

1 International Criminal Court
 2 Trial Chamber VI - Courtroom 2
 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, 23 February 2016
 9 (The hearing starts in open session at 9.05 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.
 14 Court officer, please call 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 And for the record we are in open session.
 19 PRESIDING JUDGE FREMR: Thank you.
 20 Now, appearances please in the usual order.
 21 MS SAMSON: Good morning, Mr President, your Honours. Appearing for the
 22 Prosecution today are Mr Rens van der Werf, assistant trial lawyer; Ms Marion Rabanit,
 23 associate trial lawyer; Mr James Pace, assistant trial lawyer; Ms Dianne Luping, trial
 24 lawyer; Ms Selam Yirgou, 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, Mr President. Good morning,
3 your Honours. And good morning to all in the courtroom. Representing
4 Bosco Ntaganda, who is in the courtroom this morning, Ms Sandrine De Sena, intern;
5 Maître Dignité Bwiza, legal consultant; and myself, Stéphane Bourgon. Thank you,
6 Mr President.

7 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

8 Now Legal Representatives of Victims please.

9 MS PELLET: (Interpretation) Thank you, Mr President. Former child soldiers are
10 represented by myself, Sarah Pellet, counsel at the OPCV.

11 MR SUPRUN: (Interpretation) Good morning, Mr President. Good morning,
12 your Honours. Victims of the attacks are represented by the OPCV, Anne Grabowski,
13 associate lawyer; and myself, Dmytro Suprun, counsel.

14 PRESIDING JUDGE FREMR: Thank you very much, Ms Pellet and Mr Suprun.

15 As usually before we start with the last witness of this third evidentiary block, we will
16 deal with some time with the procedural matters. The Chamber was informed that
17 Mr Bourgon would like to make submissions.

18 So, Mr Bourgon, you have the floor.

19 MR BOURGON: Thank you, Mr President. The first issue I'd like to inform the
20 Chamber of very briefly is that I have obtained information concerning my co-counsel and
21 colleague, Maître Boutin. And I have already addressed the matter of the scheduling for
22 the next block with my colleague and this week, Mr President, we will be sending a mail
23 to the Chamber asking maybe for a status conference so that we can address scheduling
24 matters sooner than later for the next block.

25 The issue I want to bring before the Chamber this morning has to do with the preparation

1 session that was conducted with Witness P-55 last week.

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 PRESIDING JUDGE FREMR: Mr Bourgon, sorry, we will move into private session.

6 And I would like to redact the last note concerning the -- well, first we will have to move
7 into private and I will then finish my comment.

8 (Private session at 9.09 a.m.) *(Reclassified partially in public)

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

10 PRESIDING JUDGE FREMR: (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 So sorry to interrupt you, Mr Bourgon, and please proceed.

19 MR BOURGON: I fully understand, Mr President. No difficulty whatsoever.

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 Mr President, this proofing session was -- or I always use the word "proofing" -- this
24 preparation session took place on 17, 18 and 19 February, that is last week. We did
25 receive a preparation session note or a log which we receive on Friday at 6 o'clock.

1 Although this is not mentioned in the note itself, we did know that this session was
2 ongoing because I was on the phone with my colleague. I guess it was the day previous
3 and she informed me that this was going on.

4 It seems, Mr President, from the preparation note that we have received from the
5 Prosecution that in fact the session itself, rather than to refresh the witness's memory (Redacted)
6 (Redacted), it was also used to pursue or to continue
7 the Prosecution's investigation. I see this, Mr President, from the preparation session
8 note where it states that, quote, unquote, "Once the witness had read (Redacted) he will
9 have the opportunity to clarify or correct any matter and that the OTP representatives
10 might ask him to clarify certain issues."

11 The preparation note, Mr President, further indicates that Witness P-55 was given the
12 opportunity to correct or clarify anything in his prior statements and that he responded to
13 clarification questions at the end of the day, and that's on page 4 of the note.

14 The issue, Mr President, is that during this session 24 new documents were shown to
15 Witness P-55. Out of these 24 documents, based on our verification, 18 documents have
16 some kind of a link with the witness because they would have been shown to him (Redacted)
17 (Redacted)
18 (Redacted)
19 (Redacted) they wanted to show these documents to Witness P-55. So that is for 17 of
20 the 24 documents.

21 However, for the other seven documents, some documents have no link with the witness
22 and some have a link. (Redacted)
23 (Redacted)
24 (Redacted)
25 (Redacted)

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 With respect to other documents there are documents which have absolutely no relation
6 to the witness, and these documents we feel, Mr President, although the Prosecution has
7 not amended its list of documents it intends to use, we feel these documents the
8 Prosecution was indeed supplementing or continuing its investigations with the witness
9 and we feel that this is inappropriate and contrary to the protocol on the preparation of
10 witnesses.

11 Mr President, (Redacted), the Chamber indicated that the prohibition between
12 contact between the calling party and the witness had not yet come into effect. So it was
13 proper for the Prosecution to attempt to meet with the witness, but preparation session is
14 different than from meeting with the witness to try and obtain further information.
15 Meeting with the witness they did, and although there is some dispute, we did receive
16 information as to what happened.

17 But the preparation session is wholly different because there's a discussion on documents
18 and there's a discussion on what the witness is likely to provide as evidence during his
19 testimony.

20 The Chamber recalled at the time, I refer also to the (Redacted) mail from the Chamber,
21 that any contact between the witness and the Prosecution should be confined to that
22 which is appropriate in the circumstances and conducted in a manner which fully respects
23 applicable standards of professional conduct.

24 We feel, Mr President, that what the Chamber, I stand to be corrected, was referring to is
25 the fact that (Redacted)

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 This goes well beyond preparation and is, in our respectful submission, continuing
7 investigation and contrary to the protocol on witness preparation.

8 Accordingly, Mr President, we respectfully request the Chamber to ask the Prosecution
9 for clarification as to what exactly happened with the witness and more importantly we
10 would like to obtain the audiovisual recording of the session that was conducted last
11 week. (Redacted)

12 (Redacted) we believe would be required to get the audiovisual recording so we know exactly
13 what was discussed between the witness and the Prosecution before his testimony.

14 Thank you very much, Mr President.

15 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

16 I find at least a bit unfortunate that we face the same problem like we faced a short time
17 ago with Witness P-800, but nevertheless, Ms Samson, please, you have the floor.

18 MS SAMSON: Thank you, Mr President. In relation to the timing of the request, in the
19 Prosecution's submission it's always preferable if our friends from the Defence approach
20 us and we can have a discussion about what was or was not discussed during a witness
21 preparation session, if those questions arise. I certainly would have been perfectly
22 content to have provided all necessary information to my friend in advance and I think
23 we probably would have avoided being here.

24 I understand from my friend that he has two main arguments in relation to the witness
25 preparation session and a request for access to the video. The first argument, of course, is

1 (Redacted). The second
2 argument he raises is that the scope of the preparation conducted by the Prosecution was
3 also inappropriate.
4 To both of those submissions, the Prosecution rejects the suggestion that there's an
5 inappropriateness that took place during witness preparation. And on the very first
6 argument, the Chamber's decision on witness preparation has set out quite clearly in
7 paragraph 18 that this case is very complex and that witness preparation in these
8 circumstances is warranted and is beneficial to the witness him or herself as well as to the
9 proceedings.
10 And the witness preparation protocol in paragraph 1 equally sets out the need to ensure
11 the efficiency of the proceedings by being able to review prior statements by witnesses
12 and also for the calling party to be able to show to the witness certain documents and/or
13 to go over any clarification matters that need to be addressed.

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 Equally appropriate in addressing the Defence's second argument on the scope is that the
3 witness be permitted to provide clarifications to anything that he read recently that he
4 thought ought to be clarified or corrected. In this case, the witness had no clarifications
5 or corrections to bring, so there is no -- should not be any issue in relation to that point.

6 The Prosecution raised very minimal clarification questions with the witness.

7 We showed him three documents, one of which we asked no questions on and the lifting
8 of conditions from the United Nations had been received (Redacted)

9 (Redacted).

10 The other two questions -- the other two documents the Prosecution asked questions
11 about simply to understand whether the witness had sufficient familiarity with the
12 documents, but there was a link between him and those documents in relation to
13 the -- him being named in one of them (Redacted). And so

14 we asked very brief questions in relation to those two documents to determine whether
15 and to what extent we would show them to him when he testified.

16 And the third document, as I said, we showed him, but we did not ask him any questions
17 about it.

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted) the Prosecution

23 provided him with those documents on the second day of his preparation session when
24 we realized they were not included in the binders.

25 We did not ask supplementary questions about those, we simply identified them for the

1 witness and said these are the documents that you were shown (Redacted)

2 (Redacted).

3 The witness preparation note and log is very comprehensive for the brief amount of time
4 that we've spent with the witness. The clarification portion of the witness preparation
5 session lasted approximately one hour or less. We've set out in great detail what
6 clarification questions we asked and what the witness responded.

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 Similarly, in our submission, it is appropriate for the Prosecution to permit the witness to
22 refresh his memory yet again to clarify matters; and where there are some additional
23 points to raise that we have an opportunity to clarify those as well.

24 Subject to any questions you may have, your Honour, your Honours, those are our
25 submissions. I do note lastly that the timing of witness preparation, although

1 open-ended in the witness preparation protocol does envisage that it does take place in
2 general in advance of the witness attendance to testify and, as a result, the witness
3 preparation protocol in paragraph 11 refers to the preparation session being conducted as
4 early as possible but, in any event, no later than 24 hours prior the witness's testimony.
5 And typically, we have been conducting those sessions on the eve or in the days prior to
6 testimony to provide the witness with the best opportunity to refresh recollection, to
7 provide corrections, and to be asked clarification questions. Thank you.

8 PRESIDING JUDGE FREMR: Thank you, Ms Samson.

9 In my understanding -- Mr Bourgon, please.

10 MR BOURGON: If you allow, Mr President, to do a quick reply, we allow for the
11 possibility that a witness such as this one might be assisted and that his memory might be
12 refreshed (Redacted)

13 (Redacted).

14 In the preparation note in this regard, Mr President, we suggest that the Chamber should
15 take a look at the preparation note itself.

16 On page 3, there's a big block of numbers of documents that were shown to the witness.

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted).

23 And as far as the other documents, those that are no connection to the witness, I simply
24 refer to these numbers, Mr President; this is number (Redacted)

25 (Redacted)

1 (Redacted). These are the ones that we would -- we respectfully submit the
2 Chamber maybe should look at in reading the preparation session log in order to
3 determine whether it is necessary for us to see the audiovisual recording.
4 If my colleague is right in chance that no questions were asked, then there should be no
5 problem in us seeing the recording, which will simply show exactly what happened
6 during the preparation session, and that will be the end of the matter, Mr President.

