

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 - Courtroom 2
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and
6 Judge Chang-ho Chung
7 Trial Hearing
8 Thursday, 16 June 2016
9 (The hearing starts in open session at 9.31 a.m.)
10 THE COURT USHER: All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: Good morning, everybody.
14 Court officer, please call the case.
15 THE COURT OFFICER: Thank you, Mr President.
16 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
17 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
18 We are in open session.
19 PRESIDING JUDGE FREMR: Thank you.
20 We start with appearances, Prosecution first.
21 MS SOLANO: Good morning, your Honours. This morning Laura Morris, assistant
22 trial lawyer; Paola Sacchi, assistant legal officer; Rens van der Werf, assistant trial lawyer;
23 Ms Selam Yirgou, case manager; and I am Julieta Solano, trial lawyer.
24 PRESIDING JUDGE FREMR: Thank you, Ms Solano.
25 Defence.

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1 MR GOSNELL: Good morning, Mr President, good morning, your Honours. Same
2 appearances as yesterday, including the presence of Mr Ntaganda.

3 PRESIDING JUDGE FREMR: Thank you, Mr Gosnell.
4 Legal Representative of Victims please.

5 MS PELLET: (Interpretation) Thank you, your Honour. The former child soldiers are
6 represented by Mohamed Abdou and by myself, Sarah Pellet, counsel for the Office of
7 Public Counsel for Victims.

8 MR SUPRUN: (Interpretation) Good morning your Honour, your Honours, the victims
9 of the attacks are represented by Dmytro Suprun, counsel with the Office of Public
10 Counsel for Victims.

11 PRESIDING JUDGE FREMR: Thank you, Ms Pellet. Thank you, Mr Suprun.
12 I am also noting for the record that Mr Levine, who represents the United Nations, is also
13 present.

14 Before we start, I also got information that Mr Ntaganda still has some problems with his
15 computer, but I was informed that our technicians are -- or, technician is on his way, so
16 hopefully the problem will be solved soon.

17 Now, we are going to continue with cross-examination of our witness.

18 Good morning, Madam Witness. So, as usually, I am just reminding you that you are
19 still under oath, which means that you have to speak the truth and nothing but the truth,
20 which I guess is clear to you.

21 WITNESS: DRC-OTP-P-0046 (On former oath)

22 THE WITNESS: Yes, your Honour. I'm not sure what the procedure, but there are two
23 things I would like to bring to your attention particularly, but I'm not sure how to do it.

24 PRESIDING JUDGE FREMR: Yes, please, you go ahead, but the only problem is whether
25 you may do it in open session or private session? It's up to you.

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1 THE WITNESS: I think open session is fine.

2 PRESIDING JUDGE FREMR: All right. So please.

3 THE WITNESS: I notice that I made a mistake in referring to one document, so I think it
4 would be better if I correct.

5 PRESIDING JUDGE FREMR: For sure.

6 THE WITNESS: It's not significant, but I mentioned a reference to the Paris principles in
7 my testimonies. I was obviously wrong because they were only adopted in 2005. I was
8 referring, in fact, to the Cape Town principle adopted in 2009 -- sorry, '97, which does not
9 change what I said about it.

10 PRESIDING JUDGE FREMR: Very well.

11 THE WITNESS: The second thing I wanted to bring to your attention is a discrepancy
12 between one of the individual child's story that I think is part of the document that have
13 been tendering as an evidence and another document which referred to this particular
14 story in a report. And the two do not match, so I just wanted to bring to the Court's
15 attention which one was -- I mean, the original one.

16 I was told by the Prosecution last week that I should pay attention also to these type of
17 details. I obviously noticed that last week. But one remark caught my attention in the
18 previous day, so I thought I could -- should inform the Court.

19 PRESIDING JUDGE FREMR: Very well. I think we appreciate that.

20 Do parties have any additional questions or comments on this supplement of testimony?

21 MS SOLANO: No, your Honour. Of course I support the witness's initiative.

22 PRESIDING JUDGE FREMR: All right.

23 So then we can continue as we planned.

24 THE WITNESS: Excuse me, your Honour.

25 PRESIDING JUDGE FREMR: Yes, Madam Witness.

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1 THE WITNESS: Should I mention what is the specific story I have got in mind?

2 PRESIDING JUDGE FREMR: Yes, please but briefly. Yes.

3 THE WITNESS: Sorry, it's about, I think, a case which is number 23 in -- in the document
4 showed yesterday by the Defence and it's referring -- and the other document is the
5 report -- the child protection report on children associated with armed groups, dated
6 February 2004, I think page 10, and that's referring to an incident where Mr Bosco is -- is
7 mentioned.

8 PRESIDING JUDGE FREMR: Thank you.

9 THE WITNESS: And the -- the version I want to mention as correct is individual story
10 that was badly, partially quoted in the report.

11 PRESIDING JUDGE FREMR: Well noted. Thank you.

12 So now Mr Gosnell, you may proceed. And I am just reminding you that you still have
13 at your disposal 3 hours 21 minutes.

14 MR GOSNELL: Thank you very much for that precision, Mr President.

15 QUESTIONED BY MR GOSNELL: (Continuing)

16 Q. Madam Witness, or Ms Peduto, where we finished yesterday I believe is that you
17 maintained that the amenities provided, the services provided by the Centre de transition
18 et d'orientation provided no incentive for individuals to lie about their affiliation with
19 armed groups. Do you remember that that's where we finished and is that a fair
20 summary of what you said?

21 A. Yes.

22 MR GOSNELL: Mr President, we're going to have to go, I'm afraid, to private session for
23 about 20 minutes.

24 PRESIDING JUDGE FREMR: Certainly. Let's move into private session.

25 (Private session at 9.38 a.m.)

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15 (Open session at 10.21 a.m.)

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

17 PRESIDING JUDGE FREMR: Thank you, court officer.

18 Mr Gosnell, please proceed.

19 MR GOSNELL:

20 Q. Ms Peduto, you've testified that physical appearance was one factor, amongst others,

21 which you relied on to come to a view as to the age of individuals. And what I'd like to

22 do now is show you some photographs and elicit your assessment of their age.

23 May we have Defence tab 108, DRC-D18-0001-0506, please.

24 MS SOLANO: Your Honour.

25 PRESIDING JUDGE FREMR: Ms Solano, any objection?

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1 MS SOLANO: Yes, your Honour, I do have an objection and I request to make it
2 in -- with the witness not in the courtroom.

3 PRESIDING JUDGE FREMR: All right then.

4 So sorry, Madam Witness, we will have to ask you to leave the courtroom for a while.

5 Court usher, please guide Madam Witness.

6 (The witness stands down)

7 MR LEVINE: Mr President, as this may impact, I don't know, on concerns of the United
8 Nations, may I please remain?

9 PRESIDING JUDGE FREMR: Yes, I think no problem I guess?

10 MS SOLANO: No.

11 PRESIDING JUDGE FREMR: Yes, it's just about the testimony, so please remain,
12 Mr Levine.

13 Now, Ms Solano, please proceed.

14 MS SOLANO: Thank you, your Honour. The Defence communicated to the
15 Prosecution a number of photographs that they may use with this witness. And on the
16 basis of the information provided to us about the photographs, it appears that they were
17 taken by a member of the Defence team last week, last weekend.

18 The photographs appear to show individuals who are probably in the age range that is
19 relevant to these charges, so probably 15, above 15, below 15, but who I submit are not
20 former child soldiers from the relevant time period because they were photographs last
21 weekend.

22 So my objection, your Honour, is that this is going to be a highly artificial exercise and
23 whatever evidence Ms Peduto gives on the age of these children is going to have very low
24 probative value because, as your Honours have seen from her evidence so far, her age
25 assessments were not based on photographs of individuals she had never seen, they were

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1 based on -- well, they were more wholistic assessment based on a range of reasons.

2 So for that reason, I object to the use of these photographs with this witness.

3 PRESIDING JUDGE FREMR: Mr Gosnell, could you please be specific about those
4 photographs you would like to present to Madam Witness.

5 MR GOSNELL: Certainly, Mr President.

6 First of all, the first photograph is not a recently taken photograph, it's actually a
7 screenshot from a video which I understand has been shown in this case. So that takes
8 care of that in respect of the first photograph.

9 In to the other photographs, indeed, they are photographs of individuals who are around
10 the relevant age. And my understanding is that this particular issue that is now before
11 you is one that has been well travelled in this courtroom and that, in fact, the Prosecution
12 has made inquiries of witnesses as to their assessment of age based upon physical
13 appearance. They have elicited that testimony, I understand, twice in respect of
14 P-805 -- well, P-901, in any event, starting at page 64 of transcript 27. And I understand
15 there were objections back and forth and ultimately the questions were permitted, and I
16 believe there's at least one other occasion on which the same thing was done.

17 So, and assessment of age based on physical appearance does not change whether we're
18 talking about somebody who was actually there at the time, or whether the photo was
19 taken in 2005, 2010, 2015. It's equally probative of that issue.

20 And Mr President, just to be clear, we're not saying that this is a question of decisive
21 importance, but it rises to the level of being relevant and certainly appropriate.

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

23 (Trial Chamber confers)

24 PRESIDING JUDGE FREMR: So even -- I think I had -- I can say that the Chamber has
25 really strong doubts about the probative value of such exercise, but it's true that we have

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1 already permitted this exercise in the past.

2 And I'm a bit premature, but the only relevant outcome would be if you would be able to
3 prove that madam witness is absolutely incapable to estimate age.

4 But as we said, we did it in the past, but for this time we will just permit it in a really
5 limited amount, so just three pictures, Mr Gosnell.

6 Now, please bring madam witness back to the courtroom.

7 MR GOSNELL: Thank you very much, Mr President. I fully appreciate the concerns of
8 the Bench.

9 (The witness enters the courtroom)

10 PRESIDING JUDGE FREMR: So, Madam Witness, now the Defence prepared some
11 funny exercise for you, so you will be asked to estimate age of the children on pictures,
12 just three pictures.

13 So, Mr Gosnell, you have the floor.

14 MR GOSNELL:

15 Q. And of course, Ms Peduto, if you can't assess the age, then that's of course also a
16 perfectly acceptable response.

17 So could we please start with the document I called.

18 PRESIDING JUDGE FREMR: Madam Witness, I see on your face some sign of -- that you
19 are not clear. It should be really easy exercise, you will be shown three pictures and your
20 task will be -- you know, even Chamber already expressed some reservations about this
21 exercise, but we permitted it in the past so that is why we are following this approach.

22 So your task is easy, just make estimation of the age of the person.

23 Ms Solano.

24 MS SOLANO: Your Honour, just for the sake of avoiding any confusion, your Honour,
25 for the witness, I note that the Defence hasn't asked her a question yet, so I want to

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1 understand whether the Court is directing her to answer the question that is coming, or
2 whether, as Defence counsel said a moment ago, she's free to decide whether she is in a
3 position to give an answer or not.

4 PRESIDING JUDGE FREMR: Yeah, for sure, I can confirm that. Yeah.

5 Mr Gosnell, please proceed.

6 So, Madam Witness, any problems?

7 THE WITNESS: Well, it's not a problem, but I would not estimate the -- the age of a child
8 based on an appearance or of anyone; it would depend on so many factors that I find the
9 exercise useless.

10 PRESIDING JUDGE FREMR: I think you have already expressed this, but just try and
11 you can just insist on that. And as Mr Gosnell said, if you will not be able to estimate,
12 then say "I am not able to estimate."

13 MR GOSNELL:

14 Q. If you can, Ms Peduto, can you give an estimate of the age of the person appearing
15 in the left-hand side of this photograph?

16 A. I would rather not estimate.

17 Q. Could we have Prosecution -- excuse me, Defence -- well, let me ask one follow-up
18 on that, can you say whether they are over or under the age of 15, or can you not say that?

19 A. No, I would not be -- I would not want to speck -- I mean, to guess.

20 MR GOSNELL: Could we have, please, DRC-D18-0001-1322, Defence tab 111. May I
21 request that this one not be broadcast. Thank you.

22 Q. Same question.

23 A. I'm afraid the same answer.

24 Q. And, again, no impression as to whether this person is over or under the age of 15?

25 A. Again, I would rather not guess.

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1 MR GOSNELL: Could we please have DRC-D18-0001-1347, Defence tab 116. Again,
2 not for broadcast, please.

3 Q. Can you give any estimate of this person -- can you give any --

4 PRESIDING JUDGE FREMR: Sorry, I think we -- we haven't -- we haven't heard
5 response from madam witness, if any.

6 Was there any response from madam witness?

7 MR GOSNELL: You're right, Mr President, there does appear to be something missing
8 from the transcript.

9 Perhaps I can summarise what was -- what transpired, Mr President, in the interest of
10 time. The witness was unable to provide an --

11 PRESIDING JUDGE FREMR: Yes.

12 MR GOSNELL: -- indication of age in respect of --

13 PRESIDING JUDGE FREMR: Please.

14 MR GOSNELL: -- DRC-D18-0001-1322.

15 MS SOLANO: Your Honour.

16 THE WITNESS: No, it --

17 MS SOLANO: Your Honour.

18 PRESIDING JUDGE FREMR: Ms Solano.

19 MS SOLANO: I'm sorry, your Honour, but that's not correct. The witness was not
20 unable to provide an indication.

21 PRESIDING JUDGE FREMR: And how you would call it?

22 MS SOLANO: I think I'd rather wait for the transcript of her answer, your Honour.

23 And if the transcript cannot be produced, then I suggest that the exact same question be
24 put to the witness again.

25 PRESIDING JUDGE FREMR: Madam Witness.

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1 THE WITNESS: Well, my answer was that I did not want to guess based on a
2 photograph.

3 PRESIDING JUDGE FREMR: I also have problems with channels because for some time
4 French translation was presented in English channel and the opposite.
5 Madam witness, please respond again.

6 THE WITNESS: What I said is that I did not want to guess based on the photograph.

7 PRESIDING JUDGE FREMR: And, Madam Witness, even not by -- to make some
8 estimation using some range, saying that this child could be between 13 and 17?

9 THE WITNESS: You know, it would not be appropriate in this -- in front of this Court.
10 I could do it in the street, but not here.

11 PRESIDING JUDGE FREMR: I get the point.

12 Mr Gosnell.

13 MS SOLANO: Your Honour --

14 PRESIDING JUDGE FREMR: Ms Solano.

15 MS SOLANO: -- I'm very sorry. I just request a correction, at page 31, line 9, what I
16 said was the witness was not unable to provide an indication.

