

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
6 Judge Chang-ho Chung
7 Trial Hearing
8 Tuesday, 22 September 2015
9 (The hearing starts in open session at 9.32 a.m.)
10 THE COURT USHER: All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: Good morning, everybody. Court officer, please call
14 the case.
15 THE COURT OFFICER: Thank you, Mr President.
16 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
17 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
18 We are in open session.
19 PRESIDING JUDGE FREMR: Thank you.
20 Now appearances, please, in usual order.
21 MS SAMSON: Good morning, Mr President, your Honours. For the Prosecution
22 today are Mr Eric Iverson, trial lawyer; Ms Marion Rabanit, associate trial lawyer;
23 Mr James Pace and Mr Rens van der Werf, assistant trial lawyers; Ms Selam Yirgou,
24 case manager; and myself, Nicole Samson, senior trial lawyer.
25 PRESIDING JUDGE FREMR: Thank you, Ms Samson.

1 Defence.

2 MR BOURGON: (Interpretation) Good morning, your Honours. Good morning
3 to everyone here in the courtroom. Representing Mr Bosco Ntaganda, who is
4 present today, Mr Dennie Michielsen, one of our interns; Isabelle Martineau;
5 William St-Michel; Margaux Portier, case manager; and myself, Stéphane Bourgon.
6 Thank you, your Honour.

7 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

8 Legal Representatives.

9 MR SUPRUN: (Interpretation) Good morning, your Honours. Representing the
10 victims of attacks, Anne Grabowski, associate counsel, and myself, Dmytro Suprun,
11 on behalf of the OPCV.

12 MR ABDOU: (Interpretation) Good morning, your Honours. The victims, the
13 victim group made up of former child soldiers is represented by myself,
14 Mohamed Abdou, on behalf of the OPCV.

15 PRESIDING JUDGE FREMR: Thank you.

16 And now duty counsel for the record.

17 MR BAHOUGNE: (Interpretation) Good morning, your Honours. Good morning
18 to everyone. Olivier Bahougne for the witness.

19 PRESIDING JUDGE FREMR: Thank you, Mr Bahougne.

20 Now today we are going to continue with testimony of witness P-901, who will be
21 cross-examined by the Defence since, if I'm not wrong, Legal Representatives of
22 Victims have not submit any request for questioning of the witness. Am I right?

23 MR SUPRUN: (Interpretation) Yes, that is correct, your Honour.

24 MR ABDOU: (Interpretation) Yes, your Honour.

25 PRESIDING JUDGE FREMR: All right. Mr Witness, I have to remind you that you

1 are still under oath, which means that you have to speak the truth and nothing but
2 the truth. I am also repeating that Rule 74 assurance concerning risk of your
3 self-incrimination remains effective for all your testimony before this Court.
4 Today you will be questioned by a representative of the Defence. Even if you are a
5 witness called by the Prosecution, please answer all questions put to you by the
6 Defence in the same exemplary manner like you did in the case of the Prosecution's
7 questions. It is for the sake of fair trial, which is the leading principle of the
8 proceedings before this Court. Have you understood, Mr Witness?

9 WITNESS: DRC-OTP-P-0901 (On former oath)

10 (The witness speaks Swahili)

11 THE WITNESS: (Interpretation) Yes.

12 PRESIDING JUDGE FREMR: Thank you. Now we can start with
13 cross-examination.

14 Mr Bourgon, I guess you will conduct that, will you not?

15 MR BOURGON: (Interpretation) Yes, indeed, your Honour. Thank you.

16 PRESIDING JUDGE FREMR: Before you start, I would like to remind you that
17 Prosecution completed its examination-in-chief using 10 hours, 33 minutes, which
18 means that in accordance with para 29 of our decision on Conduct of Proceedings, the
19 cross-examination shall not last longer unless the Chamber decides that additional
20 time for cross-examination should be granted.

21 The Chamber has not found any extraordinary aspects of examination-in-chief that
22 would justify such an extension of time, so please bear it in mind with regard to the
23 amount and order of your potential questions.

24 Mr Bourgon, you have the floor.

25 MR BOURGON: Thank you, Mr President. I'm grateful for the Chamber's advice.

1 I intend to take approximately 10 hours, which means that I would probably go into
2 the first session on Friday, but if at all possible I intend to finish on Thursday
3 afternoon.

4 QUESTIONED BY MR BOURGON: (Interpretation)

5 Q. Good morning, Witness.

6 A. Good morning.

7 Q. I am Stéphane Bourgon and I represent the accused in this case,
8 Mr Bosco Ntaganda. Today I have my team with me and we listened to your
9 testimony very carefully and, of course, I have several questions for you. Since we're
10 both going to speak French -- well, since we both speak French, it's important for you
11 to please follow the instructions that were given to you by the Presiding Judge;
12 namely, please pause between question and answer so the interpreters can finish the
13 interpretation.

14 At any time, Mr Witness, if there's a question you don't understand, please don't
15 hesitate to stop me and ask me to clarify the question for you.

16 As much as possible, we will be in open session because it is important for the public
17 to be able to attend the proceedings. And if at any time you believe that a question
18 or one of your replies might identify you, please don't hesitate to interrupt me and
19 then we can go into private session.

20 We are going to spend several hours together, Mr Witness, and to make things easier
21 to facilitate your testimony, I intend to proceed in two ways: First of all, I will take a
22 chronological approach because I think this will allow the Judges to follow your
23 testimony, but I also will be proceeding within the chronological order and covering
24 certain topics within each chronological phase, so we may stop for a moment, explore
25 one topic and then resume the chronological approach. Do you understand?

1 A. Yes.

2 Q. Since several of the questions that I will be asking you may just require a "yes"
3 or a "no", if that's so, please give your answer and actually speak, give your answer
4 properly, not just nodding your head. Do you understand that?

5 A. Yes, I've understood.

6 Q. Before we start, hark back to the interview that you had with the OTP from (Redacted)
7 (Redacted)

8 THE INTERPRETER: (Redacted)

9 MR BOURGON:

10 Q. Do you remember that?

11 A. Yes.

12 Q. Can you confirm that that interview was the first official interview with the
13 OTP?

14 A. Yes, it was the first time.

15 Q. And the questioning was over four days and there was a recording made; is that
16 not the case?

17 A. Yes.

18 Q. And during the interview, the representatives of the Prosecution did inform you
19 that as a member of the UPC it was possible that you may have committed crimes in
20 that particular time period, 2002 to 2003. Do you remember that warning?

21 A. We talked about that.

22 Q. And the OTP and its representatives immediately reassured you saying that
23 they weren't interested in you. Do you remember that?

24 A. They said that myself as a member of that group, I was not the most responsible
25 and they were investigating the people who bore the responsibility.

1 Q. So in ordinary words that would mean they were saying, "Don't worry, we're
2 not after you." Is that what the message was?

3 A. I don't know. I don't know. I know that they told me that they were
4 conducting investigations into the people who were responsible. They were not
5 going to prosecute each and every individual soldier.

6 THE INTERPRETER: Overlapping speakers.

7 MR BOURGON: (Interpretation)

8 Q. Do you remember them saying that they weren't interested in you?

9 PRESIDING JUDGE FREMR: Ms Samson, please.

10 MS SAMSON: Thank you. I believe the question has been asked and answered.

11 PRESIDING JUDGE FREMR: Objection sustained. I think it's true because
12 Mr Witness answered and you are trying to get some interpretation of the impact or
13 the consequences of such an answer, but I think he already has answered, so please
14 proceed, Mr Bourgon.

15 MR BOURGON: (Interpretation) Thank you, your Honour.

16 Q. During the interview there was a lawyer there, Charles Taku; do you remember
17 that?

18 A. Yes, I do remember that.

19 Q. And you had an opportunity to speak with this lawyer before the interview and
20 during the interview and I believe also between each individual session; is that
21 correct?

22 A. Yes, we were with him right from the very beginning of the interviews until the
23 end when we had finished the interviews.

24 Q. During the interview and actually right at the very beginning the
25 representatives of the OTP told you that you were entirely free to answer the

1 questions or not?

2 A. Yes.

3 Q. And the representatives of the OTP also explained to you that it was very
4 important to tell the truth during the interview; is that not the case?

5 A. They said to me that I was supposed to answer the questions in light of what I
6 knew.

7 MR BOURGON: (Interpretation) I would like to quote a particular passage from
8 that particular interview. It's not necessary to call up the document on the screen.
9 I'm referring to DRC-OTP-0277-57 -- I beg your pardon, the document number is
10 07 -- 2079-1549, but the actual page that I'll be referring to is page 1552.

11 Q. Witness, you said -- or, rather, the representatives of the OTP said to you to be a
12 credible witness you had to be entirely open when you answered questions. Do you
13 remember them saying that?

14 A. Yes. Each time before we started the interview they reminded me that I was
15 supposed to say what I knew, and if I didn't remember an event, I should be silent.
16 And they reminded me to answer the questions for which I had answers.

17 Q. And the answer you gave to that question also at that same page --

18 A. Yes, yes, I understand.

19 Q. So you understood that? I make reference to page 1552.

20 A. Yes. I think that's the answer that I gave.

21 Q. Now, the four-day interview was an opportunity for you to either correct
22 yourself, to make clarifications regarding answers that you had given. You did have
23 that opportunity to clarify, did you not?

24 A. No. Could you repeat your question?

25 Q. Certainly. During the interview, which lasted four days, you had an

1 opportunity to correct, to clarify, or to add details to the information that you had
2 provided?

3 A. During those four days I answered the questions that were put to me and the
4 last day, when we had finished, they asked me if I had something to add and I said
5 that I had answered all their questions and I did not make any corrections to my
6 statement and I didn't even add anything.

7 Q. Let's put aside this four-day interview for a little while.

8 I'd like to confirm one detail. Now, during the period from January 2015 to July 2015,
9 you had several contacts with representatives from the OTP; is that so?

10 PRESIDING JUDGE FREMR: Mr Bourgon. Mr Bourgon, please just be careful
11 about not, you know, mentioning any details which could reveal identity of the
12 witness. So if you are just mentioning maybe some, you know, period, it's not
13 wrong, but if you would for example mention concrete detail of the meeting, it could
14 reveal his identity. So please take it into account. And in case that you would like
15 to ask on some, you know, concrete details, that would be better to move to private
16 session.

17 You may proceed.

18 MR BOURGON: (Interpretation) Thank you, your Honour. I will do my best to
19 avoid any question that might lead to the witness being identified.

20 Q. Witness, the question that I just put to you is a general one. Did you have
21 several contacts with the OTP?

22 A. Between January and July 2015, are you making reference to that period in time?

23 Q. Yes, indeed, that particular period. You gave the interview in December, and
24 then I'm talking about January to July 2015.

25 A. (Redacted)

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 And now we will have to move to private session.

10 (Private session at 9.55 a.m.) *(Reclassified partially in public)

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

12 PRESIDING JUDGE FREMR: Thank you.

13 Mr Bourgon, you may proceed.

14 MR BOURGON: (Interpretation)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 Q. Thank you, Witness.

2 MR BOURGON: (Interpretation) We can now go into open session, your Honour.

3 PRESIDING JUDGE FREMR: All right. Let's move to open session again.

4 MR BOURGON:

5 Q. (No interpretation)

6 PRESIDING JUDGE FREMR: You need to wait a moment until we will be --

7 (Open session at 9.57 a.m.)

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

9 PRESIDING JUDGE FREMR: You may proceed, Mr Bourgon.

10 MR BOURGON: (Interpretation)

11 Q. Now we will have an opportunity to explore this in detail, but right now what
12 interests me is the following: Ever since you arrived in The Hague to give testimony
13 before this Bench, you've had an opportunity to meet with representatives of the OTP;
14 is that so?

