

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 Friday, 30 September 2016
8 (The hearing starts in open session at 11.03 a.m.)
9 THE COURT USHER: [11:03:46] All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE FREMR: [11:04:10] Good morning, everybody.
13 Court officer, please call the case.
14 THE COURT OFFICER: [11:04:26] Thank you, Mr President.
15 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
16 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
17 And for the record, we are in open session.
18 PRESIDING JUDGE FREMR: [11:04:41] Thank you, court officer.
19 Now appearances, please, starting with Prosecution.
20 MR PACE: [11:04:47] Good morning, Mr President, your Honours. For the
21 Prosecution today are Dianne Luping, trial lawyer; Rens van der Werf, assistant trial
22 lawyer; Nicole Samson, senior trial lawyer; and I am James Pace, assistant trial
23 lawyer.
24 PRESIDING JUDGE FREMR: [11:05:08] Thank you, Mr Pace.
25 Defence please.

1 MR BOURGON: [11:05:13] (Interpretation) Good morning, your Honour, your
2 Honours. Representing Bosco Ntaganda, who is present in the courtroom this
3 morning, Mr Jules Guillaumé; Mr Erik Cookson-Montin; Madam Dignité Bwiza; and
4 myself, Stéphane Bourgon. Thank you, your Honour.

5 PRESIDING JUDGE FREMR: [11:05:36] Thank you, Mr Bourgon.

6 And now, Legal Representatives of Victims, please.

7 MS PELLET: [11:05:43] (Interpretation) Thank you, your Honour. The former
8 child soldiers are represented by Mohamed Abdou and by myself, Sarah Pellet, with
9 the Office of Public Counsel for Victims. Thank you.

10 MR SUPRUN: [11:05:57] (Interpretation) Good morning, your Honours. The
11 victims of the attacks are represented by the Office of Public Counsel for Victims
12 Anne Grabowski and myself, Dmytro Suprun.

13 PRESIDING JUDGE FREMR: [11:06:09] Thank you.

14 Before I move to our regular agenda, we were informed that Mr Bourgon would like
15 to address the Chamber.

16 So, Mr Bourgon, you have the floor.

17 MR BOURGON: [11:06:21] Thank you, Mr President. I would like to address the
18 Chamber on two very brief issue.

19 The first issue being the fact that Mr Ntaganda is present this morning and that he
20 would like to address the Chamber for no more than 15 to 20 seconds, with the leave
21 of the Chamber, regarding his return to Court. That is the first issue.

22 PRESIDING JUDGE FREMR: [11:06:44] No problem, it's his right.

23 MR BOURGON: [11:06:47] The second issue, Mr President, has to do with the
24 timing or the scheduling of the cross-examination for Witness P-0030.

25 We are doing our best and I hope that the Trial Chamber is seeing what we are doing,

1 in order to accommodate the changes in the schedule, in order to proceed as quickly
2 as possible with the witnesses.

3 Yesterday I was surprised when my colleague from the Prosecution mentioned that
4 she was not aware of restrictions on meeting with Mr Ntaganda in the evening. I'm
5 not sure what her knowledge is of the situation, but it is not easy to secure meetings
6 in the evening and it is even more difficult to secure meetings during the weekend.
7 Yesterday we requested a meeting in the afternoon for today and it was granted so
8 we were able to meet with Mr Ntaganda today, hopefully, depending on what time
9 we finish today, for a couple of hours.

10 Then for the weekend, our request for a visit was refused due to staffing issues. Of
11 course maybe the Trial Chamber is able to do the necessary liaison with the Registry
12 to make this visit happen this weekend, if not, Mr President, we would like to delay
13 the cross-examination of the witness until Monday afternoon so that we have a
14 chance to meet with Mr Ntaganda on Monday morning for three hours from 9 to 12.
15 When we compare, Mr President, the issue of preparing for Witness P-30, with more
16 than nine days that the witness has been present in The Hague looking at his material,
17 we believe that asking for this three-hour additional session, which we were hoping
18 to do tomorrow afternoon, is reasonable in the circumstances. This is our request,
19 Mr President. Thank you.

20 PRESIDING JUDGE FREMR: [11:08:42] Thank you, Mr Bourgon. We will have
21 make some inquiry, yes, especially about possibility to allow you to meet Mr
22 Ntaganda during the weekend and then we will decide accordingly.
23 Mr Pace.

24 MR PACE: [11:09:10] Yes, Mr President, we of course would support the Defence
25 requests for the Chamber to, if possible, make the meeting happened this weekend.

1 We also know that we understand that we're starting today at 11 for the purpose of
2 facilitating a meeting this afternoon to enable such time.

3 And we also note that the Defence has been on notice of this witness, Witness P-0030,
4 testifying for a long time now. I believe his witness was originally meant to start
5 either today or Monday. I understand that perhaps Monday seemed more likely as
6 of late.

7 So for those reasons, of course depending on what the Chamber is able to do, we also
8 know that perhaps cross-examination could go ahead or, if not, it should be very little
9 delay.

10 PRESIDING JUDGE FREMR: [11:09:57] Thank you, Mr Pace.

11 So now it's time to give floor to Mr Ntaganda.

12 Mr Ntaganda, you have the floor.

13 MR NTAGANDA: [11:10:05] (No interpretation)

14 PRESIDING JUDGE FREMR: [11:10:19] Give me a second.

15 MR NTAGANDA: (No interpretation)

16 PRESIDING JUDGE FREMR: Hold on, Mr --

17 MR NTAGANDA: (No interpretation)

18 PRESIDING JUDGE FREMR: Mr Ntaganda, hold on please because at the moment
19 we don't have any translation.

20 THE COURT OFFICER: [11:10:55] Message for the Kinyarwanda booth: Are you
21 okay?

22 PRESIDING JUDGE FREMR: [11:11:11] So sorry for this inconvenience.

23 Mr Ntaganda, please start again because the beginning of your speech was not
24 translated to us, so please start from the beginning of your submission.

25 MR NTAGANDA: [11:11:32] (Interpretation) Your Honour, your Honours,

1 I would like to state that I'm very pleased to have been able to meet with my wife and
2 I would like to thank you because this last period was very difficult for me. The time
3 that I spent with my wife has enabled me to restore my situation and my health and
4 enable me to follow the trial in better condition and I hope that I will now be better
5 able to deal with my own defence. Thank you.

6 PRESIDING JUDGE FREMR: [11:12:08] Thank you, Mr Ntaganda. And just one
7 comment from my part, I guess I can speak on behalf of the whole Chamber, that we,
8 the Chamber, also tried to accommodate your request concerning this visit, but
9 I would like to highlight that we tried, and I guess we found a way, just within the
10 legal framework of the ICC and that your hunger strike had no influence on our
11 decision. So please have it mind for future.

12 Now, we can continue as we planned. And before we invite our witness into the
13 courtroom, I will have a few introductory remarks.

14 First of all, I would like to thank parties and participants for the flexibility in
15 accommodating the current scheduling arrangements, even if we see that there is still
16 some further issues that have to be solved, nevertheless, as the Chamber noted in its
17 email to the parties and participants yesterday, having heard the submissions of the
18 parties and having subsequently consulted with the VWU, the Chamber considered it
19 appropriate to waive the 24-hour period between witness preparation and the start of
20 the testimony of this Witness P-30, as stipulated at paragraph 29 of the witness
21 familiarisation protocol.

22 Relatedly, for the purposes of timing, as indicated in the Chamber's Rule 68(3)
23 decision for this witness, which was delivered orally on 27 September, the
24 Prosecution shall be permitted two hours to examine Witness P-30, which shall
25 include the process of seeking admission of the witness's material under Rule 68(3) as

1 well as its supplementary examination of the witness.

2 As foreshadowed by the Chamber yesterday, the Prosecution examination shall be

3 completed today and the witness cross-examination shall commence on Monday.

4 The Defence has been permitted eight hours for this purpose.

5 And now we will have to go into private session for the next part.

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

7 (Private session at 11.15 a.m.)

8 (Redacted)

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 (Open session at 11.16 a.m.)

24 THE COURT OFFICER: [11:16:46] We are back in open session, Mr President.

25 PRESIDING JUDGE FREMR: [11:16:48] Thank you, court officer.

Trial Hearing
WITNESS: DRC-OTP-P-0030

(Open Session)

ICC-01/04-02/06

1 (The witness enters the courtroom)

2 PRESIDING JUDGE FREMR: [11:17:42] Good morning, Mr Witness. Can you
3 hear me?

4 WITNESS: DRC-OTP-P-0030

5 (The witness speaks Swahili)

6 THE WITNESS: [11:17:49] (Interpretation) Good morning. I can hear you very
7 well. Thank you.

8 PRESIDING JUDGE FREMR: [11:17:54] Fine, Mr Witness. On behalf of this
9 Chamber, I would like to welcome you to the courtroom. You are called to testify in
10 the case against Mr Bosco Ntaganda and you will be soon asked questions both by the
11 Judges and lawyers in this courtroom.

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

17 Please testify just on that which you remember. Don't guess. Don't make things up.
18 There is nothing wrong in saying "I don't know" or "I don't remember". Do you
19 understand all this, Mr Witness?

20 THE WITNESS: [11:19:07] (Interpretation) Yes, I understand.

21 PRESIDING JUDGE FREMR: [11:19:09] All right. Mr Witness, protective
22 measures are put in place to ensure that your identity is not revealed to the public. It
23 means that the public cannot see your face and that your voice is being disguised so
24 that the public cannot recognize it. We will refer you only as "Mr Witness" and
25 ensure that your name and any other information that risks revealing who you are is

1 not broadcast to the public. Therefore, whenever you need to describe anything that
2 might reveal your identity we will do so in private session so that no one outside the
3 courtroom can hear your answer. Do you understand, Mr Witness?

4 THE WITNESS: [11:20:07] (Interpretation) Yes, I understand.

5 PRESIDING JUDGE FREMR: [11:20:09] Good. Now, Mr Witness, you will be
6 provided with piece of paper with the solemn undertaking. So please now I ask you
7 to make your solemn undertaking to tell the truth by reading out the declaration on
8 the piece of paper you have in your hands.

9 THE WITNESS: [11:20:39] (Interpretation) Okay. Solemn declaration. I
10 solemnly declare that I will state the truth, the whole truth and nothing but the truth.

11 PRESIDING JUDGE FREMR: [11:20:55] All right. Thank you. So now,
12 Mr Witness, you are under oath. And you need to be aware that it's an offence
13 within the jurisdiction of this Court to give false testimony. Do you understand that,
14 Mr Witness?

15 THE WITNESS: [11:21:20] (Interpretation) Yes, I understand.

16 PRESIDING JUDGE FREMR: [11:21:23] Very well. And finally a few practical
17 matters you should have in mind when giving your testimony. It's important to
18 speak into the microphone, to speak clearly and to speak at a slow pace. When a
19 question is asked please do not respond immediately but, rather, count in your head
20 to three and only then give your answer. This pause between question and answer
21 is essential for proper interpretation and recording. And if you have any questions
22 during your testimony or if you feel that you need a break, do not hesitate to let us
23 know by raising your hand. We will then give you the opportunity to speak. Have
24 you understood all that, Mr Witness?

25 THE WITNESS: [11:22:24] (Interpretation) Yes, I understand.

1 PRESIDING JUDGE FREMR: [11:22:27] Very well. It means that we can start
2 with your testimony.

3 So now I give floor to Prosecution. And I would like just to highlight that, and I'm
4 referring also to our previous decision, that the Chamber shall not require
5 Prosecution, you to show any video excerpts identified in the Prosecution's request
6 1488 to the witness in order to seek their admission.

