

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 Thursday, 26 January 2017
9 (The hearing starts in open session at 9.31 a.m.)
10 THE COURT USHER: [9:31:57] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: [9:32:58] But, it is fine. We will start, yes. Okay.
14 Mr Witness, you can still take some rest for next five minutes.
15 Now, court officer, call the case, please.
16 THE COURT OFFICER: [9:33:10] Thank you, Mr President.
17 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
18 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
19 We are in open session.
20 PRESIDING JUDGE FREMR: [9:33:20] Thank you, court officer.
21 Now appearances if change. Prosecution first.
22 MS SAMSON: [9:33:29] Good morning, Mr President, your Honours. There has
23 been no change in the composition of the Prosecution's team today.
24 PRESIDING JUDGE FREMR: [9:33:37] Thank you, Ms Samson.
25 Defence now, please.

1 MR BOURGON: [9:33:41] (Interpretation) Good morning, your Honour.

2 No change for the Defence. Thank you.

3 PRESIDING JUDGE FREMR: [9:33:44] Thank you, Mr Bourgon.

4 And Legal Representative of Victims, please.

5 MS PELLET: [9:33:49] (Interpretation) Thank you, your Honour. No change for the
6 former child soldiers.

7 MR SUPRUN: [9:33:56] Good morning, your Honour, your Honours, for the victims
8 of the attacks there is no change. Thank you.

9 PRESIDING JUDGE FREMR: [9:34:06] Thank you, Ms Pellet.

10 Thank you Mr Suprun.

11 And the reason why start just for a while without Mr Witness is that I will deliver
12 oral ruling on prosecution Rule 68(3) request for Witness P-0043.

13 This is request on -- or this is the ruling on the Prosecution request in filing number
14 1700 seeking the admission of Witness P-0043's prior recorded testimony under
15 Rule 68(3), and I will refer to this as the request.

16 On 4 January 2017 the Chamber granted by way of email a Defence request for
17 extension of deal line in which to respond. Accordingly, the Defence responded in
18 filing number 1718 on 16 January 2017 opposing certain aspects of the request.

19 I shall now go into private session for the next part of the ruling.

20 So, court officer, please.

21 (Private session at 9.35 a.m.) *(Reclassified partially in public)

22 THE COURT OFFICER: [9:35:44] We are in private session, Mr President.

23 PRESIDING JUDGE FREMR: [9:35:47] Thank you, court officer.

24 First, (Redacted) the Chamber notes

25 that the Prosecution seeks admission under Rule 68(3) (Redacted)

1 both French and English contained respectively at annexes B and C of the request.

2 The Defence does not oppose this part of the request. The Chamber finds the
3 introduction of both transcripts pursuant to Rule 68(3) to be appropriate, noting that
4 the Defence does not object to this portion of the request and having considered the
5 following: (Redacted)

6 (Redacted)

7 (Redacted) and four,

8 such introduction would significantly contribute to the efficient conduct of
9 proceedings.

10 Secondly, the Prosecution seeks to admit the entirety of the witness's (Redacted) statement,
11 which is in French, under Rule 68(3), together with an English translation of the
12 statement; these are contained respectively at annexes D and E of the request.

13 The Defence does not oppose admission of the French statement but suggests that
14 the English translation be admitted as nothing more than a draft translation on the
15 basis that it, quote, "contains various evident shortcomings," unquote, including at
16 least one error in the translation.

17 The Chamber finds the introduction of the statement at annex D appropriate,
18 pursuant to Rule 68(3), noting that such admission is not contested by the Defence
19 and having regard to the fact that: One, the statement bears former indicia of
20 reliability, including being signed and attested to by the witness as having been
21 given voluntarily and in the knowledge that it may be used in the legal proceedings
22 before the court, and the accuracy of which the witness confirmed again during his
23 Lubanga testimony. Two, the statement was given in (Redacted) and therefore has
24 relative temporal proximity to the events described therein. Three, it was made in
25 a language which the witness understands and was therefore not required to be

1 translated for him. Four, the majority of the information goes to contextual matters.
2 And five, such introduction would significantly contribute to the efficient conduct of
3 proceedings.

4 The Chamber does, however, note an inconsistency with respect to the dates of the
5 witness's interviews as between the first and last pages of the statement.

6 In relation to the English translation at annex E, the Chamber notes that this
7 document (Redacted)

8 (Redacted) However, given that the document is on its face a draft and
9 appears to be inaccurate in certain aspects, the Chamber does not find it appropriate
10 to admit the document under Rule 68(3).

11 Next, the Prosecution seeks admission of one associated document which is referred
12 to in paragraphs 39 and 40 of the witness's (Redacted) statement, (Redacted)
13 contained in annex F to the request.

14 The Defence challenges admission of this document under Rule 68(3) because of the
15 absence of a statement that the document was provided by the witness.

16 The Chamber notes that the document according to the eCourt metadata was
17 provided to the Prosecution by the witness on (Redacted). Nevertheless,
18 noting the Defence objection, the general manner in which the document is
19 described in the statement, and the fact that the time taken to admit this document
20 through the witness will not likely be extensive and observing further the poor
21 quality of the scan of the document in question, the Chamber will defer its decision
22 on admission of annex F until the provenance of the document can be clearly
23 established on the record with the witness and its text appropriately clarified.

24 The Chamber therefore rejects the request for admission of the document contained
25 at annex F pursuant to Rule 68(3) but notes that the Prosecution is free to use and

1 seek admission of this document during the witness testimony.

2 Now, court officer, we can go into public session again for the rest of the ruling.

3 (Open session at 9.42 a.m.)

