

1 International Criminal Court
 2 Trial Chamber VI
 3 Situation: Democratic Republic of the Congo
 4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
 5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and
 6 Judge Chang-ho Chung
 7 Trial Hearing - Courtroom 2
 8 Thursday, 9 June 2016
 9 (The hearing starts in open session at 9.31 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 We are in open session.
 19 PRESIDING JUDGE FREMR: Thank you, court officer.
 20 Now appearances, please. Prosecution first.
 21 MR IVERSON: Good morning, Mr President, and your Honours. Appearing today for
 22 the Prosecution are James Pace, assistant trial lawyer; Rens van der Werf, assistant trial
 23 lawyer; Dianne Luping, trial lawyer; Selam Yirgou, case manager; Judith Boekstal, intern;
 24 and Eric Iverson, trial lawyer.
 25 PRESIDING JUDGE FREMR: Thank you, Mr Iverson.

1 Defence, please.

2 MR BOURGON: (Interpretation) Good morning, your Honour, your Honours, and
3 good morning to all those here in the courtroom. I'm representing Bosco Ntaganda,
4 who's here with us. Margaux Portier, Chloé Grandon and myself, Stéphane Bourgon.
5 Thank you, your Honour.

6 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

7 Now Legal Representatives of Victims, please.

8 MS PELLET: (Interpretation) Thank you, your Honour. The former child soldiers are
9 represented by myself, Sarah Pellet.

10 MR SUPRUN: (Interpretation) Good morning, your Honour, your Honours. The
11 victims of the attack are represented by the OPCV, Anne Grabowski and myself,
12 Dmytro Suprun.

13 PRESIDING JUDGE FREMR: Thank you, Ms Pellet. Thank you, Mr Suprun.

14 And now duty counsel, please.

15 MR LAUCCI: (Interpretation) Good morning, your Honour, your Honours. To assist
16 the Witness P-190 this morning, Mr Laucci.

17 PRESIDING JUDGE FREMR: Thank you, Mr Laucci.

18 Before we start the next part of cross-examination of current witness, the Chamber was
19 informed that Mr Bourgon, Defence, would like to address the Chamber. So,
20 Mr Bourgon, you have the floor.

21 MR BOURGON: Thank you, Mr President. I'm -- of course I recall the Chamber's
22 guidance to try and avoid any legal submissions, especially in the middle of testimony.
23 And I hesitated before doing so, but to us the matter is of such importance that it needs to
24 be raised at this time.

25 Mr President, the Chamber will recall that when the witness began his testimony

1 questions were asked about an event, or an alleged murder, which would have been
2 committed by Mr Ntaganda, and the name of the victim was (Redacted). I think we can
3 remain in public session or --

4 PRESIDING JUDGE FREMR: Sorry, sorry. Mr Iverson.

5 MR IVERSON: Mr President, I was just -- that was the suggestion that I wanted to make,
6 that I wondered if the submissions might be made better in private session. Of course if
7 Defence counsel believes that he can do so without revealing any identifying information I
8 trust that, but I just ask him to be vigilant, please.

9 PRESIDING JUDGE FREMR: I think it's at least a good question, Mr Bourgon.

10 MR BOURGON: For the beginning I would like to remain in public session and to move
11 into private session if I come to some details about the event itself.

12 PRESIDING JUDGE FREMR: All right then. Please proceed.

13 MR BOURGON: For now, Mr President, as I was saying the allegation, which was
14 explored with the witness, refers to the name I mentioned a few moments ago, and on that
15 occasion the Defence first made an objection saying that this event had not been charged
16 in the indictment and that it was not in the Updated Document Containing the Charges,
17 nor was it found in the Prosecution's pre-trial brief. And for this reason the Prosecution
18 should not be authorised to lead evidence on this event. I'm not going to go back into
19 this submission.

20 The Chamber ruled that based on relevance and having weighed the matter in respect of
21 potential prejudice, the Prosecution was authorised to put questions to the witness on this
22 event.

23 On the same occasion, Mr President, the Defence made a request, via the Chamber of
24 course, to the Prosecution. I need to move into private session for a few seconds.

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

1 (Private session at 9.37 a.m.) *(Reclassified partially in public)

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

3 PRESIDING JUDGE FREMR: Thank you, court officer.

4 Mr Bourgon, please proceed.

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Open session at 9.38 a.m.)

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

17 PRESIDING JUDGE FREMR: Thank you, court officer.

18 Mr Bourgon.

19 MR BOURGON: Thank you, Mr President. Shortly after putting the question to the

20 Prosecution, during consultations with my colleague, first we were provided with a

21 document which was already in our possession. I refer here to document

22 DRC-OTP-0021-0787.

23 The Prosecution also announced, or at least informed us, that another document would be

24 disclosed to us later. It is actually a document that was already disclosed to the Defence,

25 but we were told that it would be disclosed to us with lesser redactions and that we

1 would understand once we would see the document.

2 When I put the question to my colleague as to, well, give me a name so I can go and pick it
3 up from our disclosure database, my colleague could not -- was not in a position to give
4 me a name. I did not understand then, I now understand why he could not give me a
5 name at that time.

6 The document in question, Mr President, was disclosed to us yesterday with lesser
7 redaction. This document is actually a statement which was taken from (Redacted)
8 (Redacted). And, of course, it is a very extensive statement, which contains some 38 pages.
9 And this statement goes back to 2005. And pursuant to this statement, it appears that (Redacted)
10 (Redacted) is -- would he be called to testify, would provide the same evidence that the (Redacted)
11 told us over the weekend, and that is that Mr Ntaganda is not involved in the murder or
12 in the death of (Redacted).

13 The --

14 PRESIDING JUDGE FREMR: Mr Iverson.

15 MR IVERSON: I was just wondering whether these submissions should be made in
16 private session.

17 PRESIDING JUDGE FREMR: Yes, I think it would be safer.

18 Court officer, let's move into private session as soon we are dealing with names.

19 (Private session at 9.41 a.m.) *(Reclassified partially in public)

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

21 PRESIDING JUDGE FREMR: Thank you.

22 Mr Bourgon.

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 (Redacted)

12 So, yes, we had the document, but there was no way for us to link this document to the
13 event.

14 PRESIDING JUDGE FREMR: Mr Bourgon, I think it's absolutely clear what -- in what
15 situation you are, so what is the aim of your submission? I would like to know.

16 MR BOURGON: Very well, Mr President. Thank you. The aim of my submission will
17 be for the Trial Chamber to -- there's two things we'll be asking for: First, is we would
18 like to have some answers from the Prosecution concerning the -- what happened with the
19 document, and I'll have specific question. But more importantly, we'll be asking the
20 Chamber to reconsider its position not to authorise the Prosecution to lead evidence on
21 this murder, alleged murder, which means, of course, to strike from the record any
22 evidence that was drawn that was elicited from the witness on this incident.

23 So this will be the aim of the submission and that is why it has to be made at this time
24 before the witness continues.

25 PRESIDING JUDGE FREMR: Thank you.

1 Mr Iverson, are you able to --

2 MR BOURGON: But, Mr President --

3 PRESIDING JUDGE FREMR: Yes.

4 MR BOURGON: -- my submission is I have many more details in order for the Chamber
5 to be able --

6 PRESIDING JUDGE FREMR: But I think the substance is clear, I guess. I think we don't
7 need more details. According to you, you were in some prejudice because of the
8 situation, you are asking us -- but I think now I would like to listen to Mr Iverson.

9 MR BOURGON: Well, Mr President, how it happened is very important.

10 PRESIDING JUDGE FREMR: Okay, let's -- please proceed --

11 MR BOURGON: Thank you.

12 PRESIDING JUDGE FREMR: -- but be brief.

13 MR BOURGON: Thank you, Mr President.

14 Mr President, what happened is that the Prosecution explained to us that this -- this
15 document was redacted. The problem is why it was redacted is because redactions were
16 applied by another Chamber. And the document contained redactions, what is called
17 redaction under the letter F, for foxtrot.

18 Of course when you have, when you need redactions of this type, when you have
19 redactions of this type and you have to lift them up, then you have to ask the other
20 Chamber. I guess this is what the Prosecution did, and they will explain that. But what
21 we don't know is which Chamber put the redactions, what was the order to redact the
22 incident itself, what was the date upon which these redactions were applied and whether
23 the order issued by the Chamber was the Chamber itself taking away the incident, or was
24 it the Prosecution taking away this -- the incident on the basis of its interpretation of the
25 Chamber's order.

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 From this very moment, Mr President, the Prosecution had to know that this document
5 was exculpatory and the Prosecution had to ask, at the latest, from July 2014, had to ask to
6 lift the redactions and to disclose the same to the Defence under Article 67(2). The
7 Prosecution did not do that, the Prosecution instead, of course they had disclosed this
8 document in January under Rule 77, a witness that they don't intend to call.

9 Because of this situation and because of the nature of the document, what is important,
10 Mr President, is if we had not met (Redacted) last weekend, we would have never seen
11 this document. That is the prejudice.

12 So we get this document while the witness is testifying and we would have never received
13 it otherwise. It's a lengthy document. And the document points into the direction that
14 Mr Ntaganda is not involved in that murder.

15 When you put the two together, Mr President, the fact that this is an incident that was not
16 charged, not in the Updated Document Containing the Charges, which of course the
17 Chamber said we will admit it because it had some relevance but there's no prejudice.

18 Now, when you add what I just mentioned about the way in which the document was
19 disclosed to the Defence and the way it was -- the redactions were applied and not lifted
20 in time, then the prejudice, Mr President, our argument is that the prejudice far exceeds
21 any relevance that can go into this specific incident.

22 Now, the witness has already testified, so what do we do? We suggest that what -- the
23 answers of the witness on this specific incident should be stricken from the record. My
24 colleague pointed out to me, I've never seen this in this place or other tribunal. Honestly,
25 I don't think I've ever seen that either, Mr President, but here we have to look at what's

1 going to happen if we don't do that. If we don't do that, then we will cross-examine this
2 witness on this event, we will make arguments on this event, we will have to call a
3 Defence on this event. When you look at everything that is upcoming, if we don't strike
4 the event from the record, and we look at the prejudice and we look at the relevance of an
5 event which is not in the Updated Document Containing the Charges, for all these reasons
6 we say, Mr President, that the proper remedy, remove from the record and that's the end
7 of the matter and we can continue with the witness. Thank you, Mr President.

8 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

9 Mr Iverson.

10 MR IVERSON: Mr President, I'll try to be brief, but there are a number of issues raised,
11 so I want to be careful to try to cover them all for the Chamber.

12 First of all, the Prosecution would oppose the remedy requested to strike the evidence
13 from the record.

14 Just to go back, on Monday we learned for the first time that the Defence had spoken to
15 (Redacted) over the weekend, and that's when Defence counsel asked if there was any
16 statement that she had provided to the Office of the Prosecutor. We have no record of
17 any statement. But what that Monday submission caused us to do is to, as always, we
18 have new information from the Defence, so we go back to our records and we review any
19 of our records that may pertain to that new -- either new line of inquiry, or new line of
20 defence to determine whether any information we hold or has previously been redacted,
21 may need -- we may need to ask for lifting of redactions so that the Defence has that, if we
22 make a determination that that information may be relevant or material for the defence
23 preparation. And that's exactly what we did in this situation. So we found out on
24 Monday, and by Wednesday we had asked the Chamber to lift the Regulation 42
25 redactions that had been put in place by Trial Chamber I.

1 And furthermore, we also have -- we have received information that this person (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 And just to back up even further, I would remind the Chamber that the purpose of
6 eliciting this information wasn't necessarily to prove a murder, the purpose of eliciting the
7 evidence was to show the prosecutorial intent behind the murder.

8 Now, that prosecutorial intent would have been also relevant if this -- the victim of the
9 murder had been punched in the face and not murdered. The fact that he was murdered
10 only shows the extremity -- is evidence of the extremity to which Mr Ntaganda and the
11 co-perpetrators would go to enact their -- this plan to target Lendu. That was -- that's the
12 purpose of the evidence.

13 So with that in mind the Prosecution did not regard the information to be material until
14 the Defence submitted their new line of inquiry that we found out for the first time on
15 Monday.

16 I didn't hear in Defence counsel's submission any concrete information as to why he
17 considers this potentially exculpatory information. The Prosecution doesn't consider it
18 potentially exculpatory. (Redacted)

19 (Redacted), so there's no counter-veiling

20 information that impacts the credibility of this witness to my knowledge, and I didn't hear
21 the Defence counsel actually describe anything that would, without travelling through
22 several layers of interpretation, become potentially exculpatory.

23 The Defence counsel has obviously scrutinised this document and is in a position to make
24 submissions to the Chamber. The Prosecution's position is that he can simply -- the
25 witness is still here, the testimony is not over, he can simply ask questions about the

1 information underlying the statement to the witness if he deems that relevant.

2 PRESIDING JUDGE FREMR: Thank you.

3 MR IVERSON: Those are my submissions.

4 PRESIDING JUDGE FREMR: I think it's enough.

5 Mr Bourgon, I think I don't need to hear more.

6 We are in some time pressure. We will now deliberate with the Chamber just again

7 briefly. I think we will need five, 10 minutes maximum, so please.

8 THE COURT OFFICER: All rise.

9 (Recess taken at 9.55 a.m.)

10 (Upon resuming in open session at 10.06 a.m.)

11 THE COURT USHER: All rise.

12 Please be seated.

13 PRESIDING JUDGE FREMR: We can remain in open session because I think our ruling
14 does not contain anything that could reveal identity of our current witness.

15 So we deliberated and the decision or ruling of the Chamber is that the request of the
16 Defence to reconsider our previous decision to allow Prosecution to question this witness
17 on incident mentioned is rejected.

18 In this connection, I would like to emphasise that, as we several times said, this incident is
19 not directly charged, so the testimony was allowed and also led for very limited purpose.