7 So now you may proceed pursuant to Rule 68(3).

8 QUESTIONED BY MR PACE:

9 Q. [11:23:13] Good morning, Mr Witness. We've already met but I will
10 introduce myself again, I am James Pace, and today I'll be asking you questions on
11 behalf of the Office of the Prosecutor. Before I start I wanted to ask you that if you
12 don't understand any of my questions, raise your hand or let me know and I will do
13 my best to clarify.

14 MR PACE: [11:23:40] Mr President, I will follow the procedure which we have
15 been following in this Chamber in relation to witness for whom Rule 68(3)
16 applications have been granted in principle.

17 PRESIDING JUDGE FREMR: [11:23:53] All right.

18 MR PACE: [11:23:55] And since my first questions are of an identifying nature, I
19 request that we move into private session.

20 PRESIDING JUDGE FREMR: [11:24:03] Certainly.

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

22 (Private session at 11.24 a.m.)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0030

(Private Session)

ICC-01/04-02/06

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Page redacted – Private session

Trial Hearing
WITNESS: DRC-OTP-P-0030

(Private Session)

ICC-01/04-02/06

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10 (Open session at 11.28 a.m.)

11 THE COURT OFFICER: [11:28:44] We're in open session, Mr President.

12 PRESIDING JUDGE FREMR: [11:28:51] Thank you.

13 Mr Pace, please proceed.

14 MR PACE: [11:28:58] If I could ask the court usher to provide the witness the
15 binder that I -- I understand the witness already has the binder. And just to clarify
16 for the record, the binder provided to the witness is identical to that provided to the
17 Chamber, the parties and the participants. However, we have removed any
18 documents which the Prosecution does not seek to admit pursuant to Rule 68(3).

19 Q. [11:29:27] Mr Witness, if you could first please look at the documents at tabs 1
20 to 4 of this binder.

21 MR PACE: [11:29:41] And while the witness looks through these documents, I will
22 state the ERNs: DRC-OTP-2054-2951, 2054-3902 -- I correct myself, 3092, 2054-3272
23 and 2054-3469. And since the parties, the participants and the Chamber have copies
24 of this material, there is no need to call up any of these records, any of these
25 documents on to our screens, and the same will apply to the other documents I'll be

Trial Hearing
WITNESS: DRC-OTP-P-0030

(Open Session)

ICC-01/04-02/06

1 referring to today.

2 THE WITNESS: [11:30:46] (No interpretation)

3 MR PACE: [11:30:56] I have not received interpretation of the witness's last words.

4 THE WITNESS: [11:31:08] (Interpretation) I can see the document in English.

5 THE INTERPRETER: The Swahili booth indicates that there was a technical problem
6 and they were not able to turn on the microphone.

7 MR PACE: [11:31:20]

8 Q. [11:31:21] Yes. I note that under each of tabs 1 through 4 there are the
9 documents in both English and French. Have you been able to have a look at the
10 French versions of these four documents?

11 A. [11:31:58] Yes, I can see that there is a document in French.

12 Q. [11:32:05] Do you recognize these documents?

13 A. [11:32:17] (Redacted)

14 (Redacted)

15 (Redacted)

16 Q. [11:32:40] Yes, those are the documents. Do you recognize the documents?
17 Have you seen them before?

18 A. [11:33:03] Yes, I recognize this document and I have already read through it
19 during the preparatory phase.

20 Q. [11:33:10] And do you recall as captured in these documents --

21 PRESIDING JUDGE FREMR: [11:33:14] Mr Bourgon.

22 MR BOURGON: [11:33:15] We are in public session, Mr President. There are
23 some mentions that are being made of certain (Redacted).

24 THE COURT OFFICER: [11:33:35] I do confirm that we are in open session.

25 PRESIDING JUDGE FREMR: [11:33:39] So --

Trial Hearing
WITNESS: DRC-OTP-P-0030

(Open Session)

ICC-01/04-02/06

1 MR PACE: [11:33:43] Yes, your Honour, I believe a redaction request is being
2 made, and (Redacted) myself.

3 PRESIDING JUDGE FREMR: [11:33:53] All right. So let's proceed.

4 MR PACE: [11:33:55]

5 Q. [11:33:56] Mr Witness, do you recall swearing an oath in the documents that
6 you just looked at, without specifying anything else?

7 A. [11:34:20] Yes, I do.

8 Q. [11:34:21] Are you the contents of these documents true and accurate to the
9 best of your knowledge?

10 A. [11:34:41] Yes, it corresponds to the truth.

11 Q. [11:34:48] And do you recall that, as stated in these documents, you were
12 shown a number of video excerpts and you were asked questions and you provided
13 information about them?

14 A. [11:35:13] Yes, I do remember.

15 Q. [11:35:18] And do you recall being given an opportunity over the last two
16 weeks to review certain videos?

17 A. [11:35:34] Yes, I do remember. I finished viewing those videos yesterday.

18 Q. [11:35:49] Mr Witness, could you please next look at the documents at tabs 5, 7
19 and 8 of your binder.

20 For the record, the ERNs of these documents are DRC-OTP-0151-0583, 0151-0640 and
21 0151-0645. I also note for the record that the specific parts of these documents which
22 the Prosecution seeks to admit are noted at items 5, 7 and 8 of the Prosecution's list of
23 items which the Prosecution requests to be given -- to be marked for identification.

24 Mr Witness, do you recognize these three documents?

25 A. [11:37:09] Yes, I recognize these documents. Do you want me to mention

Trial Hearing
WITNESS: DRC-OTP-P-0030

(Private Session)

ICC-01/04-02/06

1 them in private session? (Redacted)

2 (Redacted)

3 MR PACE: [11:37:34] Your Honour, perhaps it's best to move into private session.

4 PRESIDING JUDGE FREMR: [11:37:39] Court officer, let's move into private

5 session. And redact the last part of the answer.

6 (Private session at 11.37 p.m.)

7 (Redacted)

8 (Redacted)

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10 (Redacted)

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14 (Redacted)

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Trial Hearing
WITNESS: DRC-OTP-P-0030

(Private Session)

ICC-01/04-02/06

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Page redacted – Private session

Trial Hearing
WITNESS: DRC-OTP-P-0030

(Private Session)

ICC-01/04-02/06

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- 17 (Redacted)
- 18 (Open session at 11.46 a.m.)
- 19 THE COURT OFFICER: [11:46:34] We're in open session, Mr President.
- 20 PRESIDING JUDGE FREMR: [11:46:37] Thank you, court officer.
- 21 Mr Pace, please proceed.
- 22 MR PACE: [11:46:43] When we were in private session the witness already
- 23 confirmed that the prior recorded testimony which we went through today was true
- 24 and accurate to the best of his knowledge.
- 25 Q. [11:46:56] Mr Witness, you can put the binder aside for now.

Trial Hearing
WITNESS: DRC-OTP-P-0030

(Open Session)

ICC-01/04-02/06

1 Perhaps the court usher can take the binder away even.

2 Thank you, court usher.

3 Mr Witness, do you consent to your prior recorded testimony and to the material that
4 we have referred to today being admitted into evidence?

5 A. [11:47:41] Yes. If you need to, please do so. All I can tell you is that the
6 content of the document is accurate. So if you want to adopt it, you are welcome to
7 do so.

8 Q. [11:48:12] And do you consent to being questioned about the information in
9 this prior recorded testimony by the representatives for Bosco Ntaganda and the
10 Chamber, if necessary?

11 A. [11:48:29] Yes. I agree.

12 MR PACE: [11:48:49] Your Honours, at that stage, I request that the prior recorded
13 testimony and associated material of this witness be admitted into evidence.

14 We've sent an email this morning and we have asked that we will be seeking to mark
15 for identification the Prosecution's list of items. And in this list of items the material
16 which the Prosecution seeks to admit is listed at numbers 1 to 5, 7 to 24 and 26 to 29.
17 If the list of items is marked for identification, then there would be no need for me to
18 repeat the ERNs and, indeed, repeat the specific minutes from every video which we
19 seek to admit.

20 PRESIDING JUDGE FREMR: [11:49:34] Court officer, is this proposal convenient
21 to you?

22 Defence, two issues. First of all, you would be fine with this way how to proceed;
23 and second one, whether you have any objection any admission of documents
24 specified by Mr Pace?

25 MR BOURGON: [11:50:05] We agree with the procedure and we have no objection,

Trial Hearing
WITNESS: DRC-OTP-P-0030

(Open Session)

ICC-01/04-02/06

1 but there is one observation that needs to be made at this point.

2 In the list of objections to the documents that we sent to the Chamber this morning we
3 referred to one video exhibit which we -- which we did not object to initially, but
4 when we responded to the Rule 68(3) application, but after further looking at this
5 exhibit, we do oppose it, which means that there would be part of the transcript
6 which will have to be removed if our objection is granted. So I don't think -- for the
7 moment I think we can leave it as it is and if our application is granted to remove one
8 of the videos then, of course, we would have to remove part of the transcript.

9 PRESIDING JUDGE FREMR: [11:51:02] All right.

10 Mr Pace.

11 MR PACE: [11:51:04] Yes, your Honour, I don't think we can move ahead for now.
12 I think we perhaps should deal with this issue for now. If the Defence has an
13 objection to an item we can deal with it, so that, in this case, it's not only the part of
14 the transcript that is at play but also the video itself.

15 PRESIDING JUDGE FREMR: [11:51:19] Yes, because we would like, or the
16 Chamber would like to decide at this stage according 68(3) about documents tendered
17 by Mr Pace, so please go ahead and present your concrete objection to this excerpt
18 you have mentioned. Is it possible to make it in open session?

19 MR BOURGON: [11:51:41] I believe so, Mr President, but the -- of course the
20 objection has to do with the excerpt, so the transcript that is now being sought is
21 related to the excerpt, but I can certainly do the objection right now.

22 We sent our list this morning in which we objected to the admission and the use of
23 three of the proposed videos.

24 The three of them, in terms of on the list of the Prosecution, are found in item number
25 3 on the Prosecution -- item number 23, sorry, on the Prosecution's list, as well as item

1 number 25.

2 So those are the two that we object to.

3 Now, one of the these two, just to be sure that I'm not -- I'm giving the right
4 information, is that the video which is item number 23 -- just looking for my notes
5 here. If I can have just one quick minute, Mr President, please.

6 PRESIDING JUDGE FREMR: [11:53:18] All right.

7 (Pause in proceedings)

8 MR BOURGON: [11:54:10] Thank you, Mr President. As mentioned earlier, we
9 object to the use and admission of three of the videos extracts.

10 The first ones have to do with number 67 on the Prosecution's list, as well as number
11 70, 70 on the Prosecution's list. Now, I note that the video, which is 67, the item 67, is
12 a longer excerpt which includes item number 23, which is what I was trying to clarify
13 so to make sure that there is no confusion. So 23, 67 and 70 are the excerpts to which
14 we have an objection.

15 Now the basis for our objection is that these video excerpts display images which are
16 from 2004. And although (Redacted)

17 (Redacted), it's our submission that any evidence dated from 2004, which is beyond
18 the time frame of the charges laid against Mr Ntaganda, that any use of this material
19 by the Trial Chamber would first be not relevant, and that's our first submission, and
20 even if the Trial Chamber was to find some relevance because the topic, namely child
21 soldier could have some relevance, it is our submission that any relevance that the
22 Trial Chamber can find in these excerpts is far outweighed by the potential prejudice
23 to the accused.

24 Our first objection of course is relevance and second objection is probative value, if
25 any, far outweighed by the potential prejudice to the accused.

