

1 International Criminal Court

2 Trial Chamber VI - Courtroom 1

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

7 Thursday, 17 September 2015

8 (The hearing starts in open session at 9.33 a.m.)

9 THE COURT USHER: All rise.

10 The International Criminal Court is now in session.

11 Please be seated.

12 PRESIDING JUDGE FREMR: Good morning, everybody.

13 Court officer, please call the case.

14 THE COURT OFFICER: Thank you, Mr President.

15 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor

16 versus Bosco Ntaganda, case reference ICC-01/04-02/06.

17 For the record, we are in open session.

18 PRESIDING JUDGE FREMR: Thank you.

19 Now appearances starting with Prosecution, please.

20 MS SAMSON: Good morning, your Honours. Today for the Prosecution are

21 appearing Mr Eric Iverson and Julieta Solano, both trial lawyers; Ms Marion Rabanit,

22 associate trial lawyer; Mr Rens van der Werf, assistant trial lawyer; Mr James Pace,

23 assistant trial lawyer; Ms Selam Yirgou, case manager; and myself, Nicole Samson,

24 senior trial lawyer.

25 PRESIDING JUDGE FREMR: Thank you very much, Ms Samson. And I am very

1 glad to hear that your voice is much better today.

2 Defence now, please.

3 MR BOURGON: (Interpretation) Good morning, Mr President. Good morning,
4 your Honours. And good morning to all those present in the courtroom this
5 morning. Representing Mr Bosco Ntaganda we have this morning, who is in fact
6 with us this morning, we have Margaux Portier, we have William St-Michel and
7 myself Stéphane Bourgon. I thank you, Mr President.

8 PRESIDING JUDGE FREMR: Mr Bourgon, one observation from my part. You, on
9 Tuesday, you departed the courtroom during the session and maybe I understood
10 wrong, I don't know, but I understood it by your body language you asked for
11 permission to leave, but next time I would like if you would have a need to leave the
12 courtroom during the session to ask orally for my permission. It is, in my opinion,
13 for the sake of dignity of this hearing and also for the sake of course of the record.
14 So please have it in mind next time.

15 MR BOURGON: Thank you very much, Mr President. I will certainly abide by the
16 wishes of the Court. I thought that I indicated and asked permission and bowed my
17 respect to the Court before leaving, but I will gladly abide by your wishes. Thank
18 you, Mr President.

19 PRESIDING JUDGE FREMR: I think we clarified this, so it's fine with me.
20 Now LRVs, please.

21 MS PELLET: (Interpretation) Thank you, Mr President. The former child soldiers
22 are represented today by Mohamed Abdou, who is associate legal officer with the
23 OPCV, and myself, Sarah Pellet, counsel with the OPCV.

24 MR SUPRUN: (Interpretation) Good morning, Mr President. Good morning,
25 your Honours. The victims of the attacks on the civilian population are represented

1 by the OPCV by Ana Grabowski, assistant legal officer, and by myself,

2 Dmytro Suprun, counsel. Thank you.

3 PRESIDING JUDGE FREMR: I thank both of you.

4 And I further note the presence of the lawyer appointed pursuant to Rule 74 to assist
5 the upcoming witness. So welcome and please state your name for the record.

6 MR BAHOUGNE: (Interpretation) Good morning, Mr President. Good morning,
7 your Honours. My name is Maître Olivier Bahougne.

8 PRESIDING JUDGE FREMR: Thank you very much, Mr Bahougne, and again
9 welcome.

10 Now I have been informed, Mr Bourgon, if I am correct, that you would like to
11 address the Chamber before we start with proceedings today. If that is the case, you
12 have the floor.

13 MR BOURGON: Thank you, Mr President. I just wanted to know what was the
14 proper timing -- I would like to address the Chamber very quickly in respect of the
15 filing which is the submission which is due tomorrow afternoon. It is a short
16 submission. I can do it now or I can do it at any time the Chamber feels is
17 appropriate.

18 PRESIDING JUDGE FREMR: So I prefer if you can make it now.

19 MR BOURGON: Thank you, Mr President.

20 On Tuesday, 15 September, the Chamber issued an oral ruling requesting the Defence
21 and the parties to address in written submissions four issues, and that was on 15
22 September.

23 Yesterday the Chamber issued a ruling which, in our respectful opinion, addresses
24 three of those issues. Accordingly, we would like to either inform or seek leave, seek
25 leave from the Chamber not to make any submissions tomorrow.

1 Regarding the first issue, we understand the Chamber's point of view regarding the
2 courtesy meeting. We will show up and we will greet the incoming witnesses and
3 not say one word more.

4 With respect to the second issue, we will not call -- we will not seek to meet with any
5 expert witness called by the Prosecution.

6 With respect to the third issue, we will not seek to meet with any witness from the
7 Prosecution and we will keep our arguments for cross-examination.

8 I note in this regard that my colleague has nonetheless requested the audiotape of the
9 meeting that was conducted with Witness 901, although she was present and there
10 was no discussion, but it was ordered by the Chamber and we this morning disclosed
11 that audiotape to my colleague.

12 Regarding the fourth issue, and the timing of disclosure notes and logs, we concede
13 the issue. The Prosecution can give it to us whenever they feel it's appropriate.

14 Thank you, Mr President. If the Chamber agrees, we will not make any written
15 submissions tomorrow.

16 (Trial Chamber confers)

17 PRESIDING JUDGE FREMR: So it seems we don't need, you are right, and we even
18 appreciate the expeditious way how you inform us about this, so I think we don't
19 need any further submissions.

20 But maybe anyway I would like to ask Prosecution if you have any comments on
21 current Mr Bourgon's submissions.

22 MS SAMSON: Thank you, your Honour. We understand the Defence's position in
23 relation to the issues that it raised; however, as I had indicated to the Chamber earlier
24 this week, the Prosecution is making an independent filing in relation to inadvertent
25 contacts with Prosecution witnesses which may touch upon some of these issues,

1 where they overlap, so that filing we still intend to make. Thank you.

2 PRESIDING JUDGE FREMR: It's fine with us.

3 Any comments from the part of LRVs?

4 MR SUPRUN: (Interpretation) No, Mr President.

5 PRESIDING JUDGE FREMR: Thank you.

6 Mr Bourgon?

7 MR BOURGON: Thank you, Mr President. Just before we begin and we call

8 Witness 0901, I would simply like to recall that we have a pending submission

9 challenging the jurisdiction of the Court in respect of Counts 6 and 9 and as well we

10 ask the Chamber to rule on the -- any evidence that can be elicited in respect of these

11 two counts from any witness able to elicit such evidence -- to provide such evidence,

12 sorry. So I was just simply recalling that we have this pending filing, Mr President.

13 Thank you.

14 PRESIDING JUDGE FREMR: Okay. Now, before the next witness can be called in

15 to start testifying we have to address some matters related to the testimony of this

16 witness. In particular there are two outstanding Defence requests, other outstanding

17 Defence request, one for disclosure of certain material relating to this witness, and the

18 second one related request for postponement of the cross-examination of the witness.

19 Both these requests have been opposed either in full or part by the Prosecution.

20 The Chamber clarifies that it will rule on the two requests together shortly.

21 It is noted that there are also two Defence requests for leave to reply on those matters.

22 They are filings 810 and 821.

23 The Chamber does not consider that it would be assisted by further submissions on

24 the matters identified and the leave requests are, therefore, rejected which will be

25 noted in the forthcoming decision.

1 The Chamber notes that on 15 September 2015, the Prosecution informed the
2 Chamber by email that would disclose, pursuant to Rule 77 of the Rules, the
3 transcript and audio recording of an interview which the Defence had sought in its
4 disclosure request.

5 So now I am turning to Prosecution. Prosecution, can you please confirm that the
6 announced disclosure has been effectuated, and if so, when?

7 MS SAMSON: Yes, your Honour, in respect of the transcripts of the two audio
8 interviews, those were disclosed yesterday and they will be formally disclosed today
9 with the audiotapes.

10 PRESIDING JUDGE FREMR: Mr Bourgon, can you confirm that?

11 MR BOURGON: Indeed, Mr President, I confirm with the minor caveat that there is
12 a difference between the courtesy copy we receive and the copy we will receive today.
13 One contains numbers which indicate under what reason redactions have been
14 applied, the other doesn't. Thank you, Mr President.

15 PRESIDING JUDGE FREMR: Thank you. Point taken.

16 I have two further matters to address: First, the Chamber recalls its decision issued
17 yesterday granting certain in-court protective measures to the witness about to testify,
18 specifically the use of a pseudonym for the purposes of the trial and voice and face
19 distortion during his testimony.

20 In addition, private sessions will be used to deal with potentially identifying
21 information that could expose this witness or those close to him.

22 Then secondly, as already noted a moment ago, a lawyer, Mr Bahougne, is present to
23 assist the witness pursuant to Rule 74 of the Rules. This advising lawyer was
24 appointed following an indication by the Prosecution that the issue of
25 self-incrimination might arise. As a result of a request by the witness submitted to

1 the Chamber by the advising lawyer, Mr Bahougne, on 15 September 2015, the
2 Chamber permitted Mr Bahougne to be physically present in the courtroom during
3 the witness's testimony.

4 In the aforementioned 15 September filing the witness further requested assurance
5 pursuant to Rule 74(3) of the Rules.

6 Yesterday the Prosecution provided the Chamber with ex parte observations
7 pursuant to Rule 74(4) accepting that such assurances would be appropriate.

8 Defence, you were notified of Mr Bahougne's filing. Do you have any observation in
9 this regard? And please be mindful that we are in open session and let us know
10 whether we need to move into private session to hear your observations.

11 MR BOURGON: We have no observations, Mr President.

12 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

13 In yesterday's decision on in-court protective measures, the Chamber noted that
14 Mr Bahougne, on behalf of the witness, had requested for the testimony or parts of it
15 to take place in closed session. The Chamber indicated in its decision that it would
16 rule on this issue separately when addressing the other request made in relation to
17 Rule 74.

18 Mr Bahougne, the Chamber just recalled that in-court protective measures have been
19 granted for the witness. I further note that if Rule 74(3)(c) assurances are provided
20 to the witness in order to give effect to these assurances, any answers by the witness
21 to matters that could incriminate him will be elicited only in closed sessions and the
22 relevant transcript will be kept confidential. Is that also how the Chamber should
23 see your request for closed session or in camera testimony?

24 MR BAHOUGNE: (Interpretation) Mr President, I have -- I am aware of those
25 comments and I have talked with the Prosecution. I believe that the decisions that

1 you have taken are the right ones because whenever my client might find himself in a
2 sense -- or in the position of maybe self-incriminating himself or being recognized, we
3 might go into private session. I also noted that you said that I was appointed of 15
4 September. It was in fact 8 September that I was appointed. It was a little mistake
5 there.

6 PRESIDING JUDGE FREMR: Thank you, Mr Bahougne. So we will correct that in
7 the transcript. It was an error from our part. Sorry for that.

8 So, Mr Bahougne, the Chamber then will provide the witness with the Rule 74(3)(c)
9 assurances at the start of his testimony and if any questions are asked that could lead
10 to self-incrimination, we will hear the witness's answer in private session. I
11 understood that you have been explained what is the difference between closed and
12 private session.

