

Trial Hearing
Witness: DRC-OTP-P-0127

(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 3
8 Tuesday, 27 September 2016
9 (The hearing starts in open session at 9.01 a.m.)
10 THE COURT USHER: [9:01:09] All rise.
11 The International Criminal Court is now in session.
12 PRESIDING JUDGE FREMR: [9:01:18] Good morning everybody.
13 Court officer, please call the case.
14 THE COURT OFFICER: [9:01:22] 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: [9:01:37] Thank you, court officer.
19 Now appearances please as usually.
20 MS SAMSON: [9:01:41] Good morning, Mr President, and your Honours. For the
21 Prosecution today are Ms Kristy Sim, assistant trial lawyer; Ms Selam Yirgou, case
22 manager; and myself, Nicole Samson, senior trial lawyer.
23 PRESIDING JUDGE FREMR: [9:01:54] Thank you, Ms Samson.
24 Defence, please.
25 MR GOSNELL: [9:01:58] Good morning, Mr President, Christopher Gosnell for

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- 1 Mr Ntaganda, who is not present, accompanied by Isabelle Martineau and
2 Maria-Kim Vasconi. Thank you, Mr President.
- 3 PRESIDING JUDGE FREMR: [9:02:09] Thank you, Mr Gosnell.
- 4 Now Legal Representatives of Victims, please.
- 5 MS PELLET: [9:02:16] (Interpretation) Thank you, your Honour. The former child
6 soldiers --
- 7 PRESIDING JUDGE FREMR: [9:02:26] Any problem with translation?
- 8 MS PELLET: [9:02:28] (Interpretation) No, I am waiting for the interpreter to finish.
- 9 The former child soldiers are represented by Mohamed Abdou and by myself,
10 Sarah Pellet, counsel with Office of Public Counsel for Victims.
- 11 MR SUPRUN: [9:02:45] (Interpretation) Good morning, your Honour, your Honours.
- 12 The victims of the attacks are represented by the Office of Public Counsel for Victims,
13 Anne Grabowski, associate lawyer, and myself, Dmytro Suprun, counsel.
- 14 PRESIDING JUDGE FREMR: [9:02:58] Thank you, Ms Pellet. Thank you, Mr Suprun.
- 15 Before we start with the rest of cross-examination just as concerns timing, this session,
16 because of some organisational matters, will continue till 10.55, and Mr Gosnell still has
17 2 hours 26, if I'm not wrong, so it is likely that this session or cross-examination will spill
18 over to the next session. If not, it will be better, but we will see.
- 19 Mr Gosnell, you have the floor.
- 20 And last point: Mr Witness, are you okay today?
- 21 WITNESS: DRC-OTP-P-0127 (On former oath)
22 (The witness speaks French)
- 23 THE WITNESS: [9:03:58] (Interpretation) Very well, thank you.
- 24 PRESIDING JUDGE FREMR: [9:03:59] I'm glad to hear that. And usual reminder, you
25 are still under oath which means you have to speak the truth and nothing but the truth.

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1 Now, Mr Gosnell, you have the floor. And do you want to proceed in open or in private
2 session?

3 MR GOSNELL: [9:04:13] Private session will be necessary for the moment,
4 Mr President.

5 PRESIDING JUDGE FREMR: [9:04:16] Understandable.

6 Court officer, let's move into private session

7 (Private session at 9.04 a.m.) *(Reclassified partially in public)

8 THE COURT OFFICER: [9:04:28] We're in private session, Mr President.

9 PRESIDING JUDGE FREMR: [9:04:37] Thank you, court officer.

10 Mr Gosnell, please proceed.

11 MR GOSNELL: [9:04:40] Mr President, I plan in the course of my cross-examination to
12 now refer quite frequently to the witness's prior statements. I have hard copies available
13 for your Honours, and with your permission I would ask that you receive those
14 documents so that we can facilitate matters.

15 PRESIDING JUDGE FREMR: [9:05:00] Very well.

16 Court officer, please assist.

17 QUESTIONED BY MR GOSNELL: (Continuing)

18 Q. [9:05:09] Good morning, Mr Witness.

19 A. [9:05:18] Good morning.

20 Q. [9:05:20] I'd like to go back, Mr Witness, to the document we were looking at, at
21 the end of yesterday's session, and that is DRC-OTP-2055-1356, which is tab 6. And
22 you'll remember -- and this document is coming up on the screen in front of you,
23 Mr Witness, but just from your recollection you will remember that I was asking you at
24 the end of yesterday about the meeting that is referred to and memorialised ostensibly in
25 (Redacted) a meeting, which, according to the notes, was a meeting of the

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1 (Redacted) And you had informed us that

2 you did not recollect any mention during this meeting of any group (Redacted) and

3 you had told us that you didn't remember any discussion of pillage by the jeshi against

4 Lendu. Do you remember all that?

5 A. [9:07:16] Indeed, I don't remember this abbreviation that you're referring to here

6 and even less do I remember this pillaging of Lendu combatants against the population.

