

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 Thursday, 13 July 2017
9 (The hearing starts in open session at 9.48 a.m.)
10 THE COURT USHER: [9:48:42] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: [9:49:19] Good morning, everybody.
14 Court officer, please call the case.
15 THE COURT OFFICER: [9:49:24] 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: [9:49:39] Thank you, court officer.
20 Appearances, please.
21 MS SAMSON: [9:49:43] Good morning, Mr President. Good morning, your
22 Honours. Appearing for the Prosecution today are Ms Dianne Luping,
23 Mr Rens van der Werf, Ms Selam Yirgou, Ms Claudine Umurungi, Ms Marion
24 Rabanit, Ms Roya Tazib, and Mr Sergio Wey, and of course myself, Nicole Samson.
25 PRESIDING JUDGE FREMR: [9:50:11] Thank you, Ms Samson. Eight persons.

1 All right.

2 Defence, please.

3 MR BOURGON: [9:50:18] (Interpretation) Good morning, Mr President.

4 Representing Bosco Ntaganda, who is present in the courtroom this morning,

5 Ms Julia Jan, Ms Victoria Cichalewska, Mr Justin Kabika, Mr David Wagen-Magnon,

6 Maître Isabelle Martineau and myself, Stéphane Bourgon. Thank you, Mr President.

7 PRESIDING JUDGE FREMR: [9:50:41] Thank you, Mr Bourgon.

8 And Legal Representatives of Victims, please.

9 MS PELLET: [9:50:47] (Interpretation) Thank you, Mr President. Former child
10 soldiers are represented by Vony Rambolamanana and myself, Sarah Pellet, counsel
11 at the OPCV.

12 MR SUPRUN: [9:51:03] (Interpretation) Good morning, Mr President. Good
13 morning, your Honours. For the victims of the attack, today, Anne Grabowski,
14 associate jurist, and myself Dmytro Suprun, counsel at the OPCV.

15 PRESIDING JUDGE FREMR: [9:51:18] Thank you, Ms Pellet. Thank you,
16 Mr Suprun.

17 Before we continue, the Chamber was informed that Mr Bourgon would like to
18 address us.

19 If that's the case, Mr Bourgon, please.

20 MR BOURGON: [9:51:33] Thank you, Mr President. I would like to make an oral
21 request at this time concerning certain documents found on the list of items the
22 Prosecution wishes to use during its cross-examination of Mr Ntaganda. It might be
23 more appropriate to do to make this submission in the absence of Mr Ntaganda.

24 PRESIDING JUDGE FREMR: [9:51:57] All right, then.

25 So I would like to ask guards to escort Mr Ntaganda out of the courtroom. I believe

1 it will not be a long time, for a few minutes.

2 (The witness stands down)

3 PRESIDING JUDGE FREMR: [9:52:29] And now, Mr Bourgon, you may proceed.

4 MR BOURGON: [9:52:32] Thank you, Mr President. I would make my
5 submission as short as possible. We've reviewed the list of items which has been
6 provided to us by the Prosecution. We mentioned yesterday the number of items on
7 that list, over 1400. 800 of which, of course, are documents that were on the Defence
8 list. At this point in time, I only have one request, and it pertains to 14 documents
9 which were disclosed in the last week or so.

10 These documents, Mr President, I will refer to the number on the Prosecution's list of
11 items. The numbers are 1168, 1176, 1177, 1178, 1179, 1180, 1181, 1182, 1183, 1184,
12 1227, 1397, 1398, and 1396.

13 Regarding these documents, Mr President, we're talking about 14 documents. Three
14 of these documents were received by the Defence on 10 July. This is on Monday of
15 this week. I refer to documents 1227, 1396 and 1168.

16 As for two of these documents, I refer to 1397 and 1398, they were received by the
17 Defence for the first time to the best of our knowledge yesterday, on 12 July.

18 As for the other documents, they were received on Tuesday, 11 July, for the first time.
19 Mr President, of course, pursuant to the Chamber's modus operandi for documents to
20 be added on the list, the Prosecution is able to add documents on its list of evidence at
21 any time. We understand that, and this is the way we have been operating.

22 However, it is also for the other party to oppose the use of any such document. In
23 this case, we oppose the use of these documents because the Prosecution has not
24 provided any reason why these documents are added on its list at such a late point in
25 time.

1 There are two reasons why documents should be allowed to be used by a party, and
2 that is either if the document, because maybe Mr Ntaganda said something in his
3 direct examination and they find a document that is absolutely essential to the
4 Prosecution's case and relevant to the charges, then it could be added to the list. We
5 do not believe that any of these documents fall in this category.

6 In other instances, the Prosecution can have in its possession documents it had for a
7 long time and there are no reasons why such documents were not disclosed
8 previously. This is the case for at least one of these documents, and that is number
9 1227. I do not have all of the relevant metadata with me.

10 Mr President, I ask the Chamber to look at these documents and to assess whether the
11 Prosecution should be permitted to use these documents at such a late point in time,
12 and, at least, we would have to know why they add these documents and what they
13 intend to do with these documents and why they could not be disclosed previously.
14 Many of these documents, Mr President, are open-source material, which can be
15 found on the internet. That is no excuse in our view to put these documents and to
16 add these documents on the Prosecution's list. To provide an example, about a
17 month ago or so, I don't recall the exact date, the Prosecution disclosed to the Defence
18 some 10,000 pages of material, open-source material, that they found on the internet
19 or other sources regarding the period of 2004 to 2013. We did not say anything
20 because we had a month to look at these documents and it is open-source material, so
21 if the Prosecution wishes to use it, we did not say anything about such disclosure at
22 the time.

23 This case is different. We get these documents after the direct examination or during
24 the direct examination and they should not be permitted to be used.

25 Should the Chamber take a different view, Mr President, then I recall what the

1 Chamber said in its ruling concerning the conducted of proceedings during
2 cross-examination or during the testimony of Mr Ntaganda, that such documents we
3 could discuss with Mr Ntaganda because they are new. That's a point I made in my
4 earlier argument, and I said we are not going to inform Mr Ntaganda of any
5 document on the Prosecution's list, and we won't, other than for two exceptions, the
6 telephone conversations, and the Chamber acknowledged what we had said, or if it is
7 a new document, and I said at the time that we would seek leave to the Chamber to
8 be able to discuss these documents or to inform Mr Ntaganda of these documents on
9 the Prosecution's list.

10 So my request this morning is twofold. First, we are looking for an order simply
11 saying, looking at what can be done with these documents and the late disclosure,
12 that they should not be used, period. Second, or in the alternative, should the
13 Chamber take a different view and decide the documents can be used by the
14 Prosecution, we seek leave to inform Mr Ntaganda of the existence of these
15 documents and to discuss them with him.

16 Thank you, Mr President.

17 PRESIDING JUDGE FREMR: [10:00:29] Mr Bourgon.

18 Ms Samson.

19 MS SAMSON: [10:00:41] Thank you, Mr President.

20 I will also make brief submissions in relation to this request at this time. The
21 Prosecution opposes the request insofar as it requests that the Chamber at this time
22 issue a blanket prohibition on the use of documents on the Prosecution's list.
23 In our submission, that deliberation and adjudication should happen at the moment
24 when the Prosecution seeks to use any of those items consistent with the Chamber's
25 earlier decisions on how to deal with objections to documents on the list.

1 The Prosecution also submits that, as this Chamber and other Chambers of this Court
2 have pronounced, cross-examination is to a large extent a reactionary exercise. And
3 so the Prosecution listens intently to the information that is solicited during the
4 examination-in-chief of a particular witness, and where it is necessary, in the
5 Prosecution's submission, to put items to that witness in contradiction of the witness's
6 testimony, then the Prosecution or the Defence ought to be able to do that in reaction
7 to what the witness has said.

8 In this particular case, your Honours, the Prosecution did not have full disclosure of
9 Mr Ntaganda's every expected item of evidence. It had a brief summary of topics.
10 Now, after nearly four weeks of testimony, we have much more detail and there are
11 certain aspects of that evidence that the Prosecution will challenge by use of various
12 pieces of evidence, but including material that we have only recently been able to
13 determine are relevant to particular aspects of that testimony.

14 And it was not uncommon for the Defence to disclose items during the
15 examination-in-chief that it intended to use in reaction to evidence elicited on direct,
16 and this was evidence which had never been previously disclosed. The same
17 principles ought to apply to the Prosecution during the cross-examination of Defence
18 witnesses during the Defence case.

19 I also note that the Conduct of Proceedings decision at paragraph 33 permits either
20 party to provide by email, no later than 24 hours before the commencement of
21 cross-examination, documents that are not already part of the case record. And the
22 Prosecution has amply fulfilled that criteria in these instances.

23 Again, your Honour, the Prosecution requests that the Chamber deliberate on these
24 matters at the time when they may be in issue. I cannot at this time -- I have not
25 looked closely at what these 14 documents are, given that I had no advance notice of

1 the actual request. I know what the item numbers are. I will take a look, but
2 I cannot at this point indicate to the Chamber when I will be addressing them, but it
3 will not be this morning, certainly, by my quick look at the item numbers.
4 In any event, your Honour, the Prosecution seeks to have these matters adjudicated as
5 and when they arise during the examination of the witness.

6 PRESIDING JUDGE FREMR: [10:04:10] Thank you, Ms Samson. One additional
7 question from my part. Mr Bourgon mentioned that if the use of those documents
8 would be allowed, then he would like to consult Mr Ntaganda as regards those
9 documents. Would it be any problem for you?

10 MS SAMSON: [10:04:32] We have no objection to that, your Honour.

11 PRESIDING JUDGE FREMR: [10:04:35] All right. So just my first, first reaction
12 that 10 -- that was even concerning your question, 10 of the documents are press
13 articles, so I think it also indicates something about the probative value, but anyway
14 the Chamber will deliberate, not now but either during this break or during the lunch
15 break. And in the meantime, until our decision, you must not use those 14
16 documents with the witness. But I believe that it will not take a long time until we
17 decide.

18 So now maybe another housekeeping matter. Yesterday Mr Bourgon also submit a
19 request to admit those organigrams and you ask to be given some time. So what is
20 your position at the moment?

21 MS SAMSON: [10:05:50] We have no objection to the admission, your Honour,
22 with the caveat, of course, that the Prosecution doesn't accept or concede the
23 information within. But we have no objection to them being admitted as Defence
24 documents.

25 PRESIDING JUDGE FREMR: [10:06:05] All right. So I believe that we have a list

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1 of those documents in the transcript from yesterday. So I can just briefly refer to that,
2 and those documents specified at the very end of yesterday's session by Mr Bourgon
3 are admitted into evidence as a further Defence exhibit.

4 Now we can call Mr Ntaganda back.

5 (The witness enters the courtroom)

6 PRESIDING JUDGE FREMR: [10:07:39] Mr Ntaganda, welcome back. We will
7 now continue with your testimony, but now you will be cross-examined by
8 Prosecution. So allow me to remind you that you are still under oath, that you have
9 a duty to speak truth and nothing but the truth, that if you wouldn't speak the truth,
10 you can be even prosecuted.

11 And I would also like to highlight that regardless of the fact that you were called as a
12 Defence witness, you have the same position now when being examined by
13 Prosecution. So you should respond to all questions put to you at the same way how
14 you did it when examined by Defence.

15 And also allow me to quote from our decision on further matters related to your
16 testimony from 8 June 2017. It's para 24 and now I quote:

17 "As acknowledged by the Defence, once an accused voluntarily testifies under oath,
18 he waives his right to remain silent and must answer all questions put to him or her.
19 The Chamber thus confirms that the answers provided by Mr Ntaganda may be used
20 against him in the present case and if he declines to respond to a permissible question,
21 the Chamber may draw adverse inferences as appropriate."

22 Mr Ntaganda, could you confirm that you have understood all that?

23 WITNESS: DRC-D18-D-300 (On former oath)

24 (The witness speaks Swahili)

25 THE WITNESS: [10:09:44] (No interpretation)

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1 PRESIDING JUDGE FREMR: [10:10:00] Sorry, I haven't received translation. Just
2 to check the part is --

3 THE WITNESS: [10:10:10] (Interpretation) Yes, I have fully understood you, your
4 Honour.

5 PRESIDING JUDGE FREMR: [10:10:15] Okay, now I got it. Fine.
6 So we can move to cross-examination.

7 Ms Samson, you have the floor.

8 MS SAMSON: [10:10:24] Thank you, Mr President.

9 QUESTIONED BY MS SAMSON:

10 Q. [10:10:28] Good morning, Mr Ntaganda.

11 A. [10:10:31] Good morning, Madam Prosecutor.

12 Q. [10:10:38] As you know, my name is Nicole Samson and I represent the
13 Prosecution. I have a number of questions for you today and over the course of the
14 next undoubtedly several weeks. If at any time my questions are unclear, just ask
15 me to repeat and I will do my best to do so.

16 A. [10:11:05] Yes, I have understood.

17 Q. [10:11:08] Now, during the course of your testimony over the last few weeks
18 you've asserted that you are a highly respected person in the army and within the
19 civilian community. Is that right?

20 A. [10:11:30] Yes, that was my statement.

21 Q. [10:11:35] Indeed, you said that you served as an example for all.

22 A. [10:11:48] Yes.

23 Q. [10:11:52] You're married, Mr Ntaganda; is that right?

24 A. [10:12:02] Yes, I am married.

25 Q. [10:12:06] And your wife, you told the Court, is from the Hema south

1 community?

2 A. [10:12:24] Yes, she is Hema south.

3 Q. [10:12:28] You've also said that you're a practising member of the Adventist
4 Church; is that right?

5 A. [10:12:42] Yes.

6 Q. [10:12:56] And you told the Court that in June 2003 the Hema north
7 community gave you a girl and you took her as a second wife; is that right?

8 A. [10:13:19] Please can you repeat your question?

9 Q. [10:13:26] Certainly. You mentioned to the Chamber in your first day of
10 testimony that in June 2003 the Hema north community gave you a girl and you took
11 her as a second wife. Is that right?

12 A. [10:13:45] No, not the entire Hema community. It is that woman's two aunts
13 who asked me to marry her, to marry their niece. She was from Hema north.

