

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 Judge Chang-ho Chung
6 Trial Hearing - Courtroom 2
7 Tuesday, 29 August 2017
8 (The hearing starts in open session at 9.31 a.m.)
9 THE COURT USHER: [9:31:02] All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE FREMR: [9:31:28] Good morning, everybody.
13 Court officer, please call the case.
14 THE COURT OFFICER: [9:31:41] Thank you, Mr President.
15 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
16 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
17 And for the record, we are in open session.
18 PRESIDING JUDGE FREMR: [9:31:58] Thank you.
19 Appearances, please.
20 MS SAMSON: [9:32:01] Good morning, Mr President. Good morning,
21 your Honours. The Prosecution team has the same composition today as it did
22 yesterday.
23 PRESIDING JUDGE FREMR: [9:32:10] Thank you, Ms Samson.
24 I see that as to the Defence there is somebody missing, Mr Bourgon.
25 MR BOURGON: [9:32:20] Good morning, Mr President. There are also some new

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1 members on the Defence side. Representing Mr Ntaganda this morning,
2 Mademoiselle Salomé Biet, Mademoiselle Marie Mescam, Monsieur
3 David Wagen-Magnon and (Interpretation) myself, Stéphane Bourgon. Thank you,
4 Mr President.

5 PRESIDING JUDGE FREMR: [9:32:42] Mr Bourgon, the Chamber has been
6 informed that Ms Martineau has suffered some injury. So we are sorry about that,
7 and allow me to express the wish of her early recovery. Please convey this message
8 to her.

9 MR BOURGON: [9:33:02] I will certainly do so. Thank you, Mr President.

10 PRESIDING JUDGE FREMR: [9:33:05] Now Legal Representatives of Victims,
11 please.

12 MS PELLET: [9:33:07] (Interpretation) Thank you, Mr President. No change on
13 the side of the child soldiers.

14 MS GRABOWSKI: [9:33:14] Good morning, Mr President. Good morning, your
15 Honours. There is also no change for the victims of the attacks.

16 PRESIDING JUDGE FREMR: [9:33:21] Thank you, Ms Pellet. Thank you,
17 Ms Grabowski.

18 Today we can continue with the next part of cross-examination of Mr Ntaganda
19 conducted by Prosecution, by its lead counsel, Ms Samson.

20 Ms Samson, you have the floor.

21 MS SAMSON: [9:33:42] Thank you.

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23 (The witness speaks Swahili)

24 QUESTIONED BY MS SAMSON: (Continuing)

25 Q. [9:33:52] Good morning, Mr Ntaganda.

1 A. [9:33:55] Good morning, madam.

2 Q. [9:33:57] Yesterday afternoon prior to the break you had given an answer in
3 relation to the April 2002 period. And I will quote the answer, which is at transcript
4 T-231. It's the realtime transcript in English, page 115, lines 9 to 14, and then I have a
5 few questions to ask you about your answer.

6 You stated, and I quote:

7 "I remember that in the month of April we were attacked and they wanted to
8 eliminate us, so I was concerned by the strategy that we were going to use in order to
9 protect ourselves. That was the most important thing for me. Because they wanted
10 to eliminate us. And that's the reason why we left for Mandro."

11 So my question is: When you say that you "remember that in the month of April we
12 were attacked and they wanted to eliminate us", who do you mean when you say "we
13 were attacked"?

14 A. [9:35:31] This was at the time when Molondo issued an ultimatum and then
15 subsequently attacked us, and that is why we had to leave to create the Mandro
16 centre in a bid to find protection for ourselves.

17 Q. [9:35:53] And briefly could you let the Chamber know who it was who was
18 part of your group at the time who were being attacked?

19 A. [9:36:29] Are you referring to my group or to the group that attacked us?
20 Please could you clarify that question. Which group are you referring to? Which
21 group do you want me to talk about?

22 Q. [9:36:44] Certainly. In my question I was referring to your group. So as
23 briefly as possible, if you could name the members of your group who were being
24 attacked at the time.

25 A. [9:37:12] After the restructuring Kisembo left Watsa and was transferred to

1 Mambasa where he became sector commander for Mambasa. He arrived with his
2 bodyguard and a few officers and they went there to obtain their road map, and I was
3 at that location myself. When the ultimatum was issued, Tchaligonza was present as
4 well as other officers.

5 So there were -- well, we were near Thomas Lubanga's residence at the time and I
6 myself, I used to live at Lubanga's place, at his residence, since I left prison in Uganda.
7 So that is the situation I was describing when I referred to that period in April 2002.
8 So that is the group that came under attack at that time.

9 Q. [9:38:33] And it's right, isn't it, that at this time, April 2002, there were, as
10 you've described, a number of officers and soldiers of Hema ethnicity who were loyal
11 to Thomas Lubanga?

12 A. [9:39:08] No, that is not correct. When Kisembo was transferred and given
13 new duties, he was in Watsa. There was no other way to go to his location except by
14 passing through Bunia. He went through Aru and there were some APC troops and
15 other troops in his escort. The other officers were also persons who had been
16 transferred to that sector while he was still in Mambasa. So when he came through,
17 it is at that time that we came under attack. You see, the restructuring involved the
18 APC in general, all ethnic groups put together. The restructuring did not only deal
19 with people of Hema ethnicity.

20 Q. [9:40:26] In addition to Kisembo, Tchaligonza and yourself, Bagonza and
21 Kasangaki were also part of the restructuring proposal, correct?

22 A. [9:40:56] Their names appeared on the document containing the restructuring.
23 I know that Bagonza was in hiding at the airport with the Ugandans, but when the
24 document on the restructuring was issued, his name was in that document.

25 Q. [9:41:31] And Kasangaki as well?

1 A. [9:41:39] When I arrived, Kasangaki was not there. He was working with
2 Claude at the time and when the other party developed a plan to attack us, Kasangaki
3 came and joined our group.

4 Q. [9:42:08] And what about Didier, was he also part of the group that was meant
5 to be restructured and who joined your group?

6 A. [9:42:33] Didier was of Alur ethnicity. When he was in Mahagi, he was also
7 bothered, given that he had -- left Kisembo and his team go through that area, and
8 that is how he ended up joining us at Bunia as well.

9 Q. [9:43:00] I would like to show you a document. It is DRC-OTP-0126-0015,
10 item 977 on our list, and it's a public document.

11 Now, sir, this is a letter --

12 PRESIDING JUDGE FREMR: [9:44:27] Hold on, Ms Samson.

13 Mr Bourgon.

14 MR BOURGON: [9:44:30] Thank you, Mr President. Before we say any
15 information as to what the document is purported to represent, we should ask the
16 witness if he has ever seen the document and what he knows about it.

17 PRESIDING JUDGE FREMR: [9:44:43] Ms Samson.

18 MS SAMSON: [9:44:44] Mr President, my intention was first to describe the
19 document to the witness and thereafter ask if he's seen it and take him to a particular
20 passage. I do not believe that that is -- I don't know precisely what the witness --

21 PRESIDING JUDGE FREMR: [9:45:03] It's okay. I don't see anything unfair on
22 this kind of proceedings, and even yesterday we, in my view, proceed this way.

23 Mr Bourgon.

24 MR BOURGON: [9:45:11] Mr President, I believe this isn't correct. We've been in
25 this trial for some two years. We've always first shown the document and the first

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1 question is: Have you seen this document before and, if so, when? That is
2 important for the Trial Chamber's deliberation. Then she can put -- the
3 Prosecution can put a proposition based on the content of their document and what
4 the Prosecution believes the document to be. But first we have to know whether the
5 witness has seen this document, which is a new document which is not in evidence.
6 Thank you, Mr President.

7 PRESIDING JUDGE FREMR: [9:45:44] And, Mr Bourgon, what is the prejudice if
8 we would proceed as Ms Samson proposes? In my view at least, it's speeding up the
9 proceedings and even facilitate the role of the witness.

10 MR BOURGON: [9:45:59] I don't believe so, Mr President, because the Chamber
11 should know -- the Chamber has indicated on a number of occasions that it wants to
12 see the reaction of the witness when the witness is shown a document, not the
13 reaction after being told what the document is, the reaction of the witness when he
14 sees it for the first time. When he looks at the document and he reads it, then he can
15 tell the Trial Chamber if he has any knowledge of the document and then questions
16 can be put to him. That's the fair way to proceed, Mr President. Thank you.

17 PRESIDING JUDGE FREMR: [9:46:29] Mr Bourgon, even yesterday Mr Ntaganda
18 several times himself spontaneously said, "It's the first time I am seeing this
19 document". So I don't see any troubles in the proposal made by Ms Samson.
20 Ms Samson, please proceed.

21 Mr Bourgon, I don't want to hear any further submission on that. Please sit down.
22 Ms Samson.

23 MR BOURGON: [9:46:50] Mr President, I am in fact --

24 PRESIDING JUDGE FREMR: [9:46:51] Mr Bourgon, I said I don't want to hear any
25 further submission on this point. Another point?

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1 MR BOURGON: [9:46:58] Yes, Mr President.

2 PRESIDING JUDGE FREMR: [9:46:59] Please go ahead.

3 MR BOURGON: [9:47:01] I want a ruling on the fact that documents will not be
4 asked to the witness first. A ruling from this Chamber. A ruling that I can put in
5 my appeals brief.

6 PRESIDING JUDGE FREMR: [9:47:08] All right. I will consult my colleagues.

7 MR BOURGON: [9:47:10] Thank you, Mr President.

8 The document should first be shown to the witness --

9 PRESIDING JUDGE FREMR: We have heard --

10 MR BOURGON: -- and he should respond.

11 PRESIDING JUDGE FREMR: [9:47:16] We have heard that.

12 MR BOURGON: [9:47:19] Thank you.

13 (Trial Chamber confers)

14 PRESIDING JUDGE FREMR: [9:49:47] So after relatively brief deliberation in the
15 courtroom, the Chamber insist on the ruling in fact I made myself. Briefly the
16 reasoning, we, as I said already, we don't see anything prejudicial in going this way.

17 We see difference between giving document by calling party and then if calling party
18 would provide witness with some information which should be provided by the
19 witness, then it would be leading and then it would be prejudicial to the
20 counter-party. But in case that it is part of cross-examination and cross-examining
21 parties even allowed to put leading question, so even if it has some leading impact,
22 we don't see anything prejudicial to the witness and the Defence in this case on that.
23 Mr Bourgon, are you satisfied with my reasoning? I don't mean satisfied, but I mean
24 with the extent?

25 MR BOURGON: [9:50:59] Mr President, I am grateful for the Chamber's ruling.

1 That's no more that I ask. But I will be seeking clarification as to why there is
2 suddenly a marked departure from the previous practice of the Chamber. The
3 Chamber has indicated that in order for the Defence to be able, previously, in order
4 for the Defence to be able to the use of a document, the first question should be "have
5 you seen the document?", whether in cross-examination or examination-in-chief.
6 That's the practice I followed during my cross-examination. I don't understand why
7 there is a marked departure and I will be seeking clarification. But I'm grateful for
8 your ruling. Thank you.

9 PRESIDING JUDGE FREMR: [9:51:33] Very well. And even if we change
10 proceedings the first question for you if you objecting should be "Is there any
11 prejudicial to your client or to your party?" And it's for me. So it's not any iron rule
12 how the evidence could be conducted, this kind of approach obviously speeding up
13 the proceedings. And, as I said, I don't see anything which would violating, which
14 would violate right of your client.

15 Ms Samson, please proceed.

16 MS SAMSON: [9:52:15]

17 Q. [9:52:15] Now, you can see, sir, the document before you. I will take you
18 through some of the main features of the document before getting into content and
19 then I'll give you an opportunity to let the Chamber know whether you've seen the
20 document before.

21 The title or the letterhead of the document that you can see before you in French says
22 "Republique Democratique du Congo, Rassemblement Congolais pour la
23 Democratie/Kisangani, Mouvement de liberation, RCD/KIS-ML". We can see a seal
24 to that effect. And below it reads in French, "Province de l'Ituri, Cabinet du
25 Gouverneur". The date is 14 May '02 and it states that it was drafted in Bunia.

