when a woman got
23 drunk, her ear was cut off. They were struck, they were hit when they were found
24 on the road. If they had drunk, if they had drunk, they would be seriously punished
25 and whipped.

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Open Session)

ICC-01/04-02/06

1 MR BOURGON:

2 Q. Thank you, sir.

3 My next question is -- was not mentioned in the video, but you testified to that effect.

4 And I refer to the transcript on 23 October, at page 11, lines 1 to 4. So I will quote
5 your words:

6 When they arrived, they imposed very bad conditions. A woman could not fold her
7 arms when they went off to war.

8 I stop here to say, what did you mean by a woman could not fold her arms when they
9 went off to war?

10 A. This is what I meant to say: The women couldn't cross their arms, they could
11 not leave their arms out, they had to stay standing up until people left the battle.
12 You couldn't cross your arms, you couldn't stretch your arms. In the case if you did
13 that, you were whipped and you could even be killed.

14 Q. And I have one last question, sir, which relates in some parts of the video
15 that -- this might be a difficult question. Are you familiar with the facts, sir, that at
16 the time there was actually cannibalism practised by the Lendus over the Hemas?

17 A. Well, I didn't see them practising that, but what I did hear was that they had
18 eaten an Alur soldier. I didn't see it with my own eyes, but I did -- never see it. But
19 I never saw them eating human flesh, but I did hear that they had eaten a soldier who
20 was Alur.

21 Q. Thank you, sir.

22 Before I move on to my next question, Mr President, I would like to ask if the video be
23 admitted into evidence. And I would like to reserve my comments regarding the
24 transcript which was used during the hearing because we have a different position
25 regarding the transcript; we do not believe that a transcript should go into evidence.

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Open Session)

ICC-01/04-02/06

1 What should go into evidence, in our respectful submission, Mr President, is the
2 video and the comments of the witness. This is what, is in our view, should go into
3 evidence and not the transcript. Thank you.

4 PRESIDING JUDGE FREMR: Ms Luping.

5 MS LUPING: Mr President, your Honours, now, on the basis of your ruling, my
6 objection is not to the admission of the -- the video being entered into evidence, but to
7 the entirety of the excerpt what was shown because indeed there's only a -- the earlier
8 part of the portion of the excerpt was shown to the witness that he was questioned on.
9 So we would -- I would submit that it is only up to the part on which the witness was
10 actually questioned about that should be admitted into evidence and the rest -- the
11 rest of it that followed, because the excerpt does go on for quite some time, should not
12 be admitted into evidence.

13 PRESIDING JUDGE FREMR: Mr Bourgon.

14 MR BOURGON: Mr President, we -- we tried to limit the excerpt to what was
15 relevant to those conditions. What I propose, Mr President, is that I can -- to save
16 some time, I will meet with my colleague and we can agree on an exact timing that
17 will suit their purposes and our purposes.

18 Our purpose in showing the video is clear and explained, and we are not trying to go
19 anywhere beyond what we explained we would do.

20 PRESIDING JUDGE FREMR: So we will postpone the decision on this until after the
21 lunch-break. And please meet and try to find the precise excerpt that should be
22 admitted.

23 And I understood that the request is only concerning only video, no transcripts?

24 MR BOURGON: At this point in time there is no request for the transcript,
25 Mr President.

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 PRESIDING JUDGE FREMR: So please come again after the lunch-break with this
2 request in a more specific way.

3 Now you may proceed.

4 MR BOURGON: Thank you, Mr President.

5 Q. Sir, we'll move on to a completely different topic which has to do with questions
6 that were put to you yesterday asking you to identify a -- certain features on sketches
7 that you made with your statement. And what I would like to do is to call upon -- to
8 have the following exhibit called up, which is DRC-OTP-0077-0035, which was
9 admitted yesterday with the witness.

10 MS LUPING: Your Honours.

11 PRESIDING JUDGE FREMR: Ms Luping.

12 MS LUPING: Just a reminder, it is a confidential exhibit.

13 PRESIDING JUDGE FREMR: So we will now move into private session.

14 MR BOURGON: If it's at all --

15 PRESIDING JUDGE FREMR: Please hold on, Mr Bourgon.

16 (Private session at 12.54 p.m.)

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

18 PRESIDING JUDGE FREMR: And if you -- yeah, it was just my request to put the
19 blinds down in order to protect the picture being seen by -- in the public gallery. So
20 just a second and you may proceed, Mr Bourgon.

21 Yes.

22 THE COURT OFFICER: Mr Bourgon, could you please confirm that the document
23 you would like to have published is DRC-OTP-2077-0035.

24 MR BOURGON: There might be a misunderstanding, it's 0077. No?

25 THE COURT OFFICER: We do not have that number. And the sketch used

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 yesterday was 2077.

2 MR BOURGON: Then it is 20. I think it's -- it's a night mistake --

3 THE COURT OFFICER: Thank you.

4 MR BOURGON: -- with the zero.

5 Mr President, it used to be that we could ask questions in public session without the

6 exhibit being displayed publicly. If that is at all possible, I would like -- that's the

7 way I would like to proceed, if technically this is possible, not to show the exhibit, but

8 to ask the questions in public session.

9 THE COURT OFFICER: This is indeed possible. We have just closed the middle

10 blinds so that the public is not able to see what's being played on the witness's screen.

11 PRESIDING JUDGE FREMR: Ms Luping, any objection if we would keep all

12 caution?

13 MS LUPING: Provided the questions are not of an identifying nature, then there'd

14 be no objection.

15 PRESIDING JUDGE FREMR: Okay then, Mr Bourgon, you may proceed.

16 MR BOURGON: Mr President, we need to move back into public session.

17 PRESIDING JUDGE FREMR: Yes, yes, you are right. So let's move into public

18 session now.

19 (Open session at 12.56 p.m.)

20 THE COURT OFFICER: We are back in open session.

21 PRESIDING JUDGE FREMR: Thank you.

22 So you may proceed, Mr Bourgon. And please have in mind that you have

23 approximately last 5 minutes before the break.

