

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

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 Tuesday, 18 July 2017
9 (The hearing starts in open session at 9.31 a.m.)
10 THE COURT USHER: [9:31:12] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: [9:31:33] Good morning, everybody.
14 Court officer, please call the case.
15 THE COURT OFFICER: [9:31:38] 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: [9:31:54] Thank you, court officer.
20 Appearances please.
21 MS SAMSON: [9:31:58] Good morning, Mr President. Good morning,
22 your Honours. For the Prosecution today are Ms Dianne Luping,
23 Mr Rens van der Werf, Ms Selam Yirgou, Ms Claudine Umurungi and myself,
24 Nicole Samson.
25 PRESIDING JUDGE FREMR: [9:32:13] Thank you, Ms Samson.

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1 Defence please.

2 MR BOURGON: [9:32:20] (Interpretation) Good morning, your Honour.

3 Representing Mr Bosco Ntaganda today here in the courtroom is Ms Marie Mescam,

4 Ms Victoria Cichalewska, Mr David Wagen-Magnon, Mr Justin Kabika and

5 Maître Isabelle Martineau, and myself, Stéphane Bourgon. Thank you,

6 your Honour.

7 PRESIDING JUDGE FREMR: [9:32:45] Thank you, Mr Bourgon.

8 And Legal Representatives of Victims, please.

9 MS RAMBOLAMANANA: Thank you, Mr President. For the former child soldier

10 myself, Vony Rambolamanana, associate legal officer for the Office of Public Counsel

11 for Victims.

12 MR SUPRUN: [9:33:02] (Interpretation) Good morning, your Honours. The

13 victims of the attacks are represented by myself, Dmytro Suprun, Office of Public

14 Counsel for Victims.

15 PRESIDING JUDGE FREMR: [9:33:14] Thank you, Ms Rambolamanana. And

16 thank you, Mr Suprun.

17 Today we will deal with next part of cross-examination of Witness D-300, who is

18 Mr Ntaganda, made or conducted by Prosecution by its lead counsel, Ms Samson.

19 Ms Samson, you have the floor.

20 MS SAMSON: [9:33:40] Thank you, Mr President.

21 PRESIDING JUDGE FREMR: [9:33:42] Sorry. I see Mr Bourgon on his feet.

22 Mr Bourgon.

23 MR BOURGON: [9:33:46] Good morning, Mr President. Just before we begin this

24 morning, Mr President, at the beginning of this -- of the testimony of Witness D-300,

25 Mr Ntaganda, we agreed upon that we would sit for no longer than four hours per

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1 day. Since this is our first week with five full days, I would like if it is possible for us
2 to maintain within the four hours of testimony per day so that we can do -- because it
3 is a full week. Thank you, Mr President.

4 PRESIDING JUDGE FREMR: [9:34:17] But to be clear, it means four hours for
5 Mr Ntaganda, so it will be some procedural issues we will not include in that.
6 Otherwise, I think it's fine because we in fact, ourselves, set up this principle that
7 approximately four hours for Mr Ntaganda should be maximum, especially now, you
8 can imagine that the cross-examination is a bit more demanding than
9 examination-in-chief. So we will respect that.

10 Ms Samson, you have the floor.

11 MS SAMSON: [9:34:59] Thank you, Mr President.

12 WITNESS: DRC-D18-D-0300 (On former oath)

13 (The witness speaks Swahili)

14 QUESTIONED BY MS SAMSON: (Continuing)

15 Q. [9:35:05] Good morning, Mr Ntaganda.

16 A. [9:35:11] Good morning.

17 Q. [9:35:14] Yesterday, we had been looking at some messages in the logbook,
18 and I will continue to show you some messages and ask questions about them.

19 So my first question relates to situation reports that you were receiving from the field
20 on a nearly daily basis. Do you recall, during the period of the logbook at least from
21 19 November through to 22 February 2003, that you received regular situation reports
22 from areas under -- areas that you were monitoring. Can you recall that?

23 A. [9:36:28] I know that I was sent reports, but I can't tell you today that I
24 received them on a daily basis but I do know that I did receive reports.

25 Q. [9:36:42] I can take you to some examples of those messages to be clear that we

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1 are speaking of the same thing. In the logbook that's in front of you -- for you it's
2 page 0037. The ERN is DRC-OTP-0017-0033. That's public. And the translation
3 that we've been working with is DRC-OTP-2102-3855, at page 3859.

4 So, Mr Ntaganda, for you at the moment it's page 0037. In fact, perhaps you can go
5 to the page before 0036 to start. Translation 3858.

6 At the top of this page, these are the type of situation reports I'm referring to, where
7 you were receiving an update as to the situation in various areas under your control.
8 We have at the top "Aru, Mongbwalu, Fataki and Mahagi". It was important, wasn't
9 it, to receive updates from these areas so you could monitor a situation across the
10 territory under your control?

11 A. [9:39:23] Well, for myself it was important to know what the situation was
12 with our troops.

13 Q. [9:39:33] And from the logbook entries that we have, you received these
14 updates very regularly, almost daily. If you turn to -- the first one that we looked at
15 was dated 3 December 2002, at page 36, and if you turn to page 37 in the logbook,
16 translation 3859, you can see that there is an update, it looks like a little bit later, on 3
17 December, "Aru, Mahagi, Mongbwalu" and above that "Kilo, Liseyi, Asiki". Do you
18 see those situation reports?

19 A. [9:40:40] Yes, I can see the situation report.

20 Q. [9:40:49] And there's another one at page 0040, translation 3862. At the top of
21 the page, "Mahagi, Aru, Mongbwalu, Fataki, Kilo", dated 5 December 2002. You
22 received that update, that situation report?

23 A. [9:41:31] Which reference did you give, Madam Prosecutor?

24 Q. [9:41:34] Page 0040, 5 December 2002, translation 3862, but for you, the page is
25 0040. The date is Thursday 5 December 2002, and there is a situation report for

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1 Mahagi, Aru, Mongbwalu, Fataki and Kilo. It's at the top of the page. Do you see
2 that?

3 A. [9:42:16] Yes, I just saw it.

4 Q. [9:42:17] And if I could ask you to turn please to page 0042, translation 3864.

5 This is 6 December 2002, so the next day. And you can see a situation report for Aru,
6 Mahagi, Mongbwalu.

7 A. [9:42:54] Yes, I'm with you.

8 Q. [9:43:00] And it continues. The next day 7 December 2002, at page 0043,
9 translation 3865. There is another situation report for Mongbwalu, Aru and Mahagi,
10 correct?

11 A. [9:43:39] I've seen the message from this day, 7 December 2002 regarding
12 Mongbwalu and Mahagi.

13 Q. [9:43:52] Yes. So the purpose of showing you several of these messages over
14 multiple days was simply to have you confirm that you were receiving these reports
15 regularly. It looks almost like daily; would you agree with that?

16 A. [9:44:20] That was the work of the signaller, namely, to receive the daily
17 messages. That was part of his duties.

18 Q. [9:44:32] And as you've indicated previously, that was part of his duties so
19 that you could be informed of all the matters that were being sent and copied into
20 your logbook, correct?

21 A. [9:44:58] Yes. If I found myself at my residence, I would take some time to
22 read the messages that had been sent and that were in the logbook under "In". If I
23 wasn't there, he would record all these messages, and as soon as I got back from the
24 place I was, I would go into my living room and I would ask for the messages to be
25 brought to me and I would read those messages. And he himself realised that if

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1 there were messages that had been sent to me, he would bring them to me. That's
2 what happened.

3 Q. [9:45:45] Now, I'd like to look at a few messages sent in January 2003. The
4 first one is at page 108 in your logbook. For the translation it's at 3930.

5 If I could ask you to pay specific attention, please, to the first message. It's a message
6 to you from the north-east sector commander Jérôme Kakwavu on 17 January 2003 at
7 14.20. It's copied to the minister of defence, the chief of staff FPLC, Tiger One and
8 the G2.

9 In this message, which I will read in French, Kakwavu is asking for weapons. He's
10 asking you to send him weapons. And in French from the translation 3930, it reads:

11 (Interpretation) "Send G2. Stop. RPG. Stop. Mortar 60 millimetre 13.

12 (Speaks English) Infantry battalion. Stop. (Interpretation) That he should help with
13 the work."

14 (Speaks English) Now, we looked at some messages yesterday with you where you
15 had a role in receiving requests for weapons and in distributing those weapons. And
16 this is another such request to you, isn't it, for distribution of weapons, in this case, to
17 Jérôme Kakwavu?

18 Court officer, perhaps we could make the logbook slightly larger. The witness has
19 his own, but I'm not certain if the Chamber or others are using the translation.

20 PRESIDING JUDGE FREMR: [9:49:16] Yes, I fully agree.

21 MS SAMSON: [9:49:22] It's the first message on the page.

22 THE WITNESS: [9:49:32] (Interpretation) I remember that he wasn't asking for
23 those weapons. It was the commander of the 13th, Ricky, who had been arrested by
24 me in December, 28 December, if I recall correctly. And it was -- he had kept the
25 weapons. When he was freed, the weapons remained with G2. And then it was

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1 Jérôme Kakwavu, who was the sector commander in -- Ricky, and he asked for the
2 weapons to be brought to him. If you look carefully, you'll see on 28 December I had
3 arrested Ricky for stealing some wood. That happened with the staff from
4 the -- well, the customs staff. And so that was in relation to the request from the
5 commander for the weapons to be brought to him. Ricky was the commander of the
6 13th battalion.

7 Q. [9:51:07] Now, G2, RPG and 60 millimetre mortars are all weapons, are they
8 not?

9 A. [9:51:31] Yes, they were weapons that he had asked for. He had asked that
10 the weapons be brought to him for his force. Once he got to Mongbwalu, he came
11 with G2, RPGs and 60 millimetre mortars. So he was asking for these weapons, he
12 was asking that the weapons be brought to him, and these weapons could be used to
13 help the troops within his battalion.

14 Q. [9:52:03] And he sends this message and request to you; that's right, isn't it, on
15 the face of the message?

16 A. [9:52:17] Yes.

17 Q. [9:52:18] If I could ask you, please, to turn to another message; it's from the
18 same day. In fact, it's on the same page, it's the next message, the middle message
19 on page 0108 for you, sir, and 3930 for the translation.

20 Now, this message follows. It's sent on the same day, 17 January 2003, 10 minutes
21 later at 14.30. It's again sent from the north-east sector commander Kakwavu to you,
22 copied this time only to the minister of defence. And in this message Kakwavu is
23 speaking to you about "les matope", which you have told us yesterday was "the
24 enemy", who have started to move since 16 January 2003. And in the very last lines
25 of the message he states, and I will read in French:

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1 (Interpretation) "Look at the ways and means to send soldiers here to Aru. Stop.
2 Also bring enough ammunition, bombs, RPGs. Stop. 82-millimetre mortars. Stop.
3 81-millimetre mortars."

4 (Speaks English) In this message can you confirm that Jérôme Kakwavu is asking you
5 for -- to be sure that there are certain weapons that he is requesting, RPG, 81 and
6 82-millimetre mortars and military, correct?

7 A. [9:55:02] Yes, that's right.

8 Q. [9:55:03] And he addresses that to you as the hierarchical officer who can
9 authorise the deployment of troops and weapons to assist him with the enemy,
10 correct?

11 A. [9:55:33] Yes.

12 Q. [9:55:56] And if you turn to the message that is 18 January, I'm going to get the
13 page reference for you.

14 MS SAMSON: One moment, your Honour, as I find the page reference.

15 PRESIDING JUDGE FREMR: [9:56:52] Take your time, Ms Samson.

16 MS SAMSON: [9:57:40] Thank you for the indulgence.

17 Q. It's at page 0198 for you, Mr Ntaganda. And at translation page 4020. Page
18 0198. Have you reached the page 0198? I'm looking for -- at the last message on
19 that page, it's dated 18 January 2003, so it's the day after you've received a request for
20 weapons and military. The message is from you at 16.30 to Kakwavu, the sector
21 commander for the north-east sector, for information, the UPC president, and what
22 you -- the message you relay to Kakwavu is as follows and I will read it in French:
23 (Interpretation) "This Kpandroma operation must be continued because I have given
24 everything necessary. Stop. But I have not yet had an answer why. Stop. This
25 has failed. Stop. If you do not strike they will cause trouble for you because the

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1 enemies will use it as a base. Stop. The days to come I do not want you to be
2 lamenting or complaining about this zone. The operation should continue."

3 (Speaks English) With this message to Jérôme Kakwavu you are ordering him, are
4 you not, to continue with his operation and to strike?

5 A. [10:00:50] Yes. I talked to him about the operation, so that the enemy should
6 not move ahead of him. They had to get ahead of the enemy by attacking, they had
7 to overcome the enemy by attacking.

8 Q. [10:01:12] And Jérôme Kakwavu was seeking assistance again and seeking the
9 orders of his hierarchy from you in relation to this operation, which is what you do,
10 correct?

11 A. [10:01:43] Yes. I remember that at that time I was extremely vigilant
12 regarding the Aru, Mahagi and Komanda sectors. That was in January. And this is
13 true.

14 Q. [10:02:05] You testified in-chief about your role in training, in particular, at
15 Mandro, in setting that training up, but you also had a role, did you not, in ensuring
16 that the recruits had weapons and ammunition following their training?

17 A. [10:03:00] Yes.

18 Q. [10:03:01] I will ask you to turn to a message, please, in the logbook at 0194.
19 For the translation, it's at page 4016. For you, Mr Ntaganda, it's page 0194. And the
20 message I'm referring to is the last message on the page. It's dated 27 January 2003
21 at 14.04. It's a message from you to the battalion commander infantry in Boga. And
22 I'll read the message in French:

23 (Interpretation) "You are requested to have many recruits because your zone is very
24 big. Please hurry. Stop. We shall send you everything you need. Stop. Please
25 inform us of those who have finished and who do not have weapons."

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1 (Speaks English) Now, in this message, Mr Ntaganda, you are ordering the battalion
2 commander infantry in Boga to ensure that he has many recruits and to let you know
3 if those recruits do not have weapons, correct?

4 A. [10:05:39] Yes, I remember that when Kisembo sent this commander to Boga to
5 re-organise the young soldiers of the APC and provide them with training, he gave
6 him a battalion in November. He was RSM before, and this was in November 2002.
7 That was his reserve force. Here, I was asking him to hurry up so that we could
8 send them everything they needed. I remember this very clearly. It was in
9 November, and this was one of Kisembo's reserve forces. Those forces were
10 assigned to Tchaligonza's brigade.

11 Q. [10:06:50] Now, this message is dated --

12 PRESIDING JUDGE FREMR: [10:06:53] Hold on. Hold on, Ms Samson.
13 Mr Bourgon.

14 MR BOURGON: Thank you, Mr President. It appears to be a recurring problem,
15 and I don't know why, when some certain months are mentioned by Mr Ntaganda
16 different months appear in the transcript. I'm not sure if it's Swahili or if it's -- but if
17 we can ask Mr Ntaganda whether he said the month that is there.

