

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 2
8 Wednesday, 14 June 2017
9 (The hearing starts in open session at 9.31 a.m.)
10 THE COURT USHER: [9:31:53] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: [9:32:36] Good morning, everybody.
14 Court officer, please call the case.
15 THE COURT OFFICER: [9:32:42] 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: [9:32:57] Thank you, court officer.
20 Now appearances please in usual order.
21 MS SAMSON: [9:33:02] Good morning, Mr President and your Honours. For the
22 Prosecution today are Ms Dianne Luping, Mr Rens van der Werf, Ms Selam Yirgou,
23 Ms Claudine Umurungi, Mr Eric Iverson, Ms Kristy Sim and myself, Nicole Samson.
24 PRESIDING JUDGE FREMR: [9:33:22] Thank you, Ms Samson.
25 Now Defence, please.

1 MR BOURGON: [9:33:27] (Interpretation) Good morning, Mr President.
2 Representing Mr Ntaganda, who is present with us in the courtroom this morning,
3 Ms Sara Levac, Mr Josué Iglesias, Ms Dignité Bwiza, Ms Isabelle Martineau and
4 myself, Stéphane Bourgon. Thank you, Mr President.

5 PRESIDING JUDGE FREMR: [9:33:55] Thank you, Mr Bourgon.
6 And now Legal Representative of Victims, please.

7 MS PELLET: [9:34:01] (Interpretation) Thank you, Mr President. Former child
8 soldiers are represented by Vony Rambolamanana and myself, Sarah Pellet, counsel at
9 the OPCV.

10 MS GRABOWSKI: [9:34:16] Good morning, Mr President. Good morning,
11 your Honours. The victims of the attacks are today represented by Negosava
12 Smiljanic and myself, Anne Grabowski. Thank you.

13 PRESIDING JUDGE FREMR: [9:34:24] Thank you, Ms Pellet.
14 Thank you Ms Grabowski.

15 Today we commence the second evidentiary block of the presentation of evidence by
16 the Defence in which, as you are aware, we shall hear the testimony of Mr Ntaganda.
17 There are a few pending matters that I will address before we proceed with his
18 testimony.

19 First, for clarity and for the benefit of the public, I recall the Chamber's previous orders
20 on scheduling contained most recently in filing number 1945, that the second
21 evidentiary block shall run from 14 to 16 June 2017 to commence the testimony of
22 Mr Ntaganda, and it will continue thereafter from 27 June 2017 onwards. This
23 evidentiary block will end no later than 21 July 2017, when the ICC summer recess
24 starts.

25 The Chamber shall not sit on 5 July 2017.

1 While the Chamber will be flexible as to the overall timing used for Mr Ntaganda's
2 testimony, it is hoped that it can be completed within the second block.

3 It is anticipated that Mr Ntaganda shall testify for approximately four hours during
4 each day and the remaining hour of each day will be utilised, if necessary, for any
5 procedural matters arising. This schedule has been decided upon due to the fact that
6 testifying over the course of many weeks, as Mr Ntaganda is expected to do, can be a
7 very tiring process. Whether any additional breaks or amendments to sitting hours
8 are required will be assessed and determined on a case-by-case basis.

9 Second, in terms of the publicity of proceedings, I recall that Mr Ntaganda's testimony
10 will be given as far as possible in public session. The Chamber will adjudicate any
11 request from either party or participant to move into private session during the course
12 of his testimony on a case-by case basis. However, it is anticipated that much of the
13 testimony will be conducted in public session.

14 Third, on 12 June 2017, the Chamber received the Prosecution's notice of objections to
15 the list of items the Defence seeks to use in examination-in-chief with Mr Ntaganda.

16 The Chamber considers that these objections may be adjudicated as and when such
17 items are sought to be used during the testimony of Mr Ntaganda.

18 The Chamber further notes that on 8 June 2017, it received a request from the Legal
19 Representative of Victims for the former child soldiers contained in filing number 1946
20 to question Mr Ntaganda on certain topic areas. As per the Chamber's decision on
21 the conduct of proceedings, which is filing number 619, this request will be
22 adjudicated at a later stage.

23 Finally, in terms of protocol and in light of the fact that there are obviously no
24 protective measures in place for this witness, the Chamber directs the parties and
25 participants to refer to the present witness as "Mr Ntaganda" or "Mr Witness."

1 Further, if either party or participant raises an objection that must be dealt with in the
2 absence of Mr Ntaganda, the Chamber can indicate that he should be escorted out of
3 the courtroom.

4 And now the Chamber shall deliver four oral rulings on various requests before the
5 testimony.

6 First, the Chamber hereby indicates the disposition of its decision on the Defence
7 request seeking urgent leave to appeal the Chamber's decision on Defence request for
8 leave to file a 'no case to answer motion,' contained in filing number 1937. The
9 Chamber grants leave to appeal in relation to issues one and three. Reasons for this
10 decision will follow shortly.

11 The Chamber wishes to emphasise that, for clarity, while it is notifying the parties and
12 participants of the outcome of the Chamber's decision at this stage, it does not
13 consider the resolution of this appeal to be necessary prior to the commencement of
14 the testimony of Mr Ntaganda, noting that any such appeal relates to whether a 'no
15 case to answer' motion must be entertained, rather than necessarily granted or denied.
16 Second, the Chamber shall now rule on the urgent Defence request contained in filing
17 number 1944. And we have to move into private session to do so.

18 So, court officer, please let's move into private session.

19 (Private session at 9.41 a.m.)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

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25 (Redacted)

Trial Hearing

(Private Session)

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Trial Hearing

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4 (Open session at 9.48 a.m.)

5 THE COURT OFFICER: [9:48:16] We are in open session, Mr President.

6 PRESIDING JUDGE FREMR: [9:48:29] Thank you.

7 And the Chamber's fourth oral ruling concerns Prosecution request for clarification of
8 the Chamber's 8 June 2017 decision on further matters relating to the testimony of
9 Mr Ntaganda, contained in filing number 1953. Therein, the Prosecution seeks
10 clarification on two points: First, namely, whether Mr Ntaganda is generally
11 prohibited from discussing his testimony with his counsel during the course of such
12 testimony; and, second, whether Mr Ntaganda is prohibited from discussing the
13 detention centre calls on the Prosecution's list of items for cross-examination of
14 Mr Ntaganda, without specific leave of the Chamber.

15 The Defence responded in filing 1954, opposing the requests for clarification on the
16 basis that the Chamber's decision on both issues is clear as to the nature of the
17 relationship between counsel and the accused once Mr Ntaganda's testimony begins
18 as well as what is permissible in both instances.

19 The Chamber considers its decision was sufficiently clear and does not find it
20 necessary to provide the requested clarification. However, it indicates that it does not
21 support the interpretation put forward by the Prosecution in relation to either issue.
22 But anyway I will repeat the core of our decision just to assure ourselves that we were
23 clear enough.

24 So on the first issue, as stated in the decision, the Chamber considers that it is
25 sufficient to indicate its expectation that communication between the accused and the

1 Defence may be maintained during the entirety of his testimony, noting that any such
2 communication should always be appropriate, in the sense that counsel is not
3 permitted to advise Mr Ntaganda as to how he ought to respond to a question or line
4 of questioning, and provided the Code of Conduct for Counsel is adhered to.

5 In relation to the second issue, at paragraph 21 of the Chamber's decision, it indicated
6 that Mr Ntaganda would not be permitted to receive the Prosecution's list of items
7 sought to be used in cross-examination, but that this is, with the exception of the items
8 already referred to in the Prosecution's request to use non-privileged detention centre
9 communications during the testimony of Bosco Ntaganda, which the Defence has had
10 knowledge of since 26 May 2017 and which will be the subject of a discrete decision of
11 the Chamber.

12 On this basis, the Chamber encourages parties to request the clarification of the
13 Chamber only if genuinely necessary.

14 That completes the preliminary matters for this morning. If there are any further, no
15 further matters to be raised, okay, Mr Bourgon, you have the floor, please.

16 MR BOURGON: [9:52:29] Thank you, Mr President. In light of the Chamber's
17 four rulings this morning, the Defence moves for an adjournment of the proceedings
18 for two reasons. The oral motion requesting adjournment of the proceedings is
19 requested first to allow the Defence to submit a request before the Appeals Chamber
20 for the suspensive effect of the Chamber's decision on the 'no case to answer' motion.
21 I will expand further on these arguments.

22 The second request or the second reason for justifying an adjournment of the
23 proceedings at this time, which I note in passing does not have to be very long, but is
24 required, is to wait until the Chamber has ruled on a very important outstanding
25 matter, namely, what, if any, conversations of Mr Ntaganda from the detention centre

1 the Prosecution will be authorised to use during its cross-examination.

2 Regarding, Mr President, the first issue, the first issue has to do with the 'no case to
3 answer' motion. The Chamber has ruled that it decided not to entertain the Defence
4 motion. When the Chamber takes such an approach, we raise two, three issues, two
5 of which have now been, if I can use this old language, "certified", which was used
6 before ad hoc tribunals in the past to go before the Appeals Chamber.

7 These issues have to do with, of course, the decision of the Chamber, which is the first
8 issue, and the third issue is whether or not it is a discretionary decision for the
9 Chamber to decide and not entertain such a motion.

10 Mr President, the 'no case to answer' motion, in our respectful submission, goes to the
11 heart of adversarial proceedings. It goes at the heart of adversarial proceedings
12 because it has to do with the burden of proof. The burden of proof is and rests on the
13 Prosecution. And when the Prosecution has not led sufficient evidence to proceed to
14 the next phase of the proceedings, that is the case for the Defence, then the accused
15 must be acquitted and the trial should not continue on these issues. This is what is at
16 stake here. And what is at stake targets the rights of the accused in two, if not three
17 very specific ways.

