

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 International Criminal Court
2 Trial Chamber VI
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and
6 Judge Chang-ho Chung
7 Trial Hearing - Courtroom 2
8 Friday, 14 July 2017
9 (The hearing starts in open session at 9.46 a.m.)
10 THE COURT USHER: [9:46:04] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: [9:46:32] Good morning, everybody.
14 Court officer, please call the case.
15 THE COURT OFFICER: [9:46:40] 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 And for the record, we are in open session.
19 PRESIDING JUDGE FREMR: [9:46:52] Thank you, court officer.
20 Appearances, please.
21 MS SAMSON: [9:46:55] Good morning, Mr President. Good morning, your Honours.
22 Appearing for the Prosecution today are Mr Rens van der Werf, Ms Dianne Luping,
23 Ms Selam Yirgou, Ms Claudine Umurungi, Ms Marion Rabanit and myself,
24 Nicole Samson.
25 PRESIDING JUDGE FREMR: [9:47:12] Thank you, Ms Samson.

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1 Defence, please.

2 MR BOURGON: [9:47:16] (Interpretation) Good morning, Mr President.

3 Representing Bosco Ntaganda, who is present in the courtroom this morning,

4 Ms Victoria Cichalewska, Mr David Wagen-Magnon, Mr Justin Kabika,

5 Mr Benjamin Nodet, Maître Isabelle Martineau and myself, Stéphane Bourgon.

6 Thank you, Mr President.

7 PRESIDING JUDGE FREMR: [9:47:39] Thank you, Mr Bourgon.

8 And Legal Representatives of Victims, please.

9 MS PELLET: [9:47:46] (Interpretation) Thank you, Mr President. Former child

10 soldiers are represented by Vony Rambolamanana and myself, Sarah Pellet, counsel at the

11 OPCV.

12 MR SUPRUN: [9:47:59] (Interpretation) Good morning, Mr President. Good

13 morning, your Honours. For the victims of the attacks, today Anne Grabowski, associate

14 jurist, and myself, Dmytro Suprun, counsel at the OPCV.

15 PRESIDING JUDGE FREMR: [9:48:12] Thank you, Ms Pellet. Thank you, Mr Suprun.

16 Today we are going to proceed with the next part of cross-examination of Mr Ntaganda

17 by Prosecution.

18 Ms Samson, you have the floor.

19 MS SAMSON: [9:48:28] Thank you, Mr President.

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21 (The witness speaks Swahili)

22 QUESTIONED BY MS SAMSON: (Continuing)

23 Q. [9:48:31] Good morning, Mr Ntaganda.

24 A. [9:48:37] Good morning.

25 Q. [9:48:42] For my next series of questions, I'll be asking you in relation to your

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1 membership in the APC. And for my first question, I'd like to confirm your statement
2 that you were a founding member of the APC, the army of the RCD?

3 A. [9:49:19] Yes.

4 Q. [9:49:20] And you were a part of the people who set up the armed branch of the
5 APC; correct?

6 A. [9:49:43] When it was created, I was one of those who created the armed wing, but
7 I was not the number one of that armed wing.

8 Q. [9:50:02] And I understood from your testimony that the only force of the RCD-Kis
9 at that time was the PPU, or the Presidential Protection Unit, which was a battalion that
10 you led yourself; is that right?

11 A. [9:50:32] Yes.

12 Q. [9:50:32] And you were a high-ranking officer at the time; correct?

13 A. [9:50:47] I was a battalion commander.

14 Q. [9:50:49] And that was a high-ranking officer position at the time; correct?

15 A. [9:51:05] No, because you have the brigade commander, you have the division
16 commander, and I was just an officer in charge of a battalion. That is not a high-ranking
17 position within the military hierarchy; it is actually the first rank of senior military
18 officers.

19 Q. [9:51:42] Yes. And I'd like to take you to what you said in examination-in-chief
20 on that point. And I'm referring to your testimony at transcript T-211, page 47,
21 lines 2 to 8. And you stated -- actually, lines 4 -- just line 4. Your answer was:
22 "No, I was a senior officer, a senior commander in the RCD-K/ML."

23 Is that what you stated, sir?

24 A. [9:52:45] Yes, the rank of major is where the senior officers' ranks begin. And
25 that's what happens under the British-type army under which I was trained.

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- 1 MS SAMSON: [9:53:05] Mr President, for my next series of questions, we may need to
2 move into private session since the topic was covered in private session initially.
- 3 PRESIDING JUDGE FREMR: [9:53:15] All right.
4 Court officer, let's move into private session now.
- 5 (Private session at 9.53 a.m.) *(Reclassified partially in public)
- 6 THE COURT OFFICER: [9:53:30] We are in private session, Mr President.
- 7 PRESIDING JUDGE FREMR: [9:53:37] Thank you, court officer.
- 8 Ms Samson, please proceed.
- 9 MS SAMSON: [9:53:41] Thank you.
- 10 Q. [9:53:44] (Redacted)
11 (Redacted)
- 12 A. [9:54:07] (Redacted)
- 13 Q. [9:54:10] (Redacted)
- 14 A. [9:54:21] (Redacted)
15 (Redacted)
- 16 THE INTERPRETER: [9:54:34] (Redacted)
- 17 MS SAMSON: [9:54:40] (Redacted)
18 (Redacted)
- 19 A. [9:54:53] (Redacted)
20 (Redacted)
- 21 Q. [9:55:11] (Redacted)
22 (Redacted)
- 23 A. [9:55:28] (Redacted)
- 24 Q. [9:55:46] (Redacted)
25 (Redacted)

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1 (Redacted)

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8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 A. [9:57:39] Yes. Yes, I agree, that was my testimony.

15 MS SAMSON: [9:57:45] Mr President, we may be able to move back in public session,
16 with your leave.

17 PRESIDING JUDGE FREMR: [9:57:50] For sure.

18 Court officer, let's return back into open session.

19 (Open session at 9.57 a.m.)

20 THE COURT OFFICER: [9:57:58] We are back in open session, Mr President.

21 PRESIDING JUDGE FREMR: [9:58:11] Thank you, court officer.

22 Ms Samson, you may proceed.

23 MS SAMSON: [9:58:17] Tibasima was also with the RCD-Kisangani; correct?

24 A. [9:58:34] I did not see him in Kisangani. I saw him instead in Bunia.

25 Q. [9:58:40] And so when you saw him in Bunia at that time had the RCD-Kisangani

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1 changed to the RCD-K/ML or is it still the RCD-Kisangani?

2 A. [9:59:10] I think RCD-Kisangani and RCD-K/ML are one and the same group.

3 K/ML refers to Kisangani, so RCD-Kisangani.

4 Q. [9:59:25] And so coming back to my question, Tibasima was also within the
5 RCD-Kisangani?

6 A. [9:59:44] We didn't spend much time in Kisangani. I didn't see him in Kisangani.
7 However, I got to see him in Bunia when he was the minister of finance. I don't
8 remember having seen him in Kisangani.

9 Q. [10:00:00] There may be an issue in relation to the interpretation of my question.
10 I'm not asking about whether you saw Tibasima in Kisangani, but whether he was part of
11 the group RCD-K or RCD-Kisangani, the group itself?

12 A. [10:00:32] I don't know whether he was a member of the RCD-Kisangani and at
13 what time. All I know is that I saw him in Bunia and at that time he was a member of the
14 RCD-Kisangani.

15 Q. [10:00:45] And Tibasima did not have a military background; is that right?

16 A. [10:01:03] No, I never saw him involved in the army.

17 Q. [10:01:07] And Tibasima was Hema south; is that right?

18 A. [10:01:24] Yes, he is Hema south.

19 Q. [10:01:33] Now, while you were still in Kisangani and at the time of your
20 promotion to battalion commander over the PPU, you took the lead on operational
21 matters; is that right?

22 A. [10:02:10] Yes, when the Ugandans appointed me battalion commander PPU, I
23 took up the office of battalion commander.

24 Q. [10:02:37] And in that position you participated in a battle in which
25 Wamba Dia Wamba was injured and in which you, yourself, were injured in the line of

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1 duty; correct?

2 A. [10:03:02] No. Wamba Dia Wamba was not injured. I am the one who was
3 injured.

4 Q. [10:03:40] And as a result of the operation, you were promised a promotion, were
5 you not, to brigade commander because of the success of your operation and your
6 military capacities; correct?

7 A. [10:04:13] It is upon my return from South Africa that the Ugandans proposed to
8 promote me to the position of brigade commander. This was done by the UPDF
9 Ugandans.

10 Q. [10:04:29] Was that not done in 1999, sir, that promise made to you?

11 A. [10:04:45] No. I was injured when I was battalion commander. I went to South
12 Africa. Upon my return from South Africa and before I went to Bunia, the UPDF
13 proposed to me the position of brigade commander which I would take up in Bunia.

14 Q. [10:05:16] You indicated in your direct examination that there was a Ugandan
15 colonel who had made this proposal. Was it Colonel Ikondere; is that his name?

16 A. [10:05:44] Madam could you please read the excerpt of the transcript in order to
17 guide me?

18 Q. [10:05:49] Certainly, I will. But while I'm looking that up, was there a Ugandan in
19 particular in the UPDF who proposed your appointment to brigade commander?

20 A. [10:06:17] Yes, his name is Ikondere.

21 Q. [10:06:22] Isn't it right that Ikondere made this proposal in 1999 before you went to
22 Bunia?

23 A. [10:06:49] No, I think that it is when I returned from South Africa that the proposal
24 to that position was made to me. I arrived in Bunia in 2000, but he had already
25 promoted me to that position. That is why I have asked you to kindly re-read the

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1 transcript in order to be properly guided.

2 Q. [10:07:26] Aren't you aware, sir, that Colonel Ikondere died in November 1999?

3 A. [10:07:51] At the time of his death I was still in Uganda; I hadn't gone to Bunia. I
4 had not fully recovered. He was supposed to go ahead and I was supposed to follow
5 him. By the way, I attended his funeral in Mbarara and after the burial I went to Bunia.
6 So what you say is correct. He died in Beni and I remember that clearly.

7 Q. [10:08:17] So if Colonel Ikondere died in November 1999, don't you think it more
8 likely that he made this proposal that you be brigade commander prior to his death?

9 A. [10:08:41] Yes, because I returned from South Africa, he made that proposal, and
10 then he left. I was supposed to follow him, getting ready to take up my duties, and then
11 the news of his death broke and that's why I left in 2000 and landed in Bunia in 2000,
12 because I attended his funeral in his village in am Mbarara. At that time I didn't even
13 know where Bunia was located.

14 Q. [10:09:16] Sir, in the transcript today at page 9, lines 8 to 9, you said -- actually, I'll
15 go a bit earlier to cover my question, lines 6 to 9. I asked you:

16 "Isn't it right that Ikondere made this proposal in 1999 before you went to Bunia?"

17 And your answer was: "No. I think it is when I returned from South Africa that the
18 proposal to that proposition was made to me. I arrived in Bunia in 2000."

19 So I'm going to ask you again, sir, would you not agree that the proposal to make you
20 brigade commander was done in 1999 before you went to South Africa for treatment and
21 certainly before you went to Bunia?

22 A. [10:10:22] Madam, please read carefully. I said that I was made the promise when
23 I was in Uganda upon my return from South Africa. You didn't ask me on what date I
24 returned from South Africa. I don't even remember at what time I returned from South
25 Africa. One thing I know, which is clear to my mind, is that I arrived in Bunia in 2000,

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1 but before Ikondere died he had promised -- or, he had promoted me to that function
2 before his death, so I don't see where the problem arises on this matter.

3 PRESIDING JUDGE FREMR: [10:11:16] Mr Bourgon.

4 MR BOURGON: [10:11:18] It's just a quick part of translation, Mr President. I'd just
5 like to bring to the attention page 11, lines 4 is different in English and in French, but I
6 don't want to interrupt my colleague.

7 PRESIDING JUDGE FREMR: [10:11:31] Maybe if you ask for the floor you should
8 mention what is the difference.

9 MR BOURGON: [10:11:37] Well, the difference is Mr Ntaganda said you -- in English it
10 says, "Madam, please read carefully", whereas in French it says, "Madam, you read very
11 well".

12 PRESIDING JUDGE FREMR: [10:11:54] Okay, I see the difference.
13 Ms Samson.

14 MS SAMSON: [10:11:58] Thank you.

15 Q. [10:12:29] Sir, is it correct that you returned from South Africa in January of 2000?

16 A. [10:12:56] Maybe given that a number of days have gone by I may have been
17 mistaken. If I said that in relation to my return from South Africa. What I know is that
18 I returned from South Africa to Uganda, where I spent a number of days. And while I
19 was there, Ikondere died after having proposed to promote me to that position, and then
20 he died thereafter.

21 Q. [10:13:32] Sorry, sir, it's my error in the date in which you returned. I think it may
22 be better if I read exactly what you said before. So in transcript T-211, page 45,
23 lines 2 to 25, you said:

24 "Question: Now, within the PPU, did you take part in any other fighting and what
25 happened after that?

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1 Answer: Yes, I do remember. In 1999, I think it was towards the end of the year, late in
2 1999 there was a major battle and once there was a ceasefire, that was in the evening, you
3 see, there were clashes for two days. And once a ceasefire was put in place one shell
4 came in from very far away, and I was protecting Wamba Dia Wamba and the others
5 within the complex, and the shell fell and I was hurt. I was hit by shrapnel and I was
6 wounded.

7 Question, and what was the nature of your injury?

8 Answer: Well, it's called -- it was a piece of shrapnel -- a shrapnel wound between here
9 and my neck. It hit a nerve. The nerve that triggers my tongue and even now another
10 hit my leg. One piece of shrapnel hit my back, so you see I didn't eat for several days. I
11 was weak. I was out of commission for a week. I was under medical. I was receiving
12 an IV drip and then I was sent for care overseas and I received medical care out of the
13 country, abroad.

14 Question: Can you explain to us where you were treated abroad and who gave you the
15 treatment?

16 Answer: I was sent -- well, I wasn't the only one, several of us had been wounded. We
17 received medical care in Uganda and then after that I and a politician from the RCD-K/ML
18 were transferred to South Africa.

19 And how long was your convalescence?

20 Answer: I left that place once I felt better and by then it was July of the year 2000. So
21 during that entire time I was receiving medical treatment up until July of the year 2000."

22 Sir, my question to you is this, and it is the last one I have on this point: You, as I
23 understand your testimony, which I've just read, were injured in late 1999 and you went
24 to Uganda before being transferred to South Africa. At that time, I suggest to you that
25 you met with Colonel Ikondere who, with Wamba's approval, promised you a promotion

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1 to brigade commander because of your heroic and deserved military accolade during that
2 operation. You went to South Africa and you never saw Colonel Ikondere again because
3 he died and you returned to Bunia in July of 2000. Now, that's correct, isn't it?

4 A. [10:17:01] I'm afraid that that is not correct, there's an untruth. I was injured
5 towards the end of 1999. I travelled to South Africa and returned to Uganda, where I
6 continued to receive treatment. Now, when I left South Africa, there's no mention there
7 of the date of my return, but when I returned Ikondere made that proposal, he then died
8 and I stayed in Uganda at that point in time before going to Bunia in July. I'm perfectly
9 clear about my movements from Kisangani to South Africa and my return to Bunia. I
10 even attended Ikondere's funeral, who was a friend.

11 Q. [10:17:58] Well, sir, I can only go by what your testimony was in direct, and there
12 you said that you went to South Africa and during the entire time until July 2000 you
13 were receiving medical treatment. So is what you said in direct incorrect or is what
14 you're saying now incorrect?

15 A. [10:18:32] But tell me where I was receiving medical treatment until July. Please
16 read what the transcript says. Where was I receiving medical treatment? I returned to
17 Uganda. I was there. I was receiving treatment because I was not yet healed. I was
18 given a house to stay in while receiving medical treatment. And I recall meeting
19 Ikondere and going to see Wamba Dia Wamba, who promoted me, who made the
20 suggestion that I become a brigade commander in Bunia. When Ikondere went to Beni,
21 he was killed by my forces.

22 Q. [10:19:30] Now, when -- while you were convalescing in South Africa until 2000,
23 the RCD-Kis moved from Kisangani to Bunia; correct?

24 A. [10:19:54] I didn't say that I stayed in South Africa for medical treatment through
25 into 2000. I went to South Africa for medical treatment and then I returned to Uganda

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1 until 2000 before moving to Bunia.

2 Now, when I was in Bunia, the RCD had moved and had established itself there because
3 they had been driven out of Kisangani.

4 Q. [10:20:28] Now, my -- the core of my question, sir, was whether or not while you
5 were convalescing, the RCD-Kis moved its headquarters and operations out of Kisangani
6 and into Ituri. Is that right?

