

1 International Criminal Court  
2 Trial Chamber VI  
3 Situation: Democratic Republic of the Congo  
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06  
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and Judge Chang-ho Chung  
6 Trial Hearing - Courtroom 3  
7 Wednesday, 21 September 2016  
8 (The hearing starts in open session at 1.12 p.m.)  
9 THE COURT USHER: [13:12:30] All rise.  
10 The International Criminal Court is now in session.  
11 Please and seated.  
12 PRESIDING JUDGE FREMR: [13:12:49] Good afternoon, everybody.  
13 Court officer, please call the case.  
14 THE COURT OFFICER: [13:13:03] The Court is sitting in the case of the Prosecutor  
15 versus Bosco Ntaganda.  
16 PRESIDING JUDGE FREMR: [13:13:09] Thank you, court officer.  
17 Now appearances in habitual order please, starting with Prosecution.  
18 MR PACE: [13:13:18] Good morning afternoon, Mr President, your Honours.  
19 For the Prosecution today Dianne Luping, trial lawyer; Selam Yirgou, case manager;  
20 Kristy Sim, assistant trial lawyer; Nicole Samson, senior trial lawyer; and I'm  
21 James Pace, assistant trial lawyer.  
22 PRESIDING JUDGE FREMR: [13:13:36] Thank you, Mr Pace.  
23 Now Defence, please.  
24 MR BOURGON: [13:13:41] (Interpretation) Good afternoon, your Honours.  
25 Good afternoon to all those in the courtroom. Representing Bosco Ntaganda this

1 afternoon Han Catherine Morin, Erik Cookson-Montin, Chloé Grandon and I am  
2 Stéphane Bourgon.

3 I note that Mr Ntaganda is not in the courtroom this afternoon, however, he has  
4 provided and we still -- have submitted a copy of his waiver of the right to be present.  
5 Thank you.

6 PRESIDING JUDGE FREMR: [13:14:22] Thank you, Mr Bourgon. I will address  
7 this issue soon.

8 Now Legal Representatives of Victims, please.

9 MS PELLET: (Interpretation) [13:14:35] Thank you, your Honour. The former  
10 child soldiers are represented by Mohamed Abdou; and myself, Sarah Pellet, counsel  
11 at the Office of Public Counsel for Victims.

12 MR SUPRUN: [13:14:49] (Interpretation) Good afternoon, your Honours. The  
13 victims of the attacks are represented by the Office of Public Counsel for Victims,  
14 Anne Grabowski, associate lawyer; and myself, Dmytro Suprun.

15 PRESIDING JUDGE FREMR: [13:15:00] Thank you, Ms Pellet. Thank you,  
16 Mr Suprun.

17 Before turning to the testimony of the next witness, I will first address Mr Ntaganda's  
18 situation.

19 The Chamber has been informed that, in light of the Registry's efforts, in particular to  
20 expedite organisation for family visit for Mr Ntaganda, in accordance with the  
21 Chamber's directions, Mr Ntaganda has resumed his engagement with the case and is  
22 also eating again, which, including from the perspective of his own well-being, the  
23 Chamber is pleased to hear.

24 We have also received from the Defence a signed waiver from Mr Ntaganda  
25 requesting to be excused from attending proceedings between 21 September, which is

1 today, and 29 September. The purpose of this absence would be to permit  
2 Mr Ntaganda to attend a family visit and to recover from his recent condition.  
3 It is indicated that Mr Ntaganda understands that the proceedings would continue in  
4 his absence and that his interest would be represented by counsel.

5 Mr Bourgon, can you confirm or do you have any additional submissions on this  
6 issue?

7 MR BOURGON: [13:16:36] No additional submissions. This correctly reflects the  
8 situation. I was with Mr Ntaganda this morning and we were discussing the case.  
9 Thank you, Mr President.

10 PRESIDING JUDGE FREMR: [13:16:46] Thank you, Mr Bourgon.

11 Now I also give the Prosecution and Legal Representatives a chance to comment that  
12 or to express their position on the Defence request for excusal.

13 MS SAMSON: [13:17:10] Thank you, Mr President. The Prosecution does not  
14 oppose the request for the reasons that Mr Ntaganda has set out, his family visit and  
15 recovering health, but we reiterate, as the Chamber has already indicated, that  
16 absences of this nature are exceptional. We're certainly -- we note with interest that  
17 Mr Ntaganda is waiving his right to be present and, therefore, the proceedings will be  
18 continuing in the ways in which they have in the past, but the -- Mr Ntaganda's  
19 conduct over the last week and a half we felt had been inappropriate and was akin to  
20 having waived his right to be present in any event. All that to say though,  
21 Mr President, we don't oppose the request as currently framed.

22 PRESIDING JUDGE FREMR: [13:17:58] Well noted. Thank you, Ms Samson.  
23 Now, Ms Pellet.

24 MS PELLET: [13:18:03] (Interpretation) Thank you, your Honour. The former  
25 child soldiers note with satisfaction that Mr Ntaganda is more positively disposed

1 towards the proceedings taking place before your Chamber. We would of course  
2 prefer that he be present during the proceedings. It seems that he is feeling better  
3 and that he has resumed eating and, therefore, we hope that, indeed, that this absence  
4 will be exceptional. Thank you, your Honour.

5 PRESIDING JUDGE FREMR: [13:18:43] Thank you, Ms Pellet.

6 Mr Suprun.

7 MR SUPRUN: [13:18:47] (Interpretation) Your Honour, we have no objection  
8 per se, but I would reiterate the point of view of the victims who I represent, that it is  
9 very important that the accused be present to hear the case against him. It's  
10 important that he be able to hear the evidence which is adduced in this courtroom  
11 with of course the assistance of his counsel.

12 PRESIDING JUDGE FREMR: [13:19:20] Thank you, Mr Suprun.

13 And now allow me just briefly deliberate with my colleagues.

14 (Trial Chamber confers)

15 PRESIDING JUDGE FREMR: [13:19:52] I have to say that the Chamber has had  
16 some preliminary deliberation on this matter and, having heard those submissions  
17 and after short silent deliberation, I am now in a position to provide our ruling.

18 The Chamber notes that ordinarily family visits would be scheduled in a manner  
19 which would not clash with the proceedings in the case. It's noted, however, that for  
20 a variety of reasons, including logistical difficulties in scheduling the visit, it's  
21 occurring at this time.

22 The Chamber notes that, during the period in question, Mr Ntaganda will be able to  
23 continue to follow the proceedings and instruct counsel and that his rights will be  
24 fully represented by Defence counsel.

25 Given the temporary nature of the requested absence and in light of Defence counsel's

1 assurance regarding Mr Ntaganda's understanding of the waiver, the Chamber  
2 considers it appropriate to exceptionally, under current circumstances, grant this  
3 request and permit Mr Ntaganda not to attend proceedings between 21 till  
4 29 September 2016.

5 The Defence is directed to ensure that a copy of the relevant waiver is filed in the  
6 record of the proceedings.

7 Second, in light of these developments, the Chamber will be reconsidering the  
8 necessity of pursuing its decision to appoint an independent medical expert.

9 At this time we would just like to ask the Defence whether you will be amending the  
10 relief sought in filing number 1517 of 20 September? This was a confidential ex parte  
11 filing and, therefore, I will not go into further detail in this setting.

12 Mr Bourgon.

13 MR BOURGON: [13:22:02] Mr President, we will not be altering our relief  
14 requested in this submission. We believe it is important to have the full information  
15 concerning what happened over the last few days. It is for the benefit of the  
16 Chamber, the benefit of Mr Ntaganda's own legal team, and to have a full  
17 understanding, which we have not been able to obtain until now. Thank you,  
18 Mr President.

19 PRESIDING JUDGE FREMR: [13:22:30] Prosecution, any comment on that?

20 MS SAMSON: [13:22:33] Only that the planned independent medical assessment  
21 seems unnecessary at this present time. The purpose, as I understood it, was to  
22 assess Mr Ntaganda's fitness to attend and it's quite clear now that he's following the  
23 proceedings. So, for the Prosecution's part, there's really no need for an assessment.  
24 Thank you.

25 PRESIDING JUDGE FREMR: [13:23:00] Thank you, Ms Samson.

1 So we will deliberate on that further and revert in due course to the parties.

2 Mr Bourgon.

3 MR BOURGON: [13:23:09] Mr President, in light of the submissions of the  
4 Prosecution just now, we believe that it is important to note that the purpose behind  
5 obtaining independent medical advice goes beyond immediate fitness to attend  
6 proceedings. Mr Ntaganda had recourse to the ultimate way of opposing himself to  
7 the administration of justice. He -- we are conscious that this is a serious decision  
8 that he made. We are happy that he is back. We would like to know, and I think  
9 that's what I said at the beginning, it is important for us to find out what was his  
10 mental state when he did make this decision, and that's important, Mr President, in  
11 our view. Thank you.

