

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, 30 August 2017
9 (The hearing starts in open session at 9.32 a.m.)
10 THE COURT USHER: [9:32:52] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: [9:33:27] Good morning, everybody.
14 Court officer, please call the case.
15 THE COURT OFFICER: [9:33:32] 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 For the record, we are in open session.
19 PRESIDING JUDGE FREMR: [9:33:48] Thank you, court officer.
20 Now appearances, please.
21 MS SAMSON: [9:33:52] Good morning, Mr President. Good morning,
22 your Honours. The Prosecution's composition is unchanged from yesterday.
23 PRESIDING JUDGE FREMR: [9:33:59] Thank you, Ms Samson.
24 Defence, please.
25 MR BOURGON: [9:34:03] Good morning, Mr President. There are some changes

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1 on the side of the Defence. Representing Mr Ntaganda this morning,
2 Mademoiselle Julia Jan, Mr Jean-Baptiste Gasominari, Mr David Wagen-Magnon,
3 Maître Isabelle Martineau and Maître Erik Cookson-Montin and myself,
4 Stéphane Bourgon. Thank you, Mr President.
5 PRESIDING JUDGE FREMR: [9:34:27] Thank you, Mr Bourgon.
6 And Legal Representative of Victims, please.
7 MS PELLET: [9:34:31] (Interpretation) Thank you, your Honour. No change on the
8 side of the former child soldiers.
9 MS GRABOWSKI: [9:34:43] Good morning, Mr President. Good morning, your
10 Honours. There is no change for the victims of the attacks either.
11 PRESIDING JUDGE FREMR: [9:34:52] Thank you, Ms Pellet. Thank you,
12 Ms Grabowski.
13 Today we are going to continue with next part of cross-examination of Mr Ntaganda
14 conducted by the Prosecution. Ms Samson, you have the floor.
15 MS SAMSON: [9:35:03] Thank you, Mr President.
16 WITNESS: DRC-D18-D-0300 (On former oath)
17 (The witness speaks Swahili)
18 QUESTIONED BY MS SAMSON: (Continuing)
19 Q. [9:35:13] When we left the session yesterday, we were looking at a document
20 dated 11 August 2002. Now, I just have several more questions for you in relation to
21 that document and I would ask the court officer to kindly display
22 DRC-OTP-0113-0133.
23 You will recall that we looked at this document yesterday. It is the political
24 declaration of the FRP signed by Thomas Lubanga and others dated 11 August 2002.
25 And if I could ask that we turn to the second page, in fact to the very bottom of this

1 page, initially to the last line. And I will read it, where we see what the FRP is
2 declaring in this declaration, in French: (Interpretation) "That's the reason why,
3 considering the above, we declare".

4 (Speaks English) And on the next page we have those declarations, number 1:

5 (Interpretation) "Number 1, the end of the power of RCD/ML in Ituri.

6 Number 2, the political, economic and military management of Ituri by the FRP."

7 (Speaks English) Now, from this document, it's right, isn't it, that Thomas Lubanga
8 and the other signatories in Kinshasa obtained information about the ousting of the
9 RCD immediately following that event?

10 A. [9:38:11] As I told you yesterday, I will continue to answer saying that when
11 Thomas was in Kinshasa, I didn't have contact with him.

12 I've just seen this document here. I don't know this. When the president arrived in
13 the month of September, he set up the UPC and FPLC. As regards this declaration,
14 this is something I don't know nothing about. Here of course I am talking about at
15 that time.

16 Q. [9:39:04] The ousting of Molondo Lompondo and the RCD was on
17 9 August 2002?

18 A. [9:39:18] Yes, it was at that time that the Ugandans had attacked Molondo's HQ
19 and he had fled.

20 Q. [9:39:31] And within two days of that, Thomas Lubanga from Kinshasa declares
21 the management of Ituri for himself and others, correct?

22 A. [9:39:59] I wasn't aware of that and I haven't heard anyone speak of that.

23 Q. [9:40:04] And my suggestion to you is that Thomas Lubanga knew at the time of
24 the ousting of the RCD-K/ML, he knew of it because you, Floribert Kisembo,
25 Chef Kahwa, himself, Thomas Lubanga, Richard Lonema and others had planned to

1 oust the RCD and to take control of Bunia.

2 A. [9:40:51] What we know doesn't coincide with what you are suggesting. We
3 didn't plan it. We were attacked. They wanted to destroy us. And that's how we
4 decided to go to Mandro in order to protect ourselves. We weren't able to prepare
5 anything at that time.

6 I saw Lonema for the first time with the -- at the time of the Chui mobile force and the
7 second time when he came to hide at Thomas Lubanga's residence. But we weren't
8 together in order to plan to oust the RCD-K/ML. And that's why I say the reason
9 why we fled in order to go to Mandro is the opposite of what you're suggesting.

10 Q. [9:41:56] Thomas Lubanga did in fact take over the political, economic and
11 military management of Ituri, did he not?

12 A. [9:42:22] When he arrived, he was accompanied by Ntumba Luaba. His
13 intention was to return, and it was at that time that he was caught by Chef Kahwa.
14 And it was at that time that Ntumba Luaba was taken prisoner by Chef Kahwa. It
15 was at that time that the movement was founded.

16 Q. [9:42:52] And Thomas Lubanga did in fact take the political, economic and
17 military control of Ituri, correct?

18 A. [9:43:12] When he became president of the UPC FPLC as commander-in-chief,
19 I don't know what the statutes say with regards to the economic management, but all
20 I know is that he was president of the party. The political wing, the movement,
21 controlled Ituri and within the movement there were institutions which came under
22 his orders. So if that's what you are speaking about, yes, I could agree with you.

23 Q. [9:44:03] And the institutions that came under his orders were led by the
24 individuals who signed the 11 August 2002 declaration, correct, including Avochi,
25 Ndukute and Tinanzabo?

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1 A. [9:44:43] Among them there were the national secretaries. They were
2 responsible for different departments.

3 Q. [9:44:54] And those national secretaries included Avochi, Ndukute, Tinanzabo
4 and others?

5 A. [9:45:18] I don't know if Ndukute and Tinanzabo were general secretaries.
6 I don't know even the offices they were responsible for. But I know that Tinanzabo
7 was responsible for the reconciliation office. The others, I don't know what
8 departments they were responsible for.

9 Q. [9:45:49] You do know that they were part of the UPC?

10 A. [9:45:58] Yes, I know that. They were members, members of the UPC.

11 Q. [9:46:10] And Thomas Lubanga held the political, economic and military
12 management of Ituri with you and with Kisembo and with Chef Kahwa, correct?

13 A. [9:46:37] President Thomas Lubanga, he was the president of the party. But
14 there was a minister of finance. There were other people responsible for different
15 departments, but that all came under the orders of Thomas Lubanga. As for myself,
16 I was in the military wing, and Kisembo was the chief of general staff thereof. I'm
17 talking about the FPLC.

18 Q. [9:47:32] And are you aware that John Tinanzabo, UPC secretary-general,
19 referred to the August 9 2002 operation as a UPC/RP operation in official UPC
20 documents?

21 A. [9:48:14] I didn't know.

22 Q. [9:48:20] Let's take a look at a document. We've looked at it during your
23 examination before. The ERN is DRC-OTP-0092-0436, it is item 1298 on our list and
24 it's a public document.

25 If we could make the full page visible so the witness can see the first page.

1 Now, sir, this, as you will recall, is the UPC document, "Pacification of Ituri,
2 Programme - Budget - Calendar". And as we looked at previously, at page 0440, I
3 will show you the date and the author.

4 So you can see that this was done in Bunia, 26 September 2002, and it is signed
5 Jean de Dieu Tinanzabo Zeremani as national secretary in charge of pacification and
6 reconciliation of UPC/RP.

7 And if we could please turn back to page 0437, which is the second page of the
8 document after the cover page.

9 This is the introduction. And if we can scroll down, please, to the third and fourth
10 paragraphs. And a little bit more. Yes.

11 The document, as you can see, is in English so I will read it and you will have
12 a translation. Quote:

13 "From March 2002, the APC's forces of Mbusa Nyamwisi's RCD/ML, the Ugandan
14 rebels of ADF, those of NALU, the Mayimayi of Beni and the Interahamwe have
15 formed that terrorist and murderous coalition. This is the external cause to the
16 traditional Hema-Lendu conflict which has been identified by UPC/RP as a major
17 obstacle to the process of pacification in Ituri. Henceforth, UPC/RP has decided to
18 fight them by arms.

19 This is the reason that justified our military offensive on 9th of August 2002 to the
20 headquarter of these negative forces headed then by Mr JP Molondo Lompondo.
21 This offensive had put an end to the power of RCD/ML in Ituri." End quote.

22 Now, sir, I will put to you, after having read this document squarely within the
23 period when the UPC/RP and the FPLC are controlling Bunia and Ituri, we see that
24 the UPC leadership declares publicly that the 9 August 2002 military offensive was its
25 own military offensive on the headquarters of Molondo Lompondo. And this is

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1 a true and accurate description of the August 9, 2002 takeover, isn't it?

2 A. [9:54:00] I think I have already commented on the document that you have just
3 presented to me once again. At the time the document was drafted I wasn't aware of
4 the statement. I told you I didn't know about the document. And with regards to
5 pacification, what I knew was that on the date of 13 January, an event which I have
6 already testified about here with regards to this document, I don't know it. I haven't
7 even been provided with an example of this. I didn't know Tinanzabo on 9 August.
8 I was in the APC and Tinanzabo wasn't in my party. So we couldn't meet. Only
9 when we went to the RPC, that's when we met in the month of September 2002.
10 When we went to Kasese I saw that he was in the Ugandan delegation. And
11 afterwards they went back to their work within the RCD-K/ML. So with regards to
12 this declaration made by Tinanzabo, as I will repeat, I was not aware of it and I do not
13 know it.

14 Q. [9:55:43] Now, to be clear from your answer, being presented with this
15 document does not lead you to in any way amend your testimony that the
16 9 August 2002 takeover was one done by the UPC forces?

17 A. [9:56:17] I can't change my testimony because I was present at the time. I
18 remember well. I was in Mwanga and Kisémbu met me and we heard detonations
19 from tanks, the UPDF near Molondo and Molondo was driven out. And we went
20 into the town in the evening. Kisémbu wasn't there. He met me in Mwanga.
21 I was in the mission to drive out the APC and the combatants who wanted to attack
22 Mudzipela. It was after the 7th and the 8th.

23 THE INTERPRETER: Between the 7th and the 9th, corrects the interpreter.

24 THE WITNESS: (Interpretation) And I can't change my testimony just because you
25 have presented a document to me.

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1 MS SAMSON:

2 Q. [9:57:17] Now, you know a man named Professor Dhetchuvi Jean-Baptiste who
3 was national secretary in the UPC for foreign affairs?

4 A. [9:57:46] He too I got to know when the UPC was created. That was after
5 September 2002. And it was at that time that I met him. He was minister
6 responsible for foreign affairs. I didn't know him before that. In August I didn't
7 know him. I met him later in the month of October 2002.

8 Q. [9:58:25] Now I would like to show you a document signed by Mr Dhetchuvi in
9 his role as national secretary for foreign affairs.

10 The document is DRC-OTP-0037-0271. It is item 943 on our list. And it's public.

11 PRESIDING JUDGE FREMR: [9:59:18] Mr Bourgon.

12 MR BOURGON: [9:59:19] Thank you, Mr President. I note for the record that this
13 is a document that has been in the possession of the Prosecution for a long time and
14 that it was not used during the presentation of the Prosecution's case-in-chief.

15 Thank you.

16 PRESIDING JUDGE FREMR: [9:59:33] Well noted.

17 THE COURT OFFICER: [9:59:36] Ms Samson, could you please specify which
18 redacted version would you like us to publish.

19 MS SAMSON: [9:59:48] The last redacted version. I believe there may only be
20 a redaction in the header remaining.

21 Q. [10:00:20] Now here, sir, I will briefly introduce the document to you before
22 asking you questions. Here we have a document on UPC letterhead from the
23 national secretariat for foreign affairs. It's titled, in French (Interpretation)
24 "Aide-memoire intended for Sir Ketumile Masire, Neutral Facilitator of the
25 InterCongolesse Dialogue."

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1 (Speaks English) And the subject line I will read with you a bit further down, in
2 French: (Interpretation) "Participation of the UPC/RP in the inter-Congolese dialogue
3 general and inclusive".

4 (Speaks English) And I will take you to the last page of this document, 0273, to the
5 signature line at the bottom.

6 So we can see that this letter is made in Bunia on 22 October 2002 and signed by
7 Professor Dr Dhetchuvi, national secretary for foreign affairs.

8 Now, sir, is this a document that you would have come into contact with at the time it
9 was written?

10 A. [10:02:12] Not at all. I have not seen this document and I am not aware of it at
11 all.

12 Q. [10:02:21] And if we could move back to the first page, please, 0271. To the
13 centre of the page towards the bottom, the first bullet point.

14 I will read what Professor Dhetchuvi on behalf of the UPC has written about the
15 UPC/RP and its creation, in French:

16 (Interpretation) "1. Name and creation of the UPC/RP. The
17 Union of Congolese Patriots for reconciliation and peace, UPC/RP, under the
18 leadership of Mr Thomas Lubanga is a politico-military movement born on
19 15 September 2000 in the northeast of the Democratic Republic of the Congo, in
20 particular in the province of Ituri which it controls to this day."

21 (Speaks English) Now, sir, do you accept or not as true that the UPC/RP under the
22 direction of Mr Thomas Lubanga is a political-military movement born on
23 15 September 2000?

24 A. [10:04:06] When I arrived in Bunia in 2000, there was only one party, RCD-K/ML.
25 So I don't know whether the President Thomas Lubanga had another political party at

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1 the time because I didn't see that when I arrived in 2000. The administration was
2 carried out by Mbusa Nyamwisi and I explained already to you the circumstances in
3 which I met Thomas Lubanga, but I can't say to you what the circumstances were
4 when the FRP was created but -- or how it operated under him.

5 Q. [10:05:13] Professor Dhetchuvi in his letter is not referring to the FRP. He is
6 referring to the UPC/RP as being a politico-military movement under
7 Thomas Lubanga born on 15 September 2000. So I would like to know whether you
8 accept Professor Dhetchuvi's statement, signed statement, on that point or not.

9 A. [10:05:50] As I have already explained, I do not know this document. What
10 other explanation can I give you on the subject of what is reported in this document
11 when I tell you I am not familiar with this document? When the judge, the
12 Presiding Judge gave me instructions, he told me to speak of what I know and to say
13 only what I know about the things I know and to say when I do not know things.
14 Those -- you are giving information about the party and circumstances in 2000,
15 circumstances which I do not know of.

16 PRESIDING JUDGE FREMR: [10:06:46] Mr Ntaganda, just to be clear, you are right.
17 It is not up to you to comment the document if you have no knowledge about the
18 document. But the question targeted your knowledge about the fact contained in the
19 document, the date of establishment of the UPC. So you can, rather, to focus on that,
20 whether you know or knew about that or not, even now whether you have some
21 knowledge about the date of establishment of the UPC, as described in this document.
22 Mr Bourgon.

23 MR BOURGON: [10:07:25] Thank you, Mr President.

24 I note for the record that yesterday the exact same question was asked to the witness,
25 and that was in the transcript of yesterday, and that was on page -- transcript 231, and

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1 that was on page 60.

2 The question was put: "It's right, isn't it, that the UPC was created on
3 15 September 2000?" Response from the witness: "Yes, I learnt about that later.
4 I was told it was created on that date."

5 So we have already an answer on the record and now we are talking about
6 a document.

7 PRESIDING JUDGE FREMR: [10:08:02] Yes. Noted. I maybe would understand
8 that it is an attempt to refresh Mr Ntaganda's testimony in light of this document.
9 Ms Samson, you can comment it yourself.

10 MS SAMSON: [10:08:17] In fact, it's the reference within this UPC document to the
11 UPC having been a political-military movement as of 15 September 2000. The earlier
12 question, that I understood the witness had accepted, was that he had heard that it
13 had been a political movement at that time.