17 PRESIDING JUDGE FREMR: Important point. So please correct transcript accordingly
18 with Ms Solano's correction.

19 Now, Mr Gosnell.

20 MR GOSNELL:

21 Q. Same question in respect of the photograph in front of you.

22 A. Same answer.

23 MR GOSNELL: And for the purposes of the transcript, the photograph that is on the
24 screen is DRC-D18-0001-1347.

25 And I'm finished with this photograph so it can be removed.

1 Q. Yesterday, Ms Peduto, during your testimony -- I'm sorry, it was on Monday, at
2 page 97, line 4, and you were discussing the attack on Kobu, Lipri and Bambu. And
3 what you said, and I quote, was:
4 "I received a testimony from ... soldiers who took part in this attack and mentioned
5 Mr Bosco as being -- leading this attack. And I think I remember that my human rights
6 colleagues further investigated and got -- could corroborate, sorry, the information."
7 Do you remember having said that?

8 A. Yes.

9 Q. Now, do you remember when you say you received a testimony from soldiers, do
10 you know -- can you provide further specification, from whom specifically did you
11 provide -- did you obtain that information?

12 A. I think I mention child soldiers, and that was after the investigation took place.
13 This was not during the time we were physically in Lipri and Kobu.

14 Q. And did you receive this information from one soldier or did you receive this
15 information from more than one soldier?

16 A. I think that it was from more than one child soldier -- I mean, child was associated
17 with the UPC.

18 Q. How many, if you can recall?

19 A. I would say three.

20 Q. And is this a matter given your previous involvement in the special investigation
21 team that you would have considered to be of importance this information?

22 A. As far as I can recall, I received this testimony from children far after the
23 investigation was -- ended.

24 Q. Yes, I understand that, but what I'm asking you is, in light of your previous
25 involvement in the special investigation team, is this information received, quite a number

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1 of months later, information that you would have considered to be of importance?

2 A. Not particularly. I mean -- could you explain what you mean by "important" in
3 light of --

4 Q. Let me come to my point. If someone had given you such information you would
5 have noted it down and it would have ended up on your database, would it not?

6 A. This is correct.

7 MR GOSNELL: Could we go to private session, please, Mr President?

8 PRESIDING JUDGE FREMR: Certainly.

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

10 (Private session at 10.40 a.m.)

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Trial Hearing
WITNESS: DRC-OTP-P-0046

(Private Session)

ICC-01/04-02/06

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- 21 (Recess taken at 11.00 a.m.)
- 22 (Upon resuming in open session at 11.32 a.m.)
- 23 THE COURT USHER: All rise.
- 24 Please be seated.
- 25 PRESIDING JUDGE FREMR: Before we continue, we were told that Mr Levine would

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1 like to address the Chamber.

2 So Mr Levine, you have the floor, and we are in open session, so have it in mind.

3 MR LEVINE: Thank you, very much, Mr President, your Honours. I did indicate to the
4 court officer before the short adjournment that this is a matter that could be dealt with in
5 open session, but on reflection and to err on the side of caution, perhaps we could go to
6 private session.

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

9 (Private session at 11.33 a.m.)

10 (Redacted)

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- 16 (Redacted)
- 17 (Open session at 11.35 a.m.)
- 18 THE COURT OFFICER: We are back in open session, Mr President.
- 19 PRESIDING JUDGE FREMR: And thank you, Mr Levine, for your intervention, it was
- 20 helpful.
- 21 Now, Mr Gosnell, you may proceed and you still have at your disposal this session and
- 22 some minutes after the lunch.
- 23 MR GOSNELL: Thank you, Mr President. I can already advise you that I will not be
- 24 using all of my time and I do expect to finish by the end of this session.
- 25 PRESIDING JUDGE FREMR: All right.

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1 MR GOSNELL:

2 Q. May we have Prosecution tab 34, which is DRC-OTP-0152-0256.

3 Ms Peduto, excuse me, you were shown this document during your direct examination.

4 And I was wondering if you could tell us what type of document this was intended to be
5 incorporated into at some subsequent time. And do I understand that correctly, that this
6 portion that you've written was going to end up in some other document eventually?

7 A. Yes. I did not prepare this draft. I contributed to. Another of my colleague put
8 it together using my notes.

9 Q. So in other words you actually didn't write any portion of this, you only provided
10 notes for someone else to do the writing?

11 A. No, I think I did also contribute to writing some part of it.

12 Q. And can you assist us as to what document this was going to end up being
13 incorporated into, if you know?

14 A. I'm not sure when we started drafting this report, it was aimed at being integrated
15 into another one. I think that we were aiming -- the section was aiming at producing a
16 report about the situation. I may be wrong, I don't recall exactly if the intent was to
17 incorporate it into another one, sorry, but it was later on a document that I've -- that I
18 think was tendered into an evidence also.

19 Q. So at least when it was written it was envisaged to be a stand-alone document, at
20 least to the best of your recollection; is that right?

21 A. This is correct. And I'm not sure either if it was intended to be a public document
22 or an internal one.

23 Q. You anticipated my very next question, Ms Peduto. Do you remember whether it
24 was intended to be -- to end up being public or whether it was going to be only for
25 internal purposes?

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1 A. No, I cannot recall whether it would -- whether it would -- whether, sorry, we
2 intended to have it as an internal document for UN purposes only, or if it was to be
3 shared publicly. I cannot recall. And I'm not sure that we knew at that time what the
4 document would end up becoming.

5 Q. Assuming that this was intended to be an internal document, how wide of a
6 circulation would such a document have within the United Nations and within -- within
7 MONUC?

8 A. Really depends. For this -- well, it depends. It could just be circulated among,
9 among ourselves, but I think that it was intended to be -- to have a wider distribution also
10 to the other section, probably to New York as well, and probably to be shared also with
11 other agencies.

12 Q. I must say it is drafted quite elegantly and quite carefully. Does that assist you in
13 understanding or recalling what kind of circulation this document was intended to have
14 when it was written?

15 A. Excuse me, I'm not sure I've understood your question.

16 Q. Sure. What I'm putting to you is that I've reviewed this document and it's written
17 very nicely, it's well organised, it's elegant, to put a fine point on it, and I was wondering
18 whether that assists you in recalling that it was intended to have wide circulation within
19 the United Nations?

20 A. Yeah, I'm sure that we -- we intended for it to become something that would not
21 remain within the section, that's for sure. Whether we knew what it would become I
22 don't think so. But not sure.

23 Q. The very least we can say it would go to everyone in MONUC in Bunia; is that at
24 least fair to say?

25 A. The intent was to produce something that would be shared and the aim was to share

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1 the information.

2 Q. Probably the human rights section, everyone working in the human rights section,
3 whether in Kinshasa, Kisangani, Goma, Bunia. They all would have been intended
4 recipients of this document; is that correct?

5 A. Possibly, yes.

6 Q. Can we turn please to page 0265, which is page 10 of the document, if we could
7 focus on the second paragraph down please. About halfway into that paragraph there is
8 a sentence that commences "One child soldier". This was a passage that was shown to
9 you and read to you during your testimony with the Prosecution. And it reads as
10 follows:

11 "One child soldier serving under Commander Bosco related to the investigation team that
12 UPC Commander Bosco summarily executed at least 6 soldiers in public while the boy
13 was serving as his escort at Mandro camp. The soldiers were executed for" failing "to
14 enter battle. Commander Bosco himself executed them, the preferred method being a
15 bullet to the head at close range."

16 Now, you've clarified that you provided notes and that you may have written portions of
17 this report. Did you write these -- this portion?

18 A. I don't think so. Because -- sorry, as I mentioned this morning, that was a case I
19 was referring to, this is wrongly -- it does wrongly reflect the testimony we had.

20 Q. So is this the passage that you were referring to when you came in this morning at
21 the very beginning of the day and you explained that there was a discrepancy between
22 what I would call your source information and the document that it ended up being
23 incorporated into?

24 A. This is correct.

25 Q. May we turn now to Prosecution tab 54, which is DRC-OTP-2082-1832, and this is

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1 the document that is -- I'm told that the document may not be broadcast.

2 And this, for your assistance, Ms Peduto, is the top document on your three-document
3 bundle, which we've looked at a great deal, and we're going to look at again I'm afraid.
4 And if we could turn to page 1844 of this document, which is page 13, and we're going to
5 focus on item number 22.

6 Now, just before we plunge into the details, would I be correct in understanding that
7 these are the notes that are the source for the information that appeared in the draft report
8 that we were just looking at?

9 A. Yes.

10 Q. And did you conduct this interview?

11 A. Yes, I did.

12 Q. Now, I don't want to go through every last detail of this description but I do want to
13 focus on the portion that's about three paragraphs from the bottom, and I'm going to read
14 some French for the benefit of the translators. Quote:

15 (Interpretation) "Mention the case of, redacted, 24 years from Mahagi who had gone into
16 hiding rather than participate in the Komanda operation."

17 And let me just stop there and ask you this: How did the source of your information,
18 how did the individual know that the person to whom he was referring was precisely
19 24 years old?

20 A. For this case he witnessed incident.

21 Q. He may have witnessed the incident but how did he know that the person was
22 24 years old?

23 A. My assumption is that he knew the person.

24 Q. But how did he know that he was 24 years old?

25 A. You know, I don't know. I -- they probably talked to each other, they -- I don't

1 know.

2 Q. Would you say it would be typical for the children whom you interviewed to know
3 one another's exact ages?

4 A. No, it was not always the case. Sometimes children would mention names without
5 being able to provide ages. Sometimes they would.

6 Q. Do I understand that it was your practice in respect of any discussions you had with
7 the people you were interviewing to ask the age of anyone to whom they referred during
8 the interview?

9 A. For such cases I would. I would also ask them if they knew of any other children
10 associated with them in combats or in training. If they had names and ages I would ask
11 them, yes.

12 Q. So then you would just record the name that they gave you; correct?

13 A. This is correct.

14 Q. Did any of them ever say in the course of your many interviews, "Listen, I just don't
15 understand or don't know the age of the person"?

16 A. Yes.

17 Q. Did they ever say they might have been about X age but it could be plus or minus
18 one, two, three years?

19 A. Well, in that case they would just say that they did not know.

20 Q. So it's your recollection that this person provided you precise information that the
21 person was exactly 24 years old?

22 A. Well, yeah, if I recorded this way, yes.

23 Q. With hindsight, do you view that as possibly implausible that he would know the
24 exact age of this person to whom he's referring, especially when the age is mid-20s,
25 24 years old?

1 A. You know he could well have answered he did not know, or he could have said
2 around. He said 24.

3 Q. Do you recollect that he said 24 and did not say "around 24"?

4 A. No, to the best of my recollection, if I put "24" it means that the child was precise.

5 Q. Maybe I should specify then: Do you actually have a recollection of this person
6 having told you that? Or do you have no recollection and you're drawing an inference
7 based upon what you read?

8 A. I'm basing myself upon -- on the written document.

9 Q. And the document continues and I will again read in French, quote:

10 (Interpretation) "When they returned from the operation, Bosco asked him why he had
11 not come along with the others, redacted, answered that he did not know. Bosco then
12 cold-bloodedly shot him to the head."

13 Did this individual use the words "froidement abattu"?

14 A. No, that's probably the way I interpreted what the child said.

15 Q. And where did this event happen according to the person?

16 A. Based on what is written, it must have been around Komanda, or in Komanda.

17 Q. That's your inference or reading of the notes but you don't recall if that's what he
18 said?

19 A. Well, he said that he saw the person being executed because the person refused to
20 take part in the Komanda operation.

21 Q. The next sentence says, and here I'll say a couple of words in French:

22 (Interpretation) "Upon returning from the operations."

23 So do you know to where they returned? At least according to the interviewee, did the
24 interviewee say to where they returned?

25 A. From the Komanda operation.

1 Q. Yes. And to where did they return? To what destination?

2 A. I'm not sure whether it was a camp or a village or where, where soldiers went back
3 to after the combat.

4 Q. So -- so you don't know?

5 A. I don't know.

6 Q. Do you know how long after the Komanda operation this alleged execution took
7 place?

8 A. Based on what is written it would have been the same day.

9 Q. Where does it say that?

10 A. After returning from operation.

11 Q. And when you use that expression you always mean the same day?

12 A. As you said, it is not specifically written, so I'm guessing.

13 Q. You're guessing. So you don't know?

14 A. That what it -- it means.

15 Q. Well, now you do know?

16 A. Excuse me. When stating that they were coming back from the operation, it's not
17 written that when they came back to their base -- no, sorry, wrong. I don't want to guess.
18 Sorry, cannot provide more details.

19 Q. And I'm correct that you, as we've previously canvassed, are not legally able to
20 provide us the name of the source of this information, are you?

21 A. I'm not.

22 Q. Can you recall whether the source of this information personally witnessed the
23 event, or were they told about this event by someone else?

24 A. For the case just mentioned, he witnessed.

25 Q. How do you know that?

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1 A. Because he described how it happened.

2 Q. Describing how it happens doesn't mean that you're there, you could have still
3 heard it from someone else. Any other indications that he was there instead of having
4 heard it from someone else?

5 A. He explained that the person hidden, he explained that -- the way he explained it
6 means that he was there.

7 Q. Can you recall whether he told you that he was there?

8 A. I recall after, when we finish the paragraph, that for the others was not that clear.
9 When he mentioned the case of five other soldiers I remember I have asked for more
10 details, and then that wasn't clear and obviously he did not elaborate, so for the others I
11 cannot tell.

12 Q. You've just testified that you recall that after -- please just let me finish my
13 question -- you've just testified that you recall that after you finish the paragraph you
14 asked for further details. Am I correct in understanding that your recollection is that you
15 asked for more details in respect of the five others who were allegedly executed?

16 A. Because after the child mentioned this particular event he continued giving
17 information, and obviously he did not provide that many details, and, for example, yeah,
18 he mentioned one name, but did not provide more details and other names did not come
19 up so, these -- for these other events I don't think that the child was present or at least
20 obviously he did not say he was.

21 Q. So now I just want to focus on something a little bit different. You just told us that
22 you recalled having asked for further details. Is that correct, did you actually recall
23 having asked for further details?

