

Trial Hearing

(Open Session)

ICC-01/04-02/06

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 Judge Chang-ho Chung

6 Trial Hearing - Courtroom 3

7 Thursday, 24 November 2016

8 (The hearing starts in open session at 9.32 a.m.)

9 THE COURT USHER: [9:32:57] All rise.

10 The International Criminal Court is now in session.

11 Please be seated.

12 PRESIDING JUDGE FREMR: [9:33:31] Good morning, everybody.

13 Court officer, please call the case.

14 THE COURT OFFICER: [9:33:38] The situation in the Democratic Republic of the

15 Congo, in the case of The Prosecutor versus Bosco Ntaganda, case reference

16 ICC-01/04-02/06.

17 We are in open session.

18 PRESIDING JUDGE FREMR: [9:33:51] Thank you, court officer. Now appearances,

19 please, in usual order.

20 MR PACE: [9:33:58] Good morning, Mr President, your Honours. For

21 the Prosecution today are Ms Kristy Sim, assistant trial lawyer; Ms Selam Yirgou, case

22 manager; Ms Nicole Samson, senior trial lawyer; and I am James Pace, assistant trial

23 lawyer.

24 PRESIDING JUDGE FREMR: [9:34:13] Thank you, Mr Pace. Defence, please.

25 MR BOURGON: [9:34:17] (Interpretation) Good morning, your Honour. For

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1 the Defence today, Mademoiselle Maria-Kim Vasconi, Margaux Portier and myself,
2 Stéphane Bourgon. Thank you very much.

3 PRESIDING JUDGE FREMR: [9:34:30] Thank you, Mr Bourgon.

4 Legal Representative of Victims, please.

5 MS PELLET: [9:34:36] (Interpretation) Thank you very much, your Honour. The
6 former child soldiers are represented by Sarah Pellet, myself, at the OPCV.

7 MR SUPRUN: [9:34:47] (Interpretation) Good morning, members of the Bench. For
8 the victims of the attacks today, Anne Grabowski and Mr Suprun at the OPCV.

9 PRESIDING JUDGE FREMR: [9:35:02] Thank you, Mr Suprun, thank you, Ms Pellet.

10 And for the record, Mr Ntaganda is also present.

11 Before the next witness can be called, as usual the Chamber wishes to address certain
12 procedural matters. First, for the purpose of timing, as indicated in the Chamber's
13 Rule 68(3) decision for this witness which was delivered orally on 21 November 2016,
14 the Prosecution shall be permitted one and a half hours to examine Witness P-12, and
15 I am highlighting that this includes the process of seeking admission of the witness
16 material under Rule 68(3) as well as its supplementary examination of the witness.
17 The Defence is permitted six hours to cross-examine the witness.

18 Now we have to go into private session for the next part.

19 Court officer, please.

20 (Private session at 9.36 a.m.) *(Reclassified partially in public)

21 THE COURT OFFICER: [9:36:22] We are in private session, Mr President.

22 PRESIDING JUDGE FREMR: [9:36:28] Thank you, court officer. I recall
23 the Chamber's decision with filing number 774 extending the in-court protective
24 measures to this witness (Redacted)

25 (Redacted). These are face and voice distortion and the use of pseudonym.

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1 I also note that the VWU sent its protective measures report via email on
2 21 November 2016 and that it recommends the in-court protective measures (Redacted)
3 (Redacted)
4 (Redacted)
5 (Redacted)
6 (Redacted)
7 (Redacted)

8 We can now turn to the scheduled testimony and can do so in open session. So,
9 court officer, open session, and in the meantime please have the witness brought into
10 the courtroom.

11 Mr Bourgon.

12 MR BOURGON: [9:38:04] Thank you, Mr President. Very quickly I would like to
13 inform the Chamber that through filing 1646, the Prosecution has provided
14 the Defence with an updated list of evidence, or documents it intends to use in this
15 case, and in a different email they have explained the contents of the documents that
16 had been added. Amongst those documents are a number, I believe the number is
17 590 or 586, of the telephone conversations that were recorded.

18 PRESIDING JUDGE FREMR: [9:38:42] Sorry to interrupt you. Please wait with
19 inviting the witness, keep him outside.

20 Remain in private session, rather.

21 Please proceed, Mr Bourgon.

22 MR BOURGON: [9:39:04] Thank you, Mr President. I wanted to avoid taking the
23 time. I just want to mention that this material is not part of the witness -- of
24 the Prosecution's case. It is now on its list of incriminating evidence, and we believe
25 that this makes a difference. We will of course assess the situation and come back

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1 to the Chamber with additional submissions. Thank you, Mr President.

2 PRESIDING JUDGE FREMR: [9:39:26] Well noted.

3 Mr Pace, any comment on that? Or Ms Samson?

4 MS SAMSON: [9:39:28] Not at this time, your Honour, because the Defence hasn't

5 articulated a specific request. Just to note that since the Prosecution made a request

6 to access the records, in August 2014 we have been very clear that we may seek to rely

7 on this information for various purposes in the case. Thank you.

8 PRESIDING JUDGE FREMR: [9:39:50] Thank you.

9 And now, court usher, you may bring Mr Witness into the courtroom and we can
10 move into open session.

11 (Open session at 9.40 a.m.)

12 THE COURT OFFICER: [9:40:05] We are in open session, Mr President.

13 PRESIDING JUDGE FREMR: [9:40:10] Thank you, court officer.

14 (The witness enters the courtroom)

15 PRESIDING JUDGE FREMR: [9:40:47] Mr Witness, can you hear me?

16 WITNESS: DRC-OTP-P-0012

17 (The witness speaks French)

18 THE WITNESS: [9:40:52] (Interpretation) Yes, very well, very clearly.

19 PRESIDING JUDGE FREMR: [9:40:56] Fine. Mr Witness, I would like to welcome
20 you on behalf of this Chamber to the courtroom. You are called to testify in the case
21 against Mr Bosco Ntaganda and you will be soon asked questions both by the Judges
22 and lawyers in this courtroom. And in this connection I would like to guide you as
23 follows: Please listen carefully to those questions. If you do not understand, feel
24 free to ask for the question to be repeated. We want you to tell the truth and tell us
25 what you saw, heard or sensed yourself. If you did not see or hear it yourself but

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1 you found out some other way, then you should explain how. Please testify just on
2 that which you really remember, don't guess, don't make things up. There is
3 nothing wrong in saying, "I don't know" or "I don't remember." Do you understand
4 all this, Mr Witness?

5 THE WITNESS: [9:42:11] (Interpretation) Yes, very well.

6 PRESIDING JUDGE FREMR: [9:42:21] All right. Mr Witness, protective measures
7 are put in place to ensure that your identity is not revealed to the public. It means
8 that the public cannot see your face and that your voice is being disguised so that the
9 public cannot recognise it. We will refer to you as "Mr Witness" only and ensure that
10 your name and any other information that risks revealing who you are is not
11 broadcast to the public. Therefore, whenever you need to describe anything that
12 might reveal your identity, we will do so in private session so that no one outside the
13 courtroom can hear your answer. Do you understand, Mr Witness?

14 THE WITNESS: [9:43:28] (Interpretation) Yes.

15 PRESIDING JUDGE FREMR: [9:43:29] Good. Now, Mr Witness, you will be
16 provided this piece of paper with the text of solemn undertaking. So please now
17 make your solemn undertaking to tell the truth by reading out the declaration from
18 this piece of paper.

19 THE WITNESS: [9:43:49] (Interpretation) I solemnly declare to tell the truth, nothing
20 but the truth and the entire truth.

21 PRESIDING JUDGE FREMR: [9:44:11] Thank you, Mr Witness. It means that
22 you are now under oath, and therefore you need to be aware that it is an offence
23 within the jurisdiction of this Court to give false testimony. Do you understand
24 that?

25 THE WITNESS: [9:44:38] (Interpretation) Yes.

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- 1 PRESIDING JUDGE FREMR: [9:44:40] Fine. And finally a few practical matters
2 you should have in mind when giving your testimony: It's important to speak into
3 the microphone, to speak clearly and to speak at a slow pace to allow the interpreters
4 to translate everything. You should only start speaking when the person asking you
5 the question has finished. When a question is asked, please do not respond
6 immediately, but rather count in your head to at least three and only then give your
7 answer. This pause of three seconds is essential for us to properly record and
8 translate what you are saying. So please have it in mind, at least three seconds
9 between the question and start of your response.
- 10 And if you have any questions during your testimony, do not hesitate to let us know
11 by raising your hand. We will then give you the opportunity to speak. Have you
12 understood all that, Mr Witness?
- 13 THE WITNESS: [9:46:01] (Interpretation) Yes, I will make every effort.
- 14 PRESIDING JUDGE FREMR: [9:46:12] Very good, Mr Witness. So now we can
15 start your testimony, and I am giving the floor to Prosecution.
- 16 QUESTIONED BY MR PACE:
- 17 Q. [9:46:26] Good morning, Mr Witness. We've already met, but I will remind you
18 that my name is James Pace and I will be asking you questions today on behalf of the
19 Office of the Prosecutor. And before I start, I want to ask that if you don't
20 understand any of my questions, just let me know and I will do my best to clarify.
- 21 MR PACE: And Mr President, I will follow the procedure which we followed thus
22 far in relation to witnesses whose Rule 68(3) applications have been granted in
23 principle. And since my first questions are of an identifying nature, I ask that we
24 move into private session.
- 25 PRESIDING JUDGE FREMR: [9:47:06] Certainly.

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

2 (Private session at 9.47 a.m.) *(Reclassified partially in public)

3 THE COURT OFFICER: [9:47:13] We are in private session, Mr President.

4 PRESIDING JUDGE FREMR: [9:47:15] Thank you very much.

5 Mr Pace, please proceed.

6 MR PACE: [9:47:23]

7 Q. [9:47:23] Mr Witness, what is your full name?

8 A. [9:47:31] My name is (Redacted).

9 Q. [9:47:44] When were you born?

10 A. [9:47:52] I was born on (Redacted).

11 Q. [9:48:04] Where were you born?

12 A. [9:48:09] I was born at (Redacted) in the Democratic Republic of Congo.

13 Q. [9:48:22] And what is your ethnicity?

14 A. [9:48:35] I am (Redacted).

15 Q. [9:48:37] And is it correct that between (Redacted)

16 (Redacted)?

17 A. [9:48:58] Yes, that's right.

18 Q. [9:49:02] Mr Witness, when we met last week I explained that we have asked the

19 Judges to admit (Redacted), parts of

20 your 2005 witness statement and certain documents that you referred to in your

21 (Redacted) and in your statement, and to be considered as evidence in the case.

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted). I will be referring in general to your "prior
2 recorded testimony," and when I use that term that refers to (Redacted)
3 (Redacted) what you have told the Prosecution in your
4 witness interviews.

5 And part of the procedure we need to follow today requires me to ask you certain
6 questions (Redacted) about your (Redacted) witness
7 statement and certain documents.

8 (Redacted)

9 (Redacted)

10 A. [9:50:37] I don't quite recall the exact dates but I do know that I provided
11 (Redacted).

12 Q. [9:50:47] I am now going to ask the Judge to move into open session, and just
13 a reminder that I will (Redacted)
14 (Redacted) refer to "prior recorded testimony." Do you understand?

15 A. [9:51:20] Yes.

16 MR PACE: [9:51:22] Your Honour, with your leave, we can move into open session.
17 PRESIDING JUDGE FREMR: [9:51:26] All right. Court officer, let's move into open
18 session.

19 (Open session at 9.51 a.m.)

20 THE COURT OFFICER: [9:51:32] We are in open session, Mr President.

21 PRESIDING JUDGE FREMR: [9:51:34] Thank you, court officer. Mr Pace, please
22 proceed.

23 MR PACE: [9:51:37] And with the court usher's assistance, I would like to hand the
24 witness a binder, and to clarify this binder is the same one provided to the Chamber,
25 the Defence and the Legal Representatives. However, we have removed from the

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1 binder the documents that we do not seek to admit pursuant to Rule 68(3).

2 Yes, if the Defence would like to have a look at the binder.

3 If I could ask the court usher to remain there for the time being. Thank you.

4 Q. [9:52:25] Mr Witness, if you could please have a look through the documents at

5 tabs 1 and 2 of this binder, please. And while the witness looks through these

6 documents, I will state the ERNs for the record, and tabs 1 and 2 are in order,

7 DRC-OTP-2054-0172 and 2054-0351, and I note that since the parties and the

8 participants and the Chamber have the material I'll be referring to, these documents

9 don't need to be called up on to our screens, and the same applies to all the other

10 documents I will be referring to in this binder this morning.

11 Mr Witness, were you able to have a look at the documents at tabs 1 and 2?

12 A. [9:53:51] I can see the documents, but I don't know whether you are asking me

13 whether I've read everything or whether I've seen them, but I can say that I've seen

14 them.

15 Q. [9:54:02] Do you recall reading these documents over the last two weeks?

16 A. [9:54:16] In all likelihood, yes, because I read all these documents, yes.

17 Q. [9:54:20] And did you recognise these documents as you look at them now?

18 A. [9:54:34] Yes.

19 Q. [9:54:37] And do you recall that as part of these documents you were asked to

20 swear an oath to tell the truth?

21 A. [9:54:52] Yes.

22 Q. [9:54:56] And are the contents of these documents true and accurate, to the best

23 of your knowledge?

24 A. [9:55:12] Yes, I stand by what I said, to the effect that it's true.

25 Q. [9:55:23] Do you recall that as stated in these two documents that you just

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1 looked at, you were shown a number of other documents and you were asked
2 questions and you provided information about them?

3 A. [9:55:43] Yes.

4 Q. [9:55:45] Could you please next turn to the documents at tabs 8 to 12 of this
5 binder.

6 MR PACE: And while the witness has a look at those documents, I will state their
7 ERNs for the record, and they are in order: DRC-OTP-0106-0169, 0014-0140,
8 0106-0030, 0107-0198, and 0107-0324. And again, while the witness is looking at
9 these documents, I know that from DRC-OTP-0106-0030, the Prosecution seeks only
10 to admit page 0035.

11 Q. [9:57:08] Mr Witness, have you had a chance to look at these five documents?

12 A. [9:57:34] Yes, I remember all these documents, yes.

13 Q. [9:57:39] Is the information that you provided about these documents true and
14 accurate, to the best of your knowledge?

15 A. [9:57:56] Yes.

16 Q. [9:57:58] Mr Witness, if you could next please to tab 5 of the binder, and this is
17 DRC-OTP-0105-0085.

18 MR PACE: And while the witness has a look at this document, I note that the
19 Prosecution seeks only to admit the following paragraphs: 109 until 136, 272 and 273,
20 341 until 354, and paragraph 472.

21 Q. Mr Witness, do you recognise this document?

22 A. [9:58:58] Yes, I recall very well.

23 Q. [9:59:01] Could you please turn to page 87 of this document, which is ERN
24 page 0171. Do you see a signature on this page?

25 A. [9:59:26] Yes.

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1 Q. [9:59:28] Is that your signature?

2 A. [9:59:37] That's right, yes.

3 Q. [9:59:39] And are the contents of this document true and accurate, to the best of
4 your knowledge?

5 A. [9:59:59] Yes.

6 Q. [10:00:03] And finally Mr Witness, if you could please turn to tab 13 of this
7 binder, and this is DRC-OTP-0086-0086. Do you recognise this document?

8 A. [10:00:37] Yes, it was me who provided it.

9 Q. [10:00:44] And do you recall commenting on this document to Prosecution
10 investigators?

11 A. [10:00:57] Yes.

12 Q. [10:01:00] And was the information that you provided about this document true
13 and accurate to the best of your knowledge?

14 A. [10:01:15] Yes.

15 MR PACE: [10:01:17] Thank you very much, court usher. And you may also take
16 the binder with you for the time being. Yes.