15 A. Ever since I arrived here? I think that my entire schedule has been up to the
16 people who had me travel here and who are keeping me here. In our schedule, well,
17 we had to meet with people from the OTP and that was planned for. Even
18 Mr Stéphane, I met with him.

19 Q. I'm talking about your meeting with the OTP. How long did it last for?

20 A. We did not spend the day together. They gave me the transcript of the
21 interviews that I had with the investigators when we met in December. I was all
22 alone in the room where I read the transcripts, and I was with a cameraman who
23 recorded all of that. I read the transcripts during three days. And I had a
24 discussion with the OTP for half a day. And I believe it was all filmed by a
25 cameraman in actual fact.

1 Q. Thank you. During your meeting with the representative of the OTP, of course
2 I imagine they showed you some documents?

3 A. There was a transcript, an audiotape that I was shown and that was the basis for
4 my discussion with the OTP. I read the transcript and I was asked to read it and I
5 did that for three days.

6 Q. And did they show you any other documents?

7 A. I was shown the documents that were drafted by the investigators in December.

8 Q. Let's take an example, Witness: During your deposition, you were asked to
9 listen to a recording. I'd like to know whether you listened to that same recording
10 during your preparation session with the OTP?

11 A. Yes, I listened to that tape.

12 Q. How many times did you listen to that tape or recording with the OTP?

13 A. I listened once and it was the last day.

14 Q. And when you listened to it, you didn't listen to it more than one time?

15 A. Are you referring to the December meeting?

16 Q. No, I'm referring to your preparation session with the OTP last week.

17 A. I listened one time only.

18 Q. At the end of your preparation session with the OTP, you were given the
19 opportunity, Mr Witness, to make any clarifications or changes to your statement; do
20 you recall that?

21 A. No. I was told -- or, rather, I was shown a tape that I listened to, but I was not
22 coached or I was not told that I should add something or remove anything from my
23 statement.

24 Q. Perhaps my question wasn't very clear, Witness. I wasn't talking about the
25 tape in this question, I was talking about your written statement. Were you given

1 the opportunity to clarify or to modify the content of that statement?

2 A. No.

3 Q. My question to you today, Witness, is as follows: Today, do you maintain
4 everything that you stated in your statement (Redacted)
5 (Redacted)

6 A. Those were the answers that I provided.

7 Q. I would simply like to ask you, Mr Witness, once again, do you today maintain
8 all of the answers that you provided? Do you stand by them?

9 A. I answered the questions that were put to me.

10 Q. Let me state my question somewhat differently. You answered a number of
11 questions, you were given the opportunity to re-read your answers. Do you want to
12 change those answers today, or do you stand by those answers? Do you want to
13 maintain the answers you gave?

14 A. I made no change to the responses that I gave and I made no changes to the
15 document that was shown to me. And I've just told you that during the interview I
16 responded to the questions that were put to me.

17 MR BOURGON: (Interpretation) I think we need to go into private session,
18 your Honour, if we may.

19 PRESIDING JUDGE FREMR: Court officer, let's move into private session.

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

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

22 PRESIDING JUDGE FREMR: Thank you.

23 Mr Bourgon, you have the floor.

24 MR BOURGON: (Interpretation) Thank you, your Honour.

25 Q. Witness, I'd like to quote from a passage of your statement. And for the

1 purpose of the transcript it is the very same document that I referred to a moment ago,
2 which bears the reference (Redacted). And I will be quoting from a few
3 pages later on, (Redacted).

4 This is a response you gave to a question put to you by the representatives of the OTP
5 when they told you that they did not intend to investigate you. I'm going to read it
6 out and then ask you for some explanations. Let me quote. Let me quote, the
7 interviewed person --

8 PRESIDING JUDGE FREMR: Sorry, Mr Bourgon, Ms Samson is on her feet, please.

9 MS SAMSON: Apologies for interrupting, your Honour. I would just like to know
10 the line numbers of the page.

11 PRESIDING JUDGE FREMR: Mr Bourgon, could you be more specific.

12 MR BOURGON: (Interpretation) Yes, of course, your Honour. The question is on
13 page 1552, line 122, up until the page 1553, line 128. And the response given by the
14 witness that I'm going to quote can be found on page 1553, lines 129 to 132.

15 PRESIDING JUDGE FREMR: Thank you.

16 MR BOURGON: (Interpretation)

17 Q. Witness, this is the answer you gave, and I will quote, line 129:

18 Person questioned, that's you: "Yes, I prefer as regards that topic that since I'm a
19 former member of the UPC (Redacted)

20 (Redacted)

21 (Redacted). That is what I prefer. But as far as I'm concerned, in my own

22 conscience, I never committed a crime. (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 (Redacted)

2 (Redacted)

3 Q. I'm asking you to explain your answer given at the end of this paragraph. You
4 state, "As far as I'm concerned, in my own conscience, I never committed a crime. I
5 was a member, of course, yes, but I was under orders." I'm asking you to explain
6 what you meant by this response.

7 A. First of all, I was a soldier in the FPLC, (Redacted)

8 (Redacted) I've never

9 denied that. However, what I have said clearly, what I stated here clearly is that

10 (Redacted)

11 (Redacted)

12 (Redacted) but in my own

13 conscience, in my heart and soul, I stated that I had never committed any of the

14 crimes that are prosecuted by the ICC. And I think the sentence you've read out is

15 quite clear and that is exactly what I stated. Those are my words.

16 Q. Thank you. I'd like to ask you one other question on this statement and then

17 we will go on to our next topic. In the same document, the following page, page

18 1554, lines 188 to 191, you stated as follows: "Interviewed person," and I'm quoting

19 here, "I hope if some day I am to testify before the Court I would prefer to have my

20 voice protected, perhaps even my identity. It would be better that day because if my

21 voice and my identity were known to the public, there are too many things going on

22 in my country (Redacted) End of quote.

23 The portion of the sentence I'm interested in is where you refer to protective measures.

24 Were you told about such measures beforehand, or did it come of your own initiative

25 asking for voice and identity protection?

1 PRESIDING JUDGE FREMR: Ms Samson?

2 MS SAMSON: Mr President, in fairness, I think the witness -- the question put to the
3 witness before that answer should also be read to the witness.

4 PRESIDING JUDGE FREMR: This objection is sustained. I think it makes sense
5 because sometimes, you know, it has a close connection, so please in such cases you
6 want to quote, please also cover the question. Thank you, Mr Bourgon.

7 MR BOURGON: (Interpretation) Thank you, your Honour. Yes, I agree with my
8 colleague.

9 The question was as follows: "Do you have any questions" -- or, rather, the question
10 put to you just before was, "Do you have any questions regarding the procedure
11 during your deposition?" And that is where you answered, "I hope that if one day
12 I'm to testify before the Court I would prefer to have voice protection perhaps and
13 also my identity."

14 What I'm asking you, Witness, is were you familiar with such things or were those
15 matters presented to you beforehand?

16 PRESIDING JUDGE FREMR: Ms Samson?

17 MS SAMSON: Thank you, Mr President. I would like the question that the
18 investigator put to the witness before the quote from the witness that Mr Bourgon
19 cited to be put to the witness in fairness. Mr Bourgon has not done that.

20 PRESIDING JUDGE FREMR: Mr Bourgon.

21 MR BOURGON: (Interpretation) Thank you, your Honour. Well, let me rephrase
22 my question without using the document.

23 PRESIDING JUDGE FREMR: Ms Samson.

24 MS SAMSON: Thank you, Mr President. My objection is only that before
25 giving -- before asking the witness a question about an answer he gave, the question

1 should also be put to the witness. If the rephrasing isn't going to do that, then

2 I would still object.

3 PRESIDING JUDGE FREMR: Yes, I think it was our understanding and in fact you

4 heard, Mr Bourgon, that I personally confirmed that we would like to take this

5 practice, so if you would like to put or to quote the answer, please also quote the

6 question. And please take it as a common principle for our future work. Please.

7 MR BOURGON: (Interpretation) Thank you, your Honour. Since the question

8 was very long and I wanted to save time I would prefer in that case to go on to a

9 different question.

10 We can go back to open session, your Honour.

11 PRESIDING JUDGE FREMR: Well, court officer, let's move into open session.

12 (Open session at 10.18 a.m.)

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

14 PRESIDING JUDGE FREMR: Thank you.

15 Mr Bourgon, you may proceed.

16 MR BOURGON: (Interpretation)

17 Q. Witness, I have one more question before I go on to the first main topic. I'd

18 like to clarify something regarding your career.

19 MR BOURGON: Your Honour, I believe we have to go into private session.

20 PRESIDING JUDGE FREMR: Okay then, let's move again to private session.

21 (Private session at 10.19 a.m.) *(Reclassified partially in public)

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

23 PRESIDING JUDGE FREMR: Mr Bourgon, you may proceed.

24 MR BOURGON: (Interpretation)

25 Q. Witness, we're now in private session. (Redacted)

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 Q. Thank you. I'd like to go over the main aspects of your testimony during your
5 deposition. In (Redacted) you underwent a (Redacted) training period with the *AFDL;
6 is that correct?

7 A. No, it was not in (Redacted), it was (Redacted).

8 Q. (Redacted)

9 A. (Redacted)

10 Q. (Redacted)

11 A. (Redacted)

12 Q. (Redacted) you joined the APC in (Redacted)

13 A. Yes, (Redacted)

14 Q. (Redacted)

15 A. (Redacted)

16 Q. Did you desert the APC at that time? Did you leave the APC?

17 A. I went back because there were certain soldiers, comrades who lived there, but
18 I -- that is in (Redacted), but I realised that their behaviour wasn't very good because
19 they were working with (Redacted), and that's why I went back to town.

20 Q. My question was a very simple one. So you left the APC, is that correct?

21 A. Yes, I left the APC and I went back (Redacted).

22 Q. (Redacted), you went to Kyankwanzi to undergo training in
23 Uganda?

24 (Redacted)

25 (Redacted)

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 THE INTERPRETER: Excuse me, the answer continues.

5 THE WITNESS: (Interpretation) It was basic training which covered a section.

6 MR BOURGON: (Interpretation)

7 Q. In your testimony you stated that that training lasted (Redacted) and, based on
8 the information that I have, it lasted in fact (Redacted). Can you clarify?

9 (Redacted)

10 (Redacted) Perhaps, Counsel, you have met with people who are better informed of
11 the duration than I am, but what I know is that we stayed (Redacted) at the training
12 camp in Kyankwanzi.

13 PRESIDING JUDGE FREMR: Ms Samson.

14 MS SAMSON: To be clear, your Honour, I don't want to misquote the witness. In
15 transcript T-27, page 40, line 4, the witness said that he thought the training lasted
16 (Redacted)

17 PRESIDING JUDGE FREMR: Mr Bourgon, it's maybe not so crucial fact, but anyway
18 you should be very precise when quoting the witness.

19 MR BOURGON: (Interpretation) Thank you, your Honour. It was a question of a
20 general nature. It was to get an idea of the answer of the witness. In fact, I'm aware
21 of his response. I wanted to ask him to clarify it in light of the information I
22 suggested. I suggested (Redacted), and I wanted to ask him to clarify. I didn't
23 quote precisely, but of course I can do so if necessary, your Honour.

24 Q. At the end of this training, Witness, you went to (Redacted)

25 (Redacted)

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13 Page 19 redacted – Private session.

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 THE INTERPRETER: (Redacted)

6 THE WITNESS: (Interpretation) (Redacted)

7 (Redacted)

8 (Redacted)

9 MR BOURGON: (Redacted)

10 Q. (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 PRESIDING JUDGE FREMR: Could you also add as we agreed, Mr Bourgon, the

15 question? Mr Bourgon, could you also add the question put to the witness before

16 giving this answer?