18 First, it has to do with something that is very near and dear to the Chamber's interests
19 and to the accused's interests, which is the expeditious conduct of the proceedings. If
20 the Appeals Chamber should rule in favour of the Defence, meaning that there has to
21 be a 'no case to answer' motion entertained by this Chamber, then the possibility exists
22 that as a result of that motion Mr Ntaganda will be acquitted or will not have to
23 answer a significant portion of this case. And this will save a lot of time. That's the
24 first issue.

25 The second issue has to do with the right to remain silent. Mr Ntaganda has decided

1 to take the stand. He stands before you. He is sitting in this courtroom ready to
2 testify. But what will he testify on is very important, because if he testifies on the
3 charges for which the Defence believes that the Prosecution failed to lead sufficient
4 evidence, then he will be providing evidence on charges that don't exist.

5 The rights of the accused are so important that at the end of this case it will not be
6 possible to separate, to make a distinction between the evidence that came in during
7 the Prosecution's phase and the evidence that came in during the Defence case.

8 That's the whole point. If the Defence is right in doing a 'no case to answer' motion,
9 then it means that in such a case of course as examination-in-chief I will not ask any
10 questions to Mr Ntaganda in respect of the charges for which he does not have to
11 respond, and the Prosecution might very well ask questions to him on those issues in
12 respect of credibility, but it will not impact any final judgment.

13 Let's take it the other way around. If the case proceeds, despite the Defence being
14 right, then the evidence obtained by the Prosecution during the case for the Defence
15 will assist and complete its case, might complete its case, might lead to a guilty
16 verdict, which will then be based on evidence that was not there at half time. That's
17 the right of the accused. This is the purpose behind doing a 'no case to answer'
18 motion.

19 Mr President, we said so in our filings, I'm not going to repeat our arguments here, but
20 the 'no case to answer' affects the security of the judgment. The minute that we hear
21 Defence evidence, then the purpose of the 'no case to answer' has been defeated. The
22 purpose is to verify whether there is a case to answer. And if there is no case to
23 answer, then the accused must not be asked to respond to the charges for which there
24 wasn't enough evidence.

25 So now that we have a very important decision, which I'm sure the Chamber is very

1 well aware is a first, I've never -- I stand to be corrected, but I've never seen a decision
2 of this type, and the Appeals Chamber will have to rule, is the system or adversarial
3 system of proceedings before the International Criminal Court different from other ad
4 hoc tribunals, different from what that it was ever before, if so, it will defeat our
5 motion and the case will proceed.

6 If the Appeals Chamber decides, as we are saying, as we are respectfully submitting,
7 that a 'no case to answer' motion must be entertained, regardless of how quick and in
8 what format the Chamber entertains this motion, then at least the system will be
9 preserved and the rights of Mr Ntaganda will be fully respected.

10 What is at stake, Mr President, is the security of the Chamber's judgment. Why
11 would we embark on evidence, especially evidence by the accused, without having
12 this important answer?

13 The Chamber has already taken a position saying it doesn't matter. We take note of
14 that decision, we're aware of your decision, but it is a decision of such importance and
15 such far-reaching consequences that the Appeals Chamber will say, yes, you must
16 entertain a 'no case to answer' motion or, no, you don't have to entertain a 'no case to
17 answer' motion.

18 Mr President, it is necessary to adjourn these proceedings in order to get this response
19 from the Appeals Chamber. This is the first prong of our request for an adjournment
20 of proceedings at this time.

21 The second leg of our request has to do with the decision which the Chamber has yet
22 to deliver regarding the conversations the Prosecution, if any, might be able to use in
23 cross-examination.

24 It is necessary, Mr President, to understand the far-reaching consequences of the
25 Chamber's decision.

1 I will right from the get-go put our bid on the table, our argument, that the decision
2 whether Mr Ntaganda will testify or not depends on that decision. Mr Ntaganda
3 cannot take the stand today not knowing what he will have to answer. If the
4 conversations in which that are now being considered by the Chamber, again, there
5 are two sides to the same story, there is first the Prosecution's side, because they want
6 to use this material and they have made their arguments known to the Chamber.
7 And for them it is important, because they believe that this has to go to the truth of the
8 matter, to the truth of the charges, to seeking the truth, and they want to use the
9 conversations.

10 However, the issue is much more important when we look at it from the Defence
11 perspective. If I know what conversations will be authorised for the Prosecution to
12 use, if any, then that will decide what questions I will ask to Mr Ntaganda during
13 examination-in-chief. It's not possible for me to decide this with my client to establish
14 what he will -- the questions he will respond to, unless I know what these
15 conversations are.

16 The context in which these conversations have been -- came to light is very important
17 in this regard. If we go back, the conversations were disclosed back in November
18 of 2016, after being in the Prosecution's possession for a very long time, some 18
19 months. On this basis, a number of requests were filed and denied. I will not repeat
20 all of these requests, but I will go straight to the main Defence request, which was a
21 request for a stay of proceedings on the basis that the Prosecution, in the manner it
22 had obtained the conversation, without telling the Defence, made a fair trial
23 impossible.

24 The Chamber decided, no, it's not the case. The Chamber decided, well, possibly you
25 could have acted better, but not a reason to adjourn the proceedings or at least to stay

1 the proceedings.

2 We respect the Chamber's decision and we sought leave to appeal.

3 But before talking about the leave to appeal, we need to look at what the Chamber

4 said in its decision. In the decision denying the stay of proceedings, the Chamber

5 said, in order to make or to guarantee the expeditious and fair conduct of proceedings,

6 Prosecution will not be able to use that material unless it makes a specific request.

7 Well, it's clear now, Mr President, we know that this specific request for the

8 Prosecution, we said so in our filings before, for them it was just a procedural step and

9 nothing more. They felt and they put it in writing that they did nothing wrong, and

10 that they take the view that for them they just make a step forward.

11 We then filed a motion or a request asking for the conversations not to be used at all.

12 And the Chamber denied this request, but nonetheless the Chamber put in place a

13 very precise mechanism. Our understanding, the Defence understanding is that this

14 mechanism will allow the Chamber to determine if any of the conversations can be

15 used in the sense that, although there is a clear order not to use the conversations,

16 there are some which for specific reasons are important enough for the proceedings as

17 a whole to be used.

18 This mechanism was based on substantive reasoning, reasons being put forward by

19 the Prosecution, as well as a calendar, 26 May for initial submissions by the

20 Prosecution, 31 May for additional submissions by the Prosecution, 6 June for a

21 response by the Defence, and since then there has been a request for a reply which was

22 granted and the Chamber now has a reply.

23 Mr President, the nature of the examination-in-chief and thereby the testimony of

24 Mr Ntaganda depends on the Defence knowing what conversations, again I say if any,

25 will be authorised. And once that decision is rendered, then I must consult with

1 Mr Ntaganda, because then we will know what conversations, if any, and how these
2 conversations can be used and then he will decide whether he still wants to testify.
3 We were hoping for a decision before today. We don't believe and we trust that the
4 decision will entertain the right issues and make clear that whatever conversations are
5 allowed will be exceptional. That's what we anticipate and that's what we are looking
6 for. But we have no idea where the Chamber will go with its decision, it's presently
7 under deliberations. And it makes it impossible for Mr Ntaganda to say, yes, I
8 embark on this trip, on this six-weeks trip not knowing what the Prosecution will be
9 able to use.

10 Mr President, once this Chamber rules on this matter, we even anticipated that we
11 would be -- it would be one of the four rulings issued this morning, in which case it
12 could have been a matter of no consultation, if the decision was entirely positive, or
13 short consultations, depending on the number of conversations and what procedure
14 was authorised.

15 So for this second reason we request adjournment of the proceedings at this time.

16 In summary, Mr President, we are dealing again with issues that go at the heart of the
17 rights of the accused, at the heart of due process, fair trial, and we say that we need to
18 have an answer by the Appeals Chamber at least on whether suspensive effect is
19 required for the 'no case to answer' motion. And I don't think the Appeals Chamber
20 would take very long in rendering such a decision.

21 And we also need a decision from this Chamber on what conversations, if any, the
22 Prosecution will be authorised to use. If we have these two matters solved, then
23 Mr Ntaganda will be able to proceed with his testimony.

24 Mr President, I note for the record of course that Mr Ntaganda is here. He is ready.
25 He wants to testify. So it's not a matter -- he's not, he's not withdrawing, he's not

1 going back on his position, but we just want to make sure that we know what we are
2 getting into. That's my professional duty, to ensure my client knows exactly what he
3 is getting into, and without these two decisions we feel that we are not.

4 I just close in one last remark. We have been informed yesterday that the Appeals
5 Chamber will rule tomorrow morning on the Defence appeal on jurisdiction. We
6 never raised that issue before. I did mention it when, in our opening statement, I did
7 mention it at the opening of the Defence that it was also part of the uncertainty, but we
8 never put a request before the Appeals Chamber for suspensive effect, because we
9 played around and we say even though we don't have this decision on jurisdiction,
10 which again would be a first to embark on a defence without a jurisdictional matter
11 having been resolved, but we did not do that because we looked at the issue
12 themselves and we said it's possible to continue.

13 There's a difference between that jurisdictional motion and there is between this and
14 the 'no case to answer' motion and knowing what conversations, if any, the
15 Prosecution will be able to use.

16 For all these reasons, Mr President, we respectfully request an adjournment of the
17 proceedings in order for these two matters to be resolved. Respectfully submitted,
18 thank you, Mr President.

19 PRESIDING JUDGE FREMR: [10:12:29] Thank you, Mr Bourgon.

20 The Chamber definitely will deliberate about that, but before doing that I will give the
21 floor to Prosecution and then to Legal Representatives.

22 Prosecution first please.

23 MS SAMSON: [10:12:41] Thank you, Mr President. On both grounds the

24 Prosecution opposes the Defence request to adjourn the proceedings at this time. I
25 will deal with both of the arguments by the Defence in the order in which the Defence

1 raised them.