20 Moreover, and it's also led for further request of the same nature, we don't consider
21 striking part of the record as a proper measure because, in our view, it's measure which is
22 mainly used and is efficient towards to lay judges, towards to jurors that may be confused
23 by something that is either not relevant or is unlawfully put into the record. But we are
24 professional Judges, so we are able to evaluate any information contained in the record
25 and to weigh it, whether we should take it into consideration, or not, if there is some

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0190

- 1 prejudice that should prevent us to make any conclusions from such part of the record.
- 2 But at the same time, we would like to emphasise that we concluded that there was a
- 3 certain breach of disclosure obligations by Prosecution because they did not fully respect
- 4 our redaction protocol as concerns document DRC-OTP-0070-0340 because they had a
- 5 duty to review original redactions and there was obvious that there were strong reason to
- 6 make this document less redacted.
- 7 Nevertheless, we believe that to rescue this, some prejudice, it's sufficient, first, to allow
- 8 Defence to cross-examine this witness. Moreover, in the light of this certain prejudice, we
- 9 will also evaluate possible request to bring those two potential witnesses, (Redacted)
- 10 (Redacted) of the victim, mentioned by Mr Bourgon in his submission.
- 11 So that concludes our ruling.
- 12 Now, court officer, please bring Mr Witness in the courtroom.
- 13 (The witness enters the courtroom)
- 14 PRESIDING JUDGE FREMR: Good morning, Mr Witness. How are you doing today?
- 15 WITNESS: DRC-OTP-P-0190 (On former oath)
- 16 (The witness speaks French)
- 17 THE WITNESS: (Interpretation) Good morning, your Honour. I'm very well. Thank
- 18 you.
- 19 PRESIDING JUDGE FREMR: Mr Witness, today it should be the last day of your
- 20 testimony. Defence will continue in your cross-examination.
- 21 It's my duty again to remind you that you are still under oath, which means you have to
- 22 speak truth and nothing but the truth. And, again, I know I repeated myself, but it's very
- 23 important for us to -- for us if you keep at least three second pauses between your
- 24 response to Mr Bourgon's questions because there should be some time for interpretation.
- 25 So please have it in mind.

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0190

1 Mr Bourgon, please, you have the floor.

2 MR BOURGON: Thank you, Mr President.

3 QUESTIONED BY MR BOURGON: (Continuing) (Interpretation)

4 Q. Good morning, Witness.

5 A. Good morning.

6 Q. I would like to start this morning with a new subject, that's to say Kisembo, the
7 Kisembo complex. Now, you mentioned that at a particular time Kisembo was the
8 bodyguard of Bosco Ntaganda; that's your testimony, is it not?

9 A. Yes.

10 Q. Where does this information come from?

11 A. From myself.

12 Q. Still?

13 A. It comes from myself.

14 Q. So what are the observations, how did you conclude that Kisembo was the
15 bodyguard of Bosco Ntaganda and when?

16 PRESIDING JUDGE FREMR: I think we will have to move into private session. We are
17 still in open. Because Mr Witness probably will add some personal details.

18 So now, court officer, let's move into private session.

19 (Private session at 10.13 a.m.) *(Reclassified partially in public)

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

21 PRESIDING JUDGE FREMR: So sorry, again, Mr Bourgon, please repeat your question
22 to the witness.

23 MR BOURGON: Thank you, Mr President.

24 Q. (Interpretation) Witness, I'll repeat the question. You just said that the conclusion
25 was that Kisembo was the bodyguard of Bosco Ntaganda and that that comes from -- that

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Open Session)

ICC-01/04-02/06

1 is your own conclusion.

2 Now, my question is: What are the observations that made you come to such a
3 conclusion?

4 A. Thank you, Counsel. Mr Kisémbó did his military training in a centre, Nyaleke, in
5 Beni and that was in 1999. When he finished his military training he went back to his
6 village, Ituri, the district of Ituri, and when he arrived in Ituri that coincided with the
7 arrival of Mr Bosco Ntaganda and his group. And when there was another military
8 training in the Rwampara training camp at the time of governor Adèle by the Ugandans,
9 Kisémbó had already finished his military training.

10 Straight after, when the military training for young people who were in training in the
11 camp, in the Rwampara training camp, when they finished their training, yes, they
12 finished their training, they were all in Bunia. I don't know what mechanism there was
13 by which Kisémbó became Ntaganda's bodyguard, (Redacted)

14 (Redacted) Kisémbó found himself behind Bosco Ntaganda as his bodyguard. I
15 confirm that. (Redacted)

16 And the incident, the first incident, I call that a crime that Mr Ntaganda committed in
17 broad daylight, he was with his bodyguard Kisémbó (Redacted). So I confirm that

18 Kisémbó was the bodyguard of Bosco Ntaganda in 1999 when Bosco Ntaganda arrived
19 in 2000 -- the start of 2000. And that's something I confirm. (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Open Session)

ICC-01/04-02/06

1 Q. What I'm interested in, Witness, is at what time what did you see, what did you see
2 physically, otherwise, between Bosco Ntaganda and Kisembo which made you reach the
3 conclusion that he was a bodyguard and not the opposite? What observations did you
4 make which would justify your conclusions?

5 A. Thank you. A bodyguard -- well, in general Bosco Ntaganda was a commander
6 and he was always behind him, behind him. Ntaganda was in front. And most of the
7 time it was Kisembo who held Bosco Ntaganda's weapon. So Kisembo had weapons
8 always. He had Bosco Ntaganda's and his own. And Bosco Ntaganda was always in
9 front of Kisembo.

10 Q. So let's speak about when and where. Where did you see that?

11 A. In the town of Bunia.

12 Q. And when you say when?

13 A. That was in 2000. In 2000.

14 Q. Well, speak to me about a time when you saw Bosco Ntaganda acting as a
15 commander and Kisembo acting as a bodyguard?

16 A. I told you in 2000.

17 Q. Witness, I put it to you that Bosco Ntaganda and Kisembo were indeed present in
18 Bunia together in 2000. Are you in agreement with me?

19 A. Yes.

20 Q. And I put it to you as well that at that time when he was in Bunia they were both in
21 uniform, were they not?

22 A. I agree with you.

23 Q. And I put it to you that at that time Bosco Ntaganda had a pistol, whereas Kisembo,
24 he had a light weapon in his hands and that the story that he is the bodyguard is nothing
25 more than an urban myth. Would you agree with that?

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Open Session)

ICC-01/04-02/06

1 A. Not at all. I do not agree with you.

2 (Redacted)

3 (Redacted)

4 when he finished his military training and when Kisembo was taken by Bosco's

5 bodyguard, (Redacted)

6 (Redacted) So I confirm strongly that Kisembo was the bodyguard of Bosco Ntaganda (Redacted)

7 (Redacted) he was responsible for security. (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 Q. Thank you, Witness. We'll go on to another subject.

15 I'd like to go back to what we were discussing yesterday, namely, your testimony

16 concerning the murder of a United Nations observer by Bosco Ntaganda. That was your

17 testimony yesterday, was it not?

18 A. Yes.

19 Q. Well, to try and go a bit quicker I'm not going to repeat everything that we've

20 discussed. However, we do have 10 pages of transcript that I would like to bring to the

21 attention of the Prosecution from 1606 to 1630, page 119 to 129, I think, and it's on these

22 pages that I would like to ask you some questions. Are you following me?

23 A. Yes.

24 Q. Yesterday I started reading several pages from your statement concerning this

25 incident, which you confirmed; you would agree with me?

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Open Session)

ICC-01/04-02/06

1 A. Yes.

2 Q. For the purposes of the Prosecution, here we're talking about transcript 98, 120 to
3 122 are the pages.

4 Now, quickly, in this statement you confirmed that (Redacted)
5 (Redacted) is that correct?

6 A. Yes, (Redacted).

7 Q. You confirmed that (Redacted)
8 (Redacted); is that correct?

9 A. Yes.

10 Q. And (Redacted)
11 (Redacted) is that correct?

12 A. Yes.

13 Q. Now, you say that Bosco Ntaganda committed a murder. It's important for the
14 Defence and it's indeed your duty to go into the details and we need a maximum degree
15 of information to be given to the Chamber. (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 Q. So I would like to refer to your statement and show you a passage therefrom;
22 DRC-OTP-2075-0652, I think, and I would like to have page 0688?

23 THE COURT OFFICER: Mr Bourgon, the document is ending with number 0670.

24 MR BOURGON: This is actually the information I was looking for. So it's 0670, and the
25 page is 0688.

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0190

1 I would like to focus on line 640.

2 Q. (Interpretation) Witness, your statement is going to appear in front of you. I
3 would like to read from line 640 what you said to the representative of the Prosecutor.

4 A. Please excuse me, I don't see 640.

5 MR BOURGON: I'm sorry, I have the wrong page, the page I'm looking for is 668, I
6 apologise, not 688.

7 So the correct page was 0652, I apologise, for the first page.

8 THE COURT OFFICER: The document will be displayed on the evidence 1 channel.

9 MR BOURGON: (Interpretation)

10 Q. Can you see the page, Witness?

11 A. Yes, it's the same page as we read yesterday.

12 Q. And I'm going -- trying to make as few references as we can as possible. So you've
13 got 640, person interviewed, now, that's you. Directly, I said:

14 (Redacted)

15 (Redacted)

16 A bit further:

17 (Redacted)

18 (Redacted)

19 I understand from this passage that (Redacted); is that correct?

20 A. That's correct, but let me say something: (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Open Session)

ICC-01/04-02/06

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 Q. I'm just going to stop you there because that is another subject. I'm going to ask my
13 next question.

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 Q. Let me come back to the matter of who was with you. Yesterday when we
23 examined your statement, and this is the same page, the same document, on page 668 of
24 the document, the first page of which is 0670, and I referred to lines 624. This was on
25 page 120 yesterday, line 23 to 26 of yesterday's transcript.

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0190

1 Now, at that time I read out your statement to you. I believe you have it in front of you.

2 If you look at the precise line starting 622, line 622. Can you see that?

3 A. Yes.

4 Q. On line 622 the text states, and I quote:

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 Do you remember having stated that?

9 A. Yes.

10 Q. A little bit later on page 126 in yesterday's transcript, I asked you the following

11 question in order to confirm who you were referring to, this was on page 126. For the

12 purposes of the Prosecution this was lines 15 to 18. My question was:

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 Do you remember that?

17 A. Yes.

18 Q. So basically you confirm the content of this statement, it's the same thing; is that

19 correct?

20 A. Yes, well, it's not that precise because in the statement it says (Redacted)

21 (Redacted)

22 Q. Okay.

23 (Redacted)

24 (Redacted)

25 Q. Well, since we're on that very topic, following your last answer I asked you the

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Open Session)

ICC-01/04-02/06

1 following question:

2 (Redacted)

3 (Redacted)

4 And your answer was --

5 A. Yes, which paragraph.

6 Q. I understood your answer to mean (Redacted)

7 A. No, I didn't (Redacted)

8 (Redacted)

9 That's what I said yesterday.

10 PRESIDING JUDGE FREMR: Sorry, Mr Bourgon.

11 Mr Iverson.

12 MR IVERSON: Mr President, I would just kindly ask for the transcript reference where

13 counsel says I believe you confirm (Redacted)

14 that's what counsel is asserting.

15 PRESIDING JUDGE FREMR: Mr Bourgon.

16 MR BOURGON: Indeed, Mr President. The reference is the same page, page 126, lines

17 19 to 21, and the -- of course it's the French transcript. And what is mentioned here is the

18 following, I will say again:

19 (Interpretation) "I believe you confirm (Redacted)

20 (Redacted) that correct?"

21 And the answer given by the witness, line 21 was: "Yes. Which paragraph are you

22 referring to?"

23 Q. Witness, let me continue. (Redacted)

24 (Redacted)

25 A. I beg your pardon, Counsel, I think we need to be clear. That is not at all what I

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0190

1 said yesterday. The transcript that you read out, that's not what I said. I did not (Redacted)

2 (Redacted) We have to agree on that one

3 point before we go on. I cannot accept that you state something that I did not say. I

4 cannot accept that.

5 PRESIDING JUDGE FREMR: Mr Witness, it's enough. Thank you.

6 Mr Bourgon -- Mr Iverson, sorry.

7 MR IVERSON: Thank you, Mr President. I would just object to that question. It's

8 misleading that -- the witness is absolutely correct that he never confirmed that (Redacted)

9 (Redacted)

10 And I don't think there's ambiguity in the -- the transcript; I think that the question from

11 Defence counsel is misleading.

12 PRESIDING JUDGE FREMR: Mr Bourgon, I believe it was not your intent to harass

13 witness.

14 MR BOURGON: Indeed, Mr President, I'm not with a question yet, I'm just reading the

15 transcript from yesterday, just so that he knows what he said yesterday before I put my

16 question. So at this point in time I'm not making any assertions because the witness

17 provided the answer of a name that he provided later. And it's only an answer to the

18 objection from -- by my colleague that I read this paragraph over again.

19 So indeed, the witness is right, yesterday, after giving this answer, (Redacted) and

20 I will get to that.

21 PRESIDING JUDGE FREMR: All right.

22 MR BOURGON: (Interpretation)

23 Q. Witness, we are trying to (Redacted)

24 (Redacted)is

25 that correct?

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Open Session)

ICC-01/04-02/06

- 1 A. Yes.
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Open Session)

ICC-01/04-02/06

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 Q. Let's look at your statement once again, the very same paragraph that we were
15 examining a moment ago. This is still on the page 668 that you have in front of you.
16 And I'd like to call your attention to line 623 and following.

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Open Session)

ICC-01/04-02/06

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 Q. On page 624 in this very same statement it says:

7 (Redacted)

8 What exactly did you mean by that?

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 Q. I'm trying to understand and then we'll go on to something else. When you said on

22 line 624 that you have in front of you: (Redacted)

23 (Redacted)

24 Could you explain what your intentions were? What were you trying to say to the

25 investigators, (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Open Session)

ICC-01/04-02/06

1 A. (Redacted)

2 (Redacted)

3 (Redacted) That's how I would explain it. (Redacted)

4 (Redacted) That's what I

5 was trying to say here.

6 Q. Witness, I would put it to you that (Redacted)

7 (Redacted)

8 (Redacted) is that correct?