7 A. [10:20:57] No. First of all, I left South Africa and then I met with
8 Wamba Dia Wamba, who had taken a refuge in Uganda with Mbusa. When he went to
9 Bunia, he left me in Kampala and he knew that I would become the brigade commander
10 in Bunia. So they left me in Kampala whilst I continued to receive treatment. I waited
11 to recover before following them to Bunia and taking up my new post.

12 Q. [10:21:46] So it's right that the RCD-Kis moved its headquarters to Bunia; that's
13 right, I think, based on your last answer, isn't it?

14 A. [10:21:59] Yes.

15 Q. [10:22:15] Now, as you've explained in your testimony, you and other Hema and
16 Tutsi officers mutinied from the APC in the summer of 2000. Yesterday we spoke of
17 several of the officers with whom you were. You also mentioned previously in your
18 direct examination a person by the name of Zaïrois. What was his ethnic origin?

19 A. [10:22:52] Zaïrois was Tutsi as well. He was part of the Wamba Dia Wamba camp,
20 but he was mistreated, he almost died, and so he fled during the period that we were in
21 Bunia.

22 Q. [10:23:16] And you also referred to a person by the name of Musa. What was his
23 ethnic origin?

24 A. [10:23:27] He was a Tutsi from our area, from Masisi.

25 Q. [10:23:37] When you were meeting with Bagonza about the force that you were

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1 going to set up, you spoke about the dangers that you were all in; correct?

2 A. [10:24:10] Yes, we felt that we were in danger and that's the reason why we were
3 there.

4 Q. [10:24:16] Bagonza was a company commander, was he, in the APC?

5 A. [10:24:32] Yes. He was a company commander in the APC, that's correct.

6 Q. [10:24:42] And when you met with him, you told him that together you would
7 attack Wamba's troops and then sit down to explain your problems?

8 A. [10:25:09] When I arrived, what I said about that was clear. Perhaps you can
9 remind me of how it was captured in the transcript.

10 So we sat down and we made a plan and I was appointed their leader, or I was involved
11 in the planning because they had chosen me as their leader.

12 Q. [10:25:38] Yes, I can read out the portion of the transcript, as you've requested, on
13 this point.

14 What you said at T-212, page 38, starting at line 15 through to line 17, was as follows:

15 "Now, before this company was at my disposal we will attack" -- sorry, I'll start again:

16 "Now, before this company is at my disposal and we will attack the troops of

17 Wamba Dia Wamba, and the UPDF and Wamba Dia Wamba are going to summon us,

18 and we will sit down and we will explain our problems."

19 Is that accurate?

20 A. [10:26:37] What period does that relate to? Is that the period where I was with
21 Bagonza or at Sota or at Nyankunde? Which period does your question relate to?

22 Q. [10:26:54] My question relates to your evidence about your initial meeting with
23 Bagonza to discuss moving into the bush, and my understanding of your evidence is that
24 that meeting took place where Bagonza was, which was in Nyankunde. Do you
25 remember having a meeting with Bagonza in Nyankunde?

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1 A. [10:27:27] Could you direct me to the transcript, madam, so that I can be sure of
2 what's happening?

3 Q. [10:27:34] Sir, I can do that, of course, but do you on your own remember having
4 had a meeting with Bagonza in Nyankunde before moving to the Sota bush and
5 explaining in great detail to the Chamber over a number of minutes about that meeting?
6 Do you have any independent recollection of that?

7 PRESIDING JUDGE FREMR: [10:28:00] Mr Bourgon.

8 MR BOURGON: The issue, Mr President, is not whether he has an independent
9 recollection. The idea is the witness requested to know what he said so that he can give a
10 clear answer, and my colleague ought to put the lines that the witness is requesting to him
11 so that he can confirm or not confirm whatever he said before. Thank you.

12 PRESIDING JUDGE FREMR: [10:28:22] Ms Samson.

13 MS SAMSON: [10:28:23] Mr President, I do have lines and I have read some lines to
14 the witness, but this examination will be extremely lengthy if the witness has zero recall of
15 general information he provided to the Chamber just days ago. And in my submission,
16 it is an insufficient answer to my question, to continually tell me he remembers nothing
17 until I read back the transcript on general topics.

18 PRESIDING JUDGE FREMR: [10:28:54] Mr Bourgon.

19 MR BOURGON: [10:28:55] Mr President, Mr Ntaganda is the accused in this case.
20 He's acting in a very fair manner. He wants to be sure before he says anything. I advise
21 him to do so. I advise him, "Make sure you understand the question and what is put to
22 you before you say anything", and that's what he is doing, and that is quite fair for him to
23 do so. Thank you, Mr President.

24 PRESIDING JUDGE FREMR: [10:29:19] Mr Ntaganda, I am just now commenting on
25 this issue at a general level. As soon you agreed to testify as a witness, it's your

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1 obligation not only to speak truth, but also not to say that you don't remember if you
2 would remember. If you would be intentionally silent about something that you can
3 speak about, it would be also a violation of your obligation. So please have it in mind.
4 I'm not saying that in this case it's the situation I described. But please take this caveat.
5 Now, Ms Samson, please proceed.

6 MS SAMSON: [10:30:16] Thank you, Mr President.

7 Q. Sir, is it right that you met with Bagonza in Nyankunde prior to setting up the Chui
8 mobile force?

9 A. [10:30:38] Yes. We met and I recall saying, and I would repeat it, we were sitting
10 together, I was chosen, and we set up a force. We also set up an organisation.
11 Now, as regards the question that you put to me, I asked you to remind me what period
12 of time you were referring to in relation to this event. This is what I said regarding the
13 first meeting when we set up the force. So I'd like you to establish what the point in time
14 is before I answer.

15 Q. [10:31:28] Well, sir, I think you established the point in time in your direct
16 examination-in-chief. You said that this was in 2000. Is that wrong?

17 A. [10:31:49] We discussed many different topics. We left Nyankunde to enter the
18 bush at Sota. We then carried out an attack, a liberation attack. We captured a number
19 of people who I went on to release. We talked about a lot of different things. So I don't
20 know what point in time what you're asking me about now took place.

21 Q. [10:32:27] I'm still speaking about the meeting that you had with Bagonza in
22 Nyankunde in 2000 prior to setting up the Chui mobile force, and you had indicated in
23 your testimony that Kisembo and some bodyguards were with you. Does that help
24 situate you in time for my questions that are to come?

25 A. [10:33:00] You're referring to Kisembo and bodyguards. I don't remember saying

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1 that Kisembo was accompanied by his bodyguards. That I don't recall. He had
2 bodyguards when he was at the headquarters. When we mutinied in 2002, that's the
3 point in time that he sent me to Mandro and I recall that he had bodyguards then. But as
4 regards the point in time when he was in Nyankunde, I don't recall that he came in the
5 company of bodyguards.

6 Q. [10:33:44] In fairness to you, sir, that's right. I had misread that portion of the
7 transcript. You indicated that you travelled to Nyankunde with Kisembo and that your
8 bodyguard had already been killed. So I do make that correction.

9 But I'd like to know if what we've discussed in the two questions just now helps situate
10 you in time. Are you clear about what period of time we're discussing now?

11 A. [10:34:30] Madam, I think it's difficult to understand it because you're mixing up
12 different matters. You referred to Kisembo's bodyguards and you referred to Kisembo
13 being present at a meeting in Nyankunde and then you referred to events which took
14 place in March. So it's difficult to distinguish one thing from the other, but I will try and
15 answer you as the -- as the Presiding Judge instructed.

16 Q. [10:35:10] Yes. And I want to focus your attention on this meeting that you had
17 with Bagonza, Kisembo was present, and you're discussing with him, as you've said today,
18 the dangers that you were in. That's the period of time that I'm referring to. Are you
19 clear about that, just that meeting?

20 A. [10:35:47] I don't recall that we spoke about that danger during that meeting. We
21 spoke about that danger when I was speaking with Kisembo before we went to Sota. I
22 recall that I chose those who would bear responsibilities and I was responsible for the
23 operations. Bagonza was the 2IC and Tchaligonza was the IS. We set up that structure
24 because we were in danger.

25 And during the meeting that you're referring to we were discussing and taking the

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1 decision to go to Sota. The -- I can add that Kisembo was a G4, note from the Swahili
2 interpreter.

3 Q. [10:37:10] On the -- the issue of the meeting of Bagonza was discussed in your
4 testimony in chief at transcript 212. It starts at line 3 and it continues for some time
5 through page 37 and 38. And I'll just read a part of it. You were first asked a question,
6 lines 2 to 4:

7 "Mr Ntaganda, we will now continue. You were saying that you wanted to get to
8 Nyankunde. Why Nyankunde? What was going on there?"

9 And you said, at line 10 to 13:

10 "So we went to Bagonza and he was being threatened, you see, to be stripped of his duties,
11 so that's why I made the decision. I knew that he could help us get the men, and with
12 those men we could respond and even ask the question, why are we being harassed?
13 Why are people out to get us?"

14 And it continues on lines 14 to 18:

15 "Question: And when you travelled to Nyankunde with Kisembo, did you have any
16 escorts with you at that time?"

17 And you answered:

18 "When we went, I was just with him. My bodyguard had already been killed. I did not
19 have another one."

20 And then I move forward to page 37, lines 13 to 17:

21 "We got there at night, Bagonza's home, and we woke him up. He was a sleep. And we
22 said to him, well, they explained why we were there, and they called his AIS. Kasangaki
23 was that person's name. I think those were the people that we talked in the house, in
24 Bagonza's house in Nyankunde. We talked in the house of Bagonza. That was his base.
25 They had their base there. His company's base was there."

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1 And then on page 38, starting at line 3 you're asked:

2 "Please explain what happened, just in a few words, when there was this meeting with
3 Bagonza."

4 PRESIDING JUDGE FREMR: [10:39:23] Ms Samson.

5 THE COURT OFFICER: [10:39:25] Just to ask you to slow down a bit when you are
6 reading. Thank you.

7 MS SAMSON: [10:39:30] Yes. Apologies.

8 Q. So at page 38, line 3 you were asked:

9 "Please explain what happened, just in a few words, when there was this meeting with
10 Bagonza. What did you decide to do and how?"

11 And you answered, starting at line 5:

12 "Yes, I was the one who spoke. I explained the dangers that we were in."

13 And then continuing at line 15 through 19:

14 "Now before this company is at my disposal and we will attack the troops of
15 Wamba Dia Wamba, and the UPDF and Wamba Dia Wamba are going to summon us,
16 and we will sit down and we will explain our problems. He was pleased. He wanted to
17 do it, actually, but he didn't have the strength of mind. You have reinforced my
18 determination. He agreed and he said, 'Okay, now you will tell us that you will be our
19 leader; you will tell us what to do.' So I was chosen to be their leader at that time."
20 Sir, that's the meeting that I was discussing, and it's right, isn't it, that at that meeting you
21 mentioned to Bagonza, you talked, you spoke and you said -- you spoke to him about the
22 dangers that you were in. That was at that meeting in Nyankunde at Bagonza's house;
23 correct?

24 A. [10:41:18] Yes, the reason why we took to the bush was because we were in danger.
25 I never denied that.

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1 Q. [10:41:25] No, you just deny the point in time in which you had that discussion,
2 but I think you agree now that that discussion was held --

3 PRESIDING JUDGE FREMR: [10:41:34] Ms Samson, please, you know, it's up to the
4 Chamber to evaluate if somebody is denying or not. I think it shouldn't be up to you.

5 MS SAMSON: [10:41:44] Certainly. Yes, your Honour.

6 Q. [10:41:46] Now, what we just read through was that Bagonza had told you that
7 you had helped reinforce his determination because he wanted to do something but he
8 didn't have the strength of mind. That's right, isn't it?

9 A. [10:42:19] No. They wanted to strip Bagonza of his responsibilities, so we went to
10 see Bagonza and he immediately agreed that we should go to the bush. He never
11 refused.

12 Q. [10:42:44] That's right, he didn't refuse. In fact, he was pleased because he had
13 wanted to do something but he didn't have the strength of mind to do it until you came
14 along. I think that was what I just read, wasn't it?

15 A. [10:43:13] I don't know if he could take a decision himself, but when we went to
16 see him he accepted our idea and we took to the bush.

17 Q. [10:43:30] And you've indicated that you were chosen to be the leader of the
18 mutineers. I believe you've agreed to that?

19 A. [10:43:43] Yes.

20 Q. [10:43:45] And you were the most experienced and the most senior military officer
21 amongst those other people; correct?

22 A. [10:44:06] Well, one can't judge one's own experience and say that one is more
23 experienced than others, but these people chose me, taking my experience into account.
24 And they put me at the head of this activity or operation.

25 Q. [10:44:35] You've just indicated that Bagonza was a company commander and

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1 Kisembo was as well, so you were superior in rank to them; is that right?

2 A. [10:45:05] That's right.

3 Q. [10:45:05] And do you know if it's correct that Kisembo started his military career
4 and training years after you did, in 1997?

5 A. [10:45:31] I did not ask him when he started, but it is possible that he may have
6 started at that time.

7 Q. [10:45:44] Did you know that Kisembo was a high school teacher in Kasenyi before
8 he started military training?

9 A. [10:46:02] I had learnt that he had been a teacher, yes, I was aware of that.

10 Q. [10:46:22] And by the time Kisembo began training in about 1997 you had already
11 participated in major operations with the RPA in Rwanda and the DRC; is that right?

12 A. [10:46:55] Yes.

13 Q. [10:46:57] And you had been promoted to lieutenant and you were appointed the
14 chief instructor of the AFDM in Lubumbashi by that time; correct?

15 A. [10:47:23] No, the ranks had not yet been given at that time, not in the Congo. No,
16 we didn't have ranks yet. We were called commanders while we were in Lubumbashi.

17 Q. [10:47:39] And you were chief instructor in Lubumbashi?

18 A. [10:47:51] Yes.

19 Q. [10:48:02] Now, you have indicated already, including today, that you
20 immediately named the group Chui Mobile Force; correct?

21 A. [10:48:27] Yes, yes.

22 Q. [10:48:29] And you told them that you would be the commander and Bagonza
23 would be your deputy; is that right?

24 A. [10:48:49] Yes.

25 Q. [10:48:51] Kisembo, you indicated, initially was the S4, but then in the transcript

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- 1 you said, "No. He was the admin." So you made Kisembo the admin; is that right?
- 2 A. [10:49:23] The S4 is the one in charge of admin, administration.
- 3 Q. [10:49:28] That's not the position of the S1, admin?
- 4 A. [10:49:46] The S1 and the S4 perform the same responsibilities. S4 was in charge
- 5 of logistics and administration, so if someone were appointed S4 or S1 they would
- 6 perform the same duties, responsibilities, namely administration and logistics.
- 7 Q. [10:50:13] And so if Kisembo was the admin, is that akin to being a personnel
- 8 officer like a human resource persons but within the military structure, admin?
- 9 A. [10:50:42] Yes, he was in charge of logistics and administration.
- 10 Q. [10:50:54] When Tchaligonza arrived to join your group you changed the structure
- 11 and made him the S3 in charge of operations; correct?
- 12 A. [10:51:17] No, we did not change anything. We had not had an S3 in office at that
- 13 time, but when he arrived he took up that office immediately.
- 14 Q. [10:51:44] And is it right that when -- Kasangaki, you made him your IO or
- 15 intelligence officer?
- 16 A. [10:52:17] Yes.
- 17 Q. [10:52:22] And who took up the position of S1? Did you have a separate S1 or did
- 18 Kisembo do S1 and S4 functions?
- 19 A. [10:52:46] I have just told you that our structure was such that S1 and S4 were the
- 20 same, the duties were taken together. So if you looked at our structure, the person in
- 21 charge of logistics and administration was one and the same person, so the S1 and the S4
- 22 were one and the same.
- 23 Q. [10:53:22] Now, following this meeting you moved with the Chui mobile force to
- 24 the bush by Sota; correct?
- 25 A. [10:53:52] Tchaligonza met us there, but he was not in attendance at that meeting.

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1 Q. [10:54:08] And setting Tchaligonza aside for the moment, after the meeting in
2 Nyankunde is it right that the Chui mobile force set up its -- set yourselves up in the bush
3 by Sota?

4 A. [10:54:33] That is correct.

5 Q. [10:54:35] And you chose Sota because you knew it would be a safe place for you?

6 A. [10:54:59] I was not familiar with that area. When we left the young people of
7 that area told me to go to that area. It was a new experience for me. I had come from
8 town and I was going to Nyankunde, but I did not know that this was an important area.
9 We had travelled to several other areas.

10 Q. [10:55:27] But as their leader I'm sure you wanted to make sure that this would be
11 a safe area for you and your troops to go to be protected against the discrimination you
12 had been facing and the targeting; correct?

