

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 Monday, 29 February 2016
9 (The hearing starts in open session at 9.09 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: Good morning, your Honours.
16 This is the situation in the Democratic Republic of the Congo, The Prosecutor versus
17 Bosco Ntaganda, case number ICC-01/04-02/06.
18 And we are in open session.
19 PRESIDING JUDGE FREMR: Thank you.
20 Now appearances as usually, starting with Prosecution.
21 MS SAMSON: Good morning, Mr President, your Honours. Appearing for the
22 Prosecution today are Mr Rens van der Werf and Mr James Pace, both assistant trial
23 lawyers; Ms Marion Rabanit, associate trial lawyer; Ms Selam Yirgou, case manager;
24 Ms Dianne Luping, trial lawyer; and myself, Nicole Samson, senior trial lawyer.
25 PRESIDING JUDGE FREMR: Thank you.

1 Defence, please.

2 MR BOURGON: (Interpretation) Good morning, your Honours. Good morning to
3 everyone in the courtroom. Representing Bosco Ntaganda, who is present this morning,
4 Mrs Sandrine De Sena, intern; Elisa Binon, intern; Dignité Bwiza, consultant;
5 Isabelle Martineau, temporary consultant; Chloé Grandon; and myself, Stéphane Bourgon.
6 Thank you, Mr President.

7 PRESIDING JUDGE FREMR: Thank you.

8 Legal Representatives of Victims, please.

9 MR ABDOU: Good morning, Mr President, your Honours. The former child soldiers
10 are today represented by myself, Mohamed Abdou, associate legal officer at the Office of
11 Public Counsel for Victims.

12 PRESIDING JUDGE FREMR: And I will just add for the record that Ms Pellet is excused.
13 Then, Mr Suprun.

14 MR SUPRUN: (Interpretation) Good morning, Mr President, your Honours. The
15 victims of the attack are represented by OPCV, Anne Grabowski and myself,
16 Dmytro Suprun. Thank you.

17 PRESIDING JUDGE FREMR: And I'd also add for the record that Mr Cikonza, duty
18 counsel for this witness, is not present at the moment, but I was told he would be here
19 shortly.

20 We are starting without Mr Witness because the Chamber was informed that Mr Bourgon
21 would like to address it.

22 So, Mr Bourgon, you have the floor.

23 MR BOURGON: Thank you, Mr President.

24 Mr President, allow me to begin by saying that immediately this morning we have a
25 computer difficulty. The computer here to my right is completely turned off and,

1 Mr President, we are not in a position to proceed unless the -- this computer works, but I
2 can do this first part, of course, which is not related to the work performed by my
3 colleague, Maître Martineau.

4 Mr President, over the weekend of course we had time to assess the situation with the
5 witness and the issues that he raised -- that he raised during his examination-in-chief and
6 how much time we would need to finalise our cross-examination. With the view to
7 ensuring that there is no surprise, Mr President, we will be making a request for
8 additional time and we will be seeking five additional hours in addition to what we have
9 already been allotted. And I think I have about four hours left.

10 Mr President, the -- without going into the details of this request, which will be presented
11 later on, the main points of this request, of course, have to do with the -- the importance of
12 the witness for the Prosecution in terms of first of all the volume of material. I'm not
13 going to get into any of the details, but the volume of material, and my colleague from the
14 Prosecution has already mentioned how much material is available for this witness.
15 The importance of the witness, according to the Prosecution, and the fact that we are
16 convinced that we can basically deconstruct the testimony of this witness line by line,
17 word by word, comma by comma and we believe that it is in the interest of our client to
18 do so.

19 This -- the topics on which this witness has testified if we just look at the will-say
20 provided by the Prosecution, he provided testimony, according to the will-say, on 14 of 18
21 counts, and all charged modes of liability. And in the will-say there were 23 main themes
22 or thematics, paragraphs.

23 There's at least, once I finish today, it's my assessment that there will be some 20 different
24 topics that I will not have had time to address. I'm not going to get again -- once again
25 into the detail.

1 Mr President, I understand, of course, that today is the last day with this witness. We
2 have -- tomorrow is not possible to sit unless arrangements can be made, but I suggest,
3 Mr President, that the fact that there's only two courtrooms should not be -- if, of course,
4 the Chamber is inclined to give right to our request, the -- we should not be penalised by
5 the fact that there is only two courtrooms and not three available at this point in time
6 before the new ICC building.

7 Prosecution has already requested some time and the Chamber, of course, already gave us
8 an additional hour and arguments were put by the Prosecution and of course we did not
9 oppose at that time, but we did highlight, of course, that we would be likely requesting
10 more time. We did not know until we did the final assessment over the weekend.

11 In addition to substance, of course the Chamber will have seen that the witness is opposed
12 or if not hostile to the Defence and that the manner in which he is answering questions is
13 taking a lot of time.

14 There is an issue, because on Friday I wanted to mention this but I wanted to assess
15 because as I said myself, I decided to take -- I believe I took a little more than one hour on
16 one main topic which was of course the fact that his involvement in a (Redacted)
17 (Redacted) and I took a lot of time, I would say a
18 little more than an hour I think on these two topics.

19 And what I would like to say, Mr President, is although, of course, it was my choice to do
20 so, I needed to do so, and I'm -- it was important for me to do so, but it highlights the fact
21 that there's so many statements for this witness that when there is an issue that comes out,
22 that comes up, in order for us to highlight all the discrepancies in all of his statements it
23 takes a lot of time.

24 So, Mr President, this witness is one of the type where the Defence requires more time
25 than the Prosecution to cross-examine.

1 So this is basically what I will explain, of course, but providing a lot of substance in my
2 request, but I thought it was appropriate to do it at this time so that there would be no
3 surprise. And what I suggest, Mr President, that if we are -- if it's not possible to
4 continue tomorrow, then simply to use the time allotted to me today and to file a written
5 motion at the end of the day requesting for the witness to be recalled for a further day of
6 five hours of cross-examination.

7 So that would be one way at least to do this without wasting any time today so we can
8 immediately get into, continue the cross-examination. So that's one suggestion.

9 However, if it was possible to sit tomorrow, we would be glad to sit tomorrow and finish
10 that with the witness or at any point tonight we would be glad to do this, but it is our
11 respectful submission that we require this additional time to highlight that this witness,
12 the evidence that he provided cannot be accorded any probative value whatsoever other
13 than some issues he raised which were positive for Mr Ntaganda.

14 So these are my submissions this morning, Mr President. Thank you.

15 I note that the computer beside me is now working so I guess we could proceed
16 immediately after this issue. Thank you, Mr President.

17 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon. I think I find fair to decide
18 about your request immediately, so we will leave the courtroom and we will deliberate
19 with my colleagues.

