

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, 27 January 2017
9 (The hearing starts in open session at 9.31 a.m.)
10 THE COURT USHER: [9:31:32] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: [9:31:56] Good morning, everybody.
14 Court officer, please call the case.
15 THE COURT OFFICER: [9:32:00] Thank you, Mr President.
16 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
17 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
18 We are in open session.
19 PRESIDING JUDGE FREMR: [9:32:12] Thank you, court officer.
20 Now appearances.
21 MS SAMSON: [9:32:17] Good morning, Mr President and your Honours. No
22 change for the Prosecution team.
23 PRESIDING JUDGE FREMR: [9:32:21] Thank you Ms Samson.
24 Defence, please.
25 MR BOURGON: [9:32:27] (Interpretation) Good morning, your Honour.

1 No change for the Defence. Thank you.

2 PRESIDING JUDGE FREMR: [9:32:31] Thank you, Mr Bourgon.

3 Legal Representatives of Victims, please.

4 MS PELLET: [9:32:37] (Interpretation) Thank you, your Honour. No change for
5 the former child soldiers either.

6 MR SUPRUN: [9:32:47] (Interpretation) Good morning, your Honour, your
7 Honours. For the victims of the attacks, there is no change either since yesterday.

8 PRESIDING JUDGE FREMR: [9:32:56] Thank you, Ms Pellet.

9 Thank you, Mr Suprun.

10 Before we approach the rest of the testimony of our witness, the Chamber was
11 informed that Mr Bourgon would like to address it.

12 So, please, Mr Bourgon, you have the floor.

13 MR BOURGON: [9:33:10] Thank you, Mr President. Very briefly.

14 Pursuant to the Chamber's decision regarding the agenda and notebooks provided
15 to the Prosecution by Witness P-005, we received yesterday the submission of
16 the Prosecution concerning the parts thereof they would like to have admitted in
17 evidence. We will be responding, as requested by the Chamber, by the end of the
18 day and I only take the floor at this time to inform the Chamber that we would like
19 to at the same time propose in the same document the parts of the diaries and
20 agenda that we would like to have admitted in evidence. That is my only
21 submission this morning, Mr President.

22 PRESIDING JUDGE FREMR: [9:33:55] All right.

23 Ms Samson, any comment?

24 MS SAMSON: [9:33:59] Only to correct that the material was provided not
25 yesterday but the day before yesterday.

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

- 1 PRESIDING JUDGE FREMR: [9:34:04] Yes, I can confirm.
- 2 Now let's connect us with the field.
- 3 (Video link connected)
- 4 PRESIDING JUDGE FREMR: [9:35:22] Good morning, Mr Witness. Can you hear
- 5 me and see me?
- 6 WITNESS: DRC-OTP-P-0005 (On former oath)
- 7 (The witness speaks French)
- 8 (The witness gives evidence via video link)
- 9 THE WITNESS: [9:35:32] (Interpretation) I can hear you very well. I can see you
- 10 too. Yes.
- 11 PRESIDING JUDGE FREMR: [9:35:36] Good. Mr Witness, we will continue in
- 12 your cross-examination by Defence represented by Mr Bourgon. We formally plan
- 13 to have two one-hour sessions, but there is some chance, if we would prolong those
- 14 sessions a bit, that we could finish today, but we will see how the things will be.
- 15 Now, Mr Bourgon, you have the floor.
- 16 MR BOURGON: [9:36:07] Thank you, your Honour.
- 17 QUESTIONED BY MR BOURGON: (Continuing)
- 18 Q. [9:36:08] Good morning, Witness.
- 19 A. [9:36:12] Good morning.
- 20 MR BOURGON: [9:36:13] I'd like to move into private session, please.
- 21 PRESIDING JUDGE FREMR: [9:36:15] For sure.
- 22 Court officer, let's move into private session.
- 23 (Private session at 9.36 a.m.) *(Reclassified partially in public)
- 24 THE COURT OFFICER: [9:36:28] We are in private session, Mr President.
- 25 PRESIDING JUDGE FREMR: [9:36:31] Thank you, court officer.

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 Mr Bourgon, please proceed.

2 MR BOURGON: [9:36:35] (Interpretation) Thank you, your Honour.

3 (Speaks English) If I could have on the screen, please, (Redacted) and I

4 would like to have page (Redacted).

5 Q. (Interpretation) Witness, yesterday we looked at a page (Redacted)

6 (Redacted)

7 (Redacted) When we finished the session yesterday, we looked at the video

8 where we see (Redacted).

9 Do you remember that, Witness?

10 A. [9:37:34] Very well.

11 Q. [9:37:37] So I would like to draw your attention to the subjects raised during

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 A. [9:38:13] (Redacted)

17 Q. [9:38:17] (Redacted)

18 (Redacted)

19 (Redacted) is that correct?

20 A. [9:38:38] Yes.

21 Q. [9:38:40] (Redacted); is that correct?

22 A. [9:38:45] Yes.

23 Q. [9:38:48] As well as Kpandroma; is that correct?

24 A. [9:38:53] Yes.

25 Q. (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1

2

3

4

5

6

7

8

9

10

11

12

13 Page redacted – Private session

14

15

16

17

18

19

20

21

22

23

24

25

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 (Redacted)

2 Q. [9:42:00] (Redacted)

3 (Redacted) the population refused war on Iturian soil and
4 demanded that the Ugandan troops leave; is that correct?

5 A. [9:42:17] Yes.

6 Q. [9:42:19] (Redacted) I put it to you that General
7 Salim Saleh, he tried to turn the situation around in his favour but it didn't function
8 (Redacted); is that correct?

9 A. [9:42:36] Yes.

10 Q. [9:42:40] (Redacted)

11 (Redacted)

12 *A. (Redacted)

13 Q. Now I go back to another subject, because there was an issue about Lipri on
14 23 January. (Redacted) Now I am
15 referring to transcript 185, page 30, lines 4 to 7. (Redacted), do
16 you remember places where the -- from which the UPC launched attacks while you
17 were national secretary, and your response is on the same day, lines 7 to 17 and
18 here, Witness, I am going to take your answer. You stated:

19 "Yes, I remember a centre, a centre in Lipri. Lipri is approximately 20 kilometres,
20 yes, on Bunia periphery. And there some Lendu came and (Redacted)
21 (Redacted) that the UPC had attacked the centre of Lipri."

22 Do you remember that answer?

23 A. [9:44:26] I remember very well.

24 Q. [9:44:29] Now, still in the same answer you say:

25 (Redacted) Lubanga regretted that considerably and as

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 such he sent a team into the field to go and see."

2 Do you remember that answer?

3 A. [9:44:49] That is correct.

4 Q. [9:44:51] Now, in the team in question, and we are still looking at your
5 answer, lines 13 to 15, now you state that there was also a Lendu, Lilo, who was
6 present. Amboko, I remember Amboko, and there was also Tinanzabo.

7 A. [9:45:16] Correct.

8 Q. [9:45:19] Now, do you remember in this team with the three persons, I think
9 you already confirmed Tinanzabo was Bira, is he not?

10 A. [9:45:31] He is Bira.

11 Q. Lilo is a Lendu?

12 A. [9:45:35] A Lendu. Amboko is a Budu.

13 Q. [9:45:37] A Budu. And you remember that the three ministers went into the
14 field in order to obtain information and they reported on that to Lubanga when they
15 returned; is that correct?

16 A. [9:45:53] Yes.

17 Q. [9:45:55] When my colleague asked you the date on which this event had
18 taken place you mentioned that it could have been October to December 2002, but
19 you also said:

20 "I think that I don't remember. It could be. I don't remember the date very
21 precisely."

22 As regards the question that I put to you, did they help you to better situate the date
23 of this event?

24 A. [9:46:36] As far as I remember, well, it just doesn't come back to me.

25 Q. [9:46:42] So when in this trial we have had the opportunity to view a video in

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 which the three ministers -- or, rather, national secretaries, to use your terminology,
2 Tinanzabo, Tchachu Lilo, and Amboko Bebetu, when they went to Ngongo with
3 a view to pacification as well, is that the event that you were speaking about?

