

Trial Hearing
WITNESS: DRC-D18-D-0017

(Open Session)

ICC-01/04-02/06

1 International Criminal Court
2 Trial Chamber VI
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and Judge Chang-ho Chung
6 Trial Hearing - Courtroom 2
7 Thursday, 30 November 2017
8 (The hearing starts in open session at 9.16 a.m.)
9 THE COURT OFFICER: [9:16:08] All rise.
10 THE COURT USHER: [9:16:10] The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE FREMR: [9:16:17] Good morning, everybody.
13 Court officer, please call the case.
14 THE COURT OFFICER: [9:16:21] 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: [9:16:36] Thank you.
19 Now appearances.
20 MS LUPING: [9:16:40] Good morning, Mr President, good morning, your Honours.
21 The Prosecution's composition is the same except that this morning we do not have with
22 us Ms Nicole Samson or Ms Selam Yirgou.
23 PRESIDING JUDGE FREMR: [9:16:52] Thank you, Ms Luping.
24 Defence, please.
25 MR BOURGON: [9:17:00] (Interpretation) Good morning, your Honour. No change

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1 on the side of the Defence representing Bosco Ntaganda this morning.

2 PRESIDING JUDGE FREMR: [9:17:06] Thank you, Mr Bourgon.

3 Legal Representatives of Victims.

4 MS PELLET: [9:17:11] (Interpretation) Thank you, your Honour. No change for the
5 former child soldiers.

6 MR SUPRUN: [9:17:19] (Interpretation) Good morning, your Honour, your Honours.

7 The composition of the team of the victims of the attacks has not changed since yesterday.

8 PRESIDING JUDGE FREMR: [9:17:30] Thank you, Ms Pellet. Thank you, Mr Suprun.

9 Before we continue with our witness, a very brief consultation of the issue of our schedule
10 for the next week. We received email from Defence that Witness 251 is ready to testify
11 from Bunia on Friday, 1 December, so it seems that it should be -- she should be available
12 to testify viva voce. There are according this email two proposal scenarios, either to start
13 her testimony on Monday, December 11, since Witness D-70 will not come, or to start her
14 testimony either on 6 or 7 December.

15 The Chamber deliberated on that and the position of the Chamber is that we strongly
16 encourage Defence to bring all those three remaining witnesses for the next week. The
17 reason is that there are some medical reasons on the part of one of the members of the
18 Chamber that could lead to the fact that the Chamber would not be in complete
19 composition for the third week. So to allow such a risk we insist on having all three
20 remaining witnesses next week.

21 Because we will start for sure I believe with D-243 on Monday via video link, and then we
22 should have two witnesses, D-251 and D-257 viva voce here in The Hague. We even
23 propose, if necessary, to make the best or the most convenient arrangements for the
24 witnesses, to switch witnesses, which means to have D-257 as a second one, and then 251
25 as a third and last one, but all of them during the next week.

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1 Mr Bourgon, was I clear enough?

2 MR BOURGON: Yes, Mr President. Thank you very much for the Chamber's guidance.

3 The only thing I would like to say is that I just heard that 243 would testify by video link,

4 which is not the case; 243 has arrived and will testify in person on Monday morning. But

5 as for the rest, we are guided by the Chamber's instructions. Thank you, Mr President.

6 PRESIDING JUDGE FREMR: [9:20:19] Very well. And according to your estimation,

7 you estimate six hours, and the Chamber in fact accepted this estimation for total

8 testimony of D-243, which -- and then we would prefer if possible to start the second

9 witness regardless whether D-251 or D-257 even on Tuesday afternoon, to avoid any time

10 pressure.

11 Thank you very much. And now we can proceed.

12 Mr Witness, good morning. So as I --

13 THE WITNESS: [9:20:55] (No interpretation)

14 PRESIDING JUDGE FREMR: [9:20:56] -- as I stressed yesterday, it is the last day of your

15 testimony. I strongly believe that by noon you will be free. Again, I am repeating my

16 instruction: You are still under oath which means you have to speak the truth and

17 nothing but the truth. Is it clear?

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

19 (The witness speaks Swahili)

20 THE WITNESS: [9:21:13] Ndiyo.

21 PRESIDING JUDGE FREMR: [9:21:14] And now I am giving floor to Ms Luping.

22 Ms Luping, you have 1 hour 37, I believe, 37 minutes. Please proceed.

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

24 PRESIDING JUDGE FREMR: [9:21:25] And we are in open session.

25 MS LUPING: [9:21:28] Yes.

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1 QUESTIONED BY MS LUPING: (Continuing)

2 Q. [9:21:30] So good morning, Mr Witness.

3 A. [9:21:32] Jambo sana.

4 Q. [9:21:33] Now, Mr Witness --

5 A. [9:21:35] Good morning.

6 Q. [9:21:36] Yesterday, we were talking about Commander Safari, and you confirmed
7 that his call sign was Double Seven Golf. My question is this, first of all, sir, isn't it right
8 that Safari was of Rwandan origin?

9 A. [9:22:06] I think he was a Rwandan.

10 Q. [9:22:09] And he spoke Kinyarwandan, including with Bosco Ntaganda; isn't that
11 right?

12 A. [9:22:31] When we were present we only heard him speak Swahili.

13 Q. [9:22:38] He acted as a liaison on behalf of the UPC to liaise with Rwanda; is that
14 right?

15 A. [9:22:59] That I -- I can't know.

16 Q. [9:23:04] He helped to organise delivery of weapons from Rwanda to the UPC; isn't
17 that right?

18 A. [9:23:28] As I said, when the weapons arrived we just simply saw them arrive,
19 which is why I said we didn't know what the origin of these weapons was. And he was
20 in charge.

21 Q. [9:23:50] Commander Safari would sometimes accompany shipments of weapons
22 at times, wouldn't he?

23 A. [9:24:08] That is correct.

24 Q. [9:24:11] And he would travel to Rwanda for that purpose; isn't that right?

25 A. [9:24:31] During the period he was with us, before he left after being injured, he

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1 did the coordination on site.

2 Q. [9:24:46] When you say "he did the coordination on site", could you clarify where
3 precisely, which country?

4 A. [9:25:07] There, where he found us, in Mandro. When he came during all that
5 time, we said that we welcomed visitors, hosted visitors, and he was responsible for
6 coordination and he was responsible for the aircraft from which the weapons were
7 dropped.

8 Q. [9:25:34] And Safari still works for the Rwandan government today, doesn't he?
9 And I'll be more precise, sir. He is an agent of the Rwandan Ministry of Defence, and he
10 is a captain with the Rwandan Armed Forces.

11 A. [9:26:05] This I hear from you; I was not aware of that fact.

12 MS LUPING: [9:26:13] Mr President, with your leave the Prosecution would seek the
13 floor so that we can show a document to the witness. It's item 77 on the list. It is
14 DRC-OTP-2103-0401.

15 PRESIDING JUDGE FREMR: [9:26:29] All right with us.

16 In the meantime very brief correction of the transcript, page 2, line 26 instead of word
17 "testify" should be word "travel".

18 Ms Luping, please proceed.

19 THE COURT OFFICER: [9:26:58] The document will be displayed on the evidence 2
20 channel.

21 MS LUPING: [9:27:07]

22 Q. [9:27:07] Mr Witness, can you see the document in front of you?

23 A. [9:27:22] The document hasn't yet arrived on my screen. I don't see it yet.

24 THE COURT OFFICER: [9:27:41] In the meantime, Ms Luping, if you could please
25 confirm the level of confidentiality.

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1 MS LUPING: [9:27:48] This could be published publicly.

2 Q. [9:28:00] Can you see the document now, sir?

3 A. [9:28:11] Yes, I can see the document, but it's written in extremely small letters.

4 Q. [9:28:22] My colleague has now enlarged it, and I can confirm it is a page from the
5 network called LinkedIn, and I will read the names set out in the information that we see.

6 It's not very extensive. We see the name Célestin Senkoko, Agent de l'État at Ministry of
7 Defence Rwanda. Can you see that, sir?

8 A. [9:28:58] Yes, I've read it. I've seen the name written there, but I have to say I
9 didn't know this name before. It's different from the name I was given before.

10 MS LUPING: [9:29:14] Mr President, your Honours, the witness indeed has not
11 confirmed this particular name. We have other evidence on the record to connect the
12 name of Commander Safari and his call sign, Double Seven Golf, with this name Célestin
13 Senkoko. We're guided by you. We would seek to admit this document for the truth of
14 its content. We can either do so via this witness or we could also seek to do so via
15 rebuttal, but we do think it is more expedient to do so now.

16 PRESIDING JUDGE FREMR: [9:29:44] Defence, your position?

17 MR BOURGON: We oppose admission of the document, Mr President. It's not part of
18 the Prosecution's case before. My colleague just mentioned they have already other
19 evidence that establishes the link according to the Prosecution between the name and the
20 call sign. This witness is not able to help us between this document and the call sign.
21 There's no reason why this could not have been done earlier and should not be admitted.
22 Thank you, Mr President.

23 PRESIDING JUDGE FREMR: [9:30:15] Ms Luping.

24 MS LUPING: [9:30:16] Well, two points in relation to that, sir. The Prosecution could
25 not have anticipated before the Defence's list that this witness, bearing in his mind his role,

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1 which I'm not going to restate in open session, would be called and that he would be
2 giving the testimony that he would. He was able to provide evidence in relation to
3 Commander Safari and his call sign. The other evidence or separate evidence that is
4 already on the record does link the name of this individual with this, and we certainly
5 were also previously not able to anticipate that there would be a change in an agreed fact
6 relating to the role of Rwanda. Thank you.

7 PRESIDING JUDGE FREMR: [9:30:56] Objection is sustained because especially it's not
8 possible, I believe, in the Chamber's view, to tender this evidence through this witness
9 because witness has no idea about that document. So it's not the right way how to tender
10 this document.

11 MS LUPING: [9:31:19] Thank you, Mr President. We'll move on and I'll ask my
12 colleague to remove the document.

13 Q. [9:31:24] Mr Witness, I'm going to change subjects now. And I will be asking you
14 a few questions about your testimony relating to the attack on Songolo or the operation in
15 Songolo that you participated in. And according to your testimony you went to Songolo
16 after the operation in Zumbe; is that correct?

17 A. [9:32:09] I think that was it, yes.

18 Q. [9:32:12] And you've also testified that it was commanders Kisembo, Safari and
19 Didier who were involved in this operation that you participated in; isn't that right?

20 A. [9:32:30] Ndiyo.

21 Q. [9:32:33] And you --

22 A. [9:32:33] Correct.

23 Q. [9:32:34] Apologies. You explained how the UPC forces were driven out by the
24 enemy. And I refer to transcript 252, page 107, lines 17 to 23.

25 Now, you described how in the Komanda operation Ngiti participated, who had come

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1 from Songolo. And my question first is this: Songolo was a predominantly Ngiti
2 village; isn't that right?

3 A. [9:33:26] That's correct. I -- yes, I think it is a village of the Ngiti and so was
4 against the APC.

5 THE INTERPRETER: [9:33:49] "It was mixed in with elements of the APC".
6 Correction from the Swahili booth.

7 MS LUPING: [9:33:52]

8 Q. [9:33:52] And Songolo was an important base for the Ngiti; isn't that right?

9 A. [9:34:14] I can't answer that. I don't know.

10 Q. [09:34:37] At Songolo -- well, sorry, before I move on from that. You said you can't
11 answer that. There was a purpose for your operation on Songolo, wasn't there, sir?
12 There were soldiers there as well as civilians?

13 A. [9:34:50] I said we went there because they were APC soldiers who'd taken that
14 route and there were also Ngiti there.

15 Q. [9:35:01] And in terms of the Ngiti present in Songolo, there was a mix, wasn't
16 there, soldiers and civilians?

17 A. [9:35:28] How do you mean a mix of soldiers and civilians?

18 Q. [9:35:33] There were soldiers living in Songolo; there were also civilians living in
19 Songolo.

20 A. [9:35:53] What I know is that we fought the group of soldiers that we encountered
21 there, and we also fought against the Ngiti combatants.

22 Q. [9:36:10] And this operation you described that involved Kisembo, Didier and
23 Safari, that was not the only operation the UPC had in Songolo was it? There were a
24 number of UPC operations on Songolo.