17 MR BOURGON: (Interpretation) I will do so, your Honour, indeed.

18 MS SAMSON: Mr President.

19 PRESIDING JUDGE FREMR: Ms Samson.

20 MS SAMSON: Just a quick question. I'd like to be clear if we are dealing with the

21 witness's interview transcript or his testimony transcript? I'm not clear which of the

22 two transcripts we're referring to.

23 PRESIDING JUDGE FREMR: Mr Bourgon.

24 MR BOURGON: (Interpretation) Thank you. The transcript of his testimony. If

25 I wasn't clear, I apologise. The testimony of his -- the transcript of his testimony.

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(Private Session)

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1 (Redacted)

2 Q. (Redacted)

3 (Redacted)

4 A. (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

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23 (Redacted)

24 (Redacted)

25 Q. Thank you, Witness. You've answered many of the questions I wanted to put

1 to you, but let's go back to my first question: What was the name of this group?

2 A. It didn't have a name. I do know that -- well, they just said that they were
3 soldiers of Thomas Lubanga up until the training centre was set up in Mandro. The
4 name of FPLC did not exist yet.

5 Q. Thank you, Witness. Now the name FPLC came into existence officially when,
6 according to you?

7 A. During the training of recruits in Mandro. In fact, for the name -- the existence
8 of the FPLC on paper did not exist until after the training of the recruits in Mandro,
9 and it was during that period that the commanders --

10 THE INTERPRETER: Overlapping speakers.

11 MR BOURGON: (No interpretation)

12 THE INTERPRETER: Message from the interpreters: Could Defence counsel
13 please respect the five-second rule.

14 THE WITNESS: (Interpretation) It is difficult to remember the date, but it must
15 have been towards the end of August or early in September 2002. I don't remember
16 the exact date.

17 MR BOURGON: (Interpretation)

18 Q. Thank you. Now if I put it to you that the first establishment was on *4
19 September and then three people were appointed, the chief of general staff, Kisembo,
20 the deputy chief of staff responsible for administration, and then the deputy chief of
21 staff responsible for operations, Mr Bosco Ntaganda, are you familiar with those three
22 appointments that occurred on 4 September 2002?

23 A. I know that the two chiefs of staff were appointed and their deputies, there was
24 the G1, G2, G3, G4, G5, they were appointed officially on that date.

25 (Redacted)

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12 Page 27 redacted – Private session.

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1 Now the next topic I would like to explore with you, at the beginning of the next
2 session, has to do with your military knowledge.

3 And my first question is this: Tell us about your military progression.

4 PRESIDING JUDGE FREMR: Sorry to interrupt. I guess you would like to start a
5 new topic, so it would be probably more convenient to start after the break because
6 we have just one minute before 11. Did I understand well that you would like to
7 open a new topic now?

8 MR BOURGON: (Interpretation) Yes, exactly. I was just starting on the new topic
9 just to take advantage of that last minute remaining.

10 PRESIDING JUDGE FREMR: Then please keep it for after the break, okay?

11 MR BOURGON: (No interpretation)

12 PRESIDING JUDGE FREMR: So we will break now, as usual, for 30 minutes, which
13 means we will adjourn and we will resume at half past 11.

14 THE COURT USHER: All rise.

15 (Recess taken at 11.00 a.m.)

16 (Upon resuming in open session at 11.33 a.m.)

17 THE COURT USHER: All rise.

18 Please be seated.

19 PRESIDING JUDGE FREMR: Before we will continue with cross-examination, allow
20 me to -- I was asked during the break by the interpreters, allow me to remind you that
21 you should kindly observe this five-seconds rule because I was told that there was
22 several cases of overlapping which, you know, is rather harmful to our transcript.
23 So please, even I guess that you are sometimes in tension, or some -- under some
24 emotions, but still please have it in mind.

25 Now, Mr Bourgon, you have the floor.

1 MR BOURGON: (Interpretation) Thank you, Mr President. I was given the same
2 comment during the pause. I do apologise and I shall do my best in the future.

3 I would like to move into private session, please.

4 PRESIDING JUDGE FREMR: All right. Court officer, let's move into private
5 session.

6 (Private session at 11.35 a.m.) *(Reclassified partially in public)

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

8 PRESIDING JUDGE FREMR: Thank you.

9 Mr Bourgon, you have the floor.

10 MR BOURGON: (Interpretation) I thank you, Mr President.

11 Q. (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 A. (Redacted)

17 Q. (Redacted)

18 (Redacted)

19 A. (Redacted)

20 (Redacted)

21 Q. (Redacted)

22 (Redacted)

23 A. (Redacted)

24 Q. (Redacted)

25 (Redacted)

1 A. (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 Q. I shall move on to my next subject now with regard to your knowledge, your

6 military knowledge. (Redacted)

7 (Redacted) you will agree with me that you have extensive

8 military knowledge; do you not?

9 A. (Redacted) when I was in the FPLC (Redacted)

10 (Redacted), I would say that I did not have enough knowledge, but I had experience.

11 (Redacted)

12 (Redacted)

13 Q. So you are able to confirm that the rank of colonel is a very high rank in the

14 army, are you not?

15 A. Yes, the rank of colonel is part of the higher officer ranks. It's a high-ranking

16 position.

17 Q. And you are able to confirm for the Chamber the importance of the ranking

18 system within the army in general, are you not?

19 A. Yes. The importance of an army, well, it is the high-ranking individuals who

20 appreciate the value of each individual and therefore assign a certain rank to them.

21 THE INTERPRETER: Overlapping speakers. The interpreter could not follow.

22 Mr President, message from the English interpreter: The interpreter had not finished

23 the interpretation when counsel began the question. Could he please be asked to

24 repeat the question? Thank you.

25 PRESIDING JUDGE FREMR: Sorry, Mr Bourgon, I again received message from the

1 interpreters' booth that there was some overlapping so that they are, and I am also
2 asking you please repeat the question again.

3 MR BOURGON: (Interpretation) I thank you, Mr President.

4 Q. Mr Witness, I shall repeat the question. You are in a position on the basis of
5 your military experience to confirm that any low-ranking soldier owes full respect to
6 a high-ranking officer; is that not true?

7 A. Military regulations state that every soldier has to respect a higher ranking
8 individual.

9 Q. What interests me, Witness, is not the regulations as such, but your own
10 experience in the matter. And I suggest to you that an army would not be able to
11 function without the full respect of the chain of command. Would you not agree?

12 A. The workings of an army depend upon the regulations. There is no army
13 without a regulation and the regulation is clear on the matter. It says or it states that
14 lower ranking soldiers must respect higher ranking officers.

15 Q. And when we're talking about a chain of command within an armed group, you
16 will agree with me, will you not, that every soldier within an armed group has a
17 hierarchical superior, correct?

18 A. Every armed group has its own way of functioning, but the armed group
19 designated as FPLC had a structure and it worked like an army because the
20 commanders within the FPLC were soldiers that had received training. They had
21 received training as in the military.

22 Q. And you are in a position to confirm, Mr Witness, on the basis of your military
23 experience the importance of the posts occupied within any armed group, are you
24 not?

25 A. Well, if we're talking about the FPLC, you know there are a number of armed

1 groups and every group has its own structure, but within the FPLC, it was like an
2 army. So whatever rank one occupied one could not take any initiative without the
3 authorisation of one's hierarchical superior. Either you received an order from them
4 or you found yourself in a given situation and you gave the information to your
5 hierarchical superior to receive orders. Every armed group has its own way of
6 working, but I'm talking to you about the FPLC.

7 Q. So I have nothing against the fact that you take the FPLC as an example, but I'm
8 also asking you on the basis of your entire military career what your opinion is. And
9 I put it to you that the incumbent of a post is more important than somebody who is
10 not an incumbent to a certain position; would you agree with me?

11 A. The commander of a given unit within an army has his superior. At every
12 level there is a hierarchical superior. And the leader of an army has the last word,
13 apart from the president of the republic, who is the chief of general staff as such. But
14 at every rank there is a superior. And even if one is a commander, one has a
15 superior.

16 Q. I'm now moving on to the question of military units. And in this regard I am
17 not aware of the military knowledge of the Judges, but I would like you to be able to
18 confirm for the Bench the importance of every unit within an armed group. Let us
19 take the example of the FPLC. What is the smallest unit and what is the largest?

20 A. Within the FPLC structure, the smallest unit was the section, and it comprised
21 12 soldiers. Its commander was called the section chief, and this person might have
22 the rank of corporal or sergeant. The highest unit within the FPLC was the secteur
23 and at a given moment in time it was a brigade, and the head of that structure was the
24 chief of general staff of the FPLC.

25 PRESIDING JUDGE FREMR: Mr Bourgon, if your intention is at the moment to

1 make some inquiry about the structure of the FPLC, would it be possible to make it in
2 open session? But you know better. It's up to you.

3 MR BOURGON: (Interpretation) I would like to go into open session,
4 Mr President, but I am fearful that if we give examples of FPLC there might be an
5 objection on the part of the witness. But yes, indeed, we might move into open
6 session, please.

7 PRESIDING JUDGE FREMR: At least I think we can try.
8 So now, court officer, let's move into open session.

9 (Open session at 11.50 a.m.)

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

11 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon. You may proceed.

12 MR BOURGON: (Interpretation)

13 Q. Mr Witness, you have just told us that within the FPLC, the smallest military
14 unit was the section comprising 12 soldiers and that the highest is the secteur and at a
15 given moment a brigade or brigade; is that correct?

16 A. Yes, that is what I said.

17 Q. You would agree with me, would you not, that between a section and a brigade,
18 we have a platoon, a company, a battalion, and then a brigade; is that correct?

19 A. Yes.

20 Q. You also made mention of the fact that the army fell under the command of a
21 chief of general staff; is that correct?

22 A. I said that it was the chief of general staff who managed all of that within the
23 FPLC.

24 Q. A number of questions were put to you, Mr Witness, with regard to the posts
25 from G1 to G5 within the FPLC. When we say from G1 to G5, this group composes

1 the headquarters, which falls under the chief of general staff; is that correct? So
2 we're talking about the general staff that falls under the chief of general staff; is that
3 correct?

4 A. Those individuals are called the staff of the general staff, within the general
5 staff.

6 Q. Yes, precisely, Mr Witness. My next question is notably that there is a
7 distinction that you are aware of between an officer who has a staff role and an officer
8 who has a command role. Is there a difference between the two?

9 A. Yes, there is.

10 Q. And the position occupying -- a person occupying the position of G2 is a staff
11 officer, whereas the commander of a brigade is a line officer who has a role -- a
12 commanding role. Would you be in agreement with that?

13 A. The G2 is in charge of intelligence within the general staff, and he is in charge of
14 intelligence throughout the army, this army. The brigade commander is the brigade
15 commander within the army itself, but his functions stop at the brigade level. That is
16 the difference that there is between the two.

17 MS SAMSON: Thank you, Mr President. Just a point of clarification. There is a
18 difference in the French and English transcript in one of the answers that the witness
19 gave and it may be appropriate to clarify which is correct.

20 In the English transcript it's page 40, lines 5 to 6. The question was: "You also
21 made mention of the fact that the army fell under the command of a chief of general
22 staff; is that correct?"

23 And the answer at line 5: "I said that it was the chief of general staff who managed
24 all of that within the FPLC."

25 The French transcript at page 39, lines 25 to 26, refers only to the general staff being in

1 charge of this.

2 And I don't know if the witness meant to say the chief of general staff or just the
3 general staff.

4 PRESIDING JUDGE FREMR: Mr Witness, were you able to listen to this issue
5 presented by Ms Samson? Could you clarify that?

6 THE WITNESS: (Interpretation) Well, could you repeat the question to me so that I
7 can provide you with an appropriate answer?