4 A. [9:47:22] I think so. (Redacted)
5 (Redacted)

6 Q. [9:47:43] Very well.

7 PRESIDING JUDGE FREMR: [9:47:40] Ms Samson?

8 MS SAMSON: [9:47:44] Yes. It may just be me, Mr President, but I am unclear
9 what Defence counsel is putting to the witness as being the date that he is speaking
10 about. So I am referring to transcript page 8, lines 13 to 18. Specifically, there is a
11 discussion about "we have had an opportunity to view a video in which three
12 ministers --"

13 MR BOURGON: [9:48:19] I did not put a date there yet.

14 MS SAMSON: [9:48:22] No, it is not the date. It is what precisely is the
15 comparison? So the question is there is a video with three people in it, is that the
16 event you are talking about? But what event specifically, is it the date on which the
17 massacre took place? Is it -- you know, the witness has to understand what event in
18 particular.

19 PRESIDING JUDGE FREMR: [9:48:51] You could take it during your redirect, but
20 to be frank, I think it is easier, Mr Bourgon, if you try to clarify it. I will take it in
21 counting your time.

22 MR BOURGON: [9:49:03] Thank you, Mr President.

23 Q. [9:49:04] (Interpretation) Witness, I was just going to show you part of this
24 video that I just spoke to you about.

25 MR BOURGON: [9:49:15] (Interpretation) With the permission of the Chamber, I

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 would like to show you a video excerpt, (Redacted). And I would just
2 like to play one minute and eight seconds from 08.50 to 09.58 seconds. And I would
3 like to look at that with you and then I could ask additional questions.

4 Are you ready?

5 Your Honour, may I continue?

6 (Viewing of the video excerpt)

7 MR BOURGON: [9:51:15] (Interpretation) I note that the video was stopped
8 at 09.58.

9 Q. [9:51:24] Witness, did you recognise the people who appeared in this video?

10 I'm sorry, Witness, the national secretaries, did you recognise the UPC national
11 secretaries on the video?

12 A. [9:51:43] I recognise Tinanzabo. *If I am not mistaken, that is Tinanzabo.

13 Q. [9:52:07] Witness, what we see on the screen, this is a meeting according to
14 which (Redacted) a meeting in Ngongo requested by
15 Thomas Lubanga during which there was Minister Amboko, Tinanzabo and
16 Tchachu Lilo were present, and after which they made a report to Thomas Lubanga.
17 Would you agree with me that that is the team sent by Thomas Lubanga following
18 the situation in Lipri?

19 PRESIDING JUDGE FREMR: [9:53:03] Hold on, Mr Witness.

20 Ms Samson.

21 MS SAMSON: [9:53:05] Yes, I ask to make an observation where the witness cannot
22 hear what I will say.

23 PRESIDING JUDGE FREMR: [9:53:13] All right.

24 So we will now have to -- I don't know how to make it best. Probably cut the line
25 or just to put down the volume then, simply to disallow Mr Witness to hear what

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 we are saying here.

2 THE COURT OFFICER: [9:53:58] (No interpretation)

3 THE COURT OFFICER: (via video link) [9:54:22] (No interpretation).

4 PRESIDING JUDGE FREMR: [9:54:52] So, court officer, now the witness can't hear
5 us?

6 Mr Witness, can you hear me?

7 So it seems that everything is okay.

8 Ms Samson, please proceed.

9 MS SAMSON: [9:55:52] Thank you, Mr President.

10 I rise because I believe that the question as framed will induce the witness into
11 error. The witness has indicated that he doesn't have recollection of the precise
12 date of the massacre in Lipri or therefore when this group of people were allegedly
13 sent to report on the incident.
14 What Defence counsel has done is shown a video and is merging the two events in
15 his question, indicating that other witnesses have come to say that these three
16 people were at a meeting in Ngongo ordered by Lubanga for which they prepared
17 a report, and then suggesting that it was at the date of the massacre. However, the
18 information that we have from those witnesses is not that this meeting had anything
19 to do with the Lipri massacre. In fact, those witnesses have testified that there was
20 indeed discussions being held also at the request of the Lendu community to ensure
21 that there would be no further abuses committed against them, that roads could be
22 opened, and business could continue, that they could go get water, et cetera.
23 That is the tenor of the evidence that we have heard. We have not heard any
24 evidence to date - and Defence will certainly correct me if I am wrong - that this
25 particular meeting was in response to the alleged Lipri massacre. And given that

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 the witness doesn't recall the date my concern is that the way in which the question
2 was put will lead the witness to believe that other witnesses have testified that the
3 event in the video is contemporaneous with the massacre of -- alleged massacre of
4 Lendu civilians in Lipri.

5 And I just would like to ensure that the question is fair, is fairly put, particularly in
6 reference to evidence that has been heard in this trial to date.

7 PRESIDING JUDGE FREMR: [9:58:13] Mr Bourgon.

8 MR BOURGON: [9:58:14] Thank you, Mr President.

9 I believe this is more observations which should be made in terms of argumentation
10 at a later time, but allow me to respond.

11 My colleague can correct me, but we have heard evidence of the three ministers
12 going to Ngongo and making -- and returning and making a report to Thomas
13 Lubanga. So there is nothing wrong in what I am suggesting in terms of what we
14 heard. That's number one.

15 Number two, I will then proceed, and I did already, to say: Is it possible that this is
16 the visit you are talking about? And then the third question will be: Do you
17 know of any other time when these three ministers travelled together to Lipri?
18 And those will be my questions. They are not only fair, but they will allow the
19 witness to maybe jog his memory.

20 So I don't see any problems with either the questioning or the suggestions I am
21 making to the witness in cross-examination. Thank you.

22 PRESIDING JUDGE FREMR: [9:59:19] Ms Samson.

23 MS SAMSON: [9:59:20] If I may very briefly, I would therefore request that
24 the Chamber ask the Defence counsel, for the good-faith basis, for a suggestion that
25 a January 2003 meeting is the date of the massacre, the alleged massacre in Lipri

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 centre, because I don't recall any evidence to date that the massacre itself was
2 January.

3 PRESIDING JUDGE FREMR: [9:59:48] Mr Bourgon.

4 MR BOURGON: [9:59:49] That's exactly the point, Mr President. Prosecution takes
5 it for granted that the witness is talking about the massacre or the event that it would
6 like the witness to be talking about. Our position is that he is talking about
7 something else. He is not talking about the massacre in Lipri. He was talking
8 about a report from Lendu who said that the centre of Lipri had been attacked and
9 that Lubanga had sent a delegation. That's what we are talking about.
10 The Prosecution would like to lead the Chamber and the witness to say that this is
11 linked to a particular massacre. We never said which massacre, the Prosecution
12 hasn't either, and we don't intend to do so.

13 PRESIDING JUDGE FREMR: [10:00:32] All right. But I understood that you also
14 have an idea to put questions that would clarify a bit the issue. So if not in this
15 question, in further questions, you could get it in more detail.

16 MR BOURGON: [10:00:45] I will endeavour to do so, Mr President.

17 PRESIDING JUDGE FREMR: [10:00:48] So then the objection is overruled. You
18 may proceed.

19 And, court officer, please connect us again with the field, including the voice.

20 Mr Witness, can you hear us again?

21 THE WITNESS: [10:01:35] (Interpretation) Yes, I can hear you.

22 PRESIDING JUDGE FREMR: [10:01:37] Mr Bourgon, please proceed.

23 MR BOURGON: [10:01:40] Thank you, your Honour.

24 Q. [10:01:42] Mr Witness, we showed you an extract of an audio-visual exhibit,
25 and according to previous witness testimony this relates to a visit to Ngongo, during

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 which the three national secretaries, Tinanzabo, Lilo and Bebetu, went to negotiate
2 with the Lendu, after which they then returned and reported to Thomas Lubanga.
3 My question is as follows: Is it possible that this visit is the one you were referring
4 to when you answered my colleague's question?

5 A. [10:02:38] Yes, I believe so. Because Ngongo is close to Lipri, just a few
6 kilometres away, so perhaps they preferred to meet Ngongo than to meet in Lipri
7 itself. It is possible, because there were Lendu.

8 Q. [10:03:07] (Redacted)

9 (Redacted)

10 (Redacted)

11 A. [10:03:28] (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 Q. [10:04:02] The date of the event on the video is 14 January 2003. Does that fit
16 in with your recollection, jogging your memory here?

17 A. [10:04:21] It's highly possible. I think so.

18 Q. [10:04:26] And one final question on this subject: This event took place some
19 considerable time before the attack of 6 March 2003; is that correct?

20 A. [10:04:45] Could you please clarify that. I didn't quite follow your question.

21 Q. [10:04:52] The time at which Thomas Lubanga dispatched the team to Lipri
22 took place some considerable time before the famous attack of 6 March 2003; do you
23 agree with me?