18 PRESIDING JUDGE FREMR: [10:07:15] Ms Samson, please verify.

19 MS SAMSON: [10:07:18] Yes, certainly. I had also noted that there seems to be an
20 issue.

21 Q. [10:07:24] Sir, in your last answer, you were describing a reserve battalion, and
22 you -- in English in any event -- it's captured as you mentioning November. Is that
23 the month that you had mentioned in relation to your last answer?

24 A. [10:07:55] It was a reserve battalion available to the chief of general staff, and
25 that was in the month of November. I was telling him that we had to send him some

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1 military equipment in January, so those are two different dates. The material was to
2 be sent to that commander.

3 Q. [10:08:25] And I believe that you've mentioned in your last answer that,
4 notwithstanding whatever may have transpired in November, that the message that
5 you're sending that we're looking at right now is dated 27 January 2003, so your
6 message to the battalion commander is at the -- on 27 January 2003, correct?

7 A. [10:08:59] Yes.

8 Q. [10:09:02] And Floribert Kisembo, chief of general staff, he's not copied in this
9 message, is he?

10 A. [10:09:24] He was aware of it because he is the one who had the uniforms and
11 the weapons. They had been stored at his place.

12 Q. [10:09:40] But my question is whether or not he's copied in this message, and I
13 think you'll agree that he's not copied in your message to the battalion commander.

14 A. [10:10:07] That is true. I did not copy him because he was aware of it, and we
15 were talking about his forces or his force.

16 Q. [10:10:19] We've looked at messages where you've communicated with sector
17 commanders, such as Jérôme Kakwavu or Tiger One, and in this message you are
18 communicating to a battalion commander infantry and so you were communicating
19 with all levels of the troops when you needed to and you had to communicate
20 messages, correct?

21 A. [10:11:04] Those of us who were superior commanders, deputy chief of general
22 staff and chief of general staff and even sector commanders, we were not limited.
23 You see, these forces here were in Boga and between Boga and Bunia there were no
24 roads. That is why the staff headquarters had to intervene. Boga was isolated, it
25 was cut off, there was no road between Bunia and Boga.

1 Q. [10:11:53] May I ask you, please, to turn to the message that's at page
2 193 -- 0193. In the translation it is page 4015. The message is the last message on
3 the page, and it is from you, page 0193, the last message on the page. It is a message
4 that you sent on 29 January 2003 at 16.50 again to the infantry battalion commander of
5 Boga and copied to the chief of general staff. The commander in chief of sector
6 north-west. That's Kakwavu, isn't it?

7 A. [10:13:27] Which message are you referring to, madam? On that page I see
8 there is a message on Boga, another one on Boga again, so which message are you
9 referring to, madam?

10 Q. [10:13:42] The last message on the page, 29 January 2003 at 16.50. I'm looking
11 at who the message is from and to. It's from you to the same infantry battalion
12 commander of Boga, and then for information you've copied the chief of general staff,
13 the commander in chief sector north-east. And I'm asking if that's Kakwavu.

14 A. [10:14:26] Yes, it is indeed Kakwavu.

15 Q. [10:14:29] You've also copied Tiger One, you've copied the a 505 brigade
16 commander, and the 21st infantry battalion commander. Now, the 505 brigade
17 commander, is that Paul Mugisa?

18 A. [10:15:03] Yes, it's Mugisa. The 21st battalion was led by a commander in
19 Kasenyi, who was based in Kasenyi.

20 Q. [10:15:28] Do you recall his name at the moment?

21 A. [10:15:38] Mugisa Muleke, 21st battalion.

22 Q. [10:15:54] Now, I will read out the order in French, the message/order that you
23 convey:

24 (Interpretation) "The place where you hear that they have fallen asleep. Stop. That
25 very day strike at that location. Stop. Same day. Stop. Then those 150 weapons

1 hold on they're on their way. Stop. And continue training. Stop. Do not be
2 afraid whatsoever. Stop. It is just to intimidate you. Stop. Kahwa does not have
3 an army that can attack that entire territory. Stop."

4 (Speaks English) As we can see from the message, can you please confirm that you are
5 ordering the infantry commander of Boga to strike, and that there will be 150
6 weapons that are arriving, that he should continue training, and that he should not be
7 afraid because Kahwa doesn't have an army capable of attacking the whole territory.
8 Those were your orders on 29 January 2003?

9 A. [10:17:54] Yes. I remember telling you that this commander was very far
10 away and that he received orders from the headquarters. I'm referring to the
11 commander in Boga. So when Kahwa asked for a company, we heard that there was
12 some training being given in Uganda and that there was going to be an attack. So
13 that's a message which we sent to him to tell him to be strong and that we would be
14 coming to his help with reinforcements. That is the context in which this message
15 was drafted.

16 Q. [10:18:56] If I could ask you, please, to turn to the message at page 0147,
17 translation 3969. The message that I would ask you to focus on is the message at the
18 bottom of the page, the last message. It's dated 5 February 2003, received by you at
19 13.08 from the battalion infantry battalion commander in Boga to you and
20 Commander Tchaligonza, copied for information to the chief of general staff, Tiger
21 One and the G2. And I will read out this message in French:

22 (Interpretation) "We inform you that we have carried out an operation in Burasi on 3
23 February 2003 following information. Stop. They are at Kikoga and others" came
24 from Beni -- "are coming from Beni are in Kainama. Stop. Ten soldiers from our
25 position in Tchabi. Stop. Their objective is to recover our Aero. Stop. See we

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1 must share the force we ask you to quickly supply 150 weapons munitions and
2 Motorola to facilitate blocking the roads because there are several roads. Stop."
3 (Speaks English) Now, in this request addressed to you and
4 Commander Tchaligonza, the infantry commander battalion commander in Boga is
5 speaking to you about an operation confirming that they affected it and they're
6 requesting -- he's requesting more weapons, 150 more weapons, ammunitions and
7 Motorolas to help close the routes, correct?

8 A. [10:22:24] Yes, yes. I remember that on 5 February 2003 that force was no
9 longer a reserve force of the general chief of staff. He had already assigned it to
10 Tchaligonza's brigade, and they were under Tiger One's sector and under his orders.
11 That's why he is copied. So, yes, I do remember this message.

12 Q. [10:23:04] And it's correct, isn't it, that the battalion commander is coming to
13 you to inform you of the operation and to request additional weapons, ammunition
14 and Motorolas, correct?

15 A. [10:23:29] Yes.

16 Q. [10:23:32] Now, in relation to one of my earlier questions about the Boga
17 battalion, at page 11, starting at line 24 to page 12, you were recalling that Kisembo
18 sent this commander to Boga and he gave him a battalion in November 2002:

19 "That was his reserve force. I remember this very clearly, it was in November and
20 this was one of Kisembo's reserve forces. Those forces were assigned to
21 Tchaligonza's brigade."

22 Now, were you referring to the 2002 period when you mentioned that the forces were
23 assigned to Tchaligonza's brigade, November 2002, because it was in that context that
24 you provided the answer, so I'm not certain if you were saying he was assigned at
25 that time?

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1 A. [10:25:07] Maybe you did not quite understand me. Nembe, when we were
2 in Mandro, he was SSM. At some point Kitembo sent him to Boga with some
3 instructors or trainers to provide training to soldiers who were there along with the
4 recruits in order to put together a battalion. And at the end of the training, that
5 battalion was to become a reserve force. In November 2002, it was a reserve force of
6 the general staff. So Kitembo was the one who could deploy that force in whichever
7 way he chose to. Then in January, he placed that force under the responsibility -- or,
8 rather, it was in February, maybe -- I don't know the exact date, January or
9 thereabouts, it is at that time that this force was assigned to Tchaligonza; that is
10 between January and February. And then later on he added to the 101st brigade. It
11 became the 101st brigade. They were located very far away from where we were.
12 Boga was quite far away from where we were. I didn't go to Boga myself. So that
13 is the general context in which those messages were sent.

14 Q. [10:26:50] May I ask you to please turn to page 0199 in your logbook. The
15 translation is 4021.

16 PRESIDING JUDGE FREMR: [10:27:24] Mr Bourgon.

17 MR BOURGON: [10:27:25] Thank you. Thank you, Mr President. As the
18 witness is looking for the page, I would just like to make a transcript correction, and
19 this is at page 18, line 6, where the witness mentions the following. At line 6, he said
20 it was a reserve force of the general staff. There is a word missing there, but the
21 witness goes on to explain what the missing word is, so I just want to make sure the
22 audio is verified against the transcript. Thank you.

23 PRESIDING JUDGE FREMR: [10:27:59] Well noted, and thank you, Mr Bourgon.

24 MS SAMSON: [10:28:06]

25 Q. [10:28:06] Have you found, sir, the page 0199? If you could focus, please, on

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1 the message in the middle of the page. It's a message dated 31 December 2002 sent
2 at 15.28. It's a message from you. It's a message that you send to the 505 brigade
3 infantry brigade commander, and for information you've copied Kakwavu, the
4 north-east sector commander. And I'll read the message in French:

5 (Interpretation) "I want you to inform me. Stop. I want to know your current
6 position. Stop. Because you're very late. Stop. I want to know that you're at such
7 a location in the operation. Stop. And continue till the objective. Stop. I await
8 your reply or your response. Stop. Please execute. Stop."

9 (Speaks English) Now, sir, in this message we see that you are ordering the 505
10 brigade commander to inform you of his current position, correct?

11 A. [10:30:12] Yes, I do remember that. It was on 31 December 2002. I do recall
12 that on 30 December the enemy shelled our relay forces. And by the way,
13 President Thomas referred to this during a rally when he said that our forces had
14 been shelled. So I was asking him to keep me informed. I was asking him to keep
15 me informed because he wanted to attack the enemy who had attacked them on 24
16 December. I was not aware of developments in the situation on their side.

17 Q. [10:31:18] Well, the message indicates that you are ordering someone who is
18 certainly a subordinate, a brigade commander, to inform you because you want to
19 know his current position because he's late and you want to know at what place he is
20 in the operation and you order him to continue to the objective and you state that you
21 will await the answer and you order that that be executed. Doesn't this show that
22 you were quite involved in this operation at a command level and that you were
23 monitoring very closely the movements of the brigade commander and ordering him
24 to continue to the objective?

25 A. [10:32:34] I already told you that the senior officers, not only myself, sector

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1 commanders, brigade commanders, we were not limited. We were free to find out
2 what was going on, even within sections. And during that period, my duty was to
3 ensure that the enemy did not drive us out of our positions.

4 Q. [10:33:07] Yes. And the question that I put to you was for you to confirm that
5 you were, in fact, very involved in the unfolding of this operation as can be seen from
6 the detail in the movements. He's late and you want to know where he is and you're
7 awaiting his answers. This shows the level of operational command you were
8 executing over this particular operation, correct?

9 A. [10:34:11] Yes. As the commander you have to monitor all the details. If
10 you do so you attain victory during fighting.

11 Q. [10:34:27] On this message to the 505 brigade commander you have not copied
12 the chief of general staff, have you?

13 A. [10:34:56] You even see that I was commanding the -- or leading the sector of
14 commander 505. And really that wasn't a problem. You could go see a commander
15 who gets involved in operations, and that allows you to enhance the morale of the
16 soldiers. When they see that their commander is getting involved and the troops can
17 see that they're getting all the assistance wanted, and if I behave that way, the sectoral
18 commander will follow the same path, and the battalion commander too. Each
19 person will take care of, or will meet, his obligations following the example set by the
20 superior.

21 Q. [10:36:00] And finally, in this message, you indicate that you are requesting
22 information and you're waiting for the answer. We touched upon this yesterday, but
23 it was important and indeed at times critical for you to be able to send and receive
24 messages to your troops at various locations, correct?

25 A. [10:36:40] That would depend on --

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1 THE INTERPRETER: [10:36:42] Inaudible.

2 THE WITNESS: [10:36:43] (Interpretation) -- and the examples that you want to
3 give. It also depends on the operations underway. One can't be at different places
4 at the same time, but when one has enough time, one has to give an example, one has
5 to monitor the activities of the commanders during battle, and even keep direct
6 contact with them.

7 MS SAMSON:

8 Q. [10:37:24] And following on from that answer, would you please move to page
9 0208 in your logbook. For the translation it's page 4030. At page 0208 the message
10 that I would ask you to focus on is dated 9 September. It's the third message on the
11 page, 9 December 2002, sent by you at 9.55. It's a message from you to the
12 sector -- north-east sector commander, Jérôme Kakwavu, and I'll read the message in
13 French:

14 (Interpretation) "I inform you that you have to be on the telephone line. Stop.
15 Each time I call you I can't reach you. Stop. And send me a message to tell me how
16 many forces entered Mahagi and send me that over the phone."

17 (Speaks English) The message that you are sending to Jérôme Kakwavu is to ensure
18 that he's contactable because you're having trouble reaching him, correct?

19 A. [10:39:50] Yes, I remember that. At that time there was a force that had come
20 from Fataki and was going to Mahagi, and from Fataki to Mahagi there were many
21 barriers for -- at Libi and Nyoka. It was enemy territory and there were many
22 ambushes. I didn't know whether the force had got there or not. And I sent him
23 that message. I was looking for him. I was worried. I wanted to know whether
24 our forces had arrived or whether they had come under attack. That is why I sent
25 him that message.

1 Q. [10:40:43] Now, you've also indicated that, as you just said, you wanted to
2 know about whether the force had arrived at Mahagi and you want him to let you
3 know by telephone. What means of communication specifically are you asking him
4 to contact you by when you say "telephone"?

5 A. [10:41:33] Jérôme was covering the Aru territory. He had telephones. He
6 had a Thuraya and another telephone. He used the Ugandan network for that one.
7 I wanted him to tell me quickly, because I wanted to know whether or not our forces
8 had had trouble along the way, I wanted to know whether our forces had arrived.

9 Q. [10:42:10] So is it right that you were asking him to contact you using his
10 Thuraya on your Thuraya?

11 A. [10:42:32] Either using the Thuraya or his mobile phone. All that interested
12 me was finding out what was going on in Mahagi. It didn't matter which particular
13 means of communication was used; I wanted to know whether our forces had got to
14 Mahagi. And they -- he could have used any means of communication that he had
15 at his disposal.

16 Q. [10:43:04] But I don't think he could have reached you, could he, by mobile
17 telephone in December 2002? Your evidence is that mobile phones arrived in Bunia
18 in -- by June 2003, I believe?

19 A. [10:43:34] Myself, when I was in Aru, when President Thomas called me and
20 told me to go free Mongbwalu once Salumu had had a defeat -- had been defeated, I
21 talked with the representative and I used the Ugandan network. It was possible to
22 use the Ugandan network in Aru. Even in Mahagi, there was the Ugandan network
23 there.

