

Trial Hearing
WITNESS: DRC-OTP-P-0886

(Open Session)

ICC-01/04-02/06

1 International Criminal Court
2 Trial Chamber VI - Courtroom 2
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and Judge Chang-ho Chung
6 Trial Hearing
7 Friday, 23 October 2015
8 (The hearing starts in open session at 9.34 a.m.)
9 THE COURT USHER: All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE FREMR: Good morning, everybody.
13 Good morning, Mr Witness.
14 We will start --
15 WITNESS: DRC-OTP-P-0886 (On former oath)
16 (The witness speaks Swahili)
17 THE WITNESS: (Interpretation) Good morning.
18 PRESIDING JUDGE FREMR: We will start, as usual, with appearances.
19 Prosecution first.
20 MS LUPING: Mr. President, appearing for the prosecution are the same team as
21 yesterday: Myself, Dianne Luping, trial lawyer; Lois Mbafor, legal assistant; Kristy
22 Sim, assistant trial lawyer; and Nicole Samson, senior trial lawyer; and Selam Yirgou,
23 case manager.
24 PRESIDING JUDGE FREMR: Thank you, Ms Luping.
25 Defence, I see some changes compared to yesterday. Mr Bourgon?

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1 MR BOURGON: (Interpretation) Good morning, Mr President. There is no
2 change this morning. I am representing Bosco Ntaganda, who is present today.
3 Ms Elsje van Braber, intern; Elodie Victor, intern; William St-Michel; and myself,
4 Stéphane Bourgon. Thank you, Mr President.

5 PRESIDING JUDGE FREMR: Sorry for that. It was my error. I overlooked the
6 colleague on your right.

7 Legal Representatives for Victims now, please.

8 MS PELLET: (Interpretation) Thank you, Mr President. The former child soldiers
9 are represented by Sarah Pellet, myself, counsel at the OPCV.

10 MR SUPRUN: (Interpretation) Good morning, Mr President. Morning, your
11 Honours. Victims of the attacks are represented by myself Dmytro Suprun, counsel
12 at the OPCV.

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

14 Our today agenda is to continue with testimony of our witness.

15 Mr Witness, are you feeling well today?

16 THE WITNESS: (Interpretation) I'm feeling very well. Thank you.

17 PRESIDING JUDGE FREMR: That's good. It's my duty --

18 THE WITNESS: (No interpretation)

19 PRESIDING JUDGE FREMR: It's my duty to -- even if I know that, I'm sure that you
20 remember that, but it's my duty to remind you that you are still under oath. So you
21 have, as you promised yesterday, you have to speak the truth and nothing but the
22 truth. I guess you understand?

23 Have you understood, Mr Witness?

24 THE WITNESS: (Interpretation) Yes, I have understood very well.

25 PRESIDING JUDGE FREMR: Ms Luping, you have the floor.

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

2 QUESTIONED BY MS LUPING: (Continuing)

3 Q. Good morning, Mr Witness.

4 A. Good morning.

5 Q. Mr Witness, before I start asking my questions, I just wanted to reassure you
6 that you will have time to provide all the information that you want to provide to the
7 Judges. I would ask that you listen very carefully to the questions that I ask you and
8 only answer the questions that I ask you. In this way, all the information that you do
9 want to provide to the Judges will come out and will come out slowly and clearly.

10 Otherwise, if you don't listen to my questions and don't answer them, the questions
11 I'm asking you, it may become confusing. It may also be more difficult for the
12 transcribers and the interpreters.

13 And as I said, we do have time, but at the same time, the time that we have together is
14 limited, so we want to make sure that we use our time well. Is that understood,
15 Mr Witness?

16 A. Yes, I've understood you.

17 Q. Thank you, Mr Witness. Now, Mr Witness, yesterday you explained that the
18 attackers who attacked Mongbwalu and Sayo, that they captured the airport at
19 Mongbwalu; is that correct?

20 A. Yes, that's correct.

21 Q. Did you see them capture the airport with your own eyes?

22 A. Yes. Yes, I saw them because I used to work in Mongbwalu, and I know that
23 area very well. I couldn't be mistaken.

24 Q. Can you explain what you saw or you heard about the capture of the airport?

25 A. It happened when I left work. I went -- there was -- I went --

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1 THE INTERPRETER: Mr President, we're having technical problem with the
2 interpretation equipment. I'm sorry, Mr President. We have a problem with the
3 English booth interpretation.

4 THE WITNESS: (No Interpretation)

5 PRESIDING JUDGE FREMR: Mr Witness, we are sorry, but we have some problem
6 with English interpretation, so maybe try to slow down a little bit to make it easier for
7 interpreters. And please be so kind and try to repeat your response to Ms Luping to
8 the question she put to you, okay? Thank you very much for your understanding,
9 Mr Witness.

10 MS LUPING:

11 Q. Mr Witness, before you start, I will explain where we got to.

12 But first, have the technical problems been fixed before I resume?

13 PRESIDING JUDGE FREMR: Maybe -- I was informed that there are some problems
14 with the English booth. Can English booth now confirm that everything is okay and
15 we may proceed?

16 THE INTERPRETER: I think we can proceed, Mr President.

17 PRESIDING JUDGE FREMR: So, Ms Luping, you may proceed.

18 MS LUPING: Thank you, Mr President.

19 THE INTERPRETER: Mr President, from the Swahili booth as well there appears to
20 be a technical problem.

21 PRESIDING JUDGE FREMR: And what kind of technical problem do you face?

22 THE INTERPRETER: The microphones, Mr President, are overlapping. From the
23 Swahili booth there is an overlap and cutout of the microphones as the witness
24 testifies. So the Swahili booth is experiencing the same problem. Thank you,
25 Mr President.

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1 PRESIDING JUDGE FREMR: So according to my understanding, the problem is not
2 of technical nature but it's up to us who are speaking.

3 So I guess all of us, and it's also valid for you, Mr Witness, we should observe pauses.
4 And as I instructed you yesterday, after the question is put to you, just maybe try to
5 count to three, and after that you may answer, okay? Because if you are answering
6 too early, then it's an overlap, and it's impossible to translate, and that is why we then
7 have to ask you to repeat your responses. So it's better to wait a while and respond
8 after, as I said, maybe 3 seconds, okay? So we will try to do it in this way.

9 Ms Luping, I guess we can proceed.

10 MS LUPING: Thank you, Mr President.

11 Q. Now, Mr Witness, I'll remind you of my question, which was if you could
12 explain what you saw or heard about the capture of the Mongbwalu airport.

13 A. Well, I am here to tell the truth and so the truth is that what I did not see, I
14 cannot talk about it. I will tell you what I saw and what I heard. This is what I
15 have to do.

16 When the airport was taken, the assailants came from the airport -- from the bushes to
17 the airport. They had come and they were at a certain distance, and we were able to
18 see what was happening because we were at the Sayo Catholic church. Then it
19 began to rain.

20 They surrounded us, but we were not aware that we had been surrounded, the entire
21 village. It was already nighttime and we didn't know at what time they had arrived.
22 When it was raining, they started to shoot. There was a huge explosion and people
23 left their homes. People fled from their homes and left the homes empty. Then we
24 fled during the rains, leaving behind our houses, only to come back after three days.

25 Q. Mr Witness, Mr Witness, I'm sorry for stopping you. I would like to remind

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1 you that I'd like you to just answer the question that I ask. I will ask you further
2 questions to ask you to elaborate, but it will get confusing if you're not answering the
3 specific question that I'm asking you. I know it's tempting to want to tell everything
4 that you know, but please just answer the question I asked.

5 My question was --

6 PRESIDING JUDGE FREMR: Mr Witness, I think we don't want to encourage you,
7 but -- in, you know, responding; but, you know, just to give you an explanation,
8 Ms Luping is, in fact, limited because we gave her some time limit, and it's up to her
9 to explore all areas she would like to elicit in this limited time. So that is why even if
10 your answers are very interesting to us, but, you know, she has to limit herself on the
11 most relevant issues. So that is why please try just to give her the briefer responses
12 and make responses just responding to the question put to you, okay? Thank you.

13 Ms Luping, you have the floor.

14 MS LUPING: Thank you, Mr President.

15 Q. I'm going to rephrase my question for you. How did you hear that
16 Mongbwalu airport was captured?

17 A. Now, when it comes to the airport, this is what I can say: There were Lopondo
18 soldiers and FNI soldiers who had come together. Those of the FNI had arrows and
19 they had guns. When those soldiers arrived at the airport, they ran out of
20 ammunition and that is how they decided to retreat. At that time the others started
21 to advance. That is what happened.

22 Q. And who told you that they retreated?

23 A. They had their camp in Sayo, those of the FNI. Those of the APC were
24 previously in Sayo.

25 Q. And who are the FNI?

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1 A. The FNI was made up of Lendu people. The FNI were Lendus.

2 Q. And other than the capture of the airport at Mongbwalu, did you hear if
3 anything else happened at Mongbwalu?

4 A. When they captured the airport, many people died at the parking in
5 Mongbwalu. There was gunfire and people did not know where to go, so they went
6 towards the parking and were killed there.