14 Q. [10:14:11] And it's right that you told the Court that you took the girl as a
15 second wife; is that right?

16 A. [10:14:28] Yes, that was my testimony, and I accepted that fact.

17 Q. [10:14:38] You knew very well, you said at the time, that the Adventist Church
18 would not permit you to have two wives at the same time; that's right, isn't it?

19 A. [10:15:03] If I had gone through the Adventist Church, that would not have
20 been possible because the church forbids one from having two wives.

21 Q. [10:15:23] Yes. And you said to the Chamber that your father also disagreed
22 due to his own religious principles that you have two wives at that time, correct?

23 A. [10:15:39] No. My father did not know that I had a second wife. What I said
24 instead is that my father did not have two wives. You see, when I was asked to
25 marry a second wife my father was not informed of that.

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1 Q. [10:16:16] And to be clear, Mr Ntaganda, what you said to the Chamber, at
2 page 209, at transcript 209, page 45, line 16, was, "Even my father would not agree
3 because he was a devoted Christian." That's what you told the Chamber, isn't it?

4 A. [10:16:46] Madam Prosecutor, could you please quote to me the transcript
5 where I mentioned this about my father. That will allow me to reply correctly.
6 Thank you.

7 Q. [10:17:10] Yes, certainly. The transcript is transcript T-09, page 45, line 16,
8 and I quote, "Even my father would not agree because he was a devoted Christian."
9 End quote. That was your testimony, wasn't it?

10 A. [10:17:41] Yes.

11 Q. [10:17:44] And in June 2003, your first wife was pregnant with the first child
12 that you were having together, wasn't she?

13 A. [10:18:04] In June, yes, my first wife was pregnant, but I don't know how far
14 advanced the pregnancy was because she had the first child in November 2003. Yes,
15 she was pregnant.

16 Q. [10:18:28] Now, despite the laws of your religion against taking a second wife,
17 despite your father's refusal or non-acceptance of this, despite your wife's pregnancy
18 at the time, you took the girl as a wife, didn't you?

19 A. [10:18:56] When my wife arrived I told her, we discussed the matter, and she
20 agreed. She took the situation into consideration, the situation at that time, the
21 situation between the two communities, and she was in agreement.

22 Q. [10:19:23] And we've already seen in your testimony that the laws of your
23 religion did not agree, and so despite the breach of the laws of your religion, you took
24 the girl as a second wife.

25 A. [10:19:51] I just said that given the situation in which I found myself, a

1 commanding officer, and in view of the situation of the two communities where I
2 found myself, I had to accept this and ignore to a certain extent the doctrine of the
3 church.

4 Q. [10:20:18] Well, in fact you said that in your testimony. You said that you
5 had an objective in taking the girl which was to have a good relationship, essentially,
6 with the Hema north community; isn't that right?

7 A. [10:20:34] No. I wanted Hema north and Hema south to be in agreement,
8 and I wanted to be able to mediate. I wanted the communities to come together
9 through my work.

10 Q. [10:21:00] Let's look together at exactly what you told the Court. So in
11 transcript T-09, page 44, lines 18 to 21, you said in response to an answer -- question
12 from your counsel, and I'm quoting you, you said: "Yes, I had an objective. Well,
13 you know, if you have a woman or wife within a community, you would be treated as
14 an in-law, and wherever I was as an in-law of a community, I had a good relationship
15 or good relations with members of that community." End quote.

16 That's what you said was your objective; isn't that right?

17 A. [10:22:00] Madam Prosecutor, I recall having said things. There was a
18 conflict between the two communities. That's why I asked you to read the transcript
19 of what I said. There was a conflict between the two communities, and when I was
20 given the woman, I accepted her so that there could be reduction in the tension
21 between the communities, and they could find themselves together through me,
22 Hema north and Hema Sud, and that is something that I mentioned.

23 Q. [10:22:41] Isn't it right that in June 2003 you wanted to ensure that you had the
24 continued support of the Hema north community because it was likely that Floribert
25 Kisembo was going to lead the UPC with a base of Hema north supporters and

1 soldiers?

2 A. [10:23:14] No. No. I never sought to get support from the Hema. They
3 appreciated me, they appreciated the way that I was in charge. They were behind
4 me. They wanted to support me in what I was doing, but I did not actively seek
5 their support. If I were to have done that, I would have gone to get the girl for
6 myself, but they offered me the girl. That is a very different thing,
7 Madam Prosecutor.

8 Q. [10:23:48] Well, this girl, she came to stay with you for a period of time, you
9 said, correct?

10 A. [10:24:08] Yes, I asked her to continue attending school, and that is what she
11 did. She was my wife and I paid for her studies and I paid for that from my own
12 pocket.

13 Q. [10:24:32] Yes, indeed. You said that you paid for her school fees and her
14 rent and everything else; is that right?

15 A. [10:24:46] Yes.

16 Q. [10:24:49] And you said that she lived elsewhere but came to see you from
17 time to time; is that right?

18 A. [10:25:05] She lived in her own home with her family.

19 Q. [10:25:13] And this schoolgirl, she came to live with you whenever you
20 wanted to have sex with her; is that right?

21 A. [10:25:32] Yes.

22 Q. [10:25:35] Now, this girl, she got pregnant you said, I think, correct?

23 A. [10:25:46] Yes.

24 Q. [10:25:51] And it was possible, you thought, that you might be the father of the
25 child.

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1 A. [10:26:05] No. And that was the cause of our separation. When I realised it
2 was not my child, then we separated. And at a later stage we had a DNA test carried
3 out, and I wanted to carry out the DNA test to see whether it was my child, and if it
4 had been my child, I would have taken the child. But we didn't have the time to do
5 it.

6 Q. [10:26:50] Yes. But my question was, it was possible that you were the father
7 of that child; that's right, isn't it?

8 A. [10:27:09] Yes. That's what I wanted. I had married her, and I wanted the
9 child to be my child; that was my wish.

10 Q. [10:27:27] And at the time, sir, in June 2003, you were nearly 30 years old;
11 that's right, isn't it?

12 A. [10:27:47] I can see that I was born in '73, so, yes.

13 Q. [10:28:04] And the girl that you took was in school. She was a schoolgirl,
14 right?

15 A. [10:28:20] Yes, she was still at school.

16 Q. [10:28:26] And, sir, it's right, isn't it, that taking a schoolgirl as a second wife
17 against the laws of your religion did not set a good example to all, did it?

18 PRESIDING JUDGE FREMR: [10:29:07] Ms Samson, this question is about opinion
19 evaluation made by Mr Witness.

20 MS SAMSON: [10:29:15] Mr President, if I may, the witness has already made such
21 an opinion about himself in relation to his conducted, and I'm merely seeking to ask
22 him whether this conduct also fits into the type of conduct that he considers to have
23 been setting a good example.

24 PRESIDING JUDGE FREMR: [10:29:36] All right. The question as you rephrased
25 is fine.

1 MS SAMSON: [10:29:43]

2 Q. [10:29:44] Did you understand my question, sir, or would you like me to
3 repeat it?

4 A. [10:29:54] I understood. Your Honour, someone may decide to carry out
5 whatever profession. If I were to become a politician, I would leave the church, and
6 I would do that if I were to decide to be a soldier or a footballer. Then, if I were a
7 footballer and I wanted to become a soldier, then I would have a career change. So I
8 was being there a mediator between the two communities, so I was acting out a sort
9 of more politicians role, and this is why I put to one side the notion of the church at
10 that time.

11 Q. [10:30:51] My question, though, be sir, is whether or not this conduct on your
12 part set a positive and good example to the people who looked up to you and my
13 suggestion to you is that it did not; do you agree with that?

14 A. [10:31:20] Madam Prosecutor, within the army I could spend five years
15 between church visits because I was a soldier.

16 Q. [10:31:45] Your conduct at that time set an example, didn't it, that you will do
17 whatever you want no matter the consequences if it benefits you; isn't that right?

18 A. [10:32:13] Madam Prosecutor, I did not understand your question. Please,
19 could you repeat it?

20 Q. [10:32:20] Yes, of course. I said and my question was: Your conduct at the
21 time set an example, didn't it, that you will do whatever you want no matter the
22 consequences if it benefits you; isn't that right?

23 A. [10:32:55] No.

24 Q. [10:32:59] You also said in your testimony that in your military and tactical
25 training and experience you learn that it's important to make choices as to what is

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1 useful; that's right?

2 A. [10:33:22] Madam Prosecutor, I didn't understand your question.

3 Q. [10:33:31] I'll repeat it. I'll repeat it for you. You said in your testimony
4 early on that your military training and experience in tactics, in particular in combat
5 tactics, taught you that it's important to make choices as to what is useful; that's right,
6 I think, isn't it?

7 A. [10:34:05] Could you please give me the reference in the transcript where I
8 made this reference to my military career please so that I am in a better position to
9 answer your question, Madam Prosecutor?

10 Q. [10:34:25] Certainly. Certainly. In transcript T-212, page 45, lines 17 to 18
11 you said, and I'll quote:

12 "When you adopt the combat tactics which we learned, it's important to make choices
13 as to what is useful."

14 PRESIDING JUDGE FREMR: [10:34:50] Don't respond, Mr Witness.

15 Mr Bourgon.

16 MR BOURGON: [10:34:55] Thank you, Mr President. In order to be fair to the
17 witness we have to put not only those two lines but the question that was before and
18 in what context he said this because the context that follows has nothing to do with
19 military tactics, so at least the two lines before and two lines after so that the witness
20 knows what the topic was when he gave that information. Thank you.

21 PRESIDING JUDGE FREMR: [10:35:21] Ms Samson, I will have some, you know,
22 problem if you want to connect this answer with the topic you are discussing now,
23 I would be against because it's really -- you cannot -- I don't know what is the context
24 of this, of this answer, what was the question and so on, but if you want to use it as
25 argument as regards the topic you are discussing now I would be against so please

1 have it in mind. Really tactics, as concerns military, issues can be connected with
2 tactics or approach in inter-personal relationships.

3 MS SAMSON: [10:36:04] I do, Mr President, have the transcript handy, so I can
4 read the context. My question is disconnected from that. However, it relates to
5 what Mr Ntaganda says he learned regarding combat military tactics. And I do not
6 believe that I am unfairly at this point trying to extract --

7 PRESIDING JUDGE FREMR: [10:36:26] Please quote.

8 MS SAMSON: [10:36:28]

9 Q. [10:36:28] Mr Ntaganda, what you said, it's at transcript T-212, page 45, and I'll
10 start with the question that your counsel provided you with and I will go to -- several
11 lines into your answer. The quote starts at line 15 and runs through to line 21. And
12 I'll quote you now. You said -- the question I'm sorry was:

13 "Mr Ntaganda, why did you decide to send Moyi to carry a message to Wamba Dia
14 Wamba rather than hold him as a prisoner?"

15 And your answer starting a line 17 was: "When you adopt the combat tactics which
16 we learned, it is important to make choices as to what is useful. So I chose to send
17 him because he was disarmed. I had his pistol. He had a good pistol, but I
18 gave ... my pistol to late Bagonza. So we wanted him to take the message that he had
19 been defeated and that his entire company had been defeated. So it was a
20 humiliation for him."

21 Now, my question to you was: It's true, isn't it, that you learned to adopt combat
22 tactics and to make choices as to what is useful and you learned that in training and
23 in your military experience; is that right?

24 A. [10:38:26] I think you're thinking of two different subjects. We weren't
25 talking about marriage. I recall when I took Moyi in Nyankunde, I took all his

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1 troops and I said to Moyi, "Go to Wamba Dia Wamba." And this was a tactic we
2 used in the army to cause someone to be afraid. If you have a prisoner of war,
3 what's important we don't -- we wanted him to tell his comrades that we had beaten
4 them and we wanted him to be able to take this message. We wanted to intimidate
5 the message. This is a tactic used in the army. That's completely different from
6 anything to do with marriage. That's what I said, Madam Prosecutor.

7 Q. [10:39:39] Mr Ntaganda, my question was not about marriage. My question
8 was to confirm what you told the Chamber, which was that you learned combat
9 tactics, that you had to make choices based on what is useful and I only want you to
10 confirm that that is what you told the Chamber.

11 A. [10:40:17] Yes, Madam Prosecutor, we did touch on this subject.

12 Q. [10:40:25] And it's right, I think, that in your life you've made choices based on
13 what is useful to you at times, haven't you?

14 A. [10:40:52] As a commander, if you arrive on the field you need to prepare
15 yourself for battle and, depending on the situation, you will adopt a particular tactic.
16 That is how a commander works as things develop on the battlefield.

17 Q. [10:41:16] So in answer to my question, it is right, isn't it, that in your life you
18 have made choices based on what is useful to you at times?

19 A. [10:41:34] I don't know what I said in my testimony. This is a very different
20 question. If I said it before the Court, you can quote to me perhaps the transcript
21 where it has been recorded. If it's something different, something I didn't say before
22 the Court, then I will reply to your question.

23 Q. [10:42:07] Is it a very difficult question for you, Mr Ntaganda?

24 PRESIDING JUDGE FREMR: [10:42:13] Ms Samson, please leave this topic. Even
25 myself I sometime use -- try to find what is useful. The other issue is whether

1 I would prefer something what is useful before it's something which is, for example,
2 legal. But I think your question is, you know, just about whether something is useful,
3 please leave this topic.

4 MS SAMSON: [10:42:35] Certainly, your Honour.

5 Q. [10:42:36] You told the Court that in 2000 you lied to Tibasima's guards in
6 order to save yourself, correct?

7 A. [10:42:59] Yes.

8 Q. [10:43:03] And you called this a military strategy or a trick in order to defend
9 yourself; that's right?

10 A. [10:43:18] It's not a military strategy to escape, but more to implement a
11 number of strategies.

12 Q. [10:43:36] And what you said to the Court was at page 212 -- sorry,
13 transcript 212, page 13, lines 2 to 3 and I quote:

14 "So I used a military strategy or trick to defend myself. That is what I had learned to
15 do. So that's why I told a lie and that helped me."

16 You recall saying that, sir?

17 A. [10:44:09] Yes.

18 Q. [10:44:12] So when your personal interests are at stake, you're willing to go to
19 great length to save yourself, aren't you, including lying?