17 Q. Mr Witness, do you remember over the past two weeks that you were given an
18 opportunity to review these and other documents?

19 A. [10:01:44] Yes.

20 Q. [10:01:45] And do you remember that after you had reviewed these documents
21 you were given an opportunity to make corrections or clarifications to them?

22 A. [10:02:07] Yes. But there were some additions that could arise after having
23 read the documents because that might bring back some memories and then I could
24 add things. But on the documents per se, everything was clear and I had nothing to
25 add.

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1 Q. [10:02:30] Is there anything that you would like to correct or clarify in the
2 documents now? And to be clear, I am not asking for additions to them, I am asking
3 about corrections or clarifications at this stage?

4 A. [10:02:53] No.

5 Q. [10:02:56] Mr Witness, did you tell the truth in your prior recorded testimony?

6 A. [10:03:13] As far as I know, yes.

7 Q. [10:03:17] And did you provide accurate information to the best of your
8 knowledge in your prior recorded testimony?

9 A. [10:03:31] Yes.

10 Q. [10:03:35] And is your prior recorded testimony an accurate record of your
11 recollection and knowledge of the events which you addressed in it?

12 A. [10:03:55] Yes.

13 Q. [10:03:58] And do you consent to your prior recorded testimony and the other
14 material we have referred to this morning being admitted into evidence in this case?

15 A. [10:04:28] Yes, I agree.

16 Q. [10:04:30] And do you consent to being questioned about this information by
17 the Defence and by the Chamber, if necessary?

18 A. [10:04:45] Yes.

19 MR PACE: [10:04:49] Your Honour, at this stage I request that -- I request admission
20 into evidence of the witness's prior recorded testimony and associated material and I
21 know that these are items 1 to 5 and 8 to 13 on the Prosecution's list of items. I do
22 not propose to repeat the ERNs again. We have provided the court officer and court
23 usher with this list of items. I note that the relevant excerpts are also specified in
24 that list. So we seek admission at this stage.

25 PRESIDING JUDGE FREMR: [10:05:20] All right. Defence, any change to your

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1 position, compared to our previous, previous ruling?

2 MR BOURGON: [10:05:28] There is no change to our position, Mr President.

3 However, I would like to address the Chamber in the absence of the witness in
4 respect of one of these documents.

5 PRESIDING JUDGE FREMR: [10:05:38] All right.

6 So, court usher, please assist Mr Witness to leave the courtroom for a while.

7 Mr Witness, we will have to excuse you for a while because we will have to solve
8 some procedural issue in your absence.

9 (The witness stands down)

10 PRESIDING JUDGE FREMR: [10:06:15] Mr Bourgon, for your submission could we
11 remind in open session or would it be safer to move into private?

12 MR BOURGON: [10:06:23] I believe we need to move into private session,
13 Mr President.

14 PRESIDING JUDGE FREMR: [10:06:28] All right. Court officer, let's move into
15 private session.

16 (Private session at 10.06 a.m.) *(Reclassified partially in public)

17 THE COURT OFFICER: [10:06:34] We are in private session, Mr President.

18 PRESIDING JUDGE FREMR: [10:06:43] Thank you, court officer.

19 Mr Bourgon, please proceed.

20 MR BOURGON: [10:06:48] Thank you, Mr President. The Defence acknowledges
21 the fact that the Chamber already issued a preliminary ruling in respect of this
22 witness and the admission of his prior recorded testimony and associated documents.
23 When the Trial Chamber did issue this ruling, and I quote from the transcript T-161
24 and this is on page 33 at lines 11 to 19, the Chamber addressed the issue of the "five
25 documents contained at annexes G to K of the application, noting that each of these

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1 documents are used and explained (Redacted) and are not opposed to
2 the Defence."
3 The Chamber then went on to say that it "noted the Defence argument that the
4 document at annex I should be accorded no weight" and then the Chamber made
5 a ruling in this regard.
6 The document I would like to address at this time is the document that was annex K.
7 Annex K is actually the document that we find today at tab 13 of the binder. Sorry,
8 it's annex L. So the Chamber did not make a specific ruling on annex L. And annex
9 L is tab 13 and it bears a title (Redacted)
10 (Redacted)
11 In our response to the motion, Mr President, we said that the document number bears
12 the number (Redacted).
13 And we noted in our response at paragraph 22 that this document should not be
14 admitted. One of the reasons that of course we highlighted then was the fact that we
15 were opposing the admission into evidence of the statement or the paragraphs
16 requested by the Prosecution and the statement provided by the witness (Redacted).
17 However, Mr President, this document was commented in only three paragraphs in
18 his statement and he never addressed the merits or what is in the document. He
19 said that (Redacted)
20 (Redacted)
21 (Redacted) But as to the document itself, it was not addressed in the witness
22 testimony and therefore, Mr President, we believe that this cannot be considered to be
23 an associated document in the sense of being necessary to understand his testimony
24 because that is the criteria that was adopted by the Chamber: Is a document
25 necessary to understand?

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1 If we look at the paragraphs provided in support of the adoption of this document,
2 we find three paragraphs and we do not find anything that requires looking at the
3 document to know (Redacted)
4 (Redacted). But the contents of the reports, other than for one very small observation, is
5 absolutely not covered therein. Therefore we say, Mr President, that this document
6 should not be admitted pursuant to Rule 68(3).

7 Of course it's open to my colleague during his supplementary examination to ask
8 questions about the report and maybe have it admitted at that point but not through
9 Rule 68(3). Thank you.

10 PRESIDING JUDGE FREMR: [10:11:03] Mr Pace.

11 MR PACE: [10:11:07] Yes, your Honour. My first point is that Defence counsel
12 today said at page 17, line 11 "So the Chamber did not make a specific ruling on
13 annex L." And I would just like to remind the Chamber that to my knowledge
14 the Chamber has ruled on -- specifically on annex L and I'm referring to transcript 161,
15 the realtime transcript, at page 34, line 24 to page 35, line 4 where your Honour stated,
16 "Noting further that annex L is used and explained in the relevant paragraphs of his
17 statement and refers to (Redacted)
18 (Redacted), the Chamber shall consider it as an associated document to the witness's
19 prior recorded testimony for admission under Rule 68(3), together with the 45
20 paragraphs of the witness's statement."

21 So indeed your Honours have ruled specifically about this issue. The Defence has
22 had an opportunity to argue; in fact, Defence counsel referred to the Defence's
23 response. So the Prosecution considers this as a request for reconsideration
24 having -- and no circumstances have been presented.

25 And barring that, your Honour, I don't have anything further to add to what

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1 the Prosecution argued in terms of the relevance and probative value of this
2 document in its Rule 68(3) application. I believe that the information provided by
3 the witness in his statement is more than sufficient (Redacted)
4 (Redacted). It is prima facie
5 relevant to the charges in this case dating to the temporal scope of the charges and
6 relating to the conflict, referring specifically to the armed group at issue, UPC/FPLC.
7 And I also note that although the specific document was addressed in the witness's
8 statement, (Redacted)
9 (Redacted).

10 For those reasons, your Honour, we see no reason for the Chamber to reconsider its
11 prior decision and we submit that this document should indeed be admitted pursuant
12 to Rule 68(3) at this stage.

13 PRESIDING JUDGE FREMR: [10:13:14] Thank you, Mr Pace.

14 And, Mr Bourgon, please briefly.

15 MR BOURGON: [10:13:18] Yes, thank you, Mr President. First of all, I would like
16 to apologise. My colleague is absolutely correct in terms of what the Chamber held
17 in its ruling, so I missed this part of the Chamber's decision when preparing for this
18 morning.

19 However, it doesn't change the fact, Mr President, that we believe that this document
20 is not necessary to understand the testimony of the witness. So in this case, since
21 the Chamber has already ruled on it, what we request at this time, Mr President, is
22 simply for this one document at least to wait until cross-examination before admitting
23 this document. This procedure was followed before by the Chamber in previous
24 cases. I know that when Witness P-0046 testified this was the case or the position
25 adopted by the Chamber, so for this one document we ask that the Chamber wait

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1 until the end of cross-examination to determine whether it should be admitted or not.

2 Thank you, Mr President.

3 PRESIDING JUDGE FREMR: [10:14:23] Mr Pace, but also please briefly.

4 MR PACE: [10:14:26] Yes, your Honour. Unfortunately I am not familiar with the

5 circumstances in relation to the document referred to by Defence counsel in relation

6 to another witness. However, we reiterate the position that there is absolutely no

7 reason not to admit this document pursuant to Rule 68(3) at this stage. I do intend to

8 ask further questions about this document during my examination-in-chief.

9 However, for the ease of the proceedings, as with 68(3) witnesses, it would be far

10 easier, more logical to have the document admitted at this stage so the Defence

11 address this document during cross-examination, that can go to the weight attributed

12 to this document.

13 PRESIDING JUDGE FREMR: [10:15:02] Thank you. We will briefly and silently

14 deliberate in the courtroom with my colleagues.

15 (Trial Chamber confers)

16 PRESIDING JUDGE FREMR: [10:15:26] So as you could see our deliberation was

17 relatively brief. We haven't found any reason to reconsider our preliminary ruling,

18 even as concerns annex L. So now we formally decide that the Prosecution's request

19 for use of Rule 68(3) with the witness, that is filing number 1600 is granted in

20 accordance with the Chamber's preliminary ruling of 21 November 2016, which is

21 contained in transcript 161.

22 And for the rest let's move into private session, court officer, please.

23 Ah, we are in private session. So that's fine, sorry.

24 So I can continue. In light of Witness P-12's recent declarations, the Chamber admits

25 under Rule 68(3) of the Rules (Redacted)

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1 (Redacted) together with the associated exhibits contained at annexes G to K of the
2 request.

3 The Chamber also admits, as sought in the request and pursuant to Rule 68(3), the
4 paragraphs of the witness statement referred to in annex A of the request as well as
5 one associated exhibit. These materials are contained at annexes F and L of the
6 request.

7 This concludes our ruling on this matter, and we can now return back into open
8 session.

9 We can also bring witness back and Prosecution will then continue with
10 supplementary examination.

11 (Open session at 10.17 a.m.)

12 THE COURT OFFICER: [10:17:47] We are in open session, Mr President.

13 PRESIDING JUDGE FREMR: [10:17:49] Thank you, court officer.

14 (The witness enters the courtroom)

15 PRESIDING JUDGE FREMR: [10:18:35] So sorry for inconvenience, Mr Witness.

16 Now the Prosecution will continue with your examination. So I am giving floor to
17 Mr Pace.

18 And we are in open session.

19 MR PACE: [10:18:48]

20 Q. [10:18:49] Mr Witness, I would just like to inform you that in your absence
21 the Chamber has admitted your prior recorded testimony. And I will now move to
22 a brief supplementary examination and as I previously explained to you, I am not
23 going to ask you questions about all the information that you are able to provide
24 the Chamber; rather, I am going to ask you questions about specific and limited
25 aspects of this information.

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1 And, your Honour, I move -- ask that we move back into private session for my next
2 set of questions.

3 PRESIDING JUDGE FREMR: [10:19:22] Understandable.

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

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

6 THE COURT OFFICER: [10:19:31] We are in private session, Mr President.

7 PRESIDING JUDGE FREMR: [10:19:34] Thank you, court officer.

8 Mr Pace, you have the floor.

9 MR PACE: [10:19:41] I will again be referring to the tabs in the binder provided to
10 the Chamber, Defence and the Legal Representatives. And I will also provide the
11 ERNs and the specific page and paragraph references for the information that I will
12 be referring to. And again, since this information is available in hard copies, there is
13 no reason to call up the documents, except when I note so.

14 Q. And, Mr Witness, just for your information, at the time being there is no reason
15 for you to look at the binder. When I refer to the tabs in your binder, it's for the
16 benefit of the other people in the courtroom.

17 Do you understand, Mr Witness?

18 A. [10:20:42] Yes.

19 Q. [10:20:42] I will first be referring to tab 3 (Redacted) from page 45, line
20 22 to page 46, line 18.

21 Mr Witness, during this part of your prior recorded testimony you stated that
22 Bosco Ntaganda had been appointed chief of staff of the UPC, but Floribert Kisembo
23 told you that Ntaganda had rejected the offer and preferred to be the deputy in
24 charge of military operations. And my question, Mr Witness, is did Floribert
25 Kisembo explain why Ntaganda preferred to be the deputy in charge of military

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1 operations?

2 A. [10:21:47] No.

3 Q. [10:21:51] You stated that Bosco Ntaganda was the UPC's deputy in charge of
4 military operations. Are you aware of any particular operations in which
5 Mr Ntaganda was involved?

6 A. [10:22:30] Whatever the case, I think that almost all military operations of the
7 UPC were led by him. I particularly remember, if I'm not wrong, in the month of
8 October 2003 there was an attack on Tchomia which had been prepared as if it was
9 between the Hema and the Hema. Information got around quickly, very quickly,
10 and members of PUSIC were aware and, as usual, they went to contact the notables,
11 Bahemuka, Nestor (phon). Now, in this discussion Bahemuka preferred to call
12 Floribert Kisembo to ask him why he could go and attack his Hema brothers. He
13 also called Bosco Ntaganda, but Bosco Ntaganda did not come, just Floribert Kisembo.
14 (Redacted) but Floribert refused that he had
15 given a particular order for that.

16 Whatever the case, the next day there was an attack. I think it was 30 or 31 October.
17 There was an attack. When the notable arrived, Nestor arrived, he said he didn't
18 know what had happened, but in this attack there were a lot of Hema soldiers who
19 hadn't participated and the UPC lost a commander of the Tutsi ethnic group. He
20 died. He died in that battle. It was organised by Bosco Ntaganda because Floribert
21 later told us that he had asked all Hema favourable to him to not go and participate in
22 such a war against their brothers, but Bosco Ntaganda insisted that they have that
23 war.

24 And that took place. People died. There were prisoners of war who were captured.
25 They were handed over to MONUC. It was a military operation, but other military

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1 operations outside of Bunia also took place. And it was still Bosco Ntaganda who
2 was leading them. He wasn't very -- he wasn't particularly visible in the town, even
3 in meetings. It was just as if he stayed in the bush. He didn't come.

4 Q. [10:26:40] Mr Witness, you have explained to us specifically in relation to one
5 operation in Tchomia how you came to know about Bosco Ntaganda's involvement.
6 You also stated that you think that also all military operations of the UPC were led by
7 him, referring to Bosco Ntaganda. Could you tell the Chamber how you know that
8 almost all -- or how you think that almost all military operations of UPC were led by
9 him. What is the basis for this statement that you have made today?

10 A. [10:27:32] When Bosco Ntaganda was appointed as chief of general staff of the
11 UPC he declined that appointment and he proposed it to Kisembo. He himself,
12 General Kisembo spoke to me about that. And he had proposed that he be the
13 leader and the other the deputy, but he would be responsible for military operations.
14 *I also discussed it with the secretary general of the UPC, Litcha, and he told me the
15 following: All the military operations that are to the benefit of Kigali that have
16 nothing to do with the Hema or little to do with the Hema were led by
17 Bosco Ntaganda. There was an operation he led in Masumbuko where a lot of
18 people died. (Redacted)
19 (Redacted) Bosco Ntaganda was accused of carrying out this operation because
20 he was looking at how to get towards Lake Albert.

21 Now after the UPC went back into the town in the month of May 2003, they started
22 military operations in order to recover Mongbwalu and -- at the gold town of
23 Mongbwalu. Now the operations to get to Mongbwalu were also led by
24 Bosco Ntaganda. That was a recommendation that came from Kigali.
25 General Kisembo had been asked why they always went to places where there was

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1 gold, and he said, "We've got debts which have to be paid off to Rwanda with money
2 and weapons, arms and ammunition and that's the means to pay them and that's why
3 we have to go and fight where there is gold." And that's the reason why they went
4 to that area.