24 A. [10:05:10] I agree.

25 Q. [10:05:14] I move now to a different topic. Would you agree with me that

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 one of the reasons why Thomas Lubanga dispatched these three national secretaries
2 to Lipri was because he took very much to heart the subject of making peace with
3 the Lendu?

4 A. [10:05:42] Yes. Yes, because you know there was still a problem between
5 Hema and Lendu in Ituri. And to enable the reconciliation committee to do its
6 work, it was right that he sent a team of ministers into the field to reassure the Lendu
7 that the UPC had nothing against them, so that they would become members of the
8 UPC, that they would accept the UPC.

9 Q. [10:06:39] You know, Mr Witness, that Tinanzabo was national secretary for
10 pacification; that's correct?

11 A. [10:06:50] Yes. And there was the commission for reconciliation and
12 pacification.

13 Q. [10:06:58] You are mentioning the commission there. I think you said
14 exactly -- and I think you said "commission for truth, reconciliation, pacification." Is
15 that the name?

16 A. [10:07:20] Yes.

17 Q. [10:07:21] Could you confirm that Tinanzabo had already adopted a policy
18 within the UPC which had its own commission for truth, reconciliation and
19 pacification?

20 A. [10:07:37] Yes. He was in charge of that.

21 Q. [10:07:45] We could now move forward in time to 14 February 2003. We no
22 longer need the video. I am wondering whether you are aware of the creation of
23 FIPI? *Front for Integration and Peace in Ituri.

24 A. [10:08:12] *FIPI, I have heard about it. A movement created with -- there was
25 a movement created with Chef Kahwa in Uganda and the aim was to integrate

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 Lendu into the movement, to get them closer to the movement.

2 Q. [10:08:43] I suggest, and you can correct me, that FIPI brought together three
3 entities - Kahwa's PUSIC, the FNI of Floribert Njabu, and the FPDC. Can you
4 confirm that?

5 A. [10:09:05] Yes.

6 Q. [10:09:06] You knew at the time that this movement had been created at the
7 instigation of Uganda.

8 A. [10:09:16] At the instigation of Uganda, indeed.

9 Q. [10:09:21] And you know that when the FIPI was created, this, to all intents
10 and purposes, put an end to the hopes of Thomas Lubanga to be able to create an
11 understanding with Uganda.

12 A. [10:09:41] Yes. We are talking about January there, and already in December
13 in Arua things were not going well. *So UPC was adamant, it stood its ground
14 about his position to lead a movement in Ituri. And that there was another one that
15 could be created; you see what it does, there is FIPI, FNI, there is FPDC. So things
16 were not going well between Thomas Lubanga and the president of Uganda, so that
17 led to these movements.

18 And President Museveni I think was not very comfortable in his position because
19 the *international community was threatening that Ituri was put to fire and sword,
20 and that hurt the international community. And of course, he was affected by that
21 to a certain extent. And then to counterbalance the UPC, there was a need for
22 movements which could counterbalance the UPC in Ituri. *And this is what
23 Thomas Lubanga did not want.

24 Q. [10:11:16] Now, talking about counterbalancing the UPC in Ituri, I am sure
25 you know that in February, shortly after the creation of FIPI, that the three leaders of

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 the three movements were met by Kabila himself who *gave them a financial and
2 logistic support to face the UPC; do you remember that?

3 A. *Indeed, we heard about that because Kabila was almost all the time with the
4 APC in Abey (phon) and that the UPC was complaining that Kabila was getting
5 weapons on every occasion to fight against the UPC in Ituri.

6 MR BOURGON: [10:12:10] (Interpretation) I would like to see, please, on the screen
7 DRC-OTP-0193-0243, page 0245, please.

8 Q. [10:12:29] There will be a document appearing on your screen. It's a press
9 communiqué from the UPC, and I will read part of it to you to see whether you were
10 aware of the content of this communiqué. So this is a press communiqué from the
11 UPC dated 19 February 2003 and in this press communiqué it says, in paragraph 3:
12 "Where does the confusion arise? The lack of respectful engagement agreed at
13 Dar es Salaam, particularly by Uganda and the government of Kinshasa. Indeed,
14 the day following the discussions in Dar es Salaam, they created a new political
15 military movement, FIPI. One of the leaders of this group, Mr Kahwa, openly
16 stated that their group was supported by Kampala, Kinshasa and MONUC (what
17 a contradiction). To show this, a team of four officials of FIPI was led by
18 Captain Maguru of the UPDF to Kinshasa where they were received by President
19 Joseph Kabila on Friday, 14 February 2003 at 11 p.m. The promises made of arms,
20 munitions and money were fulfilled by Kinshasa and this team returned to
21 Kampala -- or returned to Kampala unless things turned differently. Today,
22 19 February 2003." Were you aware of these events?

23 A. [10:14:45] I heard of this, but I haven't read the document as such. We were
24 talking about this because *the UPC felt that there was a plot against it because
25 Kabila is in it as well as Museveni. The UPC was expecting to be spat out, expelled,

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 something of that kind. So the UPC was worried as it felt it was tossed about.

2 Q. [10:15:35] So you said that at that stage you had heard talk of this without
3 having read the communiqué, but let's move back slightly from that. I have been
4 asking you questions since yesterday. (Redacted)
5 (Redacted) We talked about a signature of an
6 agreement between the UPC and RCD/Goma; do you recall that?

7 A. [10:16:15] Yes, I do.

8 Q. [10:16:15] (Redacted)
9 (Redacted)

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

11 Q. [10:16:28] (Redacted)
12 (Redacted)

13 A. [10:16:41] (Redacted)

14 Q. [10:16:42] (Redacted)
15 (Redacted)
16 (Redacted)

17 A. [10:16:59] (Redacted)

18 Q. [10:17:00] We talked about the creation of the FIPI. We talked about the
19 peace march in Bunia on which you spoke on 26 February.

20 A. [10:17:18] Yes.

21 Q. [10:17:21] And we also talked about all the manoeuvres of Museveni and even
22 Kabila which could destroy the efforts of the UPC in Ituri; is that correct?

23 A. [10:17:39] Yes.

24 Q. [10:17:42] So, Mr Witness, if one puts all these events together - and that's just
25 simply an overview - did you know at the time that things were about to kick off?

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 A. [10:18:05] Yes, indeed, because *with a bulldozer like Uganda, which, by the
2 way, has also contributed to the founding of the UPC, and which does a U-turn, you
3 see what it means, so yes, things were about to blow.

4 MR BOURGON: [10:18:24] (Interpretation)

5 Q. [10:18:25] And it blew on 6 March.

6 A. [10:18:31] Yes, it did. Everything blew up.

7 Q. [10:18:34] So let me move on now to the situation after 6 March. If I
8 understand correctly, you remained in Bunia during this period.

9 A. [10:18:47] Yes.

10 Q. [10:18:50] (Redacted)

11 (Redacted)

12 A. [10:19:01] (Redacted)

13 (Redacted)

14 (Redacted)

15 Q. [10:19:17] (Redacted)

16 (Redacted)

17 A. [10:19:27] (Redacted)

18 Q. [10:19:32] (Redacted)

19 (Redacted)

20 A. [10:19:40] (Redacted)

21 Q. [10:19:43] (Redacted)

22 A. [10:19:48] (Redacted)

23 Q. [10:19:52] (Redacted)

24 A. [10:19:54] (Redacted)

25 Q. [10:19:55] (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 A. [10:19:56] (Redacted)

2 Q. [10:20:01] (Redacted)

3 A. [10:20:08] (Redacted)

4 (Redacted)

5 (Redacted)

6 Q. [10:20:24] (Redacted)

7 (Redacted)

8 A. [10:20:36] (Redacted)

9 Q. [10:20:49] What interests me particularly, Mr Witness, is following the attacks
10 on 6 March, and I put to you that you know that there was a period during which
11 the UPC was absent and you know that the UPDF finally left Bunia about 6 May.
12 Do you recall that?

13 A. [10:21:11] Yes, I do.

14 Q. [10:21:18] And you probably know that on 12 May or thereabouts the FPLC
15 and Kisembo came and liberated Bunia once more; is that correct?

16 A. [10:21:30] Yes. This was the return of Thomas to Bunia for the second time.

17 Q. [10:21:42] So what interests me is the period between 6 March and the return
18 of the UPC -- FPLC/UPC to Bunia. During this time, would you agree with me that
19 there was a total lack of security -- total lack of security? Would you agree with
20 that?