Trial Hearing
WITNESS: DRC-OTP-P-0030

(Open Session)

ICC-01/04-02/06

1 So it is our submission that those three video excerpts should not be used with the
2 witness. In addition, of course that the transcript of prior recorded testimony of the
3 accused, should the Trial Chamber grant our application, then the relevant
4 questioning put to the witness in respect of these three excerpts should also be
5 removed from the prior recorded testimony.

6 So to make it short, it's three video excerpts, three transcripts, three translations and
7 the related questioning in the prior recorded testimony. Thank you, Mr President.

8 PRESIDING JUDGE FREMR: [11:57:10] Thank you, Mr Bourgon.

9 Mr Pace your position.

10 MR PACE: [11:57:16] Yes, your Honour, I can be brief because these objections
11 have been made and overruled before. And I will refer to the Chambers decision
12 number 1181, at paragraph 14, where the Chamber has said and I quote:

13 "The Chamber considers that the fact that a document may fall outside of the
14 temporal scope of the charges does not, as a matter of principle, automatically result
15 in it lacking relevance or probative value. Rather, a case-by-case assessment is
16 required."

17 And your Honours echoed this decision in oral decisions, for example, in transcript 96
18 more recently.

19 And in particular, in relation to the specific videos addressed by the Defence, these
20 videos are relevant despite the fact that they are, and we agree that they are outside
21 the temporal scope of the charges, however reference in these videos is made to the
22 temporal scope of the charges, they are referring at times backwards, and that is not
23 the only reason why they should be admitted.

24 The Defence has not explained how this admission or the issues would be unduly
25 prejudicial. The witness is here, the Defence can cross-examine about whatever

1 information is elicited in regards to these videos, so in that regard there is no
2 prejudicial value. The Defence may also call other evidence should it wish to do so.
3 And, your Honour, therefore, as I said, I'll be brief, in line with your previous rulings
4 and also the fact that these videos are relevant as I mentioned to -- as I've mentioned
5 in our submissions, or written submissions, to issues such as the knowledge of the
6 accused and specific crimes with which he has been charged, these videos should be
7 allowed to be used and admitted if necessary.

8 PRESIDING JUDGE FREMR: [11:58:54] Mr Bourgon, any further reaction?

9 MR BOURGON: [11:58:56] Of course, Mr President. My colleague says that the
10 videos are relevant but does not explain why the videos are relevant, does not say
11 why events taking place in 2004 are relevant for the Trial Chamber's assessment of the
12 charges laid against Mr Ntaganda for a period prior to this. The Prosecution refers
13 to two decisions from the Trial Chamber, which mentions a case-by-case analysis, and
14 of course we have -- we did not mention these decisions, we are fully aware of those
15 decisions rendered by the Chamber.

16 However, the Trial Chamber has also in other decisions decided not to accept
17 evidence that was post the temporal scope of the accusations laid against
18 Mr Ntaganda.

19 For us we've made this argument before and I will make it again. Events preceding
20 the temporal scope might have some something to do with the mens rea of the
21 accused, might have something to do in terms of what happened later. However,
22 events that take place post temporal scope of the charges laid against Mr Ntaganda
23 have no bearing on what was his mens rea before or during the period of the charges.
24 It's a very big difference.

25 Now my colleague says that there's no prejudicial value. Well, we believe,

1 Mr President, that the prejudicial value is indeed very high. If we are going to
2 charge someone for a period of 12 months and then use what he did later to assess
3 what he did previously, if that is not prejudicial, Mr President, then I cannot see what
4 else could be more prejudicial, regardless of what is in there, because now we are
5 talking about events that had -- took place later.

6 So even if there are references to what was said to what happened before, that's not
7 the issue. Mr Ntaganda is charged for a very specific period. So what is the use of
8 these documents? And if the Chamber finds any relevance because we're talking
9 about the same topic and if we do find some probative value, it is far outweighed by
10 the prejudice. Thank you, Mr President.

11 PRESIDING JUDGE FREMR: [12:01:37] I think it would be up to us to evaluate
12 whether it's -- really creates any prejudice.

13 Mr Pace, could you be, but absolutely brief, even more specific about this relevance of
14 those documents.

15 MR PACE: [12:01:52] Yes, your Honour. With regard to the first video, I won't
16 waste the Court's time and repeat the precise submissions we made in our Rule 68(3)
17 application, which are at paragraph 32, to which the Defence did not respond, but, in
18 brief, this video feature is a speech by the accused, it features children who, in the
19 Prosecution's submissions, are under the age of 15, and it goes to issues, as I
20 mentioned before, therefore, to the accused's knowledge of the crimes and also to
21 certain other aspects relevant to the charges during the temporal scope, since, as I
22 referred to before, it took place in 2004, however reference is made to an earlier period,
23 including during the temporal scope of the charges.

24 The second video has not been shown to the witness yet, so I don't feel at liberty to
25 comment in detail about it. I will say now, and I can make further submissions in

Trial Hearing
WITNESS: DRC-OTP-P-0030

(Open Session)

ICC-01/04-02/06

1 the witness's absence should be so required, that it's -- we're faced with a similar
2 situation. It is also from 2004, however reference in that video is made to a prior
3 time, including during the temporal scope of the charges.

4 And just two final points. I know that my Defence counsel pointed out that I'm
5 referring to the Chamber's jurisprudence, I do so in an effort to try to be expedient.
6 The specific arguments made with regard to the Defence agreeing that the scope of
7 the charge -- prior to the temporal scope of the charges might be relevant but not after
8 has specifically been rejected. And that is again T-96, page 73. And I again reiterate
9 that the Defence has not explained what prejudice would come of such admission in
10 this case.

11 PRESIDING JUDGE FREMR: [12:03:26] Thank you.

12 Mr Bourgon I think I don't -- but okay but very briefly because we would like to
13 deliberate and decide and move further on.

14 MR BOURGON: [12:03:35] Mr President, my colleague has a very different
15 conception of the word "prejudice" than we have on the Defence side.

16 If we are going to judge Mr Ntaganda because he has knowledge in 2004 of
17 something that happened in 2003, well that is prejudice. If we are going to find
18 Mr Ntaganda guilty for child soldier because we see a child soldier if that was the
19 case beside him in 2004 and we're going to use this to say, well, there must have been
20 in 2003, that is definitely, Mr President, prejudice. My colleague should know this.
21 And that is our submission, Mr President. Thank you.

22 PRESIDING JUDGE FREMR: [12:04:14] All right. We will -- no further
23 submissions. We will now deliberate silently with my colleagues.

24 (Trial Chamber confers)

25 PRESIDING JUDGE FREMR: [12:05:00] Mr Pace, before I decide I would just, to

Trial Hearing
WITNESS: DRC-OTP-P-0030

(Open Session)

ICC-01/04-02/06

1 assure myself, that those all three items objected by Defence haven't been submitted
2 yet because at the moment you submit in fact tabs 1 to 11; am I right?
3 So our position is that we will in fact deal with -- that we will deal with three items in
4 the same way like we indicated we will deal with video excerpt 14 so we'll decide
5 about these objections after supplementary examination.

6 MR PACE: [12:05:43] Yes, your Honour. I just note that indeed one of the video
7 excerpts is one of the video excerpts which the Chamber has already admitted in
8 principle, and that is item 23 on the list of items, which we are seeking to admit
9 pursuant to 68(3) and, again, which the Defence did not previously oppose and which
10 your Honours have already admitted in principle.

11 PRESIDING JUDGE FREMR: [12:06:04] Still I think we have to remain consistent,
12 so take this example you mentioned as an exception to our previous decision in the
13 light of objections made. We will decide together all those, in fact at the moment,
14 four items.

15 It's item 25 that has -- as we indicated, item 23, 67 and 70. Otherwise we mark for
16 identification list of items presented by Prosecution. And we also admit into
17 evidence, according Rule 68(3) those documents specified in the previous part of the
18 hearing by Mr Pace.

19 Now Mr Pace, please proceed.

20 MR PACE: [12:06:57] Yes, your Honour. One further related issue is to note that
21 we request, pursuant to the Judge's order, that the transcripts and translations of the
22 videos be marked for identification pending the parties' agreement as to the
23 finalisation of it. And for the record, those are items 30 to 66 on the list of the items.
24 And one further question, your Honour, in relation to this specific video which your
25 Honours have deferred decision on, if I were not able to now refer to the witness's

1 prior recorded testimony in relation to this video and if I were required to show the
2 excerpts again, we would be making an application for additional time. And in this
3 regard, your Honour, I request that we be permitted to lead the -- to refer the witness
4 to his prior recorded testimony on this video in order to establish whether or not it
5 should be admitted at a later stage.

6 PRESIDING JUDGE FREMR: [12:07:50] All right.

7 Mr Bourgon.

8 MR BOURGON: [12:07:53] Two quick points. First of all, I would like to make
9 sure that we are on the same page regarding the items. The item number 23 that we
10 referred to, it is our understanding that this is included, it's part of item number 67, so
11 67 is just a longer excerpt which includes 23 in it. And this excerpt was discussed in
12 the prior recorded testimony.

13 One quick comment regarding the -- regarding the translation issue, accuracy of
14 translation. The Trial Chamber will be glad to note that we are almost done with our
15 verification and we should be able to very quickly attest to the accuracy of these
16 translations so that we can admit for sure in a very short time. Thank you.

17 PRESIDING JUDGE FREMR: [12:08:55] Mr Pace.

18 MR PACE: [12:08:56] With regard to the overlap noted by Defence counsel, I note
19 that the videos at items 23 and 67 are indeed the same videos. And there is a slight
20 overlap in terms of the minutes indicated. However, for the Rule 68(3) application, it
21 is only the minutes at item 23 which the Prosecution seeks to admit. It is indeed the
22 Prosecution's intention to use the same video and other parts of it during its
23 supplementary examination. Some of those parts have been covered in the Rule 68(3)
24 application and others are new.

25 PRESIDING JUDGE FREMR: [12:09:31] All right. So now we can move on. And

Trial Hearing
WITNESS: DRC-OTP-P-0030

(Private Session)

ICC-01/04-02/06

1 as we said, as to transcripts and translations, as you already indicated, our consistent
2 approach that we use to MFI them and then if there are no objections we can admit
3 them. So now please proceed.

4 MR PACE: [12:09:55] And during my supplementary examination, which I will
5 now begin, I'll be referring to the tabs in the binder for the benefit of those in
6 courtroom. Again, the items need not be called up on to the screen, they're also
7 confidential. And for my first set of questions, your Honour, I request to move into
8 private session.

9 PRESIDING JUDGE FREMR: [12:10:15] All right. And I forgot to say that, yes,
10 some -- but corresponding additional time will be given to you in order to explore
11 those three items.

12 Now let's move to open session -- private session, sorry.

13 (Private session at 12.10 p.m.)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0030

(Private Session)

ICC-01/04-02/06

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Open session at 12.14 p.m.)

24 THE COURT OFFICER: [12:15:03] We're in open session, Mr President.

25 PRESIDING JUDGE FREMR: [12:15:08] Thank you.

Trial Hearing
WITNESS: DRC-OTP-P-0030

(Open Session)

ICC-01/04-02/06

1 Mr Pace, please proceed.

2 MR PACE: [12:15:12] I will be referring to the document at tab 1 of the binder, and
3 that is DRC-OTP-2054-2951, from page 19, line 11, until page 24, line 12.

4 Q. [12:15:29] Mr Witness, in this part of your prior recorded testimony you stated
5 that you frequently visited Thomas Lubanga's residence in Bunia, which was near the
6 elementary school of EPO, Bunia ville. You mentioned that this residence comprised
7 of several buildings, and that Floribert Kisembo and Bosco Ntaganda frequently
8 visited this residence. I will now quote from page 24, lines 3 to 12.