2 So in relation to the Chamber's decision today granting leave on two issues in respect
3 of its decision denying leave on the 'no case to answer' motion, by our calculation the
4 Defence brief is due on 27 June and the Prosecution brief thereafter. There is
5 sufficient time, in our submission, for the Defence to continue with the examination of
6 the accused today and at the end of the day or perhaps at the lunch break for lead
7 Defence counsel to liaise with co-counsel and other members of his team to start a
8 draft on what are purely legal issues related to two issues which in fact are virtually
9 the same issue, which is whether or not this Chamber has the discretion to deny a
10 request for leave to bring a 'no case to answer' motion.

11 It's a legal issue. The Defence have two weeks to complete that brief. And it doesn't
12 impact upon whether or not the evidence should continue now because, in essence, as
13 the Chamber has already stated today, the Appeals Chamber is only deciding whether
14 or not this Chamber correctly denied leave to bring the 'no case to answer' motion.

15 The Defence is not being asked today to file a 'no case to answer motion' with heavy
16 references to evidence. It's a very legal brief, and with two weeks to complete it and
17 ample members of the Defence team who can work on this filing, there is simply no
18 need to adjourn the testimony as planned in order to deal with essentially a filing.

19 And on the second issue, your Honours, the issue of the detention centre calls, I do not
20 intend to reargue the matters that were addressed before the Chamber before, but it is
21 of -- it was a large surprise for the Prosecution to hear that Mr Ntaganda may not
22 testify, in fact, depending on the decision of the Chamber on this issue.

23 Mr Ntaganda with his counsel made an informed decision to testify today, which was
24 notified only some 30 days ago, with full knowledge of the possibility that his own
25 telephone calls from the detention centre could be used in these proceedings. And

1 surely it was not just this morning that Defence counsel and the accused thought
2 perhaps in the end the accused will not testify on the basis of decisions that have been
3 coming through and continuously permitting the Prosecution with the possibility to
4 seek authorisation to use these calls.

5 The Prosecution has no doubt that the Chamber will issue this decision shortly, and
6 with 40 hours at the Defence's disposal, it should be able to proceed with matters
7 unrelated to the detention centre telephone calls today, tomorrow and Friday, if
8 necessary, before the Chamber's decision, and then there's a week during which the
9 accused and his counsel can decide whether or not to continue with testimony.

10 But I would like to stress that the accused's knowledge of the ways in which he's used
11 the telephone calls, the decisions of the Chamber finding that there maybe coaching
12 and other inappropriate activities being conducted by the detention centre were fully
13 known to the accused since he started to use the calls, and then since August 2015,
14 when the Chamber made these findings, and in the last month we've been heavily
15 litigating whether or not the Prosecution will be able to use any of the calls, and the
16 Chamber has said that it is possible.

17 And so we certainly expect that the accused will testify and that he can start
18 immediately and deal with other issues, of which there are no doubt many, until the
19 Chamber has an opportunity to issue its decision. Thank you.

20 PRESIDING JUDGE FREMR: [10:17:30] Thank you, Ms Samson.

21 Before giving floor to you, I also promised LRVs have a chance to comment on that on.
22 Ms Pellet, please.

23 MS PELLET: [10:17:42] (Interpretation) Thank you, your Honour.

24 The victims that I represent are also opposed to any delay in Mr Ntaganda's
25 testimony.

1 In addition to the fact that this decision by Mr Ntaganda was announced a month ago,
2 the victims have been awaiting his testimony eagerly. Regarding your decision this
3 morning on the Defence application to appeal your decision on the no-case-to-answer
4 motion – well, it is difficult for me to make any arguments as to the substance, because
5 we do not have the grounds supporting that decision.

6 But I note that you, yourselves, said that this was just a possibility for the Chamber, or
7 not, to rule on the application and it did not have consequences for the possible
8 testimony of Mr Ntaganda himself at this stage of the proceedings.

9 Regarding the consequences of no decision at this stage regarding the accused's
10 telephone conversations, I note that, indeed, as my Prosecution colleague pointed out
11 and as we have also said, we must consider all the calls from the detention centre, and
12 this should not have any impact on the testimony.

13 And for all these reasons, your Honours, we are opposed to any delay in
14 Mr Ntaganda's testimony.

15 I also would like to point out that my colleague from
16 the Prosecution mentioned that the delays allow the Defence to have an entire week
17 without any examination of Mr Ntaganda to complete their appeal before the Appeals
18 Chamber.

19 I thank you, your Honour.

20 PRESIDING JUDGE FREMR: [10:20:04] Thank you, Ms Pellet.

21 Ms Grabowski.

22 MS GRABOWSKI: [10:20:08] Thank you, Mr President. I'm not going to address
23 the second point on the conversations. I just wanted to add our observations on the
24 first point raised by Defence counsel.

25 And although we were strongly opposed to the original motion to bring a motion for

1 'no case to answer,' and also we opposed the leave to appeal request, now that the
2 Chamber has rendered its decision, we do not oppose a delay because this is a very
3 important matter, and it is of course in the interest of the victims that the trial proceeds
4 expeditiously and fairly. And now that the Chamber has rendered its decision and
5 decided that Appeals Chamber review is necessary for its decision for the first and the
6 third issue, we do not oppose a delay in this regard. Thank you.

7 PRESIDING JUDGE FREMR: [10:20:58] Thank you, Ms Grabowski.

8 And now, Mr Bourgon, but please briefly, Mr Bourgon.

9 MR BOURGON: [10:21:04] Thank you, Mr President. Very briefly. My colleague
10 from the Prosecution in her submissions raises the issue of time and the issue of the
11 fact that the matter is a purely legal matter.

12 Yes, indeed, it is purely a legal matter, but there are consequences to a purely legal
13 matter. We can have our brief submitted on suspensive effect before 12 o'clock.

14 We'll have our brief filed before the Appeals Chamber before 12 o'clock. And the
15 Appeals Chamber can rule on that request further to getting submissions by the
16 Prosecution quite quickly. We're talking of hours for the Appeals Chamber to
17 entertain our request for suspensive effect.

18 Mr President, my colleague from the Prosecution has not addressed the consequences.

19 Once Mr Ntaganda begins his testimony there is no turning back, you can't erase his
20 words from the record. That is why I mentioned the issue of the jurisdictional
21 motion, which was a different issue altogether. Now we are talking about the own
22 words of the accused in this case.

23 Once he begins and he embarks on this trip, which is testifying before the Chamber, it
24 does make a huge difference and we need to have the answer from the Appeals
25 Chamber. If the Appeals Chamber says yes, we need to suspend and we need to do a

1 'no case to 'answer motion, then Mr Ntaganda, if he has begun his testimony, what do
2 we do then? It will not be possible either to erase or not to erase. It's not possible for
3 me at this point in time to alter the plan for the examination-in-chief. We need this
4 answer, which is very important.

5 Second point, Mr President, my colleague says that Prosecution is surprised that today
6 Mr Ntaganda might say he does not want to testify. Well, when we announced
7 Mr Ntaganda's testimony, this was after the decision rendered by the Chamber saying
8 that the Prosecution would only be able to use, if any, because the decision, I think it is
9 important to read that part of the decision where it says "Prosecution will not be able
10 to use the material obtained during the Article 70 investigation, other than in
11 exceptional circumstances."

12 So we need to know what those exceptional circumstances are. And more
13 importantly, the fact that the litigation that has taken place since the decision on the
14 stay of proceedings was rendered is something for Mr Ntaganda to be interested
15 about, it is something he needs to know before he embarks on this trip. And I believe,
16 Mr President, that you, the Chamber, I can't -- I don't know for myself, but I expect
17 that that decision can be rendered quite shortly. Thank you, Mr President.

18 PRESIDING JUDGE FREMR: [10:24:29] Thank you, Mr Bourgon.

19 Now we will break, because we will need to deliberate on that request. I can't
20 estimate exactly how much time we will need, but I would like to ask you to be ready
21 to reconvene at the beginning of the second session, as we planned it originally, which
22 means 11.30. If there will be any change, then we will let you know.

23 THE COURT USHER: [10:24:56] All rise.

24 (Recess taken at 10.24 a.m.)

25 (Upon resuming in open session at 2.35 p.m.)

1 THE COURT USHER: [14:36:25] All rise.

2 Please be seated.

3 PRESIDING JUDGE FREMR: [14:36:50] Good afternoon, everybody.

4 I believe there are no changes in appearances. Am I correct? All right.

5 First of all, I would like to thank you, both parties and participants, for your patience.

6 As you see, we needed a little bit more time than we originally expected so we

7 appreciate your flexibility.

8 The Chamber shall commence this session by delivering its oral ruling on the

9 Prosecution request to use audio recordings, transcripts, translations and summaries

10 of some of Mr Ntaganda's non-privileged detention centre communications, as well as

11 the call logs and the list of non-privileged contacts of Mr Ntaganda and Mr Lubanga,

12 during the testimony of Mr Ntaganda, as contained in filings numbers 1925 and 1930.

13 The Prosecution requests to use, during its cross-examination of Mr Ntaganda, certain

14 non-privileged detention centre communications, which I will refer to as

15 "conversations" arguing that this would ensure the fairness and expeditiousness of the

16 proceedings and assist the Chamber in the determination of the truth, without

17 prejudicing the accused.

18 The Defence opposes the request, arguing, inter alia, that: First, the use of

19 non-verbatim summaries, as well as that of transcripts and translations that were not

20 provided by the deadlines set by the Chamber is inappropriate; second, the

21 Prosecution has failed to identify the specific portions of the conversations to be used,

22 the manner in which they will be used, how they are probative of the charges in the

23 present case, and why resort to their use is necessary; and third, the audio recordings

24 of six conversations are in whole or in part in Kihema, a language that the Defence

25 does not understand and has not been able to secure interpretation for.

1 At the outset, the Chamber notes that any use of conversations shall be strictly limited
2 to matters that are material to the charges in the present case, and shall not be used in
3 respect of matters related to Prosecution's Article 70 investigations.