14 So with -- armed with this additional description of the 2000 period, I would like to
15 have the witness's answer.

16 PRESIDING JUDGE FREMR: [10:08:47] So then it was my error. I misinterpreted
17 your question. So please proceed, Ms Samson.

18 MS SAMSON: [10:08:56]

19 Q. [10:09:19] To ensure there is no confusion, my question is: Are you aware, do
20 you know and do you agree that on 15 September 2000 the UPC was created as
21 a political-military movement?

22 A. [10:09:36] No, I did not know this. At the time I was a member of the APC. I
23 think that during this period there I had a problem with Wamba Dia Wamba, who
24 wanted to do away with me personally. I didn't know Thomas Lubanga personally.
25 I did not meet him until he came to Mandro to collect us and put us in touch with the

1 Ugandans. But I say again, at the time I did not know the UPC as a politico-military
2 movement.

3 Q. [10:10:20] If we could turn, please, to the next page of the document, page 272,
4 and I'll focus on point 5. And I will read to you what Professor Dhetchuvi, as
5 national secretary of the UPC/RP for foreign affairs, writes about the ousting of the
6 RCD from Ituri. And I will read it in French:

7 (Interpretation) "Reasons for military ousting of the RCD-ML/Kis of Mbusa Nyamwisi
8 from Ituri by the UPC/RP.

9 The UPC/RP militarily ousted the RCD-ML of Mbusa Nyamwisi from Ituri for the
10 following reasons:

11 - mediocre nature of the management by the leaders of the RCD/ML.

12 - massacre of the Congolese populations in Ituri.

13 - the culture of inter-ethnic hate and division.

14 - conflicts out of control of the leadership leading to poor governance, clientism and
15 tribalism.

16 - funds being moved away from the -- state funds being moved and the -- rendering
17 the population of Ituri in poverty."

18 (Speaks English) Now, we see once again that the UPC leadership makes a public
19 statement, in this case through Mr Dhetchuvi, national secretary for foreign affairs,
20 that it was the UPC who militarily dislodged the RCD of Mbusa from Ituri.

21 Now, I take it you stand by your evidence, however, that that is not the case and that
22 the UPC did not do anything of the sort?

23 A. [10:13:19] I will say again, when the Ugandans drove out RCD-K/ML, I was in
24 Mwanga with two companies only. We had no forces in Bunia. It was the
25 Ugandans who drove out Molondo.

1 Q. [10:13:56] And lastly I will move to the point number 4 in the document. And I
2 will read that in French:

3 (Interpretation) "Actual facts on the terrain -- or current situation on the terrain.
4 Since 9 August 2002, UPC/RP has political, administrative and military control of Ituri,
5 with its more than 5 million inhabitants, which is at least 15 per cent of the population
6 of the DRC. The UPC/RP has re-established security of persons and property."

7 (Speaks English) Now, what is your position in relation to that paragraph? Do you
8 accept or deny that since 9 August 2002 the UPC has the political, administrative and
9 military control of Ituri?

10 A. [10:15:24] If you are asking me whether I am to confirm, whether I am in
11 agreement with the content of this document, I don't know how to reply to you,
12 because at that time I was in Mwanga. And this document was written by
13 Professor Dhetchuvi and I have already told you I was not aware of this document.
14 So it's very difficult for me to comment on the correctness of what is contained in this
15 document.

16 When I left Mwanga, I went to Mandro and I know that we didn't have any forces in
17 the town of Bunia. There were only the bodyguards of Kisembo and the two
18 companies. I left part of my troops on the bridge for access to Mudzipela. We had
19 no troops in the town of Bunia. This is the first time that I have seen the content of
20 this document that you have shown me today.

21 Q. [10:16:42] And I take it from your answer that the fact contained in this letter,
22 that the UPC took control of the management of Ituri on 9 August 2002, I take it that
23 you, according to your knowledge of what took place on 9 August, that you deny that
24 it was the UPC who took control of Ituri. I think that's right.

25 A. [10:17:24] I became a member of the UPC in September 2002 when the decree of

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1 my nomination was published. Even if in this document we see a number of facts
2 described, I did not know the UPC at that time. And I know that the FPLC was
3 created when Thomas Lubanga came back from Kinshasa, and from that period on, I
4 knew of the existence of the UPC. Before that, I was a member of the APC even
5 though I was considered to be a mutineer, up to the date of 9 August.

6 PRESIDING JUDGE FREMR: [10:18:27] Sorry to interrupt you, Ms Samson. I
7 would like to put one or two additional questions.

8 And when you join, Mr Ntaganda, when you join, when you did join the UPC
9 formally in September, were you interested in the goals of the UPC or in its role in
10 Ituri?

11 THE WITNESS: [10:19:10] (No interpretation)

12 PRESIDING JUDGE FREMR: [10:19:34] I am sorry, Mr Ntaganda. At least myself, I
13 haven't received any translation and I see that neither the parties -- what is the
14 problem, interpreters' booth?

15 THE INTERPRETER: [10:19:45] I apologise, your Honour. I forgot to press the
16 button. I forgot to switch on the mike.

17 PRESIDING JUDGE FREMR: [10:19:57] So, Mr Ntaganda, could you kindly repeat
18 your response, if possible, because it hasn't, it hasn't been captured by the interpreters.
19 Sorry for that.

20 THE WITNESS: [10:20:14] (Interpretation) Yes. I was saying that my role when I
21 became a member of the UPC/FPLC when the decree appointed me deputy chief of
22 general staff in charge of operations, deputy to Kisembo, I worked in this role until
23 the Ugandans drove us out and thereafter I continued to carry out this role until
24 Kisembo changed sides. After this change I became the interim chief of general staff.
25 But other than that, during my time within the UPC/FPLC I played no other role, I

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1 was solely the deputy chief of general staff responsible for operations.

2 PRESIDING JUDGE FREMR: [10:21:17] Mr Ntaganda, my question probably was
3 misunderstood. I was interested to know whether you, when you joined the UPC,
4 whether you were interested what the UPC is going to do, what is the UPC role in
5 Ituri, what are the goals of the UPC. So I didn't ask you about your role, but about
6 the role and goals of the UPC at the moment you joined the UPC, what was your
7 knowledge?

8 THE WITNESS: [10:22:11] (Interpretation) Well, it was the president,
9 Thomas Lubanga, who was the commander-in-chief of the army. And from him,
10 well, it was he himself as commander-in-chief of the army who gave us the line to
11 follow. In his instructions and with his ideology we, via the chief of general staff,
12 Kisembo, were given these instructions and we passed them on to the lower echelons.

13 PRESIDING JUDGE FREMR: [10:23:09] I'm sorry, but I have to insist and try to get
14 response on my question, at least what I am interested in.

15 Does it mean, Mr Ntaganda, that at the time you joined the UPC you had no
16 knowledge what the UPC role is? What are the political goals? Because I would
17 expect, to go further, that if you are fighting for some political party, I know that you
18 were a soldier, you also should be interested what the political party would like to
19 reach, what are the goals of this political party of this movement. So for you it
20 doesn't matter what the political party, what the UPC goals are?

21 THE WITNESS: [10:24:23] (Interpretation) I think I have understood you,
22 Mr President.

23 Before the creation of the UPC and the politico-military movement I did not know the
24 UPC. I only knew the minister of defence, Thomas Lubanga. And when his
25 structure was rejected he set up a new movement which became known as UPC/RP

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1 and he defined the ideology of this movement. But before, I did not know the
2 UPC/RP movement because I was not a member. It was only once he created this
3 that I became aware of it and joined. Once I became a member I developed within
4 the movement and I knew the ideology. There were press conferences organised.
5 For example, when he sent me to Mongbwalu or to other places to talk to the
6 population, I knew the ideology of the movement. And so I say again I became
7 aware of the UPC from 4 September 2002 when I joined the movement. But before
8 that date I was a member of RCD-K/ML, in particular the armed wing, the APC.

9 PRESIDING JUDGE FREMR: [10:26:15] Fine. It was that I was interested in.

10 And my last question connected with your previous answer: So as soon as you got
11 acquainted with the ideology of the UPC, when you knew that, you were fine, you
12 did agree with this ideology; am I correct?

13 THE WITNESS: [10:26:47] (Interpretation) Absolutely.

14 PRESIDING JUDGE FREMR: [10:26:50] Thank you, Mr Ntaganda.

15 Ms Samson, sorry for interruption. You have the floor again.

16 MS SAMSON: [10:26:59] Mr President, on the last document that I was showing to
17 the witness I seek to admit the portions that I have read out for the purposes of
18 impeachment. That's DRC-OTP-0037-0271.

19 PRESIDING JUDGE FREMR: [10:27:14] Defence, your position?

20 MR BOURGON: [10:27:18] No objection, Mr President.

21 PRESIDING JUDGE FREMR: [10:27:22] All right. So the parts of the document
22 specified by Ms Samson are admitted into evidence for the purpose of impeachment.
23 Ms Samson, please proceed.

24 MS SAMSON: [10:27:41]

25 Q. [10:27:44] Thomas Lubanga came back to Ituri, to Mandro in particular, with the

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1 minister of human rights based in Kinshasa, Ntumba Luaba, on 29 August 2002?

2 A. [10:28:29] Yes, he arrived at the end of August.

3 Q. [10:28:36] And upon arrival Thomas Lubanga and Ntumba Luaba were brought
4 to Mandro and held there during negotiations to free Lubanga and his delegation
5 from their house arrest in Kinshasa, correct?

6 A. [10:29:39] I didn't understand your question, Madam Prosecutor. I don't know
7 whether you are talking about Thomas Lubanga who was under house arrest or
8 whether it was he who was conducting negotiations to be released from this.

9 Q. [10:30:03] I'll repeat my question. When Thomas Lubanga and Ntumba Luaba
10 arrived in Bunia on 29 August 2002, they were brought to Mandro and held there
11 pending discussions to ensure the release of others detained in Kinshasa, correct?

12 A. [10:30:38] That's it. When they arrived Chef Kahwa entrusted the task of
13 ensuring their security to me. Ntumba Luaba and President Thomas Lubanga were
14 in Chef Kahwa's house.

15 Q. [10:31:06] And Ntumba Luaba left Mandro and was released on
16 1 September 2002, correct?

17 PRESIDING JUDGE FREMR: [10:31:20] Hold on, Mr Witness.

18 Mr Bourgon.

19 MR BOURGON: [10:31:24] Thank you, Mr President. I would just like to clarify, is
20 this, the Prosecution position being put to the witness or is it a question to the witness
21 on the basis of what he said previously? It is important for the witness to know
22 what we are doing. Is it the position of the Prosecution that the Prosecution is
23 looking for confirmation or is it a question? Thank you.

24 PRESIDING JUDGE FREMR: [10:31:49] Ms Samson.

25 MS SAMSON: [10:31:49] I am asking questions, your Honour, and the witness can

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1 let me know whether he agrees or not with the proposition that I am putting forward.

2 PRESIDING JUDGE FREMR: [10:31:59] Maybe just to, to be clear, to make it clear, if
3 you are not saying "I am putting to you", we take it as a question. "I am putting to
4 you the fact". So I think it will be no problem in future to make distinction between
5 putting proposition and asking.

6 Please proceed.

7 MS SAMSON: [10:32:17]

8 Q. [10:32:17] Sir, Ntumba Luaba's departure was on 1 September; is that right?

9 A. [10:32:40] That's possible. He didn't stay there for a long time.

10 Q. [10:32:49] Now while you were in Mandro with Thomas Lubanga and
11 Mr Ntumba Luaba, you had an opportunity to speak with Mr Lubanga, which you
12 have described to the Court already, correct?

13 A. [10:33:18] Yes.

14 Q. [10:33:24] And during those four days or so in which Thomas Lubanga was in
15 Mandro with Ntumba Luaba, he spoke to people from the comité de paix to hear -- to
16 learn about attacks in Mabanga?

17 A. [10:34:04] I remember that he asked me to send troops there for an intervention,
18 an intervention that had to react faced with the attack that the population were
19 subject to. I have already said that.

20 Q. [10:34:24] And when Thomas Lubanga asked you to deploy troops to Mabanga,
21 did you speak to him about any other matters? For instance --

22 A. [10:34:46] I no longer remember. I remember I sent soldiers. I sent soldiers
23 there.

24 Q. [10:34:56] Did Thomas Lubanga discuss with you why he would send you on
25 his instruction to Mabanga, what structure you were falling under in complying with

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1 this direction?

2 PRESIDING JUDGE FREMR: [10:35:26] Hold on, Mr Witness.

3 Mr Bourgon.

4 MR BOURGON: [10:35:29] I don't believe, Mr President, that we have a reference as
5 to Mr Lubanga instructing Mr Ntaganda to go to Mabanga. I don't think that this is
6 part of the record, unless I can get a reference where this was said.

7 PRESIDING JUDGE FREMR: [10:35:47] Ms Samson.

8 MS SAMSON: [10:35:48] Yes, your Honour. I will refer to the transcript reference.

9 At transcript T-215, page 21, lines 16 to 24, you were asked, sir, and I quote:

10 "During that period between the time of the arrival of Mr Ntumba Luaba in Mandro
11 and his return to Kinshasa, or the time of his departure to Kinshasa, did you have
12 a chance to have any discussion with Thomas Lubanga?"

13 Answer: "Yes. While I was in Mandro, I realised that they were free to move about.
14 I saw Thomas Lubanga, who was our superior. He had returned and I remember
15 that at some point he gave me orders to send troops since Mabanga had come under
16 attack and people had been killed there. So he asked me to send some soldiers to
17 that location, and I complied. I sent two companies. So I had had discussions with
18 him at that time." End quote.

19 Now, sir --

20 PRESIDING JUDGE FREMR: [10:37:04] Mr Bourgon.

21 MR BOURGON: [10:37:04] Thank you, Mr President. May I address the Chamber
22 in the absence of the witness, please.

23 PRESIDING JUDGE FREMR: For sure.

24 Guards, please take Mr Ntaganda for a while away from the courtroom. I think it
25 will not take too much time.

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1 (The witness stands down)

2 PRESIDING JUDGE FREMR: [10:37:41] Mr Ntaganda has left the courtroom.

3 Mr Bourgon, the floor is yours.

4 MR BOURGON: [10:37:49] Thank you, Mr President. My colleague is putting
5 questions to the witness on the basis of his testimony during examination-in-chief.

6 And that is perfectly -- that's the purpose of cross-examination. But to test whether
7 the witness remembers exactly what he said and by putting propositions that are not
8 in the transcript, that's definitely a difficulty.

9 In this case the question put to the witness on page 23, lines 1 to 3 was: "Did
10 Thomas Lubanga discuss with you why he would send you on his instruction to
11 Mabanga?"

12 Now that we have seen what Mr Ntaganda said, this is not what Mr Ntaganda said
13 during his examination-in-chief. It would be so easy, my colleague clearly has the
14 references ready, it would be so easy, "you said this, true or not?" rather than try to
15 put words and add little words in questions that mislead the witness. It would be so
16 easy to simply quote the passage. There's a difference. "I put to you that this is
17 what happened, true or false?" Fine. "you said this, true or false?" Fine. But
18 instead of being clear-cut, we are going around in circles and this is misleading for the
19 witness and for everyone in the courtroom. Thank you, Mr President.

20 PRESIDING JUDGE FREMR: [10:39:30] Ms Samson.

21 MS SAMSON: [10:39:32] Your Honour, there was nothing misleading in my
22 question. I was referring to instructions that Thomas Lubanga gave to the witness.
23 It turns out his evidence is about orders, because Lubanga was his superior. There is
24 nothing inappropriate in asking the witness a question based on his
25 examination-in-chief which, because it is purported to be true, ought to be within the

1 perfect recall of the witness. It is not a memory test. This is a point of the
2 witness -- in the witness's examination-in-chief, which he had no difficulty recalling at
3 the time.

4 Now, if he were to materially to depart from that, I can call his attention to that
5 material difference. At this point there is no material difference in the question and
6 the answer and I would like the witness to answer what discussions he held with
7 Thomas Lubanga when he received these orders in those four days. It's relevant to
8 the issues that the Chamber has to adjudicate. It's relevant to questions just posed by
9 the Presiding Judge, yourself, your Honour. And I maintain that it is not an
10 inappropriate way for me to have asked the question or to have proceeded during
11 cross-examination. Thank you.