4 THE COURT OFFICER: [9:42:38] We are in open session, Mr President.

5 PRESIDING JUDGE FREMR: [9:42:40] Thank you.

6 Having considered the material and submissions received, the Chamber is of the
7 view that use of Rule 68(3) is, in principle, appropriate for this witness's prior
8 recorded testimony, but has decided not to admit a document tendered as an
9 associated document. As per its normal practice, a formal decision on admission
10 will be render when the witness appears before the Chamber and it will depend
11 upon the relevant requirements of Rule 68(3) being satisfied.

12 Finally, in terms of timing, the Prosecution seeks 30 minutes to conduct the
13 formalities associated with Rule 68(3) and one hour for supplemental examination
14 on four areas identified in the request, making one and a half hours in total.

15 The Defence objects to the timing and areas of the proposed supplemental
16 examination and argues that the Prosecution's total time should be limited to
17 30 minutes as the witness has, in the opinion of the Defence - already
18 comprehensively described all the information within his knowledge on these areas
19 when during a lengthy supplemental examination - inappropriate, particularly on
20 areas the Defence has not received advance notice of.

21 The Defence also objects to the Prosecution being allowed to tender additional
22 documents through the witness.

23 The Chamber has reviewed the witness's prior recorded testimony and considers
24 that the Prosecution has not adequately established the way in which the proposed
25 supplementary examination is required in the circumstances of the present case and

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1 that, regardless, it appears the witness would only be in a position to provide
2 a limited amount of further relevant evidence on the four supplemental areas of
3 examination identified in the request.
4 Accordingly, the Chamber authorises the Prosecution a total of one hour to conduct
5 the Rule 68(3) formalities as well as its supplementary examination of the witness.
6 In doing so, the Chamber recalls its observation in oral decision transcript 142 that
7 there is nothing in its conduct of proceedings decisions that would limit the scope of
8 supplementary examination in the manner proposed by the Defence, as long as the
9 witness preparation protocol and attendant disclosure obligations are adhered to.
10 The Chamber considers further that on this basis there is nothing precluding
11 the Prosecution from seeking admission of further documents through a witness
12 whose testimony has been partially admitted under Rule 68(3) of the Rules.
13 As for cross-examination, the Defence is strongly encouraged to complete its
14 examination of the witness within three hours. This reflects the Prosecution's
15 estimate of time examination-in-chief would take without the application of
16 Rule 68(3). And, as usual, the parties are further directed to file public redacted
17 versions of filings 1700 and 1718 within two weeks of today.
18 This concludes the Chamber's ruling.
19 And now, please, court officer, we can start with the testimony. So please call the
20 witness to the video room.
21 (The witness enters the video link room)
22 PRESIDING JUDGE FREMR: [9:48:13] Good morning, Mr Witness. Can you hear
23 me and see me?
24 WITNESS: DRC-OTP-P-0005 (On former oath)
25 (The witness speaks French)

1 (The witness gives evidence via video link)

2 THE WITNESS: [9:48:21] (Interpretation) Yes.

3 PRESIDING JUDGE FREMR: [9:48:29] Mr Witness, welcome back. Sorry for this
4 slight delay. We had to solve one procedural issue. Now we would like to start
5 with the next piece of your testimony. Are you fine, okay, to continue for two
6 sessions, one hour each with your testimony?

7 THE WITNESS: [9:48:54] (Interpretation) I think so.

8 PRESIDING JUDGE FREMR: [9:48:58] Thank you very much, Mr Witness. And as
9 usual, it is my legal duty to remind you that you are still under oath so you have to
10 speak truth and nothing but the truth. And now I am giving floor to Mr Bourgon,
11 representative of Defence, who will continue in his cross-examination.

12 Mr Bourgon, habitual question: Do you prefer to continue in open session or to
13 move into private one?

14 MR BOURGON: [9:49:30] (Interpretation) I would like to start in open session,
15 your Honour, for one question.

16 PRESIDING JUDGE FREMR: [9:49:35] All right. Please proceed.

17 QUESTIONED BY MR BOURGON: (Continuing)

18 Q. [9:49:40] Good morning, Witness.

19 A. [9:49:44] Good morning.

20 Q. [9:49:44] Are you well this morning?

21 A. [9:49:47] Very well.

22 Q. [9:49:50] Yesterday when we finished the session we spoke about Thomas
23 Lubanga, who was in constant communication with several people, including
24 MONUC, nongovernmental organisations, and others -- Museveni and others. And
25 we also spoke about the decision-making process within the UPC and the fact that

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1 Thomas Lubanga, to the best of your knowledge, always consulted his advisers
2 before taking a decision.

3 Do you remember your words in this regard yesterday?

4 A. [9:50:40] Yes.

5 MR BOURGON: [9:50:45] We can now move into private session, Mr President,
6 please.

7 PRESIDING JUDGE FREMR: [9:50:48] For sure.

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

9 MR BOURGON: [9:50:59] Witness, we are now in private session.

10 PRESIDING JUDGE FREMR: [9:51:01] We are still not there.

11 (Private session at 9.51 a.m.) *(Reclassified partially in public)

12 THE COURT OFFICER: [9:51:05] We are in private session, Mr President.

13 PRESIDING JUDGE FREMR: [9:51:06] Now you may proceed, Mr Bourgon.

14 MR BOURGON: [9:51:09] I apologise, Mr President. Thank you.

15 Q. [9:51:17] (Interpretation) Witness, we are now in private session. I would like
16 to continue on this subject, (Redacted)
17 referring to your statement.

18 And this is document (Redacted)

19 (Redacted) There is no need to show it on the screen. I will read it to you, Witness.

20 Now, in this paragraph you state the following:

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 Do you remember these words as being yours, Witness?