5 As I said previously, where it concerned operations with an interest for Rwanda,
6 those operations were led by Bosco Ntaganda.

7 After July 2003, all the following operations, Bosco Ntaganda didn't come into town.

8 He never went to one of the réunions. He was like a mysterious person. But people
9 heard that there was damage in this place or that place but people didn't see him, but
10 he was always in the bush around Mongbwalu.

11 Then he tried to find out how to get to Lake Albert, next to Kasenyi, and that's how
12 the operations in that area were carried out. He was the one who led them, of
13 course.

14 Of course he used the Tutsi soldiers in the UPC in order to carry out these operations.

15 Q. [10:32:15] Mr Witness, you referred to an attack on a place you called
16 Masumbuko. Very briefly, do you know only when this attack took place?

17 A. [10:32:48] The Masumbuko attack was almost simultaneous with the, the
18 Tchomia attack. And I say this because (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 there, as I said beforehand, by the way. Bosco Ntaganda wasn't there and he came to
23 no meeting whatsoever, and it was he who ran those operations after MONUC's
24 investigations with Ndjabu, because on the Hema side -- well, there were the Lendus
25 and they were frightened, what could that -- in terms of what -- that could create

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1 resentment among the Hema and then destroy all of the accords that had been placed
2 to stop the fighting. And that's why they went off to check and the local population
3 accused Bosco Ntaganda's soldiers. (Redacted)

4 (Redacted)

5 (Redacted)

6 Q. [10:34:40] Mr Witness, earlier today at page 26, line 17 you referred to -- you
7 said:

8 "After the UPC went back into the town in the month of May 2003, they started
9 military operations in order to recover Mongbwalu." To your knowledge, were
10 there attacks on the town of Mongbwalu before May 2003?

11 A. [10:35:23] I think I've already said, and I think in January, if I'm not mistaken,
12 there were already attacks the UPC had mounted towards Mongbwalu. (Redacted)
13 (Redacted)

14 Q. And just to clarify, you are referring to January of which year?

15 A. [10:35:50] 2003, January 2003.

16 Q. [10:35:55] Mr Witness, could you tell the Chamber, if you know, who
17 Bosco Ntaganda reported to?

18 A. [10:36:05] It was a bit difficult. As I said, Bosco Ntaganda was a mysterious
19 figure, because we didn't know him. (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted) he was receiving orders from Kigali directly. He was sometimes receiving
23 orders from the -- Rafiki Aimable, who was from the security and intelligence
24 network.

25 At a certain point in time there was a meeting with their ideology adviser,

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1 Mr Munyampénda, and it was his preference that all the Ituri armed groups be
2 connected to Bosco Ntaganda, be hooked up with that gentleman. And this came
3 from Kigali.
4 So he received orders in addition from Lubanga, and sometimes from the community,
5 from the heads of the communities.
6 And I think it was 2005, unless I'm mistaken, but I think in 2005 *there were two
7 workers from Médecins sans Frontières, Doctors Without Borders, who were
8 abducted, these people were abducted (Redacted)
9 (Redacted)
10 President Lubanga was at that time behind bars and it wasn't possible. (Redacted)
11 (Redacted)
12 Dhejju Maroka had to go off and negotiate, therefore, with Bosco to free
13 the two hostages from Doctors Without Borders. And in addition to them, the
14 people responsible for security from MONUC, Arthur Kepler (phon).
15 So they went off together to see Bosco with a view of freeing those two people. And
16 at that particular time he received orders from nobody because Kisembo had already
17 gone and he'd already left the UPC at the end of December 2003, he had already gone,
18 and Bosco Ntaganda had become the head of chief of staff and, at the same time, the
19 president by interim, because nothing was giving him orders anymore, and that was
20 bad.

21 Q. [10:40:18] Yes. Thank you, Mr Witness.

22 Before I ask you any further questions I just have some clarifications for the transcript.
23 You mentioned the name of the secretary-general of the UPC, could you repeat that
24 name, please.

25 A. [10:40:40] At that time the secretary was Litcha Daniel, Litcha, L-I-T-C-H-A, and

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1 then Daniel.

2 Q. [10:41:00] And you also mentioned the name of the FNI president, could you
3 repeat that name, please.

4 A. [10:41:15] Ndjabu Floribert, N-D-J-A-B-U, and then Floribert.

5 Q. [10:41:32] And did I correctly hear you refer to someone named Rafiki Aimable;
6 is that correct?

7 A. [10:41:47] Yes, that's right. Yes, it's Rafiki Amiable. And he had another name,
8 I think he was called Saba, Saba Rafiki Amiable.

9 Q. [10:42:00] Mr Witness, before I ask you any further questions, unfortunately
10 since we have such little time I am going to ask that in your responses you try to be as
11 brief as possible.

12 And earlier you mentioned that Bosco Ntaganda sometimes received orders from
13 Lubanga, are you aware whether Bosco Ntaganda received orders from Kisembo?

14 A. [10:42:34] Not at all no, because Kisembo, he himself, Kisembo said that he had
15 been trained by Bosco Ntaganda. And for him to be the head of the general chiefs of
16 staff of the UPC, there had to be an agreement with Kigali. And Bosco Ntaganda
17 had asked permission of Kigali and Kigali had authorised the fact that
18 Bosco Ntaganda could become a deputy and Kisembo could stay at the general chief
19 of staff.

20 But all the orders and everything that was going on, the operations, almost
21 everything was run by Bosco Ntaganda. He himself, he didn't get involved in the
22 operations, perhaps in the city with soldiers, but to run the attacks he just used the
23 weapons. But in any case, he needed Ntaganda's authorisation but he even said that
24 it was a shame to give orders to Bosco Ntaganda, who saw him as his chief and he
25 himself would put him into that -- into that position.

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1 Q. [10:44:11] I'm moving on to a different subject, and I will be referring to tab 5,
2 which is DRC-OTP-0105-0085, paragraph 116 at page 0105. And, Mr Witness, during
3 this part of your prior recorded testimony you stated that (Redacted)
4 (Redacted) initially he, Chief Kahwa, was the one who welcomed the young Hemas to
5 the Mandro training camp and that Bosco Ntaganda joined him at the camp and
6 helped to train the troops.

7 (Redacted)

8 (Redacted)

9 A. [10:45:19] When he recruited Hema children, it's true that Chief Kahwa had
10 confirmed the fact that Bosco Ntaganda had come to provide training, military
11 training to these young Hema.

12 But he wasn't alone in doing that, because in June 2002 when Chief Kahwa had
13 returned from Kigali to ask for military assistance, he'd been promised that experts
14 would be sent, people who could help in the training process, and it was that way
15 that he had started the training, he was involved in the training and Bosco Ntaganda
16 joined in and he was among the people who provide the training. But he wasn't
17 alone in that, because there were a number of Hema children that had been taken here,
18 there and everywhere and there had to be, therefore, a number of instructors. (Redacted)

19 (Redacted)

20 (Redacted)

21 Q. [10:46:48] Mr Witness, the first line of your answer, page 32, line 4, you stated,
22 "When he recruited Hema children," who is the "he" you are referring to?

23 A. [10:47:03] I am making reference to the organisation, the UPC organisation.

24 They recruited children, Hema children, to give them the training. It wasn't

25 Bosco Ntaganda who did it. Or the Hema. The customary chief had been asked to

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1 send -- well, the chiefs to send their children, or the parents had been asked, or the
2 prominent community figures had been asked to send their children, and those who
3 didn't want to do that had to pay money in lieu of sending their children. And that's
4 why I was using "he", he for it, in other words, it is the UPC organisation.

5 Q. [10:48:05] Moving on to another subject, I will be referring to tab 5 again, the
6 same document, this time paragraph 118. Mr Witness, during this part of your prior
7 recorded testimony you stated that Chief Kahwa was greatly affected when Lubanga
8 assigned Beiza, Rafiki and Bosco Ntaganda to handle weapons and ammunition
9 matters.

10 And my question, Mr Witness, is whether (Redacted)
11 (Redacted) Bosco Ntaganda had any actual involvement in the
12 handling of weapons and ammunition matters?

13 A. [10:48:58] *The weapons and ammunitions were flown, according to Chef
14 Kawha, they were airdropped in very specific locations. But the organisation of
15 those weapons, well, that was entrusted, particularly the heavy weaponry, that was
16 entrusted to Bosco Ntaganda and had been handed over to him. And before he
17 actually was able to leave Ituri, before he could leave Ituri to go into the northern
18 Kivus, he had to know how to bring certain weapons and that's what brought him
19 into the bush. And he had to take certain weapons back to Rwanda, but wherever he
20 went, he went with those weapons.

21 And once again he himself said it, sometimes he threatened to leave the UPC when he
22 felt the people weren't listening to him and he threatened to leave with the weapons
23 because it was almost like his own property.

24 Q. [10:50:45] Mr Witness, you said that "particularly the heavy weaponry, that was
25 entrusted to Bosco Ntaganda." Could you briefly tell the Chamber how you know

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1 about this?

2 A. [10:51:06] That information was given by the secretary general of the UPC at the
3 time, Mr Litcha, Daniel Litcha.

4 Q. [10:51:31] (Redacted)

5 A. [10:51:44] (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 MR PACE: [10:52:51] Your Honour, we can move briefly into open session for my
12 next set of questions.

13 PRESIDING JUDGE FREMR: [10:52:57] All right. Court officer, let's move into
14 open session.

15 (Open session at 10.53 a.m.)

16 THE COURT OFFICER: [10:53:07] We are in open session, Mr President.

17 PRESIDING JUDGE FREMR: [10:53:09] Thank you, court officer.

18 Mr Pace, please proceed.

19 MR PACE: [10:53:15]

20 Q. [10:53:15] Mr Witness, while we were in private session you mentioned that
21 "The organisation of those weapons, well, that was entrusted, particularly the heavy
22 weaponry, that was entrusted to Bosco Ntaganda."

23 Could you tell the Chamber briefly, if you know, what kind of heavy weaponry
24 you are referring to?

25 A. [10:53:50] I'm not really an expert in weapons but I do know that the machine

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1 guns that you can put on top of lorries or minibuses or pickups, those, he was
2 responsible for those and that's why, with those machine guns, he went into Tchomia
3 when they endeavoured to take that particular place.

4 And I, I know that they had mortars, 80, 81 millimetre mortars. And I also know
5 that they had RPGs, because that was the type of weapon that the UPC had over and
6 beyond. The Kalashnikovs, they had those, so they had those and they only used it
7 in particular operations.

8 Now, Chief Kahwa told me that there were many other weapons that they had been
9 given but they themselves didn't know how to use those weapons. Rwandan
10 experts had to come to teach them how to handle those weapons. And they sent,
11 they were sent, rather, to Kigali to study how to use those weapons, people from the
12 UPC, to use them and Kahwa said that those weapons weren't proportionate to the
13 war that they had to do against the Lendu, thought it was a bit overkill, like
14 anti-personnel mines. I remember in the pacification order in Ituri we burned, in
15 fact we blew up a huge number of those particular mines. The anti-tank mines, we
16 blew them up, but strangely enough there were others that had remained and that
17 they kept.

18 Q. [10:56:25] Mr Witness, could you clarify to which group these anti-personnel
19 mines and anti-tank mines belonged?

20 A. [10:56:38] Yes, those mines belonged to the UPC. And I remember that they
21 were handed over, those particular mines were handed over during the Pacification
22 Committee's work in Ituri following a visit that we undertook in the Shari camps
23 where they were, where the UPC soldiers were billeted and they were under the
24 responsibility of General Tchaligonza. And the mines that were put in that location.

25 Q. [10:57:27] I'm sorry to interrupt you, Mr Witness, I just want to remind you that

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1 we are in open session. I think what we have said thus far is okay to be in open
2 session, but just to remember to tread carefully. And if I could at this stage just ask
3 you whether you know if the UPC ever used anti-personnel mines or anti-tank mines?

4 A. [10:57:57] They did use them, and on 6 March, on 6 March they laid mines in
5 order to stop the Ugandan tanks, unfortunately, and one of their colonels betrayed,
6 that's why the Ugandans didn't actually use those tanks but they were hoping to use
7 those particular tanks.

8 General Kayihura told us in fact that he had received information, and General
9 Tchaligonza had recognised the fact that the Ugandans, well, that these tanks could
10 be stopped and then they could launch that attack on that particular day. And they
11 had used in the past what I had direct knowledge of, and that was on 6 April, 6 April,
12 because this was borne out by Colonel Ali and General Kayihura from the UPDF.

13 Q. [10:59:18] Are you aware whether the mines that the UPC laid in order to stop
14 the Ugandan tanks, did those mines ever detonate?

15 A. [10:59:39] No, I don't know. I didn't know how things went. But what I can
16 tell you and what's certain is that Ugandans were aware, because their tanks after that
17 event carried on and so they must have de-mined, because the tanks left the airport
18 afterwards and I think they were told where the mines had been laid. And that's
19 why they were able to retrieve them, otherwise their tanks would never have got
20 through.

21 MR PACE: [11:00:11] And I have one more question before, your Honour, we can
22 move to the break, if that's okay.

23 Q. Mr Witness, just to be clear, when you earlier said that the organisations of the
24 heavy weaponry wasn't just Bosco Ntaganda, could you tell the Chamber, if you
25 know, who decided when such heavy weaponry was used during operations?

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1 A. [11:00:50] Based on what I was told, (Redacted) based
2 on that, their heavy weaponry, well, Bosco Ntaganda was using them only when they
3 were going to launch operations that would be of benefit to Rwanda. And the only
4 person who received orders for the use of that weaponry was Bosco Ntaganda.

5 MR PACE: [11:01:25] Your Honour, I believe it's a good time for a break.

6 PRESIDING JUDGE FREMR: [11:01:30] Yes.

7 So we break now and we will reconvene at half past 11.

8 As to the time used by Mr Pace so far, I believe I am almost precise saying that he
9 used 1 hour 2 minutes? Yes, 1 hour 2 minutes, so you still have 28 minutes at your
10 disposal, Mr Pace.

11 And now we break.

12 THE COURT USHER: [11:02:02] All rise.

13 (Recess taken at 11.02 a.m.)

14 (Upon resuming in open session at 11.32 a.m.)

15 THE COURT USHER: [11:32:30] All rise.

16 Please be seated.

17 PRESIDING JUDGE FREMR: [11:33:03] We start without witness since the Chamber
18 is going to deliver a brief oral ruling. It's oral decision on in-court protective
19 measures for once P-300. It can be issued in open session.

20 The Chamber will deliver a decision with respect to one of the 11 witnesses for whom
21 the Prosecution requested protective measures in filing number 1579. The present
22 decision concerns Witness P-300 for whom the Prosecution requests in-court
23 protective measures pursuant to Rule 87 of the Rules, in the form of face and voice
24 distortion during testimony and the use of a pseudonym.

25 The Defence opposes the protective measures in filing number 1593 on the basis that

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1 the Prosecution fails to demonstrate any objectively justifiable risk of post-testimonial
2 retaliation. In this regard, the Defence argues that P-300 is a well-known local figure
3 and that there is little basis to believe that his testimony will heighten any risk of
4 retaliation.

5 On 22 November 2016, the Chamber received the VWU's in-court protective measures
6 assessment for this witness in which it was recommended that protective measures as
7 sought by the Prosecution be granted.

8 In assessing whether there exists an objectively justifiable risk for Witness P-300, the
9 Chamber recalls that it has previously held that the general security situation in a
10 region may be a relevant consideration in respect of specific witnesses.

11 In this instance it's noted that the witness, together with his family, currently resides
12 in an area where former UPC/FPLC militia members and supporters of the accused
13 are present or continue to have influence. The Chamber further recalls that actual
14 threats to a witness or his or her family are not a prerequisite to determining whether
15 as a witness, whether a witness faces an objectively justifiable risk and that there are
16 reported instances where other witnesses were allegedly threatened as a result of
17 their involvement with the Court.

