

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
6 Judge Chang-ho Chung
7 Trial Hearing - Courtroom 3
8 Monday, 30 January 2017
9 (The hearing starts in open session at 9.34 a.m.)
10 THE COURT USHER: [9:34:11] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: [9:34:42] Good morning, everybody.
14 Court officer, please call the case.
15 THE COURT OFFICER: [9:34:47] Thank you, Mr President.
16 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
17 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
18 We are in open session.
19 PRESIDING JUDGE FREMR: [9:35:01] Thank you, court officer.
20 Now appearances in the usual order.
21 MS RABANIT: [9:35:12] Good morning, your Honours. Today for the Prosecution
22 appear Selam Yirgou, case manager; Charlotte Hubert, Prosecution Division intern;
23 Nicole Samson, senior trial lawyer. And I am Marion Rabanit, associate trial lawyer.
24 PRESIDING JUDGE FREMR: [9:35:28] Thank you, Ms Rabanit.
25 And now Defence, please.

1 MS GRANDON: (Interpretation) Good morning, your Honour, your Honours.

2 For the Defence, Mr Ntaganda is present with us today, Christopher Gosnell,

3 Margaux Portier, and myself, Chloe Grandon.

4 PRESIDING JUDGE FREMR: [9:35:47] Thank you, Ms Grandon.

5 And Legal Representatives of Victims, please.

6 MS PELLET: [9:35:51] (Microphone not activated)

7 PRESIDING JUDGE FREMR: [9:35:59] Your mike, please.

8 MS PELLET: [9:36:00] (Interpretation) I'm sorry. Thank you, your Honour. The

9 former child soldiers are represented by Mohamed Abdou and by myself, Sarah Pellet,

10 counsel with the Office of Public Counsel for Victims.

11 MR SUPRUN: [9:36:16] Good morning, your Honour, your Honours. The victims

12 of the attacks are represented by myself, Dmytro Suprun, counsel with the Office of

13 Public Counsel for Victims.

14 PRESIDING JUDGE FREMR: [9:36:27] Thank you, Ms Pellet.

15 Thank you, Mr Suprun.

16 Before we invite the next witness to the courtroom, the Chamber was informed that

17 Prosecution would like to address us.

18 So, please, Ms Rabanit, you have the floor.

19 MS RABANIT: [9:36:40] Thank you, Mr President.

20 Very briefly, just to state for the record that the Prosecution has received a list of items

21 to be used by the Defence in cross-examination late yesterday, after 7.30. We

22 understand, and Defence counsel has informed us yesterday, that there was

23 a technical problem that prevented sending some of the attachment in the email in the

24 earlier morning. But we would like to note that it seriously impairs our capability to

25 adequately prepare for cross-examination. Among those documents, some

1 documents were never disclosed before. There is one report of over 170 pages.

2 We also note that the notes of the Defence meeting with the witness was not disclosed
3 before this morning. The Prosecution was present during this meeting, so the
4 prejudice is a bit lesser. However, there is no reason, in our submission, for these
5 notes to be disclosed that late.

6 That's it. Thank you very much.

7 PRESIDING JUDGE FREMR: [9:37:52] Thank you.

8 Mr Gosnell or, sorry, Ms Grandon, do you want to provide us with some additional
9 comments on the situation?

10 MS GRANDON: [9:38:01] (Interpretation) Yes, your Honour. Indeed, the list of
11 documents was sent late yesterday. The first list was sent at midday and,
12 unfortunately, we saw at half past seven in the evening that the list never went. And
13 so we noticed that because within the team we received the message and it would
14 seem that the message didn't arrive at the Chamber or the Office of the Prosecutor or
15 the Representatives of Victims. I apologise to my colleague. As soon as I saw it I
16 immediately yesterday called to inform them that we were sending the list, as well as
17 the documents. And once again I would like to apologise. It is not usual that we
18 would voluntarily send a list late.

19 Now with regards to the content of this list there are 17 documents and there are only
20 six which are new documents. The rest are documents which come from the
21 Prosecutor's evidence, so that's no surprise for the Prosecutor when it comes to use of
22 those documents.

23 As regards the notes from the meeting that we had on Friday with the witness,
24 the Prosecutor was represented by two people during this meeting and, once again,
25 there are no surprises in the content of the notes. The audio was also disclosed this

1 morning at the earliest opportunity.

2 I would also like to remind everyone that the Defence often gets notes during the
3 weekend and to this day we have never complained about that. Thank you.

4 PRESIDING JUDGE FREMR: [9:39:39] Ms Rabanit, are you indicating that you will
5 raise any objections against the use or admission, potentially? It is rather premature,
6 but just to have at least rough idea at the moment.

7 MS RABANIT: [9:39:55] I don't know yet, I haven't had the time to fully assess all of
8 the documentation that was provided.

9 PRESIDING JUDGE FREMR: [9:40:02] All right. Well noted.

10 Then we will see what will be the situation at the moment.

11 Now, court usher, please bring Mr Witness into the courtroom. Sorry, sorry, court
12 usher, I will first deal with a few procedural matters and only then we will invite
13 Mr Witness. But it will be very brief.

14 So first, for the purposes of timing for this witness, as indicated in the Chamber's
15 preliminary Rule 68(3) oral decision I am repeating that the Prosecution shall have
16 one hour to examine the witness, which shall include the process of seeking
17 admission of the witness material under Rule 68(3), as well as any supplementary
18 examination. The Defence has been permitted three hours for cross-examination.

19 I also recall the Chamber's oral decision delivered on 27 January 2017 rejecting the
20 Prosecution's request for protective measures in relation to this witness.

21 Accordingly, the forthcoming testimony is to take place publicly. And lastly,
22 the Chamber has taken note of the Defence notice of not -- in fact, we haven't at the
23 moment got list of objections, but we also noted some objections contained in
24 submissions concerning 68(3) decision. So we will then decide about possible
25 objections if and when they arise. And now we can turn to the scheduled testimony.

Trial Hearing
WITNESS: DRC-OTP-P-0043

(Open Session)

ICC-01/04-02/06

1 So please now, court usher, please bring Mr Witness in.

2 Ms Grandon.

3 MS GRANDON: [9:42:03] (Interpretation) You haven't received the list of my
4 objections?

5 PRESIDING JUDGE FREMR: [9:42:08] Sorry, yes, yes, we received. Sorry, my
6 fault.

7 (The witness enters the courtroom)

8 PRESIDING JUDGE FREMR: [9:42:44] Mr Witness, good morning. Can you hear
9 me?

10 WITNESS: DRC-OTP-P-0043

11 (The witness speaks French)

12 THE WITNESS: [9:42:50] (Interpretation) Good morning, I can hear you.

13 PRESIDING JUDGE FREMR: [9:42:52] Good.

14 Mr Witness, I would like to welcome you to the courtroom on behalf of the Chamber.

15 You are called to testify in the case against Mr Bosco Ntaganda and you will be asked
16 questions both by the judges and lawyers in the courtroom. In this connection I

17 would like to guide you as follows: Please listen carefully to those questions. If

18 you do not understand feel free to ask for the question to be repeated. We want you

19 to tell the truth and tell us what you saw, heard or sensed yourself. If you didn't see

20 or hear it yourself, but you found out some other way, then you should explain how.

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

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

23 Do you understand all this, Mr Witness?

24 THE WITNESS: [9:44:10] (Interpretation) I have understood you very well,
25 your Honour.

1 PRESIDING JUDGE FREMR: [9:44:14] Good. Mr Witness, as you will already have
2 been informed you are testifying publicly today without in-court protective measures
3 such as face or voice distortion. While the Chamber and the parties and participants
4 are still likely to refer to you as "Mr Witness" mostly, your name and appearance
5 before the Chamber will be a matter of public record.

6 Now, Mr Witness, you, I guess, have now in front of you a piece of paper with the
7 text of solemn undertaking. So please now make your solemn undertaking to tell
8 the truth by reading out the declaration on the piece of paper you have in front of
9 you.

10 THE WITNESS: [9:45:09] (Interpretation) I solemnly declare that I will tell the truth,
11 the whole truth and nothing but the truth.

12 PRESIDING JUDGE FREMR: [9:45:25] Thank you, Mr Witness.

13 And it is my duty to remind you that now you are under oath, which means that you
14 need to be aware that it is an offence within the jurisdiction of this Court to give false
15 testimony. Do you understand that?

16 THE WITNESS: [9:45:49] (Interpretation) I understand, your Honour.

17 PRESIDING JUDGE FREMR: [9:45:53] Very well.

18 And finally a few practical matters you should have in mind when giving your
19 testimony. It is important to speak into the microphone, to speak clearly and to
20 speak at a slow pace to allow the interpreters to translate everything. What is also
21 important, you should only start speaking when the person asking you the question
22 has finished. And when a question is asked, please do not respond immediately,
23 rather, please count in your head to three and only then give your answer, because
24 this pause between the question and answer is essential for us to properly hear,
25 record and mainly translate what you are saying, because even if questions and

1 answers will be given most likely in French, it is also necessary to translate them into
2 English and it requires some time.

3 If you have any questions during your testimony, or if you feel that you need a break,
4 do not hesitate to let us know by raising your hand. We will then give you the
5 opportunity to speak.

6 Have you understood all that, Mr Witness?

7 THE WITNESS: [9:47:19] (Interpretation) I have understood all the instructions,
8 your Honour.

9 PRESIDING JUDGE FREMR: [9:47:33] Very well.

10 So now I am giving floor to Ms Rabanit representing Prosecution.

11 And Ms Rabanit, you have one hour.

12 QUESTIONED BY MS RABANIT: (Interpretation)

13 Q. [9:47:50] Good morning, Witness.

14 A. [9:47:54] Good morning, Madam.

15 Q. [9:47:57] Could you give us your full name, if you would be so kind?

16 A. [9:48:04] Kabasele Nzembele Jacques is my name.

17 Q. [9:48:17] You were born in Lubumbashi in Katanga in the Democratic Republic
18 of Congo; is that correct?

19 A. [9:48:25] Yes, that is correct.

20 Q. [9:48:33] You are Congolese, what is your ethnic group?

21 A. [9:48:37] I am from the Luba ethnic group.

22 Q. [9:48:45] What is your date of birth, sir?

23 A. [9:48:48] I was born on 17 March 1959.

24 Q. [9:49:03] And you are married and you have seven children, do you not?

25 A. [9:49:09] Yes, I am married and I am the father of seven children.

1 Q. [9:49:12] Could you tell us what languages you speak?

2 A. [9:49:17] I speak French, I speak all the national languages in my country, that is
3 to say, Tshiluba, Lingala, Kiswahili and Kikongo.

4 Q. [9:49:45] So you studied law, which you finished by obtaining a degree in 1998;
5 is that correct?

6 A. [9:49:57] Yes, that is correct.

7 Q. [9:50:02] You started your career as a trawl lawyer and then a senior trial lawyer
8 in the Parquet de grande instance in Kinshasa from '89 to '94, 1994; is that correct?

9 A. [9:50:21] That is correct.

10 Q. [9:50:23] And afterwards you were a judge at the Tribunal de grande instance in
11 Kenge from 1994 to 1996; is that correct?

12 A. [9:50:37] That is correct.

13 Q. [9:50:41] You afterwards went to Bunia where you carried out your functions.
14 Could you give us the dates when you were in Bunia, as well as the name of the post
15 that you held at that time?

16 A. [9:50:55] I arrived in Bunia in 1996 and I was appointed to the Tribunal de
17 grande instance in Bunia where I had the functions of a judge from 1996. And in
18 1997 I was appointed as a judge of the Tribunal de grande instance in Bunia.

19 THE INTERPRETER: [9:51:28] The interpreter corrects it was 1999.

20 A. [9:51:32] And as there was a rebellion I was not able to exercise the functions of
21 president of the Tribunal de grande instance, a function which I started to exercise
22 only in 2001 until 2003 when we left Bunia, fleeing the war, to go to Kinshasa.

23 Q. [9:52:01] Do you remember the date, the approximate date of your departure
24 from Bunia?

25 A. [9:52:07] I left Bunia in the month of March 2003. That was 28 April.

1 Q. [9:52:37] There seems to be a contradiction in the answer that you have just
2 given us, sir. First of all you said that you left in March and afterwards you gave us
3 a precise date, namely 28 April. Could you clarify your answer, please?

4 A. [9:52:56] I think it must have been in the month of April 2003.

5 Q. [9:53:06] Thank you very much.

6 I am just going to note for the record that there is an error in the English version of the
7 record on page 9, line 9, and there was a question that I put on the obtention of your
8 dossier, I gave the date that you obtained your diploma in 1988, and the correct date
9 is '88, it is appearing as '98 in the transcript. Sir, without revealing the place, could
10 you give us the title of the post that you currently occupy?

11 A. [9:54:00] Currently, I am president in the appeals court.

12 Q. [9:54:05] Witness, as I explained to you just week during our preparatory
13 session, the Prosecution asked that your statement be admitted into evidence, and for
14 that I have to ask a certain number of questions regarding that statement.

15 Now I am going to ask the usher to be so kind as to give the witness a file containing
16 this statement. And I would state for the people present today in the Chamber that
17 this folder was shown to my colleague.

18 I will ask the court officer or the court usher to be so kind as to show the document
19 which is filed in tab 1 on the screen. And the ERN number is as follows,
20 DRC-OTP-0126-0086. This document can be shown publicly.

21 Witness, this is the document which is also at tab 1 of your binder. Witness, this is
22 the statement you gave to the Office of the Prosecutor in 2005, to the investigators of
23 the Office of the Prosecutor.

24 A. [9:56:17] Yes, I note that it is indeed that.

25 MS RABANIT: [9:56:24] Court usher, could you be so kind as to show page 0088

1 thereof, page 13 of the document.

2 THE INTERPRETER: [9:56:41] 0098, corrects the interpreter.

3 MS RABANIT: [9:56:52]

4 Q. [9:56:52] Do you see the document?

5 A. [9:56:55] I am on page 13, yes.

6 Q. [9:57:00] Whose signature is this that appears on the page?

7 A. [9:57:07] The signature that appears on this page is mine. That is my signature.

8 Q. [9:57:15] Is it your name?

9 A. [9:57:18] Yes, indeed it is my name.

10 Q. [9:57:23] Sir, do you remember having had the possibility to review this
11 statement last week during the preparatory session and to have been able to make
12 any corrections you wish thereto?

13 A. [9:57:39] Yes, I recognise having made corrections having read through the
14 statement.

15 Q. [9:57:47] Do you remember the corrections that you made thereto?

16 A. [9:57:52] Yes, I remember.

17 Q. [9:57:58] Would you give them to us directly or would you like me to show you
18 a particular passage from your statement?

19 A. [9:58:09] I could try to do it myself. If we take page 13, I signed on the date of
20 16 September 2005, but in the witness attestation it was the date of January 17 to
21 21 January was taken for my interview. So it must have been from 17 to 21 January.
22 Rather, the 17 to 21 of September.

23 Q. [9:58:58] So if I understand that correctly, you are saying the date of the
24 statement must have been 16 September.

25 There was another correction that you wanted to make to this document.

1 A. [9:59:18] Well it wasn't a correction, major correction, I just wanted to make
2 the Chamber aware that when I gave this statement my father was alive, and as such
3 on page 3, point 10, where it concerns civil status, I said that my parents were living
4 in Kananga, whereas on -- in 2006 my father had just died. And that is the correction
5 that I wished to make. Namely, that my parents -- where I said that my parents
6 were alive, that is page 3, point 10, I wanted to correct that, namely to say that on that
7 day only my mother was alive, and my father died in 2006.

8 Q. [10:00:40] It is well noted, sir. There was another correction that you also made
9 thereto during the preparatory session, and I would ask you to go to paragraph 25 of
10 this statement, if you would like to reread the end of the paragraph to be able to make
11 the -- or tell us the correction that you made thereto.

12 A. [10:01:07] Thank you. Now when we looked at this statement again on page 5,
13 paragraph 25, towards the end of that particular paragraph, you can read that from
14 1998 to 1999, so for a period of five years, none of the judges received a salary. Now
15 I corrected this to say that it wasn't from 1998 to 1999, because if you just do the math
16 that would be, what, one year, whereas here we are talking about a period of time of
17 five years. So I think we need to change the date to say that it is from 1998 through
18 to 2003. So for a period of five years, and during that period no judges received
19 a salary. So that's, that's where it bears upon. So the correction is to the date 1999
20 which should be replaced by the year 2003.

21 MS RABANIT: [10:02:46] Mr President, I ask for your indulgence for just a few
22 seconds.

23 PRESIDING JUDGE FREMR: [10:02:51] No problem.

24 MS RABANIT: [10:02:58] (Interpretation) Can I ask the usher to bring up on our
25 screens the document at tab 3 in our file. So this can be shown publicly and the

1 number is DRC-OTP-2054-5646. And the excerpt which is of interest to us and has
2 the statement in it that is placed before the Chamber, I am talking about page 5713,
3 line 8, page 5741, line 6.

4 Mr Witness, you should have that document in your binder. And for the transcript I
5 would note, without it being shown, that the English version of this transcript bears
6 the number DRC-OTP-2054-5546. And that the pages of interest to us in that
7 particular document are the following, 5614, line 14 and then page 5643, line 11. This
8 particular document can be found at tab 4.

9 So, Mr Witness, is this the transcript corresponding to the evidence you gave in the
10 Thomas Lubanga trial, your oral evidence?

11 A. [10:05:03] I can't find this in my documents. I do apologise.

12 Q. [10:05:08] Take the time that you need, Mr Witness.

13 Perhaps I can provide you guidance to take you to 5714.

14 A. [10:06:10] I have the document. It is now on the screen before me. But with
15 the number that I have in my binder I can't seem to find any way forward.