12 PRESIDING JUDGE FREMR: [10:40:59] And, yes, Mr Bourgon, but briefly, please.

13 MR BOURGON: [10:41:01] Mr President, the Chamber is in a position to see that
14 there was a material difference in the question. The question why he -- "Did
15 Thomas Lubanga discuss with you why he would send you on his instruction to
16 Mabanga?" That was never said by the witness. We cannot put that question. The
17 question should be: "I suggest to you that he sent you to Mabanga" and then ask
18 why. But there a material difference between what the witness said in his
19 examination-in-chief and this which is put as a question rather than as a proposition.
20 My colleague would like to know what they discuss, fine. "What did you discuss?"
21 He will say.

22 So there is three types of question: The open question, but the closed question as
23 a proposition, or the closed question as based on something that Mr Ntaganda said
24 before. But mixing up the three is not proper, Mr President. Thank you. It's not
25 helpful to the Chamber.

1 PRESIDING JUDGE FREMR: [10:42:09] Just to conclude that, generally, Mr Bourgon,
2 I agree with you, but in this concrete case really I don't see anything unfair. In my
3 view, yes, it could be misleading if the question would be based on some different
4 language, but if it concerns some material, material facts, it shouldn't be problem, in
5 my view, for Mr Ntaganda said, "I didn't say that, it was not truth", and to deny that.
6 So it really depends how the concrete question is formulated, and in this case really
7 I didn't find anything, anything unfair. Even generally, generally I got your point
8 and we will be on alert to avoid the situations you have mentioned.
9 Now, guards, you may bring Mr Ntaganda back.

10 (The witness enters the courtroom)

11 PRESIDING JUDGE FREMR: [10:44:00] Mr Ntaganda, can you hear me well? Are
12 you ready to continue?

13 THE WITNESS: [10:44:17] (Interpretation) Yes, I can hear you very well,
14 your Honour. I am ready to continue.

15 PRESIDING JUDGE FREMR: [10:44:23] All right. Then, Ms Samson, please
16 proceed.

17 MS SAMSON: [10:44:28] Thank you.

18 Q. [10:44:29] Sir, did Thomas Lubanga discuss with you why he would send you
19 on his instruction to Mabanga in terms of what structure you were falling under in
20 complying with this order?

21 A. [10:45:07] President Thomas told me one thing: Members of the population of
22 Mabanga had been killed, go and help them. Roy was in Mabanga. And that's why
23 I organised a force which I, which I entrusted to Museveni. He left to work with Roy
24 because I didn't know the locality Mabanga. So I didn't ask any questions with
25 regards to the structure as such of the party.

1 Q. [10:45:54] But when Thomas Lubanga returns from Kinshasa on 29 August 2002
2 in the three, four or so days that he was in Mandro, you have described him as your
3 superior capable of giving you orders with which you complied and you didn't ask
4 him what structure you were falling under?

5 A. [10:46:42] When he was there, he himself, he was following orders from
6 Chef Kahwa. If I went to see him, that's because there were massacres in Mabanga.
7 I can also give the following explanation: When Thomas went to Kinshasa he was
8 minister of defence of RCD-K/ML. When I was appointed sector commander within
9 the army, in the army, you keep the title that you have even if you die. If I was
10 deceased I would keep my title as commander, deputy sector commander. He was
11 minister of defence and when he arrived he also had to keep his title. Our titles did
12 not change. And I didn't discuss other subjects with him, apart from the subject of
13 deployment, the deployment which had to be made towards Mabanga.

14 Q. [10:48:15] Your evidence today is that Thomas Lubanga was taking orders from
15 customary Chief Kahwa?

16 A. [10:48:44] Given that they had come together from Kinshasa, we didn't want
17 them to leave that place. We wanted Ntumba Luaba to stay there. He was in
18 a position in which he had to concede or accept and that's how there was an exchange
19 of troops between those who were in Kinshasa and Ntumba Luaba. And there were
20 people who were imprisoned, and if that hadn't happened, they wouldn't have been
21 released.

22 Q. [10:49:29] Now, did you discuss any ideology with Thomas Lubanga when he
23 sends you off to deploy troops to particular locations to fight or defend the civilians?

24 A. [10:50:09] I already told you about the subjects which we addressed together.
25 They were about the deployment of soldiers. We didn't talk about ideology. We

1 talked about the problems which had occurred in Mabanga. Just that.

2 Q. [10:50:36] And by 29 August 2002 the RCD and APC were no longer the
3 governing group in Ituri; you will agree with that, I'm sure?

4 A. [10:51:05] In my testimony I said that there was a vacuum, a power vacuum in
5 Bunia. That's something that I already stated in my testimony.

6 Q. [10:51:23] And my suggestion to you is that there was no power vacuum after
7 9 August 2002 but that, rather, Thomas Lubanga, yourself, Kisembo and others took
8 control of Ituri and promptly took over the management of Ituri, and that that is why
9 you refer to Thomas Lubanga as your superior by 29 August 2002, capable of giving
10 you orders to deploy troops to certain locations.

11 A. [10:52:23] You perhaps could have asked me how things went, instead of
12 making a suggestion to me about things that I don't know. I can't be in agreement
13 with you. Ntumba Luaba left and then we took people from Thomas's delegation.
14 And afterwards when I went to Mahagi, he immediately set up the UPC party. I also
15 said to the Presiding Judge, he issued a decree from the general staff and that's how
16 we learnt about the UPC. But before that, we had no organisation about which we
17 discussed. Ntumba Luaba left on 4 September, the party was created officially and
18 the army, the FPLC. And it was after that that I heard that there was the RPC and
19 the FPLC. It was after that that I heard that there was the UPC/RP as well as the
20 armed military wing called the FPLC.

21 Q. [10:53:52] And so your evidence is that while you were with Thomas Lubanga in
22 Mandro between 29 August 2002 and 1 September, you did not discuss the UPC or
23 the FPLC or any movement that you would be part of with Thomas Lubanga to
24 control Ituri; is that right?

25 A. [10:54:34] No. During those days between his arrival and Ntumba Luaba's and

1 the time when he created the movement, there was just an exchange of persons.
2 Ntumba Luaba left and the people returned who Thomas Lubanga had left in
3 Kinshasa. That was the main point, the main thing that had to be done. I didn't
4 know what was going to happen afterwards. What I did know is that
5 President Thomas, as minister of defence, he kept his title and I was deputy sector
6 commander within the army. That was the situation that prevailed that I knew.

7 Q. [10:55:42] And if I understand your evidence, at page 30, lines 6 to 8 you said:

8 "... the party was created officially and the army, the FPLC. And it was after that that I
9 heard that there was the RPC and the FPLC."

10 So your evidence is that the first time you heard about the UPC/FPLC as the
11 governing entity was when you were travelling and you heard it on the radio?

12 A. [10:56:29] Indeed.

13 Q. [10:56:32] So, sir, at what point in time did you propose to the UPC president, to
14 Thomas Lubanga, that the FPLC should come under a different name, the ARC?

15 A. [10:57:08] I remember that I was in Fataki when the UPC/FPLC ceased to exist.
16 I hadn't discussed that with him. I no longer recall if I suggested something. But
17 where I am concerned, I wanted our army to have a different name, Armée
18 Révolutionnaire Congolaise, that was my intention, and that's how the FPLC -- and
19 that's how the FPLC was adopted.

20 Q. [10:58:28] Now, sir, your evidence-in-chief, which I will read to you now, is that
21 prior to hearing the name FPLC on the radio, you personally proposed ARC to
22 Thomas Lubanga. Let me read this to you, transcript T-215, page 39, lines 4 to 17,
23 quote:

24 Question: "So let's go back to the name of the FPLC. Did you know this name
25 previously?"

1 Answer: "No. I didn't know those initials. It was when the FPLC was set up that
2 it was explained to me what it was, after it had been introduced publicly."

3 Question: "Who chose the name of FPLC?"

4 Answer: "That was the president of the movement himself, namely
5 Thomas Lubanga."

6 Question: "What did you think of the name? Were you in agreement with the
7 choice of names?"

8 Answer: "I couldn't go against the order of our chief who was minister of defence.
9 But before that I had personally proposed ... ARC, Armée révolutionnaire congolaise.
10 That was my proposal before, and when he came he said the army doesn't have a
11 name. I --"

12 PRESIDING JUDGE FREMR: [10:59:49] Ms Samson, please slow down. Slow
13 down a bit.

14 MS SAMSON: [10:59:55] "That was my proposal before, and when he came he said
15 the army doesn't have a name. I said I would wish for our army to be called ARC.
16 He didn't take my suggestion into account."

17 So, sir, according to your own testimony, you had a discussion with Thomas Lubanga
18 about the unnamed army and you gave a proposal and then you heard that he didn't
19 accept it and chose a new name. Now, that's different to what you're saying today,
20 and I would like to know when precisely after Thomas Lubanga returned from
21 Kinshasa on 29 August 2002 up until 4 September, when you heard it on -- the FPLC
22 on the radio, when did you propose the ARC for the unnamed army?

23 A. [11:01:13] That's the reason why I said that I didn't remember that I had made
24 this proposition before. It was after your reading that. Before going to Fataki I had
25 been asked if our army had a name and I said no. And he didn't say that he was

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1 going to create a party and set up the FPLC. But when I left, I found out that the
2 FPLC UPC had been created, and it's thanks to your reading that I have just
3 remembered what happened. Your question previously was put in a general way
4 before going to my written statement.

5 MS SAMSON: [11:02:14] Mr President, I see the time. I can resume after the break.

6 PRESIDING JUDGE FREMR: [11:02:17] Yes. We are taking our regular 30-minute
7 break and we will continue half past 11.

8 THE COURT USHER: [11:02:24] All rise.

9 (Recess taken at 11.02 a.m.)

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

11 THE COURT USHER: [11:31:37] All rise.

12 Please be seated.

13 PRESIDING JUDGE FREMR: [11:32:10] Mr Bourgon.

14 MR BOURGON: [11:32:11] Thank you, Mr President. Before we begin this session,
15 a transcript correction which is material, which I believe must be addressed by my
16 colleague, on page 28, line 22. I will not say what is there, but I would simply ask
17 my colleague to confirm, because what we heard is different from what is on the
18 transcript and it is material to the topic presently being discussed. Thank you,
19 Mr President.

20 PRESIDING JUDGE FREMR: [11:32:44] Ms Samson.

21 MS SAMSON: [11:32:46] Yes, Mr President, I am reading page 28, line 22.

22 PRESIDING JUDGE FREMR: [11:32:59] So do I.

23 MS SAMSON: [11:33:01] But I do not immediately see what the issue is. Is the
24 French different? I can no longer see the French transcript.

25 PRESIDING JUDGE FREMR: [11:33:23] Mr Bourgon, could you give some further

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1 indication?

2 MR BOURGON: [11:33:27] Well, I'm afraid, as you can understand, Mr President,
3 but they were talking about an exchange, and who would have been exchanged is
4 material to the answer of the witness.

5 MS SAMSON: [11:33:44] Mr President, I see -- I think I may see the issue. And so
6 perhaps I can put the sentence to the -- Mr Witness and see if he accepts it or wishes
7 to make a change or correction.

8 PRESIDING JUDGE FREMR: [11:34:02] Very well, please.

9 MS SAMSON: [11:34:05]

10 Q. [11:34:06] Now, at page 28, lines 20 to 25, you provided an answer, and I will
11 read it to you. Please listen carefully and if there is anything that appears incorrect,
12 let us know. Quote:

13 "We wanted Ntumba Luaba to stay there. He was in a position in which he had to
14 concede or accept and that's how there was an exchange of troops between those who
15 were in Kinshasa and Ntumba Luaba. And there were people who were imprisoned,
16 and if that hadn't happened, they wouldn't have been released."

17 A. [11:35:25] I seem to recall having said that these people were in Chief Kahwa's
18 house and the reason for their presence was that we wanted to exchange the members
19 of the delegation of Thomas Lubanga for the person we were holding. That's what I
20 said when I spoke.

21 PRESIDING JUDGE FREMR: [11:35:54] Yes, I think Mr Bourgon now is indicating
22 by gesture that is, was his concern, so I think we can proceed.

23 And thank you, Mr Bourgon, for drawing our attention to that.

24 MS SAMSON: [11:36:13]

25 Q. [11:36:13] Your group in Mandro was also seeking the release of a prisoner in

1 prison in Kinshasa, a soldier by the name of Bin Laden?

2 A. [11:36:39] He was one of the people involved in this exercise, this exchange.

3 Q. [11:37:11] Just before the break I had asked you a question to which I -- your

4 answer didn't respond and I'm going to ask it again. When precisely, after

5 Thomas Lubanga returned from Kinshasa on 29 August 2002 up until 4 September

6 when you heard the FPLC on the radio, when did you propose the name ARC for the

7 unnamed army?

8 A. [11:38:03] Ntumba Luaba had already left. I don't recall whether that was

9 when Thomas Lubanga had moved to take up position in Bunia, but I do know that

10 Ntumba Luaba had already left for Kinshasa. I went to Mahagi and I remember

11 spending time in Fataki as well at the time. And then Thomas Lubanga asked

12 whether our army had a name. I said no. And I just came up with the name that I

13 mentioned here. And then I went to Mahagi. But I have to say that I am not able to

14 give you an exact date for that.

15 Q. [11:39:04] Do you remember where you were when you had the discussion with

16 Thomas Lubanga? Were you in Bunia? Were you in Mandro?

17 A. [11:39:24] When Ntumba Luaba left, we immediately left with him and

18 Thomas Lubanga went to Bunia. So it's perhaps between the date that

19 Ntumba Luaba left Mandro and when Thomas took up place in Mandro, it was

20 between those two dates. I don't recall the date and I can't remember either exactly

21 where we were, but it was before I went to Mahagi with my troops.

22 Q. [11:40:17] Now you said just now, page 36, lines 2 to 3, "And then

23 Thomas Lubanga asked whether our army had a name. I said no."

24 So Thomas Lubanga was asking you questions about your army and whether it

25 already had a name, right?

1 A. [11:40:46] Yes. It was Thomas Lubanga who asked the question.

2 Q. [11:40:53] And he was asking you those questions, wasn't he, because you were
3 in charge of your army at the time of that discussion?

4 A. [11:41:12] No. Kisembo had been told to go to Komanda and he went to
5 Komanda with a company, whereas I had remained behind to ensure the security of
6 those engaged in the negotiations. The reason why Thomas Lubanga asked these
7 questions was not because he knew that I was in charge of the new army, he knew
8 very well that I was Kisembo's deputy because Kisembo was a sector commander and
9 I was his deputy. But he asked me the question not because I was -- he asked me
10 because I was the highest rank there. He could have asked this question to anybody
11 who would have been there with him. I don't think it was because I was the one in
12 charge of the army that he asked me this question. I was only the deputy of
13 Kisembo.

14 Q. [11:42:33] What other items or discussions related to the army and the structure
15 did you have with Thomas Lubanga at this time?

16 A. [11:43:06] I think that the questions you are asking me contain information
17 which is different from my knowledge. When he told me to send men to Mabanga
18 we didn't discuss the name of the army. He told me to send men to Djugu, and that
19 was on a different date. Because your questions, your previous questions related to
20 the time when he asked me to send people to Mabanga. And in my answers I said
21 that at that time we didn't discuss anything else.

22 Q. [11:44:05] At some point between 29 August 2002 and 4 September 2002 you
23 spoke to Thomas Lubanga about naming your army. You don't remember the date
24 and you don't remember where you were when you had that discussion. What else
25 did you discuss with Thomas Lubanga about structuring your army or your group at

1 that time in that meeting?

2 A. [11:44:57] Could you please first show me or remind me where I discussed with
3 him -- hang on, I think I have understood now. The other points we discussed did
4 not relate to the structure and the name, didn't concern the structure of the army. I
5 know that he also asked me to send troops to Djugu and this point is also unrelated to
6 the structure of the army, because it was simply finding a solution to the problems
7 that the civilian population were having at that time.

8 Q. [11:45:56] So you discussed the name of your army with Thomas Lubanga, but
9 you didn't discuss anything else about that army? The structure, who would hold
10 positions, at least the key positions, including your own?

