

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
 6 Judge Chang-ho Chung
 7 Trial Hearing - Courtroom 3
 8 Friday, 25 November 2016
 9 (The hearing starts in open session at 9.32 a.m.)
 10 THE COURT USHER: [9:33:09] All rise.
 11 The International Criminal Court is now in session.
 12 Please be seated.
 13 PRESIDING JUDGE FREMR: [9:33:35] Good morning, everybody.
 14 Court officer, please call the case.
 15 THE COURT OFFICER: Thank you, Mr President.
 16 The situation in the Democratic Republic of the Congo, in the case of the Prosecutor
 17 versus Ntaganda, case reference ICC-01/04-02/06.
 18 We are in open session.
 19 PRESIDING JUDGE FREMR: [9:33:55] Thank you, court officer.
 20 Now appearances in the usual order, starting with Prosecution.
 21 MR PACE: [9:34:01] Good morning, Mr President, your Honours. For the
 22 Prosecution today are Ms Kristy Sim, assistant trial lawyer; Ms Selam Yirgou, case
 23 manager; Mr Eric Iverson, trial lawyer; and I'm James Pace, assistant trial lawyer.
 24 PRESIDING JUDGE FREMR: [9:34:16] Thank you, Mr Pace.
 25 Defence, please.

- 1 MR BOURGON: [9:34:23] (Interpretation) Good morning, members of the Bench.
- 2 For the Defence this morning, Ms Vasconi, Ms Portier, and myself, Stéphane Bourgon.
- 3 Thank you.
- 4 PRESIDING JUDGE FREMR: [9:34:36] Thank you, Mr Bourgon.
- 5 Legal Representatives of Victims now, please.
- 6 MR ABDOU: [9:34:44] Good morning, Mr President. Good morning, your
- 7 Honours. Mohamed Abdou for the former child soldiers.
- 8 MS GRABOWSKI: [9:34:51] Good morning, Mr President. Good morning, your
- 9 Honours. Anne Grabowski for the victims of the attacks. Thank you.
- 10 PRESIDING JUDGE FREMR: [9:34:59] Thank you, Ms Grabowski.
- 11 Thank you, Mr Abdou.
- 12 We are starting without witness, and the reason is that we would like to give chance
- 13 to Prosecution to include information that they sent us by e-mail, but to include it on
- 14 the record.
- 15 So, Mr Pace, you have the floor.
- 16 MR PACE: [9:35:22] Thank you, Your Honour. I'll be referring to certain dates,
- 17 names and locations so we need to move into private session, with your leave.
- 18 PRESIDING JUDGE FREMR: [9:35:30] Understandable.
- 19 Court officer, let's move into private session.
- 20 (Private session at 9.35 a.m.) *(Reclassified partially in public)
- 21 THE COURT OFFICER: [9:35:44] We are in private session, Mr President.
- 22 PRESIDING JUDGE FREMR: [9:35:46] Thank you, court officer. Mr Pace, please
- 23 proceed.
- 24 MR PACE: [9:35:51] So the Prosecution wishes to address certain issues raised by
- 25 Defence counsel at the end of yesterday's hearing. As your Honour noted, we did

1 send an email about this yesterday so I will be brief this morning.

2 Witness P-12 did not testify that he was met by a Prosecution investigator named

3 Lavigne in (Redacted), but in (Redacted), and, according to the Prosecution's records, the

4 witness did meet this investigator in (Redacted) in (Redacted) in relation to security issues.

5 He also met him twice in (Redacted) when he provided documents that have

6 been disclosed.

7 With regard to the Defence's submissions that the witness testified that his statement

8 was not actually signed in (Redacted), the witness's testimony yesterday

9 does not seem to support this view. The witness did testify that he signed

10 documents in (Redacted) and, in the Prosecution's submission, the witness may have

11 been referring to having signed certain documents, for example the documents

12 regarding receipt or provision of documents to the Prosecution. And this is because,

13 as the Prosecution noted in its e-mail, the witness did provide documents to

14 Prosecution investigators in (Redacted) at the time. And in addition to the

15 information in last night's e-mail, the Prosecution notes that the witness met the same

16 investigator (Redacted), also in (Redacted), and the Defence is aware of this

17 because there is a document that has been disclosed that was collected during this

18 meeting and the metadata in eCourt establishes the date that this document was

19 collected and who collected it, it is the investigator at issue -- the Prosecution confirms

20 that no statements were signed by the witness in (Redacted).

21 The Defence has been provided with all the information in the Prosecution's

22 possession in relation to the witness's (Redacted) which, according to the

23 disclosed information, took place on two or three days in (Redacted), so

24 there is no further information to provide in that regard.

25 In relation to the times at which the witness provided documents to the Prosecution,

1 again the Defence is able to check about this through the metadata in eCourt, but just
2 to be brief, the witness provided documents disclosed to the Defence when he met the
3 Prosecution for his witness statements in (Redacted). And he also provided
4 documents disclosed to the Defence when he met the Prosecution investigators, as I
5 mentioned, in (Redacted).

6 And yesterday reference was made to a list of (Redacted) documents. The Prosecution notes
7 that these (Redacted) documents are referred to in an annex to the witness's (Redacted) witness
8 statement and this annex sets out a description of these documents. And we confirm
9 that these documents have been disclosed.

10 And finally, your Honour, just to clarify that in relation to initial contact with this
11 witness, that the initial contact was made by the Prosecution through a Prosecution
12 investigator and that there was no intermediary involved in establishing contact.

13 Those are our submissions, your Honour.

14 PRESIDING JUDGE FREMR: [9:39:23] Thank you, Mr Pace.

15 Defence, do you want to make any comment on this information? If yes, please.

16 MR BOURGON: [9:39:30] Yes, Mr President, I would like to comment. This
17 information from the Prosecution is much welcome, however, in our respectful
18 submission, it is not sufficient.

19 First of all, the last part about the book and about -- that was disclosed, that was our
20 mistake, we now found the reference that my colleague is talking about. And that
21 was disclosed, we just missed that when going through one of the depositions of the
22 witness. So that can be -- that's a done matter.

23 However, what is of importance to us is, first of all, the meeting between a
24 (Redacted) and the witness. Of course, this is unrelated to the interviews of (Redacted).

25 Now my colleague says that this took place in (Redacted). We agree that the transcript

1 makes clear that this meeting took place in (Redacted).

2 However, we're told today that this has to do with security issues, but this is (Redacted) and

3 we have no record whatsoever of this, and usually the Prosecution at least should

4 provide a record of this meeting, even if they redact some information.

5 But I get to the two main issues: The first issue is about the statement, and I agree

6 with my colleague that what the witness said yesterday, it's not clear whether he was

7 talking about signing his statement or signing a document when he referred to a

8 meeting in (Redacted). However, the information we have this morning from the

9 Prosecution makes it clear that there was a meeting with an investigator on (Redacted)

10 and during which a document would have been given to this investigator, and we

11 also know that another document was given on (Redacted).

12 Now, these two meetings, twice an investigator met with the witness, he obtained a

13 document, but we have no record of any of these meetings. When an investigator

14 meets with a witness, he just not simply obtains a document, there is some

15 information that is exchanged, and we have no idea why this document was given at

16 a certain time, whether there were discussions before or after. And we believe that

17 this is important.

18 The last issue, Mr President, concerning the issue of prior to the statement. The

19 witness was shown all the dates on the first page of his statement and he confirmed,

20 and that was at page 106, lines 11 to 17, and 105, lines 23 to 106, line 10. He

21 confirmed that there was an initial meeting during which they discussed documents

22 and then they decided to proceed to (Redacted).

23 To us, this is probably the most important one because that's when the witness will

24 provide his initial information, which he will then either confirm or infirm during the

25 official interview. That interview, we don't know how long it lasted. We know it

1 was held in (Redacted), we know it was held prior to the series of interviews leading to
2 his (Redacted) statement, and we do not have any information.

3 In our respectful submission, Mr President, the Prosecution should provide more
4 information as to what happened and what was discussed during this meeting.

5 Thank you.

6 PRESIDING JUDGE FREMR: [9:43:41] Thank you, Mr Bourgon. Mr Pace, could
7 you give any response to that?

8 MR PACE: [9:43:48] Yes, your Honour.

9 Briefly, I believe that there is no obligation on the part of the Prosecution to provide
10 records of every meeting that the Prosecution has with a witness. I believe this was
11 in fact the subject of litigation in this case. Of course, the Prosecution is obliged to
12 disclose information where that is relevant to the proceedings. I note, as everybody
13 here knows, that this witness is (Redacted), the witness has had security issues, so it
14 is only reasonable to understand that meetings do have to take place with this witness
15 in relation to security issues.

16 As your Honours have previously ruled, when a meeting take place and it solely
17 concerns security issues, that does not automatically entitle the Defence to have
18 disclosure of that information, and in our submissions, your Honour, there have been
19 no reasons given as to why the details of any discussions in relation to security should
20 be subject to disclosure in relation to this witness.

21 Further, your Honour, it is not in any way uncommon to meet witnesses to collect
22 documents. It's certainly not prohibited by any rules that I'm aware of. So it is
23 perfectly plausible and there is no reason to believe that when the Prosecution
24 investigators met the witness on certain occasions it was solely for the purpose of
25 collecting documents. I can confirm that the Prosecution did not collect further

1 statements. They would have been disclosed, your Honours.

2 And I note of course, I perhaps don't even need to say this, but in relation to what the
3 witness has said about the dates and times and places when he met Prosecution
4 investigators, of course the witness may be mistaken. That would be, in our
5 submission, totally understandable. The witness has met the Prosecution several
6 times, I believe spanning now over the time of a decade, so that is understandable.
7 And the witness's statements in this regard do not give rise to the need to order the
8 Prosecution to provide information when the Prosecution has indeed provided all the
9 information that it has.

10 And those are our submissions, your Honour.

11 PRESIDING JUDGE FREMR: [9:46:01] Just to clarify it for myself, so you state that
12 the first meeting was just devoted to security issues, the second one was just held to
13 collect evidence.

14 Do you have at least any record just reflecting those facts that, okay, somebody met
15 Mr Witness, collected, or hand over something and that's it, or are there any records
16 that could prove this?

17 MR PACE: [9:46:35] Yes, your Honour. Just to clarify, the first time *we met the
18 witness was not related to security issues. The information that we have, the
19 security discussion was in (Redacted). The witness's statement was taken in
20 (Redacted). And the way, what allows me to provide the information about when we met
21 the witness is that, yes, internally, the Prosecution does keep notes of when witnesses
22 are met. We have a means of keeping track of this, it is important to know just in
23 case. However, those notes are, first of all, internal work product. If anything
24 transpires during the meetings noted in this log that we have that is relevant for
25 disclosure, that is certainly assessed for disclosure and it would be disclosed.

1 So in terms of providing proof, yes, we do have our log stating investigator X met
2 with Ms Y on this date in this place. That providing that to Defence would add
3 nothing to what I'm saying here, your Honour. And we, in our submission, that is
4 absolutely not necessary to provide in any other means. The Prosecution has, as I
5 said, reviewed the documents for disclosure and has done so.

6 PRESIDING JUDGE FREMR: [9:47:48] Thank you.

7 Mr Bourgon.

8 MR BOURGON: [9:47:51] Mr President, I will just respond briefly. I'm not going to
9 go back into the events when in (Redacted) Prosecution would have
10 obtained a document without signing any records. I think it's not appropriate
11 practice, but I leave that issue aside.

12 The issue I want to come back with is further to my colleague's argument that they
13 don't have and that they don't have any obligation to provide any information, any
14 information coming from the witness. The interview we are talking about is the first
15 contact with the witness. The first time they meet with him.

16 Now, contrary to what my colleague says, the Appeals Chamber has confirmed that
17 screening notes are relevant and must be disclosed. Was there a screening note in
18 this case? Was there a screening note produced, was there any record? The witness
19 made it clear, unless the Prosecution is denying that they met with him, discussed
20 documents and then decided to go to (Redacted). If they are denying this, fine, then we
21 let the Chamber decide the importance of what the witness said about this meeting.
22 If they are not denying that there was a meeting, we'd like to know the date of that
23 meeting and we'd like to know who was there and what was discussed, and they
24 must have a record of this first meeting, which is the equivalent of taking a screening
25 note.

1 And last comment, Mr President, the Prosecution just confirmed that there were
2 no -- no one involved in establishing contact between P-12 and the Prosecution. That
3 even compounds the importance of getting a first record of that first meeting. Thank
4 you, Mr President.

5 PRESIDING JUDGE FREMR: [9:49:40] Mr Pace, and please briefly.

6 MR PACE: [9:49:42] Yes, your Honour. I most certainly agree with Defence
7 counsel that information and screening notes could be relevant and disclosable. I'm
8 fully aware of what the Appeals Chamber said and I don't believe that in my earlier
9 submissions I said that no information from the witness is disclosable, that's certainly
10 not a tenable position. The Prosecution does not have a screening note from this
11 witness. I note that the -- what the witness said yesterday in testimony, in our
12 submission, is not clear about whether any meetings took place before. We have
13 now provided the information that we have about meetings.

14 And, your Honour, in relation to the last point about establishing contact, you are
15 fully aware of who this witness is, we are in private session, (Redacted)

16 (Redacted)

17 the charges, in the geographic area of the charges and composed of persons who were
18 (Redacted) It is completely reasonable, your Honours, to

19 understand why the Prosecution would identify themselves this witness as somebody
20 of interest. So with regard to the contact established with this witness, we do
21 apologise for initially providing the wrong information that (Redacted)

22 (Redacted), but I do not believe there is any cause to question the Prosecution's statement
23 that indeed (Redacted) It is perfectly plausible
24 and that is the information that we have.

25 PRESIDING JUDGE FREMR: [9:51:13] Thank you.

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Open Session)

ICC-01/04-02/06

1 So Chamber will deliberate on that during the break.

2 Now let's move into open session and please bring Mr Witness into the courtroom.

3 (Open session at 9.51 a.m.)

4 THE COURT OFFICER: [9:51:42] We are in open session, Mr President.

5 PRESIDING JUDGE FREMR: [9:51:44] Thank you, court officer.

6 (The witness enters the courtroom)

7 PRESIDING JUDGE FREMR: [9:52:24] Good morning, Mr Witness.

8 WITNESS: DRC-OTP-P-0012 (On former oath)

9 (The witness speaks French)

10 THE WITNESS: [9:52:30] (Interpretation) Good morning.

11 PRESIDING JUDGE FREMR: [9:52:32] Mr Witness, now the Defence will continue
12 with your cross-examination. And before they start, allow me to provide you with
13 two reminders: First one, that you are still under oath, which means that you have
14 to speak the truth and nothing but the truth; and second one is of a technical nature,
15 don't forget that you both are speaking in French, while the other people involved
16 need English translation, which also takes some time, and to make precise translation
17 it requires you not to respond to questions immediately but always wait some time
18 before giving your answer, at least three seconds. So please have it in mind.

19 Have you understood all that?

20 THE WITNESS: [9:53:38] (Interpretation) Yes.

21 PRESIDING JUDGE FREMR: [9:53:39] Very well. Now I am giving the floor to
22 Mr Bourgon.

23 Mr Bourgon, habitual question, do you want to proceed in the regime of open or
24 private session?

25 MR BOURGON: [9:53:52] Private session, Mr President, please.

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 PRESIDING JUDGE FREMR: [9:53:53] In order to inform public, this witness is a
2 protected one and he was given a guarantee that his identity will not be revealed to
3 the public and if there is such a risk, subject to questions that will be put to him, we
4 have to move into the regime of private session, and it's most likely that the majority
5 of the examination will be conducted in this kind of regime.

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

7 (Private session at 9.54 a.m.) *(Reclassified partially in public)

8 THE COURT OFFICER: [9:54:34] We are in private session, Mr President.

9 PRESIDING JUDGE FREMR: [9:54:37] Thank you, court officer.

10 Mr Bourgon, please proceed.

11 MR BOURGON: [9:54:43] (Interpretation) Thank you very much, your Honour.

12 QUESTIONED BY MR BOURGON: (Continuing)

13 Q. [9:54:46] Good morning, Mr Witness.

14 A. Good morning.

15 Q. [9:54:49] I've got a number of questions for you today, Mr Witness, and I'd like
16 to start very simply with the following: I'd like to have confirmation from your oral
17 evidence which is currently on the record. I'd like to first address (Redacted)

18 (Redacted). Now, this is already on the record in this case and it features in

19 DRC-OTP-2054-0351. That's the transcript reference. And line 6 to 8.

20 (Redacted) Now the question was put to you:

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 We are in agreement on that, Mr Witness?

25 A. [9:55:58] Yes.

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 Q. [9:56:03] On the faith of that answer, I understand that (Redacted)

2 (Redacted)

3 (Redacted)

4 A. [9:56:40] Yes.

5 Q. [9:56:43] (Redacted)

6 (Redacted)

7 A. [9:57:07] (Redacted)

8 (Redacted).