13 And in light of the Chamber decision on in-court protective measures, the Chamber
14 does not consider it necessary to grant a further measure in the form of fully closed
15 session. So we will try at least to conduct part of the testimony in open session,
16 but as soon as it will be even a risk of identification of your client, we will move to
17 private session, which is also your main role to keep eye on that.

18 So now I think we can have the witness brought in and I will explain to him that the
19 Chamber will provide him the requested assurances.

20 So, court officer, please have the witness brought in. And because of that we will go
21 into closed session for this purpose.

22 (Closed session at 9.51 a.m.) *(Reclassified entirely in public)

23 THE COURT OFFICER: We are in closed session, Mr President.

24 PRESIDING JUDGE FREMR: Thank you very much.

25 (The witness enters the courtroom)

1 PRESIDING JUDGE FREMR: Can we please now go back into open session.

2 (Open session at 9.53 a.m.)

3 THE COURT OFFICER: We are in open session, Mr President.

4 PRESIDING JUDGE FREMR: Thank you. I also would like to thank to

5 Mr Bahougne that he started his assistance to the witness from the very beginning of

6 his presence in the courtroom. So thank you. I saw you that instructed him when

7 he was entering. Thank you.

8 Mr Witness, good morning.

9 WITNESS: DRC-OTP-P-901

10 (The Witness speaks Swahili)

11 THE WITNESS: Jambo.

12 PRESIDING JUDGE FREMR: You are going to testify before the International

13 Criminal Court. On behalf of this Chamber I would like to welcome you to the

14 courtroom. This Chamber has been established to try the case of the Prosecutor

15 against Mr Bosco Ntaganda. You are called to testify to assist us in our search for the

16 truth.

17 You will be soon going to be questioned both by the Judges and lawyers in the

18 courtroom and in this connection I would like to guide you. Please listen carefully to

19 those questions. It is very important that you make sure that you understand the

20 question before you answer it. If you do not understand, please feel free to ask for

21 the question to be either repeated or rephrased. We want you to tell the truth and

22 tell us only what you really saw or heard or sensed yourself. If you did not see or

23 hear it yourself, but you found out some other way, then you should explain how.

24 You may be asked about events that happened many years ago, so it is natural that

25 you may not remember all details. In such a case, please testify just on that which

1 you really remember. Don't guess, don't make things up, please. There is nothing
2 wrong in saying "I don't know" or "I don't remember." Do you understand that,
3 Mr Witness?

4 THE WITNESS: (Interpretation) Yes.

5 PRESIDING JUDGE FREMR: Fine. Then now, court officer, can you please
6 administer the solemn undertaking to tell the truth.

7 Mr Witness, do you prefer to swear in French or Kiswahili? What is your
8 preference?

9 THE WITNESS: (Interpretation) I would like to swear the oath in Swahili.

10 PRESIDING JUDGE FREMR: Fine. Then let's proceed this way.

11 THE WITNESS: (No interpretation)

12 PRESIDING JUDGE FREMR: And, Mr Witness, you should rise please.

13 Thank you.

14 THE WITNESS: (Interpretation) I solemnly declare that I will speak the truth, the
15 whole truth and nothing but the truth.

16 PRESIDING JUDGE FREMR: Thank you very much, Mr Witness. You can sit
17 down.

18 So it means, Mr Witness, that now you are under oath. The representative of the
19 Victim and Witness Unit and the lawyer appointed by Registry, Mr Bahougne, who is
20 here to assist you, have both, I guess, informed you about the importance to speak the
21 truth. Nevertheless, I have to reiterate to you that as you have just promised you
22 have to speak the truth and that it's an offence within the jurisdiction of this Court to
23 give false testimony. Do you understand that?

24 THE WITNESS: (Interpretation) Yes.

25 PRESIDING JUDGE FREMR: All right. Now, Mr Witness, you have been assigned

1 the lawyer Mr Bahougne to provide you with legal advice about self-incrimination.

2 This lawyer has requested that you be given certain assurance by the Chamber.

3 There may be questions asked to you for which you fear that answering them

4 truthfully may incriminate you because these questions relate to your own conduct.

5 In such cases we will require you to answer the question, but we can assure you that

6 your answer will be kept confidential and will not be disclosed to the public or to the

7 government of any country.

8 The Prosecution has further assured that they will not themselves use this

9 information to prosecute you before the ICC provided that you tell the truth. I think

10 it's very important information for you. Have you understood that?

11 THE WITNESS: (Interpretation) Yes, I do.

12 PRESIDING JUDGE FREMR: Fine.

13 And in this connection, I request the parties and participants to be vigilant about

14 going into private sessions for areas of evidence that are likely to elicit responses that

15 might self-incriminate this witness.

16 Now, Mr Witness, let me explain to you how the protective -- in-court protective

17 measures work that the Chamber has put in place for your testimony.

18 We decided to order face distortion, which in practice means that no one outside the

19 courtroom can see your face on the screen during testimony. We also decided to

20 order voice distortion, which means that no one outside the courtroom will be able to

21 identify you by your voice as it has been distorted. The Chamber also decided on

22 use of pseudonym. In accordance with that, everybody in the courtroom will refer

23 to you only as "Mr Witness" to make sure that the public does not know your name.

24 When you answer questions then you will not give away who you are. We will do

25 so in open session, which means that the public can hear what is being said in the

1 courtroom. You can see that we are in open session now and you can recognize that
2 according the light in front of you which is red.

3 When you are asked to describe anything that relates specifically to you, or you are
4 asked to mention facts that might reveal your identity, for example any locations
5 where you live or persons close to you, we will do this in a private session.

6 As I explained already, we will also go into private session for any evidence which
7 might self-incriminate you. The light in front of you will then be green. Then there
8 is no broadcast and no one outside the courtroom can hear your answer. If ever
9 anything gets said during open session which should have been said in private
10 session, we will do our best to protect this information. Your testimony will be
11 broadcast on a delay and therefore we can remove any such remarks from the
12 broadcast which will be heard by the public and from the public transcript of the
13 proceedings.

14 The Chamber recognizes that your security and well-being is important during the
15 course of this trial. If at any point you feel that you would like a brief break from
16 giving your testimony, or you feel unwell, do not hesitate to let us know.

17 Is it clear to you?

18 THE WITNESS: (Interpretation) Yes.

19 PRESIDING JUDGE FREMR: All right then, now a few practical matters you should
20 have in mind when giving your testimony.

21 Everything we say here in the courtroom is written down and interpreted into
22 English and French. It is therefore important to speak clearly and to speak at a
23 moderate or, rather better, slow pace. We want to make sure that your words can be
24 well understood by the interpreters and then by the rest of us.

25 Please speak into the microphone and only start speaking when the person asking

1 you the question has finished. And to allow for the interpretation, everyone has to
2 wait a few seconds before starting to speak. So I recommend to you when the
3 lawyer or the Chamber has asked his or her question, please count in your head to
4 three and then only then give your answer.

5 If you have any questions yourself, raise your hand so we know that you wish to say
6 something. We will then give you the opportunity to speak.

7 Have you understood all of that?

8 THE WITNESS: (Interpretation) Yes.

9 PRESIDING JUDGE FREMR: I know that is a lot of information, but I think we will
10 try our best to assist you.

11 Okay, then we can start your testimony.

12 So, Prosecution, who will be leading this examination?

13 MS SAMSON: I will, your Honour.

14 PRESIDING JUDGE FREMR: Okay then, Ms Samson, you have the floor.

15 QUESTIONED BY MS SAMSON:

16 Q. Good morning, sir.

17 A. Good morning.

18 Q. We've had a chance to meet already, but I'll repeat that my name is
19 Nicole Samson and that I'll be asking you questions today and tomorrow on behalf of
20 the Office of the Prosecutor.

21 A. Okay.

22 Q. I just wanted to ensure that you understand where the red and green light is
23 that the Presiding Judge made reference to to designate open session or closed session.
24 Can you see that light?

25 A. Yes, I've understood well. Thank you.

1 Q. As the Presiding Judge has just indicated, if at any time any of my questions are
2 unclear to you, simply ask me to repeat and I'll do my best. Do you understand?

3 A. Yes.

4 Q. And if at any time that we are in open session you feel that giving the answer
5 would reveal your identity, please raise your hand and indicate that to the Chamber.
6 Do you understand?

7 Sir, I don't think the interpreters captured your answer. Could you answer if you
8 understood what I just asked you?

9 A. Yes, I've understood.

10 Q. Thank you. Sir, could you please tell the Court your --

11 MS SAMSON: Your Honour, can we please move into private session for my first
12 series of questions.

13 PRESIDING JUDGE FREMR: Yes. Let's move to the private session.

14 (Private session at 10.07 a.m.) *(Reclassified partially in public)

15 THE COURT OFFICER: We are in private session, Mr President.

16 PRESIDING JUDGE FREMR: Sorry, just to -- sorry to break.

17 Mr Witness, as I already explained to you, it means now we are in private session,
18 nobody outside the courtroom could hear what you are saying, okay?

19 Ms Samson, you have the floor.

20 MS SAMSON: Thank you.

21 Q. Sir, could you please tell the Court your full name.

22 A. I will start with my family name. My name is (Redacted)

23 Q. Are you known by any other names by your family or friends or your work?

24 A. Yes, I do.

25 Q. Could you tell the Court what those names are?

1 (Redacted) on the walkie-talkie

2 is --

3 THE INTERPRETER: Inaudible. The interpreter did not hear what the witness
4 stated.

5 MS SAMSON:

6 Q. Sir, could you please repeat your (Redacted) so the interpreters
7 can hear you.

8 A. I just said that some of my friends call me (Redacted)
9 (Redacted)

10 Q. Sir, what is your date of birth?

11 A. I was born on (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 MS SAMSON:

19 Q. And what was the name of the group that you mentioned, the armed group that
20 you were in (Redacted)?

21 A. It was in the UPC and our armed group was the FPLC.

22 Q. I'll ask you more questions about that armed group a bit later. Now you've
23 told us that you were born in (Redacted). Can you please tell the Court where you were
24 born?

25 A. I was born (Redacted).

1 Q. And what is your nationality?

2 A. I'm Congolese.

3 Q. What is your ethnicity?

4 A. I'm (Redacted).

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 Q. I would like to ask you some questions now about your schooling. Did you go
19 to school?

20 A. Yes, I did go to school.

21 Q. Can you please indicate the names of the schools you attended starting with
22 primary school?

23 A. I went to (Redacted) And I went to
24 secondary school up to the fourth year and that was (Redacted)

25 Q. If you attended secondary school until the fourth year, is it correct that you

1 (Redacted)

2 (Redacted)

3 Q. Why did you not complete secondary school?

4 A. I abandoned school because I thought it was a good thing to join the military
5 service.

6 Q. And in which year did you stop school?

7 (Redacted)

8 Q. Which armed group did you join at the time?

9 A. At the time it was the (Redacted) that I joined.

10 Q. And do you know what the (Redacted) what that acronym stands for?

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 MS SAMSON:

15 Q. Do you know who the leaders of (Redacted)

16 A. There were several leaders at the time, but the most well-known was
17 (Redacted)

18 Q. How old were you when you joined the (Redacted)

19 A. I was 15.

20 Q. How long did you stay in the (Redacted)?

21 A. After military training, we went home because the war was over.

22 Q. And do you know approximately how long you were in (Redacted)

23 A. I joined the AFDL (Redacted) we went for military training in

24 (Redacted) and that lasted three months until (Redacted) And then I was

25 selected, but those who didn't -- who weren't 18 yet were sent home and, therefore, I

1 went home. So I did not become an active member of that group.