13 A. [10:56:02] Yes, I knew that we were going to be supported and that we would get
14 all that we needed.

15 Q. [10:56:14] It's right, isn't it, that the predominant ethnicity in and around Sota is
16 Hema?

17 A. [10:56:36] Yes, they're Hema, but there were also Biras.

18 Q. [10:56:42] And would you agree that the Hema were the predominant ethnic
19 group in the Sota area?

20 A. [10:57:05] Yes. In that area the Hema were in the majority.

21 Q. [10:57:12] And would you agree that it was important for you as the leader to
22 ensure that you had intelligence about where the enemy was positioned around your
23 location and what areas would be suitable for your troops to go in case of attack?

24 A. [10:57:57] As a leader I needed to find a place where we could get food supplies
25 and where the civilian population could help us with intelligence or information. And

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1 such was the case, we got help from the members of the population.

2 Q. [10:58:26] And you've mentioned a person by the name of Mahinga. You
3 designated him as the spokesperson for the Chui mobile force; is that right?

4 A. [10:58:50] Yes, he was the spokesperson when we were in the bush.

5 Q. [10:59:00] Do you know what Mahinga had done militarily prior to being with you
6 in the bush in 2000?

7 A. [10:59:36] Before going into the bush he was the deputy chief of staff in charge of
8 operations in Marekera.

9 Q. And was he part of the APC at that time?

10 A. No. When he met me I was in Uganda.

11 Q. [11:00:16] Where had Mahinga been the chef d'état-major adjoint in Marekera?

12 PRESIDING JUDGE FREMR: [11:00:25] Hold on, Mr Witness.

13 Mr Bourgon.

14 MR BOURGON: [11:00:29] Thank you, Mr President. A question was not captured in
15 the transcript. We have an answer from Mr Ntaganda that ends on line 8 and then for
16 some reason we go straight to his next answer without the question being -- I'm talking
17 about the English transcript. So the question is not there.

18 PRESIDING JUDGE FREMR: [11:00:54] In my English transcript I can see, I
19 believe -- maybe some question is not completed, but --

20 MR BOURGON: My colleague put a question about Uganda and then he answers,
21 "No. When he met me I was in Uganda." But there was a question before that wasn't
22 captured.

23 PRESIDING JUDGE FREMR: [11:01:18] Ms Samson. Could you verify.

24 MS SAMSON: [11:01:22] Yes, I'm sorry, I don't see where the question wasn't there. If
25 I could have the line reference to where there's a double answer again, I could take a

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1 closer look.

2 MR BOURGON: [11:01:33] Maybe I can help. In French the question is

3 (Speaks French) and that's not in the English transcript. So there's two of the little stick
4 in English transcript.

5 MS SAMSON: [11:01:51] Yes. Is that something we could ask the transcribers to
6 correct at the moment of the edited transcript?

7 PRESIDING JUDGE FREMR: [11:01:58] Yeah, I think it's fine for the moment.

8 MS SAMSON: [11:02:00] Thank you for raising that as well.

9 Q. [11:02:03] I'm going to rephrase my last question because I think it might not have
10 been very clear. In which armed group was Mahinga chef d'état-major général adjoint at
11 the time prior to him joining the Chui mobile force?

12 A. [11:02:41] Mahinga is a Congolese. He was with the Ugandan army, LRA, and
13 then subsequently was involved in the liberation of Rwanda, and then later on he was
14 among those who came into Congo. But when he met me in Uganda he had just
15 returned from Goma, then we went to Bunia together within the RCD. And at that time
16 the UPDF proposed him to the position of deputy chief of general staff of the APC, deputy
17 chief of general staff in Marekera. That is what I know in relation to Mahinga
18 Dieudonné.

19 THE INTERPRETER: The name previously mentioned by the witness, correction from
20 the Swahili booth, is NRA, not LRA.

21 MS SAMSON:

22 Q. [11:04:01] And just to clarify to ensure it's captured accurately on the transcript,
23 you had mentioned, page 30, lines 15 to 16, "He was with the Ugandan army, LRA." Are
24 you referring to the rebel group the Lord's Resistance Army or to a different army?

25 A. [11:04:36] Yes.

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1 Q. [11:04:52] And then just to confirm the transcript again in your answer, at page 30,
2 lines 19 to 20 you said, quote, "And then we went to Bunia together in the RCD and at that
3 time the UPDF proposed him to the position of deputy chief of general staff of the APC."

4 Is that right, was it the UPDF who proposed him to that position?

5 A. [11:05:30] Correct. We did not go to Bunia with the RCD, we went with Mahinga
6 and it is then that the UPDF troops proposed him to the position of deputy chief of
7 general staff to Marekera, Marekera's deputy.

8 Q. [11:05:53] Thank you. Now, from your prior military experience in successful
9 operations you were already familiar with the military technique of hit and run in the
10 bush and you knew how with just 200 men you could do harm to a large army; is that
11 right?

12 A. [11:06:40] Yes. If your troops are disciplined you can destroy the enemy, if the
13 enemy is not disciplined. So that is correct.

14 Q. [11:07:00] And is it right at this time that you were, some or all of you, perhaps you
15 can clarify, were still wearing APC uniforms?

16 A. [11:07:28] Yes, we were part of the APC. And I remember, for example, that
17 when I arrived I had the military uniform which I had bought in South Africa, but the
18 others wore APC uniforms. I had come out of the bush and I would be clad in my full
19 single-colour uniform.

20 Q. [11:08:01] And coming back to the operations, you provided an example in your
21 direct testimony about an operation that you led against the APC and against
22 Commander Moyi; correct?

23 A. [11:08:45] The interpreters have said that we attacked the APC and Commander
24 Mbuyi? No, I did not say that.

25 Q. [11:08:57] The commander's name that I mentioned was Moyi, Moyi, M-O-I or

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1 M-O-Y-I, Moyi.

2 A. [11:09:21] Yes, that was the commander in Nyankunde where Tchaligonza
3 was -- rather, where Bagonza was -- where Bagonza had been before. That commander's
4 name is Moyi. His name was Moyi.

5 Q. [11:09:41] Yes. And you said that the members of the population had given you
6 intelligence that Commander Moyi was coming and so you sent Kasangaki the
7 intelligence officer to meet him; is that right?

8 A. [11:10:16] No. Kasangaki went to meet and fetch Papy who was the commander
9 in Rwampara at the time -- rather, Pepe, Commander Pepe.

10 Q. [11:10:40] So to be clear, what you're saying is that you did not send
11 Commander Kasangaki to meet Moyi but you sent Commander Pepe; is that what I'm
12 understanding? Correct me if I'm wrong.

13 A. [11:11:04] No. You're mistaken.

14 Q. [11:11:09] Let me read to you what your answer was on this issue in the English
15 transcript and then you can let me know if this was correct or not.

16 At transcript T-212, page 42, lines 14 to 19 you said, and I quote, first was the question:
17 "Did you conduct any attacks with Chui?"

18 The answer was: "Yes, yes, I do recall that Commander Pepe was used. He was a
19 commander in Rwampara. And he thought that he would be able to convince some
20 commanders to come out of the bush, and they sent him. And then the members of the
21 population told us, they informed us that they were coming, so we sent Kasangaki IO to
22 meet him, and then we took him to Sota." End quote.

23 So can you please tell me if you in that quote were informed by the population that
24 Commander Moyi was coming and you sent Kasangaki IO to meet him?

25 A. [11:12:56] Madam Prosecutor, you have just said what I just said. What I said is

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1 true. Now you are putting a question to me in relation to something which is incorrect.
2 What I said and which appears in the transcript is what is correct. What the members of
3 the population told us is that Pepe was arriving in our area. I knew that he was coming
4 to sensitise my troops, so I sent Kasangaki to receive him and take him to Sota where we
5 were. I didn't talk about Moyi.

6 Q. [11:13:36] So then you sent Kasangaki to meet Commander Pepe of the APC and
7 then you took Commander Pepe to Sota; is that right?

8 A. [11:14:07] Yes.

9 Q. [11:14:10] And then following the discussion with Commander Pepe, or at the time,
10 that's when you displaced a company to attack the APC positions at 4 p.m. and you were
11 successful; is that right?

12 A. [11:14:51] No, we didn't send that company. I went with that company myself.

13 Q. [11:15:01] I'll keep reading from your earlier answer at transcript T-212, page 42,
14 and I'll start at lines 18 to 23. And you said, and I quote:

15 "And then the members of the population told us, they informed us that they were
16 coming, so we sent Kasangaki IO to meet him, and then we took him to Sota. I had a
17 discussion with him there. He came, we had discussions with him. And in order to
18 avoid being unmasked and disclosing our location, we displaced our company and
19 attacked them at 4 p.m. And we won, we beat them and captured all their troops, about
20 a hundred of them, or maybe about a hundred, and we arrested them." End quote.

21 Is that an accurate description of what happened at the time? And before you answer,
22 sir, I will also read lines 24 to 25 where the interpreter corrected that the -- the attack took
23 place at 5 a.m. in the morning, not at 4 p.m., 5 a.m.

24 A. [11:16:39] You are reading from the transcript or -- are you reading from the
25 transcript or is this another question?

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1 Q. [11:16:50] Yes, I was reading from the transcript and what you said in testimony is
2 that you were having discussions with Pepe, I understand, in Sota, and then you
3 displaced your company and attacked them at 5 a.m. and you won, you beat them and
4 you captured all their troops; is that right?

5 A. [11:17:30] No. I did not say that. We did not take any prisoners of war. No, I
6 didn't say that.

7 Q. [11:17:37] Well, I do think you explain that later. In this section of the transcript
8 you're referring to having captured the troops successfully, not whether they were
9 prisoners of war or whether they were incorporated into your troops, but you captured
10 those troops; correct?

11 A. [11:18:05] It's different when you capture or when you take people hostage. We
12 arrested people, but we didn't take them hostage.

13 Q. [11:18:18] Yes, I understand that. The term "capture" is what's in the transcript,
14 but I agree with you that you explained that later following questions from your counsel.
15 My question though is very focused on whether what you said in-chief is correct, which is
16 that you displaced a company and attacked the APC troops and you beat them?

17 A. [11:18:59] Yes, we attacked the company and the forces that were in Nyankunde
18 and all the soldiers who were there. We took them along with one person who was
19 injured whom I took to the hospital, and then one person was released to take a message
20 to his military superiors and I'm referring there to Moyi.

21 MS SAMSON: [11:19:30] Mr President, I can pick up on this when we resume after
22 the break.

23 PRESIDING JUDGE FREMR: [11:19:36] Yes, so we take our regular 30-minute break
24 and we will resume at 11.50.

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

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1 (Recess taken at 11.19 a.m.)

2 (Upon resuming in open session at 11.50 a.m.)

3 THE COURT USHER: [11:50:47] All rise.

4 Please be seated.

5 PRESIDING JUDGE FREMR: [11:50:55] Let's continue with another part of

6 cross-examination of Mr Ntaganda conducted by Prosecution.

7 Ms Samson, you have the floor.

8 MS SAMSON: [11:51:06] Thank you, Mr President.

9 Q. [11:51:09] Prior to the break we were discussing the operation involving the APC
10 forces when you were in the bush in Sota. And it's right, isn't it, that you went with and
11 led the company who surrounded the APC forces and forced them to surrender?

12 A. [11:51:45] Yes, I am the one who commanded that operation.

13 Q. [11:51:49] And it was your operational strategy that led to the success of that
14 operation; correct?

15 A. [11:52:09] That's true. I utilised military strategy.

16 Q. [11:52:19] And the forces that you successfully attacked were much larger in
17 number than your own; that's right, I think?

18 A. [11:52:34] I don't know. I had two companies available to me. And the -- the
19 number of persons that we captured was not greater than our number.

20 Q. [11:53:03] It's fair to say, I'm sure, that your men looked up to you even more after
21 the success of that operation; would you agree?

22 A. [11:53:28] Yes. Following that operation, they saw that I was, indeed, a brave
23 fighter.

24 Q. [11:53:43] And they saw, no doubt, that you were also a brilliant military strategist,
25 didn't they?

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1 A. [11:54:06] Well, I can't say what they deduced from that operation, but what I can
2 say is that they saw that I had planned the operation well. I can't know, however, what
3 all of the conclusions are that they may have drawn from it.

4 Q. [11:54:41] It's true that following the operation, your name was broadcast
5 everywhere and people were asking, "Why is he so successful, this man, in all of his
6 operations?" and you became increasingly popular then; is that right?

7 A. [11:55:17] Yes. All the UPDF commanders who had taken part in other
8 operations saw that I had planned that attack well.

9 Q. [11:55:31] And your own troops saw that you had made -- they had made a good
10 decision in choosing you as their leader; correct?

11 A. [11:55:52] Yes, of course. Of course they had made a wise choice.

12 Q. [11:56:02] And it was during this operation that you met Chef Kahwa; correct?

13 A. [11:56:14] As I recall, Chef Kahwa brought us Motorolas before we carried out the
14 operation.

15 Q. [11:56:36] Indeed, I believe that is what you stated in testimony, that Chef Kahwa
16 came and provided you with Motorolas, and after he provided them to you, you
17 distributed them to your troops; is that right?

18 A. [11:56:58] Yes. And we used the selfsame Motorolas.

19 Q. [11:57:11] Did everybody in the troops get Motorolas or was it only the officers?

20 A. [11:57:27] I don't even remember how many Motorolas he provided to us.

21 Q. [11:57:37] Can you recall whether the -- only the officers received Motorolas, or do
22 you not remember?

23 A. [11:57:51] No, I recall that it was the commanders who had the Motorolas but I
24 don't recall the number of Motorolas.

25 Q. [11:58:06] Chef Kahwa is -- was the chief of the -- of Mandro in the Bahema

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1 collectivity; that was his position at the time?

2 A. [11:58:24] Yes. I knew that he was a chief of the collectivity.

3 Q. [11:58:37] Chef Kahwa was a civilian at the time you met him; he did not have
4 militarily experience. Is that right?

5 A. [11:58:54] He was a chief of a collectivity and he was a civilian in that capacity.
6 He was a civilian, all chiefs of collectivities being civilians.

7 Q. [11:59:19] Following the successful operation against the APC that you had
8 commanded, you stated that you remained with Kisembo and he became your 2IC or
9 your deputy; is that right?

10 A. [11:59:44] Following that operation, it was essential that he become my number
11 two, and he became my 2IC.

12 Q. [12:00:01] And after you had defeated the APC troops, is it right that your enemies
13 became afraid of you and your group?

14 A. [12:00:29] Yes. Needless to say, they feared our troops following the Nyankunde
15 operation. I think they were afraid of us because our operation had been successful.

16 Q. [12:00:50] And you -- you testified that Moyi's -- or the APC troops were going to
17 be afraid because you didn't intend to stop there; correct?

18 A. [12:01:19] Yes. We took to the bush because it was our intention to stand up for
19 our rights and to claim them from the authorities. We wondered why we were being
20 discriminated against. If the matter had been resolved, we would have had to rejoin the
21 army and work together with them.

22 Q. [12:02:07] And at this time you also stated that the Hema civilians were being
23 attacked by the APC and other Lendu combatants; is that right?

24 A. [12:02:34] Yes. Attacks had already begun, but at the time I wasn't working with
25 them. I learnt that at a given point of time, they began to cooperate with Lendu

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1 combatants.

2 Q. [12:02:59] And you also stated that the civilians had organised themselves. Is that
3 a reference to self-defence forces set up by the Hema civilians in that region?

4 A. [12:03:39] Madam, could you read the part of the transcript where I gave that
5 detail so that I can answer your question?

6 Q. [12:03:52] Yes, certainly. At transcript T-212, page 47, lines 8 to 15 you -- this was
7 the exchange. The question was, quote:

8 "Did Chui conduct any other attacks subsequently?"

9 And the answer was, from you:

10 "No. There were no other attacks while we were in the bush. The civilians organised
11 themselves, went to Uganda to contact the Ugandan authorities, and then we learned over
12 radio that they said that they had some young people in the bush, because the armed
13 forces were attacking and looting civilians targeting the Hemas. This is what we heard
14 on the radio. So when we went to Mandro, a delegation came from Uganda to see us
15 and to negotiate with us and to hear our grievances." End quote.

16 And my question is about the portion of your answer where you stated that the civilians
17 had organised themselves. And my question is whether that's a reference to Hema
18 self-defence forces or the Hema civilians in that region organising themselves for
19 protection purposes?

20 A. [12:05:27] What you're saying is different. It was rather the community of
21 Iturians that went to Uganda to meet with Ugandan authorities. It was they who had
22 organised themselves. We were in the bush at that time, but I never spoke about
23 self-defence groups.

24 Q. [12:05:55] To your knowledge, did self-defence groups exist around 2000 in Ituri?

25 A. [12:06:12] I've heard of them, but I was new to the region, so I couldn't say that

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1 there were.