8 MR BOURGON: (Interpretation) Thank you, Mr President.

9 Q. With a view to clarifying, Mr Witness, I would suggest it to you that within an
10 armed force, the officers who have positions G1, G2, G3, G4 and G5 form the general
11 staff who are at the service of the chief of general staff; is that correct?

12 A. I said the G1, G2, G3, G4 and G5 and others were individuals who were
13 designated as staff within the general staff. They manage the departments. I don't
14 know whether we need to furnish any further details. Those are the staff of the
15 general staff.

16 Q. And when we say the staff of the general staff, the staff answer to the chief of
17 general staff; is that correct? They report to that person?

18 A. There is another structure that manages the staff within the general staff. Even
19 if their chief is the chief of general staff there is another structure within the general
20 staff, and it is via this means that the reporting structure functions with a view to
21 reaching the chief of general staff.

22 Q. And this system from G1 to G5, Mr Witness, within the general staff, are you
23 able to confirm that this is a system used throughout the world in all the armies of the
24 world; is that true?

25 A. In all the armies around the world, yes, this does exist because even within the

1 FARDC there are the G positions that exist.

2 Q. And within the units that are part of the FPLC, there are individuals who
3 occupy the same functions of G, but they're called S, S1, S2, S3, S4, S5; is that correct?

4 A. Within the units from the secteur level to the battalion level, there are staff.
5 Within the secteur, they are called T, T1 to T5. Within brigades and battalions, they
6 are called S, S1 to S5. That is true, yes.

7 Q. And the use of these letters makes it possible when two armies are
8 communicating to know who occupies which post within which army when two
9 armies are communicating, would you agree with me?

10 A. This is an existing structure, and this structure existed even when we joined the
11 FARDC.

12 Q. For example, Mr Witness, when I was in the army, I was a G4 within an artillery
13 regiment. And so you would know exactly what kind of work I was doing, isn't that
14 so?

15 A. The regiments in the Congo are governed by or led by S people. It is a service
16 that handles logistics.

17 Q. Mr Witness, on the basis of your own military expertise, can you confirm the
18 importance of discipline within an armed force, and the fact that without discipline an
19 armed force cannot function? Would you agree with that statement?

20 A. Well, logically discipline is recommended in all armies.

21 PRESIDING JUDGE FREMR: Mr Bourgon, in my opinion, you are asking witness on
22 his opinion, so maybe I think the same questions like this shouldn't be allowed. Just
23 ask him what he heard, what he has seen, what knowledge he got, but not about his
24 opinion.

25 MR BOURGON: (Interpretation) Duly noted, your Honour, except that I asked the

1 witness on the basis of his expertise, did he think that discipline was necessary. I

2 think he can answer the question. In a way we are asking him for his expertise.

3 PRESIDING JUDGE FREMR: Go ahead.

4 MR BOURGON: (Interpretation)

5 Q. In terms of respect amongst the ranks, I shall give you an example and then I

6 will ask you if you agree with my example. The officer who visits a particular unit, a

7 unit that does not come under his command, when that person gets to that particular

8 place, that person must go report to the commanding officer because that is part of

9 the military way of doing things in your experience. Would you agree with that

10 statement?

11 PRESIDING JUDGE FREMR: Mr Witness, I have to add to that. If you are ready to

12 respond, you have to base your answer on your own experience and that the Court

13 would be especially interested in your experience you get within the FPLC. So

14 please take this guidance from the Bench.

15 THE WITNESS: (Interpretation) Within the army, logic tells us that a soldier who

16 comes from a unit to go on vacation or to visit another place, he has to have a proper

17 form of authorisation. He has to have leave to depart from his commanding officer.

18 If he is in a place where his unit is deployed, he has to go by way of that camp to get

19 the document in question, this travel document. And this is the case no matter what

20 his rank.

21 MR BOURGON: (Interpretation)

22 Q. Now, going by your own experience, Mr Witness, armed groups that you were

23 part of were always subordinate to political authority, namely, the government.

24 Would you agree with that statement?

25 A. Yes. The two armed groups that I belonged to were affiliated with a

1 government, a form of political power.

2 Q. I would put it to you, Witness, when one says FPLC that was the armed branch
3 of the UPC and they came under the authority of the UPC. Was that not the case?

4 A. On paper, yes, that was the case.

5 Q. And during your testimony, you mentioned on a number of occasions that there
6 was the RCD-K/ML and there was the APC. Which of these two was the armed
7 group and which was the political group?

8 A. The RCD-K/ML was the political wing and the APC was the armed wing or the
9 military wing.

10 Q. And to just conclude on this particular topic, yesterday you were shown two
11 documents. One was a series of suggestions to appoint a number of people,
12 incumbents, and then there was the decree from Thomas Lubanga that made those
13 suggested assignments official. I would put it to you that this is an example of how
14 military people must follow the orders of their political masters; is this so?

15 A. I wouldn't quite agree with you on that point. That statement -- correction,
16 those suggestions didn't apply to everyone and they were outside the structure of that
17 military group, because there were other appointments that were done in a different
18 way up until 2005. The establishment of ranks that you mentioned was in 2003.
19 After 2003 and later on, people were appointed on several occasions.

20 Q. Let's take a better example. The FPLC as the armed wing of the UPC listened
21 to the directives and orders issued by the UPC. Would you agree with that
22 statement?

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing

(Private Session)

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1 Q. (Redacted)

2 (Redacted)

3 (Redacted)

4 A. (Redacted

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 Q. I'll move on to another topic. We've looked at your military career, and now

11 I'd like to look at one particular part of your military career and we're going to dissect

12 it in so many words.

13 MR BOURGON: So if we could now move into private session.

14 PRESIDING JUDGE FREMR: All right. Court officer, let's move into private

15 session.

16 (Private session at 12.12 p.m.) *(Reclassified partially in public)

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

18 PRESIDING JUDGE FREMR: Thank you.

19 Mr Bourgon, you may proceed.

20 MR BOURGON: (Interpretation) Thank you.

21 Q. Witness, this morning you told us, sir, that in (Redacted), you had (Redacted)

22 (Redacted)

23 is that correct?

24 A. Yes, (Redacted)

25 Q. Now, during this kind of training given to recruits, you were trained on how to

1 use weapons, tactics, you did drill, military exercises and discipline, is that so?

2 A. During that training we learned how to handle weapons, we learned about
3 tactics and we did some drill, but the training really focused on weapons handling
4 and fighting tactics.

5 Q. At that time you were 15 years of age and so I would put it to you that you were
6 actually a kadogo?

7 A. Yes. And what's more, I was called a kadogo.

8 Q. I'm going to move on to something else now. (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted) Do you understand this exercise that I'm suggesting to you?

13 A. Very well.

14 MR BOURGON: (Interpretation) Your Honour, if we could go into open session.

15 PRESIDING JUDGE FREMR: Court officer, please let's move into open session now.

16 (Open session at 12.16 p.m.)

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

18 PRESIDING JUDGE FREMR: Thank you.

19 Mr Bourgon, you have the floor.

20 MR BOURGON: (Interpretation) Thank you, your Honour.

21 Q. (Redacted)

22 MR BOURGON: (Interpretation) (Redacted)

23 (Redacted)

24 PRESIDING JUDGE FREMR: (Redacted)

25 (Redacted)

1 MR BOURGON: (Interpretation) Thank you, your Honour.

2 Q. Now, the witness said that he had gone to the red place in 1999; is that correct?

3 A. It was in 1997, and I remained in 1997, 1998, and I left that red place in 1999.

4 Q. And you told us that you left the red location because there was ethnic conflict
5 that had already begun to affect that place; is that correct?

6 A. There was fighting not far away from that particular place about --

7 Q. I'd like to glean some information for the benefit of the Chamber regarding this
8 ethnic war that was under way at the time, starting with the fact that this was a
9 conflict that pitted one civilian against another; would you agree with that statement?

10 A. Yes, indeed. It was a conflict between civilians, and they used bladed weapons
11 such as machetes, spears, and they also set houses on fire.

12 Q. Now, during this ethnic conflict, it was a question of the Lendu attacking the
13 Gegere or the Hema; is that not so?

14 A. Yes.

15 Q. And in the red location, can you confirm that there were only Gegere people,
16 that there were no people from the south Hema group?

17 A. In -- in that place, most of the people living there were Gegere or Lendu. There
18 were also communities there in small numbers, but most of the people were Gegere or
19 Lendu.

20 Q. Later on I will be harking back to this distinction between the Gegere and the
21 south Hema people, but right now I'd like to ask you this: Can you confirm that at
22 that time training camps were being set up in a systematic way, camps to train Lendu
23 combatants? Is that true? Is that so?

24 A. Training camps? I'm not so sure. However, in some places it was said that
25 people were going there for ceremonies.

1 Q. You are well aware of the Lendu combatants, aren't you, Mr Witness?

2 A. That term was common late in 2002 and early in 2003. It was a popular term in
3 those years and it is still popular or well in use today.

4 Q. Now, what interests me is 1999. What name was given to these people who
5 were fighting on the Lendu side?

6 A. I will give you an answer in accordance with what people were saying back
7 then. It was said that Lendus were attacking a particular place or burnt down a
8 particular village. That's the sort of talk I heard back in those days.

9 Q. Can you confirm that the Lendu were systematically attacking Hema villages?

10 A. There were some attacks and then counter-attacks of civilians. Some would go
11 and attack, and the people who had been attacked would counter-attack in turn.

12 Q. Now, between these people who were attacking and the people who were
13 counter-attacking, was one group the aggressor or were both groups the aggressors or
14 the assailants?

15 PRESIDING JUDGE FREMR: Mr Bourgon, I can't allow this question. In my view,
16 it is rather for -- belongs to expert maybe we are going to listen to on Friday. But I
17 think such a question does not belong to this witness.

18 MR BOURGON: (Interpretation) Thank you, your Honour.

19 Q. Witness, who was attacking whom to your knowledge?

20 A. This conflict -- the roots of this conflict are very complicated. When a Lendu
21 person would go and attack the village of a Gegere person, he might justify his
22 actions and, similarly, if a Gegere person would go and attack a Lendu village he
23 would provide a reason. Now, today some villages no longer exist because they
24 were burnt down. That is what I know about the origins of this conflict in the year
25 1999.

1 Q. Now, if I understand your testimony, on the basis of your knowledge, there was
2 no retribution on other side?

3 THE INTERPRETER: Correction from the interpreter: There was no holding back
4 on either side.

5 THE WITNESS: (Interpretation) Well, I told you this: A Lendu person who
6 attacked a Gegere would have his reasons for doing so. Similarly, a Gegere person
7 who attacked a Mulendu would have his reasons. And that is how it came to be that
8 the conflict worsened, and then it gradually increased and reached the level or the
9 scale that it is now at.

10 MR BOURGON: (Interpretation)

11 Q. Now, a few moments ago you mentioned that -- you mentioned the expression
12 "Lendu combatant". It was a term that became quite common early in 2002, is that
13 so?

14 A. No. It was not early in 2002. It was late in 2003. Late in 2003, that is when
15 the term or expression was heard, was common, particularly within the Ngiti
16 community.

17 And in 2003, when the UPDF troops battled the FPLC, after the FPLC left, to be Ngiti
18 combatants or Lendu combatants, they would use the expression "combatant"
19 particularly in the town of Bunia. And that is how it came to be that the term
20 became in common usage.

21 Q. During your testimony you talked about the situation in Mongbwalu, what
22 happened there, and at that point you mentioned the involvement of Lendu
23 combatants. What were you referring to?

24 A. I told you that in Mongbwalu they were APC people and Lendu combatants.
25 But the combatants who were in Mongbwalu were former soldiers of the APC who

1 had deserted along with their weapons. And they went to Mongbwalu to set up
2 operations there.

3 Q. Witness, please describe a Lendu combatant to us. What does such a person
4 look like so that the Chamber can understand what we're talking about here?