1 And if we scroll down slightly, please, the document is written to Mr Pilo Kamaragi
2 in Bunia. The subject in French is, and I will read it, (Interpretation) "In the month of
3 April 2002".

4 THE INTERPRETER: [9:53:53] There were overlapping speakers, Mr President.

5 MS SAMSON: [9:53:59]

6 Q. [9:53:59] And if we can turn to the second page we'll see the signatory, the
7 author of the document. And the letter is signed by the governor of the province,
8 Jean-Pierre Molondo Lompondo who is commander of operations.

9 Now, sir, you've discussed during your testimony the RCD/KIS, who were the
10 governing authority in Bunia in May 2002, and Governor Lompondo. Have you
11 seen this document before?

12 A. [9:55:06] No.

13 Q. [9:55:18] I would like to take you to one passage -- actually, before I do, if we
14 could flip back to the first page so we can see to whom the letter was copied. If we
15 could expand slightly, it may be a bit difficult to read. So the letter was transmitted
16 for information to the president of the DRC in Kinshasa, to the president of Uganda in
17 Kampala, to the president of the RCD/KIS-ML in Kinshasa, to the chief of general staff
18 of the APC in Beni, to MONUC in Bunia, and to OCHA in Bunia. And on the second
19 page the passage I would like to read to you from Governor Lompondo to
20 Mr Pilo Kamaragi is in the middle of the page, the fourth paragraph. And I'll read it
21 out in French:

22 (Interpretation) "Furthermore, you must be aware that for about two months now,
23 Hema-Gegere indisciplined soldiers not under the control of the état-major of the
24 APC, are all under the command of Mr Lubanga who threatens to declare an
25 autonomous state in the Ituri. It is these soldiers who are perpetrating massacres in

1 Bunia and within the province."

2 (Speaks English) Now I will stop here for one moment before continuing. So I had
3 asked you earlier, sir, whether Thomas Lubanga had Hema soldiers loyal to him
4 within the APC and your answer was no. But what we see from Governor
5 Lompondo's letter to Pilo Kamaragi copied to other people is that his view and the
6 APC's view was otherwise. Now, do you maintain your evidence that Hema Gegere
7 soldiers within the APC were under Thomas Lubanga's control and were loyal to
8 him?

9 A. [9:58:56] I have already told you that I am seeing this letter here for the first
10 time. You are now asking for my remarks. I note that it was drafted in April and
11 here it mentions two months before, that is in the month of February something may
12 have happened. Well, at that time I was not there. Furthermore, at that time
13 Kisembo was in Watsa and when I arrived at President Thomas Lubanga's place I
14 only met his bodyguards there. I did not see any soldiers there who may have been
15 under Thomas Lubanga's control and who may have been seeking some autonomy.
16 What I found at his place was 12 soldiers and I would think that if he had had such
17 view or project, he would not have only been working with 12 soldiers. So what is
18 contained in this letter could not have been achieved with a force of only 12 men.

19 Q. [10:00:34] You've stated that the letter was drafted in April. In fact it was
20 drafted on 14 May 2002, and so the two months prior described in the letter could
21 relate to the March, April, May period, or the April, May period. You were in Bunia
22 March, April, May, correct?

23 A. [10:01:10] In my testimony I said I arrived without weapons, and when we
24 were attacked I had no weapon. I didn't have a uniform. I had no bodyguard.
25 And when Kisembo arrived, he sent us an ultimatum and then we were attacked

1 thereafter. And what is described in this document does not correspond with what
2 happened. Kisémbó arrived from Watsa and he arrived in Bunia. At least a week
3 afterwards we were attacked and Kisémbó was preparing to go to Mambasa with his
4 bodyguard and some officers accompanying him. And given this situation that
5 prevailed, I don't see how the forces that you're speaking about would have been
6 trying to gain autonomy.

7 Q. [10:02:17] But coming back to my question, you were in Bunia in March, April
8 and May 2002?

9 A. [10:02:37] Yes. Yes, I was in Bunia. That was after they attacked us. In the
10 month of May the UPDF divided the town into two.

11 Q. [10:02:51] And you witnessed the growing tensions between Thomas Lubanga,
12 Floribert Kisémbó, Tchaligonza, Kasangaki, Bagonza and others on the one hand
13 against Mbusa's men and Governor Lompondo on the other hand, correct?

14 A. [10:03:23] When they came to attack us, I was there. I asked
15 President Thomas to let us go to the airport. I had no weapons nor uniforms. I had
16 only just arrived. I was not organised at that time. I remember the situation.

17 Q. [10:03:56] And I will continue to read from this letter where I left off in
18 paragraph number 4. Governor Lompondo writes in French:

19 (Interpretation) "It was these troops who were perpetrating massacres in Bunia
20 within the province. There were massacres of ten soldiers in Bunia on 18 April 2002;
21 a massacre in Likopa; the assassination of the trader Djonde on 8 May 2002 on the
22 road that goes towards Lipri market. That's to tell you that the cases of killings and
23 massacres in Ituri are reciprocal between the Hema and the Lendu, and not only
24 Hema by the Lendu as you want to get national and international opinion to believe."
25 (Speaks English) Now, it's true, isn't it, as Governor Lompondo writes, that the Hema

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1 were attacking the Lendu and committing crimes against them just as much as the
2 Lendu were attacking the Hema at this time?

3 A. [10:05:24] I'm not aware of that. I said that when I arrived, a political war
4 existed. There was the RCD-K/ML and the APC. The fighters attacked the Hema
5 villages. And the person who was responsible for operations was Molondo, and
6 that's why the UPDF attacked, in order to drive him away because massacres
7 had -- there were massacres taking place which were widespread.

8 MS SAMSON: [10:06:16] Mr President, I seek to admit for impeachment purposes
9 the paragraphs of this letter that I have read into the record.

10 PRESIDING JUDGE FREMR: [10:06:26] Defence?

11 MR BOURGON: [10:06:28] No objection, Mr President.

12 PRESIDING JUDGE FREMR: [10:06:46] Sorry, I didn't understand. No ...?

13 MR BOURGON: [10:06:50] I said no objection, Mr President.

14 PRESIDING JUDGE FREMR: [10:06:52] All right. So the part of the document
15 specified by Ms Samson is admitted into evidence for the purpose of impeachment.
16 Ms Samson, please proceed.

17 MS SAMSON: [10:07:05]

18 Q. [10:07:08] Professor Pilo Kamaragi was associated with the UPC in its
19 early -- the early creation period 2000 and thereafter, correct?

20 A. [10:07:37] I don't know about the existence of the UPC in 2000.

21 Q. [10:07:46] Are you aware that Professor Pilo Kamaragi had ties to the UPC,
22 including in 2002?

23 A. [10:08:07] I know that Kamaragi was a professor, and during the period when
24 I was a member of the UPC I did not see that he was also from the UPC.

25 Q. [10:08:27] I would like to show you another document. It's

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- 1 DRC-OTP-0089-0165. It's item 655 on the Prosecution's list and it is public.
- 2 I will go through the document with you, just the main title and date, et cetera, and
- 3 then I will ask you whether you have seen it before.
- 4 Now, the title of the document --
- 5 PRESIDING JUDGE FREMR: [10:09:45] Hold on, Ms Samson.
- 6 Mr Bourgon.
- 7 MR BOURGON: [10:09:48] Thank you, Mr President. For the record, I note that
- 8 this document was obtained by the Prosecution in 2005 and it was not used during
- 9 the Prosecution's case. Thank you.
- 10 PRESIDING JUDGE FREMR: [10:09:59] Well noted.
- 11 Ms Samson, please proceed.
- 12 MS SAMSON: [10:10:03]
- 13 Q. [10:10:04] Now, the title -- what we see at the top left-hand portion of the
- 14 document is in - I will translate - Democratic Republic of the Congo, UPC, and the
- 15 title of the document in French is (Interpretation) "Constitution".
- 16 (Speaks English) Have you ever seen the UPC's constitution?
- 17 A. [10:10:49] No.
- 18 Q. [10:10:50] If we turn to the second page, please, and go towards the bottom of
- 19 the page. A little bit higher, please, and a bit higher.
- 20 So here it says that it was done in Bunia on 15 September 2000 for the - in
- 21 French - "L'Union des Patriotes Congolais". Lubanga Dyilo is the spokesperson, and
- 22 the members listed that you can see -- and if we can scroll up so that the witness can
- 23 see the full list of members, we see on the -- a number of names, including on the left
- 24 Rafiki Saba, Kitembo Bitamara, Maman Akiki, Alidor Mwanza, Adèle Lotsove, and at
- 25 the top right-hand side we see Professor Pilo Kamaragi.

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1 Now, according to this UPC constitution, do you have any reason to dispute that
2 Professor Pilo Kamaragi as listed here had been part of this constitution in
3 September 2000 for the UPC?

4 A. [10:12:41] I didn't know if it was 2000. You presented me a letter which I had
5 never seen. Now, if you had this information, that's because you had it previously.
6 But I've just heard about this here today before the Judges.

7 Q. [10:13:14] Yes, and you have no reason to dispute --

8 PRESIDING JUDGE FREMR: [10:13:19] Ms Samson, asked and answered.

9 MS SAMSON: [10:13:33]

10 Q. [10:13:33] Now, sir, I'm going to move back to the April 2002 period that we've
11 been describing. You've spoken today about being attacked by the troops of the
12 APC and Lompondo, and on April 17 2002, it's right, isn't it, that Thomas Lubanga
13 and others issued a public declaration about the injustices of the RCD under
14 Mbusa Nyamwisi on 17 April 2002?

15 A. [10:14:25] I don't have any information about that.

16 PRESIDING JUDGE FREMR: [10:14:32] Hold on, Ms Samson. Mr Bourgon.

17 MR BOURGON: [10:14:34] Yes, Mr President. My colleague indicated the date of
18 17 April. I don't recall the witness mentioning the date of 17 April 2002. I'd like to
19 have a reference, please.

20 PRESIDING JUDGE FREMR: [10:14:47] Ms Samson.

21 MS SAMSON: [10:14:47] My question about 17 April 2002 was disconnected from
22 the witness's evidence about the April 2002 period.

23 PRESIDING JUDGE FREMR: [10:15:06] I have to agree with Mr Bourgon that, at
24 least from the text, your question is -- the transcript is not clear. So now you clarify
25 that.

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1 MS SAMSON: [10:15:17] Yes.

2 Q. [10:15:18] So, sir, what I'm putting to you about the April period is that on
3 17 April 2002 Thomas Lubanga and others issued a public declaration about injustices
4 under the RCD-K/ML by Mbusa Nyamwisi. Did you hear of that?

5 A. [10:15:44] I don't remember. I no longer remember, given the time that has
6 passed. You are precise with regards to the date. You speak about the 17th, but
7 I don't remember this event.

8 Q. [10:16:10] I will show you the public declaration that I'm referring to. It's at
9 DRC-OTP-0127-0110. It's a public document and it is item 624 on the list.
10 The document is in English, so I will read it out and it will be translated for you.
11 The title of this document is "Political Declaration of the Managerial Staff of Ituri in
12 the Face of Instituted Injustice by the RCD-KIS/ML under His Excellency Mr Mbusa
13 Nyamwisi's Presidency".

14 And if I could ask the court officer to please turn to the last page, 0113, I will show
15 you who signed the document and when.

16 Now, it says that it's done in Bunia on 17 April 2002. And you can see the list of
17 signatories here: Adubango Biri, Tinenzabo, Djalum, Lety. And if we can continue
18 scrolling up, please, or down: Avochi, Nembe, Thomas Lubanga, Mbuna, Lonu Lali,
19 Bandeché, Lonema, Bayau and Ndukute.

