

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 Wednesday, 19 July 2017
9 (The hearing starts in open session at 9.30 a.m.)
10 THE COURT USHER: [9:30:07] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: [9:30:37] Good morning, everybody.
14 Court officer, please call the case.
15 THE COURT OFFICER: [9:30:43] 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: [9:30:59] Now appearances, please.
20 MS SAMSON: [9:31:02] Good morning, Mr President. Good morning, your
21 Honours. Appearing for the Prosecution today are Ms Dianne Luping,
22 Mr Rens van der Werf, Ms Selam Yirgou, Ms Claudine Umurungi and myself,
23 Nicole Samson.
24 PRESIDING JUDGE FREMR: [9:31:17] Thank you, Ms Samson.
25 Defence, please.

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1 MR BOURGON: [9:31:21] (Interpretation) Good morning, Mr President.

2 Representing Bosco Ntaganda, here present this morning, Julia Jan,

3 Victoria Cichalewska, Justin Kabika, David Wagen-Magnon, Isabelle Martineau and

4 myself, Stéphane Bourgon. Thank you, Mr President.

5 PRESIDING JUDGE FREMR: [9:31:47] Thank you, Mr Bourgon.

6 And Legal Representatives of Victims, please.

7 MS PELLET: [9:31:53] (Interpretation) Thank you, Mr President. The former

8 child soldiers are represented by Vony Rambolamanana and myself, Sarah Pellet,

9 from the OPCV.

10 MR SUPRUN: [9:32:10] Good morning, Mr President. Good morning,

11 your Honours. The victims of the attacks are represented by myself, Dmytro Suprun,

12 from the OPCV.

13 PRESIDING JUDGE FREMR: [9:32:22] Thank you, Ms Pellet. Thank you,

14 Mr Suprun.

15 I believe there are no pending issues in front of us. So we can directly continue with

16 next part of cross-examination of Mr Ntaganda conducted by the Prosecution.

17 Ms Samson, you have the floor.

18 MS SAMSON: [9:32:42] Thank you, Mr President.

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

20 (The witness speaks Swahili)

21 QUESTIONED BY MS SAMSON: (Continuing)

22 Q. [9:32:52] Good morning, Mr Ntaganda.

23 A. [9:32:54] Good morning.

24 Q. [9:32:59] I will continue with my questions today in relation to your authority

25 in the FPLC. Now, it's right, isn't it, that soldiers could not refuse to take part in

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1 operations?

2 A. [9:33:33] Soldiers could not refuse to participate in operations for reasons of
3 discipline.

4 Q. [9:33:46] I would like to show you a message in the logbook. Is the logbook
5 still with you? Do you have the logbook with you?

6 PRESIDING JUDGE FREMR: [9:34:00] From the reaction of the Defence, I see
7 probably it's not the case. So let's give a minute to Defence. And, court usher,
8 please assist to provide Mr Ntaganda with this material.

9 MS SAMSON: [9:35:07] One moment, Mr President. I have the wrong reference.

10 PRESIDING JUDGE FREMR: [9:35:13] Take your time.

11 MS SAMSON: [9:35:35] Thank you for the indulgence.

12 Q. [9:35:38] Mr Ntaganda, if you could turn to the logbook, please. It's at
13 page 0176 and for the translation it's DRC-OTP-2102-3855 at page 3998.

14 The message I would like you to focus on is the third message on the page. It's dated
15 18 February 2003, a message you sent at 16.44 that day. You sent the message to the
16 commander of the 409th brigade. Is that Salumu Mulenda?

17 A. [9:37:31] Yes, it was Salumu Mulenda.

18 Q. [9:37:36] And you have copied for information the sector commander
19 south-east sector. Who was that at the time?

20 A. [9:37:51] At that point it was part of the sector of Commander Jérôme
21 south-east, administratively speaking. But on the operational level, it
22 was -- south-east was Tiger One. That's whom I sent the message to, but he was
23 really under Tiger One, the commander of south-east.

24 Q. [9:38:30] And I'll read the message in French:

25 (Interpretation) "You are informed according to -- following the message according

1 to which there is a commander who has refused to advance. Stop. Advance. Stop.

2 This has never happened in the army. Stop. There is no commander who has the
3 power to refuse an order coming from above." (Speaks English) End of message.

4 You were not pleased, were you, that the commander had refused to advance?

5 A. [9:39:21] That's not what it says here in this message. This message is clear.

6 I saw this message and I said that in my entire army career, I had never heard tell of a
7 commander who has refused to obey an order from above. Because there was a
8 commander there at Salumu. It was a commander who sent the message. It was a
9 stupid message.

10 Tiger One opposed Salumu and I arrested him. I was astonished and I was
11 expressing here the fact that I had never heard of such a case in the army. And I
12 thought first of all that he was going to tell us he had arrested him, but he was
13 behaving as though there had just been a simple complaint. And I just simply
14 wanted to express in this message that I'd never in my entire career heard of a
15 commander disputing an order from above. This was a general message saying that
16 such a thing cannot exist in the army. And since my earliest days in the army until
17 that date, I have never come across such a case, a commander refusing to obey an
18 order from above. So that was really what was in my mind when I wrote this
19 message.

20 Q. [9:40:52] And judging from your reaction to this message even now, it's right,
21 isn't it, that you were not pleased to hear that there was someone who refused to
22 advance following orders from above?

23 A. [9:41:10] That would never be something I would be happy with as a
24 commander. I personally have never contested an order coming from my direct
25 superior.

1 Q. [9:41:30] And you stated that - and this is page 5, line 17 in the French - that
2 this was a general message that you sent. But in fact this is not a general message, is
3 it? You're sending a message to Salumu about a specific individual who had refused
4 to advance. So it's a very specific case you're speaking about, isn't it?

5 A. [9:42:17] Yes, of course. I was not going to send it a different person, only to
6 the person who was the subject of the complaint. But if you read the content of my
7 message, you will understand that I said I had never in an army heard talk of such an
8 event. In all the armies I had worked, I had never come across the case of a
9 commander refusing to execute an order coming from his hierarchical superior.
10 I was talking about the fact that I had never come across such a case in the army.

11 Q. [9:43:05] The commander who refused to advance was Commander Américain;
12 is that right?

13 A. [9:43:19] Yes. His name is not in the message. He's part of Salumu's group.
14 I didn't mention his name. That's why I decided to send a general message, because
15 Salumu said it was Commander Américain who had refused to carry out the order.

16 Q. [9:43:45] And the message in which Salumu advised you, informed you that
17 Américain refused to advance is the message at page 0168 in the logbook,
18 translation 3990, the second message on the page, 18 February 2003 at 9.10. It's a
19 message from commander 409 brigade, Salumu Mulenda, to the south-east
20 operational sector commander, who you said is Tiger One, and you're copied for
21 information. And the message reads in French:

22 (Interpretation) "Commander Américain has refused to leave because he is afraid of
23 the way that they took our weapon in Lipri." End of message.

24 (Speaks English) So that is the specific message that you received in relation to the
25 conduct of a soldier, commander, and a few hours later in the afternoon on the same

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1 day was the message we just saw where you specifically ordered Salumu to ensure
2 that Commander Américain advanced because nobody had the power to refuse an
3 order from above, correct?

4 A. [9:46:16] I will repeat what I said earlier and that was that I said that I have
5 never heard talk within the army of this. I'm talking about all the armies in the
6 world, particularly those in which I have served. I was at the lower level right up to
7 the deputy chief of staff and I have never come across a commander refusing to carry
8 out orders of his superior. I'm not saying anything which is contrary to what is here.
9 I'm just saying to you again what I said earlier.

10 Q. [9:47:01] Now, as you've testified, following orders, advancing operations, not
11 refusing to participate was, as you've said, something that was common to the groups
12 that you were part of. And the Prosecution has information that you personally
13 executed a soldier who refused to participate in the operation in Komanda that you've
14 spoken to us about. The information that we have --

15 PRESIDING JUDGE FREMR: [9:47:48] Hold on, Ms Samson.

16 Mr Bourgon.

17 MR BOURGON: [9:47:52] Thank you, Mr President. My colleague just
18 mentioned that they have information according to which a soldier was executed by
19 Mr Ntaganda in Komanda. Before we go any further, I'd like to know what
20 information is because it should have been disclosed. And if it was, I'd like to know
21 where it is disclosed. It might exist, I'm not saying it doesn't, but I'd like to know
22 where.

23 PRESIDING JUDGE FREMR: [9:48:22] Ms Samson.

24 MS SAMSON: [9:48:22] The item that was I was moving to, in fact, in my
25 examination, is one that I have on the list of items that I intend to put to the witness.

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1 And perhaps prior to making an objection, counsel could wait until I have formulated
2 the questions in relation to a topic. It's premature to, in my submission, cut
3 cross-examination before any inappropriate questioning has been put.

4 PRESIDING JUDGE FREMR: [9:48:56] Yes, Mr Bourgon, unless there is something
5 really urgent which requires immediate intervention, I would also prefer next time if
6 you could leave Ms Samson to finish, to complete her question and then, if necessary,
7 to come with objection.

8 Now, Ms Samson -- Mr Bourgon.

9 MR BOURGON: [9:49:20] I respectfully disagree, Mr President. If the
10 Prosecution is going to say something to Mr Ntaganda, we have information that, she
11 must put that information before putting the question. Thank you.

12 PRESIDING JUDGE FREMR: [9:49:35] Ms Samson.

13 MS SAMSON: [9:49:36] Your Honour, respectfully, I disagree. Both parties have
14 an obligation to have a good faith basis for asking any questions. A good faith basis,
15 according, even to the jurisprudence of this Court, does not in every case even require
16 disclosure of the information, even when the Prosecution is cross-examining a witness.
17 And I have a good faith basis. I, in fairness to this witness, because of the nature of
18 the allegation, intend to show him the document in which this information is put but,
19 in my submission, that is not required in every case for the reasons that I have just
20 indicated.

21 PRESIDING JUDGE FREMR: [9:50:20] Mr Bourgon, please briefly.

22 MR BOURGON: [9:50:25] Mr President, when it comes to the responsibility of the
23 accused a good faith basis is not sufficient. If it is general information that will be
24 put to the witness, good faith basis is sufficient. But if I say to the accused you killed
25 someone, the Prosecution must put forward what information it has before putting a

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1 question to the witness. And that information must have been disclosed to the
2 Defence prior to the question being put to the witness.

3 PRESIDING JUDGE FREMR: [9:51:02] Yes. Give me a second. I will consult my
4 colleagues.

5 (Trial Chamber confers)

6 PRESIDING JUDGE FREMR: [9:52:36] So after silent deliberation in the courtroom,
7 the Chamber's guidance, because it was not sure whether this was objection or not,
8 but anyway our guidance is that, and I believe that we have already faced this
9 situation several times in the past, that if any party would like to confront witness,
10 any witness with some information and has concrete source of such information, they
11 shouldn't start at some general inquiry but should directly start with reference to this
12 concrete source.

13 So it was not clear from your submission, Ms Samson whether you had such an
14 intention but regardless of that, we would really want you to start with reference to
15 concrete source of such information if you have it.

16 MS SAMSON: [9:53:38] Yes. Thank you, Mr President. The item I would like to
17 show at this moment is DRC-OTP-0208-0284. It is item 743 on the list.

18 (Counsel confers)

19 MS SAMSON: [9:54:10] With your leave, Mr President, we request that the
20 document not be displayed publicly although the discussion may be held in public
21 session.

22 PRESIDING JUDGE FREMR: [9:54:23] Sorry, you are saying that may be shown
23 publicly and we can remain in public session?

24 MS SAMSON: [9:54:29] The document, with your leave, in private -- could remain
25 confidential while we remain in public session.

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1 PRESIDING JUDGE FREMR: [9:54:38] Now it's clear.

2 MS SAMSON: [9:54:40] Sorry, apologies if I was not clear.

3 PRESIDING JUDGE FREMR: [9:54:43] Now it's clear.

4 (Counsel confers)

5 MS SAMSON: [9:55:10]

6 Q. [9:55:23] Now, the information that the Prosecution obtained relates to an
7 interview conducted by the United Nations with individuals who had been former
8 child soldiers in the UPC/FPLC. And one of these children cited a case of an Alur
9 from Mahagi who hid rather than to take part in the operation in Komanda. "When
10 Bosco returned from the operations," and this I'm suggesting is you, Mr Ntaganda,
11 "he was asked why he did not go with the others. He responded that he didn't know.
12 Bosco coldly shot him in the head. This event was -- had caused a lot of waves
13 within the UPC, but Bosco was no stranger to these types of actions. Five other
14 soldiers were executed in the same way, including one who refused to advance to the
15 front." And the child states that Thomas Lubanga told Bosco had allegedly said to
16 Bosco to "Whip him, but not to kill him."

17 PRESIDING JUDGE FREMR: [9:57:24] Mr Bourgon.

18 MR BOURGON: [9:57:25] If I can have just a reference in this -- of course there's a
19 multi-page document with a number of people who were interviewed. And we
20 don't have the names, we don't know who they are, but I'd like to have at least a page
21 reference. Thank you.

22 PRESIDING JUDGE FREMR: [9:57:44] Ms Samson.

23 MS SAMSON: [9:57:45] The page reference is 0290. And I would ask the
24 Chamber to ask counsel not to comment in anyway on the document during the
25 course of my cross-examination while the witness is on the stand.

1 PRESIDING JUDGE FREMR: [9:58:00] Mr Bourgon, please follow that, not to
2 comment. Yes, I think it's a proper request not to comment on document during
3 Mr Ntaganda's presence.

4 MS SAMSON: [9:58:17]

5 Q. [9:58:17] Mr Ntaganda, that's the information that the Prosecution has that you
6 shot an individual who was 24 years old. So the information we obtained was from
7 someone younger but about an event of you killing an Alur from Mahagi because he
8 refused to participate in the operation of Komanda. Now, is that true or is that not
9 true?

10 A. [9:59:04] Madam Prosecutor, I would like you to explain which conflict, when,
11 where, what time this took place. I have told you of all the battles in which I
12 participated, everywhere I commanded the battle. Could you explain this to me? I
13 have never done that during my entire time in the FPLC. Could you please give me
14 more details, give me the time, the date, so that I can explain my position to the
15 Judges. Thank you.

16 Q. [9:59:47] The information that I provided to you relates to an operation in
17 Komanda. You have told the Chamber several times that you participated in an
18 operation in Komanda. Did you or did you not kill a soldier who refused to
19 participate in the operation? Surely that's something that you know right now.

20 A. [10:00:24] Your Honours, I led a single battle in that place at the end of the
21 month when they, APC drove out Noiret. I led a company, I've already spoken
22 about that. When I conducted a counter-attack, that is when I set on fire the various
23 items that the soldiers had stolen. That is the only time that I conducted a
24 counter-offensive with the FPLC. The attack was conducted as planned. There
25 were no challenges. All the soldiers had their commanders. I coordinated. The

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1 first road was taken by Américain, the second by Asimwe and the third by
2 (Overlapping speakers).

3 PRESIDING JUDGE FREMR: [10:01:28] Mr Ntaganda, I have to interrupt you.
4 I think the question was simple and clear and your answer concerns different issues.
5 So the question was, killed you soldier, and so on, so, who refused to take part in
6 Komanda operation. So please focus on that with your response.

7 THE WITNESS: [10:01:53] (Interpretation) Your Honours, I never executed a
8 soldier from the FPLC. I never killed a soldier who allegedly refused to go to the
9 front amongst the FPLC soldiers.

10 PRESIDING JUDGE FREMR: [10:02:18] Thank you.
11 Mr Bourgon.

12 MR BOURGON: [10:02:19] Thank you, Mr President. What the Chamber just
13 mentioned to the witness is that he was not answering the question, but he did begin
14 by responding to the question at page 12 and that was on lines 5, "I would like to
15 explain you which conflict" but then he said I have never done that during my entire
16 time in the FPLC." The answer was given. Then he provided an explanation.
17 Thank you.

18 PRESIDING JUDGE FREMR: [10:02:50] Mr Bourgon, please let it up to the
19 Chamber to evaluate whether Mr Witness is responding directly or not and whether
20 his response is too general. It's up to us even to keep even this part of proceeding
21 efficient so if any witness, regardless whether it's Mr Ntaganda or another one, have a
22 tendency to provide too broad and too general narrative it's up to me to direct him.
23 Ms Samson, please proceed.

24 MS SAMSON: [10:03:24]

25 Q. [10:03:24] This interview, with the boy who gave the information, took place

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1 with the United Nations on 26 March 2003, as you can see from the document. Do
2 you have any knowledge as to why an individual meeting with the United Nations
3 would give evidence or information about you killing somebody in this manner when
4 you claim it didn't take place? Can you explain why that might be?

5 PRESIDING JUDGE FREMR: [10:04:14] Hold on, Mr Witness.
6 Mr Bourgon.

7 MR BOURGON: [10:04:17] It's an entirely hypothetical question. Mr Ntaganda
8 said what he, his position is regarding the incident. Whether he -- how would he
9 know why someone would have said this about him?