7 Q. And what is the parking at Mongbwalu?

8 A. The parking is a place where you have taxis.

9 Q. And you say people were killed there. Did you hear how the people were
10 killed?

11 A. There was a girl who helped us to flee to the bush and she's the one who told us
12 that many people had been killed. She was looking for her father and members of
13 her family. We heard that everyone had to go back home and so we complied.
14 After three days, we went back home.

15 Q. Mr Witness, going back to my question about the killings in Mongbwalu, did
16 you hear who was killed?

17 A. At the parking many people had been killed. Lendus and people from other
18 ethnic groups, they were killed, many of them. These are people who died because
19 of the bombs that were shelled and the shelling in that location, that is, at the parking.

20 Q. And other than the people at the parking, did you hear about anybody else
21 killed in Mongbwalu?

22 A. Apart from those people, they advanced towards Sayo and killed a number of
23 people along the road. However, I am not able to tell you which tribe those who
24 died came from. What I know, however, is that most of those who were killed were
25 Lendus, many of them, in Sayo.

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1 Q. Now, Mr Witness, you mentioned that the -- there was an FNI base at Sayo.

2 Can you explain where the FNI camps were in Sayo?

3 A. The FNI camp was located close to the police. It was next to the canteen and
4 the police subsequently occupied that place. It is at that location that the UPC troops
5 came, chased them out and occupied the place while the FNI fled.

6 Q. And was there any other FNI camp in Sayo?

7 A. Yes. The FNI troops had taken up position at that location initially. They did
8 not have any weapons. They had arrows, spears, machetes and knives. Those were
9 their weapons. And it is the FNI that were at that location.

10 Q. You've mentioned an FNI camp close to the police next to the canteen. Was
11 there any other camp?

12 A. The UPC troops had several camps. They had camps at three different
13 locations.

14 Q. I will be asking you about the UPC camps later on. I'm first focusing on the
15 FNI. Other than the camp, the police camp, did the FNI have any other camp?

16 A. They had two camps, one at Sayo Gale and another next to the canteen. They
17 did not have any other camp. They had only two camps and those camps were
18 occupied by people who came from elsewhere, not the inhabitants of the village.

19 THE INTERPRETER: Message from the French booth: If the witness does not
20 observe a pause before answering his question, it is impossible for the French
21 interpreters to finish their job properly. Thank you, Mr President.

22 PRESIDING JUDGE FREMR: Mr Witness, again, we got message from -- this time
23 from French booth. Please try to observe pauses as we agreed, okay? One, two,
24 three, and only after that you may respond. Thank you very much.

25 MS LUPING:

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1 Q. Now, Mr Witness, moving to --

2 A. Very well.

3 Q. -- moving to what happened in Sayo, yesterday you said, "We saw them come
4 to attack us in Sayo." My first question is: Where were you when you saw the
5 attackers come to attack Sayo?

6 A. When they arrived in Sayo and started shelling, as I have just told you, the
7 doors were open and there were many items in there. They started to attack. Then
8 their vehicle came from Mbidjo to gather the items that had been looted from our
9 homes --

10 Q. Mr Witness, I'm --

11 A. -- but at that time we were already in the forest.

12 Q. Mr Witness -- Mr Witness, I'm going to ask you to stop. I would like you to
13 listen very carefully again to my question. I will be asking you the questions about
14 what happened next, but I want you to take us step by step so that this does not get
15 confusing and too difficult for our interpreters and transcribers. So please listen to
16 my question and only answer that question. I will repeat it.

17 Where were you when you saw the attackers come to attack you in Sayo?

18 A. Well, where I was, it was in Sayo. After Sayo I fled to the bush. The attack
19 took place after that.

20 Q. Mr Witness --

21 A. After I left.

22 Q. -- where in Sayo were you when you saw the attackers? Where precisely in
23 Sayo were you?

24 A. It was near the Catholic church, very close. Not far from the Catholic church.
25 Near the Catholic church.

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1 Q. Now, you said you saw the attackers as they came to attack Sayo. My question
2 is: From what directions did you see the attackers come to attack Sayo? From what
3 directions did the attackers come towards Sayo?

4 A. They arrived -- the attackers arrived from the Kanga road, that is, the Kanga
5 factory. They came right in, straight down the road to attack Sayo and they started
6 shooting, firing bullets and people ran away, people fled. The door was open.

7 Q. And did you see the soldiers who came with your own eyes?

8 A. I saw them with my own eyes, but they were not attacking everyone. They
9 were not running after everyone. They were looking for Lendu people.

10 Q. In terms of the soldiers that you saw, how many were there?

11 A. There were many, many, many soldiers. Even there were children 14 years of
12 age. There were many, many of them.

13 Q. And what were the soldiers wearing?

14 A. They were wearing green coloured uniforms like the Ugandan soldiers'
15 uniforms.

16 Q. And could you see if they were carrying any weapons?

17 A. They had rifles, lots of them, lots of rifles when they arrived. When we came
18 back from the bush, they had installed heavy weapons, three heavy weapons that
19 they had set up at the church in Adidi -- Abibi, in the Abibi mountain -- Mount Adidi
20 there was one and at the mine there was another. These were heavy weapons that I
21 saw.

22 Q. Going back to the attackers that you saw arriving in Sayo, you mentioned that
23 you saw children amongst them. Can you describe what they were wearing?

24 A. The children wore uniforms, but they were folded over because they were small.
25 Their bodies were small, so they had to roll up the uniforms. And they didn't wear

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1 ordinary shoes, they were wearing boots.

2 Q. And did you see if the children were carrying anything?

3 A. They had weapons, that's all.

4 Q. What types of weapons did you see them carrying?

5 A. I don't know what kind of weapon it was. They looked very heavy because it
6 was weighing down on their shoulder, but I can't tell you exactly what kind of
7 weapon it was because I'm not a professional in that area.

8 Q. Now, the civilians at Sayo, before the attackers arrived, had you been given any
9 instructions on what to do in case of any attack on Sayo?

10 A. Yes, it's true. They came to take over the factory, so when they got there, they
11 threatened people. In fact, they were looking for the gold. They wanted to steal the
12 gold. And it was only afterwards that they began to destroy the factory.

13 Q. Who is "they," Mr Witness?

14 A. The enemies. The UPC, the FNI, they were enemies. Amongst the FNI, they
15 came from different places to set up in Mongbwalu. They were interested in the
16 gold. They were fighting there in Mongbwalu.

17 Q. Before the UPC and Jérôme's soldiers attacked Sayo, did the FNI give any
18 instructions to civilians what to do if there was an attack?

19 A. The FNI -- well, they fled when the war began. It was only afterwards that
20 they returned. So others, in fact, fled and they've never come back. Even today
21 they never went back to Mongbwalu and they've gone -- they stayed far away up
22 until today.

23 Q. I don't think my question was clear, so I'll rephrase it. Did the FNI tell you
24 civilians what you should do if anybody attacked, if the UPC attacked, what should
25 you do as soon as an attack starts?

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1 A. When they arrived, they imposed very bad conditions. A woman couldn't fold
2 her arms. When they went off to war, a woman had to be partially naked, she had to
3 wear branches around her neck. Those were the recommendations given by the FNI.

4 Q. I'll ask you more questions about that later, Mr Witness.

5 Now, after the attackers came to Sayo, you said you went to the bush and you spent
6 three days there. Now, when you fled -- my question is this: When you fled, which
7 direction did you go in?

8 A. We went to the bush, the bush in Ituri.

9 Q. Where in Ituri? What do you mean by Ituri?

10 A. Ituri is a large river, so we went to the bush along the Ituri river.

11 Q. And those three days living in the bush, can you describe what that was like?

12 A. We had nothing to eat, there was no water to drink, we didn't have any fire and
13 we were under orders and it was raining and that was -- we had no shelter. We
14 were under the trees. That's all we had for shelter.

15 Q. And who else was with you? Were there other people with you? You said
16 "we."

17 A. There were many of us. Others were crossing the Ituri river. They went
18 home to Mahagi and others went to their other villages.

19 Q. Now, you said yesterday that you stayed in the bush for three days and then
20 you said, "Soldiers said that all people should return to the town. So I took up my
21 courage, I found people, I went to the road and then I walked in order to get to the
22 town."

23 My first question is: Who told you that soldiers were saying everybody should
24 return to the town?

25 A. It was a girl, a girl who told us. When they were shooting in the centre of

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1 Mongbwalu, there was a girl who was hiding under a bed. In fact, she'd spent three
2 days there because the door was open. And she came out, we saw her, and the
3 soldiers saw her and they asked her, "Where are you from?"

4 And she said, "I'm from Kinshasa."

5 And they asked her, "Where are your parents?"

6 And she said when her parents left, she didn't know where they had gone.

7 And so they said to her, "Go get your parents and tell them to come home. Go tell all
8 the civilians to come home."

9 And that's why when we met that girl on the road in Ituri, she's the one who told us.

10 Q. And you said that you went back and that you found people and you walked
11 back to the town. You also said, "When I arrived, they asked me who I was and I
12 said we're civilians."

13 My first question is: These soldiers that you spoke to, did they ask you any other
14 questions about you?

15 A. They didn't ask me any other questions. Amongst them there were people
16 from Mongbwalu and they didn't ask me those questions because they knew I was
17 not from there. I was an Alur and this was a problem between the Lendu and the
18 Hema, so I was excluded. I wasn't part of that.

