

Trial Hearing
WITNESS: DRC-OTP-P-0888

(Open Session)

ICC-01/04-02/06

1 International Criminal Court
2 Trial Chamber VI
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and Judge Chang-ho Chung
6 Trial Hearing - Courtroom 2
7 Tuesday, 21 June 2016
8 (The hearing starts in open session at 9.32 a.m.)
9 THE COURT USHER: All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE FREMR: Good morning, everybody.
13 Court officer, please call the case.
14 THE COURT OFFICER: Thank you, Mr President.
15 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
16 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
17 And for the record, we are in open session.
18 PRESIDING JUDGE FREMR: Thank you.
19 Now appearances. If they are the same, you can just refer to yesterday composition.
20 Prosecution first.
21 MS LUPING: Good morning, Mr President. It's the same members of the
22 Prosecution who are present this morning.
23 PRESIDING JUDGE FREMR: Thank you, Ms Luping.
24 Defence, there are some changes I see.
25 MR BOURGON: Indeed, Mr President. (Interpretation) Good morning, your

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1 Honour. Representing Bosco Ntaganda, who is present this morning in the

2 courtroom, we have Margaux Portier, Elisa Binon, Dignité Bwiza and myself,

3 Stéphane Bourgon. Thank you, your Honour.

4 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

5 Legal Representatives of Victims.

6 MR ABDOU: Good morning, Mr President, your Honours. Same composition for

7 the former child soldiers as yesterday.

8 MS GRABOWSKI: Good morning, Mr President, your Honours. Also for the

9 victims of the attacks the same composition as yesterday. Thank you.

10 PRESIDING JUDGE FREMR: Thank you, Mr Abdou. Thank you, Ms Grabowski.

11 Good morning, Mr Witness. But before we move to the rest of your

12 examination-in-chief, Mr Witness, we will have to deliver one short oral ruling. And

13 this oral ruling on the Defence request for disclosure of the biographic data --

14 Mr Abdou.

15 MR ABDOU: Your Honours, I probably misunderstood the subject matter of your

16 decision because late yesterday, the Defence also filed --

17 PRESIDING JUDGE FREMR: Sorry, Mr Abdou. I have some problem. I can't

18 hear you. I don't know why because your mic is -- could you start again.

19 MR ABDOU: Is it -- okay. Now, I probably misunderstood the subject matter of

20 your oral ruling because I was late yesterday. The Defence has filed a request for

21 disclosure orders in respect of Witness 877 and we would like to inquire whether the

22 victims will have an opportunity to respond, be it orally or in writing.

23 PRESIDING JUDGE FREMR: Mr Abdou, this oral ruling I am going to pronounce

24 now contains a different witness, Witness P-315, so the matter you mentioned will be

25 solved during the day.

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1 So again, the Chamber will now deliver its oral ruling on the Defence request for
2 disclosure of the biographic data and security questionnaire, so-called BSQ, relating
3 to Witness P-315 contained in filing number 1395.
4 After the Chamber shortened the deadline by way of email, the Prosecution
5 responded on 17 June 2016 in filing number 1404.
6 The Chamber notes that the Defence request was based on speculative assessment of
7 the likely content of the BSQ, having reviewed an investigation note which had been
8 disclosed summarising certain of its content. However, having reviewed the
9 relevant material, the Chamber notes that although the investigation note summarises
10 the information provided by the witness, certain additional detail is contained in the
11 BSQ which the Chamber considers could be material to the preparation of the Defence.
12 In these circumstances, the Chamber directs the Prosecution to disclose the additional
13 security related information contained at pages 3 and 4 of the BSQ forthwith by way
14 of supplementary investigation note.
15 This concludes the Chamber's oral ruling.

16 And now, Mr Witness, we can devote to the second half, in fact, of your testimony.
17 Just to assure myself, are you feeling okay today, Mr Witness?

18 WITNESS: DRC-OTP-P-0888 (On former oath)

19 (The witness speaks Swahili)

20 THE WITNESS: (Interpretation) Yes, I feel well, but I did not hear the Swahili
21 interpretation.

22 PRESIDING JUDGE FREMR: Could we just verify that everything is okay with the
23 Swahili channel?

24 THE WITNESS: (Interpretation) Yes, I can now hear the interpreter.

25 PRESIDING JUDGE FREMR: Very well. So let's continue.

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1 Ms Luping, you have the floor. And as I indicated yesterday, you still have
2 29 minutes at your disposal.

3 MS LUPING: Thank you, Mr President. And I would ask for my preliminary
4 questions if we could please with your leave move into private session.

5 PRESIDING JUDGE FREMR: All right.

6 Court officer, please let's move into private session.

7 (Private session at 9.39 a.m.) *(Reclassified partially in public)

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

9 PRESIDING JUDGE FREMR: Thank you, court officer.

10 Ms Luping, please proceed.

11 MS LUPING: Thank you, Mr President.

12 QUESTIONED BY MS LUPING: (Continuing)

13 Q. Good morning, Mr Witness.

14 Now, Mr Witness, you described --

15 A. Good morning.

16 Q. -- you described in some detail yesterday your experiences within the UPC.

17 My first question is: Did you have any other family members who had a connection
18 with or role within the UPC or its army?

19 A. No. No one in my family belonged to the UPC army or none of the other
20 soldiers.

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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3 (Redacted)

4 (Redacted)

5 PRESIDING JUDGE FREMR: Mr Bourgon.

6 MR BOURGON: Relevance, Mr President?

7 PRESIDING JUDGE FREMR: Ms Luping.

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 PRESIDING JUDGE FREMR: Even if it's not, frankly saying, 100 per cent clear to me,
13 but anyway, please proceed.

14 MS LUPING: Thank you, Mr President.

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

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4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted), did you learn at all of

9 what the relationship was like between Commander Bosco and Thomas Lubanga?

10 (Redacted)

11 (Redacted)

12 A. Well, dealings between Bosco and Thomas Lubanga, I don't know what sort of

13 dealings or relationship they had. Bosco was a high-ranking commander in the UPC.

14 We knew he was a high-ranking officer, but I don't know what kind of relationship

15 the two had.

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

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11 (Redacted)

12 (Redacted)

13 PRESIDING JUDGE FREMR: Mr Bourgon, it's clear that "assess" is a problem for
14 you, but I think we will assess ourselves whether the response is right or not.

15 THE WITNESS: (Interpretation) Each time they would meet, Mr Bosco would
16 greet Mr Lubanga and salute him as his superior. But Mr Bosco was feared and
17 respected. He was a high-ranking officer. Everyone respected him. But he and
18 Thomas Lubanga would greet one another. They respected one another. They had
19 respect for one another. Bosco respected Thomas Lubanga because he was the
20 president and Lubanga respected Bosco because Bosco was a high-ranking officer.

21 MS LUPING:

22 Q. And when you say that Commander Bosco was feared, what do you mean by
23 that?

24 A. What I meant, even us, the soldiers, we feared him because he was a very
25 serious man and very -- and really strict.

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1 Q. And what do you mean by he was very strict?

2 A. What I mean is that -- well, I said that because he used to punish the soldiers
3 who did bad things. And that is why I said he was very strict because he punished
4 people who had done wrong.

5 Q. Now, to the best of your knowledge, did Commander Bosco ever punish
6 anybody within the UPC army for any crimes committed against the Lendu or the
7 Ngiti?

8 PRESIDING JUDGE FREMR: Mr Bourgon.

9 MR BOURGON: I don't think, Mr President, the witness is in a position to answer
10 this question. (Redacted)
11 and we are asking him whether there are punishments being issued for crimes
12 committed against Lendus. So this is simply beyond the scope of what this witness
13 can offer in his testimony. Thank you.

14 PRESIDING JUDGE FREMR: Mr Bourgon, please avoid these kind of objections
15 because question was fair, was not leading. And whether witness will be able to
16 respond or not is really not ground for objection.

17 Ms Luping, please proceed.

18 MS LUPING: Thank you, Mr President.

19 Q. Mr Witness, I'm going to repeat the question: To the best of your knowledge,
20 did Commander Bosco ever punish any UPC soldiers for any crimes committed
21 against Lendu or Ngiti civilians?

22 A. No. During that entire time I was in the UPC I never saw him punish soldiers
23 for that reason. He would punish UPC soldiers when they made the people of Bunia
24 suffer, but as for punishing soldiers who had done harm to the Lendus, no, I didn't
25 see that.

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1 Q. And when you say he would punish people who made the people of Bunia
2 suffer, what ethnicities of such people in Bunia?

3 A. In Bunia there were many ethnic groups, not just Hema and Gegere people.
4 There were several tribes. Other than the Lendus there were other tribes.

5 Q. And I want to clarify that response because you've referred also to the fact --

6 PRESIDING JUDGE FREMR: Ms Luping, is there still a need to remain in private for
7 this question?

8 MS LUPING: Indeed. Mr President, if you wouldn't mind, I had one actual
9 question to ask (Redacted)

10 (Redacted)

11 PRESIDING JUDGE FREMR: All right then.

12 MS LUPING: But I took the opportunity to follow up immediately.

13 PRESIDING JUDGE FREMR: Then remain in private.

14 MS LUPING: And then I will shortly thereafter be asking that question about the
15 (Redacted)

16 Q. So just a quick clarification on the response you just gave, you said that there
17 were also Lendus, as I understand it, in Bunia. But to the best of your knowledge
18 did Commander Bosco ever punish any UPC soldiers for crimes committed against
19 Lendu living in Bunia?

20 A. No, I never -- well, I must say that most of the Lendu were not living in Bunia,
21 but there were many other ethnic groups, but as for commander, the commander
22 punish UPC soldiers when they did wrong or when they harmed the population, well,
23 it wasn't against the Lendu because the Lendu lived outside of Bunia.

24 Q. Now, I'm just going to go back to one of my original questions to you.

25 (Redacted)

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2 (Redacted)

3 (Redacted)

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6 (Redacted)

7 (Redacted)

8 A. They got along very well because Afande Bosco was a great commander. We
9 heard that he was higher ranked than Kisembo but Afande Kisembo, we used to call
10 him chief of staff. He got along -- they got along very well. They were all
11 high-ranking commanders.

12 Q. And when you say Afande Bosco was a great commander, what do you mean
13 by that?

14 A. Us within the UPC, we heard that. We were told that he was a great
15 commander, that he had a great deal of experience, and that is why people said he
16 was a high-ranking commander. He had spent a lot of time in the army and he had
17 a great deal of experience.

18 MS LUPING: Mr President, with your leave I believe we could go into open session.
19 Before we do, I would just like to give an instruction to the witness though.

20 Q. Now, Mr Witness, we are now -- I've just asked that we go into open session,
21 which means that people in the public can hear what you say, even though they still
22 cannot see your face or hear your real voice. When -- what I'll be doing now is
23 showing you a series of video excerpts, I'll be asking you questions about what you
24 may recognize in terms of anything you, anything or anybody you recognize.

25 I would just ask that you be careful when you give your responses not to say

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1 anything that might identify you, and if there is anything that you think could
2 identify you, please ask me to request leave to go into private session. Is that
3 understood?

4 A. Yes, I've understood.

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

6 (Open session at 9.57 a.m.)

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

8 PRESIDING JUDGE FREMR: Thank you.

9 Ms Luping, please proceed.

10 MS LUPING: Thank you, court officer. Thank you, Mr President.

11 Court officer, the Prosecution would like to seek the floor to show the videos. And
12 the first video excerpt that we'll be showing, and it can be shown publicly, is tab 10,
13 video DRC-OTP-0082-0016 and it is -- the first excerpt will be played without sound
14 from 00.29.39 to 00.31.28.

15 Q. Now, Mr Witness, as I said in private session I will be showing you a number of
16 excerpts that, some with sound, some without sound. You have paper and pens
17 right by you. What I would ask you to do, because we have limited time, is I'm
18 going to be showing you these excerpts only once. So whilst you're watching it, if
19 you could please note down anything or anybody that you recognize, because then I'll
20 be asking you the questions after the video excerpt is shown. I will also be stopping
21 at certain points to ask you if there is anybody or anything you recognize.

22 Is that clear?

23 A. Yes, I've understood.

24 Q. All right. We're now going to be playing this excerpt without sound.

25 PRESIDING JUDGE FREMR: Hold on, Ms Luping.

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1 Mr Bourgon, any objection?

2 MR BOURGON: I just wanted to confirm whether there was sound or no sound.

3 PRESIDING JUDGE FREMR: No sound. I think it was clear.

4 (Viewing of the video excerpt)

5 MS LUPING:

6 Q. Mr Witness, can you describe for the Judges what you recognize in terms of
7 anything or anybody in this very short excerpt that was just played to you without
8 sound.

9 A. (No interpretation)

10 THE INTERPRETER: Could the witness be asked to repeat asks the Swahili booth.
11 The line was cut.

12 PRESIDING JUDGE FREMR: Sorry, Mr Witness, I'm sorry to interrupt you.

13 Because of some problem the interpreters haven't captured the beginning of your
14 response. So please, I'm sorry, but please start again from the beginning of your
15 response. Thank you.

16 THE WITNESS: (Interpretation) Very well. In the first video I saw soldiers who
17 are at a rally. I recognized a soldier with a jacket, Commander Kisembo. I also
18 recognize Bosco. He has a stick in his hand.

19 PRESIDING JUDGE FREMR: And, Mr Witness, have you recognized the place?

20 THE WITNESS: (Interpretation) Yes. The place is Mandro, the training centre,
21 but it's not at the training centre, it's just next to it, next to the training centre. I
22 recognize it. It's in Mandro.

23 PRESIDING JUDGE FREMR: Thank you.

24 MS LUPING:

25 Q. Now, Mr Witness, you said you recognized Commander Bosco as the person

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1 with the stick in his hand. Could you describe the individual you have identified as
2 being Commander Kisembo? Can you recall what he was wearing in this short clip,
3 or do you want to see this again?