24 A. I think so, yes.

25 Q. You think so?

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1 A. For this -- for such event I would try to get more to know if it was not a child who
2 had been executed that -- I cannot 100 percent, you know, tell you I did, but that what I
3 would have done, that's what I usually did when some things -- a specific event was
4 mentioned by a child. I mean, for instance, I would always ask them if they were taking
5 part in combat together with other children, if there were children casualties during
6 battles. That's something that would come.

7 Q. So instead of recalling that you asked for further details, what you're telling us is
8 that your customary practice would have been to ask for further details under these
9 circumstances; correct?

10 A. This is better phrased. Yes, you're correct.

11 Q. And would I also be correct that you do not recall the witness telling you that he
12 was present?

13 A. The way it's written for me is pretty clear.

14 Q. But you don't recall?

15 A. Can I -- can I read through and --

16 Q. Please, take your time.

17 (Pause in proceedings)

18 THE WITNESS: No, the way the story unfold, again, for me that what he said that he
19 witnessed. I cannot 100 percent tell you that I do remember that it's exactly what he had
20 in mind, but for me, yes.

21 MR GOSNELL:

22 Q. I will now read in French, continuing, quote:

23 (Interpretation) "That event was talked about a lot within the UPC ranks given that
24 Bosco was familiar with such conduct or such actions."

25 How many, if you recall, other individuals were present at the time of this event,

1 according to the witness -- according to the child?

2 A. I don't think that the child mentioned.

3 Q. But you record that this event caused a certain reaction amongst people in the UPC.

4 Do I understand that to mean that this became widely known? Again, according to the
5 information that was given to you.

6 A. The child said that this incident had triggered reaction from the UPC.

7 Q. In the document that we were looking at previously, which was the report that was
8 written, it says there that this event occurred in public. Do you have any recollection of
9 whether this event occurred in public or in private, or something in between?

10 A. As I stated earlier, the way this incident is reflected in the other report is partially
11 incorrect, so public was not mentioned by the child. What he said is that the person
12 received a bullet in his head and that the event triggered reaction within the UPC
13 and -- that's all it says.

14 Q. So reading your own words, which are that it triggered a reaction in the UPC, that
15 doesn't jog your memory as to whether or not the person told you that this event occurred
16 in public?

17 A. I did not write it at that time. I don't think he mentioned.

18 Q. So you have just no recollection whatsoever one way or the other?

19 A. It's not mentioned in the notes, so I cannot say the child mentioned whether it was
20 public or -- public event or not.

21 Q. Who drafted the draft report from 2004? Who drafted the specific words
22 concerning this event in the -- 2004 -- I withdraw my question. I won't ask you who
23 drafted the report or that section of the report, I will instead ask you whether you spoke to
24 the person who drafted that section of the report about this information? Did you speak
25 to them orally?

1 A. Orally, I -- I'm not sure, really. Possibly. Because we were exchanging draft in
2 track changes between Bunia and Kinshasa, so this draft has been a working document for
3 a while. And things were corrected in track changes most of the time.

4 Q. Don't you think that an allegation that someone had murdered six people in cold
5 blood, using your language, is something about which you would have spoken to your
6 colleague who is drafting this section of the report?

7 A. Not necessarily because in writing, you know, I would -- I would refer to initial
8 notes I was -- I did share with the person and refer to the, um, to the source. No, not
9 necessarily again because things were clear also in writing and communication were not
10 necessarily easy over the phone at that time and working on reports usually took place
11 between Bunia and Kinshasa in writing.

12 Q. How many other child soldiers whom you interviewed at any time, 2003, 2004, any
13 other year, how many others told you about this event?

14 A. This specific event?

15 Q. Any of the six executions that are referred to here.

16 A. One.

17 Q. One other person?

18 A. No, one -- this was the only person.

19 Q. So zero other persons?

20 A. This is correct.

21 Q. Did you conduct or ask anyone to conduct any -- or, make any additional inquiries
22 about any of these six murders?

23 A. Not particularly. I mean, in March 2003, we're not really in a position to conduct
24 any sort of follow-up, and later on as well. I mean --

25 Q. Well, for example, after the UNCIVPOL arrived, after the international force became

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1 considerably more robust, did you at that time ask anyone to conduct -- and by the way,
2 this is before the draft report of February 2004, so between the time that the UN,
3 UNCIVPOL people arrived, between the time that Artemis arrived, more robust
4 international presence was available, between that time and February 2004 when you put
5 this information in the draft report, did you ask anyone to conduct any inquiries
6 whatsoever about any of these executions?

7 A. No. No that was not the mandate of CIVPOL to investigate. I mean the
8 Prosecutor arrived in Bunia only early 2004. So we were not, again, a police
9 investigation, or the CIVPOL were never meant to conduct investigation.

10 Q. And leaving aside other witness interviews, which I've already asked you about, did
11 you have any other information corroborating, confirming that Mr Ntaganda had
12 executed six people in cold blood with a bullet to the head?

13 A. Did I -- excuse me, can you repeat the first sentence?

14 Q. Did you have any other information confirming that allegation?

15 A. This specific allegation, no.

16 Q. With the benefit of hindsight, do you think it was responsible to include such a
17 serious allegation in a report that would receive broad circulation, at the very least within
18 the UN in Congo?

19 A. From what we knew, I mean, as a MONUC I think that we felt, that the section felt it
20 was appropriate.

21 MR GOSNELL: Your Honours, I will wish to address you after the witness's testimony
22 about the admissibility of the evidence that's been heard regarding this event, but I
23 propose not to do so now, but I just wanted to alert your Honours that I do intend to do
24 that at the end.

25 PRESIDING JUDGE FREMR: Well noted.

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1 MR GOSNELL:

2 Q. Ms Peduto, I would now like to ask you a few questions about the situation -- and
3 I'm done with the document on the screen -- a few questions about the situation in Bunia
4 as you found it when you arrived there in May 2003. And can I ask you just again to see
5 whether you can recall with precision the date on which you arrived in Bunia in 2003, and
6 when I say "arrived" I mean for permanent station?

7 A. 23, 24 May.

8 Q. And did anyone tell you about the events that occurred -- had occurred over the
9 previous three to four weeks?

10 A. I think so.

11 Q. Did you learn that the UPDF forces left Bunia on or around 6 May 2003?

12 A. Yes.

13 Q. Did you hear anything about whether the UPDF provided notice in advance to
14 MONUC or others that they intended to withdraw on that date?

15 A. Well, that was public knowledge and there had been many debates, well, nationally,
16 internationally about this departure date, given the fact that MONUC would not be able
17 to deploy sufficient troops prior to their departure. And as far as I recall -- I mean, do
18 you want me to elaborate?

19 Q. Sure.

20 A. As far as I recall there was a discussion about UPDF to be able to stay a bit -- a bit
21 longer and that Rwanda were opposed to that and that there was an agreement that UPDF
22 would have to leave on this specific date and that they did.

23 Q. Was there a concern that there was going to be a power vacuum and a lack of
24 sufficient forces of authority in place in Bunia to ensure security?

25 A. Yes, absolutely.

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1 Q. And is it right that immediately upon the departure of the UPDF from Bunia there
2 were massacres, large-scale killings in Bunia itself?

3 A. This is correct.

4 Q. Some of these killings happened within eyesight of the front gates of MONUC
5 headquarters in Bunia; is that right?

6 A. I was not present. That what I was told, that killings took place very nearby, in the
7 near vicinity of MONUC headquarter at that time.

8 Q. Did you hear from anyone in MONUC that they had actually witnessed such
9 killings?

10 A. I know that they witnessed dead bodies.

11 Q. Am I right or did you hear from others that it was after about a week of very serious
12 violence in Bunia that finally the UPC entered Bunia and restored order, relative order, on
13 or around 12 May 2003?

14 A. I would not agree with the term "restored order".

15 Q. Did you hear whether the situation got worse or better after the arrival of the UPC
16 forces, in terms of security?

17 A. Well, people were still being killed, raped, disappeared, threatened. So I'm not
18 sure that we could qualify that as an improvement.

19 Q. So you can't qualify whether it was worse or better, you just say it's bad on both
20 sides of the line?

21 A. Well, the situation was horrific, you know, so waiting, um, the atrocity that were
22 committed is -- would be -- not be an appropriate exercise.

23 MR GOSNELL: May we have DRC-D01-0003-5900, which is Defence tab 89.

24 (Microphone not activated) ... document.

25 This is a document entitled (Interpretation) "Report of the meeting of the CEMG with the

1 commanders of the large units." Dated 16 June 2003.

2 Q. I won't read the list of participants, but there are one or two elements here. I'm
3 sure you were not at this meeting; is that correct?

4 A. Absolutely.

5 Q. But I would like to direct your attention to one or two details. And this document
6 appears to have been authored by someone known as Peter Dz'tho, D-Z-'-T-H-O, colonel,
7 who is le rapporteur. (Interpretation) The reporter.

8 If we can turn to the top of page 2, please, which is ERN 5901, it reads, and I'll read in
9 French:

10 (Interpretation) "The French arrived. We must respect them, even if the president has
11 challenged their deployment. That is the policy. He just wanted to show the general
12 public the absurdity of the stance of the international community because just after the
13 departure of the UPDF, the town of Bunia had been left to the mercy of those committing
14 massacre. They did so" under the international -- or, "in view of the international
15 community and nobody reacted."

16 Were there vigorous calls during that first week after the departure of the UPDF for
17 MONUC to intervene more aggressively to restore order?

18 A. Were there calls from?

19 Q. Anyone, but in particular whether those calls came from the UPC, from the Hema
20 community?

21 A. I know that MONUC requested to have people deployed as soon as possible, as fast
22 as possible, and I know that there were a lot of advocacy made by us, by humanitarian
23 agencies, human right agencies to call for the deployment of a force as soon as possible.
24 Whether UPC called for such intervention I do not think so. And that's, as it's mentioned
25 in the document itself, it said that the UPC president contested the deployment of the

1 French force -- in French -- well, Artemis.

2 Q. Do we agree that there's a distinction between the French force that subsequently
3 arrived and MONUC as it existed at the beginning of May 2003? What I'm saying is it's
4 perfectly compatible, is it not, to be opposed to the arrival of a French force as such, on the
5 one hand, and on the other hand to say that the original peacekeeping force as it existed at
6 the beginning of May should be strengthened?

7 A. I do not record UPC requesting MONUC to act under Chapter 7.

8 Q. And then it continues, and I'll read in French:

9 (Interpretation) "Avoid any stance, any act which may make them hostile towards you.
10 This is my brief contribution to this meeting."

11 Does that conform with, at least in terms of the way that the UPC responded to the arrival
12 of the forces, does that correspond with what you heard was the case, namely, that they in
13 fact cooperated with those troops upon arrival and did not act in a hostile manner
14 towards them?

15 A. I know that were -- there were combats between UPC troops and the Artemis troops.
16 I know that the -- Artemis tried to -- to -- tried, no, they did -- exert, they did show their
17 force. I mean, I don't know how to phrase that. I mean, they had, you know, combat
18 planes over -- I mean, passing over Bunia just to show that they were there, that they were
19 present. I know that there -- again, there had been fighting. Cooperation, that's not
20 something that I do remember, that I do recollect.

21 Q. Is it correct that at some point there was an agreement initiated by the French forces,
22 MONUC that the UPC should either limit, drastically limit any forces present in Bunia or
23 that they should leave entirely; do you recall that?

24 A. In the city I -- yeah, I think that they were -- that the armed groups were limited to
25 have a certain number of armed personnel. I think that was 30. And that was for all

1 armed groups. And they were, I think, allowed to have certain type of weapon for this
2 person, for their -- for personnel security. That's what I recall.

3 Q. Evidently, the forces with such a small strength would not have been themselves in
4 a position to secure or maintain security in the town of Bunia, that would not be their
5 responsibility; is that correct?

6 A. Well, they were not tasked by anyone to provide security or to -- to be even present
7 with weapons anywhere. That was -- are to be the situation at that time.

8 Q. Fair enough.

9 A. But, I mean, if I may, I -- I mean, I think that we should specify the date of this
10 agreement because I don't think that it was an agreement that was reached right after the
11 arrival of Artemis, because I remember that on 12 June, I think, security consolidation was
12 in town and then I recall that children with weapons were witnessed even by the
13 delegation, so that -- I think that the agreement took place some weeks after Artemis'
14 arrival.

15 Q. Who were these children with weapons? Where did you see them? Do you have
16 any knowledge of their affiliation?

17 A. Affiliation with the UPC. And it's not only me who saw the children, it's part of the
18 Security Council mission report that I did not have any input.

19 Q. So you're sure that these people were affiliated to the UPC? Were they -- well, let
20 me use a different phrase: Do you have any knowledge as to whether or not they were at
21 that time under the orders of the UPC within the chain of command?

22 A. They were known as being affiliated to the UPC. I mean at that time this -- the
23 presence of these kids triggered many discussion. I mean, we -- we've commented their
24 presence a lot with child protection agencies, with other sources and that was something
25 that was well-known.

- 1 Q. Let me take you back, if I may, to your testimony -- well, it was either Monday or
2 Tuesday, but it's transcript 100, page 95, starting at line 8. And the question that you
3 were asked -- there's reference to a document, and it says:
4 "There is a reference to --"
5 And this is the question from the Prosecution:
6 "There is a reference to, quote, '50 to 200 auto-demobilised UPC soldiers in and around
7 Bunia. Can you explain to the Court what that reference pertains to?"
8 And then your answer was: "On top of the children we had, I had see -- we have
9 received allegation from different sources who gave us information that children who
10 would have -- sorry, let me rephrase, during that period of time UPC was not clearly
11 present in the street of Bunia. UPDF was in control and the militia was supposed not to
12 be in the city anymore, but from the information we received from different sources, some
13 of the children associated with the UPC would still have been in the city hiding in
14 different places, not necessarily with their uniform, and that some of them had sought
15 protection and care with some of these NGOs."
16 Now, to be absolutely clear, it seems from this passage that you're referring to the time
17 before the UPDF leaves Bunia; is that correct?
18 A. This is entirely correct. I mean, this was referring to March, not June.
19 Q. Absolutely. And my question is this: Do you know whether these
20 auto-demobilised UPC soldiers, as you refer to them, do you know whether they were no
21 longer auto-demobilised after the arrival of the UPC in the town of Bunia, on or around
22 12 May 2003?
23 A. At that time some of them had been taken care of, as I mentioned, by child
24 protection organisation, and some of these kids were known to them. The kids I was
25 referring to during the Security Council visit were armed, not children wandering around.

