

Trial Hearing
WITNESS: DRC-OTP-P-0894

(Open Session)

ICC-01/04-02/06

1 International Criminal Court
2 Trial Chamber VI
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and
6 Judge Chang-ho Chung
7 Trial Hearing - Courtroom 2
8 Friday, 17 June 2016
9 (The hearing starts in open session at 9.37 a.m.)
10 THE COURT USHER: All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: Good morning, everybody.
14 Court officer, please call the case.
15 THE COURT OFFICER: Thank you, Mr President.
16 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
17 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
18 We are in open session.
19 PRESIDING JUDGE FREMR: Now appearances, starting with Prosecution.
20 MS SIM: Good morning, Mr President. Good morning, your Honours. Appearing for
21 the Prosecution this morning are Eric Iverson, trial lawyer; Marion Rabanit, associate trial
22 lawyer; Selam Yirgou, case manager; and myself, Kristy Sim, assistant trial lawyer.
23 PRESIDING JUDGE FREMR: Thank you, Ms Sim.
24 Defence, please.
25 MR BOURGON: (Interpretation) Good morning, your Honour, your Honours, as well

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1 as everybody else present in the courtroom this morning. Representing Bosco Ntaganda,
2 who is present this morning, Margaux Portier; Erik Cookson-Montin; Marlène Yahya; and
3 myself, Stéphane Bourgon. Thank you, your Honour.

4 PRESIDING JUDGE FREMR: And Legal Representative of Victims, please.

5 MR ABDOU: Good morning, Mr President, your Honours. The former child soldiers
6 are today represented by myself, Mohamed Abdou, associate legal officer with the OPCV.

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

10 PRESIDING JUDGE FREMR: Thank you, both of you.

11 We are starting without the witness because first we, the Chamber, will clarify its
12 approach to Rule 68(3) procedure, especially in this case of Witness P-894.

13 The Chamber notes the submissions received from the Prosecution, via email last night,
14 seeking to clarify the procedure to be adopted for the admission of the materials for this
15 witness under Rule 68(3) of the Rules.

16 As a preliminary matter, the Chamber wishes to confirm that deferral of the admission
17 was purely subject to the condition of the witness continuing to be available today for
18 questioning by the Defence.

19 That being the case, the Chamber shall formally admit the three items that are the subject
20 of the Rule 68(3) request for Witness P-894; namely, DRC-OTP-2076-0194, then
21 DRC-OTP-2076-0211 and DRC-OTP-2076-0212.

22 And it is important subject to the witness completing examination by the Defence and
23 Chamber, because, as I said yesterday, the conditions for granting request under 68(3) are
24 fully met when Defence and Chamber had opportunity to examine the witness, and this
25 opportunity, in my understanding, doesn't mean just formally that witness is present, but

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1 they had really chance to examine the witness.

2 So hypothetically, if the witness would refuse to respond to questions put by Defence or
3 the Chamber, then, in my view, conditions wouldn't be met. So I know that such a case
4 is probably rather hypothetical, but still we should be careful.

5 So that is why, in fact, this admission is subject to those conditions. If those conditions
6 wouldn't be met, then we would have to revise our decision on granting this request.

7 So for future witnesses, the Chamber may either admit such items immediately upon the
8 witness confirming their accuracy and that he or she does not object to their admission, or
9 depending on circumstances such as, in this case, defer admission until it is apparent that
10 the witness remains available to continue the testimony and always subject to conditions I
11 mentioned today in giving reasons for this decision.

12 Any comments or questions? I don't -- Mr Bourgon.

13 MR BOURGON: Very quickly, Mr President.

14 The Defence is grateful for the Chamber's ruling on this matter. Mr President, very
15 quickly, as much as I appreciate being informed in advance of oral submissions that the
16 Prosecution wishes to make before the Chamber, which I believe was the purpose of the
17 mail which was forwarded to the Chamber last night, we would like to begin by
18 expressing our view that requests for clarification of this type should not be made by way
19 of electronic mail, especially when they deal with substantive matters such as this one.
20 This was discussed at the beginning of this case during a status conference as to what
21 could be or could not be included in electronic mail to the Chamber.

22 We believe, Mr President, that it is important to have arguments on the record at all times
23 so that we can protect our right of appeal and build the record for the appeal. We also
24 believe that it is important for the Defence to have an opportunity to respond to any
25 submissions made by the Prosecution. In this case, we have -- there isn't -- it is a

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1 non-issue because we agree with the ruling of the Chamber, but this might not always be
2 the case.
3 We suggest, Mr President, that electronic mails forwarded to the Chamber in addition to
4 the common practice. The Chamber is loaded -- is flooded with submissions by
5 electronic mail on delays, on administrative matters, but we suggest that whenever it is a
6 substantive matter, parties, including the Defence, should state the topic and should state
7 the relief requested but no more so that the debate can take place either in writing if the
8 Chamber wants so, or orally, but at least the debate can take place. Thank you,
9 Mr President.

10 PRESIDING JUDGE FREMR: Point taken.

11 Ms Sim, do you want to comment on it in any way?

12 MS SIM: No, your Honour. It's simply, in -- in this case, it was a matter of time since
13 that we wanted to have the matter before the Chamber in time for the parties to have time
14 to think about what we were saying, and to draft a filing would have been a more
15 time-consuming process, so we chose to send an email instead.

16 PRESIDING JUDGE FREMR: It's true that it was a rather urgent matter, but generally it
17 would be, maybe it might be a different opinion, that this matter would be considered
18 important or not. I would personally consider that a serious issue. So next time I
19 would generally support what Mr Bourgon said.

20 Now we can continue with the testimony.

21 Court usher, please bring Mr Witness into the courtroom.

22 And we will continue by examination conducted by Legal Representative of Victims by
23 Mr Suprun.

24 And I am just repeating that, Mr Suprun, you have been granted 15 minutes for your
25 examination.

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1 (The witness enters the courtroom)

2 PRESIDING JUDGE FREMR: Good morning, Mr Witness. Can you hear me?

3 WITNESS: DRC-OTP-P-0894 (On former oath)

4 (The witness speaks Lingala)

5 THE WITNESS: (Interpretation) Yes, I can hear you.

6 PRESIDING JUDGE FREMR: Very well. So, Mr Witness, today we will continue with
7 your examination now by Legal Representative of Victims and then by Defence.

8 It's my only duty to remind you that you are still under oath, so you have to speak the
9 truth and nothing but the truth. Is it clear to you?

10 THE WITNESS: (Interpretation) I've understood, your Honour.

11 PRESIDING JUDGE FREMR: So now -- sorry. Now, Mr Suprun, you have the floor.

12 MR SUPRUN: (Interpretation) Thank you very much, your Honour.

13 QUESTIONED BY MR SUPRUN: (Interpretation)

14 Q. Witness, good morning.

15 A. Good morning.

16 Q. We know each other, but I'm going to give my name for the record; Dmytro Suprun
17 and I represent the victims of the attacks against the civil population who are
18 participating in these proceedings against Mr Ntaganda.

19 Now, I'd like to have more details with regard to your experience, as well as the
20 experience of your family.

21 MR SUPRUN: (Interpretation) Your Honour, could we now go into private session,
22 please?

23 PRESIDING JUDGE FREMR: Certainly.

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

25 (Private session at 9.48 a.m.) *(Reclassified partially in public)

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

2 PRESIDING JUDGE FREMR: Thank you, court officer.

3 Mr Suprun, please proceed.

4 MR SUPRUN: (Interpretation)

5 Q. Witness, my first question, what your occupation was before the first attack on

6 Mongbwalu? What did you do as an activity? Did you have any work?

7 A. (Redacted)

8 (Redacted)

9 Q. (Redacted)

10 A. (Redacted)

11 Q. (Redacted)

12 A. (Redacted)

13 (Redacted)

14 (Redacted)

15 Q. Thank you very much for this precision, but my question was different. You say
16 you're married. Did you have any children and, if you did, how many children did you
17 have at that time?

18 A. At that time I had (Redacted) children because I now have (Redacted). I've had others during the
19 war. (Redacted)

20 Q. When Mongbwalu was attacked, your wife and your children, did they stay there,
21 or did they leave?

22 A. When the attacks took place, where it concerns the last attack when Mongbwalu fell,
23 my wife had fled (Redacted)

24 (Redacted)

25 (Redacted)

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1 Q. And to the best of your knowledge, in what conditions was your wife and children
2 when they fled?