24 Q. [10:44:09] Yes, but my point is that there was, according to your evidence, no
25 mobile phone network in Bunia. At the time of this message, were you in Bunia or

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1 were you in Aru? This message is 9 December 2002. Because as I understand it, if
2 you were in Aru perhaps and you had a mobile phone, he could reach you that way.
3 If you were in Bunia, he had to use Thuraya. Do correct me if I'm wrong.

4 A. [10:45:02] I was in Bunia, I had a Thuraya and I wanted him to call me on my
5 Thuraya by using either his mobile -- what interested me was the forces in Mahagi.
6 Whether he used a Thuraya or a mobile phone with the Ugandan network, that was
7 not of concern to me. I wanted to find out about the forces that had gone to Mahagi.
8 They had left from Fataki and headed to Mahagi.

9 Q. [10:45:44] May I ask you, please, to turn to your logbook at message 0188.
10 For the translation it's 4010. If I could direct your attention, please, to the message,
11 the first message. It's dated 17 February 2003 -- sorry, 7 February 2003, at 12 noon.
12 It's a message that you sent to the north-east sector commander Jérôme Kakwavu and
13 the 505 brigade infantry commander, and for information you've copied the minister
14 of defence. And the message is as follows, I will read in French:
15 (Interpretation) "You are requested to investigate the place called Nzi in the Mahagi
16 forest. There is information speaking of the enemy reorganising. Stop. The
17 location where the enemy is reorganising. Stop. You must attack the enemy on an
18 emergency basis."

19 (Speaks English) Now, with this message, is it right that you had received some
20 information yourself about the reorganisation of the enemy and you are ordering
21 Jérôme Kakwavu and the 505 brigade commander to do further intelligence
22 investigations, correct?

23 A. [10:48:25] Yes.

24 Q. [10:48:29] And you are also ordering them to attack the area where the enemy
25 is reorganising immediately; "on an emergency basis" is the translation, correct?

1 A. [10:49:05] Yes, because when you learn that the enemy is reorganising, you
2 mustn't give the enemy time to reach that goal. My intent was to keep them from
3 reorganising because that would be a problem for them in the future.

4 Q. [10:49:45] And receiving intelligence of this nature was an integral part of your
5 activities generally?

6 A. [10:50:09] Yes. When such information was received, I would forward it, but
7 I don't remember who was the source of that information at that time.

8 Q. [10:50:28] And this is the type of order that you had the authority to transmit,
9 ensuring that they do their own investigation and reconnaissance work and that they
10 must attack on an emergency basis for the reasons that you have outlined, correct?

11 A. [10:51:02] I haven't understood your question. Could you kindly repeat it?

12 Q. [10:51:10] Certainly, yes. This was the type of order that you were authorised
13 and had the authority to give, to transmit to your subordinates, ensuring that they did
14 additional intelligence or reconnaissance investigations and attack immediately?

15 A. [10:51:40] Yes.

16 Q. [10:51:58] Now, the second message on the same page, page 188,
17 translation 4010, is the same day, 7 February 2003, at 12.15. It's a message from you
18 to the operation -- north-east sector commander Kakwavu, copied for information to
19 the minister of defence and Tiger One. And I'll read the message in French:

20 (Interpretation) "Send me the commander of 505 or his deputy. Stop. Please have
21 them come see me on an emergency basis. Stop. Be informed of the state of the
22 terrain in the zones. Stop. You will receive further information over the telephone
23 once I get to my own zone."

24 (Speaks English) Now, sir, first of all, in this message you are summoning the 505
25 brigade commander or his adjoint. You've indicated that that was Paul Mugisa.

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1 Where was he based at the time that you were summoning him?

2 A. [10:53:38] Mugisa was the commander -- the brigade commander in Mahagi.
3 He was the commander of the 505th brigade. I asked that if he could not come, he
4 should send Odongo, his second-in-command. I wanted either one of them to tell
5 me about the situation in Mahagi, because when you are a commander and you want
6 to give an order or give advice, you need to have an overall picture of the situation
7 that the members of the population find themselves in; in a nutshell, the general
8 situation. That was my intent at that time.

9 Q. [10:54:29] Now, were you asking them to come to you in Bunia at that time or
10 somewhere else?

11 A. [10:54:52] If I was in Bunia, that was at the -- that was the time when the Goma
12 delegation was in Bunia, 7 February 2003. I remember that time well. The Goma
13 delegation was in Bunia.

14 Q. [10:55:16] And were you in Bunia? Sorry, I'm not clear from your last answer.
15 Are you asking --

16 A. [10:55:29] I was in Bunia.

17 Q. [10:55:33] Okay. If you look to the last sentence of your message, you inform
18 Jérôme Kakwavu that he will be informed again by telephone when you arrive in
19 your proper zone, in your own zone, he will "receive further information over the
20 telephone once I get to my own zone". Doesn't that suggest that you were not in
21 Bunia at that time on 7 February?

22 A. [10:56:30] I think that the person who translated this text did not do it properly.
23 I was in Bunia with that delegation from Goma.

24 Q. [10:56:48] Could you read the last line in Swahili as you have there so we can
25 be certain? The very last part of your message.

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1 A. [10:57:11] I am not the one who wrote this message. It was the signaller.
2 That is why I told you you might find mistakes here and there in -- there may be some
3 small mistakes like this one. But during this --

4 THE INTERPRETER: [10:57:30] Inaudible.

5 THE WITNESS: [10:57:32] (Interpretation) -- I think you already saw me in some
6 video footage that showed clearly that I was in Bunia.

7 MS SAMSON: [10:57:41]

8 Q. [10:57:41] So you don't -- you're not disputing the translation? You're
9 disputing the text in the logbook itself, where it says that -- where you tell
10 Jérôme Kakwavu that you will give him more information by telephone when you
11 arrive in your own zone; is that right?

12 A. [10:58:15] Yes, that is the mistake that the signaller made when he said "once I
13 get to my own zone". Yes, when it says "in my zone", that's a message that was
14 written when I was at home at my residence. The signaller was at my home and I
15 was not travelling during that period of time. And the Goma delegation was in
16 Bunia. In the video footage, you saw that I was in Bunia.

17 These are small mistakes that one might find in mistakes such as this -- in messages
18 such as this one.

19 MS SAMSON: [10:59:24] Mr President, I would like to verify one thing but I would
20 thereafter move to a new message. So with your leave, it may be an appropriate
21 time to break.

22 PRESIDING JUDGE FREMR: [10:59:35] Yes, I agree fully. So we now take our
23 regular 30-minute break and we will reconvene at half past 11.

24 THE COURT USHER: [10:59:46] All rise.

25 (Recess taken at 10.59 a.m.)

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1 (Upon resuming in open session at 11.31 a.m.)

2 THE COURT USHER: [11:31:22] All rise.

3 Please be seated.

4 PRESIDING JUDGE FREMR: [11:31:54] So during this session we will continue
5 with next part of cross-examination of Mr Ntaganda conducted by the Prosecution.
6 Ms Samson, you have the floor.

7 MS SAMSON: [11:32:07] Thank you, Mr President.

8 Q. [11:32:11] Sir, prior to the break we had been looking at message 0188, page
9 0188, the second message on the page, and for the translation it's 4010. And we had
10 been discussing where -- your whereabouts on 7 February when this message was
11 sent. Now, in your examination-in-chief, transcript T-219, page 65, you refer
12 to -- and 66, you refer to the delegation of the RCD-Goma. And you had also
13 mentioned in your testimony that you went with the RCD-Goma delegation to
14 Nyankunde to look at the destruction, you had stated, following the attack in
15 September. Do you recall going to Nyankunde with the RCD-Goma delegation, as
16 you stated in-chief?

17 A. [11:34:03] Yes, I went to Nyankunde with that delegation.

18 Q. [11:34:08] And you testified that that was in early February. Could it be that
19 you were in Nyankunde on 7 February when you sent this message to
20 Jérôme Kakwavu mentioning that you would call him when you reached your own
21 zone? Is that a possibility?

22 A. [11:34:43] I did not go with the signaller. I didn't stay there to -- to send a
23 message. What I told you is that the signaller is the one who sends messages, and he
24 may send the message which has been communicated to him through different
25 channels. I could send him a message from home. I could ask him to come see me

1 and give him the message verbally which he would then take down on paper, and I
2 could tell him I want you to send a message to Jérôme Kakwavu, and I'll give him the
3 message and the content; he takes that down. And that's another method by which a
4 message can be sent.

5 Another message can be sent by myself drafting the message in my own hand, and
6 then handing over the piece of paper to the signaller who would then take it to his
7 office and transmit the message.

8 Then there is another possibility, namely, that I could use a -- my bodyguard. I write
9 a message on a piece of paper and hand it to my bodyguard who then takes it to the
10 signaller who would then take it to his office and then send a coded message
11 mentioning the date and all other relevant details.

12 So these are the types of messages. I could also leave a message behind with the
13 signaller who then sends a message in my absence.

14 So this doesn't mean that I went to Nyankunde and I sent the message from
15 Nyankunde on a piece of paper. No, that is not how things work in the army,
16 madam. I did not send any message while I was in Nyankunde.

17 Q. [11:36:39] Now, I'm going to ask you to stay on the same page and look at the
18 last message that you see. It's page, the same page, 0188. It's a message from 9
19 February 2003 at 9.42. It's a message that you send to all stations FPLC. And
20 you've copied for information the minister of defence and the chief of general staff.
21 And I'll read the message in French:

22 (Interpretation) "Continue to be on standby. Stop. The plans of Uganda
23 concerning us are not good. Stop. Do not be afraid at all. Stop. Because we have
24 our right and we have the force for that. Stop. Start informing your troops so that
25 they -- start telling your troops so they can be informed that they need not be afraid of

1 the Ugandans."

2 (Speaks English) So this message you are sending to all your FPLC stations ordering
3 troops to remain on standby, correct?

4 A. [11:38:24] Yes, that is correct. At that time we had problems with UPDF, so I
5 was asking the commander to prepare their troops, to boost their morale, because,
6 you know, Uganda is a well-organised country. It had more equipment than we had;
7 it had a bigger and stronger army than ours, so as a commander who was aware of
8 the situation of the UPDF and what they were planning, I wanted our troops to be
9 informed accordingly. And even though I didn't provide much detail to our troops,
10 I told them not to be afraid and not to panic.

11 Q. [11:39:12] And in the message, when you tell them not to be afraid or to panic,
12 you say that you have military strength, you have military strength in relation to the
13 situation, correct?

14 A. [11:39:46] Madam, as a commander I could not be telling our troops that we
15 were going to be exterminated. They would flee. I cannot say that. I knew myself
16 that we could not meet the challenges of the UPDF. We couldn't stand them. But
17 was I going to say that to our troops? If I did, that would discourage them. So this
18 was a way of encouraging our troops and keeping them on alert and giving them the
19 ability to keep their cool.

20 Q. [11:40:40] So it was ordering them to be on standby, informing them that the
21 situation with the Ugandans was not good and seeking to ensure that their morale
22 remained high, correct?

23 A. [11:41:07] Yes, yes, that is the duty of a commander, he must boost the morale
24 of the soldiers even if the situation is dangerous. He must continue to encourage the
25 troops.

1 Q. [11:41:25] Could you move now, please, to page 2 -- 0205, 0205, translation
2 page 4027.

3 Now, the message I've asked you to focus on, please, is the last message on the page.
4 It's a message dated 17 December 2002, sent by you at 10.45, to Jérôme Kakwavu, the
5 north-east sector commander. And for information you've copied commanders of
6 the 505 brigade, the 5 battalion and Commander Kisémbu. Now, this
7 Commander Kisémbu is not Floribert Kisémbu, correct?

8 A. [11:43:10] If you read the message at the bottom, you will see reference made
9 to the battalion commander. I said, be on standby, referring to the troops in Nyoka.
10 If you read the message at the bottom, you will see that it was a battalion commander
11 who's being referred to.

12 Q. [11:43:38] Yes, I'm going to read the message now. I just was asking you to
13 confirm that the Commander Kisémbu in the info line is not Floribert Kisémbu, and I
14 think you've agreed with that, right?

15 A. [11:44:00] Correct. That is the battalion commander I'm referring to, the one
16 to whom we asked to put his troops on standby in Nyoka.

17 Q. [11:44:14] Now, I will read the message so that we're all following. I'll read it
18 in French:

19 (Interpretation) "That the troops of Commander Kisémbu should be on standby in
20 Nyoka. Stop. That it should have the capacity to provide help to Mahagi should
21 any problem arise. Full stop. This does not mean to go with vehicles. Stop. Let
22 all forces wait for the last plans."

23 (Speaks English) Now, as you've noted, you are sending this message ordering the
24 forces, in particular, Kisémbu, battalion Commander Kisémbu's forces to be on
25 standby in the Nyoka zone to assist Mahagi if necessary; is that correct?

1 A. [11:45:27] Yes, but you will see another message subsequently which states
2 that Commander Kisémbó's troops had deserted and that he had been dismissed from
3 his duties. So this was an attempt to position them in a place where they could be
4 able to assist Mahagi should Mahagi have come under attack. That is the reason for
5 which I drafted this message the way it is drafted.

6 Q. [11:46:04] Yes. So this order is for Commander Kisémbó to be on standby.
7 And you've indicated that all the troops should wait for final plans coming from you,
8 correct?

9 A. [11:46:45] I said that all the forces should wait for the last plans. I was not
10 only referring to those forces, I was referring to all the forces, because at that time
11 there were plans to attack the enemy on 31 December. You can see, as you read, that
12 the Mahagi forces were on standby, and I asked the commander to be ready, to get
13 ready, to be prepared. And I needed to hear that they had reached the objective.
14 And they had to be on standby in case the Mahagi troops had come under attack
15 because, you see, at that time there were preparations being made for attacks that
16 may have happened against us on 31 December or at any other date.
17 So the idea was to have these forces on standby to assist Mahagi in case of an attack.
18 I asked all forces that were on standby to wait for the last plans that would come from
19 the commander whom I referred to, the one who was supposed to go to the objective.
20 In the former message, which we read, that is the message of 31st. I referred to this
21 standby. They were to be prepared against the 31st December.

22 Q. [11:48:30] And my question was, and you've indicated in your message that all
23 the troops should wait for final plans coming from you, in the last sentence, correct?
24 You will send the final plans.

25 A. [11:48:59] Madam, there's no difference, whether from me or the commanders,

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1 because I was the one giving the orders and, therefore, it is the same orders that the
2 commander had to relay or pass forward. So I said the troops should wait for the
3 last plans. Whether those plans came from me or the commanders, it doesn't, it
4 doesn't make a difference.

5 Q. [11:49:24] And Floribert Kisembo is not copied on this message, correct?

6 A. [11:49:42] All those troops were under his responsibility. He was aware of
7 everything that we were doing. He was aware of it.