18 The Chamber further notes: One, the nature of Witness P-300's expected testimony,
19 particularly in light of his role and experiences during the events; second, the extent
20 to which Witness P-300 is known in his community and thus may be particularly
21 identifiable; three, the witness's current employment situation which brings him in
22 regular contact with a wide range of people; and four, the reported risk of reprisals.
23 In this regard, the Chamber has had particular regard to the VWU's assessment that
24 public testimony would present a realistic threat to both the witness and his family
25 and that protective measures would reduce such risk.

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1 Finally, the Chamber notes that the witness is not currently in the ICC Protection
2 Programme.

3 In light of the specific situation of the witness, the Chamber is satisfied that there
4 exists an objectively justifiable risk with respect to the security and well-being of
5 Witness P-300 and his family, warranting the protection of his identity from the
6 public. The Chamber further finds that the in-court protective measures sought do
7 not unduly infringe upon the rights of the accused, given that the accused and the
8 Defence will be able to see the witness give evidence at trial and hear his voice
9 without distortion.

10 Accordingly and pursuant to Rule 87 of the Rules, the Chamber grants the measures
11 of use of pseudonym for the purposes of the trial and voice and face distortion during
12 testimony for Witness P-300.

13 This concludes the Chamber's ruling.

14 And now, court usher, you may bring Mr Witness back in the courtroom.

15 (The witness enters the courtroom)

16 PRESIDING JUDGE FREMR: [11:39:35] Mr Witness, welcome back. We will
17 continue with your examination by Prosecution. So now I am giving floor to
18 Mr Pace.

19 Mr Pace, do you want to remain in open session or is there a need to move into
20 private?

21 MR PACE: [11:39:55] We can remain in open session for my next set of questions,
22 your Honour.

23 PRESIDING JUDGE FREMR: [11:40:00] Very well.

24 MR PACE: [11:40:02]

25 Q. [11:40:02] Mr Witness, just before we went on a break, I'm here referring to page

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1 38, lines 13 to 17, you told the Chamber that "based on that, their heavy weaponry,
2 well, Bosco Ntaganda was using them only when they were going to launch
3 operations that would be of benefit to Rwanda. And the only person who received
4 orders for the use of that weaponry was Bosco Ntaganda." So you refer to who
5 received orders.

6 My question, Mr Witness, is who within the UPC gave orders about the use of the
7 heavy weaponry?

8 A. [11:40:54] When it comes to the use of heavy weaponry, as I explained, there
9 was Bosco Ntaganda. It was Bosco Ntaganda himself.

10 MR PACE: [11:41:15] I will next be referring to tab 3, which is DRC-OTP-2054-0073,
11 from page 74, line 25, to page 75, line 14.

12 Q. Mr Witness, during this part of your prior recorded testimony, you stated that
13 the UPC took over half of the city of Bunia in May 2003. My question, Mr Witness,
14 and I'm reminding you that we are in open session, is where were you at the time of
15 the fighting in Bunia in May 2003?

16 A. [11:42:09] I was at MONUC in Bunia, in the MONUC HQ. Most of the
17 population which was not originaire or people from other communities who were not
18 from the UPC, or Lendus, took refuge at MONUC HQ.

19 Q. [11:42:38] You just referred to people who are not originaire or people from
20 other communities who are not from the UPC, or Lendu. What communities were
21 part of the UPC at the time?

22 A. [11:43:09] The communities in the UPC, as I mentioned, the town was divided in
23 2: On the one side you had the Lendu and on the other side, you had the Hema.
24 And people who were not originaire didn't have a place to go, either they had to go to
25 MONUC, but there were a lot of others who preferred to go to the Lendu side, not on

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1 the Hema side. Particularly the Ngiti, they took refuge with MONUC. I think they
2 came from the part that was occupied by the Hema.

3 Q. [11:44:13] And if you know, could you tell the Chamber why the Ngiti opted to
4 go to MONUC rather than stay in the part that was occupied by the Hema?

5 A. [11:44:37] It was dangerous. They could be killed at any time. Even when we
6 were at MONUC. When the Hema entered, of course, the Lendu caused a lot of
7 problems, damage, killings, before of the Hema came in, but the same day a lot of
8 people who came to complain to MONUC: My husband's just been killed, my
9 child's just been killed but by the UPC soldiers. And they were seriously killing
10 people. That's why people had to save their lives, they couldn't just stay there.
11 MONUC was full, it was full up.

12 Q. [11:45:29] You referred to someone reporting that their husband had just been
13 killed. Are you able to provide the Chamber with any further details about this
14 incident?

15 A. [11:45:50] Yes. Personally, I asked a question to the woman if she recognised
16 the person who had killed her husband. She said yes, I know that person,
17 Commander Saidi from the UPC. And Saidi wanted that woman, that was the
18 reason. But the woman didn't want Saidi. And the husband was a motor taxi
19 driver so he took that opportunity, the day that they entered, he went into that man's
20 house, he was a non-originaire from Ituri, and he killed him in the house. And the
21 wife came crying to MONUC.

22 Q. [11:47:01] Earlier you also referred to reports about a child being killed. Do
23 you have any information about that specific incident?

24 A. [11:47:21] Children had been killed, a lot of children had been killed, but I
25 wasn't able to ask about it. I spoke to this woman because she came directly and

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1 that's the reason why she asked questions. But where it concerns the children, I
2 wasn't able to ask where the children came from.

3 Q. [11:47:51] And other than this one killing that you refer to that was committed
4 by Commander Saidi from the UPC, were you able to learn about any other crimes
5 committed by the UPC at this time in Bunia?

6 A. [11:48:07] There were a lot of crimes. You couldn't list them all. There were
7 people settling scores. When they entered, first of all, they pillaged in the town, all
8 the houses that weren't pillaged by the Lendu, Ngiti, and when they took the town,
9 all those houses, they were considered as accomplices. So they went house to house,
10 and people couldn't stay in their houses and see how it was being pillaged because
11 they would die.

12 A lot of others were killed, abducted. And during this period, after the pacification
13 commission of Ituri, the commission of the human rights observatory went to verify
14 or check what was happening when they heard reports of people being killed. They
15 would go and see if that was true or not, were people killed or not, on both sides.
16 Lendu were killing people. Hema were killing people too. It wasn't a good place to
17 live at that time, it really wasn't.

18 Q. [11:50:10] In the first part of your answer you were talking about when they
19 entered, all the houses that weren't pillaged by the Lendu, Ngiti, when they took the
20 town, all those house, they went house to house and it was being pillaged. Who are
21 you referring to, what group?

22 A. Well, there I'm referring to the UPC. One of the friends who was let's say
23 Hema, before he could go into the town, he spoke with certain commanders, saying,
24 "You shouldn't do as the Lendu are doing. You should try and show what the
25 difference is." Because the MONUC commander or Commander Volot, Commander

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1 Volot, was complaining about what was happening with the Lendu in that period and
2 hoped that perhaps there would be a balance when the UPC entered. The friend
3 spoke to the commander, saying, "Do not do anything stupid." They came in
4 strength and they stopped at MONUC. What the Hema were hoping for was to
5 drive Lendu out of the town of Bunia, but as they had to go and pillage quickly, that's
6 why they only took half of the town. And they left -- and they left quickly to go and
7 pillage.

8 And I remember there were others blaming the commander and they said "No." You
9 have to be in charge. Those were the -- that's what they were told. That was said in
10 English. According to them, they had learnt that from their Commander Kisembo,
11 be in charge. You have to take everything that you have. That's what they did.

12 Q. [11:52:35] Could I ask the witness to repeat the last words that he said? And
13 they were interpreted in the English transcript as "be in charge." Do you recall the
14 words that you used, Mr Witness? If they could not be translated into English.

15 A. [11:53:01] What I said was what they said -- they said it in English. Beat, as in
16 to strike and charge as in to strike. Beat and charge. Beat and charge.

17 MR PACE: [11:53:25] Your Honour, I would like to move back into private session
18 for my next set of questions.

19 PRESIDING JUDGE FREMR: [11:53:30] All right.

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

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

22 THE COURT OFFICER: [11:53:44] We are in private session, Mr President.

23 PRESIDING JUDGE FREMR: [11:53:47] Thank you, court officer. Mr Pace, please
24 proceed.

25 MR PACE: [11:53:49]

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1 Q. [11:53:49] Mr Witness, just a few moments ago, at page 45, lines 4 to 5, you
2 referred to (Redacted).

3 MR PACE: And I would like to show the witness a document, and it's a document
4 that the Chamber has admitted into evidence today and this is (Redacted),
5 which is at tab 13. And with the court usher's assistance, I would like to provide the
6 witness with a hard copy of this document. And if it could be shown to the Defence
7 before being given to the witness, please.

8 Q. [11:54:54] Mr Witness, if you could just have a look through this document for a
9 few moments. And do you recognise this document that I showed you earlier
10 today?

11 A. [11:55:18] Yes.

12 Q. [11:55:21] Could you please turn to the page that says, "0117" at the bottom of
13 that page. 0117. And to be clear, this page also has the number 30 at the bottom
14 right-hand corner, perhaps -- my apologies to the court usher. Perhaps the court
15 usher could assist.

16 We just make sure that we are all on page 0117, which is also page 30. Thank you,
17 court usher. My apologies.

18 Mr Witness, can you look at the -- could you look, please, at the first entry under the
19 heading? And the heading is in French and it has the word "viol." And could you
20 read the first entry under that heading to yourself?

21 A. [11:56:58] Yes.

22 Q. [11:57:00] Mr Witness, do you recall the incident that is referred to over here?

23 A. [11:57:20] (Redacted) -- are we in private session?

24 (Redacted)

25 (Redacted)

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- 1 (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 Q. [11:59:02] Could I first just ask you to repeat the last name that you said, (Redacted)
- 12 (Redacted), I believe, to repeat that slowly.
- 13 A. [11:59:12] (Redacted)
- 14 Q. [11:59:41] In your response you mentioned that (Redacted)
- 15 (Redacted)
- 16 (Redacted) And if you have a look again at the same page, I have a question about again
- 17 the first entry in the last column, it states, and I will read in French, (Interpretation)
- 18 (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 A. [12:00:35] Yes, I can because sometimes what happened was that (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)

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1 the other hand, there were some people who were directly identified by the
2 population and they had to say whether they were FNI or PUSIC or whether they
3 were UPC. They could easily identify some of them, that's something they could do.
4 Sometimes they even accused people from the multi-national forces or even MONUC
5 soldiers, saying they were the ones who committed such actions, and then we would
6 go and report to their superiors.

7 Q. [12:01:53] Mr Witness, to your knowledge, was the incidents of rape that I
8 referred to here which is attributed to the UPC, was this the only incident of rape
9 attributed to the UPC at the time of this incident?

10 A. [12:02:20] I don't know. I hadn't got top of mind all the reports, but there were
11 cases of rape, rapes that were committed but weren't even reported. Sometimes the
12 armed groups could see within their ranks that there was a commander or such and
13 such a person had raped a girl but that person couldn't be punished. But these are
14 things that were out in the open, public, and people who weren't members of any
15 armed group, many times it was people from other communities who had felt some
16 sort of prejudice. And in cases where a commander, let's say for the Lendu or the
17 Hema, were to rape somebody, well, there were no other person, *and sometimes
18 there was no reporting. But cases of rape, they were numerous. And the army,
19 well, there were others that we reported, other cases we reported to MONUC, and
20 people who were arrested and would then had followed -- these were UPC soldiers
21 when -- and when they arrived in May and were raping women and they could be
22 taken, and we said to MONUC, and MONUC said, well, we don't have enough
23 resources to prosecute them at that time.

24 Q. [12:03:58] How did you learn about the cases of UPC soldiers who were raping
25 women?

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1 A. [12:04:19] Sometimes women would complain and go to the headquarters and
2 say, "Look, people came into my home. My daughter was raped." Or "They came
3 to my home and they took my wife." They complained, people who weren't
4 frightened. But those people who were frightened couldn't say, couldn't report
5 because perhaps the next morning they could be killed. And many times people
6 would *accuse by saying that "My wife was raped" and "My daughter was raped" and
7 things of that ilk, but it's not all the rapes that were reported.

8 Q. [12:05:01] And very briefly, Mr Witness, how did you find out about the rapes
9 that were reported?

10 A. Well, talking about rapes that feature in this document, is that what you're
11 referring to, Counsel?

12 Q. [12:05:25] I'm referring to specifically rapes committed by UPC soldiers as you
13 referred to earlier.

14 A. [12:05:47] I remember, for example, at Kisenyi, there was a gentleman that we
15 called (Redacted), and he was responsible for safety and security and many
16 people would go and complain to that person.

17 And I remember Commander Mutéguki, who had raped a woman and she went off
18 to complain to (Redacted), to say this person has raped my wife, and he was punished for a
19 while. For a while he was punished, and then because he came from the UPC camp,
20 when the Hema south, well, it was divided up with Hema north, well, (Redacted) was asked
21 to hand over that case to the Prosecutor's office.

22 No MONUC, I clarify, at MONUC we could then hand that on to the Prosecutor's
23 office, and that's what they did, but there wasn't any prosecution. But we received
24 the report, we read the reports, accounts of rape. Not only that one, by the way, we
25 read a number of accounts that were presented to that individual and handed on, but

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1 you don't actually see that in the papers because the bulk of these reports that
2 were -- that are now before me here, these reports were drawn up only in the vicinity
3 of Bunia.

4 People who were close to Bunia could then send in reports, or those people could

5 (Redacted)

6 (Redacted)

7 difficult. Means of communication weren't very good, and it was difficult also to

8 meet him in person because this wasn't (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted) but

14 there were cases where people did actually provide a complaint.

15 PRESIDING JUDGE FREMR: [12:08:43] Mr Pace, the last minute.

16 MR PACE: [12:08:46] Thank you, Your Honour.

17 Q. [12:08:47] Mr Witness, briefly, do you remember the year and the month in

18 which the specific incident that you just referred to in Kisenyi took place?

19 A. [12:09:07] What incident?

20 Q. [12:09:09] You referred to an example in Kisenyi where there was a gentleman

21 who was called (Redacted) and then you spoke about a rape. Do you remember when the

22 incident of rape took place, the month and the year, if possible?

23 A. [12:09:30] Yes, it was at Kisenyi, it was in 2003, I think, end of 2003.

24 Q. [12:09:37] Do you remember to which group the person who committed the rape

25 that you refer to belonged?

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1 A. [12:09:55] It was a bit difficult, but it was a UPC commander. But he was going
2 off with Tchaligonza, but it was Mutéguki, that was his name, he was a UPC
3 commander.

4 MR PACE: [12:10:09] Your Honour, I have no further questions. I was just going to
5 ask for the clarification of some of the names given in the last response.

6 PRESIDING JUDGE FREMR: [12:10:16] All right, then it is fine. Please proceed.

7 MR PACE: [12:10:20]

8 Q. [12:10:20] Mr Witness, you mentioned first of all the person who was called Jeff
9 and then another name. Could you repeat that name slowly for the record, please?

10 A. [12:10:34] M-U-T-É-J-U-K-I -- G-U-K-I, I clarify, Mutéguki.

11 Q. [12:10:57] And you also refer to the name of a commander, in the transcript it's
12 captured as something like Muta. I'm not sure if you recall the name?

13 A. [12:11:18] Yes, Mutéguki. That's it, Mutéguki.

14 MR PACE: [12:11:22] Thank you, Mr Witness.

15 Your Honour, I have no further questions.

16 PRESIDING JUDGE FREMR: [12:11:25] All right.

17 Now, court officer, let's move into open session.

18 (Open session at 12.11 p.m.)

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

20 PRESIDING JUDGE FREMR: [12:11:46] Thank you, court officer.

21 So now we concluded examination-in-chief of our witness and we will move to
22 cross-examination. And I'm just reminding the Defence that it was allotted six hours
23 for cross-examination. So now, Mr Bourgon, I guess it will be you, you have the
24 floor. And we are in open session, so --

25 MR BOURGON: [12:12:14] Thank you, Mr President. Before I begin, I would like

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1 to address the Chamber in the absence of the witness, please.