25 A. [9:36:38] I don't know. I can only speak of the operations in which I took part.

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1 Q. [9:36:46] Would I be right in saying, sir, you do not know the date of the operation
2 that you were involved in in Songolo?

3 A. [9:37:08] In general, my testimony -- or, during my testimony I have said that I
4 don't recall dates.

5 Q. [9:37:26] Now, in 2002 to 2003, Commander Germain was a UPC commander
6 based at Bogoro; isn't that right?

7 A. [9:37:50] I didn't work with him and I don't know anything about him.

8 Q. [9:38:07] Now, you explained though that you have been to Songolo yourself.
9 Isn't it correct that Songolo is not located very far from Bogoro? And I'll be more specific,
10 it's located approximately 10 to 15 kilometres away only.

11 A. [9:38:38] I don't know because the road that we took went from Bunia to
12 Nyankunde, but Bogoro is on a different route, different road, so I am not really able to
13 situate that.

14 Q. [9:39:04] Well, I'm going to show you a map now, sir, with the leave of the
15 Presiding Judge.

16 MS LUPING: Mr President, if we could have leave to -- from the Prosecution floor to
17 show a document, it's --

18 PRESIDING JUDGE FREMR: [9:39:17] All right.

19 MS LUPING: [9:39:18] -- item 60, DRC-OTP-2106-0044.

20 Q. [9:39:39] So, sir, just to explain what the document is before we zoom in to the
21 relevant information. This is a map of the district of Ituri which was created by the UN
22 office for the coordination of humanitarian affairs. And it's the district of Ituri in the
23 Democratic Republic of the Congo. I'm now going to ask my colleague to zoom in on a
24 part of Ituri. You see Lac Albert on the right. And you see Bunia to the north. And
25 I'm going to ask my colleague to put the cursor on Songolo. Can you see Songolo, sir?

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1 A. [9:40:38] Yes, I can see that there is a place which is labeled Songolo.

2 Q. [9:40:45] And you've explained that you took the route from Bunia to Songolo, so
3 can you confirm, as you took this journey from Bunia to Songolo, that this is the Songolo
4 that you had been talking about?

5 A. [9:41:10] As I said, we left Bunia. We took the road to Marabo which is towards
6 near Nyankunde and that's the route that we took.

7 Q. [9:41:32] So you went -- you can see on the map here, sir. You go from Bunia and
8 you've mentioned Nyankunde, and you have Songolo not far from Nyankunde. Can
9 you see that, sir?

10 A. [9:41:59] Yes. If you put it like that, where it says Songolo and Bogoro, you can
11 see the difference between the -- the distance between Songolo and Bogoro is similar to
12 Songolo and Nyankunde, but looking at it from the point of view of the road to
13 Nyankunde -- that's the road that we took.

14 MS LUPING: [9:42:42] Mr President, your Honours, the Prosecution would seek to
15 have this map admitted at this point.

16 PRESIDING JUDGE FREMR: [9:42:51] Defence.

17 MR BOURGON: [9:42:56] Mr President, in under normal circumstances we would
18 object, but we like maps and we're happy to see the Prosecution moving to maps and we
19 have no difficulty admitting this map. I do note, however, that the map is dated -- the
20 date on the map is 2007, and I do know that it was disclosed only last week. We've never
21 seen this map before but we have no objection. Thank you.

22 PRESIDING JUDGE FREMR: [9:43:21] We appreciate that. So this map is admitted
23 into evidence as a further Prosecution exhibit.

24 Ms Luping, please proceed.

25 MS LUPING: [9:43:31] Thank you, Mr President.

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1 Q. [9:43:33] Mr Witness, Commander Germain and Byaruhanga were involved in a
2 successful operation to attack Songolo on 31 August 2002; isn't that right?

3 A. [9:44:08] I don't know. I can only speak to you about operations that I took part
4 in. I can't talk about things that I wasn't part of or things I don't know.

5 Q. [9:44:19] So you confirm that you were not involved in the same operation in
6 Songolo as Commanders Germain and Byaruhanga?

7 A. [9:44:41] I say -- I said with Kisembo, Safari and Didier in the operation in which I
8 took part, and I was not with Germain. If I had with him, I would have said so, but I
9 didn't see him.

10 Q. [9:44:55] You've heard of the attack on Nyankunde by APC and Ngiti and Lendu
11 forces on 5 September 2002, sir? And just to clarify, the Operation Nyankunde I'm
12 talking about is one of the biggest attacks in Nyankunde. There were reportedly very
13 large numbers of civilians, both Bira and Hema, who were killed in Nyankunde at the
14 time. You presumably would have heard of this attack, sir?

15 A. [9:45:51] I cannot talk about an operation in which I did not take part. As I told
16 you, this was at the Nyankunde front and I wasn't present there so I can't tell you
17 anything about it.

18 Q. [9:46:05] I'm not talking about an operation by the UPC against Nyankunde; it's
19 the other way around. I'm talking about an operation where the APC, not the UPC, the
20 APC together with Ngiti and Lendu combatants attacked Nyankunde. And it's
21 reportedly one of the biggest attacks in Ituri, sir. There were hundreds
22 reported -- hundreds of civilians. Both Hema and Bira were reportedly killed. There
23 was large-scale pillaging, massive destruction of property. This was one of the most
24 notorious attacks in Ituri, sir. Isn't it right that you would have heard of this attack?

25 A. [9:47:09] Yes, I know that the hospitals also were destroyed. The shopping

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1 centres were all burnt. But I don't know if it's this operation that you're referring to.

2 What I'm saying is since I was not present, I really can't explain it very well. But I know
3 that we travelled through that place and I saw the -- the gravity or the level of destruction,
4 but I don't know if it's this operation that you're talking about.

5 Q. [9:47:34] Yes, it is the operation I'm talking about, sir. It is the biggest attack on
6 Nyankunde to which I'm referring. And isn't it right, sir, that not long before that attack
7 on Nyankunde, which was on 5 September 2002, UPC forces carried out a large attack on
8 Songolo on 31 August 2002; isn't that right, sir?

9 A. [9:48:14] I told you that I did not remember the dates. I also told you that we
10 went to the airport with Kisémbu, just as I told the Defence team, and it was at this point
11 that we came from the -- we went to the airport and this is when there was an ambush
12 and this is where Kisémbu fell. And this place was completely destroyed, as I could
13 observe.

14 Q. [9:48:56] And before this big attack on Nyankunde, wasn't there a big attack by
15 UPC on Songolo not long before the attack on Nyankunde?

16 A. [9:49:26] I don't know.

17 Q. [9:49:27] I'm going to change topics, sir, and I'm going to ask you about an attack
18 on Bogoro by Ngiti, Lendu and APC forces. Do you remember hearing about a big
19 attack on Bogoro, sir, that was perpetrated by the enemy on UPC and Hema civilians
20 living in Bogoro?

21 A. [9:50:14] Yes, I crossed Bogoro at some point of time. When I was going to
22 Kasenyi there was an attack but I don't remember the dates. All that you're saying, I did
23 not really participate in them. This is precisely why I can't answer your questions on the
24 attacks that took place in these roads because I wasn't there.

25 Q. [9:50:43] But did you hear of a big attack on Bogoro where a large number of

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1 civilians were killed by the enemy? Did you hear of that big attack, sir? It happened on
2 24 February 2003, so it was early 2003.

3 A. [9:51:24] I said that I can't answer the question with regards to the battles fought in
4 the roads where I wasn't present. At some point, I did go to Kasenyi and I observed the
5 devastation that was observed here in this road.

6 Q. [9:51:53] Isn't it right, sir, that before the fighting between the UPC and the UPDF
7 in Bunia, that you were informed of a massacre committed by Lendu combatants in
8 Bogoro; isn't that right, sir?

9 A. [9:52:13] No, I wasn't aware of this.

10 Q. [9:52:25] Well, I'm going to refer to paragraph 193 of your witness statement and
11 I'm going to read a passage from it. Before I do, I'm going to remind you of your
12 testimony, sir. You confirmed that the statement you signed on 7 November 2017 was
13 true and correct to the best of your knowledge. And in your witness preparation I can
14 confirm that no correction was made to this particular paragraph, which I'll now read to
15 you.

16 (Interpretation) "The question that was asked to me was during Bosco Ntaganda's
17 absence before the battle against the Ugandans, I -- if I was informed about the massacre
18 committed by the Lendu combatants in Bogoro. I heard of such an attack, but I do not
19 remember the date. It's only later on I understood the gravity of the massacre that was
20 perpetrated by the Lendu combatants. Today, I know that it was one of the most
21 notorious massacres committed during this period."

22 (Speaks English) Isn't it right, sir that you have heard of this attack on Bogoro?

23 A. [9:54:09] I think I said before, that I went to Kasenyi and on this road I realised that
24 there was a massacre that took place in this place.

25 Q. [9:54:30] And isn't it right, sir, that in around about the same period of time you

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1 must have also heard of a large UPC operation taking place in the area of Lipri, Kobu,
2 Bambu and in the surrounding neighbouring villages?

3 A. [9:55:08] I would say that I was not aware.

4 Q. [9:55:14] And just so I understand your testimony, are you saying that you're also
5 not aware of a large massacre of civilians in Kobu at that time as well?

6 A. [9:55:34] In my testimony, I was talking about the facts to which I was witness, that
7 I experienced and I heard of. I really can't answer questions related to events where I
8 wasn't there and which I hadn't seen.

9 Q. [9:56:14] Sir, even if you were not there and you did not see it, is it your testimony
10 that you had not even heard of the massacre at Kobu? And I want to remind you, sir,
11 that you are under oath.

12 A. [9:56:53] Yes, I'm aware of the fact that I'm under oath.

13 Q. [9:57:04] So I will repeat my question, sir: Is it your testimony that you have
14 never heard of the massacres in Kobu; is that right? Is that your testimony?

15 PRESIDING JUDGE FREMR: [9:57:20] Hold on, Mr Witness.

16 Mr Bourgon.

17 MR BOURGON: [9:57:23] Just for the sake of clarity, Mr President, my colleague
18 should say "who commit -- who would have committed the massacre that we're talking
19 about." Maybe that will help the witness remember or not remember, but now we're
20 talking just about a massacre. If we know who allegedly committed the massacre, maybe
21 that can help the witness.

22 PRESIDING JUDGE FREMR: [9:57:44] Ms Luping.

23 MS LUPING: [9:57:47]

24 Q. [9:57:48] Mr Witness, if it was not clear to you, I'm talking about massacre, a
25 massacre committed by UPC forces, UPC forces killing civilians in Kobu. My question is:

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1 Had you or had you not heard of this?

2 A. [9:58:15] Let me come back to what I said. You said that I was under oath, and I
3 said yes, I'm aware. This is what I -- my testimony is based on the facts that I saw and I
4 had been witness to. How can I reply to facts to which I was not a party, I haven't heard
5 of or I haven't experienced?

6 Q. [9:58:49] Now, Mr Witness, isn't it right that Bosco Ntaganda was the deputy chief
7 of staff still at this time in February 2003, early 2003? Sorry, to be more precise, the
8 deputy chief of staff in charge of operations in early 2003.

9 A. [9:59:28] If you put the date aside, I would say it was before Kisembo left the UPC.
10 It was Mr Bosco who was the deputy chief of staff.

11 Q. [9:59:46] (Redacted)

12 (Redacted)

13 MS LUPING: Mr President, if we could move into private session.

14 PRESIDING JUDGE FREMR: [9:59:58] I see the point.

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

16 (Private session at 10.00 a.m.) *(Reclassified partially in public)

17 THE COURT OFFICER: [10:00:08] We are in private session, Mr President.

18 PRESIDING JUDGE FREMR: [10:00:21] And please redact line 11 of the English
19 transcript.

20 MS LUPING: [10:00:27] My apologies, Mr President. My apologies, Mr Witness. I
21 hadn't noticed that we of course were still in open session.

22 Q. [10:00:35] (Redacted)

23 (Redacted)

24 A. [10:00:52] (Redacted)

25 (Redacted) This is a place where I haven't been to. How can I even estimate the date?

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1 And I've told you several times that I really don't remember dates. I really don't know
2 how to answer your questions.

3 Q. [10:01:19] (Redacted)

4 (Redacted)

5 A. [10:01:39] The first operation with which we went with him was this operation
6 during which it was the operation where the Salumu groups actually went before us.