7 I don't remember (Redacted)

8 MR GOSNELL: [9:07:44] I'm just waiting for the document, Mr President.

9 THE COURT OFFICER: [9:07:47] I just have a question: When you're mentioning the
10 ERN number, it refers to the notebooks, not to the prior statement; is that right?

11 MR GOSNELL: [9:07:56] Correct.

12 Q. And if we could turn over to page 1351, and my very -- or one of my very last
13 questions at the end of yesterday was whether you remember anything about who gave a
14 response to these allegations and you said that it was (Redacted)

15 Now, can I just clarify, and perhaps we can zoom in on the left side of the page so that the
16 witness can see the words.

17 Am I correct, given that you don't remember any discussion about pillage and you don't
18 remember discussion about the (Redacted), that you infer that it was (Redacted) who
19 responded because you know that he was (Redacted)

20 A. [9:09:38] When you read the same paragraph, if you read the last sentence, it's
21 clearly written. (Redacted)

22 I also read that with you because yesterday, when you speak about (Redacted)

23 (Redacted)

24 (Redacted)

25 Q. [9:10:20] Let me just stop you there because my question was a bit more precise.

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1 It's simply this: Do you remember, do you have a present recollection, a present memory,
2 of (Redacted) giving a response to these issues?

3 A. [9:10:46] I don't remember. It was almost 13 years ago that this meeting took
4 place. I don't remember. I don't remember the answer, the explanations that (Redacted)
5 allegedly gave as regards pillaging in jeshi of the civilian population.

6 Q. [9:11:13] Let me make the question more general then: Do you have any memory
7 at all of discussion of management of the jeshi or any discussion about the jeshi at all
8 during this meeting which you testified you attended?

9 A. [9:11:55] Really, once again, I'd like to repeat, this meeting of 26 January 2003, if I'm
10 not mistaken, was 13 years ago. Imagine if in 13 years' time -- well, you can't remember
11 some events clearly. Here I wouldn't have explanations or clear answers to be able to
12 give you with regard to the behaviour of the jeshi with regards to the civilian population.

13 Q. [9:12:43] Can you remember seeing (Redacted) during the
14 meeting?

15 A. [9:13:06] I don't remember very well (Redacted)
16 (Redacted) I don't remember the place where the -- it took place, the meeting took place.

17 Q. [9:13:25] You've testified you're familiar with (Redacted) It
18 appears to me that these notes are extremely neat and well-written; do you agree with
19 that?

20 A. [9:14:00] Whether they're clearly written (Redacted), well, imagine -- this takes me
21 all the way back to the same answer. If I could remember how this meeting went, I
22 would have answered the previous questions, but I just don't remember well. And as
23 such, it's difficult for me to give you a precise answer with regards to your questions.

24 Q. [9:14:35] Can you recall (Redacted)
25 after the meeting?

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1 A. [9:15:06] (Redacted)

2 Q. [9:15:17] Let's look at one more passage, striking passage, perhaps it will jog your
3 memory.

4 And if we could turn to the previous page, 1350, (Redacted), if we could zoom in on that.

5 Now, Mr Witness, there are some terms here that I don't know very well so I would ask
6 for your assistance, please, to read the passage starting at (Redacted) and finishing with the
7 word (Redacted) And if you could read that out loud for us, that would be very helpful,
8 Mr Witness.

9 A. [9:17:00] (Redacted)

10 Q. [9:17:02] Yes.

11 A. [9:17:03] (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 Q. [9:18:11] Thank you. And am I correct that the word Bale is another word for
18 Lendu?

19 A. [9:18:26] Yes, Bale is the Lendu, in the Lendu language.

20 Q. [9:18:37] And do you recall any discussion corresponding to this notation under
21 (Redacted) Was this discussed during the meeting on (Redacted) that you attended?

22 A. [9:19:07] With regards to the minutes of the meeting here, I think that it's important,
23 or perhaps it would be better to ask (Redacted) questions. You know, after the holding of a
24 meeting indeed, you make the minutes thereof, and the minutes of a meeting have to be
25 approved, they have to be adopted by the participants. I have the impression that he

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1 wrote -- yes, he wrote the minutes of the meeting, but I wonder if they were adopted by
2 the assembly. That's a question that I ask myself.

3 Q. [9:20:08] Mr Witness, I'm seeking to ascertain whether these notes are an accurate
4 reflection of what was actually said during the meeting, which is relevant for various
5 reasons that need not concern you. So my question is very simple, and that is whether
6 what is written at (Redacted) was discussed during the meeting, as best you can recall, yes or
7 no?

8 A. [9:20:51] I don't remember very well, but at least, as he wrote the minutes here, I
9 suppose this is a matter that was discussed. Of course, I suppose it was discussed during
10 the meeting, but I don't have a good memory of it.