19 Q. You also said yesterday that you were asked to take equipment up to the hill.
20 What hill was that?

21 A. When we arrived there, there were two women and two boys -- or, rather, two
22 men, and someone was ill with tuberculosis and they asked him to carry bullets. It
23 was heavy and in the end I carried it for him and he carried a bucket and we began to
24 walk to the river.

25 And when we got there, one of the soldiers said -- he said to me, "Give that to the

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 And then other soldiers wanted to make me suffer. The others -- the chief refused.

6 This was at the top of the hill. And he said, "Escadre, escadre, come," and he gave

7 me a wrap and two bags of salt, two kilos of salt, and I began going back down the

8 hill and I went back.

9 Q. Mr Witness, I want to ask you again if you could just answer the precise
10 questions that I ask you. What was the name of the hill that you went up to where
11 you were asked to carry this equipment?

12 A. The name is Mount Adidi. Mount Adidi.

13 Q. And the soldiers who made you carry this equipment, what group were they
14 from?

15 A. They were from the UPC. They were together and then they divided into three
16 different groups. The superiors stayed at the police camp and the others took up
17 positions elsewhere, so they divided into two groups.

18 Q. Now, these UPC soldiers at the Mount Adidi camp, when you arrived there,
19 how many UPC soldiers did you see there?

20 A. Well, there were many soldiers. They had surrounded the hill. And even at
21 the top of the hill they were digging and near the church and at the Adidi mine they
22 had dug -- dug in, and they took up positions there and they were sleeping there.

23 Q. Now, you mentioned previously that there were also heavy weapons at the
24 Mount Adidi location. Can you describe these heavy weapons that you saw?

25 A. Weapons were set up like this and there were three positions, three corners; one

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1 aiming this way, one aiming that way. They were on a -- a tripod and there was
2 Adidi mine, one was aimed at -- toward Mongbwalu and again another -- it
3 wasn't -- it wasn't aimed at the main road. It was installed on the other side. They
4 didn't want people to be able to come near these heavy weapons.

5 Q. You mentioned that you saw one of their leaders. Did you see other UPC
6 leaders at the Mount Adidi camp?

7 A. Are you referring to the superiors or the state or the government? There was
8 no one there. There were only people working in the mines at the -- on the hill, on
9 the mount. There were no houses.

10 Q. I'll clarify my question, Mr Witness. At the UPC camp at Mount Adidi you
11 mentioned that you saw or met one of the UPC superiors. Did you remember -- did
12 you see any other UPC superiors at that camp, at the Mount Adidi UPC camp?

13 A. At Mount Adidi you had the chiefs who were supervising the soldiers. They
14 came and they set up their weapons.

15 The other chiefs were at Sayo, at the mine camp. The higher ranking individuals
16 were at the police camp in Sayo. That's where the chiefs were.

17 Q. And these UPC chiefs, how could you tell that they were the higher ranking
18 chiefs of the UPC soldiers?

19 A. The ones who were at canteen, that was the camp, that's where the chapel is,
20 and the canteen is on the other side. There's the Catholic church and you have the
21 office of the police and that's where you had the police camp. And we were nearby,
22 so we could see them. They were superiors who were living in the police camp
23 houses. The others had taken up positions around that camp.

24 Q. But when you saw these UPC chiefs, these superiors, how could you work out
25 that they were UPC chiefs? If you compared them with the other soldiers, what

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1 made them different? How could you tell they were UPC officers?

2 A. To answer your question, I'm going to give you a very good (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 Q. Mr Witness, I'm sorry for interrupting you, but we're in public session now and

7 I will be asking you questions about those events in private session. They are

8 identifying. I will ask you that question later on. I'll repeat my question, but later

9 on in private session. I won't -- I won't go into private session now, though, as I

10 have more questions still that I can be asking in public session.

11 After you left the UPC camp at Mount Adidi, what did you do?

12 A. I went home and there was no one there and I was afraid. I spent the night in

13 Nyali with a friend and it was only the day after that I found my family members and

14 we went home together.

15 Q. And when you went back home to your own home, what did you find there?

16 A. Yes. When I got to my house, I found that the house had been attacked. The

17 goats and chicken and zinc and pots and a bag of beans that I owned had all been

18 taken away. They had taken those things to cook close to the church. I had some

19 white beans, and all of those items were taken away, including the clothes, the

20 clothings of my children, my daughters. They took everything.

21 Q. When you say the "zinc," what do you mean by zinc?

22 A. No. Zinc? No. I said they took everything. Well,

23 "zinc" meaning corrugated roofing sheets, clothing, pots, chickens, everything. They

24 took everything. And they used it at the Catholic church where they had set up.

25 And they made some food for themselves at that location.

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1 Q. And when you -- as you were returning to your house, can you describe what
2 you saw elsewhere in Sayo village? What else did you see?

3 A. There were not many people there, very few. Most of the inhabitants of Sayo
4 are Lendu. The other ethnic groups were a minority.

5 Q. I'll clarify my question. You've described what your house was like when you
6 came back. Did you see any of the other houses when you came back to Sayo
7 village?

8 A. All the houses were empty on all sides of the road. The houses were all empty.
9 No one was in any house. All the houses had been looted in the village. There was
10 no one in the village and the doors of the houses were open.

11 Q. And can you describe the roofs of houses that you saw?

12 A. Well, the houses that had just been recently built had roofs in corrugated
13 roofing sheets, which were taken away in vehicles.

14 Q. And were all the houses in Sayo village with this corrugated roofing or was
15 there any other type of roofing?

16 A. The corrugated sheets that were looted were found on the houses that had just
17 been recently built. The attackers took everything that was in those houses.

18 Q. You said the houses were empty. Can you also describe what condition the
19 houses were in?

20 A. The houses were in a disastrous state. They had taken all the good furniture.
21 In fact, they had taken everything and the houses were empty. Everything had been
22 taken away. There was nothing remaining in the homes or in the houses.

23 Q. But the buildings themselves, what was the condition of the buildings
24 themselves?

25 A. Now, if we are talking about the houses or the buildings of the company, what

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1 happened is that the doors were broken down and the buildings were emptied.

2 Q. You said the doors were broken down. Was anything else broken on the
3 houses?

4 A. They took everything away. Their goal was to take away everything from the
5 houses: Furniture, mattresses, everything, radios, and what have you. They took
6 everything, even generators. They took everything away.

7 Q. Now, you said the doors were broken. Was there anything else on the houses
8 that was damaged in any way?

9 A. No. They just looted. They took everything away from the houses, especially
10 goods that were still in good order, so to speak. They took everything that was still
11 in good order and did not take what they were not interested in.

12 Q. Now, you said previously, "They took everything and they used it at the
13 Catholic church where they had set up." My question is this: Who is "they"? Who
14 took these things?

15 A. The soldiers. The soldiers. They took everything away, and they cooked the
16 beans that had been collected from the houses and they set up there -- they set up
17 there at the Catholic church.

18 Q. And these soldiers, which group were these soldiers with?

19 A. They were UPC soldiers.

20 MS LUPING: Mr President, my next questions will be of an identifying nature. If
21 we could briefly go into private session, please.

22 PRESIDING JUDGE FREMR: Okay. And I also have to say the Chamber
23 appreciated you tried to aggregate those questions in one unit. Thank you for that.
24 Court officer, let's move into private session now.

25 (Private session at 10.40 a.m.)*(Reclassified partially in public)

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1 THE COURT OFFICER: We're in private session, your Honour.

2 PRESIDING JUDGE FREMR: Thank you, court officer.

3 Ms Luping, you may proceed.

4 MS LUPING: Thank you, Mr President.

5 Q. Now, Mr Witness, you said you were asked by UPC soldiers to carry their

6 equipment to their camp at (Redacted). My question is this: Did the UPC

7 soldiers ask you to bring anything from (Redacted) anywhere else for them?

8 A. (Redacted)

9 (Redacted)

10 (Redacted)

11 Q. Mr Witness, my question is different. You have already explained how you

12 carried goods for UPC soldiers to their camp (Redacted). I'm asking you a

13 different question now. I'm not asking you about what happened (Redacted).

14 My question is: Was there any other time when you were asked to carry anything by

15 UPC soldiers?

16 A. Yes. Yes. One day they came and asked us to load the looted items onto a

17 vehicle, which we did. (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted) There weren't many people in the village since most of the

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1 inhabitants had gone back to their homes. There were only very few of us remaining
2 in that village.

3 (Redacted)

4 (Redacted)

5 Q. And do you remember -- do you remember how many loads that you did onto
6 the truck?

7 A. We loaded many items, (Redacted)

8 (Redacted) We then loaded onto it all the other

9 items which we were asked to load and, thereafter, they took the items away.

10 Q. And what were the UPC soldiers doing whilst you were loading the truck?

11 Where were they?

12 A. They were taking care of our security because they felt that we could have taken
13 off at some point with -- with those items, so they were very watchful. And you
14 want to know that at that time it was actually raining cats and dogs.

