

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 International Criminal Court
2 Trial Chamber VI
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and Judge Chang-ho Chung
6 Trial Hearing - Courtroom 2
7 Tuesday, 5 September 2017
8 (The hearing starts in open session at 11.01 a.m.)
9 THE COURT USHER: [11:01:28] All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE FREMR: [11:02:01] Good morning, everybody.
13 Court officer, please call the case.
14 THE COURT OFFICER: [11:02:10] 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 For the record, we are in open session.
18 PRESIDING JUDGE FREMR: [11:02:26] Thank you, court officer.
19 Now appearances, please.
20 MS SAMSON: [11:02:31] Good morning, Mr President. Good morning, your
21 Honours. For the Prosecution today are Ms Marion Rabanit, Ms Selam Yirgou,
22 Ms Claudine Umurungi and myself, Nicole Samson.
23 PRESIDING JUDGE FREMR: [11:02:44] Thank you, Ms Samson.
24 Defence, please.
25 MR BOURGON: [11:02:47] (Interpretation) Good morning, your Honour.

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1 Representing Bosco Ntaganda who is present in the courtroom, Salomé Biet, Julia Jan,
2 David Wagen-Magnon, Isabelle Martineau, Jean Baptiste Gasominari and myself,
3 Stéphane Bourgon. Thank you, your Honour.

4 PRESIDING JUDGE FREMR: [11:03:08] Thank you, Mr Bourgon.

5 And Legal Representatives of Victims, please.

6 MS PELLET: [11:03:17] (Interpretation) Thank you, your Honour. The former
7 child soldiers are represented by Vony Rambolamanana and myself, Sarah Pellet,
8 counsel with the Office of Public Counsel for Victims.

9 MS GRABOWSKI: [11:03:29] Good morning, Mr President. Good morning, your
10 Honours. On the behalf of the victims of the attacks, Anne Grabowski.

11 PRESIDING JUDGE FREMR: [11:03:36] Thank you, Ms Pellet.

12 Thank you, Ms Grabowski.

13 Today we will take another further part of cross-examination of Mr Ntaganda by the
14 Prosecution, namely by Ms Samson.

15 Ms Samson, you have the floor.

16 MS SAMSON: [11:03:56] Thank you, Mr President.

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

18 (The witness speaks Swahili)

19 QUESTIONED BY MS SAMSON: (Continuing)

20 Q. [11:04:05] Good morning, Mr Ntaganda.

21 A. [11:04:10] Good morning, madam.

22 Q. [11:04:13] You authorised the questioning of a priest in Mongbwalu by the
23 FPLC, correct?

24 A. [11:04:36] When I met Kasangaki, he explained why he had taken the priest to
25 that place. He asked me for authorisation to give an interrogation because he had

1 certain information. When Kasangaki explained that to me, I gave my agreement.

2 Q. [11:05:06] At the time Kasangaki was based at camp Goli with Salumu's
3 brigade?

4 A. [11:05:17] No. He was living in a building within the Appartements. He
5 was living in a house which was on the edge of the Appartements, when you go in
6 the direction of the church, the Catholic church.

7 Q. [11:06:05] You were also residing at the Appartements at that time?

8 A. [11:06:24] That's correct. After the meeting, that's when the employees or
9 these people of the church arrived and I spent the night of the 24th there.

10 Q. [11:06:50] The priest and nuns were arrested at the parish in Mongbwalu,
11 correct?

12 A. [11:07:09] No. Kasangaki explained that they had found them in the bush
13 and that they left with the combatants and APC troops when they were fleeing. Our
14 forces therefore found them in the bush and brought them back to the Appartements.
15 Kasangaki had called Salumu to inform him that they had arrived and that they had
16 been arrested in the bush. Our forces didn't arrest them at the parish, but found
17 them in the bush.

18 Q. [11:07:56] And when you say that they were with combatants, you're referring
19 to Lendu combatants?

20 A. [11:08:07] Kasangaki explained that they had left with the combatants when
21 the combatants had fled with APC troops. According to what Kasangaki told me,
22 the priest in particular left with the combatants and collaborated with the combatants
23 and the APC to mistreat the population, and that's why he asked for authorisation to
24 put him through an interrogation.

25 Q. [11:08:56] Now, I would like to show you a document. It's

1 DRC-OTP-0127-0118, item 1322 on the list. And in relation to the classification,
2 I believe the item can be displayed publicly, your Honour.

3 PRESIDING JUDGE FREMR: [11:09:51] Noted. Thank you.

4 MS SAMSON: [11:09:52]

5 Q. [11:09:53] Now, here we have a report related to -- and I'll read the title in
6 French:

7 (Interpretation) "On the disappearance of Boniface Bwanalonga from the parish of
8 Mongbwalu of the diocese of Bunia in the Democratic Republic of Congo".

9 (Speaks English) And if we could scroll down, please, to the bottom, you can see that
10 it is -- on the second page, and at the very bottom you can see that it was submitted
11 by another abbé in Bunia, 18 January 2003.

12 Now, I'll -- if we could go back to the first page of the document, please, and if we
13 move down to paragraph 8.

14 Sir, let me read this paragraph to you, in French:

15 (Interpretation) "Part of the army laying siege to Mongbwalu, at least a good
16 number of soldiers, left in the evening of Monday, 25 November 2002 in order to go
17 towards the parish. It was the start of the hour of the bad force. The soldiers were
18 beating the entry door for a long time and eventually Abbot Boniface opened the door,
19 and he was beaten up at the door of entry."

20 (Speaks English) Now, sir, this report on 18 January 2003 from another abbé paints a
21 very different picture of the arrest of the priest and indicates that UPC soldiers went
22 to the parish and that he was taken from there. And this account is the true account
23 of the abbé's arrest, isn't it?

24 A. [11:13:16] In the evening when we finished the meeting and I met Kasangaki
25 and the nuns, Kasangaki explained to me that the soldiers had arrested them in the

1 bush. I don't know how the soldiers arrested the priest and the sisters, leaving the
2 others, because afterwards Kisembo arrived and we visited the other nuns who had
3 remained at the parish. And I don't know how it was decided that some sisters or
4 some nuns would be arrested and some would be left behind because there were
5 some who remained at the parish.

6 Q. [11:14:16] Now, you stated that the nuns requested to accompany the priest,
7 correct?

8 A. [11:14:57] When I asked Kasangaki why he took them, he said that he
9 considered that it was the best place to question the abbot and he said that he had told
10 the nuns that they could go home but they had said that he would not abandon the
11 abbot and, as such, that is why they were there.

12 Q. [11:15:32] And so to be clear, it's your testimony that three unarmed Catholic
13 nuns asked to be taken to a military camp with armed soldiers for the purposes of
14 questioning the priest?

15 A. [11:16:05] That's what Kasangaki explained to me. He told me that he didn't
16 want to take the nuns and take them to that place, but they refused to leave the priest
17 when he was arrested in the bush, and they decided to remain close to the priest.
18 And I went to say hello to the priest and discuss matters with him. And that's what
19 happened when I arrived there.

20 Q. [11:16:52] Now, you said that you went to say hello to the priest and discuss
21 matters with him. You introduced yourself to him, did you?

22 A. [11:17:12] I said good day to him, without giving my name, and said not to be
23 afraid and that when he had given information asked of him, he would be
24 accompanied home. I didn't discuss other matters with him.

25 Q. [11:17:31] No doubt the abbé introduced himself to you, didn't he?

1 A. [11:17:46] No. I knew that he was a priest because Kasangaki had already
2 informed me that such a person is a curate or abbot, a priest. I therefore already
3 knew that. He didn't have to introduce himself.

4 Q. [11:18:11] You knew that this priest was Lendu-Ngiti?

5 A. [11:18:39] I didn't know that immediately. It was only afterwards that I
6 found that out via the media. That's how I found that he was Ngiti. But when he
7 was there for the questioning, I didn't know that he was Ngiti. Nobody explained
8 that to me. I didn't ask him any questions about his ethnic group.

9 Q. [11:19:04] Now, this is a person of some interest to the UPC/FPLC because, as
10 you say, he was accused of collaborating with Lendu combatants and harming
11 civilians, and yet you say you knew nothing about him, not his name, not his
12 ethnicity, nothing?

13 A. [11:19:45] Any person can collaborate with the combatants in mistreating the
14 population. That's not just one specific ethnic group that does that. It's not just the
15 Lendu people who are the sole -- people who mistreat members of the population.

16 Q. [11:20:07] Well, this is not just anyone, is it? This is a member of the clergy
17 who you say is collaborating with Lendu combatants and harming civilians. Now, I
18 suggest to you that that would be unusual enough for you to have gotten to know
19 exactly who the man was by name and ethnicity.

20 A. [11:20:35] I didn't usually try to get to know people's ethnic group. Even the
21 nuns who were there, I didn't ask them what their ethnic -- what their ethnicity was.
22 What I do know is that the nuns who were there, they could be Lendu. But I did not
23 try to get details from them. I asked nobody about their ethnic group.

24 Q. [11:21:29] We have seen already during your testimony an instance where a
25 priest was accused by the UPC of clandestinely lodging certain people and otherwise

1 collaborating with the enemy. And in those instances the UPC knew exactly who
2 those people were, including their names, and they expelled them. And I suggest
3 that the same went for Abbé Bwanalanga. You knew who he was and he was a
4 target for you.

5 A. [11:22:24] I didn't carry out an investigation on him. I didn't know these
6 details. And as a military commander, after a first meeting, I wouldn't have been
7 able to take interest in such a person. That wasn't something I would normally do.

8 Q. [11:22:58] You never saw the abbé alive again after that meeting, did you?

9 A. [11:23:22] I didn't see him again because two days afterwards I left. I
10 therefore didn't meet him.

11 Q. [11:23:38] My suggestion to you is that you never saw him alive again because
12 you killed him after you interrogated him.

13 A. [11:23:51] A major commander such as me, you're saying I would have
14 interrogated somebody and then killed them afterwards? That's what you're saying?
15 You. But the truth is completely different to that. I explained to you what
16 happened. At the time when I left Kasangaki was questioning him, I was in the area,
17 and two days afterwards I left. I therefore continue to say that I did not kill that
18 person.

19 Q. [11:24:41] I take it you're not aware of any internal investigation by the
20 UPC/FPLC into the circumstances of his death?

21 A. I wasn't informed about an investigation allegedly undertaken by the UPC
22 about the death of this person.

23 Q. [11:25:32] Did Thomas Lubanga never speak to you in early December 2002
24 that he was receiving complaints about the killing of Abbé Bwanalanga by the UPC?

25 A. [11:26:01] President Thomas Lubanga and I did not discuss the problem of this

1 priest.

2 Q. [11:26:13] I take it then that this report that we just looked at about the, about
3 the disappearance and death of the priest, Abbé Bwanalunga, from 18 January 2003,
4 which was sent to UPC representatives, officials, I take it that you were never asked
5 anything at that time either about the circumstances of the questioning and
6 disappearance of this priest at your residence, the Appartements?

7 A. [11:27:05] It's the first time that I see this report. I think you didn't
8 communicate it. Nobody asked me questions about this report within the UPC, not
9 at the Appartements. Where the priest was, that was more on the opposite side to
10 where I was. And with regards to this report, it's the first time that I've seen it.

11 Q. [11:28:02] Just to be clear, sir, this document was disclosed to you years ago
12 and it's been admitted into evidence in this case. Now, you're aware, are you, that
13 Abbé Bwanalunga's body was exhumed on the property of the Appartements in
14 Mongbwalu in 2012? Did you hear of that?

15 A. [11:28:34] I could have heard it here.

16 Q. [11:29:02] You did not hear of it in 2012 prior to arriving here?

17 A. [11:29:21] No, not at all.

18 Q. [11:29:24] And I suggest to you that, on your orders, your escorts raped the
19 nuns who were detained at the Appartements.

20 A. [11:30:00] Madam, a commander such as myself could not have given such an
21 order to the bodyguards to rape nuns. I would never have said something like that.
22 Those are lies.

23 Q. [11:30:21] I'm changing topics now to ask you a few questions about Nzebi,
24 and I suggest to you that you ordered the killing of two Lendu civilians who were
25 returning to Nzebi in the aftermath of the Mongbwalu operation.

1 A. [11:31:13] When I arrived in Sayo I did not know Nzebi and I did not go to
2 Nzebi. You see, I only went as far as Sayo. But if you were to show me a map, I
3 might be able to point out where Nzebi is located. But the fact of the matter is that I
4 never set foot in Nzebi. Now, when it comes to the road leading to Nzebi, I was able
5 to identify it on a map; but I have never physically gone to Nzebi. In those
6 circumstances, therefore, I could not have given orders for the civilians to be killed in
7 Nzebi. In any event, it has always been part of my habit to consider members of the
8 population as being innocent, and so that is what I have always testified to in this case,
9 namely, that I would not have done what I did without the support of the members of
10 the population.

11 Q. [11:32:32] Sir, you were aware, weren't you, that in the aftermath of the
12 Mongbwalu operation UPC intelligence officers obtained information, including by
13 visiting health centres in Mongbwalu, about the murder and rape of civilians by the
14 UPC troops?

15 A. [11:32:59] While I was there I did not witness these incidents and I did not
16 subsequently receive any information to that effect.

17 Q. [11:33:40] The reports were submitted by intelligence officers, I suggest, to the
18 hierarchy, including Thomas Lubanga and Floribert Kisembo, yet they never,
19 according to you, spoke to you about these reports even though you were in charge of
20 the Mongbwalu operation?

21 A. [11:34:42] You are telling me that these intelligence officers submitted their
22 reports to the president and to Kisembo? Well, I arrived there on the 23rd and I was
23 there on the 24th, and I spent part of the day of the 25th there. Why did those
24 officers not submit those reports to me before I left? How is it that they submitted
25 them instead to Kisembo and Thomas Lubanga, whereas I had been there myself in

1 person? I am not aware of these reports that are alleged to have been submitted to
2 those authorities.

3 Q. [11:35:25] No FPLC soldiers were punished for the rape or murder of civilians
4 during and after the Mongbwalu or Sayo operations, were they?