4 A. Kisembo was wearing a military jacket with a red beret.

5 Q. We're now going to move on to the second clip, and that is the same video,
6 same tab, still at tab 10 and the excerpt is from timestamps 32.04 to 32.08. It's a very
7 short clip. Mr Witness, again, if there is anything you recognize within this excerpt.

8 A. In this video I can see soldiers during a parade, but I don't recognize anyone
9 among them. But it's the same place in Mandro as was in the case of the other video
10 that was shown.

11 Q. I'm going to ask that it be played just one more time for you. And this time
12 could you pay attention to the weapon that is being carried to see if you can recognize
13 or identify what that weapon is. It will be played one more time.

14 (Viewing of the video excerpt)

15 MS LUPING:

16 Q. Now we just stopped the video this time at timestamp 32.07. Do you recognize
17 that weapon?

18 A. Yes, I recognize that weapon. We call it RPG or a rocket launcher.

19 Q. Next video excerpt, third video excerpt, timestamp 36.38 to 37.27. If you could
20 please when you're watching this excerpt, Mr Witness, see if there's anybody and
21 anything that you recognize in it.

22 MS LUPING: We're just having a few technical difficulties, Mr President.

23 (Viewing of the video excerpt)

24 MS LUPING:

25 Q. Mr Witness, actually I'm stopping at timestamp 37.22. Just focussing on the

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1 individual in the middle, I know it's extraordinarily fuzzy, but can you see who that
2 is?

3 A. Yes. The person in the middle with a baton and a Motorola is Bosco.

4 Q. I'm going to move on to the next clip, and that is at 38.30 to 38.35. I want to see
5 if there is anything that you can recognize in this clip.

6 (Viewing of the video excerpt)

7 MS LUPING:

8 Q. The clip, sorry, is just going to be shown to you again. I'd like you to focus
9 actually on the weapon and indicate if you recognize it. It's just a five-second clip.

10 Focus on the weapon.

11 (Viewing of the video excerpt)

12 MS LUPING:

13 Q. We stopped at 38.32. Do you recognize the weapon, Mr Witness? And if so,
14 can you explain to the Judges what it is?

15 A. This is the weapon on a bipod. It also has an ammunition belt which is there.

16 Q. The next clip, this one will have to be played with sound, your Honours, it's
17 from 41 to 43, and you will understand why it has to be played with sound in a
18 moment. There is singing to be heard, and the question for the witness will be if he
19 can explain or described what is being sung.

20 PRESIDING JUDGE FREMR: And, Ms Luping, it should be the last one because
21 your time is almost over.

22 MS LUPING: Understood. Understood, Mr President.

23 (Viewing of the video excerpt)

24 MS LUPING:

25 Q. Mr Witness, my first question actually relates to the singing. Do you recognize

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1 the songs that were being sung in this clip, and if so, could you explain what they
2 were singing?

3 A. Yes. In these songs Afande Bosco and Kisembo are saying that the young
4 people have gone to the bush, that's to say that young people have gone into the bush,
5 that's the sense or the meaning of the song.

6 Q. Did you recognize any of the songs being sung?

7 A. Yes. I remember this song and the second one, I remember it well.

8 Q. And how do you remember it? From where or when do you recognize it?

9 A. I recognize the song because we also sung it when we were at training.

10 MS LUPING: Mr President, I would ask that all of these video excerpts that have
11 been shown to the witness be admitted as evidence for the Prosecution.

12 PRESIDING JUDGE FREMR: They were five, am I right? Or more?

13 MS LUPING: That is correct, five excerpts.

14 PRESIDING JUDGE FREMR: Defence, your position?

15 MR BOURGON: Is my colleague seeking to admit any transcript or just the videos?

16 MS LUPING: In fact, we will not be seeking to admit any transcripts or translations
17 for these excerpts, as all of them were played without sound, and the one with sound,
18 the songs, there were no transcriptions for the songs themselves.

19 MR BOURGON: Then we have no objection, Mr President.

20 PRESIDING JUDGE FREMR: Very well. Then those five excerpts of video used
21 with this witness are admitted into evidence as a further Prosecution exhibit.

22 MS LUPING: Mr President, I had one question, but it would need to be asked in
23 private session. But it's only with your leave, if that was possible.

24 PRESIDING JUDGE FREMR: Is this question really so important for you?

25 MS LUPING: It would simply be helpful I think to, for the Chamber to assess this

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1 witness, but it's only with your leave.

2 PRESIDING JUDGE FREMR: All right. Please proceed. And let's move into
3 private session.

4 (Private session at 10.15 a.m.) *(Reclassified partially in public)

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

6 PRESIDING JUDGE FREMR: Thank you.

7 Ms Luping, please.

8 MS LUPING: Thank you, Mr President. Thank you, court officer.

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 Can you recall the names of any of Commander Rafiki's escorts?

13 A. Yes, I remember one of the escorts of Commander Rafiki. (Redacted)

14 (Redacted), he was the chief escort of Rafiki's. He was

15 called Santos.

16 Q. Can you recall his ethnicity?

17 A. Santos was a Hema.

18 MS LUPING: Thank you, Mr President, thank you, your Honours, I have no further
19 questions.

20 And thank you very much, Mr Witness.

21 PRESIDING JUDGE FREMR: Now let's move into open session.

22 (Open session at 10.17 a.m.)

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

24 PRESIDING JUDGE FREMR: Thank you.

25 Mr Witness, now we will move into cross-examination, which means that you will be

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1 now examined by representative of Defence. And I would like to remind you that
2 this Court is governed by the principle of fair trial, which means that both parties are
3 treated equally. And for you it means that, because I can say that you responded
4 very clearly and patiently all questions put to you by Prosecution, so you are expected
5 to do it in the same way when you are questioned by Defence.

6 Is it clear to you?

7 THE WITNESS: (Interpretation) Yes, I understand you, your Honour.

8 PRESIDING JUDGE FREMR: And before I hand over floor to the Defence, according
9 our measuring, Prosecution in fact used for examination-in-chief four hours and
10 38 minutes, so in accordance with our principles, the Defence is entitled to utilise the
11 same time.

12 Now, Mr Bourgon, you have the floor.

13 MR BOURGON: Thank you, Mr President. Before I begin my cross-examination
14 I would like to, to make arguments in the absence of the witness. Thank you.

15 PRESIDING JUDGE FREMR: All right.

16 Court usher, please take Mr Witness out of the courtroom for a while.

17 (The witness stands down)

18 PRESIDING JUDGE FREMR: For your submission shall we remain in open session
19 or there is a need to move into private?

20 MR BOURGON: We need to stay in private session, Mr President, if we are or we
21 need to move into private session.

22 PRESIDING JUDGE FREMR: All right.

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

24 (Private session at 10.20 a.m.) * (Reclassified partially in public)

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

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- 1 PRESIDING JUDGE FREMR: Thank you, court officer.
- 2 Mr Bourgon, please proceed.
- 3 (Redacted)
- 4 (Redacted)
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- 7 (Redacted)
- 8 (Redacted)
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- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 (Redacted)
- 17 PRESIDING JUDGE FREMR: And could you just maybe clarify to us and also to
- 18 Prosecution what is your idea, how would you like to make it concretely?
- 19 MR BOURGON: Well, Mr President, it's our understanding that the (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)

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- 1 (Redacted)
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- 5 (Redacted). Thank you, Mr President.
- 6 PRESIDING JUDGE FREMR: Thank you.
- 7 Prosecution, your position.
- 8 MS LUPING: Thank you, Mr President. Thank you, your Honours. (Redacted)
- 9 (Redacted)
- 10 (Redacted)
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- 3 PRESIDING JUDGE FREMR: Mr Bourgon, any reaction to --
- 4 (Redacted)
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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 PRESIDING JUDGE FREMR: Give us 30 seconds. We will deliberate on that how
8 to proceed, what is the best way.

9 (Trial Chamber confers)

10 PRESIDING JUDGE FREMR: So after our silent brief deliberation, in our view the
11 (Redacted)

12 (Redacted), but if the reference would be made in general way

13 that simply saying another person testified, it would be fine.

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 And please answer to the microphone, madam court officer.

21 THE COURT OFFICER: Yes, Mr President, that would be possible. We will only
22 request the parties and participants to indicate it in advance so that the court usher
23 can check that the computer screen is indeed shut down. Thank you.

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 PRESIDING JUDGE FREMR: It would be ideal. Okay. So let's start with the
7 testimony and hopefully during the break we all will find the optimal way how to
8 proceed, but generally in our view it should be possible.

9 Now bring witness back in the courtroom and then the same time move into open
10 session.

11 (The witness enters the courtroom)

12 (Open session at 10.32 a.m.)

13 THE COURT OFFICER: We're into open session, Mr President.

14 PRESIDING JUDGE FREMR: Thank you, court officer.

15 Mr Witness, sorry for inconvenience, but during your absence we had to solve one
16 procedural issue that had to be solved in your absence. So it was the reason.

17 Now, as I indicated, we would continue with your cross-examination by Defence.

18 Now, Mr Bourgon, you may proceed.

19 THE WITNESS: (Interpretation) Thank you.

20 QUESTIONED BY MR BOURGON:

21 Q. Good morning, Mr Witness.

22 A. Good morning.

23 Q. Allow me to begin by introducing myself. My name is Stéphane Bourgon and
24 I am counsel representing the accused in this case, Bosco Ntaganda. Do you
25 understand this?

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1 A. Yes.

2 Q. Now, this morning, together with members of the Defence team of
3 Mr Ntaganda, I will of course ask you a number of questions for the next four hours
4 or so in order to basically cover many of the areas that you've already answered
5 questions to with the Prosecution. Do you understand that?

6 A. Yes, I've understood.

7 Q. Now, you and I have not had the opportunity to meet up to this day, but I'd like
8 to -- you to confirm that you remember meeting with two of my colleagues last week.
9 Do you remember this?

10 A. Yes, I remember.

11 Q. Then we can proceed with my questions with the only caveat that of course, as
12 you have been doing since the beginning, to ensure that you wait before I finish my
13 question until you answer; and I will do the same, I will wait for the end of your
14 answer before I say another question. Do you understand this?

15 A. Yes, I understand.

16 Q. Very well. Let's proceed. I'd like to begin by confirming with you that
17 throughout your testimony yesterday and today you have identified a number of
18 UPC officers. Can you confirm this?

19 A. Yes, I can confirm that. The ones that I remembered.

20 PRESIDING JUDGE FREMR: Ms Luping.

21 MS LUPING: Yes, I'm sorry to interrupt my learned colleague, I just wanted to
22 gently remind him that we are in public session. I'm not sure, of course, what the
23 next succession of questions will be. This first is fine, I have no objection to this
24 question as such, but just as a reminder we're in public.

25 PRESIDING JUDGE FREMR: I will be vigilant. And I guess Mr Bourgon as well.

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1 Mr Bourgon, please proceed.

2 MR BOURGON: Thank you, Mr President.

3 Q. Mr Witness, at this point in time I would just like you to confirm that during
4 your testimony you did identify on a number of occasions Bosco Ntaganda; is that
5 correct?

6 A. Yes, yes, I identified him. I know him very well.

7 Q. Now, all I want to confirm at this time that you did mention these names during
8 your examination-in-chief and you also identified Kisembo; is that correct?

9 A. Yes.

10 Q. And I take it that you do remember mentioning the name Salumu; is that
11 correct?

12 A. Yes.

13 Q. And you also remember, I take it, mentioning the name "Rafiki"; is that correct?

14 A. Yes, I remember.

15 Q. I would like to confirm, Mr Witness, that you did not mention the names of any
16 other UPC officer during your examination-in-chief; is that correct?

17 A. That is true. I did not mention any other officers because I didn't remember
18 their names.

19 Q. Now, earlier this morning you mentioned the name --

20 PRESIDING JUDGE FREMR: Sorry, sorry Mr Bourgon.

21 Ms Luping.

22 MS LUPING: Mr President, there was a name given by the witness in private
23 session, it could be highly identifying and I had warned the witness not to mention
24 the identity of this officer. It was an officer whose named in the context of the

25 Mandro training. But we are in public session now. I'm standing simply as, just to

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1 note that out of fairness of this witness that his prior testimony is being put to him,
2 but in fairness to him it's not entirely correct.

3 PRESIDING JUDGE FREMR: All right, matter clarified.

4 Mr Bourgon.

5 MR BOURGON: Thank you, Mr President. If my colleague can bring the name to
6 my attention at the break, then I will indeed make the necessary correction, unless she
7 was talking about somebody mentioned this morning in private session, but that
8 person was not referred to as an officer of the UPC. So I'm not sure if that's the
9 person we're referring to.

10 Q. Mr Witness, you mentioned this morning the name of a member of the UPC
11 called Santos who would have been the chief escort of Rafiki. Do you recall this?

12 A. Yes, I remember.

13 Q. So you will agree with me that this man called Santos was not an officer in the
14 UPC and certainly not a senior officer; do you agree with me?

15 A. Santos did not have any rank within the UPC army. He was the head
16 bodyguard of Commander Rafiki.

17 Q. Thank you, sir.

18 MR BOURGON: Mr President, if we can move in private session, please.

19 PRESIDING JUDGE FREMR: Certainly.

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

21 (Private session at 10.41 a.m.) *(Reclassified partially in public)

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

23 PRESIDING JUDGE FREMR: Thank you.

24 Mr Bourgon, please proceed.

25 MR BOURGON: Thank you, Mr President. The name I forgot to mention, I think

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1 my colleague will correct me if I'm wrong.

2 Q. Sir, do you remember mentioning the name of an officer or at least the name

3 (Redacted)

4 A. Yes, I remember mentioning that name, the name of (Redacted)

5 Q. It's my understanding you do not know the family name of (Redacted) is that

6 correct?