20 A. [10:44:28] No. That's not possible. Look at the context in which I said that.
21 This was not something that regularly occurs. It was because I had no troops to
22 defend me, so I adopted this strategy. And when the UPDF found out that I had
23 used this tactic, they were most surprised and they realised that I was indeed an
24 experienced military man.

25 Q. [10:45:19] Now, Mr Ntaganda, you've given evidence throughout your

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1 testimony in-chief in -- to contradict Prosecution evidence. And you told the Bench
2 yesterday and I'll quote, transcript 223, page 40, lines 11 to 12 quote:

3 "What people have said here are falsehoods."

4 That's what you said, right?

5 A. [10:45:55] I was referring to the place where I was and to what I saw, and what
6 was said here is something I disagree with. Several questions had been put to me,
7 but if we were going to proceed case by case, mentioning who has said what,
8 providing a transcript and the excerpt you are referring to, then I'll be able to answer
9 specifically.

10 I do remember that at some point he put generally-framed questions to me, and my
11 answer was also in general terms. Whereas he had mentioned a number of names to
12 me. Now, if you are going to put a question to me, please be specific as to who may
13 have said what and as to what the person may have said, and then that would help
14 me provide an answer, Madam Prosecutor.

15 Q. [10:46:54] I've quoted what you said, sir. Yesterday, you said at page 40, lines
16 11 to 12, transcript 223, quote: "What people have said here are falsehoods."

17 PRESIDING JUDGE FREMR: [10:47:12] But, Ms Samson, it would be also fair to
18 quote the question because now it's visible that Mr Ntaganda does not remember the
19 context, so if you would just quote this sentence, I don't find it fair. So please quote
20 the question as well.

21 MS SAMSON: [10:47:32] Thank you, Mr President. I will rephrase in more
22 generalised way so it's clearer to the witness.

23 Q. [10:47:40] You've touched upon this in your last answer, but your evidence to
24 the Chamber yesterday and earlier moments in your testimony was that Prosecution
25 witnesses have lied about parts of their account. That's fair, isn't it?

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1 A. [10:48:01] You're providing a very short explanation to me, but can you tell me
2 which topic we were dealing with when I said that they were lying. So I think there
3 are a number of questions of a general nature that were put to me and then there were
4 other questions relating to specific individuals, to specific individuals. I, therefore,
5 would like to ask you to please remind me of the context in which I made such a
6 statement or provided that kind of testimony and in relation to whom.

7 Q. [10:48:46] Yes. I've just provided the context, sir. I'm speaking about when
8 you were being asked questions about various Prosecution witnesses and you told --

9 PRESIDING JUDGE FREMR: [10:48:57] Ms Samson, please, at least provide
10 Mr Witness with those three, maybe three, four names just to make it clear of those
11 witnesses. Have been mentioned at the --

12 MS SAMSON: [10:49:08] We'll have to move into private session, Mr President, if I
13 were to do that.

14 PRESIDING JUDGE FREMR: [10:49:13] All right. Court officer, let's move into
15 private session.

16 (Private session at 10.49 a.m.)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

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- 1 (Redacted)
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- 18 (Redacted)
- 19 (Open session at 10.56 a.m.)
- 20 THE COURT OFFICER: [10:56:50] We are back in open session, Mr President.
- 21 PRESIDING JUDGE FREMR: [10:56:58] Thank you, court officer.
- 22 Ms Samson, please proceed.
- 23 MS SAMSON: [10:57:02]
- 24 Q. [10:57:04] In your last answer you have stated that what certain Prosecution
- 25 witnesses have testified to is false. It's true, though, isn't it, that of all the people who

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1 have come before these Judges, you're the one who has the most reason to lie?

2 PRESIDING JUDGE FREMR: [10:57:27] Ms Samson, this question is not fair.

3 Please move.

4 MS SAMSON: [10:57:40]

5 Q. [10:57:40] You've told the Bench throughout your testimony that you sought to
6 protect the civilian population in Ituri and that this civilian population fully
7 supported you and the UPC at all times by marching, celebrating and singing in the
8 streets; that's right, isn't it?

9 A. [10:58:08] What period does your question relate to, Madam Prosecutor?

10 Q. [10:58:16] Your evidence, as I recall it, is that the population was continually in
11 support of you and the UPC. So you've given evidence about supportive
12 populations when you were in the bush, in Sota, in 2000, correct?

13 A. [10:58:43] I do not remember saying that members of the population
14 demonstrated or walked in that area, or marched in that area. I don't think so.

15 Q. [10:58:58] You said that at that time the population supported you, correct?

16 A. [10:59:11] What period are you referring to, madam? There were several
17 periods. There was a period in 2000, in 2002, 2003, up until I left the Ituri. Now,
18 then there is the period towards the end of 2003. Please, could you be a little more
19 specific when it relates to time frame so that I'm also in a position to provide you with
20 explanations.

21 Q. [10:59:38] Can you recall any time between 2000 and 2003 when the civilian
22 population did not support you or the UPC when you say it existed? Any time you
23 were not supported by the population?

24 A. [10:59:57] I joined the UPC in September 2003. When it was created, it was
25 Thomas' party and I joined it in September 2002. Members of the population

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1 supported us and provided us with recruits whom we trained. These recruits were
2 members of the population. So right from the beginning, we had the support of the
3 population. If that support did not exist, the FPLC and the UPC would never have
4 been born.

5 Q. [11:00:58] And so was there any time that the population or any part of it did
6 not support you or the UPC?

7 A. [11:01:16] I am not aware of that.

8 Q. [11:01:21] You specifically mentioned at one point in your testimony the
9 events of August 2002 when Lompondo left Bunia, and you observed that civilians
10 after the departure were celebrating, jubilating and were clapping for you. You said
11 they were happy, they were drinking alcohol, listening to music and singing.
12 Everybody was happy, was your evidence. Do you recall that?

13 A. [11:02:10] I did not say that they were acclaiming us. Please look at the
14 transcript. Can you take me to the period, to the day? You see, when we entered
15 the town when Molondo was driven out, I know exactly where I was, I know the road
16 that I took to enter the city. Now, to say that they acclaimed me with joy and
17 celebration, please can you, can you point me to the excerpt of the transcript that
18 indicates this? And then I will be able to answer your question.

19 Q. [11:02:49] Do you have any recollection of the population being happy and
20 surrounding Kisémbé's home, as you testified, when Lompondo departed Bunia in
21 August 2002?

22 PRESIDING JUDGE FREMR: [11:03:06] Hold on, Mr Witness.
23 Mr Bourgon.

24 MR BOURGON: [11:03:09] Thank you, Mr President. The witness requested to
25 be put in context where he said something so that he can offer an answer. To ask the

1 same question in a different way is not going to do it. She can just read the
2 transcript and he will say yes or no, or he will explain. But in the abstract, it's not
3 possible for him to provide answers like this. Thank you.

4 PRESIDING JUDGE FREMR: [11:03:35] Ms Samson.

5 MS SAMSON: [11:03:36] Yes, I can do that, your Honour. I have the transcript
6 here. These questions were put to him in the abstract in-chief and he was very
7 specific, the witness, in recalling this event. But I have the transcript if he can't
8 recall.

9 PRESIDING JUDGE FREMR: [11:03:52] Please quote. I think it will just dispel
10 any doubts.

11 MS SAMSON: [11:03:58] Certainly.

12 Q. [11:04:03] Sir, in transcript T-221 (sic), page 79, lines 1 to 11, you were asked
13 the following question and you gave the following answer:

14 Question: "Did you have an opportunity to observe or notice what the feelings or
15 the opinions of the population were once the APC left?"

16 Answer: "I have already stated this, but I'll repeat myself. Although there were
17 killings in Mudzipela, the civilians who survived were celebrating, they were
18 jubilating, we went through the city and people were clapping for us. When we
19 came from Mwanga to Mudzipela, all the way to Lipri, when we crossed the bridge to
20 Mudzipela, the people were acclaiming us, they were clapping for us. When we got
21 to Kisembo's residence, the members of the population had surrounded the house
22 and they were celebrating and singing, they were all very happy, drinking alcohol
23 and they were listening to music at very loud volumes and celebrating. Everybody
24 was happy." End quote.

25 That was your evidence, wasn't it, sir, about the response of the population to the

1 departure of Lompondo and the APC in August 2002?

2 A. [11:05:51] Now I understand you. Previously you said that they were
3 clapping for me and that's why I wanted to hear the reference. What I can say is that
4 I was a witness to what you have just read out.

5 Q. [11:06:13] Would you agree that if anyone was celebrating on that day from
6 the population that they were mainly from the Hema population?

7 A. [11:06:34] I had barely arrived in Bunia and I observed that members of the
8 population were standing along the road. And I didn't put any questions relating to
9 their ethnicity to anyone or to them.

10 Q. [11:06:55] Would you agree that at least the Lendu population in Bunia in
11 August 2002 was not celebrating the departure of Lompondo and the APC?

12 A. [11:07:21] The Lendus were in Bunia, madam. There were some Lendu there.

13 Q. [11:07:27] So do you disagree with me or do you agree with me that the Lendu
14 were not celebrating when Lompondo and the APC left Bunia in August 2002?

15 A. [11:08:00] I did not ask about the ethnicity of those who were celebrating. All
16 I can say is that all ethnic groups were represented in Bunia, but I did not ask those
17 who were manifesting or celebrating what their ethnicity was.

18 Q. [11:08:18] You're familiar with OCHA, the Office for the Coordination of
19 Humanitarian Affairs that was based in Ituri in 2002?

20 A. [11:08:37] I was not in Bunia and I did not work with organisations.
21 However, I know the OCHA, but -- I know about them, but I did not have any
22 professional contacts with them.

23 Q. [11:09:02] You knew or heard, didn't you, that in August 2002 and
24 September 2002 that the Lendu who were in Bunia fled and sought refuge wherever
25 they could, including at OCHA, after Lompondo was removed and the UPC took

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1 power?

2 A. [11:09:36] No, I was not aware of that information.

3 MS SAMSON: [11:09:51] Mr President, at this point I would like to show a video to
4 the witness, but the video is just under seven minutes. My request at this point is
5 that we take the break now and I can start with the video after the break, if that's
6 acceptable to the Chamber

7 PRESIDING JUDGE FREMR: [11:10:14] Yes, it's reasonable proposal, so we break
8 now. We take our 30 minutes regular break, which means that we will
9 reconvene 11.40.

10 THE COURT USHER: [11:10:27] All rise.

11 (Recess taken at 11.10 a.m.)

12 (Upon resuming in open session at 11.45 a.m.)

13 THE COURT USHER: [11:45:52] All rise.

14 Please be seated.

15 PRESIDING JUDGE FREMR: [11:46:09] Mr Bourgon, we were missing you at 11.40.
16 Maybe my order was not translated correctly into French.

17 MR BOURGON: [11:46:22] The order was very clear but I missed it and I'm
18 responsible, so I apologise, Mr President. I missed the 11.40 recall, but it's quite clear
19 on the transcript and I apologise.

20 PRESIDING JUDGE FREMR: [11:46:37] Apology accepted. No big problem.
21 Now, Ms Samson --

22 Oh, you wanted to say something?

23 MR BOURGON: [11:46:47] Yes, I would like, Mr President --

24 PRESIDING JUDGE FREMR: We are in public session.

25 MR BOURGON: Yes. Before my colleague proceeds, I would like to know which

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1 video she intends to play and to know exactly the dates and where the video comes
2 from so that I can make an argument once I know which video my colleague is
3 attempting to play. Thank you.

4 PRESIDING JUDGE FREMR: [11:47:09] Ms Samson.

5 MS SAMSON: [11:47:11] Yes, no problem, Mr President. I have one or two
6 questions to ask prior to showing the video. The video is DRC-OTP-1008-0008. It is
7 item 887 on the list of items. The timestamps of the video that I would like to play
8 are 00.023.23 to minute 00.09.30. The segment is in French. We have a transcript,
9 which is at item 888, and the transcript is DRC-OTP-201 -- pardon me, 2102-0476,
10 pages 478, line 1, to page 481, line 141. And I have some information that this
11 excerpt has been admitted, but I'm checking that to be certain.

12 PRESIDING JUDGE FREMR: [11:48:28] Please do.

13 MS SAMSON: [11:48:33] No, it has not been admitted yet.

14 PRESIDING JUDGE FREMR: [11:48:38] Defence, any objection against the use of
15 that video and corresponding materials?

16 MR BOURGON: [11:48:44] Yes, Mr President. And I believe that this argument
17 must be made in the absence of Mr Ntaganda.

18 PRESIDING JUDGE FREMR: [11:48:50] All right. So guards, please, could you
19 kindly escort Mr Ntaganda out of the courtroom.

20 (The witness stands down)

21 PRESIDING JUDGE FREMR: [11:49:18] Mr Ntaganda left the courtroom.

22 Mr Bourgon, you may proceed.

23 MR BOURGON: [11:49:21] Thank you, Mr President. I raise at this point in time
24 to make an objection on the use of this video, but it is an issue of principle which is
25 bound to arise again as the Prosecution conducts its cross-examination.

1 The issue, Mr President, is whether the Prosecution can use material that is not in
2 evidence. I will begin simply by highlighting the difference between the position of
3 the Prosecution in this regard and the Prosecution -- and the position of the Defence.
4 When the Defence uses material in cross-examination, this material, it is not necessary
5 for that material to be admitted in evidence. Why? Because we will have an
6 opportunity later on to admit this material as part of the case for the Defence.
7 Therefore, it's not a question when the Defence uses that item whether it is in
8 evidence or not.

9 This issue arose, and I explained the Defence position in this regard when we were
10 talking about questions put to witnesses regarding pictures that had been admitted
11 and what witnesses had said about pictures in order to complete my exercise that I
12 attempted to do with Prosecution witnesses in cross-examination. I need, as part of
13 the case for the Defence, to admit these exhibits.

14 The Prosecution is in a completely different position. The Prosecution has the
15 burden of proof. The Prosecution discloses a big or large variety of exhibits or items
16 and then the Prosecution leads its case. At some point in time, the Prosecution closes
17 its case and it informs the Defence what is on the record; that's our case.

18 It is on that basis that the Defence presents evidence during the case for the Defence.

19 And to use something that is not in evidence is a violation of the fair trial rights of the
20 accused, because as soon as the Prosecution uses an exhibit that it will not have an
21 opportunity to use or to put in evidence, then when will the Defence be able to
22 challenge that exhibit in the first place? We won't. And that is the difference.