3 A. When they fled the conditions weren't good because they left when there was
4 gunfire. They left just like that, without being able to take anything with them.

5 Q. (Redacted)

6 (Redacted)

7 A. (Redacted)

8 (Redacted)

9 (Redacted)

10 Q. Have I understood your statement, *your children were with your wife who fled
11 Mongbwalu; is that right?

12 A. Yes.

13 Q. (Redacted)

14 A. (Redacted)

15 Q. And when you left Mongbwalu, in what conditions were you when you left? Did
16 you have any difficulties?

17 A. When I fled I only had my Bible with me and the clothing that I was wearing on that
18 day. I was afraid. I wanted to save my life. (Redacted)

19 Q. To the best of your knowledge, Witness, or from what you've seen, what was the
20 situation of other victims of the attack on Mongbwalu that you know apart from members
21 of your family?

22 A. Apart from people that I know, after Mongbwalu was taken, there was a civilian
23 population in Sayo. (Redacted)

24 (Redacted)

25 (Redacted)

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4 (Redacted)

5 (Redacted)

6 Q. (Redacted)

7 (Redacted)

8 A. (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 Q. (Redacted)

17 A. (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 Q. When you went home, and when you discovered that all your property had been
22 pillaged what did you do? What happened with your family afterwards?

23 A. When the town was taken we didn't go back to return, we just went to see what had
24 happened. I arrived at my house, I saw they had broken down by door (Redacted)

25 (Redacted)

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1 Q. (Redacted)

2 THE INTERPRETER: (Redacted)

3 THE WITNESS: (Interpretation) *All the houses had their doors broken down, they'd
4 been destroyed, they'd been emptied. All the goods inside had been taken.

5 MR SUPRUN:

6 Q. (Redacted)

7 (Redacted)

8 A. (Redacted)

9 (Redacted)

10 (Redacted)

11 Q. And what was your reaction when you were a witness of these events at an
12 emotional or psychological level? How did you react, how did you feel?

13 A. I was absolutely distraught. I thought perhaps I would never return home. I had
14 taken nothing with me and I no longer had the means to leave where I was and to return
15 home. And since then my life has been very difficult. In fact, my health has also been
16 negatively affected by what happened.

17 PRESIDING JUDGE FREMR: Mr Suprun, the last two minutes, just to remind you.

18 MR SUPRUN: *Let's go back to public session please.

19 PRESIDING JUDGE FREMR: All right then.

20 Court officer, let's move into open session.

21 (Open session at 10.02 a.m.)

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

23 PRESIDING JUDGE FREMR: Thank you, court officer.

24 Mr Suprun, please proceed.

25 MR SUPRUN: (Interpretation)

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1 Q. Witness, as a victim of the war in Ituri between 2002 and 2003 what do you expect
2 from the International Criminal Court at the outcome of this, this trial of
3 Mr Bosco Ntaganda?

4 A. Justice is there to issue a ruling. I am confident that the Judges will hand down a
5 judgment and that they do so based on what they have learnt and in order to ensure that
6 each person is put in their place.

7 Q. In the event that Mr Ntaganda is found guilty, would you wish to receive
8 reparations for the harm you have suffered?

9 A. If reparations were an availability or a possibility that would be a good thing. We
10 have lost our property and our belongings and if that could be compensated that would
11 be a wonderful thing, but if not our life will continue as before.

12 MR SUPRUN: (Interpretation) Thank you very much, Witness, for your assistance.
13 Your Honour, I have no other questions.

14 PRESIDING JUDGE FREMR: And I thank you, Mr Suprun, for your punctuality.
15 Now we can move to the Defence. So, Mr Bourgon. And I'm just reminding that the
16 Chamber decided to grant you three hours for cross-examination.
17 So, Mr Bourgon, you have the floor.

18 QUESTIONED BY MR BOURGON:

19 Q. Good morning, Mr Witness.

20 A. Good morning.

21 Q. Allow me to begin, sir, by introducing myself.

22 I believe we are in open session.

23 THE COURT OFFICER: Mr Bourgon, I'm sorry to interrupt you, but I would like to
24 remind you to turn off your microphone between two questions, especially when we are
25 in open session.

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1 MR BOURGON: This is exactly what I just informed my crew.

2 Q. Sir, allow me to begin by introducing myself. My name is Stéphane Bourgon and
3 I'm a lawyer from Canada, and along with my assistants here we represent together the
4 accused in this case, Mr Bosco Ntaganda. Do you understand this?

5 A. Yes, I've understood perfectly.

6 Q. Sir, you remember that you and I had a chance to meet last week when you arrived
7 in The Hague; is that right?

8 A. Yes, that's right.

9 Q. I have a number of questions for you over the next three hours in respect of your
10 statement. And the same procedure applies, which means that once I've finished asking
11 a question, please wait a few seconds before giving a response. And I will also wait
12 before -- for a few seconds before asking my next question. Do you understand this?

13 A. Yes, I've understood.

14 Q. Also, it is very important that if I ask you a question which you do not understand,
15 then I invite you to ask me to repeat my question so that we are both on the same page
16 with respect to the information I am looking for. Do you understand this?

17 A. Yes, I've understood.

18 Q. And lastly, sir, in the course of my questions many -- on many occasions my
19 questions can be answered by a yes or a no which will allow us to save some time and I
20 invite you to give a yes or no answer where possible. Of course, if you have anything
21 that you wish to add, then by all means you have to add what you want to say. Do you
22 understand this?

23 A. Yes, I have.

24 Q. Sir, since arriving in The Hague you had a number of meetings with Prosecution
25 representatives in order to prepare for your testimony; is that correct?

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1 A. Yes.

2 Q. I refer in particular to meetings which took place on Monday, 13 June. Do you
3 recall these meetings?

4 A. Yes, we met on that day.

5 Q. And I take it, sir, that you remember that this meeting, for the most part, was audio
6 and video recorded; is that correct?

7 A. Yes, that's right.

8 Q. I also understand, sir, that you remember that part of this first meeting there were
9 other people present from the victims and witnesses section and that on this occasion
10 there was no audio-video recording; do you recall this, sir?

11 A. Yes, we met with them.

12 Q. Now, sir, what I'd like to begin as part of my cross-examination is to explore the
13 information that was discussed during that initial part of the meeting.

14 MR BOURGON: And for this we will go into closed session -- private session, sorry,
15 Mr President.

16 PRESIDING JUDGE FREMR: For sure.

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

18 And for the information of public, this witness is a protected witness, which means that
19 his -- he got granted that his identity will not be revealed to the public.

20 Ms Sim, any comment on that?

21 MS SIM: Very briefly. The reference to a Victims and Witness Unit representative
22 being present is actually incorrect, it was an investigator of the Court -- of the Prosecution.
23 I don't know if my friend intended to do that, but the individual named is actually an
24 investigator with the Office of the Prosecutor, not a representative of the Victims and
25 Witnesses Unit.

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1 PRESIDING JUDGE FREMR: All right.

2 Now, let's move into private session.

3 (Private session at 10.12 a.m.) *(Reclassified partially in public)

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

5 PRESIDING JUDGE FREMR: Thank you, court officer.

6 Mr Bourgon, you may proceed.

7 MR BOURGON: Thank you, Mr President.

8 Q. Sir, you just heard my colleague say that at this initial meeting there was no one
9 present from the Victim and Witnesses Unit. Now, my information comes from an
10 investigation note that I received, kind of a summary of that meeting, which states that,
11 indeed, there was an investigator present or an associate investigator, but it says that the
12 victims and witnesses section facilitated the meeting. So you agree then that you
13 remember precisely this first part of the meeting, do you?

14 A. Well, I accept what you say, but I don't know how the Court operates. I saw
15 certain people who came to meet with me so that we could do some work and we did
16 work together.

17 Q. Thank you, sir.

18 For the record, Mr President, I'm referring to an investigation note, the number of this
19 note is DRC-OTP-2092-0306, and it's a two-page document dated 13 June 2016.