12 PRESIDING JUDGE FREMR: [13:24:02] Well noted. And I just can repeat that we  
13 will consider all those submissions and we will decide in due course.

14 (Redacted)

15 (Redacted)

16 (Redacted) There are face and voice distortion and the use of a  
17 pseudonym. I also note that VWU sent its protective measure report via email on  
18 16 September and that it recommended the adoption of the in-court protective  
19 measures already adopted.

20 So now, unless the parties or participants wish to raise anything at this point, we can  
21 turn to the scheduled testimony. I don't see any request for the floor, so it means,  
22 court officer, please bring Mr Witness into the courtroom.

23 (The witness enters the courtroom)

24 PRESIDING JUDGE FREMR: [13:26:12] Mr Witness, good afternoon. Can you  
25 hear me?

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1 WITNESS: DRC-OTP-P-0014

2 (The witness speaks French)

3 THE WITNESS: [13:26:21] (Interpretation) Yes, your Honour, I can hear you  
4 perfectly.

5 PRESIDING JUDGE FREMR: [13:26:24] Fine. Mr Witness, on behalf of the  
6 Chamber, I would like to welcome you to the courtroom. You are called to testify in  
7 the case against Mr Bosco Ntaganda. (Redacted)

8 (Redacted)

9 (Redacted)

10 You will be soon asked questions both by the Judges and lawyers in this courtroom  
11 and in this connection I would like to guide you as follows:

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

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

19 Do you understand all this, Mr Witness?

20 THE WITNESS: [13:28:00] (Interpretation) Absolutely, your Honour.

21 PRESIDING JUDGE FREMR: [13:28:03] Good. Mr Witness, protective measures  
22 are put in place to ensure that your identity is not revealed to the public. It means in  
23 practice that the public cannot see your face and that your voice is being disguised so  
24 that the public cannot recognize it.

25 We will refer to you only as "Mr Witness" and ensure that your name and any other

1 information that risks revealing who you are is not broadcast to the public.  
2 Therefore, whenever you need to describe anything that might reveal your identity,  
3 we will do so in private session so that no one outside the courtroom can hear your  
4 answer.

5 Do you understand, Mr Witness?

6 THE WITNESS: [13:29:03] (Interpretation) Yes, it's clear.

7 PRESIDING JUDGE FREMR: [13:29:05] Fine. Mr Witness, you will find or you  
8 will be provided, yes, now with a piece of paper with the solemn undertaking. So  
9 please now make your solemn undertaking to tell the truth by reading out the  
10 declaration you have in your hands.

11 THE WITNESS: [13:29:29] (Interpretation) I solemnly declare that I shall speak the  
12 truth the whole truth and nothing but the truth.

13 PRESIDING JUDGE FREMR: [13:29:47] Thank you, Mr Witness. It means that  
14 now you are under oath and also you need to be aware that it's an offence within the  
15 jurisdiction of this Court to give false testimony. Do you understand that?

16 THE WITNESS: [13:30:06] (Interpretation) Yes, I understand.

17 PRESIDING JUDGE FREMR: [13:30:07] Very well. And finally, a few practical  
18 matters, Mr Witness, you should in mind when giving your testimony. It's  
19 important to speak into the microphone, to speak clearly and to speak at a slow pace,  
20 to allow the interpreters to translate everything. You should only start speaking  
21 when the person asking you the question has finished. When a question is asked,  
22 please count in your head to three and only then give your answer. This pause is  
23 essential for us to properly hear and record what you are saying. If you have any  
24 questions during your testimony or if you feel that you need a break, do not hesitate  
25 to let us know by raising your hand. We will then give you the opportunity to

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1 speak.

2 Have you understood all that, Mr Witness?

3 THE WITNESS: [13:31:22] (Interpretation) That is very clear.

4 PRESIDING JUDGE FREMR: [13:31:24] So now we can move to the examination of  
5 the witness that will start by direct examination conducted by Prosecution. I would  
6 like to note that Prosecution has been allotted two hours for its examination of the  
7 witness and subject, understandably, the fact that some materials will be admitted  
8 pursuant to Rule 68(3).

9 Now, Mr Pace, you may proceed.

10 MR PACE: [13:31:59] Thank you, your Honour.

11 QUESTIONED BY MR PACE:

12 Q. [13:32:04] I'm James Pace and I will be asking you questions on behalf of the  
13 Office of the Prosecutor this afternoon. Following on from what Mr President said, if  
14 you think that in order to answer my questions or those of anyone else, you need to  
15 provide information which may identify you, please let us know by raising your hand  
16 and we can move into private session.

17 MR PACE: [13:32:31] Mr President, I will follow the procedure that we followed  
18 thus far with witnesses for whom applications pursuant to Rule 68(3) have been  
19 granted in principle.

20 PRESIDING JUDGE FREMR: [13:32:41] All right.

21 MR PACE: [13:32:43] And since my first questions are of an identifying nature, I  
22 will ask to move into private session.

23 PRESIDING JUDGE FREMR: [13:32:49] Fully understandable. Court officer, let's  
24 move into private session now.

25 (Private session at 1.32 p.m.)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Open session at 1.35 p.m.)

5 THE COURT OFFICER: [13:35:51] We're in open session.

6 PRESIDING JUDGE FREMR: [13:36:12] Thank you, court officer.

7 Mr Pace, please proceed.

8 MR PACE: [13:36:19] With the court usher's assistance, I would like to provide the

9 witness with a binder. This binder is similar or identical to that provided to the

10 Chamber, the Defence, and the Legal Representatives. However, we have removed

11 from this binder the documents which we do not seek to admit pursuant to Rule

12 68(3).

13 PRESIDING JUDGE FREMR: [13:36:39] So, basically, it's identical.

14 So, court officer, yes, please assist.

15 MR PACE: [13:36:54] Thank you, court officer.

16 Q. [13:36:56] Mr Witness, if you could please first have a look in this binder at the

17 tabs marked 7 to 11.

18 And while the witness looks through these documents I will read out the ERN

19 numbers for the record. And tabs 7 to 11 are, in order, DRC-OTP-2054-0429,

20 2054-0612 --

21 PRESIDING JUDGE FREMR: [13:37:32] Mr Pace, please, a bit, slow down because

22 there is a lot of numbers, a lot of facts. Please, it requires a rather slower pace.

23 MR PACE: [13:37:41] Certainly, your Honour. I'll repeat the last number

24 2054-0612, 2054-0816, 2054-0961 and 2054-1086.

25 And Mr President, since the parties, the Chamber and the participates have this

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1 material in their binder, I see no need for the documents to be called up on to our  
2 screen. They're also confidential documents and, in any case, should not be  
3 broadcast.

4 PRESIDING JUDGE FREMR: [13:38:23] All right.

5 MR PACE: [13:38:24]

6 Q. [13:38:25] Mr Witness, do you recognize these documents?

7 A. [13:38:33] Yes, I recognize them.

8 Q. [13:38:37] Do you recall swearing an oath to tell the truth in these documents?

9 A. [13:38:51] Yes, I do remember.

10 Q. [13:38:54] Are the contents of these documents true and correct to the best of  
11 your knowledge?

12 A. [13:39:02] Yes, that is correct.

13 Q. [13:39:12] Mr Witness, could you please now look through the documents at  
14 tabs 5 and 6 of the same binder.

15 MR PACE: And while the witness looks through these documents, for the record,  
16 they are DRC-OTP-0165-0861 and 0165-0862.

17 Q. Do you recognize these documents, Mr Witness?

18 A. [13:39:48] Yes, I recognize them.

19 Q. [13:39:52] Do you recall having been asked questions and providing  
20 information about these documents in your prior recorded testimony?

21 A. [13:40:07] Yes, I do remember, yes.

22 Q. [13:40:09] And was the information which you provided about these  
23 documents true and accurate to the best of your knowledge?

24 A. [13:40:17] The information was correct.

25 Q. [13:40:29] If you could next turn to tab 1 of your binder.

1 MR PACE: For the record this is DRC-OTP-0066-0002. And I note that from this  
2 document the Prosecution only seeks to admit paragraphs 55 to 65.

3 Q. Do you recognize this document, Mr Witness?

4 A. [13:41:05] Yes, I do.

5 Q. [13:41:08] I'd like you to turn to the last page of this document, and that is  
6 page 29, it also has another number which is 0030. Is that your signature on this  
7 page?

