

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 Wednesday, 29 November 2017
8 (The hearing starts in open session at 9.19 a.m.)
9 THE COURT USHER: [9:19:20] All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE FREMR: [9:19:48] Good morning, everybody.
13 Court officer, please call the case.
14 THE COURT OFFICER: [9:19:53] Thank you, Mr President.
15 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
16 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
17 We are in open session.
18 PRESIDING JUDGE FREMR: [9:20:07] Thank you, court officer.
19 Appearances, please, if changed compared to yesterday afternoon.
20 MS LUPING: [9:20:13] Good morning, Mr President. Good morning, your Honours.
21 No changes in the composition for the Prosecution team this morning.
22 PRESIDING JUDGE FREMR: [9:20:19] Thank you, Ms Luping.
23 Defence.
24 MR BOURGON: [9:20:26] (Interpretation) Bonjour.
25 PRESIDING JUDGE FREMR: [9:20:36] I can hear you, Mr Bourgon. It seems it works.

1 MR BOURGON: [9:20:46] (Interpretation) Good morning, your Honour. No change
2 in the composition of the Defence team for Mr Ntaganda.

3 PRESIDING JUDGE FREMR: [9:20:55] Mr Bourgon, should I send court usher to check
4 your mic because you will need it, I guess.

5 Court usher, please. Court officer, please assist.

6 And as regards Legal Representatives.

7 MR BOURGON: [9:21:21] I believe it's all right, Mr President.

8 PRESIDING JUDGE FREMR: [9:21:23] Thank you, Mr Bourgon.

9 MS PELLET: [9:21:30] (Interpretation) Thank you, your Honour. *The former child soldiers
10 are represented by myself, Sarah Pellet, Counsel with the Office of Public Counsel for Victims.

11 MR SUPRUN: [9:21:41] (Interpretation) *Good morning, Your Honour, your Honours.
12 The composition of the team for the victims of the attacks hasn't changed at all since
13 yesterday. Thank you so much.

14 PRESIDING JUDGE FREMR: [9:21:50] Thank you, Ms Pellet. Thank you, Mr Suprun.
15 Before we continue with testimony, three logistic issues.

16 First one, because there is a delegation of African judges, there is a seminar organised this
17 morning. We Judges of this Chamber couldn't attend that, but at least we would like to
18 meet them for lunch, where the discussion will continue. That is why we will shorten
19 slightly the second session, and we will break for lunch at 12.35, and then the third session
20 will start as usual at quarter past 2.

21 The second issue, yesterday, Mr Bourgon mentioned a possibility that testimony of
22 Witness 243, if I'm not wrong, could even start on Friday, but even if we appreciate
23 expeditiousness, possible expeditiousness, proposed by Mr Bourgon, we have to say that
24 the Chamber will not be, because of some professional commitments, possible to sit on
25 Friday. So testimony of D-0243 should start on Monday as already planned.

1 Mr Bourgon, any comment on that?

2 MR BOURGON: [9:23:22] We're in the hands of the Chamber, Mr President.

3 PRESIDING JUDGE FREMR: [9:23:25] And third issue concerns Witness D-0251.

4 Yesterday, Mr Bourgon updated us about some problems on the part of the witness's
5 children and also mentioned the possibility that this testimony could be postponed or

6 shifted to the third week of our evidentiary block. But we discussed that, and according
7 to the opinion of the Chamber, we would like to avoid any risk that during the third week
8 we would get under time pressure, because this witness is planned for seven hours, and
9 the last one, the D-70, for 10 hours. And before -- because we can't simply prolong this

10 block, there is an ultimate, ultimate last day before the December recess. That is why we
11 encourage Defence to conduct this testimony during the second week. But because
12 probably it is not possible to find solution that would be convenient to the witness and
13 organise her travel to The Hague, we encourage the Defence to conduct this testimony via
14 video link.

15 Moreover, we believe that the fact that this witness is probably a bit frustrated by health
16 problems of her children, that would be even better for her to remain even during giving
17 the testimony, which will roughly take two days, in close proximity of her children.

18 While in case that she would be travelling, it would mean that she will have to leave her
19 children for much longer time, and we even believe that it could dispel her concentration
20 on giving testimony.

21 So, Mr Bourgon, even ourself, it is up to you. We can just ask VWU. We believe that it
22 would be feasible to organise conducting testimony via video link till next week. I think
23 she should be the second witness for the next week, so we still believe there's enough time
24 to organise that. Your position?

25 MR BOURGON: [9:26:07] Thank you, Mr President. We have already, of course,

1 looked into the possibility of video link, and it is my understanding that it will be possible
2 for next week. However, Mr President, our preference remains for the witness to come
3 live, and it was actually -- it is also her preference, the witness's preference, to appear live
4 before the Chamber.

5 We fully understand the calendar issue or scheduling issue raised by the Chamber. I
6 have one fact I would like to add to this. It is based on the latest information. We will
7 not get the authorisation from the State for the Witness 0070 to appear in time or in time
8 for the witness to appear during this block. It is not confirmed yet. We are working this
9 with the ICC field office in Kinshasa. We have now finished her work and now we're just
10 really finalising the scheduling issue whether we get the proper authorisation for the
11 witness to come in the third week. If we do not get this authorisation or if it's unlikely
12 we will get the authorisation, then I would suggest, Mr President, if the witness still is
13 willing to come to The Hague, I'm talking about 251, to keep it this way for 251.

14 But in any event, as I mentioned yesterday, as soon as we see that there is a possibility of
15 conflict, then we immediately go for video link with 251, and everything is ready for that.

16 Thank you.

17 PRESIDING JUDGE FREMR: [9:27:48] Give me a second, I will briefly consult my
18 colleagues.

19 (Trial Chamber confers)

20 PRESIDING JUDGE FREMR: [9:29:20] So after brief, silent deliberation, Mr Bourgon,
21 Defence, the Chamber still insist on bringing Witness 251 during the second week of our
22 block, which means that it's probably unlikely that she could come in person, so -- because
23 the fact whether D-70 is coming or not is still not certain we can get to some time pressure,
24 and if we got information even tomorrow, you know, the day after tomorrow, it could be
25 too late. So that is why the Chamber insists of, in fact, keeping the original schedule,

1 which means that 251 should go after 243.

2 So I know that it's not fully convenient to you, but for the reasons we have already
3 indicated, the Chamber simply, in fact, orders to keep this order.

4 MR BOURGON: [9:30:33] Thank you, Mr President. We will abide by the Chamber's
5 instructions. Thank you.

6 PRESIDING JUDGE FREMR: [9:30:38] Any comment from -- even a little bit late.
7 Maybe I should ask you for your position earlier.

8 MS LUPING: [9:30:47] No comments, Mr President, your Honours. We leave it to the
9 Chamber to decide, as you have done.

10 PRESIDING JUDGE FREMR: [9:30:51] Fine.

11 And now we can proceed with the rest of testimony of Witness D-17. Ms Luping.

12 MS LUPING: [9:30:58] Mr President, your Honours, simply for planning purposes, I
13 thought it might be of use just to indicate at this stage that the Prosecution does believe it
14 may need the entirety of the remaining time. It may have implications as to how you
15 want to organise the hours and the sessions, and you may prefer to go on until tomorrow.

16 PRESIDING JUDGE FREMR: [9:31:19] Yes. One thing I also forgot to inform you
17 about is that the Chamber is not only capable to sit on Friday but also on Thursday
18 afternoon. So, in fact, at the moment we have at our disposal Wednesday and one,
19 maybe two sessions on Thursday, which in my view should be still feasible because you
20 still have roughly five hours. So my estimation is that we can exhaust four hours today
21 and I believe that one session in the morning should be enough for you. So I think it's
22 fine with all of us.

23 All right. So now, court usher, please escort Mr Witness into the courtroom.

24 (The witness enters the courtroom)

25 PRESIDING JUDGE FREMR: [9:33:09] Good morning, Mr Witness. Are you feeling

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1 okay to continue with your testimony?

2 WITNESS: DRC-D18-D-0017 (On former oath)

3 (The witness speaks Swahili)

4 THE WITNESS: [9:33:21] (Interpretation) Yes, I feel well.

5 PRESIDING JUDGE FREMR: [9:33:25] I'm glad to hear it.

6 You know it, but I have to make it again. It's my duty to remind you that you are still
7 under oath and you have to speak the truth and nothing but the truth.

8 And as concerns practical guidance, how to respond and what time to respond, please,
9 just keep the style you used yesterday and the day before yesterday. It was absolutely
10 fine, so no need to change anything. Just to assure myself so you understood my
11 instruction about duty to speak truth and nothing but the truth; am I correct?

12 THE WITNESS: [9:34:17] (Interpretation) Yes.

13 PRESIDING JUDGE FREMR: [9:34:21] Fine. And now I'm giving floor to
14 representative of Prosecution, Ms Luping, who will continue in cross-examination of our
15 witness.

16 Ms Luping, you have the floor.

17 MS LUPING: [9:34:34] Thank you, Mr President.

18 QUESTIONED BY MS LUPING: (Continuing)

19 Q. [9:34:36] And good morning, Mr Witness.

20 A. [9:34:42] Good morning.

21 Q. [9:34:44] Now, Mr Witness, yesterday you were testifying that the type of
22 punishments used on recruits during training at Mandro, and now I quote, "Really
23 depends on who was deciding".

24 And this is at transcript 252, page 83, line 25 to page 84, line 3.

25 You also testified that you were not aware of any use of firing squads or executions

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1 during training at Mandro and only knew of the use of a firing squad once, at Camp
2 Ndromo. And that's at transcript 252, page 84, lines 4 to 10.

3 Now, sir, my first question is this: Isn't it right that one of your roles at Mandro was to
4 punish recruits who tried to leave the Mandro training centre without permission?

5 A. [9:36:05] Yes. I said I was amongst the staff who were supposed to monitor
6 people who would flee from the camp or who would steal as well. We were entrusted
7 with a task of ensuring discipline.

8 Q. [9:36:32] And, sir, isn't it right that at Mandro training centre there was harsh
9 punishment of recruits?

10 A. [9:37:07] It's the same question that the Defence team asked me. I listed out the
11 different punishments that were administered.

12 Q. [9:37:30] Yes, sir, but just responding to my specific question, is it correct that there
13 was also harsh punishment at Mandro training centre?

14 A. [9:37:59] Very severe punishments were not administered. That's what I can say.

15 PRESIDING JUDGE FREMR: [9:38:04] Sorry to interrupt, Ms Luping. I would like to
16 put one additional and very concrete question.

17 Mr Witness, among the punishment used during the training of recruits, you haven't
18 mentioned beating. So according your knowledge there were no beating of recruits from
19 the part of instructors?

20 THE WITNESS: [9:38:47] (Interpretation) I told the Defence team that the recruits
21 were not beaten. I listed out the type of punishments that were administered.

22 PRESIDING JUDGE FREMR: [9:39:01] Thank you, Mr Witness.

23 Ms Luping, please proceed.

24 MS LUPING: [9:39:07]

25 Q. [9:39:11] Isn't it right, sir, that in fact there could be shootings of recruits and others

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1 for even the smallest of errors at Mandro?

2 A. [9:39:46] I would say it's a lie. I have never seen it with my eyes.

3 Q. [9:39:52] People deserted from Mandro because of the harsh punishment; is that
4 correct?

5 A. [9:40:21] That again is a lie, personally, I would say.

6 Q. [9:40:27] Mr Witness, Eric Mbabazi, he was the G5 of the UPC/FPLC; isn't that
7 right?

8 A. [9:40:53] I know. Yes, I know he was G5.

9 Q. [9:40:58] And as the G5, one of his roles was to receive complaints from soldiers
10 within the UPC/FPLC; is that correct?

11 A. [9:41:39] No. When I met him he was G5 in Bunia, but at that point of time he
12 was called PC morale because he actually kept the spirits up. That's what I know.

13 Q. [9:42:02] I'm not sure if there has been some problem in terms of interpretation.
14 I'm not asking where he was located, sir. I'm just talking about his functions at the time
15 he was the G5, not his functions as the PC morale, but as the G5. And I'll repeat my
16 question. Was it one of his jobs to receive complaints including from UPC/FPLC
17 soldiers?

18 A. [9:42:51] I replied to your question. I said that we -- he was called G5, but when I
19 met him he was giving -- he was keeping the spirits of the soldiers high.

20 Q. [9:43:21] That was one of his functions. His function was to keep the morale high.
21 And as part of that job to keep the morale high, didn't he also deal with complaints from
22 soldiers, sir? You haven't answered that part of my question yet.

23 A. [9:44:06] I will say that I'm not aware of that. In the beginning I told you that I
24 will tell you what I know and what I saw. I know the fact that he was called G5 and he
25 was PC morale. So he was in charge of keeping the morale high of soldiers.

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1 Q. [9:44:37] Isn't it right that another one of his functions was to receive complaints
2 from civilians, from the population?

3 A. [9:45:10] I do not know. I can only tell you what I know and what I saw.

4 MS LUPING: [9:45:22] Mr President, with your leave, the Prosecution would ask for
5 permission to show a document from the Prosecution's own computer.

6 PRESIDING JUDGE FREMR: [9:45:35] Could you be more specific?

7 MS LUPING: [9:45:37] It is a document. It's from -- it is item 62. It's
8 DRC-OTP-0109-0136.

9 PRESIDING JUDGE FREMR: [9:45:49] And level of confidentiality?

10 MS LUPING: [9:45:51] I believe this can be treated as a public document.

11 PRESIDING JUDGE FREMR: [9:45:55] All right then. Mr Bourgon, any objection?

12 MR BOURGON: [9:46:00] If the witness can remove his earphones please,
13 Mr President.

14 PRESIDING JUDGE FREMR: [9:46:05] Mr Witness, could you kindly remove your
15 headphones. Thank you.

16 Mr Bourgon.

17 MR BOURGON: [9:46:13] Thank you, Mr President. I do not want to belabour the
18 point. My objection is probably premature but the document should be shown to him
19 and he should be asked whether he knows about this type of document. From his four
20 previous answers, no basis has been established to show this document to the witness.
21 He has said in four different answers what the G5 was doing, according to him, and he
22 said that he has no knowledge of the G5 taking complaints or writing reports.

23 So now we're going to attempt to show him a report that was prepared by someone where
24 we know that the last page of the report bears the signature or a signature and the name
25 of Mbabazi, but that has not been established in evidence and there were lots of debate as

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1 to who is the author of this document. It was provided and admitted in evidence by a
2 witness who had no knowledge of the document itself.
3 So as long as we follow the proper procedure, I think there's enough already to say no, but
4 if the Chamber wants to allow the witness to take a look at the document before any
5 questions are put to him on it. Thank you, Mr President.

6 PRESIDING JUDGE FREMR: [9:47:33] Ms Luping, do you suppose that conditions we
7 set up in our conduct of proceeding decision will be met in this case for use of the
8 document with this witness?

9 MS LUPING: [9:47:43] Mr President, your Honours, this document has already been
10 admitted. The purpose of showing the document is not for the purposes of seeking to
11 authenticate it for admission purposes. I will not need to admit it through this witness.
12 As Defence counsel has already pointed out, it has been admitted. The sole purpose for
13 which I am proposing to show this document to the witness -- and we used exactly the
14 same procedure, your Honours, with Witness D-38 previously using exactly the same
15 document without these types of objections. The sole purpose is simply to refer the
16 witness to specific passages in the report, only two passages. He has already confirmed
17 that he is -- he knows the individual, the individual concerned who wrote the report; he
18 has confirmed that he knows what his function was within the UPC/FPLC. And what I
19 am proposing to do -- and he's already indicated that that role was also dealing with
20 morale of the troops. The two specific passages I am proposing to show to him, at page
21 141 -- first, I can tell you, your Honours, what I'm proposing to ask him about. The first
22 passage relates to a --

23 PRESIDING JUDGE FREMR: [9:48:55] It's enough.

24 MS LUPING: [9:48:57] It's enough?

25 PRESIDING JUDGE FREMR: [9:48:58] At the moment your objection is overruled. I

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1 fully agree that this different approach concerns documents which should be potentially
2 admitted. Now the purpose of this exercise, only to confront, if I may say, witness with
3 some part of the document, and we will see. He can easily say, "I don't know a thing
4 about that" and it will be fine with us.

5 Ms Luping, please proceed.

6 MS LUPING: [9:49:23] Thank you, Mr President.

7 PRESIDING JUDGE FREMR: [9:49:25] Mr Bourgon. Yeah, it's okay.

8 Ms Luping.

9 MS LUPING: [9:49:29] Thank you. I believe the witness just simply needs to be asked
10 to put his headphones back on.

11 THE COURT OFFICER: [9:49:36] The document will be displayed on the evidence 2
12 channel.

13 PRESIDING JUDGE FREMR: [9:49:55] Mr Bourgon.

14 MR BOURGON: [9:49:56] Thank you, Mr President. But of course this is a seven-page
15 document, and showing just one paragraph would not be fair to the witness. He needs
16 to see the whole document to see if he has ever seen this document or any documents of
17 the sort during his stay with the UPC. Thank you.

18 PRESIDING JUDGE FREMR: [9:50:14] Ms Luping, to be fair to the witness, I don't
19 know what part or what nature you would like to use, but at least you should really at
20 least make some summary what this document is about, who is the author, and then
21 simply to provide some context, not just to start with isolated part of this document.

22 MS LUPING: [9:50:35] Mr President, indeed, that was my indication. I will indicate; I
23 will help to navigate it. But as for the specific question that Defence counsel indicated I
24 need to ask, I believe he already repeated that objection, and it has already been overruled.
25 That was my understanding.

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1 MR BOURGON: [9:50:53] No, that is not correct, Mr President.

2 PRESIDING JUDGE FREMR: Mr Bourgon.

3 MR BOURGON: I simply asked for the witness to be given a copy. That's what I asked,
4 nothing else. Thank you, Mr President.

5 PRESIDING JUDGE FREMR: [9:51:00] But I said that in my view to provide him with
6 the context, it's enough. It's no need for him at this moment -- maybe we'll change our
7 view -- but for the moment, to provide him and to allow him to read whole document.

8 That was why I asked Ms Luping to inform and to make summary of the document to the
9 witness, which in my view will be sufficient for using part of this document to confront
10 him with.

11 Ms Luping, please proceed.

12 MS LUPING: [9:51:31] Thank you, Mr President.

13 Q. [9:51:32] So, Mr Witness, you will see the first page of a document and I'm going to
14 be asking you questions relating to this document. It is, as you will see at the very top,
15 it's dated 6 November 2002. It is attentioned to the chef d'état general of the FPLC. You
16 will see that it is entitled (Interpretation) Monthly Report of Office 5. (Speaks English)
17 And I will ask my colleague -- actually, before I do, you'll see a reference there. I am
18 going to read it to you, and the first paragraph:

19 (Interpretation) "The chief commander of this department Mbabazi Eric, with nine staff,
20 sitting at the FPLC HQ in Bunia".

21 (Speaks English) And if my colleague could turn to the very last page, that's page 0142,
22 and to the very bottom of the page. And here we have a reference to "Mbabazi Eric,
23 commander, chef G5, état-major général/FPLC". Can you see that, sir?

24 A. [9:53:30] Should I start with the beginning? Could you tell me what paragraph
25 you're talking about or what line you're talking about, please.