7 Q. [10:01:56] Well, this operation in Mongbwalu, sir, was in November 2002, and
8 (Redacted)

9 (Redacted)

10 A. [10:02:22] (Redacted)

11 (Redacted)

12 Q. [10:02:39] Well, the operation or the attack against Bogoro to which I was referring
13 in February 2003, that was before the operation in Bunia. So you were still his
14 bodyguard at that time; isn't that right?

15 A. [10:03:07] You're talking about the Bunia attack? Which attack are you referring
16 to?

17 Q. [10:03:12] Yes, I am referring to the Lendu attack on Bogoro in February 2003,
18 (Redacted)

19 (Redacted)

20 A. [10:03:44] Right from the beginning of my testimony until now, I am saying that I
21 really have problems with remembering dates. If you're going to ask me questions with
22 respect to the places where I've been, it would be easier for me to answer, but if you're
23 going to ask me questions with dates it will just confuse me.

24 Q. [10:04:12] I'm going to rephrase my question. Isn't it right that between the time
25 of the first Mongbwalu operation and the clashes between the UPC and the UPDF in

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1 (Redacted)

2 A. [10:04:37] (Redacted)

3 Q. [10:04:54] (Redacted)

4 (Redacted)

5 (Redacted)

6 PRESIDING JUDGE FREMR: [10:05:11] Hold on, Mr Witness.

7 Mr Bourgon.

8 MR BOURGON: [10:05:13] Mr President, the witness has already said that he knows
9 nothing about this operation. So the question must be put as being the Prosecution's case.

10 The witness said he has no knowledge of this operation, so it must be put this way.

11 Thank you.

12 PRESIDING JUDGE FREMR: [10:05:28] Ms Luping.

13 MS LUPING: [10:05:29] Mr President, I'm failing to see how there's any disagreement
14 that the attack in Lipri, Kobu, Bambu occurred in February 2003 or at the very least that it
15 occurred before 6 March 2003. So I don't believe I need to rephrase it. Unless there is
16 seriously an issue that the Defence is saying that this is in contention. Or perhaps also if
17 the witness could be asked to remove his headphones.

18 PRESIDING JUDGE FREMR: [10:05:54] Mr Witness, please, could you kindly remove
19 your headphones.

20 Mr Bourgon.

21 MR BOURGON: [10:06:01] The Defence might have a position and not contest
22 something, but that's not the issue. The issue is, a question was put to the witness: Do
23 you know about an operation? He says no. Then we -- then we're said -- this operation
24 took place on this date, and he knows nothing about dates. At least we could say "we are
25 telling you that there's an operation took place." And then he will know what to answer

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1 or not to answer, but we can't put a fact to him that he says he doesn't -- he's not aware of.

2 Thank you.

3 PRESIDING JUDGE FREMR: [10:06:34] Objection is sustained. I share Mr Bourgon's
4 argumentation in this.

5 MS LUPING: [10:06:40] I will rephrase, Mr President.

6 PRESIDING JUDGE FREMR: [10:06:42] Please.

7 Mr Witness, please take your headphones back. Thank you.

8 MS LUPING: [10:06:49]

9 Q. [10:06:49] Mr Witness, I am stating the Prosecution's case that the operation in
10 Lipri, Kobu, Bambu occurred in the same time frame, in February 2003, and you've
11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted) I just want to understand your testimony, sir.

15 A. [10:07:49] You're talking of Lipri, Kobu, Bambu. These are places that I did not go
16 to. I did not participate in these operations. And this is why I'm telling you that I've
17 got a problem giving a testimony on these places. And can I also add that I also have a
18 problem remembering dates.

19 Q. [10:08:22] Sir, I'm not asking you if you participated in them or if you went to these
20 areas. My question is whether you had even heard of these operations. Are you saying
21 that you had not even heard of these operations?

22 A. [10:08:53] I think I was clear in what I said. I can provide testimony on facts that
23 I've heard, on things I've heard, but on things that I haven't heard I really cannot testify
24 anything at all.

25 PRESIDING JUDGE FREMR: [10:09:06] Allow me one additional question, Ms Luping.

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1 Does it mean, Mr Witness, that you are not interested about how your colleagues from
2 other brigades are doing, whether they won or whether they failed?

3 THE WITNESS: [10:09:44] (Interpretation) If we're talking of a place where I was
4 there, a place of my interest, that's a completely different question. But places where I
5 haven't been to, this is why I am making this distinction between testimony provided on
6 places where I've been to and on my inability to provide testimony on places that I haven't
7 been to.

8 PRESIDING JUDGE FREMR: [10:10:18] Ms Luping, I believe there is, after this
9 response, no need to deal with this kind of question because I think Chamber will itself
10 adjudicate this approach of the witness. Please proceed.

11 MS LUPING: [10:10:30] Thank you, Mr President.

12 Q. [10:10:31] And, Mr Witness, I'm going to change topics now.

13 But, Mr President, just to indicate that I will still need to remain in private session for this.

14 PRESIDING JUDGE FREMR: [10:10:39] All right.

15 MS LUPING: [10:10:40]

16 Q. [10:10:40] Mr Witness, yesterday -- that's at transcript 254, page 76, lines 10 to 12, I
17 asked you the question:

18 "When you said they were talking on the radio were Bosco Ntaganda and

19 Commander Kasangaki communicating with each other via Motorola?"

20 And you answered:

21 "Yes, they were communicating through Motorola."

22 This is in relation to the Mongbwalu and Sayo operation.

23 My question is this, sir: When you say that Bosco Ntaganda and Kasangaki were

24 communicating through the Motorola, is this something that you heard with your own

25 ears, them talking on the Motorola?

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1 A. [10:11:29] Ndiyo.

2 Q. [10:11:30] And you were close to Bosco Ntaganda at the time when he was
3 speaking on the Motorola?

4 A. [10:11:52] Yes. The volume on the Motorola was rather high and this is why I
5 heard this conversation. I could follow this conversation. So I can provide testimony
6 on this fact.

7 MS LUPING: Now, again, Mr President, for the next series of questions, all of the
8 remaining questions, I believe, will need to be asked in private session.

9 PRESIDING JUDGE FREMR: [10:12:18] All right.

10 MS LUPING: [10:12:19]

11 Q. [10:12:19] Mr Witness, now, you gave a statement, witness statement to the
12 Defence, which you confirmed you signed on 7 November 2017. Isn't it right that you
13 were met on 5 December 2014; 1 to 5 April; 22 -- sorry, I'm just looking at this, it is all out
14 of sequence. So it is 5 December 2014. Again for two days in April 2016, and then April,
15 May and October of 2017. On 1 and 5 April, 10 to 12 May, and the 17 to 18 October.
16 And you were met again on 4 to 5 and 7 November; is that right, sir?

17 A. [10:13:32] You're asking me a question with respect to dates. Yes, and these are
18 the dates when I met the representatives from the Defence team.

19 PRESIDING JUDGE FREMR: [10:13:48] Mr Witness, now you are sure that you
20 remember? It's a very compound question containing ten dates, and you still remember
21 that all those dates read out by Ms Luping are correct?

22 THE WITNESS: [10:14:16] (Interpretation) Even though I don't know the exact dates,
23 for instance, the first meeting with the Defence team was in 2014, and then in 2015, and
24 then 2016 and 2017. So these are the years when I met with the Defence teams, so I
25 remember them.

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- 1 PRESIDING JUDGE FREMR: [10:14:42] Now it's clear to me. Thank you.
- 2 Mr Bourgon, should we ask Mr Witness to take --
- 3 Mr Witness, please take off your headphones.
- 4 Mr Bourgon.
- 5 MR BOURGON: [10:14:56] Mr President, in the -- there appears to be something with
- 6 the translation. What we've heard the witness as saying in response to the question,
- 7 page 26, lines 10 to 12 in English, and page 26, lines 1 to 4 in French, is that he could not
- 8 tell the dates but that he did remember meeting with the Defence. And I think that's
- 9 been his position throughout, so he did not take a different position, Mr President.
- 10 Thank you.
- 11 PRESIDING JUDGE FREMR: [10:15:26] All right. Well noted.
- 12 You can take your headphones back.
- 13 Ms Luping, please proceed.
- 14 MS LUPING: [10:15:34] Yes, I'm also looking at the French and it says (Interpretation),
- 15 "You're asking about certain dates and years". (Speaks English) "We" -- now, I've just lost
- 16 the part, but in fact, I'm looking at the transcript and he confirmed that he did know the
- 17 dates, according to the French that I'm reading.
- 18 PRESIDING JUDGE FREMR: [10:15:56] Mr Bourgon.
- 19 MR BOURGON: [10:15:59] Can I just ask for an order to listen to the audio and we'll
- 20 see from the Swahili what actually the witness said. Thank you.
- 21 PRESIDING JUDGE FREMR: [10:16:05] All right.
- 22 MS LUPING: [10:16:09]
- 23 Q. [10:16:09] Now, Mr Witness, and I'm looking at the first page of your witness
- 24 statement, and I see that Mr Dieudonné Mbuna was one of your interpreters when you
- 25 met with the Defence; is that right?

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1 A. [10:16:35] Yes, I'm trying to recall the period during which Mbuna was my
2 interpreter when I met the members of the Defence team.

3 Q. [10:16:51] And was Mbuna Dieudonné the person who put you in contact with the
4 Defence team?

5 A. [10:17:10] Yes. Katekpa came to get me first from where I was, but the person
6 who presented me to the Defence team was indeed Mbuna.

7 Q. [10:17:30] And how many times was he in contact with you when you were a -- as
8 your role as a witness?

9 A. [10:18:04] I think it was during the first meeting, that was when Mbuna was there.

10 Q. [10:18:11] And how many times after that first meeting, sir?

11 A. [10:18:41] I don't really remember. However, I know that in 2014 during the first
12 meeting he acted as interpreter, but I don't recall how many times we met.

13 Q. [10:18:59] And he's not a qualified interpreter, is he, sir?

14 A. [10:19:19] What do you mean by he wasn't qualified?

15 PRESIDING JUDGE FREMR: [10:19:21] Ms Luping, you should probably rephrase
16 your question because, you know, how this witness could adjudicate qualification of the
17 interpreter?

18 MS LUPING: [10:19:30]

19 Q. [10:19:31] In terms of your knowledge of Dieudonné Mbuna, he's not had
20 experience to the best of your knowledge as an interpreter before, has he?

21 A. [10:19:53] I can't know that. Initially, he started to provide the interpretation.
22 Later there were other interpreters. But he didn't go right to the end of the interpreting.
23 He was replaced by somebody else, but I have no means of knowing whether he was
24 qualified or not.

25 Q. [10:20:18] And in that meeting with Mbuna Dieudonné when he was the

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1 interpreter, do you remember how long the meeting was? It was a very long meeting or
2 not with the Defence?

3 A. [10:20:47] I don't remember.

4 Q. [10:20:47] And do you remember talking about your days with the UPC at the time
5 he was the interpreter?

6 A. [10:21:18] What, for example?

7 Q. [10:21:19] Anything about your life with the UPC. Was he acting as an interpreter
8 when you spoke to the Defence about anything about your experiences with the UPC?

9 A. [10:21:58] Somebody came to get me from where I was and Mbuna put me into
10 contact with the Defence team and they explained to me that the Ntaganda trial was going
11 to start and that they needed witnesses to testify about what they had experienced and
12 what they knew.

13 Q. [10:22:36] And when Dieudonné Mbuna was with the UPC he was known as Delta
14 Charlie, wasn't he?

15 A. [10:22:58] I don't recall his call sign. It was not familiar to me.

16 Q. [10:23:05] Well, sir, when you gave your witness statement and you talked about
17 going to Rwampara and you could hear a voice, you stated that it might be your voice
18 that you hear questioning Delta Charlie but you were not certain. So in your statement,
19 sir, you referred to "Delta Charlie" and my question is that is Dieudonné Mbuna; isn't that
20 right?

21 A. [10:23:49] No, you interpreted my statement. I was asked whether I had used a
22 Motorola at the camp, and then I was asked about the voice. And the voice was similar
23 to his and I said even if it seems to be the same voice, I don't recall having used Motorolas
24 at that time. Those were the answers that I gave.

25 Q. [10:24:19] Yes, and my question is about Delta Charlie, sir. Isn't it right that the

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1 Delta Charlie to whom you referred in your statement is Dieudonné Mbuna?