24 MR BOURGON: Thank you, Mr President.

25 Q. Sir, you recognize this -- this sketch which was used yesterday during your

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Open Session)

ICC-01/04-02/06

1 testimony?

2 A. I remember very well.

3 Q. Sir, I draw your attention to the left part of your sketch where we see

4 Mongbwalu, and there is an arrow. So my understanding is that this indicates that

5 Mongbwalu is to the left of your sketch; is that correct?

6 A. Mongbwalu is situated on both sides, on the left and on the right. That's where

7 you see the offices.

8 Q. Sir, the -- you can confirm that Mongbwalu, at least the part that is on the

9 right -- on the left, sorry, is much lower than Sayo. Do you agree with this?

10 A. Yes, yes. Sayo is on a hill, while Mongbwalu is in the valley.

11 Q. And if I look at your arrow pointing towards Mongbwalu, would I be right that

12 if I go --

13 A. Ndiyo.

14 Q. -- further left I would reach the airport of Mongbwalu?

15 A. Yes, you would get to Mongbwalu airport because the camp was on -- also on

16 that side. Mongbwalu was in the valley, while the airport was on the hill.

17 Q. Thank you, sir. I appreciate this because that's exactly my point. The airport

18 was also much higher than Mongbwalu, which is in the valley between the airport on

19 one side --

20 A. Ndiyo.

21 Q. -- and Sayo on the other.

22 A. Sayo is a bit higher. You found -- Mongbwalu is found a bit in front. You can

23 climb up the mountain in order to go to Sayo.

24 Q. And my last question before we break for -- sir, is that Mongbwalu is actually in

25 the valley in between, on one side the airport and on the other side --

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Open Session)

ICC-01/04-02/06

1 A. Ndiyo.

2 Q. -- with Sayo?

3 A. Yes, Sayo is a bit further away. To go to Mongbwalu, Sayo is 7 kilometres
4 away.

5 Q. Thank you, sir. We'll take up with this sketch again when we come back from
6 the break, sir. Thank you very much.

7 Mr President.

8 PRESIDING JUDGE FREMR: Thank you.

9 So now Mr Witness should be escorted out of the courtroom.

10 (The witness stands down)

11 PRESIDING JUDGE FREMR: We will break now for 90 minutes to have a
12 lunch-break, but before we do that I would like to express on behalf of the Chamber
13 our special thanks to the interpreters because they succeeded to provide us with
14 translation even regardless very hard circumstances. So thank you very much for
15 that.

16 Now we break and we will reconvene at half past 2.

17 THE COURT OFFICER: All rise.

18 (Recess taken at 1.02 p.m.)

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

20 THE COURT OFFICER: All rise.

21 PRESIDING JUDGE FREMR: Mr Bourgon, we still -- we still don't have witness here,
22 so please be patient because we would like to start with two procedural issues.

23 The first one is our decision on Defence request seeking disclosure orders and leave to
24 recall Witness P-886 for further cross-examination.

25 So the Chamber will now render its oral ruling on the Defence request seeking disclosure

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Open Session)

ICC-01/04-02/06

1 orders and leave to recall Witness P-886 for further cross-examination filed earlier this
2 morning. It's filing number 948 confidential.

3 The Defence submits that the cross-examination of Witness P-886 establishes that the
4 witness had substantive contacts with Prosecution's intermediary P-743. The Defence
5 requests that the Prosecution be ordered to disclose any information
6 provided -- provided by the witness to this intermediary in its possession as well as any
7 reports provided to the Prosecution by the intermediary containing information that he
8 received from the witness.

9 The Defence requests leave to further cross-examine the witness at a later stage if
10 necessary. The Defence also requests that the Prosecution be ordered to disclose any
11 similar information relating to contacts between P-743 and other Prosecution witnesses.
12 This morning, the Prosecution responded orally to the request. Afterwards, with leave
13 of the Chamber, the Defence asked the witness additional questions to clarify his
14 contacts with the intermediary.

15 When subsequently asked whether the Defence maintains its disclosure request, the
16 Defence stated that it insists on the Prosecution being ordered to disclose the information
17 related to the intermediary which is P-743 in terms of his relationship with the witness
18 and other witnesses.

19 In this regard, the Defence submitted that it had established during its cross-examination
20 of the witness a more than sufficient basis to establish the importance of the role of the
21 intermediary in this case and the importance for the Defence to obtain such information.

22 The Chamber notes that the Prosecution stated that intermediary P-743 had no
23 substantive contact with P-886 and that no further screening notes exist.

24 The Chamber considers that the answers provided by the witness to the Defence further
25 questions appear to confirm the limited nature of the interaction between the witness

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Open Session)

ICC-01/04-02/06

1 and the intermediary.

2 The Chamber does not consider that the testimony of the witness has provided a basis to
3 reconsider its previous oral decision of 26 October 2015 on the Defence disclosure
4 request relating to intermediary P-743 nor to grant additional disclosure of the nature
5 described either in Defence filing number 948 or in the oral submissions this morning.

6 The request is, therefore, rejected.

7 This concludes the Chamber's ruling.

8 And the second issue concerns the last point before our break, we encouraged the parties
9 to have some negotiation as concerns possible admission of video, especially to specify
10 those excerpts which are really relevant.

11 Have you made any progress in this, Mr Bourgon?

12 MR BOURGON: Thank you, Mr President. There were some inter partes consultation
13 during the lunch break. We have not reached an agreement, a final agreement, but we
14 are close to doing so. The excerpts shown to the witness will be much reduced in the
15 time -- in the time frame of the excerpt because I want to stick with exactly what I
16 intended to show and nothing more. And it is my submission, Mr President, that by
17 tomorrow morning we should agree on the specific timing for this excerpt.

18 PRESIDING JUDGE FREMR: Ms Luping, could you kindly confirm this perspective.

19 MS LUPING: Thank you, Mr President, your Honours. The Prosecution has indicated
20 to the Defence the specific time stamps or, rather, the specific excerpt of the video that
21 we would be able to agree to. We have not yet had a response to that. If Mr Bourgon
22 believes that we're able to reach agreement, that we're close, then we'll certainly seek to
23 endeavour do so. We'll be able to inform you in the morning as to the result of those
24 discussions.