2 PRESIDING JUDGE FREMR: [12:12:20] All right.

3 Court usher, please assist Mr Witness to leave the courtroom.

4 Again, Mr Witness, sorry for the inconvenience but we will have to deal with the next
5 issue in your absence.

6 (The witness stands down)

7 PRESIDING JUDGE FREMR: [12:12:56] Mr Bourgon, please proceed.

8 MR BOURGON: [12:12:58] Thank you, Mr President.

9 Mr President, when we submitted our response to the Prosecution's Rule 68(3)
10 application, we addressed the issue of the time required for the supplemental direct
11 examination.

12 And we addressed of course that, we made it clear, and that was in paragraph 25 of
13 our response, number being 1634, and we've said this before, but once the Prosecution
14 decides to use Rule 68(3) and adduce in evidence a large amount of evidence and then
15 it is authorised to conduct a supplementary examination, one issue that is very
16 important for us in terms of any supplementary examination is notice. When the
17 Prosecution is going to present a witness before this Chamber in a trial it must inform
18 the Defence, we must know ahead of time, we must be informed of what will be the
19 nature and what the witness will testify about. Now in this case, with regards to the
20 witness and his involvement in terms of what he did with the commission and
21 whether he was involved in the investigation --

22 MR PACE: [12:14:22] Your Honour, we are in open session.

23 PRESIDING JUDGE FREMR: [12:14:23] Yes.

24 So let's move into private session.

25 (Private session at 12.14 p.m.) *(Reclassified partially in public)

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- 1 THE COURT OFFICER: [12:14:40] We are in private session, Mr President.
- 2 PRESIDING JUDGE FREMR: [12:14:43] Mr Bourgon.
- 3 MR BOURGON: [12:14:44] Thank you, Mr President. I don't think there was any
- 4 harm done with what was mentioned --
- 5 PRESIDING JUDGE FREMR: [12:14:48] Yes, I think so, but still -- you are still fine,
- 6 but --
- 7 MR BOURGON: [12:14:53] But I appreciate.
- 8 The issue I was talking about, Mr President, is notice and I believe that many of the
- 9 questions asked, at least in the latter part of the supplementary examination are issues
- 10 for which we had no notice. Unless my colleague of course can provide the Defence
- 11 as to where we were put on notice that the witness would address these issues and
- 12 that such questions would be put to the witness, and that that's an issue that is, in our
- 13 respectful submission, a recurring issue that we will pay more and more attention to.
- 14 Because you cannot have it both ways: File all -- adduce all of the past recorded
- 15 testimony and then do a supplementary examination with issues that are -- lead as a
- 16 surprise.
- 17 Mr President, I would just leave it at that for the time being. I will also add,
- 18 Mr President, that in light of the number of issues raised by the witness, it is very
- 19 likely that the Defence will require more than the six hours allotted for its
- 20 cross-examination. It's not possible for me to say exactly how much time at this
- 21 moment, but it is very likely that we will ask the Chamber for more time. A number
- 22 of issues have been covered this morning, many of which we were on notice, but it's
- 23 the quantity of material as opposed to the material that is being led pursuant to
- 24 Article 68(3). The Chamber is well aware of the amount of evidence now before the
- 25 Chamber, that has been all admitted, and now we have an hour and a half of further

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1 questioning. At a minimum, Mr President, we should get more time so that we can
2 address these issues, or else we will be simply rushing through cross-examination,
3 attempting to raise all these issues and we will be short on time.

4 Thank you, Mr President.

5 PRESIDING JUDGE FREMR: [12:17:02] Before I will give the floor to Mr Pace,
6 Mr Bourgon, your requirement to be on notice according the content or intended
7 content of supplementary examination, is this requirement based, according to you,
8 on some provision or some part of our decision on conduct of proceedings?

9 MR BOURGON: [12:17:36] Mr President, it's a requirement based on fairness. And
10 the way at least I've seen trials conducted for a number of years, in the sense that
11 when you present a witness for the Prosecution, the Defence must have beforehand
12 what the witness will talk about and must have a statement and must have the
13 contents of the preparation session note.

14 In this case, the preparation session notes say absolutely nothing. We have a huge
15 amount of material to cover. (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 PRESIDING JUDGE FREMR: [12:18:50] (Redacted)

25 MR PACE: [12:18:53] Thank you, your Honour.

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 The Defence of course is free to cross-examine on what he said before, should he

5 choose to do so. My second point, your Honour, is that there are absolutely no

6 surprises in terms of what this witness would cover. The first reason for that is the

7 fact that we have admitted this witness's testimony pursuant to Rule 68(3), the

8 Defence has had every opportunity to review the material therein.

9 My supplementary examination today was limited to one hour, to topics that were

10 very limited. Even were all the information that I elicited today to be completely

11 new and unheard of, that is still something that the Defence could handle within the

12 allotted time.

13 But, your Honours, I respectfully submit that none of the information that I elicited

14 today was in any way new, it all stemmed from information which the witness

15 provided before. Certainly I asked for further detail and certainly I asked for certain

16 other incidents he may have been aware of, but in that regard there is no elements of

17 surprise.

18 And Defence counsel has invited the Prosecution to provide references to where that

19 happened. I don't think that's appropriate unless -- if your Honours oblige me to do

20 so, I can do so, but in general terms I can just state that when I asked a question I did

21 refer to where I was obtaining the information that the witness previously said.

22 I also note that Defence counsel's submissions today are again similar or actually they

23 could be characterised as a request for reconsideration. Your Honour specifically

24 addressed a similar concern which the Defence addressed in its response to our 68(3)

25 application. And this again is from transcript 161 in your decision about this

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1 witness's Rule 68(3) and your Honours said: "In terms of the appropriate scope of the
2 examination, the Chamber observes that there is nothing in its conduct of proceedings
3 decision that would limit the scope of supplementary examination in the manner
4 proposed by the Defence."

5 And very briefly, your Honour, I note that as for every other witness in this case,
6 barring expert witnesses, the Defence was provided before the start of the case with
7 will-says of these witnesses.

8 In relation to this specific witness, in our Rule 68(3) application at paragraph 6, we
9 stated that among the issues that we will cover in the supplementary examination are
10 questions regarding the role of the accused in the UPC/FPLC which, in my
11 submission, is what I did in the first half hour of my questioning, and also questions
12 about the UPC/FPLC's treatment of persons not of Hema ethnicity, which was the
13 topic I addressed in the second part.

14 So the Defence have taken issue earlier in the response with the detail provided.

15 They could have submitted this to the Chamber and the Chamber could have ordered
16 the Prosecution to provide further detail on the intended scope of supplementary
17 examination. The Prosecution submits that this would not be necessary or
18 appropriate. However, of course, if the Chamber should do so in the future, we
19 would be so guided.

20 And finally, your Honour, in terms of the Defence counsel's submissions that the
21 witness preparation note says nothing, I'm not certain exactly what the Defence
22 counsel means by that. The witness preparation note here in front of me
23 says -- contains nine pages of information. Certainly, it does not contain the
24 questions that I was about to ask the witness on the stand today. I don't believe that
25 is a requirement. So I'm not exactly certain what is expected from this.

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1 So just to be brief again, your Honour, I don't believe that we have heard any
2 submissions justifying any further extent of time. Such requests were not made
3 before in relation to this witness. The information elicited today does not warrant
4 such further time being given either.

5 Thank you, Your Honour.

6 PRESIDING JUDGE FREMR: [12:22:37] Thank you, Mr Pace.

7 Mr Bourgon, and please briefly.

8 MR BOURGON: [12:22:40] Mr President, I believe my colleague misses the point.

9 I'm talking about the questions raised on this document. (Redacted)

10 (Redacted)

11 (Redacted) The issue, Mr President, is the document is

12 admitted, but the witness never commented about the contents of the document

13 anywhere. And now my colleague goes through specific questioning referring to a

14 specific incident and he's obviously looking -- the Chamber is well aware of what my

15 colleague was trying to get from the witness, trying to get specific information on a

16 specific incident, and from this he managed to get other information. That's the

17 issue, Mr President.

18 If they have specific information on an incident and they want to ask about it, we

19 should be aware of that, and not allowing the Prosecution simply to ask questions

20 about the contents of a document that was never covered in the material we have for

21 this witness. This is the issue, Mr President, that is before you right now. That's

22 what we're saying.

23 The issue of additional time is separate. It's only a notice that we might very well

24 ask for additional time. I'm not doing so at this time. But I'm saying that on the

25 basis of the quantity of material and the supplementary questions, that six hours will

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1 be insufficient. But I'm not making this request at this time. Thank you,

2 Mr President.

3 PRESIDING JUDGE FREMR: [12:24:16] Mr Pace, but also just briefly.

4 MR PACE: [12:24:19] Yes, briefly, Your Honour.

5 In relation to this particular document, it was included in our Rule 68(3) application

6 wherein we provided the Defence and the Chamber with the paragraphs at which this

7 document was discussed. I don't need to say much further than that.

8 I don't believe Defence counsel is stating that we need to inform them ahead of time

9 about the questions in relation to documents. The document is there, I can ask

10 questions about it. And to be completely transparent, your Honour, I personally

11 have no information about this specific incident I asked about, but I think it is a

12 completely legitimate line of questioning to ask about an incident related to a crime

13 that was charged during the temporal scope of the charges, to see whether a witness

14 has information about this and to explore the subject of rape and sexual violence with

15 a witness. And in that regard, there is no need for specific notice in relation to a

16 specific line of questioning for a document that has been admitted.

17 PRESIDING JUDGE FREMR: [12:25:14] So just to conclude that dispute, as Mr Pace

18 already quoted our decision, we dealt partially with this issue, so I can just repeat

19 what in fact was said by both of you.

20 We don't see any legal basis for Prosecution or calling party automatically give notice

21 on what questions will be put. It's true that in some cases if the material which is

22 going to be admitted according to 68(3) is extremely extensive, then it could be

23 helpful to non-calling parties. So, upon request, the Chamber could order that so,

24 for future, we don't see that such a need will arise in every case, but we can see that

25 there could be cases then such an order should be proper, could be proper. But not

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1 in this case.

2 And as to the time needed for Defence, I think we had in mind the great, large
3 amount of materials that are going to be admitted, so it was for us reason why we
4 allotted six hours. We are still open to reconsider such a decision after some part of
5 cross-examination. So, to be fair, not to surprise Defence whether we will give some
6 additional time or not, so I can say that today you will start -- so after maybe four
7 hours, four hours of your time, we will decide whether we will give you some time to
8 add or not.

9 So now, Mr Bourgon, please start with cross-examination.

10 And court usher, bring Mr Witness in. So court officer, please or our team, please
11 have in mind that after four hours of cross-examination, the Chamber should indicate
12 whether -- decide whether the additional time will be granted to Defence or not.

13 (The witness enters the courtroom)

14 PRESIDING JUDGE FREMR: And before Mr Bourgon starts, Mr Witness, allow me
15 just to remind you that this Court is governed by the principle of fair trial which also
16 means, among the other principles, that both parties shall be treated equally, which
17 also in fact concerns you. So even if you are called by Prosecution, you should
18 answer all questions put to you by Defence in the same way. Do you understand
19 that?

20 THE WITNESS: [12:29:00] (Interpretation) Yes.

21 PRESIDING JUDGE FREMR: [12:29:01] Thank you, Mr Witness. And now I will
22 hand over the floor to Mr Bourgon.

23 QUESTIONED BY MR BOURGON: [12:29:14] (Interpretation)

24 Q. [12:29:16] Good morning, Mr Witness.

25 A. [12:29:18] Good morning.

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1 Q. [12:29:23] I believe that we are currently in open session.

2 PRESIDING JUDGE FREMR: [12:29:33] No, no, we are in private, so should we --

3 MR BOURGON: [12:29:34] Could we go in open session, yes, at least for the
4 beginning.

5 PRESIDING JUDGE FREMR: [12:29:40] All right. So let's move into public session.

6 (Open session at 12.29 p.m.)

7 THE COURT OFFICER: [12:29:49] We are in open session, Mr President.

8 PRESIDING JUDGE FREMR: [12:29:50] Thank you, court officer. Mr Bourgon,
9 please proceed.

10 MR BOURGON: [12:29:58] (Interpretation) Thank you, Mr President.

11 Q. [12:29:59] Mr Witness, I would like to start by introducing myself: I am
12 Stéphane Bourgon, I am a Canadian lawyer and I represent Bosco Ntaganda in this
13 case. I have two colleagues by my side. I have a number of questions to ask you
14 following your testimony. Do you understand that?

15 A. [12:30:19] Yes.

16 Q. [12:30:28] My colleague from the Prosecution and the Presiding Judge have
17 explained that we need to take a short break between replying -- between asking the
18 question and answering, and it's particularly important if we're speaking the same
19 language so that the interpreters can work properly. Do you understand that?

20 A. [12:30:52] Yes.

21 Q. [12:30:56] (Redacted)

22 A. [12:31:02] Yes.

23 PRESIDING JUDGE FREMR: [12:31:07] We are in open session, Mr Bourgon, so let's
24 redact the last part of the last question. And I -- it will be safer to move into private
25 session.

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1 (Private session at 12.31 p.m.) *(Reclassified partially in public)

2 THE COURT OFFICER: [12:31:32] We are in private session, Mr President.

3 PRESIDING JUDGE FREMR: [12:31:34] And please redact the last question.

4 Mr Bourgon, please proceed.

5 MR BOURGON: [12:31:40] Mr President, I'd like to clarify if the fact that I

6 (Redacted)

7 him. I don't believe so, Mr President.

8 PRESIDING JUDGE FREMR: [12:31:59] I guess that it may identify him because if

9 you said, and I will quote -- where is it? Now I can't find it in the transcript. But in

10 fact, (Redacted)

11 (Redacted) so I think it's really easy to conclude

12 what you had in mind, Mr Bourgon. So please proceed.

13 MR BOURGON: [12:32:47] Thank you, Mr President. (Interpretation)

14 Q. [12:32:54] Mr Witness --

15 MR BOURGON: Now we are in private session, are we?

16 PRESIDING JUDGE FREMR: [12:32:56] Now we are in private.

17 MR BOURGON: [12:33:04] (Interpretation)

18 Q. [12:33:05] Mr Witness, you arrived in The Hague a few days ago, I believe; is

19 that correct?

20 A. [12:33:09] Yes.

21 Q. [12:33:13] According to the information I have in front of me which refers to a

22 preparation note and disclosure note, you started your preparation with the

23 Prosecution on (Redacted). Could you confirm that?

24 A. I didn't note the date but it is possible.

25 Q. [12:33:42] When you go through a preparation session with the Prosecution, you

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- 1 are asked – (Redacted)
- 2 (Redacted) Is that correct?
- 3 A. [12:34:02] What do you mean by that?
- 4 Q. [12:34:05] I will clarify my question. (Redacted) is that
- 5 correct?
- 6 A. [12:34:11] Yes.
- 7 Q. [12:34:15] (Redacted)
- 8 (Redacted); is that
- 9 correct?
- 10 A. [12:34:28] Yes.
- 11 Q. [12:34:32] (Redacted)
- 12 A. [12:34:38] Yes.
- 13 Q. [12:34:43] (Redacted)
- 14 (Redacted)
- 15 A. [12:34:57] (Redacted)
- 16 Q. [12:35:07] What I would like to say is that when you had your preparation
- 17 session in this case, you were given a document by the Prosecution -- sorry, they gave
- 18 to us a document containing the information discussed. Were you told that this
- 19 would be the case?
- 20 A. Yes.
- 21 Q. [12:35:35] So if I say that the document I received from the Prosecution says that
- 22 you had a preparation session which started on (Redacted)
- 23 (Redacted), that's correct, possible?
- 24 A. [12:35:54] Yes.
- 25 Q. [12:36:00] During the preparation session you discussed and you reviewed all

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1 your documentation; is that correct?