7 A. I didn't know his last name, I just knew him by his first name, (Redacted)

8 Q. And, sir, you will agree with me that members of the UPC would not address

9 officers by their first name when you -- is that correct?

10 A. No. We would use their first names because we didn't know their surnames.

11 That was the case with (Redacted), we didn't know what his family name was.

12 Q. And it's my understanding, sir, you do not know which unit of the UPC (Redacted)

13 was in; is that correct?

14 A. That is true. I don't know what his rank was within the UPC. We called him

15 commander because others as well called him commander. As for his specific rank

16 within the UPC, there were no ranks such as general or colonel or anything like that.

17 We would call the high-ranking officers commander.

18 Q. Now, other than rank, I was referring to his role or the position he held within

19 the UPC. I take it you are not able to inform the Chamber of what position (Redacted)

20 held?

21 A. When we were at the training centre in Mandro, I know that he was an

22 instructor responsible for the training of the recruits.

23 Q. Sir, in terms of members of the UPC mentioned during your testimony, it's my

24 understanding that you provided this Chamber with five names, so I'd like to go one

25 by one and confirm that you recall mentioning these names. So of course you spoke

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1 about (Redacted), right?

2 A. Yes.

3 Q. And you spoke about (Redacted); is that correct?

4 A. Yes.

5 Q. And you mentioned the name (Redacted); is that correct?

6 A. Yes.

7 Q. And you refer to a member of the UPC who had lighter skin than you, the name
8 (Redacted); do you remember this?

9 A. Yes.

10 Q. And this morning of course we had the name Santos that we can add to the list
11 of the names you mentioned; is that correct?

12 A. Yes.

13 Q. So you will agree with me that during your testimony you were not able to
14 provide any other name of any other members of the UPC in every event you were,
15 you would have been involved in; is that correct?

16 MS LUPING: Objection, Mr President?

17 PRESIDING JUDGE FREMR: Yes, Ms Luping.

18 MS LUPING: I'm just looking at the question just posed to this witness and, out of
19 fairness to the witness, to say that "you were not able to provide any other name of
20 any other members of the UPC in every event you had been involved in". Out of
21 fairness to the witness he was not asked to provide names of anybody else involved.
22 He was asked to describe what he saw and he heard in terms of his experiences. So
23 if the question could please be rephrased, because I understand we're in
24 cross-examination but, but really it needs to be a fair question that's put to the
25 witness.

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1 PRESIDING JUDGE FREMR: I can just say it, Mr Bourgon, that I also don't
2 understand the purpose of this question.

3 MR BOURGON: Mr President, on a number of occasions the witness was asked to
4 provide whether he could provide names of persons he saw, persons who were with
5 him or persons who were involved. I'm simply putting to him that other than these
6 four names, he did not mention any other name during his testimony so far.

7 PRESIDING JUDGE FREMR: But it's even test of your memory whether he
8 remembers what he said yesterday and so on, but I think the clear proof of that is our
9 transcript. So really, you can ask but really I see very low relevance of such a
10 question. Please proceed.

11 MR BOURGON: Thank you, Mr President.

12 Q. Mr Witness, can you provide me with any other names of members of the UPC
13 you were involved in at the time?

14 A. Other UPC soldiers, well, I remember there was one soldier (Redacted)
15 (Redacted). That was his name. However, I can't remember the other names
16 because all of that was several years ago. What's more, when I was in the UPC I
17 wasn't in a position to know the names of all the UPC soldiers.

18 Q. Thank you, sir. Sir, you can confirm that the name of your father is (Redacted)
19 (Redacted); is that correct?

20 A. Yes. My father is (Redacted).

21 Q. Can you spell that second name for us, please.

22 A. Which one? (Redacted)

23 Q. As long as we have the transcript correct, and unless my colleague has an
24 objection, I think we do have the right name, (Redacted), in my question. So
25 is it (Redacted), is that the name of your father?

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1 A. Yes, that's right.

2 Q. And (Redacted) that is your mother, correct?

3 A. Yes, that is my mother's name.

4 Q. This morning you were asked about (Redacted). You can confirm of course
5 that (Redacted) was your (Redacted); is that correct?

6 A. Yes. (Redacted)

7 Q. Sir, I'd like to move on to a different topic which has to do with the preparation
8 session you had with the Prosecution (Redacted)

9 (Redacted) Do you recall this, sir?

10 A. Yes, I remember.

11 Q. And I'd like you to confirm that you were informed -- whether you were
12 informed that following these two days of meetings that the information you
13 provided would be communicated to the Defence. Did we inform you of this?

14 A. Yes, I was informed of that.

15 Q. Now, based on the information that was provided to me during those two days,
16 you can confirm that you read your statement in full two times; is that correct?

17 A. Yes, I read it over twice, everything that had been written down.

18 Q. Now, when you say you read it, explain to us how this took place. Was it read
19 to you or did you read it or was it translated? Just tell us how this took place, please.

20 A. All the documents were written in French. Someone would read in French and
21 interpreted what was written into Swahili.

22 Q. And this exercise was completed twice, as you mentioned; is that correct?

23 A. Yes, that's right.

24 Q. In addition to your statement, you also had the opportunity to review some
25 material called investigation notes; do you recall this, sir?

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1 A. Yes.

2 Q. And these investigation notes, they dealt with information that you provided to
3 the Prosecution on various occasions; is that correct?

4 A. Yes.

5 Q. At one point during your preparation session you expressed the need or the will
6 to read one specific portion of your statement over again. Do you recall this, sir?

7 A. Yes.

8 Q. And which part was this?

9 A. I don't really remember. However, I do remember that I read one part and I
10 didn't remember exactly what number it was.

11 Q. Well, this is last week, sir, and you finish one day of reading and then you say,
12 "Well, I want to read one part over again." You did not tell the Prosecution which
13 part that was, but I'd like to know the topic. What topic was it about?

14 A. Well, there was one passage that I read and the translation was done into
15 Swahili. There were several pages in that document and I can't remember which
16 page the passage was on.

17 Q. But do you recall the topic? That is my question, sir. What did these pages
18 deal with, the section that you wanted to review again?

19 A. No, I don't remember the subject. In that document several subjects were
20 covered and I couldn't really know which subject it was.

21 Q. Sir, do you recall that during your preparation session over the course of two
22 days you were reminded of the need to tell the truth on no less than seven occasions.
23 Do you recall this, sir?

24 A. Yes, I remember.

25 Q. I'd like to go over what was mentioned to you to ensure that you recall what

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1 you were asked then.

2 MR BOURGON: Mr President, I refer to document, the number of the document I'm
3 not sure I have a document number but it is the witness preparation session and
4 disclosure note. I do have a number here. DRC-OTP-2094-0002.

5 Q. On page 1 of this document, sir, it says that "The witness confirmed that he has
6 never testified before a court." That is correct, right?

7 A. Yes. That is true. This is the first time I have appeared before a chamber.

8 Q. And if I read on page 1 of this document this happened between 10.24 and 11.15
9 (Redacted). It says "The importance of telling the truth was emphasised." Do you
10 recall this, sir?

11 A. Yes, I remember.

12 Q. And during the same session from 10.24 to 11.15 here's what the note I have,
13 here is what it says:

14 "The witness was informed that he would now have a chance to review his material
15 and that while reviewing it it is important to keep in mind that he should provide the
16 Judges only with the information in his statement which is true and accurate."

17 It goes on at the top of page 2:

18 "The witness was informed that if there are any mistakes in the statement which he
19 provided to the Prosecution or if anything in his statement is not true, he had the
20 opportunity to make corrections during the witness preparation session in view of the
21 importance of telling the truth."

22 Do you recall this type of language being used with you?

23 A. Yes, all of that was explained to me.

24 PRESIDING JUDGE FREMR: Mr Bourgon, I'm very sorry, I have to break you now
25 because, first, we are over the time, but we have also some urgent commitments

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1 during this break. So sorry for that. And we will reconvene half past 11.

2 THE COURT USHER: All rise.

3 (Recess taken at 11.01 a.m.)

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

5 THE COURT USHER: All rise.

6 Please be seated.

7 PRESIDING JUDGE FREMR: Before break we finished in private session.

8 Mr Bourgon, do you want to continue in private?

9 MR BOURGON: Yes, Mr President.

10 PRESIDING JUDGE FREMR: All right then.

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

12 (Private session at 11.34 a.m.) *(Reclassified partially in public)

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

14 PRESIDING JUDGE FREMR: Thank you.

15 Mr Bourgon, please proceed.

16 MR BOURGON: Thank you, Mr President.

17 Q. Sir, we are still in private session. Before the break I read to you two, twice

18 information that was given to you by the Prosecution during your preparation session

19 concerning the importance of telling the truth. The list goes on and I'd like to cover,

20 for you to confirm that this is indeed what the Prosecution mentioned to you during

21 your preparation session. And I have -- I read here from the note I received from the

22 Prosecution where it states the following:

23 "The witness was informed that the Judges and the parties don't know about the

24 witness's personal experience, but they already know a great deal about the case, so if

25 the witness is not truthful or lies about anything, the Judges will be well placed to

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1 realise this -- to realise that this is the case."

2 Do you recall that the Prosecution informed you of this?

3 A. Yes, I was told that.

4 Q. Now, in the same paragraph, I'm quoting from the second paragraph on page 2
5 of the same document, so for the record the number is DRC-OTP-2094-0002. And it
6 states the following:

7 "The witness was informed that if there is any mix of truth and lies in what he tells the
8 Judges, the Judges may decide that they cannot rely on anything that he tells them,
9 even those parts which are true."

10 Do you recall being given such information?

11 A. Yes, I was told that.

12 Q. A little further in the note I have on page 2 of the same document, it states:

13 "The witness was informed that before he starts to testify, the Presiding Judge will
14 inform him that he is under oath and that if he does not tell the truth he could be
15 prosecuted since it's an offence in this Court. The witness was informed that the
16 importance of telling the truth cannot be stressed enough."

17 Do you recall being given this information, sir?

18 A. Yes, I remember.

19 Q. Now, on page 2 of the same document, further down, it is stated the following:

20 "The witness was again told that when he reads his material he should keep in mind
21 that information needs to be the truth because he cannot guess, exaggerate or make
22 things up."

23 Do you recall being given this information, sir?

24 A. Yes, I remember.

25 Q. And another part I would like to read, we move to page 6 of the same document,

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1 the third paragraph from the top where it states:

2 "The witness was reminded about the procedure which would be followed in the
3 courtroom and that the most important thing was to tell the truth."

4 Do you recall being given this information, sir?

5 A. Yes.

6 Q. I'd like to come back to what I mentioned a little earlier, which is the
7 information that was given to you concerning the fact that you are now under oath
8 and that if you do not tell the truth you could be prosecuted since it's an offence in
9 this Court. Sir, what is your understanding of this information?

10 A. I understood that I had to tell the truth and I'm telling the truth. I can't invent
11 anything. I can't say what I don't know.

12 Q. And you understand that should it be established that you're, if you're not
13 telling the truth that you could be prosecuted before this Court; you understand this?

14 A. Yes.

15 Q. Now, during your testimony up to this point you describe your participation in
16 a number of events which could be classified as crimes and that you were involved
17 personally in these crimes. You realise this, sir, don't you?

18 A. The crimes were committed, but it wasn't due to our will. We were given
19 orders to do that.

20 Q. But according to your testimony, you nonetheless recognize that you were
21 involved in the commission of grave crimes; is that correct?

22 A. I wasn't the only person to commit crimes. All UPC soldiers committed crimes.
23 And they did so having received orders from the authorities. It wasn't because we
24 wanted to commit crimes. I didn't want to commit crimes. It was the orders that
25 we received.

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1 Q. Now, sir, when you met the Prosecution to provide a statement, you recall
2 doing so, sir, (Redacted); is that correct?

3 A. Yes, that's correct.

4 Q. And on this occasion it's my understanding that you were never informed that
5 you were or could be a suspect in this case; is that correct?

6 PRESIDING JUDGE FREMR: Ms Luping.

7 MS LUPING: Really, objection, Mr President. The witness was met and the
8 information that was provided was provided in the context of the age of an age below
9 the age of 18 at the time of the events. On that basis there would be no reason to
10 provide any such warnings. I think out of fairness also to this witness, you know,
11 the full context of this needs to be provided by the Defence counsel. Article 55(2) is
12 not triggered when an individual is below the age of 18 at the time.

13 PRESIDING JUDGE FREMR: Mr Bourgon. But generally I think really I don't like
14 very much this kind of questioning because Mr Witness is here as a witness. He is
15 not in front of us at this moment as the accused. So he -- in fact, you are asking him
16 to defend himself and so.

17 MR BOURGON: I'm not doing so, Mr President. I'm simply asking the witness
18 whether he realised when he started giving his interview to the Prosecution that he
19 was giving information about his participating in crimes. And it's a fair question to
20 know whether the witness realised this or not.

21 PRESIDING JUDGE FREMR: Moreover, at least so far Mr Witness several times
22 described his involvement in those crimes. Nevertheless, proceed.

23 MR BOURGON:

24 Q. So, Mr Witness, did you realise at the time that when you started to give an
25 interview to the Prosecution that you could be a suspect in this case?

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1 A. No. I didn't know that one day I could be a suspect in this case. You know,
2 what I did, that wasn't something I wanted to do. And that's why I thought I
3 couldn't be a suspect in the case.

4 PRESIDING JUDGE FREMR: Ms Luping.

5 MS LUPING: Mr President, again it's simply a question of fairness to this witness.

6 He has not been brought, as you say, to this Chamber to provide testimony as a
7 suspect or as an accused person, but as a witness. And what the -- what the witness
8 has not been informed, again out of fairness, is that even individuals who committed
9 crimes may not come forward and be prosecuted, as such, by this -- by the
10 Prosecution or by this Court. And so when we use the term "suspect" I think we
11 should not lead the witness into some kind of misapprehension or misunderstanding
12 as to what his status is before this Chamber. He's been very open. He's been very
13 candid about participation in commission of crimes and I don't believe he has been
14 holding back, as it were, in any way. But I would not want him to misunderstand
15 what his status is. The term "suspect" can be a little bit confusing for a layperson,
16 especially one who's never testified before a court or not. And I would like the
17 witness to understand what the term "suspect" means in this context.