10 PRESIDING JUDGE FREMR: [10:04:38] Objection sustained.
11 Ms Samson, please move on.

12 MS SAMSON: [10:04:44]

13 Q. [10:04:47] I would ask you now to turn to a different part of the logbook. It's
14 at page 0194 in the main logbook. And in the translation it's translation page 4016.

15 PRESIDING JUDGE FREMR: [10:05:26] Mr Bourgon.

16 MR BOURGON: [10:05:29] Mr President, I apologise to returning to the last
17 document, but it is important because when my colleague put the question to the
18 witness she mentioned --

19 PRESIDING JUDGE FREMR: [10:05:47] Sorry to interrupt you, do you think that
20 your comment would be possibly made in the presence of Mr Ntaganda?

21 MR BOURGON: [10:05:57] Well, I think so, Mr President because he has the
22 document in front of him, so the -- it's just that there was a detail that was not
23 mentioned and that should have been mentioned.

24 MS SAMSON: [10:06:06] Mr President, if we're going to be describing details not
25 mentioned, should have been mentioned, perhaps it should be done without the

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1 witness being here.

2 PRESIDING JUDGE FREMR: [10:06:22] Alright. Then, yes, I would also rather to
3 make it safe, so guards could you kindly take Mr Ntaganda for a while away from the
4 courtroom.

5 (The witness stands down)

6 PRESIDING JUDGE FREMR: [10:06:55] Mr Ntaganda left the courtroom, so now
7 Mr Bourgon you may proceed.

8 MR BOURGON: [10:07:03] Thank you, Mr President. When the -- my colleague
9 put the question to the witness, she said she had information from this gentleman and
10 she gave a date of the interview, then she said information and she mentions Bosco,
11 that's you, of course, and then she went on.

12 Well, the document here that we have it says:

13 (Interpretation) "With Commander Bosco" (Speaks English) "(Rwandais)", with a
14 capital R.

15 There is an individual called Rwandais. We don't even know if this person was
16 talking about Bosco Ntaganda. That is critical information that must be put to the
17 witness to be fair to him. He can explain if Rwandais is him or not.

18 Thank you, Mr President.

19 PRESIDING JUDGE FREMR: [10:08:00] Ms Samson.

20 MS SAMSON: [10:08:00] Mr President, the counsel can re-examine on any portion
21 of this document that he feels is necessary to re-examine on. The document above
22 said "Commander Bosco (Rwandais)", which could also mean "Rwandan" which is
23 the -- which is the translation, which the witness already said many people felt he was
24 as he was born in Rwanda.

25 So the information I have is that, and the good faith basis is that this

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1 Commander Bosco is indeed the witness who is testifying today. And I -- I am
2 checking now but I believe I said "I suggest this is you" to Mr Ntaganda. And in any
3 event, he's denied the event here. And so whether it's because he's not the one who
4 may have killed this person or whether it's for some other reason, he claims that this
5 didn't take place and that this information is untrue.

6 PRESIDING JUDGE FREMR: [10:09:02] Yes. In fact, I don't see any sign, proved
7 sign of bad faith on your part, Ms Samson, but next time if something like in this case
8 which was the identity is doubtful and we have chance to be more concrete, like in
9 this case, to add this, another word "Rwandais" it probably would be better because it
10 would be easier for the witness to say yes, it's me or yeah, look Rwandais it's not me.
11 So as I, just to repeat, I don't see any bad faith but in this case I believe that
12 Mr Bourgon was right.

13 Now, please bring -- Mr Bourgon, anything else?

14 MR BOURGON: [10:09:50] I just want to say that my colleague did indeed say I
15 suggest to you. In French it read different, it was that you (Speaks French), but in
16 English she did say I suggest to you.

17 PRESIDING JUDGE FREMR: [10:10:02] I heard that, that was why I even said that
18 I don't see any sign of bad faith on the part of Prosecution.

19 Now, guards, please bring Mr Ntaganda back into the courtroom.

20 (The witness enters the courtroom)

21 PRESIDING JUDGE FREMR: [10:10:56] So I believe Mr Ntaganda is ready again,
22 so, Ms Samson, please proceed.

23 MS SAMSON: [10:11:03] Thank you, Mr President.

24 Q. [10:11:05] Mr Ntaganda, I'm going to read a bit more from that same notes of
25 interview in which a child told the United Nations that you had shot -- or, that a

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1 person named Commander Bosco had shot and killed a soldier for not going to the
2 operation. And I'll give you more information above the section that I had read
3 previously so that you can provide any additional information you wish to provide
4 about it. And I quote:

5 (Interpretation) "After two or three days in Aru 300 of them were taken to Mandro
6 where they met up with people who had been recruited in Kasenyi. There were
7 about 600 of them in the camp trained by Commander Abelanga who was from
8 Kisangani. They were trained in how to fire weapons. The smaller or the younger
9 ones were directed to positions such as escort. He stayed respectively with
10 Commander Bosco (Rwandan) Commander Mbape, a Gegere person from Tchai, and
11 Commander Tchaligonza who was a Hema person. In Mandro there were about 80
12 children. The youngest one was 11 years old. They had very little to eat. And
13 groups were regularly sent outside to steal food. There were many young girls aged
14 15 to 18 who remained off to the side with the commanders. He didn't fight. He
15 remained an escort with the military police after working with Bosco, 'because he
16 killed people.'"

17 (Speaks English) And then the individual goes on to describe the incident in which he
18 alleges that Bosco shot the Alur soldier for refusing to advance. We've spoken and
19 you've spoken, have you not, about Commander Mbape, you know who that is,
20 I believe?

21 A. [10:14:37] I will try to reply because you're talking about Mandro, Komanda --

22 Q. [10:14:47] At this time I'm asking you if you know Commander Mbape?
23 You've mentioned him.

24 A. [10:15:00] Yes, I know him. He was CI in Rwampara, but he wasn't in
25 Mandro.

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1 Q. [10:15:12] And is he Gegere?

2 A. [10:15:18] Yes. He is a Hema from the north, so thus he's a Gegere.

3 Q. [10:15:28] And this individual mentioned also that Commander -- mentioned a
4 Commander Abelanga, you have mentioned him in your testimony, correct?

5 A. [10:15:57] Yes, but Abelanga is not from Kisangani, he is a Lulu (phon) from
6 Aru, but in your text here mention is made of a person from -- a person from
7 Kisangani.

8 Q. [10:16:25] And which ethnicity did you ascribe to Abelanga? You've
9 mentioned it just now but also previously.

10 A. [10:16:46] He is an Alur from Mahagi. I made a mistake when I said he was
11 from Aru. He is from Mahagi and he is from the Alur ethnic group.

12 Q. [10:17:03] Now, this individual also mentioned a Commander Bosco, in
13 parentheses, Rwandan, and you've stated here that many people associated you as a
14 Rwandan, correct?

15 A. [10:17:31] Yes, that is what people thought. They thought that I was a
16 Rwandan from Rwanda, but I am a Rwanda-speaking person from --

17 THE INTERPRETER: [10:17:49] Inaudible.

18 PRESIDING JUDGE FREMR: [10:17:52] Mr Ntaganda, the last -- probably just last
19 word of your response was not captured by the interpreters. At the moment we
20 have, "They thought that I was a Rwandan from Rwanda, but I am a
21 Rwanda-speaking person from --" and then is something missing. Could you please
22 add it?

23 THE WITNESS: [10:18:20] (Interpretation) We, the Rwandans from Congo, we
24 are referred to as the Rwandophone, Rwandan-speaking people.

25 PRESIDING JUDGE FREMR: [10:18:36] Thank you.

- 1 MS SAMSON: [10:18:37]
- 2 Q. [10:18:37] You were born in Rwanda, were you not?
- 3 A. [10:18:44] Yes, I was born in Rwanda.
- 4 Q. [10:18:51] Abelanga was an instructor of recruits, was he not?
- 5 A. [10:19:12] He was one of the OCs of the regiment.
- 6 Q. [10:19:24] And he was in Mandro, correct?
- 7 A. [10:19:33] Yes. We -- I would say we started together in Mandro.
- 8 Q. [10:19:47] And this individual has stated that the youngest of the children with
- 9 him in Mandro were -- was 11 years old. Is that correct?
- 10 A. [10:20:13] We never trained 11-year-old people in Mandro. That never
- 11 happened.
- 12 Q. [10:20:22] And he also states that many young girls from 15 to 18 years old
- 13 stayed apart with the commanders. Do you recall that?
- 14 A. [10:20:55] I gave testimony. I said where the girls under 18 were. In Saikpa,
- 15 they were in Saikpa, not in Mandro. They had their own place to spend the night.
- 16 And it was the PC5 and the S2 who took care of them while they were undergoing
- 17 their training in Saikpa.
- 18 Q. [10:21:32] So are you agreeing that the girls were apart with the commanders?
- 19 It sounds like that's what you're saying.
- 20 A. [10:21:54] I don't understand what you mean. That these girls were with
- 21 their commanders and that they had become their wives or because those
- 22 commanders were supposed to take care of -- or were supposed to protect them,
- 23 rather, as I just said?
- 24 Q. [10:22:16] Well, for now at this point in the examination, I'm solely reading
- 25 what is contained in this document, and this individual reported to the United

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1 Nations on 26 March 2003 that at Mandro there were young girls aged 15 to 18 who
2 stayed apart with the commanders. So there's no suggestion in this document about
3 any type of wives situation, but you've stated at page 20, line 17 to 21 that, quote:
4 "I said where the girls under 18 were. In Saikpa, they were in Saikpa, not in Mandro.
5 They had their own place to spend the night. And it was PC5 and the S2 who took
6 care of them while they were undergoing their training in Saikpa."

7 So it sounds firstly as though you agree that the girls were apart and that they were
8 with commanders PC5 and S2; is that right?

9 PRESIDING JUDGE FREMR: [10:23:43] Hold on, Mr Witness.

10 Mr Bourgon.

11 MR BOURGON: [10:23:47] Thank you, Mr President. The witness provided an
12 answer which I'm saying that -- I'm told that there are words in the transcript that he
13 did not mention when he provided this answer, and this is not something that -- this
14 is something that is material, and that was at page 20, lines 17 to 21. And I don't
15 know how to check this, but it needs to be checked right now, the first two lines, if my
16 colleague can take that with the witness. I'm told that there are words that were not
17 mentioned there by the witness.

18 PRESIDING JUDGE FREMR: [10:24:28] Ms Samson.

19 MS SAMSON: [10:24:30] Mr President, may I ask your indulgence for one
20 moment?

21 PRESIDING JUDGE FREMR: [10:24:43] For sure.

22 (Counsel confers)

23 MS SAMSON: [10:24:50] The two transcripts have the same language in them and
24 it will be important to know what was said in relation to this.

25 PRESIDING JUDGE FREMR: [10:25:12] Now I don't understand. So you are

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1 opposing Mr Bourgon's request or ...?

2 MS SAMSON: [10:25:19] No, I think it's -- it will be very important to know what
3 the witness said. Both transcripts capture the same. There's no difference. Of
4 course, we don't understand the language coming -- the witness is speaking.

5 PRESIDING JUDGE FREMR: [10:25:33] The one possibility is to ask the audio to be
6 checked. The other is that you can repeat the question or to focus your question.

7 MS SAMSON: [10:25:43] Mr President, would it be possible to have the audio
8 checked? I could continue with questions not dealing with this issue, but it would
9 be of use to have the audio checked fairly immediately.

10 PRESIDING JUDGE FREMR: [10:26:00] All right then.
11 Please proceed.

12 MS SAMSON: [10:26:08]

13 Q. [10:26:08] Now, sir, for the moment I'm just addressing the portion of your
14 answer where you've said that the girls were in Saikpa and you say not in Mandro.
15 Therefore, do you agree that the girls were apart?

16 A. [10:26:28] I am giving testimony and I am looking at the transcript at the same
17 time. If someone said that there were girls under 18, that is not what I said. I said
18 that there in Saikpa there were girls over 18 years old, and they were under the
19 control of the S5 and the S2. And I do not know the source of this information.

20 Q. [10:27:11] Now, I'll ask my question again and I'm going to ask you to focus
21 very carefully on my question. My question is: When you said that "the girls were
22 in Saikpa, not in Mandro. They had their own place to spend the night", do you
23 agree that that means they were apart from the others or do you disagree?

24 A. [10:27:46] I said when the training centre was in Saikpa, the girls were sleeping
25 in a place that was separate in relation to the place where the boys spent the night.

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1 Q. [10:28:16] And when you say that it was the PC5 and the S2 who took care of
2 them while they were undergoing their training in Saikpa, do you agree that they
3 were with the commanders, apart with the commanders?

4 A. [10:28:42] I don't quite understand your question. Could you repeat it?

5 PRESIDING JUDGE FREMR: [10:29:06] Ms Samson, frankly saying, this question
6 also seems unclear to me. What does it mean that they were with the commanders?
7 Does it mean that you are asking whether they slept with commanders? Or what
8 does it mean "they were with"?

9 MS SAMSON: [10:29:22]

10 Q. Yes, I do want my question to be clear and I recognise perhaps it might not have
11 been. What I'm doing at this moment is solely dealing with what the individual told
12 MONUC. There is no reference in this document and no suggestion I'm putting to
13 you at this time that that meant that they were wives of commanders. That's not
14 what I'm asking you right now. But what the person has told the United Nations is
15 that young girls from 15 to 18 stayed apart with commanders. And I think you've
16 confirmed that. You've stated that the girls were in Saikpa, they were separated and
17 that they were under the care of the PC5 and the S2, correct?

18 A. [10:30:15] I don't know the person who gave this information. That's my first
19 point. Secondly, this S5 and the S2 had the responsibility to monitor the situation so
20 that these girls did not sleep with the men. And there was an order that no girl
21 should be made pregnant or should sleep in the boys' section. That was why it was
22 being followed so closely by S5 and S2, as well as the PC.

23 Q. [10:31:17] And you've given testimony about the military police who would
24 do patrols, correct?

25 A. [10:31:37] In -- your Honours, at 2002 when I set up in Bunia, that's when I set

1 up the military police. There was no military police in Mandro. We had five
2 soldiers with rifles to protect Mandro. At the outset there was no military police in
3 Mandro nor in Saikpa for that matter. I was in Mandro, the centre there. And that
4 was about 12 kilometres, 10, 12 kilometres from Saikpa. They were two separate
5 locations.

6 Q. [10:32:33] Now, you've just stated page 25, lines 2 to 3, "2002 when I set up in
7 Bunia, that's when I set up the military police." And what this individual has stated
8 is that the person who was allegedly killed by you stayed as an escort with the
9 military police after working with Bosco. Does that not connect you to the military
10 police and to the person with whom the soldier was working?

11 A. [10:33:24] If I've understood your question correctly, you wish to know
12 whether there was military police at the training centre. You said that it was my
13 bodyguard -- my bodyguard, but I hadn't heard talk of that before.

14 Q. [10:33:58] Mr Ntaganda, my question may not have been that easy to
15 understand, so I will repeat it. The individual who spoke to the United Nations in
16 March 2003 stated that the soldier who was killed had been an escort with the
17 military police after having worked with Bosco. That must be you, based on your
18 testimony.

19 A. [10:34:44] Your Honours, I never saw an escort who was a member of the
20 military police. There were no escorts who were members of the military police. A
21 person was either my escort or part of the military police, if I've understood the
22 translation of your question correctly through my interpreter.

23 Q. [10:35:19] Sir, you've heard evidence during this trial, and in public session, I
24 won't indicate who, but you've heard evidence that your escorts wore arm bands and
25 served as members of the military police. Now, do you deny that?

1 A. [10:35:39] That's true of Bunia. In Bunia that was the case, but that was not at
2 the training centre.

3 Q. [10:36:03] Now, for the moment I'm done with that particular document.

4 And I'll go back to the logbook message, and this was a message that I would ask you
5 to look at at page 0194. For the translation it's page 4016. The message I'd ask you
6 to focus on, please, is the message in the middle of the page. It's dated 26
7 January 2003, a message that you sent at 11.50, and you sent it to the infantry battalion
8 commander in Boga. You mention that Boga is far from Bunia. Is it near the border
9 of North Kivu?

10 A. [10:38:04] Yes. It's very close to the border with Uganda and near Semuliki
11 and not far from the North Kivu border, and that's why we took a plane to get there.
12 There were no passable roads towards that place.

13 Q. [10:38:30] And are you familiar with another location near Boga known as
14 Tchabi, T-C-H-A-B-I?

15 A. [10:38:45] I don't know that place, but I have heard of it. I've never been there
16 myself.

17 Q. [10:39:01] Now, the message that I've asked you to look at, I will read it to you.
18 It states, and I'll read in French:

19 (Interpretation) "I inform you that. Stop. This Commander Byankya if he
20 becomes out of control put him in prison. Stop. Put him in the punishment cell.
21 Stop. Or I will come and arrest him myself." (Speaks English) End of message.

