

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Open Session)

ICC-01/04-02/06

1 International Criminal Court
2 Trial Chamber VI - Courtroom 2
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and Judge Chang-ho Chung
6 Trial Hearing
7 Tuesday, 7 June 2016
8 (The hearing starts in open session at 9.30 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 We are in open session.
18 PRESIDING JUDGE FREMR: Thank you, court officer.
19 Now appearances please, starting with Prosecution.
20 MR IVERSON: Good morning, your Honours. Appearing today for the Office of the
21 Prosecutor are James Pace, assistant trial lawyer; Rens van der Werf, assistant trial lawyer;
22 Dianne Luping, trial lawyer; Selam Yirgou, case manager; Judith Boekstal, intern; and
23 myself, Eric Iverson, trial lawyer.
24 PRESIDING JUDGE FREMR: Thank you, Mr Iverson.
25 Defence please.

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1 MR BOURGON: (Interpretation) Good morning, your Honour, your Honours. On
2 behalf of the group representing Bosco Ntaganda, Chloé Grandon and myself,
3 Stéphane Bourgon. Thank you.

4 PRESIDING JUDGE FREMR: Legal Representative of Victims.

5 MS PELLET: (Interpretation) Good morning, your Honour. Thank you. The former
6 child soldiers are represented by Mr Abdou and myself, Sarah Pellet with the OPCV.

7 MR SUPRUN: (Interpretation) Good morning, your Honour, your Honours. The
8 victims of the attacks are represented by the OPCV, Anne Grabowski and myself,
9 Dmytro Suprun.

10 PRESIDING JUDGE FREMR: Thank you, Ms Pellet. Thank you, Mr Suprun.
11 And duty counsel, please.

12 MR LAUCCI: (Interpretation) Good morning, your Honours. Mr Laucci representing
13 Witness 190.

14 PRESIDING JUDGE FREMR: Thank you very much, Mr Laucci. And for the record I
15 add that Mr Ntaganda is present as well.

16 Now, good morning, Mr Witness.

17 WITNESS: DRC-OTP-P-0190 (On former oath)

18 (The witness speaks French)

19 THE WITNESS: (Interpretation) Good morning, your Honour.

20 PRESIDING JUDGE FREMR: Today, as announced, we will continue with your
21 testimony. So it's my duty to remind you that you are still under oath, which means that
22 you have to speak the truth and nothing but the truth. And I also repeat what I said
23 yesterday, that we appreciate that you observe our guidance concerning how to respond,
24 how to speak, pauses and so on, so please continue as yesterday. Yesterday you did it
25 very well.

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1 THE WITNESS: Thank you.

2 PRESIDING JUDGE FREMR: So now I am giving floor to Mr Iverson. And again as I
3 said yesterday he still has at his disposal four hours and five minutes.

4 Mr Iverson, the floor is yours.

5 MR IVERSON: Thank you, Mr President. I'd like to request to go into private session,
6 please.

7 PRESIDING JUDGE FREMR: All right.

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

9 (Private session at 9.34 a.m.) *(Reclassified partially in public)

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

11 PRESIDING JUDGE FREMR: Thank you, court officer.

12 Mr Iverson, please proceed.

13 QUESTIONED BY MR IVERSON: (Continuing)

14 Q. Sir, when we left -- good morning, sir. How are you doing this morning?

15 A. I am fine this morning, but I have some problem. The translation is not -- French
16 has not come.

17 Q. Okay, we will deal with that issue, sir.

18 PRESIDING JUDGE FREMR: Please bear with us, Mr Witness. Hopefully we will solve
19 it in a moment.

20 Please French booth could you say something for -- it's okay?

21 THE COURT USHER: The English one, yes, but the interpreters, no.

22 Yeah, it's okay.

23 THE WITNESS: Thank you.

24 (Interpretation) I can hear you now. Thank you.

25 PRESIDING JUDGE FREMR: I thank all of you. So problem seems to be solved. So

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1 again, Mr Iverson, you may proceed.

2 MR IVERSON:

3 Q. All right. So now that it's working again, yesterday when we left off I was asking
4 you questions about the -- what you referred to as the second attack in Mongbwalu. I'd
5 like to get back to those questions but first I just want to ask one clarification question
6 from yesterday's transcript, (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 A. (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 Q. (Redacted)

25 (Redacted)

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1 A. (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 Q. All right. Well, that's -- those are the only clarification questions I have on that
6 topic. So I'd like to return now to the topic of the attack in Mongbwalu.

7 Are you aware whether there was a meeting in order to plan the operation in
8 Mongbwalu?

9 A. Perhaps the volume could be increased. I can't hear you very well. I can't hear
10 the voice of the interpreter, the volume is not high enough. Perhaps it could be put up a
11 bit.

12 (Pause in proceedings)

13 THE WITNESS: (Interpretation) Yes, thank you. That's much better.

14 PRESIDING JUDGE FREMR: Thank you, court officer.

15 MR IVERSON:

16 Q. All right. Is that better? Are you able to hear me now, sir?

17 A. Yes, I can hear you well. Thank you.

18 Q. Okay. And if there are any other technical issues just let us know right away, let
19 the Presiding Judge know and of course the Court will take care of that issue, because it's
20 important that you understand what I'm asking you so we get it all on the record?

21 PRESIDING JUDGE FREMR: Exactly.

22 MR IVERSON:

23 Q. So I'm just going to repeat my question: Are you aware of, and I'm asking about
24 the second attack at Mongbwalu, were you aware if there was a planning meeting in order
25 to plan that operation?

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1 A. Yes, I was aware of that meeting for the second attack on Mongbwalu.

2 Q. And were you present at that meeting?

3 A. No, I did not participate in that meeting.

4 Q. And were you privy to any discussions about the planning for that operation? Or
5 were you aware of the discussions about the planning for that meeting?

6 A. Yes, I was informed of that.

7 Q. How were you informed of the planning for the -- for the attack at Mongbwalu?

8 A. I was informed because there were officers who were close to me and who attended
9 the meeting. So I learned that the meeting had taken place at Bosco Ntaganda's place
10 with other commanders around Commander Jérôme. So I was informed by the
11 commanders who attended the meeting and who were very close to myself.

12 Q. (Redacted)

13 (Redacted)

14 A. (Redacted)

15 (Redacted)

16 (Redacted) the strategy to take back Mongbwalu again because the first
17 time they failed in taking over Mongbwalu, so the purpose of the meeting was to deal
18 with the strategy whereby they would retake Mongbwalu.

19 Q. And do you recall what that strategy was, how they were going to retake
20 Mongbwalu?

21 A. The strategy involved supporting the new team around Commander Jérôme, who
22 was there. And they had a joint strategy, that is, bring together their forces, Jérôme's
23 forces. They didn't have a name yet, the patriotic forces of the UPC, to bring them
24 together and to take Mongbwalu. So they knew who was occupying Mongbwalu. I
25 told you that it was occupied by the APC, that is the RCD-K/ML of Mbusa. And they

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1 had to take back that town. It was a mining town as well, so they were interested in the
2 mine in Mongbwalu. That's what their strategy involved and that's what they discussed
3 at that meeting. And the men who were close to me told me about what was discussed
4 at the meeting.

5 Q. Sir, are you aware whether there were any contingency plans on how to deal with
6 civilians on the battlefield, civilians caught up in the attack?

7 A. No.

8 Q. And is that a no you're not aware, or no there were no contingency plans for dealing
9 with civilians on the battlefield?

10 A. There was no plan to deal with civilians during the attack. The only thing I'm
11 aware of is that there was a strategy to take over, to take back the town, and to do so they
12 had to attack the forces on site. There was an armed group that was on site.

13 Q. Sir, did you ever personally visit Mongbwalu in a time close to the attack, either
14 before, during or after?

15 A. Yes, I went to Mongbwalu after, not before. I was there after, once Mongbwalu
16 had already been taken over by the patriotic forces.

17 Q. And just to quickly go back to the planning meetings, who were the people involved
18 who you spoke with about the planning meetings? Who told you about the plans?

19 A. (Redacted)

20 (Redacted)

21 Q. (Redacted)

22 (Redacted)

23 A. (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 Q. Do you know why Mr Ntaganda was angry, or is that just a general description of
4 his character?

5 A. No, I didn't mean a general description. It's -- it's -- I had already seen the crimes
6 that he had committed in public and that's why, you see, I -- I have that judgment of him.
7 I stated that because I had seen myself the way he had acted before, and that's why I was
8 familiar with his behaviour and his character. It wasn't just what had happened in
9 Mongbwalu that he -- that I say that he was irritable. I was familiar with his character
10 before because of the other crimes he had committed.

11 Q. And did you learn the details of what had happened to the abbé, to the man of the
12 church?

13 A. (Redacted) the abbé had been
14 killed, that he had been assassinated and that his throat had been cut. (Redacted)
15 (Redacted) And then when I spoke to (Redacted)
16 (Redacted) that abbé was an Ngiti man, he was from the Walendu-Bindi collectivity and
17 that he was an accomplice of the people in Mongbwalu and with the APC of Mbusa
18 Nyamwisi, (Redacted)
19 (Redacted)
20 (Redacted)
21 (Redacted)

22 Q. And when you say that civilians had been killed, are you aware of what ethnicity
23 these civilians were?

24 A. Yes, I'm aware (Redacted). Mainly it was Lendus who were
25 killed. (Redacted)

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2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted) Lendus were targeted and, of course, there was a war

8 between the patriotic forces of the UPC and the APC and that after that battle there were

9 also civilians because the Mbusa's forces left, and the people who remained were civilians

10 and they became the victims. And it was more civilians who were victims. In fact they

11 were Lendus.

12 Shortly thereafter we got a message from the UPC, from the presidency, which said "Stop

13 the killing." And, therefore, the Lendus who were still there did not run away and they

14 were no longer threatened. But initially the tribes that were targeted were Lendus

15 because Mongbwalu is essentially a Nyali town from the Nyali ethnic group, and the

16 Nyalis also had problems with the Lendus and the Lendu had been targeted after the

17 attack.

18 Q. (Redacted)

19 (Redacted)

20 A. (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 Q. Sir, you also mentioned that you saw dead bodies in the street, is that right, in

14 Mongbwalu?

15 A. Yes. Yes, I told you that I saw two corpses of two men on the terrace. (Redacted)

16 (Redacted) also told me that behind the hospital there were a number of dead

17 bodies, but I did not go behind the hospital to see those dead bodies. However, what I

18 saw with my own eyes were the dead bodies on the terrace.

19 Q. And were you able to tell from the bodies whether these were civilians or whether

20 they were combatants?

21 A. Quite honestly, Mr Prosecutor, when I saw the dead bodies there, you see, when you

22 see the corpse of a combatant, you will find that body with a bladed weapon or a firearm.

23 But the bodies that I saw were wearing ordinary civilian clothing, and they did not have

24 or they did not carry any weapons.

25 So looking at the dead bodies, one would know that they were not combatants. It is very

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1 easy to distinguish between a combatant and a civilian.

2 Q. And did you ever learn who killed the , the man of the church that you had
3 mentioned?

4 A. Mr Prosecutor, no, I didn't learn about it. But Kisémbu himself, when he was
5 celebrating victory, he said he was the one who had cut off his head and that he had
6 played around with his head as if it were a football, a ball. (Redacted)

7 (Redacted) And so to my mind it is Kisémbu who killed the priest or father or abbé of
8 Mongbwalu.