9 "Question: Kisembo and Bosco, were they on their own when they came or were
10 they accompanied?

11 Answer: They had their own bodyguards with them. If it was Kisembo who came,
12 he came with his own bodyguard, and if it was Bosco, he came with his bodyguard.
13 Each of them came with their own bodyguards.

14 Question: Did you see those bodyguards?

15 Answer: Yes, I saw them.

16 Question: According to you, how old were those bodyguards?

17 Answer: Different ages, I would say. Some were 13, some were 15, and some were
18 older."

19 Now, Mr Witness, you stated that some of the bodyguards with Floribert Kisembo
20 and Bosco Ntaganda were 13, some were 15, and some were older. Focussing only
21 on those who were 13, were these bodyguards with Floribert Kisembo, or with Bosco
22 Ntaganda, or were they with both of them?

23 A. [12:17:25] As regards the bodyguards, I would say that there was a
24 commander in charge of deploying those bodyguards, in other words, he would say
25 to the bodyguards which commander they should go work for. And this was done,

1 this deployment was done on a daily basis. When the commanders went out, the
2 bodyguards went with them.

3 Q. [12:18:04] In your prior recorded testimony, you stated that among the
4 bodyguards with Bosco Ntaganda and Floribert Kisembo, some were aged 13 and
5 some were aged 15 and others were different ages. Could you tell the Chamber, if
6 you know, the bodyguards who were aged 13, who did you see them with?

7 A. [12:18:42] Well, if you look at the pictures, you can see that there were
8 bodyguards accompanying the commanders and those bodyguards were in the same
9 vehicle. For example, Floribert Kisembo or the president, any time they went out,
10 they had their bodyguards in the same vehicle at the back of the vehicle.

11 PRESIDING JUDGE FREMR: [12:19:25] Mr Bourgon.

12 MR BOURGON: [12:19:27] Thank you, Mr President. I'd like to refer to the
13 transcript on page 33, and this is at line 14, when my colleague -- it's the lead to my
14 colleague's question. Now, the manner in which my colleague is proceeding, of
15 course, he is mentioning a topic and then he is referring to the transcript. However,
16 when introducing the topic, my colleague said at line 14, "In this part of your prior
17 recorded testimony, you stated that you frequently visited Thomas Lubanga's
18 residence in Bunia," and also said later at line 17 that "Floribert Kisembo and
19 Bosco Ntaganda frequently visited this residence." I don't recall that the word
20 "frequently" stems from the transcript. This was added in the lead to the question.
21 Mr President, now that we have a procedure set where we can refer to the transcript,
22 to avoid any confusion, I suggest that we go straight to the transcript and he can just
23 lead directly to the part he wants and not put a leading information that does not
24 match the transcript. Thank you.

25 PRESIDING JUDGE FREMR: [12:20:50] Mr Pace, I think it's fair what Mr Bourgon

1 proposed. If it's no problem just to refer directly to the part of the transcript, I think
2 there's no need to make any introductory remarks which could be found as leading.

3 MR PACE: [12:21:06] Your Honour, I did not understand the Defence objection to
4 be one that I led the witness. I would state --

5 PRESIDING JUDGE FREMR: [12:21:13] You know, it was about the word
6 "frequently," whether it was right, you know, evaluation of the previous testimony or
7 not. So just to say, "I will refer to" and just to directly focus on concrete part of the
8 text and that's it.

9 MR PACE: [12:21:28] Yes, your Honour, but just to clarify our position, I provided
10 the pages and lines that I was paraphrasing from. I can quote, and I'm quoting from
11 the lines that I provided, and the question is: "When you say you went frequently,
12 how many times, roughly speaking, did you go there? Two or three times a week."
13 Before that, the previous answer was, "I went there frequently when he," referring to
14 Thomas Lubanga, "was in Bunia."
15 So I don't believe that I have misquoted in any way. So if the Chamber prefer it for
16 me to read out the entire excerpts word for word, again, that would take a lot more
17 time.

18 PRESIDING JUDGE FREMR: [12:22:02] Mr Bourgon.

19 MR BOURGON: [12:22:03] Mr President, the issue is not whether the witness went
20 frequently, it's that in the question he said that Kisembo and Ntaganda went
21 frequently. That's the "frequently" that is not found in the transcript. That's the one
22 we are objecting to.

23 PRESIDING JUDGE FREMR: [12:22:19] You know, I don't see any harm if we
24 really just focus on concrete part of the text because the witness had a chance to read
25 those texts the last few days. So I think there is really no need to make some

1 summary of the previous part of testimony. So please just focus on the concrete part
2 and then you can just quote, and that's it.

3 MR PACE: [12:22:41] Certainly, your Honour. I would not like for there to be any
4 misunderstanding on the record, and to make our position clear, I can again quote
5 directly from the passage I referred to, and the question is: "You said that there were
6 military people who came quite often. Do you remember any names of these people
7 who came frequently? And the answer is, "Yes, there were the officers, Floribert
8 Kisembo, he was the chief of staff, Bosco Ntaganda, the officers; in other words, all of
9 them, all of them that came."

10 The question is clearly referring to people who visited frequently.

11 PRESIDING JUDGE FREMR: [12:23:14] All right. Point taken. Move on.

12 MR PACE: [12:23:18]

13 Q. [12:23:25] Mr Witness, I will repeat the question that I had asked you earlier.
14 And I refer to the fact that you have previously stated that you saw Bosco Ntaganda
15 and Floribert Kisembo at Thomas Lubanga's residence in Bunia with bodyguards.

16 PRESIDING JUDGE FREMR: [12:23:43] Mr Bourgon.

17 MR BOURGON: [12:23:44] Mr President, I thought the Chamber had agreed with
18 the fact that he would read a quote and then ask a question. Now again he's
19 paraphrasing. So he can go straight to the quote that he's referring to and ask his
20 question. I think that's much better and it avoids any confusion. Thank you.

21 PRESIDING JUDGE FREMR: [12:24:02] Mr Pace, you know, it will be there, you
22 know, even you look at the source of prospective objections whether you paraphrased
23 it correctly or not. I don't see the need that any question that you want to put
24 requires to give some extensive quoting. If you just focus on the part concerned,
25 which could be one, two sentences, I don't see any need to - so the risk of

1 paraphrasing that could provoke some objections, sometimes founded, sometimes not
2 founded, I would like to avoid that.

3 MR PACE: [12:24:36] I would like to make two submissions on this, your Honour.
4 In reference to the specific question that I have asked, I actually did read the specific
5 question and answer in relation to where I'm asking questions and I repeat, it's from
6 page 24, lines 3 to 12. And because that is crucial information, I did read word for
7 word.

8 I also note, your Honour, that this witness's prior recorded testimony is extensive.

9 Although I do not, I agree with your Honours, need to refer to extensive portions of it,
10 I do need to direct the witness to the relevant parts of it to lay the foundation for my
11 questions. To do otherwise would require me to take a very long-winded approach
12 which would require a lot more time. And I again repeat submissions I have made
13 previously, this is -- the approach that I am taking is fully consistent with the
14 approach that we have taken with, I believe, every single Rule 68(3) witness, so I do
15 not understand why there are objections being entertained about this specific
16 procedure.

17 PRESIDING JUDGE FREMR: [12:25:34] Mr Bourgon, no further submissions. But
18 the problem, I think the problem is clear. As soon as you make this introductory or
19 this reference summarising something before the quotation in a way that is not
20 precise and clear, then we will hear many further objections, which I think not
21 desirable. So I concur proceed in a way that, simply saying, that will not provoke
22 those objections. So there will be no doubt about the sense or impact of your
23 reference.

24 MR PACE: [12:26:11] Your Honour, I don't wish to belabour the point, but I
25 believe the objections were made. I proved that I did not in any way misquote the

Trial Hearing
WITNESS: DRC-OTP-P-0030

(Open Session)

ICC-01/04-02/06

1 information, so the fact that objections were even made which are unfounded should
2 not preclude me from proceeding in the most efficient manner.

3 PRESIDING JUDGE FREMR: [12:26:29] Let's not litigate more on this. I think I
4 was also clear. Please just follow my instruction and do it in a way that will be
5 absolutely precise, not allowing to any doubts or any, you know, objections.

6 MR PACE: [12:26:43] Certainly, your Honour.

7 Q. [12:26:46] I will repeat the lines which I quoted from page 24, lines 3 to 12:
8 "Question: Kisembo and Bosco, were they on their own when they came or were
9 they accompanied?

10 Answer: They had their own bodyguards with them. If it was Kisembo who came,
11 he came with his own bodyguard, and if it was Bosco, he came with his bodyguard.
12 Each came with their own bodyguards.

13 Did you see those bodyguards?

14 Yes, I saw them.

15 Question: According to you, how old were those bodyguards?

16 Answer: Different ages, I would say. Some were 13, some were 15, some were
17 older."

18 Now, Mr Witness, my question to you is, from the bodyguards who were 13 that you
19 saw at Thomas Lubanga's residence, were they with Floribert Kisembo or were they
20 with Bosco Ntaganda?

21 A. [12:28:04] You're asking me if I saw that, and when? Each of them went to
22 see the president, depending on the time that they were told to go. Bosco went there
23 as well as Kisembo, but when he left the UPC, he didn't go any more. It depended
24 on the times that were set for them. They would go see the president and they
25 would then leave with their bodyguards, with their escorts, the residence of the

1 president. The president would see one of the commanders one day and another the
2 other day. When there were meetings, that's when the president might meet with
3 several commanders at the same time.

4 Q. [12:29:16] Mr Witness, to clarify in case there's a problem with interpretation,
5 my question was not whether you saw them and when. You have previously stated
6 that you saw Bosco Ntaganda and Floribert Kisembo with bodyguards. What
7 I would like to know is how old were the bodyguards with Bosco Ntaganda.

8 A. [12:29:42] Some of them had the average age, others were older, and there
9 were also children. And there weren't many children.

10 Q. [12:30:06] How old were the children?

11 A. [12:30:11] It's difficult to evaluate the age, but if you show me a picture
12 I can -- that would help me. Some of them were 12, 13, 14, 15, and some of them
13 were 18 or even 25. And their task was to guard Bosco.
14 There was a Major Asimwe was an adult -- correction, an adult called Asimwe was 28
15 or 30. I think he was the person in charge of the bodyguards. He's the one who
16 appointed the various bodyguards to accompany the commanders and decide which
17 ones would stay back in the camp.

18 They had several tasks to accomplish, but each time a commander went out, this
19 individual who was in charge of the bodyguards decided who would go. Amongst
20 the 10 or 12 bodyguards, he would tell them which ones would go with the
21 commander in the vehicle.

22 Q. [12:31:45] Referring specifically to the guards with Bosco who you said were
23 12, 13 and 14, how were you able to assess that that was their age?

24 A. [12:32:18] A child is a child. Even as you look at the person, you can
25 determine that person's age. You see, we did not go to ask the families how old they

Trial Hearing
WITNESS: DRC-OTP-P-0030

(Open Session)

ICC-01/04-02/06

1 were, but if you look at the videos and you see children, you will be able to assess
2 what their ages are.

3 Q. [12:32:40] Again referring specifically to the children aged 12, 13 and 14, what
4 were these guards wearing when you saw them?

5 A. [12:33:06] They were wearing UPC military uniforms and sometimes they
6 carried rifles or guns.

7 MR PACE: [12:33:17] Your Honour, I believe that we are at the time scheduled for
8 the break for this morning.

9 PRESIDING JUDGE FREMR: [12:33:23] You are right, but because we lost a lot of
10 time by solving objections and also referring to other procedural issues, I would
11 rather continue till 1 o'clock, if there is no objections from the parties. Is it okay with
12 you?