21 A. [10:22:09] I agree with thee. There was a total lack of security and *the
22 Lendu, the UPC, the UPC army had organised themselves and the town and was
23 divided in two. And every time, the commanders -- let's say the UPC soldiers were
24 looking for one another. And really, Bunia was not a safe place at that time.

25 Q. [10:22:49] I am talking particularly, Mr Witness, of the time prior to the return

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 of the UPC on 12 May, when there was no UPC in Bunia. Do you agree with me
2 that, *during that time, a lot of the population fled because they were afraid of the
3 FNI and the Lendu *attacks?

4 A. [10:23:18] Yes, a lot of the population went to the MONUC, to the then
5 headquarters. A lot of people of Bunia went there, which -- because they were afraid of
6 what would happen to them. So there was indeed a lack of security in Bunia.

7 Q. [10:23:42] And I put to you that even after the return of the UPC, the Lendu
8 combatants once again -- again attacked the town on a number of occasions after
9 12 May.

10 A. [10:24:00] Yes, they did that on a number of occasions. The Lendu soldiers,
11 the FNI soldiers, the UPC, they didn't agree. They would try to find each other and
12 there were a number of attacks on the town of Bunia.

13 Q. [10:24:18] If I can move on now to a different topic.
14 You, in your reply to my colleague, spoke of the demobilisation of child soldiers, do
15 you recall that?

16 A. [10:24:33] Demobilisation of soldiers?

17 Q. [10:24:39] Demobilisation of child soldiers.

18 A. [10:24:43] Of child soldiers. I don't have any official knowledge of there
19 having been an official demobilisation from the UPC of child soldiers.

20 Q. [10:24:56] My first question on this topic, Mr Witness, I put to you that you
21 were aware of the fact that there were soldiers aged under 18 in the armed groups
22 (Redacted). That is a problem of which
23 you are aware, you yourself?

24 A. [10:25:31] Yes.

25 MR BOURGON: [10:25:38] I would like to display on the screen a document,

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 DRC-OTP-0029-0276. This is a letter from Thomas Lubanga addressed to the chief
2 of the general staff of the FPLC.

3 Q. [10:26:12] This will appear on your screen. And in this letter, which I think
4 we don't yet have --

5 THE COURT OFFICER: [10:26:22] I still don't find it. Thank you.

6 MR BOURGON: [10:26:25] (Interpretation) Yes. DRC-OTP-0029-0276.

7 So while we wait for this letter, I can say that it is a letter dated 27 January and
8 signed by Thomas Lubanga.

9 THE COURT OFFICER: [10:27:05] Just for the record, it seems that the ERN
10 number is DRC-OTP-0029-0275. Thank you.

11 MR BOURGON: [10:27:28] (Interpretation) I apologise for our error. We don't
12 seem to have the same figures. If we could perhaps zoom in on this so that it could
13 be read more easily.

14 Q. [10:27:39] The letter is dated 27 January and you can see there with the
15 reference number, "from the president of cabinet," and is addressed to the chief of
16 general staff?

17 And if we could perhaps move down, we can see that what Lubanga says is -- it
18 refers to the dossier on the demobilisation of child soldiers of the FPLC:

19 "Following my letter number 287 from the presidential cabinet of 21 October 2002 in
20 which I formally prohibited the enrolment into the army of the FPLC of children
21 aged under 18, I would ask you to send me, as soon as possible, a detailed report on
22 this question which I consider extremely important."

23 And it is signed by Thomas Lubanga. (Redacted)

24 (Redacted)

25 A. [10:29:16] Yes.

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 Q. [10:29:19] Does seeing this letter jog your memory with regard to Thomas
2 Lubanga's efforts at demobilisation?

3 A. [10:29:37] 27 January 2003; is that correct?

4 Q. [10:29:42] Yes.

5 A. [10:29:44] *In January 2003, you know, MONUC was behind UPC for the
6 demobilisation of child soldiers -- a lot of pressure for the demobilisation of child
7 soldiers. Indeed, child soldiers did exist. You also saw them sometimes around
8 commanders. And Lubanga could only do this to ask this report. I don't know
9 whether the report was made for him because it is a military matter -- military
10 presidency.

11 Q. [10:30:36] Are you able to confirm Thomas Lubanga's position, the fact that he
12 forbade the recruitment of people under the age of 18 into the FPLC?

13 A. [10:30:55] Well, it was *not understood in the position that Thomas Lubanga
14 took. Nevertheless, I don't know if it could be possible, because the Lendu had
15 their combatants. There were a lot of them also. And I don't know if Lubanga
16 officially could accept that children be demobilised.

17 MS SAMSON: [10:31:30] Excuse me.

18 PRESIDING JUDGE FREMR: [10:31:31] Hold on, Mr Bourgon.

19 Ms Samson.

20 MS SAMSON: [10:31:35] Yes, I just want to check the English and the French. The
21 French says, page 28, line 18, the answer is "Bon, ça n'a pas été très, très compris
22 dans la position que prenait Lubanga," and the English seems to say the precise
23 opposite. Thank you.

24 PRESIDING JUDGE FREMR: [10:32:01] Mr Bourgon, can you confirm that the
25 French version is correct?

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 MR BOURGON: [10:32:07] To the best of my recollection, the French version is
2 correct.

3 PRESIDING JUDGE FREMR: [10:32:11] All right. I think we can agree on.

4 MR BOURGON: [10:32:19] (Interpretation)

5 Q. [10:32:20] Witness, the last question on that subject:

6 Did you have the opportunity, because we have two letters that were shown during
7 your testimony (Redacted). They speak about demobilisation.

8 There is this letter of Thomas Lubanga and there is another letter from the national
9 secretary for education. (Redacted)

10 (Redacted)

11 A. [10:32:56] Demobilisation, yes. But as regards the effectiveness, I don't

12 remember there being demobilisation of child soldiers. (Redacted)

13 (Redacted), so it is

14 difficult for me to confirm what it is in this case.

15 Q. [10:33:38] Witness, last question on this case: Were you aware of information

16 concerning any demobilisation efforts within the UPC in the years 2002 and 2003,

17 irrespective of age?

18 A. The demobilisation for me, as far as I experienced it, if demobilisation

19 happened, it was done calmly in the military group, with President Lubanga. But

20 officially, it wasn't said.

21 Q. [10:34:27] Should I understand from your answer that this is a military subject

22 and that's the reason why you believe you didn't receive any information in that regard?

23 A. [10:34:38] Correct.

24 MR BOURGON: [10:34:40] Mr President, we are now just over the one-hour mark.

25 PRESIDING JUDGE FREMR: [10:34:50] I will have to clarify that because

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 Mr Witness started to testify at 9.36. There was also a five-minute break because of
2 the procedural issues, so let's continue till quarter to 11.

3 MR BOURGON: [10:35:03] Thank you, Mr President.

4 Q. [10:35:07] (Interpretation) Witness, I continue with another subject. During
5 your testimony you spoke about the fact that you were talking about 2002, in the
6 month of August, you spoke about the fact that people were killed. Now, you
7 named two people in particular and I would like to go back to those two people.
8 Now, the first person you named was (Redacted) and you spoke about
9 (Redacted). Do you remember that, Witness?

10 A. [10:35:54] Yes, I mentioned (Redacted). And the second name?

11 Q. [10:36:00] (Redacted) was the second name.

12 A. [10:36:04] (Redacted)

13 Q. [10:36:18] The dossier isn't clear where it concerns the date on which these
14 people would have died, because we asked, and this is in transcript 183, page 38. In
15 the transcript you said what month and you stated that you didn't know the month,
16 "but I think that it was in the month of August."

17 So starting with (Redacted), do you have the date on which (Redacted) died?

18 A. [10:36:51] I don't have the date but I know the period in which (Redacted) was
19 killed and that was during the period when there was an attack on Lipri. I don't
20 remember the date. There was an attack on Lipri and by way of revenge the Lendu
21 took vengeance in the Mudzipela neighbourhood. That's where (Redacted)
22 (Redacted), and they were killed during that period.

23 Q. [10:37:31] And when you state "that period," are we talking about the same
24 period as 9 August, before or after?

25 A. [10:37:42] Well, in Lipri I don't know if -- or, I don't know what month it was,

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 but immediately afterwards there was revenge which was exacted. There was
2 a revenge attack, a reprisal on Mudzipela, and it was occupied by the Hema.
3 Indeed, the Lendu also massacred people there.
4 During this period, there obviously was the people who I spoke about, there were
5 the people who I spoke about who died on that occasion. And if I speak about
6 (Redacted) as a Lendu, *that is because (Redacted) was in the movement. Some Lendu
7 were there (Redacted)
8 (Redacted)

9 Q. [10:38:44] Witness, if we go back to (Redacted), I put it to you that
10 (Redacted)-- well, is it possible, to the best of your memory, that (Redacted) was killed on
11 7 August in Mudzipela in a Lendu attack?

