

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 Monday, 28 August 2017
9 (The hearing starts in open session at 9.40 a.m.)
10 THE COURT USHER: [9:40:07] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: [9:40:49] Good morning, everybody.
14 Court officer, please call the case.
15 THE COURT OFFICER: [9:40:54] Thank you, Mr President.
16 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
17 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
18 We are in open session.
19 PRESIDING JUDGE FREMR: [9:41:09] Thank you, court officer. Now appearances,
20 please.
21 MS SAMSON: [9:41:14] Good morning, Mr President. Good morning,
22 your Honours. Appearing for the Prosecution today are Mr James Pace,
23 Ms Selam Yirgou, Ms Claudine Umurungi, Mr Eric Iverson and myself,
24 Nicole Samson.
25 PRESIDING JUDGE FREMR: [9:41:29] Thank you, Ms Samson.

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1 Defence, please.

2 MR BOURGON: [9:41:35] (Interpretation) Good morning, your Honour.

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

4 Mademoiselle Julia Jan, Jean Baptiste Gasominari, David Wagen-Magnon,

5 Isabelle Martineau and myself, Stéphane Bourgon. Thank you, your Honour.

6 PRESIDING JUDGE FREMR: [9:41:59] Thank you, Mr Bourgon.

7 Legal Representative of Victims, please.

8 MS PELLET: [9:42:05] (Interpretation) Thank you, your Honour. The former child

9 soldiers are represented by Vony Rambolamanana and myself, Sarah Pellet, counsel

10 with the Office of Public Counsel for Victims.

11 THE COURT OFFICER: [9:42:16] I'm sorry to interrupt, but I have a message from

12 the French booth -- for the French interpretation booth. You need to switch the

13 channel because your interpretation are not heard.

14 PRESIDING JUDGE FREMR: [9:42:31] Thank you, court officer.

15 French booth, have you noted the message? It seems to be okay.

16 Ms Grabowski, please.

17 MS GRABOWSKI: [9:43:10] Good morning, Mr President. Good morning, your

18 Honours. Anne Grabowski for the victims of the attacks today.

19 PRESIDING JUDGE FREMR: [9:43:16] Thank you, Ms Pellet. Thank you,

20 Ms Grabowski.

21 First of all, a warm welcome back to everybody. This morning I believe that after

22 summer recess you are in a good shape and ready for the hard work of the next

23 evidentiary block.

24 There are a few pending matters that I will utter before we proceed as we planned to

25 hear the testimony of Mr Ntaganda.

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1 First, for the clarity and for the benefit of the public, I note that the third evidentiary
2 block will run from today, 28 August 2017 and is scheduled to last until
3 22 September 2017.

4 In line with the approach adopted so far by the Chamber during the
5 cross-examination of Mr Ntaganda, it's anticipated that Mr Ntaganda shall testify for
6 approximately four hours each day and the remaining time of each day, if any, will be
7 utilised, if necessary, for any procedural matters arising.

8 In terms of the remaining time in cross-examination the Chamber recalls that as of the
9 last day of the previous evidentiary block, the Prosecution had used a total of
10 26 hours and 29 minutes with Mr Ntaganda. The Defence was allocated 55 hours for
11 its examination-in-chief. As the Prosecution shall be entitled in principle to the same
12 amount of time, the Prosecution still has approximately 28 hours and a half to use in
13 cross-examination.

14 Ms Samson, can you -- I know it's a bit premature, but can you provide any indication
15 at this stage that you will require all of this time?

16 MS SAMSON: [9:45:43] I think stage, Mr President, I anticipate that I will require all
17 this time, but I can certainly update the Chamber further on Thursday afternoon.

18 PRESIDING JUDGE FREMR: [9:45:53] Thank you, Ms Samson.

19 So we can then proceed to the next issue.

20 The Chamber recalls that on 8 June 2017 it received a request from the Legal
21 Representative of Victims for the former child soldiers, Ms Pellet, contained in filing
22 number 1946 to question Mr Ntaganda on certain topic areas.

23 Noting the length and scope of Mr Ntaganda's testimony, the Chamber considers it
24 appropriate to slightly modify its procedure in this regard. Therefore, to enable the
25 efficient adjudication of this request the Chamber will hear any submissions thereon

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1 orally on the day prior to the expected completion of the cross-examination of
2 Mr Ntaganda.

3 The Chamber shall return to this issue and remind the parties and participants as the
4 relevant time approaches.

5 Otherwise, Ms Pellet, any comment on that?

6 MS PELLET: [9:47:03] (Interpretation) No, your Honour.

7 PRESIDING JUDGE FREMR: [9:47:08] All right. We can then proceed to the next
8 two issues, which relate to two oral rulings.

9 First one: The Chambers places on the record its order of 22 August 2017,
10 transmitted to the parties and participants via email. Therein the Chamber noted
11 that it intends to reclassify to the extent possible the evidence admitted on the record
12 from confidential to public. The Chamber ordered the parities and the participants
13 to coordinate with each other and the Registry as appropriate to review the case
14 record and indicate by 31 October 2017 any items that can be reclassified as public
15 and to provide reasons for any admitted items to remain confidential.

16 The Chamber hereby also orders that going forward the level of confidentiality of
17 items admitted into evidence shall be specified at the time that admission is sought by
18 mentioning it in the list of items to be used and tendered.

19 With regard to publicity of the proceedings, the Chamber further directs that going
20 forward and where appropriate, parties and participants should file public versions
21 of all filings as soon as practicable and in consultation with each other as appropriate
22 upon the filing of confidential or ex parte original without a further order of the
23 Chamber in this respect.

24 In terms of the second oral ruling the Chamber recalls that in its decision bearing
25 filing number 1945 in relation to the timing required for the testimony of

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1 Mr Ntaganda, it noted the Defence indications that the hearing of Mr Ntaganda's
2 testimony may result in a shorter presentation of evidence by the Defence.

3 Accordingly, and in line with these indications, the Chamber directs already at this
4 stage that the Defence file an updated list of witnesses within two weeks of the
5 completion of Mr Ntaganda's testimony.

6 On a related matter the Chamber notes that following its decision bearing filing
7 number 1900 on 15 August 2017, the Defence filed the communication of the list of
8 persons appearing on its witness list that the Defence has not yet had the opportunity
9 to contact, bearing filing number 2009. The Chamber notes for the record that while
10 this communication was filed one day later than instructed, its lateness had had
11 minimal impact on proceedings and thus the Chamber has accepted it.

12 That completes the preliminary matters for this morning.

13 Are there any requests for the floor in regard of those issues?

14 MS SAMSON: [9:51:14] Not for the Prosecution, your Honour.

15 PRESIDING JUDGE FREMR: [9:51:17] Thank you, Ms Samson.

16 Mr Bourgon, any request for the floor on those issues? I think it is the case no
17 request for the floor.

18 MR BOURGON: [9:51:32] Very briefly, Mr President, I would like to inform
19 the Chamber that since 21 July 2017, which was the last day of the testimony of
20 Mr Ntaganda before the break, we have received a number of documents that were
21 disclosed by the Prosecution. We also have received updated list for documents to
22 be used during the cross-examination of Mr Ntaganda.

23 We did not respond or produce response because those were updated lists, but I do
24 intend to make observations at the appropriate time if these documents, if and when
25 they are used.

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- 1 Thank you, Mr President.
- 2 PRESIDING JUDGE FREMR: [9:52:21] All right. Well noted.
- 3 And Legal Representatives of Victims, I guess no request for the floor. All right.
- 4 It means we can continue as we planned with next part of cross-examination of
- 5 Mr Ntaganda as a witness.
- 6 Good morning, Mr Ntaganda. Welcome back.
- 7 WITNESS: DRC-D18-D-0300 (On former oath)
- 8 (The witness speaks Swahili)
- 9 THE WITNESS: [9:52:51] (Interpretation) Good morning. Thank you.
- 10 PRESIDING JUDGE FREMR: [9:52:58] It's my legal obligation to remind you that
- 11 you are still under oath, which means that you have to speak the truth and nothing
- 12 but the truth. Can you confirm you understand that?
- 13 THE WITNESS: [9:53:12] (Interpretation) Yes, I understand that, your Honour.
- 14 PRESIDING JUDGE FREMR: [9:53:24] Very well.
- 15 THE WITNESS: [9:53:26] (Interpretation) And I'm going to follow your instructions.
- 16 PRESIDING JUDGE FREMR: [9:53:29] Very well. And it was my next, next item,
- 17 but I don't believe it's necessary to remind you the practical guidance concerning
- 18 keeping pauses, concerning responding clearly because you perfectly obeyed all my
- 19 instructions given to you at the beginning of your testimony, so please just continue
- 20 in the same way.
- 21 Now, Ms Samson, you have the floor.
- 22 MS SAMSON: [9:54:02] Thank you, Mr President.
- 23 QUESTIONED BY MS SAMSON: (Continuing)
- 24 Q. [9:54:09] Good morning, Mr Ntaganda.
- 25 A. [9:54:13] Good morning.

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1 Q. [9:54:16] Prior to the summer recess we had been discussing a topic related to
2 attacks by Lendu combatants on certain Hema localities, and I will read the passage in
3 the transcript to refresh your memory and then I will ask some questions about that.
4 So the transcript reference is T-230, page 70, lines 5 to 16 in the English transcript.
5 And at the time my question to you was:

6 "Now, it's right, isn't it, sir, that the Lendu and their allies, APC, attacked civilians in ...
7 Hema villages, including Kparanganza ... Dheu, D-H-E-U; Lonyo and Toto (phon)?"

8 Answer: "These attacks took place a long time ago. I don't know where these took
9 place. There were no longer any Hema in these villages. There were no longer any
10 Hema civilians in these villages when I arrived in Ituri. Lonyo, Kparanganza, these
11 are locations with which I am not familiar."

12 Question: "So you no longer recall now that the village of Kparanganza, Dheu,
13 Lonyo and Toto (phon) had Hema civilians residing there and that they were attacked
14 by Lendu combatants and their allies?"

15 Answer: "No, I don't know."

16 And then I wanted to proceed to show you a document which I would like to show
17 you now, and that document is DRC-OTP-0126-0030. It's a public document and it is
18 number 1215 on our list.

19 Sir, this document is in English so I will read it and you can hear a transcription,
20 a translation, pardon me. But before I begin, I will just note that at the bottom, this
21 document is signed by Professor Pilo Kamaragi. You are familiar with
22 Professor Pilo Kamaragi?

23 PRESIDING JUDGE FREMR: [9:57:46] Hold on, Mr Witness.

24 Mr Bourgon.

25 MR BOURGON: [9:57:49] Thank you, Mr President. For the record, before this line

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1 of questioning begins, I simply would like to note that this is a document that is not in
2 evidence and that is a document that was previously disclosed but not used in
3 the Prosecution's case. So I would like to note this for the record. Thank you.

4 PRESIDING JUDGE FREMR: [9:58:11] Noted. Ms Samson, please proceed. And
5 probably it would be better to repeat the question, please.

6 MS SAMSON: [9:58:18]

7 Q. [9:58:18] Sir, you know Professor Pilo Kamaragi, correct?

8 A. [9:58:34] Yes, I know him but I don't know the period in which he wrote this
9 letter.

10 Q. [9:58:41] To the left of Professor Pilo's signature you can see a stamp dated
11 8 July 2002.

12 PRESIDING JUDGE FREMR: [9:59:05] Please hold on again, Mr Ntaganda.
13 Mr Bourgon.

14 MR BOURGON: [9:59:08] I am not sure what the witness can see, but the top part of
15 the document is missing. So I don't know if he -- maybe he can see it all, but what
16 we have -- what I have in my hands, there's a title -- yeah, right there, yeah. Thank
17 you.

18 PRESIDING JUDGE FREMR: [9:59:26] I don't think so. But now the question is
19 focused on the stamp, am I right, so we should probably to facilitate the response
20 focus also on the below part, on the stamp which is below. Yes.

21 MS SAMSON: [9:59:50]

22 Q. [9:59:51] Sir, can you see that the stamp is dated 8 July 2002, to the left of the
23 signature?

24 A. [10:00:09] Yes, I can see the stamp on the letter.

25 Q. [10:00:12] And if we now move to the top of the document, I will read out the

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1 title. It states: "Report about massacre of 8th to 16th of June, 2002".

2 And the document states, and I quote:

3 "The lists in annex resume the names of persons killed from 8th to 16th of June, 2002

4 in the Hema localities which are:

5 1. Kparnganza: 170 death cases.

6 2. Singo: 103 death cases.

7 3. Mundra: 28 death cases.

8 4. Kparda: 24 death cases.

9 5. Toto, Gobu, Shako and Belo: 23 death cases.

10 6. Malo, Lori and Varnmi: 5 death cases.

11 7. Kpadyn, Melo and Tsera: 16 death cases."

12 And in parenthesis, it says "provisional".

13 "In total 369 death cases plus 55 death cases of Lonyo."

14 And then there is a total of 424 death cases plus 40 death cases of Nyapala. And it is

15 dated Bunia, 29 June 2002.

16 Now, does this help refresh your recollection that the villages of Kparnganza, Toto

17 and Lonyo, in addition to the others listed, in June 2002 were Hema localities?

18 A. [10:02:43] That doesn't remind me of anything. If I see this, if I talk about

19 Kparnganza, there were members of my wife's family there. When I arrived, she

20 said that there had been destruction there and that Hema had died before. When

21 I was there in June, I heard that all the Hema had left the place.

22 Lonyo is near Saikpa, that's a hill that I could see when I was in Mandro, and there

23 was no one there in Lonyo. The houses had been burnt down. The Loto, I don't

24 know. I talked only of Lonyo and Kparnganza because that's the information that I

25 had. I had information from my wife who had family members there, and Lonyo is

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1 near Saikpa. It's opposite Saikpa, in fact. And with regard to the other places, I
2 don't know them.

3 MS SAMSON: [10:04:00] Mr President, I ask to mark this item for identification at
4 this time pending future authentication with a future witness.

5 PRESIDING JUDGE FREMR: [10:04:11] Defence, any objection to the request?

6 MR BOURGON: [10:04:14] No objection, Mr President, at this time.

7 PRESIDING JUDGE FREMR: [10:04:19] All right, so the document specified by
8 Ms Samson is marked for identification.

9 MS SAMSON: [10:04:30]

10 Q. [10:04:30] And you also testified in your examination-in-chief that there were
11 certain Lendu from various villages who had fled because they received an order to
12 attack Hema villages towards the end of April, beginning of May but they refused to
13 do so. And I'm referring to your transcript testimony at T-213, page 70, lines 19 to 25,
14 and page 71, lines 1 to 5.

15 Which Hema villages had those Lendu inhabitants been ordered to attack?

16 A. [10:05:38] I didn't quite understand your question. I don't know exactly what
17 you were talking about.

18 Q. [10:05:50] Well, let me refer back to your testimony. It's the transcript
19 references I quoted. You were referring to some Lendu individuals who sought
20 refuge in Mandro and you stated at line 19 of page 70, transcript 213:

21 Question: "Can we speak about these Lendu? When did that happen?"

22 Answer: "Well, I can't give you the precise date, but when we arrived in Mandro
23 some days later we saw a group of Lendu come in the morning. They were fleeing.
24 They received the order to attack the Hema villages some days after our arrival there,
25 end of April, beginning of May."

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1 Question: "I'm not sure that I followed. You said they fled, but they had received
2 an order to attack the villages. Could you give some clarity in that regard?"

3 Answer: "Yes. We asked them why they were fleeing. They told us. The Lendu
4 combatants had given the order to each civilian child, young and old, to go to attack,
5 but they didn't want to; they didn't want to join them to carry out this order so they
6 fled. Now, some of them were wounded by arrows, spears and our people treated
7 them."

8 Sir, does that assist in helping give context to my question? My question is: Which
9 Hema villages were these Lendu inhabitants ordered to attack?

10 A. [10:08:08] It was an order to attack Hema in general.

11 Q. [10:08:20] So there was no order to attack any specific village is your account; is
12 that right?

13 A. [10:08:49] It is possible that that did occur, but when they spoke to us, they said
14 that they had had an order to attack the villages near Mandro. Katoto and Lonyo
15 were near Saikpa, but I couldn't say with any degree of accuracy which villages
16 around Saikpa were to be attacked. But the Lendu, those who fled to Mandro said
17 that they had received an order to attack the neighbouring villages.

18 Q. [10:09:34] So it was not a general order to attack the Hema, but now you have
19 indicated it was a specific order to attack the villages around Mandro, correct?

20 A. [10:10:01] That's what I have just been saying. It was an order to attack the
21 Hema.

22 Q. [10:10:12] And your evidence is that Chef Kahwa, who is the customary chief of
23 Mandro, welcomed the Lendu and gave them a place to live and that you were in
24 charge of protecting them. And my question is: In the midst of a climate where the
25 Lendu were accused of mounting a genocide against the Hema, your evidence is that

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1 you welcomed the Lendu into a Hema village for protection?

2 A. [10:11:05] Could you please repeat my statement so that I can explain the
3 context in which I made it, the context in which the Lendu came to Mandro for
4 protection.

5 Q. [10:11:23] I just did, sir. I repeated your transcript answer moments ago. That
6 was the context that you provided, that the Lendu were ordered to attack Hema
7 villages and that they sought shelter.