9 Q. [9:57:25] (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Interpretation) Is that correct?

22 A. [9:59:15] Yes.

23 Q. [9:59:15] (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

- 1 (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 A. [10:00:26] (Redacted)
- 8 Q. [10:00:32] (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 A. [10:01:16] (Redacted)
- 12 Q. [10:01:17] Now let's take an example, because you spoke about it, or I think you
- 13 spoke about it, you said that Thomas Lubanga had been arrested in the month of June
- 14 2002. You knew that, didn't you?
- 15 A. [10:01:37] Yes.
- 16 Q. [10:01:45] And I conclude from that you know that he was arrested in Kampala
- 17 during a meeting at a hotel; is that correct?
- 18 A. [10:02:02] Yes.
- 19 Q. [10:02:05] I would like to know, if you're able to confirm, that at the aforesaid
- 20 meeting, neither Bosco Ntaganda nor Floribert Kisembo were present. Can you
- 21 confirm that?
- 22 A. [10:02:29] (Redacted) I wasn't at that meeting.
- 23 Q. [10:02:38] My question is very simple: Are you able to confirm or not? I
- 24 would just conclude that you didn't know.
- 25 A. [10:02:48] Yes.

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 Q. [10:02:49] However, you spoke (Redacted) about the reason why Thomas

2 Lubanga was arrested in Kinshasa. (Redacted)

3 (Redacted)

4 (Redacted)

5 A. [10:03:11] (Redacted)

6 Q. [10:03:20] (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Interpretation) Do you confirm that, Witness?

22 A. [10:05:57] Yes.

23 Q. [10:06:01] Just a few points in this answer.

24 Mbusa Nyamwisi, well we know who he is, we've already discussed him.

25 Salim Saleh, you would agree with me at that time he was the commander of the

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 Ugandan forces, was he not?

2 A. [10:06:25] No.

3 Q. [10:06:27] What did he do?

4 A. [10:06:32] He was a commander of the reserve forces of the UPC.

5 Q. General Salim Saleh was a high-ranking officer in the Ugandan army; is that
6 correct?

7 A. At that time, Counsel, the general didn't have official functions within the army.
8 He was retired and he dealt with retired soldiers, but, as he was the young brother of
9 President Museveni, he did have a certain degree of influence within the army. But
10 officially, he didn't have a command position in the Ugandan army.

11 Q. [10:07:45] These clarifications are what I wanted to obtain, so thanks for that.

12 In the first sentence it was about Nyamwisi who was in contact with Kabila. Kabila
13 at that time, who are we talking about? We are talking about the father, president of
14 the Democratic Republic of Congo, are we not?

15 A. [10:08:09] No.

16 Q. [10:08:11] Who are we talking about?

17 A. [10:08:16] The son, Kabila the son.

18 Q. [10:08:21] And Kabila the son was the president of the Democratic Republic of
19 Congo at that time?

20 A. [10:08:30] Yes.

21 Q. [10:08:34] So if I take the paragraph, your answer given to the question here, if I
22 summarise it, you have Mbusa Nyamwisi, he's with the RCD/K-ML, president. You
23 have Kabila, the son, president of the Democratic Republic of Congo. And we also
24 have Salim Saleh, the general, younger brother of Museveni, president of Uganda.
25 And these three people decide to arrest Thomas Lubanga because he could be an

Trial Hearing

(Private Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0012

1 obstacle to their oil contract. Is my understanding of the paragraph correct?

2 A. [10:09:35] Could you repeat that, please, Counsel?

3 Q. [10:09:39] No, I'm going to go on to another subject. It's clear, I think.

4 The second event that I'd like to discuss with you (Redacted)

5 (Redacted) You know that at a certain time the minister Ntumba Luaba was

6 abducted, or he was held temporarily in Bunia; did you know that?

7 A. [10:10:22] Yes.

8 Q. [10:10:27] What I'm interested in, Witness, is what you said concerning the dates

9 concerning the return of Thomas Lubanga to Bunia, as well as the question of the

10 abduction of Ntumba Luaba. Here you say, (Redacted)

11 (Redacted)

12 Well, I can see -- well, I can't see what that is:

13 "Ntumba Luaba returned to Bunia with Thomas Lubanga. I think it was 25 July that

14 they returned to Kinshasa, if I'm not mistaken, in 2002. And Lubanga" --

15 PRESIDING JUDGE FREMR: [10:11:46] Hold on, Mr Bourgon. Mr Pace, please.

16 MR PACE: [10:11:50] Your Honour, just to clarify, the witness had said that they

17 came back from Kinshasa. I think it was interpreted as returned to, just to make that

18 clear on the record.

19 When I read, it says that they came -- 25 July that they came back from Kinshasa.

20 PRESIDING JUDGE FREMR: [10:12:14] Mr Bourgon, could you please clarify.

21 MR BOURGON: [10:12:17] My colleague is correct, I thought I had said that they

22 rentrés de Kinshasa, from Kinshasa. (Interpretation) Came back from Kinshasa.

23 Q. [10:12:26] I'll continue, Witness:

24 "And Lubanga convinced the professor to go and see the military training in Mandro.

25 In the collectivity led my Chef Kahwa Panga Mandro. Ntumba Luaba arrived there,

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 and Chef Kahwa had taken him hostage. And as the Ugandans -- it was 26 July.

2 The 27th, the Ugandans had sent a delegation to ask Chef Kahwa to free the professor.

3 But Chef Kahwa had put a condition: The nine other people who left with Thomas

4 Lubanga had to be freed. And these people were freed on 31 July 2002. And on 1

5 September, the professor was freed. He left on 1 September to Kinshasa." That's

6 what is currently in evidence. Do you confirm that?

7 A. [10:14:01] No, I think there's a mistake. I think I've made a mistake.

8 The 25 July? I think it was 25 August, the eighth month, 25 August, not 25 July.

9 And 26 July -- or, 26 of August as well. I think there's confusion there. I didn't state
10 the month correctly. Instead of July, it's August.

11 Q. [10:14:38] If you're making the same correction, or you do that correction to the
12 transcript later. Page 0216, you state the following, because you are asked to confirm
13 the date, and you state, lines 15 to 17. Now the question is:

14 "Could you state the date which in your -- on which, in your opinion, Mr Lubanga
15 came back from Bunia?"

16 And you replied:

17 "Yes, I think that I was speaking before 25, 26 of June. I think that July, it's not July,
18 it's August. The 25 August, not 25 June. I made a mistake with regards to the date.
19 It was the 25 August that he returned."

20 That's the correction which you made?

21 A. [10:15:37] Yes.

22 Q. [10:15:40] I put it to you that this is information that you obtained from other
23 persons, did you not?

24 A. [10:16:00] Of course, of course, yes, I wasn't there.

25 Q. Because whether it's an error or not, whether it's 25 July, you weren't there then,

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 or whether it was 25 August, you weren't there either, were you?

2 A. [10:16:13] Yes.

3 Q. [10:16:20] But I put it to you that the information you obtained isn't correct. I
4 put it to you that the minister Ntumba Luaba had in fact carried out two visits to
5 Bunia, and indeed he did visit in July and he visited at the end of the month of
6 August; did you know that?

7 A. [10:16:49] I don't remember.

8 Q. [10:16:56] And when I put it to you that the date of 25 August, even that date's
9 not correct, and that's the one you gave to us, is it not?

10 A. [10:17:11] I no longer remember exactly with regards to this event, Counsel.

11 Q. [10:17:22] I'm going on to a different subject.

12 Your testimony currently in evidence concerning the taking of Bunia, now I'm going
13 to refer over the next minutes to your statement of (Redacted)

14 This is the statement that I showed you the first page of yesterday.

15 Now I'm going to refer to some paragraphs that are in evidence. I would just ask
16 you to confirm aspects therefrom. We'll try and go through it as quickly as possible,
17 giving you the possibility to confirm what's said there, if you would like to change it
18 or confirm it.

19 So I'm going to start with paragraph 126 concerning the approximate dates of the
20 attack on Bunia or the taking of Bunia. And you state here in paragraph 126:

21 "I no longer remember the exact date of the joint UPC/UPDF attack against Molondo
22 and his troops, I think it was around 6 or 7 August 2002."

23 Do you confirm that?

24 A. [10:19:20] As I already said, with regards to the exact dates, I don't remember.

25 I said "I think" even in my statement but I'm not concern with regards to the dates.

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 Q. [10:19:31] But if it's written here, you confirmed the exact nature of it, to the best
2 of your knowledge, these are the correct dates?

3 PRESIDING JUDGE FREMR: [10:19:44] Mr Pace.

4 MR PACE: [10:19:45] Your Honour, to be fair to the witness, this statement that
5 Defence counsel just read out, the witness said "I think it was around 6 or 7 August
6 2002."

7 PRESIDING JUDGE FREMR: [10:19:55] Mr Bourgon.

8 MR BOURGON: [10:19:59] I read the exact statement in which it says "I think," and
9 that's what I asked the witness to confirm.

10 PRESIDING JUDGE FREMR: [10:20:09] But still, Mr Bourgon, you know, you
11 indicated that you will probably ask for some additional time, but, you know, I really
12 find this exercise doubtful. The witness even expressed in this statement from (Redacted)
13 some uncertainty about the date and now we are verifying, in I don't know how
14 much time, whether he is really now still in doubt, which I guess would be logical.
15 So I'm afraid we will have to take into account when we will decide about your
16 possible request for additional time.

17 MR BOURGON: [10:20:54] (Interpretation) Thank you, your Honour.

18 Q. [10:21:01] Witness, in your statement, you state the following. In paragraph
19 126, you state:

20 (Redacted)

21 (Redacted)

22 Is that correct?

23 A. [10:21:21] Yes.

24 Q. [10:21:23] And in paragraph 127 you state that the attack started around 8
25 o'clock in the morning; is that correct?

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 A. [10:21:34] I don't remember.

2 Q. [10:21:41] In paragraph 127 you state the following, speaking about the attack,
3 you say:

4 "The attack must have started around 8 o'clock in the morning. I could hear lots of
5 shooting, bursts of automatic gunfire, and the sound of heavy weaponry being fired
6 could be heard. It lasted the whole day."

7 Do you remember that?

8 A. [10:22:13] Yes.

9 Q. [10:22:16] What I'm trying to do with you, I'm just speaking about the duration
10 of the events when Bunia was captured. Now, you state concerning the duration,
11 paragraph 128, you speak about the first day of clashes and you state the following:

12 "During that first day of clashes, I did not witness any crimes or see any dead bodies."

13 What I'm trying to establish with you is the duration. So there's the first day; do you
14 agree with that?

15 A. [10:23:00] I no longer remember.

16 Q. [10:23:16] Now, in the same paragraph you had the opportunity to read last
17 week, you state, and this is again concerning the duration, that in the evening there
18 was a lull in the fighting. That's in 128:

19 "There was a lull in the fighting in the afternoon, but in the early evening fierce
20 fighting started up again."

21 Do you remember saying that?

22 A. [10:23:48] I re-read my statement, but these events happened over 15 years ago
23 so I can't give all the different hours exactly. It happened 15 years ago. I think with
24 my age as well, Counsel, it's difficult for me to remember.

25 Q. [10:24:25] We are now going to show you the statement. I'm just going to show

Trial Hearing

(Private Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0012

1 you what you said. On the screen, please, could we have the witness statement
2 0105-0085, page 0108.

3 I would like to have paragraph 129. The exercise will be very simple. I'm just
4 going to state certain sentences and afterwards, having shown that to you, I'm going
5 to ask you some questions.

6 Okay. So if we look at paragraph 129, you state:

7 "From the beginning of the morning of the following day, the fighting took up again
8 and once again I was able to hear gunfire and multiple explosions."

9 Do you see what's written there?

10 A. Yes.

11 Q. [10:26:03] Now, in paragraph 130, you state, right at the start:

12 "It was only on the third day when the fighting stopped that I saw once again people
13 out on the streets and so too I went outside of my house."

14 Do you see where that's written?

15 A. [10:26:28] Yes.

16 MR BOURGON: [10:26:30] I would like to have the next page, if you would be so
17 kind, 0109. I would like paragraph 135.

18 Q. Witness, if we look at paragraph 135, if you look at the second sentence, it states:

19 "On the fourth day of the UPC offensive, the UPC started arresting everyone
20 suspected of having or having had dealings with the Lendus."

21 Do you see that sentence?

22 Now still in paragraph 135, you state, and this is a bit further on, I'm on the fifth line
23 here:

24 "I decided to leave Bunia and I went to the airport the next day by car."

25 Do you see that?

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 A. [10:27:59] Yes.

2 Q. [10:28:00] Now, on the basis of what is written, you're talking about five days of
3 events from the first gunfire the moment you leave Bunia. Do you remember having
4 described five days of events?

5 A. [10:28:24] I didn't speak about five days of events.

6 Q. Well, I'll continue because that's already in the case, and we'll leave it to the
7 Judges to assess your answers.

8 Now, during the Bunia events, I'd like to cover what you say you saw with your own
9 eyes. So we're going to go to paragraph 12, 0107, paragraph 126. In paragraph 126
10 you state the following on the fourth line, "I should point out that I had, like the rest
11 of the population, not left my home for two days."

12 Do you see that?

13 A. [10:29:50] Yes.

14 MR BOURGON: [10:29:53] (Interpretation) Now, if we go on to the next page, and I
15 would like to have the page 0108 and I'd like to look at paragraph 128.

16 Q. We already looked at the start of the paragraph together that on that day you
17 didn't witness any crimes, nor did you see any dead bodies. I'd like to draw your
18 attention to the third line, the end of the third line, and there it said, "From my home I
19 could hear lots of explosions."

20 Is that what's written?

21 A. [10:30:55] Yes.

22 Q. [10:30:56] Now, if we go on to paragraph 130, there you state the following.

23 Now, this is the first sentence, "It was only on the third day, when the fighting
24 stopped, that I was able to see people out on the streets and so I too also went outside
25 of my home."

Trial Hearing

(Private Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0012

1 Do you see what's written there?

2 Now we go on to paragraph 135, next page. You would agree with me, Witness, that
3 on the basis of the two paragraphs we've just seen, the first day of the attack and the
4 second day of the attack, you saw nothing; is that correct?

5 A. [10:32:12] Yes.

6 Q. [10:32:22] However, in paragraph 130 -- sorry, I have to go back to the previous
7 page, 0108, paragraph 130.

8 Paragraph 130, please. And what you say in paragraph 130 is that you left your
9 home, you followed groups of people. This is the third line, you followed the
10 groups of people heading into the town centre, "My aim was to get some news and to
11 try to find out what had been going on."

12 Do you confirm that?

13 A. [10:33:29] Yes.

14 Q. [10:33:31] You state in this paragraph that you saw there were a lot of dead
15 bodies. I take the exact words here, "In the streets of (Redacted) neighbourhood there were
16 a lot of bodies." Isn't that right?

17 A. [10:33:53] Yes.

18 Q. [10:33:54] Now, in 131, you speak about the main road and you state in the first
19 line, "I again saw a large number of bodies"?

20 A. [10:34:12] Yes.

21 Q. [10:34:13] You said they were "spread out along the main road and I remember
22 seeing some near the post office."

23 Do you remember that?

24 A. [10:34:27] Yes.

25 Q. [10:34:29] And you state, "I went up to the bodies of some of the victims. Most

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 of the victims had gunshot wounds."

2 Do you confirm that?

3 A. [10:34:45] Yes.

4 Q. [10:34:49] Now, in the following paragraph, 132, you state the following, "I went
5 towards the governor's residence, as some people coming back from there had told us
6 that a slaughter had taken place, and everyone had been killed, including Governor
7 Molondo."

8 Do you confirm that?

9 A. [10:35:31] Yes, I confirm what I said.

10 Q. "I was with a group of people that I didn't know who were heading in that
11 direction. All along Bunia's main road, I saw bodies in front of the houses and shops.
12 It seemed like they were everywhere. I didn't count the number of bodies and could
13 not give you an estimate thereof."

14 Is that your testimony? That's what you saw, did you not?

15 A. [10:36:21] There, I don't know. When you said I couldn't count the number, the
16 number of bodies, I didn't do that work, but there were a lot. There were a lot by the
17 road.

18 Q. [10:36:36] Let's continue to 132. In 132, you arrive at the governor's residence,
19 "I saw that there were bodies both outside and inside the residence. In that place
20 there were mainly women and children's bodies there. I also remember seeing the
21 bodies of some soldiers."

22 Do you confirm that?

23 A. [10:37:03] Yes.

24 Q. [10:37:08] And the people who you were with said that the women and children
25 were mostly from the Lendu and Ngiti tribes. Is that what you heard from the

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 others?

2 A. [10:37:19] Yes.

3 Q. And if we go down to paragraph 133, you state that "There was blood
4 everywhere, and I remember that most of the victims had gunshot wounds."

5 Do you confirm that? Is that correct?

6 A. [10:37:52] Yes.

7 Q. [10:37:57] We are now going to the next page, paragraph 135. Oh, hang on a
8 minute, I'd just like to go back to the paragraph 132 concerning the residence of the
9 governor, what we just read a bit earlier. You stated that you saw there were bodies
10 both outside and inside the residence, but how could you see bodies inside the
11 residence?

