

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 Judge Chang-ho Chung
- 6 Trial Hearing - Courtroom 2
- 7 Tuesday, 29 August 2017
- 8 (The hearing starts in open session at 9.31 a.m.)
- 9 THE COURT USHER: [9:31:02] All rise.
- 10 The International Criminal Court is now in session.
- 11 Please be seated.
- 12 PRESIDING JUDGE FREMR: [9:31:28] Good morning, everybody.
- 13 Court officer, please call the case.
- 14 THE COURT OFFICER: [9:31:41] Thank you, Mr President.
- 15 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
- 16 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
- 17 And for the record, we are in open session.
- 18 PRESIDING JUDGE FREMR: [9:31:58] Thank you.
- 19 Appearances, please.
- 20 MS SAMSON: [9:32:01] Good morning, Mr President. Good morning,
- 21 your Honours. The Prosecution team has the same composition today as it did
- 22 yesterday.
- 23 PRESIDING JUDGE FREMR: [9:32:10] Thank you, Ms Samson.
- 24 I see that as to the Defence there is somebody missing, Mr Bourgon.
- 25 MR BOURGON: [9:32:20] Good morning, Mr President. There are also some new

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 members on the Defence side. Representing Mr Ntaganda this morning,
2 Mademoiselle Salomé Biet, Mademoiselle Marie Mescam, Monsieur
3 David Wagen-Magnon and (Interpretation) myself, Stéphane Bourgon. Thank you,
4 Mr President.

5 PRESIDING JUDGE FREMR: [9:32:42] Mr Bourgon, the Chamber has been
6 informed that Ms Martineau has suffered some injury. So we are sorry about that,
7 and allow me to express the wish of her early recovery. Please convey this message
8 to her.

9 MR BOURGON: [9:33:02] I will certainly do so. Thank you, Mr President.

10 PRESIDING JUDGE FREMR: [9:33:05] Now Legal Representatives of Victims,
11 please.

12 MS PELLET: [9:33:07] (Interpretation) Thank you, Mr President. No change on
13 the side of the child soldiers.

14 MS GRABOWSKI: [9:33:14] Good morning, Mr President. Good morning, your
15 Honours. There is also no change for the victims of the attacks.

16 PRESIDING JUDGE FREMR: [9:33:21] Thank you, Ms Pellet. Thank you,
17 Ms Grabowski.

18 Today we can continue with the next part of cross-examination of Mr Ntaganda
19 conducted by Prosecution, by its lead counsel, Ms Samson.

20 Ms Samson, you have the floor.

21 MS SAMSON: [9:33:42] Thank you.

22 WITNESS: DRC-D18-D-0300 (On former oath)

23 (The witness speaks Swahili)

24 QUESTIONED BY MS SAMSON: (Continuing)

25 Q. [9:33:52] Good morning, Mr Ntaganda.

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 A. [9:33:55] Good morning, madam.

2 Q. [9:33:57] Yesterday afternoon prior to the break you had given an answer in
3 relation to the April 2002 period. And I will quote the answer, which is at transcript
4 T-231. It's the realtime transcript in English, page 115, lines 9 to 14, and then I have a
5 few questions to ask you about your answer.

6 You stated, and I quote:

7 "I remember that in the month of April we were attacked and they wanted to
8 eliminate us, so I was concerned by the strategy that we were going to use in order to
9 protect ourselves. That was the most important thing for me. Because they wanted
10 to eliminate us. And that's the reason why we left for Mandro."

11 So my question is: When you say that you "remember that in the month of April we
12 were attacked and they wanted to eliminate us", who do you mean when you say "we
13 were attacked"?

14 A. [9:35:31] This was at the time when Molondo issued an ultimatum and then
15 subsequently attacked us, and that is why we had to leave to create the Mandro
16 centre in a bid to find protection for ourselves.

17 Q. [9:35:53] And briefly could you let the Chamber know who it was who was
18 part of your group at the time who were being attacked?

19 A. [9:36:29] Are you referring to my group or to the group that attacked us?
20 Please could you clarify that question. Which group are you referring to? Which
21 group do you want me to talk about?

22 Q. [9:36:44] Certainly. In my question I was referring to your group. So as
23 briefly as possible, if you could name the members of your group who were being
24 attacked at the time.

25 A. [9:37:12] After the restructuring Kisembo left Watsa and was transferred to

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 Mambasa where he became sector commander for Mambasa. He arrived with his
2 bodyguard and a few officers and they went there to obtain their road map, and I was
3 at that location myself. When the ultimatum was issued, Tchaligonza was present as
4 well as other officers.

