

Trial Hearing
WITNESS: DRC-D18-D-0038

(Open Session)

ICC-01/04-02/06

1 International Criminal Court
2 Trial Chamber VI
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and
6 Judge Chang-ho Chung
7 Trial Hearing - Courtroom 2
8 Wednesday, 18 October 2017
9 (The hearing starts in open session at 9.31 a.m.)
10 THE COURT USHER: [9:31:06] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: [9:31:38] Good morning, everybody.
14 Court officer, please call the case.
15 THE COURT OFFICER: [9:31:43] Thank you, Mr President.
16 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
17 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
18 And for the record, we're in open session.
19 PRESIDING JUDGE FREMR: [9:31:59] Thank you, court officer.
20 Now appearances and you can limit yourself on changes compared to yesterday, if
21 any.
22 MS LUPING: [9:32:07] Good morning, Mr President. Good morning, your
23 Honours. No changes to the Prosecution's composition this morning.
24 PRESIDING JUDGE FREMR: [9:32:13] Thank you, Ms Luping.
25 Defence, please.

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- 1 MR GOSNELL: [9:32:16] No changes, Mr President, good morning.
- 2 PRESIDING JUDGE FREMR: [9:32:18] Thank you, Mr Gosnell.
- 3 Legal Representatives of Victims.
- 4 MS PELLET: [9:32:24](Interpretation) Thank you, your Honour. No changes for
- 5 the former child soldiers.
- 6 MR SUPRUN: (Interpretation) Good morning, your Honour, your Honours. For
- 7 the victims of the attacks there is also no change.
- 8 PRESIDING JUDGE FREMR: [9:32:39] Thank you, Ms Pellet.
- 9 Thank you, Mr Suprun.
- 10 Mr Witness, good morning, are you feeling okay to continue in giving your
- 11 testimony?
- 12 WITNESS: DRC-D18-D-0038 (On former oath)
- 13 (The witness speaks Swahili)
- 14 THE WITNESS: [9:32:54] (Interpretation) Yes, I'm ready.
- 15 PRESIDING JUDGE FREMR: [9:32:57] I am very glad to hear it. It's my duty to
- 16 remind you that you are still under oath, which means that you have to speak truth
- 17 and nothing but the truth. Do you understand that -- problems with headphones.
- 18 You can't hear?
- 19 Court usher.
- 20 Seems to be okay.
- 21 THE WITNESS: [9:33:24] (Interpretation) I can follow you very well.
- 22 PRESIDING JUDGE FREMR: [9:33:26] Fine. So have you understood that you have
- 23 to speak truth and nothing but the truth?
- 24 THE WITNESS: [9:33:38] (Interpretation) This time I have a problem with the sound.
- 25 The sound is very low.

1 PRESIDING JUDGE FREMR: [9:33:46] Court usher, could you verify or make
2 inquiry what's the problem. Maybe the volume could be too low. I don't know.
3 Please check it.

4 So what about now, Mr Witness, is it better? Mr Witness, can you hear me well?

5 No? I will be speaking in order to allow you to test it.

6 Court usher, is it better? Please.

7 Is it okay now? Can you hear me? So now, Mr Witness, Mr Witness, can you hear
8 me well?

9 THE WITNESS: [9:35:00] (Interpretation) Yes, now I can hear you very well.

10 PRESIDING JUDGE FREMR: [9:35:04] And, Mr Witness, if the problem would
11 appear again, please just raise your hand and we will fix it. All right.

12 So today we are going to continue with the -- first with the rest of direct examination
13 conducted by Defence, by Mr Gosnell.

14 Mr Gosnell, according our counting plus extra time given to you by the Chamber you
15 still have 28 minutes to complete your examination. Please, you have the floor, and
16 we are in open session at the moment.

17 MR GOSNELL: [9:35:39] Thank you, Mr President.

18 QUESTIONED BY MR GOSNELL: (Continuing)

19 Q. [9:35:44] Good morning, sir. Yesterday you said that you were yourself
20 disciplined many times when you were with the FPLC. Can you tell us for what you
21 were disciplined?

22 A. [9:36:05] I was put in detention because I wasn't able to protect the members of
23 the population, and that's what I was meant to do.

24 Q. [9:36:22] And were you disciplined for anything else?

25 A. [9:36:43] That's an example that I've just given you, but I don't remember

1 another case where I would have been sanctioned.

2 Q. [9:36:55] And the occasion when you weren't able to protect members of the
3 population, when was that, what event are you referring to?

4 A. [9:37:19] It was when the chief died.

5 Q. [9:37:25] Yesterday you testified, and it's at page 86 and page 97, (Redacted)
6 (Redacted)

7 (Redacted). In those roles did you have occasion to discipline men under your
8 command, or women under your command?

9 A. [9:38:05] Yes, that did happen.

10 Q. [9:38:07] What did you discipline them for?

11 A. [9:38:26] You know, everywhere where there is a group, there is misconduct.
12 (Redacted), a troop

13 was creating trouble in a neighbouring village occupied by the Lendu. He fired
14 some shots, he took goats, chickens, and following this indiscipline (Redacted)
15 (Redacted)

16 Q. [9:39:12] For how long did you (Redacted)

17 A. [9:39:38] There had been clashes with the UPDF. That -- and he had spent
18 several days in detention. And when there was this fighting, he had just spent three
19 weeks in detention.

20 Q. [9:39:54] Do you know someone named Linganga?

21 A. [9:40:05] Yes.

22 Q. [9:40:09] Who was he?

23 A. [9:40:18] He held several functions, but when he left the FPLC he was deputy
24 chief of general staff.

25 Q. [9:40:36] Did you ever hear about him being disciplined while he was with the

1 FPLC?

2 A. [9:40:56] I found that out.

3 Q. Did you learn what --

4 A. But I never worked alongside him.

5 Q. [9:41:05] Did you learn what he was disciplined for?

6 A. [9:41:26] He was put in detention because he went and created trouble in
7 a Lendu village called Lipri, a village not far from there.

8 Q. [9:41:46] Do you know of an FPLC commander named René?

9 A. [9:42:00] I know him.

10 Q. [9:42:14] Where was he based?

11 A. [9:42:19] He was based between Katoto and Lopa in Kambe.

12 Q. [9:42:32] Was he ever disciplined within the context of the FPLC?

13 A. [9:42:43] Yes.

14 Q. [9:42:43] What was he disciplined for?

15 A. [9:43:02] He was disciplined following behaviour such as I have mentioned.

16 There was a village between Lopa and Katoto and that was a village also occupied by
17 the Lendu and he too went and caused trouble there, he pillaged their goods, their
18 property. That was an act which should not have been committed in his capacity as
19 commander and that's the reason that he was put in detention.

20 Q. [9:43:32] Do you know who put him in detention?

21 A. [9:43:53] Bosco give us an order to arrest him. We took him to Bosco's in
22 Centrale where he was residing and then some time later he took him to (Redacted)
23 (Redacted) Bosco held a meeting there and he presented him to
24 everyone as an example, made an example of him. He said that no FPLC troop
25 could bother the Lendu population. They are civilians as all others. (Redacted) spent

1 a lot of days in our cell and afterwards he left again.

2 Q. [9:44:48] Can you tell us approximately when this was in relation to other events
3 that you know of? Perhaps I can start by asking you this: Was it after the time that
4 Kisembo had retaken Bunia?

5 A. [9:45:22] I have a question by way of clarification. You are talking about Bunia
6 being taken by Kisembo, but what are the circumstances you're referring to? Would
7 you be so kind as to rephrase the question such that I may be able to understand it
8 better.

9 PRESIDING JUDGE FREMR: [9:45:42] Hold on, Mr Witness.
10 Ms Luping.

11 MS LUPING: [9:45:45] Mr President, your Honours, I was slow to my feet. I have
12 no problems obviously with Defence counsel using events to situate the witness. I
13 would however ask that when he puts the question that it be in a less leading manner.
14 It can be: Was it after? Was it before? At the moment we have only one
15 proposition for the witness as to timing. Thank you.

16 PRESIDING JUDGE FREMR: [9:46:07] Mr Gosnell, there are even two requests for
17 you to rephrase the question. But I will join them, so please.