25 A. [9:52:42] Yes. Yes.

1 Q. [9:52:46] In this paragraph, for the record, when they speak about "he," it is
2 Thomas Lubanga, is it not?

3 A. [9:52:59] Very well.

4 Q. [9:53:00] No, no. I am asking you to confirm if "il," in French, "he," is indeed
5 Thomas Lubanga?

6 A. [9:53:08] Yes.

7 Q. [9:53:10] During your testimony there was an answer to a question you gave
8 to my colleague. (Redacted)

9 The first I would like to refer to is the one about Mark Deneckere. Do you
10 remember having answered questions about Mark Deneckere?

11 A. [9:53:42] Yes.

12 Q. [9:53:45] He is the one called Père Blanc, is he not?

13 A. [9:53:59] Yes.

14 Q. [9:53:59] Now in your testimony, T185, lines 14 to 25, you mentioned that you
15 (Redacted)

16 A. [9:54:21] (Redacted)

17 Q. [9:54:27] (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 A. [9:55:09] (Redacted)

23 Q. [9:55:17] (Redacted)

24 (Redacted)

25 A. [9:55:36] (Redacted)

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1 Q. [9:55:41] That is exactly the point of my question. That is to say that you
2 know that the decision was taken concerning Père Blanc, (Redacted)
3 (Redacted) Do you remember that?

4 A. [9:56:00] Vaguely, yes. This decision was a serious decision in the sense that
5 it was only up to the president to take such a measure. (Redacted)
6 (Redacted)

7 (Redacted)

8 Q. When President Thomas Lubanga took such decisions, is it correct to say that
9 he consulted the general security agency as well, the ministry of the interior; the
10 national secretariat for the interior?

11 A. [9:56:57] with such decisions, these were very serious decisions. Like for
12 Mr Félix Ntumba, he himself was also declared persona non grata (Redacted)
13 (Redacted) I think for Father Deneckere as well, it was up to him and
14 a restricted team responsible for security and policy.

15 Q. [9:57:29] (Redacted)

16 (Redacted)

17 A. [9:57:46] (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 Q. [9:58:18] (Redacted)

22 (Redacted)

23 MR BOURGON: [9:58:24] (Interpretation) And this is from 2003,

24 DRC-OTP-0110-0398, and I'm looking at page (Redacted) thereof. If we could show this
25 page on the screen, if you would be so kind, (Redacted). I would

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- 1 like to enlarge the middle of the page where it starts with (Redacted)
- 2 Q. [9:59:33] (Redacted)
- 3 (Redacted)
- 4 A. [9:59:48] (Redacted)
- 5 Q. [9:59:52] (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 A. [10:00:29] (Redacted)
- 11 Q. [10:00:49] If we continue, Witness. What is of interest to me is the next part.
- 12 (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 A. [10:01:50] (Redacted)
- 19 (Redacted)
- 20 Q. [10:02:03] (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 A. [10:02:17] (Redacted)
- 24 (Redacted)
- 25 Q. [10:02:32] (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 A. [10:03:07] (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 Q. [10:04:07] (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 A. [10:04:39] (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 Q. [10:05:13] Thank you. A few moments ago you mentioned something which

22 was the second subject I wish to raise with you. You mentioned Félix Ntumba.

23 THE INTERPRETER: [10:05:32] Yes, the two speakers spoke together.

24 THE WITNESS: [10:05:36] (Interpretation) Yes, Félix Ntumba, he was *detained in

25 the security services, in the security administration. (Redacted)

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 MR BOURGON: [10:06:23] (Interpretation)

5 Q. [10:06:23] (Redacted)

6 (Redacted)

7 A. [10:06:32] (Redacted)

8 Q. [10:06:34] In your testimony, in your replies to the questions asked by my

9 colleague, in transcript 125 page -- 185, 39, lines 23 to 25: "Yes, Ntumba was under

10 suspicion by the UPC of having dealings with Lendu and he was detained, he was

11 detained by military security."

12 A. [10:07:11] Yes.

13 Q. [10:07:12] You recall your words to that effect?

14 A. [10:07:14] Yes, indeed.

15 Q. [10:07:18] You were shown a document which I would like to review with you

16 now. It is one that has been admitted into evidence, so I would like to have on the

17 screen DRC-OTP-0159-0438. The first page, please. You will see this on your

18 screen, Mr Witness. Mr Witness, can you see the letter?

19 A. [10:08:13] Yes, I can see it. But I am not able to read it.

20 Q. [10:08:18] Therefore, I will read it for you. I would like to start with the

21 paragraph, the second paragraph which begins: "I realise." During your testimony

22 we established that it was a decision regarding expulsion, and in the second

23 paragraph we see why and we *have seen that the letter was signed by Thomas

24 Lubanga: "I realise that the facts of which you are accused are very serious for the

25 security of the territory controlled by the UPC/RP. In addition, they are also likely

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1 to have a negative effect on the harmony of our relations with the humanitarian
2 organisations installed in our political space."

3 So these are the reasons underlying the expulsion of Mr Ntumba; is that correct?

4 A. [10:09:33] Yes, that's what is written there.

5 Q. [10:09:37] And in this paragraph when it talks about the "harmony of our
6 relations with humanitarian organisations," do you agree with me that the UPC had
7 good relations and wished to maintain good relations with the humanitarian
8 organisations; is that correct?