5 A. [11:36:12] I was a witness to the Sayo operation, and I have already testified
6 that I only saw one dead body and one prisoner and that the enemy had fled and that
7 our forces had captured their Defence positions, the Defence positions of the enemy.
8 So these facts that you are talking about never took place, they never happened.
9 Now, when it comes to punishing people, Lilipa (phon), for example, one of our
10 soldiers, was the person who went through the firing squad. I also remember
11 Abelanga, one of our troops who tried to steal from the population. I put him in
12 detention.

13 So I don't know whether there are other offences or crimes that were committed, but
14 in any event, if any of these offences had been committed in my presence, I would
15 indeed have taken the necessary measures.

16 Q. [11:37:33] And my question to you, which I'll repeat, was: No FPLC soldiers
17 were punished for the rape or murder of civilians during and after the Mongbwalu or
18 Sayo operation? And that's right, isn't it?

19 A. [11:37:54] I have made mention of some offences that were committed and the
20 perpetrators were punished, but I was referring there to these offences that were
21 brought to our attention, and we acted because they were brought to our attention. I
22 have mentioned Lilipa, for example, and I have also talked about the theft. It was
23 not possible for me to punish anyone without having information that such-and-such
24 a person had committed such-and-such an offence.

25 Q. [11:38:55] Now, sir, you stated moments ago, page 11, lines 21 to 22, quote:

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1 "Well, I arrived there on the 23rd and I was there on the 24th, and I spent part of the
2 day on the 25th there." End quote.

3 Your evidence is, isn't it, that you were in Mongbwalu until 28 November 2002?

4 A. [11:39:25] If you want me to give you the specific dates, I can provide some
5 explanations. What you are mentioning there relates to the explanations I gave in
6 relation to the offences which you talked about. I arrived on the 23rd. On the 24th
7 I participated in the liberation of Sayo. I was there on the 25th. On the 26th
8 Kisembo arrived. On the 27th we visited the convent and the centre. And then on
9 the 28th I took the flight back.

10 Q. [11:40:51] Now, sir, I put to you that you left Mongbwalu on
11 29 November 2002, or sometime after, but not the 28th.

12 A. [11:41:21] I have told you that the reasons for which I have given you the
13 details of my timetable is that -- I already explained this to the Court and what I
14 remember is that I left on the, on the 28th.

15 Q. [11:41:49] Sir, I'd like to show you a document. It's DRC-OTP-0090-0661, item
16 1242 on the Prosecution's list.

17 PRESIDING JUDGE FREMR: [11:42:07] Mr Bourgon.

18 MR BOURGON: [11:42:08] Thank you, Mr President. I'd like to address the
19 Chamber in the absence of the witness, please.

20 PRESIDING JUDGE FREMR: [11:42:13] All right.

21 So please guards, escort Mr Ntaganda for a while outside of the courtroom.

22 (The witness stands down)

23 PRESIDING JUDGE FREMR: [11:42:50] Mr Ntaganda has left the room.

24 Mr Bourgon, do you want to stay for your submission in the regime of open session?

25 MR BOURGON: [11:42:57] I believe it can be made in open session.

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1 PRESIDING JUDGE FREMR: [11:43:03] All right then.

2 MR BOURGON: [11:43:06] Mr President, the reason I raise at this time is to oppose
3 the use of this document, as well as the use of a number of other documents related to
4 the same topic.

5 The Prosecution wishes to use a document, and I will first begin by saying that the
6 document that is intended to be used by the Prosecution is not on the list of exhibits
7 to be used for cross-examination. This is the first argument. However, this is not at
8 all the main argument.

9 A number of documents have been recently disclosed related to flights which would
10 have been landing and/or departing from Bunia airport in 2002 and 2003. We have a
11 number of submissions to make as to why these documents should not be used and
12 those are divided into seven main arguments. Before I begin, however, Mr President,
13 I need to say and to state for the record that the witness, Mr Ntaganda, is not familiar
14 with any of these documents and has never been shown these documents related to
15 our request. And I will explain why this is so.

16 Accordingly, Mr President, I make this objection, which is purely a legal objection,
17 based on the right to a fair trial because the use of these documents would be highly
18 prejudicial and the potential prejudice far outweighs any probative value that could
19 be obtained from Mr Ntaganda's answers.

20 I have no idea what Mr Ntaganda would respond to these questions, but that's not the
21 issue here. Quite to the contrary, the issue is purely an issue regarding the use of
22 documents in the possession of the Prosecution which were not used in the
23 presentation of its case in-chief.

24 Now, of course the Prosecution will undoubtedly argue that cross-examination is a
25 reactionary exercise and that it is merely, "it" being the Prosecution, is merely reacting

1 to the evidence-in-chief of Mr Ntaganda. But that's not the issue here and that's not
2 what I will be arguing.

3 Even if the Prosecution had attempted to use these documents during its case in-chief,
4 I would have made the same argument. The fact that they are presented at this stage
5 are even -- really compound the difficulties.

6 I would have preferred to present these arguments, Mr President, either in writing or
7 maybe even away from the testimony of Mr Ntaganda, but we received documents,
8 first in January 2015, and we never heard again about these documents until they
9 were added, or at least when three pages were added to the list of Prosecution
10 exhibits on 12 July, and these were items on the list 1239, 1240 and 1241.

11 PRESIDING JUDGE FREMR: [11:47:20] Mr Bourgon, you meant 12 July this year?

12 MR BOURGON: [11:47:24] This year. This year. Which is the list of items to be
13 used by the Prosecution during cross-examination of Mr Ntaganda.

14 So the arguments I will be making, Mr President, is likely to take a little while because
15 it is a very important issue for us. The first time is the documents, the number that
16 was just called by my colleague, which is 0090-0661. That's the first argument, it's
17 not on the list of documents the Prosecution in --

18 (Counsel confers)

19 MR BOURGON: So it is -- the document is on the list of items. So this was of
20 course just a very technical argument.

21 Nonetheless, before I present the remainder of my arguments, it is important for the
22 Defence to know how many pages the Prosecution intends to use during
23 cross-examination of Mr Ntaganda. As it stands, the Prosecution has on its list at
24 items 1239, 1240 and 1241 three pages, and another page was added and that was
25 in -- on 18 August another page was added, which is page 0090-0647 and that is

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1 item 1535.

2 That's what we have on the list today. If my colleague intends to use any other
3 pages, we'd like to be informed at this stage so that our argument can be complete.
4 Because there are a number of related pages and we've been receiving all kinds of
5 information right up until last Thursday and some documents were actually disclosed
6 officially yesterday on the same topic.

7 So that's my first question. I'd like to know from the Prosecution whether the
8 Prosecution intends to use anything other than the 4 pages that are presently on its
9 list of items. And then I will continue with my arguments, Mr President.

10 PRESIDING JUDGE FREMR: [11:50:16] Ms Samson.

11 MS SAMSON: [11:50:16] Mr President, addressing the one issue, I would ask that
12 the Chamber consider the document that the Prosecution wishes to use now in this
13 discrete instance. And if and when the Prosecution wishes to use other documents
14 of the same nature, then we can hear submissions on whether or not the Prosecution
15 would be permitted to use those documents at that time. I am concretely now
16 seeking to use document item 1242 on the Prosecution's list, disclosed to the Defence
17 in January 2015. If the accused has not seen that document that, in my submission, is
18 not an appropriate basis upon which to deny the Prosecution the opportunity to use it
19 and to challenge his account of when he may have flown out of Mongbwalu.

20 And as the Chamber has decided previously, cross-examination is reactionary and
21 there is no general prohibition on the use of documents by the Prosecution with the
22 accused, or any other witness, just because that document was not used during the
23 Prosecution's case.

24 Thank you.

25 PRESIDING JUDGE FREMR: [11:51:29] Thank you.

1 Mr Bourgon, you know, according our decision on Conduct of Proceedings, the
2 Chamber should normally decide about objections against the use of documents on a
3 case-by-case basis. And now you are asking us to divert from this general rule, so
4 you should bring some reasons, otherwise I don't see why we shouldn't follow our
5 normal procedure.

6 MR BOURGON: [11:51:59] Thank you very much, Mr President. I will abide by
7 this ruling. It would have been much easier to know what the Prosecution intends,
8 because all of these documents are related and are part of my arguments that I will
9 make right now.

10 Mr President, our argument is that this page, 0661, should not be used with the
11 witness and that any other related pages -- it would have been nice to know for the
12 Trial Chamber to be able to assess the matter, but I will keep my arguments and my
13 arguments focus just on page 0661, but it will also apply to all other pages.

14 PRESIDING JUDGE FREMR: [11:52:38] It was just my idea, because I believe that
15 if the reason for your objection is the common one, then probably if you will decide
16 accordingly for the first document, then it's very likely we will decide the same style
17 on the others. And I also expect that if we would establish some clear ruling on this
18 kind of objection, even then Ms Samson will follow that ruling.

19 Please go ahead.

20 MR BOURGON: [11:53:11] Thank you, Mr President.

21 So our first argument is that the documents sought to be used are related to disclosure
22 violations which resulted in the accused not having had the opportunity to prepare
23 with his counsel. That is the first argument.

24 The second argument, Mr President, is that the documents sought to be used are both
25 technical and presented in a format which render them impossible for the witness to

1 understand them or, more importantly, for the Chamber to use them without the
2 assistance of witness evidence, or without making assumptions, which of course we
3 haven't heard evidence on.

4 The third argument, Mr President, has to do with the fact that the originals of these
5 documents do not exist and there is no information available, for the most part at least,
6 as to who provided the documents to the Prosecution. I put an "S" but I could
7 remove the "S" and use just "document".

8 There is no information as to who was present when pictures of the documents were
9 taken. There is no information as to why the pictures were taken in an order which
10 is anything but chronological.

11 We have no information as to why certain pages are missing, and we have no
12 information as to what were the instructions given to the persons who would have
13 purportedly completed these documents in 2002, 2003. That's one argument.

14 The next argument, Mr President, is that the documents sought to be used are but one
15 of the sources in the possession of the Prosecution. Prosecution investigated, they
16 obtained documents from a number of sources on the exact same issue. And having
17 obtained documents which are from various sources but on the same issue, the
18 documents contradict each other and make it that the documents are unreliable.
19 Had the Prosecution -- and I will explain that further -- but the Prosecution even
20 went further by disclosing only one part of the document and not disclosing the
21 second part.

22 These documents, Mr President, are not reliable in the sense that they do not establish
23 the basis on which the Prosecution wishes to put questions to the accused. That was
24 just explained to my colleague -- or by my colleague, I apologise. My colleague just
25 said I would like to say to Mr Ntaganda that he flew or didn't fly from Mongbwalu.

1 Lastly, Mr President, of course I mentioned that already, but in light of the disclosure
2 violation, incomprehensible format of the documents, lack of reliability of the
3 documents, it is our submission that the use of these documents is not only highly
4 prejudicial but also that such prejudice substantially outweighs any probative value
5 which could be attributed to the answers of Mr Ntaganda on the basis of these
6 documents.

7 Now, I will ask, Mr President, for the indulgence of the Court because these are very
8 important arguments in the light of what happened in the last few days, in terms of
9 what we have been receiving in the last few days. And we believe it is essential for
10 the Chamber to hear exactly what has happened in the last few days in order to
11 determine and to assess our arguments.

12 The first argument I mention has to do with disclosure.

13 In terms of disclosure, first, Mr President, we received in January of 2015 55 pages,
14 and these pages, I can provide you with the numbers of the pages we received back in
15 January 2015. We received page 0090-0648 to 0090-0652, that's five pages. We also
16 received 0090-0654 up to 0090-0679 for 26 pages. We also received 0090-0681 up to
17 0090-0701 for 21 pages. And we also received 0090-0703 up to 0090-0705 for 3 pages,
18 for a total of 55 pages of what appears to be records related to flights departing and
19 arriving in Bunia.

20 In 11 August of this year we were given as a matter of courtesy three additional pages.

21 Actually we were given 12, but three that fit in this order of documents, and we
22 received the following pages: 0090-0647, 0090-0653, 0090-0680, and 0090-0702.

23 When the Chamber will look at these numbers, they actually fill in some blanks in the
24 original 55 documents disclosed in January of 2015. Document 0647 being the first
25 one, which we did not know that it existed, and the three others fill in gaps in the

1 order of ERN numbers.

2 Whether or not there is bad faith on the part of the Prosecution, and we don't believe
3 that there is, these three pages were in their possession and there is no reason that can
4 be put forward for these three pages not to have been disclosed in January 2015.

5 The impact of this nondisclosure, had the Defence had a complete series of pages
6 from the first page 0647 until the page 0705, then the Defence would have been
7 prompted to do a more thorough analysis of these pages and try to determine where
8 they fit in the Prosecution's case.

9 However, these pages, Mr President, when you put them in order, they are
10 completely in an order that makes no sense. It's not possible to take these 55 pages,
11 add the four pages received on 11 August, put all the pages together, put them in the
12 ERN sequence, there is no sense with the dates. You can't figure out, at least we
13 have not been able to, there's no way to figure out how these pages fit together in
14 order to make a proper log.

15 And that is why, Mr President, that in January of 2015 when we received these pages
16 we informed Mr Ntaganda that we had received such material, but we also informed
17 him that because we could not make any sense of these pages and because they were
18 not linked to any witness on the Prosecution list, and because we had no other
19 evidence disclosed related to these lists, we decided to leave that alone and not to take
20 that into consideration in our discussions with Mr Ntaganda.

21 Had the material been disclosed into some kind of a chronological order, it would
22 have been different. Had the pages been disclosed complete, it would also have
23 been different.

24 These pages, Mr President, they refer to what I'll be mentioning during my argument
25 as the first log. So that is the story for the first log.

1 Now, when we were alerted that the Prosecution intended to use these pages, now
2 we're talking about 12 July of this year with those pages, we looked at the pages and
3 we said, oh, technically I could have interpreted this as meaning that I cannot discuss
4 with Mr Ntaganda those four pages but I can discuss the rest. We did not do so
5 because those pages are one and the same topic. So we did not discuss this topic
6 with Mr Ntaganda and he has no information whatsoever on these pages and he has
7 never seen them before.