18 MR GOSNELL: [9:46:19] Well, then I'll -- I won't add the second part of my question,
19 I'll just stay with the first part and see how the witness does.

20 Q. [9:46:27] Mr Witness, can you give us a sense in relation to any other events as
21 to when this event that you've described of René being placed in detention occurred?

22 A. [9:46:47] If I relate to that event, at a certain time he left the UPC, and at that
23 time Bosco took up the functions of chief of general staff. So it was at that time.

24 Q. [9:47:15] And what is your impression of Bosco Ntaganda as a military
25 commander, based on your experience with him in the FPLC?

1 A. [9:47:46] Would you be so kind as to clarify your question, or perhaps change
2 the terminology that you are using. At least with regards to the Swahili that I'm
3 getting.

4 Q. [9:48:08] Was he a good commander or was he a bad commander?

5 A. [9:48:18] He was a good commander.

6 Q. [9:48:22] And why do you say that?

7 A. [9:48:38] This was somebody who ensured discipline. You know, a good army
8 is a disciplined army. That's what we learnt in military training.

9 MR GOSNELL: [9:48:56] May we please have control of the floor to show a video,
10 tab 4, DRC-OTP-0120-0293. And we will show the image at 23.19, if that's possible.

11 PRESIDING JUDGE FREMR: [9:49:23] Court usher, is it feasible?
12 (Viewing of the video excerpt)

13 MR GOSNELL: [9:50:05] If we could just stop the image here.

14 PRESIDING JUDGE FREMR: [9:50:09] So evidence 2 channel should be the right one
15 for watching the video, I was told.

16 MR GOSNELL: [9:50:27]

17 Q. [9:50:28] Sir, do you have an image in front of you?

18 A. [9:50:37] Yes, I can see a photograph.

19 Q. [9:50:41] Do you recognise the individual in purple?

20 A. [9:50:53] Yes, I recognise him.

21 Q. [9:50:56] Who is that?

22 A. [9:51:02] That's Bosco.

23 Q. [9:51:04] And do you recognise the person in the middle of the screen?

24 A. [9:51:23] The picture isn't very clear. That could be Lotsove. I'm talking about
25 the person in the middle.

1 Q. [9:51:39] Yes, sir, the person in the middle.

2 MS LUPING: [9:51:51] Apologies, I withdraw my comment. I didn't see that we do
3 have in fact timestamp for the image on the transcript. So apologies.

4 MR GOSNELL: [9:52:05] The witness has complained about the quality, so what I
5 would like to do is to play this extract from about 23.15 to 23.19, because that will
6 increase the quality. So could we do that now, please.

7 PRESIDING JUDGE FREMR: [9:52:21] Go ahead.

8 MR GOSNELL: [9:52:28] Let's stop there.

9 Q. [9:52:29] Is that quality better in assisting you in identifying that person who, as
10 we now see on the screen as the person on the right?

11 A. [9:52:48] Yes. That's the person I identified as Lotsove.

12 MR GOSNELL: [9:52:55] I'm done with that, Mr President. Thank you.

13 PRESIDING JUDGE FREMR: [9:52:59] And please keep it, keep it. Please return it
14 back. I would like to put some additional questions.

15 And, Ms Luping.

16 MS LUPING: [9:53:07] I just wanted to note for the record, we actually stopped at
17 23.21, just so that we are clear for the identifications.

18 PRESIDING JUDGE FREMR: [9:53:15] Thank you.

19 Mr Witness, could you tell me a little bit more about Lotsove. How did you know
20 her?

21 THE WITNESS: [9:53:31] (Interpretation) Lotsove is a girl from Kasegwa, Quartier
22 Mudzipela. (Redacted)

23 PRESIDING JUDGE FREMR: [9:53:52] Was she younger than you or older than you?

24 THE WITNESS: [9:53:58] (Interpretation) I can't tell you her age precisely, but she
25 was an adult.

1 PRESIDING JUDGE FREMR: [9:54:30] But my question was whether she was
2 younger or older than you.

3 THE WITNESS: [9:54:55] (Interpretation) If I'm older than her, or if I was, it
4 wouldn't be more than one year. But I wouldn't be able to say that precisely.
5 I didn't live with her in the same house.

6 PRESIDING JUDGE FREMR: [9:55:22] And do you remember what was her
7 function within the FPLC?

8 THE WITNESS: [9:55:36] (Interpretation) You are speaking about the rank or
9 function? She didn't have a rank.

10 PRESIDING JUDGE FREMR: [09:56:14] Ideally both, whether you remember
11 whether she had some special assignment, whether she was just ordinary soldier, or
12 was a member of some group or brigade. If you could be more specific about her
13 function in the FPLC.

14 THE WITNESS: [9:56:22] (Interpretation) She was in the bodyguard, Bosco's
15 bodyguard.

16 PRESIDING JUDGE FREMR: [9:56:30] And do you have any information that she
17 would have any special relationship with Mr Ntaganda?

18 THE WITNESS: [9:56:54] (Interpretation) What type of relation, what type of
19 relationship?

20 PRESIDING JUDGE FREMR: [9:56:58] Any special relation unlike like the other
21 soldiers. If her relationships were the same like with the other soldiers, there is no
22 need to speak about it.

23 THE WITNESS: [9:57:22] (Interpretation) This was a troop. She was a troop like
24 any other troop in the same force.

25 PRESIDING JUDGE FREMR: [9:57:36] All right. Thank you, Mr Witness.

1 Mr Gosnell, this time will not be included to your time, so you can proceed now.

2 MR GOSNELL: [9:57:45] Thank you, Mr President.

3 Q. [9:57:48] Sir, were you ever demobilised from the FPLC?

4 A. [9:58:00] Yes.

5 MR GOSNELL: [9:58:02] Mr President, we will have to go to private session.

6 PRESIDING JUDGE FREMR: [9:58:08] All right.

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

8 (Private session at 9.58 a.m.)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

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16 (Redacted)

17 (Redacted)

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3 (Open session at 10.30 a.m.)

4 THE COURT OFFICER: [10:30:42] We are back in open session, Mr President.

5 PRESIDING JUDGE FREMR: [10:31:01] Thank you. And Ms Luping should

6 prepare for cross. And in the meantime I will instruct Mr Witness.

7 Mr Witness, so it means at the moment we concluded your direct examination

8 conducted by Defence. Now you will be cross-examined by Prosecution, which is

9 today represented by Ms Luping. And I would like to highlight to you that this

10 Court is governed by the principle of fair trial, which means that both parties are

11 treated equally. And for you it means that you should also respond questions put to

12 you in the same way like you did it towards the Defence. Do you understand that?

13 THE WITNESS: [10:31:56] (Interpretation) Yes, I understand.

14 PRESIDING JUDGE FREMR: [10:31:59] All right. So we still have 30 minutes

15 before our regular break.

16 Ms Luping, you have the floor. And we are at the moment in open session.

17 MS LUPING: [10:32:11] Thank you, Mr President.

18 QUESTIONED BY MS LUPING:

19 Q. [10:32:15] So, good morning, Mr Witness. My name is Dianne Luping and I am

20 going to be asking you questions on behalf of the Prosecution. Unfortunately, we

21 have not had a chance to meet before today. As you know, you declined to meet

22 with us at the courtesy meeting and also declined a request to interview you before

23 you testified.

24 Now, Mr Witness, my first questions are really just to have a better understanding as

25 to how you came to be a witness appearing on behalf of Mr Bosco Ntaganda. Could

1 you explain to the Chamber who first put you in contact with the Defence team for
2 Mr Ntaganda.

3 A. [10:33:17] The first time I was contacted was by Katekpa and Logo. And,
4 and -- well, I'll stop there. You can continue -- or you want me to continue?

5 THE INTERPRETER: [10:33:53] Corrects the interpreter.

6 MS LUPING: [10:33:55]

7 Q. [10:33:56] Mr Witness, before you continue -- in fact, it may be wiser if we move
8 into private session, Mr President.

9 PRESIDING JUDGE FREMR: [10:34:02] Yes, it was just my concern. And,
10 Ms Luping, can you estimate in the interests of public which is following our
11 proceedings how much time we will have to stay in private session?

