

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, 16 February 2016  
9 (The hearing starts in open session at 9.04 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: Court officer, please call the case.  
14 THE COURT OFFICER: Thank you, Mr President.  
15 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor  
16 versus Bosco Ntaganda, case reference ICC-01/04-02/06.  
17 And for the record, we are in open session.  
18 PRESIDING JUDGE FREMR: Thank you, court officer.  
19 Now appearances please as usually.  
20 MS LUPING: Good morning, Mr President, your Honours. Appearing on behalf of the  
21 Prosecution today are Nicole Samson, senior trial lawyer; Selam Yirgou, case manager;  
22 Paola Sacchi, legal assistant; Michala Chadimova; and myself, Dianne Luping, trial  
23 lawyer.  
24 PRESIDING JUDGE FREMR: Thank you, Ms Luping.  
25 Defence please.

1 MR BOURGON: (Interpretation) Good morning, your Honour. Good morning,  
2 your Honours. Representing Bosco Ntaganda, who is present in the courtroom this  
3 morning, Margaux Portier, case manager; Erik Cooksoon-Montin, intern; and myself,  
4 Stéphane Bourgon. Thank you, your Honour.

5 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

6 And legal representatives, please.

7 MS PELLET: (Interpretation) Thank you, your Honour. The former child soldiers are  
8 represented by Mohamed Abdou and by myself, Sarah Pellet, counsel with the Office of  
9 Public Counsel for Victims.

10 MR SUPRUN: (Interpretation) Good morning, your Honour, your Honours. Victims  
11 of the attacks are represented by the Office of Public Counsel for Victims,  
12 Anne Grabowski, associate jurist; and myself, Dmytro Suprun, counsel.

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

14 As you can see we are starting without witness, because as I usually at the beginning, I  
15 would like to address a few procedural matters.

16 First, in terms of scheduling, we will commence with the testimony shortly. And as you  
17 know we got in some time pressure, so as I indicated we will have to sit today in extended  
18 hours, which means that the first session will last until 11 o'clock, then we will sit from  
19 11.30 to 1.30 p.m., and reconvene after lunch from 3 p.m. to 5 p.m. This hopefully should  
20 enable us to finish the testimony of this witness either today or tomorrow morning.

21 Then I would like to inform Prosecution and legal representatives that Mr Bourgon  
22 provided our Chamber ex parte with two leave confirmation, sick leave confirmation and  
23 medical report that substantiate his absence. And I would like just to highlight that it  
24 was -- that our request was not any sign of mistrust to Mr Bourgon. But then just for the  
25 future, in case that we will have to adjourn, it simply has fundamental legal and

1 budgetary consequences, so in the case that we will have to adjourn for health reasons on  
2 the part of any party or participants, we will have to recommend for reasons on that.

3 So thank you very much, Mr Bourgon, for providing the Chamber those documents.

4 Then you will have seen that the Chamber's decision on in-court protective measures for  
5 Witness P-800 was issued last week ordering face and voice distortion as well as use of  
6 pseudonym during his testimony.

7 In this decision that was notified on 10 February, the Chamber deferred the Prosecution's  
8 request for special measures based on personal circumstances of the witness; namely,  
9 seeking additional breaks and questioning adapted to the witness's needs.

10 On 12 February, the VWU provided the vulnerability assessment for this witness and does  
11 not recommend any special measures according to Rule 88. However, the VWU informs  
12 the Chamber that because of the personal circumstances of this witness, he may wish to  
13 request for short breaks during his testimony.

14 The Chamber and the parties are on notice on the specific circumstances of the witness.

15 The Chamber will take them into consideration when hearing the witness and, if  
16 necessary, have additional breaks.

17 Now, during the hearing of last Friday, 12 February 2016, the Defence requested the  
18 Chamber to order the Prosecution to disclose the video recording of the preparation  
19 session with Witness P-800.

20 The Defence sent further observations by email at 2.56. The Prosecution responded to the  
21 request at 2.55 p.m. and to the Defence further observations at 3.22 both by email.

22 The Defence submitted that, first, during the preparation session the witness provided the  
23 Prosecution with, quote, "significant new information," unquote; and, second, the  
24 Prosecution obtained this information in violation of Articles 2 and 3 of the witness  
25 preparation protocol.

1 In particular, the Defence claimed that from the look and disclosure note of the  
2 preparation session provided by the Prosecution, it appears that the witness gave new  
3 information on the events in Kobu and Lipri, which are locations that were only  
4 mentioned but are not discussed in detail in the witness statement disclosed to the  
5 Defence and that the Prosecution's examining lawyer repeatedly questioned the witness  
6 on those events.

7 The Defence claimed that the new information the witness provided concerning events in  
8 Kobu and Lipri should be disclosed because it is a statement and it's recorded.

9 It's also submitted that the video recording of the preparation session is necessary to  
10 assess the method of questioning employed and the propriety of the questions put by the  
11 Prosecution.

12 The Prosecution submitted that the Defence request should be rejected because it has not  
13 demonstrated cogent reasons why access is warranted. In particular, the Prosecution  
14 submitted that contrary to the Defence assertions, the fact that Witness P-800 is expected  
15 to testify about events in the area of Kobu and Lipri was previously known to the Defence  
16 in light of what is referred to in the witness statement as well as in the summary of the  
17 witness' expected evidence. It also submitted that some of the names mentioned by the  
18 witness during the preparation were previously included in an investigator's note that  
19 was disclosed to the Defence.

20 The Prosecution further submitted that the supplementary information provided by  
21 Witness P-800 during witness preparation is comprehensively recorded in the witness  
22 preparation log and note already disclosed to the Defence on 10 February, and that further  
23 disclosure of the audio videotape is therefore unnecessary.

24 The Prosecution avers that there has been no violation of the witness preparation protocol  
25 as first the additional information provided regarding events in the Kobu, Lipri, Bambu

1 area was not the result of the Prosecution's instigation; and, second, the witness was  
2 explicitly informed that the Prosecution would not ask further questions during the  
3 witness preparation session about those events as they fell outside the scope of witness  
4 preparation.

5 According to the Prosecution, follow-up questions as set out in the preparation note were  
6 limited to clarification. In response to the Defence allegations of improper conduct of the  
7 examining lawyer, the Prosecution stresses that only clarification questions about the new  
8 information provided by the witness were asked and that no attempt was made to  
9 influence the witness.

10 It submits that there is no impropriety in seeking clarifications in relation to information  
11 including information of a hearsay nature.