20 But before doing that, Ms Samson, do you also want to make any (Redacted)

21 (Redacted)

22 MS SAMSON: (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 PRESIDING JUDGE FREMR: Even my apologies that I also was not vigilant enough.

12 So, court officer, we will have to redact the last part of Ms Samson's submission and let's

13 move into private session now.

14 (Private session at 9.21 a.m.) *(Reclassified partially in public)

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

16 PRESIDING JUDGE FREMR: Thank you, court officer.

17 Ms Samson, you can proceed.

18 MS SAMSON: Forty minutes or so was spent on (Redacted)

19 (Redacted), so areas that are not relevant in the main

20 to the witness's testimony.

21 The suggestion that the witness has proven to be hostile to the Defence in such a scope

22 that has significantly delayed the cross-examination is unfounded and unfair to the

23 witness. As the Court was able to see during the examination-in-chief as well as the

24 cross-examination, the witness does ask for clarity of questions regularly and then in my

25 submission it is the responsibility of counsel asking the questions to cater the questions to

1 that.

2 And the amount of time, the additional hour that the Chamber's already granted both
3 Prosecution and the Defence more than sufficiently makes up for any necessary
4 clarification of questions so that the witness understands, bearing in mind that the from
5 English to Swahili there's also an intermediate translation into French.

6 The Defence has also said that they've just now during the weekend had a chance to
7 review the examination-in-chief of the Prosecution and determine that there are areas
8 that -- to map out exactly what the witness might have said previously. And again this
9 review ought to have been done on an ongoing basis since Tuesday of last week when the
10 Prosecution started its cross-examination.

11 There's been no justification to date for why such a review had to take place four days
12 later starting on the weekend. The volume of material that the witness brings is indeed
13 large. As the Chamber has already indicated when the Prosecution made the request, for
14 experienced counsel this is something we ought to try to take into account and the
15 Chamber has been generous in allocating an extra hour for that fact already.

16 Another point, your Honour, is the Defence has indicated today that they have not been
17 able for reasons that they have not explained to determine what the witness has said in
18 prior testimony, although there were (Redacted) interviews of
19 substance of this witness (Redacted)

20 There's no justification for why the mapping out in relation to testimony areas over
21 different statements has only been done now as opposed to in the months prior, why there
22 were not proper summaries with references to where the witness has said various things.
23 Five hours, your Honour, is going to mean that this witness's cross-examination will last
24 some, let's see, 16 hours, which is -- given the amount of time spent on topics already
25 covered last week, is not supported in any way by the submissions that the Defence has

1 made to date. It will in effect mean postponing the witness's cross-examination, and that,
2 in our submission should not be permitted.

3 (Redacted) It doesn't appear possible that
4 there will be courtroom facilities to enable the Chamber to sit unless we sit in evening
5 sessions, but we do not know whether or not that will work for the witness in any event.
6 But on a principled approach the Prosecution opposes this request because there's simply
7 inadequate basis to allow an additional five hours. Thank you.

8 PRESIDING JUDGE FREMR: Thank you, Ms Samson.

9 Mr Bourgon, you have the right to reply, but please briefly.

10 MR BOURGON: Thank you, Mr President. Well, my first comment is if the Chamber is
11 going to deliberate on the merits, then I would like to have some time to argue because I
12 have a lots of arguments to raise.

13 Now, my colleague says we're trying to postpone and that we are not ready. That's
14 absolutely not the case. We are ready and we are ready to proceed at any time and we
15 were ready on Friday. So that's not the issue.

16 The issue, of course, is the merits of the application. My colleague said that
17 taking -- picking up from what I mentioned that we raised issues that were not relevant.
18 On the contrary, they were very relevant because the reason that the (Redacted) issue was
19 raised is because in all of his previous statements he -- the witness mentioned one version
20 and before this Chamber only before this Chamber he changes version. And our
21 submission in this regard is very simple, he changes version in this Chamber (Redacted)

22 (Redacted)

23 (Redacted)

24 But what's important here, it's not that we haven't identified, as my colleague said, it has
25 nothing today with it. This issue is the Chamber saw on Friday, and again I take the

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 The material we have is full of this. And in order for us to highlight every possible
10 contradiction, and it is my duty to do so, so that the Chamber is assisted in its
11 truth-seeking function, then it requires time to do material like this.

12 The Chamber will also recognize that the testimony of this witness is -- the testimony of
13 this witness is a lot of hearsay and a lot of things that he did not see himself. When there
14 is hearsay it's very difficult for us to cross-examine. It takes more time because one single
15 issue takes a lot of time.

16 Again, I give you an example, Mr President: (Redacted)

17 (Redacted)

18 (Redacted) This event he did not see himself, (Redacted), and the manner he
19 testified, in order for us to cross-examine and to show that this event, one, did not take
20 place where the witness mentioned, that the contents and the substance of this event is
21 actually not what the witness reported, and that he did not get the information as he says
22 he did get the information, in order for us to highlight this for one simple issue that took
23 the Prosecution five minutes, we will require lots of time. And it's important for us to
24 show this. We're talking about (Redacted) dead bodies. So we can't just leave that alone.
25 In terms of the material, my colleague referred when she made her request she said

1 significant amount of material, (Redacted) to go
 2 through. He is the heaviest witness of the witnesses in relation to the material he's
 3 provided previously.
 4 So that, Mr President, says it all. He's the heaviest of all witnesses that they have.
 5 Now, when we look at the importance for this witness, even the Chamber said, and I
 6 quote from the English transcript, T-41:
 7 "So even if it means some complications for all of us," it "still mean that the testimony of
 8 this witness seems to be very important, so we are ready to do everything in order to get
 9 the testimony."
 10 That was from the Chamber, transcript T-41, page 18, lines 16 to 18.
 11 And again the Chamber in the transcript 69, again, the Chamber said:
 12 "... because this witness seems to be very, very important ..."
 13 Transcript 71, the Prosecution's argument -- the Prosecution said this "... witness is
 14 important to the Prosecution's case and, in my submission, it would be beneficial for the
 15 Chamber to hear the full extent of his knowledge."
 16 So full extent of his knowledge, Mr President, full extent of cross-examination.
 17 PRESIDING JUDGE FREMR: Mr Bourgon, I think, please, wrap up because I think the
 18 purpose of your reinforcement is clear to us. I think there's no need to get 10 examples.
 19 I think you made it perfectly, so please wrap up because we would like to deliberate. So
 20 if you want just to add some most important arguments.
 21 MR BOURGON: Well, Mr President, I said there is a lot of subjects that he touched upon
 22 that we will not be able to touch upon in the time allotted regardless of the fact that we
 23 spent time on an issue which to us is very important and establishes that he is not a
 24 truthful witness, and these issues need to be covered. I won't list the issues, but there's a
 25 lot of them and I refer the Chamber to the will-say in which all these issues are

1 highlighted by the Prosecution as to what he's supposed to testify about and what he has
2 testified about.

