

1 International Criminal Court
2 Trial Chamber VI - Courtroom 1
3 Situation: Democratic Republic of Congo
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and Judge Chang-ho Chung
6 Trial Hearing
7 Monday, 21 September 2015
8 (The hearing starts in open session at 9.34 a.m.)
9 THE COURT USHER: All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE FREMR: Good morning, everybody.
13 The court officer, please call the case.
14 THE COURT OFFICER: Thank you, Mr President.
15 The situation in the Democratic Republic of the Congo in the case of the Prosecutor versus
16 Bosco Ntaganda, case reference ICC-01/04-02/06.
17 We're in open session.
18 PRESIDING JUDGE FREMR: Now as usual, appearances, starting with Prosecution, please.
19 MS SAMSON: Good morning Mr President, your Honours. For the Prosecution today are
20 Ms Marion Rabanit, associate trial lawyer; Mr James Pace and Mr Rens van der Werf, both
21 assistant trial lawyers; Ms Selam Yirgou, case manager; and myself, Nicole Samson, senior
22 trial lawyer.
23 PRESIDING JUDGE FREMR: Thank you, Ms Samson.
24 Defence.
25 MR BOURGON: (Interpretation) Good morning, Mr President. Good morning, your

1 Honours. And good morning to all those people present in the hearing today.

2 Representing Mr Bosco Ntaganda, who is present this morning, we have

3 Mademoiselle Berta Casas Rochel, who is an intern; we have Margaux Portier, who is

4 case manager; we have William St-Michel; and myself, Stéphane Bourgon. Thank

5 you, Mr President.

6 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

7 Legal representatives now.

8 MS PELLET: (Interpretation) Thank you, Mr President. Good morning, your Honours.

9 The former child soldiers are represented by Mohammed Samy Abdou, associate legal officer
10 with the OPCV, and by myself, counsel with the OPCV.

11 MR SUPRUN: (Interpretation) Good morning, Mr President. Good morning, your
12 Honours. The victims of the attacks upon the civilian population are represented by the
13 OPCV, notably Anne Grabowski, assistant legal officer, and myself, Dmytro Suprun, counsel.
14 Thank you.

15 PRESIDING JUDGE FREMR: Thank you.

16 And duty counsel also may introduce yourself for the record.

17 MR BAHOUGNE: (Interpretation) Good morning, Mr President. Good morning, your
18 Honours. And good morning to my learned colleagues. My name is Olivier Bahougne and
19 I am assisting the witness.

20 PRESIDING JUDGE FREMR: Thank you very much, Mr Bahougne.

21 The reason why we didn't call the witness is just to absolutely briefly discuss
22 measures -- issue of timing. According to my information until now, the Prosecution
23 exhausted 7 hours, 20 minutes, and I would like to emphasise that we are just
24 counting really time used for cross -- sorry, for examination itself. So we don't count
25 time that we spent on some procedural matters and housekeeping matters.

1 I also understood that the original estimation that the Chamber found reasonable
2 from the Prosecution was 10 hours, but maybe I would at one point -- that this
3 estimation had been based on the fact that -- or, presumption that witness would be
4 testifying in French, which we all know is not the case.

5 So, to that point, maybe we would like to add that if the Prosecution would like to
6 take a little bit more time, I mean one, two hour, two hours more, the Chamber would
7 be open to approve that.

8 So once more I am turning to Ms Samson. Ms Samson, at the moment what is your
9 estimation for how much time you will need to finish examination-in-chief?

10 MS SAMSON: Thank you, Mr President. I'm hoping that I'll be able to complete the
11 examination by lunch-time, excuse me, by 1 o'clock. However, if it is not too inconvenient
12 for your Honours, perhaps at the lunch-break I can see where I am. And I thank you in
13 advance for the extra time should that be necessary, but I do hope I can complete by
14 lunch-time.

15 PRESIDING JUDGE FREMR: Okay. It means we can bring the witness in. So we have to
16 go to closed session for that purpose.

17 (Closed session at 9.40 a.m.)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Open session at 9.41 a.m.)

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

24 PRESIDING JUDGE FREMR: Mr Witness, welcome back. I hope that you had during the
25 weekend time to relax a bit. And now we will continue with your testimony. Ms Samson

1 will finish her examination-in-chief.

2 And before she starts, I would like again to express Chamber's appreciation for the way how
3 you are testifying, I mean technically. I'm not saying anything about content, but the way
4 that you really respected our guidance means that you answered clearly, you also observed
5 pauses and so on. So it was I think easy for the interpreters to translate your testimony, and
6 it was also very helpful for us to get timely and exact translation. So thank you for that.

7 And now I'm giving floor to Ms Samson.

8 Ms Samson, please.

9 MS SAMSON: Thank you, Mr President.

10 WITNESS: DRC-OTP-P-901 (On former oath)

11 (The witness speaks Swahili)

12 QUESTIONED BY MS SAMSON: (Continuing)

13 Q. Good morning, sir.

14 A. Good morning.

15 MS SAMSON: Your Honour, may we please move into private session for my first series of
16 questions.

17 PRESIDING JUDGE FREMR: All right. Let's move to private session.

18 (Private session at 9.43 a.m.)

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- 20 (Open session at 10.02 a.m.)
- 21 THE COURT OFFICER: We're in open session, Mr President.
- 22 PRESIDING JUDGE FREMR: You may proceed, Ms Samson.
- 23 MS SAMSON:
- 24 Q. Sir, after the UPC/FPLC took over Mongbwalu, which ethnicities were residing there?
- 25 A. After the FPLC gained control of Mongbwalu, most of the Hema people went back to

1 live in Mongbwalu, but there were also some Nyale people. And other ethnic groups
2 continued to go about their business activities in that same town.