12 MS LUPING: [10:34:19] I believe it could be approximately 15 minutes because I will
13 have to ask him questions relating to the biographical data also related to this witness.

14 PRESIDING JUDGE FREMR: [10:34:28] All right. So now, court officer, let's move
15 into private session.

16 (Private session at 10.34 a.m.)

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- 14 (Redacted)
- 15 (Open session at 11.07 a.m.)
- 16 THE COURT OFFICER: [11:07:21] We are in open session, Mr President.
- 17 PRESIDING JUDGE FREMR: [11:07:27] Thank you, court officer.
- 18 So now we have to take our regular 30, 30 minutes break and we will reconvene at
- 19 11.35.
- 20 THE COURT USHER: [11:07:37] All rise.
- 21 (Recess taken at 11.07 a.m.)
- 22 (Upon resuming in open session at 11.36 a.m.)
- 23 THE COURT USHER: All rise.
- 24 Please be seated.
- 25 PRESIDING JUDGE SCHMITT: Now we are going to proceed with the next part of

1 cross-examination of our witness conducted by Prosecution, by Ms Luping.

2 Ms Luping, you have the floor. And we are in open session.

3 MS LUPING: Thank you, Mr President.

4 Q. So, hello again, Mr Witness. I'm just going to ask you some questions about

5 your -- related to your testimony yesterday. And I'm going to refer to one part of

6 your testimony when you said, and I refer to, it's the real time transcript 249 at

7 page 20, lines 5 to 21. You said, and I quote:

8 "... throughout my territory there were killings in villages that had been occupied by

9 the Hema." End of quote.

10 And my first question is this: Can you give us the names of the villages that had

11 been occupied by Hema? You've referred to villages where there were killings.

12 PRESIDING JUDGE FREMR: Hold on, Mr Witness.

13 As you probably noticed, we have at the moment no transcript. I was told that

14 hopefully fix, fixing it up could take five minutes. Do you think that we can

15 continue five minutes without having realtime? What is your position, Ms Luping?

16 MS LUPING: I have no problem with that, Mr President, if it's only five minutes.

17 Of course if it takes a lot longer then I will need to ask that we pause, if

18 Defence counsel has no problem with that.

19 PRESIDING JUDGE FREMR: Mr Gosnell?

20 MR GOSNELL: [11:40:19] Mr President, no problem with continuing without the

21 realtime, but there is a problem with the question that I was in the process of

22 objecting to, if I may.

23 PRESIDING JUDGE FREMR: [11:40:20] Yeah, so our common agreement, that we

24 will try for five minutes; if we will not get normal realtime we will break until it will

25 be fixed up.

1 And now you may address us with your objection, Mr Gosnell.

2 MR GOSNELL: [11:40:20] Mr President, I believe that the way in which the answer
3 was described yesterday at page 20, line 19 to 20 is at best ambiguous and possibly
4 wrong, and so therefore in this case, and given that it's not possible to immediately go
5 back and check, I would ask that my colleague be asked to start out by asking
6 whether or not what the witness said was accurately recorded. Thank you,
7 Mr President.

8 PRESIDING JUDGE SCHMITT: Ms Luping.

9 MS LUPING: [11:40:22] Mr President, could I ask that the witness be asked to
10 remove his headphones before I respond?

11 PRESIDING JUDGE FREMR: [11:40:22] Yes.

12 Mr Witness, could you kindly take your headphones off as usually, for a while.

13 Ms Luping.

14 MS LUPING: [11:40:23] Mr President, I am going to make my observations. I don't
15 believe I need to move into private session because I am going to be speaking in very
16 general terms, I don't believe this is going to identify the witness. But the witness
17 has confirmed, and it doesn't pinpoint his location, that he was from the
18 Bahema-Nord collectivity, he has confirmed that he is from a Hema village. And the
19 passage that I'm referring to that I've just quoted, "... and throughout my territory
20 there was killings in the villages that had been occupied by the Hema."

21 I don't see how or why I should go back on this with the witness, this is -- these are
22 the words that have been transcribed. If Defence counsel believes that there was any
23 error in it, of course he is free to question the witness about that in re-examination.
24 But as we -- I see no error on the face of it. I propose to simply ask the witness to
25 clarify the names of the villages to which he was referring.

1 PRESIDING JUDGE SCHMITT: Mr Gosnell.

2 MR GOSNELL: [11:41:13] Mr President, the basis for my observation concerns
3 specifically the words "the villages that had been occupied by the Hema." I don't
4 know precisely how those words came out of the witness's mouth in Swahili, nor do I
5 know how it would be interpreted back to him. But there is a potential implication
6 that these villages had been militarily occupied by Hema forces. When the entire
7 context of the passage is read, Mr President, I suggest that there's quite a different
8 description being given by the witness, which is that those were Hema villages where
9 there were Lendu combatants attacking, and so I, that is the basis for believing that
10 putting the question as it currently is put is, is potentially misleading to the witness.
11 Thank you, Mr President.

12 PRESIDING JUDGE FREMR: [11:42:05] I don't think so. I believe that at the
13 moment Ms Luping has been -- quoted what we have at the moment in the transcript
14 and, as she said, she also will probably try to ask witness to elaborate on that, so even
15 himself could -- will have chance to clarify. And as well you during your redirect, if
16 any, you can also return back to that point.
17 So, Ms Luping, you may proceed.

18 MS LUPING: [11:42:38] Thank you, Mr President.

19 Q. [11:42:40] Mr Witness, if you could put your headphones back on.

20 Mr Witness, I am just going to repeat again the passage that I was quoting from
21 yesterday's transcript, and I quote:

22 "... and throughout my territory there were killings, kills in the villages that had been
23 occupied by the Hema." End of quote. My question is this: What are the names of
24 the villages in which there were killings that had been, in the villages that had been
25 occupied by the Hema? I am wanting the names of those villages please, sir.

1 A. [11:43:51] I think there's a small confusion. Are you talking about the villages
2 occupied by Hema or the Hema villages, because the Hema did not occupy the
3 villages that belonged to others?

4 PRESIDING JUDGE FREMR: [11:44:03] Mr Luping, I am sorry, but especially now
5 we are approaching very relevant part of testimony, we still don't have transcript,
6 I think we will really need that, so we will have to break until it will be fixed now.

7 THE COURT USHER: [11:44:21] All rise.

8 (Recess taken at 11.44 a.m.)

9 (Upon resuming in open session at 11.57 a.m.)

10 THE COURT USHER: All rise.

11 Please be seated.

12 PRESIDING JUDGE FREMR: We, the Chamber, has been informed that fixing up of
13 problem with transcript will take more time than we would wish, so our solution is
14 that we would like to take lunch break now, which means that we would now break
15 from 12 till 1.30 and then we would like to hold two sessions 90 minutes each, which
16 means first one from 1.30 till 3 o'clock and the last one from 3.30 till 5 o'clock. So I'm
17 just asking parties whether there is no -- some fundamental obstacle to follow this
18 Chamber's plan.

19 Prosecution?

20 MS LUPING: [11:59:26] No problem for the Prosecution, Mr President.

21 PRESIDING JUDGE FREMR: [11:59:26] Thank you, Ms Luping.

22 Mr Gosnell?

23 MR GOSNELL: [11:59:26] No problem for us, Mr President. Thank you.

24 PRESIDING JUDGE FREMR: [11:59:26] Thank you.

25 Legal Representatives, okay with you as well?

1 All right. So we now taking our break and we will resume at half past 1.

2 (Recess taken at 11.58 a.m.)

3 (Upon resuming in open session at 1.31 p.m.)

4 THE COURT USHER: [13:31:30] All rise.

5 Please be seated.

6 PRESIDING JUDGE FREMR: [13:31:57] Good morning, everybody. Good
7 morning, Mr Witness. If there are no changes in appearances, we can directly
8 continue with the next part of cross-examination of our witness conducted by
9 Prosecution, namely by Ms Luping.

10 Ms Luping, you have the floor and we are in open session.

11 MS LUPING: [13:32:28] Thank you, Mr President. Thank you, your Honours. I
12 just wanted to note for the record that the five-minute exchange that took place just
13 before the break appears to have been -- has disappeared from the transcript or hasn't
14 yet been recorded, so I do not have a record of the witness's precise answer, so I am
15 going to have to ask him to repeat that.