5 So there were -- well, we were near Thomas Lubanga's residence at the time and I
6 myself, I used to live at Lubanga's place, at his residence, since I left prison in Uganda.
7 So that is the situation I was describing when I referred to that period in April 2002.
8 So that is the group that came under attack at that time.

9 Q. [9:38:33] And it's right, isn't it, that at this time, April 2002, there were, as
10 you've described, a number of officers and soldiers of Hema ethnicity who were loyal
11 to Thomas Lubanga?

12 A. [9:39:08] No, that is not correct. When Kisembo was transferred and given
13 new duties, he was in Watsa. There was no other way to go to his location except by
14 passing through Bunia. He went through Aru and there were some APC troops and
15 other troops in his escort. The other officers were also persons who had been
16 transferred to that sector while he was still in Mambasa. So when he came through,
17 it is at that time that we came under attack. You see, the restructuring involved the
18 APC in general, all ethnic groups put together. The restructuring did not only deal
19 with people of Hema ethnicity.

20 Q. [9:40:26] In addition to Kisembo, Tchaligonza and yourself, Bagonza and
21 Kasangaki were also part of the restructuring proposal, correct?

22 A. [9:40:56] Their names appeared on the document containing the restructuring.
23 I know that Bagonza was in hiding at the airport with the Ugandans, but when the
24 document on the restructuring was issued, his name was in that document.

25 Q. [9:41:31] And Kasangaki as well?

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 A. [9:41:39] When I arrived, Kasangaki was not there. He was working with
2 Claude at the time and when the other party developed a plan to attack us, Kasangaki
3 came and joined our group.

4 Q. [9:42:08] And what about Didier, was he also part of the group that was meant
5 to be restructured and who joined your group?

6 A. [9:42:33] Didier was of Alur ethnicity. When he was in Mahagi, he was also
7 bothered, given that he had -- left Kisembo and his team go through that area, and
8 that is how he ended up joining us at Bunia as well.

9 Q. [9:43:00] I would like to show you a document. It is DRC-OTP-0126-0015,
10 item 977 on our list, and it's a public document.

11 Now, sir, this is a letter --

12 PRESIDING JUDGE FREMR: [9:44:27] Hold on, Ms Samson.

13 Mr Bourgon.

14 MR BOURGON: [9:44:30] Thank you, Mr President. Before we say any
15 information as to what the document is purported to represent, we should ask the
16 witness if he has ever seen the document and what he knows about it.

17 PRESIDING JUDGE FREMR: [9:44:43] Ms Samson.

18 MS SAMSON: [9:44:44] Mr President, my intention was first to describe the
19 document to the witness and thereafter ask if he's seen it and take him to a particular
20 passage. I do not believe that that is -- I don't know precisely what the witness --

21 PRESIDING JUDGE FREMR: [9:45:03] It's okay. I don't see anything unfair on
22 this kind of proceedings, and even yesterday we, in my view, proceed this way.

23 Mr Bourgon.

24 MR BOURGON: [9:45:11] Mr President, I believe this isn't correct. We've been in
25 this trial for some two years. We've always first shown the document and the first

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 question is: Have you seen this document before and, if so, when? That is
2 important for the Trial Chamber's deliberation. Then she can put -- the
3 Prosecution can put a proposition based on the content of their document and what
4 the Prosecution believes the document to be. But first we have to know whether the
5 witness has seen this document, which is a new document which is not in evidence.
6 Thank you, Mr President.

7 PRESIDING JUDGE FREMR: [9:45:44] And, Mr Bourgon, what is the prejudice if
8 we would proceed as Ms Samson proposes? In my view at least, it's speeding up the
9 proceedings and even facilitate the role of the witness.

10 MR BOURGON: [9:45:59] I don't believe so, Mr President, because the Chamber
11 should know -- the Chamber has indicated on a number of occasions that it wants to
12 see the reaction of the witness when the witness is shown a document, not the
13 reaction after being told what the document is, the reaction of the witness when he
14 sees it for the first time. When he looks at the document and he reads it, then he can
15 tell the Trial Chamber if he has any knowledge of the document and then questions
16 can be put to him. That's the fair way to proceed, Mr President. Thank you.

17 PRESIDING JUDGE FREMR: [9:46:29] Mr Bourgon, even yesterday Mr Ntaganda
18 several times himself spontaneously said, "It's the first time I am seeing this
19 document". So I don't see any troubles in the proposal made by Ms Samson.
20 Ms Samson, please proceed.