20 We can turn back to the first page of the document and you can let the Chamber
21 know whether you've seen it before.

22 A. [10:19:47] No.

23 Q. [10:20:01] Now I'd like to look at some of the content of this declaration with
24 you and at the top of the document we have the signatories, who state as follows:
25 "We, political managerial staff of the Province of Ituri, preoccupied with political,

1 social and economical development of our entity, and after a keen analysis of the
2 political, administrative, economical, sociocultural situation, and security measures
3 which lasted since the event of the rebellion of 1998 until these days, but with a
4 special note since the seizure of the power of Mr Mbusa Nyamwisi in November 2001,
5 noticed with bitterness the following ..."

6 PRESIDING JUDGE FREMR: [10:20:58] Hold on, Ms Samson. Mr Bourgon.

7 MR BOURGON: [10:21:01] Thank you, Mr President.

8 The Defence opposes the use of this document and the questioning of the witness on
9 this document pursuant to paragraph 31 of the order on the conduct of proceedings,
10 which reads as follows: "Parties may show documents to a witness whose testimony
11 has a connection with that item and have the witness comment on it. When no
12 relation between the document and the witness has been established, the Chamber
13 may decide not to allow the presentation of the document or certain related
14 questions." Considering that Mr Ntaganda has clearly answered that he has never
15 seen this document, the Chamber is well aware that the contents of this document has
16 no connection with Mr Ntaganda or with his testimony, and in this regard we say that
17 this document should not be used with him.

18 Of course the Chamber might authorise the use of this document, and in which case
19 of course I will be seeking leave to conduct questions in re-examination later on.
20 Thank you.

21 PRESIDING JUDGE FREMR: [10:22:05] My reaction, the criteria you set, in my
22 view, are connected with examination of witness and for the potential admission for
23 the truth of the content. There is some I think difference if this questioning is made
24 for the purpose of potential impeachment, but still I have even problem with that
25 because Ms Samson, and I would like to get clarification from you, if Mr Ntaganda is

1 saying "I don't remember. I haven't attend this event", for what purpose will serve if
2 you were to put him part of the document, even for the purposes of impeachment?
3 If it would be clear from the document that he, for example, was present, that -- or he
4 should have a knowledge, if it would be apparent from the document, then you will
5 be free to present him part of the document. But I can hardly imagine if he is saying
6 "I don't remember. I haven't the document", that part of the text could impeach him
7 on that. If yes, please clarify it to me.

8 MS SAMSON: [10:23:18] Yes, Mr President. In fact, I've shown this document to
9 the witness before in cross-examination in transcript T-230, starting at page 57, for a
10 specific purpose. And the point of the questioning is not to determine what the
11 witness knows about the drafting of the document but, rather, given the position that
12 he was in at the time I simply want to see whether he will acknowledge that he would
13 have heard or learned of the intentions of the group with whom he was living at the
14 time, one of whom he was living with at the time. I don't intend to spend very much
15 time on this document. I have only -- I just wanted to read one little short, brief
16 passage to him and see whether he knew of that.

17 PRESIDING JUDGE FREMR: [10:24:21] I will not allow that because, as he said, he
18 doesn't know anything about this document. So if you want you can just put him
19 directly question "Do you know something about the principles contained in this
20 document", but not with the use of this document because he has no knowledge about
21 that. So please proceed in this way.

22 MS SAMSON: [10:24:43] Yes. Very well. Then I will put the principles in the
23 document without in advance letting him know what those are.

24 Q. [10:24:51] So, sir, is it your evidence that you never heard while you were
25 living with Thomas Lubanga in April 2002 that he, with others, were

1 politically -- publicly declaring their criticism of Mbusa Nyamwisi's regime and
2 splitting from the RCD definitively?

3 A. [10:25:28] I don't remember that.

4 Q. [10:25:35] And do you remember that subsequently leaders of the UPC in
5 September 2002 referred to this declaration of 17 April 2002 as a UPC declaration?

6 A. [10:26:14] I don't remember. Perhaps you could present me the document
7 that they produced in 2002 and I could make comments thereon. But asking me if I
8 remember a document that was written in 2002, well, that's something very difficult
9 for me, difficult for me to remember. Perhaps you would have to show it to me.

10 Q. [10:26:42] Now, the UPC issued decrees, Thomas Lubanga in particular, in
11 September 2002 and onwards. Do you recall that?

12 A. [10:27:09] I know the decree appointing me as deputy chief of general staff.
13 Otherwise, I don't remember the other decrees that were produced.

14 Q. [10:27:25] But you are aware that there were other decrees produced by
15 Thomas Lubanga nominating, for instance, his national secretaries?

16 A. [10:27:50] I remember decrees relating to the organisation of the general staff
17 only, for the moment.

18 Q. [10:28:09] Well, let me start with one decree and I'll show you others. At
19 DRC-OTP-0147-0204, item 539, public document.

20 Now, as you can see, sir, this is on UPC letterhead emanating from the Presidency,
21 cabinet of the president. And you can see the decree number. And in this case it's,
22 in French, (Interpretation) "On the appointment of a governor and two vice-governor
23 in the province of Ituri."

24 (Speaks English) And if we scroll down, please.

25 You can see that this has been signed by Thomas Lubanga on 2 September 2002 in

1 Bunia nominating Governor Eneko and two vice-governors, Kiza Mateso and
2 Ndukute Mangilio. Now, have you seen this decree before?

3 A. [10:29:58] I haven't seen it. But I do know Mateso and Ndukute.

4 Q. [10:30:07] Yes, and you know that Thomas Lubanga by presidential decree
5 named them governor and vice-governors of Ituri, correct?

6 A. [10:30:24] I didn't know it through the decree. Eneko died afterwards before
7 taking up his functions.

8 Q. [10:30:50] Let's move please, madam court officer, to the beginning part of the
9 decree, a little bit further down, please.

10 Sir, you can see here in the preamble to the decree Thomas Lubanga sets out various
11 points, and I will read it out in French:

12 (Interpretation) "Constitution of the UPC/RP adopted on 15 September 2000;

13 Mindful of the political declarations of 17 April and 11 August 2002;

14 Considering that the Ituri needs to have at its helm persons capable of bringing its

15 divided population together who have been mortified by previous political systems;

16 Considering the need to organise provincial executives;

17 And upon the proposal of the national secretary for the interior;

18 Mindful of the timeliness and emergency, decrees as follows ..."

19 (Speaks English) And my question to you is: The reference to the political
20 declarations of 17 April and 11 August 2002 in the preamble to a presidential decree
21 signed by Thomas Lubanga means, does it not, that the 17 April decree was
22 acknowledged by the UPC leadership as being an important UPC declaration?

23 PRESIDING JUDGE FREMR: [10:32:44] Mr Bourgon.

24 MR BOURGON: [10:32:44] My colleague is asking for an opinion from the witness
25 on a document he has not seen.

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1 PRESIDING JUDGE FREMR: [10:32:52] Ms Samson, I fully agree with Mr Bourgon.

2 Just about the opinion of Mr -- not about his knowledge, so.

3 MS SAMSON: [10:33:03] I'll rephrase, Mr President.

4 Q. [10:33:07] Did you know, Mr Ntaganda, that the decrees signed by Thomas
5 Lubanga had in its preamble a reference to the political declarations of 17 April and
6 11 August 2002?

7 A. [10:33:44] I do not know the background to all these decrees. I'm only
8 becoming aware of this decree here today.

9 PRESIDING JUDGE FREMR: [10:33:52] Allow me one additional question,
10 Ms Samson.

11 Mr Ntaganda, is your testimony that you have never seen any decree issued by
12 Mr Lubanga?

13 THE WITNESS: [10:34:28] (Interpretation) Mr President, I have acknowledged that
14 I saw the decree by which I was appointed. But when it comes to political
15 declarations or statements, I never became aware of any decrees that related to
16 political declarations.

17 PRESIDING JUDGE FREMR: [10:34:49] So have I understood correctly that the
18 only decree you personally saw was decree of your assignment?

19 THE WITNESS: [10:35:07] (Interpretation) That is correct. It is the only decree
20 which I received in my own hands. Apart from that decree, I was not handed any
21 other decree signed by President Thomas Lubanga, nor did I receive -- or, nor was I
22 copied on any of those decrees.

23 PRESIDING JUDGE FREMR: [10:35:41] Thank you, Mr Ntaganda.

24 Ms Samson, please proceed.

25 MS SAMSON: [10:35:45]

- 1 Q. [10:35:50] I would like to show you a second decree related to you,
2 Mr Ntaganda.
3 The registration number is DRC-OTP-0132-0237. It's item 598 on the list and it's
4 public.
5 This decree is dated 8 December 2003 and the title in French (Interpretation)
6 "To suspend some senior political and military officials from the Union des Patriotes
7 Congolais pour la Réconciliation et la Paix."
8 (Speaks English) And if we could turn to the second page, please. At the top we can
9 see (Interpretation) "Mindful of the timeliness and urgency; decrees as follows ..."
10 (Speaks English) And the decree relates to the suspension from their functions in the
11 UPC/RP of five individuals, including Daniel Litcha and Floribert Kisembo, and
12 Colonel Lobho Kamuhanda in the first part.
13 And in the second part it decrees that during the period of their suspension certain
14 interim responsables are appointed, including yourself under number 2, for the -- as
15 the chief of general staff of the FPLC, Major General Bosco Ntaganda.
16 And if we scroll down a bit further I can show you who signed this decree. It is
17 8 December 2003, done in Kinshasa, signed by the President Thomas Lubanga.
18 Did you have an opportunity to see this decree from 8 December suspending Floribert
19 Kisembo and others and appointing yourself as interim chief of general staff?
20 A. [10:39:14] At that time President Thomas Lubanga was in Kinshasa and this
21 decree did not get to us. It is Djokaba who informed us of it. It is true that we were
22 appointed by the president, but we did not receive the hard copy of the document
23 itself. Djokaba is the one who informed us because he was the one on location.
24 Q. [10:39:54] And if we turn to the first page, I'll read the preamble to you.
25 If we could scroll down, please.

1 So I will read starting from the beginning, in French:
2 (Interpretation) "Mindful of the constitution of the UPC/RP adopted on
3 15 September 2000;
4 Mindful of the political declarations of 17 April and 17 August 2002;
5 Mindful of the presidential decree number 3 to appoint members of the executive of
6 the UPC/RP;
7 Mindful of presidential decree number 2 bis designating officials to the general staff
8 of the FPLC;
9 Mindful of the statutes of the UPC ..."

10 (Speaks English) Et cetera, et cetera.

11 Now, sir, we saw an early declaration of 2 September 2002. Here we have
12 another -- pardon me, an early decree. Here we have another decree from Thomas
13 Lubanga on 8 December 2003. Both of those decrees refer to the political
14 declarations of the 17 April and 11 August 2002 in the preamble of the UPC. And I
15 put to you that you were aware of the import of the 17 April 2002 declaration to
16 Thomas Lubanga and his movement, the UPC, both in April 2002 and after
17 September 2002.

18 A. [10:42:45] No. I do not agree with you. What I say is that I was not aware or
19 I did not have knowledge of this decree. I did not receive the physical document
20 itself, that is the decree that President Thomas Lubanga signed, the reason being that
21 he was in Kinshasa. So what I have said is that the document which I saw is the
22 document which was signed by Djokaba.

23 Q. [10:43:24] Let's go back to the April 2002 period to assess your answers in light
24 of what was happening then.

25 PRESIDING JUDGE FREMR: [10:43:38] Mr Bourgon.

1 MR BOURGON: [10:43:39] Thank you, Mr President.

2 A transcript correction material which has to do with this line of questioning, page 22,
3 line 12, the English version reads "April 2002" whereas the same, the corresponding
4 version in French reads "September 2002" and it has to do with the decrees business.
5 I would just like to clarify which of the two dates, which one is correct. Thank you.

6 PRESIDING JUDGE FREMR: [10:44:05] Thank you.

7 MS SAMSON: [10:44:18] Page 22 in the English transcript, page 22, line --

8 MR BOURGON: [10:44:27] Line 12.

9 MS SAMSON: [10:44:32] Twelve. September. The English transcript says "in
10 April 2002 and onwards", with a highlight, that I believe means it needs to be
11 reviewed. It's in my question. My question should relate to September 2002: "The
12 UPC issued decrees, Thomas Lubanga in particular, in September 2002". So that
13 could be corrected in the transcript. It's in my question.