12 A. [10:39:03] I think so. I think so.

13 Q. [10:39:06] Now, where it concerns (Redacted), according to the information we
14 have, she died on 19 January 2001; is that possible, Witness?

15 A. Yes, because Bunia, Bunia *was a killer town and there were attacks which were
16 being carried out, and in the periphery as well. And we had the Lendu and the Hema,
17 they had -- they didn't agree with each other. And if some of them had the opportunity
18 to attack a centre and massacre people, *they did so, the Hema as much as the Lendu.

19 Q. [10:39:57] Just to be clear here, in the transcript I mentioned 19 January 2001,
20 before the creation of the UPC, and it was at that time that (Redacted) died. Is it
21 possible that she died before the events of 2002?

22 A. [10:40:21] To the best of my knowledge, (Redacted) died and the attack was
23 claimed by her family and her brothers. And in 2001 there were combatants, Lendu
24 combatants and Hema combatants. They were attacking each other like dogs.

25 Q. [10:40:56] I have got a question for you --

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 MR BOURGON: [10:41:00] Mr President, just to know exactly how much time I
2 have left so I can organise appropriately.

3 PRESIDING JUDGE FREMR: [10:41:06] Yes, we can verify that.

4 So, court officer, could you now inform us how much time Defence used so far.

5 THE COURT OFFICER: [10:41:13] Five hours 37.

6 PRESIDING JUDGE FREMR: [10:41:18] So, Mr Bourgon, it means that yesterday
7 you publicly said that you will need six hours, which will mean that you still have
8 23 minutes. Is it realistic to expect that you will finish by that time?

9 MR BOURGON: [10:41:32] Yes, Mr President, and I would like maybe the three
10 minutes now, or the best would be to just take my 23 minutes after the break.

11 PRESIDING JUDGE FREMR: [10:41:40] All right then.

12 So now we break -- well, before we break, just one minor correction to the
13 transcript, because I said it is page 27, line 15 that witness started to testify at 9.36,
14 while we currently have in the transcript 9.30, so please correct that detail.

15 Now we break and we will reconvene at quarter past 11.

16 THE COURT USHER: [10:42:18] All rise.

17 (Recess taken at 10.42 a.m.)

18 (Upon resuming in open session at 11.15 a.m.)

19 THE COURT USHER: [11:15:47] All rise.

20 Please be seated.

21 PRESIDING JUDGE FREMR: [11:16:17] Welcome back, Mr Witness. We will
22 directly continue with your cross-examination by Mr Bourgon. But then I have to
23 disappoint people in the public gallery because we will have to move into private
24 session.

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

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 (Private session at 11.16 a.m.) *(Reclassified partially in public)

2 THE COURT OFFICER: [11:16:41] We are in private session, Mr President.

3 PRESIDING JUDGE FREMR: [11:16:53] Thank you, court officer.

4 Mr Bourgon, please proceed.

5 MR BOURGON: [11:16:59] (Interpretation) Thank you, your Honour.

6 Q. [11:17:01] Good morning again, Mr Witness. We only have a few minutes
7 left together and I would now like to move on to a subject discussed during your
8 testimony. Over the last few days we have spoken about the situation with Uganda
9 and the political manoeuvring -- manoeuvres of Uganda; is that correct?

10 A. [11:17:30] Yes, it is.

11 Q. [11:17:31] We have also discussed the situation relating to the UPDF and the
12 rumours that they were spreading which were harmful to the UPC.

13 A. [11:17:46] Yes.

14 Q. [11:17:54] Taking these two subjects as an example, (Redacted)
15 (Redacted); is that correct?

16 A. [11:18:10] Yes.

17 Q. [11:18:10] You said during your testimony that you had only little information
18 about military strategy and the conduct of operations; is that correct?

19 A. [11:18:21] Yes, it is.

20 Q. [11:18:25] However, I think you would agree with me that the security
21 situation within Ituri (Redacted); is that
22 correct?

23 A. [11:18:51] Yes.

24 Q. [11:18:52] Let's take Mongbwalu as an example. The fact that there was
25 cannibalism in Mongbwalu, according to our information, is something that was

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 (Redacted). Do you recall that?

2 A. [11:19:05] I don't recall that. Cannibalism, that is something that would be
3 discussed between Hema and Hema (Redacted)

4 (Redacted).

5 Q. [11:19:30] However, the question of the bad treatment meted out to the
6 population of Mongbwalu by the Lendu in Mongbwalu, (Redacted) (Redacted)?

7 A. [11:19:48]*Well, this subject wasn't either -- Mongbwalu, I know that there
8 were events that took place there, there was the takeover of Mongbwalu, I think, by
9 the UPC, once or twice, and also the Lendu. This was happening in various places.

10 Q. [11:20:13] What interests me is not so much the operations that took place in
11 Mongbwalu but, rather, before these operations took place, (Redacted)
12 (Redacted) the security situation in Mongbwalu?

13 A. [11:20:39] Mongbwalu is a long way from Bunia so that we weren't aware of
14 everything.

15 THE INTERPRETER: [11:20:56] Sorry, the interpreter missed a part of that answer.

16 MR BOURGON: [11:21:01] (Interpretation)

17 Q. [11:21:03] Let us take another example. The fact that the roads were blocked
18 between Bunia and Mongbwalu, it was necessary to reopen the roads in order for
19 trade to recommence; that is a subject that was discussed, was it not?

20 A. [11:21:28] No.

21 PRESIDING JUDGE FREMR: [11:21:30] Hold on, Ms Samson.

22 MS SAMSON: [11:21:32] Yes, there was a portion of not the last answer but the one
23 before that the interpreter had missed a part of the answer. I wonder would it be
24 possible for the interpreter to read from the French and interpret from the transcript.

25 PRESIDING JUDGE FREMR: [11:21:49] Interpreter, would it be possible?

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 THE INTERPRETER: [11:21:50] Certainly. Certainly. Let me just find it. The
2 answer: "Mongbwalu is 60 to 80 kilometres from Bunia. (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 PRESIDING JUDGE FREMR: [11:22:20] Okay with you, Ms Samson?

8 Let's move.

9 MR BOURGON: [11:22:27] (Interpretation)

10 Q. [11:22:29] Mr Witness, according to our information (Redacted)

11 (Redacted)

12 (Redacted) Do you agree with me?

13 A. [11:22:58] I don't really have that in my memory.

14 Q. [11:23:02] In that case, let's move on to another subject. The question of the

15 (Redacted), you discussed this during your testimony, and I put to you that

16 the principal reason (Redacted)

17 (Redacted); is that correct?

18 A. [11:23:30] That is indeed correct.

19 Q. [11:23:36] (Redacted)

20 (Redacted)

21 A. [11:23:59] (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 Q. [11:24:38] (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 (Redacted)

2 A. [11:25:00] Correct. Correct.

3 Q. [11:25:03] You mentioned a person called (Redacted), whose father complained
4 that he had been recruited by the UPC. Do you recall that?

5 A. [11:25:15] Yes, I do.

6 Q. [11:25:19] I refer to page 261 of your statement, *which is 0174-0057. And I
7 am referring to page 0105, paragraph 261. My colleague read you a sentence from
8 this paragraph. I would like to read a different one:

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 And then you say that (Redacted) was certainly under 15. At the time he had not yet
14 finished primary school. And you add: "Which means that he was around
15 10 years old."

16 So my question is as follows: The age of (Redacted), is that your own conclusion on
17 the basis of the fact that he should still be attending school?

18 A. [11:26:58] Correct.

19 Q. [11:27:01] You have never seen any documents which contained his exact age.

20 A. [11:27:07] No, I have never seen any documents.

21 Q. [11:27:19] Another subject now. Do you know a person called (Redacted)?

22 A. [11:27:28] I know him very well. (Redacted).

23 Q. [11:27:32] Have you known him for a long time?

24 A. [11:27:35] I have known him for a long time in Bunia.

25 Q. [11:27:38] According to our information, (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 (Redacted)

2 A. [11:27:53] I remember that very well.

3 Q. [11:28:02] And did you know that he was an intermediary who was
4 negotiating between the Prosecution and potential witnesses?