8 A. [13:41:28] Yes, indeed, it is my signature.

9 Q. [13:41:32] Are the contents of this document true and accurate to the best of  
10 your knowledge?

11 A. [13:41:39] Yes, I can confirm that.

12 Q. [13:41:52] Could you now turn to tabs 12 to 15 of the binder.

13 MR PACE: For the record these are in order DRC-OTP-0066-0031, 0066-0039,  
14 0066-0047 and 0066-0048.

15 Q. Have you had a chance to look at these documents, Mr Witness?

16 A. [13:42:45] Yes, indeed.

17 Q. [13:42:47] Do you recognize these documents?

18 A. [13:42:51] Yes, I do recognize them perfectly.

19 Q. [13:43:01] Do you recall being asked questions and providing answers about  
20 these documents?

21 A. [13:43:14] Yes, clearly.

22 Q. [13:43:19] Was the information you provided about these documents in your  
23 prior recorded testimony true and accurate to the best of your knowledge?

24 A. [13:43:30] Yes, I can confirm that.

25 Q. [13:43:41] I would like you to look at the document at tab 3 of the binder and

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1 that is DRC-OTP-0165-0999.

2 MR PACE: And from this particular document the Prosecution only seeks to admit  
3 the following paragraphs and they are: 114, 415, paragraphs 423 until 425 and  
4 paragraph 443.

5 Q. Mr Witness, if you could again turn to the last page of this document, which is  
6 page 104, ERN page 1102. Is that your signature?

7 A. [13:44:45] Yes, it is my signature indeed.

8 Q. [13:44:49] Are the contents of this document true and accurate to the best of  
9 your knowledge?

10 A. [13:44:58] Yes, I can confirm that.

11 Q. [13:45:06] I would like you to look next at the documents at tab 20 until 22 of  
12 the binder.

13 MR PACE: And the ERNs for these documents in order are DRC-OTP-0165-0890,  
14 0165-0896 and 0165-1103.

15 Q. Do you recognize these documents?

16 A. [13:45:50] Yes, I recognize it.

17 PRESIDING JUDGE FREMR: [13:45:53] Excuse me, Mr Pace.

18 Mr Bourgon.

19 MR BOURGON: [13:45:57] Thank you, Mr President. Regarding these last series  
20 of documents, which are being brought to the attention of the witness, we oppose the  
21 use of these documents in our notice provided to the Chamber over the weekend.

22 These are the documents on the list -- on the Prosecution's list of material bearing the  
23 number 21 and 22.

24 The Prosecution indicated that it wished to tender these documents in evidence and  
25 we objected to the same. The reason for our objection, Mr President, was that these

1 documents were not on the Prosecution's list of evidence as of 2 March 2015.

2 If we look at the first document, the first document was obtained by the Prosecution  
3 on 25 November 2006 and it was disclosed to us on 10 January 2014. Now, this  
4 document was added to the list of evidence only on 5 September.

5 Concerning the second document, the second document was disclosed to the Defence  
6 on 27 May 2013 but it was only added to the Prosecution list of evidence on  
7 16 September.

8 We believe, Mr President, that in both cases the Prosecution is in breach of the order  
9 scheduling a status conference and setting the commencement date of trial, and that is  
10 the filing number 382.

11 Mr President, this issue came up before although we have not had to deal specifically  
12 with this issue recently. The principle that was adopted by the Chamber early in the  
13 case was to allow the Prosecution to add documents to its list whenever it wanted  
14 without having to seek leave to the Chamber. We recognized that previously and  
15 we still acknowledge that this is the procedure that the Prosecution can use.

16 However, in the same procedure that was adopted by the Chamber, the Defence is  
17 authorised to raise an objection at any time to the use and the -- whether these  
18 documents can be admitted.

19 Mr President, when the Prosecution is in possession of documents for such a long  
20 time and it decides not to put them on its list when it is required to do so and then  
21 adds these documents at a later time without providing any reasons as to why they  
22 suddenly require these documents, then this is a breach of the applicable procedure.

23 And the Prosecution should not be authorised to use these documents.

24 The Defence, even though we have a copy of these documents, we're not preparing on  
25 the basis of these documents, we are not factoring the information in these documents

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1 until we are put on notice.

2 It is our submission, Mr President, that by the time we are put on notice of the  
3 Prosecution's intent to use them, without again saying why did it not do so before,  
4 this is reason for us not to have prepared and not to be ready to cross-examine on  
5 these documents and that they should not be used by the Prosecution.  
6 Prosecution had ample time to have the documents on their list and to inform the  
7 Defence that it was part of its case. They did not do so, Mr President. Thank you.

8 PRESIDING JUDGE FREMR: [13:49:54] Thank you, Mr Bourgon.  
9 Mr Pace.

10 MR PACE: [13:50:00] Mr President, your Honours, these two documents were  
11 included by the Prosecution in our Rule 68(3) application and that is dated 22 August  
12 this year.

13 The Chamber has already admitted both of these documents pursuant to Rule 68(3) in  
14 principle.

15 The Defence, in responding to the Prosecution's application, did not raise the  
16 concerns that it has raised now. And I note, in particular, that in our application the  
17 Prosecution referred to one of these documents which is DRC-OTP-0165-1103 and  
18 that paragraph 19 of our application we acknowledged that this particular document  
19 was not currently on the Prosecution's list of evidence, so, again, the Defence was on  
20 notice at that stage and could have raised objections then.

21 Just by way of more clear dates, your Honour, this particular document was disclosed  
22 to the Defence in January 2014 pursuant to Rule 77, so they -- it's been in their  
23 possession since that time.

24 And, your Honour, this document consists of two handwritten pages.

25 And turning to the second document, DRC-OTP-0165-0896, this was disclosed to the

1 Defence in May 2013 and it was added to the list of evidence in September 2015, so  
2 last year. And the second document consists of four typewritten pages and one page  
3 with signatures.

4 So as I mentioned, your Honour, the Defence could have raised these issues before,  
5 even if it is doing so now, the fact that they have been disclosed before even at -- a  
6 long time ago, even if pursuant to Rule 77, it means that there is no prejudice to the  
7 Defence, they are aware of them. And even if the Defence were not aware of them at  
8 an earlier time, at the latest, since 22 August of this year, they have been put on notice  
9 about them, about our intention to admit them pursuant to Rule 68(3), together with  
10 the reasons why we intend to admit them pursuant to this rule. Those are our  
11 submissions, your Honour.

12 PRESIDING JUDGE FREMR: [13:52:20] All right. So we will then decide about  
13 all -- you finished? Mr Bourgon.

14 MR BOURGON: [13:52:26] Mr President, the information now provided by the  
15 Prosecution does not provide an answer to that question. That question is they have  
16 information in their possession for a very long time, there is a ruling that says you  
17 have to provide information if you are going to use it. They did not do so and they  
18 do not provide any reason why they did not do it previously. That's the violation.  
19 Now, the prejudice for us, I would agree with my colleague that the prejudice -- that  
20 we have been informed as of 22 August that they want to use them and that's why we  
21 immediately, at the first opportunity, when we raised our issue to the use and  
22 objection of these -- and admittance of these documents, we raised it when we are  
23 supposed to do so.

24 If we take the Prosecution's point of view, then it supports exactly what we were  
25 saying at the beginning of the case. They can put documents whenever they want,

1 as they want, at any date, and then the only thing that will matter is did the Defence  
2 have time to read the document before the witness appears? That's what we oppose  
3 at the beginning of the case and we still maintain this opposition.

4 Is the document so important that it must be added? And I think that's also because  
5 when we argued at the beginning of the case, we say if the Prosecution is going to  
6 add a document that was in its possession, it should say, well, I need this document, I  
7 can't do my case because of this document and why; did they lose the document?

8 Did they misplace the document? Was it not part of the case and it has become part  
9 of their case? This is information that we need to know in order for us to be able to  
10 raise full answer and defence. Thank you, Mr President.

11 PRESIDING JUDGE FREMR: [13:54:27] The point is clear. We will decide then  
12 together with the other documents, so you can move on, Mr Pace.

13 MR PACE: [13:54:36]

14 Q. [13:54:38] Mr Witness, to go back and look at tabs 20 to 22 as we were prior to  
15 the objection. I believe these ERNs have been captured on the record.

16 And do you recognize these three documents, Mr Witness?

17 A. [13:54:57] Yes, I do recognize them perfectly well.

18 Q. [13:55:02] Do you recall being asked questions and providing answers about  
19 these documents in your prior recorded testimony?

20 A. [13:55:17] Yes, I do recall. Yes.

21 Q. [13:55:20] Was the information you provided about these documents true and  
22 accurate, to the best of your knowledge?