8 PRESIDING JUDGE FREMR: [10:11:42] Hold on, Mr Witness.

9 Mr Bourgon.

10 MR BOURGON: [10:11:45] Mr President, the question was based on what the
11 witness would have said during his testimony concerning Chef Kahwa. That was
12 not read back to the witness. So I believe that, to be fair to the witness, we should
13 read back to him what he said about Chef Kahwa, if he wants to -- if my colleague is
14 looking for clarification.

15 PRESIDING JUDGE FREMR: [10:12:09] Ms Samson, maybe a slightly, slightly
16 broader context would be better.

17 MS SAMSON: [10:12:15] Certainly.

18 Q. [10:12:16] The context within which the Lendu came to Mandro has been
19 covered in the last transcript reference, which is all that the accused provided on that
20 topic. There the transcript reference in relation to Chef Kahwa is T-213, page 71,
21 lines 9 to 13, quote:

22 "Was Chef Kahwa involved in the contact or communications with these people?"

23 Answer: "Yes, he gave a place for them to live. I was protecting them as their troop
24 leader. But where they could grow crops, it was Chef Kahwa at the collectivity level
25 who administered that." End quote.

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1 So my question which had already provided that particular context, and I will repeat
2 it now, was that in the midst of a climate where Lendu were accused of mounting
3 a genocide against the Hema, your evidence is that you and Chef Kahwa welcomed
4 the Lendu into a Hema village for protection; is that right?

5 A. [10:13:55] Yes, we did in fact welcome them.

6 Q. [10:14:07] Now, sir, I want to move to a different topic now, which is going back
7 to the period of 2000, so that you have the context in your mind as I ask these
8 questions. And I'm going back to the period of the Chui mobile force.

9 Now, you testified, and this is in transcript T-212, page 53, lines 2 to 4, quote:

10 "When Chui was in the bush for a month, we never looted any property belonging to
11 civilians. We never touched the civilians. We supported the civilians. But our
12 enemies held an entirely different ideology." End quote.

13 But in fact, sir, isn't it correct that during the attack on Nyankunde by the Chui mobile
14 force that those troops looted a local hospital and took communication equipment
15 from an international humanitarian organisation that was operating there?

16 A. [10:15:52] Madam Prosecutor, what you are saying is not consistent at the time
17 of the Chui mobile force. When I was talking about the existence of the Chui mobile
18 force, I didn't mention these facts. I know that there are some people who attacked
19 and looted Nyankunde and these were Lendu combatants and the APC. The Chui
20 mobile force never did anything of this nature.

21 Q. [10:16:30] I would like to show you another document, please. It's a public
22 document, DRC-OTP-0100-0164.

23 And on our list it's item 1304.

24 PRESIDING JUDGE FREMR: [10:17:13] Mr Bourgon.

25 MR BOURGON: [10:17:16] Thank you, Mr President.

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1 I note for the record that this document, although it was disclosed, was not admitted
2 in evidence and was not used during the Prosecution's case, and I believe there
3 should be at least a foundation laid before using the document as to what it is and
4 where it comes from and whether there is any link between the document and the
5 witness. Thank you.

6 PRESIDING JUDGE FREMR: [10:17:41] Ms Samson.

7 MS SAMSON: [10:17:42] Mr President, if I may, I am -- the Prosecution wishes to
8 follow the procedure the Chamber has set out to date, and this document in
9 cross-examination is relevant to the point and questions that I was just asking of the
10 witness. I intend to show the document to the witness, identify for him the source,
11 and take him to a specific passage which is contradictory to what he just said. And
12 in my submission, that is a perfectly appropriate exercise and procedure during
13 cross-examination.
14 The Chamber has already ruled that the Prosecution can use documents in
15 cross-examination that were not admitted during the Prosecution's case, because of
16 the nature of cross-examination, and so I rise to also ask the Chamber that
17 interventions to remind the Chamber that this document was not yet admitted only
18 serves to delay and -- delay the proceedings and also to interrupt a cross-examination
19 flow, which I think is inappropriate, in my submission.

20 PRESIDING JUDGE FREMR: [10:18:50] Mr Bourgon.

21 MR BOURGON: [10:18:52] Mr President, paragraph 31 of the order on the conduct
22 of proceedings states that a connection must be established between the document
23 and the witness. In this case, I certainly do wish to put on the record every time
24 the Prosecution is using a document that was in its possession that it disclosed and
25 that it had no -- that it had reason to use but elected not to use it. So that's one

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1 thing -- that's nothing with the witness.

2 However, with regard to the witness, the procedure must be followed because in
3 some cases I will object to even the use of the document. In this particular case,
4 whether the use can be permitted, the connection must be first established between
5 the document and the witness before questions are put to him. So it is a simple
6 matter of procedure. Thank you.

7 PRESIDING JUDGE FREMR: [10:19:46] Ms Samson, and please briefly.

8 MS SAMSON: [10:19:48] Yes, your Honour. The Prosecution disagrees that there
9 has to be a connection between a document put to a witness in cross-examination and
10 the witness. Now, clearly there will be a material relevance with respect to the
11 content of the document which I'm about to show and that is the -- the purpose of
12 cross-examination is to seek to identify and highlight areas of inconsistency between
13 a witness's testimony and potential documentary evidence in contradiction to that.
14 It is a procedure that the Defence used multiple times during examination,
15 cross-examination, and similarly in examination-in-chief of this particular witness,
16 the Defence showed United Nations documents to which there was no connection
17 with the witness, but he was, in the Defence's estimation, able to authenticate the
18 content. This is no different.

19 Thank you.

20 PRESIDING JUDGE FREMR: [10:20:50] And also just briefly, Mr Bourgon. I will
21 consult then my colleagues because it is in fact issue of principle and issue of
22 interpretation of our conduct of proceedings decision. So please, briefly.

23 MR BOURGON: [10:21:04] Thank you, Mr President.

24 Contrary to what my colleague is saying, it is very different from what the Defence
25 has been doing when using this type of document. When the Defence referred to

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1 a document from the United Nations, first a foundation was established with the
2 witness as to what he knew about what the United Nations were doing on the ground,
3 whether he knew that reports were being compiled, whether he had seen the
4 document before and what the document was about.

5 This here, the Chamber's conduct of proceeding decision, as well as the latest decision
6 from the Chamber dated 18 July 2017, states that there is no general bar on the use of
7 document, but not every document can be used, that material connection must first be
8 established.

9 Now, for the sake of fairness to the accused, the Prosecution had documents which
10 were relevant to its case and decided not to use them. Before it can use them, in
11 order to be fair for the witness, he must know where the document comes from, how
12 it was obtained, so that he can put an answer and say, "Well, yes, I know" or "I don't
13 know". But that material connection must be established. Thank you,
14 Mr President.

15 PRESIDING JUDGE FREMR: [10:22:23] So as I indicated, now I will deliberate with
16 my colleagues briefly.

17 (Trial Chamber confers)

18 PRESIDING JUDGE FREMR: [10:23:55] So after our brief silent deliberation, our
19 ruling is that even if the requirements for the use of documents during the
20 cross-examination are not the same like is mentioned in para 31, there is still some
21 requirements. Witness shouldn't be -- and the same with the
22 counter-party -- shouldn't be just surprised if such a document hasn't been used so far
23 during the proceedings, that at least necessary I would call to introduce a bit this
24 document, even to give the counter-party chance to object against the use.
25 So it is not possible just to start with the document itself without any, any

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1 introduction. So at least some short introduction is necessary and then should be
2 given chance to the counter-party -- now it is Defence -- to express any objection, if
3 any.

4 Ms Samson.

5 MS SAMSON: [10:24:56] Thank you, Mr President. The procedure that I intended
6 to adopt here was to show the document to the witness and to take him to the first
7 page, take him to the second page, identify what this was and what the source was,
8 and then take him to the passage I would like to read to him.
9 Now, that is a procedure that I seek to be able to use here and I intended to use prior
10 to the interruption. The purpose as well of identifying early where the item appears
11 on the Prosecution's list is also to provide the Defence counsel with time to ascertain
12 whether or not its greater knowledge of the document necessitated a principled
13 objection on the use of this specific document, and so I think, in my submission, these
14 two procedures can indeed comply with the Chamber's order.

15 PRESIDING JUDGE FREMR: [10:25:52] Yes, I believe so.

16 Mr Bourgon, do you agree with this, because I think now we in fact are in agreement
17 with -- yes, I even believe that the way how Ms Samson intends to continue is in
18 agreement not only with our decision, our ruling, but also with your request; am I
19 right?

20 MR BOURGON: [10:26:16] Yes, Mr President, with one caveat. The Prosecution, in
21 accordance with the decision on the conduct of proceeding, should say whether it
22 intends to submit this document in evidence. That's part of the -- so whether it is
23 only for the use for impeachment or if it is for the use of admission should be stated
24 before proceeding with the document. Thank you.

25 PRESIDING JUDGE FREMR: [10:26:40] Ms Samson.

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- 1 MS SAMSON: [10:26:41] Your Honour, that depends on the answers of the witness
2 often, and so the request to use a document comes first, followed by the answers of
3 the witness, and then there is a request by the party, after taking those answers into
4 account, to determine whether it is an impeachment request or an admission request.
5 Thank you.
- 6 PRESIDING JUDGE FREMR: [10:27:00] Mr Bourgon, and please briefly because I
7 think we spent too much time on procedural issues today, please.
- 8 MR BOURGON: [10:27:07] Mr President, the decision on the conduct of proceeding
9 makes it clear that the Prosecution when putting items on its list should indicate
10 whether it intends to adduce the document in evidence and the Defence is to respond
11 to the same.
- 12 In this particular case we have a list of over 1000 documents and all we know is and
13 under the column whether the Prosecution intends to adduce a document is "if
14 necessary". "If necessary", the Defence has been using this term whenever it was
15 referred to a statement because we don't know what will happen and whether
16 a statement might be necessary or not depending on the answers. But when there is
17 a document the Prosecution should come forward and be transparent and say, yes,
18 we do intend to adduce a document in evidence. They might decide not to do it, but
19 they should say from the get-go whether the questions are directed at admitting the
20 document. Thank you.
- 21 PRESIDING JUDGE FREMR: [10:28:07] And again please briefly, Ms Samson.
- 22 MS SAMSON: [10:28:09] Yes. Certainly, your Honour. I just rise to remind
23 counsel that the list of items that was transmitted to the Chamber and the parties that
24 it intended to use in examine-in-chief had "if necessary" for most, if not all, of the
25 documents.

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1 PRESIDING JUDGE FREMR: [10:28:25] All right. I believe that we can just insist
2 on our previous way how we proceeded with this kind of items. There are two
3 stages: The first one is if -- the dispute, if any, about the use; and then it's true, I
4 agree with Ms Samson, then depending on the outcome of such a use, we can then
5 decide about the admission. If there is at least potentially indicated that such
6 a document could be, could be also tendered, it's enough.

7 So now please proceed. And, Mr Bourgon, yes, I don't have any suspicion that
8 you are objecting previous, previous submissions of Ms Samson with some bad faith,
9 but I would also like to prefer, if possible, to go smoothly and really just to use those
10 objections if they are really, really necessary. I am not saying that you made it in
11 some bad faith.

12 Please go ahead, Ms Samson.

13 MS SAMSON: [10:29:39] Madam court officer, if we could scroll down so that the
14 title of the document is visible, please.

15 Q. [10:29:49] Now, sir, this is a report which you can see is title "Uganda in Eastern
16 DRC: Fuelling Political and Ethnic Strife." It is dated March 2001 in the top
17 left-hand corner. And if we turn to the second page, we can see the author of the
18 report is Human Rights Watch and it's at the very bottom of the second page.
19 You have already indicated in your testimony that you are familiar with Human
20 Rights Watch and their work, correct?

21 A. [10:30:55] When I arrived here and I read the document, I read this report which
22 was communicated to me, I know there are different reports drafted by Human
23 Rights Watch.

24 Q. [10:31:16] Yes. And you are familiar with Human Rights Watch and their
25 work?

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1 A. [10:31:33] Today I know.

2 Q. [10:31:40] And you have testified about meetings with Anneke

3 Van Woudenberg prior to today, have you not? And to clarify, you have known
4 about Human Rights Watch for some number of years, correct?

5 A. [10:32:10] In general I didn't know. I knew a few officials from Human Rights
6 Watch, but I didn't know where they sent reports to, or what they were doing. But I
7 knew that this person was working for that organisation without knowing what the
8 organisation did in terms of its work.

9 Q. [10:32:44] Now I would like to move to page 175 of this document.

10 PRESIDING JUDGE FREMR: [10:33:07] Mr Bourgon.

11 MR BOURGON: [10:33:08] Thank you, Mr President. This is a 10-page document.
12 It might be preferable to at least give a paper copy to Mr Ntaganda so he can see all
13 the pages. For myself, my own copy which I have here ends at page 173. It's
14 probably a mistake from the Defence, but it would be useful for the witness to have
15 everything that is in there before answering the questions.

16 PRESIDING JUDGE FREMR: [10:33:31] Ms Samson.

17 MS SAMSON: [10:33:31] In my submissions that's not necessary, your Honour. I
18 would like to bring the witness to one paragraph; in fact, to four or five lines in one
19 paragraph. The page that's in front of him should certainly be sufficient. At this
20 time I am not asking him questions about the other parts of the report.

21 PRESIDING JUDGE FREMR: [10:33:50] So if you are sure that you will limit yourself
22 on one paragraph of one page, then it's fine, then you may proceed.

23 MS SAMSON: [10:34:01]

24 Q. [10:34:01] Now, sir, this Human Rights Watch report from March 2001 states at
25 page 175 in the fifth paragraph, which is titled "Léopard Mobile", and I think you

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1 have stated this already, sir, but Chui means leopard in Swahili, correct?

2 A. [10:34:42] Yes. Chui means leopard.

3 Q. [10:34:47] And I will read the relevant parts of the paragraph for you:

4 "In July, some RCD-ML military elements, mostly Hema and including some

5 Congolese Tutsi known as the Banyamulenge, left the RCD-ML to join local Hema

6 militiamen in the bush. The defectors declared they would come to Bunia to oust

7 Wamba, who blamed Tibasima publicly for this new coup attempt. On July 22, the

8 Hema defectors attacked the village of Nyankunde, some twenty-two kilometres

9 southwest of Bunia, killing four RCD-ML soldiers and wounding a civilian. During

10 the attack, they reportedly looted the local hospital and confiscated the

11 communications equipment of an international humanitarian organisation operating

12 there. The incident led the organisation to quit the region."

13 Now, sir, this is a Human Rights Watch report on events that took place in 2000, it is

14 dated March 2001 and does -- do you maintain, seeing this report, that the Chui

15 mobile force did not loot or confiscate communications equipment in Nyankunde?

16 A. [10:36:34] It's the first time that I see this report. I never heard people speak

17 about this report either on the radio, and I don't agree with the report, according to

18 what's written here, because when it came to the Chui there weren't Banyamulenge in

19 the Chui when they attacked Nyankunde. The only person who was not from Ituri

20 was myself and I was the one who commanded the two companies. We weren't

21 with Tibasima during the operation and I was not in agreement with this report

22 which was drafted and which you are reading here.

23 Q. [10:37:24] Now, sir, you were with other Congolese Tutsi in the Chui mobile

24 force, were you not?

25 A. [10:37:41] They arrived later. They arrived later. But during the attack in

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1 Nyankunde there wasn't pillaging, nobody was killed. We didn't lose any troops
2 and neither did the APC. The only person who was injured was the commander. I
3 took him to hospital. And we left very early in the morning. All my relatives who
4 came from North Kivu joined afterwards, Tchaligonza and the others. As far as I am
5 concerned, I do not agree with this report and it's the first time that I see the report.

6 MS SAMSON: [10:38:29] Mr President, I seek to admit for impeachment purposes
7 the lines of the report that I have read on page 0175.

8 PRESIDING JUDGE FREMR: [10:38:40] Defence?

9 MR BOURGON: [10:38:43] Mr President, we oppose the Prosecution's request for
10 admitting this paragraph for the purpose of impeachment. The reason being is that
11 there is no reliability whatsoever established for this report in the sense of if we look
12 at the page of the report, the acknowledgments, I'm referring to the page 167, 0167,
13 the name, there are no names, no source. All we know is that this information was
14 collected and that information was collected in December of 2000. We know who
15 collected, apparently who conducted the mission, but there is no reliability
16 whatsoever to this report. If we are going to contradict the witness, there must be at
17 least some probative value which can be attached to the report. If no probative value
18 can be attached to a report which is secondhand, if not triple-hand hearsay, then it
19 would not serve the interests of justice to contradict the witness with such a report.
20 What is more, Mr President, is should the report be -- should even this paragraph be
21 admitted, then of course in re-examination a contents of the report will have to be the
22 subject of re-examination from the Defence in order to downplay the reliability
23 because we say this is an unreliable report which has no source. So we're going to
24 really be here for a long time because I will -- this is a 46-page report with all kinds of
25 incident which of course I will raise in re-examination if my colleague is authorised to

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1 put paragraphs like this on unreliable reports. Thank you.

2 PRESIDING JUDGE FREMR: [10:40:51] No need for further submissions. So the
3 objection is overruled. This part of the report specified by Ms Samson is admitted
4 for the purpose of impeachment as a further Prosecution evidence.

