

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 Thursday, 31 August 2017
8 (The hearing starts in open session at 9.30 a.m.)
9 THE COURT USHER: [9:30:14] All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE FREMR: [9:30:39] Good morning, everybody.
13 Court officer, please call the case.
14 THE COURT OFFICER: [9:30:53] 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 We are in open session.
18 PRESIDING JUDGE FREMR: [9:31:07] Thank you, court officer.
19 Appearances, please.
20 MS SAMSON: [9:31:10] Good morning, Mr President. Good morning,
21 your Honours. Appearing for the Prosecution today are Mr James Pace,
22 Ms Marion Rabanit, Ms Selam Yirgou, Ms Claudine Umurungi, Mr Eric Iverson and
23 myself, Nicole Samson.
24 PRESIDING JUDGE FREMR: [9:31:26] Thank you, Ms Samson.
25 Defence, please.

1 MR BOURGON: [9:31:29] (Interpretation) Good morning, your Honour. For
2 Bosco Ntaganda this morning, Salomé Biet, David Wagen-Magnon,
3 Jean-Baptiste Gasominari, Isabelle Martineau and myself, Stéphane Bourgon.

4 Thank you.

5 PRESIDING JUDGE FREMR: [9:31:49] Thank you, Mr Bourgon.

6 And Legal Representatives of Victims, please.

7 MS PELLET: [9:31:54] (Interpretation) Thank you, your Honour. There is no
8 change with regard to the former child soldiers.

9 MS GRABOWSKI: [9:32:08] Good morning, Mr President. Good morning, your
10 Honours. Anne Grabowski for the victims of the attacks.

11 PRESIDING JUDGE FREMR: [9:32:14] Thank you, Ms Pellet.

12 Thank you, Ms Grabowski.

13 We can directly continue with the next part of cross-examination of Mr Ntaganda
14 conducted by Prosecution.

15 Ms Samson, you have the floor.

16 MS SAMSON: [9:32:29] Thank you. Mr President.

17 PRESIDING JUDGE FREMR: [9:32:32] Sorry, I see Mr Bourgon on his feet.

18 Mr Bourgon.

19 MR BOURGON: [9:32:36] Yes, Mr President. I indicated some corrections that
20 needed to be made to the transcript. I would request some audio verification of
21 yesterday's transcript, page 56 in French, lines 18 to 22, versus the English transcript,
22 page 59, lines 1 to 5. And the same, page 80 in the French transcript at line 4,
23 whereas the same word in English at page 83, line 5. I would like both of them to be
24 checked with the audio record to be sure that we have the proper wording, which are
25 important for the answers provided by the witness.

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 Thank you, Mr President.

2 PRESIDING JUDGE FREMR: [9:33:22] Yes, noted. And again supported by the
3 Chamber.

4 Now, Ms Samson, please.

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

6 (The witness speaks Swahili)

7 QUESTIONED BY MS SAMSON: [9:33:34] (Continuing)

8 Q. [9:33:36] Good morning, Mr Ntaganda.

9 A. [9:33:40] Good morning.

10 Q. [9:33:44] FPLC soldiers were not paid, correct, they did not receive a salary?

11 A. [9:34:05] They did not receive anything because rebels got no salary.

12 Q. [9:34:14] The soldiers in the FPLC at times risked their lives during battles?

13 A. [9:35:04] Correct. And sometimes indeed they died.

14 Q. [9:35:13] It's true, isn't it, that the way the UPC/FPLC motivated these soldiers
15 to remain unpaid in your army while risking their lives was to promise them things
16 such as war booty, property, women, et cetera, that they could take from civilians?

17 A. [9:36:04] This never happened during the FPLC. You can read the
18 instructions or hear the instructions that we gave them and you can do that through
19 the videos. This was not part of the instructions or ideology that we gave them.
20 Sacrificing oneself for the purposes of protecting the population, being prepared to
21 lose their lives, this was what was part of the ideology, this was the motivation. And
22 most of those who joined the patriotic forces for the liberation of the Congo were
23 there to protect themselves and to protect the members of the population, and this can
24 be seen in the history of the creation of this force.

25 Q. [9:37:25] Now, I put to you that it's true that superiors, commanders would

1 sometimes take war booty from more junior soldiers. Do you agree?

2 A. [9:38:06] Where I was, if somebody tried to do that he would have been
3 sanctioned. I can even give you examples. As to what happened where I was not
4 present, I heard nothing of -- to that effect.

5 Q. [9:38:31] Information of that nature would have been very important for you
6 as a senior FPLC commander to know, correct?

7 A. [9:38:58] I can say it would have been important for me to know whether my
8 troops were fulfilling their mission to protect the members of the population and their
9 property. And when soldiers committed offences, I should have been informed in
10 order to be able to react. And that is indeed what I did when I heard that such
11 events had taken place.

12 Q. [9:39:38] I would like to go back to a document we looked at yesterday. It's a
13 report of the G5 to the chief of general staff of the FPLC on 6 November 2002. The
14 document is number 706 on the list of the Prosecution's documents and the ERN is
15 DRC-OTP-0109-0136. It's public.

16 Now, sir, you can -- you'll recognise this letter from yesterday. Monthly report from
17 the G5, in this case Eric Mbabazi, 6 November 2002.

18 And if I could ask that we move to page 0140.

19 Under the part of the report entitled in French, "Des Militaires", I'll read in French:

20 (Interpretation) "There are soldiers who are pointing out that soldiers are being
21 treated as slaves taking account of their ethnic group. We mention Kasenyi,
22 Mabanga, Barrière, Nizi, Nyankunde, Komanda."

23 (Speaks English) And under the first bullet point under, in French "Des Militaires",

24 (Interpretation) "Soldiers".

25 (Speaks English) In French:

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 (Interpretation) "Looting of war booty of junior soldiers by seniors; Equipment,
2 animals, and other items."

3 (Speaks English) Now, in November 2002 your G5 in charge of relationships between
4 soldiers and between soldiers and the population is reporting that the war booty of
5 the juniors is being taken by the superiors. And my suggestion to you is that that is
6 exactly what was happening within the FPLC and that this was the system of
7 payment for the soldiers and commanders in your army. What is your response?

8 A. [9:44:14] Well, my answer is: Even yesterday I said, I said to you that I never
9 received this report, but I cannot say that no commander did any such thing.

10 However, when such events occurred in two or three places we intervened. I could
11 give you the example of John, who I caused to be detained for October, November
12 and December because he had stolen property from members of the population. I
13 mentioned that fact here and I've also mentioned the man brought before the firing
14 squad because he had also stolen, he said as example. I also mentioned Pigwa, who
15 had stolen livestock and who was imprisoned.

16 We had the odd isolated case, but we punished them. But on that basis one cannot
17 say that these were instructions coming from senior officers given to the men as a
18 form of paying themselves. Whenever I learnt of such cases, I took steps to sanction
19 the events, but I never saw this report, and I would like to repeat that when I heard of
20 any of these isolated cases, I took appropriate measures.

21 PRESIDING JUDGE FREMR: [9:46:08] Ms Samson, sorry to interrupt you.

22 I would like to put additional question or questions maybe.

23 Mr Ntaganda, is your testimony that you and soldiers under your command did not
24 take any war booty whatsoever?

25 THE WITNESS: [9:46:47] (Interpretation) Mr President, you're asking me a

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 question about my personal conduct and the group I had -- my orders -- who would
2 have taken war booty? No, I couldn't have done that. That could not have
3 happened, but other soldiers might have stolen items without being discovered.
4 When they were discovered, they were punished.

5 But to say that I personally took anything in terms of war booty and took it to my
6 residence, that never happened, that could never have happened. I ensured that I
7 gave an example of the discipline that should characterise our army. I could never
8 have committed any such act in the company of the soldiers under my orders.

9 PRESIDING JUDGE FREMR: [9:47:49] Still not fully clear to me because I believe
10 that there are some items which could be taken as war booty, for example enemy's
11 arms; am I correct?

12 THE WITNESS: [9:48:26] (Interpretation) That was our primary objective during
13 battle. When we went to fight the enemy, that was our primary goal. But with
14 regard to civilians, I and the other commanders had had clear instructions that we
15 should not attack civilians' property. But the enemy's weapons, that's something
16 that we absolutely were required to take.

17 PRESIDING JUDGE FREMR: [9:49:01] And what about, what about cars, for
18 example?

19 THE WITNESS: [9:49:22] (Interpretation) With regard to vehicles, with regard to
20 enemy vehicles, military vehicles, it's quite possible that we took those.

21 PRESIDING JUDGE FREMR: [9:49:36] And was it easy to distinguish what items
22 belongs to enemy or enemy soldiers and what items, for example, could belong to
23 combatants which sometimes the origin was also civilian?

24 THE WITNESS: [9:50:22] (Interpretation) I would like to give you an example,
25 but I don't want to give an overall opinion for this example. In Malabo, when we

1 went to fight the forces of the APC, there were two trucks bringing soldiers from Beni
2 to the front line, and we found these trucks in the enemy defence area and that's
3 where the weapons were as well. But there were also houses belonging to civilians
4 there, and if one observed, one could distinguish the houses belonging to civilians
5 from the other structures in the enemy defence area. So it was easy to identify what
6 was part of the enemy defence area and also to distinguish those buildings or
7 structures which housed civilians.

8 PRESIDING JUDGE FREMR: [9:51:53] I appreciate, Mr Ntaganda, that you
9 provided us with some concrete examples because I believe that this issue is better
10 illustrated on concrete examples than to discuss it generally.

11 I also would like to give you another example. What about property of those who
12 were not soldiers but supported the enemy? Give you my example: I can imagine
13 trader who had a shop and provided the enemy with the goods from his shop. So if
14 you would then get control over a village or city where such a shop was, would you
15 also take the goods from this shop as a war booty?

16 THE WITNESS: [9:52:57] (Interpretation) On this point I would also like to give
17 you an example without speaking in a general manner. I'm going to mention two
18 places where I went to -- I went to the centre of Komanda. When we were passing
19 through, we saw that members of the population had fled. But in such a case, it is
20 difficult to know whether somebody who had fled was an enemy supporter, so we
21 had to protect all the abandoned houses. And when the soldiers took property from
22 these houses, I asked the intelligence officer to call everyone together to tell them to
23 return these goods so that they would understand that it was -- they were not
24 authorised to do that, they had to return all the goods that they had taken from these
25 houses. Because the population had fled, which meant it was impossible for us to

1 know who amongst them had been an enemy supporter.

2 And then if one gives a soldier the authorisation to loot from the enemy, there -- that
3 means they're more interested in getting goods than actually fighting the enemy
4 because that means they can be eliminated, because a soldier would be preoccupied
5 by what he might find in the enemy defence area. So a commander could not make
6 an error of this nature.

7 What I'm saying to you is what happened in Komanda and now I'd like to talk to you
8 about what happened in Mongbwalu. When we arrived there, the military had fled
9 and the houses were empty, and we went to Sayo. There were only the combatants
10 there and the houses were empty houses. There were only military personnel in
11 them; they were being used as a military camp. And in that sort of case, it's difficult
12 to know whether the previous owners had supported the enemy.

13 So what I'm giving you here are two examples of cases which I experienced
14 personally. I can only express myself in terms of situations that I experienced. I
15 can't give you a general example, including what might have happened elsewhere.

16 PRESIDING JUDGE FREMR: [9:56:29] Thank you very much, Mr Ntaganda.
17 Ms Samson, you may proceed.

18 MS SAMSON: [9:56:34] Thank you, Mr President.

19 Q. [9:56:39] Now, I take it from your evidence today that you had not heard from
20 Floribert Kisembo or anybody, Eric Mbabazi, the content of Eric Mbabazi's report that
21 soldiers were complaining of superiors taking their war booty? You never heard of
22 that?

23 A. [9:57:42] Neither Kisembo nor Mbabazi told me of that. They did not inform
24 me of any such situation.

25 Q. [9:57:53] And I take it that you have -- you do not know that Kisembo did

1 anything in relation to this report?

2 A. [9:58:13] I could not have known this, whether he took any measures, but
3 if -- and if I had, then I would have been able to explain this to you. If I had been
4 informed that he had received the report but had not reacted to it, then I could have
5 told you that as well. But the thing is that he did not speak to me of this report.

6 Q. [9:58:48] And following on from the Presiding Judge's questions, how did you
7 instruct your troops to deal with televisions, radios, stereos, mattresses, clothing,
8 money, gold, refrigerators, household items found in the homes of the villages
9 that -- in which you were involved in attacks?

10 A. [9:59:42] As I've already said, any items which were not in the enemy's defence
11 area were considered to belong to the population, civilian population. And in our
12 army the soldiers were there to protect the members of the population and their
13 property. And we explained to them that they were not authorised to take property
14 from the civilian population; on the contrary, they should protect these goods and the
15 civilian population.

16 And we repeated these instructions to them when they were deployed to various
17 locations. We explained to them that their task was to protect the members of the
18 population and their property, including the sort of items you have just mentioned.

19 Q. [10:00:52] Now I'd like to move on to a discussion of some of the orders given
20 by your armed group, the UPC/FPLC. You're aware, are you not, that your group
21 expelled humanitarian workers from Bunia?

22 A. [10:01:53] I did not learn of that because as a soldier I had my own concerns
23 and I was not aware that they had effectively been expelled.

24 Q. [10:02:24] Now, in the fall of 2002 and in particular in November,
25 Félix Ntumba was expelled on orders of Rafiki and Thomas Lubanga and he was

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 someone you knew to have worked with OCHA, office of humanitarian affairs in
2 Bunia, correct?

3 A. [10:03:22] I did not know that person. That person known as Ntumba, I did
4 not know him.

5 Q. [10:03:48] You knew, didn't you, that the UPC/FPLC viewed certain
6 individuals as supporting and helping the Lendu, including certain internationals?

7 A. [10:04:30] I do not remember clearly. I don't remember whether at that time
8 there was such a case or whether such a thing happened. I was never aware of such
9 information.

10 Q. [10:04:56] You are aware, however, aren't you, that in February 2003 Thomas
11 Lubanga expelled a Belgian priest known as Mark Deneckere?

12 A. [10:05:28] I heard mention of that name. I was informed that the person
13 whose name you have just mentioned was expelled. I became aware of that
14 information, but I don't know how, I don't know from which source. I don't know
15 how the information came to me.