11 A. [11:46:25] No. We did not discuss this.

12 Q. [11:46:39] Now you are aware that from time to time the UPC/RP issued press
13 releases and press communiqués?

14 A. [11:47:08] I can remember what happened where I was, but I can't recall what
15 happened in places where I was not present.

16 Q. [11:47:31] In places where you were present you were aware, were you not, that
17 your group, the UPC/RP would, from time to time, issue official press releases and
18 press communiqués?

19 A. [11:48:05] When there were press releases there were journalists. So there were
20 press conferences organised and there were some conferences which I attended. You
21 can see that in the videos. But I can only speak to those press conferences which
22 I am aware of, which I've spoken about here. I can't speak to those which I'd know
23 nothing about.

24 Q. [11:48:56] Now I'm referring to press communiqués or press releases, which are
25 statements issued by your movement, the UPC/RP, to the public. You know, don't

1 you, that from time to time the UPC issued such public statements, correct?

2 A. [11:49:42] I've already told you what happened where I was present. With
3 regard to other press communiqués, press releases published in different places, I
4 could perhaps tell you on a case-by-case basis whether I am familiar with a particular
5 press communiqué or press release.

6 Q. [11:50:12] We'll certainly get to that, but my question right now is a general one.
7 You in your key senior position within the UPC/RP FPLC are aware that between
8 2002 and 2003, from time to time the UPC/RP issued public statements known as
9 press communiqués or press releases?

10 A. [11:51:02] There were -- I am aware of certain press communiqués.

11 Q. [11:51:10] And you know that the UPC had a national secretary in charge of
12 press and communications, correct?

13 A. [11:51:42] I do know that there was a person responsible for communications
14 and the press.

15 Q. [11:51:53] And in the period February 2003 that person was Mr Amboko Bebetu,
16 right?

17 A. [11:52:34] I don't recall at what time Amboko Bebetu took up the post, nor when
18 he left the head of the service, but I do recall that he was in this position in January.
19 As for the period thereafter, I don't know whether he moved to a different position.

20 Q. [11:53:16] Now, you were aware, were you not, that in the February 2003 period
21 Amboko Bebetu, as national secretary for press and communications, issued
22 a communiqué claiming that MONUC was partial towards one part of the population
23 in the inter-ethnic conflict, namely, the Lendu?

24 A. [11:54:02] No.

25 Q. [11:54:07] I would like to show you this presses release.

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1 It is DRC-OTP-0193-0237. And it's a public document.

2 PRESIDING JUDGE FREMR: [11:54:55] Mr Bourgon.

3 MR BOURGON: [11:54:56] Thank you, Mr President. I note for the record that this
4 document has been in the possession of the Prosecution since at least 2007 and that it
5 was not used or admitted in evidence during the presentation of the Prosecution's
6 case. Thank you.

7 PRESIDING JUDGE FREMR: [11:55:13] Noted.

8 Ms Samson, please proceed.

9 MS SAMSON: [11:55:17] Now if we could --

10 Q. [11:55:20] What you see already on the screen before you is the UPC letterhead.
11 And if we could scroll down somewhat.

12 The title of the document in French is (Interpretation) "Press communiqué of
13 14 February 2003".

14 (Speaks English) And the title continues: (Interpretation) "The pacification of Ituri
15 has got off to a bad start with notorious partiality of MONUC in favour of one sector
16 of the population. UPC/RP requests the presence of the community of Saint Egidio
17 to chair the pacification of Ituri in the interest of true and definitive peace between the
18 warring ethnic groups." (Speaks English) And it continues:

19 (Interpretation) "The UPC/RP which is currently consolidating the mechanisms which
20 should lead to inter-ethnic pacification in Ituri, an area under its control, notes with
21 great regret that this is being torpedoed by actors such as MONUC, Uganda and the
22 government of Kinshasa which are openly manipulating facts.

23 At the current time the problem of Ituri exists on two distinct levels: Firstly, there is
24 the UPC, a politico-military formation with a national dimension which took control
25 of Ituri in August 2002 by driving out the troops of RCD/ML and the FAC of the

1 Kinshasa government with a view to stopping the massacres, the genocide and the
2 destruction of socio-economic infrastructure that they were perpetrating."

3 (Speaks English) Now I'll stop here for one moment. On 14 February 2003 you were,
4 according to your testimony, at least part of the day in Bunia, correct?

5 A. [11:58:40] Could you please show me the passage where I stated that I was in
6 Bunia on 14 February 2003?

7 Q. [11:58:50] Sir, we looked together at logbook messages from you on
8 14 February 2003. Do you insist that I show those to you now?

9 A. [11:59:19] It is possible that I was in Bunia on the -- in the morning. But in the
10 afternoon I was in the territory of Ituri at that date. If you show me the passage,
11 perhaps I could specify the period that I spent -- or the period when I was in Bunia.

12 Q. [11:59:53] Did you know about this press release at the time that it was issued,
13 either before its issuance or when it was issued?

14 A. [12:00:24] No. This is the first time that I have ever seen this press
15 communiqué. I was not familiar with it before that.

16 Q. [12:00:36] And does it surprise you to learn that in February 2003 the national
17 secretary for press and communication states in a press release by the UPC that the
18 UPC is a political-military formation with a national character that took control of
19 Ituri in August 2002 by chasing the RCD/ML and FAC troops?

20 A. [12:01:23] If you are asking for my opinion on a document which I have
21 indicated that I am seeing for the first time, as I have said, that surprises me and I am
22 not able to answer your question. I don't know how to answer your question. I am
23 not even in a position to confirm that it is that national secretary who effectively
24 drafted that communiqué or whether it was someone else who drafted it on his behalf.
25 So I am not in a position to provide any further explanations on that document.

1 Q. [12:02:03] So by February 2003 you had never heard from anybody within the
2 UPC or FPLC that months into your tenor as chief of staff, deputy chief of staff in
3 charge of operations and organisation, you had never heard anyone say that the
4 takeover by the -- takeover of Bunia and the ousting of the RCD was done by your
5 own forces?

6 A. [12:02:47] Who would have informed me and provided me with those details?
7 Who would have done that while I was in Mwanga when Molondo had been driven
8 out? Who was going to talk to me about the Ugandans? Who was going to provide
9 me with all those details that you are now telling me today, whereas I was in the field
10 in Mwanga? There was nobody to do that. Nobody came to give me that
11 information while I was in the location which I have just mentioned.

12 Q. [12:03:22] And you were unaware, completely unaware that in several official
13 UPC communications the UPC claimed ownership for that victory, August 2002, you
14 never got to know the UPC was claiming that victory in the time that you were in this
15 position within the UPC/FPLC?

16 A. [12:04:03] What I told you is that there was a press conference. I testified
17 regarding what was said in relation to the area where I was. What I see today is that
18 I realise that I did not hear that, I was not aware of that at that time. So what I have
19 testified to before this Court is what I heard and what I experienced. This is the
20 answer I can offer to your question.

21 Q. [12:04:40] If we could move, please to the second page of the press
22 communiqué.

23 And the first full paragraph I will read the first sentence in French:

24 (Interpretation) "Secondly, the UPC/RP currently is managing the inter-ethnic conflict
25 which erupted during the time of RCD-Wamba and which amplified under the

1 period of Mbusa Nyamwisi."

2 (Speaks English) End quote. So we see here, do we not, that the UPC representatives,
3 and in this case the national secretary in charge of press and communications, states
4 that the UPC is currently in February 2003 managing the inter-ethnic conflict in Ituri,
5 and that's because there was an inter-ethnic conflict raging in Ituri in February 2003,
6 correct?

7 A. [12:06:33] That is what I can see on the monitor. That is what I can read from
8 the document that you have shown me.

9 Q. [12:06:47] And it's true, isn't it, that in February 2003 there was an ongoing
10 inter-ethnic conflict in Ituri, correct?

11 A. [12:07:15] When we created the FPLC we were fighting the APC army. There
12 were some problems of an ethnic nature and there were already some tensions
13 between the ethnic groups. But I was in charge of the army, the FPLC, which was
14 fighting against the APC. So whatever relates to ethnic conflicts, all those types of
15 political problems and what have you, led to the appointment of Tinanzabo to seek
16 a solution to those problems through the reconciliation effort. That is the answer
17 I can provide to your question.

18 Q. [12:08:20] Whether or not there was an inter-ethnic conflict in Ituri in 2002 and
19 2003 I put to you would have been something of paramount importance for you to
20 know about because you were, as you say, in charge of the army. Do you not agree
21 that understanding the ethnic dimension to a serious inter-ethnic conflict would have
22 been critical information for you to have?

23 A. [12:09:07] That is something that I should have known as a commander. And
24 that's why I told you that when I arrived the APC troops and the commanders were
25 mistreating the population and that's why we fought them in order to check or to

1 fight against discrimination. I was one of those who was resolved to put an end to
2 that and I have already testified to that effect before this Court. The goal of the war
3 was to stop the attacks of the combatants and the APC troops on the civilian
4 population.

5 Q. [12:09:56] And you knew, didn't you, precisely what the dimension of the
6 inter-ethnic conflict was in 2002 from September through to February 2003 and
7 onwards? It's not only information that you should have known, it's information
8 that you did know, correct?

9 A. [12:10:37] I witnessed these attacks and I intervened. I am talking about
10 something that I was aware of. And these attacks took place at all times and in
11 different areas, attacks by the combatants and the APC. And this is something that I
12 wanted to stop. When I was deputy chief of general staff I experienced all those
13 things.

14 Q. [12:11:11] And as we see here in this UPC press communication, the dossier that
15 the UPC claims it is managing in February 2003 is of the inter-ethnic conflict in Ituri,
16 and I suggest to you that that is a conflict between various ethnic groups in Ituri, not
17 just one ethnic group attacking another, but inter-ethnic, attacks going both ways
18 involving various ethnic communities; now do you agree?

19 A. [12:12:18] Yes, I heard mention of these, these attacks, this fighting between
20 various combatants. Now when the fighting intensified the Alurs and the Nyalis
21 came under attack from the Lendu combatants. This is something that I learnt about
22 when I arrived in the field. But that was in 1999. Now in 2000, 2001, or should I
23 say around 2002 when we created the FPLC, the situation was one wherein some
24 combatants joined us and we taught them our ideology, we created an army and then
25 started to fight the APC and the combatants. At that time things had changed. It

1 was no longer a situation where combatants were attacking members of the
2 population, but the APC and the combatants were working together to attack the
3 civilian population and this happened in 2002 when I joined the FPLC.

4 And it is then that we started to put together the army.

5 Q. [12:13:49] Now if we look at the last paragraph on this page, we can see that the
6 UPC sets out who are the belligerent ethnicities involved in the inter-ethnic conflict.

7 And I will read it out in French:

8 (Interpretation) "The belligerent ethnic groups (Alur, Bira, Hema, Lendu, Mambisa,
9 Ndo-Okebo, Nyali and others), who have so immensely suffered from the massacres
10 and the destruction of socio-economic infrastructure in the Ituri need genuine peace
11 and not just a protocol-type ceremony."

12 (Speaks English) And my question is that in February 2003 the UPC is writing about
13 belligerent ethnicities, warring ethnicities, and they include Alur, Bira, Hema, Lendu,
14 Nyali and others who have suffered massacres and destruction, not only the Hema
15 population. Do you agree with that as what you experienced in February 2003
16 before and after?

17 A. [12:15:57] I am seeing this document for the first time. I have not read it
18 substantively to be able to make any comments on it. Now you are putting
19 questions to me about my experience, the things that I experienced when I arrived in
20 1999 and what I am saying is that when I arrived in 1999 -- rather, I learnt that this is
21 what happened in 1999. But it was over a period of 1999 to 2000, 2001. But when I
22 arrived the combatants were not attacking all the villages. They attacked more of the
23 Hema villages than anything else. But at some point, say around 2002 or 2003 in
24 January, maybe December 2002, around that time the Alurs were also victims, it was
25 being said that there were some UPC troops on the Alur territory and so they started

1 to burn down their houses and chase them away. Who was doing that? It was the
2 APC and the combatants who were doing that, APC troops and the combatants.
3 Now, I never heard mention of any Alur attacking civilians or attacking the Lendu,
4 no.

5 Q. [12:17:29] My questions were situated specifically in the February 2003 period
6 and the period before and after that specific moment in time. Now, the suggestion
7 that I am putting to you is that the Lendu are included in the paragraph of the UPC
8 press communication, along with other ethnicities because they were both attacking
9 and being attacked in the context of the inter-ethnic conflict, do you agree?

10 A. [12:18:39] That is what I heard about before. It was said that Hema combatants
11 were attacking the Lendu in 1999 to the year 2000. At that time I had not yet gone to
12 the Ituri. But I had heard that the Hema combatants had attacked the Lendu and
13 had burnt down their houses and had killed them. So I don't, I don't really know in
14 which context this letter was written. All I can testify about is what I saw and what I
15 experienced when I arrived in the field.

16 Q. [12:19:24] Now I'll take you to another part of the press release where the UPC is
17 alleging that MONUC sides with one part of the population in the inter-ethnic
18 conflict.

19 If we can move up on the same page, 0238, under point 1, and I will read parts of the
20 three paragraphs, starting from the first paragraph under "La MONUC", in French:
21 (Interpretation) "The involvement of MONUC in the pacification effort in the Ituri
22 appears to be negative because of its partiality towards one fragment of the
23 population." (Speaks English) And in the next paragraph:

24 (Interpretation) "Since a few weeks now, MONUC is concerned in a very distinct way
25 about some complex armed groups which essentially is made up of combatants who

1 are in Gety and Kpandroma, whereas those are localities in Ituri in the same manner
2 as Marabo, Nyankunde, Kilo, Mongbwalu, Kparnganza, Mandro, Mokambo, etc,
3 where the Bira, Nyali, Hema, Alur and other inhabitants have paid the highest price
4 of this inter-ethnic war.

5 This partiality is the manipulation in which MONUC is involved in the Ituri and is
6 already quite visible, and the population is already talking about it in the streets.
7 MONUC, which was supposed to lead the discussions between the belligerent groups,
8 when it already supports one of the parties, it is only normal for such an attitude to be
9 denounced if we need and seek to reach sustainable peace in the Ituri."

10 (Speaks English) Now, sir, were you aware that your group took issue in
11 February 2003 and alleged that MONUC was partial in favour of one part of the
12 population in the inter-ethnic conflict, in particular the Lendu?

13 A. [12:22:48] When it comes to this information, I have already told you that I did
14 not hear all these things that were written at that time. I have told you that I did not
15 hear about these things at that time.

16 MS SAMSON: [12:23:06] Mr President, I seek to admit the passages that I have read
17 out for impeachment purposes.

18 PRESIDING JUDGE FREMR: [12:23:13] Defence, your position?

19 MR BOURGON: [12:23:17] Mr President, we suggest that the full document be
20 admitted for impeachment purposes in order to allow the Chamber to evaluate
21 exactly the responses of the witness with this document and not only with the
22 passages that were read to him. Thank you.

23 PRESIDING JUDGE FREMR: [12:23:33] Ms Samson.

24 MS SAMSON: [12:23:36] Your Honour, ordinarily the Defence could re-examine on
25 the portions that it wishes to put to the attention of the Chamber, if there are any such

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1 passages. So that is one proposition by the Prosecution. On the other hand, we
2 have no objection if the document is treated otherwise by the Chamber.

3 PRESIDING JUDGE FREMR: [12:23:56] Yes, I would agree, because if the Defence
4 asks for that and you have no problem with this, why not? So this document is
5 admitted as a whole into evidence for the purpose of impeachment.

6 Ms Samson.

7 MS SAMSON: [12:24:20] Yes, Mr President. Just in terms of the mechanics of
8 admitting the entire document for the purposes of impeachment, ordinarily we have
9 been proceeding on the basis that portions of a statement that are not accepted by the
10 witness and directly contradict his evidence are admitted for that purpose. We have
11 no difficulty admitting the document for the truth of its contents now in full if
12 the Defence wishes to make arguments about any other passages. But the mechanics
13 and procedure is somewhat unclear to the Prosecution in terms of how to treat other
14 passages as impeachment.

