

Trial Hearing

(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, 2 February 2016
9 (The hearing starts in open session at 9.34 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 starting with Prosecution.
21 MS LUPING: Good morning, Mr President, your Honours. Appearing on behalf of the
22 Prosecution today are Ms Nicole Samson, senior trial lawyer; Selam Yirgou, case manager;
23 Rens van der Werf and James Pace, assistant trial lawyers; and myself, Dianne Luping,
24 trial lawyer.
25 PRESIDING JUDGE FREMR: Thank you, Ms Luping.

1 Defence now.

2 MR BOURGON: (Interpretation) Good morning, your Honour. Good morning,
3 your Honours, and all people present in the courtroom this morning. Representing
4 Mr Bosco Ntaganda, who is present this morning, we have Sandrine De Sena, who is the
5 intern; Margaux Portier; Chloé Grandon; and myself, Stéphane Bourgon. Thank you
6 very much, your Honour.

7 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

8 Legal Representatives of Victims, please.

9 MS PELLET: (Interpretation) Thank you very much, your Honour. The former child
10 soldiers are represented by myself, Sarah Pellet, counsel with the Office of Public Counsel
11 for Victims.

12 MR SUPRUN: (Interpretation) Good morning, your Honour. Good morning,
13 your Honours. The victims of the attacks are represented by the Office of Public Counsel
14 for Victims, Anne Grabowski and myself, Dmytro Suprun.

15 PRESIDING JUDGE FREMR: Thank you both of you.

16 And duty counsel, please.

17 MR NÈVE: (Interpretation) Good morning, your Honour. Good morning,
18 your Honours. Marc Nève, I am assisting the witness.

19 PRESIDING JUDGE FREMR: Thank you, Mr Nève.

20 Before we continue with testimony of our witness, I would like to inform you that the
21 Chamber is aware of our tight schedule because until now, according to my information,
22 Defence exhausted 1 and a half hours and they are granted 10 hours, so it means, if I am
23 counting well, that they still have at their disposal, 8 and a half hours.

24 We have roughly, if we would insist on normal schedule, 9 hours at our disposal, which
25 means that we take into account the possibility of re-examination from the part of

1 Prosecution and also keeping some reserve for questions put by the Chamber, so then we
2 could get to some time pressure. That is why we are intending, if necessary, to shorten
3 our lunch break today, which would mean that we should have a break at 1, but continue
4 at 2 o'clock.

5 But I will, anyway, double-check the progress made by Mr Bourgon at 11 o'clock and we
6 will decide subject to that.

7 It doesn't mean, Mr Bourgon, that we are forcing you to be shorter. As I said, this is a
8 principle that this Chamber really respect that you are granted the same time like
9 Prosecution.

10 So now we can continue with testimony.

11 Ms Luping.

12 MS LUPING: Apologies for the interruption, Mr President. It's just simply a request.

13 If -- well, before my learned colleague begins, if we could start with a clarification of the
14 transcript. When I was reviewing it yesterday when the -- this particular witness
15 provides information as to others with him it would need to be elicited in private session.
16 There is one of the names missing and I can explain that in private session with your
17 leave.

18 PRESIDING JUDGE FREMR: Okay. But before that I will still finish my mission.

19 So, Mr Witness, are you feeling okay today, just to check it?

20 WITNESS: DRC-OTP-P-0017 (On former oath)

21 (The witness speaks French)

22 THE WITNESS: (Interpretation) Yes, I'm very well.

23 PRESIDING JUDGE FREMR: So as usually, I have to remind you that you are under
24 oath and you have to speak the truth and nothing but the truth.

25 Now we will move into private session, court officer, please.

1 (Private session at 9.40 a.m.)

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

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- 25 (Open session at 9.45 a.m.)

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

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

3 MR BOURGON: Thank you, Mr President.

4 Q. (Interpretation) Witness, we will continue from where we were at the end of the
5 day yesterday, that is to say that you recognized the map which is next to you as being a
6 map of Bunia; is that correct?

7 A. Yes.

8 Q. And I would ask you to look at the screen which is in front of you and the same map
9 will appear, but it will appear in electronic form. And I will give the following number
10 DRC-OTP-0207-0330. If the exhibit could be shown on the screen to the witness, we
11 would like to be able to control it so that we can move it.

12 THE COURT OFFICER: You now have the floor, Mr Bourgon. And I would invite the
13 parties and participants to switch on the evidence 2 channel.

14 MR BOURGON: (Interpretation) Thank you.

15 Q. Witness, you can confirm that the map that's on your screen is the same as the one
16 that is next to you?

17 A. Yes, but it doesn't appear entirely, it's not all of it.

18 Q. Indeed. Yes, but we can move it if we need to. And what I would like to do at
19 this stage is get you to mark on the map different places which have been mentioned
20 yesterday. Without mentioning how or why these places are important, I would like to
21 start with camp Epo. So in front of you there is a pen.

22 (Speaks English) I'm sorry, Mr President, there is a little hiccup. The number I gave is a
23 screenshot that cannot be moved. I was looking for the original number of the map. It's
24 my mistake. I apologise.

25 So I'm told it's the same number, but what I was looking at was the original map that

1 we -- that can be moved on the screen.

2 (Interpretation) Witness, the map that's now in front of you, well, this map we can move
3 it and we can indicate where it is, so you can write on the map. So I think that the court
4 officer can show you the pen that you can use. So I would like you to find on the map
5 where camp Epo is. And please mark a cross at that point.

6 A. Before starting, I would just like to say that on this map there are detailed points
7 where there are houses -- we speak about houses, it's not all the houses of Bunia that are
8 represented on this map and I can -- I can represent -- I can show sectors where these
9 houses are.

10 Q. There are no difficulties with that. What I would like to say, this is a map of Bunia
11 and the place where camp Epo is, if you could just mark a cross with the pen that's before
12 you as to where camp Epo is. If you need to move the map, please, you can move it left,
13 you can -- right you can move it.

14 A. I would like you to move the map a bit more. Could you just move it up a bit more,
15 please?

16 MS LUPING: Mr President.

17 PRESIDING JUDGE FREMR: Ms Luping.

18 MS LUPING: It's just that to be fair to the witness if he can be reminded he does have
19 the map to his right so he can situate himself a bit more easily. It must be a little bit
20 confusing as he's being shown only very small portions of the map.

21 I understand the exercise Mr Bourgon is seeking to undertake, which is to have an easier
22 map to see by having an enlarged image on the screen, but it can be confusing if he's only
23 being shown a very small segment on the actual screen.

24 It's just a reminder to look at the map on the right before situating or seeking to mark this
25 particular camp.

1 PRESIDING JUDGE FREMR: Yes, I think I'm seeing how to technically solve this issue.
2 Maybe we should make this exercise in a way that Mr Witness would first indicate this
3 point on the paper map and then we can just focus our electronic map on the place he has
4 already indicated.

5 Or, what do you think, Mr Bourgon?

6 MR BOURGON: Mr President, the aim of course of the exercise of having the large map
7 is to assist him because the map on the screen has the same zoom as the map beside him,
8 so he has the larger version and he has a shorter version and he can move the map as he
9 wants.

10 PRESIDING JUDGE FREMR: But I agree with Ms Luping that it could be a really very
11 complicated task, so maybe to facilitate it, it's in your own interest to speed up this
12 exercise, you should allow him to point first on the big map and then maybe you can just
13 focus our electronic map on the place he has already indicated. Do you agree with this?
14 Okay.

15 MR BOURGON: Indeed, Mr President. A very good idea.

16 PRESIDING JUDGE FREMR: So, Mr Witness, you can first try to show this point on the
17 big map.

18 MR BOURGON: (Interpretation)

19 Q. Witness, on the map before you on the screen do you see the same point?

20 A. As I said, there is this sector where these houses are. The camp, camp Epo, it was
21 in this sector what I have just shown.

22 Q. And you can note the same sector on the map in front of you by marking an X.

23 PRESIDING JUDGE FREMR: At the moment we can't see anything.

24 MR BOURGON: Mr President, we ran a bunch of tests before to try and make this
25 happen quickly to be sure that it would work. It had never been done at the previous

1 location of the Court, but now we have the technology, there is a picture on his screen, we
2 should be able to see the X appear where he is going to put the X.

3 PRESIDING JUDGE FREMR: Just for the court officer information, we can see a map,
4 but we can't see any X on the map, I mean on the electronic version.

5 MR BOURGON: (Interpretation) I see the witness has made a cross, but it is not on the
6 map, it is on an empty screen which appears in front of me.

7 Your Honour, so as to avoid wasting any time perhaps it's preferable just to make a short
8 adjournment so that the technology can be made to work. I did it before but perhaps we
9 can do it again because I have several maps that I need to show him and several marks
10 that need to be made today. So I do think that it would be a time well invested,
11 your Honour.