18 PRESIDING JUDGE FREMR: Thank you.

19 Mr Bourgon, I can understand that that factor could have an impact on the credibility
20 of the witness. But you ask him in fact three times, in fact, on the same issue. He
21 also expressed himself clearly, so I don't see any reason to remain on this topic.

22 MR BOURGON: Mr President, this was my last question on the issue. And I hope
23 that the time taken by my colleague for her objection will not be deducted from my
24 time.

25 PRESIDING JUDGE FREMR: I can confirm.

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1 MR BOURGON:

2 Q. Mr Witness, I'd like to move to a different topic. And that is your testimony
3 concerning the fact that you would have been taken by the UPC. You recall
4 testifying about that?

5 A. Yes, I remember having said that. I was abducted by UPC troops.

6 Q. Well, I have a few questions to ask concerning this event. My understanding is
7 that you were abducted at the same time as three other persons, namely, (Redacted)
8 (Redacted); is that correct?

9 A. Yes, that's correct.

10 Q. I'd like to explore this a bit further. What is the family name of (Redacted)

11 A. I don't know his family name. We called him (Redacted) We used to call him
12 (Redacted). But I didn't know his family name.

13 Q. Now, I understand from your testimony that (Redacted) was a friend who also
14 lived (Redacted); is that correct?

15 A. Yes, (Redacted) was a friend of mine.

16 Q. And where did (Redacted) live exactly?

17 A. At that time he was my neighbour. I don't know where he lives now.

18 Q. Well, sir, it's your testimony that (Redacted) your friend and your neighbour, you
19 did not know his family name; that is your testimony today, is that correct?

20 A. I didn't know his family name. I only know him -- knew him by his first name.

21 Q. Now, let's take a look at the -- still with (Redacted), you mentioned that he was
22 Gegere; is that correct?

23 A. Yes, he was Gegere.

24 Q. Which school did he go to?

25 A. I don't know which school he went to.

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1 Q. And did (Redacted) have brothers?

2 A. Yes, he had brothers and sisters.

3 Q. And what were their names?

4 A. I don't remember their names anymore. They were my neighbours, but I
5 didn't really know his brothers, but I knew him, (Redacted)

6 Q. Now, in your testimony yesterday you said that (Redacted) died during the
7 operation in Songolo. This was at transcript 105, page 61, lines 1 to 6. Do you stand
8 by this testimony?

9 A. Yes, I remember.

10 Q. Well, in your statement you said something different. You said that (Redacted) died
11 in Bunia and that is at -- in your statement DRC-OTP-2075-0613, page 7, paragraph 36.
12 Which one is correct?

13 A. (Redacted) was a friend of mine. He died during a battle. I think what's written
14 isn't correct. All I know is that he died during a battle.

15 Q. I take your answer to mean, sir, that you know that (Redacted) died in battle but
16 you don't know which battle. That's your testimony today; is that correct?

17 A. Yes, he died during a battle. I confirm that. But I don't remember the other
18 details. But I know that he died during a battle.

19 Q. So when you said in your statement that he died in the battle of Bunia, that
20 wasn't correct; is that so?

21 A. Perhaps in the statement I said that he died during the battle in Bunia. So
22 that's it, it's true.

23 Q. Why then did you say yesterday in your testimony that he died in Songolo?

24 A. There are details that I forget. I could be confused in answering.

25 Q. Sir, let's take a look at the second person who would have been with you on that

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- 1 morning, (Redacted) was also a close friend of yours; is that correct?
- 2 A. Yes, that's correct.
- 3 Q. And what is J(Redacted) family name, sir?
- 4 A. I knew him by the name of (Redacted).
- 5 Q. And where did (Redacted) live?
- 6 A. He was also my neighbour.
- 7 Q. And did (Redacted) have brothers and sisters?
- 8 A. I don't know if he had sisters, but I knew his brother.
- 9 Q. And what was his brother's name? So that we can go and see him.
- 10 A. I don't remember his brother's name. I've forgotten it. And I don't know
- 11 where he lives now.
- 12 Q. And which school did he go to?
- 13 A. I don't know where (Redacted) went to school.
- 14 Q. And (Redacted) is also, according to your testimony, Gegere; is that correct?
- 15 A. Yes, he was also Gegere.
- 16 Q. Now, sir, let's -- about (Redacted) you said in your testimony yesterday that
- 17 (Redacted) died in the battle of Bunia. That was at transcript 105, page 60, lines 16
- 18 to 25. Do you recall saying this?
- 19 A. Yes, (Redacted) also died.
- 20 Q. Now, sir, do you recall saying that he died in Bunia at page 60, lines 16 to 25?
- 21 A. Yes, I remember, yes.
- 22 Q. Well, sir, in your statement, that is on DRC-OTP-2075-0613, page 7, paragraph
- 23 36, you said there that he died in Songolo. Which one is it?
- 24 A. (Redacted) died in Songolo. I think that all the details that you're giving
- 25 me are confusing me.

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1 Q. Well, you just mentioned, sir, (Redacted). We will get to (Redacted). But

2 (Redacted) do you know which battle he died or do you just know that he died in a battle?

3 What is your testimony today, sir?

4 A. If you read through my statement, you will see the location at which (Redacted) died.

5 It is in Songolo. If it is written Songolo, then it is in Songolo that (Redacted) died.

6 Q. Well, sir, your statement does indeed read Songolo. You had the opportunity

7 to read your statement at least twice (Redacted) and yesterday under oath

8 you said Bunia. I just want to know which one it is.

9 A. What I can say is that he died in Songolo. But you see, the manner in which

10 you are putting these questions to me is confusing me.

11 Q. Sir, let's move to (Redacted) was a close friend of you, of yours, right?

12 A. Yes.

13 Q. And what was (Redacted) family name?

14 A. I only knew him as (Redacted).

15 Q. I take this to say that you have no knowledge of (Redacted) family name; is that

16 correct?

17 A. I don't know him by any other name.

18 Q. And where did (Redacted) live?

19 A. All three were my neighbours.

20 Q. And which school did (Redacted) go to?

21 A. I don't know.

22 Q. And did (Redacted) have brothers and sisters?

23 A. I don't know his sisters, but I knew two of his brothers.

24 Q. And what are the names of the two brothers so we can go and see them?

25 A. I do not know their names. Actually, I have forgotten their names.

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1 Q. Now, sir, yesterday in your testimony you said that (Redacted) died in Songolo.

2 That was at transcript 105, page 61, lines 1 to 6. Is that correct?

3 A. Yes, that's correct.

4 Q. Well, in your statement DRC-OTP-2075-0613, page 7, paragraph 36 it says he
5 died in Bunia. Which one is it, sir?

6 A. The truth is that some of my friends died in Bunia and others died in Songolo.

7 So if it is written that he died in Bunia, then it is in Bunia. If it is written that he died
8 in Songolo, then it is in Songolo.

9 Q. I will move on to a different topic, but also dealing with this. Now, of course
10 (Redacted) is also -- he's also Gegere, right?

11 A. Yes, he was also a Gegere.

12 Q. And did you say earlier he was your neighbour also?

13 A. Yes.

14 Q. If I look at the mix of the population -- well, let me rephrase this. You yourself,
15 sir, are not Gegere, you are Hema south; is that correct?

16 A. Yes, I am Hema-Sud.

17 Q. And Hema-Sud yourself. Living in (Redacted), you were living with three
18 neighbours who were Hema north. That is your testimony, correct?

19 A. Yes.

20 Q. Now, you mention few minutes ago that you had friends who died in battle.

21 Do you remember any other of your friends (Redacted) at the time, not in UPC but
22 simply give me some of your friends (Redacted) at the time?

23 A. Yes. I remember one young man who was (Redacted). His
24 name was (Redacted).

25 Q. So you remember this name now or when do you just remember this name?

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1 Did I just trigger your memory now?

2 A. Yes, I have just remembered that name now. (Redacted) was also one of my
3 friends. We used to play football in the neighbourhood together. He had joined
4 the army well before me. And when I joined the army, he was already a commander
5 and I heard that he had received military training in the (Redacted) region.

6 Q. And the family of -- family name of (Redacted)

7 A. No, I do not know his family name. We simply used to call him Commander
8 (Redacted)

9 Q. Sir, when I look at the people you were with in Mandro, if, according to your
10 testimony, you were taken there, the -- we already know that the only three names
11 you remember are the three that we must mentioned, (Redacted). So is it
12 that you don't remember the names of the other people or are they dead?

13 A. I do not remember any other names. Many people died and I don't remember
14 their names. And these things happened many, many years ago. That is why I do
15 not remember the names of those with whom we were in the UPC.

16 Q. And, sir, if I mention the name (Redacted) I will spell that for you, that is
17 (Redacted) Does that name ring a bell to you, sir?

18 A. Yes, I remember that name. (Redacted) as also a UPC soldier who used to work at
19 Thomas Lubanga's residence, but I don't know where his family is. I met him while
20 I was in the army as well.

21 Q. And (Redacted); is that correct?

22 A. Yes, that is what he told us, that (Redacted) and that his family used
23 to live in the sub-region.

24 Q. And I take it that you know that (Redacted) was (Redacted)
25 is that correct?

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1 A. No, he was not (Redacted)

2 Q. And did you have any contact with (Redacted), during
3 your time with the UPC?

4 A. Yes. We used to talk to each other from time to time. We met each other.
5 But not on a daily basis.

6 Q. And do you know where (Redacted), is today?

7 A. No, I don't know where he is for now.

8 Q. Sir, let me take you back to that morning where you say you were abducted.
9 How many people were fetching water that morning?

10 A. I do not remember the number, but we were a group of boys and girls and we
11 found some already at the well, but I can't give us an exact number of those who were
12 there.

13 Q. Well, in your testimony you refer to the number of people who would have
14 been abducted with you. But how large was the group at the well?

15 A. I don't know how many people were there at the well. Many people went to
16 fetch water from the well. They went and left. And I don't know how many people
17 were at the well at that time.

18 Q. And if I ask you again how many people were abducted that morning, do you
19 remember what you said yesterday or -- the number of people abducted that
20 morning?

21 A. I do not remember. There were boys and girls together, but I don't know how
22 many.

23 Q. How many boys? How many girls?

24 A. (Redacted). But I don't know about the girls.

25 I don't know how many of them were abducted. We were abducted and taken away.

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1 But I don't know how many girls.

2 Q. Now, those who were left behind, there were some people, not everyone was
3 abducted; is that correct?

4 A. Yes, some of them remained at the well. But we were not abducted at the well,
5 we were abducted on the way to the well.

6 Q. Well, let me refer you to your testimony yesterday such that we are on the same
7 page. I -- page 22, lines 9 to 13 and I think this is the French reference, so in English
8 would be page 20 and this would be starting at lines 3. It says here:

9 "Yes, yes, before kidnapping us and taking us and putting us in the army, I was with
10 friends. We went to fetch some water and we were getting ready to go to school."
11 And later on it says:

12 (Redacted)

13 (Redacted) And this is on page 22 -- 22, lines 1 and 2.

14 PRESIDING JUDGE FREMR: Ms Luping.

15 MS LUPING: Just to give the witness the total relevant possible passages. The
16 same -- the first page at page 20, at lines 9 to 11, it states:

17 "We went to draw some water, and along the way we came across two vehicles in
18 which there were a number of soldiers. Those soldiers were armed. There were
19 many of them. And they took us and they put us in a pickup truck." The words
20 there I noticed are "along the way."

21 PRESIDING JUDGE FREMR: Mr Bourgon.

22 MR BOURGON: If my colleague wants to take these types of questions during
23 re-examination it's free for her to do that, but right now my question is I'm asking the
24 witness where exactly he was when he was abducted.

25 PRESIDING JUDGE FREMR: Ms Luping I think we got your point that you would

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1 like to make it, you know, complete, just to --

2 MS LUPING: Indeed. It's just a procedural matter. Just fairness to read the entire
3 quotes out, that's all. I don't need to deal with this point in re-examination.

4 PRESIDING JUDGE FREMR: Mr Bourgon, please.

5 MR BOURGON:

6 Q. Sir, your testimony today, where were you when you were abducted?

7 A. We were on the road towards the well. We were not at the well. We were
8 abducted along the way towards the well.

9 Q. Sir, let me read from your testimony -- sorry, your statement, and that is at
10 paragraph 15 of your statement, that is DRC-OTP-2075-0613. And at the end of
11 paragraph 15, but I will read you the full paragraph just so that we have a full image.
12 It's in French, so it will be translated to you in English.

13 (Interpretation) "One day in 2002, in the middle of the school year, I woke up early
14 in the morning to go fetch water at (Redacted). It was my turn to do
15 so. My other brothers also took turns since there was no girl in the family. When I
16 went out at 5 a.m. in the morning to fetch water, it was still dark. (Redacted)
17 (Redacted). There

18 were many of us children there at the same time having come to fetch water. There
19 were some girls and some boys."

20 So were you at the well with beaucoup d'enfants qui se trouvaient là au même
21 moment pour chercher de l'eau or were you at a different place what you're saying
22 today?

23 A. We were not at the well. We were on the way to the well to fetch water.

24 MR BOURGON: I'm not getting the transcript reference. Oh, now it's coming.

25 Q. Now, it is mentioned in paragraph 15 of your statement (Redacted). I

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1 will spell that for you. Actually I think we should put this page in front of you so
2 you see the statement.

3 If I can have, please, the statement at 2075-0613 and I would like to have the page
4 2075-0615. And I would like to focus on paragraph 15.