9 A. [10:10:00] That was the intention, yes.

10 Q. [10:10:10] Could we please show the second page 0159-0439.

11 Mr Witness, this is the second page of the letter, the back of the page. There is a 2 at
12 the top indicating it is the second page and then it says:

13 "Therefore, I would request from the humanitarian coordination of the Democratic
14 Republic of the Congo in Kinshasa to appoint a new coordinator with a sense of
15 responsibility and collaboration." I would understand from this paragraph - and
16 ask you to confirm it - that President Thomas Lubanga was in contact with the
17 humanitarian coordination of the republic, and therefore he wanted a new
18 coordinator to be appointed. Is that the way you
19 understand this?

20 A. [10:11:47] Yes, that is the way I understand it from the copy which was sent to
21 the humanitarian coordination.

22 Q. [10:12:03] Since you raise the matter of copies, we see to whom a copy was
23 sent. And there are four people working in humanitarian coordination who
24 received a copy -- or maybe not four people, four organisations, there is OCHA
25 Kinshasa, MONUC in Kinshasa, OCHA in Bunia, and MONUC in Bunia.

1 Are you familiar with these four organisations?

2 A. [10:12:44] Yes.

3 Q. [10:12:50] This decision by Thomas Lubanga was taken fully
4 transparently - I am sure you will agree - it was announced to everybody?

5 A. [10:13:02] Announced afterwards, but that was when the decision had been
6 taken. And it was announced so that we would know what decision had been
7 taken, decision taken by the presidency.

8 Q. [10:13:24] Perhaps I used an inappropriate word, I used the word
9 "announced." What I meant was that the letter and the decision were
10 communicated to the people involved; is that correct?

11 A. [10:13:40] Yes.

12 Q. [10:13:47] (Redacted)
13 (Redacted)

14 A. [10:13:55] (Redacted)

15 Q. [10:13:59] (Redacted)

16 A. [10:14:05] (Redacted)

17 Q. [10:14:12] (Redacted)

18 A. [10:14:16] (Redacted)

19 Q. [10:14:19] (Redacted)

20 (Redacted)

21 (Redacted)

22 A. [10:14:40] (Redacted)

23 Q. [10:14:41] If I could now come back to the first page of this document, which
24 was 0159-0438. I would like to highlight the third paragraph, which starts with

25 "This is why." We have seen the reasoning behind the decision and we now see that

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1 Thomas Lubanga is saying:

2 ""That's why I approve the proposal of the general administration of security."

3 So before he took a decision, if I understand correctly, there was a proposal made by
4 the AGS; is that correct?

5 A. [10:15:41] Yes, yes.

6 Q. [10:15:47] (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 A. [10:17:05] (Redacted)

16 (Redacted)

17 Q. [10:17:18] I would now like to move on to different subject, Mr Witness. We
18 already have this letter admitted as evidence, so I don't need to request that. So still

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 A. [10:18:15] (Redacted)

23 Q. [10:18:19] (Redacted)

24 (Redacted)

25 A. [10:18:37] (Redacted)

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- 1 Q. [10:18:38] (Redacted)
- 2 (Redacted)
- 3 A. [10:18:54] (Redacted)
- 4 Q. [10:18:54] (Redacted)
- 5 A. [10:19:09] (Redacted)
- 6 Q. [10:19:11] (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 A. [10:19:32] Yes.
- 10 Q. [10:19:32] And they were almost all people who did not come from Ituri; is
- 11 that correct? Is that correct?
- 12 A. [10:19:54] That is correct.
- 13 Q. [10:19:55] And these police officers were mostly still working under the same
- 14 structure once the UPC had taken over?
- 15 A. [10:20:13] That's what the UPC found, yes.
- 16 Q. [10:20:23] If I could now move to another subject, and that is the situation
- 17 when Thomas Lubanga was absent from Bunia.
- 18 (Redacted)
- 19 (Redacted)
- 20 A. [10:20:46] (Redacted)
- 21 Q. [10:20:50] (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)

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- 1 A. [10:21:30] (Redacted)
- 2 Q. [10:21:30] (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 A. [10:21:49] (Redacted)
- 6 Q. [10:21:55] (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 A. [10:22:17] (Redacted)
- 10 Q. [10:22:23] (Redacted)
- 11 (Redacted)
- 12 THE INTERPRETER: [10:22:40] I'm sorry, the interpreter did not catch the reply.
- 13 There was a transmission problem.
- 14 PRESIDING JUDGE FREMR: [10:22:47] Please repeat your answer, because it hasn't
- 15 been captured by the interpreters.
- 16 THE WITNESS: [10:23:00] (Redacted)
- 17 (Redacted)
- 18 PRESIDING JUDGE FREMR: [10:23:14] Thank you, Mr Witness.
- 19 MR BOURGON: [10:23:18] (Interpretation)
- 20 Q. [10:23:19] (Redacted)
- 21 (Redacted)
- 22 A. [10:23:34] (Redacted)
- 23 (Redacted)
- 24 Q. [10:23:47] (Redacted)
- 25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 A. [10:27:54] (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 Q. [10:29:18] I misunderstood. You said there were channels for communication
13 and not cannons for communication. I misunderstood.