20 I apologise, Mr President, there is a mistake in the number I just mentioned to the Court.

21 The number of the document is DRC-OTP-2093-0142 and it is a two-page document dated
22 13 June 2016.

23 (Redacted)

24 (Redacted)

25 (Redacted)

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- 6 (Redacted)
- 7 (Redacted)
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- 9 A. (Redacted)
- 10 Q. (Redacted)
- 11 (Redacted)
- 12 A. (Redacted)
- 13 Q. (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 A. (Redacted)
- 17 Q. (Redacted)
- 18 (Redacted)
- 19 A. (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 Q. (Redacted)
- 25 (Redacted)

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1 (Redacted)

2 Q. (Redacted)

3 (Redacted)

4 A. (Redacted)

5 Q. (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 A. Yes.

14 Q. (Redacted)

15 (Redacted)

16 (Redacted)

17 A. (Redacted)

18 (Redacted)

19 (Redacted)

20 MR BOURGON: Mr President, I would like to admit into evidence for the purpose of

21 impeachment two documents. The first document is the latest one I just showed to the

22 witness, which is 2092-0306. And the first document is the one I referred to at the

23 beginning, which is the investigation note 2093-0142, which talks about what happened at

24 the beginning of the meeting last Monday. Both documents, Mr President, are relevant

25 for the sake of -- for the purpose of impeaching the witness's credibility in light of his

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1 answers and the information contained therein. It is our submission that the Chamber
2 requires the documents, to read it jointly with the testimony to understand the context of
3 the dates, (Redacted)
4 (Redacted).

5 PRESIDING JUDGE FREMR: Madam Sim, any objection to that?

6 MS SIM: There's no objection to the documents going in, they're -- they're investigation
7 notes about the witness; however, I fail to see how they're impeaching the witness, how
8 these are going in for their impeachment value. They're not documents that the witness
9 prepared, they're information that he relayed to other people. He can't really speak to
10 the underlying content other than to say what he remembers saying to the Prosecution.

11 PRESIDING JUDGE FREMR: Mr Bourgon, any reaction on that?

12 MR BOURGON: Nothing to add, Mr President. These are documents. Our
13 submission is that they are relevant and they are necessary for the Chamber's assessment
14 of the testimony of this witness.

15 PRESIDING JUDGE FREMR: All right. Give us a moment.

16 (Trial Chamber confers)

17 PRESIDING JUDGE FREMR: So after short, brief silent deliberation our ruling is that
18 those two documents are admitted for the purpose of impeachment into evidence. So the
19 objection is overruled. And those documents are DRC-OTP-2092-2306, if I am not wrong,
20 and the second one 2093-0142. If I am not wrong I think that they were precisely
21 mentioned by Mr Bourgon.

22 Now, Mr Bourgon, please proceed.

23 MR BOURGON: Thank you, Mr President.

24 Q. Sir, we now move to your victim application form itself, the one that was shown to
25 you yesterday.

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1 And I would like to have on the screen, the number of the document is 2090-0099.

2 Sir, while this is appearing on your screen, we've already confirmed the date (Redacted)

3 (Redacted), and I want to confirm, which is in your statement, this is the purpose of my

4 questions today is to look at your statement, at paragraph 62 of your statement you say

5 that you did not fill in this questionnaire yourself and that you gave the information to

6 someone; is that correct, sir, yes or no?

7 A. He wrote what I told him to write, and afterwards I signed.

8 Q. Thank you, sir.

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 A. (Redacted)

16 MS SIM: (Redacted)

17 PRESIDING JUDGE FREMR: (Redacted)

18 MS SIM: (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 PRESIDING JUDGE FREMR: (Redacted)

23 MR BOURGON: (Redacted)

24 (Redacted)

25 (Redacted)

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1 PRESIDING JUDGE FREMR: (Redacted)

2 MR BOURGON:

3 Q. Sir, at paragraph 62 you also confirm that you were assisted with the application by
4 a representative of an NGO assigned by VPRS. So you were assisted by a member of an
5 NGO; is that correct?

6 A. Yes, that's correct.

7 Q. Now, the information contained in your application form, I understand it that even
8 though it's more general it is nonetheless the truth; is that correct?

9 A. That's correct, as written.

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (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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2 A. (Redacted)

3 (Redacted)

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5 Q. (Redacted)

6 (Redacted)

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8 (Redacted)

9 (Redacted)

10 (Redacted)

11 A. (Redacted)

12 Q. (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 A. (Redacted)

17 (Redacted)

18 (Redacted)

19 Q. (Redacted)

20 MR BOURGON: Mr President, I think we can stop for the break.

21 PRESIDING JUDGE FREMR: All right.

22 So first, court officer, please escort Mr Witness out of the courtroom and then I would like
23 to move into public session because I would like to address parties about the further
24 scheduling.

25 (The witness stands down)

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1 (Open session at 11.06 a.m.)

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

3 PRESIDING JUDGE FREMR: Thank you, court officer.

4 Mr Bourgon, according my information so far you used, yes, 59 minutes, so in fact you
5 still have at your disposal 2 hours, 1 minute.

6 There are two alternatives and that is why I am addressing you, the first one is to continue
7 in traditional manner, which means that you will have next morning session
8 taking -- lasting 90 minutes and then we will adjourn for approximately 30 minutes in the
9 afternoon, or there is a second alternative, to take longer two-hour morning session if that
10 would be enough for you to complete your cross-examination. So I am asking. It is up
11 to you. I don't want to push you.

12 MR BOURGON: Mr President, I would like to complete in a two-hour session. I think
13 that is possible. However, depending on if there are objections or loss of time and I
14 cannot complete, then I will let you know halfway through the next session.

15 PRESIDING JUDGE FREMR: We will not punish you if you will not succeed.

16 So okay then, so we will change our schedule accordingly. Now it is 11.10 almost so we
17 will continue -- we will break now for 30 minutes, so we will continue 11.40, and then we
18 will take two-hour session.

19 Now we break.

20 THE COURT USHER: All rise.

21 (Recess taken at 11.07 a.m.)

22 (Upon resuming in open session at 11.41 a.m.)

23 THE COURT USHER: All rise.

24 Please be seated.

25 PRESIDING JUDGE FREMR: Mr Bourgon, sit down for a while because I would like to

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1 start, even if in a quick way, with delivery of our oral ruling. In fact I have two
2 follow-up procedural matters relating to the previous witness from yesterday that I would
3 like to address at this stage.

4 The Chambers notes that it received an email from the Prosecution yesterday confirming
5 that the parties have reached an agreement on the timestamps of the five video excerpts
6 used with Witness P-46. The timestamps are those initially indicated by the Prosecution
7 at edited transcript 101, page 59, lines 18 to 21, and there is, therefore, no need to amend
8 the Chamber's ruling on the admission of these five exhibits.

9 Now the Chamber wishes to also come back to the Prosecution request seeking to tender
10 into evidence document DRC-OTP-0152-0256 through Witness P-46 recorded at transcript
11 100. In this regard I recall that the Defence objected to the admission of this document
12 and that the Chamber received further submissions from the parties which are recorded at
13 transcript 103.

14 In taking its decision the Chamber has had particular regard to the evidence provided by
15 Witness P-46, including at page 91 of edited transcript 100 from line 8 to 23 and at pages
16 49 to 60 of live transcript 103.

17 The Chamber notes that the witness indicated that she herself received the account of the
18 event reported at page 265 of the document but observes that she does not appear to have
19 any particular recollection of the details of this meeting.

20 The Chamber further took into consideration the corrections she provided at pages 2 and
21 3 of live transcript 103 where she indicated of her own initiative that the corresponding
22 individual story referred to at page 1844 of DRC-OTP-2082-1832 is more accurate than the
23 information recorded in the draft report sought to be admitted.

24 The Chamber is satisfied that the report is relevant to the present case but wishes to
25 emphasise that it considers it appropriate to exercise caution, in particular, noting the

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1 content which could be prejudicial to the accused. Accordingly, having found that prima
2 facie probative value of the information contained in this document is outweighed by the
3 potential prejudice that admission would cause to the accused, the Chamber sustains the
4 Defence objection and document DRC-OTP-0152-0256 is not admitted into evidence.