11 Q. [9:21:08] So the answer to my question is no?

12 A. [9:21:22] What I said was I suppose that this point was discussed during the
13 meeting.

14 Q. [9:21:31] One more item, conveniently, it's on this page, down at the very bottom.
15 And, well, actually it is (Redacted), so it is on the facing page, and there's a reference to
16 (Interpretation) (Redacted)
17 (Redacted)

18 (Speaks English) Now does that reference to (Redacted) in that context assist you in any way
19 to remember what the (Redacted) was, what that term meant at the time?

20 A. [9:22:35] Well, what page is this?

21 Q. [9:22:38] Go up to the very top of the page, please. Yes, (Redacted) Mr Witness.

22 A. [9:23:00] Your question? What's your question on this point?

23 Q. [9:23:10] Does that reference to (Redacted) in this context, assist you
24 to remember what that term meant at the time, what it referred to?

25 A. [9:23:41] (Redacted) I don't remember very well this abbreviation.

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1 MR GOSNELL: [9:23:50] I'll be coming back to this document later but I'm done with it
2 for now.

3 Q. [9:24:03] Mr Witness, when did you first meet (Redacted)?

4 A. [9:24:29] Well, I don't remember the exact date I met (Redacted). I know it was
5 just after the attacks of the UPC on Lipri.

6 Q. [9:24:44] And where did you meet her?

7 A. [9:25:00] I met (Redacted) in Bunia.

8 Q. [9:25:04] Was that prior to the visit that we've seen on the video yesterday to Lipri
9 by members of MONUC?

10 A. [9:25:23] That's where I don't remember very well. In my previous statement I
11 didn't remember very well when the MONUC visit had taken place to Lipri.

12 Q. [9:25:42] Did you ever travel with (Redacted) anywhere, whether it be to Lipri or to
13 Kobu?

14 A. [9:25:58] Well, what I already mentioned in one of my previous statements, (Redacted)
15 (Redacted)

16 (Redacted)

17 (Redacted)

18 Q. [9:26:45] Do I understand that answer to mean then that (Redacted)
19 (Redacted)

20 A. [9:27:08] (Redacted)

21 (Redacted).

22 (Redacted)

23 Q. [9:27:28] (Redacted)

24 A. [9:27:38] Yes.

25 Q. [9:27:39] (Redacted)

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1 A. [9:27:54] (Redacted)

2 Q. [9:27:59] (Redacted)

3 (Redacted)

4 A. [9:28:24] (Redacted)

5 (Redacted)

6 (Redacted)

7 Q. [9:28:50] And precisely how did you introduce yourself? In what capacity did
8 you say you were there?

9 A. [9:29:17] Who I introduced myself to?

10 Q. [9:29:21] (Redacted)

11 A. [9:29:37] I don't know how I introduced myself to (Redacted) I don't
12 remember very well, but I do think that it was (Redacted) who presented me,
13 who introduced me, to (Redacted) but I
14 don't remember how I was introduced, who introduced me to (Redacted).

15 Q. [9:30:07] And you spoke to (Redacted) in
16 (Redacted) right?

17 A. (Redacted)

18 (Redacted)

19 MR GOSNELL: [9:30:51] May we have DRC-OTP-0152-0286, please. The number
20 again is DRC-OTP-0152-0286, it's tab 29. (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 Q. [9:32:38] (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 A. [9:34:23] (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 Q. [9:37:06] So there was a miscommunication that lead to this information appearing
24 in this report (Redacted)

25 A. [9:37:30] This information that refers to (Redacted)

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1 (Redacted).

2 Q. [9:37:47] How many jeshi were defending the village of Lipri at the time of the first
3 attack by the UPC on 17 February 2003?

4 A. [9:38:04] I beg your pardon, could you repeat your question?

5 Q. [9:38:07] Yes. Can you estimate, not an exact number, can you provide an
6 approximate number as to how many jeshi were defending the village of Lipri when it
7 was attacked by the UPC for the first time on 17 February 2003?

8 A. [9:38:40] Well, here, if you're referring to the jeshi and you're asking for an
9 approximate number, during the attack which took place on the 17th on Lipri, (Redacted)
10 (Redacted) therefore, I could not estimate the number of jeshi or Lendu combatants who
11 were fighting the UPC militia.

12 Q. [9:39:21] Let me reframe my question, Mr Witness. I'm not so concerned about
13 the exact day of 17 February, but I am interested to know during this time period in
14 general, and we've seen discussions (Redacted) concerning defence of the
15 village. Can you give us an estimation first as to how many armed individuals with
16 guns, which you have referred to as jeshi, were defending the village of Lipri?

17 A. [9:40:08] Well, as regards the number, they could be estimated at more than 40,
18 more than 40 jeshi or Lendu combatants who were bearing weapons.