7 Thank you.

8 PRESIDING JUDGE FREMR: Thank you. Ms Samson.

9 MS SAMSON: Yes. Thank you, your Honour. Just a clarification. While I don't recall
10 all of the ERNs, I do recall some of them. These documents, the five that my colleague
11 from the Defence has referred to, were all documents that were previously shown to the
12 witness and upon which he commented (Redacted)
13 (Redacted). And again, he has a right, in my submission, to be able to see what has been
14 put to him previously, and there is nothing untoward or inappropriate about us providing
15 him with those documents.

16 And I hadn't addressed in full the Defence's request for access to the audio video
17 recording, but there is nothing that I've heard yet from my friend's submission that
18 suggests that the witness log was, in any way, incomplete or unclear, didn't follow a
19 proper order, didn't provide the questions that the Prosecution asked whereby the
20 clarification answers were elicited, was insufficiently comprehensive or that would
21 suggest any improper influence on the part of the Prosecution with this witness. And
22 disclosure of the audio video logs has been held to be an exceptional event, one that needs
23 to be properly justified and grounded. And in our submission, the Defence's application
24 on that scale should fail. Thank you.

25 PRESIDING JUDGE FREMR: Okay. So we will -- the Chamber will deliberate on this

1 during the first break.

2 One other preliminary comment from my part: I think the main problem was (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted).

6 The obvious problem, at least for Defence, is what was the correct scope and nature of this
7 preparation session because they have some doubts, obviously, whether it was just -- the
8 purpose was just to make some clarifications or whether the Prosecution did not go
9 further and didn't make any supplementary investigation.

10 And it's true, I have to admit, that at least in the last case we faced concerning
11 Witness P-800 there were some even minor discrepancies between the log and the audio.
12 And in my view, the main objection presented by Defence is only or could be only
13 adjudicated on the basis of comparison between the log and audio recording. But we
14 will deliberate and we will render our decision on that in due course.

15 Now, so as I already indicated, I would like to address a few procedural matters at the
16 beginning. So first as to the timing, let me clarify. And now we can move for this part
17 of my introductory speech into open session. So court officer, let's move into open
18 session.

19 (Open session at 9.34 a.m.)

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

21 PRESIDING JUDGE FREMR: Thank you.

22 So first let me clarify that we are scheduled to sit from today until Friday. Currently the
23 sitting hours are three sessions of two hours each day, which means from 9 to 11, then
24 from 11.30 to 1.30 p.m., and then from 3 to 5 p.m.

25 You have probably noticed that watch in the courtroom and also in other places in this

1 building today are not working, so please rely on time on computers or another watch.

2 Sorry, the clocks are not working.

3 Depending how this testimony goes, we may be able to return to normal sitting hours

4 later this week. In case we do not manage to finish the testimony of this witness by

5 Friday, we will continue on Monday, 29 February; but due to the scheduling constraints,

6 we can definitely not sit beyond that, so please keep it in mind.

7 Then the Chamber will now render its decision of the Defence request seeking the

8 admission for the purpose of impeachment of the witness statement of Witness P-790.

9 It's document DRC-OTP-2078-2373 as well as excerpts of the witness preparation session

10 log and disclosure note, document DRC-OTP-2090-0287.

11 This request was sent via email on 26 January 2016 in which the Defence indicated that

12 due to the limited time available at the end of Witness P-790's testimony, the Defence did

13 not seek the admission of these documents immediately upon completion of the witness's

14 testimony.

15 The Defence submits that taking into consideration the length of the witness statement

16 and the number of times it was referred to during the cross-examination of the witness, it

17 should be admitted in its entirety for impeachment purposes.

18 In relation to the witness preparation session log, the Defence seeks admission also for

19 impeachment purposes of three paragraphs used with the witness. The Prosecution

20 responded to the request by email on the same day. It opposes the request as, in its view,

21 no impeachment or contradiction exists between the witness testimony and the

22 documents or excerpts thereof sought to be admitted, the relevant passages of which were

23 read into the record.

24 On 2 February, the Chamber rejected Defence request seeking leave to reply and further

25 directed that it identify the portions of the transcripts that the excerpts of the documents

1 sought to be admitted were used with Witness P-790.

2 As instructed, the Defence sent its supplementary email on 5 February identifying the

3 relevant transcript references.

4 The Chamber recalls its decision on Defence request seeking the admission of certain

5 documents following the testimony of Witness P-10. It was decision number 1070 in

6 which it held that determining whether or not admission of the relevant parts of witness

7 statements are necessary for impeachment purposes requires a case-by-case assessment.

8 The Chamber also held that parties ought to be conducting their examinations in a

9 manner designed, to the extent possible, to create a clear and self-contained transcript

10 record without unnecessary recourse to seeking admission of supplementary documents

11 for the purposes of impeachment on points of inconsistency with prior statements.

12 Accordingly, turning to the excerpts of the witness preparation session log and disclosure

13 note, the Chamber finds that only paragraph 15 shall be admitted for the purpose of

14 impeachment as the information contained therein may be relevant to the assessment of

15 the witness' credibility. The Chamber however decides not to admit into evidence

16 paragraph 6 of the log as it finds that no contradiction exists in relation to this excerpt, nor

17 paragraph 4, for which no transcript references were identified by the Defence.

18 As concerns the statement of Witness P-790, the Chamber notes that for the vast majority

19 of the paragraphs cited to, the witness either maintained his original statement and

20 merely provided additional information or explanation during his testimony, or the

21 relevant portion of the statement was read into the record in full and thus its admission is

22 not required for the purposes of impeachment. And consequently, the Chamber does not

23 find it appropriate to admit the entire witness statement into evidence, only paragraph

24 104 is to be admitted for the purpose of impeachment, as there is an apparent difference

25 with the witness testimony on this point.

1 This concludes the Chamber's ruling.

2 I then note that the Defence yesterday made an urgent request relating to the upcoming
3 witness. As you will have seen, the Chamber had shortened the deadline for responses
4 to this request to this afternoon and also asked the VWU to provide the Chamber with its
5 observations. The Chamber will rule on this request prior to the start of
6 cross-examination of this witness.

7 Next, I also note that the Chamber decided the protective measures that were previously
8 ordered for this witness are to remain in place, that measures are image and voice
9 distortion as well as the use of a pseudonym during testimony.

10 The next matter I will turn to is as usually the request by the legal representative of the
11 former child soldiers to question the witness which was filed on 26 October 2015. As per
12 the conduct of proceedings decision, after Prosecution's examination-in-chief is
13 completed, I shall ask Ms Pellet if she maintains her application to question the witness
14 and, if so, in relation to which topics. We can then deal with any objections arising
15 regarding this request.

16 Are there any further comments on this for now, noting we are in open session?

17 Prosecution?

18 MS SAMSON: No. Thank you.

19 PRESIDING JUDGE FREMR: Defence? No.

20 MR BOURGON: No observation, Mr President.

21 PRESIDING JUDGE FREMR: No, okay.

22 Now I will turn to the topic of objections according to its email of 21 February 2016. The
23 Defence objects to certain of the documents the Prosecution may seek to use with this
24 witness. The Chamber considers that certain of these objections can be best addressed if
25 and when they arise as we did it in previous cases throughout the course of the

1 examination-in-chief.

2 Now for the next issue we have to move into private session, so court officer please.

3 (Private session at 9.43 a.m.) *(Reclassified partially in public)

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

5 PRESIDING JUDGE FREMR: Thank you.

6 (Redacted) Witness P-55 (Redacted) had requested the

7 Chamber through the legal adviser assigned to him, Mr Cikonza, for Rule 74 assurances to

8 be provided. The Prosecution subsequently provided ex parte observations on the

9 request and the Defence did not oppose.

10 (Redacted), the Chamber granted the request for assurances. (Redacted)

11 (Redacted)

12 (Redacted).

13 So at the start of this witness's testimony, the Chamber will therefore provide the witness

14 with the Rule 74, and these assurances extends through the witness' testimony. And if

15 questions are asked that could lead to self-incrimination, we will hear the witness'

16 answers in private session as usually.

17 It was the duty of the witness' appointed counsel to ensure that Rule 74 has been

18 explained adequately to the witness, so I will verify it as soon as Mr Cikonza will join us.

19 So now unless parties or participants have anything they wish to raise at this point, we

20 can turn to the scheduled testimony. I think that -- Mr Bourgon, please.

21 MR BOURGON: Just one quick point, Mr President. When we informed the Chamber

22 of our notice of objection to certain documents, we did not raise any objection with the

23 document number 13 on the Prosecution's list of evidence, that is DRC-OTP-0017-0023.

24 However, from a reading of the preparation session log that we received, it appears to us

25 that there is no connection between this document and the witness and we will oppose the

1 use of this document unless a sufficient foundation can be established before it is shown
2 to him. Thank you, Mr President.

3 PRESIDING JUDGE FREMR: All right. Well noted.

4 Any comment on this? I don't think so.

5 MS SAMSON: No. Thank you.

6 PRESIDING JUDGE FREMR: So now we can bring the witness in. And because, as I
7 already indicated, the special character of this witness, we will have to remain in private
8 session.

9 (The witness enters the courtroom)

10 PRESIDING JUDGE FREMR: So for the record, I note that both Mr Witness and also
11 legal adviser assigned to him have been escorted into the courtroom and took their seats.
12 Just for the record, Mr Cikonzza, could you formally introduce yourself for the record.

13 MR CIKONZA: (Microphone not activated)

14 THE INTERPRETER: Microphone, please.

15 MR CIKONZA: (Interpretation) Good morning, your Honours. I am Gémi Mundere
16 Cikonzza, a member of the Brussels Bar, and I am the designated duty counsel for this
17 witness, Witness 55. I thank you, your Honours.

18 PRESIDING JUDGE FREMR: I would like to assure myself, Mr Cikonzza, that you had
19 enough time to discuss with your client the issue of Rule 74 and that you explained him
20 all those consequences including assurance from the Chamber?

21 MR CIKONZA: (Interpretation) Indeed. My client and I did have all the time that we
22 needed, (Redacted)
23 (Redacted).

24 Thank you, your Honour.

25 PRESIDING JUDGE FREMR: Thank you very much, Mr Cikonzza.

Trial Hearing

(Private Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0055

1 Mr Witness, good morning.

2 WITNESS: DRC-OTP-P-0055

3 (The witness speaks Swahili)

4 THE WITNESS: (Interpretation) Good morning.

5 PRESIDING JUDGE FREMR: Welcome back. We are very glad that you came to testify

6 because we believe that your testimony could assist us in our main task to find the truth.

7 (Redacted)

8 (Redacted)

9 (Redacted).

10 This Chamber has been established to try the case of Prosecutor against

11 Mr Bosco Ntaganda and you are called to testify before this Court. Shortly, you will be

12 asked questions both by the Judges and lawyers in this courtroom. And in this

13 connection, I would like to guide you.

14 Please listen carefully to those questions. It's very important that you make sure that you

15 understand the question before you answer it. If you do not understand, feel free to ask

16 for the question to be repeated or rephrased. We want you to tell the truth and tell us

17 only what you really saw or heard or sensed yourself.