15 (Redacted)

16 (Redacted)

17 MS LUPING: Mr President, we can return to public session now.

18 PRESIDING JUDGE FREMR: All right. Let's move into open session now.

19 (Open session at 10.48 a.m.)

20 MS LUPING:

21 Q. Now, Mr Witness --

22 PRESIDING JUDGE FREMR: Please wait.

23 MS LUPING: Sorry.

24 THE COURT OFFICER: We are in open session.

25 PRESIDING JUDGE FREMR: You may proceed, Ms Luping.

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1 MS LUPING: Thank you, Mr President.

2 Q. Mr Witness, you previously said that when attackers arrived in Sayo they were
3 looking for Lendu people. What did you mean by that?

4 A. That's a difficult question to answer because, you see, I do not know the genesis
5 of this conflict. All I know is that the Lendus were the enemies of the Hema and the
6 Hema were looking for the Lendu and vice-versa. But I do not know when that
7 conflict actually began.

8 Q. And in terms of the conflict at Sayo, what makes you believe they were looking
9 for the Lendu people during that attack where you were present?

10 A. That is what I've been trying to tell you. You see, I do not have the
11 background to the beginnings of that conflict. I do not know why they were fighting
12 each other. All I know is that they sought to kill each other. The Lendus were
13 killed in great numbers.

14 Q. You said earlier this morning that many Lendu had been killed on the way to
15 Sayo and within Sayo; is that correct?

16 A. Yes, yes, that's correct.

17 Q. And how could you identify them as Lendu? How could you tell that they
18 were Lendu?

19 A. The victims included people who -- or gold diggers and most of the -- who were
20 gold diggers. Most of the gold diggers were Lendu and it is mostly the
21 Lendu -- mostly them who were killed in large numbers. Some were also killed by
22 stray bullets. And many, many people were killed.

23 PRESIDING JUDGE FREMR: Excuse me. May I have a question of clarification.
24 Was it possible if somebody saw a dead body for the first time to decide whether this
25 dead body belongs to Lendu or no?

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1 THE WITNESS: (Interpretation) Some could be easily recognized. It was easy to
2 determine that this was a Lendu because such and such a person may be someone
3 who was known or it might be a victim who was trying to flee with some money and
4 was killed in those circumstances.

5 PRESIDING JUDGE FREMR: So if it would be me and I would come and look at
6 that place, would I have a chance to recognize that a dead -- a dead body belongs to a
7 Lendu?

8 THE WITNESS: (Interpretation) (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 PRESIDING JUDGE FREMR: Thank you very much, Mr Witness, for this
13 clarification.

14 Ms Luping, you have the floor.

15 MS LUPING: I only have a couple more questions before the break, Mr President.

16 Q. Mr Witness, you said earlier on that the FNI instructed the Lendu women to put
17 grass around their necks and that they were semi-naked. Did you see Lendu
18 wearing grass?

19 A. Yes, yes, yes. Yes, I'm aware of that event because they were wearing grass on
20 their necks, around their hips and on their arms and they were in the habit also of
21 going about topless, so to speak, or semi-naked.

22 Q. And did you see this with your own eyes?

23 A. We are natives of the same village and we all live along the same road. Sayo
24 village, it lies on the same hill and along the same road, so all the inhabitants of the
25 village know each other.

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1 Q. I'll rephrase my question. During the attack on Sayo, did you see any Lendu
2 wearing these grass bands, if you like, around the neck, hips, arms that you've just
3 described?

4 A. Yes, I saw them. When the UPC troops arrived, we were living with the Lendu.
5 It is only later on that we went our separate ways.

6 Q. And the Lendu that you saw wearing these grass bands, what was the gender of
7 these people that you saw wearing this grass?

8 A. Both men and women. Men, women, even children. Children as well, they
9 wore those arm bands and they wore them around their necks and on their hips as
10 well. It was a way of identifying themselves.

11 MS LUPING: Thank you, Mr President, your Honours. I have no further questions
12 before the break.

13 PRESIDING JUDGE FREMR: Thank you, Ms Luping. We will break now, but first
14 we will have to escort Mr Witness out of the courtroom.

15 So court officer, please do it.

16 (The witness stands down)

17 PRESIDING JUDGE FREMR: So we break now and we will reconvene half past 11.

18 Court is adjourned.

19 (Recess taken at 10:59 a.m.)

20 (Upon resuming in open session at 11.36 a.m.)

21 THE COURT USHER: All rise.

22 Please be seated.

23 PRESIDING JUDGE FREMR: A question: Why are we in regime of closed session?

24 Okay. We will continue, but before that I see Mr Bourgon on his feet.

25 Mr Bourgon?

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1 MR BOURGON: Thank you. Mr President, I would just like to make an
2 observation. We have been watching the live transcript of this court session and I
3 stand to be corrected, but it appears that at no point in time is the camera directed at
4 the witness. I was just wondering whether that was -- if instructions have been
5 given to that effect or if it's just by coincidence.

6 Thank you, Mr President.

7 PRESIDING JUDGE FREMR: I don't see that was just a strict instruction from the
8 Chamber, but it's true that there was some element of concern about the witness
9 because you may know he was reluctant to testify. Yesterday we succeeded to
10 change his mind.

11 So officially or formally there is no such instruction, but maybe I think there's some
12 tendency not to discourage a witness. So I'm only saying there is no such formal
13 instruction, but maybe tendency got by our technicians. So I can just confirm there is
14 no need to avoid this. I'm not saying that the main -- main focus should be on
15 witness. At the same time, I'm saying there is no need to avoid any picture of the
16 witness because, as we decided, his picture will not be distorted, his face and his
17 voice, so that is as I said. So we will see.

18 MR BOURGON: Thank you, Mr President.

19 PRESIDING JUDGE FREMR: Now, Ms Luping, I guess you would like to proceed in
20 the regime of private session, or it's up to you.

21 MS LUPING: We can remain in public session for now, in open session.

22 PRESIDING JUDGE FREMR: Oh, sorry. Okay. So we are remaining in the
23 regime of open session, public session, and Ms Luping will be continuing in
24 examination-in-chief of the witness.

25 Please.

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1 MS LUPING: Thank you, Mr President.

2 Q. Mr Witness, I just want to clarify something. It was a question put to you by
3 the President as to if you are not from Sayo village and you see the body of a dead
4 Lendu person, is there anything about Lendu people that makes them distinguishable
5 say from other ethnic groups, other ethnicities living in Sayo village that would make
6 it possible to identify them as being Lendu?

7 A. There were other people who came from other localities who were identifiable
8 as well as people from the locality, but most of those who died were members of the
9 local population.

10 Q. Thank you, Mr Witness. I'm just going to rephrase my question.
11 If you saw a Lendu person standing before you and you saw a Hema person standing
12 before you, is there anything that would distinguish them for you? Would you be
13 able to tell which one is Lendu and which one is Hema?

14 A. Yes, yes. Yes, there's something which would make it possible to distinguish
15 the two. Lendus are different from Hema. There's a big difference. They're
16 different ethnic groups.

17 Q. Physically speaking, how would you tell the difference between them?

18 A. The Hema are different from the Lendu. Well, the first criteria is the language.
19 The two different groups speak different languages. They speak a language in
20 common, but you can perceive a difference in their accents.

21 Q. And other than their differences in accents, is there anything in the way they
22 look that makes them different from one another?

23 A. Even if they didn't wear grass arm bands, you can still recognize these people
24 from the way they speak Lendu, from their accent as well.

25 THE INTERPRETER: The interpreter corrects, neck bands instead of arm bands.

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1 MS LUPING:

2 Q. And other than clothing, is there anything about their physical features that
3 makes them look distinguishable as Lendu?

4 A. Yes, there are other signs. There are other signs which can help us identify
5 which ethnic group they are from.

6 Q. And what other signs are these?

7 A. Well, you can also recognize the Hema from their teeth. Some of them put
8 something on their lower teeth and on the higher teeth as well, and that's the way you
9 can identify their teeth. They sharpen their teeth.

10 Q. And that is the Hema. What about the Lendu?

11 A. Well, the Lendu, they sharpen their upper teeth.

12 Q. And other than the teeth, is there anything else?

13 A. You want other signs to identify the Lendu? Well, it's difficult. It's easier to
14 identify them through their language. When these two ethnic groups speak, it's
15 easier to identify them from their accent. These ethnic groups are different from one
16 another. They speak two different languages. The Tutsi, Tatsi (phon) and others,
17 they speak different languages from each other, but all these people speak Lendu.

18 Q. I now have --

19 PRESIDING JUDGE FREMR: Excuse me, Ms Luping. I have to interrupt you
20 because I realize that the complaint made by Mr Bourgon is well-founded. So far
21 there's not one shot of Mr witness. So as I said, we can understand that maybe there
22 is some tendency not to focus camera on him, but at least time to time he should be
23 shown that he is with us; otherwise, it seems that he is not in the courtroom.
24 So I don't know, court officer, can technicians who are in charge of broadcast of video
25 recording, can they hear me, my microphone? If not, please, I would like to ask you

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1 to convey a message that at least time to time we have to watch on the screen also
2 witness, okay?