5 And to give reasoning, Mr Bourgon, from 90 percent I agree with you because the fact
6 that this part of document is admitted into evidence for the purpose of impeachment
7 doesn't mean that the Chamber take it as 100 percent reliable. Not at all. We have
8 already heard several witnesses on this kind of report. We had chance to admit
9 some part of the similar reports during the Prosecution case. There were several
10 objections or -- yes, objections expressed by the Defence. We will take all of them
11 into account when we will consider probative value of those reports. You were right
12 that you said that they should have some probative value. We believe that some
13 probative value could be fine, but it also requires and will require to compare this
14 report with other evidence, witness testimonies and so on. So we will make it at the
15 end of the case when adjudicated all, all evidence. But it doesn't mean that we could
16 only admit for the purpose of impeachment only piece of evidence which are
17 100 percent reliable.

18 Now, Ms Samson, please proceed.

19 MS SAMSON: [10:42:49]

20 Q. [10:42:51] Sir, the --

21 MR BOURGON: [10:42:53] (Microphone not activated)

22 PRESIDING JUDGE FREMR: [10:42:54] Sorry, Ms Samson.

23 Mr Bourgon.

24 MR BOURGON: [10:42:56] Mr President, I'm grateful for the Chamber's ruling.

25 However, there is one part missing in the Prosecution's request. Even when

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1 the Prosecution would like to request a document, whether it is for admission or for
2 impeachment, one very important criteria is why did the Prosecution not elect to use
3 this document during its case? That's clear from the Chamber's ruling of 18 July that
4 this is an important criteria. The Prosecution must say as soon as there is a request
5 for admission or for impeachment, why did the Prosecution not use a document
6 when the Prosecution's case there was a lot of evidence heard on this particular event?

7 Thank you, Mr President.

8 PRESIDING JUDGE FREMR: [10:43:47] Even if I can imagine the response,
9 Ms Samson, you can make it yourself.

10 MS SAMSON: [10:43:54] Yes. Mr President, I'm seeking to admit this document for
11 impeachment purposes which presupposes or logic entails that it's because the
12 witness has now and only now provided information that allowed the Prosecution to
13 assess the importance of these passages and for the Chamber to assess the credibility
14 of the witness's evidence given only now against the information that we have. So
15 cross-examination, as the Chamber has held, is reactionary. The Prosecution cannot
16 anticipate every line of examination, cross-examination in advance and does not seek
17 to flood the record with evidence that may not be material for admission. Thank
18 you.

19 PRESIDING JUDGE FREMR: [10:44:38] It was just my presumption and in my view
20 it was fully consistent in our way how we proceed so far.

21 Now, Ms Samson, please proceed.

22 MS SAMSON: [10:44:52]

23 Q. [10:44:52] The Chui mobile force and yourself returned to Bunia on
24 24 August 2000, correct?

25 A. [10:45:15] I no longer remember the date, the exact date. I remember that we

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1 went to Uganda at the end of October. Yes. I don't remember the exact date on
2 which we went to Bunia.

3 Q. [10:45:46] When you returned to Bunia you did so with your weapons, that's
4 right?

5 A. [10:46:04] Yes. We had our firearms.

6 Q. [10:46:11] And Wamba and his group were not happy that the Chui mobile force
7 returned to Bunia, correct?

8 A. [10:46:29] They weren't happy. He wasn't happy because we were an enemy.

9 Q. [10:46:38] And your group wanted to oust him from power, correct?

10 A. [10:46:54] At that time we were fighting them. We were discriminated against.
11 I spoke about that here. We wanted to know why we were discriminated against.

12 Q. [10:47:15] Yes. And you wanted him out of power, correct?

13 A. [10:47:30] No. We couldn't take him out of power. We were a small group.

14 What we wanted to do was quite simply to get our claim so we wouldn't be
15 discriminated against anymore and we would be re-integrated. Perhaps later if he
16 was opposed to what we asked, then we would want him to leave his functions. But
17 we had no way of getting him to do so. We didn't have the strength enable to do
18 that.

19 Q. [10:48:12] You testified that a man named Djalum and a man named Lonema
20 visited you in 2000 to speak about ousting Wamba, correct?

21 PRESIDING JUDGE FREMR: [10:48:34] Mr Bourgon.

22 MR BOURGON: [10:48:34] If I can have a reference just as to what was -- what had
23 been said by this gentleman. Thank you.

24 PRESIDING JUDGE FREMR: [10:48:41] Ms Samson, I think it's proper, proper
25 request.

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1 MS SAMSON: [10:48:44] Certainly. The transcript is T-212, page 31, lines 25 to
2 page 33, line 18.

3 Q. [10:49:02] Sir, are you able to confirm that Mr Djalum and Mr Lonema visited
4 you to discuss ousting Wamba?

5 PRESIDING JUDGE FREMR: [10:49:14] Mr Bourgon.

6 MR BOURGON: [10:49:15] As long as it's a new question, she can put the question,
7 but I don't see that in the transcript that Mr Ntaganda said that they came to see him
8 to discuss ousting Wamba. If it's a new question, the witness can answer, but if there
9 is no contradiction, unless I am missing the exact line where Mr Ntaganda would
10 have said they claim to me to discuss ousting Wamba.

11 PRESIDING JUDGE FREMR: [10:49:37] Ms Samson, I know it's rather
12 time-consuming, but it would be probably better to quote precisely to dispel any
13 doubts.

14 MS SAMSON: [10:49:51] Certainly. Now, transcript T-212, page 33, I'll focus in on
15 lines 13 to 18. Question -- actually -- yes, I'll focus here:

16 "Why did these two people want you to stay in Bunia?"

17 Answer: "As far as I'm concerned we were really determined. Based on our
18 discussion, I was reassured on what I was looking for. They were tired of Wamba
19 Dia Wamba's regime. They told me that Wamba Dia Wamba's army was attacking
20 and killing civilians. They told me that if I have an army, then I should drive out
21 Wamba Dia Wamba."

22 And earlier in this transcript you refer to the fact that this discussion, these two
23 people were Lonema and Djalum, so they came to you and asked you to drive out
24 Wamba Dia Wamba, correct?

25 A. [10:50:58] They didn't come to ask me to drive out Wamba Dia Wamba.

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1 Perhaps it was their intention, but they came to visit me at the time that the Ugandans
2 asked me to leave Bunia so that I would go to Uganda, and they came to tell me not to
3 go to Uganda. They didn't come to get me to drive out Wamba Dia Wamba from
4 power. At that time I didn't have any troops, how was I going to oust Wamba Dia
5 Wamba? They just came to ask me not to go to Uganda. And I didn't know them.
6 It was the first time that I saw them. We couldn't discuss how to drive out Wamba
7 Dia Wamba. If I didn't have an army, I didn't know these people so that wasn't
8 possible.

9 Q. [10:51:43] But you will agree that your evidence was that, quote: "They told me
10 that if I had an army, then I should drive out Wamba Dia Wamba." That was your
11 evidence, correct?

12 A. [10:52:05] It was their intention because they were tired of Wamba.

13 Q. [10:52:18] And your evidence, the same transcript page 32, lines 23 to 25 and
14 page 33, lines 1 to 2 was as follows:

15 "Lonema also said that both of them supported me, that they were totally behind me
16 and that their community supported me, and that if I left, they would mobilise
17 members of the population and vehicles for that purpose, and that they were even
18 going to block the roads so that the UPDF soldiers should not compel me to leave."
19 End quote.

20 So these two individuals had the power to mobilise resources for you and your army
21 to oust Wamba Dia Wamba, correct?

22 A. [10:53:30] Your Honour, in my testimony I said that I didn't have troops and
23 that's the reason why I fled in order to protect myself when I was in Bunia. When
24 I was in Bunia my bodyguard was killed. I no longer had any forces. I didn't have
25 the means to even make myself safe. So that's why I fled with Kisembo. I didn't

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1 have any troops. I spoke about the population, yes, it was their intention.

2 Everybody in their community, they had the intention, and as I saw that I had the
3 support of the population, I thought that I could go into the bush.

4 Q. [10:54:11] When you came out of the bush --

5 A. [10:54:14] That was my idea.

6 Q. [10:54:16] When you came out of the bush in 2000 - the Prosecution's suggestion
7 is it was 24 August 2000 - you had men, correct, you had the two or 300 Chui mobile
8 force men who were going to train in Uganda?

9 A. [10:54:51] Yes, I had the troops afterwards. When I entered into the bush I
10 mobilised troops to join me.

11 Q. [10:55:10] And the training in Tchankwanzi and Jinja you in your testimony
12 referred to it, and I quote, "... this is an opportunity we must seize in Uganda to
13 increase our skills ..." That's T-212, page 63, lines 5 to 9.

14 So this training was an opportunity that you wanted your men to seize to increase
15 your skills, correct?

16 A. [10:55:55] Well, everybody had the chance of having training in their career. In
17 a country like Uganda they had instructors who were renowned. That was an
18 opportunity. For me, it was an opportunity. When we arrived there there were
19 a lot of us. There was the UPDF, the APC, who were fighting, and there were the
20 troops who had left the Chui mobile force, and they mixed us together. That was an
21 opportunity for all of us.

22 Q. [10:56:32] And people such as Thomas Lubanga, Lonema, Djalum and others
23 also saw it as an opportunity, did they not, to mobilise their community to go on the
24 same training?

25 A. [10:57:04] We didn't know them at the time. I saw Lonema there. But

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1 afterwards I didn't have contact with him. I saw them pass, but I didn't have the
2 possibility to discuss things with them. And we went with them. Some people
3 stayed. Everybody had an intention, depending on where they came from.

4 Q. [10:57:39] There were recruits additional to the Chui mobile forces who
5 participated in the training in Tchankwanzi, correct?

6 A. [10:58:07] I haven't understood your question. Could you repeat it, please?

7 Q. [10:58:11] Yes. In fact, the -- in fact, recruits were mobilised to attend the
8 training in Tchankwanzi; there were recruits additional to those who were part of the
9 Chui mobile force, correct?

10 A. [10:58:44] You are asking me several questions at the same time. You asked me
11 a question about Lubanga and the recruits. I haven't understood what you want to
12 ask me with regards to the recruits, the recruits who were mobilised. I have no idea.

13 Q. [10:59:12] Let me break it down for you so it is simpler for you to understand.
14 There were almost 700 people who were trained in Tchankwanzi, correct?

15 A. [10:59:33] I didn't count the people who were there, but that's what I heard.

16 Q. [10:59:39] And your group of Chui mobile force represented 200 to 300 of that
17 group; is that right?

18 A. [10:59:54] Yes, those were the troops with whom I left. Others arrived later.
19 I don't know how they arrived.

20 Q. [11:00:07] The remaining 400 to 500 recruits who went to Tchankwanzi were
21 mobilised by the Hema community, were they not, to attend training?

22 A. [11:00:34] I don't have a lot of information about how these people were
23 mobilised.

24 MS SAMSON: [11:00:45] I see the time, Mr President. I can resume after the break.

25 PRESIDING JUDGE FREMR: [11:00:50] All right. So we take our regular break for

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- 1 30 minutes, which means we will resume at 11.30.
- 2 THE COURT USHER: [11:00:59] All rise.
- 3 (Recess taken at 11.00 a.m.)
- 4 (Upon resuming in open session at 11.30 a.m.)
- 5 THE COURT USHER: [11:30:24] All rise.
- 6 Please be seated.
- 7 PRESIDING JUDGE FREMR: [11:30:55] During this session we will continue with
- 8 the next part of cross-examination of Mr Ntaganda conducted by the Prosecution.
- 9 Ms Samson, you have the floor.
- 10 MS SAMSON: [11:31:12] I would like to focus on the date surrounding the
- 11 departure of the group for training in Tchankwanzi. And it was two to three days
- 12 after the Ngwene -- the killing of Inspector Ngwene that the aeroplanes arrived to
- 13 carry the group to Uganda, correct?
- 14 A. [11:32:10] This was the Chui mobile force with whom I left, so that's the group
- 15 that left on the dates that you have mentioned.
- 16 Q. [11:32:24] And Inspector Ngwene was killed during skirmishes with Chui
- 17 mobile force on 28 August 2000, correct?
- 18 A. [11:33:05] I can't recall the exact date.
- 19 Q. [11:33:10] You'll recall that there were reports about the death of
- 20 Inspector Ngwene; it was a publicly known event.
- 21 A. [11:33:33] I don't know whether there was a report to this effect.
- 22 Q. [11:33:45] Newspapers published reports of his death, correct?
- 23 A. [11:34:01] I don't know.
- 24 Q. [11:34:05] I would like to show you a newspaper article in relation to the death
- 25 of Inspector Ngwene for the purpose of securing the date. And the newspaper

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1 article is DRC-OTP-0135-0162. It's public, item 818 on the Prosecution's list.

2 MS SAMSON: [11:35:28] Madam court officer, if we could expand the view towards
3 the top of the paper, a little bit further down. And if -- you can see, sir, that this is a
4 copy of the newspaper article Le Millénaire and the date of this edition is
5 20 September to 20 October 2000. Are you familiar with the local newspaper the
6 Millénaire?

7 A. [11:36:18] No.

8 Q. [11:36:20] I would like to turn, please, to page 0166. Now, sir, you will see that
9 the title of this newspaper article in French, and I'll read it: (Interpretation)
10 "Information about the death of Inspector Ngwene in Bunia."

11 (Speaks English) The image in the newspaper is of Chef Kahwa. Are you able to
12 confirm that, sir?

13 A. [11:37:27] The photo is not clear enough. But I can see that his name is in the
14 caption under the photo.

15 Q. [11:37:48] Yes. Under the photo is says in French, which I will read:

16 (Interpretation) "Chef Kahwa Mandro at the military court."

17 (Speaks English) And I would like to read just the initial sentence in relation to the
18 date of the event. At the very beginning, top left-hand corner, if we could expand,
19 and so I will read it in French:

20 (Interpretation) "Four dead and an unknown number of wounded, that is the result of
21 the shooting on Monday, 28 August 2000 between the mutineers and the loyal
22 elements of the RCD/KIS supported by the UPDF soldiers around the military court
23 in Bunia."

24 (Speaks English) Sir, does this help refresh your recollection that the date of
25 Inspector Ngwene's death by the skirmishes with Chui mobile force was on

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1 28 August 2000?

2 A. [11:39:50] We left almost at the end of October and I don't know really how I
3 could have been associated with these events. I know that Chef Kahwa was arrested
4 and we went to free him. There was an incident and then we left. So with regard to
5 the date, I see that this date does not correspond with my recollection of events.

6 Q. [11:40:45] So your current recollection of events is -- in your testimony, your
7 current recollection of the events of 2000 takes issue with the date that was ascribed to
8 the event at the time that it occurred. So you take issue with the contemporaneous
9 document of the event?

10 A. [11:41:29] It's difficult for me to confirm a date that appears in a newspaper that
11 I am not familiar with. But I am working on my recollection of the events. But it is
12 very difficult to reconcile the date that appears in this article and the events as I recall
13 them. That's what I'm saying.

14 Q. [11:42:04] But you did recall quite clearly in your evidence-in-chief that the
15 aeroplanes to take you to Uganda came two to three days after the death of
16 Inspector Ngwene, correct?

17 A. [11:42:28] That's precisely why the information in this article doesn't correspond
18 with the way I recall events, because I know that we left for Uganda in October which
19 would mean that Ngwene died at that time. And the information that's in the
20 newspaper does not correspond with the dates I have in my memory.

21 MS SAMSON: [11:43:15] Mr President, I would like to admit this, those few lines,
22 one sentence of the newspaper article for the purposes of impeachment vis-à-vis the
23 date of the death of Inspector Ngwene.

24 PRESIDING JUDGE FREMR: [11:43:28] Mr Bourgon.

25 MR BOURGON: [11:43:30] Mr President, we oppose the Prosecution's request.

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1 Mr President, this document here, if we are going to put a proposition to the witness,
2 it is important that we know what the document is in fact. This document was
3 disclosed to the Defence and when we look, as my colleague said, this document
4 purportedly covers the period from 20 September to 20 October 2000. Now we have
5 an article in this document talking about an event which would have taken place on
6 28 August. The witness does not agree with the date.
7 That is the difficulty, Mr President, when the Prosecution uses during
8 cross-examination a document which it should have used previously so that
9 the Defence could challenge the document. Here we don't know whether this paper,
10 the articles in there, is it a paper that is published after 20 October and covers the
11 period 20 September to 20 October? Is it a paper that purportedly covers articles that
12 date from prior to 20 September. We don't have a clue on the date this paper was
13 published. And that of course makes it unfair to challenge the witness with words
14 in a paper that we cannot establish on what date it was published.
15 Had the Prosecution established the date of the document, then we could put some
16 weight to the date of 28 August, but in this particular case we do not have a date of
17 publication. We have a date that the paper covers event from 20 September to
18 20 October.
19 So in this regard, Mr President, it is very likely that the date in this article was wrong,
20 as the witness is saying. So where does that take the Trial Chamber when you come
21 to deliberate, that on a paper that the date is unknown that covers the date from
22 20 September to 20 October there is a mention of an incident which would have taken
23 place on 28 August? It does not take the Chamber nowhere, Mr President, in our
24 respectful opinion, and the request to admit this document for impeachment should
25 be denied. Thank you.