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 Q. At the time that you were back there in 1997, what was the ethnic composition
8 of (Redacted)

9 A. There were Gegere people, Lendu, as well as other ethnic groups like the Alur,
10 but the majority were Lendu and Gegere.

11 (Redacted)

12 (Redacted)

13 Q. Where did you go in (Redacted)?

14 A. I went to (Redacted)

15 Q. And why did you leave (Redacted)

16 A. I left (Redacted) because there was an ethnic conflict that had begun already
17 having an effect on that town.

18 Q. And this ethnic conflict was between which ethnicities?

19 A. It was a conflict between the Lendu and the Gegere.

20 Q. So as I understand it you moved (Redacted) And what did you do (Redacted)?

21 A. I stayed home.

22 Q. After your experience in (Redacted), did you ever come to join any other armed
23 groups?

24 A. Yes.

25 Q. After (Redacted), which armed group did you join?

1 A. Initially, it was the APC.

2 Q. And can you tell us what the acronym APC stands for?

3 A. Army of the Congolese People.

4 Q. And was the APC associated with any other group?

5 A. At the time the APC was associated with the RCD-K/ML.

6 Q. And do you know what the RCD-K/ML stands for?

7 A. The RCD-K/ML is an acronym for the *Rassemblement Congolais pour la
8 Démocratie Kisangani / Mouvement de Libération.

9 Q. Who were the leaders of the RCD-K/ML (Redacted) in 1999?

10 A. At the outset it was President Wamba Dia Wamba and subsequently Mbusa
11 Nyamwisi.

12 Q. Sir, could you please repeat the name of the person who took over from Wamba
13 Dia Wamba. It wasn't caught by the interpreters.

14 A. Mbusa Nyamwisi.

15 Q. Were Wamba Dia Wamba or Mbusa Nyamwisi from Ituri?

16 A. No, neither of them hailed from the Ituri region.

17 Q. Do you know where they were from?

18 A. I cannot tell you specifically where Wamba Dia Wamba came from in Congo.
19 Mbusa came from Beni, he comes from Beni in North Kivu.

20 Q. Do you know his ethnicity?

21 A. Yes. He is a Nande.

22 Q. Why did you join the APC?

23 A. (Redacted) I had friends who had already joined that group and they told me
24 that I should also join them, but I didn't spend much time there because there were
25 disturbances, I deserted and I went home.

1 Q. While you were in the APC, what was your role there?

2 A. Within the APC I was a soldier.

3 Q. And after leaving the APC, did you join any other armed group?

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 A. At the time -- at that time there was a group of APC dissidents by the name of
8 Chui mobile force that was negotiating, and when they arrived in Bunia I was able to
9 join them.

10 Q. Can you give the name, the names of some of the APC dissidents you're
11 speaking of?

12 A. Yes. I can provide you with the name Afande Bosco, Afande Kitembo, Afande
13 Kasangaki, Zairois, Mugabo, Bagonza, Tchaligonza. There were many of them. I
14 no longer recall the names of the other individuals. (Redacted)

15 (Redacted)

16 (Redacted)

17 Q. Okay, and these APC dissidents, do I understand that the individuals you
18 mentioned were members of the APC?

19 A. Yes. Amongst the commanders, there were some who were working within
20 the APC in Ituri and others who were there in Bunia, but I do not know whether they
21 were actually active within the movement.

22 Q. You mentioned some names. I'd like to go through them a bit more slowly to
23 understand if you know what their full names are. So starting with the first person
24 you mentioned, Bosco, do you know his full name?

25 A. I know two of his names.

1 Q. Can you please tell the Court what his names are, the two that you know?

2 A. Very well. I knew him by the name of Afande Bosco Ntaganda.

3 PRESIDING JUDGE FREMR: Sorry, Ms Samson, Mr Bourgon is on his feet.

4 Mr Bourgon.

5 MR BOURGON: Thank you, Mr President. I'm not sure we do need to continue

6 being in private session for this part of those questions. I think it is worth to have

7 this information publicly.

8 PRESIDING JUDGE FREMR: Ms Samson, generally the Chamber would like

9 to -- and we fully understand that this witness is really a delicate issue from the point

10 of his protection, but still we would like to have at least some part of his testimony be

11 conducted in open session. Do you think there is still a need to remain in private

12 session at this part of your examination?

13 MS SAMSON: I think, your Honour, that treading carefully we may be able to move

14 into public session; (Redacted)

15 (Redacted) It's a bit

16 sensitive to move in and out of this particular narrative, but I think we can certainly

17 give it a try.

18 PRESIDING JUDGE FREMR: And if you would just continue in the regime of

19 private session, how much time do you think you will have to stay?

20 MS SAMSON: I think, sir, we -- your Honour, we could move into open session and

21 I'll move into private session after the break for a few short questions.

22 PRESIDING JUDGE FREMR: Okay, I appreciate it.

23 So let's move to open session now.

24 MR BAHOUAGNE: Sorry, Mr President. Pardon, Monsieur le Président.

25 PRESIDING JUDGE FREMR: Please, you have the floor, Mr Bahougne.

1 MR BAHOUAGNE: (Interpretation) Would it be possible to indicate to the witness
2 that on each occasion when he believes that his identity might be revealed that he
3 raise his hand so that we immediately move into private session. Thank you.

4 PRESIDING JUDGE FREMR: Mr Witness, could you hear what just now
5 Mr Bahougne, your lawyer, in fact, said?

6 THE WITNESS: (Interpretation) Yes, I did follow.

7 PRESIDING JUDGE FREMR: So just, in fact, to repeat that, as soon as it would mean
8 that your question could reveal you, your identity, don't respond, just raise your hand.
9 Agreed. Okay?

10 So now, Ms Samson, you can proceed.

11 So let's now move to open session because I was informed we are still now in a
12 private session, so we have to move to an open one.

13 (Open session at 10.45 a.m.)

14 THE COURT OFFICER: We are in open session, Mr President.

15 PRESIDING JUDGE FREMR: Thank you.

16 Ms Samson, you have the floor.

17 MS SAMSON: Thank you.

18 Q. Sir, you were describing some APC dissidents in 1999 and beginning of 2000
19 and you had mentioned an individual by the first name Bosco. Can you please
20 indicate and repeat again if you know any other names of that individual?

21 A. We all knew him by the name of Afande Bosco Ntaganda. If he has any other
22 names apart from those I am not aware of them, with the exception of his call sign.

23 Q. And you mentioned a second APC dissident whom you referred to as Kisembo.
24 Are you aware of any of his other names?

25 A. Yes.

1 Q. Can you please tell the Court which names those are?

2 A. Very well. Afande Floribert Kisembo Bahemuka.

3 Q. Sir, could you please spell Bahemuka for the record.

4 A. B-A-H-E-M-U-K-A.

5 Q. Thank you. You also mentioned an APC dissident named Kasangaki. If you
6 know any of his other names, could you please tell us what they are?

7 A. I was not aware of any other names for Kasangaki, any other names that he
8 might have borne apart from his call sign.

9 Q. Do you know any other names of Zairois?

10 A. No.

11 Q. Do you know any other names of Mugabo?

12 A. Well, it was at a later stage that I gleaned Mugabo's first name.

13 Q. And what was it?

14 A. Res (phon).

15 THE INTERPRETER: Correction from the Swahili booth: Prince.

16 MS SAMSON:

17 Q. Do you know any other names for Bagonza?

18 A. No, with the exception of the call sign that he used, I do not know any other
19 name that he might have borne.

20 Q. Do you know any other names for Tchaligonza?

21 A. Yes.

22 Q. Could you please tell us what other names he had?

23 THE INTERPRETER: Message from the Swahili booth: Mr President, could the
24 witness please repeat the name. The interpreter did not grasp it.

25 PRESIDING JUDGE FREMR: Mr Witness, could you please repeat the last name

1 because the interpreters did not catch that, please.

2 THE INTERPRETER: Message from the English booth: Could the witness please
3 be requested to move towards the microphone.

4 THE WITNESS: (Interpretation) His name was Nduru.

5 PRESIDING JUDGE FREMR: Sorry, one more remark, Mr Witness: It seems to be
6 some problem that your voice probably is not loudly enough transferred to the
7 interpreter's booth. There are two possibilities, either you can move a little bit closer
8 to microphone, which maybe I can understand you don't want, or you then should, if
9 you want to stay at the place you are now, you have to speak a little bit more loudly.
10 So what do you prefer?

11 Thank you very much.

12 Now, Ms Samson, you can proceed.

13 MS SAMSON:

14 Q. Sir, do you know the ethnicity of those individuals whom you just mentioned?

15 A. I know the ethnic origin of some of them, but as to the others I do not.

16 Q. Do you know Bosco Ntaganda's ethnic origin?

17 A. Yes, I do.

18 Q. Can you please tell the Court what his ethnicity is?

19 A. To my mind he hails from Masisi territory in the North Kivu.

20 Q. Is he Hema?

21 A. No, in Masisi there are no Hemas.

22 Q. Do you know to which ethnic group he belongs?

23 A. In Congo they are described as being Rwandan speaking, that is to say the
24 ethnic groups that reside in that territory.

25 Q. And Floribert Kisembo, do you know his ethnicity?

1 A. Yes, he was of Gegere ethnic origin.

2 Q. Is Mr Kisembo still living?

3 A. No, he is already deceased.

4 Q. And can you tell us, please, what Kasangaki's ethnicity is?

5 A. Yes. Kasangaki was of the Hema South ethnic group.

6 Q. And can you tell us the ethnicity of Zairois?

7 A. Zairois also hailed from North Kivu and he was Rwandan speaking, but I do
8 not know from which territory he hailed because we did not continue with him.

9 Q. Can you please tell us the ethnicity of Prince Mugabo?

10 A. Prince Mugabo was also Rwandan speaking. I do not know from which
11 province he hailed or of what origin he was.

12 Q. Can you tell us the ethnicity of Bagonza and Tchaligonza?

13 A. Both of them were of Hema South ethnic origin.

14 Q. You had mentioned a term called the "Chui mobile force". Can you explain
15 what that term means?

16 A. Yes. The Chui mobile force, to my mind, to my knowledge, to my limited
17 knowledge -- well, you know that "chui" is an animal, do you not? "Mobile" can
18 mean people who move about. And "force" is the name that the group gave itself.

19 Q. Did the group have a leader?

20 A. At that moment in time it was Afande Bosco who was in charge of that group.

21 Q. How did this group come about? What were the circumstances of its creation,
22 if you know?

23 A. During the ethnic war there were APC soldiers who wanted to fight against the
24 Hema, with the Lendu and against the Hema, and some of the Hema commanders
25 within the APC did not understand why it was that the APC joined the Lendu during

1 the ethnic war between the Lendus and the Hema. So *the Hema commanders were
2 unhappy about this. Afande Bosco was in town at that moment in time. He left
3 town in order to seek medical care and he met *this commander, and that was the
4 beginning of the movement.