3 (Pause in proceedings)

4 PRESIDING JUDGE FREMR: So we ask for some improvement of that.

5 And now, Ms Luping, sorry for interrupting you, but you have the floor again.

6 MS LUPING: Thank you, Mr President.

7 Q. Mr Witness, I'm just going to read back the passage from the transcript from
8 some of your testimony this morning because there is some lack of clarity.

9 I want to -- I will read it to you. This is what you said, page 13, line 5, "They came to
10 take over the factory, so when they got there, they threatened people. In fact, they
11 were looking for the gold. They wanted to steal the gold and it was only afterwards
12 that they began to destroy the factory."

13 My question is this: Who were these people that were looking for the gold and
14 wanted to steal it?

15 A. It was the UPC troops. They are the ones who entered there. They were the
16 ones who attacked.

17 Q. And I want to turn to another passage in the transcript that requires
18 clarification.

19 PRESIDING JUDGE FREMR: Mr Bourgon?

20 MR BOURGON: Thank you, Mr President. I'm really doing my best not to
21 interrupt and I have not done so so far, but the last question the answer was read to
22 witness; but in all fairness, he should be read a longer passage before he provided this
23 answer in terms of they came to take over the factory because he should be read the
24 question, as a minimum, before that, and then be asked to clarify.

25 Now, I'm not sure what is the intent of clarifying these things at this time. We're

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1 trying to proceed with the witness. We're moving and then now we go back 15
2 pages behind, and we ask a question that was already asked again because we don't
3 like the answer. So we should at least, Mr President, allow the witness to have the
4 full context if we want him to clarify.

5 Thank you, Mr President.

6 PRESIDING JUDGE FREMR: Ms Luping?

7 MS LUPING: Thank you, Mr President. I believe it's important to clarify issues
8 obviously as and when they arise. In this instance it was only during the break that
9 we were able to see that there was a lack of clarity. I don't mind reading the whole
10 of the question, but in fact, as you'll see from the question and answer, it doesn't
11 necessarily correspond, so I didn't think it was helpful to read out a question that
12 might simply confuse matters further.

13 I think the information provided by the witness about the taking over the factory and
14 taking of gold was sufficiently clear and stands alone in and of itself and it
15 would -- should have been a simple question without the need to provide the
16 introductory questions that preceded it.

17 PRESIDING JUDGE FREMR: Yes, I agree. I don't know that it was objection. If it
18 was objection, it has been overruled.

19 I'm generally saying you have a right to clarify issues that had been -- hadn't been
20 clear enough. It's up to you to find the most efficient way, but what you should
21 avoid is to put a leading question. So you may proceed.

22 MS LUPING: Thank you, Mr President. My next question that I need to clarify
23 because, in fact, it's not been clearly recorded in the transcript, I will need to ask that
24 question in private session because it's of an identifying nature.

25 PRESIDING JUDGE FREMR: All right.

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

2 (Private session at 11.53 a.m.) *(Reclassified partially in public)

3 THE COURT OFFICER: We are in private session, your Honour.

4 PRESIDING JUDGE FREMR: Thank you.

5 Ms Luping, you may proceed.

6 MS LUPING:

7 Q. There are two passages that I need to read back to you, Mr Witness. First
8 passage is from page 19, line 12. My question was as follows: "After you left the
9 UPC camp at Mount Adidi, what did you do?

10 Your answer was: "I went home and there was no one there and I was afraid. I
11 spent the my" -- it looks like a typographical error -- "in Nyali with a friend and it was
12 only the night after that I found my family members and we went home together."
13 It appears as if your answer wasn't fully transcribed. I have two follow-up questions
14 to clarify it. It says you spent the night in Nyali. What do you mean by Nyali?

15 A. Nyali is the tribe in the collectivité of Nyali. Banyali are the people who live
16 there and it is in the Banyali collectivité, Kilo, Banyali-Kilo. These are people who
17 live in that locality. They are members of the population of that land.

18 Q. So to clarify, were you stating that you went to spend the night in the Nyali area;
19 is that what you mean?

20 A. Yes.

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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11 (Redacted)

12 (Redacted)

13 MR BOURGON: Thank you, Mr President. The last answer provided by the

14 answer is one of opinion for which the witness is not qualified to answer.

15 His previous answer before, and I read from page 40 and at page 40 he said, (Redacted)

16 (Redacted) That's an answer

17 that the witness can provide because this is an observation where he thinks

18 something. Moving beyond that would be moving into the purview of opinion, of

19 opinion from a medical qualified person, and he's not qualified to answer such a

20 question, Mr President. Thank you.

21 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon, but let me remind you that

22 we are not lay jury, we are Judges, so I think we can make distinction between these

23 two kind of responses.

24 Ms Luping, you may proceed.

25 MS LUPING: Thank you, Mr President.

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1 (Redacted)

2 PRESIDING JUDGE FREMR: Sorry. Mr Bourgon, again.

3 MR BOURGON: Mr President, I fully understand the type of Trial Chamber I am
4 sitting in front of. I would like to know if my objection is overruled and whether the
5 witness is qualified or not to answer the question. Thank you, Mr President.

6 PRESIDING JUDGE FREMR: First of all, your objection is overruled. And, you
7 know, moreover, I think the question was not targeting to get opinion. It was just
8 the witness who answered in this way. So I think the objection should I would say
9 target question, not the answer. As to the answer, it's another issue. It's up to us
10 whether we should -- you can ask to delete this from the record if you have a jury trial,
11 but in this case if the response is giving her the opinion, then the testimony, it means
12 that it's up to Judges to make and to find this distinction. So as I said, the objection is
13 overruled.

14 Ms Luping.

15 MS LUPING: Thank you, Mr President.

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

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12 (Redacted)

13 (Redacted)

14 PRESIDING JUDGE FREMR: Witness, please, stop, stop. Wait a moment.

15 Mr Bourgon.

16 MR BOURGON: Thank you, Mr President. I would like to raise an objection at this
17 time and I would like to do it in the absence of the witness, Mr President.

18 PRESIDING JUDGE FREMR: All right.

19 Court officer, please escort Mr Witness out of the courtroom.

20 Mr Witness, we have to solve a problem. You will have to wait for a while outside
21 of the courtroom.

22 (The witness stands down)

23 PRESIDING JUDGE FREMR: Now, Mr Bourgon, you have the floor.

24 MR BOURGON: Thank you, Mr President. We are entering into an area where my
25 colleague will be asking questions about (Redacted)

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1 (Redacted)

2 I'm not sure when the time will come, but based on the statement that we have
3 received from this witness, we believe that the next person he is about to talk about is
4 one for whom Mr Ntaganda is not charged to have killed personally, yet the evidence
5 that the Prosecution is about to elicit from the witness is evidence of a murder that
6 would have been committed by Mr Ntaganda himself, according to what is in the
7 pretrial brief. That is why we raise this objection at this time.

8 When we did the opening statement, we drew the Chamber's attention to the fact that
9 the Prosecution is trying to elicit evidence or intends to elicit evidence of crimes that
10 are not charged in this case.

11 And we are talking here, Mr President, of crimes that according to the Prosecution in
12 its pretrial brief were committed by Mr Ntaganda himself.

13 We drew the Trial Chamber's attention because we feel that it is simply not relevant
14 and that it is also highly prejudicial to bring forward evidence of a crime that would
15 have been committed by Mr Ntaganda himself when he is not charged for this crime.

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 Now, in this case it is a murder according to the Prosecution that would have been
23 committed personally by Mr Ntaganda. There is no such charge in the Document
24 Containing the Charges. There is a charge of murder for an indirect role in which
25 Mr Ntaganda would have played an indirect role and there is one charge, specific

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1 charge, where Mr Ntaganda would have been personally involved in the murder and
2 it deals with a priest in Mongbwalu. It does not deal with any other precise victims.
3 In order to be on notice and in order for Mr Ntaganda to raise a Defence, he has to be
4 on notice that he is charged with a specific murder. To do it by the back door in the
5 pretrial brief is highly inappropriate. If the Prosecution intended to charge
6 Mr Ntaganda with this murder, they should have done so in the Document
7 Containing the Charges. They did not do so. And no such specific murder of this
8 colonel was included in the Document Containing the Charges.
9 If the Prosecution was not happy with that, the Rules and the Statute allow the
10 Prosecution to amend the pretrial brief and include such an additional charge. They
11 did not do so. So this charge is not on the record, and now by what we learn from
12 the Prosecution's pretrial brief is we learn that we have two witnesses who will talk
13 about this specific murder. (Redacted)
14 (Redacted)
15 (Redacted)
16 (Redacted)
17 (Redacted)
18 (Redacted)
19 We believe, Mr President, that in both cases, this evidence should not be elicited from
20 the witness as it is not an event that is charged personally against Mr Ntaganda.
21 That is the basis of our objection and we believe that in this specific case no evidence
22 should be -- no questions should be put to this witness about this specific event which
23 goes beyond the charges and which is not relevant to these proceedings. Thank you,
24 Mr President.
25 PRESIDING JUDGE FREMR: Thank you.

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1 Ms Luping, your reaction?

2 MS LUPING: Mr President, your Honours, a number of points in response to

3 Mr Bourgon's objection. The first is that Mr Ntaganda, the accused, has been

4 charged as a direct perpetrator of murder, and as such, all acts of direct perpetration

5 of murder are relevant for that specific charge.