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1 PRESIDING JUDGE FREMR: [11:46:22] Thank you.

2 Ms Samson.

3 MS SAMSON: [11:46:24] Yes. Very briefly, your Honour, the Chamber has before
4 it a contemporaneous document of an event that would have generated high profile
5 in Bunia at the time, which was the death of the military police inspector. The date
6 of the edition of the newspaper is 20 September to 20 October 2000, so weeks
7 following the incident at issue, and that contemporaneous newspaper identifies and
8 dates the event at 28 August 2000. In the Prosecution's submission this version of
9 events will be better for the Chamber to be able to evaluate than the witness's
10 recollection some years later. And so in order to anchor the event
11 the Chamber -- the Prosecution is asking the Chamber to use a document to
12 determine whether or not Mr Ntaganda's recollection today of the date is better than
13 a contemporaneous record of the date. And I will show a further record as well.
14 Thank you.

15 PRESIDING JUDGE FREMR: [11:47:34] Mr Bourgon, and please briefly.

16 MR BOURGON: [11:47:37] Mr President, on many occasions in cross-examination
17 the Defence requested to admit some documents and it was informed by the
18 Trial Chamber not to overburden the record. That the sentence, the sentence that my
19 colleague wishes to use in her testimony is there. It was quoted. The
20 Trial Chamber knows that the sentence is there and the Trial Chamber was very well
21 aware of Mr Ntaganda's reaction as how he explained that he does not agree with that
22 date. I think the record is sufficiently clear and we do not need to admit whether
23 this document or a line of it, because all the information we need, the contradiction
24 that was sought by my colleague is on the record already. Thank you.

25 PRESIDING JUDGE FREMR: [11:48:23] Thank you. So to be brief, your objection is

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1 overruled. The request is granted. So the part of the document as specified by
2 Ms Samson is admitted into evidence for the purpose of impeachment. And I can
3 again refer to the reasoning I provided in accordance with the previous piece of
4 evidence tendered for the purpose of impeachment.

5 And I don't want to be premature, but it's just newspaper article so again we will very
6 carefully and with some reservation evaluate the probative value, and without any
7 further corroborated documents that the probative value would be very, very
8 problematic.

9 Mr Bourgon.

10 MR BOURGON: [11:49:27] Mr President, just for practical purposes, I would like to
11 enquire as to exactly when the Chamber rules in such a way to admit a line of
12 a document which bears some 50 pages, what exactly will be before the Chamber
13 during deliberations? A line, a page, the document? Because that's important as to
14 how you will assess that line and what will be in the hands of the Judges when they
15 retire to deliberate on this case. Will it be only the line or will it be the full document
16 in order to assess the line? I think it's important for us to know, Mr President.

17 Thank you.

18 PRESIDING JUDGE FREMR: [11:50:07] Good question. I think Ms Samson clearly
19 highlighted that the main and only issue is the date of the event. And they
20 cross-examined Mr Ntaganda about this and it will be only, only item which will be
21 adjudicated and reviewed by the Chamber.

22 Ms Samson, please proceed.

23 MS SAMSON: [11:50:35] Thank you, Mr President. And as was the case when
24 the Defence sought admission of a line, the Prosecution understands that the
25 Chamber has at its disposal the title of the document as well.

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1 PRESIDING JUDGE FREMR: [11:50:49] Yes, I agree. I can confirm.

2 MS SAMSON: [11:50:54]

3 Q. [11:50:54] The departure of the Chui mobile force and other recruits for training
4 in Tchankwanzi was public, was it not? In other words, it wasn't done in secret?

5 A. [11:51:30] I can only speak of the departure of the Chui mobile forces group
6 because I welcomed them. But I don't know under what circumstances the other
7 recruits left. Therefore, I can't talk about that.

8 Q. [11:51:49] There was no prohibition for people to watch the departure, or for
9 journalists or international observers to report on the departure, correct?

10 A. [11:52:24] I don't want to carry out an analysis and I was not there for the
11 departure of the recruits. I just know that when we left I didn't see any journalists
12 covering the event. I don't know whether the journalists were able to have access to
13 certain information at a given time.

14 Q. [11:52:53] The airport in Bunia is a public location, correct?

15 A. [11:53:14] Yes, but at the time the airport in Bunia was under the control of the
16 UPDF forces, so the UPDF forces, if they gave you permission, then you could enter.

17 Q. [11:53:29] But people could certainly go to the airport, could they not? There
18 was no prohibition on people going to the airport, was there?

19 A. [11:53:53] I don't know the conditions imposed by the UPDF forces for access to
20 Bunia airport. I think that is a question that could be answered by somebody from
21 the UPDF.

22 Q. [11:54:15] Well, you know, don't you, that at least in August 2002 when Thomas
23 Lubanga returned from Kinshasa that the population was at the airport to welcome
24 him, correct?

25 A. [11:54:39] Yes. Members of the population went to welcome Lubanga on his

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1 arrival, but there would have been military presence there. I don't know whether
2 there were questions as to whether the civilian population was allowed to go to the
3 airport for this event.

4 Q. [11:55:07] And there were commercial airlines flying in and out of Bunia,
5 correct?

6 A. [11:55:29] When the airport was under the control of the UPDF there were
7 indeed commercial flights from the airport.

8 Q. [11:55:42] And members of the public could go to the airport to take those
9 flights?

10 A. [11:56:03] I don't know whether your question relates to a specific period.
11 I didn't go to the airport every day of course, so I would need to have more
12 information before I could give a full answer to your question.

13 Q. [11:56:31] Well at any time that the Bunia airport was functioning and had
14 commercial airlines flying in and out with passengers, whether it was in August 2000
15 or 2001 or 2002, members of the public could access the airport to take those flights,
16 couldn't they?

17 A. [11:57:03] Yes, members of the population could go to the airport to take
18 commercial flights even though the airport was under the control of the UPDF forces.

19 Q. [11:57:20] And now my question in relation to the departure period of the Chui
20 mobile force which I suggest to you was August, end of August 2000, members of the
21 public could access, it was not secret that the Chui mobile force and other recruits
22 were flying out of the Bunia airport to Tchankwanzi for training?

23 A. [11:58:00] No. We left Bunia towards the end of October and we went to
24 Kampala. A week after our departure at the beginning of November Mbusa and
25 Wamba fought each other and I recall that there were elements from Mbusa's forces

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1 who were part of the training with us. I'm saying this to you by way of saying that I
2 dispute your statement that we left in August, at the end of August.

3 Q. [11:58:54] I would like to show you a photograph. It's DRC-OTP-0137-0715,
4 item 1246. It's a public document.

5 Sir, do you recognise this as the Bunia airport?

6 A. [11:59:59] I am not able to confirm simply by looking at this photograph.

7 Q. [12:00:07] Can you see, sir, an aeroplane on the left in the background of the
8 photograph?

9 A. [12:00:25] I do not see an aeroplane. What I see in the background of the
10 photograph is something that is not clearly an aeroplane to me. Maybe it is
11 a problem with my monitor, the picture is not clear enough.

12 Q. [12:00:59] My suggestion to you, sir, is that this is a photograph of the Bunia
13 airport with an aeroplane on the left and a line of individuals to the right, centre and
14 to the right, who are lining up to board the aircraft. Do you agree or disagree with
15 that suggestion?

16 PRESIDING JUDGE FREMR: [12:01:22] Mr Ntaganda, may I ask you to stand up
17 and to maybe really -- even the size of the picture on your monitor is not enough, but
18 could you kindly look at the screen on your right hand. Maybe it will -- court usher,
19 please assist and change the angle, make it more comfortable to Mr Ntaganda.

20 THE WITNESS: [12:02:10] (Interpretation) Your Honour, that might be an aeroplane,
21 and I believe that the Prosecutor has some information, but if she is going to ask me
22 questions about an aeroplane which I have no information about, I will not be able to
23 answer. But it is possible that what's in the background is an aeroplane.

24 PRESIDING JUDGE FREMR: [12:02:41] Ms Samson, please proceed.

25 MS SAMSON: [12:02:43] Thank you.

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1 Q. [12:02:48] The source of this photograph is a journalist whose name could I
2 provide in private session, if you would like, who provided that photograph to the
3 Office of the Prosecutor as being a photograph of the mutineers on their way to
4 training in Uganda.

5 PRESIDING JUDGE FREMR: [12:03:06] Please, let's move into private session.
6 Even the source could be of relevance. So let's move for a while into the private
7 session to allow Ms Samson to provide us with the name of the journalist.

8 (Private session at 12.03 p.m.) *(Reclassified partially in public)

9 THE COURT OFFICER: [12:03:25] We're in private session, Mr President.

10 PRESIDING JUDGE FREMR: [12:03:32] Thank you.

11 Ms Samson.

12 MS SAMSON: [12:03:35] Thank you, Mr President.

13 Q. [12:03:36] (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 A. [12:04:21] I do not know that journalist. Now, if you show me a photograph
18 without stating that this is the Bunia airport, I am not in a position to confirm that it is
19 the airport, because there is nothing here to help me come to the determination that
20 this was -- this is the Bunia airport. I don't have any indication, any indicia that
21 would point to that conclusion. So you can't just show me a picture like this and
22 then expect me to say that it is the Bunia airport.

23 PRESIDING JUDGE FREMR: [12:05:00] Hold on, Ms Samson.

24 Mr Bourgon.

25 MR BOURGON: [12:05:03] Thank you, Mr President. Now that my colleague has

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1 tried to establish a foundation for this picture or a knowledge of the witness of this
2 picture, he has no knowledge of the picture unless she wants -- sorry, I am not
3 supposed to use those words, unless my colleague would like to ask a question
4 whether the witness is present or not on the picture, whether he knows what the
5 picture represents, and then that should be it. My colleague should not go any
6 further into what this person, the name she just mentioned, the journalist would have
7 said about the picture. She can say, my colleague can say what the Prosecution
8 believes the picture is, and the witness can answer yes or no. That should be the end
9 of it, Mr President. Thank you.

10 PRESIDING JUDGE FREMR: [12:05:53] And you -- what is the base for this
11 statement that we couldn't go further?

12 MR BOURGON: [12:06:00] Because there is no connection between the witness and
13 the picture. He does not even know where the picture is taken. So if he is not able
14 to say that this picture, where it's taken and what it represents, then it should not be,
15 it should not be the time to try and put something to the witness that he never saw.
16 You never saw the picture and he is not familiar with the picture. So moving on
17 with a further question, she can put her case, the Prosecution can put its case and then
18 the witness answers and that will be it. Thank you.

19 PRESIDING JUDGE FREMR: [12:06:39] Ms Samson, do you want to comment it?

20 MS SAMSON: [12:06:42] Your Honour, yes, in the sense that the restrictions that
21 the Defence is seeking to impose on the Prosecution's questioning are unfounded.
22 The Prosecution is entitled and in fact required to put its case to the witness and I am
23 attempting to do so, not by providing a generalised suggestion that we have
24 information, but rather to provide as specific as possible an indication as to what that
25 information is and where it comes from.

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1 Now, the source of the information did not provide a specific date so I will not be
2 putting it in relation to this photograph, but did indicate that this is a picture of the
3 Bunia airport, of the mutineers leaving to take training. And that is a suggestion that
4 I have put to the witness now and for the moment that's the extent of the questioning
5 I have in relation to this photograph.

6 PRESIDING JUDGE FREMR: [12:07:37] Mr Bourgon.

7 MR BOURGON: [12:07:40] Mr President, that's the difficulty. There is no evidence
8 on the record. The Prosecution cannot testify for the person who provided the
9 picture or who took the picture. That testimony must come from the source. So
10 other than this one question, then that should be it and nothing, else, Mr President.
11 Or else we are having the Prosecution testify for witnesses that should have been
12 called, if it was their case during the case of the Prosecution. The fact that recruits
13 departed from Bunia airport is something that was part of the Prosecution's case, and
14 there has been a lot of cross-examination on this issue. So there must be better ways.
15 I'm sure the Prosecution has more material to challenge the witness than a picture he
16 is not familiar with. Thank you.

17 PRESIDING JUDGE FREMR: [12:08:39] Ms Samson, what should be your further,
18 further questions? Because I agree with Mr Bourgon that any further enquiry about
19 the -- also of the picture wouldn't be probably of relevance at the moment. What
20 could be of relevance if you want to continue to impeach Mr Witness if you mean that
21 he doesn't speak the truth about his knowledge or about his ignorance of the picture
22 and the facts which could be found on the picture.

23 MS SAMSON: [12:09:13] My further questions relate to the access by the public,
24 including journalists, of the airport at the time of the departure of the Chui mobile
25 force and recruits to Uganda. Those are -- that's the scope of my further questions,

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1 your Honour.

2 PRESIDING JUDGE FREMR: [12:09:30] All right. Then proceed. And is there still
3 a need to remain in private?

4 MS SAMSON: [12:09:35] No, your Honour. I will only add that I may show
5 another photograph which would be from the same source. If I do show it, we do
6 not need to move back into private session for that.

7 PRESIDING JUDGE FREMR: [12:09:45] All right.

8 So now let's move into open session.

9 (Open session at 12.09 p.m.)

10 THE COURT OFFICER: [12:10:05] We are back in open session, Mr President.

11 PRESIDING JUDGE FREMR: [12:10:06] Thank you.

12 Ms Samson, please proceed.

13 MS SAMSON: [12:10:10]

14 Q. [12:10:10] Now, if we could have the photograph.

15 Sir, my question to you now has to do with the people in the photograph and the
16 source of the photograph.

17 There were members of the public who were at the airport, were there not, including
18 journalists, at the time that the Chui mobile force and other recruits were flying to
19 Uganda for training?

20 PRESIDING JUDGE FREMR: [12:10:46] Mr Bourgon.

21 MR BOURGON: [12:10:47] Mr President, the question was asked and answered
22 previously where Mr Ntaganda responded earlier that when he departed with the
23 group he was with, he did not see anyone there. Thank you.

24 PRESIDING JUDGE FREMR: [12:10:56] Yes, asked and answered.

25 Please proceed.

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1 MS SAMSON: [12:11:05] Mr President, if I may, what I'm seeking to do is to now
2 with new evidence from a journalist put the question again to see whether it changes
3 Mr Ntaganda's recollection that journalists had access to the Bunia airport at the time
4 of the departure.

5 PRESIDING JUDGE FREMR: [12:11:21] It should be argumentative. Please
6 proceed.

7 MS SAMSON: [12:11:25]

8 Q. [12:11:25] Sir, I would like to show you another photograph, it's also public,
9 DRC-OTP-0137-0707, to see if you recognise it. And that is item 267 on the list.
10 Now, sir, do you recognise where this photograph was -- well, first, do you recognise
11 yourself in the centre of the photograph?

12 A. [12:12:22] Yes, I can see myself.

13 Q. [12:12:32] And do you recognise where you are?

14 A. [12:12:50] Yes. I can remember the uniform that I was wearing. That is the
15 uniform which I obtained in South Africa, and I believe that this is when I arrived in
16 Bunia in the year 2000. I remember buying that uniform in the Republic of
17 South Africa.

18 Q. [12:13:26] Is this the Bunia airport?

19 A. [12:13:48] It is possible. It is possible. But I cannot be more specific than that.
20 All that can help me to remember these circumstances is that uniform, that uniform
21 which I bought in South Africa.

22 Q. [12:14:07] And the man to your left in the green beret, who is that?

23 A. [12:14:26] His name is Prince Mugabo. I arrived along with him from Uganda
24 in the year 2000 and that was our very first trip.

25 Q. [12:14:44] And the man next to Prince Mugabo in the white cap, who's that?

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1 A. [12:15:06] Are you referring to a military beret or to a face cap?

2 Q. [12:15:21] To a man in a white shirt and a white hat or cap. He is in civilian
3 clothing.

4 A. [12:15:38] I don't -- I no longer remember that person. However, I remember
5 the other person who is shorter and who is standing right next to me.

6 Q. [12:15:50] Do you remember his name?

7 A. [12:16:01] His name is Delphin. He was one of Mbusa Nyamwisi's counsellors
8 and we had been together in Kisangani. When we arrived in Bunia he came to greet
9 me, and he usually came to greet me and I do remember him.

10 Q. [12:16:24] Now, the man in military uniform on the right, do you recall his
11 name?

12 A. [12:16:39] Yes, now I do remember that this is the airport. Yes, we came in
13 from Uganda and we had a meeting at the airport. During that meeting I saw
14 Tchaligonza, and that was in the year 2000 when we arrived in Bunia before joining
15 the Chui mobile force.

16 Q. [12:17:03] So is it correct that the man in military uniform on the right is
17 Tchaligonza?

18 A. [12:17:21] Yes, that is correct. He is the one wearing a tache-tache greenish
19 uniform. He is a soldier. Standing to my right.

20 Q. [12:17:41] Now, if you look at the man who's standing left of you in the
21 photograph in the green beret, in the uniform that's similar in colour to yours, you
22 have just testified that that is Prince Mugabo. Is it possible that in fact that is
23 Mukalayi?

24 A. [12:18:14] His name is Prince Mugabo. He is someone from my area but he is
25 no longer alive.

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1 Q. [12:18:22] And my question to you was: Could it be that this is an image of
2 Mukalayi?