23 A. [13:55:40] Yes, very true. My answer is in the affirmative.

24 Q. [13:55:48] Mr Witness, do you remember, when we met last week, that the  
25 Prosecution gave you an opportunity to review these and other documents?

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1 A. [13:56:05] Yes, I had that opportunity.

2 Q. [13:56:08] And after having reviewed these documents, do you remember  
3 being given an opportunity to make clarifications or corrections to them?

4 A. [13:56:25] Yes, I do remember.

5 Q. [13:56:28] Do you recall that I also asked you a question to clarify something in  
6 this prior recorded testimony?

7 A. [13:56:45] Yes, I do.

8 MR PACE: [13:56:48] (Microphone not activated)

9 THE INTERPRETER: [13:56:52] Microphone, please.

10 PRESIDING JUDGE FREMR: [13:56:53] I think your mic -- I can't hear you.

11 MR PACE: [13:56:57] My apologies.

12 PRESIDING JUDGE FREMR: [13:56:58] Now it's fine.

13 MR PACE: [13:56:59] As I mentioned, I will follow this Chamber's guidance in  
14 relation to the -- to the best exercise as well, the corrections exercise, so I will put  
15 certain portions of the witness's prior testimony to the witness and then ask if there  
16 are any clarifications.

17 PRESIDING JUDGE FREMR: [13:57:13] All right.

18 MR PACE: [13:57:16]

19 Q. [13:57:17] Mr Witness, when we met last week you indicated a number of  
20 clarifications. Two of these clarifications relate to the material the Prosecution seeks  
21 to admit. And I will refer you to the general paragraphs or areas where these  
22 clarifications were indicated.

23 If you could turn first to tab 1 of your binder.

24 For the record, this is DRC-OTP-0066-0002.

25 Mr Witness, if you could please read to yourself, so not out loud, paragraph 56 of this

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1 document, which is on page 13, and the ERN page is 0014.

2 Mr Witness, when you finish reading this, just raise your hand, please.

3 THE COURT OFFICER: [13:58:27] I'm sorry, would you like to have this document  
4 published? Could you please indicate in case you want to have the document  
5 published in the courtroom, just let us know.

6 MR PACE: [13:58:40] Thank you, court officer. None of these documents need to  
7 be published. If they would, they would be confidential anyway.

8 PRESIDING JUDGE FREMR: [13:58:56] And in advance those corrections, will  
9 they allow us to remain in open session or do you think they will require, those  
10 corrections, to move into private?

11 MR PACE: [13:59:06] I believe we can remain in open session, your Honour.

12 PRESIDING JUDGE FREMR: [13:59:11] All right then.

13 MR PACE: [13:59:13]

14 Q. [13:59:14] Mr Witness, you've indicated that you've read this paragraph. Is  
15 there anything you would like to correct in this paragraph?

16 A. [13:59:26] Yes, the last line where it is written that there is a number which is  
17 missing one figure, and the figure is one.

18 Q. [13:59:50] I don't believe that the clarification is clear on the record.

19 Your Honour, with your permission, may I read out the sentence where I believe that  
20 this to be necessary?

21 PRESIDING JUDGE FREMR: [13:59:59] Go ahead.

22 MR PACE: [14:00:01] I will read in French. (Interpretation) "I would like to  
23 specify that Paul Avochi Nyipir whom I have already mentioned was numero" - or  
24 number - "of the security."

25 (Speaks English) Is the addition to the number following this word "numero"?

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1 A. [14:00:53] Yes, that is correct.

2 Q. [14:00:54] So it should read (Interpretation) "Was --

3 A. [14:01:06] The missing number is "1."

4 Q. [14:01:09] I believe that is now clear.

5 Mr Witness, could you please turn to tab 8 of the binder, and this is

6 DRC-OTP-2054-0612. It does not need to be published.

7 Mr Witness, if you could please read again to yourself from page 32, line 25, and I

8 note the page numbers are at the top right-hand corner of the document. So I repeat,

9 from page 32, line 25 until page 33, line 10.

10 The witness has indicated he has read the excerpt.

11 Is there anything you would like to correct in this excerpt, Mr Witness?

12 A. [14:02:41] Yes, I would be delighted to correct the date. A question was put

13 to me stating a certain date in 2002. In my answer I refer to the month of May, but in

14 fact I should have referred to August, which is the month cited in the question.

15 Q. [14:03:10] Mr Witness, did you tell the truth in your prior recorded testimony

16 that we went through together today?

17 A. [14:03:27] Yes, the substance is truthful.

18 Q. [14:03:32] Did you provide accurate information, to the best of your

19 knowledge, in the prior recorded testimony we went through today?

20 A. [14:03:47] I can confirm that it was.

21 Q. [14:03:54] And is your prior recorded testimony an accurate record of your

22 recollection and knowledge of the events which you addressed in this testimony?

23 A. [14:04:13] Yes, that is the case.

24 Q. [14:04:19] Do you consent to your prior recorded testimony, the material

25 which we referred to today, being admitted into evidence in this case?

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1 A. [14:04:35] Yes, I give my consent.

2 Q. [14:04:45] Mr Witness, just to be clear, other than the two corrections I referred  
3 to, is there anything else which you would like to correct in this prior recorded  
4 testimony?

5 A. [14:05:03] No, I don't believe there are other corrections to be made in addition  
6 to the two we've just dealt with.

7 Q. [14:05:15] And do you consent to being questioned about the information in  
8 this material by the Legal Representatives of Victims, the Defence and the Chamber, if  
9 necessary?

10 A. [14:05:34] Yes, I consent.

11 MR PACE: [14:05:39] Your Honours, at that stage I request the admission into  
12 evidence of this witness's prior recorded testimony, including the associated material  
13 which we went through today, and to summarise, these are five transcripts and two  
14 documents referred to in those transcripts and the specific paragraphs which I  
15 mentioned from two statements, together with seven documents referred to in these  
16 paragraphs. I've already referred to the ERNs of these documents on the record  
17 today, including the paragraphs we seek to admit. I don't propose to repeat the  
18 ERNs again unless necessary.

19 PRESIDING JUDGE FREMR: [14:06:16] I don't think that is necessary.

20 Defence, so I understood, Defence, that the opposition is that you are objecting those  
21 two, use and admission of two documents, to be brief, that are contained in tab 21 and  
22 22; am I correct?

23 MR BOURGON: [14:06:34] That is correct, Mr President. I would just like to add  
24 one further information.

25 It is our respectful submission, Mr President, that when the Chamber will deliberate

1 on this issue, it is required to look at the documents and see what the Defence could  
2 have done with such documents in the time provided due to their format and due to  
3 their contents, what it was possible to do and also what will be possible for the  
4 Chamber to do with such documents once they are admitted. Thank you,  
5 Mr President.

6 PRESIDING JUDGE FREMR: [14:07:10] I can confirm that the Chamber is, because  
7 we even had some preliminary deliberations, so we are aware of the character and  
8 content of both documents, the two-page document handwritten by witness and then  
9 five-page political declaration.

10 All right, so allow me now just to confirm whether our preliminary conclusions  
11 remain the same with my colleagues.

12 (Trial Chamber confers)

13 PRESIDING JUDGE FREMR: [14:08:04] So our ruling is that all those documents  
14 specified gradually by Mr Pace are admitted into evidence in accordance with  
15 Rule 68(3) as a further Prosecution exhibit.

16 And two additional points: First one concerning document ERN  
17 DRC-OTP-2054-1086, because the Chamber noted that one answer given by witness at  
18 page 1111, from lines 19 to 21, is partly illegible. It's further noted that this answer is  
19 also contained at the very end of this transcript, but it is currently redacted from the  
20 item. So to ensure that the record contains all relevant evidence from Witness P-14,  
21 the Prosecution is instructed to lift the redaction applied to the witness's answer as  
22 reproduced at page 1168. This lesser redacted version of the transcript is hereby  
23 admitted.

24 And now just one question, Mr Pace have you mentioned also, or did you also tender  
25 document DRC-OTP-0159-0441?

1 MR PACE: [14:10:02] No, your Honour, I have not, mindful of the Chamber's  
2 decision in which you deferred the admission of this document until the Prosecution's  
3 supplementary examination.

4 PRESIDING JUDGE FREMR: [14:10:13] Exactly. You are right. So I was just -- I  
5 would like to, I wanted to assure myself that it was not part of the documents you  
6 have tendered.

7 And as concerns objections, two objections made by Defence, we, I have to agree that  
8 in fact it's -- it is violation of our protocol, but as we said many times before it should  
9 be exceptional, but in case of any violation we should -- we have always to adjudicate  
10 what impact such a violation had. It's not automatic that any violation means,  
11 especially in the area of admission, that it means that admission of such a document  
12 is -- should be a violation or should mean prejudice to the non-calling party.