12 A. [10:38:34] When we arrived, there almost nobody was there. The governor
13 wasn't there either. But there were bodies there, because the houses were open.
14 People were in there and there were people outside. There was nobody --

15 Q. [10:39:17] My question is, Witness, you state that there were bodies outside and
16 inside. Did you go inside the residence?

17 A. [10:39:26] Yes, through the door, you could see. From the door, you could see.

18 Q. [10:39:35] So you went up to the door and you saw bodies inside?

19 A. [10:39:40] Yes.

20 Q. [10:39:44] Now, well, that's what you saw. And afterwards you say a bit later
21 and here we are going on to the next page, paragraph 135, 0109. At the beginning of
22 paragraph 135, you say, "Upon seeing all of this, I went back home. On the fourth
23 day of the UPC offensive..." And we've already read this sentence. You find out
24 that one of your neighbours whose brother had been arrested. Now, the fact that the
25 UPC were arresting everybody suspected of having had relations or dealings with the

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 Lendu, that was the neighbour who told you about that?

2 A. [10:40:59] Yes, it was a neighbour who told me that.

3 Q. [10:41:03] Now, the name of the neighbour, what was the name?

4 A. [10:41:06] I no longer remember.

5 Q. [10:41:08] (Redacted)

6 (Redacted)

7 A. [10:41:14] (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 Q. [10:42:06] (Redacted)

14 A. [10:42:10] (Redacted)

15 Q. [10:42:20] (Redacted)

16 A. [10:42:26] (Redacted)

17 Q. [10:42:49] So on that day when you find out about that, you take the decision to
18 leave Bunia, do you not? And on the fifth day, you leave Bunia, and what I see here
19 in the paragraph is that you leave Bunia to go to the airport. You had no problem
20 going to the airport; is that correct?

21 A. [10:43:14] Yes.

22 Q. [10:43:18] At the airport, I imagine that they checked your name before you left;
23 is that correct?

24 A. [10:43:27] I don't think things happened like that, that the names were checked.

25 You paid for a ticket, you got in the plane, you left. Because the Ugandan army was

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 there.

2 Q. [10:43:43] So what you're saying, there was no control of names, passports,
3 nothing, you just got on the plane, it didn't matter?

4 A. [10:43:51] No, you could give your name, and you were given a ticket, but there
5 wasn't any passport control.

6 Q. [10:44:00] (Redacted)

7 A. [10:44:08] (Redacted)

8 (Redacted)

9 (Redacted)

10 Q. [10:44:39] Witness, my question is very clear: You were not bothered in any
11 way between your residence and the flight and you were able to get the plane without
12 any problem whatsoever?

13 A. [10:44:50] Yes.

14 Q. [10:44:51] Now, what I wanted to establish with you, it's just the last question
15 before we go on to checking what you've said. Now, you state that there was
16 nobody next to the residence, so I conclude therefrom that there was no control,
17 police control or military control, no APC, no UPDF, no UN, nobody was around the
18 residence; is that your testimony?

19 A. [10:45:37] Well, I think that it would be better to ask me where I was living
20 because, when you asked me about this control, the house to go towards the prison,
21 that was almost next to the airport, almost next to the airport. You had to leave the
22 airport to get to where I was staying and then you could go into town. So it wasn't
23 in the town centre.

24 Q. [10:46:19] I'm going to stop you on this point if my question wasn't clear. I just
25 went back to the residence -- well, you saw the bodies inside and outside the

Trial Hearing

(Private Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0012

1 governor's residence, but you said there was nobody. So my question is: Was
2 there -- were there people? Was there a police control? Was there a military control?
3 Was there a UPDF control, UN control? There was nothing, nothing around the
4 residence of the governor; that is your testimony, is it not?

5 A. Well, I didn't see that. Perhaps they did that before, but I didn't see it. We
6 were just a group of people, visitors, who came to see.

7 Q. [10:47:21] Witness, I'm now -- well, we'll have a look at it with you, but as
8 regards the information that you obtained concerning the activities that you have just
9 described, if I understand your statement well, and here I'm referring to paragraphs
10 123. Let's go back a bit and we're going to look at paragraph 123, page 0107. Can
11 you see paragraph 123?

12 A. [10:48:19] Yes.

13 Q. [10:48:21] (Redacted)

14 (Redacted)

15 (Redacted)

16 A. [10:48:37] (Redacted)

17 Q. (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 A. [10:49:07] (Redacted).

22 Q. [10:49:10] (Redacted)

23 (Redacted)

24 A. (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

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13 Page redacted – Private session

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Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

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13 Page redacted – Private session

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Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

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13 Page redacted – Private session

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Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 (Redacted)

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3 (Redacted)

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5 PRESIDING JUDGE FREMR: [11:00:14] Mr Pace.

6 MR PACE: [11:00:15] Your Honour, I don't think that this is an appropriate question
7 for this witness.

8 PRESIDING JUDGE FREMR: [11:00:21] Yes, I fully agree. Either rephrase that or
9 move on, because, you know, it's not up to Mr Witness to evaluate credibility of
10 another witness or another person.

11 MR BOURGON: [11:00:36] (Interpretation)

12 Q. [11:00:37] So according to you, Mr Witness, to whom did (Redacted) tell the
13 truth?

14 PRESIDING JUDGE FREMR: [11:00:46] The same, Mr Bourgon, so move on.

15 MR BOURGON: [11:00:51] (Interpretation) Thank you, your Honour.

16 (Speaks English) Mr President, I see it's 11 o'clock, so we can stop for the break.

17 PRESIDING JUDGE FREMR: [11:01:05] Good point. Let's move into open session
18 for remainder.

19 (Open session at 11.01 a.m.)

20 THE COURT OFFICER: [11:01:22] We are now in open session, Mr President.

21 PRESIDING JUDGE FREMR: [11:01:27] All right. So we will take our regular break
22 now and we will resume at half past 11.

23 THE COURT USHER: [11:01:36] All rise.

24 (Recess taken at 11.01 a.m.)

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

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

- 1 THE COURT USHER: [11:32:53] All rise.
- 2 Please be seated.
- 3 PRESIDING JUDGE FREMR: [11:33:06] We will now directly continue with the
- 4 further part of cross-examination conducted by Defence, mainly by Mr Bourgon.
- 5 Mr Pace.
- 6 MR PACE: [11:33:26] Just to note a change in appearance, your Honour.
- 7 Mr Eric Iverson has left and we are joined by Nicole Samson, senior trial lawyer.
- 8 PRESIDING JUDGE FREMR: [11:33:34] Thank you, Mr Pace.
- 9 And Mr Bourgon, I anticipate that we will have to move again into private session.
- 10 MR BOURGON: [11:33:44] Indeed, Mr President, please.
- 11 PRESIDING JUDGE FREMR: [11:33:48] So, court officer, let's move into private
- 12 session.
- 13 (Private session at 11.33 a.m.) *(Reclassified partially in public)
- 14 THE COURT USHER: [11:33:57] We are in private session, Mr President.
- 15 PRESIDING JUDGE FREMR: [11:34:09] Thank you, court officer.
- 16 Mr Bourgon, please proceed.
- 17 MR BOURGON: [11:34:13] (Interpretation) Thank you, your Honour.
- 18 Q. [11:34:17] Mr Witness, we'll pick up from where we left it before the break.
- 19 So we're talking about (Redacted), and here I referred to your (Redacted)
- 20 witness statement which is evidence in this case. The first page of this part of your
- 21 statement (Redacted), and I'm at 0217 and I will go from line 1 to line 6.
- 22 You were asked about the attack on Bunia, the taking of Bunia and how this
- 23 happened. Your answer was:
- 24 No, I didn't know. (Redacted)
- 25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

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13 Page redacted – Private session

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Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 (Redacted)

2 So my question is as follows: (Redacted) you didn't mention having seen dead
3 bodies inside the residence and nor did you say that you yourself had gone to the
4 door of the residence; is that correct?

5 A. [11:40:16] I don't know whether you -- when I was asked the question, I was
6 giving a brief summary of what I said. I was not asked in detail what I had seen, but
7 I saw what I saw and what I said I had seen and what I said was correct.

8 Q. [11:40:44] I refer now to your statement of (Redacted) and I will
9 read to you what you said.

10 Could we have on the screen 0109.

11 You will see the page appear your screen, Mr Witness. And I look at paragraph 134.

12 "About a month ago I ran into (Redacted) by chance and I took the opportunity to
13 ask him about the matter. I asked him why the UPC had massacred women and
14 children at the governor's residence in Bunia. (Redacted) replied that it was not the
15 UPC's fault, but the governor's because he was the one who had had the people come
16 to his residence in order to use them as human shields. During the conversation
17 (Redacted) confirmed that the UPC troops had attacked the governor's residence but did
18 not give me any further details."

19 Do you recall having provided this information?

20 A. [11:42:50] Yes.

21 Q. [11:42:55] So a month before your statement, so fresh in your mind you had
22 information from (Redacted), so that must have been in about (Redacted), a month before
23 your statement; is that correct?

24 A. [11:43:15] I don't recall. It's a problem of dates.

25 Q. [11:43:21] But it says very clearly here "about a month ago". Could it be

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 different?

2 A. [11:43:29] No, I'm not saying it wasn't a month prior to that, but I'm just saying
3 that I don't have the dates.

4 Q. [11:43:37] I'm not looking for dates. I'm just saying it was a relatively short
5 time before your declaration?

6 A. [11:43:45] I don't know.

7 Q. [11:43:49] So this conversation with (Redacted), what I was trying to establish was
8 that it was fresh in your memory at the time you gave your statement, but you no
9 longer remember whether that was the case; is that correct?

10 A. [11:44:07] In any case, all the people who gave me information, be it
11 (Redacted), I took their phone number and I gave that to the
12 Prosecutor's investigators, so if they wanted to know more, they could have contacted
13 them for information because they had their phone numbers. That's not something I
14 hid or kept to myself. They could have verified it themselves. That's what I
15 arranged.

16 Q. [11:44:53] Mr Witness, I'm going to share with you a statement given by
17 (Redacted) to the investigators, to the Office of the Prosecutor.

18 PRESIDING JUDGE FREMR: [11:45:11] Mr Pace.

19 MR PACE: [11:45:12] Your Honour, if I can have a few seconds to confer with my
20 colleague, please.

21 PRESIDING JUDGE FREMR: [11:45:18] Please.

22 (Counsel confers)

23 MR PACE: [11:45:34] Thank you, your Honour. Just one second.

24 Your Honour, my objection should be in the absence of the witness, (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 PRESIDING JUDGE FREMR: [11:45:58] Understandable.

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

3 Mr Witness, we will ask you to leave us for a while because we have to solve some
4 issue in your absence.

5 (The witness stands down)

6 PRESIDING JUDGE FREMR: [11:46:29] Mr Pace, you may proceed now.

7 MR PACE: [11:46:33] Thank you, your Honour. The last time that the Defence in
8 these proceedings today tried to, (Redacted)

9 (Redacted), I didn't even have time to object because the

10 Defence just straight away went ahead and told the witness that we have that another
11 person gave information (Redacted). That is not in accordance with the

12 conduct of proceedings established by this Chamber, which requires that if the

13 Defence would like to put a statement by another person to another witness it should
14 seek the leave of the Chamber.

15 (Redacted)

16 (Redacted)

17 However, it was important to voice our concern about this practice and in this regard,
18 your Honour, again the Defence should be first required to make submissions as to
19 whether it could be permitted to do so. The Prosecution should be heard. And if
20 your Honour would like me to make our submissions in this regard? And your
21 Honour is indicating that yes.

22 First of all, we query as to why it is necessary to inform Witness P-12 that (Redacted)

23 (Redacted) We do not see any added value in that

24 detail. Defence counsel can, as Defence has done before, state that Defence is in

25 possession of a statement given by this person or that this person has said, and there

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 is absolutely no need to tell the witness (Redacted)
2 (Redacted)
3 (Redacted)
4 (Redacted) It would be very important for us to establish
5 if there are any security issues in relation to this person or relatives thereof. And if
6 this can be avoided, then the Prosecution submits that this is the path which should
7 be followed.

8 In sum, your Honour, there is no added value in providing this information (Redacted)
9 (Redacted) And in this regard the Defence should not
10 have done so and should be cautioned in regards if it intends to do with this other
11 statements. *

12 *Those are our submissions, your Honour.

13 PRESIDING JUDGE FREMR: [11:48:55] Mr Bourgon.

14 MR BOURGON: [11:48:56] Thank you, Mr President.

15 Unlike what my colleague says, the decision of conduct of proceedings does not
16 provide for this at all. Paragraph 34 reads as follows:

17 "When referring to another witness's testimony or previous statements, the parties
18 and participants shall quote directly the relevant passages."

19 (Redacted)

20 (Redacted)

21 Second argument contrary to what my colleague says, there is enormous added value
22 to telling a witness that the information I have (Redacted). And
23 I'm sure the Trial Chamber will understand that when the witness hears that this
24 information was obtained (Redacted) it adds a lot of
25 weight and it makes him think twice before responding to the next question.

Trial Hearing

(Private Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0012

1 Those are our submissions, Mr President. Thank you.

2 PRESIDING JUDGE FREMR: [11:50:09] Mr Pace, any additional reaction?

3 MR PACE: [11:50:11] Yes, your Honour. The first reaction is that this has been

4 litigated before in relation to whether the other statement has to necessarily be a

5 witness who is testifying. And I may be wrong, but I believe your Honours have

6 held that it applies even to those (Redacted), the

7 reason being that the reason for this provision is security related.

8 And second of all, your Honour, the paragraph cited by the Defence does specify that

9 the references should only be used when appropriate, this is paragraph 34 of decision

10 619, and after seeking permission of the Chamber to do so.

11 So regardless of whether the Defence thought that it might have been appropriate to

12 use these two statements, it should first seek the permission of the Chamber.

13 (Redacted), that alone requires the

14 Chamber's leave and that was not done in this instant case.

15 And again, your Honour, the requirement is when appropriate. In our submission,

16 it is not appropriate in this instance.

17 PRESIDING JUDGE FREMR: [11:51:13] No further submissions needed really,

18 Mr Bourgon.

19 So just to sum it up, and I will be repeating myself a little bit because, as Mr Pace now

20 quoted that it was not part of conduct of proceedings -- protocol, it's true, but there is

21 some litigation a few days, weeks ago and we in fact decided, and even we, I think

22 the Chamber gave some guidance in this direction, so I can just briefly repeat: It

23 could be some relevance when any party would like to, would like to highlight to the

24 witness that this information is coming from another witness, because it's true that

25 information given under some circumstances, including information given to

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 (Redacted) with the knowledge that this information could be used before the Court
2 really could have some influence on evaluation of probative value of such a statement.

3 First issue.

4 The second issue also mentioned by mainly Mr Pace is security, security concern.

5 We also highlighted that issue. That is why the prior approval from the Chamber is

6 really necessary, Mr Bourgon. So you can't just approach this issue without any

7 further -- prior request. And in this issue we are a little bit late because you have

8 even opened and you called this person.

9 So I'm now asking Prosecution, if it's clear to me that maybe you might not be ready

10 to give me an answer, do you think that (Redacted) could get into some security risk if

11 we -- even if he did it? Because we, in fact now Mr Witness is informed that

12 (Redacted) But do you have any information on that?

13 MR PACE: [11:53:32] Just one moment, your Honour, if you indulge us.

14 (Counsel confers)

15 MR PACE: [11:54:07] Thank you, your Honour.

16 The first point is that what we do know is that (Redacted) provided a certain amount

17 of (Redacted) The second point is that he decided

18 (Redacted)

19 (Redacted)

20 The Prosecution is not aware of the specific circumstances in this regard. And for

21 those reasons, your Honour, there is no need to proceed further with this. Again, it

22 is out there. (Redacted)

23 (Redacted)

24 The agreement is that it would be closed to the parties.

25 So the Prosecution's position is that another person who is not a party, who has no

Trial Hearing

(Private Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0012

1 right to have information disclosed to them, that it is only absolutely when necessary

2 that that person should receive such information.

3 Again, your Honour, the Defence has not persuasively made the argument as to why

4 it is necessary to specify that this was a statement to the Prosecution.

5 Those are our submissions.

6 PRESIDING JUDGE FREMR: [11:55:16] Mr Bourgon.

7 MR BOURGON: I simply --

8 PRESIDING JUDGE FREMR: Mr Bourgon, please, one thing. I know that you are a

9 person of great temperament, but please try to moderate a bit your gestures, because

10 somebody, even if we are in private session, can't listen to us. He could have the

11 idea that we are doing here something really, something strange.

12 So please, in order to dignity of the -- in my courtroom please try to a bit moderate

13 your gesture.

14 Thank you, and now please proceed.

15 MR BOURGON: [11:55:51] Thank you, Mr President.

16 I fail to understand the arguments put forward by the Prosecution.

17 First, I do not recall that the Chamber did say that paragraph 34 applied to

18 non-witnesses. We will check, but if that's the views of the Chamber of course we

19 will abide like we always abide with what the Chamber tells us to do. That's the first

20 point. But the way I read this paragraph it does not apply to non-witnesses.