8 On the topic of disclosure, in the same day, on 11 August, we received a courtesy
9 copy of a new log, which I will be referring to as the second log. The second log was
10 also -- would have been photographed at the Bunia airport, and everything I said
11 earlier about these documents in the sense of we don't know who provided them, we
12 don't know who filled them in, we don't know the instructions as to who was filling
13 them in, we don't know who was present when the pictures were taken, all of that
14 applies to this second log. Now, this second log was in the possession of the
15 Prosecution since 2006, since 28 February 2006. And we never received that until
16 11 August 2017.

17 Once again, Mr President, had the Defence received this second log back in 2015
18 before the trial began or during the trial, then we could have seen that there was
19 something to these pages that we needed to be more thorough in our analysis and to
20 address this with Mr Ntaganda. But we did not do so because we never received
21 this second log.

22 The numbers of this second log are as follows, Mr President: First, there is a
23 covering note by an investigator which bears the number 2103-1057, and that's a note
24 that refers to the following document, and this document has the number 2103-1060
25 until 2103-1120, and that's in one sequence. The sequence is then broken down by

1 another investigation note which bears a number 2103-1121 which explains the pages
2 that follow, and the pages that follow go from 2103-1122 until 2103-1130. And that's
3 again one sequence.

4 In terms of the date of this second logbook, the first page, because this one appears to
5 be in chronological order, although it's difficult to say, appears to be from
6 15 March 2002 until 4 February 2003, and then again from 5 February 2003 until
7 2 March 2003.

8 We received a courtesy copy on 11 August of this year, that is a long time after the
9 Prosecution was due to put its list of cross-examination items. And it was formally
10 disclosed on 14 August.

11 In terms of disclosure violation, well it doesn't stop here, Mr President. On
12 11 August we were presented with -- or, last week we were presented with
13 documents in addition. These documents were disclosed to us last week on
14 31 August, that's last Thursday.

15 Now, last Thursday what did we receive? Well, we received first three pages that
16 appear to come from the first log, and these pages are the numbers
17 DRC-OTP-2103-1385, DRC-OTP-2103-1386. According to the Prosecution those are
18 two pages that would go to the month of June 2003. But there's no mention of the
19 month -- or, actually, there is a mention of the month of June in one of these two. No,
20 there's no mention of the month on these two pages.

21 And the other page is 2103-1399 and that is for a pages that, according to the
22 Prosecution, would be from 27 of December 2002 until 7 January of 2003.

23 So we received these three pages. What does the Prosecution say about those three
24 pages? They said, of course, the pages were in its possession, but they weren't
25 disclosed. And what do we get from these three pages? Well, we don't know

1 whether these pages fit in the first log or the second log. As a matter of fact, the
2 Prosecution, along with these three pages, disclosed two databases, that's on
3 31 August, two databases, internal work product. The numbers of these databases,
4 because they are voluminous documents, and it's only excerpts of databases, is
5 number 2103-1403 for some, I guess, seven pages. And there's a second one,
6 2103-1410, again for a number of pages.

7 The Prosecution informs the Defence that this is internal work product, but that they
8 decided nonetheless to give it to the Defence because they don't have the logs from
9 which these databases were created. But it's the same period, and it's the same flight,
10 and it's the same airport, and it's the same investigation, but they don't have those
11 logs. All they have is databases.

12 Mr President, had all of these documents been disclosed we would have discussed
13 the same with Mr Ntaganda. We would have done more work. But that was not
14 the case and that is why on the basis of the disclosure violations themselves because
15 of the relationship between these documents, that the Prosecution should not be
16 authorised to use any of these pages with Mr Ntaganda.

17 The next argument, Mr President, has to do with the technical nature and the format
18 in which the documents are presented. There are two main problems, a problem of
19 chronological order and, second one, a problem of the technical nature and
20 presentation of the information.

21 Let me begin with the first log so that we don't get lost in the argument. The first log,
22 looking at the date. The date on which we received the documents, and the
23 Chamber has these documents and will be able to take a look at this, the order in
24 which we received the documents, now first we had the four missing pages, but I'll
25 leave that aside. There are ten months mentioned in the document, ten months are

1 mentioned with the year 2002. That's written in block letters with month. There's
2 no page bearing October 2002 and there's no page bearing February 2002. One
3 month is mentioned, October, without the year.

4 Now the months of 2002, when we just turn the pages in the order in which they were
5 disclosed, we get the following: April, December, September, July, June, November,
6 March, August, May, January.

7 In between each of these months there are a number of pages and these pages appear
8 to come from different months. So, for example, if I take the page 0691 and the page
9 0701, because 0691 we see the word written "August 2002". And the page 0701,
10 which is of course later, we have the page written "May 2002". The pages in between
11 these two months is you have August for two pages, June for four pages, April for
12 two pages, and May for one page.

13 All this to say, Mr President, that it is very difficult, if at all possible, to put the
14 records disclosed in chronological order. We've done our best and we try to play
15 around with the pages in order to put them. Even if the Prosecution argues that it
16 would be able to do so, the witness cannot. The Chamber would also face
17 difficulties which would require the making as assumptions, and these assumptions
18 are not on the record because we did not hear any evidence. It would be unfair to
19 the witness to put questions to him on the basis of a document which cannot be
20 placed in the right chronological order and that he could not understand if he's given
21 the whole document.

22 Secondly, Mr President, the log contains information of a technical nature which does
23 require, in our respectful submission, some additional information in order to
24 understand the records. The Prosecution cannot provide this information. It must
25 come from a witness or from another document. Here no witness has provided any

1 information on the first log and no documents have been adduced which could assist
2 in understanding the information provided and/or drawing conclusions which could
3 form the basis of any questions put to the accused.

4 From the information that is available, Mr President, from the metadata, we don't
5 know who would have made the entries in the first log. We don't know, as I said,
6 the instructions given to the person who filled up the log. In fact, we don't know
7 how many persons filled up the logs. We are also told that the pictures of the first
8 log were taken by a Prosecution investigator but we don't know who. What we find
9 in the metadata is OTP ID to a Prosecution investigator Nicolas Sebire. We don't
10 know who was present when the first log pages were photographed. More
11 importantly, we don't know the state of the first log when it was photographed:

12 Were the pages picked up at different places, were the places in a chronological order
13 and he dropped them on the floor? Were they not in chronological order, were they
14 taken from different drawers and different persons? We know nothing of the sorts.

15 In the absence of such information it's not possible to know what they mean.

16 Now, although some of the columns appear to be easy to understand: departure time,
17 arrival time, from, to, number of passengers, there are some parts that we can
18 understand. But when we get into all the mixed up information on the pages, then
19 we get lost unless we have a witness who can explain. No such witness has been
20 heard.

21 I move to the problems related to the documents themselves.

22 I touched upon the problems, but there's more. What is significant is that the first
23 log appears incomplete and there are gaps which cannot be explained. And that's in
24 addition to the fact that it cannot be placed in a chronological order and more
25 importantly, as I said, the originals are not available.

1 Now according to the information we obtained last week, because we were suddenly
2 facing all of these documents, we obtained information from the Bunia airport that no
3 originals are available before 2004, so they cannot be obtained. Unless the
4 Prosecution has different information, that's information in our possession at
5 this time.

6 According to the Prosecution, the three pages last week, they would go and they
7 would refer to June 2003. And according to the Prosecution those two pages come
8 from another log not disclosed. We don't know what log this is. We don't know
9 who obtained these three pages, we don't know by whom they were given.

10 Prima facie another disclosure violation.

11 Now, we looked at the two pages for June. In our view, they look identical to the
12 pages of the first log. In fact, it would be possible to insert these two pages which
13 the Prosecution argues they come from June 2003 in the June 2002 first log. This
14 further highlights, in our view, Mr President, the internal inconsistencies in the
15 documents.

16 The most important argument today, Mr President, is the selective approach adopted
17 by the Prosecution which, in our view, is incomplete and unfair.

18 The first log comprises records which were obtained in 20 June 2005. On
19 28 February 2006 Prosecution obtained further records at Bunia airport from some air
20 police for the same period. I've already mentioned a disclosure violation and its
21 impact on the Defence. What is more important is when you compare both logs
22 found in both sets of records, the conclusion that can be drawn is that neither set of
23 records is reliable, neither the first log nor the second log, nor whatever is the third
24 log. The Prosecution is in possession of two sets of records for the same issue, which
25 is landing and departing from flights from Bunia airport. They disclose only one of

1 the two sets incomplete, in an order that cannot be understand without any witnesses.
2 They don't disclose a second set of documents and then they seek to use only the first
3 set of documents.

4 This is not something, Mr President, that can be taken in reexamination. The Office
5 of the Prosecution has two sources, one of which was not disclosed until the witness
6 had begun his testimony. It would be unfair to use this set of documents, or any,
7 without referring to all information in their possession, or else the question would not
8 be fair.

9 We try to compare to see are they reliable. We tried to look, we tried to do our job.

10 I tried to compare the first log and the second log. In the first log, and we use a
11 month that would not be contentious, just to make a sound analysis, so we took the
12 month of December 2002 and we looked at the first log and we counted 217 flights.

13 Now we look in the second log and we find 109 flights, say, wow, big difference. So
14 we say well, maybe, maybe one of the two logs only has arriving flights, which could
15 explain the huge difference because it's almost a double, 217 to 109. Well, we were
16 wrong. The incoming flights to Bunia for December, in the first log 106, for the
17 second log 87. The outgoing flights from Bunia in December, the first log 111, the
18 second log 22.

19 What is more important, Mr President, because the Prosecution could say well, of
20 course that's why we used the first log, it's more complete, the problem is the first log
21 in and of itself is not reliable. Why? Because there are numerous flights in the first
22 log that are not the second log, that we know, that's evident just for the numbers, but
23 there are flights in the second log which contains less flights which are not found in
24 the first log.

25 I need to use a few examples in order to highlight the argument as to what we find in

1 December 2002. So to give you an example: On 6 December in the second log
2 there is a flight 5 Yankee Sierra Mike Bravo arriving Bunia at 1500 hours. Not in the
3 first log.

4 On 15 December in the second log there is a flight 3 Charlie Quebec Quebec Echo
5 arriving at Bunia at 1424. Not in the first log.

6 On 16 December in the second log, flight number 48117, Quebec Romeo Foxtrot
7 arriving in Bunia at 1225. Not in the first log.

8 PRESIDING JUDGE FREMR: [12:25:46] Mr Bourgon, I believe that three examples
9 are enough.

10 MR BOURGON: [12:25:49] I have more and I will stop here, Mr President.

11 However, in and of itself when you look at the first log, it also bears inconsistencies.

12 Let me give you just one example just for the first log in and of itself. 20 December
13 there is a flight, which flight is Echo X-ray 70306, and that's very important because
14 that's the flight that you will hear in the evidence, which departs Bunia to go to
15 Mongbwalu at 12 hours 07, and the same flight Echo X-ray 70306 arrives in Bunia
16 from Mongbwalu at 12 hours and 12, so it was a five-minute flight. So there are a
17 number of such inconsistencies in both logs.

18 One inconsistency that I need to highlight in the second log is I take again the aircraft,
19 because that's one that is bound to come out in the evidence, which is the flight Echo
20 X-ray 70306. well, it departs -- I'm referring to the second log -- it departs Bunia on
21 10 February at 0945, but there's nothing from 11 to 14 February, and then it departs
22 again on 15 February at 0936. It departs again on 16 February at 1234. It departs
23 again on 17 February at 1250. It departs again on 18 February at 1055 and finally it
24 lands. So a lot of departures but no landing, but finally it lands on the 18th at 1215.
25 This is only to show, Mr President, the fact that these documents are not -- cannot

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1 be -- are not reliable.

2 Now, that's not the only thing, because now we have documents disclosed last week.

3 So we tried to compare since last week the records that we received and we looked at,

4 first of all, the two databases compiled from logs not disclosed. At least that's what

5 we're told. So I got these two databases. They cover the same period. I compared

6 the two, no match. They don't match. Plus we don't know who made this work,

7 how it was made, under what instruction, but they don't match.

8 Plus, the format is different. One appears to be flights who transit, one appears to be

9 flights who land. But we have no information. But that's relevant in assessing the

10 reliability. If the Prosecution in its own records assesses the reliability of logs and

11 comes out with this conclusion, with two different analyses, then it would be

12 completely unfair to use these records and to put any questions to Mr Ntaganda on

13 this basis.

14 So then we compared the first log, the first database with the first log. Doesn't work.

15 We compared the first database with the second log. Doesn't work. We compared

16 the second database with the first log. Doesn't work. We compared the second

17 database with the second log. Doesn't work. And we compared all of that with the

18 page that was disclosed for 27 December to January 2003, to 7 January, it also

19 doesn't work.

20 I could provide you with all of the examples, Mr President, of all these things that

21 don't work in the material.

22 I submit respectfully, Mr President, that when you look at all of what has happened

23 in the recent days concerning these documents, it will be wholly unfair to use any

24 information in one of these records and to put that to the witness and to put questions

25 to him. A number of other questions can be put to verify the reliability of his

1 testimony without referring to unreliable records for which there are disclosure
2 violation, for which there is -- they cannot be understood, for which the date cannot
3 be ascertained, and for which the format is unusable.

4 For all of these reasons, Mr President, and I will stop here, we say that all of these
5 pages should not be used with Mr Ntaganda. The Prosecution should not be
6 authorised to use these pages. But we insist respectfully, Mr President, the Trial
7 Chamber must look at all of these documents so that it can have an understanding of
8 the situation we face. Always on the understanding that Mr Ntaganda knows
9 nothing about these documents and would not even be able to understand any of
10 these documents. So we seek that the Prosecution be precluded from using the
11 document, the page 0661 and any other related pages on the same topic.

12 Thank you, Mr President.

13 PRESIDING JUDGE FREMR: [12:31:58] Thank you, Mr Bourgon.

14 Now, Ms Samson, Mr Bourgon presented very extensive submission containing many
15 details, do you think are you ready to respond immediately or do you want some
16 time to respond?