25 PRESIDING JUDGE FREMR: Thank you very much. Even if the agreement hasn't

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Open Session)

ICC-01/04-02/06

1 been reached yet, we anyway appreciate some cooperative spirit.

2 Okay, so now the witness may be escorted into courtroom.

3 And Mr Bourgon, what kind of regime your upcoming questions require?

4 MR BOURGON: The same regime as when we left before the lunch-break, which is to
5 testify in public session; however, the exhibit itself, which is the sketch that the witness
6 prepared, should not be shown outside of the courtroom. So if we can maybe close the
7 blinds immediately to ensure that the sketch does not appear to the public.

8 (The witness enters the courtroom)

9 PRESIDING JUDGE FREMR: Okay. Court officer, please make the same arrangement
10 like before the break.

11 Mr Witness, good afternoon. I know that it is a long day.

12 THE WITNESS: (Interpretation) Good afternoon.

13 PRESIDING JUDGE FREMR: I know that it is a long day today for you, but we're now
14 approaching the last part of the trial today, so please continue. You were doing very
15 well. So please continue in the same way.

16 Okay. Now Mr Bourgon you may proceed.

17 MR BOURGON: Thank you, Mr President. I would like to call up exhibit number
18 DRC-OTP-2077-0035. And as indicated previously, the exhibit should not be available
19 or should not be -- the public should not be able to see the exhibit itself.

20 Q. Sir, this exhibit that will appear in front of you is the sketch we were working with
21 this morning just before the break. You recall this?

22 Sir, if you could confirm by yes or no whether you recognize this sketch as being your
23 own sketch?

24 A. I recognize the diagram and, by the way, I saw it yesterday. It's the same sketch.

25 Q. Now, just before we left for the lunch-break, I was trying to establish with you the

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Open Session)

ICC-01/04-02/06

1 position of Mongbwalu, which is indicated by an arrow to the left of your sketch, and I
2 suggested to you that if you position yourself in Mongbwalu, on one side you will have
3 Sayo, which is higher on a hill, and on the other side you will have the airport which is
4 also higher on a hill. Can you confirm this?

5 A. Yes, indeed. Sayo is up the hill because Mongbwalu lies in a valley. However,
6 the airport is at another location, which is to the left of Mongbwalu on an elevated piece
7 of land.

8 Q. Thank you, sir. That is exactly what I was trying to establish with you.

9 Now, I understand, sir, that you are, of course, very familiar with the road that goes
10 from Mongbwalu to Sayo, which is indicated on your sketch.

11 A. Well, you can see on the sketch a road going down to Mongbwalu centre. The
12 sketch, which I drew, shows you how to go to Mongbwalu by going through a number
13 of villages.

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 MS LUPING: Mr President, your Honours.

19 PRESIDING JUDGE FREMR: Ms Luping.

20 MS LUPING: I didn't want to interrupt previously, but just a reminder, we are in
21 public session. Perhaps it was the -- it was the nature of the question. I let it go, but
22 clearly from the answer we're going to come into problems. We may need to go into
23 private session.

24 PRESIDING JUDGE FREMR: Mr Bourgon, your position?

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Open Session)

ICC-01/04-02/06

1 (Redacted)

2 (Redacted)

3 PRESIDING JUDGE FREMR: Which means that they are of what nature?

4 MR BOURGON: They -- they are of nature of identifying features like we did yesterday,
5 like the Prosecution did, some features along that road. So it's his knowledge of the
6 sketch that he draw -- that he drew.

7 PRESIDING JUDGE FREMR: I still believe that we are remaining in a relatively general
8 level, so if there would be --

9 THE WITNESS: (Interpretation) I recognize the sketch very well. And as I explained
10 to you yesterday, you can crosscheck everything that I have told you. And it appears
11 on this sketch.

12 PRESIDING JUDGE FREMR: Mr Witness, hold on.

13 So I just would like to conclude that at the moment I don't see any urgent reason to move
14 into private session, but if there would be any question which could identify the witness,
15 please let us know Mr Bourgon; otherwise, I still believe that the knowledge of the place,
16 even including details, should not identify or put our witness at risk.

17 So you may proceed, Mr Bourgon.

18 MR BOURGON: Thank you, Mr President.

19 Q. Sir, my first question is: I see on your sketch to the left "Usine Kanga." Now,
20 you're very familiar with that feature are you not, sir?

21 A. The Kanga factory is near the road. However, it was destroyed. Only the ruins
22 remain. Nothing else stands there. It had been built close to the road in any event.

23 Q. And I take it, sir, that you are aware that this factory was destroyed long before the
24 events you describe in your testimony; is that correct?

25 A. That factory was destroyed by the attackers.

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Open Session)

ICC-01/04-02/06

1 Q. By which attackers, sir?

2 A. By -- the FNI troops, who used to work in that factory, were driven out by the UPC
3 when they arrived and destroyed everything.

4 Q. And when was this, sir, so that there is no misunderstanding?

5 A. Initially, it was the FNI troops that came to Mongbwalu, but they did not touch
6 that factory. Later on other troops came and destroyed the factory. When they left,
7 the FNI soldiers then came back. And the factory was attacked and everything that
8 remained was destroyed. And the corrugated roofing sheets from the factory were
9 taken away and everything else.

10 Q. I would just like to know, sir, the destruction you are talking about, is it close in
11 time to the events you describe which happened in Sayo or long before that?

12 A. There had been clashes previously. The UPC troops clashed with the government
13 forces and the FNI. Then later on, when the UPC soldiers left, the FNI troops came
14 back and destroyed everything.

15 Q. I'll move on and maybe with some other -- maybe we can have a more -- to
16 establish when in time this took place.

17 Let me ask you, on your sketch that is before you, I want to know if there is a feature that
18 you are aware of called the appartement and whether this appears on that sketch.

19 A. I know that place.

20 Q. Is that place -- does it appear in your sketch?

21 A. No. On the sketch you can see the location where the factory was built right up to
22 Sayo going through Adidi mine and Adidi montagne.