5 THE INTERPRETER: The Swahili interpreter corrects himself: It is not free mobile
6 force, but Chui mobile force.

7 PRESIDING JUDGE FREMR: Mr Bourgon?

8 MR BOURGON: Thank you, Mr President. At the beginning of his testimony the
9 witness was informed by the Chamber to ensure that he would keep his answers to
10 what he saw personally, what he heard personally, or what he sensed and that if he
11 gained knowledge of a fact otherwise, to provide where he obtained the knowledge
12 from. I would appreciate if my colleague could ask her questions in order to elicit
13 information from the witness and to make a clear difference between what he did
14 experience himself and what he obtained from other sources, and then I can address
15 the Chamber regarding hearsay. Thank you, Mr President.

16 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon. I think you are right, but I
17 guess that now it's 11.03. Maybe it's a good time to break and then we will come
18 back to this issue after the break. Is that fine with you? Okay.

19 So we are breaking now and we will return back at half past 11.

20 THE COURT USHER: All rise.

21 (Recess taken at 11.03 a.m.)

22 (Upon resuming in open session at 11.34 a.m.)

23 THE COURT USHER: All rise.

24 Please be seated.

25 PRESIDING JUDGE FREMR: Before I move the floor to Ms Samson, I would like to

1 pronounce one oral guidance of the Chamber, and it's oral guidance on questions
2 related to Count 6 and 9.

3 At the start of the first session today, the Defence recalled its pending filing in which
4 it challenges the jurisdiction of the Court in respects of Counts 6 and 9 and in which it
5 requests the Chamber to rule that no evidence in relation to these Counts can be
6 elicited in this case.

7 The Chamber has taken note of that filing, which the Chamber observes was filed
8 only the day before the start of trial, and the responses received last week from the
9 Legal Representative of Victims of former child soldiers, to be exact, and the
10 Prosecution.

11 The Chamber will issue a decision on the Defence request in due course, but pending
12 the decision it will allow the Prosecution to ask question, if any, and thus to elicit
13 evidence on Counts 6 and 9.

14 In this regard the Chamber notes not only the interrelatedness of any evidence
15 regarding the alleged involvement of children, but in particular, it stresses that the
16 Bench is composed of professional judges. Therefore, should the Defence request be
17 granted, as with any information that at a later moment would turn out to be
18 irrelevant in relation to the charges against the accused, the Chamber can then
19 exclude that information from the evidence without any prejudice arising to the
20 accused.

21 Now we can move to the in fact last issue we faced before the break, so in effect the
22 Chamber supports Mr Bourgon's request asking Ms Samson to be more specific about
23 how witness got the knowledge he mentioned at the end of his testimony before the
24 break.

25 So, Ms Samson, you have the floor.

1 Mr Bourgon.

2 MR BOURGON: Thank you, Mr President. I take the opportunity to intervene at
3 this time before my colleague begins. I note that the witness has some notes or some
4 paper in front of him for the purpose of his testimony, and to the best of my
5 knowledge there has been no request, and we have no idea what these notes are and
6 whether they are -- what is the purpose for a witness of fact to have some notes with
7 him when he testify.

8 PRESIDING JUDGE FREMR: Mr Witness, have you heard the Defence counsel?
9 Do you use any notes?

10 THE WITNESS: (Interpretation) I do not have any notes, except for document 74
11 that you gave me. This is the Rule 74 it is.

12 PRESIDING JUDGE FREMR: Just my guidance, if you need -- feel a need to make
13 your own notes, for example, in order to record some complex question or to make it
14 but in the courtroom as a preparation for your upcoming response, it's fine, but
15 shouldn't -- you shouldn't in the future to come with some, you know, prepared notes.
16 Do you understand?

17 THE WITNESS: Ndiyo.

18 PRESIDING JUDGE FREMR: Fine. So now we can move to Ms Samson.
19 Ms Samson, please.

20 Sorry. Mr Bourgon, I think you have some doubts about, you know, statement of
21 Mr Witness?

22 MR BOURGON: I just want to make clear, Mr President, if a witness comes into the
23 courtroom with notes, I'm not sure if it was his own initiative, that of his counsel or
24 that of counsel for Prosecution. I would just appreciate that if something like that is
25 bound to happen, that counsel will come to the Defence and will say why a witness

1 has a piece of paper in front of him and basically show us the paper. That's how I
2 proceeded in past cases. If I wanted a witness to bring a piece of paper with him,
3 I simply by courtesy approach my colleague and show the piece of paper and show
4 what it is to avoid any waste of time. Thank you, Mr President.

5 MR BAHOUGNE: (Interpretation) Your Honour.

6 PRESIDING JUDGE FREMR: Duty counsel, please.

7 MR BAHOUGNE: (Interpretation) I gave the witness a copy of Rule 74, because it
8 was my duty to inform him of the issue at hand and to allow him to give testimony
9 calmly and with an untroubled mind.

10 And I believe my learned friend opposite is quite familiar with the provision in
11 question. So really it is just the actual text, the actual wording of this Rule and
12 nothing more than that. It is not notes.

13 PRESIDING JUDGE FREMR: Thank you very much, Mr Bahougne.

14 And I can confirm because just now court officer brought to me those two pages, and
15 I can assure, Mr Bourgon, that really it is French text of Rule 74.

16 But anyway otherwise I can just confirm we agree with the approach proposed by
17 Mr Bourgon if something like he described should occur in the future.

18 So you can, court officer, you can just return back this paper to Mr Witness.

19 And thank you, Mr Witness.

20 So hopefully now lastly for the third time I am giving the floor to Ms Samson.

21 MS SAMSON: Thank you, Mr President. Mr President, may I ask that we return to
22 private session just for one -- one or two questions.

23 PRESIDING JUDGE FREMR: Court officer, let's move to private session.

24 (Private session at 11.42 a.m.) *(Reclassified partially in public)

25 THE COURT OFFICER: We are in private session, Mr President.

1 PRESIDING JUDGE FREMR: Ms Samson, you may proceed.

2 MS SAMSON: Thank you.

3 Q. Sir, you told the Court this morning (Redacted)

4 that you joined the Chui mobile force. Can you please tell the Court what your role
5 was in the Chui mobile force?

6 A. As I said earlier, when the Ugandan military authorities were in Bunia at the
7 time, negotiations began with the Chui mobile force fighters. And *the combatants
8 of that force came to the town, and after that there were some incidents between the
9 APC and the Chui mobile force. And the Ugandan military authorities said that
10 they would take the leaders to Uganda (Redacted), and that is how it came to be
11 that I joined the army (Redacted).

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 Q. How did you come to learn of the creation or the circumstances of the creation
21 of the Chui mobile force?

22 A. The Chui mobile force was very close to our ethnic group, the Hema people,
23 and so that is how it came to be that the Bahema in town were aware of the mobile
24 forces' activities. And myself as a Hema person, I was aware of what they were
25 doing.

1 MS SAMSON: Your Honour, I believe we could move back into open session if
2 your Honours permit.

3 PRESIDING JUDGE FREMR: Very well. Let's move to open session again.
4 (Open session at 11.46 a.m.)

5 THE COURT OFFICER: We are back in open session, Mr President.

6 PRESIDING JUDGE FREMR: Ms Samson, please proceed.

7 MS SAMSON: Thank you.

8 Q. You've mentioned, Mr Witness, the events that were occurring in the town.
9 Could you please tell the Court which town you're referring to?

10 A. The town of Bunia.

11 Q. And could you explain for the Court why the Chui mobile force was very close
12 to the Hema ethnic group?

13 A. As I said before, there were officers and commanders in the APC who were
14 *hemas. They were unhappy, discontented with the system within the
15 APC army. Some were collaborating with Lendu fighters, and the mobile force was
16 thought of as an army fighting for the Hema people's rights. And you see the Hema
17 people were well informed of the activities of the Chui mobile force.

18 THE INTERPRETER: Correction from the interpreter: That is why I was very
19 much informed of the activities of the Chui mobile force.

20 MS SAMSON:

21 Q. Sir, do you have any knowledge of the relationship between Bosco Ntaganda
22 and Wamba Dia Wamba?

23 A. Yes. When we were in (Redacted), some people were aware of the
24 relationship between the two, Bosco Ntaganda and Wamba Dia Wamba.

25 Q. Can you please tell the Court what you knew of their relationship?

1 A. Well, as for the colleagues that we had the training with, that is to say the
2 people who were familiar with the story of Afande Bosco, in actual fact Bosco was the
3 bodyguard of Wamba Dia Wamba. During the war between the Rwandans and the
4 Uganda, *in Kisangani he was Wamba Dia Wamba's bodyguard. That was in
5 Kisangani. He defended him and in actual fact he was injured. That is what I know.

6 Q. Who was injured?

7 A. Afande Bosco was injured.

8 Q. And do you know whether Bosco Ntaganda remained Wamba Dia Wamba's
9 bodyguard?

10 A. That was at the time of the RCD. I believe that was in 1998 or 1999. That was
11 when the Rwandan army and the Ugandan army squared off in Kisangani.

12 PRESIDING JUDGE FREMR: Pardon.

13 Mr Bourgon.

14 MR BOURGON: Thank you, Mr President. I think I would like to make an
15 objection without the witness hearing the argument, Mr President.

16 PRESIDING JUDGE FREMR: All right. Court officer, please could you escort
17 Mr Witness out of the courtroom for a while. And for that reason we have to go to
18 the closed session and put the blind down.

19 MR BOURGON: Mr President, with a view to avoiding any waste of time, maybe he
20 can just take his earphones off. I don't think he speaks English. I think we can save
21 some time.

22 MS SAMSON: Your Honour, I think it would be preferable for the witness to leave
23 if the Defence needs to make an objection in his absence.

24 PRESIDING JUDGE FREMR: Yes, I think I also share the view of Ms Samson.

25 So please, court officer, escort Mr Witness out of the courtroom. It will be just for a

1 short time. And we have to go to closed session for that purpose.

2 (Closed session at 11.53 a.m.) *(Reclassified partially in public)

3 THE COURT OFFICER: We are in closed session, Mr President.

4 (The witness stands down)

5 PRESIDING JUDGE FREMR: So now the witness is away from the courtroom,

6 Mr Bourgon, you have the floor.

7 MR BOURGON: Thank you, Mr President. I tried to give as much leeway to my

8 colleague as possible in order for her to ask questions and to get the information she's

9 looking for from the witness, but here we're not even talking about hearsay, we're

10 talking about simply information which was obtained by the witness from various

11 sources and the sources are not even identified.

12 The witness mentions that people in town because they were of the Hema ethnic

13 group would know what Chui mobile force was doing. He says that because he was

14 a Hema and because it was perceived that they were fighting on behalf of the Hema

15 that gave him -- that he was aware of what was going on, of what they did.

16 Then ask other questions, he provides the answer that he obtained the information

17 while (Redacted). Now (Redacted)

18 (Redacted)

19 (Redacted) then he gains information about the story of Bosco Ntaganda, about

20 the story that Ntaganda would have been a bodyguard of Wamba Dia Wamba, story

21 that Bosco Ntaganda would have been injured in Kisangani, story that he would have

22 left. I don't think we have the right witness to provide this type of information and

23 that we need to have the right person if we are going to say -- to speak about the

24 accused.

25 So it is very important that these questions either not be asked or that the witness not

1 be allowed to answer these questions unless he provides exactly who provided the
2 information, and even then it would still be hearsay and I could still possibly object if
3 the source -- for other reason if the source is unknown, but it is important. It's going
4 to be a long trial and if we allow these types of questions to all the witnesses, we will
5 be here forever, Mr President. Thank you.