16 Q. [10:05:56] And Father Mark Deneckere was expelled because the UPC accused
17 him of wrongly taking in refugees during -- in August 2002?

18 PRESIDING JUDGE FREMR: [10:06:26] Hold on, Mr Witness.

19 Mr Bourgon.

20 MR BOURGON: [10:06:30] Thank you, Mr President. If my colleague is going to
21 put a proposition that a person was wrongly arrested, I'd like to have a source or a
22 reference at least, if we're going to make a proposal, where does that come from?

23 We need some kind of a basis to say that he was wrongly arrested. Thank you.

24 PRESIDING JUDGE FREMR: [10:06:51] Ms Samson.

25 MS SAMSON: [10:07:00] I did not indicate that anybody was arrested.

1 PRESIDING JUDGE FREMR: [10:07:07] At the moment we have transcribed
2 questions: "And Father Mark Deneckere was expelled because the UPC accused him
3 of wrongly taking in refugees during August 2002."

4 Mr Bourgon.

5 MR BOURGON: [10:07:25] It could be that I misunderstood. I thought the
6 question was that he had been accused wrongly. Now, if I read the words correctly I
7 guess the question is not accused wrongly, but wrongly doing something. That's
8 different. I apologise. Thank you.

9 PRESIDING JUDGE FREMR: [10:07:44] Ms Samson.
10 So please repeat the question.

11 MS SAMSON: [10:07:52] Certainly, yes, I will.

12 Q. [10:07:55] Sir, you know, don't you, that the UPC expelled Father
13 Mark Deneckere, missionary in Africa, because he had taken in and lodged displaced
14 persons and he was in communication with negative forces. You knew that this is
15 what the UPC accused him of doing and that that was the basis of his expulsion?

16 A. [10:09:06] No. The little information I have is to the effect that there was
17 some insecurity in Bunia at the time as regards a number of ethnic groups and that he
18 started to encourage hatred within the civilian population. And he was receiving
19 Lendus who were in their country but he offered them protection in his residence to
20 show that he was protecting refugees, whereas there was no security problem in that
21 area. Apart from that, I didn't have any other information.

22 Q. [10:10:08] And my suggestion to you is that the UPC viewed Father
23 Mark Deneckere as a threat of some type because he was seeking to protect the Lendu
24 from abuses being committed by the UPC/FPLC upon them and so you had to get rid
25 of him.

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 A. [10:10:54] No. At that time Lendus lived in Bunia in much the same manner
2 as other ethnic groups. Lendus were also members of the UPC, so how could he
3 have been driving out the Lendu? The UPC provided protection for all ethnic
4 groups and all ethnic groups were represented in the UPC, even ministers from
5 different ethnic groups. So how could UPC have been discriminating against part of
6 the population, whereas within its membership there were Lendus, Lendus who used
7 to live in Bunia and they had no problem? The information I had at the time was to
8 the effect that he was stirring hatred within the civilian population by protecting the
9 Lendus, but his intent or his purpose was simply to maintain humanitarian aid.

10 PRESIDING JUDGE FREMR: [10:11:57] And, Mr Ntaganda, could you be more
11 specific how this man was stirring hatred, just by protecting Lendus, or did he
12 anything, anything more?

13 THE WITNESS: [10:12:35] (Interpretation) Mr President, the information that I had,
14 well, you know that at the time Bunia had been liberated and there was no part of the
15 population that was suffering in Bunia. And the UPC had members from the Lendu
16 ethnic group, even some of its national officials. But, you see, prior to that period,
17 there had been an inter-ethnic war and he wanted again to whip up that climate of
18 inter-ethnic conflict. He invited the Lendu to his residence and told them to -- told
19 them to claim that they were internally displaced persons and that he would provide
20 protection for them at his residence, whereas at that time there were no longer any
21 clashes or confrontations in the area. This is the information I had in that connection,
22 Mr President.

23 PRESIDING JUDGE FREMR: [10:13:41] Thank you.

24 Ms Samson, please proceed.

25 MS SAMSON: [10:13:44] Thank you.

1 Q. [10:13:47] Did you know that Father Deneckere had been working as a
2 missionary in Ituri for over 40 years at the time of his expulsion by the UPC?

3 A. [10:14:15] No. I did not know him. You see, I am not a native of the Ituri. I
4 only became aware of bits and pieces of information, but I did not know him and I
5 did not know where he lived. I did not know where his house was located, I did not
6 know in which neighbourhood it was located.

7 Q. [10:14:49] Father Deneckere was not the only missionary that the UPC
8 expelled, correct?

9 A. [10:15:11] I don't have a clear recollection.

10 Q. [10:15:15] I'll put a name to you to see if that helps your recollection. At or
11 about the same time, February 2003, that the UPC, in this case Rafiki, signed an
12 expulsion order for Father Mark Deneckere, he also signed an expulsion order for
13 Reverend Father Jean Mottoul for the same reasons, clandestine lodging of displaced
14 persons, threatening the security and entering into intelligence with negative forces.
15 Does that help your memory?

16 A. [10:16:08] I heard mention of the Deneckere case who was expelled. But
17 when it comes to the other name you have mentioned, I do not remember.

18 Q. [10:16:30] I'm turning now to a different topic and it has to do with training.
19 You testified, transcript T-215, page 49, line 10, through to page 51, line 5 about a
20 training opportunity for the UPC/FPLC soldiers. And I'll read a section of that
21 exchange in your testimony:

22 Question: "During that period did you obtain any information about the need to
23 train soldiers to become operators of heavy weapons?"

24 Answer: "Yes. I was the one who had discussions with the chief of general staff of
25 the RCD-Goma, Sylvain Mbuki. Well, he was told that they had few people to use

1 those weapons. So we did not have enough people to run those weapons. We were
2 training them and yet we did not have enough experience. You see, there are people
3 who need special training for this. Sylvain Mbuki answered that he was going to
4 consider the matter, and shortly thereafter the commander told me that the chief of
5 general staff had called him up and asked that he prepare some young people for
6 training.

7 Now, as for myself, I went to meet with Kisembo and he told me that he had had a
8 discussion with Sylvain Mbuki, the chief of general staff, and that he had told him to
9 prepare young intellectuals for training on how to handle those weapons. At that
10 time the RCD-Goma was getting ready to go to Kinshasa while other officers were
11 getting ready for training for officers in Rwanda. So he said he would take
12 advantage of that opportunity to send his own troops for training in how to handle
13 those weapons." End quote.

14 Now, sir, it's right, isn't it, that you and Kisembo and the FPLC sent a number of
15 FPLC soldiers for training in heavy weapons in Rwanda in September to
16 November 2002?

17 A. [10:19:53] Madam Prosecutor, I don't know whether you read that transcript
18 properly. I don't know whether I said that I had a prior discussion with Sylvain
19 Mbuki prior to my training on support weapons, on heavy weapons. I don't know
20 whether I am the one who had the discussion with Sylvain Mbuki. I don't know if
21 that's what I said. I don't remember having had any discussion with Sylvain Mbuki
22 on the phone and I don't remember having said that during my testimony here.

23 Q. [10:20:43] You said in your testimony as I read, quote -- this is a discussion
24 that you had with Kisembo:

25 "At that time the RCD-Goma was getting ready to go to Kinshasa while other officers

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 were getting ready for training for officers in Rwanda. So he said he would take
2 advantage of that opportunity to send his own troops for training in how to handle
3 those weapons."

4 And so my question is: You and Kisémbó sent UPC/FPLC men to Rwanda for
5 training in heavy weapons from September to November 2002, correct?

6 A. [10:21:47] If you say that such was my testimony I will accept it. But if you
7 say what I did not say I will not agree with you. Now what you just said, the last
8 thing you said, I agree with, because when the RCD-Goma wanted to go to Kinshasa
9 they went for training in Rwanda. At that time Kisémbó and Mbuki had a
10 discussion and agreed for those youth to receive training accordingly. So when I
11 went to Mandro, Kisémbó chose some students who came to me in Mandro and then
12 I sent them to Tchomia.

13 Q. [10:22:20] Those recruits went to Rwanda to take part in special training for
14 heavy weapons, correct?

15 A. [10:22:47] Yes.

16 Q. [10:22:48] And there were over 100 UPC/FPLC soldiers who took part in this
17 training?

18 A. [10:23:09] Yes, about a hundred. I did not proceed to a headcount and I don't
19 have a specific figure. There were about a hundred, a hundred and thereabouts.

20 Q. [10:23:31] And do you recall discussing this fact with your counsel in relation
21 to -- as to whether or not you agreed with that particular point?

22 A. [10:24:14] I have not understood your question so I am not able to answer.

23 Q. [10:24:19] Do you recall having had a discussion with your counsel about
24 whether or not the UPC/FPLC sent about a hundred soldiers to Gabira, Rwanda for
25 heavy weapons training between September and November 2002?

1 A. [10:25:10] They are aware of it, we talked about it. But during my testimony I
2 cannot talk about things that I did not discuss with them. They knew it.

3 Q. [10:25:21] And did you discuss with them the fact that according to you no
4 weapons came from Rwanda to the UPC/FPLC in July 2002?

5 A. [10:25:59] They asked me the question and I gave them details as to how
6 weapons came from RCD-Goma. And I provided them with the information and
7 with all details that were available to me.

8 Q. [10:26:15] And do you recall when you might have provided those details to
9 your counsel? Approximately.

10 A. [10:26:36] No, I don't remember. No, not clearly.

11 Q. [10:26:42] Was it before the trial began or after?

12 A. [10:27:01] What I have narrated here in the course of my testimony has
13 covered the beginning of the events through to the, through to the entire period. But
14 when I was about to start my testimony we continued to revisit what I was going to
15 testify about from time to time.

16 Q. [10:27:36] The point about Rwanda providing weapons or, according to you,
17 not providing weapons to the UPC in July 2002, do you recall whether you discussed
18 that with your counsel before the trial began or only after?

19 A. [10:28:24] I don't have any specifics as to the beginning or the end, because
20 from time to time we revisited various aspects of my story. Now, if you're asking
21 me specifics as to at what time we talked about these things, all I can say is that he
22 came and then we would have a discussion, he would take down notes which he
23 would then forward to me, and I would read and then we would go over the notes
24 again. So it's difficult for me to tell you exactly at what time we talked about this
25 matter. Because my story is a very long story and I talked about it on a daily basis.

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 It's an entire book, a rather voluminous book, if one would put it in those, those
2 words.

3 MS SAMSON: [10:29:24] Mr President, with your leave I would like to address the
4 Chamber in the absence of the witness.

5 PRESIDING JUDGE FREMR: [10:29:31] All right.

6 Guards, could you kindly take Mr Ntaganda out of the courtroom for I believe it
7 would be a relatively short while. So could you take him away now.

8 (The witness stands down)

9 PRESIDING JUDGE FREMR: [10:29:59] So Mr Ntaganda has left the room.

10 Ms Samson, please proceed.

11 MS SAMSON: [10:30:16] Mr President, I'd like to address the issue of the agreed
12 facts and I would ask that this not be taken into account in the time that I have for
13 cross-examination, because I'm responding to an unexpected submission by counsel
14 in relation to the agreed fact.

15 PRESIDING JUDGE FREMR: [10:30:38] Granted.

16 MS SAMSON: [10:30:40] Thank you.

17 The issue of the UPC/FPLC sending about a hundred soldiers to Rwanda for training
18 in September to mid-November 2002, which the witness concedes, accepts, is indeed
19 agreed fact number 70. So the agreed fact that is at issue at the moment is agreed
20 fact number 69 about the provision of weapons from Rwanda to the UPC in July 2002.
21 Now, the witness maintains that that is not correct and that the provision of weapons
22 was from the RCD-Goma. And I understand from counsel that this is because there
23 were no discussions between counsel and the witness in relation to the agreed fact or
24 facts, unclear at this time.

25 The Prosecution is placed in a very difficult position as to the foundation for at least

1 the one agreed fact that's now at issue and possibly others, because, as the Chamber
2 will remember, the Prosecution and the Defence jointly submitted these agreed facts
3 in 2015 before the trial began, and the Defence requested that the Chamber rule on
4 those agreed facts in advance of the trial. And we have a ruling of the Chamber
5 accepting the proposals and the agreed facts of the parties in June 2015, and I'm
6 referring to decision number 662 in which the Chamber clearly stated that, quote, "It
7 does not consider there to be reason for more complete presentation of evidence on
8 those matters."

9 And I note as well that in two filings from the Defence - and I'm referring to two
10 filings in April, one on 5 April and one on 7 of April - the Defence request time to be
11 able to consult with the accused in relation to the agreed facts, noting the import of
12 the agreed facts to the evidence in the case and the import of making an agreed fact in
13 that it's a conceded point for which no further evidence needs to be adduced. And
14 now we hear that in fact those consultations apparently did not take place.

15 The Prosecution seeks to know whether the Chamber intends to accept the agreed fact
16 as put forward or whether it is still in play, in which case the Prosecution will need to
17 ask the Chamber for permission to adduce evidence on points that were previously
18 agreed. And the importance of the agreed facts as set out by the Defence in its two
19 filings -- in fact, there is a third filing where the Defence acknowledged, when the
20 Legal Representatives of Victims wished to be part of the agreed facts discussions,
21 that for victims it could be very important to be part of the discussion because no
22 further evidence will be adduced on the points that are agreed as between the parties.
23 And I do have references for those filings. It's filing 528 in relation to the victims and
24 filings 548 and 541 in relation to the need to, quote, "obtain the consent of the accused
25 for agreed facts".

1 The Prosecution -- I parked a question of the admission of a document from the
2 United Nations in relation to weapons deliveries from Rwanda in September 2002.
3 The Prosecution, depending on the Chamber's decision in relation to the status of the
4 agreed fact, will seek to admit that item in evidence on the basis that it was entirely
5 unanticipatable that the foundation and the agreement on the agreed facts would
6 cease to exist at some point well after the Prosecution's case was over.
7 Now, it may be that the Chamber would like to hear more from the Defence on the
8 point after the Defence made clear indications in its own filings that it needed to
9 obtain the consent of the accused, a fact which apparently did not take place.
10 But I've made the point at this stage in the cross-examination because greater clarity is
11 needed in order for the Prosecution to determine how it needs to proceed with that
12 particular agreed fact and possibly any others.