23 Prosecution must be limited to using what is part of its case. If the Prosecution
24 believes that the witness, that it was taken by surprise, then they might be able to
25 adduce this evidence as part of the rebuttal case.

1 The Prosecution is the captain of its own ship. They decide what they do, they
2 decide what they put in evidence, and then they have to live with what they decided
3 to put in evidence or not. In this case, video evidence, Prosecution called two
4 witnesses, P-0002, P-0030. It was very easy for the Prosecution to admit any material
5 that (Redacted)
6 They even used the Rule 68(3) procedure, whereas the videos did not even need to be
7 shown in Court. They were just admitted by this person coming and saying, "Yes,
8 (Redacted)." If that procedure was not followed for a certain video, if the
9 Prosecution, when leading its case, decided not to lead a video in evidence, then it
10 cannot -- it will not have the opportunity to do so later, and to put this to the witness
11 is contrary to his fair trial rights.
12 Because when he decided to take the stand -- I know that this argument would fit for
13 any Defence witness, but even more so for the accused. When he takes the stand and
14 he decides to waive his right to remain silent, he does so on the basis of the case for
15 the Prosecution and not on anything the Prosecution can't have in its record and not
16 on anything that was disclosed. He does so on the basis of what is on the record.
17 To come with something new would be a violation of his rights.
18 In support of this argument, I can quote Archbold on evidence. And the particular
19 reference, when we discuss the issue of impeachment materials, it says here -- I don't
20 have the exact page reference, but I will produce it for the Chamber. It says:
21 "A document not already in evidence containing factual assertions which are contrary
22 to the testimony of a witness who is under cross-examination and that document is
23 not alleged to have been authored by that witness or is not the one the witness has
24 adopted, such assertions or facts may be put orally to the witness and the witness
25 should be asked to comment thereon. If the witness contests the factual contentions,

1 the document cannot be admitted and cannot be used."
2 So of course video evidence is different from a document. In this case, if
3 Mr Ntaganda appears on that video -- and to be honest, Mr President, I don't know,
4 and I don't know what is exactly on that video. We did not have the time to look at
5 every exhibit that is not in evidence, but this will arise again and again during
6 cross-examination.
7 If Mr Ntaganda appears on the video, then we would say it would be an exception
8 but it could be shown to him. If it was a document that he signed, it could be shown
9 to him, it would not be a violation because it's his document or he appears on the
10 video. If he does not appear on the video, Mr Ntaganda has a right to challenge
11 whether this evidence should have been admitted in the first place.
12 He is deprived of this opportunity. The Defence is not able to contest whether that
13 video should or should not have been admitted.
14 That's the problem. And if, as I said before, it was such an overwhelming issue, then
15 Prosecution can say, "Well, Mr President, we will move to have this video admitted as
16 part of our rebuttal case."
17 But in this case that's not what happened. The video we are about to see, from the
18 little I know from what was mentioned by my colleague, it is a video about the events
19 when Lompondo was chased out of Bunia. It's part of the Prosecution's case. They
20 knew what their case was. They decided not to use that video as part of their case.
21 When Mr Ntaganda said that he was willing to testify more than two months ago on
22 12 June, Prosecution could have said, "Oh, well, now we need this video," and they
23 could have warned the Defence in advance, and we could have a debate on this,
24 whether it should be admitted. It's too late, on the day the cross-examination begins,
25 to simply say, "Now we want to use some evidence that Mr Ntaganda was not

1 warned about."

2 When Mr Ntaganda said he was going to testify, the Chamber asked for a statement
3 from -- not a statement, but from a summary of the evidence he was about -- he
4 would testify on. As part of that statement, it was clearly provided to the
5 Prosecution that he would speak about Lompondo being chased out of Bunia on
6 9 August. So the Prosecution, there's no surprise for them as to what Mr Ntaganda
7 said during his testimony.

8 In addition, as part of our cross-examination of Prosecution witnesses, we repeatedly
9 put our position as to what happened on 9 August as being contrary to what the
10 Prosecution attempted to put forward.

11 So there was no surprise, and it was up to them to put this material in evidence as
12 part of their case. Then there would be no problem and we would be looking at this
13 video.

14 But out of the 600 or so exhibits that the Prosecution added to its list, many of these
15 exhibits are not in evidence. And it will be different depending on the nature of the
16 material. There is some video material, there are documents, documents for
17 impeachment, and there are a lot of documents which I believe are beyond the case.
18 Situation will be different for documents which go beyond the case because it's not
19 part of the case.

20 But for each category of documents, we will make submissions; we will present
21 submissions to the Chamber.

22 What we are looking for, Mr President, is simply a fair cross-examination, and a fair
23 cross-examination, my colleague does not even have to -- when she will use video
24 exhibits, if they are in evidence, she does not even have to go through the exercise of
25 doing what I did, which was play a 30 seconds and wait 15 minutes to have the video

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1 authenticated. None of that needs to be done in cross-examination. We did not do
2 so, and the same regime applies to the Prosecution. But the difference here is using
3 an exhibit that is not part of the Prosecution's case.

4 And in our submission, these videos should not be used, nor admitted through
5 Mr Ntaganda. Thank you.

6 PRESIDING JUDGE FREMR: [12:00:35] Before I give floor to Ms Samson, I have
7 two additional questions: First one, you quoted part of some document, but it hasn't
8 been captured in our transcript. Could you please kindly repeat the origin of your
9 quotation?

10 MR BOURGON: [12:00:58] Mr President, what I quoted comes from Archbold, but
11 it is part of the -- it was derived from the case law of Prosecutor versus Bizimungu
12 before the ICTR, and that was a ruling on admissibility of a statement during
13 Mugenzi cross-examination, 24 November 2005, and there's a transcript reference at
14 page 47 and 48.

15 This issue was also discussed in Prosecutor versus Karemera, a decision on admission
16 of UNAMIR documents of 21 November 2006 at paragraph 6.

17 It was also discussed before the ICTY, Prosecutor versus Dragomir Milošević, a
18 decision on Prosecution motion for reconsideration regarding evidence of Defence
19 witnesses Mitar Balevic. And there are a couple of references, other references,
20 Mr President, which I can probably put by email.

21 But it is an issue of principle. Are we taking Mr Ntaganda by surprise by using
22 against him material that is not part of the case? And our submission is that the only
23 exception is that if it is a document authored by Mr Ntaganda or in the case of a video
24 material on which he appears, then there would be no surprise because they are his.

25 But otherwise, they should not be used because the Prosecution has made its bed and

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1 should sleep in it. Thank you.

2 PRESIDING JUDGE FREMR: [12:02:51] Thank you, Mr Bourgon. In fact, you
3 started to respond my second question, which was a question about jurisprudence.
4 You have already responded, but if I am not wrong, do you have an example coming
5 from the ICC jurisprudence? I don't think so.

6 MR BOURGON: [12:03:15] I am informed by recent verification that such
7 jurisprudence exists. I do not have it at the present time, Mr President, I don't.

8 PRESIDING JUDGE FREMR: [12:03:34] All right.

9 Ms Samson, now floor is yours.

10 MS SAMSON: [12:03:35] Thank you, Mr President. The Prosecution opposes the
11 Defence's request for it not to be able to use items during cross-examination that have
12 not yet been admitted in evidence. Such a procedure would be a drastic departure
13 from the Chamber's current decision. In the Conduct of Proceedings decision
14 number 619, paragraph 33, the Chamber has already indicated that for either
15 party -- excuse me -- for either party, the -- and I'll read paragraph 33:

16 "As regards the use of documents that have not previously been admitted into
17 evidence the party intending to make use of the documents during cross-examination
18 shall provide a list, by e-mail, no later than 24 hours before the commencement of the
19 cross-examination. If the documents are not already part of the case record, (digital)
20 copies shall be provided to the Chamber, the other party and the LRVs at the same
21 time."

22 And what is contemplated in that provision of the Conduct of Proceedings decision is
23 that both parties are in fact able to put items on their list of evidence that have not
24 previously been admitted into evidence.

25 And in our submission, this is correct; it's the procedure that has been applied

1 throughout the case to date. It is in conformity with Appeals Chamber
2 jurisprudence of this Court in the Katanga Ngudjolo case that fair trial rights to both
3 parties, including the Prosecution, allows the Prosecution an opportunity to present
4 its case during cross-examination of Defence witnesses.
5 And what the Defence is purporting to establish now is an entirely new regime
6 whereby a very limited pool of documents can be put to the witness in
7 cross-examination. And the Chamber's duties in this trial are to determine the truth,
8 to assess the credibility of witnesses who appear on behalf of both parties, and, in my
9 submission, it is necessary for the Chamber to be able to see and adjudicate on the
10 responses of the witness that go to his credibility on matters to which he has testified
11 to date.
12 And so in this concrete example, the witness had said countless times during his
13 examination-in-chief that the civilian population in Bunia supported him and those
14 with whom he was collaborating from 2000 through to 2003, possibly beyond, but
15 I can certainly say up to 2003, and indeed I quoted from his testimony where he gave
16 such evidence in relation in particular to the departure of Lompondo from Bunia in
17 August 2002.
18 And indeed, in another section of his testimony, your Honour, the Presiding Judge,
19 asked a question in relation to a May 2003 or June 2003 event when Thomas Lubanga
20 had returned, and the witness indicated that the population had arrived in numbers
21 in support of the UPC and of Mr Lubanga. The Presiding Judge asked indeed
22 whether or not that population included Lendu civilians. I've asked that question
23 again. I think it is a question of central importance to this trial, and the evidence that
24 I wish to show, in my submission, may undermine that evidence.
25 The Chamber will ultimately determine whether or not the witness's answers are

1 credible on the issues that he's putting forward. But in my submission, it is of
2 central importance to this trial to determine the nature of the ethnic conflict and
3 whether or not all members of the population were in support of the witness and his
4 movement or whether some were in fact targeted by the witness and his movement.
5 I am not familiar at this moment with jurisprudence of this institution forbidding the
6 Prosecution from admitting evidence during the Defence case. I understand that
7 Counsel does have such jurisprudence and when we see it, I can make further
8 submissions on that. But, in my submission, it would not be correct to deny the
9 Prosecution an opportunity to either authenticate documents if they come from a
10 particular Defence witness in support of its case if such authentication wasn't possible
11 prior to the Defence witness coming. So giving one concrete example, that certainly
12 isn't -- is a case where the Prosecution can put documents to a witness that have not
13 yet been admitted for the purpose of its own case and to admit that evidence at that
14 time.

15 The Defence has indicated that it may not be able to challenge such evidence at this
16 stage. In my submission, it can. There is a re-examination that can be done. We
17 have 114 Defence witnesses on the list to come, and undoubtedly some of those
18 witnesses can provide evidence that may support the Defence and the accused in
19 relation to the documents that the Prosecution seeks to use now.

20 I would also point out that the Chamber has already approved the use of items that
21 have not been admitted into evidence during this cross-examination, and I am in
22 particular referring to the calls from the detention centre. No issue was raised that
23 these shouldn't be used because they were never admitted before and the Chamber
24 has permitted their use now. So that, in our submission, is a point of principle.
25 It is also not fair to assume that the Prosecution will be able to put evidence in in

1 rebuttal on concrete issues when a witness is able to give evidence about it when they
2 are here or when it could impact on the credibility of that witness. And
3 cross-examination, as the Chamber is certainly aware, is a very different exercise, and
4 the challenges to the credibility of a witness have much broader latitude in
5 cross-examination, and in our submission, we should be able to use items that haven't
6 been admitted, consistent with the Chamber's jurisprudence at this time on these
7 issues.

8 Subject to any further questions your Honour may have, those are my submissions at
9 this time.

10 PRESIDING JUDGE FREMR: [12:10:39] Thank you, Ms Samson.

11 Before we deliberate, Mr Bourgon, you also have the floor, please.

12 MR BOURGON: [12:10:46] Thank you, Mr President. Very briefly, the issue is
13 that we are confronted with an exhibit or an item which is not in evidence. The first
14 issue is: Where does the document come from? When was the document or the
15 video produced? Who produced the video? Is the accused on the -- the witness on
16 the video or not? Who will provide these answers?

17 The Prosecution cannot testify on its own behalf or on behalf of the persons who
18 made this video. So that -- the lack of that information, it will not be possible to
19 admit this evidence. If it's not possible to admit this evidence, and if the Defence is
20 not provided with an opportunity to challenge such evidence, to challenge that it is
21 not an authentic video, to challenge that the date is different from the date that is put
22 to the witness, that the video was not properly handed over, all of these challenges
23 cannot be made.

24 So we are completely jumping the gun by doing something that should have been
25 done during the Prosecution's case. They had the evidence. It was part of their

1 case. It is an issue that is in the updated Documents Containing the Charges and
2 they decided at that point in time not to use it.

3 The question should be, Mr President, in the Chamber's deliberations: Is what
4 Mr Ntaganda said of such an important and such a surprise to justify moving away
5 from the Prosecution leading all of its case before it closes its case?

6 Last observation: My colleague talks about the possibility that I will have to
7 re-examine Mr Ntaganda. Yes, I will have an opportunity to re-examine him, but it's
8 re-examining him on the basis of his testimony. I cannot through my re-examination
9 of Mr Ntaganda, I cannot challenge the exhibit itself. That is all the problem. And
10 that's why only exhibits that are so important to the Prosecution's case and that it has
11 been taken wholly by surprise should be allowed to be used.

12 And this issue will come again, Mr President, with witness statements. We know
13 that from the list there are a number of witness statements that are on the
14 Prosecution's list of items. I need to say immediately, because we know that the
15 Prosecution intends to use a statement that was provided by Kisembo. Kisembo,
16 they have a 600-page statement or something like that that they have been -- that has
17 been in their possession for years. They decided -- well, Mr Kisembo is now
18 deceased so they could not call Mr Kisembo. They could have tried to put
19 Mr Kisembo's statement in evidence through Rule 68(3), I think (b) or (c), because he's
20 not available. They decided not to do so. They decided that they did not want to
21 put Mr Kisembo's statement in evidence.

22 Now they will be seeking to cross-examine Mr Ntaganda with evidence that is not
23 part of the case, that they decided not to put in evidence. And that will be wholly
24 unfair to Mr Ntaganda.