22 Now, we've seen messages in which you have indicated your authority to punish and
23 discipline. This message is another example of your authority in that regard, isn't it?

24 A. [10:40:32] Yes. It was known in the army, people knew that for cases of
25 indiscipline, I would always react very quickly, as you see in the example quoted in

1 this message.

2 Q. [10:40:55] And here again you've sent the message directly to a battalion
3 commander without copying the brigade or sector commanders, correct?

4 A. [10:41:16] Yes. From the commander to the echelon base, there were no limits.
5 If I had to impose a punishment, it had to be an example for the other troops because
6 they have to see what you do and that they therefore also conduct themselves
7 correctly. And then this would be a good example for the army.

8 Q. [10:42:04] And in another message at page 193, translation 4015, page 193, this
9 is a message that you sent two days later on 28 January 2003 at 9.50. Again, you've
10 sent it directly to the infantry battalion commander in Boga, and I'll read it in French:
11 (Interpretation) "I told you that you have to put Byankya in prison if you see that he
12 constitutes an obstacle. Stop. If you do not have the capacity let us know. Stop.
13 We will send someone who has the capacity. Stop. And anybody that you consider
14 to be an obstacle should be locked up." (Speaks English) End of message.
15 So here, as we can see, you're ordering the imprisonment of Byankya, the arrest and
16 imprisonment of Byankya, right?

17 A. [10:43:51] Yes, this commander also did not have the authority to lock
18 somebody up, somebody who was under his responsibility. I had to send someone
19 else to command the battalion. And that's what this message refers to.

20 Q. [10:44:20] And you've offered to assist if the infantry battalion commander
21 can't do it, correct?

22 A. [10:44:46] I recall having said that if this commander was not competent, he
23 would be replaced by somebody else. It's what's written here. If you are not
24 able -- if he's not able to lock somebody up, then we will replace him by somebody
25 else because it could be that he -- that would then indicate that he doesn't have the

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1 capacity to occupy his post.

2 Q. [10:45:28] And you are saying here that you have the authority to make arrests,
3 to order arrests and to remove anyone who is an obstacle to the mission, right?

4 A. [10:45:50] Yes.

5 (Counsel confers)

6 MS SAMSON: [10:46:18]

7 Q. [10:46:19] And we see again in the message that you have sent the message
8 directly to the battalion infantry commander in Boga without going through the
9 brigade commander or the south-east sector, correct?

10 A. [10:46:43] At my level I could also direct a battalion. I didn't have any limits.
11 I could go down to the lowest level. That is how things are done within the army.

12 Q. [10:47:09] Sir, I'm setting the logbook message aside for the moment just to ask
13 you a question from your recollection. In May 2003, do you recall or have
14 knowledge of an incident whereby some commanders named Kapaco, K-A-P-A-C-O,
15 Maki Eface, E-F-A-C-E, and Ziggy, Z-I-G-Y, took out support weapons and started a
16 mutiny around Boga in Tchabi end of May 2003 or early June 2003 in that time period,
17 did you ever obtain such information?

18 A. [10:48:08] In 2003, in May, I went to Goma to RCD-Goma I was sent there so I
19 do not have this information.

20 Q. [10:48:55] When you returned you say in June 2003, did you ever receive
21 information of this type after you had returned that you recall?

22 THE INTERPRETER: [10:49:24] The English booth is not hearing interpretation.
23 Mr President, could we please ask Mr Ntaganda to repeat his reply because the
24 channel was occupied.

25 PRESIDING JUDGE FREMR: [10:49:46] Mr Ntaganda, I would like to ask you to

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1 kindly repeat your last, complete last response because it hasn't been captured
2 because of some technical troubles by the interpreters. So please kindly repeat that.

3 THE WITNESS: [10:50:07]) (Interpretation) Yes. After the liberation of Bunia in
4 May and later, Boga was no longer part of the forces under the control of the FPLC.

5 PRESIDING JUDGE FREMR: [10:50:34] Thank you.

6 MS SAMSON: [10:50:40]

7 Q. [10:50:42] Sir, yesterday we had looked together at a document which stated it
8 had been sent in copy to you regarding the death of Gasana, 61-Sierra. Do you recall
9 the document?

10 PRESIDING JUDGE FREMR: [10:51:04] Hold on, Mr Witness.

11 Hold on, Ms Samson.

12 Mr Bourgon.

13 MR BOURGON: [10:51:10] Thank you, Mr President. I'm not sure if my colleague
14 is moving to a different topic or if it's the same topic, but she made a suggestion of an
15 incident before in Boga and she asked Mr Ntaganda whether he had any knowledge.
16 I did not say anything at the time, but I'd like to have a reference where I can find this
17 incident if it's part of the Prosecution's case, so at least I can look it up, because right
18 now I don't know what she's talking about. So I'd like to know what this incident is
19 and where does it fall in the Prosecution's case. Thank you.

20 PRESIDING JUDGE FREMR: [10:51:44] Ms Samson.

21 MS SAMSON: [10:51:45] I will get to that, your Honour.

22 PRESIDING JUDGE FREMR: [10:51:48] Thank you.

23 MS SAMSON: [10:51:50]

24 Q. [10:51:50] Now, sir, do you recall the document or would you like to see it? I
25 don't have questions about the content of the report, but I have a question in relation

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1 to your testimony of yesterday. Would you like to see the document again, the
2 letter?

3 A. [10:52:22] If you're going to ask me questions about that, I would like to be
4 shown the letter because I didn't have a copy of it.

5 Q. [10:52:39] I have a hard copy, since that's the procedure we had yesterday, but
6 for the record I will indicate that the registration number is DRC-OTP-0016-0102. It's
7 a public document.

8 PRESIDING JUDGE FREMR: [10:52:58] And court usher, please assist to provide
9 Mr Ntaganda with the hard copy.
10 Mr Bourgon.

11 MR BOURGON: [10:53:12] If I can just have an item number, please, on the list so
12 I can pull up the letter. Thank you.

13 MS SAMSON: [10:53:19] Yes. Certainly. It is item 801.

14 MR BOURGON: [10:53:40] Thank you.

15 MS SAMSON: [10:53:50]

16 Q. [10:53:53] Now, sir, you were asked questions about this document yesterday
17 and you questioned it on the basis that there was no 6th battalion or no numbers
18 assigned to battalions in November 2003, correct?

19 A. [10:54:27] Yes. We had not yet assigned names to the battalions we were
20 setting up. We had just been chased out of the town and we were setting things up.
21 We had not yet started assigning names to the brigades which we were creating.

22 Q. [10:55:11] And this document is dated 4 November 2003, correct?

23 A. [10:55:21] Yes, that is visible here. It's written here, 4 November.

24 Q. [10:55:36] I would like to display a different document in connection with this.
25 It's at DRC-OTP-0014-0269. It's number 508 on the list. It has been admitted. It's a

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1 public document.

2 Now, sir -- if we can perhaps enlarge it slightly for the witness.

3 Now, at the top can you see that the document is dated 1 August 2003, can you see
4 that?

5 A. [10:57:15] Yes, 1 August 2003.

6 Q. [10:57:23] And it is being sent to all units. And for information, the
7 commander-in-chief and yourself, correct?

8 A. [10:57:48] I have never seen this document. I do not know this document.
9 This is the first time I have ever seen it.

10 Q. [10:57:57] Well, that's not my question. My question is do you see that this
11 document has been sent to all units, copying for information commandant en chef
12 whom you said was Thomas Lubanga, and you? Do you see that?

13 A. [10:58:20] Yes, I see info, and I see commander-in-chief and myself.

14 MS SAMSON: [10:58:39] And court officer, if you could scroll down, please so we
15 can see the signature.

16 Q. [10:58:44] Now, sir, can you confirm that this is a document from Floribert
17 Kisembo, chef état major at the FPLC?

18 A. [10:59:00] I don't know whether that came from him.

19 Q. [10:59:07] That's not my question. Can you see that this document is signed
20 by Floribert Kisembo and that it purports to come from him? I mean, do you
21 disagree with that?

22 A. [10:59:23] I see his name and his signature.

23 MS SAMSON: [10:59:32] Court officer, if we could go back to the top of the
24 document, please.

25 Q. [10:59:38] The subject of this order is in French, "Affectation", meaning

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1 assignments.

2 And court officer, if you could please scroll down slightly -- or up so I can see a bit
3 more.

4 Now what we see here, and I will read it out in French, what the general chief of staff
5 has ordered is, in point 1, and I'll read it French:

6 (Interpretation) "In the aim of reinforcing the military -- the soldiers and troops in
7 the region of the 5th battalion, 3rd brigade, Lieutenant Colonel Mateso is appointed
8 commander 5th battalion."

9 (Speaks English) Isn't it true, sir, that by August 2003, as we can see from this order
10 from Floribert Kisembo, chief of staff, that you had battalion numbers?

11 A. [11:00:59] To my knowledge, I was unaware of the names of the battalions. I
12 knew of three brigades. And I didn't know the commanders of the battalions. I
13 knew the brigades of Mabo, Papi and that of India Queen. When we -- when it
14 comes to the names of the battalions, I don't know those. We were at that point, in
15 August, setting up the battalions. We were setting up the battalions and the
16 brigades.

17 Q. [11:01:42] Sir, you've just confirmed that you were setting up the battalions
18 and the brigades in August. And here we have a letter, in fact an order, from
19 Floribert Kisembo, who you've reminded us many times is your superior, you're
20 copied for information, it's sent to all units about a military assignment, and you're
21 telling the Chamber that you had no idea that there were battalion numbers assigned
22 as of August 2003?

23 A. [11:02:28] I never received a copy of this letter. I didn't know the names of
24 the battalions in the month of August, not at all. However, I gave you the names of
25 the brigades. If I knew the names of the battalions, I would have put them on to the

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1 organigram. Knowing the names of the battalions is an honour for me as a
2 commander, but I, not hiding it, I just did not know these names.

3 MS SAMSON: [11:03:13] Mr President, I have just one further question on this
4 point.

5 Q. [11:03:17] Sir, you were at this point deputy chief of staff in charge of
6 organisation and operations. How could it be that you did not have information in
7 relation to the names of your own battalions?

8 A. [11:03:36] Ma'am, you know in the army Kisémbu could -- might have had
9 those names and it's possible that he intended to provide them to us, but he didn't
10 provide them to us at that point. But in February when I drew up the org chart for
11 that period of time, I gave you the names of many brigades and battalions. And you
12 know, for me to know the names of the brigades and the battalions that's an honour.
13 If I know them, I -- if I had known them, I would -- if I knew them, I would not have
14 hidden them.

15 MS SAMSON: [11:04:38] Thank you, Mr President. I can resume after the break.

16 PRESIDING JUDGE FREMR: [11:04:44] All right. So we take our regular
17 30-minute break which means that we will reconvene at 11.35.

18 THE COURT USHER: [11:04:59] All rise.

19 (Recess taken at 11.04 a.m.)

20 (Upon resuming in open session at 11.35 a.m.)

21 THE COURT USHER: [11:35:24] All rise.

22 Please be seated.

23 PRESIDING JUDGE FREMR: [11:35:53] Let's continue with next part of
24 cross-examination of the current witness, who is Mr Ntaganda, by Prosecution.

25 Ms Samson, you have the floor.

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1 MS SAMSON: [11:36:07] Thank you, Mr President.

2 Q. [11:36:10] May we please have document DRC-OTP-0014-0268. It's a public

3 document and it's number 507 on the list. This document has not been admitted.

4 Now, sir, this is another military affectation or assignment by Floribert Kisembo

5 dated 1 August 2003, the same day as the one we just saw. Again to all units, copied

6 to you and to the commander-in-chief. If you focus in on point b), Floribert Kisembo

7 is assigning commanders to units: Captain Dhakana will go to the 1st battalion;

8 Captain Liripa to the 2nd brigade; Captain Sting to the 2nd battalion, 2nd brigade.

9 Now, this also confirms, does it not, that by August 2003 the FPLC and the forces that
10 you acknowledge you were setting up at this very moment had numbers or names
11 assigned to battalions, correct?

12 A. [11:39:00] These are brigades and lower -- correction, above we have the

13 battalions, but in actual fact those names had not been published yet. When I

14 sent -- correction, when I sketched the organigram here, I could have put -- I couldn't

15 put the names because I didn't know. So I didn't. I didn't even know the other

16 battalion commanders. It was at the beginning when we were starting to build the

17 army.

18 Q. [11:39:31] Now, you've stated at page 37, lines 3 and 4, that these are brigades

19 but in fact those names had not been published yet. But in fact the two documents

20 we've just looked at are documents published by the chief of staff to all units, signed,

21 dated, sent out to all units about important structuring matters related to battalions,

22 brigades and assignments of people using numbers. So it's not correct to say that

23 this was not published anywhere within the FPLC, is it?

24 A. [11:40:24] Madam Prosecutor, I did not receive this letter. I do know that

25 I was honoured by my army. If I am not familiar with the names that have been

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1 attributed to the various units within our army, well, that's something important.
2 When we were driven out of the town, we still had to rebuild. If the chief of staff
3 intended to put names to units as part of the reorganisation and not provide a copy, I
4 can't say that I knew the battalions. When I showed the organigram here in front of
5 you, what I knew, I put. I showed to my lawyers and what I didn't know, I did not
6 put anything on it.

7 Q. [11:41:33] This document at the top says you were copied, right?

8 A. [11:41:49] Unfortunately, I did not receive this copy.

9 Q. [11:41:59] And your evidence is that being involved in restructuring in
10 August 2003, which you've just stated before the break, that you and
11 Floribert Kisembo never discussed assigning names and never discussed -- to
12 battalions, and never discussed the military assignments in this letter; is that your
13 evidence?

14 A. [11:42:29] When I freed Mongbwalu for the third time, I found that he had sent
15 commanders to three different brigades. When I got there, those commanders had a
16 mission to reorganise. And before that, they were supposed to take into account the
17 forces we had to build the battalions, and at the same time we struck Kisembo and he
18 left. And that was in December.

19 Q. [11:43:10] Sir, I don't want to have to interrupt you each time you don't answer
20 my question. But I would ask you to focus. My question is: Is your evidence that
21 you never discussed the restructuring that is in this letter with Floribert Kisembo in
22 August 2003, yes or no?

23 A. [11:43:40] No. No. We did not talk about what is on this document here.
24 No.

25 Q. [11:43:51] I would like to display another document, please.

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1 DRC-OTP-0014-0282. It's public, number 509 on our list. It's been admitted.

2 MS SAMSON: [11:44:08] And actually while that's happening, Mr President, may
3 the prior document be admitted for impeachment purposes on the point of the
4 naming of the battalions.

5 PRESIDING JUDGE FREMR: [11:44:21] Defence.

6 MR BOURGON: [11:44:23] Mr President, we object to the admission of this
7 document. This was not part of the Prosecution's case. The Chamber was able to
8 listen to the answers provided by Mr Ntaganda on the contents of the document.
9 They were able to hear the fact that he did not receive this document.

10 Now, the main -- of course, the main issue is: Why is this document not part of the
11 Prosecution's case? Why, if it was important to the Prosecution, they did not put it
12 as part of their case and now suddenly are trying to, as they say, impeach
13 Mr Ntaganda on a technical document that was not part of their case? So I see no
14 reason for this be admitted on the record, Mr President. Thank you.

15 PRESIDING JUDGE FREMR: [11:45:16] Before I deliberate, Ms Samson, do you
16 want to reply?

17 MS SAMSON: [11:45:19] Yes, Mr President. The Defence is seeking to set rules
18 that are not currently in place and have not been during this trial. It has been
19 perfectly appropriate for either party during cross-examination to seek to impeach or
20 undermine the credibility of the witness through the use of documents that the
21 Chamber has admitted for that limited purpose. The Chamber has the powers not
22 only to follow the orders it's issued before, but under 69(3) for the determination of
23 the truth to consider and admit relevant evidence. And in my submission, the
24 Chamber will decide whether or not Mr Ntaganda's answers of receiving documents
25 or not are credible. That is up to the Chamber to determine and, in my submission,

1 it will assist in that determination to have the documents that contradict his evidence
2 on important points.

3 PRESIDING JUDGE FREMR: [11:46:16] Thank you.

4 And Mr Bourgon, absolutely briefly.

5 MR BOURGON: [11:46:20] Mr President, we're not trying to set up new rules.

6 We have a decision issued by the Chamber yesterday. This is decision
7 number 20 -- or 1997. Paragraph 15 and 16 are the most relevant and when it comes
8 to admitting documents in evidence.