9 A. No, what you're saying is not correct. You've deformed my words. It was indeed
10 (Redacted). I can confirm that.

11 Q. Let's continue about -- talking about the same event.

12 Yesterday we were talking about the conflict, UPC-K and the UPC-Lubanga, remember
13 that?

14 A. Yes, we discussed that yesterday a bit.

15 Q. On page 129 I asked you the following question, line 14, you said that you had
16 knowledge of the conflict between the UPC-K and the UPC-Lubanga but that you had not
17 at all been involved in that conflict; is that your testimony?" That was my question.

18 And your answer was: "Yes, exactly."

19 Can you confirm that?

20 A. Yes, I confirm that.

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Open Session)

ICC-01/04-02/06

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Page redacted – Private session

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Open Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0190

(Open Session)

ICC-01/04-02/06

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Page redacted – Private session

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Open Session)

ICC-01/04-02/06

1 (Redacted)

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5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 PRESIDING JUDGE FREMR: Mr Witness, I think you are repeating yourself. It's fine.

12 Thank you, for the moment.

13 Mr Bourgon, it is five minutes over 11, we have to --

14 MR BOURGON: Five more and I finish with this incident, Mr President.

15 PRESIDING JUDGE FREMR: Sorry, five?

16 MR BOURGON: Five more minutes and I'm finished with this incident.

17 PRESIDING JUDGE FREMR: Okay, (Redacted)

18 MR BOURGON: (Interpretation)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Open Session)

ICC-01/04-02/06

1 MR BOURGON: I bring to your attention that this document was added to the list of
2 documents to be used with this witness on cross-examination -- sorry, I have the wrong
3 number, DRC-OTP-0009-0146.

4 (Speaks English) As I was saying, Mr President, we added this document on our list to
5 be used with this witness yesterday, and we communicated the same to the Prosecution
6 overnight. And this is a UN report, it's a document that was disclosed by the
7 Prosecution. I had a brief encounter with my colleague. I'm not sure if he will
8 maintain -- he told me that he would not oppose, but I'm not sure if he wants to make any
9 observation, and then we can use this document. There are two such documents that we
10 added to our list yesterday. They come from the Prosecution, they are well-known and
11 they are United Nations document.

12 PRESIDING JUDGE FREMR: Mr Iverson, any objection against the use of that
13 document?

14 MR IVERSON: Mr Bourgon -- or, excuse me, Defence counsel is absolutely correct, I've
15 no objection, even though it was added late to the list of documents.

16 PRESIDING JUDGE FREMR: Very well.
17 Mr Bourgon.

18 MR BOURGON: (Interpretation)

19 Q. Witness, we're going to look at this document together. This is an English
20 document, I'm going to read it for you and it will be interpreted into French.

21 On the first page of the document there's paragraph 2, where it states:

22 "Ituri in Specific." Do you see it?

23 A. Yes.

24 Q. So I'll read the paragraph, letter "a" in English:

25 (Speaks English) "The death of an unarmed United Nations military observer in an

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0190

1 ambush on his convoy on Thursday was an eerie replay of the troubles that beset the
2 United Nations peacekeeping mission here just under a year ago. The convoy, made up
3 of military observers and a civilian United Nations representative, had gone to investigate
4 reports of fighting between rival militia groups in the town of Katoto, about 14 miles
5 north of here. The convoy of four United Nations off-road vehicles, sandwiched between
6 armoured personnel carriers, had just left Katoto and was on its way back to the mission
7 headquarters here, when gunmen began firing from the forested banks of the dirt road.
8 The gunmen waited until the first armoured personnel carrier had crossed their path,
9 choosing instead to fire at the unarmed observers. The driver of the second car in the
10 convoy, Major Peter Wachaye, took a fatal bullet in the head. Beatriz Baygin, a human
11 rights investigator who was driving the next car, saw Major Wachaye's vehicle swerve to
12 the left and crash into a tree. She kept driving. The armoured personnel carriers at the
13 back of the convoy returned fire, but it was apparently too late. Major Wachaye's body
14 was flown back to his country, Kenya, on a United Nations plane Friday morning. None
15 of the gunmen were captured. 'It was an organised ambush - that's my feeling,'
16 Ms Baygin said. 'They were waiting for us.'"

17 (Interpretation) Witness, I'll show you a second document, which was also disclosed to
18 the Prosecution, DRC-OTP-0155-0147. I'd like to have the first page of this document
19 entitled, "Friday 20 February 2004 Bunia bi-monthly report.
20 Situation report.
21 Political update."

22 (Interpretation) I'd like to draw your attention, Witness, to the fact that this document is
23 in front of you. I think it's already there. "Violence against MONUC intensifies."
24 So the start of the paragraph:

25 (Speaks English) "As mentioned in the last report, MONUC personnel had been the target

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Open Session)

ICC-01/04-02/06

1 of attacks allegedly over the encroaching implementation of the DDR programme in Ituri
2 initially scheduled to be inaugurated on the 18th of February 2004. According to
3 MONUC civilian-military liaison officer, increased UPC-Lubanga activity in the towns
4 20 kilometres north of Bunia (only 10 kilometres by footpath), prompted MONUC to
5 dispatch two military patrols to the area. But the patrols were unable to gather any
6 information as the local populations feigned ignorance and reported no incidents despite
7 the fact that some of the gunfire in the towns of Katoto and Mwito could be heard from
8 Bunia itself. A third attempt was made this time with a mixed civilian and military with
9 the hopes of getting some of the population to talk about what was happening on the
10 ground. The convoy came under fire resulting in the death of a Kenyan military observer
11 whose body was left at the site due to security concerns for the rest of the convoy. His
12 body was later recovered after two failed attempts and repeated exchanges of gunfire
13 with local militia. The incident has been blamed on MONUC."

14 (Interpretation) And the next paragraph:

15 (Speaks English) "Katoto had been the base for the UPC-Kisembo group that broke away
16 from the primary UPC militia back in December 2003."

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Open Session)

ICC-01/04-02/06

1 (Redacted)

2 (Redacted)

3 (Redacted) We're going to

4 read a lot of them. So thank you very much.

5 Q. Merci, Monsieur le témoin.

6 MR BOURGON: Mr President, I think we can go for the break. I apologise for keeping

7 the Chamber a bit later. I'd just like to have a time estimate just in terms of how much

8 time I have left and what is the schedule the Trial Chamber intends to proceed on.

9 Thank you.

10 PRESIDING JUDGE FREMR: We can ask court officer. I think it will be a little bit more.

11 You have at your disposal two and a half hours, something like that. Court officer.

12 Mr Laucci. Okay, after that.

13 First, court officer.

14 THE COURT OFFICER: Mr Bourgon, you have used 5 hours and 45 minutes so far.

15 PRESIDING JUDGE FREMR: Which means you have still 2 hours and 15 minutes.

16 Now, Mr Laucci.

17 MR LAUCCI: (Interpretation) Thank you, your Honour. I would just like to obtain

18 clarification from the Chamber, so I make no act which might be harmful to the proper

19 conduct of proceedings before the Chamber. This morning the court officer distributed

20 the paper version of the two documents which the Defence is referring to. We are on a

21 break, I need to speak to my client, but I don't want to do anything wrong and I would

22 like to know if it's normal that I got the paper version of these documents and if I'm

23 authorised to use them?

24 PRESIDING JUDGE FREMR: Okay, I think -- I was told it's fine. So we don't see any

25 problem in that.

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Open Session)

ICC-01/04-02/06

1 Otherwise now we break.

2 Mr Bourgon.

3 MR BOURGON: Mr President, I do see a problem with the issue. The fact that the legal
4 adviser of the witness receives a document, absolutely correct, he's entitled to receive
5 anything. I -- it's my understanding, Mr President, that the legal adviser of the witness,
6 he's there to protect his rights pursuant to Rule 74 and the assurances and certainly not to
7 prepare the witness and not to discuss with him possible evidence that will be brought in
8 question. So it is a very important topic. And to me it was clear, but I wish to make
9 a -- to get a clarification from the Chamber that whenever we have a counsel who's there
10 to protect the rights of the witness, he is not there to discuss the contents or the substance
11 of his testimony in any way. Thank you, Mr President.

12 PRESIDING JUDGE FREMR: Very briefly for sure, but there is something that could
13 have some connection to issue of self-incrimination. He has -- he should to know what is
14 in. So I think this document, it's up to him. There is no connection, there is no
15 obligation for Mr Laucci to discuss it. If it would be then he should. So I think at least
16 he should be informed what will be the matter for cross-examination and so on.
17 Now, we break and we will resume quarter to 12. Anyway, I see some disappointed
18 faces. Okay, 10 to 12.

19 THE COURT USHER: All rise.

20 (Recess taken at 11.22 a.m.)

21 (Upon resuming in open session at 11.51 a.m.)

22 THE COURT USHER: All rise.

23 Please be seated.

24 PRESIDING JUDGE FREMR: So let's continue. We will continue till 1 o'clock. And it
25 seems that the afternoon session will be devoted to the rest of cross-examination and to

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Open Session)

ICC-01/04-02/06

1 re-X in-chief, if any, and to questions from the Chamber, if any.

2 Now, Mr Bourgon, please proceed.

3 MR BOURGON: Thank you, Mr President.

4 Q. (Interpretation) Good morning again, Witness.

5 A. Good morning.

6 Q. I have a few more questions I'd like to put to you as part of my cross-examination?

7 PRESIDING JUDGE FREMR: Mr Bourgon, are we safe in open session, or should we
8 move into -- I think it will be safer to move into private.

9 MR BOURGON: Yes, Mr President.

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

11 (Private session at 11.53 a.m.) *(Reclassified partially in public)

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

13 PRESIDING JUDGE FREMR: Thank you.

14 Mr Bourgon, please.

15 MR BOURGON: Thank you, Mr President.

16 Q. (Interpretation) The first topic I'd like to discuss with you is the events that
17 occurred, according to you, in Mabanga. Do you remember having spoken about events
18 that took place in Mabanga?

19 A. Yes.

20 Q. I'd like to refer to your statement, and in order to do that I'd like to ask that we have
21 document DRC-OTP-2075-0827 on the screen, please, in particular page 0829. And I'd
22 like to have lines 76 to 78 on the screen.

23 Witness, I'm going to read the statement that you have on the screen in front of you, and I
24 shall start on line 75. The interviewer who says, "Mm-mm."

25 And then it is the interviewed person, in other words, you yourself. And this is what

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Open Session)

ICC-01/04-02/06

1 you stated here:

2 "So that could be around the 27th, 28th, it could be about the 27th or the 28th, or a few
3 days before the delegation in Kinshasa. I don't have a lot of details about that, but it was
4 just four days before the end of the month before the attack on Songolo. That is all that I,
5 myself, can confirm. As for the date, I don't -- I'm not sure I remember. It was 2002."

6 My first question is do you recognize your statement here?

7 A. Yes, indeed, I do. That's what I said.

8 Q. Let's go on. And I'd like lines 40 to 42. It's the previous page, it starts on page
9 0828. I'd like to start on page 39.

10 Do you have it in front of you, Witness?

11 A. No, not yet.

12 Q. Do you have it now? Can you see it?

13 A. Yes.

14 Q. Let's start on line 39 directly. This is what you stated:

15 "Yes. As far as I know, we were in Mandro when the attack began, so the people who
16 occupied Mabanga, it was a mixture of ethnic groups, that I know because then I was in
17 Mabanga and there were Lendus there, there were people who were not natives of Ituri
18 who were there, and that attack was aimed more at the interests than the Mabanga attack,
19 as I said yesterday. Where is Mabanga? To situate it, Mabanga is a mining region, it's a
20 small village that's not far from Bambu. I can explain it to you."

21 Do you recognize this statement?

22 A. Yes, I do.

23 Q. First of all, as regards the actual position of Mabanga geographically do you agree
24 that it's much further north than Bambu?

25 A. No, I don't agree because I am very familiar with Bambu and Mabanga.

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Open Session)

ICC-01/04-02/06

1 Q. Since you're very certain about the geographical context, can you tell me how many
2 kilometres there are between Bambu and Mabanga?

3 A. I think that in my statement it says it's about 20 kilometres, approximately 20
4 kilometres.

5 Q. Do you agree with me that Mabanga is 20 kilometres north of Bambu?

6 A. I don't agree that Mabanga is north; it's east of Bambu. In the north you have Kilo
7 and Kobu. Mabanga is east of -- it's about 20 kilometres east of Bambu.

8 Q. I'll take a look at a map later on with you and we'll be able to check that.

9 According to the statement, your statement that we've just read, there was a mixture of
10 ethnic groups in Mabanga; is that correct?

11 A. Yes.

12 Q. I would put it to you, Witness, that around the month of August 2002 there were no
13 Lendus in Mabanga; do you agree with that?

14 A. I don't agree a hundred per cent with what you've said and I can prove it to you.

15 Q. How -- how much? What percentage?

16 A. I could approve what you've said 90 per cent.

17 Q. Well, go ahead, I'm listening.

18 A. Thank you. Mabanga is part of Djugu territory. And the village itself of Mabanga,
19 or 1 to 2 kilometres north, south and east of Mabanga you have Lendu localities. So
20 Mabanga itself is not a village, as you say -- you say that there were no Lendus. It's a
21 quarry, it's a gold mine quarry. And that quarry was exploited in a makeshift fashion.
22 And when you say that there were no Lendus there in that quarry, I said, no, 90 per cent
23 no because the reason is that it's impossible because the people living around that quarry
24 were 90 per cent Lendu aside from the Bambisa, and usually the Bambisa are not involved
25 in mining, they don't tend to work in these mines. It's a known fact that in Ituri the gold

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0190

1 diggers in the Djugu, most of them are Lendus.

2 So a makeshift mine, you have to have Lendus. By definition there must be Lendus there
3 at the time. At the time the chiefs, perhaps you know this, the chiefs of this quarry, the
4 name was Tuja (phon), Tuja -- Djudja (phon) was his name, and in August of 2002 the
5 chief was a Lendu so I don't understand how can you say that there was no Lendus in the
6 quarry, whereas the chief was a Lendu.

7 So the man who was supervising the quarry was a Lendu, so you can't say that there were
8 no Lendus. That's why I don't agree with you because the chief, Juja, was a Lendu and
9 the villages around the area, around Mabanga were Lendu villages, and most of the
10 workers in the mine were Lendus.