5 A. A Lendu combatant did not have enough weapons. On most occasions he had
6 bows and arrows, spears, machetes and knives. Those were -- that was the manner
7 in which they were armed.

8 Q. And the Lendu combatants did not wear any uniform, did they?

9 A. At the beginning they were in no way different to APC soldiers. They wore
10 APC soldier uniform. But there were combatants who started to wear FPLC uniform
11 that they recuperated during the war.

12 Q. So the Lendu combatants wore a uniform, did they?

13 A. At the outset they were in civilian attire, with the exception of those who had
14 deserted from the APC. And there were others who would take on the FPLC
15 uniform and wear it during fighting.

16 Q. And when you say that there were Lendu combatants in civilian attire, did this
17 civilian attire bear any resemblance to that which you are wearing today? Can you
18 give us an image? What did it -- what did their attire look like?

19 A. Well, I don't know if there is any difference between various forms of civilian
20 attire. Maybe a priest might wear a white robe, but other civilians will be wearing
21 trousers, a T-shirt, a shirt. That's the way they would dress.

22 Q. And Lendu combatants would also wear animal skins. Are you aware of that?

23 A. The Lendu tribe often wears gri-gri and things on their arms, on their buttocks,
24 on their hips. They wear this as gri-gri that protect them, or amulets that protect
25 them.

1 Q. But there are also Lendu combatants who did not wear any of that, who were
2 just wearing civilian dress; is that correct?

3 A. I think I explained this to you. They wore civilian attire. They did not have
4 any -- or, did not wear any military uniform.

5 Q. So when you say during your testimony that they were difficult to identify, it
6 was by virtue of the fact of their clothing; is that not correct?

7 A. Well, they were civilians.

8 Q. And you are in a position to confirm, on the basis of your experience, that
9 Lendu combatants would involve men, women and the elderly in their fighting?

10 A. I do not know.

11 Q. You know, Mr Witness, that Lendu combatants created a number of alliances
12 over the years; namely, at a given moment in time, they fought side by side with the
13 APC. Would you not agree?

14 A. Yes, they did create alliances, but the only lesson I drew from this was that they
15 did not have any vested interest.

16 Q. Could you explain to me what you mean by interest, "vested interest"?

17 A. Well, I could explain to you that this did not bring any results for them, but it is
18 difficult, unless we were to move into private session.

19 THE INTERPRETER: Correction from the Swahili interpreter: The witness actually
20 said closed session.

21 MR BOURGON: (Interpretation) May we move into private session please,
22 Mr President.

23 PRESIDING JUDGE FREMR: All right.

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

25 (Private session at 12.37 p.m.) *(Reclassified partially in public)

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

2 PRESIDING JUDGE FREMR: Mr Bourgon, you may proceed.

3 MR BOURGON: (Interpretation)

4 Q. Mr Witness, could you give me more information, please?

5 A. The FNI, that was the Lendu party, and the FRPI created alliances with the APC.

6 And the APC was allied with the Kinshasa government. However, they were not
7 able to have or get hold of enough equipment, and that was also the case for the APC.

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 Q. If I understand you correctly, Mr Witness, the situation from 1999 to 2003

22 evolved greatly subsequently with regard to the conflicts between the Lendus and the
23 Hemas and all other groups present in Ituri. Would you not agree with me?

24 A. Yes, the situation was a complicated one, because there was a great deal of
25 change in the situation.

1 Q. And at the time of the events in 2002 and 2003, when the Lendu fought with
2 either the APC or the UPDF, that is the Ugandan forces, you would agree with me
3 that they were still not wearing a uniform at the time?

4 A. Are you talking about 2002 or 2003?

5 Q. Well, you can answer both together or you can separate the two.

6 A. Officially speaking, the Lendu did not have as many weapons as the FPLC.
7 They did not have a military uniform.

8 PRESIDING JUDGE FREMR: Mr Bourgon, is there still a need to remain in private
9 session? What do you think? It depends on --

10 MR BOURGON: (Microphone not activated)

11 THE INTERPRETER: No microphone, Defence counsel. Microphone, please.

12 PRESIDING JUDGE FREMR: Could you repeat it, because your mic was switched
13 off probably, Mr Bourgon. Could you repeat that for the record?

14 MR BOURGON: (Microphone not activated)

15 THE INTERPRETER: Microphone please, Defence counsel. Microphone, please.

16 MR BOURGON: (Interpretation) Yes, we would like to move into open session
17 please, Mr President.

18 THE INTERPRETER: Message from the English interpreter: The second
19 microphone seems to be working less well. Thank you.

20 PRESIDING JUDGE FREMR: All right. Court officer, let's move to open session
21 now.

22 And a message to Mr Bourgon. Mr Bourgon, according message I received from the
23 interpreters' booth, probably microphone on your right side is not working very well,
24 so please, if possible, use rather the left one. Thank you.

25 (Open session at 12.44 p.m.)

1 THE COURT OFFICER: We're in open session, Mr President. And a technician
2 will check the microphone during the lunch-break.

3 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon. You may proceed.

4 MR BOURGON: (Interpretation)

5 Q. Mr Witness, you are in a position to confirm, are you not, because I'm harking
6 back to 1999, that the Lendus were involved in cannibalism. Are you in a position to
7 confirm that?

8 A. I do not have any confirmation that they were engaged in cannibalism.

9 Q. Was this a widespread knowledge within the population even if you did not
10 receive confirmation yourself?

11 PRESIDING JUDGE FREMR: Ms Samson?

12 MS SAMSON: Your Honour, I question the relevance of understanding what the
13 rumours in the community might have been at the time.

14 PRESIDING JUDGE FREMR: Objection overruled. I guess that even in all those
15 rumours could have some influence on the behaviour of some people.

16 So please respond this question, Mr Witness.

17 THE WITNESS: (Interpretation) As I said, I do not have any confirmation in this
18 regard, but there were rumours being mongered that they were engaged in
19 cannibalism, yes, but I do not know anybody who was eaten by the Lendus.

20 MR BOURGON: (Interpretation)

21 Q. The situation that we have just described through the last questions, does this
22 reflect the reason why you left the red location or does it not?

23 A. No. Nobody was eaten in that village.

24 Q. I shall specify my question. The conflicts between the Lendu, Gegere and
25 other groups, whether civilian or not, with bladed weapons for ethnic reasons, well,

1 this was the reason why you left the red village, was it not?

2 A. That is not where the conflict began. It reached the red village after a number
3 of months. And if I left the red village and others left the red village, it was because
4 we were afraid because there were rumours and there were attempts to attack the
5 surrounding area. That is why the Gegere community fled. Because to say that
6 people fled the red village because there were Gegere -- because some Gegere had
7 been gobbled up, well, I'm not in a position to confirm that fact.

8 Q. Well, let's continue on the same question, but let us forget the question of
9 cannibalism. You say when you -- that you left the red village because of the ethnic
10 conflict and we talked about the ethnic conflict during the last questions, did we not,
11 during the previous questions?

12 A. There was an ethnic conflict, and it was because of this that the Gegere left -- or
13 correction, they fled the conflict. That is why they moved around.

14 Q. And you are in a position to confirm that at the time the Gegere but also the
15 Hema south were completely disorganised? Could you confirm that? We're
16 talking about the year 1999.

17 A. In principle they were not prepared. They were counting heavily on the
18 protection of the Ugandan army. Whether it be the Hema or the Gegere, they all
19 were counting on the protection of the Ugandan army, that is the protection of the
20 individuals and of the entire village.

21 Q. And during that conflict, at that moment in time there was no involvement of
22 armed groups until the APC created an alliance with the Lendu; is that correct?

23 A. At the outset, it was a conflict between civilians and the Ugandan army was
24 attempting to maintain a neutral position, but neutrality did not serve any purpose at
25 that time. And if the APC created an alliance with the Lendu, I do not know on

1 what basis that policy was founded, but the Lendu accused the Ugandan forces
2 saying that they were protecting the Hema. In fact, the Lendus said that the
3 Ugandan army had driven out Lompondo from Bunia, and I believe that that was the
4 basis of the Lendu participation in the war against the Hema.

5 Q. And still in this period 1999 at the moment or the time of the ethnic conflict,
6 would you be in a position to confirm that within the villages peace committees were
7 set up?

8 A. Young people had set up protection structures in villages such as Fataki and
9 Iga Barrière. There were youth structures in these villages that would light
10 campfires at night-time with a view to protecting their villages.

11 Q. And can you confirm that the peace committees were led by customary chiefs
12 and that the entire village would contribute?

13 A. I do not know whether they were led by customary chiefs or not, I cannot
14 provide you with any specific information in this regard, but I do know that this
15 existed. And there were some leaders who were wise or elders within the villages.

16 Q. And within the villages everybody would contribute. Can you confirm that
17 fact, everybody would contribute in order to -- or, all soldiers would contribute in
18 order to defend the village?

19 A. Not everybody. It was the young people who were still strong. Not all the
20 inhabitants of the village.

21 Q. And you said that at that moment in time you entered Bunia. You talked
22 about the political situation that reined in Bunia at the time. Can you confirm that
23 the political power in place at the time was the RCD-K/ML; is that correct?

24 A. Yes, it was the RCD-K/ML that was in charge at that time.

25 Q. And the RCD-K/ML was led by the president, Wamba Dia Wamba, and

1 Nyamwisi Mbusa who were the two leaders of the RCD-K/ML; is that correct?

2 A. Yes.

3 Q. And you are in a position to confirm that there was a discriminatory policy
4 against a number of ethnic groups, namely, the Hema within the RCD-K/ML; is that
5 correct?

6 A. Wamba Dia Wamba had set up a pacification commission within Ituri that was
7 headed up by Jacques Deberger at that time. And that commission had been set up
8 with a view to putting a stop to the ethnic conflict.

9 Q. And did the RCD-K/ML to your knowledge have -- conduct any discrimination
10 against the Hema or any other group?

11 A. The RCD-K/ML at the time of Wamba Dia Wamba, well, Tibasima was one of
12 the presidents and he is of Hema ethnic origin. There were also ministers at the time.
13 And the APC army was led by Hema commanders and Lendu commanders.

14 Q. And you are in a position to confirm that the APC at that moment in time, at the
15 end of 1999, started to take part in attacks against the Hema side by side with the
16 Lendu? Are you able to confirm that?

17 A. I do not know, and I would not be in a position to confirm that.

18 Q. And at that moment in time, as you mentioned earlier, the UPDF or Ugandan
19 army was attempting to protect the population, all groups confounded; is that
20 correct?

21 A. I said that the UPDF attempted to remain neutral, but both communities, that is
22 to say the Lendu and the Bahema, did not have much belief in this neutrality or
23 neutral stance.

24 MR BOURGON: (Interpretation) Mr President, could we please move into private
25 session for two questions, and then I will have finished.

1 PRESIDING JUDGE FREMR: Okay, just two questions.

2 Court officer, please let's move into private session.

3 (Private session at 1.00 p.m.) *(Reclassified partially in public)

4 MR BOURGON: (Interpretation)

5 Q. And at that moment in --

6 THE COURT OFFICER: We are now in private session.

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

8 MR BOURGON: (Interpretation) Thank you, Mr President.

9 Q. (Redacted)

10 (Redacted)

11 A. (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 Q. (Redacted)

17 (Redacted)

18 A. (Redacted)

19 (Redacted)

20 MR BOURGON: (Interpretation) I thank you, Mr President. We may now move
21 into open session.

22 PRESIDING JUDGE FREMR: All right.

23 Court officer, let's move to open session.

24 (Open session at 1.02 p.m.)

25 THE COURT OFFICER: We are back in open session.

1 PRESIDING JUDGE FREMR: Mr Bourgon, probably you did not understand
2 because I just allowed you to put two last questions before the break. So is it okay
3 with you to break now or something urgent that you have to continue because it's
4 1 o'clock?