13 And in this case, in fact we shared arguments presented by Prosecution that, taking  
14 into account the extent of document, the character, because, as I said, we made  
15 acquaintance ourselves with the content of documents and we don't see real prejudice  
16 for the Defence in case of admission. Also having bear in mind the time, even if  
17 shorter than should be, but still sufficient time for Defence to take note of those  
18 documents.

19 Now we can move on. Mr Pace, please you have the floor.

20 MR PACE: [14:12:03] Thank you, Mr President. And I will now conduct the brief  
21 supplementary examination as authorised by this Chamber.

22 Q. [14:12:14] I will be referring to the binder provided to the Chamber and the  
23 parties and participants in order to ask certain questions. I'll provide the ERNs and  
24 the specific page and line or paragraph references for the information to which I'll be  
25 referring. And since this information is in the binders, there is no need to call it up

1 in the courtroom. And I will first refer to the document at tab 7 of the binder. And  
2 now for this exercise, Mr Witness, there is no need for you to refer to the binder  
3 unless necessary. And this is DRC-OTP-2054-0429.

4 PRESIDING JUDGE FREMR: [14:13:01] Mr Bourgon.

5 MR BOURGON: [14:13:01] Thank you, Mr President. I would just like to ensure  
6 that we are in the same page with the Prosecution concerning the procedure to be  
7 followed during its supplementary examination.

8 For us a binder was provided to the witness, but that binder should be now taken  
9 away from him, once these documents have been admitted, because it is a normal  
10 examination. And referring to any parts of these documents should only take place  
11 if there's a need for memory refreshing or if there's a need for the witness to be  
12 declared hostile.

13 And other than that, the material should not be referred to and should be taken away  
14 from the witness so that we have his real evidence.

15 He has seen it all during the past two weeks, so I don't think there should be an issue  
16 of memory refreshing. Thank you, Mr President.

17 PRESIDING JUDGE FREMR: [14:13:55] Mr Pace, do you agree?

18 MR PACE: [14:13:59] Not fully, Mr President. The documents in the binder have  
19 now been admitted into evidence in this case. I'll be referring to information in this  
20 information which is now evidence. I will be quoting from parts of it. As I said I  
21 will give precise references so that the Defence and everyone else may follow. And  
22 should the witness need to refer to this document, since this is information already in  
23 evidence, the procedure is not the same as with non-68(3) witnesses, so he should be  
24 allowed to consult such information. The purpose of a supplementary examination,  
25 as the Defence has also argued in its response to this and other applications, is to

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1 clarify and build upon information in these documents that are admitted. Those are  
2 our submissions.

3 PRESIDING JUDGE FREMR: [14:14:46] Mr Bourgon.

4 MR BOURGON: [14:14:46] Well, Mr President, I fully disagree with my colleague.

5 There is one part of the examination of this witness which was conducted now where  
6 references were brought to the attention of the witness and he was able to make  
7 clarifications. Those arise from his preparation session.

8 And even that, at the beginning, the Chamber will recall was not authorised, but to  
9 try and make things easy, it's a good thing, so we showed him these paragraphs  
10 where he wants to make a correction and he did.

11 As to supplementary examination, to show him his statement is inappropriate  
12 because it is leading the witness. What we want is the information coming from the  
13 witness.

14 Now a difference should be made, Mr President, between a document -- if it is an  
15 exhibit, a normal exhibit, then of course it can be shown to the witness. If it is a  
16 statement or if it is his evidence, that should not be shown to him because then we  
17 would be leading him.

18 So even though it's part of the case doesn't mean that we can show the witness his  
19 own statement and say now tell us more.

20 Thank you, Mr President.

21 PRESIDING JUDGE FREMR: [14:16:01] We will decide on case-by-case basis. It  
22 depends what the document, would be intended to be shown to the witness and also  
23 on the circumstances.

24 So please now, I think it's no need to take it out, but please close it, Mr Witness, put it  
25 aside and then we will decide in case of something definitively to, for example, to

1 refresh his mind and so on. So please for the moment close it, and as soon there will  
2 be such a need or such a proposal from Prosecution, we will give floor to Defence and  
3 we will decide on case-by-case basis.

4 Now, Mr Pace, please proceed.

5 MR PACE: [14:16:46] So for the benefit of those in the courtroom, I will be  
6 referring to DRC-OTP-2054-0429, from page 62, line 12, until page 63, line 3.

7 Q. [14:17:04] Mr Witness, in this part of your prior recorded testimony you stated  
8 that you saw children being trained at the UPC headquarters in Bunia.

9 PRESIDING JUDGE FREMR: [14:17:14] Excuse me, Mr Pace. I see Mr Bourgon  
10 on his feet.

11 Mr Bourgon.

12 MR BOURGON: [14:17:20] Mr President, with all due respect for my colleague,  
13 this is exactly what we're referring to. The supplementary examination is not meant  
14 to put a paragraph to the witness and then to ask him to say more.

15 They have additional questions, then they could ask the question in a non-leading  
16 manner. You can't read a paragraph and then ask the witness to comment upon it.  
17 This is completely leading, Mr President. This is the statement that was provided by  
18 the witness. He is familiar with his statement. He has reviewed the statement. In  
19 that respect, during supplementary examination, he is in no other -- no different  
20 position from a normal witness when the time comes for a supplementary  
21 examination.

22 So we should not change the way we have been doing the -- treating the Rule 68(3)  
23 witnesses at this point in time.

24 If the Prosecution has -- ask question, they can ask their question in a non-leading  
25 manner, ask for their information and leave it at that. That will be the proper

1 procedure.

2 PRESIDING JUDGE FREMR: [14:18:23] Mr Bourgon, allow me --

3 MR BOURGON: [14:18:24] It's not changed in the Rules (Overlapping speakers)

4 PRESIDING JUDGE FREMR: [14:18:25] -- allow me question from my part.

5 I believe that we will agree on one fact, that a calling party has to refer to some part of  
6 the testimony, not just put question in isolation. So how they should refer? I  
7 believe -- I agree with you that it maybe shouldn't take extensive part of his testimony,  
8 but if they want to put some supplemental questions to some facts they should refer  
9 to those facts, or am I wrong?

10 MR BOURGON: [14:18:54] Mr President, the way it should be done is, first of all, it  
11 should be fully open, without reference to the text. That's the way it should be done.  
12 Now, for -- I agree with you to the extent that "You spoke about child soldiers," then  
13 you ask your open question. That's it. Nothing more. Not "On this page you said  
14 child soldiers were wearing boots that were purchased in Uganda and now can you  
15 tell us more." That's completely different.

16 So the reference to bring the witness to - to provide the answer that the Prosecution is  
17 looking for should be, "In your testimony you addressed the issue of child soldier. I  
18 have one question for you," then put the question in a non-leading fashion.  
19 I think this is the way to do it, Mr President, and that's the way we have been doing it.  
20 So I'm not making anything different now than we've been doing since the beginning  
21 of this case. Thank you.

22 PRESIDING JUDGE FREMR: [14:19:47] All right. So please Mr Pace, put this  
23 question, rephrase it a bit because really I agree that the question shouldn't, in fact,  
24 contain the answer you would like to get from the witness.

25 MR PACE: [14:19:59] Mr President, with your leave, may I make one submission

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1 in response to the Defence on this?

2 PRESIDING JUDGE FREMR: [14:20:05] Go ahead.

3 MR PACE: [14:20:06] Yes, I note that in terms of how things have been done before.

4 The way I intend to proceed, I haven't been allowed to even ask the question yet, it's

5 fully compliant with the manner in which we've proceeded with previous witnesses,

6 in particular, for example, P-877, in transcript 109. And I am essentially copying the

7 same format. I haven't asked my question yet. It will be an open question. I will

8 not lead the witness. I know that that is not permitted. And I just note that

9 proceeding in the matter which Mr Bourgon for the Defence has suggested would

10 require me to essentially elicit a lot of duplicative information which is now already

11 in evidence, it would also, as a consequence, require a lot more time for our

12 examination.

13 PRESIDING JUDGE FREMR: [14:20:50] All right. My understanding was that

14 Mr Bourgon even found the beginning of your question leading but, all right, put

15 your question and we will then see.