8 Q. [11:49:56] Now, I would like to ask you a question outside the logbook which
9 has to do with written reports that you may have received. You received written
10 reports from subordinates from time to time in your capacity as deputy chief of staff
11 in charge of operations and organisation, correct?

12 A. [11:50:33] Well, we have what is referred to as the out messages. I don't
13 know whether you're talking about the in messages. You have the in and the out
14 messages. So these are two different categories of messages. I don't know which
15 one, which category, you're referring to.

16 Q. [11:50:53] Yes. It might not have been very clear in the way I put my
17 question. I wanted to ask you a question that didn't not involve the messages in the
18 logbook but rather a question about reports in writing that you received from time to
19 time from subordinates. Do you agree that you received written communications
20 and reports from time to time?

21 A. [11:51:28] Yes, they would send reports to me and those reports are contained
22 in the logbook.

23 Q. [11:51:38] Let's take a look at a document together. It's DRC-OTP-0016-0102,
24 item 801 on the list. It is public. It will come up on your screen, sir, it is not a
25 logbook message. It's not in the logbook, it's a written document.

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1 Could it be expanded slightly, please.

2 Now, sir, take a moment to familiarise yourself with the document. It's a
3 handwritten document dated 4 November 2003. It's written to the S3 commander of
4 the 6th infantry battalion in Centrale. And you are copied for information, along
5 with the G3 of the general staff, brigade company and classement, which I think may
6 be an archive or secretary of some type; is that right?

7 A. [11:53:35] I am seeing this for the first time.

8 Q. [11:53:43] If you look at the right-hand -- top right-hand corner, can you see
9 the date 4 November 2003?

10 A. [11:54:05] Yes, I can see the date. Yes, I can see the date, yes.

11 Q. [11:54:11] And on the left-hand top corner it says, in French (Interpretation)
12 "Democratic Republic of Congo Patriotic Force for the Liberation of the Congo 6th
13 battalion infantry general staff command."

14 (Speaks English) And then below that on the left-hand centre of the page are the
15 persons who are the recipients -- sorry, a little bit higher up -- the recipients of this
16 report which are the S3 commander of the 6th battalion infantry in Centrale. And
17 then for information there's you, the deputy chief of staff, and then the next person is
18 the G3 staff, general staff, and then below that there's brigade company, and under
19 that there's a term "classement". And do you know if "classement" refers to the
20 administration whereby documents of this type are archived?

21 A. [11:56:10] I cannot make that assertion because we did not have such a model.
22 We never used to send this type of message. That is why I have not understood this
23 message. Maybe you give me time to read the message to the end of the message to
24 see who signed it, because so far I have not understood the message and I don't see
25 how I can provide any answers relating to the message.

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1 Q. [11:56:40] Certainly. Take your time and read the message, which will be
2 visible on the screen. It's called a report.

3 PRESIDING JUDGE FREMR: [11:56:50] Mr Bourgon.

4 MR BOURGON: [11:56:52] Thank you, Mr President. We did not object to the
5 use of this document even though it has not been admitted in evidence previously.
6 And this document has been in the possession of the Prosecution since, I believe, 2004,
7 and it was disclosed in 2014 to the Defence. We did not object. But just to make
8 sure that, in all fairness to the witness, he can get a paper copy so he can read it and
9 have a feel for it before he answers any questions.

10 PRESIDING JUDGE FREMR: [11:57:23] Very good point. It also came to my
11 mind. So please, court usher, assist. Since the reading from the screen is not ideal.
12 Prosecution, do you have a copy or not?

13 MS SAMSON: [11:57:40] I will check in our binders. It is likely that we have a
14 printed version.

15 PRESIDING JUDGE FREMR: [11:57:56] Could we print it? I think it's okay,
16 Ms Samson. I think our court officer will print it, that, herself. And for the next
17 cases like this, I would also prefer to provide Mr Ntaganda with whole page because
18 it is easier than --

19 MS SAMSON: [11:58:16] Certainly. I do have a copy handy.

20 PRESIDING JUDGE FREMR: [11:58:35] So it has been verified by me. I think you
21 can, yes, hand it over to Mr Ntaganda.

22 MS SAMSON: [12:00:56]

23 Q. [12:00:57] Have you had a chance to read the document?

24 A. [12:01:08] Yes, but at that time I had not received this copy. In reading it, I
25 recall the attack taking place, but I did not receive a copy of this report. We didn't

1 have names for the 6th battalion at the time. We had three brigades. But we hadn't
2 put battalions in place.

3 And there's other information here which is not accurate. I know that there was a
4 battle in October in Tchomia. The FPLC had attacked PUSIC in Tchomia, and I
5 mention this because my lawyer was asking me questions. I remember that was the
6 case when -- that was the time when it arose.

7 Q. [12:02:31] Sir, I have more questions for you on the document, but are you
8 disputing the authenticity of this document, and by that I mean do you take issue
9 with the information that's contained in this document? Do you not believe that the
10 information is correct, listening to your answer?

11 A. [12:03:10] No. I am aware of the attack in Tchomia. The person who died
12 was my bodyguard, but I don't remember there being a 6th infantry battalion in
13 November 2003, and I don't know the secretary who signed this letter. There's also
14 some information in here that I don't know or that I don't recognise.
15 I also said that I didn't receive a copy of this document, but the way the battle took
16 place and other details I am also not aware of. But the battle itself I do recognise, but
17 how it went I don't know.

18 There's a 6th infantry battalion but we didn't have names for our battalions. We had
19 three brigades, and we hadn't given names to our battalions. And I do not know the
20 person who has signed here at the bottom of the page.

21 Q. [12:04:38] Now, I just have some questions about that. We've been looking at
22 logbook messages from February 2003 and December 2002 this morning, where the
23 names of the brigades are 5 brigade or 505 brigade. There were numbers assigned to
24 those brigades and battalions. Is there a reason why you think that some months
25 later you didn't have names such as 6th battalion assigned when in February of the

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1 same year you did?

2 A. [12:05:47] There are reasons for this. When the Ugandans defeated us, the
3 whole structure that we had in February 2003 was completely changed. We
4 restructured the whole thing. When Kisembo came to liberate Bunia, we set the
5 army up again. He set up three brigades, the brigade under Commander Mabo,
6 Commander Papy and India Queen. But we hadn't yet set up battalions or given
7 them names. When Artémis fought in Miala we didn't yet have a name for the
8 battalion. I recall that quite clearly. The brigades may have had names, but we did
9 not yet have names for the battalions because we were undergoing a restructuring
10 process for our forces. That's the difference between the situation in February 2003
11 and November of that year.

12 Q. [12:07:16] Now, you've stated that you --

13 A. [12:07:19] Kisembo --

14 THE INTERPRETER: [12:07:21] Correction from the Swahili booth: Kisembo
15 liberated Bunia from Mamedì.

16 MS SAMSON: [12:07:29]

17 Q. [12:07:30] You've stated that you are aware of a battle in Tchomia at the end of
18 October 2003, correct?

19 A. [12:07:53] Yes, the forces went there in -- the head of my bodyguard went there.
20 Most of them were members of my bodyguard but they didn't yet have names, my
21 bodyguard. And there the head of my bodyguard died.

22 Q. [12:08:15] And you sent the head of your bodyguard or other bodyguards to
23 this operation?

24 A. [12:08:30] No, he went to reinforce the commander who was there on site. I
25 think it was India Queen. He went to provide reinforcement to the forces that were

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1 going to fight in Tchomia, but I know very well that those forces did not have a name.

2 Q. [12:09:01] Yes, but my question is about sending him to provide
3 reinforcements. He didn't decide to go on his own, I'm sure. He's your bodyguard,
4 so you sent him, correct?

5 A. [12:09:25] Yes, I sent him.

6 Q. [12:09:27] And this report is about the circumstances of his death at the end of
7 October 2003, correct?

8 A. [12:09:47] The report sets out the circumstances under which he died. You
9 can see that I'm there to receive a report for information, but I never received that
10 copy, and I remember the date. But I do not know the author of this report. That's
11 all I can say about the comment -- about the content of this document, as I have just
12 explained to you.

13 Q. [12:10:27] And Martin Gasana, the man who died in this report, is your
14 bodyguard 61-Sierra, correct?

15 A. [12:10:58] Yes, indeed, he was 61-Sierra.

16 Q. [12:11:02] And is he Congolese Tutsi?

17 A. [12:11:16] Yes, he came from Masisi.

18 Q. [12:11:26] And when he died there were -- when he died it was a big,
19 important moment for you and your troops, wasn't it?

20 A. [12:12:06] I recall that when he died, Kisembo was in tears because he had lost
21 a brave combatant. At the funeral in Mudzipela, he spoke of how he had been in
22 Mamedi in the advance party, how he had fought there and how he had given the
23 report when Jérôme's forces had fallen into an ambush. I recall that Kisembo was
24 crying, he was in tears at the funeral. He was a brave combatant.

25 Q. [12:13:12] Now, in relation to the author of this report, it says, "Approved by

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1 Commander Sopick". You're familiar with Commander Sopick, I'm sure, aren't you?

2 A. [12:13:44] Sopick was somebody in the group using the support weapons. He
3 was not in the infantry. He could not give approval because it was not -- he was not
4 commander of the 6th battalion, as this letter implies. In the artillery, they used the
5 support weapons, and he was there. That's all I know. He was in the artillery. I
6 don't see how he could have approved this when he was part of the team responsible
7 for the heavy weapons.

8 Q. [12:14:46] And to be clear, are we speaking of Sopick Njaza?

9 A. [12:15:09] I don't know his other name. All I know is that his name was
10 Sopick. He was with me, and when I went to Mongbwalu in June 2003 I was with
11 him as well. He was using the B-10. I don't know his other name.

12 Q. [12:16:45] And looking in the document that you have before you, we have in
13 number 1 paragraph that there was an attack on 30 October 2003, and Gasana Martin,
14 under orders of the high hierarchy. And you confirm that that's correct, right?

15 PRESIDING JUDGE FREMR: [12:17:19] Mr Bourgon.

16 MR BOURGON: [12:17:19] Thank you, Mr President. The Defence objects to any
17 further use of this document based on the answers provided by the witness. He
18 does not recognise the document, does not recognise ever having received the
19 document; the authenticity of the document is put into question by the witness.
20 This is a document that was obtained by the Prosecution from the MONUC. It was
21 not obtained by anyone even closely related to the witness. The witness did say that
22 he recognises the event and he knows how the event took place. So I don't think we
23 can continue with this document, and my colleague should ask any additional
24 questions based on the witness's knowledge of the event itself. There's no use in
25 using a document the witness does not recognise as ever having seen the document.

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1 Thank you.

2 PRESIDING JUDGE FREMR: [12:18:18] Ms Samson.

3 MS SAMSON: [12:18:19] Your Honour, the Defence was able to use documents
4 that the witness had never seen before. This -- in particular, United Nations sitreps,
5 even portions that he could not confirm had never authored and was not part of
6 drafting.

7 In this case, this document indicates that the witness was copied for information,
8 although the witness states that he did not receive the document. And what I would
9 like to have the witness confirm is whether or not aspects of these letters are -- which
10 aspects are correct based on the information he knows and which aspects are not. I
11 can do that. I can take the document away from him and I'll read the document and
12 he won't have it. That's an option, if that's what counsel wishes I do, certainly.

13 PRESIDING JUDGE FREMR: [12:19:13] Objection is overruled. Please proceed.

14 MS SAMSON: [12:19:19]

15 Q. [12:19:19] Now, sir, in the first paragraph of the letter before you, can you let
16 us know whether or not the information contained in that paragraph is correct, to
17 your knowledge? I would just like to know which parts of this letter you believe are
18 incorrect. You've mentioned already the name of the battalion, and as you read the
19 first paragraph, can you please inform the Chamber whether the information in the
20 first paragraph, to your knowledge, is accurate on the event or not?

21 A. [12:20:14] There are -- there's information here saying they attacked at 6 o'clock,
22 the date, the fighting. And I know about the death of Colonel Gasana Martin and I
23 know that he was buried on 2 November, I believe. But the rest of the information,
24 I'm not sure about, the mention here of commander, of OCs and other details.
25 But what I do know is that Gasana died in Tchomia. And when we went to fight the

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1 PUSIC forces, I know about that. But as to the other details here, the OCs, I -- I'm not
2 familiar with this information and I do not know the person who has signed this
3 document. I am unaware of all the other details. What I know is that Gasana died
4 in Tchomia when we were attacking the PUSIC. All of the rest is unknown to me.

5 Q. [12:21:47] And in March 2004 were your headquarters in Lopa?

6 A. [12:22:10] In March I was in Lopa, yes. I remember that during that month,
7 that was the time where Kisembo had declared himself president of the UPC and had
8 denounced President Thomas. That was in March. That was the time that we
9 drove him out of Katoto, he -- together with his brigade.

10 Q. [12:22:47] And do you recall any moment in March 2004 when MONUC did a
11 search and seizure operation in Lopa at UPC premises and seized documents?

12 A. [12:23:23] No, I don't remember that. I know that my camera was taken in
13 the Centrale. At that time the MONUC was entering various buildings where they
14 thought there were commanders involved in the operation. But I couldn't tell you
15 exactly when MONUC came to Lopa, which month that was. I don't know. But I
16 know that in 2004, 2005 the United Nations were present in Ituri.

17 MS SAMSON: [12:24:16] Mr President, I seek to admit the document on the basis
18 of the witness's answers in relation to it. He was copied on the document, although I
19 accept for my part that he may not have seen it. There was a search and seizure
20 operation done in Lopa, which the witness has -- confirms the UPC and himself were
21 headquartered at on 14 March 2004. That is from -- we -- the Prosecution received
22 the document from the MONUC in April 2004, from that search and seizure
23 operation.

24 And the event itself, which is the attack in Tchomia and the death of Gasana Martin,
25 the witness has confirmed. I note that there are details about what goods were on his

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1 body. The witness may not have information about that, but there is sufficient
2 information here, in my submission, to admit it.

3 And that's the application being made at this time. Thank you.

4 PRESIDING JUDGE FREMR: [12:25:29] One question: Why you did not use this
5 document during the Prosecution case?

6 MS SAMSON: [12:25:39] It may be an oversight, Mr President. I have to be clear
7 that I -- I will have to say inadvertent oversight on that one, your Honour, and
8 recognise that that is an application that we're making at this time.

9 PRESIDING JUDGE FREMR: [12:25:58] Thank you.
10 Defence, your position?

11 MR BOURGON: [12:26:02] Thank you, Mr President. Before I -- I'd like to have
12 information because my colleague put questions to the witness suddenly about
13 March 2004, and March 2004 is not mentioned anywhere on this document. So I
14 think I have the answer because my colleague just stated that she would have
15 obtained this document from the MONUC, from the search operation in Lopa in 2004,
16 but we have no information to that -- in that respect.