12 The Chamber ordered the disclosure of the relevant excerpts of the video recording on  
13 Friday by way of email at 6.52 p.m. and indicated that the reasons therefore would be  
14 placed on the record at the next hearing. The Chamber now provides these reasons:

15 The Chamber recalls Articles 2 and 3 of the witness preparation protocol which provide  
16 respectively that, quote, "Witness preparation should not be conducted for the purpose of  
17 seeking new evidence or continuing the calling party's investigation and that any attempt  
18 to influence a witness to testify to factual events that the witness did not observe or  
19 perceive is prohibited. Coaching, training or practising are not allowed." Unquote.

20 It also recalls that the witness preparation sessions are recorded as a safeguard and that  
21 pursuant to Article 13 of the protocol, the Chamber, if it considers necessary, may review  
22 the recording itself or order the disclosure of the recording.

23 The Chamber notes that from the witness preparation session log it appears that during  
24 the preparation session, Witness P-800 provided additional information about events in  
25 Kobu and Lipri. The Chamber recalls in this regard that in its decision on witness

1 preparation, filing 652, at paragraph 32, states that, quote, "So long as the Defence is  
2 informed of any deviation from the witness statements or additional information  
3 provided by the witness, the video recordings themselves would thus not be subject to  
4 disclosure." Unquote.

5 As the log contains detailed information, the Chamber considers the disclosure was not  
6 required for this reason.

7 With regard to the allegations of improper conduct on the part of the Prosecution, it  
8 appears from the log that the events in Kobu and Lipri were discussed on several  
9 occasions. Given the volume and nature of the new information provided and that the  
10 manner in which such information was elicited could not be fully ascertained from the log  
11 itself, the Chamber found it appropriate to order the disclosure to the Defence as well as  
12 the Chamber of all relevant excerpts of the video corresponding to the contested parts of  
13 the witness preparation session with Witness P-800.

14 In this regard, the Chamber notes that on 13 February by email, the Prosecution informed  
15 the Chamber that it had disclosed the audio files of the recording after having applied the  
16 necessary redactions to the name of the interpreter. It indicated also that applying the  
17 relevant redactions to the video version of the recording would take approximately one  
18 week and sought leave from the Chamber to disclose only audio files of these excerpts.  
19 Yesterday the Defence responded that it did not object to disclosure of the audio  
20 recording at this stage, but that the video should nonetheless also be disclosed once it is  
21 available.

22 The Defence additionally requested the Chamber to direct the Prosecution that future  
23 preparation sessions be recorded in a manner which facilitates prompt disclosure of the  
24 video.

25 The Chamber yesterday ruled that the audio recordings at this stage would enable the

1 Defence to review the manner of questioning; but, as the witness preparation protocol  
2 foresees, the video of the session being disclosed and not just the audio, the Chamber  
3 considers that the relevant video excerpts are still to be disclosed as soon as possible.  
4 The Chamber hereby also instructs the Prosecution to record the preparation sessions in a  
5 different manner in the future to allow for a faster disclosure if ordered. This could, for  
6 example, be done by ensuring that the interpreter's face does not appear in the video.

7 That concludes the Chamber's ruling.

8 According to its email of 15 February 2016, the Defence has no objections to the use of  
9 documents with the witness, but it objects to the admission of one document. The  
10 Chamber will address this objection if and when it arises during the testimony.

11 So now unless the parties or participants have anything they wish to raise, we can bring  
12 the witness.

13 Is there any request for the floor?

14 Ms Luping, please.

15 MS LUPING: Thank you, Mr President, your Honours. It was just to indicate at this  
16 very early stage that whilst the Prosecution will endeavour that it meets the 3 hours  
17 requirement, as you may have seen yourselves from reviewing the audio files, there are  
18 some difficulties in terms of communication with this witness. Communication,  
19 unfortunately, is slow going. He has in addition to the difficulty with communication  
20 that is recorded in the request that I will not state publicly, he does find it difficult to slow  
21 down and we may need to seek additional time, not an unreasonable amount of  
22 additional time, possible half an hour, depending upon how the communication -- we're  
23 able to communicate with this witness effectively during the course of his testimony. It  
24 was just to indicate at this early stage for planning purposes because, indeed, I found it  
25 difficult during the preparation session in terms of communication with the witness. It

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1 will be slow going. Thank you.

2 PRESIDING JUDGE FREMR: Thank you.

3 Defence any comment on this request or potential request?

4 MR BOURGON: No, Mr President. If it's required, then I think the Prosecution should  
5 be given the time. However, I note that my colleague made reference to a filing which  
6 she will not discuss publicly. I don't know if this is an ex parte filing or if this is  
7 something that we should be made aware of.

8 PRESIDING JUDGE FREMR: Ms Luping.

9 MS LUPING: I'm simply referring to the confidential version of the request for in-court  
10 protective measures that the Defence are aware of. It's just that if we're in public session  
11 now I want to avoid referring to what the communication difficulties is, as that's  
12 identifying. That was all.

13 PRESIDING JUDGE FREMR: I can just confirm that even the Chamber is aware of  
14 aspects of potential testimony that could make it a bit slower, so your request is well  
15 noted. At the moment we found reasonable the previous estimation of 3 hours needed  
16 for this examination-in-chief, but we will be flexible and if the problems you have  
17 mentioned arise, we will take it into account, and it is possible it could lead to giving you  
18 the next 30 minutes. We will see.

19 Now, court officer, please escort Mr Witness into courtroom.

20 (The witness enters the courtroom)

21 PRESIDING JUDGE FREMR: Mr Witness, good morning. Can you hear me?

22 WITNESS: DRC-OTP-P-0800

23 (The witness speaks French)

24 THE WITNESS: (Interpretation) Yes. Good morning.

25 PRESIDING JUDGE FREMR: Very well.

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1 Mr Witness, you are going to testify before the International Criminal Court. This  
2 Chamber has been established to try the case of the Prosecutor against  
3 Mr Bosco Ntaganda and you are called to testify to assist us in our search for the truth.  
4 You will be shortly asked questions both by the Judges and lawyers in this courtroom. In  
5 this connection, I would like to guide you in the following way:  
6 Please listen carefully to those questions. It is very important that you make sure that  
7 you understand the question before you answer it. If you do not understand, feel free to  
8 ask for the question to be repeated or rephrased. We want you to tell the truth and tell us  
9 only what you really saw or heard or sensed yourself. If you did not see or hear it  
10 yourself but you found out some other way, then you should explain how.  
11 You may be asked about events that happened many years ago, so it's natural that you  
12 may not remember all the details. It doesn't matter. Please testify just on that which  
13 you remember. Don't guess. Don't make things up. There is nothing wrong in saying,  
14 "I don't know" or "I don't remember." Do you understand all this, Mr Witness?  
15 THE WITNESS: (Interpretation) Yes.  
16 PRESIDING JUDGE FREMR: Then very good.  
17 Mr Witness, let me now explain to you how the protective measures work that this  
18 Chamber has put in place for your testimony.  
19 As you can see, you are sitting in a place where the public here in this building cannot see  
20 you. In addition, face distortion is applied, which means that your face is blurred on the  
21 camera images and the public cannot see your face during testimony. We also decided to  
22 order voice distortion, which means that the public will not be able to identify you by  
23 your voice, as it has been disguised. And we ordered the use of pseudonym. This  
24 means that we will all refer to you only as "Mr Witness" to make sure that the public does  
25 not know your name. When you answer questions that will not give away who you are,

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

7 Please do not refer to these details later on during your testimony whenever we are in  
8 open session.

9 If ever anything gets said during open session which should have been said in private, we  
10 will do our best to protect this information. Your testimony will be broadcast on a delay  
11 and then we can remove any such remarks from the broadcast which will be heard by the  
12 public and from the public transcript of the proceedings.