3 So for all these reasons, Mr President, we ask for five additional hours to be taken up at
4 any time, whether it's today during the night, tomorrow, any time, Mr President.

5 PRESIDING JUDGE FREMR: Thank you very much, Mr Bourgon. The Chamber now
6 will deliberate so we have to break.

7 THE COURT USHER: All rise.

8 (Recess taken at 9.34 a.m.)

9 (Upon resuming in private session at 9.42 a.m.) *(Reclassified partially in public)

10 PRESIDING JUDGE FREMR: Court officer, let's move into open session for our oral
11 ruling.

12 (Open session at 9.42 a.m.)

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

14 PRESIDING JUDGE FREMR: Thank you, court officer.

15 So we will now continue by rendering oral ruling on the Defence request since Defence
16 requested to be granted five additional hours for their cross-examination of the
17 Witness P-55.

18 After deliberation, the Chamber rules the following way: The Chamber shares the
19 reasoning presented by the Prosecution. The Chamber considers that the Defence had
20 sufficient time to prepare for this witness and to prioritise the material points of
21 cross-examination.

22 The Chamber notes that it is not influenced in this regard by the availability of courtroom
23 time. Rather, the Chamber considers that the conduct of the examination of the witness
24 to date, including at times that of the Prosecution has not been efficient and therefore does
25 not find any justification for granting further time.

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1 The request is rejected.

2 This is the end of our ruling and in practice it means that Mr Bourgon you have at your
3 disposal 3 hours 55 minutes, so please proceed.

4 And now we can bring Mr Witness into the courtroom. And I guess that duty counsel
5 will join him as well.

6 (The witness enters the courtroom)

7 PRESIDING JUDGE FREMR: Good morning, Mr Cikonza. Good morning, Mr Witness.
8 Take your seats.

9 Mr Witness, good morning. Just to assure myself, are you feeling all right today?

10 WITNESS: DRC-OTP-P-0055 (On former oath)

11 (The witness speaks Swahili)

12 THE WITNESS: (Interpretation) Yes, I am very well. Thank you, Mr President.

13 PRESIDING JUDGE FREMR: Good. So it's my duty as usually to remind you that you
14 have to speak the truth and nothing but the truth. I guess it is clear to you. Mr Bourgon
15 will continue with your cross-examination.

16 Mr Bourgon you have the floor. And as usual, I am asking you whether you can remain
17 in open or it's better for you, depending on the character of your questions, to move to
18 private session?

19 MR BOURGON: We can go into private session, Mr President.

20 PRESIDING JUDGE FREMR: All right.

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

22 (Private session at 9.46 a.m.) *(Reclassified partially in public)

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

24 PRESIDING JUDGE FREMR: Thank you.

25 Mr Bourgon, you may proceed.

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1 QUESTIONED BY MR BOURGON: (Continuing)

2 Q. Good morning, Mr Witness.

3 A. Jambo.

4 Q. (Redacted)

5 (Redacted)

6 A. (Redacted)

7 Q. (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 A. (Redacted)

17 Q. (Redacted)

18 A. (Redacted)

19 Q. (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 A. (Redacted)

25 (Redacted)

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1 Q. (Redacted)

2 (Redacted)

3 A. (Redacted)

4 Q. (Redacted)

5 (Redacted)

6 A. (Redacted)

7 Q. (Redacted)

8 (Redacted)

9 A. (Redacted)

10 (Redacted)

11 Q. (Redacted)

12 (Redacted)

13 A. (Redacted)

14 Q. (Redacted)

15 (Redacted)

16 (Redacted)

17 A. (Redacted)

18 Q. My second question has to do with the Manpack or the phonie. You know what

19 I'm talking about, right?

20 A. You're talking about Manpack and phonie? I'm not following you.

21 Q. You know what a Manpack is?

22 A. Yes.

23 Q. You testified about that?

24 A. Yes, I said that.

25 Q. (Redacted)

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1 (Redacted)

2 (Redacted)

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8 (Redacted)

9 A. (Redacted)

10 (Redacted)

11 (Redacted)

12 Q. (Redacted)

13 (Redacted)

14 (Redacted)

15 A. (Redacted)

16 (Redacted)

17 Q. (Redacted)

18 (Redacted)

19 A. (Redacted)

20 (Redacted)

21 Q. Well, sir, I suggest to you that the Manpack was not used for oral communications
22 but only to transmit coded messages and that you never spoke to anyone orally using the
23 Manpack. Does that refresh your memory?

24 A. No, I haven't got it wrong. I don't know where you got that from. You use a
25 Manpack to converse with someone.

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1 Q. Thank you, sir. We'll have -- the Manpack itself, you saw a Manpack at

2 Bosco Ntaganda's place; is that correct?

3 A. Yes.

4 Q. So you were able to see that it is a large piece of equipment and a heavy piece of
5 equipment, right?

6 A. Yes.

7 Q. If my understanding is correct in Bunia you said there were three Manpacks; is that
8 correct?

9 A. Yes.

10 Q. You said Bosco Ntaganda, Thomas Lubanga and Floribert Kisembo; is that correct?

11 A. Yes.

12 Q. Sir, I suggest to you that Thomas Lubanga did not have a Manpack. Does that
13 refresh your memory?

14 A. He had one.

15 Q. Sir, in your statement, and I refer here to your statement of (Redacted), and
16 the number is DRC-OTP-2062-1089, that is at page 2098, lines 300 to line 314.

17 And on this -- in this statement you mentioned that Bosco Ntaganda developed a way to
18 use the Manpack along with the Motorola. Do you recall saying anything about that?

19 A. Yes. I am aware of that type of communication.

20 Q. How did this work, sir?

21 A. I spoke to you about the Manpack, the Thuraya satellite phone, it's like an ordinary
22 cellphone.

23 Q. Let me make my question more clearer with exactly what you said in your statement.

24 You said, and I quote from lines 305, this is on page 1098, from lines 305 to 310.

25 You say there:

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1 "He had a system where he would take a Motorola, then the signaller would call on the
2 Manpack, which is a radio. So, the signaller would take a Motorola and told it next to the
3 Manpack, so it would go directly to Ntaganda's Motorola."

4 Do you stand by this testimony?

5 A. Yes, I remember that.

6 Q. So it's your testimony, sir, that the Manpack and the Motorola could be put close
7 together so that they could communicate, one using a Manpack and one using a Motorola;
8 that's your testimony?