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1 Q. [9:53:36] I'm not talking about any paragraph, sir. I'm indicating to you the
2 signature at the very bottom of this report. I've indicated that there is a reference to the
3 function of the person who signed as the G5 of the état-major général of the FPLC. I'm
4 just simply --

5 THE INTERPRETER: General staff FPLC.

6 MS LUPING: -- showing different aspects of this document before asking you a question
7 and showing you the relevant paragraph. Do you see that, sir?

8 A. [9:54:09] Yes, I can read the name "Bambazi". With regard to document and the
9 signature, I don't know what questions you want to ask me, but what I've said from the
10 start is that I've only stated the things that I know. I was (Redacted) but
11 when I was shown the document, whether it comes from whatever office, I have to be
12 asked questions about somebody, but I never used documents such as this one. If you
13 ask me questions, what basis, on what basis can I answer such questions?

14 PRESIDING JUDGE FREMR: [9:54:53] I would like to intervene. So just to make it
15 clear, Mr Witness, you have never seen this document; am I correct?

16 THE WITNESS: [9:55:08] (Interpretation) I'll repeat what I said. What I said is that I
17 can only talk about things that I have seen or know. Where it concerns the document, I
18 didn't handle documents and I can't speak about documents that I don't know.

19 PRESIDING JUDGE FREMR: [9:55:25] Mr Witness, don't, you know, don't oppose to
20 put questions if you know -- don't know what questions would be about, but please try to
21 just to say -- my question was easy -- to answer, to say yes or no. So your answer is no,
22 fine. Have you ever seen this kind of report issued by G5? Again, yes or no?

23 THE WITNESS: [9:55:56] (Interpretation) My answer is no.

24 PRESIDING JUDGE FREMR: [9:55:59] Fine.

25 And the last question from my part: Were you even aware that part of the work of G5 is

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1 issuing this kind of reports? Again, yes or no? Were you aware of that, the G5 is
2 producing some kind of reports?

3 THE WITNESS: [9:56:30] (Interpretation) Very briefly, I would say no.

4 PRESIDING JUDGE FREMR: [9:56:32] Fine.

5 Ms Luping, please proceed.

6 MS LUPING: [9:56:35] Thank you.

7 PRESIDING JUDGE FREMR: [9:56:36] Mr Bourgon.

8 MR BOURGON: [9:56:37] Mr President, I -- if the witness can remove his earphones,
9 please.

10 PRESIDING JUDGE FREMR: [9:56:43] Mr Witness, usual exercise. Thank you.
11 Mr Bourgon.

12 MR BOURGON: [9:56:49] Respectfully submitted, Mr President, the questions put to
13 the witness by the Chamber put in question his willingness to answer and his willingness
14 to answer the questions from the Chamber. But at page 17, at lines 3 to 4, the witness
15 said, "I was (Redacted) but when I was shown the document, whether it
16 comes from whatever office, I have to be asked questions about somebody, but I never
17 used document such as this one".

18 Mr President, I think the answer was already on the record and we make it look as the
19 witness doesn't want to answer. He's a bodyguard. He's never seen any documents.
20 It's unfair, Mr President, to make it -- to make the witness feel as though he's not
21 answering when he did provide the answer. Thank you.

22 PRESIDING JUDGE FREMR: [9:57:45] Mr Bourgon, maybe I misunderstood
23 Mr Witness. If he's never seen that, what he would like to respond to, which is, I guess,
24 not his role. And now even if he has no knowledge of the document, my expectation is
25 that Ms Luping would like to confront him with some facts from the document, which I

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1 don't see anything wrong on that.

2 Ms Luping, please.

3 MS LUPING: [9:58:14] Thank you, Mr President. I do note that we are in open session
4 at the moment. The witness unfortunately has referred to his job title and it's been
5 repeated. I don't believe that my questions now will be revealing of his identity in any
6 way. I believe we can continue in open session but it was just to note that.

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 MS LUPING: [9:58:56] Yes, Mr President. I would now ask my colleague to turn to
13 page 0141.

14 PRESIDING JUDGE FREMR: [9:59:02] Mr Witness, please.

15 MS LUPING: [9:59:05] Thank you, Mr President.

16 PRESIDING JUDGE FREMR: [9:59:07] And, Mr Witness, sorry for, you know, forcing
17 you to -- for that exercise because otherwise you will have to leave the room, which is I
18 believe still more convenient for you just to remove your headphones. So thank you for
19 your indulgence.

20 Ms Luping, please proceed.

21 MS LUPING: [9:59:24] Thank you, Mr President.

22 Q. [9:59:28] So I'm going to read to you, sir, an extract from this document at page
23 0141 and it should appear on your screen. Can you see the document in front of you, sir?

24 A. [9:59:52] Yes. Yes, I can see a document which is on my screen.

25 Q. [9:59:59] Right. Well, I'm now going to read to you. It's the fourth paragraph in

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1 this document. And it follows under a heading on the previous page, which is set out as
2 "Suggestions". Now, I'm going to read this extract in French:
3 (Interpretation) "We ask that we be told who has the right to execute because later we
4 will be missing soldiers. For small errors, for small errors, there's a firing squad. That is
5 the case in Tchomia, Mandro, and that is the subject of the desertion of our troops. And
6 the numbers are going down more and more. This is why they're leaving".

7 (Speaks English) Now, sir, isn't that the truth, that there were desertions from Mandro
8 because of these types of harsh punishments, even executions, for the smallest of errors?

9 PRESIDING JUDGE FREMR: [10:01:38] Ms Luping, I don't find this question correct
10 because whether it was truth or not. Mister -- you can ask Mr Witness whether he has
11 knowledge about that, but whether it's -- because whether this report is truthful or not,
12 may be the author could say but not the witness. So please rephrase your question.

13 MS LUPING: [10:01:58] I'll rephrase my question, Mr President.

14 Q. [10:02:03] Now, sir, you have said that there were no such executions or harsh
15 punishments at Mandro. Now, the Prosecution's case is that indeed there were such
16 punishments at Mandro; do you agree with that?

17 PRESIDING JUDGE FREMR: [10:02:29] Mr Bourgon, is it really necessary to intervene
18 now before witness will give his answer?

19 MR BOURGON: [10:02:37] Well, the answer is "such punishment". What is the "such"?
20 Is the "such" what's in the paragraph or is the "such" what the witness referred to earlier?
21 So that we have a clear answer.

22 PRESIDING JUDGE FREMR: [10:02:49] Ms Luping.

23 MS LUPING: [10:02:52] I think it's clear, in fact, Mr President. I mean, I'm not sure to
24 what extent it is unclear. I've said harsh punishments "such as" executions. I'm not sure
25 what the ambiguity is in that.

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1 PRESIDING JUDGE FREMR: [10:03:10] Mr Witness, maybe I will try to simplify
2 things.

3 You said something about punishment. Now Ms Luping quoted part of the report
4 prepared by G5 which -- and it's obviously that this, what is said in the report, is different
5 from your testimony. So, in fact, which is her full right, she cross-examined you about
6 this contradiction. Do you have any explanation for that? Because the report says
7 something different from what you have said about punishment and about firing for
8 minor, minor délits.

9 THE WITNESS: [10:04:06] (Interpretation) In order to answer this question, with
10 regard to what happened in Mandro, when I was in training where it concerns
11 punishment and execution, those are two different things. When I was in Mandro there
12 weren't executions. But with regards to the punishment, there were punishments when I
13 was there. But myself, I saw people were punished, but no executions.

14 PRESIDING JUDGE FREMR: [10:04:39] Ms Luping, please proceed.

15 MS LUPING: [10:04:41] Thank you, Mr President.

16 Q. [10:04:44] Now, Mr Witness, I'm going to read an extract from the previous page.
17 That's page 0140 that my colleague will be pulling up for us. Again, and these are the
18 complaints coming now from "de militaires" and I'm going to read the second point.
19 (Speaks French) -- my apologies.

20 I will just repeat that:

21 (Interpretation) "Insufficient military rations due to the greed of the superiors who try to
22 enrich themselves".

23 (Speaks English) Now, isn't that right, sir, that indeed there were insufficient military
24 rations for both recruits and soldiers alike?

25 A. [10:06:10] Quite briefly, I can say that this is the opposite of the truth. Where it

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1 concerns the UPC, for rations, I would say there were business people who gave us beans,
2 maize and they came by lorry. This is what I saw when I was in Mandro. We received
3 rations, beans, but there weren't salaries paid.

4 Q. [10:06:49] When you say there were no salaries paid, do you mean for both recruits
5 and soldiers; is that right?

6 A. [10:07:12] I don't know if this is a general question with regards to the UPC. I
7 think that's a general question, that's why I gave a general answer. In the UPC, we didn't
8 have salaries. And that's the reason why they raised our morale all the time, but when it
9 came to the rations, it was the citizens of the country, the business people, who brought
10 food, brought it by truckload, and I saw them bring food to us. It was brought to us by
11 these business people.

12 Q. [10:07:49] Now, when you were at Mandro, it was Bosco Ntaganda who was in
13 charge of training; is that right?

14 A. [10:08:18] I haven't understood your question well when you speak about training.
15 Could you be so kind as to repeat your question.

16 Q. [10:08:25] You explained that you did training at Mandro. At that time, isn't it
17 right that Bosco Ntaganda was the commander in charge of training?

18 A. [10:08:55] I can say that at the time that I knew him as a major commander, but
19 there were other commanders who were responsible for the training centre who were
20 instructors.

21 Q. [10:09:11] Sir, just so I understand your response clearly, sir, are you saying, is it
22 your testimony that Bosco Ntaganda was not responsible at all for training at Mandro or
23 any other military camp of the FPLC; is that your testimony, sir?

24 A. [10:09:44] If I have to repeat my answer, I would say that he was a senior
25 commander. He carried out the inspection of the training centre, but there were other

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1 people who were responsible for training, and they were responsible for the training
2 centre where the soldiers were.

3 Q. [10:10:12] Now, sir, you've heard of the UN MONUC?

4 A. [10:10:33] Yes, I know MONUC.

5 Q. [10:10:36] And you know that they had human rights officers?

6 A. [10:10:56] Yes. Yes, my response is affirmative.

7 Q. [10:10:59] And they had human rights officers who interviewed former UPC
8 soldiers; isn't that right?

9 A. [10:11:25] That's something I don't know. I can only talk about things I know and
10 saw, but I don't know how to answer your question.

11 MS LUPING: [10:11:37] I am going to ask for your leave, Mr President, to show a
12 document to the witness. It's item 63, DRC-OTP-0152-0286. Again, the purpose of this
13 is not to seek to authenticate the document. The document has been admitted. It's
14 purely for the sake of showing certain information contained in the document.

15 PRESIDING JUDGE FREMR: [10:12:03] Defence, I believe it will be the same situation
16 we faced a few minutes also, so do you want to repeat your objection or?

17 MR BOURGON: [10:12:12] I do not want to repeat the objection, but we could save lots
18 of time if we could just say what information is in the possession of the Prosecution and
19 move on. But if my colleague wants to take time and show the document, if we are
20 going to use a document as a basis to contradict, then the witness must see this 20-page
21 document before he can answer a question. Thank you.

22 PRESIDING JUDGE FREMR: [10:12:38] Yes, I think I expressed my position and the
23 Chamber's position clearly, so as I said, in my view, it is the same situation, so please
24 proceed accordingly, Ms Luping.

25 MS LUPING: [10:12:50] Thank you, Mr President. And my colleague will now go to

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1 paragraph 91, at page 0310 of the document.

2 Q. And I'm going to read a passage, sir, to you.

3 PRESIDING JUDGE FREMR: [10:13:01] But, please, again, just briefly inform

4 Mr Witness that it is a report issued by someone, just verbally provide him with some
5 short summary, and then you can move to quotation of details from this report.

6 MS LUPING: [10:13:14] Certainly, sir.

7 Q. [10:13:15] This is a report of the special investigation team of MONUC, that's the
8 human rights section of MONUC, of abuses committed in Ituri during the period of
9 January to March 2003. The report is dated June 2003. And the relevant section I'm
10 going to read to you, sir, is a summary of meetings that the human rights officers, in
11 particular, the child protection officers of MONUC of their meetings with former UPC
12 soldiers, including those at Mandro and Rwampara and including those who reported
13 Commandant Bosco as being one of the commanders in charge at Mandro.

14 PRESIDING JUDGE FREMR: [10:13:57] Ms Luping, you are making
15 perfectly -- probably too fast, am I correct?

16 THE COURT OFFICER: [10:14:03] You are, Mr President.

17 PRESIDING JUDGE FREMR: [10:14:04] Otherwise, it fully met my expectation what
18 you should do with this kind of document.

19 MS LUPING: [10:14:10] Thank you, Mr President. And my apologies to --

20 PRESIDING JUDGE FREMR: [10:14:15] But not Mr Bourgon's expectation. Probably,
21 Mr Bourgon?

22 MR BOURGON: [10:14:19] Indeed, Mr President, it does not meet the expectations of
23 the Defence. Before any questions can be put, we need to know whether the witness
24 knows about anything about what was just mentioned by my colleague. What does he
25 know about special investigation team? What does he know about an investigation

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1 conducted in January to March? What does he know about child protection officer?

2 The difference, Mr President, there's two things. If my colleague wants to use
3 information that she has, put to the witness, fine. But if she wants to use the document
4 as a basis to show why he knows or doesn't know, then she needs to show the document.
5 Thank you, Mr President.

6 PRESIDING JUDGE FREMR: [10:15:00] With due respect, Mr Bourgon, I disagree. In
7 such a case, if Ms Luping would like to quote from transcript from Lubanga case,
8 according your policy, she would have to ask him about the Court, about what is the
9 transcript and so on. I don't see such a need.

10 Ms Luping, please proceed.

11 MS LUPING: [10:15:23] Thank you, Mr President. And I would ask that if Defence
12 counsel is going to make also these types of submissions, that they are made in the
13 absence of the witness's hearing because I do not want this witness to be guided or led in
14 anyway in his responses.

15 PRESIDING JUDGE FREMR: [10:15:39] But I don't believe that this objection was
16 guiding anyway to Mr Witness, but, yes, we will have it in mind.

17 MS LUPING: [10:15:48] Thank you.

18 PRESIDING JUDGE FREMR: [10:15:48] Please proceed.

19 MS LUPING: [10:15:49] Thank you, Mr President.

20 Q. [10:15:51] So I'm now going to read to you, sir, an excerpt from this. And this
21 is -- at the beginning there's an explanation as to where the interviews took place
22 including at Mandro, Montawa, Rwampara, and Watsa. And the bit I'm going to read to
23 you is as follows: "Various commanders are reported to have been in charge in Mandro:
24 Commandant Abelanga, Commandant Americain, Commandant Bebwawa, Commandant
25 Bosco, Commandant Fiston, Commandant Germain, Commandant Invisible, Chef Kahwa".

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1 I'm only focusing, sir, on the part in Mandro. And now I'm going to read one sentence
2 here: "All the minors reported being badly treated and poorly fed".

3 Now, sir, isn't that right that at Mandro and in these other locations recruits were in fact
4 badly treated and badly fed?

5 A. [10:17:21] I don't know if we're going to understand ourselves. If I have to go
6 back to what I said before with regards to the food when I was training, I can say that the
7 members of the population were providing food so there was enough for everybody.

8 Q. [10:17:47] And what is your response, sir, to the report that recruits were badly
9 treated?

10 A. [10:18:22] Are you talking of poor treatment or mistreatment? What do you mean
11 by the people who were there to undergo military training? Could you explain a bit
12 more?

13 Q. [10:18:43] Well, it's not for me to testify, sir. The question is really, is it right or
14 not what's in this report? Was there bad treatment? That is all. Now, how you
15 interpret that I cannot comment. The report states "bad treatment"
16 and I'm just asking you if that's right or not.

17 A. [10:19:14] I will say the following. I underwent a training programme there. We
18 can't talk of mistreatment for people who were going to undergo military training, and
19 this is precisely why I don't agree with you.

20 Q. [10:19:33] All right, sir. I'm going to change topics now and I'm going to move
21 back in time. And this is to consider the moment before you went to Mandro and you
22 explained that you were in Mongbwalu living there.

23 Now, sir, isn't it right that before you went to Mandro for training that there were Lendu
24 combatants present in Mongbwalu?

25 A. [10:20:19] This is what I will say. When I met the Defence team, I told them that

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1 there was a group of Hema traders or businessmen who were doing trading in Bunia,
2 Nyangarai. They were maltreated, their belongings were confiscated, and at that time I
3 was in Bunia, and that's what I got to know.

4 Q. [10:20:53] Thank you, sir. And you did, indeed, give us that testimony already.
5 My question is different, sir, and I'm talking about the Lendu combatants in Mongbwalu
6 before you went to Mandro. I just want to ask you about those Lendu combatants.
7 First of all, it's right they were present there, weren't they?

8 A. [10:21:34] When I met the Defence team, we talked about this group. This group
9 was preparing in Sayo. Sayo is in Mongbwalu. This is why we left. And I had to stop
10 my business and leave this place.

11 Q. [10:21:56] And these Lendu combatants, isn't it right that they would wear
12 traditional items like animal skins, fetishes and grasses?

13 A. [10:22:33] This happened after I left this place. When I was there, this did not
14 happen. And the people who were there after me saw this and they confirmed this.

15 Q. [10:23:33] And at any time did you see combatants, Lendu combatants, wearing
16 this type of clothing, with your own eyes?

17 A. [10:24:02] I'll just come -- go over what I said. Now, I can tell you what I
18 experienced and what I saw. When all this happened I wasn't there. My parents and
19 those who stayed on saw all this. And it's true, this is how things happened.

20 Q. [10:24:36] Now, sir, you described how the Lendu would attack Hema, and it was
21 this period between 2002 to 2003. Isn't it right, sir, that in the same time period, 2002
22 to 2003, that the Hema also attacked the Lendu?

23 A. [10:25:26] I thought things were clear. There was hatred on both sides. I would
24 say that both sides were trying to protect themselves and defend themselves. We
25 understood subsequently that there was no solution possible, and this is why we took

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1 measures and we started living just like before.

2 Q. [10:26:23] I'm now going to change topics, sir, now.

3 Now, you have testified about the -- an incident at Songolo and you mentioned a
4 UPC/FPLC commander called Didier. Now, my first question, sir, is it right that
5 Commander Didier was an Alur?

6 A. [10:26:57] It is possible that Didier was Alur.

7 Q. [10:27:14] And Commander Bagonza, he was a battalion commander in Djugu; is
8 that right?

9 A. [10:27:34] Commander Bagonza, I think he was a commander in the Bunia axis and
10 this is exactly where he died.

11 Q. [10:28:03] Do you recall the commander who was Bosco Ntaganda's second in
12 command in June 2003?

13 A. [10:28:38] When I met the Defence team, and in the beginning of my testimony, I
14 said that I had a problem with dates, but to the best of my knowledge, after Kisembo
15 changed the configuration of the FPLC, it was Bosco who was in charge and his deputy
16 was Linganga. I don't know if you're referring to the same period.

17 Q. [10:29:12] Thank you, sir. I'm referring to a slightly later period. And I would
18 refer to Commander Bagonza.

19 A. [10:29:40] No, Bagonza died when Kisembo changed the configuration of the
20 armed group. The deputy of Mr Bosco was Mr Linganga.