14 PRESIDING JUDGE FREMR: [10:45:00] Well noted.

15 MS SAMSON: [10:45:09]

16 Q. [10:45:09] Now coming back to the 17 -- or the April 2002 period. You went
17 to Kasese, Uganda with Thomas Lubanga and his delegation.

18 A. [10:45:38] We did not leave on the 17th of April.

19 Q. [10:45:48] No, I hadn't actually finished my question. You went to Kasese,
20 Uganda with Thomas Lubanga and a delegation in April 2002, correct?

21 A. [10:46:12] It is true that we went with a delegation and the Ugandans took us
22 in a plane to Kasese. I do remember that.

23 Q. [10:46:28] And your delegation included some of the people who had signed
24 the 17 April declaration, including Thomas Lubanga, Ndukute, Avochi, Tinanzabo,
25 correct?

1 A. [10:47:05] When we went to Kasese, I was not aware that they had signed that
2 document. So for me, these are two different issues. However, we went to Kasese
3 with the help of the Ugandans. There was also an RCD-Kisangani delegation which
4 came from Beni. That is what I can remember.

5 Q. [10:47:47] And your delegation who left with Thomas Lubanga also included
6 Floribert Kisembo, Chef Kahwa?

7 A. [10:48:11] They were part of those who had indeed been selected by the
8 Ugandans.

9 Q. [10:48:25] I'd like to show you a photograph. It's DRC-OTP-0127-0115. It is
10 item 270 on the list. And it's a public document.

11 This is a photo, is it not, of your delegation in Kasese who attended the meetings in
12 Kasese?

13 A. [10:49:44] I remember this photograph. It was taken after the incident when
14 Claude fell. The Ugandans subsequently tried to find a solution to the problem and
15 they organised a meeting between us, the mutineers, and the RCD-K/ML.

16 Q. [10:50:21] Your delegation was headed by Thomas Lubanga, who we see on
17 the right in a red and white shirt with his head turned slightly to the left, behind a
18 woman in blue and white, correct?

19 A. [10:50:49] Yes, he's wearing what is known as a boubou, which is reddish in
20 colour.

21 Q. [10:51:05] He was the head of your delegation, correct?

22 A. [10:51:11] Yes, but we met up with other persons in Kampala such as
23 Mama Lotsove, because she no longer came back to the Congo and the Ugandans
24 were providing security for her in Kampala. We also have other members of the
25 delegation with whom we travelled on the photograph.

1 Q. [10:51:46] Mama Lotsove is the woman smiling in the centre of the photograph
2 in a light green shirt?

3 A. [10:52:15] Yes, that is correct. She is the one standing behind Kisembo and
4 smiling.

5 Q. [10:52:26] Kisembo is kneeling in the front of the photograph in a blue shirt,
6 looking away from the camera?

7 A. [10:52:37] Yes. He is also holding a notebook in his hand.

8 Q. [10:52:54] And you are standing in the back of the image in a beige shirt,
9 correct?

10 A. [10:53:16] Yes. Behind Mama Lotsove, that's me.

11 Q. [10:53:26] Next to Mama Lotsove and also in front of you in a white shirt is
12 Tinanzabo?

13 A. [10:53:40] Yes. Slightly to my left, yes. In front of me. That is Tinanzabo,
14 indeed.

15 Q. [10:54:02] Now, in the back of the photograph standing in a blue shirt is
16 Chef Kahwa, correct?

17 A. [10:54:18] Yes, that indeed is Chef Kahwa. Let me specify that we also met
18 him in Uganda, we didn't travel with him.

19 Q. [10:54:45] And the man who has a multi-coloured shirt in front of Chef Kahwa
20 is Avochi?

21 A. [10:54:59] Yes. That is Avochi, yes.

22 Q. [10:55:20] The man in a white T-shirt with glasses in the far left of the picture is
23 Adubango Biri?

24 A. [10:55:44] Yes, that is correct. That man's name is Adubango.

25 Q. [10:55:59] The man who is kneeling in the photograph to Kisembo's right, he's

1 got a grey, blue and white-striped shirt, that's Tchaligonza?

2 A. [10:56:24] Yes, that is Tchaligonza. He is also holding a notebook in his hand.

3 Q. [10:56:38] And the man between yourself and Chef Kahwa in a green shirt, is
4 that Ndukute?

5 A. [10:57:00] Yes, that is Ndukute, he is standing behind Mama Lotsove.

6 Q. [10:57:12] And the man on the other side of Chef Kahwa, is that Lonema?

7 A. [10:57:31] Yes, that is Lonema.

8 Q. [10:57:36] Now this delegation, some of whom you travelled with from Bunia,
9 others you met in Kampala to attend meetings in Kasese, this delegation represented
10 itself during the meetings as the FRP, correct?

11 A. [10:58:04] No. Let me explain things to you. We had been fighting when
12 Claude fell and so I went with Thomas Lubanga to seek refuge in the UPDF side.
13 They had some -- they had taken some of our officers and so all those people were
14 working and had duties within the RCD-K/ML and they had been taken away by the
15 UPDF and brought along in the delegation, but we did not know why. We travelled
16 together, but they were part of the RCD-K/ML.

17 Now, when they spoke of any problems, they mentioned issues of the bad leadership
18 of their party. I did not hear them introduce themselves as members of the FRP.
19 Even Thomas Lubanga himself introduced himself as the minister of defence. What
20 happened is that they were objecting to the decree that Thomas Lubanga had signed
21 regarding the restructuring. So this was not in relation to any other problem. That
22 was the only issue at hand, namely that they were opposed to the decree signed by
23 Thomas Lubanga relating to the restructuring.

24 Q. [10:59:53] We'll explore that after the break. But I neglected to mention, in
25 the photograph before you the woman in blue and white, a blue and white dress, is

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1 Mama Akiki, correct?

2 A. [11:00:11] Yes. That is my mother-in-law.

3 MS SAMSON: [11:00:25] Thank you, Mr President. I can resume after the break.

4 PRESIDING JUDGE FREMR: [11:00:30] Yes.

5 So we take our regular 30-minute break now and we will reconvene at 11.30.

6 THE COURT USHER: [11:00:40] All rise.

7 (Recess taken at 11.00 a.m.)

8 (Upon resuming in open session at 11.30 a.m.)

9 THE COURT USHER: [11:30:33] All rise.

10 Please be seated.

11 PRESIDING JUDGE FREMR: [11:30:53] We can directly continue with next part of
12 cross-examination of Mr Ntaganda conducted by the Prosecution.

13 Ms Samson, you have the floor.

14 MS SAMSON: [11:31:10] Thank you, Mr President.

15 Q. [11:31:14] Sir, I'd like to take you back to the photograph of the Kasese meeting
16 one more time to identify one additional individual on the picture.

17 The ERN is DRC-OTP-0127-0115, item 270.

18 The man kneeling in front of Mama Akiki in the white shirt is Didier; is that right?

19 A. [11:32:24] No. The person on his knees before Mama Akiki is taxi man, the
20 person who drove Mama Akiki, because we didn't travel together with Mama Akiki.

21 This person isn't Didier. That's the taxi man. Didier is another person on my left, if
22 I'm speaking about my position here.

23 Q. [11:33:08] So Didier is the person that we can see -- well, we can see his head
24 standing between -- next to you in the back of the photograph and his head is visible
25 between your head and that of Thomas Lubanga's?

1 A. [11:33:35] Didier is very visible here next to this elderly man that you said was
2 Adubango, next to Avochi, that's commander Didier. He's wearing a grey shirt -- a
3 green shirt with jeans, black jeans.

4 Q. [11:34:10] And to be clear, he has his hands in his pockets, partly in his pockets,
5 that's the gentleman?

6 A. [11:34:25] Yes, that's Didier.

7 Q. [11:34:28] Now, you've spoken about what you say was the purpose of the
8 meeting, which was to deal with the issue of the appointments or deployments of
9 yourself and others in the APC. I put to you that the purpose of the meetings in
10 Kasese was to ensure that the RCD left power and that your group took power in Ituri.
11 Do you agree?

12 A. [11:35:11] No. It was to discuss the attacks that we'd been victims of, the
13 conflict that had taken place in Bunia, the way in which Molondo had attacked us.
14 That's what it was about. * And I took part in that meeting. And why, why
15 was there conflict? What was the reason for that conflict? That's what it was about
16 at Kasese. We discussed all of that at the meeting.

17 Q. [11:36:14] Now, Chief Kahwa was not part of the APC, was he?

18 A. [11:36:31] No. I don't even know if he was in the RCD-K/ML. He was the
19 customary chief, the chief of Mandro collectivity.

20 Q. [11:36:54] And yourself and Thomas Lubanga, Floribert Kisembo, Tchaligonza,
21 Didier, you had been working with Chef Kahwa since the Chui mobile force days,
22 correct?

23 A. [11:37:24] I would say the following: This was a chief who gave us his
24 support. When we created Chui mobile force we appreciated him as a chief of a
25 collectivity. Perhaps he noted that our cause was just and that's the reason why he

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1 was on our side.

2 Q. [11:38:07] And I put to you that the outcome of the Kasese meeting was that
3 the RCD would leave power and the FRP would start the management of Ituri. And
4 that's right, isn't it?

5 A. [11:38:38] In realty, the FRP that you speak about, well, I've heard about that
6 here before this Court, but I didn't know it. And now, during this meeting we didn't
7 speak about a political party or two political parties. The idea was to know what the
8 problems were within the RCD-K/ML, where was the internal conflict within the
9 RCD-K/ML. That was what the issue was during the Kasese meeting.

10 MS SAMSON: [11:39:19] Mr President, if I may ask for the session to move into
11 private session for a few questions, please.

12 PRESIDING JUDGE FREMR: [11:39:26] All right.

13 Court officer, let's move into private session now.

14 (Private session at 11.39 a.m.)

15 (Redacted)

16 (Redacted)

17 (Redacted)

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22 (Open session at 12.27 p.m.)

23 THE COURT OFFICER: [12:27:45] We are back in open session.

24 PRESIDING JUDGE FREMR: [12:27:47] Thank you, court officer.

25 Ms Samson, please proceed.

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1 MS SAMSON: [12:27:50] Thank you.

2 Q. [12:27:53] Now, sir, in answer to my question moments ago that you wanted
3 the same leadership to remain in power, that is Mbusa Nyamwisi as president and
4 Lompondo as commander-in-chief and governor, you said that's correct. Now, do
5 you know why therefore after the meeting in Kasese on 16 May 2002 Thomas
6 Lubanga publicly declared that the RCD movement had been replaced by the FRP as
7 governors of Ituri, managers of Ituri?

8 A. [12:28:40] I don't recall any such statement, nor the context in which it might
9 have been made.

10 Q. [12:29:08] And that he stated that the management of the territory of Ituri by
11 Mbusa Nyamwisi was characterised by political chaos and disorganisation of the
12 administrative machine. Do you recall that Thomas Lubanga wrote those words on
13 16 May 2002?

14 A. [12:29:51] I don't remember that.

15 Q. [12:29:58] Let's take a look at the document together. It's
16 DRC-OTP-0194-0328. It's a public document. We've looked at it before, you've also
17 given testimony about it in-chief. It's a public document.

18 MR BOURGON: [12:30:31] Can I just have number of item, please.

19 MS SAMSON: [12:30:35] Yes, certainly. It is number 678.

20 Q. [12:31:07] Now, sir, you've had a chance --

21 PRESIDING JUDGE FREMR: [12:31:11] Sorry, Defence, are you ready, or? You
22 are ready? May we proceed?

23 It seems so. So please, Ms Samson, you may proceed.

24 MS SAMSON: [12:31:22] Thank you.

25 Q. [12:31:24] Now sir, you've seen this document before, it's titled memorandum

1 of the political members of Ituri to the intention of the president of the DRC in
2 Kinshasa.