9 A. Yes.

10 Q. Thank you, sir.

11 I move to a different topic, which has to do with the fighting between UPDF and UPC.

12 Last week I asked you, and this was -- I asked you about -- if you could put a date on the
13 fighting between UPDF and UPC and we had some difficulty, but in the end with the
14 assistance of the president we managed to get information as to when this fighting took
15 place. So just so that we can begin, when did this fighting take place now that you've
16 had the weekend to think about it?

17 I will read you your answer to make it easier. On page 84, lines 6 to 8 -- sorry, 10 to 13:

18 "Maybe. I think it was early in 2003 because I do remember the New Year of 2003, I was
19 in Bunia, the war hadn't started. I think it was the early months of 2003."

20 Do you recall this answer?

21 PRESIDING JUDGE FREMR: Sorry, Mr Bourgon.

22 Ms Samson.

23 MS SAMSON: Yes, your Honour, we spent an exhaustive amount of time on this on
24 Friday and the witness had requested that the Swahili be checked, but in any event, the
25 witness gave the information he had at the time. I'm unclear how this is any different.

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1 PRESIDING JUDGE FREMR: Mr Bourgon.

2 MR BOURGON: Mr President, it is my foundation for my next question, so I want to be
3 fair with the witness so he knows what we're talking about. Again, my colleague is
4 wasting my time because this was a clear question. And the idea is simply to bring him
5 back to what he said and see, does he recall that he said early in 2003.

6 PRESIDING JUDGE FREMR: (Microphone not activated)

7 MR BOURGON:

8 Q. So the fighting between UPDF and UPC was early in 2003. Do you stand by this
9 testimony or maybe you've had time to think?

10 A. No. As the Prosecutor has just said I answered that question on Friday,
11 your Honour. You said that if I don't remember the dates, then I can give an
12 approximate answer, and I said that it was at the start of the year. I answered that
13 question and I'm not going to change what I said.

14 Q. And that's all I wanted to know because my next question relates to that. My next
15 question is: The Prosecution asked you a question that was on the second day of your
16 testimony in transcript 71, and that was on lines 1 to 5 -- page 71, sorry, and it was on lines
17 18 to 22. So the question was as follows:

18 "Do you know if it was a long time after or a short time after?"

19 Maybe to be more complete I will read you what happened before that.

20 So the first question was at line 12:

21 "Sir, this attack," we're talking about UPDF and UPC, "this attack in Bunia between the
22 UPC and the UPDF that you were describing, did it take place before or after the
23 operation in Lipri, Kobu and Bambu to open the road?"

24 That was the question.

25 Your answer was:

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1 "Yes, the fighting between the UPC and the UPDF took place after the Lipri and Bambu
2 operation."

3 So that's not -- you agree with that? Those are your words, you agree with that?

4 A. Yes.

5 Q. The next question was:

6 "Do you know if it was a long time after or a short time after?"

7 And your answer was as follows:

8 "It was not very long afterwards. I would say one month or one and a half months. This
9 was when the UPDF and the UPC soldiers started fighting each other."

10 So do you still maintain this answer of one month to one month and a half between the
11 two events?

12 A. (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted) All I know is that *after

17 the fighting in Lipri and Bambu *there has been this battle between the UPDF and the
18 UPC. *It was not long between the two. As you are aware there were several operations,
19 so it is not possible for me to know the number of months that elapsed between those operations.

20 Q. Sir, we have two events. We have the fighting in Kobu, Bambu, Lipri, that's one
21 event. We have a second event, the fighting between UPC and UPDF. In the answer I
22 just read to you, you said there's an estimate of a month and a half. My question is very
23 simple: Do you maintain this estimate today?

24 PRESIDING JUDGE FREMR: Ms Samson.

25 MS SAMSON: Yes, your Honour, I think that we're going in circles over the same

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1 question and answer debate. The witness has said a month or a month and a half. It's
2 an approximate estimation. He's confirmed it again today. We need to move on.
3 Mr Bourgon has no time left.

4 PRESIDING JUDGE FREMR: Mr Bourgon, you complained, even you, you requested for
5 some additional time and now your last four questions was just whether Mr Witness is
6 maintaining his previous response from Friday. So, you know, it's your time and maybe
7 you have some special purpose behind, but to me it seems that you are wasting your time,
8 you know. But it's up to you.

9 And witness, again, as usual, he confirmed that he is still insisting on his testimony and he
10 is not absolutely sure about the dates that he just -- it's his approximation. So you spent
11 six, seven minutes and you got nothing in my view, but go ahead.

12 MR BOURGON: Mr President, the witness did not insist he wants to go back -- he
13 wanted to go back and he says now it's no longer anything sure, but I'll move on.

14 Q. (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 A. (Redacted)

19 (Redacted)

20 Q. (Redacted)

21 (Redacted)

22 A. (Redacted)

23 Q. (Redacted)

24 (Redacted)

25 (Redacted)

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- 1 (Redacted)
- 2 PRESIDING JUDGE FREMR: (Redacted)
- 3 MR BOURGON: (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 PRESIDING JUDGE FREMR: (Redacted)
- 7 MR BOURGON: (Redacted)
- 8 PRESIDING JUDGE FREMR: (Redacted)
- 9 THE WITNESS: (Interpretation) (Redacted)
- 10 (Redacted)
- 11 MR BOURGON: (Redacted)
- 12 Q. So it is your testimony that troops belonging to Salumu's brigade were in
- 13 Mongbwalu and that these troops took part in the Kilo-Bambu-Lipri operation?
- 14 A. No. No. That is not what I said. I told you that Kobu is close to Mongbwalu and
- 15 Mongbwalu is very far from Bunia. *Salongo and Tchaligonza were in Lipri. That
- 16 is -- and I said that Salongo left Mongbwalu to go to Bunia. He was not part of Salumu's
- 17 sector. The brigade that was present there was the brigade commanded by Tchaligonza
- 18 and it was very different from Salumu's brigade.
- 19 Q. Sir, I say again my question: Which part of Salumu's brigade are in Mongbwalu
- 20 and need to be prepared for the operation on Kobu, Bambu, Lipri? If you don't know,
- 21 you can just say "I don't know."
- 22 PRESIDING JUDGE FREMR: Ms Samson.
- 23 MS SAMSON: Yes, I'm unclear of the question. Which part of Salumu's brigade?
- 24 PRESIDING JUDGE FREMR: I understand that Mr Bourgon would like for some
- 25 specification.

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1 Mr Bourgon, what --

2 MR BOURGON: I'm just following up on the witness's answer that troops in Salumu's
3 brigade were in Mongbwalu. I want to know which, if he knows.