14 A. [10:29:34] (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 Q. [10:30:54] Two questions on this subject: In paragraph 215 of your statement,
22 which is on (Redacted). The first page of your statement, you say that:

23 (Redacted)

24 (Redacted)

25 (Redacted)

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- 1 Is that correct?
- 2 A. [10:31:42] Yes, that's correct. (Redacted)
- 3 (Redacted)
- 4 Q. [10:31:48] (Redacted)
- 5 (Redacted)
- 6 A. [10:32:07] Yes, I could do that.
- 7 Q. [10:32:12] (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted) Do you recall having
- 11 discussed this yesterday?
- 12 A. [10:32:51] Yes.
- 13 Q. [10:32:57] Without quoting your actual words, do you recall having said that
- 14 (Redacted)
- 15 (Redacted) Is that correct?
- 16 A. [10:33:22] Yes, that's correct. (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 *Q. [10:33:25] (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 A. [10:33:59] (Redacted)
- 23 Q. [10:34:06] (Redacted)
- 24 (Redacted)
- 25 A. [10:34:16] (Redacted)

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ICC-01/04-02/06

- 1 Q. [10:34:19] (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 A. [10:34:38] (Redacted)
- 5 Q. [10:34:52] (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 A. [10:35:08] Yes.
- 10 Q. [10:35:12] (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 A. [10:35:30] That is correct.
- 14 Q. [10:35:32] (Redacted)
- 15 (Redacted)
- 16 A. [10:35:54] Yes.
- 17 Q. [10:35:58] (Redacted)
- 18 (Redacted) Is that
- 19 correct?
- 20 A. [10:36:21] I think so, yes.
- 21 Q. [10:36:23] (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 A. [10:36:47] I think so --
- 25 THE INTERPRETER: [10:36:52] Inaudible.

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- 1 THE WITNESS: [10:36:55] -- (Redacted)
- 2 THE INTERPRETER: [10:36:59] Inaudible.
- 3 THE WITNESS: [10:37:01] (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 THE INTERPRETER: [10:37:32] The interpreter points out that in the last passage
- 9 there were several cuts.
- 10 *MR BOURGON: [10:37:46] (Interpretation)
- 11 Q. [10:37:46] (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 THE INTERPRETER: [10:37:59] Inaudible.
- 16 THE WITNESS: [10:38:02] Once --
- 17 THE INTERPRETER: [10:38:04] Inaudible.
- 18 THE WITNESS: [10:38:06] -- a delegation --
- 19 THE INTERPRETER: [10:38:08] Inaudible.
- 20 THE WITNESS: [10:38:09] -- that was --
- 21 THE INTERPRETER: [10:38:12] Inaudible.
- 22 THE WITNESS: [10:38:12] -- (Redacted)
- 23 PRESIDING JUDGE FREMR: [10:38:17] Just question to the
- 24 interpretation -- interpreter's booth. Is there any problem with -- with the line or --
- 25 THE INTERPRETER: [10:38:26] Yes, your Honour, it keeps cutting. In the last

1 answer -- and I said this also for the previous answer and it is also picked up in the
2 French transcript. Now there is obviously a problem with the connection because
3 the picture is blurring over, which indicates a bandwidth issue, and there are
4 repeated cuts in sound. And that's why both in the English transcript and French
5 transcript we have indicated "inaudible" for those specific parts where it cut
6 completely. It is not just an audio issue, it is affecting the picture as well, because
7 the entire picture pixelates over, indicating there is some kind of bandwidth issue
8 generally, not just the audio.

9 PRESIDING JUDGE FREMR: [10:39:09] Okay. Understood.

10 So, please, Mr Witness, could you kindly repeat your last answer because it was
11 disturbed by some problems on the line.

12 THE WITNESS: [10:39:28] (Redacted)

13 (Redacted)

14 THE INTERPRETER: [10:39:37] Inaudible.

15 THE WITNESS: [10:39:41] -- (Redacted)

16 THE INTERPRETER: [10:39:43] Inaudible.

17 THE WITNESS: [10:39:46] -- (Redacted)

18 (Redacted)

19 THE INTERPRETER: [10:39:55] Inaudible. The audio is cutting.

20 The picture is freezing and the audio is cutting.

21 THE WITNESS: [10:40:06] -- (Redacted)

22 (Redacted)

23 MR BOURGON: [10:40:15] (Interpretation)

24 Q. [10:40:15] I will come back to this subject, Witness, because the translation is
25 difficult due to the quality of the line. But when I asked my question concerning

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(Private Session)

ICC-01/04-02/06

- 1 (Redacted)
- 2 A. [10:43:39] Yes, yes, very well.
- 3 Q. [10:43:45] (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 So you remember that event, do you not?
- 8 A. [10:44:23] I remember.
- 9 Q. [10:44:24] (Redacted)
- 10 (Redacted)
- 11 A. [10:44:36] I don't remember very well.
- 12 Q. [10:44:53] I could refresh your memory, Witness. (Redacted)
- 13 (Redacted)
- 14 A. [10:45:04] (Redacted)
- 15 Q. [10:45:11] (Redacted)
- 16 (Redacted)
- 17 A. [10:45:25] (Redacted)
- 18 THE INTERPRETER: [10:45:28] Inaudible.
- 19 THE WITNESS: [10:45:30] (Interpretation) -- (Redacted)
- 20 THE INTERPRETER: [10:45:35] Frozen picture.
- 21 MR BOURGON: [10:45:37] (Interpretation)
- 22 Q. [10:45:37] Could you repeat the name of (Redacted)
- 23 A. [10:45:42] (Redacted)
- 24 Q. [10:45:49] And (Redacted) would be one of his names?
- 25 A. [10:45:53] (Redacted)

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- 1 Q. [10:45:57] (Redacted)
- 2 A. [10:46:07] (Redacted)
- 3 Q. [10:46:15] (Redacted)
- 4 (Redacted)
- 5 A. [10:46:26] (Redacted)
- 6 Q. [10:46:37] (Redacted)
- 7 A. [10:46:40] (Redacted)
- 8 Q. [10:46:50] (Redacted)
- 9 A. [10:47:03] (Redacted)
- 10 Q. [10:47:10] (Redacted)
- 11 A. [10:47:18] (Redacted)
- 12 Q. [10:47:26] (Redacted)
- 13 A. [10:47:32] Yes.
- 14 Q. [10:47:36] (Redacted)
- 15 (Redacted)
- 16 (Redacted)
- 17 A. [10:47:59] (Redacted)
- 18 Q. [10:48:04] (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 MR BOURGON: [10:48:27] (Interpretation) Should we do it after the break,
- 22 your Honour?
- 23 PRESIDING JUDGE FREMR: [10:48:32] Mr Witness, now we almost exhausted one
- 24 hour which was determined for your testimony during the first session, but if you
- 25 would agree, we can continue for next 10 minutes, because it would increase the

1 chance that we will finish your testimony tomorrow. Otherwise, there is still
2 a possibility that we will have to continue on Monday. Are you feeling enough
3 strong to continue for next 10 minutes?