3 Q. Did the Lendu population continue to reside there to your knowledge?

4 A. No. I don't think they came back to Mongbwalu.

5 Q. Do you know why?

6 A. After the FPLC gained control of Mongbwalu, the people living there, most of whom
7 were Lendu, fled. They went into the bush and they went back to their native villages such
8 as Kobu, Bambu and so on and so forth. They didn't go back to Mongbwalu when that
9 locality was taken over by the FPLC because they thought that they would not be safe, that
10 the FPLC would not ensure their safety. That is why they did not go back to Mongbwalu.

11 Q. You told the Court that sectors were created within the FPLC after the takeover of
12 Mongbwalu. Do you know who created the sectors?

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 PRESIDING JUDGE FREMR: (Redacted)

1 MS SAMSON:

2 Q. Do you know, sir, who created the sectors? You just mentioned who appointed sector
3 commanders, but do you know who created that structure, the sectors?

4 A. To my knowledge, it was the first time that the term "sector" was used. I had heard
5 talk about that in Aru, but more to the south. That was the first time that this word or term
6 was used, sector.

7 Q. Do you know who within the FPLC hierarchy created the sectors? Who decided that
8 there should be sectors in the FPLC?

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 Q. You stated, sir, that one of the main roads connecting Bunia to Mongbwalu ran through
13 Kobu and Bambu. Are you aware whether there was any fighting along that road during the
14 time you were in the UPC/FPLC?

15 A. Yes, there was fighting. What's more, the last clashes occurred in February 2003, if I
16 recall correctly.

17 Q. Do you know who decided that this operation should take place?

18 A. I think it was upon the initiative of the head of general staff of the FPLC. It must have
19 been General Kisembo and his deputy Afande Bosco who decided that that particular road
20 would be reopened.

21 Q. Do you know why the FPLC wanted to have that route open?

22 A. The Nyangarai road which has been used was very long and during the rainy season,
23 that road was in poor shape, poor condition, whereas the other road was in good condition in
24 comparison to the Nyangarai road.

25 MS SAMSON: Mr President, may we please move into private session for my next

1 questions.

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

3 (Private session at 10.13 a.m.)

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12 (Open session at 11.37 a.m.)

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

14 PRESIDING JUDGE FREMR: Thank you.

15 Ms Samson, you may proceed.

16 MS SAMSON:

17 Q. Sir, before the break, you mentioned that the UPC used checkpoints to obtain money,
18 fuel and rations. Can you explain to the Court how that worked?

19 A. They would set up a checkpoint, a motorbike or a vehicle that went by, there was a rope
20 that was stretched along the path or across the road so that anyone who went by that way, if
21 he had something to eat or a bit of money, that person would have to provide the money or
22 the food.

23 Q. Was the checkpoint used to obtain anything other than money, fuel or rations to your
24 knowledge?

25 A. These checkpoints were set up to get money, to hit people up for money or for food or

1 fuel. There were some isolated incidents. Soldiers who were at the checkpoints
2 occasionally raped girls or women. Those things can happen.

3 PRESIDING JUDGE FREMR: Sorry to interrupt, Ms Samson.

4 Mr Witness, you even yourself, you have been witnessing several objections made by
5 Mr Bourgon. And generally I find right his objection that if you are, and I think we
6 indicated that in the beginning of your testimony, if you are just reproducing
7 something you got know -- because I guess you were not personally present at those
8 checkpoints, so I rather guess that you got some knowledge about that, so you should
9 also add after this information what you know from what source you know it. So
10 please continue in this way, okay?

11 THE WITNESS: (Interpretation) This is not hearsay. These are things that occurred that I
12 saw with my own eyes. And they didn't happen at just one checkpoint, they happened at
13 several checkpoints.

14 PRESIDING JUDGE FREMR: Thank you very much, Mr Witness, that you got my point.
15 And, Ms Samson, you may proceed.

16 MS SAMSON: Thank you.

17 Q. Sir, were you aware of any disciplinary action taken against soldiers who raped women
18 at checkpoints?

19 A. These were isolated cases, and each commander was responsible for his area of service.
20 To my knowledge, well, I don't know of anyone who was punished for such cases, because no
21 such cases were identified except one case, but unfortunately the perpetrator of those rapes
22 fled and was never found again.

23 Q. Sir, I'm going to play an audio for you. I'm going to play a certain section of it. I
24 would like you to listen carefully to the audio, take notes if required. I would like at first
25 instance to know if you recognize the audio and then I will ask you supplementary questions

1 about it. The audio --

2 PRESIDING JUDGE FREMR: Mr Bourgon.

3 MR BOURGON: (Interpretation) Thank you. Now, my learned friend wishes to play a
4 video. I don't know if this is a follow-up on her earlier questioning or whether this is a new
5 topic. Perhaps my learned friend could tell us which video is in question and if she could
6 explain exactly which video she intends to play, why, and what is the link between the video
7 and this witness. I believe we are entitled to a little bit of information here, your Honour.

8 PRESIDING JUDGE FREMR: Also, I don't see generally such a need, but I think in this case
9 maybe make a courtesy to Mr Bourgon and inform us.