21 Second issue is the issue of security. Before we raise this issue and before we take a

22 statement we verify whether there are security concerns, whether it's a witness for -- a

23 (Redacted) for whom there was an application for some kind of

24 redaction or that there might be a risk. We did this and there are none.

25 Third issue, we provided the names to the Prosecution of the witnesses we intend to

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 use. There are three that they have been aware of before this hearing and we
2 tend -- we intend to use (Redacted)
3 (Redacted)
4 The three of them are non-witnesses. The three of them I fail to understand any
5 security concern. This man who is here, whatever is mentioned in this courtroom,
6 whether it is what he says or what he hears, he has an obligation not to mention it to
7 anybody.
8 So I fail to see how mentioning the name (Redacted) will have
9 any bearing on the security of anyone outside of this courtroom, unless the witness
10 wants to hurt -- because once he hears this information he might be not too happy
11 about some person he knows. But unless the threat comes from the witness, and I
12 don't think that this is the Prosecution's argument, there is no security concern
13 involved.
14 What is involved is contradicting the witness with information (Redacted)
15 (Redacted). It is not only a normal practice, it is the practice in order to allow
16 the Trial Chamber to determine the truth and to assess the credibility of the witness.
17 So, Mr President, I see no problems with what we have done. We will adjust
18 accordingly to whatever ruling is issued by the Chamber, but I completely disagree
19 with the arguments put forward by the Prosecution.
20 Thank you.

21 PRESIDING JUDGE FREMR: [11:58:40] Mr Pace, and please briefly, we have to
22 move on.

23 MR PACE: [11:58:43] Yes, your Honour, just one point. In terms of using the
24 document itself, because the Defence feels this contradiction is somehow more -- there
25 would be more weight attributed to it, the Defence could always provide the

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 Chamber and the Prosecution with the relevant information. Again, the Defence
2 does not need to tell the witness that (Redacted) However,
3 either ex parte in the witness's absence, via e-mail or in their closing brief, the Defence
4 can always argue "the witness stated this, however, a witness statement" and make
5 reference to it "provides otherwise."

6 Your Honour, that would seem to be a reasonable way to proceed.

7 PRESIDING JUDGE FREMR: [11:59:22] Give me a second. We will deliberate
8 with my colleagues.

9 (Trial Chamber confers)

10 PRESIDING JUDGE FREMR: [12:00:05] So I will be brief. We are persuaded by
11 argumentation presented by Defence so we can refer mainly to their argumentation.
12 It's true that our guidance contained witnesses, but I can also imagine a situation
13 when it could have some impact on persons who are not formally witnesses, so the
14 security issue which is behind all those litigations should be prioritised.

15 So now, Mr Bourgon, you may proceed as we intended.

16 And we can invite Mr Witness into the courtroom.

17 MR BOURGON: [12:00:46] Thank you, Mr President.

18 (The witness enters the courtroom)

19 PRESIDING JUDGE FREMR: [12:01:28] Welcome back, Mr Witness. We will
20 continue.

21 And Mr Bourgon has the floor.

22 MR BOURGON: [12:01:32] (Interpretation) Thank you very much, your Honour.

23 Q. [12:01:35] Mr Witness, before leaving the courtroom a moment ago I was
24 speaking to you about information received by the Defence, and I'm referring to a
25 (Redacted) who you make mention of. And in that

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 statement I'd like to read out what he stated (Redacted) with a view to see

2 whether this just refreshes your memory, Mr Witness.

3 So the number of the statement, this is DRC-OTP-0066-0131, and I'm looking at page

4 0155. And I'm going to be citing to paragraph 107:

5 "At the beginning of August 2002, I remember that it was the day of the beginning of

6 the second -- beginning of the exams of the secondary cycle, Molondo was to start the

7 examination test. After the ceremony at the beginning of the exams, Molondo went

8 back to his office and said to his managers that he had ordered an operation designed

9 to disarm the APC fraction that was still obeying Lubanga. I was informed a few

10 days after of what had happened in that meeting through (Redacted) and he was

11 present and he would -- and who eventually would become national secretary of the

12 UPC."

13 Paragraph 108:

14 "Molondo's troops would attack twice the positions held by Lubanga's troops. And

15 it wouldn't succeed in stopping and disarming those troops. On our side, it was

16 Floribert Kisembo who was in charge of the troops. Bosco Ntaganda, for his part,

17 was still located at Mandro. One of the reasons why the UPC's troop attack had

18 failed under Molondo was the fact that the Ugandan army had intervened during the

19 attacks."

20 Let me just skip to the end of paragraph 109, 0156 is the page, 0156:

21 "The Ugandan army would take the decision to drive out of the city of Bunia and

22 would succeed in doing so after fighting that lasted up to an hour."

23 So having heard this, Mr Witness, do you stand by what you said at paragraph 134 in

24 your statement?

25 A. [12:05:27] I can't see that, Counsel.

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 Q. [12:05:28] Well can we bring up on our screens, please, the statement, namely
2 0105-0085 and the first -- that's the first page and I'm interested in 0109. This is the
3 paragraph that I read a moment ago and will be displayed before you in a moment.
4 This is your statement that is in evidence.
5 So do you stand by what you are recorded saying here after hearing (Redacted)
6 words?

7 A. [12:06:51] Yes.

8 Q. [12:06:54] I'd just like to read out something from another document. This is
9 information obtained from the United Nations, this is the document bearing the
10 number 0049-0461. I'm now going to switch into English because the document is
11 drafted in English and then I'll be putting one or two questions to you, Mr Witness.

12 (Speaks English) (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 Q. [12:14:38] I'd just like to *stop you, Mr Witness, and here's *my question: On
5 the basis of this, do you stand by, yes or no, the *APC, in your view, did it attack
6 Mudzipela, to the best of your own knowledge, Mr Witness?

7 A. [12:14:55] I've already told you that I don't know who started attacking.

8 Q. [12:15:00] Did they attack, yes or no, throughout the time that Bunia was being
9 taken; do you know?

10 A. [12:15:08] No.

11 Q. [12:15:08] Do you know whether, yes or no, there was a massacre at
12 Mudzipela with a huge number of corpses resulting thereof?

13 A. [12:15:17] Yes, I know there were corpses in Mudzipela, yes.

14 Q. [12:15:23] And do you know that there was fighting in Mudzipela involving
15 Lubanga's troops leaving Mandro with the APC?

16 A. [12:15:37] I don't know those specifics.

17 Q. [12:15:41] And do you stand by your evidence to the effect that there were
18 bodies everywhere in the main thoroughfare in the Bigo neighbourhood and corpses
19 of women and children everywhere and blood everywhere in the city of Bunia when
20 you left on the third day, do you stand by your evidence?

21 A. [12:16:03] When you talk about everywhere, there were bodies, there were
22 corpses that were found along the way and you can see, there was blood and we were
23 walking on blood under foot, yes, but there were corpses, corpses of people who were
24 shot, yes there were some. (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 Q. [12:16:55] Mr Witness, on the basis of your answer, I put it to you that the
5 whole area of your testimony going to the taking of Bunia, all that entire section of
6 your testimony is not true; would you agree with that?

7 A. [12:17:24] That's what you say.

8 Q. [12:17:26] I also put to you, Mr Witness, that your evidence about arriving in
9 Bunia at the (Redacted) I

10 put it to you that that's not true because you weren't there; would you agree with
11 that?

12 A. [12:17:52] I was at Bunia. I -- I tell you. When I was asked, when I
13 said -- well, the investigators were asking me, "How did you tot up the time?" Well,
14 I didn't tot up the amount of time, or know the number of *months, or months.
15 I was asked pretty much in that period and I didn't know what they were looking for.
16 "Can you just give us a ballpark figure?" And so I gave a ballpark figure and -- in
17 that period I was there. But to talk about specific dates and all that, well, I'd already
18 told them that I didn't remember, but I gave a ballpark figure as they asked me.

19 Q. [12:18:47] I move to another area. In your statement you also talk about
20 events that allegedly took place at Songolo; is that right? Do you remember that?

21 A. [12:19:17] Not at all.

22 Q. [12:19:20] When you reviewed all your information over a 12-day period, you
23 don't remember having re-reading your remarks going to the events at Songolo?

24 A. [12:19:42] There are about 1,500 pages to read and I don't think that that stood
25 out from the page. If you want to put it to me, well, perhaps --

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 Q. [12:19:55] Yes, of course. I understand, I agree with you it was a huge
2 number of pages to read. I concede that.

3 MR BOURGON: (Interpretation) So could we have on our screens the witness'
4 statement 0105-0085, the same reference, and I'd like to have 0148 displayed, please,
5 paragraph 343.

6 Q. This will be appearing before you shortly, Mr Witness. And this is already
7 entered into evidence. 343 is the paragraph and let me read it out to you. I read:
8 "With regard the attack on the Lendu village Songolo by the UPC armed forces, my
9 main sources of information were (Redacted)
10 They spoke to me about this attack over some conversations that we had in the past.
11 Everybody said that the overriding objective of the attack on that particular village
12 was to stop Jean-Pierre Molondo to reorganise and regroup. Based on what he told
13 me, they had received information saying that Molondo and his APCs were
14 regrouping in that particular village and were recruiting in order to consolidate their
15 local fighting force Lendu and Ngiti tribes, which in passing I would say were at that
16 particular time already allied to RCD-K/ML of Mbusa Nyamwisi and as a
17 consequence to the APC. This attack was part -- according to them was part of the
18 overall UPC offensive designed to take out of Ituri's borders all the Nande."
19 Would you agree with that?

20 A. [12:23:03] Yes.

21 Q. [12:23:04] Let's very swiftly look at 344, that particular paragraph. And here
22 you say that Kisembo's HQ was at Nyankunde and you say, at 345, that Lubanga had
23 returned to Bunia and you say, in 346, the following, I read:
24 (Redacted) explained to me (Redacted) troops based at Nyankunde had attacked Songolo
25 with the support of the UPC troops who were based in Sota. He didn't tell me how

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 many troops had been involved in that particular attack. From my conversations
2 with people, I understood that Kyaligonza, Bagonza, Kasangaki Thomas and Dahura
3 David were among the UPC officers who directly participated in the attack. As far
4 as I remember, Bosco Ntaganda's name was not mentioned, nor even were Rafiki's or
5 Chief Kahwa's. I remember (Redacted) received assistance from
6 the Ugandan troops who had also fought in Songolo."

7 Do you stand by your version, your account of these events?

8 A. [12:25:02] Yes.

9 Q. [12:25:03] Mr Witness, let's just start with Bagonza and Tchaligonza. I would
10 put to you, based on the information that I've given to you a moment ago, that these
11 two people were not at Songolo at all, that they hadn't yet at that point joined the
12 ranks of the UPC. Does that jog your memory?

13 A. [12:25:27] No. (Redacted)

14 Q. [12:25:40] All right then. Since we're talking about (Redacted)

15 (Redacted)

16 (Redacted)

17 A. [12:25:56] No.

18 Q. [12:25:56] (Redacted)

19 A. [12:26:01] (Redacted)

20 Q. [12:26:03] Well, I'm -- it's unfortunate that I should tell you in these

21 circumstances. (Redacted). But when he provided a statement to the

22 Prosecutor he said the following, I read -- well, the first page of the statement, in fact,

23 (Redacted). I'm looking at 1889, that particular page: "I was coming back

24 from Komanda."

25 Sorry I do apologise, I'm going to start at page 1888.

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 "... there was an attack on Songolo a little before the Nyankunde attack.

2 Question: Were you aware of that?

3 Answer: Yes.

4 Question: And who was the commander for that particular attack?

5 Well, the Songolo event, what was it, in fact?

6 I was coming back from Komanda.

7 From Komanda?

8 Because you know, the Ugandans drove out the APC from the city of Bunia and they
9 fell back on Songolo, they fell back on the villages and at that particular time the
10 objective changed, in other words, because it was the potential enemy henceforth for
11 the APC, well, it was the Hemas, the Hema community. And so you will appreciate
12 that at Komanda there were Hemas, at Irumu as well. And when I came back from
13 there they prepared an ambush on the road around the bridge there. There's a
14 bridge there. There's a big bridge that separates things. You come from Chai
15 towards Nyankunde, there's a big bridge at that location. On the Chai road it's a
16 particular location there. On the road there's just a bridge there going to Bunia and
17 Nyankunde. There's a big bridge there. Well, they held their ambush there. So I
18 tried to defend myself as best I could with the few troops I had had my avail."

19 I stop reading there, Mr Witness. So Mr Witness, does this refresh your memory
20 with regard to what (Redacted) may have told you regarding the Songolo attack?

21 A. [12:29:18] What I said is what he told me. I'd like to remind you that when I
22 provided my evidence, the investigators could ask me, "Did you learn anything or do
23 you know anything about Songolo?" And I remember, I remember having spoken
24 with such a person about this, speaking to many people. And I never said that I was
25 there. I said I remember.

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 If I was asked did you ever speak -- ever hear about this, that and the other, I
2 remember, yes, such and such a person told me this, that and the other. And
3 because I've -- I've already said, I said this this morning, when they wanted to meet
4 these people I provided telephone numbers for them to get in touch with these
5 people.

6 Q. [12:30:20] Mr Witness, when did you have this *conversation with (Redacted)?

7 A. [12:30:35] Well, I don't remember, but I do remember that he told me that he was
8 injured, he'd been shot and that's why he'd run off to go off to (Redacted) and it was in
9 those circumstances, but I don't know when exactly it was.

10 Q. [12:31:00] Let's move on to another subject, the use of weapons. You
11 mentioned this yesterday. We had a few questions about the subject relating to the
12 fact that Bosco Ntaganda received instructions from Rwanda. Do you recall that?

13 A. [12:31:24] Yes.

14 Q. [12:31:25] I'll try and refresh your memory with a few facts. You can tell me
15 whether you agree or not and then I will ask you some questions. Firstly, do you
16 agree that Kahwa took the first approach to Kigali to get weapons? Do you agree
17 with that?

18 A. [12:31:49] Yes.

19 Q. [12:31:58] You saw that he went to Kigali, he realised that he had been tricked
20 by Uganda who had just arrested Thomas Lubanga; is that correct?

21 A. [12:32:08] Yes.

22 Q. [12:32:12] When we talk about Uganda, you know that Uganda and Rwanda
23 have different interests with regard to the DRC, correct?

24 A. [12:32:35] At that time I didn't know that.

25 Q. [12:32:40] If I talk about RCD Goma, you know that there is an association

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 between RCD Goma and Rwanda, correct?

2 A. [12:32:57] Yes, for me it's the same thing.

3 Q. [12:33:00] And if I say RCD Kisangani, that has the support of Uganda; is that
4 correct?

5 A. [12:33:11] Yes.

6 Q. [12:33:14] Are you aware that at the beginning of the conflict when RCD Goma
7 and RCD/K were the same, they fought among themselves rather than against Kabila;
8 do you know that?

9 A. [12:33:35] Yes.

10 Q. [12:33:39] And Bosco Ntaganda, you know that when there was the break
11 between the two, Bosco Ntaganda was linked with RCD/K; is that correct?

12 A. [12:33:57] Yes.

13 Q. [12:33:59] You know that at that time Bosco Ntaganda was the head of the
14 presidential guard under Wamba, the PPU; is that correct?

15 A. [12:34:15] No.

16 Q. [12:34:16] Did you learn that Bosco Ntaganda, in the fighting that took place at
17 this time, was wounded when defending Wamba?

18 A. [12:34:32] Yes.

19 Q. [12:34:35] And you know that Bosco Ntaganda was treated in South Africa,
20 thanks to arrangements made by Uganda?

21 A. [12:34:50] No.

22 Q. [12:34:55] But you know that the first time that Bosco Ntaganda went to Bunia
23 was in 2000? Is that correct?

24 A. [12:35:11] No.

25 Q. [12:35:11] Did you know that Bosco Ntaganda had been sent to Bunia by the

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 Ugandans and that he was to take up a post with Governor Molondo Lompondo?

2 A. [12:35:31] No.

3 Q. [12:35:36] So you don't know either that when Bosco came back to Bunia in
4 2002, he came from Uganda; did you know that?

5 A. [12:35:51] No.

6 Q. [12:35:56] Did you know that Bosco Ntaganda came from Uganda, where he
7 had been training in Jinja?

8 A. [12:36:10] I know that he had undergone officer training because -- which he
9 didn't complete because he saw himself *as an officer, and a well trained one.

10 Q. [12:36:31] So you don't know what happened to Bosco Ntaganda during
11 training?

12 A. [12:36:34] No.

13 Q. [12:36:37] Mr Witness, I put to you that Bosco Ntaganda, when he was with
14 Thomas Lubanga in 2002, had affinities with Uganda and not with Rwanda. Do you
15 agree with this statement?

16 A. [12:37:04] Yes, that I know.

17 Q. [12:37:10] I put it to you, therefore, that Bosco Ntaganda could not receive
18 instructions from Rwanda as to where he should attack because he had no links to
19 Rwanda.