21 Mr Bourgon, I don't want to hear any further submission on that. Please sit down.
22 Ms Samson.

23 MR BOURGON: [9:46:50] Mr President, I am in fact --

24 PRESIDING JUDGE FREMR: [9:46:51] Mr Bourgon, I said I don't want to hear any
25 further submission on this point. Another point?

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 MR BOURGON: [9:46:58] Yes, Mr President.

2 PRESIDING JUDGE FREMR: [9:46:59] Please go ahead.

3 MR BOURGON: [9:47:01] I want a ruling on the fact that documents will not be
4 asked to the witness first. A ruling from this Chamber. A ruling that I can put in
5 my appeals brief.

6 PRESIDING JUDGE FREMR: [9:47:08] All right. I will consult my colleagues.

7 MR BOURGON: [9:47:10] Thank you, Mr President.

8 The document should first be shown to the witness --

9 PRESIDING JUDGE FREMR: We have heard --

10 MR BOURGON: -- and he should respond.

11 PRESIDING JUDGE FREMR: [9:47:16] We have heard that.

12 MR BOURGON: [9:47:19] Thank you.

13 (Trial Chamber confers)

14 PRESIDING JUDGE FREMR: [9:49:47] So after relatively brief deliberation in the
15 courtroom, the Chamber insist on the ruling in fact I made myself. Briefly the
16 reasoning, we, as I said already, we don't see anything prejudicial in going this way.

17 We see difference between giving document by calling party and then if calling party
18 would provide witness with some information which should be provided by the
19 witness, then it would be leading and then it would be prejudicial to the
20 counter-party. But in case that it is part of cross-examination and cross-examining
21 parties even allowed to put leading question, so even if it has some leading impact,
22 we don't see anything prejudicial to the witness and the Defence in this case on that.
23 Mr Bourgon, are you satisfied with my reasoning? I don't mean satisfied, but I mean
24 with the extent?

25 MR BOURGON: [9:50:59] Mr President, I am grateful for the Chamber's ruling.

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 That's no more that I ask. But I will be seeking clarification as to why there is
2 suddenly a marked departure from the previous practice of the Chamber. The
3 Chamber has indicated that in order for the Defence to be able, previously, in order
4 for the Defence to be able to the use of a document, the first question should be "have
5 you seen the document?", whether in cross-examination or examination-in-chief.
6 That's the practice I followed during my cross-examination. I don't understand why
7 there is a marked departure and I will be seeking clarification. But I'm grateful for
8 your ruling. Thank you.

9 PRESIDING JUDGE FREMR: [9:51:33] Very well. And even if we change
10 proceedings the first question for you if you objecting should be "Is there any
11 prejudicial to your client or to your party?" And it's for me. So it's not any iron rule
12 how the evidence could be conducted, this kind of approach obviously speeding up
13 the proceedings. And, as I said, I don't see anything which would violating, which
14 would violate right of your client.

15 Ms Samson, please proceed.

16 MS SAMSON: [9:52:15]

17 Q. [9:52:15] Now, you can see, sir, the document before you. I will take you
18 through some of the main features of the document before getting into content and
19 then I'll give you an opportunity to let the Chamber know whether you've seen the
20 document before.

21 The title or the letterhead of the document that you can see before you in French says
22 "Republique Democratique du Congo, Rassemblement Congolais pour la
23 Democratie/Kisangani, Mouvement de liberation, RCD/KIS-ML". We can see a seal
24 to that effect. And below it reads in French, "Province de l'Ituri, Cabinet du
25 Gouverneur". The date is 14 May '02 and it states that it was drafted in Bunia.

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 And if we scroll down slightly, please, the document is written to Mr Pilo Kamaragi
2 in Bunia. The subject in French is, and I will read it, (Interpretation) "In the month of
3 April 2002".

4 THE INTERPRETER: [9:53:53] There were overlapping speakers, Mr President.

5 MS SAMSON: [9:53:59]

6 Q. [9:53:59] And if we can turn to the second page we'll see the signatory, the
7 author of the document. And the letter is signed by the governor of the province,
8 Jean-Pierre Molondo Lompondo who is commander of operations.

9 Now, sir, you've discussed during your testimony the RCD/KIS, who were the
10 governing authority in Bunia in May 2002, and Governor Lompondo. Have you
11 seen this document before?