10 MS SAMSON: Certainly, sir. I would need to make that submission in the absence of the
11 witness. I'm happy to explain what it is, but I don't want to alert the witness before he's had
12 a chance to provide his own information about the document, the video -- audio, sorry.

13 PRESIDING JUDGE FREMR: Okay. So then Mr Witness has to be escorted for a little while
14 outside of the courtroom.

15 Court officer, please proceed in this way and we have to go to closed session for such a
16 purpose.

17 (Closed session at 11.45 a.m.)

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19 (Open session at 11.51 a.m.)
20 THE COURT OFFICER: We're in open session.
21 PRESIDING JUDGE FREMR: Ms Samson, you may proceed.
22 MS SAMSON:
23 Q. Sir, I would like to play an audio recording for you.
24 The audio recording is at number 34 of the Prosecution's list of documents. The ERN is
25 DRC-OTP-0162-0115. I will play a segment of that audio recording on track 1, minutes 7 to

1 minutes 12. Once the Court Officer has the audio recording up on our screens, I would ask
2 for leave to have the floor to be able to manipulate the audio recording from the Prosecution's
3 bench.

4 And sir, what I would ask you to do is to listen very carefully to the audio recording,
5 take notes if you would like, and I will ask you questions about whether you
6 recognize the audio recording and what is happening during the audio recording and
7 who is speaking during the audio recording if you are able to provide that
8 information at the end, after you've listened to the 5 minutes. Is that clear?

9 A. Ndiyo.

10 PRESIDING JUDGE FREMR: Your request is granted, Ms Samson.

11 THE WITNESS: (Interpretation) Yes.

12 (Playing of the audio excerpt)

13 PRESIDING JUDGE FREMR: Sorry, before I will return back floor to Ms Samson, I have to
14 correct myself. I mentioned video recording, I think it was obvious that it was audio. So
15 sorry for that error.

16 And now Ms Samson, you have the floor.

17 MS SAMSON: Thank you.

18 Q. Sir, do you recognize anything in the audio recording?

19 A. Yes.

20 Q. What language is being spoken?

21 A. Swahili.

22 Q. What means of communication is being used to your knowledge?

23 A. Motorola.

24 Q. Did you recognize any of the speakers in the audio recording?

25 A. I recognized the voices of some commanders, and I understood how it came to be that

1 they were appointed.

2 Q. Which commanders' voices did you recognize?

3 A. I recognized Bravo Charlie, Sierra Alpha, Echo Charlie, Chuma Kumai, Sierra Delta and
4 Tango Hotel. Those are the commanders that I identified. I identified them by their call
5 signs.

6 Q. You mentioned Bravo Charlie. Who is that commander? What is his name, if you
7 know?

8 A. Bravo Charlie was Kaguma.

9 Q. Was he a commander in a particular brigade or battalion that you know of?

10 A. He was the battalion commander in the unit that came from Shari to go to Nyangarai.

11 Q. And you mentioned Sierra Alpha. What is that person's name if you know?

12 A. That was the call sign of Commander Salumu.

13 Q. Who is Echo Charlie?

14 A. Echo Charlie, his name was Eric. He was one of the battalion commanders of the
15 Salumu brigade.

16 Q. You mentioned somebody else after Echo Charlie. It wasn't captured. I didn't catch it.
17 Do you remember who you mentioned?

18 A. Yes. We called him Chuma Kumai.

19 Q. Do you know how that is spelled?

20 A. C-H-U-M-A, space, K-U, space, M-A-Y-I. I think that's the right spelling.

21 Q. Do you know in which unit he was from?

22 A. I don't know the details, but I heard orders being given. He must be one of the
23 commanders who came from Nyangarai.

24 Q. And you mentioned Sierra Delta. Who is he?

25 A. Sierra Delta, his name was Saidi, Saidi.

1 Q. Are you able to spell his name, please?

2 A. S-A-I-D-I, Saidi.

3 Q. You mentioned Tango Hotel, who is that person?

4 A. Tango Hotel was someone called Théophile.

5 Q. Do you know in which units Saidi and Théophile were based?

6 A. Saidi was in Nyangarai, and Théophile was in the Salumu unit.

7 Q. And, sir, based on the excerpt that you listened to of the audio, are you able to explain to
8 the Court what event is recorded or what is taking place in the recording?

9 PRESIDING JUDGE FREMR: Mr Bourgon.

10 MR BOURGON: (Interpretation) I'd like to know whether the witness is being asked to
11 give his opinion or whether he actually heard the conversation and he knows what it was
12 about. There is a difference.

13 PRESIDING JUDGE FREMR: Ms Samson.

14 MS SAMSON:

15 Q. Sir, do you know what this conversation is about?

16 A. It was during the battle, those were conversations during the battle.

17 Q. Which battle?

18 A. It was the battle to free up the road between Kobu at the end of February 2003.

19 Q. On what do you base those conclusions?

20 A. On the basis of their conversations. I heard that and I had followed that conversation
21 on the Motorola. They were talking and they mentioned certain localities. And so I am
22 certain that it was that operation.

23 THE INTERPRETER: Message from the interpreter: In the previous answer it was the
24 Kobu-Bambu Road.

25 MS SAMSON:

1 Q. Which localities were mentioned?

2 A. There was a commander who asked Sierra Delta: "Where are you?"

3 And Sierra Delta answered: "I'm in Ngotutsi."

4 Ngotutsi is a place on the road to Nyangarai before you get to Buli on the way to Bambu.

5 Q. Are you able to spell that location, that place name?

6 A. N-G-O-T-U-T-S-I.

7 Q. Sir, would I like to play sections of that audio again, taking smaller segments at a time,
8 so that you can explain to the Chamber what you are hearing. We'll start at minute 7 and
9 we'll stop at about minute 7.30.