20 A. [12:37:30] You are right, because at that time the UPC was completely under
21 the supervision of Uganda. The UPC had changed completely once they had started
22 to receive weapons. I think that in December of 2002, that was the time that they
23 developed more concrete relations with Rwanda, but prior to that, they were
24 completely dependent on Uganda and therefore it's quite normal for Bosco Ntaganda
25 to have been linked to Uganda. I mean, that's quite normal.

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 Q. [12:38:26] Mr Witness, this morning we established that you were absent from
2 Bunia from (Redacted) is that
3 correct?

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

5 Q. [12:38:54] This morning I asked you a question about your knowledge of
6 events during your absence and now I wish to refer to one event that concerns you
7 personally, (Redacted)
8 (Redacted)

9 A. [12:39:18] Yes. I told the Court of that.

10 Q. [12:39:25] Let us look at what you said in your statement. It was in
11 paragraph 28 where you say the following. I will read the paragraph so that it's in
12 the court record. So it's still the same number, 0105-0085, and I'm on 0089,
13 paragraph 28. This is what is stated here:

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 Are you still following, Mr Witness?

21 A. [12:41:23] Yes, very well.

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

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13 Page redacted – Private session

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Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

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13 Page redacted – Private session

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Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 THE WITNESS: [12:52:42] (Interpretation) (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 PRESIDING JUDGE FREMR: [12:52:59] Mr Witness, please, please hold on

6 because you know you are here to answer questions put to you by calling or

7 non-calling party. At this moment it seems that Mr Bourgon would like to stop you.

8 So if he makes a gesture indicating that he would like just to break your response,

9 please follow that.

10 Mr Bourgon.

11 MR BOURGON: [12:53:17] (Interpretation) Thank you, your Honour.

12 Q. [12:53:21] We have five minutes before the break. I would like to turn to

13 another subject.

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 "At that time I think the enemies were the Lendu and they were fighting against the

18 Lendu, but curiously the persons that they were fighting, Lubanga was supplying

19 weapons to the Lendu and he was supplying these weapons and these weapons were

20 fighting against the brothers, and this surprised certain people in certain members of

21 his community."

22 You got this information yourself or did you get this information from someone else?

23 A. [12:55:03] I think that I had written who had given this information, the

24 (Redacted) people who were

25 complaining about this gesture of giving weapons to the Lendu. That was the first

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 time I heard that. And then (Redacted) confirmed to me that they were giving weapons along the
2 way and he had asked why Lubanga had left a lorry full of *weapons. He said: "It's to catch the
3 Lendus, they'll come to take these weapons, and we'll catch them." But the people did this, and on
4 the day he left, he would be with Ugandan rebels and then people would understand that
5 these weapons were not going to the Lendu but to the Ugandan military rebels.

6 Q. [12:56:15] That's what you know of that situation (Redacted)

7 (Redacted); is that correct?

8 A. [12:56:28] Yes.

9 Q. [12:56:35] On page 0235 you said, "We have had – (Redacted)

10 (Redacted)

11 (Redacted)

12 We recall that the Ugandans found that at Kpandroma there were Ugandan rebels
13 there and they bombarded Kpandroma, and when they bombarded Kpandroma, the
14 Lendu woke up. A Lendu leader, Gorille, I think, arrested 12. He brought them to
15 Uganda and he handed them over to the Ugandan government."

16 That is your testimony?

17 A. [12:57:47] Yes, that is so.

18 Q. [12:57:51] (Redacted)

19 (Redacted)

20 A. [12:58:05] (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 Q. [12:59:23] My final question before the break, Mr Witness: Can you confirm that

6 this testimony relating to the weapons is information that you got from (Redacted)

7 (Redacted) those were your two sources; is that correct?

8 A. [12:59:49] I think that (Redacted) didn't know about the problem of the

9 weapons that had been given to the PRI. (Redacted) was not familiar with that. But

10 (Redacted) did know that. But I'm talking about Lendu -- sorry, Hema leaders, (Redacted)

11 (Redacted), they were familiar with this because they

12 were there. I was in (Redacted) when they were talking about this.

13 MR BOURGON: [13:00:23] (Interpretation) I think we can leave it here,

14 Mr President, and we can pick it up after the break with the same subject.

15 PRESIDING JUDGE FREMR: [13:00:33] Yes, I fully agree.

16 So Mr Witness, now we will break so you can even take some rest, and we will

17 continue at half past 2.

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

19 (The witness stands down)

20 PRESIDING JUDGE FREMR: [13:01:11] And now I would like to briefly deal with

21 the issue of timing, and I think it would be better to remain in private session because

22 parties could even mention some issues that should be made in private session.

23 So now just to check with court officer, according to my measuring, so far

24 Mr Bourgon used 4 hours, 18 minutes? Exact. Okay, so 4 hours 18 minutes, which

25 means you still have, Mr Bourgon, at your disposal 1 hour 42 minutes.

Trial Hearing

(Private Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0012

1 Now it's, I guess, the right time to ask whether it will be enough for you, or if you
2 want to make any request for additional time, please do make it now. Obviously, we
3 can make it even at the end but if we would decide during this break, it would at least
4 give you some indication how much time you still have. We don't want to surprise
5 you at the last minute.

6 MR BOURGON: [13:02:18] Thank you very much, Mr President. I do require
7 additional time and I'd like to explain to the Chamber why I do need additional time.
8 It's a matter of the topics I have to cover with this witness.

9 Personally, I would much prefer to finish today and go home, I'm dead tired. But it's
10 a number of issues. With this witness I intend to cover the events that took place in
11 2003, (Redacted)

12 (Redacted)

13 (Redacted) And I have left to cover also with the witness everything that
14 took place from 2000 to 2002, when Bosco Ntaganda arrived.

15 The witness in his testimony talks about events and the young Hemas who would
16 have been sent to Uganda for training. He discusses the events of the firing -- not
17 the firing, but the shooting of Claude, and he also covers events concerning the area
18 of Mbusa, the conflict between Mbusa and Wamba Dia Wamba. These are the
19 minimum issues I would like to cover.

20 Doing as best as I can, Mr President, I would need another two hours and I'm already
21 at one, so I don't need much more. What I propose, Mr President, is I propose to try
22 and finish in time with the time allotted but just if I can get -- when I'm at the end, if
23 I can get a little more time if I'm not finished so that we can end this witness today. I
24 understand that the aim is to ensure that the witness does not stay over the weekend,
25 but that would probably mean going overtime after 4.30. And that's what I propose

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 to the Chamber, Mr President. Thank you.

2 PRESIDING JUDGE FREMR: [13:04:46] Thank you, Mr Bourgon.

3 Mr Pace, the Prosecution position? And please also include your indication, even if
4 a bit premature, about probable redirect.

5 MR PACE: [13:04:58] At the moment I do not have any questions for
6 re-examination, your Honour.

7 If I understand the Defence correctly, they are proposing that the extra time is
8 essentially 20 minutes. In that case I understand that the Defence has 1 hour 40
9 minutes left and they propose to use the entirety of the next session. Should that be
10 the case, the Prosecution will not oppose 20 minutes' extension. However, any
11 extension of time beyond that, we do oppose and that would be for a number of
12 reasons.

13 The first is that both parties have to make a selection of the arguments that they need
14 to address during their examination. The Prosecution also had a time limit and we
15 stuck to it. There are certainly various other topics I would have wished to explore,
16 but we did not do so because of the Chamber's guidance in the relation to time.

17 The Defence has known about this witness's upcoming testimony since October.

18 There are no issues in relation to preparation. Yes, the material is vast. The
19 Defence made no indication of the need for extra time when we presented our Rule
20 68(3) application.

21 Your Honour, of course has already commented on the manner in which certain parts
22 of the cross-examination was conducted and remarked on the impact of that on
23 provision of extra time.

24 And yes, your Honour, so again just to summarise, if it is for 20 minutes, then we
25 don't oppose. And again, the witness, as has been done in the session, if he is

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0012

1 providing longer answers, he can be cut off if necessary and appropriate. So if that's
2 the issue in the upcoming two hours, that can be one measure in which to certainly
3 curtail the length of that examination.

4 PRESIDING JUDGE FREMR: [13:06:35] Thank you.

5 Now let's move into open session for the remainder.

6 (Open session at 1.06 p.m.)

7 THE COURT OFFICER: [13:06:50] We are in open session, Mr President.

8 PRESIDING JUDGE FREMR: [13:06:52] Thank you, court officer.

9 So Chamber will thoroughly consider the Defence request. We will deliberate
10 during the lunch break and we will issue our ruling orally at the beginning of the
11 afternoon session.

12 Now we adjourn and we will reconvene half past 2.

13 THE COURT USHER: [13:07:18] All rise.

14 (Recess taken at 1.07 p.m.)

15 (Upon resuming in open session at 2.31 p.m.)

16 THE COURT USHER: [14:31:49] All rise.

17 Please be seated.

18 PRESIDING JUDGE FREMR: [14:32:17] Good afternoon, everybody. We are -- we
19 start without witness because the Chamber is going to deliver its decision, or its oral
20 ruling on two issues. First, and we are in open session, yes, we can start in open
21 session.

22 So the first issue is our ruling on the Defence request for additional time for
23 cross-examination of Witness P-12, and then the other one will be for further
24 disclosure in relation to this witness.

25 The first one is possible to be delivered in open session.

Trial Hearing

(Private Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0012

1 The Defence requested a short extension of time in which to cross-examine the
2 present witness on the basis of a number of further topics that it seeks to address.
3 The Defence propose that it would aim to complete the cross-examination within two
4 hours. The Prosecution stated that it would not oppose the request if the additional
5 time requested was only as indicated, approximately 20 minutes.
6 In the present circumstances noting, one, the requested extension of time is relatively
7 short; second, that certain additional issues arose during the course of
8 cross-examination, including regarding the details of Prosecution contacts with the
9 witness, which the Defence considered necessary to explore further in the light of
10 existing disclosure; and three, the Defence identification of the further matters upon
11 which it wishes to question the witness, the Chamber will grant an additional
12 20 minutes as requested. This means that the Defence now has two hours in which
13 to complete its cross-examination.

14 Now let's turn into private session.

15 (Private session at 2.34 p.m.) *(Reclassified partially in public)

16 THE COURT OFFICER: [14:34:37] We are in private session, Mr President.

17 PRESIDING JUDGE FREMR: [14:34:41] Thank you.

18 And I will now deliver our ruling on the Defence request for further disclosure in
19 relation to Witness P-12.

20 The Chamber considers that in light of the clarification provided by the Prosecution in
21 its email last night and the oral submissions this morning, it remains for the Chamber
22 to determine whether the Prosecution must disclose, first, any record detailing the
23 meeting held between Witness P-12 and investigator (Redacted)
24 (Redacted) which the Prosecution submits related to security issues, and second, any record
25 of the initial contact between the Prosecution and Witness P-12.

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 Regarding the applicable law governing the request itself, the Chamber refers to
2 Rule 77 and further recalls its previous finding that security concerns expressed by
3 a witness or information regarding their circumstances are not necessarily material,
4 but rather that materiality must be determined on a case-by-case basis.

5 To assist the Chamber with its deliberations, the Prosecution was this morning requested
6 via email to provide ex parte any record it may have in relation to the (Redacted)
7 meeting in (Redacted).

8 The Chamber understands that there is no direct record of the content of the meeting
9 in the Prosecution's possession and that the Prosecution has rather been able to
10 confirm the occurrence of such a meeting on the basis of logistical records such as in
11 relation to expense receipts.

12 So now I would like to ask Prosecution before I proceed, can you please confirm,
13 Mr Pace probably, this briefly on record that there is in fact no record on the
14 substance of the meeting?

15 MR PACE: [14:36:58] No, your Honour, the Prosecution is not in possession of any
16 record regarding the substance of the meeting. And I could also say, also, if the
17 meeting actually took place, the information that we provided establishes that there
18 was a mission from the investigator at the time in relation to this witness in relation to
19 the issues that we outlined in our email.

20 PRESIDING JUDGE FREMR: [14:37:22] All right. So under these circumstances it
21 appears that there is no further available disclosure in relation to this matter.

22 Nonetheless, the Chamber notes that the Defence remains free to further explore this
23 matter directly with the witness, should it consider it relevant to do so, in the
24 remainder of its allocated time.

25 Relatedly, however, the Chamber was provided with a letter which it understands may

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 have been provided by the witness to the Prosecution on the occasion of that (Redacted)
2 meeting. It is noted that the portion of this letter has previously been disclosed
3 as (Redacted).

4 Having reviewed the letter in question, the Chamber considers that additional content
5 may be material to the preparation of the Defence, although it is noted that much of
6 the disclosable content is already reflected in other materials which have been
7 previously disclosed. The Chamber nonetheless considers that the redacted version
8 of the letter should be disclosed forthwith.

9 In relation to the initial contact made between the witness and the Office of the
10 Prosecutor, the Chamber notes the Prosecution submission, consistent with the
11 witness testimony, that this was done without the assistance of an intermediary and
12 that no screening note exists.

13 While the Chamber notes that the Defence was initially misinformed as to the
14 relevant circumstances, and expects the Prosecution to exercise great diligence in its
15 provision of such information to the Defence, the Chamber does not consider any
16 further order to be necessary on this matter at this stage.

17 That concludes the Chamber's oral ruling and we can now move into open session
18 and bring the witness in.

19 (Open session at 2.39 p.m.)

20 THE COURT OFFICER: [14:39:54] We are in open session, Mr President.

21 PRESIDING JUDGE FREMR: [14:39:56] Thank you, court officer.

22 (The witness enters the courtroom)

23 PRESIDING JUDGE FREMR: [14:40:36] Good afternoon, Mr Witness. We will
24 continue your cross-examination. And we believe that your testimony, hopefully,
25 will be concluded during this afternoon.

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 Now, Mr Bourgon, I will give you the floor. And I guess we will have to move into
2 private session; am I right?

3 MR BOURGON: [14:40:58] Yes, please, Mr President.

4 PRESIDING JUDGE FREMR: [14:41:00] Court officer, let's move into private session.

5 (Private session at 2.41 p.m.) *(Reclassified partially in public)

6 THE COURT OFFICER: [14:41:16] We're in private session, Mr President.

7 PRESIDING JUDGE FREMR: [14:41:18] Thank you, court officer.

8 Mr Bourgon, you have the floor.

9 MR BOURGON: [14:41:23] (Interpretation) Thank you very much, your Honour.

10 Q. [14:41:26] Good afternoon, Mr Witness.

11 A. [14:41:30] Good afternoon, Counsel.

12 Q. [14:41:34] I would like to return to the matter of weapons, weapons that were
13 allegedly given to the Lendus or the Ugandan rebels. And my first question goes
14 back to what you said (Redacted)

15 (Redacted)

16 (Redacted)

17 MR BOURGON: And to make it easy for you, I request (Redacted) to be displayed,
18 please, for your purposes.

19 Q. Mr Witness, it is on this page that you explain the fact that (Redacted)
20 (Redacted) by external security services of Lubanga to find out where those
21 rebels were located, (Redacted)

22 (Redacted)

23 Now, based on what you said this morning, I surmise that the person who was
24 responsible for undertaking that work was (Redacted); is that right?

25 A. [14:43:10] Yes.

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

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13 Page redacted – Private session

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Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 A. [14:51:25] (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 Q. [14:51:50] Well, that's in -- the very point that I want to shed light on with you.

9 The information that I have, well, it is similar to what you are saying but there are one
10 or two discrepancies and I just wonder whether you've heard talk of these

11 discrepancies. The first, the weapons, according to the information that I have, these
12 weapons were given, that's true, given to the Lendus and it was the Lendus that
13 received these weapons. Do you have any, any information about that?

14 A. [14:52:34] There were Lendus to whom weapons were given in one way or
15 another. We know some circumstances, but the Ugandans also received weapons.

16 The Ugandan rebels received weapons. The weapons received by the Lendus, well,
17 I don't know about them. I don't really know specifically about that.

18 Now, if it was the UPC that gave them the weapons, well, of course the rumours were
19 that they were giving the weapons to the Lendus and that's how the prominent
20 community figures in the Hema knew that weapons were being given to the Lendus
21 and then we understood -- well, we were to understand later on that it wasn't to the
22 Lendus that the weapons were given but, rather, those weapons were given to the
23 Ugandan rebels.

24 Q. [14:53:32] Well, that's what you say in fact, a little bit further on you say, "We
25 would learn later on." But you never received confirmation to that effect, it's your

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 analysis here that these rebels received these weapons; is that right?

2 A. [14:53:49] I don't think that, aside from the UPC people who gave their weapons,
3 and they would just leave their weapons in the bush, aside from them, there is
4 nobody who knew about it. According to (Redacted), only Thomas was aware of that
5 state of affairs. The others, we don't know.

6 Q. [14:54:26] Right. With regard to what Thomas knew, this isn't -- this doesn't really
7 appear to what transpires through your evidence, but since you say that (Redacted)
8 allegedly said that - this is the page in front of you - (Redacted) allegedly said to you that
9 Thomas allegedly denied that particular matter. Did he say that Thomas was aware?