2 Q. [12:06:24] What had you heard about them at that time?

3 A. [12:06:46] It was said that the self-defence groups were made up of young civilians
4 in order to be able to defend themselves in the event of attack. That is the information
5 that I heard on the topic, nothing more. And I personally didn't see them with my own
6 eyes.

7 Q. [12:07:13] Did you hear at the time that there were self-defence forces in Hema
8 villages made up of Hema youth?

9 A. [12:07:31] Yes. Yes, I did hear of that.

10 Q. [12:07:37] And did you hear whether in Lendu-dominated villages that they had
11 their own separate self-defence forces?

12 A. [12:08:01] They are the same groups that I was talking about, those who
13 cooperated with the APC to attack Hema villages.

14 Q. [12:08:13] So if I understand your testimony, at that time in 2000 the Lendu
15 combatants who had cooperated with the APC were part of self-defence forces?

16 A. [12:08:39] I heard that the APC assisted them by providing munitions to them and
17 firearms. I heard talk of that. And that is why they didn't want to work with Hema
18 commanders, they wanted to isolate Hema commanders in order to be able to kill them.

19 Q. [12:09:16] When you were in the bush around Sota, as the Chui mobile force, it's
20 right, isn't it, that your force would be able to protect the local predominantly Hema and
21 Bira populations around Sota?

22 A. [12:09:47] When we went to Sota it wasn't our intention to protect the civilian
23 population. However, if that population had been attacked we would have been in a
24 position to defend them. We had taken to the bush to champion our claims vis-à-vis the
25 authorities and the RCD-K/ML why we were being discriminated against as soldiers.

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1 And if we hadn't done so we wouldn't have gone to Uganda. So we took to the bush to
2 claim our rights, to make our voice heard.

3 Q. [12:11:13] And to be absolutely clear in your last answer, sir, you stated that "if that
4 population had been attacked we would have been in a position to defend them." And
5 it's right that you're speaking about the population around Sota that is predominantly
6 Hema?

7 A. [12:11:44] As a leader, given that I was in Sota, I would have defended anyone, any
8 civilian who was attacked. Now, I had gone there because I was being targeted and I
9 was being driven in that direction. In going to Sota it wasn't my intention to protect the
10 Hema civilian population; however, if those people or any people, irrespective of their
11 ethnic origin, were attacked, then I would have defended them, I would have defended
12 the people.

13 Q. [12:12:29] And the people in the area that you were, you've said, were
14 predominantly Hema; that's right?

15 A. [12:12:42] Yes. The majority of the civilians of Sota were Hema.

16 Q. [12:12:53] When, to your knowledge, did these self-defence forces cease to exist?

17 A. [12:13:12] Could you be more specific? The self-defences forces from where?

18 Q. [12:13:24] We've talked about your knowledge of self-defence forces initially in
19 Hema communities to protect the Hema civilians in villages. When, to your knowledge,
20 did those Hema self-defence forces in villages in Ituri cease to exist?

21 A. [12:13:56] In the villages populated by Hema, the members of those forces joined
22 the army, but I can't say that all of those groups ceased to exist. As regards us, wherever
23 we were deployed there were no longer self-defence groups there, but where our forces
24 were not present those self-defence groups protected themselves.

25 So wherever we weren't they continued to protect themselves, defend themselves, but I

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1 can't really answer your question as to when they ceased to exist. At some point in time,
2 those self-defence groups were no longer active. But each time they thought that
3 combatants were going to attack them, they would rise to defend themselves again, but
4 they were small groups and they were located where we were not present.

5 Q. [12:15:38] And to be clear in your last answer in the transcript in English, page 44,
6 lines 9 and 10, you stated:

7 "In the villages populated by Hema, the members of these forces joined the army."

8 And is it right that you mean the FPLC army?

9 A. [12:16:09] Yes. Yes. And they made up the bulk of the people who I trained in
10 Mandro. Those young people who wanted to join the army were trained by us. And
11 the civil defence groups were civilians, of course, civilians defending themselves.

12 Q. [12:16:36] Did you have any knowledge of the -- whether the Lendu self-defence
13 forces ever ceased to exist in those villages?

14 A. [12:17:06] Which villages are we referring to here, Madam Prosecutor?

15 Q. [12:17:11] The villages where you've said there were Lendu self-defence forces,
16 Lendu combatants.

17 A. [12:17:36] I'm sorry, I haven't fully understood your question. I was talking about
18 self-defence combatants of the Hema and now you are talking to me about the Lendu
19 self-defence combatants so I'm not really sure what you're asking of me.

20 Q. [12:17:58] Yes, I'm asking you now to focus not on the Lendu self-defence
21 forces -- sorry, not on the Hema but on the Lendu. I'm asking you to focus on the Lendu
22 self-defence forces. It's right, isn't it, that predominantly Lendu villages also had civilian
23 combatants or civilian people to assist them during attack? That's right, isn't it?

24 A. [12:18:40] I wasn't there during the attacks. When one group attacked another I
25 was not present. This was during the inter-ethnic war and during that time I was not

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1 myself in Ituri.

2 Q. [12:19:02] Yes, but you've discussed in that period that there were Lendu
3 combatants. You said that they were working with the APC, and my question now is
4 whether you learned in 2000 or in 2002 or 2003 that any Lendu self-defence forces in
5 Lendu villages ceased to exist?

6 A. [12:19:40] No. Afterwards they joined the Kinshasa government in 2004. At that
7 time, we had also joined the FARDC, the government forces of Kinshasa.

8 Q. [12:20:07] But prior to any integration into the government forces, at any time
9 during the periods that you were in Ituri, did you learn that Lendu self-defence forces
10 ceased to exist? Or did they continue to exist?

11 A. [12:20:38] When they fought the APC -- when we fought the APC, they were
12 fighting with the APC, they were together with them.

13 Q. [12:20:51] Is it your evidence that there were no Lendu self-defence forces in Lendu
14 villages at any time while you were in Ituri; is that your evidence?

15 A. [12:21:16] In September 2002, when the UPC was created, when we fought the APC,
16 the Lendu combatants existed. They were allied to the APC, and at that time they were
17 there. They fought with the APC, they wore uniforms and they had weapons.

18 Q. [12:21:52] And you've told us today that alongside the FPLC forces, the Hema
19 continued to have self-defence troops wherever the UPC was not deployed. And my
20 question to you now is: Do you know whether the Lendu in their own villages
21 continued to have self-defence forces during the time you were in Ituri?

22 A. [12:22:33] Yes, they were mixed together with the APC.

23 Q. [12:22:48] I'm going back now to the 2000 period where you're with the Chui
24 mobile force, and you had travelled with a delegation to meet in Kahwa's office in
25 Mandro, and you were with Lubanga, Kahwa, Kisémbu, Mugabo, Mahinga to meet with a

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1 Ugandan delegation. Do you recall that meeting?

2 A. [12:23:32] Yes. At that time the Chui mobile force was based in Mandro and we
3 went to meet with a delegation from the UPDF who had come from Uganda.

4 Q. [12:23:47] And it was around this time that you met Thomas Lubanga; is
5 that right?

6 A. [12:23:58] Yes.

7 Q. [12:24:02] Thomas Lubanga is Hema north; is that right?

8 A. [12:24:12] Yes, he is Hema north.

9 Q. [12:24:17] And Thomas Lubanga had travelled to Kampala with several other
10 civilians in order to discuss the issues of a possible attack by the UPDF on the Chui mobile
11 force; is that right?

12 A. [12:24:47] Yes, we heard on the radio. When they left, we didn't have the
13 information. When Bagonza spoke on the radio, we heard that the UPDF were killing
14 the children, so they then went to Uganda to ask them to desist -- sorry, they weren't
15 killing the children, they were harassing the children, and so they went to Uganda to ask
16 that this stop and that they stop following us into the bush. They also went to plead our
17 cause because at that point Wamba Dia Wamba was also chasing us. They went to tell
18 them that there was discrimination during the reign of Wamba Dia Wamba at that time.

19 Q. [12:25:59] And Thomas Lubanga was a civilian without military experience at that
20 stage; correct?

21 A. [12:26:14] Yes, he was not a military man.

22 Q. [12:26:40] And it's right, isn't it, that during the period that you were leading the
23 Chui mobile force that Kisembo respected you and listened to you?

24 A. [12:27:03] Yes, I was his superior. And in the military tradition, that commands
25 respect.

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1 Q. [12:27:27] Following your training in Uganda, you've testified as to your arrest for
2 some months in Uganda.

3 A. [12:28:00] Yes.

4 Q. [12:28:00] And you were arrested on suspicion of speaking on the phone to
5 Rwandan individuals, although, as you said, this was later disputed by you.

6 A. [12:28:26] Yes. I think that this subject was discussed in private session, but I
7 don't know.

8 MS SAMSON: [12:28:49] Mr President, the witness has indicated that it might be
9 preferable to move into private session. Perhaps counsel can advise whether this topic
10 was addressed in private session previously.

11 THE WITNESS: [12:29:04] (Interpretation) It's not necessary, Mr President.

12 PRESIDING JUDGE FREMR: [12:29:12] All right. So then proceed in the regime of
13 open session.

14 MS SAMSON: [12:29:16] Yes, thank you.

15 Q. [12:29:18] Sir, which -- what telephone were you using at the time that the
16 Ugandans had intercepted your calls?

17 A. [12:29:42] MTN, which is a Ugandan network.

18 Q. [12:29:50] And what telephone device were you using through the MTN network?

19 A. [12:30:07] I don't remember.

20 Q. [12:30:12] Was it a Motorola?

21 A. [12:30:28] Because the Motorola telephone can communicate between Uganda and
22 Rwanda?

23 Q. [12:30:36] I take it that it was not a Motorola?

24 A. [12:30:50] It was a mobile phone.

25 Q. [12:31:00] So at that time there were mobile phones that you could use in Uganda

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1 to Rwanda; is that your evidence?

2 A. [12:31:24] Yes, they did exist.

3 Q. [12:31:32] And your evidence is that they did not exist and no network coverage
4 was possible in neighbouring Ituri at that time.

5 PRESIDING JUDGE FREMR: [12:31:50] Mr Bourgon.

6 MR BOURGON: [12:31:52] I believe that my colleague did not understand the answer
7 properly. He said that they did exist. He did not say they did not exist; he said they
8 did exist.

9 PRESIDING JUDGE FREMR: [12:32:08] Ms Samson.

10 MS SAMSON: [12:32:09] I'm referring to a different location. The witness is saying
11 that the device that was intercepted was a mobile telephone that he was using in Uganda
12 to communicate with Rwanda vis-à-vis the MTN network. And my question to him is
13 about Bunia, that his evidence was that in a -- neighbouring Ituri, that mobile phones had
14 no network coverage in 2001.

15 PRESIDING JUDGE FREMR: [12:32:44] Yes, it was also my understanding of your
16 question. So I think Mr Ntaganda should answer.

17 MS SAMSON: [12:32:53]

18 Q. [12:32:54] So my question, sir, is that -- is your evidence that you could have MTN
19 mobile network coverage in and around Jinja in 2000, 2001, but not in neighbouring Ituri?

20 A. [12:33:22] I know that the mobile telephone arrived in Bunia in April 2003, but at
21 that time I was in Jinja in 2001. So from 2000 to 2001 in Uganda there were mobile
22 telephone networks. It's an organised country, but I don't know what the network
23 coverage would have been there. I don't know what space it would cover. I'm not a
24 mobile telephone engineer. I haven't had any detailed information on that subject.

25 Q. [12:34:07] Where did you acquire or get your mobile phone?

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1 A. [12:34:21] I bought it in Uganda.

2 Q. [12:34:34] And so you had enough money at that time to buy a mobile phone in
3 Uganda; that's right?

4 A. [12:34:49] Yes. When I left RCD-Goma I had my own vehicle, I left it in Uganda.
5 My vehicle had broken down and it was taken to bits, it was -- bits were sold as spares,
6 and I got that money so I had some money on me.

7 Q. [12:35:30] And you returned after your -- actually before I ask that question I do
8 have another question: Did you ever go to a home on Ggaba Road in Kampala?

9 A. [12:36:10] At what time, Madam Prosecutor?

10 Q. [12:36:14] In the period 2000, 2001 when you were in Uganda for training.

11 A. [12:36:36] Yes. We have a house there when we're in Jinja. It was a house that
12 belonged to us.

13 Q. [12:36:50] And was it --

14 A. [12:36:52] We had our own safe house there.

15 Q. [12:36:57] Was it a safe house that could be used by you and the other Chui mobile
16 force officers who were training at Jinja?

17 A. [12:37:23] Yes.

18 Q. [12:37:26] And Thomas Lubanga was there from time to time in 2000 as well?

19 A. [12:37:45] No. When he came he stayed in an hotel. This house was for us.

20 Q. [12:37:59] So is your evidence that Thomas Lubanga never went to the house in
21 Ggaba Road in 2000?

22 A. [12:38:18] When I went to Jinja I never saw him there. During my training I was
23 able to go to this house at the weekends and I never saw him there. The weekends when
24 we finished our training, we left the training unit on the Friday and we went back on
25 Sunday to continue training on Monday. And I never saw him there. I went there

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1 every weekend and then returned to the place where the training was taking place.

2 We -- we left on Friday after training had finished and we returned on Sunday in time to
3 recommence training on Monday.

4 Q. [12:39:22] Sir, I'd like to ask you some questions now about the period 2002, 2003
5 from September onwards. It's right, isn't it, that at that time you had the greatest military
6 experience amongst all the UPC/FPLC commanders?

7 A. [12:40:16] Could you define which period, please?

8 Q. [12:40:21] Certainly. As I just stated, I'm speaking about the period 2002, 2003
9 from September onwards?

10 A. [12:40:42] I would say that we had different levels of experience. When we were
11 in Jinja Kisembo had the same as me. He -- if you look at our certificates, you will see
12 that that is the case.

13 Q. [12:41:09] Well, let's look at that. You had more military experience than Thomas
14 Lubanga I think you'll agree?

15 A. [12:41:29] Yes. Thomas Lubanga was not a soldier. He had no experience at all
16 in the army. He has political experience, but none of the army. I never considered him
17 to be a soldier.

18 Q. [12:41:48] And you certainly had more experience militarily than Chief Kahwa;
19 you'll agree?

20 A. [12:42:03] Yes, indeed. Chef Kahwa had not been a soldier either.

21 Q. [12:42:10] And at that time you also had more military experience than Floribert
22 Kisembo, didn't you?

23 A. [12:42:27] No, no. I can't agree with you there. I have given you some ideas. If
24 you go to Jinja in Uganda and ask for the results that we obtained there you will see that
25 he had higher grades than I did. And then I stopped. He went on. And when I found

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1 him, he was sector commander. I had no function. I saluted him, gave him a military
2 salute in the army. That's not the custom in all cases. There are changes at all times in
3 the army. In September I saluted him, I offered him my respects and I saluted him at
4 that time in 2002 because he was my superior at that time.

5 Q. [12:43:33] Well, we have done this a bit this morning already, but let's take a closer
6 look at that.

7 When you left for Jinja you were Floribert Kisembo's superior; correct?

8 A. [12:43:58] No. In Jinja all students were on an equal footing. When we are
9 undertaking training, we are all at the same level and during the formation there might be
10 names, we could see who's -- see who has what rank. He respected me there, but then I
11 stopped my training, then he continued, he got higher ranks. And when I came out
12 of -- when I went into prison I dropped down because I was in prison. And then when I
13 found him again he was a -- a sector commander, he was a superior officer. And then
14 when I saw him in Bunia, I was the deputy sector commander and when I saw him I
15 saluted him. That's -- that's automatic. When I saw him I immediately saluted him.

16 Q. [12:45:05] You've already confirmed today that you had more years experience as a
17 military -- in military operations and as a commander than Floribert Kisembo, and my
18 suggestion to you is that that certainly did not change as a result of some months of
19 officers' training. You would agree with that, wouldn't you?

20 A. [12:45:41] No. In the army there are no traditions. In the army things change at
21 a moment's notice. They can be a platoon commander and then somebody who was at a
22 lower rank then can become my superior and then of course I would salute him. In the
23 army I say that there are -- it's a place of constant change, there's a lot of change. There
24 are even recruits whom I trained who became generals before I did and, therefore, I
25 saluted them in the army in Kinshasa. And even everywhere there's a lot of change

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1 experienced, changes -- things change on a month-by-month, year-by-year basis. There
2 are people who receive awards and you don't know who will be your military superior
3 tomorrow. When I left Jinja I went to prison and then I went to Bunia. And when the
4 organisation was published, I was deputy sector commander and Kisémbó was the sector
5 commander and when he arrived, I saluted him because he had become my hierarchical
6 superior. So this was just the way that it was.

7 Q. [12:47:12] Sir, is your evidence that a few months' training in Jinja meant that
8 Kisémbó had more years of military experience in total than you?