9 Q. Are you aware through your visit to Mongbwalu or other information whether there
10 were child soldiers involved in this attack against Mongbwalu on the part of the UPC
11 forces?

12 A. At about the same time, after they left the UPC troops, and most of them I saw were
13 made up of child soldiers, (Redacted)
14 (Redacted), most of those who were working there were child soldiers, and I saw them with
15 my own eyes, with my own naked eyes. I told you already that I know how to identify a
16 child, by their conduct, if you may. And it was mostly children who were working on
17 that landing strip, and I saw it myself.

18 Q. And how old were these children?

19 A. I'm not able to confirm their ages, but I can provide an estimate. You see, when
20 you look at a child, you can at least estimate how old they are. You see, in the UPC in
21 the patriotic forces, there are no pygmies, people who are referred to as pygmies. There
22 was not a single pygmy. So one cannot argue that the short people whom I saw before
23 me were pygmies. No, they were not pygmies, they were children. And I can only
24 provide an estimate of their age without confirming it. Simply by looking at them I
25 could say that these were children aged 13, 14 to 15 years old.

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1 Q. Do you know if the UPC forces in Mongbwalu maintained any type of prison or
2 place where they would keep people imprisoned?

3 A. Mr Prosecutor, I already told you that the UPC had a force, the patriotic force which
4 was a militia force. They were disorganised and disorderly. There was no prison.
5 There was no location at which a -- or to which a soldier could be sent as way of
6 punishment. They had no location for holding soldiers who had either breached rules of
7 discipline or committed some offences. There was no such location.

8 Q. But did, to your knowledge, did the UPC in Mongbwalu keep any enemy prisoners
9 or keep any people who they captured in a prison? I'm just asking according to your
10 knowledge, sir.

11 A. There was no prison as such, a house in which people were kept, so to speak.
12 However, in the patriotic forces camp there were areas. You see, they did not have
13 houses themselves, they had areas where they would hold people whom they had
14 arrested, they would hold them like prisoners, including civilians.
15 You see, the war -- prisoners of war were not held. They simply kept a few civilians.
16 These people were not held in detention as such.
17 Now, when they were asked *by the UPC President to halt the killings, that is when they started
18 to arrest and hold them in the camps. But these holding places were not houses or anything like that.
19 It was an open-air area where they would be held, so to speak. That is what I am aware of.

20 Q. And what, if anything, do you know about alleged pillaging by the UPC in
21 Mongbwalu?

22 A. I'm aware of the looting. Well, the other word for looting is war harvest. And whatever was
23 taken was not referred to as looted material. They said simply that what they had gathered was the
24 proceeds of war, so to speak, and they never talked about looting. They talked about the gold mines,
25 they had taken them over. *Then, in the areas where the APC had been exploiting gold mines, they

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1 took over and exploited the gold mines. And this is what I can say was the general attitude.

2 Q. And when you were in Mongbwalu, were you able to personally see or observe any
3 UPC member with items from Mongbwalu, items that had been looted?

4 A. Many, many. In the patriotic forces camp there was a lot of property that had been
5 brought from stores. There were various motorbikes belonging to business persons. I
6 never asked them where the business persons were, but they also had motorbikes. And
7 I'm referring to the soldiers here who were riding a number of motorbikes which did not
8 belong to them, but belonged to the inhabitants of the area. That is mostly what I saw.

9 Q. And you had mentioned in the context of looting that gold was taken. What was
10 the objective, what was the UP objective with -- regarding the gold in Mongbwalu?

11 A. Mr Prosecutor, I did not talk about gold. I talked about gold mines. They took
12 over the gold mines that had been occupied by the APC. So those mines, those mines
13 were subsequently exploited and they began to dig for gold from those mines.

14 Q. And who did the UPC use to dig for gold in those mines?

15 A. Before Bosco Ntaganda left for Bunia, he left instructions with Commander Salumu
16 to supervise the mines. It is, therefore, Commander Salumu under orders from
17 Commander Bosco who remained in Mongbwalu to supervise the mines.

18 Q. (Redacted)

19 (Redacted)

20 A. (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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4 Q. (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 PRESIDING JUDGE FREMR: Mr Bourgon.

9 MR BOURGON: Thank you, Mr President. I've been refraining from objecting. This
10 is leading question after leading question after leading question. Everybody is asleep
11 here listening to these questions, but, Mr President, this one is just too much. Thank you.

12 PRESIDING JUDGE FREMR: Mr Iverson, maybe you should -- you usually jump in the
13 middle of these things. Maybe you should make some gradual steps to get to this issue.

14 MR IVERSON: I'll ask a foundational question.

15 Q. What, if anything, do you know about Hema -- the use of Hema civilian supporters?

16 A. I'm afraid I really haven't understood that question. Perhaps you can clarify it for
17 me.

18 Q. What I'm really trying to ask you, sir, is if you're aware of any Hema civilians who
19 would accompany the UPC forces, whether that, to your knowledge, happened, or not?

20 A. As regards civilians, I'd like to emphasise that when the UPC occupied the
21 goldmines they didn't use soldiers to dig in the mines; they used the civilians to dig in the
22 mines. And it was forced labour. They were forced by the soldiers to do that work in
23 order to reach the goal that they had, which was to obtain the gold. If you had to work
24 all day and all night, well, the civilians would be forced to do so, like slaves. That's all
25 that I know about civilians.

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1 And in addition civilians helped them transport property when they had pillaged or taken
2 war spoils, it was civilians that would help them transport the property. That's what I
3 can tell you about the civilians and what they did for the patriotic forces.

4 Q. And just so there's a clear timeline, when did the first and second attacks in
5 Mongbwalu take place, to the best of your recollection?

6 A. It was the same month, but I'm afraid I don't remember the exact date, but it wasn't
7 much long after. There was the first attack, and then shortly after the second it
8 wasn't -- there wasn't much time between the two.

9 Q. Well, let me ask you in terms of other attacks that you've mentioned. So was it
10 before or after the attack at Songolo, the first attack at Mongbwalu?

11 A. It was after the attack on Songolo.

12 Q. (Redacted)

13 (Redacted)

14 (Redacted)

15 A. (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 MR IVERSON: Mr President, could I have just one moment, please? Thank you.

21 PRESIDING JUDGE FREMR: All right.

22 (Counsel confers)

23 MR IVERSON: Thank you very much, Mr President.

24 Q. Sir, I'd like to ask you a few questions in private session and then I'll ask the

25 Presiding Judge to return into open session, but I just wanted to ask: Are you familiar

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1 with another military operation around the Nyangarai, Lipri, Bambu, Kilo area?

2 A. Yes, thank you. To go to Mongbwalu you must necessarily go through Nizi,

3 Bambu, Kobu, Kilo and Mongbwalu. Or by road you can walk through Lipri, Nyangarai,

4 Kilo and Mongbwalu.

5 So when the patriotic forces left Bunia to go to Mongbwalu they didn't just go to

6 Mongbwalu; as soon as they come to a village, the villages I have just listed to you, those

7 for the most part are Lendu villages and the problem with the UPC was that there was a

8 continual conflict between the two ethnic groups when they got to Kobu. (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted) So

13 it's the road, those towns are on the road to Mongbwalu. I don't have a lot of precise

14 information and, in particular, I didn't stop on my way to Mongbwalu to be able to give

15 you a lot of details on those villages.

16 Q. And are you aware (Redacted) who directed

17 that attack, who directed that military operation?

18 PRESIDING JUDGE FREMR: Mr Bourgon.

19 MR BOURGON: Thank you, Mr President. Although the question referred the witness

20 to an operation, and the question was Nyangarai, Kobu, Bambu, Lipri, the answer of the

21 witness does not describe any operation. So before we get into any details as to who

22 commanded an operation, the witness should be asked to at least explain what we are

23 talking about before we give a name to an operation that has not been described yet.

24 PRESIDING JUDGE FREMR: Mr Iverson.

25 MR IVERSON: All right. I'll rephrase, your Honour.

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1 Q. You mentioned there were victims in Lipri and Nyangarai, among others. Why
2 were they victims? When you say they are victims, why were they victims?

3 A. You asked me why there were victims? Well, it's because I received information
4 that there had been people killed. And the victims there, in particular in Lipri, I can give
5 the example of Lipri, it's not far from Bunia. Kilo, I can't give you precise information
6 about the attack or Kobu, but in the case of Lipri I can.

7 Lipri was attacked by Bosco Ntaganda himself. Because it's not far from Bunia, he went
8 there with his soldiers. They attacked the village, they burned houses, and they killed
9 civilians. There was no military group in Lipri to be able to oppose the patriotic forces.
10 They were all civilians in Lipri. And it's just a few kilometres from Bunia. And, in fact,
11 people in Bunia go to the market in Lipri on foot to buy their supplies. So there were no
12 military soldiers in Lipri.

13 Now, there were Lendu fighters who fought against the patriotic forces elsewhere. And
14 then there was -- in Kobu, in Kobu. *And then, if you go a little further, after Kobu, there
15 is Kilo, Mbusa's soldiers were already there. It is not far from Mongbwalu. A real war
16 took place there between the two forces. In Nyangarai there were civilians. The village
17 of Nyangarai was a Nyali village, it wasn't Lendu or Hema. But what I can tell you is
18 specifically about Lipri that I'm familiar with, I know that Lipri was attacked by Bosco
19 Ntaganda with the patriotic forces, and they attacked civilians. A lot of houses were
20 burned down, and there were a lot of victims, a lot of people killed. (Redacted)

21 (Redacted)

22 (Redacted)

23 Q. (Redacted)

24 A. (Redacted)

25 (Redacted)

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11 Q. And how do you -- and the other things that you mentioned, how do you know that
12 they attacked civilians at Lipri?

13 A. I told you that Lipri is very close to Bunia. And a lot of displaced persons came
14 because they fled, they fled Lipri to go to Bunia. It's just a few kilometres away. And
15 many civilians who fled, they spread the news throughout Bunia that there had been
16 massacres in Lipri and that homes had been burned down in Lipri.

17 I didn't go there myself, but everyone, all the people who had fled were reporting that
18 there had been massacres, that homes had been burned down and that's why they all run
19 away. And they had survived, they had managed to escape.

20 Q. And other than Mr Ntaganda, do you know who from the UPC was involved in that
21 attack on Lipri?

22 A. As I told you, I can't give you a lot of information about the attack on Lipri other
23 than what I have just described. I don't have a lot of details about other commanders
24 other than Bosco.

25 Of course, there may be other commanders that I'm not aware of, but what I know is that

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1 Bosco went there with the patriotic forces. If there were other commanders, I cannot give
2 you the names that I'm not familiar with. But I do know that Bosco went there, and he
3 came back victorious, and that the soldiers that were with him came back celebrating
4 victory saying they had controlled the situation, and that the fighters in Lipri are not
5 going to bother Bunia anymore.

6 In Kobu, I know there were soldiers, but not in Lipri, there were no soldiers in Lipri.
7 There were no combatants in Lipri.

8 Q. I'd like to change topics just slightly now. What information, if any, do you have
9 about a 6 March 2003 attack in Bunia?

10 A. Mr Prosecutor, perhaps you could reformulate your question. I'm afraid I haven't
11 really understood. It was a very long question. Perhaps you can make it shorter so that
12 my own answer can be more concise.

13 Q. Do you recall an attack on Bunia in March 2003?

14 A. Yes, I remember very well.

15 Q. Okay. Could you explain the circumstances of that attack to the Chamber, please?

16 A. Yes. The attack took place on March 6th, and it was planned by Bosco Ntaganda,
17 number one, and then Kisémbó, not by the UPC, because on March 5th the president of
18 the UPC had received an invitation from the Ugandan government to go and meet the
19 president of Uganda.