5 Finally, concerning the Defence request seeking clarification from the Chamber
6 concerning the eventual use of the related information appearing on the record, the
7 Chamber considers that this is a matter that is more appropriately assessed in light of the
8 full evidentiary record. Nonetheless, the Chamber notes that the nature of the material
9 currently before it is such that it's likely to attribute little to no weight to this particular
10 evidence.

11 This concludes the Chamber's ruling.

12 Now, Mr Bourgon, you may proceed.

13 MR BOURGON: Thank you, Mr President.

14 Q. Welcome back, Mr Witness.

15 A. Thank you.

16 Q. (Redacted)

17 (Redacted)

18 (Redacted)

19 A. (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 PRESIDING JUDGE FREMR: Ms Sim.

4 MS SIM: I just wanted to remind opposing counsel that we're in public session right now.

5 So I don't think that the transcript caught any names, but I -- in French it did, I'm told. So

6 we're going to have to seek a redaction to that as well.

7 PRESIDING JUDGE FREMR: So, yes, I'm ordering redaction of those names, the part of

8 the transcript containing the names. And I guess it would be safer to move into private.

9 MR BOURGON: Yes, Mr President.

10 PRESIDING JUDGE FREMR: So, court officer, let's move into private session.

11 (Private session at 11.49 a.m.) *(Reclassified partially in public)

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

13 PRESIDING JUDGE FREMR: Thank you, court officer.

14 Mr Bourgon, please proceed.

15 MR BOURGON: Thank you, Mr President.

16 Q. (Redacted)

17 A. (Redacted)

18 (Redacted)

19 Q. (Redacted)

20 (Redacted)

21 (Redacted)

22 A. (Redacted)

23 (Redacted)

24 Q. (Redacted)

25 (Redacted)

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1 Q. (Redacted)

2 A. (Redacted)

3 (Redacted)

4 (Redacted)

5 Q. (Redacted)

6 (Redacted)

7 A. (Redacted)

8 (Redacted)

9 Q. (Redacted)

10 (Redacted)

11 (Redacted)

12 A. (Redacted)

13 Q. If we can go back to the page 1 of this document, which is 2090-0099. Sir, the first
14 page of the document now appears. I'd like to focus on the bottom of the document on
15 paragraph 3 where it is said, I will read in French, Mr Witness:

16 (Interpretation) "The suspect was found guilty and does the victim intend to request
17 reparation?"

18 Answer: "Yes."

19 (Speaks English) You can confirm that this was your answer?

20 A. Yes. I said yes because wherever there were problems or whenever we have
21 problems we seek reconciliation among people.

22 Q. (Redacted)

23 (Redacted)

24 (Redacted)

25 A. (Redacted)

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1 (Redacted)

2 (Redacted)

3 Q. Sir, I move to a different topic, which is your knowledge of Bosco Ntaganda.

4 Yesterday a question was put to you and this is at page 126, lines 22 to page 127, line 2.

5 Now, there you confirmed that Bosco Ntaganda, during the events in Mongbwalu, was
6 staying at the Appartements and that he was the chief of staff. Do you maintain this
7 testimony?

8 A. Yes, that is correct. They lived at Appartements which was a series of houses (Redacted)
9 (Redacted), that is where they used to lived.

10 Q. Sir, in fact you said, to use the precise words at page 127, line 1, answer: "Yes, I
11 know some. For example, the chief of general staff Bosco lived there."
12 So you agree with -- you maintain this testimony?

13 A. Yes. That is where they used to stay.

14 Q. Sir, I suggest to you that Bosco Ntaganda was in fact the deputy chief of staff for
15 operations of the FPLC and that you were not aware of this at the time. Do you agree
16 with me?

17 A. You see, we cannot be very specific when it comes to knowledge about their ranks.
18 However, we knew the ranks of the highest ranking officials. We could hear people talk
19 about that. We understood that Bosco was chief of staff, chief of general staff. Whether
20 he was substantive or deputy, we didn't know, but yes, his name was mentioned.

21 Q. At paragraph 59 of your statement when dealing with the UPC, you mentioned the
22 following, and I will read this paragraph to you at the end:

23 "I heard about Bosco from people who fled the war from other areas. They said that he
24 grew up in Bunia and that his father was a headmaster at the Athénée of Bunia."

25 Sir, my understanding from this paragraph is that this information you learned after the

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1 events of Mongbwalu; is that correct?

2 A. Yes. When someone is well known, people talk about that person. People were
3 saying that he grew up in Bunia, that his father or one of his family members was the
4 head of the Athénée school in Bunia and he grew up in Bunia. However, I never saw
5 him when he was growing up. I only heard this from other persons who used to say that
6 the -- his father was the principal of the Athénée school in Bunia.

7 Q. Now, sir, if I tell you that Bosco Ntaganda did not grow up in Bunia and that his
8 father was not the principal of the Athénée school, does that surprise you?

9 A. No, that that would not surprise me because it is information that you are giving me.
10 Why should I be surprised when you provide me with information?

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 Q. I further suggest to you, sir, that you at the time did not have any knowledge what
25 his role was in both attacks on Mongbwalu other than for this meeting; is that correct?

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1 A. Well, during that attack when there was firing, only the soldiers were there.
2 Civilians had fled. Now, what I saw after the attack is that some people who had fled
3 had come back and they told us a number of things. But what happened during the
4 attack proper we do not know. What we know is that there were dead bodies, that some
5 of the dead bodies were burnt, but how it all happened I do not know.

6 Q. So for the record, sir, of course I do not have time to walk you through paragraph by
7 paragraph of your statement, but for the record I will state that from paragraphs 22 to 25
8 you deal with the first attack. You remember giving a description of the first attack, do
9 you not?

10 A. Yes.

11 Q. And also for the record, you recall in your statement talking about the second attack,
12 which you do from paragraphs 32 to 38, and you made no reference of Bosco Ntaganda in
13 these paragraphs. Do you agree with me, sir?

14 A. Yes. Because, you see, when there is firing or gunshots in a village, you do not
15 necessarily know who is the leader of the group involved, but it is usually after that you
16 are able to gather more information to distinguish between who was doing what.

17 Q. To be more specific, I will simply highlight for you that in paragraph 28 of your
18 statement you do mention Bosco and you mention the following: "But the UPC
19 headquarters where Bosco was staying was at the Appartements." Now, this is in the
20 section dealing with camp Sayo. Do you agree with this information, sir?

21 A. Yes. He used to stay at Appartements. Sayo was their base and it is from there
22 that they provided protection for the entire Mongbwalu area.

23 Q. And sir, talking about the Appartements, it's my understanding that you are not
24 able to provide any name of any other officer who was there with Bosco Ntaganda; is that
25 correct?

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1 PRESIDING JUDGE FREMR: Ms Sim.

2 MS SIM: My notes from the testimony of the witness the day before was that he did in
3 fact name another person.

4 PRESIDING JUDGE FREMR: Mr Bourgon.

5 MR BOURGON: My colleague could be correct. I was referring to the statement when
6 he was talking about the headquarters.

7 Q. But let me refer you, sir, to what you said exactly in your statement -- sorry, in the
8 testimony yesterday. The question was: "Do you know any particular commanders
9 who lived there?"

10 And your answer was: "Yes, I know some. For example, the chief of general staff Bosco
11 lived there and there was another, a battalion commander as well."

12 My reference stops here, I need to refer to the transcript.

13 MS SIM: I can assist. It says, "another commander who was called Claude and he also
14 lived there and others as well whose name I have forgotten." It's page 127, lines 1
15 through 4.

16 MR BOURGON: I'm grateful for my colleague's assistance.

17 Q. (Redacted)

18 A. (Redacted)

19 (Redacted)

20 Q. (Redacted)

21 A. (Redacted)

22 (Redacted)

23 (Redacted)

24 Q. (Redacted)

25 (Redacted)

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1 (Redacted)

2 A. (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 Q. I move to a difficult topic which is -- refers to paragraph 19 of your statement.