16 Q. [10:06:24] Well look directly on the computer screen therefore, it is probably
17 simpler.

18 A. [10:06:33] All right. Yes, that's me and that's the statement, that's right.

19 Q. [10:06:38] Do you remember having an opportunity to reread that transcript
20 during your preparatory session?

21 A. [10:06:45] Yes, yes, I confirm the fact that I reread it during the visit that you
22 made to me.

23 Q. [10:06:55] Any corrections you would like to make, Mr Witness?

24 Mr Witness?

25 PRESIDING JUDGE FREMR: [10:07:32] Hold on, Mr Witness.

1 Ms Grandon.

2 MS GRANDON: [10:07:35] (Interpretation) Unless I am mistaken, the page that is on
3 our screen isn't actually the witness's transcript in the Lubanga affair. It's 5713.
4 And this came under the motion of 6803.

5 MS RABANIT: [10:08:01] (Interpretation) Yes, I asked for 5714 to be brought up on
6 our screens because the following pages are of particular interest to us.

7 PRESIDING JUDGE FREMR: [10:08:12] Yes. Court officer, we have still wrong
8 page on our screen. 5714 is requested by Prosecution.

9 MS RABANIT: [10:08:35] (Interpretation)

10 Q. [10:08:36] I am just going to repeat my question: Do you have any corrections
11 you would like to make to the oral evidence you provided in the Lubanga case?

12 A. [10:08:46] By rereading the document I can't see any corrections I would like to
13 make.

14 Q. [10:08:58] The entirety of this statement, when I say "entirety" I am talking about
15 your written statement made before the OTP investigators in addition to the oral
16 evidence you provided during the Lubanga trial, and that you have just corrected in
17 terms of your written statement, that is, this statement that was recorded and as far as
18 you can remember and as far as you know, is it true and accurate to the best of your
19 knowledge?

20 A. [10:09:37] Yes, true and accurate.

21 Q. [10:09:45] Would you agree that these prior recorded testimonies be tendered
22 into evidence before this Chamber?

23 A. [10:10:00] I have no objection to that so I say yes, I consent.

24 Q. [10:10:07] Do you consent for Defence, Prosecution and Chamber to put
25 questions to you during this hearing?

1 A. [10:10:18] Yes, I do consent.

2 MS RABANIT: [10:10:25] Mr President, Madam -- Mr Judges, I would like to request
3 officially that the -- sorry, I will switch to French.

4 (Interpretation) I would just like for the entirety of the prior recorded testimonies
5 enter into evidence under Rule 68(3) and, to make things crystal clear, I am going to
6 give you the recording numbers. So the statement, the written statement of the
7 witness bears the number DRC-OTP-0126-0086. And the French version of his oral
8 evidence, DRC-OTP-2054-5646 from pages 5713, line 8, through to 5746, line 6. And
9 the English version of that particular excerpt from the transcript DRC-OTP-2054-5546,
10 pages 5614, line 14, through to 5643, line 11.

11 PRESIDING JUDGE FREMR: [10:11:53] Ms Grandon, Defence position.

12 MS GRANDON: [10:11:55] (Interpretation) No objection, your Honour.

13 PRESIDING JUDGE FREMR: [10:12:00] So document specified by Ms Rabanit are
14 admitted according Rule 68(3) as a further Prosecution exhibit.

15 MS RABANIT: [10:12:15] (Interpretation)

16 Q. I would like now to put some additional questions to you, Mr Witness, but
17 beforehand I would like to ask the usher to refer again to the binder that is being
18 placed before Mr Witness.

19 Mr Witness, can I direct you to your arrest. The FPLC soldier and members of the
20 DGM that came to arrest you, did they hand you any documents?

21 A. [10:13:04] Yes, I confirm the fact that the day when these civil and -- soldiers
22 from the DGM came to see me, yes, they did indeed give me some documents.

23 Q. [10:13:19] And what were those documents?

24 A. [10:13:22] If my memory serves, these documents were entitled "service record".

25 Q: [10:13:33] Can I ask the court usher to bring up on our screens document at tab 5

1 in our file, DRC-OTP-0126-0100. This can be shown publicly.

2 Do you recognise this document and, if so, what is this document?

3 A. [10:14:28] Yes, I do recognise this document. And this is a mandate, arrest
4 warrant actually, that was served against me, so that I would be taken to the DGM
5 offices in order to be heard. And that's what I initially understood by way of the
6 purpose of that particular document.

7 Q. [10:15:08] And do you know who drafted that document, Mr Witness?

8 A. [10:15:17] I read the document, I read the name of the person who drew it up
9 and who signed it.

10 Q. [10:15:29] And so who was that person, Mr Witness?

11 A. [10:15:34] Mr Nembe.

12 PRESIDING JUDGE FREMR: [10:15:54] Mr Witness, what was the function of
13 Mr Nembe?

14 THE WITNESS: [10:16:06] (Interpretation) When the UPC was responsible for
15 running Ituri, Mr Nembe was a director in the immigration department.

16 PRESIDING JUDGE FREMR: [10:16:26] Thank you.

17 MS RABANIT: [10:16:36] (Interpretation)

18 Q. [10:16:36] Who was responsible for the DGM, Mr Witness?

19 A. [10:16:45] My memory serves, there was, number one, Mr Rafiki, and he was
20 responsible for intelligence gathering as well as migratory matters, more to the point,
21 immigration.

22 Q. [10:17:14] And you told us that when the UPC was responsible for running Ituri,
23 Mr Nembe was the director. Could you tell us then what's the link between the UPC
24 and the DGM?

25 A. [10:17:34] Well, in my country, the DGM is a state organ which is responsible for

1 dealing with entry and exit of individuals in and out of the country. And the UPC
2 was the governing authority representing the authority of the state in this area of my
3 country.

4 Consequently, the DGM, the ministry for migration, was an organ akin to all other
5 types of state organs or state bodies, but who came under the authority of the state.
6 And in those days, in that area, the state was represented by the UPC.

7 Q. [10:18:51] When did you see this document for the very first time, Mr Witness?

8 A. [10:19:00] This document was served upon me on the first day they came to
9 arrest me. So I suppose it must have been the 11th, 11 November 2002. And then
10 the second time, because the first time when they came with that particular document
11 in hand, they took me and took me off to their office and then they let me go. They
12 let me go because the officers that were to deal with this case were not in their offices
13 and so they went back with the document.

14 Q. [10:19:57] This particular document is difficult to make out, so could you help us
15 understand its content if you can pick out what's written opposite "mission objective".

16 A. [10:20:15] Yes, I can read it out in terms of the mission objective. So here, and I
17 read:

18 "Apprehend the president of the Bunia Tribunal of grand instance, take him to our
19 DGM office for Ituri."

20 Q. [10:20:44] Can you decipher what is right at the top of the document,
21 Mr Witness?

22 A. [10:21:02] Right at the top of the document you can see "Democratic Republic of
23 Congo, Ituri province, General Directorate Ministry for Migration," DGM for short.

24 Q. [10:21:29] Did you give a copy of this particular document to the Office of the
25 Prosecutor?

1 A. [10:21:36] I believe I provided it to the investigators when they came to Kinshasa.

2 And I think it was them who presented the document, unless my memory fails me,

3 but I think it was among the documents that were given to the OTP's investigators.

4 MS RABANIT: [10:22:05] Mr President, I will request that this document be

5 admitted for the Prosecution.

6 PRESIDING JUDGE FREMR: [10:22:10] Defence, any objection?

7 MS GRANDON: [10:22:12] (Interpretation) I would like to have something clarified,

8 because the witness said that he had read the name of Mr Nembe on this particular

9 document, but the version I have in front of me now I can't find that name. But

10 could this be clarified by the Prosecution, because I can see the signature but the name

11 Mr Nembe, for my part, I can't actually see it on this document.

12 PRESIDING JUDGE FREMR: [10:22:37] Ms Rabanit.

13 MS RABANIT: [10:22:47] Yes, I would just ask the usher to maybe zoom down.

14 Q. [10:22:51] (Interpretation) Mr Witness, if you look at the bottom of the document

15 you will see a signature. Do you see Mr Nembe's name there?

16 A. [10:23:04] It is difficult to read that on this document, but the original,

17 unfortunately we don't have it with us here, but it was clear on the original, because

18 this is a photocopy or a copy of the original document. And what's been filled out

19 here was typed up with very old typewriters, so it's really not straightforward to

20 decipher the name on this particular version. But what I can tell you is that the

21 original document did indeed bear the name Mr Nembe.

22 Q. [10:24:01] When you made your first statement -- paragraph 17 for the parties in

23 this courtroom -- you did say that at the time you gave to the public prosecutor in

24 Bunia, you gave a letter that retraced the events of your arrest. Now, do you

25 remember having handed over other documents in addition to the letter or did you

1 just hand over that particular letter and nothing else?

2 A. [10:24:37] I gave the letter to the public prosecutor of the-- or the prosecutor
3 working at the Bunia TGI, and there were other documents which were given
4 alongside the letter that you are making reference to.

5 MS RABANIT: [10:25:03] Before I forget, I think I have to renew my request for
6 admission of the previous document.

7 PRESIDING JUDGE FREMR: [10:25:09] And just to be absolutely clear, Mr Witness,
8 so is my understanding correct that apart of signature of Mr Nembe his name is also
9 typed, in fact it is not readable, but should be typed at the last line of the document?

10 THE WITNESS: [10:25:36] (Interpretation) Yes, that's exactly so, your Honour.

11 PRESIDING JUDGE FREMR: [10:25:38] Thank you, Mr Witness.

12 Defence position now, clarified enough?

13 MS GRANDON: [10:25:47] (Interpretation) Well, I will leave that up to you,
14 your Honour.

15 PRESIDING JUDGE FREMR: [10:25:53] All right, I found this clarification sufficient
16 for the moment, so this document is admitted into evidence as a further Prosecution
17 exhibit.

18 MS RABANIT: [10:26:12] If the usher could please put on the screen the document
19 number DRC-OTP-0045-0070, which is tab 17, at page 0053 first, please. It can be
20 broadcasted publicly.

21 THE COURT OFFICER: [10:26:51] Excuse me, can you repeat the ERN number,
22 because we have page 0053, but the first page 0070, just for clarification. Thank you.

23 MS RABANIT: [10:27:12] Sorry, so DRC-OTP-0070-0045, my apologies. And the
24 page is 0053. (Interpretation)

25 Q. [10:28:05] Mr Witness, do you see the document that appears on your screen?

1 A. [10:28:08] Yes, I can see it clearly.

2 Q. [10:28:12] Can I ask the usher to bring up the next page, please.

3 Do you recognise this document, Mr Witness, and, if so, what is it?

4 A. [10:28:46] Yes, I do recognise that document. It is a report that the NGO
5 Amnesty International drew up. It drafted the report to examine human rights
6 matters in Ituri. On this particular page, I can refer you to the second paragraph,
7 and this particular paragraph makes mention of my arrest by the UPC where I was
8 held without charges for three weeks at the DGM.

9 Q. [10:29:39] Mr Witness, were you aware of this document before today and, if so,
10 in what particular circumstances?

11 A. [10:29:50] Yes, I did see this document before today's hearing. This document
12 was given to me by Justice Plus, an NGO which deals with human rights matters in
13 Ituri. And it is my belief that this particular document has been taken from Internet
14 and because I appear in the report Justice Plus, the NGO, must have given me a copy
15 of it.

16 Q. [10:30:41] And, Mr Witness, did you give this document beforehand yourself
17 and, if so, in what circumstances?

18 A. [10:30:58] I think that I sent this document to the investigators, or provided it to
19 the investigators, who came to carry out investigations at the time of my interview
20 when I was in Kinshasa.

21 Q. [10:31:15] Did you provide this document to anyone else?

22 A. [10:31:27] I think that I also transmitted this document to the Prosecutor of the
23 Bunia court. I think that must have been among the documents which accompanied
24 my letter.

25 Q. [10:31:52] So I am going to read this paragraph in English. It seems that you

1 speak this language to a certain degree, but just in order to ensure you understand it
2 well it will be interpreted for you. Now my question is: Is the information as it
3 appears in this paragraph, is that information true?

4 (Speaks English) "On 12 November Jacques Kabasele, president of Bunia's high court
5 (Tribunal de grande instance) was arrested by the UPC and held without charge for
6 more than three weeks at the Direction Générale des Migrations (DGM), Migrations
7 General Directorate - the police security and intelligence agency - in Bunia. He was
8 reportedly accused of collaborating with the RCD/ML or the Kinshasa government."

9 (Interpretation)

10 Is this information correct, sir?

11 A. [10:33:02] Well, I confirm the fact that I was indeed arrested for three weeks at
12 the General Directorate for Migration. And during that time I underwent interviews,
13 I was interviewed by the people who were responsible for carrying out that work.
14 And it was during that time that I was informed by these people that the reason they
15 arrested me was because I was collaborating with the RCD/ML movement, as well as
16 with the Kinshasa government.

17 MS RABANIT: [10:34:18] Mr President, I seek admission of this document.

18 PRESIDING JUDGE FREMR: [10:34:20] And one additional question from my part.

19 Mr Witness, what was the source for the Amnesty International for this information?

20 Were it you, or?

21 THE WITNESS: [10:34:45] (Interpretation) There were several sources. I think I
22 met Madam Anneke Van Wouderberg, if my memory is not mistaken. She came to
23 carry out these investigations in Ituri on everything that had happened.

24 I think it was after I was freed that I met her. She asked me certain questions
25 regarding my arrest and I answered her as is set out in her report. So if I gave her

1 the information according to which I was accused of collaborating with RCD/ML or
2 the Kinshasa government, it was the people from the DGM who had notified me
3 thereof.

4 PRESIDING JUDGE FREMR: [10:35:58] Thank you for this clarification, Mr Witness.
5 Defence, your position?

6 MS GRANDON: [10:36:03] (Interpretation) Yes, your Honour.

7 The passage read to the witness is on one of the numerous pages of the document
8 DRC-OTP-0070-0045. If my colleague would be so kind as to show the document,
9 only the page was read into the transcript. So it is not necessary for me, as far as
10 I am concerned, to admit this document that is made up of at least 25 pages, given
11 that only one paragraph was read into the record. So I am opposed to the admission
12 in its entirety of this document.

13 MS RABANIT: [10:36:51] Mr President, we have --

14 PRESIDING JUDGE FREMR: [10:36:52] Ms Rabanit.

15 MS RABANIT: [10:36:52] Yes, it is my fault; I should have said that we only seek to
16 admit this page and the page before, because it's effectively the same document. The
17 entire document is a dossier, so that's a bit ...

18 PRESIDING JUDGE FREMR: [10:37:07] Now, Ms Grandon, any change in your
19 position?

20 MS GRANDON: [10:37:10] (Interpretation) I will leave that to the Chamber.

21 PRESIDING JUDGE FREMR: [10:37:16] Now it is fine under correction made by
22 Ms Rabanit for the Chamber. So document, in the extent now specified by
23 Ms Grandon, which means the initial page and page containing the paragraph
24 concerning Mr Witness, which is page 54, if I am not wrong, are admitted into
25 evidence as a further Prosecution exhibit.

1 MS RABANIT: [10:37:50] Mr President, I already see that I am going to be very
2 pressed with time and I would like to request if I can go until 11, which would mean
3 30 minutes more -- 13 minutes more.

4 PRESIDING JUDGE FREMR: [10:38:06] I think it is even not 30 minutes, because in
5 fact the testimony or your examination started a bit later, so I think it would be
6 20 minutes. It is fine with us, all right. But you will anyway have to finish by the
7 end of this session at 11 o'clock.

8 MS RABANIT: [10:38:23] Thank you, Mr President.

9 PRESIDING JUDGE FREMR: [10:38:35] And moreover, there were also some
10 questions put by me which also should be subtracted, so it is even in fact maybe
11 15 minutes plus but, to make it clear, until the end of this session.

12 MS RABANIT: [10:38:52] Thank you, Mr President.

13 Q. [10:38:54] (Interpretation) Witness, in your written statement you stated that
14 you used a phonie -- and for persons in the courtroom this is in paragraph 44 -- to call
15 your family who were outside Ituri. Now, my question is as follows: Where was
16 this phonie? And who did this device belong to?

17 A. [10:39:26] Well there wasn't just a phonie. At that time there were no mobile
18 phones in Ituri. I often used a satellite phone. That was the property of Mr Passy
19 Keta.

20 Q. [10:40:01] I'm sorry, I'm confused. Please excuse me for interrupting you.
21 Could you please spell the name you have just given.

22 A. [10:40:11] Well I don't know exactly how it is written, but I suppose that Passy is
23 P-A-S-S-Y and then Keta, K-E-T-A.

24 Q. [10:40:43] Who is this person, sir?

25 A. [10:40:46] Well, at the time, Mr Passy, he carried out business, but currently he is

1 the vice governor of the province of Ituri.

2 Q. [10:41:04] Did you use this phonie freely, for free, or did you have to pay to use
3 it?

4 A. [10:41:11] You paid for the satellite phone. That wasn't free.

5 Q. [10:41:20] Were you alone when you used this device, sir?

6 A. [10:41:35] I wasn't alone, there was the operator who was with me at the time in
7 the booth.

8 Q. [10:41:42] Who was this operator?

9 A. [10:41:51] Well, I can no longer remember the name. This was somebody who
10 was in the service of Mr Keta. Who, according to the information that I had received,
11 was related to Mr Thomas Lubanga. But as regards the name, I can't remember that.
12 It was a long time ago.

13 Q. [10:42:18] Was this person a member of a particular group?

14 A. [10:42:23] I couldn't know that. What I know is I met the person in a booth as
15 an operator who was facilitating communication for people who wished to use it.

16 Q. [10:42:41] Was there anybody else with you during that communication?

17 A. [10:42:48] To the best of my knowledge there were just two of us. And the
18 communication was confidential. It was -- there was a surveillance, it was
19 monitored, but I remember at that time this device, whether it was this device or the
20 phonie, there was always a member of the intelligence service who would be there in
21 order to monitor all communications.