3 A. [12:18:36] No. Mugabo is someone from my community. I knew him very
4 well. We were together in the village and we were together in the army. Later on
5 he joined me in Uganda when he came from -- when he came from Goma. So I know
6 him very well and I cannot confuse him for Mukalayi. He is the one on the
7 photograph. His name is Prince Mugabo.

8 MS SAMSON: [12:19:16] Mr President, I seek to admit the two photographs. The
9 second photograph, in my submission, can be admitted. It has been authenticated
10 by the witness. And that is item DRC-OTP-0137-0707, and the first image, which is
11 DRC-OTP-0137-0715, I seek to admit for the purpose of impeachment in the sense of
12 the location of the photograph and the access of the photograph by the public to the
13 airport during the departure of the troops to Uganda.

14 PRESIDING JUDGE FREMR: [12:19:56] Defence, your position?

15 MR BOURGON: [12:19:59] Well, Mr President, if we start with the first photograph,
16 I do not see any contradiction that would lead to any kind of impeachment
17 considering that the witness does not recognise the picture, and it should not be
18 admitted for the purpose of impeachment.

19 Moving on to the second photograph, and I note also that we do not have a date as to
20 when this photograph was taken. We have the Prosecution's testimony as to who
21 took the photograph, but that's not in evidence. So those are material questions in
22 order to determine whether there is any type of contradiction.

23 As for the second photograph, I don't see first any physical overlap between the first
24 and the second photograph. Now, in this case Mr Ntaganda is on the picture, so that
25 would be normal to admit this photograph. The issue here is why? And why was

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1 it not used during the Prosecution's case? This is a picture that they had in their
2 possession. It is -- if it is relevant and if it identifies anything that goes to
3 the Prosecution's case, it should have been done during the Prosecution's case. Now
4 the Prosecution must explain why it has evidence that apparently establishes
5 something and the identity of people.
6 All those people mentioned there, they were all mentioned in the Prosecution's case.
7 There is no reason why the Prosecution did not use this evidence during its case. If
8 the Prosecution wants to lead further evidence, this is why there is a general rule that
9 the evidence of the Prosecution should not be split in two. It is not I lead sufficient
10 case to move forward and then I lead more evidence during the Defence case.
11 The Prosecution opens its case, closes its case. If it wants to further its case with
12 Mr Ntaganda, then it must use evidence and explain why it did not use this evidence
13 which was in its possession.
14 So, Mr President, for both photographs, again we do not know when this picture was
15 taken, although we have some information from Mr Ntaganda. But what is the
16 probative value of the exact photograph, the probative value of having a picture from
17 Tchaligonza of Mugabo and this other individual? Where does that take us?
18 The Prosecution has not said why it wants -- what is the importance of going beyond
19 the rule of submitting all of its evidence during its case. Why is this so exceptional?
20 That's part of the case law on this, and this was noted by the Trial Chamber in its
21 decision of 18 July. So we don't know why this is so exceptional and we don't know
22 why it has not been used during the Prosecution's case.
23 So for these reason, Mr President, we oppose the admission of both documents.
24 Thank you.
25 PRESIDING JUDGE FREMR: [12:23:33] Ms Samson, could you kindly focus yourself

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1 on the -- in fact two questions put by Mr Bourgon at the end of his submission: Why
2 not during your case and what is the relevance of the second picture?

3 MS SAMSON: [12:23:50] Mr President, the Chamber has not precluded the
4 admission of evidence by the Prosecution during the Defence case entirely, and
5 therefore the Prosecution seeks to authenticate documents that it was unable to
6 authenticate in its own case when Defence witnesses are properly able to do so.

7 There should not be any controversy to the notion that this witness is in the
8 photograph, has identified where it may have been taken, and is himself in the
9 picture and identifies those he is in the picture with. So for the purposes of
10 admission, the authenticity criteria has been met.

11 The Prosecution ought to be in a position to utilise witnesses when they come and
12 the Chamber ought to also be able to be in a position to accept evidence when
13 witnesses who come after the Prosecution case are better able to authenticate items
14 than through a bar table motion or where witnesses could not come.
15 Now, the particular author of this item is deceased. And what we see here is the
16 accused in Bunia at a certain point in 2000 with some of his collaborators and persons
17 who have become close collaborators of his at a later time. And this is a type of
18 image that the Prosecution seeks to rely on for that purpose now.

19 For the second item, we are seeking to use the item for impeachment purposes,
20 your Honour.

21 PRESIDING JUDGE FREMR: [12:25:29] All right. So our ruling is that both
22 documents are admitted into evidence, the first one for the purpose of impeachment,
23 the second one for the truth of its content.

24 And I would like to add one thing as a reaction on Mr Bourgon's reaction. Even if
25 some document is admitted for the purpose of impeachment, it doesn't mean that it

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1 couldn't serve for the opposite purpose, which means that it could -- subsequent
2 could even confirm that Mr Witness - now it is Mr Ntaganda - was speaking true. So
3 this attempt to impeach him is not well-founded if, for example, from the picture it's
4 really not -- and now I am just speaking generally, I am not providing any premature
5 evaluation which would be made by the Chamber, but if, for example, it would be
6 proved that from the Chamber it is really not visible whether it is Bunia airport or
7 other airport, so even if document is admitted for the purpose of impeachment, it
8 could serve for the opposite, opposite purpose, to prove that he was not, not lying or
9 was not evasive during his testimony.

10 As to the second thing, the second picture, yes, with some reservation, it could have
11 some probative value. Mr Ntaganda again provided, in my view, relevant details
12 concerning the timing with connection with, with the kind of uniform he had. So I
13 think it could have even served for future for some further conclusions of
14 the Chamber.

15 Now please proceed, Ms Samson.

16 MS SAMSON: [12:27:24] Thank you, Mr President.

17 Q. [12:27:51] Now before we leave with this photograph, sir, I would like you just
18 to retain the image of yourself in the blue beret from this uniform and I would like to
19 go back, if possible, to item 1246, which is DRC-OTP-0137-0715.

20 Madam court officer, if you could scroll in as far as you can to the centre of the
21 photograph.

22 Now, sir, what you will start to see is an image of a person, you can see only
23 the partial face in a blue beret. And I will ask whether that is an image of you?

24 A. [12:28:46] No. No. When we went to Uganda as part of the Chui mobile force,
25 I wasn't wearing that uniform. I had that uniform when we arrived in Bunia from

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1 Uganda in October 2002 -- in October 2000, rather. At that time I didn't have that
2 uniform.

3 Q. [12:29:31] Sorry, in the transcript in English it says that you arrived in Bunia
4 from Uganda in October 2000 and -- oh, sorry, October 2000.

5 Sir, in the transcript just now, lines 24 to 25, page 60, and lines 1 to 2, page 61, it reads
6 that you said:

7 "I had that uniform when we arrived in Bunia from Uganda in October 2002 -- in
8 October 2000, rather."

9 Is that correct?

10 A. [12:30:24] Let me explain so that you can clearly understand. There are two
11 things here. When I returned from South Africa, where I had undergone treatment, I
12 bought that uniform from South Africa, brought it to Bunia and a few days later I
13 went to the airport. And at that time Tchaligonza was still in Kasenyi and I did not
14 know him, I didn't know him at that time yet. Then we took the photograph
15 together at the airport. But that was before the Chui mobile force was set up. I did
16 not even have the intention at that time of joining the Chui mobile force. I had
17 joined in order to become the brigade commander, as was proposed by Ikondere, and
18 then later on we went for training and then went back to Uganda in October 2002.
19 So this first photograph has no connection whatsoever with the activities of the Chui
20 mobile force.

21 Q. [12:31:36] Well I understand that contrary to my suggestion you maintain that
22 this photograph has nothing to do with the Chui mobile force, but your uniform with
23 the blue beret that you had when you went to Bunia, which you say was in July 2000,
24 would have been the same uniform that you used when you went to Uganda, was it
25 not?

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1 A. [12:32:05] No. When we were getting ready to go to Uganda as troops of the
2 Chui mobile force I wasn't wearing that uniform. I no longer had that uniform.
3 I don't know how I lost it when I was a member of the Chui mobile force. The
4 uniform I wore at the time had only one colour. When we were going to Uganda I
5 no longer had that uniform, I had lost it.

6 Q. [12:32:46] All right. Now --

7 A. [12:32:48] And Mugabo did not have that uniform either.

8 Q. [12:32:55] Now, the flights to Tchankwanzi from the Bunia airport took place
9 over two to three days, correct?

10 A. [12:33:21] I didn't understand your question, Madam Prosecutor.

11 Q. [12:33:27] I will repeat to be sure it's clear. The flights that left Bunia with the
12 recruits who were going to train in Tchankwanzi, Uganda, those flights departed over
13 a two-to-three-day period, correct?

14 A. [12:33:51] I didn't leave with the recruits. I went with the troops of the Chui
15 mobile forces. These were trained soldiers. I didn't go with the recruits.

16 Q. [12:34:11] I understand that that is your evidence. My question is: Did the
17 Chui mobile force and recruits leave from Bunia over a two-to-three-day period?
18 Flights went and came back and took the next group and came back over
19 a two-to-three-day period?

20 A. [12:34:49] No. I have already covered this point. When I had left I left with
21 the first group which was made up of members of the Chui mobile forces. I didn't
22 even know that there was another group of recruits. And when all the troops of the
23 Chui mobile forces arrived in Tchankwanzi, I saw them. But I don't know anything
24 about the arrival of the recruits. It was only later that I found them in Tchankwanzi.
25 But I can't say exactly when they arrived in Tchankwanzi.

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1 Q. [12:35:32] Now my suggestion to you is that all of the flights leaving the Bunia
2 airport to take the Chui mobile force and recruits to Tchankwanzi left between 29 and
3 31 August 2000, do you agree?

4 A. [12:36:09] No. In September the Chui mobile force was in the bush. The
5 information that I have who was in the field does not correspond to what you say.
6 Wamba Dia Wamba, Mbusa fought once we had spent a week in Uganda and it was
7 the officers of these two groups who arrived in Uganda and we followed the training
8 together. They arrived in November.

9 Q. [12:36:56] Did you get to know at some time that some of the recruits who
10 attended training in Tchankwanzi were under the age of 18 and some were under the
11 age of 15?

12 A. [12:37:24] I was not in a position to know the age of these recruits, because I was
13 not with these recruits.

14 Q. [12:37:38] You never heard about a large recruitment effort by UNICEF, a large
15 demobilisation effort by UNICEF to deal with about 163 or 165 underage children
16 who were in the Tchankwanzi training, you never heard of that?

17 PRESIDING JUDGE FREMR: [12:37:59] Hold on, Mr Witness.
18 Mr Bourgon.

19 MR BOURGON: [12:38:02] Mr President, it's just important for my colleague to put
20 a date on her question because right now whether the witness heard, is it before, is it
21 at the time, is it later on? This issue was discussed with the witness on numerous
22 occasions during preparation. So the question should be clear as to when, what
23 period the Prosecution is referring to. Thank you.

24 PRESIDING JUDGE FREMR: [12:38:27] In my understanding, if the question is put
25 in a way you never heard means that covers all, all options. But, Ms Samson, you

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1 can comment it yourself.

2 MS SAMSON: [12:38:40]

3 Q. [12:39:10] Yes, that's right. It's at any time, whether it was prior to leaving,
4 while the recruits were being trained or indeed following the training, did you never
5 hear that there was a number of approximately 163 or 165 of those recruits of 700 who
6 were under the age of 18 and some under the age of 15?

7 A. [12:39:24] When I was in Jinja during the training I did not see any such
8 information.

9 Q. [12:39:36] Does that mean that you never heard of that information at any time
10 during or after the training?

11 PRESIDING JUDGE FREMR: [12:39:52] Hold on, Mr Witness.

12 Mr Bourgon.

13 MR BOURGON: [12:39:55] Mr President, these events took place back in 2000. It
14 should be -- to be fair to the witness, we should say is it until today or in the months
15 that followed? I think that is important so that the witness knows what he is
16 answering. Right now I would not know what to answer here. Is it until today or
17 is it at the time of the events? I think that is important if we are going to get an
18 answer from the witness. Thank you.

19 PRESIDING JUDGE FREMR: [12:40:27] Mr Bourgon, you in fact you rephrased the
20 question according your taste instead of Ms Samson.
21 Ms Samson.

22 MS SAMSON: [12:40:36] Yes, your Honour, and I would ask that such interventions
23 really be kept to an absolute minimum. This is almost giving the witness an
24 indication of where to begin to testify while we're discussing what was discussed
25 during presentation, which is a note that the Prosecution does not have, and it comes

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1 very close to providing coaching to the witness and I would ask the Chamber to
2 remind Defence counsel that it ought not go that way during cross-examination.

3 PRESIDING JUDGE FREMR: [12:41:06] Mr Bourgon.

4 MR BOURGON: [12:41:07] Now we are getting in a very sensitive issue here.

5 The Prosecution knows that we have Defence witnesses who will come and discuss
6 what happened in Tchankwanzi. Prosecution knows this, they have the summaries,
7 the Trial Chamber has the summaries. Of course this was discussed with
8 Mr Ntaganda when discussing about what witnesses to see, what witnesses could
9 provide, when they could come. All this was discussed. This has nothing to do
10 with what my colleague is now making reference to calling preparation. I did not
11 say that this was discussed in preparing for his testimony, I said this is a topic that of
12 course Mr Ntaganda discussed with the Defence because everybody here knows that
13 some Defence witnesses will come and testify to that effect.

14 All I want, and this is an issue of fairness, if a question is going to be put to the
15 witness, it should be clear as to what time period the question refers to. This way we
16 get a clear answer, whether it is contradicted or not contradicted.

17 So any references to preparation or any references to wrongdoings on the Defence,
18 you know, Mr President, that I take issue with this because I take great care in
19 following the instructions.

20 So this, if it was discussed with Mr Ntaganda, it was certainly not discussed during
21 preparation, as my colleague is making reference to.

22 Thank you, Mr President.

23 PRESIDING JUDGE FREMR: [12:42:48] All right.

24 But, yeah, please take this caveat because to be -- how to call it? -- or to correct
25 witnesses, questions put by the counterpart should really occur only in very, very rare

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1 cases and very -- in cases there is something really very important, and then if the
2 question put, as originally put, would make some harm. But I don't believe it was
3 this case, even if you provided us with some context with which makes sense.
4 But really, please, Mr Bourgon, I even can understand concern expressed by
5 Ms Samson. Prosecution has its own tactics taken during the cross-examination and
6 your objection even is -- even if fairly mentioned, shouldn't harm their tactics. So
7 please next time have it in mind.
8 Now, in fact, I don't know whether, Ms Samson, ask you to rephrase your question,
9 because in fact Mr Bourgon did it. So please proceed.
10 MS SAMSON: [12:44:10] Thank you. I will repeat my question.
11 I think the witness may not remember it.
12 Q. [12:44:23] Essentially it was: At any time, sir, are you saying today that you
13 did not hear before, during or after the training of those recruits that some of them
14 were under the age of 18 and some were under the age of 15?
15 A. [12:44:54] With regard to their age, I don't remember this age bracket being
16 taken into consideration for demobilisation. But I know that I didn't have any such
17 information while I was at the training. And nor can I tell you exactly when I learnt
18 this after I returned. I don't know whether it was in 2010 or after I arrived here in
19 The Hague. I would like to say once again that I don't know when the NGOs arrived
20 in Tchankwanzi to undertake the demobilisation to which you referred.
21 Q. [12:45:56] Now I would like to show you a document. It's one that we have
22 seen today already, the Human Rights Watch report from March 2001. It's
23 DRC-OTP-0100-0164.
24 And the item number again is 1304.
25 For the purposes of the transcript and for your benefit, the title again is: "Uganda in

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1 Eastern DRC: "Fuelling Political and Ethnic Strife".

2 And I would ask madam court officer to please move to page 176.

3 And I will focus in on the first two full paragraphs of the page. If you could zoom in
4 just slightly more. Thank you.

5 Now this document is in English, so I will read the second paragraph in full and
6 a part of the third paragraph and then I will ask you whether you agree with the
7 content as reported by Human Rights Watch. These two paragraphs, to situate for
8 you, relate to the Chui mobile force and their departure for Tchankwanzi, and I quote
9 page 176, second paragraph, in English:

10 "The offer transformed an imminent disaster into a reward for the perpetrators of the
11 coup attempt. By the time the defectors returned to Bunia from the bush on
12 August 24, their number, estimated initially to be 300, had grown to 700 as" --

13 PRESIDING JUDGE FREMR: [12:48:25] Ms Samson.

14 THE COURT OFFICER: [12:48:26] Will you mind to slow down when you are
15 reading a document. Thank you.

16 MS SAMSON: [12:48:31] Certainly.

17 THE INTERPRETER: [12:48:34] From the French booth interpreters: could counsel
18 please slow down in reading the document?

19 MS SAMSON: [12:48:41] Certainly. I can certainly slow down.

20 I will start from the second sentence again:

21 "By the time the defectors returned to Bunia from the bush on August 24, their
22 number, estimated initially to be 300, had grown to 700 as militiamen hurried from far
23 villages to join the core group expecting to benefit from the Ugandan offer of training.
24 In Ituri district new recruits were reportedly enroled to augment the number of the
25 beneficiaries of the offer. Local people had expected the UPDF to disarm the

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1 defectors when they arrived in town, but they did not. Their arrival caused another
2 serious crisis because the defectors attacked a local prison on August 28, to free one of
3 their leaders who was in detention for his suspected role in organising the mutiny.