18 If you did not see or hear it yourself but you found out some other way, then you should

19 explain how. You may be asked about events that happened many years ago, so it's

20 natural that you may not remember all details. It doesn't matter, please testify just on

21 that which you remember. Don't guess, don't make things up. There is nothing wrong

22 in saying "I don't know" or "I don't remember." Do you understand all this, Mr Witness?

23 THE WITNESS: (No interpretation)

24 PRESIDING JUDGE FREMR: I haven't received any translation. Nevertheless, I guess

25 you confirmed.

Trial Hearing

(Private Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0055

1 THE WITNESS: (Interpretation) Yes, I've understood.

2 PRESIDING JUDGE FREMR: Very well. Now, Mr Witness, (Redacted)

3 (Redacted), the Chamber has put protective measures in place for your testimony. Let me now

4 remind you how these measures work. We are in a new courtroom now. As you see,

5 you are sitting in a place where the public here in this building cannot see you. In

6 addition, face distortion is applied, which means that your face is blurred on the camera

7 images and the public cannot see your face during your testimony. We also decided to

8 order voice distortion, which means that the public will not be able to identify you by

9 your voice as it has been disguised. And we ordered the use of pseudonym, this means

10 that everybody in this courtroom will refer to you only as "Mr Witness" to make sure that

11 the public does not know your name.

12 When you answer a question that will not give away who you are, we will do so in open

13 session, which means that the public can hear what is being said in the courtroom. When

14 you are asked to describe anything that relates specifically to you, we will do this in a

15 private session. For example, at the very start when a few general questions about you as

16 a person will be asked, or when you are asked to mention facts that might reveal your

17 identity, where you live, or your profession, then there is no broadcast and no one outside

18 the courtroom can hear your answer. Please do not refer to these details later on during

19 your testimony whenever we are in open session.

20 If ever anything gets said during open session which should have been said in private, we

21 will do our best to protect this information. Your testimony will be broadcast on a delay

22 and we can remove any such remarks from the broadcast which will be heard by the

23 public and from the public transcript of the proceedings.

24 The Chamber recognizes that your security and well-being is important during the course

25 of this trial. If at any point you feel that you would like a brief break from giving your

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0055

1 testimony or you feel unwell, do not hesitate to let us know by raising your hand.

2 Do you understand, Mr Witness?

3 THE WITNESS: (Interpretation) Yes, I've understood.

4 PRESIDING JUDGE FREMR: Thank you.

5 For the next part I think we can move into open session. Court officer, please.

6 (Open session at 9.56 a.m.)

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

8 PRESIDING JUDGE FREMR: Thank you.

9 Mr Witness, you will find a piece of paper in front of you with the solemn undertaking.

10 Now you have it in your hands. Please now make your solemn undertaking to tell the

11 truth by reading out the declaration on the piece of paper in front of you.

12 THE WITNESS: (Interpretation) I solemnly declare that I shall tell the truth, the whole

13 truth and nothing but the truth.

14 PRESIDING JUDGE FREMR: Thank you, Mr Witness. It means you are now under

15 oath. You will have already been informed by representatives of the Victims and

16 Witness Unit and I guess afterwards by representatives of the Prosecution about the

17 importance of speaking the truth, but nevertheless you need to be aware that it's an

18 offence within the jurisdiction of this Court to give false testimony. Do you understand

19 that?

20 Very well. For the next part --

21 THE WITNESS: (Interpretation) Yes, I have understood, your Honour.

22 PRESIDING JUDGE FREMR: Very well. For the next part of my guidance we have

23 again to return back into private session.

24 (Private session at 9.57 a.m.) *(Reclassified partially in public)

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

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1 PRESIDING JUDGE FREMR: Thank you.

2 Mr Witness, you have been assigned a lawyer to provide you with legal assistants for

3 legal advice about possible self-incrimination. You know Mr Cikonza (Redacted)

4 (Redacted) he has requested on your behalf that you be given

5 certain assurances by this Chamber. The Chamber granted this request. There may be

6 questions asked to you for which you fear that answering them truthfully may

7 incriminate you because these questions relate to your own conduct. In such cases, we

8 will require you to answer the question, but we can assure you that your answer will be

9 kept confidential and will not be disclosed to the public or to the government of any

10 country.

11 The Prosecution has further assured that they will not themselves use this information to

12 prosecute you before the ICC provided that you tell the truth.

13 I guess you consulted this issue with Mr Cikonza, but nevertheless it is my duty to assure

14 myself that you understood all this; is it the case?

15 THE WITNESS: (Interpretation) I've understood, your Honour, but I need more

16 explanations about self-incrimination. I haven't really understood the scope or the full

17 extent of that word.

18 PRESIDING JUDGE FREMR: In my understanding, it means that if you will testify and

19 the testimony also will describe something that could normally lead to prosecution of

20 your person, that you describe that you, for example, participated in some that could be

21 qualified as a crime, so you should be worrying to say that, but because you have been

22 given this assurance, you can freely speak about that because there is no possibility, we

23 are giving you this assurance, no possibility to prosecute you for anything that you will be

24 saying here.

25 Do you understand? So your testimony can't be basis for any further prosecution of your

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1 person. The idea is it's part of our Rules to allow witnesses that also hypothetically or
2 even really committed some crimes, they have some connection with the accused, to allow
3 them speak freely about the event and to give to the Chamber full picture of the events.
4 Have you understood?

5 THE WITNESS: (Interpretation) Yes, I have understood you, Mr President.

6 PRESIDING JUDGE FREMR: So are you satisfied with my explanation?

7 And again I would like to --

8 THE WITNESS: (Interpretation) Yes.

9 PRESIDING JUDGE FREMR: -- assure you if you will have any question concerning this
10 issue during your testimony you can just raise your hand, put this question to me and I
11 will do my best to explain the issue you have some doubts about, okay?

12 THE WITNESS: (Interpretation) All right. I have understood you, Mr President.

13 PRESIDING JUDGE FREMR: And in this connection, I would like to request the parties
14 to be highly vigilant about going into private session for areas of evidence that are likely
15 to elicit responses of the witness that might self-incriminate him.

16 So now we can return back into open session. And I also have been informed that it
17 probably my problem that I haven't observed pauses, so that was why we
18 sometimes -- well, I caused those problems with interpretation, but it's just from my part,
19 a warning to parties, please during examination be careful and observe pauses.

20 Now, let's move into open session.

21 (Open session at 10.03 a.m.)

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

23 PRESIDING JUDGE FREMR: Thank you.

24 And, Mr Witness, I will finish my guidance with a few practical matters.

25 First of all, you should have in mind when giving your testimony that everything we say

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1 here in the courtroom is written down and your answers are interpreted into English. It's
2 therefore important to speak clearly and to speak at a slow pace. We want to make sure
3 that your words can be well understood by the interpreters and then by the rest of us.
4 Please speak into the microphone and only start speaking when the person asking you the
5 question has finished.

6 And to allow for the smooth interpretation everyone, including myself, has to wait a few
7 seconds before starting to speak, so I recommend to you when the lawyer or Judge has
8 asked his or her question, please count in your head to three, at least, and only then give
9 your answer.

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

12 Have you understood all that, Mr Witness?

13 THE WITNESS: (Interpretation) Yes, I have understood, Mr President.

14 PRESIDING JUDGE FREMR: Very well, Mr Witness.

15 So now we can move the floor to Prosecution. It will be, I guess, you, Ms Samson, who
16 will be examining this witness?

17 MS SAMSON: Yes, Mr President, that's right.

18 PRESIDING JUDGE FREMR: And before you start, allow me to say that the Prosecution
19 made estimation that you will need 10 hours to examine this witness. The Chamber
20 finds this estimation realistic, so please arrange your examination in a way that really
21 would allow you to finish in 10 hours because otherwise you would have to request for
22 additional time and it's not certain that the Chamber will grant such a request.

23 So, please, you have the floor.

24 MS SAMSON: Yes. Thank you, Mr President.

25 QUESTIONED BY MS SAMSON:

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1 Q. Good morning, sir.

2 A. Jambo.

3 Q. We've met before, but I'll repeat for you that my name is Nicole Samson and I
4 represent the Prosecution today. I have questions for you today and tomorrow. The
5 first series of questions that I have for you relate to your identity and for that reason I will
6 request that we move into private session.

7 PRESIDING JUDGE FREMR: All right, let's move into private session now.

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

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

10 PRESIDING JUDGE FREMR: Thank you.

11 Ms Samson, you may proceed.

12 MS SAMSON:

13 Q. Sir, could you please state your full name?

14 A. Yes. My names are (Redacted).

15 Q. What is your date of birth, please?

16 A. I was born in (Redacted).

17 Q. Where were you born, sir?

18 A. I was born in the Congo, known at the time as Zaire, in (Redacted) to be more specific.

19 Q. And could you spell the name of the place where you were born that you just
20 mentioned?

21 A. (Redacted).

22 Q. Actually, I think it might have been appropriately captured in the transcript. I'll
23 move. I'll move. I think it is captured appropriately.

24 Given that you were born in the Congo, sir, what is your nationality?

25 A. Congolese.

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1 Q. And your ethnicity?

2 A. (Redacted).

3 Q. And are you part of a specific ethnic group?

4 A. I have not understood your question. Please clarify.

5 Q. (Redacted).

6 What ethnic group do you and your family belong to?

7 A. (Redacted)

8 (Redacted).

9 Q. (Redacted)

10 A. Yes.

11 Q. I'll ask you one question in relation to your education: What level of education
12 have you completed?

13 A. (Redacted)

14 (Redacted).

15 Q. And I'm going to move now to your professional history. After your studies, what
16 employment did you take up or what job did you have?

17 A. When I left school, I did not undertake any other career except for military service.

18 Q. Let's start with the first military job that you had. Could you please tell the Court
19 in which armed group and which date you had that first military service?

20 A. Mr President, I would like to ask you to please bear with me when it comes to dates
21 because I have difficulty remembering dates. I might remember years, but it's difficult
22 for me to remember dates. Please bear with me on that point.

23 PRESIDING JUDGE FREMR: Mr Witness, we will. And as it was part of my guidance,
24 that if you don't remember, you are free to say "I don't remember" or just to say "It is just
25 my submission, I am not precisely sure." So no problem with that, really.

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- 1 THE WITNESS: (Interpretation) Thank you.
- 2 PRESIDING JUDGE FREMR: I have also problem remembering dates.
- 3 THE WITNESS: (Interpretation) I understand that. (Redacted)
- 4 (Redacted).
- 5 MS SAMSON:
- 6 Q. (Redacted)
- 7 (Redacted)
- 8 THE INTERPRETER: (Redacted).
- 9 THE WITNESS: (Interpretation) (Redacted)
- 10 MS SAMSON:
- 11 Q. And the name of that military group, please?
- 12 A. (Redacted).
- 13 Q. Do you recall what that stands for, that acronym?
- 14 A. (Redacted).
- 15 Q. (Redacted)
- 16 A. (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted).
- 20 Q. And what position did you take up there?
- 21 A. (Redacted)
- 22 (Redacted).
- 23 Q. (Redacted)
- 24 A. (Redacted).
- 25 Q. And what position did you take up after that, if any?