17 The information that we have is that the document was obtained from the
18 UN MONUC on 27 August 2004, from UN MONUC to William Wiley. That's what
19 we have for information. We have no information about any search operation
20 conducted in April 2004 and we have no information which documents would have
21 been given to the Prosecution by the MONUC further to a search operation in 2004.
22 So that's the, I guess, the first -- the first issue.

23 The second issue is, of course, even before we look at the prejudice, we have to look at
24 the probative value of a document. Probative value includes, amongst other things,
25 the reliability of a document: Is this document reliable, whereas there is no one to

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1 recognise the signature?

2 My colleague stated the name Sopick. The witness knows someone named Sopick,
3 but does not recognise that Sopick had any role as what is attributed to Sopick on this
4 document. The witness says that -- my colleague says that the witness would have
5 received -- at least he's copied on the document, but she acknowledges and accepts
6 that the witness never saw the document. This is what she just mentioned.

7 If we look at, in terms of the relevance and the probative, the weight that can be
8 attributed to this document, what the witness knows about Tchomia he said during
9 his examination-in-chief and he is repeating this here. His knowledge of the death of
10 Gasana, he has mentioned in-chief and he has mentioned it again.

11 So now we get to the issue of prejudice. The Prosecution has had this document
12 since 2004, decided not to use it, by oversight. If we are going to admit any
13 document during cross-examination, there has to be a valid reason. I'm not even
14 sure what my colleague wants to prove with this document. So the probative value
15 is so little as compared to the prejudice of using a document that the witness never
16 received and to try and take any information in here and to match this with the
17 witness.

18 The Chamber has the answers of the witness. The Chamber has the reaction of the
19 witness to the document. It will not assist and it will not be in the interests of justice
20 to add this document on the record.

21 That concludes my observation, Mr President. Thank you.

22 PRESIDING JUDGE FREMR: [12:30:03] Thank you, Mr Bourgon.

23 Ms Samson, do you want to add anything?

24 MS SAMSON: [12:30:09] There's one additional submission I could make, but it
25 would have to be done in private session, your Honour.

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- 1 PRESIDING JUDGE FREMR: [12:30:16] All right then.
- 2 Court officer, let's move into private session.
- 3 (Private session at 12.30 p.m.)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 (Redacted)
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- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Open session at 12.33 p.m.)

7 THE COURT OFFICER: [12:33:08] We are back in open session, Mr President.

8 PRESIDING JUDGE FREMR: [12:33:17] Thank you, court officer.

9 Ms Samson, please proceed.

10 MS SAMSON: [12:33:21] Thank you.

11 Q. [12:33:23] Now, sir, I wanted to move to a new topic in relation to desertions.

12 You testified in your examination-in-chief with your counsel that you were not aware
13 of desertions in Mandro amongst the recruits; do you recall that?

14 A. [12:34:11] Are you asking me a question, or are you asking me to confirm what
15 I had testified to previously? I don't understand what you want me to do.

16 Q. [12:34:23] Yes, I would like you to confirm that you testified that you were not
17 aware of desertions in Mandro amongst the recruits, correct?

18 A. [12:34:49] Could you please give me the reference so that I can provide an
19 explanation in relation to the context in which I may have made such a statement?

20 Q. [12:35:04] Yes. In transcript T-214, page 6, starting at line 12 -- starting at
21 line 16:

22 "Now the question was as follows: 'Mr Ntaganda, have you heard it said that
23 volunteers changed their mind at a certain time and decided that they wanted to
24 return home?'

25 Now, you answered with the following answer: 'When I was at the training centre I

1 never received such a report or such information from a person asking to return
2 home. I never received such a report, your Honour.'

3 So the Presiding Judge continued saying: 'Second question: So there were no
4 deserters, were there?'

5 And your answer was: 'Among the recruits? No.'

6 And then your counsel continues:

7 "Now my question is as follows: If there were no deserters among the recruits, did
8 some try to desert and who were prevented from doing so?"

9 And your answer was:

10 "No. I think I haven't understood the question -- or I didn't understand the question
11 well yesterday. I never heard about a case of desertion. There are cases where
12 recruits are asked to go home due to an illness and I could accept such a request, but I
13 never heard of a case of desertion at the time that I was there.

14 Question: I think you've answered my question, but my question at the start was did
15 you know of people who tried to desert and who were prevented from deserting?

16 Answer: No. No."

17 And the quote ends at page 7, line 10.

18 So, sir, I'll ask you again. You testified that you were not aware of desertions in
19 Mandro amongst the recruits, correct?

20 A. [12:37:27] Yes, that is correct. They came voluntarily, of their own volition.

21 And when they desired or if they desired to return to their homes they did so. The
22 recruits came in large numbers and no one intended to desert. So I was never aware
23 of any cases of desertion in Mandro.

24 Q. [12:38:11] Now, you had a strict policy though, didn't you, about desertion;
25 that was not something that you accepted amongst the soldiers?

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1 A. [12:38:36] Madam, now you're talking about two different things. You have
2 the recruits on one hand and then you have soldiers on the other hand. When it
3 came to soldiers it was very strict. If soldier could desert with a weapon, the
4 punishment was extremely severe, but if it came to recruits, the cases that we know
5 were only those of recruits who wanted to leave because they were -- they were
6 unwell and they were given permission to return to their homes. This is what I've
7 already testified to.

8 Q. [12:39:35] And there were -- you spoke of, also in testimony, about beatings in
9 Mandro amongst the recruits. Did beatings continue once the recruits finished their
10 training and set up at a camp such as Mandro, to your knowledge?

11 A. [12:40:18] Please jog my memory and read out to me the excerpt in which I
12 said that recruits were beaten. Would you please read out the transcript to me so
13 that I can provide explanations as to that specific entry in the transcript?

14 Q. [12:40:44] Yes. At transcript T-213, page 83, lines 8 to 13 -- actually, page 82,
15 lines -- I'll start at line 9 on page 82 and I'll continue to complete your answer. And
16 the question was -- and this had to do with recruits at Mandro.

17 "Question: Was failure to observe discipline followed by any punishment?

18 Answer: Yes, there was punishment.

19 Question. What type of punishment?

20 Answer: In an army when a recruit commits an offence, they might be asked to do
21 push ups, to rollover, or to maintain a standing position for a long time, to go fetch
22 water or to cook while the other recruits are receiving training. From time to time,
23 might even be asked to lie down on the ground and sometimes they might be flogged,
24 but not to the point of injuring them."

25 And then you were asked by the Presiding Judge at line 24:

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1 "One follow-up question, Mr Ntaganda. Do you have any knowledge or information
2 that some of the instructors would beat the recruits in order to keep discipline?"

3 And your answer was: "Your Honour, such information did not get to me. There
4 was a commander, there was the OCs and the RCM, and so when an instructor
5 violently beat up a recruit, that might have been brought to my attention. And if I
6 noticed, for example, that a recruit was wounded or injured, the commander or the CI
7 could punish the instructor concerned. But then there were more serious offences
8 and such would be reported to us.

9 When it came to small-scale punishments, these were administered at the level of the
10 training centre without such information having to be forwarded to us. So I was
11 never informed that a recruit had been beaten so severely that they could no longer
12 walk. That had never been brought to my attention.

13 So I never received such a report, but there were minor punishments that were meted
14 out here and there to those who were at fault."

15 And that's the end of the quote, page 83, line 13. So, sir, my question was in the
16 context of these punishments that I refer to as beatings and your testimony also
17 acknowledges that there were times when there were beatings which you said were
18 not so severe that the recruit could no longer walk. And my question --

19 PRESIDING JUDGE FREMR: [12:44:07] Hold on, Ms Samson.

20 Mr Bourgon.

21 MR BOURGON: [12:44:10] I believe, Mr President, the question is unfair. The
22 testimony just read does not acknowledge that recruits were, as my colleague put it to
23 the witness, "There's no acknowledgement in what was read that there were times
24 when these were beatings which you said were not so severe that the recruit could no
25 longer walk." There's no acknowledgement of that in the passage that was read, so

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1 we have the testimony. She can put the question directly on what is on the directly
2 rather to try to paraphrase and get from what is in writing what is not there.

3 PRESIDING JUDGE FREMR: [12:44:50] Ms Samson.

4 MS SAMSON: [12:44:53] Well, your Honour, I certainly don't want to be
5 misrepresenting what the witness has said. I've re-read the testimony, and then my
6 question was -- my question was in the context of these punishments, which he's
7 acknowledged took place, that I refer to as beatings. So I'm saying that's a word I
8 used. And your testimony also acknowledges that there were times when there
9 were beatings which you said were not so severe that the recruit could no longer walk.
10 If that's unfair, I can certainly rephrase.

11 PRESIDING JUDGE FREMR: [12:45:32] But I think Mr Ntaganda will make it
12 himself if such a need will arise.

13 MS SAMSON: [12:45:39] Certainly.

14 Q. [12:45:40] Now, sir, I wanted to refresh you, as you requested, on that
15 exchange where you were describing -- responding to the Presiding Judge's question
16 about whether there were beatings at the Mandro training camp. And the initial
17 question I had asked of you was in relation to the soldiers. So once the recruitment
18 had been completed or the training had been completed, were you aware of beatings
19 of soldiers in the context of discipline?

20 A. [12:46:38] As I said before, I have never heard of any case of a recruit having
21 been beaten. I mentioned cases of punishment, such as rolling over and push ups
22 and the like. The instructors would do that. And the instructors would apply this
23 based on the instructions they received in Uganda. Furthermore, the instructors
24 were people who were natives of the same community as the recruits, so they would
25 not beat them. They were providing training to young people who were natives of

1 their own villages so that subsequently they could all fight together against the APC
2 and the combatants.

3 So that is the example that I gave. I never said that the recruits were beaten. They
4 were trained. And if a recruit were to commit an offence, he will be punished with
5 having been required to do pushups and rollovers and the like.

6 So the instructors were people from the same villages, and they all knew that they
7 were going to fight the APC and the combatants together in case they came under
8 attack.

9 That is the context which I provided you with when I was talking about the types of
10 punishment that meted out to the recruits, your Honours.

11 Q. [12:48:35] Now, my question was about the soldiers who had finished training.
12 I want to make sure that you understand that that's the context. I'm now talking
13 about soldiers who had finished training. And you were aware, weren't you, that
14 there were cases of desertion at Mandro and Tchomia and other places because of
15 excessive beating or whippings?

16 A. [12:49:36] If you want to know, when we set up the FPLC in September 2002, is
17 that -- is that what you're talking about? Can you please specify the period during
18 which you say that we punished soldiers, and I will give you an explanation, a
19 case-by-case explanation and tell you that we punished this person for this offence.
20 As I've already told you in my testimony, some of them committed misdemeanors for
21 which we punished them, so I'm asking you to please give me the reference and the
22 time frame and the location at which such a thing may have happened.

23 Q. [12:50:24] By November 2002, there had been cases of desertion, hadn't there,
24 amongst the troops in Mandro and Tchomia and other places as a result of excessive
25 beatings and whippings, correct?

1 A. [12:50:57] That's impossible. Given the situation in which we were, we
2 couldn't be beating our troops to the point where they would likely desert and then
3 join the enemy. That was, that was impossible.

4 Q. [12:51:31] And you knew, didn't you, that there were executions for small
5 errors that also caused desertions in Tchomia and Mandro? Same time frame,
6 through to November 2002.

7 A. [12:52:25] I do not have that information in relation to Mandro and Tchomia
8 where soldiers are said to have been executed. What I know is that there was one
9 execution in Ndromo which was meant to serve as an example. The case was one in
10 which a soldier stole property belonging to Nande people, and we put him on the
11 firing squad so that this would serve as an example to others, namely, that the FPLC
12 had no tolerance for cases of theft and that the FPLC was intransigent when it came to
13 this.

14 Now, as to what you have just said, I really have no idea. I know nothing about it.

15 Q. [12:53:32] There were people within the general staff whose responsibilities
16 included reporting on the morale of troops, such as the G5 position?

17 A. [12:54:14] Yes. The G5 was in charge of ideology within the army. He had
18 troops under his orders at all levels, from the sector, all the way to the brigade and the
19 battalions. So they were PC and they were present in all units.

20 Q. [12:54:44] And if there were issues of desertions that could affect your
21 numbers or affect your plans, contrary to your ideology, then the G5 would report
22 that to his superiors because that was important for you to know, would you agree?

23 A. [12:55:29] Not necessarily. The P5, well, when we went to -- the G5, rather,
24 when we went to Mandro, Kisembo made available to Salumu forces to liberate that
25 region. We said that any soldier who deserted will be severely punished, even up to

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1 the point of being executed. We said that any soldier who was involved in looting,
2 pillaging and persecution of members of the population would be severely punished.
3 We were very serious about this.

4 Now, you say that the G5 was the person in charge of drafting this report. Well, this
5 message was written by the chief of general staff in which he called on all sectors to
6 stop this because deserters are a danger for members of the population.

7 Q. [12:57:02] And it's right, isn't it, that you did not want desertions because it
8 would affect your own troop morale and your own numbers and your ability to
9 deploy, and it would upset the structure that you helped set up; would you agree
10 with that?

11 A. [12:57:45] At the beginning -- by the way I don't know if your question refers
12 to soldiers or to recruits. Now, if you are talking about recruits, I can provide you
13 with some explanations. If you are talking about soldiers, I can also explain that, but
14 when you mix up the two I will not be able to answer your question.

15 Q. [12:58:06] Sir, I hope I was clear when I paused after asking you a question
16 about soldiers and confirmed that my questions relate at this time to soldiers. And
17 my question had to do with, and I'll repeat it:

18 It's right, isn't it, that you did not want desertions because it would affect your own
19 troop morale and your own troop numbers and your ability to deploy, and it would
20 upset the structure that you helped set up.

21 Would you agree that those were the reasons why you would not want desertion?

22 A. [12:59:05] For us, desertion was considered from the angle of its impact on the
23 civilian population. That -- that was our -- our angle of consideration.

24 Q. [12:59:23] So your evidence is that as the deputy chief of staff in charge --

25 A. [12:59:28] You see, it is quite natural that when a soldier defects, the strength

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1 of the army is reduced.

2 Q. [12:59:40] Now, following up on what you've just said, you accept that you
3 would not have wanted desertions because it had an affect on your own army. As
4 you've just said, the strength is reduced; that's right, isn't it?

5 A. [13:00:12] Yes, I could not agree that there be any deserters within my ranks.
6 I would not have been proud of that.

7 MS SAMSON: [13:00:25] Thank you, Mr President. I see the time.

8 PRESIDING JUDGE FREMR: [13:00:30] Yes, so we now take our 90-minute lunch
9 break and we will reconvene at half past 2.

10 THE COURT USHER: [13:00:41] All rise.

11 (Recess taken at 1.00 p.m.)