10 PRESIDING JUDGE FREMR: Mr Bourgon, any objection to that?

11 MR BOURGON: (Interpretation) Your Honour, if the basis of the witness's deposition is
12 based on the fact that he listened or heard the conversation, I have no objection. But if it's his
13 opinion that's being asked about something that he learned later on, it should not be allowed,
14 your Honour.

15 PRESIDING JUDGE FREMR: Thank you. Ms Samson, I maybe also would like to know
16 what is your intention, how to proceed with this recording because I can just indicate, but it's
17 not still the ultimate decision, but if you want to admit this for the purpose of, you know, to
18 prove that witness is able to recognize voices, recognize medium used, but as to content it
19 would be probably inadmissible because we don't have any official translation of that. So I
20 don't see very reasonable to deal with the content itself.

21 MS SAMSON: Your Honour, the Prosecution has prepared and disclosed a transcript of the
22 audio as well as the translation. I didn't intend to seek to admit the translation through this
23 witness. Rather, I seek to admit the audio recording and then via a Bar table request we will
24 seek to admit the transcript and the translation as well.

25 PRESIDING JUDGE FREMR: Okay. But still have in mind Mr Bourgon's objection. So

1 please proceed.

2 MS SAMSON: Thank you, Mr President. I understood the witness to have indicated that
3 he listened to this particular recording. That is what he said. If your Honours would like,
4 I'm happy to locate the spot in the transcript where he said that.

5 PRESIDING JUDGE FREMR: Yes, please.

6 Mr Bourgon?

7 MR BOURGON: (Interpretation) In order to save time if the witness can say, "Yes, I heard
8 the conversation," I would be satisfied. Thank you, Mr President.

9 PRESIDING JUDGE FREMR: We may proceed.

10 MS SAMSON: I have found it, Mr President. Page 38, lines 14 to 17. The witness said, "I
11 heard" -- my question at line 13 was: "On what do you base those conclusions?"

12 And the witness answered: "On the basis of their conversations. I heard that and I
13 had followed that conversation on the Motorola. They were talking and they
14 mentioned certain localities, and so I'm certain that it was that operation."

15 PRESIDING JUDGE FREMR: I can confirm. I'm looking at the moment which is the same
16 part of the transcript. It's correct. So you may proceed, Ms Samson.

17 MS SAMSON: Thank you.

18 Q. So, sir, we're going to play about 30 seconds or so and I will ask you thereafter to tell us
19 what it is that you've heard.

20 (Playing of the audio excerpt)

21 MS SAMSON: We've stopped the recording at minute 07.31.

22 Q. Sir, what did you hear in that excerpt?

23 A. There is a commander who asks a question to another commander: "Where did they
24 flee to?" and they were referring to their enemies.

25 And the answer was: "They went to a house."

1 And the commander said: "I'm with their soldiers here. There is about 40 of them." And
2 he said, "If they can't" -- well, that he would attack the soldiers.

3 And then there was a question: "Are the commanders over there?"

4 And the answer was: "Yes, yes, they're in that house."

5 That's what I heard in this excerpt.

6 Q. Thank you. Now I'm going to play a next segment of again about 30 seconds and ask
7 you similar questions starting at minute 7.31.

8 (Playing of the audio excerpt)

9 MS SAMSON: We've stopped the recording at minute 8.07.

10 Q. Sir, what did you hear in that segment?

11 A. A commander asks another commander: "Where are they?"

12 And the other says: "Who?"

13 The first one says: "They've just gone into a house. Haven't you attacked that
14 house or are you going to attack that hill?"

15 And the other answers: "I've already talked to their soldiers here. If they move, I'll
16 shoot."

17 And the other answers: "If they move, you have to shell them if they move."

18 Q. Who are the two commanders speaking, if you know?

19 A. Well, they didn't mention their call signs, but I might be able to identify their voice.
20 But it's been a long time, I'm not able to identify exactly whose voices I heard.

21 Q. Okay. I'm going to move to a next segment starting at minute 8.08.

22 (Playing of the audio excerpt)

23 MS SAMSON: We've stopped the recording at minute 9.19.

24 Q. Sir, what did you hear during that segment?

25 A. I heard the noise of bullet shots and a commander said: "This is your commander."

1 He said: "Go get them and bring them here so that they don't run away."

2 And then one of the commanders asks the other to change the battery of his
3 walkie-talkie because the battery had gone dead.

4 Q. Do you recognise the commanders speaking in this segment?

5 A. I heard the voice of Sierra Delta, but I can't identify the voice of the other commander.
6 (Redacted).

7 THE INTERPRETER: Comment from the interpreter: In the previous answer, the witness
8 said, "Go tie them up. Go get them and tie them up and bring them here."

9 MS SAMSON:

10 Q. I'm going to play another segment for you starting at minute 9.19.

11 (Playing of the audio excerpt)

12 MS SAMSON: We've stopped that segment at minute 10.23.

13 Q. Are you able to explain what's happening during this segment please?

14 A. There is someone, I think it's Sierra Delta, who asks: "What is your position?"
15 And the other one says: "Ngotutsi."

16 Then he asked: "Why did you deviate from the straight line?" And then there is a question:
17 "How many people are with you?"