21 MS LUPING: [10:29:59] I'd now like to show an extract to you. It's from a UN
22 MONUC report, and I would again ask leave of the Chamber to show it on the
23 Prosecution side. Again, it's the same exercise. It's simply showing an extract and
24 confronting with an extract, and it's item 64. It's DRC-OTP-0152-0256. And I will be
25 quoting a specific passage from this report, and I can explain first to the witness what this

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1 report is.

2 PRESIDING JUDGE FREMR: [10:30:36] And before doing that, I would just like to
3 assure myself the document is public.

4 MS LUPING: [10:30:42] Actually, in this instance it might be better to retain its
5 confidential status because of certain details that are included in it.

6 PRESIDING JUDGE FREMR: [10:30:57] So and because we will discuss that, it will be
7 better to move into private session; am I correct?

8 MS LUPING: [10:31:05] Yes, indeed.

9 PRESIDING JUDGE FREMR: [10:31:07] So court officer, please.
10 Mr Bourgon.

11 (Private session at 10.31 a.m.) *(Reclassified partially in public)

12 THE COURT OFFICER: [10:31:22] We are in private session.

13 PRESIDING JUDGE FREMR: [10:31:27] Mr Bourgon, did you want something?

14 MR BOURGON: [10:31:31] Indeed, Mr President, and I would like if the witness could
15 remove his earphones.

16 PRESIDING JUDGE FREMR: [10:31:35] Mr Witness, as usual, please remove your
17 headphones. Thank you.

18 You may proceed, Mr Bourgon.

19 MR BOURGON: [10:31:45] Thank you, Mr President. We object to the use of this
20 document with the witness. In addition to what I said previously for other documents,
21 this document is not admitted in evidence. At a minimum, the Prosecution should say
22 why it did not elect to put this document as part of its case. And if there is any reason
23 why, because of what this witness would have said in some way or during his testimony,
24 that there's a reason why we want to use a different document that will not be in evidence.
25 It is not a document that the Prosecution had put either to the bar table or that the Defence

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1 has used to the bar table. It will -- and it's highly unlikely that this evidence -- this
2 document will ever be in evidence.

3 Again, I say the document itself should not be used, and, again, I reiterate the fact that it is
4 unfair to use the weight of a document or the alleged weight given to a document because
5 it is a UN report with a witness who knows nothing about reports. If just the information
6 can be used, we have no problems with that. But even here, that information is not in the
7 possession of the Prosecution because it will not be able to put this document in evidence
8 until the end of the case. I stand to be corrected if there's a reason why this witness said
9 something that requires this report to be used. Thank you.

10 PRESIDING JUDGE FREMR: [10:33:18] Ms Luping, your position.

11 MS LUPING: [10:33:19] Thank you, Mr President. Your Honours, the witness has
12 claimed that there was no such violence, to his knowledge. This does relate to that topic.
13 He has explicitly confirmed that he was in an operation with one of the individuals
14 named in this report. The Prosecution has admitted other items of a similar nature.
15 This report is the only one that mentions the specific commander that he named as
16 somebody that he was involved in an operation with. It is on this basis that I will seek to
17 ask him a question about the information contained in it.

18 I do believe that the objections are premature. What we're talking about at this stage is
19 the use of the document as to its potential admissibility or the weight of the information.
20 That is for your Honours to determine. I have not sought to admit it at this stage. I may
21 do so. Of course, it does depend.

22 As I said, the objection is premature. There is certainly -- should be no reason to change
23 practice, though, from the practice used in the past in being able to use documents
24 whether admitted or not where there is information that is able to be used to confront a
25 witness where he has claimed that there is no sexual violence at all, according to his

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1 knowledge.

2 PRESIDING JUDGE FREMR: [10:34:34] Give me a second. I will on that issue consult
3 my colleagues.

4 (Trial Chamber confers)

5 PRESIDING JUDGE FREMR: [10:35:31] So after a brief, silent deliberation in the
6 courtroom, the Chamber's position is that Ms Luping can use this document. We see
7 completely different issue of potential admission, which would probably be hardly
8 possible, but to confront Mr Witness with the document by quoting from such a report, if
9 he will be again provided with some context, we don't see anything wrong on that. It's
10 true, and I partially agree with Mr Bourgon, that if Ms Luping would say and I read in
11 some, in that report, that the effect would be almost the same. But at the same time, we
12 procedurally don't see a reason why to prohibit Ms Luping quote explicitly or exactly
13 from that document.

14 So Ms Luping, you may proceed.

15 MS LUPING: [10:36:37] Thank you, Mr President. And I believe the witness simply
16 needs to be asked to put his headphones back on.

17 Q. [10:36:56] Thank you, Mr Witness.

18 So, Mr Witness, you mentioned that -- or, you confirmed that you know an individual
19 called Commander Didier. Now, you previously stated that, to your knowledge, there
20 was no sexual violence or rapes of other soldiers within the FPLC; is that right?

21 PRESIDING JUDGE FREMR: [10:37:44] Hold on, Mr Witness. Mr Bourgon.

22 MR BOURGON: [10:37:48] I don't recall the witness saying those specific words, and
23 I'd like to have a quote, please, where this information comes from where he did say this,
24 in his statement or in his testimony. Thank you.

25 PRESIDING JUDGE FREMR: [10:38:02] Ms Luping.

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1 MS LUPING: [10:38:03]

2 Q. I may be wrong and you can correct me, sir, was there ever -- sorry, I'll ask the
3 question then because I may have misinterpreted your response. Was there ever any
4 sexual violence or rape of FPLC soldiers or recruits by other FPLC soldiers?

5 A. [10:38:45] I'm going to answer this question by saying that, with regards to all -- I
6 can't actually tell you about all the elements of the FPLC because I wasn't the supreme
7 authority. If you're asking for specific cases, I've already provided the information to the
8 Defence team. But asking me something that pertains to all of the FPLC soldiers is
9 something that I can't reply.

10 Q. [10:39:26] To your knowledge, are you aware of any instances of soldiers, FPLC
11 soldiers or FPLC recruits, being raped by other FPLC soldiers? And I'm just confining it
12 to your knowledge, sir.

13 A. [10:40:13] No, I cannot answer this by giving you information about all the soldiers
14 in the FPLC. I simply cannot.

15 Q. [10:40:25] Thank you, sir. I rephrased my question. My question is, are you
16 aware, you personally, of any instances where any FPLC recruit or FPLC soldier was
17 raped by another FPLC soldier?

18 A. [10:41:04] No, I don't know.

19 Q. [10:41:06] Now, I'm now going to ask my colleague to bring up a document. I'll
20 explain what it is. It's another report written by UN MONUC, human rights officers.
21 It's entitled "Report on Children Associated with Armed Groups in Ituri". It's dated
22 February 2004. And I'm only going to read to you one extract, and that's at page 0262.
23 Now, it's the second paragraph in the document on the screen in front of you. It's in
24 English, and I'm going to read out the relevant part.

25 A. [10:42:06] The document in front of me is in English.

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1 Q. [10:42:15] Yes, sir, and I'm going to read it in English but then you will receive a
2 translation for it and you will hear it in your headphones, and then I will ask you my
3 question.

4 And I quote:

5 "Many girl-child soldiers were the victims of repeated rape and sexual violence by several
6 victimisers. This was the case of a girl-child, aged 15 years, who served with the UPC as
7 the escort of Commander Didier, of Alur ethnicity, at Djugu town. There, the girl was
8 gang-raped by three soldiers of her unit (identified only as Hema) under the command of
9 Commander Azugu. This rape resulted in a pregnancy but the girl-child stated that '...as
10 I did not know who the father was, I was forced to abort it'. The girl was later raped by a
11 certain Commander Mubagonza, second-in-command of the UPC troops under
12 Commander Bosco in June 2003. The girl was later admitted to the hospital and
13 continues to suffer abdominal pain. Girls as young as 12 years of age were subjected to
14 similar acts of sexual violence throughout the conflict. Amazingly, few girl-children
15 subjected to sexual violence and myriad suffering during their association with these
16 armed groups dared to desert their units. As one girl-child exclaimed to the CPS" -- that's
17 the child protection section -- 'there was nowhere else to go to'".

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 A. [10:46:04] I think there's some confusion in this question. You read out something
25 to me and you are talking to me about one of my companions who -- one of my

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1 bodyguard companions who raped. Ask me a question that concerns me and I will
2 answer that question.

3 PRESIDING JUDGE FREMR: [10:46:28] Mr Witness, don't do that. Don't do that.

4 You are not person who will say to any counsel what question they should put to you.

5 The question was clear. You can say "I don't know anything about that". It was not a

6 question concerning you. It was a question potentially concerning some of your

7 colleagues. So it's natural that Ms Luping is trying to make inquiry whether you knew

8 something about that. So please stop with this style, saying that you will not respond

9 any question.

10 THE WITNESS: [10:47:12] (Interpretation) That's not what I wanted to say. When I

11 met the Defence team, I told them what happened to me and what I saw. And here

12 I'm -- you're talking to me about Mubagonza as the second in command. I don't know

13 anything about Mubagonza with respect to Didier and sexual violence. I really don't

14 know. I know that with Didier we went to the Songolo battle. We went together, but

15 we did not come back together. And this is why I'm saying that I cannot talk about what

16 these people did because I don't know what they did.

17 PRESIDING JUDGE FREMR: [10:48:11] Mr Witness, such an answer is absolutely

18 legitimate. If you don't know anything about what Ms Luping is trying to get from you,

19 you can easily say "I don't know anything about that". But, please, as I said, maybe it

20 was mistranslation, I don't know, but don't say any more "I will not answer any question".

21 This answer you put now is absolutely fine.

22 Ms Luping, please proceed.

23 MS LUPING: [10:48:42] Thank you, Mr President.

24 (Redacted)

25 (Redacted). Isn't it right that

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1 Commander Bagonza was known to rape other FPLC soldiers; isn't that right?

2 A. [10:49:25] There, too, I would say that I don't know. You've said that he was
3 Bosco's second in command. I didn't know that. I knew that he was a commander
4 responsible, but when I was there I wasn't with him. He died there. So I can't say
5 anything concerning that. I know that he was responsible for the Komanda road.

6 Q. [10:49:54] Commander Abelanga, sir, wasn't he also known to rape other FPLC
7 soldiers?

8 A. [10:50:15] Where it concerns Commander Abelanga, I would say that he was
9 known as somebody who, after drinking, committed damage, not just sexual violence, but
10 he would extort from members of the population. He would take their property without
11 paying for it. I didn't see that personally, but I did hear about that. But what I do know
12 is that was an aspect that was part of his conduct.

13 Q. [10:50:50] And isn't it right, sir, that Commander Abelanga was never punished for
14 the rapes that he committed of either FPLC soldiers or of the population?

15 PRESIDING JUDGE FREMR: [10:51:08] Ms Luping, presumption of innocence. You
16 can just put as a fact that he, Mr Abelanga committed. So please rephrase at least slightly
17 your question.

18 MS LUPING: [10:51:18] Certainly, Mr President. I'm just simply trying to ascertain on
19 the basis of the witness's knowledge what if anything happened to Commander Abelanga
20 as a result of this reported conduct.

21 PRESIDING JUDGE FREMR: [10:51:30] Which is fine. The reported conduct is fine.

22 MS LUPING: [10:51:32] Yes.

23 PRESIDING JUDGE FREMR: [10:51:33] But not to say he committed.

24 MS LUPING: [10:51:36] Understood. I'm going to rephrase my question.

25 Q. Sir, you refer to -- you stated --

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1 PRESIDING JUDGE FREMR: [10:51:42] And we will also have to take our break, so
2 please try to wrap up.

3 MS LUPING: [10:51:47] Yes.

4 Q. [10:51:50] You have stated, sir, that after drinking -- sorry, "Commander Abelanga,
5 I would say he was known as somebody who, after drinking, committed damage, not just
6 sexual violence but he would extort from members of the population. He would take
7 their property without paying for it".

8 Now, in terms of this reported conduct, sir, to your knowledge, was he ever punished for
9 his rapes of either FPLC soldiers or of civilians?

10 A. [10:52:35] Yes. I was told that I should just tell the truth. During my testimony, I
11 said that I would just testify with regard to what I saw and experienced myself. And I
12 think that in Lopa I remember that in Lopa he had committed something. He was
13 carrying out extortion, getting people's property without paying for it. And he was
14 arrested and beaten. He was injured at that time. Mr Bosco had got Commander India
15 Queen and taken him to prison. And he spent three days there. That's something that I
16 saw with my own eyes and that's something that I can confirm. Misconduct was
17 an -- was part of his conduct.

18 Q. [10:53:30] And you've now explained that he was detained and punished for his
19 extortion, but my question was regarding the rape, sir. To your knowledge, was he ever
20 punished, and in fact, isn't it right he was never punished for rapes of FPLC soldiers or
21 civilians?

22 A. [10:54:05] In that regard I told you that I've testified with regards to what I saw.
23 He was beaten in Lopa and he was arrested and he was put into detention for acts that he
24 had committed.

25 Q. [10:54:19] Thank you. And you explained that related to the extortion. So can I

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1 understand that your testimony that you are not aware of any instances where he was
2 punished for rapes?

3 A. [10:54:54] That's what I've said. I'm testifying -- I'll repeat what I've said. I'm
4 saying what I've seen and experienced. And I've heard about such incidents, but I can't
5 testify about the incidents, things that I didn't see personally.

6 MS LUPING: [10:55:18] Mr President, your Honours, I'm going to switch topic now
7 and so we can -- I apologise that I have gone over in terms of time.

8 PRESIDING JUDGE FREMR: [10:55:26] All right. In fact, we had to -- we should
9 break 10 minutes earlier, but not a big issue. So we will now take our regular 30-minute
10 break, which means we will reconvene at 11.25.

11 THE COURT USHER: [10:55:43] All rise.

12 (Recess taken at 10.55 a.m.)

13 (Upon resuming in open session at 11.26 a.m.)

14 THE COURT USHER: [11:26:06] All rise.

15 PRESIDING JUDGE FREMR: [11:26:28] So we will proceed with next part of testimony
16 of our witness, but I see now Mr Bourgon on his feet.

17 Mr Bourgon, you have the floor, and we are in open session.

18 MR BOURGON: [11:26:39] Thank you, Mr President. I would just like to make three
19 transcript corrections to -- at least to pre-request. The first one has to do with the French
20 transcript, page 28, lines 6 to 7, and the corresponding English version at page 31, lines 5
21 to 6. What we've heard from the Defence side in Swahili is completely different from
22 both versions that is -- that are in the transcript. And we'd like the audio to be listened
23 again.

24 The second request is page 33, line 11 in French, and page 36, line 15 in English. In this
25 one we believe that the French version is the correct version and it is material to the

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1 response given by the witness.

2 The third and last request is page 38, in English, lines 24 and 25, and page 35, lines 23 and
3 25 in French. We believe, Mr President, based on what we've heard, that the -- both
4 versions are incorrect, and this had to do with the manner in which the witness responded
5 to a specific question. We believe that the three -- the audio should be listened again on
6 those three instances. Thank you, Mr President.

7 PRESIDING JUDGE FREMR: [11:28:14] Noted. Ms Luping, any -- Ms Luping, any
8 immediate reaction on the request?

9 MS LUPING: [11:28:20] No immediate reactions, Mr President. We'd have to check
10 what references are being referred to.

11 PRESIDING JUDGE FREMR: [11:28:26] But I saw Ms Pellet. Ms Pellet, please.

12 MS PELLET: [11:28:30] (Interpretation) Thank you, your Honour. It doesn't concern
13 the request for corrections, but just for the record to indicate that Vony Rambolamanana
14 has come back to the courtroom. Thank you.

15 PRESIDING JUDGE FREMR: [11:28:45] Thank you, Ms Pellet.

16 So the Chamber as usual fully supports verification of piece of the transcript as specified
17 by Mr Bourgon.

18 Now we can proceed with the next part. And caveat, gentle caveat to you, Ms Luping.

19 We will have to finish this session 11.35 sharp. Now please proceed.

20 MS LUPING: [11:29:10] Thank you, Mr President. And I would ask for your leave for
21 us to move into private session because I do believe that the next questions are of an
22 identifying nature.

23 PRESIDING JUDGE FREMR: [11:29:20] I see, Ms Luping, that you are not attentively
24 listening to me because I said 11.35, which should be in five minutes. And I was
25 obviously wrong. It was -- I have to correct myself -- 12.35. And now let's move into

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1 private session.

2 (Private session at 11.29 a.m.) *(Reclassified partially in public)

3 THE COURT OFFICER: [11:29:39] We are in private session, Mr President.

4 PRESIDING JUDGE FREMR: [11:29:50] Thank you, court officer.

5 Ms Luping, please proceed.

6 MS LUPING: [11:29:54] Thank you, Mr President.

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted) And it was at that time that I got to know him.

12 Q. [11:30:51] He was in the first Mongbwalu operation with you then, sir. He was at
13 the first Mongbwalu operation in November 2002.

14 A. [11:31:13] I don't think that I remember that he was part of the first operation in
15 Mongbwalu.

16 Q. [11:31:30] Well, the Prosecution's case is that he was there; he was there at the first
17 operation in Mongbwalu. And (Redacted) sir, isn't it
18 right that Museveni raped another of the young female escorts in Bosco Ntaganda's
19 escorts?

20 A. [11:32:12] I would briefly say that I don't know. You're speaking about the first
21 Mongbwalu operation. I don't know if at that time this individual was in our group. I
22 just know that he joined our group later.

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 Q. [11:33:16] Now, I'm going to change topic now, sir.

2 You explained that the person who gave you the order to go to Mongbwalu was

3 Mzee Bosco. Isn't it right that Bosco Ntaganda gave orders to all of his escorts?

4 A. [11:33:56] I think I said previously that where it concerned operations that had to
5 be carried out in different places, there were commanders in charge of that and who gave
6 orders to the escorts.

7 Q. [11:34:18] My question, sir, is more general than that. Isn't it right that
8 Bosco Ntaganda would at different times give orders to his escorts? I'm not speaking
9 about any particular operation now.

10 A. [11:34:37] Could you be more precise in your questions so that I may know what
11 orders you're talking about?

12 Q. [11:35:05] Well, sir, I'm not talking about any particular orders. I'm just asking
13 you just, generally speaking, isn't it right that Bosco Ntaganda would give different types
14 of orders to his escorts; isn't that so?

15 A. [11:35:39] My response is brief: Obviously as a superior commander he had to
16 give orders to his subordinates who in turn would pass on those orders to the lowest
17 ranks. I don't know if I've been clear in that regard.

18 Q. [11:36:03] And again, I'm only here referring to his own escorts. These orders that
19 he gave, the escorts would have to obey them; isn't that right?

20 A. [11:36:31] Yes, I agree with your assertion. The orders he gave went through
21 different ranks, and the people who had to execute them had to execute them.

22 Q. [11:36:50] And this included the PMFs amongst his escorts, didn't it, sir? He also
23 gave them orders and they also had to obey them; isn't that right?

24 A. [11:37:21] I don't know. Perhaps it would be better if you ask your question, or
25 put your question differently. You say orders with regards to escorts, but among the

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1 escorts there were boys and girls. The order was given to somebody who would then
2 pass on the orders in a general way to the troops. That is the way in which the orders
3 were communicated to us.