23 Q. And, sir, the appartement, what is that? What do you know about the
24 appartement?

25 A. The location known as appartement was a large compound in which the white

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 people who used to work for that factory lived. It was a factory that was located there
2 in that very place and that is what was referred to as appartement.

3 Q. And the appartement, sir, did they still exist when the events took place in Sayo
4 that you describe?

5 A. Yes. Appartement has always existed, before the fighting and even after the
6 fighting. White people used to live at that location, but at the time of the war, they left.

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 PRESIDING JUDGE FREMR: All right. To be safer, court officer, let's move into
16 private session.

17 (Private session at 2.56 p.m.)

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

19 PRESIDING JUDGE FREMR: And it will I guess give even more space for your
20 question, Mr Bourgon. You may proceed.

21 MR BOURGON: Thank you, Mr President.

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 (Redacted)
2 (Redacted)
3 (Redacted)
4 (Redacted)
5 (Redacted)
6 (Redacted)
7 (Redacted)
8 (Redacted)
9 (Redacted)
10 (Redacted)
11 (Redacted)
12 (Redacted)
13 (Redacted)
14 (Redacted)
15 (Redacted)
16 (Redacted)
17 (Redacted)
18 (Redacted)
19 (Redacted)
20 (Redacted)
21 (Redacted)

22 Q. On your testimony on 23 October, that is last Friday, on page 11, lines 15 to 20, you
23 said "The attackers arrived from the Kanga road, that is, the Kanga factory. They came
24 right in, straight down the road."
25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 PRESIDING JUDGE FREMR: Ms Luping?

13 MS LUPING: Mr President, just a request for a spelling for Kanga Alluvion path and
14 perhaps greater clarity as to which precise road that he's seeking the witness to comment
15 upon because he talked about two roads, so it's not clear which road is being requested
16 of him.

17 PRESIDING JUDGE FREMR: All right.

18 Mr Bourgon, please.

19 MR BOURGON:

20 Q. Well, the spelling, I'm not sure which word we are looking for a spelling for.

21 MS LUPING: Kanga Alluvion.

22 MR BOURGON:

23 Q. Kanga Alluvion. Can you spell, sir, Kanga Alluvion?

24 A. K-A-N-G-A, A-L-U-V-I-O-N. Kanga Alluvion.

25 Q. Thank you, sir. (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 Q. And my question, sir, is that's the way according to your testimony this is where
7 the soldiers who came to Sayo, this is the way that they took; is that correct?

8 A. They came all the way behind the church. They took a bush path and they came
9 in behind the church. (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1

2

3

4

5

6

7

8

9

10

11

12

13 Page redacted – Private session

14

15

16

17

18

19

20

21

22

23

24

25

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 (Redacted)
2 (Redacted)
3 (Redacted)
4 (Redacted)
5 (Redacted)
6 (Redacted)
7 (Redacted)
8 (Redacted)
9 (Redacted)
10 (Redacted)
11 (Redacted)
12 (Redacted)
13 (Redacted)
14 (Redacted)
15 (Redacted)
16 (Redacted)
17 (Redacted)
18 (Redacted)
19 (Redacted)
20 (Redacted)
21 (Redacted)
22 (Redacted)
23 (Redacted)

24 MS LUPING: Thank you, Mr President, your Honours. The Prosecution objects to the
25 various satellite images, that's items 9 to 25 on the list, the proposed list of the Defence,

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 being shown to this witness, on the basis that, in our submission, he is not qualified
2 either to review or answer questions in relation to satellite images. He's not an
3 individual who has, as a result of his job or occupation, had to deal with satellite images.
4 The Prosecution itself has called an expert to look at and review satellite images on its
5 own behalf. He has no military background. He's not a person who will have even
6 looked at satellite images in his -- in his daily work.

7 And on that basis, we think it is not fair on this witness to expect him to be able to
8 review or comment upon them. He is not a cartographer. He has provided a sketch
9 but he's not -- he was not asked to produce the sketch and we've not sought to enter that
10 into evidence on the basis that he is a professional, simply on the basis of his own
11 experience.

12 But satellite images require a different level of experience and knowledge which, in our
13 submission, this witness is not able to provide.

14 PRESIDING JUDGE FREMR: Mr Bourgon, your position?

15 MR BOURGON: Thank you, Mr President. These images were taken from Google
16 and even I, being completely computer illiterate, am able to recognize these pictures on
17 Google. I think this is very basic knowledge in 2015, that people are aware of Google
18 Map, Google Earth and all these things, and he can recognize features.

19 I will -- certainly will not ask him to recognize a bullet hole in a wall, but I will ask him
20 to recognize main features. And I think this will be of major assistance to the Chamber
21 in recognizing these features from above so that they will better understand his
22 testimony. And I don't think that calls for any type of expertise. Thank you,
23 Mr President.

24 PRESIDING JUDGE FREMR: Give us a second. I will consult my -- Ms Luping, you
25 want to still respond? Anything else?

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 MS LUPING: (Redacted)

2 (Redacted). I think it's

3 individually based, your Honours, as to whether an individual is able to review and

4 comment upon satellite images, but what we're simply saying is that -- and, you know,

5 Mr Bourgon has perhaps military background that this witness does not. It's -- which

6 it's simply on the basis of the background of this witness. We -- I would say that he is

7 not able to properly comment.

8 PRESIDING JUDGE FREMR: Thank you. As I said, we will deliberate briefly.

9 (Trial Chamber confers)

10 PRESIDING JUDGE FREMR: So for the moment the objection is overruled.

11 But I have to give our reasoning because, in fact, we partially agree with Ms Luping that

12 it's really individual capability, so our ruling is that we will in fact test witness,

13 Mr Bourgon, and as soon we would see that it really is not beneficial, that he is not able

14 to make this exercise, we will stop that. So we will simply try, okay?

15 So now the witness may be escorted back into the courtroom.

16 MR BOURGON: Thank you, Mr President.

17 Once again, Mr President, I would like the -- my colleague to take control of the

18 presentation so that he can zoom into the different places.

