

Trial Hearing

(Open Session)

ICC-01/04-02/06

1 International Criminal Court
 2 Trial Chamber VI
 3 Situation: Democratic Republic of the Congo
 4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
 5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and Judge Chang-ho Chung
 6 Trial Hearing - Courtroom 3
 7 Monday, 28 November 2016
 8 (The hearing starts in open session at 9.33 a.m.)
 9 THE COURT USHER: [9:33:41] All rise.
 10 The International Criminal Court is now in session.
 11 Please be seated.
 12 PRESIDING JUDGE FREMR: [9:34:11] Good morning, everybody.
 13 Court officer, please call the case.
 14 THE COURT OFFICER: [9:34:18] Thank you, Mr President.
 15 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
 16 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
 17 We are in open session.
 18 PRESIDING JUDGE FREMR: [9:34:29] Thank you, court officer.
 19 Now appearances, starting with Prosecution.
 20 MS LUPING: [9:34:34] Good morning, Mr President. Good morning your
 21 Honours. Appearing on behalf of the Prosecution this morning are Ms Nicole
 22 Samson, senior trial lawyer; Charlotte Hubert, intern; Ms Paola Sacchi, assistant legal
 23 officer; Selam Yirgou, case manager; and myself, Dianne Luping, trial lawyer.
 24 PRESIDING JUDGE FREMR: [9:34:55] Thank you, Ms Luping. Defence, please.
 25 MR GOSNELL: [9:35:00] Good morning, Mr President and your Honours.

1 Christopher Gosnell for Mr Ntaganda this morning, accompanied by

2 Isabelle Martineau and Han Catherine Morin. Thank you.

3 PRESIDING JUDGE FREMR: [9:35:10] Thank you, Mr Gosnell.

4 Legal Representatives of Victims now, please.

5 MS PELLET: [9:35:15] (Interpretation) Thank you, your Honour. The former

6 child soldiers are represented by myself, Sarah Pellet, counsel with the Office of

7 Public Counsel for Victims. Thank you.

8 MR SUPRUN: [9:35:31] (Interpretation) Good morning, your Honour, your

9 Honours. For the victims of the attacks today, Anne Grabowski, associate lawyer,

10 and myself Dmytro Suprun, counsel with the Office of Public Counsel for Victims.

11 PRESIDING JUDGE FREMR: [9:35:47] Thank you, Ms Pellet. Thank you,

12 Mr Suprun.

13 Before we started with testimony of the next witness, which is planned for today and

14 probably tomorrow, the Chamber would like to address two procedural issues.

15 The first one is our ruling, our oral decision on in-court protective and special

16 measures for Witness P-883. This decision concerns Prosecution request for

17 protective and special measures for Witness P-883 contained in filing number 1579.

18 The Prosecution requests in-court protective measures pursuant to Rule 87 of the

19 Rules in the form of face and voice distortion during testimony and the use of a

20 pseudonym. The Prosecution also seeks various special measures under Rule 88,

21 including that, one, the witness be shielded from the accused in the courtroom; two,

22 the parties and participants adapt their questioning in accordance with the needs and

23 capacities of the witness; and three, the witness be granted regular breaks, if

24 necessary, in-court assistance and reading assistance.

25 The Legal Representatives for former child soldiers supports the request in filing

1 number 1599 and, among other factors, highlights the risk of post-testimonial
2 retaliation due the witness's of residence, the nature of the expected testimony, the
3 witness's experiences, role and age at the time of the events, and current personal
4 situation.

5 The Defence in filing number 1593 opposes the protective measures and certain of the
6 special measures requested, arguing that the Prosecution fails to substantiate any
7 objectively justifiable risk of post-testimonial retaliation.

8 The Defence also objects to the witness being shielded from the accused, arguing that
9 the Prosecution fails to provide any justification for what it argues is an extreme
10 measure which to be considered only in special circumstances.

11 On 23 and 25 November 2016, the Chamber received respectively the VWU's in-court
12 protective measures and vulnerability assessment for this witness, in which it was
13 recommended that the same protective and special measures sought by the
14 Prosecution be granted.

15 In assessing whether there exists an objectively justifiable risk, the Chamber recalls
16 that it has previously held that the general security situation in a region may be a
17 relevant consideration in respect of specific witnesses. In this instance, it's noted that
18 the witness and witness's family currently reside in an area where former UPC/FPLC
19 militia members and supporters of the accused are present or continue to have
20 influence.

21 The Chamber recalls that threats to a witness or his or her family are not a
22 prerequisite to determining whether a witness faces an objectively justifiable risk and
23 that there are reported instances where other witnesses were allegedly threatened as a
24 result of their involvement with the Court.

25 Also, on the basis that the witness subjective fears are not a decisive consideration in

1 the Chamber's determination of the existence of an objectively justifiable risk to the
2 witness.

3 The Chamber does not consider that the signed statement from the witness explaining
4 his or her concerns is a requirement needed in support of such requests as suggested
5 by the Defence.

6 The Chamber further notes in relation to Witness P-883: One, the nature of the
7 witness's expected testimony, particularly in light of her role and experiences during
8 the events; and two, the extent to which the witness may be identifiable.

9 And now, court officer, for the next part of this ruling, we will have to move into
10 private session briefly.

11 (Private session at 9.41 a.m.)

12 THE COURT OFFICER: [9:41:35] We are in private session, Mr President.

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Open session at 9.42 a.m.)

22 THE COURT OFFICER: [9:42:29] We are in open session. Mr President.

23 PRESIDING JUDGE FREMR: [9:42:36] Thank you, court officer.

24 The Chamber has also had particular regard to the VWU's assessment that also in
25 light of the witness's current occupation, realistic concerns exist that public testimony

1 would present a threat to the witness and her family and might trigger a retaliation
2 and that protective measures would reduce such risk.

3 Finally, the Chamber notes that the witness is currently not in the ICC protection
4 programme.

5 In light of the above, the Chamber is satisfied that there exists an objectively
6 justifiable risk with respect to the security and well-being of the witness and her
7 family, warranting the protection of her identity from the public.