4 A Ugandan and a Congolese soldier, as well as two of the attackers, were killed in the
5 attempt.

6 The UPDF organised an air bridge to transport all of the 700 defectors from Bunia to
7 Kampala between August 29 and 31. According to observers, many of the defectors
8 were under 15 years of age. At a time when the United Nations had recognised the
9 need to end the use of child soldiers, the departure of these children for military
10 training took place in full view of the entire population, in a town where the UN
11 Organisation Mission in the Democratic Republic of the Congo (MONUC) maintains
12 military observers and where UNICEF and other humanitarian agencies operate
13 assistance missions for victims of the ethnic conflict."

14 I will end the paragraph there and note that there are two footnotes in the passages,
15 footnotes 13 and 14 which relate to the source of information, which were Human
16 Rights Watch interviews in Bunia from December 8 to 14, 2000. And footnote 14,
17 which says that: "The airlift took place exactly four weeks after the UN Security
18 Council held a special debate on children and armed conflict."

19 Now, sir, the passages that I have read out from this report dated March 2001 is an
20 accurate reflection of the events that you were involved in from August 24 through to
21 August 31, 2000, correct?

22 A. [12:52:30] I have already stated here that I have no information about the
23 recruits. You can ask me questions about the Chui mobile forces but not on the
24 subject of the recruits. With regard to this report, this is the first time I have seen it.
25 And if I have no memory or information of any type of -- and I have no recollection of

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1 any type of operation for the demobilisation of recruits.

2 Q. [12:53:09] My question covers more broadly some other topics that are reflected
3 in this report and that we have discussed today already. Do you maintain your
4 testimony that you did not return to Bunia from the bush on August 24 as set out in
5 this report?

6 A. [12:53:57] I left Bunia at the end of October to go to Uganda.

7 Q. [12:54:06] And do you continue to dispute that the attack on the local prison to
8 free Chef Kahwa was not on August 28 as is reported here and in the newspaper
9 article we saw earlier?

10 A. [12:54:42] What I recall is that once he had been liberated we went immediately
11 to Uganda, and once we had reached Uganda there was fighting between the forces of
12 Mbusa and Wamba Dia Wamba. And then we started our training. So I would
13 think that this fighting took place towards the beginning of November.

14 Q. [12:55:31] And finally in relation to this document, do you maintain your
15 testimony that, contrary to this report, the full complement of the 700 recruits were
16 leaving Bunia at the same time for Tchankwanzi, with the Chui mobile forces?

17 A. [12:56:26] No, when I left with the Chui mobile forces we did not leave together
18 with the recruits. The photo you showed me earlier which was taken at the airport
19 was the Chui mobile forces. There was not any recruits involved when we left. It
20 was only once I was at Tchankwanzi that I saw the recruits, but I don't know the
21 circumstances of their arrival there. And we arrived in Tchankwanzi at night and I
22 have already said in my statement here I saw no recruits on that occasion.

23 MS SAMSON: [12:57:15] Mr President, I seek to admit the two paragraphs, the
24 portions that I have read from this report, for impeachment purposes as the witness
25 does not accept the information contained in them.

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1 PRESIDING JUDGE FREMR: [12:57:30] Defence, your position.

2 MR BOURGON: [12:57:33] Following the further -- the previous ruling, no objection,
3 Mr President.

4 PRESIDING JUDGE FREMR: [12:57:39] So the part of document specified by
5 Ms Samson is admitted to the evidence for the purpose of impeachment.

6 Ms Samson.

7 MS SAMSON: [12:57:52]

8 Q. [12:57:54] You yourself with some of the Chui mobile force stayed at
9 Thomas Lubanga's residence before leaving for Tchankwanzi and Jinja, correct?

10 A. [12:58:16] Yes. Before leaving for Uganda we stayed in his residence.

11 Q. [12:58:34] And as you've stated previously, you were the leader of the Chui
12 mobile force?

13 A. [12:58:56] That is correct.

14 Q. [12:58:59] And you were an experienced military instructor at that time?

15 A. [12:59:20] I can't claim to having great experience, but I did have a certain
16 degree of experience in the matter.

17 Q. [12:59:30] And it was only logical, wasn't it, that you would have played an
18 important role in the planning of the training for your troops, correct?

19 A. [12:59:55] When we were in the bush, we didn't have any training. How could
20 I have planned the training for my troops? No.

21 Q. [13:00:13] So it's your evidence that after naming your group, structuring your
22 group, leading your group of Chui mobile force in successful operations against the
23 APC, that when it came time to take part in a great opportunity for training, that you
24 had no role whatsoever in the planning of that?

25 A. [13:00:52] I'm answering your question in the way that it was formulated. I am

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1 saying that at the time of the Chui mobile forces, we didn't have any training. But
2 I don't know whether you are asking two questions in one. I don't know whether
3 you are referring to the Chui mobile forces period when, as I say, we had no training,
4 or whether you are referring to the period that followed, whether you are kind of
5 making an amalgam of the Chui mobile forces period and the period that then
6 followed.

7 Q. [13:01:44] I will try to make it as simple as I can for you so you understand what
8 I am trying to put to you. Your evidence is, is it not, that despite the role that you
9 had in leading the Chui mobile force and despite discussions you might have had
10 with Lonema and Djalum about ousting Wamba, you went to Thomas Lubanga's
11 residence and had no further discussions with anybody about a plan to train you and
12 your own men; is that your evidence?

13 A. [13:02:43] We had no role to play. The orders came from the Ugandans. The
14 Ugandan leaders arrived and explain what they had prepared for us. We could not
15 have been part of the programming of our training in Uganda because we were in fact
16 the very people who were being trained. We played no role in this other than to be
17 there to be trained.

18 MS SAMSON: [13:03:24] Mr President, I note the time and I can pick up after the
19 break.

20 PRESIDING JUDGE FREMR: [13:03:28] Very well.
21 Mr Bourgon.

22 MR BOURGON: [13:03:31] Thank you, Mr President. Just before the break, an
23 exhibit was admitted earlier on for the purpose of impeachment. I refer to
24 DRC-OTP-0137-0715. In eCourt this document was tagged with the following page,
25 which is actually the back of this, of this photograph. Although the back page bears

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1 a different number, namely 0137-0716, I would like to ensure that the only part that is
2 admitted for impeachment pursuant to the Chamber's decision is only 0715 and not
3 the back part. Thank you, Mr President.

4 PRESIDING JUDGE FREMR: [13:04:20] Yes, I can, for the record, confirm that.

5 Because we haven't dealt in any, any regard with the back, back page. So only the
6 front page of -- page dealt with during the cross-ex has been admitted for the purpose
7 of impeachment.

8 Now we break and we will reconvene at half past 2.

9 THE COURT USHER: [13:04:48] All rise.

10 (Recess taken at 1.04 p.m.)

11 (Upon resuming in open session at 2.32 p.m.)

12 THE COURT USHER: [14:32:50] All rise.

13 Please be seated.

14 PRESIDING JUDGE FREMR: [14:33:18] Good afternoon, everybody.

15 The agenda for upcoming session is to proceed with next part of cross-examination of
16 Mr Ntaganda conducted by the Prosecution, Ms Samson, you have the floor.

17 MS SAMSON: [14:33:36]

18 Q. [14:33:46] It's right, isn't it, that the UPC was created on 15 September 2000?

19 A. [14:33:59] Yes, I learnt about that later. I was told that it was created on that
20 date.

21 Q. [14:34:25] Thomas Lubanga is a founding member and president of the UPC at
22 that time?

23 A. [14:34:44] I do not know whether at that time he was one of the founding
24 members or whether he was the president. At that time I did not know.

25 Q. [14:35:00] Have you ever seen the UPC statute?

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1 A. [14:35:18] No.

2 Q. [14:35:24] I'd like to take a look at the UPC statute now at DRC-OTP-0093-0359.

3 It is item 668 on the Prosecution list. And it's public.

4 You can see here on the first page in French the title (Interpretation) "Democratic
5 Republic of the Congo, Union of Congolese Patriots, UPC, Statute".

6 (Speaks English) And if I could ask the court officer to kindly move to page 0367.

7 And we can focus for the moment towards the bottom of the page, we see -- a little bit

8 higher up. Yes. Yes, thank you. We see in French, "Fait à Bunia, le 15 Septembre

9 2000", in French. And it says, and I continue to read: (Interpretation) "Done in Bunia
10 on 15 September 2000. Constituent assembly of the UPC: Founding members".

11 (Speaks English) Now, you will see the first founding member is Thomas Lubanga,
12 with his signature. Can you see that?

13 A. [14:38:09] Yes, I can see it here, I can see his name.

14 Q. [14:38:18] And there are five founding members in total. The fifth founding
15 member is Richard Lonema, and then there are a number of co-founding members on
16 this page and the pages that follow, and number 10 is Rafiki Saba. So these are some
17 of the founding and co-founding members of the UPC, correct, Thomas Lubanga,
18 Richard Lonema, Rafiki Saba, et cetera?

19 A. [14:39:10] Yes, I can read that on the document.

20 Q. [14:39:18] And you know from your time spent in the UPC, don't you, that

21 Thomas Lubanga and Richard Lonema were founding members along with

22 Rafiki Saba, a co-founder? You have independent knowledge of that as well, don't
23 you?

24 A. [14:39:51] I did not know that before.

25 Q. [14:39:59] Is this the first time you're learning that Thomas Lubanga,

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1 Richard Lonema and Rafiki Saba were founding and co-founding members of the
2 UPC?

3 A. [14:40:17] Before I joined the UPC and became a member of the UPC, I did not
4 have this information. I joined the UPC in September 2002.

5 Q. [14:40:32] And so at least as of that time you'll agree that you knew what role
6 these three men had in the foundation of the UPC, correct?

7 A. [14:40:45] Not at all.

8 Q. [14:40:53] Well, I'd like to move back to page 359, which is the first page, and
9 under Article 5 of the UPC Statute it says, and I'll read the first line and then I want to
10 take you to one of the specific objectives. Article 5 in French (Interpretation): "The
11 UPC shall pursue the following objectives."

12 (Speaks English) And I would like to move to the next page, page 0360, to objective
13 number 12. Now, UPC objective number 12 on 15 September 2000 was, and I'll read
14 in French (Interpretation): "To create a national army that is capable to provide
15 protection and defence and for the integrity of the territory."

16 (Speaks English) You knew, didn't you, that the UPC's goal starting from
17 September 2000 and onwards was to form a national army, correct?

18 A. [14:42:54] I was not able to know it because I was not a member at that time.
19 If I had been a member, I would have signed that document as one of the founding
20 members. In 2000 I did not know what the objectives or goals of the UPC were.

21 Q. [14:43:16] And I put to you that if you did not sign the document, it was at
22 least in part because you were already in Uganda for training on 15 September 2000,
23 correct?

24 A. [14:43:39] That is not correct. In 2000 I was the commander of the Chui
25 mobile force, I was part of the APC, one of the mutineers of the APC, I was part of the

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1 RCD-K/ML, and I did not belong to any other party at that time.

2 Q. [14:44:12] Now, objective number 12 of the UPC Statute was to defend the
3 integrity of the territory. And in order to do that, it's right, isn't it, that the UPC
4 would need an army to secure Ituri, correct?

5 A. [14:44:38] You are putting a question to me on the opinion of the members of
6 the UPC. At that time I was not part of the UPC. At that time I was a commander
7 with the RCD-K/ML and I was one of the mutineers and I was protesting against the
8 discrimination against us, and at that time my party was the RCD-K/ML.

9 Q. [14:45:16] You will agree with me, won't you, that in order for the UPC to
10 achieve the goal of assuring the protection and defence of the integrity of the territory,
11 it would need to form a national army, as it set out in its objective, correct?

12 A. [14:45:52] When the party was created, I was not with them. When they
13 signed that document, I was not a member of the party. I can see their objectives
14 outlined here as you have displayed them to me. Maybe we can analyse these
15 objectives together, but at that time I was not part of that group. I was a member of
16 the RCD-K/ML, but then I was one of the mutineers, and at that time really I was a
17 member of the RCD-K/ML, one of the mutineering forces.

18 Q. [14:46:32] And Mr Thomas Lubanga acted as an intermediary between
19 yourselves, the leaders of the Chui mobile force and the Ugandan representatives
20 who came to Bunia to negotiate your group going for military training in Uganda,
21 correct?

22 A. [14:47:10] I escaped from Bunia to create the Chui mobile force. At that time I
23 did not know Lubanga. I had never seen him. I saw him for the first time in
24 Mandro. When I saw him, he was an ordinary citizen who had come to defend the
25 interests of the members of their community. At that time I was one of the

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1 mutineers. The RCD-K/ML took us and mixed up -- took us up together with the
2 APC troops, and at that time I knew nothing about Thomas Lubanga and I was not
3 part of the UPC at that time. So I was not aware of all these things that you are
4 talking about to me today.

5 Q. [14:47:59] Yes, but my question was about something else. Thomas Lubanga
6 attended meetings between yourself and the Ugandan representatives where you
7 negotiated training by Uganda for your military force, the Chui mobile force, correct?

8 A. [14:48:30] No, not at all. He is not the one who conducted those negotiations.
9 He and other people had gone, having been selected, and I don't know how that
10 selection was made. Those who decided that we should go for training were not
11 from Thomas's group. The decision was taken by the Ugandans to send us to
12 training. They are the ones who took that decision and he had no role to play in the
13 matter. So there was a meeting at which the Ugandans took the decision to send us
14 on training, not him.

15 Q. [14:49:14] I'm going to refer to your testimony in-chief, transcript T-212,
16 English, page 67, line 20 to 25, and page 68, lines 1 to 2. And you said:
17 "We had come out of the bush and our men stayed in Mandro, and so
18 Thomas Lubanga said that in his residence there were many places, many spots, and
19 we could go there and stay there before taking the plane to Uganda. So we went to
20 the residence of Thomas Lubanga, his particular plot of land, and since he was the
21 contact person between us and the UPDF members at the time ... I'm not talking about
22 the UPDF. Rather, I'm talking about the Ugandan delegation. He was the person
23 who was the mediator or go-between." Close quote.

24 So your earlier testimony was that Thomas Lubanga was -- had a role between the
25 Chui mobile force and the Ugandan delegation, who ultimately offered you training

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1 in Uganda. You've identified him as the contact person, the mediator or go-between,
2 that's right, isn't it? That was your evidence?

3 A. [14:51:09] I said so because he had left Bunia. That was the first time I saw
4 him in Mandro, when he got to Mandro, the first time I saw him. During that
5 meeting his role ended there and then the Ugandans took over and took the decision
6 to send us for training. And that was the only meeting that took place. By the way,
7 I do not see any other meeting at which President Toms played any other role, and
8 that is why I said he was in charge of liaison all the way from the time of -- from the
9 time in Mandro up to the time of the meeting with the Ugandans.

10 Q. [14:51:56] Now, today at page 80, starting from line 3, I asked you:

11 "Yes, but my question was about something else. Thomas Lubanga attended
12 meetings between yourself and the Ugandan representatives where you negotiated
13 training by Uganda for your military force, the Chui mobile force, correct?"

14 And your answer was at line 7:

15 "No, not at all. He is not the one who conducted those negotiations."

16 But now you agree with me, don't you, that Thomas Lubanga attended at least one
17 meeting between yourself and the Ugandan representatives on the topic of your
18 training, correct?

19 A. [14:52:51] Yes, that was the only meeting that took place when they took us
20 from Mandro.

21 Q. [14:53:00] Thomas Lubanga acted, as you said, as the mediator or go-between
22 between yourselves and the Ugandan delegation and he attended the meeting that
23 you attended to negotiate your training. Thereafter, you and the group of Chui
24 mobile force stayed at Thomas Lubanga's residence prior to leaving for Uganda. My
25 question is: Thomas Lubanga had an ongoing and continuing role with the Chui

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1 mobile force, did he not, up until and after the time you left for Ugandan training?

2 A. [14:53:51] I never said that we negotiated anything with the Ugandans.

3 Please can you point me to that reference. There were no negotiations. The

4 Ugandans came and told us what we needed to do and that was it. And thereafter

5 we left. I did not see him play any role whatsoever. The Ugandans were in charge.

6 They were the leaders. They were the chiefs. They said do this and do that and

7 that was it. There was -- he didn't have any power to negotiate anything whatsoever

8 with the Ugandans. In fact, that was the first time I saw him and I didn't see him

9 play any other role when we went there.

10 Q. [14:54:43] You referred in your testimony in chief about the house on Ggaba

11 Road. Chef Kahwa was also at the house on Ggaba Road, correct, in Kampala?

12 A. [14:55:05] No.

13 Q. [14:55:34] Thomas Lubanga and Rafiki visited Ggaba Road, did they not, to

14 introduce the UPC statutes to the Chui mobile force officers who were there during

15 their training?

16 A. [14:55:55] I don't, I don't remember that, not at all.

17 MS SAMSON: [14:56:04] Mr President, may we please move into private session

18 for one question.