7 Now, this section deals with the topic, it's called "tribal war" and you describe the

8 situation in Mongbwalu. (Redacted)

9 (Redacted)

10 A. (Redacted)

11 Q. (Redacted)

12 (Redacted)

13 (Redacted)

14 PRESIDING JUDGE FREMR: Ms Sim.

15 Mr Witness, please hold on with --

16 THE WITNESS: (Interpretation) (Redacted)

17 PRESIDING JUDGE FREMR: -- your response. We will first listen to Ms Sim.

18 Ms Sim.

19 MS SIM: I was just pointing out that the way that opposing counsel read in this quote

20 was actually not directly taken from the statement and it -- it's slightly different than

21 what's said in the statement, but I believe the witness was about to correct it, so.

22 PRESIDING JUDGE FREMR: All right then.

23 So, Mr Witness, sorry, but please try to repeat your response.

24 THE WITNESS: (Interpretation) (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 PRESIDING JUDGE FREMR: Mr Bourgon, sorry to interrupt you, just for the sake of
4 planning, do you think that it's realistic that you might finish by 1.30? If not, then we
5 will break at 1 o'clock. So I'm asking you for update.

6 (Counsel confers)

7 MR BOURGON: No, Mr President, it will not be possible to finish. I apologise.

8 I would have liked to, but I would like to use --

9 PRESIDING JUDGE FREMR: All right then. So we will then break at 1 o'clock. So
10 now we may proceed, please.

11 MR BOURGON:

12 Q. Sir, my question now is I have your statement -- I'll say that again, sorry. (Redacted)

13 (Redacted)

14 (Redacted) You don't want to change this, you agree with that, right?

15 A. Yes, at that point in time, APC was the regular army in Ituri.

16 PRESIDING JUDGE FREMR: Ms Sim.

17 MS SIM: Mr President, I'm going to make the same observation, which is that opposing
18 counsel is not actually reading back what's put in the statement. He's changing it slightly
19 and putting that to the witness. It's the same -- it's the same proposition he put to the
20 witness the last time.

21 PRESIDING JUDGE FREMR: Mr Bourgon, would it be possible to be precise.

22 MR BOURGON: Well, Mr President, I have two choice: I can get the information from
23 the witness, which I'm trying to get. I think I'm allowed to move away from the
24 statement. But then someone might tell me that I'm just repeating his statement, so I
25 don't do that. So I'm just trying to move as quickly as I can and I want him to confirm

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1 some propositions based on his statement. If I want to quote, then I will be precise.

2 PRESIDING JUDGE FREMR: But they should really precisely reflect the statement.

3 Ms Sim.

4 MS SIM: (Redacted)

5 (Redacted)

6 (Redacted)

7 MR BOURGON:

8 Q. Sir, I will read you one short sentence, which is from your statement and I would

9 like you to confirm. "The APC of Mbusa Nyamwisi was in command of Mongbwalu at

10 this time." Do you agree with that?

11 A. Yes.

12 Q. (Redacted)

13 (Redacted)

14 A. (Redacted)

15 Q. (Redacted)

16 (Redacted)

17 A. (Redacted)

18 (Redacted)

19 Q. (Redacted)

20 (Redacted)

21 A. (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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- 1 (Redacted)
- 2 (Redacted)
- 3 A. (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 PRESIDING JUDGE FREMR: Mr Bourgon, we should break.
- 11 MR BOURGON: One last question, Mr President, if you allow.
- 12 PRESIDING JUDGE FREMR: All right.
- 13 MR BOURGON:
- 14 Q. (Redacted)
- 15 (Redacted)
- 16 A. (Redacted)
- 17 (Redacted).
- 18 Q. I suggest we do this after the break, Mr President.
- 19 PRESIDING JUDGE FREMR: All right then.
- 20 So first now, Mr Witness, we will break and we will continue half past 2.
- 21 So now let's move into open session. And in the meantime, court usher, please you can
- 22 escort Mr Witness out of the courtroom.
- 23 (The witness stands down)
- 24 (Open session at 1.03 p.m.)
- 25 THE COURT OFFICER: We're in open session, Mr President.

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1 PRESIDING JUDGE FREMR: Thank you, court officer.

2 And before we break, update on timing. According to my information Defence still have
3 at its disposal 47 minutes.

4 And even I know I'm rather premature, Ms Sim, at this moment do you envisage any
5 request for redirect?

6 MS SIM: At this moment very brief -- there would be a very brief redirect.

7 PRESIDING JUDGE FREMR: So we break now and we will reconvene half past 2.

8 THE COURT OFFICER: All rise.

9 (Recess taken at 1.03 p.m.)

10 (Upon resuming in open session at 2.30 p.m.)

11 THE COURT USHER: All rise.

12 Please be seated.

13 PRESIDING JUDGE FREMR: So for the record, the Chamber entered the courtroom, but
14 the light disappeared.

15 Court officer, could you verify that everything is okay with our equipment?

16 (Pause in proceedings)

17 PRESIDING JUDGE FREMR: So it seems that everything is now in order, which means
18 we can continue with cross-examination of our witness.

19 Mr Bourgon, you have the floor.

20 MR BOURGON: Thank you, Mr President.

21 Q. Welcome back, Mr Witness.

22 PRESIDING JUDGE FREMR: And, Mr Bourgon, do you think we can remain in open
23 session or does it a need to -- is there a need to move into --

24 MR BOURGON: I prefer to stay in private session, Mr President, please.

25 PRESIDING JUDGE FREMR: It's reasonable.

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1 Let's move into private session, please.

2 (Private session at 2.32 p.m.) *(Reclassified partially in public)

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

4 PRESIDING JUDGE FREMR: Thank you, court officer.

5 Mr Bourgon, please proceed.

6 MR BOURGON: Thank you, Mr President.

7 Q. Mr Witness, what I would like to do now is to look at your statement with you
8 concerning both attacks on Mongbwalu, which you described. So I'd like to go to some
9 paragraphs, read you or at least make you a proposition as to what you said and you can
10 tell me whether you agree or if you don't agree.

11 So if we believe -- if we begin with the first attack, at paragraph 22 of your statement you
12 said that it began at 6 a.m. in the morning; is that correct?

13 A. Yes, that is correct.

14 Q. (Redacted)

15 (Redacted)

16 A. (Redacted)

17 Q. And again in the same paragraph you say that you heard gunshots and bullets and
18 you add "We all ran to the centre of the city." Do you maintain this evidence?

19 A. Yes. We could hear gunfire from the Mongbwalu airport. The military camp had
20 come under attack.

21 Q. In paragraph 23 of your statement you say that the UPC attack the airstrip and the
22 military camp. So you maintain this testimony?

23 A. Yes, that is what happened.

24 Q. Now, in the same paragraph you state that at some point the Lendu combatants
25 came from Sayo and that they went to reinforce the APC. Do you maintain this

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1 testimony?

2 A. Yes, that is correct.

3 Q. Now, at paragraph 23 and 24 you state something that I would like to explore with
4 you. You mention that the UPC was allied with the Ugandans and also that many UPC
5 and Ugandan soldiers were killed during this attack. Do you recall saying this in your
6 statement?

7 A. Yes. That is what happened. They were together.

8 Q. Sir, I suggest to you that your information wrong because there was no UPDF and
9 Ugandans fighting with the UPC at that time. Does that refresh your memory?

10 A. We were in that area and we were witnesses to what was happening. There were
11 Ugandan soldiers on the ground and they were working together in a group with the
12 Hemas.

13 Q. And you know, sir, that the Ugandan soldiers and the UPC soldiers, they wear
14 different uniforms? You're aware of that?

15 A. Yes, I know that. The UPC soldiers had camouflage uniforms.

16 Q. Sir, at paragraph 23, of course, you mention that the Lendus and the APC fighting
17 together managed to push back the UPC to the airport. Do you maintain this testimony?

18 A. Which airport are you talking about, the Bunia airport or the Mongbwalu airport?
19 I did not quite understand your question. Please explain so that I can provide a proper
20 answer.

21 Q. Yes, sir. This is in your statement and you say that they are pushed back to the
22 airstrip. Of course that is Mongbwalu. So I'm just saying are you changing this
23 testimony? This comes from you.

24 PRESIDING JUDGE FREMR: Ms Sim.

25 MS SIM: My friend I believe is referring to the last sentence of paragraph 23 and there is

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1 no mention of the airport there.

2 PRESIDING JUDGE FREMR: Mr Bourgon.

3 MR BOURGON:

4 Q. Sir, the sentence here says, "Together with the APC they managed to push back the
5 UPC." Where did they push back the UPC?