19 PRESIDING JUDGE FREMR: All right.

20 MR BOURGON: If I may, Mr President, I will also, just so we know right now so we

21 don't waste too much time, I also have an exhibit, a paper exhibit, which shows all of

22 these maps together which I will -- which I would like to show to the witness to assist

23 him in finding the places.

24 PRESIDING JUDGE FREMR: For sure. All right.

25 (The witness enters the courtroom)

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 PRESIDING JUDGE FREMR: Mr Witness, before Mr Bourgon will continue with his
2 questioning, one guidance from my part now. The following questions will concern
3 satellite images, so we will see if you will be able to answer them. It will be even better;
4 but if not, if you would be not capable, to be confused, no problem, we can finish this
5 exercise. So please try to do your best. But if you will see that you are not able to
6 respond, it's no problem.

7 MR BOURGON: Thank you, Mr President. The exhibit that is -- I would like to show
8 to the witness bears the number DRC-D for delta 18-0001-0459.

9 Q. Sir, there's a picture appearing on the screen before you. This is an aerial
10 overview of the area we discussed in your testimony and I'm going to ask you if you
11 recognize some of the features that you see on the screen. That is the first level.
12 And the second level we will move in -- into with much more detail.
13 The first is I'd like to focus in, to zoom in, to where Sayo is and ask you whether you
14 recognize where is Sayo. Do you recognize on this picture, do you recognize the road
15 that leads to Sayo and the village of Sayo?

16 A. I can't see the village, but I can see the road. I see the road to the right. I can see
17 an intersection here. And I see the road that goes up to Sayo and the other road that
18 goes to Saba. That road goes to Saba, the one in the back. But the one that goes up the
19 hill, it goes to Sayo. I can see that here when you get to this spot there is a river.
20 That's the place called Artisan before you get there. That's what I can see here.

21 Q. Thank you, sir. I will now zoom into another area on this -- on this map, and it is
22 to the right --

23 MS LUPING: Sorry, Mr President.

24 PRESIDING JUDGE FREMR: Ms Luping.

25 MS LUPING: It's just that I'm not certain of the purpose, but we've had certain areas

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 indicated, but it's not clear as to what positions in the places we've been shown these
2 places are. For example, Artisan, it's not clear where it's located.

3 PRESIDING JUDGE FREMR: Mr Bourgon, really I also have some doubts about the
4 effect of this exercise because even now Mr Witness -- I'm not sure if the witness is right
5 or not because we can't see at the moment of what places he really indicated by his hand.
6 Do you think that it's really beneficial?

7 MR BOURGON: Mr President, this is the first level and I can go into much more detail.
8 But first, to be fair, I wanted him to recognize the area in general and then I'll go into a
9 much -- much closer look and then he will -- he will be able to recognize some buildings
10 and then we can identify those.

11 PRESIDING JUDGE FREMR: Okay. Let's proceed.

12 MR BOURGON:

13 Q. Sir, to the top left I will now zoom in and you can even see the word there that is
14 called -- that is spelled as being Nzebi. Do you recognize to the top left that this is
15 Nzebi and that where is Sayo from Nzebi? Do you recognize this from this picture?

16 A. Yes. I recognize quite well. There is a stream here. Nzebi is here. And this
17 road goes to the hill. And the other -- the other road goes toward the hill and toward
18 the centre of Mongbwalu. (Redacted)

19 (Redacted) . Here it's much clearer. Nzebi is to the left. Sayo is to the left.

20 Q. Thank you, sir. I'd like to focus now to a place you referred to as being the
21 appartement. See if you can recognize the appartement. Do you recognize the
22 appartement on this sketch?

23 A. Just a moment, just a moment. Can we move it over to the right because this road
24 goes from Bambu to Bunia and appartement is in the middle. Continue that way, a
25 little further left. And here I'll be able to see it. Appartement is here in the middle

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 where the cursor is. That's where appartement is because this road goes to Sayo from
2 Mongbwalu. This road goes to the roundabout and then it continues to Bunia. It's a
3 large road that goes to Bunia.

4 PRESIDING JUDGE FREMR: Mr Witness -- I would add that it's a proposal made to all
5 or both parties -- if you want to indicate someplace, maybe we can use this cursor. You
6 may just say to Mr St-Michel, put it left, put it right, put it down or up. And then if he
7 would just find the place, you say, "Okay, this is the place I meant." Okay? So the
8 cursor could be very helpful.

9 A. Okay. Yes. Okay.

10 MR BOURGON:

11 Q. Now, sir, in order to assist you, allow me to show you a hard copy of the sketch
12 that you have -- pictures that you have before you.

13 Mr President, I would like permission to bring the hard copy beside the witness. It is
14 the identical of what has been shown to the witness and the number is
15 DRC-D18-0001-0463. If we can begin the -- if the Judge will allow.

16 Can you see this picture, sir?

17 A. Yes. Yes, I can see it.

18 Q. Can you recognize Sayo on this map?

19 A. Yes. I recognize it.

20 Q. And can you recognize Nzebi?

21 A. Yes. If I follow the road, I would get to Nzebi. Yes.

22 Q. Now, do we -- can we see Mbidjo on this map?

23 A. The Mbidjo hill cannot be seen on this map. It's a very high hill.

24 Q. Thank you, sir. That is exactly what I wanted to verify with you because Mbidjo
25 is not on this map. However, can you see the town of Mongbwalu, can you?

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 A. Yes. Mongbwalu is at the bottom in the valley. It's down here. And then if you
2 go -- you have to go up toward Sayo to the right and the other road goes to Bambu all
3 the way to Bunia to the left, and to the right is the road that goes to Sayo.

4 Q. Now, on this map, sir, to the right of Mongbwalu, can you show us where the
5 airport is?

6 A. From here, Mongbwalu, the airport is to the left if you go toward the east.

7 Q. Can you direct my colleague to bring the cursor where the airport is, if you see it?
8 And you can look on the big map too, if you want.