18 And the other answers: "I've just arrested 40 people and I tied them up."

19 The question: "Do they have any weapons?"

20 The answer was: "No weapons."

21 And he said he was going to call on someone else to report to Echo Charlie. That's
22 what I heard.

23 Q. And, sir, you said that when Sierra Delta asks: "What is your position?" that the other
24 one said something, but it wasn't captured. So I'd like to know what you said. What did
25 the other one say?

1 A. When the question was put to Sierra Delta, he said he was in Ngotutsi and Sierra Delta
2 asked Chuma Kumai: "Why did you deviate from a straight line?"

3 He asked the question to the other commander: "How many people are with you?"

4 And he said he'd arrested 40 people. He tied them up.

5 And he was asked: "Do they have rifles?"

6 And the other answered: "No."

7 And he said: "Some of them ran away and those who were running away were
8 supposed to go to Echo Charlie."

9 THE INTERPRETER: Your Honour, would you be so kind as to ask the witness to slow
10 down in answering the questions please. Request from the Swahili booth.

11 PRESIDING JUDGE FREMR: Witness, I have to convey a message from Swahili booth.

12 They would like to ask you to speak a little bit slower, okay? During giving the last response
13 you were too fast. Thank you.

14 MS SAMSON:

15 Q. Sir, you mentioned a location which sounded in the translation like Ngotutsi. Are you
16 able to spell the location that you mentioned?

17 A. N-G-O-T-U-T-S-I, Ngotutsi.

18 Q. Thank you. Now I'm going to play the last segment from minute 10.23 to minute 12.00.
19 (Playing of the audio excerpt)

20 MS SAMSON:

21 Q. Sir, what did you hear during that segment, please?

22 A. In the beginning I heard the noise of gunshot and then Sierra Delta asked Chuma Kumai
23 if he could deploy in single file because the enemy was running away. And then I heard the
24 noise of gunshots and the noise of shelling.

25 MS SAMSON: Mr President, the translation of that entire track of the audio is at

1 DRC-OTP-0204-0056, 0204-0056.

2 Q. I would like to play a second track on the same audio recording and go through a very
3 similar procedure playing 6 minutes for the witness to let the Chamber know if he recognizes
4 the recording and then going more slowly if he does, going more slowly through the
5 recording to understand what is happening.

6 PRESIDING JUDGE FREMR: Mr Bourgon, I think the same situation like before, so no
7 objections? Okay. Let's proceed.

8 MS SAMSON: On this particular track we'll be playing minutes 3 to minute 9.
9 (Playing of the audio excerpt)

10 MS SAMSON: We've stopped the audio at minute 9.01.

11 Q. Sir, do you recognize that audio recording?

12 A. The sound quality is not good, however I was able to recognize a few voices. And
13 towards the end of the recording, I was able to understand what was being said.

14 Q. And what did you recognize about it?

15 A. It was the same operation, having to do with the road between Babeko
16 (phon) -- Echo Charlie is telling someone else that he took 40 prisoners and had tied them up.
17 Then he's asked do they have weapons? He says: "No." And then Salumu asks him to
18 send those people to him because he wanted to see them. And he tells Echo Charlie to move
19 forward.

20 I also heard him give the order and ask whether the people had gotten to Bambu.

21 And he orders the forces to head towards Buli and to take control of that hill.

22 After that he calls Sierra Alpha. And towards the end -- November Alpha. And
23 towards the end, I heard a conversation between November Alpha and Echo
24 Whiskey.

25 Q. Sir, I have to ask a few clarification questions to make sure that the interpretation is

1 correct. You said that this audio intercept has to do with the roads between which villages?

2 A. It was the operation that had to do with the Lipri, Bambu, Kobu road. And the
3 communication that you played has to do with that particular operation.

4 Q. And you said that towards the end you heard a conversation between Sierra Alpha and
5 Echo Whiskey; is that right?

6 A. Echo Charlie was reporting to Sierra Alpha and said that he had taken 40 prisoners, tied
7 them up and then the latter asked them whether they had weapons, and he said no. And
8 then he asked him to move ahead because the people from Lipri had got to Bambu. And he
9 ordered them to take control of that hill.

10 Towards the end, someone asks to November Alpha: "Where are you?"

11 And November Alpha says: "I have already taken control of a village and the name
12 of that particular village was not mentioned."

13 Q. Sir, was this also part of the recording that you, yourself, listened to on Motorola at the
14 time of the event?

15 A. Yes. Part of the audio, well, the quality is good, and another part the quality is not
16 good. So to answer your question, I was able to listen to some of the conversations over the
17 Motorola.

18 MS SAMSON: Mr President, the translation of this particular track is at DRC-OTP-0204-0036.
19 I have no further questions on the audio. I ask that it be admitted into evidence.

20 PRESIDING JUDGE FREMR: The problem is that, at least as far as I know, the Chamber was
21 not provided with the translation, but at least I can just check that the Defence had been
22 provided with translation?

23 MR BOURGON: (Interpretation) We did receive two documents, one with a draft
24 translation and a second one with a better version.

25 I would like to say, your Honour, that I do have an objection to this being adduced

1 into evidence. This is not the right witness to bring these documents into evidence.
2 We don't know how this was prepared. The witness said that he heard some of the
3 conversation. I don't think this is sufficient to place the information on the case
4 record.

5 If my learned friend wishes to say that the witness recognized some voices and heard
6 some of the things, but this witness was not present. He is just repeating what he
7 heard. This is not sufficient. This should not be placed on the case record.