5 Sir, you see paragraph 15?

6 A. Yes, I can see that.

7 Q. I would just like to draw your attention to the word that is in capital letters in
8 paragraph 15.

9 PRESIDING JUDGE FREMR: Ms Luping.

10 MS LUPING: Mr President, just a reminder of the special measure granted by this
11 Chamber in relation to this witness in relation to reading assistance for French.

12 PRESIDING JUDGE FREMR: All right. So it will be read in French and then it will
13 be translated to Swahili for the witness.

14 MR BOURGON: Thank you, Mr President. If at all necessary, I do not mind
15 having someone come in as long as to assist him. In all fairness to the witness,
16 maybe he should have reading assistance like he did during the preparation session,
17 but I would like to avoid that this is taken up on my time.

18 PRESIDING JUDGE FREMR: Yes, but, if I'm not wrong, you would like just to focus
19 attention of the witness to the two names?

20 MR BOURGON: Indeed, Mr President.

21 PRESIDING JUDGE FREMR: So then I guess I would -- I think you can just read it
22 yourself and then it will be translated in Swahili. As to the names, I think the
23 witness can -- it's not so complex issue.

24 MR BOURGON: Thank you, Mr President.

25 Q. Mr Witness, I take it that you do speak some French, but are you familiar with

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1 the name that is found in paragraph 15 before your eyes in capital letters called

2 (Redacted) What is this?

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 Q. Thank you, sir. Now, (Redacted) that is much further away from your house
10 than (Redacted), is it not?

11 A. (Redacted) That was an approximation. I did not measure the distance. It
12 could have been more than (Redacted), or maybe even (Redacted), but
13 I don't know the exact distance. It might be more, it might be less than (Redacted)
14 (Redacted).

15 Q. How much more, if you want to provide us with an estimate, sir?

16 A. I have no clue. I cannot give you the exact distance. I offered an
17 approximation. So I don't know whether it's a (Redacted) I simply provided an
18 estimation.

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 Q. But sir, I'm interested in the well that is close to your house. It wasn't (Redacted)
23 is that correct?

24 A. The well that was close to our house, at about a (Redacted), was the
25 well referred to as the well (Redacted). It was called well (Redacted)

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1 (Redacted)

2 (Redacted)

3 Q. Sir, we, members of the Defence, recently had the opportunity to meet with

4 (Redacted). And according to the information we

5 have, (Redacted) is much further away from your house (Redacted) and there was

6 absolutely no reason (Redacted) to fetch water from that place;

7 would you agree with this statement, sir?

8 A. (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 Q. Sir, according to your mother, none of her children was ever a member of the

13 military. What do you make of this comment?

14 A. My mother had (Redacted) children. And I was the only one who joined the army

15 as a soldier of the UPC.

16 Q. Sir, let's talk about the time when you are abducted. In your testimony

17 yesterday you mentioned that, and I will give you the exact reference; page 20, line 7

18 to page 21, line 2.

19 According to what I get from your testimony is you were taken from that place where

20 you were and you were taken in the city to an area where you spent two days before

21 going to Mandro. Now this is transcript 105, page 20 and 21. Sorry the exact place

22 is page 20, lines 15 to 20. I will quote just so that we are exactly on the same place.

23 Lines 14 to 18: "They took us to a place still in the centre of the town. They took us

24 to a place where there were other recruits and they gathered us all together. And

25 once there were many of us there, we were taken to a training centre called Mandro."

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1 Do you maintain this testimony, sir?

2 A. Yes.

3 Q. Now, describe for us the place you are taken to in the centre of town.

4 A. We were taken to the town centre. (Redacted)

5 And we spent two days there. There were -- because there were a lot of us, we went

6 to the -- when there were a lot of us, we were taken to the training centre at Mandro.

7 Q. So, sir, it's your testimony that when you are abducted, the place you referred to

8 yesterday is (Redacted), that's your testimony today; is that correct?

9 A. Yes, that's correct.

10 Q. Now, what happened at (Redacted) during those two days?

11 A. We spent two days, we were there, we were waiting others, other people

12 arrived, but I didn't know these people. I didn't know if they'd also been abducted

13 or they'd come by their own free will. We spent two days there. We were singing.

14 The idea was to build up our morale. They said that we were going to go to the

15 training centre in Mandro. That was the way of raising people's morale.

16 Q. So you were singing and basically getting the morale up before going to

17 Mandro; is that your testimony?

18 A. That's it.

19 Q. And you don't know how many -- well, how many people are there?

20 A. I don't know how many people we were, but there were a lot of us. But I don't

21 have the exact figure.

22 Q. And some are abducted and some are not, but you have no idea who has

23 been abducted and who came voluntarily; that is your testimony, sir?

24 A. That's it. That's what I said.

25 Q. Now, sir, based on your testimony, you did not see Bosco when you were

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1 abducted but he was in one of those two vehicles, right?

2 A. Yes, that's correct. The soldiers told us that Afande Bosco was in one of the
3 vehicles. When they took us they put us on the vehicle, the second one.

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 Q. Bosco is in one of the two vehicles, but when you arrive you get off of the
12 vehicle and you didn't see him; is that correct?

13 A. I didn't see him. I didn't pay attention to see him. Because at that time my
14 mind wasn't with it. We were in panic. I wasn't going to find out who was who
15 and try to find out where Commander Bosco was.

16 Q. So I take your answer to mean that you could not even have recognized Bosco if
17 you had seen him; is that correct?

18 A. (Redacted) I didn't

19 know who was who. I didn't pay attention to know Afande Bosco. I didn't do it on
20 that day. I was just looking around at my friends. I was afraid. And my mind
21 wasn't with it.

22 Q. So I take it you assume on the basis of what you had been told that amongst this
23 group of people coming out of the vehicle Bosco must have been one of them; is that
24 your testimony?

25 A. (Redacted). When we got off the vehicle,

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1 we were told that he was in the vehicle, but when everybody left the vehicle, I didn't
2 pay attention to check where he was.

3 Q. Now, you just mentioned a moment ago that you did not see him that day, but
4 you said, and I quote from page 59, lines 19, "But the next day I saw him."
5 So since you spent two days at (Redacted)
6 (Redacted); is that correct?

7 A. Yes, that's correct. I saw him.

8 Q. Well, sir, let me remind you what you said under oath yesterday, and that was
9 on page 39 at lines 10 to 13. "The first time I saw him" -- that is Bosco "in Mandro,
10 that was on the first day when I got there, when I got to Mandro. I didn't know
11 what rank he held but I know he was a high-level commander."
12 So now I understand that when you saw him in Mandro it was not the first time you
13 saw him, it was the second time; is that correct?

14 A. Yes. Put it like this. I saw him (Redacted) and when I entered the
15 training camp in Mandro, that was the first time to see him arrive in Mandro. And
16 that was the first time I saw him in Mandro. But I also saw him (Redacted)

17 Q. Well, sir, what I fail to understand is that this is entirely different from what is
18 in your statement. So in your statement at paragraph 19 and if I can have on the
19 screen, this is again the statement 2075-0613, and I would like to have page 0616 and
20 I would like to focus on paragraph 17. I will read this paragraph for you, sir. It will
21 be translated to you in Swahili. And if you require additional assistance, please do
22 not hesitate:

23 (Interpretation) "I don't remember how many children were taken with me, but
24 there were more than eight of us, including girls. I was thrown into the back of a
25 black pickup with other children and soldiers. (Redacted)

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1 (Redacted) My three friends were in the other pickup. Before that,
2 I'd already heard people talk about Mandro and the fact that people carried out
3 military training there. But I didn't know where Mandro was. It was soldiers who
4 were already there who told us that we were in Mandro. I think it took us two hours
5 to get there. There were roadblocks set up by the military which were opened up

6 (Redacted)

7 Sir, I understand from this paragraph of your statement that there is no two days at
8 (Redacted). It's abduction and straight to Mandro. I'd like to know which
9 one is the truth.

10 A. When we were abducted, we spent two days at (Redacted)

11 After that we went to the Mandro training centre.

12 Q. Sir, when you reviewed your statement less than a week ago, and you reviewed
13 paragraph 17 twice at least, you did not make any corrections to this paragraph, did
14 you?

15 A. There was nothing I could put as a correction. I remember we were abducted,
16 we spent two days (Redacted) and then we went to Mandro. That's what I
17 remember.

18 Q. And, sir, why is the two days (Redacted) not mentioned in your
19 statement?

20 A. I don't know what to say. Perhaps I forgot to mention it, but we spent two
21 days (Redacted) and afterwards we went to Mandro. We didn't go there on the
22 same day.

23 Q. Sir, it says in this paragraph 17:

24 (Interpretation) "I think that it took approximately two hours to get there."

25 (Speaks English) I understand this to mean that the ride from the place you are

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1 abducted to Mandro required two hours by vehicle. Is that your testimony, sir?

2 PRESIDING JUDGE FREMR: Ms Luping.

3 MS LUPING: Thank you, Mr President. I'm just looking at the proposition that has
4 just been put to this witness; that the two hours referred to at paragraph 17 is from the
5 place of abduction to Mandro, but that is not what paragraph 17 states, Mr President.
6 So bearing in mind this witness is a witness who has been granted reading assistance,
7 I believe the precise language contained in paragraph 17 should be read to him and
8 then the proposition put to him. But the proposition as put does not fairly reflect
9 what actually is contained at paragraph 17.

10 PRESIDING JUDGE FREMR: Mr Bourgon.

11 MR BOURGON: Well, I disagree with my colleague but I can read the paragraph
12 over again.

13 PRESIDING JUDGE FREMR: Please do.

14 MR BOURGON: I just read it a few moments ago but I will read it again.

15 Q. (Interpretation) "I had heard people talk about Mandro and the fact that
16 people carried out military training there, but I didn't know where Mandro was. It
17 was soldiers who were already there who told us that we were in Mandro. I think it
18 took us about two hours to get there."

19 I think, Mr President, it's quite clear that this paragraph is saying that they needed
20 two hours to get to Mandro from the place they were abducted. I'm asking the
21 witness to confirm, or to modify if he wants.

22 PRESIDING JUDGE FREMR: Ms Luping.

23 MS LUPING: Mr President, I'm just asking for my learned colleague to point out
24 where in paragraph 17 that the point of departure to get to Mandro was from the
25 place of abduction. The exact passage just read confirms the time it took, it doesn't

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1 state that the point of departure was from the place of abduction. Perhaps this could
2 be clarified, out of fairness to the witness. Of course he's here to respond to any
3 questions that are put and that is not the point of my objection, it's just a question of
4 clarity.

5 PRESIDING JUDGE FREMR: It's true that even Mr Bourgon said that it's the way
6 how he understood and now he's asking Mr Witness for clarification.

7 So, Mr Witness, I think you have heard what Mr Bourgon said. Could you clarify
8 that.

9 THE WITNESS: (Interpretation) He spoke about two hours. That doesn't mean
10 that it was two hours from the place where we were abducted. I said two hours
11 from (Redacted) to Mandro. So from Bunia to Mandro I think that it could
12 take two hours. I wasn't talking about the place where we were abducted in order to
13 go to Mandro.

14 PRESIDING JUDGE FREMR: All right. Point taken.

15 Now, Mr Bourgon, please proceed.

16 MR BOURGON:

17 Q. Well, sir, this is exactly the point I want to raise with you. I understand this to
18 mean that it took two hours from the place you were abducted to Mandro. That's
19 what I understand. And I'd like you to see whether this is the case or not?

20 PRESIDING JUDGE FREMR: Mr Bourgon, asked and answered now. Mr Witness
21 just provided all of us with his explanation that he meant distance between
22 (Redacted) and Mandro.

23 MR BOURGON: Mr President, there is not a word about (Redacted) in this
24 paragraph, not a word. Not one word about (Redacted). That is
25 why, Mr President, I'm putting to the witness that we're talking about the place where

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1 he was abducted and that is clear from the paragraph 17. And I just want to know
2 from him, just to confirm, from the place he is abducted to Mandro, how long does it
3 take. That's all I want to know, Mr President.

4 PRESIDING JUDGE FREMR: Ms Luping.

5 MS LUPING: Mr President, two points. One is, indeed, asked and answered, and,
6 secondly, the Prosecution disagrees with the proposition that paragraph 17 clearly
7 states that the point of departure was the abduction site.

8 PRESIDING JUDGE FREMR: Again, Mr Bourgon, if you want to ask Mr Witness
9 what is the time needed to get from place of abduction to Mandro, that is fine. But
10 as to your previous question it was really answered by the witness.

11 MR BOURGON: That's all I'm trying to get, Mr President.

12 Q. What is -- how much time does it take to get from the point of abduction to
13 Mandro.

14 A. I can't estimate how much time it takes after being abducted to go to Mandro,
15 because we didn't go on that itinerary. I gave an estimation from the (Redacted)
16 (Redacted) to the centre because we went from there to the centre. So I can't
17 answer the question as regards the other location because that's not the itinerary that
18 we followed.

19 Q. I will take your answer and we will let the Chamber assess what paragraph 17
20 really means. In the meantime, I'd like to move to the date of your abduction. Now
21 according to what I understand you forgot the date and you also forgot the year. Is
22 that correct?

23 A. I can't remember. Perhaps I've forgotten. I don't know what month it was.
24 I don't remember. I don't remember the day.

25 Q. Sir, you mention that the duration of your training was two weeks; is that

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1 correct?

2 A. Yes, my training lasted two weeks. I don't know if other people did more or
3 less than two weeks. But I spoke to you about my case. I spent two weeks at
4 Mandro training centre. After two weeks, I returned to Bunia.

5 Q. Thank you, sir. I am trying to establish the exact date of your training and for
6 this purpose I will refer you to your statement and that is on paragraph 44.

7 If I can have please on the screen, it's still the statement, and I would like to have page
8 2075-0620 and I would like to focus on paragraph 44.