22 Q. [10:43:32] Sir, you spoke about the fact that you were monitored, there was
23 a member of the communications service there who listened to the communications.
24 Now, did this person belong to a particular group?

25 A. [10:43:49] Could you ask your question again, please?

1 Q. [10:43:53] Certainly. You spoke about the fact that the communication was
2 monitored. Who was it done by? Which group? Who was monitoring or carrying
3 out surveillance on these calls?

4 A. [10:44:12] As I said, during this period, all communication was monitored and
5 there was an official who was within the intelligence service of the UPC who was
6 given over to each communication point.

7 Q. [10:44:41] Do you know technically how this monitoring or surveillance was
8 carried out?

9 A. [10:44:48] Well, it's difficult to say this, but there were two or three languages
10 that you had to speak in when communicating. When you were on the phonie, you
11 had to speak either in French, in Kiswahili, or in Lingala. And if you tried to speak
12 a different language, you were told that you could not do so. You could only speak
13 in those three languages. And I understood that these were the languages which
14 were monitored because they were the languages that were known by the people who
15 were carrying out monitoring and surveillance.

16 Q. [10:45:47] I am going on to another subject, sir. Paragraph 45 of your statement
17 you stated that certain people from non-government organisations and international
18 organisations tried to intercede on your behalf when you were detained and that
19 Thomas Lubanga, and here I quote directly from your testimony, "knew the case and
20 had to reflect thereon."

21 And my question is as follows: Do you know if Thomas Lubanga had already given
22 the official position of the UPC in writing with regard to your case and the reasons
23 that were given that led to your arrest?

24 A. [10:46:37] During the time that I spent in detention, I never met Thomas
25 Lubanga. But there were people from his service, and others, who saw him and who

1 would report to me on their meetings with him. Now to come back to your question,
2 I never saw him or heard him, whether in writing or orally, to take a position on the
3 subject of my arrest.

4 MS RABANIT: [10:47:33] Usher, if you would be so kind as to show the document at
5 tab 18. And it has the number --

6 PRESIDING JUDGE FREMR: Ms Grandon.

7 MS GRANDON: [10:47:54] (Interpretation) The document that my colleague wishes
8 to call is a document which has the UPC logo and which mentions (Speaks English) I
9 will do it in English. The document that my colleague wants to call is --

10 MS RABANIT: [10:48:20] I'm sorry. I'm sorry.

11 PRESIDING JUDGE FREMR: [10:48:21] Ms Rabanit.

12 MS RABANIT: [10:48:23] Just maybe ask the witness to take off his headphones
13 because then he can understand. It is being translated to him.

14 PRESIDING JUDGE FREMR: [10:48:31] Would it mind if Mr Witness will listen to
15 you?

16 MS GRANDON: [10:48:36] I don't think so. But it seems that my colleague minds.

17 PRESIDING JUDGE FREMR: [10:48:38] Because I don't see a reason for that,
18 Ms Rabanit.

19 MS RABANIT: [10:48:42] Sorry, I wasn't clear, but I think whatever we say in
20 English is translated to him through the headphones, so maybe he just needs to take
21 them off.

22 PRESIDING JUDGE FREMR: [10:48:53] Yes, but it depends whether the nature of
23 the -- or there will be objection or submission, well really shouldn't be listened by
24 Mr Witness.

25 Is it the case, Ms Grandon?

1 MS GRANDON: [10:49:05] I think my colleague mind, but I don't.

2 PRESIDING JUDGE FREMR: [10:49:11] All right then it is easier, because

3 Mr Witness I guess also could understand English as well.

4 So, Mr Usher, please take Mr Witness for a while out of the courtroom.

5 Sorry for that, Mr Witness, there should be some exchange of views that you should

6 not listen to. So we will ask you for a while to leave the courtroom, but it will be

7 really, I guess, short, short while.

8 MS RABANIT: [10:49:38] I'm sorry, I obviously wasn't clear. I didn't mean that the

9 witness need to be taken out of the courtroom. I think he can just take off his

10 headphones.

11 PRESIDING JUDGE FREMR: [10:49:47] Are you sure that he doesn't, really doesn't

12 understand? Then we will speak in English. All right then, it is up to you.

13 Remain here, Mr Witness.

14 And Ms Grandon, go ahead.

15 But still then, Mr Witness, please take off your headphones, at least.

16 And so now Ms Grandon, please.

17 MS GRANDON: [10:50:10] Thank you, Mr President. What I was going to say is

18 that the document my colleague is intending to use is a document with the UPC logo

19 on the top and which at page 0082 mention the arrest of the witness. We just heard

20 the witness say that he never heard or knew that Thomas Lubanga took a position on

21 his arrest, neither orally or by written, so I don't think this is -- I don't think that my

22 colleague can show this document since the witness does not have any knowledge

23 about it.

24 PRESIDING JUDGE FREMR: [10:50:56] So this issue of foundation, Ms Rabanit, to

25 use this document with this witness.

1 MS RABANIT: [10:51:03] Yes, Mr President, the witness speaks about what was said
2 to him by the UPC members, including about what was the position of Thomas
3 Lubanga on the reasons of his arrest. It has been said -- it has been said that by the
4 people who detain him during his detention and my goal is to confront him with
5 what was said by the head of the UPC, knowing if it was in line or --

6 PRESIDING JUDGE FREMR: [10:51:30] All right, it is fine with me. No problem
7 with the use, the objection is overruled.

8 Please go ahead.

9 Mr Witness, please take your headphones back.

10 And please proceed, Ms Rabanit.

11 MS RABANIT: [10:51:46] So I don't think that the document -- I didn't have the time
12 to give the number, so it is document at tab 18, DRC-OTP-0102-0071. It can be
13 shown publicly. And I would like to show first the first page.

14 Q. [10:52:27] (Interpretation) Can you see this document before you, Witness?

15 A. [10:52:31] Yes, I can see the document.

16 MS RABANIT: [10:52:38] I would then like to show the last page of the document.
17 And then I would like to show to the witness page 0082.

18 Q. [10:53:30] (Interpretation) I would ask you to focus on a paragraph in the middle
19 of the page, it starts with "Le magistrat". If you would read yourself a few sentences
20 which follow that, then I can ask you questions about it.

21 Have you finished reading it, sir?

22 A. [10:54:35] Yes, I have finished reading it.

23 Q. [10:54:37] Do you see your name in this passage, sir?

24 A. [10:54:42] I see my name twice.

25 Q. [10:54:51] Sir, does what is written correspond with the justification that was put

1 forward by the people who interviewed you, people within the UPC during your
2 detention?

3 A. [10:55:08] It doesn't correspond with it, because here they consider me as having
4 been the political adviser and legal adviser of the criminal governor Molondo, and
5 somewhere it said: "After the fall of power of the latter, Kabasele being in Bunia,
6 guided the different Machiavellian actions of his master, and that is the reason why
7 he was intercepted by the UPC security services."
8 That is false and completely and utterly false.

9 Q. [10:55:47] Well, perhaps it is false. To say that it is false, does that correspond
10 with what you said with regard to the acquisitions made against you during your
11 detention? And here I am thinking in particular about Mr Nembe and Rafiki, what
12 they said.

13 A. [10:56:08] Mr Rafiki, he was the person who told me that if I had been arrested
14 the order came from the hierarchy, the highest authority in the hierarchy. But he
15 never said that he thought I was the political or legal adviser of the governor. What
16 I was accused of, according to what he said, was of being in -- of collaborating with
17 RCD/ML, as well as the Kinshasa government. At no time was I told that I was the
18 political and legal adviser of the governor.

19 Q. [10:57:05] Thank you.

20 (Speaks English) Mr President, I ask for the admission of this document.

21 PRESIDING JUDGE FREMR: [10:57:12] Whole document or only some pages?

22 MS RABANIT: [10:57:18] Well maybe the first, the last and this page.

23 PRESIDING JUDGE FREMR: [10:57:21] All right then.

24 Ms Grandon?

25 MS GRANDON: [10:57:24] (Interpretation) The Defence is opposed to the admission

1 of this document. This is a document which has no date, it hasn't been signed, and
2 the witness has just said that what was stated therein is not what was said to him
3 during his arrest. So there is no reason to admit this document, according to
4 the Defence.

5 PRESIDING JUDGE FREMR: [10:57:53] Ms Rabanit, any further comment?

6 MS RABANIT: [10:57:57] Well, this document was provided to the Office of the
7 Prosecutor by the Prosecutor in Bunia. It purports to be a UPC document with the
8 letterhead that you see in the first page of the document. For us it is relevant,
9 anything that was any justification, even variation justification that was provided
10 either to the witness or to other organisations as to why the witness was detained.

11 PRESIDING JUDGE FREMR: [10:58:26] Ms Grandon, just one additional question,
12 because generally it is, to me that it is rather strange that you, as a Defence, you object
13 document allegedly issued by UPC shouldn't be admitted. But you put in that
14 authentication of this document or?

15 MS GRANDON: [10:58:52] (Interpretation) I have two arguments, your Honour.
16 To be opposed to the admission of this document, indeed, there is the question of the
17 authenticity of the document, there is no signature and there is no date. And the
18 presence of a logo which is meant to be the UPC logo isn't sufficient to identify this
19 document. And, furthermore, it was transmitted by the Prosecutor from DGM
20 Bunia. That in itself is not sufficient. It could have been falsified by anyone on
21 a computer, and on the basis of the relevance as well with regards to the testimony of
22 the witness.

23 PRESIDING JUDGE FREMR: [10:59:27] All right, the objection is sustained.
24 Moreover, the witness commented the crucial part of this document that it, I think
25 Defence is absolutely right, that he couldn't confirm authenticity of the document.

1 So that is why the decision is that objection is sustained and this document is not
2 admitted into evidence.

3 Ms Rabanit, just last two minutes for you.

4 MS RABANIT: [10:59:58] Okay. Thank you, Mr President.

5 Q. [11:00:03] (Interpretation) So I am going to change subject now. Now, in
6 paragraph 26 of your statement you state that a non-originaire, Mr Tshibengabo, was
7 appointed to the ministry of justice of the UPC and he said he wasn't notified thereof,
8 prior thereof. Now do you know Mr Tshibengabo?

9 I will ask the question again. He said that he wasn't notified prior to that. Also
10 state that you said he wasn't able to refuse because that would have meant that he
11 was against the UPC. Did he share with you the concrete consequence that he
12 envisaged if he had been considered as against the UPC?

13 A. [11:00:59] First of all, I confirm that I had an exchange with Mr Tshibengabo
14 before appointment as minister within the government of Thomas Lubanga and he
15 was the person who was the president of the Tribunal of grande instance in Bunia.
16 And when he was entrusted with these responsibilities I was the person who took up
17 my functions again and, as minister of justice, he had a view of the functioning of
18 justice in Ituri and it was in this regard as a former collaborator with regards to justice
19 because he was my boss, he was the person who was the president of the tribunal
20 while I was a judge. Within the framework of the relationship that we had he let me
21 know that as minister of justice, the government of Lubanga, that he was minister of
22 justice in the government of Lubanga, but he told me that he wasn't consulted prior to
23 his appointment to accept or not accept the functions. And he also told me that even
24 if he was asked this question there was no choice other than to accept. But where it
25 concerned the consequences that could come from such a refusal, that was something

1 we didn't speak about other than to say that if you were considered -- if you refused
2 such a function it would be considered as being against the UPC, if you refused
3 a function to which you were appointed. So it was just limited to that.

4 And furthermore, I would inform you that he has died.

5 Q. [11:03:12] Mr Tshibengabo, do you know whether he had power and authority
6 within the UPC, Mr Tshibengabo, authority and power as justice minister? And if
7 you do know, how do you know?

8 A. [11:03:28] I can't, I can't know about that. People have responsibility and as
9 such they should know whether they are able to do the job that they've been
10 entrusted. But it is not up to me to decide that.

11 PRESIDING JUDGE FREMR: [11:03:59] Ms Rabanit, last question, if any.

12 MS RABANIT: [11:04:03] (Interpretation)

13 Q. [11:04:05] Now paragraph 25 in your statement, you say that the non-locals
14 within the UPC government held no power. Do you remember any specific
15 circumstances that would, that came to your knowledge about that?

16 A. [11:04:22] Mr Tshibengabo, yes, I will talk about that particular case, because
17 when he was justice minister I fell victim to an illegal arrest. And when I tried to
18 send people to go off to see him, because he was the minister that I was beholden to,
19 to ask him to intercede on my behalf before Mr Thomas Lubanga so that I would be
20 released, Tshibengabo said that he wasn't able to take any decision whatsoever to that
21 effect.

22 And he said that whenever he met Thomas Lubanga, Thomas Lubanga never
23 provided any positive response. And here it was about arresting a judge, a
24 president of the tribunal of grand instance, somebody who was operating within the
25 judiciary, and the justice minister wasn't even informed of that, he wasn't even

1 consulted with a view to arresting a member of the judiciary.

2 Q. [11:06:20] I have no further questions for you at this juncture, Mr Witness.

3 I would like to thank you for answering all my questions.

4 Your Honour.

5 PRESIDING JUDGE FREMR: [11:06:27] All right, we will break now. Then

6 after -- let's move into -- we are in open session. That's fine. So we will now break

7 for 30 minutes and then after break the Defence will continue with cross-examination

8 of our witness, which means that we will reconvene at 11.35.

9 THE COURT USHER: [11:06:49] All rise.

10 (Recess taken at 11.06 a.m.)

11 (Upon resuming in open session at 11.39 a.m.)

12 THE COURT USHER: [11:39:25] All rise.

13 Please be seated.

14 PRESIDING JUDGE FREMR: [11:39:50] We will continue with testimony of our

15 witness. But before that, I was told that Ms Rabanit would like to be informed about

16 the time she really used.

17 So it was, Ms Rabanit, one hour two minutes, even to my surprise, frankly saying.

18 Any additional submission?

19 MS RABANIT: [11:40:16] None, Mr President.

20 PRESIDING JUDGE FREMR: [11:40:20] Fine. But generally speaking I didn't want

21 to push you to any request for further time, but if any party is opting for 68(3) request,

22 which means that it also has some other consequences also concerning the oral

23 testimony, so I think it is part of the game.

24 Now we will move it into cross-examination.

25 Ms Grandon, you have three hours.

1 MS GRANDON: [11:40:51] (Interpretation) Thank you very much, your Honour.

2 QUESTIONED BY MS GRANDON: (Interpretation)

3 Q. [11:41:01] Good morning, Mr Witness.

4 A. [11:41:02] Good morning, Counsel.

5 PRESIDING JUDGE FREMR: [11:41:03] Sorry to interrupt, just one short guidance.

6 Mr Witness, I appreciated how you perfectly followed my guidance, it is probably
7 also because you are also expert on judicial matters, but anyway I, as to other
8 witnesses, would like to highlight that this court is governed by the principle of fair
9 trial, which means equal treatment of both parties, so you are expected that you will
10 also, even if you are, you have been called as a Prosecution witness, that you will
11 answer all questions put to you during cross-examination in the same way how you
12 did it with Prosecution. Is it clear to you?

13 THE WITNESS: [11:42:01] (Interpretation) That's clear, your Honour.

14 PRESIDING JUDGE FREMR: [11:42:03] Very well.

15 Ms Grandon, please.

16 MS GRANDON: [11:42:08] (Interpretation) Thank you very much, your Honour.

17 Q. [11:42:15] We have already met, we have met twice, but I would like once again
18 to introduce myself to you, Mr Witness. My name is Chloé Grandon and today I
19 want to put questions to you on behalf of the Ntaganda defence.

20 My first question flows from one of the clarifications you provided earlier this
21 morning, going to the matter of your salary when you operated as a judge and then
22 when you presided at TGI at Bunia. Are you following, Mr Witness?

23 A. [11:43:04] I am currently doing so, Counsel.

24 Q. [11:43:09] In the statement that has now been entered into evidence, paragraph
25 25.

1 And for the avoidance of doubt I would like to call the following document, it is

2 DRC-OTP -- (Speaks English) 0126-0086, tab 1. (Interpretation)

3 And can we bring up on the screens (Speaks English) 0090.

4 (Interpretation) Can we zoom in on the bottom section of paragraph 25, please.

5 Mr Witness, can you see the document on your screen?

6 A. [11:44:29] I can see the document.

7 Q. [11:44:33] With regard to income, the last line in this particular paragraph,

8 "From 1998 to 1999, for a period of five years, none of the judges received a salary.

9 We were not paid." And a little earlier this morning, subsequent to last week's
10 preparatory session with you, you said that the dates in that paragraph were

11 erroneous and it should be from 1999 to 2003, do you remember that?

12 A. [11:45:08] I clarify it is 1998 to 2003.

13 Q. [11:45:16] Last week during your working sessions with the OTP, the correction
14 that you provided to that paragraph was slightly different. And for the avoidance of
15 doubt and not to lead you astray I would just like to call up the following document.

16 You will find it at tab 19, there is no DRC number here. It is the preparation log. I
17 say that for the court registry.

18 Can we look at page 3 in the document, paragraph 2, please. This is a document
19 written in English. I will read it out to you and it will be translated for you. Last
20 week you clarified this paragraph in your statement and you corrected it thus:

21 (Speaks English) "The witness clarified that he was not paid since his arrival in Bunia
22 in 1996. When asked when he started being paid again, the witness indicates that he
23 was paid by the central government in 2003 when he went to Kinshasa."

24 (Interpretation) Here's my question, Mr Witness: While you are at Bunia from 1996
25 through to 2003, at any point were you paid for the duties that you carried out?

1 A. [11:47:30] I confirm that we were never paid. All judges, not only myself, all
2 the judges who were working with us didn't receive any salary during that particular
3 period.