12 A. [9:55:06] No.

13 Q. [9:55:18] I would like to take you to one passage -- actually, before I do, if we
14 could flip back to the first page so we can see to whom the letter was copied. If we
15 could expand slightly, it may be a bit difficult to read. So the letter was transmitted
16 for information to the president of the DRC in Kinshasa, to the president of Uganda in
17 Kampala, to the president of the RCD/KIS-ML in Kinshasa, to the chief of general staff
18 of the APC in Beni, to MONUC in Bunia, and to OCHA in Bunia. And on the second
19 page the passage I would like to read to you from Governor Lompondo to
20 Mr Pilo Kamaragi is in the middle of the page, the fourth paragraph. And I'll read it
21 out in French:

22 (Interpretation) "Furthermore, you must be aware that for about two months now,
23 Hema-Gegere indisciplined soldiers not under the control of the état-major of the
24 APC, are all under the command of Mr Lubanga who threatens to declare an
25 autonomous state in the Ituri. It is these soldiers who are perpetrating massacres in

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 Bunia and within the province."

2 (Speaks English) Now I will stop here for one moment before continuing. So I had

3 asked you earlier, sir, whether Thomas Lubanga had Hema soldiers loyal to him

4 within the APC and your answer was no. But what we see from Governor

5 Lompondo's letter to Pilo Kamaragi copied to other people is that his view and the

6 APC's view was otherwise. Now, do you maintain your evidence that Hema Gegere

7 soldiers within the APC were under Thomas Lubanga's control and were loyal to

8 him?

9 A. [9:58:56] I have already told you that I am seeing this letter here for the first

10 time. You are now asking for my remarks. I note that it was drafted in April and

11 here it mentions two months before, that is in the month of February something may

12 have happened. Well, at that time I was not there. Furthermore, at that time

13 Kisembo was in Watsa and when I arrived at President Thomas Lubanga's place I

14 only met his bodyguards there. I did not see any soldiers there who may have been

15 under Thomas Lubanga's control and who may have been seeking some autonomy.

16 What I found at his place was 12 soldiers and I would think that if he had had such

17 view or project, he would not have only been working with 12 soldiers. So what is

18 contained in this letter could not have been achieved with a force of only 12 men.

19 Q. [10:00:34] You've stated that the letter was drafted in April. In fact it was

20 drafted on 14 May 2002, and so the two months prior described in the letter could

21 relate to the March, April, May period, or the April, May period. You were in Bunia

22 March, April, May, correct?

23 A. [10:01:10] In my testimony I said I arrived without weapons, and when we

24 were attacked I had no weapon. I didn't have a uniform. I had no bodyguard.

25 And when Kisembo arrived, he sent us an ultimatum and then we were attacked

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 thereafter. And what is described in this document does not correspond with what
2 happened. Kisémbó arrived from Watsa and he arrived in Bunia. At least a week
3 afterwards we were attacked and Kisémbó was preparing to go to Mambasa with his
4 bodyguard and some officers accompanying him. And given this situation that
5 prevailed, I don't see how the forces that you're speaking about would have been
6 trying to gain autonomy.

7 Q. [10:02:17] But coming back to my question, you were in Bunia in March, April
8 and May 2002?

9 A. [10:02:37] Yes. Yes, I was in Bunia. That was after they attacked us. In the
10 month of May the UPDF divided the town into two.

11 Q. [10:02:51] And you witnessed the growing tensions between Thomas Lubanga,
12 Floribert Kisémbó, Tchaligonza, Kasangaki, Bagonza and others on the one hand
13 against Mbusa's men and Governor Lompondo on the other hand, correct?

14 A. [10:03:23] When they came to attack us, I was there. I asked
15 President Thomas to let us go to the airport. I had no weapons nor uniforms. I had
16 only just arrived. I was not organised at that time. I remember the situation.

17 Q. [10:03:56] And I will continue to read from this letter where I left off in
18 paragraph number 4. Governor Lompondo writes in French:

19 (Interpretation) "It was these troops who were perpetrating massacres in Bunia
20 within the province. There were massacres of ten soldiers in Bunia on 18 April 2002;
21 a massacre in Likopa; the assassination of the trader Djonde on 8 May 2002 on the
22 road that goes towards Lipri market. That's to tell you that the cases of killings and
23 massacres in Ituri are reciprocal between the Hema and the Lendu, and not only
24 Hema by the Lendu as you want to get national and international opinion to believe."
25 (Speaks English) Now, it's true, isn't it, as Governor Lompondo writes, that the Hema

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 were attacking the Lendu and committing crimes against them just as much as the
2 Lendu were attacking the Hema at this time?

3 A. [10:05:24] I'm not aware of that. I said that when I arrived, a political war
4 existed. There was the RCD-K/ML and the APC. The fighters attacked the Hema
5 villages. And the person who was responsible for operations was Molondo, and
6 that's why the UPDF attacked, in order to drive him away because massacres
7 had -- there were massacres taking place which were widespread.