1 I mean, we were not talking about the same kids.

2 Q. But do you have any knowledge about what happened? I mean you've just given
3 an indication of a small number, but do you know what happened to the rest? Do you
4 know where they reabsorbed in the UPC? Did they continue to be hiding in the town of
5 Bunia as auto-demobilised soldiers?

6 A. I can confirm that some were still in the care of organisations.

7 Q. Let's just look again at the document on the screen in front of us. And below title
8 number 2 there's a subtitle which is in French and I'm going to read in French for the
9 benefit of the interpreters:

10 (Interpretation) "The current difficulties. Prior to 6 March there was complete
11 discipline. No armed theft. No rape, et cetera. The army was disciplined in its
12 dealings with everyone, even if the journalists tell fibs. However, currently from time to
13 time we received reports of bizarre atrocities. I note that there are independent troops,
14 but this must cease immediately."

15 Now, is it true that there were, as it's described here, independent forces or independent
16 soldiers who were around at that period of time, that is, after the middle of May and
17 through June 2003?

18 A. Well, out of the paragraph you just quoted, I would totally disagree with the fact
19 that there was a total discipline prior to 6 March 2003. We've documented exactions and
20 human rights violations prior to this period. Independent troops, troops, no.

21 Q. No one not perfectly under the control of the UPC present in Bunia May and
22 June 2003?

23 A. The document is referring to troops. Individuals who may have left the UPC, that's
24 totally possible. I mean, we knew that certain children were -- had left and were in
25 hiding. When the person -- when reading the document, the mention of independent

1 troops mean -- means groups operating.

2 Q. Well, it doesn't say groups, does it?

3 A. Troops. Troops is not individuals, it -- excuse me.

4 Q. You don't believe that that could be a reference to, indeed, the number of
5 auto-demobilised individuals who, as the term seems to imply, took it upon themselves to
6 desert, kept their guns and were causing trouble in the town of Bunia in May and
7 June 2003?

8 A. That's something that was never reported and never documented by us.

9 Q. But you were aware of those people being in Bunia up until 6 May?

10 A. Excuse me, could you repeat?

11 Q. Yes. Yes. Now I'm referring back to what you said during your testimony in
12 which you were describing the situation, which included 50 to 200 auto-demobilised UPC,
13 according to you, child soldiers who were present during the time that the UPDF was
14 present in Bunia.

15 A. In March this -- yeah, this is correct to say that we were told that between 50 and I
16 think mentioned 200 children were still in the city and their status was unclear. Some of
17 them were known as having left the UPC troops. And the status of other was unclear.

18 Q. I'm done with this document and could we please now have DRC-OTP-0001-0046,
19 Prosecution tab 2. Public document.

20 This is one of your weekly reports, Ms Peduto. And the date is 6 July 2003. And I
21 would like to look at a section of page 2 of the document, please, which is ERN number
22 ending 0047.

23 Down under section "II.2 Sexual Abuse/Exploitation" it says:

24 "Two rapes of young girls were reported. The first one concerns a 13 years old girl raped
25 within the Logbase camp on the 28th June, a case that will probably require MONUC to

1 investigate. The adolescent was seriously injured and brought to MSF clinic for medical
2 care."

3 Who had responsibility for security at the logbase camp on 28 June 2003?

4 A. Legally, I don't think that anyone had. I know that MONUC did ensure the -- the
5 set up of barbwire around the camp at that time, that were -- that MONUC vehicles were
6 patrolling around. Within the camp there was no security of any sort, there was no,
7 again, I repeat, a police presence. Displaced person had organised themselves in section, I
8 think, in specific sections and security arrangements were being developed, if I may say.
9 And lightings were being set up in the camp but was not very well organised at that
10 period -- I mean, organised, yeah.

11 Q. So this would be, and I believe you used the word during your testimony, a
12 transitional situation?

13 A. Yes. I know that agencies were approached so that they could take in charge the
14 camp management. I don't believe that any of them at that time -- I mean, yeah, no
15 agencies was in charge as such in this area.

16 MR GOSNELL: May I have just a moment, Mr President, I'm looking for a document?

17 PRESIDING JUDGE FREMER: No problem.

18 (Counsel confers)

19 MR GOSNELL: Sometimes the document that gets lost is the document that's in your
20 hand.

21 Q. Can we turn to the next page.

22 "Save the Children" just there under the heading that begins "Ituri":

23 "Save the Children had several times been requested by the UPC Commander Alex, one
24 CPA with in April when UPDF was still in town, to take in charge 47 children UPC
25 wanted to demobilise. SC advised him to inform the IPC so that a formal process could

1 take place. This advice was obviously not taken into consideration by the UPC."

2 Can you remind us who is the SC?

3 A. Save the Children.

4 Q. Do you agree with that suggestion, namely, that the demobilisation under these
5 circumstances should have been done exclusively through contacts with the IPC, or do
6 you think it would have been suitable, even more suitable, to have engaged in a direct
7 process of demobilisation with the UPC?

8 A. I already mentioned this specific event. Also, I think recalling that after the Ituri
9 Pacification Commission took place there was an agreement -- I mean, as part of the -- of
10 the outcome of these meetings to which participated or representative of Ituri, including
11 representative of the armed groups that conservatory measures were to be put in place
12 and that the Ituri interim administration would be the body would be responsible for
13 administrating the district, including the issue of child protection and particularly the
14 situation of children associated with armed groups. And one person within this
15 administration was a focal person to whom armed groups were to discuss demobilisation
16 of children, and this person was available. I met the person several -- I mean, easily
17 several times, so there was no problem of interaction.

18 Q. How efficacious or how functional would you have said that the IPC was as an
19 institution as of this date?

20 A. Well, the administration was not tasked to take in charge the entire process, it was
21 said that this person would be responsible and that the channel that the armed group had
22 to use to deal with such -- well, with such issues, they knew that humanitarian
23 organisation would follow that process. I mean, there was administration put in place
24 and we would have to respect and to try to reinforce to the extent possible the power of
25 this administration, the powers. And we were collaborating. It was known we had

1 meetings with the administration. There was no complication about -- for anyone to
2 discuss and then find an arrangement.

3 Q. Well, I guess my point is you have a commander arriving and saying, I really want
4 to demobilise these people and I want to have direct contact with the NGO that conducts
5 the -- that carries out the reception part of the demobilisation process, so to speak, the
6 reintegration part.

7 A. Mm-hmm.

8 Q. Now, given that situation, what would be the argument -- what would be the
9 reasons against facilitating that to the maximum extent possible?

10 A. That's why the answer that was given -- given to this UPC commander was to call
11 the interim administration so that we could properly follow up. That also what was told
12 to Mr Thomas Lubanga when we met with him end of May. That's what we were saying
13 all the time, and to everyone. I mean, that was well-known.

14 Q. But what are the arguments against proceeding directly to demobilisation and then
15 following up later, perhaps, with the IPC, especially when you have someone coming and
16 presenting a readiness, an immediate readiness to demobilise people?

17 A. There were many signs of UPC ignoring the interim administration and the person
18 that were put in charge of this administration. If you look into the first page of this
19 document you will see that exactions were still reported from the UPC, that we were -- I
20 think I mentioned drafting a letter of protest to the UPC president about these violations.
21 It was well-known that UPC was trying to set up its own administration, particularly in
22 the north of the city at that time and that it was obvious they were, if not
23 undermining -- well, they were undermining, they were ignoring and they were trying to
24 keep their own way of functioning. That's what I recall.

25 Q. (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

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5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 Q. Are you telling us there would have been a violation of the law by Save the Children
12 merely receiving these individuals as quickly and as informally and as efficiently as
13 possible?

14 A. I don't think that -- I cannot comment on Save the Children I would say. Okay,
15 excuse me, can you please repeat your question so that I can try to answer properly?

16 Q. Well, let's not put you into the mind of Save the Children because that wouldn't be
17 fair?

18 A. What I can -- excuse me, if -- what I can say is that any child who approach Save the
19 Children CTO, to my knowledge, was never, ever rejected because they did not go
20 through the administration. I think that the point was made about a UPC commander
21 who approached an organisation who was advised to pass through the interim
22 administration, to contribute also to build a process. It was, as you said -- I mean, that
23 was the first weeks -- weeks of this administration to be put in place, so everyone at that
24 time was eager of having this administration functioning as a result of the pacification
25 talks. And, again, children were accepted. So there was no -- well, I think that we all

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1 thought it was the appropriate way to -- to behave and to -- to act.

2 Q. Well, thank you very much for that -- for that answer.

3 Mr President, I'm done with this document.

4 May we have Prosecution tab 4, which is DRC-OTP-0001-0055, another weekly report
5 dated 12 August, Ms Peduto, one of yours, as you'll shortly see. And this is a public
6 document. And while that's coming up, Ms Peduto, I can just ask you a question, and
7 this concerns testimony that you gave on Tuesday. And for my colleagues in the
8 Prosecution that's page 49, starting at line 23. And you were describing an incident of
9 someone from the UPC arriving at one of the Centre de transition et orientation and in
10 respect of that incident you gave the following description, quote:

11 "Well, I would not want to state something that was wrong, but I think it was about
12 attempts of re-recruitment of children who were accommodated in the centre of one of the
13 CTO, if I'm not mistaken."

14 Now, could we now turn please to page 3 of this document, and if we can go down to the
15 paragraph beginning "On the 5th of August."

16 It will be expanded to you. And I'll just read it, but before I do that perhaps I can just
17 confirm with you: Did you write this?

18 A. Most probably. Yes, yes.

19 Q. And it says, quote:

20 "On 5th of August, Mr Marcel, secretary of General Kisembo, UPC chief of staff tried
21 yesterday to enter into Save the Children CTO and asked for the list of children
22 accommodated there. CPA brought the matter to the attention of General Kisembo
23 during a phone conversation on the 7th and inquired about this attempt of getting these
24 sensitive information. He denied being informed about the initiative of his personal
25 secretary. He was therefore requested to advise his staff to be more cautious and was

1 recalled that this type of information was confidential and could not be shared with
2 anyone else but the authorities."

3 And then you went on in your testimony at page 50, line 10, again for my colleagues with
4 the Prosecution, you described General Kisembo's reaction as being that, and I quote:
5 "He mentioned he was aware that it was not proper and it was not appropriate. Again, I
6 cannot recall his exact words."

7 Do you remember all that?

8 A. Yes, I remember I miss -- I provided the wrong information. I miss -- I made a
9 mistake with an incident that took place in June 2004 actually. So my apologies again.
10 Yes, I -- what I remember about this phone call is that, well, I did not talk that often with
11 Mr Kisembo in any way and that it had been a pleasant phone call and that he had been,
12 you know, he showed understanding, he expressed understanding.

13 Q. You were actually able to directly reach by telephone the commander of the chief of
14 staff of the UPC, is that correct?

15 A. I requested the assistance of our security officer to do so, yes, because for us it was a
16 security matter. As I said, MONUC was present -- close by to the CTOs to ensure that
17 there would not be any security breach, so when I received this information I immediately
18 reported it to our security and the security suggested, as they had direct contact with
19 Kisembo, to give me the phone.

20 Q. Now, there's no mention in your report that this incident related to re-recruitment.
21 Are you -- are you sure that it related to re-recruitment or could it have related to
22 something else?

23 A. No, absolutely not. I did not say that. I mean, I wish to correct. I gave a wrong
24 answer to the Prosecution question last time. I mean, I think I was asked if I remember a
25 phone call or a contact with Kisembo, and I -- I referred to an incident that actually took

1 place in June 2004 and that was related to attempt re-recruitment that were taking place
2 at -- during that period.

3 Q. Well that clarifies things and I very much appreciate that clarification.

4 And just one additional detail on this: And in fact once or twice you've mentioned
5 during your testimony that it was not unknown that individuals who were 18 or over
6 somehow found their way into the Centre de transition et d'orientation; is that correct?

7 A. No, that's not what I said. I said that at times it was entirely possible that persons
8 above 18 would be accommodated in the centre because children of 17 would turn into 18,
9 so that they would stay during a longer period of time because there was no solution that
10 had been found for these children.

11 Q. Well, thank you for that clarification. I didn't realise that that is what you had
12 meant to say --

13 A. (Overlapping speakers)

14 Q. -- but, nonetheless, now I will come back and I will pose the question squarely:
15 You have no knowledge of anyone who was 18 years old, for example, the one individual
16 who we looked at earlier today who you originally estimated was 15 and then later it
17 turned out that they were 18, for example, does that remind you that in fact there were
18 some occasions --

19 MS SOLANO: Your Honour.

20 PRESIDING JUDGE FREMR: Ms Solano.

21 MS SOLANO: Your Honour, of course my -- counsel for the Defence will correct me if
22 I'm wrong, but I believe in relation to the example that counsel is referring to, Ms Peduto
23 had recorded the age of the child as provided by the child during her initial contact with
24 him, rather than her having assessed the age as being 15.

25 PRESIDING JUDGE FREMR: Mr Gosnell.

1 MR GOSNELL: Well, I apologise if I used not quite the exact right word. I'm not sure if
2 that justifies an objection to be honest with you, Mr President, and I'm not sure if it
3 justifies interrupting me in the middle of my question.

4 PRESIDING JUDGE FREMR: Not in the middle, but it was, in my view, a relevant point,
5 so. Anyway please move.

6 MR GOSNELL: I won't take it too hard, Mr President, but I didn't mean to focus on that
7 aspect of the question at all.

8 Q. But do you recall that indeed we looked at a case earlier today of one person who
9 starts out as 15, whether it is an assessment or whatever it is, and then the person becomes
10 18? I mean, were there other such cases of people who entered into one of the CTOs and
11 then it was later determined that they were -- they were actually 18 or over?

12 A. I'm not aware of all the cases that were taken care of by the NGOs. I was not
13 documenting all children who were entering there.

14 Q. That's perfectly fair. But there's a possibility, would you not agree, that that
15 situation could have arisen?

16 A. Well, again, they were not conducting a police investigation, again, they were not
17 requesting for the papers of the children, so whether they were, you know, 17 and 11
18 months or 18 and three, if a person was assessed as being young -- I mean, around -- I
19 mean, you know, yeah, it may have been possible.

20 Q. I fully understand your hesitation and that's fine. I don't need anything more
21 specific because really the point that I'm getting at is, isn't it possible that this incident
22 involving seeking out a list, and I'm not sure that that's actually the case, but is it possible
23 that the inquiry by this assistant of Mr Kisembo was in fact to inquire whether there was
24 anyone who was 18 or over in the centre who had in fact deserted? Is that possible?