11 Q. I let you have your say about that. And I'd like to take a look at the map, if you
12 will to confirm what you're saying.

13 I'd like to have the document DRC-OTP-2080-0239 on the screen, please. And if you will
14 allow us, we will handle it from here?

15 THE COURT OFFICER: The document will then be displayed on the evidence 2 channel.

16 MR BOURGON: (Interpretation)

17 Q. There's a map that's going to be coming up on the screen, Witness.

18 Can you see the map now in front of you?

19 A. Yes.

20 Q. We're going to enlarge the map, in particular the area that includes Bambu and
21 Mabanga.

22 Can you see Bambu on this map?

23 A. I see Mambisa, that's the tribe that lives in Bambu, but I don't see Bambu -- oh, there
24 it is. I see it now.

25 Q. Fine. For the purposes of the transcript, because we will not be able to have this

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0190

1 map in evidence and I can't ask you to draw on it, but you can see Bambu, so the Judges
2 can see where you pointed, to the left and above Bambu you can see Kobu; is that correct?

3 A. Yes.

4 Q. And then to the left of Kobu, if you follow that road, you come to a place called Kilo;
5 is that correct?

6 A. Yes.

7 Q. Fine. On the other side of Bambu, if you go up, following the line, and a little bit to
8 the right, you come to Mabanga; is that correct?

9 A. Yes.

10 Q. This map is oriented to the north; in other words, the north is at the top. Does this
11 confirm that Mabanga is north of Bambu?

12 A. Well, this map confirms it, but I was going by motorcycle between Mabanga and
13 Bambu. And I went toward the east. And I went to Mambisa, which is written in red
14 here. And Mambisa is the chef-lieu of the Bambu collectivity. And when you see
15 Mambisa and Mabanga, Mabanga is to the east, not to north. When I was talking about
16 Bambu, I was not talking about the beginning of Bambu, I was talking about the chef-lieu
17 of Bambu, which is Mambisa. And when you look at this map Mabanga is to the east,
18 not to the north. But if you look at the beginning of Bambu, then, yes, it looks like it's in
19 the north. But I was coming from the collectivity, and from there it's 20 kilometres, not
20 from where you're referring to. And if you look at the scale, you won't see that it's 20
21 kilometres, it's much more than 20 kilometres from the Bambu that you can see here, but if
22 you measure from Mambisa you will see that it is 20 kilometres.

23 Q. So if we take the initial Bambu and we go to Mabanga, Mabanga is northeast; do
24 you agree?

25 A. Yes, I agree.

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Open Session)

ICC-01/04-02/06

1 Q. And the distance would be greater than 20 kilometres; is that correct?

2 A. Yes, that's correct.

3 Q. What about the population that lived in Mabanga, the people who were living there,
4 there were no Lendus I would say living there. You can say you agree, you don't agree?

5 A. I don't agree.

6 Q. I would also submit to you, in addition, that the attack on Mabanga in August
7 of 2002 was an attack carried out by the Lendu. The Lendus attacked Mabanga and they
8 burned it down. Do you agree with me?

9 A. I don't agree. All the more so that you just said a few moments ago that there were
10 no Lendus in Mabanga so how could the Lendus have attacked Mabanga, whereas they
11 were in Mabanga. I don't understand.

12 Q. I'm trying to explain and to avoid all possible confusion. The Lendus were not in
13 Mabanga and they went there to attack the tribes that were living there, in other words,
14 the Hema. Do you agree with that?

15 A. I don't agree, all the more so that Mabanga is not at all Hema territory; it's Mambisa
16 and Ndo-Okebo territory. I don't see how the Hema could end up there.

17 Q. If I have understood you correctly, I -- I don't have the exact reference, I could find it,
18 your knowledge of the peace committee is fairly limited; is that correct?

19 A. It's somewhat limited, but not too limited.

20 Q. What do you know about the peace committees?

21 A. Well, I know a little bit. I know it took place in Bunia, that's all. (Redacted)

22 (Redacted) I learned about those committees, those peace committees where a
23 district commissioner was appointed, the government was set up -- or, rather, not really a
24 government, but they tried to set up these committees to -- in favour of peace and they
25 appointed new people in charge after the militias had left. That's all I know.

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Open Session)

ICC-01/04-02/06

1 Q. I'd like to give you some additional information. Perhaps my question wasn't
2 precise enough. I'm referring to the peace committees that were to be found in most of
3 the villages where the majority was Hema. Do you have any information on that topic,
4 any knowledge?

5 A. I do have some knowledge, but those peace committees were not just in the Hema
6 collectivities, there were also those committees in Mambisa and in Ndo-Okebo; in other
7 words, east of Mabanga, west of Mabanga and north of Mabanga. And to the east of
8 Mabanga, the southeast of Mabanga where you have the north Bahema, because to the
9 east that's where you have the Lendu. So to the southeast you have north Hema, to the
10 north you have the Ndo-Okebo and to the east you have Mambisa. So this entire
11 collectivity, throughout you had these peace committees in Mambisa. Let me add, if I
12 may, the head of the peace committee was Mr Ndrundro. And for the Ndo-Okebo, the
13 chief was Chuma. And for the Lendus, the Hema north I don't remember the name.

14 Q. Well, to facilitate the reading of the transcript perhaps you could spell the names
15 you've just mentioned. Could you please spell the chief of the collectivity that you
16 mentioned? You referred to -- the first name you gave was Drodro (phon)?

17 A. No, it wasn't the chief of the collectivity. I said the chief of the peace committee
18 appointed by the district, the district appointed people in charge of those peace
19 committees, not Drodro, but Ndrundro.

20 Q. I'd like you to spell that name, please.

21 A. Thank you. Yes. N-D-R-E-N-D-N-O.

22 Q. Fine. You mentioned another name which was Chuma.

23 A. Yes.

24 Q. Would this be C-H-U-M-A?

25 A. Yes, that's correct.

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0190

1 Q. If I were to suggest to you that the chief of the peace committee in Mabanga -- first
2 of all, there was a peace committee composed for the most part of Hema in Mabanga, do
3 you agree with that?

4 A. No, I don't agree because the chiefs I have just mentioned were not in Mabanga.
5 You just told me that there was a chief of a peace committee in Mabanga. I mentioned
6 the chief in Mambisa and Ndo-Okebo. And you've just told me that there was also a
7 chief of the peace committee in Mabanga, but I don't understand, Mabanga was a quarry
8 in a collectivity with an administration, how can you put a peace committee in a quarry;
9 whereas there's another peace committee in the collectivity as a whole? I don't
10 understand.

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 Q. Therefore, I suggest to you that the name of that person was Roy, R-O-Y. Does that
16 name say anything to you?

17 A. No, because that's not a family name, that's a first name. I gave you the family
18 names. And if you check they are Mambisa and Ndo-Okebo names. The name of the
19 chief of the peace committee must have a name from those collectivities. There couldn't
20 be a Hema. I don't understand how you would appoint someone who is not from that
21 village as being the chief of the peace committee for that village. I just don't understand,
22 because at the time you would put someone who was a native of the village in charge,
23 someone who had been involved in the conflict.

24 Q. So if I were to put it to you that the patriotic forces, as you like to call them, the
25 FPLC, when they attacked during the operations in Mongbwalu, they went through

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Open Session)

ICC-01/04-02/06

1 Mabanga; do you know anything about that?

2 A. Could you repeat? I'm a bit confused. It seems a bit like a tautology.

3 Q. Well, I'm going to try to clarify.

4 Yesterday we talked about Mongbwalu, remember that?

5 A. Yes.

6 Q. And we said that the patriotic forces -- or, rather, you told us how they went to
7 Mongbwalu; is that correct?

8 A. Yes, and you too.

9 Q. And yesterday I said that the patriotic forces went through Mabanga -- or, if I didn't
10 say it yesterday I'm saying it today, they went through Mabanga. Do you have any
11 information about that?

12 A. No, you're saying that. Yesterday you said they -- that Salumu left Mandro with
13 the soldiers and that he went through Mabanga. I didn't say that, you said that. You
14 said that.

15 Q. At the time, did you have any information about that?

16 A. To go to Mongbwalu I had no information that the soldiers left Mandro and that
17 they had gone through Mabanga. I had no information about that. I know that the
18 soldiers left Mandro to go to Mongbwalu, but I cannot confirm where exactly they went,
19 which towns they went through.

20 Q. Witness, we've heard other witnesses in this Chamber, witnesses for the Prosecution,
21 one in particular but I'm not going to quote that person, who was a Hema, who lived in
22 Mabanga, and following the attack on the part of the Lendus, which destroyed Mabanga,
23 he returned to Bunia. Is that possible as far as you know?

24 A. It cannot be possible because, first of all, you already denied the presence of Lendus
25 in Mabanga and you, yourself, said that the Lendus entered into Mabanga. Perhaps you

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Open Session)

ICC-01/04-02/06

1 can help me understand how did they enter into Mabanga? Which road did they take to
2 get to Mabanga.

3 Q. Let me try to clarify. A Hema, who was present in Mabanga --

4 PRESIDING JUDGE FREMR: Mr Iverson.

5 MR IVERSON: I'd just like to object on the basis of the conduct of proceedings decision,
6 decision 619 from paragraph 34, which requires counsel to point out the reference if
7 they're going to use another witness's testimony or statement to the Chamber and ask for
8 leave to do that, ask for permission to do that. I would just ask that Defence counsel
9 follow that procedure.

10 PRESIDING JUDGE FREMR: Mr Bourgon.

11 MR BOURGON: Thank you, Mr President. I'm fully aware, of course, of this -- this
12 position, but I'm not referring to the testimony, I'm now referring to something that a
13 witness would have said. My understanding is that this paragraph of the conduct of
14 proceedings decision is I have to ask permission if I'm going to use a statement, and I will
15 in a few minutes, or if I have to -- if I want to refer to something he said in his testimony.
16 Now I'm just suggesting that we've heard such evidence, and I'm asking the witness
17 whether he believes this is possible or not based on his information.

18 PRESIDING JUDGE FREMR: All right. Proceed.

19 MR BOURGON: (Interpretation)

20 Q. Mr Witness, is it possible for a Hema living in Mabanga -- is it possible that Hemas
21 living in Mabanga could have been driven out by Lendus who attacked Mabanga and that
22 they would consequently have to return to Bunia in August 2002? Does that correspond
23 to your knowledge of the facts as they obtained at the time?

24 A. Can you tell me how many Hema were driven out of Mabanga to Bunia? You see,
25 when there is war there are movements, the inhabitants move. And I don't know

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0190

1 whether Mabanga was occupied exclusively by Hema people. I have said earlier in my
2 statement that there was a mixture of inhabitants. So if the town came under attack and
3 some Hemas fled, that would be normal, but it is not only the Hemas who fled because
4 most of those who were living there were Bambisa and when the UPC attacked the Lendu,
5 who were combatants, you see, you have just stated here that these are people who came
6 in. Yes, they came, they were fighting with bladed weapons, but if you say that they
7 came in and the UPC attacked because they had driven out the Hema, or what have you,
8 my question then is the other tribes remained. If Hemas left, how many of them left?
9 Where were the other people from other tribes, or is it only the Hemas who left?

10 Q. Mr Witness, let me be the one to put the questions to you here rather than the other
11 way around. So let me clarify the question: (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 Q. Witness, let me refer to your testimony, transcript 97, in French, page 98. This is
20 the question which was put to you by my learned colleague at lines 18 and 19:

21 "Who was involved in the Mabanga operation?"

22 And this is your answer: "In the Mabanga operation, the following were involved:

23 Mr Bosco Ntaganda."

24 And then there was a next question: "How do you know that it is Mr Ntaganda
25 specifically who led the attack?"

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Open Session)

ICC-01/04-02/06

1 Your answer at line 23: "Mr Ntaganda himself returned from Mabanga. There was
2 all -- another commander who was always talking."

3 Now, question for you: Do you remember that Mr Ntaganda never led any operation,
4 either by the UPC or the force patriotic on Mabanga? And this is what I'm putting to
5 you, that he never led any such operation; what is your reaction?

6 A. I don't agree with you. Where was Bosco at that time? I'm sorry that I don't have
7 to put any questions to you, but on the day of the attack where was he? If he was not
8 there he must have been somewhere. I'm really sorry to have to put this question to you.
9 Where was he?

10 Q. Witness, that is actually the question I'm putting to you; where was he?

11 A. I have confirmed that he was in Mabanga. You're the one now saying that he was
12 not in Mabanga.

13 PRESIDING JUDGE FREMR: Mr Witness, please don't polemise with Defence counsel.
14 It's not up to you to provide any explanation. Counsel could ask you about your
15 knowledge. If you know, say what you know, if not, you simply say "I don't know,"
16 that's it, but it's not for you to defend yourself or to provide him with some explanation,
17 okay.

18 Mr Bourgon, please proceed.

19 MR BOURGON: Thank you, Mr President.

20 Q. (Interpretation) Last question on Mabanga, Mr Witness.

21 A. Mr President, I'm sorry, sometimes one gets emotional and these things happen.
22 I'm really sorry.

23 PRESIDING JUDGE FREMR: It's fully understandable. No problem.

24 MR BOURGON: (Interpretation)

25 Q. Witness, I put it to you that at that time, that is August 2002, Bosco Ntaganda

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0190

1 deployed FPLC troops, in fact two companies, to Mabanga at the request of the president
2 of the peace committee in Mabanga with a view to defending Mabanga. Do you have
3 any information whatsoever on this -- in this regard?

4 A. None. None whatsoever.

5 Q. A short while ago I mentioned the name Roy or Roy, R-O-Y, and I want to be fair
6 and state that the full name is Unega Djonga Roy, or Roy. Let me spell it for the record:
7 U-N-E-G-A for Unega. D-J-O-N-G-A, for Djonga, and R-O-Y for Roy, or Roy.
8 Do you know that person?