13 Thank you.

14 PRESIDING JUDGE FREMR: [10:36:50] Thank you, Ms Samson.

15 Mr Bourgon, we would like to hear your position.

16 MR BOURGON: [10:36:57] Thank you, Mr President.

17 The issue, we believe, is twofold: First, I totally agree with my colleague, agreed
18 facts are important and we don't take them lightly, and we did submit those filings
19 and we did ask the Prosecution for time to discuss these issues with Mr Ntaganda.
20 So there's no issue here between the Prosecution and the Defence. We do not take
21 these things lightly.

22 Where I say there are two issues is the Prosecution making an argument with respect
23 to the validity of agreed facts number 69. If so, I suggest to you, Mr President, that
24 this can be done after the testimony of the accused because for the time being this
25 filing is on the record and I cannot myself, after what we now know, I cannot myself

1 say that I stand by this, by this admission because now we have evidence to the
2 contrary.

3 However, I'm convinced that if and when I do speak to Mr Ntaganda about the issue
4 after the -- whether now, if you allow me to do it now, or if I can do it after his
5 testimony, we will stand by the agreed fact. Those weapons came from Rwanda. It
6 does not change anything, in our respectful submission.

7 What it does change, it changes the fact that under oath Mr Ntaganda said, "I did not
8 know this at the time". That's the major difference. Are we able to, from a legal
9 perspective - because that is a legal issue - from a legal perspective, when we enter
10 into an agreed fact, is we want to dispense the other party of having to prove a fact.
11 And we have not changed our mind to this.

12 And once I speak to Mr Ntaganda, then it is very likely that we will confirm the
13 agreed fact. And if not, we will tell the Prosecution and then the Prosecution can
14 lead the evidence it wishes to lead, because I agree this would not be appropriate to
15 change our mind on an agreed fact at this time.

16 So that's for the first issue.

17 Now, regarding how this took place, we just heard -- and I'm glad that my colleague
18 put the question to Mr Ntaganda as to whether he discussed this issue with the
19 Defence. I'm talking not about the agreed fact, about the issue as to where the
20 weapons come from. I can certainly say that we discussed this with Mr Ntaganda on
21 numerous occasions and I was crossing my finger that he would say this, because we
22 did discuss this on numerous occasions. But it is important to recall how this took
23 place.

24 Now, how this took place is this began with a Prosecution making a submission or
25 sending to the Defence proposed agreed facts. And the proposed agreed facts were

1 sent in three blocks; there were three sets. I'm looking for the exact dates here.

2 I had some notes. But there were three specific instances when the Prosecution sent
3 the Defence proposed agreed facts.

4 First time was on 3 April, there were 91 facts. Then there was on 8 April 158 facts.

5 Then there were on 17 May 15 facts. And the issue of agreed facts had been raised
6 by the Chamber right from my first status conference that the Chamber had invited
7 the party, tried to make some agreed facts, and we did our best.

8 So we received those three submissions and we did consult with Mr Ntaganda at
9 various times and we -- the way it actually happened is the -- our final response sent
10 to Mr Ntaganda -- to the Prosecution, it was sent on 2 and 3 June 2015. Out of the -- I
11 made the addition, but it's some 270 proposed agreed facts. We managed to agree
12 on 82. We did our best effort to do that.

13 Now, the timing of this, Mr President, is very important because this happened on
14 8 April -- 3 April, 8 April and 17 May 2015. Now, the Chamber will recall our
15 submission to the Chamber that we were simply -- we were in over our head
16 preparing for a trial which was to begin on 2 June, a trial for which we received
17 suddenly three times the documentary evidence that we previously had expected to
18 be dealing with. We were in over our head.

19 And I was trying -- since this issue was brought up, I was trying to recall what
20 happened, why did we ever -- I never send a filing without telling Mr Ntaganda.

21 And the recollection we have is that -- because the person who worked on this most,
22 under my supervision, and I will not draw back from any of my responsibility in this
23 issue.

24 We were working on the first submission of 3 April, which does not include the
25 agreed fact number 70 because those numbers have to do with the number of agreed

1 facts and not the initial numbering system. And then we received the filing, the
2 submission of the Prosecution on 17 May of 15 new facts and we realised at that time
3 that we had missed the 8 April 158 facts. And we were scrambling to put a response
4 together, and we did and we put that submission, and I thought it was in the best
5 interests of my client to do so and -- but, however, he was not consulted.
6 The trial began and, honestly, Mr President, we've been looking at agreed facts on
7 and off since then. It's a document that we do refer to to see where we are. I
8 missed that agreed fact or else I would have done something about it based on my
9 discussion with Mr Ntaganda, who on numerous occasions insisted with me that he
10 knew nothing about the weapons coming from Rwanda. What's the basis for his
11 knowledge is not for me to say. I can only say that he did insist with me on
12 numerous occasions, "No, I did not know that those weapons came from Rwanda".
13 And that's what he testified here during his testimony.
14 So other than the fact that he was not consulted for today's purposes, I think we can
15 continue. The Prosecution might put more questions to Mr Ntaganda on -- as to
16 what was discussed or what's his basis for his knowledge. That's perfectly fair game.
17 But I just wanted to try and -- I knew that on the basis of the answer provided by
18 Mr Ntaganda that the Prosecution would necessarily ask him lots of questions on this
19 issue and I wanted to try to avoid wasting time on this issue by making the statement
20 I did.
21 So I made two statements on that day. The first time is I got it and I said, "Please, it
22 should be understood that there is difference between Mr Ntaganda's knowledge of
23 an issue and the agreed fact". And then that wasn't sufficient, so I confirm and I
24 admitted, I made an admission that the filing was submitted to the Chamber, to the
25 Prosecution and the Chamber, and that Mr Ntaganda had not seen this submission,

1 which I had forgot myself, forgotten myself. So there are two issues: One is the
2 agreed fact itself. I can consult Mr Ntaganda now or later and inform the Chamber
3 of the final position, if I can call it this way, which I believe won't change because we
4 don't believe that this is an issue that creates any prejudice, whether to Mr Ntaganda
5 or to the Prosecution. So that's the first issue and I guess we can continue with the
6 testimony of the accused.

7 And the second issue is the knowledge of Mr Ntaganda. If the Prosecution would
8 like to put any questions, they are certainly allowed as to what -- and to ask
9 Mr Ntaganda any question as to what he told us. What he said in his answer two
10 days ago, he said "I told my counsel". I don't have the exact words, but the exact
11 words he said, the exact words he used, "I didn't study law, but I do know that
12 whenever my counsel asks me questions I told them that I would give them a lot of
13 evidence to show them that we received arms from RCD-Goma. That's what I told
14 them." And that's what I can confirm, but the Prosecution can ask any questions to
15 Mr Ntaganda as to what he told us in this regard and to test his recollection of events.

16 Mr President, we have to look at this from a realistic point of view. I led
17 Mr Ntaganda for his examination-in-chief, I put the question to him in
18 examination-in-chief and he explained where the weapons came from. If I had had
19 any doubt that this was contrary to an agreed fact, I would have discussed this with
20 my client, said "Listen, listen, we already agreed to something. You can't say that."
21 I would have prepared him long time in advance. But that didn't take place because
22 I forgot about the fact.

23 Whether this is a, whether this is a breach of my code of conduct, whether it's a
24 breach of anything, I'm willing to take whatever blame that comes with it. But
25 I think we can go on with the testimony of the accused and then we can decide

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 whether, whether the Trial Chamber would like me to do this now -- I thought it
2 wasn't appropriate to do it at this time with Mr Ntaganda -- or after his testimony to
3 confirm that we stand by the fact that the weapons came from Rwanda. To us that's
4 not the issue. To us the issue is what he knew at the time as to where the weapons
5 came from.

6 Thank you, Mr President.

7 PRESIDING JUDGE FREMR: [10:49:20] Thank you, Mr Bourgon. Ms Samson,
8 your reaction?

9 MS SAMSON: [10:49:24] Well, your Honour, the issue really is quite a serious one.
10 I've certainly tried to make it understood that that's the Prosecution's position in my
11 earlier submission. Because the Prosecution did not need to adduce evidence on
12 where the weapons came from, as accepted by the Chamber, and now we are very far
13 into the Defence case with a potential lacuna or gap in the Prosecution's evidence
14 with Mr Ntaganda taking a very contrary view. So the issue is quite fundamental
15 and it's very important. We've seen it in relation to one agreed fact, but there are 89.
16 And so, your Honour, the Prosecution and I would submit the Chamber do need to
17 know quite quickly what the position is from the Defence side in relation to this
18 agreed fact. Does Mr Ntaganda accept that the weapons came from Rwanda in
19 July 2002? That is not his evidence as we heard it over the last few days. Does he
20 now accept that as the agreed fact was put forward? And if he does not and if the
21 agreed fact is now put to the Chamber as potentially having no foundation and
22 therefore no legal effect, then the Prosecution will need to seek to -- the opportunity to
23 admit evidence in relation to that or any fact that is apparently not -- no longer one
24 for which no evidence was required to be adduced, and I think the importance of that
25 can't be overlooked.

1 If the accused agreed or now agrees that weapons came from Rwanda, that
2 presupposes he knows it to be true, otherwise no such agreement could ever have
3 been made, so a distinction artificially between the fact and his knowledge is absurd.

4 Thank you, Mr President.

5 PRESIDING JUDGE FREMR: [10:51:44] Thank you, Ms Samson.

6 Mr Bourgon, and please briefly.

7 MR BOURGON: [10:51:48] Mr President, I will not belabour the point regarding
8 the importance of issue. We acknowledge that. We also acknowledge that should
9 it be the case that we would withdraw, if I can use this term, an agreed fact, that the
10 Prosecution could of course be authorised to lead evidence on the issue.

11 That being said, Mr President, we have to look, and the Prosecution omits that it has
12 led its case in-chief for almost two years and that we have cross-examined a number
13 of witnesses. If the Prosecution looks on the record, during the cross-examination
14 what we took an interest in and that remains the fact is when did the weapons arrive,
15 how did the weapons arrive and the date of the weapons. Because that's important.
16 That's important for Mr Ntaganda and that's what we've been cross-examining on.
17 We have not done any cross-examination to go against that agreed fact. So whether
18 or not it was there or not our conduct during the case was not to go against that
19 agreed fact. Our conduct has always been to dig into where the weapons land at, at
20 what time, what they did. Because this is what we use to challenge and to
21 undermine the credibility of Prosecution witnesses. That's the part that was
22 important to us, Mr President, and it remains the part that's important to us. Thank
23 you.

24 PRESIDING JUDGE FREMR: [10:53:24] Yes, important to you, Mr Bourgon, but I
25 guess you know that the fact whether the conflict is international -- or internal also

1 have big impact on potential legal qualification of the charges.

2 Now I also would like to give floor to Legal Representative of Victims.

3 Ms Pellet first.

4 MS PELLET: [10:53:51] (Interpretation) Yes, Mr President.

5 As recalled by the Prosecutor, these agreed facts are very important for the victims.

6 She recalled that this importance was accepted by the Defence team and it's important

7 to say, and I will quote in English, submission 128 of 20 March 2015 (Speaks English)

8 (Overlapping speakers) "that the interest of the alleged victims, more particularly the

9 right to truth, might be affected by any agreement reached by the parties on alleged

10 facts. Indeed, the fact that no evidence would be adduced in relation to an agreed

11 fact might deprive the alleged victims of the necessary evidence for the establishment

12 of truth." (Interpretation) End of quotation.

13 Mr President, what is true for the victims is even more so for the Prosecutor, the

14 Chamber and the Defence. This point that we are discussing today is that the fact 70,

15 and to a lesser effect 69, is what we're -- that's what we're discussing today. But if all

16 these facts have not been discussed with the accused, perhaps the counsel for Defence

17 could be authorised to discuss this with Mr Ntaganda, number 69, and perhaps all the

18 other facts to know whether they are in agreement, because there is a very great

19 degree of uncertainty on I don't know how many facts that have been agreed in total.

20 But I would like to submit this request to the Chamber so that the trial can follow the

21 normal conditions for establishing the truth, which is of course the prime concern of

22 those I represent in this trial.

23 PRESIDING JUDGE FREMR: [10:56:21] Thank you, Ms Pellet.

24 Ms Grabowski, do you want also to make any submission on that issue?

25 MS GRABOWSKI: [10:56:27] Thank you, Mr President.

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 Just very briefly, the main concern to the victims that we represent is of course if now
2 the Prosecution moves to reopen its case and to lead evidence, this is inevitably going
3 to lead to further delay which could have been avoided, and I would like to put this
4 on the record. Thank you.

5 PRESIDING JUDGE FREMR: [10:56:46] Thank you.

6 Mr Bourgon.

7 MR BOURGON: [10:56:50] Mr President, in light of the observations made by the
8 Legal Representatives of Victims, I propose, Mr President, that we have these 82 facts,
9 I propose to give them to Mr Ntaganda, he can have a look at them and I can have a
10 10-minute conversation with him at some point during lunchtime and I'll come back
11 and get a confirmation and we can move on. I just didn't want to do it until this
12 debate took place to be sure that we were within with the guidelines set by the
13 Chamber. Thank you.

14 PRESIDING JUDGE FREMR: [10:57:24] It's really -- we all know that complex
15 issue, serious issue, so the Chamber will have to thoroughly deliberate on that. We
16 will start during this break. I'm not sure what time we will be ready to come with
17 some guidance or ruling how to proceed, but we will also do our best to come as
18 shortly as possible.

19 Now we will break and we take our 30-minute break and reconvene at 11.30.

20 THE COURT USHER: [10:57:55] All rise.

21 (Recess taken at 10.58 a.m.)

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

23 THE COURT USHER: [11:45:10] All rise.

24 Please be seated.

25 PRESIDING JUDGE FREMR: [11:45:44] We will start this session by delivery of

1 Chamber's oral ruling on agreed facts, fact number 69, and since we heard
2 submissions on that in the absence of Mr Ntaganda, we also render this decision in
3 his absence.

4 So the oral ruling is following:

5 The Chamber shall provide immediate guidance on the issue discussed before the
6 break, namely, on the issue of agreed fact number 69, which is "Rwanda provided
7 weapons and ammunition to the UPC/FPLC beginning in July 2002". Unquote.

8 The Chamber notes with concern the Defence submission that Mr Ntaganda has not
9 been consulted on this issue. However, the Chamber does not find it appropriate, at
10 this stage of Mr Ntaganda's testimony, to authorise Defence counsel to discuss this
11 issue with Mr Ntaganda.