13 MR PACE: [12:33:45] Certainly, your Honour, whatever you think best.

14 Q. [12:33:56] Mr Witness, you mentioned that the guards who were 12, 13, 14,
15 some of them were in uniform. Did the uniform fit them?

16 A. [12:34:20] Well, some of them had uniforms that fitted them because some of
17 the uniforms were small in size, but other children were wearing uniforms that did
18 not fit them, that were bigger, and so they used belts to wear such uniforms. Now,
19 as for the adults, there was no problem because their uniforms fitted, they had the
20 right sizes.

21 Q. [12:35:00] When you saw the children aged 12, 13 and 14, were you able to
22 observe how these children behaved?

23 A. [12:35:11] Quite often you would see them playing like young children and
24 from time to time come and share a few jokes with us and with other persons, and it
25 was clearly obvious that they were still very young, even by virtue of the content of

1 their discussions. One could say and see that they were children, not adults. They
2 would laugh and they would tease each other, and I think you would see that it was
3 very much like when children and friends play together and exchange or crack jokes
4 together.

5 Q. [12:36:24] Were you able to observe this with your own eyes?

6 A. [12:36:48] Yes, I saw that with my own eyes. They would play football, and
7 whenever I showed up on my motorbike, they wanted me to take them on a ride, but
8 I would say no. And I got to understand that they were children, children in
9 military service. But they were very obedient children when it came to their
10 commanders.

11 Q. [12:37:33] And from what you were able to observe from Bosco Ntaganda's
12 guards, were they male, female or both?

13 A. [12:38:04] In Langu, I saw a girl accompanying madam. She was a PMF, an
14 adult who must have been 18 or 19 years old. She was a PMF. But they didn't have
15 younger girls at that place. There were some boys there, but no girls of that age, that
16 is not too young, so to speak.

17 Q. [12:38:45] Who is the person you refer to as madam?

18 A. [12:39:04] When I talk about madam, I am referring to Afande Bosco's woman,
19 to his wife, the mother of his children, the wife of Afande Bosco.

20 Q. [12:39:21] What does the word "Afande" which you are using to refer to Bosco
21 mean?

22 A. [12:39:44] Afande is the senior commander, the person in charge, the highest
23 ranking officer, the senior officer.

24 Q. [12:40:02] And why did you use the term "Afande" for Bosco?

25 A. [12:40:29] Because he was a general, Afande is an honorary title. One could

1 not just call him Bosco. You would say to him, "Good morning, Afande Bosco," out
2 of respect and honour. It's an honorary title, just like Mzee. He used to be referred
3 to as Mzee Bosco as well. So you would address him as Afande Bosco or Mzee
4 Bosco.

5 Q. [12:41:03] Could you tell the Chamber what the word "Mzee" means?

6 A. [12:41:20] It's the same thing. Mzee refers to someone or a senior person, an
7 older or an elderly person, like a senior officer, someone who is above his or -- his
8 juniors. When you call someone "Mzee," you are actually saying that this person is
9 ranked higher than others. He is the one who has power over the troops. That is
10 the person who would be referred to as Mzee.

11 Q. [12:42:02] Did you hear anyone other than yourself refer to Bosco as Afande or
12 Mzee?

13 A. [12:42:26] Yes, that's his name. People always said, "We are going to Mzee's
14 place" or "to Afande's place." Now, every now and then he would invite someone
15 and then the person would be told "Come aboard, Mzee wants to see you. Put your
16 things together, Mzee wants to see you." That is the way people used to refer to him.
17 He had his men and people who were with him or on his side, as well as others who
18 were with Lubanga. But he was always surrounded by many, many people.

19 Q. [12:43:21] Before I move on to my next set of questions, in your previous
20 response you referred to PMF. Could you tell the Chamber what PMF means or
21 what it refers to?

22 A. [12:43:55] Well, I am not too sure what PMF stands for specifically, but one
23 thing is certain and that is that all the girls or females in the army were referred to as
24 PMF, whether they were adult or young children, young girls.

25 Q. [12:44:26] And I'm going to quote from tab 1 of the binder, from page 24, lines

Trial Hearing
WITNESS: DRC-OTP-P-0030

(Open Session)

ICC-01/04-02/06

1 13 to 15. The ERN is DRC-OTP-2054-2951. I repeat, page 24, lines 13 to 15:

2 "Question: As regards Kisembo and Bosco, you said that you saw them at the
3 residence. Did you also see them elsewhere outside the residence?

4 Answer: Yes. I came upon them elsewhere."

5 Mr Witness, in this information which you previously provided you said that you
6 saw Kisembo and Bosco elsewhere. Could you tell the Court where else you saw
7 Bosco?

8 A. [12:45:32] They did not meet often. They would arrive at the presidency at
9 different times, but they could meet every now and then by chance. You see, one
10 could come in, see the president, have a discussion with the president and then leave.
11 And then the other would arrive and do the same thing. But they did not meet often.
12 So I do not know whether it was possible for them to meet during meetings, and
13 maybe there are excerpts to that effect in the video. And if that were to be the case, it
14 must have been during a meeting.

15 Q. [12:46:25] Again, perhaps it's an error with the interpreters or a
16 misunderstanding. My question is where else did you, Mr Witness, see Bosco other
17 than at Thomas Lubanga's residence?

18 A. [12:47:01] I never saw Bosco and Kisembo together. I saw Bosco at his place
19 at Largu whenever I was invited to do my job. I saw him in Katoto as well. Since
20 he was the leader, the chief, he would come. But Kisembo also came from the UPC,
21 but he did not come to Thomas Lubanga's place often. He had created another
22 movement known as the UPC Kisembo, but it was dissolved shortly after its creation.

23 MR PACE: [12:47:50] Your Honour, if we could move into private session for my
24 next questions, please.

25 PRESIDING JUDGE FREMR: [12:47:55] Certainly.

Trial Hearing
WITNESS: DRC-OTP-P-0030

(Private Session)

ICC-01/04-02/06

- 1 Court officer, let's move into private session.
- 2 (Private session at 12.48 p.m.)
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Trial Hearing
WITNESS: DRC-OTP-P-0030

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0030

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0030

(Private Session)

ICC-01/04-02/06

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- 21 (Upon resuming in open session at 2.35 p.m.)
- 22 THE COURT USHER: [14:35:29] All rise.
- 23 Please be seated.
- 24 PRESIDING JUDGE FREMR: [14:35:55] Good afternoon, everybody.
- 25 Any change in appearances? I see some changes on Prosecution's part.

Trial Hearing
WITNESS: DRC-OTP-P-0030

(Open Session)

ICC-01/04-02/06

1 MR PACE: [14:36:06] Yes, your Honour. Ms Nicole Samson is no longer in the
2 courtroom.

3 PRESIDING JUDGE FREMR: [14:36:11] Thank you.

4 While -- or, as concerns Defence and Legal Representatives I see no changes, am I
5 right? Okay, no objections.

6 Before we move again to examination of our witness, as concerns the issue presented
7 by Mr Bourgon, I mean problems with Defence chance to meet Mr Ntaganda, I
8 understood that in the meantime there seem to be some progress, even if things are
9 not probably solved definitely yet, but Mr Bourgon could you just update us on that.

10 MR BOURGON: [14:36:51] Thank you, Mr President. We were contacted by the
11 Registry over the lunch break. We indicated that we were flexible any time tonight,
12 Saturday, Sunday and that the last attempt is to have a meeting here immediately
13 after the Court session as long as we are permitted to use a computer so that we can
14 play videos to Mr Ntaganda. So we would have a session until 7 or 7.30 tonight.
15 And we believe that this could be enough. The rest we could do over the phone.
16 Thank you.

17 PRESIDING JUDGE FREMR: [14:37:23] Very well.

18 So now let's move to the examination, as I said.

19 Mr Pace, you have the floor. And do you want to proceed in open or in private
20 session?

21 MR PACE: [14:37:31] I have a brief request, your Honour, which I can do in open
22 session.

23 PRESIDING JUDGE FREMR: For sure.

24 MR PACE: And your Honours, we seek your authorisation to provide the
25 transcripts and translations of certain videos, which I intend to play this afternoon, to

1 provide them to the interpreters. I note that the Defence has previously objected to
2 this practice, that is why we haven't done this before. And the reasons for providing
3 these -- these transcripts and translations is to ensure the accuracy of the
4 interpretation in view of the fact that the quality of the audiovisual material is not the
5 best. And indeed we refer to certain speeches by the accused and the admissibility
6 and relevance of these videos hinges upon the accuracy of it -- their interpretation.
7 We note that a similar procedure was adopted in the Katanga and Ngudjolo case, but
8 of course, your Honour, we're guided.

9 PRESIDING JUDGE FREMR: [14:38:33] Mr Bourgon.

10 MR BOURGON: [14:38:35] I wish my colleague would have come to me over
11 lunch, but, if I understand correctly, he will be asking the interpreters to interpret
12 what we hear on the video?

13 PRESIDING JUDGE FREMR: [14:38:47] But with some assistance of having written
14 transcriptions in their hands. It was my understanding.

15 MR BOURGON: [14:38:56] We have no problem, Mr President.

16 PRESIDING JUDGE FREMR: [14:38:58] Very well.

17 Okay. So please proceed, Mr Pace.

18 MR PACE: [14:39:05] Then if I may provide the transcripts and translations to the
19 court usher to distribute.

20 My first set of questions will not require interpretation because the first excerpt will
21 be played without sound.

22 PRESIDING JUDGE FREMR: [14:39:21] All right.

23 THE INTERPRETER: [14:39:24] Mr President, the interpreters would appreciate
24 copies as well.

25 PRESIDING JUDGE FREMR: [14:39:31] So please distribute those transcript to

Trial Hearing
WITNESS: DRC-OTP-P-0030

(Open Session)

ICC-01/04-02/06

1 interpreters.

2 In the meantime, Mr Bourgon.

3 MR BOURGON: [14:39:42] I'm -- just like to be clear as to what the procedure will
4 be.

5 The witness I believe can understand the video without the assistance of any
6 interpretation and we all have the transcript. Just to be sure what we're doing.

7 MR PACE: [14:40:01] No, your Honour, the transcripts and translations are being
8 provided to the interpreters so that they can more accurately interpret the video as we
9 hear it. Part -- yes.

10 PRESIDING JUDGE FREMR: [14:40:13] It was clear to me.

11 Mr Bourgon, any problem with that? It's just for the -- to assist interpreters. They
12 will anyway -- it's my understanding they will anyway interpret what they will hear,
13 but still, if there will be something unclear I can imagine that they will see the word in
14 writing and then compare with what they hear is --

15 MR BOURGON: [14:40:36] We have -- we have the transcript with us. We have a
16 translation with us. So we can all read it. We don't need the interpreters to
17 interpret something that we have in writing.

18 PRESIDING JUDGE FREMR: [14:40:48] Mr Pace.

19 MR PACE: [14:40:48] Your Honour, we defer to your judgment of course on this
20 matter. And you've -- you've expressed our position.

21 PRESIDING JUDGE FREMR: [14:40:59] (Microphone not activated). Oh, mic.

22 In such a case, I think the Chamber doesn't need really direct interpretation. If you
23 can just compare video with transcripts we do have in our binders.

24 But again, you know, I think we are making this issue more complex. As soon as
25 you will see that, for example, speech by somebody is really something that could be

1 relevant for us, that even -- because I -- the main problem is whether those excerpts
2 from 2004 could have some relevance for us, I think we can very soon, after one, two
3 sentences even to decide whether yes or not. So in my view, it's not issue of any
4 word on some, you know, translation depending on any word, I guess won't be
5 anything so complex that we really need absolutely precise translation of very
6 extensive text. Am I right? I think it will be -- though those videos anyway will be
7 relatively short.