17 MS SAMSON: [12:32:13] Mr President, I will start to respond now and, subject to
18 questions that your Honours may have on specifics, I may seek your leave to come
19 back to you with any unanswered questions that I'm unable to respond to at the
20 moment.

21 PRESIDING JUDGE FREMR: [12:32:28] All right.

22 MS SAMSON: [12:32:29] Now, I'd like to boil the issue down to its bare essentials.
23 The Prosecution disclosed a logbook, photographs of a logbook in January 2015.
24 There's one page of that logbook that the Prosecution seeks to use now.

25 In my submission, it is clear from the documents disclosed in January 2015 that we

1 are dealing with a logbook of flights.

2 The format of the logbook is clear, there are typed headers at the top of the document
3 running across each page of the logbook, and the logbook opens as every normal
4 bound book does, and it has entries on both pages once opened. So each photograph
5 covers two pages that have been opened in the logbook. As counsel rightly pointed
6 out, these were photographs of logbooks taken from the Bunia airport by the
7 Prosecution in 2006.

8 The left-hand column -- so on both pages of a bound book we see the same headers.

9 The far left header clearly says "Date" and in the left-hand column we have
10 handwritten entries in legible handwriting where you have the date and the month.

11 So in the document that I wish to use with Mr Ntaganda now we are dealing with
12 flights on the 25th, 24th, 26th, 27th, 28th and 29th of November. And that's clear.

13 The next entry is "Marque de nationalité" and (Interpretation) "Registration"
14 (Speaks English), which are also clearly labelled with numbers, we submit, are of
15 aeroplane registration numbers. The next entry in French (Interpretation) "Name of
16 owner" (Speaks English) and in that column we have a handwritten name of known
17 airline companies, Mbau, Showa, et cetera, UN.

18 The next column is, in French (Interpretation) "Type of aircraft" (Speaks English) and
19 handwritten in legible writing we see C-208, Antonov 8, which is AN-8. AN-2,
20 Antonov 2, and other types of known aircrafts.

21 And then we have hour of arrival, hour of departure, place of departure, place of
22 arrival, with cities named in those columns known to Defence counsel, Bunia, Aru,
23 Entebbe, Bunia, Beni, Bunia, Bunia, Mongbwalu, et cetera.

24 And then in the last column on each page we have name of the pilot, that's the header,
25 and each of the pilot's names for the flights are listed.

1 So without a lengthy explanation from the Prosecution at the date of disclosure of this
2 document, January 2015, the Defence, in my submission, was perfectly capable of
3 understanding what this document purported to be and of discussing it with the
4 accused as they do with all disclosures. To the extent that there were questions, we
5 are always available for that.

6 The point that I wish to make when using the document with Mr Ntaganda is simply
7 to show him, to take him through this document in layman's terms and have him
8 confirm or deny that this document does not show that there were flights to or from
9 Bunia, Mongbwalu on 28 November 2002. And thereafter I would seek, unless he
10 accepts that he made a mistake on the date, in which case I will not seek to admit the
11 document for any purpose. If he denies the date of departure and maintains that he
12 left on the 28th I would ask that the Chamber admit the document for impeachment
13 purposes.

14 And the normal criteria for admission would apply. I would not be seeking to admit
15 the document for the truth of its contents, notwithstanding that on its face it has
16 indicia of reliability. But that would be not be the purpose of the impeachment
17 admission. It would solely be for the Chamber to be able to assess the witness's
18 answers on the date of his departure against the document that has been admitted.
19 The Prosecution was not aware prior to the cross-examination the date upon which
20 Mr Ntaganda was going to testify that he left Mongbwalu.

21 Now, in respect of other disclosures, as the Prosecution was preparing for the
22 cross-examination we reviewed other databases that contain largely internal work
23 product of the Prosecution division. And there we noted that there were three pages
24 at or about the same time as this logbook was photographed which had not been
25 disclosed to the Defence. They are for flights dating 7 to 13 December 2002,

1 30 January to 2 February 2003, and 3 to 8 June 2003. We proceeded to disclose those
2 immediately for whatever material issue they may relate to in the Defence's
3 preparation.

4 I do not seek to use those documents now. I am asking to use the earlier disclosed
5 document which has the flights on the dates that I mentioned, 24 to 29 November.

6 And the accused is certainly capable of indicating that he is not -- it's not possible for
7 him to understand the document such that he cannot give an answer to my question,
8 that he accepts that he made a mistake and the date is different, or that he maintains
9 that the date is the same that he, that he left.

10 The Chamber can thereafter evaluate the credibility of the answer against the weight
11 it will attributable to this document, much like it will do for press reports that have
12 been admitted for impeachment but for whom the author of the article is not
13 appearing. And in the Prosecution's submission the Chamber's evaluation and the
14 weight that it will give to the impeachment document or to the credibility of the
15 answer will equally be an issue for the Chamber to weigh. But, in my submission,
16 the document itself is clear enough as to what it purports to be, and I will frame it in
17 those terms when I explain what it is to the accused so that he understands that it is
18 something I am purporting rather than definitively suggesting this is what we have,
19 and, in my submission, it's a fair way to proceed.

20 The recent disclosures of additional logbooks, in my submission, are not squarely
21 related to the page that I wish to used now. They in part differ in format because at
22 least one of them emanates from police who were working at the airport at the time.
23 In my submission, this logbook, the page I wish to use, is more detailed and contains
24 much more information of the type that I mentioned earlier in the submission than
25 later logbooks, but I'm aware at this time of a relationship between them.

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1 Now, to the extent that the Chamber wishes to ask further questions on any other
2 logbooks, I may seek to come back to you with answers on that, your Honour. But
3 for now, on the specific page that I wish to use, I submit that the procedure is not
4 unfair, nor is it prejudicial. Disclosure took place a long time ago. The item has
5 been put on our list of documents at the right moment prior to cross-examination.
6 I am reacting to testimony provided by the accused. And the indicia of reliability
7 such as it is on its face to be able to read and understand the document is clear.
8 Thank you.

9 PRESIDING JUDGE FREMR: [12:43:21] Thank you, Ms Samson.
10 But I would like to put you some additional question or questions. I would like you
11 to elaborate on this part of Mr Bourgon's submission challenging the reliability of all
12 those documents and, according him, reliability even of those three pages cannot be
13 adjudicated without looking at the context. He referred to some differences that
14 those two logbooks didn't match, that only after evaluation of whole context we will
15 have full picture whether we can rely on those three pages.
16 Could you comment that?

17 MS SAMSON: [12:44:18] Well, Mr President, I will certainly do the best I can at
18 this moment without having the logbooks or the full examples at my disposal, but I
19 did not understand from counsel's submission that there were any other logbook
20 entries that relate to the entries on the 24 to 29 November 2002 that I wish to put to
21 the accused now. And, in my submission, my cross-examination on this point is
22 quite confined to what is contained in this logbook and the other logbooks are not
23 related to these dates in particular.

24 PRESIDING JUDGE FREMR: [12:45:02] But my understanding, but I will then still
25 give floor to Mr Bourgon, was that Mr Bourgon tried to refer to some inconsistencies

1 concerning the other dates, other flights, which then would put probably, it was my
2 understanding, bad light on the reliability of those three pages you would like to
3 present.

4 MS SAMSON: [12:45:26] Your Honour, that will be an argument that counsel can
5 make in relation to the weight that the Chamber will attribute to the impeachment
6 evidence. And if counsel wishes in reexamination to put to the accused that there
7 may be some unreliable points in these documents, he is free to do so. And then the
8 Chamber is able to evaluate whether the information in these pages for impeachment
9 purposes alone will be ascribed any weight at all.

10 PRESIDING JUDGE FREMR: [12:46:01] Thank you, Ms Samson.
11 Judge Chung, please.

12 JUDGE CHUNG: [12:46:06] So is it true that there is not any original version of
13 this?

14 MS SAMSON: [12:46:12] I do not know whether there is an original version that
15 still exists. At the time that these photographs were taken of the logbook I'm
16 referring to in particular, in February 2006, these were taken from original logbooks.
17 And the Prosecution has endeavoured recently to make inquiries with the airport to
18 determine whether those originals are still in existence. And I do not at this moment
19 have an answer to that, but we are endeavouring to determine that issue. But they
20 existed at the time the photographs were taken. If they have still been maintained is
21 a question I will address with my team at the break.

22 JUDGE CHUNG: [12:46:54] And in this specific page, 0661, where we can find the
23 year 2002? I can see the date and month, but ...

24 MS SAMSON: [12:47:08] The reference that I can assist you with, your Honour,
25 relates to several of the entries where we see the year '03. So there are

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1 entries 27/01/03, 27/01/03.

2 And my suggestion is that -- my suggestion to the witness will be that these other
3 records for 27/11, 29/11 refer to the 2002 period.

4 JUDGE CHUNG: [12:47:44] But in this page, in this specific page, because this is
5 the only one you want to use now, but in this page can you verify where we can find
6 the year of this -- of this logbook?

7 MS SAMSON: [12:48:00] On this specific page, 2002 does not appear. What
8 appears in terms of year is only references to the January '03 year, from which I wish
9 to put to the witness that the entries that relate to November relate to the 2002 year in
10 contrast with the 2003 that we see for January.

11 PRESIDING JUDGE FREMR: [12:48:35] Does Judge Ozaki have any question?
12 Mr Bourgon, do you want to react? Please go ahead.

13 MR BOURGON: [12:48:45] Thank you, Mr President. I understand the
14 Prosecution wants to take it to the bare essentials, but fair trials rarely have to do with
15 the bare essentials. The issue raised a few minutes ago by the Honourable
16 Judge Chung certainly highlights the issue. There is no 2002 on this page, and to try
17 and put a suggestion that where we see two places with '03 written, that in November
18 of 2002 they would include a flight not yet arrived, that has not yet taken place in
19 January of 2003. The assumption itself does not allow to draw a conclusion.
20 But, Mr President, that's not the gist of my submission. The submission has to do
21 with reliability. Now, reliability comes in two places. Cross-examination is not a
22 test where you -- where the Prosecution can put a proposition without knowing if it is
23 true to see how the witness will react. There has to be a what you call a good-faith
24 basis on -- it would appear although -- even if we take away the '03 argument, it
25 would appear that this one page has a good-faith basis.

1 But the Prosecution has the other information, and the Prosecution, by doing its own
2 work, knows that this is not a reliable document, then there is no longer a good-faith
3 basis and it should not be a reason to put the witness, who happens to be the accused
4 in this case, to a test as to how he will react to a page he has never seen.

5 The second place where reliability comes in is that if the document is allowed to be
6 used, there has to be -- the basis for using a document must be its reliability.

7 I'm not sure the Trial Chamber is interested in getting all of this material and to make
8 a full analysis of this material in order to determine whether that page was reliable.

9 Many times we have been informed by the Chamber not to overburden the record.

10 Now it's not overburdening the record, it is making an exercise which will take hours
11 and hours and hours on the part of the Chamber to try and determine whether this
12 page is reliable and then to assess one answer of Mr Ntaganda on this issue.

13 We say that when we weigh the prejudicial effect with the probative value, potential
14 probative value, the answer is clear, that the prejudicial effect far outweighs the
15 probative value and that it should not be used, that is if and when the Chamber is
16 willing to do the exercise. I'm sure the Judges would be interested in doing so, but
17 even if you try to do so, Mr President, my respectful submission is that you will not
18 be able to come to a conclusion as to whether it is a reliable document.

19 We should not forget the disclosure aspects of all this. Now, the last thing I'll say is,
20 I'll respond to the reactionary argument, which of course I anticipated. The question
21 that the Trial Chamber should ask itself, in our respectful submission, is: Is the date
22 of flights something that was important for the Prosecution's case? When we look at
23 the Prosecution case, the way it was presented, and when we look at the
24 cross-examination conducted by the Defence, there are a number of days where the
25 date is important. For example, when did (Redacted)

(Redacted)? When did Peter, the alleged assistant, leave to Aru to transport weapon?
When did Mr Ntaganda go to Rwanda? When did Kisémbu -- or yesterday we were
talking about a flight to -- with Mr Lubanga going to Aru. When did the delegation
on the Prosecution's own video landed in Bunia? (Redacted)

(Redacted)

Mongbwali? All of these dates were important for the Prosecution. Had the date
of flights been important, they should have called a witness and they should have
tried to make these documents reliable. They haven't tried to do so.

And now we are in the middle of the cross-examination of the most important
witness in this case, the accused, and we're trying to pull and to use a page where the
homework has not been done.

As I mentioned at the very beginning, even if the Prosecution had attempted to do
this in its case in-chief, we would have opposed this on the basis of reliability. At
this point we respectfully submit that the Prosecution should be precluded from
using any of this material.

Thank you, Mr President.

PRESIDING JUDGE FREMR: [12:54:55] And, Ms Samson, please briefly.

MS SAMSON: [12:54:57] Yes, very briefly, your Honour. In relation to the
good-faith basis for the 2002 year suggestion, as counsel has in the end conceded, the
good-faith basis exists within the context of the materials disclosed in January 2015.
The following page of the logbook, which is recorded at 0090-0660 is -- follows on
from 29/11, and then has a header December 2002. And a few pages prior, 0090-0684
is a reference to November 2002 with the dates that follow.

So that's the good-faith basis for the suggestion, although I do not seek to put those
documents to Mr Ntaganda, just the relevant page.

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1 Thank you.

2 PRESIDING JUDGE FREMR: [12:55:56] Thank you, Ms Samson. The Chamber
3 will deliberate during the lunch break and we will try to return back to you with our
4 ruling as soon as possible.

5 At the moment I think it doesn't make to bring Mr Ntaganda back to the courtroom
6 because we have just three minutes available. So we will break now and we will
7 reconvene at half past 2.

8 THE COURT USHER: [12:56:22] All rise.

9 (Recess taken at 12.56 p.m.)

10 (Upon resuming in open session at 2.32 p.m.)