20 So he forbade the patriotic forces from opposing the Ugandan forces militarily. But
21 Bosco had already been in contact with the Rwandan government and was providing
22 supplies and men at the Irumu airport on March 5th so that on the 6th they could attack
23 and they'd be receiving additional supplies on the 6th, that it would all be well.
24 So in the evening of March 6th, they took the president of the UPC as a hostage, who was
25 preparing to go and meet with the Ugandan president without his knowing. (Redacted)

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13 (Redacted) And around 6 or 7 o'clock in
14 the morning, the war had started between the Ugandan army and the patriotic forces in
15 town, first of all, and then towards the south-east, where the FRPI forces were fighting
16 mixed with the UPDF, that is, the Ugandan army, who had also come into town and who
17 were also chasing out the UPC, because they had already routed out the UPC toward the
18 town.
19 So when the FRP and the UDF were fighting against the UPC toward the city, and then in
20 the city it was complete panic, and Bosco was on the front in the town and also Kisembo.
21 There was complete panic because the Ugandan forces were very powerful, very strong.
22 They were able to retrieve the weapons warehouse of the UPC patriotic forces and then
23 they -- there were other commanders who had come from Rwanda at the airport.
24 Remember, the airplane was supposed to land with reinforcements, and it didn't land,
25 because there was already a defeat in town. And so in town the entire city of Bunia was

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1 taken over by the Ugandan army and by the FRPI.

2 And it was only after the Ugandan army, when they chased, when they routed out the

3 UPC out of the town, they were in the north towards Mudzipela, and that's at that point

4 where the city was under the control of the Ngiti combatants, the FRPI. That's concisely

5 what happened.

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 Q. And where did the UPC headquarters move after that event?

11 A. They went toward the north, right after the attack on March 6th, they were based in

12 Centrale, Soleniama, but they were spread out. Some of them were in Mudzipela, some

13 were in Centrale, in Soleniama, and others went a bit further to Fataki.

14 But I can't really say that there was one specific location where they had a chief of staff

15 and a headquarters. They were spread out in various places and they kept moving

16 forward depending on how the attacks evolved and depending on the situation in Bunia

17 and according to their strategy, that is the strategy of the patriotic forces. They didn't

18 really have a precise headquarters, if you will. After the attack, they were spread out.

19 Q. And I see we have about six minutes to the break. I'm finishing with this topic.

20 I'm going to move on to another topic. I think I'll use these six minutes just briefly to ask

21 a few questions about communication and then I'll move to the next topic after the break.

22 Sir, could I ask you, do you have knowledge about the means of communication that the

23 UPC would use back in the 2001, 2002, 2003 time frame?

24 A. Yes, I know. The UPC used Motorolas, walkie-talkies, small Motorolas that

25 enabled them to communicate amongst soldiers. And there was a base station where

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1 there was an operator controlling it. But they also had satellite telephones, the Thurayas
2 that the UPC used in general. So whether you're talking about the ministers or a few
3 ministers or the president, and some commanders, not all the soldiers, but the major
4 commanders like Kisémbó had a Motorola, Bosco had a Motorola. And some of them,
5 rather than a Motorola they had Thurayas. And the Motorolas were given to the
6 battalion commanders, for example. Those were the main means of communication, that
7 is Motorolas and satellite Thurayas.

8 PRESIDING JUDGE FREMR: Mr Iverson, is there still a need to remain in private? I
9 don't know how you would like to --

10 MR IVERSON: Well, that's a good question, Mr President. But I would recommend yes,
11 because I was going to ask him questions related to his identity and the
12 communication devices.

13 PRESIDING JUDGE FREMR: All right then.

14 MR IVERSON:

15 Q. (Redacted)

16 (Redacted)

17 A. (Redacted)

18 Q. (Redacted)

19 A. (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

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10 (Redacted)

11 (Redacted)

12 Q. (Redacted)

13 (Redacted)

14 (Redacted)

15 A. (Redacted)

16 (Redacted)

17 Q. All right. Thank you, sir.

18 Mr President, I would ask that we now take the break.

19 PRESIDING JUDGE FREMR: All right.

20 Let's move into open session.

21 (Open session at 11.00 a.m.)

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

23 PRESIDING JUDGE FREMR: Thank you, court officer.

24 So we will break now for 30 minutes. But before doing that, Mr Iverson, do you think

25 you will be able to finish examination-in-chief by lunch break?

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1 MR IVERSON: It will be close, Mr President. I do believe that it's possible, but there's a
2 fair chance that I'll take just a bit of this afternoon as well.

3 PRESIDING JUDGE FREMR: Thank you. Just for the sake of planning, you still have
4 even more time, but it's good to know.

5 Okay. So we break now and we will resume at half past 11.

6 (Recess taken at 11.01 a.m.)

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

8 THE COURT USHER: All rise.

9 Please be seated.

10 PRESIDING JUDGE FREMR: So we are going to continue with examination-in-chief of
11 our witness conducted by Prosecution, by Mr Iverson.

12 Mr Iverson, you may proceed. Do you want to proceed in open or private session?

13 MR IVERSON: I'd like to proceed in open session, Mr President. I do have just a
14 clarification question that came to my attention from the last session. It was given -- the
15 answer was given in private, but I think it can be clarified safely in open session without
16 referring to --

17 PRESIDING JUDGE FREMR: All right.

18 MR IVERSON: -- the identity of the witness.

19 PRESIDING JUDGE FREMR: And for the information of the public, this witness is a
20 protected witness, so he was given assurance that within this protection his identity will
21 not be revealed to the public and that is why those portions of his testimony that may lead
22 to his identification have to be conducted in private session, that is pretty possible that
23 some parts of his testimony you will have no chance to listen to. Just to -- it is such a
24 caveat.

25 So now, Mr Iverson, please proceed.

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1 MR IVERSON: Thank you, Mr President.

2 Q. So the clarification involves -- I had asked you whether there were child soldiers
3 involved in the attack in Mongbwalu and that's today's transcript, page 18, line 25, and
4 page 19, lines 1 and 2. In the English transcript it says on line 7 that -- 6 and 7 that: "I
5 saw them with my own eyes, with my own naked eyes."

6 And in the French transcript, French transcript, excuse me, page 18, line 2, it says that
7 the -- you saw naked or nude children. And so I just wanted to clarify what is your
8 testimony on that particular point.

9 A. Thank you, Mr Prosecutor you have read out the excerpt in English. My naked
10 eyes. That is it. That is correct. So in the French is with a naked eye, so that means
11 that I saw it -- I saw them with my own eyes. That's the detail I can provide.

12 Q. All right. Well, thank you for that clarification.

13 Sir, I'd like to ask you questions now we're in open session, but I'd like to ask you
14 questions about child soldiers within the UPC. Now, you mentioned yesterday at -- and
15 if at any point you need to answer a question and reveal your identity, please then raise
16 your hand before you answer the question so that you can alert the Presiding Judge to
17 that and then he can order the session be turned into a private session; do you understand
18 that, sir?

19 A. Yes, I have understood you.

20 Q. Thank you for your cooperation on that point.

21 So yesterday in the English transcript, at page 42, lines 12 and 13, you referred to
22 Mr Ntaganda's involvement in recruiting children from schools. So I'd like to ask what
23 children did Mr Ntaganda recruit from schools? How was he involved in that
24 recruitment process?

25 A. Would you please kindly rephrase somewhat your question because the last part I

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1 did not quite understand.

2 Q. I'll rephrase the question, sir. You had mentioned yesterday Mr Ntaganda's
3 involvement in recruiting children from schools, so I would -- I'm asking you now to
4 elaborate on that, what do you mean that he was recruiting children from schools? If
5 you could explain that to the Chamber, please.

6 A. Thank you very much, now I understand your question. Mr Ntaganda and his
7 group went to a school, the Mudzipela primary school. There are two schools in
8 Mudzipela, there is a boy's primary school and then there is a girl's primary school. He
9 went with his group to the boy's primary school in Mudzipela. When he arrived the
10 children were still in their classrooms, then he took forcibly some teachers and asked them
11 to open the doors to the classrooms where the children were and he took some children
12 out of the fifth year, children in the fifth year. They forcibly took those children and
13 immediately took off by road to Mandro. That is what I can tell you regarding the
14 forcible recruitment that he carried out at the boy's primary school in Mudzipela. I was
15 there. I saw it with my own eyes. And all those who were present also saw it and
16 people thereafter were clamouring, asking for their children to be returned in the various
17 neighbourhoods.

18 Q. And what I'd like to do is what -- the same thing we did yesterday, is stay in open
19 session, I'll pose questions and then I'll ask the Presiding Judge to go into private session
20 and then I can ask you the basis of your knowledge so that you can explain where you
21 were, who you were with, things of that nature; do you understand that, sir?

22 A. Yes, I do.

23 Q. Why did Mr Ntaganda forcibly recruit these children from the Mudzipela primary
24 school?

25 A. First of all, the boy's primary school in Mudzipela, geographically speaking is

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1 situated not far away from Mandro. That's first.

2 Second, the Mandro neighbourhood is one which has people who are more of Hema

3 ethnicity as well as people of the Bira ethnic group. That's the second point.

4 Third, I do not know how he found himself at that school to carry out that recruitment.

5 Well, you know that when there are recruitments it is because a need has to be met. The

6 patriotic forces needed troops, needed people to fight alongside with them in their camp

7 or their site. But I'm not able to tell you why he specifically chose that school and why he

8 chose the children of a primary school, whereas there was also a secondary school located

9 not far away from Mandro and whereas there was also a secondary school in Bunia. So I

10 don't know why he made that choice, but the three reasons that I have provided for you

11 are the ones I can offer.

12 In any event, I don't know why he decided to choose that school and for what reason he

13 decided to go to the primary school, whereas there was also a secondary school in that

14 area. That is the explanation I can offer.

15 Q. And what eventually happened with these children at the Mudzipela primary

16 school, to the best of your knowledge, after they were taken by Mr Ntaganda?

17 A. Mr Bosco Ntaganda took all of them to Mandro, to a camp. When I talk about a

18 camp it is not a well-constructed camp, I'm referring to an empty piece of grounds where

19 cows were being grazed, which was used as a camp, with a few huts here and there put

20 up in that area which was known as a camp. And some people slept outside in the open

21 air. And that is the camp to which he took those children for what was referred to as

22 training, but it was, strictly speaking, not military training as such, they were simply

23 taught basics in weapons handling and how to shoot, how to threaten people, and in some

24 instances if anyone was found attempting to escape they would be shot, they wouldn't

25 simply be arrested. So this training also involved threatening and intimidation. It

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1 wasn't really military training, they were simply shown the basics in how children could
2 handle weapons. And then quite strangely he also said that, and according to him using
3 his words, in all revolutions one must know one's enemy. And the first enemy, get this
4 straight in your head, your first enemy is the Lendu in all revolutions. That is the word
5 he used. Those are the words he used. That was a sentence that was repeated by all the
6 soldiers who were present in Mandro. So that is how things happened when it came to
7 those child soldiers in the camps and when it comes to their training.

8 Q. And do you recall when this event happened, when the children were taken from
9 the Mudzipela primary school by Mr Ntaganda?