8 The Chamber further finds that the in-court protective measures sought do not
9 unduly infringe upon the rights of the accused, given that the Defence will be able to
10 see the witness give evidence at trial and hear her voice without distortion.

11 Accordingly, and pursuant to Rule 87 of the Rules, the Chamber grants the measures
12 of use of pseudonym for the purposes of the trial and voice and face distortion during
13 testimony for Witness P-883.

14 And for the next part of the ruling, we will have again move into private session,
15 court officer, please.

16 (Private session at 9.44 a.m.)

17 THE COURT OFFICER: [9:44:22] We're in private session. Mr President.

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 (Open session at 9.45 a.m.)

2 THE COURT OFFICER: [9:45:17] We're in open session.

3 PRESIDING JUDGE FREMR: [9:45:19] Thank you, court officer.

4 Therefore, on the basis of the VWU's assessment and pursuant to Rule 88, the

5 Chamber decides that the special measures previously mentioned shall be granted.

6 This concludes the Chamber's ruling.

7 So it was the first issue. And the second issue is also another procedural matter

8 which concerns the Defence objection to the preparation session with Witness P-300,

9 as well as the supplemental submissions which we received via email both from

10 Defence and Prosecution.

11 So before the Chamber deliberates on those submissions, I would like just to assure

12 ourselves to ask parties whether they want to add anything orally before we will

13 deliberate.

14 So, in this case, Defence first. Do you want to add anything to your objections

15 contained in your written submission?

16 MR GOSNELL: [9:46:36] Thank you, Mr President. Yes, very briefly and only in

17 light of my unfortunately very limited opportunity to review the email from the

18 Prosecution, and I don't want to belabour the point and I don't want to waste the

19 Court's time because we do recognize this is a matter for your Honours' impression,

20 whether you believe this goes beyond what you intended in your decisions on the

21 conduct of proceedings. I'll just make one observation in respect of the document

22 which is at tab 19 concerning the letter that was written to P-300, and I won't go into it

23 in detail because I understand that it may be a confidential document, but the essence

24 of the objection, your Honours, in respect of this, yes, it was addressed to P-300.

25 That's true. But when you compare the information that is in the statement about

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1 what P-300's role was at the time and when you see the brief exchange that occurs
2 before that document is shown to the witness, when you observe that there was no
3 mention of in particular the FAPC by --

4 PRESIDING JUDGE FREMR: [9:48:07] Ms Luping.

5 MS LUPING: [9:48:09] I just want to remind Defence counsel we're in open, yes,
6 we're in public session at the moment. Perhaps it's best if the remainder of our
7 submissions are made in private session.

8 PRESIDING JUDGE FREMR: [9:48:18] Yes, I think at least it will both make you
9 free, just not to be limited by the fact that we're in open session.

10 So court officer, let's move into private session.

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

12 THE COURT OFFICER: [9:48:34] We're in private, Mr President.

13 PRESIDING JUDGE FREMR: [9:48:38] Thank you, court officer.

14 Mr Gosnell, please proceed.

15 MR GOSNELL: [9:48:41] Thank you, Mr President.

16 The essence of it, Mr President, is that there's nothing in the witness's statement that
17 comes close to the subject matter of that document. And even the few questions that
18 were asked before the document was actually shown to the witness did not establish
19 that he had knowledge or a recollection of having received this letter, let alone of any
20 of the contents of the letter, and that's what I suggest is problematic. No suggestion
21 here that the Prosecution is trying to do anything nefarious or that's there's any bad
22 faith or any improper motive, just that this procedure does have an impact on the
23 witness, it does go beyond what seems to be in the materials that are -- that were
24 prepared with the witness during the investigation stage and also, when you look at
25 the preparation note cumulatively, the length of it, the amount of material that's

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1 discussed, the degree to which it does go beyond the two statements that exist, when
2 you look at all that in the round, I believe, reading your two decisions on witness
3 preparation, that it goes beyond what your Honours intended.

4 So those are my submissions. Thank you.

5 PRESIDING JUDGE FREMR: [9:50:06] Thank you, Mr Gosnell.

6 Ms Luping, please.

7 MS LUPING: [9:50:09] Yes, Mr President, your Honours. I don't intend to repeat
8 the written submissions that were sent to you this morning, but just simply to
9 respond to the additional submissions made by Defence counsel.

10 The first is, I mean, it's a bit unclear what the exact concerns are that are being
11 expressed. As the Prosecution understands it, at the heart of the Defence's concern is
12 that the Prosecution was effectively conducting new investigations.

13 Well, for the purpose of showing -- the purpose instead, in terms of the questions that
14 the Defence has raised as being questions of concern, the purpose instead was simply
15 to ascertain whether this witness was in a position to meaningfully comment upon

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 (Redacted)

2 (Redacted)

3 So in that context, your Honours, I don't think it's inappropriate, bearing in mind
4 paragraph 24 of the witness preparation protocol, to then show the letter to the
5 witness and ask if he recalled the specific communication, which he did. He
6 expressed certain concerns or reservations about going beyond the scope of the letter,
7 but he was able to confirm that he is in position to comment about the strict confines
8 of that letter.

9 Now, in our submission there was nothing inappropriate in the context of the
10 preparation. All of the questions to which the Defence has raised as objections are in
11 the section of the preparation and in the section of the preparation note that deal with
12 potential exhibits, your Honours.

13 So all the questions posed were a follow-up from comments the witness himself had
14 made in his statement and were simply to clarify: Can this witness comment on
15 exhibits or not? And it was for the purpose of cutting down on time and being more
16 efficient, which is the whole purpose of the preparation protocol, your Honours.

17 In fact, many of the exhibits that the Prosecution questioned this witness on that are
18 the basis of the Defence objections, many of them we -- I was able to assess, your
19 Honours, that there was no need to then show the exhibits even to the witness.