19 PRESIDING JUDGE FREMR: [14:56:09] Certainly.

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

21 (Private session at 2.56 p.m.) *(Reclassified partially in public)

22 THE COURT OFFICER: [14:56:24] We're in private session, Mr President.

23 PRESIDING JUDGE FREMR: [14:56:29] Thank you, court officer.

24 Ms Samson, please proceed.

25 MS SAMSON: [14:56:33] Thank you.

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- 1 (Redacted)
- 2 (Redacted)
- 3 A. [15:13:59] (Redacted)
- 4 Q. [15:14:12] (Redacted)
- 5 (Redacted)
- 6 MS SAMSON: [15:14:26] (Redacted)
- 7 (Redacted)
- 8 PRESIDING JUDGE FREMR: [15:14:30] (Redacted)
- 9 (Redacted)
- 10 (Open session at 3.14 p.m.)
- 11 THE COURT OFFICER: [15:14:39] We are back in open session.
- 12 PRESIDING JUDGE FREMR: [15:14:51] Thank you, court officer.
- 13 Ms Samson, please proceed.
- 14 MS SAMSON: [15:14:55] Thank you.
- 15 Q. [15:14:56] Now, sir, I put to you that Thomas Lubanga and Rafiki came to
- 16 introduce the UPC statutes to your military group because it was intended that your
- 17 group would be subsumed into the UPC as the military force that would secure Ituri,
- 18 as set out in the UPC statutes. Do you agree or not?
- 19 A. [15:15:31] I don't remember.
- 20 Q. [15:15:41] Now, I'd like to ask you some questions in relation to Rafiki. Your
- 21 testimony is that in the 2000 period when Rafiki was with Lubanga and the Ugandan
- 22 authorities that he was Lubanga's driver. But Rafiki had a much more important
- 23 role than solely Lubanga's driver, even in that time in 2000, did he not?
- 24 A. [15:16:22] I knew Lubanga and Rafiki when they became a member of the
- 25 party, but at the time these were traders. I got to know them in 2002. They were

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1 traders. Rafiki was the driver of Thomas Lubanga. I don't know if the vehicle
2 belonged to Rafiki or to Thomas Lubanga because I don't remember very well, but
3 Rafiki at this time didn't have a major role at this time. Even Thomas himself wasn't
4 that important at that time.

5 Q. [15:17:23] Rafiki had a Motorola in 2000 when you met him with
6 Thomas Lubanga, didn't he?

7 A. [15:17:37] No. Well, there was a photo taken and he took the Motorola from
8 one of our soldiers for the photo, but other than that, why would he have had a
9 handset or a Motorola walkie-talkie? To communicate with whom?

10 Q. [15:18:09] You mentioned a photograph. Why don't we have a look at it.
11 DRC-OTP-0014-0140 -- sorry, the ERN DRC-OTP-0128-0003, item 245. The
12 photograph is public.

13 Now, sir, here Rafiki is holding a Motorola, correct?

14 A. [15:19:23] The walkie-talkie that he has in his hand belonged to the late
15 Kasangaki.

16 Q. [15:19:35] And Rafiki takes a position in this photograph between yourself and
17 Kisembo, correct?

18 A. [15:19:54] That's correct, he sat between both of us.

19 Q. [15:20:02] Even from his position within this photograph, it appears that Rafiki
20 had a role within your group that extended beyond being somebody's driver, did it
21 not?

22 A. [15:20:28] Madam, I explained to you, Rafiki's work was to provide food for
23 people -- for the UPDF. At the time when we made this photograph, that was his
24 role. This was somebody who provided foodstuffs to the UPDF troops.

25 Q. [15:21:00] He was also in charge of providing food and logistics to the Chui

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1 mobile force, wasn't he?

2 A. [15:21:19] I'm not aware of that because when we were in the bush, a lot of
3 people helped us. They gave us food or drinks.

4 Q. [15:21:39] And you're not aware that Rafiki also provided you with food and
5 drinks and other logistical support while you were in the Chui mobile force? You
6 don't know that?

7 A. [15:22:12] I don't remember. The only person who provided us with a
8 walkie-talkie that I remember was Chef Kahwa.

9 Q. [15:22:29] And the only people who are holding walkie-talkies in the
10 photograph in front of you are yourself and Rafiki, correct?

11 A. [15:22:53] That's correct. But I think that Kisémbó also had a Motorola in his
12 hand with an antenna pointing downwards.

13 Q. [15:23:13] So the leadership of the Chui mobile force, yourself and your 2IC
14 Kisémbó, along with Rafiki, are the persons who are holding walkie-talkies, correct?

15 A. [15:23:50] Rafiki wasn't a soldier, he wasn't one of the troops I was leading.
16 But if a civilian asks you for a walkie-talkie to take a photo, why would you refuse to
17 give it to him? I told you that this belonged to the late Kasangaki. Personally, even
18 if I had been asked for my beret, I would have given it to him. And Kasangaki had a
19 call sign but he didn't, Rafiki didn't, because he didn't have a precise function which
20 would mean that he could have a Motorola handset.

21 Q. [15:24:36] Now, you're aware, aren't you, that Rafiki had military intelligence
22 training prior to 2000?

23 A. [15:25:04] That's the first time that I've heard that information.

24 Q. [15:25:09] You weren't aware that Rafiki had joined the AFDL and trained in
25 Rumangabo, Kivu between 1996 and 1997 for six months of officers training in

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1 military intelligence?

2 A. [15:25:29] You're the first person to give me such information. I never heard
3 that Rafiki followed military training of any kind. It's the first time that I hear such
4 information.

5 Q. [15:26:14] Rafiki also thereafter did three more months of intelligence training,
6 did he not?

7 A. [15:26:43] That's the first time that I've heard this information about Rafiki and
8 training that he did in Rumangabo in military intelligence. That's the very first time
9 that I hear this information.

10 MS SAMSON: [15:27:02] Mr President, may we move into private session for one
11 question.

12 PRESIDING JUDGE FREMR: [15:27:07] Before doing that, Mr Bourgon, what is
13 your submission?

14 MR BOURGON: [15:27:10] Well, we can wait until we are in private session.
15 I think it would be better.

16 PRESIDING JUDGE FREMR: [15:27:15] Fine then.
17 So court officer, let's move into private session.

18 (Private session at 3.27 p.m.) *(Reclassified partially in public)

19 THE COURT OFFICER: [15:27:29] We're in private session.

20 PRESIDING JUDGE FREMR: [15:27:32] So now, Mr Bourgon, it's your turn.

21 MR BOURGON: [15:27:35] I withdraw that, Mr President.

22 PRESIDING JUDGE FREMR: [15:27:38] All right.

23 Ms Samson, please continue.

24 MR BOURGON: [15:27:42] I was looking for a source. I found the source. I just
25 wanted the source.

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1 be really made clear both for the Defence and for Mr Ntaganda what is the character
2 of the source. So even to highlight that it is not, for example, part of the testimony
3 before the Court, that it's part of the interview, so to make clear, because that is
4 obviously different in the importance of such a source.

5 Please proceed.

6 MS SAMSON: [15:32:53]

7 Q. [15:32:55] Now, sir, you mentioned that you were not aware that Rafiki had --

8 Mr President, are we still in private session? We could move to open session.

9 PRESIDING JUDGE FREMR: [15:33:13] We're in private. So you want to move
10 into open?

11 MS SAMSON: [15:33:18] Yes, please.

12 PRESIDING JUDGE FREMR: [15:33:19] All right then.

13 Court officer, please.

14 (Open session at 3.33 p.m.)

15 THE COURT OFFICER: [15:33:24] We're in open session, Mr President.

16 PRESIDING JUDGE FREMR: [15:33:35] Thank you, court officer.

17 Ms Samson, please.

18 MS SAMSON: [15:33:39]

19 Q. [15:33:45] Now, in relation to Mr Rafiki and his background in intelligence,
20 military intelligence, in 2002 he became Lubanga's security adviser in the UPC,
21 correct?

22 A. [15:34:08] Yes. President Thomas appointed him to the position of in charge
23 of intelligence within the UPC. Rather, in charge of security.

24 THE INTERPRETER: [15:34:28] Corrects the witness.

25 MS SAMSON: [15:34:30]

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1 Q. [15:34:31] And his official title was administrateur général de sécurité.

2 A. [15:34:45] He was in charge of -- he was the secretary general in charge of civil
3 security.

4 Q. [15:34:59] So you don't recall that his official title was administrateur général
5 de sécurité?

6 A. [15:35:17] He was the one in charge of civil security. I do not know what the
7 specific terminology applied in that case was in French.

8 Q. [15:35:33] And he was responsible for intelligence as well over this civilian
9 security role, correct?

10 A. [15:35:53] I know that he was in charge of intelligence within the civil security
11 setup.

12 Q. [15:36:03] And he was also responsible for the DGM, which stood for Direction
13 Générale de Migration, correct?

14 A. [15:36:22] Maybe he held two positions, maybe.

15 Q. [15:36:35] And one of the areas under his control, being in charge of migration,
16 was airline traffic, correct?

17 A. [15:37:08] I think that it fell within his ambit as person in charge of security in
18 the area under the control of the UPC.

19 Q. [15:37:23] And also migration, so movement of persons, correct?

20 A. [15:37:43] The DGM was under Nembe, but I'm not certain. However, it is
21 possible that Nembe reported to Rafiki.

22 Q. [15:38:08] Now, you've talked in your testimony about the September 2002
23 period and I want to rest there for just one moment. You are aware, are you not, that
24 Thomas Lubanga gave a speech on 11 September 2000 from Mandro on Radio
25 Candip?

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1 A. [15:38:51] That is possible, but I do not have any recollection.

2 Q. [15:39:12] You were not present in Mandro for this speech?

3 A. [15:39:28] I don't remember whether I was in Mandro or not. What I
4 remember is that I wanted to go to Mahagi, but it was not possible, we couldn't do so,
5 because we had some problems on the way. I do not remember when I went to
6 Mandro. I think it -- I went in September and by the time I went back to Mandro,
7 President Thomas had already moved to Bunia. It is at that time that I was injured.

8 Q. [15:40:24] Well, let's take a --

9 A. [15:40:25] I was supposed to deploy to Fataki at that time. And it is at that
10 time that Kisembo was injured.

11 THE INTERPRETER: [15:40:35] Interpreter corrects.

12 PRESIDING JUDGE FREMR: [15:40:36] Mr Bourgon.

13 MR BOURGON: [15:40:37] Thank you, Mr President. I believe it's just a
14 transcript correction, because the question was put to the witness on page 98 at
15 lines 20 to 24 and there are two dates there. The question says that the witness spoke
16 about September 2002, but then the date that we have in English at line 23 is
17 "11 September 2000". Maybe it's just a mistake. I think it is the same right now in
18 French. I'm sure my colleague can correct. It's probably 2002 because I think the
19 witness is answering on that basis. I'd just like to have the record clear.

20 PRESIDING JUDGE FREMR: [15:41:19] Ms Samson, could you confirm?

21 MS SAMSON: [15:41:20] Yes, I can. Thank you for the note. If I said,
22 "11 September 2000", I certainly meant to say in my question, "11 September 2002".

23 PRESIDING JUDGE FREMR: [15:41:27] All right. Thank you for Mr Bourgon's
24 comment and for correction. Please proceed.

25 MS SAMSON: [15:41:35]

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1 Q. [15:41:35] Mr Ntaganda, I believe you answered the question on the basis of
2 11 September 2002; is that right?

3 A. [15:41:55] Yes, I was referring to September 2002 when I answered your
4 question. I did not take the year 2000 mentioned in your question into
5 consideration.

6 Q. [15:42:11] Now, if we could take a look at the message that was transmitted on
7 Radio Candip. It is at DRC-OTP-0147-0212 and item 626 on the list.

8 THE COURT OFFICER: [15:42:59] Could you please confirm the level of
9 confidentiality of the document?

10 MS SAMSON: [15:43:03] Yes, certainly, apologies. It's public.

11 Q. [15:43:33] The title of this message, which I will read in French, is:
12 (Interpretation)

13 "Message by his Excellency the President of the Union des Patriotes Congolais for
14 Peace and Reconciliation (UPC/RP in short), Mr Thomas Lubanga, message to all
15 Congolese of the Ituri, over Radio Candip (RTNC), on 11 September 2002, in
16 Mandro."

17 (Speaks English) And if we can move down towards the lower half of the page, please.
18 Thomas Lubanga says the following about the 2000 period and the conflict at that
19 time, and I'll read it:

20 (Interpretation)

21 "Dear compatriots, the combat we have been engaged in since the year 2000 has
22 always been misunderstood either by bad faith or by sheer ignorance. After starting
23 timidly in the UPDS, serious matters began to happen during the time of Professor
24 Wamba Dia Wamba, at that time when there was a leadership conflict leading up to
25 deadly politics which was characterised by division, the introduction of hatred and

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1 massive destruction of innocent lives. We reacted by mutineering and we created
2 the Union des Patriotes Congolais, UPC, that being its logo. We were not
3 understood."

4 (Speaks English) End of quote.

5 Now, sir, in that last sentence that I read out, Thomas Lubanga is confirming in
6 September 2002, as president of the UPC, that there was a direct link between the
7 mutineers in 2000 and the creation of the UPC in September 2000, is he not?

8 A. [15:46:23] We are dealing here with the language of politicians and this is how
9 politicians speak when they are speaking politics, which is not always reality. I was
10 in charge of the Chui mobile force and he is not the one who gave me that
11 responsibility. In 2002 they realised that those of us who were officers were part of
12 the Chui mobile force and he took advantage of that opportunity to address this issue.
13 Otherwise, President Thomas Lubanga had nothing to do with the activities of Chui
14 mobile force. When I left -- in fact it is when I came back that he found me, he came
15 to see me, and he did not even know how I had ended up in the bush.

16 Q. [15:47:29] Are you suggesting that Thomas Lubanga is lying in his message to
17 the people of Ituri?

18 A. [15:47:42] He says here that the youth went into the bush because there were
19 many of them. Now, he was heading up a delegation and delivered the speech
20 which he delivered, but at the time when we went to the bush, he is not the one who
21 sent those troops to the bush. So I cannot agree with that. He was a politician at
22 that time simply.

23 Q. [15:48:20] And you said in your testimony today, and I'll quote, page 101,
24 lines 14 to 16:

25 "We are dealing here with the language of politicians and this is how politicians speak

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1 when they are speaking politics, which is not always reality."

2 How often did Thomas Lubanga write letters or did the FPLC give speeches that
3 followed a language of politics but did not mirror the reality of your actions?

4 A. [15:49:09] I do not know when Mr Thomas wrote any documents that do not
5 correspond to reality. However, there were -- there are two things. When we were
6 in the bush, he was not part of our movement, but if he wrote something saying that
7 those of us in the bush were their children and that he had led up a delegation to
8 intercede on behalf of the people of the Ituri, having been chased by the UPDF, if he
9 had said such a thing, then I can concede that he might have mixed up those issues at
10 the time when he was president. But for him to say that we had politicians in our
11 group at that time, that does not reflect reality.

12 Q. [15:50:16] This is the first or one of the first public messages that
13 Thomas Lubanga gives to the people of Ituri on the radio now that he's been installed
14 in September 2002 as the president of the newly governing group, the UPC/RP and
15 the FPLC. I put to you that in this particular message Thomas Lubanga is giving an
16 accurate description to the people of the history of his movement that included the
17 mutiny by you and others in 2000, at the same time as the UPC was created on
18 15 September? Do you agree?

19 A. [15:51:13] Yes. When one is in charge of children, yes, but as a politician, no.
20 When he went, he went as a politician pleading on behalf of the young people who
21 had gone into the bush.

22 Q. [15:51:53] And so to be clear from your last answer, do you maintain your
23 evidence, despite Thomas Lubanga's speech to the people in September 2002, do you
24 maintain your evidence that there was no connection between the mutiny in 2000 of
25 the Chui mobile force and the creation of the UPC in September 2000?

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1 A. [15:52:26] Well, these are two distinct matters. At that time Chui mobile force
2 was led by a Lubanga delegation which was also a civilian delegation. However,
3 in 2002 he created a political and military movement. So these are distinct events
4 that we are referring to.

5 Q. [15:53:02] Now I'm moving to another movement in time, it's the period when
6 you returned to Bunia from prison in Uganda in January 2002. When you returned
7 to Bunia from prison you stayed at Thomas Lubanga's house for three months,
8 correct?

9 A. [15:53:55] I don't think so. I don't think so. Because I arrived in March 2002.
10 But yes, it might have been about three months because I went to Mandro in early
11 May. So I stayed at his residence for about two months.

12 Q. [15:54:31] So you were released from prison in the month of January 2002,
13 correct?

14 A. [15:54:46] Yes, in January. If I am not mistaken.

15 Q. [15:55:00] And in your testimony in chief at transcript T-214, page 77, lines 1 to
16 3 you stated, and I quote:

17 Question: "So where it concerns Thomas Lubanga's residence where Lonema was,
18 did you know that place well?"

19 Answer: "Yes. When I left Uganda I resided in that house for three months." End
20 quote.

21 Did you reside there for three months or did you reside there for two months, as you
22 are now testifying to?

23 A. [15:55:51] From March, or from March to May when I went to Mandro, I went
24 to Mandro in May. So from March to May that would be between two and a half
25 months and three months, because I arrived there in March.