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

16 Do you understand, Mr Witness?

17 THE WITNESS: (Interpretation) Yes.

18 PRESIDING JUDGE FREMR: Very good.

19 Now you will find a piece of paper, or at least now you can find a piece of paper in front  
20 of you with the solemn undertaking. Please make now your solemn undertaking to tell  
21 the truth by reading out the declaration on the piece of paper in front of you.

22 THE WITNESS: (Interpretation) Solemn undertaking. I solemnly declare that I will  
23 tell the truth, the whole truth and nothing but the truth. Thank you.

24 PRESIDING JUDGE FREMR: Thank you, Mr Witness. It means you are now under  
25 oath. You will have already been informed by representatives of the Victims and

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1 Witness Unit and afterwards by representatives of the Prosecution about the importance  
2 of speaking the truth.

3 You need to be aware that it's an offence within the jurisdiction of this Court to give false  
4 time. Do you understand that?

5 THE WITNESS: (Interpretation) Yes.

6 PRESIDING JUDGE FREMR: Very good.

7 And at the end of my introductory guidance a few practical matters you should have in  
8 mind when giving your testimony:

9 Everything we say here in the courtroom is written down and what you say is interpreted  
10 for us into English. It is therefore important to speak clearly and to speak at a slow pace  
11 like me now. We want to make sure that your words can be well understood by the  
12 interpreters and then by the rest of us. Please speak into microphone and only start  
13 speaking when the person asking you the question has finished.

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

17 If you have any questions yourself, raise your hand so we know that you wish to say  
18 something. We will then give you the opportunity to speak.

19 Mr Witness, have you understood all that?

20 THE WITNESS: (Interpretation) Yes.

21 PRESIDING JUDGE FREMR: Very well, Mr Witness. It means that we can now start  
22 with your testimony.

23 And you will be first examined by Prosecution.

24 Ms Luping, you have the floor.

25 MS LUPING: Thank you, Mr President.

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1 QUESTIONED BY MS LUPING:

2 Q. Good morning, Mr Witness.

3 A. Good morning.

4 Q. Now, Mr Witness, there are only two things that I wanted to remind you that  
5 Mr President, the Presiding Judge, has already indicated to you. The first one is that is if  
6 you can remember to speak slowly and in short sentences to make the job of the  
7 interpreters a lot easier; and secondly, a reminder only to say what you remember. It's  
8 only what you remember. And if there is anything that you do not remember, please feel  
9 free to say so.

10 MS LUPING: Mr President, with your leave, if we could go into private session for some  
11 questions of an identifying nature.

12 PRESIDING JUDGE FREMR: For sure.

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

14 (Private session at 9.33 a.m.)

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

16 (Redacted)

17 (Redacted)

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19 (Open session at 9.43 a.m.)

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

21 PRESIDING JUDGE FREMR: Thank you.

22 Ms Luping, please proceed.

23 MS LUPING:

24 Q. Mr Witness, you explained that in 2002 you were working in Sayo. I want to

25 explain now that you're in open session, so I would ask you to be careful in not saying any

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1 responses to my questions now that might identify you. My question is this: In 2002  
2 when you were in Sayo, do you recall any fighting that happened in Mongbwalu or Sayo  
3 when you were living there?

4 A. Yes.

5 Q. Can you describe the first battle or fighting that you remember happened in  
6 Mongbwalu and Sayo in 2002?

7 A. The first battle in Sayo in 2002 was in November 2002, but the exact date I don't  
8 recall really, but it was before the 15th of the month.

9 Q. And was there any battle in Mongbwalu before this battle in Sayo that you  
10 remember?

11 A. Sayo is 5 kilometres away from Mongbwalu. Mongbwalu is the city, you see, and  
12 Sayo is the neighbourhood.

13 In November there was fighting, the first fighting. And the second fighting was such  
14 that we had to leave Mongbwalu. And that was also in the month of November.

15 Q. Now, starting with that first battle that you remember that happened you said in  
16 Mongbwalu, can you recall who was fighting whom? Who were the groups fighting one  
17 another?

18 A. During the first battle it was the UPC and the FC. They were fighting in  
19 Mongbwalu, but the war ended in Mongbwalu and, you see, the second battle, that was  
20 when Mongbwalu was taken as well as Sayo.

21 Q. Mr Witness, I'm sorry. I'm just waiting. Yes, okay. Now the French transcript  
22 has come up.

23 MS LUPING: I want to note, Mr President, there is a discrepancy between the French  
24 and the English transcripts. There's a reference to the FC, whilst in the French transcript  
25 there's a reference to FNI. I believe the French is correct.

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1 Q. Mr Witness, just starting with -- you said the battle, the first battle was between the  
2 UPC and the FNI. Do you recall what the UPC stands for? If you don't, that's fine, but  
3 simply if you remember.

4 A. The UPC is the political party that the Hema were associated with, and then the FNI  
5 was the party that the Lendu were part of.

6 Q. And do you remember what -- first of all, what "FNI" stands for? Again, only if  
7 you remember. I mean the acronym FNI. Do you know what the letters FNI stand for?

8 A. F stands for "front/front." N stands for "nationaliste/nationalist." And then I  
9 stands for "intégr  /integrated."

10 Q. And do you remember what the letters UPC stand for?

11 A. U stands for "union." P stands for "party." And C stands for  
12 "Congolais/Congolese." The Union of Congolese Party.

13 Q. Now, you said that it was during the second battle that Mongbwalu and Sayo were  
14 taken. Who succeeded in the second battle in taking over Mongbwalu and Sayo, which  
15 group?

16 A. The UPC.

17 Q. And in the first attack, who was attacking Mongbwalu during the first attack?

18 A. During the first attack it was still the UPC attacking Mongbwalu, but they were not  
19 able to take control of Mongbwalu during the first battle.