15 PRESIDING JUDGE FREMR: [12:25:00] Yes, normally -- Mr Bourgon.

16 MR BOURGON: [12:25:02] Well, Mr President, we do not want to admit the
17 document for the truth of its content and we would oppose such a request by
18 the Prosecution. But the idea is the -- some passages of a document unknown to the
19 witness were put to him, and now the Prosecution is asking the Chamber to admit
20 only the passages of a document unknown to him for the purpose of impeachment.
21 In order for the Chamber to be able to evaluate if the document or if the passages
22 have any impeachment value, we believe that it is important that the whole document
23 be before the Chamber and that will facilitate the Chamber's work in evaluating
24 whether there is an impeachment value. Thank you.

25 PRESIDING JUDGE FREMR: [12:25:51] I got the point, and again I don't see a big

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1 issue behind that because I would like to highlight that in fact the whole text or all
2 parts of the text put to the -- put to the witness have been in fact quoted by
3 Ms Samson, plus his responses. So really I don't see an issue with this document.
4 Now please proceed.

5 MS SAMSON: [12:26:27]

6 Q. [12:26:27] In your testimony in-chief, and I will quote transcript T-213, page 9,
7 lines 18 to 25, you stated, quote:

8 "... our objective was to protect the population and you can't rape a woman or young
9 girls and you mustn't extort goods from civilians. All those who are going to take
10 goods from the population will be punished." End quote.

11 And it is right, isn't it, that if that is your group's objective, you would therefore
12 investigate allegations of reported crimes and punish the perpetrators where those
13 allegations were found to be true, correct?

14 A. [12:27:33] Yes. That is true. This was the responsibility of each commander to
15 ensure that all his troops were disciplined from the lowest ranking upwards. And so
16 in order to be able to protect the population, that was my intention; that was the
17 intention of our army. It was also a duty for each commander to do so.

18 Q. [12:28:04] And you also testified at transcript T-224, page 50, line 3, quote:

19 "When the FPLC was set up we, the UPC, never attacked Lendu civilians, never, not
20 one day."

21 So there were never any punishments by the UPC for attacks against Lendu civilians,
22 because your evidence is those attacks never occurred, correct?

23 A. [12:28:57] The truth is that if any soldier had attacked the civilian population,
24 that soldier would be punished. If any soldier had been found getting ready to go
25 and attack the civilian population, and such information was brought to my attention,

1 such a soldier would be punished.

2 Q. [12:29:27] But since your evidence is that the FPLC never attacked Lendu
3 civilians, never, not one day, it follows, doesn't it, that you didn't investigate or report
4 those attacks because they didn't happen, correct?

5 A. [12:30:02] In my capacity as a commander in the FPLC, and mindful of our
6 ideology, I never heard of any cases involving FPLC attacks on the population.

7 Q. [12:30:23] And so it follows, doesn't it, that you neither investigated attacks by
8 the UPC of Lendu populations nor punished for that, correct?

9 A. [12:31:06] Where I heard of such incidents, I did my work, but otherwise I could
10 not of -- have issued punishments for facts of which I was not informed. And you
11 can look at my logbook. When I knew that incidents had taken place, I hurried to
12 intervene, but not where an incident had taken place and I was unaware of it.

13 Q. [12:31:42] Yes, and your testimony now, page 53, lines 21 to 22, was, quote:
14 "I never heard of any cases involving FPLC attacks on the population."
15 Right?

16 A. [12:32:20] I made this statement because, at the time I was in the FPLC, nobody
17 ever reported to me any attacks by the FPLC on the population. No one reported to
18 me to that effect, that the FPLC had attacked members of the population.

19 Q. [12:33:10] You testified that Eric Mbabazi, the G5 in the UPC, provided ideology
20 training and that he was an intermediary between the soldiers and the population.
21 And I am quoting transcript T-215, page 43, line 19, to page 44, line 2. Eric Mbabazi
22 as G5 provided reports to the general staff, correct?

23 A. [12:34:05] Could you please repeat to me exactly what I said in my testimony?
24 I didn't quite follow what you have just read to me about Eric Mbabazi.

25 Q. [12:34:21] Yes, I will. And what you stated, and I will read your testimony:

1 Question: "Now, you spoke about Eric Mbabazi, but what was the main function of
2 the G5?"

3 Answer: "The G5 is responsible for instructing soldiers in ideology. Now, this
4 instruction was given to the platoon, to a company, to a brigade to be deployed into
5 different areas. Furthermore, he was an intermediary between the soldiers and
6 members of the population. In order to take care of relations between these parties I
7 would say that he was an ambassador between the army." End quote.

8 And Eric Mbabazi as G5 provided reports, did he not -- we looked at one and we will
9 look at it again -- to the general staff?

10 A. [12:35:55] I don't know whether I testified that Eric Mbabazi worked in all these
11 services. I was explaining the function of the G5 bureau. But I don't know whether
12 I actually testified that Eric Mbabazi carried out this service or this function as -- at
13 company level, battalion level or brigade level. That couldn't be so because he
14 couldn't have been in all those places at the same time.

15 Q. [12:36:42] I am simply reading from your testimony, and what you said in
16 answer to your counsel's question about the main function of the G5 was as I quoted:
17 "The G5", you said, "is responsible for instructing soldiers in ideology. Now this
18 instruction was given to the platoon, to a company, to a brigade to be deployed into
19 different areas. Furthermore, he was an intermediary between the soldiers and
20 members of the population. In order to take care of relations between these parties I
21 would say that he was an ambassador between the army."

22 Now would you like to change your testimony in any respect in relation to the G5
23 function?

24 A. [12:37:53] I believe I have understood you. Previously you were mentioning
25 the name of Eric Mbabazi and now you are talking about the function. The function

1 is different from the name. But I am going to explain to you the functions of the G5
2 bureau and who was responsible for this service, if that is what you want.

3 Q. [12:38:24] Eric Mbabazi held the position of G5, did he not?

4 A. [12:38:42] Yes, that's correct. Eric Mbabazi was in charge of the G5 bureau
5 within the FPLC.

6 Q. [12:38:53] And your counsel asked you what was the main function of the G5,
7 Eric Mbabazi. Your answer, I put to you, explained the main functions of the G5
8 office held by Eric Mbabazi; that's right, isn't it?

9 A. [12:39:22] That is correct. I said that he was like an ambassador between the
10 army and the population.

11 Q. [12:39:40] Now Eric Mbabazi as G5 provided reports to the general staff,
12 correct?

13 A. [12:40:05] That is how it should have been, but as a rule I didn't see any reports
14 that he wrote. Perhaps his reports were oral reports. There were meetings from
15 time to time, we met, we discussed, we spoke. But with regard to written reports, I
16 received no written reports from he. I don't recall having had written reports.

17 Q. [12:40:53] The relationship between your FPLC soldiers and the population was
18 important to you, wasn't it?

19 A. [12:41:15] Absolutely. It was something very important for me because my aim
20 was to ensure the protection of the population and their property.

21 Q. [12:41:31] And you would have taken very seriously, would you not, any
22 complaints by the local population throughout Ituri against your soldiers?

23 A. [12:42:03] When I was informed I absolutely had to act. I took that very
24 seriously.

25 Q. [12:42:20] Any reports therefore coming from the G5, Eric Mbabazi, dealing with

1 the complaints of the population or the security of the population in particular areas
2 would have, I put to you, been of paramount importance to you.

3 A. [12:43:01] That's correct. Eric was a commander, like other commanders. I
4 would have given great importance to a report or a message coming from him in the
5 same way as I considered reports from other commanders. And if it ever appeared
6 that what was in his report was correct, then I would have acted.

7 Q. [12:43:42] And those reports would also have been of paramount importance to
8 Floribert Kisembo, correct?

9 A. [12:44:03] Absolutely. If Kisembo had received some form of report, then he
10 would have examined the content seriously. But perhaps he could express himself
11 on this subject better, but, but if I had had a report from Eric Mbabazi, I would have
12 treated it very seriously. So my reply regarding the response of Kisembo is of course
13 a general reply. I would say that he would have accorded importance to such
14 a report because he was the head.

15 Q. [12:45:01] And if you received a report directly from Eric Mbabazi about -- with
16 a relationship between the FPLC army and the population which suggested that the
17 population was complaining in some way or another, surely you would have shared
18 that without delay with Floribert Kisembo to discuss the way forward.

19 A. [12:45:39] Even in the absence of Kisembo I would have responded because
20 when there were errors committed, I responded immediately without delay, because
21 this is something that could have had a negative impact on our ideology within the
22 FPLC. I had no need to wait to be able to share the information with him. In such
23 a case, he would have congratulated me for responding immediately. And I should
24 emphasise here that he, as the person in charge, would have asked me the question of
25 how I had responded when I, when I heard the news of such offences.

1 Q. [12:46:51] And my point is, as you've mentioned, Floribert Kisembo would have
2 learned what those complaints were and what you did in relation to them. He
3 would have known about that, correct?

4 A. [12:47:22] Not necessarily. There is -- there was some information that was
5 communicated to him and some that was not. There is information that may have
6 reached him, a reaction of some description. In some cases he would absolutely
7 have had to be informed.

8 Q. [12:47:58] And I put to you that if Floribert Kisembo had received reports from
9 the G5 in relation to complaints by the population and the security situation in
10 various locations, he would have shared that information with you.

11 A. [12:48:25] I'm going to explain to you how in my role as a soldier I was in the
12 field. When Kisembo had information, he could react and punish the offender
13 without telling me of what he had done.

14 Q. [12:48:57] Sir, you were not only a soldier, you were the deputy chief of staff in
15 charge of operations and organisation, with, as you've testified, a very specific desire
16 to ensure discipline within your troops. Floribert Kisembo would not have failed to
17 communicate to you information about complaints by civilians against the FPLC.

18 A. [12:49:49] (Overlapping speakers) to share your opinion. In the army there are
19 echelons, and the explanations I am giving you here apply to the army which I was
20 serving. Kisembo was my superior and when he received a report, he could respond
21 and react without informing me, because he was my superior. He was the chief of
22 general staff and he had no need to communicate a report to his deputy. That's not
23 the way things are done in the army.

24 Q. [12:50:34] Even when, by your own statement, the relationship between the
25 population and your FPL soldiers was absolutely important to you?

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1 A. [12:51:08] The ideology of the FPLC which was communicated to the troops was
2 that we were there to protect the population and their property. The instructions
3 were clear. Any FPLC, all FPLC soldiers were there to protect the population and to
4 protect the property of the population. That was our ideology. And my position as
5 commander within the FPLC was based on this understanding of the events. We
6 were there to protect the population and to protect their property.

7 Q. [12:52:16] I would like to show you a report from the G5. We have looked at it
8 before. The registration number is DRC-OTP-0109-0136. It's a public document
9 and it is item 760. I may have given an incorrect item number. I am just checking.
10 The item number is 706. It is the correct document, it was just not the correct item
11 number.

12 THE COURT OFFICER: [12:54:06] Ms Samson, I'm sorry, but I would like to check
13 the level of confidentiality with you. You mentioned that it was public but I have
14 confidential in Ringtail.

15 MS SAMSON: [12:54:14] Yes, the document can be displayed publicly. Thank you.

16 Q. [12:54:28] Now, sir, as you can see at the top left-hand corner, we see, in French:
17 (Interpretation) "Democratic Republic of the Congo, Patriotic Forces for the Liberation
18 of the Congo, General Staff G5".

19 (Speaks English) On the right-hand side, done in Bunia, 6 November 2002, to the chief
20 of general staff FPLC. The subject, which we see a bit further down towards the
21 centre of the page on the left, in French: (Interpretation) "Monthly Report of Bureau
22 5".

23 And if we can turn, please, to the last page of the document, 0109-0142. And at the
24 bottom of the page the document is signed Mbabazi Eric, Commander Chef G5,
25 état-major general/FPLC (Interpretation) general staff FPLC.

1 The report is six pages in length. And if we could turn back to the first page, please.
2 I believe you have indicated this previously, but have you seen this document at or
3 about 6 November 2002?

4 A. [12:57:14] You've just said yourself that we have discussed this. I told you that
5 I saw this document for the first time when I arrived here. I didn't know of it
6 beforehand.

7 Q. [12:57:31] And to be clear, did Floribert Kisembo ever discuss reports from the
8 G5 with you?

9 A. [12:57:58] No. If the head of the G5 bureau had given me a copy, perhaps I
10 would have discussed it with Kisembo. But only -- but if the report was given only
11 to Kisembo, then he had no obligation to discuss it with me and therefore I would not
12 have seen the report.

13 Q. [12:58:39] Now, let's see what Eric Mbabazi writes under point 1, in French:
14 (Interpretation) "From the political leadership of the FPLC army, we present the
15 report of this department whose task is raising the awareness of troops and
16 monitoring morale, discipline and the relations between the troops, the troops, the
17 troops and the officers, and the officers amongst themselves, the troops and the
18 population, and also to educate the troops regarding the ideology of the movement.
19 The commander-in-chief of this department: Mbabazi Eric with nine staffs.
20 Located in the general staff in Bunia." (Speaks English) Mr President, I see the time
21 and I am in your hands. I will take some time --

22 PRESIDING JUDGE FREMR: [13:00:22] I'm afraid that if you want to question even
23 this issue, it would probably require more than one, two, three minutes. If it would
24 be until five minutes, still fine, but I think it would be better to postpone it after the
25 lunch break.

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1 MS SAMSON: [13:00:38] Certainly, your Honour.

2 PRESIDING JUDGE FREMR: [13:00:39] All right. Mr Bourgon.

3 MR BOURGON: [13:00:40] Since we have a couple of minutes, Mr President, I have
4 some request for audio verification in the transcript that I would like to have.

5 On page 37, lines 1 to 13 in English, there was an issue as to what was heard in -- by
6 our Swahili interpreter does not match what the witness mentioned both in French
7 and English. On page 42 at line 9 in English, and the corresponding translation at
8 page 41, line 16 in French, both of which would be different from what the witness
9 said. On page 45, line 18, and the French corresponding version on page 44, lines 19
10 to 20, in terms of what was heard. And lastly, on page 48, line 1 in English,
11 compared with the French version, page 47, lines 22 and 23.

12 In all these cases, Mr President, we believe that these are -- we have identical version
13 in English and in French and they do not correspond to the audio. So I request that
14 the audio be checked. Thank you, Mr President.

15 PRESIDING JUDGE FREMR: [13:02:06] Point taken and the Defence request for
16 verification is fully supported by the Chamber. Now we break and we will
17 reconvene at half past 2.

18 THE COURT USHER: [13:02:17] All rise.

19 (Recess taken at 1.02 p.m.)

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

21 THE COURT USHER: [14:30:58] All rise.

22 Please be seated.

23 PRESIDING JUDGE FREMR: [14:31:30] Good afternoon, everybody.

24 Before we continue, Ms Samson, you said in the morning that appearances are the
25 same like yesterday, but I see Ms Rabanit and she was with us even during the

1 previous session, so could you please for the record make a correction.

2 MS SAMSON: [14:31:51] Yes, your Honour. My apologies, I forgot to do so at the
3 start of the second morning session. At the start of the second morning session
4 Mademoiselle Rabanit joined the Prosecution team. And now, your Honour,
5 Mr James Pace had left the courtroom for the Prosecution and Mr Rens van der Werf
6 has joined.

7 PRESIDING JUDGE FREMR: [14:32:15] Thank you, Ms Samson.

8 Since Ms Rabanit had been hidden behind the screen, I discovered her just at the last
9 minute of the previous block.

10 All right. So we can now continue with the next part of cross-examination.

11 Ms Samson, you have the floor.

12 MS SAMSON: [14:32:38] If I could ask that we have the same document that we
13 were discussing prior to the break displayed on the screen. It's DRC-OTP-0109-0136.

14 Q. [14:33:23] Before the break I had read the first paragraph of the document and
15 I will focus now on the first part of the report, which is entitled as we can see on this
16 page, 0136, it's entitled, in French: (Interpretation)
17 "Morale of the troops in general."

18 "In general, the morale of the FPLC troops is quite high in all positions. It is
19 remarkable by the victories obtained at the various fronts. The army is disciplined
20 and is compliant with military regulations. We remember the army of Hitler in
21 Germany here which sought to conquer the world following discipline and morale
22 within the troops. Furthermore, here, what further heightens the morale is the
23 realisation of promises that authorities have made to the soldiers by avoiding any
24 political demagoguery." End of quote.