5 A. [11:28:14] Yes, I do.

6 Q. [11:28:15] According to my information about (Redacted), he was in contact
7 with you from (Redacted), so about two years during which he
8 acted as intermediary between you and the Prosecution; do you recall that?

9 A. [11:28:43] That's correct.

10 Q. [11:28:45] (Redacted), I imagine when he contacted you, explained why he
11 wanted to present you to the Prosecution.

12 A. [11:28:58] Yes. (Redacted)

13 (Redacted)

14 (Redacted)

15 Q. [11:29:18] And when he approached you, he explained to you that the Defence
16 wanted to -- sorry, that the Prosecution wanted to get information firstly on the
17 UPC.

18 A. [11:29:32] Yes.

19 Q. [11:29:33] And that they wanted to get information on Thomas Lubanga.

20 A. [11:29:44] Yes. *Because when you say UPC, you say primarily Thomas
21 Lubanga *as president.

22 Q. [11:29:44] And he also mentioned to you that the Prosecution wanted to have
23 information about Bosco Ntaganda?

24 A. [11:30:02] He didn't talk about that. He talked about the UPC, the UPC and
25 the matters that I knew about in Ituri.

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 Q. [11:30:16] So did (Redacted) talk to you about the prosecution of matters of
2 Thomas Lubanga and the recruitment of child soldiers?

3 A. [11:30:28] Yes.

4 Q. [11:30:31] So you discussed this matter with (Redacted) before you met
5 with the Office of the Prosecutor.

6 A. [11:30:39] Yes.

7 Q. [11:30:41] So (Redacted) explored with you your knowledge of this matter.

8 A. [11:30:51] Yes, he talked about it. He explained what it was, what the Court
9 was, and what the Court would need. (Redacted)

10 (Redacted)

11 Q. [11:31:17] Would it be correct to say that (Redacted) explained that a child
12 soldier, in the views of the International Criminal Court, is somebody aged
13 under 15?

14 A. [11:31:33] Yes, that is what he told me.

15 Q. [11:31:35] And would it be correct to say that you discussed with (Redacted)
16 (Redacted) examples that you could come up with of this; is that correct?

17 A. [11:31:50] Yes, I had to go back into my memory and see what information I
18 had.

19 Q. [11:32:00] (Redacted)
20 (Redacted), is this something you discussed with (Redacted)?

21 A. [11:32:12] I talked about this with him and then the fact that there was nothing
22 officially, but perhaps unofficially there might have been something (Redacted)
23 (Redacted). And one needs to speak the truth. One needs to talk about what one
24 knows.

25 Q. [11:32:33] So you just said that there might have been something unofficially.

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 Is it correct to say that (Redacted) said it would be preferable to say that this did
2 not happen?

3 A. [11:32:48] No, no. He did not say it to me, *because everything I have said
4 here, it is not (Redacted) who suggested it to me. I talked about what I am aware
5 of. (Redacted)

6 Q. [11:33:09] And according to the information that we have, with (Redacted)
7 you *started to meet directly the investigators from the Prosecution from
8 (Redacted) onwards.

9 A. [11:33:32] He presented the fact that I could go with him and I could be
10 a potential witness.

11 Q. [11:33:44] And after that date, you had *direct contact with the Office of the
12 Prosecutor; is that correct?

13 A. [11:33:52] Yes.

14 Q. [11:33:56] Continue, Mr Witness, if you wish. Sorry, I thought that you had
15 not completed your answer. After this date, did you continue to meet with
16 (Redacted)?

17 A. [11:34:15] To meet with (Redacted)? *Because (Redacted) left immediately
18 after. (Redacted). That's it. And I
19 stayed with all this information. But as soon as he presented me to the Court's
20 team, whenever one team or another would come, I would be called because my
21 number was with (Redacted) and it still is to today.

22 Q. [11:34:57] Financial questions related to testimony of the Court is something
23 that you discussed with (Redacted); is that correct?

24 A. [11:35:06] Financial matters? Financial questions? No. You see, even as I
25 consulted some documents of the ICC myself, I saw no reference to finances or

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 financial matters. So if I am testifying, it is because I simply want to testify and make
2 a contribution that might be a remedy towards something. That would be what
3 really interests me. Now, if it could deter all and sundry from engaging in the type of
4 terror that we experienced in the Ituri, that would be very pleasing to me, I believe.

5 Q. [11:35:58] That was actually my last question for you, Mr Witness.

6 MR BOURGON: [11:36:06] Mr President, I would like to have -- to take the time
7 remaining to admit some documents on the record. I would like first to admit the
8 two videos that we watched yesterday. I don't think I have to repeat all of the
9 references which were quite detailed on the record yesterday. There were two
10 videos that we looked at with the witness.

11 PRESIDING JUDGE FREMR: [11:36:28] Just to be clear, that there are also those
12 two?

13 MR BOURGON: [11:36:31] There are only those two videos that I wish to admit, as
14 we saw yesterday. One was divided into five parts, of course.

15 PRESIDING JUDGE FREMR: [11:36:36] Yes.

16 MR BOURGON: [11:36:38] But it is one video. And that was a document that we,
17 that we distributed in the courtroom yesterday. And there was a previous video
18 (Redacted) So those are the two videos.

19 I can provide you with the number of the videos.

20 PRESIDING JUDGE FREMR: [11:36:54] I would prefer that, yes.

21 MR BOURGON: [11:36:56] (Redacted) And that was from minute 08.26
22 until minute 12.34, and with the associated transcript and translation.

23 The second video is (Redacted). And this was from 01.18.10 until
24 01.31.22. These are the two videos, Mr President, and all the references were stated
25 on the record yesterday.

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 PRESIDING JUDGE FREMR: [11:37:42] Ms Samson.

2 MS SAMSON: [11:37:45] No objection, your Honour. I just query the process
3 the Chamber has adopted with regard to transcripts. When it is a Prosecution
4 transcript, I do not see any reason to unduly defer admission. But when
5 the Defence uses Prosecution transcripts, they seek immediate admission. When
6 the Prosecution seeks to admit Prosecution transcripts, the Defence opposes and it
7 doesn't happen. So I just want to be sure that we are proceeding in the same way
8 that we have with others.

9 PRESIDING JUDGE FREMR: [11:38:20] At this moment it is not, I guess, proposed
10 to proceed in the same way.

11 But, Mr Bourgon, in my understanding in fact the whole -- all speeches made
12 during the video have been anyway translated during the testimony, or not?

13 MR BOURGON: [11:38:37] They have been, Mr President. But of course there is
14 always -- the interpretation cannot always be 100 per cent accurate, even if they have
15 a transcript. So the procedure usually is it is on the record but we also have, of
16 course, if need be, the transcript.

17 PRESIDING JUDGE FREMR: [11:38:54] But normally -- normally, we MFI just the
18 transcripts and then we will give a chance to the Prosecution to respond or to
19 comment. If not in a reasonable time, then we will admit it.

20 MR BOURGON: [11:39:07] Absolutely, Mr President. I just took it for granted
21 because it was their transcript and we did not oppose, but, of course, if
22 the Prosecution wants to make a verification, of course.

23 PRESIDING JUDGE FREMR: [11:39:19] Ms Samson.

24 MS SAMSON: [11:39:21] Well, your Honour, the issue I would like to check and
25 confirm is whether or not non-identified speakers have been identified in the

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 transcript, because this was something that the Defence has objected to consistently.

2 PRESIDING JUDGE FREMR: [11:39:34] All right. Then we can take our usual

3 procedure. So those two videos specified by Mr Bourgon are admitted into

4 evidence, while the transcript and translation for the moment are MFI-ed only and

5 they could be later on admitted, regardless of the further -- further comments from

6 the Prosecution and the final decision/ruling made by the Chamber.

7 Mr Bourgon, please.

8 MR BOURGON: [11:40:08] Thank you, Mr President. I note for the record that

9 only one person was speaking on the video extracts, (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 The last document, Mr President, I wish to admit is DRC-OTP-0029-0276 and this

14 one is for the purpose of impeachment -- 0275, I think a correction was made. This

15 one is for the purpose of impeachment. (Redacted)

16 (Redacted)

17 PRESIDING JUDGE FREMR: [11:40:53] Ms Samson.

18 MS SAMSON: [11:40:54] Yes, I understand this document has already been

19 admitted but perhaps the court officer could check.