4 Q. [11:38:01] I'll rephrase my question, sir, to make it clearer.

5 The point is simply this: It's right, isn't it, that whether you were a male or a female
6 escort, if you received an order from Bosco Ntaganda you would have to obey it; isn't
7 that right?

8 A. [11:38:28] Yes.

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 A. [11:39:51] No, it was impossible. We would receive orders in a general way, and
18 if it was necessary for us to move, we would all do so together without any kind of
19 distinction between the sexes.

20 Q. [11:40:12] Sir, just to clarify, my question is a different one now. I've moved on
21 from my questions about orders. And this is a different question. Isn't it right that
22 there would be times when Bosco Ntaganda could be alone with any of his PMFs?

23 A. [11:40:45] I'm not able to understand your question.

24 (Redacted)

25 (Redacted)

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2 (Redacted)

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8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 MS LUPING: Mr President, your Honours, just to clarify that the next set of questions
17 will also need to remain in private session, with your leave.

18 PRESIDING JUDGE FREMR: [11:47:13] Noted.

19 MS LUPING: [11:47:18]

20 Q. [11:47:18] Now, Mr Witness, I am going to read to you certain extracts from your
21 testimony from yesterday. I would ask that you listen very carefully. I will summarise
22 at the end the essence of that, and I will explain to you when I'm going to actually ask you
23 my questions. So the exercise at the beginning is simply to read out various excerpts
24 from your testimony because I want to make sure that you have the entirety of the extract.
25 Now, you testified yesterday that after receiving orders from Mzee Bosco to participate in

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1 the operation in Mongbwalu that you left with a group from Bunia. Now, when you
2 were asked by Defence counsel, who was part of the group with whom you left from
3 Bunia, you said the following, and now I'm going to quote the exact passages from the
4 transcript. This is T-253, page 41, lines 6 to 8. And I quote:
5 "In the group, amongst the people who came from Bunia, I would say that it was a group
6 of escorts. Tiger One commander was also part of the group".
7 You were then asked by Defence counsel the following question:
8 "You talked about Tiger One and his escorts. When you left from Bunia, do you
9 remember anyone else who was part of the group"?
10 And you responded:
11 "Yes. Apart from Tiger One's escorts and Bosco's escorts, there was the group that
12 received training in using support weapons".
13 Defence counsel then asked you the following question:
14 "Amongst the escort, were there female escorts as well"?
15 Answer: "Yes, there were female escorts as well".
16 Question: "Can you drop a few names of the people who were there when you left for
17 Mongbwalu"?
18 Answer: "Yes, I can. (Redacted) So these are the few
19 names that I can say. There was also (Redacted).
20 So, sir, my first question is this. And sorry, before I ask you my questions I refer to all of
21 the relevant extracts. The first one was page 41, line 6 to 8; the next was page 41, line 15
22 to page 42, line 8, and again at page 42, lines 13 to 20.
23 So again my first question, Mr Witness. Tiger One, that's Commander Tiger One and his
24 escorts, were they part of the same operation at Mongbwalu then as (Redacted) isn't that right,
25 according to your testimony yesterday?

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1 A. [11:51:20] I'll repeat what I said to you. I remember that after the answer I gave
2 that you've just read, on page 41, I remember that the Defence counsel asked me a
3 question with regards to two trips that I had carried out, and he said "was it during the
4 first trip or the second one when you were with (Redacted). And I remember that I said that
5 (Redacted) was with us during the second trip or operation that we called the 48-hour battle.
6 And if you look at your document you will see that I said that (Redacted) was with us during
7 the second operation as well as the other PMFs.

8 Q. [11:52:21] My question was a different one, sir. And this related to Commander
9 Tiger One. I read you the extract of the people who you said yesterday left from Bunia.
10 And you referred to Commander Tiger One and his escorts, heavy weapons operators,
11 and Bosco Ntaganda's escorts, and you referred to (Redacted) as being amongst the PMFs. So
12 my question was this, and this was my question, sir, and I'd like you to answer this
13 question: Sir, isn't it right that Commander Tiger One was part of the same operation at
14 Mongbwalu that (Redacted) participated in, according to your testimony?

15 A. [11:53:20] I will repeat the same thing. The Defence counsel asked me a question.
16 There was a misunderstanding, but I quickly understood the sense of the question. And
17 I said that Salongo or Tiger One was with us during the first operation but (Redacted) was
18 with us during the second operation as well as the other PMFs. She was not with us
19 during the first operation.

20 Q. [11:53:50] Now, in your testimony yesterday, sir, just reading the extract that I read
21 to you before these various exchanges and you quite rightly said you provided your
22 corrections, your changes at that point. But my question is this, and that relates to
23 Commander Tiger One. You stated yesterday that Commander Tiger One and his
24 escorts were together at the same time as Bosco's escorts for this journey and you included
25 (Redacted) isn't that right?

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1 A. [11:54:36] I'm going to repeat the same thing. It was in relation to the question
2 that was put to me, that at the start I hadn't understood if he wanted to speak about the
3 first or second operation. I just understood the name of Mongbwalu. But afterwards
4 when he specified his question, then I said that it was during the second operation. And
5 if you read the transcripts well, the transcripts you've got in front of you, you will see and
6 understand that speaking about (Redacted) I stated that she was with us during the second
7 operation.

8 Q. [11:55:20] Now, Mr Witness, I'm just going to ask you to focus on the part of the
9 question that I'm asking in relation to Commander Tiger One. You listed Tiger One,
10 Commander Tiger One, in connection with Bosco's escorts in a group travelling together
11 and you mentioned (Redacted) at that point in time. Isn't it right that you were referring to a
12 journey that Commander Tiger One made together with (Redacted) and other Bosco escorts?
13 That's all I'm asking at this stage, sir; I'm not talking about which operation at this point.

14 A. [11:56:03] I would say there is confusion when the question was put to me but
15 when I found out that it concerned the second operation, then I rectified that, saying that
16 (Redacted) was with us during the second operation and not during the first operation.

17 Q. [11:56:41] Well, I leave the Chamber to assess those responses, sir.
18 I'm going to ask you a different question now. Tiger One, Commander Tiger One, isn't it
19 right that he is also known as Salongo Ndekezi?

20 A. [11:57:06] Yes, Salongo is his name.

21 Q. [11:57:11] And isn't it correct that Salongo left the UPC by March 2003; isn't that
22 right?

23 A. [11:57:39] Where it concerns the dates, the years, as I've always said right from the
24 very start, I don't remember. I don't know what answer to give you.

25 Q. [11:57:52] Well, isn't it right that he had left the UPC before the operation in Bunia

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1 that you said Kisembo was leading to take over Bunia, again in May 2003. He'd already
2 left been then; isn't that right?

3 A. [11:58:27] I mentioned Salongo's name but that was with regard to the first
4 operation. Where it concerns (Redacted) she was present during the second operation.
5 That's the explanation that I can give to you in that regard.

6 Q. [11:58:45] Mr Witness, my question is very different now. I am now asking you
7 about the timing of when Commander Salongo left the UPC. Isn't it right that he had
8 already left the UPC before the operation in Bunia that you described when you testified?
9 You said you were one of Kisembo's escorts in that operation in Bunia.

10 PRESIDING JUDGE FREMR: [11:59:16] Hold on, Mr Witness. And please remove
11 your headphones.

12 Mr Bourgon.

13 MR BOURGON: [11:59:26] Thank you, Mr President. It is just a question related to
14 Kisembo and the Bunia operation. I cannot find the reference as to where he described
15 this operation, but I know that it is in the statement. I would just like to know if my
16 colleague is referring to the statement or to the testimony about an operation with
17 Kisembo in Bunia.

18 PRESIDING JUDGE FREMR: [11:59:45] Ms Luping, can you clarify?

19 MS LUPING: [11:59:49] I certainly hope I didn't make it up. I believe the witness has
20 already confirmed that there was an operation in Bunia and he was together with
21 Kisembo at the time. I may stand to be corrected.

22 PRESIDING JUDGE FREMR: [12:00:01] So you don't at the moment have specific
23 reference?

24 MS LUPING: [12:00:04] I didn't bring out the specific reference, Mr President, indeed.
25 I can also use a different benchmark for time. I was simply trying to help the witness

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1 situate himself in time.

2 PRESIDING JUDGE FREMR: [12:00:24] Mr Bourgon.

3 MR BOURGON: Fine, if it is a benchmark, but there is information in the statement
4 about this. So if my colleague wants to refer to that then she should use the statement,
5 but I don't recall that he said this in the testimony. That's why it is important for the -- to
6 put a question to the witness to say "in your testimony" or "in your statement"; it's
7 different.

8 PRESIDING JUDGE FREMR: [12:00:45] Yeah, I get the point. And I share
9 Mr Bourgon's concern.

10 MS LUPING: [12:00:54] I can rephrase the question and first clarify with him --

11 PRESIDING JUDGE FREMR: [12:00:56] Yes, I think that would be --

12 MS LUPING: [12:00:59] -- that he was with Kisembo in Bunia and then move on.

13 PRESIDING JUDGE FREMR: [12:01:02] Easy solution.

14 Mr Witness, you can take your headphone back. Mr Witness, please.

15 THE WITNESS: [12:01:14] (No interpretation)

16 PRESIDING JUDGE FREMR: [12:01:23] I just understood partially with my poor
17 knowledge of Swahili, but I would rather get full translation.

18 THE WITNESS: [12:01:31] (Interpretation) I would like to be excused if I may for a
19 moment, Mr President.

20 PRESIDING JUDGE FREMR: [12:01:36] For sure. For sure, Mr Witness.

21 Court usher, please assist Mr Witness to leave the courtroom.

22 (Witness stands down)

23 PRESIDING JUDGE FREMR: [12:01:58] And during this break which I expect will be
24 brief we all will remain in the courtroom.

25 In order to inform public in the public gallery, we are in session, but we are waiting, and

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1 we are in private, okay.

2 Court officer, please, let's move for a while into open session just to explain why we are
3 doing nothing in fact here.

4 (Open session at 12.03 p.m.)

5 THE COURT OFFICER: [12:03:15] We are in open session, Mr President.

6 PRESIDING JUDGE FREMR: [12:03:21] Thank you, court officer.

7 Public, at the public gallery, I would like to inform you that at the moment we have a
8 short break because we are waiting for the accused which is excused for a while, but we
9 will -- witness, sorry, sorry. It's my fault. So we are waiting for the witness, who is
10 excused for a while. We will proceed soon, but we will proceed in the regime of private
11 session because this witness is protected one and he got granted d that his identity will
12 not be revealed to the public, so as soon there is a risk that potential question, questions
13 put to him could reveal his identity, we will have to remain in the regime of private
14 session, which will be the case for some next, next minutes.

15 Mr Bourgon, do you want anything?

16 MR BOURGON: [12:04:22] Yes, Mr President. I would like to apologise to my
17 colleague. The reference that she, that my colleague was using can be found at page 68,
18 lines 3 to 6 in transcript 253.

19 (The witness enters the courtroom)

20 PRESIDING JUDGE FREMR: [12:04:40] And I appreciate your cooperative approach,
21 Mr Bourgon.

22 Now we have to move into private session. And the witness is back.

23 (Private session at 12.04 p.m.) *(Reclassified partially in public)

24 THE COURT OFFICER: [12:04:56] We are in private session, Mr President.

25 PRESIDING JUDGE FREMR: [12:05:05] Thank you, court officer.

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1 And Ms Luping, please proceed.

2 MS LUPING: [12:05:10] Thank you. And my thanks also to Defence counsel for the
3 reference.

4 Q. [12:05:18] So, Mr Witness, I'm going to refer to your testimony from yesterday, it's
5 at transcript T-253, page 68, lines 3 to 6, where you stated:

6 "To give you a precise answer, I must say that there was a point where I was part of the
7 group of the general army chief of staff Kisembo, and we, in fact, regained control of
8 Bunia. And I met him at Kisembo's residence".

9 Now, the only reason why I have read that to you, sir, is I'm just asking you to think about
10 this time when you participated in the operation in Bunia. Now, I can tell you that
11 there's -- I believe there won't be any disagreement with this, that this occurred in
12 May 2003.

13 My question is simply this: Isn't it right that Commander Salongo had already left the
14 UPC before this operation in Bunia of May 2003 when you say you were part of Kisembo's
15 group?

16 A. [12:06:57] The operation which I took part in with Kisembo in Bunia -- well, I said I
17 met him at Dhego, and the operation was led by --

18 THE INTERPRETER: [12:07:15] Inaudible.

19 THE WITNESS: [12:07:16] (Interpretation) And that was where I met Bosco. I don't
20 recall the date.

21 MS LUPING: [12:07:21]

22 Q. [12:07:21] Thank you, sir. I'm not -- I'm not asking you for the date of this
23 incident. There's really no -- I'm sure no big disagreement with the Defence as to when
24 this event happened. All I'm asking you, sir, is about Commander Salongo. So if you
25 focus only on the question regarding Commander Salongo, isn't it right that he had

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1 already left the UPC/FPLC before this operation in Bunia with Kisembo?

2 A. [12:08:13] If I recall correctly, that I think must be true.

3 Q. [12:08:22] In fact, he had rejoined Jérôme Kakwavu's forces of the FAPC; isn't that
4 right?

5 A. [12:08:54] I don't know which group he joined, but in Bunia, when I was with
6 Kisembo when Mugabo came, if I recall correctly, I think that Salongo was not there.

7 Q. [12:09:12] And just simply so that there is clarity on this point I would ask my
8 colleague to pull up a document, it's item 156, and the ERN is DRC-OTP-0107-0874.

9 And whilst my colleague is pulling up that document, I will just explain to the witness
10 this is an article from the newspaper Les Coulisses of 17 May to 31 May 2003. It is an
11 article entitled "Jérôme Kakwavu rencontre le Président Kabila", end of quote. And the
12 relevant part of this article, sir, is at page 0875.

13 Okay, I'm going to read to you, it's the far-right column, sir, it's in French, and I will start
14 with the sentence sort of in the middle of this far-right column, and I quote as follows:

15 (Interpretation) "He shouted the -- he set up the forces of the Congolese".

16 THE INTERPRETER: [12:11:45] I'm terribly sorry, but here in the booth I can't
17 see -- sorry, sorry, I've just found:

18 "He created the armed forces of the Congolese people (FAPC)".

19 My apologies.

20 MS LUPING: [12:12:03] (Interpretation)

21 Q. "With an autonomous general staff. He's flirting with Thomas Lubanga's UPC and
22 on 27 February 2003 he divorced one week from the expulsion of Lubanga from Bunia.

23 Commander Jérôme Kakwavu is surrounded by three officers created brigade generals:
24 Ilanga Efomi, Emmanuel Ndungute and Salongo Ndekezi".

25 (Speaks English) So here, sir, in this article this is a reference to Salongo being together

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1 with Jérôme Kakwavu; isn't that right?

2 A. [12:13:35] As it is written here, with regard to the description of Salongo Ndekezi, I
3 would say yes.

4 MS LUPING: [12:13:47] Mr President, your Honours, the Prosecution would seek to
5 have this particular portion of the article admitted as a further Prosecution exhibit and
6 admitted for the truth of its content.

7 PRESIDING JUDGE FREMR: [12:14:04] Defence.

8 MR BOURGON: [12:14:06] Well, Mr President, we oppose this request for admission.

9 I -- maybe I should even oppose the use of the document. What we have here, first of all,
10 is the question was put to the witness what he knows about Jérôme Kakwavu joining
11 another group -- sorry, about Tiger One or Salongo joining another group.

12 Maybe it's better if the witness removes his earphones, Mr President.

13 PRESIDING JUDGE FREMR: [12:14:35] Yes, you are right.

14 Mr Witness, please, as usually. Thank you.

15 Mr Bourgon, you may proceed.

16 MR BOURGON: [12:14:42] Thank you, Mr President.

17 Now, the witness, his response was that he knows that as of the time he's with Kisembo,
18 back in Bunia, Salongo is not there. So if we were looking for the benchmark, we have
19 the benchmark. And the witness says "I have no knowledge which group he joined".

20 Now we show him a newspaper article and say "Is that true"? Well, he reads the
21 newspaper article and says, "Well, yeah, it's true".

22 So even for impeachment purposes it would have no value, but in this case it's a
23 document that is not in evidence, it's a document that has been in the possession of the
24 Prosecution for a very long time. If it had been a document that the Prosecution needed
25 for its case, surely it should have either used it with the witness, or to put it through the

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1 bar table.

2 The Chamber's position of course with paper articles in addition to the fact is that they
3 are -- they are of very little probative value.

4 So at a minimum there are two questions: Why did the Prosecution not use the
5 document during its case? And that is clear from the Chamber's decision and the
6 Chamber's decision regarding what can be or cannot be admitted as part of the
7 Prosecution's case.

8 PRESIDING JUDGE FREMR: [12:16:11] Mr Bourgon, to save you time, because I will
9 accept your objection, I will stop you now.

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

11 PRESIDING JUDGE FREMR: [12:16:17] So the objection is sustained. I don't need any
12 further, further submission on that, Ms Luping. It is, in my view, it is in conformity with
13 our previous, previous attitude. The probative value of a newspaper article of that kind
14 is really very close to zero. You were allowed to use it, Mr Witness commented, that's it.
15 Please move.

16 MS LUPING: [12:16:44] Thank you, Mr President. Can I please respond, however?
17 I'm not asking for reconsideration at this point, but just to clarify --

18 PRESIDING JUDGE FREMR: [12:16:51] Please.

19 MS LUPING: [12:16:51] -- that the reason why the Prosecution, just for the sake of the
20 record, the Prosecution would have not sought to have such an article admitted is simply
21 because it wasn't relevant for the main case. The reason why we were seeking to have
22 this admitted now, Mr President, your Honours, is because it's a question of timing. It's
23 a question of timing because this is only now of relevance because of this witness's
24 testimony, that is why. And we can of course seek to have it admitted as part of our
25 rebuttal evidence because it's important, your Honours, because this witness has

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1 responded as to who exactly was with (Redacted) travelling on the way from Bunia to
2 Mongbwalu and it -- he mentioned quite spontaneously Commander Tiger One, and it's
3 relevant to establish exactly when Tiger One left the UPC.

4 So that was just simply for the records, Mr President.

5 PRESIDING JUDGE FREMR: [12:17:42] Yes. As to the issue of timing it could be
6 maybe relevant, but we have seen, you know, in previous gathering of evidence several
7 journalists and, frankly saying, their work I think didn't make a great impression on us.
8 Very often they, in fact, followed in my view wish of those who invited them to report on
9 something. So there is some general doubt which in my view minimise probative value
10 of this kind of newspaper articles.

11 But anyway, we accepted your explanation and now please proceed.

12 MS LUPING: [12:18:21] Thank you, Mr President. I believe now the witness has to be
13 asked to put his headphones back.

14 Q. [12:18:37] Thank you.

15 Now, Mr Witness, isn't it right that Commander Tiger One could not have participated in
16 the 48-hour operation together with (Redacted) isn't that right?

17 A. [12:19:13] What I said, if I mentioned the name of Salongo that was in connection
18 with the first operation. But Salongo was not, did not take part in the 48-hour battle
19 operation.