20 Q. And who occupied Mongbwalu and Sayo during this first and second attack?  
21 Before the UPC took over, who was in control of Mongbwalu and Sayo?

22 A. Mongbwalu and Sayo were occupied by FNI.

23 Q. And again, this is only if you know, Mr Witness, or if you remember, but do you  
24 know where the FNI were based in Mongbwalu and Sayo before the UPC attacked?

25 A. Mongbwalu and Sayo were controlled by the FNI, and their headquarters was in

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1 Sayo.

2 Q. And do you recall where in Sayo their headquarters were?

3 A. The headquarters were in Sayo in the Kilo-Moto neighbourhood.

4 Q. Now, you said that the UPC had the Hema integrated within it. What do you  
5 mean by that?

6 A. What I mean is that the UPC was led by a Hema person.

7 Q. And to your knowledge, what ethnic group or groups were members of the UPC?

8 A. It was the Hema people.

9 Q. Now, you said that the UPC had attacked Mongbwalu one time before they were  
10 successful in taking it over, taking over Mongbwalu and Sayo. How did you learn about  
11 the first attack on Mongbwalu?

12 A. Mongbwalu was controlled by the FNI. The UPC came during the first attack upon  
13 Mongbwalu, and the UPC had been driven out by the FNI. During the second attack, the  
14 FNI -- well, ultimately, the UPC took Mongbwalu during the second attack.

15 Q. My question is slightly different. How did you learn about the first attack on  
16 Mongbwalu? Starting just with the first attack how did you, yourself, come to know  
17 about it?

18 A. The first attack upon Mongbwalu, the FNI and the -- you see there were even cases  
19 of people being injured in Mongbwalu and those people went towards Sayo for care  
20 because, you see, during the war, the Mongbwalu hospital was unable to deal with all  
21 these ill people because of the war. So a number of UPC soldiers had -- the UPC soldiers  
22 were, indeed, wearing military uniforms; whereas, the Lendu combatants did not have  
23 any military clothing.

24 MS LUPING: Mr President, with your leave, if we could go into private session.

25 PRESIDING JUDGE FREMR: All right.

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

2 (Private session at 9.57 a.m.)

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

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7 (Open session at 10.58 a.m.)

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

9 PRESIDING JUDGE FREMR: Thank you, court officer.

10 Ms Luping, you may proceed.

11 MS LUPING: Thank you, Mr President.

12 Q. Mr Witness, you described fleeing from Sayo. Now, without giving the names of  
13 people who were with you when you were fleeing because now we're in open session, can  
14 you describe how many other people were fleeing from Sayo at the same time as you?

15 A. I beg your pardon. Could you repeat the question?

16 Q. Yes, I'll repeat the question. You described fleeing from Sayo. Can you describe  
17 how many other people were fleeing from Sayo at the time you were trying to flee from  
18 Sayo? How many other people were leaving the same time as you?

19 A. There were four of us.

20 Q. And other than the four of you, did you see any other people leaving from Sayo  
21 when you left?

22 A. We were nearly the last people to leave Sayo in the rain.

23 Q. And how do you know you were amongst the last to leave? Did you see any other  
24 people leave Sayo before you?

25 A. We were inside the building; but, you see, the others had already fled the UPC

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1 militia and, (Redacted)

2 (Redacted).

3 Q. Now, you said that the others had already fled the UPC militia. Who are these  
4 others that you're referring to?

5 A. We fled with other people as well. Along the way we met up with some other  
6 people.

7 Q. And who are these other people that you met along the way?

8 A. More than five people, but I only knew one of them. I only knew one person's  
9 name.

10 Q. I'll ask the name after the break; but just to clarify, these five other people, were they  
11 civilians or fighters?

12 A. They were civilians.

13 Q. Now, you said that when you were fleeing there was some firing. Where was the  
14 firing coming from?

15 A. The shots were coming from Sayo and behind Sayo where the Catholic church is  
16 located. The fighters, the Lendu fighters were on the hill.

17 Q. And who was firing towards your direction?

18 A. The UPC.

19 Q. And how do you know that?

20 A. Because the Lendu combatants were on the other side, the other side of the hill.  
21 And they were barely shooting at all.

22 Q. And in what direction did you flee, this is -- I'm talking about when you were being  
23 shot at, which direction did you flee from Sayo?

24 A. Towards Nzebi.

25 MS LUPING: Mr President, your Honours, I have no further questions before the break.

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1 Q. Thank you, Mr Witness. I will have further questions for you though after the  
2 break.

3 PRESIDING JUDGE FREMR: Mr Bourgon.

4 MR BOURGON: (Microphone not activated)

5 THE INTERPRETER: Microphone, please.

6 PRESIDING JUDGE FREMR: Maybe you can just I think now take Mr Witness out of the  
7 courtroom.

8 Mr Witness, before you will be taken out, I would like to thank you that you perfectly  
9 observed my previous guidance, you were focused, you carefully listened to questions  
10 put to you and you answered keeping some pauses as we asked you. So everything was  
11 okay so far. So please proceed after the break in the same way. Thank you very much.  
12 Now the witness may be escorted out of the courtroom and then I will give the floor to the  
13 Defence.

14 (The witness stands down)

15 PRESIDING JUDGE FREMR: Mr Bourgon.

16 MR BOURGON: Thank you, Mr President. I said earlier that much of the evidence  
17 which was being adduced by this witness was never previously mentioned in the material  
18 that we have. Of course I can take that up in cross-examination, that's not the issue at  
19 this point.

20 I now note for the record that many of the questions put to the witness were to the best of  
21 our knowledge never put to the witness whether when they obtained his statement or  
22 whether when they sought to prepare him for his testimony.

23 Now, on the basis of the excerpts that we received from the audio, the audio excerpts that  
24 we received, we will be making some submissions at the end of the examination-in-chief.

25 Thank you, Mr President.

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1 PRESIDING JUDGE FREMR: Ms Luping, any reaction at this moment?

2 MS LUPING: Thank you, Mr President, your Honours. I don't think there's any need  
3 for me to repeat the prior submissions I made and I can respond at the very end of the  
4 examination.

5 PRESIDING JUDGE FREMR: All right.

6 Since we finished almost 10 minutes after 11 o'clock and we will be sitting in extended  
7 hours, so I think it is necessary to keep a real 30 minutes break, so we will reconvene  
8 at 11.40.

9 THE COURT USHER: All rise.

10 (Recess taken at 11.07 a.m.)

11 (Upon resuming in open session at 11.40 a.m.)