4 THE WITNESS: (Interpretation) So what is your question?

5 MR BOURGON:

6 Q. Sir, I suggest to you that the troops were going to participate in the
7 Kobu-Bambu-Lipri operation were not in Mongbwalu and that there were no troops for
8 Kisembo to prepare in Mongbwalu. Do you agree with that?

9 A. That is not correct.

10 Q. And, sir, I suggest to you that Salongo by that time he was the sector commander in
11 Mongbwalu; do you agree with that?

12 A. Yes, he was the sector commander of Mongbwalu, but I believe that I explained this
13 in answer to the Prosecutor's question (Redacted). At that time
14 Salongo left Mongbwalu and then he was transferred to Bunia, so at that time Salongo
15 was no longer in Mongbwalu, he was instead in Bunia. I do not know whether you have
16 understood me correctly.

17 Q. Well, sir, I suggest to you that Salongo was not transferred to Bunia, (Redacted)
18 (Redacted)

19 A. (Redacted)

20 Q. I move to where Bosco Ntaganda was supposed to go. Now, you mentioned that
21 Bosco Ntaganda was supposed to go to Fataki and to the -- if I understand your testimony,
22 he went there for two reasons. First for a passing-out ceremony. Do you recall saying
23 something about that?

24 A. Yes, I do recall.

25 Q. And secondly, you said that he was going there to organise the troops or to visit the

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1 troops?

2 A. I did not say that. You're mistaken.

3 Q. So I understand from your answer that his only purpose was the passing-out
4 ceremony; is that correct?

5 A. Yes. I would like to add the following: I said that he went to preside over the
6 ceremony of the end of the training of the recruits. He was the chief of staff and he had
7 many duties to perform, so once there he could have done other things, but the primary
8 objective of his visit was to preside over this passing-out ceremony for the recruits.

9 Q. And, sir, which passing-out ceremony for which training camp?

10 A. You can ask him that question. He's the one who made the trip. I was not there
11 with him.

12 Q. So I understand from your testimony he said, "I'm going to see a passing-out
13 ceremony," but he never said which ceremony it was or which camp it was; is that your
14 testimony?

15 A. Yes, that is correct.

16 Q. So you have no recollection of which passing-out ceremony it was?

17 A. It was in Fataki.

18 Q. Is it your testimony, sir, that there was a training camp in Fataki?

19 A. Yes, there was a camp there.

20 Q. I suggest to you, sir, that there was no camp in Fataki and that -- does that refresh
21 your memory?

22 A. That is not correct.

23 Q. (Redacted)

24 (Redacted)

25 (Redacted)

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- 1 MS SAMSON: Mr President.
- 2 PRESIDING JUDGE FREMR: Ms Samson.
- 3 MS SAMSON: Yes, I object to the commentary introduced into the question.
- 4 PRESIDING JUDGE FREMR: Mr Bourgon.
- 5 MR BOURGON: I'll move on, Mr President, but it's a fact, so I'm not -- so it's not a
- 6 commentary --
- 7 PRESIDING JUDGE FREMR: Please move on.
- 8 MR BOURGON: -- it's a fact.
- 9 PRESIDING JUDGE FREMR: Please move on.
- 10 MR BOURGON: But I'll move on.
- 11 Q. (Redacted)
- 12 A. (Redacted)
- 13 Q. (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 (Redacted)
- 17 (Redacted)
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- 25 (Redacted)

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1 (Redacted)

2 A. (Redacted)

3 (Redacted)

4 Q. (Redacted)

5 (Redacted)

6 A. (Redacted)

7 (Redacted)

8 Q. Thank you, sir.

9 MR BOURGON: Mr President, we can stop here.

10 Mr President, I'd like to know how much time I used up during this session and I also
11 would like to have maybe just to review the time from last week. In the penultimate
12 session I was told I had six hours left. I know that the last session was less than two
13 hours and now I end up beginning this session with 3 hours and 55 minutes. I would just
14 like to check because every minute will be important for me, Mr President. Thank you.

15 PRESIDING JUDGE FREMR: It is a legitimate request. According just absolutely fresh
16 information, you exhausted so far 8 hours 37 minutes. And since the Prosecution used
17 11 hours 5 minutes, according my counting you still have 2 and a half hours, 2.28, if I am
18 counting well.

19 Now we will break. Since we are sitting in extended hours, I think we should insist on
20 really sufficient time to take the rest to our interpreters and stenographers. So we will
21 break and we will continue at 11.35.

22 THE COURT USHER: All rise.

23 (Recess taken at 11.07 a.m.)

24 (Upon resuming in open session at 11.35 a.m.)

25 THE COURT USHER: All rise.

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- 1 Please be seated.
- 2 PRESIDING JUDGE FREMR: So we will continue with the testimony.
- 3 And just to remind all of you we will sit -- because we have to sit in extended hours, so
- 4 this session will take till half past 1.
- 5 Mr Bourgon, I guess you will need to continue in private session; am I right?
- 6 MR BOURGON: Indeed, Mr President.
- 7 PRESIDING JUDGE FREMR: So, court officer, let's move into private session.
- 8 (Private session at 11.36 a.m.) *(Reclassified partially in public)
- 9 THE COURT OFFICER: We are now in private session.
- 10 PRESIDING JUDGE FREMR: Thank you.
- 11 Mr Bourgon, you may proceed.
- 12 MR BOURGON: Thank you, Mr President.
- 13 Q. Mr Witness, before you -- we left just before the break, we were talking about --
- 14 PRESIDING JUDGE FREMR: Sorry, Mr Bourgon, I see Ms Samson on her feet.
- 15 Ms Samson.
- 16 MS SAMSON: Yes, it's just to note that the witness has had his hand up to say
- 17 something.
- 18 PRESIDING JUDGE FREMR: Mr Witness.
- 19 THE WITNESS: (Interpretation) Yes, I thank you, Mr President. I believe that over
- 20 the past few days I requested that I speak to my lawyer and you requested that I speak to
- 21 the VWU and that they would transfer the message. They said that they transferred the
- 22 message, but I would like to add something, it is not something particularly important,
- 23 but it concerns time, time keeping. I note that on occasion you talk about time and you
- 24 forget me with regard to the schedule. (Redacted)
- 25 (Redacted)

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1 (Redacted)

2 PRESIDING JUDGE FREMR: Mr Witness.

3 THE WITNESS: (Interpretation) I thought that my testimony would come to an end on
4 Friday.

5 PRESIDING JUDGE FREMR: Mr Witness, first of all, I think we were informed, we
6 discussed it with VWU, we were ensured that everything will be organised by them to
7 your satisfaction, first of all. (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 So be -- calm down, it's no problem. If there are still some pending issues, you can
13 discuss it with VWU, but we were assured that especially the problems you have
14 mentioned will be arranged by them to your satisfaction, okay?