16 Q. [13:32:50] Now, Mr Witness, just before the break, as you understand or may
17 have appreciated, there were problems with the transcript. I did take a note, a
18 handwritten note of what I understood you said. And the note I had is that I believe
19 you said that the Hema never occupied any villages that belonged to others. Is that
20 what you said, Mr Witness?

21 A. [13:33:13] Yes.

22 Q. [13:33:21] And just first focussing on that response, when you say that the
23 Hema never occupied any villages that belonged to others, the Hema militia,
24 including the FPLC, is it your position that the FPLC also never occupied any other
25 villages?

1 A. [13:34:03] Could you please rephrase your question? It will help me.

2 Q. [13:34:12] Certainly. I just want to clarify your response, sir. You said that
3 the Hema never occupied villages belonging to others, and my question is this: The
4 Hema militia, the FPLC, did the FPLC occupy -- ever occupy villages belonging to
5 others?

6 A. [13:34:53] You haven't actually given me any time reference. You see, I
7 haven't understood your question. If I followed you well, you are saying that in my
8 yesterday's answer I said that FPLC was occupying our locality. Could you please
9 be more specific with regards to your question?

10 Q. [13:35:33] I'm not sure if it's an issue of interpretation, Mr Witness. I was not
11 referring to yesterday's testimony. I was referring to your testimony just before the
12 break when you stated, and I repeat, your response was that the Hema never
13 occupied villages belonging to others.

14 My question, this is a new question, Mr Witness, the question I'm asking you now is
15 did the FPLC, the Hema militia in other words, ever occupy villages or not? And I'm
16 not giving you a time frame, I'm asking in any time. To the best of your knowledge,
17 did they ever occupy any village?

18 PRESIDING JUDGE FREMR: [13:36:29] Hold on, Mr Witness. Mr Gosnell.
19 Shouldn't we ask Mr Witness to take off his headphones?

20 MR GOSNELL: [13:36:37] Yes.

21 PRESIDING JUDGE FREMR: [13:36:39] Mr Witness, please take your off
22 headphones again. Thank you.

23 Mr Gosnell.

24 MR GOSNELL: [13:36:44] Mr President, there would not have been any objection
25 but for the insertion of those three words "the Hema militia". The witness himself

1 has not accepted that. That's a matter that's heavily contested, and it makes the
2 question very complex I must say. But there would have been no objection if it had
3 not been for the insertion of those words.

4 PRESIDING JUDGE FREMR: [13:37:08] Ms Luping.

5 MS LUPING: [13:37:09] Mr President, I'm happy to break it down.

6 PRESIDING JUDGE FREMR: [13:37:13] I would also strongly in favour, so please
7 do it this way.

8 MS LUPING: [13:37:17]

9 Q. [13:37:20] So, Mr Witness, you can put back your headphones.

10 So I'm going to ask you my question, Mr Witness: The FPLC, the militia that you
11 confirm that you belonged to, did it ever occupy other villages?

12 A. [13:37:49] You cannot say villages belonging to others because FPLC in fact
13 established security in the Ituri. The FPLC took control of all Ituris.

14 Q. [13:38:27] Sir, if I understand your answer correctly, you do not accept that
15 those villages belonged to others; is that correct?

16 PRESIDING JUDGE FREMR: [13:38:36] But Ms Luping, even myself I have
17 problems. What is according you the "others"?

18 MS LUPING: [13:38:44] Mr President, I am just simply repeating back to the
19 witness his own language. He had stated just before the break, and that's why I was
20 trying to be very careful to use his own words and not put words in his mouth. He
21 said that the Hema never occupied any villages that belonged to others.

22 That was, that was his own language.

23 PRESIDING JUDGE FREMR: [13:39:03] Okay.

24 MS LUPING: [13:39:04] He can clarify.

25 PRESIDING JUDGE FREMR: [13:39:05] The others then probably are Lendus

1 (Overlapping speakers)

2 MS LUPING: [13:39:09] Well, he can certainly clarify that, Mr President. I can ask
3 him to explain what he meant by "others".

4 PRESIDING JUDGE FREMR: All right then.

5 MS LUPING:

6 Q. [13:39:15] And indeed that's an opportunity, Mr Witness, if you could explain
7 what you meant by that. Who did you mean by "others"?

8 A. [13:39:30] To answer your question, I would like you to remind me the
9 question that you asked me at the beginning and the -- I already answered that
10 question. Could you read your question and the answer and we'll take it from there.

11 Q. [13:39:55] Well, Mr Witness, my question to you is a more limited and
12 focussed question. I repeated already your testimony from before the break, which
13 was that - and your words - the Hema never occupied any villages that belonged to
14 others. That is as, you know, there is no transcript for me to give you a number for,
15 because I explained the transcript is not working. My question was: When you
16 said that belonged to others, to whom are you referring? Who are the others?

17 A. [13:40:32] We're clearly not understanding each other. I answered a
18 question -- I mean, I answered a question and this question was -- this answer was a
19 reference to a question that was asked before the break. If you are giving me this
20 reference, we are going to continue discussions on this basis. Could you re-read the
21 question and the answer I provided and we will take it from there?

22 Q. [13:41:30] Mr Witness, I've read to you, I have said the notes I took four times.
23 Are you evading my question, sir?

24 PRESIDING JUDGE FREMR: [13:41:39] Ms Luping.

25 And please take out your headphones, Mr Witness. Take out.

1 Please move on because it's really wasting of time that we are asking this witness
2 about describing control of the FPLC. Is it really the core of his testimony? I don't
3 think so.

4 MS LUPING: [13:41:59] No, I don't believe so, Mr President, but I do also not
5 appreciate that this witness is --

6 PRESIDING JUDGE FREMR: Yes.

7 MS LUPING: -- appearing to be quite difficult deliberately so. He's asked me to
8 repeat the same question four times.

9 PRESIDING JUDGE FREMR: [13:42:10] I think his position is clear from his
10 statement that the FPLC protected whole area, so we can -- hardly can expect that he
11 will say that the FPLC occupied any village. You can also maybe ask whether they
12 protected Lendu villages, then maybe it will be a clear question and hardly
13 could -- you could explore some areas if approached but, you know, asking in this
14 way is really wasting of time.

15 MS LUPING: [13:42:37] That's fair, Mr President. I will move on. Especially he's
16 clearly being obstructive at this point.

17 Could you put your headphones on, back, Mr Witness.

18 PRESIDING JUDGE FREMR: [13:42:47] Mr Gosnell.

19 MR GOSNELL: [13:42:48] Mr President, I wonder if it's appropriate for statements
20 such as that to be put on the record. We have a comment being made by counsel
21 about the nature of the evidence. I certainly strongly disagree with it. This is not
22 the time for a debate about that, but I wonder, your Honour, whether it's appropriate
23 for comments of that nature.

24 PRESIDING JUDGE FREMR: [13:43:06] I think, on the contrary, we should keep it
25 in transcript because I think it illustrates the situation, it illustrates the situation on the

1 part of the Prosecution, how they see the witness. What is relevant is the position of
2 the Chamber. So I think it's -- I think it's clear to you that any evaluation of the
3 witness presented by any party, this is not binding to the Chamber, so it's
4 Ms Luping's evaluation.

5 Ms Luping, please proceed.

6 MS LUPING: [13:43:33] Thank you, Mr President.

7 Q. [13:43:34] So, Mr Witness, I'm going to return to my original question, and this
8 was before the break, when you said that "... throughout my territory there were
9 killings ... in the villages that had been occupied by the Hema." And my question is
10 this: Can you provide the names of these villages that you had mentioned, these
11 Hema villages?

12 PRESIDING JUDGE FREMR: [13:44:00] Hold on, Mr Witness. Mr Gosnell.

13 MR GOSNELL: [13:44:01] Mr President, I did hear the answer of the witness prior
14 to the break and the witness asked for -- it's not -- we don't have a transcript
15 unfortunately, but I do distinctly recall the witness's answer, and the witness asked
16 for clarification, "Did I refer to villages that were occupied or did I refer to Hema
17 villages?" And that was a question that was raised by the witness just before we
18 broke for lunch. So he's already given that answer and I think that that should be
19 taken into account at this stage.