12 PRESIDING JUDGE FREMR: The problem is that according to my knowledge we have
13 these annotations on evidence 1 screen but without map, and then on the evidence 2
14 screen we have just the map but without annotations, so it would be nice to merge those
15 two pictures in one.

16 THE COURT OFFICER: Mr President, I've just been informed that the marking should
17 be visible if the document is displayed from the court usher computer. So if the Defence
18 could send us the document by email, we will then publish it ourselves.

19 MR BOURGON: I believe, Mr President, this document, it is already -- because it is a
20 Prosecution exhibit and so it should already be available to the court usher.

21 PRESIDING JUDGE FREMR: Okay. We will break for 10 minutes and we will allow
22 the court officer and Defence and maybe in cooperation with Prosecution to solve the
23 issue.

24 So we will rise and we will return back in 10 minutes and hopefully the problem will be
25 solved in the meantime.

1 THE COURT USHER: All rise.

2 (Recess taken at 9.58 a.m.)

3 (Upon resuming in open session at 10.08 a.m.)

4 THE COURT USHER: All rise.

5 Please be seated.

6 PRESIDING JUDGE FREMR: So we got good news that we can proceed.

7 So, Mr Bourgon, you have the floor.

8 MR BOURGON: (Interpretation)

9 Q. Mr Witness, we are back.

10 And, Mr President, we are very sorry about this hitch, but we did tests on the Friday,
11 yesterday evening and this morning to make sure that everything was working correctly.
12 Now, Mr Witness, you have the map on your screen and it is the same map as the one to
13 your right, so please mark camp Epo on the screen in front of you, just place a small mark
14 there.

15 You can place an X and then circle it, and then put the figure 1 next to the X.

16 So for the record that would be Epo camp.

17 (Redacted)

18 (Redacted)

19 Please wait.

20 PRESIDING JUDGE FREMR: Ms Luping.

21 MS LUPING: Mr President, we are in public session as far as I'm aware and this -- the
22 last question will need to be redacted. If we could move into private session.

23 PRESIDING JUDGE FREMR: Yes, I share this proposal. So let's redact the last question
24 and we then will have to move into private session.

25 (Private session at 10.10 a.m.) *(Reclassified partially in public)

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

2 PRESIDING JUDGE FREMR: Thank you, Ms Luping, for your intervention.

3 Mr Bourgon, you may proceed.

4 MR BOURGON: (Interpretation) Thank you, your Honour.

5 Q. Mr Witness, on that map in front of you on the screen, can you see Kisembo's house?

6 A. Yes, I can see the sector in which Kisembo lived.

7 Q. Mark a small X at the location where Kisembo's house was. I would also like you
8 to make a circle around that X and put the number 2 next to it.

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

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14 (Redacted)

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16 (Redacted)

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24 Q. (Overlapping speakers)

25 THE INTERPRETER: Mr President, if the counsel and witness could respect the

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1 PRESIDING JUDGE FREMR: Ms Luping, any objection?

2 MS LUPING: No objection, Mr President.

3 PRESIDING JUDGE FREMR: Just a question to -- two questions to court officer. The
4 first one is it really necessary to always to put also the date or if we exhibit today, I think
5 for the next cases? And the second question, what number should be assign to this
6 exhibit because I guess we, at the moment we have OTP number, so...

7 THE COURT OFFICER: The document will bear the number DRC-REG-0001-0012. The
8 date is not necessary for the record as I will fill the metadata of the document in.

9 PRESIDING JUDGE FREMR: Okay. So this document is admitted into evidence as a
10 Defence exhibit and the number has already been pronounced by the court officer.
11 Mr Bourgon, you may proceed.

12 MR BOURGON: (Interpretation) Thank you, your Honour.

13 Q. On the map in front of you -- in fact, you can direct the court usher so that her -- she
14 can shift the map to the location (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 Is it possible to delete the marks that have been made on the map?

19 PRESIDING JUDGE FREMR: Ms Luping.

20 MS LUPING: Mr President, it's just another question out of -- again out of fairness to the
21 witness to avoid any kind of confusion as to locations. I repeat I understand the exercise
22 we're seeking to do here or that my learned friend is seeking to do, but there is the larger
23 map next to him. It may be easier for him, if this is a very different location to the prior
24 two locations he's already marked, to first look at the bigger map before identifying the
25 precise point that has been now asked of him.

1 PRESIDING JUDGE FREMR: Yes, as I already indicated before, yes, I have no problem
2 with this. I think it could facilitate it. Would be even beneficial for Defence to speed up
3 witness orientation.

4 So, Mr Witness, after a question is put to you, you can first orient, to find the point on the
5 big map and then we will focus the electronic one on the point you showed.

6 MR BOURGON: (Interpretation)

7 Q. The location that you have marked on the large map, can you see it on the screen?

8 (Redacted)

9 (Redacted)

10 Q. Can you see the location you have just marked on the large map?

11 A. Yes.

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 And then at the bottom right of the screen, please write down P-17.

16 MR BOURGON: Mr President, I would like a screenshot to be made and this document
17 tendered into evidence.

18 PRESIDING JUDGE FREMR: Ms Luping, any objection?

19 MS LUPING: No, Mr President. No objection.

20 PRESIDING JUDGE FREMR: Okay, then this electronic version annotated by -- of the
21 map annotated by Mr Witness is admitted into evidence as a further Defence exhibit.

22 Mr Bourgon, you may proceed.

23 MR BOURGON: (Interpretation) Thank you, your Honour.

24 Q. Mr Witness, on the map in front of you where you have marked the number 3, can
25 you see Thomas Lubanga's residence?

1 A. No.

2 PRESIDING JUDGE FREMR: Ms Luping.

3 MS LUPING: Mr President, again to avoid confusing the witness as to locations that are
4 being sought, if he could first be directed to the larger map instead of this very small
5 segment of the map.

6 PRESIDING JUDGE FREMR: Yes. To avoid any further disputes on that I would like to
7 support this and take it as a common, you know, approach.

8 So always, Mr Witness, you always can start with the big map and according with your
9 indication of the point concerned we will focus the electronic version on this point.

10 MR BOURGON: (Interpretation)

11 Q. Now, Mr Witness, can you see Mr Thomas Lubanga's residence on the large map?

12 A. Thomas Lubanga's residence at that time was not far away from Commander
13 Kisembo's residence.

14 Q. Can you see that location on the large map?

15 A. Yes.

16 Q. Can you see it on the small map on the screen?

17 A. No.

18 MR BOURGON: I would like the screenshot of the first map where he marked points 1
19 and 2 to be displayed on the screen.

20 PRESIDING JUDGE FREMR: Hold on, Mr Bourgon. I think we are close to meeting
21 your require -- and I guess you would like to erase the points made, or do you want to
22 keep the points made?

23 MR BOURGON: (Interpretation) No, not at all. I simply want the exhibit which was
24 previously marked to be displayed once again.

25 Q. Mr Witness, let us go back to the large map. You can see Thomas Lubanga's

1 residence on the large map?

2 A. Yes.

3 Q. And you can locate it on the exhibit in front of you?

4 A. Yes.

5 Q. Can you place a mark on that map. And I would like to ask you to place the
6 figure 4 next to it.

7 For the court reporters I would like to point out that the witness annotated the first map
8 where he marked points 1 and 2, and now he has placed number 4, which is Thomas
9 Lubanga's house. I would like a new screenshot to be made and tendered into evidence.

10 PRESIDING JUDGE FREMR: Ms Luping.

11 MS LUPING: No objection, Mr President.

12 PRESIDING JUDGE FREMR: So again, the last version of the electronic map annotated
13 by Mr Witness by point 4 is admitted into evidence as a further Defence exhibit.

14 In this connection, Mr Bourgon, what was preventing you from, you know, making all
15 those points in one piece? Because we just jump to the second map and then we are now
16 returning to the map. Wouldn't it be easier just to ask Mr Witness on all those points in
17 one?

18 MR BOURGON: The reason, Mr President, is that I did not expect to have a marking
19 away from this first screen and I expected even less to have the fourth marking to come
20 back on the first one.

21 PRESIDING JUDGE FREMR: All right.

22 MR BOURGON: (Interpretation)

23 Q. Mr Witness, in front of you you have a map with three marks, the first one is camp
24 Epo; is that correct?

25 A. Yes.

1 Q. The second is Kisembo's house; do you agree?

2 A. Yes.

3 Q. And number 4 is Thomas Lubanga's residence; is that correct, Witness?

4 A. Yes, it was in that sector.

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 Q. Monsieur le témoin --

14 THE COURT OFFICER: Mr Bourgon, sorry to interrupt, but you really need to slow
15 down, please.

16 PRESIDING JUDGE FREMR: Yes, Mr Bourgon. I got again, you know, a message from
17 interpreters. They have a problem, there is overlapping again, so please -- I know that
18 you are making maximum effort to speed up your examination, but still you should avoid
19 this.