20 Q. [12:19:43] I'm going to now change topic, Mr Witness, and I'm going to focus on
21 what you have said so far about the operation in Mongbwalu and Sayo. Now, you
22 haven't testified about this point at this stage, but this is something that arises in your
23 witness statement.

24 My question is this: Isn't it right that Bosco Ntaganda ordered Commander Kasangaki to
25 head towards Sayo to attack the enemy with a 12 and a B-10 in support?

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1 A. [12:20:51] As we discussed with the Defence team, I think I explained this clearly; I
2 said that Kasangaki was in the forward detachment. After that, we went up a mountain
3 where we built a house, and I was with Mzee Bosco who was talking to Kasangaki and he
4 said "We are going to continue". I think that is what I explained to the Defence team. I
5 said that we set up the B-10 on this hill.

6 Q. [12:22:11] And you've explained that Kasangaki was in the forward detachment.
7 So he was sent on ahead to Sayo; isn't that right?

8 A. [12:22:33] Yes.

9 Q. [12:22:33] And Bosco Ntaganda ordered Kasangaki to go towards Sayo to attack
10 the enemy with the 12 and the B-10 in support; isn't that right?

11 A. [12:22:55] No, that wasn't it. I said that we went with the B-10, took it up the hill,
12 and he said to him to continue, and that he would confirm that he would attack because
13 the enemy was there and, therefore, it was difficult to attack from on high, which is why
14 they decided to change tactics and to have the attack near to camp Sayo.

15 Q. [12:23:37] Yes, but in addition to the B-10 that was taken up the hill, isn't it right
16 that Kasangaki also had heavy weapons in support with him as part of the forward
17 detachment?

18 A. [12:24:07] In the forward detachments you don't need heavy weapons. We had
19 the B-10 and went up to put it at the bottom using cover fire. It wasn't Kasangaki who
20 was to take the B-10, he didn't need that.

21 Q. [12:24:40] Well, Mr Witness, I'm not talking about the B-10 that was with
22 Ntaganda's group. Isn't it right that Kasangaki had at his disposal separate heavy
23 weapons?

24 A. [12:25:07] As I said, the support weapon that he had was the SMG, and there was a
25 G2 as well.

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1 Q. [12:25:20] And he also had a recoilless, didn't he? He had a 12?

2 PRESIDING JUDGE FREMR: [12:25:27] Hold on, Mr Witness.

3 Mr Bourgon.

4 MR BOURGON: [12:25:29] If the witness can remove his earphones, please.

5 PRESIDING JUDGE FREMR: [12:25:32] Mr Witness, exercise with headphones.

6 Thank you.

7 Mr Bourgon.

8 MR BOURGON: [12:25:37] Mr President, I don't think that the witness has said before
9 that Kasangaki had heavy weapons with him during his testimony.

10 Now, in the witness statement there is a sentence which was read by my colleague, and
11 this sentence here, and I will read it -- I will not read it in French, but when you read those
12 words, those words in military language do not mean that the weapon is with the person.
13 When you say a weapon in support, that's not what that means. So that's what the
14 witness is trying to explain. A heavy weapon in support means the heavy weapon is at
15 another area supporting the attack. So unless my colleague has another firm basis to
16 suggest that there were heavy weapons with the soldiers and with Kasangaki, then I think
17 the question should not be allowed. Thank you.

18 PRESIDING JUDGE FREMR: [12:26:39] I have to admit I don't have your expertise on
19 that.

20 Maybe, Ms Luping, you can clarify that.

21 MS LUPING: [12:26:45] Mr President, your Honours, the Prosecution does object to the
22 Defence counsel giving evidence. It's not his place to testify from a military position or
23 otherwise as to what the meaning is of a particular sentence in the witness's statement.
24 And frankly, I believe that the language of the statement is clear. Whether it's support
25 from above or support carried with them, they both are equally valid explanations and

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1 interpretations of this. The Defence counsel's objection is also, frankly, premature. I
2 was simply laying the foundation to then bring out the contrary or contradictory
3 statement and give the witness an opportunity to respond to that. But it should not be,
4 as I said, for Defence counsel to put -- to put forward this type of evidence.
5 PRESIDING JUDGE FREMR: [12:27:36] Ms Luping -- Mr Bourgon, I think there's no
6 need to spend too much time on that.
7 I don't find this, you know, improper, because in my understanding in fact Mr Bourgon
8 tried to avoid misinterpretation or misunderstanding what Mr Witness said, so I don't
9 understand or I don't take it that he responded on behalf of him. It's issue which is
10 really, which requires some expertise, this interpretation of that terminology. And at this
11 moment in -- at least in my understanding, there is some unclarity on that. So if you
12 don't want to clarify that, all right, but I don't believe that it -- this not objection, but this in
13 fact remark made by Mr Bourgon was improper. I found, found it beneficial.
14 MS LUPING: [12:28:40] All right. Mr President, just to clarify my comment. I am
15 not saying that I would not seek to have clarity from the witness as to what he's saying or
16 what was said in his witness statement, it was just as to who the clarity should come from.
17 Although having taken on board your comments that the Chamber found it useful and
18 instructive, I would still ask that the -- this is not a basis for an objection, however, to not
19 put any potential contradiction and the witness can explain for himself.
20 PRESIDING JUDGE FREMR: [12:29:07] Fully agree with you, Ms Luping, but my
21 understanding was that neither you, neither me, we in fact found this possible, possible
22 source of doubt.
23 Mr Bourgon, please briefly.
24 MR BOURGON: [12:29:22] Very quickly, Mr President. My objection had to do with
25 page 67, lines 2 and 3. The question was he had a recoilless as well. I'm saying the

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1 witness has never said that he had a recoilless, whether in the statement or testimony.

2 All my colleague has to do is "I put to you that he did", but not to tell him that he had one
3 without -- by making it sound that he said this, because he did not say this. She can
4 challenge him, my colleague can challenge the witness, but not, not to rely on something
5 he has not said.

6 Thank you.

7 PRESIDING JUDGE FREMR: [12:29:59] Ms Luping.

8 MS LUPING: [12:30:00] Mr President, I can be brief. That's two separate objections.

9 As regards the first objection which related to the use of -- the question as to whether
10 there were heavy weapons at all in support, this is something that I will now
11 want -- would like to move to the next part of my cross-examination with your leave, that
12 was my intention, to give the witness an opportunity to respond.

13 As regards the point on the recoilless, point taken on that from Defence counsel and I'm
14 happy to rephrase my question in relation to the recoilless, he has indeed not mentioned
15 that at this stage.

16 PRESIDING JUDGE FREMR: [12:30:35] I am fine with your conclusion, Ms Luping, so
17 please proceed.

18 Mr Witness, please take your headphones again.

19 And Ms Luping, as I said at the beginning, you still have five minutes, not more --

20 MS LUPING: [12:30:48] Thank you.

21 PRESIDING JUDGE FREMR: [12:30:49] -- to conclude this session.

22 MS LUPING: [12:30:51] Thank you, Mr President. Just to complete this point.

23 Q. [12:30:53] Now, sir, you have stated that there was no heavy weapons with
24 Kasangaki in support with him when he went to Sayo; is that correct?

25 A. [12:31:22] The support weapon I'm talking about was not a heavy weapon.

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1 Q. [12:31:29] Right. And you've said that the weapons he brought in support with
2 him to Sayo were a G2 and SMGs; is that correct? That's your testimony?

3 A. [12:31:42] Ndiyo.

4 Q. [12:31:44] Right. Well, Mr Witness, you've already confirmed that --

5 A. [12:31:48] Yes.

6 Q. [12:31:48] -- you gave a statement which you signed on 7 November, and you
7 confirmed that it was true and correct to the best of your knowledge.

8 I'm now going to read a paragraph from your statement, it's at paragraph 136, and I'm
9 going to read the entirety of it. And then I will emphasise it's the last sentence in
10 particular that I'll be asking you questions about, but for the sake of clarity I'm reading
11 you the whole paragraph:

12 (Interpretation) "The enemy made up of APC soldiers and the Lendu combatants had
13 withdrawn to Sayo and was facing part of our forces at the factory. On the orders of
14 Bosco Ntaganda, we deployed to a place at the edge of Appartements with the B-10 and
15 the 12. Gege and Nduru were preparing to fire the B-10. At one point, Bosco Ntaganda
16 ordered Kasangaki to go towards Sayo to attack the enemy with the 12 and the B-10 in
17 support".

18 (Speaks English) So my question is this, sir, you've mentioned just before that when
19 Kasangaki went to Sayo he had the G2 and SMGs in support, but here in your witness
20 statement you stated that he had the 12 and the B-10 in support.

21 Now, this is correct, isn't it, sir, that he did have heavy weapons with him in support
22 when he went to Sayo?

23 A. [12:34:14] Yes. In brief, I can say that this may be a contradiction noted here by
24 the Defence team. At the beginning of my testimony, I said I would talk about things
25 that I've seen that I am aware of. When we passed through we had a rearward base with

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1 the B-10 and the shell that was launched that day, there were two, I said to the Defence
2 team that when they were talking on the radio they were saying "Is that the weapon that
3 has helped them to re-take Sayo"?

4 MS LUPING: [12:35:16] Mr President, I'm guided by you. I do have to ask a
5 follow-up question, but I can do that after the break if you prefer because I know your
6 Honours need to leave at 12.35.

7 PRESIDING JUDGE FREMR: [12:35:23] I'm really sorry, but we have, you know, we
8 have to be somewhere sharp as well, so I'm sorry about that (Overlapping speakers)

9 MS LUPING: [12:35:31]

10 Q. So I can -- I will be asking you additional questions about that, Mr Witness, but we
11 will be breaking now I understand.

12 PRESIDING JUDGE FREMR: [12:35:36] And thank you for your indulgence,
13 Ms Luping.

14 We will now break and we will then have the last session for today quarter past 2. It will
15 last two hours as regularly, so from quarter past 2 to quarter past 4.

16 THE COURT USHER: [12:35:54] All rise.

17 (Recess taken at 12.35 p.m.)

18 (Upon resuming in open session at 2.17 p.m.)

19 THE COURT USHER: [14:17:14] All rise.

20 Please be seated.

21 PRESIDING JUDGE FREMR: [14:17:37] Good morning, everybody. Good morning,
22 Mr Witness. I believe nothing prevents us from direct continuation with
23 cross-examination of our witness.

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

25 MS LUPING: [14:17:53] Thank you, Mr President. I --

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1 PRESIDING JUDGE FREMR: [14:17:58] Sorry. I see Mr Bourgon.

2 Mr Bourgon.

3 MR BOURGON: [14:18:02] Thank you, Mr President. I understand that my colleague
4 will go back on the same issue that we were just when we left off and I did bring to the
5 attention of my colleague that there was some difficulties with the transcript at page 72,
6 lines 4 to 11. And in French it is page 66, lines 24 to 67. A number of words according
7 to what we have heard in Swahili are missing from this long answer, like many words if
8 not whole sentences. Maybe the witness is speaking too fast, or -- but this answer should
9 be maybe done over again because there were some material words missing from that
10 response. Thank you.

11 PRESIDING JUDGE FREMR: [14:18:50] Ms Luping, it's up to you whether you will
12 follow advice of Mr Bourgon, so --

13 MS LUPING: [14:18:56] Mr President, what I was going to propose to do, actually, is I
14 did see at least the parts that had been captured. I agree that there should be an audio
15 check of the answer. At this stage, though, I wasn't proposing to ask any specific
16 questions. There would be one point I'm going to ask from what I could see of the
17 transcript and the witness can then complete the answer there. But otherwise, I had
18 separate questions to ask relating to the same point.

19 PRESIDING JUDGE FREMR: [14:19:21] As I said, it is up to you so please proceed.

20 MS LUPING: [14:19:25] Thank you. And I should just note that I -- there is something
21 wrong with my computer. I can see Transcend but I am not able to follow the French
22 transcript. And it is apparently going to be looked to, but I just wanted to explain I only
23 have recourse at the moment only to the English transcript, not the French.

24 PRESIDING JUDGE FREMR: [14:19:43] Well noted.

25 Mr Bourgon.

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1 MR BOURGON: Will that audio part be checked, those lines that I've mentioned?

2 PRESIDING JUDGE FREMR: [14:19:51] Yes, yes. There was in fact not request. But,
3 yeah, from the part of the Chamber we support verification as you proposed.

4 MR BOURGON: [14:19:59] Thank you, Mr President.

5 MS LUPING: [14:20:03]

6 Q. [14:20:03] So good afternoon, Mr Witness. Now, I'm --

7 A. [14:20:08] Jambo.

8 Q. [14:20:09] -- I will be asking you a few more questions about this, but not related to
9 what you said just before the break. But just to clarify, you described how a forward
10 group led by Commander Kasangaki went to Sayo. (Redacted)

11 (Redacted)

12 (Redacted)

13 A. [14:20:52] Yes, I stayed with Bosco Ntaganda.

14 MS LUPING: [14:21:06] My apologies, your Honours. Mr President, it has just been
15 brought to my attention that we were in open session. That was my fault. I had
16 forgotten. If we could, with your leave, seek to go into private session, and I assume that
17 the various points that might identify the witness will need to be redacted. And my
18 apologies.

19 PRESIDING JUDGE FREMR: [14:21:26] Yeah, for sure. We will move into private
20 session. And I'm just not sure that your question or even the answer should reveal
21 identity.

22 Now let's move into private session.

23 (Private session at 2.21 p.m.) *(Reclassified partially in public)

24 THE COURT OFFICER: [14:21:46] We're in private session, Mr President.

25 PRESIDING JUDGE FREMR: [14:22:02] Ms Luping, please proceed.

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1 MS LUPING: [14:22:04]

2 Q. [14:22:04] Now, Mr Witness, you referred to G2s and SMGs being part of the
3 weapons that were with Kasangaki's group. Wasn't it right that there was also a grenade
4 launcher that was together with Kasangaki's group?

5 A. [14:22:44] I don't know if there was a grenade launcher. I can only tell you what I
6 know and what I saw. We used B-10 and SMG as well, and the G2.

7 Q. [14:23:07] I'm moving to a different topic, but I -- this is now going to be a reference
8 to the testimony you gave just before the break, at page 72, lines 9 to 10. And I'm not
9 sure if everything that you stated was captured, but I'm going to be asking a question in
10 relation to this. And I quote what is captured here:

11 "When they were talking on the radio", were Bosco Ntaganda and Commander Kasangaki
12 communicating with each other via Motorola?

13 A. [14:23:53] Yes, they were communicating through Motorola.

14 Q. [14:24:01] Now, you've testified, you described how you accompanied
15 Bosco Ntaganda in to Sayo. You testified that you did not enter the church in Sayo and
16 that you do not have any information about people being in the church. And that's at
17 transcript 253, page 52, lines 12 to page 53, line 17.

18 Now, Mr Witness, isn't it right, though, that there were people inside the church and
19 Bosco Ntaganda ordered his escorts to kill them and you were with him so you must
20 know that?

21 A. [14:24:59] No, I don't even know what you're talking about because there was a
22 kind of hut up near the church, and we were there near the hut and the church was
23 actually in front of us. We stopped there but I did not know what happened inside the
24 church. And then we returned.

25 Q. [14:25:44] Now, Mr Witness, you testified that during the first Mongbwalu

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1 operation that you did not see any prisoners at the Appartements and you did not see
2 any -- including any religious people there. And that's at transcript 253, page 54, lines 5
3 to 15.

4 Just so that I understand your testimony, sir, is it your testimony then that there were no
5 prisoners captured or held during or after the operation in Mongbwalu and Sayo by the
6 UPC/FPLC; is that your testimony?

7 A. [14:26:45] What I can say on the population, and if my memory doesn't fail me,
8 every time the enemies were searching for things, the population did the same. This is
9 why I did not see any civilians. They were -- they had already fled. Every time the
10 enemies fled the population also fled with them.

11 PRESIDING JUDGE FREMR: [14:27:26] Sorry to interrupt, Ms Luping. I would like to
12 put one additional question.

13 This, your last answer, Mr Witness, I have some problem to understand because
14 according my understanding, the attack on the enemy should start by some surprise. So
15 as the enemy should be surprised, I expect that also the civilians should be surprised by
16 your attack, or not?

17 THE WITNESS: [14:28:20] (Interpretation) The question is about the attack on Sayo.
18 Every time they tried to attack, it did not work. The enemies were resisting our attack.
19 And it's subsequent to this resistance that we had this base. Kasangaki left. And when
20 we reached, the enemies had actually fled and the civilians also had fled.

21 PRESIDING JUDGE FREMR: [14:28:55] Thank you.

22 Ms Luping.

23 Mr Bourgon.

24 MR BOURGON: [14:29:04] Just, Mr President, a correction to the transcript. This is
25 page 77, at the beginning, in lines 10 to 11, we have a mention here -- I will not say it.

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1 Maybe my colleague wants to pick it up. But in terms of what is there is not what was
2 mentioned at all. In French we have a completely different word, and we believe the
3 French version is right. I'm not saying more because the witness is listening.

4 PRESIDING JUDGE FREMR: [14:29:31] Ms Luping, could you join Mr Bourgon's
5 comment?

6 MS LUPING: [14:29:40] Unfortunately, I'm following not the realtime on the French.
7 We'd have to check that first. Perhaps we can come back to it later.

8 MR BOURGON: [14:29:49] French is 71, lines 26, 27. If the witness can remove his
9 earphone, I can explain the word that is different.

10 PRESIDING JUDGE FREMR: [14:29:59] Mr Witness, please take off your headphones.
11 Mr Bourgon, you may proceed.

12 MR BOURGON: In English we have "when the enemies were searching". In French we
13 have "when they were fuyaient", fleeing. They weren't searching anything they were
14 escaping. Thank you.

15 PRESIDING JUDGE FREMR: [14:30:22] Ms Luping.

16 MS LUPING: [14:30:23] Thank you, Mr President. I don't think I need to go back on
17 that and I think an audio check -- I have no problem with -- the Prosecution has no
18 problem with the correction being made, but I don't think we need to go back to the
19 witness on it because I agree with Defence counsel, that's very clear.

20 PRESIDING JUDGE FREMR: [14:30:39] Please proceed.

21 MS LUPING: [14:30:40] Mr President, if the witness could be asked please to return his
22 headphones on.

23 PRESIDING JUDGE FREMR: [14:30:44] Mr Witness, thank you. Thank you.

24 MS LUPING: [14:30:53]

25 Q. [14:30:54] So, Mr Witness, I just want to understand your testimony, first in

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1 relation to the operation in Mongbwalu and Sayo. So if I understand your testimony
2 correctly, and please correct me if I'm wrong, is it your testimony then that you never
3 heard or saw any crimes committed by any UPC/FPLC soldiers in Mongbwalu or Sayo; is
4 that right?

5 A. [14:31:38] I don't understand the term you used, "crime". What do you mean by
6 the word "crime"? Can you please explain that?

7 Q. [14:31:49] I will be more specific. I understand now your testimony is that there
8 were no civilians, so according to you, is it your testimony during the Mongbwalu-Sayo
9 operation that there were no attacks on civilians; is that your testimony?