11 THE COURT USHER: [14:32:24] All rise.

12 Please be seated.

13 PRESIDING JUDGE FREMR: [14:32:55] Good afternoon, everybody. Are there any
14 changes in appearances? No.

15 So we will start, as you can see, without Mr Ntaganda for the first few minutes,
16 because the Chamber wants to issue oral ruling on submissions made before the
17 lunch break. And since the submissions have been heard in the absence of
18 Mr Ntaganda for the good reasons, we also will deliver this ruling in his absence.

19 In accordance with Rule 64(2) of the Rules, the Chamber shall now issue an oral
20 ruling on the matter discussed before the break, namely the Prosecution request to
21 use the item bearing ERN number DRC-OTP-0090-0661 with Mr Ntaganda, which is
22 item 1241 on the Prosecution's list of items.

23 The Chamber observes that this item was disclosed to the Defence on 30 January 2015
24 and considers that there is therefore no issue as to the timing of disclosure of this
25 particular document.

1 The Chamber also considers there to be no issue as to the format of the document
2 itself. The item, which the Prosecution notes is a photograph of a double page of
3 a logbook from Bunia airport, taken by the Prosecution in 2006, appears fairly legible
4 and is easily understandable, in the view of the Chamber.

5 However, at this stage, in light of, firstly, the Defence submissions as to the existence
6 of late-disclosed material which contradicts the entries of the logbook; secondly, the
7 fact that the order of the logbook pages is disputed, and that item

8 DRC-OTP-0090-0661 does not contain the logbook in its entirety; and, thirdly, noting
9 that the Prosecution was not in a position to comment on whether an original of the
10 logbook exists, which would assist with the issue of page ordering, the Chamber does
11 not consider that the item is sufficiently reliable and that the prejudice to the accused
12 caused by its use, at this stage, would outweigh its probative value.

13 This ruling is without prejudice to any future requests based on further information
14 that may come to light in relation to the item or associated items.

15 That concludes the ruling of the Chamber.

16 Any request for the floor on that issue? No. All right. So please now bring
17 Mr Ntaganda back to the courtroom.

18 Ms Samson.

19 MS SAMSON: [14:36:58] Yes, I do have a submission, not in relation to
20 the Chamber's ruling, but a request for a translation verification by the interpreters.
21 The yesterday transcript, T-235, pages 94 and 95, are sections of the transcript in
22 which the Prosecution played a portion of the Mongbwalu video.

23 (The witness enters the courtroom)

24 MS SAMSON: [14:37:32] And the translation as accepted between the parties, which
25 is DRC-OTP-2102-3766 at page 3786, lines 671 to 674, contain the following words, in

1 French:

2 (Interpretation) "When the people fled, they were fired upon. They lay down on the
3 ground and then they got back up and continued to flee."

4 (Speaks English) And I -- the interpretation is being done in the passive, of the words
5 "on tirat sur eux", and I would like the interpretation to consider whether there's an
6 active form when coming from -- spoken from an individual to describe a particular
7 event and whether that is also a potential interpretation of those words.

8 Thank you.

9 PRESIDING JUDGE FREMR: [14:38:44] Thank you, Ms Samson. All points of your
10 request are taken and also supported by the Chamber.

11 Mr Ntaganda, good afternoon. Welcome back. Just to provide you with brief
12 explanation why you have been brought to the courtroom later. The first reason was
13 that -- the main reason was that the submissions we have heard before the lunch
14 break have been made in your absence because of some reason which I can
15 openly -- oh, because it in fact concerned your testimony, so we also, when delivering
16 our ruling on that, we had to make it in your absence.

17 And now you didn't miss anything. Ms Samson started in your absence, but started
18 with her request for verification of some part of the transcript and translation.

19 So now we will continue with the next part of your cross-examination by
20 the Prosecution.

21 Ms Samson, you have the floor.

22 MS SAMSON: [14:39:55] Thank you, Mr President.

23 Q. [14:39:57] You testified that Floribert Kisembo arrived in Mongbwalu on
24 26 November, correct?

25 A. [14:40:14] Yes, that is correct. Trying to remember the events that occurred

1 after, in particular the liberation of Mongbwalu and Sayo. The day that they came to
2 come and fetch the wounded people and he himself came, I put that event on
3 26 November.

4 Q. [14:40:44] Yes. Sir, because of the limited time that I have to ask you a question,
5 I would ask you please to focus on the question, and answer, to the extent that you
6 can, only the question that I have asked.

7 Now, it's right, isn't it, that Floribert Kisembo attended Governor Eneko's funeral in
8 Aru?

9 A. [14:41:23] Yes, he went, he went to the burial of the governor in Aru.

10 Q. [14:41:31] Now, we spoke a bit yesterday about the date of the burial. It was on
11 24 November, was it not?

12 A. [14:41:50] Yes, that's correct. The burial was on 24 November.

13 Q. [14:41:59] And Floribert Kisembo stayed in Aru for the burial for three days,
14 right?

15 A. [14:42:16] No. I remember calling so that he should send an aeroplane to come
16 and fetch the wounded and he said he was going to come the next day. He sent the
17 aeroplane on the day preceding and then the next day he did arrive. He sent the
18 aeroplane on the 25th.

19 Q. [14:42:49] In the Mongbwalu video, Floribert Kisembo speaks about his trip to
20 Aru for the funeral, and I will quote to you what he says at DRC-OTP-2102-3766 at
21 page 3791, lines 858 and 859. Quote, in French:

22 (Interpretation) "We were happy. After the governor's death, we went with the
23 president to Aru and we spent three days there for the governor's funeral."

24 End quote.

25 (Speaks English) So after hearing Floribert Kisembo's words in the transcript, do you

1 accept that he was in Aru for three days?

2 A. [14:44:21] That doesn't change my answer because he is talking about three days.

3 But I think you have to determine the day he arrived in Aru.

4 Q. [14:45:05] Floribert Kisembo, in the excerpt that we just -- that I just read to you,
5 said that he went with the president to Aru. And that's right, isn't it, they went
6 together?

7 A. [14:45:34] He was with the president in Aru, but I'm not in a position to know
8 whether they left on the same flight, in the same plane. They were together in Aru.
9 Both of them attended the funeral of the governor.

10 Q. [14:45:57] And what -- I will read out again the excerpt of the video, and
11 Floribert Kisembo says, and I quote, in French:
12 (Interpretation) "We were happy. After the death of the governor, we went with the
13 president to Aru and we spent three days there for the governor's funeral."
14 (Speaks English) Now that, what Floribert Kisembo says is that he went with the
15 president and they stayed three days, correct?

16 A. [14:46:44] I don't have the transcript of what you're reading out to me and I'm
17 following the explanations you are giving me, but even if he said that, I'm telling you
18 that on the day he arrived, the date that I gave -- it was the date I gave you. After
19 the aeroplane came to get the injured -- the wounded people, he spoke, he spoke to
20 the people that he spoke to and I was not present.

21 PRESIDING JUDGE FREMR: [14:47:18] Hold on, Ms Samson, please.

22 Mr Bourgon.

23 MR BOURGON: [14:47:26] Thank you, Mr President.

24 My colleague referred to the transcript of a video and I did not object, hoping that it
25 would be a one-time issue. But that issue arose during examination-in-chief when I

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1 wanted to refer to the transcript of a video rather than to the video itself, and both
2 the Prosecution objected to this procedure and the Chamber ruled that we should
3 look at the video so that we have a proper -- we know exactly when and how these
4 words with spoken. So I think the same should apply to the Prosecution in order
5 that if my colleague would like to cite some passages in the transcript of the video,
6 then we should look at the video at the same time. Thank you.

7 PRESIDING JUDGE FREMR: [14:48:18] Ms Samson.

8 MS SAMSON: [14:48:19] If -- should the Chamber wish to -- me to do that, I'm
9 happy to do it. I want to move to a logbook message on the date of the arrival in
10 Aru at the moment. If for any reason it appears that the witness was not able to
11 follow, I can show the video.

12 PRESIDING JUDGE FREMR: [14:48:38] I would prefer to take a case-by-case
13 approach. If there will be some really great controversy between the parties about
14 the text, for example, about the concrete words, then we can even use the video. But
15 if there is -- it concerns more general issues, I don't see such a need. So please
16 proceed.

17 MS SAMSON: [14:49:03]

18 Q. Now, sir, I would like to show you a passage from the logbook. At this time
19 it's the only passage I want to show you so I believe it can be -- well, in fact, it's best
20 that you have the original, I think, in fairness.

21 And for the record, it is DRC-D18-0001-5748 at page 5764.

22 PRESIDING JUDGE FREMR: [14:49:38] And in the meantime minor correction of
23 the transcript, page 52, line 23, instead of word again, should be general.

24 MS SAMSON: [14:50:13] I note, your Honour, that there are annotations in red ink
25 in the logbook that the accused now has. It may be that he made them. I am

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1 unclear where they come from.

2 PRESIDING JUDGE FREMR: [14:50:26] Noted.

3 Mr Bourgon.

4 MR BOURGON: [14:50:37] If there is any annotations that don't come from the
5 witness it should be taken away from him. I'm not sure. I think that's my -- the
6 point raised by my colleague. He should not get any material with anything
7 that is --

8 PRESIDING JUDGE FREMR: [14:50:51] Yes, I find comment made by Mr Bourgon
9 reasonable, because it could influence or have some influence to Mr Ntaganda's
10 testimony.

11 Mr Ntaganda, can you see any annotation in the text in front of you? Is this
12 annotation made by you or not?

13 THE WITNESS: [14:51:25] (Interpretation) I haven't got to the page yet, the
14 page specified by the Prosecutor.

15 PRESIDING JUDGE FREMR: [14:51:35] Mr Bourgon.

16 MR BOURGON: [14:51:36] Mr President, we haven't touched that binder. But in
17 the event Mr Ntaganda made any annotations, then the binder should go at the end of
18 the day to the court -- to the court usher and not back to us to avoid any
19 misunderstanding in this regard. Thank you.

20 PRESIDING JUDGE FREMR: [14:51:57] Right. Ms Samson.

21 MS SAMSON: [14:51:58] Yes. That's fine. Thank you.

22 Q. [14:52:01] Now, sir, the page that I'm referring you to is the document behind
23 the second tab in your binder and it is page number 5764 in your binder.

24 For the display, may I ask that we display the translation, which is D18-0001-5778 at
25 page 5788. And it's public.

1 Sir, have you reached the page 5764?

2 A. [14:53:22] Yes, I'm at that page.

3 Q. [14:53:29] I will read out the translation while we're waiting for it to be

4 displayed. The translation reads -- this is a message from the loose pages logbook,
5 24 November 2002.

6 For the display it is actually page 5794.

7 Now, sir, in the original logbook that you have before you, you see the number 24 at
8 the top of the page, do you see that?

9 A. [14:55:04] The number is not very clear. I don't know if it's 24 or something
10 else.

11 Q. [14:55:11] In your testimony in chief your counsel asked you questions about the
12 number 24 and you stated as follows, T-217, page 40 and 41, starting at lines 24:

13 Question: "Please turn over the page to page 5764. On what date -- or which date
14 does that page refer to?"

15 Answer: "The same date, that is the 24th. But it was in the afternoon."

16 Now you've testified, haven't you, that the 24 at the top of the page indicates
17 24 November?

18 A. [14:56:23] I don't see the reference on this page. It was on another page on
19 which it was clear that the message went on -- that the message continued on the
20 following page.

21 Q. [14:56:49] Well, sir, the page before, which is 5792 in the translation and
22 5764 -- pardon me, 65 in your document, the original -- 5763 in the original. The
23 page just before your page. We see -- it should be 5763 in your logbook, the
24 page before.

25 A. [14:57:45] The page with the number ending 63 has nothing marked upon it.

1 MR BOURGON: [14:57:57] If I can intervene, Mr President, it's 5762 because he has
2 the original and some pages are numbered where the reverse page is numbered. It's
3 5762 is the page my colleague is looking for.

4 PRESIDING JUDGE FREMR: [14:58:10] Thank you very much, Mr Bourgon.

5 MS SAMSON: [14:58:11] Yes, thank you.

6 Q. [14:58:13] Can you check page 5762, please. It should be dated
7 24 November 2002, a message at 715. Do you see that?

8 A. [14:58:40] This is the message I was talking about and I told you a few moments
9 ago that if you look at the arrow, that means continue, that arrow points to a spot
10 where there is a reference. The reference is not clear and you said it was 24 and that
11 shows that this message also dates back to 24 November.

12 Q. [14:59:14] Yes. And that is all I was seeking to establish, that the 24 that's
13 scratched out in the original logbook at page 5746 and 5794 in the translation relates
14 to 24 November 2002. I believe we're in agreement about that.

15 Could the court officer please move back to the page which we had before,
16 which is 5794.

17 And, sir, if you look at page 5764, this page you've just indicated is a message from
18 24 November 2002, correct?

19 A. [15:00:16] Yes. This message is a follow-up on part of the message which
20 appears on the page ending with 62.

21 Q. [15:00:35] Now this message refers to number one's arrival in Aru and it reads
22 as follows: "Aru 1345" is the time, and I quote, in French:
23 (Interpretation) "Arrival of No 1 in Aru. Very warm reception and the body of the
24 governor had arrived yesterday at about 1745 hours. The governor will be buried
25 today. They were waiting for the No 1 as he mentioned."

1 (Speaks English) End of quote.

2 And so my question is, according to this logbook message, No 1, Thomas Lubanga,
3 arrived in Aru on 24 November 2002, correct?

4 A. [15:01:43] Well, that is what the message says.

5 Q. [15:01:48] And so if Floribert Kisembo travelled with or was with
6 Thomas Lubanga when he went to Aru, and if he attended the governor's funeral on
7 24 November and if he stayed three days in Aru, I put to you that he could not have
8 gotten to Mongbwalu before 27 November, not the 26th, as you've testified.

9 A. [15:02:30] I said that he arrived in Mongbwalu on the 26th.

10 Q. [15:02:43] Now, I'm changing topics for my questions. In early December 2002
11 UPC troops attacked Kilo. Can you confirm that?