4 Q. [11:47:52] So this is a six-year period, 1996 to 2003; is that right?

5 A. [11:48:02] That's right.

6 Q. [11:48:23] I would like to revisit certain areas of your professional and academic
7 background. Now Friday last when we met you told me that a bachelor of law can
8 be taken in a period of five years but for you it was six; is that right?

9 A. [11:48:50] That's right, Counsel.

10 Q. [11:48:51] And additionally, a given point in time during your university career
11 you opted to specialise in legal areas regarding to economics and social science?

12 A. [11:49:06] That's what I said, but it's not a -- it's not as if I would only be
13 confined to doing everything pertaining to economics and social sciences. It was
14 more in the nature of an option. But you would stay in the main, main trunk of law
15 studies but you would acquire more specialist knowledge in order areas.

16 Q. [11:49:42] And you did your studies in Kinshasa; is that right?

17 A. [11:49:48] Yes, I went to university in Kinshasa until I finished my university
18 studies.

19 Q. [11:49:55] And you also said there were two ways of becoming a judge in the
20 DRC, either through a competitive examination when there are more candidates than
21 jobs available, or when you were appointed, in other words, when there were more
22 positions available than candidates that put themselves forward; is that right?

23 A. [11:50:14] Yes, that's right.

24 Q. [11:50:16] So which avenue did you adopt to enter the judiciary?

25 A. [11:50:24] In my day we were appointed, we were recruited on that basis

1 because there are a number of positions available on the basis of my qualifications
2 and there were very few candidates putting themselves forward for those positions.

3 Q. [11:50:43] And your first years were with the public prosecutor's office at
4 Kinshasa; is that right?

5 A. [11:50:49] Yes, I started my career at the TGI in Kinshasa, that's right, in the
6 public prosecutor's office.

7 Q. [11:50:57] And how long did you fulfil that function in the public prosecutor's
8 office?

9 A. [11:51:06] From 1989 to 1994, so that's a five-year period.

10 Q. [11:51:22] And then you are transferred to Kenge; is that right?

11 A. [11:51:25] After Kinshasa I was transferred to Kenge, that's right.

12 Q. [11:51:30] And what's the difference between the two locations, Mr Witness,
13 what's the distance?

14 A. [11:51:37] 270 miles separate the two locations.

15 THE INTERPRETER: [11:51:45] Kilometres: interpreter correction.

16 MS RABANIT: (Interpretation)

17 Q. [11:51:48] And after that position in Kenge then you were transferred to Bunia;
18 is that correct?

19 A. [11:51:55] After Kenge, that's right, I was transferred to Bunia.

20 Q. [11:52:01] And did your family go with you each time you were transferred,
21 Mr Witness?

22 A. [11:52:09] My family only came with me when I was transferred to Bunia. To
23 Kenge, I went off alone and then I could come back to Kinshasa as my wife could
24 spend a small period at Kenge and then look after the children back in Kinshasa. But
25 when I was transferred to Bunia, six months after my family joined me there.

1 Q. [11:52:33] And that means your wife and all your children?

2 A. [11:52:38] That's right, my wife and all my children.

3 Q. [11:52:40] And they were with you throughout the entire period where you
4 were a Bunia judge?

5 A. [11:52:49] Throughout the entire period they were with me, except where certain
6 incidents occurred, that occurred in that particular area, which meant that I had to
7 send my family away out of Bunia and back to Kinshasa. And so my family left to
8 go to Kinshasa, if my memory serves it must be, must have been in 2002, around July
9 or August in that year. August, I would say, August or September.

10 Q. [11:53:36] In the DRC are judges required to change positions on a regular basis?

11 A. [11:53:49] Yes, this is true for all state official, all people working for the state.
12 From time to time you are transferred and judges are no exception to that.

13 Q. [11:54:04] And is there a maximum period beyond which a judge has to change
14 and go to another locality?

15 A. [11:54:15] It depends. Under DRC law sitting judges, part of chambers
16 therefore, they have to spend a period of three years in a particular position. And
17 after that three-year period they have to be sent elsewhere. But the prosecutors, they
18 don't see any cap on their time and they can be changed at any point. But where
19 things stand currently in the DRC, that particular rule is no longer applied, which
20 means that you can spend as many -- many, many years in one particular area or you
21 can do less, less than three years therefore, or beyond the three-year threshold. It
22 really depends on what the hierarchy deems appropriate.

23 Q. [11:55:06] And who decides that a judge is to be transferred?

24 A. [11:55:12] The judge can enter a request to that effect for personal reasons, it
25 could be linked to his or her health, wish to change area. This is also true for the

1 president of the judicial council, who is the president of the constitutional council.

2 And for emergency reasons and of course based on the needs in certain areas, you can
3 transfer judges without the judges having entered a prior request to that effect.

4 Q. [11:56:06] And when a judge is to be transferred there is no guarantee that his
5 request for transferal will be accepted; is that right?

6 A. [11:56:18] No, there is no guarantee unless there are compelling reasons, links
7 flowing from health or when you have medical certificates drawn up and they say
8 that for health reasons the judge should be moved to another area where the judge
9 concerned can receive appropriate medical treatment. And in those circumstances
10 then his request can be granted. Also wives who wish to seek to join their husband
11 when their husband is transferred to another area.

12 Q. [11:57:12] Now when you were transferred in 1996 to Bunia, was that an
13 opportunity, was that a golden opportunity for you, was it a promotion, or not?

14 A. [11:57:27] It wasn't a promotion and it wasn't an opportunity either. I just
15 obeyed the instruction that was given to me. It wasn't a promotion. Because when
16 I was at the Kenge TGI I operated as a judge. And it was as such that I was
17 transferred to Bunia before being appointed the president of the TGI, that same
18 tribunal.

19 Q. [11:58:15] And in the DRC are there any areas that are more sought after than
20 others to operate as a judge?

21 A. [11:58:26] Well, there are, there are people who express a preference, there are
22 some people who really want to work in what could be termed as viable areas, in
23 other words, where it is nice to live. So there are preferences, just to answer your
24 question. But when the hierarchy decides, well then those preferences don't hold
25 sway, and in theory needs are met according to certain requests or state of emergency,

1 if you will.

2 Q. [11:59:24] And Bunia was understood to be a viable area?

3 A. [11:59:32] Well, in my view judges are called upon to work everywhere. But to
4 compare Bunia and Kenge, well, Bunia offered better conditions than those in Kenge,
5 because in Bunia there was water, there was electricity, in Kenge that wasn't true.

6 Q. [11:59:55] And when compared with Kinshasa then?

7 A. [12:00:01] Kinshasa, well, it's where you've everything, everything is there, you
8 have got transport, you have got running water, you have got electricity, there is good
9 infrastructure, there are good schools, there are good hospitals. So Kinshasa, that's
10 where living conditions are good, better than elsewhere.

11 Q. [12:00:38] I would imagine that you know that the UPC was compelled to leave
12 Bunia on 6 March 2002 following its being defeated by a UPDF offensive?

13 A. [12:00:55] Yes, at a certain point in time I knew that the UPC was no longer
14 governing Ituri and in particular Bunia.

15 Q. [12:01:06] And you knew that from that particular time the town came under the
16 APC, the Lendu combatants and the UPDF, you know that, do you?

17 A. [12:01:18] That's right.

18 MS GRANDON: [12:01:21] (Interpretation) For the purpose of the transcript I can
19 see that in the English version the date wasn't properly transcribed, it's 6 March 2003,
20 but it seems to appear as 2002.

21 PRESIDING JUDGE FREMR: [12:01:38] All right, noted.

22 MS GRANDON: [12:01:44] (Interpretation)

23 Q. [12:01:46] Mr Witness, let us now turn to paragraph 23 of your statement, where
24 you say the following:

25 "I arrived as a judge in '96 in Bunia. In '99 the minister of justice in Kinshasa

1 appointed me to the position of president of the TGI. Because of the war I only
2 became president in 2001, a position which I held till 2003 when I left Bunia. I left
3 Bunia when the president of the republic, Joseph Kabila, invited me. In fact
4 Vital Kamere, who was the government commissioner for the peace process in the
5 Grands Lacs conveyed an invitation from the ..."

6 THE INTERPRETER: [12:02:35] Mr President, can counsel be requested to slow
7 down.

8 PRESIDING JUDGE FREMR: [12:02:43] Ms Grandon, I think you have already
9 received this message from the interpreters. Please slow down. Thank you.

10 MS GRANDON: [12:02:51] Should I repeat?

11 THE INTERPRETER: [12:02:54] Yes, Mr President.

12 PRESIDING JUDGE FREMR: [12:02:58] Yes, please.

13 MS GRANDON: [12:03:03] (Interpretation) "Vital Kamere, who was the government
14 general commissioner for the Great Lakes conveyed a verbal invitation to us from the
15 president of the republic to take part in a meeting in Kinshasa to inform him on the
16 functioning of justice system in the Ituri. Along with four other magistrates from the
17 Ituri, we went to meet the head of state but we are rather received by his director of
18 cabinet, Mr Boshab. Since then we have not returned to Bunia."

19 Do you remember providing that explanation, Mr Witness?

20 A. [12:03:54] Yes, I can confirm that.

21 Q. [12:03:56] So you left Bunia on 23 April 2003 upon the invitation of the central
22 government in Kinshasa; is that correct?

23 A. [12:04:08] Yes, that is correct, following what Mr Kamere told me.

24 Q. [12:04:12] Just to be clear, in relation to your presence in Bunia you explained to
25 me last Friday that between August 2002 and the time you left Bunia on 28 April 2003

1 you never left Bunia; is that correct?

2 A. [12:04:31] I can confirm that during that period I did not leave Bunia and there
3 was no way, it wasn't possible to leave Bunia.

4 Q. [12:04:39] You were never dismissed from your office as president of the TGI in
5 Bunia; is that correct, Mr Witness?

6 A. [12:04:47] I was never dismissed from that position as president of the TGI in
7 Bunia.

8 Q. [12:04:54] You were never driven out of Bunia?

9 A. [12:04:59] Formally, no, I wasn't chased out, but I was forced to leave.

10 Q. [12:05:07] Nothing stopped you from returning to Bunia after your trip to
11 Kinshasa; is that correct?

12 A. [12:05:17] Many things prevented me from returning to Bunia.

13 Q. [12:05:30] Were you prohibited from returning to Bunia?

14 A. [12:05:35] I took a personal decision, no one prohibited me from returning to
15 Bunia.

16 Q. [12:05:47] Mr Witness, I would like us to turn to paragraph 49 of your statement.
17 This is what you say in that paragraph: "I was released on Saturday, 30 November
18 and resumed work on 2 December 2002. After I was released I did not receive any
19 other intimidations from the UPC. I had other meetings with persons of the UPC but
20 in matters relating to work. As president of the court, I was associated in the
21 security committee meetings for the Ituri province."

22 (No interpretation)

23 A. [12:06:49] I can confirm that.

24 Q. [12:07:06] The OTP disclosed some documents to me which, by the way, you
25 were able to consult last week during your preparatory session. From those

1 documents I have a letter which you sent to Madam Anneke. Do you remember
2 having had the opportunity to read that document last week?

3 A. [12:07:41] Yes, Counsel, I read it.

4 Q. [12:07:54] Your email address is indeed --

5 PRESIDING JUDGE FREMR: [12:08:01] Sorry, Ms Rabanit would like to get some
6 reference also, counter party, because you probably want to deal with this document
7 and you haven't specified, just a letter to Anneke.

8 MS GRANDON: [12:08:11] Tab 10. Sorry.

9 PRESIDING JUDGE FREMR: [12:08:15] Tab 10. Ms Rabanit.

10 MS RABANIT: [12:08:17] Yes, just to make sure that the document is not
11 broadcasted publicly.

12 PRESIDING JUDGE FREMR: [12:08:24] Is not public document?

13 MS GRANDON: [12:08:28] (Interpretation) I believe that the address which I was
14 about to mention should be redacted.

15 MS RABANIT: [12:08:38] Mr President, the document is not a public document and
16 there are some private information on, it should not be broadcasted to the public.

17 PRESIDING JUDGE FREMR: [12:08:50] Would it be then problem to move into
18 private session for dealing with this issue?

19 MS GRANDON: [12:08:56] (Interpretation) No, Mr President.

20 PRESIDING JUDGE FREMR: [12:08:57] All right. It is I think safer to move into
21 private session for that issue.

22 (Private session at 12.09 p.m.)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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 12.12 p.m.)

24 THE COURT OFFICER: [12:12:37] We are in open session, Mr President.

25 PRESIDING JUDGE FREMR: [12:12:40] Thank you, court officer. Ms Grandon,

1 please proceed.

2 MS GRANDON: [12:12:44] (Interpretation)

3 Q. [12:12:46] At paragraph 36 of your statement this is the explanation you
4 provide:

5 "Mr Honoré Musoko from Justice Plus sent me an email from Kampala in December
6 2002 - January 2003 because he had heard from Savo Manassé that even if I were
7 released, that was going to cause me trouble with the UPC. I do not know why
8 Manassé wanted to hurt me because, as far as I know, we did not have any problems
9 or dispute. I did not keep a copy of that email."

10 Now, Mr Witness, if you had received such an email, wouldn't you have considered it
11 important enough to not be deleted?

12 A. [12:14:02] I confirmed that Mr Musoko had sent me an email from Kinshasa, but
13 it was not through my email. He sent the email through the account of his NGO
14 email and it is a member of that NGO who showed me the letter but did not hand
15 over a copy of the letter to me. This is the understanding you must have of this
16 entry. Mr Musoko did not send me the letter through my account, he sent it through
17 his NGO and it is one of the members of his NGO who informed me accordingly and
18 he said and felt that it was not proper for me to keep a copy for security reasons.
19 That is the understanding you must give to that answer.

20 Q. [12:14:55] So you never received such an email?

21 A. [12:14:58] Not in my email account. I didn't receive it, but I read it and I saw it.
22 It was shown to me by members of the NGO known as Justice Plus.

23 Q. [12:15:18] Those threats were never followed through, is that correct, by any
24 action; is that correct?

25 A. [12:15:25] Let me confirm that the threats were never followed by any actions?

1 Q. [12:15:38] You know that Mr Honoré Musoko was the adviser of Mr Tibasima; is
2 that correct?

3 A. [12:15:46] He was his lawyer and later, much later, he was appointed to the
4 position of minister of justice in the merger that occurred between the Mbusa and
5 Jean-Pierre Bemba movements. At that time he became minister of justice, but he
6 remained -- or he had served as Mr Tibasima's lawyer and I can confirm that.

7 Q. [12:16:20] Mr Tibasima who was the vice president of the RCD; is that correct?

8 A. [12:16:26] Yes, that is correct.

9 Q. [12:16:33] Which is the party, the opposition party to the UPC; is that correct?

10 A. [12:16:38] I am not able to confirm that. But, you know, in order to take power
11 the UPC had to impose itself and put an end to the reign of the RCD. So I don't
12 know whether it was their opposition or not. What I know is that when the RCD left
13 Bunia the UPC took over, up until the time when I left the town.

14 Q. [12:17:35] Within the political and military context of the opposition between the
15 UPC and the RCD, in that context, and based on information coming from someone
16 who is affiliated to a political group who informs you that there is hostility towards
17 you, would you process that information with objectivity or would you think that it is
18 a subjective political attempt by the person conveying the information to you?

19 A. [12:18:11] Please, Counsel, kindly repeat your question, but be clearer.

20 Q. [12:18:20] Yes. You have someone who is politically affiliated to the opposition
21 party of the UPC. Now this person through a third party informs you that the group
22 which he is fighting against, whether it is on the military or political level, seeks to do
23 you harm. Would you process that information subjectively or objectively? Now
24 what is the nature of this information; is it subjective or objective?

25 PRESIDING JUDGE FREMR: [12:18:56] Sorry, Mr Witness.

1 I will not permit this question, it is absolutely speculative, it is about opinion, it is not
2 about the testimony that should be given by witness. Please proceed.

3 MS GRANDON: [12:19:16] (Interpretation)

4 Q. [12:19:20] In your testimony in the Lubanga case you testified in open session; is
5 that correct, Mr Witness?

6 A. Yes, that's what I was told, that I would testify in open session.

7 Q. [12:19:36] You were never threatened thereafter, Mr Witness, after your
8 testimony; is that the case?

9 A. [12:19:42] I wasn't threatened after that testimony, Madam.

10 Q. [12:19:48] You have never met Bosco Ntaganda, correct?

11 A. [12:19:56] At what time? At what time do you think I met him or did not meet
12 him?

13 Q. [12:20:03] Any time whatsoever.

14 A. [12:20:08] Mr Ntaganda used to work in Bunia and I got to meet him, I got to see
15 him.

16 Q. [12:20:18] Did you personally have a discussion with him?

17 A. [12:20:24] About what?

18 Q. [12:20:29] Any matter whatsoever.

19 A. [12:20:36] Maybe he may not remember, but I think I met him once in
20 a restaurant and we had a discussion on daily life, and that was it.

21 Q. [12:20:56] Do you think or are you sure?

22 A. [12:20:59] I am certain that I met Mr Ntaganda in a restaurant known as Okapi
23 at the time and, in my official capacity, when I see a military authority I could not but
24 go towards him, greet him and ask him how things were. That's the context in
25 which I met him.

1 Q. [12:21:36] But you never mentioned that to the investigators of the OTP.

2 A. [12:21:40] No one asked me that question and therefore I could not mention that
3 meeting.

4 Q. [12:22:10] You never attended any meeting of the UPC executive; is that correct,
5 Mr Witness?

6 A. [12:22:18] To attend such a meeting you must be a member of government,
7 member of the executive. I was not a member of the executive and therefore did not
8 attend any executive meeting with the UPC.

9 Q. [12:23:04] I conducted some research on Google about you and I found out that
10 last year you were appointed to the position of president of the appeals court; is that
11 correct?