8 MS SAMSON: [10:06:16] Mr President, I seek to admit for impeachment purposes
9 the paragraphs of this letter that I have read into the record.

10 PRESIDING JUDGE FREMR: [10:06:26] Defence?

11 MR BOURGON: [10:06:28] No objection, Mr President.

12 PRESIDING JUDGE FREMR: [10:06:46] Sorry, I didn't understand. No ...?

13 MR BOURGON: [10:06:50] I said no objection, Mr President.

14 PRESIDING JUDGE FREMR: [10:06:52] All right. So the part of the document
15 specified by Ms Samson is admitted into evidence for the purpose of impeachment.

16 Ms Samson, please proceed.

17 MS SAMSON: [10:07:05]

18 Q. [10:07:08] Professor Pilo Kamaragi was associated with the UPC in its
19 early -- the early creation period 2000 and thereafter, correct?

20 A. [10:07:37] I don't know about the existence of the UPC in 2000.

21 Q. [10:07:46] Are you aware that Professor Pilo Kamaragi had ties to the UPC,
22 including in 2002?

23 A. [10:08:07] I know that Kamaragi was a professor, and during the period when
24 I was a member of the UPC I did not see that he was also from the UPC.

25 Q. [10:08:27] I would like to show you another document. It's

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 DRC-OTP-0089-0165. It's item 655 on the Prosecution's list and it is public.

2 I will go through the document with you, just the main title and date, et cetera, and
3 then I will ask you whether you have seen it before.

4 Now, the title of the document --

5 PRESIDING JUDGE FREMR: [10:09:45] Hold on, Ms Samson.

6 Mr Bourgon.

7 MR BOURGON: [10:09:48] Thank you, Mr President. For the record, I note that
8 this document was obtained by the Prosecution in 2005 and it was not used during
9 the Prosecution's case. Thank you.

10 PRESIDING JUDGE FREMR: [10:09:59] Well noted.

11 Ms Samson, please proceed.

12 MS SAMSON: [10:10:03]

13 Q. [10:10:04] Now, the title -- what we see at the top left-hand portion of the
14 document is in - I will translate - Democratic Republic of the Congo, UPC, and the
15 title of the document in French is (Interpretation) "Constitution".

16 (Speaks English) Have you ever seen the UPC's constitution?

17 A. [10:10:49] No.

18 Q. [10:10:50] If we turn to the second page, please, and go towards the bottom of
19 the page. A little bit higher, please, and a bit higher.

20 So here it says that it was done in Bunia on 15 September 2000 for the - in

21 French - "L'Union des Patriotes Congolais". Lubanga Dyilo is the spokesperson, and
22 the members listed that you can see -- and if we can scroll up so that the witness can
23 see the full list of members, we see on the -- a number of names, including on the left
24 Rafiki Saba, Kisembo Bitamara, Maman Akiki, Alidor Mwanza, Adèle Lotsove, and at
25 the top right-hand side we see Professor Pilo Kamaragi.

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 Now, according to this UPC constitution, do you have any reason to dispute that
2 Professor Pilo Kamaragi as listed here had been part of this constitution in
3 September 2000 for the UPC?

4 A. [10:12:41] I didn't know if it was 2000. You presented me a letter which I had
5 never seen. Now, if you had this information, that's because you had it previously.
6 But I've just heard about this here today before the Judges.

7 Q. [10:13:14] Yes, and you have no reason to dispute --

8 PRESIDING JUDGE FREMR: [10:13:19] Ms Samson, asked and answered.

9 MS SAMSON: [10:13:33]

10 Q. [10:13:33] Now, sir, I'm going to move back to the April 2002 period that we've
11 been describing. You've spoken today about being attacked by the troops of the
12 APC and Lompondo, and on April 17 2002, it's right, isn't it, that Thomas Lubanga
13 and others issued a public declaration about the injustices of the RCD under
14 Mbusa Nyamwisi on 17 April 2002?

15 A. [10:14:25] I don't have any information about that.

16 PRESIDING JUDGE FREMR: [10:14:32] Hold on, Ms Samson. Mr Bourgon.

17 MR BOURGON: [10:14:34] Yes, Mr President. My colleague indicated the date of
18 17 April. I don't recall the witness mentioning the date of 17 April 2002. I'd like to
19 have a reference, please.

20 PRESIDING JUDGE FREMR: [10:14:47] Ms Samson.

21 MS SAMSON: [10:14:47] My question about 17 April 2002 was disconnected from
22 the witness's evidence about the April 2002 period.