3 And in the introduction, which I'll read, it states in French: "The political leaders of
4 the province of Ituri coming together within the Front for Reconciliation and Peace
5 (FRP), concerned with political, social and economic development of our entity;
6 having carried out a deep analysis of the political, administrative, economic,
7 sociocultural and security situation that has reigned since the rebellion of 1998 to this
8 day, but with a particular note since the taking of power by Mr Mbusa Nyamwisi in
9 November 2001, we have noted the following ..."

10 (Speaks English) And if I look at point 2 or the second bullet point on the page, I'll
11 continue to read in French:

12 (Interpretation) "The management of the territory (of the province) of Ituri by
13 Mr Mbusa Nyamwisi has been characterised by political chaos, disorganisation of the
14 administrative machine, which have made it possible to pillage the economic
15 resources to the detriment of the population."

16 (Speaks English) And if we turn, please, to the second page, page 0329, we see at the
17 top, the first bullet point, in French, I will read:

18 (Interpretation) "Due to his mismanagement at political level, Mr Mbusa Nyamwisi
19 has got rid of the deliberating organs (territorial assemblies as well as provincial
20 assemblies and the Congress) set up at the time of the FLC (Liberation Front of
21 Congo), whereas these provide a safeguard for the executive organised at all levels,
22 with a view to having the population represented in these organs participate in the
23 management of public life."

24 (Speaks English) The next bullet point:

25 (Interpretation) "The whole of his reign has been characterised by deliberate -- by

1 disorganisation which was wished for and entertained in order to guarantee the basis
2 of his absolute reign."

3 (Speaks English) The third bullet point:

4 (Interpretation) "Mr Mbusa Nyamwisi has no societal project."

5 (Speaks English) And under the heading in French (Interpretation) "As regards
6 security" (Speaks English) is written:

7 (Interpretation) "The RCD-KIS/ML of Mr Mbusa Nyamwisi has shown itself to be
8 incapable of ensuring security in Ituri due to the fact that the movement is both judge
9 and party in the disorder and conflicts in Ituri."

10 (Speaks English) And now, if I look at the conclusion, we look together at the
11 conclusion, the drafter is right, and I will read in French from the words underneath
12 "Conclusion" in French:

13 (Interpretation) "Given the above, we bring to your attention the following ..."

14 (Speaks English) And the third bullet point:

15 (Interpretation) "His movement, the RCD-KIS/ML, is replaced by the FRP (Front for
16 Reconciliation and Peace) in Ituri, created for reconciliation between Iturians and to
17 set up dialogue with Kinshasa with a view to reunifying the country and achieving
18 national reconciliation."

19 (Speaks English) And on the third page, 0330, this is done in Bunia on 16 May 2002,
20 and in French (Interpretation): "For the political leaders of Ituri".

21 (Speaks English) And the people that we see here who have signed this memorandum,
22 including Adubango Biri, John Tinanzabo, Avochi, Lubanga, Ndukute, Lonema, these
23 are members of the FRP, are they not?

24 A. [12:37:55] I can see the document as drafted and signed. I'm discovering the
25 existence of this document here. I didn't know before. And I was not a member of

1 the FRP.

2 Q. [12:38:22] These are the -- some of the individuals who went to the Kasese
3 meeting with you, those that I've named, correct?

4 A. [12:38:41] When we arrived at the airport before taking the plane, I saw that
5 the Ugandans were gathering them together. I don't know if they had an agreement
6 with the UPDF. That's something that I didn't know. I hadn't spent a lot of days in
7 Bunia when they attacked us.

8 Q. [12:39:08] My question is simply the individuals I mentioned were with you in
9 Kasese. I mentioned Adubango Biri, John Tinanzabo, Achovi, Thomas Lubanga,
10 Ndukute, Richard Lonema.

11 They signed this document on 16 May 2002 and they were with you in Kasese in
12 April 2002; that's right, isn't it?

13 A. [12:39:38] Yes, these people were in Kasese, but during the fighting we weren't
14 together. We were together in Kasese, that's true.

15 Q. [12:39:59] A few weeks after returning from Kasese, these people who were
16 with your delegation proclaimed to the DRC government in Kinshasa, the president,
17 that the RCD-KIS/ML is replaced by the FRP, correct?

18 A. [12:40:44] Madam, you're speaking about my government, but where is my
19 name? I don't see my name anywhere. I was never a member of the FRP, whose
20 existence I only found out about here. I didn't know about the FRP. I was never a
21 member of that movement, I didn't know in Bunia at the time.

22 Q. [12:41:16] Sir, you've denied to the Chamber that the delegation that you
23 participated in in Kasese, which included a number of the persons who signed this
24 declaration, you've denied that your objective was to get rid of the RCD-K/ML and its
25 leadership in order to put the FRP in the place of management of Ituri. You've

1 denied that. But this document dated 16 May 2002, several weeks later, states that
2 members of that delegation in fact did proclaim the end of the RCD management of
3 Ituri and that the FRP was now taking over.

4 So this, I suggest to you, contradicts your evidence about the intentions of your
5 delegation at the Kasese meeting. Do you agree?

6 A. [12:42:34] You've asked me a lot of questions. I no longer remember the
7 details. But what I can tell you is that I cannot agree with the thesis that I was a
8 member of that organisation. When we left there, we weren't told that we had an
9 intention to replace the RCD-K/ML. That was never a subject of the discussions
10 during the Kasese meeting. We spoke about the restructuring, which was the
11 problem.

12 Q. [12:43:24] And your testimony today is that you wanted Mbusa Nyamwisi and
13 Lompondo to remain in power and have your group integrate into the APC again, but
14 the language used by Thomas Lubanga and others in this memorandum on
15 16 May 2002 is quite severe, is it not, in terms of its criticism of Mbusa Nyamwisi?

16 A. [12:44:10] I have the impression that you want to have a comment from me on
17 the subject of the issue of the points developed in this document, but I wasn't a
18 member of this group. I wasn't a member of the FRP. I didn't even know the FRP
19 at the time.

20 Q. [12:44:57] You were a member of the delegation in Kasese and I put to you that
21 that delegation never wanted Mbusa Nyamwisi and Governor Lompondo to remain
22 in power; they wanted them out. That's my suggestion to you. Do you agree?

23 A. [12:45:19] I don't know what these people think. When we arrived we spoke
24 about the army, the restructuring and the reasons why we were fighting. We didn't
25 address issues in accordance with what these different people thought. I therefore

1 can't speak or make a statement with regards to your suggestion.

2 Q. [12:46:03] Now, a second meeting was scheduled between Thomas Lubanga's
3 delegation and the RCD, this time in Kampala in the weeks following the Kasese
4 meeting, correct?

5 A. [12:46:52] I no longer remember. We took a plane to return to Bunia.

6 Q. [12:47:00] Thomas Lubanga and other members of the second delegation in
7 Kampala were placed under house arrest and transferred to Kinshasa in June 2002?

8 A. [12:47:30] I found out about that when I was in Mandro. I found out that
9 they had been transferred to Kinshasa.

10 Q. [12:47:44] And at this time your group decided to get logistical support,
11 including weapons from Rwanda, correct?

12 A. [12:48:01] I think I already stated something about that and I maintain what I
13 said. We were looking at means of surviving and how to fight the APC because the
14 APC were attacking us all the time with the combatants. Afterwards we received
15 support from RCD-Goma, support in terms of weapons. I already stated that during
16 my testimony.

17 Q. [12:48:48] And now I'm putting to you that the weapons came from Rwanda.

18 A. [12:49:04] If you had representatives there who knew of the provenance of
19 these weapons, you can say that, but I know who provided them. And that's not
20 secondhand information which I have. When the chief of general staff arrived, we
21 had a discussion and we heard about how arms had -- weapons had been sent and
22 who had sent them and I gave the source of provenance of these weapons during my
23 testimony.

24 Q. [12:49:50] Now I just want to be clear in your answer. Are you denying that
25 the weapons came from Rwanda?

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1 A. [12:50:05] I can't give a different version from what I know. I can't change my
2 testimony. The weapons came from RCD-Goma.

3 Q. [12:50:30] Now, sir, in the context of this case you have agreed with the
4 Prosecution certain facts and one of the facts, agreed fact number 69, to which you
5 have agreed is, and I'll quote: "Rwanda provided weapons and ammunition to the
6 UPC/FPLC beginning in July 2002."

7 How do you reconcile that agreement on your part with the Prosecution and your
8 current evidence?

9 PRESIDING JUDGE FREMR: [12:51:23] Hold on, Mr Witness.
10 Mr Bourgon.

11 MR BOURGON: [12:51:25] Mr President, there is a difference between an agreed
12 fact, whereas the fact might have been accepted, and the knowledge of the witness.
13 So that's two different things, so we should not mix up the two. Thank you.

14 PRESIDING JUDGE FREMR: [12:51:39] Noted.
15 Please proceed.

16 MS SAMSON: [12:51:43]

17 Q. [12:51:43] Now, sir, you have agreed in these proceedings with the Prosecution
18 that weapons were delivered from Rwanda to the UPC/FPLC beginning in July 2002.
19 Can you explain that?

20 A. [12:52:18] Could you show me that passage. I no longer remember it and I
21 didn't give such a statement.

22 Q. [12:52:24] It's one of a number of facts that the Prosecution and you through
23 your lawyers have discussed about the events in Ituri in 2002 and 2003 and the
24 precise fact or point to which we have obtained your agreement through your
25 lawyers is, quote, "Rwanda provided weapons and ammunition to the UPC/FPLC

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1 beginning in July 2002."

2 A. [12:53:18] Could you show me that testimony. I would like to read it --

3 PRESIDING JUDGE FREMR: [12:53:33] Mr Witness --

4 THE WITNESS: [12:53:35]) (Interpretation) -- in order to remind myself thereof.

5 PRESIDING JUDGE FREMR: [12:53:38] Sorry to the interpreters. Sorry, I was
6 premature.

7 Mr Witness, you probably misunderstood, which is no problem because it's legal,
8 legal issue. The statement that Rwanda provided weapons doesn't have origin in
9 any of your previous testimony or statement, it's part of the agreement between
10 parties and one of the parties is Defence representing you. So it's something like
11 legal agreement which is part of the case and then it's a presumption that those facts
12 on which such agreement have been taken are undisputable. So there is also
13 presumption that the Defence team consulted you on that, so they didn't do it without
14 your agreement.

15 Is it now clear to you, that it's not -- we are not -- or Ms Samson doesn't speak about
16 your testimony, it's agreement between the Prosecution and the Defence.

17 THE WITNESS: [12:55:06]) (Interpretation) Your Honour, I didn't study law, but I
18 do know that whenever my counsel asks me questions I told them that I would give
19 them a lot of evidence to show them that we received arms from RCD-Goma. That's
20 what I told them. And I spoke about the same subject here. I don't understand
21 very well what's being said at the moment, or if I don't, that might be because I didn't
22 study law.

23 PRESIDING JUDGE FREMR: [12:55:59] All right.

24 Ms Samson, please proceed.

25 MS SAMSON: [12:56:03]

1 Q. [12:56:04] Sir, it can be a difficult concept. I will certainly grant you that.

2 But I will just ask one more question on this topic.

3 The Prosecution provided to your lawyers a series of statements about the events in
4 Ituri, very short statements about who is who, what events took place on which dates,
5 and your lawyers responded to the Prosecution by telling us whether they, and we
6 assume you, agreed with those statements. And what your lawyers told us and
7 what we've together told the Chamber is that you agree that in July 2002 weapons
8 and ammunition were provided to the UPC/FPLC from Rwanda.

9 A. [12:57:28] No. The weapons didn't come from Rwanda. They came from
10 Goma. I can give you the details. If you speak about Rwanda, I can't give you any
11 precise evidence about that. So how can you describe how the weapons came from
12 Rwanda? If I had to say they came from Rwanda, then I wouldn't be saying what
13 was correct. But I can tell you how they came from Goma in a detailed way.

