

1 International Criminal Court
2 Trial Chamber VI
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and Judge Chang-ho Chung
6 Trial Hearing - Courtroom 3
7 Monday, 7 November 2016
8 (The hearing starts in open session at 9.34 a.m.)
9 THE COURT USHER: [9:34:21] All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE FREMR: [9:34:45] Good morning, everybody.
13 Court officer, please call the case.
14 THE COURT OFFICER: [9:35:07] 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're in open session.
18 PRESIDING JUDGE FREMR: [9:35:20] Thank you, court officer.
19 Now appearances please in the usual order.
20 MS SOLANO: [9:35:26] Good morning, your Honours. The Prosecution is
21 represented by Ms Nicole Samson, senior trial lawyer; Mr James Pace, assistant trial
22 lawyer; Ms Claudine Umurungi, assistant legal officer; Ms Selam Yirgou, case
23 manager. And I am Julieta Solano, trial lawyer.
24 PRESIDING JUDGE FREMR: [9:35:44] Thank you, Ms Solano.
25 Defence now.

1 MR GOSNELL: [9:35:47] Good morning, Mr President. Good morning, your
2 Honours. Christopher Gosnell for Mr Ntaganda this morning, assisted by
3 Isabelle Martineau and Maria-Kim Vasconi. Thank you.

4 PRESIDING JUDGE FREMR: [9:36:00] And I just add for the record that
5 Mr Ntaganda is present. Thank you, Mr Gosnell.
6 And now Legal Representatives of Victims, please.

7 MS PELLET: [9:36:11] (Interpretation) Thank you, Mr President. The former
8 child soldiers are represented by Mohamed Abdou and by myself, Sarah Pellet, for
9 the OPCV.

10 MS GRABOWSKI: [9:36:26] Good morning, Mr President, your Honours, the
11 victims of the attacks are today represented by myself, Ms Anne Grabowski. Thank
12 you.

13 PRESIDING JUDGE FREMR: [9:36:34] Thank you, Ms Pellet. Thank you,
14 Ms Grabowski.

15 I want to at the beginning welcome everybody back to the courtroom for the seventh
16 evidentiary block, and I hope that we can have another efficient and productive block
17 and I also note we are very well aware in that regard of the heavy workload of all
18 concerned. Before the next witness is called I have a number of administrative
19 matters to briefly address.

20 First, I recall that the dates for this block are today, 7 November 2016, until
21 16 December 2016 and the Chamber shall not be sitting on 18 November 2016.

22 I also record that we will be sitting in courtroom 3 for the duration of this evidentiary
23 block.

24 Second, on 2 November 2016 the Chamber received an updated witness list for this
25 block and provided guidance on this by way of email on 3 November 2016. The

1 Chamber indicated that 16 witnesses, for one of whom *a rule 68(2)(b) application is
 2 expected, and one reserve witness should be retained for this evidentiary block.
 3 The Chamber wishes to thank the parties for their efforts to agree the list inter partes,
 4 while it's recognized that certain matters may unexpectedly arise warranting changes
 5 to the list. The Chamber also reiterates the importance of a calling party settling its
 6 witness list sufficiently in advance of scheduled evidentiary blocks.
 7 Next, the Chamber notes for the record that on 17 October 2016 it granted by way of
 8 email a Prosecution request pursuant to regulation 42 to lift a redaction to document
 9 DRC-OTP-0210-0027.
 10 Further, for the purposes of timing for this witness, as indicated in the Chamber's
 11 Rule 68(3) decision which bears the filing number 1602, the Prosecution shall have
 12 one hour to examine the witness, which shall include the process of seeking
 13 admission of the witness material under Rule 68(3) as well as its supplementary
 14 examination of the witness.
 15 The Defence has been permitted four hours for cross-examination of the witness.
 16 Now we need to go into private session for the next part, so court officer, please.
 17 (Private session at 9.40 a.m.)
 18 THE COURT OFFICER: [9:40:03] We are in private session, Mr President.
 19 PRESIDING JUDGE FREMR: [9:40:16] (Redacted)
 20 (Redacted)
 21 (Redacted)
 22 (Redacted)
 23 (Redacted)
 24 (Redacted)
 25 (Redacted)

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- 11 (Open session at 9.41 a.m.)
- 12 THE COURT OFFICER: [9:42:02] We are in open session, Mr President.
- 13 PRESIDING JUDGE FREMR: [9:42:09] Thank you, court officer.
- 14 (The witness enters the courtroom)
- 15 PRESIDING JUDGE FREMR: [9:43:09] Good morning, Mr Witness. Can you hear
- 16 me?
- 17 WITNESS: DRC-OTP-P-0976
- 18 (The witness speaks French)
- 19 THE WITNESS: [9:43:16] (Interpretation) Yes, I can hear you perfectly.
- 20 PRESIDING JUDGE FREMR: [9:43:19] Very well. Mr Witness, on behalf of this
- 21 Chamber I would like to welcome you to the courtroom. You are called to testify in
- 22 the case against Mr Bosco Ntaganda. You will be soon asked questions both by the
- 23 Judges and lawyers in this courtroom and in this connection I would like to guide you
- 24 as follows:
- 25 Please listen carefully to those questions. If you do not understand, feel free to ask

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1 for the question to be repeated. We want you to tell the truth and tell us what you
2 saw, heard and sensed yourself. If you didn't see or hear it yourself but you found
3 out some other way, then you should explain how. Please testify just on that which
4 you remember. Don't guess. Don't make things up. There is nothing wrong in
5 saying "I don't know" or "I don't remember." Do you understand all this,
6 Mr Witness?

7 THE WITNESS: [9:44:39] (Interpretation) Yes, I have understood.

8 PRESIDING JUDGE FREMR: [9:44:42] Fine.

9 Mr Witness, protective measures are put in place to ensure that your identity is not
10 revealed to the public. It means in practice that the public cannot see your face and
11 that your voice is being disguised so that the public cannot recognize it. We will
12 refer you as "Mr Witness" only and ensure that your name and any other information
13 that risks revealing who you are is not broadcast to the public. Therefore, whenever
14 you need to describe anything that might reveal your identity, we will do so in
15 private session so that no one outside the courtroom can hear your answer.
16 Do you understand, Mr Witness?

17 THE WITNESS: [9:45:44] (Interpretation) Yes, I have understood.

18 PRESIDING JUDGE FREMR: [9:45:46] Very well. Now, Mr Witness, you will be
19 provided with a piece of paper, which you now have in your hand, and it contains the
20 solemn undertaking. So please now make your solemn undertaking to tell the truth
21 by reading out the declaration from the paper.

22 THE WITNESS: [9:46:13] (Interpretation) I solemnly declare that I shall speak the
23 truth, the whole truth and nothing but the truth.

24 PRESIDING JUDGE FREMR: [9:46:23] Very good, Mr Witness. It means that now
25 you are under oath and you need to be aware that it's an offence within the

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1 jurisdiction of this Court to give false testimony. Do you understand that,

2 Mr Witness?

3 THE WITNESS: [9:46:45] (Interpretation) Yes, indeed.

4 PRESIDING JUDGE FREMR: [9:46:47] All right. And finally a few practical

5 matters you should have in mind when giving your testimony:

6 It's important to speak into the microphone, to speak clearly and to speak at a slow

7 pace. When a question is asked, it's very important, please do not respond

8 immediately but, rather, count in your head to at least three and only then give your

9 answer. This pause of three seconds is essential for proper interpretation and the

10 transcript.

11 If you have any questions during your testimony or if you feel that you need a break,

12 do not hesitate to let us know by raising your hand. We will then give you the

13 opportunity to speak.

14 Have you understood all that, Mr Witness?

15 THE WITNESS: [9:47:49] (Interpretation) Yes, I have understood.

16 PRESIDING JUDGE FREMR: [9:47:52] Very well. Then we will then start your

17 testimony and we will first give the Prosecution the floor so that it can take the

18 witness through the material it seeks to have admitted pursuant to Rule 68(3) of the

19 Rules.

20 Prosecution, please proceed.

21 MS SOLANO: [9:48:12] Thank you, your Honour.

22 QUESTIONED BY MS SOLANO:

23 Q. [9:48:18] Good morning, sir. Can you hear me well?

24 A. [9:48:24] Good morning. Yes, I can hear you.

25 Q. [9:48:30] My name is Julieta Solano. I represent the Prosecution. We have

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1 met in the past.

2 MS SOLANO: [9:48:38] Your Honours, I will follow the procedure that has been
3 used before in relation to Rule 68(3) applications. And because my initial questions
4 are identifying, can we please move into private session, your Honour.

5 PRESIDING JUDGE FREMR: [9:48:54] Certainly.

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

7 (Private session at 9.49 a.m.) *(Reclassified partially in public)

8 THE COURT OFFICER: [9:49:06] We're in private session, Mr President.

9 PRESIDING JUDGE FREMR: [9:49:14] Thank you, court officer.

10 Ms Solano, please proceed.

11 MS SOLANO: [9:49:17] Thank you, your Honour.

12 Q. [9:49:19] Sir, can you state your full name, please?

13 A. [9:49:26] My name is (Redacted).

14 Q. [9:49:42] Were you born on (Redacted)?

15 A. [9:49:48] Yes, indeed.

16 Q. [9:49:51] Were you born in (Redacted), Democratic Republic of Congo?

17 A. [9:49:59] Yes.

18 Q. [9:50:01] (Redacted)

19 A. [9:50:10] (Redacted)

20 Q. [9:50:13] (Redacted)

21 (Redacted)

22 A. [9:50:24] (Redacted)

23 Q. [9:50:26] (Redacted)

24 A. [9:50:32] (Redacted)

25 Q. [9:50:36] (Redacted)

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1 Q. [10:05:39] (Redacted)

2 (Redacted)

3 (Redacted)

4 A. [10:05:57] (Redacted)

5 Q. [10:06:00] (Redacted)

6 (Redacted)

7 A. [10:06:17] (Redacted)

8 Q. [10:06:23] And do you agree to being questioned by the Defence, the Legal

9 Representatives of Victims and the Judges, if necessary, about the information those

10 three documents contain?

11 A. [10:06:43] Yes, I do.

12 MS SOLANO: [10:06:46] Your Honour, I seek admission of the three documents,

13 please. (Redacted)

14 (Redacted)

15 (Redacted)

16 PRESIDING JUDGE FREMR: [10:07:21] So in total it will be five documents, am I

17 right?

18 MS SOLANO: [10:07:27] Yes, your Honour.

19 PRESIDING JUDGE FREMR: [10:07:29] Defence, any objection?

20 MR GOSNELL: [10:07:32] No, Mr President. I do note, however, that the

21 document ending ERN (Redacted) is already admitted.

22 PRESIDING JUDGE FREMR: [10:07:42] Ms Solano, do you insist on it?

23 MS SOLANO: [10:07:46] Your Honour, I leave it in the hands of the court officer.

24 If she can confirm it's already admitted, then I withdraw that part of my request.

25 PRESIDING JUDGE FREMR: [10:07:57] We will confirm.

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1 Court officer, could we review the fact whether the last document had been already
2 admitted.