20 MR BOURGON: (Interpretation) I'm sorry, Mr President. I was the only one speaking.
21 I simply wanted to place the number on the record.

22 Q. I will read out your answer to the question, Mr Witness. And the question was put
23 to you on page 10. I'm sorry, there is an error in the number. (Redacted)

24 (Redacted)

25 (Redacted)

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13 Q. I'll now go on to another subject and I will allow the Court -- or leave it to the Court
14 to compare your two answers.

15 (Speaks English) I'm not sure now what I have to do or not to do. I've read the transcript,
16 the page number, the line number and the description of what it was. I'm not sure if I
17 have to ask something else in terms of making sure that this is on the record of the Court.

18 PRESIDING JUDGE FREMR: But I think it was okay. At least from my part I don't see
19 any shortcoming in that.

20 MR BOURGON: Thank you, Mr President.

21 Q. (Interpretation) Witness, I would like to ask you a few questions concerning the
22 notion that -- or, the concept that you spoke about yesterday, that of people who assist the
23 commander within the unit. In your testimony on several occasions you refer to T3 and
24 T2. What is that exactly?

25 A. Those are where we have the UPC organisation, you have the general staff, you

1 have sectors and you have brigades, and within those units you have Ts which are the
2 representatives who carry out liaison with the Gs, who are in the general staff.

3 Q. That's exactly my point. I would like to know the Gs, where are the Gs exactly?

4 A. These are what we call the Gs. They are the ones who are at the general staff.

5 Q. So it's the general staff?

6 A. Yes.

7 Q. And you say it was where?

8 (Redacted)

9 (Redacted)

10 Q. And you're aware of the -- another -- the S. Where do you find the S?

11 A. The S that I knew in the UPC were in contact with the battalions.

12 Q. So I put it to you, Witness, that -- well, I want to be certain, to be honest, that when
13 you speak about a T you're speaking about a person who is at the brigade level according
14 to you; is that correct?

15 A. I know that they're above the brigade, there's the representative, the legal
16 representative above -- and above that there's the G. That's what I know.

17 (Counsel confer)

18 MR BOURGON: (Interpretation)

19 Q. In your testimony you refer to Ts, to people who have a letter T. What I would like
20 to know, these people where exactly do you find them? At what level in the hierarchy
21 do you find them?

22 (Redacted)

23 (Redacted)

24 (Redacted)

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4 (Open session at 11.01 a.m.)

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

6 PRESIDING JUDGE FREMR: Since I was informed that the numbers assigned to some of
7 the exhibits in this session was not correct, I think there is now a good chance to correct
8 those numbers, so now I would like to ask the court officer to read out the proper
9 numbers, please.

10 THE COURT OFFICER: Thank you, Mr President.

11 The document with the marks 1 and 2 will bear the number DRC-REG-0001-0013.

12 The document with the mark 3 will bear the number DRC-REG-0001-0014.

13 And finally, the document with the marks 1, 2 and 4 will bear the number

14 DRC-REG-0001-0015. Thank you.

15 PRESIDING JUDGE FREMR: Thank you.

16 Mr Bourgon, you would like to say anything because you are still on your feet?

17 MR BOURGON: (Interpretation) A point, your Honour, I would like to know how
18 much time will be accorded in the session. Because of technical reasons, we'd like to
19 know how much time I have available to me because of the technical difficulties that were
20 encountered. If we can go over that when coming back, but I'd just like to have an idea.

21 THE COURT OFFICER: Mr Bourgon, you have used 1 hour and 6 minutes this session,
22 so for a total of 2 hours and 40 minutes.

23 PRESIDING JUDGE FREMR: But Mr Bourgon the only issue is whether you, and I will
24 ask this question before the lunch break, whether you will need the full 10 hours. If yes,
25 it is your right, no problem. So the only issue is whether there is some chance to shorten

1 your cross-examination, that could, you know, have some impact on our further schedule.

2 But if you are, which you are fairly entitled, you will insist on your 10 hours, then we will

3 have to shorten the launch break. But I will ask, as I said, before the lunch break.

4 Now we will break for 25 minutes and we will adjourn and come back at half past 11.

5 THE COURT USHER: All rise.

6 (Recess taken at 11.04 a.m.)

7 (Upon resuming in open session at 11.32 a.m.)

8 THE COURT USHER: All rise.

9 Please be seated.

10 PRESIDING JUDGE FREMR: Before we start I was told, Ms Luping, you would like to

11 add something. No? Okay, that's fine. So maybe it is just some miscommunication.

12 Then, Mr Bourgon, you may proceed. And we are at the moment in open session. Do

13 you want to move into private? I assume it would be about some, you know, personal

14 involvement of Mr Witness that could reveal his identity that would be for sure better to

15 move into private, subject to your further questions.

16 MR BOURGON: (Interpretation) I do not think so, your Honour, for the next set of

17 questions.

18 PRESIDING JUDGE FREMR: Okay. Then let's proceed in open session.

19 MR BOURGON: (Interpretation)

20 Q. Mr Witness, before the break we were saying that all the soldiers assembled in Lalu

21 and Commander Salumu addressed them; is that correct?

22 A. Yes.

23 Q. He then explained the purpose and functioning of the operation; is that correct?

24 A. Yes.

25 Q. In your testimony you used a term kupiga na kuchaji. I'm sorry if my

1 pronunciation is incorrect, but did you use that term?

2 A. Yes.

3 Q. My first question is to put it to you is that that expression is neither Swahili, Lingala,
4 Kinyarwanda; is that correct?

5 A. I do not know the origin of those words, but they were used in the UPC.

6 Q. It was not the first time you heard that expression in Lalu; is that correct?

7 A. With regard to the operation that we had to carry out it was in Lalu that I heard that
8 expression.

9 Q. I put it to you that you had already heard that expression before.

10 A. Those who were members of the UPC used those words, yes.

11 Q. And when you look at the structure of that word you agree that it can be split into
12 two parts; isn't that correct?

13 A. If you look at it that way, yes.

14 Q. I put it to you that the word "kupiga" means to strike or to attack; is that correct?

15 A. Yes.

16 Q. And would you agree that "na kuchaji" can mean to charge; is that correct?

17 A. Yes, indeed.

18 Q. And when you put the two words together it does not in any way relate to pillaging;
19 isn't that so?

20 A. Wh1en I heard that expression and the way it was used, it alluded to pillaging.

21 Q. My question concerns the words. Which part of that word refers to pillaging?

22 A. I am saying that I do not know the etymology or the origin of the word, but when I
23 was in the UPC they used that expression to mean strike and pillage.

24 Q. Mr Witness, I have information provided -- that will be provided by other witnesses
25 during this trial who will say that pillaging was not part of that expression "kupiga na

1 kuchaji." Would you agree with them?

2 PRESIDING JUDGE FREMR: Ms Luping.

3 MS LUPING: Mr President, I think I -- I did let my colleague continue with his questions,
4 but at this stage we're getting argumentative with the witness. The question has been
5 asked, it has been answered, and frankly it is not for this witness to comment on the
6 information that apparently is going to be brought by subsequent witnesses which may or
7 may not, in fact, be brought by subsequent witnesses. And it should not be simply also
8 presented as if it is fact.

9 PRESIDING JUDGE FREMR: May I take it as an objection?

10 MS LUPING: Indeed, Mr President.

11 PRESIDING JUDGE FREMR: Yes, I sustain this objection. In my view, Mr Witness
12 explained how this term was understood, at least my him.

13 And I think the further -- the last question from you, Mr Bourgon, I found it
14 argumentative, so please move on.

15 MR BOURGON: (Interpretation)

16 Q. Mr Witness, the expression "kupiga na kuchaji" we can see that it is in two parts, and
17 I put it to you that it is a military expression referring to the various phases of the attack?

18 A. As I have already pointed out, I learnt about that expression in the UPC. And
19 when it was used, not only by me, but even senior officers were using that word, it simply
20 meant pillage, pillaging, that is to attack and pillage.

21 Q. Would you be surprised to hear that other people have a different understanding of
22 that word?

23 MS LUPING: Objection.

24 PRESIDING JUDGE FREMR: Sustained.

25 Mr Bourgon, you are not respecting my previous order. Please move on. Please leave

1 this issue. Otherwise we have completely new angle from which you can put the
2 question, but otherwise you were just, in fact, repeating the same question in a slightly
3 different matter, but in the substance it was the same question like in the past.

4 MR BOURGON: For the record -- Mr President, I will of course move on and I will abide
5 by the Chamber's guidance. For the record, I must say that I believe it is appropriate for
6 me to suggest to the witness that other soldiers beside him might have had another
7 understanding and he can answer yes or no.