2 A. [10:24:39] I know nothing of this. When I was asked the question about Delta
3 Charlie and the voice, I was asked whether I'd used the Motorola, I said no. I said I did
4 not use the Motorola and I was asked about this, but the voice -- I was asked "the voice
5 seems to be similar to yours". I said it was not my voice and that I didn't use the
6 Motorola.

7 Q. [10:25:18] Well, then according to you, sir, who is Delta Charlie that you referred to
8 in your statement?

9 A. [10:25:41] I'll come back to this. I did not mention the call sign Delta Charlie. A
10 question was asked to me and -- about that and I answered that I didn't remember having
11 spoken over Motorola and I didn't recognise it having been me speaking over the
12 Motorola because I didn't usually use Motorolas.

13 Q. [10:26:21] Isn't it right that Dieudonné Mbuna was the -- was a senior UPC
14 politician?

15 A. [10:26:43] I cannot give any opinion on that subject because I don't know. He was
16 not part of the military department, so I know nothing about that and I can say nothing on
17 this subject.

18 Q. [10:26:59] Do you know what the role of Thomas Lubanga was within the UPC?
19 Sir, he was the president of the UPC, isn't that right?

20 A. [10:27:19] Yes. I knew that he was the founding president of the UPC.

21 Q. [10:27:24] And the directeur cabinet du président of the UPC was Dieudonné
22 Mbuna; isn't that right, sir?

23 A. [10:27:41] As I have told you I was not familiar with their organisation because I
24 didn't know the internal workings of the political bureau. All I know is related to the
25 army in which I was serving. As for the cabinet, I have no knowledge of that.

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1 Q. [10:28:04] (Redacted)

2 have accompanied him to meetings with members of the UPC executive; isn't that right,
3 sir?

4 A. [10:28:31] Even if it did happen that I escorted him, that doesn't necessarily mean
5 that we went into the meeting room itself. We remained outside and were there to
6 ensure their security.

7 MS LUPING: [10:28:50] Mr President, with your leave, the Prosecution would seek
8 authorisation to show a document from the floor at item 133, DRC-OTP-0090-0063.

9 PRESIDING JUDGE FREMR: [10:29:06] Defence.

10 MR BOURGON: [10:29:10]

11 Mr Witness, please take off your headphones.

12 Mr President, this document is not admitted in evidence. It's a document that has been
13 in the possession of the Prosecution for a very long time. It is a specifically political
14 document that comes from the presidency that is signed by the individual which my
15 colleague is referring to in her cross-examination. The witness had already said that he
16 has no knowledge whatsoever of this individual.

17 In the past, Mr President, it has been the case that before a document could be used with a
18 witness, it would be necessary to establish a material connection or some sort of
19 knowledge, not only of the document, but topic. Here we have neither. Thank you.

20 PRESIDING JUDGE FREMR: [10:30:19] Ms Luping, it was just my concern that was
21 why I asked Prosecution -- Defence because Mr Witness said clearly he has no idea of the
22 political structure, so if you want now to confront him with some details of that structure,
23 what is sense of that?

24 MS LUPING: [10:30:35] Mr President, it will be the Prosecution's case that it is
25 completely implausible and incredible that this witness has not heard of such an official in

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1 his role. This is not something that we would have had to use in the past because this
2 issue hasn't arisen where this individual acted as an interpreter. The Prosecution is
3 simply going to show -- my intentions, Mr President, was to show this witness this
4 document, which has been signed by the individual in question, somebody who acted as
5 an interpreter in his interview, showing his function within the UPC. And it will be the
6 Prosecution's submission, certainly by the closing brief, to indicate that he had to have
7 known who this individual was. And I will be putting that to him as well subsequently.
8 But I would first like to give an opportunity for the witness to see this letter so that he can
9 see that when the Prosecution is putting its case to him that this individual had this role,
10 that we have a document confirming it, sir.

11 PRESIDING JUDGE FREMR: [10:31:30] Not permitted because I think I was clear. He
12 said "I was not present to those negotiations, I don't know function of this guy", so if he
13 doesn't -- I'm not saying that his testimony is credible, but to confront him with such a
14 document has no relevance. There is no chance for any progress in his testimony.
15 Please proceed.

16 MS LUPING: [10:31:55] I think he needs to -- if the witness could please be asked to
17 put his headphones back on.

18 Q. [10:32:10] Mr Witness, Jean-Claude Ngadjole was also one of your interpreters
19 when you met the Defence; isn't that right?

20 A. [10:32:36] I can say that I was called by Jean-Claude Ngadjole and I was taken to
21 the place where I was to meet with the Defence team.

22 Q. [10:32:52] And he also acted as an interpreter for you; isn't that right?

23 A. [10:33:17] If I recall correctly, he only acted as an interpreter on one occasion.
24 Later I worked with other interpreters.

25 Q. [10:33:29] And on that occasion he acted as an interpreter, did you discuss issues

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1 relating to your experiences with the UPC at that time?

2 A. [10:34:06] This is what I have to say: When I met him for the first time, he put me
3 in contact with this group and he explained how the meeting would run, what would
4 happen in the meeting.

5 Q. [10:34:27] And other than that, did he interpret any substantive issues about your
6 life in the UPC?

7 A. [10:35:03] I'm trying to recall what happened. He collected me from the hotel and
8 took me to the location of the group, among which there were also interpreters, and then
9 he left.

10 Q. [10:35:29] And how many times did you meet with Jean-Claude Ngadjole when
11 you were contacted as a Defence witness?

12 A. [10:36:13] I don't remember, but he tended to come and see me or to call me, but
13 how many times I met him, that's a difficult thing for me. I didn't accord this any great
14 importance and so I don't recall.

15 Q. [10:36:40] And Jean-Claude Ngadjole, he served in the military, didn't he?

16 A. [10:37:00] No, he never carried out any military service.

17 Q. [10:37:03] And how do you know that, sir?

18 A. [10:37:21] One of his brothers, I don't know whether the younger brother or an
19 older brother, he was a lieutenant colonel.

20 Q. [10:37:33] And what is the name of that brother who was the lieutenant colonel?

21 A. [10:37:50] He was known by the name Ndjango.

22 Q. [10:37:53] And he was with the UPC; is that right?

23 A. [10:38:04] Yes, Jean-Claude's brother Ndjango was a UPC soldier.

24 Q. [10:38:15] And do you recall what role Jean-Claude Ngadjole himself had in
25 connection with the UPC?

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1 A. [10:38:32] I don't know.

2 Q. [10:38:34] Isn't it right that Jean-Claude Ngadjole was the former secretary of the
3 Lopa peace committee?

4 A. [10:38:55] That is something else I don't know about. I can't give any opinion on
5 this subject.

6 MS LUPING: [10:39:00] Mr President, with your leave, I would seek to show an image,
7 a photograph, to the witness. It's item 100 on the Prosecution's list. It is
8 DRC-OTP-2105-8313. And the Prosecution is ready to show it with your leave.

9 PRESIDING JUDGE FREMR: [10:39:21] All right. Mr Bourgon.

10 MR BOURGON: [10:39:35] No objection, Mr President.

11 PRESIDING JUDGE FREMR: [10:39:38] It was my understanding from your gesture.
12 Thank you.

13 MS LUPING: [10:39:43] Just to make it clear -- sorry, I think the document, it might be
14 better if it is shown confidentially and not publicly.

15 PRESIDING JUDGE FREMR: [10:39:52] All right. Please court officer.

16 THE COURT OFFICER: [10:39:55] We are in private session.

17 PRESIDING JUDGE FREMR: [10:39:57] We are in private anyway.

18 Mr Bourgon.

19 MR BOURGON: [10:39:58] If the witness could remove his earphones for one second,
20 please.

21 PRESIDING JUDGE FREMR: [10:40:02] Mr Witness, please take off your headphones.
22 Thank you.

23 Please proceed, Mr Bourgon.

24 MR BOURGON: [10:40:07] I just want to note for the record, of course, that the
25 individual displayed on this document is one of the Defence resource persons, that he has

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1 been employed and he is under an official contract. There was even an incident where
2 he lost some documents in which the Prosecution was closely interested. But if we are
3 going to deal with Defence resource persons in this way, are there any allegations of
4 wrongdoing whatsoever? It's very different when we were dealing with the so-called
5 intermediaries who had prepared witness, who had collected witness, who had briefed
6 witness, and we had evidence from other trials. But here we're talking about a member
7 of the Defence team, so I'd just like the questioning to remain to talking about a member
8 of the Defence team, unless we have allegations that we're not aware of and would like to
9 know. Thank you.

10 PRESIDING JUDGE FREMR: [10:41:05] Ms Luping.

11 MS LUPING: [10:41:06] Mr President, your Honours, I think the Prosecution's been
12 consistent with also other Defence witnesses, and there have been no objections from
13 Defence counsel when we have sought to do similarly, put our case or put our
14 propositions to the witness as to whether or not this individual and other individuals
15 working with the Defence may indeed have even told -- gone to the extent of telling them
16 what to say when they came to testify. The --

17 PRESIDING JUDGE FREMR: [10:41:36] Such inquiry is legitimate and then the
18 Chamber will decide on a case-by-case basis on single questions, whether they should be
19 permitted or not.

20 MS LUPING: [10:41:45] Thank you, Mr President.

21 PRESIDING JUDGE FREMR: [10:41:46] Mr Witness, take your headphones back.
22 Ms Luping, please proceed.

23 MS LUPING: [10:41:57] Now, Mr Witness.

24 Q. [10:41:59] Now, Mr Witness, we have a name here, we have a person, Jean-Claude
25 Ngadjole. Can you confirm that this is the Defence resource person that you have met

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1 with Jean-Claude Ngadjole?

2 A. [10:42:16] Ndiyo.

3 Q. [10:42:17] And the clothing that he's wearing -- sorry, before I go on to that, we
4 also have a date on this document. I should explain it dates from this year, it is 22
5 August 2017, and this is taken from Mr Ngadjole's Facebook page.

6 And now I'm going to ask you some questions about the clothing that he is wearing, sir.
7 You can see that written on it is "Union des patriotes congolais" and "UPC". Isn't it right,
8 sir, that this is clothing that would be used by supporters of the UPC?

9 A. [10:43:21] Firstly, I would say, even if I was a soldier, I had -- even as a soldier I
10 had this clothing. Lots of people wore this. So I can't answer your question because
11 people bought this, whether they were military or civilians.

12 Q. [10:43:46] And whether people were military or civilians, isn't it right that these are
13 supporters of the UPC movement?

14 A. [10:44:07] No. It is clothing that was on sale probably. Anybody could buy it.
15 As a soldier, I bought it and wore it because I wanted to. Whether one was a
16 sympathiser or not one could wear this attire.

17 MS LUPING: [10:44:39] And before I seek to have this admitted, Mr President, I have
18 another photograph, another two photographs, I would like to quickly show the witness
19 with your leave. It is item 143, DRC-OTP-0128-0019.

20 PRESIDING JUDGE FREMR: [10:44:56] In the meantime, Ms Luping, we approached
21 the time for the normal, regular break. How much time you guess you will need to
22 complete your cross?

23 MS LUPING: [10:45:07] Could I please ask for how much time I have remaining?

24 PRESIDING JUDGE FREMR: [10:45:11] No, I'm asking you. I would rather hear from
25 you because then you will see, yeah, I will need all that time, so it is really necessary to

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1 use all that time.

2 MS LUPING: [10:45:22] I have approximately 25 to 30 minutes remaining,

3 Mr President.

4 PRESIDING JUDGE FREMR: [10:45:25] But you still have 20 minutes remaining.

5 MS LUPING: [10:45:28] I have 20 minutes remaining.

6 PRESIDING JUDGE FREMR: [10:45:31] So you --

7 MS LUPING: [10:45:32] I will need all the time.

8 PRESIDING JUDGE FREMR: [10:45:35] All right. Please proceed.

9 MS LUPING: [10:45:36] And just to understand, Mr President, in terms of the timing
10 are we supposed to finish now or is it 11.15?

11 PRESIDING JUDGE FREMR: Okay. Give me a second.

12 (Trial Chamber confers)

13 PRESIDING JUDGE FREMR: [10:46:01] So we will proceed and we will then hopefully
14 also go to redirect if any during those last ten minutes of two-hour session.