10 A. [14:55:04] He said that Thomas, when this problem arose about why he left the
11 weapons, why he had given the weapons, and Thomas said he didn't know anything
12 about that at all and that was the answer that Thomas gave. But they fled on 6 April,
13 and it was on those days that they would encounter the officials among the Ugandan
14 rebels. *That day, he met Uganda rebel officers, who were on the same plane, same
15 place, and so he, he'd understood that it was true that they were working in
16 conjunction with those particular groups.

17 Q. [14:55:50] All right. Well, Mr Witness, according to the information I have, at
18 least, the situation that you're outlining relates to weapons, that's true, weapons that
19 were given to the Lendus by the UPC, with the knowledge of Thomas Lubanga.
20 And the matter of Ugandan rebels, well, they were implicated, or involved, rather, in
21 the transaction only to act as an intermediary. Is that hypothesis a probable one,
22 Mr Witness?

23 A. [14:56:33] You are saying that they were being an intermediary, the UPC?

24 Q. [14:56:38] The rebels.

25 A. [14:56:39] The rebels. Yes, but those rebels, they had received weapons from

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 Rwanda.

2 Q. [14:56:51] Well, that's what you say.

3 A. [14:56:53] Yes.

4 Q. [14:56:53] Well, I'm saying, well, I don't know where the weapons came from the
5 rebels and you can answer yes or no, we don't want to have this matter detain

6 ourselves too much, but the Lendu receive weapons from the UPC in February 2003.

7 Now, do you have any knowledge about that?

8 A. [14:57:17] February 2003? In February 2003, if I'm not mistaken, the

9 Lendu-Ngiti had attacked Bogoro and Mandro, and General Kisémbu had said, "My

10 objective is to attack Zumbé. But the time required to do these reprisals in Zumbé

11 because they had attacked Bogoro and Mandro, well, I was forbidden to go off there

12 and I was told, 'No, we are going to change things, we are going to attack the

13 Ugandans'." And he didn't understand actually why he'd been forbidden but they

14 received weapons to go off and attack them, well, to say that doesn't strike me as very

15 logical.

16 Q. [14:58:21] Right, Mr Witness. Then I am going to put a supplementary

17 question to you. I would put to you that not only that transaction did in fact take

18 place but Bosco Ntaganda was involved, do you have any information going to that?

19 A. [14:58:35] No.

20 Q. [14:58:37] And I would put to you in addition that the reason why the UPC had

21 organised a weapons transaction with the Lendus was because Thomas Lubanga

22 wanted to strike up an alliance with the Lendus in order to get the UPC out of Ituri.

23 Do you have any information going to that?

24 A. [14:59:16] We also thought of that, that the UPC wanted to ally with the Lendus

25 so that they could push out the UPDF. We had information to that effect, but we

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 didn't have any data on the ground, but that's what we thought that that's what they
2 wanted and we thought that the Rwandans had thought that it would be better that
3 the Lendus and the Hema be united to push out the Ugandans. We were aware of
4 that and we knew that.

5 Q. [14:59:54] Mr Witness, I suppose you would agree with me when I say that if we
6 look at February 2003, even if you, if you weren't at Bunia at that particular point in
7 time, I suppose you would agree with me that Thomas Lubanga in that particular
8 period had a number of reasons for wanting to push out the UPDF from Ituri; is that
9 right?

10 A. [15:00:22] Yes.

11 Q. [15:00:24] And one of those reasons was the establishment of the FIPI; isn't that
12 right?

13 A. [15:00:42] You are saying that Thomas Lubanga was right to push out the
14 Ugandans? One of the reasons was the establishment of the FIPI; is that right?

15 Q. [15:00:59] That's what I am putting to you, Mr Witness?

16 A. [15:01:01] Well, I don't think so because Lubanga in January had already signed
17 the RCD accords, RCD Goma on 6 January, he'd already signed the agreement. And
18 General Salem Saleh had gone off to negotiate with him, *once again. On 6 March,
19 Lubanga had an appointment with President Museveni on the same day so that they
20 could negotiate. He wanted Lubanga to stay in his position as commander but, on
21 the same day, this is what we were told in the office, that the same day that they
22 attacked -- so the FIPI, well, he was offered the FIPI. Now if you don't accept that,
23 well, we'll establish, we'll create the FIPI, but he didn't want to.

24 Q. [15:02:02] So you spoke about the signing of an agreement between RCD Goma
25 and Thomas Lubanga, so you know this agreement, do you not?

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 A. [15:02:16] Yes, I know it.

2 Q. [15:02:20] Obviously you would agree with me that, from the moment that RCD
3 Goma and the UPC concluded an agreement, that was the end of all cooperation with
4 the UPC and Uganda; was it not?

5 A. [15:02:40] Of course.

6 Q. [15:02:44] Now a moment ago you said that this agreement was signed on
7 6 January. And I would put to you the date 6 February; is that possible?

8 A. [15:02:57] 6 February, 6 January, I think it was in the same period, it's not
9 a problem, but I think it was in January because the UPC delegation that was in
10 December, they went there in December to Rwanda and after new year they went to
11 Goma and then they signed the agreement. But I think it was the 6th, but if you say
12 it's the 7th it doesn't change anything, the facts are still the same.

13 Q. [15:03:31] Well, there's an order in which these events occurred and that means
14 that Thomas Lubanga could have had reasons to act in the way that he did. And
15 that's what I am trying to explore with you. Now you mentioned a moment ago that
16 there was a visit, and here I am looking for the place, you spoke about a visit when --

17 A. Salim Salem.

18 Q. -- Salim Salem he went to Bunia and he was humiliated then was he not?

19 A. [15:04:14] Yes.

20 Q. Well, you weren't there but you found out about that, did you not?

21 A. [15:04:22] The Ugandan services reported that to us, it was official.

22 Q. [15:04:26] This humiliation was that the young brother of Museveni was sent to
23 Bunia in order to ensure that Lubanga could meet Museveni and Lubanga refused to
24 do so; is that the information that you had?

25 A. [15:04:47] He had discussions with him, but as to whether he accepted or

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 refused he didn't get news about that, but it's probable that it was proposed to him.

2 And according to President Museveni, he had set a meeting with him for 6 March that
3 he was meant to meet him the same day that they fought.

4 Q. [15:05:17] Witness, I'm referring here to your statement of 5 March, so from 2005,
5 same number, first page 0105-0085, page 0123. Page 156, you say that he told us that
6 he had been appointed in Bunia in the month of January 2003 with a view to
7 reorganising the UPC forces in Bunia and after -- during Salim Saleh's visit in Bunia
8 during that month. Does that remind you of your remarks to that point?

9 A. [15:06:13] Who was appointed?

10 Q. [15:06:15] Well, I'm going to show the page so that there be no -- page 0132,
11 0105-0087. Kale Kayihura you mentioned previously. So if we look at paragraph
12 256, and this is going to appear in front of you, what you say is the following. You
13 continue anew, paragraph 256, if you would be so kind.
14 So in this paragraph he said that he had been appointed in Bunia in the month of
15 January 2003 to reorganise the UPDF troops there following the insult caused to Salim
16 Saleh when he visited Bunia that month. "I knew, having followed things on
17 television and radio, I knew that Salim Saleh had gone to meet Lubanga in Bunia in
18 January 2003. But I did not know all of the details of the visit."

19 Do you confirm those remarks?

20 A. [15:08:02] Yes. But after, when we met Kayihura he explained to us how and
21 why he was appointed.

22 Q. So indeed in your statement a bit further you explain that. Now what is of
23 interest to me is to know about the insult caused to Salim Saleh, you say that that's
24 when Thomas Lubanga refused to meet Museveni in Uganda, but if you don't know
25 you can say yes or no.

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 A. [15:08:51] I don't know. I just know that there was a disagreement with Salim
2 Saleh and he no longer wished to work with the Ugandans. That doesn't mean
3 necessarily that he met Museveni. You think that Salim Saleh could resolve the
4 problem, but unfortunately he wasn't able to do that.

5 Q. [15:09:18] Very well. The question that is of interest to me is talking about the
6 good agreement between the UPDF and the UPC, the UPDF, that was something in
7 the past in 2003, that was over.

8 A. [15:09:37] That's true.

9 Q. [15:09:38] (Redacted)

10 (Redacted)

11 MR BOURGON: (Redacted)

12 Q. (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 A. [15:11:09] (Redacted)

22 Q. [15:11:14] (Redacted)

23 A. (Redacted)

24 Q. (Redacted)

25 A. [15:11:18] (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

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13 Page redacted – Private session

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Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 promised to help them militarily by providing weapons and munitions, with a view
2 to driving the UPC and Lubanga out of Bunia. In addition to arms and munitions,
3 Kabila had promised to send military advisers with a view to training the troops that
4 the FIPI was supposed to have." Are those your words?

5 A. [15:17:27] Yes, that's true.

6 Q. [15:17:33] I'd like to show you a document.

7 MR BOURGON: (Interpretation) If we could have document DRC-OTP-0193-0243
8 on the screen. The document which will appear on the screen is a press
9 communiqué of 19 February 2003. And I would like if we could have the first
10 paragraph at the top of the communiqué, where it says "press communication."

11 Q. Now the first thing, Witness, about this press communiqué is that it was
12 a response to a communiqué which was issued by MONUC.

13 If we could show the first paragraph. Now MONUC in Kinshasa issued
14 a communiqué on 18 February 2003, reporting the signing of a ceasefire agreement in
15 Ituri and accusing the UPC of blocking the pacification process of Ituri by calling into
16 question the participation of other groups of Ituri in the Ituri pacification process and
17 accusing MONUC of bias in the management of the Ituri case.

18 Are you aware of this press release which came from MONUC and Kinshasa?

19 A. [15:19:38] No.

20 Q. [15:19:39] (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 A. [15:20:02] (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 that was going on.

2 Q. [15:20:14] So by way of reaction to the press release issued by MONUC in

3 Kinshasa, well, the UPC wrote this communiqué that you have before you. So I

4 would now like to draw your attention to paragraph 3(a), page 0245.

5 Paragraph 3.1, well, I will just quickly read it: "Lack of respect of the commitments

6 made in Dar es Salaam, in particular by Uganda and the Kinshasa government.

7 Indeed, after the talks in Dar es Salaam, they created a new politico-military

8 movement. The FIPI, one of the leaders of which is Mr Kahwa, who openly said that

9 his group was supported by Kampala, Kinshasa and MONUC. What a contradiction.

10 By way of demonstrating it, a team of four FIPI officials was taken by Captain

11 Maguru to Kinshasa, Captain Maguru of the UPDF, where he was received by

12 President Kabila on Friday, 14 February, at 2300 hours. The promises made in

13 weapons, ammunition and money was realised by Kinshasa, and this team went back

14 to Kampala today, 19 February 2003."

15 So you answered that you weren't surprised that Thomas Lubanga found out what

16 was happening in Kinshasa. This press release, were you aware of it when it was

17 issued on 19 February 2003?

18 A. [15:22:44] No.

19 MR BOURGON: [15:22:54] Your Honour, I would like this press release to be

20 admitted into evidence. Despite the fact that the witness was not aware of it at the

21 time, his answer shows he has sufficient knowledge thereof to know that it was real.

22 It was disclosed by the Prosecution and the document is a Defence piece of evidence.

23 PRESIDING JUDGE FREMR: [15:23:24] Prosecution.

24 MR PACE: [15:23:25] Your Honour, we object to the admission of this document.

25 There was no impeachment. The witness is not familiar with the production of this

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 document. It also seems to be taken from some form of website. If the Defence
2 wishes to admit this document, it would be more appropriate to do so at the Bar table
3 when they can argue the relevance, if any, of this document.

4 PRESIDING JUDGE FREMR: [15:23:47] Mr Bourgon?

5 MR BOURGON: [15:23:49] If my colleague objects to the admission of their own
6 documents, we will do it at a later time. I thought it was better to have the
7 document when the person who can speak about the events is on the stand, but I can
8 move on, Mr President.

9 PRESIDING JUDGE FREMR: [15:24:04] Yes, just to comment, I get your point, but
10 really if you want, I am not somebody who really strictly sticks on 100 per cent clarity
11 of procedure, but at this time I think Bar table is more proper way how to get it in.

12 MR BOURGON: [15:24:25] Fine with the Defence, Mr President. I will move on.

13 Q. [15:24:29] (Interpretation) Witness, I would like to go back to a paragraph in
14 this document here.

15 PRESIDING JUDGE FREMR: [15:24:38] Mr Witness, you have the floor. Please go
16 ahead, I am listening to you. You can speak, please.

17 THE WITNESS: [15:24:55] (Interpretation) Yes, I think that counsel had, has taken
18 things as he wanted to, but if you look at the substance with regards to what he
19 thought, in agreement with what's written on the document, but the reality is that it
20 didn't happen in that way. Because for Lubanga to be attacked, a long process was
21 followed because they thought that it was more expensive to start a new group.
22 And, rather, Lubanga had to accept. He blocked the process and he refused.
23 Because even when we met him, he said, "I've got nothing to do with the president.
24 I'm president of a nation and we have to deal with each other on a level footing." He
25 didn't want anything from the pacification commission. He was forced. He was

Trial Hearing

(Private Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0012

1 forced to do that. (Redacted)
2 (Redacted), but it wasn't a precise
3 programme that he gave them as to what they should do. Unencan didn't have any
4 troops, Ndjabu didn't have troops, Kahwa almost didn't have any troops. How
5 could they start? First of all, he wanted to put political pressure on Lubanga so that
6 Lubanga perhaps he would be afraid, but in the process Lubanga anticipated things
7 by attacking the UPDF. And if he hadn't attacked, he could still continue with the
8 negotiations until he accepted that the IPC would happen, but what he wanted was to
9 organise it himself. We've also got documents that he sent to say "I want to organise
10 the IPC. I don't want this, I don't want that, or the other." He wasn't in agreement
11 with the Luanda agreements, and that's the reason why. But we were in agreement
12 to work with Lubanga, but President Museveni said there was no objection in that
13 regard.

14 MR BOURGON: [15:27:37] (Interpretation)

15 Q. [15:27:37] Witness, what you have just said, that's your opinion based on the
16 information that you have accumulated over that period, is it not?

17 A. [15:27:48] I'm sorry, Counsel. (Redacted)

18 (Redacted)

19 (Redacted)

20 preferred, first, that they were not militia but political parties and that's why it was
21 organised in that way. And when they went back, we still had to continue with the
22 discussions, but his idea was to form something in Ituri which would be
23 a counterweight and it would make it possible for Lubanga to accept the pacification
24 commission. It wasn't Museveni, he was forced to do that.

25 Q. [15:28:48] Witness, I am going to read a paragraph in the press release that

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 we've got in front of us.

2 Now, here I would like to have page 0246. This is the last page of the press release.

3 If you could highlight the last paragraph, "En guise de conclusion, that paragraph.

4 Now, in this press release, Witness, "By way of conclusion, the UPC/RP brings to the

5 international and national community that it has never decided to be a blockage of

6 any kind to the pacification process in the region under its control. Quite the

7 contrary, it is prepared to cooperate with sincerity and honesty with anyone who

8 wants to help achieve the laudable work of pacification and reconciliation which it

9 has already started since it effectively came into existence." Do you agree with those

10 words?

11 A. [15:30:14] No, Counsel. I have just seen the press release but I do not believe

12 that the UPC was of that opinion.

13 Q. [15:30:29] Mr Witness, you talked about the Ituri peace commission. You said

14 that they had not officially participated in the process and that the report of the

15 commission had not been accepted; is that correct?

16 A. [15:30:48] Yes.

17 Q. [15:30:50] May I show you a document, DRC-OTP-0107-0223.

18 I'd like to have the first page on the screen, if I may, please.

19 I imagine that you are familiar with this document, Mr Witness, because it's the final

20 report of the pacification commission for Ituri. Do you recognise this document?