8 But I will move on, Mr President.

9 Q. (Interpretation) Mr Witness, when you referred to the words used by Salumu to
10 indicate that there were women in Mongbwalu, I put it to you that you misunderstood
11 those words and they never referred to rapes. Would you agree with me?

12 A. If I wanted to talk about rapes, I -- I would have used the word "rape." He just said
13 that there you will have women. He didn't add any other thing. That is all I heard.

14 Q. Lastly, the Presiding Judge asked you a question during your testimony relating to
15 the fact that you did not receive any salary from the UPC. Do you remember the
16 question?

17 A. Yes.

18 Q. And I put it to you that the words used by Salumu to the effect that you will become
19 rich were not in any way related to pillaging; do you agree with me?

20 A. When Salumu used those words he was the only one who knew what he meant by
21 them, and considering that we had different levels of education and although we were
22 from different regions, each person interpreted those words in their own way.

23 Q. After Salumu's speech you left to go and attack Mongbwalu; is that correct?

24 A. Yes.

25 Q. You travelled from Lalu to Mongbwalu on foot?

1 A. Yes.

2 Q. And this road was difficult, that is the road between Lalu and Mongbwalu; is that
3 correct?

4 A. Yes.

5 Q. And, in fact, can you confirm that you had to cross a forest just before reaching the
6 (Redacted)

7 A. Yes.

8 Q. And at the time of the events it was the rainy season; isn't that correct?

9 A. Yes.

10 PRESIDING JUDGE FREMR: Ms Luping.

11 MS LUPING: (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted) It's just a request

15 for caution for the subsequent questions. Otherwise if, with your leave, if we could go
16 into private session.

17 PRESIDING JUDGE FREMR: Yes. First of all, (Redacted)

18 (Redacted)

19 And for the future, subject to your further questions, you know, we have to be very
20 vigilant, Mr Bourgon, so do you think it is maybe better for you maybe not to break your
21 examination to move into private?

22 MR BOURGON: I disagree, Mr President. There's a lot of soldiers moving from Lalu to
23 Mongbwalu. The fact that the road is difficult, the fact that it is rainy season, the fact
24 that -- all this has nothing to do with identifying the witness. And I disagree. But I will
25 gladly move into private session and stay there for the remainder of the testimony. I

1 have no problem, Mr President.

2 PRESIDING JUDGE FREMR: Ms Luping.

3 MS LUPING: Mr President, the concern was not with the journey between Lalu and
4 Mongbwalu, which is why I allowed those questions, or I did not object. The concern or
5 the objection relates to the precise location in Mongbwalu. I'm not going to repeat it
6 again. The precise location in Mongbwalu. The witness indicated where in Mongbwalu
7 he reached. A question was asked about that location in Mongbwalu that was reached.
8 That is what I would like to indicate is identifying of the -- with this witness because it is
9 not so many units indeed that were ordered to go to this precise location.

10 PRESIDING JUDGE FREMR: Okay. So if you are not sure, Mr Bourgon, I think it will
11 be maybe better to move into private just to keep your hands free.

12 So let's move into private session now.

13 (Private session at 11.46 a.m.) *(Reclassified partially in public)

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

15 (Redacted)

16 (Redacted)

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5 Q. I will move on to something else, Mr Witness.

6 Now, you had the opportunity to view a video on what happened in Mongbwalu after the
7 attack; is that correct?

8 A. I have seen a number of videos, yes.

9 Q. Among them, do you remember seeing a video depicting the things that happened
10 in Mongbwalu in the days following the attack?

11 A. I am not able to ascribe a date to the videos, but yes, I did see some videos on
12 Mongbwalu.

13 Q. I will have the opportunity to show you the video, but what you're telling the Court
14 is that from all the videos that you were shown you are not able to assign a date to the
15 videos, to any of the videos; is that correct?

16 A. What I know is that it could only have happened after Mongbwalu was captured by
17 the UPC. That is all I can say. But I cannot give you a month or a date in relation to the
18 videos.

19 PRESIDING JUDGE FREMR: Mr Bourgon.

20 Yes, Ms Luping.

21 MS LUPING: Just out of fairness to this witness, he's being asked very specific questions
22 about dates of videos that he has not actually been shown yet. He's been shown a
23 number of videos, as Mr Bourgon is aware of, during the course of his preparation. He
24 has commented on a number of videos. The question being asked is frankly overly
25 broad.

1 If Mr Bourgon would like to ask a date of the witness, then the witness should be shown
2 the video so that he can situate himself, to be fair to him.

3 PRESIDING JUDGE FREMR: Mr Bourgon, I was even thinking whether we couldn't
4 move into public session, but if you, accordingly, with Ms Luping's proposal, would move
5 into more specific questions, then we probably will have to stay in private, so it depends.

6 MR BOURGON: Mr President, regarding private or closed session, I'm willing to go
7 private all the way. I let the Chamber rule whenever that is appropriate or not because I
8 don't want to waste any time.

9 However, in terms of more specific question, the witness was shown videos by the
10 Prosecution during the 13 days he spent with the Prosecution before his testimony, and
11 I'm asking him in general whether he could say -- if he could say when these videos were
12 made, and he just confirmed that they were made after the attack. That's all I was
13 looking for and I'm moving on, Mr President.

14 PRESIDING JUDGE FREMR: So maybe try to move into open session now subject to
15 your further questions.

16 MR BOURGON: No, Mr President. I would prefer to stay in private session.

17 PRESIDING JUDGE FREMR: Okay.

18 MS LUPING: Mr President.

19 PRESIDING JUDGE FREMR: Ms Luping.

20 MS LUPING: I just want to remind -- this is the second time that Mr Bourgon has
21 referred to the number of days this witness has spent with the Prosecution in preparation.
22 For the sake of the Court record I will like it clarified that there were only two days the
23 Prosecution spent questioning this witness and the rest of the days were spent simply
24 reading his materials and watching materials with a videographer. Mr Bourgon has had
25 the preparation note. He is quite aware of this and I think these remarks are uncalled

1 for.

2 PRESIDING JUDGE FREMR: Mr Bourgon, any comment on this clarification?

3 MR BOURGON: Absolutely, Mr President. I think this objection is wholly
4 inappropriate. If she wants to take that in re-examination, she can do that, but the fact of
5 the matter is I have a record and it says how many days there were meetings between
6 representatives of the Prosecution and the witness.

7 PRESIDING JUDGE FREMR: But I didn't take it as an objection. I just took it as a
8 clarification which I think seems to be proper.

9 Please, let's move.

10 MR BOURGON: (Interpretation)

11 Q. Mr Witness, let's move on. And I would like to show you a video on Mongbwalu
12 at some point, but before that, have you seen several videos on Mongbwalu as far as you
13 can recall?

14 A. No.

15 Q. Earlier on I asked you whether you were unable to recognize some buildings in a
16 video of Mongbwalu. Do you remember that question?

17 A. Yes, yesterday.

18 (Redacted)

19 (Redacted)

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12 PRESIDING JUDGE FREMR: Mr Bourgon, I now have to --

13 MR BOURGON: I think the moment is appropriate for a break.

14 PRESIDING JUDGE FREMR: Exactly, but before the break I would like to, again, as I
15 indicated, verify. Because according to my counting, and maybe the court officer could
16 correct me if I am wrong, you exhausted until now 4 hours. Give me a second, I will just
17 verify it.

18 Yes, so very roughly you used 4 hours, 3 minutes. You have still 6 hours at your disposal,
19 if you insist on taking the full rest, which would mean that we, in fact, have -- if insist on
20 normal schedule, we have just four sessions which obviously is not enough to cover also
21 some possible re-X and also some questions possibly put by the Chamber. So I'm
22 returning back to my indicated question, do you think, Mr Bourgon, that you will need all
23 those 6 hours?

24 MR BOURGON: Indeed, Mr President, I will need those 6 hours. And we have no
25 objection whatsoever in sitting late, or longer lunches, or whatever is required.