12 A. [12:23:23] Yes, that is correct. In the month of February or March -- March,
13 rather, I was appointed president of the appeals court.

14 Q. [12:23:42] I also found a report from Open Society at tab 22.

15 I am referring to a report captioned "Democratic Republic of the Congo, justice and
16 the rule of law".

17 The reference number is (Speaks English) 0001-2971. D18-0001-2971.

18 (Interpretation) You are mentioned in this report as being one of the contributors to
19 this report that was prepared by this association.

20 I want to draw my learned colleague's attention to page 2982 of that DRC where you
21 have page XII.

22 THE INTERPRETER: [12:25:15] Says counsel.

23 MS GRANDON: [12:25:17] (Interpretation)

24 Q. And in your connection the document states that you served as the adviser at
25 the appeals court in Matadi; is that correct, Mr Witness? This report was published

1 in July 2013.

2 A. [12:25:33] It is true that at that time I was an adviser at the appeals court in
3 Matadi; and that's a rank. I want to state that at that time my rank was adviser at the
4 appeals court in Matadi.

5 Q. [12:25:55] You agree with me that Matadi is found in the extremities of Ituri; is
6 that correct?

7 A. [12:26:07] Yes, that is correct.

8 Q. [12:26:10] And you agree that the UPC is not represented in that area politically?

9 A. [12:26:17] I am not aware of that, Madam. I do not know whether the UPC is
10 represented in that area. That's not my problem. I have never sought to find out.
11 All I can say is that I do not know and I can neither confirm nor deny such an
12 assertion.

13 Q. [12:26:53] Mr Witness, let us now return to the time when you arrived in Bunia
14 in 1996. You explained earlier in your statement that you arrived in 1996 and that
15 you served as a judge. And then last Friday you explained to me that you were
16 a judge and then you became president of the court in 2001. You further explained
17 at paragraph 25 of your statement that at the time the tribunal had some 15 people on
18 staff; is that correct?

19 A. [12:27:39] If that's what I said, then that must be the case going by the memory I
20 had of events at that time. So it must be the case.

21 Q. [12:27:53] So you had confirmed earlier that during the seven years you spent in
22 that court you and your colleagues did not receive any salaries for that period; is that
23 correct?

24 A. [12:28:08] Yes, I can confirm that, Madam.

25 Q. [12:28:23] So we are dealing here with a period during which several political

1 groups governed the Ituri; is that correct?

2 A. [12:28:33] Yes, it is during that period that we had all those disturbances when
3 all these movements were created and were fighting against each other.

4 Q. [12:28:45] But the UPC was in charge of the city only from August 2002 to
5 March 2003, during that time when you were present in Bunia?

6 A. [12:28:54] Yes, that is correct, Madam.

7 Q. [12:28:58] How did you live without a salary for seven years?

8 PRESIDING JUDGE FREMR: [12:29:09] Hold on, Mr Witness.

9 Ms Rabanit.

10 MS RABANIT: [12:29:15] I object to this question, I don't see the relevance of it.

11 PRESIDING JUDGE FREMR: [12:29:18] On the contrary, I do.

12 Ms Grandon, please proceed.

13 MS GRANDON: [12:29:22] (Interpretation) Thank you, Mr President.

14 Q. [12:29:27] Witness, do you want to answer or should I repeat the question?

15 A. [12:29:35] I have understood your question and I can answer you. It is difficult
16 for you to understand how someone may work and not earn a salary, yet have
17 a livelihood. As far as my case goes, in my position as an official, I owned a small
18 farm. And besides that, there was solidarity with friends and relatives so we
19 basically lived on the basis of relationships that had developed during that time.
20 I think it is a bit complicated to explain to you how we managed to live.

21 Q. [12:30:37] The lack of income for judges over a period of seven years is likely to
22 give rise to corruption; isn't that right, Mr Witness?

23 A. [12:30:59] Well that's a subjective point of view. It is not necessarily the case
24 that when you don't receive a salary or when you are not remunerated that the
25 reverse side is necessarily corruption, because corruption is there even when people

1 receive a salary. So I can't assert that that was the case in respect of me.

2 Q. [12:31:38] I would like to put a document before you, it is at tab 26. This is
3 a MONUC report which was drafted on 31 July 2003.

4 Here is the DRC (Speaks English) -- 0171-0434.

5 PRESIDING JUDGE FREMR: [12:32:01] Ms Rabanit.

6 MS RABANIT: [12:32:05] (Interpretation) I have got no objection to the use of the
7 document, but given its provenance I think it would be better that we talk about it in
8 private session.

9 PRESIDING JUDGE FREMR: [12:32:19] Ms Grandon, any problem with this, to deal
10 with this document in private session?

11 MS GRANDON: [12:32:33] (Interpretation) Is my colleague telling me the document
12 is confidential? This is a MONUC report.

13 MS RABANIT: [12:32:41] (Interpretation) I can provide reasons, but in private
14 session, with your leave.

15 PRESIDING JUDGE FREMR: [12:32:48] All right, let's move into private session.

16 (Private session at 12.33 p.m.)

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Trial Hearing
WITNESS: DRC-OTP-P-0043

(Open Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0043

(Open Session)

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Trial Hearing
WITNESS: DRC-OTP-P-0043

(Open Session)

ICC-01/04-02/06

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1 (Redacted)

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6 (Open session at 12.45 p.m.)

7 THE COURT OFFICER: [12:45:16] We are in open session.

8 PRESIDING JUDGE FREMR: [12:45:21] Thank you, court officer.

9 Ms Grandon, please proceed.

10 MS GRANDON: [12:45:26] (Interpretation)

11 Q. [12:45:32] Mr Witness, I would like to return to a section of your statement,
12 paragraphs 27, 28 and 30. In these paragraphs you detail how the judiciary operated
13 in Bunia, and you say the following, and let me quote what you say in paragraph 27:
14 "One day, we arrested six people for murder and Ugandan soldiers who are armed
15 came directly to the tribunal in full hearing to stop the proceedings and to stop us
16 working."

17 Paragraph 28 you say the following:

18 "The Ugandans didn't make things easy because they played a double game with
19 the Lendus and with the Hema. The UPDF commander from the Ugandan army
20 told me not to hand down a ruling by virtue of security situation. This was the
21 murder case that I mentioned earlier on that was interrupted."

22 A little bit further down at paragraph 30 you continue by saying:

23 "The prosecutor seized the goods from a businessman whose goods had not been
24 declared to customs, the public prosecutor was paid a visit by four Ugandan soldiers
25 asking him to halt proceedings and threatening him."

1 Do you remember having said that, Mr Witness?

2 A. [12:47:17] I confirm having said that, that's right.

3 Q. [12:47:30] And you say this with regard to the fact that politics found its way
4 into the judiciary and that unwelcome involvement is the UPDF's involvement in the
5 judiciary and not the UPC interfering?

6 A. [12:47:58] I said that the tribunal had been broken up and we were stopped
7 working and I saw Ugandan soldiers. When I said that we had to hand down
8 a decision and that the UPDF commander said that for security reasons we weren't to
9 do that, I would confirm that it was the UPDF soldiers. Now, was there interference
10 from politicians? That's all I said.

11 Q. [12:48:30] Yes, but if we look at concrete examples of interference in the
12 judiciary the only examples that you provide in your statement were examples of
13 interference from the UPDF and not by the UPC. That's right, isn't it?

14 A. [12:48:48] I stated what I saw.

15 Q. [12:48:56] Staying with this particular point for the time being with regard to the
16 UPDF's interference in the case, Pigwa was involved. Do you remember that you
17 handed down that decision against that individual in July 2002?

18 A. [12:49:17] Yes, I confirm that.

19 Q. [12:49:19] And, Mr Witness, do you know that in July 2002 Pigwa was a member
20 of the UPC?

21 THE INTERPRETER: [12:49:29] The APC corrects the interpreter and not the UPC.

22 A. [12:49:36] Mr Pigwa, well I knew him. I saw him as a uniformed soldier. I
23 saw him on the day when the UPC took power, where he had been convicted, even
24 though he had been convicted by the court and he was in custody and when the UPC
25 took power, driving out of Ituri the RCD, a member, if not all the prisoners were

1 released. And it was at that particular time that Mr Pigwa, who had been convicted
2 by the tribunal, it was then that he put on the uniform of soldiers operating under the
3 UPC flag. If he started with the APC, I don't know. But what I am telling you is
4 that when the UPC took power I saw him within the UPC ranks.

5 Q. [12:51:05] No doubt you know, Mr Witness, that the UPC resulted from a split
6 within the APC, you know that?

7 A. [12:51:15] I wasn't aware of that.

8 Q. [12:51:17] You know that the APC --

9 PRESIDING JUDGE FREMR: [12:51:20] Ms Rabanit, please.

10 MS RABANIT: [12:51:23] I object to the form of the suggestion that Defence counsel
11 is using. She is doing it as a fact is presented and we submit that it will be more
12 proper to say "I suggest to you."

13 PRESIDING JUDGE FREMR: [12:51:38] Yes, please rephrase, Ms Grandon.

14 MS GRANDON: [12:51:54] (Interpretation)

15 Q. [12:51:56] Sir, I put it to you that the UPC stemmed from a split within the APC.
16 Were you aware of that?

17 A. [12:52:08] I couldn't know that.

18 Q. [12:52:16] Did you know that the APC was the armed wing of the RCD-K/ML?

19 A. [12:52:24] With regard to its name, perhaps I can remember. But what's true is
20 that all the rebel movements that were operating in Ituri had a political branch and
21 had an armed wing. So the UPC would necessarily therefore have a political wing
22 and an armed wing.

23 Q. [12:53:08] So you are saying that you can't confirm that you knew in those days
24 that the UPC was the armed wing of the RCD-K/ML, is that what you are saying?

25 A. [12:53:20] I am not confirming. I would just like to clarify this, that with regard

1 to the name of the armed wing, perhaps I am wrong, but what is true is that all the
2 rebel movements had two wings. They had the political wing and they had the
3 armed wing. And within the RCD, if there was an armed wing, well, I don't know
4 what it was called, maybe, but I do know that it did have an armed wing.

5 Q. [12:54:12] If I say the army for the Congolese people, APC, does that ring a bell?

6 A. [12:54:22] What do you want me to say? I told you that there was an RCD
7 armed wing.

8 Q. [12:54:34] And the RCD, do you know its origins?

9 A. [12:54:44] No, I don't know how it came about.

10 Q. [12:54:58] But I suppose you would know that it is an opposition party, an
11 opposition in relation to the government, the sitting government; is that right?

12 A. [12:55:12] Well everyone knows that, everybody knew that there was a rebellion
13 and that it was opposing the Kinshasa central government. And yes, I knew that just
14 like everybody else.

15 Q. [12:55:32] And so you also knew that the RCD was fighting the Kinshasa central
16 government in the east of Congo in the Kivus and in Ituri, you knew that?

17 A. [12:55:46] It is difficult to say. Yes, there was fighting. But what I can tell you
18 is that there was a rebel movement that had built up in the east of the country and
19 that was occupying the areas that the central government could no longer control.
20 To say that the UPC or the RCD was in opposition and was fighting the Kinshasa
21 regime, that might well be true, but what I do know is that there was a rebel
22 movement that had taken power and that was controlling the areas that the central
23 government could no longer go into.

24 Q. [12:56:44] And that opposition was still the case when the UPC took Bunia in
25 August 2002; is that right?

1 A. [12:56:54] What I can tell you is that the UPC openly stated, I think in
2 August 2002, and in March 2003 there was a crisis, which meant that the UPC didn't
3 have total control over the region.

4 Q. [12:57:27] You knew that the UPC was opposed to the Kinshasa central
5 government?

6 A. [12:57:34] I have already answered that question to say that they were against,
7 according to what you say, but what I can tell you, what I know is that the UPC took
8 power and took control over a part of the DRC's territory that the central government
9 could no longer control.

10 PRESIDING JUDGE FREMR: [12:58:03] Ms Grandon, I have some doubts that at
11 least the main core of the testimony should be political analysis given by this witness,
12 because I guess that, obviously from the content of his previous statements, the
13 relevance of his testimony lies somewhere else, I would say.

14 MS GRANDON: [12:58:26] (Interpretation) I need to understand what was his
15 understanding of the political context in the day in order to -- as a preamble to
16 another area.

17 PRESIDING JUDGE FREMR: [12:58:40] All right then.

18 MS GRANDON: [12:58:44] (Interpretation) Thank you, your Honour.

19 Q. [12:58:49] Did you know with regard to this opposition that -- were you aware
20 of armed conflict?

21 PRESIDING JUDGE FREMR: [12:58:59] Hold on.

22 Ms Rabanit.

23 MS RABANIT: [12:59:01] I'm sorry, I don't mean to interrupt so much, but I would
24 like that the objection that had been sustained have an actual consequence in the way
25 the questions are formulated.

1 PRESIDING JUDGE FREMR: [12:59:15] But in fact I -- what objection you meant?

2 MS RABANIT: [12:59:23] I meant that some of the suggestion that are made by

3 Defence counsel are phrased in a way that puts something to the

4 witness -- (Overlapping speakers)

5 PRESIDING JUDGE FREMR: [12:59:31] Yes. Oh, I see. In such a case I would

6 confirm that the way how the questions should be put should be as a submission or

7 proposal, not just to put something which is real fact, which mostly is a bit doubtful,

8 at least between the parties.

9 MS GRANDON: [12:59:57] (Interpretation)

10 Q. [12:59:58] Mr Witness, do you know that in the 2002-2003 context, this was

11 referred to by the OTP as an internal armed conflict in the Ituri; is that correct?

12 A. [13:00:13] Yes, that is the position of the Prosecutor.

13 Q. [13:00:25] Mr Mbusa was the leader of the RCD; correct?

14 A. [13:00:29] Yes, that's correct.

15 Q. [13:00:33] Do you know that when Mr Lompondo was chased out in

16 August 2002 by the Ugandans, the RCD/K and its Ugandan branch sought refuge in

17 Beni?

18 A. [13:00:52] Yes, everyone knew about that. When the UPC drove out the RCD

19 administration under Mr Molondo (phon), that territory was captured accordingly.

20 Q. [13:01:12] When the political changes took place in Bunia, particularly at the

21 time you were there between 1996 and 2003, in spite of all those changes in political

22 governments, the administration in place continued to function, is that the case?

23 A. [13:01:36] What administration are you referring to?

24 Q. [13:01:38] All administrative services put together.

25 A. [13:01:43] What I know is that the justice system continued to be administered

1 normally. But when I say "normally" I mean that the justice system and justice itself
2 were not banished but there were some orientations that were given in the area of the
3 administration of justice. Now when it comes to the other administrative services,
4 I cannot make any statement because did I not belong to any of them.

5 Q. [13:02:16] Let me remind you of your testimony in the Lubanga case.

6 And this is at tab 3. (Speaks English) DRC 2054-5646 (Speaks French) à la page 5732.

7 PRESIDING JUDGE FREMR: [13:02:37] And it will be the last issue before the break,
8 but still you have, because we started 11.35, so you still have a few minutes to
9 conclude this part.

10 MS GRANDON: [13:02:49] (Interpretation)

11 Q. [13:02:50] During that testimony, Mr Witness, at lines 13 to 17, you explain the
12 following:

13 "As you know, that part of the country was governed by the rebels, as I would refer to
14 them. Where there is a rebellion, the classical norms of government no longer apply.
15 Each rebel government came along with its administration and we complied with the
16 orders of that rebel administration."

17 Do you remember having said that?

18 A. [13:03:28] I said so, and I have just said the same thing a short while ago when I
19 told you that when a rebel administration takes over, and to the extent that the justice
20 system was concerned, the justice system worked along the lines of the instructions of
21 the rebel administration in place.

22 Q. [13:03:55] This morning you explained that the successive rebel movements that
23 governed the Ituri governed the territory as a government, in much the same manner
24 as the government from Kinshasa; is that correct?

25 A. [13:04:16] Yes, that is correct, Madam.

1 Q. [13:04:38] If a civil servant were to obey instructions from Kinshasa rather than
2 from the administration in place in the Ituri, that was considered as the power
3 in -- the government in power as an act of treason; is that correct?

4 A. [13:05:05] Madam, speak to the areas of interest to me. You can put questions
5 to me about matters of justice and ask me, for example, whether it ever happened that
6 I implemented any orders from Kinshasa and whether that amounted to the eyes of
7 the rebel movement as treason for them. Now, but if you put the question to me in
8 such broad terms as to people receiving instructions from Kinshasa and how they
9 would be perceived, Madam, I don't know, because I didn't work in the other
10 administrative units. I do not know whether those other administrative units had
11 received any orders from Kinshasa, whether they implemented them or not. So,
12 Madam, if you could put questions to me in relation to justice I might be able to
13 answer.

14 Q. [13:05:54] Mr Witness, at paragraph 31 of your statement you refer to one
15 Mr John Loango, who was a senior staff of the taxation department in Bunia who was
16 arrested when he returned from Beni because he was suspected for working for
17 Mbusa. We are dealing here with a matter that is outside the realm of justice and
18 touches on the taxation department. Can you then confirm to us that anyone who
19 was in the administrative units and who took instructions from Kinshasa was
20 perceived by those in power in Bunia as being a traitor?

21 A. [13:06:39] I talked about the case of John Loango, because this person ended up
22 in jail with me, and when we had discussions in our positions as prisoners, I asked
23 him why he had been arrested. And it is then that he disclosed to me that he had
24 been returning from Beni where the headquarters of the RCD, Mr Mbusa's RCD was
25 based. And he told me that he was arrested upon his return because he was

1 suspected of being an agent at the service of Mr Mbusa. That is all I know about
2 Mr Loango. If we had not met in jail I would never have come by this information,
3 Madam.