8 MR PACE: [14:42:13] The longer excerpt that I intend to play runs for 15 minutes.
9 The other excerpts are much shorter.

10 PRESIDING JUDGE FREMR: [14:42:20] All right. So let's proceed this way.
11 I think we don't need translation through our headphones.
12 Mr Bourgon.

13 MR BOURGON: [14:42:40] I think I understand; the transcript is in French, that's
14 why the Prosecution wants it interpreted into English for the Judges.

15 PRESIDING JUDGE FREMR: [14:42:53] Oh.

16 MR BOURGON: Then we have no problem.

17 PRESIDING JUDGE FREMR: That is important issue. So, sorry, I have to
18 reconsider my decision.

19 MR BOURGON: [14:42:58] I just wanted to understand why we were doing this --

20 PRESIDING JUDGE FREMR: Now -- so now, yeah.

21 MR BOURGON: -- but the transcript is only in French.

22 PRESIDING JUDGE FREMR: [14:43:00] Sorry, so --

23 MR BOURGON: So there's no problem.

24 PRESIDING JUDGE FREMR: -- I am returning back and that is why we will need
25 English translation. So sorry for confusing all of you.

Trial Hearing
WITNESS: DRC-OTP-P-0030

(Private Session)

ICC-01/04-02/06

1 MR PACE: [14:43:06] Thank you. And thank you to Defence counsel for pointing
2 that out.

3 The video which I intend to show is the video which is item 67 on the Prosecution's
4 list of evidence -- list of items, rather, and that is DRC-OTP-0127-0064.

5 And your Honour, I propose to show the first excerpt from this video without sound.

6 And we can do so in open session. When it comes to asking the witness questions
7 about it, I will request to move into private session.

8 PRESIDING JUDGE FREMR: [14:43:46] All right.

9 MR PACE: [14:44:04] And if my Prosecution's colleague can be given the floor, we
10 will be playing it from our bench.

11 And the first timestamps are from 21.38 until 22.51. And as I said, this first excerpt
12 can be played without sound.

13 (Viewing of the video excerpt)

14 MR PACE: [14:46:15] And as I mentioned, your Honour, we could now move into
15 private session for the questioning.

16 PRESIDING JUDGE FREMR: [14:46:22] All right. Court officer, let's move into
17 private session.

18 (Private session at 2.46 p.m.)

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Trial Hearing
WITNESS: DRC-OTP-P-0030

(Private Session)

ICC-01/04-02/06

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17 (Open session at 2.49 p.m.)

18 THE COURT OFFICER: [14:49:23] We're in open session, Mr President.

19 PRESIDING JUDGE FREMR: [14:49:26] Thank you, court officer.

20 Mr Pace, please proceed.

21 MR PACE: [14:49:32]

22 Q. [14:49:32] Mr Witness, are you able to tell the Chamber when the scene that we
23 just viewed took place?

24 A. [14:49:52] That event took place at the Katoto football stadium. That's where
25 the meeting was to take place. Here you can see Afande's arrival. Everything else

Trial Hearing
WITNESS: DRC-OTP-P-0030

(Open Session)

ICC-01/04-02/06

1 was ready. They were waiting for Afande Bosco to begin the ceremony and when
2 it -- when he arrived, the ceremony began.

3 Q. [14:50:21] And do you know when this took place?

4 A. [14:50:36] I don't remember the date exactly. Perhaps it's on the video, but I
5 must say I don't remember the date.

6 MR PACE: [14:51:11] Your Honour, I note that, as the witness mentioned, the
7 video does contain a reference to the date and that date is in 2004. If the Chamber
8 wishes, we can play a part of that, of the video which states so, otherwise, that is just
9 for the Chamber's knowledge about that.

10 PRESIDING JUDGE FREMR: [14:51:28] I think it's fine with us. No need.

11 MR PACE: [14:51:31] And I would like to show the witness another excerpt from
12 this video and this time with sound, and that is from minutes 44.07 until 59.01.

13 Q. [14:51:48] Mr Witness, when you view this video and when you listen to it,
14 I would like you to pay attention and I will have some questions about it afterwards.
15 (Viewing of the video excerpt)

16 PRESIDING JUDGE FREMR: [14:52:23] We don't have any translation so far.

17 THE INTERPRETER: [14:52:27] Your Honour, the interpreters were not given the
18 transcript for this video.

19 PRESIDING JUDGE FREMR: [14:52:34] So according message from the
20 interpreters' booth, they were not provided with written transcript of this video.

21 MR PACE: [14:52:48] Yes, your Honours, we hope that we just provided this
22 transcript. It is the item number 68 on our list of evidence and it is the one bearing
23 the ERN DRC-OTP-0165-0276. That is the transcript. And the translation is
24 DRC-OTP-0165-0349.

25 PRESIDING JUDGE FREMR: [14:53:17] So are the interpreters now ready?

Trial Hearing
WITNESS: DRC-OTP-P-0030

(Open Session)

ICC-01/04-02/06

1 THE INTERPRETER: [14:53:37] Mr President, could we be given the timestamp
2 again for the benefit of the interpreters?

3 PRESIDING JUDGE FREMR: [14:53:43] Okay.

4 MR PACE: [14:53:48] May I be of assistance, your Honour?

5 PRESIDING JUDGE FREMR: [14:53:51] Sorry, I understood that they would like to
6 start again from the beginning.

7 MR PACE: [14:54:00] Shall I repeat the timestamps?

8 PRESIDING JUDGE FREMR: [14:54:04] Yes, yes.

9 MR PACE: [14:54:05] So the timestamps are from minute 44.07 until 59.01. In the
10 transcript this is from lines 525 until 677, and in the translation it is in lines 547 until
11 721.

12 PRESIDING JUDGE FREMR: [14:54:33] Thank you, Mr Pace.

13 Mr Bourgon.

14 MR BOURGON: [14:54:43] Thank you, Mr President. Can my colleague verify
15 the lines in the translation? I don't believe that in the French translation that these
16 lines correspond to this excerpt. These are the lines that are provided on your
17 document, but they don't match with the video.

18 MR PACE: [14:55:06] Your Honour, if I may have clarification from Defence
19 counsel.

20 Defence counsel, is this perhaps because the timestamps on the transcripts do not
21 match to the times?

22 MR BOURGON: [14:55:20] Indeed. We're provided with 547, line 547 to line 721,
23 and it says here that the time there would be 37.58.

24 MR PACE: [14:55:41] Indeed, Defence counsel is correct. The timestamps
25 represented on the transcript are incorrect. They are off by approximately five

Trial Hearing
WITNESS: DRC-OTP-P-0030

(Open Session)

ICC-01/04-02/06

1 minutes. When we made our Rule 68(3) application, we provided the transcript and
2 translation references which actually match up to the video being shown.

3 PRESIDING JUDGE FREMR: [14:56:00] So it is the main thing that now the
4 interpreters hopefully are provided with the correct part of the transcript, including
5 timestamps.

6 So, interpreters, could we start playing video?

7 THE INTERPRETER: [14:56:20] Mr President, we are not able to find the exact
8 document, but an ERN number and the timestamp would be useful.

9 PRESIDING JUDGE FREMR: [14:56:30] Mr Pace, have you heard? Please.

10 MR PACE: [14:56:34] The ERN number for the transcript is DRC-OTP-0165-0276.

11 The timestamp that I will be playing is from 44.07 until 59.01; however, as I have just
12 noted, the timestamps as they appear on the transcript are incorrect. The correct
13 lines for this transcript for the timestamps that we need are lines 525 until 677. I can
14 repeat the ERN for the translation if that assists.

15 THE COURT OFFICER: [14:57:28] Message for the interpretation booth: Would it
16 help if we publish the actual transcript?

17 THE INTERPRETER: [14:57:33] We do not have the French transcript. We only
18 have a Swahili transcript. Item number 68 in the booth is in Swahili.

19 MR PACE: [14:57:47] Yes, indeed. Item 68 is a transcript and it's meant for the
20 Swahili booth. Item 69 is a translation and it's meant for the French booth.

21 Your Honour, as the interpretation booth suggested, if it is possible to call up the
22 document, if the interpreters have access to the information on the screen.

23 PRESIDING JUDGE FREMR: [14:58:18] It would simplify things a lot, I guess.

24 THE INTERPRETER: [14:58:22] Your Honour, I believe I have found the
25 appropriate line.

Trial Hearing
WITNESS: DRC-OTP-P-0030

(Open Session)

ICC-01/04-02/06

- 1 PRESIDING JUDGE FREMR: [14:58:27] Okay, so bingo, so we can proceed.
- 2 THE COURT OFFICER: [14:58:31] The document will be displayed on the
- 3 evidence 1 channel then.
- 4 MR PACE: [14:58:43] May we proceed?
- 5 PRESIDING JUDGE FREMR: [14:58:45] I hope so. It seems so.
- 6 MR PACE: [14:59:02] Your Honour, I just note that we're waiting for the transcript
- 7 to show up on evidence 1.
- 8 THE COURT OFFICER: [14:59:46] If you could please let us know which page of
- 9 item 69 we need to publish, that will go faster.
- 10 MR PACE: [14:59:55] I don't have a page reference in hands. I have the lines.
- 11 From item 69, it's lines 547 and following.
- 12 PRESIDING JUDGE FREMR: [15:00:45] Mr Bourgon.
- 13 MR BOURGON: [15:00:46] I believe the page number is 0374, if that can be of
- 14 assistance.
- 15 PRESIDING JUDGE FREMR: [15:00:52] Thank you, Mr Bourgon.
- 16 THE COURT OFFICER: [15:00:54] The French transcript are now published on the
- 17 evidence 1 channel.
- 18 PRESIDING JUDGE FREMR: [15:00:59] Very well. So we really can proceed.
- 19 Please, Mr Pace.
- 20 MR PACE: [15:01:04] We will start the video now.
- 21 (Viewing of the video excerpt)
- 22 THE INTERPRETER: [15:01:14] (Interpretation of the video extract)
- 23 "We're going to be welcoming our major general. He's going to be saying a few
- 24 words, and when he has finished, we will welcome the Minister of Defence, who will
- 25 also say a few words.

1 We will then go on to the parade that we have prepared for you today. Please come
2 forward.

3 Thank you very much for giving me the floor once again. Indeed, I will have a few
4 words to say, but first of all I would like to thank the fourth brigade for organising
5 this event.

6 And I would like to say a few words and I hope that you will all listen carefully. His
7 Excellency, the Minister of Defence of the UPC/FPLC, the Minister of Energy, of the
8 Mines and the Energy, the administrator of the Djugu territory, the deputy
9 administrator, of all of the guests who are present here today, I believe that on
10 numerous occasions we have marched together and attended ceremonies that have
11 been organised by our soldiers, our military, and when we invite you, you have
12 always come to see us.

13 I believe that this is different, this is different because we've organised this in LARGU.

14 This is an initiative on the part of the Chief of Staff of the battalion.

15 The planification of the battalion that I wanted to organise, this little get-together, as
16 you can see, the soldiers are not all that numerous and I believe that they do represent
17 many others because they are from various different regions and they are involved in
18 other work. Those who have been able to come to represent the soldiers of the
19 battalion, the others are from various other detachments in order to ensure the
20 security of various areas, and that is why you will see that the soldiers are not very
21 numerous.