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

13 THE COURT USHER: [14:31:54] All rise.

14 Please be seated.

15 PRESIDING JUDGE FREMR: [14:32:28] Good afternoon, everybody.

16 I believe there are no changes in appearances.

17 Before we continue with next part of cross-examination of Mr Ntaganda, as regards
18 this, that time limit of four hours for testimony of Mr Ntaganda a day, I have to say
19 and probably you have already been informed that during the first two sessions he
20 testified for two hours, 32 minutes, since even to my surprise we spent almost half an
21 hour in procedural issues, objections and so on.

22 Anyway, I ask our court officer, Ms Bossette, to indicate five minutes before the end
23 of expiration of those four hours publically that we are close to this deadline in order
24 to give Ms Samson those five minutes to wrap up.

25 And we will proceed this way also during the next sessions to the end of this week.

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1 Now, Ms Samson, you have the floor.

2 Mr Bourgon.

3 MR BOURGON: [14:33:44] Thank you, Mr President. Before we begin, I'd like to
4 make an oral request to the Chamber along with an observation. Mr President, as
5 the Chamber is probably well aware, we've just received at 9 minutes after 1 today a
6 further updated list of documents the Prosecution intends with the -- to use during
7 the testimony of Mr Ntaganda. This list includes 24 documents.

8 I have a request to make in this respect. My request first is that amongst those 24
9 documents, there are three that have never been disclosed before. Though three
10 documents are entirely new, at least to the best of our knowledge, and these are -- I'm
11 not sure if this should be -- this argument should be made in the presence of
12 Mr Ntaganda or not. I'm not going to refer to any titles of documents or anything
13 like that.

14 PRESIDING JUDGE FREMR: [14:34:53] Do you see any problem in that,
15 Ms Samson?

16 MS SAMSON: [14:34:57] It may be that we will have to discuss the documents on a
17 individual basis. I'm not certain, but I do believe it's best to do it without the witness
18 being present.

19 PRESIDING JUDGE FREMR: [14:35:08] All right, then. So I would like to ask
20 guards to escort Mr Ntaganda for a short while outside of the courtroom just to solve
21 this procedural issue in his absence.

22 Thank you, Mr Ntaganda. And thank you, guards.

23 (The witness stands down)

24 PRESIDING JUDGE FREMR: [14:35:42] Mr Ntaganda has left us, so Mr Bourgon,
25 please proceed.

1 MR BOURGON: [14:35:47] Thank you, Mr President. I will make it as quickly as
2 possible. Out of the 24 documents which are indicated in the Prosecution's
3 additional list of items, there are three that have never been disclosed before that are
4 entirely new to the Defence. I'm referring to items 1498, 1500 and 1501. So these
5 are documents, not only are they not admitted but they've never been disclosed.
6 In respect of these three documents, I seek leave from the Chamber to be able, at least,
7 to give copy to Mr Ntaganda and to discuss these documents with him, and that is
8 without prejudice to any objection I would have to their use, but as a preliminary
9 measure at least to allow Mr Ntaganda to see these documents.

10 The second request, Mr President, has to do with the audiovisual items on the
11 Prosecution's list of exhibits. As the Chamber is well aware, the Prosecution
12 basically took the Defence list which went up to 800 and then added its own six or so,
13 six or 700 more documents to this list. The Prosecution took the audiovisual exhibits
14 that were on the Defence list and for some they have provided extracts, which are
15 different from the ones that we wanted to use, however for nine of them there are no
16 extracts provided, I'm referring to 276, 285, 294, 297, 303, 306, 309, 317 and 323.

17 My request in respect of these nine Defence audiovisual exhibit, the Prosecution
18 should inform the Defence whether they intend to use these exhibits, if not to remove
19 them from the list, and if yes to provide the relevant extracts so that we can prepare
20 ahead of time and avoid wasting time in arguments when they do.

21 The third request has to do with audiovisual exhibits which appear on the
22 Prosecution's part of the list, and I hereby refer to items 844, 850, 866, 869, 875, 890
23 and one last one, 1508. For these exhibits we do not have any extract, we do not
24 have any reference to translations and no reference to transcripts, so we would like,
25 Mr President, the Prosecution to provide these references so that we can prepare

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1 ahead of time for the cross-examination.

2 Lastly, Mr President, I simply say that we don't know. We did the

3 examination-in-chief of Mr Ntaganda, we did add some documents. It is a common

4 practice to have updated lists. We acknowledge this. However, in this case,

5 Prosecution has been aware of Mr Ntaganda's testimony since 12 May, the testimony

6 began on 14 June, cross-examination began on 13 July, we received the first list on

7 11 July. We're wondering to what extent and how many such lists are awaiting the

8 Defence because we went between 11 July and now we've had a number of updated

9 lists and a number of additional documents. So we'd like at some point to have

10 some kind of a cap at least so that we have a final list with which to prepare.

11 And I say this especially or in particular in light of the fact that there will be a break

12 between this week when we break and then when cross-examination resumes.

13 I would like to avoid that the next cross-examination is not a new cross-examination

14 but, of course, it is a continuation of the cross-examination which has begun and not a

15 completely new exercise. Thank you, Mr President.

16 PRESIDING JUDGE FREMR: [14:40:57] Thank you, Mr Bourgon.

17 Ms Samson, could you comment Mr Bourgon's -- reply to Mr Bourgon's submission.

18 MS SAMSON: [14:41:04] Yes, certainly. In relation to the first issue which are the

19 three documents newly disclosed, the Prosecution disclosed those documents as a

20 result of evidence given by Mr Ntaganda which we could not have anticipated, which

21 was that the FRPI did not exist in -- until 2004, notwithstanding that the -- there's an

22 agreed fact, to which the Defence has agreed, that the FRPI is signing a peace

23 agreement in March 2003. And so we have disclosed three documents that prove the

24 existence of the FRPI earlier than the testimony of the accused. So if -- should the

25 Defence wish to discuss those documents with Mr Ntaganda, certainly we have no

1 objection to that.

2 In relation to the second request which is for -- the second and the third request
3 together I can deal with, which are requests for precise references for audiovisual
4 exhibits in Defence videos and in Prosecution videos. Indeed, we do recognise that
5 we have to do that. For the Defence videos, since we have been using the same list
6 as the Defence, we, through inadvertence, have not provided those, but I will ensure
7 to do so by the end of this week to determine which of those extracts we will be using.
8 And if we are not using them, then I can submit an updated list that removes those
9 Defence videos that we will -- we do not anticipate using. And for Prosecution
10 videos, we do have those on the list because we may use them and we have not, it
11 appears, provided extracts. I will check on those seven videos and provide the
12 extracts as soon as possible tonight or tomorrow if that is amenable.

13 And on the issue of the updated list, certainly it's true there have been updates. As
14 the Defence has conceded this is not uncommon. Particularly during
15 cross-examination of all of our witnesses, we received updates during the
16 cross-examinations. With the accused, the scope of the testimony and some rather
17 unexpected evidence in relation to certain matters have meant that we have added
18 documents to the list.

19 I -- in our submission, capping the Prosecution's ability to add documents in an
20 exercise that is, to a certain extent, reactionary would not be something that we would
21 think should happen at this stage. We will certainly endeavour to keep those
22 updates to a minimum in future, but at this point it may be that there will be
23 documents that I seek to use and that regrettably I could not have anticipated in
24 advance and that may happen when we resume, notwithstanding efforts to ensure
25 that we have captured all possible materials.

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1 PRESIDING JUDGE FREMR: [14:44:50] Thank you, Ms Samson.

2 Anything else?

3 MS SAMSON: [14:44:55] The only last point that I'll make is that should the
4 Defence at any stage believe that there is a prejudice to the accused with the late
5 admission or insertion of such an item onto the list, it can at that time make an
6 application to not allow us to use it or admit it rather than a blanket cap on that
7 exercise at this time.

8 PRESIDING JUDGE FREMR: [14:45:19] So Mr Bourgon, now in my understanding,
9 in fact Ms Samson made something like commitment, in fact which I believe could
10 satisfy your concern, is it okay with you? Because I think she reacted on all three
11 parts of your request I would say in positive way.

12 MR BOURGON: [14:45:38] Indeed, Mr President. Before I made this submission
13 today, I had been in contact with the Prosecution, I did request some information
14 which were provided to me. We just thought that with the numbers it was necessary
15 to do it in open court now, but I'm certainly satisfied with the answers provided by
16 my colleague. And as long as we both act reasonably there is no reason that we
17 cannot proceed on a sound basis.

18 PRESIDING JUDGE FREMR: [14:46:06] Fine. The only what I can add that for
19 example as concerns those first three documents mentioned under point one of your
20 request, they shouldn't be used before Mr Ntaganda will have a chance to be familiar
21 with them.

22 MS SAMSON: [14:46:20] Yes, certainly, your Honour.

23 PRESIDING JUDGE FREMR: [14:46:22] So now we can ask Mr Ntaganda to be
24 brought back into the courtroom.

25 (The witness enters the courtroom)

1 PRESIDING JUDGE FREMR: I'm waiting for Mr Ntaganda to have his headphones
2 on his ears.

3 Welcome back, Mr Ntaganda, we will continue, but we are still waiting. Yes.

4 Welcome back, Mr Ntaganda. We will continue. We solved the procedural issue.

5 And now Mr Bourgon is probably coming with another issue. Please go ahead.

6 MR BOURGON: [14:47:31] It's just a very quick point, Mr President. The
7 Chamber just granted us leave about these three documents. What we would like to
8 avoid simply is that we -- once we have the excerpt that the excerpt not be played at
9 least until we have 24 hours to prepare. And I think that's a good way to avoid to
10 waste time. Thank you.

11 PRESIDING JUDGE FREMR: [14:47:46] Yes, I can confirm from the position of
12 the -- from the part of the Chamber that we will also insist on that.

13 So now, Ms Samson, you may proceed with cross-examination of Mr Ntaganda.

14 MS SAMSON: [14:47:59] Thank you, Mr President.

15 Q. [14:48:04] Mr Ntaganda before the lunch break we were discussing desertion
16 in the ranks of the FPLC and how that would be a negative event, desertions from the
17 perspective of the strength of your troops. You were receiving information from
18 various sources in relation to cases of desertion, were you not?

19 A. [14:48:45] Yes, I did get a message to that effect and that came from the 505
20 brigade in Mahagi to the effect that military had defected. It was what was called a
21 self-deployment. They had deployed. And then I sent a message saying that they
22 should find these defectors because it was important to make an example of them to
23 other soldiers.

24 Q. [14:49:43] And I --

25 A. [14:49:49] And there was a message in the logbook.

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1 Q. [14:49:52] We will look together at the messages in the logbook that came to
2 your attention with respect to desertions, but before that I would like to show you
3 another document, it's DRC-OTP-00 -- pardon me, 0109-0136, item 1313 on our list.
4 The document has several pages.

5 It may be easier for the witness to navigate with a hard copy, your Honour.

6 PRESIDING JUDGE FREMR: [14:50:50] Yes. Court usher, please assist.
7 Mr Bourgon.

8 MR BOURGON: [14:51:03] Thank you, Mr President. We do not have any
9 objection to the use of this document which has already been admitted in evidence. I
10 do point out, however, that this is a document that is likely to be subject to
11 re-examination at a later time once it is used by the Prosecution. Thank you.

12 PRESIDING JUDGE FREMR: [14:51:24] Well noted.

13 Ms Samson, you may proceed.

14 MS SAMSON: [14:51:34] Thank you.

15 Q. [14:51:41] This document, sir, on the top page, can you see it's dated
16 6 November 2002?

17 A. [14:51:53] Yes, I can see the date quite clearly.

18 Q. [14:52:10] On the left, can you see that it is written on FPLC letterhead from
19 the G5 office, on the left?

20 A. [14:52:36] Yes, I can see that, but this is the first time that I have seen this letter.

21 Q. [14:52:47] Can you see that it is written to the chief of staff FPLC, on the front
22 page just below the date, two lines below the date?

23 A. [14:53:27] I see, yes, that it is addressed to the chief of the general staff of the
24 FPLC.

25 Q. [14:53:34] Can you confirm the subject line? It states in French:

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1 (Interpretation) "Monthly Report of Bureau 5".

2 (Speaks English) Can you see that on the first page?

3 A. [14:54:06] I can see that it is marked "Bureau 5" on the left as part of the
4 heading.

5 Q. [14:54:23] And can you see that the subject is "Monthly Report of the Bureau 5"?
6 That's the subject of this document?

7 A. [14:54:45] Yes, I can see where that is written.

8 Q. [14:54:53] And if you turn to the last page, which is ending in 0142, can you
9 see that it's been signed at Bunia, 6 November 2002, by Eric Mbabazi, Commander
10 Chef G5, general staff FPLC?

11 A. [14:55:20] I can see it, but I don't know his signature. He never sent me a
12 letter. I see the name "Bambazi Eric".

13 Q. [14:55:53] You know that Eric Mbabazi held the G5 position, as you testified in
14 your evidence-in-chief, correct, at this time, November 2002?

15 A. [14:56:18] Yes, he started in this function when the FPLC was set up. He was
16 at the head of G5.

17 Q. [14:56:37] And his base was in Bunia, correct?

18 A. [14:56:58] The G5 was based in Bunia at a certain time. He himself could
19 move around to go and visit various troops in their location.

20 Q. [14:57:13] Part of his responsibilities were to review the morale of the troops
21 and the relationship between the troops and the civilian population, was it not?

22 A. [14:57:39] Yes.

23 Q. [14:57:47] And he -- the subject of this report is "Monthly Report", so it's right,
24 isn't it, that Eric Mbabazi submitted reports on a monthly basis?

25 A. [14:58:11] Unfortunately, he never sent me any reports.

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1 Q. [14:58:26] If I could ask you, please, to turn to page 0137. And it's the second
2 to last paragraph. And I will read this to you in French:

3 (Interpretation) "There are officers who discriminate amongst the soldiers. This
4 has repercussions such as desertion, movement of troops within the units, people
5 thinking certain things. Furthermore, this bad management means that the deserters
6 leave demoralised, demoralise their friends, and these last are discouraged. This
7 means that it is no longer possible to have more children in the army."

8 (Speaks English) Now, my question in relation -- my question in relation to this
9 passage is that there's a reference by the G5 to desertions, and he states that these
10 deserters demoralise their friends, discourage them, and it's hard to get more children
11 for the army. So this is one of the reasons, isn't it, as described by your G5, the FPLC,
12 why deserters were viewed negatively by the general staff, correct?

13 A. [15:01:40] I never received any reports during that time, and what is described
14 as having gone on that month, I did not know about. There were rumours within
15 our army. Even if they wrote that -- well, even though -- well, if that had happened,
16 it would have been recorded in the book. Everything that happened within the
17 army -- well, not -- nothing could be hidden; it would be mentioned in messages and
18 it was recorded in the logbook. I never received this letter from the G5, but
19 everything was happening at the battalion level or the brigade level or the sector level,
20 and we were informed of what was going on or even by the --

21 THE INTERPRETER: [15:02:48] Inaudible.

22 THE WITNESS: [15:02:53] (Interpretation) I never received written
23 correspondence about this. Such information written in this correspondence was
24 never provided to me.