20 I believe there were two exhibits out of the eight related questions that I ended up
21 having to show the witness, but for the remainder I was able to either assess that there
22 was no need to show the exhibit during the testimony based on the response, such as

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 submission, your Honours, there was no inappropriate new investigations. It was
2 squarely within the confines of the witness preparation protocol. And there needs to
3 be a possibility for the Prosecution to ask foundational questions to clarify comments
4 made in the statement to determine can this witness indeed usefully comment or not?
5 In terms of Defence counsel's comments as to the -- whether there was in fact any new
6 investigations or not, your Honours, simply to say that there was certainly no attempt
7 to glean new information as such from the witness. The questions were limited and
8 in our submission the witness preparation note is comprehensive, so your Honours
9 should be able to, simply on the face of the preparation note itself, make your own
10 assessment as to the need in relation to the first request of the Defence whether to
11 disclose the video, which in our submission is totally unnecessary.

12 As to the length of the note, the first ten pages I have to confirm come directly from
13 the witness's clarifications with not one question from the Prosecution. You will
14 find -- and unfortunately, I have to explain. You'll find that this witness does tend to
15 provide rather detailed information and in the three hours that will certainly be a
16 challenge to ensure that this witness will remain focussed. It was a 19-page
17 preparation note, so I would agree with Defence counsel it is indeed long, but I can
18 confirm that there was no result an attempt to further investigations on the part of the
19 Prosecution.

20 Thank you, your Honours.

21 PRESIDING JUDGE FREMR: [9:55:34] Thank you, Ms Luping.

22 Mr Gosnell, Ms Luping provided you with extensive explanation or comment. Do
23 you want to add anything?

24 MR GOSNELL: [9:55:45] Just on one subject, if I may, Mr President. And it has to
25 do with the use of documents in eliciting comments from the witness to know

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1 whether or not it should be used in court. I do fully understand that purpose.

2 I would suggest, however, that in the witness preparation protocol your Honours'

3 intention was that the documents that are shown are already within the scope of what

4 appears to be the witness's prior statements and not a document that goes

5 significantly beyond the scope of the witness's prior statement because all of us know

6 who have had to deal with the witnesses that if you show a document outside of the

7 scope of the statement, of course they are going to go there, they are going to go into

8 that additional area and then that becomes the equivalent of the conducting an

9 investigation.

10 So it's my understanding of reading your Honours' decision on the conduct of

11 proceedings that we're talking about documents that's within the scope of the existing

12 statements for clarification and determinations for use. And in this case the

13 document in question did not fall within the scope of the existing statement. The

14 only connection was the fact that the witness in his previous statement had said

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 Now we say that in this circumstance that constitutes an investigation.

22 Those are my submissions. Thank you, Mr President.

23 PRESIDING JUDGE FREMR: [9:57:44] Ms Luping, but please briefly.

24 MS LUPING: [9:57:47] Understood, Mr President. Just briefly two points. First

25 of all, that the documents are relevant. They do come within the realm of the

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 anticipated by your Honours by the witness preparation protocol.

5 And secondly, that this issue has been litigated before. And we would refer your

6 Honours to previous litigation as raised by the Defence, including in relation to

7 (Redacted) where similar issues were raised as to whether the Prosecution had gone

8 beyond the scope of the preparation protocol by showing documents to the witness.

9 And your Honours confirmed that it was a legitimate purpose of the preparation

10 protocol to show new exhibits to clarify whether a witness can usefully comment

11 upon them. And you reiterated this in the supplementary decision on the conduct of

12 proceedings at paragraph 11.

13 Thank you, your Honours.

14 PRESIDING JUDGE FREMR: [9:58:48] I thank both of you. I have to say the

15 Chamber has already preliminarily discussed this issue, but we also have to now to

16 take into account your additional submissions, so we will break now and I estimate

17 that we will need at least 15 minutes, I guess, at least 15 minutes to prepare our

18 ruling.

19 THE COURT USHER: [9:59:14] All rise.

20 (Recess taken at 9.59 a.m.)

21 (Upon resuming in open session at 10.16 a.m.)

22 THE COURT USHER: [10:16:19] All rise.

23 Please be seated.

24 PRESIDING JUDGE FREMR: [10:16:45] Before we invite next witness, the

25 Chamber will deliver its oral ruling on Defence objection to the preparation session

1 with Witness P-300.

2 On 27 November 2016 the Defence submitted via email an objection to the
3 preparation session with Witness P-300 followed by supplemental submissions in
4 which it objects to the manner in which preparation with Witness P-300 was
5 conducted.

6 With reference to six specific portions of the preparation log for Witness P-300, and I
7 will refer to this hereafter as "the log", the Defence argues that the Prosecution has
8 violated paragraphs 2 and 3 of the witness preparation protocol by: First, exceeding
9 a legitimate exercise of clarification of prior statements; and second, communicating
10 factual events the witness did not observe.

11 According to the Defence, the appropriate remedy in present circumstances is to:

12 First, order disclosure of the video recording of all excerpts of the meetings with the
13 witness that are pertinent to pages 16 through 18 of the log; and second, disallow the
14 Prosecution from using at the very least items 19, 20, 22 to 24 and 26 to 42 during the
15 testimony of Witness P-300.

16 The Prosecution responded by email on 28 November 2016 at 9.13 submitting that
17 there were -- there was no violation and explaining the purpose of the questions
18 posed in the challenge portions of the log.

19 Paragraph 2 of the witness preparation protocol, this is the annex to filing 652 and
20 will hereafter be referred to as "the protocol," provides that, quote: "Witness
21 preparation should not be conducted for the purpose of seeking new evidence or
22 continuing the calling party's investigations." Unquote.

23 Paragraph 3 provides that, quote: "Any attempt to influence a witness to testify to
24 factual events that the witness did not observe or perceive is prohibited. Coaching,
25 training or practising are not allowed." Unquote.