12 The Chamber therefore orders Defence counsel to consult with and to obtain
13 instructions from Mr Ntaganda after the completion of his testimony and to provide
14 the Chamber, within two days of this occurring, with further submissions on the
15 Defence position on agreed fact number 69 and on any other agreed fact upon which
16 Mr Ntaganda has not yet been consulted. However, at this stage we shall proceed
17 with the examination of the accused on the basis of the remainder of the facts as
18 agreed in the annex to filing 633.

19 Upon receipt of these submissions, the Chamber will evaluate whether it will require
20 further observations on the issue, including whether it shall authorise the Prosecution
21 to adduce additional evidence on this issue or any other issue flowing from the
22 agreed facts.

23 The Chamber shall also decide at this time whether issues arising from the Code of
24 Professional Conduct for counsel will need to be addressed.

25 That concludes the guidance of the Chamber.

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 And now -- maybe before we invite Mr Ntaganda back to the courtroom, any
2 reactions from the parties on that ruling?

3 MS SAMSON: [11:48:46] Mr President, I rise only to inquire as to the document
4 used by the Prosecution in examination of Mr Ntaganda on the issue, which was a
5 United Nations document, DRC-OTP-0208-0272. The Prosecution will seek to admit
6 the document and the paragraph number 12 that was read out either for the truth of
7 its contents, depending on the indications of the Defence following consultation after
8 cross-examination, or for impeachment purposes. But I make the observation for the
9 record now and if the Chamber wishes to deal with the substance of that submission
10 now, we can. Alternatively, it can be left until the issue of agreed fact number 69 has
11 been determined at a later time.

12 PRESIDING JUDGE FREMR: [11:49:46] Ms Samson, I get the point, but I believe it
13 would be better to make it after we will have clarity about the position of Defence and
14 mainly Mr Ntaganda as concerns the agreed fact number 69 because it will influence
15 also our decision. All right?

16 MS SAMSON: [11:50:03] Yes. Thank you.

17 PRESIDING JUDGE FREMR: [11:50:06] Defence, any reaction on our ruling? No?
18 All right.

19 MR BOURGON: [11:50:08] None, Mr President. Thank you.

20 PRESIDING JUDGE FREMR: [11:50:11] All right.

21 So now, please, could be Mr Ntaganda escorted into the courtroom.

22 (The witness enters the courtroom)

23 PRESIDING JUDGE FREMR: [11:51:18] Welcome back, Mr Ntaganda. Can you
24 hear me well?

25 THE WITNESS: [11:51:25] (Interpretation) Yes, I can hear you, Mr President.

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 PRESIDING JUDGE FREMR: [11:51:32] Explanation from my part: We had to
2 escort you out of the courtroom at this moment because since we heard submission
3 on the issue concerned in your absence and now we rendered a ruling on that, we
4 also had to do it in your absence. Just to make it clear.
5 Now we will continue with next part of cross-examination of Mr Ntaganda conducted
6 by Prosecution.

7 Ms Samson, you have the floor. And we will just shorten this session and we will
8 finish as usually at 1 o'clock.

9 MS SAMSON: [11:52:10] Thank you, Mr President. And I'll note for the record
10 that Ms Rabanit left the courtroom from the Prosecution team.

11 PRESIDING JUDGE FREMR: [11:52:19] Thank you.

12 MS SAMSON: [11:52:21]

13 Q. [11:52:24] According to you, gold was not one of the objectives for the UPC's
14 takeover of Mongbwalu, correct?

15 A. [11:52:48] No. That was not the objective.

16 Q. [11:52:57] You knew at the time, though, didn't you, that Mongbwalu was one
17 of the most important gold reserves in the region?

18 A. [11:53:20] Yes. Mongbwalu is well known for the quantity of gold that it
19 holds.

20 Q. [11:53:37] And nonetheless, you had no discussions with Floribert Kisembo or
21 with Thomas Lubanga about the gold reserves and its exploitation if the UPC could
22 take control of Mongbwalu?

23 A. [11:54:34] No, we didn't discuss that. Salumu had been asked to go to that
24 place. When I was in Aru, I did not know that forces were supposed to go to
25 Mongbwalu. That is why I have told you that capturing Mongbwalu was not

1 because the gold reserves were targeted.

2 Q. [11:55:07] Are you familiar with the company Kilo-Moto?

3 A. [11:55:37] When I was in the Ituri, I learnt something. I learnt about
4 Kilo-Moto, which is a company in charge of gold in Kilo, Nizi, Lopa and Mongbwalu.
5 I think all those reserves in that area belong to Kilo-Moto.

6 Q. [11:56:20] And you knew, didn't you, that Thomas Lubanga was in touch with
7 the offices of Kilo-Moto in the fall of 2002 prior to the Mongbwalu operation?

8 A. [11:57:04] I did not know whether he had contacts with those people. I was
9 never provided information in that connection.

10 Q. [11:57:20] I would like to show you a document.

11 It's DRC-OTP-0136-0161, item number 980 on our list. And it's public.

12 This is a letter, and you can see from the letterhead it comes from the -- comes from
13 the OKIMO company, which in French in the title you see, and I'll quote,
14 (Interpretation) "Kilo-Moto Gold Mines Office General Directorate".

15 (Speaks English) It's drafted in Bunia, 1 October 2002, to his Excellency Mr President
16 of the UPC/RP. And if we scroll down a bit further, the letter is signed by the
17 director general of OKIMO and reads as follows, in French, quote:

18 (Interpretation) "We have the honour to transmit to you here with appended, as
19 requested by Your Excellency, the expectations of the Kilo-Moto gold mines office
20 which had been presented to you during the audience which you kindly granted to
21 the management committee on 26 September 2002."

22 (Speaks English) Now, sir, were you aware, having seen this letter, that
23 Thomas Lubanga for the UPC was meeting with the Kilo-Moto general director in
24 September 2002?

25 A. [12:00:25] No, I was not aware of that. He did not speak to me about the

1 persons he received. He did not tell me that he received such and such a person.

2 And by the way, this is the very first time that I see this document, and it is also the
3 first time that I have become aware of this information.

4 Q. [12:00:49] And so I take it then that you had no idea that the UPC was
5 requesting from Kilo-Moto its expectations, Kilo-Moto's expectations?

6 A. [12:01:27] I don't know anything about that. I don't know anything with
7 regard to that information.

8 Q. [12:01:50] And I'd like to take you to one of the expectations of Kilo-Moto that
9 is annexed to the letter. It's at page -- first I'll take you to the following page, 0163, so
10 you can see the heading. The heading of the annex as you can see is in French,
11 (Interpretation) "The expectations of OKIMO".

12 (Speaks English) And I'd like to show you in particular expectation number 3 which is
13 on the following page, 0164.

14 Number 3 I will read in French:

15 (Interpretation) "That a mixed commission of the executive council and OKIMO to
16 draw up a status report on Mongbwalu.

17 The management committee welcomes the retaking of Mongbwalu by the Patriotic
18 Forces of Liberation of Congo. And so, it wishes that a mixed commission of the
19 executive council and OKIMO in order to take stock after the departure in view of
20 deciding what should be done quickly."

21 (Speaks English) So, sir, were you aware that the UPC and OKIMO were discussing
22 the creation of a mixed committee between them regarding Mongbwalu?

23 A. [12:04:36] No, I wasn't informed of that and I can't make any comment with
24 regards to what you've just told me. Mongbwalu is in Ituri. The UPC had freed
25 that region in which Mongbwalu is. These people working in that area had to go

1 back to work. That was among the wishes of the personnel of the company OKIMO.

2 But I wasn't informed of what you're reading in the document.

3 Q. [12:05:25] Now, the letter from OKIMO with its expectations is sent as
4 requested to the UPC on 1 October 2002. That's before the UPC took control of
5 Mongbwalu, right?

6 A. [12:05:59] I saw that date on the document. On that date the fighters and the
7 APC forces had driven out all the population and these fighters and the APC troops
8 were carrying out the work of extracting gold. And I think you were even able to
9 see that in the video which was played here. Kisembo was saying that all the
10 members of the population had fled. And if you would like my personal comment
11 thereon, without doubt, the people or the Kilo management wanted the staff to go
12 back to work.

13 Q. [12:06:53] Now, what I'm putting to you in relation to the date is that this
14 document shows that the UPC had plans to engage with Kilo-Moto and exploit
15 Mongbwalu's gold mines even before the FPLC actually took control of Mongbwalu.

16 A. [12:07:27] That's what I'm telling you. What I'm giving you here, this is a
17 personal comment because I didn't have this information at the time. If the OKIMO
18 staff had fled, that means that they weren't in Mongbwalu and I would consider that
19 they were proposing the president of the UPC, namely, Thomas Lubanga, that once
20 all Ituri had been freed by the UPC that he would be authorised to come to work in
21 cooperation with the UPC. But that is a personal comment based on the information
22 that you're giving me which is contained in the document.

23 Q. [12:08:21] And I put to you that in fact exploiting Mongbwalu's gold reserves
24 was an important objective on your part and that of the UPC for taking control of
25 Mongbwalu.

1 A. [12:08:58] That's your opinion. I could also give you my perspective on that.
2 When I received the mission, I remember that at the time President Thomas Lubanga
3 had sent me so that I would go and release the members of the population who were
4 living in poor conditions. And he had stated that if we were able to free them, then
5 the UPC would get a good reputation. But once the people went to take up work,
6 having been freed by the UPC, that would aid the reputation of the UPC which would
7 be considered as the saviour of the population.

8 Q. [12:10:03] Floribert Kisembo came to Mongbwalu several days after you
9 captured the town?

10 A. [12:10:15] I wouldn't say a lot of days because he arrived two days after I took
11 the control of Sayo.

12 Q. [12:10:39] He arrived three days after, didn't he?

13 A. [12:10:53] If I base myself on what I remember in terms of the chronology is
14 that he arrived two days afterwards. But you will understand that 15 years have
15 passed since then. But if I base myself on what I remember in terms of the timeline,
16 it was two days after I liberated Sayo. It was in the reaction to the proposal you
17 were making to me to know what happened several days after we freed Mongbwalu.
18 I'm saying -- so I was specifying that it was two days after I liberated Sayo.

19 Q. [12:12:02] Floribert Kisembo arrived in Mongbwalu by aeroplane?

20 A. [12:12:11] That's correct. You could see that on the video sequence which was
21 shown here.

22 Q. [12:12:27] And the first place that you visited with Floribert Kisembo when he
23 arrived was the gold factory in Mongbwalu, wasn't it?

24 A. [12:12:54] That's correct. When he arrived the first time we went to the place
25 where the factory was. It had been damaged before we arrived.

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 Q. [12:13:15] The UPC was looking for investors to rehabilitate the factory in
2 Mongbwalu, right?

3 A. [12:13:26] You're asking me a question about the date or the time that we went
4 to this factory? Kisembo arrived with journalists. I don't know if you want to ask
5 when we went to the factory the first time if we went to look for an investor to
6 rehabilitate the premises.

7 Q. [12:14:19] Yes. Didn't the journalist make reference on his news broadcast
8 that the UPC was looking for investors to rehabilitate the factory?

9 A. [12:15:01] If I could listen to the sound in order to remember what was said in
10 the report, then I will be able to comment on that. If I were able to listen to the audio.
11 I don't remember that the journalist said that the UPC was searching
12 investors -- searching for investors who could rehabilitate the installations. I don't
13 remember exactly what was said.

14 Q. [12:15:38] We can certainly take a look at the video. It's DRC-OTP-2058-0251,
15 item 282 on the list. And I will show from minutes 34.58 to 37.39. The transcript is
16 DRC-OTP-2102-3708 at 3722 to 3724, lines 477 to 502, and the translation is
17 DRC-OTP-2012-3766 (sic) at 3782, lines 506 to 522. The transcript is item 283 on the
18 list and the translation is item 284. And I would ask if the Prosecution could have
19 the floor for the video, please. It's a public video.

20 THE COURT OFFICER: [12:16:58] You now have the floor and the video will be
21 displayed on the evidence 2 channel.

22 PRESIDING JUDGE FREMR: [12:18:18] Mr Bourgon.

23 MR BOURGON: [12:18:20] Thank you, Mr President. I just wonder if we have
24 the right number for the translation of the video. I have a different number in terms
25 of DRC-OTP-2101-3766 -- no, sorry, 2886, and the page where -- which would

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 correspond to the numbers provided by the Prosecution would be on page 2902. If
2 we can just check that, please. The lines match, 502 to 5 something, but the number
3 of the document doesn't match.

4 PRESIDING JUDGE FREMR: [12:19:09] Ms Samson.

5 MS SAMSON: [12:19:11] I have a copy of the transcript. I'll just confirm. One
6 moment, your Honour.

7 PRESIDING JUDGE FREMR: [12:19:30] Yes, please take your time.

8 THE COURT OFFICER: [12:19:34] We've also been informed that the computer of
9 the Prosecution is not working properly. So the Registry will try to play the video
10 on the evidence 1 channel.

11 MS SAMSON: [12:19:50] The reference in the document, which is a French
12 transcription, is, I believe, as I stated, DRC-OTP-2102-3766 at page 3782, lines 506
13 to 522. I have the transcription in front of me. It corresponds to what I read out
14 earlier. But I can wait until the Defence has a chance to confirm.

15 PRESIDING JUDGE FREMR: [12:20:46] Defence, can you confirm you are --

16 MR BOURGON: [12:20:47] We don't mind, Mr President. We have a text, but the
17 Prosecution announced a translation, and the translation, that's not the number we
18 have. But we have the page and the lines. So we can proceed. It's just for further
19 reference for the Chamber, Mr President. Thank you.

20 PRESIDING JUDGE FREMR: [12:21:10] Let's proceed. But we are still waiting
21 for -- are we ready, court officer, with the video? It seems that we are almost, almost
22 ready.

23 (Pause in proceedings)

24 MS SAMSON: [12:22:35] Alternatively, we could read out --

25 PRESIDING JUDGE FREMR: [12:22:41] I think -- no, no problem. But as to the

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 video, I think we are almost -- there are still some, I was told, some obstacles, but it
2 will be for sure fixed. So just I'm asking for your patience. I think we are not far
3 from the start, this can I see.