3 THE COURT OFFICER: [10:08:40] Could you please confirm that this is the
4 document (Redacted).

5 MS SOLANO: [10:08:46] Yes.

6 THE COURT OFFICER: [10:09:06] It has been indeed admitted for the Defence on
7 (Redacted).

8 PRESIDING JUDGE FREMR: [10:09:12] So we'll decide about the four remaining,
9 am I right?

10 MS SOLANO: [10:09:16] Thank you, your Honour. I just want to make sure the
11 document was admitted for the truth of its contents and not for a more limited
12 purpose.

13 THE COURT OFFICER: [10:09:28] The oral decision states that the objection is
14 overruled and those two documents are admitted into evidence as a further Defence
15 exhibit.

16 MS SOLANO: [10:09:36] Thank you.

17 THE COURT OFFICER: [10:09:40] For the record it's at transcript T-148, page 15,
18 lines 10 to 12 of the realtime transcript.

19 PRESIDING JUDGE FREMR: [10:09:51] So may I understand that you at the
20 moment insist on the admission of four documents, or to be sure maybe we will just
21 admit all of them, and I think such a duplication wouldn't be a big problem.

22 All right. So now our decision is that all five documents are admitted into evidence
23 as a further Prosecution exhibit.

24 Now, Ms Solano, you may proceed.

25 MS SOLANO: [10:10:16] (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 Q. [10:10:44] (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 A. [10:11:49] (Redacted)

12 (Redacted)

13 Q. (Redacted)

14 A. (Redacted)

15 Q. [10:12:12] (Redacted)

16 (Redacted)

17 A. [10:13:08] (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 Q. Which other communities do you mean?

23 A. The UPC captured Bunia within the context of a Hema-Lendu inter-tribal
24 conflict. So it was initially the Lendu communities that were the first victims.

25 However, Bunia as we know is made up of several communities who used to live

1 there at that time and who continue to live in Bunia even today. So members of the
2 other communities, whether they were natives of the Ituri or not, many persons of
3 those communities were also victims of the abuses committed by the UPC troops.

4 Q. [10:14:28] And what were these abuses that you're speaking of?

5 A. [10:14:40] There were many cases of abduction, arbitrary arrests, there was
6 torture, killings and murder, rape. There were even cases of looting.

7 Q. [10:15:02] Are you familiar with any particular cases, any particular instances
8 of those abuses? Can you say who the victims were, for example, and when and
9 where exactly they occurred?

10 A. [10:15:33] I can -- I can take myself for a direct example, because I myself was a
11 victim of some of those abuses. I could also talk about other persons whom I
12 attempted to help.

13 Q. [10:15:49] In your case, what abuses are you referring to?

14 A. [10:15:57] (Redacted)

15 Q. [10:16:11] Sir, forgive me for interrupting you, (Redacted)

16 (Redacted)

17 (Redacted) there is no need to go into it because

18 it's already part of the record.

19 So were there any other abuses that you yourself were a victim of?

20 A. [10:16:41] Yes, indeed. (Redacted)

21 (Redacted) the troops of the UPC who came to our

22 house (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 They came in, (Redacted), but left taking away a lot of property

2 (Redacted) So that was the case of

3 pillaging. (Redacted) *They knew very well there

4 were none. They simply came to loot and pillage (Redacted).

5 Q. [10:17:59] When did this event take place?

6 A. [10:18:02] It happened one or two weeks after (Redacted).

7 Q. [10:18:13] What property was taken?

8 A. [10:18:20] Women's jewelry, money from various bags, a few items of clothing
9 and several such small items.

10 Q. [10:18:33] And can you say with more precision who these properties
11 belonged to?

12 A. [10:18:43] As I said, (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 Q. [10:19:41] What was the exact location of this house where the pillaging took
20 place?

21 A. [10:19:59] (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 Q. [10:20:45] (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted) Who were these boys,

6 sir?

7 A. [10:21:38] I no longer remember their names; however, I do recall that (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 Now, when they came to search our house, I was able to recognize them. I asked

18 them "Who is your chief? Who is the leader of your group and who has sent you (Redacted)

19 (Redacted)?" They told me that they had received orders from their

20 commander, whom I did not know, so I don't know who was their commander.

21 Now, it was said that the -- according to the commander, they were of the view that

22 (Redacted)

23 (Redacted)

24 Q. [10:23:42] You say there were members of your community. What do you

25 mean?

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1 A. [10:23:52] I'm not sure I understood your question. What do you mean by
2 "who was part of my community?" Is that what you said?

3 Q. [10:24:01] Let me put the question differently. These two boys that you've
4 referred to, were they also members of the UPC?

5 A. [10:24:20] Those who were tortured, or are you talking about those who came
6 to search?

7 Q. The ones who came to your house --

8 THE INTERPRETER: [10:24:26] Overlapping speakers, Mr President. Counsel
9 should wait for the interpretation.

10 PRESIDING JUDGE FREMR: [10:24:34] Ms Solano, sorry, but there is another
11 overlapping. Please don't forget to observe pauses. Thank you.

12 THE WITNESS: [10:24:48] (Interpretation) Those who came to our house were
13 UPC troops. They were in uniform.

14 MS SOLANO: [10:24:55]

15 Q. [10:24:56] What were their ages?

16 A. [10:25:07] (Redacted)

17 (Redacted)

18 Q. [10:25:16] And why do you believe, sir, that this pillaging incident was -- that
19 the people who came to your house to pillage were UPC?

20 A. [10:25:36] That was the only force controlling Bunia and, you see, their
21 uniform, the uniform of the UPC was well known.

22 Q. [10:25:46] Can you describe the uniform briefly?

23 A. [10:25:58] It is a military uniform and, as usual, the military uniforms are
24 camouflage in nature with touches of green and light green and dark patches here
25 and there, as all military uniforms would be. The uniforms were brand new.

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1 Q. [10:26:24] (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 How were you able to tell the ages of these children?

6 A. [10:27:06] (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted) You could look

10 at the child and estimate their age, the age bracket to which such a child might

11 belong.

12 Q. [10:27:57] Did you rely on anything else apart from their physical appearance

13 to assess their age?

14 A. [10:28:12] The children themselves knew their ages and could tell us their ages.

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 Q. [10:28:47] Thank you. (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 A. [10:30:12] (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 Q. [10:31:12] And to your knowledge did the UPC use Radio Candip or television
9 for transmission of other news related to the conflict?

10 A. [10:31:32] Indeed. As Bunia especially was under the occupation of the UPC,
11 Radio Candip was an important and strategic instrument to put information through
12 with regard to the movement and in such a context it was rather what we could, in
13 inverted commas, refer to as their "exploits" and their "conquests" into Lendu villages
14 that was broadcast, rather than any of the acts of the president of the UPC.

15 Q. [10:32:16] And do you recall any specific exploits in specific Lendu villages
16 that you heard being disseminated through the radio?

17 A. [10:32:41] Indeed, the UPC was at the front at all the main or major roads
18 within Bunia. And Bunia was under the control of UPC, but UPC did not control the
19 entire of Ituri, the Ituri region, which meant that they constantly had to go and attack
20 Lendu villages. The closest villages I can name are Zumbe, for example, Lipri, and
21 we could also go as far as Kobu. These are Lendu villages that the UPC attacked on
22 several occasions.

23 Q. [10:33:32] When did the UPC attack Zumbe?

24 A. [10:33:44] The UPC would attack Zumbe on a regular basis. And the UPC did
25 not reign over Bunia in a peaceful manner, or throughout Ituri in fact, because the

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1 UPC was in conflict or at war throughout virtually the entire duration of its
2 occupation. And this is why I said that it was incessant that it was a regular
3 occurrence that the UPC would find itself at the front.

4 Q. [10:34:32] Was there any particular reason, to your knowledge, why the UPC
5 attacked Zumbe on a regular basis?

6 A. [10:34:48] Well, a particular reason, well Zumbe, from a strategic standpoint is
7 a village that is just above Bunia and if you have opponents that are very close to the
8 headquarters of the movement, then it's not very reassuring.

9 And secondly, Zumbe *supplies Bunia with water from the Régie des Eaux, the Water
10 Board.

11 From a strategic standpoint, if Zumbe was to remain under the control of what they
12 would consider to be their enemy, then Bunia was under the threat of being cut off or
13 having its water cut off.

14 MS SOLANO: [10:35:46]

15 Q. [10:35:46] Thank you. Sir, you mention the UPC having attacked Kobu. Do
16 you remember the year and the month?

17 A. [10:36:02] The UPC besieged -- in fact, prior to that, with the assistance of the
18 Ugandans, they virtually besieged the road, the mining road going from Bambu to
19 Mongbwalu. They were on that road. And Kobu is to be found between Bambu and
20 *Kilo-Mission and Kilo-État. So the UPC, in a sense, this was a refuge, they were
21 seeking refuge in the villages surrounding Kobu. And that is where in fact *most of
22 the displaced Lendu had sought refuge in order to escape the killings perpetrated by
23 the UPC at that moment in time, and they came under many attacks and they defended
24 themselves with their meagre means against these attacks, but they were already spent.

25 Q. [10:37:18] And what time period are you referring to?

1 A. [10:37:33] Those things, well, it's difficult for me to remember in terms of time,
2 but it might have been maybe at the end -- well, the time at which *the UPC besieged
3 that area might have been in the year 2002, it might have been at the beginning of the
4 year 2003. It was in that period.

5 Q. [10:38:00] Can you explain succinctly, please, how you know about this UPC
6 attack on Kobu and the other surrounding villages?

7 A. [10:38:22] Well, according to the information in my possession, as I said at an
8 earlier stage, the region was already virtually surrounded by the UPC and the
9 remaining members of the Lendu community had sought refuge in Kobu, and the
10 specific name of the village in question was Buli - Buli - which is also close to Kobu.
11 And there was a major concentration of Lendu in that locality and they were under
12 siege. They could not even go out in order to seek supplies, you know, essential
13 requirements such as salt and oil. So the UPC, in order to get them out of there, they
14 sent a pacification message, with a view to having those people come to talk about
15 peace, saying that they would no longer pursue them. Unfortunately, those people
16 put together a delegation to go and attend that meeting and they were massacred.

17 Q. [10:39:55] How do you know that?

18 A. [10:39:58] Well, the manner in which I found this out was that when the UPC
19 was chased out of Bunia by the Ugandans in March, I believe, March, in March 2003,
20 and when the UPC was driven out, there was an opening, an opening in the roads
21 that had been blocked by the UPC, and some of the members of the Lendu
22 community who were besieged were able to get out and go to Bunia, and that is how
23 we were privy to this information. It came from them.

24 Q. [10:40:44] Can you be more specific? Were there any particular members of
25 the Lendu community who told you about the massacre that followed the pacification

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1 meeting?