4 MS GRANDON: [13:07:44] (Interpretation) We can take the break now,
5 Mr President.

6 PRESIDING JUDGE FREMR: [13:07:47] I fully agree.

7 But before we take the break, may I get update on time used by Defence so far,
8 court officer?

9 THE COURT OFFICER: [13:07:58] Yes, Mr President. One hour 21 so far used by
10 the Defence.

11 PRESIDING JUDGE FREMR: [13:08:05] Which means that you still have,
12 Ms Grandon, one hour 39 minutes. Just for the sake of planning of our afternoon
13 session, do you think that you will need all that time? If you can envisage now.

14 MS GRANDON: [13:08:20] (Interpretation) Mr President, I don't know.

15 PRESIDING JUDGE FREMR: [13:08:26] All right, we will see.

16 You have a right to use all that time. But I would like to express our view,
17 the Chamber's view that it won't be probably reasonable to adjourn, because we don't
18 have any witness for tomorrow, so it wouldn't be very reasonable to adjourn for just
19 10 or 15 minutes of remainder of the testimony. So we would like to encourage both
20 you and Ms Rabanit to conclude this testimony during the afternoon session.

21 Any comment on that, Ms Grandon, I saw you --

22 MS GRANDON: [13:09:06] (Interpretation) I want to confirm that I will not be
23 finished in 15 minutes.

24 PRESIDING JUDGE FREMR: [13:09:12] In 15 minutes? It was --

25 MS GRANDON: [13:09:25] (Interpretation) I think I misunderstood you,

1 Mr President.

2 PRESIDING JUDGE FREMR: [13:09:29] Yes, I was just saying that I don't want to
3 adjourn this session for tomorrow for the rest of examination taking just 15 minutes,
4 just to have a hearing for 15 minutes, which would be I think wasting of resources
5 and so on. But it is just my comment.

6 Now we break and we will reconvene at 2.30.

7 THE COURT USHER: [13:09:54] All rise.

8 (Recess taken at 1.09 p.m.)

9 (Upon resuming in open session at 2.31 p.m.)

10 THE COURT USHER: [14:31:41] All rise.

11 Please be seated.

12 PRESIDING JUDGE FREMR: [14:32:15] Good afternoon, everybody.

13 We will continue with cross-examination of our witness. But I am still waiting for
14 one document that I would like to read out. It will be one of our oral rulings
15 concerning next witness. Thank you.

16 It is a decision we deliberated on during the lunchbreak and it concerns modalities for
17 the testimony of Witness P-551.

18 On 19 January 2017, in its decision bearing filing number 1733, the Chamber, inter alia,
19 granted the Prosecution's request to add Witness P-551 to its list of witnesses, and
20 decided that Rule 68(3) is, in principle, appropriate for the admission of his prior
21 recorded testimony. Further, the Chamber considered that the use of video link may
22 be appropriate for the testimony of Witness P-551, and invited the parties and the
23 VWU to file any relevant submissions on this issue.

24 On 24 January 2017, in line with the time limit set by the Chamber, the Defence and
25 the Prosecution filed their submissions, respectively in filing numbers 1742 and 1750.

1 The Defence requests that video link testimony be denied, on the basis that the
2 burden for establishing the conditions of video link testimony rests on the "moving
3 party" and there is no Prosecution request explaining the witness's personal
4 circumstances and justifying video link testimony to which the Defence can respond.
5 In addition, the Defence argues that the witness may need to be shown a number of
6 documents which would be facilitated by hearing the witness at the seat of the Court.
7 The Prosecution agrees that video link is appropriate for the testimony of
8 Witness P-551 and seeks the Chamber's authorisation to proceed in that manner.
9 As a preliminary matter, the Chamber recalls that it was the Chamber itself which
10 considered that the use of video link may be appropriate for the testimony of
11 Witness P-551, and invited submissions in this respect. The Chamber indicated that
12 this was based on the nature of the expected testimony, the limited time expected to
13 be required for it, and potential logistical difficulties which the VWU may encounter.
14 In the view of the Chamber, this approach is consistent with its previous finding, as
15 most recently set out in its decision with filing number 1706, that the Statute and the
16 Rules give the Chamber a broad discretion to permit evidence to be given viva voce
17 by means of video or audio technology, provided, inter alia, that such measures are
18 not prejudicial to, or inconsistent with the rights of the accused.
19 In the present case, the Chamber notes that the Defence made no concrete
20 submissions as to prejudice specifically arising from hearing Witness P-551's
21 testimony via video link, except for noting the potential difficulties in showing
22 documents to the witness. The Chamber recalls in this regard that this has been
23 done with a number of other witnesses who testified via video link.
24 Noting further the nature of the witness's anticipated testimony, the fact that the
25 Chamber, parties and participants will be able to see and hear the witness testifying in

1 real time, and that the parties will have the opportunity to examine the witness,
2 the Chamber does not consider that it would be prejudicial to or inconsistent with the
3 rights of the accused for the testimony of the witness to be heard by way of video link.

4 In these circumstances, the Chamber finds it appropriate to hear the testimony of
5 Witness P-551 by way of video link and orders the Prosecution and the VWU to make
6 the necessary arrangements. The Chamber also notes its agreement to the joint
7 proposal of the parties for the testimony of this witness to be scheduled for
8 15 February 2017.

9 In light of the Defence's submission that the witness may need to be shown a large
10 number of documents, the Chamber directs the Defence to liaise with the VWU to
11 ensure that any hard copies it wishes to be shown to the witness during
12 cross-examination are provided to the registry in time.

13 This concludes the Chamber's ruling.

14 And now we can move to the rest of the cross-examination.

15 Ms Grandon, you have the floor.

16 MS GRANDON: [14:38:58] (Interpretation) Thank you, Mr President.

17 Q. [14:39:05] Good afternoon, Witness. Can you hear me, Mr Witness?

18 A. [14:39:17] Yes, I can hear you.

19 Q. [14:39:27] Mr Witness, is it correct that when Minister Ntumba Luaba visited in
20 2002 you accompanied him; is that correct? That you went with him?

21 A. [14:39:46] That is not correct. I never travelled to any location with him.

22 When he came to Bunia, I was with him at the place where he resided and that was it.

23 MS GRANDON: [14:40:05] (Interpretation) Mr President, I would like to request
24 permission from the Chamber to provide to the witness -- and before, in the previous
25 question, Mr President, the question was whether the witness had travelled to

- 1 Iga-Barrière with the minister -- (Overlapping speakers)
- 2 MS RABANIT: [14:40:21] -- we go into private session, please.
- 3 PRESIDING JUDGE FREMR: [14:40:27] (Microphone not activated)
- 4 Sorry, could you kindly repeat your request. Now I understood request made by
- 5 Ms Rabanit to move into private session. But for that purpose we will move into
- 6 private session and then please you can just complete your request.
- 7 So, first of all, court officer, let's move into private session.
- 8 (Private session at 2.40 p.m.)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
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Trial Hearing
WITNESS: DRC-OTP-P-0043

(Private Session)

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19 (Redacted).

20 (Redacted).

21 (Open session at 2.47 p.m.)

22 THE COURT OFFICER: [14:47:19] We are in open session.

23 PRESIDING JUDGE FREMR: [14:47:22] Thank you.

24 Ms Grandon, please.

25 MS GRANDON: [14:47:25] (Interpretation) At paragraph 22 of your statement you

1 explain the following:

2 "In my capacity as magistrate, I was never involved in political activities." Can you
3 confirm that?

4 A. [14:47:44] Yes, I can confirm that on the basis of my duties as a judge I was never
5 involved in political activities.

6 Q. [14:47:55] This is pursuant to your duty of neutrality and impartiality that is
7 incumbent on magistrates or judges; is that correct?

8 A. [14:48:04] Well, my status as magistrate does not allow me to be involved in
9 politics. That is why I did not have to proceed pursuant to any other principle.
10 That is in line with my professional ethics as a judge which prohibits me from
11 engaging in political activities.

12 Q. [14:48:27] Mr Witness, would you agree with me that the basis for that
13 prohibition is to enable judges to perform their duties with all neutrality and
14 impartiality; is that correct?

15 A. [14:48:45] Yes, I believe that this is the spirit. It doesn't only apply to politics.
16 Judges in our country cannot also engage in trade. That is according to the law.

17 Q. [14:48:56] That duty of impartiality and neutrality also applies to the private
18 lives of judges and not only to the courtroom; is that correct?

19 A. [14:49:09] Magistrates are governed by certain statutes and they have their own
20 ethics and deontology, so the principles of neutrality and impartiality also apply
21 whereby magistrates are not expected to engage publicly or privately in any activities
22 that can hamper their honour and dignity and thereby compromise their functions or
23 duties.

24 Q. [14:49:42] Mr Witness, at paragraph 34 of your statement you explain as follows,
25 and I quote, in relation to your arrest: "I was targeted by the UPC not as a nonnative

1 but because I tried to do my job and because I had some relations with Molondo, the
2 former governor of Ituri, which the UPC took as opposition to their project."

3 Is that correct?

4 A. [14:50:18] That's my testimony, Madam, my statement.

5 Q. [14:50:22] At paragraph 42 you continue as follows: Mr Molondo -- and I am
6 paraphrasing here -- needed you in his duties as governor from a strictly professional
7 standpoint. Then later on you said Molondo and yourself were friends. So you had
8 personal relations with him which were extraprofessional; is that correct?

9 A. [14:50:54] That would be an overstatement. I said this in order to point out that
10 there was no obstacle for my visiting Molondo at his home, who by the way used to
11 live quite close to me. I could go to him during my spare time and he was also able
12 to come to my house. So outside our professional duties he was able to visit me in
13 his office and I would visit him -- visit me in my office and he would visit me in mine
14 and that is the context in which I was defining the relationship between us. We were
15 not enemies, we used to visit each other and I can confirm that.

16 Q. [14:51:40] Did you ever have to go to his home, his personal home and did he
17 ever have to come to yours?

18 A. [14:51:46] Yes, that is correct.

19 Q. [14:51:55] Did you ever travel to the field with Mr Molondo?

20 A. [14:52:01] Can you be more specific in your question.

21 Q. [14:52:05] Please let us turn to the document in tab 28, DRC-D18-0001-3151.
22 Do you see the document?

23 A. [14:52:36] I can see the document, but I don't know which passage you want to
24 deal with.

25 Q. [14:52:40] I am going to point you to the appropriate paragraph. This is an

1 article from Le Millénaire, a newspaper. If we look at the first column of the article,
2 this is what it says, at the second paragraph.

3 Can we zoom in, please.

4 Maybe you will be able to identify the location better than I can. "Gorianzaou
5 (phon)", does that ring a bell? Does that sound like something? Maybe I am
6 mispronouncing it.

7 A. [14:53:34] I am not able to find what you are talking about, I am not a native of
8 that area and I don't know if I can help.

9 Q. [14:53:42] I will continue and see if that can be helpful.

10 "Governor Jean-Pierre Molondo asked the deputy chief of groupement of Ndukukwa
11 Tanginabo to talk to those who had burnt the houses. And thereafter he was in
12 contact with Jacques Kabasele, president of the TGI."

13 A. [14:54:14] I don't know what the circumstances were in which this was written.
14 I do not know the groupement which is being referred to, I do not know the incident
15 which is being referred to and therefore I am at a loss to tell you what may or may not
16 have happened at that place. I really don't have any idea.

17 Q. [14:54:30] Generally speaking, have you ever had to travel with Mr Molondo?

18 A. [14:54:38] Yes, we travelled together for professional purposes. With the local
19 security committee we have had to travel once or twice.

20 Q. [14:55:14] Mr Molondo belonged to a political party and you travelled with him.
21 Does that not contradict your duty of a judge to be neutral and impartial, Mr Witness?

22 A. [14:55:29] No, that doesn't violate that principle at all. But, in any event,
23 Mr Molondo was the governor at the time of the Ituri province. So when you travel
24 with a figure of authority that cannot amount to a breach of the principle of neutrality.
25 He was a politician involved in politics. But within professional limits it was

1 possible to work with politicians without necessarily being involved in politics, and
2 that was the case for me.

3 Q. [14:56:36] One of the other reasons for which you were arrested and questioned
4 by the DGM is that you had telephone conversations with some persons of the
5 government in Kinshasa. Last Friday you confirmed to me that at least once you
6 communicated with the minister of justice at the time; is that correct?

7 A. [14:57:01] Yes, that is correct, Madam.

8 Q. [14:57:32] During your discussions with the DGM officials they asked you about
9 those conversations; is that correct?

10 A. [14:57:43] I was informed of that during my interview. It is then that I was told
11 that I had been in communication with Kinshasa in relation to the functioning of the
12 judicial system in the Ituri.

13 Q. [14:58:17] Your professional relations and extraprofessional relations with
14 Mr Molondo, in addition to the discussions with representatives of government
15 officials in Kinshasa, were those not sufficient reasons to create suspicion that you
16 were in contact with those who were enemies to the government in power?

17 A. [14:58:44] That is a matter of speculation. And I say this because, when the
18 judicial system was no longer functional, when judges could no longer go to the
19 courts to work, everything was closed down and therefore I had the duty to report to
20 the government authorities who were in charge of justice at the level of the central
21 government.

22 Now, if the person who drafted this did so properly, he would have told you that
23 during that discussion with the minister of justice, the idea was to point out to him
24 that the judges were in a state of insecurity and that we could therefore no longer
25 work under those circumstances. And that was the reason why we had shut down

1 the courts while waiting for security to return. So there is no reason to imagine that
2 the purpose of the conversation was to certify that we were collaborating with anyone
3 against the government in place.

4 MS GRANDON: [15:00:18] (Interpretation) Can we now call up document number
5 17, 0070-0045. Page 0070, please.

6 Can we just zoom in a bit, please.

7 Q. [15:01:32] Mr Witness, this is a document that bears the date 13 June 2001. This
8 document appoints Mr Nembe to the director responsible for economic matters,
9 sociocultural matters, general information and military activities at the general
10 directorate of the BSI. Can you tell me what the BSI is?

11 A. [15:02:02] I have no idea.

12 Q. [15:02:07] This is the internal security bureau?

13 A. [15:02:15] Thank you very much for that information.

14 Q. [15:02:16] Which is what the FLC, the name gave to the AMR.

15 Q. [15:02:31] Can we move to 0072, please.

16 This is a document which is dated is 11 September 2002 and which appoints
17 Mr Nembe as the general director of migration, which is something you have spoken
18 of at length already, Mr Witness.

19 I would like the next page, please, 0073. If we can scroll down to the second half of
20 the document, please.

21 This is dated 3 June 2003 and within the ANR appoints Mr Nembe as the officer for
22 administration and identification.

23 Mr Nembe was therefore a civil servant who had a certain seniority when the FLC
24 and then the APC, and after that by the Kinshasa government in his respective duties.

25 That's right, isn't it?

1 A. [15:04:20] Well, I don't know what to say. But when I see the date, the date at
2 which the document was drawn up, namely 3 June 2003, I wasn't at Bunia at that
3 juncture, I was already at Kinshasa. And all this, everything, rather, that happened
4 after my departure, I don't know about.

5 Q. [15:04:58] Do you know whether the ANR officials had as their functions
6 judiciary police powers?

7 A. In my country that's how things are done, judiciary police officials, this is my
8 belief anyway, but I think there has to be a text that provides for this. I don't have
9 this text to hand, but it is highly likely that, that they would have those powers as
10 officials ensuring that restricted scope of action.

11 Q. [15:05:37] Let's look at tab 31, DRC-D18-0001-3152.

12 Mr Witness, here we have a decree, just to establish and structure the ANR. If we
13 move to the third page of this document, article 22 and following, of this particular
14 decree, we see the following, article 22:

15 "Officials and civil servants belonging to the ANR will hold a rank under that of
16 deputy inspector and are therefore judicial police officials. Officials and civil
17 servants belonging to the ANR, having at least the rank of deputy inspector shall be
18 judicial police officials with broad-based powers. Their powers will cover the
19 entirety of the country."

20 Article 23, we read -- 25, I clarify:

21 "Judicial police officials all belonging to the public Prosecutor's office, before setting
22 proceedings against officials or civil servants belonging to the ANR for conduct
23 within the ambit of their duties shall request a prior opinion of the general
24 administrator."

25 Mr Nembe, as an ANR official, had the power to arrest and bring in for questioning

1 a suspected individual; is that right?

2 A. [15:08:33] According to this text, civil servants and officials belonging to the
3 ANR, in their capacity as judicial police officers with broad powers in the conduct of
4 their -- discharge of their duties, they could indeed call in for questioning who they
5 wished.

6 Now turning to Mr Nembe, when looking at the date when the conduct, criminal
7 conduct was done and the date of his appointment as an official belonging to the
8 ANR, it is difficult to know whether he had that power to bring in for questioning. It
9 depends on the date, whether he enjoyed that power at the time when he set in train
10 a certain amount of official steps and whether he did so when he had been appointed.
11 If it were the case then that would be part and parcel of his official capacity.

12 Q. [15:09:54] By looking at the documents I presented to you beforehand we saw
13 that Mr Nembe had been director for sociocultural activities, military activities, and
14 then he was director at the DMG and then finally at administration and identification,
15 he held duties there. So in that capacity he had the power to bring people in for
16 questioning and to arrest an individual.

17 A. [15:10:27] In my country you have to make a distinction between the ANR and
18 the DMG. Now you cannot do something that doesn't flow from your status as
19 acknowledged by the law. If he did something that would be held against him,
20 I don't know whether he was at that juncture with the ANR or whether he was with
21 the DGM. These are two different bodies enjoying a different scope of activity with
22 a different set of attributions. I would just like to have really some clarity so I can
23 answer your questions appropriately.

24 Q. [15:12:12] I am going to return to your witness statement. Now from your
25 statement I understand that things were done in two steps, first, Monday,

1 11 November where at the end of the day you were taken to the DGM offices for
2 a couple of hours and then you were free. And then the next day you were taken
3 and then kept there until the end of November; is that right?