20 PRESIDING JUDGE FREMR: [11:41:01] Court officer, could you kindly verify.

21 THE COURT OFFICER: [11:41:14] DRC-OTP-0029-0275 was admitted as

22 a Prosecution exhibit on 25 February 2016.

23 PRESIDING JUDGE FREMR: [11:41:23] So I suppose now you withdraw your

24 request.

25 MR BOURGON: [11:41:27] Well, it all depends what the position of the Chamber is.

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 I just thought it was important for the record to ensure that we insist on this
2 document, although it is in evidence, for impeachment purposes. Nothing more.

3 PRESIDING JUDGE FREMR: [11:41:38] I think it --

4 MR BOURGON: [11:41:40] If it is not necessary, then I have nothing else,
5 Mr President.

6 This concludes my cross-examination.

7 (Interpretation) Thank you very much, Mr Witness, for having patiently fielded all
8 my questions. I wish you a safe trip. (Redacted)

9 (Redacted) Thank you very much, Mr Witness.

10 THE WITNESS: [11:42:03] (Interpretation) Thank you.

11 PRESIDING JUDGE FREMR: [11:42:04] And now, Ms Samson yesterday you
12 indicated that you would like to request some additional time for redirect. So do
13 you insist on your yesterday request?

14 MS SAMSON: [11:42:14] Not in the same amount of time, Mr President. So I
15 maintain a request to re-examine the witness, but I have re-evaluated over the course
16 of the evening and I am requesting 15 minutes. I seek indulgence to say by noon,
17 I believe I could complete this. It could be a few minutes past 15 minutes, it could
18 be a few minutes below, but I understood that the Chamber would prefer if I
19 complete sooner.

20 PRESIDING JUDGE FREMR: [11:42:48] I'm afraid, Ms Samson, that you were
21 reading our mind, because in fact we were -- we intended to give you 15 minutes.
22 So there is no problem, so you have your 15 minutes. Please proceed.

23 MS SAMSON: [11:43:05] Thank you very much.

24 QUESTIONED BY MS SAMSON:

25 Q. [11:43:08] Mr Witness, I have questions for you for the next 15 minutes or so

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 and I would like first to touch upon an issue that was raised today in relation to the
2 meeting (Redacted). And my first question is one of clarification
3 of our transcript at, in the French transcript, page 19, lines 20 to 21, you said, and I
4 quote in French: (Interpretation) "It was then necessary to create movements that
5 would counter the UPC in the Ituri. And it was notably Uganda that did not want
6 it." That is it.

7 (Speaks English) Sir, I will read that last part again. (Interpretation) "That
8 particularly is what Uganda did not want."

9 Did you say "l'Ouganda ne voulait pas ça" or did you say "Lubanga"?

10 A. [11:44:28] Kindly repeat, please.

11 Q. [11:44:31] Let me read what you said again. You said in French:

12 (Interpretation) "In order to counter the UPC, it was then necessary to create
13 movements that would counter the UPC in the Ituri. That is particularly what
14 Uganda did not want." (Speaks English) Was it -- did you say that Uganda did not
15 want to create another movement to balance the UPC, or did you say that Lubanga
16 did not want the creation of another movement to balance out the UPC?

17 A. [11:45:34] This is what I can say for purposes of understanding. Lubanga did
18 not agree with the creation of another. The UPC was already in the Ituri and was
19 under the leadership of Lubanga. So if another movement or other movements
20 were created, they would undermine the UPC or put them in a situation which he
21 did not want. So that could not have been his internal desire, so to speak. There
22 you have it.

23 Q. [11:46:17] Thank you for the clarification. (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page redacted – Private session

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 A. [11:50:25] (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 Q. [11:51:38] (Redacted)

12 (Redacted)

13 (Redacted)

14 A. [11:52:13] (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 Q. [11:52:50] (Redacted)

19 (Redacted)

20 A. [11:53:10] (Redacted)

21 (Redacted)

22 (Redacted)

23 Q. [11:53:31] Has the UPC ever been accused of refusing to participate in peace
24 talks, to your knowledge?

25 PRESIDING JUDGE FREMR: [11:53:43] Hold on, Mr Witness. Hold on,

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 Mr Witness. Hold on.

2 Mr Bourgon.

3 MR BOURGON: [11:53:50] Mr President, I don't think this question arises from the
4 cross-examination. I never raised the topic as to whether the UPC had been accused
5 of participating or not participating. Thank you.

6 PRESIDING JUDGE FREMR: [11:54:04] Ms Samson.

7 MS SAMSON: [11:54:05] Mr President, my submission is that this is part of whether
8 or not the UPC - I'm trying to choose my words carefully because I know the witness
9 is able to hear - but whether or not the UPC was participating in these kinds of
10 meetings. And we spent quite a bit of time yesterday --

11 PRESIDING JUDGE FREMR: [11:54:33] All right, then. Please proceed. Objection
12 is overruled.

13 MS SAMSON: [11:54:37]

14 Q. [11:54:37] Sir, I will repeat my question: Had the UPC ever been accused of
15 refusing to participate in peace talks?

16 A. [11:54:56] As far as I know, the UPC was not accused, but the UPC effectively
17 participated. (Redacted)

18 (Redacted)

19 (Redacted). So the UPC

20 was not -- was not accused.

21 Q. [11:55:39] You were asked a question today about the principal reason why

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 PRESIDING JUDGE FREMR: [11:56:09] Hold on, Mr Witness. Hold on,

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 Mr Witness.

2 Mr Bourgon.

3 MR BOURGON: [11:56:14] Mr President, I don't think the witness is in a position to
4 answer this question because it was raised both in examination-in-chief, as well as in
5 cross-examination, that he is not aware of any decisions to attack. So whether -- if
6 he is not aware of the decisions, he cannot be aware whether another -- anyone
7 would be in agreement with these orders.

8 PRESIDING JUDGE FREMR: [11:56:40] We will see whether he is aware.

9 Please proceed. Objection is overruled.

10 MS SAMSON: [11:56:45]

11 Q. [11:56:46] Sir, I will repeat my question: (Redacted)

12 (Redacted)

13 A. [11:57:10] (Redacted)

14 (Redacted)

15 (Redacted) The UPC, *as all the Hema were in the UPC, the UPC was fighting against the
16 Lendu, the Lendu against the Hema. The (Redacted) had already been affected. Houses
17 had been burnt (Redacted). Centres were *destroyed. People died.

18 And of course this was sad news (Redacted) and therefore they could not

19 understand how peace could be sought in those circumstances. (Redacted)

20 (Redacted)

21 Q. [11:58:09] Now, I would like to ask you a question about the delegation that

22 Mr Lubanga sent to Lipri -- well, to investigate the massacre in Lipri. Do you know

23 if the -- if Mr Lubanga sent FPLC military leaders on that mission to investigate the

24 massacres allegedly committed by the UPC?

25 A. [11:58:51] Well, Lubanga instant -- sent the national secretaries Amboko,

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 Tinanzabo, Lilo, they are the ones who went on the field in that regard.

2 As far as I know, I am not sure whether any other such investigations were
3 conducted on the ground.

4 Q. [11:59:17] Now --

5 PRESIDING JUDGE FREMR: [11:59:19] Hold on, Ms Samson. Mr Bourgon.

6 MR BOURGON: [11:59:22] Mr President, for the record, I object to the last question.

7 I let it go because we want, of course, the witness's answer. But the question was
8 put in terms of investigating a massacre. What is on the record is not investigating
9 a massacre; it is investigating what some members -- some Lendu members of the
10 government reported as being an attack in the centre of Lipri. So by using the word
11 "massacre," we are trying to lead the witness, so I just oppose the use of this word.

12 Thank you.

13 JUDGE FREMR: [11:59:53] Well noted.

14 Ms Samson.

15 THE INTERPRETER: [11:59:58] Message from the interpreters: In the previous
16 answer, the witness indicated that he wasn't aware whether the FPLC had conducted
17 any investigations on the ground.

18 PRESIDING JUDGE FREMR: [12:00:10] Fine. Now you may proceed, Ms Samson.

19 We waited for the additional interpretation.

20 MS SAMSON: [12:00:16] Yes. Thank you. I propose to continue. I can check,
21 but my recollection was that there was a word used by the witness, but I don't have
22 it handy. But I was going to move on to another topic.