2 A. [10:41:05] Yes, indeed. There were many of them coming to Bunia. It was

3 like they were feeling, they were -- they had a feeling of relief. (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 Q. [10:42:02] Sir, I would like you to turn to three photographs contained at tabs

10 14, 15 and 17 of your binder, please.

11 MS SOLANO: [10:42:15] And for the record, these are DRC-OTP-0077-292, 293 and

12 295.

13 Q. [10:42:37] And actually, sir, you don't have them with you but we're going to,

14 with the Judges -- with the usher's assistance, we're going to provide the witness with

15 copies, your Honour. These are copies where any existing annotations have been

16 redacted.

17 PRESIDING JUDGE FREMR: [10:42:59] Court usher, please assist the witness.

18 And in the meantime, Ms Solano, you still have 8 minutes.

19 MS SOLANO: [10:43:06] Thank you, your Honour. I can confirm that I am on my

20 very last line of questioning.

21 Q. [10:43:31] Please take a moment to look through those photographs, sir, and

22 then I will ask you some questions.

23 MS SOLANO: [10:43:49] Your Honours, these photographs are available at tabs 14,

24 15 and 17 of your binders.

25 Q. [10:44:01] Sir, do you recognize these photographs?

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1 A. [10:44:08] Yes, indeed, I do recognize these photographs.

2 Q. [10:44:14] And what do they show?

3 A. [10:44:18] They show people who have been killed, massacred and mutilated
4 even.

5 Q. [10:44:28] When and where were the people shown on the photograph killed,
6 massacred and mutilated?

7 A. [10:44:40] (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 Q. [10:45:34] (Redacted)

13 (Redacted)

14 A. [10:45:48] (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted) They were just pictures

21 of killings, and they were explaining to us that these were the events that we

22 had -- they had experienced in Kobu and that this was the fate that those individuals

23 who had gone for the alleged pacification process at the UPC had met.

24 (Redacted)

25 (Redacted)

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1 A. [10:53:43] (Redacted)

2 Q. (Redacted)

3 MS SOLANO: [10:53:49] Your Honours, I seek admission of the three photos,

4 DRC-OTP-0077-0292, 293, and 295. According to the information available to me,

5 the first of the photographs has been used before, but we cannot really tell from the

6 metadata whether it has been admitted, so I seek admission. The second one as far

7 as we can tell has not been admitted and the third one, it appears that a

8 non-annotated version has been admitted, but for my purposes I want the result to be

9 that the three redacted versions that have been shown to the witness just now are

10 admitted into evidence, please.

11 PRESIDING JUDGE FREMR: [10:54:42] Defence, if I am not wrong, I think you

12 rejected that those photographs have been already admitted or not?

13 MR GOSNELL: [10:54:49] Well, just to save time, Mr President, we won't object.

14 If there's any doubt as to whether the versions are different, we know there are

15 duplicates, but just to save time perhaps we should just admit those.

16 PRESIDING JUDGE FREMR: [10:55:03] Yes, all right then. So those three

17 photographs are admitted into evidence as a further Prosecution exhibit.

18 Now, let's move --

19 (Pause in proceedings)

20 THE COURT OFFICER: [10:55:23] Ms Solano, did you give redacted version of the

21 photographs to the witness?

22 MS SOLANO: [10:55:28] That's right.

23 THE COURT OFFICER: [10:55:31] Thank you.

24 PRESIDING JUDGE FREMR: [10:55:32] And now for the rest of this session let's

25 move into open session.

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1 (Open session at 10.55 a.m.)

2 THE COURT OFFICER: [10:55:49] We're in open session, Mr President.

3 PRESIDING JUDGE FREMR: [10:55:51] Thank you, court officer.

4 So we have finished direct examination conducted by Prosecution. Now my
5 question goes to Ms Pellet, who is Legal Representative of Victims. Ms Pellet, you
6 have made a request for questioning of the witness. Could you provide us with the
7 update, if any?

8 MS PELLET: [10:56:23] (Interpretation) Yes, Mr President. Thank you.

9 I would like to retain my request with regard to point B of my request and the efforts
10 of demobilisation and reintegration of the child soldiers. I think I will need a little
11 bit longer than 5 minutes, unfortunately, but it will depend of course on the manner
12 in which the witness responds. I can't really give you a precise indication of the
13 required time, but in any case it will be longer than 5 minutes.

14 PRESIDING JUDGE FREMR: [10:57:01] Defence, any objection?

15 MR GOSNELL: [10:57:03] We do object, Mr President, mainly on the basis -- two
16 basis, Mr President: First, that the subject matter as defined is quite vague and,
17 second, (Redacted)
18 (Redacted).

19 Perhaps we need to go into private session, Mr President.

20 PRESIDING JUDGE FREMR: [10:57:26] Now let's move into private session, court
21 officer, please.

22 (Private session at 10.57 a.m.) *(Reclassified partially in public)

23 THE COURT OFFICER: [10:57:35] We are back in private session, Mr President.

24 PRESIDING JUDGE FREMR: [10:57:43] Thank you.

25 Mr Gosnell.

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- 1 MR GOSNELL: [10:57:46] I think we need to redact my last few words there,
- 2 Mr President.
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted) so on that basis we object.
- 6 MS PELLET: [10:58:06] Monsieur le Président.
- 7 PRESIDING JUDGE FREMR: [10:58:09] First of all, we will have to redact the last
- 8 question or last remark made by Mr Gosnell (Redacted)
- 9 (Redacted)
- 10 Now, Ms Pellet, you have the floor.
- 11 MS PELLET: [10:58:22] (Interpretation) Yes, I do apologise, Mr President. As
- 12 indicated in my request and in accordance with your decision, (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 PRESIDING JUDGE FREMR: [10:58:59] All right. Give us a second. We will
- 19 silently deliberate.
- 20 (Trial Chamber confers)
- 21 PRESIDING JUDGE FREMR: [10:59:37] So we considered objection made by the
- 22 Defence. The objection is overruled. We grant Ms Pellet 10 minutes, (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 And just the further argument in favour of this decision, that we find (Redacted)

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1 (Redacted).

2 And we would rather continue now and then we will keep the regular 30-minutes
3 break and then we will shorten the next session accordingly. So now please it will be
4 even better for, I guess for preparation of cross-examination.

5 So now, Ms Pellet, you have the floor and you have your 10 minutes. And do you
6 think we should remain in private or probably we will have to?

7 MS PELLET: [11:00:34] (Interpretation) Yes, unfortunately we will have to,
8 Mr President, (Redacted).

9 PRESIDING JUDGE FREMR: [11:00:44] I see. So please proceed.

10 MS PELLET: [11:00:46] (Interpretation) Thank you, Mr President.

11 QUESTIONED BY MS PELLET: (Interpretation)

12 Q. [11:00:49] Good morning, Mr Witness.

13 A. [11:00:50] Good morning.

14 Q. [11:00:50] We have already met briefly. For the record I would like to
15 reiterate that I am the Legal Representative for the former child soldiers in this case.

16 And I have a few questions to put to you with regard to (Redacted)

17 (Redacted).

18 My first question is with regard to your experience with children, children that you
19 were taking care of. (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 A. [11:02:00] While we were in charge of those children, (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 Q. [11:03:17] Thank you, Mr Witness.

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 MR GOSNELL: Objection.

15 PRESIDING JUDGE FREMR: [11:03:55] Defence, please.

16 MR GOSNELL: [11:03:56] (Redacted)

17 (Redacted)

18 PRESIDING JUDGE FREMR: [11:04:06] Ms Pellet.

19 MS PELLET: [11:04:08] (Interpretation) (Redacted)

20 (Redacted)

21 (Redacted)

22 PRESIDING JUDGE FREMR: [11:04:32] Sorry, objection is sustained. If you have
23 some more specific questions, please proceed, but not just repeating the same.

24 MS PELLET: [11:04:43] (Interpretation) No, Mr President. I will move on to my
25 next question.

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1 Q. [11:04:50] Mr Witness, in the context of your work with the child soldiers, you

2 explained that (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 A. [11:05:30] (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 Q. [11:06:27] I'm sorry, Mr Witness, (Redacted)?

12 A. [11:06:34] (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 Q. [11:07:11] As far as you know, (Redacted)

19 (Redacted)?

20 A. [11:07:23] Unfortunately --

21 PRESIDING JUDGE FREMR: [11:07:25] Sorry, hold on, hold on, Mr Witness.

22 Mr Gosnell.

23 MR GOSNELL: [11:07:27] Objection. (Redacted)

24 (Redacted)

25 PRESIDING JUDGE FREMR: [11:07:36] Ms Pellet.

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- 1 MS PELLET: [11:07:37] (Interpretation) Thank you, Mr President. (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 PRESIDING JUDGE FREMR: [11:07:48] Mr Gosnell.
- 5 MR GOSNELL: [11:07:49] (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 PRESIDING JUDGE FREMR: [11:08:21] In order to save time, the objection is
- 14 overruled.
- 15 Ms Pellet, please proceed.
- 16 MS PELLET: [11:08:29] (Interpretation) Thank you, Mr President. (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 THE WITNESS: [11:09:08] (Interpretation) (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)

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1 (Redacted)

2 MS PELLET: [11:09:51] (Interpretation)

3 Q. [11:09:52] (Redacted)

4 A. [11:09:54] (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 Q. [11:10:48] Thank you, Mr Witness. And I have one last question for you.

14 MS PELLET: [11:10:52] (Interpretation) Mr President, one last question for the
15 witness.

16 Q. [11:10:57] (Redacted)

17 (Redacted)

18 A. [11:11:05] (Redacted)

19 (Redacted)

20 (Redacted)

21 Q. [11:11:28] (Redacted)

22 (Redacted)

23 A. [11:11:36] (Redacted)

24 PRESIDING JUDGE FREMR: [11:11:43] Hold on, Mr Witness. Hold on,

25 Mr Witness.

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1 Mr Gosnell.

2 MR GOSNELL: [11:11:45] Objection, Mr President. I know what my colleague is

3 trying to -- where my colleague is trying to push the witness, (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 PRESIDING JUDGE FREMR: [11:12:12] Ms Pellet.

8 MS PELLET: [11:12:14] (Interpretation) I do not understand the objection. I

9 have asked the witness whether (Redacted)

10 (Redacted).

11 PRESIDING JUDGE FREMR: [11:12:35] Mr Gosnell, could you be more specific,

12 just to clarify for the Chamber.

13 MR GOSNELL: [11:12:37] I can, Mr President. (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted) That's the basis for

17 my objection because that's in my learned colleague's question.

18 PRESIDING JUDGE FREMR: [11:13:04] Ms Pellet.

19 MS PELLET: [11:13:05] (Interpretation) Thank you, Mr President. Let me then

20 put a follow-up question to the witness.