25 (Speaks English) Now, sir, we see here that your G5 refers to Hitler's army in its

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1 discipline and morale. Was Hitler's army a model for your army, the FPLC?

2 A. [14:35:23] At that time I did not know what Hitler's army's conduct was like.

3 It is only when I was in my cell that I watched a documentary on Hitler and on what

4 he had done. I did not have access to this written report.

5 Q. [14:36:10] Now I'm going to move to page 0139 and to a section at the bottom

6 of the page entitled, in French, (Interpretation) "The grievances of the population".

7 (Speaks English) And the first bullet point, in French:

8 (Interpretation) "Threats by soldiers, torture, rape, pillaging in Mabanga, Barrière,

9 Largu and Fataki."

10 (Speaks English) The FPLC had troops stationed at Mabanga, Barrière, Largu and

11 Fataki?

12 A. [14:37:50] It depends on the period you're referring to. If this period is

13 referring to acts that were carried out and if a report had come my way in that regard,

14 I would have acted immediately. But I repeat, I never received such -- this written

15 report.

16 Q. [14:38:16] In November 2002 the FPLC had troops stationed at Mabanga,

17 Barrière, Largu and Fataki?

18 A. [14:38:30] Yes. FPLC were deployed to that entire zone.

19 Q. [14:38:55] Yet you say that you never heard that there were serious complaints

20 by the local populations of those areas about threats by the military, torture, rape and

21 pillaging?

22 PRESIDING JUDGE FREMR: [14:39:34] Hold on, Mr Witness.

23 Mr Bourgon.

24 MR BOURGON: [14:39:37] Thank you, Mr President. I don't believe that the

25 words attributed to the witness are in accordance with what he said previously. I'd

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1 like to have a reference, please.

2 PRESIDING JUDGE FREMR: [14:39:48] Ms Samson.

3 MS SAMSON: [14:39:50] I'm looking at the witness's answer page 65, so moments
4 ago, lines 16 to 19:

5 "If this period is referring to acts that were carried out and if a report had come my
6 way in that regard, I would have acted immediately. But I repeat, I never received
7 such -- this written report."

8 PRESIDING JUDGE FREMR: [14:40:22] Ms Samson, I see some difference.

9 According the transcript he never received written report and now you are asking or
10 you are referring to hearing about complaints, so there is some difference.

11 MS SAMSON: [14:40:35]

12 Q. [14:40:35] Sir, did you ever get to know that the population of Mabanga, Fataki,
13 Largu and Barrière were complaining by November 2002 that FPLC military troops
14 were threatening the population, torturing -- that there were cases of torture, rape and
15 pillaging in those locations?

16 A. [14:41:22] Are you asking me questions about this document or are these
17 questions of a general nature? Please can you be more specific so that I can answer
18 you.

19 Q. [14:41:40] This document is reporting crimes allegedly being committed
20 against populations in Mabanga, Fataki, Largu and Barrière by November 2002. Did
21 you ever get to know of those complaints by the local populations, either by virtue of
22 this written report or through an oral discussion with Eric Mbabazi or in any other
23 way?

24 A. [14:42:35] I did not receive this report and I'm seeing it in this courtroom here
25 for the first time. However, in September, October and November I was able to lock

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1 up a number of commanders because of what they had done to members of the
2 population and I have already mentioned their names. But this has no bearing on
3 what is written in this report.

4 I said that in September I locked up Pigwa in Mandro when some cows were stolen
5 and he was responsible for that. Then in October and November I also -- there were
6 also some officers who were detained in one of the houses belonging to
7 President Thomas. I also mentioned their names already. Then in November I also
8 locked up Abelanga because he was mistreating the population.

9 Now, if I had learned about these things that are written in this document, I would
10 have taken measures. Abelanga was detained, Django was detained, Bebwawa was
11 detained, as well as others. So all these people, I locked them up during that period,
12 but it has nothing to do with what you are now telling me as you refer to this report.
13 I had the habit of punishing soldiers who took it out unjustly on the members of the
14 civilian population.

15 PRESIDING JUDGE FREMR: [14:44:26] Ms Samson, sorry to interrupt. I have to
16 make two small corrections for the transcript. Please, page 66, line 14 and 16. I
17 didn't say "reference" but "difference", as a difference. So please correct it.

18 Ms Samson, please proceed.

19 MS SAMSON: [14:44:47]

20 Q. [14:44:58] The populations of Mabanga, Barrière, Largu and Fataki were
21 majority Hema, correct?

22 A. [14:45:12] I used to hear that various ethnic groups all mixed up used to live
23 together in Mabanga. In Barrière and in Fataki as well as in Largu, these areas were
24 mainly occupied by the Hema, that is true.

25 Q. [14:45:55] And it was important for the FPLC to obtain the support of the

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1 Hema populations where your troops were based, in part because you would obtain
2 food and other logistical supplies from them?

3 A. [14:46:37] (No interpretation)

4 MS SAMSON: [14:46:52] Your Honour, there's no translation, at least not that I can
5 hear.

6 THE WITNESS: [14:46:56] (Interpretation) I have not quite understood your
7 question.

8 MS SAMSON: [14:47:00]

9 Q. [14:47:01] It was important for the FPLC to have the support of the local
10 populations where you -- your troops were deployed because the local populations
11 provided food and other logistical support to your troops, correct?

12 A. [14:47:38] We protected the members of the population and their property not
13 with a view to receiving something in return. It is the duty of all soldiers to protect
14 the civilian population so that the population can improve their livelihood and work.
15 And our goal within the FPLC was to protect members of the population and their
16 property as a matter of priority, as a vital matter, and that was what all soldiers were
17 expected to do.

18 Q. [14:48:26] Did you get to know that some of the populations in areas in which
19 the FPLC was based complained about the heavy burden of supplying food and
20 logistical support to the troops?

21 A. [14:49:12] Please kindly clarify this point so that I can provide an answer. I'm
22 not sure that I have any recollection of such a situation.

23 Q. [14:49:31] I will show you a letter. It's DRC-OTP-0089-0146, item 958 on the
24 Prosecution's list, and it's public.

25 Now, sir, on your screen is a letter dated -- it states, "Lopa, 17 December 2002" on the

1 right and on the left we see in French:

2 (Interpretation) "Democratic Republic of the Congo, UPC/RP, province of the Ituri,
3 territory of Djugu, collectivity Bahema Baguru, coordination: General Secretariat
4 Bunia, peace committee, liaison centre/Lopa."

5 (Speaks English) The subject is "Monthly Report" and it is transmitted, as we can see
6 in the bottom of the image that you have, in French, (Interpretation) "To the Secretary
7 General and Coordinator of the Peace Committee".

8 (Speaks English) And it's transmitted for information in copy to a number of
9 individuals listed at the top right-hand side of the page, including his Excellence the
10 president of the UPC/RP and the, in French, "le Chargé de la Défense", to the national
11 secretary in charge of reconciliation and peace, to the governor -- his Excellence the
12 governor, the province of Ituri in Bunia, to the head of the post in Nizi at Iga
13 Barrière - in French, that says, (Interpretation) "To the chief of post of state" --

14 (Speaks English) and also to the chief of the collectivité of the Bahema Baguru.

15 Now, I'll show you who signs the letter on the second page, page 0147. It is signed
16 by two individuals for the peace committee and, in French, "Centre de liaison/Lopa"
17 by its president and secretary, a Mr Gondji Ndjabu and Ngadjole Djombu.

18 Now, sir, I'll take you to one portion of this document and read it to you to give you
19 an opportunity to familiarise yourself with the content. On the first page of the
20 document -- we can return to the first page, and if we could scroll down, please, to the
21 substance of the letter.

22 Now, towards the centre of the page, slightly further down here, it reads, and I quote
23 in French:

24 (Interpretation) "Furthermore, within the same framework, we deplore the abuses by
25 the soldiers which do not leave the population in peace, which at this time has the

1 major burden of supporting soldiers by providing food, transportation and various
2 collections. Our desire is that the population be made secure without being
3 threatened to death."

4 (Speaks English) Now, first, sir, did you ever get to know that the population
5 complained to the UPC leadership about abuses by soldiers and the fact that the
6 population felt it had the major burden of supporting soldiers by providing food,
7 transport and collections?

8 A. [14:57:23] I did not receive this report. I did not see it. And I am not aware
9 that members of the population contacted the general secretariat of the UPC. Now,
10 if you want a comment, I can tell you what our conduct in the field was, but when it
11 comes to this particular report, I did not receive it, I do not recognise it.

12 Q. [14:57:56] It's right, isn't it, that if the UPC leadership such as Thomas Lubanga
13 receives reports about military, or abuses by the FPLC soldiers, that the first thing he
14 needs to do is to consult with the military leadership of the FPLC, including you?

15 A. [14:58:31] No. President Thomas never consulted me. In any event, I cannot
16 say that he never consulted me, but what I'm saying is that I never received this
17 report, he never sent this report to me, so I cannot tell you that I remember him
18 contacting me in relation to any grievances expressed by members of the population.
19 I do not have a recollection of having had any contact from him following complaints
20 made to him by members of the population.

21 Q. [14:59:34] The military intelligence branch, the G2, also prepared reports,
22 internal reports for the benefit of senior military leadership such as you?

23 A. [15:00:32] I don't remember written reports that the intelligence officers would
24 have sent to me.

25 Q. [15:00:49] Do you remember oral reports?

1 A. [15:00:59] For the moment it's difficult to remember the different reports that
2 came to me orally. I can't immediately remember the reports that were given to me
3 at the moment.

4 Q. [15:01:47] You don't remember at all that the G2 military intelligence provided
5 reports to the FPLC leadership, including you? Not specific reports, but in general,
6 you have no recollection of that?

7 A. [15:02:20] When the G2 came to the meeting held in Lipri, or came back from a
8 meeting in Lipri, he gave me a verbal report because I had sent him. I also
9 remember getting a report from Bebwa who had committed a fault in Bogoro and I
10 put him in detention for that. Now, where it concerns Lopa I also -- and Django, I
11 put Django in prison. This type of reports were what I received from the office of the
12 G2, but these reports were oral. I don't remember receiving a document of any kind
13 of this type.

14 Q. [15:03:28] The G2 and military intelligence staff also provided reports to you,
15 did they not, about the security situation in various areas of Ituri?

16 A. [15:04:15] Could you specify the period? If you speak generally, I've already
17 given you some examples.

18 Q. [15:04:21] At all times while you had G2 military intelligence staff at the
19 headquarters level or the brigade level or the battalion level, et cetera, their role was,
20 was it not, to provide you with military intelligence reports that included information
21 about the security situation on the ground?

22 A. [15:05:09] They gave their reports to their hierarchical superiors. I already
23 mentioned certain examples. When the persons responsible for the G2 office
24 provided me with reports and when I received a message in this regard, I
25 immediately reacted.

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1 Q. [15:05:40] I would like to show you a report.

2 It is DRC-OTP-0017-0023, item 1266 in our list.

3 PRESIDING JUDGE FREMR: [15:06:07] Mr Bourgon.

4 MR BOURGON: [15:06:08] Thank you, Mr President.

5 I waited until my colleague had finished with the last document, which was item 958

6 with the number DRC-OTP-0089-0146. A word on this document in the third

7 paragraph, the word in French is "tracasseries" and it was translated into -- in the text

8 to "abuse". I'd like to have confirmation that this is the proper translation. I note

9 that the person listening to the question in Swahili translated the word exactly as

10 "tracasseries".

11 To my recollection tracasseries is different from an abuse. I would like to have

12 confirmation of this.

13 Thank you.

14 PRESIDING JUDGE FREMR: [15:07:05] So my question goes to English booth -- or,

15 do you have, Mr Bourgon, as a bilingual counsel some proposition? How it should

16 be --

17 MR BOURGON: [15:07:18] We can do this later. But I want it noted for the record

18 immediately that this word was translated as "abuse". And we can get maybe a

19 second opinion at some other time by the interpreters. I don't want to waste any

20 time.

21 PRESIDING JUDGE FREMR: Maybe just --

22 THE INTERPRETER: [15:07:30] Your Honour, this could also be translated as

23 "harassment", which is a particular level of abuse.

24 PRESIDING JUDGE FREMR: [15:07:39] Mr Bourgon, would you find harassment

25 more proper?

- 1 MR BOURGON: [15:07:44] Yes, Mr President.
- 2 PRESIDING JUDGE FREMR: [15:07:47] Very well.
- 3 Ms Samson, please proceed.
- 4 And I appreciate that you waited until the end of the questioning on the previous
- 5 document.
- 6 Ms Samson, please proceed.
- 7 MS SAMSON: [15:07:55]
- 8 Q. [15:07:57] So we're looking for a document that's public DRC-OTP-0017-0023.
- 9 Now, this is a report. On the top left-hand side of the page we see in French
- 10 (Interpretation) "Democratic Republic of Congo, Patriotic forces for the liberation of
- 11 Congo, security and intelligence military service, G2".
- 12 (Speaks English) There is an FPLC reference that we see on the top right-hand side
- 13 followed by the title (Interpretation) "Daily situation".
- 14 (Speaks English) And for the moment I'm interested in -- well, I'll just canvass for you
- 15 so you have a chance to familiarise yourself with this document. Under point 1, in
- 16 French: (Interpretation) "General situation".
- 17 (Speaks English) Under point 2, a bit further down, in French: (Interpretation)
- 18 "Enemy situation".
- 19 (Speaks English) And the third bullet point: (Interpretation) "Military situation".
- 20 (Speaks English) And then I'll turn to the next page so you can see the signature, 0024.
- 21 At the top we see the fourth bullet point, in French: (Interpretation) "Security
- 22 situation".
- 23 (Speaks English) Further down below the fifth point, in French: (Interpretation)
- 24 "Socio economic situation".
- 25 (Speaks English) And then finally I'll show you the signature. It's signed in Bunia on

1 18 February 2003 by the (Interpretation) Commander RGEM G2.

2 (Speaks English) Which I suggest is the, in French, renseignement général état-major.

3 Général, (Speaks English), or G2.

4 And if we move back to the first page I will read one passage to you from this report,

5 and it's under bullet point 3: (Interpretation) "Military situation".

6 (Speaks English) And it's the third bullet point, which I will read in French:

7 (Interpretation)

8 "Some soldiers in the town of Bunia started raping young girls in the late hours.

9 And others are the escorts at the service, at the security service of the excellencies of
10 the movement."

11 (Speaks English) End quote.

12 Now, sir, did you ever get to know of the -- this report from your military intelligence
13 service of sexual violence, rape of little girls and of escorts of les excellences de
14 mouvement?

15 A. [15:13:28] I wasn't even able to see the name of the person who signed at the
16 bottom of this report. I just know that at the time the chief of military intelligence
17 was Mr Mbuyi. But I have to say that I never received this report, because if I had
18 known that people were committing rapes, I would immediately have taken the
19 required measures. I would have sanctioned that behaviour immediately.

20 Q. [15:13:59] And my suggestion to you is that this is an internal report with
21 such -- with information of such an importance that there is no way it would not have
22 gotten to you. What's your position on my proposition?

23 A. [15:14:35] I don't even know the name of the person who drafted this report in
24 order to answer you. I told you that at the time the document was signed the person
25 who was at the head of the intelligence service was Ali Mbuyi. He never provided

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1 me with this report. And I repeat, if this document had come to me, I would
2 necessarily have reacted. I would never have allowed soldiers to rape young girls
3 and that I would have remained doing nothing. If this report had come to me,
4 I would certainly have reacted.

5 PRESIDING JUDGE FREMR: [15:15:16] Sorry to interrupt you, Ms Samson.

6 Court usher, could we move to the signature of the document. And if you could just
7 focus and maybe even enlarge. Yes.

8 Mr Ntaganda, could you just look again at the signature. You said that at the time it
9 should be Mr Mbuyi conducting this function or position of G2. Can you recognise
10 his signature, or according to you it's not his signatures? Could you have any
11 comment on signature?

12 THE WITNESS: [15:16:16] (Interpretation) I don't know his signature. Even when
13 we were working together, he never provided me with a written report so that
14 I would be able to know what his signature looked like.