23 Q. [12:00:31] Sir, you were asked during your cross-examination - and I'm
24 referring to the transcript at T-187, page 11, line 22, to page 12, line 2, you were
25 asked whether you knew Bosco Ntaganda since the year 2000 and you said, "Correct,

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 because he was working for the presidency." And which presidency was

2 Bosco Ntaganda working for?

3 A. [12:01:07] Bosco Ntaganda worked for the UPC presidency on the side of the
4 president.

5 MS SAMSON: [12:01:19] And in response to the last objection, Mr President, at
6 T-185, page 24, lines 4 to 14, the witness indicated that he received information
7 speaking of a massacre which had been perpetrated in Lipri.

8 PRESIDING JUDGE FREMR: [12:01:34] Well noted as well. Thank you.

9 MS SAMSON: [12:01:39] Mr President, I have one remaining question but I think I
10 have exceeded my 15 minutes.

11 PRESIDING JUDGE FREMR: [12:01:44] One question is fine.

12 MS SAMSON: [12:01:46] Thank you.

13 Q. [12:01:48] Sir, in transcript T-187, at pages 9 and 10, you were asked questions
14 about a document dated 17 April 2002 denouncing the fact that key positions in Ituri
15 were held by non-originaire, people not from Ituri. And you were asked whether
16 the issue of key posts being held by non-originaire was linked to the ethnic conflict,
17 and you responded that, quote: "At the beginning there wasn't really an ethnic
18 connotation to it."

19 When you refer to it as not having an ethnic connotation at the beginning, I would
20 like to know whether that changed in any way.

21 A. [12:03:07] Well, it did not really change, because the Ituri was under the care
22 of the RCD-K/ML, under Mbusa. *And if the Iturians were unanimous regarding
23 this problem, because the problem concerned all of Ituri. The sons of the Ituri
24 would have been expected to occupy political and strategic positions, but
25 unfortunately that was not the case.

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 Q. [12:03:46] Were the Nande considered originaire or non-originaire of Ituri?

2 A. [12:03:55] Please repeat your question again.

3 Q. [12:04:00] Were the Nande considered originaire or non-originaire to Ituri?

4 A. [12:04:12] The Nande are non-natives of the Ituri. They are from the north
5 Kivu.

6 PRESIDING JUDGE FREMR: [12:04:18] Thank you.

7 Now, Mr Bourgon, any need for re-examination?

8 MR BOURGON: [12:04:30] One question, Mr President.

9 PRESIDING JUDGE FREMR: [12:04:34] All right.

10 QUESTIONED BY MR BOURGON:

11 MR BOURGON: [12:04:42] (Interpretation)

12 Q. [12:04:43] Mr Witness, I just want to revisit quickly this question that was put
13 to you by my colleague with a view to clarifying the record. You mentioned today
14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 A. [12:05:26] (Redacted)

20 MR BOURGON: [12:05:30] (Interpretation) Thank you very much, Mr Witness.

21 PRESIDING JUDGE FREMR: [12:05:38] And just one question from my part,
22 (Redacted)

23 (Redacted)

24 THE WITNESS: [12:05:55] (Interpretation) (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Private Session)

ICC-01/04-02/06

1 PRESIDING JUDGE FREMR: [12:06:10] Yes.

2 THE WITNESS: [12:06:13] (Interpretation) So far, no. No. No consequences on
3 me. No.

4 PRESIDING JUDGE FREMR: [12:06:24] Do my colleagues have any questions to the
5 witness? No.

6 So, Mr Witness, it concludes your testimony, after a long time you spent with us. I
7 would really highly appreciate your approach that even of some health troubles you
8 agreed several times to extend our sessions. So thank you very much. Thank you
9 for patiently responding to so many questions. And I firmly believe that your
10 testimony will assist the Chamber in its effort to find the truth. So thank you very
11 much.

12 THE WITNESS: [12:07:11] (Interpretation) I also want to thank you. And, as I said
13 before, I hope that my testimony can somewhat contribute to shedding light in these
14 matters for the Court so that things can go well for the Ituri. I thank you.

15 PRESIDING JUDGE FREMR: [12:07:32] Thank you once more, Mr Witness, and
16 now we can cut the line.

17 (Video link disconnected)

18 PRESIDING JUDGE FREMR: [12:07:47] And now let's move into open session.

19 (Open session at 12.07 p.m.)

20 THE COURT OFFICER: [12:08:00] We are in open session, Mr President.

21 PRESIDING JUDGE FREMR: [12:08:06] Thank you, court officer. First of all, one
22 minor correction to the transcript page, of the English version, 44 line 12, instead of
23 "leading" it should be "reading".

24 And now the main issue, we will now deliver our oral decision on in-court
25 protective measures for Witness P-0043, which is going to start his testimony on

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Open Session)

ICC-01/04-02/06

1 Monday.

2 It is the oral ruling on the Prosecution request for protective measures for
3 Witness P-0043 contained in filing number 1686. The Prosecution requests face and
4 voice distortion as well as the use of a pseudonym.

5 In filing number 1703, the Defence opposes the protective measures requested on
6 two bases: First, that the Prosecution fails to demonstrate any objectively
7 justifiable risk of post-testimonial retaliation and, second, due to the Prosecution's
8 alleged late disclosure of investigation notes referring to confidential security
9 related information of the witness.

10 On 26 January 2017 the Chamber received the VWU's in-court protective measures
11 assessment for P-0043 in which it recommends that the same protective measures
12 sought by the Prosecution be granted. No special measures were recommended in
13 the VWU's vulnerability assessment which was received by the Chamber on
14 24 January 2017.

15 The Chamber incorporates by reference the applicable law set out in its first
16 decision on protective measures which has filing number 824 and which I shall refer
17 to as the first decision. In assessing whether there exists an objectively justifiable
18 risk, the Chamber recalls that it has previously held that the general security
19 situation in a region may be a relevant consideration in respect of specific witnesses.

20 In so doing, the Chamber has frequently referred to Registry reports outlining the
21 security issues in the Ituri region as it did in its first decision, noting this to be an
22 area where former UPC/FPLC militia members and supporters of the accused are
23 present or continue to have influence.

24 The Chamber observes that the witness is stated to live in an area which appears to
25 be reasonably removed from this region. The Chamber therefore does not consider

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Open Session)

ICC-01/04-02/06

1 that the risk to the witness based on his current area of residence has been
2 sufficiently substantiated. The Prosecution puts forward certain alleged
3 security-related incidents which had occurred in 2002 in support of its current
4 request.

5 However, although the witness's prior involvement with the Court is publicly
6 known, the Chamber notes that no allegations of threats or interference have been
7 made in relation to the witness since his 2005 statement was given.

8 Indeed, while the Chamber has previously held that the level of risk to witnesses
9 may fluctuate over time and in relation to the specificities of different cases and
10 therefore need to be assessed on case-by-case basis, the Chamber notes that
11 the Prosecution's submissions as to the current level of risk to the witness contained
12 in annex D to the request are also based solely on the witness's own assessment and
13 opinion.

14 The Chamber considers further that the VWU assessment also appears to be
15 primarily based on the witness's own assessment of his security situation. While
16 the subjective fears and opinions of the witness may be relevant to the Chamber's
17 assessment of risk, they are not determinative and the Chamber does not consider
18 that in the present situation these submissions show an objectively justifiable risk in
19 the absence of any additional supporting material.

20 In this connection, while noting the unique nature of the witness's anticipated
21 evidence and stated position, the Chamber does not consider that the Prosecution
22 has adequately demonstrated the way in which these factors will impact on his level
23 of risk.

24 Therefore, while the Chamber recalls that a prior direct threat is not a prerequisite
25 to determining that a witness faces an objectively justifiable risk, the Chamber does

Trial Hearing
WITNESS: DRC-OTP-P-0005

(Open Session)

ICC-01/04-02/06

1 not consider, in light of the material before it and given the witness's current
2 location and the nature of the expected testimony, that it has been established that
3 an objectively justifiable risk to the witness or his family exists.

4 In the present circumstances, the Chamber rejects the request. In so finding,
5 the Chamber acknowledges the courage required to testify publicly before it and is
6 grateful for witnesses who are in a position to do so.

7 This concludes the Chamber's ruling.

8 So now we exhausted the agenda for today. If there are no further requests for the
9 floor, and I don't see any request for the floor, we can now adjourn till tomorrow
10 9.30, when we will continue with testimony of the witness -- sorry, Monday, 9.30,
11 when we will continue with testimony of the Witness P-0043.

12 And now court is adjourned.

13 THE COURT USHER: All rise.

14 (The hearing ends in open session at 12.15 p.m.)

15 RECLASSIFICATION REPORT

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