25 Last observation: The conversations is a completely different matter. The

1 conversations that we are talking about, we did object. They have been the object of
2 numerous debates and numerous decisions. In the end, they will be able to use
3 some of these conversations, and the Chamber has laid a very specific regime for the
4 use of these conversations, and all that we will do from the Defence perspective is
5 ensure that the regime put in place by the Chamber is adhered to.

6 The Conduct of Proceedings decision that my colleague referred to does not apply,
7 Mr President, to documents used in cross-examination by the Prosecution. The idea
8 is you can't contradict a witness, in particular the accused, with evidence that is not
9 part of the case record.

10 Thank you.

11 PRESIDING JUDGE FREMR: [12:16:04] And please briefly Ms Samson.

12 MS SAMSON: [12:16:07] I will be brief, your Honour. I think I don't really need
13 to say that paragraph 33 of the Conduct of Proceedings decision says a party, it
14 doesn't say the Defence. And in my submission it is applicable to both parties.

15 And the Defence did not seek leave to appeal the Conduct of Proceedings decision on
16 this point when it would have been the appropriate time to raise such a fundamental
17 issue of how the examinations will be conducted when we get to the Defence case.

18 Nor did it raise the issue in advance of the Defence case which also would have been
19 an opportune moment to raise a fundamental procedural disagreement that it was
20 going to raise in relation to the conduct of the Defence case.

21 Indeed the Chamber has been quite clear that on procedural issues the Defence case
22 will proceed in the same manner as the Prosecution case in fairness to both parties,
23 and where there are any deviations from that, the Chamber has been equally clear.

24 And so the party that is raising this issue late is certainly the Defence and in my
25 submission as I've said before, the restrictions that are being sought contravene the

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1 Chamber's very clear orders that come before.

2 The Chamber will be able to evaluate the probative value or weight that it wishes to
3 assign to an item of evidence that I use to impeach Mr Ntaganda's credibility or I seek
4 to do that

5 And if I may, the rules cannot always be accommodating the Defence to the
6 disadvantage of the Prosecution.

7 Just days ago the Defence put a United Nations document to the witness that he never
8 authored, had never seen before solely because he was able to say that he knew
9 something about the context in which that -- the description prepared by somebody
10 else had been made and he gave a brief account of the description, greater detail was
11 in the document, he agreed that the greater detail was accurate after reading it.

12 All of that got admitted into evidence.

13 I objected at one stage because one portion of one document contained a section of
14 factual information that the witness could not confirm and I noted that ordinarily for
15 admission purposes, although not necessarily for use purposes, the witness ought to
16 be able to authenticate the document, but the Chamber found that in its assessment it
17 was an important item that should be admitted into evidence because there are
18 broader -- potentially broader evidentiary admissibility requirements here. And
19 indeed the Defence said at that time and I quote "whether he knows or doesn't know
20 is equally important".

21 So the situation is somewhat similar. I would like to put a document to the witness
22 that he may or may not have been present at, in fact I'm certain he's not there, but it's
23 about a factual issue in great dispute in this case which is whether or not the accused
24 with his armed group targeted Lendu individuals or conversely whether Lendu
25 civilians in great number supported the accused and his group. This is central in

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1 many ways and it's a point that I will raise throughout the cross-examination I hope
2 but with the broad scope in cross-examination to challenge credibility of a witness
3 I believe it is in the interests of determination of the truth for the Chamber to assess
4 what Mr Ntaganda's concrete answers are when specific items of evidence are put to
5 him in relation to events that he contests.

6 Thank you.

7 PRESIDING JUDGE FREMR: [12:20:11] Thank you, Ms Samson. As somebody
8 said, this objection is really fundamental and moreover our ruling on that objection
9 will have great impact on many other pieces of evidence, so we will need some good
10 time to deliberate. I think at the moment I would like to adjourn for 30 minutes and
11 we will deliberate outside of the --

12 (Trial Chamber confers)

13 PRESIDING JUDGE FREMR: [12:21:09] Ms Samson, there is proposal making,
14 because otherwise I was ready to break at least for 30 minutes, but in order to spare
15 some time, would it be possible for the Prosecution now to postpone presentation of
16 this video until the beginning of the afternoon session just to use the other topics?

17 MS SAMSON: [12:21:32] Your Honour, I believe that this is an objection that is
18 fundamental, that will arise in the course of my cross-examination in the segments to
19 come, and therefore I will not be able to proceed significantly without a decision of
20 Chamber on this issue.

21 PRESIDING JUDGE FREMR: [12:21:48] All right. So we will, we will break now.
22 My estimation is you should be back at 10 to 1 and I hope that at least we will be able
23 to come to some conclusion in those 30 minutes.

24 So now the Court is adjourned till 10 to 1.

25 THE COURT USHER: [12:22:12] All rise.

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1 (Recess taken at 12.22 p.m.)

2 (Upon resuming in open session at 12.58 p.m.)

3 THE COURT USHER: [12:58:31] All rise.

4 Please be seated.

5 PRESIDING JUDGE FREMR: [12:59:10] So here is our oral ruling on the request
6 made before the break:

7 The Chamber has deliberated on the Defence request and indicates that the use of
8 documents that hadn't previously been admitted into evidence by the opposing party
9 is provided for in the Conduct of Proceedings decision, provided that the
10 requirements for use are met.

11 Use of such items will therefore be allowed. Any requests for admission of such
12 items will be adjudicated on a case-by-case basis in accordance with the Conduct of
13 Proceedings decision.

14 The reasons of the Chamber will follow in a written decision.

15 Now, Ms Samson, we still have 15 minutes so please you may proceed with
16 presentation of video.

17 MS SAMSON: [13:00:14] Thank you, Mr President.

18 Q. Prior to showing the video I have a question, Mr Ntaganda, for you. You knew,
19 didn't you, that in 2002 and 2003 in Ituri, there was an ethnic dimension to the conflict
20 that included a conflict between the Hema and the Lendu?

21 A. [13:00:54] When I arrived -- before there was an inter-ethnic war. Now, when
22 I arrived there was the APC combatants attacking the Hema. That's what I
23 encountered. But prior to that there was an inter-ethnic war.

24 Q. [13:01:23] Yes. And I'm focussing in on the period after you arrived in the
25 2002-2003 period, it's right, isn't it, that the conflict had an ethnic dimension that

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1 carried through that time period and that pitted the Hema against the Lendu?

2 A. [13:02:02] The inter-ethnic war between the Hema and the Lendu changed.

3 At that point in time it was the APC and the combatants who were attacking Hema
4 villages. It was a war which had changed form.

5 Q. [13:02:18] And this war that had changed form involved ongoing conflict
6 between the Hema and the Lendu in 2002 and 2003, right?

7 A. [13:02:46] No. Before there were the Hema combatants and the Lendu
8 combatants who were fighting each other. At that point in time the army was not
9 involved. However, when I arrived there was the APC army together with the
10 combatants, mixed together, who were fighting the Hema. So you see that the war
11 had changed its form and it was in that context that the UPC was founded in
12 September 2002. And then we created --

13 THE INTERPRETER: [13:03:28] Question from the Swahili booth: Could we ask
14 the witness to repeat the last part of his answer?

15 PRESIDING JUDGE FREMR: [13:03:34] Mr Ntaganda, the interpreters haven't
16 captured the last part, last words of your response. Could you kindly repeat the last
17 part of your response. We have, "So you see that the war had changed its form and
18 it was in that context that the UPC was founded in September 2002." And now it
19 follows, "And then we created" and that is the end of translation. If you could add
20 the rest.

21 THE WITNESS: [13:04:11] (Interpretation) Yes. When we created the FPLC,
22 that's the armed branch, that was against the APC and the combatants. So you see, it
23 wasn't an inter-ethnic war; rather, it was a political war at that point in time.

24 MS SAMSON: [13:04:34]

25 Q. [13:04:35] Now, let's take your answer in two parts. Prior to September 2002,

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1 is your evidence that there was no conflict whereby the Hema fought against the
2 Lendu and the Lendu fought against the Hema; in other words, both the Lendu and
3 the Hema were fighting each other prior to September 2002?

4 A. [13:05:07] They were fighting each other from 1997 onwards until 2000, 2001,
5 there was an inter-ethnic war, but I wasn't present in the region then. When the
6 political war began, there was the RCD-K/ML and there was the UPC/FPLC. That's
7 when I arrived. I wasn't present in the region when the ethnic war was ongoing.

8 Q. [13:05:47] So is it your evidence that from 2002, at least September, maybe
9 before, the ethnic conflict between the Hema and the Lendu ceased to exist?

10 A. [13:06:02] When I was in Ituri it was a political war. It was the RCD-K/ML
11 and those groups that we were fighting.

12 Q. [13:06:23] I have to press you a bit so that I get an answer to my question.
13 Was there or was there not a conflict after 2002 between the Hema and the Lendu? I
14 know you've said that there was a political conflict, but at the same time was there not
15 a conflict that remained ongoing between the two ethnicities, Hema and Lendu?

16 A. [13:07:02] This conflict was between civilians. I don't know if they had
17 reconciled. You're talking about the period before. We the FPLC put in place
18 pacification. Prior to that there was an inter-ethnic war and it was by establishing
19 the pacification action or initiative that we tried to put an end to it.

20 Q. [13:07:47] Is your evidence that after September 2002 the FPLC pacified the
21 conflict between the Hema and the Lendu such that it did not exist at all after
22 September 2002? Is that your evidence?

23 A. [13:08:19] No. We were involved in a process of bringing the conflict that
24 had begun in 1997 to an end, that is to say, the inter-ethnic war. When the
25 RCD-K/ML was there it continued to inflame ethnic conflict. We in the UPC

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1 launched the pacification process and we drove the RCD-K/ML out.

2 PRESIDING JUDGE FREMR: [13:08:54] Hold on, Ms Samson. Mr Bourgon is on
3 his feet.

4 Mr Bourgon.

5 MR BOURGON: [13:08:58] Thank you, Mr President. Just an issue of -- appears
6 to be contradictions in both transcript and it happened for the second time. Just
7 recently in French page 58, lines 3 and 4 where the words mentioned are
8 (Interpretation) "No. We were in the process of putting an end to the conflict which
9 had begun back in 1999", (Speaks English) whereas in the English for the same answer
10 at page 57, lines 18 and 19 we have "No. We were involved in the process of
11 bringing the conflict that had begun in 1997 to an end." The same situation exactly
12 appears earlier on and where in French we have 1999 at page 56, line 26 and 27, and
13 then in English we have at page 56, line 13 where we have 1997. So twice the same
14 mistake happened. I just want to make sure that we have the correct transcript.

15 Thank you.

16 PRESIDING JUDGE FREMR: [13:10:15] Mr Ntaganda, which of those two
17 alternatives is the right one, the French version or the English version? 1999 or 1997
18 is main difference.

19 THE WITNESS: [13:10:29] (Interpretation) The inter-ethnic conflict began
20 in 1999, 1999.

21 PRESIDING JUDGE FREMR: [13:10:38] Thank you.

22 Ms Samson, please proceed.

23 MS SAMSON: [13:10:41] Thank you. And I'm grateful to counsel for raising the
24 transcript issue.

25 Q. [13:10:46] Now, sir, reading through and listening to your answer you stated

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1 that there was -- there was a process of pacification. So I come back to my question:
2 In September 2002 through to 2003 the ethnic conflict between Hema and Lendu
3 continued; is that right?

4 A. [13:11:31] No. At that point in time there were no Lendu combatants any
5 more. In 1997 there were Lendu combatants, but when the UPC was set up, they no
6 longer existed. The Lendu combatants were transformed into soldiers in the training
7 centres. So it was APC combatants who were attacking Hema villages.

8 Q. [13:12:09] And, sir, I think --

9 A. [13:12:15] From September 2002 to the end of 2003. February 2003.

10 THE INTERPRETER: [13:12:22] The interpreter corrects.

11 MS SAMSON: [13:12:25]

12 Q. [13:12:27] There is another issue with the transcript where the English
13 transcript mentions that in 1997 there were Lendu combatants, but when the UPC
14 army was set up, they no longer existed, whereas in French the date is 1999. Did you
15 use the date 1999 or 1997?

16 A. [13:12:53] 1999.

17 Q. [13:13:04] And there is another discrepancy. In the English transcript there is
18 a reference to Lendu combatants in your answer. In the French transcript there's a
19 reference to Hema combatants. Were you discussing Hema or Lendu combatants
20 who ceased to exist?

21 A. [13:13:29] There were no longer Hema combatants as before. Before there
22 were Hema combatants who had been attacking the Lendu and that's since 1999 and
23 that changed when we set up the FPLC.

24 Q. [13:14:15] I take it then that your answer would be the same in relation to the
25 August 2002 period? At the time that Molondo Lompondo was chased out of Bunia,

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1 I take it your evidence is that there was no inter-ethnic conflict between the Hema and
2 the Lendu in August 2002; is that right?

3 A. [13:14:45] Yes. At that point in time it was a political war. There was the
4 RCD-K/ML party, which is a political group, and the APC with the Lendu combatants
5 who were attacking the civilians. So the war had changed form. There were no
6 longer combatants. As I said in 2002 it was a political war and things had become
7 political. When Molondo was driven out, UPC/FPLC had not yet been born. We
8 were working part time or acting part time.

9 PRESIDING JUDGE FREMR: [13:15:31] Ms Samson, allow me one additional
10 question.

11 And, Mr Ntaganda, in this political war and political fight, as you called that, did
12 ethnicity play any role in this political fight, political war?

13 THE WITNESS: [13:15:58]) (Interpretation) Yes. The RCD-K/ML, there was
14 inter-ethnic war when it comes to the RCD-K/ML and we set up our movement to
15 combat that.

16 PRESIDING JUDGE FREMR: [13:16:16] Ms Samson.

17 MS SAMSON: [13:16:17] Thank you.

18 Q. [13:16:19] Sir, is it your evidence then that the attacks against the civilian
19 population, and you've mentioned the Hema civilian population, was only one-sided
20 in that it was only Lendu combatants and the APC who were attacking the Hema
21 civilians, but nobody was attacking Lendu civilians; is that your evidence?