4 Now I can see it on my screen.

5 (Viewing of the video excerpt)

6 PRESIDING JUDGE FREMR: [12:24:41] The correct excerpt should start at 34.58.

7 (Viewing of the video excerpt)

8 PRESIDING JUDGE FREMR: [12:25:25] Sorry, there is some misunderstanding,
9 court usher. We would like to start excerpt as requested by the Prosecution.

10 MS SAMSON: [12:25:38] Mr President, if I may, it appears that a portion of the
11 excerpt may be in Swahili and the second portion is in English. The translation is
12 entirely in French. So we could play it again starting at minute 34.58 to 37.39 and --

13 PRESIDING JUDGE FREMR: [12:26:01] Because we haven't received -- at least on
14 the English channel, we haven't received any translation. So it was not clear to me
15 whether we are playing video.

16 THE INTERPRETER: [12:26:13] Your Honour, message from the interpreters:
17 What we heard was English so we didn't give interpretation into English. However,
18 it was difficult to hear.

19 PRESIDING JUDGE FREMR: [12:26:23] But it was, I think, lack of volume because
20 I ... could we start it again and to increase the volume because I even didn't recognise
21 that it was in English.

22 (Viewing of the video excerpt)

23 THE INTERPRETER: [12:27:16] (Interpretation of the video excerpt)

24 "This factory employed 2,000 workers who worked day and night. These machines
25 after the fall of Mobutu's regime were inactive. Any person who wanted to have

1 access to them could do what they wanted to do, and you can see that all these
2 machines are damaged. But after that, the administration of the UPC was convinced
3 that they could get foreign investors who would be able to rehabilitate the
4 installations in order to exploit them and that would aid in reconstruction such as
5 hospitals. And we are in Kilo-Moto here where you extract gold from."

6 (The following inserted excerpt is a transcription prepared and provided by the
7 parties of the aforementioned recording, without any modification or alteration)

8 487 For foreign investors, more and more skills are required. More and more are invited to come here in
9 488 order to rehabilitate this factory. Kilo-Moto factory, whereby gold has been produced here, has been
10 489 shut down because of the rebel activities. But foreign investors are now invited because they are
11 490 going to be provided by ... with security by UPC rebels who are eager to assist foreign investors who
12 491 are willing to rehabilitate this factory. It's a big asset for Congolese people. It's an asset for them and
13 492 for the future of this country. Mike Arereng, reporting from Kilo-Moto gold factory.

14 THE INTERPRETER: [12:27:16] (Interpretation of the video excerpt)

15 "Commander Bosco, what is the situation here? Is everything under control?
16 Yes".

17 MS SAMSON: [12:29:51] Thank you. The video is stopped at 37.39.

18 Q. [12:30:02] Now, sir, were you able to hear the journalist Mike Arereng
19 indicating that the UPC wants to exploit the gold mines and that foreign investors are
20 invited to assist in that regard and that the UPC will ensure their security?

21 PRESIDING JUDGE FREMR: [12:30:42] Mr Bourgon.

22 MR BOURGON: [12:30:42] I apologise, Mr President. But this is not what we
23 have in the -- we have here a text in French which does not say that, and we have
24 another text which is half Swahili and half English and does not say that either. So if
25 we are going to put a proposition to Mr Ntaganda it should be based on what was

1 said, and what I heard in this question is not what is mentioned by the journalist.

2 Thank you.

3 PRESIDING JUDGE FREMR: [12:31:17] Ms Samson.

4 MS SAMSON: [12:31:20] Mr President, it's certainly what I heard in the
5 interpretation which -- and I'll -- page 46 of the transcript, lines 23, starting from
6 line 23, quote:

7 "But after that the administration of the UPC was convinced that they could get
8 foreign investors who would be able to rehabilitate the installations in order to exploit
9 them and that would aid in reconstruction such as hospitals. And we are in
10 Kilo-Moto here where you extract gold from."

11 And then there was an indication from when it continued in English indicating that
12 foreign investors are invited and the UPC will ensure their security. And that was
13 the basis of my question, your Honour.

14 PRESIDING JUDGE FREMR: [12:32:20] I think I find it corresponding. Please
15 proceed.

16 MS SAMSON: [12:32:26]

17 Q. [12:32:30] Based on the video where we see -- well, you were present and the
18 journalist indicates that the UPC is convinced that it can rehabilitate the mines to
19 exploit them and invites foreign journalists and will guarantee their security. I put
20 my suggestion back to you that that was always the UPC's plan as an important
21 objective for the Mongbwalu operation.

22 PRESIDING JUDGE FREMR: [12:33:07] Sorry, before I give you the floor, you said
23 foreign journalists, you meant foreign investors. I guess it was obvious mistake.

24 MS SAMSON: [12:33:17] Indeed. Yes, I meant foreign investors.

25 PRESIDING JUDGE FREMR: [12:33:18] Mr Bourgon.

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 MR BOURGON: [12:33:19] Mr President, I see on the transcript something about
2 the UPC being -- the UPC being convinced. I have both texts here that are in
3 evidence and I don't see here anywhere where it says the UPC is convinced of
4 anything. What I have in the text here is I have two references to the mining. In the
5 first one in French at lines 511, and I will read in French:

6 (Interpretation) "It can be hoped that if foreign investors are found things would
7 improve."

8 (Speaks English) And that's the journalist speaking. And later on in the text that we
9 have and that is in evidence we have here at lines 518, in French:

10 (Interpretation) "But foreign investors are currently being invited because they will be
11 supplied by because their security will be provided for by the UPC rebels who desire
12 to help foreign investors to rehabilitate this factory."

13 (Speaks English) This, Mr President, is very different from the UPC's convinced that
14 they can do it or that they want to do it. So if we're going to put a question it should
15 be the exact text that is in evidence and not a further text based on -- unless the
16 Prosecution wants to make a proposition not based on the text, that would be
17 different. Thank you.

18 PRESIDING JUDGE FREMR: [12:35:06] Ms Samson.

19 MS SAMSON: [12:35:07] Mr President, I think that my question was fair following
20 on from the interpretation. And I'm looking now at the original, it is part in Swahili,
21 but the original English spoken by the journalist, the foreign investors are now
22 invited because they are going to be provided by -- with security by UPC rebels who
23 are eager to assist foreign investors who are willing to rehabilitate this factory.

24 Q. And my question to the witness is that the UPC invited foreign investors, was
25 eager to assist them to rehabilitate the factory so that it could exploit the gold in

1 Mongbwalu and that this was a major and important objective for the UPC in taking
2 control of Mongbwalu.

3 A. [12:36:26] When I listened to what was said in the video I believe that this was
4 happening at the time when some questions were put to me at the airport and were in
5 relation to the factory. This was an independent journalist who made his own
6 independent analysis of what was happening in the UPC in relation to the taking over
7 of Mongbwalu. By the way, that journalist was not even a member of the UPC so he
8 must have been expressing his own opinion. He wanted people to come because the
9 UPC had just taken over that territory and he said that by that time the machines and
10 the tools had already been damaged. So I believe that he was expressing his own
11 views. He was not a member of the UPC.

12 Now, how does that relate to me? What I wanted was that the people of Mongbwalu
13 should return to Mongbwalu after Mongbwalu was taken over and resume their
14 activities. That would have been a point of pride and honour for me.

15 PRESIDING JUDGE FREMR: [12:37:54] Mr Ntaganda, you are right that we are
16 not so interested in the view of the journalist, but rather the view of the UPC. So if
17 you are saying that it is his own words, it's fine. But what is the difference,
18 according you, between the plan or idea of the UPC and words of this journalist?
19 Just to know because we are interested what was the plan or goals with the area with
20 the mines of the UPC, so could you respond that?

21 THE WITNESS: [12:38:47] (Interpretation) Mr President, what I think is that when
22 Kisembo arrived in the area we went to the factory to find out the extent of the
23 destruction. Everybody had an opinion. People made comments. And this was
24 done by people who were present. Now, even I would have been able to express my
25 views if I had been interviewed at that time.

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 So I don't, I don't know, Mr President, whether I have properly understood your
2 question.

3 PRESIDING JUDGE FREMR: [12:39:25] Yeah, probably not. I will try to be
4 clearer. So you said that idea was to return people back to the work to allow
5 company again be functioning, but there were no idea at least to get some benefit for
6 the UPC from doing that?

7 THE WITNESS: [12:39:51] (Interpretation) The journalists arrived and at that time I
8 did not yet know what -- I did not yet know what the president's intention was, that is
9 the president of the party, what his intention was after the liberation of Mongbwalu.
10 Now, after the liberation of Mongbwalu, the president came, along with some
11 journalists, and at that time many people spoke, the journalists, Kitembo and even
12 myself at the airport. So everybody said something, making comments about what
13 they were able to observe at that time. So I am not able to say that at that time
14 President Tom's intention and ideas after the liberation of Mongbwalu were -- at least
15 at that time, I did not know them at that time. I didn't know what his intentions
16 were.

17 PRESIDING JUDGE FREMR: [12:40:53] All right. At this moment you didn't
18 know. And later on you didn't get to know anything about some economic benefit
19 from having control over gold mines?

20 THE WITNESS: [12:41:20] (Interpretation) Later on, I think, I think it was difficult
21 because nobody, even people in Bunia, nobody had the power to rehabilitate the
22 factory in Mongbwalu. Maybe some foreigners would have been able to do so, but
23 the people in Bunia or in Mongbwalu were not able to do so. The factory remained
24 in that state until we were driven out. The people from Kimin came and tried to
25 work the factory again, but it was simply a cottage-type industry that they were

1 involved in, in very rudimentary exploitation like in Barrière, Nizi and Mabanga. It
2 was the same thing.

3 So it has never been different. That that is what I can say that I know of that
4 situation.

5 PRESIDING JUDGE FREMR: [12:42:23] Ms Samson, please proceed.

6 MS SAMSON: [12:42:26] Thank you, Mr President.

7 Q. [12:42:30] Now, another objective of the Mongbwalu operation which you
8 have just stated, page 50, lines 20 to 22, was that you wanted that people of
9 Mongbwalu should return to Mongbwalu after Mongbwalu was taken over. You
10 wanted the Hema displaced persons to return to Mongbwalu, correct?

11 A. [12:43:17] Yes. That was not my desire. It was not only about Hemas who
12 had fled and deserted the area. There were other ethnic groups as well which had
13 left the region. So my desire was for people to be liberated from the mistreatment
14 they received from the Lendus and the combatants. I wanted those people to leave
15 the area so that the population could return.

16 Now, what is true is that people had left, including the Hemas, and so my intention
17 was to liberate Mongbwalu.

18 Q. [12:43:57] And you wanted to drive out the Lendu and the combatants who
19 you say were mistreating people in Mongbwalu?

20 A. [12:44:25] Personally, and as a commander having served in the army, my
21 intention could not have been to drive out members of the population in the area.
22 My intention was to drive out the APC troops and the combatants who were
23 mistreating members of the civilian population, including the Biras, the Hema and the
24 Lendus. So these people were all the same and no one was superior to the other.
25 So I participated in the liberation of Rwanda under the AFDL and in similar

1 operations elsewhere.

2 Q. [12:45:20] With your experience in Ituri up to that point in time, November
3 2002, you were well aware, weren't you, that if the Hema population goes back to
4 Mongbwalu the Lendu population is driven out?

5 A. [12:45:42] No. Not at all. Look at that video and listen to to what Kisembo
6 is saying. He says that the Lendus have the right to live here and that the Hemas
7 should not occupy the houses of the Lendu. That was the ideology of the army and
8 it applied to all ranks of our army. We had no intention similar to what you have
9 just mentioned. If you listen to the video, if you view the video and listen to what
10 Kisembo is saying, he was saying that nobody should, should bother anyone else.
11 That's what he was saying at the time. And by the way, at that time I didn't know
12 that I was ever going to appear before this Court.

13 Q. [12:46:45] After the UPC took control of Mongbwalu, the Hema population
14 that had been displaced returned?

15 A. [12:47:15] I left that area rather abruptly, but I don't know whether all
16 members of the population who had left had returned. But when I went back there
17 to see my junior brother in Rwanda, I found that activities had returned to normal,
18 well, had returned, and people were happy. Although their lives were not as good
19 as the lifestyles here in Europe, but if you looked at the situation in the Congo and in
20 Mongbwalu specifically, I can say that I noticed that activities had resumed and life
21 had gone back to normal.

22 THE INTERPRETER: [12:48:13] And the Swahili interpreter corrects: This
23 happened when I was on my way to visit my son in Rwanda.

24 MS SAMSON: [12:48:27]

25 Q. [12:48:28] Now, you are aware that Hema were returning to Mongbwalu while

1 you were still there, right?

2 A. [12:48:54] Apart from the time when I left Mabanga, some members of the
3 population -- when some members of the population were asked to transport our
4 property, I don't know whether they were only Hema because you know in Mabanga
5 there were people from other ethnic groups as well who had left Mongbwalu because
6 things had become difficult there. Now, when we went back to those places, we
7 realised that the ethnic groups were beginning to come back from the south, the east
8 and the west. They were coming back. So we had discussions with those people.
9 And you might be able to see that on the video, namely, that members of the
10 population were beginning to return, including the Hemas. That's what I can say.

11 Q. [12:49:51] Now, in relation to the operation on Mongbwalu it was your idea,
12 you've said, to use Kakwavu's troops to attack from the north, correct?

13 A. [12:50:20] When I was given the task, I sent a message to Commander Seyi that
14 some troops from Kakwavu should advance all the way to the target, including
15 movement by the other commander, Salumu, and this is even recorded in the logbook.
16 Yes, I did send those messages out to the location where they were.

17 Q. [12:51:01] And you gave the idea to Kisembo, you said, about using
18 Kakwavu's troops to come from the north, correct?

19 A. [12:51:30] I have not quite understood your question. Maybe it's an
20 interpretation issue. I didn't follow your question.

21 Q. [12:51:39] I'll repeat it. In addition to contacting Seyi and others from
22 Kakwavu's sector, you gave the idea to Kisembo to use Kakwavu's troops to take
23 control of Mongbwalu, right?

24 A. [12:52:08] No. No. It wasn't Kisembo who handled that mission. I am the
25 one who was given the mission and I asked Kisembo to use the forces that had fought

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 the enemy which were coming from Kandoyi. I asked him where those forces were
2 so that I could use them because we were facing the same enemy which had attacked
3 them in Ariwara and Aru. So we felt that if we drive the enemy out of their base in
4 Mongbwalu, then Jérôme would be at peace in Aru.