4 THE WITNESS: [10:49:12] (Interpretation) Very well. Very well.

5 PRESIDING JUDGE FREMR: [10:49:19] Thank you, Mr Witness. The Chamber
6 appreciates that.

7 Mr Bourgon, so we will break at 11.

8 MR BOURGON: [10:49:27] (Interpretation) Thank you, your Honour.

9 Q. [10:49:30] So, Witness, we are going to look together at a short extract of
10 a video, and I note for the interpreters we have distributed a document in tab 78
11 where there is the exact text. The number of the document, the video is
12 (Redacted) This is a video of (Redacted) And we are going to
13 play it from minute 0826 to 1234. The document number for the transcript, the first
14 page of the document is (Redacted) and we are going to start on page (Redacted)
15 line 203, and we will go page 0023 to lines 253. (Redacted)
16 (Redacted)
17 (Redacted)

18 *Your Honour, could I play the video from the Defence desk?

19 PRESIDING JUDGE FREMR: [10:52:08] It is fine with the Chamber, yes.

20 MR BOURGON: [10:52:13] (Interpretation)

21 Q. [10:52:14] Witness, you are going to see the video, you will be able to hear it in
22 your language, and it will be translated simultaneously by the interpreters. So it is
23 a short excerpt, about four minutes long. Are you ready? Witness, are you ready?

24 A. [10:52:41] I'm ready.

25 Q. [10:52:50] Let's go.

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- 1 (Viewing of the video excerpt)
- 2 THE INTERPRETER: [10:53:02] (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
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- 25 (Redacted)

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6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 MR BOURGON: [10:57:29] (Interpretation) So at 12 minutes, 34 seconds. Now the
11 interpretation continued. I would like to take the opportunity to tank thank the
12 interpreters. I know that this is a difficult exercise to interpret a video
13 simultaneous, so thank you very much to the interpreters.

14 Q. [10:58:04] Now, Witness, you have the opportunity to see and to hear what
15 happened (Redacted) did you not?

16 A. [10:58:18] Very well.

17 Q. [10:58:22] And it brings back good memories, does it not?

18 A. [10:58:26] Very, very good memories.

19 Q. [10:58:33] Now I have a few questions to put to you concerning this video.

20 MR BOURGON: [10:58:40] But rather than doing it in two parts, I think,
21 your Honour, that it is preferable to stop here and I will ask my questions after the
22 break.

23 PRESIDING JUDGE FREMR: [10:58:50] Yes, I fully agree.

24 So now let's move into open session for remainder.

25 (Open session at 10.59 a.m.)

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- 1 THE COURT OFFICER: [10:59:12] We are in open session, Mr President.
- 2 PRESIDING JUDGE FREMR: [10:59:14] Thank you, court officer.
- 3 Now we take our regular break for 30 minutes and we will reconvene at half past 11.
- 4 THE COURT USHER: [10:59:25] All rise.
- 5 (Recess taken at 10.59 a.m.)
- 6 (Upon resuming in open session at 11.32 a.m.)
- 7 THE COURT USHER: [11:32:14] All rise.
- 8 Please be seated.
- 9 PRESIDING JUDGE FREMR: [11:32:38] Welcome back, Mr Witness.
- 10 We will directly continue with your cross-examination by representative of
- 11 the Defence, Mr Bourgon.
- 12 Mr Bourgon, I guess we will have to move into private session again, am I right?
- 13 MR BOURGON: [11:32:55] Yes, Mr President.
- 14 PRESIDING JUDGE FREMR: [11:32:56] So, court officer, please let's move into
- 15 private session.
- 16 (Private session at 11.33 a.m.) *(Reclassified partially in public)
- 17 THE COURT OFFICER: [11:33:09] We are in private session, Mr President.
- 18 PRESIDING JUDGE FREMR: [11:33:11] Thank you.
- 19 Mr Bourgon, please proceed.
- 20 MR BOURGON: [11:33:17] (Interpretation)
- 21 Q. [11:33:14] Good morning again, Mr Witness.
- 22 A. [11:33:20] Good morning.
- 23 Q. [11:33:28] Just before the break, we watched a video together which showed
- 24 an event that took place (Redacted)
- 25 (Redacted)

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1 Q. [11:42:18] (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 A. [11:43:04] (Redacted)

7 (Redacted)

8 Q. [11:43:19] (Redacted)

9 (Redacted)

10 (Redacted)

11 A. [11:43:38] (Redacted)

12 Q. [11:43:42] (Redacted)

13 (Redacted)

14 (Redacted)

15 A. [11:43:59] (Redacted)

16 Q. [11:44:05] The reason I mention this date is because --

17 PRESIDING JUDGE FREMR: [11:44:10] Hold on, Mr Bourgon, Ms Samson is on her
18 feet.

19 MS SAMSON: [11:44:14] Yes, excuse me, I understood the witness was repeating the
20 date and reflecting on whether or not it was accurate. I just wanted to express that
21 I was not clear myself if that was the date that the witness had accepted or was
22 considering.