10 A. I'm not able to give you an exact date, but I can give you a time frame, a time frame.
11 It was before the UPC became active. It was before the creation of the UPC, that was
12 before August 2002, but I cannot give you a specific date. You see these things happened
13 a very long time ago and I may have forgotten some dates.

14 Q. And I understand that you can only offer an approximation, but how many -- how
15 much time was it in your estimation before the UPC was actually created, or was it -- are
16 you talking in terms of weeks, or months, or years, just so it's clear for the Chamber how
17 much time this was before the UPC was created?

18 A. I would put it at about a month. A month before the creation. You see, when
19 Thomas Lubanga came from Kinshasa with the government delegation, with Ntumba
20 Luaba, minister of human rights, the children were still being trained. The first
21 operation in which the children participated was the Songolo operation which took place
22 at the end of the month of August, so I will put it at one to two months, an approximation
23 that I can offer.

24 Q. And do you recall how many children were taken by Mr Ntaganda from the
25 Mudzipela primary school?

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1 A. I'm not able to give you the figure or number of children because all along the way
2 from -- all the way to Mandro they picked up children along the way, so the number of
3 children in Mandro was not only of the children from the Mudzipela primary school, it
4 included other children who had been picked up along the way. They picked up
5 children who were fetching water, they picked up little girls who were fetching water,
6 they would be kidnapped as they went to fetch water. And this happened along the way,
7 but I started by mentioning those who were taken from the primary school in Mudzipela.
8 So we can address that and maybe talk about the others at some other point.

9 In any event, I'm not able to give you the exact number. There were many children,
10 about a hundred children including those who were picked up along the way.

11 Q. And when you say "children", just so it's clear for the Court, what were their ages
12 based on your estimation?

13 A. I would estimate that in a primary school, or specifically from that school they
14 would take children who may have entered primary school at age six in the first year, and
15 if you go 6, 7, 8, 9, by the time they get to the fifth year a child who has not repeated a
16 class would be around 10 years old. So the children who were taken were in the fifth
17 year of primary school and some may be from the sixth year of primary school. You can
18 then estimate that the children would have been 10, 11, 12, 13 years old. That would be
19 my estimation. But again, along the way they picked up other children whose ages I am
20 not able to approximate because I did not see them, however I heard that he picked up
21 some children along the way as well.

22 Q. And in addition to Mr Ntaganda, do you recall if there were others from the UPC
23 present on that day when the children were taken from the Mudzipela primary school?

24 A. Well, I am not able to recall right now. Even if I could, this happened a long time
25 ago. Well, Bosco Ntaganda was such a key figure that one could not forget. As for the

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1 other commanders, one may forget, but when it comes to Bosco Ntaganda, who was the
2 leader, I cannot forget those things.

3 Q. But I do take it from your answer that there were others present you just don't
4 remember who they were; is that right? That there were others from UPC present; is that
5 correct?

6 A. Yes, that is correct. Bosco Ntaganda never did anything or operated or conducted
7 an operation single-handedly, he always had other commanders with him, that is why I
8 said there must have been other commanders.

9 Secondly, Bosco Ntaganda is not a native of Bunia and he is not particularly from the
10 neighbourhood in which that school was located. What I'm saying, therefore, is there
11 must have been some commanders who knew about this school, who were familiar with
12 the environment and who must have been instrumental in choosing that specific school.
13 So, yes, indeed, he was with other commanders, but I cannot mention them right now off
14 the cuff because I -- I have already forgotten, these things happened several years ago.

15 Q. And do you know whether there was any reaction from the families of these
16 children after the children were taken from the Mudzipela primary school by
17 Mr Ntaganda?

18 A. Yes, certainly there were reactions, very negative reactions, first from the officials of
19 the school and then from the families. All along the road they were in an Indian file, so
20 to speak, and you could hear all along the road family members crying out, crying out.
21 And that didn't mean a thing to Commander Bosco because everyone feared Mr Bosco,
22 even children feared him. When they heard that Bosco was in a neighbourhood they
23 would go into hiding. What I'm saying, therefore, is that the families were crying and
24 wailing but they couldn't do anything.

25 Q. And you say they were in what you call an Indian file. Did these children walk

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1 from Mudzipela to Mandro? Is that what we should understand from your testimony?

2 A. Yes, they travelled on foot, but the distance is not very long; 7, 6, 8 kilometres or
3 thereabouts.

4 Q. And could you tell the Chamber what was -- what is the primary ethnicity in that
5 area in Mudzipela of the people who live in Mudzipela?

6 A. Well, at that time I cannot say that one tribe or one ethnic group was present. What
7 I can confirm is that there were several ethnic groups there. Mudzipela is a Bira village
8 to begin with. But there were also some Hema people there, and several other tribes
9 were also present. So I cannot confirm to you that that school had people only from one
10 tribe. There were many people from different tribes at that school, people from Ituri or
11 who were from elsewhere, people who were natives of Mudzipela or who came from the
12 city. There were people from everywhere.

13 However, it was a Bira village with many Hemas. But the school was attended not only
14 by Bira people, but by people from all tribes.

15 Q. And what, if anything, did the UPC as an organisation do in response to the
16 complaints of the parents of these children from Mudzipela?

17 A. Mr Prosecutor, I do not think that the UPC at that time was an organisation; it was a
18 disorganisation of militia. So there was no possibility of any reaction whatsoever,
19 because Bosco was not accountable to anyone whosoever. He was a small lord or God,
20 and when he said A, it was A, and when he said B, it was B, final.

21 Q. And are you aware whether any of these parents of the children taken from
22 Mudzipela primary school by Mr Ntaganda complained to Mr Ntaganda himself?

23 A. Yes, Mr Prosecutor. When I told you that there was crying and wailing, it is
24 because they saw that Indian file or that single file, and at the head of it was the boss.

25 And he could hear the cries from the parents and relatives. So this was happening live as

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1 they left Mandro.

2 Now, when it happened were the parents there? No. But as they moved along the way,
3 the parents were there and they saw how they had lined up on their way to Mandro.

4 Q. And what, if anything, did Mr Ntaganda do in response to the cries, the complaints
5 of the parents of these children?

6 A. He could not react because that was not his problem. His problem was to achieve
7 his purpose, and that is what he wanted to do. He had achieved his purpose. Whether
8 people were crying or not, he didn't care about it.

9 MR IVERSON: Mr President, I'd like to ask that we move into private session now.

10 Thank you.

11 PRESIDING JUDGE FREMR: All right.

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

13 (Private session at 11.58 a.m.) *(Reclassified partially in public)

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

15 PRESIDING JUDGE FREMR: Thank you, court officer.

16 Mr Iverson, please proceed.

17 MR IVERSON: Thank you, Mr President.

18 Q. (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 A. (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 Q. Did you have an opportunity to actually visit Mandro and observe the training for
2 yourself?

3 A. Yes, of course. I'm familiar with Mandro, very familiar. And when there
4 was -- when there were operations I could see where the camp was, I can tell you exactly
5 where it was. When you come into Mandro, when you come from the city it's on the
6 right-hand side before you get to the chief's residence, that is the chief of the collectivity,
7 Chief Kahwa, Chief Kahwa's house. So it was just before his residence, that's where the
8 camp was is. And before that it is just pastures where the cows were sent to graze.

9 Q. Could you, from your own personal observations of Mandro, can you explain to the
10 Chamber what you were able to observe going on at that place at Mandro?

11 A. Mr Prosecutor, could you perhaps explain what you mean by that question? If I
12 were to explain all the things that occurred in Mandro that would be an awful lot and I
13 don't know when we'd finish if I were to do that. But if you want me to explain what
14 happened in relationship to a particular individual or whatever I can endeavour to do.
15 That I'm not sure I understand your question.

16 Q. Well, right now I'm just focused on your own personal observations. You say you
17 visited Mandro. So I'd like the -- I'd like for you to explain to the Chamber what you saw
18 happening at Mandro based on just your own personal observations?

19 A. Okay. It's not what I saw just once, this was a place that I went to frequently,
20 Mandro. I often spent the night. When I got there it was just when the weapons and
21 the munitions were dropped by the Antonovs *from Rwanda. That's when I got to
22 Mandro. And I also saw the training, I saw Bosco Ntaganda train young people,
23 including children, and a few who were a bit older, and then (Redacted)

24 (Redacted)

25 (Redacted) And there was another time

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1 when Chief Kahwa set up a camp to take in the survivors of Ezekere. Chief Kahwa did
2 that, he purchased food and beans and set up beds so the Lendus who had escaped from
3 Ezekere would have food to eat. (Redacted)
4 (Redacted) The other thing I saw in Mandro, and this is where
5 there were weapons reserves in Mandro, (Redacted)
6 (Redacted)
7 (Redacted)
8 (Redacted)
9 In addition, during the war in Songolo when Bosco left for Songolo for the battle, and
10 when the soldiers came back and there were victims amongst the small children, I saw
11 that as well in Mandro. And they were buried in Mandro not far from the training camp.
12 That's where they were buried. Of course there was no one -- they had no time to find
13 out who the parents were, they just dug a grave and buried them. Now, that's what I can
14 tell you, that's what I remember. It's been more than 10 years, I may have missed
15 something or forgotten something, but the things that I have just mentioned are things
16 and events that I saw in Mandro. (Redacted)
17 (Redacted)
18 (Redacted)
19 THE INTERPRETER: Correction from the interpreter. At the very beginning of that
20 answer (Redacted)
21 (Redacted).
22 MR IVERSON:
23 Q. And just focusing in on your personal observations at Mandro of the child soldiers
24 which you've mentioned, did you see any weapons training conducted by any child
25 soldiers at Mandro?

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1 A. Yes, I saw them being trained in Mandro. I saw them myself. And they also went
2 up the hill about 2 kilometres away where they trained the soldiers. There were firing
3 ranges. And that's where all of them, the children and the soldiers, that's where they did
4 their firing practice before they went to Songolo. It was just a few metres away, so I,
5 myself, saw them in Mandro.

6 Q. And could you tell the Chamber what were these child soldiers wearing?

7 A. Mr Prosecutor, there were uniforms but not for children. Many children wore
8 civilians clothes. Some of the children did try to wear the uniforms, but it was really
9 quite comical because if you see a ten-year-old trying to wear an adults clothing because
10 they would tie the pants with a piece of string and they didn't fit. It was perhaps brave
11 on their part to try to wear adults clothing, but most of them went off to battle in civilian
12 clothes. That's what I can tell you as regards the clothing they wore.

13 Q. And as regards the child soldiers who you saw in Mongbwalu do you know if they
14 were armed or unarmed?

15 A. They all had weapons.

16 Q. Do you know who the trainers were at Mandro? Who conducted the actual
17 training of the child soldiers and others at Mandro?

18 A. First of all, Bosco himself, but he worked with other commanders. And I can't give
19 the names of those other commanders. Unfortunately I've now forgotten them. I don't
20 remember their names.

21 Q. And do you recall seeing Mr Ntaganda at the Mandro training camp?

22 A. (Redacted) I saw him in the camp. He would go from the training
23 camp to the residence, to Chief Kahwa's residence, et cetera.

24 Q. When you saw Mr Ntaganda, did you happen to -- or, did you have an opportunity
25 to see his entourage as it were, or people around him?