10 A. [14:32:18] I did not say that. What I said that when there was resistance against
11 the attack, they actually proceeded and fought. I'm only talking about what I saw.
12 When we followed the Kasangaki's group that preceded us, I did not see any civilians
13 there because they'd already fled.

14 Q. [14:32:51] And is it your testimony, sir, that no civilians were killed by UPC/FPLC
15 forces in Mongbwalu or Sayo?

16 A. [14:33:17] No. I think -- I thought we were thinking of the battle. There
17 was -- there were clashes between the soldiers and the civilians. People were killed, but
18 when we entered, there was a group that had been there before, but when we entered I
19 did not see the civilians. And even in the church I did not see the dead bodies of people
20 who had killed. What I can say is I did not see any of all this.

21 Q. [14:34:02] Now, I'm going to quote at page 80, lines 11 to 12, and you stated:
22 "People were killed, but when we entered there there was a group that had been there
23 before, but when we entered I did not see the civilians". End of quote.

24 Now, my first question is this, sir: When you say that "when we entered there was a
25 group that had been there before", this group that had been there before, are you still

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1 talking about the UPC/FPLC forces? So are you referring to another UPC/FPLC group
2 that had been there before?

3 A. [14:34:53] I don't know. You see, UPC attacked the enemies who were in Sayo.
4 It was the forward group that was led by Kasangaki. I told you -- now, you're asking me
5 the question on civilians. I can tell you that the forward group had been there before.
6 When we came there, personally, I did not see any civilians being killed.

7 Q. [14:35:25] I just want to understand your prior response though, sir, and maybe
8 you are answering it, but when you say "people were killed, but when we entered there
9 there was a group that had been there before", do I now understand your response to be
10 that you're referring to Commander Kasangaki's group, is that the group that you were
11 referring to?

12 A. [14:36:02] I don't know what word you're referring to. I was asked the question if
13 I was -- seen dead bodies and my answer is I did not see dead bodies. But when you're
14 saying that I've seen people being killed, I really don't understand. I'm saying that on
15 both sides during the war there were clashes, and when I was there I did not see any dead
16 bodies. That's exactly what I'm saying. And there's always dead casualties on both
17 sides during a war.

18 Q. [14:36:40] Mr Witness, I believe there may be a problem with interpretation
19 because that was not my question. I did not ask you if you saw any dead bodies. I'm
20 going to repeat my question.
21 My question was, in fact: Is it your testimony that no civilians were killed in Mongbwalu
22 or Sayo?

23 A. [14:37:17] If you're coming back to the question on Mongbwalu, I really don't
24 know what to say. What I'm saying is when we arrived in Sayo, when we reached Sayo,
25 personally, I did not see people who were killed. And this is what I'd said because I was

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1 asked the question if you saw people in the church. What I'm saying is in Sayo and in
2 the church I did not see the people.

3 Q. [14:37:52] Now, just not limiting yourself to the church, sir, but in anywhere in
4 Mongbwalu, anywhere in Sayo are you aware of any civilians being killed by any
5 UPC/FPLC forces?

6 A. [14:38:28] This is exactly why I'm repeating what I said in the past. During a war,
7 whether it's own side or on our side, on the side of the enemies, there are casualties, there
8 are people who die. But when I'm speaking from a personal stance I haven't seen anyone
9 killed, but I cannot deny that there were no deaths.

10 Q. [14:38:53] And can I understand your testimony then about rapes, in Mongbwalu
11 and Sayo, is it right that females were raped by UPC/FPLC soldiers?

12 A. [14:39:24] I can't reply to this question because I don't know. I wasn't involved in
13 such things.

14 Q. [14:39:32] Did you hear about such things, sir?

15 A. [14:39:40] I haven't heard of any such things.

16 Q. [14:39:46] Now, just going back to the first operation in Mongbwalu, just so I
17 understand exactly who amongst the PMFs were there. So Lotsove was involved in the
18 first operation in Mongbwalu?

19 A. [14:40:15] I think Lotsove was there for this operation.

20 Q. [14:40:21] And Annie, Annie was involved in the first operation?

21 A. [14:40:42] I cannot remember very well if Annie was there or not, if Annie took
22 part in this operation or not.

23 Q. [14:40:49] And Lamama, she was there?

24 A. [14:40:59] It's possible that she could have been there.

25 Q. [14:41:04] And Caroline was there?

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- 1 A. [14:41:09] It is possible that she could have been there as well.
- 2 Q. [14:41:17] All right. I'm switching topics.
- 3 MS LUPING: Mr President, I should just note that I'm afraid I will still have to remain in
- 4 private session because the next questions are of an identifying nature.
- 5 PRESIDING JUDGE FREMR: [14:41:28] Understandable.
- 6 MS LUPING: [14:41:31]
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 MS LUPING: Mr President, I believe my next series of questions can be asked in open
- 13 session.
- 14 PRESIDING JUDGE FREMR: [14:42:42] Very well.
- 15 Court officer, please let's return back into open session.
- 16 (Open session at 2.42 p.m.)
- 17 THE COURT OFFICER: [14:42:51] We are in open session, Mr President.
- 18 PRESIDING JUDGE FREMR: [14:43:02] Thank you, court officer.
- 19 Ms Luping, please proceed.
- 20 MS LUPING: [14:43:07] Thank you, Mr President.
- 21 Q. [14:43:12] Now, Mr Witness, you testified about an operation in the area of Zumbe,
- 22 Ezekere and you stated that Lendu combatants had stolen cattle from Mandro. And you
- 23 said the objective was to chase the enemy and to get back the stolen cattle.
- 24 Now, my first question, sir, is: Zumbe and Ezekere, they are both Lendu villages; is that
- 25 right?

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1 A. [14:43:56] That's right.

2 Q. [14:43:57] And at the time of this operation in 2002 there were still civilians living
3 there, right, not just soldiers?

4 A. [14:44:14] That's right.

5 Q. [14:44:16] And in the operation, the FPLC used a heavy weapon called a recoilless
6 in their operation to retrieve cattle from Zumbe and Ezekere; is that correct?

7 A. [14:44:37] That's right. And I also said that we moved and we used this recoilless.

8 Q. [14:45:01] And in that -- after that operation the UPC/FPLC stayed for a few days;
9 correct?

10 A. [14:45:17] That's right.

11 Q. [14:45:19] And your aim was to stop the Lendu from returning; is that right?

12 A. [14:45:27] Could you please repeat your question?

13 Q. [14:45:52] You confirm that you stayed at Zumbe for a few days or the UPC/FPLC
14 forces stayed for a few days. And isn't it right that the purpose of this was to stop the
15 Lendu from returning?

16 A. [14:46:27] Well, firstly, for this village, I can say there are a few houses on the hill
17 and in the valley. The reason we stayed there was to make sure that they could not come
18 back to the village. That's why we more or less camped there, why we stayed there.

19 Q. [14:47:01] And the UPC/FPLC also placed landmines there and this was also to
20 stop the Lendu from returning; right?

21 PRESIDING JUDGE FREMR: [14:47:18] Hold on, Mr Witness. Hold on.
22 Mr Bourgon.

23 MR BOURGON: [14:47:22] Thank you, Mr President. To my recollection this is
24 nowhere to be found in his testimony or statement. I'd like to know what is -- is it a
25 suggestion or is it something that we should know of before the question is asked?

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1 Thank you.

2 PRESIDING JUDGE FREMR: [14:47:36] Ms Luping.

3 MS LUPING: [14:47:37] Mr President, if the witness could please remove his
4 headphones.

5 PRESIDING JUDGE FREMR: [14:47:42] Mr Witness, please.

6 Thank you.

7 Ms Luping, you may proceed.

8 MS LUPING: [14:47:48] Yes. Mr President, your Honours, the Prosecution does have
9 a good-faith basis on which to put this question. We are in cross-examination. We do
10 not have to limit ourselves to what appears either in his prior testimony or in his
11 statement. Indeed this is part of the Prosecution's case, part of the case and also was a
12 description of various landmines that were placed in there. There has been disclosure of
13 this information to the Defence. So that is the basis, your Honours.

14 And I would ask that if these types of objections are being made, to avoid any kind of
15 suggestion to the witness as to how he responds, if Defence counsel could please make
16 these types of objections with the witness's headphones off.

17 PRESIDING JUDGE FREMR: [14:48:29] Yeah, they were off.

18 And just, Mr Bourgon, I think it's -- Ms Luping didn't explicitly say that it's proposal, but
19 she said from the, I would say, articulation of her question finishing by saying "right"? I at
20 least understand that as a proposal. So do you want to comment it?

21 MR BOURGON: [14:48:53] Mr President, even if it's a proposal it requires, as I
22 colleague referred to, a good-faith basis. A good-faith basis must be some information in
23 the possession of the Prosecution normally that has already been admitted in evidence so
24 we can say -- we challenge the witness with something we know or we think we know.
25 If it's something that is not in evidence, in any event, the Defence should be aware of it.

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1 If there's a suggestion put to a witness it must be based on something that is -- that we
2 know of, that this is what we've been operating since the beginning of this case, always
3 having a good-faith basis. My colleague says that the Prosecution does have a good-faith
4 basis. We are simply requesting to know what is that good-faith basis because I don't
5 know where that information comes from. Thank you.

6 PRESIDING JUDGE FREMR: [14:49:44] Ms Luping, do you want to -- because if my
7 memory serves me well, it's not the first time we face this information, so whether it's on
8 the basis of good faith or not, it's maybe a little bit subjective. But for sure I can confirm
9 myself that it's not the first time we face this fact as alleged, as alleged at least.

10 MS LUPING: [14:50:08] Yes, that --

11 PRESIDING JUDGE FREMR: [14:50:09] Ms Luping.

12 MS LUPING: [14:50:10] Yes, that's correct, Mr President. Well, first of all, it is
13 contained in documentary evidence that has been disclosed to the Defence. And in
14 addition to that, there have been various witnesses who have testified about the events. I
15 have not got at my disposal the specific witness references about the events in Zumbe, but
16 certainly there's documentary evidence that I've included in my outline.

17 PRESIDING JUDGE FREMR: [14:50:34] It's fine.

18 The objection, if it was objection, is overruled. You may proceed.

19 MS LUPING: [14:50:43] If the witness could please return his headphones.

20 Q. [14:50:57] Mr Witness, isn't it correct that there were landmines that were used in
21 Zumbe by UPC/FPLC forces; is that right?

22 A. [14:51:28] In Zumbe we did not use any mines.

23 Q. [14:51:36] Now, Mr Witness, you stated or you testified that you ate chickens and
24 goats during the time that you were staying in Zumbe; is that correct?

25 A. [14:52:09] Yes. We were following the cattle and, because of that, they killed all

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1 the cattle and while we were there, therefore we ate chicken and goats.

2 Q. [14:52:27] And you did that in other operations too that you would eat the food or
3 you would take food from the places where there were other FPLC operations?

4 A. [14:52:59] I said that we spent three days there. We were not going to fast for
5 three days. And that is why I'm explaining to you what I recall. I was asked to tell the
6 truth and I am telling you what actually happened.

7 Q. [14:53:21] Now, Mr Witness, you testified previously that there was an abundance
8 of rations, military rations, you explained that businessmen had brought large amounts of
9 supplies for the UPC/FPLC. So if I understand your testimony now, you did not have
10 this great abundance of supplies with you at Zumbe; is that correct?

11 A. [14:53:55] Try to picture the situation. We tried to follow people who had stolen
12 goods. We weren't going to take ammunition and rations at the same time. I talked
13 about rations, but that was for a different case.

14 Q. [14:54:29] So just to understand how the FPLC would operate, when you went on
15 other operations and if you had to stay for any period of time, would you take food
16 supplies from the inhabitants during those or after those other operations?

17 A. [14:55:01] When our aim was to install ourselves in a place, then we organised
18 what was necessary, but here we were following goods that had to have been taken and
19 we were trying to ensure that they would no longer come back and disturb the population.
20 This was a different objective, it was different. If we went to Bunia, we made the
21 necessary preparations, but here the preparations were different.

22 Q. [14:55:38] Now, this operation in Zumbe when the UPC stayed for some days,
23 there are various reports of an operation when the UPC stayed in Zumbe after the
24 inhabitants fled on 15 and 16 October 2002, in fact this is the only operation where it's
25 reported that the UPC stayed. Am I right that there were no other operations when the

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1 UPC were able to take over Zumbe and stay for such a period of time?

2 PRESIDING JUDGE FREMR: [14:56:28] Hold on, Mr Witness.

3 Mr Bourgon, should I ask --

4 MR BOURGON: Yes, Mr President.

5 PRESIDING JUDGE FREMR: [14:56:33] Mr Witness, please remove your headphones
6 again.

7 Mr Bourgon.

8 MR BOURGON: [14:56:40] Mr President, we are here, we need the good-faith basis as
9 to what those reports are about 15 and 16 October 2002. I do not know where this
10 information comes from. It does not come from this witness, whether in his statement or
11 his testimony.

12 I think I know where it might come from, but in this case it must be made clear because
13 earlier on my colleague made a suggestion that landmines were used. When I try to
14 verify and to find where this information comes from, the only thing I can find is that it
15 comes from the testimony of the witness we are challenging who was not there. Is it the
16 same in this case? Because putting a question to the witness saying "we have reports", if
17 the only report they have is the testimony of this witness, somehow it cannot be put to the
18 witness as being a truth before asking a question because that date, we know that this
19 date -- we believe this date is wrong, but the witness does not know the date, but we
20 should put something to him that we have a good-faith basis. I don't think this is a
21 good-faith basis if it comes from a witness who is alleged not even to have been there
22 unless we say who that witness is.

23 And I would agree if my colleague would want to identify, even though it is a witness in
24 this case, I don't think there's an issue of danger, but if it's going to be the only source. If
25 my colleague has another source, then it's different and I stand to be corrected. Thank

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1 you.

2 PRESIDING JUDGE FREMR: [14:58:22] Ms Luping, I think it would be fair to clarify
3 the source, even in a general way whether it's from testimony or from report of some
4 organisation.

5 MS LUPING: [14:58:29] Mr President, I was fully intending to go to the reports. This
6 is just me setting the foundation for my questions. It's a little bit premature in our
7 submission, your Honours.

8 I have three documents. I'm so happy to share them with Defence counsel and then I
9 will be more than happy to share that good-faith basis. I'll be in fact quoting from these
10 various excerpts from these reports. I can tell you now that two of them have been
11 admitted, one being the UN special report on Ituri, the other one being a UN mapping
12 report, and the reference to landmines is also in the special report on Ituri, both of which
13 have been admitted, your Honours.

14 PRESIDING JUDGE FREMR: [14:59:06] But to keep equal treatment, I remember that
15 during the Prosecution case we also in fact asked Defence, who tried to challenge some
16 witnesses by saying "we have information", so we also asked them to be more specific
17 about whether they heard it from witnesses or -- so it was my concern that you, just
18 maybe you could add the report comes from witnesses in this court or from MONUC, I
19 don't know. So just to put this context to Mr Witness. Otherwise I'm fine.
20 Mr Witness, take your headset back.

21 MS LUPING: [15:00:02] Thank you, Mr President.

22 Q. [15:00:04] So, Mr Witness, I'm going to repeat my question again. I had been
23 mentioning information contained in reports and I will come to those in a moment, and I
24 will explain that two of those reports to which I will be referring are reports of the United
25 Nations, the UN, including one that was written by the special investigation team, human

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1 rights officers of UN MONUC.

2 But before I come to those reports, sir, I will repeat my question to you which is: Isn't it
3 right that the incident in which the UPC stayed in Zumbe for two days, on 15 and 16
4 October 2002, isn't it right that there were no other instances when the FPLC were able to
5 actually take over Zumbe; is that correct?

6 A. [15:01:23] I didn't understand the last part of your question.

7 Q. [15:01:29] I will rephrase my question. Were there any other FPLC operations in
8 Zumbe where the FPLC were able to stay for such a long period of time, for two or more
9 days?

10 A. [15:02:02] As I reminded you, I am not -- I don't find it easy to remember dates. I
11 explained the operation. People came and stole cattle. And that's why we went there.
12 If there was another later operation, then I'm not aware of it. I'm talking about the
13 operation with which I am familiar.

14 Q. [15:02:31] And so I understand your testimony, sir, is it your testimony that in the
15 operation that you described in Zumbe, that no civilians were killed, no Lendu civilians; is
16 that correct?

17 A. [15:02:59] When I went there I didn't see that. I've said that I am telling you what
18 I saw and what I experienced. We went there because they had stolen cattle and killed
19 the cattle. There are a lot of hills in this region and there's a valley. They fled. So I
20 didn't see what you're suggesting.

21 Q. [15:03:31] And based on that response, would it be your testimony then that no
22 women were raped in Zumbe?

23 A. [15:03:53] No, I didn't see that.

24 Q. [15:03:59] Now, isn't it right, sir, that the UPC set fire to a large number of
25 buildings in Zumbe, including the health centres and the schools?

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1 A. [15:04:14] No. When I talk about the region where we were following the stolen
2 cattle, I would say there were not many houses there. It's a very hilly valley region.
3 There was an area where we were walking. And as I said to the Defence team, there
4 were goats that had remained, because they had already killed all the cows. That's why
5 the goats that had been left behind were burnt in a house. That's what I can remember
6 and that's what I am testifying.

7 Q. [15:05:19] But isn't it right, sir, that other than the goats and the chickens that the
8 FPLC took, there was massive pillaging in Zumbe?

9 A. [15:05:43] I told you that that day I went there. What could have been looted in
10 these houses that were on the hills and in the valleys, I can't imagine anything of note that
11 could have been stolen or looted.

12 MS LUPING: [15:06:14] Mr President, with your leave, I would now seek leave to show
13 the first of three documents that we'd like to show to the witness. The first has been
14 admitted. It's DRC-OTP-0074-0422.

15 PRESIDING JUDGE FREMR: [15:06:31] So let's go step by step. So now let's start
16 with the first document and then we will proceed.

17 Defence, any objection to use this document with Mr Witness?

18 MR BOURGON: [15:06:49] No, Mr President.

19 PRESIDING JUDGE FREMR: [15:06:50] Very well then.

20 THE COURT OFFICER: [15:06:59] Ms Luping, would you like the Registry to publish
21 the document or are you doing it.

22 MS LUPING: [15:07:04] My apologies for not making that clear, court officer. The
23 Prosecution will be showing the document.

24 THE COURT OFFICER: [15:07:11] It will be published on the evidence 2 channel.

25 MS LUPING: [15:07:14] Thank you. And sorry, I should have asked with the leave of

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1 the Presiding Judge.

2 PRESIDING JUDGE FREMR: [15:07:20] Fine with me. And I suppose that the
3 document is not confidential.

4 MS LUPING: [15:07:25] It is public. It can be published publicly.

5 PRESIDING JUDGE FREMR: [15:07:28] All right.

6 MS LUPING:

7 Q. [15:07:44] So, Mr Witness, you have in front of you a document. I would ask my
8 colleague to enlarge it somewhat. It is dated 16 July 2004 and it is a report to the United
9 Nations Security Council. I'll ask him to turn to the second page. As you will see there
10 in the heading, it is a special report on the events in Ituri covering a period from
11 January 2002 to December 2003. And this report is based on investigations conducted by
12 the UN MONUC special investigation team that was operating in Ituri and investigating
13 events there in that time.