25 A. Well, then UPC should have brought it as an issue during the CCGA meeting or,

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1 you know, called the interim administration and, you know, raised concern about the
2 CTO if it was the case, so I would not think so, but again that's speculation.

3 Q. Well, my point is can you exclude that this was Mr Marcel's purpose however
4 misguided his manner of execution may have been?

5 A. I cannot comment on what he was fetching for.

6 Q. Ms Peduto, thank you very much for your patience and for all of your answers.

7 MR GOSNELL: Mr President, that concludes my cross-examination.

8 PRESIDING JUDGE FREMR: Very well then.

9 And it depends whether we also will -- but first -- maybe first we would like to hear your
10 submission on admissibility of document. If I am not wrong, it is DRC-OTP-0152-0256
11 because it could have maybe impact on re-examination, if any.

12 MR GOSNELL: I'm very happy to do that now. I'm not sure whether it would be a
13 good idea to do it in the presence of the witness.

14 PRESIDING JUDGE FREMR: All right then. So we can now free Madam Witness.

15 So, Madam Witness, we still are not saying you goodbye because it's a possibility -- maybe
16 I might ask you, do you envisage Ms Solano any need for re-examination?

17 MS SOLANO: Yes, your Honour, with your leave I would like to conduct a brief
18 re-examination.

19 PRESIDING JUDGE FREMR: All right then.

20 So anyway, now you -- Mr Levine.

21 MR LEVINE: Mr President, my apologies, there is one matter I would like to raise in
22 private session, it's time sensitive.

23 PRESIDING JUDGE FREMR: And it's in the presence of the witness or?

24 MR LEVINE: I think it would be fine in the presence of the witness.

25 PRESIDING JUDGE FREMR: All right. Anyway, let's move into private session.

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- 1 (Private session at 1.00 p.m.)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
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7 (Open session at 1.03 p.m.)

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

9 PRESIDING JUDGE FREMR: Very well.

10 So now, Mr Gosnell, you have the floor as to your submission on admission.

11 Madam Witness, sorry, you now, you are now free but we will ask you again in the
12 afternoon to come and to finish your testimony.

13 (The witness stands down)

14 PRESIDING JUDGE FREMR: Mr Gosnell, please.

15 MR GOSNELL: Mr President, I'm wondering, having reflected on the matter, whether it
16 would not be more prudent on my part to request your leave to consult with my lead
17 counsel over lunch. Because this matter of course relates to matters that have come up
18 with at least two previous witnesses. I understand that there are pending motions.

19 PRESIDING JUDGE FREMR: In fact, it's no problem because my idea was maybe to
20 facilitate the role of Ms Solano because it could facilitate their decision to what extent she
21 would like to re-examine. But I think it's not such a big issue, you can postpone it, and
22 then properly will decide on this tomorrow, tomorrow morning.

23 MR GOSNELL: Well, perhaps I could just assist then if that's the purpose and to say that
24 the only issue is whether this portion of the document should be considered outside of the
25 scope of this case, therefore irrelevant, and in the absence of any other admissible portion

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1 of the document it should not be admitted. And I would also make one or two
2 submissions about how your Honours may wish to treat the testimony that was heard on
3 this subject. So I don't know that that would affect re-direct but I just thought I should
4 advise at least the Prosecution that that's the gist of the remarks.

5 PRESIDING JUDGE FREMR: So take your time, consult main counsel and we will then
6 hear your and Prosecution's submission on that issue after, in fact, at the end of this
7 testimony after this testimony. And we will decide in due course, which I guess will be
8 tomorrow morning.

9 Now we break and we will reconvene half past 2.

10 THE COURT USHER: All rise.

11 (Recess taken at 1.05 p.m.)

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

13 THE COURT USHER: All rise.

14 Please be seated.

15 PRESIDING JUDGE FREMR: Good afternoon, everybody. I see there are some changes
16 in appearances. So as to the Prosecution there is no change; am I right?

17 MS SOLANO: No, your Honour. I would just want to mention that my colleagues who
18 will deal with the testimony of the next witness are going to be ready in the adjoining
19 ready as soon as the re-examination is complete.

20 PRESIDING JUDGE FREMR: So maybe then we will make five minutes' break just to
21 facilitate those changes in your composition in sitting in the courtroom.
22 Defence.

23 MR GOSNELL: Quite a few changes on the Defence side.

24 PRESIDING JUDGE FREMR: You got some enforcement, I see.

25 MR GOSNELL: Apparently I needed help, your Honour.

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1 We are no longer accompanied by Sandrine De Sena and we are now accompanied by
2 Stéphane Bourgon, lead counsel, Marlène Yahya Haage, Erik Cookson-Montin and
3 Margaux Portier.

4 PRESIDING JUDGE FREMR: Thank you, Mr Gosnell.

5 And just for the record we have the same composition as concerns our Legal
6 Representative of Victims. And Mr Levine is also with us.

7 Mr Suprun, was I wrong?

8 MR SUPRUN: (Interpretation) Mr President, Anne Grabowski has joined us this
9 afternoon in the courtroom indeed. Thank you.

10 PRESIDING JUDGE FREMR: Thank you for this correction, Mr Suprun.

11 Otherwise, I believe that we now can move to the re-examination of our witness.

12 Ms Solano, how much time you think you would like to get for this task?

13 MS SOLANO: Your Honour, I expect that 10 minutes would be sufficient. Of course it
14 depends on what the witness answers, but I do expect that would be sufficient.

15 PRESIDING JUDGE FREMR: It's entirely fine with us. So please, you may proceed.

16 MS SOLANO: Thank you, your Honour.

17 QUESTIONED BY MS SOLANO:

18 Q. Good afternoon, madam.

19 A. Good afternoon.

20 Q. First I would like to take you to the children which you testified told you were
21 recruited at a location called Ndrele and had been trained at a camp called Mont Awa and
22 more specifically about the age of those children. During cross-examination you noted to
23 counsel for the Defence that the ages of these children are recorded properly in the report.
24 And I am quoting, for my friend, from transcript 102 -- for counsel, I apologise, from
25 transcript 102.

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1 PRESIDING JUDGE FREMR: Ms Solano, I am afraid you are a bit fast. So don't worry,
2 if you will get a little bit more, no problem with me, but I would prefer to a slow pace of
3 your speech. Thank you.

4 MS SOLANO: I'm guided, your Honour. Thank you.

5 Q. So I am quoting your answer from transcript 102 at page 7, line 2.

6 You said: "I will just answer that the ages of these children are recorded properly in the
7 report that was produced out of this mission. These ages would be the correct one.

8 I would just test my memory here. I think that some of them were 15. Others older.

9 Maybe one was younger, or two. Really I would just guess." So -- end quote.

10 In order for you not to guess, I request the court officer to display DRC-OTP-0152-0286.

11 MR GOSNELL: Could I request --

12 PRESIDING JUDGE FREMR: Mr Gosnell.

13 MR GOSNELL: Could I just request a tab number, please.

14 MS SOLANO: 36.

15 MR GOSNELL: Thank you.

16 MS SOLANO:

17 Q. And can we go to the fourth page, 0289.

18 Madam, do you recognize this document?

19 A. This is the special investigation team report about Lipri, Kobu and Bambu. Yes.

20 Q. And in this report do you recall discussing the -- do you recall whether this report
21 addresses the children who had been recruited in Ndrele?

22 A. No, I don't.

23 Q. Okay. Just a moment, please.

24 I'm going to move on, your Honours, to my next point.

25 During your cross-examination, and I'm referring to today's transcript, page 78, line 2, you

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1 said that you had made a mistake when you provided an answer to a question from the
2 Prosecution in that you had mentioned an incident in 2004, in June 2004.

3 A. Yes.

4 Q. What incident did you mean?

5 MR GOSNELL: Objection.

6 PRESIDING JUDGE FREMR: What ground, Mr Gosnell?

7 MR GOSNELL: Beyond the scope because now we're going to be talking about an
8 incident that was never discussed during the direct and is not an incident that I discussed
9 in my cross-examination.

10 PRESIDING JUDGE FREMR: Ms Solano.

11 MS SOLANO: Your Honour, the incident of June 2004 was mentioned before your
12 Honours in response to a question by the Defence. Now, the Defence might not have
13 intended to elicit that information, but it nevertheless arose during cross-examination.
14 And as I read the decision on the conduct of proceedings, that is the limitation on my
15 re-examination.

16 PRESIDING JUDGE FREMR: Mr Gosnell.

17 MR GOSNELL: The context in which this June 2004 event, whatever it may be, was
18 mentioned was exclusively in the context of the witness explaining how she had been
19 mistaken. There was no discussion at all of the substance of the event, so this is an
20 extremely thin basis on which to embark on a discussion of a new topic that was not
21 addressed during direct examination.

22 PRESIDING JUDGE FREMR: Ms Solano, I really believe that if you want to question the
23 witness you should still -- you should still remain in the limits of that, you know, so do
24 not go further. So it was just correction, in fact, initiated by witness herself. So you
25 shouldn't go further, so I don't know what is your intention.

1 MS SOLANO: My intention, your Honour, was to allow the witness to explain what
2 incident she meant to refer to in June 2004.

3 PRESIDING JUDGE FREMR: All right. But just briefly.

4 MS SOLANO:

5 Q. Please, madam.

6 A. I was referring to a specific period during which re-recruitment of children had been
7 documented particularly. That's not something that happened only in June and July but
8 during these two months of 2004, many -- we received many information about children
9 being re-recruited or attempts of re-recruiting children who had been disassociated from
10 armed group -- from armed groups. Is that the answer?

11 Q. From which armed groups?

12 A. That would be the UPC.

13 Q. Thank you. Madam, during cross-examination in transcript 102 from page 38,
14 line 15 the Defence showed you three documents which appeared to emanate from the
15 UPC. Do you recall what I am alluding to?

16 A. Yes, I do.

17 Q. Now, if you need to see the documents again, please let me know, but the first
18 document, and for the benefit -- for the record, it was a document on UPC letterhead
19 dated 21 October 2002 with Thomas Lubanga's name and a signature at the bottom of the
20 page. And in that document Mr Lubanga prohibited the practice of (Interpretation)
21 "enlisting minors within the fighting forces."

22 And he denounced this practice of enrolment of minors as having -- as being
23 (Interpretation) "contrary to our ideology."

24 The Defence then showed you -- sorry, in this same document the Defence showed you
25 that in relation to the armed wing FPLC Mr Lubanga was forbidding the practice because

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1 it was contrary to (Interpretation) "our former activities with the NGO SOS Grands Lacs."

2 Do you remember looking at that document?

3 A. Yes, I do.

4 Q. Madam, you spoke in your evidence-in-chief about a group of 163 children having
5 been demobilised with the assistance of UNICEF and you discussed that the NGO SOS
6 Grands Lacs had played a role in the reinsertion, I believe is the term, of these 163 children.
7 To your knowledge, is there a link between the demobilisation of those 163 children and
8 anciennes activités of the UPC with the NGO SOS Grands Lacs that this document from
9 the UPC refers to?

10 A. It could.

11 Q. Do you know whether the UPC was involved in some way in the demobilisation of
12 these 163 children?

13 MR GOSNELL: Objection.

14 PRESIDING JUDGE FREMR: Mr Gosnell.

15 MR GOSNELL: Leading.

16 PRESIDING JUDGE FREMR: Ms Solano.

17 MS SOLANO: Your Honour, the question makes it perfectly possible for the witness to
18 answer in affirmative or in the negative.

19 PRESIDING JUDGE FREMR: Objection overruled. Please proceed.

20 THE WITNESS: I don't have precise information about this, but what I know is that the
21 demobilisation of these children had been widely broadcasted. These children had been
22 trained in Uganda and reinserted into the communities for most of them. UNICEF had
23 made public announcement at that time, so I'm positive that it could have come to the
24 attention of those who would become leaders of UPC. Whether there were any more
25 connection between the NGO and the UPC, I am -- I'm -- I do not recall. What I do recall

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1 is that 130 of these children were said to have been remobilised by the organisation. For
2 what I -- I have been personally talking to one of these -- of these children, but at what
3 was the estimation or the information that was shared with me at one point about the
4 whereabouts of these 163 children.

5 MS SOLANO:

6 Q. And according to your information, who had these 130 children been remobilised
7 by?

8 A. Again, I'm sorry. It's certainly reported somewhere in my notes. I would have a
9 guess. If --

10 Q. That's all right. No need to guess.

11 Madam, the Defence also showed you two other documents. One of them was dated
12 30 October 2002. It was an order from a person called Kisembo Bahemuka in the FPLC to
13 demobilise from the self-defence forces children under the age of 18.

14 And finally, the Defence showed you a document dated 27 January 2003 --

15 PRESIDING JUDGE FREMR: Sorry, Ms Solano.

16 Mr Gosnell.

17 MR GOSNELL: Actually, the word in the document is not demobilise. It's something
18 different.

19 MS SOLANO: Your Honour, I'll find the word so that I can --

20 PRESIDING JUDGE FREMR: Please do.

21 MS SOLANO: -- make the appropriate correction.

22 Q. Disarmament. I apologise. The word in the document is that all children under
23 the age of 18 were to be disarmed within a period of two weeks.

24 And then finally, the Defence showed you the third document dated 27 January 2003 also
25 from Thomas Lubanga addressed to the chef d'état-major of the FPLC. And in this

1 document Mr Lubanga referred to the first document shown to you by the Defence dated
2 21 October 2002 and required to receive a detailed report on the matters addressed in the
3 21 October 2002 document.

4 Madam, when the Defence asked you about these documents, you stated, and I'm going
5 to quote from transcript 102, page 46: "I just want to say that if this document existed at
6 that time, I'm really sorry it was not disseminated to the MONUC and to other child
7 protection agencies, to the interim Ituri administration because we could have used it as
8 an advocacy tool with the commanders and with the UPC itself. So I find it very strange
9 that -- well, I was not informed, but no one ever talked about such document or shared it."
10 And then a few lines later you say: "I find it very surprising that ... the goodwill of the
11 UPC at that time was not -- did not use such document or such report just to prove that it
12 was doing something."

13 Madam, my question is: After January 2003, which is the date of the last of these three
14 documents shown to you by the Defence, did you continue to meet and interview children
15 under the age of 15 who had been recruited or served in the UPC?