8 PRESIDING JUDGE FREMR: Ms Samson?

9 MS SAMSON: Thank you, Mr President. My request is for the audiotapes themselves.
10 The translation we can, if your Honours prefer, seek to admit via a Bar table motion later.
11 In my submission, there is a sufficient foundation to admit the audiotapes in full.
12 The witness has indicated that he was listening to the communications at the time of
13 the events. He recognizes the people speaking, he recognizes the places and he
14 recognizes the event.

15 I'm not certain that we'll ever find a better witness with whom we can admit this
16 particular item of evidence. Thank you.

17 PRESIDING JUDGE FREMR: So if I understood well, purpose of prospective admission is to
18 prove that he was able to recognize concrete persons and he was able even to identify
19 concrete events that this organisation in effect commented. Am I correct on that?

20 MS SAMSON: Yes, that he can identify the event because he listened to it at the time, he can
21 identify the speakers and he can identify the locations that are involved in this particular
22 event.

23 PRESIDING JUDGE FREMR: I'm coming back to Mr Bourgon. So would be such a limited
24 extent of possible admission would fine with you or you are still insisting on your objection?

25 MR BOURGON: (Interpretation) Your Honour, before it is possible to adduce an audio

1 recording into evidence, at least one must know where the recording comes from, how it was
2 produced and how the Prosecution came into possession of this particular item.

3 In this particular case, the witness was asked if he had heard this conversation, and he
4 confirmed that yes, he had.

5 On the other hand, he was not present. He was not physically there mentioned -- at
6 the places mentioned in the audio. So the question is this: Where does this
7 recording come from?

8 If my learned friend wishes to place the recording on the record for identification
9 purposes until we actually have the person who produced the recording, then we
10 would not have an objection. But at present, if this item is placed on the record, it
11 can only be used to recognize -- or, rather, to prove that the witness recognized the
12 voices of some people he heard and the words uttered by some people, but not as to
13 the veracity of the actual content. Thank you, your Honour.

14 PRESIDING JUDGE FREMR: Ms Samson?

15 MS SAMSON: Thank you, Mr President. The purpose of the admission is not simply to get
16 who, when, where, why, but to admit the audio for the content. The witness was for all
17 intents and purposes there. He's not one of the speakers, but he was present when the words
18 were spoken because he was listening via Motorola.

19 Where -- what the source of an item is is not a factor on admissibility. Admissibility
20 is to be considered on the basis of indicia of reliability and whether or not the witness
21 has provided sufficient information to be able to ensure that what is being said on the
22 video -- the audio is an accurate representation of what took place at the time of the
23 event when it was created.

24 In my submission, the witness has done that because he was effectively present when
25 the words were spoken and he heard them at the time.

1 PRESIDING JUDGE FREMR: It will not be probably easy issue, so the Chamber will
2 deliberate during the lunch-break and then I guess we will pronounce decision on that at the
3 beginning of the afternoon session.

4 But nevertheless, is origin of this document secret? Because I think for the issue of
5 authenticity maybe it would be good to know what is the origin of this exhibit.

6 MS SAMSON: The exhibit came to us via another Prosecution trial witness, trial Witness 245,
7 but our Witness 245 was not involved in the creation of the audio. He intercepted it and
8 thereafter gave it to the Prosecution. This particular witness, your Honour, is better placed
9 to know the content than the witness who was the source of the document to the Prosecution.

10 PRESIDING JUDGE FREMR: I guess you've got some additional message. Maybe you
11 would like to add something.

12 MS SAMSON: Yes, sorry, your Honour. Clarification, the item came from Witness P-101.

13 PRESIDING JUDGE FREMR: I think it's enough for the moment. As I indicated we --
14 Mr Bourgon also would like to reply again please.

15 MR BOURGON: (Interpretation) Your Honour, I would like to suggest that perhaps we
16 could wait until the end of this witness's deposition and at that point in time the Chamber will
17 have more information as to the reliability of this recording. I think the Chamber will be in a
18 better position to evaluate the reliability, which is an important factor when you are talking
19 about the admissibility of a document. Thank you, your Honour.

20 PRESIDING JUDGE FREMR: As I said, we will for sure deliberate on that. We also will
21 consider your proposal, Mr Bourgon.

22 Now we have still 10 minutes remaining, so, Ms Samson, you may continue until
23 1 o'clock.

24 MS SAMSON: Thank you, Mr President. And, Mr President, in terms of timing, I will
25 continue for 10 minutes now. If I could ask the Court's indulgence to go a little bit longer

1 after the break for approximately 45 minutes to one hour maximum.

2 (Trial Chamber confers)

3 PRESIDING JUDGE FREMR: As you could see, we deliberated silently. As I also indicated
4 in the morning, our approval of your previous estimation for 10 hours was based on the
5 presumption that the witness will testify in French. Now I even got information that until
6 now you utilized 9 hours 25 minutes, so I think we can for sure grant you one hour more. So
7 that's fine. You may proceed.

8 MS SAMSON: Thank you, Mr President.

9 Q. Sir, I would like to ask you which attacks -- you've described several attacks that took
10 place on behalf of the FPLC and I wondered if you could explain to the Court which other
11 attacks you're aware of that the FPLC participated in?

12 A. There were many attacks, mainly on the road from Bunia to Komanda going through
13 Marabo. There were many clashes on that road. There was the road from
14 Marabo-Nyankunde, where there were many clashes, as well as other roads near Fataki to
15 Mahagi. There were lots of clashes. And until the end of the FPLC, there were certain
16 localities where the FPLC never managed to take over, never managed to control them.