14 Q. [12:58:16] Goma borders Rwanda, does it not?

15 A. [12:58:28] Yes. Yes, it borders Rwanda.

16 MS SAMSON: [12:58:39] Mr President, I would like to continue this line of
17 questioning in private session and develop it a bit more. Given the time, I'm in your
18 hands as to whether you wish me to proceed now.

19 PRESIDING JUDGE FREMR: [12:58:52] Since I believe that you will need more
20 questions, I would rather prefer to stop now.

21 Mr Bourgon.

22 And by the way, you told us that you would like to continue in private session
23 because it was also my proposal.

24 MS SAMSON: [12:59:05] Yes, that's right when we resume.

25 PRESIDING JUDGE FREMR: [12:59:07] All right.

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1 Mr Bourgon.

2 MR BOURGON: [12:59:09] Yes, Mr President. Are we in private session now?

3 No. Because I would like to make sure that we are in public session just to say that I
4 confirm that the agreed facts, Mr Ntaganda was not consulted as he mentioned. I
5 did not say that before. I waited until he would say it. What Mr Ntaganda told us
6 is what he said on the record. He never -- he was not consulted when this document
7 was provided to the Prosecution. And this is my mistake.

8 PRESIDING JUDGE FREMR: [12:59:49] Yes, because my next question would be
9 why not? Because probably everybody would assume that you consulted. Okay,
10 I think it's fine with me.

11 MR BOURGON: [13:00:00] Mr President, I have a few transcript corrections to
12 make in terms of on page 57, line 24 there is a word I'd like a transcript correction
13 whereas the witness would have said were not together instead of were together. So
14 I'd just like to refer to the audio but to refer to page 57, line 24 in English.
15 On page 50, line 3 there's a word missing there and I guess I can say that for the audio
16 to be checked that the witness said deputy sector commander and not only sector
17 commander.

18 On page 35, line 1 the transcript reads "I was preparing for the meeting." This is not
19 what we heard. I would like the audio to be checked.

20 And lastly, a material correction on page 45, line 13 where there's a name mentioned
21 there, the name mentioned now is Ndisa. This is not the name that we heard. I can
22 leave that one to my colleague to ask if the Prosecution would like to have
23 confirmation of the proper that was mentioned at page 45, line 13. Thank you,
24 Mr President.

25 And I wanted this -- and I can -- if the Chamber would like to have explanation as to

1 why when this document was provided to the Prosecution Mr Ntaganda was not
2 consulted, I will be happy to provide that to the Chamber, Mr President.

3 PRESIDING JUDGE FREMR: [13:01:34] I believe it's not necessary. You just said
4 it's your mistake. I think it's sufficient at least for the Chamber.

5 Otherwise we break now. I also should say that the request for control of the
6 transcript as mentioned by Mr Bourgon is fully
7 supported by the Chamber.

8 Now we take our lunch break and we will reconvene at half past 2.

9 THE COURT USHER: [13:02:11] All rise.

10 (Recess taken at 1.02 p.m.)

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

12 THE COURT USHER: [14:30:51] All rise.

13 Please be seated.

14 PRESIDING JUDGE FREMR: [14:31:29] Good afternoon, everybody. I haven't
15 noticed any change in composition of the teams.

16 Mr Bourgon.

17 MR BOURGON: [14:31:41] Mr President, there is a quick change which I did not
18 even note myself this morning. He arrived just before I addressed the Chamber.

19 Jean Baptiste Gasominari came in the courtroom just before we began and I did not
20 put his name on the record and he is here this afternoon also. Thank you.

21 PRESIDING JUDGE FREMR: [14:31:59] And also, sorry, my excuse then, because I
22 have this block of the table with, with files.

23 And before we continue with next part of cross-examination of Mr Ntaganda by
24 the Prosecution, the Chamber is to deliver its oral ruling on request to -- Prosecution
25 request to use non-privileged detention centre communication during the testimony

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1 of Witness D-12.

2 And we have to move into private session for that purpose.

3 (Private session at 2.32 pm)

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5 (Open session at 2.41 p.m.)

6 THE COURT OFFICER: [14:41:45] We are back in open session, Mr President.

7 PRESIDING JUDGE FREMR: [14:41:46] Thank you, court officer.

8 Ms Samson, you may proceed.

9 MS SAMSON: [14:41:53] Thank you. I ask your indulgence, Mr President, for one
10 moment while we check one transcript reference.

11 PRESIDING JUDGE FREMR: [14:42:05] No problem. Take your time.

12 (Counsel confers)

13 MS SAMSON: [14:42:18] Thank you.

14 Q. [14:42:21] Now you have testified that an individual named Jacques had
15 a coordination role in the weapons delivery in Mandro in and after July 2002, that's
16 right?

17 A. [14:42:51] Could you please reread me the text of the statement I made so that I
18 can recall the context in which I made the statement about July, please.

19 Q. [14:43:12] The transcript is T-214, page 45, lines 14 to 21. And you were asked
20 by the Presiding Judge:

21 Question: "What was the origin of the weapons? Who was this company or state or
22 people who in fact provided you with those weapons?"

23 And your answer was: "Your Honour, I found out when Jacques and Kahwa arrived.

24 At the time of the dropping late Kisembo was present, but prior to the dropping ..."

25 Your Honour, at this time, although this is an open session transcript, I believe the

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1 witness inadvertently made a reference in the public session transcript which it is best
2 that I not repeat again. If I may, we perhaps should move into private session.

3 PRESIDING JUDGE FREMR: [14:44:25] Yes, I fully share, share your view.

4 Court officer, let's return back into private session.

5 (Private session at 2.44 p.m.)

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Trial Hearing
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(Private Session)

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12 (Open session at 3.40 p.m.)
13 THE COURT OFFICER: [15:41:03] We're in open session.
14 PRESIDING JUDGE FREMR: [15:41:05] Thank you, court officer.
15 Ms Samson, please proceed.
16 MS SAMSON: [15:41:08] Thank you.
17 Q. [15:41:09] Now, sir, I would like to show you another document. This time it's
18 a United Nations daily report, it's DRC-OTP-0208-0272. It is item 1340 on our list.
19 And we have, Mr President, been treating these reports as confidential, to be
20 discussed in open session but not displayed on the screens.
21 PRESIDING JUDGE FREMR: [15:41:39] Noted by me and court officer as well.
22 Mr Bourgon.
23 MR BOURGON: [15:41:57] Thank you, Mr President. Considering that my
24 colleague appears to be moving away from the statement of the person
25 she -- the Prosecution was reading from, I would just like to confirm that the status of

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1 all of this reading in the transcript, that this is not evidence, this is merely to get
2 answers from the witness and that it does not have the status of evidence.

3 When -- I'm not sure if the name of the witness was mentioned. When the witness
4 will testify, then it may become evidence. But for the time being it is only merely to
5 get answers from the witness. Thank you.

6 PRESIDING JUDGE FREMR: [15:42:39] Ms Samson.

7 MS SAMSON: [15:42:40] Mr President, the Prosecution will be evaluating precisely
8 what submissions it will make to the Chamber in relation to the evidence we just
9 heard and in relation to the item that I am about to show, because we have been taken
10 by surprise today to discover that an agreed fact which has been accepted by
11 the Chamber, where the Chamber has stated that it no longer requires any evidence
12 on the point, is in fact not an agreed fact in this case.

13 Now the Chamber may on its own determine that the status of that agreed fact
14 remains, but that is uncertain at the moment and as such the Prosecution has
15 proceeded, appropriately, on the basis that the Chamber has accepted the concession
16 from the Defence. Therefore, overnight the Prosecution will assess the state of the
17 evidence adduced and put forward by it on the point of the role of Rwanda in
18 weapons deliveries and will make further submissions to the Chamber tomorrow on
19 any applications we wish to make about that evidence.

20 Thank you.

21 PRESIDING JUDGE FREMR: [15:43:54] All right. Well noted. Please proceed.

22 MS SAMSON: [15:44:04]

23 Q. [15:44:04] Now, sir, the document in front of you is a daily report from the
24 United Nations dated 16 -- pardon me, dated 19 September 2002.

25 And I would ask the court officer to move to the last page of the document, which is

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1 page 0275, item number 12 in the report, and I will read it out.

2 It's in English so it will be translated for you, Mr Witness, quote:

3 "It is reported that on 18 September a Rwandan plane airdropped arms, ammunition
4 and uniforms in camp Mandro (12 kilometres northeast of Bunia). After the airdrop
5 the UPC militia were seen wearing new uniforms and weapons were also seen with
6 them. The Bunia team is trying to verify the report."

7 Now, sir, my suggestion to you is that the report received by the United Nations
8 contained in this daily report is accurate and that Rwandan planes were airdropping
9 weapons, ammunition and uniforms in camp Mandro in September 2002 at least?

10 A. [15:46:20] I was present and at least during September there was no equipment
11 delivered to Mandro camp. The drops that took place were in July. The uniforms
12 were not sent to Mandro. They were sent to Tchomia. There is a significant
13 distance between Tchomia and Mandro.

14 MS SAMSON: [15:47:09] Mr President, the Prosecution reserves its position on the
15 status of its application for admission of a document, with your leave, until tomorrow
16 morning along with the other item of evidence read out.

17 PRESIDING JUDGE FREMR: [15:47:23] All right.

18 MS SAMSON: [15:47:29]

19 Q. Now I will move to the events of 7, 8, 9 August 2002. Your testimony is that
20 Floribert Kisembo asked you to provide soldiers to defend Mudzipela and that you
21 went there with two companies in August 2002, correct?

22 A. [15:48:12] That's correct. It was 9 August.

23 Q. [15:48:35] But you maintain that there was no link whatsoever between the
24 ousting of Molondo and your troops, you had nothing to do with the ousting of
25 Molondo, correct?

1 A. [15:49:10] I and the two companies, we went to drive out the enemy which
2 was come -- which had come to kill the missionaries of Mudzipela and I drove them
3 to Mwanga. Kisémbó himself met me there and we heard the noise of bombs
4 launched by armoured vehicles. So Kisémbó and I, we were at Mwanga when the
5 operation to drive out Molondo was ongoing.

6 Q. [15:49:57] And yet your evidence is also at T-214, page 79, lines 5 to 11, is, and I
7 quote: "When we came from Mwanga to Mudzipela, all the way to Lipri, when we
8 crossed the bridge to Mudzipela, the people were acclaiming us, they were clapping
9 for us. When we got to Kisémbó's residence, the members of the population had
10 surrounded the house and they were celebrating and singing, they were all very
11 happy, drinking alcohol and they were listening to music at very loud volumes and
12 celebrating. Everybody was happy." End quote.

13 Now, sir, if the population was clapping for you and if the population was
14 surrounding Kisémbó's residence, it was because you were involved in the takeover
15 of the town of Bunia and you were victorious in having done that.

16 A. [15:51:31] That is not correct. We didn't go to Lipri. We were coming from
17 Mwanga and we went via Mudzipela. A lot of people were very happy because
18 Molondo had been driven out. I showed you the route that we took going through
19 the -- going by the office that housed the APC general staff and that's where Kisémbó
20 was living. And I can say though we were in the northern part of Bunia whereas
21 Molondo and the fighting that led to him being driven out were taking place in the
22 southeast of the city and it was the Ugandans who carried out that operation, it
23 wasn't our forces.

24 Q. [15:52:34] But you testified, sir, that the people were acclaiming you and they
25 were clapping for you. And they surrounded Kisémbó's residence. Now they

1 would not have done that if you were -- had nothing to do with the events in Ituri, in
2 Bunia in August 2002 and the chasing out of Molondo, would they?

3 A. [15:53:17] I'm going to explain why the members of the population were happy.
4 And I've already testified to this effect. Every time -- on a number of occasions
5 Molondo came to attack Kisembo, but he never managed to drive him out of this
6 building where the chief of staff -- where the general staff was housed. When the
7 population saw Molondo fleeing, having been driven out by the Ugandans, members
8 of the population, the civilians who lived near the general staff building came to
9 demonstrate their satisfaction because they knew that Molondo was the enemy of
10 Kisembo. And that was the context within which I spoke of the members of the
11 population expressing their joy.