19 Q. [9:40:33] And then how many other combatants were there, individuals who
20 you've referred to as combatants?

21 A. [9:40:50] How many? Well, that's a difficult question to answer. Well, as
22 regards their number, we did see them in the village. They were there. Well, some of
23 them were not armed, but we still referred to them as jeshi. Well, I would say that there
24 were approximately - and I insist the word approximately - around 100 individuals.
25 Some of them did not have weapons, but we still referred to them as jeshi. Others did

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1 have weapons.

2 Q. [9:41:44] And I fully understand your testimony (Redacted)

3 (Redacted) but are you in any position to give us an approximate

4 number of Lendu combatants in the area of Kobu, Bambu and Lipri in February 2003?

5 A. [9:42:17] Well, I really don't think I can answer that question, sir.

6 Q. [9:42:22] Fair enough.

7 MR GOSNELL: Could we have DRC -- well, it's a video so I'll ask that control be given

8 to the Defence computer. Tab 24, DRC-OTP-1033-0222, and the transcript, for those who

9 may have that, is DRC-OTP-2085-0452.

10 (Viewing of the video excerpt)

11 MR GOSNELL: [9:43:44] Let's stop there and just for the benefit of the witness,

12 let's -- and I realise that this is in Swahili and that we don't have direct translation of that,

13 but let's just have the witness listen to it again.

14 (Viewing of the video excerpt)

15 MR GOSNELL: [9:44:51] If we stop there.

16 Now, what we have on the -- on this video is a person who appears to be translating into

17 French for someone else who is speaking in Swahili.

18 Q. (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 A. [9:45:45] Yes.

25 Q. [9:45:49] And let's just go back again, and again the passage is 6.34 to 7.05.

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1 Now, first of all, well, let's continue a little further.

2 (Viewing of the video excerpt)

3 MR GOSNELL: [9:46:17]

4 Q. [9:46:17] Do you recognize this person, sir?

5 A. [9:46:30] I can see the one here in the foreground, I can see he was one of the Lendu
6 combatants, and the other one, he was the one who was the judge presiding in the Tsili
7 command.

8 Q. [9:46:57] And do you know the name of this individual pictured in the foreground
9 of this video still whom you've just described as being a Lendu combatant?

10 A. [9:47:17] I don't know his name. I recognize his face, but I don't know his name.

11 Q. [9:47:22] And do you know not only that he was a Lendu combatant but that in
12 fact he was a Lendu commander?

13 A. [9:47:36] Well, if he introduced himself as a commander, sir, I can tell you the
14 following: Somewhere I stated already that those groups were not all that well
15 organised. All it took was for someone to have participated in a counter-offensive and
16 done so bravely, they would self-declare themselves as commander, if you will. So to
17 say he was a commander is a very commonplace title.

18 So if he introduced himself as commander, fine, we can recognize him as a commander.

19 MR GOSNELL: [9:48:25] For the record, we're stopped at 6.35 of the video, and I tender
20 portion 6.34 through 7.05 of DRC-OTP-1033-0222.

21 MS SAMSON: [9:48:56] No objection from the Prosecution, your Honour.

22 PRESIDING JUDGE FREMR: [9:49:00] Thank you.

23 MR GOSNELL: [9:49:08] Does his estimate that --

24 PRESIDING JUDGE FREMR: [9:49:10] Sorry, so this excerpt is admitted into evidence
25 as a further Defence exhibit.

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1 MR GOSNELL: [9:49:22] Let's just look at one more document, please, which is on this
2 subject, which is DRC-OTP-0195-1557.

3 Q. [9:49:46] Who is a person named (Redacted) Do you know someone named
4 (Redacted)

5 A. [9:50:08] Sorry, there's no picture on the screen.

6 Q. [9:50:11] I don't want you to refer to anything on the screen. I want to ask a
7 question before anything is on the screen. Do you know someone named (Redacted)
8 (Redacted)

9 A. [9:50:32] Yes, I know (Redacted)

10 Q. [9:50:35] And he was --

11 A. [9:50:36] Sorry, if you're referring to the (Redacted), there may be several, but if it's
12 the (Redacted)

13 Q. [9:50:53] And did you ever undertake any missions on his behalf in relation to
14 FRPI forces?

15 A. [9:51:12] Undertake a mission with him?

16 Q. [9:51:15] Not a military mission necessarily, (Redacted)
17 (Redacted)

18 A. [9:51:40] Well, to act on his behalf, you mean represent him? I'm not sure I
19 understand your question.

20 Q. [9:51:47] Yes, represent him.

21 A. [9:51:57] Well, I don't remember having represented (Redacted), who was a
22 combatant, one of the commanders in Lipri. I don't remember that.

23 MR GOSNELL: [9:52:13] May we show the document for the witness, and again it is
24 DRC-OTP-0195-1557.

25 Q. This is a document entitled (Redacted), tab 32. Paragraph 2

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1 discusses contacts with (Redacted) Paragraph 3 reads, quote: (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 Do you remember, sir, having undertaken this mission or this task?

10 A. [9:54:22] Thank you very much. Thank you for your question. Here there's

11 mention of (Redacted)

12 (Redacted) Unfortunately, it's in English. Perhaps the

13 text can be translated into French so I can understand it better. Is that possible?