16 A. Yes.

17 Q. In your experience, did the UPC make genuine efforts to demobilise children in their
18 ranks?

19 A. There was one particular period, November 2003, where I documented children
20 coming from -- children who had been instructed by their commander to leave their
21 groups. November 2003. That was the only period where during which we could see
22 that something organised had happened. In the same time, during the same period,
23 children were also being recruited.

24 MS SOLANO: Thank you.

25 Those are all my questions, your Honour.

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1 PRESIDING JUDGE FREMR: Very well.

2 Now, Defence, any request for recross?

3 MR GOSNELL: May I have just one moment, Mr President?

4 PRESIDING JUDGE FREMR: All right.

5 (Counsel confers)

6 MR GOSNELL: No further questions. Thank you, Mr President.

7 PRESIDING JUDGE FREMR: All right then.

8 So it means, Ms Peduto, that your testimony is finished. So I would like to thank you
9 very much because I can imagine it was very, very tiring. You spent with us four days.

10 You had to answer hundreds of questions. So thank you very much because I believe
11 that your testimony will assist us in our effort to find the truth. Thank you very much.

12 And I also very much thank, too, Mr Levine who perfectly represented United Nations
13 here. Thank you very much.

14 And I guess now, court officer, you may just guide both of them outside of the courtroom.

15 (The witness is excused)

16 PRESIDING JUDGE FREMR: And as I promised we will make five minutes' break
17 before moving to upcoming testimony, but before that I have to -- Mr Gosnell.

18 MR GOSNELL: I'm not sure whether you wish me to make submissions now on
19 Prosecution tab 34?

20 PRESIDING JUDGE FREMR: Thank you for reminding me, but it was one of my two
21 issues I would like to deal with now.

22 The first one is really minor. It's the issue of timestamp because you promised, parties,
23 to approach us. In my view it's a very minor issue, so I guess you were able to meet
24 some agreement or what is the update on that?

25 Ms Solano.

1 MS SOLANO: Your Honour, I'm afraid we will have to come back to you because we
2 don't yet have the timestamp that is missing.

3 PRESIDING JUDGE FREMR: So please, but tomorrow, tomorrow morning is the
4 deadline really, okay?

5 MS SOLANO: Yes, your Honour.

6 PRESIDING JUDGE FREMR: It's a minor issue and we are just bringing it to another day,
7 another day. So please be mindful of that.

8 And now the second issue already mentioned by Mr Gosnell I think would be reasonable
9 to start with Defence in this case.

10 So, Mr Gosnell, you have the floor.

11 MR GOSNELL: Thank you, Mr President. I didn't mean to jump the gun. I should
12 have known you would of course remember.

13 The issue multi-layered in terms of the admission of this document. We first of all would
14 object to the admission of this document on the simple ground that --

15 PRESIDING JUDGE FREMR: Mr Gosnell, sorry to interrupt you. Just for the record,
16 please specify, indicate again the ERN number.

17 MR GOSNELL: Yes. It is DRC-OTP-0152-0256.

18 The first ground of objection to the admission of this document as a whole is the fact that
19 all the information of relevance in this document was mentioned during the trial
20 proceedings and there are, on the other hand, a significant volume of other allegations
21 and statements in this document upon which there is no -- was no discussion. And if a
22 document like this is to be admitted based upon an extremely narrow and selective set of
23 references, then your Honours will find yourselves at the end of this case with a large
24 volume of so-called evidence which, in fact, was never discussed before you and whose
25 reliability is essentially unassessable.

1 Conversely as well, and this I guess is a second point, all of the information I suggest that
2 the Prosecution wishes to rely upon is reflected in what I describe during my questioning
3 as source documents, in other words, the witness's own notes and own descriptions of her
4 interviews with the individuals who were the source of this information.

5 This is, so to speak, an upstream document, revised, written by other people and therefore
6 less reliable in relation to the source information. So that's a second reason to object to
7 the admission of this document. It's simply not the best evidence available to your
8 Honours of the matters that are discussed therein.

9 And now I come to the third point, which is more specifically focused on the passage that
10 appears on page 265 of the document. That is ERN page 265, page 10 of the document.

11 And this concerns the allegation that Mr Ntaganda executed, murdered in cold blood six
12 individuals.

13 This allegation does not appear in the Document Containing the Charges. This
14 allegation was not confirmed by the Pre-Trial Chamber. And if your Honours are going
15 to accept this kind of evidence, which is particularly prejudicial, then you will find
16 yourselves I suggest focusing on a large number of peripheral allegations, not directly
17 relevant to the charges that are actually before your Honours and that have been
18 confirmed and upon which you will decide whether Mr Ntaganda should go to jail.

19 And the consequences of allowing such peripheral information into the record is that the
20 Defence is going to have no choice but to not only spend extensive time cross-examining
21 on such matters, not only to litigate whether or not such matters should be discussed and
22 should be considered admissible, but also when the time comes to conduct investigations
23 into such matters and, if need be and if available, present evidence to show that such
24 events did not occur.

25 That will broaden the scope of this trial I would suggest to your Honours unacceptably,

1 inappropriately and in a way that is not helpful to your Honours.

2 And after having heard the cross-examination and the answers given by the witness,

3 I believe your Honours will also be aware of the extraordinarily I would say weak

4 foundation for the allegations that are going to be put before you and that the Defence

5 will have no choice but to seek to adduce defence evidence on.

6 And when you compare all of that as against the prejudice of an allegation coming in

7 before your Honours that Mr Ntaganda executed six people in cold blood, and I would

8 suggest that your assessment of whether or not this type of information should be deemed

9 admissible is very easy and that is that the balance between probative value and prejudice,

10 which is certainly implied by Article 69(4) of the Statute, compels exclusion or

11 non-admission of this type of material.

12 And I would go beyond the request that this section of the report not been admitted,

13 I would say that your Honours should provided the Defence, and I would respectfully

14 request that your Honours provide an indication to the Defence that the entire subject

15 matter pertaining to these allegations which was adduced during oral testimony in front

16 of your Honours, that you provide an indication to the Defence as to whether that subject

17 matter will be used in any way in respect of the charges against Mr Ntaganda. And if

18 your Honours are able to provide that guidance, then we can know how to conduct

19 ourselves, how to conduct a defence investigation and how to present our case.

20 So those, Mr President, would be our submissions and I thank you for your time.

21 PRESIDING JUDGE FREMR: Thank you very much, Mr Gosnell.

22 Now Ms Solano, please.

23 MS SOLANO: Your Honour, I'm not going to make any further submissions on the

24 document itself, but I do want to address the more general point of the admissibility of the

25 evidence regarding murders allegedly perpetrated by Mr Ntaganda.

1 I don't have to be very long on that. Your Honours have already ruled on this in -- on
2 previous occasions and have determined that this type of evidence is potentially relevant
3 on several counts. So I will fall back on this issue on 965 on your Honours' oral decision
4 in transcript 96 at page 61 and I will not go further.

5 I will make just one additional comment and it is that it seems to me that in the last part of
6 the Defence's observations just now what the Defence is actually asking you to do is to say
7 what you will do or whether you will take into consideration the evidence elicited by the
8 Defence, not only the Prosecution but also the Defence, in relation to these murders
9 attributed to Mr Ntaganda by Ms Peduto's sources. And I just want to emphasise the
10 evidence was elicited by the Defence, it is in the record, it is part of the record, and there is
11 absolutely no basis at the moment for your Honours to disregard it when the time comes
12 for you to consider all the facts and evidence before you.

13 Those are my submissions, your Honour.

14 PRESIDING JUDGE FREMR: Thank you, Ms Solano.

15 So as I said, now we will break for five minutes just allow you to prepare properly for the
16 upcoming witness.

17 THE COURT USHER: All rise.

18 (Recess taken at 3.05 p.m.)

19 (Upon resuming in open session at 3.14 p.m.)

20 THE COURT USHER: All rise.

21 Please be seated.

22 PRESIDING JUDGE FREMR: Before we invite our upcoming witness to the courtroom, I
23 will deal with a few procedural matters.

24 As concerns submissions we have heard at the end of the previous session, we will
25 deliberate and I believe that we will be able to deliver our decision on that tomorrow.

1 Then I would also like as a further point to recall our oral decision on Tuesday, which was
2 transcript 101, pages 72 to 75 granting in-court protective measures for Witness P-894 in
3 the form of face and voice distortion and the use of pseudonym.

4 The Chamber also granted a special measure of reading assistance pursuant to Rule 88 of
5 the Rules to the extent required during the witness's testimony.

6 Then the Chamber recalls that according to its oral decision of 9 June 2016, it's transcript
7 99, pages 61 to 64, in principle the application of Rule 68(3) is appropriate for Witness
8 P-894. The Chamber considers that in term of procedure, the Prosecution may elicit any
9 clarifications to the witness's prior recorded testimony and, if agreed to by the witness,
10 seek admission of the witness statement and to accompany sketches pursuant to Rule 68(3)
11 of the Rules.

12 The Chamber also recalls its guidance that any supplementary examination conducted in
13 relation to Mr Ntaganda's alleged direct perpetration of murder which is not included in
14 the Updated Document Containing the Charges must be limited.

15 In this connection the Chamber is aware of the request for leave to appeal filed yesterday,
16 filing number 9399, and the Chamber will rule on this request in due course but does not
17 consider it necessary to further address it at this stage.

18 Are there any questions under Rule 68(3) procedure of this witness?

19 Prosecution.

20 MS SIM: No, your Honour. Thank you.

21 PRESIDING JUDGE FREMR: Defence. No questions? All right.

22 And the next point: According to its email of 15 June 2016, the Defence objects to certain
23 of the documents the Prosecution may seek to use with this witness. These objections
24 will be addressed if and when they arise throughout the course of the
25 examination-in-chief. In this connection the Chamber recalls that according to its

1 decision on the conduct of proceedings, the non-calling party shall provide by way of
2 email no later than two days prior to the start of the witness testimony notice of its
3 objection to the use or admissibility of any document in connection with the witness.

4 So the Chamber instructs the Defence to be mindful of this timing moving forward.

5 And the last point from my part: As indicated in the Chamber's oral decision on the
6 Prosecution's Rule 68(3) application, the supplementary examination of this witness by
7 the Prosecution is to be completed within one hour.

8 In terms of timing for the Defence, the Chamber considers the cross-examination of this
9 witness ought to be completed within approximately three hours, which was the amount
10 of time indicated by the Chamber as appropriate for examination-in-chief of this witness if
11 Rule 68(3) is not applied.

12 It is contained in email to parties on 4 May and which was then adopted by the
13 Prosecution as it revised time estimate.

14 And the last point, if there are no comments on the previous points, I realise there are
15 some changes in appearances so I would like just for update on appearances starting with
16 Prosecution.

17 MS SIM: Thank you, Mr President. Good afternoon, your Honours, Mr President. For
18 the Prosecution this afternoon is Eric Iverson, trial lawyer; Marion Rabanit, associate trial
19 lawyer; Selam Yirgou, case manager; and myself, Kristy Sim, assistant trial lawyer.
20 Thank you.

21 PRESIDING JUDGE FREMR: Who will examine the upcoming witness?

22 MS SIM: It will be me.

23 PRESIDING JUDGE FREMR: All right.

24 Now, Defence please update your appearances.

25 MR BOURGON: Thank you, Mr President. Good afternoon. Good afternoon

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1 (Interpretation) your Honours, representing Bosco Ntaganda for this witness,
2 Margaux Portier, Erik Cookson-Montin, Marlène Yahya, and myself, Stéphane Bourgon.
3 (Speaks English) There is one quick issue I would like to raise, Mr President, before we
4 proceed. I'm looking for the transcript reference, so with the Chamber's leave, I believe
5 we have just been told by the Chamber to be mindful of the two days' delay for the filing
6 of our list of objections. I'm not sure, we will verify, we thought we were within the
7 prescribed time frame, so we will verify again, but it is for sure our intention to meet this
8 two-day deadline and I will verify again. I thought we were within the deadline. So
9 thank you, Mr President.

10 PRESIDING JUDGE FREMR: Thank you. And I will verify it too.

11 Now Legal Representatives of Victims, please.

12 MR ABDOU: Good afternoon, Mr President, your Honours. Appearing on behalf of
13 the former child soldiers now, Mohamed Abdou, associate legal officer with the OPCV.

14 MR SUPRUN: (Interpretation) Good afternoon, your Honour, your Honours. For the
15 victims of the attacks, no change. Anne Grabowski and Dmytro Suprun, myself, in the
16 Office of Public Counsel for Victims.

17 PRESIDING JUDGE FREMR: I thank both of you.

18 And now, court officer, please bring witness into the courtroom.

19 (The witness enters the courtroom)

20 PRESIDING JUDGE FREMR: Good afternoon, Mr Witness. Can you hear me?

21 WITNESS: DRC-OTP-P-0894

22 (The witness speaks Lingala)

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

24 PRESIDING JUDGE FREMR: Mr Witness, on behalf of this Chamber I would like to
25 welcome you to the courtroom.

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1 You are called to testify in the case against Mr Bosco Ntaganda and to assist this Chamber
2 in its search for the truth. You will be soon asked questions both by the Judges and
3 lawyers in the courtroom. In this connection I would like to guide you as follows:

4 Please listen careful -- Mr Witness?

5 THE WITNESS: (Interpretation) Thank you.

6 PRESIDING JUDGE FREMR: Mr Witness, please listen carefully to those questions that
7 will be put to you. If you do not understand, feel free to ask for the question to be
8 repeated. We want you to tell the truth and tell us what you saw, what you saw, heard
9 or sensed yourself. If you did not see or hear it yourself but you found out some other
10 way, then you should explain how.

11 You may not remember all details and it doesn't matter, please testify just on that which
12 you remember. Don't guess. Don't make things up. There is nothing wrong in saying
13 "I don't know" or "I don't remember."

14 Mr Witness, do you understand all that?

15 THE WITNESS: (Interpretation) I understand you very well.

16 PRESIDING JUDGE FREMR: Very good, Mr Witness.

17 Now, Mr Witness, another issue: Protective measures are put in place to ensure that
18 your identity is not revealed to the public, which means that the public cannot see your
19 face today, your voice is being disguised so that the public --

20 THE WITNESS: Merci.

21 PRESIDING JUDGE FREMR: -- cannot recognize it.

22 Mr Witness --

23 THE WITNESS: Merci.

24 PRESIDING JUDGE FREMR: -- just -- I will always ask you whether you understand, so
25 no hurry, just wait for my guidance and I will give you space to express or to

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1 comment -- express yourself or to comment. Okay?