9 A. [12:47:59] Madam, please refer to things as I've said them. I said that in Jinja we
10 spent a little more than seven months, eight months, and I said that based on the school
11 reports you could see if somebody got 60 percent, 70 percent, 80 percent. And I said that
12 at that point in time the school reports showed that Kisémbó had better grades, although I
13 had more experience than him. And I gave you the example that he was promoted and
14 that when I left prison, I had to start again at the bottom, whereas he was already a
15 commander -- a sector commander. I didn't even have a uniform and I had a bit of luck
16 that I was appointed as a deputy commander. And I have as I've explained, I had to
17 serve as military practice dictated. And the way things went, when -- the same as in the
18 FPLC, this is a universal practice in the army.

19 Q. [12:49:30] And so I see here in your answer that you confirm, page 55, lines 11 to 12:
20 "I had more experience than him." And that's right, isn't it, "him" being Kisémbó.

21 A. [12:50:02] Could you repeat your question, please?

22 Q. [12:50:05] Certainly. You confirm then at page 55, lines 11 to 12, "I had more
23 experience than him." "Him" being Kisémbó. And that's all I'm asking.

24 A. [12:50:27] When? When I was his superior, yes, I had a lot more experience than
25 him. And when he became my superior, he had better experience than I did because he

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1 had achieved high scores.

2 Q. [12:50:57] Now, when you, sir --

3 MS SAMSON: Mr President, may we move into private session. I'm uncertain if this
4 section was dealt with in private session. I can ask the witness, and if not, we can return
5 to open session, with your leave.

6 PRESIDING JUDGE FREMR: [12:51:18] Please do.

7 So let's move into private session.

8 (Private session at 12.51 p.m.) *(Reclassified partially in public)

9 THE COURT OFFICER: [12:51:25] We're in private session, Mr President.

10 PRESIDING JUDGE FREMR: [12:51:37] Thank you, court officer.

11 Ms Samson, please proceed.

12 MS SAMSON: [12:51:41] Thank you.

13 Q. [12:51:44] (Redacted)

14 (Redacted)

15 (Redacted)

16 A. [12:52:17] (Redacted)

17 Q. [12:52:29] (Redacted)

18 (Redacted)

19 (Redacted)

20 A. [12:53:02] (Redacted)

21 (Redacted)

22 Q. [12:53:24] (Redacted)

23 PRESIDING JUDGE FREMR: [12:53:25] Hold on, Ms Samson.

24 Mr Bourgon.

25 MR BOURGON: [12:53:29] Mr President, I'd just like to have a date on the record

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1 because of course Mr Ntaganda knows what we're talking about, my colleague and I both
2 know, but when it will come later on to read what part we're talking about, because now
3 we're returning two years back, so I'd just like to have a date on the record.

4 PRESIDING JUDGE FREMR: [12:53:47] Ms Samson.

5 MS SAMSON: [12:53:48] Yes.

6 Q. [12:53:48] (Redacted)

7 (Redacted)

8 A. [12:54:15] (Redacted)

9 (Redacted)

10 Q. [12:54:42] (Redacted)

11 A. [12:54:56] (Redacted)

12 (Redacted)

13 (Redacted)

14 Q. [12:55:17] (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 A. [12:56:15] I can't say if it's because of my bravery. I was a lower-ranked officer. I
22 was a platoon commander, so that's an officer of a lower rank, but I was a comrade in
23 arms in their revolution. I don't think it would be right to say that I was an exceptional
24 person. A platoon commander in the Rwandan army is really not such a big deal. I was
25 commanding only approximately 30 men.

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1 Q. [12:57:02] It's right, isn't it, Mr Ntaganda, that when you were in the UPC/FPLC
2 you were the most successful military commander in conducting military operations;
3 that's right, I think, isn't it?

4 A. [12:57:37] I could list the battles that I fought in. First of all, Mwanga, then in
5 Komanda, thirdly in Mongbwalu, and then finally battles against the Ugandans, so I
6 didn't take part in a large number of battles in the FPLC.

7 Q. [12:58:17] Is it fair the way I've put the question to you, though, that within the
8 UPC/FPLC you were the most successful military commander in conducting military
9 operations; that's right, isn't it; you were the most successful?

10 A. [12:58:52] I can't agree with you. When my superior Kisembo was attacked by
11 Lompondo, each time at the headquarters we only had a small number of soldiers,
12 perhaps 26 soldiers, but he was very successful. The enemy never managed to drive him
13 out of headquarters, at no time. So he was exceptionally successful. I think that each
14 commander was capable of good performance, platoon commanders too could perform
15 well. And as regards my own case, we were successful during six months. We were
16 able to bring an end to killing during that period, so I think that a large number of
17 commanders were able to show their successors, and I was one of them.

18 Q. [12:59:58] We'll get to your successes certainly shortly. Let's start with some of
19 Kisembo's operations. Kisembo was not successful in the Songolo operation at the end of
20 August 2002, was he?

21 MS SAMSON: [13:00:16] Mr President, we can return to public. I apologise.

22 PRESIDING JUDGE FREMR: [13:00:20] Yes.

23 Court officer, let's return back into public session.

24 (Open session at 1.00 p.m.)

25 THE COURT OFFICER: [13:00:27] We are back in open session, Mr President.

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1 PRESIDING JUDGE FREMR: [13:00:39] Thank you, court officer.

2 Ms Samson, please.

3 MS SAMSON: [13:00:45]

4 Q. [13:00:45] Mr Ntaganda, I was asking you about operations that Floribert Kisembo
5 commanded. He was not successful in the Songolo operation in August 2002; correct?

6 A. [13:01:12] Madam, when I went to Mongbwalu, I was driven out by Lendu
7 combatants. I had to pull out. There are times when any commander is beaten in battle.
8 And what you've -- the way you've just described things is not really, or doesn't really
9 reflect the way things happened in the army. That is to say, when I went to Mongbwalu
10 for the third time.

11 Q. [13:01:48] Apologies. I'm not asking about the way things worked in the army
12 and any general sense. I want to specifically put to you that Floribert Kisembo was not
13 successful in the commanding the operation in Songolo at the end of 2002; do you agree
14 with that?

15 A. [13:02:13] Yes, but he also succeeded in liberating Bunia in May 2003, which made
16 it possible for us to survive, so to speak, because prior to that I was in exile, and that was a
17 success for which Kisembo was responsible and which we shouldn't forget.

18 Q. [13:02:47] And you'll agree that Kisembo was not successful either in his next
19 operation in Nyankunde in early September 2002?

20 A. [13:03:08] Yes, he was defeated. He was taken by a surprise attack and was
21 injured, in fact.

22 Q. [13:03:21] And he was not successful in commanding the first operation in
23 Mongbwalu in early November 2002?

24 A. [13:03:45] He wasn't there; it was Salumu who was there.

25 Q. [13:03:51] And who was the commander above Salumu?

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1 A. [13:04:03] It's Kisembo who sent him there, but he was not present on site.

2 Q. [13:04:13] Now, sir, contrast that to your first operations within the group.

3 You've mentioned Komanda, you were successful in Komanda in August 2002,
4 weren't you?

5 A. [13:04:46] Yes, I was present there.

6 Q. [13:04:50] And you also mentioned that you struck the enemy in Tchai and
7 defeated them. That was also a success, I think, wasn't it?

8 A. [13:05:10] I wasn't present in Tchai, but I coordinated the operations, the
9 operations of two forces. It was battalion commander David who was in fact in Tchai.

10 Q. [13:05:27] And it was a success under your command or coordination?

11 A. [13:05:49] Yes, it was a success of mine.

12 Q. [13:05:51] And you, your troops were successful also after Kisembo and Salumu
13 failed in taking over Mongbwalu in November 2002; that was your success, wasn't it?

14 A. [13:06:14] No. I was only successful in Sayo. When it comes to Mongbwalu it
15 was occupied by Salumu.

16 Q. [13:06:30] We'll have an opportunity to speak about that operation more in depth
17 at a later time, but you had success, so you say today, in Sayo and you were also
18 successful in taking Mongbwalu in June 2003; that's right, isn't it?

19 A. [13:07:08] I was repelled in 2003. I went to Mongbwalu, but I was repelled
20 and left.

21 Q. [13:07:31] Sir, I understood your evidence to be that you were successful in
22 Mongbwalu, you stayed for two days, and then you left due to other important business;
23 isn't that right?

24 A. [13:07:57] I left further to pressure. If the enemy had not come to attack me, I
25 would not have left. I left Mongbwalu in June owing to enemy pressure.

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1 Q. [13:08:12] Yes. And prior to leaving Mongbwalu in June you had successfully
2 ousted those who were there, the people you were fighting, you were successful in that
3 operation until you had to leave due to other pressures; that's right, I think, isn't it?

4 A. [13:08:46] Yes. I drove out Jérôme's soldiers and the Lendu combatants.
5 Subsequently, the enemy attacked us and when I requested aid from Bunia, President
6 Thomas told me to leave the area.

7 Q. [13:09:07] It's true, isn't it, that many within the UPC/FPLC viewed you as the real
8 operational leader of the army?

9 A. [13:09:40] In the army one has successes per times. I was a tactician, I certainly
10 accept that. I commanded a very disciplined army and we had a reputation for
11 discipline. My role was chief of general staff and that was also a well-known
12 fact -- deputy chief of general staff.

13 MS SAMSON: [13:10:30] Mr President, I would like to move to a slightly new area that
14 I would need to develop in some detail and with your permission I seek to break now and
15 resume perhaps five minutes earlier if it's appropriate.

16 PRESIDING JUDGE FREMR: [13:10:45] Yes. Mr Chung will put a question, please.

17 JUDGE CHUNG: [13:10:50] Thank you.

18 So when you trained your force in Uganda 2000, June and July, so what other main
19 officers were there at that time with you to train the force? Yourself and Kisembo. Who
20 else? Can you give all the names for clarification?

21 THE WITNESS: [13:11:25] (Interpretation) It was in 2001, November/December 2000,
22 but the training began in 2001. Ugandan officers were present who were following
23 training, and there were also civilians of a university level who joined us in our cadet
24 school. I recall that there was a large number of us, a large number of Congolese
25 nationality. There were a large number of APC soldiers. I would say there were about

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1 500 people. And the trainers came from outside. There were external trainers there to
2 train us and they too were of a large number.

3 JUDGE CHUNG: [13:12:36] And today you talked about safe house in Jinja and you
4 also testified that there were mobile force officers who are training at Jinja stayed at the
5 safe house. So who were those officers, Chui mobile officers who stayed at the safe
6 house in Jinja?

7 THE WITNESS: [13:13:05] (Interpretation) Yes, there was Mugabo, Kisembo, Bagonza
8 was also there, as well as Tchaligonza, Kasangaki and Zairois and somebody called
9 Asimwe. There were also other APC officers who were given other houses, they weren't
10 living with us. We were the mutineers group and we had brought those other APC
11 soldiers to be trained with us as one big group.

12 JUDGE CHUNG: Thank you. You also testified that Lubanga was there from time to
13 time in 2000 and he used to stay in hotel. So what brought Lubanga to that place? For
14 what reason Lubanga visited the place you trained in 2002? What were the main reasons
15 visited to that place?

16 THE WITNESS: [13:14:49] (Interpretation) When the Prosecutor raised the topic I
17 answered by saying that I never saw Lubanga visit us there.

18 JUDGE CHUNG: [13:15:05] Yeah, I know that you never saw him, but do you know
19 reason why he was there. Even you did not saw him, do you have an idea why he was
20 there?

21 THE WITNESS: [13:15:17] (Interpretation) He was staying in an hotel in Kampala
22 and we were located in the safe house I referred to. When he came, as a member of a
23 delegation it was to speak or take action on behalf of our population.

24 THE INTERPRETER: And, your Honour, the Judge, could you ask the witness to repeat.

25 PRESIDING JUDGE FREMR: [13:15:52] Mr Ntaganda --

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1 THE INTERPRETER: [13:15:53] Sorry, the question to be repeat.

2 PRESIDING JUDGE FREMR: [13:15:55] -- could you kindly repeat the last part of your
3 answer because I guess you are too fast so please slow down and repeat your last
4 response.

5 THE WITNESS: [13:16:08] (Interpretation) Yes, yes, your Honour.

6 So when we went to Uganda the Ugandans brought Lubanga to Uganda and put him in a
7 hotel in Kampala. Now, when we were in Jinja we were taken at one point to work with
8 Mbusa Nyamwisi in Bunia and he became the minister of sports and youth. Only the
9 Ugandans know why he was brought in.

10 Now, we were following the orders of the UPDF and Uganda. We were not taking any
11 decisions, it was the Ugandans who were deciding who would come and who would go.

12 JUDGE CHUNG: [13:17:02] So then you have no chance, you had no chance to meet
13 with Lubanga at the time, then were there any officers, commanders who used to meet
14 with Lubanga during his visit?

15 THE WITNESS: [13:17:26] (Interpretation) I don't think that commanders met them.

16 He didn't spend much time in Uganda. He went back to work with RCD-K/ML.

17 When he came I had left with officers on leave. We had two days' leave, that is to say,
18 Saturday and returning on Sunday to resume training. So when we were on leave, we
19 spent time together in the same house and we heard that Lubanga was in a hotel. And
20 then we learnt one day that he had begun working with the RCD-K/ML.

21 JUDGE CHUNG: [13:18:13] Yes, thank you. That's it from me.

22 PRESIDING JUDGE FREMR: [13:18:15] Yes. And before we break I also have just one
23 question for you, Mr Ntaganda, a question which is, in fact, a follow-up to questions put
24 to you by Ms Samson, who asked you about some comparison between you and
25 Mr Kisembo. And my question is: According you, was there any rivalry between you

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1 and Mr Kisembo?

2 THE WITNESS: [13:18:56] (Interpretation) Your Honour, I respected Kisembo. We
3 had very friendly -- a very friendly relationship and everybody knew that, but there came
4 a time when he changed and, indeed, there was rivalry between us. People knew that I
5 respected him, militarily speaking, and there was never any problem between the two of
6 us. He was an extremely experienced man. Even though I had been his superior for
7 some considerable time, I very much appreciated the way in which he worked. And I
8 have a very good recollection of him. He promoted me to general within the national
9 army in Kinshasa. It was thanks to him that I was given the rank that I was still holding
10 until I entered into detention.

11 PRESIDING JUDGE FREMR: [13:20:16] Thank you, Mr Ntaganda.

12 We now take our lunch break and we will reconvene at 2.45.

13 THE COURT USHER: [13:20:24] All rise.

14 (Recess taken at 1.20 p.m.)

15 (Upon resuming in open session at 2.46 p.m.)

16 THE COURT USHER: [14:46:05] All rise.

17 Please be seated.

18 PRESIDING JUDGE FREMR: [14:46:30] Good afternoon, everybody. I didn't notice
19 any change in appearances, so we can continue with the further part of cross-examination
20 of our witness, of the accused, Mr Ntaganda, which will be conducted by Prosecution by
21 its lead counsel, Ms Samson.

22 Ms Samson, you have the floor.

23 MS SAMSON: [14:46:57] Thank you, Mr President.

24 Q. [14:47:02] Prior to the break, Mr Ntaganda, the Presiding Judge asked you a
25 question about any rivalry that might have existed between yourself and

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1 Floribert Kisembo. You've denied that such a rivalry existed. However, I will put to
2 you that it is true, isn't it, that there was a rivalry between you and Mr Kisembo, wasn't
3 there?

4 PRESIDING JUDGE FREMR: [14:47:39] Ms Samson, it's a problem. I put this question.
5 If you want, you should go further to be more specific, to bring some more points. But in
6 fact you are repeating the same question as I put, asking for a different answer, which I
7 don't find correct. So please rephrase.

8 MS SAMSON: [14:47:56] Yes, Mr President. I'm putting -- I understand the concern of
9 the Chamber. My intention was to put the suggestion positively from the
10 Prosecution's -- as part of the Prosecution's case, but I will indeed go further as the -- as
11 you've highlighted.

12 Q. [14:48:15] Mr Ntaganda, I'll suggested to you further that you didn't frequently
13 report to Mr Kisembo, did you?

14 A. [14:48:33] Yes. When he was my hierarchical superior, he gave me orders and I
15 reported to him, as one does in the army.

16 Q. [14:48:50] I understand that there may be a difference between the English and
17 French transcript in relation to my question. My question did include the negative,
18 which was that you did not frequently report to Mr Kisembo, but I understand that the
19 answer refutes that and positively answers that you did.

20 A. [14:49:26] In the army, reports are made at the appropriate time. When it was
21 possible to give a report, I did it. When he had to give me orders, he did it.

22 MS SAMSON: [14:49:41] Mr President, I would like to make a submission, which I ask
23 your permission to do in private session initially, please.