9 A. Well, you have to go a bit further to the left and closer to the centre of Mongbwalu
10 and I'll be able to show you the airport. Keep moving up the map. Continue. Keep
11 going. Keep going. To the left. Keep that -- the little hand, the cursor, keep moving.
12 You're going to the right. No. Go left. Go left. That's right. Continue. Further
13 down. Further down. Further down. Further down. Keep going down. Now, go
14 to the left. Keep going. You go over the word "Mongbwalu." Continue. Continue.
15 That's -- keep going. Keep going. A little bit further up. Go up. And now go
16 toward the corner to the left. Keep going. Keep going. Go up a little bit, a little bit,
17 just a little bit. That's the airport. That's where the airport is in Mongbwalu. The
18 airport is over there.

19 This road goes through the airport. And the other path which is right nearby takes you
20 up to the village. The road goes right through the airport. It's right there. It's -- that's
21 exactly where the airport is on that hill. But this is the airport in Mongbwalu. It's a bit
22 far from the centre of Mongbwalu to get to the airport.

23 Q. Thank you, sir.

24 PRESIDING JUDGE FREMR: Mr Bourgon, you know, I don't like this exercise. Please,
25 if you don't have any specific question which could bring something new, then okay, but,

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 you know, until now we are just, you know, testing witness whether he is able to
2 orientate himself with the map. Well, what is the purpose of that? I can't understand.
3 So please if you have some specific questions concerning our evidence, please go ahead,
4 but I don't will just admit further, you know, exercise asking him to find some, you
5 know, points which are on the map and he is obviously familiar with the situation. So
6 please take it into account in putting your next questions.

7 MR BOURGON: Thank you very much, Mr President. I'll follow your advice and I'll
8 move to a different topic.

9 Q. I thank you very much, sir, for trying to identify these features and I'll move to a
10 different topic. And the topic I'd like to address, which is why I wanted you to identify
11 some features so we can take it off the screen, is I wanted to talk about the attack which
12 took place as you described it in your testimony.

13 Now, sir, if you refer to your testimony over the last few days, I would like you to
14 confirm that if you are at the church in Sayo, it is not possible to see Mbidjo; is that
15 correct?

16 A. One can see Mbidjo. Mbidjo is far away from Sayo, but it's on a hill, on a distant
17 hill about 18 kilometres between Sayo and Mbidjo.

18 Q. And I suggest to you, sir, that in your testimony, you referred to a road that was
19 blocked and that you could not see this road from the church, the Catholic church in
20 Sayo; is that correct?

21 A. Which -- which road are you talking about?

22 (No interpretation)

23 Q. Sir, I referred to your -- what you mention of -- and that is concerning the
24 beginning of the attack. And you mention that there was a road that had been blocked
25 by the people coming from Aru. Do you recall this, sir?

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 MS LUPING: Mr President, your Honours.

2 PRESIDING JUDGE FREMR: Yes, Ms Luping.

3 MS LUPING: Yes, if Mr Bourgon could simply provide the transcript page and line
4 reference so that it is clearer for the witness as to which road he's referring to.

5 MR BOURGON: Yes I will, Mr President.

6 PRESIDING JUDGE FREMR: I appreciate it.

7 MR BOURGON: I'm not able to find the reference at this point, but I'd like to ask the
8 witness whether he recalls saying that the conflict began when the road was blocked in
9 Mbidjo.

10 Q. Do you recall saying this, sir?

11 A. It is only the Pluto road that was blocked. Elsewhere the roads were open and
12 people could walk and go about without any problem.

13 Q. Let me quote you exactly what you said, sir, during your testimony. On page 71
14 of the transcript, and that is at lines 1 to 4: "Well, when it started, we heard gunshots in
15 Mbidjo and they -- there was fighting in Mbidjo. The APC and the people from
16 Lompondo had blocked the road." Do you recall which road I'm talking about?

17 A. Yes, I remember. It is the Pluto road. That is the road that was blocked. The
18 war was going on and raging, so to speak, in Pluto, and they had been fighting from
19 Mbidjo for a period of two days and it is thereafter that they captured the airport.

20 Q. And sir, I'm simply suggesting to you that from where the church -- the Catholic
21 church in Sayo, it is not possible to see that road which was blocked in Mbidjo, 18
22 kilometres away; is that correct?

23 A. From Sayo to Mbidjo, it's all forest. You cannot see much. You have trees and
24 trees that were planted by white people. That's all there is there.

25 Q. Thank you, sir. Sir, when you testified, and I quote from the transcript, that is on

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 26 October, and that is on page 89, at lines 23 to page 90, line 1:

2 "During three days, I no longer went to work because the situation was getting worse.

3 We could not go to work." Do you recall saying this, sir?

4 A. Yes, I said so. On the last day I didn't go to work because the road was blocked.

5 (Redacted). Things were complicated. It

6 was very difficult to go to work, that is why I did not go to work on that day. And that

7 was my testimony.

8 Q. Thank you, sir. Now, in your statement you said, and I quote, that is your

9 statement which is -- finishes by the number 0019, on page 21, at paragraph 12, you said

10 the following:

11 "We heard gunshots coming from Mbidjo. This lasted for three days during which I

12 still went to work as usual."

13 Why did you have a different position in your statement than you did during your

14 testimony?

15 A. I have not changed my statement. I did not go to work for three days. On the

16 fourth day, the airport was captured and it was difficult to go to work on that day.

17 (Redacted)

18 (Redacted)

19 (Redacted). I haven't changed my

20 statement.

21 Q. Thank you, sir. In your testimony yesterday, when referring to those you call as

22 effacer le tableau, when I suggested to you that they had nothing to do with the attack on

23 Mongbwalu, I will quote the answer you provided. Transcript 26 October, page 97, at

24 lines 19 to 22. You said the following: "Yes, we saw that they were the ones referred

25 to as effacer le tableau. They did not have bad intentions as such, but they attacked the

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 FNI. They only attacked the FNI and they did not attack anyone else." End of
2 quotation.

3 Based on this answer, sir, I would like to confirm that the attack that was launched by
4 those people whom you call effacer le tableau was indeed directed only at the FNI.

5 MS LUPING: Mr President.

6 PRESIDING JUDGE FREMR: Ms Luping.

7 MS LUPING: If we could also ask that Mr Bourgon, for the -- out of fairness to the
8 witness, read the rest of the transcript reference up to "They did not agree with the
9 UPC," the whole of the passage, the whole of the witness' answer and then to repeat the
10 question.