6 PRESIDING JUDGE FREMR: Comment from my part: Even if, and I think I stated
7 that in the absence of Mr Bourgon yesterday, even if the hearsay is not prohibited
8 because there is no statutory provision prohibiting to use hearsay before this Court, at
9 the same time I have to confirm that really opinion of the witness of his testimony,
10 things that he got to know but without, you know, specifying the origin of such
11 knowledge has almost minimal probative value, so that is why even we try to
12 emphasise that we are not interested to listen to such kind of information.

13 So I have just to confirm what I already said. Please, Ms Samson, either try to elicit
14 the origin of such information, and I know that it would mean that we will have to go
15 probably to private session, or please just, you know, avoid putting this kind of
16 question because really it would be, and I guess I can speak on behalf of all the
17 Chamber, it will be really wasting of time because this kind of information just, you
18 know, meaning opinions or just very general, general information would have no, no
19 impact on our decision. So we would like to avoid to take time by listening to this.
20 Okay?

21 MS SAMSON: Thank you, Mr President. If I may just respond to a few points of
22 the -- of Mr Bourgon.

23 Mr Bourgon will certainly have an opportunity to cross-examine this witness on the
24 basis of his knowledge. I will further elicit the basis of his knowledge indeed in
25 private session. It cannot be that the only people know whether or not Mr Ntaganda

1 was a bodyguard of Mr Wamba Dia Wamba are Mr Ntaganda and Mr Wamba Dia
2 Wamba. Other people will certainly know of it and we will be able to ask witnesses
3 the basis of their factual knowledge. I am not asking the witness to give me his
4 opinion on whether or not there was a superior-subordinate relationship between
5 Mr Ntaganda and Mr Wamba Dia Wamba, I am asking him to tell the Court what he
6 knows factually.

7 If it isn't sufficiently clear how he knows what he knows, I will elicit that from the
8 witness, but in my submission it is not inappropriate to ask a witness factually what
9 they know, either what they saw or what they heard from others, and the Chamber
10 can thereafter evaluate the weight to be given to that evidence on the basis of how
11 directly the witness came to know of it. Thank you.

12 PRESIDING JUDGE FREMR: Mr Bourgon.

13 MR BOURGON: Thank you, Mr President. There is a significant difference
14 between asking a witness what he learnt from others and what he learnt from an
15 identified source.

16 What he learnt from others without further specification is of no value to this
17 Chamber. That is why I simply want, if my colleague can identify the source, then I
18 will give her all the possibility in the world to ask questions. But we need to know
19 something more than "I heard from people" or "because I'm Hema I know." It takes
20 more than that to establish a sufficient foundation to at least authorise what is
21 permitted or at least not forbidden by the Statute which is hearsay. We're willing to
22 hear some hearsay as long as we have a solid and sufficient foundation. Thank you,
23 Mr President.

24 PRESIDING JUDGE FREMR: Thank you. I think the Chamber heard enough on
25 that, so I think and I also hope that I was clear enough, so I guess that we will now

1 continue in the style desired by the Chamber.

2 So now the witness could be escorted in again.

3 (The witness enters the courtroom)

4 PRESIDING JUDGE FREMR: Welcome back, Mr Witness. We have solved some,
5 you know, procedural issue in the meantime, so now Ms Samson will continue in
6 your examination.

7 Ms Samson, you have the floor.

8 MS SAMSON: Thank you, Mr President.

9 Shall we move into private session?

10 PRESIDING JUDGE FREMR: Thank you. Please move to private session.

11 (Private session at 12.02 p.m.) *(Reclassified partially in public)

12 THE COURT OFFICER: We are in private session, Mr President.

13 PRESIDING JUDGE FREMR: Ms Samson, please proceed.

14 MS SAMSON: Thank you.

15 Q. Sir, before the short break we were discussing your evidence and you were
16 telling the Court that Mr Ntaganda had been a bodyguard of Mr Wamba Dia Wamba.
17 Can you tell the Court specifically how you know that or where you learned that
18 information?

19 (Redacted)

20 (Redacted)

21 (Redacted) After a few days, we joined the UPC group and in that group there
22 were other individuals who knew him well, and it was via those means that I gleaned
23 this information concerning him.

24 (Redacted)

25 (Redacted)

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 Q. And, sir, I may have misunderstood, but did you say that Mugabo and

13 Mr Ntaganda were together in Kisangani, or did I misunderstand?

14 A. Yes, that is what we were told, that they lived together in Kisangani at the time

15 of Wamba Dia Wamba.

16 Q. Thank you. And could you please tell the Chamber with whom you spoke to

17 get information about the circumstances of the creation of the Chui mobile force?

18 A. At the outset when the Chui mobile force was created, we received this

19 information within our Bahema community. And when we went to Kyankwanzi,

20 we were in the company of some of their troops who were with them in the Chui

21 mobile force. (Redacted) and we talked about the Chui mobile

22 force. There are some of their troops, the members of their troops that we

23 (Redacted).

24 Q. Could you name some of those individuals who were members of the Chui

25 mobile force troops that you referred to?

1 A. Within those -- amongst those members of the Chui mobile force that we were
2 (Redacted), well, there are many of them. I can't remember all of them,
3 but I do believe I recollect two names, Mr Mbavazi and another man called Abelanga.
4 Those are the two names that I can recall for the time being. Those two individuals
5 were members of the Chui mobile force.

6 Q. For the record, could you please spell those two names?

7 PRESIDING JUDGE FREMR: Mr Witness, if it would facilitate spelling for you, we
8 can provide you a piece of paper and pencil just to put it on paper and then spell it.
9 Do you prefer that?

10 THE WITNESS: (Interpretation) Yes.

11 PRESIDING JUDGE FREMR: So can you now spell it, the name asked by
12 Ms Samson?

13 THE WITNESS: (Interpretation) A-B-E-L-A-N-G-A. M-B-A-V-A-Z-I.

14 MS SAMSON:

15 Q. Thank you. And for the record could you also spell Kyankwanzi?

16 THE WITNESS: (Interpretation) K-A-N-K-W-A-N-Z-I.

17 Q. I'm sorry, Mr Witness, but I think it still wasn't caught correctly. Could you
18 please respell that name, please?

19 A. K-Y-A-N-K-W-A-N-Z-I.

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 (Redacted)

2 Q. And what do you know about the recruitment that was performed?

3 A. (Redacted). At that moment in time Chui mobile force troops

4 were in town. And when they were asked to go to Uganda, some individuals were

5 sent to the inside to recruit young members for their group.

6 Q. And do you know which individuals were sent to the inside, and if so, how you

7 know that they were sent to the inside?

8 A. I do not have any names in mind, but what I do recall is that when the Ugandan

9 authorities requested that they undergo training, the authorities made some lorries

10 available to transport those individuals. There were troops who were in town and

11 these troops went to rural areas with a view to *recruiting people.

12 Q. And when you say that they went to the inside, are you referring to these rural

13 areas outside of Bunia?

14 A. Yes.

15 Q. And how many people were in the group that you went to Kyankwanzi with?

16 A. There were approximately 800 to 900 of us.

17 Q. And do you have knowledge of which ethnicities were participating in this

18 training amongst the 800 and 900 you mentioned?

19 A. Most of us were of Hema ethnic origin.

20 Q. And of the recruits that you were able to see, what was the approximate age

21 range?

22 A. Well, we were of all ages; there were younger members and older members.

23 Q. Did you get to know the approximate age range of these individuals? How

24 young were the younger members and how old approximately were the older

25 members? Just an age range based on what you saw and what you know.

1 A. There were those who were in their 40s, others were aged between 13, 14, and
2 more, and older.

3 Q. How long did you attend training in Kyankwanzi?

4 A. We spent between (Redacted) in Kyankwanzi.

5 Q. And did the Chui mobile force training group in Kyankwanzi have a
6 spokesperson?

7 A. Are you referring to Kyankwanzi?

8 A. Yes. To your knowledge did the Chui mobile force either before leaving for
9 Kyankwanzi or during Kyankwanzi have a spokesperson?

10 A. The Chui mobile force?

11 Q. Yes.

12 A. Yes. When the negotiations came to an end and the Ugandans entered
13 Bunia -- well, at the outset there was no spokesperson, but subsequently they did
14 have a spokesperson in Bunia, yes.

15 Q. And who was the spokesperson?

16 A. It was Mr Thomas Lubanga.

17 Q. Do you know Mr Lubanga?

18 A. I did not know him prior to that, it was from that moment that I met him.

19 Q. And do you know what his ethnicity is?

20 A. He is a Gegere.

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 Q. Can you tell the Court who attended officers' training, to your knowledge?

2 A. All of those who were commanders in the Chui mobile force, Afande Bosco,
3 Afande Kisembo, Tchaligonza, Bagonza, Kasangaki, Zairois and Mugabo, all of them
4 attended officer training, (Redacted)

5 Q. And do you know where the officers' training took place within Uganda?

6 A. Yes, it was in Jinja.

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 Q. Sir, I would like to show you two photographs, please. The first is

20 (Redacted)

21 MS SAMSON: And it is contained in the binders that your Honours and the parties
22 and participants have been given. It's the -- one of the last documents. I'll give you
23 the number. It is number 44.

24 THE COURT OFFICER: Ms Samson, could you please confirm the level of
25 confidentiality of the document.

1 MS SAMSON: The document is public.

2 (Pause in proceedings)

3 MS SAMSON: I don't see the image.

4 Mr President, with your leave, perhaps we could ask these questions in open session.

5 PRESIDING JUDGE FREMR: Well, let's move to the open session.

6 (Open session at 12.29 p.m.)

7 THE COURT OFFICER: We are in open session, Mr President.

8 PRESIDING JUDGE FREMR: Thank you.

9 Ms Samson, you have the floor.

10 MS SAMSON: Thank you.

11 Q. Sir, can you see the photograph in front of you?

12 A. Yes.

13 Q. Do you recognize anybody in the photograph?

14 A. Yes.

15 Q. Starting from the left-hand side of the photograph, do you recognize the person
16 who is sitting down with a green military cap holding a gun?

17 A. Yes, I recognize the person.

18 Q. Can you please tell the Court what the person's name is?

19 A. I don't recognize the person, the first person who is seated.

20 Q. Thank you. And the person who is seated to the right of that individual, so the
21 second person to the left of the photo who is sitting with a bandana, white bandana
22 around his head, do you recognize that person?

23 A. Yes.

24 Q. Can you give the Court that person's name, please?

25 A. It is Kasangaki.

1 Q. And the person sitting next to Mr Kasangaki holding a stick of some sort and a
2 blue-colour beret and a weapon, do you recognize that person?

3 A. Yes.

4 Q. Can you please tell the Court his name?

5 A. Afande Bosco.

6 Q. And when you use the term "Afande" to describe Mr Ntaganda *or others,
7 what does that term mean?

8 A. Well, ever since I've known him he's been called Afande and I've always used
9 that name right up until the present, up until now.

10 Q. And what does the term denote? Is it part of his name or does it denote
11 something else?

12 A. I don't know what the word means. All I know is that in Swahili, in the army,
13 that is what you call a commander or a high-ranking person.

14 Q. And coming back to the photograph, do you recognize and can you give the
15 Court the name of the person sitting to the left of Mr Ntaganda? He's in blue jeans
16 and a blue button-down shirt.