6 In addition, he has been charged as Mr Bourgon mentioned, on the basis of indirect

7 perpetration of the charge of murder, and as such, any evidence of direct perpetration

8 of murder is directly relevant to the issue of his role as an indirect perpetrator as well,

9 his contributions, his acts, that relate also even to -- even the acts of his subordinates

10 or the acts of himself, they are also relevant to alternative mode of liability. Any

11 such acts of direct perpetration of murder are also relevant to his intent and

12 knowledge.

13 Even for other bases of the charge of murder, namely acts of his subordinates, the fact

14 that he, as a commander, perpetrated acts of murder himself meant that he led by

15 example and those acts can be assessed when assessing his own not only knowledge,

16 but an intent not only as a direct perpetrator, but also as an indirect co-perpetrator.

17 There is ample jurisprudence, your Honours, to support the argument that any such

18 evidence may indeed be elicited even if -- even if, and it's not case here, even if this

19 was non-charged conduct for the other purposes I've outlined, namely to establish

20 other modes of liability, intent, knowledge, context, background. Non-charged

21 conduct can also be elicited, and we have already essentially been litigating this issue

22 and the jurisprudence of relevance is referred to in our filings, so I will not take the

23 Chamber's time on this matter now.

24 (Redacted)

25 (Redacted)

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3 (Redacted)

4 (Redacted), but we would submit, your Honours, that this evidence

5 should be allowed. It should be able to be elicited. Thank you.

6 PRESIDING JUDGE FREMR: Mr Bourgon, any reaction? Okay. Go ahead.

7 MR BOURGON: Mr President, the Prosecution just recognized that they are

8 intending on leading evidence on the charge of murder of a specific individual

9 attributed to Mr Ntaganda when there is no such charge.

10 The Prosecution says Mr Ntaganda is charged with direct perpetration of murder, but

11 not all murders that we could possibly come upon in the context of war. He is

12 specifically charged with one murder for direct perpetration, and that is about the

13 priest and not anybody else.

14 The context referred to by my colleague of one specific murder is not something that

15 must be because it is. When we say "always," is evidence, the probative value of this

16 evidence -- so let's assume for one moment that the Chamber will allow this evidence.

17 What is the probative value of this one incident as opposed to the prejudicial value or

18 the prejudicial effect on Mr Ntaganda?

19 Clearly the prejudicial effect far outweighs any probative value that can be attributed

20 to one specific murder in the context of the overall indirect murder charge.

21 For these reasons we believe that this should not be put into evidence.

22 If I may just add that in the decision on the updated Document Containing the

23 Charges, the Chamber considered that at Section H, for hotel, (ii), the Chamber said

24 that "This is not merely a summary but, rather, this paragraph contains the

25 comprehensive facts and circumstances in relation to the underlying acts."

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2 (Redacted)

3 Now, should the Prosecution wish to confirm right then and now that they will not be
4 seeking a ruling and they will not be seeking any type of decision from this Chamber
5 and to confirm this and to be bound by their undertaking, then maybe the Chamber
6 could allow this evidence to go in. But even then, we say that the evidence about
7 this particular event will be highly prejudicial and the prejudicial effect far outweighs
8 the probative value or the use that can be made of one event by professional Judges
9 who are not lay juries.

10 Thank you, Mr President.

11 PRESIDING JUDGE FREMR: Ms Luping, any further reaction? And I would like
12 to finish any further discussion, but you have the floor again.

13 MS LUPING: Yes, Mr President. It's just to refer, in fact, to the language of the
14 updated document containing the charges itself. Mr Bourgon has highlighted the
15 Section H. And if you refer to Section H and the way in which the count of murder
16 and attempted murder of civilians, including as a former direct perpetration or direct
17 co-perpetration, refers to a number of areas and there is no reference or no limitation.
18 There's no specific reference to the killing of only one individual. And, indeed, the
19 charge relates to specific areas in or around -- there are specific locations that are
20 mentioned and it's not limited only to Mongbwalu to one individual and that is not
21 also the nature of the confirmation decision.

22 Thank you, Mr President.

23 PRESIDING JUDGE FREMR: Thank you. That's a really fundamental objection, so
24 we will need -- I think we can't just solve it in the courtroom by silent deliberation, so
25 we will break now.

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1 And because we, in fact, lost 15 minutes from our normal schedule, we will start our
2 afternoon session 15 minutes earlier, which means that we will start not half past 2 as
3 usual, but we will start quarter past 2 and then we will start with giving a ruling on
4 this objection.

5 So now we break and we will reconvene quarter past 2.

6 (Recess taken at 12.41 p.m.)

7 (Upon resuming in open session at 2.20 p.m.)

8 THE COURT USHER: All rise.

9 Please be seated.

10 PRESIDING JUDGE FREMR: Good afternoon, everybody. We start in open session
11 and at the moment without witness because the Chamber would like to render its oral
12 ruling, and it is our ruling on Defence objection to the leading evidence related to a
13 particular incident.

14 Just before the lunch break, the Defence objected to the Prosecution reading certain
15 evidence. On the basis of the witness statement the Defence anticipated that the
16 evidence would relate to the deaths of an individual which the Prosecution in its
17 pretrial brief contends was directly perpetrated by Mr Ntaganda.

18 The Chamber has noted the Defence objection, including on the question of notice and
19 on the potential prejudice that could arise from the leading of such evidence.

20 Based on the Chamber's understanding of the evidence which this witness is likely to
21 provide, as indicated by the Prosecution prior to the break, the Chamber considers
22 that the objection is premature. It is the Chamber's understanding that this
23 particular witness will not testify as to the identity of the direct perpetrator of this
24 alleged murder and, therefore, the question of prejudice does not arise.

25 The objection is, therefore, overruled and the Prosecution may continue to read

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1 evidence from the witness regarding the bodies that he personally encountered in

2 Sayo village as the Chamber considers this to be relevant to the charges.

3 The Chamber will revisit this issue should it be necessary at a later stage in

4 proceedings.

5 And after that, I would like also to ask Mr Bourgon because we got some indication

6 that the Defence is ready to provide us with another objection.

7 Mr Bourgon, it's necessary to deal with this objection just now, which means that it

8 would require immediate resolution, or it's possible to leave it for the end of our

9 session? It's up to you.

10 MR BOURGON: Thank you, Mr President. It is definitely possible to wait until the

11 end of the session; however, I would like to do those two applications orally. They

12 will be very quick.

13 Thank you, Mr President.

14 PRESIDING JUDGE FREMR: Thank you. And maybe the -- before we call the

15 witness in, Ms Luping, what is your estimation? Because at the moment we should

16 have a time until 3 o'clock -- sorry, until 4 o'clock. Do you think you will be able to

17 wrap up until 4?

18 MS LUPING: Thank you, Mr President. I do believe I may need time also on

19 Monday. There is exhibits that will take some time to go through with the witness.

20 I hope that by the end of the session, at least most of the substantive questions will

21 have been dealt with, but I will not have completed all my questions.

22 PRESIDING JUDGE FREMR: Okay. It's true that there was also some technical

23 problems and problems with translation, but anyway, please be informed that we

24 would like to stick to this time limit we gave you, means six hours for your

25 questioning. I'm not sure, but we will probably inform you at the end of this session

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1 how much time you still have at your disposal for -- disposal for Monday.

2 So now please call the witness to the courtroom.

3 (The witness enters the courtroom)

4 PRESIDING JUDGE FREMR: Good afternoon, Mr Witness. Before we continue
5 with your --

6 THE WITNESS: (Interpretation) Good afternoon, your Honour.

7 PRESIDING JUDGE FREMR: Before we continue with your testimony, I would like
8 to check the issue of transcript because at the moment my transcript finishes at 12.41.
9 Thank you, court officer.

10 So now my transcript is back and, Ms Luping, you may proceed, please.

11 MS LUPING: Thank you. Mr President, would we be able to please go into private
12 session? I'm continuing my questions of an identifying nature.

13 PRESIDING JUDGE FREMR: All right.

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

15 (Private session at 2.27 p.m.) *(Reclassified partially in public)

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21 PRESIDING JUDGE FREMR: Mr Bourgon?

22 MR BOURGON: Asked and answered, Mr President.

23 PRESIDING JUDGE FREMR: Please maybe try to rephrase your question,
24 Ms Luping.

25 MS LUPING: Yes, Mr President. But my question has not actually been answered

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21 PRESIDING JUDGE FREMR: Sorry, Ms Luping. He said he doesn't know, so what
22 does it mean, understanding? I don't understand. What do you mean by that?
23 MS LUPING: Does -- what I mean -- I'm sorry, I'll rephrase the question,
24 Mr President.
25 PRESIDING JUDGE FREMR: Please.

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1 MS LUPING:

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11 Q. (Overlapping speakers)

12 PRESIDING JUDGE FREMR: Sorry, excuse me.

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 MS LUPING: Mr President, I'm just checking to see if any of my question was
17 actually --

18 PRESIDING JUDGE FREMR: That was just my problem because we couldn't hear
19 you in our headphones, and I guess maybe the interpreters had the same problem.