12 A. [15:03:07] If I go by the messages in the logbook, then they arrived in Kilo in
13 early December.

14 Q. [15:03:24] And I suggest to you that the UPC attacked Kilo and the population
15 fled to Kobu and to the bush. Can you confirm that?

16 A. [15:04:01] I was not there.

17 Q. [15:04:07] Didn't you know what the troops were doing in Kilo, as you've
18 indicated you received information reports about Kilo in early December 2002?

19 A. [15:04:33] That was not mentioned in the messages. And there was no other
20 means by which to know what had happened, except through the messages that were
21 transmitted to me by my radio operator.

22 Q. [15:04:57] There was no other way for you to get information from Kilo?

23 A. [15:05:12] No. I did not receive any other information. I was simply informed
24 that our forces had arrived in Kilo and that is all the information I got.

25 Q. [15:05:31] What you said, however, is that there was no other means by which to

1 know what had happened except through the messages that were transmitted to me
2 by my radio operator. Now, you testified a few days ago that you find out about the
3 death of a governor before many other people because of your intelligence soldiers on
4 the ground, yet you can't find out, there is no other means for you to find out what
5 took place much closer to you in Kilo except by Manpack radio?

6 A. [15:06:25] It was possible to receive information on a daily basis which would
7 differ from what one had learnt the day before. Now when it comes to Kilo, I
8 received information that had been sent through the Manpack and the messages were
9 transcribed into the logbook. But I am not able to explain to you why I did not
10 receive other information through other channels.

11 Q. [15:06:59] Now I put to you that you know that UPC soldiers raped women in
12 Kilo in December 2002. Can you confirm that?

13 A. [15:07:30] Kisembo once assigned me to supervise the Aru and Komanda areas,
14 but while there I never learnt about these things that you said because otherwise for
15 the sake of the honour of the UPC I would have intervened. Unfortunately, this
16 information was not brought to my attention.

17 Q. [15:07:59] Did you not know that the UPC troops stationed in Kilo requested
18 antibiotics to treat the soldiers for venereal disease?

19 A. [15:08:33] No one gave me that information.

20 Q. [15:08:39] And I suggest that the UPC troops in Kilo killed civilians there.

21 A. [15:09:00] No one provided me with that information. No one provided such
22 information to me at the time.

23 Q. [15:09:13] Did you not visit Kilo yourself on or about 3 December 2002?

24 A. [15:09:42] I did not go to Kilo. I was in Bunia.

25 Q. [15:09:50] I would like to show you a logbook message. It's in the logbook at

1 DRC-OTP-0017-0033, that's the original language, at page 0035. And the translation
2 is DRC-OTP-2102-3854 at page 3857.

3 Sir, have you reached the page? It's a message dated Monday, 2 December 2002.

4 There's only one message on the page. A message at 1452 sent by the T3 operations
5 sector northeast to the chief of general staff with info to the sector commander of the
6 northeast sector and the brigade Mahagi commander. And if we look carefully at
7 the initials SA, that's Salumu Mulenda, correct?

8 A. [15:12:00] That means that it is Salumu Mulenda who sent the message.

9 Q. [15:12:10] Yes. And what he sends in his message, what he writes is, and I
10 quote, in French: (Interpretation) "We are in the locality of Kilo. Tomorrow
11 morning CVC was" --

12 THE INTERPRETER: [15:12:35] Sorry, Mr President, we didn't follow the reading of
13 the acronym.

14 PRESIDING JUDGE FREMR: [15:12:46] Ms Samson, please repeat. Yes.

15 Thank you.

16 MS SAMSON: [15:12:50] Certainly. (Interpretation) "We are in the Kilo locality.
17 Tomorrow morning it is V/C and T.R."

18 Q. Sir, T.R. is a reference to your call sign Tango Romeo, isn't it.

19 A. [15:13:28] Madam, I think you are looking for information now. In military
20 language TR does not stand for -- well, that particular TR does not stand for
21 Tango Romeo. If you had a radio operator with you he would explain to you what
22 the T.R. means. Even the V/C does not stand for Victor Charlie, which ordinarily is
23 someone's call sign.

24 By the way, we never had anybody with the call sign Victor Charlie.

25 Q. [15:14:10] Now, sir, you have already explained that T.R. could not be you

1 because you say, quote from the transcript, T-216, page 72, lines 13 to 15, and I
2 quote -- actually, I'll say from line 12 to 15:

3 Question: "Who had the call sign Tango Romeo?"

4 Answer: "That was me. But that wasn't a call sign. T.R. ... if it was the call sign it
5 wouldn't have the dots between the two letters. It would just be TR. As there are
6 dots between them, that must be something else."

7 And that was your explanation for why T.R. could not be your call sign, a reference to
8 you in this message?

9 A. [15:15:45] Yes, that's the first reason. The second reason is that for somebody
10 as important as myself, some additional information would have been provided in
11 parenthesis. There is also an important point for us in the army. Maybe you will
12 not fully understand it, but my radio operator could not receive a message at the
13 location where I was because you see this message is an extract from my logbook.
14 He would have received such a message in Bunia and shown it to me. Now, if this
15 message had come from me while I was in Kilo, it would have been in the "out" box
16 because I would have been sending it to other persons. And my radio operator
17 would not have been receiving "in" messages at the location where I was. Therefore,
18 clearly this message was received and it was not possible for him to be receiving
19 messages in the area where I was. It is the contrary that would have happened, that
20 is the message should have been sent out.

21 Q. [15:17:09] I'm not suggesting that you sent this message. I'm suggesting that
22 Sierra Alpha, Salumu, sent a message stating that he was in Kilo and tomorrow it's
23 your turn, Tango Romeo.

24 A. [15:17:36] No. What he is saying is the following: We are in Kilo, and
25 tomorrow morning -- then he goes on -- rather, the radio operator then goes on to use

1 some words which I myself am not able to interpret for you, but what is contained in
2 the message is that the person who has drafted the message is announcing that they
3 will be in Kilo tomorrow morning.

4 Q. [15:18:29] Now, let's take a look at your explanation about the call sign. As we
5 can see from the message itself, so sent by Salumu, his call sign is captured in this
6 very message as "S.A." So doesn't this message alone contradict your evidence that
7 in the FPLC you never use dots in between the initials of a call sign?

8 A. [15:19:13] I did not say that we did not use any dots between call sign letters.
9 Can you show me the area where I said so? What I said is that generally speaking
10 there are no dots in a call sign. But a radio operator from time to time might make
11 the mistake of inserting dots or points. But as a general rule, a call sign does not take
12 any dots.

13 Q. [15:19:48] Well, as I read to you a moment ago, you were very specific in your
14 evidence-in-chief that T.R. was not a call sign because it had the two dots between the
15 letters, and you said, and I quote:

16 "That can't be the call sign Tango Romeo, because if you see here, Echo Mike, at the
17 start, you will see right at this beginning 'In Echo Mike, Sierra, Papa Mike', there
18 aren't full stops between the letters ... If it was the call sign it wouldn't have the dots
19 between the two letters."

20 That was your evidence.

21 A. [15:20:44] Well, I said so because there were some examples to go by. If you
22 look at the original, you will see Echo Mike, Sierra Alpha, Papa Mike and other such
23 call signs which are written out in that way normally. But when you insert dots, it
24 means that you are referring to something else. That is the experience that I have.
25 So if you look at other messages, look through the messages, you will see how call

1 signs are generally written out.

2 Q. [15:21:26] And if we could turn to another message in the logbook - the original
3 is sufficient for my purposes - DRC-OTP-0017-0033 at page 0212, and the original can
4 be displayed, please.

5 And if we look at the first message, 19 November 2002 at 1314, from operations
6 commander T.R. That's you?

7 A. [15:23:00] Yes, that's me.

8 Q. [15:23:06] Now, sir, I would like to move to a different topic, and I won't be
9 referring to the logbook at present.

10 The UPC launched the CVPR, the commission on truth, peace and reconciliation, on
11 13 January 2003?

12 Mr Ntaganda, you can set the logbook aside and I will rephrase my question so that
13 you can focus on it.

14 The UPC launched the CVPR, the commission on truth, peace and reconciliation, on
15 13 January 2003?

16 A. [15:24:43] I remember that there was a press conference on that day which was
17 organised by the truth, peace and reconciliation commission.

18 Q. [15:24:59] On the same day, however, the UPC attacked villages from Nyangarai
19 to Ngongo, forcing the population to flee into the forest and killing civilians, correct?

20 A. [15:25:29] No. People were there in Nyangarai even at the meeting of
21 14 January. The complaints from the Lendu community -- well, the representatives
22 of the Lendu community in their complaints asked for the FPLC forces to withdraw in
23 order to begin negotiations. And this means that the inhabitants, the members of the
24 population were still present there.

25 Q. [15:26:20] You are aware that there was fighting in Nyangarai on

1 13 January 2003, aren't you?

2 A. [15:26:51] On 14 January I was there and I became aware of this information
3 through the discussions that were taking place. So I heard them talk about it. I saw
4 this on the video that was recorded as well. But at the location where I was, I did not
5 have information to the effect that they had been fighting at that location at the time.

6 Q. [15:27:37] In your testimony in-chief when you were discussing this period, in
7 particular a meeting at Ngongo on, as you say, 14 January, at transcript T-219,
8 page 12 -- page 13, lines 10 to 13, you were asked the following question and you
9 answered as follows:

10 Question: "As far as you know, when this event took place, was there any fighting in
11 the region?"

12 Your answer was: "No. There was no fighting in Lipri, but in other places like
13 Nyangarai there was some small confrontations." End quote.

14 So from your testimony in-chief, you knew by at least 14 January 2003 that there were
15 what you describe as "small confrontations" in other places like Nyangarai, correct?

16 A. [15:29:06] I can explain to you why I made that statement. The questions that
17 you have put to me lead me to provide the answers following what I saw on the
18 video.

19 Now, today if you ask me whether there were any problems in that area on
20 14 January 2003, I am only able to answer because I have become aware of that
21 through the video, by which I am now able to know that around Christmas or
22 New Years period there were clashes in Nyangarai and in surrounding areas.

23 And this is because I also was able to see that in the logbook and in the video that you
24 have played for me here. Those are the sources of my information and that's why
25 I am able to provide those answers in that way.

1 Q. [15:30:00] Sir, just so I'm clear. The passage that I've read to you from your
2 testimony in-chief, where you were asked, "As far as you know ... was there any
3 fighting in the region?" by 14 January '03, and you say, "No ... no fighting in Lipri, but
4 in other places like Nyangarai there was some small confrontations", all of that
5 knowledge, you say, comes from when you arrived in The Hague?

6 A. [15:30:51] I would have preferred that you read out to me an excerpt of my
7 statement so that I can provide you with an explanation as to what I meant.

8 Q. [15:31:11] I just did that, and my question is: Your information -- when you say
9 there were some small confrontations in other places like Nyangarai in January 2003,
10 are you saying now in cross-examination that you learned about this since you were
11 in The Hague and that you didn't know about it at all at the time in January 2003?

12 A. [15:31:54] In your previous question, you asked about something in relation to
13 a specific date, but in your second question you are asking a general question. So
14 that is why I asked you to re-read the question put to me and the answer I provided
15 so that I can provide a more specific answer, if necessary.

16 Q. [15:32:23] When did you find out that there were small confrontations in
17 Nyangarai and other places at the time of the Ngongo meeting on 14 January 2003?

18 A. [15:33:01] I don't know whether your question is a repetition of the question put
19 to me by my counsel or if it's a different question that you're asking me, different to
20 the question that my counsel put to me.

21 Q. [15:33:18] Sir, I believe my questions are fair and clear and I don't have an
22 unlimited amount of time for cross-examination. You must endeavour, please, to
23 listen carefully to the question and to answer it. I have read out a passage of your
24 examination-in-chief, I have said to you you were discussing the Ngongo pacification
25 meeting on 14 January 2003 and your counsel asked you, and I will read it again.

1 Question: "As far as you know, when this event took place, was there any fighting in
2 the region?"

3 And your answer was: "No. There was no fighting in Lipri, but in other places like
4 Nyangarai there was some small confrontations."

5 A. [15:34:21] Now I have understood. When I was talking about confrontations it
6 was on the basis of my logbook when I read the messages. And that was the period
7 between Christmas and the new year. I had received a message to the effect that our
8 soldiers had been wounded at the bridge. They were about to go into Nyangarai.
9 And that is how, through the messages in the logbook, that is how I learned about
10 that.

11 Q. [15:35:04] The United Nations issued a report about abuses committed in Ituri
12 from January to March 2003 in Lipri, Bambu, Kobu, Bogoro and Mandro. The report
13 is at DRC-OTP-0152-0286. It's number 1330 on our list. And I draw your attention
14 to page 301, paragraphs 54 and 55. It's a public document.

15 And I will read out the two paragraphs as reported from the United Nations'
16 investigation. Paragraph 54 and 55:

17 "UPC forces had been carrying out attacks against the villages of the region with few
18 casualties until mid January thus forcing the population to hide in the bushes. On
19 25 January 2003, three male Lendu going from Kobu to Bunia were reportedly
20 arrested by the UPC and executed. There were reports of several attacks on nearby
21 villages such as Ngongo, Nyangarai or Nyarada on 13 January.

22 An eyewitness from Nyangarai reported that around two battalions of UPC coming
23 from Mongbwalu arrived around 5:00 a.m. in his locality on 13 January. They forced
24 the population out of their homes and put 15 of them in the chapel. They reportedly
25 chopped all of them to death with machetes and burned their bodies. The

1 eyewitness could identify two victims, one being a child."

2 Now, sir, I put to you again that on the very day that the UPC was purportedly
3 launching its commission of truth, peace and reconciliation, it's reported that the UPC
4 equally attacked villages, including Nyangarai, on 13 January 2003. And I put to
5 you that these attacks and reported crimes are true.

6 A. [15:38:38] Unfortunately I did not receive these reports. I gave you my sources.
7 I told you that I was in the field.