24 PRESIDING JUDGE FREMR: [14:49:51] All right then. So court officer, let's move into
25 private session now.

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1 (Private session at 2.49 p.m.) *(Reclassified entirely in public)

2 THE COURT OFFICER: [14:50:01] We are in private session, Mr President.

3 PRESIDING JUDGE FREMR: [14:50:12] Thank you, court officer.

4 Ms Samson, please.

5 MS SAMSON: [14:50:18] At this juncture, Mr President, I would like to put to the
6 witness, and I'll only go as far as I can in his presence, a portion of a statement given to the
7 Prosecution by Mr Kisembo which was disclosed to the witness some years ago in relation
8 to this point. And I will not seek to admit the passage. I simply wish to read it to him,
9 as we've done with other witnesses, and to see whether or not he agrees with what was
10 said by Mr Kisembo to us in 2005.

11 PRESIDING JUDGE FREMR: [14:50:54] Defence.

12 MR BOURGON: [14:50:57] Mr President, we object to this, to the use of this document.
13 Yesterday the Chamber issued a ruling that the documents which are not in evidence can
14 be used, and we acknowledge the Chamber's ruling. That is up until, of course, there is
15 another reason than that advanced yesterday for the use of, of any specific item.

16 In this case, we say that this item should not be used, and the reason for this is that this
17 statement that the Prosecution is referring to has been in its possession for years. As part
18 of its case, it was given the possibility to adduce in evidence the statement of Mr Kisembo
19 by using the proper Rule 68. It elected not to do so.

20 So the Prosecution is, in fact, splitting its case in two. They don't put the case of
21 Mr Kisembo as part of their case in-chief, and now they want to do -- they want to re-open
22 their case and put some fresh evidence with a statement.

23 There are two difficulties here. First one is, Mr Kisembo -- a statement is not any
24 ordinary document. It is a statement. Anyone who wants to introduce a statement in
25 evidence, or let's call it witness evidence, can do it by calling the witness, can do it by

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1 Rule 68(2) without cross-examination, or can do it by Rule 68(3) with -- allowing the
2 Defence to cross-examine. There is a further exception, which is when the witness is not
3 available.

4 In this case, the Prosecution did use the opportunity that was open to it. And when they
5 felt it was appropriate for their case, they moved to have statements admitted even
6 though the witness was not available and simply cannot be cross-examined. It happened
7 on at least five occasions. And to the best of my recollection, in at least three occasions, if
8 not more, the Chamber granted the Prosecution's request, but admitting, as part of the
9 Prosecution's case in-chief, the statement that they requested because the person is not
10 available.

11 Now, not having done so as part of its case in-chief, they want to do this as part of
12 re-opening their case during re-examination. The issue under consideration right now,
13 which is whether there was a disagreement or not between Mr Ntaganda and
14 Mr Kisembo, is nothing new to the Prosecution. They put their case. It is in the
15 Updated Documents Containing the Charges, it is in their trial brief as to what was the
16 relationship between the two. Prosecution would like it, the Chamber to believe that
17 Mr Ntaganda was the real chief and Kisembo was not the real chief. All these issues
18 were known when the Prosecution elected not to put Mr Kisembo's statement into
19 evidence. So the first issue has to do with the nature, and that's a very important
20 consideration.

21 The second issue, which is much more important, is the Prosecution will never be -- well,
22 never be - one would hope that the Prosecution will not be able to lead that statement in
23 evidence at this stage. Therefore, Mr Ntaganda will never be able to contest or to
24 challenge the admission of this statement because the Prosecution would have two
25 hurdles to go through. The first hurdle is --

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1 PRESIDING JUDGE FREMR: [14:55:28] Mr Bourgon, but the admission is not at the
2 stake. So you are now going a bit over the submission made by Ms Samson. She at the
3 moment pleads for use only.

4 MR BOURGON: [14:55:40] Well, that's the problem. The problem with the use is that
5 we'll never be able to challenge this item. That's why we don't want to use it now,
6 because once it is used and once we get -- I have no idea what part of the statement they
7 want to use, but instead of getting the statement in evidence they wait until
8 cross-examination, once their case is closed, to use bits and pieces. If the Chamber allows
9 that, it means that in re-examination I'm going to do exactly the same thing, I'm going to
10 take Kisembo's 600-page statement and take all bits and pieces, and there are a lot in that
11 statement, that are in favour of Mr Ntaganda and I will put those to Mr Ntaganda for him
12 to explain. And we get into a new trial.

13 They're trying to do something that should not be allowed at this stage. It is not in the
14 interests of justice to take a statement from a dead person that has been in the possession
15 of the Prosecution and to put that to the witness.

16 What purpose will that serve, purpose being asking Mr Ntaganda a question on a
17 statement that will not be admitted into evidence, or likely will not be admitted into
18 evidence? There is no. The interests of justice are not served by allowing this back-door
19 approach. That's why we say we should not even get into Mr Kisembo's statement at this
20 point in time.

21 They had the possibility to do so, they elected not to do so. It is too late to do so. They
22 knew that Mr Ntaganda could testify any time. It was always known to the Prosecution.
23 And now to use this approach at this stage is -- simply should be forbidden.

24 We have to ask the Prosecution, first question, why? Why use this statement now and
25 why did they not use it during their case in-chief? Two, what is it and what purpose will

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1 that serve? If the purpose is only to serve that contradiction about whether there was a
2 disagreement before Mr Kisembo and Mr Ntaganda, the probative value and the impact
3 of that answer on the case is so little that we should not open the door and get into that
4 house because once we get into that house, then the Prosecution will be asking to go into
5 Mr Kisembo's statement on multiple occasions. Right from the get-go, this is something
6 that should be forbidden and the Prosecution should not be allowed to use that statement.
7 Thank you, Mr President.

8 PRESIDING JUDGE FREMR: [14:58:22] Thank you, Mr Bourgon.

9 And, Ms Samson, any reply? I would appreciate if you could give answers to those two
10 questions put by Mr Bourgon because I believe it will play a role in my deliberation with
11 my colleagues, which will follow soon. Please.

12 MS SAMSON: [14:58:39] Thank you, Mr President. I just have to locate the precise
13 two questions. One is the purpose that it will serve.

14 PRESIDING JUDGE FREMR: [14:58:51] (Microphone not activated) and why just now,
15 not during your case.

16 MS SAMSON: [14:58:55] Yes. Well, Mr President, in addressing those two questions I
17 must indicate that this is a procedure that the Chamber has adopted during
18 cross-examination and so this is a document I intend to use for the purposes of
19 impeachment or undermining the credibility of the witness, which is an exercise
20 disconnected from admission of material. And as we saw during the cross-examination
21 of Prosecution witnesses, the Defence put statements to witnesses in order for them to
22 verify or not the information contained in those statements. It was a procedure that we
23 adopted on a number of occasions just so that the witness could -- the Chamber could
24 evaluate the credibility of the witness's answer when the information from another
25 witness was put to him or her.

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1 And so that's the framework within which we're seeking to use this information. It's to
2 see whether Mr Ntaganda agrees or not and then the Chamber can evaluate the credibility
3 of the answer when confronted with this particular information.

4 Now, Mr Kisémbu himself could not be a witness here, the Prosecution did not seek to
5 admit the totality of his statement, but admission isn't the issue that we're discussing at
6 this point, it's whether or not the Prosecution can use the evidence in impeachment in the
7 same way the Defence was permitted to use statements to potentially undermine
8 credibility and for the Chamber to evaluate whether or not the answer, once confronted
9 with the statement of a different witness that may contradict that, whether or not that
10 answer is credible. It's really within the Chamber's purview to be able to conduct this
11 exercise, in my submission.

12 Subject to any further questions you have, your Honour, that's what I wish to say that
13 this time.

14 PRESIDING JUDGE FREMR: [15:01:07] Thank you, Ms Samson.

15 Mr Bourgon, but one minute maximum. Please.

16 MR BOURGON: [15:01:12] Thank you, Mr President. The question is, the question
17 that they want to elicit or the evidence they're trying to get from Mr Ntaganda, was that
18 part of the Prosecution's case? Yes, it was. It is clear from the UDCC and the pre-trial
19 brief that this was their case. So there's no reason for them not to put the evidence in
20 their possession that was as part of their case in-chief. So what they're trying to do right
21 now is something that is beyond the scope.

22 But the real reason my colleague just said that, "We elected not to put the totality of
23 Mr Kisémbu's statement. So we're not going to put the totality because it could hurt us,
24 we'll wait until cross and we'll use bits and pieces." That's the problem. But the issue
25 my colleague has not answered: How will I ever on behalf of Mr Ntaganda be able to

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1 challenge that statement or small portions that will be put to Mr Ntaganda? We do not
2 have answers to these questions and we should not go and enter that door at this stage.

3 Thank you.

4 PRESIDING JUDGE FREMR: [15:02:25] Thank you.

5 Ms Samson, I think we heard enough. Give us a second. I have to deliberate on this
6 substantial objection with my colleagues.

7 (Trial Chamber confers)

8 PRESIDING JUDGE FREMR: [15:03:49] So after silent deliberation in the courtroom
9 our ruling is that the objection is overruled.

10 In fact, we believe we even in this case we can follow our decision we made in a bit
11 general way.

12 And maybe why not to move into open session because this is an important thing.

13 Court officer, please.

14 (Open session at 3.04 p.m.)

15 THE COURT OFFICER: [15:04:23] We are in open session, Mr President.

16 PRESIDING JUDGE FREMR: [15:04:31] So I will repeat from the beginning of our
17 ruling that the Chamber deliberated and came to conclusion that in fact we can follow our
18 decision we have made yesterday, if I am not wrong, even at a bit more general level, but I
19 really believe that it could be applied also on this concrete case.

20 We again highlight that now it's the use at stake. In fact, we agreed with arguments of
21 Mr Bourgon even it's a bit premature that the chance that this kind or this document could
22 be admitted is really very close to zero, but in our view it doesn't prevent us to use it, and
23 we would like to stress that not for the truth of the content, but only for the purpose of
24 challenging credibility of Mr Witness. So in fact what is relevant for us would be the
25 answers given by Mr Ntaganda, it even could very well serve to his defence, so we don't

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1 find any prejudice in using this document with Mr Ntaganda, giving him chance to
2 support his own defence on that basis.

3 So now, Mr Bourgon.

4 MR BOURGON: [15:06:02] Thank you, Mr President. With all due respect for the
5 Chamber's decision, I ask for a reconsideration of this decision on the basis of a clear error
6 of law and the clear error of law, Mr President, comes from the Prosecution's own
7 admission. They said to the Chamber a few minutes ago "we do not intend to admit this
8 part in evidence". So what the Prosecution is seeking to do is to test, challenge the
9 credibility, impeach the witness on the basis of evidence it has no intention of placing on
10 the record. The Chamber just said that even if it did enter on the record, it's probative
11 value was close to zero. Now, we know on the basis of the Prosecution's own admission
12 that it will not be in the record. So the Chamber is left with assessing the words of the
13 witness on the basis of nothing. That's why this exercise we believe, Mr President, is a
14 clear error of law and I kindly ask respectfully that your decision be reconsidered at this
15 stage. Thank you, Mr President.

16 PRESIDING JUDGE FREMR: [15:07:22] Prosecution position on this request.

17 MS SAMSON: [15:07:24] The Prosecution opposes the request for reconsideration,
18 your Honour, on the basis that the Chamber has not said that the exercise lacks probative
19 value, but that the chance of having a statement of another witness admitted for the truth
20 of its contents now is unlikely. But this is the precise same exercise that the Chamber has
21 approved in a number of other cases during Defence cross-examination. And if the
22 Chamber had not wanted for this exercise to happen then, it would have, in my respectful
23 submission, ruled that that procedure was inappropriate when the Defence sought to
24 utilise it.

25 And what's -- as Defence counsel acknowledged a few days ago, what's good for the

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1 goose is good for the gander, which means that if the Defence were able to do the precise
2 same exercise when they were cross-examining Prosecution witnesses for the purpose of
3 having the Chamber evaluate the credibility of the witness when confronted with a
4 statement that somebody else made, a statement that was not in evidence, then in our
5 submission the Prosecution ought to be able to do the same thing and so we ask that
6 your Honours uphold the decision you've just rendered.

7 PRESIDING JUDGE FREMR: [15:08:43] Thank you.

8 So, Mr Bourgon, I think we have again heard enough. Give me a second. I will
9 deliberate.

10 (Trial Chamber confers)

11 PRESIDING JUDGE FREMR: [15:09:09] So I can be brief: Now the Chamber hasn't
12 found any reason for reconsideration and we uphold our previous decision.

13 Now, Ms Samson, please proceed.

14 MS SAMSON: [15:09:22] Thank you, Mr President. May I ask that we move into
15 private session for this exercise and I can give explanations to the Chamber for private
16 session.

17 PRESIDING JUDGE FREMR: [15:09:34] All right.

18 Court officer -- in the interest of public view, can you estimate for how much time we will
19 spend in private session?

20 MS SAMSON: [15:09:43] I think no more than five minutes, your Honour.

21 PRESIDING JUDGE FREMR: [15:09:45] All right.

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

23 THE COURT OFFICER: [15:09:54] Mr Bourgon, do you want to make your submission
24 in open session or in private session?

25 MR BOURGON: [15:10:00] One or the other. I can wait.

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1 PRESIDING JUDGE FREMR: [15:10:02] So please proceed, court officer.

2 (Private session at 3.10 p.m.) *(Reclassified entirely in public)

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

4 PRESIDING JUDGE FREMR: [15:10:15] Thank you, court officer.

5 Mr Bourgon.

6 MR BOURGON: [15:10:19] I would just like to have further information as to the
7 reason for going into private session. Mr Kisembo is not a witness. Mr Kisembo is
8 deceased. I don't know if there's any other names that will be mentioned, but I would
9 like to know why.

10 PRESIDING JUDGE FREMR: [15:10:32] Mr Bourgon, you are a little bit impatient.

11 Ms Samson thought she would provide us with reasons and then we will evaluate those
12 reasons.

13 Ms Samson, go ahead.

14 MS SAMSON: [15:10:44] Yes, thank you, Mr President. I indeed wanted and
15 intended to provide further reasons for the Chamber to adjudicate whether or not private
16 session is appropriate. Having consulted with our internal security advisers as to
17 whether or not it would be appropriate, in our submission, to discuss Mr Kisembo's
18 statement to us in 2005 in open session, the reservation expressed, which I'm now
19 communicating to you, is that we do not wish to in any way endanger Mr Kisembo's
20 family because of his cooperation with us in 2005. And that is the reason why, if allowed,
21 I would ask these short series of questions in private session.

22 That said, we allow -- the Chamber will evaluate whether or not that is a concern that you
23 wish to take into account in deciding the private or public session.

24 PRESIDING JUDGE FREMR: [15:11:40] And the term "coordination", we should
25 understand that he provided this statement to Prosecution? What should we understand

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1 under the term "cooperation"?

2 MS SAMSON: [15:11:55] Yes. Well, it's a term that I use in respect of every witness
3 with whom we meet. We met with Mr Kisembo from 25 to 28 November 2005 and we do
4 have a lengthy interview from him. And in that context our responsibilities and duties to
5 witnesses begins and that's what we consider to be the beginning of obligations to uphold
6 the security for them and their family. And although there are no further security
7 concerns, clearly, for Mr Kisembo, we do extend to their families.

8 I don't have information I can say to the Chamber in relation to Mr Kisembo's family, but
9 the concern expressed, which I'm communicating, is that there may be.

10 PRESIDING JUDGE FREMR: [15:12:46] Thank you, Ms Samson.

11 Mr Bourgon, Defence position?

12 MR BOURGON: [15:12:51] Well, Mr President, I don't think we've heard any
13 justification to justify why we should do this into private session. My colleague does not
14 have information, she just acknowledged. She says that there are security concerns
15 coming from internal security department, but we don't know who, we don't know when
16 those concerns were obtained, we don't know what the concerns are, other than
17 Mr Kisembo's family, because -- however, the fact that information goes into private
18 session will prevent the Defence from using that answer when we meet our own
19 witnesses because it will become confidential information. And that's the major
20 difference for us.

21 So no matter what the considerations are, and I don't know what the questions are and I
22 don't know what the part of the statement my colleague intends to use, but that should be
23 done in public so that the public can know what is his -- what it is that was, according to
24 the Prosecution and Mr Kisembo, deceased a long time ago, what was the problem
25 between him and Mr Ntaganda. Thank you.

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1 PRESIDING JUDGE FREMR: [15:14:08] All right. Ms Samson. And be brief, please.

2 MS SAMSON: [15:14:11] Certainly. It was just to address the issue of the use that the

3 Defence can make of the information later. There is nothing, in my submission, that

4 precludes the Defence from making investigative inquiries about the relationship that

5 existed as between Mr Kisembo and Mr Ntaganda. What is precluded is disclosing the

6 fact of cooperation that could raise security concerns. Thank you.