12 THE COURT USHER: All rise.

13 Please be seated.

14 PRESIDING JUDGE FREMR: So we can continue with the witness. And one caveat  
15 from my part to Ms Luping, so far the Chamber doesn't see any problems with the way  
16 how the witness testifies, so at the moment we don't see any strong reasons to allot you  
17 more time than 3 hours, so please try to adjust your examination to this 3-hours limit.

18 MS LUPING: Understood, Mr President, your Honours.

19 Q. Good morning again, Mr Witness.

20 A. Good morning.

21 MS LUPING: Mr President, I did have one question I wanted to ask in private session  
22 with your leave.

23 PRESIDING JUDGE FREMR: All right.

24 Let's move to private session now.

25 (Private session at 11.42 a.m.)

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

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20 (Open session at 11.47 a.m.)

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

22 PRESIDING JUDGE FREMR: Thank you.

23 Ms Luping, please proceed.

24 MS LUPING:

25 Q. And this crowd that you saw, I'm focusing now on the civilians. Were they males,

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1 females, or both, amongst the civilians that you saw in this crowd?

2 A. In this crowd there were civilians and there were militia as well. There were  
3 women, and there were men.

4 Q. And can you recall what the women were wearing? What dress were they  
5 wearing?

6 A. The women were wearing pagne wraps, but there were militia who were wearing  
7 civilian clothing with banana leaves around the neck and the skins of certain animals,  
8 while the other militia had weapons but with civilian clothing.

9 Q. And from the militia that you saw, what kind of weapons did you see amongst the  
10 militia you saw?

11 A. The Lendu militia, they had two types of weapons. Some had rifles, some had  
12 machetes and arrows. There weren't many rifles.

13 Q. When you saw this crowd, how far away from Sayo were you by then? How far  
14 away from Sayo were you when you caught up to this crowd of people?

15 A. Sayo and Nzebi, it's about 3 kilometres.

16 Q. And when I asked you previously about how you knew the group of five who were  
17 with you were civilians, you said the civilians and the soldiers had not taken the same  
18 route. Is that what -- is that correct?

19 A. Well, the civilians were fleeing, and there was a place on the road where the  
20 civilians were fleeing. And the militia were going in the direction they were fleeing, but  
21 they were in different positions.

22 PRESIDING JUDGE FREMR: Mr Bourgon.

23 MR BOURGON: Thank you, Mr President. The last question -- I stand to be corrected,  
24 but I don't think the witness ever said before that they were taking different routes, at  
25 least from the French transcript. I'd like to have the exact reference where the witness

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1 said this, that they were taking different routes. What I have is that they were not  
2 escaping or fleeing together. That's what I have in the French transcript at page 46, lines  
3 23 and 24, but I do not have any reference to a different road, but I may be wrong.

4 PRESIDING JUDGE FREMR: Ms Luping.

5 MS LUPING: I'm just going to find the transcript reference. My apologies. I won't be  
6 one moment.

7 PRESIDING JUDGE FREMR: Take your time.

8 MS LUPING: The transcript reference I had was page 48, lines 18 to 19. The exact  
9 words were, "The soldiers and the civilians were not fleeing together." I will rephrase  
10 my question, then, to make it clearer.

11 Q. Now, Mr Witness, when you said that "The soldiers and the civilians were not  
12 fleeing together," what did you mean by that?

13 A. That is to say 3 kilometres away there's only one road to flee, but when the attack  
14 started on Sayo, civilians were fleeing separately from the militia. They were in their  
15 position separately. But once Sayo fell, the militia took the sole road that there is upon  
16 which the civilians were fleeing.

17 Q. Do you know what route the civilians were taking when they fled?

18 A. The civilians were following the Nzebi road.

19 Q. And do you know what route the fighters were taking?

20 A. Fighters were fleeing on the Ndele road to get to the crowd in Nzebi village, Nzebi.

21 Q. And amongst the crowd of civilians, what were the -- what's the youngest amongst  
22 those that you saw?

23 A. There were a lot of young people.

24 Q. And what was the youngest that you saw, roughly the age of the youngest?

25 A. There were young people, there were children.

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1 Q. And what was the age of the youngest child that you saw?

2 A. There were school-aged children and other children were around their mothers.

3 Q. And the children who were amongst their mothers, roughly what age were they?

4 A. They were infants.

5 THE INTERPRETER: In the previous answer, the witness said they were on their  
6 mother's backs, these infants.

7 MS LUPING:

8 Q. Now, after you saw this crowd of people in Nzebi, where did you go, Mr Witness,  
9 you personally? Where did you go to next?

10 A. From Nzebi the crowd and the militia were headed towards Kobu.

11 Q. And where did you go?

12 A. From Nzebi it took us five days to get to Kobu. We spent the night in different  
13 villages. It took us five days to get to Kobu.

14 Q. And did you personally go to Kobu?

15 A. Yes.

16 Q. And for how long were you in Kobu?

17 A. I stayed several days in Kobu, and from there I went to the neighbouring villages.

18 THE INTERPRETER: So I was there for two days, corrects the interpreter.

19 MS LUPING:

20 Q. And what neighbouring village or villages did you go to after Kobu?

21 A. Next to Kobu I went to neighbouring villages. Nyangarai, Ngoto, these are the two  
22 villages which are close to Kobu.

23 Q. And you say you stayed a couple of days in Kobu before moving to the  
24 neighbouring villages. Why did you leave Kobu?

25 A. Well, Kobu is the centre, and there were security issues there because -- I felt

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1 insecure because it's the major centre. It's not a good place to hide.

2 Q. And can you clarify what you mean by the fact that you felt insecure?

3 A. When I came to Kobu, I spent two days. There were attacks. There were attacks  
4 in Bambu, close to Kobu, and that's why I felt insecure.

5 Q. And what were these attacks? Who was attacking?

6 A. It was still the UPC that continued to attack.

7 Q. And how do you know it was the UPC that was continuing to attack?

8 A. The UPC knew that the people of Mongbwalu had gone, had fled towards Kobu,  
9 and that is why the UPC continued to attack Kobu through Bambu mine.

10 Q. Did you see or hear the attackers for yourself?

11 A. Bambu is not too far away from Kobu, so we could hear the gunfire. And it is true  
12 that the people of Bambu were actually fleeing.

13 Q. And did you meet any of these people who were fleeing?

14 A. Yes. Kobu and Bambu are not too far from each other; less than 10 kilometres  
15 apart.

16 Q. And did you speak to any of these people who were fleeing?

17 A. No, I did not. But I saw some of the displaced persons and I could hear some of the  
18 firing. I also saw the militia, the Lendu militia who were in Bambu. You see, Bambu is  
19 quite close to Nizi, which was under the control of the UPC.