9 Now, sir, looking at paragraph 44 I will read that to you and it states here:

10 (Interpretation) "Two days after the end of my training I and other new recruits left
11 in operation to Songolo."

12 So let's stop here and confirm that two days after the end of your training you leave
13 for Songolo. That's what your statement says. Do you maintain this statement, sir?

14 A. Yes. Two days after the training I went to the Songolo operation.

15 Q. And in the same paragraph it says:

16 (Interpretation) "This attack took place in 2002 at the time that the Kinshasa
17 delegation had been arrested in Mandro."

18 (Speaks English) Sir, I take this to mean that the Songolo operation happens at the
19 same time as this delegation was arrested in Mandro; that is correct?

20 A. When we went to the Songolo operation -- this attack took place in 2002 and we
21 found out that a delegation from Kinshasa, well, they'd come from Kinshasa, I heard
22 that had been arrested in Mandro, but I didn't see them. I didn't know who it was.
23 I didn't even know them.

24 Q. On the basis of your answer, sir, I suggest to you that this would place your
25 training in the second half of August 2002. Would that refresh your memory, sir?

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1 A. I don't remember the date or the month. I have no idea. I don't remember
2 anything at all.

3 Q. Now, we only have a few minutes before the break, so I will just ask you a few
4 questions concerning the persons who would have abducted you. First of all, you
5 said that they were elements of the UPC. Do you recall saying this?

6 A. Yes, I remember.

7 Q. Now, you were asked about what kind of weapons they had and you confirmed
8 that they had SMG; you know what an SMG is, right?

9 A. Yes, I know.

10 Q. You confirmed that they had rocket launchers; is that correct?

11 A. Yes.

12 Q. And you confirm that you saw -- now, I need to refer you to the transcript
13 because there's two different names here. In the transcript of yesterday you mention
14 MLG, Mike, Lima, Golf. And that was on page 23 and this was lines 10 and 11.

15 Answer: "Yes, they had SMGs and some rocket launchers as well as MLG."

16 My first question is: How many rocket launchers did you see then?

17 A. There were troops who had two rocket launchers. But where it concerns the
18 shells, they were wearing them. Two of them had rocket launchers.

19 Q. And, sir, you mentioned MLG for Mike, Lima, Golf. My second question is:
20 What is MLG?

21 A. LMG is a weapon. It's a weapon with a bipod and it also has a belt, an
22 ammunition belt.

23 Q. So if yesterday you said MLG rather than LMG, it's just a slip of the tongue; is
24 that correct?

25 PRESIDING JUDGE FREMR: Ms Luping.

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1 MS LUPING: I note that in the French transcript there is a reference to MLG. I
2 stand to be corrected, but I believe in the English transcript it was captured as LMG.
3 So there appear to be two different references. Perhaps the witness can be asked to
4 clarify this.

5 PRESIDING JUDGE FREMR: Yes, it will be the last point before the break.

6 MR BOURGON: Well, Mr President, I just already offered him whether he says
7 MLG or LMG.

8 PRESIDING JUDGE FREMR: Yes, let's finish by that. You can maintain this
9 question, no problem.

10 MR BOURGON: But then I will just make a proposition for him.

11 Q. Sir, you mentioned this morning in your testimony, you identified what you
12 called LMG; is that correct?

13 A. Yes, I saw a weapon with a bipod and a belt, an ammunition belt.

14 Q. Well, sir, I suggest to you that what you saw in that picture is a medium
15 machine gun and it is not a light machine gun because there were no light machine
16 gun within the UPC. Does that refresh your memory?

17 A. (No interpretation)

18 THE INTERPRETER: Could the witness be asked to repeat? The line was
19 occupied.

20 PRESIDING JUDGE FREMR: Mr Witness, sorry, we haven't captured your response.
21 Could you kindly repeat it again.

22 THE WITNESS: (Interpretation) Yes, I was saying the following. Perhaps I made
23 a mistake in the pronunciation when I said MLG. Perhaps I made a mistake.

24 Because people told us the different types of weapons, perhaps we were confused. I
25 could make a mistake. Perhaps I made a mistake.

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- 1 PRESIDING JUDGE FREMR: Mr Bourgon, we have to break now. Let's move into
- 2 open session, just to announce that.
- 3 (Open session at 1.04 p.m.)
- 4 THE COURT OFFICER: We're in open session, Mr President.
- 5 PRESIDING JUDGE FREMR: Thank you, court officer.
- 6 Now we will break for 90 minutes which means that we will resume again at 2.35.
- 7 THE COURT USHER: All rise.
- 8 (Recess taken at 1.05 p.m.)
- 9 (Upon resuming in open session at 2.36 p.m.)
- 10 THE COURT USHER: All rise.
- 11 Please be seated.
- 12 PRESIDING JUDGE FREMR: Good afternoon, everybody. We will continue with
- 13 cross-examination of the witness conducted by Defence.
- 14 One announcement concerning scheduling. As you know, we will have -- continue
- 15 until half past 4, but in fact I will be ready for that Mr Bourgon, I will have to
- 16 interrupt you, break your cross-examination quarter past 4, because in the remaining
- 17 time I would like to orally deliver two decisions. And anyway, I guess you will
- 18 anyway continue until tomorrow because you still have some time and I guess, as
- 19 usual, you would like to utilise all time allotted to you, am I right?
- 20 MR BOURGON: Yes, Mr President.
- 21 PRESIDING JUDGE FREMR: All right. And now we are in open session. Should
- 22 we move into private?
- 23 MR BOURGON: Yes, Mr President.
- 24 PRESIDING JUDGE FREMR: All right.
- 25 Court officer, please let's move into private session.

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1 (Private session at 2.38 p.m.) *(Reclassified partially in public)

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

3 PRESIDING JUDGE FREMR: Thank you, court officer.

4 Mr Bourgon, please proceed.

5 MR BOURGON: Thank you, Mr President.

6 Q. Welcome back, Mr Witness.

7 A. Thank you.

8 Q. Yesterday during your testimony I referred to transcript 105, page 10, line 6

9 to 25, you mentioned that you were born (Redacted). You maintain this

10 testimony, sir?

11 A. Yes, that is my date of birth. I was born (Redacted)

12 Q. Thank you. I would like to explore this -- your testimony in this regard and

13 I would like to begin by getting the -- your identification card, which was shown to

14 you yesterday. I refer to number DRC-OTP-2075-0644.

15 If we can have the card displayed on the screen, please.

16 Sir, do you see the card on the screen?

17 A. Yes, I can see it.

18 Q. Sir, yesterday you told us that this was a -- some kind of a residence card which

19 was issued by (Redacted); is that correct?

20 A. Yes, that's correct.

21 Q. And you also mentioned that you needed to get this card to avoid having

22 problems with the authorities or the police; would that be correct, a fair statement?

23 A. Yes.

24 Q. Now if I look at the card it says here that you were born (Redacted)

25 (Redacted); is that correct?

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1 A. That was a mistake which was made at the time the card was being issued. My
2 date of birth is (Redacted)

3 Q. Thank you, sir. Now, between -- we see on this card first that the card was
4 issued on 12 June 2013; is that correct?

5 A. Yes, that is correct. It was issued on 12 June 2013.

6 Q. So in between 12 June 2013 and today where we are, 21, I believe, of
7 June -- sorry, between 12 June 2013 and 21 June 2016, you never had this card
8 corrected; is that correct?

9 A. No, I did not. I did not correct the card because I received another card after
10 this one. It was a card showing residence in another neighbourhood, but that card
11 was not produced in my case file. It is a card that was issued to me from another
12 neighbourhood to which I moved.

13 Q. Thank you, sir. I take it that you would have no problem sharing this new
14 card with us; is that correct, sir?

15 PRESIDING JUDGE FREMR: Ms Luping.

16 MS LUPING: I know we're in private session, Mr President. It's just a question of
17 the name of the neighbourhood. I just wanted to note that what we had said to the
18 witness previously is that the reference to (Redacted), for example, had been redacted
19 from the Defence. It was information that the witness passed on in reference to this
20 older card of 2013. It's just a question of caution in not mentioning the new place of
21 residence because this is, in our view, information that should not be provided, his
22 current location. He may be prepared to share it and it may have relevant
23 information contained in it, it's just simply to caution the witness to avoid referring to
24 the neighbourhood that he's living in or the exact place of residence.

25 PRESIDING JUDGE FREMR: Mr Bourgon.

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1 MR BOURGON: I did not intend to get into place of residence. I'm --

2 PRESIDING JUDGE FREMR: Sorry. And, Mr Witness, have you, have you heard
3 what now Madam Prosecutor said?

4 THE WITNESS: (No interpretation)

5 PRESIDING JUDGE FREMR: So please follow this advice.

6 Mr Bourgon, please proceed.

7 MR BOURGON: Thank you, Mr President.

8 Q. So, sir, would you be -- of course you would be willing to share with us your
9 new card; is that correct?

10 A. No. I do not intend to show you that card because I don't have it on me.

11 Q. Sir, I take it that you have some travel documents with you that you could share
12 with us?

13 A. Yes, I have a photocopy of my passport.

14 Q. And what is the date of birth indicated on your passport, sir?

15 A. (Redacted)

16 Q. Thank you, sir. Now, when you -- after you received this erroneous card,
17 when exactly did you realise that you had a wrong card?

18 A. It did not take me several weeks to identify the mistake. However, I did not
19 take the card in for correction when I found the mistake because I had already
20 plastified the, or sealed the card.

21 Q. Thank you, sir. Now you -- we already know that you met with the Prosecution
22 to provide a statement and that this took place on the -- from the (Redacted)
23 (Redacted); is that correct?

24 A. Yes.

25 Q. If I can have on the screen, please, the first page of the witness statement,

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1 2075-0613, the first page where we have the date of birth.

2 So you see the first page of your statement before the screen. I take it that you are
3 able to understand the information. I refer to you where it says "date de naissance"
4 and it says (Redacted). Now that is the date you provided the Prosecution; is
5 that correct?

6 A. The date of birth on that page was taken from the card and that is the date that
7 was registered because it is the date that appears on my card. It is on that basis that
8 this document was prepared.

9 Q. And on that occasion you did not tell the Prosecution that there was a mistake
10 on your date of birth, did you not?

11 A. No, I didn't do so because I didn't think about it. My mind was elsewhere and
12 I did not have the time to remind them to correct the date.

13 Q. Thank you, sir. If I can have the third page of the statement on the screen or
14 its -- the page is 2075-0615 and I would like to focus on paragraph 11, please.

15 Sir, you see paragraph 11 before you, which I will read the first few words. This is in
16 your statement where it says: (Interpretation) "Born on (Redacted)
17 (Redacted)

18 (Speaks English) So this information was provided by yourself; is that correct?

19 A. Yes, I provided that information myself but the date of birth was simply taken
20 from the card which I mentioned to you before. So rather than write the (Redacted)
21 they had written (Redacted) and that is how the mistake was made on that document.

22 Q. If I can have the first page of the statement which is 2075-0614 and I would like
23 to focus on paragraph 4.

24 Sir, I will read this paragraph to you. It will be translated in Swahili. It says here, I
25 read from the French: (Interpretation) "I was told that at the end of the statement I

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1 will be asked to sign the written statement after having been given the opportunity to
2 re-read it and to make the necessary corrections thereto or to make any further
3 additional -- to provide any other further additional information."

4 (Speaks English) Do you remember reading this paragraph from your statement,
5 sir?

6 A. Yes, I remember reading that sentence.

7 Q. And having read this sentence, you nevertheless omitted to provide the correct
8 date to the Prosecution, knowing that the information you had given was false; is that
9 correct?

10 A. No. When I arrived here, I was asked to re-read the document, which I did
11 twice. Then I told the OTP that there was a mistake in the document and I requested
12 that the mistake be corrected.

13 Q. I understand this, sir, you said this yesterday, but I'm referring you to (Redacted)
14 when you signed your statement. So when you signed your statement I'm
15 suggesting to you that you knew that you were providing false information to the
16 Prosecution; is that correct?

17 A. No. All the information I provided was truthful. However, there was a
18 mistake on my date of birth and the mistake I made was that in (Redacted) I did not
19 correct that mistake.

20 Q. Well, let's take a look at the next page, just to verify some of the information.
21 I would like to have back on the screen please 2075-0615 and I'd like to focus on
22 paragraphs 11 and 12.

23 Looking at paragraphs 11 and 12, sir, I bring your attention to paragraph 12 just by
24 example where it says, I read in French:

25 (Interpretation) (Redacted)

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1 (Redacted)

2 (Speaks English) Is this information correct, sir?

3 A. Yes.

4 Q. I'm not sure if there was a problem, my screen seems to be -- oh, here we go.

5 So the information in paragraph 12 is correct; is that the case?

6 A. Yes, it is correct.

7 Q. And where it says immediately after that your name when you were baptised is

8 (Redacted) that's also correct information?

9 A. Yes, that's my baptismal name, that is correct.

10 Q. But people called you (Redacted) at school; that's also correct?

11 A. Yes, that is true people, used to call me (Redacted) in school.

12 Q. But you're also known under the name (Redacted), that's also correct?

13 A. Yes, that's correct.

14 Q. Now, yesterday while you were testifying you explained that during your
15 preparation session you informed the Prosecution of your correct date of birth. Do
16 you remember saying that?

17 A. I did not -- well, when it comes to the date of birth, reference was made to my
18 identity card and the information on it was simply copied and I did not have time to
19 get that corrected.

20 Q. Now, I was just saying that when you arrived here last week, you brought that
21 mistake to the attention of the Prosecution; that's what you said yesterday, correct?

22 A. Yes.

23 Q. And that's what you also said under oath yesterday before this Chamber,
24 information that you are born on (Redacted) is the correct information; is that so,
25 sir?