1 The Chamber further recalls that it has previously clarified that documents may be
2 presented to a witness in order to ascertain whether they can usefully comment on
3 them during testimony. Provided the scope of any questioning is narrowly tailored
4 to that purpose, the Chamber finds that falls within the scope of permitted witness
5 preparation. This was in transcript 78 of 11 April 2016 at page 62, as well as in the
6 supplemental decision on the conduct of proceedings with filing number 1342 at para
7 11. It's also contained in transcript 78, page 62.

8 Having considered the challenged portions of the log, the Chamber is of the view that
9 the manner preparation was conducted, including enquiries related to documents,
10 was in line with the permitted scope. On the basis of the log, the questions asked by
11 the Prosecution appear to relate to documents on the Prosecution's list and appear to
12 have been asked in order to ascertain whether or not the witness could comment on
13 them.

14 The Chamber further notes that the log is elaborate and detailed and as such appears
15 to provide a clear picture of what occurred during the witness preparation session.

16 In respect of item 19 specifically, the Chamber notes that the Prosecution intervened
17 to curtail the witness and focus him just on whether he is in a position to comment on
18 document.

19 The Chamber therefore finds that disclosure of the video recordings would not be
20 warranted and accordingly the first part of the request is rejected.

21 Turning to the second part of the request and having found that the preparation
22 session has been conducted within the permitted parameters, the Chamber finds there
23 to be no basis arising from the preparation session for preventing the Prosecution
24 from using the documents in question.

25 Rather, in line with its usual practice, the Chamber will consider on a case-by-case

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1 basis whether for a specific item intended to be used by the Prosecution, the requisite
2 connection with the witness has been established or whether there are any other
3 reasons prohibiting their use.

4 This concludes the Chamber's ruling.

5 And before we invite the witness in, I recall that the Chamber indicated that the
6 examination-in-chief for this witness is to be completed within three hours.

7 The Chamber notes that in its email of 23 November the Defence informed the
8 Chamber that it would require four and a half hours for its cross-examination.

9 However, the Chamber recalls that in accordance with the Chamber's practice, the
10 maximum for time for cross-examination will in principle be equal to the time

11 allocated for the examination-in-chief. The Defence should therefore in principle

12 conduct its cross-examination in three hours. At this stage the Chamber does not see

13 a basis for granting additional time, but we will consider a request later should the

14 Defence maintain its view that additional time is needed.

15 And in order not to surprise Defence, we can just ask Defence roughly after two hours

16 of its cross-examination whether it maintains the request and then decide on that.

17 And now we can turn to the scheduled testimony, so I ask court officer to kindly

18 bring the witness into the courtroom.

19 (The witness enters the courtroom)

20 PRESIDING JUDGE FREMR: [10:25:57] Good morning, Mr Witness. Can you
21 hear me?

22 WITNESS: DRC-OTP-P-0300

23 (The witness speaks French)

24 THE WITNESS: [10:26:04] (Interpretation) Good morning.

25 PRESIDING JUDGE FREMR: [10:26:06] Mr Witness, I would like to welcome you

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1 in the courtroom on behalf of this Chamber. You are called to testify in the case
2 against Mr Bosco Ntaganda and you will be soon asked questions both by the Judges
3 and lawyers in the courtroom. And in this connection I would like to guide you as
4 follows:

5 Please listen carefully to those questions. If you do not understand, feel free to ask
6 for the question to be repeated. We want you to tell the truth and tell us what you
7 saw, heard or sensed yourself. If you didn't see or hear it yourselves but you found
8 out some other way, then you should explain how.

9 Please testify just on that which you remember. Don't guess. Don't make things up.

10 There is nothing wrong in saying "I don't know" or "I don't remember".

11 Do you understand all this, Mr Witness?

12 THE WITNESS: [10:27:23] (Interpretation) Yes, it is clear enough.

13 PRESIDING JUDGE FREMR: [10:27:30] Fine. Mr Witness, protective measures
14 are put in place to ensure that your identity is not revealed to the public. In practice,
15 it means that the public cannot see your face and that your voice is being disguised so
16 that the public cannot recognize it. We will refer to you as "Mr Witness" only and
17 ensure that your name and any other information that risks revealing who you are is
18 not broadcast to the public.

19 Therefore, whenever you need to describe anything that might reveal your identity,
20 we will do so in private session so that no one outside the courtroom can hear your
21 answer.

22 Do you understand, Mr Witness?

23 THE WITNESS: [10:28:31] (Interpretation) Yes, it is quite clear.

24 PRESIDING JUDGE FREMR: [10:28:34] Very well. Now, Mr Witness, you will be
25 provided with a piece of paper, which now I believe you have in your hand, with the

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1 text of solemn undertaking. So please now make your solemn undertaking to tell
2 the truth by reading out the declaration you have in your hands.

3 THE WITNESS: [10:28:59] (Interpretation) I solemnly declare to speak the truth,
4 the whole truth and nothing but the truth.

5 PRESIDING JUDGE FREMR: [10:29:13] Thank you, Mr Witness. So you are now
6 under oath and you need to be aware that it's an offence within the jurisdiction of this
7 Court to give false testimony. Do you understand that?

8 THE WITNESS: [10:29:35] (Interpretation) Yes, I do.

9 PRESIDING JUDGE FREMR: [10:29:38] Good. And finally a few practical
10 matters you should have in mind when giving your testimony:
11 It's important to speak into the microphone, to speak clearly and to speak at a slow
12 pace to allow the interpreters to translate everything precisely. You should only
13 start speaking when the person asking you the question has finished. And when a
14 question is asked, please, and it's very important, please do not respond immediately,
15 just please count in your head at least to three and only then give your answer
16 because this pause is essential for us to properly translate and record what you are
17 saying.

18 If you have any questions during your testimony, do not hesitate to let us know by
19 raising your hand. We will then give you the opportunity to speak.