11 MR BOURGON: I -- can my colleague give me some lines because what I read is
12 also -- I read the question, I mentioned the question and the witness' answer. Now,
13 which line does she wants me to read?

14 MS LUPING: Continuing on, "There was another group ..." up to "they ... did not agree
15 with the UPC."

16 MR BOURGON: So sir, just to -- to be -- to read the lines which followed which I just
17 quoted, now I'll say again your answer:

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

23 Now on this basis, sir, I'm just saying can you confirm that the attack that was launched
24 that you know about was directed only at the FNI?

25 MS LUPING: Mr President, your Honours.

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 PRESIDING JUDGE FREMR: Please.

2 MS LUPING: It's just for Mr Bourgon's question to be clearer. It says I'm -- that the
3 attack that was launched that you know about was directed only at the FNI. What
4 attack precisely is he referring to and by which group because the answer that he is
5 reciting from the witness' testimony previously referred to different intentions, or
6 different groups within the group of attackers. So if he could be more precise as to
7 which group he's referring to that was attacking.

8 PRESIDING JUDGE FREMR: Or maybe to go group by group.

9 MR BOURGON: Well, I -- I will follow the Chamber's advice, Mr President, but
10 the -- this question was read and the full answer was read. So I will just rephrase my
11 question, Mr President.

12 PRESIDING JUDGE FREMR: Please.

13 MR BOURGON:

14 Q. So you testified about one attack that was launched, and you described this attack
15 as a five-day attack. Do you know which attack I'm talking about?

16 A. You are talking about the attack by the *Effacer. They came in with the UPC, but
17 there were three ways or tracks. There was Watsa, there was Aru, and there was
18 Berunda. The *Effacer group went through Aru. I don't know which group went to
19 Watsa. They were people from the government. But they came in with the UPC to
20 fight off the FNI. The FNI were part of Lompondo's government. And then you had
21 the Banande in Beni who belonged to that group as well. That is what I saw. But
22 I -- I'm not saying that I was a member of any of these things, I'm just talking about
23 things that I saw with my own eyes.

24 Q. And my question, sir: Is this attack that you now describe in detail, I'm asking to
25 you confirm that it was directed at the FNI and the APC; is that correct?

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 MS LUPING: Mr President, your Honours.

2 PRESIDING JUDGE FREMR: Ms Luping.

3 THE WITNESS: (Interpretation) Yes, that's how it is. In fact, they were fighting each
4 other. They were fighting against the UPC. And the Balendu combatants were also
5 fighting and looting.

6 Now, when they had fought off the enemy, then they would proceed to looting.

7 PRESIDING JUDGE FREMR: Ms Luping, please.

8 MS LUPING: Mr President, your Honours, it was just the fact that the question was
9 still not clear. Out of fairness to the witness, there's been no differentiation between the
10 different groups of within the attackers as to what their intention was.

11 PRESIDING JUDGE FREMR: Mr Bourgon, please try to qualify with the witness as any
12 specific knowledge as concerns attacks of each of those three groups.

13 MR BOURGON: I disagree with my colleague, Mr President. I think the
14 witness -- well, it was the way described the attack. He puts the three groups together
15 as attacking. He knows very well the attackers. I understand that they were trying to
16 get me to use up my time, but I can live with that, Mr President.

17 MR BOURGON:

18 Q. Sir --

19 PRESIDING JUDGE FREMR: Mr Bourgon, it's just speculation. I think please follow
20 my guidance.

21 MR BOURGON: I will, Mr President.

22 Q. Sir, these three groups that you described, did they fight together the three groups?
23 I will mention them one by one. You say there's a group called effacer le tableau, you
24 say there's a group called Berunda, and you say there's a third group and that third
25 group, I guess, is those coming from Aru. Are those the three groups that you referred

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 to, sir, that were attacking?

2 MS LUPING: Mr President.

3 PRESIDING JUDGE FREMR: Hold on, Mr Witness.

4 Ms Luping.

5 MS LUPING: I'm sorry, but is -- just looking at the description of the groups, that is not
6 how the witness has described the groups, your Honours. He talked about the group
7 called *Effacer coming from Aru. He's talked about two different areas, not a group
8 called Berunda but different areas of Berunda and Watsa. That was in his prior
9 testimony. He said as to the different groups there was the *Effacer coming from Aru,
10 there was the UPC and he describes another group again, but he -- and he describes the
11 areas from which they came, but he doesn't say the -- describe it as an *Effacer group, a
12 Berunda group and an Aru group. In fact, he says the *Effacer came from Aru.

13 PRESIDING JUDGE FREMR: I see the problem in the fact that there are some
14 differences even between this current, you know, answer and the previous answer that
15 Mr Bourgon refers to.

16 MR BOURGON: Mr President, I will rephrase my question once again and I will quote
17 from the transcript.

18 Q. Sir, I will refer you to your testimony on 22 October and that is last Thursday.
19 And this is on page 71 of the transcript at lines 22 to 25 and where you said, "There were
20 three groups: Mont Awa's soldiers, de Berunda that is UPC, and then the APC as well.
21 And then there was Jérôme's group. They were known as the *Effacer, and they merged
22 with the APC to attack Mongbwalu. Is that, sir, your testimony today?

23 A. No. This is what I said: "There were three groups. The first group came from
24 Aru to Mont Awa, and that is Jérôme's group, and they were referred to as *Effacer. The
25 second group is the UPC group from Berunda, and the third group came from Watsa."

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 That was my testimony. These three groups all came together in Mbidjo and then went
2 to Mongbwalu.

3 Q. Thank you very much, sir. That is, I think, very clear. Now, these three groups
4 put together when they merged in Mongbwalu, their attack was directed at -- they
5 were -- at whom were they directed? Much better. Who was their attack directed
6 against?

7 A. They wanted to fight the FNI, but the FNI did not have weapons. FNI was with
8 Lompondo's group, and it was against the APC group of Lompondo, which was the
9 government group that they fought. In fact, they merged. The Banande of the FNI
10 and the APC of Lompondo merged together.