8 Q. [15:39:05] Now, on 14 January military and political UPC representatives met
9 Lendu community leaders in Ngongo, correct? You've talked about this.

10 A. [15:39:27] The 14th they were in Ngongo.

11 Q. [15:39:40] And the G2 you said reported to you that the Lendu he met with did
12 not know that there were Lendu in the UPC and they were pleased to open the route
13 between Lipri and Bunia, correct?

14 A. [15:40:23] I remember that I was told that he wasn't aware that there were
15 Lendus within the UPC. I remember him saying that. And at that time the road
16 was opened. Yes, I do remember. They agreed that the road should be opened, the
17 road which had been closed previously. And it was during that very same meeting.

18 Q. [15:40:54] Didn't he report to you that those Lendu leaders complained about
19 the UPC attacking Nyangarai, burning houses, chasing the population in the forest
20 just the day before the meeting?

21 A. [15:41:28] No, he didn't say that.

22 Q. [15:41:30] And didn't he report to you that those Lendu leaders said to him that
23 the population had to flee Mongbwalu because the UPC were chanting slogans
24 against various ethnic groups, including Bira, Nande, Lendu and Ngiti?

25 A. [15:41:59] No, he didn't give me any such report.

1 Q. [15:42:06] And didn't he report to you that the Lendu representatives
2 complained that UPC Commander Salongo was on the radio saying that, quote,
3 "They should chase the Lendu wherever they are"?

4 A. [15:42:35] I did not receive any such report.

5 Q. [15:42:44] I would like to show you extracts from the video of the meeting in
6 Ngongo. The video extract I would like to play is item 287 on the Prosecution's list.
7 It's DRC-OTP-0127-0063, minutes 1.32.58 to 1.34.13. The translation is at number 290
8 on our list. It is DRC-OTP-0176-0428 at pages 453 and 454, lines 579 to 610. And I
9 understand the interpreters have the transcript.
10 May we have the floor for the video.

11 PRESIDING JUDGE FREMR: [15:43:44] I think so, but before that I would like to
12 hear Mr Bourgon.

13 MR BOURGON: [15:43:48] Thank you, Mr President. While we prepare the video I
14 just wanted to highlight for the benefit of the Chamber that there have been a number
15 of questions put by my colleague to the witness in reference to somebody who
16 testified in this case. If the Prosecution has references in the testimony, they should
17 put those references to the witness so that he can answer what the witness would
18 have said. But if they don't, then the propositions are not correct. So either way my
19 colleague should come forward with the right wording coming from the testimony of
20 the witness, or with respect to simply asking open questions and not leading
21 questions that he would have said this or he would have said that. Thank you.

22 PRESIDING JUDGE FREMR: [15:44:37] Ms Samson.

23 MS SAMSON: [15:44:37] Mr President, we need to be careful with our public session
24 submissions in relation to testified witnesses. My propositions come entirely from
25 the video. And so Lendu community leaders spoke to a number of individuals from

1 the UPC and made certain claims about crimes and ill-treatment. I wish to show the
2 video and have the witness confirm one way or the other whether anybody from the
3 UPC side ever reported the claims and reports coming from the Lendu leaders to the
4 UPC leadership.

5 PRESIDING JUDGE FREMR: [15:45:24] All right then.

6 (Viewing of the video excerpt)

7 THE INTERPRETER: [15:45:59] (Interpretation of the video excerpt)

8 "Now, those, those who are in Nyangarai, they have burnt down houses all the way to
9 here. It's the soldiers from Nyangarai, it is the soldiers from Nyangarai who are
10 chasing the people from here -- from there to here.

11 Nyangarai. Truly. Yesterday we -- and I said that we were to go see the superiors
12 and explain to them and then -- that we should sit down and see what must be done.

13 And the superiors are in agreement. The president himself agreed.

14 And, and the road, I think that this road, you saw it, was it not opened? Eh? And

15 the Nyangarai road, I think that we can -- after our discussions here, you Ukumu and

16 I, we are continuing towards Nyangarai. I believe that the ministers will, will go

17 back. The soldiers, the chief, commander Ukumu and I will take this road. We will
18 go to Nyangarai and we will. Chief?"

19 THE COURT OFFICER: [15:47:27] (Overlapping speakers) I would like to double
20 check with you that that video was public.

21 MS SAMSON: [15:47:32] Yes, that's fine. Thank you.

22 Q. [15:47:44] Now, sir, you have heard that when confronted with a civilian who
23 said that in Nyangarai they burned the houses everywhere to here, your G2

24 responded by saying, "We were to go see the superiors and explain to them and

25 then ... we should sit down and see what must be done. And the superiors are in

1 agreement. The president himself agreed."

2 Yet dispute the G2 confirming to the civilians that he would relay this information
3 and talk to the superiors, you claim that you, as part of the superior leadership in the
4 FPLC, were not informed when you got a report about this event; is that right?

5 A. [15:49:08] They were negotiating in relation to the combatants. What I can tell
6 you is that I saw -- when the FPLC forces were in Nyangarai, I went to that place.

7 There were houses all along the road and members of the population too, and that is
8 when I made my trip to go see my son in Rwanda. I went by way of Nyangarai.

9 Q. [15:49:48] If you could focus, please, on my question, which was: Didn't the G2
10 report all of this back to you, as we saw in the video that he promised to do, because
11 the president was in agreement?

12 A. [15:50:12] No. He did not give me a report about houses that allegedly were
13 torched. No, he didn't do that.

14 Q. [15:50:25] I would like to show you a second excerpt of the same meeting. It is
15 2.35.45 to 2.38.32. The translation is at pages 489 to 490, lines 1618 to 1662.

16 (Viewing of the video excerpt)

17 THE INTERPRETER: [15:51:23] (Interpretation of the video excerpt)

18 "When they arrived there, taking power, that was done in two stages. The week of
19 the 4th to 11th of November, from 4 to 11 November, here in Mongbwalu, it didn't
20 work [incomprehensible word] he pushed them back, and during that time a

21 Muhema who had [incomprehensible] caught there, and the person was taken to the
22 camp who had [incomprehensible] he specified all the fronts of the troops that were
23 supposed to come at night, attack us [incomprehensible] and the troops that were
24 supposed to come by way of the Watcha road, the front that -- and then enter

25 Mongbwalu. A grand coalition. When that guy was captured, he said that he was

1 not supposed to go back to Mongbwalu, that he was supposed to actually take
2 Mongbwalu. But, to our great surprise, even if it was said that this war, the UPC
3 with the army, there is a separation, me personally as an individual, I doubt. When
4 they entered Mongbwalu, once got to Plito, that was on the road -- on the Watcha
5 road, practically -- in Mongbwalu, they were chanting slogans, hostile, hostile slogans
6 about some tribes. During -- amongst these tribes, there were the Bira, the Nande,
7 the Lendu and the Ngiti. We were the ones who forced them to flee, to scatter.
8 And what is more, you know [incomprehensible] engineer from Butama, he was
9 captured when he [incomprehensible] from an agent in his company. We just -- they
10 were just asked their tribe, we captured him."
11 Another speaker: "But the communiqué has gone out." Unidentified speaker:
12 "That is why the whole population of Mongbwalu fled. Practically, Mongbwalu was
13 left empty. We, we fled on the Sayo road. I don't know whether you know
14 Mongbwalu. We went down to Ituri. Once in Ituri, we said goodbye to our friends,
15 Ja Jambo de Kilo Moto, the Banande, they crossed, we, we took the risk of entering
16 here, believing that the state was going to quickly take control of the situation and
17 that we would have peace everywhere, somewhat. We get here. Truly hell.
18 Attacks at any time in Makabo, Ngongo here, down here [incomprehensible]
19 Nyangarai, we were in the fire. You see why you see the people hiding in the bush,
20 that's not some coincidence. So the population flees the hostilities that go along with
21 this war, and I am telling you that these are terrible things that we have experienced.
22 All of Mongbwalu was destroyed, all our possessions. We left. We didn't have the
23 chance to get out of Mongbwalu with our [incomprehensible]. But, however, when
24 the Hema are [incomprehensible], you leave them a corridor. Two weeks they go
25 with their property, their possessions [incomprehensible] Mongbwalu, that was

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1 a Thursday. We left our houses, we fled. As you can see me, I just have clothing.

2 We fled. We fled five days after Sayo."

3 End of sight translation.

4 Q. [15:56:20] Now, sir, in this extract you saw an individual and heard an
5 individual describe the UPC attack on Mongbwalu, including displacement of the
6 population, pillaging and other destruction. And I put to you that this is, firstly, an
7 accurate description of your Mongbwalu operation.

8 A. [15:57:08] I haven't heard the interpretation. You were the one who just said
9 that. I didn't hear what he was saying in this particular excerpt.

10 Q. [15:57:23] You could not hear the sound of the video? Or get interpretation
11 into Swahili of the transcript?

12 A. [15:57:47] Well, I didn't get the interpretation in Swahili from the beginning to
13 the end. I thought that the interpretation would follow after, but while you were
14 playing the video footage, I didn't get any interpretation. The person was speaking
15 in French.

16 MS SAMSON: [15:58:09] Mr President, could we verify with the Swahili booth?

17 PRESIDING JUDGE FREMR: [15:58:16] Swahili booth, could you confirm whether
18 you provided translation of the last video? The court usher indicated that the
19 answer was yes.

20 Mr Ntaganda, according our information, you have been provided with translation.

21 THE WITNESS: [15:58:57] (Interpretation) Your Honour, the original, you see, some
22 people were speaking in French and I didn't get an interpretation into Swahili.

23 PRESIDING JUDGE FREMR: [15:59:12] Mr Bourgon.

24 MR BOURGON: [15:59:13] Mr President, the interpreter who is sitting with us said
25 that he did not hear also any interpretation.

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1 PRESIDING JUDGE FREMR: [15:59:23] Then maybe, if you insist on that part of
2 examination, you will have probably to put it to Mr Ntaganda again, play the video
3 again. And this time will not be again included to your time because it is -- because
4 of some maybe technical problems. I don't know. We are not at the moment sure
5 about the reason. So you can repeat and, as I said, time will not be on you.

6 MS SAMSON: [15:59:58] Yes. Thank you, Mr President. So we will start again
7 at -- in the translation, page 489, starting at line 1618, until page 490, line 1662.

8 PRESIDING JUDGE FREMR: [16:00:32] So, Mr Ntaganda, in this case if you would
9 not again hear the translation into Swahili, please raise your hand. Otherwise, if
10 everything is fine, remain as you are.

11 THE WITNESS: [16:00:50] (No interpretation)

12 THE INTERPRETER: [16:00:52] Could the Prosecution repeat the reference once
13 again for the benefit of the Swahili booth?

14 MS SAMSON: [16:01:00] Certainly, yes. The translation is DRC-OTP-0176-0428,
15 page 489, starting at line 1618, until page 490, line 1662.

16 THE COURT OFFICER: [16:01:38] Would it help if the Registry was publishing the
17 transcript on the evidence 1 channel?

18 THE INTERPRETER: [16:02:26] Message from the interpreters: If the Swahili
19 original could be put up on the screen, this would be very helpful for the Swahili
20 booth, if that is possible.

21 MS SAMSON: [16:02:39] I can provide the references, but we cannot watch the video
22 and see the translation, unless we can do side-by-side documents.

23 THE COURT OFFICER: [16:02:51] I would suggest that you play the video on the
24 evidence 2 channel for the benefit of the parties and participants, and that the Swahili
25 booth is putting its screen on the evidence 1 channel so that they are the only one to

1 see the Swahili transcript.

2 MS SAMSON: [16:03:09] My understanding is that a large part of the words of the
3 individual speaking is -- are in French. The original video is largely French.

4 PRESIDING JUDGE FREMR: [16:03:24] Anyway, I think that it's clear, Swahili
5 speech has to be translated by Swahili booth, French by French booth. And now
6 I think everybody is on alert, so I believe that it will be -- if you -- no problem even to
7 provide interpreters with written text, but still we have to rely mainly on audio.

8 MS SAMSON: [16:04:00] I believe the only copy of the translation is with the -- one
9 set of interpreters, all of them. All of the interpreters should have the text.

10 THE INTERPRETER: [16:04:24] The English booth has the French transcript of the
11 video footage.

12 PRESIDING JUDGE FREMR: [16:04:30] And what about French and Swahili booths?

13 THE INTERPRETER: [16:04:44] Message from the French booth: This is mostly
14 useful for the English and Swahili booths.

15 The Swahili booth does have the document and the Swahili interpreters confirm that
16 they do have the document.

17 PRESIDING JUDGE FREMR: [16:05:00] Very well. So it seems that we all should
18 be ready.

19 Mr Bourgon.

20 MR BOURGON: [16:05:07] Yes, Mr President. In order to save time maybe we can
21 just read the text. I don't see anything much in the picture of two people speaking
22 from the beginning. We could just read it to him and then we can proceed to save
23 time.

24 PRESIDING JUDGE FREMR: [16:05:21] It would be fine with the Chamber.

25 Ms Samson.

1 MS SAMSON: [16:05:24] Certainly, your Honour, I can do that.

2 PRESIDING JUDGE FREMR: [16:05:27] All right. So let's proceed this easier way.

3 MS SAMSON: [16:05:31] Yes. Thank you.

4 Q. [16:05:35] So I will start to read the passage, starting from lines 1618 -- 1620 in

5 fact is where we first get words: (Interpretation) "When they got there, the taking of

6 power, that was done in two stages. The week of 4 to 11 November. Here in

7 Mongbwalu that didn't work. He pushed them back and during that time there is

8 a Muhema person who [incomprehensible] caught there who was brought back to the

9 camp who had [incomprehensible] he, he specified, he gave all the fronts of the troops

10 who were supposed to come at night and attack us. And the troops that were

11 supposed to come taking the Watcha road, that is the front that ultimately entered

12 Mongbwalu. A great coalition. When we captured that guy, he said that he was

13 not supposed to go back to Mongbwalu, that he was indeed supposed to take

14 Mongbwalu. But to our great surprise, even if it is said that this war, the UPC, with

15 the army, there is a separation, I myself as an individual, I doubt that. When they

16 entered Mongbwalu, once they got to Plito, along the Watcha road practically, in

17 Mongbwalu they were chanting slogans, slogans that were hostile to certain tribes,

18 including the Bira, the Nande, the Lendu and the Ngiti. That is what led us to flee,

19 to scatter. What is more, you know [incomprehensible] an engineer in Butama, he

20 was captured when he [incomprehensible] by an officer -- or an agent from his

21 company. They just asked the tribe, they captured him.