4 A. [15:12:43] That's right.

5 Q. [15:12:47] And the second day when they came to get you at the tribunal and
6 then you were taken to the DGM's offices, you yourself at the end of the day, you
7 asked to be taken to prison because you didn't want to stay in the office; is that right?

8 A. [15:13:12] I just have to tell you on what conditions I accepted. It's true that I
9 hadn't been interviewed officially. The day that I was arrested was 12 November, it
10 was around 7 p.m. and night had fallen at that point. And at that point an official,
11 a soldier, in fact, he came to tell me that I was under arrest and as such he could, he
12 could detain me in an office. And I told him that an office isn't an appropriate place
13 of detention, if there is a cell, a prison cell, it would be better for him to take me there.
14 And it was in those circumstances that I asked that official to take me to a prison cell
15 rather than detain me in an office, where anything could happen and anything could
16 be held against me. So if I asked him to take me to the prison cell it is because the
17 office wasn't an appropriate place of detention, it wasn't fit for purpose, and so I -- I
18 mean my status had changed, I was now a detained person, and you don't keep
19 a detained person in an office, you put them in a prison cell. And so he took me to
20 a prison cell and I stayed there until the decision was made to release me.

21 Q. [15:15:16] And so it was the next day that you were questioned by Mr Nembe
22 and his colleagues; is that right?

23 A. [15:15:23] Yes, it was the next day, on the 13th, that I was interviewed and it was
24 towards the end of the day.

25 Q. [15:15:34] And in paragraph 41 of your statement you say this in respect of the

1 interview that you had with those individuals, and let me quote:

2 "It was a relaxed ambience where they are not nasty to me, they didn't threaten me.

3 I knew all about them as they were well known people in Bunia but I didn't know any
4 of them personally or as friends." Is that right?

5 A. [15:16:02] That's right.

6 Q. [15:16:09] And then after that interview nothing happened until you were freed
7 at the end of November; is that right?

8 A. [15:16:22] I would just like to point out that while I was being detained, on two
9 occasions, if it wasn't three, people came to visit me at night. Maybe I pointed this
10 out in my statements, but the first visit was made by soldiers who came to the prison
11 cell around midnight, if I am not mistaken. They had asked to meet me and these
12 soldiers were commanded by Faustin Kiza Mayebo (phon). And I wasn't happy
13 about this nighttime visit because, well, anything might happen.
14 And then the second occasion, again at night, there was a gentleman that arrived call
15 José, and he was among the people who, who had interviewed me, and he came to
16 ask me or to tell me that we would have to take me out of that city -- prison cell to go
17 off to Mandro. Mandro was about between seven and 12 kilometres away from the
18 town. And I said this was really not right and proper. And apart from that, there is
19 nothing else that I think went wrong.

20 Q. [15:18:10] And when you were in the DGM premises you were able to bring
21 some personal belongings, food and a mattress; is that right?

22 A. [15:18:21] Yes, that's what I did, Madam. I had to ask for people to bring me
23 a little mattress and people came to see me with food, very kindly, because, because
24 I was in a state of detention, I couldn't move around.

25 And even to wash, I could only wash at night under a tree and the watchful eye of

1 soldiers who were guarding me. And obviously I am not going to -- I think this
2 speaks for itself in what attire I was when I was washing.

3 Q. [15:19:15] And you spoke to Sonia Bakar and Anneke, you made mention of this
4 morning, you spoke to these two people of your detention period; is that right?

5 A. [15:19:26] After my period of detention, those two people came up to me, no
6 doubt they wanted information about the conditions and the motive, underlying
7 motive behind my arrest. And it's true, yes, I entered into contact with those two
8 people.

9 Q. [15:19:49] And you had an interview with Mrs Bakar?

10 A. [15:19:56] With both.

11 Q. [15:20:02] Well, as we saw earlier on today, you also corresponded with
12 Mrs Anneke; is that right?

13 A. [15:20:13] Yes, I had a correspondence with Mrs Anneke, when there were
14 anonymous messages and telephone calls and I didn't know who was making them,
15 and thinking about my own personal protection, I had to talk to her about this and to
16 do everything in my power through her, at her level, to see whether it was possible to
17 be evacuated to Kinshasa.

18 Q. [15:20:54] So this is a means for you to try and get a transfer or at least to be
19 taken out of Bunia to go to Kinshasa; is that right?

20 A. [15:21:05] That's exactly it, Madam. Exactly it.

21 MS GRANDON: [15:21:20] (Interpretation) Now let's turn to tab 14,
22 DRC-OTP-2099-1739.

23 PRESIDING JUDGE FREMR: [15:21:52] Ms Rabanit.

24 MS RABANIT: [15:21:54] I'm sorry, can we do it in private session because the name
25 of investigators appear on the document?

1 PRESIDING JUDGE FREMR: [15:21:59] Ms Grandon, any problem with that?

2 MS GRANDON: [15:22:03] (Interpretation) Well, we simply maybe could avoid
3 displaying the document publicly and I won't name the person whose name features
4 on the document.

5 THE COURT OFFICER: [15:22:16] Could you please repeat the ERN number.
6 Thank you very much.

7 MS GRANDON: [15:22:19] (Interpretation) 2099-1739.

8 PRESIDING JUDGE FREMR: [15:22:28] Ms Rabanit, would it be fine with you --

9 MS RABANIT: [15:22:32] Yes.

10 PRESIDING JUDGE FREMR: [15:22:33] -- what is proposed by Grandon? All right
11 then, let's proceed like Ms Grandon proposed.

12 MS GRANDON: [15:22:56] (Interpretation) Could we zoom in on the text we see on
13 the document.

14 Q. [15:23:02] Mr Witness, here we have an investigator's note which relates
15 a telephone conversation that you had with one of the OTP investigators, and it
16 concerns the following, a conversation that you had on 28 August 2007. And here
17 we read that P43, and I won't reveal his name (Speaks English) "to request some sort
18 of financial support as the DRC judiciary has not yet posted him to a specific
19 tribunal." (Interpretation)

20 And this person then answered by saying (Speaks English) "explained that no
21 financial assistance could be provided."

22 (Interpretation) Mr Witness, due to your arrest did you try to achieve any financial or
23 material favour from any organisation?

24 A. [15:24:22] No organisation came to me after my arrest and offered no financial
25 support whatsoever. And I can't remember any interview with any organisation

1 whatsoever, apart from perhaps the gentleman whose name you didn't speak aloud.
2 This goes back to 2007, a long time ago. In all likelihood he needed a certain amount
3 of information and I think one way or another, I don't know how things were
4 construed, could call for financial assistance. It could well be that I put on the table
5 the problem at hand, because I was saying to myself that with these reports, with
6 these interviews, because I hadn't at that point found any work, I hadn't actually
7 received an appointment. It occurred to me that this may take things forward and I
8 think I may have spoken to the investigator about that matter.

9 Q. [15:25:50] I am going to move to another area.

10 Paragraph 29 of your statement you make reference to the murder of CICR officials
11 and about that you say "we didn't take this far because we knew it was very
12 dangerous, particularly because certain rumours accused the Hema of perpetrating
13 the murder." Would you mind providing some explanations about that, please. Do
14 you recognise this? Do you remember what date that occurred?

15 A. [15:26:38] It's difficult to remember. Because this was the time prior to my
16 departure from Bunia, so before 2003, and I can't provide the exact date at which
17 these events took place. But this is something that was well known, it was on
18 everybody's lips.

19 Q. [15:27:03] Document 23 now, please, DRC-D18-0001-3145.

20 This is an article from Les Coulisses, a newspaper, and I would like to read out to you
21 one or two excerpts. This article has the title "Six CICR officials had been murdered
22 in two steps". The first paragraph:

23 "There are events that you cannot cast out of mind so easily. Among them, the cruel
24 murder of six officials belonging to the CICR on the Djugu-Fataki-Bunia road on 25
25 and 26 April 2001." Does that date refresh your memory, Mr Witness?

1 A. [15:28:19] No, but I would say this is the period during which the incident took
2 place, but this date doesn't come from me, but I would say, yes, I would situate the
3 events in that particular time frame, yes.

4 Q. [15:28:34] And a little further on we read in the article the following:
5 "According to sources that contradict what everybody says, the two white people
6 (Julio Delgrado, Rita Stucki) and Véronique Saro were allegedly killed well before
7 and the two drivers (Jean Molokabonge and Aduwe Boboli) and the official Alur
8 Unen Ufoirworth were allegedly executed near a business, or a compound, between
9 Fataki and Gbakalo in a place where wood was often sculpted. An irksome witness,
10 the driver Papa Jean had been killed 12 metres away. It was almost half past 11.
11 UPDF officials would hide the victims' body before yielding them at 10.30 in the
12 evening to the CICR at Bunia.""

13 Another document now, tab 14, DRC-D18-0001-3146.

14 Let's look at the second page of this document. I am going to read certain excerpts:

15 "24 April 2001, the CICR team left Bunia to go to Kpandroma and Rethy (areas known
16 as decision-making centres of the Lendu tribe in the Djugu territory). Instruction
17 had already been communicated by message. When going through Fataki, one of
18 the officials would be threatened by these little words that would eventually not be
19 taken note of at all, would become commonplace.

20 On 25 April 2001, the team spent the night at Fataki to appraise needs and to hand out
21 aid. Before setting up they went to pay their respects to the UPDF commander" --

22 PRESIDING JUDGE FREMR: [15:32:01] Ms Grandon, please slow down.

23 MS GRANDON: [15:32:21] (Interpretation) "saying that it would stay until the
24 following day and would safeguard his security.

25 You will be safe answered the UPDF commander before leaving -- letting his hosts go

1 off and rest.

2 On the morning of 26 April 2001, the team returned before the UPDF commander to
3 ask what was the programme for the day, and also to say goodbye to him, but they
4 were told that the commander had left early that morning."

5 A little further on we can read the following, "towards 11" on the third column. I
6 clarify:

7 "Towards 11 o'clock, when the team wanted to begin its trip, the president of the
8 peace committee, surrounded by some UPDF soldiers invited them to another
9 meeting. The team first refused, but the president insisted with the presence of the
10 UPDF soldiers and gave in out of respect."

11 And then a little further on, with regard to the operation per se, we can read the
12 following, the fifth column:

13 "When the operation was being undertaken, the UPDF blocked traffic for more than
14 two hours in both directions, before the crime was committed and even after the
15 crime was being committed."

16 And a little further on it carries on by saying:

17 "A battalion of Congolese soldiers headed up by a commander and a UPDF section
18 was 3 centimetres away from where the crime was committed and didn't even move
19 when the sound of gunfire could be heard.

20 The UPDF commander who had left Fataki in the morning to go off to Djugu (15
21 kilometres) would only arrive at Djugu at half past five in the evening (after the crime
22 had been committed) without making it clear where he had spent the entire day, he
23 who had left Fataki to go to Djugu in the morning. And it was said that the UPDF
24 commander apparently took a round trip, the long road after having made sure that
25 the crime had been committed and therefore hide the fact that he had contributed to

1 the commission of the crime.

2 After the alert, the sub-delegate of the CICR at Bunia contacted the UPDF authorities
3 at the Bunia airport in order to get more information about its colleagues. The
4 commander showed outright indifference and questioned the sub-delegate about the
5 information that he held before reassuring him by saying that he would take
6 everything in hand."

7 And then at the end of that column we read:

8 "The white truck belonging to marque Stout would then reappear at Fataki and in the
9 evening it was possible to see Ugandan soldiers and some young people, combatants,
10 young combatants exchanging dollar bills in order to buy beer. On the next day,
11 28 April, four young UPDF soldiers also exchanged a number of US dollars in the
12 markets for weapons and receiving Ugandan shillings in exchange."

13 A little further on we can read:

14 "Everybody was pointing them out and suspected them for having got involved in the
15 operation in question."

16 THE INTERPRETER: [15:37:47] Interpreter note: The interpreter doesn't have sight
17 of the document that counsel is reading out.

18 MS GRANDON: [15:37:58] (Interpretation) Let me continue further on. The second
19 column:

20 "The investigation undertaken by the prosecution was hampered by the Ugandan
21 soldiers, and witnesses or suspects that were be interviewed, were advised to not
22 come forward in order to not respond to the request and subpoenas that were served
23 against them.

24 On 14 May 2002, the Ugandan government sent a high ranking official of the UPDF to
25 take the prosecutor away from the case, off the case, with a certain amount of

1 intimidation."

2 Last paragraph of the last column --

3 THE INTERPRETER: [15:39:11] Interpreter note: The interpreter can only see
4 page 26 of this article.

5 MS GRANDON: [15:39:22] (Interpretation) There is a third page of this document.

6 THE INTERPRETER: [15:39:26] Interpreter note: Which he doesn't have. The
7 interpreter note: Now the article is appearing on the screen.

8 MS GRANDON: [15:39:35] (Interpretation) Last paragraph on this article:

9 "In order to make sure that the investigation went awry, the UPDF soldiers upon the
10 order of Ugandan authorities in all likelihood, intimidated the former administrator
11 of Djugu territory who was there when the crime was committed and who was asked
12 to sign, giving the date 15 August 2001, a document according to which all statements
13 that were made in that case were wrong and that he wasn't at Djugu when the crime
14 was committed."

15 And there is a third article, tab 25. DRC-D18-0001-3149. This is an article taken
16 from Colombe Plus, a newspaper.

17 The article begins as follows:

18 "The brutal death of six officials of the CICR in Ituri on 26 April 2001 continues to
19 cloud Uganda considerably."

20 And then the last paragraph, second column:

21 "It should be remembered that Uganda had promised to make public the outcome of
22 its investigations and is remaining totally silent on the subject."

23 Witness, so according to these articles they point the finger at the UPDF and the
24 Ugandans in the murder of the CICR officials, do they not?

25 A. [15:42:13] According to my understanding, that is correct.

1 Q. [15:42:20] Now in April 2001 the UPC did not exist, did it?

2 A. [15:42:26] UPC officially existed I think from 9 August 2002. That during a
3 certain period there was a split between Mr Mbusa and Mr Lubanga. And this
4 meant that they were operating differently and the town of Bunia was cut in two and
5 previous to that, before August 2002, well before August 2002. Now, in order to
6 answer your question, the 2001 the UPC did not exist officially.

7 Q. [15:43:25] Do you know that on the date when these acts occurred,
8 February 2001, the officials who would later become the FPLC officials, the officers of
9 the armed wing of the UPC were undergoing training outside the Democratic
10 Republic of Congo?

11 A. [15:43:43] I cannot know that.

12 PRESIDING JUDGE FREMR: [15:43:44] Hold on, Mr Witness, Ms Rabanit.

13 MS RABANIT: [15:43:49] Yes, your Honour, I reiterate the same objection that was
14 made before as to the form of the suggestion put by Defence counsel to the witness.

15 PRESIDING JUDGE FREMR: [15:44:02] Ms Grandon, I think we can now let
16 Mr Witness answer, but we will evaluate the value of this answer in the light of
17 Ms Rabanit's objection.

18 MS GRANDON: [15:44:20] (Interpretation) I would like to change subject,
19 your Honour.

20 PRESIDING JUDGE FREMR: [15:44:24] Even better.

21 MS GRANDON: [15:44:34] (Interpretation)

22 Q. [15:44:37] Now you were informed at a certain time after you left from Bunia
23 that Mr Nembe was subject to judicial proceedings, you were aware of that, were you
24 not?

25 A. [15:44:46] Yes.

1 Q. [15:44:53] On Friday when we met you explained to me that it was the police
2 inspector who was operating, exercising his functions in Bunia to whom you had
3 communicated that information, was it not?

4 A. [15:45:06] I confirm that it was indeed that person. I didn't make any
5 complaint, but I was informed that Mr Nembe was subject to judicial proceedings in
6 Ituri, and in particular the judicial police brigade.

7 Q. [15:45:26] He was the person who called you or did you call?

8 A. [15:45:31] He was the person who had called me. I didn't call.

9 Q. [15:45:44] And following that you addressed a note to the Office of the
10 Prosecutor, is that it?

11 A. [15:45:52] Because the proceedings were already open we needed certain
12 evidence. And of course I was a victim, but in this dossier I hadn't written
13 a complaint of any kind. The investigation was underway at the initiative on the
14 judicial police brigade and when the dossier was open we certainly needed certain
15 information in order to complete the case file. And it was within that framework
16 that I was called upon in order to provide the information on the arrest. And that's
17 what I did, giving this information in the form of a letter addressed to the Prosecutor
18 of Ituri.

19 Q. [15:46:53] Did you have access to the evidence in the proceedings?

20 A. [15:47:00] To this day, I have never been shown it, because the proceedings were
21 open in Ituri and I was in Kinshasa. And I was not aware of anything within the
22 framework of the investigations in that case.

23 Q. [15:47:20] Why didn't you become party to civil proceedings in this case, or civil
24 party to criminal proceedings in this case?

25 A. [15:47:32] Well, becoming a civil party to civil proceedings is something I could

1 do. I could become a civil party, just as I could not do. Now this is a choice and not
2 whether to do it or not, and particularly because the proceedings were underway in
3 Ituri, I couldn't see myself leaving Kinshasa in order to request anything as a civil
4 party within a framework of that case. So this was a choice that I made. Justice had
5 to carry out its work without necessarily me having to become a civil party to
6 proceedings.

7 Q. [15:48:21] But nevertheless this was necessary to get reparations for any harm
8 suffered subject to your arrest?

9 A. [15:48:31] Counsel, this was a choice for me to obtain reparations. This was
10 a hypothesis. The trial, when it started, well, we knew that, but we didn't know
11 exactly what it would lead to. So personally I made the choice to not become a civil
12 party to the proceedings.