14 Q. [9:55:03] It should have been translated into your earphones. I'm not sure if

15 you're on the right channel.

16 A. [9:55:16] Thank you very much. So they're presenting (Redacted)

17 (Redacted)

18 (Redacted)

19 Your Honour, I can give you a very clear explanation as regards this paragraph 3 here.

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 Now, in this third paragraph here, (Redacted)

25 (Redacted) there was -- it was the

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- 1 (Redacted) So if -- it may be, indeed, that they thought that (Redacted)
- 2 (Redacted) I can understand that, but that on
- 3 a particular day (Redacted) who was always working in favour of peace, and in
- 4 particular, as regards the arrival of the Artémis forces in Ituri and (Redacted)
- 5 (Redacted)
- 6 (Redacted) I
- 7 remember rather vaguely, but we went there and I remember writing about the situation
- 8 in Lipri. (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted) Imagine, imagine their
- 16 organisation. We had no idea what it was all about. (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 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 So to say that I represented (Redacted) how could that be the case? My being a

7 civilian, how could I represent a soldier, a military person? (Redacted)

8 (Redacted)

9 (Redacted)

10 That needs to be corrected, please. So what is it that it says here, what were we supposed

11 to do? I am reading it in English, he reported that the group -- what is -- what does it say

12 further on? (Redacted)

13 Q. [10:02:49] I'm not asking about paragraph 2, and I believe that you've answered my

14 question, certainly to my satisfaction, and I believe the rest of the Court as well. And I'll

15 move on - and thank you for your answer - to ask you how long in time, and you can

16 give us a time, specific time frame, how long in time did the (Redacted) and

17 you used that term yesterday, (Redacted) how long in time did that

18 last?

19 A. [10:03:38] (Redacted)

20 Q. [10:03:43] You testified yesterday that prior to the pacification meeting to which

21 Lendu were invited by Salumu, (Redacted)

22 (Redacted) And my question for you is simply

23 this, and it is a very focused question: How long did that (Redacted)

24 A. [10:04:24] Well, let me situate the question.

25 Q. [10:04:27] Mr Witness, I would appreciate just getting a simple straightforward

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1 answer to my question, how long in time, if you can recall, the meeting lasted?

2 A. [10:04:48] Well, I could imagine about two hours. I would estimate it about two
3 hours, the duration of that meeting.

4 Q. [10:04:57] And as far as you know, was there only (Redacted)

5 (Redacted)

6 (Redacted)

7 A. [10:05:22] Well, according to my knowledge, (Redacted)

8 (Redacted)

9 Q. [10:05:37] (Redacted)

10 A. [10:05:55] (Redacted) Well, I don't really

11 remember whether I saw that letter, but it was during this first meeting here that we

12 spoke about what Commander Salumu had written, a letter, according to which, he asked
13 for a meeting in Sangi.

14 Q. [10:06:20] Well, Mr Witness, yesterday, at line 20 of page 27 of the transcript, you
15 said, "I saw that letter." Are you now saying that you're not sure that you saw that letter?

16 A. [10:06:43] This letter, well, there's this letter that I mentioned. There's a note, is
17 there not, of the Commander Salumu from Commander Salumu? And he sent the other
18 here, (Redacted)

19 Q. [10:07:07] Let me stop you there, Mr Witness, I'm not talking about the letter that
20 was given to (Redacted), I'm talking about the initial letter of invitation to the pacification
21 meeting. And you were asked specifically about that letter at page 27, line 16, yesterday,
22 and at line 20 you said, "I saw that letter." And now you seem to be expressing doubts as
23 to whether you saw that letter. Can you explain the discrepancy in your answers?

24 A. [10:07:53] Well, if I remember, yesterday I spoke about a letter that Salumu was
25 meant to provide it to Gombili, who had to take it to the Lendu community.

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1 Now, the Lendu community answered Salumu's letter, so there was an exchange of
2 letters.

3 I also spoke about a note on a piece of paper that Commander Salumu had handed to
4 (Redacted) In that note he asked that the Lendu combatants return their weapons, their
5 rifles

6 Q. [10:08:53] Yesterday, not only did you say that you saw that first letter, not the
7 Jean Mbau note, not only did you say you saw that first letter, (Redacted)
8 (Redacted) Have you forgotten that
9 testimony?

10 And for the record, that's line 1 of page 28.

11 A. [10:09:33] Well, here I apologise because it's misread because I said I saw this letter
12 that (Redacted) had brought. That's it.

13 Q. [10:09:52] So now are you telling us that you did not see that first letter, that first
14 invitation to the pacification meeting from Mr Salumu?