14 I'm now going to take you to paragraph 63 in this report. So you should have paragraph
15 63 in front of you, sir. I'm going to read it to you. It is in English but you will receive a
16 translation.

17 "In 2002 and 2003, the groupement experienced a total of 11 attacks with 445 civilian
18 victims of killing, according to a Lendu teacher who took notes of each event. The most
19 serious attacks occurred on 15 and 16 October 2002, when Hema militias, together with
20 UPDF from Bogoro, attacked Zumbe and stayed there for 48 hours. From Zumbe, the
21 attackers burned all the surrounding villages, killed around 125 civilians and planted
22 several anti-personnel mines".

23 Now, Mr Witness, before asking you questions about this specific report, as the
24 information contained in these reports is very similar, I'm going to move to the next
25 document, with the leave of the Presiding Judge, and then I will summarise my questions

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1 to you after seeing this information.

2 And the second report is also a report of the United Nations, it's called the UN mapping
3 report.

4 MS LUPING: But I would actually ask some guidance from the Chamber on this. The
5 version that has been admitted as evidence, Mr President, is the French version, and I can
6 read the French version. There is also an English version, which has not been admitted.
7 I can also read from the English. It is what you prefer.

8 PRESIDING JUDGE FREMR: [15:11:12] Defence, your position?

9 MR BOURGON: [15:11:16] Well, regarding the second document, Mr President, the
10 only parts of this report have been admitted in evidence. I am not sure if my colleague
11 wants to refer to the parts that have been admitted in evidence or with different parts.

12 PRESIDING JUDGE FREMR: [15:11:32] But we, I think, clearly said that it's not
13 *condicio sine qua non* whether the evidence of the concrete part has been admitted.

14 MR BOURGON: [15:11:45] Then we have no objection, Mr President.

15 PRESIDING JUDGE FREMR: [15:11:48] So it's up to you then, Ms Luping, which
16 version you would prefer.

17 MS LUPING: [15:11:53] Thank you, Mr President. I will just simply refer for the
18 record to the French version, just so that we have the ERN, but then I will read from the
19 English. I will give both references. So the French version is DRC-OTP-1061-0212, but
20 the passage that I'm going to be reading from is the English version, DRC-OTP-1061-0793,
21 at page 1028, paragraph 414.

22 PRESIDING JUDGE FREMR: [15:12:26] In the meantime, one correction to the
23 transcript, English version, page 96, line 24. The Latin term I said was *sine qua non*,
24 condition without -- which is not possible to do something, *sine qua non*.

25 Ms Luping, you may proceed.

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1 MS LUPING: [15:12:52]

2 Q. I'm just going to explain what this report is, sir. It's, again, from a report conducted
3 by the United Nations concerning events between March 1993 and June 2003. The report
4 itself is dated August 2010 and the title of the report is Report of the Mapping Exercise
5 Documenting the Most Serious Violations of Human Rights and International
6 Humanitarian Law Committed Within the Territory of the Democratic Republic of Congo
7 between March 1993 and June 2003.

8 And now I will ask my colleague to go to paragraph 414.

9 I'm only going to read part of this paragraph, sir. It's the first bullet point.

10 "Between 15 and 16 October 2002, UPC militiamen killed at least 180 people, including
11 civilians, in Zumbe in the Walendu-Tatsi community. The militiamen also raped at least
12 50 women. Most of the victims were killed with machetes or spears. Some were shot
13 dead. Some survived but were badly mutilated. Having looted large amounts of
14 property and stolen 1,500 head of cattle, the UPC troops set fire to the village, destroying
15 more than 500 buildings, including health centres and schools. Zumbe was an FRPI
16 fiefdom".

17 And finally, Mr President, with your leave, I would seek to show the witness extracts
18 from another document, but this document has not been admitted. It's simply for
19 Chamber's information, and that's DRC-OTP-0194-0348.

20 PRESIDING JUDGE FREMR: [15:16:10] And sorry, and Ms Luping, so as regards the
21 previous, the second document, you don't have any question, or you don't ask any
22 comment from Mr Witness; you would like to make it later?

23 MS LUPING: [15:16:22] Exactly. At this stage, Mr President, what I'm doing is, I'm
24 simply referring to relevant extracts with very similar information, and then I will simply
25 be summarising my questions relating to all three documents, with your leave.

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

2 MS LUPING: [15:16:51] And in the meantime, just to explain to the witness that this is
3 a document dated 15 November 2002. It's written by the Communaute Lendu de Base,
4 written at Gety-Etat. It's written to the president of the RCD-K/ML in Beni and copied to
5 others. And I would ask my colleague to scroll down further.

6 So that was the covering letter, sir. And it's -- the letter explains that it is a transmission
7 of a report. And I would ask my colleague now to turn to page 0351, which is part of the
8 report that was attached, at paragraph 9, at the very top. Okay.

9 PRESIDING JUDGE FREMR: [15:18:00] Hold on, Ms Luping.

10 Mr Bourgon.

11 MR BOURGON: [15:18:03] Thank you, Mr President. If the witness can remove his
12 earphones, please.

13 PRESIDING JUDGE FREMR: [15:18:07] Certainly.

14 Mr Witness, yeah, you have heard it.

15 Mr Bourgon, please proceed.

16 MR BOURGON: [15:18:14] Thank you, Mr President. First, I note for the record that
17 the previous document referred to by my colleague, the paragraphs are not admitted in
18 evidence. I understand that the Trial Chamber believes that it is possible and -- to put a
19 question to a witness. However, very little information as to how this information was
20 obtained and who obtained it and when it was obtained has been given to the witness.

21 The document we now have is a document which -- at least the witness must be informed
22 more about the document itself. This is a document written by a community of persons
23 from the Lendu community, it is kind of a complaint report. What is in evidence, what is
24 not in evidence if it's going to be authorised should at least be communicated to the
25 witness so he knows what weight or what these reports have.

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1 Now, then he can -- then my colleague, it's open to contradict the witness on the basis of
2 his evidence which we know is evidence already and -- but at least the witness must know
3 that these --

4 PRESIDING JUDGE FREMR: [15:19:31] Mr Bourgon, I fully agree you.

5 MR BOURGON: [15:19:32] Thank you.

6 PRESIDING JUDGE FREMR: [15:19:33] That's why Ms -- I think I already indicated
7 that in our previous decisions, or rulings that the source of the information, if the
8 document is not admitted in evidence, should be made absolutely clear. And the aspects
9 of this document mentioned by Mr Bourgon, that it's a report written down by, in fact,
10 Lendus is very, very material for -- and to be made known to Mr Witness.

11 MS LUPING: [15:19:59] Mr President, I have no disagreement with that, which is why
12 at the very beginning on the very first page I indicated to this witness that it was written
13 by the "communaute Lendu de base". And he will understand through his translation
14 that it's the Lendu community that has written this letter. So I don't believe,
15 Mr President, that I have withheld any information from the witness. Quite the contrary.
16 I believe I am being very forthcoming.

17 And pursuant to your instructions, Mr President, I have been summarising the content
18 and the nature of the document as I've been going along.

19 PRESIDING JUDGE FREMR: [15:20:30] All right.

20 Mr Witness, could you take your headphones back. Just to be sure, Mr Witness, have
21 you noticed - and Ms Luping have already mentioned it, but it's important for both
22 parties - what is the source of this report, who wrote this report? Do you know that? Do
23 you remember that, what she said to you?

24 Okay, then I can repeat it. It's report written by Lendu community. Is it clear?

25 THE WITNESS: [15:21:12] Ndiyo.

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1 PRESIDING JUDGE FREMR: [15:21:14] All right.

2 Ms Luping, please proceed.

3 MS LUPING: [15:21:17] Thank you.

4 Q. [15:21:17] So looking at paragraph 9, sir, I'm going to read the extract for you
5 which is in French in front of you. So it's:

6 (Interpretation) "Tuesday, 15/10/2002. Unprecedented attack on the locality of Zumbe
7 by the same army. The localities of Kabutso, Likoni, Masu, Zaba, Buy-Hu, Zumbe, were
8 completely pillaged.

9 The result: 215 civilians dead. 62 wounded by firearms of all calibre and anti-personnel
10 mines. Systematic pillaging and setting to light of 2 health centres, 6 schools, 4 churches,
11 all the houses of the localities that were just cited. 83 bicycles, 15 motorcycles, 180 radio
12 sets, 19 sewing machines".

13 (Speaks English) So, Mr Witness, I have read to you extracts now from three different
14 reports, three different sources, one being from a team from within the United Nations
15 MONUC team, one being a United Nations human rights group, part of the mapping
16 exercise, and the third from the communaute Lendu de base, the Lendu community itself.
17 Now, these are the different sources of information relating to the attack on Zumbe where
18 the UPC forces were able to take over Zumbe on 15 and 16 October.

19 I would ask my colleague, he can remove the final document, because now I'm going to be
20 asking you questions about all three.

21 Now, sir, you've seen that in all three reports there were reports, first of all, of civilians
22 being killed, women being raped and buildings being burnt or destroyed and of
23 large-scale pillaging. Now, isn't it right, sir, that this is, in fact, what happened in Zumbe
24 and it's not as you described it to the Chamber?

25 A. [15:24:21] I do not agree with what was just said. What I told you was what I

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1 witnessed. And I talked about the operations where I was involved. You are talking of
2 clashes that I did not -- against the Ugandans and I did not participate in these operations
3 against the Ugandans.

4 Q. [15:24:48] Mr Witness, I'm going to change topics now and I am going to talk to
5 you about the events in Komanda that you testified about. You described your
6 participation.

7 PRESIDING JUDGE FREMR: [15:25:05] Mr Bourgon.

8 MR BOURGON: [15:25:07] Thank you, Mr President. Based on the last witness -- the
9 last answer given by the witness, maybe there was a problem of interpretation, but I
10 believe it is necessary for the interest of justice to talk about the clashes as they were
11 understood by the witness. And I refer here to transcript page 102, lines 19 and 20,
12 which I believe is not something that is in the documents. I think it is for everyone's sake
13 to clarify this.

14 MS LUPING: [15:25:45] Thank you to Defence counsel. Mr President, I do not agree.
15 I see now that the -- I thought that perhaps it was correct in the French, but it states
16 "contre les Ougandais" in both the French and English.

17 Q. [15:25:57] Now, Mr Witness, the response that you gave was that you did not
18 participate in clashes against the Ugandans. Now, there may have been indeed a
19 problem of interpretation, but in none of the reports that I have read out to you is there
20 any reference to clashes between the UPC against the UPDF, the clashes concerned really
21 the UPC against the Lendu.

22 A. [15:26:37] In the document before me, I feel it's the UPC elements that clashed with
23 Ugandans in the locality where the Lendus were living. I never took part in this
24 operation.

25 Q. [15:26:59] Well, I can --

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1 A. [15:27:02] The Ugandans and the UPC fought the Lendus.

2 THE INTERPRETER: [15:27:09] This is the interpreter correcting himself.

3 MS LUPING: [15:27:17]

4 Q. [15:27:17] So just to understand your response, sir, were you saying that you did
5 not participate in clashes in Zumbe against the Ugandans?

6 A. [15:27:41] In this document I see that the UPC elements with Ugandans attacked
7 Zumbe and they would have killed many people. Personally, I did not combat alongside
8 Ugandans. That's what I'm saying.

9 Q. [15:28:00] Thank you for that clarification, sir, and I'm now going to move on to the
10 operations in Komanda.

11 And I still believe that my questions -- or, actually, my first few questions are not of an
12 identifying nature, but I will have to move quite rapidly into private session,
13 Mr President.

14 PRESIDING JUDGE FREMR: [15:28:22] Understandable.

15 MS LUPING: [15:28:24]

16 Q. [15:28:24] Now, Mr Witness, you testified that there were two operations in
17 Komanda that you participated in. Now, you haven't given dates, but isn't it right that
18 these took place before the operation, the first operation in Mongbwalu and they happen
19 on 23 August and November 2002; isn't that right?

20 A. [15:29:01] No. I have -- I do not know anything about what happened before the
21 Mongbwalu operation. I took part in an operation of Komanda, and this happened
22 before the Mongbwalu operation.

23 Q. [15:29:24] Thank you, Mr Witness. That's exactly what I had said, and again I
24 don't know if it's a problem of interpretation. My question was, indeed, the two
25 operations in Komanda that you participated in, these happened before the first operation

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1 in Mongbwalu; isn't that correct?

2 A. [15:29:59] Yes.

3 Q. [15:30:00] And in the first operation you said that there were Ngiti mixed with
4 APC, and you said that the Ngiti came from Songolo and Aveba. I refer to transcript 252,
5 page 98, lines 14 to 25.

6 Now, my question is this, sir: Isn't it right that the Ngiti are also known as the
7 Lendu Sud?

8 A. [15:30:54] According to the interpretation, I said -- it was Ngiti and UPC, but I said
9 APC.

10 Q. [15:31:06] And indeed I can confirm, Mr Witness, that what I had said in reference
11 to your testimony was Ngiti mixed with APC. I did not say UPC.

12 A. [15:31:22] Ndiyo.

13 Q. [15:31:24] But I am now going to repeat my question, which is: Isn't it correct that
14 the Ngiti are also known as the Lendu Sud?

15 A. [15:32:04] I don't know if they were called Lendu Sud. They are Ngiti. That's all
16 I know. And they live in the localities that I mentioned.

17 Q. [15:32:19] And when you fought in Komanda, isn't it right that the Interahamwe
18 were also allied with the Ngiti?

19 A. [15:32:43] Personally, I haven't heard this, but there are people who identified the
20 dead body of a person who was undressed and this person said that in the clashes there
21 was a mixture of people coming from various groups, from different groups, and he said
22 that these people fought this way.

23 Q. [15:33:27] Now, you testified that at Komanda there were pillaged goods that were
24 burnt in front of others; is that right?

25 THE INTERPRETER: [15:34:24] Could you please ask your question once again,

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- 1 Counsel Luping? It's the interpreter who is requesting for the question to be rephrased.
- 2 MS LUPING: [15:34:50]
- 3 Q. [15:35:01] Well, I'm going to repeat the question I asked, which has been captured
- 4 accurately in both the English and the French transcripts.
- 5 You testified that at Komanda -- and that was during the first operation -- that there were
- 6 pillaged goods, goods that had been pillaged by UPC, that were then burnt in front of
- 7 others; is that correct?
- 8 A. [15:35:39] Yes.
- 9 Q. [15:35:43] Now, as I understand it, you were explaining that some type of example
- 10 was being given to the forces; is that correct?
- 11 A. [15:36:06] In an armed group, when there is an operation, the soldiers are not
- 12 allowed to do pillaging. That's exactly why this act was performed.
- 13 Q. [15:36:27] And could you confirm whether amongst these goods there was also any
- 14 food that had been pillaged?
- 15 A. [15:36:36] What type of food, for instance?
- 16 Q. [15:36:58] It's a question for you, sir. Any type of food. Just amongst the goods
- 17 that were burnt, the pillaged goods, were there any foodstuffs?
- 18 A. [15:37:24] No. There was no pillaging of food. Why would a soldier pillage
- 19 foodstuff and to do what with it?
- 20 Q. [15:37:36] Well, maybe it's just a difference in terms, sir, because you explained
- 21 that in Zumbe that you ate chickens and you ate goats there, and that's a type of food.
- 22 Was there any other type of food in Komanda that was taken from the inhabitants or that
- 23 had been left by inhabitants there?
- 24 A. [15:38:25] I clearly answered the question and I will repeat myself. I said that we
- 25 were going after the cows that were stolen. And when we reached there, the cows were

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1 all slaughtered. And this is why we took the goats and the chicken that were
2 slaughtered, just to eat them.

3 Q. [15:38:51] And as I also understood your response, sir, you also explained that you
4 would not take military rations with you to Zumbe, especially on such an operation; isn't
5 that right?

6 A. [15:39:12] Yes. I told you that they attacked, they burnt the houses and they stole.
7 And our objective was to go after them and recover what was stolen. And this is why we
8 couldn't go with foodstuff.

9 Q. [15:39:44] And just to understand your response, is your testimony that you were,
10 however, able to bring military rations with you to Komanda whilst you could not do so
11 to Zumbe; is that what your testimony is?

12 A. [15:40:00] You're confusing me. You're talking of Komanda, you're talking of
13 Zumbe. What I'm telling you is that the attackers came and stole the cattle. We
14 followed them. Once we reached there, the cows were slaughtered and we found
15 chicken that we took and ate.

16 Q. [15:40:46] So when you went to Komanda, sir, is it your testimony that you had
17 sufficient military rations that you were able to take to Komanda; is that what you're
18 saying?

19 A. [15:41:07] Now, to go to Komanda you've got to take the main road. And there
20 are vehicles on that road. It's easy to do an operation in such a place because you can
21 actually go there in a vehicle.

22 MS LUPING: [15:41:28] Now, Mr President, I believe my next questions might be
23 borderline; they might be identifying. So in the abundance of caution we may be better
24 with your leave to move to private session.

25 PRESIDING JUDGE FREMR: [15:41:39] Yeah, yeah, it's a good point.

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1 Mr Witness, you want to leave? Okay, as usual, no problem.

2 Court usher, please assist Mr Witness. And during this short break we will remain in the
3 courtroom.

4 (The witness stands down)

5 PRESIDING JUDGE FREMR: [15:42:04] And, Ms Luping, I would like to inform public
6 present in our -- at our public gallery how much time roughly you think we will spend in
7 private session, just estimation?

8 MS LUPING: [15:42:33] Once the witness returns, I believe, the next 15 minutes, 10 to
9 15 minutes.

10 PRESIDING JUDGE FREMR: [15:42:38] All right.

11 MS LUPING: [15:42:39] Depending on his responses.

12 PRESIDING JUDGE FREMR: [15:42:41] So it's just for the public present in the public
13 gallery, next 15 minutes we will have to spend in the regime of private session because
14 our witness is a protected one and the questions now potentially put by Prosecution could
15 reveal his identity. That is why the next 15 minutes you will have no chance to hear
16 anything.

17 Yes, and let's move into private session.

18 Thank you, court officer, for reminder.

19 (Private session at 3.43 p.m.) *(Reclassified partially in public)

20 THE COURT OFFICER: [15:43:19] We are in private session.

21 PRESIDING JUDGE FREMR: [15:43:25] Thank you, court officer.

22 (Pause in proceedings)

23 (The witness enters the courtroom)

24 PRESIDING JUDGE FREMR: [15:44:28] Welcome back, Mr Witness.

25 I can imagine that you are tired because it was a long day, but you still have in front of

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1 you last 30 minutes, and then we will again break. And also in the meantime, it is good
2 to inform you we moved into private session, so now we are in private session.

3 Ms Luping, please proceed.

4 MS LUPING: [15:44:50] Thank you, Mr President.

5 Q. [15:44:52] Now, Mr Witness, when you testified, you explained that
6 Bosco Ntaganda was present during the first operation, but not the second operation; isn't
7 that right?

8 A. [15:45:06] Yes, I think this is what I said.

9 Q. [15:45:19] And isn't it right that at that time during both operations,
10 Bosco Ntaganda was still the deputy chief of staff at the time?