16 MR PACE: [14:21:02]

17 Q. [14:21:05] Mr Witness, I will repeat my question. Actually, I haven't got to

18 my question, I'll repeat what I said. So you've stated in your prior recorded

19 testimony that you saw children being trained at the UPC's headquarters in Bunia in

20 July and August 2002, and I will now quote from page 63, lines 1 to 3 where you

21 stated --

22 PRESIDING JUDGE FREMR: [14:21:31] Sorry. Mr Bourgon, anything new or are

23 you insisting on your (Overlapping speakers)

24 MR BOURGON: [14:21:34] Well, Mr President, you asked the Prosecution to

25 rephrase its question to at least bring the witness to an area, now he is quoting from

1 the statement which is exactly our objection.

2 This is inappropriate. It is only appropriate if it comes to corrections. And even for  
3 corrections we would have objected, but we want to proceed, so for corrections, he  
4 was authorised to bring the witness to look at his statement and say, Do you want to  
5 change "May" for "June" or "May" for "August"? The witness said, yes, I want to  
6 make corrections. Then we can bring the witness to a specific point because this was  
7 discussed before with the Prosecution. But now we want evidence. You  
8 have -- Mr President, the Chamber has all of the evidence, and we want  
9 supplementary evidence. Supplementary will not come from leading the witness.  
10 If we want the evidence to come from the witness, it must be open-ended questions,  
11 as we do for any witness.

12 The supplementary examination is not a way to circumvent the rules. If this witness  
13 would come under normal circumstances, this would not be allowed. Why would it  
14 be allowed now pursuant to Rule 68(3)? That's our objection, Mr President. And  
15 the Prosecution should not be able to quote unless there is an issue of memory  
16 refreshing, and there's a clear procedure to do that, Mr President. Thank you.

17 PRESIDING JUDGE FREMR: [14:23:04] Give me a second. I also consult my  
18 colleagues just to give common consensus on that. But before that, Mr Pace.

19 MR PACE: [14:23:13] Thank you, your Honour. Just to point out that what I am  
20 proposing to do and, again, I have not even reached my question, would be no  
21 different to what we do where a witness who is not a 68(3) witness says something at  
22 the beginning of his testimony and later on I say, "This morning you told us that X, Y  
23 and Z. About X, Y and Z, I would like to ask you the next question." So I don't see  
24 what the difference is, in view of the fact that this evidence, this information, is now  
25 in evidence. Thank you, your Honours.

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1 PRESIDING JUDGE FREMR: [14:23:43] All right. We will briefly deliberate.

2 And before we deliberate, I got message that in fact both speakers were speaking too  
3 fast. So next time, please, we all have to slow down.

4 (Trial Chamber confers)

5 PRESIDING JUDGE FREMR: [14:25:34] So since we will need a bit more time to  
6 really to come to general consensus between the Judges, we will break a bit earlier  
7 today now. So we break now. We will take our regular 30-minute break, and we  
8 will resume at 14.25, 5 to 3.

9 THE COURT USHER: [14:26:05] All rise.

10 (Recess taken at 2.26 p.m.)

11 (Upon resuming in open session at 2.59 p.m.)

12 THE COURT USHER: [14:59:51] All rise.

13 Please be seated.

14 PRESIDING JUDGE FREMR: [15:00:10] Before the break the Defence objected to  
15 the manner the Prosecution asked a question as a part of its supplementary  
16 examination of our witness.

17 According to the Defence, the Prosecution should not put part of the prior recorded  
18 testimony to the witness, as this would be leading.

19 The Chamber's position on that is as follows: The Chamber notes that the prior  
20 recorded testimony has been admitted and therefore becomes part of the testimony of  
21 this witness. Information contained in the admitted prior recorded testimony can  
22 therefore be put to him in order for the witness to elaborate on the topic concerned.

23 In this regard, the Chamber notes that during a witness's testimony, it's common to  
24 refer back to what the witness had said earlier during the testimony. The

25 Prosecution is therefore allowed to put a topic to the witness in order to ask follow-up

1 questions.

2 The evidence put to the witness should not be leading in respect of the subsequent  
3 question, and the question itself should not be leading, but the quotation from the  
4 admitted part of the statement is permitted.

5 Now, Mr Pace, you may proceed and please follow, observe our guidance.

6 MR PACE: [15:02:08] Thank you, your Honour.

7 Q. [15:02:11] Mr Witness, in your prior recorded testimony you said children  
8 were being trained at the UPC's headquarters in Bunia in July and August 2002 and  
9 you said, and I quote from page 63, lines 1 to 3 - I've referred to the ERN of the  
10 document before - "The person who was head of training who was at the core of  
11 Lubanga's army was a certain Bosco Ntaganda." End of quotation.  
12 What did you mean when you said that Bosco Ntaganda was at the core of Lubanga's  
13 army?

14 A. [15:03:03] Based on events on the ground, he was involved in not only  
15 supervising recruitment but also training per se; in other words, he based on the  
16 ability of the individual recruits what type of training they should undergo after their  
17 general training.

18 Q. [15:04:01] Perhaps it's an issue with interpretation, but I don't quite  
19 understand the way it's been interpret -- put into Transcend in English. The  
20 transcript, Mr Witness, says, "He based on the ability of the individual recruits what  
21 type of training they should undergo after their general training." Can you explain  
22 what this means, if it is what you said?

23 A. [15:04:46] To my knowledge, the recruits were of course trained to perform  
24 different functions, or not so much functions but different type of work that they were  
25 to carry out in the field. They became soldiers and then were trained to become

1 military intelligence officers or to become bodyguards to VIPs or to be further trained  
2 for combat fighting, possibly to become commanders at various levels or to extend  
3 their abilities in terms of military administration.

4 MR PACE: [15:05:56] Mr President, we could move into private session so that I  
5 could elicit the basis of knowledge for this information.

6 PRESIDING JUDGE FREMR: [15:06:04] Certainly.

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

8 (Private session at 3.06 p.m.)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Open session at 3.09 a.m.)

8 THE COURT OFFICER: [15:09:30] We're in open session, your Honour.

9 PRESIDING JUDGE FREMR: [15:09:31] Thank you.

10 You may proceed, Mr Pace.

11 MR PACE: [15:09:37] So I'm referring to DRC-OTP-2054-0429 from page 66, line 19,  
12 until page 68, line 4.

13 Q. [15:09:50] Mr Witness, in your prior recorded testimony you said you saw  
14 training of soldiers at UPC headquarters, and when you were asked whether you saw  
15 anyone senior there, you refer to people such as Richard Lonema, Daniel Litcha,  
16 Floribert Kisembo, and you said that there were others and it would be a very long  
17 list if you had to list them all. Could you tell the Court whether Bosco Ntaganda  
18 ever visited UPC headquarters when you were there.

19 A. [15:10:45] Bosco Ntaganda visited the UPC headquarters, however, I did not  
20 personally see him there. Various soldiers and other personalities would indicate  
21 that his bodyguards were present.

22 Q. [15:11:15] Did you ever see his bodyguards there?

23 A. [15:11:28] Yes, of course I saw them. I was told those are the bodyguards of  
24 The Terminator and, yes, I saw them.

25 Q. [15:11:45] Before I ask this question, I remind you that if to answer it you need

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1 to move into private session, let us know.

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Private session at 3.12 p.m.)

8 (Redacted)

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1 (Open session at 3.15 p.m.)

2 THE COURT OFFICER: [15:15:29] We're in open session, your Honour.

3 PRESIDING JUDGE FREMR: [15:15:38] Thank you.

4 Mr Pace, please proceed.

5 MR PACE: [15:15:42]

6 Q. [15:15:42] In private session you just told us that Bosco Ntaganda was better  
7 known as Terminator in Ituri than by his own name. Do you know why?

8 A. [15:16:08] Well, the reason is simple. It was based on his actions in the field.  
9 What I mean is in relation to the work that he did as a military commander.

10 Q. [15:16:28] Earlier you told us that you saw Bosco Ntaganda's bodyguards at  
11 UPC headquarters. Were you able to assess how old these bodyguards were when  
12 you saw them?

13 A. [15:16:57] Yes, of course. Those who were pointed out as being his  
14 bodyguards were five persons, each between 13 and 18 years.

15 Q. [15:17:18] When you were at UPC headquarters, and you've mentioned that  
16 several other people including Bosco Ntaganda were there, did these people who  
17 visited know that child -- children were being trained there?

18 PRESIDING JUDGE FREMR: [15:17:49] Mr Bourgon.

19 MR BOURGON: [15:17:51] Objection, Mr President. How would he know what  
20 the other people know?

21 PRESIDING JUDGE FREMR: [15:17:58] Mr Pace, I have to say that I find some,  
22 you know, basis on the objection. What is your reaction?

23 MR PACE: [15:18:06] Yes, Mr President, if I may. If I know that someone has  
24 visited the ICC's premises, the one we are in, I can confidently state that they would  
25 have seen the flags in the lobby as they enter. The person who is at the stand as a

1 witness today has testified that he was at the headquarters at the same time as the  
2 people who I'm asking him about.