20 PRESIDING JUDGE FREMR: [13:44:34] Unfortunately we don't have a transcript,
21 but Ms Luping please try to phrase it in ideal way.

22 MS LUPING: [13:44:44] Yes. All right.

23 Q. [13:44:46] So, Mr Witness, I'm first going to read the actual language taken at
24 page 20, lines 5 to 21 from yesterday's transcript where you had been recorded as
25 stating:

1 "... throughout my territory there were killings ... in the villages that had been
2 occupied by the Hema."

3 My question is this, sir: The villages that you were alluding to or referring to, can
4 you provide the names of those villages, please? I'm just asking for the names at this
5 stage.

6 A. [13:45:26] I said that during the war there were killings in the entire territory
7 or region, but I did not say that it was Hema occupied villages. I said that these
8 were villages where Hema were living. In this locality you have both Hema and
9 Lendu living. And it's actually here that we don't understand.

10 When we say "occupy" it's different from lived or stayed. There was war
11 everywhere. War was rife. There was war in all the localities as well. It was
12 Lendu who were attacking, pillaging, looting property. And this is what I said
13 yesterday. You're now asking me to give the names of the villages. Do you want
14 me to give you the names of all the localities, all the territories?

15 Q. [13:46:48] You stated that there were a lot of killings in villages and you've
16 now clarified that these were villages that the Hema were residing in. Could you
17 confirm the names of these villages that you describe as Hema villages where Hema
18 were living?

19 A. [13:47:18] Now, this will take me one hour just to give you the names of the
20 villages. Perhaps if you ask me to give the names of the collectivities it would be
21 possible, but the villages were really numerous. If I start giving you the names of
22 the localities, it really can't be -- you can't actually put the -- all the names on a sheet
23 of paper. But if you're talking about giving the names of collectivities, I would be
24 able to give you a brief answer.

25 Q. [13:47:57] I understand, Mr Witness. I'm just going to list some names of

1 villages and I'd ask you to confirm whether they're not -- whether they're Hema or
2 not. That might speed up the process. Iga Barrière, is that a Hema village?

3 A. [13:48:16] It belongs to the Hema.

4 Q. [13:48:22] Fataki, is that Hema?

5 A. [13:48:30] Fataki is divided into two, but the Hema are majority.

6 Q. [13:48:35] And I want to clarify, Mr Witness, I want to know what the situation
7 was in 2002, 2003, rather than today, so going back to 2002 and 2003, Fataki, was that
8 a mostly Hema location?

9 A. [13:48:57] Yes, the Hema were majority.

10 Q. [13:49:02] And Largu, Hema?

11 A. [13:49:07] Yes, it was a Hema village.

12 Q. [13:49:11] And Nizi, apologies if I'm mispronouncing it. Also Hema?

13 A. [13:49:24] You probably will not understand the situation in Nizi. Nizi is the
14 chiefdom of Mambisa occupied by the Alur. There is the presence of Hema, but
15 everyone speaks the Hema language, and this is why people confuse that with Hema,
16 but they're actually Alur.

17 Q. [13:50:02] Is it correct that in the period including 2002 to 2003 there was a
18 UPC military camp in Nizi?

19 A. [13:50:19] Yes.

20 Q. [13:50:24] The location Dheu, that D-H-E-U, Dheu, that's a -- that was a Hema
21 location also; is that correct?

22 A. [13:50:36] Which locality are you referring to? Could you spell it, please?

23 Q. [13:50:48] D for Delta, H-E-U.

24 A. [13:51:03] D-H-I-U --

25 Q. [13:51:18] D --

1 A. [13:51:18] Is it E or U? The U in Swahili is pronounced as oo (phon) and
2 oo (phon) is pronounced as U. Is it an E or an U?

3 Q. [13:51:42] I'm going to repeat it one more time. D-H-E-U, Dheu. And is that
4 a Hema locality, please, sir -- a Hema village, rather?

5 A. [13:52:02] It's a Lendu village. It's a Lendu village.

6 Q. [13:52:06] I'm referring to the time in 2002 to 2003, sir.

7 A. [13:52:27] Dheu is in the Lendu collectivity.

8 Q. [13:52:37] Kparnganza in 2002 to 2003 was a mostly Hema village; isn't that
9 correct, sir?

10 A. [13:52:53] In 2002, 2003 this locality was empty. You did not have people
11 there. Hema could not be in this locality. And if there were people they would be
12 Lendu.

13 Q. [13:53:18] And at one point in time there were Hema living there; is that right?

14 A. [13:53:41] In fact, you're not aware of the geography of this region before the
15 war. In all villages you had different ethnic groups living in these villages, whether
16 they be Hema or Lendu. When the war broke out, the ethnic groups split; the Hema
17 were in their village and the Lendu were in the other villages, but before people were
18 living peacefully together.

19 PRESIDING JUDGE FREMR: [13:54:24] Sorry to interfere.

20 Court usher, could you kindly take Mr Witness for a while away from the courtroom.
21 It will be just two, three minutes. I would like to make some comment in his
22 absence.

23 (The witness stands down)

24 PRESIDING JUDGE FREMR: [13:55:03] Ms Luping, I'm sorry to intervene but it's
25 my role to -- and I am responsible that the examination should be efficient and should

1 concern relevant things.

2 This witness, according materials we have, this portion, could testify about training,
3 which is a very relevant issue, about child soldiers, if any, about demobilisation,
4 about issue of discipline, even about massacres, which are very relevant for charges
5 we are going to deal with. But we are now again, the last 20 minutes we spent by his
6 opinion, it's a more expert opinion about situation in Ituri, about, you know, ethnic
7 composition, majority in single, single villages. It is my view really not for this
8 witness; at least I find much more interesting topics you should deal with. You are
9 under time pressure and I can imagine that five minutes before expiration of your
10 time you will deal very interesting and very relevant topics. But this is really not
11 something, we have had many witnesses on this, and is this witness which was
12 soldier really the best witness to testify about that?

13 I have strong doubts about that. Please take it as a caveat and I can imagine the
14 Chamber will be very strict when deciding about the timing for your examination.

15 MS LUPING: [13:56:33] Understood, Mr President. I take on board all of those
16 comments. I just want to explain why I was asking this particular witness. I will be
17 asking him very shortly the composition of those who underwent training in
18 Tchankwanzi, I want to be prepared in the event he suggests that they were not
19 mostly Hema who went for the training, because on the list I will going back to that
20 has already previously been shown to him I will be asking him to confirm indeed that
21 the individuals who came from these Hema villages were also amongst those listed in
22 the list of people who are recruits at Tchankwanzi. That was the purpose of that
23 exercise.

24 And two of the last villages you'll recognise from accounts of other Defence witnesses
25 who talked about massacres in those areas, and so for that reason it was deemed

1 relevant, although of course it is for your Honours to determine the relevance of the
2 particular testimony of those previous Defence witnesses. It's not for us to comment
3 on that.

4 But having said all of that, I clearly take your caveat on that and you'll be please to
5 know those were the last of the villages that I had -- intend to list for him.

6 PRESIDING JUDGE FREMR: [13:57:41] Thank you for this explanation, Ms Luping,
7 but I have to insist, at least from my point, I really see much more relevant and much
8 more - to Chamber - interesting topics that you could, hopefully should deal with.

9 Now, court usher, please bring Mr Witness back.

10 (The witness enters the courtroom)

11 PRESIDING JUDGE FREMR: [13:58:41] Welcome back, Mr Witness.

12 Ms Luping will continue with your cross-examination.

13 Ms Luping, you have the floor.

14 MS LUPING: [13:58:48] Thank you, Mr President.

15 Q. [13:58:49] Now, Mr Witness, I'm now going to move to your testimony
16 regarding your travel to Tchankwanzi with other recruits, and you explained that you
17 were in a second group travelling from Bunia to Tchankwanzi in Uganda for military
18 training. My first question is this: Were you amongst others who left from the
19 residence of Thomas Lubanga in Bunia?

20 A. [13:59:15] No. I just left my village where I was born.

21 Q. [13:59:38] And you were asked yesterday, and I'm going to refer to transcript
22 T-249, page 28, lines 5 to 8, you were asked what was your estimation or impression
23 of the age of the youngest members of the group in Tchankwanzi, and I'm going to
24 quote your response:

25 "It's not easy to know somebody's age precisely if you haven't grown up with them.