17 A. Yes, that person is Rafiki.

18 Q. And what is Mr Rafiki holding in his hand?

19 A. He has a Motorola.

20 Q. And going back to Mr Ntaganda, what is he holding in his hands?

21 A. He has a spear in one hand and he also has a Motorola in the other hand.

22 Q. Do you recognize the weapon that he's holding, the weapon that looks like a
23 gun?

24 A. The one he has slung around his chest?

25 Q. Yes. I'd like to know if you could tell me and the Court what type of weapon

1 that is?

2 A. In English? It is an SMG in English, or it's also known as an AK-47.

3 Q. And turning now to the person who's sitting to the left of Mr Rafiki, with his leg
4 crossed over the other and in a green beret, do you recognize that person, and if so,
5 could you please give his name to the Court?

6 A. I recognize that person, it is Afande Kitembo.

7 Q. Do you recognize the person sitting to Mr Kitembo's left, so the person on the
8 far right hand of the photo sitting?

9 A. No.

10 Q. Are you able to identify the person in the back row of the photograph in the
11 white shirt and tie?

12 A. Yes.

13 Q. Who is that person?

14 A. It is Mr Thomas Lubanga.

15 Q. And lastly, do you recognize the person who's also in the back row wearing a
16 green military shirt and with a green beret?

17 A. Yes.

18 Q. Who is he?

19 A. That is Abelanga.

20 Q. Do you recognize where this photograph was taken?

21 A. This photograph was taken in the town of Bunia after leaving the bush.

22 Q. Do you know which part of Bunia this photograph was taken? Are you able to
23 identify the building behind the men in the photo?

24 A. He was living in a house that was opposite the Azanga movie house and the
25 owner of that house was Chui Nyanga (phon).

1 Q. You said he was living in the house. Who are you referring to? Who was
2 living in that house? It wasn't captured by the interpreters.

3 A. The Chui mobile force soldiers. It was a house that had been occupied by the
4 Chui mobile force soldiers once they had come back from the bush. And that house
5 was initially occupied by Lubanga.

6 Q. So, sir, are you able to tell the Chamber approximately when this photograph
7 was taken? You mentioned it was after the Chui mobile force left the bush?

8 A. It was early in the year 2000, and the people who were moving towards
9 Kyankwanzi used that house. That was their departure point.

10 Q. And when you say "the people who were moving towards Kyankwanzi," are
11 you referring to people (Redacted) and other recruits who were going to training
12 or are you referring to somebody else?

13 A. The recruits were first taken to that house before they left for Kyankwanzi.
14 They were taken to the airport for transportation towards Entebbe.

15 Q. Thank you.

16 MS SAMSON: May I have a second?

17 PRESIDING JUDGE FREMR: Sorry to interrupt. One question from my part on
18 this photo. May I?

19 Mr Witness, do you have any knowledge why Mr Ntaganda is keeping this spear on
20 his right -- in his right hand?

21 THE WITNESS: (Interpretation) No, I'm not in a position to know that. All
22 I know was that he was in the habit of holding a stick in his hand.

23 PRESIDING JUDGE FREMR: Fine. Thank you.

24 MS SAMSON: I would like now, please, to turn to a second photograph, which is in
25 your binders at number 45 on the Prosecution's list of documents. It should be tab

1 45 in your binders as well. The ERN is DRC-OTP-0137-0713.

2 PRESIDING JUDGE FREMR: Is it also public?

3 MS SAMSON: Yes.

4 Q. Sir, can you see the photograph?

5 A. Yes.

6 Q. I have similar questions in relation to this photograph. First, do you recognize
7 anybody in the photograph?

8 A. Yes, I recognize a few of them.

9 Q. I will ask you to identify a few of the individuals and then afterwards you can
10 let me know if there are additional individuals that you recognize.

11 So starting first with the individual to the extreme left of the photograph in the back
12 row who is holding a weapon and has a white bandana around his head, do you
13 recognize that person?

14 A. Yes, that is Kasangaki.

15 Q. Do you recognize the person standing to Mr Kasangaki's left?

16 A. Yes, that is Mbavazi.

17 Q. Are you able to spell Mbavazi?

18 A. M-B-A-V-A-Z-I.

19 Q. Thank you. Do you recognize the person standing in the back row at the far
20 right of the photograph? You can see the person's head and a bit of his shoulders,
21 but not much else.

22 A. What is that person wearing?

23 Q. It looks like a white shirt, but much of the person's body is hidden behind a
24 soldier standing in front of him. It is the person standing in the back row to the far
25 right of the photograph?

1 A. That is Mr Thomas Lubanga.

2 Q. Do you recognize the person who's to Mr Lubanga's right wearing a green
3 beret?

4 A. Yes, that is Afande Kisémbó.

5 Q. Do you recognize the person to Mr Kisémbó's right in a blue buttoned-down
6 shirt?

7 A. Yes, that is Rafiki.

8 Q. Do you recognize the person who is just in front of Mr Rafiki in what looks like
9 a blue beret?

10 A. Yes, that is Afande Bosco.

11 Q. And do you recognize a person who's sitting down in the very front row, the
12 third person from the left who has a beige-coloured beret with a white bandana
13 around his forehead?

14 A. Yes, that is Abelanga.

15 Q. Do you recognize anybody else in that photograph?

16 A. Yes, there's a young man who I recognize.

17 Q. Can you please tell the Court where that young man is positioned on the
18 photograph and what his name is?

19 A. He is crouched down, he's beside *Mbabazi. He's wearing a bandana around
20 his head. I have the impression that he has a weapon in his hand. And his first
21 name is Olivier.

22 Q. And are you able to tell the Court where this photograph was taken? Do you
23 recognize the place?

24 A. No, I don't know, but I think it was in the town of Bunia, either in the
25 compound where he was living, but I can't be very specific.

1 Q. And as for the time frame of this photograph, do you have any idea of the time
2 frame, and if so, how do you base your conclusions?

3 A. When the Chui mobile force soldiers entered the town, they were all wearing
4 bandanas, white bandanas around their heads. That's why I think that.

5 Q. Thank you.

6 MS SAMSON: I have no more questions on these photographs, unless the Chamber
7 has a question.

8 PRESIDING JUDGE FREMR: We don't.

9 Defence, any question? Well, no questions.

10 Maybe one question concerning possible tendering this document into evidence. Do
11 you intend to tender those two photographs?

12 MS SAMSON: Yes, your Honour. Yes.

13 PRESIDING JUDGE FREMR: Defence, any objection to that?

14 MR BOURGON: We'll have no objection, Mr President, but we will have a lot of
15 questions on cross-examination for the witness. Thank you.

16 PRESIDING JUDGE FREMR: Okay. So those two documents, the first one ending
17 with 0711 and the second one ending with 0713, are admitted into evidence as a
18 Prosecution exhibit.

19 So now, Ms Samson, you still have 6 minutes. You may proceed if you want.

20 MS SAMSON: Thank you very much.

21 Your Honour, may I request that we go into private session for a few questions.

22 PRESIDING JUDGE FREMR: Court officer, please let's move to private session.

23 PRESIDING JUDGE FREMR: Mr Bourgon?

24 MR BOURGON: Thank you, Mr President. Concerning that we have only about
25 five minutes left --

1 (Private session at 12.54 p.m.) *(Reclassified entirely in public)

2 THE COURT OFFICER: We are in private session now. I hope what you said
3 earlier on was public.

4 PRESIDING JUDGE FREMR: Now, Mr Bourgon, you may proceed.

5 MR BOURGON: Thank you, Mr President. I would respectfully seek leave to
6 address the Chamber without the presence of the witness now that we have 5 minutes
7 left.

8 PRESIDING JUDGE FREMR: Okay. Then, Mr Witness, you can now -- you will be
9 escorted out because we will just spend the last 5 minutes before the break by some
10 other issues. So thank you very much. You can now take some rest and also take
11 lunch and we will see you again half past 2. So thank you.

12 Now we have to move to closed session again in order to allow the witness to be
13 escorted out.

14 (Closed session at 12.55 p.m.) *(Reclassified entirely in public)

15 THE COURT OFFICER: We are in closed session, Mr President.

16 (The witness stands down)

17 PRESIDING JUDGE FREMR: Thank you, court officer.

18 Now, Mr Bourgon, the character of your question requires you to stay in private
19 session or could we move to open session for the last 5 minutes? It depends what is
20 the question.

21 MR BOURGON: We can go into public session, Mr President.

22 PRESIDING JUDGE FREMR: Okay. So again let's move to public session for the
23 last 5 minutes.

24 (Open session at 12.56 p.m.)

25 THE COURT OFFICER: We are in open session, Mr President.

1 PRESIDING JUDGE FREMR: So, Mr Bourgon, you have the floor.

2 MR BOURGON: Thank you, Mr President.

3 My objection is that I wanted to raise objections to a few of the questions that were
4 put by my colleague during the last hour or so, but at the same time I want to avoid
5 interrupting the work of the Court so I kept it for the last few minutes.

6 One of the issues is the relevance of the questions being asked. On the one hand, if
7 my colleague is looking for a confirmation of the identity of some persons, we can
8 provide that and we don't need to go through all this work, and I could identify the
9 pictures for her.

10 I note that the witness was not present on either of these two pictures, so he is talking
11 from knowledge that he gained from some other source.

12 This happened in 2000, in the year 2000. This happened -- those pictures were taken,
13 at least according to the information we now have, would have been taken at a time
14 which is outside of the temporal scope of the charges laid against the accused. At
15 least my colleague could establish a foundation as to why she is looking for this
16 witness to identify these pictures.

17 One of the reasons I did not object of course is this information is bound to come into
18 evidence at some point during the trial, but is it the right witness to ask for
19 recognition and then to ask the witness for his opinion as to when that picture would
20 have been taken? I think there is a different way to -- a different approach that can
21 be taken to accelerate the proceedings in order to have the Court benefit from
22 valuable information that is relevant. Thank you, Mr President.

23 PRESIDING JUDGE FREMR: And just to be clear, Mr Bourgon, so your objection is
24 targeting admittance into evidence or even questioning witness on the photographs?

25 MR BOURGON: No, we do not object the admittance into evidence. I have said so

1 and the two pictures have been admitted. And as I've mentioned those pictures are
2 bound to be admitted at some point.

3 Now, what I'd like to know, which has not been established, is why these questions
4 are being put to this witness. Is it just to confirm the identity of those -- of the people
5 on the pictures or is it to confirm something else? Is it -- is she trying to establish by
6 having the witness identify those persons on the picture is -- what is the relevance to
7 identifying these people to the charges laid against the accused? This is not relevant,
8 at least with this witness. It might be relevant for the case, but why this witness?

9 And of course the questions are very often put in a leading fashion and I want to
10 leave -- I want my colleague to get all the possibility to ask the questions she want,
11 but she should focus or at least provide the foundation before doing so. Thank you.

12 PRESIDING JUDGE FREMR: Ms Samson, do you have a response for Mr Bourgon?
13 I guess you have.

14 MS SAMSON: Well, I do to the extent that the Prosecution's position on the period
15 prior to 6 August 2002 is quite clear in my submission in our pre-trial brief, in our
16 Document Containing the Charges, in our opening statement. And I'll remind
17 Mr Bourgon and perhaps if it is of assistance to the Chamber that the Lubanga Trial
18 Chamber held that matters and events prior to the start of the charges, as they relate
19 to the common plan, is relevant and necessary and appropriate to be adduced and
20 admitted into evidence during the course of the trial.