4 With regard to the summaries of the conversations prepared by the Prosecution, the
5 Chamber finds that their use will not be permitted, due to the fact that they have been
6 prepared by a party to the proceedings, and are therefore based on an understanding
7 and translation of the conversations by the same party. This applies to all summaries
8 of conversations listed in Annexes A and B of filing number 1930. The Chamber now
9 will address the use of the actual conversations.

10 First, the Chamber finds that no use may be made of conversations for which the
11 Prosecution had not provided transcripts and translations by the date of filing of its
12 supplemental request, given the impact on the Defence's time and facilities to prepare
13 for Mr Ntaganda's testimony, as well as the Chamber's ability to analyse the material
14 intended to be used. This refers to items 29 to 49 as listed in Annex A of filing
15 number 1930.

16 Second, the Chamber finds that no use may be made of those conversations for which
17 the audio recording is partly or entirely in Kihema, given the impact on the Defence's
18 ability to prepare for Mr Ntaganda's testimony with respect to these conversations.

19 The Chamber does not consider it sufficient, as was argued by the Prosecution, that
20 the accused himself is able to understand Kihema, as it is not just Mr Ntaganda who
21 needs to prepare for his testimony but also the Defence.

22 The Chamber's ruling on this point concerns items 4, 9, 12, 17 and 19 listed in Annex A
23 of filing number 1930.

24 Subject to the limitation mentioned earlier that their use shall not relate to conduct
25 potentially relevant to alleged Article 70 violations, and in light of the Chamber's

1 truth-seeking function, the Chamber finds that the use of items 1 and 2, 5 to 8, 10
2 and 11, 13 to 16, 18, and 20 to 28 listed in Annex A of filing number 1930 may be
3 permitted, if a direct link between the conversation at stake and the charges in the
4 present case can be identified.

5 During cross-examination, the Prosecution will only be permitted to put specific
6 information contained in the aforementioned conversations to Mr Ntaganda for the
7 limited purpose of exploring his testimony with respect to events related to the
8 charges in the present case.

9 If necessary, the relevant part of conversation relating to specific points of
10 Mr Ntaganda's testimony can be played in Court and interpreted by the Court
11 interpreters. At the relevant time, the Chamber will consider the appropriateness of
12 any questions the Prosecution may ask the accused on the basis of the aforementioned
13 conversations.

14 Concerning the Prosecution's request to use the call logs and list of non-privileged
15 contacts of both Mr Ntaganda and Mr Lubanga, as well as, if necessary, the Registry's
16 reports and underlying materials, the Chamber notes that the Prosecution has not
17 made any specific submissions in this respect. On the basis of the request before it,
18 the Chamber therefore shall not grant permission to use these items at this point.

19 That concludes this ruling of the Chamber.

20 And now the Chamber shall render its oral ruling for the request of adjournment of
21 the proceedings.

22 The Defence this morning has requested an adjournment for two reasons. First, to
23 allow the Defence to submit a request before the Appeals Chamber for the suspensive
24 effect of the Chamber's decision rejecting leave to file a no case to answer motion; and
25 second, on the basis that the Chamber has not yet ruled on the Prosecution request to

1 use certain of Mr Ntaganda's non-privileged detention centre conversations during
2 Mr Ntaganda's testimony.

3 The Defence avers that it does not wish to commence the examination-in-chief of
4 Mr Ntaganda until it's aware of the ambit of the Chamber's ruling in this regard. The
5 Prosecution opposes the request, the legal representative for former child soldiers
6 similarly opposes the request, but the legal representative for victims of the attacks
7 does not oppose an adjournment for the first reason advanced by the Defence.

8 The Chamber has now issued its ruling on the use of the conversations and does not
9 consider that any further basis for adjournment is warranted following that decision,
10 noting especially that in any event the topics that the Defence is expected to cover at
11 the start of the testimony will relay to background information.

12 Having so ruled, it considers this matter to be sufficiently addressed in the context of
13 the request for adjournment. I shall therefore turn to the first issue raised by the
14 Defence.

15 The Chamber this morning indicated the disposition of its decision on the Defence
16 request seeking urgent leave to appeal the Chamber's decision on Defence request for
17 leave to file a no case to answer motion contained in filing number 1937.

18 It indicated that reasons would follow. While not considered necessary for the
19 resolution of the present request, I shall now provide those reasons.

20 I recall that the decision for which leave to appeal was sought was the Chamber's
21 decision on Defence request for leave to file a no case to answer motion, which I shall
22 refer to as the impugned decision.

23 The Defence seeks leave to appeal in respect of three issues: Issue one, whether the
24 Chamber erred in permitting the trial to proceed in respect of charges for which the
25 Chamber declined to consider the sufficiency of the Prosecution's evidence; issue two,

1 whether the Chamber erred in law by considering only expeditiousness and not
2 fairness in declining to evaluate the sufficiency of the evidence and; issue three,
3 whether to declining to entertain a Defence motion for a judgment of partial acquittal
4 is a discretionary matter.

5 The legal representative for the victims and the Prosecution filed responses opposing
6 the request on 7 and 8 June 2017 respectively. The Chamber incorporates by
7 reference the applicable law as set out in previous decisions on requests for leave to
8 appeal, such as its decision with filing number 760. And as noted this morning, the
9 Chamber considers that issues one and three, as set out by the Defence, are closely
10 connected, and as such the Chamber shall consider these two issues jointly.

11 The Chamber considers that the question of whether a Chamber has discretion to
12 grant or reject leave to file a no case to answer motion as set out in issues one and
13 three arises from the impugned decision insofar as the Chamber, at paragraph 25
14 thereof, noted its broad discretion as to whether or not to pronounce upon matters
15 such as whether it will entertain a motion by the Defence asserting that there is no case
16 for it to answer at this stage of proceedings.

17 Further, the Chamber considers that issues one and three would significantly affect the
18 fair and expeditious conduct of the proceedings and that an immediate resolution by
19 the Appeals Chamber may materially advance the proceedings.

20 In particular, the Chamber considers that were the Appeals Chamber to find that the
21 Chamber lacks discretion to deny a leave to file a no case to answer motion, the fact
22 that the Defence would have been denied the opportunity to submit such a filing
23 would impact on the fairness and expeditiousness of the proceedings as the Defence
24 would have been prevented from making submissions on the sufficiency of the
25 evidence with the view of attaining a partial judgment of acquittal.

1 As regards issue two, the Chamber finds that the issue does not arise from the
2 impugned decision and, as such, does not meet the requirements set out in
3 Article 82(1)(d) of the Statute.

4 In particular, the Chamber considers that issue two amounts to a misinterpretation of
5 the impugned decision. While the impugned decision addressed the issue of
6 expeditiousness in a general sense, with regard to no case to answer motions, the
7 language of the decision clearly shows that the Chamber considered its obligations
8 under Article 64 of the Statute, including not only its duty to ensure that the trial be
9 expeditious, but also in respect of the rights of the accused and the fairness of the
10 proceedings.

11 The foregoing reasons formed the basis of the Chamber's decision granting the request
12 for leave to appeal the impugned decision in regard to issue one and issue three and
13 for rejecting the request for leave to appeal in relation to issue two.

14 In relation to the Defence request for adjournment, the Chamber notes that it already
15 indicated this morning that it does not consider the resolution of this appeal to be
16 necessary prior to the commencement of the testimony of Mr Ntaganda.

17 I shall now expand on this point in light of the Defence request for adjournment and
18 its indication that it shall make a request for suspensive effect before the Appeals
19 Chamber.

20 First, the Chamber notes that under Article 82(3) of the Statute, an appeal shall not of
21 itself have suspensive effect unless the Appeals Chamber so orders upon request in
22 accordance with the Rules of Procedure and Evidence. An application for suspensive
23 effect may be made pursuant to Rule 156(5) of the Rules of Procedure and Evidence.
24 According to this procedure and leaving aside any issue of the appropriateness of
25 such a remedy to the present situation, such application is to be made before the

1 Appeals Chamber and is thus to be decided by the Appeals Chamber. However, this
2 Chamber has issued its decision rejecting leave for the Defence to present a no case to
3 answer motion and it remains that the present proceedings must continue as
4 scheduled unless the Chamber is persuaded that there are compelling reasons to
5 adjourn.

6 In the present situation and having considered the submissions of the parties and
7 participants on this issue, the Chamber does not consider that any compelling reasons
8 have arisen to itself to adjourn -- adjourn the proceedings for the reasons put forward
9 by the Defence. In particular, the Chamber does not consider that either the Defence
10 or the accused would suffer any negative effect or undue prejudice from commencing
11 the testimony of Mr Ntaganda at this stage.

12 The Chamber is composed of a bench of professional judges. It is well equipped to
13 appropriately assess the evidence, including in light of any ruling of the Appeals
14 Chamber in relation to the upcoming appeal, in relation to any no case to answer
15 motion or any procedural issues arising therefrom that may impact the present
16 proceedings.

17 Further, the Chamber notes, as it did this morning, that such appeal relates to whether
18 a no case to answer motion must be entertained rather than necessarily granted or
19 denied in substance. The Chamber therefore considers that the request for
20 adjournment is premised on unduly speculative grounds.

21 Accordingly, the Chamber does not find it to be in the interests of justice, nor the
22 fairness or expeditiousness of the proceedings to adjourn the proceedings pending
23 resolution by the Appeals Chamber of the foreshadowed Defence request for
24 suspensive effect.

25 The Defence request is therefore rejected and the Chamber expects the Defence to

1 proceed with the scheduled testimony of Mr Ntaganda.

2 This concludes the Chamber's ruling of the -- on this request.

3 And now we would like to continue directly with testimony of Mr Ntaganda, but I'm
4 asking Mr Bourgon whether he wants to be given a few minutes to explain to
5 Mr Ntaganda the substance of our decisions.

6 MR BOURGON: [14:56:44] Mr President, no time will be requested to explain to
7 Mr Ntaganda. We did entertain both topics this morning and what could happen
8 one way or another.