21 A. [15:31:44] Yes.

22 Q. [15:31:48] I would draw your attention here to the page that I'd like to have

23 displayed on the screen now, which is 0316. At the end of the document we have all

24 the signature pages and then we see that it was done in Bunia on 14 April 2003, UPC,

25 RP." I look at the names of the people there, John Tinanzabo, I think you know him

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

- 1 well, do you not?
- 2 A. [15:32:38] Yes.
- 3 Q. [15:32:41] Eustache Matheso, you know him?
- 4 A. [15:32:44] Yes.
- 5 Q. [15:32:46] Marcel Adubango, you know him too?
- 6 A. [15:32:51] No.
- 7 Q. [15:32:53] Denis Akobi, you know him?
- 8 A. [15:32:55] Yes.
- 9 Q. [15:32:58] And the final one who signed, Ondini Kidikpa, do you know him?
- 10 A. [15:33:09] No.
- 11 Q. [15:33:11] You know the ethnic group that these people belonged to, the ones
- 12 that you know?
- 13 A. [15:33:17] Approximately, yes.
- 14 Q. John Tinanzabo, he's Bira?
- 15 A. Yes.
- 16 Q. And Eustache Matheso is Hema, is he not?
- 17 A. [15:33:29] I don't know.
- 18 Q. [15:33:33] Adubango is an Alur, yes or no?
- 19 A. [15:33:40] But I don't know Adubango.
- 20 Q. [15:33:45] Akobi, he's a Lendu?
- 21 A. [15:33:48] Yes.
- 22 Q. [15:33:48] So you see these people signed the commission report on 14 April,
- 23 agreed?
- 24 A. [15:33:56] Yes, that's what it says. I was not in the commission. (Redacted)
- 25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 (Redacted). But the UPC was not represented. Matheso and
2 Tinanzabo, not the others, is in the Lendu group. The two came to represent them.
3 *They have been forced to represent the UPC at that time, which was still in the bush,
4 but they signed and Matheso, (Redacted)
5 (Redacted)Lubanga said, "Since you are going to sign there, you are no longer part of
6 the *UPS (phon)." He revoked his membership for having signed the documents.
7 So we had our commitments and everything was changed. He said, "I don't agree
8 with that, I don't agree with that, I don't agree with this," but President Kabila was
9 patient, he accepted the changes that Lubanga made. And then we signed the
10 documents with the new commitments. And that was not everything.
11 (Redacted)
12 (Redacted) Lubanga asked everyone involved in Ituri to meet (Redacted)
13 (Redacted) And he changed these documents. He said, "We don't accept
14 international forces, we don't accept *national police. We want to organise Ituri in
15 our own way." And everybody refused him. He refused to sign. He gave it to
16 Tinanzabo, and Tinanzabo signed them. So he wanted to sign but what -- not with
17 what he didn't want, not with only what the government wanted. That was the
18 situation.

19 Q. [15:36:30] The first thing, is it your testimony that despite the signatures here,
20 the UPC was not represented in the CPI? Is that what you are stating? You can
21 answer yes or no, please, because we don't have much time.

22 A. [15:36:51] No, they signed. There were other people that signed but that were
23 not there. Like Germain Katanga, he signed but he wasn't there. There were a lot
24 of people who came, who signed simply. They were asked to sign, but they were
25 not part of the commission. They just wanted to have their names there. The

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 names were already written and we just needed to have the signatures.

2 Q. [15:37:20] I am going to move to another subject. You said that there was

3 a rejection of international forces (Redacted) You

4 mention the fact that the UPC didn't want Artemis. First question: You know what

5 Artemis is, do you?

6 A. [15:37:42] Yes.

7 Q. [15:37:53] (No interpretation)

8 I'm sorry, I missed the reference, but we are on line 15 of 2054-0240 and you talked

9 about signing at the arrival of the international forces. (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 A. (Redacted)

19 Q. [15:39:40] (Redacted)

20 PRESIDING JUDGE FREMR: [15:39:42] Mr Bourgon, you are probably too fast

21 because we have problem to capture everything by the interpreters. So now would

22 it be possible to provide at least this concrete page, either on the screen or in hard

23 copy to Mr Witness?

24 MR BOURGON: [15:40:06] (Interpretation) The number of the first page is 2054-0172,

25 and it is 0240.

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 Q. You have the text now, Mr Witness, and I was reading from line 15 to the end.

2 (Redacted) that's what you have just repeated, that is what happened

3 during this meeting.

4 The point that I'm putting to you is that things did not happen in that way, and I

5 would like to show you another document and see whether that jogs your memory.

6 If I could, I would like to have document DRC-OTP-0014-0179.

7 This is a document which is an official declaration by the executive of the UPC on the

8 deployment of the multinational force in Bunia, dated 11 June 2003:

9 "On the occasion of deployment at Bunia, the head of the province at the headquarters

10 of the multinational emergency peace force, we, the members of the executive,

11 meeting here with Thomas Lubanga, president of the movement, we have

12 unanimously decided to declare to the force of the world that, one, we welcome the

13 deployment of the multinational emergency force in Bunia in Ituri and we welcome it

14 to the hospitable soil of our ancestors; two, we are in no way hostile to the presence of

15 this force in our headquarters, but we believe that in the complementarity it has been

16 nominated somewhat belatedly in order to consolidate peace and security which have

17 been so costly restored in Bunia since 12 May. We undertake the firm engagement to

18 offer this force an ideal working framework for the harmonious accompaniment in

19 full by the mission given to it by the United Nations Security Council that is to

20 safeguard the City of Bunia and its airport, to protect the UN personnel, also NGOs

21 and the population in danger. Signed in Bunia on 11 June 2003. Matthieu Amboko

22 Bebetu."

23 Mr Witness, were you aware of this official declaration in June 2003?

24 A. [15:44:44] He had signed in what quality of the UPC?

25 Q. [15:44:57] You can see as well as I can it was Matthieu Amboko Bebetu who was

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 minister, he was national secretary for communication. And he was the
2 spokesperson for the UPC. My question is: Did you see this document in
3 June 2003?

4 A. What do you mean by take cognisance of this document, I don't know if it even
5 existed, it might have existed but I am now saying (Redacted)
6 (Redacted) You can check
7 that.

8 Q. [15:45:46] My question is simple, have you seen this document before?

9 A. [15:45:52] Why should I have seen it? We weren't sent that. It was
10 a communiqué that was issued where? Who was it communicated to, to the Hema,
11 to everybody, to all the political actors involved?

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 So at this time Bebetu, we didn't know him, I'd never seen him in any meeting
16 representing the UPC. Tinanzabo, until you can prove differently, was the
17 secretary-general at that time. He could represent or sign on behalf of the
18 organisation, but Bebetu I don't know.

19 Q. [15:46:56] Mr Witness, I accept your reply to my question, but my next question
20 is as follows: I suggest to you that the UPC having taken Bunia at the fall of the
21 other place in August 2002 set up a very complicated mechanism for pacification and
22 reconciliation in Ituri. Are you aware of this programme, yes or no?

23 A. [15:47:34] No.

24 Q. [15:47:37] Do you know, do you know, and I'm just looking for the document,
25 it's about to be passed to me -- well, it is a document entitled "The committee for truth,

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 peace and reconciliation", CVPR, it's a French acronym. Does that mean anything to
2 you?

3 A. [15:48:39] Yes.

4 Q. [15:48:39] What is it?

5 A. [15:48:41] I think we wanted to take the political military (indecipherable) of
6 Ituri and discuss how one could set up the Ituri commission. (Redacted)
7 (Redacted). That was the aim of this organisation.

8 Q. [15:49:08] You will agree that it was set up by Thomas Lubanga and the UPC; is
9 that correct?

10 A. [15:49:15] I don't know who presented this, but I know that at that time the UPC
11 was running Ituri.

12 Q. [15:49:30] May I have on the screen 0093-0041.

13 THE COURT OFFICER: Mr Bourgon, could you please specify the first page of the
14 ERN number, the ERN number of the first page.

15 MR BOURGON: The ERN number DRC-OTP-0093-0141.

16 THE COURT OFFICER: [15:50:01] Thank you.

17 MR BOURGON: [15:50:04] (Interpretation)

18 Q. [15:50:05] Mr Witness, this is the first page of the document entitled
19 "Programme" -- maybe it is legible on the screen. Have you ever seen this document,
20 Mr Witness?

21 A. [15:50:31] I don't think so.

22 Q. [15:50:34] And if I could have 0143 shown on the screen, please, page 0143.

23 If we could enlarge it somewhat so that we can see the programme for pacification in
24 Ituri.

25 I would draw your attention to the subject mentioned. The programme for

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 pacification in Ituri is the main title and then there is a), b), c) and d). And it
2 continues on the next page. So we can look briefly at the various components. One
3 is updating the Luanda agreements with regard to the Ituri pacification commission.
4 Can you see that title? It's the letter a)?
5 A. [15:51:40] Yes.
6 Q. [15:51:41] B), the administrative political military autonomous management of
7 Ituri, can you see that?
8 C), the formation of an executive -- of a representative executive (government), can
9 you see that?
10 And then d), the creation of the committee reconciliation, truth and peace.
11 In this paragraph I would draw your attention to the second subparagraph, which
12 reads as follows:
13 "This organ which is representative of all the ethnic groups of Ituri will incorporate
14 into itself those who are not originally from Ituri, as well as some experts. The role
15 attributed to it is to express in material terms the process of reconciliation and
16 pacification and to remain in permanent contact with the base."
17 The rest is logistic details, so if we could move on to the next page, 0144.
18 And then we have e), the restoration of state authority and good governance, do you
19 see that?
20 A. [15:53:38] Yes, I do.
21 Q. [15:53:39] F), promotion of a permanent dialogue. In this paragraph we see
22 that the UPC intends to promote a permanent dialogue between the communities in
23 Ituri through the union of cultural association.
24 Then paragraph g), fight against disinformation and false information.
25 And if I could now see the final page, 0145.

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 And this is simply the conclusion, which should be on your screen: Done in Bunia
2 26 September 2002, national secretary responsible for pacification and reconciliation
3 of UPC/RP, Jean de Dieu Tinanzabo. You recognise Tinanzabo's name? Were you
4 aware, Mr Witness, of the creation of the CVPR by Jean Tinanzabo and everything
5 done by this committee during 2002 and 2003?

6 A. [15:55:22] Counsel, with due respect, you read the headlines in the document
7 but you didn't go into the content. What was important for us was that the Lusaka
8 said and the Luanda agreement said, without any question, the management, the
9 running of Ituri had to be put back into the hands of the government. We -- all the
10 military had to be involved into the national forces. *And it is written that we want to
11 make the UPC army our national army, to provide protection. This is not what was said in the
12 Lusaka agreements, in the framework of the inter-congolese dialog... which led to the Luanda
13 agreement. The Luanda agreement set out what was to happen with the CPI, but what they
14 tried to show here was what they took from these agreements but in terrain they actually had
15 to agree with what the government wanted, with what Kinshasa wanted, but they didn't want
16 to follow Kinshasa. They wanted to implement the Luanda agreements and put themselves at
17 the centre of these agreements, but in reality it was Kinshasa that was at the centre of these
18 agreements, and that is what Uganda wanted as well, to do the same thing.

19 Q. [15:56:55] Mr Witness, when we talk here about pacification and reconciliation,
20 and I come back to my question: Were you aware of all the efforts made by this
21 committee in 2003 and 2002?

22 A. [15:57:12] They had a meeting which I recall. I think they met in Uganda.
23 They had a meeting where they brought everybody together, but they couldn't reach
24 agreement because the UPC was always in the centre. They wanted to be the
25 dominant party. But since it was a Hema group, *the 18 other tribes did not agree.

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 The ideas were good, but they couldn't all be round one ethnic group running 18,
2 that's not possible. You need a central government for that.

3 Q. [15:57:55] Have you ever seen this document before, Mr Witness?

4 A. [15:57:59] This document itself, no, but a lot of its content, yes.

5 Q. [15:58:05] If I were to say to you that the CVPR had a national secretariat that
6 functioned correctly, would you agree with me?

7 A. [15:58:19] Where did that function?

8 Q. [15:58:29] If you don't know that that was the case, then say no, quite simply.

9 A. [15:58:34] No, because it's -- in that way I am saying that it existed but I am
10 saying it didn't exist, but I never saw it in action.

11 MR BOURGON: [15:58:46] (Interpretation) I'd like to see DRC-OTP-0093-0004.

12 (Speaks English) Mr President, I would like to know how much time I have.

13 I don't know how much -- I see the clock at 4 o'clock.

14 PRESIDING JUDGE FREMR: [15:59:28] I am also interested to have update on
15 timing. Court officer, may I ask you how much time the Defence so far has used.

16 THE COURT OFFICER: [15:59:39] The Defence so far has used 5 hours and
17 33 minutes.

18 PRESIDING JUDGE FREMR: [15:59:43] 33. So still 27 minutes for you,
19 Mr Bourgon.

20 MR BOURGON: [15:59:48] Plus 20, Mr President?

21 PRESIDING JUDGE FREMR: [15:59:55] You are right, yes.

22 MR BOURGON: [15:59:57] Thank you, Mr President.

23 Q. [16:00:03] (Interpretation) Mr Witness, can you see the document that is before
24 you? This is a report, activity report at National Secretariat

25 November/December 2002. Now this is a report by the CVPR. Let me just show

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 you the second page of the document, 0005, if I could have that displayed, please.

2 Now this is an activity report which comprises a number of pages, but I don't have

3 time to look at the various sections in this document which I was proposing to do.

4 But I will ask you to confirm that you have no idea of what this particular committee

5 did in 2002 and 2003; is that right?

6 A. [16:01:17] Yes.

7 Q. [16:01:20] Now I would like to share with you one of the activities of this

8 particular committee and, to that end, I am going to refer to the statement which was

9 obtained by the Prosecutor. Oh, no, I do apologise, forgive me, (Redacted)

10 (Redacted) And

11 0107, if I could have that page displayed, please.

12 Now I am going to read one of the paragraphs going to one of the activities of this

13 body organised by the CVPR, or RP, so paragraph 175, it is right at the bottom. So

14 let me read for the transcript:

15 "Following this decree, the premises of the CVPR were set up and, in January 2003,

16 a seminar gathering together all the prominent figures of all the communities took

17 place in Bunia. The seminar lasted a week and was chaired by Policarpe Ndivito, a

18 Nande from North Kivu. The seminar's objectives were, first, to think about how the

19 UPC/RP could work with them in order to pursue and reach reconciliation and peace.

20 Second, following the seminar, it was also important to identify people who were

21 going to be part of the CVPR whose make-up is detailed in pages 6 and 7 of the

22 document mentioned previously. I myself was involved in the seminar's

23 organisation but I only attended partially. My role was to bring together these

24 people and to explain what the CVRP involved and then it was up to the prominent

25 figures in the communities to talk amongst themselves and to take decisions."

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 So, Mr Witness, were you aware of such an initiative whereby all the prominent
2 figures in the community were invited to come to Bunia for a week-long seminar in
3 January with a view to talking about the situation at hand?

4 A. [16:04:49] Yes.

5 Q. [16:04:53] Let me just read what (Redacted)

6 paragraph 176, so it's the next, basically it's the next page on the screen where we can
7 read:

8 "On the day of closure, an act of commitment was signed by almost all the attendees.

9 The signatories committed thereby in the CVRP programme and accepted to work
10 together with the UPC/RP."

11 Just a bit lower down, please, 176.

12 "So that same day the RCD-Goma delegation headed by its president Adolphe

13 Onusimba, was also present, following the fact that this movement and ours had
14 come together. Only some Lendu representatives refused to sign the act."

15 Is this -- well, basically, does this accord with what you know about this seminar,

16 Mr Witness?

17 A. [16:06:14] Yes, yes, I know.

18 Q. [16:06:26] I move to another document. It's another of the activities undertaken

19 under the aegis of the CVPR, but also at the initiate of Thomas Lubanga. Are you

20 aware, Mr Witness, of a peace meeting that took place at Ngongo, next to Nwanga

21 and Lipri, the objective of which was to seek peace between the Lendus and the UPC.

22 And this is February 2003. Forgive me, it's 14 January 2003. Are you aware of that
23 peace initiative?

24 A. [16:07:15] No.

25 Q. [16:07:20] So if I tell you at that particular point in time, three ministers, three

Trial Hearing

(Private Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0012

1 UPC ministers went to Ngongo where they met the Lendus and after a peace meeting
2 they managed, this is just by way of example amongst others, but they managed to
3 open up the road between Bunia and Lipri, which is a significant mercantile artery for
4 local populations in those two places, were you aware of the reopening of that
5 thoroughfare between Bunia and Lipri?

6 A. [16:08:07] No. But, Counsel, can I say something?

7 Q. [16:08:13] Off you go.

8 A. [16:08:16] I don't know, Counsel, and I don't know whether you really realise
9 that you are defending a document that has no bearing whatsoever with the legal
10 framework. They presented peace in their own way, which wasn't the perspective of
11 the government with regard to the international agreements in order to produce
12 peace because they showed a document. All they did was that. But it wasn't an
13 agreement with, with the Luanda Accords, because the substance of that accord, okay,
14 they open roads, that's true, I agree with that, lots of good things came out of that and
15 I acknowledge that, but the accords should be done around a centre. And what was
16 that centre? That centre should either be MONUC or the two governments of
17 Uganda or Kinshasa. But they did peace in their own way, in the Ituri way, but not
18 in the Congolese way.

19 Q. [16:09:27] So, Mr Witness, on the basis of your answer, I'm just asking you really
20 to confirm, because you've just confirmed the fact that they did a number of good
21 things, but there was, even though it was their way of doing things, as you say, there
22 were efforts to produce peace by Thomas Lubanga; that's right, isn't it?

23 A. [16:09:50] Yes, yes, I would confirm that. They did a number of things and
24 made a number of efforts to make sure that they could organise kind of like a copy of,
25 of peace but couldn't reach the outcome, desired outcome because it was basically

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 revolving around the Hema's interests.

2 Q. [16:10:16] I move to another area. (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 "And do you recall to what group the person who committed the rape belonged to?"

9 Your answer: "It was a bit difficult, but it was a commander, a UPC commander.

10 But who had moved and went around with Tchaligonza, but he was a UPC

11 commander, and it was his name, Mutéguki."