15 So now I would like to -- because, you know, we are in some pressure of time, so it is even
16 your benefit, in your interest to finish today, so please let's continue.

17 Mr Bourgon, you have the floor.

18 MR BOURGON: Thank you, Mr President.

19 Q. (Redacted)

20 (Redacted)

21 A. (Redacted)

22 Q. (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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- 1 (Redacted)
- 2 (Redacted)
- 3 Q. (Redacted)
- 4 (Redacted)
- 5 A. (Redacted)
- 6 Q. (Redacted)
- 7 (Redacted)
- 8 A. (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 Q. (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 A. (Redacted)
- 15 Q. (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 A. (Redacted)
- 19 Q. (Redacted) I take it you
- 20 recall the moment when Salumu's brigade, after being in Kobu, Bambu, Lipri, returned to
- 21 Bunia; do you recall this event?
- 22 A. After the Kobu killings, yes, I did talk about that. It was after that incident that
- 23 Salumu was moved to go to Bunia. That was after the Kobu incident.
- 24 Q. In respect of the return of Salumu's brigade, do you recall that very shortly after the
- 25 return of Salumu's brigade the UPDF deployed very close to Thomas Lubanga house?

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1 A. Could you please repeat your question. I did not quite grasp it.

2 Q. Yes. You remember Salumu's brigade returning to Bunia after Kobu-Bambu-Lipri
3 operation?

4 A. Yes.

5 Q. I'm asking if it refreshes your memory or if you can recall that shortly after that the
6 UPDF deployed close to Thomas Lubanga's house; do you recall this, sir?

7 A. Yes, I do remember.

8 Q. And as a matter of fact, as a result of this tension, the commander of the UPDF, Kale
9 Kayihura, was actually detained by Kisembo; do you recall this, sir?

10 A. Could you please repeat your question. When are you saying that happened?

11 Q. Do you recall when the UPDF deployed close to Thomas Lubanga's house?

12 A. I've already answered that question. Yes, I do remember.

13 Q. At that time, because UPDF deployed close to Thomas Lubanga's house, this created
14 big tensions between UPC and UPDF; do you recall this?

15 A. That was not the only reason. Tension had been present for quite some time.

16 Q. If I had more time I would ask you lots of questions about those tensions, but for
17 now all I'm interested in: Do you recall that Kisembo detained Kale Kayihura,
18 commander of the UPDF?

19 A. No, he did not detain him.

20 Q. (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 A. (Redacted)

25 Q. (Redacted)

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1 A. (Redacted)

2 Q. (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 A. (Redacted)

7 Q. (Redacted)

8 (Redacted)

9 A. (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 Q. Thank you, sir.

15 MR BOURGON: Mr President, we can break here.

16 PRESIDING JUDGE FREMR: Yes, we have to break here.

17 Court officer, please escort the Mr Witness out of the courtroom because I would like then
18 absolutely briefly address the issue of timing but in his absence.

19 (The witness stands down)

20 PRESIDING JUDGE FREMR: So for the sake of planning, the last and last afternoon
21 session, according to my information Mr Bourgon still has at his disposal 40, four-zero, 40
22 minutes.

23 Ms Samson, do you still envisage need for re-examination? If yes, for what amount of
24 time?

25 MS SAMSON: At this point no, your Honour. I will re-evaluate over the break at

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1 lunchtime so that if that should change at this point it would be very limited. Thank
2 you.

3 PRESIDING JUDGE FREMR: Thank you.

4 Mr Bourgon.

5 MR BOURGON: Mr President, I'm not asking the Chamber to revisit this morning's
6 ruling, but I am making a request for a few minutes more based on the witness which the
7 Chamber was able to see how he reacted. I would ask for the Chamber's indulgence to
8 have one hour instead of 40 minutes and I will conclude my cross-examination. Thank
9 you, Mr President.

10 PRESIDING JUDGE FREMR: We will decide this request at the end of your examination,
11 so during the afternoon session.

12 At the moment we break and we will reconvene at 3 o'clock. And the afternoon session
13 is planned from 3 to 5.

14 THE COURT USHER: All rise.

15 (Recess taken at 1.36 p.m.)

16 (Upon resuming in open session at 3.01 p.m.)

17 THE COURT USHER: All rise.

18 Please be seated.

19 PRESIDING JUDGE FREMR: Good afternoon, everybody.

20 Before you start, Mr Bourgon, I would like to deliver our ruling on your request for
21 additional time.

22 I would rather omit or I would rather avoid to give the reasoning because to be absolutely
23 sincere there are very different opinions between the Judges, but what is the importance is
24 the result we agreed on, and then this that we will give you in total 1 hour, which means
25 to your 40 minutes you already have plus a further 20 minutes, so you have 60 minutes

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1 from now. So please proceed.

2 And I guess we will have to move into private again?

3 MR BOURGON: Yes, Mr President, please.

4 PRESIDING JUDGE FREMR: So let's move into private session.

5 (Private session at 3.03 p.m.) *(Reclassified partially in public)

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

7 PRESIDING JUDGE FREMR: Thank you, court officer.

8 Mr Bourgon, the floor is yours.

9 MR BOURGON: Thank you, Mr President.

10 Q. (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 A. (Redacted)

15 Q. Sir, I suggest that you know that as during this – (Redacted)

16 (Redacted), you know that through Bosco Ntaganda the UPC provided the Lendus with
17 some weapons. Are you aware of this?

18 A. Please would you repeat your question?

19 Q. Yes. We were mentioning that there were -- that Bosco Ntaganda was involved in
20 Fataki in reaching an alliance with the APC and the Lendu combatants to fight the UPDF.
21 Were you aware of this?

22 A. No, I didn't know.

23 Q. So I take it then you did not know that the UPC provided weapons to the Lendu
24 combatants during these negotiations?

25 A. How could the UPC give weapons to the Lendu given that the UPC was fighting

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1 against the Lendu?

2 PRESIDING JUDGE FREMR: Mr Witness, please do not polemise with Mr Bourgon. So

3 I understood your answer was in fact: No. Am I right? Because the question was:

4 Do you know or did you know? So your answer in fact is: I didn't know. Am I right?

5 THE WITNESS: (Interpretation) Your Honour, he asked me if the UPC had given

6 weapons to the Lendu. The UPC was actually fighting against the Lendu and that's why

7 I said how could the UPC give weapons to the Lendu given that the UPC was fighting

8 with the Lendu?

9 PRESIDING JUDGE FREMR: All right.

10 Let's move.

11 MR BOURGON: Thank you, Mr President.

12 Q. Sir, as part of these dealings I take it that you're not aware that Mr Ntaganda was

13 dealing with le chef coutumier de Kpandroma?