15 A. [10:10:14] Perhaps I've forgotten.

16 Q. [10:10:19] Well, you say you've forgotten, perhaps you've forgotten, but yesterday
17 you provided testimony under oath that you saw a letter, (Redacted)

18 A. [10:10:46] Well, here the letter, the note that I spoke about that I provided to (Redacted)
19 (Redacted)

20 Q. [10:10:56] Well, DRC-OTP-0126-0107, your first statement to the Office of the
21 Prosecutor in 2005, page 36 -- excuse me, paragraph 36.

22 MR GOSNELL: So your Honours have this, and in fairness to the witness, perhaps we
23 should put it up on screen for him. It's page 113.

24 Q. Now, Mr Witness, this is your statement in the French language, which you
25 understand.

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1 A. [10:11:58] Yes.

2 Q. [10:11:59] And we see clearly from paragraph 36 that you are referring from

3 the -- to the first letter and you say:

4 (Interpretation) (Redacted)

5 (Redacted)

6 (Redacted)

7 (Speaks English) Now, that's what you said in your first statement, and yesterday you

8 said the same thing. And today you're not sure.

9 MR GOSNELL: Perhaps we can turn the page for the witness so he sees the last part of
10 the sentence.

11 Q. [10:13:51] You can't remember these details, Mr Witness, because they didn't
12 happen, correct?

13 Have you finished reading, Mr Witness? Do you have any response?

14 A. [10:15:47] If we could go back to paragraph 36.

15 Q. [10:15:54] I'm sure the Registry can do that.

16 A. [10:17:19] Can we go to paragraph 37.

17 Q. [10:17:22] No, Mr Witness, we won't go to paragraph 37 because my question
18 concerns only the issues addressed in paragraph 36. And I note you've taken quite a bit
19 of time to try and understand what you have said in this paragraph, and I suggest to you
20 that the reason you cannot answer spontaneously today in the same way that you
21 answered yesterday and the same way that you answered in 2005 is because it didn't
22 happen that way, did it?

23 MS SAMSON: [10:18:02] Mr President.

24 PRESIDING JUDGE FREMR: [10:18:03] Yes, Ms Samson.

25 MS SAMSON: [10:18:04] I just ask that we are specific about what it is precisely that

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1 Defence suggests didn't happen that way.

2 PRESIDING JUDGE FREMR: [10:18:14] Mr Gosnell.

3 MR GOSNELL: [10:18:15] Well, we're starting with the tip of the iceberg, which is the
4 first letter.

5 Q. And you didn't see that first letter, (Redacted)
6 did you?

7 A. [10:18:42] Well, there are several -- there were exchanges of several letters.
8 When you read the content of certain letters, the content that was taken up (Redacted) well, you
9 have an exchange of several different letters. (Redacted)

10 (Redacted) If I'm not
11 mistaken, it is exactly this (Redacted), unless I'm confused. It's this (Redacted)
12 letter, the one that he had brought, written by Commander Salumu (Redacted)
13 (Redacted) It was a long time ago.

14 Q. [10:20:17] It was a long time ago, but yesterday during your testimony you were
15 able to remember a detail such as the fact that (Redacted)

16 (Redacted) How are you able to remember that
17 particular detail but not something as important as a letter or a note from a commander
18 from the UPC inviting people to a pacification meeting in which there was a massacre?

19 A. [10:21:15] Well, even if I don't remember exactly, what one can understand is that
20 there was an invitation, you can understand that straight away, and the consequence was
21 that the Lendu population went to this meeting in Buli -- in Sangi, please excuse me.

22 Q. [10:21:53] At page 39 of yesterday's transcript -- well, starting *on page 38, line 24,
23 you describe this encounter with (Redacted) You say that he arrived running towards
24 Buli, towards us in Buli. You say there were (Redacted) joined us and he
25 brought a small note which was written by Salumu. (Redacted)

26

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1 A. [10:22:51] Yes.

2 Q. [10:22:51] You say that he arrived running. How long did he stay with you
3 during this meeting or during this encounter with him? Was it a matter of seconds,
4 minutes, half an hour, an hour?

5 A. [10:23:10] He just came. He was trembling. He'd just come out of a horrific
6 place. He gave us the letter and he left directly. It wasn't even for one minute.

7 Q. [10:23:36] So he was in a hurry to get away; is that what you're saying?

8 A. [10:23:44] Yes, to flee.

9 Q. [10:23:48] And why did he give the note to you in particular?

10 A. [10:24:04] Because on arriving in Buli, he found us there in Buli. The people were
11 already fleeing towards the forest of Jitchu and he found (Redacted)

12 (Redacted) he had to

13 provide us with a note directly when he found us. There weren't people, they'd already
14 fled towards Jitchu forest.

15 Q. [10:24:47] And how long did you have that note in your possession? In terms of
16 days, weeks, months, how long did you have it in your possession?

17 A. [10:25:08] I think I said yesterday, when (Redacted) provided us with a letter, he
18 left. (Redacted) I asked the question,

19 "What can we do with this letter?" (Redacted)

20 (Redacted)

21 (Redacted) The UPC troops, even if we give them

22 this weapon, even if we don't, these people are determined to kill us. And so we

23 dispersed. I don't know where (Redacted) went. But this letter, providing that to

24 (Redacted) that was after some days, of course, maybe even months.