5 PRESIDING JUDGE FREMR: [12:53:03] Mr Bourgon.

6 MR BOURGON: [12:53:04] Based on the witness's last response, I'd like to have a
7 reference as to where he -- the reference because the Prosecution's question on page
8 56, line 5 is "And you gave the idea to Kisémbó, you said, about using Kakwavu's
9 troops." So can we have a reference where the witness would have said this?

10 PRESIDING JUDGE FREMR: [12:53:28] Ms Samson.

11 MS SAMSON: [12:53:31] Yes, certainly.

12 Q. [12:53:33] I'm referring to your testimony-in-chief at transcript T-216, page 45,
13 lines 6 to 9 and line 14 to 16. And I'll quote it for you. Your counsel asked you:

14 Question: "So the idea there you mentioned, and I think the idea of using the
15 brigade of Jérôme, Jérôme's brigade, can you give us more details about that? Who
16 had that idea? How did the discussions go between you and Kisémbó?"

17 And your answer was: "I gave him that idea."

18 And then at line 14 you said: "And Kisémbó was in agreement with this idea. He
19 said, 'I'm in agreement with you using Jérôme's forces because I know that if you
20 drive out the enemy from Mongbwalu, then Jérôme will be able to live in peace from
21 now on.'"

22 So you gave the idea of using Jérôme's brigade to Kisémbó and he accepted it,
23 correct?

24 A. [12:55:08] Yes, that is clear. I am the one who asked him to do that, who gave
25 him the idea, and I subsequently used those forces. But you said that I asked

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 Kisembo to use those forces. Those are two different things. And it's different from
2 my testimony.

3 Q. [12:55:32] Now, sir, my question actually was:

4 "You gave the idea to Kisembo to use Kakwavu's troops to take control of
5 Mongbwalu, right?"

6 And your answer was "No."

7 But I understand that now your answer is yes.

8 A. [12:55:55] I did not say no. You know very well that I'm the one who gave
9 Kisembo the idea. But when you say that I say no, I don't remember. What I
10 remember is that you said that I asked Kisembo to use Kakwavu's troops and that's
11 where I said no, it is not Kisembo who used those troops. I am the one who used
12 those troops. I gave him the idea, he accepted the idea and I used, I used the troops.
13 You said that I asked Kisembo to use those troops, and that's where we have a
14 disagreement. I don't agree with you on that.

15 Q. [12:56:46] You went to Aru to meet with Jérôme Kakwavu?

16 A. [12:57:05] Yes, before going to Mongbwalu I went to Aru.

17 Q. [12:57:09] It was around the end of October, beginning of November 2002?

18 A. [12:57:23] Yes, around that time. Yes. Yes.

19 Q. [12:57:35] The UPC provided weapons to Jérôme Kakwavu's troops in advance
20 of the Mongbwalu operation, correct?

21 A. [12:58:07] No. We made available a force to him and that force had firearms.
22 So we made available some armed forces to him, but we did not give them firearms.

23 Q. [12:58:35] Did you give Jérôme support weapons, grenade launcher and
24 recoilless?

25 A. [12:59:00] Yes. Those weapons were with the forces that were made available

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 to him and they went with all such weapons, including support weapons.

2 Q. [12:59:18] You provided uniforms to Kakwavu's troops?

3 A. [12:59:36] Yes. They went along with uniforms because when he left the APC,
4 those forces were wearing APC uniforms so in order to harmonize our uniforms,
5 since they were now on the side of the UPC, it was necessary for them to wear our
6 uniforms.

7 MS SAMSON: [13:00:08] Mr President, I note the time and I can continue after the
8 break.

9 PRESIDING JUDGE FREMR: [13:00:13] Yes. Thank you for your punctuality.
10 Mr Bourgon.

11 MR BOURGON: [13:00:17] Thank you, Mr President. To avoid wasting time at
12 the beginning of the next session, there was one transcript correction on page 51, line
13 25 in English. The witness mentioned a word which is not the same in French at
14 page 48, lines 13 to 17. And this is about the people who went to Mongbwalu with
15 journalists. We say that the French is the right version, but it should be checked
16 against the record.

17 The other issue, Mr President, I refer to the French transcript page 52, line 1 to page 53,
18 line 28. It appears from what I'm told that the words as translated or as interpreted
19 to the witness, the idea of -- the words "idea" and "suggestion" were used
20 interchangeably, which -- so maybe we can get also an audio recording for a check for
21 these words because that -- there seemed to be an exchange where there was some
22 misunderstanding as to did you suggest", "did you understand idea". So maybe we
23 can get an audio recording checked. Thank you.

24 PRESIDING JUDGE FREMR: [13:01:44] Noted and supported.

25 So now we take our break and we will reconvene at half past 2.

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 THE COURT USHER: [13:01:54] All rise.

2 (Recess taken at 1.01 p.m.)

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

4 THE COURT USHER: [14:30:34] All rise.

5 Please be seated.

6 PRESIDING JUDGE FREMR: [14:31:08] Good afternoon, everybody. This
7 afternoon session is going to be devoted to the next part of cross-examination of
8 Mr Ntaganda conducted by Prosecution by its lead counsel, Ms Samson.

9 Ms Samson, you have the floor.

10 MS SAMSON: [14:31:29] Thank you, Mr President. And for the record, I would
11 like to note that two members of the Prosecution team are no longer in this court
12 session, Mr Eric Iverson and Mr James Pace.

13 PRESIDING JUDGE FREMR: [14:31:42] Thank you, Ms Samson.

14 MS SAMSON: [14:31:46] And Mr Rens van der Werf has joined.

15 Q. [14:31:53] Before the break we were discussing the provision of men, weapons
16 and uniforms to troops in Aru in the northeast sector, and I would like to show you
17 a document. It is DRC-OTP-0109-0115, item 1133 on our list. It's a public
18 document.

19 The document on your screen is an FPLC -- UPC FPLC document and it reads at the
20 top, and I will read it in French, (Interpretation) "Dated 26 to 27 October 2002, stock
21 report on military equipment state of delivery sector Aru".

22 (Speaks English) And if we can scroll down, there's -- (Interpretation) "Delivery staff
23 HQ sector Aru". (Speaks English) We see the date, 26 to 27 October 2002, a list of
24 items, SMG, uniforms, military uniforms, 60 millimetre mortars, ammunition for SMG,
25 an item described as, in French, (Interpretation) "Mortars 60", (Speaks English) and

1 magazine. And the quantity for each item is listed as well, with an observation that
2 some of the weapons don't work well and need to be repaired before use.

3 And if we could scroll a bit further down to the end of the document, we can see
4 a signature, "Received by Commander Selemani, T3 sector operations northeast", and
5 for the delivery, a liaison officer, Commander Didier Wanican, and we also see below,
6 "Approved by Jérôme Kakwavu, commander northeast sector". And we can perhaps
7 show the full document for your benefit.

8 Now, sir, you are familiar with this document, are you not?

9 A. [14:36:10] I don't know this document. I'm seeing it for the first time.

10 Q. [14:36:18] What we can see on the document is that Commander Didier Wanican,
11 whom we have spoken about during your testimony, signs as delivering a number of
12 weapons and military uniforms and ammunition to the northeast sector, correct?

13 A. [14:36:58] I see the name on the document, but I remember at the time Didier
14 was a commander at Mahagi. I don't know how he went with ammunition to the
15 place specified in this document. He wasn't a delivery officer.

16 Q. [14:37:36] I put to you, sir, based on the information contained in this document
17 signed by officers within the FPLC, that the UPC provided a number of weapons,
18 individual SMG bombs and ammunition, to Jérôme Kakwavu, not just as you've said
19 men with their own weapons, but an independent delivery and distribution of
20 a number of individual weapons, uniforms and magazines, contrary to your evidence.

21 A. [14:38:38] I don't know this document, but I know that I sent men. As I said
22 here, I sent them with their weapons. I don't know if in the plane, when they got
23 into the plane they didn't get in with their weapons. So that's something that I don't
24 know. What I do know is that I sent a battalion. It was composed of 300 to 350 men.
25 I therefore can't comment on the document because I don't know it. I don't even

Trial Hearing
WITNESS: DRC-D18-D-0300

(Private Session)

ICC-01/04-02/06

1 know who drafted this document.

2 Q. [14:39:27] You can clearly see who signed it. Are you disputing that these
3 signatures are accurate, Jérôme Kakwavu, Selemani and Didier Wanican?

4 A. [14:39:55] I sent Peter. I didn't send Didier.

5 MS SAMSON: [14:40:04] And may we move, Mr President, into private session for
6 a few questions, please?

7 PRESIDING JUDGE FREMR: [14:40:13] For sure. Court officer, let's move into
8 private session.

9 (Private session at 2.40 p.m.)

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Trial Hearing
WITNESS: DRC-D18-D-0300

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-D18-D-0300

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-D18-D-0300

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-D18-D-0300

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 (Open session at 2.55 p.m.)

2 THE COURT OFFICER: [14:55:48] We are in open session, Mr President.

3 PRESIDING JUDGE FREMR: [14:55:59] Thank you, court officer.

4 Ms Samson, please.

5 MS SAMSON: [14:56:05]

6 Q. [14:56:07] You spent several days in Aru at that time?

7 A. [14:56:37] I can't tell you immediately how many days I spent on that occasion in
8 Aru. I left in the month of November. But I can't even confirm if the date
9 mentioned in the document is the exact date when I left Aru, but I did spend some
10 days in Aru.

11 Q. [14:57:27] Your testimony today, page 58, lines 8 to 10:

12 Question: "It was around the end of October, beginning of November 2002?" That
13 you went to Aru.

14 Answer: "Yes, around that time. Yes. Yes."

15 And when you were visiting Kakwavu in Aru you also went with Jérôme Kakwavu to
16 visit troops in Kandoyi, correct?

17 A. [14:58:14] That's correct. I also carried out a visit to the men who were in
18 Kandoyi.

19 Q. [14:58:30] And you spoke to the troops?

20 A. [14:58:46] I remember I spoke to them, but I didn't speak to all of them. Some
21 of them were already on the front line. And there were APC -- there were APC
22 troops because there were APC troops who had launched an attack.

23 Q. [14:59:10] In your experience with conducting military operations would you
24 agree that military operations require careful planning?

25 A. [14:59:46] That's obvious. You have to have preparation within the army.

1 Q. [14:59:56] And you have to ensure that your troops have weapons and
2 ammunition before operations?

3 A. [15:00:21] Before starting an operation there are numerous preparations to be
4 made, not only weapons and munitions, you need to see whether anyone is ill and
5 therefore has to be excluded from the operation. You have to check also that morale
6 among the troops is good. There's lots to be done before actually starting an
7 operation.

8 Q. [15:00:51] When you were in Kandoyi you checked on the morale of those
9 troops?

10 A. [15:01:11] I spoke to them and that is why I went there, because I wanted those
11 in the front line to show that we were behind them, that we had not abandoned them,
12 and that their commanders were close to them and were supporting them.

13 Q. [15:01:43] In order to mobilise Jérôme Kakwavu's troops to attack Mongbwalu
14 from the north you had to communicate the attack plan to them, right?

15 A. [15:02:19] No. That's not what happened. In Kandoyi the enemy had already
16 started attacking Jérôme's forces, combat was already ongoing. So we couldn't ask
17 them to go and launch an attack in Mongbwalu when they hadn't yet finished dealing
18 with the attack in Kandoyi. So until Mbijo there was the enemy along the whole of
19 the route so we couldn't ask them to -- ask them to launch an attack at a distance
20 when there was an enemy 200 metres away from them. There are stages in an
21 operation, we didn't know whether they were even capable of driving out the enemy,
22 the APC forces in Kandoyi. How could we then have gone and set up a plan for the
23 attack of Mongbwalu when we hadn't yet completed the operation in Kandoyi?

24 Q. [15:03:37] Mongbwalu is the second largest city in Ituri after Bunia, isn't it?

25 A. [15:03:56] Yes. In terms of activities carried out there, I think that's possible.

1 After Bunia, yes. Yes, it's quite possible that this is the second most important town.
2 I'm not sure whether there's Aru as well, but if we look at the criteria of activities
3 carried out in a town, it could be the second most important.

4 Q. [15:04:35] Mongbwalu had an airport which also made it important for you,
5 correct?

6 A. [15:04:59] For an army an airport is a strategic point in any operation, military
7 operations that is. So there was one in Mongbwalu.

8 Q. [15:05:20] And in November 2002, October, November, the UPC controlled
9 Bunia, and with the integration of Kakwavu's forces you controlled Aru and Mahagi,
10 correct?

11 A. [15:05:54] With regards to Kakwavu, I would say that it was in October that he
12 came to join us. I didn't know him before that time. I went to see him and I
13 welcomed him. That was my intention, because I did not know him before that. I
14 simply wanted to welcome him to our army, the FPLC.

15 Q. [15:06:34] I will repeat my question: In November, October 2002, the UPC
16 controlled Bunia and with the integration of Kakwavu's forces you controlled Aru
17 and Mahagi, correct?

18 A. [15:06:59] Yes. When Jérôme arrived he took Aru and Ariwara. The UPC had
19 already deployed in Mahagi. Didier met us in Mahagi. We were already there.
20 He deployed in Mahagi without any fighting.

21 Q. [15:07:35] And the UPC could not ensure full control of Ituri unless it also
22 controlled Mongbwalu, the second largest city, correct?

23 A. [15:08:01] Yes. To free Ituri and to drive out the APC troops, because
24 Mongbwalu is in, in Ituri, we couldn't not free, liberate this town as the others had
25 been liberated.

1 Q. [15:08:29] And yet your evidence is that on the eve of one of the most important
2 and certainly a complex military operation you did not bother to mention the
3 operation to Jérôme Kakwavu or his troops in Aru or Kandoyi at all?

4 A. [15:09:05] Could you please read the passage where I have said that and that
5 will allow me to answer you.

6 Q. [15:09:21] Now, what you've said is, at lines 14 to 18 on page 71, is that, quote:
7 "With regards to Kakwavu, I would say that it was in October that he came to join us.
8 I didn't know him before that time. I went to see him and I welcomed him. That
9 was my intention, because I did not know him before that. I simply wanted to
10 welcome him to our army, the FPLC."

11 And my question to you is: You did not, according to you, deem it at all important
12 to discuss an attack such as the one that was upcoming in Mongbwalu with
13 Jérôme Kakwavu whose forces you had the idea to use during that attack?