12 I do apologise if I have pronounced that badly. But do you remember having said

13 that in your oral evidence yesterday?

14 A. [16:11:27] Yes.

15 Q. [16:11:31] But you know full well, Mr Witness, Mr Mutéguki wasn't UPC but he

16 was part of the PUSIC; isn't that right?

17 A. [16:11:49] Counsel, be it Tchaligonza or Mutéguki or, again, all these Hema

18 leaders, these military leaders, they never belonged genuinely to PUSIC. With

19 Uganda they put together a group aside and Uganda used them as they wished and

20 when they wished. But they had no link with PUSIC, they didn't receive

21 Chief Kahwa's orders.

22 Q. [16:12:19] All right, Mr Witness, then let me just read out what you said in your

23 statement.

24 PRESIDING JUDGE FREMR: [16:12:29] I will interrupt you because I would like to

25 make a break just for five minutes in order to give chance to the interpreters also to

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 get some break.

2 So we will now break for five minutes.

3 THE COURT USHER: [16:12:44] All rise.

4 (Recess taken at 4.12 p.m.)

5 (Upon resuming in private session at 4.19 p.m.) *(Reclassified partially in public)

6 THE COURT USHER: [16:20:00] All rise.

7 Please be seated.

8 PRESIDING JUDGE FREMR: [16:20:06] So I believe that those five minutes help

9 everybody to refresh a bit and to keep the concentration for the last roughly

10 30 minutes.

11 And I also note for the record that Ms Samson left us, all of the team, so the only

12 change in appearances.

13 Now, Mr Bourgon, please proceed.

14 MR BOURGON: [16:20:32] Thank you very much, your Honour.

15 Q. [16:20:34] We have almost finished Mr Witness. Where we left off we were

16 talking about Mr Mutéguki, and I wanted to draw to your attention your statement,

17 paragraph 394, page 0157, and at this juncture you say the following, I read:

18 "I was also informed of what Major Mutéguki of the PUSIC had shot a Hema girl

19 at Kasenyi. I know there were cases of rape. For example, Kabo raped women of

20 some PUSIC soldiers. And it was at this time -- this was why Kahwa excluded" --

21 PRESIDING JUDGE FREMR: [16:21:32] Please hold on.

22 Mr Pace.

23 MR PACE: [16:21:33] Yes, your Honour, before any questions are put to the witness

24 perhaps the first part of the paragraph can be read out, because that provides at least

25 context as to the location that the witness was referring to in regard to these crimes.

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 PRESIDING JUDGE FREMR: [16:21:48] Mr Bourgon.

2 MR BOURGON: [16:21:48] I was trying to save time, but I will read the full

3 paragraph. The first thing is to put the paragraph on the screen so that there is no
4 debate.

5 If I can have the page, it is the same statement, 0105-0085, page 0157, and if you can
6 focus in on 394.

7 PRESIDING JUDGE FREMR: [16:22:49] Mr Bourgon, you can start reading out in the
8 meantime.

9 MR BOURGON: [16:22:54] (Interpretation)

10 Q. [16:22:55] So, Mr Witness, let me read the paragraph in its entirety:

11 "I know that in some cases PUSIC soldiers also committed crimes on Lake Albert, on
12 each occasion they were careful to lay the blame on the FRPI forces. For example I
13 saw a complaint, Kasenyi woman killed by the PUSIC, and more specifically by Kabo
14 and Aboki. I was also told that Major Mutéguki from the PUSIC had shot a Hema
15 girl in Kasenyi. I know that rapes occurred too, for example Kabo raped the wives of
16 some of the PUSIC soldiers, which incidentally is why Kahwa expelled him from the
17 movement." We can take that down.

18 Mr Witness, my first question: You recognise this paragraph from your statement; is
19 that right?

20 A. [16:24:12] Yes. I recognise that.

21 Q. [16:24:14] And Mutéguki is from PUSIC; is that right?

22 A. [16:24:18] Just hang on a second counsel, (Redacted)

23 (Redacted)

24 (Redacted), of that report, many times it's said that there is a confusion

25 between the PUSIC soldiers and the UPC soldiers. And it's written actually on the

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 report, if you read it.

2 But Mutéguki, maybe it was an error on my part to include him as a member of

3 PUSIC because he was never a member, but he came with Tchaligonza and

4 Tchaligonza himself said that he hailed from the UPC because, (Redacted)

5 (Redacted)

6 (Redacted)

7 Q. [16:25:16] I have to stop here because I don't have enough time.

8 A. [16:25:18] Yes.

9 Q. [16:25:20] At that particular time you wrote that Mutéguki was a member of
10 PUSIC at the time when these crimes were committed, yes or no?

11 A. [16:25:32] I am saying that this is an error on my part to have written that, yes.

12 Q. [16:25:37] So you are changing your statement now, are you, by saying that
13 Mutéguki wasn't from PUSIC; is that right?

14 A. [16:25:44] Not only changed, I mean that's the truth, because even if you ask
15 General Bosco, well, he would confirm that Mutéguki was of the UPC.

16 Q. [16:26:02] (Redacted)

17 (Redacted)

18 (Redacted)

19 All right, look at the bottom, the comments, 2.2, please.

20 Sir, that point, 2.2, this is what we read, quote:

21 "The victims and people declaring human rights violations couldn't properly identify
22 the perpetrators. Consequently, sometimes there are confusions between the UPC,
23 PUSIC and Hema combatants. FNI/FRPI and Lendu combatants."

24 That's the sentence that features on the report; that's right, isn't it?

25 A. [16:27:36] Yes.

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 Q. [16:27:37] In the paragraph I read to you a moment ago it was said the following:

2 I know that in some cases PUSIC soldiers also committed rapes on Lake Albert's
3 shores, and here it said that every time they were careful to lay blame on the FRP
4 forces.

5 So here you have got people from PUSIC who are saying, "No, no, it's not us, it's the
6 FRPI," and that's what we read in this paragraph; isn't it?

7 A. [16:28:10] I think, yes. When you've got opposed groups they'll accuse each
8 other, it always happens. And it's true what I said, I recognise the fact that
9 sometimes PUSIC people did this and they accused other peoples, yes, I encountered
10 that.

11 Q. [16:28:32] And now staying with this particular page you can see that there are
12 one or two statistics with the numbers of recorded cases broken down into various
13 categories, and here what do we see? We see the number of cases over that
14 particular time frame recorded and we see the total line, 48 cases of infractions on the
15 right to life, 12 cases of abductions, we see two cases of disappeared people, we see
16 four cases of arrest and arbitrary detention, we see 23 cases of infraction of physical
17 integrity, one of an infraction against free circulation, three -- 30, cases, rather, of
18 infractions against the right of property and two cases of rape.

19 Now, if I'm following your oral evidence you are saying that all these figures are right
20 except for rapes, because in cases of rapes people didn't make complaints. Is that
21 your evidence, witness?

22 A. I think I referred you to that particular page in the first place, that the reports
23 here are what they are. But in the cases that we have referred to that feature in this
24 report, cases of PUSIC or even Hema, who knows among Hema who committed
25 something, between the Lendu and the Ngiti, who did it? Well, it's the same. So

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 sometimes people who are victims found it difficult to identify the perpetrator of the
2 wrong unless they knew from the outset that guy is from the UPC, that guy is from
3 the FNI, they could do that. But if they didn't know, I mean, you talk about Hema,
4 Lendu, PUSIC; we wouldn't know. Or even for UPC.

5 Q. [16:30:48] (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

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25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 A. [16:34:17] (Redacted)

7 Q. [16:34:21] (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 A. [16:35:01] (Redacted).

13 Q. [16:35:04] I will now go on to a different subject and we will go to the year 2000
14 and Bosco Ntaganda's arrival. For me, it is an important subject. I put it to you that
15 you didn't have the correct information about concerning the creation of Chui and
16 dealing between Chui and the UPC. First of all, I put it to you that Chui was created
17 by Bosco Ntaganda with Bagonza, Tchaligonza and Kisembo and that had no link to
18 the UPC. Did you know that?

19 A. [16:36:05] Yes.

20 Q. [16:36:07] Chui was created because there was an attack on Bosco Ntaganda, an
21 attack where César, who had tried to kill Bosco Ntaganda, but it was Commander
22 César who died and that forced Bosco Ntaganda to flee into the bush, where he
23 created Chui. Do you remember that?

24 A. [16:36:49] Well, I don't --

25 PRESIDING JUDGE FREMR: [16:36:51] Mr Witness, hold on, hold on.

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 Mr Pace, please.

2 MR PACE: [16:36:54] Yes, your Honour, just an objection to the way that the
3 questions are being phrased, the last two questions. The Defence should provide
4 their basis for these statements or otherwise inform the witness that this is
5 a suggestion, unless these are uncontested events, which they are not uncontested.

6 PRESIDING JUDGE FREMR: [16:37:16] Maybe you could just slightly rephrase the
7 question. I think the core could remain the same but really a proposal, yes.

8 MR BOURGON: [16:37:23] I agree with my colleague, if the word suggestion were
9 not there, they should be there because they are indeed suggestions and my colleague
10 is right. I am just with time trying to press on. I apologise.

11 Q. [16:37:41] (Interpretation) I put it to you, Witness, that when Bosco Ntaganda
12 met Kisembo for the first time, that was just before the creation of Chui and at that
13 time Kisembo was already in the APC. Did you know that?

14 A. [16:38:03] Yes.

15 Q. [16:38:11] If I put it to you that Kisembo at the time of meeting Bosco Ntaganda
16 was already a soldier and he was well trained, he was experienced, would you agree
17 with that?

18 A. [16:38:23] Yes.

19 Q. [16:38:26] If I put it to you that Chui was created when Bagonza deserted the
20 APC with his company which was in Nyankunde, would you agree with that?

21 A. [16:38:42] Yes. I know that, but Chef Kahwa told me that together, they were
22 all together. When Bagonza left, the others followed him into the bush and they
23 created that together.

24 Q. [16:39:03] So you are telling me that Chef Kahwa was involved with Chui, in the
25 creation of Chui?

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 A. [16:39:12] Yes.

2 Q. [16:39:14] I've got two more points I would like to put to you. The next officer
3 to join Chui, I put it to you, was Tchaligonza, who also deserted with his company.
4 Are you aware of that?

5 A. [16:39:41] What I'm aware of is everything that I said.

6 Q. [16:39:49] Very well. And according to what you know about this period, that
7 is what Kahwa told you; is that correct?

8 A. [16:39:57] Yes.

9 Q. [16:40:01] I've got one last question before coming to my final points. Now,
10 you spoke about young Hema who were sent to training. For me, not only did you
11 not have the correct dates but I would say that you are mistaken when you say, and
12 you can correct me if I am wrong in this regard, but you state that when Wamba was
13 driven out, he was driven out by members of the APC, with people who had come
14 from training. Do you remember saying that?

15 A. [16:40:39] Could I see that in context?

16 Q. [16:40:53] Do you remember having spoken about the problem that existed
17 between Mbusa and Wamba, do you remember that?

18 A. [16:41:00] Yes.

19 Q. [16:41:03] So, according to you, who drove out Wamba?

20 A. [16:41:12] Wamba was driven out by a coalition between the Hema and the
21 Lendu.

22 Q. [16:41:30] Witness, I put it to you that you are mistaken, because the Hema that
23 you speak about had just left for training when Wamba was driven out on
24 4 November 2000.

25 A. [16:41:53] (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 Q. [16:42:29] (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 A. [16:43:12] (Redacted)

12 (Redacted)

13 Q. [16:43:22] So I put it to you, Witness, that you made an error because not only
14 had they gone to training when Wamba was driven out, but Wamba was driven out
15 by the private battalion of Mbusa, called the Usama (phon) battalion, peace battalion?

16 A. Usalama.

17 Q. Usalama, yes, please excuse my pronunciation. Do you know Usalama
18 battalion?

19 A. [16:43:56] Yes, I know it, the private battalion of Mbusa. I didn't know it was
20 private or not, but I did know that it was called that.

21 Q. [16:44:05] Witness, I put it to you - unfortunately I don't have the time to ask
22 you questions - but everything that you said about the period from 2000 to the death
23 of Claude, I put it to you that either you obtained information which is not correct or
24 for another reason, but I put it to you that the information that you have given on the
25 dates or places are not correct. That's all I can do with the time that I have and I

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 know that you can't reply much to that either but just, for the record, I have to state
2 what my position is.

3 Do you want to make a comment?

4 A. [16:44:49] No. Those are your conclusions. How am I going to comment on
5 that? I have already told you, you can ask questions about dates, you have prepared
6 that to come and defend yourself, but I don't have to defend myself. I think that the
7 dates are as such. If that's not the case, that's an error about the dates, that's all.

8 Q. [16:45:16] (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 A. [16:45:45] (Redacted)

13 Q. [16:45:49] (Redacted)

14 A. [16:45:56] (Redacted) .

15 Q. [16:46:00] (Redacted)

16 (Redacted)

17 A. [16:46:11] (Redacted)

18 PRESIDING JUDGE FREMR: [16:46:15] (Redacted)

19 (Redacted)

20 MR PACE: [16:46:18] (Redacted)

21 (Redacted)

22 PRESIDING JUDGE FREMR: [16:46:24] (Redacted)

23 (Redacted)

24 MR PACE: [16:46:36] (Redacted)

25 PRESIDING JUDGE FREMR: [16:46:40] (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

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Page redacted – Private session

Trial Hearing
WITNESS: DRC-OTP-P-0012

(Private Session)

ICC-01/04-02/06

1 Do you understand? Now, you can get that information, they will tell you that.

2 Q. [16:48:54] Witness, the conclusion, the conclusion that I would like to make,
3 Witness, is that over the last days we have heard a lot of information and I don't
4 doubt that you have a lot of information. However, I put it to you that you obtained
5 information which was erroneous, firstly. And secondly, you didn't have all the
6 information in order to answer the questions that were put to you. That's my final
7 suggestion. Would you like to make a comment, Witness?

8 A. [16:49:32] Thank you very much.

9 MR BOURGON: [16:49:34] Thank you, Mr President, I have no more questions for
10 the witness.

11 PRESIDING JUDGE FREMR: [16:49:37] So just to assure myself, as you indicated,
12 Mr Pace, no need for redirect?

13 MR PACE: [16:49:45] No, your Honour.

14 PRESIDING JUDGE FREMR: [16:49:47] Very well.

15 Let's move into, because you also deliberated there will be no question -- or, no
16 questions from my colleagues? No.

17 So now let's move into open session.

18 (Open session at 4.50 p.m.)

19 THE COURT OFFICER: [16:50:06] We are in open session, Mr President.

20 PRESIDING JUDGE FREMR: [16:50:10] Mr Witness, it concludes your testimony. I
21 would really like to thank you very much because -- Mr Pace, said I anything wrong?

22 MR PACE: [16:50:19] Not at all, your Honour. Just to clarify, the transcript, the last
23 comment of the witness, the transcript said it was "Thank you very much." Just to
24 confirm whether that's what the witness said or was that Defence counsel?

25 PRESIDING JUDGE FREMR: [16:50:37] Mr Witness, what was your last response?

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0012

1 And be careful, we are again in open session. So what was your last response?

2 THE WITNESS: [16:50:49] (Interpretation) I said "Thank you."

3 PRESIDING JUDGE FREMR: [16:50:50] All right, correct.

4 So I will continue.

5 Thank you very much, Mr Witness, because I can imagine that it was really

6 demanding and exhaustive experience to undergo such a long journey and then to

7 spend with us two full days and you really perfectly and patiently responded to so

8 many questions, so thank you for that. I believe that your testimony will help us,

9 you provided us with many interesting information, many relevant information, and I

10 really believe that your testimony will assist us in our effort to find the truth. So

11 thank you very much and we wish you safe journey home.

12 And now, court usher, please assist Mr Witness to leave the courtroom.

13 (The witness is excused)

14 PRESIDING JUDGE FREMR: [16:52:09] And before we adjourn I would also like to

15 thank you, to parties and participants for their flexibility because it would be really

16 unreasonable to adjourn this testimony just for next 10 or 20 minutes, so we

17 appreciate that. It was in the interest of the expeditiousness, and also I think we

18 spared some cost of this Court.

19 And obviously my special thanks also go to the interpreters, to the court reporters

20 and to the guards, and we appreciate it highly that you supported us in this very,

21 very long session. And I would like to emphasise that it was really exceptional

22 measure we had to take under current extraordinary circumstances. So thank you

23 very much and I wish all of you relaxed weekend.

24 We will resume again on Monday, 9.30 and we will conduct testimony of

25 Witness P-300.

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-OTP-P-0012

- 1 THE COURT OFFICER: [16:53:17] All rise.
- 2 (The hearing ends in open session at 4.53 p.m.)
- 3 RECLASSIFICATION REPORT
- 4 Pursuant to the Trial Chamber VI's Order, ICC-01/04-02/06-1887, dated 4 May 2017,
- 5 the public reclassified and lesser redacted version of this transcript is filed in the case.