22 That's why the entire population of Mongbwalu fled. Mongbwalu was practically

23 empty. We, we fled, taking the Sayo road. I don't know whether you know

24 Mongbwalu. We went down to Ituri. Once we got to Ituri we said goodbye to the

25 friends, Ja Jamo from Kilo-Moto, the Banande, they crossed. We, we ran the risk of

1 coming in here, believing that the state would quickly take control of the situation
2 and that we would have peace somewhat everywhere. We get here, truly, it's hell.
3 Attacks at any time in Makabo, Ngongo here, down there [incomprehensible]
4 Nyangarai, we were in the fire. You can see why the people are hiding in the bush,
5 that's not some coincidence. The people are fleeing the hostilities that go along with
6 this war and I am telling you that these are terrible things that we experienced.
7 Everything was destroyed in Mongbwalu. All our property we left behind. We did
8 not have a chance to leave Mongbwalu with our [incomprehensible]. But on the
9 other hand when the Hema are [incomprehensible] you left a corridor for them, two
10 weeks, they went with all their possessions. Mongbwalu, that was on a Thursday,
11 we left our houses, we fled. Me, as you see me, all I have is the clothing on my back.
12 We fled, we spent five days behind Sayo."

13 (Speaks English) In the passage that I have read out where an individual is describing
14 the attack on Mongbwalu and the fleeing population, the destruction in Mongbwalu
15 and the pillaging, that is an accurate description, is it not, of what transpired during
16 the UPC attack on Mongbwalu by UPC troops?

17 A. [16:11:13] I do not know the person who is speaking and I did not meet that
18 person when I was in Mongbwalu. My testimony is about what I saw in
19 Mongbwalu. He seems to be confusing what happened there on 11 November on
20 the 4th when the Hema fled. In his explanations he has mixed up all these events.
21 But what I have told you is a result of what I observed on the ground myself. I have
22 already said that in my testimony and I can repeat it again.

23 We talked to the members of the population who explained to us how they fled, that
24 it was the APC forces and the combatants who had taken them hostage. So when
25 they came back, they explained to us what had happened. When I got there, I did

1 not see the members of the population who were in the bush. Now, as a soldier, I
2 know that we were fighting against soldiers from the other side, that we were
3 attacking the enemy's positions. We had no problems whatsoever with the civilians.
4 Therefore, I am not in a position to make comments about the remarks made by this
5 person and I don't know whether this person was effectively in Mongbwalu.

6 Q. [16:12:45] And what he says is also true, isn't it, that the UPC gave the Hema
7 a corridor, in other words, safe passage, to leave Mongbwalu with their goods?
8 That's right, isn't it?

9 A. [16:13:20] You see, when the Hema were fleeing, the UPC did not exist at the
10 time, whether it be the political or the military branch of the UPC. I do not think that
11 when the Hema were driven out of Mongbwalu the UPC was already in existence. I
12 only learnt about these things myself through stories and various narrations that
13 occurred thereafter and I wasn't there at the time.

14 Q. [16:13:51] Sir, I suggest to you that when the individual is referring to attacks in
15 Mongbwalu at two stages, one between 4 and 11 November that failed, and one after,
16 that he is referring to the November period and the Mongbwalu operation that you
17 commanded. And I suggest also that it was true that during that operation Hema
18 individuals were given safe passage by the UPC to take their goods away from the
19 fighting? Now, do you agree or disagree with my proposition?

20 A. [16:15:05] All what you have said so far is, is unknown to me. When I got to
21 Mongbwalu I knew that all the Hema had already been driven out. I knew that
22 members of the population were suffering, that they were being held in slavery,
23 because Lendu combatants were asking women to be bare-chested and to stop eating
24 cassava leaves and cassava. So we went to Mongbwalu in order to liberate members
25 of the population who were held in slavery and also to explain to those who had fled,

1 including the Hemas, to return to Mongbwalu. So what you have just explained to
2 me is different from what obtained at the time of the events.

3 Q. [16:16:02] I have one last short excerpt to play for you.

4 MS SAMSON: And, Mr President, I can either read the extract or we can watch the
5 video, whatever seems to be most efficient in the remaining --

6 PRESIDING JUDGE FREMR: [16:16:26] If the most relevant is the text, then I would
7 prefer to read it.

8 MS SAMSON: [16:16:34] The video portions that I will play now are for minutes 7.28
9 to minutes -- excuse me for one moment.

10 (Counsel confers)

11 MS SAMSON: So it is minutes, just for the purposes of the record, minutes 7.28 to
12 10.06. The translation that I will read is DRC-OTP-2102-3675 at pages 3682 to 3685,
13 lines 150 to 197.

14 Q. And we have a Lendu representative who says, and I quote, in French:

15 (Interpretation) "On that very day, the day -- the same day on that day on Thursday,
16 we learnt that the soldiers and the FPLC had already arrived from Bunia to Mwanga.
17 The same night, Friday night, we learnt that the military authorities had come to ask
18 for pardon and for peace. First, it was not the military authorities who have to come
19 seek peace. No. It is the civilian authorities who have to come just like you have
20 done today. When I see you here, you are ministers, you are civilians and so when I
21 see you as a minister I am happy. Because it is civilian authorities who have to come
22 seek peace, not military authorities. No! No! No! No! No! It is not the guns
23 that would stand up and seek peace, no. It is you civilians who have to come and we
24 are now going to talk, we will sit around a table and have discussions and do
25 everything the way we want and that is how it is going to be. Let me draw your

1 attention fully to the fact that Salongo, Salongo from Mongbwalu said that henceforth
2 he will chase down the Lendu wherever they are. My question then is the following:
3 We, Lendus, what evil have we done to the UPC? What have we done against the
4 UPC? Answer me."

5 (Speaks English) And then we have the response from the UPC representative, and I
6 quote in French:

7 (Interpretation) "If you are sure that this is what he said, the soldier has spoken, let us
8 wait, let us wait for the commander. He will answer. We are here. They have to
9 choose somebody. If a soldier is unable to speak and says something of that nature,
10 well, for me personally, well, I haven't understood, eh? I have not understood. It
11 might be true. Well, but that engages or commits only him and we have taken good
12 note of that."

13 (Speaks English) In English, and the Lendu representative answers, in French:

14 (Interpretation) So we shall get into discussions or problems with Salongo."

15 (Speaks English) And the UPC representative states in French:

16 (Interpretation) "We take good note and we will report to the superiors accordingly.

17 It is the president who is the supreme commander of the forces.

18 Of the army and of politics.

19 The patriotic forces and the fatherland, we will tell him about this. If he actually said
20 so, he will call him up and he will explain why he said that, because such words do
21 not go hand in glove with the goals that the UPC has set for itself. Do you
22 understand? OK."

23 (Speaks English) Sir, I hope you were able to follow, given that I read the video and
24 you weren't watching it, but what the Lendu representative is telling your UPC/FPLC
25 political and military representatives is that Salongo is on the radio saying that you

1 must chase the Lendu where they are. And you knew that he said that on the radio,
2 didn't you?

3 A. [16:22:40] I did not know that, because there was no radio in Mongbwalu. The
4 radio was in Bunia and I did not hear this on the radio. I didn't hear him say that on
5 the radio.

6 Q. [16:22:55] And you have heard that your representatives do not flat out deny
7 that he may have said that, they actually discuss that he might have said that, but that
8 if he did, they will report it in any event to their superiors who surely would take
9 action. Correct? Your representatives did not deny what the man was saying
10 about Salongo's words on the radio.

11 A. [16:23:55] He could not have denied what was being said without
12 cross-checking. He would have had to cross-check whether Salongo actually made
13 such a statement over radio and then ask him why he would have done so.
14 Knowing Salongo, I think that he would never have gone to the radio and made any
15 statements that were contrary to the ideology of the UPC. Unfortunately, I did not
16 hear this myself on the radio, I only became aware of it upon hearing this excerpt
17 from the video.

18 Q. [16:24:43] Now your representatives have stated to the Lendu leaders that they
19 will take this issue to their superiors and they specifically refer in addition to taking it
20 to their superiors that they will speak to Thomas Lubanga. Did you ever get a report
21 from your G2 on this particular part of the meeting?

22 A. [16:25:35] No. He did not talk to me about it.

23 Q. [16:25:46] And if the representatives from the UPC had also spoken to Lubanga
24 about this, then surely Lubanga would have had to have taken it up with you and
25 Floribert Kisembo as the senior military leaders of your movement. Did he take it

1 up with you?

2 A. [16:26:37] President Thomas Lubanga did not mention this to me. Maybe he
3 talked about it with Kisembo, but he personally did not bring this matter up with me.

4 MS SAMSON: [16:27:03] Mr President, the last extract that I played has been
5 admitted into evidence. The first two have not. And given that the witness denies
6 their content, I wish and seek to admit them for the purposes of impeachment. And
7 I can provide the references again as necessary.

8 PRESIDING JUDGE FREMR: [16:27:23] And you mean just videos or also transcripts
9 and translations as well?

10 MS SAMSON: [16:27:32] Correct. All. The video is the primary evidence and the
11 transcript and translation allows the Chamber to assess the words spoken.

12 PRESIDING JUDGE FREMR: [16:27:41] Court officer, is it necessary to ask
13 Ms Samson to repeat specification of those two videos?

14 THE COURT OFFICER: [16:27:52] No. No need, Mr President.

15 PRESIDING JUDGE FREMR: [16:27:56] All right then.

16 Defence, your position to the request made by prosecution?

17 MR BOURGON: [16:28:06] Well, I would just like to verify that we heard three
18 extracts. The last one I recall is in evidence, but I'm not sure the reference is right.

19 As for the other two, we do not oppose that they be admitted for the purpose of
20 impeachment. But of course since that they were not covered during this trial at all
21 so far, this is material that I intend to re-examine Mr Ntaganda on. Thank you.

22 PRESIDING JUDGE FREMR: [16:28:35] All right.

23 So, Ms Samson.

24 MS SAMSON: [16:28:38] Apologies, your Honour.

25 PRESIDING JUDGE FREMR: [16:28:40] So the two, the first and the second video

1 introduced by Ms Samson are admitted into evidence for the purpose of
2 impeachment.

3 Ms Samson, anything else?

4 MS SAMSON: [16:29:00] No, thank you, your Honour.

5 PRESIDING JUDGE FREMR: [16:29:02] So before we adjourn I have one minor point.

6 As the Chamber indicated, and now I can quote from my speaking notes at the
7 beginning of this block, that concerning the submission made in writing by Ms Pellet,
8 we will ask her, the Chamber considers appropriate to slightly modify its procedure
9 in this regard, therefore to enable the efficient adjudication of this request,
10 the Chamber will hear any submissions thereon, I mean on the possible questioning
11 conducted by Ms Pellet orally on the day prior to the expected completion of the
12 cross-examination of Mr Ntaganda.

13 Court officer, could you provide us with the time which remains still to the end of the
14 cross-examination made by, conducted by Prosecution?

15 THE COURT OFFICER: [16:30:11] The Prosecution has used 48 hours 28 minutes so
16 far, so that will make 6 hours 32 minutes left.

17 PRESIDING JUDGE FREMR: [16:30:23] So roughly it seems if everything goes well,
18 cross could be completed by Thursday afternoon, which leads to me conclusion that
19 you, Ms Pellet, are expected to come again with your submission on Wednesday
20 afternoon. Maybe we will just devote last 15 minutes of tomorrow's afternoon
21 session to that. So please be ready.

22 All right. So long as there are no other requests for the floor -- Mr Bourgon.

23 MR BOURGON: [16:30:57] Thank you, Mr President. At the beginning of this
24 session there was a correction or at least a verification of the audio that was requested
25 by my colleague, and if I understand the question put was that there is another

1 possible interpretation. Now, I am not sure, when we request audio verifications, I
2 guess the only way is once we get the corrected or the edited transcript we see the
3 final result and then that this is it, unless we want to further challenge. So I am not
4 sure I understand what my colleague was referring to that it's another possible
5 interpretation. I would just like to know what is the procedure that we are going to
6 follow when we request audio verifications. Thank you.

7 PRESIDING JUDGE FREMR: [16:31:45] I understood there was some discrepancy
8 between the French and English?

9 MS SAMSON: [16:31:50] Yes, Mr President, there may very well be.

10 The Prosecution's interpretation of "on tirat sur eux" is an active one. And the
11 interpretation has been done in the passive voice. So I can recall that there was
12 another instance in which Mr Ntaganda used a term in French and counsel for
13 the Defence suggested there could be an alternative interpretation. The interpreters
14 in that instance immediately changed the word from "abuse" I think to "harassment"
15 or something like that, which was to the satisfaction of the Defence, and I am asking
16 for the same review to be conducted because we believe that the interpretation is not
17 correct, but we defer of course to the interpreters.

18 PRESIDING JUDGE FREMR: [16:32:44] Yes. It seems to me that the only difference
19 in the last case we make it orally and we ask the interpreters immediately now. In
20 fact, there is a challenge of the English translation made with some delay. But
21 otherwise I think that we can use the same, same approach.

22 Mr Bourgon, would it be fine with you?

23 MR BOURGON: [16:33:08] Yes, Mr President. I just want to make it clear for
24 everyone. Once we get the edited transcript, if we're not satisfied, we will challenge.
25 And I guess Prosecution will do the same.

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

- 1 Thank you.
- 2 PRESIDING JUDGE FREMR: [16:33:20] All right then.
- 3 So now we adjourn and we will reconvene tomorrow, 9.30.
- 4 THE COURT USHER: [16:33:25] All rise.
- 5 (The hearing ends in open session at 4.33 p.m.)