3 The Defence may cross-examine the witness on this issue later, but I submit that it is  
4 admissible.

5 PRESIDING JUDGE FREMR: [15:18:33] All right. Let's proceed. Let's try.

6 MR PACE: [15:18:39]

7 Q. [15:18:40] Would you like me to repeat my question, Mr Witness?

8 A. [15:18:51] Yes, please. That would be helpful.

9 Q. [15:18:56] You mentioned that when you were at UPC headquarters, several  
10 people were also there, including Mr Bosco Ntaganda. Did these people who visited  
11 at that time know that children were being trained there?

12 A. [15:19:25] Yes, they all knew.

13 PRESIDING JUDGE FREMR: [15:19:30] But now, please, Mr Pace, you should  
14 elaborate on that because they knew and we should know the basis for Mr Witness'  
15 conclusion on that.

16 MR PACE: [15:19:41] Certainly, your Honour.

17 Q. [15:19:43] Mr Witness, how did you know that these people, including  
18 Bosco Ntaganda, knew that children were being trained there?

19 A. [15:20:02] First of all, the people there were not blind. Furthermore, some of  
20 these prominent people whose names I have mentioned referred to the children, these  
21 children, and I can't imagine that Bosco Ntaganda could not see that his bodyguards  
22 that he had trained himself were children. He saw them and I saw them too. And I  
23 will repeat that the other prominent persons referred to children.

24 Q. [15:20:57] Did these prominent persons refer to the children with any  
25 particular term or terms?

1 A. [15:21:14] Yes, of course. The term that we would use in our part of the  
2 country when referring notably to child soldiers was the term "kadogo." That's how  
3 we called them, "the kadogo."

4 Q. [15:21:38] Did you hear anyone in the UPC use the term "kadogo"?

5 A. [15:21:52] Yes, of course. All of the UPC leaders who had bodyguards, all of  
6 them, and I'd like to emphasise that, had kadogos amongst their bodyguards and they  
7 referred to them in those terms each time that they would speak to those younger  
8 soldiers.

9 Q. [15:22:21] When these people used the term "kadogo," were they referring to  
10 children in a particular age range?

11 A. [15:22:42] Yes, that is absolutely the case. Given the etymology of that word,  
12 "kadogo," basically means small or, in fact, smaller, to be more specific with my  
13 translation. So, to answer your question, they were referring to those young soldiers  
14 who were young in age. To our minds, anybody who is aged 18 or under is a child.

15 Q. [15:23:26] Apologies. You mentioned that Bosco Ntaganda's bodyguards  
16 were five in number and they were aged 13 to 18. How do you know that this was  
17 their age range?

18 A. [15:23:51] Well, you need to remember (Redacted)  
19 (Redacted) I have the necessary experience to ascertain the age of children, or back in  
20 the day of school children. That's based on the experience that I have. Furthermore,  
21 your Honour, their clothes made it very clear that they were children. Furthermore,  
22 the weapons that they wore or bore were hanging. And as I said earlier, their faces  
23 were the faces of children of that age.

24 Q. [15:24:45] (Redacted) what are the ages of children  
25 who are in secondary school?

1 A. [15:25:04] Well, the ages ran from 11 to 12 years to 18 years.

2 Q. [15:25:12] You stated that the clothes made it very clear that they were  
3 children. What do you mean by that?

4 A. [15:25:29] Well, try to imagine a 13 year old boy who is wearing adult clothing  
5 like mine. Clearly you can see him and he looks practically comical. I can give you  
6 an example: The shirt sleeves were rolled a number of times. Similarly, the  
7 trousers, of course, they would wear them with a belt but, once again, the trousers  
8 were rolled up around the hips as much as possible. And that may them look  
9 comical.

10 Q. [15:26:15] From the bodyguards aged 13 to 18 who were with Bosco Ntaganda,  
11 could you tell us how many of these were under the age of 15?

12 A. [15:26:41] Based on my own estimate, based on what I saw, the three out of the  
13 five were aged between 13 and 15 years.

14 Q. [15:26:54] You mentioned that Bosco Ntaganda and the other people who  
15 visited UPC headquarters couldn't have missed the children there. To your  
16 knowledge, did Bosco Ntaganda raise any concerns about the fact that children were  
17 being trained there?

18 PRESIDING JUDGE FREMR: [15:27:21] Hold on, Mr Witness, before you respond.  
19 Mr Bourgon.

20 MR BOURGON: [15:27:25] Thank you, Mr President. The witness said that he  
21 never saw Bosco Ntaganda, so he certainly cannot answer whether Bosco Ntaganda  
22 raised any concerns about a situation.

23 PRESIDING JUDGE FREMR: [15:27:37] Mr Pace.

24 MR PACE: [15:27:38] Yes, your Honour. The witness has stated that and he has  
25 also provided the basis of his knowledge for the information he has provided about

1 Mr Ntaganda and where he was at the time. And again, this is a matter which is  
2 admissible evidence. If the Defence wishes to test it for its weight, it can do so  
3 during cross-examination.

4 PRESIDING JUDGE FREMR: [15:28:00] All right. Objection overruled.

5 MR PACE: [15:28:05]

6 Q. [15:28:06] Mr Witness, do you need me to repeat the question?

7 A. [15:28:17] No, not at all. My conclusion is based on the fact that I spoke with  
8 the UPC authorities who were located at the headquarters. And all of them had the  
9 same attitude. They were totally unconcerned by the fact that there were children  
10 amongst the ranks of soldiers.

11 So, based on that and the fact that it was Bosco who was responsible for the training  
12 of those children, one can draw that conclusion, he is the one who trained them, who  
13 deployed them, so I can only draw the logical conclusion that the children or the  
14 presence of children did not bother him at all.

15 Q. [15:29:22] I'm going to refer for the benefit of my colleagues and those in the  
16 courtroom to DRC-OTP-2054-0816 from page 25, line 20 until page 26, line 20.

17 Mr Witness, in this part of your prior recorded testimony you were asked whether  
18 you saw child soldiers in the UPC after 1 September 2002, and you referred to two  
19 children, you said one of them was a child in Commander Jérôme's headquarters who  
20 was about to be imprisoned. And I will quote what you said that this child said at  
21 this time from page 26, lines 13 to 16:

22 "No, Commander Bosco taught me that my weapon is my father, my mother, my  
23 brother, my sister, my wife. It's everything for me, and therefore I will not give up  
24 my weapon. If you want it, you will have to kill me first and then, then you will get  
25 my weapon." End of quotation.

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1 Mr Witness, did you hear this child say these words yourself?

2 A. [15:30:57] Of course I heard them myself. Of course I wasn't alone. The  
3 child said them in that way.

4 Q. [15:31:09] Who was the Commander Bosco that he was referring to?

5 A. [15:31:22] In that time Commander Bosco was still responsible for training of  
6 soldiers and afterwards of their deployment and all operations. Bosco at that time,  
7 too, was the sector commander for Mongbwalu.

8 MR PACE: [15:31:53] Your Honour, if we could move into private session for my  
9 next set of questions.

10 PRESIDING JUDGE FREMR: [15:31:59] Yes.

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

12 (Private session at 3.32 p.m.)

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- 25 (Open session at 4.12 p.m.)

1 THE COURT OFFICER: [16:12:56] We're in open session, your Honour.

2 PRESIDING JUDGE FREMR: [16:12:58] Thank you, court officer.

3 Mr Pace, please proceed.

4 MR PACE: [16:13:04]

5 Q. [16:13:05] Mr Witness, earlier today you told us that all commanders in

6 Lubanga's army had kadogos. Are you aware of commanders other than

7 Bosco Ntaganda having kadogos with them?

8 A. [16:13:39] Of course. I said it earlier. All of the high personalities in the

9 UPC who had bodyguards had at least one kadogo amongst their bodyguards. So

10 Bosco Ntaganda was not the only one to have minors amongst his bodyguard. I

11 could, for instance, cite Daniel Litcha, Lonema himself, Thomas Lubanga, Jérôme

12 Kakwavu, Salumu, Tiger One, Salongo, et cetera. They were almost enumerable.

13 All of them, in fact.

14 Q. [16:14:31] Earlier, you told us that the guards with Bosco Ntaganda were aged

15 between 13 and 18. Were any of the guards with these other commanders you've

16 mentioned under the age of 15?

17 A. [16:15:00] Well, perhaps to underline what I have said, all of the higher

18 personalities had bodyguards, and amongst the bodyguards there were kadogo. So

19 this was the case for all those who had bodyguards. What I saw myself was that in a

20 group of bodyguards there would always be at least one kadogo.