22 A. [13:16:54] Yes. Yes, because back then it was the UPDF that was protecting
23 the Hema because our movement had not yet been born.

24 Q. [13:17:10] And just to be clear that I have the answer -- I understand the
25 answer, is your evidence that there were no attacks by the Hema or the UPC against

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1 Lendu civilians at all in 2002 and 2003?

2 A. [13:17:38] Yes. When the FPLC was set up we, the UPC, never attacked

3 Lendu civilians, never, not one day.

4 MS SAMSON: [13:17:56] Mr President, I apologise, I've gone beyond the time. I

5 will with your permission show the video when we resume after the break.

6 PRESIDING JUDGE FREMR: [13:18:07] Yes, I think it's better because we even

7 overcame a bit our time to break.

8 So now we take our regular 90-minute break for lunch and we will reconvene -- but,

9 Mr Bourgon? Okay, it can wait. We will reconvene at quarter to 3, yeah,

10 quarter to 3.

11 THE COURT USHER: [13:18:34] All rise.

12 (Recess taken at 1.18 p.m.)

13 (Upon resuming in open session at 2.51 p.m.)

14 THE COURT USHER: [14:51:42] All rise.

15 Please be seated.

16 PRESIDING JUDGE FREMR: [14:52:15] Good afternoon, everybody.

17 If there are no changes in appearances, which I haven't noticed, we will -- before

18 we continue with the next part of cross-examination of Mr Ntaganda, I will deliver

19 the Chamber's oral ruling on a Defence request in relation to Prosecution's use of

20 14 specific items.

21 The Chamber shall now deliver its oral ruling on the Defence request made at the

22 start of the first session today, namely, that the Chamber should preclude the use

23 of 14 documents that were disclosed to it only in the past three days, on the basis

24 that there is no compelling justification for their late disclosure. In the alternative,

25 the Defence seeks leave to discuss these documents with Mr Ntaganda. The

1 documents objected to are items 1168, 1176 to 1184 inclusive, 1227 and 1396 to 1398
2 inclusive on the Prosecution's list of items sought to be used during Mr Ntaganda's
3 cross-examination.

4 The Prosecution opposes the request insofar as, in its view, the request amounts to
5 a "blanket prohibition" on the use of documents on the Prosecution's list that do
6 not appear on that of the Defence. In its submission, adjudication of the use of
7 such items should only occur at the moment when the Prosecution seeks to use any
8 of those documents, which is consistent with the Chamber's approach with
9 previous witnesses.

10 While the Chamber considers that the disclosure of items at this stage should not
11 necessarily be routine, it appreciates that conducting cross-examination can be
12 somewhat of a reactionary exercise, whereby the cross-examining party cannot
13 necessarily predict the witness's specific responses. Accordingly, the Chamber
14 may allow the use of late-disclosed items where the conditions of use stipulated in
15 the Conduct of Proceedings decision are fulfilled, and where, in the Chamber's
16 assessment, the accused will not be unduly prejudiced by such late disclosure.

17 However, the Chamber notes the particular circumstances of this witness as the
18 accused person in this case. In this connection, the Chamber recalls its decision
19 bearing the filing number 1945, in which it ruled that "the Defence shall also not be
20 permitted to discuss any material on the list of items with the accused, save by
21 leave of the Chamber". The Chamber also indicated therein that, should the
22 Prosecution intend to use material it has not yet disclosed as of the start of
23 Mr Ntaganda's testimony, it must clearly indicate this on its list of items, including
24 the date of disclosure. The Chamber further indicated it would address at that
25 stage whether such items may be used during cross-examination and/or whether it

1 is appropriate to permit the Defence to provide any such items to the accused, or to
2 discuss them with him.

3 The Chamber notes that the Prosecution appears not to have abided by this
4 instruction of the Chamber, which was intended to be for the benefit of the Defence
5 and also of the Chamber.

6 Notwithstanding, if the conditions of use stipulated in the Conduct of Proceedings
7 decision are fulfilled, and noting the Prosecution has not itself yet sought to use
8 any of these items, the Chamber may allow use of such items on a case-by-case
9 basis at the time the item is sought to be used, provided that it is not this week.

10 Any associated request for admission of an item will also be adjudicated at the
11 relevant time, and will depend on the length and complexity of the document, and
12 the Chamber's assessment of any prejudice that may occur as a result of admission
13 following late disclosure.

14 To ensure that Mr Ntaganda encounters no undue prejudice, at this stage, the
15 Chamber grants the Defence request for leave to discuss these items and their
16 content with Mr Ntaganda. Accordingly, the Prosecution shall not be permitted
17 to seek to use the majority of these items until Monday, 17 July 2017, at the earliest,
18 and for items 1168, 1397 and 1398, not before Tuesday, 18 July 2017.

19 This concludes the Chamber's ruling and we can now continue with the
20 cross-examination of the accused.

21 Ms Samson, please, you have the floor.

22 MS SAMSON: [14:58:47] Thank you, Mr President. I would ask the Chamber
23 that we be permitted to show a video. It's the video that I had referenced prior to
24 the break. I can repeat the numbers if that would be appropriate at this stage.

25 PRESIDING JUDGE FREMR: [14:59:05] Please do.

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1 MS SAMSON: [14:59:07] The video is at number 887 on our list. The ERN is
2 DRC-OTP-1008-0008. The transcript of the video, which is in French, is at
3 DRC-OTP-2102-0476. It's at tab 888 in the Prosecution's materials, and the
4 relevant passage of the transcript is page 478, line 1, to page 481, line 141. The
5 interpreters have copies of the transcript. And the time of the video that the
6 Prosecution wishes to show from the Prosecution's bench is minute 00.02.23
7 to 00.09.30.

8 THE COURT OFFICER: [15:00:18] Ms Samson, could you please indicate the
9 level of confidentiality?

10 MS SAMSON: [15:00:25] The video can be shown publicly.

11 PRESIDING JUDGE FREMR: [15:00:32] Mr Bourgon, apart of the objection
12 made in the morning, is there any further specific objection?

13 MR BOURGON: [15:00:41] None, Mr President.

14 PRESIDING JUDGE FREMR: [15:00:42] Thank you.

15 MS SAMSON: [15:00:54] The video will be played with sound.

16 Q. [15:00:58] Mr Ntaganda, kindly watch the video and then I will have some
17 questions on the content afterwards.

18 (Viewing of the video excerpt)

19 THE INTERPRETER: [15:01:45] (Interpretation of the video excerpt)

20 "What's your name?

21 My name is Irisi Warasi, Anastasie.

22 So why, why do you live in this house which has been lent to you? What obliged
23 you or forced you to leave your own homes?

24 Well, what forced us to leave our homes is that there is an inter-ethnic war that
25 broke out here. And then Governor Lompondo was driven out. Directly after

1 his departure, the militias started to kill the Lendu who lived here in Bunia, set fire
2 to their houses, loot their goods and then demolish their houses too. And that is
3 the reason why we came here, to take refuge.
4 And how many families live here? How are you getting by?
5 Here there are more than 100 people. And we're here but we have nothing to eat.
6 We are destitute. We lack everything.
7 Yes, but supplies are being distributed in town, are they not, through the United
8 Nations programme, Agro Action Allemande, that are distributing food to
9 displaced people?
10 Food is being distributed but we here are not being given anything. We don't
11 know why we're not being given the foodstuffs that are being distributed.
12 And why do you think you're not receiving anything?
13 I don't know. I don't know why we're not receiving anything.
14 We're not receiving anything because we're of the Lendu race. That's the reason
15 why they don't give us anything.
16 So how are you getting by if you're not getting any aid?
17 Well, we just try and get by as best we can, even begging. For instance, we beg
18 anywhere. If we meet somebody on the road we know, we put out our hand and
19 if they want to help us, they help us.
20 And what do you think about the UPC and its policies?
21 Well, first of all, we're innocent. We know nothing about politics. But we are
22 really, really suffering and we would request or we would hope that the
23 government would take care of us. That's our concern. If the government is
24 here, we can be free, and people who work, even if they work just a little bit, they'll
25 be able to get by, they'll be able to have something. Before the UPC was here, at

1 least we were free, we were able to seek out a way of making a living.

2 But currently you can travel freely, can't you? You can leave town, you can return
3 from town?

4 No, we're not free. For example, if we leave here, if we go walking, we're not free.

5 If you have the misfortune that somebody recognises you on the road, they can
6 report you, arrest you and torture you where they are. So for that reason we're
7 not really free to move around. That's our problem.

8 And do you feel safe in this big house?

9 Here we are nonetheless safe because OCHA is taking care of us. So if one of us is
10 arrested, if we inform them, then they do come to our rescue.

11 Thank you.

12 What's your name?

13 My name is Logo Joseph.

14 And why did you have to take refuge in this house?

15 Well, I'm here because I'm a refugee. I fled my home when the war started against
16 Lompondo. At that point in time, the Hema, people of Hema race, took machete
17 to kill people here in Bunia town. And that is why we had to flee, to come to this
18 house. But really, that's the reason why we're here. We're -- have little to eat,
19 little assistance, and until now we have stayed here.

20 The UPC people who hold the town say that the Lendu wanted to kill them all.

21 Well, UPC, UPC was an army and it's an army that only works for or on their own
22 race, but not for the Lendu, but not for all of the Congolese people who live here in
23 Bunia. It's a popular army, a tribal army, which killed all of the Congolese who
24 stayed here or were living here in Bunia, and that's the reason why we have taken
25 refuge here.

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1 Do you feel safe here?

2 Yes, we feel safe here because the Ugandans patrol here every day, and thanks to
3 that, we really are safe, but our circumstances are not good, not very good.

4 Right now the UPC is requesting that Ugandans leave. What do you think about
5 that?

6 Well, when it comes to the Ugandans leaving, we would say no, no. I'm sorry, I'm
7 sorry, but the Ugandans should go only when Joseph's government comes to
8 Bunia, but not today.

9 Because if they leave today, are you afraid of something that will happen?

10 If the Ugandans leave today, it will be our end, the end of us. They could kill us
11 all, all of us. We'd all be exterminated, exterminated by the militia.

12 Thank you.

13 Okay."

14 MS SAMSON: [15:08:21] Mr President, I'll repeat that the video is stopped at
15 minute 00.09.30.

16 Q. [15:08:30] Mr Ntaganda, you've had an opportunity to watch and listen to
17 the video. Having seen the video, do you agree that not all of the population of
18 Bunia, and certainly not this group of Lendu persons, were celebrating after
19 Lompondo was chased out in August 2002?

20 A. [15:09:12] This is the very first time that I've seen this video. I don't know
21 when those -- that footage was taken or where. So it's not easy for me to give an
22 answer to your question now.

23 Q. [15:09:32] Based on what you heard, these individuals say that they are
24 Lendu and that when Lompondo was chased away, the UPC and the Hema
25 committed certain offences against them and that they sought refuge at OCHA.

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1 And my question is this: Do you agree then that based on what you've seen on
2 this video, at least some of the Lendu population in Bunia were not happy and not
3 celebrating when Lompondo was chased out of Bunia in August 2002?

4 A. [15:10:28] Counsel, could you tell me when that film was recorded? Then I
5 will be able to comment on the film, because I don't know when that footage was
6 taken or where it was taken. I also don't know the people who I've just seen. I
7 could give you information regarding the period concerning Lompondo.

8 Q. [15:11:02] So based on the video that we've all just seen, this event takes
9 place after Lompondo has left Bunia in August 2002 and while the UPC is
10 controlling the town of Bunia. And my question to you is: At that time period,
11 do you agree, after watching this video, that some Lendu at least in Bunia were not
12 happy and were not celebrating when Lompondo was chased out of Bunia and
13 when the UPC took control? Would you agree with that?

14 PRESIDING JUDGE FREMR: [15:11:41] Mr Bourgon.

15 MR BOURGON: [15:11:44] Thank you, Mr President. My colleague is
16 indicating that this video took place in -- after Lompondo has left Bunia in
17 August 2002. I would like to know where this information comes from because
18 it's certainly not on the video that we've looked at.

19 PRESIDING JUDGE FREMR: [15:12:03] But anyway, Ms Samson, I don't like
20 this way of examination, because what the agreement of Mr Ntaganda would be
21 about, how -- how is the relevance of that? The question should be:

22 Mr Ntaganda, do you have any knowledge that at least some people in Bunia were
23 not pleased that the UPC came? It should be allegedly one of the examples. Do
24 you have any knowledge of such a reaction of some people in Bunia?

25 THE WITNESS: [15:13:11] (Interpretation) I don't know, your Honour. I

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1 don't know if that comment was addressed to me. Now, if -- I'll leave that video
2 to one side. When Lompondo --

3 PRESIDING JUDGE FREMR: [15:13:21] Yes, yes. I am asking -- in fact, I
4 rephrase -- sorry, I will start again. In fact, Mr Ntaganda, I rephrased the question
5 put to you by Ms Samson, asking you whether you have some knowledge about
6 people, like we can see in this video, that wouldn't be pleased of arrival of the UPC,
7 but on the contrary they would be worrying about being together with UPC in
8 Bunia and they -- that they would rather prefer to have Ugandans in Bunia as well
9 to protect them? Do you have any knowledge about this opinion at least
10 expressed by some people in Bunia after you chased out Mr Lompondo?

11 THE WITNESS: [15:14:20] (Interpretation) Your Honour, I'm not aware of that.
12 When Lompondo was driven out, President Thomas was minister of defence and
13 was based in or located in Kinshasa at the and the UPC/FPLC had not yet come
14 into being. But we were mutineers. And here we're mixing up the driving out of
15 Lompondo and UPC/FPLC business, but those two things don't go together.
16 When Lompondo was driven out, President Toms was in Kinshasa. We, we were
17 APC mutineers.

18 PRESIDING JUDGE FREMR: [15:15:00] Thank you.

19 Ms Samson, please proceed.

20 MS SAMSON: [15:15:02] Thank you, Mr President.

21 Q. [15:15:05] And so we will certainly get to a point in the cross-examination
22 where we discuss the takeover of Bunia, but based on what you saw and heard in
23 the video, do you have any knowledge that some people stated that the UPC and
24 Hema militia in the period August 2002, September 2002, were committing certain
25 crimes such as those mentioned in the video; burning of houses, for example?