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1 A. Yes, of course, Mr Prosecutor. When I saw him he couldn't go from the training
2 camp to the residence alone. Ever since I knew Bosco Ntaganda he was always
3 surrounded by his bodyguards, ever since he arrived in Bunia. And yesterday I gave an
4 example of Kisembo who had been his chief bodyguard. So in Mandro he had
5 bodyguards. And in addition they liked to have young girls as bodyguards. In Mandro
6 he had many, several little girls and young boys as well, minors. You could tell. They
7 were wearing civilian clothes. They weren't wearing military uniforms but they did bear
8 weapons, they had the AK-47s. So he was always surrounded with bodyguards. And
9 there were other commanders with him. I don't remember their names. I've forgotten
10 the names of the commanders that accompanied him.

11 Q. And when you say little girls and little boys, again were you -- what were the ages
12 of these minors, as you put it, in your best estimation?

13 A. Those little girls, to my mind, could not have been 16 years old yet. No. You see,
14 when you look at a small boy you can tell that it's a small boy, but when you look at a
15 little girl, well, excuse me, I -- I think that as a matter of decency somebody who doesn't
16 have breasts is a small girl and you can see small girls who are actually minors, they are
17 not adults. That's the estimation I can -- I can make. And you can just look at them and
18 tell whether they are minors or adults.

19 Q. And did you have an opportunity in observing child soldiers to know what type of
20 footwear they would wear?

21 A. Well, at the beginning of the training they went around barefooted. (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 At the beginning they were barefooted, but when the UPC got organised it ordered shoes
8 for these children and so they also ordered some boots for the children, which were used
9 when it rained and these boots are not the same as ordinary shoes.

10 Q. You mentioned that there were female recruits, little girls as well, what if anything
11 did you hear about rape within the UPC involving these little girls or these female recruits
12 you mentioned?

13 A. Yes, I heard about it. I did not see it. I heard from soldiers who were in the
14 training camps (Redacted)

15 that Bosco used to take some small girls forcibly as his wives. And this information was
16 well-known within the UPC and people -- there was talk about it within the UPC, but no
17 one could do anything about it because he was all powerful. One couldn't utter a single
18 word regarding any negative statements that may have been made about Bosco.

19 Q. Who in the UPC would talk about the rape of females and that Mr Ntaganda had
20 little girls as his wives? Who would talk about that?

21 A. First of all, the soldiers among themselves. And then those in charge also talked
22 about it. The officials talked about it in the corridors, so to speak. But no one would tell
23 you officially that Bosco was taking children or girls forcibly. When they talked about
24 it -- when I say everyone was talking about it, let me be specific. (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 So what I can say is that everybody knew what was going on but no one could utter
6 anything regarding the bad things that Bosco may have done. He was all powerful, but
7 nothing was ever said about it to him.

8 Q. (Redacted)

9 (Redacted)

10 (Redacted)

11 PRESIDING JUDGE FREMR: Mr Bourgon.

12 MR BOURGON: I think we've done -- we've been over this, Mr President. For the
13 record, I know that we had earlier set an objective and there are no charges for sexual
14 slavery against Mr Ntaganda. I know the Chamber will authorise all these questions but
15 I think we have enough. Thank you, Mr President.

16 PRESIDING JUDGE FREMR: Mr Iverson.

17 MR IVERSON: I'm not certain how to respond to "I think we have enough" objection. I
18 mean, in my mind that's not even an objection, that's an opinion or preference stated by
19 counsel, but we're here to establish facts.

20 PRESIDING JUDGE FREMR: Please proceed and I can again also refer to our previous
21 decisions concerning acts that are not within the charges but have some relevance, so
22 please proceed in this way.

23 MR IVERSON:

24 Q. Well, let me try to connect this question to something that's readily apparent for the
25 proceedings: Are you able to speak to the command climate that (Redacted)

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1 and the command climate that was created around him when there were these allegations
2 that he was forcibly taking young girls as wives?

3 PRESIDING JUDGE FREMR: Mr Bourgon.

4 MR BOURGON: Thank you, Mr President. The witness is being asked to provide an
5 opinion, opinion coming from an ordinary witness is not admissible. (Redacted)

6 (Redacted) he is in no position to offer such kind of
7 observation. Thank you, Mr President.

8 PRESIDING JUDGE FREMR: Mr Iverson.

9 MR IVERSON: I'm not asking for his opinion, I'm asking for his own personal -- his own
10 personal knowledge from his experience in hearing these things, having the president of
11 the UPC refer to Mr Ntaganda's habit of taking young girls as wives, and my question is
12 what effect did this have on the organisation, on the command climate within the
13 organisation (Redacted) he should be able to answer
14 that question.

15 PRESIDING JUDGE FREMR: Mr Bourgon.

16 MR BOURGON: The description just given by my colleague is clearly a matter of
17 opinion that should not come from a fact witness. This witness has said what he heard.
18 We will of course challenge this under cross-examination, but for him to comment and to
19 make his own personal observation on the command climate and what something he
20 heard (Redacted) might have created in terms of climate within the organisation
21 (Redacted), Mr President, this is clearly opinion, it is
22 clearly not admissible. Thank you.

23 PRESIDING JUDGE FREMR: Mr Iverson, please rephrase your question. Because even
24 this term "command climate" is a term which requires some interpretation which is
25 always a bit subjective, so please maybe try to put some more specific question.

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1 MR IVERSON: All right.

2 Q. Well, what did this do to affect your own personal opinion about Mr Ntaganda's
3 reputation?

4 PRESIDING JUDGE FREMR: Mr Bourgon.

5 MR BOURGON: Question of opinion again. How did this affect your opinion? We're
6 clearly into an area which this witness is not qualified to enter into. Thank you,
7 Mr President.

8 PRESIDING JUDGE FREMR: Mr Iverson.

9 MR IVERSON: I'll move on, Mr President, but this line of questioning is relevant
10 because this is a command case, he's charged as a leader, so his behaviour will be
11 emulated by his subordinates, so all of that is relevant for the Chamber's consideration,
12 but at this point I'll move on with this witness.

13 PRESIDING JUDGE FREMR: One comment from my part: I think really the question
14 on reputation is absolutely fair, but to some extent I have to agree with Mr Bourgon that
15 the question about the impact of some, for example, this alleged rape of young girls, the
16 impact of those acts to his reputation is really opinion or evaluation. The reputation, it
17 could be explored for sure. If you are moving on I think it's fine.

18 MR IVERSON: All right. Well, let me just ask this one question then.

19 Q. What was Mr Ntaganda's reputation? What was his reputation?

20 A. Mr Ntaganda's reputation proper? Well, to begin with, when it came to
21 Mr Ntaganda himself he wasn't affected by evil, you see, but when it comes to his
22 reputation he did not just commit that act alone, he did many things that people talked
23 about. So for him reputation did not matter. There was really no reputation to talk
24 about; namely, that Bosco was this, that or what have you. People knew him and he had
25 a negative -- more of a negative reputation, but positively maybe he helped a number of

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1 people and did whatever they wanted him to do. But most of those who did not like
2 what he did would say that he had a bad reputation. So it would be based on each
3 person's assessment. Some people would say that they were happy with what he was
4 doing, while others would say that they were not.
5 So when it comes to Bosco's reputation it would depend on who is assessing it, but in any
6 event it did not matter to him.

7 PRESIDING JUDGE FREMR: And one additional question from my part and if you are
8 describing this bad reputation, it did not mean anything to Mr Lubanga? (Redacted)
9 (Redacted)

10 So why Mr Lubanga did not anything to improve the situation?

11 THE WITNESS: (Interpretation) Mr President, as I told you the UPC was not an
12 organisation, it was a disorganisation. Bosco Ntaganda was the most powerful, the
13 strongest, and sometimes even the president was afraid of Bosco Ntaganda, regardless of
14 the information he received. You see, he received a lot of information, many messages
15 and many reports about what was not going well within the patriotic forces of the UPC.
16 So President Lubanga could hit the table and react when he received information in anger,
17 but he could not call him to make any comments and remarks to him. So that is what
18 Thomas Lubanga's reaction was in the face of all those offences committed by the
19 commanders and most particularly by Mr Bosco Ntaganda.

20 PRESIDING JUDGE FREMR: Thank you, Mr Witness.
21 Mr Bourgon.

22 MR BOURGON: Thank you, Mr President. Now that the Chamber has authorised
23 questions on reputation of course we object to this line of questioning. It is our respectful
24 position that questions on reputation is not what a criminal trial is based on unless the
25 accused has put in play his reputation. We have not done so, this is not in play and

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1 reputation is not the basis on which this Chamber is to judge Mr Ntaganda. So we object,

2 Mr President, and we will be seeking clarification in writing. Thank you.

3 PRESIDING JUDGE FREMR: Yes, and please leave it up to the Chamber. I think you

4 can ask for the explanation in writing, but I think I was clear enough.

5 Mr Iverson, please proceed.

6 MR IVERSON:

7 Q. I just have a few more questions for you, sir, in private session.

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 A. (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 Q. (Redacted)

23 (Redacted)

24 A. (Redacted)

25 (Redacted)

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1 Q. Sir, are you aware whether the UPC as an organisation or individuals within the
2 UPC ever demobilised any child soldiers?

3 A. Thank you. (Redacted) it is very difficult for me to tell you
4 whether I observed a demobilisation exercise. However, (Redacted) we
5 learnt that there was a demobilisation exercise (Redacted), we
6 only heard about it. (Redacted)
7 (Redacted)
8 (Redacted)

9 Q. Sir, you've mentioned a high number of incidents involving crimes, criminal
10 behaviour, allegations. Are you aware whether there was -- there were any disciplinary
11 measures? As a general matter, what was the disciplinary forum for the UPC for
12 allegations of crime?

13 PRESIDING JUDGE FREMR: Mr Bourgon.

14 MR BOURGON: Thank you, Mr President. I believe this question has been asked over
15 and over again on many occasions. I do not have the transcript references. I leave it up
16 to the Chamber to rule. But this has been asked many, many times. Thank you.

17 PRESIDING JUDGE FREMR: Mr Iverson.

18 MR IVERSON: Well, I have asked that question in relation to specific crimes that he
19 mentioned, so he'll mention, for example, the killing of civilians, rape in Mongbwalu, so I
20 would ask were there any disciplinary measures taken for those crimes, but I haven't
21 asked about his knowledge generally as to the disciplinary options available to those in
22 the UPC.

23 PRESIDING JUDGE FREMR: All right. Proceed.

24 THE WITNESS: Mr President, I can't hear the French translation.

25 PRESIDING JUDGE FREMR: Wait a moment.

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1 (Pause in proceedings)

2 THE WITNESS: (Interpretation) Now it is okay. I was not hearing before.

3 PRESIDING JUDGE FREMR: You didn't miss anything because it was just discussion
4 between counsels and me.

5 So now, Mr Iverson, you may proceed.

6 MR IVERSON: All right.

7 Q. Sir, do you know as a general matter what disciplinary options or fora did the UPC
8 have as an option? Were there any courts or ways to discipline forces under the UPC?

9 A. Thank you very much. I have understood your question. What I can say is that
10 the UPC was a militia force. Secondly, the UPC only created a political party and
11 appointed its government ministers and cabinet without any legal text or code which
12 could have been applied to punish a soldier or a civilian who had committed any abuses
13 or offences within that party.
14 What I'm saying is that what you have just alluded to did not exist in the UPC. In Bunia,
15 for example, there was a high court, but the magistrates and the high court, all those
16 officials they could not do anything, even the national police could not do anything
17 against the UPC if the UPC did anything wrong. So there was no court, there was no
18 tribunal, there was no disciplinary committee, there was no disciplinary board, there was
19 no forum at which the UPC could sanction its members. It did not exist.

20 Q. And are you aware of any instance, any instance at all, where Mr Ntaganda
21 punished any of his subordinates for any offence?