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1 A. Please can you be more specific in your question, where and when?

2 Q. (Redacted)

3 Did you take up a new position and, if so, where and when?

4 A. (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 Q. Can you repeat please the name --

11 A. (Redacted).

12 Q. Can you repeat please the name of the group that you joined at that time around

13 (Redacted)

14 A. (Redacted)

15 (Redacted).

16 Q. (Redacted)

17 A. (Redacted)

18 (Redacted).

19 Q. (Redacted)

20 A. (Redacted)

21 (Redacted)

22 (Redacted).

23 Q. (Redacted)

24 A. Yes. There was military training provided, but I did not have to follow it because I

25 was already a soldier. However, yes, military training was organised.

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1 (Redacted)

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7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 A. I will try to explain. It's a long story. I'll try to make it short. When I went back

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted). Some people even had problems with all

6 of that. And there were a great many of us who were experiencing this problem,

7 (Redacted)

8 (Redacted)

9 (Redacted).

10 THE INTERPRETER: Interpreter correction: At the beginning of the witness's reply
11 just now he spoke of a misunderstanding; not an agreement, a misunderstanding.

12 MS SAMSON:

13 Q. And then (Redacted)?

14 Where did you go?

15 A. (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 Q. (Redacted)

25 (Redacted)

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1 (Redacted)

2 A. (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 THE INTERPRETER: (Redacted)

13 (Redacted).

14 MS SAMSON:

15 Q. (Redacted)

16 (Redacted)

17 A. (Redacted)

18 (Redacted).

19 Q. (Redacted)

20 A. Yes, I joined another group. And (Redacted) went to that group called the

21 UPC in a town called Bunia.

22 Q. Do you recall the year in which you went to join the UPC?

23 A. (Redacted).

24 Q. (Redacted)

25 A. (Redacted).

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1 Q. (Redacted)

2 (Redacted)

3 A. (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted).

7 Q. Can you explain briefly how it was that you came to join the UPC?

8 A. (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 Q. (Redacted)

19 (Redacted)

20 (Redacted)

21 A. (Redacted)

22 (Redacted).

23 Q. (Redacted)

24 A. (Redacted)

25 (Redacted).

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 Q. (Redacted)

6 A. (Redacted)

7 Q. (Redacted)

8 (Redacted)

9 (Redacted)

10 A. (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 Q. (Redacted)

22 (Redacted)

23 MS SAMSON: (Redacted)

24 (Redacted)

25 PRESIDING JUDGE FREMR: Thank you for your punctuality, Ms Samson. So we will

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1 break now and we will reconvene at half past 11.

2 THE COURT USHER: All rise.

3 (Recess taken at 11.00 a.m.)

4 (Upon resuming in open session 11.31 a.m.)

5 THE COURT USHER: All rise.

6 Please be seated.

7 PRESIDING JUDGE FREMR: So we are in open session, Mr Bourgon. You wanted to
8 make any submissions in open session?

9 MR BOURGON: Yes, Mr President.

10 PRESIDING JUDGE FREMR: Okay. So then go ahead.

11 MR BOURGON: Well, I'm not sure if this was made -- this might have been made in
12 private session, so I think we might be on the safe side and go into private session.

13 PRESIDING JUDGE FREMR: So let's move into private session, court officer, please.

14 (Private session at 11.32 a.m.) *(Reclassified partially in public)

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

16 PRESIDING JUDGE FREMR: Thank you.

17 Mr Bourgon, please proceed.

18 MR BOURGON: Thank you, Mr President. Just to bring to the attention of the
19 Chamber words missing in the English transcript. I refer here to page 46, line 12, where
20 it says that, it talks about the wife of Chief Kahwa; whereas in the French transcript it says
21 the wife of Chief Kahwa who was working at the airport in Bunia. These words are
22 missing from the English transcript. If we can please ask the witness to confirm that this
23 is what he said.

24 Thank you, Mr President.

25 PRESIDING JUDGE FREMR: Ms Samson, before you will continue with the testimony, I

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1 will like to address briefly the last procedural issue. So please hold on for a while.

2 And, Mr Witness, because it concerns your testimony, I would like to ask you, or maybe
3 court officer could assist you, to take off the headphones for a while, because it concerns
4 your testimony, I will speak in English, so I have to deprive you for a short while of
5 translation.

6 MS SAMSON: Mr President, the witness understands English.

7 PRESIDING JUDGE FREMR: Understands English?

8 MS SAMSON: Yes.

9 PRESIDING JUDGE FREMR: Okay. So please, court officer, take Mr Witness just for
10 one minute outside of the courtroom.

11 Thank you, Ms Samson, for giving this information.

12 (The witness stands down)

13 PRESIDING JUDGE FREMR: It will be really just one minute because I would like to
14 have some further comment on Defence witness regarding the preparation session. The
15 Chamber requested and received a copy of the preparation note but has not yet had the
16 opportunity to fully review this.

17 At this stage, however, the Chamber would like to seek a certain further clarification from
18 the Prosecution. We see from the preparation note that 30 documents, (Redacted)
19 (Redacted) were presented to the witness.

20 Mrs Samson, can you please identify for the Chamber any of those 30 documents which
21 had been (Redacted)

22 (Redacted) and, if possible, you may do it by
23 email. It will be easier for us. Is it okay with you?

24 MS SAMSON: Yes, absolutely, your Honour. We will do that by email.

25 PRESIDING JUDGE FREMR: Very well. And then the Chamber will then address the

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1 Defence request further at a later stage. Thank you.

2 And now please bring Mr Witness again into the courtroom.

3 And, Ms Samson, do you want to continue in open or in private session?

4 MS SAMSON: In private session, please, your Honour.

5 And, Mr President, if I may make one submission in relation to the Defence's request for

6 access to the audiovisual of the witness preparation session? I understand, of course,

7 that your Honours are deliberating on the point. As a proposed way forward, should the

8 Chamber deem it necessary following its review of the witness preparation log and note

9 to review the video, the Prosecution proposes that the Chamber has an opportunity to

10 review the video alongside the note on its own prior to making a determination as to the

11 discloseability of the audio video. Thank you.

12 (The witness enters the courtroom)

13 PRESIDING JUDGE FREMR: Okay. Well noted.

14 Now we have to move into private session.

15 We are already? Okay, that's fine.

16 So then it means, yes, we are already in private session. So, Ms Samson, you may

17 proceed.

18 MS SAMSON: Thank you.

19 Q. Sir, there is one question of clarification in relation to the transcript that I'd like to

20 ask you. (Redacted)

21 (Redacted)

22 (Redacted)

23 In the French transcript it appears that you said that "The wife of Chief Kahwa was

24 working at the airport in Bunia." Is that correct? Did you say that the wife of

25 Chief Kahwa was working at the airport in Bunia?

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1 A. (Redacted)

2 (Redacted) I was told that Chief Kahwa's wife

3 worked at the Bunia airport.

4 Q. Thank you for that clarification. That seems to be sufficient.

5 (Redacted)

6 (Redacted)

7 A. (Redacted)

8 (Redacted)

9 Q. (Redacted)

10 A. (Redacted)

11 Q. (Redacted)

12 (Redacted)

13 A. (Redacted)

14 (Redacted)

15 (Redacted)

16 Q. (Redacted)

17 A. (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 Q. (Redacted)

22 A. (Redacted)

23 Q. (Redacted)

24 (Redacted)

25 A. (Redacted)

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1 (Redacted)

2 Q. Is the ANR part of the UPC or separate, to your knowledge?

3 A. The ANR or ANR was not part of the UPC. It's a civil organisation known as the
4 ANR in the Congo.

5 Q. Did you -- do you know any of José's other names?

6 A. Yes. I know his other name.

7 THE INTERPRETER: Witness in the previous answer said that at the time he was
8 working for the UPC.

9 THE WITNESS: (Interpretation) I also remember that on one occasion I was asked to
10 provide his other name and I wrote it down somewhere. Maybe I can look it up, and if I
11 do remember during my testimony, if I remember his name, I will provide you with his
12 name during my testimony, if I do remember.

13 MS SAMSON:

14 Q. That's fine, sir. Thank you.

15 A question of clarification. In your answer in relation to José, did you state that he was
16 working for the UPC at the time?

17 A. Yes.

18 Q. And do you know what his function was in the UPC at the time?

19 A. I told you that he used to work at the ANR. He was the person in -- one of the
20 officials of the ANR. There was José and then there was someone else whose name
21 was -- now I forget his name. Maybe I'll remember the name later on. But there were
22 two of them working for the ANR. They had a boss whose name was Rafiki.

23 Q. Did Rafiki have any role in the UPC at the time to your knowledge?

24 A. I am sorry, the other gentleman who used to work with José at the ANR was
25 Mende (phon), and Rafiki was their hierarchical boss. I'm referring here to those who

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1 used to work at the ANR office.

2 Q. Can you please repeat the name of the other man, just for our transcript.

3 A. His name is Mende.

4 Q. And coming back to my earlier question, before the clarification I asked if Rafiki to
5 your knowledge had any role in the UPC at that time?

6 A. Yes. I have just told you that Rafiki was in charge of civil security. However, he
7 also used to work for the UPC as aide de camp to Thomas Lubanga.

8 Q. I think you might have mentioned Thomas Lubanga's role. What was his role or
9 title in the UPC at the time?

10 A. Are you talking about Thomas Lubanga or Rafiki?

11 Q. Thomas Lubanga. I thought I heard you mention his title. I wonder if you could
12 say what his title was in the UPC at the time, if you know.

13 A. He was the president of the UPC.

14 Q. (Redacted)

15 (Redacted)

16 (Redacted)

17 A. (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 Q. (Redacted)

25 (Redacted)

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1 A. (Redacted)

2 (Redacted)

3 Q. (Redacted)

4 (Redacted)

5 A. (Redacted)

6 (Redacted)

7 Q. (Redacted)

8 (Redacted)

9 A. (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 Q. What to your knowledge was Mr Ntaganda's role in the UPC at that time?

18 A. Ntaganda was chief of staff in charge of operations.

19 Q. And did you learn what role he had, if any, in preparing for the operation in
20 Mongbwalu?

21 A. His role included what I have already told you, namely, organising the troops and
22 compiling an inventory of the needs of the troops for the battle. And it is for that reason
23 that he was travelling to Aru, that is, in order to organise the troops. The weapons were
24 in some boxes and had been loaded onto the plane. The weapons were loaded onto the
25 plane along with boxes of ammunition.

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1 Q. (Redacted)

2 A. (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 Q. And before I ask you more specifics about this event, earlier you mentioned that
7 Mr Ntaganda's role in preparing for the operation at Mongbwalu was to organise the
8 troops and to compile an inventory of the needs of the troops for battle. Can you
9 elaborate briefly on what you mean by those two roles that he had? How was he
10 organising troops and compiling inventories?