15 Mr Bourgon.

16 MR BOURGON: [10:46:07] Mr President, my colleague from the Prosecution did use a
17 number of documents that had never been used or admitted before. I would seek for
18 re-direct 25 minutes, Mr President, just to inform the Chamber, and I can explain in detail
19 exactly what issues I want to go into.

20 PRESIDING JUDGE FREMR: [10:46:23] No need. We will then deliberate on that.

21 Ms Luping.

22 MS LUPING: Thank you, Mr President.

23 So the next document, DRC-OTP-0128-0019. And these -- this document -- we are in
24 private session.

25 PRESIDING JUDGE FREMR: [10:47:09] Hold on, Ms Luping. We have some logistic,

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1 technical issue which we have to resolve first. In the meantime, Mr Bourgon.

2 MR BOURGON: [10:47:30] Mr President, Prosecution is seeking to use a photograph
3 which was not admitted in evidence and not used before. I'd just like to know what is
4 the reason for using this photograph. Is there any connection? What's the purpose? If
5 there's a purpose, we won't object, but right now I cannot see from the people in this
6 photograph what purpose that could be.

7 MS LUPING: [10:47:53] Mr President, if the witness could remove his headphones.

8 PRESIDING JUDGE FREMR: [10:47:59] Mr Witness, please.

9 MS LUPING: [10:48:05] These are individuals, Mr President, from the military
10 movement. And I'll be showing two photographs. And these are two well-known
11 individuals from that movement. I'm trying to be clear because it's not clear to me how
12 much English or not the witness does understand.

13 PRESIDING JUDGE FREMR: [10:48:20] Then all right. Mr Witness, take your
14 headphones back.

15 MS LUPING: [10:48:31]

16 Q. [10:48:31] Now, Mr Witness, you see some clothing that is similar to that worn by
17 Jean-Claude Ngadjole; isn't that right?

18 A. [10:48:50] Yes. "UPC" is written on their clothing.

19 Q. [10:48:55] Am I right in saying that the individual to the left is Floribert Kisembo
20 and the individual to the right is an individual known as Rafiki?

21 A. [10:49:16] Yes.

22 Q. [10:49:18] I'd now like to show a next document, item 142. It's
23 DRC-OTP-0094-0057.

24 PRESIDING JUDGE FREMR: [10:50:07] I was now told there is some technical issue
25 which forces us to break at 11 o'clock, so even though I am upset about that a bit because

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1 this complicates all things, but we will have to break at 11.

2 MS LUPING: [10:50:23]

3 Q. [10:50:24] So, Mr Witness, can you see the photograph of the person in front of
4 you?

5 A. [10:50:33] Ndiyo.

6 Q. [10:50:34] Am I right in saying that that is Thomas Lubanga, the president of the
7 UPC?

8 A. [10:50:39] Ndiyo.

9 Q. [10:50:39] And he's also wearing clothing that is similar to that worn by Mr
10 Jean-Claude Ngadjole with "UPC" written on it?

11 THE INTERPRETER: [10:51:02] Can Counsel Luping wait, please. Even if it is a mere
12 answer, it has to be recorded so if she could wait that would be nice.

13 MS LUPING: [10:51:16] My apologies to the interpreters.

14 Q. [10:51:32] I'm not clear if the -- if the witness has given an answer. No.

15 So, Mr Witness, I'll repeat my question. Am I right in saying that this is the president of
16 the UPC, Thomas Lubanga, wearing similar clothing to that worn by Jean-Claude
17 Ngadjole?

18 A. [10:52:02] Yes, I can see in the photo that it is Thomas Lubanga.

19 Q. [10:52:07] And he is wearing similar clothing to that worn by Jean-Claude
20 Ngadjole.

21 A. [10:52:25] Yes.

22 MS LUPING: [10:52:26] Mr President, your Honours, with your leave I would seek to
23 have admitted the last three photographs I have shown to the witness.

24 PRESIDING JUDGE FREMR: [10:52:33] Defence, any objection?

25 MR BOURGON: [10:52:42] We oppose the admission of these documents in evidence,

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1 Mr President. They have no probative value whatsoever. I don't know where they fit in
2 the Prosecution's case but we don't know. It has not been mentioned why the
3 Prosecution did not elect to use these documents or admit these documents during the
4 presentation of its case, and we don't know how the testimony of this witness recognising
5 people wearing a certain dress advances this case to any degree. For all these reasons we
6 oppose this admission of this new evidence at this stage. Thank you, Mr President.

7 PRESIDING JUDGE FREMR: [10:53:17] Objection is overruled.

8 Those three photographs are admitted into evidence as a further Prosecution exhibit.
9 And brief reasoning, I think the reason or purpose of this is clear from the previous
10 questions put by Ms Luping. I am not saying that those documents will have extremely
11 high relevance, but at the same time there is no harm, no prejudice, to the Defence if we
12 admit those pictures.

13 Ms Luping, please proceed.

14 MS LUPING: [10:53:52] Your Honours, I'll ask my colleague to remove the photo from
15 the screen.

16 Q. [10:53:55] Now, Mr Witness, isn't it correct that Jean-Claude Ngadjole still supports
17 the UPC even still today?

18 A. [10:54:23] I don't know. You pulled out a photo with someone wearing an attire
19 and it was Thomas Lubanga, but even when I was a soldier, civilians would actually wear
20 such attire. I knew Ngadjole, he was the commander. I cannot say anything more. It's
21 really hard for me to speak on facts that I don't know.

22 PRESIDING JUDGE FREMR: [10:54:59] Mr Bourgon, could we -- should we ask
23 Mr Witness. Mr Witness, Mr Witness, again please. Thank you.

24 Mr Bourgon.

25 MR BOURGON: [10:55:07] Quick verification. We haven't heard the word

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1 "commander" being mentioned at all in Swahili. Thank you.

2 MS LUPING: [10:55:13] I would just note, Mr President, that I think that there has been
3 some misinterpretation. In the French there's is a reference to "il était le frère du
4 commandant Ndjango". So I think that is where there's some confusion. There was a
5 reference to a commander, but it relates to Mr Ngadjole's brother.

6 PRESIDING JUDGE FREMR: [10:55:29] So I am just ordering the verification of this
7 part of transcript.

8 MS LUPING: [10:55:35]

9 Q. [10:55:35] Now, Mr Witness, did you watch Bosco Ntaganda testify before you
10 came here as a witness today?

11 A. [10:55:53] No. Where could I follow that?

12 Q. [10:55:57] Did anybody, did anybody tell you about the content of Mr Ntaganda's
13 testimony, what he said when he testified?

14 A. [10:56:19] No. Who would have told me?

15 Q. [10:56:21] Did Dieudonné Mbuna tell you what to say when you came here to
16 testify on behalf of Mr Ntaganda?

17 A. [10:56:40] No. How could he tell me what to say?

18 Q. [10:56:43] And did Mr Jean-Claude Ngadjole tell you anything about what you
19 should say when you came to testify on behalf of Mr Ntaganda?

20 A. [10:57:01] No. He did not tell me what I should say in my testimony. Ever since
21 I've been here I'm telling you what I know and what I've seen with my own eyes.

22 Q. [10:57:16] And did anybody tell you how you should testify on behalf of
23 Mr Ntaganda, tell you what you had to say?

24 A. [10:57:36] No, not at all.

25 Q. [10:57:43] Well, the Prosecution's case is, sir, that you have been told what to say

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1 when you came to testify. In particular that you have been told how to respond in
2 relation to -- including in relation to individuals (Redacted)

3 That's correct, isn't it, sir, you've been told what to say about these people?

4 A. [10:58:21] I don't know. It's now that I'm learning of this. I don't know why
5 these two names have been mentioned. I don't know why you're mentioning these two
6 names.

7 PRESIDING JUDGE FREMR: [10:58:34] Mr Bourgon, sorry for not reacting because I
8 just read important message from court officer. Please.

9 MR BOURGON: [10:58:44] If the witness can remove his --

10 PRESIDING JUDGE FREMR: [10:58:46] I think I can imagine what will be your
11 objection. Asked and answered or?

12 MR BOURGON: [10:58:51] Not exactly, Mr President, there is --

13 PRESIDING JUDGE FREMR: [10:58:53] Okay, court officer -- Mr Witness, take off your
14 headphones.

15 MR BOURGON: [10:59:04] Mr President, what is the good-faith basis of the
16 Prosecution in making such allegations at this stage that the witness would have been told
17 what to say on these three issues? This is a serious allegation. If the Prosecution has
18 any evidence of this or any material of this, or -- then they should come forward with this
19 material. But just to come to the witness and say -- they can suggest to him that he was
20 influenced, but to say he was told what to say on three specific issues, we need to know
21 what is the substance. Thank you Mr President.

22 PRESIDING JUDGE FREMR: [10:59:42] Ms Luping.

23 MS LUPING: [10:59:43] Mr President, two points in response to that. I have clearly
24 indicated -- it is the Prosecution's case, so I have made my suggestion. And it is the
25 Prosecution's case. As for the good-faith basis, Mr President, your Honours, the

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1 Prosecution has also included -- or two points in relation to the first individual. The
2 Prosecution included in a filing relating to Rule 68(3) excerpts from the detention centre
3 call records where there was some indication of potential coaching and instructions being
4 given to Mr Mbuna Dieudonné. As for Jean-Claude Ngadjole, we also have indicated or
5 elicited from the testimony his links -- both of these gentleman have links to the UPC, sir.
6 And it is the Prosecution's right, I would submit, to explore these issues, and in fairness to
7 the witness to put its case to the witness. You can see these are certainly submissions
8 we'll be making in its closing brief.

9 PRESIDING JUDGE FREMR: [11:00:42] We will break now. Mr Bourgon -- I think I
10 have heard enough. We have some time pressure, sorry. But anyway, I have to admit
11 that also I have some problem with this kind of questioning because first of all Mr Witness
12 said clearly in previous answer that he was not -- so your question can only collaborate
13 your previous question. And the second issue, really, you put as your case very, very
14 serious allegations. I think you got at the edge of what we can permit or not. So please
15 be very, very careful about that in future.

16 Now we have to break. At the moment, court officer, please, how much time remains till
17 the end of allotted time for cross?

18 THE COURT OFFICER: [11:01:24] Eight minutes, Mr President.

19 PRESIDING JUDGE FREMR: [11:01:25] Eight minutes. Give me a second. I will
20 consult my colleagues how we will proceed further.

21 (Trial Chamber confers)

22 PRESIDING JUDGE FREMR: [11:04:12] So after consultation with court officer, we will
23 shorten, which we were told is possible, technical, and both as concerns rights of the
24 interpreters. We will shorten this break, and we will start the last session at quarter past
25 11, starting with the rest of the -- Ms Luping cross and then we will decide how much

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- 1 time we will give to the Defence to complete their re-direct.
- 2 THE COURT USHER: [11:04:46] All rise.
- 3 (Recess taken at 11.04 a.m.)
- 4 (Upon resuming in open session at 11.17 a.m.)
- 5 THE COURT USHER: [11:17:55] All rise.
- 6 Please be seated.
- 7 PRESIDING JUDGE FREMR: [11:17:58] We will now proceed with the remainder of
- 8 cross-examination conducted by Prosecution, by Ms Luping.
- 9 Ms Luping, you have still 8 minutes to complete.
- 10 MS LUPING: [11:18:02] Thank you, Mr President. Could I ask if we could please move
- 11 into private session with your leave.
- 12 PRESIDING JUDGE FREMR: [11:18:08] For sure.
- 13 Court officer, let's move into private session.
- 14 Sorry, I see now Mr Suprun changing composition, I guess.
- 15 MR SUPRUN: [11:18:14] (Interpretation) Yes. Anne Grabowski has left the
- 16 courtroom.
- 17 PRESIDING JUDGE FREMR: [11:18:23] Thank you very much, Mr Suprun.
- 18 (Private session at 11.18 a.m.) *(Reclassified partially in public)
- 19 THE COURT OFFICER: [11:18:34] We're in private session.
- 20 PRESIDING JUDGE FREMR: [11:18:36] Thank you, court officer.
- 21 Ms Luping, please proceed.
- 22 MS LUPING: [11:18:39] Thank you, Mr President.
- 23 Q. [11:18:41] Now, Mr Witness, you were close to Bosco Ntaganda; isn't that right?
- 24 A. [11:19:03] What do you mean?
- 25 Q. [11:19:08] You think of him like a brother?