5 MR BOURGON: (Interpretation) It's fine for us to take the break now.

6 PRESIDING JUDGE FREMR: Okay. So we will have to break now for 90 minutes.
7 We will continue half past 2. But before we adjourn we have to bring Mr Witness
8 out of the courtroom and for that purpose we have to move into closed session.
9 So court officer, let's move into closed session.

10 (Closed session at 1.04 p.m.) *(Reclassified entirely in public)

11 THE COURT OFFICER: We're in closed session, Mr President.

12 (The witness stands down)

13 PRESIDING JUDGE FREMR: And since we will have to adjourn in open session,
14 let's move to open session again.

15 (Open session at 1.05 p.m.)

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

17 PRESIDING JUDGE FREMR: Thank you. So as I said, we will reconvene half
18 past 2.

19 And now Court is adjourned.

20 THE COURT USHER: All rise.

21 (Recess taken at 1.05 p.m.)

22 (Upon resuming in open session at 2.30 p.m.)

23 THE COURT USHER: All rise.

24 Please be seated.

25 PRESIDING JUDGE FREMR: Good morning, everybody. We will continue in listening to

1 testimony of Witness P-901 concretely to cross-examination conducted by the Defence.

2 Mr Bourgon, do you want to proceed in private or open session?

3 MR BOURGON: (Microphone not activated)

4 THE INTERPRETER: Microphone.

5 PRESIDING JUDGE FREMR: Mr Bourgon, could you repeat it for the record, because you
6 probably hasn't switched your mic. Kindly repeat that please.

7 MR BOURGON: (Interpretation) Your Honour, I have now turned on both microphones.
8 Private session please.

9 PRESIDING JUDGE FREMR: All right. So we will have stereo. Okay.

10 Now we have to move to private session. So, court officer, let's move us into private session.

11 (Private session at 2.32 p.m.) *(Reclassified partially in public)

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

13 PRESIDING JUDGE FREMR: Thank you.

14 Mr Bourgon, you may proceed.

15 MR BOURGON: (Interpretation) Thank you, your Honour.

16 Q. (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 A. (Redacted)

22 (Redacted)

23 PRESIDING JUDGE FREMR: Sorry to interrupt you, Mr Bourgon. I understand that at
24 least myself I do have a problem with the transcript, but now maybe it's coming back. But I
25 think now it's okay. Now it's okay. It improved at the moment.

1 Just question to parties, you have no problem with transcript? No?

2 MS SAMSON: I have no transcript, your Honour.

3 PRESIDING JUDGE FREMR: No transcript? Because I had this problem a few seconds ago,
4 but now it returned back.

5 MS SAMSON: It's back.

6 PRESIDING JUDGE FREMR: Back, fine.

7 Defence is also provided with transcript? Not yet?

8 MR BOURGON: (Interpretation) Your Honour, no, we don't have it either.

9 PRESIDING JUDGE FREMR: Maybe let's wait for a while.

10 (Pause in proceedings)

11 PRESIDING JUDGE FREMR: So I understood that even Defence now is fine with the
12 transcript; am I right?

13 Then we can continue.

14 MR BOURGON: (Interpretation) Yes.

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

16 MR BOURGON: (Interpretation) Thank you, your Honour.

17 Q. The answer in fact that you just gave, you already told us that before the break, but I
18 would like to know about your departure from the APC (Redacted). Can you confirm
19 that that has nothing to do with the disorder that took place between the APC and the civilian
20 population?

21 A. I've given you the reason why I went home.

22 Q. (Redacted)

23 (Redacted)

24 (Redacted)

25 A. (Redacted)

1 Q. In that case when did you obtain information about the Chui mobile force?

2 A. (Redacted)

3 Q. (Redacted)

4 A. There were incidents that had occurred in Bunia (Redacted), and then later on
5 members of the Chui mobile forces went into the bush. There was a commander of the
6 UPDF, a sector commander in Bunia, who held a meeting in the parking lot, that is the
7 parking lot of the central market in Bunia. And they were talking about the rebellion that
8 had been launched again by the Chui mobile force, (Redacted)

9 (Redacted)

10 Q. I'm referring to your testimony in the transcript. It's T-27, page 30 in the French
11 version, lines 6 to 10. The question was: (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 A. (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 Q. When did this occur? What was the date?

24 A. I don't remember the date, but it was when the Chui mobile forces went to the bush.

25 They were in the bush.

1 Q. Did that occur before you joined the APC (Redacted) or after you left the APC?

2 A. It was after, after I left the APC.

3 Q. (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 My question is: What activities are you referring to that you were aware of?

10 A. The members of the Chui mobile force knew that amongst the Hema civilian population
11 there was no other community that supported them, so when they went to the bush in Sota
12 and Nyankunde, all of those towns were inhabited mostly by Hema. And the Hema
13 commanders wanted to launch a battle to defend the local population.

14 THE INTERPRETER: The Swahili booth requests that the witness slow down.

15 PRESIDING JUDGE FREMR: Witness, just a message from the Swahili interpreters' booth,
16 please try to slow down a bit, okay? Thank you.

17 THE WITNESS: (Interpretation) I don't know if you understood my answer. Do you
18 want me to repeat it?

19 PRESIDING JUDGE FREMR: I guess it was okay. Just for the future, little bit slow down.
20 Thank you.

21 THE WITNESS: (Interpretation) Okay.

22 PRESIDING JUDGE FREMR: Mr Bourgon, you may proceed.

23 MR BOURGON: (Interpretation)

24 Q. And you knew that the members of the Chui mobile force were dissidents of the APC; is
25 that correct?

1 A. There were some who came from the APC and others who were not in the APC in
2 Bunia.

3 Q. If I were to put to you that you knew that those officers had left the APC because of the
4 discrimination and bad treatment inflicted upon the Hema officers and other groups within
5 the APC, can you confirm that?

6 A. (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 Q. (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 A. (Redacted)

17 (Redacted)

18 (Redacted)

19 Q. Well, if I were to suggest that you knew that the APC at the time organised operations
20 and attacks against Hema villages and that the civilian Hema population was being
21 massacred, is that correct?

22 A. I don't know whether members of the APC were collaborating with the Lendus to attack
23 the Hema. I do not know of that information myself.

24 Q. You did know, however, that Chui was very popular amongst the population; is that
25 correct?

1 A. It was popular amongst the Hema and following because of the propaganda that it was
2 using.

3 MR BOURGON: (Interpretation) Could we go back into open session, your Honour?

4 PRESIDING JUDGE FREMR: All right. Court officer, let's move into open session.

5 (Open session at 2.50 p.m.)

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

7 PRESIDING JUDGE FREMR: Thank you, court officer.

8 And, Mr Bourgon, you may proceed.

9 MR BOURGON: (Interpretation) Thank you, your Honour.

10 Q. You also knew that the population which was in favour of the Chui mobile force went
11 over and beyond the Hema community; is that correct?

12 A. To my knowledge they were popular amongst the Hema population because of the
13 propaganda that they were using amongst the Hema population.

14 Q. So your testimony is that only the Hema people appreciated the Chui mobile force; is
15 that correct?

16 A. That's the answer I've given you. It was the result of propaganda that was used by the
17 members, the soldiers, who were in the Chui mobile force. They made use of propaganda
18 vis-à-vis the Hema population. And also there were some commanders from the APC who
19 were Hemas and they also joined the group.

20 Q. Again, my question is only Hema people or other groups as well.

21 PRESIDING JUDGE FREMR: Ms Samson?

22 MS SAMSON: The question, your Honour, has been asked and answered several times.
23 Thank you.

24 PRESIDING JUDGE FREMR: Objection sustained.

25 Mr Bourgon, you may proceed.

1 MR BOURGON: (Interpretation) Thank you, your Honour.

2 Q. As regards the activities of the Chui mobile force, you said you were aware of their
3 activities. Do you know that the first gesture that led to the setting up of the Chui mobile
4 force or, rather, the name change was when Commander Bagonza, who was a commander of
5 a company in Nyankunde, when he deserted the APC with his men to set up a dissident
6 group in Sota, can you confirm that that is the case?

7 A. I don't know, but I do know that amongst the Hema commanders in the Chui mobile
8 force there was Bagonza and Tchaligonza. Those two were members of the Chui mobile
9 force. But I don't know any more details about why those Hema commanders joined the
10 Chui mobile forces, but I do know that Bagonza and Tchaligonza did join the Chui mobile
11 force.

12 Q. My question was whether or not you knew that Bagonza had left his position in
13 Nyankunde to join the Chui mobile force?

14 PRESIDING JUDGE FREMR: Ms Samson?

15 MS SAMSON: Again, your Honour, the question was already asked and the witness has
16 answered it.

17 PRESIDING JUDGE FREMR: Objection sustained.

18 MR BOURGON: (Interpretation) Thank you, your Honour.

19 Q. Witness, you know that the same day during the night, Tchaligonza deserted his
20 position in Kasenyi to join the Chui mobile force in Sota. Were you aware of that?

21 A. I know that Tchaligonza was a company commander. Bagonza was also a commander
22 of a company. And Afande Bosco was in Bunia. He lived in the building of the *NBK.
23 And there was a commander of the PPU and Wamba Dia Wamba whose name was
24 *Cesar (phon). He used to drive a grey Jeep pickup truck, and he was attacked during the
25 day. And it was Afande Bosco who attacked him. That person was killed. And the

1 soldiers came to attack that place. Afande Bosco had already left and that was the beginning
2 of the Chui mobile force. Later on Tchaligonza, Bagonza both joined the -- well, joined
3 Afande Bosco, and to my knowledge that was the beginning of the Chui mobile force.

4 Q. Since you referred to Afande Bosco Ntaganda you do know that he arrived in Bunia in
5 July of the year 2000?

6 A. I don't know of that information. I was not aware of that before. I wasn't active. It
7 was only when -- it was only later on that I learned that.

8 Q. You do know that Bosco Ntaganda had been the commander of the Presidential Guard
9 of Wamba Dia Wamba in Kisangani? You do know that?

10 A. I learned that, yes.

11 Q. And you know that when he arrived in Bunia, he was coming from South Africa
12 because he had been injured during fighting, during battles? Were you aware of that?

13 A. I did learn about that.

14 Q. And do you know that when he returned to Bunia he had been appointed as
15 commander of the Bunia brigade? That was the position he was to occupy when he arrived
16 in Bunia. Did you know that?

17 A. No, I did not know that. I know nothing about that.

18 Q. So you know nothing about the fact that Bosco Ntaganda tried to meet with Wamba Dia
19 Wamba and that *César would not let him speak before Wamba Dia Wamba? You have no
20 information about that?

21 A. Well, I didn't follow his -- what happened with César, but when he was attacked in
22 town César or Sésame said that it was Bosco that attacked that commander and that's when I
23 learned his name, and it was from then that people said that he was the one who set up the
24 Chui mobile force. And when they left Bunia to go to Kyankwanzi, all of the soldiers were
25 chanting the name of Afande Bosco as the commander. That is what I know.

1 Q. And you say, and I use your words, it was said that it was Bosco who attacked the
2 commander and that that is when you learnt his name; is that correct?

3 A. When he died that was the first time that I heard his name mentioned. I'm talking
4 about Commander César.

5 Q. So you did not know that at that moment in time an operation had been launched to kill
6 Bosco Ntaganda?

7 A. I do not know. I just told you that I had never heard the name César mentioned. It
8 was only when he was killed that I heard his name.

9 Q. And you said at an earlier stage that Bosco Ntaganda lived in a building called NBK.
10 Did you know that Bosco Ntaganda was wearing a uniform at that time?

11 MS SAMSON: Mr President, may I please have the transcript reference to where the witness
12 said that Commander Bosco was living in the NBK building?