9 A. Thank you. First of all, what you refer to as Roy is an abbreviation for
10 Roger -- Rogers in English. That person you said -- you said that the president of the
11 peace committee was a Hema. Let me confirm to you that this man is not a Hema, he is
12 an Alur from Mahagi territory. I can confirm to you that this gentleman is a young man.
13 And when I say "young man" he wasn't even 40 years old, as far as I know, except there
14 are two persons bearing the same name. But if it is Roy Unega or Roger Unega, was a
15 gold digger, he was an Alur and not a Hema and he wasn't even 40 years old yet.

16 Q. What was his function or his duties?

17 A. I said that he was a gold digger.

18 Q. Did you know that he was the president or chairman of the peace committee in
19 Mabanga?

20 A. No, I did not know that.

21 Q. Let me move on to something else now.

22 You testified that Bosco Ntaganda proceeded to carry out a recruitment in a school in
23 Mudzipela; do you remember that?

24 A. Yes, I do.

25 Q. First question: How many schools are there in Mudzipela?

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Open Session)

ICC-01/04-02/06

1 A. In 2002 -- well, you didn't specify the year, but in 2002, in Mudzipela, we had the
2 Mudzipela boys' primary school, that school is open in the morning. Now, in the
3 afternoon and in the same premises, there is another school which was known as Bunia 1,
4 or something like that, and it was set up thereafter.

5 So at that time Bunia 1 was also a school operating in the same premises in the afternoon.

6 Then you have the girls' school in -- primary school in Mudzipela close to the nunnery, to
7 the sisters' nunnery or convent. This was a mission school belonging to the Catholic
8 mission.

9 Then there was a secondary school, Ujio wa Heri, somewhere to the north of Mudzipela,
10 some 2 kilometres from the boys' primary school, and I'm referring there to the secondary
11 school.

12 Apart from that there was a seminary for the training of priests.

13 And then there was also a higher institute.

14 Those were the schools that one could find on the Mudzipela hill.

15 Q. Witness, I would like to start by asking you to spell out the name you mentioned,
16 the name of one of the schools, and I'm referring here to transcript line 15 in French, a
17 secondary school -- you mentioned the name of a secondary school. Please, what is the
18 name of that secondary school?

19 A. Ujio wa Heri. At the time it was known as St Joseph.

20 Q. Can you spell out that name, please?

21 A. Yes. U-J-U-O -- sorry, U-W-O space, W-A space, H-E-R-I.

22 Q. Thank you. The recruitment that was conducted by Bosco Ntaganda in which you
23 referred to, which school did it take place at?

24 A. It was at the Mudzipela boys' primary school a few metres away from the Catholic
25 school -- the Catholic church, rather.

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Open Session)

ICC-01/04-02/06

1 THE INTERPRETER: The interpreter corrects.

2 MR BOURGON: (Interpretation)

3 Q. Before you go any further I believe that you confirmed that you didn't go into the
4 school at that time yourself; is that correct?

5 A. Yes.

6 Q. So you did not see Bosco Ntaganda yourself carry out this recruitment exercise?

7 A. I saw Bosco Ntaganda going with the children in a single file as they left the school.

8 Q. But you were not within the school compound itself. Correct?

9 A. Yes, that is correct.

10 Q. You did not talk to the teachers who were offended, according to your testimony?

11 A. I talked to a teacher who had been threatened, not within the school premises, but
12 outside of the school premises.

13 Q. Witness, we talked to the director of the school, the then director of the school, who
14 told us that there was never any recruitment, any forced recruitment of pupils at the
15 Mudzipela boys' primary school. Does that refresh your memory?

16 A. No, because the parents were crying and wailing when they saw the single file of
17 people.

18 Q. Mr Witness, are we in private session? Okay, that's fine - do you know one Kiza
19 Amoti Honoré?

20 A. I know many people who bear the name Kiza. It is a Hema name that is given to
21 twins. And many twins bear that name, Kiza. So I am not able to determine which Kiza
22 you are talking about.

23 Q. Kiza Amoti Honoré whose father is Ngaudzo?

24 A. No, that name does not ring a bell. I have no idea. Because Amoti is also a title or
25 a name of respect that is given to all Hema and Honoré is a Christian name that is given as

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Open Session)

ICC-01/04-02/06

1 well. So can you repeat his father's name?

2 Q. Yes, the father's name is Ngaudzo -- let me spell it out: N-G-A-U-D-Z-O. Does
3 that help you in any way whatsoever?

4 A. No.

5 Q. I put it to you, Mr Witness, that at that time he was the director of the boys' primary
6 school at that time and you didn't know that?

7 A. I do not know.

8 Q. Let me mention another name: Do you know Kazadi Mokili Justin? Does that
9 ring a bell?

10 A. No.

11 Q. For the record, the name is spelled Kazadi, K-A-Z-A-D-I; Mokili, M-O-K-I-L-I; Justin
12 or Justin.

13 Mr Witness, let me put another name to you and ask you if you know that person. Well,
14 Mokili, before I move on, was a teacher at the boys' primary school in Mudzipela. Do
15 you know him?

16 A. No.

17 Q. Simbalina Yelikana Philogène, do you know that person?

18 A. No.

19 Q. Let me spell out that name for the record: S-I-M-B-A-L-I-N-A. Yelikana,
20 Y-E-L-I-K-A-N-A. And Philogène. She was a teacher at the boys' primary school. Do
21 you know her?

22 A. I don't know her.

23 Q. Mbidjo Mhoma Ignace, do you know that person?

24 A. No.

25 Q. For the record, that name is spelt Mbidjo, M-B-I-D-J-O. Mhoma, M-H-O-M-A,

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0190

1 Ignace, teacher at the boys' primary school in Mudzipela. Do you know that person?

2 A. I don't know him.

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted) according

12 to her she is not at all aware of any recruitments that may have taken place in a primary or

13 secondary school. She also went on to say that was even impossible for that to happen

14 because there was so much movement and agitation during the war that the children had

15 to stay home and that no one went to school. Does that refresh your memory?

16 A. No, not at all because there was no war at that time.

17 Q. So you say there was no war and, therefore, we must agree on the date on which this

18 happened. Clearly in your statement you said it was in November. Do you remember

19 that?

20 A. No, I didn't say November.

21 Q. Okay, we will go back to the month of November, but if it is not November, what

22 month are you talking about because in your testimony you actually did not say

23 November?

24 A. I said before August. That is what I said. Before the month of August.

25 Q. Let me give you the reference for the benefit of the Prosecution, and I'm referring to

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0190

1 the segment dealing with your mention of the month of November. Document
2 DRC-OTP-2075-0691, page 698. And I'm going to read out for the record the following,
3 beginning at line 270.

4 Well, maybe this document could be displayed for the benefit of the witness as well.

5 So, Mr Witness, you're going to see this document displayed before you shortly.

6 I'm going to begin reading on line 270.

7 THE COURT OFFICER: It seems that the document is too big for eCourt. It is still
8 loading.

9 MR BOURGON: Thank you.

10 Q. (Interpretation) Well, because it's taking time, I will just read it out. It's on line
11 270.

12 "Interviewer 1: And what school was it?

13 The interviewed person: It was the primary school, the Mudzipela primary school, that's
14 where I was. It was in November 2002.

15 Interviewer 1: It was in November 2002?

16 Interviewed person: Mm-mm. If my memory serves me well, it was in November 2002,
17 I think. It was in 2002, in November."

18 This is what you stated in your own statement; do you remember that?

19 A. Yes, I do, but I said November perhaps -- I can confirm 2002, but frankly I have
20 doubts about the month. And when you read it yourself you can see that there were
21 doubts in my mind about the month. But as for the year, I'm sure it was 2002.

22 Q. Okay. In that case you can't tell us when it was in 2002, but a moment ago you said
23 it was before the month of August?

24 A. Yes.

25 Q. Is that more certain or less certain?

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Open Session)

ICC-01/04-02/06

- 1 A. Yes, it's more certain in my mind, it was before August, I believe.
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
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Trial Hearing
WITNESS: DRC-OTP-P-0190

(Open Session)

ICC-01/04-02/06

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Page redacted – Private session

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Open Session)

ICC-01/04-02/06

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Page redacted – Private session

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Open Session)

ICC-01/04-02/06

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13 (Redacted)

14 MR BOURGON: Mr President, I know it's five minutes before 1 o'clock, but the next
15 topic will be more than five minutes, so if I can maybe stop here and then I will
16 conclude --

17 PRESIDING JUDGE FREMR: No, Mr Bourgon, because we have to spare any minute, so
18 please continue. I will simply break in the middle of your topic. Sorry of that.

19 MR BOURGON: No problem. I'm available to the Trial Chamber, Mr President.

20 Q. (Interpretation) Witness, I'd like to go on to another topic. The visit -- or, rather,
21 the kidnapping of Minister Ntumba Luaba by members of the UPC. Are you familiar
22 with that event?

23 A. Yes, very well, (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Open Session)

ICC-01/04-02/06

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Page redacted – Private session

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Open Session)

ICC-01/04-02/06

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4 PRESIDING JUDGE FREMR: Mr Bourgon, the interpreters have problem to translate
5 because you are too quick. So don't forget, keep the three-seconds rule between question
6 and answer. Thank you.

7 THE WITNESS: Merci.

8 MR BOURGON: (Interpretation)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 Q. Who planned the event?

15 A. Well, there's two ways of looking at it. There was the idea, the idea of kidnapping
16 Ntumba Luaba, the idea of kidnapping Ntumba Luaba, that is to take Thomas Lubanga
17 and to let Ntumba Luaba go. That idea was Bosco's idea; in other words, to take Ntumba
18 Luaba and to take Thomas Lubanga and then let Ntumba Luaba and the delegation go.

19 (Redacted)

20 (Redacted)

21 (Redacted) Chief Kahwa

22 suggested the following: Chef Kahwa said we should take both Ntumba Luaba and
23 Thomas Lubanga, take them up to Mandro, both of them, keep them and then ask
24 Kinshasa for ransom that we would give to our people, and then we would release them.
25 So my question was, in that case, how are we going to convince them? Because he has to

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Open Session)

ICC-01/04-02/06

1 go back to Kinshasa, he's supposed to go back to Kinshasa with Thomas Lubanga after the
2 speeches. So Bosco said we could go to the hospital where injured people are, where our
3 injured men are, that is the soldiers who had been injured, and rather than going to the
4 airport, we would go to Mandro as Chief Kahwa suggested. And that's exactly what
5 happened. So I think I've explained how the events occurred.

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 PRESIDING JUDGE FREMR: Mr Bourgon, I have to interrupt you, so just last question if
11 you need, but then I have to -- no? Okay, fine.

12 So now please take Mr Witness away.

13 So thank you, Mr Witness, and we will see you after the lunch break. It will be the last
14 part of your testimony.

15 THE WITNESS: (Interpretation) Thank you very much, your Honour.

16 (The witness stands down)

17 PRESIDING JUDGE FREMR: And now, court officer, please, let's move into open
18 session.

19 (Open session at 1.03 p.m.)

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

21 PRESIDING JUDGE FREMR: Thank you.

22 So for the sake of planning, Mr Bourgon, how much time you will need to finish
23 cross-examination of this witness?

24 MR BOURGON: Mr President, as much time as I have left. And I could keep him for
25 three more days.

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0190

1 PRESIDING JUDGE FREMR: I believe you.

2 Mr Iverson, how do you envisage a need for re-examination at the moment?

3 MR IVERSON: Well, this is of course subject to what happens this afternoon, but I do
4 right now plan on asking for a re-examination probably around 10 to 15 minutes.

5 PRESIDING JUDGE FREMR: All right.

6 So just to be precise, Mr Bourgon, according our measuring you still have at your disposal
7 1 hour and 6 minutes. So be ready that we really ask you to finish at this time.

8 Now we adjourn and we will reconvene at half past 2.

9 THE COURT USHER: All rise.

10 (Recess taken at 1.05 p.m.)

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

12 THE COURT USHER: All rise.

13 Please be seated.

14 PRESIDING JUDGE FREMR: Good afternoon, everybody. We will start with two oral
15 rulings. The Chamber will first deliver its oral ruling on the Prosecution request bearing
16 filing number 1326, seeking the admission under Rule 68(3) of the prior recorded
17 testimony and associated documents of Witness P-9 -- sorry, 894.

18 In its request the Prosecution seeks admission of all but one section of the witness
19 statement, which relates to the alleged murder of Colonel Lusala by Mr Ntaganda, as well
20 as two sketches annexed to the statement. The Prosecution also appends to its request
21 the victim application form for Witness P-894, which it submits may be necessary to
22 understand the materials, but which it does not seek to be admitted.

23 The Prosecution indicates that in addition to admission of these materials it seeks to
24 conduct a supplementary examination of the witness of one-and-a-half hours.

25 The Defence responded to the request in filing 1365, indicating that it does not oppose

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0190

1 admission of the identified materials, but objects firstly to the Prosecution's proposed
2 procedure for their introduction and, secondly, to the admissibility of the evidence
3 concerning the alleged murder of Colonel Lusala by Mr Ntaganda on the basis that this
4 incident was not charged in the Updated Document Containing the Charges.

5 Yesterday in filing 1373, the Prosecution sought leave to reply to the response on one
6 issue; namely, the admissibility of the evidence of Mr Ntaganda's direct perpetration of
7 murder of individuals who are not referred to by name in the Updated Document
8 Containing the Charges.

9 Yesterday evening the Defence responded by way of email submitting that it does not
10 object to leave to reply being granted. However, having regard to the numerous
11 submissions previously received on this broader issue, the Chamber does not consider it
12 will be assisted by further submissions with respect of this matter in connection with
13 Witness P-894's testimony.

14 Accordingly, the request for leave to reply is rejected.

15 Having considered the submissions before it, and in light of its previous guidance on the
16 examination of upcoming witnesses, including with respect to the application of Rule
17 68(3), and in relation to time estimates, the Chamber indicates at this stage that in
18 principle the application of Rule 68(3) is appropriate for Witness P-894.

19 Given the issues raised by the parties, the Chamber considers it necessary to give the
20 following guidance on three points:

21 First, consistent with its prior rulings, most recently with respect to Witness P-190 and as
22 outlined in our decision with filing number 968, the Chamber recalls that the conduct of
23 an accused person, in particular during the temporal period of the charges, has sufficient
24 potential relevance, including in relation to various modes of liability and to mens rea.