20 Q. How long did you stay in Ngoto, Nyangarai for? For how long were you in these  
21 neighbouring villages?

22 A. Nyangarai and Ngoto, I was there till just before Christmas.

23 Q. And where did you go after that?

24 A. I then went to Lipri.

25 Q. And do you recall roughly for how long you were in Lipri?

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1 A. I came to Lipri a few days before Christmas and I remained there till the month of  
2 March.

3 Q. And in this period that you were staying in Lipri, Ngoto and Nyangarai, can you  
4 describe where you were staying?

5 A. While in Lipri and in Ngoto, we lived in the bush because attacks were occurring at  
6 any time. So during the day we would go here and there, and around 5 p.m. we would  
7 prepare some food when we went back, and then the next day in the morning we would  
8 wander about again.

9 Q. Now, you said attacks were occurring at any time. In French it says "il y avait des  
10 attaques à tous, tous moments." Could you explain what you mean by that? Who was  
11 attacking at any time?

12 A. The UPC had almost surrounded all Lendu villages, so there were attacks here and  
13 there on a daily basis. So where there were no attacks, we would flee to those areas, and  
14 when another area was attacked, we would go to those areas where there was no attack.  
15 And there was several attacks occurring at the time.

16 Q. Now, you say the UPC had almost surrounded all Lendu villages, so there were  
17 attacks here and there on a daily basis. Can you explain where the UPC were attacking  
18 in this area to your knowledge?

19 A. The Nyangarai sector was under attack; Bambu as well, Bambu sector; and also the  
20 sector along the road to Mongbwalu. In fact most, if not all, Lendu sectors were under  
21 attack.

22 PRESIDING JUDGE FREMR: And, Ms Luping, please clarify source of this information.  
23 MS LUPING: Indeed, Mr President.

24 Q. Now you've described these different places were under attack in these different  
25 areas. How do you know that? How do you personally know that?

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1 A. Kobu is made up of a number of small villages, and all those villages are basically  
2 side by side. So if there is firing heard from any location, one would know immediately  
3 which village was under attack, and that was the time for people to take measures  
4 immediately to flee to the other villages that were not under attack at the time.

5 PRESIDING JUDGE FREMR: Mr Bourgon.

6 MR BOURGON: (Microphone not activated)

7 PRESIDING JUDGE FREMR: Okay.

8 MR BOURGON: I found the reference. Thank you.

9 PRESIDING JUDGE FREMR: Ms Luping, you may proceed.

10 MS LUPING:

11 Q. Now, you say that "So where there were no attacks, we would flee to those areas,  
12 and when another area was attacked, we would go to those areas where there was no  
13 attack. And there was several attacks going on at the time." That's page 55, lines 21 to  
14 24 of the English transcript.

15 My question is this, Mr Witness, starting first with Bambu, did you learn of what  
16 happened or what was happening there after UPC attacks in that area; and, if so, could  
17 you explain how you know that?

18 A. I do not know what happened in the Bambu sector apart from the fact that there was  
19 war in the Bambu sector.

20 Q. And what about Kobu? Did you learn what happened there; and, if so, how did  
21 you know that?

22 A. Yes. In spite of the multiple attacks on Kobu, one can say that there was intense  
23 shooting or firing in Kobu before Christmas.

24 The UPC had attacked the Lendus and other -- had actually fooled the members of the  
25 population, the Lendus, to come to a reconciliation, and many effectively showed up.

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1 But unfortunately when the people showed up for the reconciliation, the UPC started to  
2 fire.

3 And at that time I was in a village that was very close to Kobu, and I was also aware of the  
4 reconciliation effort. Now, fortunately, when I was on my way to the location where the  
5 reconciliation was supposed to take place, I happened to be in the company of the  
6 husband --

7 Q. Mr Witness, Mr Witness, I'm sorry to interrupt you.

8 But I will ask, with the leave of the Presiding Judge, if we could please move into private  
9 session for this information.

10 PRESIDING JUDGE FREMR: All right. Let's move into private session.

11 (Private session at 12.11 p.m.)

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

13 (Redacted)

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12 THE COURT OFFICER: All rise.

13 (Recess taken at 1.13 p.m.)

14 (Upon resuming in private session at 1.22 p.m.)

15 THE COURT USHER: All rise.

16 Please be seated.

17 (Redacted)

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- 10 (Recess taken at 1.34 p.m.)
- 11 (Upon resuming in open session at 3.04 p.m.)
- 12 THE COURT USHER: All rise.
- 13 Please be seated.
- 14 PRESIDING JUDGE FREMR: Good morning, everybody.
- 15 Good morning, Mr Witness. Mr Witness, we will continue with the rest of your
- 16 examination-in-chief conducted by Ms Luping, representing Prosecution.
- 17 So, Ms Luping, you have your last 30 minutes, please.
- 18 MS LUPING: Thank you, Mr President, your Honours. I was going to resume the
- 19 questions I was asking before the break. So with your leave I'm afraid we will need to go
- 20 into private session. I do apologise --
- 21 PRESIDING JUDGE FREMR: No problem.
- 22 MS LUPING: -- to those in the public gallery.
- 23 PRESIDING JUDGE FREMR: It's for a fair trial and for the protection of the witness.
- 24 Let's move into private session now, please.
- 25 (Private session at 3.06 p.m.)

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

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4 (Open session at 3.57 p.m.)

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

6 PRESIDING JUDGE FREMR: Thank you.

7 Mr Bourgon, please proceed.

8 MR BOURGON: Thank you, Mr President. Mr President, on two occasions this  
9 morning I raised and to make some notes for the record.

10 On the first occasion, I informed the Trial Chamber that, in our submission, the witness  
11 was providing much more and different information than what is found in his statement  
12 and/or the material we have to prepare for his testimony.

13 On the second occasion I raised, I informed the Trial Chamber that in our opinion the  
14 questions being put to the witness suggest that the Prosecution wanted to elicit the  
15 additional evidence being provided as the questions were specific in this regard.

16 And I add at this point in time, even though this information is not in the witness material  
17 and unknown to the Defence, the questions, Mr President, in and of themselves may be  
18 appropriate, and there's nothing wrong for the Prosecution to try to obtain such evidence  
19 from the witness. That is not the issue. The issue is one of disclosure and of knowledge  
20 or prior notice on the part of the Defence concerning the evidence that can be provided or  
21 likely to be provided by this witness before he begins.

22 There is a reason, Mr President, and a rationale behind the Prosecution's disclosure  
23 obligations. It is to ensure that the Defence knows in advance the information which a  
24 witness is likely to provide so that the Defence can prepare and be ready to challenge this  
25 evidence through cross-examination. It's a matter of fairness, Mr President.