14 A. I don't know.

15 Q. Did you know the chef coutumier de Kpandroma, Chef Lombwe? L-O-M-B-W-E,

16 Oli. Lombwe Oli.

17 A. I do not know him.

18 Q. (Redacted)

19 A. (Redacted)

20 Q. (Redacted)

21 (Redacted)

22 A. (Redacted)

23 (Redacted)

24 Q. Sir, did you know that --

25 PRESIDING JUDGE FREMR: Sorry, sorry. Hold on, Mr Bourgon.

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1 Ms Samson, please.

2 MS SAMSON: Yes. Sorry, it's just for the record. It's un -- the English transcript
3 currently captures the last name of this individual as (Redacted). I thought I heard (Redacted),
4 but I wonder if Mr Bourgon could clarify for the record.

5 PRESIDING JUDGE FREMR: Mr Bourgon, please.

6 MR BOURGON: (Redacted)

7 PRESIDING JUDGE FREMR: Yeah, we are still waiting for -- now, Mr Bourgon, is it
8 correct?

9 MR BOURGON: Yes.

10 PRESIDING JUDGE FREMR: We are still waiting for -- could we have a transcript of the
11 name as has been made by Mr Bourgon? At the moment it is not very helpful.

12 MR BOURGON: I'll move on, Mr President.

13 PRESIDING JUDGE FREMR: Okay.

14 MR BOURGON: We can correct the transcript later.

15 PRESIDING JUDGE FREMR: Move on.

16 MR BOURGON:

17 Q. (Redacted)

18 A. (Redacted)

19 Q. (Redacted)

20 (Redacted)

21 A. (Redacted)

22 Q. And do you know that Bosco Ntaganda as part of those dealings was also meeting
23 with the Ugandan rebels or opponents to the Ugandan government?

24 A. Yes, I knew that he would meet them. (Redacted)

25 (Redacted)

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1 (Redacted)

2 Q. Sir, I suggest you are aware that the object of this talk was to create or to unite APC,
3 UPC and Lendu combatants against the UPDF. Are you aware of this?

4 A. (Redacted) The negotiations with the
5 enemies of Uganda, they came together and the idea was to attack Uganda. And as for
6 any other negotiations I don't know anything about them.

7 Q. Sir, I suggest you know that at one point in time Uganda, Museveni sent combat
8 helicopters to attack Kpandroma because he found out what was going on?

9 A. Yes, I heard about that.

10 Q. (Redacted)

11 (Redacted)

12 A. (Redacted)

13 (Redacted)

14 Q. (Redacted)

15 (Redacted)

16 (Redacted)

17 A. (Redacted)

18 Q. (Redacted)

19 (Redacted)

20 A. (Redacted)

21 (Redacted)

22 (Redacted)

23 Q. (Redacted)

24 (Redacted)

25 A. (Redacted)

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1 (Redacted)

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4 (Redacted)

5 (Redacted)

6 MR BOURGON: (Redacted)

7 (Redacted)

8 Q. (Redacted)

9 (Redacted)

10 (Redacted)

11 A. (Redacted)

12 Q. (Redacted)

13 (Redacted)

14 A. (Redacted)

15 Q. (Redacted)

16 (Redacted)

17 A. (Redacted)

18 Q. (Redacted)

19 (Redacted)

20 (Redacted)

21 PRESIDING JUDGE FREMR: Mr Bourgon, we do have it on the record. I don't see that

22 it's necessary to verify it by a question put to the witness. It is on the record that he

23 asked this, am I right, so --

24 MR BOURGON: But --

25 Q. (Redacted)

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- 1 (Redacted)
- 2 PRESIDING JUDGE FREMR: (Redacted)
- 3 THE WITNESS: (Interpretation) (Redacted)
- 4 MS SAMSON: Yes, your Honour, I'm not sure this is a proper question for the witness.
- 5 PRESIDING JUDGE FREMR: Again, Mr Bourgon, it was part of the instructions I gave
- 6 to the witness.
- 7 MR BOURGON: Mr President, the issue is very clear. (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 PRESIDING JUDGE FREMR: Ms Samson.
- 13 MS SAMSON: I object to the question, your Honour, (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 PRESIDING JUDGE FREMR: Objection sustained.
- 19 Mr Bourgon, any --
- 20 MR BOURGON: This concludes my cross-examination, Mr President. Thank you.
- 21 PRESIDING JUDGE FREMR: Very well.
- 22 Now, Ms Samson, any need for re-examination of this witness?
- 23 MS SAMSON: No, your Honour.
- 24 PRESIDING JUDGE FREMR: Okay.
- 25 That means, Mr Witness, that it concludes your testimony. You spent this -- you spent

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1 with us a long five days, so I would like to thank you for your effort to remain
2 concentrated. I know it was very tiring for you. You also had to leave your family, but
3 now I would like to thank you and I hope, I believe that your testimony will help us in our
4 task to find the truth. So thank you and we wish you a safe journey home.

5 Now, court officer, please, you may escort Mr Witness out of the courtroom.

6 Sorry, my big fault, I forgot even myself I would like to put a few questions, so sorry it
7 was a little bit premature. I was so concerned about the, you know, timing issue that I
8 forgot that.

9 So, sorry, Mr Witness, still just four or five questions from my part and then you really
10 will be free.

11 First area I would like to explore: (Redacted)

12 (Redacted)

13 THE WITNESS: (Interpretation) (Redacted)

14 PRESIDING JUDGE FREMR: (Redacted)

15 THE WITNESS: (Interpretation) (Redacted)

16 PRESIDING JUDGE FREMR: (Redacted)

17 (Redacted)

18 THE WITNESS: (Interpretation) (Redacted)

19 PRESIDING JUDGE FREMR: Thank you.

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 THE WITNESS: (Interpretation) (Redacted)

24 (Redacted)

25 PRESIDING JUDGE FREMR: And the last area I would like to explore: (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 THE WITNESS: (Interpretation) (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 PRESIDING JUDGE FREMR: Thank you very much, Mr Witness. I do not have any
10 further questions.

11 Do my colleagues have any question for the witness? I don't think so.

12 So now for the second time thank you very much and you now will be escorted out of the
13 courtroom.

14 THE WITNESS: Asante.

15 PRESIDING JUDGE FREMR: Asante sana.

16 (The witness is excused)

17 PRESIDING JUDGE FREMR: Mr Bourgon.

18 MR BOURGON: Thank you, Mr President. I wish to put on the record that it is the
19 Defence's view that any incentive received by a witness, whether legitimate or illegitimate,
20 any conditions afforded to a witness is proper route for cross-examination. I did not get
21 into this because there was no time, there was a lot of questions I could have asked, many
22 questions. I went for only one, I was stopped in my tracks, Mr President. I hope that if
23 I do take such questioning with a future witness that the Court will allow me to do so.
24 Thank you, Mr President.