22 One other day perhaps you will be called again to come and attend an event or a fair
23 organised by the brigade and that will be the organisation of those who are out in the
24 field, and I believe that tomorrow you will be called and there will be numerous
25 invitations.

1 We know that you have" --

2 THE INTERPRETER: [15:04:53] The text continues further on.

3 "And that you will be seated together, that you can see there are young people here
4 who have come from various different families who may have aided their parents and
5 who have accomplished various different tasks in their families and many of them
6 have sacrificed themselves to come here, and you know what they have done.

7 I believe that we will be mainly talking about the historic role of our army, even
8 though our army has met with many difficulties, but that we should realise what we
9 have done. First of all, our goal is to build up our own army and to put an end to the
10 killing. I think that you can take note of the fact that in almost all of the regions
11 there is less killing; that is indeed our goal. And that is why you are wearing
12 uniforms.

13 We are different from the others.

14 I think that when we parade you will not know -- when we walk around, you will not
15 know who you have crossed. You will meet a person in a particular place, and given
16 that you don't know what rank that person is, they will try to explain it to you.
17 That's what's happened here and that is what's going to happen here. It's not just in
18 our region. This is done everywhere where the UPC has set up. Everywhere
19 throughout our territory, the military soldiers have ranks, as you can see.

20 You have non-commissioned officers, you have section commanders, all the way up
21 to -- then we began from various authorities, starting with myself, the higher ranking
22 officers, starting with the major general down to the captains, the lieutenants and
23 other soldiers and who have borne their ranks. We know that they are concerned,
24 and I think that we will be able to invite you to come and attend and see how they
25 behave.

1 This is the first year, the first promotion of officers, and there is battalion personnel,
2 brigade personnel, commanders and others. And that's why there are conditions,
3 certain conditions for those who have done well, who have worked hard, will
4 continue to be promoted. Those who don't work well, well, you have seen each time
5 what has happened. Tomorrow, don't be surprised to see them amongst you.
6 There were also be those whose rank, such as commanders, brigade commanders or
7 other battalion commanders, amongst the soldiers, there's corporals, sergeants, and
8 others, rank and file soldiers. The army is something that is growing. It is a thing
9 that is growing. It will continue to grow.
10 The section commanders can also be promoted all the way up to commander of the
11 army. You see, we ourselves, we hear about generals, colonels. We hear about the
12 others but we must first of all have been a section commander or even just a rank and
13 file soldier, and that's why I would like to begin by thanking the population. Thank
14 you very much. Thank you very much. And where you are sitting, those of you,
15 let us all applaud.
16 I'd like to thank you for a number of things because since the UPC party and the
17 FPLC have existed, I know that you have supported us, that you have helped us, that
18 is, the population has helped us, and we'd like to thank you and that's -- that you
19 have really contributed and that you will contribute to whatever government is set
20 up.
21 We know that we don't know where we're going to find the money and yet, at the
22 same time, we are still all alive, and we know that there are difficulties.
23 They're all working. I hope that you will not be tired of us in spite of all the
24 difficulties that you have met with. I'm not talking about -- well, you know what
25 I've mean. You've come across difficulties on the way. But to arrange things,

1 certain contributions, you've made sacrifices, and that's why we would like to
2 encourage you. Don't stop, continue bearing arms because those of you who have
3 taken up arms, I think it's not over yet. This task is not over.
4 We know that we must continue. We must continue working hard because we are
5 certain that -- until we are certain that peace is durable and that our children, your
6 children, that we will all be -- until we are all able to have children, that we not return
7 to the situation that led us to take bearing arms, that we not have to take up arms in
8 order to bear the ranks that we have, that we will not take up arms just to get a salary
9 at the end of the month, that we have taken up arms in order to put an end to the
10 killing that has been perpetrated in the district of Ituri, and that is why we will
11 continue to support you in order to keep watch on the -- to be sure that peace remains
12 for our children and our future children.
13 Those who have committed false crimes, as the elder has stated, he advised the
14 presidency and advised the army, your families, your advisers, your children, for us.
15 We are your children. Continue advising us. And this rank that we are bearing
16 and this ideology which has led us to taking up arms, we would like it to serve in the
17 interest of the entire Congolese army, wherever it may be. In the region we in the
18 UPC we occupy, we are an example of discipline, even though we may not be strong
19 enough. We have preserved this ideology that is our ideology in order to serve the
20 light for the entire Congolese army, and we shall continue this ideology that we have
21 kept watch over so that we help Congo and all the Congolese people.
22 We, the soldiers, it is our task to show this throughout the Congo, in particular, the
23 FPLC army. Our goal, as we have said, is to protect the population, to protect its
24 property as well as the country, the country, the population of Congo and their
25 property. In order to do that, that's all. That's the only thing.

1 We know that we soldiers, even amongst the population, amongst the military, that
2 each society, of course some will have sinners, but the soldiers are -- if our soldiers are
3 amongst those who commit faults, we will continue to reprimand them. That's why
4 we have training. We teach them so that when they go back to living with the
5 population, they would be used to supporting your children.

6 You let them work and in order to ensure that we have completed this task, I think
7 that you will be very pleased to go to Équateur and you will find your child, for
8 example, with the rank of colonel. If you go to the Kivu, to the south, to the north
9 you will go to any of the provinces of the Congo and you will find your children, they
10 will be leading those who have taken away your parents, your parents that gave birth
11 to them.

12 And for that reason, I don't want to speak too long because many people are still
13 waiting to take the floor and I see that the atmosphere has begun to change, and
14 therefore the groupement here in Katoto and Lovangira has taken the initiative in
15 order to welcome and organise with other soldiers this event and meet with the
16 various guests. And I hope return to the chef de groupement in Loga to invite also
17 the Loga commander to continue sharing with you the good things that we've
18 obtained and that we've been able to work on pacification and peace.

19 Anyway, I don't want to be too lengthy. And for those of you, once again, thank you
20 very much for your attention, et cetera. Thank you.

21 Distinguished guests, inhabitants of Katoto, good day.

22 To tell you the truth, I didn't intend to say anything here, but the most important
23 thing is that the chief of general staff has just spoken and he said everything that
24 needed to be said, so I have almost nothing to add, that is why I will be brief. First of
25 all, I thank the organisation in Katoto and I also thank our third brigade and I thank

1 our soldiers for the organisation of today's feast. On our side we have a lot to say,
2 things to say over the last 17 months and the day on which our soldiers got their
3 epaulettes or grades. You have heard the old man, the counsellor and the
4 presidency and now there is also military counsel coming to you. He says that we
5 have already brought forth children and our children have grown up and some of
6 them, these children, have had grandchildren, that is why he said that the president
7 of our party and our authorities should give different grades to our soldiers."

8 MR PACE: [15:16:51] Your Honour, to clarify for the record the video was stopped
9 at 59.01. Of course the interpretation went on after that.

10 PRESIDING JUDGE FREMR: [15:16:59] All right.

11 MR PACE: [15:17:03] I note that we are in open session.

12 Q. [15:17:06] Mr Witness, did you recognize the two persons who were speaking
13 in this video?

14 A. [15:17:26] The first person is General Bosco Ntaganda. The next person was
15 introduced as the minister for defence. I know that person. He goes by the name
16 Mbuna (phon).

17 Q. [15:17:50] Mr Witness, earlier we saw a part of the video in which you
18 described Bosco Ntaganda arriving on the scene in Katoto. Did the speech which we
19 just saw take place on the same day?

20 A. [15:18:23] The speech which we just listened to was delivered at the same
21 place. It was an improvised speech. It was not prepared. And he spoke to the
22 population, greeted them to begin with and then went on to deliver this speech in the
23 same way an adult would address a child.

24 Q. [15:18:49] And in the interpretation of the speech where Bosco Ntaganda was
25 speaking, and I'm here referring to page 67 of today's realtime transcript, from lines

Trial Hearing
WITNESS: DRC-OTP-P-0030

(Private Session)

ICC-01/04-02/06

1 20 to 23 it states:

2 "We know that we soldiers, even amongst the population, among the military, that
3 each society, of course some will have sinners, but the soldiers are -- if our soldiers are
4 amongst those who commit faults we will continue to reprimand them."

5 Mr Witness, to your knowledge, when soldiers in the UPC/FPLC committed faults or
6 wrong things were they reprimanded?

7 A. [15:19:53] I do not know whether they were punished or not, but I never
8 witnessed any such thing because I was in Bunia where there was no military court
9 for the UPC -- or, no military prosecutor of the UPC.

10 MR PACE: [15:20:15] Your Honour, if we could move back into private session for
11 my next questions.

12 PRESIDING JUDGE FREMR: [15:20:20] For sure.

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

14 (Private session at 3.20 p.m.)

15 (Redacted)

16 (Redacted)

17 (Redacted)

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Trial Hearing
WITNESS: DRC-OTP-P-0030

(Private Session)

ICC-01/04-02/06

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Page redacted – Private session

Trial Hearing
WITNESS: DRC-OTP-P-0030

(Private Session)

ICC-01/04-02/06

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Page redacted – Private session

Trial Hearing
WITNESS: DRC-OTP-P-0030

(Private Session)

ICC-01/04-02/06

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13 Page redacted – Private session

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Trial Hearing
WITNESS: DRC-OTP-P-0030

(Private Session)

ICC-01/04-02/06

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Page redacted – Private session

Trial Hearing
WITNESS: DRC-OTP-P-0030

(Private Session)

ICC-01/04-02/06

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Page redacted – Private session

Trial Hearing
WITNESS: DRC-OTP-P-0030

(Private Session)

ICC-01/04-02/06

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Page redacted – Private session

Trial Hearing
WITNESS: DRC-OTP-P-0030

(Private Session)

ICC-01/04-02/06

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Page redacted – Private session

Trial Hearing
WITNESS: DRC-OTP-P-0030

(Private Session)

ICC-01/04-02/06

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Page redacted – Private session

Trial Hearing
WITNESS: DRC-OTP-P-0030

(Private Session)

ICC-01/04-02/06

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Page redacted – Private session

Trial Hearing
WITNESS: DRC-OTP-P-0030

(Private Session)

ICC-01/04-02/06

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Page redacted – Private session

Trial Hearing
WITNESS: DRC-OTP-P-0030

(Private Session)

ICC-01/04-02/06

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15 (Open session at 3.50 p.m.)

16 THE COURT OFFICER: [15:50:09] We're in open session.

17 PRESIDING JUDGE FREMR: [15:50:11] Thank you, court officer.

18 Mr Pace, please.

19 MR PACE: [15:50:15] I will be referring to tab 8 of the binder and this is

20 DRC-OTP-0151-0645 at paragraphs 1 to 5 on pages 0645 to 0646. And I note that

21 these paragraphs have now been admitted into evidence pursuant to Rule 68(3).

22 Q. [15:50:43] Mr Witness, in this part of your prior recorded testimony you stated

23 that UPDF troops left Bunia -- and just to clarify, Mr Witness, there is no need for you

24 to refer to the binder at this stage. I will -- I will summarise what you -- what you

25 have previously said, and that is that UPDF troops left Bunia on 6 May 2003 and the

1 UPC arrived in Bunia on 12 May 2003. You state that when the UPC took control of
2 Bunia certain UPC soldiers ran after those people who were escaping and that there
3 was pillaging, rapes and killings.

4 And you stated, and I quote from paragraph 3 in French: (Interpretation) "I saw
5 with my own eyes some soldiers pillaging."