2 A. [12:36:11] Yes.

3 Q. [12:36:20] You said this morning that having reviewed all the documentation,
4 you had no corrections that needed to be made; is that correct?

5 A. [12:36:33] Yes.

6 Q. [12:36:41] I refer firstly to page 9 of this document, the last page of the document,
7 and there you were asked a question. The Prosecution asked you, "Have you ever
8 spoken to Bosco Ntaganda?" And you answered, "No." Is that correct?

9 A. Yes.

10 PRESIDING JUDGE FREMR: [12:37:12] Hold on.

11 Mr Pace.

12 MR PACE: [12:37:14] Thank you, your Honour, in fairness to the witness, perhaps
13 the content of this paragraph can be explained. As the paragraph referred to by
14 Defence counsel clearly states, the witness was first referred to a specific part of his
15 prior recorded testimony and then he was asked in question in relation to this. So
16 rather than just summarising for the witness, we should provide this important aspect
17 of information before the witness provides an answer.

18 PRESIDING JUDGE FREMR: [12:37:40] Mr Bourgon, I think, I'm not sure the case
19 concerning you, but I think the Chamber already indicated that it would like to
20 proceed in this way as Mr Pace now asks for. Not just to make summary, but if you
21 are interested in something in previous statement, really to refer as specifically as
22 possible to the concrete part of the statement.

23 MR BOURGON: [12:38:07] Thank you, Mr President. I will change the focus of my
24 question so I don't have to refer because -- or else just reading the material will take
25 me 15 minutes before I can put my question. So I'll move straight to the point and I

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1 think we already have the answer, but I will ask again.

2 Q. [12:38:28] (Interpretation) Mr Witness, have you ever spoken to Bosco

3 Ntaganda?

4 A. [12:38:48] Yes.

5 THE INTERPRETER: But it means no in this context because of the form of the
6 question.

7 MR BOURGON:

8 Q. [12:38:56] I understand this "yes" to mean that you have never spoken to him; is
9 that correct?

10 A. No. You didn't re-ask me the question. There were conversations in between
11 with the President. I would like you, please, to put your question to me again.

12 Q. [12:39:17] I had done so. At the time of the events, did you ever speak to Bosco
13 Ntaganda?

14 A. No.

15 Q. [12:39:31] This morning, when you started your testimony, you said that you
16 (Redacted); is that correct?

17 A. [12:39:49] Yes.

18 Q. [12:39:56] Correct me if I'm wrong, but you – (Redacted)

19 (Redacted) That's what I understood from your
20 testimony this morning. Is that correct?

21 A. Yes.

22 Q. [12:40:13] Just for the purposes of clarification, I would like to know when you
23 say (Redacted) this is on 29 of the transcript, lines 2 to 5, (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted) which meeting are

2 you referring to?

3 A. [12:41:03] With the investigators, they didn't come and ask me a question

4 specifically about Ntaganda. When we met, I think it was (Redacted). They asked me -- a

5 lot of questions were raised, a lot of matters so that I could explain things, and I

6 explained everything I knew about the situation, not only Ntaganda, but all the

7 political military actors in Ituri.

8 I don't know whether they in their minds were thinking of this person or that person

9 or that person, that was not the idea I had, but we talked a lot and we talked about a

10 lot of people. (Redacted)

11 (Redacted)

12 (Redacted)

13 PRESIDING JUDGE FREMR: [12:42:18] Mr Bourgon, sorry to interrupt you. I

14 would like to make one correction of transcript because it's even minor but important

15 concerning page 68, line 8 in fact. It contains our guidance and it now reads as

16 follows, it's just to make summary, but I said it's just not to make summary. So

17 please add the word "not" to line 8.

18 And please now proceed, Mr Bourgon.

19 MR BOURGON: [12:42:56] (Interpretation) Thank you, Mr President.

20 Q. [12:43:00] I understand, Mr Witness, from your answer that before your first

21 meeting with the OTP investigators (Redacted)

22 (Redacted); is that correct?

23 A. [12:43:24] Yes.

24 Q. [12:43:26] (Redacted)

25 A. (Redacted)

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1 I'm sorry, Mr President, because I would like to explain this about Ituri, to explain

2 (Redacted).

3 PRESIDING JUDGE FREMR: [12:44:08] Go ahead.

4 THE WITNESS: [12:44:17] (Interpretation) When the war started in the east, we

5 had to do all we possibly could to stop it. Some people who were responsible, and

6 particularly those in -- those in a responsible position, particularly those in the

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)

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1 intervene in the country.

2 MR BOURGON: (Interpretation)

3 Q. Mr Witness --

4 PRESIDING JUDGE FREMR: [12:47:49] Mr Bourgon, just to make it clear, this time
5 used by witness for giving the clarification will not be included to your time because
6 it was in fact incited by me. So now you may proceed, Mr Bourgon.

7 MR BOURGON: [12:48:01] (Interpretation) Thank you, Mr President.

8 Q. [12:48:03] Mr Witness, I conclude that you decided (Redacted)

9 (Redacted)

10 (Redacted)

11 A. I don't know. Mr President, in French, which I don't speak correctly,
12 sometimes for reasons of politeness we use the term "we" when one actually means
13 "I." I don't know whether you do that in Canada, but we tend to use the term "we"
14 when actually it means "I".

15 Q. [12:49:04] In Canada we do something similar, but when you say "we", you
16 mean "I", I just wanted to clarify that answer?

17 A. [12:49:14] Yes.

18 PRESIDING JUDGE FREMR: [12:49:15] Sorry to interrupt. Again I have to correct
19 the transcript. I said this time will not be included to the Defence time, so please at
20 page 72, line 7 add the word "not".

21 Please proceedings, Mr Bourgon.

22 MR BOURGON: [12:49:35] Thank you, Mr President.

23 Q. [12:49:39] (Redacted)

24 (Redacted)

25 (Redacted)

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1 A. [12:49:56] Yes.

2 Q. [12:50:01] (Redacted)

3 (Redacted)

4 (Redacted)

5 A. [12:50:23] With respect to Mr President, (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 Q. [12:51:19] Mr Witness, you are -- we are not here to complicate the situation. I

14 talked about one of the people (Redacted), and I'm going to read what

15 I have here from the report, 29, 1 to 5: "(Redacted)

16 (Redacted)" Is

17 that correct?

18 A. [12:51:54] (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 PRESIDING JUDGE FREMR: [12:52:35] Mr Witness, I would like to ask you if you

24 could slightly slow down because, you know, there is -- each word has to be precisely

25 interpreted. So you are a bit fast, so please try to slow down a bit. Thank you.

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1 Mr Bourgon.

2 MR BOURGON: [12:52:52] (Interpretation) Thank you, Mr President.

3 Q. [12:52:55] Let's start with the fact that (Redacted),

4 and I come back to your last reply. (Redacted)

5 (Redacted)

6 A. [12:53:15] Yes.

7 Q. [12:53:19] (Redacted); is

8 that correct?

9 A. [12:53:28] Yes.

10 Q. [12:53:30] (Redacted)

11 (Redacted); is that correct?

12 A. [12:53:42] Yes.

13 Q. [12:53:44] (Redacted)

14 (Redacted); is that correct?

15 A. [12:53:57] Yes, if the Court were to find that relevant.

16 Q. [12:54:06] (Redacted)

17 (Redacted)

18 (Redacted) Which ethnic group do you belong to?

19 A. [12:54:29] I am (Redacted).

20 Q. [12:54:39] Is it correct to say that you yourself are much closer (Redacted)

21 (Redacted)? Is that something which you recognize?

22 A. [12:55:05] (Redacted)

23 (Redacted)

24 (Redacted)

25 Q. [12:55:41] Perhaps I could clarify my question. Do you recall having said in

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1 (Redacted)

2 (Redacted) Do you recall having said that?

3 PRESIDING JUDGE FREMR: [12:56:08] Hold on, Mr Witness. Hold on.

4 Mr Pace.

5 MR PACE: [12:56:09] Yes, your Honour, if we're referring to specific questions and
6 answers from prior testimony, it would be good to have a reference. Thank you.

7 PRESIDING JUDGE FREMR: [12:56:18] Mr Bourgon.

8 MR BOURGON: [12:56:18] I have no intention of giving references to this type of
9 question. I can ask the witness whether he remembers saying something and then I
10 will put the transcript, if necessary. That's the procedure, Mr President.

11 PRESIDING JUDGE FREMR: [12:56:30] I think I'm afraid that you are right.

12 MR BOURGON: [12:56:39] (Interpretation)

13 Q. [12:56:41] For the court report, I'm going to read (Redacted)

14 (Redacted).

15 THE INTERPRETER: [12:57:15] And I'm sorry, the interpreter did not catch the page
16 reference.

17 PRESIDING JUDGE FREMR: [12:57:21] Mr Bourgon, could you repeat the reference
18 to the page because it was not captured. The number of the page.

19 MR BOURGON: [12:57:28] (Interpretation) I'm sorry. (Redacted).

20 PRESIDING JUDGE FREMR: Thank you.

21 MR BOURGON: (Interpretation)

22 Q. [12:57:43] In this reply, Mr Witness, you said as follows: "(Redacted)

23 (Redacted)"

24 Do you recall having said that?

25 A. [12:58:07] Yes. Because you asked me a question, you asked me which

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1 ethnicity I'm from, and from the ethnic point of view (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 Q. [12:58:56] I understand that this is your personal opinion. (Redacted)

6 (Redacted); is that correct? Is that correct?

7 A. [12:59:18] I don't know that that -- whether that's the way you interpret it, but as

8 I said from the outset, the -- those who came from there and those who did not come

9 from there, (Redacted) --

10 Q. [12:59:42] I am going to interrupt you because that's not the question, and we'll

11 come back to the people who are not from that area. The question is very clear:

12 You as an individual, (Redacted)? Is

13 that what you said?

14 A. [12:59:57] Yes, I have already accepted that.

15 Q. [13:00:06] We can continue. So as you were (Redacted),

16 (Redacted)

17 (Redacted)

18 A. [13:00:27] Do you want to know which period or which time?

19 Q. [13:00:33] I see the same in the same way.

20 MR BOURGON: (Interpretation) Because it's now 1 o'clock, Mr President, perhaps

21 we should stop here and start again after lunch and that would be my first question.

22 Mr Witness, you could discuss with us the exact time, the exact moment when you

23 started the investigation into Ntaganda. Thank you, Mr President.

24 PRESIDING JUDGE FREMR: [13:00:58] All right. Now for the remainder, let's

25 move into open session.

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- 1 (Open session at 1.01 p.m.)
- 2 THE COURT OFFICER: [13:01:11] We are in open session, Mr President.
- 3 PRESIDING JUDGE FREMR: [13:01:13] Thank you, court officer. So we take our
- 4 regular lunch-break now and we will reconvene half past two.
- 5 THE COURT USHER: [13:01:25] All rise.
- 6 (Recess taken at 1.01 p.m.)
- 7 (Upon resuming in open session 2.34 p.m.)
- 8 THE COURT USHER: [14:34:23] All rise.
- 9 Please be seated.
- 10 PRESIDING JUDGE FREMR: [14:34:41] Good afternoon, everybody.
- 11 We will directly continue with cross-examination of our witness.
- 12 Ms Grabowski.
- 13 MS GRABOWSKI: [14:35:09] Mr President, I just wanted to put on the record that
- 14 Mr Suprun has left the courtroom this afternoon. Thank you.
- 15 PRESIDING JUDGE FREMR: [14:35:15] Thank you, Ms Grabowski.
- 16 I hadn't noticed. Otherwise appearances, I see, remain the same.
- 17 So, Mr Bourgon, you have the floor and, usual question, do you want to remain in the
- 18 regime of open session or is there a need to move into private?
- 19 MR BOURGON: [14:35:35] I would like to try in public session, Mr President.
- 20 PRESIDING JUDGE FREMR: [14:35:40] Let's try, but please be vigilant,
- 21 Mr Bourgon.
- 22 MR BOURGON: [14:35:49] (Interpretation)
- 23 Q. [14:35:52] Good afternoon, Mr Witness.
- 24 I don't know whether you replied or not, but I did wish you a good afternoon.
- 25 A. I didn't hear you. Thank you.

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1 Q. [14:36:22] Mr Witness, you mentioned having carried out an investigation on
2 the subject of Bosco Ntaganda and other people and you said that you did that for
3 your country, amongst other things, and that that made me curious. So I'd like to
4 ask you a few questions on that topic.

5 I imagine that, given where you're living for some time, you are well aware that the
6 conflicts, the ethnic conflicts in the Congo go back to 1998. Do you agree with me?

7 A. [14:37:08] Yes.

8 Q. [14:37:11] And I would suggest also that one of the elements that led to the
9 ethnic conflicts in DRC was a communiqué which was issued by the president which
10 was on the television, so we're talking about Kabila's father. He said at that time that
11 he was going to squash all the vermin, all the Tutsi and any who resembled them.
12 Do you recall that?

13 A. [14:38:03] Yes.

14 Q. [14:38:05] Do you agree with me that that was one of the elements that led to
15 the ethnic conflict in the Democratic Republic of Congo?

16 A. [14:38:20] Yes, one of the elements.

17 Q. [14:38:27] And if I were to suggest to you that the (Redacted),
18 which is not (Redacted), that for decades and generations had a visceral hate, would that be
19 right?

20 A. [14:38:49] That I don't know.

21 Q. [14:38:57] So in your testimony you say that you, as a member of the (Redacted),
22 you say that there was not a general recognized hatred for the (Redacted), is that what
23 you're saying here today?

24 PRESIDING JUDGE FREMR: [14:39:16] Mr Bourgon, please hold on.

25 Mr Pace.

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1 MR PACE: [14:39:18] Yes, your Honour, just to tread carefully on issues that may
2 be revealing of the witness's identity.

3 PRESIDING JUDGE FREMR: [14:39:26] I believe that the ethnicity itself is not a
4 fact that could, easily at least, reveal identity, Mr Pace.

5 MR PACE: [14:39:34] I could make further submissions in private session on this
6 matter, your Honour.

7 PRESIDING JUDGE FREMR: [14:39:38] All right.

8 Let's move into private session.

9 (Private session at 2.39 p.m.) *(Reclassified partially in public)

10 THE COURT OFFICER: [14:39:49] We are in private session, Mr President.

11 PRESIDING JUDGE FREMR: [14:39:52] Mr Pace.

12 MR PACE: [14:39:53] Thank you, your Honour.

13 Just briefly, (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 PRESIDING JUDGE FREMR: [14:40:24] (Redacted)

20 (Redacted)

21 MR PACE: [14:40:33] (Redacted)

22 (Redacted)

23 (Redacted)

24 so I think we're okay for now, but just to tread carefully, if possible.

25 PRESIDING JUDGE FREMR: [14:40:49] All right.

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1 Mr Bourgon, any comment from your part on this issue?

2 MR BOURGON: [14:40:53] I prefer not to make comment and to proceed,

3 Mr President.

4 PRESIDING JUDGE FREMR: [14:40:58] All right. Please proceed.

5 MR BOURGON: [14:41:04] I believe we are now in private session.

6 PRESIDING JUDGE FREMR: [14:41:07] Now we are in private, so should we move
7 back I guess?

8 MR BOURGON: [14:41:11] No, we will stay in private session.

9 PRESIDING JUDGE FREMR: [14:41:14] Rather not. Okay. Fine.

10 MR BOURGON: [14:41:16] (Interpretation)

11 Q. [14:41:17] We are now in private session so what you say will not be heard
12 outside the courtroom. I'm going to repeat my question because I'm not sure that
13 you'd actually answered it. It is as follows: Okay. I found my place. It's on page
14 82, lines 1 to 5. What I was saying was, if I understand your testimony correctly, you
15 were saying that as a member of the (Redacted) you do not
16 know that there was or is, and has been for decades, a visceral hate between the
17 (Redacted) groups; is that what you are stating here?