1 A. [15:15:48] No, I know nothing of it.

2 Q. [15:15:53] And did you have any knowledge of the UPC or Hema militia
3 killing Lendu in August or September 2002?

4 A. [15:16:18] The UPC/FPLC had not yet come into being then, Prosecutor.
5 We were mutineers. I was a mutineer APC soldier.

6 Q. [15:16:34] And did you have any knowledge of Hema militia or UPC
7 pillaging the goods of Lendu in August or September 2002?

8 A. [15:17:01] No, I was not aware of that.

9 MS SAMSON: [15:17:06] Mr President, I'm finished with the video. And my
10 request now is to admit the video into evidence.

11 PRESIDING JUDGE FREMR: [15:17:14] Mr Bourgon.

12 MR BOURGON: [15:17:18] Thank you, Mr President. We oppose the
13 admission of this video. It's simply does not match the question and answers that
14 follow. Mr President, when the Prosecution is going to seek to admit what is
15 referred to as fresh evidence by some, or new evidence by others, but something
16 that was not in evidence when the cross-examination began, must be adjudicated
17 based on certain criteria.

18 Now, I -- this video, when the Prosecution seeks to have it admitted, the first thing
19 it must do is, it must inform the Trial Chamber what is the purpose of seeking the
20 admission of the video.

21 Number two, the Prosecution should say why, having the video in its possession, it
22 did not seek to have the video admitted as part of its case in-chief.

23 Once these two questions have been answered, then we must look at the probative
24 value of the video. Do we have any probative value of this video when we do not
25 know who filmed the video? When we do not know where the video is filmed,

1 although it appears to be close to Bunia, when we do not know the date that the
2 video was filmed, nor do we know whether the person who is filming the video is
3 someone from the media, is someone from a biased NGO or a non-biased NGO,
4 whether the person who filmed the video is from the same country with an
5 understanding of the country, where this person was -- spoke to other groups on
6 the same day and did other videos with other groups. We do not know whether
7 the persons we see on the video, what is their basis for the allegations they make.
8 What is their knowledge of the existence or non-existence of UPC/RP, contrary to
9 Mr Ntaganda's testimony? What is their knowledge whether we are talking about
10 civilians committing looting or people committing looting as part of a militia?
11 We heard in this video the man saying these are Hema people from Hema race.
12 What is the link between that and the case against Mr Ntaganda? Then, the
13 probative value being solo, then we have to look at the prejudice.
14 Mr Ntaganda says, "I've not seen this video before" because he did not expect to be
15 shown material that is not in evidence. Having not seen this video, he
16 nonetheless provided the answers to the best of his knowledge, and now the
17 answers of course are probably not satisfactory to the Prosecution, but he doesn't
18 know these issues.
19 So when we look at all of this, the ultimate test developed in the case law of
20 international tribunals, when the Prosecution is going to have any item admitted
21 which is not part of its case, is whether it is in the interest of justice to do so.
22 In this case, we submit, Mr President, that it is certainly not in the interest of justice
23 to admit this evidence, which should have been admitted earlier. Prosecution
24 was not caught by surprise in any way.
25 Moreover, we don't believe that this specific video will be of any significant

1 assistance to the Chamber in adjudicating this case.

2 So for all these reasons, I believe, Mr President, that we should not be -- this video
3 should not be admitted. Thank you.

4 PRESIDING JUDGE FREMR: [15:21:54] Before I deliberate with my colleagues,
5 Ms Samson, please, briefly.

6 MS SAMSON: [15:21:59] Thank you, Mr President. The Prosecution has
7 requested that the video be admitted into evidence primarily for the truth of its
8 contents, and, alternatively, as an item that can be used to undermine
9 Mr Ntaganda's credibility on whether or not there was inter-ethnic conflict at that
10 particular time.

11 We are proceeding on the same basis as did the Defence when they sought to
12 admit a document, such as United Nations's documents, that were put to the
13 witness who could not make any reference in relation to them and yet they were
14 admitted, also in relation to P-635 who was asked, shown -- who's not a UPC
15 member, yet was shown documents by the Defence that were internal UPC
16 documents. These were permitted to be shown to the witness. They were
17 admitted through the witness, although she had no knowledge of them. And
18 summarily, she was shown a video to which she had no information. She had not
19 seen the event. She had not been present at the event. And this was permitted
20 to be shown to her and questions developed to her on that.

21 And in this case, we are relying as well on Article 69(3) and the Chamber's
22 authority to request submission of evidence it considers necessary for the
23 determination of the truth. And so for the same reasons that we argued, the video
24 ought to be -- we ought to be permitted to use the video. We are also arguing that
25 this video ought to be equally admitted in the case. Thank you.

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1 PRESIDING JUDGE FREMR: [15:23:45] Thank you. Give me a -- I think we
2 don't need any further submissions, Mr Bourgon. Give me a second. I will
3 consult my colleagues.

4 (Trial Chamber confers)

5 PRESIDING JUDGE FREMR: [15:24:54] So after brief silent deliberation in the
6 courtroom, our ruling is that the request is rejected. This video and neither
7 connected translation and transcript are not admitted into evidence.

8 Briefly, about the reasoning: First of all, we applied the classical criteria that we
9 used for the evidence tendered through other witnesses. We didn't know author
10 of this video, we didn't know clearly time, we didn't -- it could be even some
11 doubts about the place. So in our view the probative value is close, close to zero.
12 And also there is one important aspect mentioned by Mr Bourgon, which I would
13 like to highlight, that differs or brings another criterion we haven't used during the
14 previous part of proceedings. When the Prosecution would like to admit any
15 evidence now during the cross-examination, they should also answer this question
16 why they didn't do that during their case.

17 And there should be really strong reasons why they did not, if they want us to
18 admit such evidence.

19 It was also not said anything on that persuasive, so we didn't really find in the
20 interest of justice, taking into account content of Article 69(3) in the interest of
21 justice to admit this document.

22 That is it. And Ms Samson, please proceed.

23 MS SAMSON: [15:26:57] Thank you, Mr President.

24 Q. [15:26:59] Sir, I'm moving to a different topic of my cross-examination at the
25 moment. And my first question is: You told the Court that as a Rwandan Tutsi,

1 a Tutsi in Rwanda, that you lost members of your family during the Rwandan
2 genocide; that's right?

3 A. [15:27:31] I am a Congolese Tutsi. Yes, I lost some members of my family
4 in Rwanda; that is correct.

5 Q. [15:27:46] And you've said that the persons who were perpetrating the
6 genocide, the génocidaires, included ex-FAR, government forces and
7 Interahamwe?

8 A. [15:28:12] Yes. The Rwandan army known as the FAR, and the
9 Interahamwe, yes.

10 Q. [15:28:31] And the ex-FAR and the Interahamwe were largely of Hutu
11 ethnic origin; is that right?

12 A. [15:28:50] Yes.

13 Q. Many of the Interahamwe and ex-FAR fled into the DRC and drove out Tutsi
14 who lived there; am I right?

15 A. [15:29:15] Yes.

16 Q. [15:29:16] You've told the Court that many Tutsi in the DRC were displaced,
17 including members of your family?

18 A. [15:29:44] Yes, insecurity was created in the entire eastern part of the Congo
19 by the Interahamwe.

20 Q. [15:29:56] And you, thereafter, took part in a rebel movement to oust
21 President Mobutu, the AFDL?

22 A. [15:30:23] Yes.

23 Q. [15:30:24] And I understand from your testimony that you fought against
24 the Interahamwe and the ex-FAR in Rwanda and then again in the DRC?

25 A. [15:30:48] Yes, they were also in the Congo and we fought against them

1 while they were fighting alongside the ex-FAZ.

2 Q. [15:31:09] In August 1998, you stated that the Kabila government issued a
3 communiqué that all Tutsi were to be killed?

4 A. [15:31:33] And all those resembling them, yes.

5 Q. [15:31:39] Is it right that UPC leaders, and perhaps others, alleged that the
6 communiqué issued by Kabila targeted not only the Tutsi but also the Hema
7 because, as you point out, they resembled the Tutsi?

8 A. [15:32:15] No. Please, don't bring the UPC into -- into that. The UPC was
9 not a Hema party, and I never made such a statement.

10 Q. [15:32:32] Sir, I'll clarify. I did not ask if you made the statement, but I
11 stated that certain UPC leaders had made the statement, that the communiqué
12 issued in 1998 targeted not only the Tutsi, but also the Hema, because the Hema
13 resembled the Tutsi. Do you know that?

14 A. [15:32:59] No, I never heard anything like that from any member of the UPC
15 while I was a member of that group.

16 Q. [15:33:14] And setting the UPC leadership aside for the moment, did you
17 ever hear that the Hema community felt that the communiqué targeted the Hema
18 as well as the Tutsi because of a reference to the Tutsi and those who resembled
19 them?

20 A. [15:33:49] Yes. During the inter-ethnic war of 1999, that started, and then
21 there was the communiqué, which made things worse, because Hemas resemble
22 Tutsis. So maybe that is one of the reasons why they wanted to exterminate the
23 Hema.

24 Q. [15:34:42] And you testified in your direct examination that the Tutsi and
25 the Hema were being harassed because of your ethnic origins, being harassed by

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1 the RCD/K-ML; is that right?

2 A. [15:35:11] Madam Prosecutor, could you point me to the relevant excerpt of
3 the transcript where I said that? I no longer recall in which context I may have
4 said that.

5 Q. [15:35:23] Certainly. Certainly, yes. In transcript T-211, page 42, lines 24
6 to page 43, line 6. You stated, and I quote:

7 "I took the decision to speak with Kisembo and I said that it was time to go and see
8 Bagonza because they also wanted to chase him out, Tchaligonza, and I thought we
9 could negotiate with Wamba Dia Wamba's forces, tell them our difficulties and ask
10 them why we were being harassed. And this harassment was based on ethnic
11 origin because people were talking about Rwandans and Hemas. That is when
12 we decided we would go into the bush."

13 Does that help you recall, sir, that you testified that both the Tutsi and the Hema
14 were being harassed because of your ethnic origins?

15 A. [15:36:38] Yes, that was in the year 2000.

16 Q. [15:36:43] And as we've --

17 PRESIDING JUDGE FREMR: [15:36:45] Hold on. Hold on, Ms Samson, please.
18 Mr Bourgon.

19 MR BOURGON: [15:36:50] There appears to be an error in the transcript. I'm
20 looking for the right reference. But can my colleague just correct me whether it
21 is 212 and not 211. I'm trying to find the right reference.

22 MS SAMSON: [15:37:03] Let me check, your Honour, against the actual
23 transcript. My notes say 211, but I will just check.

24 PRESIDING JUDGE FREMR: [15:37:12] Please do. Thank you.

25 MR BOURGON: [15:37:14] I think I may be able to assist. On transcript 212,

1 page 34, I just found something and I think that's the right reference.

2 PRESIDING JUDGE FREMR: [15:37:31] Take your time.

3 MR BOURGON: [15:38:06] Page 34, 19 to 23 is what I have in English.

4 MS SAMSON: [15:38:17] Yes, that's correct. That's correct, thank you.

5 PRESIDING JUDGE FREMR: [15:38:20] Thank you, Mr Bourgon, for your
6 correction.

7 Ms Samson, please proceed.

8 MS SAMSON: [15:38:26]

9 Q. [15:38:26] And, sir, having listened to your testimony, it's right, isn't it, that
10 it was at this time that you, Kisembo, Bagonza, Kasangaki and Tchaligonza went
11 into the bush in 2000 around Sota?

12 A. [15:38:56] Yes.

13 Q. [15:39:00] Kisembo, Bagonza, Kasangaki and Tchaligonza are Hema, aren't
14 they?

15 A. [15:39:13] Yes, they were also -- there were also other members of our army
16 from other tribes. Abelanga was an Alur, for example. But the majority of them
17 were Hema.

18 Q. [15:39:33] And of the leadership of the group, yourself, Mugabo, Mukalayi,
19 Muhinga were Tutsi; is that right?

20 A. [15:39:57] Yes.

21 Q. [15:40:00] And you and the group that you were with were referred to as
22 the mutineers or les mutins in French?

23 A. [15:40:20] Yes. You see, they were chasing after us, trying to kill us
24 because of our ethnicity. And that's why we became mutineers.

25 Q. [15:40:37] And you and the others were mutining against or from the APC

1 armed branch of the RCD/K-ML?

2 A. [15:41:10] No, we did not refuse. They were chasing us. So going to the
3 bush was a way for us to protect ourselves.

4 Q. [15:41:22] And prior to going to the bush to protect yourselves, those
5 individuals that I've just referred to were members of the APC, the armed wing of
6 the RCD; is that right?

7 A. [15:41:51] Yes, some of them were from the APC. And when they sought
8 to arrest them they escaped, one after the other.

9 Q. [15:42:26] And is it right that the Lendu were first set against the Hema
10 because they were considered to have the same ethnic roots as Ugandan and
11 Rwandan aggressors, if you know?

12 A. [15:43:14] Madam Prosecutor, please kindly repeat your question.

13 Q. [15:43:17] Certainly. Is it right, to your knowledge, that the Lendu were
14 first set against the Hema because the Hema were considered to have the same
15 ethnic roots as Ugandans and Rwandan aggressors?

16 A. [15:43:51] I already told you that at that time there was no talk of the
17 Lendus; it was us, the APC against Wamba Dia Wamba. There was no mention of
18 the Lendu at that time.

19 Q. [15:44:14] My question, sir, is more general: Did you know, or not, that the
20 Lendu considered the Hema to have the same ethnic roots as Ugandan and
21 Rwandan aggressors?

22 A. [15:44:46] I do not know.

23 Q. [15:44:48] And did you know, or not, that the Lendu and others had a
24 theory of a Hema-Tutsi conspiracy?

25 A. [15:45:21] Madam Prosecutor, I really am -- I'm lost here. What period are

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1 you referring to?

2 Q. [15:45:31] Sir, I'm referring to the period of the conflict, even the period that
3 you agree there was an ethnic conflict. So in the period in which you agree there
4 was an ethnic conflict, did you ever know or hear that the Lendu considered that
5 the Hema had the same ethnic roots as Ugandan and Rwandan aggressors or that
6 there was a Hema-Tutsi conspiracy?