6 Mr Witness, my question is: To which group did the soldiers you saw pillaging
7 belong?

8 A. [15:52:06] They were all UPC soldiers. Kisembo came into Bunia on 6 or
9 12 May 2003. He's the one who took control of Bunia and he drove out the Lendus.
10 When he came in, there were Lendus killing people and there were police officers
11 from Kinshasa as well. Kisembo beat them and he drove them out and there
12 were -- there was looting afterwards. People were killed and there was looting,
13 kupiga na kuchaji, according to the expression. And then the MONUC people came
14 and they had a meeting and that was when the entire city went under the control of
15 the UPC.

16 Q. [15:53:21] What does the expression that you just used kupiga na kuchaji
17 mean?

18 A. [15:53:37] It means kill and loot. Kuchaji means loot, kupiga means kill.

19 Q. [15:53:50] Who used this expression?

20 A. [15:54:02] Kisembo's men, the ones who came with him those were the ones
21 who used that expression "kupiga na kuchaji." And even it was the first time I heard
22 that expression. And this was something that they did during their operations, kill
23 and loot. People's property was looted. And even if I don't know the precise
24 identity of the victims, there were victims of this practice.

25 Q. [15:54:45] You refer to Kisembo's men. What armed group, if any, did these

1 people belong to?

2 A. [15:55:05] UPC/FPLC. When the UPC soldiers were -- when they were
3 defeated by the Ugandans, they -- Kisembo went to the Lese people where I'm from
4 and President Lubanga went with other soldiers and also Afande Bosco. So they
5 were just running in every direction, each leader with a few soldiers. When
6 Kisembo took control of Bunia, he called the president to tell him, "Come, things have
7 calmed down" and that's when the president came back to Bunia and other people
8 also began to return to Bunia.

9 Q. [15:56:17] And in the same part of your prior recorded testimony you
10 mentioned that rapes and killings were taking place in Bunia at the time. Focussing
11 on the rapes, what, if any, knowledge did you have of these rapes at the time?

12 A. [15:56:47] Well, I didn't myself see any rapes. The soldiers would send a
13 young girl to go get water and then they would follow her, rape her and kill her.
14 Those were cases that occurred with violence, but there were other cases of soldiers
15 who took young girls as their wives, they married them, they were -- they married
16 them out of love. I remember that after certain rapes occurred, the girls were shot in
17 the genital area and they were found several days later and they were buried.

18 Q. [15:58:17] You stated that you didn't yourself see these rapes. Can you tell us
19 how you know about the rapes which you just described?

20 A. [15:58:47] Well, the incident that took place in Bunia happened while I was
21 there, however, I didn't film the incident. The body of that girl was discovered in the
22 environs but I didn't see it myself. However, other soldiers didn't rape, but they
23 would say to the young girls "I love you," et cetera, and they would get married.
24 This wasn't rape.

25 Q. [15:59:27] Referring specifically to the girls who were raped, do you know

1 what ethnicity these girls were?

2 A. [15:59:50] Those girls were civilians. To go back to the girl who was raped,

3 she had been sent to buy salt or soap and that's how she ended up getting raped.

4 The members of her family couldn't find her, they started looking for her and she was

5 found later on. That's the only specific case that I am aware of, but I don't know of

6 any other cases of rape that might have taken place.

7 Q. [16:00:33] Referring to this specific case of rape, do you know the ethnicity of

8 this girl?

9 A. [16:00:50] She was a Hema girl.

10 Q. [16:00:59] And I refer to the same document at paragraph 6 on page 0646.

11 Again, this paragraph has also been admitted into evidence.

12 Mr Witness, in this part of your prior recorded testimony you stated you knew

13 someone who was the manager of shop called Kisumba who was killed by UPC

14 soldiers because he was a Nande. How do you know about this incident?

15 A. [16:01:50] He was our friend. Mbale was our friend. Mbale was the

16 manager of a shop called Kalitex. Mbale, along with other people, had fled to the

17 MONUC headquarters but one old man who was with them who was 90 years old

18 did not want to flee along with the others. He really did not care, he did not believe

19 that he was going to be attacked, but he ended up being killed.

20 Now, the information reached the MONUC officials. So Mbale and the others

21 decided to go and bury that old man. They had some money and some gold on

22 themselves and then they were said to have disappeared, and I do not know whether

23 Mbale and his colleague's bodies were ever found. I do not know.

24 The acts relating to this case were committed by Kitembo's soldiers.

25 PRESIDING JUDGE FREMR: [16:03:32] Yes, you still have.

Trial Hearing
WITNESS: DRC-OTP-P-0030

(Open Session)

ICC-01/04-02/06

1 MR PACE: [16:03:33] Thank you, your Honour.

2 I refer to the three documents at tabs 9 to 11 of the binders and these contain three
3 photographs which have been admitted into evidence. And I refer to tab 7 of the
4 binder DRC-OTP-0151-0640 and I ask perhaps if hard copies of these photographs
5 could be provided to the witness.

6 PRESIDING JUDGE FREMR: [16:04:15] Court usher, please assist.

7 MR PACE: [16:04:33] Perhaps Defence counsel would like to have a look before
8 they are handed over to the witness.

9 PRESIDING JUDGE FREMR: [16:04:59] It's five minutes.

10 MR PACE: [16:05:03] Yes, your Honour.

11 Q. [16:05:06] Mr Witness, could you have a look at these three photographs.

12 And while the witness does that, I will be referring to his prior recorded testimony in
13 relation to these photos which I repeat is at tab 7, DRC-OTP-0151-0640, the second
14 row on the first page.

15 Mr Witness, have you had time to look at the three photographs?

16 A. [16:05:44] Yes.

17 Q. [16:05:57] In your prior recorded testimony referring to these photos and
18 others, you stated that they were taken in the Bakoko neighbourhood of Bunia a few
19 days before 6 March 2003. You also stated that the photos depict the bodies of two
20 soldiers and that both the UPC and UPDF denied that the soldiers were part of their
21 group. And finally, you stated that the UPC left three kadogos to guard these
22 bodies.

23 Mr Witness, how do you know that the UPC left three kadogos to guard the dead
24 bodies?

25 A. [16:06:57] When I showed up with a camera, I saw some soldiers there close to

1 the dead bodies, and it was at the request of their commander. The soldiers said that
2 it was UPC soldiers who had been killed, but they later found out that the victims
3 were not UPC soldiers but rather Ugandans, and that is why they decided to go away,
4 leaving those bodies behind.

5 And subsequently it even emerged that those bodies were neither of UPC soldiers nor
6 of Ugandans, and that is how the Red Cross ordered for the bodies to be buried.

7 And then later on it was discovered that it had been some Ngiti people who had been
8 killed.

9 Q. [16:08:24] Do you recall the name of this commander that you're referring to?

10 A. [16:08:44] There were many, many commanders and I do not remember all
11 their names. Some were colonels, some were majors. There were so many of them,
12 and they would be transferred often from one area to another.

13 By the way, on that day, they had taken up position and their weapons were in place
14 as well, so it was not possible for me to go to that location. I came on my motorbike,
15 but upon realising that there were very many armed soldiers in the area, I decided to
16 go back, that is to backtrack.

17 Now the commanders came, and when they realised that the dead bodies did not
18 belong to any of their troops, they asked the kadogo who had been guarding the
19 bodies to leave the area, and then the bodies were taken to the MONUSCO or, rather,
20 should I say to the MONUC hospital.

21 Subsequently, they called up the secretary general of the UPC to view the bodies.

22 He came and decided that the corpses did not belong to any UPC troops, and then it
23 was realised that they were Ngiti corpses and an order was then given for the bodies
24 to be buried.

25 Q. [16:10:40] Do you recognize the uniforms worn by the soldiers in this photo,

Trial Hearing
WITNESS: DRC-OTP-P-0030

(Private Session)

ICC-01/04-02/06

1 the ones standing up in the three photos?

2 A. [16:10:51] Yes. They are all UPC troops. One of them is not wearing a coat
3 or a jacket, but they are all UPC troops, all of them.

4 Q. [16:11:30] And is this how -- is the uniform the fact which leads you to state
5 that they are UPC kadogo?

6 A. [16:11:42] Yes. They are kadogo, kadogos who were detached from their
7 position and sent away to that assignment following the orders of their commander.
8 At the time of that assignment, they probably did not know where they were being
9 assigned to, but all they could do was follow the orders of the commanders, that is the
10 UPC commanders.

11 MR PACE: [16:12:28] Your Honour, we can move into private session for my last
12 two questions, please.

13 PRESIDING JUDGE FREMR: [16:12:34] Last, but no more.

14 Let's move into private session, court officer, please.

15 (Private session at 4.12 p.m.)

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Trial Hearing
WITNESS: DRC-OTP-P-0030

(Private Session)

ICC-01/04-02/06

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15 (Open session at 4.15 p.m.)

16 THE COURT OFFICER: [16:15:35] We're in open session, Mr President.

17 PRESIDING JUDGE FREMR: [16:15:38] So just for the record, Mr Pace was
18 allowed to use 2 hours 15 minutes.

19 Now, Mr Witness, it concludes your testimony for today. It was just first part of that.
20 The more extensive part will continue on Monday. And it's my duty to remind you
21 that in the meantime during the weekend you must not discuss your testimony with
22 anybody else. Do you understand that?

23 THE WITNESS: [16:16:14] (Interpretation) Yes.

24 PRESIDING JUDGE FREMR: [16:16:16] So I thank you. I wish you a relaxed
25 weekend and see you on Monday.

Trial Hearing
WITNESS: DRC-OTP-P-0030

(Open Session)

ICC-01/04-02/06

1 Now, Court usher, please assist Mr Witness to leave the courtroom.

2 And at the end -- first of all, I received confirmation, Mr Bourgon, that your meeting
3 with Mr Ntaganda will be arranged as you wished, so I guess there is no problem
4 then to start with cross-examination on Monday.

5 (The witness stands down)

6 MR BOURGON: [16:16:46] Mr President, yes, indeed the meeting has been
7 confirmed. We will be meeting with Mr Ntaganda for three hours right now. And
8 our estimate of course is we were hoping to meet with him three hours this afternoon
9 and another three hours this weekend, but we will do our best, as I mentioned, to
10 complete our preparation with Mr Ntaganda.

11 Now, Mr President, we ask the Chamber to bear in mind the fact that Mr Ntaganda
12 and his Defence team have had limited contact over the previous weeks and that is
13 why we need this time to prepare for the testimony of this witness with so many
14 videos.

15 I understand the Prosecution will stand up and say it's self-inflicted and on and on
16 and on. They can say what they want, but the reality is we need time to prepare for
17 the testimony with 50 hours of videos and that the Trial Chamber must bear in mind
18 the fact that this witness has been in The Hague for ten days looking at his material
19 every single day for ten days. And that is very important, Mr President, to bear in
20 mind.

21 I have one question, Mr President. I would like to understand what is included in
22 the 2 hours and 15 minutes of the time that was used by my colleague? Is the time
23 for showing video included or excluded from this amount of time, Mr President?

24 PRESIDING JUDGE FREMR: [16:18:21] It was my understanding and now it was
25 confirmed by Madam Court Officer that even the time needed for playing video was

Trial Hearing
WITNESS: DRC-OTP-P-0030

(Open Session)

ICC-01/04-02/06

- 1 included in those 2 hours and 15 minutes.
- 2 Now, so that's it for Monday. So we will adjourn, we will continue on Monday
- 3 morning 9.30.
- 4 And before we leave the courtroom I would like to convey my special thanks today to
- 5 the interpreters because we prepared really tough job for them for the afternoon,
- 6 Mr Pace in collaboration with the Chamber. So thank you very much because I think
- 7 you made very good job. Thank you.
- 8 And otherwise we adjourn and we will continue Monday 9.30.
- 9 THE COURT USHER: [16:19:09] All rise.
- 10 (The hearing ends in open session at 4.19 p.m.)