1 But among the group none of them was of an age which wouldn't make it possible for
2 them to do military service."

3 You were then asked by the Presiding Judge at page 28, and I'm going to quote, that's
4 from lines 9 to 10:

5 "What is the age making it possible for people to do military service?" End of quote.

6 To which you responded, and I'm quoting you from lines 11 to 13 on the same page:

7 "To do military service, according to Congolese law, you must be of 18 years of age."

8 Close quotation marks.

9 In fact my question, Mr President, I think I do need to move to private session for this
10 question.

11 PRESIDING JUDGE FREMR: [14:00:55] Certainly.

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

13 (Private session at 2.01 p.m.)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

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Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

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WITNESS: DRC-D18-D-0038

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Trial Hearing
WITNESS: DRC-D18-D-0038

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Trial Hearing
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Trial Hearing
WITNESS: DRC-D18-D-0038

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11 (Open session at 2.42 p.m.)

12 THE COURT OFFICER: [14:42:04] We're back in open session, Mr President.

13 PRESIDING JUDGE FREMR: [14:42:16] Thank you, court officer. Ms Luping,
14 please proceed.

15 MS LUPING: Thank you, Mr President.

16 Q. [14:42:22] Now, Mr Witness, we are back in public session now, which means
17 that the people in the public gallery can hear my questions and your responses. I do
18 believe that my next question should not be identifying, but if you have any concerns
19 please just put your hand up and let us know if there are any problems.

20 Now, Mr Witness, I'm just going to return to your testimony from yesterday, and I'm
21 referring to the realtime transcript 249, page 47, lines 10 to 14, and you are explaining
22 that Commander Kisémbu was the commander of your group that was returning
23 from Équateur. My question is this: When you referred to Commander Kisémbu,
24 do you mean Floribert Kisémbu who subsequently became the chef d'état-major of the
25 FPLC?

1 A. [14:43:15] Yes, it's him.

2 Q. [14:43:25] And again during your testimony yesterday you confirmed that you
3 left the Équateur and that you returned to your village at the end of 2001. I'm not
4 going to refer to the name of that village. You stated, and I quote, this is again
5 transcript 249, page 48, lines 13 to 14, you said, and I quote: "When I returned to my
6 village the massacres were continuing. The situation had not changed." End of
7 quote.

8 So, Mr Witness, I'm just trying to understand a bit about the timing because you said
9 you returned from Équateur the end of 2001 and you did testify that there were a
10 number of massacres, there were plenty, quite a number of attacks after your return.
11 So would I be right in saying that the massacres that you described continued into the
12 next year, into 2002; is that correct?

13 A. [14:44:51] It's true. I went back to my village and the situation had not
14 changed. In 2002 UPC tried to control Ituri and the killings in fact had slightly
15 dropped.

16 Q. [14:45:12] And just so I understand your response, you said: "In 2002 the
17 UPC tried to control Ituri and the killings in fact had slightly dropped." So the
18 killings had slightly dropped, but the killings continued even when the UPC was
19 trying to control Ituri; is that correct?

20 A. [14:45:42] Could you repeat the question, please?

21 Q. [14:46:00] Yes. You said that the killings had slightly dropped when the UPC
22 was trying to control Ituri. Is it correct then that the killings continued, the UPC was
23 trying to control Ituri but the killings were continuing; is that correct?

24 A. [14:46:25] When UPC was controlling Ituri there were no killings. The
25 killings resumed when the UPDF had chased out UPC.

1 Q. [14:46:53] So just so I understand your testimony, you are saying that before
2 the UPDF chased out the UPC, and I assume you're referring to the events in Bunia; is
3 that correct, sir? You're referring to events of 6 March 2003 when the UPDF chased
4 the UPC out of Bunia, is that what you're referring to?

5 A. [14:47:32] No, I think you haven't understood me well. I don't know if I've
6 understood your question or not. The question was whether if the killings continued,
7 and I told you that there were no longer killings, the killings started when the
8 Ugandans had driven out UPC and then the killings resumed. But when UPC was
9 controlling all the region of Ituri, there were no killings. Even the Lendu were part
10 of the UPC at that point of time.

11 Q. [14:48:18] So if I understand your testimony, it's not contested, sir, that the
12 UPDF drove out the UPC from Bunia on 6 March 2003. So if I understand your
13 testimony correctly, you are saying that there were no killings at all up to that period
14 of 6 March 2003, there were no massacres, no killings at all anywhere in Ituri; is that
15 your testimony, sir?

16 PRESIDING JUDGE FREMR: [14:48:49] Hold on, Mr Witness. Mr Gosnell.

17 MR GOSNELL: [14:48:51] The problem with the question, Mr President, is that
18 there is no start time period, start to the time period, and I think in order to be able to
19 answer the question the witness needs to be given a time period, not just the end.

20 PRESIDING JUDGE FREMR: [14:49:06] Ms Luping.

21 MS LUPING: [14:49:09] Certainly, Mr President. And I think this is the difficulty
22 that I was alluding to yesterday when we were indeed asking for time periods to be
23 clarified.

24 Q. [14:49:18] But, Mr Witness, you have already confirmed you returned from
25 Équateur at the end of 2001, you said that the massacres were indeed continuing

1 through 2002, so in the period when the UPC took control of Ituri in 2002, through to
2 6 March 2003, is it your testimony that there were no longer any killings anywhere in
3 Ituri? Is that what you're saying, sir?

4 A. [14:50:00] Yes. Because when UPC was controlling the whole region of Ituri
5 there were no killings, because UPC -- the UPC's control over the region, it did not
6 take many days for UPC to take control of the region.

7 Q. [14:50:21] And so that we are very clear on timing, sir, you referred yesterday
8 in your testimony, or the Defence counsel referred you to the event of Lompondo
9 leaving Bunia in 2002. Now, when you confirmed that there was this event of
10 Lompondo leaving Bunia, were you referring to the event where Lompondo and his
11 APC forces were ousted from Bunia? Was that the point in time you were referring
12 to?

13 A. [14:50:55] Could you please rephrase your question so that I can get a better
14 idea of the time frames that I can easily answer your question. Are we talking of
15 Bunia, Ituri? Could you please be more specific so that I can understand your
16 question.

17 Q. [14:51:37] That is certainly not a problem, Mr Witness. Now, yesterday
18 during your testimony and when Defence counsel was trying to understand the time
19 periods you were talking about, and we were talking about the year 2002, and he
20 asked you if you knew about an event where Lompondo left Bunia in 2002 and you
21 said yes, you remembered that. And just so I understand the event that we are
22 talking about, this event where Lompondo left Bunia, is this the time when
23 Lompondo and his APC forces were ousted from Bunia? Is that the event that you
24 were referring to yesterday in your testimony?

25 A. [14:52:35] Even though I haven't understood the question well enough, I will

1 try and answer you. The question perhaps is a bit hard for me. When Lompondo
2 was driven out, he wasn't alone. He was with his troops, he was the governor and
3 commander of operations. He had his troops. When we say that we drove
4 Lompondo, it was him and all his forces and soldiers.

5 Q. [14:53:06] Thank you, Mr Witness.

6 Now, it's not contested, in fact, it's an agreed fact between the Defence and the
7 Prosecution that the date on which the former Governor Lompondo was driven out of
8 Bunia was on 9 August 2002. So with that date in mind, sir, when you say the UPC
9 took control of Ituri, was that before or after Lompondo was driven out of Bunia in
10 August 2002?

11 Sorry, I should say there is also of course a third option, which of course is the day
12 that Lompondo was driven out of Bunia. What is the date that you say the UPC took
13 control of Ituri?

14 A. [14:54:16] UPC took control of Ituri after Lompondo was ousted. If
15 Lompondo was still there, they couldn't have taken control of Bunia.

16 Q. [14:54:27] And am I right, sir, to say that it was only a matter of days in fact
17 that the UPC took control of Ituri after Lompondo was ousted from Bunia?

18 A. [14:54:53] Yes.

19 Q. [14:54:54] And so in this period from August 2002 to 6 March 2003, is it your
20 testimony that there were no killings anywhere in Ituri during this time period of the
21 UPC's control?