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1 A. [11:19:13] When we were working together, I considered him to be my boss. That's
2 all.

3 Q. [11:19:41] In your statement, sir, paragraph 259, and when you are talking about
4 Bosco Ntaganda, you stated, and I quote: (Interpretation)
5 "For me, he was an elder brother".

6 (Speaks English) And that's right, isn't it, sir, for you he's like an elder brother?

7 A. [11:20:02] I don't know why are you asking me this question. But in the framework
8 of my duties, I considered him to be my boss, my leader.

9 Q. [11:20:33] Are you disagreeing now, sir, with the comment that you made in your
10 statement that you considered him to be like an elder brother? Is that what you are
11 saying now, sir?

12 A. [11:20:44] Now, on a personal level I can say that he is my -- I considered him to be
13 my elder brother, not in a professional capacity.

14 Q. [11:21:15] (Redacted)

15 (Redacted)

16 (Redacted)

17 A. [11:21:27] (Redacted)

18 Q. [11:21:43] (Redacted)

19 (Redacted)

20 A. [11:21:52] (Redacted)

21 (Redacted)

22 (Redacted)

23 Q. [11:22:40] Now, when Bosco -- Bosco Ntaganda, he married a Hema-Gegere called
24 Amani Dhego; is that correct, sir?

25 A. [11:23:03] Yes.

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1 Q. [11:23:05] Sorry. And her father is called Dhego Nganga Perez; is that right?

2 A. [11:23:12] The name of this lady, Dhego Nganga, and the other name that you
3 quoted, you mentioned, I do not know those names.

4 Q. [11:23:36] Well, you've confirmed Amani Dhego was Bosco Ntaganda's wife. I'm
5 going to state it for the record her father, I'm talking about her father now, not alternative
6 names for Amani, her father, Bosco Ntaganda's father-in-law is called Dhego Nganga
7 Perez, that's N-G-A-N-G-A P-E-R-E-Z.

8 A. [11:24:15] I'm saying that I do not know the third name. I said that the name of his
9 father was Dhego Nganga. I don't know the third name.

10 Q. [11:24:30] (Redacted)

11 (Redacted)

12 A. [11:24:43] (Redacted)

13 Q. [11:25:05] (Redacted)

14 A. [11:25:08] (Redacted)

15 (Redacted)

16 Q. [11:25:43] (Redacted)

17 (Redacted)

18 (Redacted)

19 A. [11:26:00] (Redacted)

20 MS LUPING: [11:26:18] (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 PRESIDING JUDGE FREMR: [11:26:33] Two minutes maximum, Ms Luping.

25 MS LUPING: [11:26:36] All right. It is item 120, DRC-OTP-0017-0361.

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- 1 Q. [11:26:43] Sir, whilst my colleague is getting this to show to you, I would explain
2 that this is a UN document. It's a report of the military officers, and it is a report dated
3 15 December 2003. It's referring to an operation, it's referring to an arrest operation.
4 And I'm going to read to you a specific passage from this report.
5 PRESIDING JUDGE FREMR: [11:27:12] Mr Bourgon.
6 MR BOURGON: [11:27:14] Yes, I'd like to have the number of the document on the
7 Prosecution's list because it's difficult to find. There is 150 documents.
8 MS LUPING: [11:27:20] I've already given it. It's actually item 120.
9 PRESIDING JUDGE FREMR: [11:27:24] 120. Please proceed, Ms Luping.
10 MS LUPING: [11:27:35] I believe we're still in private session and indeed this document
11 is confidential.
12 PRESIDING JUDGE FREMR: [11:27:39] Yes, I can confirm we are in private session.
13 MS LUPING: [11:27:53] We're just having some problems in accessing the document.
14 I'd like just simply to read a passage, Mr President, in the interests of time.
15 PRESIDING JUDGE FREMR: [11:28:00] Yes, indeed, in the interests of time, all right.
16 MS LUPING: [11:28:02] Yes. During the initial investigation -- sorry. Just to give the
17 witness more context, quote, (Redacted)
18 (Redacted)
19 (Redacted)
20 (Redacted)
21 THE INTERPRETER: [11:28:29] Could counsel slow down, please.
22 PRESIDING JUDGE FREMR: [11:28:31] You are too fast. You are too fast.
23 MS LUPING: [11:28:32] Sorry.
24 Q. -- (Redacted)
25 I'm now going to read from a different part of this report about that operation.

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 A. [11:29:53] (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 Q. [11:30:51] (Redacted)

19 (Redacted)

20 (Redacted)

21 A. [11:31:22] (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 because of the memory of what happened between us that I agreed to come. I don't

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1 know whether you wrote it down yesterday, but I said that I thank God because the
2 conflict between the Hema and the Lendu has come to an end. Now we live together.
3 We visit each other. There are no problems anymore. And that is why I agreed to come
4 and testify here.

5 MS LUPING: [11:32:38] Mr President, your Honours, I have no further questions.

6 PRESIDING JUDGE FREMR: [11:32:42] All right. Now, Mr Bourgon, the Chamber
7 deliberated in the meantime how much time I think not Defence deserves, but how much
8 time cross-examination deserves for redirect. In our view, 20 minutes should be
9 absolutely fine, because we didn't find any surprising information coming during the
10 cross, any fundamental changes of testimony given through or during direct, so that is
11 why we are giving you 20 minutes.

12 MR BOURGON: [11:33:26] Thank you, Mr President. If I can just get the --

13 PRESIDING JUDGE FREMR: [11:33:33] I know what you mean, this support thing.

14 MR BOURGON: [11:33:39] I don't know what you call this.

15 Mr President, in the meantime I note that the last document --

16 PRESIDING JUDGE FREMR: [11:33:46] Court usher, please assist.

17 MR BOURGON: [11:33:49] The last document, Mr President, used by the Prosecution
18 was number 152 on its list and not document 120. And this document was never
19 admitted and never used before, and it has been in the possession of the Prosecution for a
20 very long time.

21 PRESIDING JUDGE FREMR: [11:34:08] Well noted, Mr Bourgon. Mr Bourgon, please
22 proceed. We are in private session. Do you want to remain in private?

23 MR BOURGON: [11:34:50] (Interpretation) Yes, your Honour, if I may.

24 PRESIDING JUDGE FREMR: [11:35:00] All right then.

25 QUESTIONED BY MR BOURGON: (Interpretation)

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1 Q. [11:35:03] Good morning, Mr Witness.

2 A. [11:35:05] I am well.

3 Q. [11:35:08] We have almost finished, but I have a further 20 minutes to ask you some
4 further questions following questions from the Prosecution.

5 I would like to start with a paragraph from your statement which was used by the
6 Prosecution. It deals with the events of Rwampara. I would like if possible to have on
7 the screen DRC-D18-0001-6291. And I would like to have, well, I would like to have the
8 paragraph 168 and the paragraph used by my colleague.

9 The paragraph from your declaration, Mr Witness, my colleague read part of it and I
10 would like to read you the whole paragraph and ask you three questions. You will see
11 the document on your screen. We are on page 33 of your statement. So I would like to
12 take you back to Rwampara. And this is what was read from paragraph 168. Please
13 listen carefully, Mr Witness.

14 "The question was put to me regarding the extract from minutes 29.03 to 30.58 and to
15 know whether I was able to give an opinion on the age of recruits. It is not possible for
16 me to give a precise assessment of the age of the recruits who appear in this video.

17 Furthermore, and I do not know at what stage of their training these recruits are or even
18 whether some of them have started their training in Rwampara at this point.

19 It appears that some do seem to be small and it is clear that they are not 18 years old."

20 My colleague stopped there.

21 So my first question is: Do you confirm the content of this paragraph?

22 A. [11:37:44] Yes.

23 Q. [11:37:51] The line not read by my colleague is the following: "So I said that some
24 seem small and it is clear that they are not 18 years old".

25 And then you add, "I can say without hesitation that these young people would not have

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1 been accepted to undertake training in Mandro".

2 Do you confirm that?

3 A. [11:38:23] I can recall that quite well.

4 Q. [11:38:37] So I would like to show you now the two photos shown by my colleague
5 from this extract.

6 Your Honour, if I may, I would like to have the authorisation to have these images on the
7 screen.

8 PRESIDING JUDGE FREMR: [11:38:55] Approved.

9 MR BOURGON: [11:38:57] (Interpretation) Thank you, your Honour.

10 Q. [11:39:00] So, Mr Witness, I'm going to show you a photo which was at 2907. You
11 will see this on the screen in front of you.

12 THE COURT OFFICER: [11:39:18] Could we please have an ERN number for the record?

13 MR BOURGON: [11:39:20] (Interpretation) I'm sorry, DRC-D18-0001-0463, and that
14 was at 29.17.

15 Q. [11:39:40] You see this now. You will recall having seen this photo yesterday?

16 A. [11:39:50] Yes.

17 Q. [11:39:54] The two smallest people here on the photo, so my question is as follows:

18 When you were in Mandro, did you see any people who were similar to these two people
19 on the photo carrying out military training or undergoing military training in Mandro?

20 A. [11:40:20] For the questions you asked me yesterday, I tried to give an explanation.
21 I said that the photos we were shown from Ndromo, those were the people with whom I
22 could have had training in Mandro. But I was not with people of this size in Mandro.

23 Q. [11:40:51] I had the interpreter to interrupt you, but I was right to let you go on.

24 And now from the same document, now from 29.44, do you recall having seen this photo
25 yesterday?

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1 A. [11:41:11] Yes.

2 Q. [11:41:14] The young girl in the middle with a T-shirt or wearing something green,
3 during your training in Mandro, did you see any young girls like that undergoing military
4 training?

5 A. [11:41:35] No, I never saw any like that.

6 Q. [11:41:45] I now turn to the final line of the paragraph which you mentioned in your
7 statement. So I come back to your statement, and the final sentence I previously read
8 was that you can say without hesitation that these young people would not have been
9 accepted into the training at Mandro.

10 And then you continue, "However, when I look at the recruits who have completed their
11 training and who are in camp Ndromo from minute 52.12 to 52.21, they are similar to the
12 recruits with whom I underwent training in Mandro and seemed to be aged over 18 or in
13 any case not under 16".

14 Do you confirm that, Mr Witness?

15 A. [11:42:53] Yes, I can confirm that.

16 Q. [11:43:02] And the final sentence of this paragraph is, "The UPC did not want to
17 have children who were too young in its ranks".

18 Do you still stand by the statement that you made here?

19 A. [11:43:19] Yes, I can confirm that. Here we were talking of me being in Mandro.

20 Q. [11:43:38] And one final question about this young girl wearing green. The
21 President flagging that asked you a question that there may have been an error.
22 According to you, would this person have been capable of following the military training
23 that you received at Mandro?

24 A. [11:44:06] Looking at the time we spent in Mandro and what we did there, I said that
25 this person would not have been capable of doing the training.

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1 Q. [11:44:30] I'd now like to move on to another subject, Zumbe. Do you recall that
2 yesterday we discussed Zumbe?

3 A. [11:44:41] Yes, I remember that.

4 Q. [11:44:59] At one point in the document you referred to the UPDF. I would like to
5 ask you a question about this document. We are talking here of DRC-OTP-0074-0042,
6 and it's number 65 on the Prosecution list.

7 In this document, and as it's in English I would like to have it on the screen, please. So
8 DRC-0074, sorry, 0422 --

9 THE INTERPRETER: Correction from the interpreter.

10 MR BOURGON: (Interpretation)

11 Q. [11:45:45] And I would like to have page 0442. This will be translated for you.

12 And I will then ask you a question, paragraph 62 in English.

13 (Speaks English) "A Lendu groupement located in the collectivity of Walendu-Tatsi was
14 attacked several times from January 2001 to March 2003. Several persons were killed and
15 all of its 24 localities were destroyed at each attack. Zumbe, well-known as one of the
16 headquarters of the Lendu militia, is part of this collectivity, which may explain the
17 repetition and intensity of the attacks. The attackers were" -- nous changeons pour la
18 page suivante -- "reportedly UPDF forces under the command of Muzora, together with
19 Hema militias from Bogoro, Mandro, Tchomia, Kasenyi and Bunia under the command of
20 Chief Kahwa".