11 A. [15:45:42] Yes, because at that time Kisembo was there.

12 Q. [15:45:48] And his call sign was Tango Romeo?

13 A. [15:45:57] Ndiyo.

14 Q. [15:45:59] And you've also explained that as --

15 A. [15:46:03] Yes.

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 A. [15:46:59] I don't know his family name. All I know is his call sign.

23 Q. [15:47:18] And can you confirm his call sign?

24 A. [15:47:35] It was Double Seven Golf.

25 Q. [15:47:48] And Safari, he was also the commander of operations for the east zone;

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1 correct?

2 A. [15:48:14] I am not familiar with east zone.

3 Q. [15:48:20] Okay. I'm -- will be showing a document to you in a moment, but I
4 have here a reference to commandant des opérations zone EST.

5 A. [15:49:05] I understand what you're saying, but I don't know what is meant by east
6 zone or zone EST.

7 Q. [15:49:19] Now, the commanders in the field leading the operations in Komanda,
8 as usual, they would have been reporting back what was happening to the état-major
9 général; isn't that right?

10 A. [15:49:55] Yes. In military service there are different levels, échelons.

11 Q. [15:50:09] And there would have been reports back from the field to the état-major
12 général; is that correct?

13 A. [15:50:39] Yes, that may have happened.

14 Q. [15:50:44] And the G2's office, they dealt with intelligence reports; is that correct?

15 A. [15:51:10] Yes, that's also possible.

16 Q. [15:51:14] And G2 officers, intelligence officers, were also often deployed to the
17 field to collect information for the état-major général; is that correct, sir?

18 A. [15:51:55] There are various subdivisions, but I don't know that -- I can't give you
19 any reply in this regard. In fact, there's a lot that I didn't know about the UPC, and that's
20 why there are some questions which I cannot give you an answer to.

21 MS LUPING: [15:52:34] Now, I'm going to ask with the leave of the Presiding Judge to
22 please be able to show a document to the witness. It is item 76 on the list, and it is
23 DRC-OTP-0017-0025. It has been admitted. It's already admitted, this document.

24 PRESIDING JUDGE FREMR: [15:53:00] Defence, any objection?

25 MR BOURGON: [15:53:04] If the witness could remove his earphones please,

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1 Mr President.

2 PRESIDING JUDGE FREMR: [15:53:08] Mr Witness, please, kindly remove your
3 headphones.

4 Mr Bourgon, please proceed.

5 MR BOURGON: [15:53:16] Mr President, just that when the document is shown to the
6 witness, it will be important to know if he has ever seen any documents of the kind. As
7 in this court, it is our submission that he has no knowledge of the G2 branch in detail. So
8 before we ask him a document, then the -- we should know what is his knowledge of this
9 type of document. Unless of course it is only one information we are trying to contradict
10 him. Thank you.

11 PRESIDING JUDGE FREMR: [15:53:45] Ms Luping, I know that you don't like, you
12 know, that advice from Mr Bourgon, but I think we, in fact, follow that procedure with
13 previous document concerning a report of G5. So I think it would be fine to keep this
14 modus operandi, starting with whether he knows the document, whether he knows
15 something about G2 competence, and then go to the concrete details of the document. I
16 hope that is fine with you.

17 MS LUPING: [15:54:18] Mr President, I'm obviously guided by the Chamber and what
18 the Chamber's preferences are. I would just note that in this instance the document has
19 been admitted. This purpose of the questioning of the witness in relation to this
20 document is not for the purposes of actually authentication as such; it's simply relating to
21 the information contained in it. We have to also, I think, keep in mind the nature of this
22 witness's role within the FPLC. I -- of course, he did carry various documents. That
23 was one of his functions, so perhaps he does have a knowledge of and has seen these
24 types of documents, but really it's for your Honours to decide what you would think
25 would be useful.

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1 PRESIDING JUDGE FREMR: [15:55:01] But I have already, I think, stressed that if it's
2 obviously not necessary to leave witness whole document, she is expected to comment,
3 but always I would appreciate if counsel putting document to the witness make always
4 short summary, what is the comment about, then to focus on concrete parts. But I guess
5 that the question "have you ever seen this document or this kind of document", should be
6 part of the beginning of such examination.

7 MS LUPING: [15:55:37] That is -- that's also fine, Mr President. I can certainly do so.

8 PRESIDING JUDGE FREMR: [15:55:44] Thank you.

9 Q. [15:56:03] All right, so, Mr Witness, I'm now going to have a document brought up
10 and it will be shown to you and you'll be able to see it. I'm just going to note at the
11 beginning that it's written in Komanda on 10 October 2002. We can see that it's a SitRep
12 to the chef d'état-major of the FPLC, and it's the forces patriotiques pour la libération du
13 Congo. And in terms of those copied in on this, we have SN adjoint à la défense, we
14 have the chef G2 of the FPLC, and we have commandant OPS, which appears to stand for
15 opération, and then zone EST Safari.

16 I'd like to ask my colleague to scroll all the way down to the bottom first before I ask you
17 questions about the content.

18 And then we have a name here, sir, it's Mugisha, Commandant Mugisha, and we also
19 have somebody called -- that's written PO Jean-Ahebwa IO, which I assume stands for
20 intelligence officer. And Mugisha is writing, it appears, as the chef G2, second in
21 command, for the FPLC en mission, on mission.

22 Sir, first of all, I'm going to ask my colleague to go back one step so that we can see
23 perhaps the entirety of the document.

24 Now, you explained, Mr Witness, that you were required to carry papers on behalf of
25 Bosco Ntaganda. We saw you in Rwampara also carrying a bundle of documents. In

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1 your work as an escort for Bosco Ntaganda, did you ever have to look at papers or pass on
2 any papers to him from others, any kind of reports, internal sorts of reports, to
3 Bosco Ntaganda, for example?

4 A. [15:59:01] Well, the answer that I can give you with regard to the document folder
5 that I was carrying, it's not the fact that I was carrying this wallet that means that I was
6 carrying all the documents. I transported them when I was escorting them. But I kept
7 the documents for him. But I couldn't give him a report or read him a report. As I said
8 to the Defence team, I didn't know the content of these reports.

9 Q. [15:59:40] And when you had various documents in your possession (Redacted)
10 (Redacted) or Mr Safari or Mr Kisembo or any other commanders, did you
11 ever come across any kinds of reports like this, like this one which is, in this case, it's
12 written by the G2 to the chef d'état-major?

13 A. [16:00:35] No.

14 Q. [16:00:38] Now, I'm just going to focus on certain information that's contained in
15 this report now.

16 PRESIDING JUDGE FREMR: [16:00:56] Hold on, Ms Luping.
17 Mr Bourgon.

18 MR BOURGON: [16:00:59] Thank you, Mr President. Taking into consideration the
19 responses by the witness, questions should be limited to a contradiction of a content, but
20 not in terms of seeking information of a document which is -- the witness has no
21 knowledge of. Thank you.

22 PRESIDING JUDGE FREMR: [16:01:18] I will decide potentially about the correctness
23 of witness's questions, whether they are permitted or not.

24 Please proceed, Ms Luping.

25 MS LUPING: [16:01:37]

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1 Q. [16:01:50] Now, at the beginning, I'm going to read the first paragraph.

2 (Interpretation) "I inform you that the team of intelligence agents and officers that the G2
3 IEMS-Mugisha is commanding in Komanda has just drawn up a plan of action with the
4 troops".

5 (Speaks English) And then what we have, what appear to be four plans set out, A, B, C, D.
6 And plan A reads as follows:

7 (Interpretation) "Intelligence on the terrain under our control and not under our control,
8 in other words, from Bunia to Komanda. And then will be under the control of Komanda
9 IO Kiza Faustin and his intelligence staff".

10 (Speaks English) Now just focusing on this first point, sir, and that is -- appears to be
11 information about what was under the control or not under the control of the UPC
12 elements from Bunia to Komanda, isn't it right to say that these are the types of
13 information then that would be expected to go back to headquarters from the field, that
14 they would have to get status reports of what was going on in the field?

15 A. [16:04:38] I didn't understand your question, in fact.

16 Q. [16:04:42] I will reformulate and try to make it clearer.

17 Now, this letter that I have -- or report, rather, that I have shown to you, and I read you
18 just one portion of it, it's a report talking about the G2 office reporting back about what's
19 the zone or territory under the control or not under the control of UPC forces. And this
20 was just an example, sir. My question is this: Isn't it right that troops in the field would
21 send back reports of what was happening in the field back to headquarters, that this was
22 normal?

23 A. [16:05:40] What would you want me to answer? You are showing me this
24 document. I might have transported these documents, as I said earlier, but I did not
25 know the content of the reports. The intelligence service did its work. I never read

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1 these documents. I never saw them. So I have nothing to say on the subject of this
2 document.

3 Q. [16:06:18] But moving away, sir, moving away from this specific document, my
4 question is a general one: Isn't it right that there would be reports from the field either
5 during or following an operation giving the headquarters the updates from the field?

6 A. [16:07:04] If I come back to -- if I come back to the subject that you asked me before,
7 about how the radio was used, it was used to transmit messages. And there were also
8 documents to send reports, documents in writing. I think that is quite clear.

9 Q. [16:07:29] Thank you, sir. So just to be clear in your response, response to my
10 question whether there would be reports back from the field about operations, you refer
11 to the phonie. So there'd be messages by phonie, there would also be written reports,
12 and there would probably be also verbal reports? Is that correct, sir? So there were
13 different ways information from the field was transmitted back to headquarters?

14 A. [16:08:16] Yes. I can say that in order to be aware of the situation of the events,
15 reports are made. But I never made a report. I'd never seen a document like this one.
16 And I'm also wondering why you're asking me this question, because you can only ask
17 me questions about things that I saw or heard that I know. And I said to the Defence
18 team this same thing when we met.

19 Q. [16:09:01] That's right, sir, and you have limited it to what you know. You've
20 talked about phonie messages that you know about, you are able to confirm that there
21 were written reports, and that's all indeed that can be asked of you, sir. (Redacted)
22 (Redacted). You've confirmed his role was the deputy chief of staff of
23 operations, and isn't it right, sir, that he would have also received reports from the field
24 about what was happening even if he was not present, and that includes the operation in
25 Komanda?

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1 A. [16:09:53] Yes, I can say in brief that this is the reason -- this was what enabled
2 them to plan.

3 Q. [16:10:05] Now, going back to the operation in Komanda --

4 PRESIDING JUDGE FREMR: [16:10:10] Hold on, Ms Luping.

5 Mr Bourgon.

6 MR BOURGON: [16:10:12] Well, the witness responds -- my colleague is going to
7 Komanda, it's okay, but the response has nothing to do with Komanda. So if we want to
8 make it clear and to stick to Komanda or a report about Komanda, it should be put to the
9 witness. Thank you.

10 PRESIDING JUDGE FREMR: [16:10:29] Ms Luping.

11 MS LUPING: [16:10:32] Thank you, Mr President. Well, just to be clear, my
12 questions - and I want to ensure that there is clarity on this - my questions were not
13 limited only to Komanda.

14 Q. [16:10:44] Mr Witness, I was asking you very generally speaking, and I think my
15 question was clear, Mr President. I asked in operations --

16 PRESIDING JUDGE FREMR: [16:10:51] Yes, I understood your question in this sense,
17 yes.

18 MS LUPING: [16:10:54] Thank you, Mr President.

19 So I'm now going to switch topics and I'm going to go back to Komanda.

20 PRESIDING JUDGE FREMR: [16:11:01] Mr Bourgon.

21 MR BOURGON: [16:11:02] I apologise, Mr President. But the question was precise,
22 and that includes the operation in Komanda, question mark. So we are asking the
23 witness to confirm whether there was a report about Komanda. He's giving a general
24 answer. So all I want is, if we are going to stick to Komanda, the question should be
25 made clear to him. Thank you.

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1 PRESIDING JUDGE FREMR: [16:11:22] Ms Luping, please, in order to cover rights of
2 the accused, Mr Bourgon has his view on the issue. He phrased it Mr Witness didn't
3 understand correctly. So just to dispel this doubt, which I don't believe it is
4 well-founded, but I think he has full right to ask for that, please try to clarify.

5 MS LUPING: [16:11:52]

6 Q. [16:11:52] All right, sir. Sir, I'm going to go back to the question and answers.

7 I'm going to refer here to what has already been stated. And this was my question:

8 (Redacted)

9 (Redacted)

10 from the field about what was happening even if he was not present, and that includes the
11 operation in Komanda"?

12 Your response was:

13 "Yes, I can say in brief that this is the reason -- this was what enabled them to plan". End
14 of quote.

15 Now, just to ensure that there's absolute clarity on this, first of all, my question is about
16 reports to Mr Ntaganda as the deputy chief of staff. Isn't it right that in any
17 operations - any - that he received reports from the field about what was happening, in his
18 role as the deputy chief of staff of operations? That's my first question.

19 A. [16:13:32] I have the feeling that we're coming back once again to our starting point.
20 I said on the subject of reports, and even the question you asked me before about the
21 documents, you asked me whether these documents reached him, and I said that I don't
22 know because I didn't give him any report.

23 So it's difficult for me to answer this question. I can only answer questions that relate to
24 things that I have seen, heard or that I know.

25 Q. [16:14:14] Yes, sir, and I want to be clear. I am not limiting it to written reports.

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1 We had been talking about written reports. We talked about -- you mentioned messages
2 by phonic. I also gave the example of verbal reports. Reports can obviously be
3 communicated in different ways.

4 (Redacted)

5 (Redacted)

6 information coming from the field about what was happening, either during or following
7 operations?

8 PRESIDING JUDGE FREMR: [16:15:08] Mr Bourgon.

9 And, Mr Witness, please take off your headphones. Mr Witness, please, your
10 headphones.

11 Mr Bourgon.

12 MR BOURGON: [16:15:19] Thank you, Mr President. This witness is not qualified to
13 provide an answer to this question, the question: Would he have received reports
14 following operations? If he saw reports arriving, he can say. If he heard a report on the
15 radio, he can say. Whether Mr Ntaganda would have received reports following
16 operations, unless he saw this, he cannot testify to this effect. With respect to the
17 "would", if it -- this is an issue of general military knowledge, but not of the level of this
18 witness. We're not talking about a senior officer.

19 PRESIDING JUDGE FREMR: [16:16:04] But, Mr Bourgon, I get your point. But
20 I believe that Mr Witness is smart enough to say it himself, the same what you are now
21 saying.

22 MR BOURGON: [16:16:11] But he has said it already. But we are going back to
23 putting together in the same question different kinds of report. We mix everything into a
24 big bowl and then we say: Would he have received something in that big bowl? Of
25 course, he would have --

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1 PRESIDING JUDGE FREMR: [16:16:25] Mr Bourgon --

2 MR BOURGON: [16:16:26] The question is inappropriate and not the provenance of
3 this witness. Thank you.

4 PRESIDING JUDGE FREMR: [16:16:29] Mr Bourgon, we get back on your request,
5 frankly saying. But I think the Chamber will be able itself to adjudicate to what extent
6 such a question was misleading or not. But so far, having seen responses made by
7 Mr Witness, I don't find him misled.

8 So, Ms Luping, but we are approaching the end of the session, so please try to wrap up.

9 MS LUPING: [16:17:03] So I'm just indicating that I have asked the witness if he could
10 return his headphones.

11 Q. [16:17:11] So, Mr Witness, I'm going to repeat my question and I'll try to simplify it.
12 Isn't it right that as the deputy chief of staff of operations, Mr Ntaganda did or would
13 have received information from the field during or after operations about what was
14 happening?

15 A. [16:17:59] This is my last answer: It is hard for me to talk about things that I have
16 no knowledge of. I have absolutely no idea if he was receiving reports or not. I can
17 only say that I do not know.

18 Q. [16:18:27] Now, Mr Witness, I'm going to --

19 Well, this is up to you, Mr President. I would certainly want to follow up on this because
20 we now have --

21 PRESIDING JUDGE FREMR: [16:18:37] Just a last question, really last. And I hope
22 that it will not provoke some extensive response because we will have to go as well.

23 MS LUPING: [16:18:47] If this is my last question then on this topic, Mr President, I
24 would prefer to defer till tomorrow because I can see there may be follow-up on this and
25 it's certainly not a topic I would want to leave as it's been left now.

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1 PRESIDING JUDGE FREMR: [16:18:57] Yes, it would be better. I appreciate that.

2 So, Mr Witness, we will break for today. Thank you very much again for responding all
3 so many questions put to you. We will continue tomorrow 9.15 and I can promise that
4 we will be ready with your testimony by noon. So it will be last day of your testimony.

5 Now, court usher, please assist Mr Witness to leave the courtroom.

6 And before we leave, just --

7 THE WITNESS: [16:19:32] (Interpretation) I'm sorry, I don't know if you -- if I can say
8 a word, with your Honours' leave.

9 PRESIDING JUDGE FREMR: [16:19:56] Is it necessary to say it now? Because you still
10 will have a chance to say it tomorrow. It's still not the end of your testimony.

11 THE WITNESS: [16:20:13] (Interpretation) No, it's not my testimony; it's a personal
12 thing. Ever since the day before yesterday I'm really forcing myself. I don't know if
13 you can allow me to take the floor a bit.

14 PRESIDING JUDGE FREMR: [16:20:37] Mr Witness --

15 THE WITNESS: [16:20:39] In private session, please.

16 PRESIDING JUDGE FREMR: [16:20:42] Mr Witness, is this issue urgent because we
17 would like to break now because we are a little bit late. Wouldn't it be possible to
18 postpone it tomorrow morning, this your statement, or is it urgent?

19 THE WITNESS: [16:21:02] (Interpretation) I really would like to tell you this because
20 I'm really not at ease with regards to my personal affairs at home, and this is -- because of
21 the sickness of my children. I really would like to finish tomorrow by midday because I
22 don't think I can stay here for a very long time. I really would like to attend to these
23 personal affairs I have that are pending. It's a case of illness.

24 PRESIDING JUDGE FREMR: [16:21:35] Mr Witness, you probably misunderstood. In
25 fact, I can guarantee you that we will finish by noon tomorrow. So 12 o'clock, I believe,

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1 tomorrow you will be free. So if you have some concern about travel home, I think
2 everything -- because even your testimony was planned it should last till Friday -- till
3 tomorrow, which is Thursday. So Thursday noon you will be free and you will go home.
4 Is it clear?

5 THE WITNESS: [16:22:12] (Interpretation) I'll do my best to do what I did until now.
6 And thank you so much.

7 PRESIDING JUDGE FREMR: [16:22:24] I thank you, Mr Witness. And as usual you
8 must not discuss your testimony till tomorrow with anybody else.

9 Court usher, please assist.

10 And as to the timing, so far --

11 THE WITNESS: [16:22:35] Asante.

12 PRESIDING JUDGE FREMR: [16:22:37] -- Ms Luping has used 4 hours 23, roughly, 23
13 minutes, which means for tomorrow 1 hour 36 minutes at your disposal. So I hope that
14 at least your cross should be finished in one maybe slightly extended session.

15 And we will reconvene at quarter past 9 again.

16 THE COURT OFFICER: [16:23:02] All rise.

17 (The hearing ends in private session at 4.23 p.m.)

18 RECLASSIFICATION REPORT

19 Pursuant to the Trial Chamber VI's Order, ICC-01/04-02/06-1887, dated 4 May 2017,
20 the public reclassified and lesser redacted version of this transcript is filed in the case.