23 PRESIDING JUDGE FREMR: [11:44:30] Even I am not sure.

24 Maybe, Mr Bourgon, clarify it also by your question.

25 MR BOURGON: [11:44:38] (Interpretation) Thank you to my colleague.

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1 Q. [11:44:42] Mr Witness, do you remember that this agreement with RCD/Goma
2 had been signed on 6 January 2003?

3 A. [11:44:56] I can't call this date to mind.

4 Q. [11:45:06] (Redacted)

5 (Redacted)

6 A. [11:45:26] (Redacted)

7 Q. [11:45:31] (Redacted)

8 (Redacted)

9 A. [11:45:41] (Redacted)

10 Q. [11:45:52] (Redacted)

11 (Redacted)

12 (Redacted)

13 It is DRC-O(Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 A. [11:49:21] (Redacted)

24 Q. [11:49:26] (Redacted)

25 (Redacted)

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- 1 A. [11:49:51] (Redacted)
- 2 Q. [11:50:04] (Redacted)
- 3 (Redacted)
- 4 A. [11:50:18] (Redacted)
- 5 Q. [11:50:24] (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 A. [11:50:47] (Redacted)
- 9 Q. [11:50:54] (Redacted)
- 10 (Redacted)
- 11 A. [11:51:09] (Redacted)
- 12 Q. [11:51:16] Shall we look together at a part of your statement, paragraph 317.
- 13 The first page is (Redacted). And you say as follows, the exact page is
- 14 (Redacted)
- 15 ""The change of mind of the UPC towards Goma with the signature of the
- 16 agreements with RCD/Goma was the last straw that broke the camel's back with
- 17 regard to UPC and Uganda. After 6 January 2003, the date on which the
- 18 agreements were signed, the relations with Uganda degraded very quickly."
- 19 Do you recognise these words from your statement?
- 20 A. [11:52:43] Yes.
- 21 Q. [11:52:43] So this situation, you were talking of a turnaround is -- if you are
- 22 talking about a turnaround, it was because Thomas Lubanga turned towards
- 23 RCD/Goma because of the tension that existed between the UPDF and UPC; is that
- 24 correct?
- 25 A. [11:53:16] Yes, that is correct. And yes, *this turnaround caused President

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1 Museveni's wrath. Because remember that already in May, April, May, Uganda
2 fought against Rwanda in Kisangani. And as RCD/Goma was to a certain extent
3 supported by Rwanda, but Uganda was counting on the UPC. And Uganda also
4 supported the UPC to a certain extent. And this turnaround really caused President
5 Museveni's wrath and that made the relationships between UPDF and UPC tense.

6 Q. [11:54:29] (Redacted) were you
7 aware of the downturn in relations between Uganda and the UPC? Were you
8 aware of that?

9 A. [11:54:45] Yes.

10 Q. [11:54:52] And to give just one example, you know that there was a conference
11 *called the conference of the last chance in January when notable *visitors from
12 Uganda came to Bunia. Does that mean something to you?

13 A. [11:55:16] Yes, that does say something to me, (Redacted)

14 (Redacted)

15 (Redacted)

16 Q. [11:55:38] (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 A. [11:56:18] (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 (Redacted)

2 Q. [11:57:05] (Redacted) but let us

3 now return to January. We have already talked about the tense relations. You will
4 recall that Museveni sent his younger brother to invite Thomas Lubanga to come to
5 Uganda in January. Do you recall this invitation?

6 A. [11:57:33] Yes.

7 Q. [11:57:37] Do you recall that Thomas Lubanga refused to go to Uganda at that
8 time?

9 A. [11:57:45] Yes, he refused because the relations were already somewhat tense,
10 *and it could not have thrilled Thomas Lubanga either, especially with the creation
11 of FNI, (Redacted) that Thomas Lubanga was not expecting.

12 Q. [11:58:18] Would it be correct to say that if you knew -- did you know whether
13 Thomas Lubanga, who was looking for peace and reconciliation, was -- felt betrayed
14 by the two-faced actions of Uganda?

15 A. [11:58:37] Yes.

16 Q. [11:58:42] And on the other hand, still in January, when Thomas Lubanga
17 refused to go and see Museveni, Museveni would have been humiliated; is that the
18 case?

19 A. [11:58:59] I didn't quite understand what you said.

20 Q. [11:59:01] I will rephrase my question.

21 When Museveni sent his younger brother, General Salim Saleh, to go and fetch
22 Thomas Lubanga for a meeting and Thomas Lubanga refused, that was a moment of
23 extreme humiliation for Museveni?

24 A. [11:59:23] Absolutely, absolutely. It was indeed a humiliation for the
25 president of the Ugandan republic, because Museveni would see Thomas as his son.

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1 *It was him who created the UPC. And as -- if a father puts out his hand to his son
2 and his son refuses to take this hand, then it is a humiliation.

3 Q. [12:00:01] (Redacted)

4 (Redacted) you knew that Museveni was the strong man of the area; isn't that the
5 case?

6 A. [12:00:17] Yes, that's common knowledge.

7 Q. [12:00:18] And annoying Museveni would not have been a good thing, right?

8 A. [12:00:23] That's correct. Well, we saw the decision that followed and the
9 situation that unfolded thereafter.

10 Q. (Redacted)

11 (Redacted)

12 A. [12:00:51] (Redacted)

13 (Redacted)

14 Q. [12:01:12] (Redacted)

15 (Redacted)

16 A. [12:01:22] (Redacted)

17 (Redacted)

18 Q. [12:01:40] (Redacted)

19 (Redacted)

20 A. [12:01:51] (Redacted)

21 Q. [12:01:54] (Redacted)

22 (Redacted)

23 (Redacted)

24 A. [12:02:12] (Redacted)

25 Q. [12:02:16] (Redacted)

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9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 MR BOURGON: [12:29:00] (Redacted)

14 (Redacted)

15 Q. [12:29:09] Mr Witness, were you able to clearly hear and view the video?

16 A. [12:29:19] Very, very well. Very clearly. Very well.

17 Q. [12:29:24] (Redacted)

18 (Redacted)

19 A. [12:29:31] (Redacted)

20 Q. [12:29:34] Mr Witness, ordinarily we should have stopped at 11.30 today, but

21 if you agree we can listen to this last excerpt and then proceed to questioning

22 tomorrow?