20 Have you understood all that, Mr Witness?

21 THE WITNESS: [10:30:50] (Interpretation) Yes.

22 PRESIDING JUDGE FREMR: [10:30:53] Very good. So now we can start your
23 testimony.

24 Prosecution, you have the floor.

25 MS LUPING: [10:31:01] Thank you, Mr President.

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1 QUESTIONED BY MS LUPING:

2 Q. [10:31:08] Good morning, Mr Witness. We have met before. My name is

3 Dianne Luping and I will be asking you questions on behalf of the Prosecution.

4 Before we start, Mr Witness, just a couple of reminders. First that I would ask that

5 you listen very carefully to my questions and only answer those questions and that

6 you keep your answers and your sentences short to aid the interpretation and

7 transcripts and because time is very short. We only have three hours and I want to

8 make sure we have enough time to cover all the topics.

9 Is that clear, Mr Witness?

10 A. [10:31:52] Yes.

11 MS LUPING: [10:31:55] Mr President, with your leave, I would ask if we could

12 please move into private session for questions of an identifying nature.

13 PRESIDING JUDGE FREMR: [10:32:05] Certainly.

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

15 (Private session at 10.32 a.m.) *(Reclassified partially in pubic)

16 THE COURT OFFICER: [10:32:13] We are in private session, Mr President.

17 PRESIDING JUDGE FREMR: [10:32:19] Thank you, court officer.

18 Ms Luping, please proceed.

19 MS LUPING: [10:32:22] Mr President, with your leave, I would seek leave to lead

20 on background matters that should be of a non-contentious nature.

21 PRESIDING JUDGE FREMR: [10:32:32] Mr Gosnell, any objection?

22 MR GOSNELL: [10:32:34] No, Mr President.

23 PRESIDING JUDGE FREMR: [10:32:35] Thank you.

24 Please proceed, Ms Luping.

25 MS LUPING: [10:32:39] Thank you, Mr President.

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1 for my next series of questions.

2 PRESIDING JUDGE FREMR: [10:40:42] Very well.

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

4 (Open session at 10.40 a.m.)

5 THE COURT OFFICER: [10:40:52] We are in open session.

6 PRESIDING JUDGE FREMR: [10:40:55] Thank you.

7 Ms Luping, please proceed.

8 MS LUPING: [10:40:59]

9 Q. [10:41:02] Mr Witness, you've explained that in 2002 you were living in Kobu.

10 Can you recall any attacks that took place in Kobu in that year?

11 A. [10:41:22] In Kobu there were a lot of attacks. The most serious was the

12 attack in the market in the afternoon. The Ugandans arrived at the market. They

13 attacked the population. They shot at everybody. It was a total rout and we left for

14 the bush. Some people died. I was there and I wanted to go to sleep, to have a

15 siesta, but it wasn't possible. We all had to leave on that day and go into the bush.

16 And I was there for three months.

17 Q. [10:42:15] And in this first attack by the Ugandans, you said you were living

18 for three months in the bush. Can you recall where in the bush you were living at

19 this time?

20 A. [10:42:39] At that time I was around Buli in Jitchu on the edge of the forest.

21 *Behind Buli, there is a small village called Jitchu, and behind it there is a small bush

22 with a creek, and then the forest starts and that's where I was staying.

23 MS LUPING: [10:43:05] Mr President, for my next series of questions, if we could

24 move back into private session.

25 PRESIDING JUDGE FREMR: [10:43:11] All right.

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

2 (Private session at 10.43 a.m.)

3 THE COURT OFFICER: [10:43:21] We're in private session, Mr President.

4 PRESIDING JUDGE FREMR: [10:43:23] Thank you.

5 Ms Luping, please.

6 MS LUPING: [10:43:27]

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22 MS LUPING: [10:56:24] Mr President, if we could move now into public session.

23 PRESIDING JUDGE FREMR: [10:56:28] For sure.

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

25 (Open session at 10.56 a.m.)

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1 THE COURT OFFICER: [10:56:39] We're in open session, Mr President.

2 PRESIDING JUDGE FREMR: [10:56:43] Thank you.

3 Ms Luping, please proceed.

4 MS LUPING: [10:56:45] Thank you, Mr President.

5 Q. [10:56:49] Mr Witness, you explained to the Judges that the UPC had attacked

6 Mongbwalu on more than one occasion. My question is this: Can you recall the

7 first -- a first attack by the UPC on Mongbwalu? And if so, when was that?

8 A. [10:57:24] Precisely, well, I couldn't give the exact time, but there were a lot of

9 attacks on Mongbwalu by the UPC. Mongbwalu is a mining area, that's where

10 there's money. It's a favoured zone. I know that there were a lot of attempts to

11 attack Mongbwalu. By the airport, the aerodrome, for example, there were such

12 attacks. So in terms of precisely -- but afterwards, I know there was a very large

13 attack afterwards, but the first I don't have any precisions in that regard, but

14 afterwards I can tell you about a very large attack that there was.

15 Q. [10:58:11] Can you describe the large attack by the UPC on Mongbwalu?

16 A. [10:58:21] In fact, when I was called upon by the community I did what I could

17 do in Mongbwalu and I went back to Kobu.

18 MS LUPING: [10:58:35] Mr President.

19 PRESIDING JUDGE FREMR: [10:58:36] Yes.

20 MS LUPING: I'm just conscious that we're in public session. A reminder to the

21 witness to be cautious not to say anything that might identify him. If it's easier, we

22 can also move back into private session.

23 PRESIDING JUDGE FREMR: [10:58:48] All right.

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

25 (Private session at 10.59 a.m.) *(Reclassified partially in public)

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1 THE COURT OFFICER: [10:59:01] We're in private session.

2 PRESIDING JUDGE FREMR: [10:59:03] Thank you.

3 Ms Luping, please.

4 MS LUPING: [10:59:06] Thank you.

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20 MS LUPING: [11:06:14] Mr President, I think this is a convenient point at which
21 we can break.

22 PRESIDING JUDGE FREMR: [11:06:20] All right. So let's move into open session
23 now.

24 (Open session at 11.06 a.m.)