9 The first issue is my colleague did not answer the first question, which is: Why did
10 they not put this document as part of their case? That's the first question. The
11 second issue is the Chamber says we'll continue to assess in terms of relevance,
12 probative value, prejudicial effect. In this case this document does not prove
13 anything and that is part of the Prosecution's case. Is it relevant? It has some
14 relevance, yes, but the prejudicial effect of a document never shown to the accused,
15 shown to him for the first time in the courtroom and now he says he hasn't seen the
16 document, and we're going to say that because of this we're trying to impeach the
17 witness, the prejudicial value goes way beyond any benefit that can be gained from
18 this document.

19 The document is -- the Chamber has the witness's answers on the record. There's no
20 reason to add this document in addition to the witness's answer.

21 The Chamber said be guided by what happened in the Prosecutor versus Jean-Pierre
22 Bemba and items tendered by the Prosecution in cross-examination after closure of its
23 case in-chief must in present principle have a genuine and not pretextual connection
24 to its examination.

25 What is the connection to the examination between this document, which what -- goes

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1 to proving that yesterday maybe Mr Ntaganda provided an answer on a document
2 that was not admitted? And it may be he has some knowledge of what is the
3 restructuring on that date. I think the answer is clear. The witness knows the
4 restructuring. What he knows, what he doesn't know he has informed the Chamber.
5 Thank you, Mr President.

6 PRESIDING JUDGE FREMR: [11:48:44] Thank you, Mr Bourgon.

7 One minute, Ms Samson please.

8 MS SAMSON: [11:48:48] Yes, thank you, Mr President. In the Bemba
9 jurisprudence the admission was permitted. The Chamber admitted the document
10 in question. And the Prosecution could in no way anticipate that this witness was
11 going to suggest that he did not receive letters to which he squarely copied. And the
12 document has been disclosed a long time ago. If the witness claims he didn't see at
13 the time, which the Chamber will evaluate and decide, he certainly had an
14 opportunity to examine it in some great detail since. And in our submission it's a
15 relevant point for the Chamber to determine the credibility of the witness on these
16 answers.

17 PRESIDING JUDGE FREMR: [11:49:29] Thank you. Give me a minute.

18 (Trial Chamber confers)

19 PRESIDING JUDGE FREMR: [11:50:59] So after brief silent deliberation in the
20 courtroom, the ruling of the Chamber is that the objection is overruled and this
21 document is admitted but only in the limited extent for the -- limited purpose for the
22 purpose of impeachment.

23 Since -- and I can be brief, I can refer to arguments presented by Prosecution which
24 Chamber mostly shares, the main is that it was in fact in reaction to what had been
25 said to -- by Mr Ntaganda during the examination-in-chief.

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1 Now let's move further. Ms Samson, please.

2 MS SAMSON: [11:51:44] Yes.

3 Q. [11:51:46] Now, Mr Ntaganda, there's a document on your screen that you've
4 had some time to familiarise yourself during the debates that we've just had. It is a
5 letter written from the general staff of the 1st battalion, you can see that on the upper
6 left-hand side. It's a letter to which you have been copied, you're the first recipient
7 in copy where there's a check mark. Under that it's gone also to the G3, the G4 and it
8 is sent to the general chief of staff. The subject is "Report of the 1st battalion".

9 And if I could ask the court officer to scroll to the end of the page, please.

10 You can see that it's been signed at Mabanga on 26 June 2003, signed by Major
11 Djonga-Bahati Roger, commander of the 1st battalion.

12 Now, does this not indicate that there were in fact numbers assigned to battalions in
13 the FPLC even as of 22 June 2003?

14 A. [11:53:19] Your Honour, it is true I do see the names. These are forces that I
15 use to regain Mongbwalu, but as for the names of the battalions, I would say that
16 Kisembo had asked me to go and fight with those battalions, but he didn't give me the
17 names. Sometimes the commanders gave names to battalions as they wished. So
18 these were battalions that I used in Mongbwalu. I acknowledge the content of the
19 report, but I'm not saying that I received it.

20 Q. [11:54:17] Now, this report is from commander of the 1st battalion, do you
21 agree?

22 A. [11:54:37] The commander that I had entrusted those forces to was named Roy
23 and he -- I arrested him in Centrale. Not this person, the person whose name was
24 Djonga-Bahati Roger, rather it was Roy.

25 Q. [11:55:01] This is Roy, isn't it, sir?

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1 A. [11:55:05] No. This person, his name is Roger Djonga Bahati. That's not
2 Roy.

3 Q. [11:55:21] This letter is dated 22 June 2006, correct -- sorry, 3, 2003?

4 A. [11:55:38] When I regained Mongbwalu, you see, even where the forces were
5 deployed, this letter is talking about places that I mentioned Aru, Mabanga, Dhego,
6 but it's true, the date here is correct.

7 Q. [11:55:59] And now, this is a force that was with you when you captured
8 Mongbwalu in June 2003, correct?

9 A. [11:56:15] Yes, yes. I was where -- with those forces and I was the one who
10 deployed them.

11 Q. [11:56:26] But your evidence is that you had no idea that you were deploying
12 the 1st battalion; is that it?

13 A. [11:56:42] No, not at all. At our level there are times when you may not know
14 which battalions the commanders gave, perhaps he gave a name to those. I worked
15 with those battalions, but I was not aware of those names.

16 Q. [11:57:01] Now, you also mentioned, at some stage in your answer, that maybe
17 battalion commanders named themselves. So is your evidence that anybody could
18 give themselves whatever name they wanted to in the FPLC and they didn't have to
19 tell you what it was and you didn't have to structure that yourself? Is that your
20 evidence?

21 A. [11:57:39] No, that's not so. There are some names that we ourselves gave to
22 the battalions, those names are known. They are found in the logbook. And when
23 we were rebuilding, some commanders did give names that they themselves had
24 suggested because we were reorganising. And then after that, we could confirm the
25 names or adopt other names, change the name.

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1 Q. [11:58:14] I would like to show you another document. It's document
2 DRC-OTP-2055-1468. It's number 1403. And for the witness, for the witness there's
3 an original, the original is DRC-OTP-0017-0030, item 516. Now these are
4 handwritten and a transcribed message. So item number 1403 is transcribed and
5 translated, and item 516 is in the original handwritten Swahili.

6 If we could display the translation. And I have a hard copy that I could provide to
7 the witness, the original.

8 PRESIDING JUDGE FREMR: [11:59:51] All right.

9 THE COURT OFFICER: [11:59:56] Could you please confirm the level of
10 confidentiality of the document, please.

11 MS SAMSON: [12:00:02] Yes, apologies. It's public. They're public.

12 PRESIDING JUDGE FREMR: [12:00:06] And court usher, please assist to distribute
13 hard copy.

14 MS SAMSON: [12:00:33]

15 Q. [12:00:34] Now, sir, this document is a logbook message sent on 2 June 2003 at
16 11 o'clock. It's from the 2IC commander of the 9th infantry battalion. And it's copy
17 to the general chief of staff and yourself. For information, it's sent to the supreme
18 commander of the FPLC and president of the UPC/RP, Thomas Lubanga. And it
19 also has a reference number confirming the 9th battalion.

20 If we could move to page 2 of the translation, please.

21 Now, sir, this message sent to you from the 2IC commander of the 9th infantry
22 battalion in June 2003 establishes again, doesn't it, that you had assigned numbers to
23 your battalions long before November 2003?

24 A. [12:02:05] Mr President, when I left, Mr Kisembo stayed back and he was in
25 charge. If he gave names to battalions, that I'm not aware of. This is reference to

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1 the Boga battalion, which we didn't have control over because we were fleeing since
2 the Ugandans had driven us out and the battalion left.

3 At that time I was not yet there. Maybe this happened when I just arrived in early
4 June. I had just returned from where I had fled to and I was starting things all over
5 again from scratch.

6 Q. [12:02:43] Now, my question had to do with something slightly different. I
7 want to know whether now looking at this item, along with the three other items
8 we've seen, you can confirm that there actually were numbers, names assigned to
9 battalions by June 2003, as we've seen in these documents, correct?

10 A. [12:03:23] Even during the restructuring, this battalion had a name, the Boga
11 battalion. But in June I did not have a Manpack. When I returned, I no longer used
12 the Manpack and I did not use the Manpack when I came back.

13 Q. [12:03:43] Do you agree then that by 9 November 2003 your battalions were
14 named? This is the issue I'd like you to focus on. Do you agree that by 9 November,
15 according to all the documents we've seen, in June, in August 2003, that you were
16 wrong, mistaken or incorrect that there were no battalion numbers by
17 November 2003?

18 A. [12:04:26] I cannot lie and say that our battalions had -- had names. They -- it
19 was a matter of pride for me to be familiar with the names of my battalions, but I did
20 not know those names.

21 Q. [12:04:49] Now, let's set aside for the moment what you claim your knowledge
22 was. Looking at the documents we've just seen emanating from Floribert Kisembo
23 in August 2003, emanating from commanders of battalions with numbers, do you
24 agree that those numbers and names existed?

25 PRESIDING JUDGE FREMR: [12:05:14] Ms Samson, really it's not a proper

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1 question, "Do you agree?" In fact, I think it's high time to leave this topic, because
2 you in fact cross-examined Mr Witness with three or four cases. He's from the
3 first -- from the first case, even there are some different dates, but in fact he insisted
4 on his defence.

5 It's up to the Chamber then to adjudicate whether such a testimony or this part or his
6 answers are credible or not. But the issue whether he does agree or does not is really
7 not relevant for us.

8 MS SAMSON: [12:05:51] Yes, Mr President. It may be a formulation issue. I'll
9 formulate differently in the future.

10 Q. [12:06:01] Now, in relation to another part of your testimony on these -- on the
11 document that came from Sopick, so that's the document that you may still have in
12 front of you, it's ...

13 A. [12:06:24] Yes, yes, I have the document.

14 Q. [12:06:27] For the purposes of the record, it is DRC-OTP-0016-0102. We had
15 looked at that document this morning; it formed the basis of the questions I just asked
16 you.

17 And in relation to the commander who is approving the letter at the bottom, he's
18 listed as Commander Sopick, a battalion commander. And what you stated in
19 evidence yesterday at T-227, page 42, lines 20 to 25, quote, was that:

20 "Sopick was somebody in the group using the support weapons. He was not in the
21 infantry. He could not give approval because it was -- he was not commander of the
22 6th battalion, as this letter implies."

23 And I would like to show a document to you. The document is DRC-OTP-0091-0162.
24 It's item number 649.

25 MS SAMSON: [12:08:14] And, Mr President, may I ask one question in private

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- 1 session, please.
- 2 PRESIDING JUDGE FREMR: [12:08:18] Certainly.
- 3 Court officer, let's move into private session.
- 4 (Private session at 12.08 p.m.)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 (Open session at 12.09 p.m.)
- 19 THE COURT OFFICER: [12:10:02] We are back in open session, Mr President.
- 20 PRESIDING JUDGE FREMR: [12:10:05] Thank you.
- 21 Ms Samson, please proceed.
- 22 MS SAMSON: [12:10:08] Thank you.
- 23 Q. [12:10:09] Now, the document on your screen is a document from the general
- 24 staff G1 of the FPLC. At the top it refers to FPLC officers, superior officers and
- 25 general staff officers, and at the bottom - if the court officer could move to the bottom

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1 of the page, please - it's dated 12 March 2004 in Bunia.

2 And if I could ask you to scroll to the top, please, Madam Court Officer, then
3 number 1, we can see yourself, General Major, Chef d'état-major; number 2 we have
4 Jonvith Linganga, who is your deputy at that time. We see Rafiki, Etienne Nembe,
5 Peter Dz'tho, Maki Papy, Eric Mbabazi, Innocent Kaini, Innocent Zimulinda, et cetera.
6 Now, these were indeed officers in the FPLC at this time, May -- March 2004?

7 A. [12:11:40] I can see that this document was drafted in March 2004, yes.

8 Q. [12:11:45] And the people whose names you see, those that I've mentioned and
9 others, these were in fact FPLC officers and superior officers and general staff officers
10 as of that date, correct?

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

12 MR BOURGON: [12:12:14] If my colleague is going to refer to all the persons on
13 the document, at least he should be given some time to go down the list himself and
14 take a look at the document, unless she has a specific name. But if she says all of the
15 officers, he needs time to look at them, Mr President. Thank you.

16 PRESIDING JUDGE FREMR: [12:12:29] Ms Samson.

17 MS SAMSON: [12:12:30] Yes, well, fair enough. I'm going to go straight to one
18 particular individual and I will thereafter repeat my earlier question.

19 Q. [12:12:41] Now, sir, in fact I'll just ask a question: Yourself, Mr Linganga,
20 Rafiki, Etienne Nembe, Peter Dz'tho, Maki Papy, Eric Mbabazi, Innocent Kaini,
21 Innocent Zimulinda, these were people who were part of the UPC/FPLC senior
22 officers and general staff in March 2004?

23 A. [12:13:19] In March 2004 Papy was not part of those people, because I
24 remember he arrived after we had driven out Kisembo in March, and Kisembo joined
25 later and took up the position of G4. In March, that would not have been correct.

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1 Maybe I can explain the content of this letter to the Judges.

2 Q. [12:13:43] Maybe you can answer my questions. And if I could ask you to
3 scroll down to number 31 on the list.

4 PRESIDING JUDGE FREMR: [12:13:52] Hold on, Mr Witness.

5 Mr Bourgon.

6 MR BOURGON: [12:13:55] I don't believe, Mr President, that the witness refrained
7 from answering any question, and I think this comment is just too much. Thank
8 you.

9 PRESIDING JUDGE FREMR: [12:14:05] No, I don't see this relevant. Ms Samson,
10 I guess, is going to focus on concrete name, not from those first nine names, am I right?
11 So then we can proceed.

12 MS SAMSON: [12:14:16]

13 Q. [12:14:17] Yes, I would like you, sir, to look at number 31 on the list,
14 Sopick Fabrice, major commander -- battalion commander. Now, my question really
15 was, of all of this, your testimony, as I read moments ago, was that Sopick was not a
16 battalion commander but he had been operating heavy weapons. And this you had
17 stated in challenge to the letter purportedly from him in November 2003.

18 Now, the document before you indicates that Sopick Fabrice was a battalion
19 commander as of March 2004 and so is it not possible that he was also a battalion
20 commander in November 2003, as set out in the report that you have and that we've
21 looked at together?

22 A. [12:15:38] Your Honours, I know Sopick very well. He was never a battalion
23 commander. So what I am telling you, I am sure of it. That is why I wanted to
24 explain the content of this letter to you. But a simple answer to your question is that
25 Sopick has never been a battalion commander.

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1 PRESIDING JUDGE FREMR: [12:15:57] Now, sorry to interrupt you, Ms Samson.
2 So according you, the content of this letter has something to do with Mr Sopick that
3 you would like to provide us with?

4 THE WITNESS: [12:16:26] (Interpretation) Yes, your Honours. We were in the
5 process of preparing names that were to be sent to Kinshasa and we asked the G1 to
6 include as many commanders as possible, many of them, even if those commanders
7 had not really occupied the positions of commanders, because Kinshasa had asked for
8 a list to be sent as soon as possible. So we included a bulk of names on the list. We
9 never had these brigades in 2004. They didn't exist. So there are many things that
10 are included in that document which are inaccurate. And I know this letter very
11 well.

12 PRESIDING JUDGE FREMR: [12:17:12] All right.
13 Ms Samson, please proceed.

14 MS SAMSON: [12:17:16] Thank you, Mr President. At this time I would ask that
15 this document be admitted for the same limited purpose, for the Chamber to evaluate
16 whether or not Sopick Fabrice may have been a battalion commander in light of the
17 witness's answers.

18 PRESIDING JUDGE FREMR: [12:17:35] Defence.

19 MR BOURGON: [12:17:36] Well, Mr President, although the request is for the
20 limited purposes of impeachment, it is admitted or not as part of the Prosecution's
21 case. Here it -- this document does not go and has no probative value because it is a
22 2004 document, no probative value to show something in respect of something that
23 happened in November or March of -- or November of 2003. Moreover, it was never
24 used in the Prosecution's case, it is a document which the prejudicial value of asking
25 the witness to make comments on a document that is of 2004 in order to try and

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1 ascertain something that was true or not in 2003 is highly prejudicial. When we
2 compare both prejudicial value and probative value, clearly it is -- the prejudice is
3 much higher and there's no reason to admit this document. Maybe later in her case
4 my colleague will have other arguments or other reasons to admit the document, but
5 not in respect of this specific question. Especially with the answers provided by
6 Mr Ntaganda. Thank you.

7 PRESIDING JUDGE FREMR: [12:19:05] I don't think -- I don't need any further
8 submissions on that. So the ruling is this: The objection is overruled, that this
9 document is admitted for the purpose of impeachment.

10 And just briefly, it could be even in the interest of the Defence because Mr Ntaganda
11 provided us with explanation why Mr Sopick had been put on the list. And if such a
12 statement will be confirmed or corroborated by other evidence, it could even increase
13 our evaluation of credibility of his responses.