25 The Chamber, therefore, rules that evidence on the murder of Colonel Lusala has prima

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0190

1 facie probative value and is not in principle inadmissible. However, the Chamber has
2 previously indicated that any examinations in chief in relation to such evidence should be
3 limited.

4 Consequently, rather than permitting viva voce examination specifically on this topic, the
5 Chamber shall admit the witness statement bearing the ERN DRC-OTP-2076-0194 in its
6 entirety, together with two accompanying sketches.

7 Second, on the basis of the foregoing, the Chamber sees no compelling reason why the
8 Prosecution needs to elicit evidence of Colonel Lusala's murder viva voce. The
9 supplementary examination of the witness shall therefore not exceed one hour and should
10 not be merely repetitive of the witness statement. While not forbidding leading
11 questions entirely, the Prosecution is directed to first aim to elicit any clarifications to the
12 witness statement in a non-leading fashion.

13 And, third, the Chamber does not consider that admission of the victim application form
14 for Witness P-894 is necessary to understand the witness statement, noting in particular
15 the clarification provided at paragraph 68 thereto.

16 Considering further that the Prosecution does not seek admission of the victim application
17 form, the Chamber does not consider it necessary to admit it at this stage as part of the
18 requested Rule 68(3) materials.

19 The granting of the request on the aforementioned basis will be contingent on the
20 requirements of Rule 68(3) being met; namely, first, Witness P-894 being present before
21 the Chamber; second, the witness being available for questioning by the parties and by the
22 Chamber; and, third, that the witness does not object to the submission of the materials in
23 question.

24 As a final matter, the Chamber orders that public redacted versions of filings 1326, 1365,
25 and 1373 be filed within two weeks.

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0190

1 This concludes the Chamber's ruling.

2 And the second ruling we will now deliver is our ruling on the Defence request dated

3 10 May 2016, with filing number 1314.

4 Therein the Defence requested the admission of the first five pages of document

5 DRC-OTP-2090-0089, the victim application form of Witness P-887, for the sole purpose of

6 impeachment.

7 The Prosecution responded on 30 May 2016, its filing 1348, indicating that it did not

8 oppose the request provided that all six pages of the form are admitted.

9 The Legal Representative for Victims of the attacks also responded on 30 May 2016

10 opposing the request.

11 The Chamber observes that extensive questioning in relation to the form was conducted

12 during the examination-in-chief, cross-examination and re-examination of Witness P-887

13 and notes that the ambiguities concerning the form that were raised therein. Accordingly

14 the Chamber rules that the form may be admitted for impeachment purposes and in the

15 circumstances considers it appropriate to admit it in its entirety.

16 The Chamber orders further that public redacted versions of the request as well as the

17 responses be filed within two weeks.

18 This concludes this Chamber's ruling.

19 Now we can move to the rest of cross-examination of our witness.

20 So as I said, Mr Bourgon, you still have at your disposal 1 hour 5 minutes, if I'm not

21 wrong. So, please, you may proceed.

22 MR BOURGON: Thank you, Mr President.

23 Q. (Interpretation) Good afternoon, Witness.

24 A. Good afternoon, Counsel.

25 Q. Just before the break, the lunch break, we were talking about the abduction of

Trial Hearing

(Private Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0190

1 Minister Ntumba Luaba by people from the UPC. First question: Can you confirm that
2 the purpose of the abduction was to seek the release of people who were prisoners in
3 Kinshasa and who belonged to the UPC?

4 PRESIDING JUDGE FREMR: Sorry, sorry, sorry. We have to move into private session.
5 We are still in open.

6 So now, court officer, let's move into private session.

7 (Private session at 2.43 p.m.) *(Reclassified partially in public)

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

9 PRESIDING JUDGE FREMR: Mr Bourgon, please proceed.

10 MR BOURGON: Thank you, Mr President.

11 Q. (Interpretation) Mr Witness, I believe that you understood the first part of my
12 question; namely, that the purpose of the abduction of Mr Ntumba Luaba, the minister,
13 was to seek the release of people who were prisoners in Kinshasa.

14 A. No, it was notables or leaders of the Ituri who were in Kinshasa.

15 Q. Did the operation succeed, can you confirm that?

16 A. Yes, it was successful.

17 Q. The minister was released and people -- the minister was returned and people were
18 released, correct?

19 A. Yes, correct.

20 Q. You also stated that the minister had visited a number of locations during the time
21 he spent in Bunia; is that correct?

22 A. Yes.

23 Q. Can you confirm, Mr Witness, that Minister Ntumba Luaba in fact was not coming
24 to Bunia for the first time, that was not his first visit to Bunia, correct?

25 A. Yes, that is correct, it was not his first time.

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Private Session)

ICC-01/04-02/06

1 Q. In a previous visit in July 2002 he had had the opportunity, first of all, to visit the
2 freedom hospital. Do you recall that?

3 A. Yes, I do.

4 Q. During that first visit, the same first visit, he also had the opportunity to visit the
5 mass grave in Mudzipela; do you remember that?

6 A. I heard about that.

7 Q. You were not there when the minister went to visit the mass grave in Mudzipela; is
8 that correct?

9 A. I was not there.

10 Q. But you know that the victims found in the mass grave in Mudzipela were in the
11 most, in the main Hemas who had been killed by Lendus at that time, correct?

12 A. I wasn't there in person.

13 Q. Can you confirm that those who are buried in the mass grave are victims of the
14 Lendu attacks on Bunia in the month of August 2002?

15 A. I cannot confirm that because you have just said that the first time Ntumba Luaba
16 visited was in July and now you're talking about mass graves in August, so I don't
17 understand.

18 Q. You're absolutely right. They were the Hema victims of the previous attack. So
19 you don't have any information on that topic, correct?

20 A. No, not at all.

21 Q. During that first visit there was no problem, right, it unfolded without any
22 problems?

23 A. Well, I wasn't there so I cannot confirm that.

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Private Session)

ICC-01/04-02/06

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- 25 (Redacted) It is then at

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Private Session)

ICC-01/04-02/06

1 night around 9 p.m. that the official announcement was made to Ntumba Luaba that he
2 had been taken hostage along with Thomas Lubanga because we needed our notables and
3 leaders to be returned to Ituri.

4 Q. And this announcement was made by Chief Kahwa to the minister at his residence
5 in Mandro; is that correct?

6 A. Yes, that's correct.

7 THE INTERPRETER: Mr President, they are going too fast, counsel and witness.

8 PRESIDING JUDGE FREMR: Please, I got the message that you are both a bit too fast, so
9 please both slow down to get precise interpretation and precise transcript. Thank you.

10 MR BOURGON: Thank you, Mr President.

11 Q. (Interpretation) Can you confirm that Thomas Lubanga was not aware of the plan
12 to take Minister Ntumba Luaba as a hostage; is that correct?

13 A. While at his residence he was not aware of it, but when he got to Mandro he was
14 then officiously informed of the plan.

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 Q. Mr Witness, according to information available to us -- by the way, who is Litsha?

21 A. Litsha was a senior member of the UPC.

22 Q. Can you confirm that he subsequently became the secretary general of the UPC?

23 A. Yes, I can confirm that.

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Private Session)

ICC-01/04-02/06

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11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 Q. So you maintain your testimony although information available to us shows that

17 (Redacted) Do you stand by your testimony?

18 A. Yes, I stand by the testimony that (Redacted)

19 (Redacted)

20 Q. Witness, the minister was then released and he left Bunia on 1 September; is that
21 correct?

22 A. Yes, that is correct.

23 Q. On 1 September he was taken to the airport; is that correct?

24 A. Yes, (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Private Session)

ICC-01/04-02/06

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22 (Redacted)

23 Q. Thank you. Those who were present in Mandro, can you confirm, given that the
24 abduction lasted some time, was Kisembo present in Mandro -- or, he was not present in
25 Mandro?

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Private Session)

ICC-01/04-02/06

1 A. Yes, he was not present but he came to Mandro from time to time, he was in town.

2 Q. Let me move on to something else, that is your testimony regarding the attack on
3 Songolo. First of all, I would like to draw your attention -- or, rather, ask you to confirm
4 that the FPLC troops or UPC, or even at that time -- well, at that time the troops didn't
5 have a name; is that correct?

6 A. Yes.

7 Q. If you do recall the expression "the boys of Thomas" was used; is that correct?

8 A. This is the first time I hear that.

9 Q. Very well. You see the name FPLC and the creation of the FPLC actually happened
10 after the minister left within the framework of the activities of 5 September; is that correct?

11 A. Yes.

12 Q. You know, and please would you confirm whether the FPLC had warded off the
13 enemy; namely, the APC, and driven them far off -- or, far back; whereas there was still
14 some conflict in Komanda; is that correct?

15 A. Well, what I know is that they were around Komanda.

16 Q. Can you confirm that the enemy, the APC tried to return to Bunia from Beni; is that
17 correct?

18 A. Yes, I can confirm that.

19 Q. I would now like to look at a document with you, it's document
20 DRC-OTP-0024-0119. That document will be displayed before you shortly.

21 So I'd like to draw your attention, Witness, to the top part of the document.

22 THE COURT OFFICER: Mr Bourgon, we do not have this document in eCourt. Are
23 you sure about the number?

24 MR BOURGON: (Interpretation) The document is going to -- okay, I will ask my
25 question to the witness.

Trial Hearing

(Private Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0190

1 In this document, Witness, what we're talking about is document which was drafted for
2 the attention of his excellency the president in Bunia, 23 August 2002. (Redacted)
3 (Redacted)
4 (Redacted) Do you remember such a document shown to you by the Prosecution during
5 your preparation session?

6 A. Yes, I remember the document.

7 Q. I just have one question to put to you with regard to this document, and this is on
8 page 2 of the document. It's written here, and I quote, from page 2:

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 MR IVERSON: I would just like to make the observation I think that it would only be
13 fair to the witness if he were able to look at this document. And if it can't be pulled up
14 on the computer we have a paper copy of the document.

15 PRESIDING JUDGE FREMR: Let's do that, even the quotation is rather extensive. So is
16 it possible, court officer?

17 MR BOURGON: Mr President, if we cannot have the document I will just ask the
18 question without the document and without citation.

19 PRESIDING JUDGE FREMR: All right then.

20 MR BOURGON: (Interpretation)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 Q. I mentioned it at the start of my cross-examination, Komanda is a very important
25 road in order to have access to Bunia, is it not?

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Private Session)

ICC-01/04-02/06

1 A. Please could you repeat that.

2 Q. I ask you if you are able to confirm that Komanda is on a very important road to
3 have access to Bunia?

4 A. Perhaps you're pronouncing it wrong, you're saying commander. Komanda,
5 Komanda, Komanda. Okay, now can you ask the question again.

6 Q. So the question is as follows: Komanda, I don't know if I'm pronouncing it right or
7 not, is on an important road if you want to go to Bunia?

8 A. Yes.

9 Q. And after Bunia was taken you were able to confirm that there were attacks by the
10 FPLC on Komanda, you know that, do you not?

11 A. Yes.

12 Q. You know that the APC withdrew -- they took Komanda again?

13 A. Yes.

14 Q. And you knew that the FPLC re-took Komanda, did you not?

15 A. Yes.

16 Q. Now, about Komanda. Are you able to confirm that Songolo isn't far from
17 Komanda?

18 A. No, it's far from Komanda.

19 Q. Well, what distance is it from Komanda?

20 A. Bunia, Komanda, 78 kilometres. Bunia, Songolo, that's approximately 30
21 kilometres, or 35 kilometres. Between 30 and 35. To say that -- well, Songolo, Komanda,
22 it's more than 50 kilometres. So the difference between Bunia, Songolo is close to the
23 other and that's why I said it's far.

24 Q. According to the information we have, Witness, the person who's responsible for
25 carrying out the attack on Komanda, that was Kisembo. Would you agree with that?

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Private Session)

ICC-01/04-02/06

1 A. I agree with you.

2 Q. Would you agree, Witness, that what happened in Songolo was a result of the attack
3 on Komanda?

4 A. Not at all, it's different. The attack on Songolo came after. And the Komanda one
5 was something before.

6 Q. According to the information available to us, coming from members of the FPLC
7 present, the APC forces had managed to take Songolo, and it's for that reason that there
8 was an engagement between the FPLC and the APC. Do you have information in that
9 regard?

10 A. I say that's false because Komanda during the attack on Songolo, before that attack
11 the commander who was there who controlled Irumu, Marabo to Songolo that was
12 Commander Bagonza.

13 Q. I'm sorry, I'm looking at your answer.

14 Now, you're speaking about Marabo and you say that it was Commander Bagonza, and
15 you spoke about Bagonza in your testimony, did you not?

16 A. Yes.

17 Q. I put it to you, Witness, that Commander Bagonza didn't arrive in Bunia until the
18 end of the month of September, so he wasn't there during the events of Songolo; would
19 you agree with that?

20 A. I don't agree with you because Commander Bagonza went for consultation in
21 Mandro, consulted Bosco with regard to this attack, Songolo, and then he came back to
22 Marabo where he was to wait for the message from Bosco to go to Songolo.

23 (Redacted)

24 (Redacted)

25 Q. So I put it to you, Witness, that Commander Bagonza, Commander Tchaligonza and

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Private Session)

ICC-01/04-02/06

1 another commander who you know, Mugisa Paul, do you know that name?

2 A. Yes.

3 Q. That the three arrived together from Uganda towards the end of September after the
4 Songolo events; could you confirm that?

5 A. I don't confirm it because Bagonza and Tchaligonza went to Uganda, indeed, when
6 the delegation -- or, two days before the delegation of the UPC. So Thomas Lubanga and
7 the elders went to Kinshasa and there they left for Kampala, but they came back from
8 Kampala before the arrival of Thomas Lubanga.

9 Q. Witness, on the basis of the information in our possession from FPLC witnesses who
10 were present in Songolo, I put it to you that Bosco Ntaganda was not present in Songolo at
11 any time during these events that you spoke about. Does that refresh your memory?