6 A. The conflict between the Hema and the Ugandans took place in Bunia. That is
7 where the fighting took place.

8 Q. Sir, stop, stop, stop, stop.

9 A. And the Ugandans had control of the airport.

10 Q. I'll make my question very clear. We are in the first attack, we are in your
11 statement and you say, "Together with the APC they managed to push back the UPC."
12 Where did they push them back? That's all I want to know. Nothing more, just the
13 location.

14 A. Very well. During the first attack they came to capture Mongbwalu, but they did
15 not succeed. They were pushed back on the first day and they went back, they retreated.

16 Q. I'll leave it at that. I'll move to my next question. Also in paragraph 23 you say
17 that, I quote from your statement, just tell me yes or no, "The Lendu who participated in
18 the fightings had arrows and machetes." Do you maintain this sentence?

19 A. Yes. At the beginning of the fighting they used arrows and machetes.

20 Q. And sir, I suggest to you by the time the first attack took place the Lendus were
21 already well armed. Does that refresh your memory? With fire weapons.

22 A. During the first attack when they arrived in Mongbwalu, there were no Lendu
23 troops. Those who were there were Lendu combatants. They were known as Lendu
24 combatants and they had knives and arrows and machetes. They worked together with
25 the APC and fought together with them. Now, after each battle, they were able to

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1 recover some weapons which they then took for themselves.

2 Q. Sir, my question is very simple. During the first attack do you maintain that the
3 Lendus only had machetes and arrows?

4 PRESIDING JUDGE FREMR: Mr Bourgon, asked and answered.

5 MR BOURGON: I move on Mr President.

6 Q. What I'm interested in, Mr Witness, at this time is what happened to the civilians?
7 Now, yesterday you were asked a question and you provided the following answer.
8 This is at page 127 and from lines 5 to 10. I would read this to you. I would like you to
9 listen carefully.

10 "Mr Witness, in your statement you speak when you returned from the war to
11 Mongbwalu. Can you describe how you found your house when you went back to your
12 house?"

13 Listen carefully to your answer: "From the battle we left the town to go to camp Sayo
14 because the Lendu combatants were there. Now as it was above a hill we could see
15 Mongbwalu well and that happened four times."

16 Do you maintain this testimony from yesterday?

17 A. Yes.

18 Q. And the next sentence goes as follows: "The first time we went back, there was no
19 damage."

20 Do you maintain this testimony?

21 A. When we went back for the first time, since they were unable to take control of the
22 city, all that happened was that there was no damage as such except for people who died,
23 people who were killed.

24 Q. Thank you. My understanding of your -- this information concerning the civilians
25 is that every time there was some fighting in Mongbwalu the civilians would all go to

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1 camp Sayo. That was standard procedure and it happened all the time. Would you
2 agree with me?

3 A. Yes, that is correct.

4 Q. I move, sir, to the second attack. In paragraph 32 you say that it happened about
5 one week and a half later. Do you maintain this?

6 A. Yes, that is correct. I am not able to give you the specific date, but that's how it
7 happened.

8 Q. Now in paragraph 32 you mention -- and I'm not quoting, I just want you to confirm,
9 that when the second attack begins, the APC (Redacted) and the Lendus are defending. Do
10 you agree with that?

11 A. Yes, I agree with that.

12 Q. And in paragraph 33 you also mention that this attack was expected following the
13 first attack, right?

14 A. Yes, that is correct.

15 Q. (Redacted)

16 (Redacted)

17 A. (Redacted)

18 (Redacted)

19 (Redacted)

20 Q. And, sir, I take it you confirm what is in your statement that the second attack lasted
21 for four days; that's correct?

22 A. There were four different attacks.

23 Q. Sir, I am referring to the second attack, the one that happened that we are talking
24 about a week and a half later and in paragraph 34 you mention that it lasted four days.

25 The words are, "The attack lasted for four days." So you maintain this, right?

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1 A. The attacks sometimes lasted for a number of days, not just hours. The first time I
2 recall was a number of hours, but the other attacks came up against a lot of resistance and
3 lasted a number of days.

4 Q. Sir, according to your statement the second attack started again at the airstrip at
5 5 o'clock in the morning. Do you recall this?

6 A. Yes, 5, 5, 5.30, yes, still at the airstrip, at the airport.

7 Q. (Redacted)

8 (Redacted)

9 A. (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 Q. (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 A. (Redacted)

20 Q. (Redacted)

21 (Redacted)

22 (Redacted)

23 A. (Redacted)

24 (Redacted)

25 (Redacted)

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1 Q. (Redacted)

2 A. (Redacted)

3 (Redacted)

4 Q. And, sir, I now move to paragraph 33 of your statement and you mention here, and
5 that's what I'm interested in at the end of the paragraph, "Whenever there was a gunshot,
6 everyone fled to Sayo." Do you stand by this testimony, sir?

7 A. Yes, that is correct.

8 Q. And in the same paragraph it says, "We all fled to Sayo." And then it goes on to
9 say that "After the first day, Mongbwalu was still under the control of the APC and the
10 Lendu." Do you agree with that? This is your statement.

11 A. Yes. We fled to Sayo and at that time they were the ones in control of the area.

12 Q. Sir, in paragraph -- in the following paragraph, you explained where the troops are
13 at the end of the first day. I just suggest to you the Hema are still at the airstrip. You
14 agree with that?

15 THE INTERPRETER: Message from the booth, the Swahili booth: Could the witness be
16 invited to please kindly -- the Lingala booth, rather: Could the witness be invited to
17 kindly repeat his answer, Mr President.

18 PRESIDING JUDGE FREMR: Mr Witness, could you kindly repeat your last answer
19 because it was not completely captured by the interpreters.

20 THE WITNESS: (Interpretation) Could counsel please put the question again?

21 PRESIDING JUDGE FREMR: Mr Bourgon, maybe you missed my guidance, but please
22 repeat the last question. Mr Witness asked for that.

23 MR BOURGON: Thank you, Mr President.

24 Q. I will move on to another question --

25 PRESIDING JUDGE FREMR: But first we would like you to repeat the last question

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1 because Mr Witness, his response was not captured, so he asked us or asked you to repeat
2 your question, then he will respond.

3 MR BOURGON: Due to lack of time, I'm not interested in this answer anymore,
4 Mr President.

5 PRESIDING JUDGE FREMR: All right then.

6 MR BOURGON:

7 Q. Sir, what is important to me is that at the end of the first day, you already mentioned
8 who was in control. Now I move to the second day of this attack. And on day two of
9 the attack, I understand that the fighting lasted all day. That is in paragraph 34. Do
10 you agree with that?

11 A. Yes. The fighting lasted an entire day.

12 Q. My understanding, sir, is that this fighting on the second day does not involve
13 civilians because all civilians are gone to Sayo. Would you agree with that?

14 A. When I talk about civilians, this is what I mean, anybody who was Lendu, including
15 women, all of them took up their machetes and went to fight while the children and
16 people from other provinces fled to Sayo.

17 Q. (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 A. (Redacted)

24 (Redacted)

25 (Redacted)

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- 1 Q. (Redacted)
- 2 (Redacted)
- 3 A. (Redacted).
- 4 Q. (Redacted)
- 5 (Redacted)
- 6 A. (Redacted).
- 7 Q. (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 A. (Redacted)
- 11 Q. (Redacted)
- 12 (Redacted)
- 13 A. (Redacted)
- 14 (Redacted)
- 15 Q. (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 A. (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 Q. (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 A. (Redacted)

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- 1 (Redacted)
- 2 (Redacted)
- 3 Q. (Redacted)
- 4 (Redacted)
- 5 A. (Redacted)
- 6 Q. (Redacted)
- 7 A. (Redacted)
- 8 (Redacted)
- 9 Q. (Redacted)
- 10 (Redacted)
- 11 A. (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 PRESIDING JUDGE FREMR: For sure.
- 15 Court usher, please assist Mr Witness.
- 16 THE WITNESS: (Interpretation) Thank you.
- 17 (The witness stands down)
- 18 PRESIDING JUDGE FREMR: It's true, we will use this time for delivery of two oral
- 19 rulings that we originally intended to deliver at the end of this session, but I think nothing
- 20 prevents from doing it now. But we will have to move into open session for that
- 21 purpose.
- 22 (Open session at 3.07 p.m.)
- 23 THE COURT OFFICER: We're in open session, Mr President.
- 24 PRESIDING JUDGE FREMR: Actually the first one will be delivered in public but the
- 25 second one will be delivered in private session.