14 Now, Ms Samson, please proceed.

15 MS SAMSON: [12:19:49] Thank you.

16 Q. [12:19:51] Now, Mr Ntaganda, I just have one additional question in relation to
17 the 6 November 2003 letter that you have before you. DRC-OTP-0016-0102.

18 Now, when we look at the recipients of this letter, which we looked at yesterday,
19 you'll agree that Floribert Kisembo is not copied, correct?

20 A. [12:21:01] Yes, he is not copied on this letter.

21 MS SAMSON: [12:21:05] Mr President, I seek to admit this document this time for
22 the sole purposes of impeachment on three issues.

23 PRESIDING JUDGE FREMR: [12:21:14] Mr Ntaganda, you wanted to add
24 anything?

25 THE WITNESS: [12:21:20]) (Speaks English) Yeah. Yeah, yeah.

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1 (Interpretation) Your Honours, if you look at the content, it is stated info deputy
2 chief of general staff and it says seen by chief of general staff. If I had received the
3 letter myself, it would have indicated vu, meaning seen. So as I testified before, I
4 never received this letter.

5 PRESIDING JUDGE FREMR: [12:21:58] Ms Samson, I'm not sure whether you
6 have completed your submission or?

7 MS SAMSON: [12:22:03] No, Mr President. I didn't. My request at this time is
8 for admission of the 4 November 2003 letter, 0016-0102, solely for impeachment
9 purposes on three points: One is on the issue of the number of battalion numbers
10 and whether or not they had been assigned; second, on the position that Sopick held
11 by November 2003; and third, on the issue as to whether or not the document copied
12 to the witness was actually ever viewed by him.

13 PRESIDING JUDGE FREMR: [12:22:46] Mr Bourgon.

14 MR BOURGON: [12:22:48] Well, Mr President, this is clearly a request for
15 reconsideration of the Chamber's previous decision. It's not because suddenly we
16 declare that it's -- would be for impeachment purposes. Yesterday the Chamber
17 rejected the Prosecution's request regarding this document. And there are no
18 reasons to say differently. The Prosecution still has not said why it, by oversight,
19 neglected to put this document as part of its case.
20 Probative value, what does this document prove, if anything, that the witness has not
21 answered as part of his question? He says he knows the operation, he says that the
22 person who died was his chief escort. There is nothing in this document to which
23 the witness did not provide answers. So there is no -- nothing has changed since
24 yesterday to make it to grant reconsideration of this document.

25 And ...

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1 (Counsel confers)

2 MR BOURGON: That's it, Mr President. Thank you.

3 PRESIDING JUDGE FREMR: [12:24:15] Ms Samson, you can also focus on the
4 argumentation that we have already rejected this request. So what is new that you
5 are asking again?

6 MS SAMSON: [12:24:27] Yes. I did intend, I rose to raise issue -- deal with this
7 issue. In my submission, this is not a request for reconsideration. Yesterday I
8 requested full admission of the document for the truth of its contents. Today I went
9 back and asked the witness questions about whether or not additional documents,
10 whether he would agree that his initial evidence about the battalion numbers was
11 incorrect as to the date of the assignment and also whether or not his initial evidence
12 was incorrect in relation to the title held by Sopick.

13 And so in order -- my request today is to admit the document for impeachment
14 purposes, not the truth of its content, and so that the Chamber can review this issue
15 wholistically with all of the documents together on those three limited points that I've
16 identified.

17 So I do not believe it is a request for reconsideration. I believe it's a new request for
18 admission for a limited purpose which we've been referring to as impeachment.

19 PRESIDING JUDGE FREMR: [12:25:33] Mr Bourgon, and please briefly.

20 MR BOURGON: [12:25:35] This is an important issue that goes to the Trial
21 Chamber's decision issued yesterday or the day prior to yesterday.

22 We're now moving into making a difference between admitting a document for
23 impeachment or admitting a document. In both cases, no matter how we admit the
24 document, it falls in the category of fresh evidence, evidence that was not part of the
25 Prosecution's case, evidence that should have been part if they deem that to be the

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1 case.

2 They decided that it was not the case. And my colleague said yesterday it was an
3 oversight. If the Prosecution does an oversight it is prejudicial to impeach a witness
4 on a document that was not put as part of the Prosecution's case by oversight.

5 In this case, Mr President, the Chamber has adopted a position where these
6 documents can be used. That serves to impeach. It was used and the Chamber has
7 the reaction and the answers of the witness. So the impeachment part stays with the
8 records and the answers of the witness. The admission part goes to fresh evidence
9 and there's no reason for the Chamber to reconsider its decision of yesterday. Thank
10 you.

11 PRESIDING JUDGE FREMR: [12:27:01] Thank you. Give me a minute. I will on
12 that issue deliberate with my colleagues.

13 (Trial Chamber confers)

14 PRESIDING JUDGE FREMR: [12:27:54] So our brief silent deliberation in the
15 courtroom, our ruling is that the objection is overruled.

16 This document in a limited extent, as specified by Ms Samson, is admitted for the
17 purpose of impeachment. And again briefly, the Chamber really sees important
18 difference between admission for the truth of the content and admission just for the
19 purpose of impeachment.

20 And in our view, it really makes difference whether some evidence is omitted during
21 the Prosecution case and where this document is tendered in order to impeach a
22 witness following his testimony, even during the examination-in-chief or even during
23 the initial part of cross-examination because they also had a chance to react, react on
24 that.

25 Now, Ms Samson, please proceed.

1 MS SAMSON: [12:29:09]

2 Q. [12:29:16] Sir, you mentioned today in answer to my question that you were
3 involved in restructuring the FPLC in August 2003, correct?

4 A. [12:29:43] Yes. Regarding the three brigades that we had at the end of
5 August, I was the deputy chief of staff and I took part in that reorganisation.

6 Q. [12:30:00] And now more broadly, within your duties as deputy chief of staff
7 in charge of organisation and operations, you had the power to make changes to
8 structure, the military structure from time to time, didn't you?

9 A. [12:30:22] When my superior asked me to do so, because he was the one who
10 put those three brigades in place. I could not make any change, but if he had
11 suggested to me to restructure, I would have helped him.

12 Q. [12:30:52] And my suggestion to you is that you had the power to do that on
13 your own?

14 A. [12:31:02] No. It would have depended on the decisions taken.

15 Q. [12:31:34] Now, I'm going back to an earlier answer that you gave today.

16 Sir, I'm going to move to a different question since I can't quite find the reference at
17 this time. I can come back to it.

18 May I ask you please to turn to your logbook at 0177, translation 3999.

19 A. [12:33:14] Yes, I can see this.

20 Q. [12:33:20] It's the message on the -- in the middle of the page, please. Dated
21 17 February 2003. Sent by you at 16.20 to the north-east sector commander of
22 operations, Jérôme Kakwavu. And your message is, and I'll read it in French:
23 (Interpretation) "Consecutively to those who are in the field who have engaged in
24 operations it is -- they suggested that the battalion that we had given to Ndeze
25 become that of the young man called Cobra who is in Amee. Stop. On that point

1 I've confirmed it. Stop. Please have Commander Ndeze come to the T/W, await the
2 troops who will finish." End of message.

3 (Speaks English) Now, in this message which you're sending to Jérôme Kakwavu,
4 you're indicating, aren't you, that there was a proposal that a battalion be switched to
5 a different command under Commander Cobra and you've confirmed that
6 restructuring, correct?

7 A. [12:35:10] Yes. At the levels of the sector, the brigade, battalion, I did nothing
8 without consulting my superior, but maybe at the level of company I would not have
9 done so.

10 THE INTERPRETER: [12:35:39] Correction: Perhaps at the level of the company
11 that is possible.

12 MS SAMSON: [12:35:44]

13 Q. [12:35:45] So if I understand what you just said, are you saying that at the
14 company level you could make structural changes yourself but not above that?

15 A. [12:36:13] Yes. I can appoint a company commander without asking my
16 superior for his opinion. But at the brigade or battalion level, I would have to make
17 a suggestion to my superior.

18 Q. [12:36:30] Looking at the message on 17 February at 16.20, you have confirmed
19 this restructuring. What you've said is, in French, "sur ce je l'ai confirmé, on that I
20 confirm. You are not saying in this message on that point Floribert Kisembo
21 confirms, correct?

22 A. [12:37:08] Well, that practice does not exist in the army. You cannot
23 report -- you cannot write a report and mention -- well, when a superior delegates
24 something to you, you're the GC and with confidence.

25 Q. [12:37:43] And when you say "you're the GC" what does that mean?

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1 A. [12:38:00] I did not say that.

2 THE INTERPRETER: [12:38:03] Interpreter correction: The previous reply was as
3 follows: When a superior delegates something to you, you take action with
4 confidence.

5 MS SAMSON: [12:38:17]

6 Q. [12:38:19] And are you saying that Kisembo delegated to you the restructuring
7 in this message?

8 A. [12:38:42] No. When I was appointed deputy chief of staff responsible for
9 operations and organisation, I was at a level where I could make suggestions to the
10 battalions, brigades and sectors. That is what I said.

11 Q. [12:39:08] And when you refer to making suggestions, are you referring to
12 suggestions to battalions, brigades and sectors?

13 A. [12:39:30] Yes. I couldn't decide to appoint a battalion commander or a sector
14 commander or brigades commander without asking my superior for his opinion and
15 he would confirm. Once my superior had confirmed my suggestions, then I could
16 send the message.

17 Q. [12:40:15] And on 17 February 2003 where was Floribert Kisembo?

18 A. [12:40:31] On the 17th I believe he was in Mongbwalu -- no, no. He was in
19 Kilo.

20 Q. [12:40:49] So your evidence is that you would have spoken to him when you
21 received this message to restructure and before you responded; is that -- is that it?

22 A. [12:41:18] This is an event that occurred a long time ago during the setting up
23 of the commands, the commands -- the commanders that we had put in reserve. We
24 were setting up their battalions at the time. So it was a matter -- well, it was a
25 continuation of the establishment and I began with that on the 12th and the 13th. So

1 it was the continuation. And don't forget because they were making suggestions
2 about these soldiers who had been placed in reserve.

3 Q. [12:42:03] Now, coming back to my question, are you saying that you spoke to
4 Floribert Kisembo after you received this request and before you responded, or are
5 you saying that you had general authority to do this without speaking to him at the
6 time?

7 A. [12:42:33] We suggested the establishment of these battalions before the 12th,
8 well before 12 February. The message was sent after we suggested the names of the
9 commanders. So it was the continuation of the implementation of the commanders
10 in the departments that did not have commanders. The commanders who had been
11 forgotten.

12 THE INTERPRETER: [12:43:10] Corrects the Swahili booth.

13 MS SAMSON: [12:43:15]

14 Q. [12:43:16] Now a moment ago you stated that you could not decide to appoint
15 a battalion commander or a sector or brigade commander "without asking my
16 superior for his opinion and he would confirm. Once my superior had confirmed
17 my suggestions, then I could send the message."

18 That's page 61, lines 14 to 18.

19 So did you speak to Floribert Kisembo after you received the request for this
20 restructuring and before you sent this message, or did you have enough authority to
21 do it yourself?

22 A. [12:44:08] Before the implementation, we appointed battalion commanders,
23 that was before 12 February. It was the implementation that continued. I knew all
24 the commanders in my -- in my book, that is to say the commanders to whom
25 battalions had been allocated.

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1 Q. [12:44:44] And now we're looking at a message on 17 February, after
2 12 February when you started the appointments of battalion commanders, you've
3 received a request to restructure and put somebody, another commander -- move a
4 battalion under the command of somebody else.

5 A. [12:45:07] No. They were being kept in reserve and well before that time.
6 Look and you will see that I had those names well beforehand. It was gradually,
7 gradually I placed them as the battalions were being put in place. That was done on
8 a gradual basis as the battalions were being created, but the names existed well before
9 12 February before the implementation.

10 Q. [12:45:47] This message is dated 17 February from you to Jérôme Kakwavu.
11 And it states that along with those or consecutively with those who are on the ground
12 in operations, so my suggestion not reserve, it's been proposed that the battalion that
13 we've given to Ndeze becomes the battalion of a Commander Cobra, and you confirm
14 that in this message.

15 And what I'm trying to get at is the suggestion that you had the authority, as we can
16 see in this message, to confirm that restructuring.

17 PRESIDING JUDGE FREMR: [12:47:12] Mr Ntaganda, have you heard the
18 question?

19 THE WITNESS: [12:47:20]) (Interpretation) Yes, your Honour, but I was reading
20 the message in question.

21 Regarding Cobra, he was a battalion -- Cobra, he was a battalion commander, even
22 before that time. And here it is being confirmed Ndeze to wait for soldiers being
23 trained, be ready, wait until these soldiers being trained are ready.

24 MS SAMSON: [12:48:47]

25 Q. I'll repeat my question. It seems like a long time ago that I asked it. You may

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1 have forgotten.

2 My question was: This message states that troops who were in operations are
3 proposing that the battalion be given to Ndeze or given to Ndeze becomes a battalion
4 under Commander Cobra. And in this message you personally are confirming that
5 restructure. And what I'm asking you, or suggesting to you is that you had the
6 power to do that, you can confirm that, as we've seen in the message.

7 PRESIDING JUDGE FREMR: [12:49:41] Hold on, Mr Witness.

8 Mr Bourgon.

9 MR BOURGON: [12:49:44] Mr President, there might be an interpretation issue
10 here because the French and the English is different in terms of the reading this
11 message. The tense of the verb is very important when you read this message
12 because where it says here about those people in operations, in French it is clear that it
13 says "ils ont proposé", that's something that was done prior to -- in English the way
14 we read it, it says "they are proposing" -- so the timing is important and I think the
15 clear question is when did the witness authorise this Cobra change and then we'll be
16 in a better position to know what we're dealing with. Thank you.

17 PRESIDING JUDGE FREMR: [12:50:30] Point taken.

18 Ms Samson.

19 MS SAMSON: [12:50:31] I can read out the message again as it's been translated to
20 make sure that there's no question. My question really is --

21 PRESIDING JUDGE FREMR: [12:50:43] Sorry. I'm afraid that Mr Ntaganda is
22 still focussed on reading the message. So let's give him time to complete this.

23 Mr Ntaganda, are you ready to listen to Ms Samson? Have you completed reading
24 of the message?

25 THE WITNESS: [12:51:08] (Interpretation) Yes, I have finished reading.

1 PRESIDING JUDGE FREMR: [12:51:13] All right.

2 Ms Samson, you have the floor.

3 MS SAMSON: [12:51:15] Thank you.

4 Q. [12:51:16] Sir, I will read out the translation of the message that we've agreed
5 as between the parties with your counsel and the Prosecution. I will read that out to
6 you again in French.

7 (Interpretation) "Consecutively to those who are in the field who have done
8 operations, they have suggested that the battalion that we had given to Ndeze
9 become that of the young man that is called Cobra who is in Amee. Stop. On this I
10 have confirmed it. Stop. Make Commander Ndeze come to the T/W await the
11 troops who will finish." End of message.

12 (Speaks English) And my question is really about you confirming a change in the
13 battalion command and location because you had the authority to do that.

14 A. [12:52:34] Commander Cobra was already a battalion commander. You have
15 the organigram that I prepared. When the soldiers were brought together, I do
16 know exactly who made the suggestion. It was Commander Odongo. When there
17 was a shortage of men and it wasn't possible to have two battalions, it was suggested
18 that Cobra be in charge of that battalion. He already was a commander. And so I
19 suggested that the other one come and wait until the ones being trained were ready.
20 Cobra was indeed a battalion commander beforehand and I indicated that on the
21 organigram that I drew.

22 Q. [12:53:38] And you're the one who confirms the movement of the battalion,
23 correct?

24 A. [12:53:57] Yes. Me.

25 Q. [12:54:01] And if we could move, please, to the message at page 0164,

1 translation 3986.

2 Mr Ntaganda, for you it's page 0164 in your book.

3 Now, this message is sent to you, page 0164. It's the last message on the page. It's
4 sent to you also on 17 February 2003 several hours earlier in the day. It's sent from
5 the Jérôme, sector -- north-east sector operations commander. And he -- the message
6 he sends to you of relevance in the third line, and I'll start reading from the third line
7 in French:

8 (Interpretation) "Thus I suggest to you that the one from Djugu be 12 battalions.

9 Stop. You could entrust it to Commander Katanazi. Stop. Because I think that the
10 punishment that you gave him is sufficient."

11 (Speaks English) And my question on this is that this is a message in which Jérôme
12 Kakwavu is proposing a restructure to you and suggesting that you can confer to
13 Commander Katanazi and that the punishment that you meted out was sufficient.
14 Now I note that on this message it's copied also to president and the chief of general
15 staff as well as the south-east sector operations commander. Jérôme Kakwavu is
16 writing to you as the authority to whom he will propose restructure and to you as the
17 person who will approve it and to you as the person who, who ordered a particular
18 punishment. He's writing to you, correct?