21 PRESIDING JUDGE FREMR: [11:13:16] Please, and it will be the last one.

22 MS PELLET: [11:13:18] (Interpretation) Thank you.

23 Q. [11:13:22] (Redacted)

24 (Redacted)

25 A. [11:13:43] (Redacted)

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- 1 (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 Q. [11:14:26] (Redacted)
- 7 (Redacted)
- 8 A. [11:14:36] (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 Q. [11:15:10] Thank you, Mr Witness. I have no further questions for you.
- 14 PRESIDING JUDGE FREMR: [11:15:13] Now let's move into open session.
- 15 (Open session at 11.15 a.m.)
- 16 THE COURT OFFICER: [11:15:21] We're in open session, Mr President.
- 17 PRESIDING JUDGE FREMR: [11:15:29] So now we also finished examination
- 18 conducted by Legal Representatives of Child Soldiers. We prolonged a bit this
- 19 session, so as I indicated we will now take our regular 30-minute break and we will
- 20 continue quarter to 12, but the last session will last only till 1 o'clock.
- 21 THE COURT USHER: [11:15:54] All rise.
- 22 (Recess taken at 11.15 a.m.)
- 23 (Upon resuming in open session at 11.47 a.m.)
- 24 THE COURT USHER: [11:47:07] All rise.
- 25 Please be seated.

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1 PRESIDING JUDGE FREMR: [11:47:34] Before we continue with

2 cross-examination of our witness, I will deliver the Chamber's guidance in relation to
3 paragraph 33 of the decision on the conduct of proceedings.

4 On 6 November 2016, the Chamber provided a clarification via email on the conduct
5 of proceedings in response to submissions which had been made by the parties. The
6 Chamber now puts that clarification and the reasons therefore on record.

7 In its decision on the conduct of proceedings of 2 June 2015, the Chamber directed, at
8 paragraph 33, that, quote:

9 "As regards the use of documents that have not previously been admitted into
10 evidence the party intending to make use of the documents during cross-examination
11 shall provide a list, by email, no later than 24 hours before the commencement of the
12 cross-examination. ... Objection to the use of any other documents during
13 cross-examination shall be raised orally, prior to the start of the cross-examination."

14 Unquote.

15 Subsequently on 26 June 2016 the parties made further submissions in relation to the
16 appropriate timing for disclosure of this list.

17 The Defence submitted that the 24-hour period is not triggered until it is informed of
18 when examination-in-chief will be completed and, in any event, only commences after
19 the witness has taken the oath. It submitted that otherwise Defence strategy would
20 be revealed and that the Prosecution, quote, "has access to the witness right up until
21 the moment that the witness takes the stand." Unquote. The Defence referred to
22 certain ICTY jurisprudence adopting a similar procedure.

23 Submissions from the parties addressing this issue were also received via email on 11
24 and 13 October 2016.

25 The Chamber notes that its decision on the conduct of proceedings did not

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1 incorporate the caveat that the witness must have taken the oath. Indeed, noting the
2 direction that objections to documents intended to be used on cross-examination be
3 raised prior to the start of cross-examination, it's clear that the Chamber's intention
4 was for the calling party to have 24 hours to review such material. The Chamber
5 therefore considers the Defence request to amount to a request for reconsideration.
6 In the Chamber's view the requisite standard has not been met. First, no new facts or
7 arguments have been raised which were not already known to the Chamber at the
8 time of rendering its decision.
9 Second, no clear error of reasoning has been demonstrated.
10 And third, the Chamber does not consider that reconsideration is to prevent injustice.
11 The Chamber notes in this regard that, contrary to the Defence submissions, the
12 calling party is, pursuant to Familiarisation Protocol, not permitted to have
13 substantive contact with the witness in the 24 hours preceding the witness's
14 testimony, unless otherwise ordered by the Chamber.
15 Further, the Chamber notes that the timing of provision of such a list is a matter upon
16 which practice varies among different Chambers. The *Katanga Trial Chamber, for
17 example, directed that such list be provided three full working days in advance, and
18 Trial Chamber IX has directed that such list be provided 24 hours prior to the
19 testimony starting rather than just prior to the cross-examination starting.
20 In these circumstances the Chamber finds no reason to reconsider its decision and
21 reaffirms the requirements set out in paragraph 33 of the decision on the conduct of
22 proceedings; namely, that in principle the cross-examining party shall provide a list of
23 the documents it intends to use with a witness at least 24 hours before the
24 commencement of its cross-examination, including in cases where this would entail
25 transmitting the list when the testimony of the witness is yet to commence. A

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1 cross-examining party may, however, apply to the Chamber to delay provision of
2 such a list in particular circumstances, for example, where, exceptionally, witness
3 preparation may not have completed.

4 That concludes the Chamber's ruling.

5 Now we can move to cross-examination of the witness.

6 Mr Gosnell, do you want to start in open session, or is there any reason that forces
7 you to start in closed session or private session?

8 MR GOSNELL: [11:54:30] I will be starting, Mr President, with some biographical
9 details, so private session will be required.

10 PRESIDING JUDGE FREMR: [11:54:39] Clear to me. All right.

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

12 (Private session at 11.54 a.m.) *(Reclassified partially in public)

13 THE COURT OFFICER: [11:54:46] We are in private session, Mr President.

14 PRESIDING JUDGE FREMR: [11:54:56] Thank you, court officer.

15 Mr Gosnell, you have the floor.

16 MR GOSNELL: [11:55:01] Thank you, Mr President. And may I just say that we
17 immediately complied with the Chamber's ruling as soon as we were advised of it by
18 email yesterday. May I also say that we provided courtesy disclosure actually at the
19 24-hour deadline in respect of new materials that we thought the Prosecution, out of
20 an abundance of caution, may wish to have further in advance. So just so that
21 your Honours are aware that we took those steps.

22 PRESIDING JUDGE FREMR: [11:55:33] All right.

23 QUESTIONED BY MR GOSNELL:

24 Q. [11:55:36] Good morning, Mr Witness. My name is Christopher Gosnell. I
25 represent Mr Ntaganda here and I will be posing some questions to you today and

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- 1 possibly tomorrow. If any of my questions are not clear, then please ask me to
- 2 clarify and I'll be happy to do that. And I'd like to start, if I may, (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 A. [11:56:16] (Redacted)
- 6 Q. [11:56:18] And in what village did you grow up in?
- 7 A. [11:56:31] (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 Q. [11:56:57] (Redacted)
- 12 (Redacted)
- 13 A. [11:57:07] (Redacted)
- 14 Q. [11:57:20] (Redacted)
- 15 (Redacted)
- 16 A. [11:57:33] (Redacted)
- 17 Q. [11:57:35] (Redacted)
- 18 A. [11:57:46] (Redacted)
- 19 Q. [11:57:50] (Redacted)
- 20 A. [11:58:04] (Redacted)
- 21 Q. [11:58:06] (Redacted)
- 22 (Redacted)
- 23 A. [11:58:21] (Redacted)
- 24 Q. [11:58:21] (Redacted)
- 25 (Redacted)

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1 (Redacted)

2 A. [12:04:46] (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 Q. [12:05:03] (Redacted)

7 A. [12:05:12] (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 Q. [12:05:40] (Redacted)

12 A. [12:05:53] (Redacted)

13 Q. [12:05:56] Now, I understand that on the desk in front of you, you still have
14 what we refer to in this courtroom as tabs 14, 15 and 17, which are three photographs.

15 (Redacted)

16 (Redacted)

17 A. [12:06:30] Yes, that's correct.

18 Q. [12:06:32] (Redacted)

19 (Redacted)

20 (Redacted)

21 A. (Redacted)

22 Q. [12:06:58] Now, we have, Mr Witness, a record of your meeting with the Office
23 of the Prosecutor on Thursday and Friday last. And this document I would ask, if
24 it's not already been distributed, to be distributed. It is ERN DRC-OTP-2097-0567,
25 this is Defence tab 27.

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1 And, Mr Witness, we have an indication of what you said during that meeting in
2 respect of the photographs. And I'll just read to you what is recorded as you having
3 told the lawyers from the Office of the Prosecutor, and I quote:

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 Now, I'd like to ask you a bit more in detail about the circumstances (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 A. [12:10:24] (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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- 1 A. [12:29:38] (Redacted)
- 2 MR GOSNELL: [12:29:39] (Redacted)
- 3 (Redacted)
- 4 Q. [12:30:33] (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 A. [12:31:51] (Redacted)
- 11 (Redacted)
- 12 Q. [12:32:02] (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 A. [12:32:26] (Redacted)
- 17 Q. [12:32:32] (Redacted)
- 18 (Redacted)
- 19 A. [12:32:51] (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 Q. [12:33:28] Yes, that would be the type of meeting I'm referring to. And can

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1 you tell us who was participating in these meetings?

2 PRESIDING JUDGE FREMR: [12:33:37] Hold on, Mr Witness.

3 Ms Solano.

4 MS SOLANO: [12:33:40] Your Honour, the question is temporally vague. Can the
5 witness please be asked to answer the question with relation to a specific time period.

6 PRESIDING JUDGE FREMR: [12:33:53] Mr Gosnell.

7 MR GOSNELL: [12:33:54]

8 Q. From (Redacted) until the time that (Redacted), do you know

9 whether (Redacted) in the context of these

10 meetings that you've referred to?

11 A. [12:34:21] With whom? Well, the question is still vague. I said that (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 Q. [12:34:46] (Redacted)

17 (Redacted)

18 A. [12:35:05] (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 Q. [12:36:21] Yes, and that was the point that I was getting at. (Redacted)

2 (Redacted)

3 (Redacted)

4 A. [12:36:39] (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 Q. [12:37:43] (Redacted)

13 (Redacted)

14 A. [12:37:54] (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 Q. [12:38:40] And they said that these photographs were of a massacre; correct?

21 A. [12:38:52] Indeed, because they came from Kobu. They had to say what had

22 happened, what they'd suffered.

23 Q. [12:38:58] (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 MR GOSNELL: [12:45:11] May we have (Redacted), which is a video.

4 I'll ask for control to be handed over to the computer on the Defence bench.

5 PRESIDING JUDGE FREMR: [12:45:26] Ms Solano.

6 MS SOLANO: [12:45:27] Your Honour, actually, I just want to request a correction

7 to the English transcript on page 68, line 19, so that it corresponds more faithfully to

8 the French version, page 69, lines 11 to 12. According to the French transcript, the

9 witness referred to the (Redacted)

10 (Redacted), and the English transcript is incomplete in that regard, your

11 Honour. Thank you.

12 PRESIDING JUDGE FREMR: [12:46:00] Mr Gosnell, do you agree with this?

13 MR GOSNELL: [12:46:03] I'm afraid I'm not in a position to agree or disagree,

14 Mr President. I would simply say that perhaps we could check that the --

15 PRESIDING JUDGE FREMR: [12:46:11] Okay, then we will check later on.

16 MR GOSNELL: And the video I'm asking for is Defence tab 28, and we're going to

17 start at (Redacted).

18 THE COURT OFFICER: [12:46:35] The video will be displayed on the evidence 2

19 channel.