25 Q. [10:26:36] Well, was it days or was it months? Can you help us a little bit more

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1 estimate how long it was? For example, let me help situate you in time, did you still

2 have that letter when you returned to Lipri, or that note?

3 A. [10:27:01] Yes. When we returned, I still had the note because when we returned

4 to Lipri, I still had the note. When we returned to Lipri, (Redacted)

5 (Redacted)

6 Q. [10:27:23] (Redacted)

7 A. [10:27:34] (Redacted) well, if here we're talking about Lipri, those are the most

8 known villages, and I said that these were villages that could easily be confused. (Redacted)

9 (Redacted)

10 Q. [10:27:52] (Redacted)

11 A. [10:28:00] (Redacted)

12 Q. [10:28:02] And how long did he continue living in (Redacted)

13 A. [10:28:15] I wouldn't be able to tell you exactly, but when calm returned, he went

14 (Redacted)

15 Q. [10:28:28] And approximately when did calm return, according to you, what

16 month?

17 A. [10:28:45] Well, that was in the month of March. Well, what does that mean?

18 That meant that the UPC had left the region and the villages that they were occupying.

19 They returned in the direction of Bunia, but Losinu, as for precision, when he returned to

20 Bunia, I think it could have been from the month of April or May, around then.

21 Q. [10:29:27] Yes, and we know from a previous document we looked at and some of

22 your previous answers that it was only (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 A. [10:30:18] (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 Q. [10:31:38] (Redacted)

11 (Redacted)

12 A. [10:32:00] (Redacted)

13 (Redacted)

14 (Redacted) There's a village that's called like that because the living conditions of

15 the displaced persons were such that (Redacted)

16 (Redacted)

17 Q. [10:32:43] Were you seeing from time to time, and you can answer this question

18 yes or no, (Redacted)

19 A. [10:33:05] (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 Q. [10:33:48] In any event, he was available if you had needed to seek him out for any

25 reason, is that correct, in the evenings at the very least?

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- 1 A. [10:34:08] Well, yes, if I needed him, of course I could always see him.
- 2 Q. [10:34:12] (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 A. [10:34:42] I'm afraid I didn't understand your question.
- 7 Q. [10:34:45] Well, let me put it more simply: Do you know, and if you do know
- 8 please tell us, (Redacted)
- 9 (Redacted)
- 10 A. [10:35:10] I beg your pardon, I'm afraid I don't understand. (Redacted)
- 11 (Redacted)
- 12 Q. [10:35:17] (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 A. [10:35:47] Yes, (Redacted) -- sorry, sorry, sorry, I
- 16 beg your pardon, he gave it to (Redacted)
- 17 Q. [10:35:59] And when did he tell you that approximately?
- 18 A. [10:36:12] He told me that, if I'm not mistaken, in 2005, but I may be getting the
- 19 year wrong. (Redacted)
- 20 Q. [10:36:42] At the time (Redacted)
- 21 and we are going to come to that document, but when you wrote that document, were
- 22 you able to look at the (Redacted) Did you have it in your possession?
- 23 A. [10:37:12] Well, now, when you refer to the (Redacted)
- 24 (Redacted)
- 25 Q. [10:37:33] You see, Mr Witness, the reason I'm asking these questions is because I

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1 find it perplexing, to say the least, (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted) Any explanation for that at all?

6 A. [10:38:29] I don't have an explanation.

7 Q. [10:38:42] And if I understand correctly, as far as you know, (Redacted) lost

8 all the letters from Mr Salumu, letters or notes that we've been discussing involving the
9 pacification meeting?

10 A. [10:39:07] Well, you would have to ask (Redacted) that question. It's up to
11 him to answer that.

12 Q. [10:39:17] Well, you say that and yet, in your previous statements, you've
13 answered that question. Is there a reason why you can't answer it now, having answered
14 it previously?

15 A. [10:39:39] The fact of having lost the notes, that is the fact that (Redacted) lost the
16 notes, it's up to him to answer that question.

17 MR GOSNELL: [10:39:48] May we have 0065-0003, that's a DRC-OTP document, it's
18 tab 4.

19 Q. [10:40:30] Now, this, sir, is the document that I just referenced, the (Redacted)
20 (Redacted)

21 Now, am I correct first of all that you do not remember - and this can be a yes or no
22 answer - when you wrote this document?

23 A. [10:41:04] This document, well, I don't exactly remember when I drafted it, (Redacted)
24 (Redacted)

25 (Redacted)

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1 Q. [10:41:32] Can you remember anything at all about the circumstances in which you
2 drafted this document?

3 A. [10:41:55] Given the title of the document, (Redacted)
4 (Redacted)
5 (Redacted)

6 Q. [10:42:16] You just used the word conditional "would" as if to imply you're reading
7 the title and then you're telling us your interpretation of the title. I'm just asking you
8 now about your memory. Can you remember anything about the circumstances of the
9 creation of this document?