22 A. [14:55:14] During this period there were people who were making mistakes
23 and they were put in prison. We really can't say that for six months you had killings.
24 I did not hear of any killings during this period. If you know, please do tell me.
25 But, personally, I did not hear of any killings when UPC was controlling the whole

1 region.

2 Q. [14:56:00] And you say that there were some mistakes, some killings. You're
3 talking about the FPLC soldiers, that's right?

4 A. [14:56:15] Let me give you an example. Right now, when UPC was
5 controlling the whole region of Ituri, Linganga was also punished because he
6 provoked the Lendus and he was imprisonment, and he -- at that time there was no
7 war. When the UPC was controlling Bunia, there was no war; there was no fighting.
8 The Lendu, again, was part of the UPC government. You had ministers, Lendu
9 ministers. They were there, and they could -- who could they fight against at that
10 time?

11 Q. [14:57:19] Now, Mr Witness, I'm going to return to your testimony from
12 yesterday about Mandro and training in Mandro. And you said page 63, lines 18 to
13 25, that when you went to Mandro you were met by General Kisémbó. You were
14 provided with military uniforms, equipment, and ordered to go protect the road
15 going towards Uganda, and that Kisémbó gave a briefing on military service.
16 And then at page 64, lines 14 to 24, you stayed 45 Kisémbó told you all, and I'm going
17 to quote now: "It was all over with the committee. The committee was a matter of
18 the past and that henceforth, we would be under military service." End of quote.
19 Now, you were later asked for the name of the group that Kisémbó told you about,
20 and at page 74, line 5, your response was, "The armed group was called FPLC." End
21 of quote.

22 Now, you explained, sir, yesterday -- and I'm going to give the transcript reference
23 again -- that the timing of your first visit to Mandro was about a month before
24 Lompondo left Bunia. This is at page 73, lines 4 to 8, of yesterday's transcript.
25 My question is this, sir: When you were told by Floribert Kisémbó that the time of

1 the peace committee was over and that your group would then be in military service,
2 was this speech that Kisembo gave explaining this to you all, was that during your
3 first visit to Mandro in July 2002 then, one month before Lompondo was ousted from
4 Bunia?

5 A. [14:59:30] I think you haven't understood me. I did not say I went to Mandro
6 one month before Lompondo left. Perhaps there's a mistake there. I said that I had
7 no additional information. Even one -- I did not say before a month. I never said
8 that.

9 Q. [15:00:09] Mr Witness --

10 Mr President, I notice the time is now 3 o'clock, but perhaps just to finish on this one
11 point, it would be worthwhile for me read this extract for the witness.

12 PRESIDING JUDGE FREMR: [15:00:21] No problem. You can take (Overlapping
13 speakers)

14 MS LUPING: (Overlapping speakers) Thank you, Mr President.

15 Q. [15:00:26] So, Mr Witness, I'm just going to read to you the extract of the
16 exchange between yourself and Defence counsel yesterday. That's at page 73, lines 4
17 to 8, where you were asked by Defence counsel:

18 "Sir, can you estimate how long after your visit to Mandro Lompondo left Bunia?"

19 Answer: "I don't remember, but I don't think it would have been over a month."

20 End of quote.

21 So, sir, does that refresh your memory that your first visit to Mandro could not have
22 been more than a month before Lompondo left Bunia?

23 A. [15:01:24] Perhaps it was. What I said was, I do not remember the day. I
24 said perhaps one week, but I do not have any exact information. So it wasn't a
25 month, and I did not actually say a month.

1 Q. [15:01:42] Well, sir, I'm not going to argue on this point with you; it is simply
2 what's on the transcript. We can of course ask to have the audio listened to, if you
3 are now correcting your answer to say it's a week before.

4 So according to your testimony, you're saying that it was about one week, then,
5 before 9 August that you were in Mandro for the first time and that you heard
6 Kisembo give this speech; is that correct?

7 A. [15:02:15] I said that I do not have any exact information on the day or the date,
8 as a matter of fact. Because I did not know that I was supposed to retain all the dates.
9 I have no exact information. Even now, even as of today, I don't have any specific
10 information.

11 Q. [15:02:43] I will try to make this simpler, and of course it's understandable if
12 you forget things, Mr Witness, and there is no criticism of you for that. My question
13 is, when Kisembo spoke to your group and said the time of the peace committee was
14 over, was that before Lompondo was ousted from Bunia?

15 A. [15:03:15] If I'm not mistaken, Lompondo had already left Bunia. The
16 problem is time. You're actually asking me questions about the past, and it's really
17 hard for me because I really cannot remember all these dates today.

18 Q. [15:03:37] So I just want to understand that when Kisembo spoke to you, you
19 originally told Defence counsel that he spoke to you before Lompondo was ousted
20 from Bunia, and are you now changing that timeline, sir?

21 A. [15:04:01] I'm not changing the answer. You're asking me questions on the
22 timeline and this is precisely where I have a problem. I don't remember the dates. I
23 said I don't have any specific information on the duration or time. It wasn't a very
24 long time. That's exactly what I'm saying. I don't know if it was one week when
25 Lompondo left Bunia. That's how I said -- that's how I replied yesterday.

1 Q. [15:04:54] Sir, thank you for that clarification. As I understand it, you're
2 saying that the speech from Kisembo, then, was not long either before or after
3 Lompondo was ousted; is that correct, sir?

4 A. [15:05:26] You have to understand one thing. This is what I said: When
5 Kisembo made his speech, it wasn't a long time. I don't know how many days. We
6 ousted Lompondo from Bunia, but we don't know how many days. I don't know if
7 you've understood me now.

8 MS LUPING: [15:05:50] Mr President, I see it's five minutes past three, but we
9 haven't clarified the response yet.

10 PRESIDING JUDGE FREMR: [15:05:57] Please finish (Overlapping speakers).

11 MS LUPING: [15:05:59] Thank you. It's just this one point.

12 Q. [15:06:01] This is obviously difficult with the passage of time, Mr Witness, but
13 if you could use the time period when Lompondo was ousted from Bunia as a means
14 of situating you in time. It doesn't have to be exact by days at all, but the meeting in
15 Mandro when General Kisembo or Kisembo spoke to your group and you were there,
16 was that meeting before or after Lompondo was ousted from Bunia?

17 A. [15:06:44] I said it was before, but it wasn't many days before he was ousted.
18 But I can't exactly tell you the exact time, how many days or weeks before Lompondo
19 was ousted.

20 Q. [15:07:13] And that's not a problem, Mr Witness.

21 MS LUPING: Mr President, I have one follow-up question relating to that meeting.
22 It might be better to end this topic. Thank you, sir.

23 Q. [15:07:24] So, Mr Witness, you explained that the armed group was called
24 FPLC. Just to clarify, did you learn that the name of the armed group was FPLC
25 during this speech given by Kisembo in Mandro?

1 A. [15:08:08] To answer that question, are you referring to the term "FPLC"? I
2 don't understand it very well. Could you just explain it to me a bit? Even
3 the -- even others were saying that. Everyone was saying that we were UPC, and
4 that's all.

5 Q. [15:08:35] Yes, I'm referring to the response you gave yesterday in your
6 testimony that the name of the armed group was called FPLC. You've testified and
7 confirmed that the armed group was given that name. So my question is just to
8 understand the timing of when you learnt the name of the armed group, was that
9 during the same speech that Kisembo gave to your group in Mandro? Is that when
10 you learnt of the name of the armed group being FPLC?

11 A. [15:09:07] Are you saying -- which day are you talking about? I don't
12 understand very clearly what exactly do you want to understand. If you please
13 explain it to me, that would be good.

14 Q. [15:09:37] Yes, Mr Witness. You explained how Kisembo met with your
15 group in Mandro before Lompondo was ousted from Bunia. And what I want to
16 understand is, did you learn that the name of your armed group was FPLC during
17 that time Kisembo met with your group in Mandro?

18 A. [15:10:22] You're saying on that day? I don't know.

19 Q. [15:10:41] Well, I'll rephrase my question, sir. Do you remember when you
20 learnt that the name of the armed group was FPLC?