13 PRESIDING JUDGE FREMR: Mr Bourgon.

14 MR BOURGON: (Interpretation) Page 71, line 17. Thank you, Mr President. It is in the
15 French transcript, Mr President.

16 PRESIDING JUDGE FREMR: I change to French transcript. I'm having a problem to get
17 page 71, line 17. Maybe I can use --

18 MR BOURGON: (Overlapping speakers)

19 PRESIDING JUDGE FREMR: -- the information from -- from Prosecution.

20 THE INTERPRETER: Overlapping speakers, Mr President. Counsel and yourself were
21 speaking at the same time. We apologise we could not interpret.

22 PRESIDING JUDGE FREMR: Overlapping. Could you repeat that, Mr Bourgon, because I
23 have problem to switch to French transcript because my French transcript is frozen.

24 Maybe, Ms Samson, are you able to confirm that Mr Bourgon was right?

25 MS SAMSON: Yes, I see it in the English transcript. It's captured slightly differently. It's

1 in English line 6, page 71. It's the building of the MBK in English.

2 PRESIDING JUDGE FREMR: So is difference between English and French translation.

3 MS SAMSON: Yes, it just seems to be a slight difference. Thank you.

4 PRESIDING JUDGE FREMR: So I guess, Mr Bourgon, you may now repeat your question to
5 witness.

6 MR BOURGON: (Interpretation)

7 Q. Mr Witness, I shall repeat my question: To the effect that you knew that Bosco
8 Ntaganda lived at the NBK building, N for November, B for Bravo, K for Kilo?

9 A. It is a building that is used or that harbours a bank by the name of the nouvelle banque
10 de Kinshasa, and it is on the Kinshasa Boulevard.

11 THE INTERPRETER: The Swahili interpreter did not catch the last part of the witness's
12 answer.

13 PRESIDING JUDGE FREMR: Sorry, Mr Witness. Could you kindly repeat the final part of
14 your response again because it was not captured by the interpreters.

15 THE WITNESS: (Interpretation) It is on boulevard Lumumba. The NBK building is on
16 that boulevard.

17 THE INTERPRETER: The interpreter would like to add that the witness said that NBK is not
18 a hotel.

19 MR BOURGON: (Interpretation)

20 Q. My question, Mr Witness, was that Bosco Ntaganda lived in that location and you knew
21 that only too well, did you not?

22 A. On the day that Commander César was attacked, people said that Bosco Ntaganda was
23 living at that location and it was at that same location that César came under attack. But I
24 did not know that name until César was killed.

25 Q. And where were you, Mr Witness, when those events unfolded?

1 PRESIDING JUDGE FREMR: Ms Samson.

2 MS SAMSON: Perhaps if we are going to get into detail, we may want to go into private
3 session for this answer.

4 PRESIDING JUDGE FREMR: Good point.

5 Court officer, because we -- you don't agree? Because we are trying to locate, you
6 know, Mr Witness at concrete time at a concrete location, so I think it's for sure better
7 to move into private session.

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

9 (Private session at 3.08 p.m.) *(Reclassified partially in public)

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

11 PRESIDING JUDGE FREMR: So, Mr Witness, you now can respond if you recall the
12 question.

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted) And the information about that incident was circulating
20 around the town. And most inhabitants were aware of this incident.

21 PRESIDING JUDGE FREMR: Mr Bourgon, sorry to interrupt you. We have a request from
22 interpreter's booth because they hadn't captured, because probably your mic was not
23 switched on, they didn't capture your previous question. So to have precise transcript, could
24 you just repeat for transcript your previous question? We got perfectly the answer from the
25 witness. But we don't have in the transcript, at least in the English transcript, we don't have

1 your question, the last one.

2 MR BOURGON: (Interpretation) Mr President, thank you. I'm not in a position to
3 circulate the transcript. (Redacted)

4 (Redacted)

5 PRESIDING JUDGE FREMR: (Redacted)

6 MR BOURGON: (Interpretation) (Redacted)

7 Q. (Redacted)

8 (Redacted)

9 A. (Redacted)

10 (Redacted)

11 (Redacted)

12 MR BOURGON: (Interpretation) Mr President, I might like for us to be able to show --

13 PRESIDING JUDGE FREMR: Please proceed.

14 MR BOURGON: (Interpretation) Mr President, I would like us to be able to show to the
15 witness his statement. And I'm referring to document (Redacted)

16 This is a French transcript.

17 PRESIDING JUDGE FREMR: Ms Samson, any objection to that, to use this document?

18 MS SAMSON: No, your Honour.

19 PRESIDING JUDGE FREMR: Then you may proceed, Mr Bourgon.

20 THE COURT OFFICER: Mr Bourgon, could you please give the ERN number of the first
21 page of the document, please?

22 MR BOURGON: (Interpretation) Yes, of course. It's as I was saying earlier,
23 (Redacted), and the number of the page is (Redacted).

24 PRESIDING JUDGE FREMR: Ms Samson.

25 MS SAMSON: Sorry, your Honour. I think that there might be a slight error in the ERN.

1 On the copy that I have, the transcript section starts at (Redacted)

2 MR BOURGON: (Interpretation) I would thank my colleague. Yes, in fact, Mr President,
3 it is my mistake. The first page is (Redacted), indeed, and I apologise.

4 PRESIDING JUDGE FREMR: Okay. Court officer, are we able to find this document? So
5 give us a minute maybe please. Hold on for a while, Mr Bourgon.

6 (Pause in proceedings)

7 PRESIDING JUDGE FREMR: Does Chamber have it on our screen? So we are -- yes, we
8 have it. So I guess we can proceed, Mr Bourgon. Go ahead.

9 MR BOURGON: (Interpretation)

10 (Redacted)

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 Q. Mr Witness, I shall move on to another question. I believe we've said enough on the
4 matter.

5 My question now is an attempt to ascertain with regard to your knowledge, you have
6 answered this in part at an earlier stage, with regard to the operation launched by the APC to
7 kill Bosco Ntaganda wearing a uniform. Were you aware of that?

8 A. In Bunia town?

9 Q. Absolutely.

10 A. No, I know nothing of that.

11 Q. And I imagine that you did not know either anything about the very public event in
12 Bunia that the APC had hired or contracted out a killer to kill Bosco Ntaganda subsequently?

13 PRESIDING JUDGE FREMR: Ms Samson.

14 MS SAMSON: Thank you, Mr President. By my count this is now the third time the
15 question has been asked. The first time, page 72, lines 21 to 22; the second time just now; and
16 the third time is the last question.

17 PRESIDING JUDGE FREMR: Objection sustained.

18 Mr Bourgon.

19 MR BOURGON: (Interpretation) Yes, in fact, it is an entirely different event. It is an event
20 that occurs after the death of César.

21 PRESIDING JUDGE FREMR: But you know he said he knows nothing of that, so I don't
22 think it doesn't make any sense to ask any further question.

23 MR BOURGON: (Interpretation) I thank you, Mr President. I shall continue.

24 Q. Mr Witness, now, to conclude, Mr Witness --

25 PRESIDING JUDGE FREMR: Sorry, Mr Bourgon. Maybe I was wrong. So you are saying

1 that you know after this answer "No, I know nothing of that," your further question was
2 concerning the different incident?

3 MR BOURGON: (Interpretation) Yes, indeed, Mr President.

4 PRESIDING JUDGE FREMR: So I misunderstood. Then you are allowed to put this
5 question. Please repeat it again, please.

6 MR BOURGON: (Interpretation) I thank you, Mr President.

7 Now, before putting my question, I was just attempting to ascertain his knowledge, because
8 he said he had knowledge on the matter. So I'm asking him whether he knows an individual,
9 whether an individual by the name of Patrick was contracted out by the APC to kill Bosco
10 Ntaganda after the death of César. That is my question. Thank you.

11 A. I am not aware of that. It might have been something that was a known fact by the
12 APC internally.

13 MR BOURGON:

14 Q. I thank you, Mr Witness. That's all I wanted to know.

15 Now, we shall come back to the Chui and to the information that you had on the
16 subject of the Chui. You will agree with me that you never saw the Chui mobile
17 force in the bush, did you?

18 A. I never saw them.

19 Q. And you did not know that the Chui mobile force comprised approximately 150
20 individuals, did you?

21 A. I do not know.

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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(Private Session)

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14 Page 69 redacted – Private session.

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2 (Redacted)

3 (Redacted)

4 (Redacted)

5 Q. Mr Witness, you were shown photographs of Chui mobile force according to your
6 testimony in Mr Thomas Lubanga's residence. Do you recall those photographs?

7 A. I can see the residence they set up in when they left Mandro before going to Uganda.

8 Q. And do you remember having seen those photographs? That is my question.

9 A. These photographs were presented to me the other day during my testimony, yes, I do
10 recall having seen them.

11 Q. And on those photographs I put it to you that you noted that a number of individuals
12 were wearing a white bandana, were they not?

13 A. Yes.

14 Q. And I put it to you that you knew that when the Chui mobile force entered Bunia, they
15 were all wearing white bandanas as a sign of peace.

16 A. Yes, I know that when they returned to Bunia, they were wearing white bandanas on
17 their heads. Yes, I know that.

18 Q. And you probably know that during the negotiations, Lubanga was sent on site, the
19 minister of public security, the minister of defence to negotiate on behalf of Uganda?

20 A. Well, it was the members of the Chui mobile forces who would know who attended the
21 negotiations. I know that there was a negotiation between the Chui mobile force and
22 Uganda, but I don't know who exactly negotiated with the Chui mobile force because I wasn't
23 a member of the Chui mobile force.

24 Q. Are you familiar with the name Chief Kahwa?

25 A. He is the chief of the Bahema Mahagi collectivity, and it was Mandro, the main town.

1 Q. (Redacted)

2 (Redacted)

3 A. (Redacted)

4 (Redacted)

5 (Redacted)

6 Q. I believe that you said you know that the day that the Chui mobile force, in other words
7 those who were in the bush, when they left Chief Kahwa was arrested by the authorities of the
8 RCD-K/ML. Are you aware of that?

9 A. I know that he was in prison -- imprisoned in Bunia.

10 Q. And do you know that the Chui mobile force intervened to free him and there were
11 even men who were killed in that clash?

12 A. There was a group of Chui mobile force that was led by Afande Bosco, and they fought
13 at the military prison, military Prosecutor's office, and there was someone named Mali
14 Mohelel (phon) who also died during that period. I think that that is what led to the
15 Ugandan authorities to evacuate the Chui mobile force to Uganda.

16 Q. So you know that the very same day the Chui mobile force were evacuated to Uganda?

17 A. I didn't say it was that particular day, but that incident led to the evacuation of the
18 members of the Chui mobile force from Bunia to Uganda.

19 Q. Witness, I'm going to go onto a new topic, (Redacted)

20 You understand what I'm referring to, don't you?

21 A. (Redacted)

22 Q. (Redacted)

23 (Redacted)

24 A. (Redacted)

25 Q. (Redacted)

1 A. (Redacted)

2 Q. (Redacted)

3 A. (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 Q. Amongst all of the people (Redacted) you didn't
9 meet anyone who was forced to join that group, did you?

10 A. Here I'm talking about my own personal case. I decided to go. There were others
11 who were recruited from their villages, and I do not know what those conditions were
12 surrounding their recruitment, but I, myself, decided to join that group.

13 Q. I appreciate the fact that you are not aware of the recruitment conditions, but my
14 question is very simple: Did you see or meet anyone who had gone (Redacted) without
15 it being of their own volition?

16 A. I stated that I was not familiar with the conditions of the recruitment that took place in
17 the villages because I was not involved in that recruitment. And, you know, to recruit
18 people, you have to work out -- develop their awareness, you have to contribute to their
19 military training, and this propaganda took place in the villages. But in my case, that was
20 not the case, no one presented any propaganda. (Redacted).