18 A. [14:42:35] Is that a question?

19 Q. [14:42:42] Yes.

20 A. [14:42:43] Yes, I had replied. I'm not interested in that and I don't know that.
21 I've never lived in the villages.

22 Q. [14:42:56] When you say village, what -- which village do you mean?

23 A. [14:43:05] (Redacted)

24 Q. [14:43:18] (Redacted)

25 A. [14:43:22] Yes.

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1 Q. [14:43:23] And do you know, Mr Witness, that when we talk about the Tutsi
2 that the Hema people are often associated with the Tutsi; that is correct, is it not?

3 A. [14:43:50] I don't know whether I'm about to repeat myself. I'm going to
4 insinuate something here. (Redacted)

5 (Redacted), so I have no problem with that. (Redacted)

6 (Redacted) So I don't think it's

7 of interest that we continue along that line. (Redacted)

8 Q. [14:44:34] My question was not to know whether you had a problem with

9 (Redacted), but to know whether you were aware of the fact that the Tutsi people, the

10 Hema are often linked to the Tutsi because of their physical appearance, for example.

11 Do you agree with that statement?

12 A. [14:44:57] Yes, because they are allied to the Tutsi.

13 Q. [14:45:08] And you know from the outset that Bosco Ntaganda is a Tutsi; is
14 that correct?

15 A. [14:45:19] Yes.

16 Q. [14:45:22] So I come back to the question I asked just before the break. The
17 inquiry, (Redacted)

18 (Redacted)?

19 A. [14:45:49] (Redacted)

20 Q. [14:45:56] (Redacted)

21 A. [14:46:01] All the time.

22 Q. [14:46:05] So if I take a reference point to the fact that you talked to the
23 investigators in (Redacted), I would be right to say that (Redacted)

24 (Redacted) until the time you met with the

25 investigators; is that correct?

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1 A. [14:46:34] No, I didn't restrict myself to that. I would like to tell you that I

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 Q. [14:47:05] (Redacted)

6 (Redacted)

7 A. [14:47:22] No, I would have no objection.

8 Q. [14:47:28] Mr Witness, the Prosecutor, the investigators, the OTP, they also

9 know (Redacted); is that correct?

10 A. [14:47:41] No. (Redacted)

11 Q. (Redacted)

12 A. [14:47:58] Yes. (Redacted)

13 (Redacted) But I would like to add one thing, if

14 you don't mind. (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted) If there are things that have happened and I'm asked

18 whether I know about them, whether I heard about them, then I have the right -- the

19 duty to give my testimony.

20 But -- and this is in my statements and I have said that. But I was asked to testify

21 whether I heard things and, of course, for the purposes of justice it is up -- it is my

22 duty to say what I know.

23 Q. [14:49:30] (Redacted)

24 (Redacted)

25 A. [14:49:44] Yes. (Redacted)

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1 Q. [14:49:50] Mr Witness, I was talking more about (Redacted)

2 (Redacted)

3 (Redacted)

4 A. [14:50:10] (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 Q. [14:51:23] (Redacted)

12 (Redacted)

13 A. [14:51:39] (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 Q. [14:52:31] (Redacted) which

20 deals with the situation between the Lendu and the Hema, what period are we talking

21 about here? From which year to which year?

22 A. [14:52:48] From the start of the conflict when they started the fighting, tribal

23 fighting initially, (Redacted)

24 (Redacted).

25 Q. [14:53:11] Could you be more precise in terms of, terms of time? You're

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1 talking about the tribal war, could you talk about a starting date and a finishing date?

2 A. I think from 1999 onwards.

3 Q. Until which year?

4 A. [14:53:36] I think 2006.

5 Q. [14:53:41] If I understood correctly, earlier you said that you were told that
6 (Redacted)?

7 A. [14:53:56] (Redacted)

8 Q. [14:54:02] I'm trying to find the exact place to find your words when you said
9 that there were (Redacted). Your answer was, it's on page 77 of the French, lines 4 to
10 6 and it says:

11 "(Redacted)" Who told you? That's
12 my question.

13 A. [14:54:42] (Redacted)

14 Q. [14:54:48] (Redacted)

15 A. [14:54:56] (Redacted)

16 (Redacted)

17 Q. [14:55:10] (Redacted)

18 (Redacted)

19 A. [14:55:25] No, I don't remember the number.

20 Q. [14:55:30] It's part of your testimony in the page -- in paragraph 24. And I'll
21 remind you what you said in 24 of your statement, which is from (Redacted) and
22 there you say:

23 "I gave -- when my interview was continued in (Redacted) I gave the investigators (Redacted)
24 documents, newspapers and press cuttings. The documents I provided are either
25 originals or copies that I obtained (Redacted)

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1 (Redacted)

2 So my question is as follows: (Redacted)

3 (Redacted)

4 (Redacted)

5 A. [14:56:52] I think part of it is included in those documents.

6 Q. [14:56:59] We will verify this and we'll come back to this tomorrow.

7 So my question now still relates to (Redacted)

8 (Redacted) mention that Bosco Ntaganda was a strange man, as you said this
9 morning?

10 I'm looking for the exact words that you used. Someone who didn't come to
11 meetings, who wasn't very visible, who was strange. Did you put that in your book,
12 this first book?

13 A. [14:57:48] I never said he was strange.

14 Q. [14:57:55] To avoid any confusion, let me look at your exact words. I don't
15 want to cause any confusion with you. When you were talking about -- answering
16 questions about Bosco Ntaganda, you said the following -- and we're just looking for
17 the exact place.

18 A. [14:58:26] I could help you. I said he was mysterious.

19 Q. [14:58:32] That's the word I was looking for.

20 A. We didn't see him, we hardly saw him in public. We expected that when
21 there was some form of action we heard about him, but we didn't see him in all the
22 meetings, in all the activities, only when there were actions, which is why I said he
23 was mysterious. I didn't say he was strange

24 Q. [14:59:05] So this mysterious Bosco Ntaganda who is not visible, who doesn't
25 come to meetings, (Redacted)?

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1 A. [14:59:20] No, (Redacted).

2 Q. [14:59:28] Turning now (Redacted)

3 (Redacted).

4 A. [14:59:37] Yes, I would prefer not to talk about that. (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 Q. [15:00:11] This is only for the purposes of justice, it's with a *view to seeking

9 truth. (Redacted) the implication of countries in

10 the conflict?

11 A. [15:00:33] (Redacted)

12 (Redacted) I don't want to. I've got a lot of

13 reasons why I don't want to.

14 Q. [15:00:46] Mr Witness, do you agree with me that (Redacted) the relations of

15 states that were in conflict; is that what you said earlier?

16 A. [15:01:04] I can see that you're insisting. I don't want to talk about it, but I

17 could say that there are elements, for example, on the arms and munitions trafficking

18 between the countries and the armed groups. I don't want to talk about this for the

19 moment. Firstly, because there are documents that I don't want to have discussed.

20 (Redacted) but I would prefer you to ask me questions about

21 Ntaganda at that level.

22 Q. [15:01:56] Well, let's just make some progress, but I suppose you would agree

23 that for the purposes of justice (Redacted)

24 (Redacted)?

25 A. [15:02:06] For the time being, no.

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1 MR BOURGON: [15:02:15] Mr President, if I can address the Chamber in the
2 absence of the witness, please.

3 PRESIDING JUDGE FREMR: [15:02:20] I also had idea to address you in absence
4 of the witness.

5 Court usher, please assist Mr Witness to leave the courtroom.

6 Sorry, Mr Witness, we would like to ask you to leave for a while the courtroom.

7 (The witness stands down)

8 PRESIDING JUDGE FREMR: [15:02:50] Mr Bourgon, please proceed.

9 MR BOURGON: [15:02:53] Very briefly, Mr President.

10 The witness is now indicating (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)

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1 there is or whether there is not a disclosure violation (Redacted)
2 (Redacted). Thank you, Mr President.
3 PRESIDING JUDGE FREMR: [15:04:35] Mr Pace, Prosecution position?
4 MR PACE: [15:04:37] Yes, your Honour. At the moment we don't have
5 information about (Redacted). I will certainly double, triple check to check whether
6 the witness has previously provided the Prosecution with (Redacted). I note that
7 I'm not, I'm not certain whether there is (Redacted)
8 (Redacted). The Prosecution's position is that the relevance
9 of (Redacted) has not been established thus far.
10 And of course the witness is here and can be questioned about any matter relating to
11 the accused, so if the Defence line of questioning is trying to seek information that the
12 witness has about the accused, they can certainly explore that in the absence of any
13 (Redacted).
14 However, of course, should your Judges be minded to order that, it falls within the
15 Chamber's authority to do so. But our position is that the relevance needs to be
16 established, and the need for it, given that the witness is here and can testify.
17 PRESIDING JUDGE FREMR: [15:05:40] Mr Bourgon.
18 MR BOURGON: [15:05:43] Mr President, the relevance is quite clear and the
19 witness has explained the relevance, relationship between the Hema and between the
20 Lendu between the period from 1998 or the beginning of the conflict until 2006.
21 (Redacted), of states in
22 the conflict in DRC and the matter in which there is weapons would have been
23 provided to various armed groups. That is for the relevance.
24 As to the probative value or what we are trying to achieve, my colleague knows very
25 well that the main purposes of cross-examination is to try to highlight the reliability

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1 or lack of reliability of a witness, the credibility or lack of credibility of a witness. It
2 is our submission, Mr President, that this witness, despite everything he's been saying

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 So I believe, Mr President, that we completely fulfil the test for both relevance, for
8 both the need and for both the importance of obtaining this material.

9 As for the disclosure part, I leave it up to my colleague to come up with whatever
10 information they possess regarding the testimony today under oath that he was told

11 (Redacted)

12 (Redacted)

13 Thank you, Mr President.

14 PRESIDING JUDGE FREMR: [15:07:41] All right.

15 Mr Pace, anything else?

16 MR PACE: [15:07:44] Yes, your Honour, just briefly. In terms of assessing the
17 credibility of witness I won't make submissions at length now, I don't feel it is

18 appropriate to do so. However, as I mentioned, the witness is here, can be

19 cross-examined, and in terms of how the witness obtained his information, that is

20 certainly an area which has been explored both in examination-in-chief and I assume

21 will also be explored during cross-examination.

22 PRESIDING JUDGE FREMR: [15:08:08] Yes. And you know, either you can just
23 focus on that during possible redirect, also the Chamber could focus a bit because I

24 agree that (Redacted) could be

25 relevant, especially if Mr Witness made some evaluation of the conflict, evaluation of

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1 the person of Mr Ntaganda. We heard something about Mr Ntaganda being
2 considered hero, so I think it could obviously influence on evaluation of Mr Witness's
3 credibility. (Redacted)

4 (Redacted)

5 (Redacted)

6 But we will decide on that at the end of this testimony and, as I said, both Prosecution
7 and Chamber could even make some additional inquiry about details.

8 Now please bring Mr Witness back and we will continue.

9 (The witness enters the courtroom)

10 PRESIDING JUDGE FREMR: [15:09:58] Thank you, Mr Witness.

11 We just solved procedural issue and we will continue.

12 Mr Bourgon, please proceed.

13 MR BOURGON: [15:10:05] (Interpretation) Thank you very much, your Honour.

14 Q. Mr Witness, let's just return to our starting point, (Redacted)

15 (Redacted) which started in 2003. So in light of that we

16 know (Redacted)

17 (Redacted)

18 A. [15:10:33] You want the names of people or?

19 Q. [15:10:42] Yes, Mr Witness, I'm trying to establish your sources (Redacted)

20 (Redacted)

21 (Redacted)

22 A. [15:11:03] (Redacted)

23 (Redacted)

24 (Redacted)

25 Q. [15:11:59] Just a second. That last name is new to me. Would you mind

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- 1 spelling it for me?
- 2 A. [15:12:08] (Redacted)
- 3 Q. [15:12:17] Would you mind spelling the second name, the family name, please,
- 4 if you wouldn't mind?
- 5 A. [15:12:27] (Redacted)
- 6 Q. [15:12:55] You can carry on citing your other sources, Mr Witness?
- 7 A. [15:13:02] (Redacted)
- 8 Q. [15:13:41] Would you mind spelling that, please?
- 9 A. [15:13:43] Yes. (Redacted)
- 10 Q. [15:14:10] Thank you very much. Any other sources?
- 11 A. [15:14:17] (Redacted)
- 12 Q. [15:14:25] Do you have another name for that (Redacted)?
- 13 A. [15:14:30] No.
- 14 Q. [15:14:32] Any other sources?
- 15 A. [15:14:35] Well, if they come back to me I will tell you them.
- 16 Q. [15:14:46] Thank you very much, Mr Witness. So let's just look at some of
- 17 these names, because some of them -- well, I don't think you made mention of all
- 18 these names in the material that corresponds to you in my holdings.
- 19 Let's start with (Redacted), who is this gentleman?
- 20 A. [15:15:20] (Redacted)
- 21 Q. [15:15:34] And you spoke to him about Bosco Ntaganda and when?
- 22 A. [15:15:37] Can I finish, please?
- 23 Q. [15:15:39] I do apologise.
- 24 A. [15:15:42] I hadn't finished. He had gone. He had also gone to talk with
- 25 (Redacted)

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1 Hema, but from a military standpoint. (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 After that --

7 Q. [15:16:57] If I could just butt in just a second, Mr Witness. Now you've
8 mentioned (Redacted), so what period of time you're referring to precisely, Mr Witness?

9 A. [15:17:12] I'm talking about 2005.

10 Q. [15:17:18] (Redacted) was in 2005; is that right?

11 A. [15:17:28] Yes.

12 Q. [15:17:29] So 2005 (Redacted); is that
13 right?

14 A. [15:17:36] Not me.

15 Q. [15:17:37] Yes, that (Redacted); is that right?

16 A. [15:17:41] Yes.

17 Q. [15:17:41] Any other information you can provide with regard to (Redacted)?

18 A. [15:17:47] Yes. (Redacted) and, as such, he left actually

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 Q. [15:18:47] Right, Mr Witness, I don't want to butt in and cut you off, but here
2 you're talking about events that occur in 2005; is that right?

3 A. [15:18:58] Yes.

4 Q. [15:19:00] Well, in light of that, did you talk to (Redacted) about events occurring
5 between 2000 and 2003?

6 A. [15:19:17] I don't think there would be any reason to do so. It was he who
7 was submitting (Redacted)
8 (Redacted)

9 Q. [15:19:36] All right. Then let's move on to another name, which I don't know
10 whether actually it is among the information I have with regard to you. But
11 (Redacted), let's talk about him, who is this person?

12 A. [15:19:57] Well, Counsel, first of all I'd just like to say that the event that I'm
13 talking about is in the material that I was given to read and in the documents, it
14 features there. (Redacted) He is
15 the kind of ideologue, the ideologist, if you like, behind that particular movement.
16 (Redacted)
17 (Redacted)
18 (Redacted)

19 Q. [15:21:16] Mr Witness, once again I'd just like to cut in here very briefly, this
20 conversation that you're making reference to took place in what year and it goes to
21 events occurring in what year?

22 A. I'm talking about 2005?

23 Q. [15:21:28] (Redacted)

24 (Redacted) that dates back to 2005; is that right?

25 A. [15:21:38] Yes.

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1 Q. [15:21:40] (Redacted) with regard

2 to Bosco Ntaganda going to the period 2000 to 2003?

3 A. [15:21:57] No.

4 Q. [15:21:58] Let's move to (Redacted), another contact you mentioned. You
5 told me that you didn't have a second name for that individual; is that right?