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1 The first ruling concerns Defence request for disclosure of the biographic data and
2 security questionnaire, the so-called BSQ, relating to Witness P-888 contained in filing
3 1392.

4 After the Chamber shortened the deadline by way of email, the Prosecution responded on
5 16 June 2016 in filing 1401.

6 The Chamber notes that the Defence request was based on a speculative assessment of the
7 likely content of the BSQ, having reviewed an investigation note which had been
8 disclosed summarising certain of its content. While noting that responsibility for making
9 an assessment of the materiality of information for disclosure purposes rests with the
10 Prosecution in the first instance, the Chamber found it appropriate on this occasion to
11 request a copy of the BSQ in order to facilitate its assessment. Having reviewed the
12 relevant material, the Chamber confirms that all information contained within the BSQ
13 that is subject to a disclosure obligation has been disclosed to the Defence by way of the
14 investigation note, and considers that any further disclosure would be merely duplicative.
15 In these circumstances, the Chamber rejects the Defence's request.

16 So that concludes the first oral ruling. And the second one will be delivered at the end of
17 the session.

18 (The witness enters the courtroom)

19 PRESIDING JUDGE FREMR: Now let's continue with cross-examination of the witness.

20 And kind reminder, Mr Bourgon, you still have 14, one-four, 14 minutes.

21 MR BOURGON: Thank you, Mr President.

22 Q. Sir, I read from paragraph --

23 PRESIDING JUDGE FREMR: I'm sorry, because in the meantime, we moved into open,
24 so we have to return back into private session.

25 (Private session at 3.10 p.m.) *(Reclassified partially in public)

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

2 PRESIDING JUDGE FREMR: Thank you, court officer.

3 Mr Bourgon, please proceed.

4 MR BOURGON: Thank you, Mr President.

5 Q. (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 A. (Redacted)

11 (Redacted)

12 (Redacted)

13 Q. (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 A. (Redacted)

19 (Redacted)

20 Q. (Redacted)

21 (Redacted)

22 (Redacted)

23 A. (Redacted)

24 (Redacted)

25 Q. (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 A. (Redacted)

5 (Redacted)

6 Q. (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 A. (Redacted).

12 Q. (Redacted)

13 (Redacted)

14 (Redacted)

15 A. (Redacted)

16 (Redacted)

17 Q. (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 PRESIDING JUDGE FREMR: (Redacted)

25 MS SIM: (Redacted)

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1 A. (Redacted)

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7 (Redacted)

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11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 Q. I'll stop here, Mr Witness.

21 MR BOURGON: I have four questions left, with the leave of the Chamber.

22 PRESIDING JUDGE FREMR: No, Mr Bourgon, you are just over your time last question
23 and you have to finish.

24 MR BOURGON:

25 Q. Mr Witness, you spoke in your statement about looting and you answered some

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1 questions from my colleague from LRV, your Legal Representative, about the fact that all
2 your belongings were stolen. My question is: When you saw these belongings no
3 longer in the house that was yours, this is when you returned to Mongbwalu much later,
4 is it not, sir?

5 A. Yes. Some days later when things had calmed down we returned. (Redacted)

6 (Redacted)

7 (Redacted)

8 Q. Sir, our case is that you left Sayo before the UPC came in and you have no idea who
9 took the goods from your house in Mongbwalu? That's my last question, sir.

10 A. I couldn't know and that's what I told you. When there's pillaging you can't know
11 who carried out the pillaging. All that we were able to find out was that there was a
12 group of people who carried out the pillaging, but it wasn't possible to know personally.

13 PRESIDING JUDGE FREMR: Thank you, Mr Witness.

14 Now let's move into open session.

15 (Open session at 3.28 p.m.)

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

17 PRESIDING JUDGE FREMR: (Microphone not activated)

18 MR BOURGON: I just wanted to say thank you to the witness, Mr President.

19 PRESIDING JUDGE FREMR: All right. Now I am turning to Ms Sim.

20 Ms Sim, any request for redirect?

21 MS SIM: I have one question that I would like to ask.

22 PRESIDING JUDGE FREMR: Please go ahead.

23 QUESTIONED BY MS SIM:

24 Q. Mr Witness, opposing counsel asked a question of you about the second attack
25 starting at the airstrip at 5 a.m., we're talking about Mongbwalu. And I would like you

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1 to refer to the map of Mongbwalu that you drew and tell the Chamber whether or not the
2 location of the airport is depicted on that map.

3 So if we could pull up the map it's DRC-2076-0211?

4 A. Could I be shown that map on the screen maybe so that I can take a look at it.

5 Q. Absolutely. It's going to be up on your screen in just a minute. Can you see the
6 map now, Mr Witness?

7 MS SIM: I understand it's upside down. Is there a way we could rotate it so that the
8 signature is at the top? Perhaps not. Perhaps not.

9 THE COURT OFFICER: The signature was at the top.

10 THE WITNESS: (Interpretation) The airstrip is right here, just above here. Here.

11 THE INTERPRETER: Says the witness.

12 MS SIM:

13 Q. Now unfortunately we can't see what you're pointing at. So if you could perhaps
14 situate the location of the airport against maybe other words or something else on the
15 picture so that we could know what you're speaking about. Maybe you could circle the
16 location of the airport.

17 PRESIDING JUDGE FREMR: It would be ideal.

18 MS SIM: Thank you very much.

19 And at this point, Mr President, if we could submit this additional version of the map as
20 an exhibit. Thank you.

21 PRESIDING JUDGE FREMR: Defence, any objection to that?

22 MR BOURGON: No objection, Mr President.

23 PRESIDING JUDGE FREMR: So this map or sketch, now newly annotated and indicated
24 where is the airport is admitted -- by the witness, is admitted into evidence as a further
25 Prosecution exhibit.

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1 So that's it, madam?

2 MS SIM: That's it. Thank you.

3 PRESIDING JUDGE FREMR: Very well.

4 Now, Defence, any request for a recross?

5 MR BOURGON: Well, just on the same exhibit, I just may have like one marking and
6 admit the exhibit.

7 PRESIDING JUDGE FREMR: All right.

8 QUESTIONED BY MR BOURGON:

9 Q. Mr Witness, now that you have the pencil with you, I'd just like you to circle camp
10 Baru where you say there was a group that came in for the second attack at 8 o'clock.

11 THE COURT OFFICER: Mr Bourgon, just a clarification, would you like the witness to
12 circle the same map or would you like to have a new version of the original map?

13 MR BOURGON: The same is fine with me.

14 PRESIDING JUDGE FREMR: No problem with the Chamber.

15 THE WITNESS: (Interpretation) Very well. The airport is here, the military camp is
16 here. Between the airport and the military camp there is a bush. The military camp is
17 in one area and the airport as well but then there is a footpath that goes from there to
18 camp Baru. There is another footpath that goes towards camp Sindangombe, right here.
19 Camp Baru, from camp Baru there is another footpath that goes to the centre and all the
20 way to Sayo. This other footpath goes to Pluto. Then we have here the, the cemetery
21 where people are buried and then we have a footpath there which goes all the way to
22 Sindangombe camp, and then there are several footpaths all over.

23 PRESIDING JUDGE FREMR: Mr Witness, the easiest way would be if you just make a
24 circle about the place where according to you is camp Baru on the sketch again, like you
25 did it with airstrip.

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1 THE WITNESS: (Interpretation) Baru is here.

2 PRESIDING JUDGE FREMR: We can see it is on the left.

3 MR BOURGON:

4 Q. And, sir, can you make a circle around BMO, the feature called BMO we referred to
5 earlier where you say a meeting was held on the fourth day of the battle?

6 A. Camp Sayo, at camp Sayo there is a playground for the school.

7 Q. Sir, I was referring to the place called BMO in Mongbwalu which you referred to in
8 your statement, BMO.

9 A. BMO is here. Here. BMO is a school and there is -- there was a camp there as well
10 and that camp was known as the BMO camp.