12 Q. [15:54:26] But, sir, you've also testified that Kisembo was part of the APC at this
13 time, correct?

14 A. [15:54:53] It was not only him. I was also a member of the APC, but we were
15 being referred to as mutineers. We hadn't actually officially left the APC army, but
16 the attacks against us were against us because we were seen as being mutineers at
17 that time.

18 Q. [15:55:19] You were called mutineers at that time because that's what you were.
19 You were not part of the APC in the summer of 2002. You were building your own
20 army in Mandro, correct?

21 A. [15:56:04] We were setting up a force of mutineers who had come from the APC.
22 We were trying to find a way to protect ourselves because we knew that if we did
23 nothing we were going to be exterminated. But we had no official name or status.
24 We were simply APC mutineers. We didn't have any other organisation to defend
25 our cause.

1 Q. [15:56:44] Well, let's see what you said about this. In your transcript of
2 testimony T-214, page 80, lines 7 to 13, you were asked as follows:

3 "Mr Ntaganda, let me clarify my question. I don't want -- I'm not referring to the
4 people of the APC, I am talking about the ideology of your group. You said that the
5 ideology was put together by three people. When did that happen and in which
6 place?"

7 Answer: "That was before we went to Mandro. At the same time before we went
8 to Mandro, before we started the training we set up the new ideology for the new
9 army that we were creating." End quote.

10 And your testimony on that point was true, was it not? Your testimony, you were
11 creating a new army.

12 A. [15:58:21] When Kisembo sent me to coordinate the Mandro training camp
13 activities when Chef Kahwa went to show me the locality of Saikpa (phon), we were
14 setting up an army, but we were still considered as mutineers of the APC and I don't
15 know where the difference lies between what you are saying and what I am saying
16 today.

17 Q. [15:58:54] Now, as soon as Molondo Lompondo was driven out of Bunia, you
18 swiftly acted to teach your ideology to any APC troops who would come within your
19 new army, correct?

20 A. [15:59:40] That's correct. We were teaching them the new ideology of the new
21 army which we were setting up but which had no official name. So we started to
22 give them lessons in ideology, the ideology of our new army.

23 Q. [16:00:10] You are aware, are you not, that two days following the takeover of
24 Bunia, Thomas Lubanga issued a public declaration claiming the victory and the
25 defeat of Molondo Lompondo as having been done by the mutineers, yourselves?

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1 You're aware of that?

2 A. [16:00:54] No. When Molondo was driven out, Thomas spoke in his capacity as
3 minister of defence of RCD/Goma. I had no telephone and I had no other -- I didn't
4 have a Motorola and I had no other means of communication by which I could reach
5 him.

6 Q. [16:01:32] And two days following the takeover of Bunia, in the same public
7 declaration, Thomas Lubanga claimed -- proclaimed the end of the power of the RCD
8 in Ituri and the political, economic and military management of Ituri by the FRP;
9 you're aware of that?

10 A. [16:02:14] No. What I know is that at the time he was considered to be the
11 minister of defence for RCD-K/ML. And I had no contact with him while he was in
12 Kinshasa and I was not aware of his activities while he was there.

13 Q. [16:02:42] Now, let's take a look at Thomas Lubanga's political declaration on
14 11 August 2002. It's DRC-OTP-0113-0133. It's a public document and it is item
15 number 675.

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

17 MR BOURGON: [16:03:09] Thank you, Mr President. I would just like to check
18 because I have something in my transcript that we heard differently and maybe the
19 question should be put again to the witness. I'd just like to refer my colleague to
20 page 97, line 1. And I am checking the French and I think we have the same thing in
21 French but we heard differently. If we can just check this with the witness, please.

22 MS SAMSON: [16:03:38] Mr President, could there be more clarity? I don't want
23 counsel to provide an answer, but I am unclear what I am being asked to do.

24 PRESIDING JUDGE FREMR: [16:03:50] What part of the -- at least if you can
25 indicate what part of the answer is, according to you, incorrect?

1 MR BOURGON: [16:03:56] Well, the answer, the part of the answer is when it talks
2 about capacity, line -- page 97, line 1. If I say anything more, it would be
3 suggesting, so ...

4 MS SAMSON: [16:04:12] I think I understand, Mr President, and I can clarify.

5 PRESIDING JUDGE FREMR: [16:04:16] I don't, so please.

6 MS SAMSON: [16:04:18]

7 Q. [16:04:19] Sir, in the transcript today in one of your recent answers, you made
8 reference, page 96, line 25, page 97 line 1, "When Molondo was driven out, Thomas
9 spoke in his capacity as minister of defence of RCD/Goma." Is that correct?

10 A. [16:04:56] No. I know that Thomas Lubanga was minister for RCD-K/ML.

11 And I said that while he was in Kinshasa, I was not aware of his activities. You put
12 a suggestion to me in reference to the message he had delivered and I said that I was
13 not aware of that message since I had no contact with him at that time.

14 Q. [16:05:30] Now, we're just waiting, I think, for the political declaration to appear
15 on the screen.

16 Now, the title of this document is "Political Declaration of the FRP", which stands for
17 Front for the Reconciliation and Peace. And if we turn to the second part of the
18 page -- the second page, please, we can see that this declaration was made in
19 Kinshasa on 11 August 2002. It is signed by six persons. You can see on the screen:
20 Number one, Thomas Lubanga, coordinator of the FRP; two is Avochi; three,
21 Ndukute; four, Tinanzabo; five, Ngabu; and six, Bamaraki.

22 First, do you maintain, sir, that you didn't hear of the FRP in April, didn't hear of the
23 FRP in May, didn't hear of the FRP in August 2002?

24 A. [16:07:55] No, no, not at all. I only heard that name here. If I had heard it
25 before, I would have said so. I would have had no problem talking about it.

1 Q. [16:08:10] And I take it that you had no knowledge, never saw the UPC decrees
2 starting from September 2002 on through to December 2003?

3 MR BOURGON: [16:08:24] Asked and answered, Mr President.

4 MS SAMSON: [16:08:29] I'm asking my questions in relation to a different decree,
5 Mr President. My previous questions were in relation to 17 April 2002. This is
6 11 August 2002.

7 PRESIDING JUDGE FREMR: [16:08:43] Mr Bourgon.

8 MR BOURGON: [16:08:43] Previous questions were related to all decrees. Even the
9 Trial Chamber put questions to Mr Ntaganda on the existence of decrees and his
10 knowledge of decrees, and he provided answers already. Thank you.

11 PRESIDING JUDGE FREMR: [16:08:52] We will see, so let's, let's continue, whether
12 it is clear or not.

13 MS SAMSON: [16:08:57]

14 Q. [16:08:57] My question, sir, is that I take it your evidence is you had no
15 knowledge and never saw UPC decrees from September 2002 through to
16 December 2003, and possibly later, where the UPC's president, Thomas Lubanga,
17 referred to this political declaration as a seminal point in the UPC history?

18 A. [16:09:45] I have already answered that question. If the question is in relation
19 to what was not mentioned before, well, I would like you to read back to me what I
20 said and then I may be able to then answer your question.

21 Q. [16:10:07] I can phrase it positively. Were you aware at any time that this
22 11 August 2002 political declaration was mentioned in UPC decrees starting
23 September 2002, or did that escape your attention?

24 A. [16:10:44] I talked about the decree which I saw and which was about me. And
25 that's all. Only that one. And I told you that I was not aware of the other

1 documents. The Presiding Judge even put a question to me on that issue.

2 Q. [16:11:04] Now, I would like to turn back to the first page of this political

3 declaration so that we can see together precisely what Thomas Lubanga and others

4 are declaring. And I will start to read from the beginning some of the bullet points,

5 although not all, in French:

6 (Interpretation) "We, of the Front for Reconciliation and Peace, acronym FRP, bring to

7 the knowledge of the international community:

8 - that our armed troops dissident from the RCD/ML aligned behind the former

9 minister of defence for RCD/ML, Mr Thomas Lubanga, have effectively taken control

10 of Bunia and its surrounding areas following confrontations on 9 August 2002 having

11 led to the defection and disarray of RCD/ML and allied troops."

12 (Speaks English) Now, my first question: Thomas Lubanga describes himself in this

13 first bullet point on 11 August 2002 as the "ex-minister of defence of the RCD/ML",

14 and that's right, isn't it?

15 A. [16:13:26] I do not know whether this is a decree or a statement. I have not

16 read it before. I am seeing it here for the first time and I am reading it at the same

17 time as yourself. And I can only read what is written on it.

18 Q. [16:13:48] It is a political declaration from the FRP for the international

19 community signed by Thomas Lubanga and six other persons as the FRP. I take it

20 you don't dispute Thomas Lubanga's own signed declaration that by August 11, 2002

21 he was the ex-minister of defence of the RCD/ML?

22 A. [16:14:31] At that time he was in Kinshasa. I therefore am not in a position to

23 tell you anything because I am not aware of the existence of this document. You are

24 asking me to analyse something which I am not able to do, particularly in relation to

25 this document.

1 Q. [16:15:02] Well you've testified, sir, that Mr Lubanga was still the minister of
2 defence in August 2002 and here we have a document signed by Thomas Lubanga
3 saying he was not the minister of defence in August 2002. Do you have any reason
4 to dispute Thomas Lubanga's own acknowledgment of his role in August 2002?
5 What's your position?

6 A. [16:15:42] When I make a comment, when I made a comment I did not say what
7 was on this -- what is in this statement. I said he left Bunia for Kampala and that
8 when he went there he was the minister of defence and that he had no other title.
9 That's why I said when he went to Kinshasa he was the minister of defence. Now
10 when he arrived there, I had no contact with him. I had no telephone. I was in
11 Bunia. And I was not aware of the statement that he is said to have made.

12 PRESIDING JUDGE FREMR: [16:16:35] Sorry to interrupt you, Ms Samson. At this
13 moment we reach the four-hour time limit for Mr Ntaganda established by
14 the Chamber for giving testimony.

15 Mr Ntaganda, it is up to you, if you feel tired we will finish. We still have 12,
16 13 minutes. So if you feel strong enough to continue, we may continue. But I am
17 not pushing you. It's up to you.

18 THE WITNESS: [16:17:15] (Interpretation) Mr President, we can continue. I am not
19 tired yet.

20 PRESIDING JUDGE FREMR: [16:17:21] Thank you, Mr Ntaganda. The Chamber
21 appreciates that.

22 Ms Samson, please proceed.

23 MS SAMSON: [16:17:29]

24 Q. [16:17:30] And we see in this declaration signed by Thomas Lubanga and others
25 that they say that their soldiers or elements who are armed and dissidents of the

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1 RCD/ML aligned behind the ex-minister of defence, Thomas Lubanga, took effective
2 control of Bunia and surroundings by -- on 9 August 2002. So we see here, don't we,
3 that Thomas Lubanga and the others of the FRP are claiming the victory and the
4 ousting of the RCD/ML by their forces, armed dissidents of the RCD/ML, correct?

5 A. [16:18:46] I have repeatedly said that we did not fight Molondo were his
6 residence. If I had done so, that would have been a victory for us, because we would
7 have beaten our enemy Molondo because that was our goal. But I cannot tell a lie by
8 saying that we are the ones who drove him out of his residence in Bunia. That was
9 done by the Ugandans. If they had not done so, maybe we would have, but later on.

10 Q. [16:19:27] Now --

11 PRESIDING JUDGE FREMR: [16:19:28] Sorry, Ms Samson.

12 Mr Bourgon.

13 MR BOURGON: [16:19:30] Thank you, Mr President. My colleague is putting
14 questions to the witness with respect to that paragraph. But I note, Mr President,
15 that we did not make an objection to the use of the document because it's a document
16 that is in evidence. However, I do note that the first paragraph is something that is
17 open for interpretation as to what it means. So we can put questions to the witness,
18 but there are various interpretations that can be put to the same paragraph. Thank
19 you.