9 However, I would like to put on the record, place on the record, that a motion has
10 been filed a few minutes ago seeking, of course -- it's our notice of appeal following
11 the decision granting leave on two issues, as well as requesting suspensive effect
12 before the Appeals Chamber.

13 We take note of the Chamber's ruling. We take the view that we should not be placed
14 in a position to begin the testimony, but the Chamber has just decided otherwise. In
15 any event, Mr President, I can inform you that regardless of the Chamber's decision,
16 we had come to the conclusion that we are able to begin for the first few days until the
17 Appeals Chamber of course rules on our motion. And we are ready to begin in this
18 respect.

19 However, it is important for us to place on the record that we are beginning the
20 testimony of Mr Ntaganda without prejudice. And we would like to make sure that
21 this does not come into play in the Appeals Chamber's adjudication of our request for
22 suspensive effect.

23 Other than that, we are ready to proceed, Mr President, and we are grateful for that
24 first decision. This is also one where we have entertained with Mr Ntaganda various
25 scenarios. I do not believe that more is required in terms of informing him of the

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1 outcome of the decision. We are ready to proceed. Thank you.

2 PRESIDING JUDGE FREMR: [14:58:42] Well noted, and thank you very much,

3 Mr Bourgon.

4 So now, Mr Ntaganda, please kindly you should move to the witness bench.

5 Mr Bourgon, you want anything to add because I will start with instruction to your

6 client so you still have time to wait.

7 Mr Ntaganda, good afternoon.

8 I guess we will need some -- to fit, yes. So now I believe I will be able to hear

9 Mr Ntaganda. Would it be possible to move it a little bit closer to -- microphone.

10 Sorry, no, we didn't see that Mr Ntaganda has a microphone close to his mouth.

11 That's fine.

12 Now, Mr Ntaganda, can you hear me?

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14 (The witness speaks Swahili)

15 MR NTAGANDA: [15:00:52] (Interpretation) Yes, I can hear you, your Honour.

16 PRESIDING JUDGE FREMR: [15:00:54] And I can hear you as well. It's fine. So I

17 can proceed with my initial instruction.

18 Mr Ntaganda, you have elected to testify as the accused person in this case under oath

19 and to assist this Chamber in its search for the truth.

20 As you are aware, you will be asked questions both by the Judges and lawyers here in

21 the courtroom, and I would like to provide you some guidance for answering the

22 questions as I have done for previous witnesses.

23 Please listen carefully to the questions that you will be asked. It's very important that

24 you make sure that you understand the question. If you do not understand, feel free

25 to ask for the question to be repeated.

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1 As with any other witness testifying before our Chamber, we want you to tell us what
2 you saw, heard and sensed yourself. Please testify just on that which you remember
3 and indicate the source of your knowledge where it is not from your own experience
4 of the events in question.

5 Have you understood all this, Mr Ntaganda?

6 MR NTAGANDA: [15:02:32] (Interpretation) Yes, your Honour, I have understood.

7 PRESIDING JUDGE FREMR: [15:02:37] Very good. I saw, Mr Ntaganda, you
8 have been provided with the text of the solemn undertaking. But before you take the
9 solemn undertaking, I wish to inform you, and I'm sure your counsel has explained
10 this to you, that the Chamber issued a decision last week contained in filing number
11 1945, affirming that once an accused person voluntarily testifies under oath, such a
12 person waives its right to remain silent and must answer all questions put to him or
13 her. Your Defence team may definitely object to questions posed to you by the
14 Prosecutor or, if applicable, the Legal Representatives, in which case the Chamber will
15 rule whether the question must be answered. But if we so determine, then you must
16 answer the question. The Chamber does confirm that the answers provided by you
17 may be used against you in the present case, and if you decline to respond to a
18 permissible question, the Chamber may draw adverse inferences as appropriate. Do
19 you understand that, Mr Ntaganda?

20 MR NTAGANDA: [15:04:19] (Interpretation) Yes, your Honour, I've understood
21 just fine.

22 PRESIDING JUDGE FREMR: [15:04:22] All right. So now please play -- please
23 make your solemn undertaking to tell the truth by reading out the declaration you
24 have in front of you.

25 MR NTAGANDA: [15:04:43] (Interpretation) Solemn declaration. I solemnly

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1 declare that I shall tell the truth, the whole truth and nothing but the truth.

2 PRESIDING JUDGE FREMR: [15:04:54] Thank you, Mr Ntaganda. So it means

3 that you are now under oath. And you need to be aware that it is an offence within

4 the jurisdiction of this Court to give false testimony. Do you understand that?

5 MR NTAGANDA: [15:05:16] (Interpretation) Yes, your Honour.

6 PRESIDING JUDGE FREMR: [15:05:20] All right. And finally, a few practical

7 matters you should have in mind when giving your testimony, and I know that you

8 have seen many witnesses testify before this Chamber, but I also want to remind you

9 that it is important to speak into the microphone, to speak clearly, and to speak at a

10 slow pace to allow the interpreters to translate everything. I guess you know it, but

11 again I am repeating, you should only start speaking when the person asking you the

12 question has finished, and when a question is asked, please, do not respond

13 immediately, but rather count in your head to three and only then give your answer,

14 please. This pause is essential for us to properly hear, translate and record what you

15 are saying.

16 We have been informed that you will be asked by your Defence team to annotate

17 certain maps using the screen on your right. When you get up in such a case to do so

18 and will be commenting on the annotations, you may please first make the annotation

19 and then turn towards us before you start speaking. Have you understood all that,

20 Mr Ntaganda?

21 MR NTAGANDA: [15:07:02] (Interpretation) Yes, I have understood.

22 PRESIDING JUDGE FREMR: [15:07:07] Very well. So now I completed my

23 instructions and I can move floor to Mr Bourgon, who will start with your

24 examination.

25 Mr Bourgon, you have the floor.

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1 MR BOURGON: [15:07:19] Thank you, Mr President.

2 Before we begin, I would just like to, for planning purposes, how long does the
3 Chamber intend on sitting today?

4 PRESIDING JUDGE FREMR: [15:07:28] We are intending to sit till 4.30.

5 MR BOURGON: [15:07:34] Thank you, Mr President. I also have a second request,
6 which I should maybe have entertained my colleague earlier, I would simply like
7 Mr Ntaganda to be provided with some white pages and a pen so that he can write if
8 he has some spelling to go over, if we can be provided with such material, this could
9 be of assistance when going through names in particular.

10 PRESIDING JUDGE FREMR: [15:07:58] No problem. I see our court officers are
11 working on that.

12 (Pause in proceedings)

13 PRESIDING JUDGE FREMR: [15:08:40] So I see and for the record it has been done,
14 so now Mr Bourgon you may proceed.

15 MR BOURGON: [15:08:50] Thank you, Mr President. I will be asking my
16 questions to Mr Ntaganda in French, but his answers will be provided in Swahili, so
17 both of us will be interpreted, and both Mr Ntaganda and myself will do our best to
18 speak slowly so that everyone can have the benefit of proper interpretation.

19 QUESTIONED BY MR BOURGON: (Interpretation)

20 Q. [15:09:20] Good afternoon, Mr Ntaganda.

21 A. [15:09:25] Good afternoon.

22 Q. [15:09:27] How do you feel today?

23 A. [15:09:34] I feel well. I have no problems.

24 Q. [15:09:43] Mr Ntaganda, we have known one another for nearly three years
25 now, ever since I was assigned to your case to represent you, I believe it was in

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1 August 2014. Allow me all the same to introduce myself for the record. My name is
2 Stéphane Bourgon, I am your lead counsel, as you certainly realise, and I am the one
3 who will be asking questions of you during your examination-in-chief. Do you
4 understand that?

5 A. [15:10:20] Yes, I understand.

6 Q. [15:10:26] Let us begin with one easy question. Now, according to African
7 custom, should I say "Papa Bosco" or "My Brother Bosco, mon frère"?

8 A. [15:10:46] Please call me "My Brother Bosco."

9 Q. (Overlapping speakers)

10 PRESIDING JUDGE FREMR: [15:10:56] Mr Bourgon, you know, you might
11 remember I asked parties not to call each other "my friend" because it could be
12 misleading to some observers. And frankly saying I also have a problem with this.

13 MR BOURGON: [15:11:15] The aim of my question, Mr President, is to introduce
14 the topic of African culture and its importance. And I don't know if it was interpreted
15 "as my friend", but the response was more "my brother, mon frère", so that's why --

16 PRESIDING JUDGE FREMR: [15:11:32] The translation was exactly "my brother",
17 but still, you know, I know that it's --

18 MR BOURGON: [15:11:39] And I intend, Mr President, to use "Mr Ntaganda"
19 throughout, but I would like the witness to provide something about his African
20 culture before we begin.

21 PRESIDING JUDGE FREMR: [15:11:48] Now it should be fine then. All right.

22 MR BOURGON: [15:11:54] (Interpretation)

23 Q. [15:11:57] Mr Ntaganda, why don't you believe it is appropriate for me to refer
24 you as "Papa Bosco"?

25 A. [15:12:15] If you were to refer to me that way, I would have to be as old as your

1 father. As far as I'm concerned, I think it would be better for you to refer to me as
2 "my brother Bosco", because I see myself as a person who could be -- well, you could
3 deal with me as if I were your younger brother.

4 Q. [15:12:44] Thank you, Mr Ntaganda. Are there many terms or expressions
5 like that used in Africa not known to Europeans or North Americans?

6 A. [15:13:03] Yes. Because there are very -- there are a number of different
7 cultures and we have our own culture, we Africans, and that culture is different to
8 men of the white race.

9 Q. [15:13:24] Mr Ntaganda, if I were to say to you "a child of the Ituri", what
10 would that mean to you?

11 A. [15:13:34] Well, for me, that means that the person is a native to the Ituri region,
12 and that the person, be it a child or someone aged 900 years old, no matter what, that
13 person would be referred to in relation to a place, a location. For example, President
14 Kabila is a child of the country, so to speak. That is how he is referred to.