20 So may -- I'm sorry, but it seems it would be better to -- to repeat your question again
21 because it was not captured.

22 MS LUPING: Actually, Mr President, I'm looking at page 63, line 20 to 22, and my
23 question appears to have been captured.

24 PRESIDING JUDGE FREMR: Okay. Give me a second --

25 MS LUPING: Oh, actually, no. My question was not captured.

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1 PRESIDING JUDGE FREMR: No, no, no, no.

2 MS LUPING: Indeed. My question was --

3 PRESIDING JUDGE FREMR: It was probably some technical problems because we
4 couldn't hear you in our headphones, so please repeat, I think, to be safe.

5 MS LUPING:

6 (Redacted)

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12 PRESIDING JUDGE FREMR: Mr Bourgon.

13 MR BOURGON: This is a question that should not be put to the witness because it
14 necessarily calls for an opinion of a qualified person.

15 Thank you, Mr President.

16 PRESIDING JUDGE FREMR: Objection sustained.

17 Ms Luping.

18 MS LUPING: Mr President, I will rephrase my question.

19 (Redacted)

20 PRESIDING JUDGE FREMR: Mr Bourgon.

21 MR BOURGON: Previously asked and answered, Mr President.

22 PRESIDING JUDGE FREMR: Objection sustained.

23 MS LUPING:

24 (Redacted)

25 (Redacted)

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11 PRESIDING JUDGE FREMR: Ms Luping, just one announcement. I would like to
12 devote last ten minutes of today's session to procedural issues, so please try to finish
13 your questioning for today, I know you will very likely continue on Monday, but by
14 10 to 4, please.

15 MS LUPING: Yes, Mr President. We can now move into public session.

16 PRESIDING JUDGE FREMR: All right.

17 Court Officer let's move into open session.

18 (Open session at 3.42 p.m.)

19 THE COURT OFFICER: We're in open session, your Honour.

20 PRESIDING JUDGE FREMR: Thank you, court officer.

21 Ms Luping, you may proceed.

22 MS LUPING: Thank you, Mr President.

23 Q. Mr Witness, you described a UPC camp based at Mount Adidi. You said there
24 was also a UPC camp at the Catholic church. Could you explain where the other
25 UPC camps were? You said there were other UPC camps. Can you explain now to

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1 us where the other UPC camps were?

2 A. The biggest camp they had was at the police station in Sayo near canteen. That
3 was their big camp. And that's where all the chiefs were.

4 The second camp was above the hill, above Mount Adidi.

5 And the third was at a place called Adidi mine. Those were the three camps that I
6 saw.

7 Q. Other than these three camps, you also mentioned that there was a UPC group
8 based at the Catholic church; is that correct?

9 A. Yes, yes, they were there. And all the authorities were at the Catholic church.
10 They were there. Some of them in the Catholic church and some of them occupied
11 different positions all around to protect the chiefs.

12 Q. Mr Witness, you mentioned that when you first saw attackers coming to Sayo,
13 you saw with your own eyes UPC soldiers and, amongst them, you said you saw
14 children. My question is this: After the UPC moved into Sayo, did you see any
15 children amongst the UPC soldiers that remained in Sayo?

16 A. When they got to Sayo, they divided into several groups. One went to Adidi
17 mine, the other went to Adidi mountain and the others stayed on site. They divided
18 into several groups.

19 Q. My question relates to the children. Did you see any children amongst the
20 UPC soldiers staying in Sayo after they had taken over Sayo?

21 A. There were several people who had run away from that place and never came
22 back. Some came back, but others didn't. And most of the people in that group
23 and who had left the UPC, they came back and they're still living there to this day,
24 and they get along perfectly fine with the other members of the population.

25 Q. Mr Witness, my question is slightly different. You described how after the

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1 attack on Sayo UPC soldiers were positioned in Sayo, and you've just now described
2 the different camps where the UPC were and positions where the UPC were. Did
3 you see any children amongst the UPC soldiers at any of these various positions
4 within Sayo, at any of the camps or any UPC positions?

5 A. No, no. They left, the young people on that night, they all left.

6 Q. What do you mean the young people left that night?

7 A. All these children left with other soldiers and all the soldiers left at night.

8 Where did they go? We don't know because they -- because they left and we didn't
9 see when they left.

10 Q. Mr Witness, I'm not talking about the time all the UPC soldiers left Sayo. My
11 question was, and I think you've answered the question now effectively, so there were
12 children amongst the UPC soldiers who were there after the attack; is that what you
13 mean? I'll rephrase my question.

14 You've just said that the children left when they all -- all the UPC soldiers left Sayo.

15 After the UPC took over Sayo and before they left, were there any UPC soldiers at the
16 UPC camps? I'm talking about UPC child soldiers.

17 PRESIDING JUDGE FREMR: Sorry, we don't have any translation of the last
18 witness's response.

19 THE WITNESS: (Interpretation) These young soldiers, we called them kadogo.
20 They're the very young ones.

21 MS LUPING:

22 Q. And these young child soldiers, did you see them at any of the UPC camps
23 whilst the UPC was still in Sayo?

24 A. These kadogo were there in the camp. There were many of them. Others
25 went to Adidi mines. Others were in Adidi mountain. These kadogo were

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1 numerous.

2 Q. And my final question, Mr President, for today: Mr Witness, can you -- sorry.

3 Did you see what type of jobs these child soldiers were doing at the UPC camps?

4 Did you see the types of tasks they were doing?

5 A. These kadogo were bodyguards. Their role was to protect the authorities.

6 They were sent to carry out certain tasks. They were called an escort.

7 Q. I won't ask you about the escorts now, but do you know of any other jobs or
8 tasks you saw child soldiers doing?

9 A. Well, I couldn't see -- they were very bad. They caused a lot of terror in the
10 town. They didn't walk around much. The most important tasks that they had was
11 to stay within the town.

12 MS LUPING: Mr President, I'll ask more questions on Monday morning of the
13 witness. I'm conscious of the time and the need for the Chambers to deal with the
14 procedural issues.

15 Thank you, Mr Witness. I have no further questions for today, but I will have more
16 questions for you on Monday morning.

17 PRESIDING JUDGE FREMR: Thank you, Ms Luping. We appreciate.

18 And now I would like to thank you, Mr Witness. We will see you again on Monday,
19 so you can take some rest during the weekend. Thank you very much and see you
20 on Monday.

21 Now the witness may be escorted.

22 THE WITNESS: (Interpretation) Thank you.

23 PRESIDING JUDGE FREMR: Now the witness may be escorted out of the
24 courtroom.

25 (The witness stands down)

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1 PRESIDING JUDGE FREMR: So in the remaining time, first of all, I would like to
2 give chance to Mr Bourgon to present his submission or submissions. You indicated
3 that you would like to submit some objections or something like that?

4 MR BOURGON: Thank you, Mr President. I would like to make two brief oral
5 applications at this time. Usually we would submit them in writing. However,
6 because they are directly linked to the preparation of cross-examination for the
7 witness who is on the stand, then they are also -- they are necessary, then we request
8 permission to make these applications orally.

9 First application deals with a request for disclosure, and we made this request for
10 disclosure on 22 October, and on the same day we received the Prosecution's response
11 refusing to disclose the material.

12 The first application comes from a screening note concerning the witness who is on
13 the stand. The screening note has the number DRC-OTP-2075-0425. At page 2 of
14 this screening note, paragraph 1, we have the following information: "Basis for
15 Contact" and then we have kind of a title that says, "Background to approaching the
16 individual. Include information about sources and intermediaries used." The
17 information provided in this document is the following, "The source was mentioned
18 by P-0815 as a lead and was independently contacted via intermediary P-0743 who
19 brought him a phone and travel money to travel to Bunia."

20 In other words, Mr President, the Office of the Prosecution was given information
21 about a potential witness, which is this witness, P-886, by another witness, who is
22 P-0815.

23 On the basis of this information, the Prosecution called upon an intermediary, namely,
24 P-743 who brought him a phone and travel money to Bunia.

25 As we are working in to prepare our cross-examination, we notice major differences

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1 between what we can find in the screening note which was provided to us about

2 Witness 886 and the statement which we were provided for the same witness.

3 In this context, we submit that what this witness was told by the Office of the

4 Prosecution or by the intermediary and what the intermediary P-743 reported back to

5 the Office of the Prosecution is material to the Defence, including, of course, the

6 relationship between the Prosecution and its intermediary, namely, P-743.

7 This information is necessary for us and it is material to the Defence not only for the

8 credibility of 886, but also in order to determine and try to elucidate the differences

9 between the screening note and the statement.

10 The Office of the Prosecutor refused to disclose this information and, basically, what

11 the Prosecution said is "The Defence has not demonstrated the materiality of that

12 information for its preparation for P-886 testimony or how the information concretely

13 affects the credibility of P-886 beyond mere speculation."

14 The important part follows, Mr President: "The Prosecution recalls the Chamber's

15 decision, which is decision 840 at paragraph 60, 60, "(in the context of a request for

16 Rule 77 disclosure of witness expense information), that in the absence of any

17 indication of irregularity or specific materiality, it is not appropriate to order

18 disclosure of information. Moreover, identifying a Prosecution intermediary may

19 endanger their safety and security."