20 MR GOSNELL: [12:46:41] Thank you, Madam Registrar.

21 Q. Just before we start rolling the video, you can see the image on the screen in

22 front of you, Mr Witness. (Redacted)

23 A. [12:46:55] (Redacted)

24 MR GOSNELL: [12:46:58] We're going to play about 15 seconds, Mr President,

25 until (Redacted).

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1 (Viewing of the video excerpt)

2 MR GOSNELL: [12:47:34]

3 Q. [12:47:34] (Redacted)

4 (Redacted)

5 A. [12:47:42] (Redacted)

6 (Redacted)

7 (Redacted)

8 MR GOSNELL: [12:48:03] Now we're going to play to (Redacted).

9 MS SOLANO: [12:48:08] Your Honour.

10 PRESIDING JUDGE FREMR: [12:48:08] Yes, Ms Solano, please hold on.

11 MS SOLANO: [12:48:11] Um, I apologise if I missed something from what the

12 person on the video said, but Defence counsel has in his question introduced, I

13 believe has introduced a date, (Redacted), and I'm not sure that necessarily matches with the

14 information we have available and that has been used in court today about the date of

15 this footage. So I want to make sure the witness is not confused or led to error about

16 the time period about which he's being asked.

17 PRESIDING JUDGE FREMR: [12:48:50] Mr Gosnell, could you provide us with

18 timing of this?

19 MR GOSNELL: [12:48:55] Certainly. The transcript of the video, which has been

20 prepared by the Office of the Prosecutor, says that this (Redacted)

21 (Redacted) took place in (Redacted). And, of course, we're very familiar with the events

22 to which the witness may (Redacted) the video may be referring. And then the

23 next segment you're going to see, Mr President, the time period that he is referring to.

24 PRESIDING JUDGE FREMR: [12:49:25] Ms Solano.

25 MS SOLANO: [12:49:26] Thank you, your Honour. And can I ask that Defence

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1 counsel please put on the record the ERN of the transcript because it's not part of the
2 list of documents from the Defence.

3 PRESIDING JUDGE FREMR: [12:49:35] Mr Gosnell, please.

4 MR GOSNELL: [12:49:49] That was an oversight if the transcript wasn't put on the
5 list, Mr President, but the Prosecution knows that we were seeking to use this video.
6 We provided the excerpts that would be used. I can provide the references to the
7 transcript; it is (Redacted), Mr President.

8 PRESIDING JUDGE FREMR: [12:50:14] Ms Solano.

9 MS SOLANO: [12:50:15] Your Honour, I -- it's not a problem but I just want to note
10 that -- that Prosecution was not informed that the Defence intended to play the video
11 with audio.

12 PRESIDING JUDGE FREMR: [12:50:27] But as you said, I think it is not a big
13 problem, I believe.

14 MR GOSNELL: [12:50:36] Thank you. Could we play the next excerpt to (Redacted),
15 please.

16 (Viewing of the video excerpt)

17 MR GOSNELL: [12:51:19] May I just say one thing for the record, Mr President,
18 and that is that the transcript in relation to this particular video does not extend up to
19 this segment of the video so there actually is no counterpart transcript for this
20 particular portion.

21 PRESIDING JUDGE FREMR: [12:51:33] Well noted.

22 MR GOSNELL: [12:51:36] And if we could actually continue now to (Redacted).

23 MS SOLANO: [12:51:40] Your Honour.

24 PRESIDING JUDGE FREMR: [12:51:41] Ms Solano.

25 MS SOLANO: [12:51:42] Your Honour, that being the case and that having been

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1 clarified, I do request that the interpreters please interpret into English what is being
2 spoken by the man on the tape in French so that your Honours can follow, and
3 anyone else in the courtroom who needs the English.

4 (Pause in proceedings)

5 PRESIDING JUDGE FREMR: [12:52:24] Now I was informed by the court officer
6 that generally it's possible, and it would be obviously desirable for the Chamber, but
7 that this part might be too fast for the interpreters.

8 So this is why I am asking the French booth whether you are able to translate or
9 interpret, or there is also a solution that he can just put it to you by shorter pieces?

10 In fact, the English booth. Sorry, I was wrong. So what is your response?

11 THE INTERPRETER: [12:53:12] We will attempt to interpret, Mr President.

12 PRESIDING JUDGE FREMR: [12:53:15] Very well. So please now we will then
13 have to repeat the last, in fact two sequences again for the interpretation.

14 MR GOSNELL: [12:53:32] So we'll need to go back to (Redacted).

15 PRESIDING JUDGE FREMR: [12:53:36] Please.

16 MR GOSNELL: [12:53:37] And we'll take it in short pieces, Mr President, to make
17 sure we don't overload the interpreters.

18 PRESIDING JUDGE FREMR: [12:53:43] Very well. Yes, please.

19 MR GOSNELL: [12:53:45] I can say that, in general, the witness -- the video, the
20 narrative is rather slow, but we will still take it in short pieces.

21 PRESIDING JUDGE FREMR: [12:53:53] Very well.

22 MR GOSNELL: [12:53:59] So we're going to start with about the first 14 seconds
23 following (Redacted).

24 THE INTERPRETER: [12:54:18] (Redacted)

25 (Redacted)

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1 (Redacted)

2 MR GOSNELL: [12:54:37] And now we'll continue with the next excerpt, which
3 will be about 29 seconds, if that's not --

4 THE INTERPRETER: [12:54:43] Mr President, I think -- I think it could go a little
5 longer if there are no serious problems.

6 PRESIDING JUDGE FREMR: [12:54:51] Have you heard? Fine.

7 MR GOSNELL: [12:54:52] I did. So I'm hopeful that 29 seconds will be okay.

8 (Viewing of the video excerpt)

9 THE INTERPRETER: [12:54:59] (Interpretation of the video excerpt)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 MR GOSNELL: [12:55:36] And if we could now go the next 21 seconds to (Redacted).

16 (Viewing of the video excerpt)

17 THE INTERPRETER: [12:55:50] (Interpretation of the video excerpt)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 MR GOSNELL: [12:56:13]

22 Q. [12:56:13] Mr Witness, first of all, we just heard (Redacted)

23 (Redacted). Can you tell us whether (Redacted)

24 (Redacted)?

25 A. [12:56:36] (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 MR GOSNELL: [12:58:00] If we could proceed through the next minute and 3

11 seconds, but there is not speaking for a certain portion of that, so I hope it will be all

12 right.

13 (Viewing of the video excerpt)

14 THE INTERPRETER: [12:58:17] (Interpretation of the video excerpt)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 MR GOSNELL: [12:59:19] If we can just skip to one last excerpt of 20 seconds,

22 which commences at (Redacted).

23 MS SOLANO: Excuse me.

24 PRESIDING JUDGE FREMR: [12:59:32] Ms Solano.

25 MS SOLANO: [12:59:33] Could we just have the time code where the transmission

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1 was interrupted, for the record, please.

2 MR GOSNELL: [12:59:40] Yes, we stopped at (Redacted).

3 Q. While that's coming up, in one of the passages we just heard (Redacted)

4 (Redacted). Do you know whether that was true? (Redacted)

5 (Redacted)

6 A. [13:00:23] Yes, indeed, (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 MR GOSNELL: [13:01:05] If I can just play another 20 seconds, Mr President, I can

13 just finish up with the final question.

14 PRESIDING JUDGE FREMR: [13:01:10] All right.

15 MR GOSNELL: [13:01:11] And it's (Redacted) through to (Redacted), for the record.

16 (Viewing of the video excerpt)

17 THE INTERPRETER: [13:01:27] (Interpretation of the video excerpt)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 MR GOSNELL: [13:01:54]

22 Q. [13:01:54] Mr Witness, here we hear (Redacted)

23 (Redacted).

24 Do you know whether it's true that (Redacted)

25 (Redacted)?

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1 A. [13:02:25] (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 Q. [13:03:00] Thank you, Mr Witness.

8 MR GOSNELL: [13:03:02] Mr President, I do see the time.

9 PRESIDING JUDGE FREMR: [13:03:05] Very well.

10 Now, court officer, let's move into open session.

11 (Open session at 1.03 p.m.)

12 THE COURT OFFICER: [13:03:11] We are in open session, Mr President.

13 PRESIDING JUDGE FREMR: [13:03:27] Thank you, court officer.

14 So we are taking our regular lunch break. We will continue at 2.30.

15 And before we break, I would like to express my special thanks to the English

16 interpreter for his excellent job, regardless of really complex circumstances. Thank

17 you very much. Now we break and we will resume half past 2.

18 (Recess taken at 1.03 p.m.)

19 (Upon resuming in open session at 2.31 p.m.)

20 THE COURT USHER: [14:31:03] All rise.

21 Please be seated.

22 PRESIDING JUDGE FREMR: [14:31:28] Good afternoon, everybody. Before we

23 continue with cross-examination of our witness, I will deliver the Chamber's oral

24 decision, and it's oral decision on in-court protective and special measures for

25 Witnesses P-898 and P-918. It will be issued in open session but with a short

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1 recourse to private session as concerns a small part of this decision.

2 On 11 October 2016, the Prosecution filed a request seeking in-court protective
3 measures pursuant to Rule 87 of the Rules, in the form of face and voice distortion
4 and the use of a pseudonym during testimony, for a number of witnesses scheduled
5 to testify during the seventh evidentiary block, as well as various special measures
6 under Rule 88 for certain of those witnesses. It's filing number 1579.

7 At this time, the Chamber will address the request in respect of two witnesses,
8 namely *P-0898 and *P-0918.

9 The Prosecution submits that the requested protection measures are necessary on the
10 basis of objectively justifiable risks to the security and well-being of the witnesses and
11 their family members. In relation to *P-0898, the Prosecution further requests a
12 special measure under Rule 88, namely that the witness be shielded from the accused
13 in the courtroom. For *P-0918, the Prosecution requests that the witness be granted
14 in-court assistance and reading assistance.

15 On 25 October 2016, the Defence filed its response, it's filing number 1593, in which it
16 opposes the requested protective measures for both witnesses. Emphasising that
17 accused's rights to a public hearing, it submits that the Prosecution fails to
18 demonstrate any objectively justifiable risk of post testimonial retaliation. In this
19 regard it argues that, first, the Prosecution's reliance on approaches to *P-0898 is
20 misguided; second, *P-0898's story is already widely known; and third, *P-0918 didn't
21 raise any security concerns and her mere wish to avoid talk from the community or
22 criticism from colleagues is insufficient to meet the threshold for protective measures.
23 The Defence also objects to *P-0898 being shielded from the accused, arguing that the
24 Prosecution failed to provide any justification for such an extreme measure which is
25 to be considered only in special circumstances.

1 The Legal Representative of former child soldiers filed a response on 28 October 2016,
2 it's filing number 1599, in which she requests that the Prosecution's request be
3 granted.

4 On 3 November 2016, the Chamber received the VWU's assessment for *P-0898, in
5 which it was recommended that the same requested protective measures be granted.