17 Q. And, sir, do you recall the approximate month and year in which Lompondo was
18 ousted from Bunia?

19 A. Lompondo left Bunia in August 2002.

20 Q. And do you remember the first FPLC operation after that time?

21 A. The date on which Lompondo left Bunia, it wasn't the FPLC who drove him out, it was
22 Ugandan troops who did that. The first operation by the FPLC was conducted at Lipri.
23 After that there was another operation which was conducted in Songolo. Those were the
24 very first two operations led by the FPLC.

25 Q. Do you recall who decided to launch these two operations, Lipri and Songolo?

1 A. I don't know. Actually, after the first operation in Mandro, the FPLC soldiers raided
2 Bunia in order to attack Lompondo's residence. However, the Ugandans intervened saying
3 that they were the ones who were going to drive out Lompondo, and those soldiers then went
4 to Lipri.

5 There was another operation that was conducted in Songolo. At that time the president of
6 the UPC had not come back and Afande Kisembo and Afande Bosco were the people
7 responsible for those troops. And what's more, at that time the name FPLC had not been
8 officially adopted.

9 Q. Thank you. I just wanted to correct something that's set out differently in the English
10 and French transcripts.

11 Did you say that: "After the first operation in Mandro the FPLC soldiers raided Bunia"?

12 Which is what it says in the English transcript.

13 Or did you say: "After the first training in Mandro the FPLC soldiers raided Bunia"? Which
14 is what it says in the French transcript?

15 THE INTERPRETER: The Swahili booth wishes to report that the channel was occupied.
16 Could the witness please repeat his reply? The first part of the reply was not interpreted
17 because there were basically overlapping speakers and a channel was occupied.

18 PRESIDING JUDGE FREMR: I'm sorry, Witness, now I have been informed that the first
19 part of your last response was not caught by Swahili booth because of some, you know,
20 overlapping speakers. So please, could you kindly repeat this response again.

21 THE WITNESS: (Interpretation) I was saying this, when the first recruits ended their
22 training in Mandro, they were given weapons, and they went to Bunia, and it was during the
23 night, and the goal was to attack the residents of Lompondo. However, the Ugandan troops
24 heard about this scheme, and they intervened. They said that Lompondo would be driven
25 out by the Ugandans.

1 So those FPLC troops who had gone to Bunia with the aim of driving out Lompondo
2 changed directions and they headed towards Lipri.

3 MS SAMSON: Mr President, if this is an appropriate time, perhaps we could break.

4 PRESIDING JUDGE FREMR: I think so. It is appropriate time. So we will now break for
5 90 minutes, which means that we will adjourn again half past 2.

6 But first we have to go to closed session in order to allow safe escort of the witness
7 out of the courtroom, please.

8 (Closed session at 1 p.m.)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Open session at 1.01 p.m.)

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

14 PRESIDING JUDGE FREMR: Thank you.

15 So now I am just repeating what I have already said, that court is adjourned until half
16 past 2.

17 THE COURT OFFICER: All rise.

18 (Recess taken at 1.01 p.m.)

19 (Upon resuming in open session at 2.38 p.m.)

20 THE COURT USHER: All rise.

21 Please be seated.

22 PRESIDING JUDGE FREMR: Good afternoon everybody. We are in open session
23 and we will continue with two procedure matters. The first one is oral ruling on
24 request for authorisation for VWU to convene a meeting in relation to contacts with
25 witnesses.

1 Last week the issue of certain recent contacts between Defence investigators and
2 Prosecution witnesses was raised. On Friday, the Defence indicated an intention to
3 request the Victim and Witnesses Unit to convene a meeting between the parties on
4 this issue.

5 This morning the Defence has filed a request seeking the Chamber's authorisation for
6 such a meeting. It's filing number 844.

7 The Chamber considered that the VWU as a neutral organ of the Court dealing with
8 witnesses should normally not be asked to become involved in disputes between the
9 parties or be expected to mediate between them.

10 As I indicated on Friday, the Chamber would like the parties to make efforts to
11 resolve any matters of dispute inter partes and to ensure that the best practices are in
12 place in respect of investigations.

13 However, in that regard, the Chamber notes that the witness contacts protocol, filing
14 number 412, indicates that the VWU is available to provide training on best practices
15 and to provide advice to parties and participants who are in direct contact with
16 witnesses and victims. Therefore, on this particular occasion, and noting also that
17 the VWU's indication that it would be willing to convene such a meeting subject to
18 the Chamber's authorisation, the Chamber considers that it is appropriate to authorise
19 such a meeting. The VWU may, however, exercise their own discretion regarding
20 the scope of their role in this meeting.

21 Further, the Chamber notes, however, that the Defence proposes to include only the
22 Legal Representative for the Victims of the attacks in this meeting on the basis that the
23 recent incidents in question relate to certain of his clients. Nonetheless, to the extent
24 that the meeting extends to be best practices more broadly or to procedure going
25 forward, the Chamber considers it appropriate for the Legal Representatives for child

1 soldiers to also be invited to participate.

2 The Chamber, therefore, directs the Registry to make Defence filing number 844,
3 excluding annexes, available to the Legal Representatives for child soldiers.

4 The Chamber has noted the Prosecution's stated intention to make a filing in relation
5 to the recent contacts and the meeting is, of course, without prejudice to any filing it
6 considers to still be necessary.