22 A. No, Mr Prosecutor. Personally, no.

23 Q. And are you aware of any instance where any member of the UPC was ever
24 punished for any offence committed against a Lendu person?

25 A. No. Once again, my answer is no.

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1 Q. Are you aware whether there was any training given on discipline or international
2 humanitarian law, the law of war?

3 A. No, it never happened, Mr Prosecutor. Never.

4 MR IVERSON: Mr President, there are -- I'm coming very close to the end, but I have
5 three documents that I want to be shown to the witness and I would propose that we do
6 that after lunch and then I should be finished shortly after that, but it -- I don't predict that
7 it will take a very long time.

8 PRESIDING JUDGE FREMR: All right. Because according our measuring you, in fact,
9 exhausted so far 6 hours and 40, 45 minutes, so you should still have at your disposal 1
10 hour and 15 minutes, which seems to be fully enough for this exercise. So we will
11 continue with this after our lunch break.

12 So now we break and we are going to resume at half past 2.

13 THE COURT USHER: All rise.

14 (Recess taken at 12.58 p.m.)

15 (Upon resuming in open session at 2.39 p.m.)

16 THE COURT USHER: All rise.

17 Please be seated.

18 PRESIDING JUDGE FREMR: Good afternoon, everybody.

19 Before we continue with the testimony of our witness, the Chamber will render its
20 explanation on the objection made by Defence just before the lunch break. And its
21 objection that reputation of Mr Ntaganda is not relevant and shouldn't be explored.

22 The Defence stated that the reputation is not what a criminal trial is based on unless the
23 accused has put in play his reputation. I would like to clarify that this Chamber certainly
24 will not judge Mr Ntaganda by his reputation. His reputation is neither mitigating, nor
25 an aggravating fact, but it doesn't mean that it can have no relevance.

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1 But I would like to state that we are not really talking about Mr Ntaganda's character,
2 instead this was about Mr Ntaganda's reputation as a military commander, which in our
3 view relates to the manner in which he could exercise authority over others.
4 So in our view it can be therefore relevant for the modes of liability he's charged with, but
5 it may also be relevant for understanding the way, the way in which Mr Ntaganda was
6 perceived by people who interacted with him, mainly by his subordinates within the
7 UPC, also by the other UPC commanders, and also by his superior, but it well may be also
8 by those who fought against the UPC.
9 I can even imagine that this could be relevant for evaluation of testimony of victims that
10 could be negatively affected by alleged reputation of Mr Ntaganda. So also in evaluation
11 of credibility of witnesses, we also, in my view, would have taken into account whether
12 the testimony of witnesses was not influenced by Mr Ntaganda's alleged reputation.
13 So for those reasons, the Chamber finds that questions on Mr Ntaganda's reputation are
14 not per se to be excluded.
15 Now, please, court officer, bring Mr Witness into the courtroom.
16 Mr Bourgon.
17 MR BOURGON: Thank you, Mr President. We will be seeking leave to appeal this
18 decision. We disagree completely with the fact that evidence can be relevant and will not
19 be considered by the Chamber.
20 But I was on my feet for another purpose, Mr President. It is to inform you that two
21 members of the Defence team have joined the Defence, have joined this side,
22 Mademoiselle Margaux Portier and Maître Dignité Bwiza. Thank you, Mr President.
23 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon. Well noted.
24 (The witness enters the courtroom)
25 PRESIDING JUDGE FREMR: Good morning, Mr Witness. We will continue with your

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1 testimony, but before that I see Mr Laucci on his feet.

2 Mr Laucci, please.

3 MR LAUCCI: (Interpretation) Thank you, your Honour. (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted) Thank you.

17 PRESIDING JUDGE FREMR: Thank you, Mr Laucci. I have to admit that this

18 information is not new for us, we have been also informed about this, even a few minutes

19 ago. I was also assured that in fact the measures you are proposing will be taken. So

20 even now everything will be double-checked and verified. And also, as you proposed, if

21 we -- in fact, it would be up to the Registry to check whether this problem really occurred

22 before and for sure then in such a case we will ask VWU to take appropriate measures to

23 fix this problem and also to have some preventative measures to avoid any problem in the

24 future.

25 MR LAUCCI: (Interpretation) Thank you very much, your Honour.

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1 PRESIDING JUDGE FREMR: Now, Mr Iverson, please proceed. Do you want to
2 proceed in open or in private session?

3 MR IVERSON: I'd like to request private session, Mr President.

4 PRESIDING JUDGE FREMR: All right.

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

6 (Private session at 2.47 p.m.) *(Reclassified partially in public)

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

8 PRESIDING JUDGE FREMR: Thank you, court officer.

9 Mr Iverson, please proceed.

10 MR IVERSON: I'd like to ask if the court officer could please display document number
11 3 on the Prosecution's list of documents. And the ERN number is (Redacted).

12 PRESIDING JUDGE FREMR: Mr Bourgon, any objection against the use of this
13 document?

14 MR BOURGON: No, Mr President. We have an objection for the first two documents,
15 but not on the third one.

16 PRESIDING JUDGE FREMR: All right.

17 THE COURT OFFICER: The document will be displayed on the evidence 1 channel.

18 MR IVERSON:

19 Q. Sir, are you able to see this document on your screen? Is it visible on your screen?

20 A. Yes, I can see it on my screen.

21 Q. And do you recognize this document, sir?

22 A. Yes, I recognize the document.

23 MR IVERSON: And if I could just have the court officer display the next page in the
24 document. It is a two-page document so I'd just like to be able to see the second page as
25 well.

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1 Q. And do you recognize this portion of the document, the second page?

2 A. Yes, I recognize it, but perhaps it could be moved up a bit so I can see the end,
3 including the signature, which is not on the screen at present.

4 Q. Are you able to see the entire second page now, sir?

5 A. Yes. Yes, I can see it now. Thank you. Fine.

6 MR IVERSON: And could I ask the court officer just to go back to the first page again,
7 (Redacted).

8 Q. And can you explain to the Chamber how it is that you recognize this document?

9 A. Thank you, Mr Prosecutor. Well, the reason I recognize the document is, first of all,
10 it's a UPC document and I was a member.

11 (Redacted)

12 (Redacted)

13 Q. And could you explain to the Chamber what this document is and what this
14 document represents?

15 A. Well, it's a (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

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1 (Redacted)

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3 (Redacted)

4 MR IVERSON: I'd like to now submit this document into evidence.

5 PRESIDING JUDGE FREMR: Defence, any objection?

6 MR BOURGON: No objection, Mr President.

7 PRESIDING JUDGE FREMR: All right. Then document (Redacted) is admitted

8 into evidence as a further Prosecution exhibit.

9 Please proceed, Mr Iverson.

10 MR IVERSON: Could I now ask that document 1 on the Prosecution's list of documents
11 be shown on the screen, and that is (Redacted).

12 PRESIDING JUDGE FREMR: Mr Bourgon.

13 MR BOURGON: I would like to raise an objection to this document in the absence of the
14 witness, please.

15 PRESIDING JUDGE FREMR: All right.

16 Then, court officer, please escort Mr Witness out of the courtroom.

17 (The witness stands down)

18 PRESIDING JUDGE FREMR: Mr Bourgon, you may proceed.

19 MR BOURGON: If we can go into public session, Mr President, please.

20 PRESIDING JUDGE FREMR: Court officer, please, let's move into open session.

21 (Open session at 2.59 p.m.)

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

23 PRESIDING JUDGE FREMR: Thank you.

24 Mr Bourgon, please.

25 MR BOURGON: Thank you, Mr President.

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1 The Defence objects to the use of these documents with the witness for the following
2 reason:

3 Firstly, pursuant to the supplemental decision on the conduct of proceedings issued by
4 the Chamber on 27 May 2016, I refer to submission -- or to decision 1342, at paragraph 11,
5 which reads as follows, I read directly to the relevant part:

6 "Potential exhibits may be shown to a witness during preparation regardless of whether
7 or not the witness has previously seen such material to ascertain whether the witness can
8 usefully comment on them during testimony."

9 Of course we are bound by this decision, but when the time comes to use a document, it is
10 our submission that this must be a document that figures on the list of items or the list of
11 exhibits the Prosecution intends to use at trial. If not, it amounts to continuing
12 investigations and it amounts to a violation of the protocol.

13 In this specific case, of course the -- before I move into the specific case, I need to add one
14 detail, which is the Chamber has authorised the Prosecution to add any document at any
15 time for whatever reason and they can do what they want. That's fine with us. We can
16 live with that. But the Chamber has also said that the Defence could raise an objection at
17 any time whenever such a document was added. Well, this is one such time,
18 Mr President.

19 The document my colleague intends to use here, which is the document ending with 0345,
20 was obtained by the Prosecution on 6 September 2004. So they've had this document for
21 12 years. It was disclosed to the Defence on 27 May 2013. I note that there's a mistake in
22 the mail that we forwarded to the Chamber when we responded to the list of exhibits the
23 Prosecution submitted.

24 So it was disclosed 27 May 2013. So we've had the document for some three years.

25 That's correct. However, that's not the issue; the issue is the Chamber issued a clear

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1 decision that the Prosecution, if it intends to use some documents, it was supposed to put
2 them on its list of 2 March 2015. This document was not added on that list.

3 On this basis it is not a document that we looked at, it is not a document that we work
4 with, it is not a document that we considered.

5 The Prosecution then is working with this witness and we know that there's been a
6 number of meeting with this witness, a number of opportunities during which they could
7 have maybe raised that document with him, or maybe that they could have included that
8 document on their list of documents they intend to use at trial; however, as of 30
9 May 2016, to the best of my knowledge, this is the last list we have from the Prosecution,
10 this document is still not there.

11 In these circumstances, Mr President, we respectfully submit, one, that the document
12 should not be used and should not be neither used nor admitted, and also we highlight
13 the fact that if the Prosecution is going into documents back from 2004 and from 2006,
14 then that they are showing these documents to a witness who has never seen these
15 documents, they are in fact continuing their investigation. This is what is happening in
16 this case.

17 Our objection, to avoid having to repeat this argument over again, also applies to the next
18 document my colleague probably intends to use, which is a document ending with -- the
19 last numbers are 0311, which is labelled by the Prosecution as a financial document or
20 invoice.

21 These are our submissions, Mr President. Thank you.

22 PRESIDING JUDGE FREMR: One additional question, Mr Bourgon. So what time did
23 the Defence realise that the Prosecution is intending to use this document with the
24 witness?

25 MR BOURGON: On 27 May 2016.

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1 PRESIDING JUDGE FREMR: Thank you.

2 Mr Iverson.

3 MR IVERSON: Mr President, I just want to make sure that I understand the objection
4 because I think that there was -- there were a lot of things stated that weren't necessarily
5 part of the objection, but as far as I understand it, the objection is that these two
6 documents were placed on the list of evidence late essentially is the Defence's claim.

7 PRESIDING JUDGE FREMR: It's also my understanding that is the core of the objection.

8 MR IVERSON: Well, we abided by the Chamber's directions on this matter. The
9 Defence has had this document, as the Defence stated, for over three years now. And
10 this is -- I think it's a gross overstatement to say that this is continuing investigation.
11 These are what amounts to two documents that pertain to this witness because they
12 mention him or have some connection with him. And that was -- the document that he's
13 objecting to right now was shown to the witness during the taking of his witness
14 statement as well and he commented upon that in his statement. So that's further notice
15 to the Defence of the existence of the document, which they had, and that the witness was
16 capable of commenting upon that document.