21 A. [15:10:50] That question is one to which I cannot provide an answer. I need
22 to think a lot about it.

23 Q. [15:11:38] And what is the difficulty, Mr Witness? If you could just explain
24 why is it difficult to answer this question?

25 A. [15:11:47] You're asking me to give you the exact date, the first day on which I

1 heard mention of the expression FPLC.

2 Q. [15:12:40] No exact dates needed, Mr Witness. Perhaps I'll try it again, try to
3 situate you in time. Did you learn of the name FPLC before or after Lompondo was
4 ousted from Bunia?

5 PRESIDING JUDGE FREMR: [15:12:57] Hold on, Mr Witness. Mr Gosnell.

6 MR GOSNELL: [15:13:00] Mr President, the question has been asked several times
7 different ways. The witness has tried to answer. It may not be satisfactory for the
8 Prosecution, but the answer is there. The question has been posed several times, I
9 suggest it's asked and answered.

10 PRESIDING JUDGE FREMR: [15:13:14] Ms Luping, I know that you are trying to
11 get some response at least, but --

12 MS LUPING: [15:13:20] Mr President, could I ask that the witness remove his
13 headphones for me to respond.

14 PRESIDING JUDGE FREMR: [15:13:26] For sure.

15 Mr Witness, please.

16 Ms Luping.

17 MS LUPING: [15:13:28] Mr President, I would say that the question has not
18 actually been answered. The witness has clearly said that at this stage he is, he has
19 difficulties indeed answering. He's asked me now a question as to whether I want a
20 precise date. I was trying to, before I was interrupted, explain that actually no
21 precise date is needed. And now I'm going to ask him to -- this is a different
22 question, it's about his knowledge as to the timing of the use of the term FPLC.
23 So in my submission, Mr President, the question is has not been asked or answered at
24 this stage.

25 PRESIDING JUDGE FREMR: [15:13:57] All right. Objection overruled, please try.

1 MS LUPING: [15:14:01] Thank you.

2 Q. [15:14:04] Mr Witness, if you could put your headphones back on. Now, as
3 I was explaining, sir, the exact date is not necessary. My question is this: When
4 you learnt of the use of the term FPLC, was that before or after Lompondo was ousted
5 from Bunia?

6 A. [15:14:40] This happened a long time ago. And that's why I said that I don't
7 have an answer.

8 Q. [15:14:53] I understand, sir. It's just a question of situating it. I know it took
9 you time to confirm the --

10 PRESIDING JUDGE FREMR: [15:15:03] Now, now, Ms Luping, really it was now
11 what was I think the last chance. It was answered. Simply he does not remember,
12 so.

13 MS LUPING: [15:15:09] All right. Thank you, Mr President.

14 I do note the time, it's 3.15. And we've certainly eaten into the break time, so I can
15 stop at this point.

16 PRESIDING JUDGE FREMR: [15:15:19] Yeah, we prolonged this session so we
17 have to shorten the last one accordingly. As I said, we have to finish by 5 o'clock,
18 which means that we will now resume at quarter to 4 and we will finish at 5.

19 THE COURT USHER: [15:15:38] All rise.

20 (Recess taken at 3.15 p.m.)

21 (Upon resuming in open session at 3.46 p.m.)

22 THE COURT USHER: [15:46:07] All rise.

23 Please be seated.

24 PRESIDING JUDGE FREMR: [15:46:32] Ms Rambolamanana, please.

25 MS RAMBOLAMANANA: [15:46:34] Thank you, Mr President. I would just like

1 to inform the Chamber that Ms Pellet has left the room.

2 PRESIDING JUDGE FREMR: [15:46:41] Thank you. Well noted. We still have
3 still 75 minutes in front of us for the next part of cross.

4 Ms Luping, you have the floor.

5 MS LUPING: [15:46:50] Thank you, Mr President.

6 Could I please ask that the court usher provide to the witness item 8, and if it could
7 also be brought up on our screens, DRC-OTP-2081-0003. This is one of the lists that
8 the witness has already been shown.

9 PRESIDING JUDGE FREMR: [15:47:21] And, please, before doing that, please
10 correct the transcript. Page 45, line 17 and correct name of Ms Rambolamanana. At
11 the moment we have just Mr Ram, which I think is absolutely incorrect.

12 Ms Luping, please.

13 MS LUPING: [15:47:47] Thank you.

14 And for the court officer, if we could look at line 32. Could the court usher also
15 assist the witness just to point out line 32.

16 PRESIDING JUDGE FREMR: [15:48:09] Mr Gosnell.

17 MR GOSNELL: Mr President, I think when we went into names in this list, we went
18 into private session, so perhaps that would be best.

19 MS LUPING: [15:48:16] My apologies. I had overlooked that, Mr President. If
20 we could indeed seek --

21 PRESIDING JUDGE FREMR: [15:48:20] No problem.

22 MS LUPING: -- to move into private session.

23 THE COURT OFFICER: It is a common consensus on that, so let's move into private
24 session now.

25 (Private session at 3.48 p.m.)

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8 (Open session at 5.00 p.m.)

9 THE COURT OFFICER: [17:00:28] We are back in open session, Mr President.

10 PRESIDING JUDGE FREMR: [17:00:35] Thank you, court officer.

11 Mr Witness, I would like to thank you. It was a very long day. I can promise that
12 tomorrow will be, I believe, much shorter. Anyway, thank you very much for being
13 concentrated and patiently, at least, trying to respond all questions put to you.

14 As yesterday, I have to repeat my instruction that you must not discuss your today's
15 testimony with anybody else, and I hope that you will keep promise you gave me
16 yesterday.

17 THE WITNESS: [17:01:19] Ndiyo.

18 PRESIDING JUDGE FREMR: [17:01:20] Fine. So please now escort Mr Witness
19 out of the courtroom, because I would like to deal very briefly with the issue of timing
20 in his absence.

21 And court officer, could you publicly inform us how much time so far Ms Luping has
22 used for cross-examination.

23 THE COURT OFFICER: [17:01:43] Yes, Mr President. Ms Luping, the Prosecution,
24 has used 2 hours and 55 minutes in total. Thank you.

25 PRESIDING JUDGE FREMR: [17:01:53] Two 55? So to the original allotted time,

1 you would still have 1 hour 5 minutes. Ms Luping, at the moment, what is your
2 estimation how much time you will need to complete cross?

3 MS LUPING: [17:02:10] Mr President, your Honours, my understanding of the
4 rules are in fact that I should be getting the same amount as the Defence had.

5 PRESIDING JUDGE FREMR: [17:02:17] Ms Luping, my question is how much time
6 you need to complete.

7 MS LUPING: [17:02:21] I do believe that I may need the same amount of time as
8 the Defence had. That was the reason for that question, sir.

9 PRESIDING JUDGE FREMR: [17:02:28] Give me a second. I will consult my
10 colleagues.

11 (Trial Chamber confers)

12 PRESIDING JUDGE FREMR: [17:03:12] So after brief deliberation, the decision of
13 the Chamber is that in fact you will also be granted the same time like the Defence,
14 which means 4.30, so if I'm counting well, you still have for tomorrow, 1 hour, 35
15 minutes sharp. No one minute more, Ms Luping. Be ready.

16 And again I have to return back to my recommendation which I made several times.
17 Please try to adjust your questions to the capability and willingness, and also
18 willingness of the witness to respond. And I still believe I know that it is something
19 typical for common law system that it is a privilege to put leading questions, but
20 sometimes in my view the open-ended questions could serve better. Please thank
21 about that.

22 You have 1.35 for tomorrow, no one minute more.

23 Now we will break, and I would also like to thank -- sorry?

24 Yes, for tomorrow we will start 9.30, and in fact I believe that Ms Luping should be
25 able to complete this examination in one slightly extended session. So my idea is to

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- 1 have one session of two hours, which I think should be enough for Ms Luping to
- 2 complete those one hour 35 of neto, neto (phon) examination.
- 3 And before we leave, I would like to thank court reporters, interpreters and security
- 4 officers who supported us today loyally in those extended hours. Thank you very
- 5 much. And see you tomorrow, 9.30.
- 6 THE COURT USHER: [17:05:09] All rise.
- 7 (The hearing ends in open session at 5.05 p.m.)