10 A. [10:42:47] Well, it seems to me that this document, (Redacted)
11 (Redacted)
12 (Redacted)

13 Q. [10:43:10] Were you copying from (Redacted) when you prepared this
14 document?

15 A. [10:43:30] Here I don't think I copied it from (Redacted) because (Redacted)
16 (Redacted)
17 (Redacted) Yes, that's it.

18 Q. [10:44:00] Let's start by looking at page 2 of this document. If we could zoom in,
19 please, on what is purported to be the response (Redacted) We see that it reads:
20 (Interpretation) (Redacted)
21 (Redacted)

22 (Speaks English) Do you see that, Mr Witness?

23 A. [10:45:06] Yes.

24 Q. [10:45:10] And then it says under point 1:
25 (Interpretation) (Redacted)

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1 (Redacted)

2 (Speaks English) I think that's as far as we need to go reading it together, but now I'd
3 like to show you (Redacted) but please keep those words in mind.

4 MR GOSNELL: Could we have 2055-1346? It is tab 6, page 1351.

5 PRESIDING JUDGE FREMR: [10:46:01] And Mr Gosnell, please be ready to break in
6 five minutes.

7 MR GOSNELL: [10:46:05] Understood. Thank you, Mr President. I'm informed that
8 we can put the documents next to each on the screen, and that would really be ideal if we
9 can do that.

10 PRESIDING JUDGE FREMR: [10:46:20] Court officer, is it feasible?

11 MR GOSNELL: [10:47:51] So it is the portion of text on the left in red that should be
12 zoomed. And the other document is 0065-0004 -- excuse me, 0003, page 004. Yes, if we
13 could go to the next page and zoom in on the part beginning (Speaks French) (Redacted)
14 (Redacted)

15 Q. [10:49:12] Mr Witness, here we have your document on the right and on the left we
16 have (Redacted)
17 (Redacted)
18 Do we agree on that?

19 A. [10:49:38] Yes, I understand your question, but can we go back to the first page?
20 Well, if we can't go back right now. Your question referred to the first page and whether
21 or not (Redacted) and I said no because (Redacted)
22 (Redacted)

23 Now, to answer this last question regarding what's written here, well, let me confirm that
24 this is an extract from Commander Salumu's letter and the Lendu community that I did
25 take from (Redacted) yes, I can confirm that, but it doesn't refer to the first page

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1 where it says (Redacted) et cetera.

2 Q. [10:50:40] That's understood, Mr Witness. The key issue that I'm asking you
3 about and to confirm is that you prepared your document as best you can recall, and your
4 recollection is not very clear, but as best you can recall, you prepared your document
5 (Redacted) and not based upon looking at the original notes and
6 letters from Salumu; is that correct?

7 A. [10:51:20] I said that here this is an extract of a letter that the community sent to
8 Commander Salumu, and vice-versa, the -- Salumu with the Lendu community. And
9 (Redacted) had, again, quoted from it. I beg your pardon, but I simply refer here to extracts
10 of those letters that were exchanged, but the page with the various dates of the attacks,
11 that information (Redacted)

12 MR GOSNELL: [10:52:02] I suppose, Mr President --

13 THE WITNESS: [10:52:04] (Interpretation) It's not in (Redacted) because you see
14 there are various different dates that I mentioned in (Redacted)
15 (Redacted)

16 MR GOSNELL: [10:52:24] I suppose we're at time, Mr President.

17 PRESIDING JUDGE FREMR: [10:52:27] Exactly. Thank you.
18 Court officer, let's move into open session for the remainder of this session.
19 (Open session at 10.52 a.m.)

20 THE COURT OFFICER: [10:52:41] We are in open session, Mr President.

21 PRESIDING JUDGE FREMR: [10:52:48] So before we break, Mr Gosnell, you still have
22 38 minutes. Just to have an idea of our perspective, do you think you will need all that
23 time?

24 MR GOSNELL: [10:53:01] I wish I could say it could be less, and it could have been less,
25 but it hasn't worked out that way, Mr President.

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- 1 PRESIDING JUDGE FREMR: [10:53:09] All right. And even if rather premature,
- 2 Ms Samson, do you envisage any need for re-direct?
- 3 MS SAMSON: [10:53:19] Not at this time.
- 4 PRESIDING JUDGE FREMR: [10:53:20] Very well.
- 5 So now we adjourn and we will reconvene because we have to vacate this courtroom at
- 6 half past 1.
- 7 THE COURT USHER: [10:53:35] All rise.
- 8 (The hearing ends in open session at 10.53 a.m.)
- 9 RECLASSIFICATION REPORT
- 10 Pursuant to the Trial Chamber VI's Order, ICC-01/04-02/06-1887, dated 4 May 2017,
- 11 the public reclassified and lesser redacted version of this transcript is filed in the case.