15 Q. [15:14:17] Mr Ntaganda, and the expression "kadogo", do you know that
16 expression?

17 A. [15:14:28] I know that phrase or term, it is a term that we started to use, I
18 believe I heard it for the first time when the President Yoweri Kaguta Museveni had
19 begun the rebellion to overthrow the Ugandan president of the day, that is when the
20 term "kadogo" was used for the first time. It is a term that is used in Kenya, Tanzania
21 and all those other countries where Swahili is spoken.

22 THE INTERPRETER: [15:15:12] Interpreter correction, the president mentioned
23 was President Yoweri Kaguta Museveni.

24 MR BOURGON: [15:15:22] (Interpretation)

25 Q. [15:15:24] And what does "kadogo" mean, Mr Ntaganda?

1 A. [15:15:32] Well, it is a Swahili word and it means "little one," or "little thing."

2 For example, if one sees a thin person you might say, one might say that the person is
3 small, and you wouldn't necessarily consider the actual age of the person. So
4 "kadogo" means little thing or someone who is small.

5 Q. [15:16:09] And the term "kadogo", could that word be used in reference to you?

6 A. [15:16:20] No. Today you could not call me a kadogo in light of my size. I'm
7 not a thin person or a small person. It depends on the size of a person. You couldn't
8 call me a kadogo. There's two terms, "kadogo" and "kibonge". "Kidogo" means
9 someone who is small, and "kibonge" means a more heavier person. These are terms
10 that we use in the army. A person who is small is referred to as a "kadogo" and
11 someone who's rather large or sturdy is called a "kibonge."

12 Q. [15:17:08] I won't ask you whether I'm kibonge myself, but I'd like to ask you
13 now where you were born?

14 A. [15:17:22] I was born in Rwanda, but I grew up in the Congo.

15 Q. [15:17:36] Mr Ntaganda, where did you spend your childhood years?

16 A. [15:17:53] My grandparents were Congolese by nationality and I grew up with
17 them before I joined the army.

18 Q. [15:18:10] Where were you born exactly in Rwanda?

19 A. [15:18:24] I was born in Ruhengeri prefecture in the village called Kinigi.

20 Q. [15:18:38] I can see that on the transcript we see Ruhengeri, that is spelled
21 correctly, but then Kinigi does not appear to be correct. Well, can you confirm
22 exactly how that name is spelled?

23 A. [15:19:04] K-I-N-I-G-I.

24 Q. [15:19:19] And what is your date of birth, Mr Ntaganda?

25 A. [15:19:25] I was born on 5 November 1973.

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1 Q. [15:19:48] Now, the Court records have you as Mr Bosco Ntaganda as your
2 official name. Now, do you have any other names that you go by?

3 A. [15:20:07] I was baptised within the Seventh Day Adventist church, and the
4 name that I was given is not known. Only people very close to me, my brothers, my
5 mother know me by my Adventist name, Enias. My father's dead, but the others. I
6 began going by the name of Bosco once I was in the army.

7 Q. [15:20:47] I believe I missed something. Now, you mentioned another name,
8 Miapa (phon) Bosco Ntaganda. Is there another name, your Seventh Day Adventist
9 name?

10 A. [15:21:09] Enias.

11 Q. [15:21:10] Could you spell out that name for us, please?

12 A. [15:21:20] E-N-I-A-S. I believe that's how it's written.

13 Q. [15:21:35] Now, you just mentioned your faith. Can you be more specific,
14 what is your faith at this time, Mr Ntaganda?

15 A. [15:21:53] I did not change religion.

16 Q. [15:21:58] And what is your religion?

17 A. [15:22:07] I'm a member of the Adventist church.

18 Q. [15:22:14] And this name, Enias, are there any people who call you by that
19 name amongst your military colleagues?

20 A. [15:22:39] No, no one knows that name of mine amongst the soldiers.

21 Q. [15:22:47] I'd like to elicit some information from you about your schooling.
22 Did you go to primary school and, if so, where?

23 A. [15:23:09] I went to primary school in Masisi, in the Ngungu region, in the
24 Democratic Republic of the Congo, formerly known as Zaire.

25 Q. [15:23:32] And if I wanted to be more specific about the location of Masisi,

1 where is it exactly in the Congo?

2 A. [15:23:45] Masisi is in the territory of North Kivu, in the eastern part of the
3 Congo.

4 Q. [15:24:01] How long did you go to school till?

5 A. [15:24:14] I went to primary school and I continued until sixth grade.

6 Q. [15:24:28] Did you go on to secondary school and, if so, until what year?

7 A. [15:24:39] I did go to secondary school, up until the third year of secondary
8 school.

9 Q. [15:24:50] And where was that?

10 A. [15:24:57] In Masisi, in North Kivu, at a school that was called Kanyatsi.

11 Q. [15:25:11] Could you help us? Could you spell out that name?

12 A. [15:25:22] K-A-N-Y-A-T-S-I.

13 Q. [15:25:34] What ethnic group are you from, Mr Ntaganda?

14 A. [15:25:43] I am from the Tutsi ethnic group.

15 Q. [15:25:53] Are there many Tutsi people in the Congo?

16 A. [15:26:01] Yes. When I was there, there were many of them. That was before
17 I joined the army. But once we liberated Rwanda and the FDR went into the Congo,
18 the Tutsis fled, and most of them ended up in refugee camps in Rwanda, Uganda or
19 Burundi, and I believe that today there are only a few Tutsi in that region because a
20 great many of them are now in refugee camps.

21 Q. [15:26:48] Mr Ntaganda, now, let us ask you a few things about your family.
22 Your parents are still alive today?

23 A. [15:27:06] My father has passed away. He died in 2011. My mother is still
24 alive.

25 Q. [15:27:21] And where does your mother live?

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1 A. [15:27:34] Well, now the names of places are different in Rwanda. The names
2 have been changed, but she lived in Musanze, which was formerly known as
3 Ruhengeri.

4 Q. [15:27:49] Could you give us the name of your mother, Mr Ntaganda?

5 A. [15:28:08] Are we in private session, or in open session?

6 PRESIDING JUDGE FREMR: [15:28:13] It was just my idea. I think I would
7 recommend to move into private session for that answer.

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

9 (Private session at 3.28 p.m.)

10 (Redacted)

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- 25 (Open session at 3.34 p.m.)

1 THE COURT OFFICER: [15:35:00] We are back in open session, Mr President.

2 PRESIDING JUDGE FREMR: [15:35:13] Thank you, court officer.

3 Mr Bourgon, please proceed.

4 MR BOURGON: [15:35:19] (Interpretation) Thank you, Mr President.

5 Q. [15:35:22] Mr Ntaganda, I will repeat my question relating to your sister who
6 died during the genocide. I was asking you whether you could share with us the
7 circumstances and details of the death of your sister.

8 A. [15:35:47] Very well. The one who died has the same father and mother as
9 myself. I lost many members of my family during the genocide against the Tutsis.
10 When the colonisers had divided the country, there were people who remained in
11 Rwanda while others went to Congo. So you -- you would have a father separated
12 from his son. A major part of my ethnic group was in Congo. I would say 60
13 percent. Many had fled during the massacres that took place in Rwanda in 1959, and
14 those who remained in Rwanda were exterminated during the genocide, my aunts, my
15 young uncles who lost their lives. I mentioned the name because you asked me
16 about it, but I would say that I lost many members of my family in Rwanda.

17 Q. [15:37:23] And when you say "genocide", Mr Ntaganda, can you be more
18 specific, which genocide is that and in what year, that is if you can give a time frame
19 for that?

20 A. [15:37:43] I believe that the entire world is aware of that, about the genocide
21 which took place in Rwanda, and that it took place in 1994.

22 Q. [15:38:01] Mr Ntaganda, were you a witness to the genocide in 1994 in
23 Rwanda?

24 A. [15:38:19] Yes, I was one of those who put an end to the genocide. I was
25 young, but I was already in the army. I was a soldier, I was a platoon commander at

1 that time, and I witnessed horrific events.

2 Q. [15:38:44] Mr Ntaganda, the genocide that you witnessed, did it contribute to
3 transforming you into the person that you are today and, if so, in what way?

4 A. [15:39:12] I remember that when we put an end to the genocide in Rwanda, our
5 superiors told us that what we had just seen, those of us soldiers, if possible, we had to
6 do everything to prevent this from happening again in Africa. And this was in my
7 mind wherever I went. I testified about that. And I told myself that I do not wish to
8 see any community, any other community experience what my own community went
9 through.

10 Q. [15:40:11] Mr Ntaganda, where did your grandparents come from?

11 A. [15:40:31] My grandparents were of Congolese origin, but during that time
12 they were no longer alive, they were already deceased.

13 Q. [15:40:53] But you, Mr Ntaganda, with the past that you have just described
14 during your childhood, are you a Congolese or a Rwandese or Rwandan?

15 A. [15:41:12] I am Congolese, Counsel.

16 Q. [15:41:21] Within your family, which language did you speak? I'm talking
17 about your maternal family with your mother and your father.

18 A. [15:41:42] In Masisi, where I grew up, I know that locality very well, many
19 people do not know Swahili, they speak Kinyarwanda, except those who had lived in
20 towns such as Goma. So in that so-called Rwandophone area they speak Kinyarwanda.
21 For example, in Masisi people speak only Kinyarwanda. Those who went to school
22 might be able to speak Swahili and French, but in my family we spoke Swahili and
23 Kinyarwanda.

24 Q. [15:42:42] Are you married, Mr Ntaganda?

25 A. [15:42:48] Yes, I am married.

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1 Q. [15:42:52] And when did you get married?

2 A. [15:43:11] I got -- or, rather, I cohabited with my wife since 2002, but we
3 officially got married in 2010.

4 Q. [15:43:35] Mr Ntaganda, do you have any children and, if yes, how many?

5 A. [15:43:44] I have seven children.

6 Q. [15:43:54] Can you give us the names and ages of your children, beginning
7 with either the eldest or the youngest?

8 PRESIDING JUDGE FREMR: [15:44:05] Hold on, Mr Witness.

9 Let's move into private session for that answer, court officer, please.

10 (Private session at 3.44 p.m.)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Open session at 3.51 p.m.)