21 Paragraph 63. "In 2002 and 2003" --

22 PRESIDING JUDGE FREMR: [11:47:34] Sorry, Mr Bourgon, couldn't we move into open
23 session.

24 MR BOURGON: [11:47:39] With 20 minutes I prefer to stay here, Mr President.

25 PRESIDING JUDGE FREMR: [11:47:42] All right.

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1 MR BOURGON: [11:47:45]

2 Q. [11:47:45] "In 2002 and 2003, the groupement experienced a total of 11 attacks with
3 445 civilian victims of killings".

4 Écoutez bien ici, Monsieur le témoin.

5 "According to a Lendu teacher who took notes of each event, the most serious attacks
6 occurred on 15 and 16 October 2002, when Hema militias, together with UPDF from
7 Bogoro, attacked Zumbe and stayed there for 48 hours".

8 (Interpretation) Mr Witness, I have one question. When you went to Zumbe, were
9 there members of the UPDF taking part in the operation with your forces?

10 A. [11:49:04] Yesterday, when this was read to me, I said that the only operation I took
11 part in in Zumbe, I was not fighting alongside the UPDF. I don't know whether that was
12 noted correctly. There were no Ugandans in our operation.

13 Q. [11:49:32] I've got one question about another document you were shown. It is
14 DRC-OTP-0152-0256, item 64 on the Prosecution list.

15 Mr Witness, I have one question about this document. When did Bagonza die, if you
16 know?

17 A. [11:50:05] I don't know on what date he died, but I do know that he died on the
18 Komanda road. He had gone ahead, and that's where he was killed, on that road.

19 Q. [11:50:29] And during the events of the 48-hour attack in Mongbwalu, how long had
20 he been dead by then?

21 A. [11:50:48] With regard to the 48-hour battle in Mongbwalu, that was later. He was
22 already dead. But I don't know when he had died.

23 Q. [11:51:00] My next question relates to a paragraph in your statement which was used
24 by the Prosecution, paragraph 194, which I would like to read to you, because they seem
25 to be calling into question what you had said in this paragraph, so I would like to come

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1 back to it. It is in French, but please pay attention --

2 PRESIDING JUDGE FREMR: [11:51:29] Mr Bourgon.

3 Ms Luping.

4 MS LUPING: [11:51:31] Mr President, at this stage we don't have any indication about a
5 lack of recall in any way. The witness has given some testimony with regard to the
6 48-hour battle in Mongbwalu. And at this stage, when we are in re-examination, there
7 should be open-ended questions.

8 Using a statement in this way, Mr President, your Honours, can simply be leading,
9 guiding the witness to an answer that counsel would like to hear. But at this stage we
10 haven't had the lead-up questions that would warrant or justify showing this statement.
11 So objection to simply just showing this statement at this stage, Mr President. We need
12 the open-ended questions first regarding his prior testimony on the 48-hour war.

13 PRESIDING JUDGE FREMR: [11:52:21] Mr Bourgon.

14 MR BOURGON: [11:52:22] Mr President, as long as this time is not taken on my time,
15 my colleague referred to this specific paragraph, put questions to the witness. So now
16 it's not a question of memory refreshing; it's whether the witness is able based on what is
17 in his statement, which was put to him. He was challenged on the basis of this
18 paragraph; he should be able to read this paragraph and provide clarifications.

19 PRESIDING JUDGE FREMR: [11:53:10] Ms Luping.

20 MS LUPING: [11:53:11] Mr President, I would like Defence counsel to indicate to me
21 where in the transcript indicates that I referred to paragraph 194, because according to at
22 least my notes, I did not use this paragraph in my questions for the witness.

23 MR BOURGON: [11:53:28] These questions, Mr President, were put to the witness in
24 relation to the attacks which the witness said he did not remember on the Kobu, Bambu
25 and Lipri. And she put a number of questions to him --

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1 PRESIDING JUDGE FREMR: [11:53:46] Mr Bourgon, but please put open-ended
2 questions and not quote that, because I really believe that in that regard Ms Luping is
3 right.

4 MR BOURGON: [11:53:55] Thank you, Mr President.

5 PRESIDING JUDGE FREMR: [11:53:57] This time was not included because it was just
6 objections, so it's not included in your time.

7 MR BOURGON: [11:54:10] (Interpretation)

8 Q. [11:54:25] Mr Witness, my colleague put a number of questions to you relating to an
9 operation on Kobu, Bambu and Lipri. And she said that this operation -- or at least that's
10 what the Prosecution claimed, that it took place before the combat between the UPDF and
11 the UPC.

12 Do you recall everything you put in your declaration or your statement, or would it help
13 for me to read it to you first?

14 PRESIDING JUDGE FREMR: [11:55:14] Ms Luping, no need to intervene.

15 Mr Bourgon, is trying to just, you know, circumvent what I asked for you, because "do
16 you remember everything you said", what do you expect will be the answer? So he is
17 just trying -- it is not possible for you just to put question on what is contained in this
18 paragraph but as an open-ended question without quotation, because it was in fact the
19 core of the objection, not to use, not to use this article in order to lead Mr Witness.

20 MR BOURGON: [11:56:02] (Interpretation) Thank you, your Honour.

21 Q. [11:56:06] Mr Witness, please pay close attention to my question. My colleague
22 asked you a question. We are talking about the period prior to the fight in between the
23 UPC and the UPDF. My colleague suggested that in that period there was an operation
24 where there was a massacre by the UPC on the Kobu-Bambu-Lipri road.

25 So my question is as follows: At this time, have you had any information at all about the

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1 operation or the massacre?

2 A. [11:56:46] If I recall correctly, I replied that I had heard nothing about this, and since
3 I didn't take this direction, it was difficult to give a reply to her question. I believe that is
4 the reply I gave.

5 PRESIDING JUDGE FREMR: [11:57:17] Caveat: You have still 3 minutes remaining.

6 MR BOURGON: [11:57:21] (Interpretation) Thank you, your Honour.

7 Q. [11:57:26] Mr Witness, before you came to testify before this Court, did anybody at
8 all tell you what to say on the subject of (Redacted)?

9 PRESIDING JUDGE FREMR: [11:57:46] Mr Bourgon, asked and answered. I think your
10 client was clear that -- you want just to repeat or just to be sure, otherwise I don't
11 understand. He was clear that nobody advised him about that.

12 Ms Luping put two questions on that, and Mr Witness said clearly that they were nothing
13 like that. So I don't understand why you put in fact the same question on the same topic.

14 MR BOURGON: [11:58:19] Mr President, at least the witness could say. That's my aim,
15 to ask him whether anyone influenced him.

16 PRESIDING JUDGE FREMR: [11:58:29] All right. In fact, would be almost the last
17 question. Go ahead.

18 MR BOURGON: [11:58:34] (Interpretation)

19 Q. [11:58:35] Mr Witness, my colleague put three subjects to you, (Redacted) she also
20 mentioned (Redacted) Did anyone at all at any time tell you what
21 you should say to this Chamber during your testimony?

22 A. [11:59:16] I think I gave a quite clear reply that nobody at all had told me to say
23 anything in particular. I was to come here and say what I know. That's all.

24 Q. [11:59:24] Final subject, Mr Witness. You were also asked questions by my
25 colleague about somebody called Abelanga. My question is were you personally aware

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1 of the fact that this Abelanga committed sexual violence?

2 PRESIDING JUDGE FREMR: [11:59:48] Mr Witness, hold on.

3 Ms Luping.

4 MS LUPING: [11:59:52] Mr President, your Honours, first of all, I'm just trying to see
5 how it has been posed in the French to compare the question and how it's been articulated
6 in the English.

7 I think it's important in the circumstances to also indicate to the witness what he
8 previously stated, because I believe he's also already answered this question, because I
9 believe I already asked this question: Was he personally aware of this?

10 PRESIDING JUDGE FREMR: [12:00:26] Yes. It's also my memory said that this. In
11 fact, the question had been put, and he clearly answered that, Mr Bourgon.

12 MR BOURGON: [12:00:39] If I can ask the witness to remove his headphones,
13 Mr President.

14 PRESIDING JUDGE FREMR: [12:00:43] Mr Witness, please take off your headphones.

15 MR BOURGON: [12:00:48] Mr President, it is our position that the Prosecution tried to
16 mix two things in the same bag. The witness provided an answer and he said that, and I
17 quote from page 42, lines 16 to 18, he said that, "Abelanga, I would say he was known as
18 somebody who, after drinking, committed damage, not just sexual violence, but he would
19 extort from members of the population. He would take their property without paying
20 for it".

21 And then when he was asked about punishment, my colleague from the Prosecution
22 attempted to say that he was never punished for rapes. One, the witness never said that
23 he has any knowledge of Mr Abelanga committing a rape. That's the point I'm trying to
24 clarify.

25 And second is --

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1 PRESIDING JUDGE FREMR: [12:01:48] All right then. Indeed, there is still time. Go
2 ahead.

3 MR BOURGON: [12:01:53] Thank you, Mr President.

4 PRESIDING JUDGE FREMR: [12:01:54] Mr Witness, get your headphones back. But
5 still, you have just space for maybe one, two questions maximum.

6 MR BOURGON: [12:02:09] (Interpretation)

7 Q. [12:02:19] Witness, to the best of your personal knowledge, do you know if Abelanga
8 committed a rape or sexual violence?

9 A. [12:02:34] I think I answered that, answered that question. I said that there were
10 times when he caused a lot of problems. He took people's property. He didn't pay for
11 it. He was even punished. He was arrested. But with regards to rape, I'm not aware
12 of that.

13 I think I answered that question yesterday.

14 Q. [12:02:59] Witness, you mentioned that he'd been punished, and you added that he'd
15 been punished by Mr Bosco Ntaganda. To the best of your personal knowledge, the
16 whole period that you spent with Bosco Ntaganda, during that period did Bosco
17 Ntaganda leave a crime of any kind unpunished to the best of your knowledge?

18 A. [12:03:36] No. To show that he punished people, I said that I participated in the
19 platoon with regards to what happened in Camp Ndromo. But he didn't let problems
20 like that pass. He wasn't happy even when people smoked cannabis. I've said
21 everything.

22 Q. [12:04:03] My last question, Mr Witness. When you participated in the operation in
23 Songolo, you mentioned, and my colleague asked you questions, about the presence of
24 Commander Kisémbó there. With regards to Didier as well and Safari, were there other
25 commanders who were present during that operation?

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1 A. [12:04:27] I think that it was just those names who I mentioned who were present at
2 the operation.

3 Q. [12:04:44] Thank you, Mr Witness. I have no further questions.

4 MR BOURGON: Thank you, Mr President.

5 PRESIDING JUDGE FREMR: [12:04:48] Prosecution, any request for recross?

6 MS LUPING: [12:04:50] Only one topic, Mr President. I think it involves simply
7 showing a document reading an extract. It is one topic with one question related to that
8 document.

9 PRESIDING JUDGE FREMR: [12:04:59] How much time you think you would like to get
10 for that?

11 MS LUPING: [12:05:01] I believe no more than 5 minutes.

12 PRESIDING JUDGE FREMR: [12:05:04] Again, 5 minutes sharp, not more.

13 Mr Witness, you would like to go to the restroom? Yes, please go ahead. Court usher
14 will assist you.

15 (The witness stands down)

16 MS LUPING: [12:05:20] And whilst the court usher is assisting the witness, could I
17 please ask my learned friend, rather, Defence counsel, sorry, if he could return the stand
18 very kindly. We appear to only have one in the courtroom.

19 PRESIDING JUDGE FREMR: [12:05:35] First of all, we still didn't solve issue whether
20 this inquiry will be permitted. So it's inquiry on what document?

21 MS LUPING: [12:05:44] I am going to be asking questions about the photograph that the
22 witness was shown, one that we had previously shown. He was asked if he ever saw
23 any individuals of that size in Mandro or not.

24 And my question will relate to a document referring to individuals below the age of 15 in
25 Mandro and asking him to respond to that.

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1 PRESIDING JUDGE FREMR: [12:06:10] Because I'm not sure, frankly speaking, that, you
2 know, it's something that arises from redirect.

3 Mr Bourgon.

4 MR BOURGON: [12:06:25] This is exactly our point, Mr President. This does not arise
5 from the questions I asked. I asked if the persons were in Rwampara, whether he trained
6 with persons like this in Mandro. My colleague had every opportunity to challenge his
7 evidence on Mandro. I had the opportunity to lead him to at least to do the direct
8 examination. This kind of questions should not be permitted at this stage, Mr President.