15 PRESIDING JUDGE FREMR: [15:16:34] All right.

16 Ms Samson, please proceed.

17 And sorry, Mr Bourgon is on his feet.

18 Mr Bourgon.

19 MR BOURGON: [15:16:44] Mr President, the document is being put to the witness,
20 I believe it is important to put to the witness also what the Prosecution believes this
21 document, to be the source of this document. The Prosecution mentioned the G2
22 department, mentioned the signature. What is the source of the document in their
23 view? What is their proposition that this document represents? Because this
24 document was the object of litigation in terms of being admitted from the Bar table.
25 We made submissions that this was not an authentic document. It was nonetheless

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1 accepted by the Chamber, so at least we could have the Prosecution say well we
2 believe this document comes from so and so. Do they know who this -- who signed
3 this document?

4 Thank you.

5 PRESIDING JUDGE FREMR: [15:17:29] I have to say that even during -- and it was
6 disputed especially by Defence -- but during my and then the Chamber's decision we,
7 in fact, encouraged or supported Prosecution if Prosecution is confronting Mr Witness
8 with some document, that it is not necessary to ask him "have you seen it or not", but
9 that such a document should be introduced to him which, in my view, could facilitate
10 further questioning. So in this case I would support this request if you do have such
11 information to inform Mr Ntaganda about the alleged source of this report.

12 MS SAMSON: [15:18:12] Mr President, the information the Prosecution has is what
13 I have put to Mr Ntaganda, and I will find the reference. But I -- I put to him what
14 we know. Here we go: Page 75, I went through the various parts of the document
15 to provide the witness with an overview and then I said at page 75, starting from line
16 18, I quote:

17 "And then finally I'll show you the signature. It's signed in Bunia on
18 18 February 2003 by the Commander RGEM G2", which I suggest is in French -- and I
19 said, renseignement général état-major, général G2. That's as much as the
20 Prosecution can do. I see that it is signed by a person who says "commandant", but
21 the person's name is not -- either was not provided on the document or the photocopy
22 doesn't contain it, but it's signed by someone who claims to be the commandant
23 RGEM G2. I cannot go further than that, your Honour.

24 PRESIDING JUDGE FREMR: [15:19:55] Now it's fine with me.

25 Mr Bourgon.

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1 MR BOURGON: [15:19:59] I would just like to note for the record, Mr President,
2 that the person who provided this document to the Prosecution testified before this
3 Chamber and was never shown this document. Thank you.

4 PRESIDING JUDGE FREMR: [15:20:09] Noted.

5 Ms Samson.

6 MS SAMSON: [15:20:12] Your Honour, I'm going to have to verify that
7 information because the source of this document to the Prosecution -- well, I'll have to
8 check it. I'll have to check that.

9 PRESIDING JUDGE FREMR: [15:20:24] Understandable.

10 MS SAMSON: [15:20:26] But I'm not certain if the source testified.

11 PRESIDING JUDGE FREMR: [15:20:56] So, Mr Bourgon, my understanding is that
12 you know who is the author of this document, or at least you believe that you know.

13 MR BOURGON: [15:21:04] We don't have a clue. We dispute the authenticity of
14 the document. That's why we'd like to know. Thank you.

15 PRESIDING JUDGE FREMR: [15:21:11] All right.

16 MS SAMSON: [15:21:12] Well, Mr President, the source of the document is a
17 witness who obtained the document but was not part of the UPC and so would have
18 been unable to authenticate the document, the person who gave the document to the
19 Prosecution.

20 PRESIDING JUDGE FREMR: [15:21:30] Noted.

21 MS SAMSON: [15:21:46]

22 Q. [15:21:49] Chief Kahwa left the UPC in early December 2002, correct?

23 A. [15:22:09] I remember that it was the month of December, but I no longer
24 remember whether it was at the start or the end of December 2002. I just remember
25 that it was in 2002 in the month of December.

1 Q. [15:22:35] Chief Kahwa left the UPC because he did not agree with the way in
2 which the UPC was attacking Lendu and non-originares civilians, correct?

3 A. [15:23:08] That's the first time that I've heard that information. I didn't know
4 that. I thought Kahwa left because the Ugandans wanted to destroy our movement
5 and he was therefore recruited by the Ugandans. And afterwards, he created his
6 own movement, the PUSIC.

7 Q. [15:23:40] Are you aware that Chief Kahwa made public statements about
8 human rights abuses by the UPC in press conferences?

9 A. [15:24:23] That he made statements to the media?

10 Q. [15:24:31] Yes, in early December 2002. Are you aware of that?

11 A. [15:24:48] I know he left the UPC in December 2002. And at the time it was
12 the Ugandans who had recruited him, explaining to him that they were going to help
13 him to create his own party.

14 Q. [15:25:10] I'd like to show you a copy of the press article. The registration
15 number is DRC-OTP-0134-0062, at number item 1164 on the Prosecution's list.

16 You can see on your screen the edition of the newspaper La Colombe Plus and the
17 edition dates covers the period, you can see at the left-hand side of the page under the
18 title of the newspaper, 15 November to 15 December 2002.

19 A. [15:26:49] I see the date. I can see it.

20 Q. [15:27:05] We've looked at an earlier article from La Colombe Plus in which
21 you stated you are not familiar with this newspaper; is that right?

22 A. [15:27:32] Could you show me the passage. I don't know if I spoke about this
23 newspaper or another one. I would also like to know what I said in my statement in
24 this regard.

25 Q. [15:27:49] Have you ever heard of the local newspaper "La Colombe Plus"?

1 Local to Bunia.

2 A. [15:28:11] I don't remember it.

3 Q. [15:28:15] May we turn, please, to page 0070. And I'm making reference to
4 the article that we see on the bottom right-hand portion of the page, if we could
5 please focus on that one. A little bit higher so we can see the heading, higher, and a
6 bit higher, please. Okay.

7 So here we see Chief Kahwa Panga Mandro in the title, and the heading of the article
8 in French reads: (Interpretation) "I have resigned from the UPC and I am forbidden
9 from Bunia".

10 (Speaks English) If we can focus in on the photo a bit so that the witness can confirm,
11 that's a photograph of Chief Kahwa?

12 A. [15:29:53] I can see that it's Chef Kahwa.

13 Q. [15:29:57] And if I could ask that we move to the left, focus on the article itself,
14 and a bit further down. Okay.

15 I will read a portion of the article, starting with the words in French, "Profitant",
16 which are at the -- towards the top of the article, and I'll read -- yes, towards the top of
17 what's visible on your screen right now:

18 (Interpretation) "Taking advantage of his presence in Kampala, on return from his
19 trip to Dar-es-Salam in Tanzania, this chef de collectivité chefferie of the
20 Bahema Banywagi spoke to the press on 1st December 2002 at the restaurant of Speke
21 Hotel about his situation within the UPC/RP, the social and political climate of Ituri,
22 his stay in Kampala and his ambitions of the movement."

23 (Speaks English) And if we go a bit further down into the next paragraph, he is
24 quoted as saying, and I'll quote here, quote: (Interpretation) "I resigned from the
25 UPC/RP due to the lack of understanding and the deterioration of my relations with

1 President Thomas Lubanga. And people were against me because of my wish to
2 make peace with everybody: My Lendu brothers and the Kinshasa government such
3 that they would cease arming them."

4 (Speaks English) And then a bit further down he's quoted again as saying, and I quote,
5 a bit further down:

6 (Interpretation) "I believed that we Hema, who were misled at the time of Molondo,
7 would make a difference by making our tribe safe. But I saw the opposite with too
8 many human rights violations since the UPC took power."

9 (Speaks English) Now that you've had a chance to read those excerpts of the press
10 conference of Chief Kahwa, at the time in November, December 2002 it's true, isn't it,
11 that Chief Kahwa left the UPC because of the human rights violations that the UPC
12 were committing since it took power in Ituri?

13 PRESIDING JUDGE FREMR: [15:33:57] Before witness will give his response,
14 Ms Samson, is there in the article - because I guess you know it - anything more
15 specific than just a rather general term abuse of human rights? Is there any concrete
16 examples of that in the article?

17 MS SAMSON: [15:34:15] Not in this article, your Honour. There's the reference to
18 Chief Kahwa feeling that he should secure -- wanted to secure other tribes and then
19 realising that the contrary was taking place, with too many human rights abuses since
20 the UPC took power. I will start with this and then I will focus in on another
21 interview of Chief Kahwa where there's greater detail.

22 PRESIDING JUDGE FREMR: [15:34:49] All right. Thank you.

23 MS SAMSON: [15:35:11]

24 Q. [15:35:11] Sir, I'll repeat my earlier question. It's true, isn't it, that
25 Chief Kahwa left the UPC in December 2002 because of the human rights abuses

1 committed by the UPC against civilians since the UPC took power?

2 A. [15:35:50] When Chief Kahwa left, the information I received was to the effect
3 that they had started to come together with other parties like the FNI and FAC, with a
4 view to destroying the UPC. I know that Chief Kahwa was taken in order to weaken
5 the UPC. He said that he had a misunderstanding with Thomas Lubanga, and this
6 happened at the time when the Ugandans drove out the APC. President Thomas
7 was not there.

8 When Chief Kahwa arrived, as you have just said, it was in early December or
9 November. And I'm not sure whether there was a problem between the UPC and
10 the other ethnic groups, given that all ethnic groups were represented within the UPC,
11 ethnic groups from the Ituri as well as ethnic groups from other areas outside of the
12 Ituri who were all part of the UPC. That is why I'm having trouble understanding
13 what you are saying.

14 Q. [15:37:23] Let's take a look at another interview.

15 MS SAMSON: [15:37:30] Mr President, may we move into private session, please,
16 with your leave.

17 PRESIDING JUDGE FREMR: [15:37:34] Certainly.

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

19 (Private session at 3.37 p.m.)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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- 1 (Redacted)
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- 6 (Redacted)
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- 9 (Redacted)
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- 12 (Redacted)
- 13 (Open session at 3.53 p.m.)
- 14 PRESIDING JUDGE FREMR: [15:53:40] Mr Bourgon.
- 15 MR BOURGON: Mr President --
- 16 PRESIDING JUDGE FREMR: [15:53:43] It depends, Mr Bourgon, if you want to
- 17 make it in public or in private session.
- 18 THE COURT OFFICER: [15:53:49] We are now in open session.
- 19 PRESIDING JUDGE FREMR: [15:53:50] So please go ahead, Mr Bourgon.
- 20 MR BOURGON: [15:53:52] I just thought that by common agreement we could
- 21 take the last few pages back immediately into public, since it was an oversight also on
- 22 my part. Thank you.
- 23 PRESIDING JUDGE FREMR: [15:54:04] Thank you.
- 24 Ms Samson.

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1 MS SAMSON: [15:54:11]

2 Q. [15:54:11] Sir, I'd like to show you a document which is a United Nations'

3 MONUC report. The registration number is DRC-OTP-0018-0126. The document is

4 confidential and it's item 1267 on the Prosecution's list.

5 PRESIDING JUDGE FREMR: [15:54:56] Mr Bourgon.

6 MR BOURGON: [15:54:57] Thank you, Mr President. I note for the record that

7 this document item 1267 has been in the possession of the Prosecution since the early

8 2000s, and that it was neither used nor admitted in evidence during the Prosecution's

9 case. Thank you.

10 PRESIDING JUDGE FREMR: [15:55:14] Noted.

11 Ms Samson, please proceed.

12 MS SAMSON: [15:55:19] Just a quick point for the transcript. I don't believe the

13 Office of the Prosecutor has any documents in its possession since early 2000.

14 PRESIDING JUDGE FREMR: [15:55:36] Mr Bourgon.

15 MR BOURGON: [15:55:37] 2004, based on our information. I thought that was

16 early 2000s, but I did not have the right figure. Thank you.

17 PRESIDING JUDGE FREMR: [15:55:47] So now it has been corrected.

18 MS SAMSON: [15:55:50]

19 Q. [15:55:50] Now, sir, this is a United Nations' document, it is three pages in

20 length. I will take you through it briefly. It's a report to MONUC headquarters,

21 Kinshasa from the Human Rights Affairs, Bunia. The subject is "Human rights

22 update from Bunia" and it is dated 24 September 2002. And I will just read the

23 caption, the introductory paragraph before taking you to more specific parts of this

24 report.

25 If we could scroll down just a bit so that the complete first paragraph is visible.

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1 Thank you. A bit further up, please. Thank you.

2 Now I'll read in French so you can situate yourself within the context of the
3 document:

4 (Interpretation) "Reports on the human rights situation of 02 and 09 September 2002
5 mention major violations in Bunia in the months of August and September 2002.

6 This document will focus on the security situation which is yet volatile on one hand,
7 as well as on abductions and disappearances as well as rape and other violence to
8 women, other acts of violence to women."

9 (Speaks English) And if we could scroll down, please, to the middle of the first point,
10 which is the security situation.

11 This is where the United Nations make reference -- makes reference to an invitation
12 by Thomas Lubanga to meet, and I will read it out. It's the eighth line visible on the
13 screen at the moment, in French:

14 (Interpretation) "This very volatile security situation is confirmed by the invitation of
15 23 September 2002 from the president of the UPC, Thomas Lubanga to MONUC
16 Bunia to an audience on the same day at his official residence."

17 (Speaks English) And if we scroll down, please, to the very end of this -- yes. The
18 last two sentences read as follows, in French:

19 (Interpretation) "From what precedes it emerges that the two parties (the militia and
20 Ngiti combatants with the support of the APC) --

21 THE INTERPRETER: [15:59:51] Sorry, Mr President, the interpreters cannot locate
22 the exact sentence yet in the document. If we can be guided.

23 PRESIDING JUDGE FREMR: [16:00:00] Ms Samson, have you heard --

24 MS SAMSON: [16:00:02] I have.

25 PRESIDING JUDGE FREMR: [16:00:03] -- the message? Please follow that.

1 THE INTERPRETER: [16:00:06] We found it, Mr President. We found it. Thank
2 you.

3 MS SAMSON: [16:00:15]

4 Q. [16:00:15] So I begin again reading in French, the last two sentences in French:
5 (Interpretation) "It emerges from what precedes that the two parties (UPC militia and
6 Lendu-Ngiti combatants with the support of the APC) are preparing for a sure
7 confrontation in Bunia with a view to taking over the city. This certainty of clashes
8 or of imminent confrontation in Bunia has raised a number of questions."

9 (Speaks English) If we could turn to the following page, please, page 0127. And I'll
10 continue:

11 (Interpretation) "1 - What would the attitude of the UPDF be if the APC or the
12 Lendu-Ngiti combatants were to attack Bunia?

13 2 - What would be the fate of the UPC Hema militia, or what would the fate of the
14 non-Hema civilian population of the town be at the hands of the UPC Hema militia?
15 Mindful of the fact that various clashes so far have always ended up in the massacre
16 of civilian populations on all parts.

17 Taken from any angle whatsoever any attempt to answer these questions must
18 culminate in an urgent need to send UN troops to Bunia in order to prevent possible
19 massacres of the civilian population.

20 That is why the MONUC delegation, availing itself of this unexpected opportunity,
21 informed Mr Lubanga of its concerns in relation to the various abuses committed by
22 the UPC militia on the civilian population. He affirms that he has already been
23 informed of these abuses and undertakes to put an end to impunity."

24 (Speaks English) Before I get into the details of those reported abuses, do you
25 maintain that Thomas Lubanga did not speak to you at all about reports of abuses

1 committed by UPC militia against the civilian population in September 2002 when he
2 learned of them from MONUC?

3 A. [16:03:58] President Thomas Lubanga had a chief of general staff, and what
4 I can tell you personally is that I am hearing this information for the first time from
5 you. He never spoke to me directly about this.

6 Q. [16:04:25] Thomas Lubanga, according to the United Nations report, affirmed
7 that he was already informed of these abuses and he promises to put an end to
8 impunity. And I put to you that Thomas Lubanga could not have put an end to
9 impunity if he did not engage his top military leaders, such as you and Floribert
10 Kisembo, in order to ensure that the UPC militia did not continue to commit abuses
11 against the civilian population.