11 A. I'm not sure that I have understood your question.

12 Q. How, to your knowledge, was Mr Ntaganda organising the troops for the
13 Mongbwalu operation?

14 A. This is what I said -- first of all, I can tell you that he was taking the weapons to the
15 troops that were in Aru, so the troops were meant for the Mongbwalu operation, that is
16 the attack on Mongbwalu. (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 Q. And do you recall the name of the local commander in Aru that you're referring to?

23 A. Well, there were many commanders, and I don't remember all the names. One of
24 them was known as Scarpa, for example, and I think that in Aru he met the commanders
25 who were working at the headquarters, including the G4s, G2s and G5. These are the

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1 people with whom he met.

2 Q. How did you learn of what happened in Aru, the distribution of weapons and the
3 meeting with the commanders?

4 A. Are you talking about that meeting?

5 Q. Yes. You made reference to meetings in Aru to distribute weapons with certain
6 commanders, meetings that Mr Ntaganda attended. How do you know of those events?

7 A. Well, maybe you did not quite follow what I said. I did not say that the purpose of
8 the meeting was to distribute weapons. I said that he met with the troops and that it was
9 the first time and that for them it was the first time to meet Ntaganda. So it was some
10 sort of a contact meeting. The purpose of the meeting was not to distribute weapons.
11 The weapons, however, were meant for a location known as Kandoyi.

12 Q. Did any weapons get distributed in Aru, to your knowledge?

13 A. (Redacted)

14 (Redacted)

15 (Redacted) What I know, however,

16 is that some of the weapons remained at the headquarters while some other weapons
17 were taken to Kandoyi.

18 Q. (Redacted)

19 (Redacted)

20 A. (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 Q. (Redacted)

25 (Redacted)

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1 A. (Redacted)

2 (Redacted)

3 (Redacted)

4 Q. (Redacted)

5 (Redacted)

6 (Redacted)

7 A. (Redacted)

8 Q. (Redacted)

9 (Redacted)

10 (Redacted)

11 A. (Redacted)

12 (Redacted)

13 Q. (Redacted)

14 (Redacted)

15 (Redacted)

16 A. (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 Q. And did girls within the -- girl soldiers or female soldiers in the UPC have any
23 particular name or title?

24 A. Yes. The girls were known as PMFs.

25 Q. Do you know what that term stands for?

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1 A. In fact, I do not know. I simply know that they were referred to as PMFs.

2 Q. And do you know the age or age range of the escorts that you saw in Aru with

3 Mr Ntaganda?

4 A. I do not know.

5 Q. (Redacted)

6 (Redacted)

7 A. (Redacted)

8 (Redacted)

9 Q. (Redacted)

10 (Redacted)

11 (Redacted)

12 A. (Redacted)

13 Q. (Redacted)

14 A. (Redacted)

15 (Redacted)

16 Q. (Redacted)

17 (Redacted)

18 A. (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 Q. (Redacted)

23 A. (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 Q. Do you recall what Mr Ntaganda said to the troops?

10 A. He simply greeted them and tried to find out whether the morale was high, and he
11 was introduced to the troops there as the chief of staff -- deputy chief of staff responsible
12 for operations. He asked questions about their morale but he did not tell them anything
13 really specific. It is just -- it was just a courtesy visit.

14 Q. Were you present for any conversations between Mr Ntaganda and Mr Kakwavu or
15 the troops in relation to the preparations for the Mongbwalu attack (Redacted)?

16 A. I was not present in the meeting when that attack was being prepared. (Redacted)
17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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- 1 A. (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 PRESIDING JUDGE FREMR: (Redacted)
- 7 (Redacted)
- 8 MS SAMSON: (Redacted)
- 9 (Redacted)
- 10 PRESIDING JUDGE FREMR: (Redacted)
- 11 THE WITNESS: (Interpretation) (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 PRESIDING JUDGE FREMR: (Redacted)
- 20 (Redacted)
- 21 MS SAMSON: Thank you.
- 22 Q. Did you learn (Redacted)
- 23 who within the UPC hierarchy was -- had planned the Mongbwalu operation from an
- 24 operational level?
- 25 A. Okay. (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 Q. And within the UPC structure itself, did you learn who within the hierarchy was in
6 charge of planning the operational aspects of the attack?

7 A. (Redacted)

8 (Redacted)

9 (Redacted) it was an operation which was commonly known or

10 known by everyone. President Thomas Lubanga was aware of it. (Redacted)

11 (Redacted)

12 (Redacted)

13 Q. (Redacted)

14 (Redacted)

15 A. (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 Q. (Redacted)

24 (Redacted)

25 PRESIDING JUDGE FREMR: (Redacted)

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1 (Redacted)

2 Then there was a minister from Kinshasa called Ntumba Luaba, he came to Bunia to
3 negotiate with the UPC group which was in Mandro so as to put an end to the war and
4 agree with the APC. But they took this Congolese minister and put him in prison and set
5 the condition that Lubanga should be freed so that they also could release Ntumba Luaba.
6 So there were UPDF, Ugandan troops in Bunia, and they were the ones who assisted in
7 having the minister released and Lubanga also released from Kinshasa. That is how that
8 exchange was made. When Lubanga arrived, he was elected president of the UPC and
9 then they started working together with the other ministers, things like that. (Redacted)

10 (Redacted)

11 PRESIDING JUDGE FREMR: Mr Bourgon.

12 MR BOURGON: Thank you, Mr President. Of course I can take this on
13 cross-examination, but it would be helpful I believe to everyone in the courtroom if we
14 would have a time frame and a location where (Redacted)
15 (Redacted) because right now we have a whole bunch of
16 information and unless, again, I stand to be corrected, but I don't know where we are and
17 I don't know when we are, and that would be helpful, Mr President. Thank you.

18 PRESIDING JUDGE FREMR: Ms Samson, do you want to help Mr Bourgon on this?

19 MS SAMSON: Certainly. I will ask one additional question (Redacted)
20 (Redacted).

21 Q. (Redacted)

22 (Redacted)

23 A. (Redacted)

24 (Redacted)

25 (Redacted)

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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 Q. (Redacted)

11 (Redacted)

12 A. (Redacted)

13 (Redacted)

14 (Redacted)

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

16 THE WITNESS: (Interpretation) Yes, I wanted to ask for a short break.

17 PRESIDING JUDGE FREMR: All right. Five minutes would be okay with you?

18 THE WITNESS: (Interpretation) Yes.

19 PRESIDING JUDGE FREMR: So, please, court officer, bring Mr Witness out of the
20 courtroom and we will break for five minutes because we still have 18 minutes before our
21 normal break. Don't be misled by this clock which is one hour slow.

22 So we break for five minutes and we then will continue until half past 1.

23 THE COURT OFFICER: All rise.

24 (Recess taken at 1.12 p.m.)

25 (Upon resuming in private session at 1.17 p.m.) *(Reclassified partially in public)

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(Private Session)

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1 THE COURT USHER: All rise.

2 Please be seated.

3 PRESIDING JUDGE FREMR: Mr Witness, are you fine now?

4 THE WITNESS: (Interpretation) Yes, I'm fine, your Honour.

5 PRESIDING JUDGE FREMR: Very well.

6 So we still have 12 minutes.

7 Ms Samson, the floor is yours.

8 MS SAMSON: Thank you, Mr President.

9 Q. (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 A. (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 Q. (Redacted)

18 A. (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 Q. (Redacted)

24 A. (Redacted)

25 Q. (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 Q. And is there a difference between a Motorola and a Manpack?

5 A. Yes, there is a difference. Motorola is portable, but a Manpack can be used to
6 communicate over a very long distance, much longer than the Motorola.

7 Q. Who within the UPC had Manpacks?

8 A. President Lubanga had a Manpack, Ntaganda had a Manpack and also Kisembo, he
9 had a Manpack.

10 Q. I will ask you more about the Manpack and communications generally, (Redacted)

11 (Redacted)

12 (Redacted)

13 A. (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 Q. (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 A. (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 Q. (Redacted)

6 A. (Redacted)

7 Q. (Redacted)

8 (Redacted)

9 A. (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 Q. I'll have more questions --

14 PRESIDING JUDGE FREMR: Ms Samson, I'm sorry, but you know, we are sitting in
15 extended hours, so I think we shouldn't shorten our break because I think everybody
16 deserves that. I'm sorry, you are free to continue on this topic after the break, but
17 I would like to break now.

18 MS SAMSON: Certainly, yes.

19 PRESIDING JUDGE FREMR: So we adjourn. We will reconvene again at 3 o'clock and
20 our last session also is planned for two hours which means 'til 5 o'clock.

21 THE COURT USHER: All rise.

22 (Recess taken at 1.35 p.m.)

23 (Upon resuming in open session at 3.02 p.m.)

24 THE COURT USHER: All rise.

25 Please be seated.

Trial Hearing

(Open Session)

ICC-01/04-02/06

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1 PRESIDING JUDGE FREMR: Before we continue with the testimony, one question from my
2 part to Mr Bourgon concerning your request on status conference.

3 Mr Bourgon, could you hear me? Okay. Fine. Because I have just maybe two
4 additional questions. Your request for status conference, are you requesting ex parte
5 or inter partes status conference?

6 MR BOURGON: Thank you, Mr President. Are you referring to my -- what I mentioned
7 this morning?

8 Yes, inter partes, of course, with the Prosecution. I've addressed the matter already
9 with my colleague, and I expect to have some information probably today or
10 tomorrow, at which point we will send a message to the Trial Chamber.

11 PRESIDING JUDGE FREMR: Okay. For the sake of planning. And my other question
12 was what time you expect it will require? But I think also it depends, and we will see from
13 your email maybe.

14 MR BOURGON: I would assume that half hour would do what is necessary; but, of course,
15 it all depends how much consultations there are with the Prosecution.

16 PRESIDING JUDGE FREMR: Thank you. It was just my inquiry for the sake of further
17 planning.

18 Now, we will continue with examination of this witness. For the information of
19 public, there is a very high likelihood that because this witness is protected one, that
20 we will -- the vast majority of his examination will be conducted in private session. I
21 can ask Ms Samson what is the perspective, whether I am right or wrong.

22 MS SAMSON: Yes, your Honour. You are correct. I will request we remain in private
23 session for the series of questions I have next, and it will likely go on for some time.