1 PRESIDING JUDGE FREMR: I have to make this follow up. So as I indicated, the
2 Chamber for some reasons really would like to conclude this testimony by Wednesday,
3 which means that we will have to sit in extended hours, so we will start with the
4 shortening of our lunch break. I'm sorry for this inconvenience.
5 So we will break now, we will reconvene at 2 o'clock. And please be ready. We will sit
6 from 2 to quarter past 4. And then we will see how far we got.
7 So we are adjourned and we will reconvene at 2 o'clock.
8 THE COURT USHER: All rise.
9 (Recess taken at 1.01 p.m.)
10 (Upon resuming in open session at 2.04 p.m.)
11 THE COURT USHER: All rise.
12 Please be seated.
13 PRESIDING JUDGE FREMR: Good afternoon.
14 Mr Bourgon, you can sit down for a while because I would like to start with some short
15 guidance before we continue with cross-examination because, in light of some even minor
16 litigations, we faced during the morning sessions, I would like to make two observations.
17 First, bearing in mind the principle of the publicity of proceedings and the desirability of
18 conducting as much of this trial as possible in open session, where this is appropriate, the
19 Chamber reiterates that the parties should carefully consider that the information is in fact
20 likely to be identifying or, for the present witness, self-incriminatory before requesting
21 either private session or redactions to the public transcript.
22 Events in which a large number of people participated, or places where a large number of
23 persons gathered, may not be sufficiently unique so as to be identifying.
24 And if I am saying large number, you have to make your own adjudication in the context
25 of our case.

1 Second, the Chamber reminds parties to identify with precision and in full the ERN
2 numbers of the items used with the witness, including any relevant line or paragraph
3 numbers therein. This, we believe, will greatly assist the Chamber and indeed the parties
4 and participants in identifying the relevant portions of the items used and to be able to
5 understand at a later stage, when returning to the transcripts, the witness's comments on
6 such items.

7 Thank you.

8 And now, Mr Bourgon, you may proceed.

9 MR BOURGON: Thank you, Mr President.

10 PRESIDING JUDGE FREMR: So we are at the moment in the open session, so do you
11 think we can stay, or should we move into private in the light of my guidance?

12 MR BOURGON: Yes, Mr President, we should move in private session.

13 PRESIDING JUDGE FREMR: Okay.

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

15 (Private session at 2.07 a.m.) *(Reclassified partially in public)

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

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Trial Hearing

(Private Session)

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Trial Hearing

(Private Session)

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Trial Hearing

(Private Session)

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10 Q. So I would like to explore with you, phase by phase, the major lines of your
11 testimony that you've just confirmed together. And in order to do so I would like to get
12 you to recognize the place. So I would like to show you a map, and here we're talking
13 about an aerial view of the place, and I'm going to ask you firstly if you recognize what
14 there is on that map.

15 Your Honour, I would ask the permission to put before the other large map an exhibit
16 which we are going to ask the admission of and tendering into evidence. And this is two
17 maps, they are an aerial view. The exhibit has the number DRC-D18-0001-0464.

18 MS LUPING: Mr President, before this map is shown to the witness, I just want to note
19 for the record, as I have explained to Mr Bourgon, that the Prosecution objects to the use
20 of this image. As we indicated to Mr Bourgon, the image as disclosed to the Prosecution,
21 and released into eCourt, it is not the normal north to south orientation of the map and, in
22 our submission, if the map is shown in the way it has been disclosed to the Prosecution it
23 will only serve to confuse the witness and lead him into error. So we do object to the use
24 of this map in its current form unless it is properly orientated and at this stage it is not.

25 PRESIDING JUDGE FREMR: Give me a second, I will deliberate with my colleagues.

1 MR BOURGON: (Interpretation) Your Honour, could I answer, if I may?
2 (Speaks English) Mr President, the -- this exhibit with the number I have just used was
3 communicated to the Prosecution. First of all, I -- my colleague did inform me, when I
4 showed her the exhibit, that there was some kind of a problem with the orientation, that it
5 was not north to south, or something like that. I've looked at the exhibit that was
6 communicated to the Prosecution. I'm not sure if it is north to south, but it is in the exact
7 same orientation as the previous map that we used, the large map that we used this
8 morning, and the other maps that we have been using, and even if the orientation would
9 be wrong, which we do not agree with, the issue is whether the witness recognizes the
10 area on the map. That is the issue. And there is an electronic version. And again this
11 large version that we have is there for the specific purpose of being fair to the witness so
12 that he can have a large overview of the area, following which we will show him
13 screenshots and ask him to recognize some features.
14 I don't think there is anything wrong with proceeding in this way. And I ask that the
15 map be shown to the witness to see if he recognizes it or not.

16 PRESIDING JUDGE FREMR: Ms Luping.

17 MS LUPING: Mr President, your Honours, the other maps that have been shown
18 previously, there was no objection because they followed a normal north to south
19 orientation. I just simply repeat that it's not fair for the witness to be shown a map that's
20 upside down, or on its side. It will make it much more difficult an exercise. It should
21 be a simple task to ensure that a map is shown the right way up. It's a -- especially with
22 a satellite image, especially with the tasks of locating specific locations on the map, it just
23 make the task much more difficult for the witness unnecessarily so, your Honours.

24 PRESIDING JUDGE FREMR: Now we will shortly deliberate, or I will shortly deliberate
25 with my colleagues.

1 MR BOURGON: Mr President, I believe the map is north to south, so I don't see what
2 the problem is.

3 MS LUPING: I can also, if it assists, your Honours, I can send to the Trial Chamber --

4 PRESIDING JUDGE FREMR: Ms Luping.

5 MS LUPING: -- an image. I can -- if it assists the Chamber, I can send the image that
6 we found of a correct north to south presentation of the image and together with the
7 version that the Chamber -- the Defence is seeking to send to -- show to the witness and
8 you can see how it has been turned effectively on its side.

9 PRESIDING JUDGE FREMR: I think it's fine. Give us a moment.

10 (Trial Chamber confers)

11 PRESIDING JUDGE FREMR: So objection is overruled. We now are aware of the
12 problems which may arise, so we will carefully observe witness reaction and if we will see
13 that his, you know, comments are affected by issue brought by Ms Luping we will take it
14 into account, but at the moment we approve the use of these maps. So we can proceed.

15 MR BOURGON: I note for the record, Mr President, that this exact map was shown to
16 the witness by the Prosecution in the exact same orientation on (Redacted) in order to
17 take a statement --

18 PRESIDING JUDGE FREMR: I would like to conclude discussion on this. We still are
19 open to see whether orientation is right or wrong, and we will then take into account
20 when adjudicating witness responses, but for us it's not so highly relevant or important.
21 So we will take it into account whether the orientation is good or wrong according the
22 witness's reaction.

23 Ms Luping.

24 MS LUPING: I'm not wanting to reopen the issue except to observe that the larger
25 satellite map now being shown to the witness is in the correct direction. The version

1 though on the screen you'll see will -- should differ.

2 PRESIDING JUDGE FREMR: Mr Witness, can you hear me?

3 THE WITNESS: (Interpretation) Yes.

4 PRESIDING JUDGE FREMR: So I think you even heard discussion, the exchange of
5 views. So there is pretty possible that will be different orientation of maps, big maps,
6 paper maps, compared to maps you will be shown in -- on the screen. So if you then will
7 find some troubles or you will be misled or confused, feel free to express what is problem
8 with, you know, in comparison between the big map and map on the screen, okay?

9 Mr Bourgon.

10 MR BOURGON: (Microphone not activated)

11 THE INTERPRETER: Microphone.

12 MR BOURGON: (Microphone not activated)

13 THE INTERPRETER: Microphone.

14 MR BOURGON: OTP --

15 PRESIDING JUDGE FREMR: Mr Bourgon I think you switched too late. Please start
16 your submission or your speech from the beginning.

17 MR BOURGON: Thank you, Mr President. DRC-OTP-2052-0198, which is annex 1 to
18 the witness statement of (Redacted) I would like to have this exhibit called on the
19 screen of the witness, please.

20 PRESIDING JUDGE FREMR: Court officer, on which channel we will see it? Evidence
21 2, okay.

22 THE COURT OFFICER: Mr President, the Defence is publishing its own documents so
23 they will be visible on evidence 2.

24 PRESIDING JUDGE FREMR: Thank you, court officer. I can see it now.

25 MS LUPING: Just a question for clarification.

1 PRESIDING JUDGE FREMR: Ms Luping, yes.

2 MS LUPING: Yes, Mr President. I see this, indeed, is the exhibit that the Prosecution
3 showed where we did show it in the correct north or south orientation which differs to the
4 Defence exhibit that they had originally been proposing to show him on the small screen.
5 My one question though is also just to ensure that this is -- remains -- I know we're in
6 private session, that it remains a confidential document that cannot be seen by the public
7 because this is, indeed, as an annotated version.

8 PRESIDING JUDGE FREMR: I suppose so. Am I right, court officer?

9 THE COURT OFFICER: Just for clarification, Ms Luping, this picture over there can be
10 seen by the member of the public gallery, right?

11 MS LUPING: That's correct.

12 THE COURT OFFICER: Okay.

13 MS LUPING: The large satellite map, which is not annotated, is not a problem, but I just
14 observe that the version which is in the correct orientation, which is the Prosecution's map,
15 has annotations on it and it's a different document to the one that the Defence was
16 showing which has no markings.