21 Accordingly, I'm not quite clear on what the objection is precisely. I have a witness
22 here who in 2000 happens to have been present at places where these pictures were
23 taken and has given his assessment and basis as to why he dates the photographs at a
24 certain time. Perfectly appropriate in my view, your Honour. He is not an
25 inappropriate witness to ask those questions of. There may be other witnesses who

1 were also at those locations at those times, but as the first witness, in my submission,
2 it was appropriate to have asked this one who was well placed to give the evidence he
3 gave. Thank you.

4 PRESIDING JUDGE FREMR: Thank you, Ms Samson. I can confirm I think on
5 behalf of all the Chamber that we also don't find your questions concerning those
6 photographs inappropriate. If it would be the case, we would just stop you from our
7 own initiative. So for the moment, thank you very much.

8 We will now break for the lunch and we will resume half past 2.

9 THE COURT USHER: All rise.

10 (Recess taken at 13.02 p.m.)

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

12 THE COURT USHER: All rise.

13 Please be seated.

14 PRESIDING JUDGE FREMR: Good afternoon, everybody. We will continue in our hearing
15 by testimony of our second witness. So I am giving floor to Ms Samson. Ms Samson, do
16 you want to continue in private or open session?

17 MS SAMSON: With your leave, your Honour, I would like to move into private session,
18 please.

19 PRESIDING JUDGE FREMR: Okay. So let's move to private session, court officer, please.

20 (Private session at 2.34 p.m.) *(Reclassified partially in public)

21 THE COURT OFFICER: We're in private session, Mr President.

22 PRESIDING JUDGE FREMR: Thank you, Ms Samson. You may proceed, please.

23 MS SAMSON: Thank you.

24 Q. Sir, you stated this morning that there were children approximately aged 13 and up
25 with you when you went to Kyankwanzi. And I would like to know if you know what

1 happened to those children?

2 A. When we completed our training, the UNICEF agents came to demobilise the children
3 who were amongst us.

4 Q. And how do you know this?

5 A. Well, after the training, the UNICEF representatives came to demobilise the children,

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 PRESIDING JUDGE FREMR: Sorry to interrupt, just question: Do parties have at the
10 moment transcript available?

11 MS SAMSON: No, your Honour.

12 PRESIDING JUDGE FREMR: No. May I ask, court officer, whether there is some chance to
13 improve that at the moment or should we be patient?

14 So I was informed that it has been reported already, so hopefully we will be given
15 transcript back soon.

16 So Ms Samson, please continue.

17 MS SAMSON: Yes.

18 Q. And, sir, do you recall approximately the date or the month and year when this
19 demobilisation took place?

20 (Redacted)

21 it was in 2001.

22 (Redacted)

23 (Redacted)

24 (Redacted)

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6 (Redacted)

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11 (Redacted)

12 (Redacted)

13 (Redacted) in December 2001, do you recall which group was

14 controlling Ituri at the time?

15 A. Yes, I remember. It was the APC.

16 Q. And the APC was the armed group; is that right?

17 A. Yes, it was an armed group of the RCD-K/ML.

18 Q. And do you recall who in 2001, December were the leaders of the RCD-K/ML?

19 A. Do you mean the leaders of the political branch?

20 Q. Yes.

21 A. Mbusa Nyamwisi was the president. Tibasima was the vice-president.

22 Mr Thomas Lubanga was the minister of defence of that movement.

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing

(Private Session)

ICC-01/04-02/06

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Trial Hearing

(Private Session)

ICC-01/04-02/06

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19 (Redacted)

20 MS SAMSON: Mr President, with your leave, I think we can move into open session.

21 PRESIDING JUDGE FREMR: Thank you.

22 Court officer, please, let's move into open session.

23 (Open session at 2.54 p.m.)

24 THE COURT OFFICER: We're in open session, Mr President.

25 PRESIDING JUDGE FREMR: Thank you.

1 Ms Samson, you may proceed.

2 MS SAMSON: Thank you.

3 Q. And, sir, when you were in Bunia at this time in March or April 2002, can you describe
4 the political situation at that time?

5 A. When we arrived, the political atmosphere wasn't good. There were -- there was a lot
6 of misunderstanding amongst the political leaders at that point in time.

7 Q. Sir, did you remain a member of the APC?

8 A. When we left Watsa to go to Bunia, I was still a member of the APC. A few months
9 later I left the armed group of the APC.

10 Q. Are you able to describe the circumstances of your departure from the APC? If you
11 think that might identify you, please let the Judges know.

12 A. It's better to go into private session if you want me to tell that story.

13 PRESIDING JUDGE FREMR: Okay then, court officer, please move into private session.

14 (Private session at 2.57 p.m.) *(Reclassified partially in public)

15 THE COURT OFFICER: We're in private session.

16 PRESIDING JUDGE FREMR: Thank you.

17 Ms Samson, you may proceed.

18 MS SAMSON:

19 Q. Sir, I was asking if you could describe the circumstances leading to your departure from
20 the APC?

21 A. (Redacted), there was a disagreement between

22 President Mbusa and the defence minister, Mr Lubanga. And then the person in charge of
23 Mbusa's security, who was in Bunia, was causing problems to the security people who were
24 protecting Lubanga. When we arrived in Bunia, the persons in charge of Mbusa's security
25 considered us as Lubanga supporters, and we, therefore, had problems.

1 Q. What was the name of the person in charge of Mbusa's security?

2 A. His name was Claude Kiza.

3 Q. Is Claude Kiza still living today?

4 A. No, he is already deceased.

5 Q. Do you know how he died?

6 A. He was killed by gunshot.

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 Q. Do you know if anybody gave orders for people to shoot at Claude Kiza?

15 A. Claude Kiza did not get along with our commanders who were based in Bunia.

16 Q. And could you repeat one more time the name of your commanders based in Bunia?

17 A. Yes. There Afande Bosco, Afande Kitembo and Tchaligonza. They were the ones
18 who were thought of as our military higher-ups.

19 Q. And what was the situation like in Bunia after Claude Kiza's death?

20 A. The situation was poor. Those soldiers that evening *wanted to come and get the corpse
21 and there were clashes, and then our group and the group of Mbusa squared off against one
22 another and then they -- that was when the UPC was created.

23 Q. And just so it's clear for the record, when you say "our group," can you confirm whether
24 or not the leaders you just mentioned were the leaders of your group, or if that's wrong?

25 A. Yes. We were called Thomas Lubanga's soldiers, and we reported to three -- the three

1 commanders that I mentioned. And what's more, the members of the general population
2 knew that.

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 Q. And what did your group do following the death of Claude Kiza?

7 A. The governor of Ituri, who was Kiza's boss, was called Colonel Molondo Lompondo.

8 Q. Sir, I'm not sure if you had completed your answer. I asked you what your group did
9 following the death of Claude Kiza. And I understood you to say that the governor of Ituri
10 was Mr Molondo Lompondo. Did you say anything further about what your group did after
11 Claude Kiza's death?

12 A. Molondo Lompondo was the military supervisor of Kiza, and when Kiza was killed,
13 Lompondo was not in Bunia, he was in Aru. Upon his return, he began to attack our group
14 in the town of Bunia itself.

15 Q. Do you know if Mr Ntaganda remained in Bunia at this time?

16 A. You mean when we were attacked by Lompondo, Lompondo.

17 Q. Yes, around that time, at the time of the attacks or shortly thereafter.

18 A. No, he had left the town. He was a ways off from the town.

19 Q. Do you know where he went?

20 A. Yes. He went towards Mandro.

21 Q. And do you know what he was doing in Mandro?

22 A. They opened up a training centre, a training camp to train recruits there in Mandro.

23 Q. And do you know who Mr Ntaganda went with when you say they opened

24 *a recruitment centre? Who do you mean by "they"?

25 A. Yes. The group was divided in two. Some remained with Kisembo, and others went

1 off with Bosco towards Mandro.

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 Q. Did you come to learn where the recruits for Mandro came from?

7 A. The recruitment was done in the town of Bunia and in rural areas.

8 Q. What did you learn of the recruitment efforts?

9 A. An outreach campaign was conducted with various communities. And we asked the
10 parents to provide their children to us so that they could be trained and thus ensure the safety
11 of their villages.

12 PRESIDING JUDGE FREMR: Mr Bourgon.

13 MR BOURGON: Thank you, Mr President. This is an area, Mr President, where my
14 colleague knows very well that we're going to get into heavy hearsay.

15 Before we do so, I would appreciate if you could establish the foundation of the knowledge of
16 the witness regarding recruitment and regarding who was in (Redacted). The witness
17 mentioned that he was not himself in (Redacted)

18 (Redacted) And we have no knowledge of how he would have come into knowing about what
19 he is testifying about now.

20 So if my colleague wants to ask questions in that area, she should first establish the
21 foundation, what knowledge does he have, coming from where, and then proceed to ask
22 questions, and not the other way around, where asking questions and then try to establish a
23 foundation on the basis of the questions.

24 Thank you, Mr President.

25 PRESIDING JUDGE FREMR: Ms Samson.

1 MS SAMSON: Thank you, Mr President. I'm happy to ask the witness further questions to
2 establish his basis of knowledge should the Chamber find it necessary. The witness has
3 indicated that he was part of a group who was involved in these very events at the time and
4 that his superiors included Mr Ntaganda, Mr Kisémbó, Mr Tchaligonza and others, (Redacted)
5 (Redacted) I can ask him additional
6 questions. I think there is a sufficient foundation for him to be answering questions about
7 what members of his group was doing but, as I say, I'm happy to ask further questions.
8 PRESIDING JUDGE FREMR: I think we would appreciate that as well. So please proceed
9 this way.

10 MS SAMSON:

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 Q. And so you mentioned an individual named Rafiki. Could you please explain who he
11 is?

12 A. Rafiki was one of the people who was the closest to our leaders. Rafiki was much
13 closer to Lubanga and he was on good terms with the military authorities.

14 Q. Do you know his ethnic origin?

15 A. I don't know, but I know that he was not from Bunia. He spoke Kinyarwanda. I don't
16 know whether he was from North Kivu or not. I don't know what his ethnic origin is.

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 (Redacted)

2 Q. Were you able to assess or learn the age range of the recruits that were in Mandro at that
3 time?

4 A. As I told you earlier, there were young people and then some who were much older.

5 Q. Are you able to give a more precise estimate of the age range of the people you saw who
6 were younger?

7 PRESIDING JUDGE FREMR: Mr Bourgon.

8 MR BOURGON: Thank you, Mr President. My colleague from the Prosecution is seeking
9 from the witness an opinion as to the age of the people he might have seen there. His
10 opinion is not something that can be of benefit to the Court. The information which could be
11 elicited from the witness is whether he knows the age of anyone and on what basis he knows
12 this information.

13 Whether he thinks that someone is of a certain age is an opinion and is not for him to
14 provide to the Court. If you want to have an expert witness to come and to look at
15 pictures of people and to say that on the basis of some certain physical signs a person
16 is of a certain age, that is one thing. But we could ask anyone in this room or anyone
17 who (Redacted) at the time to provide an opinion as to the age of a certain person.

18 The fact that he was there at the time is no more relevant, no more significant than
19 anyone who was there at the time. If we ask -- if we allowed this question to this
20 witness, then every single witness will have to be asked the same question as to what
21 was in their opinion the average age from the youngest to the oldest of the persons
22 we see they met during the events in Bunia. This, in itself, should discourage the
23 Chamber from allowing such questions.