25 PRESIDING JUDGE FREMR: My very brief comment also before doing that, look at the

1 jurisprudence of this Court on this issue.

2 Now, before we adjourn there is an issue of further planning. So, as you know, we
3 should start our next evidentiary block on 4 April, if I am not wrong. I also understand
4 that there is still some negotiation between parties about the list of witnesses, so what is
5 the current situation?

6 MS SAMSON: Yes, your Honour --

7 PRESIDING JUDGE FREMR: Sorry, Ms Samson will start.

8 Ms Samson, please.

9 MS SAMSON: Yes, certainly. We've provided a list of witnesses to the Defence and the
10 Legal Representatives. The Defence had requested that one of the witnesses that we
11 intended to call be moved to a different block and what the Prosecution is endeavouring
12 to do is to see if we can accommodate that request. I'm unable to advise the Court or the
13 Defence or the Legal Representatives at this moment whether we're able to do that, but we
14 are certainly trying to accommodate the Defence request.
15 And the forthcoming witness list is actually due on Friday, 4 March, and I'm hopeful that
16 between now and then we will know one way or the other if we can replace the one
17 witness with another. Thank you.

18 PRESIDING JUDGE FREMR: Mr Bourgon, you also asked for the floor. Please.

19 MR BOURGON: Well, very briefly, Mr President. The Prosecution indeed provided us
20 with a list of the witness they would like to call in the next evidentiary block. The issue
21 of that one witness is Witness P-190, and that the issue is that it's a very large witness and
22 we've asked the Prosecution it's the only witness I would have liked to avoid in the next
23 block because this witness was prepared by the co-counsel -- the outgoing co-counsel.
24 But, Mr President, at this point in time the issue is we'll contact the Prosecution, we
25 haven't done nothing -- we haven't done anything since Thursday. However, for us it is

1 very important to get a final call as early as possible concerning the witnesses who will be
2 called so that we can start preparations without delay given the circumstances that I
3 inform the Chamber about.

4 We also have not yet contacted officially the Registrar -- or the Registry in order of the
5 issue also raised in our mail concerning the change of co-counsel on the team.

6 So I will get on the -- we'll get on the go immediately as soon as this hearing is over, we'll
7 contact Prosecution and we will try to reach an agreement.

8 In the event we are not able to do so, Mr President, I would certainly appreciate if the
9 Chamber could handle the matter quickly so that we know by Friday what witnesses we
10 have to work on for the next block.

11 That brings a second issue, Mr President: I'd like the Prosecution to provide the Defence
12 with at least some kind of an order for the next witnesses until the end of the case so that
13 we have at least some information to work with rather than just waiting just a month
14 before when we get the list for the next month. In past cases I've been involved we used
15 to have a list. The list is never -- can never be abided by entirely, but at least it gives us
16 an idea of the order in which they want to call their witnesses so that we can maybe
17 organise our work accordingly. Thank you, Mr President.

18 PRESIDING JUDGE FREMR: Before I will give the floor to Ms Samson to respond to the
19 second issue, I think we can move now into open session because it would be fair even to
20 let the public be informed about our future plans.

21 So let's move into open session.

22 (Open session at 4.17 p.m.)

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

24 PRESIDING JUDGE FREMR: Now question to you, Ms Samson: Do you think it would
25 be feasible for you, now we have for the fourth evidentiary block, I understood you are in

1 negotiation with the Defence about the list of witnesses. Do you think it would be
2 feasible, I know it still be a certain level of likelihood, but to inform them also with some
3 expected list of witnesses for the fifth evidentiary block before the summer recess?

4 MS SAMSON: Yes, Mr President, I think that we could provide an approximate order of
5 witnesses for the fifth evidentiary block as soon as possible. We're still finalising the list
6 for the fourth evidentiary block, so there is still quite a bit of work to do before we're able
7 to confirm with any degree of reliability what the fifth evidentiary block order will look
8 like.

9 We also do not yet know how long that block is expected to be, which will make a very
10 big difference in terms of which witnesses we call and how many.

11 Where we can, we have consistently provided the anticipated forthcoming list early. We
12 did so several weeks up to almost a month early before the -- this evidentiary block
13 commenced and we provided the list to the Defence last week, which was over a week
14 earlier, for the fourth block.

15 We're happy to provide whatever we can on the fifth block in advance, but as I said, there
16 are a lot of uncertainties in relation to that list at the moment, so it certainly wouldn't be
17 something the Prosecution could provide in the next week until we have a bit more
18 concrete information about the fifth block. Thank you.

19 PRESIDING JUDGE FREMR: I think just on our part we will be hopefully able in a short
20 time to inform you about dates we booked for the fifth block because as you know there
21 are three cases that have to share two courtrooms, but we have already booked dates and
22 we will inform you shortly.

23 And just to conclude this issue, yes, as we used to say always this Chamber would prefer
24 if the parties could reach agreement, especially as concerns planning. If not, then
25 obviously it is our role to intervene and to make decision on that.

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1 So we would like, encourage you to make this agreement. It is true that especially now
2 the Defence is in some troubles, we all know what it is about, it is not their fault, so I think
3 it also should be taken into account. But if there will be no agreement, we will decide.

4 So, Mr Bourgon.

5 MR BOURGON: I'm sorry, Mr President. Just in terms of the future blocks, of course
6 there's a number of weeks between the end of the next block, which is 6 May, going right
7 up until 22 July. So I'm not sure if we -- if it's possible to have any, at least some kind of
8 information, but if we would prefer two shorter blocks rather than one very long block
9 depending on how the Trial Chamber -- I anticipate that the Trial Chamber wants to fill it
10 up as much as possible and we agree with that, but it would be better for us to have two
11 shorter blocks rather than one longer block. I just wanted to put this on the record.

12 Thank you.

13 PRESIDING JUDGE FREMR: We will take it into consideration.

14 Ms Samson, what do you think about this idea, whether to have one longer block or two
15 shorter?

16 MS SAMSON: We have no preference, your Honour. We can go either way. Thank
17 you.

18 PRESIDING JUDGE FREMR: Okay.

19 So thank you and before we leave the courtroom I would like also to express our thanks to
20 court reporters, interpreters and guards who supported us. I also would like to thank
21 Mr Cikonza who supported Mr Witness.

22 So thank you and otherwise we will adjourn and we will then reconvene on 4 April.

23 THE COURT USHER: All rise.

24 (The hearing ends in open session at 4.22 p.m.)

25 RECLASSIFICATION REPORT

Trial Hearing

(Open Session)

ICC-01/04-02/06

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