19 A. [12:57:18] Yes.

20 Q. [12:57:19] And he refers to you because you are the authority who has the
21 power to restructure and shift and order the movements that he has requested,
22 correct?

23 A. [12:57:47] Yes. He knew that I had that power.

24 MS SAMSON: [12:57:54] Mr President, do I have time to do another logbook
25 message prior to the break, or is your preference to --

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1 PRESIDING JUDGE FREMR: [12:58:02] We have three minutes, so I don't know
2 how much time you will need, but probably it's not sufficient time.

3 MS SAMSON: No.

4 PRESIDING JUDGE FREMR: Yes. All right.

5 And before we break, I would like just to ask our court officer, Ms Bossette, how
6 much time so far did Mr Ntaganda testify today?

7 THE COURT OFFICER: [12:58:24] Ms Samson has used 2 hours 16 minutes today.

8 PRESIDING JUDGE FREMR: [12:58:29] So the same for Mr Ntaganda. So it
9 seems that again probably the situation will be similar to yesterday that we will
10 probably have to use almost all afternoon session before reach this four-hour limit.
11 Anyway, now we break for lunch and we will reconvene at half past 2.

12 THE COURT USHER: [12:58:54] All rise.

13 (Recess taken at 12.58 p.m.)

14 (Upon resuming in open session at 2.30 p.m.)

15 THE COURT USHER: [14:30:07] All rise.

16 Please be seated.

17 PRESIDING JUDGE FREMR: [14:30:30] Good afternoon, everybody.

18 I, if I'm not wrong, I don't see any changes in appearances. So we can then continue with
19 next part of cross-examination of Mr Ntaganda conducted by the Prosecution.

20 Ms Samson, you have the floor.

21 MS SAMSON: [14:30:51] Thank you, Mr President.

22 Mr President, I had neglected prior to the break to seek to admit for impeachment
23 purposes document -- for the sole issue of the numbers assigned to battalions, the message
24 at DRC-OTP-0017-0030 and translation at DRC-OTP-2055-1468. Although the original
25 document contains a fairly clear indication of the -- of the number 9 battalion infantry and

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1 since it's not for the content, your Honours may decide to admit for impeachment
2 purposes, if at all, only the original. It really is only the header, the "from" column that
3 I'm interested in. So the original message could suffice.

4 PRESIDING JUDGE FREMR: [14:32:06] Defence, Mr Bourgon.

5 MR BOURGON: [14:32:22] Mr President, the document requested for admission at this
6 point in time comes from a Prosecution witness; that was Prosecution Witness 0245.

7 When this witness testified before this Chamber, this document was not used with the
8 witness and the witness did not say -- did not have the chance to say whether this
9 document had any -- was either authentic or whether he had drafted it or where the
10 document came from.

11 This document has been in the possession of the Prosecution since 2004 and it was
12 disclosed in 2013. And, of course, it was not admitted as part of the Prosecution's case.

13 In this regard, the Chamber ruled before -- just before we went and took this break, the
14 Chamber held that it sees a difference, and I quote the Chamber's words:

15 "... really sees important difference between admission for the truth of the content and
16 admission just for the purpose of impeachment.

17 And in our view, it really makes difference whether some evidence is omitted during the
18 Prosecution case" -- which is exactly the case here -- "and where the document is tendered
19 in order to impeach a witness following his testimony, even during the
20 examination-in-chief or even during the initial part of cross-examination because" -- there
21 is -- "also a chance to react ... on that."

22 Mr President, the understanding of the Defence of this ruling is not that the Prosecution
23 can suddenly ask any document to be admitted in evidence for impeachment purposes,
24 because there has to be at least a valid and real reason that admitting a document at this
25 point in time would be in the interest of justice. The Prosecution has not mentioned any

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1 reason whatsoever why they failed to use this document during their case, why they
2 failed to use this document with one of their own witness.

3 Moreover, when we look at the responses provided by the witness, this document is dated
4 2 June 2003. The witness said he came back early June. I don't think we have an exact
5 date on the record, but he came in early June. So it is really not, in our submission,
6 Mr President, a valid submission, what has been put on the record and the questions put
7 to the witness to admit this document for impeachment purposes. We believe that the
8 Prosecution's request should be denied. Thank you.

9 PRESIDING JUDGE FREMR: [14:35:19] Thank you, Mr Bourgon.

10 And now, Ms Samson, briefly.

11 MS SAMSON: [14:35:25] Yes, Mr President, if I may respond quickly. Both in this
12 submission and in an earlier submission, counsel appears to want to further limit any use
13 that the Prosecution can make during credibility parts of its cross-examination not only to
14 documents that have been admitted but now to documents that have never been used.
15 So effectively the Defence is suggesting that the Prosecution's pool of available documents
16 are only documents that it used during its examination-in-chief of Prosecution witnesses.
17 And, your Honours, in the Prosecution's submission, that's an incorrect legal assertion
18 and not one for which the Chamber will find jurisprudence at this Court or any others.
19 What the Prosecution is seeking to do is to ask questions following answers that are being
20 given by the witness that could not have been anticipated and seeking to challenge his
21 credibility on a point. And what I would like this document to be admitted for is solely
22 for the purpose of demonstrating an inconsistency between a document and the testimony
23 that we have, the Chamber has heard today, so that the Chamber can exercise its functions
24 appropriately and evaluate the credibility of the witness. Thank you.

25 PRESIDING JUDGE FREMR: [14:36:46] Mr Bourgon, again please briefly.

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1 MR BOURGON: [14:36:51] Mr President, the Defence did not object to the use of the
2 document. It was used, it was put to the witness, and the Chamber has the reaction of
3 the witness on the document. There is no reason to, one, overburden the record with
4 documents, whether for impeachment purposes or other, with documents that have no
5 probative value, even if it was just to limit. That's already on the record, that
6 Mr Ntaganda said that -- his reaction to this document is on the record.
7 In the decision of the Trial Chamber regarding the use and admission of documents, the
8 Chamber made it clear there is a big difference between use of a document and admission
9 of a document. Once we used -- once we move to admission stage, regardless of the
10 purpose, the test must be higher, the test must be stricter, or else the Prosecution will use
11 every single document and will say the witness disagrees with the document, and they
12 will strengthen their case with documents that have no real connection with the issues at
13 hand.

14 In this case, what does this document prove other than to say that there's a number 9 on
15 this document, and the Chamber has the witness answer. Thank you, Mr President.

16 PRESIDING JUDGE FREMR: [14:38:16] Thank you.

17 Since the litigation was relatively fundamental, give me a minute. I will consult my
18 colleagues.

19 (Trial Chamber confers)

20 PRESIDING JUDGE FREMR: [14:39:05] So our ruling is that the objection is sustained,
21 even - and I have to highlight - that generally this document could be again admissible for
22 the purpose of impeachment. But since we have already two or three documents on the
23 same topic, same issue, and as Mr Bourgon said, Mr Ntaganda extensively commented
24 this document in his testimony, we don't see need to have another, another document, in
25 fact targeting the same issue.

1 Now, Ms Samson, please proceed.

2 MS SAMSON: [14:39:39] Thank you, Mr President.

3 Q. [14:39:43] Now I would like to move to another one of the messages in the series of
4 messages we were looking at a moment ago prior to the break, and I will obtain the
5 reference for you. It should be, Mr Ntaganda, at page 0164 in your logbook and the
6 translation at page 3986.

7 A. [14:41:02] I am there.

8 Q. [14:41:21] Now, in this message that we looked at prior to the break, it's the last
9 message on the page. As you can see, 17 February 2003, sent at 11.36 from the north-east
10 operational sector commander Kakwavu to yourself, copying the president, the
11 general -- chief of general staff and the sector south-east operational commander, as well
12 as the G2. And I wanted just to remind you of this message, because I'll take you to a
13 different one related to this. The portion that I had read out prior to the break, and I'll
14 read it again in French, in the centre of the message:

15 (Interpretation) "Proposes that the one in Djugu should be 12 battalions."

16 (Speaks English) And with that message from Jérôme Kakwavu in mind, sent at 11.36 on
17 17 February 2003, could I ask you to please turn to a message at page 0177. It is
18 page 3999 in the translation. And I would ask you to focus on the last message, please, of
19 the page. This is a message dated 17 February 2003 at 16.35, which you have sent to
20 Jérôme Kakwavu, the north-east sector commander for operations. And I'll read out the
21 first half of the message in French:

22 (Interpretation) "12 battalion has proposed that it be first in Djugu. I went to ensure
23 that it exists and I cannot set up a battalion in theory. Stop. I have driven around the
24 entire area of Djugu to see the deployment and I gave it to Lyevin. Stop. We will give
25 him Kazungu to be the 2I/C. Stop."

1 (Speaks English) Now, this message shows, doesn't it, that in response to
2 Jérôme Kakwavu's proposal on the 12th battalion that you travelled to Djugu to see it and
3 that you circulated throughout the zone to see the deployment, correct?

4 A. [14:45:21] No. It was on the 17th at 4 p.m. when I returned. I had just received a
5 mission from Toms to take equipment and material to group B. I knew that I was going
6 to visit that battalion to whom I was going to hand over the equipment. I hadn't gone
7 there yet, but I intended to. Now, when it comes to Lyevin, I had already transferred
8 him to that 12th battalion, and his name is found within the restructuring exercise.

9 Q. [14:46:16] Now, looking at the -- your language choice in the message as
10 transcribed, you are describing this as a past event, your actions as a past event. And I'll
11 read it again from the translation that's been agreed upon with your counsel and the
12 Prosecution, and it states:

13 (Interpretation) "Propose that he should be in Djugu. First I went to ensure that it exist.
14 I cannot put in place a battalion in theory. I drove across the entire zone of Djugu to see
15 the deployment. I gave it to Lyevin."

16 (Speaks English) Now, you're describing an activity that -- you're describing an activity
17 that you've already conducted, are you not?

18 A. [14:47:47] According to the organigram or the restructuring document, you will see
19 that battalion and you will see Lyevin's name. But I had not yet gone there. I was
20 looking forward to going there when President Thomas had given me that assignment.
21 So I wrote to the sector commander telling him that I had already travelled in the area, but
22 I had not yet done so. I knew that I was going to go there, and that happened on the 19th.
23 I went there on the 19th.

24 Q. [14:48:27] So I just want to be clear. What you're saying is that where the message
25 says "I went", what you meant was "I am going to go at a different time in the future"?

1 A. [14:49:01] I know the context of what I wrote. I knew that I was going to go there,
2 I knew that I had a mission, but I could not tell him everything. I told him that I had
3 already done so, but that I could not set up a brigade in theory. I had already assigned it
4 to Lyevin. In any event, I knew that I was going to go there the day after or two days
5 after.

6 Q. [14:49:35] And when you stated in English, "I drove" -- it's been -- well, in French,
7 I'll read it again:

8 (Interpretation) "... to see the deployment. I gave it to Lyevin."

9 THE INTERPRETER: [14:50:01] Mr President, we missed the first part of counsel's
10 sentence.

11 PRESIDING JUDGE FREMR: [14:50:05] Ms Samson, I think you caught the message.

12 MS SAMSON: [14:50:09] I did, yes. I'll start again, making sure to pause.

13 (Interpretation) "I drove around the whole zone of Djugu to see the deployment. I gave
14 it to Lyevin."

15 (Speaks English) Now, are you saying here, sir, that you were not describing an action
16 you had already done, but you're describing a future action?

17 A. [14:51:01] Yes. You see, when commanders make suggestions to their -- or
18 proposals to their subordinates, they expect them to comply. That is why I spoke in
19 these terms to Lyevin, because I knew that I was going to be going there in a few days and,
20 indeed, I went there on the 19th.

21 Q. [14:51:25] This message that you're sending, it's sent to Jérôme, right?

22 A. [14:51:45] Yes, it is a message to Jérôme because he had intended to propose
23 someone else to -- another commander.

24 Q. [14:51:56] And you chose to respond to him using the past tense?

25 A. [14:52:25] I had already given that battalion to Lyevin, as you would see on the

1 organigram. It was written down there, and I told him that I was going to confirm that,
2 when the battalion would have been properly equipped and would have had all the
3 necessary troops. So I needed to give him the necessary troops, maybe a hundred, and if
4 I didn't have those numbers, I would not be able to set up a battalion in theory. This is
5 what that message means.

6 Q. [14:53:09] Now, are you confirming that you had already given the troops to
7 Lyevin, as we can see in your message when you say in French, "Je l'ai donne a Lyevin"?

8 A. [14:53:38] Yes.

9 Q. [14:53:39] So that part of the message is correct, it's an action that you had already
10 done, it had already taken place?

11 A. [14:54:01] Yes, it was already given to Lyevin.

12 Q. [14:54:14] And you had not already gone to Djugu, according to this message, you
13 say, but rather you were going to do it on the 19th?

14 A. [14:54:40] Yes, I intended to go there and that is why I told him that I had travelled
15 through that area. I did so because I knew that I was going to go there.

16 Q. [14:54:57] So from your last answer it's right, isn't it, that you told Jérôme Kakwavu
17 that you had already travelled throughout the zone, correct?

18 A. [14:55:22] Yes, that is what I told him, but the idea was to get him to understand
19 that I had already travelled through that zone.

20 Q. [14:55:40] And you say that you in fact hadn't, so the information you gave him
21 you say now is incorrect, and that you were going to do it on 19 February?

22 A. [14:56:14] I did not know the exact date on which I was going to go there, but
23 when I was given that mission I wrote that message knowing full well that I was going to
24 go there. The battalion had been assigned to Lyevin, at least on the organigram, that he
25 had already been assigned that battalion.

1 Q. [14:56:44] And on the 19th is it your evidence that you conducted this patrol
2 throughout the zone of Djugu for the deployment, and to assure yourself that there was a
3 battalion there?

4 A. [14:57:17] No. I knew that I had been given a mission to go there, to the zone
5 which was under Lyevin's control, which was given to Lyevin. But at some point I -- I
6 did that. Not on the 19th, it was later.

7 Q. [14:57:53] In the English transcript, page 75, lines 21 to 24, you said:
8 "So I wrote to the sector commander telling him that I had already travelled in the area,
9 but I had not yet done so. I knew that I was going to go there and that happened on the
10 19th. I went there on the 19th." End quote.
11 Now, that was just a few moments ago and now you're saying you did not go there on the
12 19th. So did you go there on the 19th or did you not go there on the 19th?

13 A. [14:58:48] I went there. I knew that I had been assigned a mission to that place,
14 but I did not know how long it would last. It was during that mission that I was
15 supposed to control that area and I went there on the 19th.

16 Q. [14:59:16] And could we have some more details on where you went on the 19th,
17 please?

18 A. [14:59:39] No, I did not travel around on the 19th, I spent it with Paul and we
19 stopped on the 20th. I was called and on the 21st I went back with Richard and then I
20 had a chance to drive around this area of Djugu which was under the command of Lyevin.
21 This whole area -- well, I drove around it as part of my mission and it was under the
22 control of Lyevin.

23 Q. [15:00:24] So just to be clear, because it's not clear to me, you stated that you went
24 on the 19th, then you stated that you did not go on the 19th. You stated at page 79, line
25 14, "And I went there on the 19th again." So now we're back there on the 19th. And just

- 1 now you have said, lines 23 to 25, that you did not go there on the 19th.
- 2 Can you please let the Chamber know, yes or no, did you go to Djugu to do this patrolling
- 3 which you told Kakwavu you had already done, but did you do it or not on 19 February?
- 4 A. [15:01:27] Your Honours, I said that when I wrote this message it was the 17th and
- 5 I knew that I have been assigned a mission to go to Djugu, Libi, Fataki. And then I said
- 6 that where I spent the night when my lawyer asked me, that was -- which was controlled
- 7 by Lyevin, I left on the evening of the 19th. And then I went to Djugu and I came back
- 8 on the 20th, late at night. And I didn't say I didn't go there on the 19th, there was a
- 9 different mission. I came back on the 20th and on the 21st I went with Richard and then I
- 10 went to Fataki, then Drodoro, which is where I met Lyevin, and I gave him a mission. He
- 11 was to come and find me and give me his troop numbers. I remember this very clearly.
- 12 It was under these circumstances that I said to Jérôme "I've already given a mission to
- 13 Lyevin" and that I have been to this location. And I knew that that was going to be
- 14 carried out at that point.
- 15 Q. [15:02:52] Now, on which date did you meet Lyevin?
- 16 A. [15:03:10] I believe that it was the 23rd, 24th, something like that. I don't recall
- 17 exactly. It was after having taken Richard that I met Lyevin because I was in the place
- 18 where he was also at that time.
- 19 Q. [15:03:38] And the place where Lyevin was and you met him on the 23rd or 24th
- 20 approximately was in Drodoro?
- 21 A. [15:04:00] I said that I don't recall exactly the date as to whether it was the 23rd or
- 22 the 24th, but it was after I had been with Richard. I met him when I was going to Drodoro.
- 23 We saw each other. And he was the one who had control over this area, Fataki, Bule and
- 24 Drodoro.
- 25 Q. [15:04:33] Now, Jérôme Kakwavu wrote to you in the message that we looked at,

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1 17 February at 11.36, you said, because he knew you had the authority to order these
2 movements. And it was within your power, wasn't it, to drive around and ensure
3 yourself or assure yourself that things within the battalions were running smoothly, as
4 you indicate you were doing with this message?