21 MR BOURGON: (Interpretation) Your Honour, perhaps the Court could help me. I
22 would like to ask the witness to answer the question. My question was: Did he see anyone
23 who was there who had gone (Redacted) without it being of their own free will? It
24 seems to me that the witness has not answered that question and I would like to ask him to do
25 so.

1 PRESIDING JUDGE FREMR: Ms Samson.

2 MS SAMSON: Your Honour, I believe the witness has answered that question now twice,
3 and he doesn't know the circumstances in which some of the people he was with were
4 recruited.

5 PRESIDING JUDGE FREMR: Maybe for my own clarification, so, Witness, if I understood
6 well, you are saying that you personally, you decided yourself to join this group (Redacted)
7 (Redacted) And do you have any knowledge that there should be some persons who have
8 been recruited against their will? Simple say I have such a knowledge, I don't have such a
9 knowledge.

10 THE WITNESS: (Interpretation) I don't know.

11 PRESIDING JUDGE FREMR: Mr Bourgon, please proceed.

12 MR BOURGON: (Interpretation) Thank you, your Honour.

13 Q. In your testimony, you stated that (Redacted), you received the
14 visit of a delegation and Bosco Ntaganda was part of that delegation. Do you remember
15 that?

16 A. Yes.

17 Q. My first question is that you referred to the night. I would like to ask you, for the
18 benefit of all of the parties and participants and the Chamber, when you refer to the night,
19 you don't mean after midnight necessarily, you mean after nightfall; am I correct? It's just a
20 simple question for clarification.

21 A. No, it's not midnight, it's during the night; in other words, before people go to bed,
22 before they go to sleep. Every evening I remember there was something called kitamaduni,
23 and that's where we met. Kitamaduni.

24 Q. My question was very simple, so I think everyone has understood that when you use
25 the term "at night," as is the case in many places in Africa, you're referring to the evening,

1 after nightfall; am I correct?

2 A. Yes. Around 7 o'clock in the evening, between 7 and 8 o'clock in the evening.

3 Q. You've just mentioned the expression "kitamaduni". Can you explain what that
4 means?

5 PRESIDING JUDGE FREMR: Sorry, Mr Bourgon, could you kindly spell it for the record
6 because I see we have some problems to put it rightly into transcript. Please spell it, this
7 word.

8 MR BOURGON: (Interpretation) Yes, let me spell it: K-I-T-A-M-A-D-U-N-I, kitamaduni.

9 PRESIDING JUDGE FREMR: Thank you very much, Mr Bourgon.

10 MR BOURGON: (Interpretation)

11 Q. What is the meaning of that expression, Witness?

12 A. Well, kitamaduni -- in fact, it should be spelled with a C-H and not a T, it's kicha,
13 K-I-C-H-A.

14 Q. Can you tell us what this word means?

15 A. At the end of the day, after the recruits had their supper, there would be an area where
16 they came together. They would sing, tell each other stories and around 10 o'clock in the
17 evening they were given permission to go to sleep. And that's what we called that activity.
18 We called it kitamaduni.

19 Q. Well, these sessions, these kitamaduni sessions were also a time when discipline was
20 taught, military respect and law. Do you remember that?

21 A. When we were (Redacted) during the evening, we would sing, tell each other
22 stories, of course under the supervision of our trainers. And when the trainers had
23 something to say, well, they would relay certain messages and then we were given the order
24 to go to bed.

25 Q. Perhaps my question wasn't clear. In those messages that were relayed to the recruits

1 during the kichamaduni, were there any messages regarding discipline?

2 A (Redacted), we were taught about the military profession, but we never had any
3 classes on military rules and regulations as such. But we were trained, we received military
4 training.

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 Q. And the language used was mainly (Redacted), wasn't it?

9 A. No. It was Swahili.

10 Q. One last question about this matter. If I were to put to you that during the
11 kichamaduni training there was not just what you've said, but there were also classes on
12 military custom, military discipline and the law of war, do you agree with that or not?

13 A. I remember the first time that I saw a book about international humanitarian law was in
14 2007 (Redacted) I have no recollection of having learned anything about the law during
15 the war. I don't remember. I don't remember having had a course in the law of war.

16 Q. Thank you, Witness. I have a few more questions left for today.

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing

(Private Session)

ICC-01/04-02/06

1 (Redacted)

2 (Redacted)

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12 (Redacted)

13 (Redacted)

14 Q. I'd like to start a new subject tomorrow. (Redacted), but

15 I would like to confirm with you that you yourself and those who went (Redacted), you

16 (Redacted), you knew that that would be the case before you left, but you

17 also expected to go back to Bunia immediately thereafter; is that the case?

18 A. Well --

19 THE INTERPRETER: The interpreter apologises. I was not able to hear the answer.

20 PRESIDING JUDGE FREMR: Sorry, excuse me. Mr Bourgon, we will ask Mr Witness to

21 repeat his, repeat his answer.

22 Mr Witness, please once more. Could you kindly repeat what you responded to Mr Bourgon

23 for his last question.

24 THE WITNESS: (Interpretation) I said that the majority of those who were in Kyankwanzi

25 expected to go back to Bunia after the training.

1 PRESIDING JUDGE FREMR: Thank you, Mr Witness.

2 Mr Bourgon, you may proceed.

3 MR BOURGON: (Interpretation) Thank you, your Honour.

4 Q. And if I were to put to you that when the participants in the training began to realise
5 that they were not going to Bunia, (Redacted), that

6 many of them were dissatisfied and they wanted to desert, did you see that? Did you
7 witness that?

8 A. (Redacted)

9 (Redacted). So perhaps some of them were better
10 informed than we were, and they deserted, maybe a few of them, but less than ten. We were
11 not told why they had deserted.

12 Q. I have one last question for you. Yesterday you testified about a word in Swahili that
13 I'm going to try to pronounce, kupiga na kuchaji. You're familiar with this term?

14 A. Yes.

15 THE INTERPRETER: Would you ask -- please ask counsel to repeat his question. The
16 microphone was not on at the beginning.

17 PRESIDING JUDGE FREMR: Sorry to intervene. Obviously we have again some problems
18 with microphones, so for that reason, Mr Bourgon, please kindly repeat your question again.
19 Sorry for that.

20 THE INTERPRETER: Message from the English interpreter: It was not a microphone
21 problem. It was in fact an overlapping because counsel did not leave time for the interpreter
22 in the Swahili booth to finish. Thank you.

23 MR BOURGON: (Interpretation) Thank you, Mr President. My question is referring to
24 the testimony of the witness with regard to the term "kupiga na kuchaji." And I was asking
25 the witness whether he was conferring his testimony to the effect that he heard half of this

1 term (Redacted) and the second half of it within the FPLC.

2 PRESIDING JUDGE FREMR: Ms Samson.

3 MS SAMSON: Thank you, Mr President. Would it be possible to get the transcript
4 reference to this part of the witness's earlier testimony, please?

5 PRESIDING JUDGE FREMR: Mr Bourgon.

6 MR BOURGON: (Interpretation) Your Honour, I can give you the reference. Do you
7 need the exact text? It's transcript 29, page 20, line 24 to 28 in the French version of the
8 transcript. Sorry, it's page 22, line 14 to 17. Again, it's the French transcript.

9 PRESIDING JUDGE FREMR: Ms Samson, could you confirm, because I don't have at the
10 moment at my disposal French transcript, is it correct?

11 MS SAMSON: In the English transcript at page 20, T-29, there is a discussion about the
12 expression. I don't see that the witness said that he heard half of the expression (Redacted)
13 (Redacted) and half of the expression in the FPLC.

14 I think the reference to be accurate is that there was one meaning to that term within
15 the (Redacted) training and a second meaning to that expression in the FPLC.

16 PRESIDING JUDGE FREMR: Mr Bourgon, would it be possible to rephrase your question
17 accordingly?

18 MR BOURGON: (Interpretation) Of course, Mr President. I'm going to quote the
19 transcript or from the transcript:

20 Question: "Was that the first occasion that you heard this expression used or an
21 expression of this type?" lines 11 and 12.

22 Answer: "It was (Redacted) that I heard the first time the words 'chage.'

23 During my training I was told -- we were told how to attack. And we were told that
24 whenever you fight the enemy, you need to check their camp. But the other more
25 complete expression 'kupiga na kuchaji' I learnt for the first time within the FPLC."

1 End of quote.

2 Q. So I'm asking the witness whether he stands by the question that he gave to the answer
3 put to him by my learned colleague?

4 A. Yes.

5 Q. I put to you, Mr Witness, that my last question to you today is that the term "kupiga na
6 kuchaji" is a very well-known expression in the military manuals in a number of countries,
7 and it was used not only (Redacted), but in other trainings that you took part in. Would
8 you agree with me?

9 A. I'm telling you what I know.

10 MR BOURGON: (Interpretation) I have no further questions for the witness today,
11 Mr President.

12 PRESIDING JUDGE FREMR: Thank you very much. So we will -- we are going to adjourn
13 now. And what is important to emphasise, that tomorrow, Mr Witness, you will have one
14 day for taking some rest, because it's not any special privilege, but because tomorrow is the
15 ICC holiday, so the Court will not be sitting. So we will continue on Thursday morning.
16 I was also informed that in the morning you did not feel very well, so I and the whole
17 bench appreciated that you were responding in a really very exemplary manner all
18 the questions put to you by Defence. So thank you very much for that.

19 And we will see you again on Thursday. As usual, I have to remind you that you
20 must not discuss your testimony in the meantime with anybody, either neither here in
21 The Hague, either not by phone or with relatives and so on. Do you understand?

22 THE WITNESS: Ndiyo.

23 PRESIDING JUDGE FREMR: Thank you very much.

24 THE WITNESS: (Interpretation) Yes.

25 PRESIDING JUDGE FREMR: Thank you very much.

1 And now we will have to move to closed session in order Witness may be safely escorted out
2 of the courtroom. Let's move to closed session.

3 (Closed session at 4.05 p.m.) *(Reclassified entirely in public)

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

5 (The witness stands down)

6 PRESIDING JUDGE FREMR: Now let's return back to open session, please.

7 (Open session at 4.06 p.m.)

8 THE COURT OFFICER: We're in open session.

9 PRESIDING JUDGE FREMR: Thank you.

10 And before we adjourn, I would like to ask Mr Bourgon just for the sake of planning,
11 especially as regards the third expert witness, may I ask you, Mr Bourgon, how are
12 you doing? What is your, I know it's rather premature, but what is your estimation
13 at the moment as concerns duration of your cross-examination?

14 MR BOURGON: (Interpretation) With pleasure, Mr President. I have a slight delay, but I
15 think I can catch up on Thursday. And I believe I will be able to wrap up by the end of the
16 day on Thursday or, failing that, by the end of the first session on Friday. Thank you, Mr
17 President.

18 PRESIDING JUDGE FREMR: From our part, it will be probably from the view of planning
19 ideal to finish by Thursday with this witness. Maybe we also could consider to give you 30
20 minutes more. I mean that the last session on Thursday maybe could take two hours instead
21 of 90 minutes. But you can discuss that maybe after the lunch break on Thursday.

22 At the moment thank you all of you.

23 Mr Bourgon?

24 MR BOURGON: (Interpretation) I shall try and do my very best to finish on Thursday,
25 Mr President.

1 PRESIDING JUDGE FREMR: We would appreciate that.

2 So at the moment, I thank all of you. I wish you enjoy, enjoy some rest. It was very,

3 very demanding and tiring. And we are looking forward to see all of you on

4 Thursday morning.

5 Court is adjourned.

6 THE COURT USHER: All rise.

7 (The hearing ends in open session at 4.08 p.m.)

8 RECLASSIFICATION REPORT

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

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