23 PRESIDING JUDGE FREMR: [10:15:06] I have to agree with Mr Bourgon that, at
24 least from the text, your question is -- the transcript is not clear. So now you clarify
25 that.

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 MS SAMSON: [10:15:17] Yes.

2 Q. [10:15:18] So, sir, what I'm putting to you about the April period is that on
3 17 April 2002 Thomas Lubanga and others issued a public declaration about injustices
4 under the RCD-K/ML by Mbusa Nyamwisi. Did you hear of that?

5 A. [10:15:44] I don't remember. I no longer remember, given the time that has
6 passed. You are precise with regards to the date. You speak about the 17th, but
7 I don't remember this event.

8 Q. [10:16:10] I will show you the public declaration that I'm referring to. It's at
9 DRC-OTP-0127-0110. It's a public document and it is item 624 on the list.

10 The document is in English, so I will read it out and it will be translated for you.

11 The title of this document is "Political Declaration of the Managerial Staff of Ituri in
12 the Face of Instituted Injustice by the RCD-KIS/ML under His Excellency Mr Mbusa
13 Nyamwisi's Presidency".

14 And if I could ask the court officer to please turn to the last page, 0113, I will show
15 you who signed the document and when.

16 Now, it says that it's done in Bunia on 17 April 2002. And you can see the list of
17 signatories here: Adubango Biri, Tinenzabo, Djalum, Lety. And if we can continue
18 scrolling up, please, or down: Avochi, Nembe, Thomas Lubanga, Mbuna, Lonu Lali,
19 Bandeché, Lonema, Bayau and Ndukute.

20 We can turn back to the first page of the document and you can let the Chamber
21 know whether you've seen it before.

22 A. [10:19:47] No.

23 Q. [10:20:01] Now I'd like to look at some of the content of this declaration with
24 you and at the top of the document we have the signatories, who state as follows:

25 "We, political managerial staff of the Province of Ituri, preoccupied with political,

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0300

1 social and economical development of our entity, and after a keen analysis of the
2 political, administrative, economical, sociocultural situation, and security measures
3 which lasted since the event of the rebellion of 1998 until these days, but with a
4 special note since the seizure of the power of Mr Mbusa Nyamwisi in November 2001,
5 noticed with bitterness the following ..."

6 PRESIDING JUDGE FREMR: [10:20:58] Hold on, Ms Samson. Mr Bourgon.

7 MR BOURGON: [10:21:01] Thank you, Mr President.

8 The Defence opposes the use of this document and the questioning of the witness on
9 this document pursuant to paragraph 31 of the order on the conduct of proceedings,
10 which reads as follows: "Parties may show documents to a witness whose testimony
11 has a connection with that item and have the witness comment on it. When no
12 relation between the document and the witness has been established, the Chamber
13 may decide not to allow the presentation of the document or certain related
14 questions." Considering that Mr Ntaganda has clearly answered that he has never
15 seen this document, the Chamber is well aware that the contents of this document has
16 no connection with Mr Ntaganda or with his testimony, and in this regard we say that
17 this document should not be used with him.

18 Of course the Chamber might authorise the use of this document, and in which case
19 of course I will be seeking leave to conduct questions in re-examination later on.
20 Thank you.

21 PRESIDING JUDGE FREMR: [10:22:05] My reaction, the criteria you set, in my
22 view, are connected with examination of witness and for the potential admission for
23 the truth of the content. There is some I think difference if this questioning is made
24 for the purpose of potential impeachment, but still I have even problem with that
25 because Ms Samson, and I would like to get clarification from you, if Mr Ntaganda is

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 saying "I don't remember. I haven't attend this event", for what purpose will serve if
2 you were to put him part of the document, even for the purposes of impeachment?
3 If it would be clear from the document that he, for example, was present, that -- or he
4 should have a knowledge, if it would be apparent from the document, then you will
5 be free to present him part of the document. But I can hardly imagine if he is saying
6 "I don't remember. I haven't the document", that part of the text could impeach him
7 on that. If yes, please clarify it to me.

8 MS SAMSON: [10:23:18] Yes, Mr President. In fact, I've shown this document to
9 the witness before in cross-examination in transcript T-230, starting at page 57, for a
10 specific purpose. And the point of the questioning is not to determine what the
11 witness knows about the drafting of the document but, rather, given the position that
12 he was in at the time I simply want to see whether he will acknowledge that he would
13 have heard or learned of the intentions of the group with whom he was living at the
14 time, one of whom he was living with at the time. I don't intend to spend very much
15 time on this document. I have only -- I just wanted to read one little short, brief
16 passage to him and see whether he knew of that.