5 A. [15:05:34] Not at all times. This depended on the period and the reasons.
6 Jérôme was in his battalion in Djugu. And when I said I was going to go there I said I
7 had already visited that place. And the place where I was going to stay during my
8 mission was in the place under Lyevin's control. That's why I did that, but this was not
9 the way that it always happened.

10 Q. [15:06:17] Certainly you had the power to move about and check on your troops
11 where they were deployed?

12 A. [15:06:38] If I wanted to, yes. I did not have any obstacles of any type that
13 prevented me from doing so.

14 Q. [15:06:54] Now, if you could turn please, Mr Ntaganda, to the message in the
15 logbook at page 0184. And the translation is at page 4006.

16 PRESIDING JUDGE FREMR: [15:08:03] Mr Bourgon.

17 MR BOURGON: [15:08:04] While the witness is waiting for a message, I think my
18 colleague will agree with me that what was mentioned on page 81, line 17, was not -- that
19 the name mentioned there was not the right name. It's the same in French and in English,
20 but I'm told that this was not the name that was mentioned there. So if we can just revert
21 to the audio I have no problem with that.

22 PRESIDING JUDGE FREMR: [15:08:35] Ms Samson, do you agree with this proposal?

23 MS SAMSON: [15:08:39] Certainly. I have no recollection of the name that was given,
24 but it's possible it was a different name.

25 PRESIDING JUDGE FREMR: [15:08:47] All right, approved.

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1 MS SAMSON: [15:09:01]

2 Q. [15:09:01] Now, sir, we looked at this message, in fact it's a message that runs over
3 several pages, pages 184, 183 and 182, and they are, as you noted in your examination
4 conducted by your counsel, they run backwards. So 0184 appears to be the first part of
5 the message, and then it follows on page 0183 and 0182. But we can start for my
6 purposes at 0184. And the correct translation is up, it's page 4006. And I'd like to draw
7 your attention, please, to the message -- well, it's the last message on the page dated 12
8 February 2003. It's sent -- you've sent it at 13.32 to all stations of the FPLC regarding a
9 new structure that you are setting out in via the Manpack messaging system. Have you
10 found the page?

11 A. [15:10:45] I am on page 183, 182. Yes, yes, I've got it. I see the message of 12
12 February 2003. Yeah, I've got it.

13 Q. [15:11:03] Yes. And I had just gone through that it's a message that you sent to all
14 stations regarding a new structure in place. And you've discussed this at some length in
15 your examination-in-chief. And what you have set out in your message, isn't it, are the
16 appointments to sector north-east, sector south-east, including the sector commander,
17 brigade commander, battalion commanders, correct?

18 A. [15:12:19] In the first message it speaks of battalion commander, for the 401
19 brigade there's a battalion. Yes, yes, that's it.

20 Q. [15:12:42] So do you confirm that you're setting out in your message the
21 appointments in relation to the two sectors, north-east and south-east and the names of
22 those who will take up positions as sector commanders, brigade commanders and
23 battalion commanders?

24 A. [15:13:14] Yes. This is the structure I was talking to you about. We discussed it
25 before it was published.

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1 Q. [15:13:28] Now, you stated that you and Floribert Kisembo discussed it and then it
2 was published; is that right?

3 A. [15:13:48] Yes.

4 Q. [15:13:51] And you are the authority who ultimately published the restructuring,
5 not Floribert Kisembo, correct?

6 A. [15:14:11] Yes. It was sent out by my bureau, organisation and operations, and it
7 was one of my tasks within that bureau.

8 Q. [15:14:23] And that was my point, that you had an important role in setting up this
9 new structure as part of your tasks, correct?

10 A. [15:14:47] Yes. I had been given a prominent role in this.

11 Q. [15:15:01] Now, part of your role also included promoting subordinates, correct?

12 A. [15:15:25] Yes. That's what is done here.

13 Q. [15:15:32] Yes. Yes, I understand you to be saying that there is a promotion for
14 some people taking place in this February restructuring, correct?

15 A. [15:15:57] These were appointments. This was not related to a promotion to a
16 higher rank.

17 Q. [15:16:11] Were there any of the individuals listed in the 12 February 2003
18 restructuring being given positions higher than they had had before?

19 A. [15:16:45] This was to confirm the officers who had been appointed and that's why
20 their names are included. We set up this structure. The commander at 409 brigade
21 or -- or, which he -- there was a commander sent to 409 brigade. This structure did not
22 take into account what we had done with the UPDF. When we were defeated, there
23 were some people who left and some people who stayed with us and that situation was
24 not reflected --

25 THE INTERPRETER: The situation got worse. Correction from the booth.

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1 MS SAMSON:

2 Q. [15:17:45] And this restructuring that we see in February 2003, does it reflect any
3 promotions or any people whose positions were elevated or are these solely lateral
4 assignments?

5 A. [15:18:23] If I look closely I can find cases like that, but I don't recall correctly. If I
6 had more time available I could see who had been promoted or who was in a battalion,
7 yes, because there are those who were available, could be -- there was Seyi and I -- I could
8 give you the names if I had more time, one after the other, but I don't know whether
9 you're going to allow me to actually do that.

10 Q. [15:19:18] I don't require that level of detail at the moment, I just wanted to know
11 whether from your recollection there may have been appointments that were to higher
12 positions, promotions or whether they were all lateral. It's only if you can remember.

13 A. [15:19:57] Yes, I recall that both of these were the case.

14 Q. [15:20:04] Are you referring to Commander Seyi or are you just referring generally
15 to there were promotions and there were lateral moves? It may be just an issue of
16 interpretation. Are you saying there were both -- when you say "I recall that both of
17 these were the case", are you referring to there were promotions and there were lateral
18 moves?

19 A. [15:20:50] We can't mix things up here. There were some specific cases. It was
20 not automatic. Not everybody was promoted or changed. There were individual cases.
21 It was -- in fact, it was done on a case-by-case basis and there were a number of cases, but
22 it's not the case for all of them.

23 Q. [15:21:16] I understand. I would like to look at some specific cases, so if you
24 could turn please to the logbook page 204, the translation is 4 -- at page 4026?

25 PRESIDING JUDGE FREMR: [15:21:33] Hold on, Ms Samson.

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1 Please, Mr Bourgon.

2 MR BOURGON: [15:21:38] Thank you, Mr President. Just before we look at the next
3 message, I'm informed that a number of words are missing from page 84, lines 22 to page
4 84, line 5, a number of words are simply not there, so I would like to have the audio
5 verified.

6 PRESIDING JUDGE FREMR: [15:21:56] And just to have a clear picture, they are
7 missing both in French and in English transcript?

8 MR BOURGON: [15:22:04] Yes, Mr President.

9 PRESIDING JUDGE FREMR: [15:22:05] Thank you.

10 MR BOURGON: [15:22:06] They don't appear to be material, but there are words
11 missing, so before we move to the next message, I'm told that there were some examples
12 that were given that are just not there. Thank you.

13 PRESIDING JUDGE FREMR: [15:22:17] Thank you. Well noted. And the control is
14 highly supported.

15 MS SAMSON: [15:22:54]

16 Q. [15:22:55] Now, the message I would ask you to focus on, please, is the second
17 message, it's the message in the middle of the page. It's a message dated 19
18 December 2002 that you sent to the north-east and south-east sector commanders. At
19 this time this is Jérôme Kakwavu and Tchaligonza or Tiger One?

20 A. [15:23:43] Tchaligonza and Tiger One are two different people. Tiger One was a
21 sector commander. Tchaligonza was someone else. He was his deputy during the
22 structural operation. It's not the same person. We're talking about two separate
23 individuals.

24 Q. [15:24:01] Yes. I wanted to confirm whether the south-east sector commander
25 was Tiger One or Tchaligonza.

1 A. [15:24:19] It was Tiger One who was commander of operations in the sector
2 south-east. The sector commander, something like that is what we would call him.

3 Q. [15:24:38] Now, in this message that you're sending to the sector commanders of
4 the north-east and south-east sectors, I'll read out the message in French so we can have
5 translation:

6 (Interpretation) "You are informed that it's necessary to know the commanders who
7 work well. Stop. From the rank of section commander upwards. In a few days we will
8 need this. Stop. And also to know the list of numbers of your force. Stop."

9 (Speaks English) Now, in this message we see that you're requesting information from
10 these two sector commanders about who is working well. Was this with a view to
11 ultimately either preparing a restructure or promoting certain individuals?

12 A. [15:26:17] If I'm appointed deputy chief of staff responsible for operations and
13 organisation, that's part of my tasks to have an army which is organised, prepared and
14 with commanders who have soldiers who are disciplined, to have the power. But also in
15 the following days so that these people can be promoted taking account of their ranks.

16 Q. [15:27:08] And if you turn please to logbook message at page 0198, translation
17 4020.

18 May I ask you please to look at the message at the top of the page, it was one that you sent
19 on 11 January 2003 at 9.38 in the morning. And it's a message that you sent to the
20 north-east sector commander of operations, Kakwavu. And you've copied the chief of
21 staff of the FPLC. And it looks like also the president. Can you confirm?

22 A. [15:29:06] Yes, I can confirm that.

23 Q. [15:29:12] Now here we have an example, don't we, of individual cases of
24 promotions, as you had mentioned moments ago, and I'll read the message in French:

25 (Interpretation) "The persons following this have been promoted to the following

1 functions. Stop. Commander Seyi 2IC 401 brigade - Commander Innocent 2IC 201
2 brigade - Commander Ricky commander battalion Kandoyi. Stop - Commander Eric
3 commander 7th battalion - Commander Theophile 2IC company 7th battalion. Stop."

4 (Speaks English) So these are examples of individuals who were promoted by you,
5 according to the message that you sent on 11 January, correct?

6 A. [15:30:35] Yes, that's true. However, Ricky hadn't been promoted. He'd been a
7 battalion commander for some time, and Eric as well. I think that -- well, I would say
8 simply that they were -- had been battalion commanders for some time.

9 Q. [15:31:09] So just so I'm clear in your answer, Commander Ricky and
10 Commander Eric were not being promoted by this message, these were positions that they
11 already held and that you're confirming; is that what you said or did you say something
12 different?

13 A. [15:31:40] Yes. When I liberated Sayo, Eric was a battalion commander under
14 Seyi. And Ricky was ill, but he was also a battalion commander under Jérôme. This
15 here is a means of confirming their positions because they had been battalion
16 commanders for some time.

17 Q. [15:32:10] And I note that Commander Seyi is the 2IC of the 401 brigade in this
18 message. Is that the position that he held or did he become commander of the 401
19 brigade?

20 A. [15:32:37] He was ad interim, acting ad interim when he liberated Mongbwalu in
21 December. Kitembo renamed that brigade 401st brigade and Manu took over, while Seyi
22 became his deputy. But at that time he had been acting as an interim battalion because
23 Commander Manu was absent.

24 Q. [15:33:10] Now, my question was actually having to do with your message from
25 January 2003, I wasn't asking you in relation to December. In your message of

1 January 2003, you've indicated that people are promoted and Commander Seyi is 2IC of
2 the 401 brigade. So is that the promotion you were giving him on 11 January 2003?

3 A. [15:34:20] At that time he was not the 2IC. That is the time when he was
4 appointed 2IC, but before then he had acted in an interim capacity. When that brigade
5 didn't have a commander, he was appointed to serve as interim commander of the
6 brigade, but here he is appointed as a deputy brigade commander.

7 Q. [15:35:00] And Commander Innocent who's mentioned as the 2IC of the 201st
8 brigade, is that Innocent Zimulinda?

9 A. [15:35:30] No, this is Innocent Kaina, this one.

10 Q. [15:35:36] And Innocent Kaina is Tutsi from Rwanda?

11 A. [15:35:54] No, I know him. He met me in the Ituri. I hadn't known him before.
12 It is said that he is a native of Rutshuru.

13 Q. [15:36:12] Innocent Kaina is an ethnic Tutsi, is he not?

14 A. [15:36:28] Yes.

15 Q. [15:36:30] If I could ask you to move please to the logbook message at page 0196,
16 translation 4018. The message I would ask you to focus on is the last message on the
17 page, it's dated 24 January 2003, sent by you at 12.56. And you're sending it to the
18 infantry battalion commander of Boga. You've copied for information the chief of staff of
19 the UPC/RP and Commander Tchaligonza. And I will read the message in French:
20 (Interpretation) "You are informed that you should not be fighting for leadership
21 positions. Stop. The organisation is as follows. Stop. Commander Nembe. Stop.
22 2IC CO - GODE. Stop. OC A company Commander Byankya. Stop. This should be
23 followed whenever there are changes. Stop. The one who would have worked well will
24 be the one to be promoted."

25 (Speaks English) End of message.

1 Now I'd just like to confirm a few of the acronyms that are used here. The first
2 organisation -- organisational detail that you set out is Commander Nembe. Was he put
3 in charge of the Boga battalion?

4 A. [15:39:30] Yes. You see "CO" here? CO refers to Commander Nembe and his
5 deputy is Gode, while OC is Byankya, OC company.

6 Q. [15:39:58] And these are promotions, are they, or are they lateral moves?

7 A. [15:40:16] Nembe had been with the reserve force of the chief of general staff since
8 November and he was promoted to battalion commander. What they were doing here is
9 that they were fighting for positions and they wanted to arrest Byankya. So there was
10 some sort of confusion at the beginning and that's why I had to send out this message to
11 make sure that everybody knew what their rank was and, in so doing, put an end to that
12 conflict between them. That is why I sent this message.

13 Q. [15:40:48] And you've confirmed at the end that he who works well will be
14 promoted?

15 A. [15:41:10] Yes, that was the criterion for promotion.

16 Q. [15:41:17] Now, I would like to move please to the logbook message at page 0066.
17 The translation is page 3888. And I'll refer you to the message at the bottom of the page,
18 it's a message that you received on 21 December 2002 from the commander of the 5th
19 battalion, and he's sent it to the brigade, 505 brigade commander. You're copied for
20 information along with the minister of defence and the chief of general staff. And I will
21 read a portion of the message and ask you a question about it, in French:

22 (Interpretation) "Sitrep 20 to 21 December 2002. Stop. General situation. Stop.

23 Calm. Stop. Population disappointed by conduct of the following M.D.R. Stop.

24 Koko Yuda. Stop. OC B company. Stop. Salif Keïta. Stop. 2IC OPTO battalion.

25 Stop. Wanichan Lunze. Stop. S.S. battalion. Stop. For having attempted to rape the

1 wives of civilians. Stop. At 1830. Stop. At the Mahagi centre. Stop. Commander
2 Yuda is in flight or fleeing. Commander Yuda is fleeing. Stop. Population was greatly
3 frightened. Stop. Hereby ask for your -- request your decision to find a solution. Stop.
4 In order to boost the morale of the civilians. Stop. Preparing to return to the bush.
5 Stop. Would signal at the same time. Stop. The arrival of Commander Moyi from
6 Beni. Stop."

7 (Speaks English) In this message it's right, isn't it, that you're receiving information that
8 several FPLC soldiers had attempted to rape wives of civilians in Mahagi, correct?

9 A. [15:45:33] Not many women. Their names are there. I received the message
10 which is contained in the logbook and I asked for all those troops to be sent to the
11 headquarters in Bunia. And I took measures very swiftly. Well, not many troops were
12 involved and I asked that Moyi be struck.

13 Q. [15:46:03] Now, in your answer, just to be sure that it's correct, you've
14 answered -- my question, lines 8 to 9 was:

15 "In this message it's right, isn't it, that you're receiving information that several FPLC
16 soldiers had attempted to rape wives of civilians in Mahagi, correct?"

17 And your answer was: "Not many women. Their names are there." Is that what you
18 said?

19 A. [15:46:44] No, that's not what I said. I said that the soldiers' names appear in the
20 document. Their names are mentioned in the document. Those are the soldiers who
21 attempted to rape some civilians and I took measures swiftly, promptly.

22 Q. [15:47:07] Now I've used the term "soldiers", but these are commanders, are they,
23 Commander Koko Yuda, Salif Keita and Wanichan Lunze, correct?

24 A. [15:47:35] Yes, they were commanders.

25 Q. [15:47:39] And does it matter that there were not many who attempted to rape the

1 civilians?