12 A. [16:05:37] If you want me to comment personally thereon, I remember one
13 thing. I don't know if it happened following these comments or following the
14 content of this document. I remember that somebody was arrested who had
15 committed armed robbery and when that person came to the general staff HQ
16 Thomas Lubanga -- according to Thomas Lubanga this person had to be made an
17 example of to go to camp Ndromo (phon). The FPLC and the civilians, as well.
18 This person was to serve as an example and, therefore, this was an opportunity which
19 had to be shown to everybody that the FPLC could not allow for abuses to be
20 committed by FPLC troops against the civilian population. And he asked me
21 therefore to give an example to the members of the population and to the soldiers in
22 camp Ndromo (phon) and I therefore followed the instructions that were given. I
23 did what I was asked to do.

24 PRESIDING JUDGE FREMR: [16:07:05] Ms Samson, I'm sorry, I have to intervene
25 since at the moment we reached four-hour time limit for duration of Mr Ntaganda's

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1 testimony.

2 Mr Ntaganda, I will provide you with the same guidance like yesterday. It's up to
3 you if you feel tired, no problem, feel free to say it and we will conclude this session
4 now. If you feel strong enough to continue, we can still continue for next 20 minutes.
5 But we don't want to push you, we don't want to make you extremely tired. So feel
6 free to express your will.

7 THE WITNESS: [16:07:55] (Interpretation) We can continue, your Honour. I'm
8 not tired yet.

9 PRESIDING JUDGE FREMR: [16:08:09] Thank you, Mr Ntaganda. As I said
10 yesterday, the Chamber appreciates that.

11 Ms Samson, please proceed.

12 MS SAMSON: [16:08:19]

13 Q. [16:08:19] Are you referring to an incident of theft from a Nande individual?

14 A. [16:08:45] The Nande wasn't killed, but his goods were pillaged and the
15 soldier was armed. The soldier stole from his house. And there was an execution
16 squad, a firing squad.

17 Q. [16:09:22] Yes. The Nande individual who lived not far from you?

18 A. [16:09:32] Yes, the Nande was my neighbour.

19 Q. [16:09:45] And I put to you that if there were any punishment meted out
20 against an FPLC soldier for theft against a Nande individual, it's because that person
21 was your neighbour, the victim was your neighbour.

22 A. [16:10:31] No. All citizens are equal, whether it's a neighbour or somebody
23 who lives far away. For me, as a military commander, all citizens are equal. I
24 didn't even know him. I had never gone to his house. I didn't even know that it
25 was a Nande who had suffered that theft. I didn't know his ethnic group. And the

1 order came from President Thomas Lubanga and from the chief of general staff
2 Kisembo. These two persons wanted -- told me that this must be an example, that an
3 example be made of this.

4 Q. [16:11:25] Let's take a look at the report by the MONUC to Thomas Lubanga
5 about the abuses it alleged were being committed, to which Thomas Lubanga
6 confirmed his knowledge and promised to put an end to. That starts a bit further
7 down on the page in front of you on the screen, page 0127, and it starts with the
8 heading in French: (Interpretation)

9 "Abductions and disappearances

10 At the beginning of the month of August characterised by massive attacks on the right
11 to life, the situation of human rights in the current month is affected by the significant
12 number (approximately 50) of disappearances or public abductions of non-Hema
13 individuals. These victims are men and women of all ages and of non-Hema ethnic
14 groups."

15 (Speaks English) And then there are references to individuals who were specific cases,
16 which you can see before you. I will not mention them in the public -- in public, but
17 there are instances reported of disappearances and abductions on 5 September 2002,
18 on 7 September 2002, on 8 September 2002, on

19 14 September 2002 -- 14 September 2002 is a report, actually, about a disappearance
20 on 7 September 2002 of six women. And in the middle of the page, a bit further
21 down so I can situate for everybody in the courtroom, it starts:

22 (Interpretation) "According to sources, these women were Ngiti. Eyewitnesses who
23 wish for protection from MONUC -- the eyewitness who wishes for protection from
24 MONUC (see message dated 16 September 2002 from Bunia for the Kinshasa human
25 rights section in Kisangani) confirmed having been on the date of 12 September 2002

1 the driver of the vehicle which was used for the abduction by UPC militia of six
2 women and ten non-Hema men who were decapitated by machete and their bodies
3 thrown into the Shari river. Displaced persons were staying at the ISTB (Lendu and
4 Ngiti for the most part). Following the clashes of the month of August 2002 which
5 led the UPC to the cases, they drew up a list of at least seven of their people who had
6 been abducted or disappeared."

7 (Speaks English) And I will also make reference to "Cependant", which is almost at
8 the bottom of the page:

9 (Interpretation) "However, it's important to point out the freeing or release of the
10 military journalist under the condition confirmed by himself to become the press
11 attaché of the chief of general staff of the army."

12 (Speaks English) And the last set of abuses reported by MONUC under number 3 at
13 the bottom of the page I will read: (Interpretation) "Rape and other violence against
14 women."

15 (Speaks English) And on the following page, page 0128, in the middle of the first
16 paragraph there's a report that starts in French:

17 (Interpretation) "So in the current month two young girls of Lendu ethnicity confirm
18 to the humanitarian workers having been abducted and raped during 13 days by UPC
19 militia. Cases of rape are question the same militia who were -- they were registered
20 in the month of July by human rights association -- human rights defender
21 associations."

22 THE INTERPRETER: [16:18:32] Interpreter correction: Rapes involving the same
23 militias were listed in the month of July by human rights defender organisations.

24 MS SAMSON: [16:18:48]

25 Q. [16:18:49] Now, sir, take your time if you want to review this document any

1 further on your own. My question is: Did you not hear from Thomas Lubanga
2 about any of the alleged abuses that MONUC reported to him on 23 September 2002?

3 A. [16:19:22] He didn't speak to me about the incidents reported in this
4 document.

5 Q. [16:19:40] And you did not - or did you - get information about any of these
6 reports through any other means?

7 A. [16:20:07] Where it concerns the incidents contained in the report, I was not
8 made aware of them by other sources either or through other means.

9 MS SAMSON: [16:20:29] Mr President, I have no further questions on the
10 document. At this time I would seek to admit the document. It has not previously
11 been admitted. I'll make submissions on the reliability and authenticity of the
12 document, its probative value, the reasons why we did not seek admission of the
13 document before, and interests of justice arguments.

14 On indicia of reliability, the document emanates from MONUC. The author of the
15 report in terms of the Human Rights Affairs section Bunia is clear, as is the addressee
16 of the report and those who are copied. It is dated and it is a detailed report,
17 "Human Rights Update from Bunia". The document is contemporaneous with the
18 events in question as it's dated September 2002, September 24.

19 The probative value of the document is that it relates to crimes allegedly committed
20 by the FPLC, a report directly provided to Mr Thomas Lubanga following his request
21 for a meeting with the MONUC representatives. Mr Lubanga asserts that he's aware
22 of the crimes and that he will ensure that there is no impunity. It relates to the
23 knowledge of the leadership and to our pattern evidence on crimes.

24 The Prosecution can now squarely -- has now squarely been informed of the accused's
25 position in this case, that the UPC never committed any crimes against civilians and

1 that there was no inter-ethnic conflict whereby the Hema were involved in attacking
2 civilians or involved in any way in the perpetration of crimes.

3 And lastly, your Honour, the Prosecution puts forward that it is in the interests of
4 justice to admit this document now so that the Chamber can have at its disposal the
5 ability to evaluate the credibility of the accused's testimony about his knowledge of
6 crimes in the August/September 2002 period and that he would not have been made
7 aware or informed of reports of crimes by UN MONUC to Thomas Lubanga at the
8 time.

9 Thank you.

10 PRESIDING JUDGE FREMR: [16:23:42] Ms Samson, I have one additional question:
11 Why you did not tender this document during your case?

12 MS SAMSON: [16:23:50] Your Honour, we certainly could have, but it is now,
13 when the issue of the accused's position is crystallising on the absence of an
14 inter-ethnic conflict or of any crimes committed by the UPC against civilians as
15 reported in this document.

16 PRESIDING JUDGE FREMR: [16:24:12] Thank you.
17 Defence, your position?

18 MR BOURGON: [16:24:16] Thank you, Mr President. The Defence opposes the
19 admission of this document. This is first of all squarely what the Trial Chamber had
20 in mind when it produced its decision of 18 July concerning the reasons for the
21 Chamber's oral ruling on the use of certain material but also on the admission.
22 The Trial Chamber issued guidance that the documents could be used even though
23 they were not used previously by the Prosecution. However, the Chamber provided
24 some guidelines if the Prosecution moved to add or to have the document admitted.
25 If the Prosecution was seeking this document to be admitted for impeachment

1 purposes, based on the fact that -- of the answers provided by the witness, based on
2 the fact that he says that he was not informed by Mr Lubanga, whereas this document
3 appears to say that Mr Lubanga was informed, the Defence would have no objection.
4 However, to put this document in evidence at this stage should not be permitted and
5 should be rejected. First of all, when I look at the content of this document, there is
6 one instance in this document that was previously mentioned during the
7 Prosecution's case. And that instance appears with respect to a man called Bulamuzi,
8 and that's in paragraph 2 on the second page of this document. All other instances
9 are reported as having been the object of a report to MONUC, but we don't know
10 what MONUC did, we don't know how MONUC obtained the information, we don't
11 know the source of these reports. We know that the source of these reports are for
12 the most part, if not all, people who were opposed to the UPC.

13 And there is no -- nothing in this document -- if I look at paragraph 2 on the second
14 page, which is 0018-0127, it says here that Mr Lubanga -- let me read the exact
15 paragraph, where it says:

16 "This is why the delegation of MONUC, using this occasion, (Interpretation)
17 expressed its concerns to Mr Lubanga with regards to the different abuses that had
18 been observed."

19 (Speaks English) There is nothing to say in this document that the contents of this
20 report, what is found in paragraph 2 and 3, was reported to Mr Lubanga. We don't
21 know this from this document.

22 But this could have been used during the Prosecution's case. The whole point about
23 the Prosecution leading evidence is that the Prosecution opens its case and ends its
24 case.

25 Now the Prosecution is trying to split its evidence, which is of course unfair and

1 prejudicial to the accused. The prejudice is we were never given the opportunity to
2 investigate the content of this document. We were never given the opportunity to
3 object to the way in this, which document and where it was drafted. We have never
4 had the opportunity to investigate the events reported into this document. Had this
5 document been part of Prosecution disclosure, if it was so important for the
6 Prosecution, then of course the Defence would have conducted or at least attempted
7 to conduct the necessary investigations. And Mr Ntaganda would at least have been,
8 have had an opportunity to see this report and to make observation to his counsel so
9 that we could come up with Mr Ntaganda's view on these events.

10 A number of witnesses during the Prosecution's case could have been shown this
11 document and could have provided evidence, whether it was -- it had any truth or if
12 any of its content was established. Prosecution decided not to do so.

13 The Prosecution had the opportunity to put this document as part of a Bar table
14 submission. Unless I stand to be corrected, the Prosecution did not use the
15 opportunity to even submit the document on this as part of a Bar table submission.
16 Clearly the Prosecution is splitting its case and attempting to add to its case and the
17 prejudice to the accused far outweighs any probative valuable that can be derived by
18 the Chamber from this document.

19 Mr President, when you look at the Chamber's decision, the Chamber notes at
20 paragraph 11, I'm quoting from decision 1997 of 18 July, and the Chamber notes
21 that -- sorry, paragraph 18, that it deemed appropriate to emphasise that "the
22 potential prejudice at this stage of the proceedings will likely be considered higher
23 than the Prosecution's case. Accordingly, when applying this test, the conditions for
24 admission will be stricter and the Chamber will take into account inter alia the
25 reasons why such evidence was not tendered at an earlier stage."

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1 What have we heard from the Prosecution today in this regard? Very little
2 information, if any.

3 The Prosecution is now telling you, Mr President, that suddenly the evidence
4 crystallises --

5 PRESIDING JUDGE FREMR: [16:31:35] Mr Bourgon, I think there is no need to
6 elaborate on this point. I think you were clear. You are in fact right. So please try
7 to be brief and to conclude. Because I think this submission, in my view, doesn't
8 deserve very extensive -- I mean, Prosecution submission doesn't require any
9 extensive reaction from your part. You said a lot.

10 MR BOURGON: [16:31:57] Well, Mr President, I will -- thank you. I will keep it
11 short. We haven't heard the reasons, any legitimate reasons for not using or
12 submitting this document in evidence before.

13 And the last paragraph of the Chamber's decision, the Chamber said in paragraph 16
14 that any documents attempted by the Prosecution to be admitted after the closure of
15 its case in-chief must have a genuine and not a pretextual connection to its
16 examination. When you show a document to the witness who has never seen the
17 document, doesn't know anything about the document, testifies that he was not
18 informed of the content of the document, then we can say that the Prosecution is
19 using its examination of the witness as a pretext to supplement its case. It is unfair,
20 prejudicial and should not be allowed.

21 Thank you, Mr President.

22 PRESIDING JUDGE FREMR: [16:33:04] Thank you.

23 Ms Samson, do you feel any need to react?

24 MS SAMSON: [16:33:08] The only point --

25 PRESIDING JUDGE FREMR: [16:33:10] If yes, please briefly.

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1 MS SAMSON: [16:33:11] The only point that I wish to respond to is the document
2 was disclosed, your Honour, in January 2015 as incriminating evidence, which would
3 have given the Defence an opportunity to do investigations in relation to it, I would
4 submit. Thank you.

5 PRESIDING JUDGE FREMR: [16:33:27] Thank you. Allow me to consult my
6 colleagues on our ruling.

7 (Trial Chamber confers)

8 PRESIDING JUDGE FREMR: [16:34:04] So after brief silent deliberation in the
9 courtroom, our ruling is that the request is rejected. To be brief, I can mostly refer to
10 arguments presented by Mr Bourgon as we established the conditions for potential
11 tendering evidence by Prosecution at this stage, they are stricter and they were not, in
12 our view, met.

13 Moreover, Prosecution brought several witnesses who also testified on those topics,
14 members of NGOs, member of the, if I am not wrong, intermediate UPC government,
15 it could be tendered through them. And we also agreed that it would be prejudicial
16 to the Defence to tender this document at this stage of proceedings.

17 My additional question goes to Ms Samson: Ms Samson, do you want this document
18 to be admitted for the purpose of impeachment at least?

19 MS SAMSON: [16:35:04] Yes, certainly, your Honour. Thank you.

20 PRESIDING JUDGE FREMR: [16:35:07] And I take what Mr Bourgon said, that in
21 this case they wouldn't object. Am I correct, Mr Bourgon?

22 MR BOURGON: [16:35:15] That is correct, Mr President. We believe that there is
23 no impeachment value, but so the Prosecution believes otherwise so we don't object.

24 PRESIDING JUDGE FREMR: [16:35:24] All right. So this document is admitted
25 for the purpose of impeachment only.

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1 Now we adjourn and we will -- Mr Bourgon.

2 MR BOURGON: [16:35:35] Sorry, Mr President. A document was used
3 previously that I did not make any submissions on. Prosecution used document
4 DRC-OTP-0134-0062. I'm not sure what the Prosecution request is in respect of the
5 passage that was read. First, I note that this document again is entirely new to the
6 Defence, in terms of it was not used in the Prosecution's case, and I believe that the
7 answers or the part that was read --

8 PRESIDING JUDGE FREMR: [16:36:07] I'm sorry, Mr Bourgon, but there were no
9 requests, so I think no need to at the moment --

10 MR BOURGON: [16:36:11] Well, I'm not sure what the request is. So maybe my
11 colleague can say what the request is tomorrow. I thought she wanted to admit this
12 passage.

13 PRESIDING JUDGE FREMR: [16:36:17] You mean this article, newspaper article?

14 MR BOURGON: [16:36:19] The newspaper article.

15 PRESIDING JUDGE FREMR: [16:36:21] We haven't heard any request so I don't
16 see any reason to hear submissions for it.

17 MR BOURGON: [16:36:27] We can do it in the morning, Mr President. Thank
18 you.

19 PRESIDING JUDGE FREMR: [16:36:33] All right. So we adjourn now and we
20 continue tomorrow 9.30.

21 THE COURT USHER: [16:36:47] All rise.

22 (The hearing ends in open session at 4.36 p.m.)