6 On 7 November 2016, the Chamber received a vulnerability assessment for *P-0898
7 from the VWU, in which it is recommended that, first, direct eye contact between the
8 witness and the accused be avoided by use of a screen; second, a familiar support
9 assistant be able to sit next to the witness; third, questions to be put in a
10 non-confrontational, non-pressuring manner, and fourth, the witness be observed
11 closely and additional breaks be taken, if necessary.

12 On the basis of the information and submission provided, the Chamber has
13 conducted an individual assessment in respect of each of the two witnesses. In
14 assessing whether there exists an objectively identifiable risk, the Chamber recalls that
15 there are reported instances where other witnesses, including both insider and crime
16 base witnesses, were allegedly threatened as a result of their involvement with the
17 Court. In that regard, the Chamber has previously held that the general security
18 situation in a region may be a relevant consideration. In this instance, it is noted that
19 both *P-0898 and *P-0918 presently reside in an area where former UPC militia
20 members are present or continue to have influence. In addition, *P-0898 and *P-0918
21 are not currently in the ICC Protection Programme.

22 Further, with regard to *P-0898, the Chamber has had particular regard to the VWU's
23 assessment that public testimony would expose the witness to significantly enhanced
24 levels of risk and might trigger retaliation, and that protective measures would
25 reduce such risk. The Chamber also notes the witness's profile and the extent to

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1 which he may be recognisable in his community, and the alleged contacts already
2 reported by the witness. With reference to the Defence submissions that the
3 witness's story is already widely known, the Chamber notes that the witness is not
4 currently known as a Prosecution witness.

5 Concerning *P-0918, the Chamber notes the witness's current occupation as well as
6 the witness's close family connection with other individuals, including with former
7 UPC members and other protected witnesses in this case.

8 In light of the above, the Chamber is satisfied that there exists an objectively
9 justifiable risk with respect to the security and well-being of each of the two witnesses
10 and their family members, warranting the protection of their identity from the public.

11 The Chamber further finds that the in-court protective measures sought do not
12 unduly infringe upon the rights of the accused, given that the Defence will be able to
13 see the witnesses give evidence at trial and hear their voices without distortion.

14 Accordingly, and pursuant to Rule 87 of the Rules, the Chamber grants the measures
15 of use of pseudonym for the purposes of the trial and voice and face distortion during
16 testimony for Witness *P-0898 and *P-0918. For *P-0918, this decision is without
17 prejudice to any reconsideration that might be warranted by the outcome of the
18 pending VWU assessment.

19 And now for the next part of this ruling, I would like to ask the court officer to please
20 briefly go into private session.

21 (Private session at 2.40 p.m.) *(Reclassified partially in public)

22 THE COURT OFFICER: [14:40:41] We're in private session, Mr President.

23 PRESIDING JUDGE FREMR: [14:40:49] Thank you, court officer.

24 MS SOLANO: [14:40:51] Your Honour.

25 PRESIDING JUDGE FREMR: [14:40:51] Ms Solano.

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1 MS SOLANO: [14:40:53] Excuse me, your Honour, can I request that the witness
2 please be ushered out of the courtroom for the private session, the private portion of
3 your Honour's decision. (Redacted)

4 (Redacted)

5 PRESIDING JUDGE FREMR: [14:41:08] No problem. So court usher, please assist.
6 (The witness stands down)

7 PRESIDING JUDGE FREMR: [14:41:35] So now I can continue.

8 Turning to the request for special measures for P-898, the Chamber notes that the
9 assessment and recommendations provided by the VWU and in particular the fact
10 that the witness explained having experienced several trauma related symptoms, that
11 eye contact with the accused might influence his ability to testify and that the
12 requested measures would reduce his nervousness and anxiety.

13 With just a short time now we can return back to open session. We also can bring
14 Mr Witness back.

15 (Open session at 2.42 p.m.)

16 THE COURT OFFICER: [14:42:30] We are back in open session, Mr President.

17 PRESIDING JUDGE FREMR: [14:42:33] I think we can continue even without
18 witness.

19 Therefore, on the basis of the VWU's assessment and pursuant to Rule 88, the
20 Chamber decides that the special measures recommended by the VWU shall be
21 granted. Regarding the special measures requested in respect of *P-0918, the
22 Chamber defers its decision until receipt of the pending VWU assessment. This
23 concludes the Chamber's ruling.

24 Now, for the record, Mr Witness is back and we can then continue with his
25 cross-examination.

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1 Mr Gosnell, just for your information, according to our measuring, you so far
2 exhausted one hour six minutes, which means that you still have at your disposal
3 almost three hours, so now please proceed.

4 And habitual question, do you want to proceed in private, or in open session?

5 MR GOSNELL: [14:43:34] I don't think I have any choice, Mr President, but to
6 remain in private session.

7 PRESIDING JUDGE FREMR: [14:43:38] Just for information of public, this witness is
8 a protected one, which means that he was granted that his identity will not be
9 revealed to public within the framework of his protection, which means as soon the
10 question could reveal his identity, which is now the case, we will have to move into
11 private session. And unfortunately, in this case, it probably will take most of the
12 time needed for this cross-examination.

13 Now, court officer, please move into private session.

14 (Private session at 2.44 p.m.) *(Reclassified partially in public)

15 THE COURT OFFICER: [14:44:25] We're in private session, Mr President.

16 PRESIDING JUDGE FREMR: [14:44:27] Thank you, court officer.

17 Mr Gosnell, please proceed.

18 MR GOSNELL: [14:44:33]

19 Q. [14:44:34] Good afternoon, Mr Witness.

20 The video that we were watching before the lunch break, is that the first time that
21 you've seen that video?

22 A. [14:44:51] Indeed, it's the first time that I've seen that video.

23 Q. [14:44:58] (Redacted)

24 (Redacted)

25 A. [14:45:07] (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted) So I don't really have any clarifications to give in that regard.

5 Q. [14:45:57] And you do confirm that (Redacted)

6 (Redacted)?

7 A. [14:46:04] Indeed, (Redacted).

8 MR GOSNELL: [14:46:08] Mr President, at this time I seek to tender the portions of

9 the video that were played, and for the record the video is (Redacted), and

10 the excerpts that were played are from (Redacted)

11 (Redacted).

12 PRESIDING JUDGE FREMR: [14:46:46] Ms Solano, any objection?

13 MS SOLANO: [14:46:48] No, your Honour.

14 PRESIDING JUDGE FREMR: [14:46:49] So portions of video specified by Mr Gosnell

15 are admitted into evidence as a further Defence exhibit.

16 Now, Mr Gosnell, please proceed.

17 MR GOSNELL: [14:47:05] Thank you, Mr President. And I would now like to

18 move to a different video, which is (Redacted). That's tab 29. And we do,

19 Mr President, have a transcript of this particular video. We have distributed it to the

20 interpreters, which will facilitate the interpretation.

21 PRESIDING JUDGE FREMR: [14:47:32] Appreciate.

22 MR GOSNELL: [14:47:34] And for the record, the transcript of this video is

23 (Redacted), and I will direct the interpreters to page (Redacted), around line (Redacted).

24 Q. [14:48:02] Now, Mr Witness, I'd now like to show you a further portion of (Redacted)

25 (Redacted). And we'll be starting at timestamp (Redacted).

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1 And if the interpreters are in agreement, we could go straight through to (Redacted) or we
2 could split it into two, as they consider most appropriate.

3 PRESIDING JUDGE FREMR: [14:48:38] What is position of the interpreters?

4 THE INTERPRETER: [14:48:40] We can split it, your Honour.

5 PRESIDING JUDGE FREMR: [14:48:42] All right.

6 MS SOLANO: [14:48:43] Your Honour.

7 PRESIDING JUDGE FREMR: [14:48:44] Ms Solano.

8 MS SOLANO: [14:48:45] I would like to request the Defence for the page reference
9 so the transcript that correspond to those time stamps, please.

10 MR GOSNELL: [14:48:54] Yes, I mentioned those. It starts at line (Redacted), which
11 appears at ERN page (Redacted).

12 MS SOLANO: [14:49:04] Thank you.

13 (Viewing of the video excerpt)

14 THE INTERPRETER: [14:50:05] (Interpretation of the video excerpt)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 MR GOSNELL: [14:51:56] Let's just stop here, please.

8 Q. [14:51:59] May I ask you, Mr Witness, whether you can tell us in respect of these

9 elements (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 A. [14:52:34] (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 for me to tell you that, to tell you that exactly. I no longer remember. And
2 according to the information that we have, well, there were different estimates that
3 were given to us. Personally, I wasn't at the place, so I wouldn't be able to give the
4 correct figures of people who were killed.

5 Q. [14:55:07] Yes, Mr Witness, I understand that you were not at the place, and
6 you've also told us that your brother was not at the place, and so that's why I'm
7 asking you the question whether you know - and perhaps you don't know - but
8 whether you know from whom your brother obtained these specific elements about
9 the incident at Kobu, including the precise number of victims, the fact that the victims
10 included intellectuals, the date as being April; from whom did he obtain that
11 information, if you know?

12 A. [14:55:43] As I said, once Bunia had been freed, people from Kobu could go to
13 Bunia. It wasn't just those people who brought us the negatives. There were other
14 people as well who came to Bunia. Not any from Kobu, from Bambu or the mining
15 zone in general. My brother could get information from different sources, I can't
16 precise them here, but in addition to the information from those people who gave us
17 the negatives.

18 Q. [14:56:34] Are you telling us that the people who gave you the negatives
19 provided you with this information about the number of victims, the fact they were
20 intellectuals, the fake invitation to a pacification meeting and the date of the killing?

21 A. [14:56:53] Yes. They gave us a certain amount of information, but where it
22 concerns precise figures, I don't remember. I no longer remember. But I know that
23 they gave such clarifications with regards to the invitation of the UPC and the
24 circumstances surrounding the massacre and other elements as well. But as regards
25 the precise figures, I no longer remember that.

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1 MR GOSNELL: [14:57:28] Could we continue please with the video until (Redacted).

2 (Viewing of the video excerpt)

3 THE INTERPRETER: [14:57:41] (Interpretation of the video excerpt)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 MR GOSNELL:

16 Q. [14:59:03] Now, you've told us that (Redacted)

17 (Redacted)

18 (Redacted)

19 A. [14:59:27] (Redacted)

20 (Redacted)

21 (Redacted)

22 Q. [15:00:03] And to come back to the same question that I asked you before but

23 now in respect of slightly different elements, and Mr Witness, I expect your answer is

24 going to be the same and there is no difficulty with that, but I just want to be clear, in

25 respect of the information about (Redacted)

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1 (Redacted)?

2 A. [15:00:26] I said that (Redacted)

3 (Redacted)

4 (Redacted)

5 Q. [15:00:50] Can we go now please to timestamp (Redacted). And for the record, this is

6 on the transcript starting from line (Redacted), which is on ERN page (Redacted) of ERN (Redacted).

7 And this excerpt is 1 minute and 12 seconds long. Perhaps we can do that in one

8 step.