17 PRESIDING JUDGE FREMR: [10:24:21] I will not allow that because, as he said, he
18 doesn't know anything about this document. So if you want you can just put him
19 directly question "Do you know something about the principles contained in this
20 document", but not with the use of this document because he has no knowledge about
21 that. So please proceed in this way.

22 MS SAMSON: [10:24:43] Yes. Very well. Then I will put the principles in the
23 document without in advance letting him know what those are.

24 Q. [10:24:51] So, sir, is it your evidence that you never heard while you were
25 living with Thomas Lubanga in April 2002 that he, with others, were

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 politically -- publicly declaring their criticism of Mbusa Nyamwisi's regime and
2 splitting from the RCD definitively?

3 A. [10:25:28] I don't remember that.

4 Q. [10:25:35] And do you remember that subsequently leaders of the UPC in
5 September 2002 referred to this declaration of 17 April 2002 as a UPC declaration?

6 A. [10:26:14] I don't remember. Perhaps you could present me the document
7 that they produced in 2002 and I could make comments thereon. But asking me if I
8 remember a document that was written in 2002, well, that's something very difficult
9 for me, difficult for me to remember. Perhaps you would have to show it to me.

10 Q. [10:26:42] Now, the UPC issued decrees, Thomas Lubanga in particular, in
11 September 2002 and onwards. Do you recall that?

12 A. [10:27:09] I know the decree appointing me as deputy chief of general staff.
13 Otherwise, I don't remember the other decrees that were produced.

14 Q. [10:27:25] But you are aware that there were other decrees produced by
15 Thomas Lubanga nominating, for instance, his national secretaries?

16 A. [10:27:50] I remember decrees relating to the organisation of the general staff
17 only, for the moment.

18 Q. [10:28:09] Well, let me start with one decree and I'll show you others. At
19 DRC-OTP-0147-0204, item 539, public document.

20 Now, as you can see, sir, this is on UPC letterhead emanating from the Presidency,
21 cabinet of the president. And you can see the decree number. And in this case it's,
22 in French, (Interpretation) "On the appointment of a governor and two vice-governor
23 in the province of Ituri."

24 (Speaks English) And if we scroll down, please.

25 You can see that this has been signed by Thomas Lubanga on 2 September 2002 in

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 Bunia nominating Governor Eneko and two vice-governors, Kiza Mateso and

2 Ndukute Mangilio. Now, have you seen this decree before?

3 A. [10:29:58] I haven't seen it. But I do know Mateso and Ndukute.

4 Q. [10:30:07] Yes, and you know that Thomas Lubanga by presidential decree
5 named them governor and vice-governors of Ituri, correct?

6 A. [10:30:24] I didn't know it through the decree. Eneko died afterwards before
7 taking up his functions.

8 Q. [10:30:50] Let's move please, madam court officer, to the beginning part of the
9 decree, a little bit further down, please.

10 Sir, you can see here in the preamble to the decree Thomas Lubanga sets out various
11 points, and I will read it out in French:

12 (Interpretation) "Constitution of the UPC/RP adopted on 15 September 2000;

13 Mindful of the political declarations of 17 April and 11 August 2002;

14 Considering that the Ituri needs to have at its helm persons capable of bringing its

15 divided population together who have been mortified by previous political systems;

16 Considering the need to organise provincial executives;

17 And upon the proposal of the national secretary for the interior;

18 Mindful of the timeliness and emergency, decrees as follows ..."

19 (Speaks English) And my question to you is: The reference to the political

20 declarations of 17 April and 11 August 2002 in the preamble to a presidential decree

21 signed by Thomas Lubanga means, does it not, that the 17 April decree was

22 acknowledged by the UPC leadership as being an important UPC declaration?

23 PRESIDING JUDGE FREMR: [10:32:44] Mr Bourgon.

24 MR BOURGON: [10:32:44] My colleague is asking for an opinion from the witness

25 on a document he has not seen.

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 PRESIDING JUDGE FREMR: [10:32:52] Ms Samson, I fully agree with Mr Bourgon.

2 Just about the opinion of Mr -- not about his knowledge, so.

3 MS SAMSON: [10:33:03] I'll rephrase, Mr President.

4 Q. [10:33:07] Did you know, Mr Ntaganda, that the decrees signed by Thomas
5 Lubanga had in its preamble a reference to the political declarations of 17 April and
6 11 August 2002?