24 PRESIDING JUDGE FREMR: So now court officer let's move into private session.

25 (Private session at 3.05 p.m.) *(Reclassified partially in public)

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(Private Session)

ICC-01/04-02/06

- 1 THE COURT OFFICER: We're in private session, Mr President.
- 2 PRESIDING JUDGE FREMR: Thank you, court officer.
- 3 Ms Samson, you may proceed.
- 4 MS SAMSON: Thank you.
- 5 Q. Good afternoon, sir.
- 6 A. Good afternoon.
- 7 Q. (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 A. (Redacted)
- 15 Q. (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 A. (Redacted)
- 21 Q. (Redacted)
- 22 A. (Redacted)
- 23 (Redacted)
- 24 Q. (Redacted)
- 25 (Redacted)

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- 1 (Redacted)
- 2 A. (Redacted)
- 3 Q. (Redacted)
- 4 A. (Redacted)
- 5 Q. (Redacted)
- 6 (Redacted)
- 7 A. (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 Q. (Redacted)
- 15 A. (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 Q. And a moment ago you were mentioning the misconduct by UPC soldiers towards
- 22 civilians. Did you get to know (Redacted) what ethnic groups these civilians were from?
- 23 A. No. It wasn't a question of ethnicity. I told you that the conflict in Bunia was between
- 24 the Hema and the Lendu. In Aru, there were not any Lendu people, nor were there any
- 25 Hema. There were the Kakwa and the Alugwa (phon). In Mongbwalu, there were Lendu,

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1 Bira and people from Hema north, that is to say Mahagi, there were -- there was another tribe,
2 they were the Alur. There were the Congolese Alur and the Ugandan Alurs.
3 So that doesn't mean that it would depend on ethnicity. The act would be
4 committed without taking account of ethnicity. If they wanted to steal a motorcycle
5 they would. They were not really targeting someone from a particular tribe. Of
6 course, that would happen occasionally in Bunia. For example, one person from the
7 Nandi tribe had lost some goods, and some -- there would be some looting because
8 the person was from that ethnic group, but there, there were people who came from
9 different ethnic groups, Hema people and people from other tribes.

10 Q. (Redacted)

11 A. (Redacted)

12 (Redacted)

13 (Redacted)

14 Q. (Redacted)

15 (Redacted)

16 PRESIDING JUDGE FREMR: (Redacted)

17 MR BOURGON: (Redacted)

18 (Redacted)

19 PRESIDING JUDGE FREMR: (Redacted)

20 MS SAMSON: (Redacted)

21 (Redacted)

22 (Redacted)

23 PRESIDING JUDGE FREMR: (Redacted)

24 MS SAMSON:

25 Q. (Redacted)

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1 (Redacted)

2 A. (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 Q. (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 A. (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 Q. And this may be clear to you but I would like it to be clear for everybody in the
17 courtroom who wasn't present in Bunia when you were there. Why could a Lendu person
18 not come into Bunia town when you were there?

19 A. It was not possible. It was not possible, as I just told you. The UPC soldiers were
20 fighting the Lendus. So they couldn't come into town. They could not get to the place
21 where the UPC troops were. They were thought of as enemies. So they could not come to
22 the place where the UP soldiers were.

23 Q. And what about Lendu civilians, how were they considered? Are you referring in
24 your answer to Lendu civilians or Lendu military who could not go to Bunia town because
25 they were considered the enemy?

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1 A. Well, an unarmed Lendu civilian could not enter Bunia. How could an armed Lendu
2 person come into town?

3 Q. (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 A. (Redacted)

8 (Redacted)

9 Q. (Redacted)

10 A. (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 Q. You have made reference to Mr Kisémbu and to Mr Ntaganda. How did the roles of
17 the two men differ, if at all, Mr Kisémbu as the chief of staff and Mr Ntaganda as the deputy
18 chief of staff? Can you explain what their different roles were within the UPC army?

19 A. Kisémbu was chief of staff, chief of general staff. He was the commander of the UPC.
20 Ntaganda was his deputy. He was the deputy chief of staff, and he was in charge of
21 operations.

22 Now, I don't know whether your question has to do with how the two people worked
23 together and you're trying to understand how they worked together.

24 Q. Yes. I'm trying to understand how they worked together. I'm also trying to
25 understand what their different roles were, which I think you've explained. So how did they

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1 work together?

2 A. Well, let me go back to the point I made earlier. Kisémbó was the chief of general staff,
3 and Ntaganda was the deputy responsible for operations. All the same, as to the way they
4 worked together, you must realise that Kisémbó was in charge, but most of the decisions were
5 taken by his deputy, that is to say Mr Ntaganda. Why do I say that? It was Ntaganda who
6 had more experience when it came to managing an army. That is to say, he relied on
7 Ntaganda to manage the army. He was the chief of general staff, but he didn't have
8 enough -- as much experience as Ntaganda. That is why most of the operations were
9 conducted by Ntaganda.

10 Q. (Redacted)

11 A. (Redacted)

12 (Redacted)

13 (Redacted)

14 Q. (Redacted)

15 I have some questions now about -- more about the structure of the UPC army.

16 (Redacted)

17 (Redacted)

18 A. (Redacted)

19 Q. (Redacted)

20 (Redacted)

21 (Redacted)

22 A. (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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- 1 (Redacted)
- 2 Q. (Redacted)
- 3 (Redacted)
- 4 PRESIDING JUDGE FREMR: (Redacted)
- 5 MR BOURGON: (Redacted)
- 6 (Redacted)
- 7 PRESIDING JUDGE FREMR: (Redacted)
- 8 MS SAMSON: (Redacted)
- 9 (Redacted)
- 10 Q. (Redacted)
- 11 (Redacted)
- 12 A. (Redacted)
- 13 Q. (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 A. (Redacted)
- 17 PRESIDING JUDGE FREMR: (Redacted)
- 18 THE WITNESS: (Interpretation) (Redacted)
- 19 PRESIDING JUDGE FREMR: (Redacted)
- 20 (Redacted)
- 21 THE WITNESS: (Interpretation) (Redacted)
- 22 (Redacted)
- 23 MS SAMSON:
- 24 Q. Have you ever heard of an individual whose name is Nembe, N-E-M-B-E, within the
- 25 UPC?

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1 A. Nembe?

2 Q. Yes.

3 A. I have talked to you about Mende. Mende is the person I'm talking about.

4 Q. Yes. And I'm asking you if you've ever heard of an individual whose last name was
5 Nembe in the UPC?

6 A. What name did I mention to you before? Did I say Nembe?

7 Q. Well, the name that you're referring to is Mende, Mende. And I'm simply asking if you
8 know of someone whose name is Nembe, N-E-M-B-E?

9 A. Yes. That's the person I'm talking about. I think I mispronounced the name. I was
10 talking about the person who is called Nembe. That's the one I was talking about.

11 Q. And to be clear, what was Mr Nembe's role in the UPC?

12 A. Yes. He's the one, but I mispronounced his name. It's Nembe, not Mende. He's the
13 one I was talking about who used to work with José and Rafiki at the ANR.

14 Q. (Redacted)

15 (Redacted)

16 A. (Redacted)

17 Q. (Redacted)

18 A. (Redacted)

19 (Redacted)

20 (Redacted)

21 Q. (Redacted)

22 (Redacted)

23 A. (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 Q. (Redacted)

11 (Redacted)

12 (Redacted)

13 A. Kahwa used to work with the UPC before, and he was known as "Chief Kahwa." He
14 was the traditional ruler of the Hema ethnic group. Then there was a misunderstanding
15 between him and the UPC movement under Thomas Lubanga. He left the movement and
16 then went to Uganda. When he got to Uganda, he had discussions with the Ugandan
17 authorities, and they helped him to drive out the UPC, and he created his own movement.

18 THE INTERPRETER: And the interpreter, English interpreter didn't get the name that was
19 mentioned of the group that was created.

20 MS SAMSON:

21 Q. What was the name you mentioned of the group created by Chef Kahwa?

22 A. The name is PUSIC. PUSIC.

23 Q. When you were in the UPC, was Chef Kahwa still in the UPC?

24 A. Yes. I met him. He was still in the UPC.

25 Q. Could you spell PUSIC for our transcript, if you know?

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1 A. Well, I'm not very sure because I never belonged to PUSIC. I think it must be Papa
2 Mike Zulu Kilo, or something like that. I have never belonged to that movement.

3 MS SAMSON: I think the transcript has it accurately.

4 Q. What role or title or function did Chef Kahwa have in the UPC (Redacted)?

5 A. (Redacted) he wasn't there for long before leaving. That's when he fled to
6 Uganda. But I learnt that he had been the minister for finance, and I think he was to have
7 been appointed minister of finance, but he did not come to an agreement with Lubanga.

8 (Redacted)

9 Q. (Redacted)

10 (Redacted)

11 (Redacted)

12 A. (Redacted)

13 (Redacted) some new sector commanders had been appointed in Aru,
14 Mongbwalu and Mahagi as well as Bunia, in those sectors. The Mongbwalu sector
15 commander was Jérôme. The Mongbwalu sector was under Salongo. The Mahagi sector
16 was under Mugisa. And the Bunia sector was under Tchaligonza.

17 Q. And just to be clear, which sector was Jérôme in charge of?

18 A. Aru.

19 Q. And Mongbwalu?

20 A. Salongo.

21 Q. Now I wanted to ask you some --

22 PRESIDING JUDGE FREMR: I'm sorry, Ms Samson, we still -- now it's getting better because
23 we still have some gaps in the transcript concerning your last question. Mahagi sector was
24 under Mugisa. And we still -- there is still missing the name of the fourth sector.

25 MS SAMSON: Yes, you're right, your Honour. I will ask the question.

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1 Q. Which sector was Tchaligonza in command of, please?

2 A. Bunia.

3 PRESIDING JUDGE FREMR: Thank you, Ms Samson.

4 THE WITNESS: (Interpretation) Bunia.

5 MS SAMSON:

6 Q. Thank you. Sir, you did make reference earlier to some -- to the name Romeo Charlie.

7 What type of name is that?

8 A. It's a call sign, it's not a name.

9 Q. Did you have a call sign?9

10 A. Yes.

11 Q. What was it?

12 THE INTERPRETER: Request from the Swahili booth: Could the witness be kindly
13 requested to repeat his answer.

14 MS SAMSON:

15 Q. Sir, could you repeat your answer again for our transcript?

16 A. (Redacted)

17 Q. And can you recall Mr Ntaganda's call sign?

18 A. Yes, his call sign was Tango Romeo.

19 Q. Mr Kisembo, his call sign?

20 A. Zulu Mike.

21 Q. Did Mr Lubanga have a call sign? And if so, what was it?

22 A. It was Number One.

23 Q. And Rafiki?

24 A. His call sign was Romeo something, which I forget. I've forgotten his call sign, but he
25 did have a call sign.

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1 Q. Did Jérôme Kakwavu have a call sign that you know of?

2 A. Yes. It was Ten Bravo.

3 Q. And you mentioned an individual named Emmanuel Ndungutse. Did he have a call
4 sign that you know of?

5 A. Yes, he had a call sign. And I think I can remember it. It was Echo Mike.

6 Q. Do you know the names of any other commanders who came from Mr Kakwavu's
7 troops such as Mr Ndungutse?

8 A. There was the Kandoyi brigade commander whose name was Commander Seyi. Then
9 there was Ingbokolo. In Ingbokolo they had a commander whose name I forget. I'm sorry,
10 I don't remember the name of the commander of Ingbokolo, but if I were to remember his
11 name I will bring it up. I could jot it down somewhere and make it available to you.

12 Now for Ariwara, there was also a commander there and his name was -- well, I'm
13 sure I will remember those names at some point. I've forgotten the names of the
14 commanders under the UPC.

15 In Ariwara, for example, when Jérôme left the APC -- well, anyway, I have forgotten
16 those names, but I think -- I think I will be able to recall them at some point.