4 THE COURT OFFICER: [15:51:33] We are back in open session, Mr President.

5 PRESIDING JUDGE FREMR: [15:51:45] Thank you, court officer.

6 Mr Bourgon, please proceed.

7 MR BOURGON: [15:51:53] (Interpretation) Thank you, Mr President.

8 Q. [15:51:56] Mr Ntaganda, you have just told us that the Adventist religion does
9 not allow its members to have two wives at the same time, so can you explain to us
10 why you took a second wife in June 2003?

11 A. [15:52:20] Let me repeat what I have already said. There was a conflict
12 between the north Hema and the south Hema. The aunts of the second wife
13 approached me and they told me that we would like you to have a child with our
14 daughter, and that is why I disobeyed the laws of my religion given the situation in
15 which I found myself, so I decided to take their daughter.

16 Q. [15:53:11] Did you have any particular purpose in doing that, or was it simply
17 in order to have a second wife?

18 A. [15:53:26] Yes, I had an objective. Well, you know, if you have a woman or
19 wife within a community, you would be treated as an in-law, and wherever I was as
20 an in-law of a community, I had a good relationship or good relations with members
21 of that community.

22 Q. [15:54:15] Mr Ntaganda, let us now move on to your military career, if you
23 wish, so that --

24 PRESIDING JUDGE FREMR: [15:54:23] Sorry, Mr Bourgon. I will just put one
25 additional question concerning the second wife, since we are moving further.

1 Mr Ntaganda, during the year 2002, 2003, your second wife, did she live with you or?
2 Because I understood that you have been on move, you know, so did you have any
3 common house or something like that?

4 MR NTAGANDA: [15:55:02] (Interpretation) Mr President, we did not live together
5 with the second wife, but I do remember that at one point she would come and we
6 would stay together and then she would go back home. She also came with her
7 family and then she went back to school, but I cannot say that we lived together. She
8 would come and visit me as my fiancée. It was later that she became pregnant and
9 she had a child, but this was a pregnancy from someone else, which led to our
10 separation.

11 PRESIDING JUDGE FREMR: [15:55:55] So in 2002 and 2003 you just most of the
12 time you live alone or?

13 MR NTAGANDA: [15:56:16] (Interpretation) I don't think you quite understood
14 me. In 2002, I lived with my first wife right up to June 2003. In 2003, I received the
15 aunts of the second wife, and I told them I would like to agree, but my church and
16 even my father would not agree. My father was a devoted Christian, and he would
17 not agree. They told me you can have a child with her, even if you're not together.
18 We will take care of that child. That is how come that girl came to where I lived.
19 She would stay for a week. She was a student. I paid her school fees and I paid her
20 rent. She lived with her mother, but I paid her school fees and everything else. It
21 was during this period that she became pregnant. After that, I could not continue the
22 relationship with her because she had had a child with someone else. We were trying
23 to do a DNA test to find out whether it was my child or not and if it was not my child,
24 then that child would be handed over to the child's father. She was not sure whether
25 it was my son or someone else's son. That is my answer to you, Mr President.

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- 1 PRESIDING JUDGE FREMR: [15:58:06] Thank you for this clarification,
2 Mr Ntaganda.
3 Mr Bourgon, please proceed.
4 MR BOURGON: [15:58:15] (Microphone not activated)
5 THE INTERPRETER: [15:58:17] Microphone, please.
6 MR BOURGON: [15:58:21] (Interpretation)
7 Q. [15:58:22] Mr Ntaganda, there is something missing in the stenographic notes
8 or record. I am sorry, my microphone was switched off.
9 But, Mr Ntaganda, the record at page 55, line 23, indicates that you mentioned
10 something which was not properly captured on the record. You talked about
11 payment of a dowry. Do you remember having mentioned that, and could you again
12 please explain to the Court what a payment of dowry refers to?
13 A. [15:59:10] In African culture -- there might be differences in various -- between
14 various cultures, but customary practice requires that something be given when one
15 goes to marry a woman. When it comes to the Hemas, some may give 12 or 20 cows,
16 while others provide money as dowry. What I paid in my case was a number of
17 cows in relation to the second wife. I provided eight cows as dowry for her.
18 Q. [15:59:59] Thank you. A last question before we move on to your military
19 background. You refer to the conflict between the Hema north and Hema south,
20 what was the nature of that conflict and what happened at that time?
21 A. [16:00:33] It was not a major conflict. It was a -- a conflict that was created by
22 PUSIC when we were part of the UPC. It was a small group that created that conflict,
23 a small group of people who came from the south. The other ones who initiated the
24 disagreement between the two communities after the Ugandans had driven us out of
25 where we were.

1 Q. [16:01:19] The fact that you accepted a second wife, did it have an impact on
2 that conflict?

3 A. [16:01:45] Yes. This conflict was not a major conflict, but that issue changed
4 the situation somewhat because, you know, each community has its own way of life.
5 When they noticed that I had taken in that girl, I was living with her, they understood
6 that I was on their side, in one way or another.

7 Q. [16:02:16] Mr Ntaganda, let us now move on to the time when you became a
8 soldier. Do you remember what year that was?

9 A. [16:02:35] It was in February 1991.

10 Q. [16:02:43] What was the situation at that time, the time you started or you
11 joined the army? By the way, which army did you join?

12 A. [16:03:09] At that time the Rwandan Patriotic Army was in rebellion, and it
13 received support from Museveni to ensure that the Rwandans who were driven out of
14 Rwanda in 1959, who had gone to Uganda and had been living there, would be
15 supported as part of that rebellion, whose purpose was to overthrow the former
16 President Habyarimana at the time. I joined that rebellion and I became part of them.

17 Q. [16:04:02] If I understand you correctly, the first armed group that you joined
18 was part of a rebellion. It was not a national army; is that correct?

19 A. [16:04:20] Yes, it was a rebellion, or a rebel movement.

20 Q. [16:04:31] At that time, Mr Ntaganda, what was the name of the national army
21 in Rwanda?

22 A. [16:04:44] It was known as the FAR, F-A-R, or Rwandan Armed Forces. That
23 was the name of the Rwandan government army.

24 Q. [16:05:00] At that time was it possible for a Tutsi to join the FAR?

25 A. [16:05:14] No, that was not possible. It was not possible because even from a

1 historical perspective, Tutsis who used to live in Uganda were said to not be
2 Rwandans, that they were Falashas who had come from Ethiopia or from such areas,
3 and so the Tutsis were not accepted into the Rwandan army at the time. That would
4 not have been possible.

5 Q. [16:05:54] What is the name of the group that you joined?

6 A. [16:06:09] The political wing was known as the FPR, the Rwandan Patriotic
7 Front, and its armed wing was known as the Rwandan Patriotic Army.

8 Q. [16:06:32] The RPA, where was it located at the time you joined the army?

9 A. [16:06:49] When I joined that rebel movement, it had not yet captured any part
10 of any territory, but they used to live on the Gahinga volcano, they used to live in the
11 no-man's land between Tanzania and Uganda. They had a training centre there.

12 Q. [16:07:22] That group, the RPA, Rwandan Patriotic Army, did it ultimately
13 engage in combat in Rwanda?

14 A. [16:07:45] At that time, when I joined, it had already attacked and training was
15 ongoing. You see, there were a number of things happening. Training was going
16 on on the one hand, and, on the other hand, there was a part of the army that was
17 engaged in fighting in a number of places.

18 Q. [16:08:15] At what location did you join that group?

19 A. [16:08:27] When I finished my training, or, in fact, while I was still a recruit and
20 up until -- or, rather, are you talking about the time I finished my training or while I
21 was still a recruit?

22 Q. [16:08:51] And I'm speaking about the very first time you joined a military
23 group, irrespective of the group, where did that happen and where did that take place?
24 When and where did it happen?

25 A. [16:09:07] I recall that we went through Uganda, but our training took place in

1 a no-man's land between Rwanda, Tanzania and Uganda, somewhere in the bush.

2 Q. [16:09:29] Mr Ntaganda, how old were you at that time?

3 A. [16:09:36] I was 17 years old.

4 Q. [16:09:44] Mr Ntaganda, do you remember the reasons for which you joined
5 the army or the rebel movement?

6 A. [16:10:00] Yes. When the RPF rebellion was launched in Rwanda in 1990, I
7 was still a student. The situation began to change in all the Rwandan speaking area
8 where we used to live, in those areas, and we learnt that all the Tutsis would be killed.
9 And so all the young people who were strong, when we heard that there were
10 machetes that were going to be used to kill Tutsis, all those who were strong would go
11 to join the army, would decide to join the army without anyone sensitising them. We
12 did so because we preferred to join the army rather than wait for someone to massacre
13 us with machetes, and that is why we opted to take up firearms.

14 Q. [16:11:13] Mr Ntaganda, can you tell us about your first military training,
15 where and how did it take place?

16 A. [16:11:32] My first military training took place in that forest which I have
17 already talked about. Shortly thereafter I became a trainer myself. We had been
18 trained by a number of trainers or instructors. And we were recruits at that time, we
19 were grouped up as recruits. We were taught a certain ideology, the reasons for
20 which we had come to the army, and we were told what we would have to do once we
21 became soldiers. That is how my early days in the army can be summed up.

22 Q. [16:12:23] How long did your initial training last, Mr Ntaganda?

23 A. [16:12:39] What I remember is that when I was recruited I underwent a
24 four-month initial training period, because we were among the very first to join the
25 army. You see, during the rebellion, training doesn't last long. We had professional

1 instructors who knew how to provide training within four months. And at the end of
2 those four months, we were ready for combat, trained and ready for combat at the
3 battlefield.