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1 Now, on the basis of your statement, of course --

2 A. Yes.

3 Q. On the basis of your statement, the fact that you are born on (Redacted)
4 makes you age 14 when you would have been abducted as you testified; is that
5 correct?

6 A. *Yes, that's correct.

7 Q. And the fact that you were -- that you would have been 14 at the time is a
8 critical part of your testimony; is it not?

9 A. Yes, that's correct.

10 Q. As a matter of fact, we are in private session, (Redacted)
11 after meeting with (Redacted) the Prosecution, you told them that
12 the Prosecutors wanted to speak to you because you were a child soldier in 2002. Do
13 you recall this (Redacted)

14 A. Yes, I remember. He said to me that some young people would be coming and
15 meet *with me and I said "Who are those people?" And you said to me "Don't worry.
16 They are investigators. They're good people." Since I really had some doubts
17 whether I should meet them or not he reassured me, saying that they were good
18 people and they would be coming to meet with me. And so that is what I did. I
19 waited and they came and I talked to them.

20 Q. Sir, before you spoke to them, (Redacted)
21 (Redacted). Do you recall this?

22 A. No. (Redacted). He told me some people would be
23 coming to see me. He said they were investigators. They would be coming in
24 order to conduct an investigation. We did not talk about anything else. He just
25 told me that some investigators would be coming to see me as part of these

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1 investigations. That's all he told me.

2 Q. (Redacted)

3 (Redacted) from people who

4 wanted to know because -- because you had been a soldier in the UPC. That's what

5 he said, did he not?

6 A. Yes. He informed me of that saying that some investigators (Redacted)

7 (Redacted) to talk with me since I had been a child soldier. That is what

8 he told me. (Redacted) and we did talk.

9 Yes.

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted) No, I no longer recall.

16 (Redacted)

17 (Redacted)

18 (Redacted) Does that refresh your memory?

19 A. No. I no longer recall (Redacted)

20 Q. Now, sir, I'll give you an opportunity to change your testimony because I put it

21 to you that your date of birth is not (Redacted). So I will give you an

22 opportunity to provide us with your real date of birth.

23 A. The true date of birth is (Redacted)

24 Q. Well, sir, I suggest to you that your real date of birth is (Redacted). Does

25 that ring a bell to you?

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1 A. No, that's not my date of birth. What I'm saying is that my birth date is
2 (Redacted). When I went to school at the primary school, the teachers asked me
3 for our dates and we were told to ask our parents and we would provide that
4 information. And even my school records have that date, (Redacted)

5 Q. Well, sir, let's look at a document together.

6 If I can have on the screen, please, the document is D18-0001-1464 and I would like to
7 have the first page of the document, which is 1464.

8 Sir, I -- the document on the screen, which was disclosed to the Prosecution, is called:
9 (Interpretation) "Register of baptisms."

10 (Speaks English) And starting on (Redacted)

11 PRESIDING JUDGE FREMR: Ms Luping.

12 MS LUPING: It's just a question of reading what's on the document. Perhaps it's
13 my mistake but I see it says (Redacted). And it would be useful, again a question of
14 reading assistance for this witness, if the entire title of this document which is in
15 French is read to him.

16 PRESIDING JUDGE FREMR: I have to admit I also would tend to see it as (Redacted).

17 MR BOURGON: That is correct, Mr President. That's my mistake.

18 MS LUPING: Sorry, I also note that I do not see the word "registre" on the front page
19 of this document.

20 PRESIDING JUDGE FREMR: What I can confirm as well.

21 MR BOURGON: I will read the exact title, Mr President, where it says (Redacted)
22 (Redacted) and it says:

23 (Interpretation) "Baptism of adults parish of (Redacted)"

24 (Speaks English) And there is a number there which is (Redacted)

25 Q. Sir, we obtained this document from the person responsible for baptism where

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1 you were born. I would like to turn to the last page of this document and the last
2 page being 1472. This is just to show you, sir, that we took a photograph of the first
3 page and the last page of the document and now I would refer you to page number
4 1468.

5 If I can have this page on the screen, please. And
6 we will look at the information close to the name -- with the serial number (Redacted)
7 If we can focus on the page -- on the number (Redacted) sir, I draw your attention
8 here to the third column which is your family name, (Redacted); is that so?

9 A. Yes, that is correct.

10 Q. And the next column we find (Redacted) which is the name you were given when
11 you were baptised; is that correct?

12 A. Yes, that is my baptismal name.

13 Q. And in the next column before (Redacted) we have the date of birth, which is
14 (Redacted); is that correct?

15 A. I see that date has been written here, but I don't know if that is the case. I
16 know that my mother told me that I was born on (Redacted), the date here I
17 have -- I don't know about this date.

18 Q. Let's take a look at the next column. And the next column, we have two names
19 in the next column. First we have the name where is says (Redacted). That
20 is your father; is it not?

21 A. Yes, that is indeed my father's name.

22 Q. And the name below that is the name (Redacted), who is your mother;
23 is it not?

24 A. Yes, that is my mother's name.

25 Q. Sir, is it your testimony today that your -- following your baptism, you do not

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1 know that your birthday is (Redacted)

2 A. No. I'm not familiar with this date. I asked my mother about my date of birth.

3 I asked my parents (Redacted). That was the

4 date they gave me. As for the date here, I don't know anything about it. I do know

5 that if you look at my documents you will see that has been written down,

6 (Redacted). As for this date, I don't know. I have no idea. I grew up and up

7 until this day I have always known that my date of birth is (Redacted)

8 Q. So you do remember being baptised in (Redacted)

9 do you not?

10 A. Yes, I remember. I was baptised in (Redacted)

11 (Redacted)

12 (Redacted)

13 Q. Now, let's take a look here at the date at which you were baptised. And for

14 this we need to see the second column and we need to go up on the page and we need

15 to look at page 1467, please, on the screen. I'd like to focus on the first serial of this

16 document at the top, which is (Redacted) Now, just beside is the date you were

17 baptised and it says here (Redacted)

18 Sir, on the basis of this date, are you telling us that at (Redacted) you were baptised

19 but you don't know that your date of birth is (Redacted)

20 A. No, I don't recognize the birth date of (Redacted). I don't remember.

21 That was a long time ago. I don't remember. I no longer remember that date.

22 Q. Sir, we move on to a different topic, which is your arrival in Mandro. But

23 before that I have to put my case to you and my case, sir, is on the basis of what we

24 covered this morning and on the basis of your date of birth, that you were never

25 abducted by the UPC to go to Mandro. Do you agree with this statement, sir?

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1 A. I was abducted and taken to Mandro. I did not go of my own volition.

2 MR BOURGON: Mr President, I would like at this time to seek admission of this
3 document in evidence. The number is DRC-D18-0001-1464 and it is a nine-page
4 document.

5 PRESIDING JUDGE FREMR: Prosecution, any objection?

6 MS LUPING: Mr President, your Honours, we have no information at this stage as
7 to, or sufficient information at this stage as to the origins and exactly who created this
8 document. We have some basic metadata. We would not object to this being given
9 a temporary number at this stage. We assume that in the Defence part of this case
10 they will be bringing a witness, presumably, to authenticate this document to be
11 admissible, especially this kind of documentation that is being used to directly
12 contradict the witness. We would expect that there will be a minimum indicia for
13 liability and at this point we will argue that there has been insufficient proof in terms
14 of the reliability of this document to be able to be admitted for the purpose for which
15 it is being sought to be admitted. I assume it's being sought to be admitted for the
16 truth of its content.

17 PRESIDING JUDGE FREMR: Mr Bourgon.

18 MR BOURGON: Mr President, it is our submission, I disagree with my colleague.
19 It is our submission that reliability has been established based on the document itself,
20 but also the answers of the witness concerning the document. Now, Mr President,
21 I would submit that we have two choices. The first choice is we admit the document
22 immediately for the truth of its contents, or, as an alternative, we admit it at this stage
23 for impeachment purposes and then we can proceed to admit it for the truth of its
24 contents later. But it should not be -- there should be no temporary
25 or -- identification. We have more than sufficient, Mr President, in our view, to at

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1 least admit it for impeachment purposes.

2 PRESIDING JUDGE FREMR: Give us a second, because it's an important issue.

3 I would like to consult my colleagues.

4 (Trial Chamber confers)

5 PRESIDING JUDGE FREMR: So as you can see, we discussed it thoroughly and we

6 are in favour of the second alternative, if I may call it, proposed by Defence, by

7 Mr Bourgon, which means that at the moment we are -- this document is admitted but

8 for the purpose of impeachment. And the possibility to admit it for the content of

9 the truth is still open, but depends on the further proceedings.

10 Mr Bourgon, please proceed.

11 MR BOURGON: Thank you, Mr President.

12 Q. Sir, I'd like to move on to a few -- to address a few questions concerning your

13 relationship with (Redacted). I'd like to know when is the last time that you spoke

14 to (Redacted)

15 A. I don't remember the last time I spoke with him. The last time that we met was

16 a long time ago. (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 Q. And, sir, on this occasion, now we are talking your -- of course your statement
3 was provided to the Prosecution from (Redacted). How many days before
4 this interview did you speak to (Redacted)

5 A. Before that date a long time went by. I no longer recall. Months. Months
6 since we last spoke.

7 Q. Maybe I will make my question more clear. We have discussed together that
8 before you provided your statement to the Prosecution, first they gave you a call.
9 We confirm that, right?

10 A. Yes, they called me.

11 Q. How many days prior to your interview did the Prosecution call you?

12 A. I no longer recall how long it was, how much time before, before the statement.
13 They called me and a few days later we met one another and they said to me, first of
14 all, the place that we would meet, I went there, they asked questions and I answered
15 their questions. I no longer recall how much time went by before I met with them.
16 I no longer recall how many days went by.

17 Q. Sir, after you received the call from the Prosecution (Redacted)
18 (Redacted)

19 A. I no longer recall whether I called him; however, I do know that before I met
20 with the people from the Prosecution, I (Redacted)
21 tell me that some officers from the OTP would be arriving. But I no longer recall
22 whether I spoke to him again after that.

23 Q. And what information did he provide you (Redacted) If you don't -- you
24 don't remember calling back, but how much information did he provide you
25 (Redacted)

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1 A. He didn't tell me anything special, just the same thing, namely, that some
2 people will be coming to meet me and I asked him who, and he said "Don't worry,
3 they are investigators." That is the information he gave me and nothing more.

4 Q. So when he said "they are investigators", did you ask him what type of
5 investigator or where from?

6 A. I asked him who the people were and he told me they were good people,
7 investigators who would be coming to have a discussion with me. He told me they
8 would put some questions to me and that I should answer the questions. I did not
9 know where they were coming from. It is only when I met them that the
10 investigators themselves told me where they had come from.

11 Q. Well, sir, you already answered earlier on today. And I refer here to transcript
12 page 80, lines 3 to 5 where you said, "Yes, he informed me of that, saying that some
13 investigator would be coming. They would be coming to talk with me since I had
14 been a child soldier. This is what he told me. That is what I heard about the arrival
15 of these people and we did talk."

16 So that, we've established that already today. What I'm interested in is, when he told
17 you these investigators are coming because you were a child soldier, what
18 information did you have about what is a child soldier at that time?

19 A. The information I had was in relation to the questions they put to me. I
20 answered the questions they asked me. They asked me whether I was a child soldier
21 and I said "yes". I told them I had been a child soldier. I told them about the
22 training that I undertook and I told them about -- I told them about what happened
23 within the UPC. Those are the things that we discussed.

24 Q. Sir, my question is -- refers to the period before you answer the questions of the
25 Prosecution: what did you know at that time or what was your basis to say that you

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1 were a child soldier?

2 A. I told them that I had been a child soldier because at the time I was taken up
3 I was a child soldier. I told them what happened at that time. That is why I had
4 that discussion with them.

5 Q. Sir, I'm trying to establish what was your understanding of what is a child
6 soldier before you spoke to the Prosecution.

7 A. To my mind, a child soldier was someone who was young and who was in the
8 army. That is the person who would be referred to as a child soldier.

9 Q. So picking up from this answer you mention a child soldier was someone who
10 was young and who was in the army. So if I suggest to you that your understanding
11 was anyone under 18 was a child soldier, would that be correct?

12 A. Yes. Someone who was less than 18 years old would be a child soldier. A
13 child soldier would be younger than 18 years old.

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

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25 Q. So I take it then that you did not have a chance to discuss the events of

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1 2002-2003 with (Redacted) at no time; would that be correct?

2 A. I never had the opportunity to have a discussion with him or to put questions to
3 him about the events of 2002 or 2003. I never had that opportunity to put such
4 questions to him.

5 Q. So it's your testimony that you never informed him of what happened to you in
6 2002-2003; is that correct?

7 A. I never said anything to him because, you see, at that time we did not get to
8 meet or see each other, so I didn't have any such discussion with him.

9 Q. Well, then, let's move back now to your interview with the Prosecution. And I
10 just referred to your answer a bit earlier where you said, the question was, "I
11 understand your answer to mean that from the time you were supposedly abducted
12 until you left --" no, sorry, this is not the right question. I'm talking about, "From the
13 moment you had this conversation with the Prosecution, (Redacted)
14 (Redacted) This is at page 90, lines 18
15 to 20.

16 And I just want to make sure so that, in all fairness to you, that you understand my
17 question. So you have the interview with the Prosecution, now even though you
18 don't remember the date we know that it's on (Redacted)
19 (Redacted) Is that your
20 testimony?

21 PRESIDING JUDGE FREMR: Ms Luping.

22 MS LUPING: It's just a question of the date that was given to the witness as to the
23 date of the interview. It appears to have been given a date of (Redacted) I
24 don't want to lead him into error. The interview was actually in (Redacted)

25 PRESIDING JUDGE FREMR: Mr Bourgon.

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1 MR BOURGON: Yes, I appreciate the assistance of my colleague, it is indeed

2 (Redacted)

3 Q. Now after this moment, sir, I think you already confirmed that, but I want you

4 to make sure that you did not -- (Redacted)

5 A. This is correct. (Redacted)

6 Q. Now, sir, you recall that at the end of your interview with the Prosecution,

7 (Redacted), that you had severe headaches. Do you recall this, sir?