17 Q. That's fine. Thank you.

18 MS SAMSON: Mr President, I just note that the names of the two commanders, Seyi and
19 Ingbokolo has been captured correctly in the French transcript but not in the English and, to
20 save time, I propose that the English transcript be edited to reflect the French spelling.

21 PRESIDING JUDGE FREMR: All right.

22 Yes, Mr Witness.

23 THE WITNESS: (Interpretation) Mr President, I think that I have been misunderstood. I
24 didn't give the names Seyi and Mbokolo (phon). Ingbokolo is the name of a place, not the
25 name of a person. So it's Ingbokolo. It's a location.

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1 PRESIDING JUDGE FREMR: Could you rather spell it because I again see that we don't
2 have right spelling in our transcript, at least the English one.

3 THE WITNESS: (Interpretation) Ingbokolo is spelled India Mark Uniform Bravo Oscar
4 Kilo Oscar Romeo Oscar. Ingbokolo.

5 MS SAMSON:

6 Q. And, sir, you mentioned the commander Kandoyi. I thought you said his name was
7 Seyi, but I want to be sure that I have that correctly?

8 A. Yes, it is Seyi.

9 Q. Sir, do you remember Seyi's call sign? And I will ask you to spell the name Seyi just so
10 it's clear?

11 A. Those are names in the Lugbara language, so I will spell it the way I can, but I'm not
12 sure if the spelling is correct. Sierra, Echo, India. I think that -- that's it.

13 Q. And you've referred to Commander Salumu earlier today. Did he have a call sign?

14 A. Yes, he had a call sign. Yes, he did. It was Sierra -- Sierra Alpha.

15 Q. And Mr Mugisa, who you mentioned this afternoon, what was his call sign?

16 A. Papa Mike.

17 Q. Now I'd like to move to a different topic which is the topic of communications in the
18 UPC. And you referred today to the Motorola and to the Manpack, and you've also referred
19 to the signallers -- signoras, pardon me, and you stated that you could provide more
20 information about the role of the signora in the UPC. Could you do that now?

21 A. The tasks of the signora included receiving messages and sending messages to sectors or
22 brigades. So if I or another commander wanted to send a message, we would do so through
23 the signora.

24 PRESIDING JUDGE FREMR: Ms Samson, I don't want to complicate your role, but would it
25 be possible for this topic move into open session?

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1 MS SAMSON: Yes, your Honour, I think we could for the communication section. Thank
2 you.

3 PRESIDING JUDGE FREMR: Very well then.

4 Then move into open session now.

5 Mr Bourgon.

6 MR BOURGON: Thank you, Mr President. May I ask for a technician, please, because my
7 computer keeps turning off and I keep rebooting it, but it doesn't work. So I'm sorry to
8 interrupt --

9 PRESIDING JUDGE FREMR: For sure.

10 MR BOURGON: -- but I'd like to have a few minutes to have somebody take a look at it,
11 please.

12 PRESIDING JUDGE FREMR: For sure. I would like court ushers to assist Mr Bourgon.
13 (Open session at 4 p.m.)

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

15 PRESIDING JUDGE FREMR: Ms Samson, please hold on. We will still wait whether we
16 succeed to assist Mr Bourgon.

17 THE COURT OFFICER: The technician is on his way, Mr Bourgon.

18 MR BOURGON: I will use my colleague's computer just to avoid wasting time.

19 PRESIDING JUDGE FREMR: Mr Bourgon, we thank you for your indulgence and we
20 appreciate your flexibility.

21 So now, Ms Samson, you may proceed and we are in open session, so please bear it in
22 mind.

23 MS SAMSON: Yes.

24 Q. And so, sir, where were the signora themselves based?

25 A. Each one had a place within the headquarters, for example, the signora of the Mahagi

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1 sector was in the Mahagi headquarters.

2 Q. And you mentioned that there were Manpacks at various places with Mr Lubanga, Mr
3 Ntaganda, Mr Kisembo. Did they have signora based with them at their residences or offices
4 or not?

5 A. They had their own residences.

6 Q. And just to be clear on that, at Mr Lubanga's or Mr Ntaganda's or Mr Kisembo's
7 residences where there were Manpacks, were the signora working from those three areas with
8 the Manpacks or did they work from afar, remotely?

9 A. No. It was at their own residence. The Manpack belonging to Mr Lubanga was in his
10 residence, and it was the same thing for the other commanders. They couldn't be set up far
11 away from the place where they were, because each person might receive a report from the
12 signora. So the signora could not be far away from the commander's residence.

13 Q. And what was the range of a Motorola?

14 A. I couldn't tell you exactly what the range was of those Motorola, but it was a long
15 distance, for example, for someone who was here, here in The Netherlands, someone in The
16 Netherlands could send a message to someone in Belgium, and what's more, you could send a
17 message to someone who was in France. So really it had quite a large range.

18 Q. And were you able to follow communications on the Motorola?

19 A. No. That was impossible. For instance, someone in Bunia could not communicate
20 with someone in Aru or Mongbwalu. That was impossible.

21 Q. Was that impossible using the Motorola? Is that what you mean?

22 A. No. It was far away. The Motorolas were used for short distances. For relatively
23 long distances we used other means of communications. They were called base stations.
24 For example, you might ask someone who was operating the base station to communicate
25 with someone with a Motorola so that the two parties could communicate.

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1 Q. What is the difference, if any, between a base station and a Manpack?

2 A. They're different. I don't know how to explain it to you, because you've never been in
3 Bunia, but I'll give you the example of someone here. Someone who is here can
4 communicate with someone who is in France or England using a Manpack. But for someone
5 who is here, in order to communicate with someone who is in Delft, for example, an example
6 I'm giving you, well, then you have to call someone who has the other equipment called the
7 base so that he can connect you to the person using the Motorola.

8 Q. So the base is connected to the Motorola in order to allow for longer distance
9 communication; is that correct?

10 A. Yes, that's right. Now, for someone who is far away, if that person used a Motorola,
11 that person had to go through the person who was operating the base as a relay so that they
12 would be able to communicate.

13 Q. And could Motorola communications or base station communications be intercepted?

14 A. Yes, that was possible. The communications could be intercepted if, for example, you
15 knew the frequency that was being used, it was possible. For example, you could intercept
16 Lendu communications if you knew what the frequencies were.

17 Q. And were the Lendu in a position to intercept UPC communications or did that not
18 happen?

19 A. That was possible. I would say that was possible because I was a witness to that, to
20 such a case.

21 Q. And can you describe what you witnessed in that case.

22 Excuse me one moment, sir.

23 Perhaps we should move into private session, your Honour, before we get this answer.

24 PRESIDING JUDGE FREMR: Good point. Let's move into private session now.

25 (Private session at 4.11 p.m.) *(Reclassified partially in public)

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

2 PRESIDING JUDGE FREMR: Thank you.

3 Ms Samson.

4 MS SAMSON:

5 Q. Sir, would you like me to repeat my question?

6 A. (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted).

16 The second case that I saw was during the fighting between the UPDF and the UPC.

17 The UPDF soldiers were monitoring, they could hear our communications. So those

18 were the two cases that I can tell you about, cases that I saw for myself.

19 Q. Do you remember approximately when the fighting between the UPDF and the UPC
20 took place?

21 A. That was in 2003. I don't remember which month, but it was in 2003.

22 Q. And you mentioned an individual named Papa Three, and you also used a name for
23 him. You said his name, but it wasn't captured in the transcript. What was his name, Papa
24 Three?

25 A. You want me to give his name or his call sign? His call sign was Papa Three, and his

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1 name was Mbeza (phon).

2 Q. And he was operating base equipment, you said. Where was he based?

3 A. In his home, and he was living in Bunia.

4 Q. Was he a signora, or did he have a different title or function?

5 A. I would say that he was a member of the party. He was a volunteer. He had no
6 official position or duties. He did have a base at home, his home, and it was just for him. It
7 wasn't for the UPC. And he was in the custom of calling people from his ethnic group to tell
8 them about the situation in the field. He would call Ntaganda to report to him about
9 Tchaligonza. I wouldn't say he was a UPC soldier. He was a volunteer.

10 Q. What was his ethnic group?

11 A. He was a Hema person, Hema south.

12 Q. Do you know how to spell his name?

13 A. It is a Hema name. I will try. I don't know if I can spell it right, but I think it's
14 M-B-I-Z-A.

15 Q. Now, the examples you provided of intercepts are of occasions where the UPC was
16 intercepting Lendu communications. Do you have any examples where the Lendu could
17 intercept or did intercept UPC communications?

18 A. No, that's not what I said. I didn't say that the Lendu were intercepting UPC
19 communications. (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 Q. (Redacted)

25 A. (Redacted)

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1 (Redacted)

2 (Redacted)

3 Q. I'll get to that shortly, but I would like to ask you a few more questions about the
4 signora. If the signora received a message, how would they record it, do you know, or
5 transmit it to the person it was intended to go to?

6 A. Each signaller had a Motorola radio. When a signaller would receive a message, he
7 would call the recipient, the person for whom the message was intended. As I told you, the
8 Manpack were set up in the residences of the commanders. If, for example, a signaller
9 received a sitrep in the morning, he would take the logbook and he would take it to Lubanga's
10 signaller and say, "Well, here is the report that was sent."

11 That was done every day. (Redacted)

12 (Redacted).

13 Q. (Redacted)

14 A. (Redacted)

15 Q. (Redacted)

16 A. (Redacted)

17 (Redacted)

18 (Redacted)

19 Q. Did Mr Ntaganda have signora at his own residence?

20 A. Yes. I told you that he had a signaller.

21 Q. Do you remember the name of the signora when you were in the UPC who was based at
22 Mr Ntaganda's residence?

23 A. Yes. There were two of them. One did the training of the others, and then there was a
24 second one, Hema south person, who received training. Ntaganda's signora, I've forgotten
25 his name. What's more, when the UPC was driven out of Bunia, he joined Jérôme's group,

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1 and he was appointed Jérôme's signaller in Aru.

2 Q. And the person who was appointed Jérôme's signora in Aru, was he the one who did
3 the training, or was he the Hema south person? Which of the two is the one who went to
4 Jérôme Kakwavu's troops?

5 A. I didn't say that it was sent by someone. It was after, after the battle between the UPC
6 and the UPDF, after which the UPDF drove the UPC out of Bunia. That is when the young
7 man joined Jérôme's group because Jérôme had deserted the UPC and set up his own
8 movement. (Redacted) in Jérôme's group, and he was a signora. I don't know how it
9 came to be that he joined that movement. (Redacted)

10 Q. But if I understand, you said that there were two signoras at Mr Ntaganda's residence.
11 One of the signoras did the training of the others. The second one was a Hema south person
12 who received training. Is it one of those two signoras who joined Jérôme Kakwavu's troops
13 when the UPDF and the UPC fought in Bunia?

14 A. The one who had the higher rank, the one who gave the training to the young people, he
15 was the one who went to Jérôme's group. He is not a Hema person. He is not a Hema.
16 That was the person, the one who was not a Hema, who went and joined Jérôme's group.