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1 In this case, we already know, on the basis of the preparation session log and disclosure  
2 note, which was disclosed by the Prosecution before the beginning of the witness, as well  
3 as on the basis of the audio recordings of the same session, which were disclosed to the  
4 Defence by the Trial Chamber's order, that the witness can provide or could provide  
5 evidence not disclosed before regarding events related to Kobu, Bambu and Lipri. So  
6 that is established. And we were informed of this ahead of time. But that's why exactly  
7 because it was such a new area we asked for the -- to have the recording of the  
8 preparation session.

9 Just to provide the Trial Chamber with one example: This morning the witness, when  
10 testifying, provided evidence that he was preparing to attend negotiation sessions in  
11 Kobu. This is something that was not disclosed by the Prosecution in its preparation  
12 note, or its disclosure note, but it was -- we did find this out over the weekend in the  
13 audio recordings.

14 So in the audio recording we -- I have the exact form here and I can refer to that. We  
15 tried to make a transcript to the best of our knowledge. And here is what the witness  
16 said:

17 "I was going to the negotiations. On my way I ran into people, including the grandfather  
18 of the daughter of my sister who told me, 'Don't go there because UPC is killing all the  
19 people who are going there.'"

20 I stand to be corrected, but neither the statement nor the preparation session make any  
21 mention of this information.

22 PRESIDING JUDGE FREMR: Mr Bourgon, I am thinking about some way how to speed  
23 up this issue. Because I can imagine that you're also ready to bring some other examples  
24 of a legit violation of disclosure obligation by Prosecution, and I also guess that  
25 Prosecution should be given opportunity to correct you if it's possible to say, okay, we

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1 informed you or not, but it would really be very time consuming. Could you just jump  
2 to the end of your objection and just inform us what is, according you, or what should be,  
3 according you, consequence of those violations and then we can see whether it is really  
4 necessary immediately, for example, to decide or maybe ask both parties. You can just  
5 come with a list of new information which, according you, was prejudice to you because  
6 you were not in the right time informed, and then Prosecution could be given a chance to  
7 oppose, or to correct, or maybe to admit that they were wrong. But could you just now  
8 inform us what is, according you, consequence or what should be, what should result  
9 from this alleged violation of disclosure obligation.

10 MR BOURGON: If I can assist the Court in this manner I will do so, Mr President.

11 My submission was not much longer than what I had prepared. And I thought it was  
12 important to provide you with some information, but this -- what happened with this  
13 witness, our submission, which is the most important part, it has to be read and  
14 considered in the context of what was mentioned to the witness during the proofing  
15 session, during the what I call proofing session but they called it the preparation session.  
16 And I would like to quote in this regard something that comes from the preparation  
17 session. And this is the gist of the argument. And I quote now, it is in the audio we  
18 received during the weekend. Now, it goes as follows:

19 "I'm not going to ask you more questions yet about what happened in Lipri, but when you  
20 testify do you think you will be able to answer more questions about what happened in  
21 Kobu and Lipri? I don't want to ask you now because I should explain the witness  
22 preparation is about checking for clarifications. We are not meant to take a new  
23 statement from you or to start investigations when we meet you, new investigations, but,  
24 hey, it is fine when you testify to provide additional information. I just want to ask if I  
25 ask you questions when you testify about what happened in Kobu and Lipri do you think

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1 you will be able to answer my questions because I will have more questions? I would  
2 not ..." -- and so that's what the Prosecution mentioned.  
3 Now, when I look at what happened this morning in the areas which were covered by the  
4 testimony of the witness, and I'm not going to get into examples, and I look at the  
5 questions that were asked, it appears to me, Mr President, that the position of the  
6 Prosecution is basically, hey, Witness, now that I know that you know more, I'm not going  
7 to ask you anything else but then I will ask you when you testify.  
8 So it appears to be a voluntary way to obtain evidence that will be provided by the  
9 witness without providing the information to the Defence before his testimony. That's  
10 what it appears like. And on the basis of the two areas that were covered this morning,  
11 which are not in what we've received in terms of the audio material, and I come to what  
12 the Trial Chamber requested, my first request is to obtain the full audio recording of the  
13 preparation session to see if the information elicited from the witness regarding the details  
14 that were elicited from the witness regarding the people injured in the health centre and,  
15 secondly, regarding the manner in which the witness would have fled from Sayo, and the  
16 persons he was with, and how this took place, and who he met and a description of these  
17 people. Because we have no such information on the record.  
18 So on this basis, I ask that the full preparation session audio be disclosed to us at this time.  
19 My second request is to delay the beginning of my cross-examination not for long, just  
20 until tomorrow morning, and which will still allow me to finish tomorrow. And I would  
21 not ask for any time regarding the next witness because I'm fully aware of the schedule set  
22 by the Trial Chamber and I don't want to disturb that. But I think if I start in the  
23 morning, at least it will give me time to listen to this audio and to adjust my  
24 cross-examination as a result of what happened today with this witness. Thank you,  
25 Mr President.

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1 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

2 Ms Luping, what is your position to this proposal made by or request made by  
3 Mr Bourgon?

4 MS LUPING: Mr President, your Honours, just to cut to the chase, we would not object  
5 to a brief adjournment, as such, provide with -- the Defence with additional time. And  
6 so we don't object to the request to postpone the cross-examination to tomorrow morning.  
7 But simply for the record, in response to the allegations made by the Defence, a couple of  
8 points:

9 First just to observe, in terms of disclosure and prior notice of the evidence, the  
10 Prosecution has, in our submission, met its obligations, we've disclosed the information  
11 necessary.

12 In terms of the information contained in the audio recording, the one example provided, I  
13 would agree that that was an error, it was an inadvertent omission from the preparation  
14 note to this question of the witness being en route to the negotiation. So that is correct.  
15 But the Defence did receive the audio recording prior to this witness testifying. They did  
16 have this information. And in our submission, it is not correct to say that we're therefore  
17 precluded from seeking to obtaining this information when testifying. The witness  
18 preparation protocol is clear. The purpose of the preparation is simply to clarify prior  
19 statements. We're not to elicit new information by way of investigations or inform in the  
20 form of a new statement. In a way we're being criticised for doing what we're being told  
21 by the preparation protocol we should do, which is once new, it is clear this is new  
22 information, we should not go further. And at the same time it is -- it is not wrong in  
23 our -- it is incorrect in your submission that it's -- it's not inappropriate for the Prosecution  
24 then to seek to elicit this evidence when the witness is testifying. The witness was clearly  
25 in a position to provide additional information.

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1 It is part of this Chamber's truth-seeking mandate, including under Article 69(3) of the  
2 Statute, to determine the truth. If the witness is able and is in a position to provide  
3 information, in our submission, it should be for the Chamber to hear this evidence that the  
4 witness is in a position to provide.