25 MS SAMSON: [15:03:11]

1 Q. [15:03:13] Sir, your own testimony is that not everything that happened in the
2 FPLC was recorded by way of Manpack in your logbook; that's right, isn't it?

3 A. [15:03:45] Everything that happened in our forces, you know, the logbook is a
4 top-secret army document. Documents were sent, coded messages were sent, and
5 only the signallers received the messages. They would receive them and then
6 decode the message. So everything that happened, all these situations, were sent
7 and recorded in the logbook.

8 Q. [15:04:22] You have already testified that you would have conversations on
9 your Thuraya, and those are not recorded in the logbook, are they?

10 A. [15:04:37] Well, that's another way in which we communicated. He might tell
11 me what he had recorded in the logbook, or what was not recorded in the logbook
12 might be reported to me over the Thuraya. So we had various ways of
13 communicating. You could send a message, draft a letter. Everything was possible,
14 even over the Thuraya or over the phone. These were all possibilities.

15 Q. [15:05:19] And -- well, one possibility, which we have in front of us here, is
16 that the G5 sent a very detailed typed report about the responsibilities that he had
17 and the morale of the troops and the issues of desertion and other issues in
18 November 2002. He did it this way in writing, correct?

19 A. [15:05:47] I think that at that time we were not yet at Mongbwalu. I
20 remember we had liberated Sayo on 24 November 2002. Even -- but I never -- you
21 see, I never received these reports, ma'am.

22 Q. [15:06:31] In this report from the G5, he says, doesn't he, that desertion
23 demoralises effectively people who could be recruited to join the UPC and therefore
24 you have less chance of getting children in the army. And I'm putting to you that's
25 one of the reasons set out by your G5 why deserters were strictly disciplined in the

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1 FPLC. Do you agree with that?

2 A. [15:07:24] No. I was never given these reports. This is the first time I've
3 seen this document. And everything in this letter, I never read any such document.
4 I never received this message or this letter from the G5 within the FPLC.

5 Q. [15:07:56] And don't you think it's right that deserters could create the effect
6 that your G5 is describing here, which is having negative impact on the population of
7 children you wish to recruit for the army?

8 A. [15:08:45] I haven't understood your question. Could you kindly repeat it?

9 Q. [15:08:50] Certainly.

10 PRESIDING JUDGE FREMR: [15:08:55] Mr Bourgon.

11 MR BOURGON: [15:08:56] Mr President, I'd like to avoid an issue of
12 misunderstanding. If I just can make a suggestion. If my colleague can use the
13 content of the document but make it clear she's not referring to the content, but she's
14 referring to his knowledge, I'm sure Mr Ntaganda can answer these questions very
15 well. It's the understanding of the link with the document. But I'm sure he can
16 answer these questions very well. Something happened, the same, yesterday with
17 the link to a document. If my colleague can just use the document but telling him it's
18 not the document, I'm sure he can answer.

19 PRESIDING JUDGE FREMR: [15:09:35] Ms Samson.

20 MS SAMSON: [15:09:36] I don't understand the submission, I'm sorry. What I
21 could do is be clear that I'm speaking to the witness's sense of logic and common
22 sense that was described in the document reflects his understanding of how
23 desertions could impact his army. I thought my question did that, but if it didn't,
24 I'm certainly happy to rephrase.

25 PRESIDING JUDGE FREMR: [15:10:05] It was not objection. It was just

1 something like recommendation. It's up to you, Ms Samson.

2 MS SAMSON: [15:10:12]

3 Q. [15:10:13] Sir, what I'm asking you is, with your vast experience in the FPLC as
4 a senior -- in the senior leadership, it's right, isn't it, that desertion could have a
5 negative impact on your ability to recruit children from the population?

6 A. [15:10:45] If you say that desertion can have an impact, yes, desertion is a bad
7 thing in all armies of the world. Desertion is not a good thing. But if you say that it
8 can have an impact on the young people who would come of their own will or the
9 ones who were brought by their parents, you're saying that there would have been a
10 bad impression on those people. Well, that's true. These were young people who
11 were coming of their own free will to join up with us, and if there were cases of
12 desertion, yes, that would demoralise those people.

13 Q. [15:11:41] May I ask you, please, to turn to page 0141. It's page 6 at the top of
14 the letter. And if you're there, Mr Ntaganda, I would ask you to focus on bullet
15 point number 4 and bullet point number 6. I want to make sure you're at the right
16 page. It's page ending in 141, at the bottom of the document. And at the top of the
17 report you can see it's page 6. And on that page I would ask you to focus on the
18 fourth bullet point and the sixth bullet point, which I will read in French:

19 (Interpretation) "We asked to be told who has the right to execute because later we
20 will run short of soldiers. For small mistakes there is shooting, as is the case of
21 Tchomia, Mandro, and this is what is the subject of desertion of our men. And the
22 number of soldiers is increasing -- is decreasing more and more."

23 (Speaks English) And now the 6th bullet point:

24 (Interpretation) "Prohibit the commanders from whipping excessively which causes
25 soldiers to shift from one unit to another and sometimes they dessert once and for

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1 all."

2 (Speaks English) Now, Mr Ntaganda, these bullet points, as you can see from page
3 140, come under a heading called "suggestions".

4 Now, this document is indicating that there are shootings for small errors in Tchomia
5 and Mandro, which is causing desertion of troops and diminishing your numbers.
6 And the document is also suggesting that commanders should be prohibited from
7 excessively whipping, which can create displacement of military or even definitive
8 desertion.

9 And you were aware that these were issues causing desertion within the FPLC,
10 weren't you?

11 A. [15:15:47] I said earlier and I'll say it once again, I said that there never was
12 any executions in Mandro or Tchomia. I said that when the Salumu brigade left
13 Mandro, we kept one company, that is to say, in Mandro there was only one company.
14 In November, the men were not there at that time. The recruits went to Rwampara.
15 I never received this item of information. I've never seen this letter. I am saying
16 that when you asked me whether there had been executions in Tchomia or Mandro, I
17 said no. What you're saying and what we see written here, that seems to be what
18 your question was about, but I've never seen this before. I've never read this before.

19 Q. [15:17:06] In your testimony this morning at page 57, lines 18 to 25, I asked
20 you about this, but before you were able to see this document. And my question, I'll
21 read the exchange at line 18, page 57. My question was: "By November 2002 there
22 had been cases of desertion, hadn't there, amongst the troops in Mandro and Tchomia
23 and other places as a result of excessive beatings and whippings, correct?"
24 And your answer was, "That's impossible given to the situation in which we were, we
25 couldn't be beating the troops to the point where they would likely desert and then

1 join the enemy. That was impossible."

2 Now, sir, this document tells the Court, doesn't it, that it was not impossible for there
3 to have been excessive whipping leading to desertions in the FPLC in November 2002,
4 because that's what your G5 is recording at that very moment, and that was his job,
5 correct?

6 A. [15:18:38] That situation occurred in the army. If it happened, I would have
7 been informed. I should have been informed, but as I told you, I unfortunately
8 never received this letter and the situation never existed. And if it had existed,
9 I would have taken measures, the appropriate measures, as I did in other places.
10 You know, the measures that we took apply to the entire army. If I had known of
11 such cases, I would have done something. I would have said something. That's in
12 my testimony.

13 Q. [15:19:29] You yourself have testified about being at Mandro in connection
14 with training but also going to Mandro after September 2002 to deploy troops in
15 various places. So it's right, isn't it, that you were visiting the Mandro military camp
16 regularly at this time; that's right, isn't it?

17 A. [15:19:56] When the report was written, that was on 6 November, and it was
18 signed; I see it there, but I've never seen it before. At that time I was not in Mandro.
19 I don't know your -- which period of time you're alluding to because I said that when
20 I was in Mandro I deployed the men. When I was in other places, I deployed men.
21 And I mentioned everything one step at a time. I don't know when I said -- at what
22 point I said that I deployed men in Mandro in November. I don't remember saying
23 that in my testimony.

24 Q. [15:20:54] You attended the Mandro training camp regularly, would you agree
25 with that? In August, September, October 2002.

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1 A. [15:21:18] October, yes. We went there for the ceremony during which we
2 gave instructions to the men. That was -- they were the last men who left Mandro.
3 After that I visited Aru early in November and from there I was entrusted with the
4 mission to liberate Mongbwalu. I know what I did and at what time I did it.
5 But this letter is talking about November and I was not in Mandro. Even if I had
6 been there, as a major commander, a high-ranking commander in the army, that news
7 could not be going -- could not be circulating in our army without my taking the
8 appropriate measures to deal with the problem as we did in other cases, as is clearly
9 indicated in the logbook. Because the elements in Mandro and Tchomia were no
10 different from the troops elsewhere; the entire FPLC army had the same ideology, the
11 same command. And the chain of command was respected. I never received this
12 letter. I never received this report.

13 Q. [15:23:04] Now, Floribert Kisembo is the person who receives this report, and
14 you state that you were in Mandro in October 2002. You were based in Mandro,
15 I think, is that right, in August 2002?

16 A. [15:23:38] If Kisembo got this message, he would have reacted. I know him.
17 He was a commander who was brave and I respected him a lot. In October I was not
18 based in Mandro. I had my residence in Bunia and my bodyguards were at the
19 headquarters, the place I showed you on the map. At that time I had already moved
20 to Bunia in September. I had left Mandro by September.

21 Q. [15:24:15] You were deploying troops from Mandro in September 2002, were
22 you not?

23 A. [15:24:31] Yes, yes. I deployed the men.

24 Q. [15:24:37] And you have no information that Floribert Kisembo did not receive
25 this letter, this report, correct?

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1 A. [15:25:01] You're talking about September and this letter is signed November.
2 Those are two different things. I don't know. If he had received this letter, he
3 would have told me about it because this message has to do with the men that we
4 were leading. To say that Kisembo received this message in September when I was
5 in Mandro, I don't know when the letter was written.

6 Q. [15:25:39] I'll come back to my question. You have no information, do you,
7 that Floribert Kisembo did not receive this report?

8 A. [15:25:51] I have no information.

9 Q. [15:26:02] We spoke of the logbook messages that referred to cases of desertion.
10 So may I ask you, please, to turn to the logbook, DRC-OTP-0017-0033 at page 0208.
11 For the translation it's DRC-OTP-2102-3855 at page 4030.

12 PRESIDING JUDGE FREMR: [15:26:52] Mr Bourgon.

13 MR BOURGON: [15:26:53] Thank you, Mr President. Before we proceed with
14 this next line of questioning, I would like to address the Chamber in the absence of
15 Mr Ntaganda, please.

16 PRESIDING JUDGE FREMR: [15:27:03] All right then. So, guards, please take out
17 Mr Ntaganda, take out him from the courtroom.

18 (The witness stands down)

19 PRESIDING JUDGE FREMR: [15:27:40] Mr Bourgon, you may proceed.

20 MR BOURGON: [15:27:42] Thank you, Mr President. I have no difficulty with
21 my colleague trying to obtain information of Mr Ntaganda on the document that is in
22 evidence. However, I do have a problem when -- the information being put to the
23 witness when the Prosecution has different information in its possession.

24 In this particular case there are three issues: (Redacted)

25 (Redacted)

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1 PRESIDING JUDGE FREMR: [15:28:20] No, we are not. So you would like to
2 move there. All right.
3 Court officer, let's move into private session.
4 (Private session at 3.28 p.m.)
5 (Redacted)
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18 (Open session at 3.44 p.m.)
19 THE COURT OFFICER: [15:44:23] We're in open session.
20 PRESIDING JUDGE FREMR: [15:44:26] Thank you, court officer.
21 Ms Samson, please proceed.
22 MS SAMSON: [15:44:30][15:44:31] Thank you, Mr President.
23 Q. [15:44:34] Mr Ntaganda, before the break that we just had I had asked you,
24 please, to turn to page 208 in the logbook. And for the translation, last four digits are
25 4030. The ERN is DRC-OTP-2102-3855 at 4030, please.

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1 And, Mr Ntaganda, if you could please turn your attention to the message, the very
2 first message, on the page. It's a message that you sent on 7 December 2002 at 13.45.
3 You're sending it to the commander of the 5th battalion in Mahagi, and for
4 information you've copied Jérôme Kakwavu, the north-east sector commander.
5 I'll read out the message in French:

6 (Interpretation) "I am informing you. Stop. That I want to hear no further talk of
7 cases of desertion. Stop. Anybody caught should serve as an example for the
8 others this order to be followed." End of message.

9 (Speaks English) Now, this -- this message that you've sent to the 5th battalion in
10 Mahagi clearly expresses, doesn't it, your opposition to desertion and your orders that
11 deserters should be made to serve as an example, correct?

12 A. [15:46:55] Yes. But this is not what it says in the letter. In the letter, it says
13 that anybody who committed a small misdemeanour was shot. And this is
14 information which every time I got information sent to me, I would react in this way.
15 And I did not receive this letter.

16 Q. [15:47:25] For the moment, my questions are exclusively based on the message
17 that you see in front of you. So just focussing in on your own words, your order, to
18 the commander of the 5th brigade on 7 December 2002, you say, "I don't want to hear
19 any more stories of desertion." So you have been hearing stories of desertion from
20 this brigade prior to 7 December, correct?

21 A. [15:48:19] Yes. I wrote this message to ensure that desertions should stop
22 within our army. Particularly with regard to 505 brigade.

23 Q. [15:48:44] And you are telling the 5th battalion? Actually, in this case, it's the
24 5th battalion. Were you referring to the 5th brigade, 505 brigade?

25 A. [15:49:09] I had received information from this battalion which is why I

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1 informed the commander of the 5th brigade and that is why I also informed his sector
2 commander, Commander Jérôme.

3 Q. [15:49:36] Now, as we can see, you are telling the 5th battalion commander
4 that anyone caught who had tried to desert should serve as an example to the others,
5 and by that you're referring to a punishment, are you?

6 A. [15:50:13] Yes. I said that anybody found doing this should be severely
7 punished.

8 Q. [15:50:27] And is your evidence that deserters could be shot?

9 A. [15:50:43] Within the FPLC, no, not a single deserter was shot. There were
10 various sorts of punishments in the army. This was the middle of a rebellion. It all
11 depends on the severity of the misdemeanour or offence. We did not have only one
12 punishment, i.e. shooting. Those who were shot served -- would serve as an
13 example for FPLC, and the whole population of Ituri, saying that we would have no
14 tolerance for any offence committed by a soldier because we wanted to protect the
15 members of the civilian population and their property.

16 Q. [15:51:49] Now, I would like to look at a message dated 14 December 2002.
17 That's a message at page 54, 0054 and the translation ends in 3876.