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1 Q. [15:56:15] In 2002 March when you arrived in Bunia, Thomas Lubanga was
2 minister of defence in the RCD-K/ML, correct?

3 A. [15:56:40] Yes, he was the minister for defence.

4 Q. [15:56:43] It was in March 2002 when Mbusa Nyamwisi appointed Governor
5 Lompondo; is that right?

6 A. [15:56:59] No. When I arrived, Lompondo was the governor and sector
7 commander for Bunia.

8 Q. [15:57:30] As minister of defence, Thomas Lubanga clashed with Lompondo
9 regarding the ASP troops, didn't he?

10 A. [15:57:58] The UPC did not exist at that time. Everybody, including myself,
11 we were all members of the RCD-K/ML. But I cannot speak for President Thomas
12 Lubanga because he had his own party. He used to work with Mbusa Nyamwisi at
13 that time while I was of the RCD-K/ML. So I don't know whether they had an
14 alliance between themselves. All I know is that we were all members of the APC.
15 All his bodyguards were of the APC as well.

16 Q. [15:59:00] Now, Thomas Lubanga had nominated you and certain other Hema
17 soldiers to military appointments in the APC, correct?

18 A. [15:59:25] No. That is not correct. Please consult my testimony. There was
19 a general setup within the ministry of defence. Now, to say that he selected me at
20 the same time as other Hemas, well, I don't know. He had never selected me from
21 among other Hemas.

22 Q. [15:59:58] I'll read to you your testimony, which is T-213, page 30, lines 6 to
23 line 21.

24 Question: "What did Thomas Lubanga, minister of defence, tell you about the
25 situation in Bunia or what was happening there?"

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1 Answer: "We did not discuss much. I only remember two items. He told me that
2 he had taken care of getting me released. And then he also told me that at some
3 point they were going to set up a structure and that I will be the 2IC of this sector
4 conducted under Molondo. And after those statements from him I went to bed."

5 Question: "What do you mean by 'mise en place' or setting-up of a structure?"

6 Answer: "It was a reinstructing of the army, particularly involving the transfer of a
7 number of commanders to different areas. The idea was also to give higher ranks to
8 some commanders. That is what he told me briefly regarding what was going to
9 happen in the days ahead."

10 Question: "According to that structure, what was your specific function going to
11 be?"

12 Answer: "He told me that I would be the deputy sector commander for Molondo.
13 Molondo had two positions, sector commander and governor at that time." Close
14 quote.

15 So are you saying something different now in that Lubanga had not informed you
16 that you would have an appointment within the APC?

17 A. [16:02:05] I never denied that. What I said was that I found that the governor
18 had two functions. I don't see the question from you.

19 Q. [16:02:30] My question was simply that Thomas Lubanga had nominated you
20 and certain other Hema soldiers to military appointments in the APC. And that's
21 right, isn't it?

22 A. [16:02:57] Well, that's correct. But what I was opposed to is the fact that you
23 said that he chose me with other Hema officers. What is true that he appointed me
24 within the framework of the general restructuring of the APC. But it wasn't a
25 selection within a specific group of Hema officers. It was a general restructuring.

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1 Q. [16:03:29] There were Hema officers, were there not, that Thomas Lubanga
2 was going to give higher positions to in the restructuring?

3 A. [16:03:54] Within the UPC in general there were Hema. They were also
4 concerned by this restructuring, because you couldn't carry out restructuring ignoring
5 the Hema. And that's the reason why when this general restructuring took place the
6 Hema officers were also affected, some were promoted to various posts.

7 Q. [16:04:29] Now, Governor Lomondo was not in agreement with your
8 nomination or the nomination of some Hema officers to higher appointments; that's
9 right, isn't it?

10 A. [16:04:58] They refused this restructuring which was being carried out by
11 Thomas Lubanga who at the time was minister of defence. Molondo and Mbusa
12 were generally opposed to this restructuring. It's not that they refused the
13 appointments of Hema or people from other ethnic groups. What they were
14 opposed to was they were opposed to this restructuring in general.

15 Q. [16:05:43] And Thomas Lubanga was furious, was he not?

16 PRESIDING JUDGE FREMR: [16:05:58] Hold on, Mr Witness.

17 Mr Bourgon.

18 MR BOURGON: [16:06:01] Thank you, Mr President.

19 I would like my colleague to put a source behind the question. If it is a proposition
20 on behalf of the Prosecution, that is one thing. If it is to test the memory of
21 Mr Ntaganda as to what he said in his testimony, then she should quote the passage.
22 The last three or four questions this has happened, that's why I rise at this point in
23 time. When my colleague says "Mr Lubanga was furious", is she proposing that
24 Mr Lubanga was furious or is she saying you said that Mr Lubanga was furious.
25 That's the difference when the witness will answer the question.

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1 Thank you.

2 PRESIDING JUDGE FREMR: [16:06:46] Ms Samson.

3 MS SAMSON: [16:06:47] Your Honour, I request the ability to conduct my
4 cross-examination in accordance with my own outline rather than the Defence's
5 outline, and I would ask that these interruptions not be continued on points that are
6 not necessary. I am putting propositions to the witness which he is capable of saying
7 that he agrees with or not. And where it may have been something he said before,
8 he will no doubt recall it as true, because that is certainly the expectation that the
9 Chamber has that he will not forget his true testimony.

10 PRESIDING JUDGE FREMR: [16:07:29] Yes, Mr Bourgon, if it is just proposition
11 like now there is no need to specify any source. If there is any concrete source then
12 we expect that Ms Samson would either refer to that or even quote that. So I think
13 from the context it seems to be that it's just pure proposition and there is no need to
14 go further.

15 So please, Mr Bourgon, respect that in future.

16 Ms Samson.

17 MS SAMSON: [16:08:02]

18 Q. [16:08:03] Now my question was Thomas Lubanga was furious, was he not,
19 and humiliated that the structure change was opposed by Lompondo and Mbusa?

20 A. [16:08:26] That was completely normal. I remember a mission for Mbusa to
21 go to Sun City in South Africa. And once Thomas had entrusted that mission,
22 Mbusa Nyamwisi and Molondo were opposed to it and understood that Thomas
23 Lubanga was right to get angry.

24 PRESIDING JUDGE FREMR: [16:09:18] Mr Bourgon, I hope that you took into
25 account my previous guidance.

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1 MR BOURGON: [16:09:22] Well, yes, Mr President. But I do note for the record
2 that in the witness's testimony on page 32, and that was in the transcript 213, there
3 was a question put to him, "What then did the minister of defence do at that time, if
4 you are aware of what he did?" And the answer is:
5 "He was extremely furious because according to him, this amounted to humiliation."
6 All I'm saying, Mr President, is we are here in the interest of justice to get to the truth.
7 We are not here to play games. If my colleague wants a clarification, you said this, I
8 say something else, give me your answer. But if we just ask these questions that
9 were already asked without referring to them, it is unfair for the witness.

10 Thank you, Mr President.

11 PRESIDING JUDGE FREMR: [16:10:09] Ms Samson.

12 MS SAMSON: [16:10:10] Your Honour, I would respectfully submit that counsel is
13 not taking into account your Honour's order, in that a cross-examiner is entitled to
14 put propositions to the witness, whatever they may be, so long as there is a good faith
15 basis. What I am not trying to do right now is to trap Mr Ntaganda into
16 contradicting himself. I am simply putting propositions to him that he, in my
17 estimation, will accept because they're accurate, whether they came from him or
18 somebody else. And to the extent that he doesn't remember that, I will remind him
19 of what it is.

20 But the exercise is not unfair. The exercise is an appropriate one and I do not have
21 200 hours to cross-examine Mr Ntaganda. I have a set amount of time and if I have
22 to preface every question with a lengthy exchange from a previous transcript, which I
23 am endeavouring to do, where I think there may be some controversy, then this will
24 be a very difficult exercise indeed and I do not believe it is one that is required, in
25 fairness or for any other reason, unless the witness decides that he wants to ask for

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1 that because the question is somehow unclear. Mr Ntaganda has been capable of
2 answering my questions without any difficulty.

3 PRESIDING JUDGE FREMR: [16:11:34] Yes, I think it's necessary to distinguish
4 cases where it's really clear or very likely that there's no need to refer to any previous
5 either testimony of Mr Ntaganda or some controversy, and cases when it's better to,
6 in order to be fair, to refer. So I think in this case really question seems to me
7 absolutely simple, and especially taking into account intelligence of Mr Ntaganda
8 easy for him either to say yes or no, or even ask for some further clarification, if
9 necessary.

10 Please -- and, Mr Bourgon, really I believe that now in this case, and I think I was
11 clear, that Ms Samson is right and really it seems to me that at least some of your,
12 some of your objections has some, how to call it, bothering, bothering effect. So
13 please be more careful when coming with further objections.

14 Ms Samson, please proceed.

15 MS SAMSON: [16:12:50]

16 Q. [16:12:55] Mbusa Nyamwisi did not select Thomas Lubanga to attend the Sun
17 City conference, did he?

18 A. [16:13:20] I wasn't there when Mbusa left. What's clear is that Thomas
19 Lubanga didn't go to Sun City. But I wasn't there when they selected who should be
20 in the delegation to go to Sun City.

21 Q. [16:13:47] And in the two and a half to three months that you were residing
22 with Thomas Lubanga he never once told you that he had not been selected for the
23 Sun City conference and that this was a point of great frustration for him with Mbusa
24 Nyamwisi?

25 A. [16:14:22] No. He didn't explain anything to me.

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1 Q. [16:14:29] Thomas Lubanga didn't say to you that he was upset at being
2 blocked from pursuing his military appointments such as yours, and upset at being
3 blocked from attending quite an important inter-Congolese dialogue, never once
4 mentioned these issues to you?

5 A. [16:15:23] No. He explained nothing of the sort to me.

6 Q. [16:15:50] Now I'd like to put a document to you that you were shown during
7 examination-in-chief. It's DRC-OTP-0194-0328. It's a public document.

8 I'll read the title of the document for the record and for your benefit, and then we'll
9 look at the date and the signatories. It's entitled in French, (Interpretation)

10 "Memorandum of political leaders of Ituri for the intention of his excellency Mr the
11 President of the Democratic Republic of Congo in Kinshasa Gombe".

12 (Speaks English) If we turn to page 0330.

13 We can see that this memorandum was signed at Bunia on 16 May 2002 and there are
14 a list of 13 signatories. There's Adubango Biri, John Tinanzabo Zeremani, Avochi,
15 Thomas Lubanga, Ndukute Mangili, Lety Awuma, Richard Lonema, Bayau, Djalum,
16 Nembe, Bandeché, Lonu Lali and Mbuna.

17 You're aware, are you not, that most if not all of these individuals held positions
18 within the UPC when the UPC formed a government in September 2002?

19 A. [16:19:08] I know some of them among them. But at the time the FPLC that
20 I was a member of hadn't been created yet. I therefore don't recognise this
21 document.

22 Q. [16:19:24] Now, this is not an FPLC document.

23 If we can return to the first page, please, page 0328, these individuals are signing as
24 the FRP, in French, Front pour la Réconciliation et de la Paix, which you can see in the
25 first two lines of the introduction.

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1 So as of May 16, 2002 Thomas Lubanga is not referring to himself as the minister of
2 defence of the RCD-K/ML any longer, correct?

3 A. [16:20:46] I don't know this document. I don't know this abbreviation. I
4 can't make a comment with regard to the name which was adopted.

5 Q. [16:20:57] You've never heard of the Front pour la Réconciliation et de la Paix,
6 FRP, before today?

7 A. [16:21:17] I heard about this during the trial in hearing from witnesses who
8 have been questioned, and that's where I saw that abbreviation. But before the trial,
9 I did not know of this structure.

10 Q. [16:21:42] When the UPC officially took power in September 2002 they -- you
11 called yourselves the UPC/RP, an abbreviation from, taken from FRP, is it not?

12 PRESIDING JUDGE FREMR: [16:22:11] Hold on, Mr Witness.

13 All right. Please proceed. So, Mr Witness, you can answer.

14 THE WITNESS: [16:22:24] (Interpretation) When President Lubanga chose a name
15 for his party, I don't know why, he added RP. I didn't ask him the question as to
16 why he had given the name of FPRC. Where it concerned the party, I didn't ask him
17 that question when he chose the name. I wasn't present, I wasn't with him in order
18 to be able to discuss that with him.

19 MS SAMSON: [16:23:11]

20 Q. [16:23:11] Now let us look at the document under the first heading,
21 (Interpretation) "Political level". (Speaks English) And I'll read the first sentence
22 under that bullet point, which says: (Interpretation) "The RDC/ML delegation, led in
23 the inter-Congolese dialogue in Sun City by Mr Mbusa Nyamwisi, chosen on an
24 ethnic basis showed notorious lack of capacity in the way it defended the interests of
25 the territory under its control."

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1 (Speaks English) Now, this is a memorandum of 16 May 2002 signed by Lubanga,
2 amongst others, but do you maintain your evidence that Thomas Lubanga or
3 anybody else did not mention to you at or about this time the view that Mbusa's
4 choice for the delegation to go to Sun City, chosen on an ethnic basis, showed the
5 complete incapacity of defending the interests under its control?

6 A. [16:25:06] Why do you think that he would have informed me with regards to
7 preparations for the Sun City conference? I come out of prison in Uganda and I was
8 starting a new life. I wasn't concerned by what was happening. It was the
9 abbreviation, whether it was the FRP or the FPLC, I discovered that abbreviation
10 when I questioned witnesses who have appeared here before this Chamber.

11 Q. [16:25:47] Now, sir, you were also living at Lubanga's residence with Richard
12 Lonema in this period, March, April, May 2002?

13 A. [16:26:18] I remember that in the month of April we were attacked and they
14 wanted to eliminate us, so I was concerned by the strategy that we were going to use
15 in order to protect ourselves. That was the most important thing for me. Because
16 they wanted to eliminate us. And that's the reason why we left for Mandro. I
17 therefore wasn't concerned with knowing how people went to Sun City. That wasn't
18 a priority for me.

19 Q. [16:27:16] Now, my question was something else and I'll repeat it: You were
20 also living at Lubanga's residence with Richard Lonema in this period, March, April,
21 May 2002, correct?

22 A. [16:27:42] I didn't live with Richard Lonema. For a certain time I lived in
23 Thomas Lubanga's residence when I returned from Uganda, and others that were
24 going to take up their posts, and it's in that context that we were attacked. But
25 I don't remember that I lived with Richard Lonema in the residence of Thomas

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1 Lubanga. All I remember is that I went to the residence when Thomas Lubanga left
2 for Kinshasa.

3 Q. [16:28:45] When you say in your last answer "All I remember is that I went to
4 the residence when Thomas Lubanga left for Kinshasa", what time period are you
5 referring to?

6 A. [16:29:11] When attacks were launched against Kisembo, afterwards I went to
7 Bunia in the month of July, or June. I think that it was rather in the month of July.
8 And I didn't stay with Thomas Lubanga. I stayed with Ato. And two days
9 afterwards I came back and Richard Lonema, at that time he was at Lubanga's
10 residence. But I didn't have discussions with him on political matters.

11 Q. [16:30:06] Sir, you're describing a later time period, is that right, June, July 2002,
12 when you were staying at Lubanga's residence? June, July 2002?

13 A. [16:30:31] It was July. It was at that time that I saw Richard Lonema at the
14 residence of Thomas Lubanga and I stayed there for two days. But previously I had
15 not seen Richard Lonema and I hadn't lived with him in Thomas Lubanga's residence.

16 MS SAMSON: [16:30:56] Mr President, given the time I can pick up tomorrow
17 morning.

18 PRESIDING JUDGE FREMR: [16:31:00] Thank you for being punctual.

19 So we will conclude today.

20 Just for your information, according a message I have been provided with, as of 4.30
21 the time used with Mr Ntaganda by the Prosecution was 3 hours 42 minutes today
22 and in total 30 hours 11 minutes.

23 And before we leave, one recommendation from my part. Even if I fully respect that
24 both main counsel came from common law system for which is typical adversary
25 proceedings, so I fully respect that you, both parties have full, full right to oppose the

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1 counter-party. But I still believe there should be some borderline and which
2 shouldn't be over-crossed, because I still believe that it's possible to keep a spirit of
3 collegiality, spirit of mutual respect that you, that you I think for 99 percent I would
4 say followed so far. I even remember, it's message to Defence, cases where one
5 counsel, I will not provide the name, from Prosecution put series of questions which
6 in my view, in the Chamber's view was of the bordering and disrupting character.
7 And as Defence may remember, the Presiding Judge stopped that effort and maybe
8 even reprimanded that counsel not to proceed in this way. I am not saying that
9 today you are in the same position, but in my view there was some, from my point of
10 view, some trend maybe to go this way.
11 So I would like to remind you that in the past I was really very fine with your
12 collegial approach, with your mutual respect, with respecting dignity of this
13 proceeding, so I would like if you could just remember that and continue tomorrow
14 in that style.
15 That's it for today and see you tomorrow 9.30.
16 THE COURT USHER: [16:33:37] All rise.
17 (The hearing ends in open session at 4.33 p.m.)
18 RECLASSIFICATION REPORT
19 Pursuant to the Trial Chamber VI's Order, ICC-01/04-02/06-1887, dated 4 May 2017,
20 the public reclassified and lesser redacted version of this transcript is filed in the case.