17 Nothing that the Prosecution has done violates either the letter of the Chamber's order on
18 the list of evidence or the spirit of it because the Defence has had these documents for
19 years. That I think is the response to the objection.

20 PRESIDING JUDGE FREMR: Mr Bourgon.

21 MR BOURGON: I would just like to add, Mr President, that the list -- that those two
22 documents I mentioned 27 May, it is actually 30 May. So until 30 May we did not
23 know --

24 PRESIDING JUDGE FREMR: Sorry, three-zero?

25 MR BOURGON: Three-zero May, 30 May. Until 30 May we did not have any

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1 knowledge that these two documents would be used. We received a proofing note,
 2 the -- what is called, sorry, I keep using the words "proofing note," but it is the witness
 3 preparation session log and disclosure note. The preparation session was conducted
 4 between 23 May and 1 June, and I believe we received it on the same day or the following
 5 day, I'm not sure, but in terms of knowing when these documents -- not that they could be
 6 used with the witness, but the first time we see these documents appearing is when they
 7 are added to the list of documents the Prosecution intends to use at trial and that is on 30
 8 May 2016. This is a year and three months, if not more, after the deadline of 2 March,
 9 whereas they've had these documents since 2004 and 2006. That's the objection,
 10 Mr President. It's an objection.

11 The contents of the documents has nothing to do with it. We have rules, these are rules
 12 that it is the only that way we can enforce any type of control, any type of judicial control
 13 over what the Prosecution is doing because this Chamber has allowed the Prosecution to
 14 add documents as they wish and that's what they're doing, they are constantly adding
 15 documents. We alerted the Chamber at the beginning, we said this is not the way it's
 16 done in other trials, but of course the Chamber decided otherwise and the Chamber
 17 authorised the Prosecution to do what it wants, when it wants, how it wants it. The only
 18 judicial control is when they miss a deadline. And that's one occasion, Mr President.

19 Thank you.

20 PRESIDING JUDGE FREMR: And Mr Iverson, you also may reply, but anyway, one, my
 21 question at the beginning was what's the reason to put this document so late on the list?

22 MR IVERSON: Can I have just a moment to make sure that -- I want to make sure I give
 23 the full and correct answer.

24 PRESIDING JUDGE FREMR: Yes, all right.

25 (Counsel confer)

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1 MR IVERSON: The adding it to the list was inadvertent, an oversight. And the
2 additional point I wanted to make is in the case were the evidence were to be voluminous
3 and it would take the Defence lots and lots of time to understand, digest and comprehend
4 the documents, the Defence counsel may have a point, but what we're talking about here
5 are two pages and not even -- the pages aren't even really full with information, so it's
6 not -- it is quite the opposite of voluminous information, they are two small documents
7 that relate to this witness's testimony.

8 PRESIDING JUDGE FREMR: Thank you.

9 The Chamber now will deliberate -- sorry, Judge Chung, you have a question? Please.

10 JUDGE CHUNG: So do you just want to use this, or also want to tender to the Chamber?

11 MR IVERSON: Your Honour, depending on the witness's testimony and his ability to
12 provide the context about what -- how these documents relate to the case or how they
13 bear significance we would seek to admit those documents. So it depends on the
14 witness's answers. I anticipate that he will offer some substantive information making
15 these documents admissible.

16 PRESIDING JUDGE FREMR: Thank you.

17 So the Chamber will now briefly deliberate outside the courtroom. So please wait, I think
18 we will be back in 10 minutes.

19 THE COURT USHER: All rise.

20 (Recess taken at 3.11 p.m.)

21 (Upon resuming in open session at 3.27 p.m.)

22 THE COURT USHER: All rise.

23 Please be seated.

24 PRESIDING JUDGE FREMR: So the Chamber deliberated on the objection made by the
25 Defence against the use of a document brought by Prosecution and we decided to allow

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1 the use.

2 And I will try to give you our reasoning briefly:

3 For us the main criteria how we approach this issue, whether if any Rule is violated or if
4 any provision or requirements are not fully met, to what extent it means prejudice to the
5 other party, it in our view should be the main criterion. And in this case we -- even if in
6 the past we several times said and we asked Prosecution to be perfect and not to come
7 with notification of any document which is intended to be used too late, but at the same
8 time it has been explained as an oversight and we don't have any reason not to believe
9 that.

10 But I am coming back to my main idea. We focused on potential prejudice that could be
11 created by the use of this document, and we have taken into account that is absolutely a
12 brief document, that even content of this document is not complex. So even if Defence
13 had just five days, five days I guess, to consider this document, it was in our view
14 sufficient time and wouldn't -- the use of this document wouldn't create any prejudice to
15 the Defence.

16 At the same time, I am saying it could be important for repetition of such a situation in
17 future if you would like to avoid forever repetition of such situation, but rather as a caveat
18 this time, caveat to the Prosecution that if such a document would be either extensive or
19 more complex than this document, or if the case would be that it would be higher number
20 of documents notified in such a short time, then we will decide that the use will not be
21 allowed.

22 So only because in this case the document is very short, in fact the content seems to be
23 very simple, that is why we decided like we decided.

24 So now you may proceed.

25 Mr Bourgon.

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1 MR BOURGON: Thank you, Mr President. I'm grateful for the Chamber's decision. I
2 do note for the record, however, that this document is a letter handwritten by the
3 president of UPC and we will be seeking leave to appeal and we will file in an ex parte
4 motion all the investigation we had to do over the past five days on the basis of this
5 particular document. Thank you, Mr President.

6 PRESIDING JUDGE FREMR: All right.

7 Mr Iverson.

8 MR IVERSON: Thank you, Mr President. I just want to say to the Chamber we will
9 definitely take those comments on board. Our intent is never to create an ambush
10 situation or anything like that. We want to make sure that the Defence has the
11 information in a timely manner so they can do their jobs. So I just want to make it clear
12 that it's -- I don't want any misunderstanding, it's of course not our intent to create any
13 kind of situation like that, but of course we will take your ruling on board and we
14 understand the Chamber's position.

15 PRESIDING JUDGE FREMR: We appreciate that. And I also have to emphasise that
16 we are -- it is not only about this issue, but simply the beginning of our proceedings is
17 long time behind us, so we are ready to be stricter and stricter as to the meeting of
18 provisions governing our proceeding, so it's also part of the caveat. So you may now
19 proceed. Do you want to proceed in open or in private session? We are already in
20 private? Okay.

21 We don't have the witness. Thank you. So now please bring the witness. I completely
22 forgot.

23 Mr Iverson, do you want to proceed in open or in private?

24 MR IVERSON: I would ask to continue in private session, Mr President.

25 PRESIDING JUDGE FREMR: It means we have to move into private session.

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1 (Private session at 3.33 p.m.) *(Reclassified partially in public)

2 (The witness enters the courtroom)

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

4 PRESIDING JUDGE FREMR: Thank you, court officer.

5 So now, Mr Iverson, you may proceed.

6 MR IVERSON: So I'd like to pick up where we left off and ask if the court officer could
7 please display document 1 on the Prosecution's list of documents. And the ERN is
8 (Redacted).

9 Q. Sir, can you see this document on your screen?

10 A. Yes, except the bottom of the page. I can't see the bottom of the page, but I can see
11 the beginning, yes. Yes.

12 Q. Okay, I'd like to give you an opportunity to read this to yourself, not out loud, but
13 first I just want to ask do you recognize this document?

14 A. Perhaps it's preferable that I read it first before I tell you whether I recognize it or
15 not.

16 Q. Please do so and when you're finished reading it just look up at me so I know you're
17 finished.

18 A. Merci beaucoup.

19 (Pause in proceedings)

20 THE WITNESS: (Interpretation) I've finished reading it.

21 MR IVERSON:

22 Q. And do you recognize this document?

23 A. Yes, I remember this document. Well, I remember the content of the document.

24 Q. And can you explain to the Chamber how it is that you recognize the content of this
25 document?

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- 1 A. Well, let me explain. I recognize the document, (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
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- 10 (Redacted)
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- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 Q. (Redacted)

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1 A. (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 Q. (Redacted)

7 (Redacted)

8 A. (Redacted)

9 (Redacted)

10 (Redacted)

11 MR IVERSON: Your Honours, the Prosecution now submits this document.

12 PRESIDING JUDGE FREMR: Defence.

13 MR BOURGON: We object to the admission of the document, Mr President.

14 I will add, Mr President, that the document is prejudicial to the conduct of the Defence of

15 Mr Ntaganda and that we have had to conduct a significant investigation on the basis of

16 this document and that for those reasons we object to its admission.

17 PRESIDING JUDGE FREMR: Mr Iverson, any reaction? To the objection I mean.

18 MR IVERSON: Well, I think the objection itself has already been addressed by the

19 Chamber. If there's no objection to respond to then I don't think I have anything else to

20 respond to.

21 PRESIDING JUDGE FREMR: All right.

22 (Trial Chamber confers)

23 PRESIDING JUDGE FREMR: So objection is overruled. According to the Chamber's

24 view, all requirements to admit this evidence have been met.

25 So document (Redacted) is admitted into evidence as a further Prosecution

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1 exhibit.

2 Mr Iverson, you may proceed.

3 MR IVERSON: Thank you, Mr President. And I have one last document that I'd like
4 you to take a look at, sir, and it's number 2 on the Prosecution's list of documents. The
5 ERN number is (Redacted). And if I could ask the court officer to please
6 display that document.

7 PRESIDING JUDGE FREMR: Before doing that, Mr Bourgon, any objection?

8 MR BOURGON: Yes, Mr President, although I had already made the objection to the
9 two documents together, so I'm not going to repeat any arguments, however, I will note
10 that this document is prejudicial because it highlights evidence related to (Redacted)
11 (Redacted)

12 this document at this time of course is prejudicial because we have to conduct
13 investigation and we did not have time to conduct such investigations. Thank you,
14 Mr President.

15 PRESIDING JUDGE FREMR: Mr Iverson, any reaction?

16 MR IVERSON: Well, I have to -- I think Mr Bourgon would have to ask the witness that
17 question but I'm not sure that the document establishes what Mr Bourgon or the Defence
18 counsel claims that the document establishes, location data; in other words, it doesn't
19 seem to establish at least on its face any location data.

20 PRESIDING JUDGE FREMR: It's the (Redacted), am I right?
21 Mr Bourgon.

22 MR BOURGON: Yes, Mr President. The witness testified this morning about (Redacted)
23 (Redacted)

24 (Redacted)

25 (Redacted) And of

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1 course this is our argument. It is our submission. And I note, Mr President, of course,
2 that this is being made in front of the witness. Thank you.

3 PRESIDING JUDGE FREMR: Any further reaction now? Okay. Give us a second.

4 (Trial Chamber confers)

5 PRESIDING JUDGE FREMR: So the Chamber decide that this objection is sustained
6 because, in the light of the reasoning I provided you a few moments ago, we really see a
7 difference between the previous document and that one, and the Defence has in fact the
8 same time of roughly five or six days to consider this document because this document
9 really could provoke some more extensive investigation or more extensive verification
10 unlike the previous one, so in light of our decision we find prejudice with the use of this
11 document, that is why the objection is sustained and the Prosecution is not allowed to use
12 this document with this witness.

13 Mr Iverson, please proceed.

14 MR IVERSON:

15 Q. Sir, I have just a few more questions for you in private session and they relate to
16 your testimony earlier today. Earlier today (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted) I mean I'm trying to be faithful to your testimony that you, in a way, (Redacted)
20 (Redacted). Is that a fair characterisation of your testimony?