20 Mr President, we submit that the information sought, contrary to what the

21 Prosecution is saying, is material, and that it is required to prepare for the

22 cross-examination of this witness. The Office of the Prosecution is, in our respectful

23 opinion, erroneously relying on the Trial Chamber's decision in at least two ways:

24 First, the Prosecution is referring to the Chamber's decision, which -- or a part of the

25 Chamber's decision, which referred specifically to expenses where the topic raised has

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1 nothing to do with expenses.

2 Secondly, the Prosecution is, in our respectful submission, taking advantage of the
3 fact that the Trial Chamber's decision does not elaborate a clear and objective
4 materiality test.

5 In fact, Mr President, ever since the Trial Chamber's decision came out, on at least
6 three occasions, but I think there are more, the Prosecution has been refusing to
7 disclose information on the basis of an alleged failure by the Defence to
8 demonstrates -- to demonstrate, sorry, materiality. Respectfully, Mr President, we
9 ask that the Prosecution be ordered to disclose this information, which includes what
10 they have in their possession concerning Witness P-473. I say "witness," but
11 intermediary P-743.

12 I do not believe, Mr President, that there are any security concerns involved. Any
13 information given will be, of course, kept confidential. We are bound by a duty to
14 maintain this information confidential, and we will act with the utmost of care with
15 this information.

16 So in terms of security, we don't believe that this is something that can prevent
17 disclosure of the information.

18 But the most important part of our request has to do with the materiality test. Right
19 now we do not have a materiality test. We say that the Prosecution is unduly taking
20 advantage of this fact and, in this specific case, we ordered -- we respectfully request
21 that they be ordered to provide this information so that we can prepare for our
22 cross-examination.

23 So this is the first application, Mr President. I have a second one.

24 PRESIDING JUDGE FREMR: Mr Bourgon, I would like to deal first with this
25 request. Could you be a little more specific as concerns the materiality? What is

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1 the real aim of your request, to know the identity of the intermediary, or ...

2 MR BOURGON: Yes. We'd like to know -- P-743 is, basically, called upon the
3 Prosecution. So there is somebody who meets witness P-0815. The information is
4 brought to the Prosecution. On the basis of this information, they call upon an
5 individual. This individual is told, "You will go to see" -- at least that's our
6 understanding -- "You will go and see 886, and you will give him a phone, and you
7 will give him some money." What else was told to 743; what was his mission, we
8 don't know.

9 What happened when 743 met with 886, we don't know. What happened when 743
10 reported back to Prosecution, we don't know. If it -- when we look at the context,
11 which is the differences between the first time 886 provided information to the
12 Prosecution, the screening note, and we look at the differences with what he said in
13 his statement, we figure that there's something wrong that we need to explore in
14 order to prepare for the cross-examination.

15 So for this we need the identity of 743, we need to know what is the relationship
16 between 743 and the Prosecution, and we need to know what instructions he was
17 given, what he did, and what he reported back.

18 And then, of course, we'd like to know what the nature of the contract -- the
19 contractual relationship between 743 and the Prosecution, whether P-743 was used in
20 other cases to approach other witnesses.

21 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon. We will have to be careful
22 of the time.

23 Prosecution, Mr Bourgon has quoted your written response. Do you want to add
24 anything orally?

25 MS LUPING: Yes, Mr President, your Honours, just to deal with the request, the

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1 specific request, a few points for clarification.

2 The first is that the screening note of witness 886 that is being referred to, it is not the
3 intermediary who is conducting the screening, clearly, it is the investigators, and
4 they're named as the individuals who directly meet with the witness and have
5 substantive contact with the witness.

6 So as regards any so-called inconsistencies between the screening note and the
7 witness statement, all of that questioning comes from investigators, Prosecution staff,
8 not the intermediary. It's not the intermediary who was questioning 886 in this
9 screening, so there's nothing of substance being discussed between the intermediary
10 and witness 886. So that's the first point to make very clear.

11 As for the request and the scope of the request, the Defence, indeed, did contact the
12 Prosecution. Their request was for all contacts between intermediary 743 and any
13 Prosecution witnesses, his identity, the contract between the Prosecution and this
14 intermediary, and all communications, including reports, to the Prosecution.

15 What the Prosecution has confirmed to the Defence is that it would agree and has
16 agreed to provide the list of contacts who are the Prosecution witness that
17 intermediary 743 has contact with.

18 However, as regards the request for his identity, any reports, the contract, the
19 Prosecution, indeed, has not agreed to this request.

20 First of all, the argumentation being made by the Defence now are not arguments that
21 were set out in the initial request to us; but, in any event, the arguments put forward
22 by the Defence today, in our minds, still do not satisfy the test of materiality under
23 Rule 77.

24 The assertions that the Defence are making essentially amount to speculation, your
25 Honours. This could be seen as a form of a fishing expedition, and that's not the

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1 purpose of Rule 77 in our submission. There needs to be a specific irregularity. Just
2 referring to potential inconsistencies in a statement taken by Prosecution investigators,
3 your Honours, is not sufficient, in our submission, to warrant disclosure of identity of
4 an intermediary who still lives in situ, who is still in Ituri, working in Ituri, and
5 who -- therefore, whose security could be put at risk as a result of what we submit are
6 simply speculative assertions.

7 There's no, in our submission, no sound basis for this wholesale request in relation to
8 intermediary 743.

9 PRESIDING JUDGE FREMR: Thank you, very much, Ms Luping. I think the
10 Chamber will decide it in due course for sure before the beginning of
11 cross-examination. And now, please, very briefly the second issue because we are
12 almost short of -- on the tape, please.

13 MR BOURGON: Thank you, Mr President. The second issue deals also with the
14 same witness and a request for lifting redactions concerning the witness. There are
15 limited redactions concerning this witness in the material.

16 Lately, we have encountered difficulties in getting redactions lifted. I will not say
17 anything about that. We will inform -- address the Chamber in a different
18 submission.

19 But in respect of this specific witness, based on his testimony and based on our work
20 that we have done to prepare for his cross-examination, we believe that there is a
21 definite issue of motivation as to why he is bringing this information. It is our -- it is
22 our submission, and that we will highlight in cross-examination, that many of the
23 events he's talking about are simply untrue, and that there's a motivation for that.
24 In order to highlight the motivation, we want to explore certain issues related to his
25 immediate family. And his immediate family is the object of some redactions, very

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1 limited, so we addressed immediately today to the Prosecution a request to lift the
2 redactions, and we described these redactions, they are very limited, at page 1,
3 paragraph 9, paragraph 10, and paragraph 24. We received a response by the
4 Prosecution that there was still a need for these redactions and that they would not
5 lift the same. We believe, Mr President, it is very important for us to get the
6 background to the family of this witness, and I will just say one example: When he
7 says that his wife left the area to go to Nyali, Nyali being an area where it is known
8 where all the Lendus live and his wife left the area of Sayo to go to Nyali where it's
9 full of Lendus, we believe that there is a relationship between the fact -- his wife
10 meeting with -- with Lendus and his motivation to tell false evidence in this case.

11 That's why we need the redactions to be lifted, so at least we have some information
12 about his family, which, of course, we will maintain completely confidential.

13 Thank you, Mr President.

14 PRESIDING JUDGE FREMR: Thank you very much, Mr Bourgon.

15 Prosecution, absolutely briefly, your reaction?

16 MS LUPING: Yes, Mr President. Just to clarify the nature of the redactions that we
17 seek to have maintained, the witness's precise place of residence as of today, one of
18 his relative's precise locations, a family relative's location within the Nyali area, the
19 names of his parents, and the number of his children. In our submission, your
20 Honours, none of this information is relevant to any of the points that the Defence
21 have raised or the arguments as to why they believe this information is necessary, and
22 these are points -- or these are allegations that the Defence is free simply to raise with
23 the witness during the cross-examination of Witness 886. It is not necessary for them
24 to know his precise location or the precise location of any other family members.

25 PRESIDING JUDGE FREMR: Thank you very much.

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1 We will decide, again, as I said, in due course.

2 And the last thing I would like to -- to mention, I got information that the Prosecution
3 until now used approximately four hours and five minutes for the examination in
4 chief, so it means, in practice, that you still have almost two -- two hours at your
5 disposal; and one, so please try to organise your questions, including the tendering of
6 evidence, in this way.

7 And then the last comment concerning the evidence and exhibits you would like to
8 tender, I saw there is many, many photographs and, in my view, at least some of
9 them I can see are very similar. I can see three other four, sometimes, pictures
10 showing the same place or the same object only from different angles on
11 different -- different -- yeah, from different angle. So please reconsider whether you
12 will really like to tender all of them because I would say that some selection would
13 be -- would be beneficial.

14 MS LUPING: Indeed. Just to give you peace of mind, Mr President, we're at this
15 stage only intending to show approximately four photographs in total to the witness
16 in addition to the panoramic reconstruction.

17 PRESIDING JUDGE FREMR: Very good. So that concludes our session for today.
18 I wish you a nice weekend, and see you on Monday, 9.30.

19 THE COURT USHER: All rise.

20 (The hearing ends in open session at 4.13 p.m.)

21 RECLASSIFICATION REPORT

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