17 THE COURT OFFICER: Thank you very much. Thank you.

18 MR BOURGON: (Interpretation)

19 Q. Mr Witness, in front of you you have a picture. I would like to confirm with you
20 that you remember being shown -- I'm speaking about on your screen, it's on your screen.
21 Do you remember being shown this picture on which you made certain markings in
22 (Redacted); is that correct?

23 A. I remember that it was the first one which was here was presented to me, yes.

24 Q. Can you confirm that the picture, the bigger picture which is next to you on the two
25 big screens, that they represent the same region?

1 A. Yes.

2 Q. I see that you're looking at your screen. I would like you to look at the two posters.

3 Can you confirm that those two posters are exactly what you have on your screen, yes?

4 A. Yes.

5 Q. You recognize this place, do you not?

6 A. Yes.

7 Q. You recognize Mongbwalu?

8 A. Yes, it's the town of Mongbwalu.

9 Q. You recognize Sayo?

10 A. Yes.

11 Q. You recognize the airport of Mongbwalu?

12 A. Yes.

13 MR BOURGON: (Interpretation) Your Honour, now I would like to take an exhibit

14 which has no annotation, the exhibit about which we want to -- to which we want to draw

15 the attention of the witness. The number is the one I mentioned a moment ago,

16 DRC-D18-0001-0464. Unlike the exhibit which is on the screen this one has no

17 annotations whatsoever, and for the moment it's a public exhibit.

18 PRESIDING JUDGE FREMR: All right. We can see it.

19 MR BOURGON: (Interpretation)

20 Q. So, Witness, from the picture that you have in front of you, can you tell me -- well,

21 I'm going to use the smallest part of it and enlarge it and ask you if you recognize some of

22 these pictures. Now, I would like to have the first screenshot which is in the number that

23 I gave. We have control of it currently in order to show the first screenshot.

24 Witness, you recognize -- do you recognize this picture?

25 A. Yes.

1 Q. We can't ask you to write -- if I've understood, we can't ask you to write on this
2 exhibit because we control it, but I would ask you to confirm that where there's the word
3 "Sayo Cantine" that the building immediately next to it, I put it to you that that's
4 Mongbwalu church -- correction, Sayo church. Would you agree with that?

5 A. Yes.

6 Q. And if I go further down below Sayo Cantine you can see a long building. And I'm
7 going to put the arrow on it, on the building in question, and I put it to you that that is the
8 school of Sayo, Sayo school. Do you agree with that?

9 A. When I went through, I didn't know what that building was used for, but I
10 recognize the place.

11 Q. Good.

12 Your Honour, I would like to ask for each of these photos and screenshots be tendered
13 into evidence. We can do it separately, or alternatively we can do it with one number
14 with the seven different screenshots that are going to follow.

15 PRESIDING JUDGE FREMR: Ms Luping, any objection?

16 MS LUPING: Provided it's taken step by step carefully, then no objection, Mr President.

17 PRESIDING JUDGE FREMR: Okay. So it will be seven, am I right, seven exhibits?

18 MR BOURGON: (Interpretation) Indeed.

19 THE COURT OFFICER: I will also ask the Defence to upload those seven documents in
20 Ringtail, please.

21 MR BOURGON: Mr President, should I ask for the -- each document one by one or at
22 the end?

23 PRESIDING JUDGE FREMR: I think we can do it later on because we still can decide on
24 this even tomorrow morning. So please your request is well noted. And maybe remind
25 us tomorrow morning, and then please follow the request made by court officer in the

1 meantime. Is it okay?

2 So now you may proceed.

3 MR BOURGON: (Interpretation) Thank you very much, your Honour.

4 Q. Witness, I'm now going to show you a second picture, this is taken from the same
5 map, and you will see that what you currently see is what was at the bottom of the first
6 picture, that is to say the building that you recognized but that you didn't know what its
7 use was for at the time is now -- that building is now at the top of the screen. So what do
8 you see on this picture now, Witness?

9 A. Well, this is another part of Sayo.

10 Q. And in that part of Sayo, are you able to show us where the dispensary is?

11 A. Here on the picture it's difficult because the houses look like each other from above.

12 Q. Do you recognize where there are the words "Sayo Kati (phon)", do you see these
13 words?

14 A. Yes.

15 Q. (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

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Trial Hearing

(Private Session)

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19 (Redacted)

20 Q. I would ask for this evidence -- this to be tendered into evidence, this is image
21 number 4, taking into account the comments of the witness.

22 I'm now going to show you another --

23 PRESIDING JUDGE FREMR: Mr Bourgon, I would like to ask Ms Luping on her
24 position about your proposal, your motion concerning image number 2, 3 and 4.

25 MS LUPING: No objection so far, Mr President.

1 PRESIDING JUDGE FREMR: Okay, so those three images are admitted into evidence
2 as a -- sorry.

3 MR BOURGON: Mr President, this is the fourth image.

4 PRESIDING JUDGE FREMR: Yes, I think these -- I said number 2, 3 and 4 will be
5 admitted into evidence as a Defence exhibit. But the problem is now we just got a
6 message that -- from the team that use of arrows will not be reflected subsequently in the
7 transcript.

8 MS LUPING: That was the point I was just going to raise too, Mr President, that I was
9 just going to ask for clarification because these points being indicated are indeed not being
10 captured.

11 PRESIDING JUDGE FREMR: So at the moment we have on the record that witness
12 allegedly recognized or identified places you were asking him to identify, but the
13 evidence will not cover that, so we will have just --
14 (Pause in proceedings)

15 PRESIDING JUDGE FREMR: Yes, at least, there are some - I was told it's true - there are
16 at least some descriptions from your part you also described, you know, there was main
17 road and some details, so it may be should prove the identification because you said you
18 can see this building then on the left side, so you made some description and witness
19 confirmed that.

20 Ms Luping.

21 MS LUPING: Yes, Mr President, it was just to try to facilitate the process. One
22 suggestion would be also the witness is here, we do have the capability of marking up on
23 these various images as he has already done previously, he could -- he could, indeed,
24 mark up the routes that the -- that Mr Bourgon is seeking to indicate to him so that there's
25 clarity, especially for this last image, Mr President, where there is no similar building to

1 orient exactly the route that is being referred to.

2 PRESIDING JUDGE FREMR: Mr Bourgon, I am afraid if you want to be really precise,
3 you will have to return back and to -- or, do you have any better proposal?

4 MR BOURGON: Mr President, I agree. The problem is a technical problem. We
5 cannot -- if we use the documents themselves, we do not have the technical capability. It
6 is the first time we do this exercise. What I propose is tomorrow morning if we can
7 maybe, if we have time at the end, then I can go back to these and have him do the
8 markings.

9 But for me what is important at this stage is for the Trial Chamber and the witness to have
10 this image when you will hear his testimony, then you can see exactly what he's talking
11 about because you will have seen the pictures.

12 PRESIDING JUDGE FREMR: So then maybe I understand it it would be just okay with
13 you as it is now. And I think there were even no gaps that -- you know, witness I think
14 identified all those points with no hesitation, so I think it's -- I would say it's not doubtful
15 between the parties. Am I right, Ms Luping?

16 MS LUPING: Well, as we've not been given an opportunity to look at these specific
17 seven extracts that the Defence is now showing to this witness, we've had the large
18 satellite images, but not the smaller images, then it is hard for me to say at this point that
19 we would agree with the precise points being shown. I'd have to -- we'd have to have
20 time to -- to review that carefully, Mr President.

21 So, at this stage, we have no comment on the accuracy except to say that as for the, you
22 know, the admitting of the -- the exhibits themselves, at this stage, we're not objecting.

23 PRESIDING JUDGE FREMR: I also got now proposal from our court officer that the
24 Defence could send us the document by email, those documents, then we will then
25 publish it and then the witness could mark it then. Would it be okay with you?

1 MR BOURGON: Indeed, Mr President. And that's what I, if I have time at the end,
2 I can take this exercise and mark the exhibits one by one if they are sent to the court usher.

3 PRESIDING JUDGE FREMR: Okay. Then let's -- Ms Luping.

4 MS LUPING: Yes, Mr President, I just wanted to make a request. This is the second
5 time now though that exhibits are being shown to the witness where we have not actually
6 been shown these extracts. I mean, we have been sent the larger satellite map, but when
7 the witness is being shown sort of focused extracts, which have been in the possession of
8 the Defence quite clearly for some time, that we would ask simply as a matter of courtesy
9 not, you know, even quite apart from the Chamber's order that it should be 24 hours in
10 advance, that we be provided with this otherwise, as you see, we're having delays when
11 we're asked for our opinion on exhibits that we have precise extracts we've not seen
12 before.