14 A. [15:10:50] You're talking about an attack that was being prepared when? When
15 I went to Aru I knew nothing about Mongbwalu. I didn't know Mongbwalu. I'm
16 not from Ituri. I came to Ituri to welcome Jérôme. That's all. Everything related to
17 Mongbwalu. I can say again I didn't even know where Mongbwalu was. When I
18 arrived there, they knew that it had been attacked, so I went to console him, because
19 he had been attacked by the APC. So I went to Aru. I didn't know Mongbwalu at
20 all.

21 MS SAMSON: [15:11:43] Mr President, may we move briefly into private session?

22 PRESIDING JUDGE FREMR: [15:11:47] Certainly.

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

24 (Private session at 3.11 p.m.)

25 (Redacted)

Trial Hearing
WITNESS: DRC-D18-D-0300

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-D18-D-0300

(Private Session)

ICC-01/04-02/06

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24 (Open session at 3.20 p.m.)

25 THE COURT OFFICER: [15:20:11] We are back in open session, Mr President.

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 PRESIDING JUDGE FREMR: [15:20:27] Thank you.

2 Ms Samson, please proceed.

3 MS SAMSON: [15:20:34]

4 Q. [15:20:35] I would like now to show you some pages of your radio
5 communications logbook.

6 Mr President, I would ask -- we'll show them on the display, certainly. The practice
7 that we had previously was to provide the witness with a binder which had come
8 from the Defence. It was a Defence binder. So I would ask whether the Defence
9 still has the binder in the courtroom.

10 PRESIDING JUDGE FREMR: [15:21:08] Defence? I believe that Ms Martineau has
11 everything. And I was right.

12 So, court usher, please assist, provide Mr Ntaganda with the dossier.

13 Mr Bourgon.

14 MR BOURGON: [15:21:30] Mr President, I would like to have one minute, please, to
15 check a reference, because I was going to ask to address the Chamber in the absence
16 of Mr Ntaganda but I need to check my reference first.

17 PRESIDING JUDGE FREMR: [15:21:42] For sure.

18 Mr Bourgon.

19 MR BOURGON: [15:22:11] Mr President, I believe it would be appropriate to
20 address the Chamber in the absence of the witness, please.

21 PRESIDING JUDGE FREMR: [15:22:17] No problem.

22 So, guards, please kindly take Mr Ntaganda away from the courtroom for a while.

23 Mr Ntaganda, please.

24 (The witness stands down)

25 PRESIDING JUDGE FREMR: [15:22:49] Mr Ntaganda has left the room. We are in

Trial Hearing
WITNESS: DRC-D18-D-0300

(Private Session)

ICC-01/04-02/06

1 open session. Do you want to address us in open session?

2 MR BOURGON: [15:22:59] I will refer to a statement which was just used in private
3 session, so --

4 PRESIDING JUDGE FREMR: [15:23:07] Maybe it would be more secure to go into --

5 MR BOURGON: [15:23:10] It might be, Mr President.

6 PRESIDING JUDGE FREMR: [15:23:12] So let's move into private session.

7 (Private session at 3.23 p.m.)

8 (Redacted)

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Trial Hearing
WITNESS: DRC-D18-D-0300

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

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4 (Open session at 3.27 p.m.)

5 THE COURT OFFICER: [15:27:49] We are back in open session.

6 PRESIDING JUDGE FREMR: [15:27:56] Thank you, court officer.

7 Ms Samson, please.

8 MS SAMSON: [15:28:00] Thank you.

9 Q. [15:28:00] Now, before you you have the logbook, the first tab contains what we
10 term the loose pages of the logbook and the second tab contains the logbook itself.

11 THE COURT OFFICER: [15:28:22] I'm sorry to interrupt, but could we please have
12 the ERN number of the logbook for the record. Thank you.

13 MS SAMSON: [15:28:30] Yes, certainly. The pages that I will be referring to right
14 now are the -- what we term the loose pages. And the registration number for the
15 original is -- and I will for the moment be using the reorganised loose pages as
16 registered by the Defence. The Chamber will recall that the Prosecution disclosed an
17 original order in the way in which it was received and Mr Ntaganda reorganised it,
18 re-registered it and we were using that version.

19 PRESIDING JUDGE FREMR: [15:29:29] I suppose it's fine with Defence?

20 MR BOURGON: [15:29:34] Mr President, I would like to verify. I believe that the
21 documents presently in the possession of Mr Ntaganda are not the same version that
22 my colleague is referring to. I just want to make sure that he has the same version
23 which is, my colleague just mentioned, the reorganised version, if that's correct.

24 MS SAMSON: [15:29:58] I would encourage, support counsel taking a look. When
25 I looked at it, it looked like it was the reorganised version, but --

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

- 1 PRESIDING JUDGE FREMR: [15:30:07] Even the Chamber encourages Mr Bourgon.
2 Do you have it at your disposal? You can check.
- 3 MR BOURGON: [15:30:12] Yes, if we can have the Court usher to give us a hand just
4 to verify that --
- 5 PRESIDING JUDGE FREMR: [15:30:19] Court usher, please assist.
6 And, Mr Bourgon, please refrain from those gestures.
- 7 MR BOURGON: [15:30:36] I am making no effort in this regard.
8 I am informed that Mr Ntaganda has the correct version.
9 Thank you.
- 10 PRESIDING JUDGE FREMR: [15:30:56] Very well. So now we are sure that we can
11 proceed.
12 Ms Samson, please.
- 13 MS SAMSON: [15:31:06] Thank you.
- 14 Q. [15:31:25] Mr Witness, if you could take a look please at the loose pages starting
15 DRC-OTP-00 -- pardon me, DRC-D18-0001-5748.
- 16 A. [15:32:28] Could you repeat the reference, in particular the last three figures, as
17 was done before? That would greatly facilitate things for me.
- 18 Q. [15:32:49] Yes. Certainly. The number at the bottom right-hand portion of the
19 page is DRC-D18-0001-5748.
- 20 PRESIDING JUDGE FREMR: [15:33:18] Court usher, maybe could you kindly assist
21 Mr Ntaganda to make it easier for him. 5748.
22 Mr Bourgon.
23 Thank you, court usher.
- 24 MS SAMSON: [15:33:56]
25 Q. [15:34:09] And I would like to draw your attention to the top of the page, the

1 messages at the top of the page.

2 A. [15:34:20] I'm following.

3 Q. [15:34:22] And we have the first one from Commander Salumu, SA dot. It's

4 a situation report. And the second from Commander Seyi.

5 For the benefit of the Chamber I will provide the translation, which perhaps ought to

6 be the version that's up on the screen now that Mr Ntaganda has been able to situate

7 himself. The translation is DRC-D18-0001-5778.

8 Sir, have you had a chance to read the two messages, situation reports, one from

9 Commander Salumu, one from Commander Seyi, sent to you on 19 November at

10 7.30 a.m.?

11 A. [15:37:24] I'm reading it.

12 MS SAMSON: [15:39:22] Mr President, would the Chamber wish that I read it out so

13 that there is a translation available in English?

14 PRESIDING JUDGE FREMR: [15:39:31] Yes, I don't see any problem with that.

15 Please proceed.

16 MS SAMSON: [15:39:34] I will do so. The first situation report from

17 Commander Salumu states in French:

18 (Interpretation) "Calm. I sent 79 soldiers to Damas. They are going to continue to

19 work until they reach the objective. Where it concerns the munitions, I have sent 10

20 of them for the SMG. I would like you to send me 20 of them and I am organising

21 things such that they go and arrive at Pili-Pili. And it's from there that they will take

22 up position (more or less 10 kilometres from the objective)." (Speaks English) And the

23 situation report from Commander Seyi reads in French:

24 (Interpretation) "Calm. The TATA lorry has broken down on way. Two small

25 vehicles arrived with some spares. We are awaiting the TATA vehicle. It is going

1 to arrive today. The two small ones arrived during the night."

2 (Speaks English) Sir, you testified that these were messages about preparations to go
3 to Mongbwalu?

4 A. [15:41:27] You read my words. Or are you putting something to me?

5 Q. [15:41:36] You stated in transcript T-216, page 62, lines 22 to 25, quote:

6 "Yes. There were preparations to go to Mongbwalu. That was the objective of this
7 message or the subject of this message."

8 A. [15:42:11] These messages just speak about Mongbwalu. When you read
9 "objective", that's Mongbwalu that's being talked about here.

10 Q. [15:42:24] And it's clear from the situation reports that you were being informed
11 about operational matters for the attack, including troop deployment, requests for
12 weapons and ammunition, on 19 November.

13 A. [15:43:00] These messages were received by my radio operator. But it wasn't
14 addressed to anyone, even if I read it, because it's my radio operator who received
15 these messages.

16 And afterwards I answered the message which had been sent by Sierra Alpha to
17 announce that I was going to provide ammunition sent to Seyi.

18 Q. [15:43:48] Salumu needed ammunition to attack the objective, which was
19 Mongbwalu; that's right, isn't it?

20 A. [15:44:08] No. Here in this message Salumu had already left Bunia and had
21 received ammunition because he had already tried to take Mongbwalu. He had
22 failed because there wasn't ammunition. And after he had failed, when I was in Aru,
23 he returned to Bunia, to Kisémbó's residence, where he got ammunition as well as
24 weapons. He left and he arrived and it was at that time that there was this contact.
25 When he contacted Seyi -- Salumu says he sent troops to Damas. He therefore also

1 gave ammunition because in Damas they were short of ammunition.

2 Q. [15:45:15] In this message Salumu says, in French:

3 (Interpretation) "Where it concerns the munitions, I sent 10 for the SMG. I would
4 like you to send me 20 of them." (Speaks English) That's a request for ammunition
5 which he needed for the attack on the objective, Mongbwalu, isn't it?

6 A. [15:45:57] This was about reimbursing it. Salumu said that he had already
7 given Seyi the quantity of munitions. That is reported in the document, and
8 afterwards they attacked and they took Mongbwalu. And I also had to send
9 ammunition which he had given to Seyi when the troops had been sent to Damas.
10 He insisted on that, that this ammunition that he had given to the men who went to
11 Damas to be reimbursed to him.

12 Q. [15:46:51] Now, Commander Seyi is writing to you that two -- that a truck broke
13 down and that two vehicles arrived with some matériel, correct?

14 A. [15:47:15] Madam, I didn't send the message. Where it concerns military
15 communication, you have to mention from and to. And if you consider this message,
16 this is a message received by my radio operator. Message from Seyi was destined
17 for his commander. He was speaking about an incident that happened on the road,
18 because the vehicle from Aru -- and I at the time, I was not in Aru. There is no road
19 from Bunia for the vehicle to get to Damas on. At the time no vehicle left Bunia in
20 order to go to Damas because the road was not -- it was not in a state to drive on it.
21 Now, this is -- were message that -- these are messages that the radio operator got
22 from Salumu and Seyi.

23 Q. [15:48:29] Your radio operator gave you the message, didn't he?

24 A. [15:48:49] I read them later. You might note that I sent an answer to Salumu to
25 say that I was going to give him the ammunition back and whence -- and later I could

1 provide him with the ammunition that he had given to Seyi in order for him
2 afterwards to be able to advance towards the objective.

3 Q. [15:49:27] And you were informed, according to Commander Seyi's message,
4 that a truck broke down and two other vehicles arrived with matériel, correct?

5 A. [15:50:10] The message was the message that was also received by my radio
6 operator and I read it. And if you read it carefully, these vehicles came from Aru.
7 So it is the sector commander who sent matériel, because they were short of
8 munitions and that's the reason why Salumu had sent or sent in advance ammunition.
9 But afterwards he was sent supplies, even if the truck had problems on the way.

10 Q. [15:50:58] Now, if you could turn, please, to the next page in the original and in
11 the translation. It is page 5778 in the translation and page 5750 in the original. It
12 should be the next page of the translation. If we could focus on the second message
13 on the page, please. It is dated 19 November and it is 14.30, the time. I will read
14 the entry, which is in French:

15 (Interpretation) "Damas, the group of 79 is ready. It is preparing to go where
16 Commander Salumu is in accordance with the instructions received from the
17 hierarchy."

18 (Speaks English) This message is related to the message that we just read on the
19 previous page, correct? Page 5778 of the translation and page 5748 of the original.

20 A. [15:53:52] That's correct. If you look carefully, he -- well, he is talking about
21 Damas there and that's why he was in Damas. He says that the group of 79 were
22 preparing to go to return to where Commander Salumu was. So he is writing that
23 where Seyi was in Damas, the group which was there had started to advance towards
24 the place where Salumu was. That's to say that this -- these 79 men were Salumu's
25 men. And you can see that if you read the preceding messages.

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 Q. [15:54:47] So here again we have information which you received on the
2 deployment of troops for the Mongbwalu operation.

3 A. [15:55:13] Here I hadn't given the order. You can see that this order was given
4 in a later message that I sent. Because if this message had been a message which was
5 sent by me, it would have been marked "out". But if you look here, these messages
6 are marked "in". They must be messages which had been received and which were
7 sent by other commanders. And in the messages that I sent where it's mentioned
8 "out" I explained to them how they were going to proceed.

9 Q. [15:56:02] Yes, that's right. I was asking or suggesting that we have
10 information which you received about the deployment of troops for the Mongbwalu
11 operation.

12 A. [15:56:28] That's it. I received the message and that's the reason why I said that
13 they were preparing to go to Mongbwalu and they had to exchange ammunition and
14 the men had to advance. That was all part of the plan to go to free Mongbwalu.

15 Q. [15:56:59] And now, sir, I would ask that you turn to the second logbook, behind
16 the second tab in your binder. It is DRC-OTP-0017-0033 at page 0213. And the
17 translation that I would ask to have displayed is DRC -- one moment while I get the
18 correct translation.

19 The translation is DRC-OTP-2102-3854 at page 4035.

20 Sir, have you found the page? Page 0213 are the last four digits of the page.

21 A. [15:58:56] I'm there.

22 Q. [15:59:00] Now we'll just wait for the translation.

23 I would like to focus on the second message of the page, please.

24 It's a message dated 19 November 2002 at 1310 and this is a message that you sent to
25 Commanders Salumu and Seyi. I will read it in French:

1 (Interpretation) "Do everything you can and all move forward to the objective. Stop.
2 As far as I am concerned they are currently repairing my vehicles. I will bring you
3 Salumu the cartridges that you gave to Seyi. Stop. This to be done at all speed."