7 PRESIDING JUDGE FREMR: [15:14:36] Thank you again. I will briefly consult my

8 colleagues because it is again a rather fundamental request.

9 (Trial Chamber confers)

10 PRESIDING JUDGE FREMR: [15:15:38] So after silent deliberation in the courtroom,

11 our ruling is that this part of statement should be used and read in open session. We, in

12 fact, followed our jurisprudence that we establish as concerns other witnesses. We

13 haven't heard anything that would really confirm some objectively justifiable risk for the

14 family of Mr Kisembo. And moreover -- also argument mentioned by Mr Bourgon is

15 valid and moreover the fact that this procedural step, in fact, provoked a big litigation I

16 think also requires to make it transparent, which means make it in open session.

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

18 (Open session at 3.16 p.m.)

19 THE COURT OFFICER: [15:16:46] We are back in open session.

20 PRESIDING JUDGE FREMR: [15:16:56] Ms Samson, please proceed.

21 MS SAMSON: [15:16:59] Thank you, Mr President.

22 If I could ask the court officer, please, to bring up item number 1051 on our list. It's a

23 document DRC-OTP-2055-1932 at page 1970, and I will be reading lines 1355 to 1370

24 Q. [15:18:06] Mr Ntaganda, I'm going to read to you what Floribert Kisembo said in

25 relation to your relationship with him, and I will read in French.

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1 THE INTERPRETER: [15:18:27] Guidance for the interpreters, Mr President. Are we
2 expected to read the English excerpt or to interpret?

3 PRESIDING JUDGE FREMR: [15:18:37] Ms Samson, you will read in French, I guess?

4 MS SAMSON: [15:18:42] I can read the English. Perhaps that would make the
5 exercise easier. It was interpreted into English originally and so if that --

6 PRESIDING JUDGE FREMR: [15:18:51] If the translation is correct, then it would be
7 probably preferable by Chamber. And one question for my part: Could you provide us
8 with the date of this statement for the record?

9 MS SAMSON: [15:19:02] Yes, Mr President. It is 28 November 2005.

10 PRESIDING JUDGE FREMR: [15:19:09] Thank you.

11 MS SAMSON: [15:19:16] And I will start reading it again, starting from the English
12 interpretation, which is at line 1356:

13 "What I noticed" -- and this, sir, is in relation to you -- "What I noticed that he wanted to
14 measure himself to me ... he tried to do everything to prove with ... Thomas Lubanga that
15 he was better than me. As he started the army much before me ... he had this complex.
16 That's how ... that's why he didn't want to give me any report, because that would have
17 been ... lower himself. He always took a distance from me. That was his problem."
18 End quote.

19 Now, sir, having listened or been able to read this part of the exchange, does that refresh
20 your recollection in any way of the rivalry that might have existed between you and
21 Mr Kisembo?

22 A. [15:21:03] Your Honours, let me tell you something. When the meeting took place
23 with Kisembo, it was after his defection. He had just created his own party in
24 December 2003, and President Toms had asked that the question be put to him directly,
25 and I -- or he asked that we be opposed to him directly, and I did so. And that's when

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1 we became enemies.

2 He became my enemy. I became his enemy. I fought against him in Katoto. I was in

3 Bunia and he was in Katoto. At that time we were enemies. Do you expect that he

4 would say anything good about me? That's one.

5 Secondly, I am a soldier and I tell you things with evidence to support it. When I was

6 there, I presented a military salute to him as a sign of my respect. Now, if I don't respect

7 anybody in the army, I would not salute them. But I learnt to salute like soldiers do and I

8 had to do so.

9 In Mongbwalu he introduced me to the population, and you have the video where he

10 says, "This gentleman is my 2IC, my deputy". At the airport in Mongbwalu you saw me

11 salute him when he came there, and at that time we were -- we were enemies. He could

12 have gone ahead and said any kind of thing about me at that time. This is the answer I

13 can give to that question, your Honours.

14 PRESIDING JUDGE FREMR: [15:23:02] Sorry to interrupt. I would like to put

15 additional question, Ms Samson.

16 So you are saying that from your part everything was fine. It seems from this statement

17 that it was not the case of Mr Kisémbó. Is it possible that you haven't observed anything

18 like that, that he doesn't -- at least at some time, at some point of time, he doesn't like you

19 or he's jealous or -- to your position?

20 THE WITNESS: [15:23:44] (Interpretation) Your Honours, before he defected and was

21 opposed to Lubanga, I had never had any problems with Kisémbó. I respected him and

22 he respected me too. At my level, we never had any problems at that time. Before he

23 died, he came to see me in Goma and told me that he had been asked to testify against

24 Lubanga but he turned it down. Subsequently he died, but before he died we had been

25 reconciled, we had become friends again. We were friends before, then we became

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1 enemies because he had turned against President Thomas, who was very popular.

2 PRESIDING JUDGE FREMR: [15:24:37] Sorry, Ms Samson, one more question because

3 I would like to use this opportunity.

4 Mr Ntaganda, do you have any knowledge or explanation for the reason of

5 Mr Ntaganda -- sorry, of Mr Kisembo defection? Because I can -- one of the explanation

6 for me, but it's up to you to confirm it or not, could be that he was not satisfied with his

7 position within the UPDF. But I'm now asking whether you have some explanation for

8 that or some knowledge what was the reason for Mr Kisembo to leave you?

9 THE WITNESS: [15:25:36] (Interpretation) Mr President, he told me when we met later on.

10 He said it was because the director of MONUC, the lady director of MONUC, had misled

11 her -- had misled him, *rather. He thought that he was going to receive support from

12 MONUC, but they didn't keep the promise. I mean, the MONUC people did not keep

13 their promises. The people of MONUC had taken him to Kinshasa, but when he came

14 back from Kinshasa he came to see me in Goma and I presented my military salute to him.

15 PRESIDING JUDGE FREMR: [15:26:14] Thank you, Mr Ntaganda. Ms Samson, please proceed.

16 MS SAMSON: [15:26:18] Thank you, Mr President. And for the record, I'd just note

17 that at -- in the same document 20551932, at the preceding page 1969, line 1340, is where

18 specifically it states that the discussion is about Mr Ntaganda. Just for clarity.

19 Q. [15:26:42] Now, sir, you mentioned that it may be, you think that Mr Kisembo lied

20 about you in his interview because at that time in 2005 you were enemies. That's right,

21 that's what you said?

22 A. [15:27:09] Yes, that is what he told me. He said he had done so because we had

23 become enemies.

24 Q. [15:27:18] Well, did he tell you that he spoke about you and talked about

25 his -- talked about this particular excerpt and how you didn't report to him? Did he tell

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1 you that he said that to us?

2 A. [15:27:40] No, he didn't tell me that.

3 Q. [15:27:43] You said earlier that you had become enemies by 2005 because

4 Floribert Kisembo defected from the UPC in December 2003; right?

5 A. [15:28:04] Madam, kindly repeat your question, please.

6 Q. [15:28:08] Certainly. You said earlier that at the time that Floribert Kisembo

7 provided this information, you and he were enemies because the meeting took

8 place -- and I'm quoting page 84 lines 1 to 3:

9 "The meeting took place with Kisembo. It was after his defection. He had just created

10 his own party in December 2003."

11 So if I understand what you're saying, you had become -- you and he had become enemies

12 from the time of his defection in 2003 through to 2005 when he gave his interview; that's

13 your evidence, I think, isn't it?

14 A. [15:29:03] I don't know the period when you interviewed him, but what I know is

15 that from the time of his defection until he went to Kinshasa, we were enemies, but later

16 on he left Kinshasa, came to see me, and we had a conversation, and we were reconciled

17 to each other, and he later on died.

18 Q. [15:29:29] And when were you promoted to general within the national army in

19 Kinshasa?

20 A. [15:29:51] He promoted me to the rank of major general in June 2003, and I'm

21 referring there to Kisembo. When my name was sent to Kinshasa, I was promoted to the

22 rank of brigadier general in 2004.

23 Q. [15:30:22] And your promotion, you said, to general in the national army in

24 Kinshasa, was that in 2004, or in 2004 were you brigadier general in the Kinshasa

25 government? Can you help us with that?

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1 A. [15:30:55] Kisembo promoted me to the rank of major general in June 2003. And
2 when a request was made for our names to be put forward, I put forward my name as
3 well as the names of other commanders, and then I was -- rather, I was demoted -- or,
4 rather, by one rank. I lost one star and became a brigadier general.

5 Q. [15:31:44] Now, some of -- some of your answer is not captured in the English
6 transcript, but I believe you just said that you put forward your name as well as the name
7 of other commanders for integration into the national army in 2004. I just want to make
8 sure the transcript is accurate; is that correct?

9 A. [15:32:33] I remember that before our batch, which came out in 2004, well, I don't
10 remember the exact month, the names were initially sent to Kinshasa, and then a few days
11 later there was confirmation of the various ranks. As for me, I lost one star.

12 Q. [15:33:03] Now, earlier today, and I'm referring to page 67 of the transcript -- page
13 66, pardon me, of the transcript, in response to a question in relation to whether or not
14 there was a rivalry between yourself and Mr Kisembo, a question of the Presiding Judge,
15 you stated, in lines 20 to 23 -- actually, at 18 to 23 you said, and I quote:

16 "Even though I had been his superior for some considerable time, I very much appreciated
17 the way in which he worked, and I have a very good recollection of him. He promoted
18 me to general within the national army in Kinshasa. It was thanks to him that I was
19 given the rank that I was still holding until I entered into detention."

20 Now, is your evidence that Kisembo promoted you to general in 2004 or sometime after
21 that when your name went in within the national army in Kinshasa?

22 A. [15:34:37] Madam, you're putting words into my mouth that I didn't say. I told
23 you that in June 2003 Kisembo gave me a rank, then our names were sent to Kinshasa. In
24 fact, he had already assigned me the rank of major general, but this rank was not
25 confirmed. The rank that I was ultimately given was thanks to him and I have a good

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1 memory of that, thanks to him.

2 Q. [15:35:22] So in fact, Kisémbé did not promote you to general within the national
3 army in Kinshasa as you said earlier, that's right? He did not promote you to general
4 within the national army in Kinshasa?

5 A. [15:35:55] He, too, was promoted by the authorities in Kinshasa. He couldn't
6 promote himself. So he is the one who gave me my rank. That's what I told you.

7 Q. [15:36:21] Now, the rank that you say he gave you --

8 PRESIDING JUDGE FREMR: [15:36:24] Hold on a second.

9 Mr Bourgon, sit down so --

10 MR BOURGON: [15:36:31] I don't want to interrupt my colleague; I'll let her finish. I
11 have two transcript corrections.

12 MS SAMSON: [15:36:38] Yes.

13 Q. [15:36:38] Now, the rank that you stated that Mr Kisémbé gave you in June 2003
14 was actually the same rank that he had, wasn't it, major general?

15 A. [15:36:57] Yes.

16 PRESIDING JUDGE FREMR: [15:37:00] Mr Bourgon, now you can come up with your
17 corrections.

18 MR BOURGON: [15:37:10] Thank you, Mr President.

19 I'd like first to go to a citation from the transcript that was just used by my colleague, and
20 this was on page 68, lines 9 to 10. I'm informed -- this happened just before the break,
21 but it was just used again and I would just like to be sure what exactly was mentioned on
22 this occasion.

23 And if I go to the exact citation, my colleague said today on page 89 in French, she was
24 quoting the paragraph, and she was quoting lines 18 to 23. I would just like to know if
25 those were the words that Mr Ntaganda used:

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1 (Interpretation) "Although I had been his superior for quite some time, I very much
2 appreciated the manner in which he worked and I have a very good memory of him."

3 (Speaks English) I'd like to know if those were the words that were mentioned by
4 Mr Ntaganda.

5 PRESIDING JUDGE FREMR: [15:38:23] Mr Ntaganda, could you comment?

6 MS SAMSON: [15:38:25] Mr President.

7 PRESIDING JUDGE FREMR: [15:38:26] Yes.

8 MS SAMSON: [15:38:27] I would ask that --

9 PRESIDING JUDGE FREMR: [15:38:29] Even better.

10 MS SAMSON: [15:38:31] Mr Ntaganda certainly can answer, but I would ask that to the
11 extent there's a question about what has already been said that this be checked against the
12 original Swahili and maybe that there was a mistake in the English transcript.

13 PRESIDING JUDGE FREMR: [15:38:43] All right with me.

14 MS SAMSON: [15:38:45] Thank you.

15 Q. [15:38:46] Now, sir, in relation --

16 PRESIDING JUDGE FREMR: [15:38:48] Mr Bourgon.

17 MR BOURGON: Then there's a second issue, Mr President. And that's at page 86 line
18 26 to page 87 line 4. According to what I'm told, there's a series of words missing in that
19 paragraph to complete -- to make the answer complete.

20 PRESIDING JUDGE FREMR: [15:39:06] In English transcript?

21 MR BOURGON: [15:39:09] Eighty-six. Both transcripts, appear to be the same.

22 PRESIDING JUDGE FREMR: [15:39:12] Both. Because I hope in the French
23 everything is okay because I thought it is only a problem with the English version, so if
24 you're saying it is also in French version as well, so we should return back to that.

25 MR BOURGON: [15:39:25] Missing in both, Mr President.

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1 PRESIDING JUDGE FREMR: [15:39:29] Ms Samson, could you deal with that, with
2 those both.

3 MS SAMSON: [15:39:34] Would it be possible for the missing words to be checked as
4 against the original Swahili and inserted?

5 PRESIDING JUDGE FREMR: [15:39:44] All right.

6 MS SAMSON: [15:39:45] Thank you.

7 Q. [15:39:48] Mr Ntaganda, you were describing that in June 2003, you were given a
8 rank of major general which was in fact the same rank as Kisembo and you've agreed with
9 that?

10 A. [15:40:11] Yes. When he gave me that rank he, too, had the same rank, that is,
11 major general.

12 Q. [15:40:19] It's unusual, isn't it, that your superior, as you allege, would have the
13 exact same rank as you, isn't it?

14 A. [15:40:47] He could not do something abnormal in the army, that would have been
15 impossible. But in the army, even if two people have the same rank there is always one
16 who is superior to the other. Even if you have two corporals walking side by side on the
17 streets, or two sergeants, there is usually one who is superior to the other.

18 PRESIDING JUDGE FREMR: [15:41:20] I can confirm.

19 MS SAMSON: [15:41:31]

20 Q. [15:41:35] And in fact you bypassed Kisembo, didn't you, when you were giving
21 orders or responding to commanders; isn't that right?

22 A. [15:42:00] If I had short-circuited him then our army would have been destroyed.

23 Q. [15:42:13] I'd like to take a look at a message in the logbook. I'll just get the
24 references. The original logbook is DRC-OTP-0017-0172. And the translation is

25 DRC-OTP-2102-3855. For the court officer, the original is 0017-0033, at page 0172. And

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1 the translation is at page 3994?

2 PRESIDING JUDGE FREMR: [15:43:39] Defence, do you have it? Have you found it?

3 MR BOURGON: [15:43:42] We do, Mr President. My colleague had requested that I
4 prepare the binder for Mr Ntaganda, the same one that was used, so I have it here. If she
5 intends to use it, if think would be a --

6 PRESIDING JUDGE FREMR: [15:43:53] Good idea.

7 Court usher, please assist.

8 MS SAMSON: [15:43:57] Yes, thank you.

9 MR BOURGON: [15:44:00] It is exactly the same binder that was given to him during
10 examination-in-chief.

11 MS SAMSON: [15:44:24]

12 Q. [15:44:24] Mr Ntaganda, if you could turn to page 0172 in the original Swahili
13 logbook that you have, it's the thicker of the two.

14 If I could ask you to look at the last message on the page, it is a message that we've seen
15 during your examination-in-chief.

16 Now, this message, sir, is dated 21 February 2003 received at 11.59; is that right?

17 A. [15:45:44] Yes.

18 Q. [15:45:47] And it's addressed to Kisembo, the chief of general staff from Jérôme
19 Kakwavu, the sector north-east commander. Copied are the minister of defence, yourself,
20 the deputy chief of staff operations and organisation and sector commander south-east
21 and the G2. Is that right?

22 A. [15:46:27] Yes.

23 Q. [15:46:30] Now, in February 2003 who's the minister of defence?

24 A. [15:46:53] It was President Thomas Lubanga.

25 Q. [15:46:58] And this message was read to you previously. I will read it again.

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1 And so Jérôme writes and I'll read it in French:

2 (Interpretation) "Why do all the movements award ranks apart from UPC/RP. Stop. Is
3 that the fruit of the work that we have done. Stop. Even RCD-Kis are already wearing
4 their clothing. Stop. Criteria for awarding a rank. Stop. One experience. Stop.
5 Two service performance. Stop. Three discipline."