13 As I say, this is the second time now. We had markings on roads that we had not
14 been -- had the courtesy to have sent to us in advance so that we'd be prepared for -- to
15 make submissions on them.
16 We ask if there are any similar exhibits that we actually have, you know, the Defence
17 abiding by the Court's order and sending them -- sending them to us 24 hours in advance.
18 If there are additional exhibits, we ask that they be shown tomorrow so that we are given
19 sufficient time to review them. Thank you, Mr President.

20 PRESIDING JUDGE FREMR: Mr Bourgon, I really believe, not only that it's not in
21 accordance with our Conduct on Proceedings Protocol, but moreover I think it obviously
22 causes some delays, so I think it's even in your interest to disclose those and maybe the
23 further excerpts, extract, pictures to the Prosecution to facilitate the future process.

24 MR BOURGON: Thank you very much, Mr President. I will do my best to abide with
25 the Chamber's guidance. I do have to say that I completely disagree with my colleague.

1 They have been working on this case for 10 years. This is a criminal case, criminal law
2 case, and they know about Sayo for 10 years. And they have received the maps. There
3 is no surprise whatsoever in parts of a map being shown to the witness, especially that
4 this comes from something that they have been using with the witness when they did this
5 statement.

6 So, Mr President, this comment is absolutely not helpful. We are doing our best. These
7 exhibits were produced last night or should I say this morning because this is the type of
8 schedule we are working on, Mr President. I can go on now.

9 PRESIDING JUDGE FREMR: But anyway, I would like to ask you to adhere to our
10 Conduct of Proceedings Protocol if it's realistic.

11 MR BOURGON: We are doing our best and we will do everything in our power to abide
12 by the Chamber's guidance.

13 PRESIDING JUDGE FREMR: Ms Luping.

14 MS LUPING: Sorry, Mr President. I just can't leave that one remark left alone I'm
15 afraid. These exhibits have been with the Defence clearly, they have it prepared to show
16 today. There was absolutely no reason why they could not have been shared with the
17 Prosecution yesterday. The satellite image was able to be shown to us and shared with
18 us. There's no reason for the extracts not to be shared with us. It's not a question of -- it
19 is a question, in fact, of surprise because we're being asked to look at what, as you can see,
20 is an extraordinary large satellite map to focus in on specific locations and buildings
21 within this large satellite map to comment immediately.

22 And I'm afraid there is also no excuse whatsoever for the roads. They could have also
23 been shared previously. They've been with the Defence. And I'm afraid lack of time for
24 preparation is no excuse. Witness 17 has been allocated with Mr Bourgon since the very
25 beginning. He's had notice of this witness coming, so there's no excuse for a lack of

1 preparation.

2 PRESIDING JUDGE FREMR: Let's leave it at that and please move.

3 Mr Bourgon, continue.

4 MR BOURGON: Thank you, Mr President.

5 Q. (Interpretation) Mr Witness, I want to draw your attention to the screen before.

6 You identified the road to Sayo and which goes towards the factory; is that not the case?

7 A. Yes.

8 Q. But we do not see the factory on this picture, correct?

9 A. The buildings are not visible.

10 Q. I will now show you two additional pictures. It will be a picture of the same as we
11 move further down. Do you recognize this picture as being the next one to the one
12 which you had just seen?

13 MS LUPING: It appears to me, Mr President, this picture has been turned. It is not
14 following the same logical line as the other images have. If we can understand from the
15 Defence how, to what extent this has been turned, this image has been turned. Because if
16 you see the -- the image on the far left it does appear to be following a different
17 orientation to the road that we saw previously. I just would not want this witness to be
18 confused or led -- misled into error, your Honours.

19 PRESIDING JUDGE FREMR: If it's technically possible to follow the orientation taken
20 with the previous pictures it would be, I think, fine. Is it now -- is it now okay?

21 MR BOURGON: Mr President, I know what my colleague is trying to achieve here, but
22 we made a point of spending large amounts of money to have a large exhibit to be fair to
23 the witness. And the orientation here is not changed. And it's a picture, an image that
24 comes from the large map. If the witness complained that he could not recognize, then
25 there would be a point for my colleague to raise. I think that should always be the

1 starting point. Is there a problem for the witness? Is there's something he doesn't

2 recognize? Is he confused, or is it only the Prosecution that is confused?

3 PRESIDING JUDGE FREMR: Mr Bourgon, if technically it's not a problem I guess to

4 turn the picture, so if we kept some orientation with the previous pictures it will be

5 desirable to keep the same one with the further images. As I said, technically it's a piece

6 of cake to turn it to the right orientation.

7 MR BOURGON: It's the same, Mr President. It is the same orientation. We don't need

8 to change it.

9 PRESIDING JUDGE FREMR: Okay. Let's move.

10 MR BOURGON: It is the same. Same north to south. I don't know what -- what you

11 want me to do more.

12 Q. (Interpretation) Mr Witness, do you recognize this image?

13 A. Yes.

14 Q. Do you recognize the link between this image and the previous image?

15 A. Yes.

16 Q. I put it to you that you can see the factory on this photograph, correct?

17 A. On the screen or --

18 Q. On the screen.

19 A. There are some sorts of buildings at the location where I know that the factory is

20 located.

21 Q. Before I get your answer, let me use the cursor to point to what we believe is the

22 factory where you were. Now we are going to move the cursor around. Is that it? Do

23 you recognize that area as being the factory where you were?

24 A. No, that's not the Kilo-Moto factory.

25 Q. Can you help us point to the factory?

1 A. The buildings of the factory cannot be seen clearly, but where you pointed to is the
2 area where some civilians used to live and work at Kilo-Moto.

3 Q. Very well. Thank you for that clarification.

4 I note for the record that the witness did not recognize the building of the factory, or the
5 witness said that the Kilo-Moto factory buildings are not appearing on this map, this
6 image.

7 But do you recognize the factory?

8 A. Well, I have said that I do not recognize the factory on this map. Where your
9 cursor was pointing does not reflect the position of the factory.

10 Q. Let's move to another map, another image. Do you recognize the image before
11 you?

12 A. Yes.

13 Q. Can you see the same image on the bigger image which is next to you?

14 A. Yes.

15 Q. Do you still recognize the road from Sayo?

16 A. Yes.

17 Q. On this picture do you see the Kilo-Moto factory?

18 A. No.

19 MR BOURGON: For the record, the witness did not recognize the factory or stated that
20 the Kilo-Moto factory does not appear on this image.

21 Q. To the top of the image, close to the road you see some blue roofs. Do you see
22 those?

23 A. Yes.

24 Q. What is that?

25 A. These are the houses I described that were built by Israelis who had come to build

1 what was referred to as maisons neuves that were built up at that time. That is what I
2 already testified to previously here.

3 Q. Do those houses have any particular significance in relation to the events that we are
4 dealing with here that took place in Sayo?

5 A. It is in those houses that the officers were lodged at that time.

6 Q. In your testimony and in material available to me, there is a term which you did not
7 use. I would like to find out from you whether you are familiar with the expression "les
8 appartements"? Do you know "les appartements"?

9 A. Yes.

10 Q. Are you able to point out on this image whether we have the place known as les
11 appartements?

12 A. I know that most of the houses there were twin houses and it must be there with
13 those blue roofs, where you have the blue roofs.

14 Q. If I were to put it to you that this was the HQ?

15 A. That's what I was just talking about. I said it is where the officers at the HQ were
16 settled. They were there.

17 (Redacted)

18 (Redacted)

19 Q. When you say "Bosco Ntaganda's camp," is that the place you are referring to?

20 A. Yes, absolutely.

21 Q. Okay.

22 MR BOURGON: I will be asking, Mr President, for the -- this picture to be admitted into
23 evidence, this image, but I have one last one which follows from this one.

24 MS LUPING: Mr President, before we move beyond this image, if we could go back to
25 that original image, with your leave, Mr President, because there's been no numbers

1 indicated. We're having a series of questions. We've had the witness be asked a series
2 of questions relating to what he can recognize and not recognize in the last two images
3 and no numbers were given by Mr Bourgon in relation to these images. So when we go
4 back to the record to check images against the responses it's going to be extremely difficult
5 to unravel it.

6 PRESIDING JUDGE FREMR: Yes, I confirm. I just see capture Sayo, number 6, but I
7 guess you will be able to provide us with some ERN numbers, Mr Bourgon.