9 (Viewing of the video excerpt)

10 THE INTERPRETER: [15:01:40] (Interpretation of the video excerpt)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 MR GOSNELL: [15:01:53]

17 Q. [15:01:55] Now, do you recognize this photograph as being one of the three that

18 you indicate as having seen (Redacted)

19 (Redacted)?

20 A. [15:02:12] Yes, I do indeed recognize the photograph.

21 MS SOLANO: [15:02:27] Your Honour.

22 PRESIDING JUDGE FREMR: [15:02:28] Ms Solano.

23 MS SOLANO: [15:02:29] Excuse me, could Defence counsel please note for the

24 record the timestamp at which we stopped?

25 MR GOSNELL: [15:02:40] I was about to do that, Mr President. I had just been

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1 reminded here at the bench that I had neglected to do that. And the timestamp was

2 (Redacted).

3 May we continue playing the video?

4 (Viewing of the video excerpt)

5 THE INTERPRETER: [15:02:54] (Interpretation of the video excerpt)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 MR GOSNELL: [15:03:35]

17 Q. [15:03:35] Now, do you recognize this photograph, Mr Witness, as one of the

18 other photographs that you saw (Redacted)

19 (Redacted)?

20 A. [15:03:50] Yes, indeed.

21 MR GOSNELL: [15:03:59] For the record the timestamp is (Redacted). Now we will

22 proceed to (Redacted).

23 (Viewing of the video excerpt)

24 THE INTERPRETER: [15:04:30] (Interpretation of the video excerpt)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 MR GOSNELL: [15:04:55] Now we have stopped at (Redacted).

8 Q. [15:04:58] (Redacted)

9 (Redacted)

10 (Redacted)

11 A. [15:05:12] (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 MR GOSNELL: [15:06:26] Mr President, I seek to tender the two excerpts that have
20 just been shown, (Redacted).

21 PRESIDING JUDGE FREMR: [15:06:44] Prosecution, your position?

22 MS SOLANO: [15:06:46] No objection, your Honour.

23 PRESIDING JUDGE FREMR: [15:06:51] So those two excerpts now specified by Mr
24 Gosnell are admitted into evidence as a further Defence exhibit.

25 MR GOSNELL: [15:07:00]

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1 Q. [15:07:00] Mr Witness, you've told us that (Redacted)

2 (Redacted); is that correct?

3 A. [15:07:09] Yes, indeed.

4 Q. [15:07:20] (Redacted)

5 A. [15:07:21] Yes, yes, (Redacted)

6 (Redacted).

7 Q. [15:07:33] Did you (Redacted)

8 (Redacted)?

9 A. [15:07:44] That was my intention. If my memory serves me correctly, (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 Q. [15:09:09] (Redacted)

21 (Redacted)

22 A. [15:09:27] Well, I don't remember (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 Q. [15:09:54] (Redacted)

2 (Redacted)

3 A. [15:10:02] (Redacted)

4 (Redacted)

5 (Redacted)

6 Q. [15:10:30] And is there any possibility that the three photographs that you have
7 looked at today and that you have recognized, is there any possibility that those
8 photographs relate to a massacre other than the one at Kobu?

9 A. [15:10:47] Well, I think it can only be in relation to the events in Kobu because
10 the other images (Redacted)

11 (Redacted) one is able to recognize the town of Bunia in those images. And if you look
12 at the images here, we can see quite clearly that we are in a locality where you do not
13 see any buildings or any built up areas. So we are here in a rural area. But the
14 other photographs (Redacted) were relevant to an urban areas. They
15 were photographs of Bunia where you could see large buildings, you could see
16 houses, you could see roads, contrary to the photographs that we have before us.

17 Q. [15:11:55] The reason I ask this question, Mr Witness, is that again in the
18 document that was provided to us by the Prosecution memorialising their meeting
19 with you, they indicate that there was one photograph of four that you no longer
20 remembered and that you no longer recognized because you said the photo is not
21 quite clear, perhaps because he does not remember. And this was one of the
22 photographs that you said in your statement that you identified as being from Kobu.
23 Now, can you tell us why it is that you have doubts about one of the four
24 photographs now in respect of whether it indeed is of the massacre at Kobu?

25 PRESIDING JUDGE FREMR: [15:12:52] Ms Solano.

1 MS SOLANO: [15:12:53] Your Honour, can I request that the witness please be
2 shown the photograph about which he is being questioned?

3 PRESIDING JUDGE FREMR: [15:13:03] Mr Gosnell.

4 MR GOSNELL: [15:13:05] We can do that. That's DRC-OTP-0077-0294. That's
5 tab 16.

6 Q. [15:13:58] Mr Witness, this is a photograph that you indicated you recognized as
7 being an image of a body that was found in Kobu, and you said that back in your
8 statement in (Redacted), and now you've indicated that you're not sure whether this is such
9 a photograph; is that correct?

10 A. [15:14:36] Yes, indeed. What I said to the OTP recently was that the quality of
11 the image is not a clear one. It is not clear enough to enable me to jog my memory
12 with regard to this individual or his state. I find the photograph somewhat dark.
13 And this does not allow me to directly recall matters as I was able to do with the three
14 other photographs. (Redacted)

15 (Redacted) So I am not able to retain all the images, but at
16 the very least I can easily recognize some of them, whereas others that are not clear,
17 such as this one as you can see, it's a dark photograph, means that it's difficult for me
18 to recognize it and difficult to establish whether I had seen it before or not.

19 I found the others easy to recognize. But this one, well, were the photograph to be a
20 little bit brighter, I would be in a position to recognize it immediately, but I do not
21 exclude that this photograph was taken in this same context. But for the time being,
22 my memory does not allow me to recall this specifically.

23 Q. [15:16:29] And in respect of the three photographs that you do recall, you say,
24 and you've just told us at line 19 of page 96, that "... if you look at the images ... we can
25 see quite clearly that we are in a locality where you do not see any buildings or any

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1 built up areas."

2 Do I understand you to be saying that you infer that those three photographs are of
3 Kobu because you don't see any buildings, or do you have an actual recollection that
4 you've previously seen those photographs as being images of the massacre at Kobu?

5 A. [15:17:24] I spoke of the rural area and the urban area just in order to provide us
6 with the different contexts (Redacted)
7 (Redacted).

8 Now, if we were to compare and ascertain what makes it difficult for me to adapt my
9 perception with regard to this photograph that's up on the screen before us, well, this
10 is because firstly it is not a clear image and secondly, in the situation in Kobu, all of
11 the bodies were gathered together, and they were killed and practically all of them
12 put together, whereas here these bodies seemed to be in isolated positions, they
13 seemed to be isolated one from the other.

14 So this does not exclude the fact that they might be bodies from those bodies in Kobu.
15 However, it does make me feel somewhat reserved in the sense that we can't see
16 clearly in this photograph what the surrounding area is all about.

17 MR GOSNELL: [15:18:58] I'm done with this document, Mr President.

18 PRESIDING JUDGE FREMR: [15:19:01] All right.

19 MR GOSNELL: [15:19:03]

20 Q. [15:19:03] (Redacted)

21 A. [15:19:10] (Redacted)

22 Q. [15:19:20] (Redacted)

23 (Redacted)

24 A. [15:19:28] (Redacted)

25 THE INTERPRETER: (Redacted)

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1 (Redacted)

2 Q. [15:28:31] (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 A. [15:29:41] (Redacted)

13 (Redacted)

14 Q. [15:29:57] (Redacted)

15 (Redacted)

16 A. [15:30:11] (Redacted)

17 Q. [15:30:18] And you agree, do you not, that in August or September 2001, the

18 UPC did not exist?

19 A. [15:30:31] August till September, the UPC had not yet been set up. We were

20 part of the RCD at the time, if I'm not mistaken, and then the FLC and then the RCD

21 again, and then after that UPC, the UPC came along.

22 Q. [15:30:58] So in respect of this time period, which groups, which armed groups

23 or group were these children rejoining?

24 A. [15:31:12] Do you want to speak about the period preceding my entry or the

25 following period?

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1 Q. [15:31:27] Let's just start with up to the time that you joined, September 2001.

2 A. [15:31:44] Well, it's logical for this period. First of all, there were the RCD

3 forces. They controlled Ituri. There was also the militias of the communities who

4 were killing each other, because we're still talking about a conflictual, inter-ethnic

5 conflict. There was a succession of these rebel movements, or the same movement

6 which was changing the name depending on the leader of the group, whether that

7 person remained in power or not. So these children could only join either the ethnic

8 militia, the ethnic group to which they belonged, that militia. So the ethnic groups to

9 which they belonged or, alternatively, the rebel forces who had control of the area.

10 Q. [15:32:49] (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

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- 1 (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 A. [15:34:51] (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 Q. [15:35:11] (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 PRESIDING JUDGE FREMR: [15:35:49] (Redacted)
- 13 (Redacted)
- 14 MS SOLANO: [15:35:53] (Redacted)
- 15 MR GOSNELL: [15:35:56] (Redacted)
- 16 (Redacted)
- 17 Q. [15:36:12] (Redacted)
- 18 (Redacted)
- 19 (Interpretation) (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 A. [15:37:09] (Redacted)
- 24 Q. [15:37:17] Let me just re-pose my question so we can focus. And my specific
- 25 question to you is: What forces are you referring to that were organised by locality

1 or by collectivité?

2 A. [15:37:39] Well, here I'm referring to the militia, the combatants, the *Lema and
3 Hema ethnic forces who were fighting the Lendu ethnic forces, combatants, not
4 organised groups. And that's why I said, when UPC took power, given that the UPC
5 was a movement initiated by the Hema, all the forces or militia combatants joined the
6 UPC. They were the ones who formed the UPC armed wing, the FPLC.

7 Q. [15:38:33] And these Hema ethnic forces that you're referring to at this time, at
8 this time period, were they also known as forces d'autodéfense?

9 A. [15:38:51] Well, it depends what name you give them. For example, at the time,
10 if I remember correctly, we called the Lendu who were fighting or who were
11 defending themselves the Lendu combatants. But with the Hema, we called them
12 the Hema militia. It depended on what name each person would give. But before
13 the UPC arrived, it wasn't really organised -- military organised groups with
14 structures, no. We're talking about combatants. And with the arrival of the UPC,
15 there was a military organisation.

16 Q. [15:39:49] Did you ever hear of these local groups being referred to as comité de
17 paix?

18 A. [15:40:00] Comité de paix, peace committee, no, no. When you speak about
19 comité de paix, that makes me think of something else. That's got nothing to do with
20 the combatants of the two ethnic groups.

21 The comité de paix that was set up, that was within the framework of pacification.
22 There were several attempts at pacification between the two communities. They
23 started a long time before the arrival of the UPC.

24 Q. [15:40:45] And can you tell us when, according to you, the UPC came into
25 existence? Was it before taking power in Bunia, or was it at the same time as taking

1 power in Bunia?

2 A. [15:40:58] If the organisation started perhaps in the corridors as it were in Bunia,
3 at least there was a clear manifestation of it when they took Bunia, because we were
4 under rebel occupation of the RCD. So, as I said, people would change depending
5 on the circumstances and depending on the role of Uganda.