7 A. [15:46:26] I never heard mention of -- of it. At the time I was in the Ituri,
8 there were no Rwandans there.

9 Q. [15:46:42] But there were Tutsi there; right?

10 A. [15:46:53] We -- there were -- we were four Tutsi. You could count them
11 on one hand, the number of Tutsis in Ituri. But what you are referring to, what
12 you have just suggested, is not something I have ever heard of.

13 Q. [15:47:18] You spoke during your examination-in-chief, and, indeed, briefly
14 today, about the UPC's efforts at pacification. Have you ever spoken to any UPC
15 leaders about their pacification plans?

16 A. [15:47:50] No. Are you referring to the authorities? I never discussed the
17 pacification programme with the authorities. There was somebody responsible
18 for pacification, Tinanzabo, and of course he discussed the pacification plan with
19 certain people.

20 Q. [15:48:20] I'd like to take a look at the pacification plan with you. The
21 document is DRC-OTP-0092-0436. It's at item 1298 on our list. And it's a public
22 document. It has been admitted into evidence.

23 And if we could please have page 0440 -- well, perhaps the first page initially so
24 the witness can see it.

25 Can you see this document, sir?

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1 A. [15:50:00] Yes, I see it.

2 Q. [15:50:02] It's a UPC document called the -- titled "Pacification of Ituri
3 Programme - Budget - Calendar". Is that right?

4 A. [15:50:31] I can see the document in question. I see it before me.

5 Q. [15:50:44] And if I may ask to move to page 0440.

6 Can you see, sir, that this programme is signed in Bunia on 26 September 2002 by
7 Jean de Dieu Tinanzabo Zeremani, National Secretary in Charge of Pacification and
8 Reconciliation of the UPC/RP?

9 A. [15:51:42] Yes, he is the person responsible for pacification.

10 Q. [15:51:48] And if we look a bit further down on the page, you can see the
11 section below the signature is entitled "The Programme of Pacification and
12 Reconciliation of the Congolese Union Patriots for Reconciliation and Peace
13 (UPC/RP) in Ituri", and then part II is a preliminary section.

14 So I just wanted to show you that's the title of the section, and I'd like to move to
15 the following page, 0441, please. And, sir, I'm going to read from the first
16 paragraph. It's the portion in the centre of the paragraph that starts:

17 "In Ituri, the Lendu were firstly set against the Hema, considered to have the same
18 ethnic roots with the Ugandan and Rwandan aggressors. (Is it necessary to
19 remember here the speech on the 'Hima-Tutsi empire?'. That is the reason why
20 the traditional Hema-Lendu conflict has taken the actual dimension ever lived
21 before."

22 Sir, you'll agree with me, or will you, that the UPC leadership wrote down in its
23 own documents that the Lendu had been set against the Hema for having the same
24 ethnic roots as Ugandan and Rwandan aggressors as a basis for the Hema-Lendu
25 conflict?

1 A. [15:54:09] Well, that's politics. I wasn't a politician, madam.

2 Q. [15:54:15] But you were a member of the UPC, sir, and you ascribed to its
3 ideology; you'll agree?

4 A. [15:54:29] Yes, we were -- we followed, or took, as our guidance the policy
5 of the UPC, but I was not a politician.

6 Q. [15:54:55] And as you can see, as I read in the document, as you read
7 yourself, the UPC leadership also mentioned a speech on the Hema-Tutsi empire;
8 does that refresh your recollection about hearing anything in relation to
9 Hema-Tutsi empire in Ituri?

10 A. [15:55:27] That's what President Kabila said. He asked that all the Tutsis
11 and Hema be killed because he wanted to put a Hema-Tutsi empire in place. I
12 heard a communiqué issued by Kabila asking that all those who resembled the
13 Tutsis be killed, and Tutsis.

14 Q. [15:56:04] I would just highlight a difference in the transcript, and I'll ask
15 you, sir, which of the two is correct.

16 In French, page 84, lines 7 to 9, it says, and I'll read in French:

17 (Interpretation) "That's what Kabila or President Kabila said. He asked that the
18 Tutsis and Hema be killed because they wanted to place -- or put in place a
19 Hema-Tutsi empire."

20 (Speaks English) Whereas in English, page 85, lines 15 to 17, the transcript reads:

21 "That's what President Kabila said. He asked that all the Tutsis and Hema be
22 killed because he wanted to put a Hema-Tutsi empire in place."

23 Who was it that President Kabila said wanted to put a Hema-Tutsi empire in
24 place?

25 A. [15:57:21] President Kabila called for the killing of all Tutsis and all those

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1 who resembled them because they, in the plural, wanted to establish a Hema-Tutsi
2 empire.

3 Q. [15:57:51] And you, yourself, sir, if I'm right, started your military training,
4 you said, in February 1991 when you were 17?

5 A. [15:58:14] Yes, in 1991.

6 Q. [15:58:22] Could it be, sir, that you joined in 1990 when you were 16?

7 A. [15:58:41] No. I'm very familiar with the period, the period when I joined
8 the army. That was in 1991, in February.

9 Q. [15:59:03] And, sir, yesterday you had an opportunity to look at an
10 interview that you had given to Human Rights Watch to Anneke Van Woudenberg
11 and that item we can look at together. Do you recall telling Anneke and her
12 colleague that you joined the RPF when you were in fact 16?

13 A. [15:59:39] Please show me the point where I stated that. I think that I
14 made a correction and I said that I joined the army at the age of 17 and not 16.
15 I'm -- I recall explicitly making a correction in this regard.

16 Q. [16:00:01] Let's look at the document together because I think in fact you
17 did make a correction when you met with Anneke.

18 The item is DRC-OTP-2062-0363. It's item number 1216 on the list. And it's been
19 admitted.

20 Court officer, could we please expand so that the first paragraph is more visible,
21 more clearly visible.

22 I will read the note to you which is in English, but before I do so, sir, you stated
23 yesterday that you agreed to the meeting with Anneke and it's right that you knew
24 that the meeting was not confidential and that you were on the record, so to speak,
25 correct?

1 A. [16:01:42] I haven't understood your question well, madam. You're
2 referring to a meeting? Could you repeat your question, please.

3 Q. [16:01:49] Certainly, yes. When you met with Anneke from Human Rights
4 Watch in 2010 you understood that you were not having a confidential meeting
5 and you understood that this meeting was something that she could reproduce in
6 her reports; is that right?

7 A. [16:02:33] When she came to see me, she didn't tell me how the meeting
8 would proceed. We met, she took notes, but without specifying that. As we
9 spoke, I saw her take notes, but I didn't know what she was noting down and she
10 didn't tell me what use she was going to make of the notes that she was taking.
11 She said nothing about that.

12 Q. [16:03:09] You stated yesterday, sir, that you knew, in general terms, the
13 work of Human Rights Watch, you had heard of them; is that right?

14 A. [16:03:29] Yes. I know that Human Rights Watch has produced a certain
15 number of reports, just as other NGOs have done.

16 Q. [16:03:53] And when you met with Anneke of Human Rights Watch, she
17 never said to you, did she, that the meeting would remain confidential and that she
18 could not use any of the information you gave to her in her reporting, did she?

19 A. [16:04:24] She didn't say anything about that to me, nothing at all.

20 Q. [16:04:30] Well, let's take a look at the first paragraph of the meeting that
21 you had with her as reflected in her notes. And it states, and I quote:

22 "Before the AFDL, I was with the RPF in 1990 when I was 17 years old. In fact, I
23 was 16 years old when I joined and then two months later I turned 17. I was
24 trained in Uganda and then I went with Kagame to Rwanda. I joined from
25 Ngungu. I was a child soldier myself, at 16 years."

1 Does that help refresh your recollection on the date that you joined the RPF and
2 your age and the correction that you made when you spoke to Anneke?

3 A. [16:05:38] Yes, that's what I said to you earlier, I was 17 years old.

4 Q. [16:05:44] But the correction that you rightly remember having made was to
5 tell Anneke that, in fact, you were almost 17, but you were 16 at the time that you
6 joined; do you remember that?

7 A. [16:06:09] Yes, I recall having made a correction to what I had just said.
8 There was a little discussion on this matter and I recall I made a correction. I
9 don't recall exactly what I said, but in any case I know that I told her that I had
10 joined the army when I was 17 years old.

11 Q. [16:06:39] And now having recalled that you made a correction, and seeing
12 the notes that Anneke has produced of her meeting with you, do you accept that
13 the correction you made at the time was to say, in fact, I was 16 when I joined,
14 almost 17?

15 A. [16:07:09] I don't recall that little detail, madam. That was a long time ago.
16 I don't recall these details exactly. All I know is what I said to her was that I was
17 17 years old. However, I can assure you that I did make that little correction.

18 Q. [16:07:41] And you told Anneke that you were a child soldier yourself when
19 you joined the RPF; correct?

20 A. [16:07:52] I don't recall.

21 Q. [16:07:58] And a child soldier in those terms, you were intending to reflect a
22 person who was under 18 who was within a military army; is that right?

23 A. [16:08:19] No. You're referring to 18 years. I use the Swahili term
24 "kadogo, kadogo", someone who is small of stature, someone who is not bulky. I
25 wasn't bulky. I was not kibonge.

1 Q. [16:08:52] When I asked you a moment ago if you told Anneke that you
2 were a child soldier, you said that you don't remember, but now do you remember
3 that you told her that you were a kadogo, using the Swahili expression in
4 particular?

5 A. [16:09:17] I said that I was 17 years old and that's how it is that we
6 discussed the term "kadogo," but saying "kadogo" doesn't mean I wasn't 18 years
7 old. The connotation of kadogo in our discussion was that it denoted somebody
8 who was small of stature, somebody who was not bulky, full-bodied. Dogo is
9 different from kadogo.

10 Q. [16:10:01] But, in fact, sir, if you did use the term "kadogo" with Anneke, it
11 was in connection as well with you being 17, or at least under 18; that's right, isn't
12 it?

13 A. [16:10:31] I think that we talked about that and the term that kadogo that I
14 used, as I said. Of course I'm perfectly familiar with the term. You have kadogo,
15 which is in contrast to kibonge. And she had put a question to me, she wanted to
16 know if children had been recruited in Ituri. I said "No. We didn't or we haven't
17 recruited children." And that's how it is that we were discussing that. And it
18 was in the framework of that discussion that I used the term.

19 Q. [16:11:21] Now, sir, this interview was in French I believe you indicated
20 yesterday. And do you have a specific recollection today of speaking in Swahili
21 to Anneke during that meeting?

22 A. [16:11:59] No. She doesn't speak Swahili.

23 Q. [16:12:03] And yet you chose to use a Swahili term is your recollection
24 today when describing yourself to a non-Swahili speaker?

25 A. [16:12:36] What Swahili did I speak? I don't recall. What is it I said in

1 Swahili?

2 Q. [16:12:45] Well, as I understand your evidence, you said that you used the
3 word "kadogo". If Ms Anneke doesn't speak Swahili, how would she know to
4 translate that to child soldier in your interview notes?

5 A. [16:13:16] You're saying that I spoke of an age, 18 years. I told her we did
6 not recruit children under the age of 18 years old. I know that kadogo is a Swahili
7 term. Somebody who is not kadogo is kibonge. I was kadogo, I was slim, I
8 wasn't bulky, corpulent. So when I was speaking to her, I used that term to
9 illustrate what I had in my mind.

10 Q. [16:14:11] Well, sir, that term is not what's captured in her notes. What's
11 captured in her notes, as I've just read, in relation to you personally, not
12 recruitment of other people, but you personally, is that you said, and I quote, "I
13 was a child soldier myself at 16 years. Now, do you deny having said that to
14 Anneke?

15 A. [16:14:47] Yes, I recall and I've told you I recall. I concede that.

16 Q. [16:14:56] Do you recall having said to Anneke, "I was a child soldier myself,
17 at 16 years"?

18 A. [16:15:15] I don't remember. Maybe. If you say "kadogo", yes, but child
19 soldier no.

20 PRESIDING JUDGE FREMR: [16:15:32] Sorry, to interrupt you. Anyway, I
21 expect that you will finish soon.

22 But one question, Mr Ntaganda: How would you say in Swahili "child soldier"?
23 Is there any term or is there any precise translation from English to Swahili of that
24 term?

25 THE WITNESS: [16:16:09] (Interpretation) Yes, "mtoto ya jeshi".

1 PRESIDING JUDGE FREMR: [16:16:21] And could now the Swahili booth
2 provide us with -- I can answer that probably those two words means something,
3 so it's really "child" and then "soldier", or what? If you could decode this or
4 to -- it's possible to give some --

5 THE WITNESS: [16:16:43] (Interpretation) Mtoto jeshi. Mtoto jeshi.

6 THE INTERPRETER: [16:16:52] The witness says, "mtoto jeshi. Mtoto jeshi."

7 PRESIDING JUDGE FREMR: [16:16:56] So what does a word "mtoto" mean?

8 THE WITNESS: [16:17:08] (Interpretation) "Mtoto jeshi" would be a child of
9 two or three years who is able to walk. That child is referred to as "mtoto jeshi".

10 PRESIDING JUDGE FREMR: [16:17:35] All right. But I expected that "child
11 soldier" means at least two words, child, and something what gives -- makes clear
12 that this child is fighting or that is a soldier. So "mtoto jeshi" is "small child", am I
13 right? But I'm asking you how would you say in Swahili "child soldier"?

14 THE WITNESS: [16:18:09] (Interpretation) Oh, all right. All right. Now
15 "mtoto jeshi" is not someone who is up to four years old, but it could also be a
16 nickname, a nickname, and a child soldier in Swahili is also referred to as "mtoto
17 jeshi". A child soldier in Swahili would be "mtoto jeshi", word for word
18 translation from English to Swahili.

19 PRESIDING JUDGE FREMR: [16:18:51] Thank you, Mr Ntaganda.

20 Ms Samson, if you could kindly wrap up as soon as possible because we are
21 slightly behind our schedule.

22 MS SAMSON: [16:19:00] Yes, I'm done with this topic, thank you.

23 PRESIDING JUDGE FREMR: [16:19:03] Thank you, Ms Samson. So we can
24 close for today. We adjourn till tomorrow, and tomorrow we will start again at
25 quarter to 10.

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- 1 THE COURT USHER: [16:19:17] All rise.
- 2 (The hearing ends in open session at 4.19 p.m.)