8 MR BOURGON: (Interpretation) Yes, Mr President, with pleasure. (Speaks English)
9 The number will be --

10 PRESIDING JUDGE FREMR: Of last two please, yes. Not only the last one but last two
11 images.

12 MR BOURGON: DRC-D18-0001-0495. And this one is same number with 0496.

13 PRESIDING JUDGE FREMR: Thank you.

14 Ms Luping, any objection?

15 MS LUPING: No objection, Mr President.

16 PRESIDING JUDGE FREMR: Then those two images are admitted into evidence as a
17 further Defence exhibits.

18 You may proceed, Mr Bourgon.

19 MR BOURGON: (Interpretation) Thank you, Mr President.

20 Q. Let me now go to the next image, which is linked to the previous. Mr Witness, do
21 you recognize this image?

22 PRESIDING JUDGE FREMR: Mr Bourgon, maybe just at the very beginning please refer
23 to ERN number.

24 MR BOURGON: (Interpretation) Same number, Mr President. DRC, I repeat
25 D18-0001 and the image should be 0497.

1 PRESIDING JUDGE FREMR: Thank you.

2 MR BOURGON: (Interpretation)

3 Q. Mr Witness, do you recognize this same area with blue roofs which you referred to
4 as Bosco Ntaganda's camp?

5 A. Yes, I do recognize it as the area where Bosco Ntaganda was installed.

6 Q. Do you recognize the road leading to Mongbwalu downtown or centre of the town?

7 A. Yes.

8 Q. Towards the top of the image, to your right, there is an intersection. I will place the
9 cursor at that intersection. Do you know this roundabout or intersection?

10 A. Yes.

11 Q. Can you describe it? What is it?

12 A. We used to call this the roundabout.

13 Q. From that roundabout it was possible to go to Bosco Ntaganda's camp and to Sayo
14 as well, correct?

15 A. Yes. Yes.

16 MR BOURGON: I would like to tender this image into evidence, Mr President?

17 PRESIDING JUDGE FREMR: And I would also just to add that this roundabout is on the
18 different corner than the blue roofs, on the right part of the image.

19 Ms Luping.

20 MS LUPING: No objection, Mr President.

21 PRESIDING JUDGE FREMR: Well, this image is also admitted into evidence as a further
22 Defence exhibit.

23 Mr Bourgon.

24 MR BOURGON: For the record, Mr President, the images that have just been admitted
25 go from, if I take the last three numbers, from 491 to 497.

1 PRESIDING JUDGE FREMR: Thank you. Well noted.

2 MR BOURGON: (Interpretation)

3 Q. Now, Witness, I want to show you another image, still reflecting the illustration next
4 to you. This is image number DRC-D18-0001-0498.

5 Witness --

6 PRESIDING JUDGE FREMR: Ms Luping is on her feet.

7 MS LUPING: Mr President, I would just like Mr Bourgon to clarify when was this image
8 disclosed to the Prosecution. I have no record of it.

9 PRESIDING JUDGE FREMR: Mr Bourgon?

10 MR BOURGON: Mr President, it's an image taken from the same picture, from the same.

11 PRESIDING JUDGE FREMR: So is it just detail of the big map?

12 Ms Luping.

13 MS LUPING: Again, just to request that the Defence, if there are any additional images,
14 that they could at least, they have their case manager there, they could even be sending
15 this to us so that we are aware of any additional images that are extracted from the
16 satellite map.

17 As I say, it's difficult for us to comment on whether we agree that this is the location that
18 the Defence is putting or suggesting to the witness when we've had no prior notice of it.
19 It is, as I say, a large map with -- in a large area.

20 And I would just note for the record that this is not an appropriate way to deal with the
21 exhibits. We've had no notice, Mr President.

22 PRESIDING JUDGE FREMR: Formally you are right, but is it really such a big deal to
23 focus your attention to the detail from the big map?

24 MS LUPING: We can seek to look at the satellite map over there as well. It's simply a
25 question of timing as well, Mr President. I wouldn't have to keep standing up, objecting

1 to the fact and noting on the record we didn't receive it if the Defence just abided by the
2 Court's decision.

3 It is a large satellite map. I can try to see over there. We've just simply not had enough
4 time to be able to review it, to confirm that's the airport, if the various locations are what
5 has been put to the witness. That's all, Mr President.

6 PRESIDING JUDGE FREMR: I understood. But I am asking you is it really such a big
7 deal without this timing to recognize this detail of the big map? Because one thing is
8 formally oppose something and the other one is really to think about the impact of any
9 violation of any Rule.

10 MS LUPING: All I can say, Mr President, is I'm not in a position to state what the
11 Prosecution's position as to whether this is an accurate reflection of what is being put to
12 the witness. That's all.

13 PRESIDING JUDGE FREMR: Okay.

14 Mr Bourgon, please proceed.

15 MR BOURGON: Thank you, Mr President.

16 Q. (Interpretation) Mr Witness, do you recognize the image before you, the image on
17 your screen?

18 A. What did you say?

19 Q. Do you recognize the image before you?

20 A. Yes.

21 Q. Are you able to confirm that this is an extract from the broader picture next to you?

22 A. Yes.

23 Q. I put it to you that on this image you can see the Mongbwalu airport; is that correct?

24 A. Yes, indeed.

25 Q. Now, I would like to place the cursor at the Mongbwalu airport and ask you to

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1 confirm that it is indeed the Mongbwalu airport. Can you see the cursor?

2 A. Yes, that is the runway of the Mongbwalu airport or the strip.

3 Q. Now, when we're looking at the Mongbwalu airport, it is not Amsterdam, right, it's

4 not -- there's nothing around it, it's just a strip, correct?

5 A. Yes.

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

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7 Q. So when it comes to people who left their houses and they were shot at and they fell
8 down, you didn't see any of that, did you?

9 A. I mentioned the father and this young girl who came out of the house who was shot
10 at, that's what I saw, yes.

11 Q. But soldiers who were shooting everywhere in town and people who were coming
12 out of their houses and were shot, you didn't see any of that in Sayo?

13 A. There I was speaking about our advance.

14 Q. When you arrived, at what time exactly did you start your advance on Sayo?

15 A. When we started or when we left the factory (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

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8 (Redacted)

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12 (Redacted)

13 (Redacted)

14 PRESIDING JUDGE FREMR: Mr Bourgon, our time is over. We have to finish now.

15 So, Mr Witness, it's the end of your testimony for today, so thank you very much for being

16 attentive and focused for such a long day. Thank you very much. We will continue

17 tomorrow and as usually, I have to remind that you must not discuss your testimony, the

18 content of your testimony with anybody else.

19 So now witness may be escorted out of the courtroom.

20 (The witness stands down)

21 PRESIDING JUDGE FREMR: And I would like just very briefly address the timing of

22 tomorrow's session because so far, according to my information, Defence utilized 6 hours

23 and 15 minutes, which means that you still should have at your disposal 3 hours and

24 45 minutes, taking into account that formally we have three sessions which roughly

25 means 4 and a half hours, but you know, if we subtract time needed for procedural issues,

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1 it's even less.

2 At this time, Mr Bourgon, do you envisage that you will need all those 3 hours and

3 45 minutes?

4 MR BOURGON: Yes, Mr President.

5 PRESIDING JUDGE FREMR: All right.

6 Even if rather premature, Ms Luping, do you envisage any need for re-examination of this

7 witness?

8 MS LUPING: At this stage limited re-examination, Mr President.

9 PRESIDING JUDGE FREMR: Which means?

10 MS LUPING: 15, 20 minutes approximately at this stage.

11 PRESIDING JUDGE FREMR: Okay. And if I having taken into account that it means

12 that even if we would like to reserve some time for possible questions put by the Chamber,

13 I am afraid, and I don't want to make you sad, but that we will probably need to sit

14 tomorrow in the same regime like today. Sorry for this inconvenience, but we are really

15 forced to finish this testimony by tomorrow.

16 Ms Luping.

17 MS LUPING: Yes, I would just simply make a request, Mr President, as I had sought to

18 make during this witness's testimony today. If there are any additional exhibits that the

19 Defence has and that they must know by now that they're proposing to show this witness,

20 if they can please be disclosed today. I do not want to delay the process by having to

21 object or to seek further clarifications.

22 We certainly don't want to be surprised by any additional exhibits that have still not been

23 disclosed.

24 We have -- our case manager has sent a request for these, but I would ask that the -- that

25 you remind the Defence of their obligations pursuant to your own orders under the

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1 decision of the conduct proceedings. It's meant to be a full 24 hours. That order, Court
2 order, it's not a guidance, as Defence counsel referred to today, it indeed is an order and
3 we'd ask that it be stuck to.

4 Thank you, Mr President.

5 PRESIDING JUDGE FREMR: Point taken.

6 I know this was also taken by Defence. As I said before, it's not only the order, but it's

7 I think for the benefit even for you, Defence, so please follow this.

8 And the last thing, I would like to thank all of you, also to express our special thanks to

9 interpreters, to court reporters and to the guards who supported us during this lengthy
10 afternoon session.

11 Thank you very much and we will reconvene tomorrow half past 9.

12 THE COURT USHER: All rise.

13 (The hearing ends in private session at 4.21 p.m.)

14 RECLASSIFICATION REPORT

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

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