23 PRESIDING JUDGE FREMR: [12:29:48] It is not up to me, it is up to Mr Witness.

24 Mr Witness -- and Ms Samson.

25 MS SAMSON: [12:29:52] Yes, I would just ask if the questions on the excerpt or the

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1 extract are not going to be terribly long, if we could ask them at the same time as the
2 video is viewed. It has happened in the past that we watch a video in the evening
3 and the next morning the witness is asked questions, but I find it slightly unfair to
4 the witness to do it in that way.

5 PRESIDING JUDGE FREMR: [12:30:15] It is even another reason to continue now.

6 But, as I said, it depends mainly on Mr Witness.

7 Mr Witness, and I believe that I am making this request for the last time: Do you
8 feel strong enough to continue for the next 10 or 15 minutes today, and then we will
9 break?

10 THE WITNESS: [12:30:45] (Interpretation) I think we can view the last excerpt. I am
11 here, I am ready.

12 PRESIDING JUDGE FREMR: [12:30:52] And are you then ready to answer the
13 question that will be put to you concerning those excerpts for, as I said, next
14 10 minutes?

15 MR BOURGON: [12:31:06] Mr President, if I may intervene, I apologise. I might
16 have quite a bit of questions using this as a basis for various areas. I don't think it
17 would be good to start and to cut in the middle. That is why I would prefer to start
18 fresh in the morning when the witness is fresh and ready to answer the questions.

19 PRESIDING JUDGE FREMR: [12:31:27] So you prefer to --

20 MR BOURGON: [12:31:29] Just watch the last part and keep it for the morning.

21 PRESIDING JUDGE FREMR: [12:31:33] All right, but we will have in mind
22 reservation expressed by Ms Samson and we will see what impact it will have on
23 Mr Witness's memory.

24 So just now let's show the last part of video and then we will break.

25 MR BOURGON: [12:31:51] Thank you, Mr President.

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1 (Redacted)

2 A. [12:37:27] (Redacted)

3 (Redacted)

4 Q. [12:37:46] Mr Witness, I will stop here.

5 MR BOURGON: [12:37:49] Mr President, with your leave, I believe it's best to stop at
6 this point in time.

7 PRESIDING JUDGE FREMR: [12:37:52] All right.

8 Mr Witness, we will break now. We will have to continue tomorrow morning at the
9 same time like today. I thank you very much, and as usual I have to remind you
10 that in the meantime you must not discuss your testimony with anybody else. So I
11 thank you and we are looking forward to seeing you tomorrow morning.

12 And now the line -- now the line can --

13 THE WITNESS: [12:38:21] (Interpretation) I thank you too, Mr President.

14 PRESIDING JUDGE FREMR: [12:38:25] Thank you.

15 And now, please, let's move for remainder into open session.

16 (Open session at 12.39 p.m.)

17 THE COURT OFFICER: [12:39:07] We are in open session, Mr President.

18 PRESIDING JUDGE FREMR: [12:39:11] Thank you, court officer. And could you
19 kindly provide us with the update on timing, the time used so far by Defence.

20 THE COURT OFFICER: [12:39:20] Yes, Mr President. The Defence used so far four
21 hours and 45 minutes.

22 PRESIDING JUDGE FREMR: [12:39:25] For the sake of planning for tomorrow,

23 Mr Bourgon, how far you got in your examination? Because you have been allotted
24 six hours, so normally you should have still one hour, 15 minutes.

25 MR BOURGON: [12:39:42] I will need the one hour 15 minutes, Mr President.

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1 PRESIDING JUDGE FREMR: [12:39:46] All right.

2 Ms Samson, do you envisage any need for redirect?

3 MS SAMSON: [12:39:51] I do, Mr President. Yes.

4 And to be fair to the Defence counsel, since I did request - and was

5 granted - additional time, as much as I would like it to be over in six hours, I have to

6 acknowledge that I asked for additional time which in fairness ought to be granted

7 to the Defence as well. But in any event, I will ask for re-examination time and I

8 will ask for 35 minutes, which seems excessive, it is a lot, but we have covered a lot

9 so far, I expect we will cover more, and I genuinely have that much time to cover if

10 the Chamber would grant it.

11 PRESIDING JUDGE FREMR: [12:40:35] But be ready then to bring some grounds

12 that will really make such a request well-founded.

13 Mr Bourgon, just to be clear, yes, you have one hour, 15 minutes. Ms Samson is

14 defending your rights. Obviously, if you would come with request to get the same

15 time which was actually used by the Prosecution, it is most likely that you will get it.

16 So please have it in mind, but it doesn't mean that I force you at any price to use the

17 same time as Prosecution.

18 MR BOURGON: [12:41:17] I hope that I will not have to do so, Mr President.

19 PRESIDING JUDGE FREMR: [12:41:19] We would appreciate it, frankly saying.

20 Now we break and we will reconvene tomorrow 9.30.

21 THE COURT USHER: [12:41:28] All rise.

22 (The hearing ends in open session at 12.41 p.m.)

23 RECLASSIFICATION REPORT

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

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