5 As for disclosure, the Defence did have disclosure of the various aspects that the witness  
6 was going to testify, including about events in Kobu and Lipri, in the summary of the  
7 witness's -- we'll say essentially of what he was going to be saying during the course of his  
8 testimony.

9 In addition, the preparation note indicated that, indeed, this witness is in a position to  
10 provide further information about the broader events outside of Kobu Lipri, including in  
11 Bambu and Nyangarai. So in our submission, they did receive notice.

12 If they feel that they need additional time in light of, perhaps, new details elaborated  
13 upon by the witness, in our view, in our submission, we do not consider that they need  
14 additional time. They should be in a position to respond now on the basis of what they  
15 knew, the areas where -- that the witness was going to testify about.

16 In our submission, the Defence should be in a position already to start cross-examining.  
17 But as we're only talking about essentially an adjournment of approximately an hour to  
18 prepare, if in the Defence's submission they feel that they are not capable of dealing with  
19 this additional new information or details elaborated on by the witness, then the  
20 Prosecution would have no objection to that.

21 As regards the second request, your Honours, in terms of disclosure of the full version of  
22 the witness preparation session, in our submission there has been no good reason  
23 provided as to why the whole of the preparation session is needed, but obviously we  
24 leave that to your Honours' decision as to what you believe is necessary in this instance.  
25 But in our submission I think the -- what has already been disclosed should have already

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1 met not only the Defence but the Chamber's -- any concerns they might have had as to  
2 whether the Prosecution was acting inappropriately in any way in the questions that were  
3 elicited in the -- at least in the issues related to the new information that was elaborated  
4 upon by the witness.

5 So in our submission, it should not be necessary to disclose anything else further from the  
6 witness preparation. Thank you, your Honours.

7 PRESIDING JUDGE FREMR: Thank you.

8 Mr Bourgon, do you want to --

9 MR BOURGON: Very briefly, Mr President. If I just take the example of Colonel  
10 Lusala, the questions put and the answers we've have heard this afternoon.

11 PRESIDING JUDGE FREMR: We are in open session?

12 MR BOURGON: I don't think it should be a problem.

13 THE COURT OFFICER: We are, indeed, in open session, but I would like to request the  
14 parties and participants to slow down to entitle the French booth to interpret properly.  
15 Thank you.

16 PRESIDING JUDGE FREMR: Otherwise, I don't believe that this name should reveal  
17 anything. So I guess if you will --

18 MR BOURGON: I don't think, Mr President, it reveals anything.

19 PRESIDING JUDGE FREMR: That's fine.

20 MR BOURGON: I'm just saying that the evidence we've heard this afternoon concerning  
21 Colonel Lusala and the way it was elicited in the questions is not to be found, whether in  
22 the disclosure note or in the material provided for this witness, and on this basis we  
23 submit that this was a prima facie showing that there might be something or there is likely  
24 to be information that was discussed with the witness on this issue during the preparation  
25 session, which justified disclosure of the audio without delay.

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1 Now, this is one example because it's one that is very -- the latest one, but we have at least  
2 two major areas which are -- uncover the same prima facie showing, and I mentioned  
3 those. One relates to the description of the persons held in the witness centre or found in  
4 the witness centre, and the second area is the manner in which the witness would have  
5 fled from the area where he testified about. This is a prima facie showing of issue that  
6 were discussed -- it appears prima facie showing, and that is sufficient for us to get the  
7 audio so that we have the information. And I disagree with my colleague --

8 PRESIDING JUDGE FREMR: Point taken.

9 MR BOURGON: -- areas is enough. We need to know the evidence before it comes out  
10 so we can prepare, and this is not the case for this witness. Thank you.

11 PRESIDING JUDGE FREMR: Ms Luping, absolutely briefly, please.

12 MS LUPING: Mr President, I'm simply standing because there was some information  
13 being provided in open session that we consider of an identifying nature, that is all. It  
14 was a reference to a place which we had been eliciting information about in private  
15 session.

16 PRESIDING JUDGE FREMR: At the moment I'm not aware of that, but I believe you, so  
17 please court officer -- or maybe you can just point it out on that, and we will redact that  
18 then.

19 Give me one minute, I will deliberate with my colleagues on the request made.

20 (Trial Chamber confers)

21 PRESIDING JUDGE FREMR: So after brief silent deliberation, we decided to grant the  
22 request on both points. Just a brief reasoning as to the -- so we ordered the full  
23 disclosure of whole audio because we are not saying -- and to be open, in my view, this  
24 case is not black and white. We are not saying the Prosecution clearly violated their  
25 duties according to Article 2 and 3 of our protocol on preparation, the same with the duty

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1 to disclose, but there are some -- I would say each case is -- for example, if you compare  
2 audio and log, this is not precisely the same. We are not saying that it was made in bad  
3 faith, it's even maybe natural that some details -- but details that could be important for  
4 Defence are not contained in the log.

5 So in order to keep the atmosphere of the mutual trust, I mean, between Defence and  
6 Prosecution, we granted this request.

7 And we also agreed to adjourn today to give some even short additional time for -- to  
8 Defence to make them aware with the audio and prepare better for cross-examination, but  
9 under condition that they will not ask any additional time for preparation for upcoming  
10 witness, which is -- has to start on Tuesday.

11 By the way, Mr Bourgon, how much time you think, because I think Ms Luping used  
12 roughly 3 hours, 10 minutes. How much time do you think you will need for  
13 cross-examination?

14 MR BOURGON: Mr President, I believe that it is likely that it will be possible to use the  
15 exact same time. I may need a few more minutes, but at this point in time I believe I can  
16 do it in the exact same time.

17 PRESIDING JUDGE FREMR: Thank you.

18 So it means we can adjourn for today. We will rather start 9 o'clock again tomorrow even  
19 if I firmly believe there will be no need to sit in the afternoon; but rather, to be sure not to  
20 cause any further delays. So we will start tomorrow again at 9, we will sit again for  
21 two-hour sessions, and it seems to me that we will make maximum for that, we will finish  
22 by noon.

23 Ms Luping?

24 MS LUPING: Apologies, Mr President. Just to clarify the Chamber's order in terms of  
25 the rest of the preparation session, are you requesting the full audio or both the audio and

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1 video, because obviously one will be much quicker than the other?

2 PRESIDING JUDGE FREMR: No, no. Just audio.

3 MS LUPING: Audio for the remainder. Understood. Thank you, Mr President, for  
4 clarifying.

5 PRESIDING JUDGE FREMR: Okay. Now Court is adjourned.

6 THE COURT USHER: All rise.

7 (The hearing ends in open session at 4.19 p.m.)

8 RECLASSIFICATION REPORT

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

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