18 Sir, it's the first message on the page. A message from the 5th battalion commander
19 to the 505 brigade commander, 14 December 2002 at 9.57. Page 0054.

20 A. [15:53:27] Yes, I'm on the page.

21 Q. [15:53:38] And I'll read part of the message in French:

22 (Interpretation) From the 12 of 13 December -- sorry, "Sitrep, 12, 13 December 2002.

23 Stop. General situation in Mahagi calm. Stop. Morale officers and men is still
24 high. Stop. Security situation. Stop. In the neighbouring areas. Stop. Enemy
25 has looted goods belonging to the civilian population. Stop. Further indication

1 that desertion is increasing within the 5th battalion. Stop. From 12 to 13
2 December 2002 a further five. Stop."
3 (Speaks English) Following the message that we just saw on 7 December, there
4 were -- from you, the 5 battalion commander is informing -- informs of desertions
5 multiplying in the 5th brigade. And while you're not directly sent this message, you
6 did receive it, didn't you, since it was in your logbook?

7 A. [15:55:55] Yes. I and know what the reasons were for these desertions and
8 I believe I mentioned it earlier. There were problems in Djugu. Those who
9 deserted were natives of Djugu. They learnt that there were combatants attacking
10 the region of Djugu and that's why they deserted. But they didn't go to their village,
11 they went to the battalion of a commander called Lyevin in Djugu. When in the
12 message Jérôme requests that the Djugu natives not be deployed in Djugu but sent to
13 commander and Mahagi, this is a proposal by Commander Jérôme, but we call this
14 self-deployment, but there's also a sort of desertion because there were some who
15 went to Lyevin to protect their brothers. They didn't go directly to the villages.
16 They went to Commander Lyevin. I am indeed entirely familiar with this situation.

17 Q. [15:57:13] Now, the context that you've provided now is not contained in the
18 logbook but you had means at your disposal to obtain additional information about
19 messages in your logbook; is that right?

20 A. [15:57:40] Yes. And that's why I said that sector Commander Jérôme had sent
21 a message in which he suggested how the deployment could take place; in other
22 words, take soldiers from Djugu to be deployed in the south or the north or where we
23 could get messages. And sometimes in other cases not. That depended according
24 to the situation. You can't always have all the information at any time. It all
25 depended what you were doing, where you were, what sort of mission you were

1 undertaking. It all depended on the individual situation.

2 Q. [15:58:28] Now, I'd like to understand better the issue. You say that there
3 was something known as self-deployment. Now, what is that?

4 A. [15:58:54] Yes. That's what I was just explaining to you, this form of
5 deployment; in other words, a soldier who leaves the place where he was deployed or
6 he leaves his battalion or the 505 brigade and then deploys himself to the 409 brigade
7 in Kilo. It's -- this is the action that I was describing using the term
8 "self-deployment".

9 Q. [15:59:36] But that is not desertion. Desertion is something different, isn't it?

10 A. [15:59:47] It is a desertion because he had written -- because he said he didn't
11 know where the soldiers had gone. They'd left Mahagi to go to another force.
12 Within the rebellion soldiers could leave one place to go and deploy in a different
13 location. If you know that there are two or three soldiers who have deserted, you
14 send a message to let people know that there are elements who have -- that there are
15 troops that have deserted and then maybe you find them in another unit. This was
16 the very start of things. We were trying to set up an army, but we didn't yet have
17 the status of a regular army which we could lead as it should be. This all happened
18 as we were in the process of setting up our army.

19 Q. [16:00:55] I'll start first with self-deployment. Certainly, Mr Ntaganda, that is
20 not something you would have encouraged or condoned or even accepted within
21 your armed force, is it?

22 A. [16:01:17] Deserting is not a good thing. Self-deployment is not encouraged
23 either. Neither one of these actions is a good thing. They both interfere with the
24 organisation of the army.

25 Q. [16:01:52] Yes. And now that you've explained self-deployment, I come back

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1 to my original question. It's not the same thing, is it, as deserting the army, which
2 means to completely leave and discharge yourself from the army without any
3 permission to do so? That's desertion, isn't it?

4 A. [16:02:26] Yes. Desertion consists of leaving an army and not coming back.
5 Yes, I agree with you.

6 Q. [16:02:38] And so when your commanders are using the term "desertion" and
7 when you refer to desertion or deserters, you're referring, are you not, to people who
8 have left the army for good without authorisation?

9 A. [16:03:01] Yes, that's what I said. I say so because when they leave, when
10 they go off, well, we didn't know where they had gone to because when they left, they
11 did not say that they were joining another force. We might have thought that they
12 had gone back home or they had gone to hide somewhere or they had gone off and
13 committed offences. The consequences of desertion are that some of them might
14 have stolen things or committed other infractions. So when they left, we thought
15 that they had deserted. It was only later that we were able to get information to the
16 effect that a particular person had gone to another force, that is why I wrote this
17 message, saying that anyone who is caught in such a case shall serve as an example to
18 the others.

19 Q. [16:04:36] Now, in relation to an earlier answer that you gave today, page 58,
20 lines 23 to page 59, line 16, you said, and I quote:

21 "We said that any soldier who deserted will be severely punished, even up to the
22 point of being executed." End quote.

23 So deserters could be executed in the FPLC, correct?

24 PRESIDING JUDGE FREMR: [16:05:22] Hold on, Mr Witness.

25 Mr Bourgon.

1 MR BOURGON: [16:05:24] Mr President, I'd like my colleague at least to bring
2 back the witness to the context in which he provided that answer. Thank you.

3 PRESIDING JUDGE FREMR: [16:05:32] Ms Samson.

4 MS SAMSON: [16:05:34] Certainly.

5 Q. At page 58 -- at page 58, line 23 my question was, and I quote:

6 "And if there were issues of desertions that could affect your numbers or affect your
7 plans, contrary to your ideology, then the G5 would report that to his superiors
8 because that was important for you to know. Would you agree?" And this was
9 before I showed you the document from the G5.

10 And you answered: "Not necessarily. The G5, when we went to Mandro, Kisembo
11 made available to Salumu forces to liberate that region. We said that any soldier
12 who deserted will be severely punished even up to the point of being executed."
13 Does that assist you with the context in which you gave that answer? Does that
14 assist you with the context in which you gave that answer?

15 A. [16:07:16] Personally, I don't remember. I think there was some confusion.

16 To say that if someone deserts that person will be executed, I don't remember.

17 I don't remember saying that. Rather, I said, speaking of the case of when we went
18 to Mandro, that was for a briefing intended for the soldiers, to tell them what they
19 could do and what they should not do. That was in October in Mandro. And Chief
20 Kahwa said that when soldiers committed offences, they would be executed, and I
21 gave the example of Kpandroma and Mongbwalu. It was to give a message to the
22 soldiers and have them understand that our ideology was to protect the population
23 and their property and that we were not in agreement with anyone
24 what -- whosoever going against our ideology, any soldier not following our ideology,
25 or contravening it. But I don't remember saying that.

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1 PRESIDING JUDGE FREMR: [16:08:57] Mr Bourgon.

2 MR BOURGON: [16:08:57] Transcript correction, Mr President. Same in English
3 and French, but the name -- the witness said at page 98, line 24, the example of, he
4 gave, and he mentioned Kpandroma and Mongbwalu. I'd like him to, if we can
5 check with the witness, if he did say Kpandroma.

6 PRESIDING JUDGE FREMR: [16:09:21] Ms Samson, please.

7 MS SAMSON: [16:09:23] Can the audio be checked, Mr President. So I can
8 continue.

9 PRESIDING JUDGE FREMR: [16:09:30] All right, then. Please proceed.

10 MS SAMSON: [16:09:35] Thank you.

11 Q. [16:09:51] Sir, you raised the Mandro video where you're addressing -- the
12 FPLC hierarchy is addressing the troops, and it's right, isn't it, that Chief Kahwa tells
13 the troops and I quote, "And any soldier who will flee during the war, you've
14 understand, right, any soldier who will dessert during the war will be immediately
15 and unavoidably killed. Isn't it?"

16 That's what Chief Kahwa told the troops in your presence, correct?

17 A. [16:10:34] Yes, he gave examples. And he said that they would be severely
18 punished up to even being executed and he said -- and you can listen to it. You can
19 listen to the video footage.

20 Q. [16:11:02] Yes. Indeed, we'll have an opportunity to do that, we will, but not
21 right this moment. Because right now I want to continue and take you to another
22 logbook message in relation to deserters, which is at page 0058 in your logbook. The
23 translation is 3880. Mr Ntaganda, it's page 0058. It's a message, the second
24 message on the logbook, dated 17 December 2002 at 13.10. It's from the north-east
25 sector commander, Jérôme Kakwavu, to the chief of general staff, and for information

1 it's the commandant en chef. Who is that?

2 A. [16:12:33] The first message, that's about Salumu brigade -- no, Manu. The
3 401st brigade was led by Manu.

4 Q. [16:13:04] I think we're -- you're not looking at the right message. I'd like you
5 to look, please, at the second message on the page. It's the one that was sent -- or
6 received at 13.10 from the north-east sector commander to the chief of general staff,
7 information commandant en chef. Do you know who that is, commandant en chef?

8 A. [16:13:39] Yes. It was President Thomas.

9 Q. [16:13:47] And in this message, which I'll read, Jérôme Kakwavu writes, I'll
10 read in French: (Interpretation) "Situation report for 16 to 17 December 2002.
11 Stop. General situation calm. Stop. Situation 5th brigade -- 5th infantry brigade
12 Mahagi. Stop. Picked up six deserters. Stop. Three Ndrele. Stop. Three
13 Kudikoka market stop. Await decision from higher levels of command. Stop.
14 Morale of officers and rank and file soldiers good. Stop. Other situations to be
15 reported. Stop. Unless barring anything out of the ordinary." End of message.
16 (Speaks English) So I think from this message it's right, isn't it, that Jérôme Kakwavu
17 is informing Kisembo, Lubanga of deserters, and you also received the message since
18 it's in your logbook, correct?

19 A. [16:15:19] Yes.

20 Q. [16:15:26] Now, if you could, I would ask you to turn now to the message at
21 page 205 in your logbook, which is a response to the last message we saw, 0205. For
22 the translation, it's 4027.

23 If you're there, Mr Ntaganda, it's the message in the middle of the page. It is dated
24 17 December 2002 at 10.45. You send the message at 10.45 to Jérôme Kakwavu, the
25 north-east sector commander. And for information you've copied the 505 brigade

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1 and the commander of the 5th battalion.

2 And what you've said is, and I'll read it in French: (Interpretation) "Reference
3 message 170943B from commander of 5th battalion. Stop. I inform you that these
4 deserters have to be put in the punishment cell and also wait for latest order. Stop."
5 (Speaks English) And so, sir, this is a message that you send in response to
6 information you're getting about these deserters, correct?

7 A. [16:17:53] Yes. I was telling you that when I heard about cases of
8 noncompliance with discipline, I did not hesitate, and that's why I asked them to be
9 placed in the cell, and that is why I asked that they -- well, I asked that they receive
10 new military training.

11 Q. [16:18:44] Sir, this message does not refer to new military training, does it?

12 A. [16:19:01] But no mention is made of the outcome. I was -- well, this is what
13 we did. This was our general practice.

14 THE INTERPRETER: [16:19:17] Interpreter correction: In the previous reply, the
15 witness mentioned a refresher, line 21, page 99 of the French realtime transcript.

16 MS SAMSON: [16:19:37]

17 Q. [16:19:37] Now, you respond or provide these orders, although you were not
18 the person who -- to whom the message was initially addressed. But I take it that
19 you could issue this type of an order because you had the authority to discipline,
20 correct?

21 A. [16:20:00] (No interpretation)

22 THE INTERPRETER: [16:20:20] Message from the interpreters: There has been a
23 problem with the relay. Could the witness please repeat his answer.

24 PRESIDING JUDGE FREMR: [16:20:28] Mr Ntaganda, there's a problem. Your
25 response was not captured completely. Could you kindly repeat it again.

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1 THE WITNESS: [16:20:43]) (Interpretation) Yes. I was telling you that when it
2 came to discipline, each person could apply discipline within the army, and as I've
3 said since the beginning, when it was a matter of applying discipline, I did not wait.
4 I immediately took measures. That's why asked Jérôme to arrest the deserters, and I
5 received a mission to monitor the situation closely within the Mahagi area.

6 MS SAMSON: [16:21:55]

7 Q. [16:21:58] You gave evidence in relation to a firing squad execution at Camp
8 Ndromo. You stated that you were supervising that firing squad operation, correct?

9 A. [16:22:25] Yes.

10 Q. [16:22:41] Floribert Kisembo and Thomas Lubanga were not present at Camp
11 Ndromo for the execution?

12 A. [16:22:58] No. I went by Floribert Kisembo's home and I was with the deputy
13 Dilangu, deputy chief of staff, and we also brought with us -- or rather, I met up in
14 the room of the young man who had stolen the items, and I was given an order to set
15 an example, make an example of him in front of the soldiers and the families whose
16 property had been stolen.

17 It was necessary for the civilian population and the soldiers to learn, and it had
18 to -- an example had to be made. And so they didn't go to that place with me. They
19 delegated this to me.

20 Q. [16:24:10] And you were the highest authority of the FPLC present at the
21 execution?

22 A. [16:24:34] Yes.

23 Q. [16:24:35] You stated in-chief that the family from which this individual had
24 taken something was Nande, correct?

25 A. [16:25:06] Yes. It belonged to the Nande. It was opposite where I was,

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- 1 about 50 metres away.
- 2 THE INTERPRETER: [16:25:20] Interpreter correction: 150 metres, corrects the
- 3 Swahili booth. The French booth adds that the family was Nande.
- 4 MS SAMSON: [16:25:41] Thank you. I understood that I have five minutes.
- 5 PRESIDING JUDGE FREMR: [16:25:44] That is exactly the point we should finish
- 6 anyway.
- 7 MS SAMSON: [16:25:47] Perhaps, Mr President, we could break here if it's
- 8 amenable to you.
- 9 PRESIDING JUDGE FREMR: [16:25:54] Yes, I think it's fine with us, with all of us.
- 10 We will break now. We will continue tomorrow, 9.30. And now -- Mr Bourgon,
- 11 please.
- 12 MR BOURGON: [16:26:02] Just one quick correction. Page 103, line 18, the name
- 13 of the person there was not captured. Mr Ntaganda said that the other chef
- 14 d'état-major adjoint, and he mentioned the name which was not correctly captured.
- 15 We can either ask him or simply listen to audio. Thank you.
- 16 PRESIDING JUDGE FREMR: [16:26:24] I think we will take our usual approach,
- 17 which means to check the audio.
- 18 So now we adjourn and we will reconvene tomorrow, 9.30.
- 19 THE COURT USHER: [16:26:40] All rise.
- 20 (The hearing ends in open session at 4.26 p.m.)