25 THE COURT OFFICER: [11:06:31] We are in open session, Mr President.

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1 PRESIDING JUDGE FREMR: [11:06:45] Thank you.

2 So will take our regular break for 30 minutes now, which means we'll resume 11.35.

3 THE COURT USHER: [11:06:58] All rise.

4 (Recess taken at 11.07 a.m.)

5 (Upon resuming in open session at 11.37 a.m.)

6 THE COURT USHER: [11:38:17] All rise.

7 Please be seated.

8 PRESIDING JUDGE FREMR: [11:38:57] The proceedings will continue with

9 examination-in-chief of our witness. The question to Ms Luping is whether she is
10 forced to continue in private or in open session.

11 MS LUPING: [11:39:14] Mr President, I believe for the next series of questions, they
12 can be asked in open session.

13 PRESIDING JUDGE FREMR: [11:39:19] Very well. So you may proceed.

14 MS LUPING: [11:39:24]

15 Q. [11:39:25] So, Mr Witness, I'm going to refer to page 36 of today's transcript,
16 lines 21 to 22. I'm going to quote a passage there. This is information you gave
17 after describing a large attack by the UPC on Mongbwalu. And I quote to you, "And
18 afterwards, after a certain time, the UPC continued to go up to Kilo-État and the UPC
19 were going to Kobu." End of quote.

20 So my question is this, Mr Witness: After the UPC attacked Mongbwalu and you
21 described them moving to these other areas, Kilo-État and Kobu, were there any other
22 attacks by the UPC in these or any other areas close to Kobu and Kilo-État?

23 A. [11:40:33] When the UPC attacked Mongbwalu, they began to surround the
24 entire region; in other words, they went to Mongbwalu, Kilo-État to Mongbwalu, then
25 they went to Nizi, Mabanga. So they were tightening the circle around that entire

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1 region.

2 MS LUPING: [11:41:23] I'm just -- I was waiting for the French transcript because I
3 see that there is -- yes. I see that in the French transcript there is a correct reference
4 to Nizi, N-I-Z-I, but in the English it has not been captured, so just a request if that
5 could be captured in the English transcript.

6 PRESIDING JUDGE FREMR: [11:41:45] All right.

7 MS LUPING: [11:41:52]

8 Q. [11:41:52] And you've described how the UPC tightened the circle around this
9 region. Were they occupying these areas? I just want to clarify what you mean by
10 going to these areas and tightening their control in this region.

11 A. [11:42:16] In other words, they were blocking people from leaving. In other
12 words, the people were collecting in Kilo and Kobu, in particular Buli and Gutsi.
13 The people could no longer leave. They couldn't go toward Nizi, toward Nyangaray,
14 toward a third place. In fact, they were completely asphyxiated there. That's what
15 I meant. They couldn't leave.

16 Q. [11:42:53] And the population living in Kilo and Kobu and Buli and Gutsi, what
17 did they do? Where did they go to? Did they remain in these areas or did they
18 move elsewhere?

19 A. [11:43:21] It was a horrible war. People were in despair. It was *like the end
20 of the world because people were not able to defend themselves. People ran off into
21 the bush. And it was a very small group of people, *without any means, and you
22 can't get out, and you are stuck in the bush in Gutsi and Buli.

23 Q. [11:44:01] And in this time that the UPC were encircling this area, do you know
24 what types of weapons that they were using?

25 A. [11:44:17] We know that they had large weapons, but as to the exact type of

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1 weapons, we didn't know.

2 Q. [11:44:26] And were there any particular UPC weapons that civilians were being
3 hurt by during this time?

4 A. [11:44:40] Yes, yes. *On the road from Bunia, to Mwanga and Lipri, we knew that in
5 Mwanga, antipersonnel mines had been planted. After the war as I was passing by there, I
6 saw an NGO digging out these mines. I saw it with my own eyes. We thought that mines
7 had been put between Kilo-État, Batata toward Buli in the forest, but that hasn't been justified
8 until now. And we also believed that between Nyangarai and Lombu there would be mines,
9 and again we haven't been able to verify that, even until now, but what was confirmed...

10 because there was a woman who walked on one of those mines. We didn't see her. The
11 witnesses saw her, but I did see with my own eyes the mine sweepers in Mongbwalu -- in
12 Moanga.

13 Q. [11:45:51] And in this time when the UPC were encircling this area, what area
14 were you in, Mr Witness?

15 (Redacted)

16 (Redacted)

17 Q. [11:46:28] And during this time that you were in this location, could you see or
18 hear anything of the UPC's operations?

19 A. [11:46:44] I was at a very high point and so I could see Mongbwalu from afar. I could
20 see Kilo *easily. I could see where they had built. And let me add one other thing: At
21 that point in time they sent pygmies wearing military uniforms into the forest, into the bush.
22 They were hunting for us. And we were told about that afterwards. The fact that pygmies
23 were there, we were told during the war that they'd gone out into the bush, but what were
24 they doing? It was *some Hema friends of mine told me afterwards, after we came out.

25 Q. [11:47:57] And at any point was there any direct contact with the UPC in this

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1 time the community and you were living in this area in the bush?

2 A. [11:48:16] When the UPC attacked Kobu, it was -- it was a bit like when the

3 Ugandans attacked Kobu. People went off to the bush *and the same at Gutsi and Buli.

4 But this time it was for two months. When the Ugandans attacked, it had been three

5 months. When we were there, one day we found out that the UPC had written a letter,

6 and that we have to get back together and that the UPC wanted to make peace. But in

7 the beginning, it was said that the UPC was looking for the sophisticated weapons that

8 the combatants had taken in Lipri. Apparently, when they came to Lipri, the

9 combatants took a very sophisticated weapon. And there were rumours in the bush that

10 UPC was looking for weapons. And the UPC wrote a letter to Commander Salumu -- in

11 fact, it was Commander Salumu who wrote the letter, correction. So we were asked to

12 have a meeting for reconciliation, so we got together and we had a meeting to discuss

13 that in Kabu -- Ngabulo, rather. It's just nearby. It's less than a kilometre from Buli.