21 PRESIDING JUDGE FREMR: Mr Bourgon.

22 MR BOURGON: Thank you, Mr President. Asked and answered. This was put to the
23 witness and the witness provided an answer (Redacted).

24 Thank you, Mr President.

25 PRESIDING JUDGE FREMR: Mr Iverson.

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1 MR IVERSON: I think that Defence counsel misunderstands my question. I'm not
2 asking (Redacted). I'm just trying to make it clear because I
3 feel like there was a bit of a miscommunication that the witness thought I was (Redacted)
4 (Redacted), I was just trying to clarify that I wasn't (Redacted)
5 (Redacted)
6 (Redacted) I just wanted to clarify if that was
7 his understanding as well and it is more of an interpretation issue than anything else.

8 PRESIDING JUDGE FREMR: All right. Objection is overruled.
9 Please proceed, Mr Iverson.

10 MR IVERSON:

11 Q. So, sir, is that a correct or a fair characterisation that you (Redacted)
12 (Redacted)?

13 A. No, (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 A. (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 Q. Sir, I just want to thank you for paying attention to my questions, for your patience
16 and your focus. I know it takes a lot of energy to appear as a witness. Those are all the
17 questions that I have.

18 MR IVERSON: Thank you, your Honours.

19 PRESIDING JUDGE FREMR: And I thank you, Mr Iverson, to make your examination
20 streamlined and focused.

21 Now, Ms Pellet, my question goes to you, because you indicated in your written request
22 that you originally intended to cover three, six, seven area, which are specified from A to
23 G, so now I am asking you whether in light of the Prosecution examination you insist on
24 all seven items or are ready to reduce them?

25 MS PELLET: (Interpretation) Thank you, your Honour. Given the questioning on the

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1 part of the Prosecution, I withdraw my request, your Honour. Thank you.

2 PRESIDING JUDGE FREMR: Thank you very much, Ms Pellet. We appreciate also this
3 constructive approach.

4 Now, Defence, according our measuring, the Prosecution used for their
5 examination-in-chief 7 hours 13 minutes. So we can start, we still have 30 minutes, or
6 maybe we would rather finish a bit earlier because Judges have some other commitment
7 at half past 4, so we will finish today 20 minutes past 4, but I think we can still start with
8 cross-examination.

9 Mr Bourgon, as concerns your request, because if I'm not wrong you, Defence requested
10 to use 10 hours for cross-examination. In the light of the examination-in-chief, do you
11 still insist on this extent of or amount of time for cross-examination?

12 MR BOURGON: If I can make a submission in the absence of the witness, Mr President,
13 please?

14 PRESIDING JUDGE FREMR: All right.

15 Court officer, please take Mr Witness out of the courtroom.

16 (The witness stands down)

17 PRESIDING JUDGE FREMR: Mr Bourgon, you may proceed.

18 MR BOURGON: Thank you, Mr President.

19 There are two distinct issues here. The first one, of course, deals with the
20 cross-examination -- the examination-in-chief conducted by my colleague. My colleague
21 used, according to the Trial Chamber's estimate, 7 hours and 15 minutes.

22 Mr President, this is witness number 19 or 20, I believe, and it is my understanding that by
23 now the Trial Chamber is well aware of the facts of this case, or at least of the theory that
24 the Prosecution is putting forward.

25 And, Mr President, we respectfully submit that the Trial Chamber must be aware,

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1 following the examination-in-chief conducted by my colleague, that he touched upon
2 many areas, but that he touched upon these areas in a very cursory manner or a
3 very -- I'm not too sure if it is the exact English word, but he just went not too deep in
4 many areas.

5 Mr President, the Defence requests the indulgence of the Chamber, because in order to
6 cross-examine on these issues, for sure we will not be able to address all of the issues
7 raised during the examination-in-chief, just not possible.

8 If I use, for example, Mr President, just one example and that example is the witness
9 mentioning if and when he was in Mandro, and he provided an answer where he was in
10 Mandro, I believe four times at least, if I just want to explore this area, and because it is
11 our submission that what he said is not the truth, and if I want to explore this area, it is
12 going to take much longer than the 10 minutes or so that was used by my colleague for
13 this topic. This is only one example, Mr President.

14 So on the basis of this submission, I respectfully request that at a minimum the Defence be
15 granted at least the 8 hours that we planned upon. Bearing in mind also that this witness
16 was initially planned for 10 hours and that had he testified in the previous block maybe
17 we would have had the 10 hours before the Trial Chamber invited the Prosecution to
18 reduce on its timing. So that's the first issue.

19 The second issue is the issue raised in my address in our response to the list of items the
20 Prosecution intends to use with this witness. And in there we said that there might be a
21 possibility of asking more time to address something that is not related to the evidence of
22 this witness, but that is of paramount importance and I think is in the interest of justice.

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 So for this reason, Mr President, I now make the formal request for an additional two
12 hours to be able to address this issue (Redacted)

13 (Redacted). I think the

14 Chamber is entitled, and I respectfully submit that the Chamber should be interested in
15 this issue being explored so we know exactly the background to (Redacted)

16 (Redacted).

17 So on the basis of these two distinct requests, the Defence request 10 hours to complete
18 full cross-examination. Thank you, Mr President.

19 PRESIDING JUDGE FREMR: And before I will give the floor to Mr Iverson, especially to
20 comment the second issue, I think the first one is clear, Mr Bourgon, it's our general rule
21 and it is also applied when decide on your request, the total allocation of time is one thing,
22 but according us the conditions sine qua non is to use this time efficiently, which means
23 that it's also a gentle caveat to you, if you would realise that you are not using this time
24 efficiently, then we can even cut allotted time.

25 And in this connection, I would just make one example; for example, the method asking

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1 the witness whether he really is correct what he said the day before seems to us inefficient.
2 If it is a question concerning some fact that had been mentioned in some written statement
3 two years ago, then there is probably a need for verification, but if there is not obvious
4 discrepancy between what the witness said day before during the examination-in-chief, so
5 we don't find efficient to put 50, 100 questions just with the answer "Yes, I said it
6 yesterday." It's one issue.

7 Otherwise now I am giving the floor to Mr Iverson. Especially I would like to hear
8 comments on the second issue on the request to explore (Redacted)
9 (Redacted).

10 MR IVERSON: Yes, your Honour. The Prosecution opposes the request. It's beyond
11 the scope of the direct examination. It doesn't relate to credibility in any articulable or
12 reasonable fashion. Even being very generous I can't really come to any reasonable
13 conclusion as to why questions should be asked, especially for a two-hour period about
14 events (Redacted) that are not central to any issue in
15 this trial.

16 And so we would oppose for those reasons. I think that the rule that cross-examination
17 should be tailored to what was addressed on direct examination, it stands on good logic
18 and experience. It's not fair to the witness, it's not fair to the proceedings to allow a party
19 to use examination as an opportunity essentially to depose a person under oath under a
20 topic that they may be interested in but happens to be unrelated or not central to the case.
21 So we would oppose for those reasons.

22 As to the other Defence request, I mean, it's -- I don't -- the Defence accuses the
23 Prosecution of asking questions in a cursory manner. I'm not going to address that.
24 That's left -- that's up to your Honours to decide, of course. And we're just trying to
25 place you in the best possible position to evaluate that evidence.

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1 PRESIDING JUDGE FREMR: No need to comment this part.

2 MR IVERSON: And as far as the submission that somehow 10 minutes of direct
3 examination would require more time on cross-examination, I don't think experience
4 bears that out. Generally, cross-examination, at least in my experience, is shorter or can
5 be shorter and has to do with the style of questions. It has to do with -- of course he's
6 entitled to ask leading questions. And so that, being able to ask leading questions, you
7 can create certain shortcuts that save time. But it's up to him, Defence counsel, to
8 exercise that right to ask leading questions and to make his examination more efficient.
9 I've said it before in this courtroom and I'll say it again, it is not for the Prosecution to
10 micromanage Defence counsel in the way in which he questions witnesses. But there is a
11 way to do it in which it doesn't require so much time. So for those reasons we oppose the
12 Defence request.

13 PRESIDING JUDGE FREMR: Mr Bourgon, please, if you want to. I have some
14 questions for you, but first you may react.

15 MR BOURGON: I'll take your questions first, Mr President.

16 PRESIDING JUDGE FREMR: Okay. Well, just to explain us what light on the other
17 case should bring this special part of your cross-examination concerning this (Redacted)
18 (Redacted), so what light on our case should bring this?

19 MR BOURGON: Mr President, since the beginning of this case, the Prosecution has been
20 (Redacted)
21 (Redacted)
22 (Redacted)
23 (Redacted)
24 (Redacted)
25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 PRESIDING JUDGE FREMR: All right. That's enough for me.

13 And the second question: Do you really mean seriously that you will need eight hours
14 for whole testimony and then two hours just for this issue of concerning credibility of the
15 witness?

16 MR BOURGON: Mr President, I've heard my colleague many times throwing
17 accusations of mismanagement and micromanagement and I'm not going to be
18 micromanaged, and you've never heard this on this side.

19 PRESIDING JUDGE FREMR: Mr Bourgon, please, please.

20 MR BOURGON: You've never heard this on this side, Mr President, never.

21 PRESIDING JUDGE FREMR: Mr Bourgon, please, please avoid these kind of comments,
22 which we would like to keep this proceeding dignified. So please avoid this.

23 MR BOURGON: The idea, Mr President, is I started my submission by saying the
24 number of issues addressed by the Prosecution with this witness, and the witness -- the
25 Prosecution did not go into details with many of these issues. I will need to go in details

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1 into some of these issues in order to show that this witness is not credible, that he's not
2 telling the truth, and that he should not -- no probative weight should be attributed to his
3 testimony whatsoever. And I feel that I need the full eight hours at a minimum to do this
4 job, plus time for -- time for in terms to address the issue of the conversation that was
5 recorded.

6 Now, Mr President, you raised a very sensible point about questions being asked in order
7 to confirm the transcript of the previous day. I've been in my past cross-examination,
8 usually my cross-examination, I'm much shorter than what the Prosecution does. But the
9 way this trial is conducted, the number of facts that we have and the way we have to
10 conduct the cross-examination, they do take a longer time.

11 And if, Mr President, you feel at any time that I'm asking questions based on yesterday's
12 transcript that I should not be asking, please let me know and I will move on. I will
13 abide by the guidance of this Chamber at all times. But sometimes it is necessary because
14 we have to be very methodological -- or I'm not sure if that's the right word -- in order to
15 show that these witnesses are simply not telling the truth.

16 So Prosecution picked its witnesses. We pick the way that we cross-examine. And we
17 need the full eight hours to show that this witness is not telling the truth and that he's
18 making up everything he said before this Chamber.

19 Thank you, Mr President.

20 PRESIDING JUDGE FREMR: All right.

21 Now, court officer, let's move into open session and we will conclude.

22 (Open session at 4.16 p.m.)

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

24 PRESIDING JUDGE FREMR: Thank you, court officer.

25 First, it doesn't make any sense to start cross-examination now, so we will start with the

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- 1 cross-examination tomorrow. And also tomorrow morning we will deliver our ruling on
- 2 the Defence request for amount of time needed for cross-examination.
- 3 So now we adjourn, and we will reconvene tomorrow 9.30.
- 4 THE COURT USHER: All rise.
- 5 (The hearing ends in open session at 4.16 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.