12 A. Not at all, because (Redacted)

13 (Redacted)

14 (Redacted)

15 Q. I'm going to move on. The issue -- well, we spoke about -- I think we're still in
16 private session. So I would like to speak in private session about Bulamuzi. You know
17 Bulamuzi, do you not? Chief of the collectivity of Nyankunde, is he not?

18 A. Yes.

19 Q. And according to your testimony Bulamuzi was killed in Bunia on the same day that
20 Kisembo was wounded in Nyankunde; is that right?

21 A. Yes.

22 Q. Now, if I've understood well your testimony there was Kisembo who was wounded
23 from Nyankunde, he gave orders that Mr Bulamuzi be beaten up because he was with the
24 Lendu; is that correct?

25 A. With the Ngiti combatants.

Trial Hearing

(Private Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0190

1 Q. With the Ngiti combatants. According to your testimony you -- Bulamuzi was
2 transported to a garage where he was beaten up; is that correct?

3 A. Not in a garage, but not far from the garage, next to the workers' centre.

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 A. (Redacted) Kisémbó arrived from Nyankunde wounded. (Redacted)

21 (Redacted)

22 (Redacted) And some minutes afterwards Bulamuzi

23 came with Commander Budza from the police and the nurse was the commander from

24 Nyankunde in the national police. So when he arrived Commander Kisémbó didn't

25 want the presence of Mr Bulamuzi, so Kisémbó himself stated that, thanks to Bulamuzi, he

Trial Hearing

(Private Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0190

1 wanted to kill him in Nyankunde. So he was complicit with the Nyankunde combatants.

2 And some minutes afterwards he ordered the soldiers to take him down to the place

3 which you've just mentioned, next to the garage. And the commander of the police, I

4 don't know how he disappeared -- (Redacted).

5 Q. Now, you'll see page 95, lines 4 to 5. When you speak about Kisembo, you said he

6 ordered the soldiers to take him down to the place that you've just mentioned. When

7 you say "faire descendre" in French, what do you mean?

8 A. Yes, the place --

9 Q. Well, you said it was a garage.

10 A. I said it wasn't a garage, I said it was next to the garage to a room of one of the

11 members of the family of this place.

12 Q. My question, Mr Witness, applies to the issue of "faire descendre," take him down.

13 Do you mean you asked him to be shot, he was ordered to be shot?

14 A. No.

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

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Trial Hearing
WITNESS: DRC-OTP-P-0190

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0190

(Private Session)

ICC-01/04-02/06

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7 PRESIDING JUDGE FREMR: Mr Iverson.

8 MR IVERSON: I think Defence counsel just stated it as I was standing up so I'll
9 withdraw.

10 PRESIDING JUDGE FREMR: Mr Bourgon.

11 MR BOURGON: (Interpretation)

12 Q. Witness, together, we're going to look at your statement. Here we're talking about
13 the following document DRC-OTP-2075-0733, page 750, lines 698, 795.

14 You can see I think in front of you.

15 A. No.

16 Q. That's it. I'd like to draw your attention to line 698.

17 Are you there?

18 A. Yes.

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Private Session)

ICC-01/04-02/06

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7 (Redacted)

8 (Redacted)

9 Q. We have information, Witness, from a witness statement, a Prosecution witness
10 statement, and here I'm going to ask permission before mentioning the paragraph.
11 (Speaks English) Mr President, I would like to use, to have permission to use a statement
12 of a Prosecution witness. The number of the witness is (Redacted), it's a document that
13 was disclosed by the Prosecution and the witness was asked about these events and about
14 the death of Mr Bulamuzi and we would like just to at least provide this information to
15 the witness to see what he can say about it?

16 PRESIDING JUDGE FREMR: Mr Iverson, any objection?

17 MR IVERSON: Well, Mr President, I believe that in order to be faithful to the provision
18 in the conduct of proceedings Defence counsel needs to make the Chamber aware of what
19 passage he intends to use with the witness and we would appreciate that as well so we
20 know what this is about.

21 PRESIDING JUDGE FREMR: Mr Bourgon.

22 MR BOURGON: Well, Mr President, I'm not sure if I can -- how I can show you this
23 paragraph without showing it to the witness, but I can read the paragraph and then if the
24 Chamber refuses then I can move on to save some time.

25 PRESIDING JUDGE FREMR: I think I got very good proposal from court officer, they

Trial Hearing

(Private Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0190

1 will cover the screen of Mr Witness and we, the rest, we will have a chance to watch it.

2 So please.

3 MR BOURGON: The document, Mr President, is DRC-OTP-2067-2480. I would like to
4 have page 2493. And the relevant part begins at line 486 until 505, but I would only read
5 to the witness the part that begins at line 500.

6 PRESIDING JUDGE FREMR: So please proceed, Mr Bourgon.

7 MR BOURGON: Thank you, Mr President.

8 Q. (Interpretation) Witness, now I'm going to read a paragraph from a statement of a
9 witness, you don't have the name of the witness. Now, this is what he said:

10 The question: "Did (Redacted) say why they killed Bulamuzi?"

11 And the person interviewed in this statement says: "Yes. Apparently he had betrayed
12 the general -- he had betrayed the general who suspected that he was the one who had
13 denounced their operations. In 2010, (Redacted), I was told that he was also
14 dead. A small one, a kadogo had killed him in the town. A kadogo took vengeance on
15 him, on (Redacted)."

16 MR BOURGON: Mr President, if I can have permission to go on to the next paragraph.

17 Q. (Interpretation) So we'll go on to the next paragraph which you have before you,
18 and I'm going to read from line 508:

19 "When I went in 2010 to Bunia, I was told how he had been killed."

20 The question here -- well, we're talking about Bulamuzi.

21 "Kadogo, who he had mistreated, because it was really the way they were, took a soldier
22 from the movement and beat him up. It was a subordinate who beat him up and the
23 kadogo killed him. It said that this small one arrived and he said, 'You recognize me?'
24 He said, 'No, I'm such-and-such a person. You've done this to me and that to me.
25 Today I'm going to kill you.' And he laughed or he joked. He wanted to give an order.

Trial Hearing

(Private Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0190

1 'Put your arm, put your weapon on the ground small one.' And the small one said,
2 'Today I'm the one who has the weapon, I'm the one giving the orders.' And the small
3 one shot him coldly in the town (Redacted). His name is (Redacted). I've already told
4 you his surname before."

5 My only question, Witness, you see that the witness here says that Mr Bulamuzi was
6 killed by a kadogo in the middle of the town. Does that make you want to change your
7 testimony?

8 A. Yes, of course. I want to explain. You've just said a child soldier. A kadogo is
9 Swahili. A child soldier killed him in the town.

10 Firstly, Counsel, I want to tell you that the town of Bunia is a place where there's an
11 overpopulation, it's overpopulated. If Bulamuzi, a customary chief -- well, in the
12 collectivity of Andisoma that is where there's a major hospital of Orientale province. So
13 he was known by everybody.
14 Now, if Bulamuzi was killed by a child soldier in the town, in the heart of the town, then I
15 do not think that there would be speculation, I think that they would just get his body
16 because in the town it is the Bira collectivity, you couldn't get his body to disappear. His
17 body would have been buried with honour. And that's -- gives you -- I don't agree with
18 this testimony.

19 Q. Do you accept that it is possible that a kadogo killed Bulamuzi in the heart of the
20 city of Bunia?

21 A. I cannot accept that.

22 Q. Let me now show you some new information we have received, and this is from a
23 Prosecution witness statement. And now I'm going to mention it to you because it's
24 mentioned in the statement, but I need leave.

25 MR BOURGON: Mr President, I'd like to have permission to show a statement. This is

Trial Hearing

(Private Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0190

1 a statement coming from (Redacted). And in his statement he talks about this event.

2 And I would like to show this information, what (Redacted) said about this

3 information --

4 PRESIDING JUDGE FREMR: Mr Bourgon.

5 MR BOURGON: -- so that I can ask the witness --

6 PRESIDING JUDGE FREMR: Mr Bourgon, please hold on for a moment.

7 Mr Iverson.

8 Mr Iverson.

9 MR IVERSON: I would just ask -- I don't know what -- what Defence counsel intends to
10 do here, but I think we have to be very careful about revealing --

11 MR BOURGON: I have no intention to do so.

12 MR IVERSON: Okay. I understand. I think I understand. I'm sorry I have to be
13 cryptic, but --

14 PRESIDING JUDGE FREMR: It's not clear to me what is the issue, but I guess you
15 are -- you both are clear, so it's fine with me.

16 MR IVERSON: Okay. Thank you, Mr President.

17 MR BOURGON: (Interpretation)

18 Q. Now, Witness, we have a statement here which was provided to us by the
19 Prosecution, it is a statement given by (Redacted). I want to read an excerpt of that
20 statement, number (Redacted), and I'd like page (Redacted) to be displayed at
21 paragraph -- or, lines 90 -- rather, 96 to -- 86 to 93.

22 PRESIDING JUDGE FREMR: Mr Iverson.

23 MR IVERSON: Apparently we didn't understand each other, Mr President. I'm going
24 to have to ask to make a submission in the --

25 PRESIDING JUDGE FREMR: Absence.

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Private Session)

ICC-01/04-02/06

1 MR IVERSON: -- absence of the witness.

2 PRESIDING JUDGE FREMR: All right then.

3 Court officer, please escort Mr Witness for a while out of the courtroom.

4 Sorry, Mr Witness, it will take just a moment, but this dispute has to be made in your
5 absence.

6 (The witness stands down)

7 PRESIDING JUDGE FREMR: Mr Iverson, please proceed.

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

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20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

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Trial Hearing
WITNESS: DRC-OTP-P-0190

(Private Session)

ICC-01/04-02/06

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Page redacted – Private session

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Private Session)

ICC-01/04-02/06

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Page redacted – Private session

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Private Session)

ICC-01/04-02/06

- 1 (Redacted)
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22 Now, please bring witness back to the courtroom.

23 Just to check, how much time still remains at the disposal of Mr Bourgon? Court officer,
24 could you kindly confirm? You have already informed me, am I right, but -- thank you.

25 So now 15 minutes for you, Mr Bourgon.

Trial Hearing

(Private Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0190

1 MR BOURGON: Thank you, Mr President.

2 (The witness enters the courtroom)

3 PRESIDING JUDGE FREMR: Sorry for inconvenience, Mr Witness, but it was necessary.

4 Now, Mr Bourgon, please proceed.

5 THE WITNESS: (Interpretation) Thank you.

6 MR BOURGON: (Interpretation)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

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Trial Hearing
WITNESS: DRC-OTP-P-0190

(Private Session)

ICC-01/04-02/06

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Page redacted – Private session

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Private Session)

ICC-01/04-02/06

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18 (Redacted)
19 (Redacted)
20 (Redacted)

21 Q. Let me now move to my last line of questioning, Ezekere. According to your
22 testimony the crimes committed in Ezekere were allegedly committed by Chief Kahwa in
23 the company of Bosco Ntaganda; is that correct?

24 A. Yes, that is correct.

25 Q. Are you aware, Mr Witness, that Chief Kahwa in fact was convicted and sentenced

Trial Hearing

(Private Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0190

1 to prison in relation to events that took place in Zumbe on the dates that you mentioned?

2 Are you aware of that?

3 A. I don't know, but please can you try to locate Zumbe and Ezekere? Do you have a
4 map which shows Zumbe and Ezekere? Ezekere is just an extension of Zumbe.

5 Q. According to information available to us, Zumbe is a village within Ezekere
6 collectivity. And the facts described in the judgment convicting Chief Kahwa relate to
7 the facts that you also mentioned in your testimony; is that correct?

8 A. Well, for your information Ezekere is not a collectivity; it is the Walendu-Djatsi
9 collectivity in which Ezekere is a village, which is an extension of Zumbe. So you start
10 off as Ezekere and end up in Zumbe within the Walendu-Djatsi collectivity. So Ezekere
11 is not a collectivity.

12 Q. I'm sorry, I think you are right. Maybe not a hundred per cent.

13 However, Ezekere is a groupement and Zumbe is a village; is that correct?

14 A. Yes, Ezekere is a groupement and Zumbe is a locality within Ezekere groupement.

15 Q. Are you able to tell the Court where the attack took place? Since you mention in
16 Ezekere, in which part of Ezekere did the facts that you talked about occur?

17 A. I think that in my statement I didn't mention that I was present at the attack. What
18 I know is that these things happened in the Ezekere locality. And Zumbe is within the
19 Ezekere groupement. So there's a locality and then there's the Ezekere groupement. It's
20 a locality within that groupement. So when you confirm to me or when you confirm to
21 me or you say that Chief Kahwa was in Ezekere groupement, then it does confirm the fact
22 that Kahwa was present during Ezekere events because Zumbe is in Ezekere.

23 Q. If I understand your testimony properly, Mr Witness, you have then come to the
24 conclusion that Chief Kahwa was present (Redacted); is that
25 correct?

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Private Session)

ICC-01/04-02/06

1 A. Yes, with Bosco.

2 Q. Mr Witness, I put it to you that based on the information available to us,
3 Bosco Ntaganda did not play any role in those events. Does that refresh your memory?

4 A. No. That is your point of view, that is what you say yourself.

5 Q. Who told you about the attack, Mr Witness?

6 A. I got the information from several sources. Radio Candip talked about it, talked
7 about the attack. Then apart from that I was in Mandro thereafter. And then when
8 Minister Ntumba Luaba was in Mandro, then Chief Kahwa and the minister went to see
9 the camp and the houses that had been set up for the survivors or people who had been
10 displaced by the Ezekere war.

11 So this was information that was known to the people in Mandro, even officially, since
12 Chief Kahwa himself explained the attack, the attack on Ezekere. He explained it to
13 Ntumba Luaba, and even showed Ntumba Luaba the place where the women and
14 children who had fled the Ezekere attacks had been accommodated and fed.

15 Q. Mr Witness, I have two questions and I will be done.

16 Now, first you say it is Chief Kahwa himself who said so. When he said so, you were not
17 there when he did; right?

18 A. I was not there, (Redacted).

19 Q. Mr Witness, second question: In the course of your testimony, you talked about
20 people who were protected by Chief Kahwa near his residence. These were Lendus who
21 had occupied a piece of land close to his home and who were protected by him.