14 Q. [11:49:41] Mr Witness, I think the place of the meeting to which you just referred

15 has not been captured correctly. Could you repeat the name, because the French

16 transcript has not come up yet. I heard the name of the place and it doesn't appear

17 to be captured correctly in the English transcript?

18 A. [11:50:00] Ngabulo.

19 Q. [11:50:01] Can you please spell it, for the record?

20 A. [11:50:06] N-G-A-B-U-L-O, Ngabulo.

21 Q. [11:50:25] And in this area, were there any Lendu commanders, any

22 commanders of the Lendu combatants?

23 A. [11:50:47] The commander in charge was Kabuli. He was from Lipri. Kabuli

24 was the commander in charge in that area. He was from Lipri. But everyone was

25 around Buli because we couldn't go anywhere else.

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1 MS LUPING: [11:51:14] Now for my next series of questions, Mr President, I'd like
2 to ask for leave to move into private session, please.

3 PRESIDING JUDGE FREMR: All right. Court officer, let's move into private session.

4 (Private session at 11.51 a.m.) *(Reclassified partially in public)

5 THE COURT OFFICER: [11:51:35] We are in private session, Mr President.

6 PRESIDING JUDGE FREMR: [11:51:37] Thank you.

7 Ms Luping, please.

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3 (Redacted) Could you explain to the

4 Judges what you mean by shika na mukono, what that means?

5 A. [12:35:29] Shika means "take," na means "with," and mukono means "with the
6 hand." In other words, we're going to take *these Balendus with our hands,
7 weapons are of no use. So that's how they started by the ruse of asking for peace
8 negotiations, and *as if that was not enough, they continued where the Balendu
9 people had retreated together simply because they had no means of defence. Near
10 Buli and Gutsi, the very same thing happened in Gutsi. That's what shika na
11 mukono means. They took with their hands and it was very cruel policy that also
12 took place in Kobu.

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1 A. [12:59:57] Right after the events.

2 Q. [13:00:02] And did you provide a copy of that sketch to the Prosecution during
3 your witness preparation?

4 A. [13:00:14] Yes.

5 MS LUPING: [13:00:16] With your leave, Mr President, I would ask that the
6 (Redacted)

7 PRESIDING JUDGE FREMR: [13:00:31] Defence?

8 MR GOSNELL: [13:00:31] We don't object to that, Mr President.

9 PRESIDING JUDGE FREMR: [13:00:33] And it will be the last issue before the break.
10 All right.

11 MS LUPING: [13:00:54] In the interests of time I can also ask that a hard copy of
12 this imagine be shown to the witness.

13 Q. [13:01:32] Mr Witness, do you recognise the sketch?

14 A. Yes, yes, I drew it.

15 Q. [13:01:37] And is this the sketch to which you referred that you drew shortly
16 (Redacted)

17 A. [13:01:50] Yes, that's correct.

18 MS LUPING: [13:01:52] Mr President, your Honours, with your leave I would ask
19 that this also be admitted as a further exhibit for the Prosecution.

20 PRESIDING JUDGE FREMR: [13:01:59] Defence?

21 MR GOSNELL: [13:02:01] No objection.

22 PRESIDING JUDGE FREMR: [13:02:04] So the sketch is also admitted into evidence
23 as a further Prosecution exhibit.

24 MS LUPING: [13:02:12] And there are no further questions from the Prosecution at
25 this stage. We will have more questions obviously after the break.

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1 PRESIDING JUDGE FREMR: [13:02:20] All right. Let's move into open session for
2 the remainder of this session.

3 (Open session at 1.02 p.m.)

4 THE COURT OFFICER: [13:02:37] We are in open session, Mr President.

5 PRESIDING JUDGE FREMR: [13:02:40] So we will break now.

6 According to my measuring, which could be almost correct, you exhausted so far,

7 Ms Luping, 1 hour 50 minutes.

8 Court officer, could you correct me?

9 One, 51, so you still have 1 hour 9 minutes for the afternoon session. So it's most

10 likely we will start with cross-examination during the afternoon session.

11 Now we break and we will resume half past 2.

12 THE COURT USHER: [13:03:21] All rise.

13 (Recess taken at 1.03 p.m.)

14 (Upon resuming in open session at 2.33 p.m.)

15 THE COURT USHER: [14:33:30] All rise.

16 Please be seated.

17 PRESIDING JUDGE FREMR: [14:34:08] Good afternoon, everybody. I believe we

18 can directly continue with examination-in-chief of our witness, and I have the only

19 question to Ms Luping: Ms Luping, do you want to proceed in open or in private

20 session?

21 MS LUPING: [14:34:23] Just for my next questions, if we could please be in private

22 session.

23 PRESIDING JUDGE FREMR: [14:34:28] For sure.

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

25 (Private session at 2.34 p.m.) *(Reclassified partially in public)

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- 1 THE COURT OFFICER: [14:34:42] We are in private session, Mr President.
- 2 PRESIDING JUDGE FREMR: [14:34:46] Thank you, court officer. Ms Luping,
- 3 please proceed.
- 4 MS LUPING: [14:34:50] Thank you, Mr President. Thank you court officer.
- 5 (Redacted)
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1 THE COURT OFFICER: [14:46:55] The redacted version of this document, or the one
2 in the court already?

3 MS LUPING: [14:47:02] Yes, please, the redacted version.

4 THE COURT OFFICER: [14:47:06] The redacted version.

5 MS LUPING: [14:47:31] And actually for ease of reference for the witness, if a hard
6 copy could also be provided to him.

7 Q. [14:48:11] Mr Witness, I would like you to just quickly go through this
8 document and until you reach the fourth page, that's page 0201, the ERN. From the
9 start to the finish, please, if you could look at the first page and then skim through it
10 until you get to the fourth page.