2 A. [15:47:59] No, it's a very bad thing. Even if it's one commander or two, it's still a
3 very bad thing to do.

4 Q. [15:48:16] Now let's look at the message in which you respond. It's at page 0203,
5 translation 4025.

6 If I could ask you to focus please on the last message on the page. Now, this is some
7 hours later on the same day, 21 December 2002, and you respond to the message to the
8 commander of the 5th battalion. And for information you've copied the northeast sector
9 commander and the 505 brigade commander. And you order, as follows, and I quote in
10 French:

11 (Interpretation) "I inform you that. Stop. Those leaders must be imprisoned. Stop.
12 You must send them here to the general staff headquarters. Stop. And that
13 Commander Moyi, if you know where he is attack him. Stop. Inform us of the
14 outcome."

15 (Speaks English) And so in this message you respond and you've ordered the arrest of
16 these leaders, correct?

17 A. [15:50:42] Yes.

18 Q. [15:50:42] If we can move to another logbook message, page 68. Translation is at
19 page 3890. It's the last message on the page. It's dated the following day,
20 22 December 2002 at 8.55 and it's from the 5th battalion infantry commander to the
21 505 brigade commander. For information you've copied -- he's copied the chief of staff of
22 the FPLC and the sector commander of the northeast sector. And you received the
23 message as it's in your logbook, correct?

24 A. [15:52:24] Yes.

25 Q. [15:52:27] And what the message states is that your order was carried out, and I'll

1 have you confirm that once I read the message, or part of it, in French:

2 (Interpretation) "Sitrep of 21 to 22 December 2002. Stop. General situation. Stop.

3 Calm. Stop. Point out to you that OC Koko Yuda has been taken and joined with the
4 two suspects or presumed in our amigo. Awaiting means of transportation. Stop. To
5 take them to the general staff headquarters. Stop."

6 (Speaks English) I stop at that part of the message for now. This confirms that these
7 commanders were arrested further to your order?

8 A. [15:53:51] Yes, they were picked up, but ultimately released when we had to fight
9 the Ugandans at the time when the prisoners were released.

10 Q. [15:54:05] And based on information you had received they were arrested and
11 imprisoned, at least initially, because they were guilty of having tried to rape civilians,
12 correct?

13 A. [15:54:29] Yes, that is correct.

14 Q. [15:54:37] Could you please move to message 0185, translation 4007. And the
15 message that I will refer you to is the first message on the page. It's a message that you
16 sent on 11 February 2003, so it's some six weeks after the arrest. You send this message
17 to Jérôme Kakwavu of the north-east sector, and for information the chef d'état major
18 général. And your message reads, and I will read it in French:

19 (Interpretation) "You are hereby informed to send me the following commanders
20 urgently. Stop. Commander Bebwa Mahagi area. Stop. Commander Yuda Mahagi.
21 Stop. Commander Mateso who was OC Mahagi. Stop. They should report to the
22 general HQ (general chief of staff). Stop. Because they have been promoted to certain
23 positions. Stop."

24 (Speaks English) Now, sir, Commander Yuda is amongst the commanders that just several
25 weeks after committing the grave offence of attempted rape is being promoted, correct?

1 A. [15:57:10] No. The one who attempted to rape is Koko Yuda, but this one is Yuda
2 and I forget what his other name was. These are two different people. There is another
3 message which refers to this particular person.

4 Q. [15:57:36] Sir, the last message referred to a Commander Yuda from Mahagi, and
5 now you're promoting Commander Yuda from Mahagi.

6 A. [15:57:56] The promotion is for Commander Yuda, but the one who was arrested
7 was Koko Yuda. This Yuda here has another name but I have forgotten that name. His
8 other name was not provided; that is why it doesn't appear here. The one who
9 attempted to rape is called Koko Yuda. So this message is very clear.

10 Q. [15:58:25] May I ask you to go back, please, to the last message we saw. It's the
11 message at page 0185, translation 4007. The translation is 4007, it's the first message on
12 the page. And this is the message we looked at earlier where you first are informed of
13 the attempted rape by various commanders, attempted rapes by various commanders.
14 And what you're informed of is, and I'll read it again:

15 (Interpretation) "Because of the conduct of the following MDR. Stop."

16 (Speaks English) And it refers -- it refers to Koko Yuda, Salif Keïta, Wanichan Lunze.

17 And then I'll read again:

18 (Interpretation) "At 1830 at the Mahagi centre. Stop. Commander Yuda fled. Stop.

19 The population was greatly frightened. Stop."

20 (Speaks English) And so on. So while I can see that there's a reference to Koko Yuda as

21 the offender in the second line of the message, he's referred to three, four lines down as

22 Commander Yuda who fled and the population was afraid. So I suggest to you that the

23 Commander Yuda from Mahagi that you promoted several weeks later is the same

24 Commander Yuda who is mentioned here as having, you said, been guilty of attempted

25 rape.

1 A. [16:01:27] The said Koko Yuda was OC, but the other Yuda whose name I forget
2 was the 2IC, and the one who gave me his name was Kisembo because he had worked
3 with him in the Équateur before the setting-up of the structure on 12 February. I know
4 this very well because I was with these people and I was -- I was their commander.

5 Q. [16:01:59] So your evidence is that the Commander Yuda from Mahagi that's
6 mentioned in this message is not the Commander Yuda from Mahagi that you are
7 promoting weeks later?

8 A. [16:02:28] Yes. Yuda had been detained, but he left prison, and I said so already,
9 when we were attacked by the UPDF. But Koko Yuda was never promoted. The Yuda
10 who was promoted was the 2IC CO. These are two different individuals whom I know
11 very well.

12 Q. [16:02:59] And you indicated previously that you released him because of an
13 operation that needed military strength, correct?

14 A. [16:03:40] This is not clear to me. I don't -- I don't know anything about this.

15 Q. [16:03:47] You mentioned that Commander Yuda from Mahagi was arrested, but
16 then he was released in advance of an operation. I'll find the reference for you.

17 MR BOURGON: [16:04:07] 95, line 19.

18 MS SAMSON: [16:04:11] Thank you.

19 Q. Page 95, line 19, you said, "Yes, they were picked up, but ultimately released when
20 we had to fight the Ugandans at the time when the prisoners were released."

21 In French the term you used was "arrested": "They were arrested and then released when
22 we had to confront the Ugandans."

23 A. [16:05:02] Let me describe the situation to you again, and this is what I said:
24 When we clashed with the Ugandans, the FPLC prisoners were held in detention.

25 Q. [16:05:16] Sir, you've provided information in relation to this, but my question was

1 just to confirm, yes or no, the evidence you gave that prisoners, including
2 Commander Yuda, were arrested and then released when you were confronting the
3 Ugandans.

4 A. [16:05:51] No, they were not released. They got out of the prison in their own
5 way because of the combat, without there having been a decision to liberate them, to free
6 them.

7 Q. [16:06:08] I see in the English it states that you said they were arrested but - it says
8 "picked up" but in French it says "arrested" - "ultimately released when we had to fight the
9 Ugandans at the time when the prisoners were released". The suggestion in the English
10 and French is that they were released as opposed to escaped.

11 A. [16:06:52] I said that during the war the prisoners got out because of the situation
12 that prevailed. They left the prison.

13 Q. [16:07:12] The French and the English translations both use the word "released",
14 but your evidence now is that they were not released by the authorities but they escaped;
15 is that your evidence?

16 A. [16:07:42] Everyone left the prison in their own way because of the clashes that
17 were taking place. That is my statement.

18 Q. [16:07:51] Now, I have one follow-up question.

19 PRESIDING JUDGE FREMR: [16:07:55] Hold on. Hold on, Ms Samson.
20 Mr Bourgon.

21 MR BOURGON: [16:07:58] Thank you, Mr President. I mean, the best way to verify is
22 just to have the audio verified as to what he said originally. So in French it was on
23 page 92, lines 21 to 23 and in English it was page 95, lines 19 to 21. We can show what he
24 said and add this to whatever he added after. Thank you.

25 PRESIDING JUDGE FREMR: [16:08:24] All right.

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1 Ms Samson.

2 MS SAMSON: [16:08:26] Certainly. Yes, your Honour.

3 Q. [16:08:30] Now, I wanted to come back to a message that we had looked at earlier
4 today. It's a message on page 177 in the logbook, translation 3999. It's the last message
5 on the page, 17 February 2003 at 16.35, when you had indicated having circulated or
6 driven through the zone of Djugu. Are you referring to the territory of Djugu?

7 A. [16:09:43] I did speak of the territory of Djugu, but I hadn't yet been there.

8 Q. [16:09:56] And where were you when you sent this message?

9 A. [16:10:11] I sent this message, I was in Bunia. I arrived in Bunia at about 7 a.m.
10 after having gone to the place where my child was living in order to visit him.

11 Q. [16:10:57] Now, I have a question to ask you in relation to the communications of
12 the UPC. Chief Kahwa had a satellite telephone in -- earlier than August 2002, correct?

13 A. [16:11:33] He didn't have a satellite telephone when I was with him, when I saw
14 him. He arrived there towards the end of July and he had no satellite telephone available
15 to him.

16 Q. [16:12:07] I would like to show you a document. It's DRC-OTP-0072-0315, it's
17 number 1124 on the Prosecution's list. Could the document be displayed confidentially,
18 please, although we can remain in public session.

19 Now, sir -- perhaps it could be expanded a bit more.

20 PRESIDING JUDGE FREMR: [16:13:04] Mr Bourgon, do you want to address the
21 Chamber or ...?

22 MR BOURGON: [16:13:10] No, Mr President, I had the wrong document in mind.

23 PRESIDING JUDGE FREMR: [16:13:13] Okay then.

24 MS SAMSON: [16:13:16]

25 Q. [16:13:17] Now, sir, can you see at the top left-hand corner the name

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1 Yves Kahwa Panga?

2 A. [16:13:36] Yes.

3 Q. [16:13:37] That's the person that we've been referring to as Chief Kahwa, correct?

4 A. [16:13:56] Yes, Chief Kahwa's name is Yves Panga, yes, that's right.

5 Q. [16:14:03] Now, could the document be enlarged slightly more, please. Perhaps a
6 little bit more.

7 Now, sir, can you see that this is an - court officer, if you could move slightly to the left of
8 the page for the moment - that this is a bill for an Iridium telephone, correct?

9 A. [16:15:16] Yes, I had seen that Jacques had an Iridium telephone even before
10 President Thomas had one.

11 Q. [16:15:29] This is the Iridium bill in the name of Yves Kahwa Panga, correct?

12 A. [16:15:53] I have no idea. I know nothing about telephone bills.

13 Q. [16:16:01] Is there a reason why you made reference to Jacques all of a sudden?

14 A. [16:16:23] I know what an Iridium telephone looks like and I've seen it. He had it
15 when we were in Mandro and that's why I mentioned his name. I was talking about the
16 equipment.

17 Q. [16:16:42] Now, this document is an Iridium -- is a list of Iridium calls, durations
18 and the cost under the name Yves Kahwa Panga. And as we can see, the charges or the
19 calls began in December 2001.

20 And if I could ask the court officer to scroll to the last page of the document, please.

21 PRESIDING JUDGE FREMR: [16:17:38] Hold on.

22 Mr Bourgon.

23 MR BOURGON: [16:17:40] Thank you, Mr President. Although the witness said he
24 has no idea of a telephone bill, this is a multi-page document. Maybe it would be better
25 for him to have a feel of the document and to see all the pages before any questions are

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1 put to him.

2 PRESIDING JUDGE FREMR: [16:17:57] Ms Samson, it depends what kind of questions
3 you are intending to put.

4 MS SAMSON: [16:18:01] I really have very few questions here. I just wanted to show
5 him the last page so we can see the last date of this particular bill as a means of seeing
6 whether he can confirm that Chef Kahwa had a satellite telephone in the period 2002,
7 which is when these calls end.

8 PRESIDING JUDGE FREMR: [16:18:23] It seems to be, I think, simply enough for
9 Mr Ntaganda to understand without any further study of the document, so please
10 proceed.

11 MS SAMSON: [16:18:34] And once we are at the last page, court officer, if you could
12 scroll just to the end of the entries. You may be there.

13 Q. [16:18:42] So you can see, Mr Ntaganda, that the last entry or the last telephone call
14 on this particular document is October, 8 October 2002; do you see that?

15 A. [16:19:10] Yes, I can see that date.

16 Q. [16:19:14] Now, does that help refresh your recollection as to whether Chef Kahwa
17 had a satellite telephone in the summer of 2002 through to October 2002?

18 A. [16:19:47] Your Honours, when I lived with Kahwa in Mandro, I never saw him
19 carrying a telephone in his hand. I know that the Iridium system has an antenna that
20 you move to change direction. And I never saw Chief Kahwa carrying any device of this
21 type.

22 Q. [16:20:20] You, yourself, would receive bills for your Thuraya telephone after you
23 received one in 2002 and 2003, correct?

24 A. [16:20:49] Nobody ever gave me a bill.

25 Q. [16:20:56] You stated in your examination-in-chief that the -- you would make

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1 requests for payment of Thuraya to the presidency, correct?

2 A. [16:21:32] They bought credit for us, air units, units to make calls, and I could go to
3 the place called Air Showa (phon), but I was never actually presented with a bill. A bill
4 is something which you are given and then it's up to you to pay the amount in question.
5 And I never received any such bill for the Thuraya.

6 Q. [16:22:15] Did you ever make requests to the president of FEC, the
7 Federation -- Economic Federation of the Congo to pay your Thuraya bills?

8 A. [16:22:52] I don't remember that.

9 Q. [16:22:58] Do you know what I mean when I refer to the FEC, F-E-C?

10 A. [16:23:15] In the Congo the FEC is the boss or the manager, the person in charge of
11 businessmen.

12 Q. [16:23:36] Do you know that the president of the FEC in Ituri is a man named
13 Constant Bubu Lenga?

14 A. [16:24:00] At the time we were in Bunia, yes, it was him, he was the head of the
15 FEC.

16 Q. [16:24:14] And the UPC would get financing or money from the FEC, correct?

17 A. [16:24:32] With regards to the funding of the UPC, I never got involved in that.
18 What I was dealing with were military matters, and I'm not really very familiar with the
19 financial side of things.

20 PRESIDING JUDGE FREMR: [16:24:51] Ms Samson, we reached -- we have reached the
21 four-hour time limit, so if possible please wrap up as soon as possible.

22 MS SAMSON: [16:24:59] Thank you, Mr President. Perhaps we can break here for the
23 day and I can resume tomorrow.

24 PRESIDING JUDGE FREMR: [16:25:08] All right.

25 And for tomorrow, court officer, please next time either inform both parties publicly

1 because they both should know about last five minutes or just report to me and I will
2 inform parties, but we will have to put it on the record and I think the body language is
3 not -- towards to Prosecution not the ideal form of contact.

4 Now, Mr Bourgon.

5 MR BOURGON: [16:25:39] Thank you, Mr President. Just on page 28 at line 12, I
6 would like that line to be checked. There's a difference between -- the word that was
7 used; one has a legal meaning and one does not have a legal meaning, and I would like
8 that word to be checked on the audio recording.

9 I would also like, Mr President, just to make -- to seek clarification regarding the use of the
10 logbook. I made extensive use of the logbook myself during the examination-in-chief
11 and I know that my colleague will probably go on. However, I'm just wondering as to
12 how many times we can go over the same message again and again and again, because
13 then when I take up all of these messages in re-examination, that might take quite a bit of
14 time. So I just wanted to seek clarification from the Chamber in that regard. Thank you.

15 PRESIDING JUDGE FREMR: [16:26:36] A clarification from Ms Samson. Ms Samson,
16 because I don't believe this -- that is prohibited. Ms Samson.

17 MS SAMSON: [16:26:43] Yes, I just rise to understand what the clarification is, solely
18 because it cannot be that the Defence can use however many messages it wishes to and
19 the Prosecution cannot challenge any of them because the Defence would prefer that we
20 not go there. Thank you.

21 PRESIDING JUDGE FREMR: [16:27:03] Mr Bourgon.

22 MR BOURGON: [16:27:03] That's not the issue at all, Mr President. They can use all
23 the messages they want and I will do the same. My question is: How many times can
24 we go over the same message over and over again? Usually a question is asked and
25 answered once. Once we spend in this -- I say this because today there was one message

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1 where my colleague spent 29 minutes on that message and then she returned to the
2 message again later. Is there -- there should be some kind of an "asked and answered"
3 rule even in cross-examination. Thank you.

4 PRESIDING JUDGE FREMR: [16:27:38] I understood you well, Mr Bourgon. And I
5 can confirm that -- feel free to stand up and to submit "ask and answered" objection, and it
6 will be accepted if it will be well-founded. But the other thing is, if the Prosecution have
7 some need to return back to the same message but with different question, then even if it's
8 not ideal, I agree with you, it would be better rather to exhaust all questions concerning
9 one, one message, but it still, it can't be prohibited. So that is my guidance to both
10 parties.

11 Now we adjourn and we will reconvene tomorrow 9.30.

12 THE COURT USHER: [16:28:23] All rise.

13 (The hearing ends in open session at 4.28 p.m.)