22 A. No, not a piece of land. It was actually the house which I just talked about.

23 Q. Those people were Lendus, Mr Witness, right?

24 A. Yes, they were Lendus.

25 Q. Mr Witness, I have had the opportunity to meet some of those people, and they

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Private Session)

ICC-01/04-02/06

1 confirmed to us that they were there because they had been attacked by other Lendus.

2 But since they were not radical Lendus, that is why they were under Chief Kahwa's

3 protection. Can you confirm that?

4 A. This is the first time I hear mention of the expression "radical Lendus," so I cannot
5 confirm this.

6 Q. Mr Witness, I want to thank you for your patience through the last few hours, and I
7 have no further questions for you.

8 However, Mr President, for the last two minutes I have a few documents I would like to
9 have admitted into evidence.

10 PRESIDING JUDGE FREMR: Please go ahead.

11 MR BOURGON: First documents, the first are the two UN documents, United Nations
12 document referred to this morning with the witness. That is DRC-OTP-2009-0146. And
13 the second document, DRC-OTP-0155-0147.

14 PRESIDING JUDGE FREMR: Mr Iverson, any objection?

15 MR IVERSON: No objection, your Honour.

16 PRESIDING JUDGE FREMR: Then those two documents are admitted into evidence as a
17 further -- two further Defence exhibits.

18 Mr Bourgon.

19 MR BOURGON: Mr President, the third document is DRC-OTP-1062-0395. (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Private Session)

ICC-01/04-02/06

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8 PRESIDING JUDGE FREMR: Mr Bourgon.

9 MR BOURGON: Mr President, it goes beyond the contradictions individual in the
10 document. It is the document itself which the witness does not recognize and the event
11 which led to the preparation of this document, if of course the event took place, and that's
12 the whole issue. The Chamber needs this document in order to determine whether the
13 event leading to the preparation of the document exists. And for this reason -- it is a very
14 short document. And I don't see the point of because the issues have been discussed
15 already, it should not be entered. The issue is is it helpful and is it necessary to
16 understand? And based on the questions I put to the witness at the beginning, we say it
17 is indeed necessary for the Chamber to understand the testimony of the witness for him to
18 refusing having signed the document and not recognising the event itself. Thank you.

19 MR IVERSON: If I may just add one last thing, your Honour.

20 PRESIDING JUDGE FREMR: Please, Mr Iverson.

21 MR IVERSON: I think the -- I don't know if perhaps my colleague misstated something
22 at the end. I don't think there was ever any testimony that he refused to sign the
23 document. The testimony is as far as I understand is that he didn't sign the document or
24 that there is no signature on the document.

25 PRESIDING JUDGE FREMR: He even denied that he has any knowledge about this.

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Private Session)

ICC-01/04-02/06

1 MR IVERSON: And the last thing is the Defence had the opportunity to ask whatever
2 questions it wanted about that document and if it still has time can still ask questions. I
3 don't know if there's any time allotted.

4 PRESIDING JUDGE FREMR: No, no, no. There's no further time. Give me a second.
5 (Trial Chamber confers)

6 PRESIDING JUDGE FREMR: So the Chamber's ruling is that we sustain the objection.
7 In our view, the only purpose to admit it would be for the purpose of impeachment.
8 And because the Defence has enough time, even utilised his time to cross-examine witness
9 thoroughly on this, so we don't see any need to admit this exhibit into evidence.

10 Mr Bourgon, any further proposal?

11 MR BOURGON: Other than to say that we will seek leave to appeal because we cannot
12 accept the Chamber's ruling. Thank you, Mr President. Or we accept it, but we don't
13 understand it. Thank you.

14 PRESIDING JUDGE FREMR: It is your right, Mr Bourgon.

15 Now, Mr Iverson, do you want to conduct any re-examination of the witness?

16 MR IVERSON: Yes, I would request 15 minutes to conduct re-examination.

17 PRESIDING JUDGE FREMR: Mr Iverson, 10 minutes because we would also like to put
18 questions.

19 MR IVERSON: Okay.

20 PRESIDING JUDGE FREMR: And we are, you know, we are in some -- because we can't
21 sit tomorrow for important reasons, and we will have to conclude his testimony today.
22 So sorry for that, but please try to be concise, 10 minutes.

23 MR IVERSON: I'll do my best to stop right at 20 after, Mr President.

24 QUESTIONED BY MR IVERSON:

25 Q. Sir, good afternoon. I just want to ask you a few questions based on the questions

Trial Hearing

(Private Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0190

1 that Defence counsel asked you. And the first question has to do with, earlier today on
2 page 18 of the transcript, the Defence had asked you a question about the relationship
3 between Mr Kisémbó and Mr Ntaganda. And I'm just going to read a portion of this
4 testimony and then ask a question. So on page 18, line 3, you state:

5 "So I confirm that Kisémbó was the bodyguard of Bosco Ntaganda in 1999. When Bosco
6 Ntaganda arrived in 2000, the start of 2000, and that's something I confirm, I saw it, I saw
7 them and I saw it in Bunia."

8 Question by defence counsel: "So, Witness, you said you saw that. What did you see?"

9 PRESIDING JUDGE FREMR: Sorry. Mr Bourgon, any serious reason to --

10 MR BOURGON: Well, I think it is improper re-examination. Re-examination is to
11 explore new issues not explored during examination-in-chief that were raised by the
12 Defence. The relationship between Kisémbó and Mr Ntaganda was explored at length
13 by the Prosecution during its examination-in-chief. I cross-examined on the issue. I did
14 not raise any new issues, so there is no -- no room or no possibility for re-examination on
15 an issue that was dealt with in cross-exam. I did not raise any new issue that deserves or
16 that requires re-examination.

17 PRESIDING JUDGE FREMR: I don't share this narrow interpretation of re-examination.
18 Objection is overruled.

19 Mr Iverson, please proceed.

20 MR IVERSON: Okay. My question will not relate to the relationship between
21 Mr Ntaganda and Mr Kisémbó, or at least I don't think it will.

22 Q. But so to cut to the chase on page 18, line 1, you say:

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Private Session)

ICC-01/04-02/06

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11 (Redacted)

12 Q. And could you tell the Chamber what it is that you saw?

13 A. The bodyguard of Wamba Dia Wamba, he came towards the south, towards the
14 former residence of Wamba. He went down to the town, to the corner Avenue Ituri.

15 Bosco came with his bodyguard Kitembo. And just looking, well, there was a conflict at
16 that time between Wamba's group and Tibasima's camp. And when Bosco saw the
17 person, he took his weapon which was in his bodyguard's hands behind Kitembo and he
18 had a pistol and he shot at the bodyguard of Wamba Dia Wamba, and I knew the
19 bodyguard very well. I can't remember the name at the moment. But that can happen
20 at any time.

21 There was a crowd. And the Ugandans, the UPDF arrived at the place and the body was
22 taken. And afterwards, after taking the body, I didn't follow the events as to where the
23 body was taken, but it was in broad daylight. And immediately I gave -- there was a
24 note about the defeat to Bosco Ntaganda. That was done in broad daylight when people
25 were outside the company called Temka (phon). It was just around that company. So it

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Private Session)

ICC-01/04-02/06

1 was on the other side of the road, Ituri road. That's what I saw.

2 Q. And could you tell the Chamber approximately when you saw this?

3 A. I can't remember exactly, but I remember it was around the time when the Wamba
4 events were. There was a noise -- well, people were saying that he was going to leave, so
5 the town was divided and the people further down were Mbusa and Tibasima and people
6 further up were Mbusa, Tibasima and in the south where there was the administration it
7 was Wamba. So the bodyguard had left the south to get to the camp which separated
8 their camp because the town was almost cut in two at that time. I can't remember exactly,
9 2001 or -- well, I can't say. I can't be precise in that regard. But it was a crime known by
10 a lot of people (Redacted). So this was a crime which
11 was committed. It was done during daylight and it was seen by a lot of people.

12 Q. And then I just want to follow up on another issue the Defence challenged you on.
13 On today's transcript, page 68, line 1, Defence counsel suggested to you that you
14 fabricated the story or your account of Mr Ntaganda taking the children from the
15 Mudzipela primary school. And he challenged you on the -- the month in which that
16 occurred. Do you recall that that the Defence challenged you on that?

17 A. I remember. I remember the reaction of the Defence.

18 PRESIDING JUDGE FREMR: Mr Bourgon.

19 MR BOURGON: Thank you, Mr President. The witness was not challenged on this
20 issue. The Defence highlighted the fact that his statement read November and then took
21 his testimony that it was in August. So there was --

22 PRESIDING JUDGE FREMR: Yes.

23 MR BOURGON: So there was no challenge about the date of this event.

24 PRESIDING JUDGE FREMR: I have to confirm, he corrected himself.

25 So, Mr Iverson, please move on.

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Private Session)

ICC-01/04-02/06

1 MR IVERSON: Okay. Well, in that case I just have one question on that.

2 Q. Do you recall whether Lompondo was still in office when that event took place
3 when Mr Ntaganda took the children from Mudzipela primary school?

4 A. That's a long time ago. I can't remember. My head is full. I can't remember for
5 the moment in order to be able to concentrate to remember this period exactly.

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

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Trial Hearing
WITNESS: DRC-OTP-P-0190

(Private Session)

ICC-01/04-02/06

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Page redacted – Private session

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Private Session)

ICC-01/04-02/06

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- 6 PRESIDING JUDGE FREMR: That's it. Thank you, Mr Iverson.
- 7 MR IVERSON: Based on that, can I just ask one short follow-up.
- 8 PRESIDING JUDGE FREMR: No, no, no. You went over your 10 minutes.
- 9 Now, Mr Bourgon, any need of re-cross in the light of Mr Iverson?
- 10 MR BOURGON: Yes, Mr President. Very shortly.
- 11 PRESIDING JUDGE FREMR: Very shortly, please.
- 12 QUESTIONED BY MR BOURGON: (Interpretation)
- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted)
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Trial Hearing
WITNESS: DRC-OTP-P-0190

(Private Session)

ICC-01/04-02/06

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11 Page Redacted – Private session

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Trial Hearing
WITNESS: DRC-OTP-P-0190

(Private Session)

ICC-01/04-02/06

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9 PRESIDING JUDGE FREMR: Thank you.

10 Now, Mr Witness, three questions from me, but please Mr Iverson.

11 MR IVERSON: I'm sorry, to interrupt you, Mr President, but when you shut down my
12 last question it was I wanted to submit --

13 PRESIDING JUDGE FREMR: Okay, I agree to take last question.

14 MR IVERSON: I just wanted to submit the document DRC-OTP-0128-0015 --

15 PRESIDING JUDGE FREMR: Which is?

16 MR IVERSON: -- into evidence. It's the photograph that --

17 PRESIDING JUDGE FREMR: I see.

18 MR IVERSON: -- (Overlapping speakers) shown.

19 PRESIDING JUDGE FREMR: Defence any objection?

20 MR BOURGON: No objection.

21 PRESIDING JUDGE FREMR: Very well.

22 Then this photograph is admitted into evidence as a further Prosecution exhibit.

23 Now, Mr Witness, three questions from my part, but please be absolutely brief because we
24 are almost over our time.

25 First one: You testified that -- about Chui mobile force demobilisation of child soldiers.

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Private Session)

ICC-01/04-02/06

1 Do you have any knowledge whether Mr Ntaganda was involved in this process of
2 demobilisation in Kampala?

3 THE WITNESS: (Interpretation) Thank you, your Honour. I don't have information
4 that Bosco participated in this demobilisation because this demobilisation started in
5 another country. It was the Ugandans who were more in charge of this demobilisation
6 under pressure from the international community.

7 PRESIDING JUDGE FREMR: All right. Fine. Thank you.

8 The second issue: You also testified that Bosco Ntaganda instructed Commander Salumu
9 to supervise the gold mines in Mongbwalu and the idea was to exploit those mines.

10 Could you be more specific on that? What does it mean this supervision on how those
11 gold mines were exploited by the UPC?

12 THE WITNESS: (Interpretation) Thank you, your Honour. These mines were firstly
13 exploited by the APC, the soldiers of the RCD-K/ML. And when the UPC took over the
14 mining town they took over the same mines that the APC soldiers occupied, RCD-K/ML.
15 Now, when I said supervise that means when Bosco left he left Commander Salumu to
16 give instructions to the people. So there were civilians who were working in the mines.
17 And it was forced work, forced labour to dig gold. So supervising, well, it's gold digging.
18 That's what it is, your Honour. And he was supervising how they were digging gold
19 and giving orders.

20 PRESIDING JUDGE FREMR: All right.

21 And did the UPC have any benefit from this production of gold mines, if you know
22 anything about that?

23 THE WITNESS: (Interpretation) Your Honour, these mines, these gold mines -- well, I
24 can't say it, the UPC benefitted more, it was individuals, commanders. The UPC didn't
25 benefit from the gold, each commander did.

Trial Hearing
WITNESS: DRC-OTP-P-0190

(Private Session)

ICC-01/04-02/06

1 PRESIDING JUDGE FREMR: All right. And my last question: (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 PRESIDING JUDGE FREMR: Thank you very much, Mr Witness. I have no further

13 questions.

14 Do my colleagues have any questions? No. No, all right.

15 So it means, Mr Witness, that we can conclude your testimony. I would like to thank you

16 because you spent a pretty long time with us, it was really demanding and tiring, I can

17 imagine. So we thank you because we believe that your testimony hopefully will assist

18 us in our effort to find the truth. So now thank you very much and we wish you a safe

19 journey home. Thank you.

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

21 THE WITNESS: (Interpretation) Thank you, your Honour. And I thank everybody.

22 (The witness is excused)

23 PRESIDING JUDGE FREMR: And before we adjourn, any request for the floor? I don't

24 see any.

25 Which means that, as you are already aware, we can't sit tomorrow, so we will adjourn

Trial Hearing

(Private Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0190

1 and we will resume on Monday, 9.30, and we will deal with testimony of Witness P-46.

2 So that's it and see you on Monday.

3 THE COURT OFFICER: All rise.

4 (The hearing ends in private session at 4.32 p.m.)

5 RECLASSIFICATION REPORT

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

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