6 Q. [15:41:40] And do you know whether any of these locally organised militia
7 maintained any independence from the UPC after it came into creation, or is that
8 something you just don't know about one way or the other?

9 A. [15:41:59] We heard about some misunderstanding between the Hema
10 community in general. But I would be unable to tell you here if the local groups, by
11 collectivity or by locality, remained back. Where it concerned the coming into
12 existence of the UPC, the UPC wanted to bring together all its forces to assert its
13 authority. It needed people.

14 Q. [15:42:38] (Redacted)
15 (Redacted)

16 A. [15:43:06] (Redacted)

17 Q. [15:43:25] (Redacted)
18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 A. [15:43:52] (Redacted)
23 (Redacted)
24 (Redacted)
25 (Redacted)

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- 1 (Redacted)
- 2 Q. [16:01:25] (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 A. [16:01:45] (Redacted)
- 6 (Redacted)
- 7 Q. [16:01:57] (Redacted)
- 8 (Redacted)
- 9 A. [16:02:07] (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 Q. [16:02:42] (Redacted)
- 14 (Redacted)
- 15 A. [16:02:54] (Redacted)
- 16 Q. [16:03:11] (Redacted)
- 17 (Redacted)
- 18 A. [16:03:22] (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 Q. [16:04:05] (Redacted)
- 23 (Redacted)
- 24 Could we please have DRC-D01-0003-5894, tab 35. This is a document signed by
- 25 Bahemuka Kisembo as commandant from the chef d'état-major général of the FPLC.

1 It's dated 30 October 2002. It appears to be addressed to subordinate commanders,
2 and it reads as follows, (Interpretation) "Subject: Disarmament of children with
3 weapons. You must disarm within two weeks all of those children who are younger
4 than 18 and even within the self-defence forces."

5 (Speaks English) Did you ever see this document -- have you ever seen this document
6 before?

7 MR GOSNELL: May we have DRC --

8 THE WITNESS: (Interpretation) [16:06:18] This is the first time I'm seeing this document.

9 THE INTERPRETER: [16:06:38] Apology from the interpreter. Her microphone
10 was not on.

11 MR GOSNELL: [16:06:42] May we have DRC-OTP-0178-0152, which is tab 36. I
12 may not have given the correct ERN number because there are actually two ERN
13 numbers. It's 0029-0275, and that is tab 36.

14 Q. [16:07:55] This is a letter from Thomas Lubanga addressed to the chef
15 d'état-major. It's dated 27 January 2003. And he says or this letter says in French,
16 (Interpretation) "Subsequent to my letter dated 21 October 2002 in which I formally
17 forbade the enrollment in the army of the FPLC of children aged under age 18, I
18 would request that you send to me at your earliest opportunity a detailed report on
19 this issue, to which I attach a great deal of importance."

20 (Speaks English) You didn't see this document at the time, did you?

21 A. [16:08:57] Not yet. Well, this is the first time that I've ever seen this document.

22 MR GOSNELL: [16:09:09] May we have DRC-OTP-0113-0070, tab 37.

23 Q. [16:10:05] If we could start by just turning over the page and looking at the
24 signatory, it appears to be from someone under the title secrétaire national de
25 l'éducation nationale. And then if we could turn back to the front page, we see that

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1 the date is 12 February 2003. It's addressed to le commandant G5 of the FPLC and
2 the subject line reads (Interpretation) "Designation 13 training officers or DDR/RR
3 child soldiers."

4 THE INTERPRETER: The interpreter cannot see it on the screen as it has not been
5 blown up. Thank you.

6 MR GOSNELL: [16:11:30] I think it's there now for the interpreters. Perhaps we
7 could just finish with the acronym.

8 THE INTERPRETER: [16:11:40] The acronym reads DDR/RR, I believe. Thank you.

9 MR GOSNELL: [16:11:46] Thank you very much.

10 Q. [16:11:49] And then down at the very bottom of the page, which is unfortunately
11 not of the greatest quality, I believe it reads, quote, (Interpretation) "In the
12 immediate future, here is the programme for the preparatory activities. On 17 and
13 18 February, a training and information workshop is organised by the Save Children
14 organisation for those figures of authority who are interested in the project, for
15 officers who have been appointed by their military hierarchy," and in brackets "(13
16 officers) of various confessions and associations working within the humanitarian
17 framework. From 24 and 25 February the same training seminar is organised for the
18 offices of the transit centre."

19 (Speaks English) Have you ever seen this document before?

20 A. [16:13:06] No, not at all. I have never seen this document.

21 Q. [16:13:16] Have you ever heard of transit centres?

22 A. [16:13:21] I have never heard speak of these transit centres.

23 Q. [16:13:38] Have you ever heard of any NGO with a name similar to Save the
24 Children?

25 A. [16:13:46] To the contrary, quite to the contrary, I know the Save the Children

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- 1 organisation, (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 Q. [16:14:20] (Redacted)
- 5 (Redacted)
- 6 A. [16:14:30] (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 Q. [16:15:09] (Redacted)
- 10 (Redacted)
- 11 A. [16:15:20] (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 Q. [16:16:41] (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 A. [16:16:58] (Redacted)

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1 Q. [16:17:10] (Redacted)

2 (Redacted)

3 (Redacted)

4 A. [16:17:27] (Redacted)

5 (Redacted)

6 MR GOSNELL: [16:17:38] Could we have DRC-D01-0003-5896, please, which is tab

7 38. That's DRC-D01-0003-5896.

8 Q. [16:18:52] This is a document which I can say as an undersigned, an

9 underwritten, it says "Bosco Ntaganda," and the date is 16 February 2003, and it's a

10 report, (Interpretation) "Disarmament of child soldiers."

11 (Speaks English) I won't read the entire document out loud, but you can see what is

12 written here, Mr Witness, and I'll just draw your attention to point 2: (Interpretation)

13 "Our U. are up against a distinct opposition on the part of those in charge of the

14 self-defence forces in demobilising and disarming the children of their group."

15 (Speaks English) Did you see this document at the time, or ever before now?

16 A. [16:20:07] I have never seen this document.

17 Q. [16:20:12] And it seems to suggest that in fact the auto-defence forces are

18 resisting the demobilisation and disarmament of children. Now, does that in any

19 way remind you about the existence of auto-defence forces or self-defence forces

20 continuing after the creation of the UPC?

21 A. [16:20:42] Well, what I know is when UPC took power, took control of Bunia, it

22 made efforts and gathered all of the Hema fighting forces and made this the major

23 part of its military presence or force.

24 Now, as to whether some of those military leaders within the UPC were

25 fiercely -- fierce opponents to the demobilisation of child soldiers, I am not aware.

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1 These are facts that are internal to the UPC movement and I am not privy to this
2 information. But on the basis of this letter, I can provide the analysis that the
3 auto-defence forces here mentioned were under the control of the UPC.

4 Q. [16:22:04] (Microphone not activated)

5 THE INTERPRETER: Microphone please, counsel.

6 MR GOSNELL: [16:22:15]

7 Q. [16:22:15] Under the control, but apparently not sufficiently under control so
8 that they could not resist orders to demobilise children, correct?

9 A. [16:22:24] Well, it would depend upon the interpretation made of this. Well,
10 whatever the case, they were part of it.

11 Q. [16:22:44] You can't exclude, in fact, your answer already seems to suggest that
12 those auto-defence forces continued to exist, did they not, after the formation of the
13 UPC?

14 A. [16:22:58] No. What is said here is that those in charge, it was those in charge
15 who were opposed or who were building up such a resistance. That is the analysis
16 that I am making of this letter. But those forces, once they were integrated within
17 the UPC, were part and parcel of the UPC.

18 We heard people say, for example, that between Thomas Lubanga and Kahwa, his
19 minister for defence, that there were issues, but that didn't mean that Kahwa was not
20 a member of UPC. He was a member of the UPC until he left.

21 So I cannot say any more than what can be seen here. I can't even comment on it any
22 further.

23 Q. [16:24:13] Because you don't know about the details of the chain of command
24 within the UPC or the extent to which the auto-defence forces were autonomous, can
25 you?

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1 A. [16:24:25] The UPC, well at least it's armed wing appeared to everybody as a
2 well organised and highly functional hierarchical structure. So the degree of all of
3 this can only have been felt within its ranks. But I can't know this. But from the
4 outside what we could see was that it was a well organised army that responded to
5 orders from its hierarchy.

6 Q. [16:25:10] And that's not based on any knowledge of the internal workings of
7 the UPC, is it?

8 A. [16:25:15] I can only talk about what I know. Let me give you an example. (Redacted)
9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 So by virtue of that situation, we can see that the UPC did indeed gather, because
17 (Redacted) was operational in the Irumu territory in the south. They brought
18 together the various Hema forces and made a military wing out of it, out of them.

19 They organised them. So it's difficult for me to say or to describe the degree of
20 allegiance of such and such a commander, such and such a group with regard to
21 Thomas Lubanga, or any other figure of authority within the UPC.

22 But what was visible was that they all answered to the same authority.

23 MR GOSNELL: [16:27:35] May we have (Redacted), tab 48.

24 Q. [16:28:15] Mr Witness, the date of this document is (Redacted). The
25 provenance is not relevance. If we can turn to page two at the bottom of the page,

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 A. [16:29:39] (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 MR GOSNELL: [16:30:10] Mr President, I see we've arrived at the time.

13 PRESIDING JUDGE FREMR: [16:30:15] All right. Now court officer, let's move
14 into open session.

15 (Open session at 4.30 p.m.)

16 THE COURT OFFICER: [16:30:27] We're in open session, Mr President.

17 PRESIDING JUDGE FREMR: [16:30:37] Thank you, court officer. So first update on
18 our time measuring so far, Mr Gosnell used two hours and 52 minutes, which means
19 that for tomorrow there is still one hour and eight minutes remaining.

20 Mr Gosnell, for the sake of planning, do you think you will need all that time?

21 MR GOSNELL: [16:30:58] Probably, Mr President.

22 PRESIDING JUDGE FREMR: [16:31:01] All right. Just to prepare Prosecution for
23 their next witness. All right.

24 Mr Witness, it's the end of your testimony for today. We will continue tomorrow.

25 And it's my duty to remind you that in the meantime until tomorrow you must not

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- 1 discuss your testimony with anybody else. Do you understand that?
- 2 THE WITNESS: [16:31:29] (Interpretation) I do perfectly.
- 3 PRESIDING JUDGE FREMR: [16:31:34] So thank you very much for your today
- 4 testimony and we will continue tomorrow 9.30.
- 5 Now court is adjourned.
- 6 THE COURT USHER: [16:31:48] All rise.
- 7 (The hearing ends in open session at 4.31 p.m.)
- 8 RECLASSIFICATION REPORT
- 9 Pursuant to the Trial Chamber VI's Order, ICC-01/04-02/06-1887, dated 4 May 2017,
- 10 the public reclassified and lesser redacted version of this transcript is filed in the case.