4 Q. [16:13:21] How many recruits were there in your group when you received that
5 training?

6 A. [16:13:36] I remember that there were many of us in my group, maybe 6,000
7 or 7,000, excluding those who were already at the battlefield. I'm referring only to
8 the recruits. And I would put the figure at about six to 7,000 recruits.

9 Q. [16:14:05] What happened at the end of your training?

10 A. [16:14:20] We were selected, some 80 of us, and sent for further training in
11 leadership and training --

12 THE INTERPRETER: [16:14:43] Overlapping.

13 MR BOURGON: [16:14:46] (Interpretation)

14 Q. [16:14:46] Was there a specific goal?

15 A. [16:14:56] It was an important training, because when you are selected from
16 one group and sent to further training, well, this was a training in leadership which
17 we underwent. During that training we were taught about leadership, how to be an
18 instructor, how to lead other soldiers and how to become a teacher or an instructor.
19 You see, it was a very important training programme.

20 Q. [16:15:36] Mr Ntaganda, did you have a nickname at that time?

21 A. [16:15:51] Yes. My nickname was OC Morale.

22 Q. [16:16:04] What does OC Morale mean?

23 A. [16:16:12] I had a number of nicknames. OC Morale and Ridia because I used
24 to lead in singing to raise the morale of the troops. That's what those two names
25 pertained to.

1 Q. [16:16:33] Were there any kadogos in your group, Mr Ntaganda?

2 A. [16:16:44] I, myself, was a kadogo.

3 Q. [16:16:53] What do you mean by that?

4 A. [16:17:08] Kadogo, at that time, I was very slim. I was not a kibonge.

5 Q. [16:17:18] Mr Ntaganda, earlier on at page 63, you said that 80 of you were
6 selected, but just before that you said that there were some six to 7,000 recruits. Am I
7 to understand that those 80 were selected from the 7,000 for the leadership programme;
8 is that a correct understanding of your testimony?

9 A. [16:17:50] Yes, that is correct.

10 Q. [16:17:57] Why, if you recall, why is it that you were selected among the 80 out
11 of the 7,000?

12 A. [16:18:16] I remember that the commander, OC of the regiment, requested that
13 a number of youth who were lively and awake should be selected from among the
14 recruits. I was selected from -- I was selected as part of those 80 persons.

15 Q. [16:19:03] I read the English, which says you were lively and awake. Is that
16 the reason for which you were recruited, because you were lively and awake?

17 A. [16:19:29] No, it was not simply because I used to sing. I knew how to sing,
18 yes, that is correct. I was smart when it came to parades. And I would answer aptly
19 to questions during training. And when we were underground for military exercises,
20 the instructors noticed me and I was somewhat of a model among the other recruits.
21 So this selection was not based only on my ability to sing but on other criteria, and it is
22 for these reasons I was selected among the 80.

23 Q. [16:20:18] What was the outcome of the training of the 80?

24 A. [16:20:35] After the training for the 80 persons we had completed the course on
25 leadership and training, and after that training I was among those who were given the

1 rank of sergeant. About six or five or six of us were promoted to the rank of sergeant.

2 Q. [16:21:10] What ranks did the others receive, if at all, Mr Ntaganda?

3 A. [16:21:22] The rank of corporal.

4 Q. [16:21:26] Was there any reason why you and the five others were promoted to
5 the rank of sergeant, whereas the others were given the rank of corporal?

6 A. [16:21:41] Yes. You see, in the army each rank has a meaning and a
7 significance. I was given that rank because I had better results. Those of us who
8 distinguished ourselves during the training were awarded the highest rank.

9 Q. [16:22:11] Mr Ntaganda, what did you do in the army -- or, rather, in that
10 group after you were promoted to the rank of a sergeant?

11 A. [16:22:27] We started to train other people. We became instructors or trainers.
12 We began to train others on the training which we ourselves had received. And that
13 is how I became an instructor or trainer.

14 Q. [16:22:48] For how long did you serve as a trainer or instructor at that location?

15 A. [16:23:02] I was an instructor for two years.

16 Q. [16:23:09] Can you tell the Court what you did in your capacity as an
17 instructor?

18 A. [16:23:25] The instructors had a number of duties in the training centre. We
19 were non-commissioned officers, and we were given different goals and assignments.
20 The head instructor could be Company Sameja, SSM or SSM, School Sameja, those are
21 the various ranks. And by the time I left the training centre, my level was regime or,
22 rather, regiment sergeant. That was my level.

23 Q. [16:24:27] I don't know if I have understood you properly, but I turn to the
24 English transcript, and I see regiment and I see sergeant. What was your exact
25 position, the exact position you held at the time? And please speak slowly,

1 Mr Ntaganda.

2 A. [16:24:53] At the time I left the training centre, my position was RSM.

3 Q. [16:25:00] Is the RSM position an important position or post, Mr Ntaganda?

4 A. [16:25:10] Yes, it is a very important post because as RSM you are in charge of
5 three training centres or three training companies.

6 Q. [16:25:28] You just said that you would be in charge of three companies. How
7 many persons would that amount to for the RSM?

8 A. [16:25:46] About 330.

9 Q. [16:25:55] Did you have any specific duties in your capacity as RSM?

10 A. [16:26:11] Yes, in a regiment my duties were important. Yes, I had important
11 duties to perform.

12 Q. [16:26:27] Mr Ntaganda, with the remaining minutes for today, can you
13 describe to the Court what you did? What were your duties as the RSM that make
14 that position an important post?

15 A. [16:26:45] I was responsible for ensuring that the recruits in my regiment had
16 eaten and eaten sufficiently, that they had received training, proper training, that they
17 had -- that they had a proper sleeping area, that they had bathed, that they had a
18 proper training programme in place, including the time at which to learn how to fire,
19 at what time to eat, and the time at which to receive training on the field, tactical
20 training. I was the one implementing all these programmes at the regiment level, and
21 then I would report to the SSM, School Sergeant Major, and also to --

22 THE INTERPRETER: [16:27:58] And the interpreter doesn't get that last part of the
23 witness's ...

24 MR BOURGON: [16:28:06] (Interpretation)

25 Q. [16:28:07] We will come to the last -- to that part of the SSM and OC tomorrow

1 in the examination. But how old were you at the time that you held the position of
2 RSM, Mr Ntaganda?

3 A. [16:28:25] I was 18 or 19 years old, or thereabouts.

4 Q. [16:28:32] Based on your experience, Mr Ntaganda, would it be normal for a
5 young man of 18, 19 years old to hold the position of RSM, regimental sergeant major?

6 A. [16:28:53] Well, you know, we are gifted differently in life. And that's how
7 things happened. We all have luck in different ways, we are all gifted differently.
8 And in the army I had the good fortune of evolving very rapidly to important
9 positions and positions of responsibility. In fact, in relation to my age, this was not
10 normal. In any event, I loved the army very much.

11 Q. [16:29:29] One last question for today, Mr Ntaganda. Does the RSM have any
12 role to play relating to discipline in his regiment?

13 A. [16:29:45] I thought that I mentioned that already. You see, the RSM was the
14 first person in charge of discipline. If, for example, he assigned duties, he expected
15 that those duties would be properly executed and he would monitor accordingly. If
16 you notice that everybody has implemented to the letter what has been decided, then
17 you would come to the conclusion that discipline has been maintained. I hope that
18 you understood that from my testimony. In any event, I was in charge of discipline.

19 Q. [16:30:31] Thank you very much, Mr Ntaganda. I think we will stop here for
20 today.

21 MR BOURGON: [16:30:33] (Interpretation) Mr President, maybe we can continue
22 tomorrow.

23 PRESIDING JUDGE FREMR: [16:30:37] Yes, exactly. We will have to break now.
24 So first of all, Mr Ntaganda, thank you very much for answering all questions put to
25 you today and I also thank you that you perfectly followed my instructions how to

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1 proceed. So we will continue as Mr Bourgon indicated tomorrow.

2 And the same, like with the other witnesses, it's my duty to remind you that in the
3 meantime you must not discuss your testimony with anyone, including with anyone
4 you may be in contact with tonight via telephone or at the detention centre. But as
5 we also highlighted, you are allowed to communicate with your Defence team as long
6 as such communications is appropriate, which we understood under that, in the sense
7 that your counsel is not permitted to advise you as to how you ought to respond to a
8 question or line of questioning. Do you understand that, Mr Ntaganda?

9 MR NTAGANDA: [16:31:51] (Interpretation) Yes, your Honour, I've understood.

10 PRESIDING JUDGE FREMR: [16:31:53] Very well. Before we adjourn, and
11 Mr Bourgon, it is just my question. You have a request for the floor. Mr Bourgon,
12 please.

13 MR BOURGON: [16:32:04] Mr President, I just wanted to inform the Chamber that
14 when we had the oral arguments on this matter of contacts or discussing testimony
15 with others, I indicated to the Chamber that of course Mr Ntaganda is not in a position
16 to discuss his testimony with anyone.

17 But I forgot that there are other inmates at the detention centre and that, of course, he
18 could discuss his testimony with them. I made it clear to him that that includes
19 everybody, that he cannot discuss his testimony with anyone, including the other
20 inmates, which I forgot about. Thank you, Mr President.

21 PRESIDING JUDGE FREMR: [16:32:46] Exactly. I reconfirm that. So no further
22 requests for the floor? Then I can just announce that tomorrow, as I guess you know,
23 in this courtroom from 9.30 it will be delivery of the Appeals Chamber judgment. So
24 we will have to start a bit later. So according our information, we will be allowed to
25 start at quarter past 10.

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- 1 So the schedule which is intended by the Chamber for tomorrow would be, first
- 2 session would be shorter, from 10.15 till 11, and then we would like to continue
- 3 according the original schedule, which means the second session from 11.30 till 1 p.m.,
- 4 and then the afternoon session from 2.30 p.m. till 4.30 p.m.
- 5 So that is for tomorrow. And now the Court is adjourned.
- 6 THE COURT USHER: [16:33.45] All rise.
- 7 (The hearing ends in open session at 4.33 p.m.)