6 A. [15:22:08] I don't know his other name.

7 Q. [15:22:11] (Redacted), does that ring a bell?

8 A. [15:22:17] No, I don't think so, (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 Q. [15:22:49] Well, once again, Mr Witness, I would just like to know that with
13 this (Redacted)

14 (Redacted)

15 (Redacted)

16 A. [15:23:13] Of that particular moment, because you asked me in fact all, the
17 names of all those people that had been – (Redacted), so

18 you're not, you know, not going to confine me to talking about one year to another
19 year. All people, well, he will tell me -- (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 because he had gone. (Redacted) who had also gone to see where

2 he was.

3 Q. [15:24:31] And the name of the investigator, Mr Witness?

4 A. [15:24:37] I think it was (Redacted).

5 Q. [15:24:46] So did you speak with (Redacted) about events regarding

6 Bosco Ntaganda from 2000 to 2003?

7 A. [15:24:56] Well, let me just return to what I was saying, namely, (Redacted)

8 talked to me about the way he moved around (Redacted) -- well, how they facilitated

9 his departure, in fact, from the country. So it was a kind of a conjunction of a

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 Q. [15:25:49] Was that an official meeting with (Redacted)?

15 A. [15:25:56] Well, I don't know what was official and what wasn't official, but he

16 knew that I was in contact with the Court, he had my telephone number, and as soon

17 as he arrived he called me and then we met in a hotel and that's when he told me that

18 he'd gone off to Ituri to try and meet or speak with Bosco Ntaganda. And for me,

19 because this was an investigator, for me it was official. But we didn't have to write

20 down this and this was done, but I saw him again here and I think around (Redacted),

21 (Redacted) if my memory serves me well, I don't remember whether we spoke

22 about that.

23 Q. [15:26:57] All right. Mr Witness, well, we have a list of names and I asked

24 questions about those that are familiar to me, but there are others. For the time

25 being we're going to explore what they said during my cross-examination and so

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1 here's my question: (Redacted)

2 (Redacted)

3 (Redacted)

4 A. [15:27:40] Yes.

5 Q. [15:27:43] So what's of interest to me here is the following: How was contact
6 established between you and the Office of the Prosecutor? How did that go then?

7 A. [15:28:03] I don't know myself, I don't know. I don't know how things went,

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 Q. [15:29:50] (Redacted)

25 (Redacted)

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- 1 A. [15:29:55] Yes.
- 2 Q. [15:29:56] (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 A. [15:30:16] (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 Q. [15:30:46] (Redacted)
- 13 (Redacted)
- 14 A. (Redacted)
- 15 (Redacted)
- 16 Q. [15:31:06] (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 A. [15:31:29] (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 Q. [15:31:45] (Redacted)
- 25 A. [15:31:56] (Redacted)

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1 A. [15:35:04] I haven't got it up yet.

2 Q. [15:35:08] Nor have I, Mr Witness, but it will appear.

3 THE COURT OFFICER: [15:35:27] Is it the ERN number ending (Redacted)?

4 MR BOURGON: [15:35:32] Indeed it is.

5 Q. [15:36:01] (Interpretation) There is the document, Mr Witness. I hope you
6 can see it. So may I draw your attention first of all to there where we see (Redacted)
7 (Redacted)

8 (Redacted)

9 A. [15:36:32] (Redacted)

10 (Redacted)

11 Q. [15:36:52] (Redacted)

12 (Redacted)

13 A. [15:37:02] (Redacted)

14 Q. [15:37:14] (Redacted)

15 (Redacted)

16 A. [15:37:21] (Redacted)

17 Q. [15:37:22] (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 A. [15:37:51] (Redacted)

22 Q. [15:38:01] (Redacted)

23 (Redacted)

24 A. [15:38:13] (Redacted)

25 (Redacted)

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1 A. [15:41:15] (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 Q. [15:42:02] (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 So if they had been handed in a different time, you would have confirmed that, I
13 assume?

14 A. [15:42:38] What does it say there exactly?

15 MR BOURGON: (Interpretation) Please, could you put this same document up,
16 0105-0085 this time, please. The French version is 089.

17 THE INTERPRETER: [15:43:23] Mr Bourgon has no microphone.

18 PRESIDING JUDGE FREMR: [15:43:26] Mr Bourgon, please switch on the mic.

19 MR BOURGON: [15:43:35] I apologise.

20 Q. [15:43:37] (Interpretation) So I will repeat my question because my
21 microphone was not operating. So I draw your attention to paragraph 24.

22 PRESIDING JUDGE FREMR: The court officer wants --

23 THE COURT OFFICER: [15:43:50] Excuse me, could you please specify the
24 paragraph number, please.

25 MR BOURGON: [15:43:53] (Interpretation) 24, as I thought I said on a number of

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 Q. [15:49:14] (Redacted)

5 A. [15:49:23] (Redacted)

6 (Redacted)

7 Q. [15:49:31] (Redacted)

8 (Redacted)

9 A. [15:49:37] (Redacted)

10 Q. [15:49:42] Let us move on to another subject, Mr Witness, something you said
11 this morning about weapons. You remember that this morning you spoke about
12 weapons. The subject of weapons was discussed this morning. Do you recall that?

13 A. [15:50:08] Yes.

14 Q. [15:50:10] This is proof we know that Kahwa made the arrangements with
15 Rwanda for the weapons we know that; is that correct?

16 A. [15:50:32] Yes.

17 Q. [15:50:35] We'll come back to the involvement of Chef Kahwa, but what
18 I would like to know now is what you said about the control, the monitoring of
19 weapons, particularly heavy weapons, and I come back to what you said this morning
20 and it was on page 37, lines 11 to 13 in the French transcript:

21 "According to what (Redacted) the heavy
22 weapons were used by Bosco Ntaganda only when they were carrying out an
23 operation for the benefit of -- which would benefit Rwanda. And the only person
24 that would get the order to use these heavy weapons, that was Bosco Ntaganda."

25 Do you recall having said that this morning?

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1 A. [15:51:50] Yes, I do.

2 Q. [15:51:59] Do you also recall having said that the decision to use heavy
3 weapons was a decision taken by Bosco? Do you remember having said that?

4 A. [15:52:09] Yes, I do.

5 Q. [15:52:11] One moment, if I may. When you said they were only going to be
6 used for operations which would be of benefit of Rwanda and the one who received
7 the orders is Bosco, were you talking then about orders coming from Rwanda?

8 A. [15:52:48] Yes.

9 Q. [15:52:48] So according to your testimony, it was Rwanda deciding when the
10 heavy weapons were used?

11 A. [15:53:04] Yes, but only the heavy weapons.

12 Q. [15:53:07] So I can conclude from that that when the UPC used heavy weapons
13 there were two things, firstly, it meant that Bosco had to give the order and he had to
14 get authorisation from Rwanda to do that; is that correct?

15 A. [15:53:24] I think before he was able to start an operation, he got the
16 authorisation, he must have had the authorisation to do so.

17 Q. So your testimony is that when Bosco Ntaganda wanted to start an operation, he
18 first calls, communicates, shall we say, with Rwanda to get the authorisation to use
19 heavy weapons and then he would decide to use them in the operation; is that the
20 way it worked as far as you know?

21 A. [15:54:07] Counsel, I think we have to make some distinctions here because I'm
22 getting a bit sort of confused in my mind with this. So there were Hema military
23 operations, Hema against the Lendu. There were also military operations where the
24 Rwandans were working with Ugandan rebel groups in Ituri with the idea of course
25 of destabilising Uganda.

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1 So there were the different things, the Ugandans were aware of the situation because
2 they had asked inquiries to be made into these rebels and the localities, so this could
3 concern cases where the rebels were going to get near to the Ugandan border, that
4 was a Rwandan thing. But a conflict between Lendu and Hema, for whatever reason,
5 that was a Hema problem. *If it's a mining area and there there were the orders
6 from Rwanda to do that. So there were two sorts of attack: Hema against Lendu,
7 or the Hema, the UPC with the idea of taking something.

8 Q. [15:56:02] There you have raised a point that I would like to cover in detail
9 with you tomorrow. According to the material I have on your subject you talk about
10 this at length, about the exchange of weapons between the UPC and Ugandan rebels
11 and Lendu. But let's put that to one side for the moment. I'd like to come back to
12 that tomorrow.

13 I'm talking about weapons in general now. This morning you said that the weapons
14 were used only in operations which would be of benefit to Rwanda. So if this -- so in
15 other words in a Hema/Lendu operation there were no heavy weapons. Is that
16 correct?

17 A. [15:56:58] In many cases it was like that.

18 Q. But if it was something that could be of benefit to Rwanda, then perhaps there
19 one could use heavy weapons; is that correct.

20 A. [15:57:12] Yes, but the question is of course which operations were of benefit to
21 Rwanda and which were those of benefit to Hema, that is the question.

22 Q. [15:57:33] But for an operation to be of benefit to Rwanda somebody would
23 have to communicate with Rwanda for authorisation and, according to you, that
24 someone would be Bosco Ntaganda?

25 A. [15:57:46] *I think before they could start the operation, they had to ask for

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1 authorisation.

2 Q. [15:57:54] (Redacted)

3 (Redacted)

4 A. [15:58:03] (Redacted)

5 Q. [15:58:06] (Redacted)

6 A. [15:58:12] (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 Q. [15:59:24] (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 A. [15:59:45] (Redacted)

18 (Redacted)

19 Q. [15:59:54] (Redacted)

20 (Redacted)

21 A. [16:00:02] (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 Q. [16:00:32] (Redacted)

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1 (Redacted)

2 (Redacted)

3 This document will appear in front of you. Can you see it?

4 Do you recognize this document?

5 A. [16:06:50] Yes.

6 Q. [16:06:52] I would like to have the second page of the document, that is

7 number (Redacted).

8 THE INTERPRETER: [16:07:21] Corrects the interpreter.

9 MR BOURGON: [16:07:25] (Interpretation)

10 Q. [16:07:26] (Redacted)

11 (Redacted)

12 A. [16:07:31] (Redacted)

13 Q. [16:07:34] (Redacted)

14 (Redacted)

15 A. [16:07:48] (Redacted)

16 Q. [16:07:53] (Redacted)

17 (Redacted)

18 A. [16:08:12] (Redacted)

19 (Redacted)

20 Q. [16:08:18] (Redacted)

21 Perhaps it would be preferable for us to give you a paper copy. I don't know if the

22 Prosecution has a paper copy. I can give mine. There's no writing on it. If my

23 colleague wants to look at the document.

24 MR PACE: [16:08:38] We have no objection to the paper copy, your Honour. I

25 just note that my colour paper copy, the quality of the writing on the second page is

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1 terrible. I'm not sure about the Defence counsel. It's better on the screen, but I have
2 no position if it's a better quality document.

3 MR BOURGON: [16:09:04] We have a second copy of the document, if it can be
4 shown to my colleague. It has no markings on it or no colours.

5 PRESIDING JUDGE FREMR: All right. Court usher, please assist.

6 MR PACE: [16:09:23] Yes, your Honour, as I said, I have no position to the witness
7 using this document for some pages. The writing, the handwriting, might be more
8 clear on the screen than on the document because of the printout quality, but I have
9 no position to using the document when that's better.

10 PRESIDING JUDGE FREMR: [16:09:40] Noted.

11 MR BOURGON: [16:09:41] I don't intend to look into the details. It's the
12 document itself that I'm interested in.

13 Q. [16:09:47] (Interpretation) (Redacted)

14 (Redacted)

15 A. [16:09:56] (Redacted)

16 Q. [16:09:59] (Redacted)

17 A. [16:10:02] (Redacted)

18 Q. [16:10:10] (Redacted)

19 A. [16:10:15] (Redacted)

20 (Redacted)

21 Q. [16:10:23] (Redacted)

22 A. [16:10:25] (Redacted)

23 Q. [16:10:36] (Redacted)

24 A. [16:10:42] (Redacted)

25 Q. [16:10:44] (Redacted)

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1 (Redacted)

2 A. [16:21:03] (Redacted)

3 (Redacted)

4 (Redacted)

5 Q. [16:21:35] (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 A. [16:21:59] (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 Q. [16:22:23] (Redacted)

14 (Redacted)

15 (Redacted)

16 A. [16:22:40] Yes, there are none.

17 MR BOURGON: [16:22:42] With the leave of the Chamber, I would like to stop

18 here. I would like to address the Chamber in respect of an issue before we continue

19 with our cross-examination.

20 PRESIDING JUDGE FREMR: [16:22:52] You mean in the absence of the witness?

21 MR BOURGON: [16:22:54] Indeed, Mr President.

22 PRESIDING JUDGE FREMR: [16:22:55] Mr Pace.

23 MR PACE: [16:22:56] Yes, your Honour. Just to note that the Prosecution also has

24 very brief information to provide the Chamber and also in the absence of the witness.

25 PRESIDING JUDGE FREMR: [16:23:04] All right then. Court usher, please assist

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1 Mr Witness to leave the courtroom. And I believe it means that we can just make
2 him free for today because we still have five minutes and I believe it will be needed
3 for those submissions.

4 Mr Witness, it concludes your testimony for today, so we thank you very much and
5 one important thing, it's my duty to remind you that -- because we will continue
6 tomorrow, 9.30, it's my duty to remind you that you must not in the meantime discuss
7 your today's testimony with anybody else. Do you understand that?

8 THE WITNESS: [16:23:50] (Interpretation) Yes.

9 PRESIDING JUDGE FREMR: [16:23:51] So thank you and we will see you
10 tomorrow, 9.30.

11 (The witness stands down)

12 PRESIDING JUDGE FREMR: [16:24:07] And now, Mr Bourgon, you may proceed.

13 MR BOURGON: [16:24:18] Thank you, Mr President. It's issues of disclosure or
14 of getting information concerning this witness. The witness has testified that he was
15 (Redacted)

16 (Redacted) To the best of our knowledge, we have
17 no information of such a meeting.

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 only issues that are still uncertain are whether there were any record of meetings in
2 (Redacted); am I right?

3 MR PACE: [16:30:15] I believe so, your Honour. Perhaps Defence counsel can
4 confirm. Defence could also send us an email and we could check any specific issues
5 in that regard.

6 PRESIDING JUDGE FREMR: [16:30:24] Thank you, Mr Pace.

7 Mr Bourgon.

8 MR BOURGON: [16:30:27] Thank you, Mr President. We will indeed verify the
9 information provided concerning (Redacted). We already
10 mentioned that we had received the interview, but we did not make the link with the
11 (Redacted).

12 But that was not the issue. (Redacted) are two outstanding issues. Plus
13 who put this witness in contact with the Prosecution? It might be a mistake and not
14 (Redacted). We'd like to know who it is. Thank you.

15 PRESIDING JUDGE FREMR: [16:30:57] Mr Pace.

16 MR PACE: [16:30:58] Yes, on that, your Honour, we have informed the Defence
17 that it was not (Redacted), that was a mistake. As I said, we can check who put the -- who
18 put the witness in touch with the Prosecution. I'm not entirely sure of the relevance
19 of this factor, given that the witness has been questioned about it, but we will
20 certainly check.

21 PRESIDING JUDGE FREMR: [16:31:17] Please do. And do it in a time that would
22 allow Defence to work with those information and to make some additional
23 preparations, if such a need will arise, for tomorrow, tomorrow cross-examination.

24 So if there are no further requests for the floor, and we are in private?

25 So let's move into open session as usually just to inform public of our further

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1 programme.

2 (Open session at 4.31 p.m.)

3 THE COURT OFFICER: [16:31:58] We are in open session, Mr President.

4 PRESIDING JUDGE FREMR: [16:32:03] Thank you. So we will adjourn now and

5 we will continue tomorrow with the rest of cross-examination of this witness

6 tomorrow at 9.30.

7 THE COURT USHER: [16:32:18] All rise.

8 (The hearing ends in open session at 4.32 p.m.)

9 RECLASSIFICATION REPORT

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

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