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- 19 (Redacted)
- 20 THE COURT OFFICER: [15:51:42] We have the redacted version and the other one.
- 21 Which one would you like?
- 22 MS LUPING: [15:51:48] The redacted version, please.
- 23 THE COURT OFFICER: The redacted version.
- 24 MS LUPING:
- 25 Q. [15:51:52] Mr Witness, I am going to refer you to paragraph 3 and I am going to

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1 Q. [15:56:59] And other than that, is the note an accurate reflection of the
2 discussions that you held at this meeting?

3 A. [15:57:10] I don't really understand English very well. It's in English, it's not in
4 French. I understood under paragraph 12 that I was taken to Moanga. I wanted to
5 leave, I wanted to leave.

6 Q. [15:57:29] Mr Witness, I have read you relevant passages from the minutes of
7 this meeting, not only your being escorted to Moanga village, but a request to
8 MONUC to provide escorts for 200 IDPs, which means internally displaced persons,
9 moving from Zumbe to Lipri during their movement through Bunia town on 1
10 June 2003 which MONUC agreed to do. Does that accurately reflect the events and
11 does that accurately reflect what was discussed at this meeting?

12 A. [15:58:03] Yes, that's correct.

13 MS LUPING: [15:58:08] Mr President, your Honours, with your leave I would ask that
14 the last two documents shown to this witness be admitted as further prosecution
15 exhibits.

16 PRESIDING JUDGE FREMR: [15:58:21] Mr Gosnell, your position?

17 MR GOSNELL: [15:58:24] No objection to admission.

18 PRESIDING JUDGE FREMR: [15:58:26] So those two documents are admitted into
19 evidence as a further Prosecution exhibit.

20 And Ms Luping, your time is over.

21 MS LUPING: [15:58:34] And thankfully I had finished all my questions.

22 So thank you, Mr President, your Honours.

23 And thank you, Mr Witness, I have no further questions for you.

24 PRESIDING JUDGE FREMR: [15:58:46] All right, let's move into open session just to
25 inform public about this stage of our proceedings.

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1 (Open session at 3.58 p.m.)

2 THE COURT OFFICER: [15:58:59] We are in open session, Mr President.

3 PRESIDING JUDGE FREMR: [15:59:02] Thank you, court officer.

4 We finished examination-in-chief of our witness and now we will move to Defence
5 who will cross-examine the witness.

6 Mr Gosnell, do you want to start in open or in private session?

7 MR GOSNELL: [15:59:18] Private session, please, Mr President.

8 PRESIDING JUDGE FREMR: [15:59:22] Understandable. So let's return back into
9 private session.

10 (Private session at 3.59 p.m.) *(Reclassified partially in public)

11 THE COURT OFFICER: [15:59:33] We are in private session, Mr President.

12 PRESIDING JUDGE FREMR: [15:59:35] Thank you, court officer.

13 Mr Gosnell, please proceed.

14 MR GOSNELL: [15:59:40] Thank you, Mr President.

15 QUESTIONED BY MR GOSNELL:

16 Q. [15:59:42] Good afternoon, Mr Witness. My name is Christopher Gosnell. I
17 represent Mr Ntaganda in these proceedings and I will be asking you some questions
18 for the remaining half an hour today and tomorrow. And I would like to start by
19 recalling something that you said earlier today. It is at the end of page 49 of today's

20 (Redacted)

21 (Redacted)

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6 PRESIDING JUDGE FREMR: [16:07:41] I partially can understand your emotions,

7 but the questions put to you, it is really in the competence of the party concerned. So,

8 Ms Luping also put you questions that she found relevant to Prosecution case. Now

9 Mr Gosnell is putting to you questions he finds relevant to his case. So please

10 respect that, all right? So I think you can't hardly correct questions put to you by the

11 parties. Please just limit yourself on answering as clearly as possible.

12 THE WITNESS: [16:08:24] (Interpretation) Thank you.

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

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6 A. [16:11:23] Well, that's correct, I do not remember clearly, because these things
7 happened quite some time ago. But I do remember that I saw the letter, but I can't
8 be specific as to when.

9 PRESIDING JUDGE FREMR: [16:11:41] Mr Witness, as I told you at the beginning
10 when I gave my guidance, it is pretty fair if you really don't remember some details,
11 and as I instructed, just please testify what you remember. There is nothing wrong
12 to say "I don't remember this or that detail." Okay?

13 THE WITNESS: [16:11:59] (Interpretation) Thank you. Thank you.

14 (Redacted)

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13 Q. [16:34:39] And while you were thinking through these things again, did you
14 discuss these events with anyone?

15 A. [16:35:00] Well, first of all, as a matter of discretion, you see, the witness has to
16 be discreet, he does not have to indicate to anyone that he has been interviewed. So
17 this also contributes to his not being identified.

18 MR GOSNELL: [16:35:23] I see we are beyond the end of the day, Mr President.

19 PRESIDING JUDGE FREMR: [16:35:28] Thank you, Mr Gosnell.

20 Now let's move into open session.

21 (Open session at 4.35 p.m.)

22 THE COURT OFFICER: [16:35:41] We are in open session, Mr President.

23 PRESIDING JUDGE FREMR: [16:35:45] Thank you, court officer.

24 Mr Witness, I would like to thank you for today. We will break now and we will
25 continue tomorrow morning at 9.30. I can imagine that it was a very tiring exercise

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1 but we appreciate that you remain concentrated until the very last minute. So thank
2 you for that. And as you rightly pointed out, the witness should remain discreet
3 about this testimony so it is also my legal duty to remind you that in the meantime,
4 till tomorrow, you must not discuss your testimony with anybody else.

5 Do you understand that?

6 THE WITNESS: [16:36:26] (Interpretation) Yes, very well.

7 PRESIDING JUDGE FREMR: [16:36:30] All right.

8 So now we adjourn and we will reconvene tomorrow, 9.30.

9 THE COURT USHER: [16:36:38] All rise.

10 (The hearing ends in open session at 4.36 p.m.)

11 RECLASSIFICATION REPORT

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