6 (Speaks English) That's the end of the message.

7 And now, sir, if you could have that message in mind while you turn to your response
8 which is at -- in your original book it's DRC-OTP-0017-0003, message 174. And the
9 translation is at DRC-OTP-2102-3855, at page 3966.

10 A. [15:48:45] Where is the original of the second message?

11 Q. [15:48:49] The original in your logbook is at page 0174.

12 A. [15:49:28] 174?

13 Q. [15:49:34] Yes, that's right.

14 A. [15:49:47] Okay. I'm there.

15 Q. [15:49:53] It's the message from you to Kakwavu, north-east sector commander,
16 dated 21 February 2003, at 14.04. Do you see that message?

17 A. [15:50:25] Yes, I can see it.

18 Q. [15:50:28] And so, sir, it's right, isn't it, that you responded to Jérôme Kakwavu
19 within two hours of him sending you the message; correct?

20 A. [15:50:48] Yes, if that is what you can see there, then that is so.

21 Q. [15:50:55] Yes. And I'll read the message, but effectively you're responding in
22 relation to the grades.

23 You've written, and I'll read it in French: (Interpretation)

24 "Regarding the distribution of ranks. Stop. What they follow we know that. We have
25 the infantry certificate. Stop. For that the distribution of ranks is not something to be

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1 planned by one person, it is the high command that should plan. Stop. This is why I am
2 telling you to be on standby. Come we will sit down together and plan. Stop. Don't
3 worry, we who are above you are not concerned."

4 (Speaks English) And that's the end of the message.

5 Now, it's right, isn't it, that you've copied the minister of defence in this message, but you
6 don't copy Mr Kisembo? On the message, sir, if you look at the message you've copied
7 the minister of defence, but not Floribert Kisembo; is that right, based on the message?

8 A. [15:52:40] Madam, the army is not a political body. Secondly, there were no
9 suspicions between Kisembo and myself. If I sent a message to reply quickly, if I see a
10 message I can reply quickly to the writer. There were no suspicions between us.
11 Jérôme reported to me. I could reply to him any time, whenever I wanted to. Our
12 administration is not like yours. Here I replied to Jérôme telling him what my thoughts
13 were and if Kisembo wanted to send him a reply, then he could have done. Here you're
14 referring to my logbook, but if you had Kisembo's logbook, then perhaps you would see
15 other things in that logbook, perhaps you could see that he also sent a message to the
16 same person.

17 Q. [15:53:51] And on the face of this message, however, you didn't include Floribert
18 Kisembo in your response; am I right or am I wrong, if you look at the message?

19 A. [15:54:13] He had his signaller for the same message. I could send him a copy or
20 not, but he had the possibility to have it because he had his own signaller. He had his
21 own logbook and his own signaller. That didn't come from signaller. I could send a
22 message and not send a copy, but because he has his signaller, he got all the messages.

23 Q. [15:54:47] And so if I understand your answer, what you've said is that -- and I'm
24 referring to an earlier answer on page 96, you could reply to Jérôme, "Jérôme reported to
25 me. I could reply to him at any time, whenever I wanted to." And so it -- sorry, is that

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1 wrong? I've just --

2 A. [15:55:25] No.

3 Q. [15:55:26] I'm just reading what you just said.

4 A. [15:55:31] That's not it. You see, Jérôme had sent him the message, he had sent
5 the message to Kisembo, he could send the same message to the president. There were
6 no restrictions. Everybody could send a message to whomsoever they wanted at any
7 time. There was a procedure with the messages. You could reply, send a message to
8 someone, and reply to anyone. Everyone had their own radio, their signaller and their
9 logbook. I replied to Jérôme and gave him my opinion. He was under me, he was my
10 subordinate. You will recall at that stage I had come from Mongbwalu when Kisembo
11 asked me to follow the operation in Mahagi. This message from Jérôme is quite natural;
12 that is the way we worked, madam.

13 Q. [15:56:53] And it's right then, isn't it, that the way you worked was that when you
14 wanted to you could respond to messages in relation to grades or anything else whenever
15 you wanted to at any time?

16 A. [15:57:20] Yes. Yes. When you felt the need to send -- when I felt the need to
17 send a message, I sent it. If I didn't think it was useful --

18 Q. [15:57:36] And this message that we've just read in relation to the distribution of
19 grades or ranks, in it you're explaining to Kakwavu your subordinate that the assignment
20 of ranks is for the high command who need to plan; that's right?

21 A. [15:58:11] Yes. I said that this is not something an individual does; it is something
22 done by the high command.

23 Q. [15:58:24] And --

24 PRESIDING JUDGE FREMR: [15:58:25] Hold on, Ms Samson.

25 Mr Bourgon.

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1 MR BOURGON: She can finish her line and then I can --

2 MS SAMSON: [15:58:38] Certainly. Thank you.

3 Q. [15:58:38] And then you go on to say, "Not to worry because we who are above
4 you are not concerned about the issue." And you yourself were part of this high
5 command. That seems clear from the message, doesn't it?

6 A. [15:59:16] Yes.

7 Q. [15:59:17] And when you responded to this message, you did not know -- you had
8 not spoken to Kisembo before responding, I take it, because you didn't need to?

9 A. [15:59:43] I knew what my superiors' intentions were and I knew what -- when he
10 was going to give the new ranks, when we were at a time of peace rather than a time of
11 war. At this particular moment, the Ugandans were about to attack us and Jérôme sent
12 the message in this crucial period. So it is the same person who asked me about the
13 ranks. And I said that these things are not compatible, therefore, this is why I sent the
14 reply that I did.

15 Q. [16:00:30] Thank you.

16 PRESIDING JUDGE FREMR: [16:00:36] Now it is time for Mr Bourgon.

17 Mr Bourgon, please.

18 MR BOURGON: [16:00:40] Mr President, a correction needs to be made both in the
19 English and in the French. In French, it's page 98, at lines 26 and 27. And in English, it's
20 page 97, lines 20 and 21.

21 My colleague can put the question to Mr Ntaganda to be, but those words do not reflect
22 what was said by the witness.

23 PRESIDING JUDGE FREMR: [16:01:06] Thank you.

24 MS SAMSON: [16:01:14] I take it, Mr President, that that is a correction that can be
25 accommodated in the edited transcript?

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- 1 PRESIDING JUDGE FREMR: [16:01:21] Yes, I believe so.
- 2 MS SAMSON: [16:01:22] Yes. Thank you.
- 3 PRESIDING JUDGE FREMR: [16:01:24] Mr Bourgon.
- 4 MR BOURGON: [16:01:25] Well, sometimes they are material and sometimes it needs
- 5 to be done now to understand the follow-up questions. And in this case, a negative form
- 6 was used instead of a positive form, and this may reflect on future questions in the
- 7 immediate. So that's why I would appreciate if it could be corrected now.
- 8 PRESIDING JUDGE FREMR: [16:01:45] So then it seems to be really material, so
- 9 Ms Samson, please.
- 10 MS SAMSON: Yes, certainly, Mr President, I will just find the references and I will ask a
- 11 follow-up question.
- 12 MR BOURGON: If I can help, I'm looking at the -- in English it's page --
- 13 MS SAMSON: [16:02:25] It may be page 97.
- 14 MR BOURGON: [16:02:29] The issue, Mr President, is when could
- 15 Mr Ntaganda -- when did he decide to send the message and the answer is different.
- 16 MS SAMSON: [16:02:44]
- 17 Q. [16:02:44] Sir, I'm going to read out to you what the answer is in two languages,
- 18 and then you can tell me and the Chamber what is correct.
- 19 In English, on the English transcript, page 97, lines 19 to 21, I had asked a question as to
- 20 whether you could respond to messages whenever you wanted to at any time and you
- 21 said:
- 22 "Yes, yes. When -- when I felt the need to send a message I sent it. If I didn't think it
- 23 was useful."
- 24 And the French has captured that as:
- 25 (Interpretation) "Yes, yes, whenever the need arises, I send a message because I think

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1 that it is not useful."

2 (Speaks English) Could you explain what it is you had said about the utility of when you
3 sent those messages. Was it when it was useful or when it wasn't?

4 A. [16:04:26] When I think it is useful and I have the time, then I reply to the message,
5 and I replied to this message that had been said. I had time then.

6 PRESIDING JUDGE FREMR: [16:04:40] Thank you, Mr Bourgon. I think now it
7 makes sense, which was not the case in the previous wording. Or not.

8 MR BOURGON: [16:04:52] I apologise, Mr President, that was not the issue. The
9 issue of the usefulness or not, and my --

10 PRESIDING JUDGE FREMR: [16:05:00] But at least for my understanding, the English
11 version didn't make sense because those two sentences were controversial, so now in my
12 view it makes sense as Mr Ntaganda in fact elaborate on that. 97, line 20 in the original
13 wording was:

14 "Yes, when you felt need to -- when I felt the need to send a message I sent it, if I didn't
15 think it was useful." Which in my view doesn't make sense. And now I understood that
16 Mr Ntaganda corrected anyway. If he find it useful, then he sent a message, so now it
17 makes sense. So I think we agreed on that.

18 Ms Samson, please proceed.

19 MS SAMSON: [16:06:01] Thank you, Mr President.

20 Q. [16:06:06] Now, sir, you'll agree that you had the ability the communicate with all
21 FPLC stations using the Manpack and your signaller?

22 A. [16:06:35] Yes, apart from those who didn't have Manpacks, or if the Manpack was
23 not switched on, or my signaller's battery was flat, or there was no acid in the battery.

24 Those are circumstances where a message cannot be received, but one can always send a
25 message. And if people want to send us a message, then they did so and then we would

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1 receive it.

2 Q. [16:07:25] Yes. And so aside from those exceptions or times when you wouldn't
3 send a message, you'll agree that you had the ability to communicate with all FPLC
4 stations using the Manpack; correct?

5 A. [16:08:00] Yes.

6 Q. [16:08:03] And it was important for you to ensure that those subordinate to you
7 and others in the high command understood the proper chain of command; correct?

8 A. [16:08:35] As that's the instruction I received from my superior and that complied
9 with the level that I had.

10 Q. [16:08:51] Now, I wasn't referring to any instruction. I was simply asking that it
11 was important for you as part of the high command to ensure that subordinates
12 understood that there was a proper chain of command to follow; that's right, isn't it?

13 A. [16:09:26] Yes. That's the order I received. And according to the rank I had, the
14 deputy chief of staff, that is the rank that I held.

15 Q. [16:09:52] I'd like to show you another message, please, in the logbook that you
16 have. It's at page 0181.

17 And for the court officer, it's item -- well, it's DRC-OTP-0017-0003. That's the original
18 language, at page 0181. And the translation is at DRC-OTP-2102-3854, at page 4003.

19 The message that I would ask you to concentrate on is the message at 13 February 2003 at
20 8.15 in the morning. It's a message -- it's at page 0181, Mr Ntaganda, page 0181.

21 PRESIDING JUDGE FREMR: [16:11:12] Mr Bourgon.

22 MR BOURGON: [16:11:13] For the record, Mr President, the number that was
23 mentioned of the logbook is incorrect. It should be 0033 because 0003 is the small
24 logbook.

25 MS SAMSON: [16:11:27] That's right. Apologies if I said three zeros and a three. I

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1 meant 0033.

2 THE COURT OFFICER: [16:11:34] This is indeed the one we've taken into consideration
3 to publish the document.

4 PRESIDING JUDGE FREMR: [16:11:38] Well noted, and thank you, Mr Bourgon, for
5 your correction.

6 MS SAMSON: [16:11:43] Yes, thank you.

7 Q. [16:11:44] Mr Ntaganda, are you at page 0181? And at the message?

8 A. [16:12:00] Yes, I'm there.

9 Q. [16:12:03] And it's at -- dated 13 February 2003, a message sent by you at 8.15 in the
10 morning to Jérôme, north-east sector commander, and for info all stations of the FPLC;
11 correct?

12 A. [16:12:39] Ndiyo.

13 Q. [16:12:52] And I'm going to read to you the first part of that message, and I'll read
14 it in French, and then I'll have some questions. In French:

15 (No interpretation)

16 MS SAMSON: [16:13:34] I didn't hear the English translation. I'm not sure if I need to
17 repeat.

18 PRESIDING JUDGE FREMR: [16:21:41] Neither did I.

19 THE INTERPRETER: [16:13:39] Apologies from the booth. I hit the wrong button:

20 "You are informed that you must tell the commander what the chain of command is.

21 Stop. I no longer want to see a battalion commander sending me a message. Stop. I

22 am not anybody's soldier. Stop. I am the chief of -- the deputy chief of the general staff

23 for operations and organisation. Stop."

24 MS SAMSON: [16:14:08]

25 Q. [16:14:08] Now, in this message it's right, isn't it, that you're sending a strong

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1 message to Jérôme Kakwavu, but for information all FPLC stations, that you demanded
2 deference, given your position within the army; correct?

3 A. [16:14:50] Yes, I informed all the stations, reminding them of the respect they owed
4 to their hierarchical superior.

5 Q. [16:15:05] Yes. And you were also reminding them in this message that you
6 expected them to be obedient in accordance with the chain of command; correct?

7 A. [16:15:23] Yes. I wanted this to be respected. In the army you have to respect
8 the chain of command for discipline reasons.

9 Q. [16:15:45] Thank you, Mr Ntaganda.

10 MS SAMSON: [16:15:46] Mr President, perhaps we may break until Monday, with
11 your leave.

12 PRESIDING JUDGE FREMR: [16:15:52] Yes, Judge Chung has some additional
13 question or questions, please.

14 JUDGE CHUNG: [16:15:58] Thank you. Mr Ntaganda, so you testified today that you
15 had no problem with Mr Kisémbu by December 2003. Then was there any problem or
16 obstacles that interrupted your role as a deputy chief of staff between September 2002 and
17 December 2003?

18 THE WITNESS: [16:16:38] (Interpretation) Your Honour, the difficulty was that when
19 Kisémbu declared himself to be president of UPC, he wanted to overthrow
20 President Lubanga while he was absent and in Kinshasa. He wanted to overthrow him,
21 take him off the throne. And I did not agree with that. That was in December 2003.

22 JUDGE CHUNG: [16:17:19] So before that time, so from between September 2002 and
23 December 2003, was there any other problem that prevented you from exercising your
24 role as a deputy chief of staff?

25 THE WITNESS: [16:17:49] (Interpretation) Before that, I had no problem with him,

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1 your Honour.

2 JUDGE CHUNG: [16:18:00] So other than him, something else, other problems other
3 than him, no?

4 THE WITNESS: [16:18:18] (Interpretation) I didn't understand your question,
5 your Honour.

6 JUDGE CHUNG: [16:18:23] So other than Kisembo, did you face any problems during
7 that period of time in exercising your role?

8 THE WITNESS: [16:18:41] (Interpretation) At that point, when he opposed the chief,
9 it was not a problem between him and me. It was with the whole party. Our whole
10 party was against him. He defected and went and hid in Kinshasa, but I -- personally,
11 the only point of opposition with him was the fact that he was against the party. Prior to
12 that, there had been no problem with him.

13 JUDGE CHUNG: [16:19:19] No, no, no. Again, sorry for I couldn't make it clear. So
14 I don't talk about relation with Kisembo, Mr Kisembo. Just yourself and FPLC. Was
15 there any problem in exercising your role?

16 THE WITNESS: [16:19:41] (Interpretation) No.

17 JUDGE CHUNG: [16:21:42] Thank you.

18 PRESIDING JUDGE FREMR: [16:19:49] All right. So we completed this part of
19 cross-examination of Mr Ntaganda.

20 If there are no further requests for the floor, we can adjourn.

21 I just reiterate that from Monday, we will again sit in our classical schedule, which means
22 that we will start from 9.30, we will have two sessions in the morning, 90 minutes each,
23 and then in the afternoon one session of two hours.

24 Mr Ntaganda, I would like to thank you that this week you patiently and clearly
25 answered all questions put to you. I believe that it was a demanding task, but we

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- 1 appreciate, the Chamber appreciate, that you remained concentrated.
- 2 And as usually, I have to remind you that in the meantime until Monday, you must not
- 3 discuss your testimony with anybody else apart of your Defence counsel.
- 4 So I wish all of you a relaxed weekend and we see you on Monday at 9.30.
- 5 THE COURT USHER: [16:21:08] All rise.
- 6 (The hearing ends in open session at 4.21 p.m.)
- 7 RECLASSIFICATION REPORT
- 8 Pursuant to the Trial Chamber VI's Order, ICC-01/04-02/06-1887, dated 4 May 2017,
- 9 the public reclassified and lesser redacted version of this transcript is filed in the case.