24 It is important that we rely on evidence that can be of benefit and that can be
25 really -- that has probative value and not simply I'm there and I see, I think a certain

1 person is young, I think a certain person is old. There is no benefit. Does he have
2 information? Does he have a list? Does he know? Did someone tell him that
3 there was people of a certain age? But not just his opinion.

4 Thank you, Mr President.

5 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

6 First of all, I think it's clear to everyone involved in this process that the age of people
7 involved in some military actions in the relevant time is very important for our prospective
8 judgment and for gathering evidence.

9 I, on the one hand, fully agree with you, but I expect that Ms Samson that your -- the
10 objection was a little bit premature. Even generally, I think it's fully acceptable,
11 maybe even relevant for our upcoming witnesses, but I expect that Ms Samson
12 wouldn't be just satisfied with -- it is true that her question was are you able to give a
13 more precise estimate, but I guess that she wouldn't be satisfied just with estimate
14 and I suppose that she would then continue with some following question trying to
15 find the source of this estimate. If not, I agree with you that such a response would
16 be of minimal or even zero probative value.

17 Ms Samson, please.

18 MS SAMSON: Thank you. If I may just respond quickly. I think that my friend from the
19 Defence raises perfect questions for cross-examination and certainly for closing argument.
20 Taking what your Honour has just said on board, there is significant jurisprudence from the
21 Special Court for Sierra Leone, as well as from the Chambers here, that a witness's assessment
22 of the age of children with whom they came in contact is admissible and has probative value
23 so long as the witness is able to provide the basis for the estimate, whether it's because he or
24 she spoke to the child or was able to observe certain characteristics.
25 So I take issue with my friend's suggestion that it's inadmissible at all times or that an

1 expert is required to do what a witness who was present at the time was able to do.

2 PRESIDING JUDGE FREMR: Ms Samson, maybe one, if I may say, warning, please don't
3 take current jurisprudence of this Court as the iron rule. You may know that especially this
4 part of jurisprudence is under continuing discussion and I obviously indicated that maybe
5 even Chamber could have a little bit different view on that, so please take into account.

6 MS SAMSON: Yes.

7 PRESIDING JUDGE FREMR: You may proceed.

8 MS SAMSON: I will. Thank you, your Honour.

9 Q. So, sir, you were -- I was asking a question in relation to your estimate of the age of the
10 recruits that you saw when you were in Mandro. Would you be able to be more precise
11 about the age range of those recruits?

12 A. Some were between 12 and 13 and even older than that.

13 Q. Sir, would you be able to explain to the Court what you base your assessment of the age
14 of those who were 12 or 13 on?

15 A. I'm saying that because they were there and I saw them and, what's more, within the
16 UPC in 2003, a decision was taken to the effect that it was necessary to demobilise some
17 young people so that they could go back to school.

18 Q. I will ask you more questions about that in a bit, but right now we were speaking about
19 Mandro. Did you know any of the recruits or base your assessment on anything in
20 particular?

21 A. Well, first of all, just looking at their face, someone can be older but be short. But if you
22 look at their face, you can tell. And I was able to look at them to observe them, and I
23 considered that that was their age.

24 Q. And you mentioned that there were recruitment or sensibilisation or awareness-raising
25 campaigns in various communities. Can you explain to the Chamber which communities

1 this recruitment took place in and how you know that?

2 A. This awareness raising took place essentially within the Hema community. Some of
3 the leaders were convened and *they talked to these community leaders to ask them to send
4 in young people.

5 PRESIDING JUDGE FREMR: Mr Bourgon.

6 MR BOURGON: Thank you. Thank you, Mr President. Initially my colleague asked a
7 compound question, which in itself should be avoided. The question was in what ethnic
8 groups were the people being recruited? That was one question. And then what is your
9 basis for saying so?

10 My colleague should begin by what do you know about the recruiting? Where do
11 you get this knowledge? How did you obtain this knowledge? And then move
12 onto the question about in what group was the recruiting taking place and not the
13 other way around. In this case the witness first answers that it's -- he answers the first
14 question and determines that the recruiting was mostly in the Hema group. And then,
15 without answering the question of the basis for his knowledge, he continues and starts to give
16 evidence concerning the recruiting itself.

17 I think we're just proceeding upside down. Let's, please, first establish what this
18 witness knows and where he got the information before we ask him the questions.
19 Then this evidence might have some probative value. But for now, we're simply
20 proceeding upside down. Thank you, Mr President.

21 PRESIDING JUDGE FREMR: Mr Bourgon, I think you're always not to instruct opposing
22 counsel how she or he should put his questions.

23 But generally speaking, it also, in my view, depends on the character of the question
24 and/or even of the fact which should be elicited by this question. So I don't see
25 anything improper in this way of asking. Even it's true that could be even made in

1 the opposite way, but anyway it's not improper.

2 Ms Samson, please proceed.

3 MS SAMSON: Thank you.

4 Q. So, sir, I had asked a question in relation to the recruitment and awareness-raising
5 drives in communities. You said they were predominantly, I think, Hema communities.

6 Could you please tell the Court how you know about these recruitment drives or
7 awareness-raising initiatives?

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 Q. (Redacted)

19 (Redacted) Was anyone specifically in charge of recruitment
20 or these awareness-raising initiatives?

21 A. Often the leaders who came from the villages would go to Mandro because that's where
22 the meetings took place, and it was during those meetings that instructions were given to
23 those community leaders to tell them what they were supposed to do.

24 (Redacted)

25 (Redacted)

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 Q. Did you ever learn of instances where community leaders refused to raise awareness
15 within their community for members to join the group?

16 A. No, I was not aware because when they finished their discussion they would leave.
17 And I never heard the community leaders responding directly like that.

18 Q. And you mentioned that you had gone to (Redacted) yourself towards the end of the
19 training. Do you know how long that training lasted?

20 A. The first training took two months or more than two months.

21 Q. Did you get to know what the purpose of the training was?

22 A. At the beginning, when we opened that training camp, I was not aware of the secrets of
23 the camp, of the centre, and I didn't know what the purpose was, (Redacted)
24 (Redacted) I found out more information.

25 Q. And what did you find out that day?

1 A. I saw that each person who was there had a weapon. They were holding a weapon.

2 Q. Did you learn where those weapons had come from?

3 A. That day I didn't know, but afterwards I asked the question *to the recruits: Where did those
4 weapons come from? And I was told that they came from higher up and later on I learned even more.

5 Q. Who explained to you where the weapons came from?

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted) there was someone who had come there to arrange for the
10 delivery of these weapons.

11 PRESIDING JUDGE FREMR: Mr Bourgon.

12 MR BOURGON: Thank you, Mr President. I'd appreciate if the witness could remove his earphones.

13 PRESIDING JUDGE FREMR: Again, I think it will be better if it's something really what he
14 shouldn't hear, it would be better to escort him out. So is it the case?

15 Then please, court officer, we have to move to closed session and escort witness for, I
16 guess, a short while away from the courtroom.

17 (Closed session at 3.47 p.m.) *(Reclassified entirely in public)

18 THE COURT OFFICER: We are in closed session, Mr President.

19 (The witness stands down)

20 PRESIDING JUDGE FREMR: Thank you. The witness left the courtroom. So Mr Bourgon,
21 the floor is yours.

22 MR BOURGON: Thank you, Mr President.

23 Mr Ntaganda is charged pursuant to the Documents Containing the Charges as
24 involving himself and a number of co-perpetrators. These co-perpetrators are

1 identified precisely in the Document Containing the Charges.

2 Today, on a number of occasions, my colleague from the Prosecution has been trying to obtain
3 information directly related to the co-perpetrators.

4 I name amongst the co-perpetrator Mr Lubanga, Mr Kisembo, Mr Rafiki, Mr Bagonza,
5 Mr Tchaligonza and Mr Kasangaki.

6 There is absolutely nothing wrong in my colleague obtaining information about the
7 co-perpetrators. That's perfectly, perfectly legitimate. However, when we get into
8 the world of hearsay, and we are establishing that the witness is providing hearsay
9 evidence, where the source of the hearsay is a co-perpetrator, then our respectful
10 submission is that this is inappropriate because this is like entering into evidence the
11 statement of a co-perpetrator.

12 And for us this is something that cannot be done, eliciting evidence about a
13 co-perpetrator that is legitimate, not eliciting from a witness hearsay evidence where
14 the source is the co-perpetrator.

15 Thank you, Mr President.

16 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

17 Ms Samson, any reaction to this objection?

18 MS SAMSON: Yes, only to say, your Honour, that the witness participated in the
19 conversations, so it's acceptable under Rules of Procedure and Evidence for him to relay what
20 it is that he received in terms of information from that communication.

21 On the one hand, Mr Bourgon would like the witness to identify the source of his
22 information. On the other hand, he doesn't seem to like what the source is. And so,
23 your Honour, I don't think that there is any difficulty in the witness identifying from
24 whom he's received information, which is indeed what my friend has asked the
25 witness to do.

1 PRESIDING JUDGE FREMR: Thank you. Give us a minute, we will silently deliberate on
2 that, I mean with my colleagues.

3 (Trial Chamber confers)

4 PRESIDING JUDGE FREMR: So our ruling is that we are overruling the objection and, just
5 briefly, absolutely brief reasoning, I can almost quote Ms Samson, in fact, she followed your
6 request when she -- when witness says I know something to find the source of that. I'm not
7 at the moment commenting the probative value, which is the other issue, but otherwise she in
8 fact accommodate the way of questioning to your request, Mr Bourgon. So it would be really
9 very strange now to put or to base on this basis objection.

10 I don't know whether -- it probably doesn't make any sense to follow with witness
11 because I was not informed that he asked to go to the restroom. So probably I think
12 it doesn't make sense to ask him to come back for one, two, three minutes.

13 So we can now go to open session again.

14 (Open session at 3.54 p.m.)

15 THE COURT OFFICER: We're in open session, Mr President.

16 PRESIDING JUDGE FREMR: Thank you very much, court officer.

17 We are about to finish our today's session. I'm very sorry; I saw that there is some
18 people in public gallery trying to follow our -- to the hearing, but it was impossible.

19 I can just stress that really there were very serious reasons and well-founded why we
20 had to stay in either private or closed session. So sorry for that.

21 Now we will not, just for your information, continue with witness testimony because
22 it's almost 4 o'clock, and moreover he asked to be taken to toilet.

23 Before we finish, I would like to ask Ms Samson, I know maybe it's rather premature,
24 but I know that your original estimation was that you would need approximately
25 10 hours for examination-in-chief of this witness. I guess you exhausted today

1 something around maybe 4 o'clock -- 4 hours, sorry. Could you just tell us, if you

2 just check your time schedule, how far are you?

3 MS SAMSON: At this point, your Honour, I think I will be using the full 10 hours. So

4 certainly all day tomorrow. If there is a change by the end of the day tomorrow I will let you

5 know, but at this point I have to maintain the 10-hour time.

6 PRESIDING JUDGE FREMR: All right. Thank you, Ms Samson.

7 It means we can just finish today. We will adjourn and we will convene

8 tomorrow 9.30.

9 THE COURT USHER: All rise.

10 (The hearing ends in open session at 3.55 p.m.)

11 RECLASSIFICATION REPORT

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

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