11 Q. And this is the place where the meeting took place on the fourth day of battle; that's
12 your testimony?

13 A. Well, that is where the Lendu held a meeting at which they said that Mongbwalu
14 should be liberated because their ancestors had said that they were no longer able to -- to
15 have victory in this battle.

16 PRESIDING JUDGE FREMR: Mr Bourgon, you are beyond the scope of redirect, so you
17 are --

18 MR BOURGON: I'm finished.

19 PRESIDING JUDGE FREMR: -- you are (Overlapping speakers).

20 MR BOURGON: I just made markings and I'm finished. I just him to sign and it's over.

21 PRESIDING JUDGE FREMR: All right. So are you tendering this?

22 MR BOURGON: Yes, I would like to tender this in evidence with the witness's signature
23 and that is it, Mr President.

24 PRESIDING JUDGE FREMR: Ms Sim.

25 MS SIM: Seeing that we now have four markings and four circles, I'm wondering if it

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1 wouldn't be a good idea to maybe have the witness indicate one, two, three, four for each
2 of the four places that he spoke about in order so that there's no problem later when
3 people are looking back at this map.

4 PRESIDING JUDGE FREMR: (Microphone not activated)

5 Sorry, sorry, once more.

6 Mr Witness, please add apart of those circles also numbers as you gradually indicated
7 those places starting with, I think the airstrip was number 1. So make just number 1
8 close to the circle. Yes. Then the second point was camp Sayo, if I am not wrong.

9 MS SIM: I believe the second was the military camp.

10 PRESIDING JUDGE FREMR: You are right. The second was the military camp.

11 Sorry, Witness, it was number 3, am I right? Nice exercise. So, Mr Witness, sorry, it
12 was number 3, camp Sayo was number 3. Sorry for confusing you. Then strike number
13 3. It was number 2 if I am not wrong. Strike 3 and make 2. And then the last point is
14 Baru, if I am not wrong, it is number 4. But I think it's anyway clear from your sign
15 there.

16 So this sketch additionally annotated by points 2, 3 and 4 on the request of the Defence
17 counsel is admitted into evidence as a further Defence exhibit.

18 Thank you very much, Mr Witness. And now there is also -- Mr Bourgon.

19 MR BOURGON: Just one quick point, Mr President. Just as the witness, before he
20 leaves, I would like to seek to have admitted in evidence for the sake of impeachment the
21 Demande de participation pour les victimes, a document that was referred to with the
22 witness. He provided many answers in respect of paragraphs 1, 2 and 3. He also
23 referred to the second page and he also referred to the fourth page and the document that
24 comes from the officier de l'état civil.

25 Our submission, Mr President, this document is necessary for the Chamber's evaluation of

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1 the testimony of this witness. The number of the document is DRC-OTP-2090-0099 and it
2 is a five-page document going until 0103. We believe that this is relevant, has probative
3 value and of course it is only being admitted for the purpose of impeachment.

4 Thank you, Mr President.

5 PRESIDING JUDGE FREMR: Prosecution, any objection?

6 MS SIM: We object to the admission of the document simply because the portions that
7 Defence counsel suggest impeach the witness have all been read into the record, so
8 it's -- there's no need to put the document itself in.

9 PRESIDING JUDGE FREMR: I think we will be in harmony with our previous decision
10 because, in fact, it was almost the same issue. Just to have a clear picture what are the
11 discrepancies, if any, between this and his testimony we, as already did, we admit also
12 this evidence -- this exhibit into evidence just for the purpose of witness impeachment.
13 So now we are done with redirect and recross. There is also some space for Chamber to
14 put questions, if any.

15 I have two questions or two issues that I would like to clarify with you, Mr Witness.

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 We are in -- oh, so let's move into private session for this response because it could reveal
21 identity of the witness.

22 So hold on, Mr Witness.

23 (Private session at 3.42 p.m.) *(Reclassified partially in public)

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

25 PRESIDING JUDGE FREMR: (Redacted)

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- 15 (Redacted)
- 16 (Redacted)
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- 18 (Redacted)
- 19 (Redacted)
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- 24 (Redacted)

25 PRESIDING JUDGE FREMR: It's sufficient to me. It's sufficient to me, Mr Witness, and

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(Private Session)

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1 I have the last additional question. And you also said, "Some Hema returned to
2 Mongbwalu when the UPC took control of the town." So I understood from that that
3 there were no Hema and also no Lendu. When the UPC started its attack on Mongbwalu,
4 there were no Lendus because they were all relocated?

5 THE WITNESS: (Interpretation) If I am not mistaken, during that security meeting
6 which took place in 1999, if I am not mistaken --

7 PRESIDING JUDGE FREMR: Mr Witness --

8 THE WITNESS: (Interpretation) During that meeting --

9 PRESIDING JUDGE FREMR: Sorry, I have to interrupt you. What I am interested is
10 not -- we already dealt what security meeting decide on. I'm interested in the fact
11 whether, when the UPC attacked Mongbwalu, whether there were some Lendu in the
12 city.

13 THE WITNESS: (Interpretation) The Lendus had already gone back to Mongbwalu.

14 PRESIDING JUDGE FREMR: All right then. I don't have any further questions for our
15 witness.

16 Do my colleagues have any questions?

17 No. No.

18 So, Mr Witness, it concludes your testimony. I would like on behalf of this Chamber
19 thank you very much because I can imagine that it was very exhaustive exercise to come
20 and to respond for two days many questions. So I thank you very much because I
21 believe that your testimony will assist us in our effort to find the truth. So thank you
22 very much, Mr Witness, and we wish you safe journey home.

23 And now, court officer, please guide Mr Witness out of the courtroom.

24 I'm sorry, I should had done this in open session, but --

25 THE WITNESS: (Interpretation) I also want to thank you for giving me the

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1 opportunity to express myself here, but I call on you to help Africa because people are
2 being killed in Africa, many people are being killed in Africa. *People in authority in
3 Africa should know that you cannot hold authority after having shed a lot of blood.
4 Please help the Congo. Thank you so much for the opportunity you have given me to
5 express myself here. (The witness is excused)

6 PRESIDING JUDGE FREMR: And we will remain in private session because the
7 remaining second oral ruling has to be made in private session.

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

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14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

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25 (Redacted)

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(Private Session)

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1 (Redacted)

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3 (Redacted)

4 (Redacted)

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6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 This concludes this Chamber's ruling.

12 Now we may move into open session.

13 (Open session at 3.57 p.m.)

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

15 PRESIDING JUDGE FREMR: Thank you, court officer.

16 So we are going to continue on Monday with testimony of Witness P-888. And before we
17 adjourn, are there any requests for the floor?

18 Mr Bourgon, please.

19 MR BOURGON: Thank you, Mr President. We just finished the testimony of Witness

20 P-894 and pursuant to Rule 68(3) it is a first, according to 68(3), of course there was an

21 expert witness earlier on, but it is the first one. In this case, Mr President, we had a

22 statement that was in English and the witness was not able to read the statement. I think

23 it is important and I simply make a suggestion that if we are going to have many

24 witnesses pursuant to Rule 68(3), it is important that they have a statement that they can

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1 read so that we can accelerate the process during the asking of questions.

2 So I'm just making this suggestion both to the Prosecution and the Chamber because the
3 resources are in your hands and certainly not in the Defence's hands, and I think it would
4 be something that would make the process much better and be in the interest of justice.

5 Thank you.

6 PRESIDING JUDGE FREMR: Before I give the floor to Prosecution, the problem is if the
7 original statement had been made in the other language, then it should be just translated.

8 But anyway, Prosecution, you have the floor.

9 MR IVERSON: Thank you, Mr President. I understand Defence counsel's suggestion
10 and concerns. I can't make any promises on that right now because that involves
11 resources so I would have to go back to talk to other Prosecution staff to see about the
12 possibility of that. So that's all I have to say about that. I don't think I can make any
13 promises or positions of the Prosecution at this time.

14 PRESIDING JUDGE FREMR: All right. Well noted.

15 So now we adjourn and we will continue on Monday, 9.30.

16 THE COURT USHER: All rise.

17 (The hearing ends in 3.59 p.m.)

18 RECLASSIFICATION REPORT

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