21 Q. [16:15:31] Earlier, you told us that the expression "kadogo" was used to refer to

22 children under the age of 18. Of those children, now referring only to children under

23 the age of 15, were there such children among the bodyguards?

24 A. [16:16:05] There were, but not in the case of everyone. One saw kadogos

25 particularly in the case of the military leaders and not the civil leaders.

1 Q. [16:16:21] Other than Bosco Ntaganda, which, if any, senior leaders in the UPC  
2 had children under the age of 15 in their guards?

3 A. [16:16:41] Kisembo, who was always present at the UPC headquarters in  
4 July-August 2002. Jérôme, he had some. Salongo, who came on a number of  
5 occasions to Aru, and he always had a number of kadogo behind him, with him. I  
6 also recall Commander Alex Munyalizi who had bodyguards who included kadogo.  
7 I don't know if you want me to list the names of all of the commanders I knew.

8 Q. [16:17:42] There is no need, Mr Witness. I'm changing subjects. Mr Witness,  
9 based on your experience and your knowledge of the UPC, how did soldiers within  
10 the UPC treat non-Hema, non-Gegere civilian women?

11 A. [16:18:13] It's unfortunate to have lived through certain events. For example,  
12 this is something which remains engraved in my memory because I saw this woman  
13 suffering. (Redacted)

14 (Redacted)

15 MR PACE: [16:18:53] I'm sorry to interrupt, but since we're getting into specific  
16 details, we should move into private session.

17 And I ask that the last few words of his response are redacted.

18 PRESIDING JUDGE FREMR: [16:19:08] All right. Court officer, let's move into  
19 private session.

20 (Private session at 4.19 p.m.)

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15 (Open session at 4.36 p.m.)  
16 THE COURT OFFICER: [16:36:57] We're in open session, your Honour.  
17 PRESIDING JUDGE FREMR: [16:37:14] Thank you.  
18 Mr Pace, please proceed.  
19 MR PACE: [16:37:17] I will be referring to DRC-OTP-2054-0612 from page 42, lines  
20 10 to 17, and from page 44, line 22 to page 45, line 18.  
21 Q. [16:37:38] Mr Witness, in your prior recorded testimony you stated  
22 Parfait Ngona, who worked at the public prosecutor's office, did whatever he could to  
23 get rid of his colleagues who you referred to as Jajambu, and you mentioned certain  
24 examples of non-native members of the public prosecutor's office and judiciary in  
25 Bunia who were replaced.

1 Were the non-natives or Jajambu members of the judiciary the only professionals who  
2 were replaced at the time?

3 A. [16:38:43] If I have understood your question well, the question -- if I've  
4 understood the question well, you want to know if all the non-natives or  
5 non-originales were replaced or not; is that -- is that your question?

6 Q. [16:38:57] In your prior testimony you referred to examples of non-originales  
7 from the judiciary being replaced. Did this happen also in other professions?

8 A. [16:39:21] Yes. Well, straight away in teaching, and it's still the case today.  
9 That has remained the case. That's a fait accompli. In teaching, all the  
10 non-originales of Ituri and furthermore, it was more or less hidden, all the teachers  
11 who weren't Gegere or Hema were quite simply replaced. You can still today go to  
12 all the schools in Bunia, and I'll give an example Nyakasanza school, you will find  
13 almost only Gegere, Hema teachers there. That wasn't the case before this event.

14 Q. [16:40:06] When did this event that you're referring to, the changing of  
15 teachers, depending on ethnicity, start?

16 A. [16:40:30] Well, more precisely, in August 2002, after the UPC took power in  
17 Bunia.

18 Q. [16:40:43] And who, if anyone, decided that this should take place?

19 A. [16:40:59] I remember a recommendation that was almost an order that  
20 Lonema had issued for the attention of Kabukura. Kabukura was responsible for  
21 education at provincial level, a Hema. Richard Lonema had asked him to go to the  
22 schools and physically count the teachers present and confirm them in their post.  
23 And here I give you the name of Richard Lonema. That's what I saw. (Redacted)  
24 (Redacted) And afterwards Thomas Lubanga, through his minister of  
25 education, continued to do the same thing.

1 Q. [16:42:06] Other than members of the judiciary and teachers, were other  
2 non-originaires replaced?

3 A. [16:42:24] Well, I can talk to you the chef de quartier of the town of Bunia.  
4 The chef de quartier were also replaced. I can also mention the army if you want.  
5 Well, the UPC controlled the army, so they were the ones who could -- they could  
6 decide whether to put somebody in a post or not, but the fact is that non-originaires  
7 were never in a command position, not one that I know.

8 PRESIDING JUDGE FREMR: [16:42:53] Mr Pace, kindly -- gentle reminder last  
9 three minutes.

10 MR PACE: [16:43:02] Yes, your Honour, if I could move into private session for  
11 my last set of questions please.

12 PRESIDING JUDGE FREMR: [16:43:08] All right. Court officer, let's move into  
13 private session.

14 (Private session at 4.43 p.m.)

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- 15 (Open session at 4.49 p.m.)
- 16 THE COURT OFFICER: [16:49:55] We are in open session, your Honour.
- 17 PRESIDING JUDGE FREMR: [16:50:14] Thank you, court officer.
- 18 So, Mr Witness, thank you very much that you today patiently responded all
- 19 questions put to you. We will continue tomorrow 9.30. And it's my duty to remind
- 20 you that you must not in meantime discuss your testimony with anybody else. Is it
- 21 clear to you?
- 22 THE WITNESS: [16:50:43] (Interpretation) You can trust me, your Honour.
- 23 PRESIDING JUDGE FREMR: [16:50:47] We will.
- 24 Now, court officer, please escort Mr Witness out of the courtroom.
- 25 And the last point I would like to address is request of LRV. Ms Pellet, do you insist

1 having heard direct examination to your request as you made in writing?

2 (The witness stands down)

3 MS PELLET: [16:51:11] (Interpretation) Your Honour, Mohamed Abdou will  
4 address that.

5 PRESIDING JUDGE FREMR: [16:51:17] All right. Mr Abdou, go ahead.

6 MR ABDOU: We do, in fact, maintain our request for questioning this witness.

7 This is, in our respectful submission, an important witness and we believe there are  
8 many areas or many areas of questioning and lines of questioning that we can explore  
9 with this witness. So I believe we can -- we can do this early tomorrow. I believe I  
10 will need between 15 and 20 minutes to cover meaningfully what I intended to cover  
11 with this witness. Thank you, Mr President.

12 PRESIDING JUDGE FREMR: [16:52:03] Thank you, Mr Abdou.

13 Prosecution, do you have any position on that request?

14 MR PACE: [16:52:07] We have no objection to the request, your Honour.

15 PRESIDING JUDGE FREMR: [16:52:10] Thank you.

16 Defence, any position on that question?

17 MS GRANDON: [16:52:15] (Interpretation) Your Honour, the Defence is opposed  
18 to the questions mentioned in the request of the Legal Representatives of Victims  
19 being put. We oppose these questions quite simply because if you take the subject  
20 which is mentioned in the application, for the first part it is a subject which has  
21 largely been covered in the previous testimony of the witness.

22 If I take subject A (Speaks English) "The policy and various frames of recruitment  
23 within the UPC as well as the related consequences for child soldiers" (Interpretation)  
24 (Redacted) That's a subject  
25 which has been largely addressed at the time in the (Redacted)

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1 Now, the B subject (Speaks English) "The training provided to UPC child soldier and  
2 the condition within UPC/FPLC camps" (Interpretation) I would refer you there to  
3 (Redacted)

4 MR PACE: Your Honour.

5 PRESIDING JUDGE FREMR: [16:53:29] Sorry, Mr Pace.

6 MR PACE: [16:53:31] Simply to note that certain references which have been made  
7 had been made in private session before. Perhaps they're unnecessary if reference  
8 only to the specific ERN is made, then we can remain in open session.

9 PRESIDING JUDGE FREMR: [16:53:45] All right. So, Ms Grandon, please take it  
10 into account that we are in open session.

11 MS GRANDON: [16:53:49] Yes. (Interpretation) So where it concerns the  
12 second subject this is also a subject which has largely been addressed in (Redacted)  
13 and this is subject C (Speaks English) The disciplinary measure within the  
14 UPC/FPLC --

15 PRESIDING JUDGE FREMR: [16:54:01] (Redacted)

16 (Redacted)

17 (Redacted)

18 (Private session at 4.54 p.m.)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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- 1 (Redacted)
- 2 (The hearing ends in private session at 5.02 p.m.)