4 (Speaks English) And, sir, this is the message that you were referring to moments ago
5 in which you give the order to advance towards the objective, correct?

6 A. [16:01:31] Yes. This is my first message, the first one I sent to Seyi and to
7 Salumu. So that they should advance to the objective which was in fact Mongbwalu.

8 Q. [16:01:56] And since Commanders Seyi and Salumu were advancing from two
9 different directions, it was important to the operational plan that the commanders
10 advanced at the same time, correct?

11 A. [16:02:31] Yes. Yes. I asked Kisembo to use the forces. Kisembo agreed to
12 that and that's why I used these two forces for the two objectives and that's how they
13 managed to enter Mongbwalu. Because initially Salumu had failed because it had
14 been poorly planned. He had not planned his operation well, or in such a way as to
15 allow him to defeat the enemy.

16 Q. [16:03:17] Now, sir, at page 88, line 25 you've said, quote: "I asked Kisembo to
17 use the forces." I understood your testimony earlier today in answer to my question
18 about whether it was your idea to use the forces that you did not need to ask Kisembo
19 to use his forces, that you could do that on your own.

20 A. [16:03:59] I said that it was I who gave this idea and he said it was a very good
21 idea. I said that I put forward this idea to him and he accepted it. If I said that I
22 asked permission and he said yes, well, what's the difference? I couldn't use these
23 forces without the chief of general staff being aware of it and having approved it.
24 That would not have worked. So I had no problem with him.

25 Q. [16:05:09] While we look for the exact reference from today's transcript, it was

1 up to you to coordinate the advance of Commanders Salumu and Seyi, correct?

2 A. [16:05:35] Yes. When I received the authorisation to command I started my
3 work to liberate Mongbwalu.

4 Q. [16:06:00] Now I have found a reference in your earlier testimony from today,
5 page 58, lines 3 to 5, and I'm quoting your answer. You said: "You said that I asked
6 Kisembo to use those troops, and that's where we have a disagreement. I don't agree
7 with you on that."

8 PRESIDING JUDGE FREMR: [16:06:44] Hold on, Mr Witness. Mr Bourgon.

9 MR BOURGON: [16:06:47] Mr President, the two lines before that the witness says
10 exactly what he said a few moments ago. So for the Trial Chamber I suggest we look
11 at the end of page 57, the last two lines, 24 and 25, and then the first five lines of 58,
12 which are those referred to by my colleague. That paragraph, and of course I recall
13 what I said this morning at the end of the session, I think will make it clear for
14 everyone.

15 MS SAMSON: [16:07:22] Let me read. I read page 58, lines 3 to 5. So I will read
16 page 57, the last two lines, 24, 25, I will go a bit further up, page 57, line 22,
17 answer -- in fact, I will go further back. My question, line 17:

18 "Now, sir, my question actually was: 'You gave the idea to Kisembo to use
19 Kakwavu's troops to take control of Mongbwalu, right?' And your answer was 'No.'
20 But I understand now that your answer is yes." Your answer was no.

21 Answer: "I did not say no. You know very well that I am the one who gave
22 Kisembo the idea. But when you say that I say no, I don't remember. What I
23 remember is that you said that I asked Kisembo to use Kakwavu's troops and that's
24 where I said no, it is not Kisembo who used those troops. I am the one who used
25 those troops. I gave him the idea, he accepted the idea and I used the troops. You

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 said that I asked Kisembo to use those troops, and that's where we have
2 a disagreement. I don't agree with you on that."

3 So your testimony today was that you disagreed or you did not ask Kisembo to use
4 the troops.

5 A. [16:09:28] I repeat, I didn't ask Kisembo to use these troops. That's not what I
6 said. I don't understand your question therefore.

7 Q. [16:09:40] I think your answer is very clear, that you did not ask Kisembo to use
8 the troops.

9 Now, in the message that we were looking at on 19 November 2002 at 1310, which I
10 read, you have stated that at this moment in time your vehicles were being repaired,
11 correct?

12 A. [16:10:37] I said my vehicles. At any time they will do the repair of my vehicles
13 and then I can take Salumu the ammunitions, the cartridges. Which is what is
14 written in the original text.

15 Q. [16:11:19] Yes. And that was on 19 November. And now you've testified
16 before the Chamber that on 20 November your vehicle was still at a garage in Bunia.
17 And I refer to transcript T-216, page 83, lines 10 to 12. Correct?

18 A. [16:11:56] It was on that date that I sent this message. At 1300 hours I said that
19 my vehicles were in the garage. So on the 20th my vehicles were still there.

20 Q. [16:12:22] And you testified that you only left Bunia on November 21 at
21 1700 hours. I'm referring to transcript T-216, pages 85 to 87. Correct?

22 A. [16:12:55] Yes. That was indeed at 1700 hours. Yes.

23 Q. [16:13:07] And according to you you met Salumu Mulenda for the very first time
24 when you arrived in Mongbwalu, right?

25 A. [16:13:30] Yes. Since we had left, we had separated at Jinja, this was the first

1 time I saw him.

2 Q. [16:13:48] And that was two days after you had left Bunia, so you met Salumu
3 on 23 November?

4 A. [16:14:16] Yes, in the evening of the 23rd. Yes. It was night. I arrived at his
5 location at night.

6 Q. [16:14:37] And the Mongbwalu operation had already been completed when
7 you arrived?

8 A. [16:15:03] I wouldn't say that it was completely finished, because Sayo still had
9 to be liberated, the only remaining place.

10 Q. [16:15:19] But Mongbwalu city centre, the objective of Salumu and Seyi's
11 operation, had concluded, you say?

12 A. [16:15:40] Yes. Mongbwalu down to l'usine, that had all been liberated. Only
13 Seyi had not yet been liberated.

14 Q. [16:16:12] And when you met Salumu you provided him with the ammunition
15 he requested?

16 A. [16:16:31] Yes. He took these munitions which I gave him.

17 Q. [16:16:44] Now from a military perspective it would not make much sense,
18 would it, for Commander Salumu to ask for ammunition before the start of an
19 operation only to receive it after his part of the operation was completed?

20 A. [16:17:22] Yes, because he had asked for the munitions he had given to
21 Commander Seyi to be replaced. He needed some ammunition in reserve. When
22 you're fighting you need to have something in reserve in case there's another
23 stop -- another attack, you need to have something in reserve. That's quite normal.

24 Q. [16:17:50] His logbook message, Commander Salumu, did not say, did it, that he
25 needed the ammunition for reserve stock?

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 A. [16:18:25] You're asking the question: Is that possible in the army? Well, I'm
2 saying yes, it is possible. But one possible -- a possible hypothesis does not have to
3 be necessarily in the message. I'm just saying that that is a possible hypothesis for
4 things in the army, not necessarily that it appears in the message.

5 Q. [16:18:57] And so the information that you had at your disposal when you were
6 collecting the ammunition was simply that Salumu needed it before the operation,
7 correct?

8 PRESIDING JUDGE FREMR: [16:19:12] Hold on, Mr Witness.
9 Mr Bourgon.

10 MR BOURGON: [16:19:15] Well, I believe, Mr President, that that is incorrect. This
11 is absolutely not what the message says. The information available to the witness is
12 in that message, so my colleague should put the message to the witness but not
13 something else.

14 PRESIDING JUDGE FREMR: [16:19:31] Ms Samson.

15 MS SAMSON: [16:19:32] Mr President, counsel ought not to be making observations
16 on the content of the messages, in my estimation. If the objection is that the question
17 is somehow unfair because the witness cannot recall the exact content of the message,
18 well, that has not been borne out by the testimony of the witness as to his recall of the
19 message we just saw.

20 PRESIDING JUDGE FREMR: [16:19:59] (Microphone not activated)

21 MS SAMSON: [16:20:06] Mr President, I believe the transcript hasn't captured your
22 last answer because of possibly --

23 PRESIDING JUDGE FREMR: [16:20:13] Yes. So I will repeat it. I do agree with
24 you, Ms Samson. Please proceed.

25 MS SAMSON: [16:20:19]

1 Q. [16:20:52] I will repeat my question: The information that you had at your
2 disposal from the logbook message when you were collecting the ammunition was
3 simply and only that Salumu needed the ammunition at a time before the operation
4 had started, correct?

5 A. [16:21:00] He was asking for the ammunition that he had given to Seyi. And
6 that's clearly in the message. He said that he had sent a quantity of ammunition to
7 Seyi. That's clearly stated. And he had sent this in 18 -- sorry, 78. And we can see
8 that in the message. I said, "Do everything that is necessary to advance to the
9 objective. For my part, my vehicles are currently being repaired. I will take to
10 Salumu the cartridges -- no, Salumu, I will bring you the cartridges that you gave to
11 Seyi." It's very clear. He has to fight and I am going to come and bring the
12 cartridges that he gave to Seyi. It's really quite clearly expressed in this message.

13 Q. [16:22:12] Now, sir, you knew, didn't you, from Kisémbó that Salumu's earlier
14 attempt to take control of Mongbwalu had failed because he did not have enough
15 ammunition, correct?

16 A. [16:22:43] I arrived. I had the information that Salumu had taken the cartridges
17 as well as the operators of the heavy weapons and I spoke to Kisémbó, Salumu had
18 already gone to Dala, Mabanga, where he had left his troops. And at that point I
19 received the order to go and liberate Mongbwalu myself. That was when I had that
20 information.

21 Q. [16:23:22] So you had that information that without a proper supply of
22 ammunition this time around, surely the second attempt to take over Mongbwalu
23 would have failed, correct?

24 A. [16:23:57] I had the information that Salumu had made a first attempt which had
25 failed because he was short of munition. He broke his force back to Dala, Mabanga

1 and then he returned to Bunia. Once he was in Bunia he took the ammunition and
2 the operators for the heavy weapons. He didn't have any ammunition, he couldn't
3 have taken Mongbwalu. And when I found him he had taken Mongbwalu because
4 he did have the ammunition.

5 Q. [16:24:34] Now if we look at the message in front of you, 19 November 2002,
6 which is at page, translation 3854 and original 0213, when you write that "a tout
7 moment".

8 I think it was the message that was just up.

9 When you write, in French, (Interpretation) "At this point they are repairing my
10 vehicles" (Speaks English) you are confirming that you were to leave -- about to leave
11 at any time, correct?

12 A. [16:26:10] That's what the message says. At any time my vehicles could be
13 ready and I could leave. I was -- the reason I was late was because my vehicles were
14 not ready, that's why I was having to hang around.

15 MS SAMSON: [16:26:44] Mr President, I see there are a few moments left, but I
16 would like to enter into another line which requires development through several
17 logbook messages.

18 PRESIDING JUDGE FREMR: [16:26:51] Yes, I would even like to use those
19 remaining minutes for dealing with some housekeeping matters. So I appreciate
20 that we can break your examination now.

21 So just three points: First one, information about time used so far by the Prosecution,
22 so it may be not precisely exact but it should be roughly 42 hours and maybe 14,
23 15 minutes. So taking -- even less, maybe. So taking into account that the Defence
24 used 55 hours, generally the Prosecution should still, would have at its disposal
25 12 hours and 45 minutes, something like that.

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 As we indicated, Ms Samson, the Chamber would like for the sake of planning have,
2 if possible, your assumption whether you will need all that time remaining.

3 MS SAMSON: [16:28:01] Yes, Mr President. I will.

4 PRESIDING JUDGE FREMR: [16:28:03] Okay. At least we are clear on that.

5 And one preliminary information. It's likely that on Tuesday morning the Chamber
6 will cede some time to the Appeals Chamber which needs to deliver a summary on
7 some decision. So it's possible that on Tuesday our programme will be a bit shorter,
8 but we will inform you on Monday about details.

9 Now, you know that tomorrow is ICC holiday, so we are not sitting tomorrow.

10 Before we adjourn, any request for the floor?

11 I see Mr Bourgon, please.

12 MR BOURGON: [16:28:48] Thank you, Mr President.

13 Page 70, line 7, I believe, and that's in English, and page 66, line 21 in French, there is
14 a difference between 200 metres and 200 kilometres. We believe that the French
15 version is correct. I think we can agree on this one rather than sending it for
16 translation.

17 PRESIDING JUDGE FREMR: [16:29:19] Ms Samson, sorry, I believe that Mr Bourgon
18 is right in this case.

19 MS SAMSON: [16:29:22] It may be, your Honour. I really -- I am not sure. I don't
20 take issue one way or the other. I haven't gone back to check the transcript.

21 PRESIDING JUDGE FREMR: [16:29:33] Mr Bourgon.

22 MR BOURGON: [16:29:34] And the second issue is a correction, but I believe it must
23 be said without -- in the absence of the witness. So maybe if we excuse the witness.
24 It will be very short, but.

25 PRESIDING JUDGE FREMR: [16:29:45] All right.

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 So, Mr Ntaganda, thank you very much for testifying again clearly, patiently all the
2 day. Tomorrow, as I said, is ICC holiday, you can celebrate it as well and we will see
3 you on Monday at 9.30.

4 Now, please, you can escort Mr Ntaganda out of the courtroom.

5 (The witness stands down)

6 PRESIDING JUDGE FREMR: [16:30:29] Mr Ntaganda has left the courtroom.

7 Mr Bourgon, floor is yours.

8 MR BOURGON: [16:30:35] Thank you, Mr President.

9 In English page 63, line 17 and in French page 59, line 28 to page 60, line 1, simply to
10 say that both version have the word "potential witness" when Mr Witness did not say
11 "potential", he just said "witness" according to us, so we would like the audio to be
12 checked. Thank you.

13 PRESIDING JUDGE FREMR: [16:31:02] Should be verified. Ms Samson.

14 MS SAMSON: [16:31:05] Yes, I have no information, not speaking Swahili. My
15 understanding is that at some stage the witness was a provisional witness, but that
16 may have changed.

17 PRESIDING JUDGE FREMR: [16:31:13] It will be verified by audio. And anything
18 else, Mr Bourgon?

19 MR BOURGON: [16:31:17] Well, I am saying that that was -- he did not say
20 "potential", he is a witness. And that's what Mr Ntaganda said.

21 PRESIDING JUDGE FREMR: [16:31:26] Understood.

22 So now we adjourn and we will reconvene on Monday at 9.30.

23 THE COURT USHER: [16:31:34] All rise.

24 (The hearing ends in open session at 4.31 p.m.)