17 Q. (Redacted)

18 (Redacted)

19 A. (Redacted)

20 (Redacted)

21 Q. (Redacted)

22 A. (Redacted)

23 Q. (Redacted)

24 (Redacted)

25 A. (Redacted)

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1 Q. (Redacted)

2 A. (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 Q. (Redacted)

7 A. (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 Q. (Redacted)

12 (Redacted)

13 A. (Redacted)

14 Q. (Redacted)

15 (Redacted)

16 A. They also used Manpack in order to communicate their orders to the ground. They
17 either used the Manpack or they went to the field themselves. So there were several ways of
18 communicating. Manpack was one of them. There was another type of communication,
19 which was the Thuraya telephone, some kind of telephone device that was used. We used
20 that telephone when there is no network. And at that time telephones had not yet been
21 available in Bunia, and there were no problems of network. So there was a telephone which
22 we used at the time which was known as the Thuraya.

23 Q. And could you just speak -- repeat the name of that telephone slowly so that it can be
24 captured by the interpreters for our transcript?

25 A. That telephone is known as the Thuraya.

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1 THE INTERPRETER: Says the witness, Thuraya.

2 MS SAMSON:

3 Q. Could you spell that word, please, so that we get it or say it again very slowly?

4 Because it isn't being captured.

5 A. Well, I think it's an English word Thuraya, something like that in English.

6 MS SAMSON: Mr President, I don't think it's an issue of contention if I provide the name
7 that I think I heard the witness say so that it's captured accurately on the transcript, but I seek
8 your guidance.

9 PRESIDING JUDGE FREMR: Mr Bourgon, any objection to that? I don't think so.
10 Please go ahead.

11 MS SAMSON:

12 Q. Sir, are you referring to a Thuraya telephone, T-H-U-R-A-Y-A?

13 A. Yes, it's the Thuraya. It's the Thuraya. But it must be my pronunciation that is getting
14 in the way. It must be Thuraya.

15 Q. And can you explain what type of telephone it is?

16 A. The Thuraya is a telephone which is different from the ordinary telephone. It is like
17 the Motorola telephone. It's big, as big as my hand. It is big. It has a long antenna. It
18 looks like the Motorola telephone somewhat. It is a telephone. Like other telephones, it has
19 a SIM card and you can use it just like the ordinary phone. The only difference is that it
20 works where there is no network. It works everywhere.

21 Q. Thank you. Now, in the time we have remaining today, which is about 24 minutes, I
22 would like to ask you some questions about the Mongbwalu operation. (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 Q. Do you know whether Manu participated in the attack on Mongbwalu or not?

2 A. Yes, that's what I've just said. (Redacted)

3 (Redacted). Tango Romeo had already sent him with a team to attack

4 Mongbwalu so he was part of the group that was going to attack Mongbwalu passing by
5 Kandoyi.

6 Q. (Redacted)

7 (Redacted)

8 A. (Redacted).

9 Q. And I believe you've indicated already that Tango Romeo is Mr Bosco Ntaganda; is that
10 right?

11 A. Yes.

12 Q. When you referred to Manu, are you referring to Emmanuel Ndungutse just to be clear
13 for our record?

14 A. Yes.

15 Q. You indicated or stated that Manu left with a team. Do you know any other
16 commanders who went with him?

17 A. Yes, there were other commanders with him. For example, Eric, Seyi, they were all
18 part of the group, as well as other battalion commanders. (Redacted)

19 (Redacted).

20 Q. (Redacted)

21 A. (Redacted).

22 Q. (Redacted)

23 spoken to the family of Nicolas. And you indicated that you were aware that the UPC

24 operation in Mongbwalu was successful because you heard it on the BBC radio and because

25 you spoke to Mr Ntaganda after you returned to Bunia.

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1 (Redacted)

2 (Redacted)

3 A. (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 Q. (Redacted)

13 A. (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 Q. (Redacted) you could see how things happened in Mongbwalu

18 and the roads that they had used to get to Mongbwalu. What roads did they use?

19 A. Yes. I have already explained to you that previously some forces under Salumu's

20 command had gone through Mabanga. They went to Mabanga, and when Bunia -- when

21 Bosco left Bunia, he was with Salongo and his escort as well as other troops who went with

22 him. (Redacted)

23 They stopped to rest at Mabanga. When they arrived in Mabanga, they spent the

24 night there. They ate there. And the next day they advanced to attack Mongbwalu.

25 Now, we saw the roads that they used. (Redacted) And they passed by, by

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1 the bush. And you could see some civilians going into the bushes as they fled.

2 This was previously a motorable road which had not been maintained or used over
3 several years, and so it was very difficult to travel on it. And you could see civilians
4 on that road travelling on foot while there were also a number of vehicles behind
5 carrying weapons and ammunition.

6 (Redacted) So they went that
7 way as far as the Mongbwalu airport. And there they met Salumu's group, the
8 group which had left before with Salumu. And they joined forces, they came
9 together and continued to advance together.

10 The group from Kandoyi was also getting close to Mongbwalu, and they were at a
11 location known as Mbidjo. This is the way the operations unfolded.

12 Q. And the location Mbidjo, is it a location in Mongbwalu or outside of Mongbwalu, do
13 you know?

14 A. It is within Mongbwalu territory, but outside of the city of Mongbwalu, but it is within
15 the Mongbwalu territory.

16 Q. (Redacted)

17 (Redacted)

18 A. (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 Q. Was there any actual fighting (Redacted)?

23 A. Yes. I saw (Redacted) Salongo firing the 12 gun. I saw that other soldiers were also
24 firing. And then I saw some dead bodies nearby. I also saw people who had been captured
25 and made prisoners.

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1 Q. And the dead bodies that you saw, did you -- were they in military uniform or what
2 type of clothing were they wearing?

3 A. They were in civilian attire, civilian.

4 Q. Similarly, the people that you saw captured and made prisoners, how were they
5 dressed?

6 A. They were in civilian clothing, and they had arrows. One of them had an arrow,
7 another had a spear, and they were wearing civilian attire.

8 Q. And, sir, you may have used a term "mateka." Is that a term you used?

9 A. Yes, I said "mateka." "Mateka" means people who were captured alive during the war.

10 Q. Do you know what happened to those prisoners? Were you able to see (Redacted)
11 did you learn from Mr Ntaganda or anybody else what happened to them?

12 A. No, I have no idea. (Redacted)

13 (Redacted) I don't know anything else beyond that.

14 Q. And the civilians that you saw, either the bodies on the ground or the prisoners, were
15 they just men or were they men and women?

16 PRESIDING JUDGE FREMR: Mr Bourgon -- hold on, Mr Witness, hold on. Mr Bourgon.

17 MR BOURGON: Mr President, I do not recall the witness saying that he saw civilians. He
18 might have seen people dressed as civilians.

19 PRESIDING JUDGE FREMR: As far as I remember question, Mr Bourgon is right, so you
20 probably please rephrase your question accordingly.

21 MS SAMSON: Yes, I will. I do see he says that "The dead bodies" -- I asked, "The dead
22 bodies that you saw, were they in military uniform or what type of clothing were they
23 wearing?"

24 And the answer was, "They were in civilian attire, civilian."

25 Q. The individuals that you saw, the dead bodies in civilian attire and the prisoners that

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1 you saw in civilian attire, were they men alone or were there women amongst them?

2 A. (Redacted), the prisoners were actually two men. And the dead bodies on the
3 ground were about two or three in number, two or three dead bodies. And I noticed that
4 they were wearing pagnes or wraps. That must have been women, maybe two or three of
5 them. (Redacted) And then I also saw those people who
6 had been captured and made prisoners.

7 Q. And were you able to see (Redacted) whether the dead bodies of women, whether
8 there were weapons around them such as spears or arrows or any other weapons lying next to
9 them?

10 A. No, I did not see. Those who had a spear and an arrow were two in number. One of
11 them was a senior person. One of them had an arrow.

12 Q. And just to be clear, you said one of them was a senior person. Do you mean a person
13 who was advanced in age? Is that what you mean by "senior," or do you mean something
14 else?

15 A. He was not old. But when you look at them, you would see that they were a person of
16 a certain age, but not an old person. And then there was a younger one. One of them was
17 carrying a spear while the other had a bow and some arrows, and they were holding them
18 like this. (Redacted)

19 (Redacted) They were holding those weapons in their hands.

20 Q. Did you learn, or know why or whether Mongbwalu was strategically important to gain
21 control over?

22 A. (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 So their objective, their target was to capture Mongbwalu. And then after
2 Mongbwalu had been captured, I learnt that some planes had left Rwanda for
3 Mongbwalu and that there were two white persons in those planes who had come to
4 Mongbwalu with some equipment to look for gold and things like that.
5 So they came and conducted their tests and went back.

6 MS SAMSON: Your Honour, I do see it's 5 o'clock. May I ask one further question?

7 PRESIDING JUDGE FREMR: Just one.

8 MS SAMSON:

9 Q. Sir, what is the main industry in Mongbwalu, if you know?

10 A. Are you asking for the name of a factory or what is your question?

11 Q. No. Just what is the main trade or industry in Mongbwalu in terms of what do most of
12 the people in Mongbwalu do for a living?

13 A. Okay. There are minerals in Mongbwalu, such as gold, diamond -- and diamond in
14 huge quantities. This is part of the Congolese history. There is a lot of minerals in
15 Mongbwalu. That is why you can see that several movements were fighting to have control
16 of Mongbwalu, which is an area rich in several minerals.

17 Q. Thank you, sir.

18 PRESIDING JUDGE FREMR: Mr Witness, thank you very much. We conclude your
19 testimony for today. It was very long day, but you were doing very well, you responded
20 attentively and patiently to all questions, so we appreciate this.

21 We will continue tomorrow in the morning at 9 o'clock. And it's my duty to remind
22 you that you must not discuss your testimony in the meantime with anybody else.
23 Have you understood that?

24 THE WITNESS: (Interpretation) Yes.

25 PRESIDING JUDGE FREMR: So now, court officer, please escort Mr Witness out of the

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1 courtroom.

2 (The witness stands down)

3 PRESIDING JUDGE FREMR: And at the end, usual question, asking the calling party in
4 terms of progress being made because, according my information, you should have at your
5 disposal for tomorrow 5 hours 20 minutes. Do you think it will be feasible for you to finish
6 examination in this time?

7 MS SAMSON: I certainly hope so, your Honour. I have an awful lot to cover still
8 tomorrow, but the aim is to be completed in the 5 hours and 20 minutes that I have left.

9 PRESIDING JUDGE FREMR: Okay. So I hope that our expectation will be met.
10 Thank you very much and see you tomorrow 9 o'clock.

11 THE COURT OFFICER: All rise.

12 (The hearing ends in private session at 5.04 p.m.)

13 RECLASSIFICATION REPORT

14 Pursuant to the Trial Chamber VI's Order, ICC-01/04-02/06-1887, dated 4 May 2017, the public
15 reclassified and lesser redacted version of this transcript is filed in the case.