2 So I will continue now with my guidance.

3 THE WITNESS: (Interpretation) I understand.

4 PRESIDING JUDGE FREMR: We will refer you as "Mr Witness" and ensure that your
5 name and any other information that risks revealing who you are is not broadcast to the
6 public; therefore, whenever you need to describe anything that might reveal your identity,
7 we will do so in private session so that no one outside the courtroom can hear your
8 answer.

9 Do you understand that?

10 THE WITNESS: (Interpretation) I've understood you well and you have my attention.

11 PRESIDING JUDGE FREMR: Very well, Mr Witness.

12 Mr Witness, you will find a piece of paper in front of you with solemn undertaking.

13 Please now make your solemn undertaking to tell the truth by reading out the declaration
14 on piece you have in your hands.

15 THE WITNESS: (Interpretation) I solemnly declare that I will tell the truth, the whole
16 truth and nothing but the truth.

17 PRESIDING JUDGE FREMR: Very good, Mr Witness. It means that now you are under
18 oath, so you need to be aware that it is an offence to give false testimony. Do you
19 understand that?

20 THE WITNESS: (Interpretation) I understand.

21 PRESIDING JUDGE FREMR: Very well.

22 Now, at the end few practical matters you should have in mind when giving your
23 testimony.

24 First of all it's important to speak into the microphone, to speak clearly and to speak at a
25 slow pace, approximately like me now, to allow the interpreters to translate everything.

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1 And what is even most important, you should only start speaking when the person asking
2 you the question has finished. And when a question is asked, please count in your head
3 to five and only then give your answer. So always it should be some pause between the
4 question and the answer because it's essential for us and especially for our interpreters to
5 have a time to translate what is being said and also for precise transcript.

6 So please always wait a few seconds and only then give your response. Is it clear to you?

7 THE WITNESS: (Interpretation) It's very clear.

8 PRESIDING JUDGE FREMR: And if you have any questions during your testimony or if
9 you feel that you need a break, do not hesitate to let us know by raising your hand and we
10 will then give you the opportunity to speak.

11 Have you understood all that, Mr Witness?

12 THE WITNESS: (Interpretation) I've understood you well.

13 PRESIDING JUDGE FREMR: Perfect, Mr Witness. So it means I finish with this
14 extensive instructions and now we can move to your testimony. We will start with your
15 examination-in-chief and that will be conducted by Ms Sim.

16 Ms Sim, you have the floor.

17 MS SIM: Thank you, Mr President.

18 QUESTIONED BY MS SIM:

19 Q. Good morning, Mr Witness -- sorry, good afternoon, Mr Witness.

20 A. Good afternoon.

21 Q. We've met previously. My name is Kristy Sim and I will be asking you questions
22 today for the Office of the Prosecutor.

23 Before I start I wanted to remind you that if any of my questions are unclear, please ask
24 me to repeat or clarify and I will be happy to do that.

25 As the Presiding Judge explained, if you think that something you say might identify you,

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1 you can also ask to go into private session and then only the people inside this courtroom
2 will be able to hear you.

3 MS SIM: Mr President, propose that first I ask the witness some identifying questions
4 and we do that in private session, then I will take the witness through the clarifications
5 and corrections that he wishes to make in public session where that's possible, and then I
6 will do a brief supplementary examination of the witness.

7 PRESIDING JUDGE FREMR: Yes, I will agree, but under condition that you will slow
8 down a bit, please. Okay. Then you may proceed.

9 MS SIM: So if I could ask my first questions in private session.

10 PRESIDING JUDGE FREMR: All right then.

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

12 (Private session at 3.32 p.m.)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

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18 (Open session at 3.35 p.m.)

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

20 PRESIDING JUDGE FREMR: Thank you, court officer.

21 Ms Sim, please proceed.

22 MS SIM:

23 Q. Mr Witness, when we met previously, I explained a process to you where I can -- we
24 can ask to have your witness statement admitted to the Judges without me having to ask
25 you many, many questions about it in Court today. Part of this process requires me to

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1 ask you questions about that witness statement.

2 Could I have the following document, please, pulled up: It's DRC-OTP-2076-0194. And
3 it's a confidential document.

4 Mr Witness, I'm going to show you a document now. Do you see a document on your
5 screen, Mr Witness?

6 A. Yes, I can see it.

7 Q. And do you recognize this document?

8 A. Yes, I know this document.

9 Q. And can you confirm that your name and your signature is on the first page of this
10 document?

11 A. Yes, I can see my name and my signature on this document.

12 MS SIM: I'm going to ask that the court officer move to page 0209 of this document?

13 PRESIDING JUDGE FREMR: Hold on.

14 Mr Bourgon.

15 MR BOURGON: Thank you, Mr President. This matter was raised before your
16 Honours in written filings in written submissions. The Prosecution requested the
17 possibility -- maybe this is better, Mr President, to do this in the absence of the witness.

18 PRESIDING JUDGE FREMR: All right then.

19 So, Mr Witness, we will ask you to leave just for a while the courtroom - you will be
20 assisted by court usher - because we have to solve some procedural issues.

21 (The witness stands down)

22 PRESIDING JUDGE FREMR: Mr Bourgon, you may proceed.

23 MR BOURGON: Thank you, Mr President. My objection might be premature by the
24 page I see on the screen before me. If my colleague intends to show only the first and the
25 last page to the witness, then there is of course no difficulty here. However, if my

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1 colleague intends to show specific paragraphs of the statement, then I would say,
2 Mr President, this is purely leading and that this should not be permitted.
3 I recall in this respect that when the Chamber issued its ruling, the Chamber said that
4 the -- should not -- the supplementary examination of the witness shall therefore not
5 exceed one hour and should not be merely repetitive of the witness's statement. And
6 then the Chamber said "while not forbidding leading questions entirely, the Prosecution is
7 directed to first aim to elicit any clarifications to the witness statement in a non-leading
8 fashion."
9 Of course if the witness does not remember one of his clarifications that he made during
10 the preparation session, then of course there is a procedure by which we can use the
11 statement, but the statement should not be used.
12 But maybe my colleague can stop me if she only wanted to show the first and the last
13 page, to which I would have no objection. Thank you.
14 PRESIDING JUDGE FREMR: I think that your objection is on time.
15 Ms Sim, what is your intention?
16 MS SIM: My intention at this point is to get -- is to read to the witness the witness
17 acknowledgment and get him to confirm that -- that that was translated to him and that he
18 signed that portion of his statement.
19 What I was then going to propose to do is to read out those portions of the paragraphs of
20 his statement where he had indicated to us previously that he would like to make a
21 correction and ask him what the correction he wants to make to that.
22 The difficulty is this witness doesn't read English and the statement is in English. So
23 other than asking him what he told me on Monday, and if he can repeat those things,
24 there's no way for me to really direct him to the portions of his statement that he made
25 corrections to. These corrections are fairly minor, so I don't think there's anything

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1 particularly contentious in what he's wanting to correct.

2 My friend -- or my opposing counsel has notice of the things that he sought to correct
3 through the disclosure note. But other than reading a portion of the statement to him
4 and having him tell me what he wants to correct, I don't know how to seek those
5 corrections from him without simply asking him to recite what he can remember and that
6 seems like it would take a fairly long time and we're probably going to be down to asking
7 him these very questions anyways.

8 PRESIDING JUDGE FREMR: Mr Bourgon, your position?

9 MR BOURGON: Mr President, I maintain that the paragraphs of witness statement
10 should not be shown to him; however, she can certainly ask him whether he has -- he
11 recalls meeting with the Prosecution during the preparation session. Does he remember
12 making a correction about a topic and if so, what is it? And this happened last Monday,
13 so it's not like if it happened two years ago. So the witness is bound to recall what he
14 said to the Prosecution on Monday. And if there is a problem, then maybe we can move
15 to stage to, but unless there's a problem, it should be elicited in the proper way so that the
16 Chamber is -- benefits from the true answer of the witness and spontaneous answer of the
17 witness. Thank you.

18 PRESIDING JUDGE FREMR: Give me a second, I will consult also my colleagues.

19 (Trial Chamber confers)

20 PRESIDING JUDGE FREMR: So according our ruling, we direct Prosecution to take
21 something which I would call compromise solution. On the one way the solution
22 proposed by Mr Bourgon seems to us too general to follow and a bit inefficient. On the
23 other hand, we're also not -- we wouldn't be fine with the solution proposed by Ms Sim
24 because it would really then had some too strong leading aspects. But anyway, we
25 would be fine with certain level of leading, but just first ask Mr Witness one general

1 question, whether he wants to make some corrections and then to lead him a bit. Do you
2 have any -- maybe you can start with first - I don't know what will be the
3 outcome - corrections on what. But if he wouldn't be -- his mind won't be fresh, then you
4 can at least slightly lead him: Do you have any correction on, but in one sentence, on
5 time of attack? And that's it, or number of person killed, something like that. But not to
6 put him concrete part of the transcript of the record. Am I clear enough?

7 So some level of leading is allowed, but just to really to lead to the issue, not to give in fact
8 the correction to his mouth. Am I clear enough?

9 MS SIM: I certainly wasn't proposing to put the correction to him, but if it -- perhaps I
10 could explain. When we do the witness preparation, we leave the witness with an
11 interpreter and they put sticky notes where they want to make a correction without
12 discussing it with the interpreter. We then go back into the room and the witness stops
13 at each sticky note and explains what the correction is. So it's sort of on a paragraph
14 level, that there's a correction at paragraph 7 and we then read back paragraph 7 and the
15 witness tells us what it is he wants to correct in that paragraph.

16 PRESIDING JUDGE FREMR: I get the point, but still I guess you should be capable to
17 see if you just summarise content of paragraph 7 in one sentence. Do you have
18 any -- paragraph 7?

19 MS SIM: That's a bad example since it's in the beginning. The first correction that I was
20 going to seek is paragraph 15, so perhaps we can --

21 PRESIDING JUDGE FREMR: Okay, look at paragraph 15, "When Kabila came to power"
22 so I guess I would like just if you would just lead him: Do you have any correction
23 concerning time when Kabila came to power? And that's it. Something like that. Do
24 you understand?

25 MS SIM: Absolutely. I will -- I can start with that and I can even maybe say the

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1 paragraph starting with that and hopefully the witness will remember it. But if he
2 doesn't, I don't want him to say that everything in it is correct when it hasn't been read
3 back to him again.

4 PRESIDING JUDGE FREMR: But please tell me, just to be really very practical, in this
5 paragraph 15, what, according your notes, what he wanted to correct?

6 MS SIM: He wants to pluralise "the bad witness" to "the bad witnesses were."

7 PRESIDING JUDGE FREMR: So I still believe that you can just ask him whether he had
8 some corrections concerning which witnesses, for example, something just simply to
9 indicate the core of the information or the main issue. And the correction should be
10 made by him, not by you simply. But as soon you would just put him whole paragraph
11 to read it, then you know the value of such a testimony would really low.

12 Okay. So now let's bring Mr Witness back to the courtroom. And please start generally
13 with whether he wants to make any corrections -- or maybe we can even start with asking
14 him what are the main corrections first and then to go step by step if you have some notes.
15 Mr Bourgon.

16 MR BOURGON: I fully agree with the Chamber, Mr President, and I have no objection
17 in my colleague leading to the topic. It's no problem. We want to get on with it, we just
18 want a spontaneity in the witness's answer. Thank you.

19 (The witness enters the courtroom)

20 PRESIDING JUDGE FREMR: So I think we are on the same page.

21 Mr Witness, sorry for this inconvenience because if there are some procedural issues
22 concerning your testimony, I'm sorry but it's necessary to make it in your absence. That
23 was why we had to take you out of the courtroom.

24 Now, Ms Sim, please proceed.

25 MS SIM: If we could return to page 0209, the bottom of the page, if that's still up.

1 Q. Mr Witness, can you see that page on your screen?

2 A. Yes.

3 Q. And is that your signature that you see on that page?

4 A. Yes, indeed.

5 Q. I'm going to read you the paragraph just above your signature to have you confirm
6 what it says there, and that is:

7 "This statement has been read over to me in the English and Lingala languages and is true
8 to the best of my knowledge and recollection. I have given this statement voluntarily
9 and I am aware that it may be used in legal proceedings before the International Criminal
10 Court and that I may be called to give evidence in public before the International Criminal
11 Court."

12 Do you remember having that said to you?

13 A. Yes, that paragraph was read out to me.

14 Q. And when you met with the investigators, did you tell them the truth?

15 A. Yes, I told them the truth.

16 Q. Mr Witness, when we met earlier in the week, do you remember being given an
17 opportunity to make corrections to this statement?

18 A. Yes, I do remember.

19 Q. And are you able to remember any of the corrections that you sought to make?

20 A. Yes, I do remember. However, I do not know on which pages those corrections
21 were made. Now, if someone could show me those pages, I will be able to remember.

22 Q. What I propose to do is to give you a general topic area and see if you can remember
23 what was in that paragraph and what you wanted to correct in that paragraph.

24 The first correction or the first area that you indicated had to do with a paragraph that
25 started talking about when Kabila came to power in the Congo. Do you remember that

1 paragraph?

2 A. Yes, I do.

3 Q. And there was a reference to the war between Lendu and Hema people. Was there
4 anything in that paragraph that you can remember wanting to correct?

5 A. Yes.

6 Q. And what is that?

7 A. It was a tribal conflict.

8 Q. And do you remember any part of a sentence that you wanted to correct?

9 A. Well, I'm trying to remember, but if that passage could be displayed on the screen, I
10 would be able to show you. In any event, you know that I do not speak English.

11 PRESIDING JUDGE FREMR: Mr Bourgon.

12 MR BOURGON: Thank you, Mr President. I'm not sure if it's just an issue of
13 understanding, but my colleague can lead further without showing the paragraph.

14 I think in this case the question can be: Do you recall making any comments about the
15 term "the bad witness"? I think that will bring him to the point.

16 It should not be an exercise in memory of paragraph 17 or 12, but it should be do you
17 remember saying something about this, and then we'll know if he said something about
18 that. But not an exercise in specific memory. That's not what we're looking for. Thank
19 you.

20 PRESIDING JUDGE FREMR: It was just my point, Ms Sim. So don't worry, I think you
21 can go really further. My only concern is not to put, as I said, the answer. It should be
22 up to the witness. But you can really specify what was the problem or what was the item
23 that had been corrected.