20 PRESIDING JUDGE FREMR: [16:20:01] Yes, we note it and we also will note it in the
21 evaluation of the responses of Mr Ntaganda.

22 Ms Samson, please proceed.

23 MS SAMSON: [16:20:09] Thank you. I will, Mr President. But I would ask that
24 counsel refrain from making closing argument submissions in the middle of
25 cross-examination.

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1 PRESIDING JUDGE FREMR: [16:20:19] Mr Bourgon.

2 MR BOURGON: [16:20:20] I waited until the witness had answered the question
3 before I did this submission because it has to do with the use of a document which the
4 witness has not seen. I am trying to help and to try and save some time. Thank
5 you.

6 PRESIDING JUDGE FREMR: [16:20:35] Yes, but I think it was also part of our
7 decision that -- and any, any counsel, not only you, should refrain from indirect
8 coaching of witness if giving some indication how the next response should look like.
9 So I am not saying that you are doing that, but I think it could be some tendency to
10 that. So please be careful and refrain from something that could be taken like that.
11 Ms Samson.

12 MS SAMSON: [16:21:17]

13 Q. [16:21:17] Now, sir, are you suggesting that Thomas Lubanga is making
14 inaccurate statements to the international community when he writes that "our armed
15 elements, dissidents from the RCD/ML aligned behind Thomas Lubanga took the
16 effective control of Bunia on 9 August 2002"?

17 A. [16:22:01] I cannot make any comment on this document which I am not familiar
18 with. I can only react to your comments whereby we are said to have driven out
19 Molondo.

20 PRESIDING JUDGE FREMR: [16:22:18] Ms Samson, sorry to interrupt you. I have
21 to make two corrections of the transcript of my intervention. Page 104, line 16
22 instead of "it should", I believe I said "it could be tendency to that". And please also
23 delete from the transcript the word employees.

24 Now please proceed, Ms Samson.

25 MS SAMSON: [16:22:49]

1 Q. [16:22:50] Now, Mr Witness, Thomas Lubanga and his group does not say this
2 once in the document. They say it again at the -- in the last bullet point where they
3 write, on the first page of the document, where they write in French, and I will read it
4 out:

5 (Interpretation) "Exacerbated by this conduct the FRP took control of the town of
6 Bunia".

7 (Speaks English) And in French it was "le FRP".

8 (Interpretation) "APC dissidents aligned between Mr Thomas Lubanga" in French
9 "took control of the town of Bunia."

10 (Speaks English) Now, sorry, my question is: Here we see again that
11 Thomas Lubanga is telling the international community that the FRP with its APC
12 dissidents aligned behind Thomas Lubanga has taken control of the town of Bunia.
13 And that was correct, right?

14 A. [16:24:35] Let me repeat what I said. I was not aware of this statement and I
15 insist on that.

16 Q. [16:24:47] Whether or not you were aware of this statement, you are either
17 suggesting that Thomas Lubanga lied to the international community in a signed
18 written declaration, or -- well, let's start with that. Is that what you're suggesting?

19 A. [16:25:23] Since I was not aware of this statement, how should I -- or what
20 should I rely on to make any comments about what is in the statement? He was in
21 Kinshasa while I was in Bunia, and I had no means of communication by which to
22 communicate with him.

23 Q. [16:25:47] Sir, Thomas Lubanga is saying that the RCD, APC dissidents were
24 behind him and took control of Bunia. That is what he is saying in this signed
25 declaration to the international community. Is Thomas Lubanga lying?

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1 A. [16:26:16] I did not follow that statement when he delivered it.

2 PRESIDING JUDGE FREMR: [16:26:25] If you allow, Ms Samson, I would rephrase
3 the question because I think to ask Mr Ntaganda whether Mr Lubanga was lying or
4 not maybe is not the ideal way.

5 But what is I think, what could be relevant, Mr Ntaganda, is the second part of the
6 quotation, whether APC dissidents, according to your knowledge, whether APC
7 dissidents were aligned behind Mr Lubanga and helped him to take control of the
8 town of Bunia. Is the information which could be relevant. Regardless whether
9 Mr Lubanga said it or not. But is it true that APC dissidents aligned to Mr Lubanga
10 helped him to take control over the town of Bunia?

11 THE WITNESS: (Speaks English) No interpretation, your Honour.

12 PRESIDING JUDGE FREMR: All right. So --

13 THE INTERPRETER: [16:27:24] Witness says he did not receive interpretation,
14 Mr President.

15 PRESIDING JUDGE FREMR: [16:27:31] Okay. I will repeat that what is relevant,
16 what could be of relevance for the Chamber is the second part of the quotation
17 containing information that APC dissidents aligned behind Thomas Lubanga has
18 taken control of the town of Bunia. And we are not asking you whether Mr Lubanga
19 was lying or not, but is this part of information, according your knowledge, correct or
20 not?

21 And, Mr Bourgon, I believe that you don't want to assist Mr Ntaganda how to, how to
22 respond.

23 MR BOURGON: [16:28:21] Absolutely not, Mr President. But this is not what this
24 paragraph reads as to who took control of the town. So I would like at least the
25 question to be clear.

1 PRESIDING JUDGE FREMR: [16:28:35] All right. So give me a minute. I will
2 find -- or, Ms Samson, could you please just rephrase, rephrase the question
3 concentrated on this part of quotation yourself to be, to be precise.

4 MS SAMSON: [16:29:07] Certainly, Mr President.

5 Q. [16:29:10] Now, sir, is it true that the FRP supported by the dissidents from the
6 APC aligned behind Mr Thomas Lubanga took effective control -- took control of the
7 town of Bunia on 9 August 2002?

8 A. [16:29:51] As I already stated, I was in Mwanga and I also said that we got
9 together with other persons to drive out Molondo. But we were not part of the war
10 which drove out Molondo. This was done by the Ugandans, they are the ones who
11 forced him out. They forced him out with their tanks.

12 Q. [16:30:29] So this statement is not true?

13 A. [16:30:38] I am not taking this statement into account. I am simply telling you
14 what happened in Bunia, the things that happened in Bunia as I experienced them.
15 I am not relying on this written statement to make my comments.

16 PRESIDING JUDGE FREMR: [16:30:59] Ms Samson, there is no need to push
17 Mr Ntaganda to say this was true or not. It's clear that his knowledge seems to be
18 different from the content of this report.

19 Ms Samson, it's half past four, so I don't know, is it a convenient point for you to
20 break?

21 MS SAMSON: [16:31:25] Yes, Mr President. It's convenient. We can resume in the
22 morning.

23 PRESIDING JUDGE FREMR: [16:31:29] Mr Bourgon.

24 MR BOURGON: [16:31:31] Thank you, Mr President. I would like to address
25 the Chamber in the absence of Mr Ntaganda for a very quick period of time.

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- 1 PRESIDING JUDGE FREMR: [16:31:39] (Microphone not activated)
- 2 THE INTERPRETER: [16:31:44] Microphone, Mr President.
- 3 PRESIDING JUDGE FREMR: [16:31:45] Sorry. Mr Bourgon, could we release
- 4 Mr Ntaganda? No need to keep him waiting. All right.
- 5 So now please we can, we can take Mr Ntaganda out of the courtroom.
- 6 Thank you very much, Mr Ntaganda, for patiently responding all the questions, even
- 7 over the time limit. Thank you.
- 8 PRESIDING JUDGE FREMR: [16:32:14] And, Mr Bourgon, for your submission
- 9 could we remain in open session?
- 10 MR BOURGON: [16:32:20] I believe so, Mr President.
- 11 PRESIDING JUDGE FREMR: [16:32:21] All right.
- 12 (The witness stands down)
- 13 PRESIDING JUDGE FREMR: [16:32:31] Mr Ntaganda left the courtroom.
- 14 Mr Bourgon, floor is yours.
- 15 MR BOURGON: [16:32:35] Thank you, Mr President. Very briefly when we are
- 16 putting a lot of questions to the witness on the content of a document, the paragraph
- 17 that was read to the witness talks about the FRP taking control of the town. Taking
- 18 control of the town can be through fighting, can be the conflict. Taking control of the
- 19 town can be political control. Taking control of the town might be further to the
- 20 events of, of Uganda fighting Lompondo out. It could be anything. And now we
- 21 are insisting on the witness saying something he is not aware of. He's not aware of
- 22 this political movement called FRP.
- 23 PRESIDING JUDGE FREMR: [16:33:18] Mr Bourgon, I am sorry, I have to interrupt
- 24 you. I get your point, but I would recommend not to come with this, it's not
- 25 objection, but not now at the end of the testimony, but just at the first question put in

1 the absence of Mr Ntaganda put by Ms Samson. I also can remember there was
2 some questions about playing a role. I agree with you playing of role is also very
3 general term. But I think to come with this objection now is a little bit late. So
4 please next time come at the first moment as soon as possible.

5 MR BOURGON: [16:33:52] I could not, Mr President, because of the way the
6 document was presented. I respectfully refer you to the record and the way the
7 document was presented. The procedure followed is exactly the procedure that I
8 objected to this morning and that the Chamber decided contrary to me. I said I
9 would be filing for clarification, I will tonight, but because of the procedure used I
10 could not, I am deprived of the opportunity to make submissions not to refrain
11 the Prosecution from using a document. And then what happens is later on if I try to
12 do it, then of course I can't do it later. I can't do it before, I can't do it during, I can't
13 do it later. That, Mr President, is -- we are -- we're talking about time. You can
14 always look at the Defence in a bad way, that's -- I don't have -- I don't have
15 a problem with that. My problem is we are wasting time. The Prosecution will be
16 complaining later on that it is lacking time to do its cross-examination. We spent
17 half an hour on a document that the witness has no knowledge of. That's what I'm
18 saying, Mr President. I think there's a better way to do things. Thank you.

19 PRESIDING JUDGE FREMR: [16:35:00] First of all, I think I don't believe that me
20 and the Chamber looks at Defence in a bad way. But I think we should make
21 distinction case by case. There are some cases in my view, and I decided in
22 accordingly, if you really went too far and you try to advise Ms Samson how she
23 should put her questions, which in my view is improper. On the other hand, if you
24 would come like in this case to conclusion that the question put by her is wrong in
25 some, some way, for example, as you now propose, that it's too general, even doesn't

1 give chance for clear response, then you can ask for the floor in the absence of the, of
2 the accused and explain what is your objection or suggestion.

3 So please follow my guidance in this way tomorrow. But as I said, I really see
4 a difference in cases you mentioned. I don't believe there is a tendency to deprive
5 you of your right to represent your client, including objections made towards to
6 questions put by Ms Samson.

7 Ms Samson, do you want to make any comment from your part, if you want, please?

8 MS SAMSON: [16:36:27] The only comment I wish to make, Mr President -- well,
9 there are two. The first is certainly the direction of the Chamber that substantive
10 submissions and objections need to be made in the absence of the witness.

11 And secondly, that arguments that actually go towards a closing brief or aimed at not
12 the scope of the question but, rather, an interpretation of the documents ought not to
13 be made by counsel in the course of cross-examination under the guise of an objection
14 to a question. And that would be in the absence or not of the witness.

15 Thank you.

16 PRESIDING JUDGE FREMR: [16:37:13] Mr Bourgon, do you agree with the last part
17 of Ms Samson's submission because I would support that?

18 MR BOURGON: [16:37:20] I do, Mr President. If I read to the transcript, yesterday
19 and today, I invite respectfully the Chamber to look at who is making allegations in
20 this courtroom of wrongdoings and it is not the Defence.

21 Thank you, Mr President.

22 PRESIDING JUDGE FREMR: [16:37:39] All right. So again I am recalling and
23 highlighting my yesterday final encouragement to conduct these proceedings in a
24 collegial and a dignified way, and I believe you both are highly respected and very
25 experienced counsel so I believe that we will, we will make it tomorrow.

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- 1 Now the Court is adjourned and we will continue tomorrow 9.30.
- 2 THE COURT USHER: [16:38:12] All rise.
- 3 (The hearing ends in open session at 4.38 p.m.)