8 A. Yes, I do remember.

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 Q. And did he ask you why you were not feeling well or what had, you had done

22 that day?

23 A. No. I am the one who told him that after the interview I was having

24 nightmares and that I was somewhat emotional about these things and that I had

25 headaches, because I had been thinking about a lot of things, and that I was having

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1 nightmares. That is what I told him.

2 Q. Well, let's take a look at one document that I have here, sir, which -- that you are
3 familiar with.

4 I would like to have on the screen document DRC-OTP-2076-0063. It's a one-page
5 document and it bears the title "Investigation Note."

6 MS LUPING: Just a quick message for the court officer, if the witness's screen could
7 please be switched off. He should not be seeing this. Could we take -- could this be
8 removed, please. I would just ask my learned colleague, we have an alternative
9 version of this note, the version that was provided to the witness, which is a redacted
10 version of the document which was attached to the preparation note that was
11 provided. The witness should be simply shown the same version that he was shown
12 during the witness preparation.

13 PRESIDING JUDGE FREMR: Yes, I would prefer, and I guess Mr Bourgon as well,
14 the second alternative.

15 MR BOURGON: Yes, I fully agree. I was wondering why, but I just -- the light
16 came on.

17 Q. Sir, I don't think you need to see the document because other people in the
18 courtroom are seeing it, but I'm just going to read from that second paragraph. This
19 is a call that took place on (Redacted), on this day you were contacted
20 by two investigators. Do you recall this, sir?

21 A. Yes, there were two male -- two investigators, two men and a woman.

22 Q. So here it says a courtesy call. Was that in person or over the telephone?

23 A. They called me on the phone and told me that they wanted to meet with me.

24 They gave me an appointment somewhere and I was taken to that place where we
25 met for the interview.

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1 Q. Sir, I was not referring to the initial phone call which led to the interview. I'm
2 talking to a few days after the interview. According to what I have here, and this is
3 information that you reviewed less than a week ago, it reads as follows: "The
4 witness informed" there are two names of investigators, (Redacted)
5 "that he is doing well but that he had suffered from a severe headache and nightmares
6 the evening after he concluded his interview with the OTP investigators. (Redacted)
7 (Redacted) to the hospital where he was seen by a doctor and who
8 gave him some medication. The headaches have not returned since then."

9 Do you recall giving that information to the Prosecution?

10 A. Yes, I gave them that information when, when they called me. It is *when they
11 called me that I gave them that information.

12 Q. Now, in all fairness to you it says at paragraph 3 that "The witness said that he
13 had not discussed his OTP interview with (Redacted) and confirmed that he would
14 not discuss it with anyone." Now my proposition to you, sir, is that -- no, I will wait.
15 So you remember giving that information also?

16 A. No, I did not share my interview with the investigators or with anyone
17 whosoever. Even (Redacted) never asked me about what we had discussed. I never
18 said anything to him.

19 Q. (Redacted)
20 (Redacted) you did not discuss your testimony with him. That's your testimony?

21 A. I never shared the interview with (Redacted). And he never asked me any
22 questions about it. So I didn't say anything to him about it. I never said anything
23 to him about it.

24 Q. I understand your answer, sir, to mean that although (Redacted) established
25 contact between you and the Prosecution, he never asked you to share the contents of

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1 your interview with him; is that your testimony, sir?

2 A. Yes, that is correct. He is the one who told me that the investigators were
3 going to come and see me, but after the interview with the investigators, the
4 investigators instructed me not to discuss the content of our interview with anyone,
5 whether it be (Redacted) who had established contact between us. So I never told
6 him anything and he himself never asked me to find out what I had discussed with
7 the investigators.

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

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24 (Redacted)

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1 (Redacted). So I wonder if you know, if you had provided him

2 with any information so that he could make that assessment?

3 A. No. I did not give him any information. I did not tell him anything about

4 what happened between myself and the investigators. I did not even tell him that

5 I was feeling well.

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

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9 (Redacted)

10 (Redacted)

11 (Redacted)

12 A. That is correct.

13 Q. I'd like to have on the screen without showing to the witness -- actually, this one

14 can be shown to the witness, the first page at least. And this is document

15 DRC-OTP-2092-0314. I'd like to have paragraph 2 on the screen, please.

16 THE COURT OFFICER: Mr Bourgon, could you please confirm if the document

17 may or may not be shown to the witness, please.

18 MR BOURGON: The first page may be shown to the witness. I apologise if I

19 wasn't clear.

20 Q. Sir, you can see on the screen, but of course it is in English, but I would

21 nonetheless read it to you. It says, paragraph 2:

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 Q. Before that time, sir, you had no involvement whatsoever with the Prosecution;
13 is that correct?

14 A. Before that I had no contact with the Office of the Prosecutor.

15 Q. And in addition, you had no contacts also, let's say, to file an application to
16 participate as a victim, you never did something like that; is that correct?

17 A. Before that I had not received any information about becoming a
18 witness -- correction, a victim.

19 THE INTERPRETER: Says the Swahili interpreter.

20 MR BOURGON:

21 Q. Now, in the same note, this time it cannot be shown to you, but I can refer to it.
22 I'd like to have the second page of the document, please, on the screen but not to the
23 witness. And this is 2092-0315

24 And in this document, sir, at paragraph 3 -- or paragraph 4, sorry, it says that (Redacted)
25 (Redacted)

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21 (Redacted)

22 (Redacted)

23 PRESIDING JUDGE FREMR: All right. And another caveat, Mr Bourgon, you

24 have last two minutes to wrap up.

25 MR BOURGON: Thank you, Mr President.

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1 (Redacted)

2 Q. Thank you very much, Mr Witness.

3 MR BOURGON: Mr President, I'm one or two minutes later than 4.15. That's it for
4 today, but I would like to continue tomorrow morning. I'm not sure how much time
5 I have left tomorrow morning.

6 PRESIDING JUDGE FREMR: I will inform you shortly.

7 Now we can move into open session.

8 (Open session at 4.18 p.m.)

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

10 PRESIDING JUDGE FREMR: So, Mr Witness, I would like to thank you. For you
11 it's finished for today. So we will for maybe one, two hours continue tomorrow, but
12 at the moment you will be made free.

13 So court officer, please guide Mr Witness.

14 And one important caveat, Mr Witness, in the meantime you must not discuss your
15 testimony with anybody else as I said to you yesterday. Do you understand that?

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

17 PRESIDING JUDGE FREMR: Thank you. Take some rest and we see you
18 tomorrow.

19 (The witness stands down)

20 PRESIDING JUDGE FREMR: Information concerning timing, so far Defence
21 exhausted 3 hours 25 minutes which means that, Mr Bourgon, you still have at your
22 dispose for tomorrow 1 hour 13 minutes.

23 Usual question to calling party, Ms Luping, do you envisage any need for redirect at
24 this moment?

25 MS LUPING: It will be limited at this stage. I really need to have a proper look at

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1 the transcript from today. I envisage approximately 15 minutes at this stage.

2 PRESIDING JUDGE FREMR: All right. We will decide tomorrow. And for the
3 rest of the session I will utilise it for delivery of two oral rulings.

4 The first one is oral ruling on the Prosecution request for protective measures for
5 Witness P-877 in the form of face and voice distortion as well as the use of
6 pseudonym, contained in filing number 1336.

7 On 30 May 2016, in filing number 1344, the Legal Representative for Victims of the
8 Attacks supported the request.

9 After the Chamber shortened the deadline by way of email, the Defence responded on
10 14 June 2016 with filing number 1394. The Defence opposes the request.

11 On 20 June the Chamber received the VWU's protective measures assessment, which
12 recommends granting the same protective measures in the request.

13 The Chamber incorporates by reference the applicable law set out in its first decision
14 on protective measures, which is filing number 824.

15 In ruling on the request, the Chamber has considered, particularly: The place of
16 residence of the witness and his family, the prevailing unstable security situation in
17 the area, the minimal degree of protection currently provided and the witness's
18 personal circumstances, including his professional responsibilities, which bring him
19 in contact with a large number of people in the community. In this connection, the
20 Chamber has also noted the Prosecution submissions regarding the witness's
21 previous involvement with certain organs of the Court.

22 Although the Chamber has not been made aware of any direct threat to the witness, it
23 notes the reported instances where other witnesses, including crime-based witnesses,
24 were allegedly threatened as a result of their involvement with the Court. The
25 Chamber also had particular regard to the VWU's assessment in respect of the

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1 witness's security situation.

2 In light of the above, the Chamber is satisfied that there exists an objectively
3 justifiable risk with respect to the witness's security, and that of his family, that
4 warrants the protection of the witness's identity from the public. The Chamber
5 further finds that the in-court protective measures sought do not unduly infringe
6 upon the rights of the accused and, accordingly, grants the measures of use of a
7 pseudonym for the purposes of the trial and voice and face distortion during
8 testimony pursuant to Rule 87 of the Rules.

9 Finally, the Chamber orders the filing of public redacted versions of the request and
10 both responses by 7 July 2016.

11 This concludes this Chamber's ruling.

12 And the second ruling is ruling on Prosecution request number 1335 seeking the
13 admission, under Rule 68(3) of the Rules, of the prior recorded testimony of Witness
14 P-877, together with associated documents.

15 The Prosecution seeks to admit parts of the witness's two statements, their five
16 accompanying sketches, as well as seven entries of the witness's notebook. It further
17 seeks permission to use leading questions to elicit corrections or clarifications from
18 the witness during its preparation session and requests one and a half hours to
19 conduct a non-leading supplementary examination, specifically on alleged crimes
20 committed in Kilo.

21 The Defence responded in filing number 1387.

22 Having considered the materials and submissions received, the Chamber is of the
23 view that use of Rule 68(3) is, in principle, appropriate for this witness. It will
24 render its formal decision on the admission of the requested materials when the
25 witness appears before the Chamber and if the requirements of Rule 68(3) are

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1 satisfied.

2 First, without prejudice to certain portions of the evidence being elaborated in more
3 detail viva voce in a manner which is not merely repetitive, the Chamber considers it
4 appropriate to admit the statements in full. Accordingly, and in line with the initial
5 guidance provided, the Chamber will authorise supplementary examination of a
6 maximum of one hour, which should include the Prosecution requesting the witness
7 to confirm the accuracy of the material sought to be admitted and addressing any
8 necessary corrections and/or clarifications. The Chamber considers that clarification
9 should be sought in a non-leading manner and may be elicited by discussing with or
10 showing to the witness certain portions of the prior reported testimony.

11 Additionally, the Chamber considers that the five sketches drawn by the witness are
12 appropriate for admission pursuant to Rule 68(3), together with the witness's
13 statements, given that they are used and explained therein and necessary to fully
14 understand his prior recorded testimony.

15 Similarly, the Chamber finds that the entries in the witness's notebook identified by
16 the Prosecution and sought to be admitted are also associated exhibits necessary to
17 read and understand parts of the witness's prior recorded testimony. Accordingly,
18 the Chamber considers that the seven entries from the notebook shall be considered
19 for admission under Rule 68(3), together with the witness's prior recorded testimony.
20 This is subject to the witness satisfactorily authenticating such items in court and
21 fulfilment of the requirements of Rule 68(3). If necessary, the Chamber will hear
22 further submissions prior to ruling on the Rule 68(3) request.

23 The Chamber notes the Prosecution's indication that it will request admission into
24 evidence of the corresponding portions of transcription and translations. The
25 Chamber hereby provides notice that, for ease of reference, the corresponding parts of

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1 the transcription as identified by the Prosecution in annex A to its request will also be
2 considered for admission when issuing its formal ruling on the request. As the
3 relevant entries in the notebooks are in French, the Chamber hereby indicates that it
4 does not consider it necessary to admit the translations into evidence. The parties
5 should attempt to resolve any differences with regard to the transcriptions inter
6 partes in advance of the testimony.

7 The parties are further directed to file public redacted versions of filings 1335 and
8 1387 within two weeks.

9 This concludes the Chamber's ruling.

10 Are there any requests for the floor? I don't see any indication of that, which
11 means -- Ms Luping please:

12 MS LUPING: My apologies, Mr President. It's just in relation to this last or second
13 oral ruling where -- and I'm going to read the lines:

14 "First, without prejudice to certain portions of the evidence being elaborated in more
15 detail viva voce in a manner which is not merely repetitive, the Chamber considers it
16 appropriate to admit the statements in full."

17 Just a question really for clarification, the Prosecution had sought that certain aspects
18 of the testimony be able to be indeed provided by the witness viva voce, certain key
19 aspects of his testimony. Does this mean that indeed the Prosecution will be able to
20 elicit the, what it has identified as being those key aspects viva voce, if you like,
21 certain parts carved out viva voce?

22 PRESIDING JUDGE FREMR: Yes, we just consulted. Our interpretation or
23 explanation, how we meant it, is that it should be -- could be admitted in full but
24 probably it will be better to focus on those really, just on those key passages and to,
25 not to repeat them, but to examine the witness on those passages viva voce.

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- 1 MS LUPING: Thank you for that clarification, Mr President.
- 2 PRESIDING JUDGE FREMR: If there are no further requests for the floor, we can
- 3 adjourn and we will resume tomorrow 9.30.
- 4 THE COURT USHER: All rise.
- 5 (The hearing ends in open session at 4.31 p.m.)
- 6 RECLASSIFICATION REPORT
- 7 Pursuant to the Trial Chamber VI's Order, ICC-01/04-02/06-1887, dated 4 May 2017,
- 8 the public reclassified and lesser redacted version of this transcript is filed in the case.