24 MS SIM: Perhaps I wasn't being clear. I was never intending to read the correction.
25 I was simply going to read the part of the paragraph that I wished -- that I believe the

1 witness wished to correct so that he could tell me if there was anything in there that he
2 wanted to correct, that sentence in there, for instance. So I don't see that that is more
3 leading than saying: Do you want to correct? But I will -- I will simply read the
4 sentence to the witness.

5 PRESIDING JUDGE FREMR: It will be still okay with me.
6 Mr Bourgon.

7 MR BOURGON: As long as the sentence doesn't bring another context, then we have
8 what we're looking for, which is the answer from the witness and not from the
9 Prosecution. That's all we're asking for. Thank you.

10 PRESIDING JUDGE FREMR: All right. So please move on.

11 MS SIM:

12 Q. Mr Witness, the sentence that I was speaking about in particular I'm going to read to
13 you the way that it is in the statement now and you can tell me if there's something you
14 want to correct in that or if it's fine the way it is.

15 The sentence is "the bad witness was the Lendu and those of us who came from other
16 tribes." Is there anything in what I've just read to you that you would like to correct?

17 A. Yes. This is what I want to correct: What I said is that there was an ethnic or
18 tribal war between the Lendus and the Hema people and the bad witnesses came from
19 other provinces. Those are the people whom I consider to have been the bothersome
20 witnesses because they felt that we were supporting the Lendus and therefore they
21 considered us to be bothersome or bad witnesses. That is -- that is the aspect of my
22 testimony that I wanted to correct.

23 Q. Thank you, Mr Witness. The next area that I would like to look at is when you
24 listed various camps. It's paragraph 27 and page 0199. The camps that you listed, I will
25 read them, are camp Alivion, Kanga Usine, Kangala (phon), Sindangombe, Kanga Mafi.

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1 Is there anything in what I've just read that you would like to correct?

2 A. No, there's no correction to be made there. All of that was -- all of those were the
3 camps of the workers of the company. Now, there's something else to correct. It's
4 Gangala, not Kangala. That's the correction.

5 Q. Thank you. I'm going to move on to another paragraph now. That's on page 0207
6 and it's paragraph 59. You refer to information you have about where someone you refer
7 to as Bosco grew up, and you speak about his father being the headmaster at the Athénée
8 of Bunia. Is there anything in that sentence that you would like to correct?

9 A. I have nothing to correct. We heard that he grew up in Bunia. His father was a
10 headmaster at the Athénée of Bunia.

11 MS SIM: I have one more correction, but I think that should be done in private session.

12 PRESIDING JUDGE FREMR: Okay.

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

14 (Private session at 4.01 p.m.)

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7 (Open session at 4.03 p.m.)

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

9 PRESIDING JUDGE FREMR: Thank you.

10 Ms Sim, please proceed.

11 MS SIM:

12 Q. Mr Witness, at the time that you met with the investigators and provided them with
13 a statement, do you recall also drawing any sketches or maps?

14 A. Yes, I drew sketches.

15 MS SIM: Could I please have document DRC-OTP-2076-0211 pulled up and shown to
16 the witness. And it is also a confidential document.

17 Q. And can you see a document on your screen, Mr Witness?

18 A. Yes, I can see a sketch.

19 Q. And do you recognize this document?

20 A. Yes, I recognize it. I'm the person who drew it.

21 Q. And do you see your signature on that document?

22 A. Yes, I see it.

23 Q. And can you please briefly tell the Court what this is a sketch of?

24 A. Well, this sketch represents Mongbwalu.

25 Q. Thank you.

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1 MS SIM: I'm going to ask that we pull up another document which is

2 DRC-OTP-2076-0212 and show that to the witness.

3 PRESIDING JUDGE FREMR: Mr Bourgon.

4 MR BOURGON: Thank you, Mr President. Before the sketch is removed and taken
5 away, because it's going to be admitted in evidence, I think for the benefit of us all, if the
6 witness can just indicate to us where is north on the sketch. I think that would be a
7 benefit to everybody in the courtroom.

8 PRESIDING JUDGE FREMR: Why not.

9 Mr Witness, have you heard the comment made by Defence main counsel? Are you able
10 to indicate on this sketch where is the north and south?

11 THE WITNESS: (Interpretation) The north, well, I think that it's towards Bunia, east of
12 Kanga factory in the west towards Pluto.

13 PRESIDING JUDGE FREMR: So on this sketch, it would be on what side? Left side,
14 right side, above, below? North, where would you put north?

15 THE WITNESS: (Interpretation) North is at the top, south at the bottom, east on the left
16 and west on the right.

17 PRESIDING JUDGE FREMR: Thank you, Mr Witness.

18 Ms Sim, please proceed.

19 MS SIM:

20 Q. Perhaps for ease, on this map, Mr Witness, you've indicated camp Sayo in the top
21 corner. Can you situate which direction is north in relation to that camp Sayo?

22 A. If you take camp Sayo as a reference, I would say first of all that camp Sayo is in the
23 north of Mongbwalu.

24 Q. Thank you. That's -- that's helpful for us.

25 If we could have the other sketch pulled up now, which is DRC-OTP-2076-0212.

- 1 Can you see a document on your screen now, Mr Witness?
- 2 A. Yes, I can see it.
- 3 Q. And what is the document that you see?
- 4 A. This sketch represents camp Sayo.
- 5 Q. Did you draw this sketch?
- 6 A. Yes, I was the one who drew it.
- 7 Q. And can you see your signature on the sketch?
- 8 A. Yes.
- 9 Q. Were there any changes or corrections that you wished to make to either of those
- 10 sketches?
- 11 A. No, I have no changes nor any corrections to bring to that sketch.
- 12 Q. Did you have any changes or corrections you wished to bring to the Mongbwalu
- 13 sketch, the previous sketch?
- 14 A. No.
- 15 Q. Mr Witness, is the statement that you reviewed earlier this week an accurate record
- 16 of your recollection and knowledge of the events that you described in it?
- 17 A. My statement consists of what I personally saw. Apart from a case which is
- 18 something that somebody told me.
- 19 Q. And does your statement accurately reflect the part that was something that
- 20 somebody told you rather than something that you saw?
- 21 A. No. I was the one who was the eyewitness.
- 22 Q. Let me re-ask that question just to make sure that we understand each other. I
- 23 asked if everything in this statement that you read or you had read to you earlier this
- 24 week is accurate to the best of your knowledge?
- 25 A. The whole statement that is there, if you look at it, there are two parts. There's the

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1 statement about what I saw and also what I heard.

2 Q. And do you consent to this statement and the two sketches that we just looked at
3 being admitted into evidence in this case?

4 A. Yes. That's what I experienced.

5 MS SIM: Your Honour, would you like me to seek to admit these -- the statement and
6 the sketches now?

7 PRESIDING JUDGE FREMR: No, because in my view the other condition which has to
8 be met is that are we and Defence also has a chance to examine witness. Because it
9 would be -- okay, you can ask, but we will anyway decide after seeing that those
10 conditions have been met. So why not make this request formally, but as I said, we'll
11 decide after cross-examination by Defence and examination by LRV, if any. So please go
12 ahead with the request.

13 MS SIM: So my request is that the statement of the witness, which is
14 DRC-OTP-2075-0194, be admitted into evidence and that the two sketches annexed to the
15 statement also be admitted, they are DRC-OTP-2076-0211 and DRC-OTP-2076-0212.

16 PRESIDING JUDGE FREMR: Thank you. Well noted. And please return back after
17 the end of the testimony and we will decide.

18 MS SIM: Thank you, Mr President.

19 I now have a few supplementary questions to ask of the witness. I imagine I will be done
20 before we need to be done today.

21 PRESIDING JUDGE FREMR: Very well then.

22 MS SIM:

23 Q. Mr Witness, I'm going to return to the sketches that we just looked at and have you
24 comment on something in them.

25 If we could please pull up 2076-0211. Do you see the sketch on your screen, Mr Witness?

1 A. Yes, I can see camp Sayo.

2 Q. Can you also see on --

3 A. It's a sketch that shows Mongbwalu in general.

4 Q. Can you see on the sketch a location marked number 4?

5 A. Number 4, camp AGK, Appartement.

6 Q. I'm just checking the transcript -- the transcript to see if that came up. All right, it
7 didn't. If you could just repeat, you said camp and then you said another word. If you
8 could repeat that slowly for the transcript.

9 A. Where it's written number 4 it is a camp. They are apartments that we built for the
10 foreigners, expatriates. We built them in 1983.

11 Q. And during the time that the UPC was in Mongbwalu, do you know of any use that
12 was made of that location?

13 A. When they were in Mongbwalu, I think it was the place where the commanders
14 lived. As regards to military secrets I couldn't say anything, but I know that it was the
15 place where the commanders lived.

16 Q. Do you know any particular commanders who lived there?

17 A. Yes, I know some. For example, the chief of general staff, Bosco, lived there. And
18 there was another commander, a battalion commander who was called Claude and he
19 also lived there. And others as well whose names I have forgotten.

20 Q. Mr Witness, in your statement you speak about when you returned from the war to
21 Mongbwalu. Can you describe how you found your house when you went back to your
22 house?

23 A. From the battle we left the town to go to camp Sayo because the Lendu combatants
24 were there. Now, as it was above a hill, we could see Mongbwalu well. And that
25 happened four times. The first time we went back, there was no damage, but when the

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1 UPC troops took control of the locality, all the houses were pillaged. Mine too. I found
2 nothing.

3 Q. And what do you mean when you say "I found nothing"?

4 A. That is to say all the goods were pillaged. Afterwards, I decided not to return to
5 live there.

6 Q. And do you remember what specific goods were pillaged from your house?

7 A. They pillaged all the goods that I had. There were chairs. There was a television.
8 There was a freezer because I had fish activities. There were clothing, children's clothes,
9 women's clothes. Everything that was there had been pillaged.

10 Q. And do you know who pillaged it, who pillaged these goods?

11 A. You know, during the war when you're a civilian you wouldn't dare to go close.
12 We hid in the bush. We didn't know who had committed these acts.

13 Q. Did you ever have these goods returned to you? Did you ever see them again?

14 A. No. I had nothing. And who could I complain to? If I had done that, that would
15 have been death for me.

16 Q. Mr Witness, early in your statement you speak about a Colonel Lompondo and of
17 the UPC taking over the city of Bunia. And I would like to know if those events
18 happened before or after the time when the UPC attacked Mongbwalu.

19 A. I think that this event took place before. First of all they took Bunia before
20 attacking Mongbwalu.

21 MS SIM: I have one short section of questions that I'm going to need to conduct in
22 private session.

23 PRESIDING JUDGE FREMR: Let's move into private session now, please.

24 (Private session at 4.25 p.m.)

25 (Redacted)

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9 (Open session at 4.30 p.m.)

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

11 PRESIDING JUDGE FREMR: Thank you, court officer.

12 Ms Sim, please proceed.

13 MS SIM:

14 Q. Mr Witness, do you see the sketch of Sayo on your screen right now?

15 A. Yes, I can see it.

16 Q. There is some writing on the very far left of this sketch and I would like you to read
17 that writing, please.

18 A. On the left-hand side it's written "entry to camp Sayo" from the centre of
19 Mongbwalu and going towards camp Sayo.

20 Q. Thank you. I was going to get you to say what the MGB stood for, but you did it in
21 your answer, so thank you for that.

22 MS SIM: Those are my questions.

23 PRESIDING JUDGE FREMR: For today or totally?

24 MS SIM: Totally.

25 PRESIDING JUDGE FREMR: Totally, so you have finished. Very well then. I

1 appreciate, the Chamber appreciates.

2 So, Mr Witness, it concludes your testimony for today. Tomorrow we will continue with
3 questions of other parties and participants. So I would like to thank you and I also have
4 to instruct you that in the meantime, till tomorrow, you must not discuss your testimony
5 with anybody else. Is it clear to you?

6 THE WITNESS: (Interpretation) Yes. I followed you with great attention.

7 PRESIDING JUDGE FREMR: Very well. And before we leave, question to Mr Suprun:
8 Mr Suprun, you indicated three areas or topics you would like to explore. In the light of
9 examination conducted by Ms Sim, are you willing to make any update on that?

10 MR SUPRUN: (Interpretation) Thank you, your Honour. Indeed. I would like to
11 keep my request on the three issues identified therein. Concerning point A, I just need to
12 ask a couple of questions for clarification. What I'm interested in is the concern of the
13 victims at the time of the attack on Mongbwalu as well as the situation of the family. I'm
14 not going to ask the witness to repeat his whole history.

15 And now where it concerns this issue A, that's also linked to B because here we're talking
16 about harm suffered by the witness and the members of his family, and I wanted to ask
17 the witness what consequences the events of 2002-2003 had, if any, on himself and the
18 members of his family.

19 And where it concerns issue C, as a legal representative of hundreds of victims of the
20 attacks on Mongbwalu who are not present in the courtroom here but the personal
21 interests of these victims are concerned by the information that could be provided to the
22 Chamber and in particular with regards to the situation of other victims who were in the
23 same conditions as the witness and members of the family, and in particular I am
24 referring to the statement of the witness in which he said that he took care of two families,
25 he helped two families during the war.

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WITNESS: DRC-OTP-P-0894

(Open Session)

ICC-01/04-02/06

- 1 So I would like to ask for more details with the regards to the statement. Thank you very
2 much, your Honour.
- 3 PRESIDING JUDGE FREMR: Defence, any position on that?
- 4 MS HAAGE: Good afternoon, Mr President. Just to introduce myself, I'm
5 Marlène Yahya Haage. The Defence has no objections as to points A and B of
6 paragraph 8 of the LRV request.
- 7 As to point C, as long as it is limited to the attack the witness can testify on, then we have
8 no objections as well. Thank you.
- 9 PRESIDING JUDGE FREMR: All right.
- 10 Then, Mr Suprun, you will be allotted 15 minutes and you may -- tomorrow you may
11 cover all those three issues, but be vigilant and as you would be repetitive, I would then
12 not allow such a question, okay? So tomorrow 15 minutes all three topics.
- 13 MR SUPRUN: (Interpretation) Thank you very much, your Honour.
- 14 PRESIDING JUDGE FREMR: Now we conclude, we finish and we will continue
15 tomorrow 9.30.
- 16 THE COURT USHER: All rise.
- 17 (The hearing ends in open session at 4.35 p.m.)