7 This ends the oral ruling on this matter. It was the first issue.

8 And the second issue is still ongoing litigation on prospective, if any, admission into
9 evidence of the audio we listened to in the morning session.

10 We discussed it thoroughly and we, at the moment, we took a conclusion that we will,
11 as Mr Bourgon proposed, will wait until the end of this testimony. It means that we
12 will also make our decision on the basis of the results of cross-examination.

13 So now we can continue with the last part of examination-in-chief, which should take
14 approximately one hour. So now we can -- we have to move to closed session in
15 order to get the witness safely in the courtroom.

16 Court officer, please.

17 (Closed session at 2.43 p.m.)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 (Redacted)

2 (Open session at 2.46 p.m.)

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

4 PRESIDING JUDGE FREMR: Just for the information of public, we are continuing in
5 here listening to testimony of witness concretely in the part of examination-in-chief by
6 Prosecution.

7 Ms Samson, you have the floor.

8 MS SAMSON: Thank you, Mr President.

9 Q. Sir, before the break we were discussing FPLC attacks that you know of. And
10 you mentioned that after the ousting of Lompondo from Bunia, the first FPLC attacks
11 you're aware of were in Lipri and Songolo. After those two attacks, can you please
12 tell the Court which was the next attack that you can recall the FPLC being involved
13 in?

14 A. There were several attacks. Most of them took place on the road between
15 Bunia-Marabo toward Komanda.

16 Q. Do you recall the approximate time frame, the month and the year in which
17 those attacks occurred?

18 A. The first attack took place in Songolo. It was right after the departure of
19 Lompondo, the first months following his departure. The attack on the Komanda
20 Road took place between the departure of Lompondo and 6 March 2003. And that
21 road, during that period, there were numerous attacks on that road.

22 Q. Can you recall any other attacks? You've mentioned Lipri, you've mentioned
23 Songolo, you've mentioned attacks in the Komanda, Marabo area. Any others?

24 A. There were several. There were attacks near Zumbe, Kpandroma. In those
25 days there were numerous operations.

1 Q. Do you know who decided when the FPLC would participate in operations and
2 where?

3 A. When the FPLC troops went off to the front to the battle, the decision was made
4 by the chief of staff, the general chief of staff. As far as I know there was no one who
5 could send troops off to battle other than the superior officers.

6 Q. So to be clear, when you say that these decisions were made by the chief of staff,
7 who were you referring to?

8 A. Amongst the commanders who were in charge of the units, I'm referring here to
9 the period after Lompondo's departure, there was no one between -- or, rather, no one
10 amongst those commanders who could take the initiative of sending soldiers to the
11 front to battle without the authorisation of the chief of staff and the deputy chief of
12 staff in charge of operations.

13 Q. And just to be clear, who were the chief of staff and deputy chief of staff in
14 charge of operations? What were their names?

15 A. It was Afande Kisembo and Afande Bosco.

16 Q. Before the break you referred to fighting in Fataki and Mahagi, in that area.
17 Do you recall approximately when that fighting occurred?

18 A. Fataki was a territory under the control of the FPLC. When the FPLC soldiers
19 had to leave Bunia to go to Mahagi, that is because of their deployment, they had to
20 go through Fataki and other towns. The soldiers went through Fataki to go to
21 Mahagi, and on the way there were clashes.

22 Q. Do you recall the approximate month or year when these clashes took place?

23 A. The FPLC soldiers went to Mahagi in the month of October. When they left to
24 go to Mahagi there were military men who took trucks to go to where they intended
25 to go. These were traders' trucks, trucks that belonged to traders.

1 Q. Do you recall the year in which the soldiers went to Mahagi? You said it was
2 October. Which year is it?

3 A. 2002.

4 Q. And the traders that you mention, which ethnic community did they come
5 from?

6 A. I said that after the FPLC soldiers left Bunia to go to Mahagi and going through
7 Fataki on the way, it was at that point in time if there were any vehicles that belonged
8 to traders and who needed to go to those places, in fact the soldiers escorted them.

9 Q. Do you know from which ethnic community the traders came from?

10 A. The trucks belong to the Hema in the majority, to the Hema.

11 Q. Sir, several days ago you referred to the Mandro training camp. Are you
12 aware of any other training camps that the FPLC had in 2002-2003?

13 A. In 2003, there was a training centre in Bule and there was also a training camp
14 or centre in Rwampara. And those were the two camps that functioned along with
15 the Mandro camp, that is officially, to my knowledge at least.

16 MS SAMSON: Mr President, may we move into private session for several questions,
17 please?

18 PRESIDING JUDGE FREMR: All right, let's move into private session now.

19 (Private session at 2.57 p.m.)

20 (Redacted)

21 (Redacted)

22 (Redacted)

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25 (Redacted)

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Trial Hearing

(Closed Session)

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Trial Hearing

(Closed Session)

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Trial Hearing

(Closed Session)

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- 1 (Redacted)
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- 6 (Closed session at 3.54 p.m.)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Open session at 3.55 p.m.)
- 12 THE COURT OFFICER: We are in open session, Mr President.
- 13 PRESIDING JUDGE FREMR: Thank you.
- 14 We are going to adjourn, but before doing that I would like to summarise that today
- 15 Ms Samson, who represented Prosecution, completed examination-in-chief of the
- 16 witness and we will continue tomorrow at 9.30 by cross-examination made by
- 17 Defence.
- 18 So now Court is adjourned.
- 19 THE COURT USHER: All rise.
- 20 (The hearing ends in open session at 3.56 p.m.)