13 Q. [15:49:08] You also explained in your statement that you had the information
14 that during the proceedings Mr Nembe had been transferred to Makala prison; is that
15 correct?

16 A. [15:49:25] That is true. When the judgment was delivered I was informed by
17 the same sources as Mr Nembe, Mr Nembe had been transferred to Kinshasa at
18 Makala prison.

19 Q. [15:49:45] And this information you obtained from the judicial police inspector;
20 is that correct?

21 A. [15:49:50] Perhaps I can't be precise with regards to the source of information,
22 but this is information that was published, it was on the radio, on television, it was in
23 newspapers, everybody was speaking about it. Whether it was the judicial police
24 inspector or other sources, what is true is that the information is that having been
25 tried and convicted, Mr Nembe had been transferred to Kinshasa.

1 Q. [15:50:29] The Office of the Prosecutor communicated the judgment concerning
2 the proceedings against Mr Nembe.

3 And this is document 30, DRC-OTP-0151-0124.

4 This is a sentence issued on 3 August 2004. And according to this judgment, this
5 isn't a substantive ruling but it only rules on the issues which were raised by the
6 lawyers of Mr Nembe on the exception of the privilege of jurisdiction, because his
7 lawyers defended the fact that as an official of the ANR they couldn't be prosecuted
8 on anything apart from the authorisation of his hierarchical superior.

9 Now this, they rejected the exception raised by the lawyers and we have no
10 substantive judgment in this regard.

11 Mr Nembe therefore was not convicted, or at least the proceedings did not continue
12 concerning the acts relating to your arrest. Does that --

13 PRESIDING JUDGE FREMR: [15:52:25] Ms Rabanit.

14 MS RABANIT: [15:52:28] Yes, the conclusion that Defence counsel reaches is not
15 grounded on the fact, it is her own conclusion, but in our submission there is no fair
16 basis reasons to reach that conclusion.

17 PRESIDING JUDGE FREMR: [15:52:43] Yes, Ms Grandon, at the moment it seems
18 that you are again putting something that at least we haven't proved so far.

19 MS GRANDON: [15:52:56] (Interpretation) If you would allow me to answer.

20 PRESIDING JUDGE FREMR: All right.

21 MS GRANDON: (Interpretation) The Prosecutor disclosed to us the dossier, the
22 proceedings dossier which Mr Nembe was subject to, and the judgment which
23 appears in this dossier is one which I have just referred to concerning the exception of
24 jurisdiction which was raised by the lawyers for Mr Nembe.

25 If the Prosecutor tells me that they have other substantive judgments then I am ready

1 to hear them, but the fact is there wasn't a substantive judgment.

2 PRESIDING JUDGE FREMR: [15:53:31] Ms Rabanit, but briefly, because take into
3 account who is the witness, Mr Witness is familiar with procedural matters so I think
4 even for him it is clear what it is about. So he hardly can be confused by even some
5 not perfect statement. Anyway, you have the floor.

6 MS RABANIT: [15:53:47] Just to simply say that we dispute the conclusion reached
7 by Defence counsel. Just because the dossier is not complete there doesn't mean that
8 something that is not there doesn't exist.

9 PRESIDING JUDGE FREMR: [15:53:59] Taken.

10 MS GRANDON: [15:54:08] (Interpretation)

11 Q. [15:54:09] Did you know, Witness, that Mr Nembe is still in the FRDC?

12 A. [15:54:21] I don't know that, Madam.

13 Q. [15:54:52] I am just changing the subject here. You were questioned during
14 your testimony within the framework of Mr Lubanga's trial on the question of
15 prefinancing. Do you remember having testified about such loans?

16 A. [15:55:13] Yes, I remember and I confirm that indeed I made a statement about
17 that. If you look at the statement during my interview by the investigators you will
18 find the same thing.

19 Q. [15:55:28] And during your testimony you also explain that -- and this is
20 document 3 in my list, page 5730 and on, you say that was a system which was used
21 by all groups who followed at the head of Ituri and Bunia in general, Bunia and Ituri
22 in general; is that correct?

23 A. [15:55:54] I confirm that.

24 Q. [15:55:58] I understand, Witness, from the prefinancing system that this quite
25 simply is a system of taxation which is taken from businesses before the importation

1 of goods rather than at the time of their importation; is that correct?

2 A. [15:56:19] Well, I can't confirm that to you because I wasn't in the tax
3 administration of the country during that period. I never was. But if I was made
4 aware of what was happening in terms of prefinancing, then it was when certain
5 dossier were being dealt with and certain friends who were in the customs
6 administration expressed their concerns. When, for example -- well, I am just
7 wondering how you can have prefinancing when you haven't had importation, that is
8 to say that in one way or another you can prefinance a customs procedure. You can
9 only do that when you have the goods for import. So the prefinancing procedure
10 could be carried out prior thereto, prior to importation, or while the importation has
11 already been carried out. Now I imagine that is how things worked. That's
12 a reflection. I am not saying that that is how it was done because I am not within
13 that administration.

14 Q. [15:57:41] So a form of taxation therefore?

15 A. [15:57:47] The taxation, well, it's an obligatory taxation defined by law, whereas
16 here what you have is prefinancing. This consisted of customs excise and in customs
17 matters there isn't a fixed tax in advance, everything depends on the quantity and the
18 quality of the merchandise to be imported. So that is a type of tax that is paid in
19 advance, before the customs administration has the dossier for a customs matter.

20 Q. [15:58:40] Do you know someone called Prince Mugabo?

21 A. [15:58:46] I don't know him, Madam.

22 Q. [15:58:53] If I put it to you that this person was the military auditor of the FPLC,
23 would that mean something to you?

24 A. [15:59:00] I have no idea, Madam.

25 THE INTERPRETER: Military Prosecutor of the FPLC, corrects the interpreter.

1 MS GRANDON: [15:59:14] (Interpretation) I have finished, your Honour.

2 Thank you, Witness.

3 A. [15:59:18] Thank you, Madam.

4 PRESIDING JUDGE FREMR: [15:59:20] And thank you, Ms Grandon, to make your
5 examination efficient, even sparing some, even if small amount of time, but still
6 appreciated.

7 Now, Ms Rabanit, have you request any time for redirect?

8 MS RABANIT: [15:59:38] I do, Mr President. I have three areas and I expect it will
9 be around 10 minutes maximum.

10 PRESIDING JUDGE FREMR: [15:59:47] Ten minutes would be fine, but on the
11 condition that these topics really arose from the cross-examination. It should not be
12 some supplementary or examination-in-chief, are we clear on that?

13 MS RABANIT: [16:00:01] Well understood, Mr President.

14 PRESIDING JUDGE FREMR: [16:00:03] Then you have 10 minutes.

15 MS RABANIT: [16:00:28] I would like to call the document on the Defence list,
16 which is at tab 31, and the number is DRC-D18-0001-3152 and I would like to see the
17 first page of that document, please.

18 QUESTIONED BY MS RABANIT: (Interpretation)

19 Q. [16:01:17] Sir, if you would be so kind, could you read the title of this document
20 as it appears before you.

21 A. [16:01:32] "Décret-loi number 003-2003 on the creation and organisation of the
22 National Intelligence Agency."

23 Q. [16:01:48] Could you read to us the date given in front of this title?

24 A. [16:01:54] The decree is from 11 January 2003.

25 Q. [16:02:00] Could you give us the date on which you were arrested?

1 A. [16:02:13] I was arrested in the month of November 2002, from 12 to
2 30 November of that year.

3 Q. [16:02:32] Sir, you have been asked questions with regard to the possibility for
4 police officers to arrest people and my question is as follows: In the DRC is it legal
5 to arrest and detain somebody for three weeks without any charge?

6 A. [16:03:02] I would say that it's not legal to arrest somebody for three weeks
7 without any charges, unless there are investigations which are being carried out. But
8 in that case, firstly, there have to be charges against the person. Now, in the
9 opposite case, if there are no charges, that's what we call arbitrary arrest or detention.

10 Q. [16:03:40] So were any charges against you made during your time of detention
11 with the UPC?

12 A. [16:03:50] I was never made aware of any charges whatsoever during my
13 interview. It was only when I was freed that Mr Nembe asked me to see Mr Rafiki,
14 who was his superior. And he was the person who explained to me the reasons why
15 and how they proceeded with my arrest and my detention for so many days. But
16 during the examination I was not told why. I even asked the question and I was told
17 that that was something I would find out one day.

18 Q. [16:04:43] I am going to change subject. During the examination or
19 cross-examination of my colleague you were asked questions about the copy of the
20 email sent to you by Mr Musoko and they stated that Manassé Savo wanted to harm
21 you, and I can read it, paragraph 36 of your statement, that he was going to harm you
22 with the support of the UPC.

23 Now my question is as follows: With regards to this event, or this copy of the email
24 by Mr Musoko, did that arrive with you before or after your arrest and detention for
25 three weeks by the UPC?

1 A. [16:05:43] If you look at the date of my email, it came after my arrest.

2 Q. [16:05:53] Did you take these threats seriously at the time?

3 A. [16:06:00] I took these threats seriously, and that's the reason why I wrote to the
4 organisations responsible for human rights, so that they intervene so that does not
5 occur.

6 Q. [16:06:24] Sir, I am going to change subject once again, and that will be my last
7 question. Today in the court record, page 50, lines 13, 14, when you were asked if
8 you had been driven out of Bunia, you answered: "Formally, I was not driven out,
9 but I was forced to leave." Could you clarify that answer, if you would be so kind.

10 PRESIDING JUDGE FREMR: [16:06:56] Hold on, Mr Witness, before you answer.
11 Ms Grandon.

12 MS GRANDON: [16:06:58] (Interpretation) This isn't a new subject that the Defence
13 addressed in its cross-examination, your Honour.

14 PRESIDING JUDGE FREMR: [16:07:07] Ms Rabanit.

15 MS RABANIT: [16:07:08] (Interpretation) This is an answer that the witness gave to
16 a question from my colleague and I'm just trying to make the answer explicit,
17 your Honour.

18 PRESIDING JUDGE FREMR: [16:07:20] Ms Grandon, if this reference concerns the
19 part of your cross-examination, then I don't see anything wrong in Ms Rabanit's
20 attempt to elaborate on that.
21 So please proceed.

22 MS RABANIT: [16:07:41] (Interpretation)

23 Q. [16:07:42] Mr Witness, do you remember my question or do you want me to
24 repeat it?

25 A. [16:07:52] Please repeat the question, Madam.

1 Q. [16:07:55] When you were asked this morning whether you were driven out of
2 Bunia you answered as follows, and I quote you: "Formally, I wasn't driven out, but
3 I was forced to leave." Can you explain what you meant by that answer and give the
4 reasons for which you left?

5 A. [16:08:14] Thank you. There are cases, and when I say that I wasn't formally
6 chased out of Bunia, it is because there were a number of cases particularly involving
7 workers with the United Nations system, cases of people who were expelled from
8 Bunia pursuant to a decision that was signed by the authorities in power at the time.

9 Q. [16:08:55] Sorry, I'm sorry to interrupt, to have interrupted you, but please
10 proceed.

11 A. [16:09:04] But in my case there was no such decision concerning me, however,
12 mindful of the context in which I found myself, and I may say that during that time
13 my entire family was already in Kinshasa, there was such a high level of insecurity
14 that it was not possible for us to administer justice as it should be administered. You
15 have heard from an article that was published in a paper that the Ugandan soldiers
16 did not allow the justice system to function. Under those circumstances, I had no
17 reason to continue to stay in Bunia. That is why I was not able to work and therefore
18 was forced out, was forced to leave, although there was no formal decision taken in
19 that connection concerning me.

20 Q. [16:10:21] You said that some staff of the UN organisations were expelled. Can
21 you tell us who these staff are and who expelled them?

22 A. [16:10:35] I do recall --

23 PRESIDING JUDGE FREMR: [16:10:39] Hold on.

24 Ms Grandon.

25 MS GRANDON: [16:10:41] (Interpretation) That question is beyond the scope of the

1 cross-examination, Mr President.

2 PRESIDING JUDGE FREMR: [16:10:47] Ms Rabanit, now I believe Ms Grandon is
3 right.

4 MS RABANIT: [16:10:51] Your Honour, I am just trying to explicit the response of
5 the witness to the last question and to explore everything that he has to say on this
6 subject that is relevant to his testimony.

7 PRESIDING JUDGE FREMR: [16:11:07] All right then.

8 MS RABANIT: [16:11:10] (Interpretation)

9 Q. [16:11:13] Witness, do you want me to repeat the question or do you remember
10 it?

11 A. [16:11:19] I do remember the question and I can answer. When I was detained,
12 I saw -- well, maybe I misspoke when I talked about UN agencies. What happened
13 is that I saw two gentlemen come who used to work for the NGO known as Save the
14 Children. Those gentlemen were expelled because they had attempted to reunite
15 Rwandan children who had been found in the Ituri with their families, without the
16 authorisation of the UPC. Those people were expelled from Bunia.

17 I can also mention the case of the officer in charge of OCHA, Mr Félix Ntumba, who
18 was also expelled from Bunia pursuant to a UPC decision because he wanted to
19 uphold human rights when it came to the -- some of the conduct displayed by the
20 UPC. So those are the cases in mind which relate to the number of people who were
21 expelled during that period.

22 Q. [16:13:28] I have no further questions for you, sir. Thank you for answering
23 my questions.

24 PRESIDING JUDGE FREMR: [16:13:33] Thank you, Ms Rabanit.

25 And now, Ms Grandon, do you have any request for recross?

1 MS GRANDON: [16:13:40] (Interpretation) No, Mr President.

2 PRESIDING JUDGE FREMR: [16:13:45] All right. I will have just one question,
3 possibly my colleagues as well.

4 Mr Witness, have you ever as a judge in Bunia dealt with a case in which either
5 executive of the UPC or soldier of its armed wing FPLC was a party to?

6 THE WITNESS: [16:14:28] (Interpretation) Mr President, as a judge, but during that
7 period I do not remember having dealt with any case that may have come before the
8 tribunal in which members were prosecuted. However, I do remember one case
9 between the Prosecutor and Mr Pigwa, and Mr Kiza et al, who were charged with
10 murder of some local trader. When they were convicted and imprisoned, they were
11 released when the UPC came to power. So officially before 9 August 2002, a soldier
12 going by the name of Pigwa had been tried and convicted by the tribunal which I
13 presided over. But he ended up in the armed wing of the UPC after the events of
14 9 August 2002.

15 And while the UPC was in power, officially, I do not remember any such cases being
16 prosecuted in the court which I chaired, which I presided over.

17 PRESIDING JUDGE FREMR: [16:16:48] Thank you, Mr Witness.

18 Now Judge Chung also would like to put some questions, please.

19 JUDGE CHUNG: [16:16:53] Thank you.

20 Mr Kabasele, when you just testified that the arrest was arbitrary and illegal, then was
21 there any chance for you or was it possible for you to resist or avoid that arrest at that
22 time?

23 THE WITNESS: [16:17:28] (Interpretation) I can confirm that my arrest and
24 detention were illegal. It was impossible to resist or to avoid that detention. Why
25 do I say so? Because at the time of my arrest some soldiers, along with a number of

1 civilians came to my office. The soldier had a weapon and he asked me not to do
2 anything other than follow them to their office. In the presence of that weapon it
3 was impossible for me not to comply, so I obeyed and I was therefore taken in my car
4 to their office.

5 JUDGE CHUNG: [16:18:36] And you also testified that, so you made a phone call
6 during the detention, but other than phone call were you able to take any legal
7 measures, or procedural measures to be released from detention?

8 THE WITNESS: [16:19:10] (Interpretation) First of all, I do not believe that I said that
9 I made a phone call. Because during that time while I was in detention there were
10 no telephones, we did not have access to a telephone. So I don't remember and
11 I don't think that I called anyone. That's the first point.

12 Secondly, those were troubled times. The high authorities of the UPC are those who
13 ordered my arrest. It was therefore impossible for me to stop that arrest and
14 detention in the context in which we were at that time.

15 JUDGE CHUNG: [16:20:14] Thank you. And you also mentioned about two NGOs.
16 So were those NGOs with you during your detention?

17 THE WITNESS: [16:20:33] (Interpretation) I remember having been detained with
18 two staff members of the NGO known as Save the Children. Those are the two with
19 whom I was in contact, because they had been arrested and we found ourselves in jail
20 together, and every evening we would share whatever information we had. It is
21 during that time in detention that I was informed that the gentleman from OCHA,
22 which is an NGO, had been expelled. Upon my release from the detention facility, I
23 learnt that staff of the NGO known as Save the Children had also been expelled.

24 JUDGE CHUNG: [16:21:46] Thank you very much, Mr Witness.

25 PRESIDING JUDGE FREMR: [16:21:51] Judge Ozaki, no questions? All right.

1 So, Mr Witness, it concludes your testimony. I would like to express the whole
2 Chamber's thanks for the way how you testified. Probably because of your expertise
3 you were responding clearly to the substance in a very focused way, so I think thanks
4 to that we were able to cover a lot of area.

5 I thank you for that. I also appreciate that you testified publicly, which is not very
6 common, unfortunately, before this Court. And now we wish you safe journey
7 home. Thank you.

8 And now, court usher, you may assist Mr Witness to leave the courtroom.

9 THE WITNESS: [16:23:00] (Interpretation) Thank you, Mr President, for paying
10 attention to my testimony. I remain available to collaborate with you.

11 (The witness is excused)

12 PRESIDING JUDGE FREMR: [16:23:17] And now briefly, as regards our further
13 schedule, because of some logistic troubles and circumstances you all are aware of,
14 we had to change our original schedule, so if my recent schedule is correct, we are
15 going to continue on Friday, 3 February, with Witness P-317.

16 So until Friday, 9.30, the Court is adjourned.

17 THE COURT OFFICER: [16:23:56] All rise.

18 (The hearing ends in open session at 4.24 p.m.)