9 PRESIDING JUDGE FREMR: [12:06:53] Could you clarify, because yes, Mr Bourgon
10 dealt with those pictures, those two small persons. Does it have any connection with
11 that or could you be more specific.

12 MS LUPING: [12:07:04] The witness was asked if he ever in Mandro saw people of this
13 size undergoing training. So it's relating to the fact he has already identified, or given his
14 estimate, rather, of the child wearing a green dress, the girl, as being someone he
15 considered to be 13. And I didn't ask any questions in relation to this image at
16 Rwampara but --

17 PRESIDING JUDGE FREMR: [12:07:26] Witness is not here. Please say openly what
18 you would like to get from this question.

19 MS LUPING: [12:07:29] All right. What I would be proposing to do, Mr President, your
20 Honours, is to first show him, first refer to that testimony in re-examination where he said
21 that in Mandro he never saw people of that size undergoing training, and then I would
22 show him a document which relates to a 13-year-old who underwent training in Mandro
23 and who talked about others of that same age in Mandro.

24 And then I would be asking him a question, because this training of this individual is
25 about August 2002 and the witness states he was there, to ask if that is indeed correct, that

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1 he would never have seen anyone of that size, bearing in mind here we have information
2 of children under that age.

3 PRESIDING JUDGE FREMR: [12:08:09] Do you mean confirm with written document or
4 with picture?

5 MS LUPING: [12:08:13] It is not with a picture, Mr President. It is with a written
6 document indicating an age of the same age as the child he estimated being in the image.

7 PRESIDING JUDGE FREMR: [12:08:22] Not approved, because really maybe it's not
8 relevant because if you would bring some picture, for example, probably with something
9 that would arise from his previous testimony during the redirect but to bring document, it
10 doesn't make any sense.

11 (The witness enters the courtroom)

12 MS LUPING: [12:08:41] All right, Mr President, I have no other questions for the witness
13 then.

14 PRESIDING JUDGE FREMR: [12:08:44] All right then. So let's move into open session.
15 I will have just two topics, two brief questions, hopefully.

16 (Open session at 12.08 p.m.)

17 THE COURT OFFICER: [12:09:02] We're in open session, Mr President.

18 PRESIDING JUDGE FREMR: [12:09:07] Thank you, court officer.

19 Mr Witness, just one topic I would like you to elaborate on. You said that the sexual
20 relationships between recruits were prohibited. But now I am interested how it was with
21 sexual relationships --

22 THE COURT OFFICER: I'm sorry to interrupt, Mr President, but I have a message from
23 the French booth. If the interpreter could please speak in the microphone. We cannot
24 hear her at all.

25 PRESIDING JUDGE FREMR: [12:09:47] So how it was with sexual relationship between

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1 other members of the UPC, which I mean between soldiers -- not -- between recruits, or
2 between soldiers and recruits? Were those sexual relationships also prohibited or not?

3 THE WITNESS: [12:10:16] (Interpretation) They were also prohibited.

4 PRESIDING JUDGE FREMR: [12:10:18] All right. Therefore my second question, let's
5 move into private session.

6 (Private session at 12.10 p.m.) *(Reclassified partially in public)

7 THE COURT OFFICER: [12:10:30] We are in private session.

8 PRESIDING JUDGE FREMR: [12:10:37] (Redacted)

9 (Redacted)

10 (Redacted)

11 THE WITNESS: [12:11:06] (Interpretation) (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 PRESIDING JUDGE FREMR: [12:11:40] (Redacted)

16 (Redacted)

17 (Redacted)

18 THE WITNESS: [12:11:53] (Interpretation) (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 PRESIDING JUDGE FREMR: [12:12:38] (Redacted)

23 (Redacted)

24 THE WITNESS: [12:12:44] (Interpretation) (Redacted)

25 (Redacted)

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1 PRESIDING JUDGE FREMR: [12:13:27] (Redacted)

2 (Redacted)

3 THE WITNESS: [12:13:35] (Interpretation) (Redacted)

4 (Redacted)

5 (Redacted)

6 PRESIDING JUDGE FREMR: [12:14:06] All right. I have no more questions for the
7 witness. Do my colleagues have any questions? I don't think so.

8 Mr Bourgon.

9 MR BOURGON: [12:14:16] Mr President, I do have one question, respectfully, arising
10 from the question that you put to the witness. I believe it is an important topic.

11 PRESIDING JUDGE FREMR: [12:14:24] Please go ahead.

12 QUESTIONED BY MR BOURGON: (Interpretation)

13 Q. [12:14:30] Witness, I would like to take you back to the answer that you gave to the
14 (Redacted)

15 (Redacted)

16 A. [12:14:58] (Redacted)

17 (Redacted)

18 (Redacted)

19 Q. [12:15:33] (Redacted)

20 (Redacted)

21 PRESIDING JUDGE FREMR: [12:15:44] Mr Bourgon, I think you are -- you haven't heard
22 my question, which was on the same topic. I just asked for superior -- he said;

23 Mr Witness has answered that question. So are you aiming to get another response? I
24 don't understand. I think it was clear.

25 So please move on.

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1 MR BOURGON: [12:16:09] Indeed, Mr President. I'm looking for something different
2 from what --

3 PRESIDING JUDGE FREMR: [12:16:14] I think you are looking for different response.
4 But the question was clear: any superior, which in my view also covers your client. And
5 he said no permission needed.

6 MR BOURGON: [12:16:23] Well, my understanding, Mr President, is when the
7 witness -- he can remove his earphones. But --

8 PRESIDING JUDGE FREMR: [12:16:30] I don't think so, Mr Bourgon. Really, I don't see
9 any arguments that could rebut my argument, because I put questions the same like you,
10 the only difference that I put question on "any superior", and I said "permission", you said
11 "authorisation". But I think the aim is the same.

12 MR BOURGON: [12:16:53] I, respectfully, I believe the aim is different, but I will stop
13 here, Mr President. I think there is a difference between whether you authorise a
14 relationship between two persons, and because we have had evidence to that effect before,
15 and whether you authorise two people to live together as military people. I think those
16 are two different issues. But I stop here. Thank you.

17 PRESIDING JUDGE FREMR: [12:17:17] I don't think this witness could make a
18 difference between those two terms.

19 MR BOURGON: [12:17:21] Thank you, Mr President.

20 PRESIDING JUDGE FREMR: [12:17:22] So no further questions.
21 All right. So let's move into open session.

22 (Open session at 12.17 p.m.)

23 THE COURT OFFICER: [12:17:33] We are in open session.

24 PRESIDING JUDGE FREMR: [12:17:39] Mr Witness, I'm sorry, I am a little bit behind my
25 promise. I promised you would be free at noon. It's 12.17. But anyway, now your

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1 testimony is finished. I would like on behalf of the whole Chamber to thank you very
2 much that you spent with us a long time, and I hope that you did your best to answer all
3 those questions. And hopefully your testimony will assist the Chamber in its task to find
4 the truth.

5 So I thank you very much. I wish you safe journey home, and that's it. Thank you.

6 And you now may leave the courtroom.

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

8 THE WITNESS: [12:18:33] (Interpretation) Thank you.

9 (The witness is excused and exits the courtroom)

10 PRESIDING JUDGE FREMR: [12:18:51] Ms Luping, any request for the floor? I see Ms
11 Luping, please.

12 MS LUPING: [12:18:54] Apologies, Mr President, your Honours. I hopefully will not
13 keep you long. It's just that the Prosecution would like a little more clarity on the
14 proposed schedule for the upcoming witnesses. We did notice in the transcript your
15 mention, Mr President, that Witness 70 will not come.

16 We have also received some information subsequently from the Defence. We
17 understand, but we would like this confirmed, that Witness 70 is no longer coming as a
18 witness and we want to understand if that's correct, and secondly to understand then the
19 timing of the forthcoming witnesses. We understand that 243 then will start on Monday
20 4 December.

21 PRESIDING JUDGE FREMR: [12:19:30] Step by step.

22 MS LUPING: [12:19:31] Sorry.

23 PRESIDING JUDGE FREMR: [12:19:32] Ms Luping, as regards Witness D-70, I think
24 Mr Bourgon could provide us with clarification.

25 MR BOURGON: [12:19:43] Indeed, Mr President. And I believe that it is important

1 because we communicated with the Trial Chamber on an ex-parte basis last night and
2 because we wanted to avoid the Prosecution being aware of this fact until the end of the
3 witness -- of the testimony of this witness.

4 So at least I think this should -- this can be clarified. This morning the Chamber
5 confirmed that our information that D-0070 would not be testifying, and the reason for
6 this mainly is it's not -- are we in private session?

7 PRESIDING JUDGE FREMR: [12:20:22] No. We are in open.

8 MR BOURGON: [12:20:24] We need to go in private session, Mr President.

9 PRESIDING JUDGE FREMR: [12:20:26] Understandable.

10 Court officer, let's move into private.

11 (Private session at 12.20 p.m.) *(Reclassified entirely in public)

12 THE COURT OFFICER: [12:20:37] We are in private session.

13 PRESIDING JUDGE FREMR: [12:20:43] Thank you, court officer.

14 Mr Bourgon.

15 MR BOURGON: [12:20:45] Thank you, Mr President. I just want to say that without
16 giving or justifying our decision not to call Witness 0070, I can say that it is related to the
17 fact that in the present political context in the DRC, it is very difficult to convince a
18 witness that he will be protected no matter what measures are implemented by this Court.
19 So I can now confirm that D-0070 will not be coming and the first witness for Monday is
20 Witness 243, albeit the only thing we expect, I guess, is the Chamber will issue a decision
21 on our request for Rule 68(3). Then the next witness will be either 257 or 251, simply
22 depending on travel. Thank you, Mr President.

23 PRESIDING JUDGE FREMR: [12:21:40] Thank you very much.

24 Ms Luping.

25 MS LUPING: [12:21:43] Mr President, just simply to get an indication as to when we're

1 likely to know about 251 and 257 just for planning purposes. Of course the Prosecution
2 will be ready to proceed regardless of whom it is.

3 PRESIDING JUDGE FREMR: [12:21:54] As regards 251, we have been informed that she
4 is going to travel on Friday. My understanding is from Bunia, which means that she will
5 be here probably on Saturday. And as to 243, I guess, is available already in The Hague.
6 As to 257, I have at the moment no information.

7 Does Defence have any information about 257?

8 MR BOURGON: [12:22:25] Witness 257, we do not have the information, but he is
9 scheduled to arrive this morning. He is probably, he has probably already arrived. So
10 for sure now I can say that 257 will come after 243.

11 The only thing is that for 251, right now, I'm told that the witness can testify and
12 everything could be arranged for Thursday and Friday of next week, but the Chamber has
13 scheduled a status conference on the Friday. So I don't know if -- I don't know what to
14 do about the status conference which is scheduled. But she can testify in person here
15 Thursday and Friday. Thank you, Mr President.

16 PRESIDING JUDGE FREMR: [12:23:20] The Chamber also will be flexible, so it's possible.
17 I believe that you will be able also to participate in expected calling, if he would change
18 date for status conference for example for Wednesday, would it be okay with the parties?

19 MR BOURGON: [12:23:41] For us, no problem. Whenever, Mr President.

20 MS LUPING: [12:23:45] And no problem for the Prosecution.

21 PRESIDING JUDGE FREMR: [12:23:47] Yes. We also expect that this status conference
22 will not last too much time. You know, it's about just planning issues for the sixth block.
23 But I think we all will have to remain flexible. What is now sure for the moment,
24 hopefully, is that we will start on Monday at 9.30 with D-243. And then it depends
25 whether we will have as a second witness 257 or 251. But what is the main goal of the

1 Chamber, to have all those three witnesses within this week.

2 Are there any further requests for the floor? Is it not the case? I thank you very much.

3 This day, I admit, was a little bit hectic. I also thank court reporters and interpreters,

4 because today it was really very demanding. Thank you very much.

5 And we see all of you on Monday, 9.30, in this courtroom. Now court is adjourned.

6 THE COURT USHER: [12:24:46] All rise.

7 (The hearing ends in private session at 12.24 p.m.)

8 RECLASSIFICATION REPORT

9 Pursuant to the Trial Chamber VI's Order, ICC-01/04-02/06-1887, dated 4 May 2017,

10 the public reclassified and lesser redacted version of this transcript is filed in the case.