11 Q. I'd just like to clarify, sir, because my understanding, based on your testimony, was
12 the APC from Lompondo, they were the ones being attacked. They were the
13 government forces being attacked; is that correct, or were they the attackers?

14 A. They and the Balendu were the ones who were attacked, but because they did not
15 have weapons, they fled. The UPC and the APC of Mont Awa entered -- Mont Awa,
16 rather, and massacred people. However, later on they did not kill anyone. There were
17 no gun shots later on.

18 Q. I will move on to a different topic, sir, because I see that we are kind of mixed up in
19 the groups here. You said that the airport was taken on the fourth day; is that correct,
20 sir?

21 A. Yes. The airport was taken on the fourth day, and they wanted to attack the
22 entire town the next day, but they remained at the airport.

23 Q. Now, sir, based on the information that I have, the airport was actually taken the
24 first day, and I suggest that you were -- you are mistaken in your dates.

25 MS LUPING: Mr President.

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 THE WITNESS: (Interpretation) Yes. It was on the fifth day that they attacked the
2 entire town. They had captured the airport, but they attacked the entire town and Sayo
3 on the fifth day, (Redacted). They had left Sayo. It
4 was on the fifth day that they attacked the town. That is my testimony.

5 PRESIDING JUDGE FREMR: Ms Luping, please.

6 MS LUPING: It was simply to, again, state that Mr Bourgon is free to suggest
7 information to the witness, but not to simply state it as a fact. That was all. The
8 question has been asked and now has been answered.

9 PRESIDING JUDGE FREMR: Mr Bourgon, please also have in mind that we are very
10 close to 4.00, so try to wrap up in a few, five minutes maximum, okay.

11 MR BOURGON: Thank you, Mr President.

12 Q. Sir, I just have a few questions on this issue, which is the attack before it reaches
13 Sayo. On the basis of information that I have, the airport was actually attacked a first
14 time at least seven days before this conflict erupted. Do you have any recollection of
15 this?

16 A. Seven days before the onset of the war? No, I didn't say that. The war started in
17 Mbidjo, and they came right to Pluto where they remained for three days and then went
18 to the airport and then attacked the airport on the fourth day; and then on the fifth day,
19 they entered Sayo, and it was from that time on that people fled to the bush. But the
20 question you have put to me is not correct. That was not my testimony. What I'm
21 telling you is what I know and what I usually say.

22 Q. Sir, do you recall testifying about the fact that the FNI and the APC ran out of
23 munition, and that is why they decided to retreat. Do you recall this, sir?

24 A. Yes. I said so because things were not going well for them, so they decided to try;
25 but then later they retreated towards Mambasa -- rather Mambasa. They went towards

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 Mambasa. And I'm referring to the APC.

2 Q. Thank you, sir. Now, I will simply put my case to you that you are -- the

3 information that you provided in your testimony is information you gathered from a

4 number of sources because the way it happened, and this is my case put to you, sir, is

5 there was a first attack on the airport a week prior to this attack launched by UPC.

6 They had to withdraw because they ran out of munition. That is the UPC and not the

7 APC.

8 And when they launched the second attack, on the first day the airport was taken and on

9 the fourth day they went to Sayo. So I'm saying that all of the information that you

10 have about these attacks, you have a general recollection. Maybe you obtain

11 information from others, but you don't know that for yourself. And this is my case that

12 I put to you, sir.

13 A. Well, I will answer you. At the beginning, the war broke out in Mbidjo. At that

14 time, I was in (Redacted). Now, here we are talking about the second war against the FNI.

15 I had been (Redacted), and it was not possible to go towards

16 Mongbwalu because the road had been blocked. (Redacted)

17 (Redacted)

18 Now, there was a second war, and it happened after the first one was already over. So

19 when it comes to the second war, I do not have information because I was not there.

20 But as for the first war, these things happened in my presence, so I cannot tell you a lie.

21 I can only tell you that which I know.

22 Now, at the time I do not know how all these other things happened because I was away

23 (Redacted).

24 MR BOURGON: Thank you, sir. I have no more questions for you for today, and we

25 will finish tomorrow your cross-examination, sir. Thank you very much.

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Private Session)

ICC-01/04-02/06

1 PRESIDING JUDGE FREMR: Thank you very much, Mr Witness. We will finish or
2 break your testimony now. So enjoy getting some rest, and I guess tomorrow it will be
3 the last day of your testimony. And, as usually, it's my duty to remind you that you
4 must not discuss your testimony in the meantime with anybody. Thank you very much,
5 and see you tomorrow.

6 Court Officer, please take witness out, out of the courtroom.

7 (The witness stands down)

8 PRESIDING JUDGE FREMR: Now Court Officer, please, let's move into open session.

9 (Open session at 16.05 p.m.)

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

11 PRESIDING JUDGE FREMR: Thank you. And before we adjourn, I would like to
12 make an inquiry for the sake of planning of the next witness. First of all, Court Officer,
13 could you provide me with time used so far by the Defence for cross-examination of this
14 witness?

15 THE COURT OFFICER: Yes, Mr President. The Defence team has used 4 hours and
16 30 minute in total.

17 PRESIDING JUDGE FREMR: So because according to my notes, time used by
18 Prosecution was 6 hours 45 minutes. So in accordance with our policy you still have at
19 your disposal 2 hours 15 minutes. Mr Bourgon, do you think it will be sufficient for
20 you to finish your cross-examination?

21 MR BOURGON: The maximum time that you just stated will be, for sure, sufficient,
22 but I will endeavor to use less time.

23 Thank you, Mr President.

24 PRESIDING JUDGE FREMR: Even better.

25 At the last tribunal question to Mr Luping: Ms Luping, do you presume any need for

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0886

1 direct examination of this witness?

2 MS LUPING: There had been some, but it will not be for a considerable amount of time,
3 your Honours.

4 PRESIDING JUDGE FREMR: Okay, then. Thank you very much. We adjourn, and
5 we will reconvene tomorrow at 9.30.

6 THE COURT USHER: All rise.

7 (The hearing ends in open session at 4.06 p.m.)

8 RECLASSIFICATION REPORT

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

11