7 A. [10:33:44] I do not know the background to all these decrees. I'm only
8 becoming aware of this decree here today.

9 PRESIDING JUDGE FREMR: [10:33:52] Allow me one additional question,
10 Ms Samson.

11 Mr Ntaganda, is your testimony that you have never seen any decree issued by
12 Mr Lubanga?

13 THE WITNESS: [10:34:28] (Interpretation) Mr President, I have acknowledged that
14 I saw the decree by which I was appointed. But when it comes to political
15 declarations or statements, I never became aware of any decrees that related to
16 political declarations.

17 PRESIDING JUDGE FREMR: [10:34:49] So have I understood correctly that the
18 only decree you personally saw was decree of your assignment?

19 THE WITNESS: [10:35:07] (Interpretation) That is correct. It is the only decree
20 which I received in my own hands. Apart from that decree, I was not handed any
21 other decree signed by President Thomas Lubanga, nor did I receive -- or, nor was I
22 copied on any of those decrees.

23 PRESIDING JUDGE FREMR: [10:35:41] Thank you, Mr Ntaganda.

24 Ms Samson, please proceed.

25 MS SAMSON: [10:35:45]

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

- 1 Q. [10:35:50] I would like to show you a second decree related to you,
2 Mr Ntaganda.
3 The registration number is DRC-OTP-0132-0237. It's item 598 on the list and it's
4 public.
5 This decree is dated 8 December 2003 and the title in French (Interpretation)
6 "To suspend some senior political and military officials from the Union des Patriotes
7 Congolais pour la Réconciliation et la Paix."
8 (Speaks English) And if we could turn to the second page, please. At the top we can
9 see (Interpretation) "Mindful of the timeliness and urgency; decrees as follows ..."
10 (Speaks English) And the decree relates to the suspension from their functions in the
11 UPC/RP of five individuals, including Daniel Litcha and Floribert Kisembo, and
12 Colonel Lobho Kamuhanda in the first part.
13 And in the second part it decrees that during the period of their suspension certain
14 interim responsables are appointed, including yourself under number 2, for the -- as
15 the chief of general staff of the FPLC, Major General Bosco Ntaganda.
16 And if we scroll down a bit further I can show you who signed this decree. It is
17 8 December 2003, done in Kinshasa, signed by the President Thomas Lubanga.
18 Did you have an opportunity to see this decree from 8 December suspending Floribert
19 Kisembo and others and appointing yourself as interim chief of general staff?
20 A. [10:39:14] At that time President Thomas Lubanga was in Kinshasa and this
21 decree did not get to us. It is Djokaba who informed us of it. It is true that we were
22 appointed by the president, but we did not receive the hard copy of the document
23 itself. Djokaba is the one who informed us because he was the one on location.
24 Q. [10:39:54] And if we turn to the first page, I'll read the preamble to you.
25 If we could scroll down, please.

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 So I will read starting from the beginning, in French:

2 (Interpretation) "Mindful of the constitution of the UPC/RP adopted on

3 15 September 2000;

4 Mindful of the political declarations of 17 April and 17 August 2002;

5 Mindful of the presidential decree number 3 to appoint members of the executive of
6 the UPC/RP;

7 Mindful of presidential decree number 2 bis designating officials to the general staff
8 of the FPLC;

9 Mindful of the statutes of the UPC ..."

10 (Speaks English) Et cetera, et cetera.

11 Now, sir, we saw an early declaration of 2 September 2002. Here we have

12 another -- pardon me, an early decree. Here we have another decree from Thomas

13 Lubanga on 8 December 2003. Both of those decrees refer to the political

14 declarations of the 17 April and 11 August 2002 in the preamble of the UPC. And I

15 put to you that you were aware of the import of the 17 April 2002 declaration to

16 Thomas Lubanga and his movement, the UPC, both in April 2002 and after

17 September 2002.

18 A. [10:42:45] No. I do not agree with you. What I say is that I was not aware or

19 I did not have knowledge of this decree. I did not receive the physical document

20 itself, that is the decree that President Thomas Lubanga signed, the reason being that

21 he was in Kinshasa. So what I have said is that the document which I saw is the

22 document which was signed by Djokaba.

23 Q. [10:43:24] Let's go back to the April 2002 period to assess your answers in light

24 of what was happening then.

25 PRESIDING JUDGE FREMR: [10:43:38] Mr Bourgon.

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 MR BOURGON: [10:43:39] Thank you, Mr President.

2 A transcript correction material which has to do with this line of questioning, page 22,
3 line 12, the English version reads "April 2002" whereas the same, the corresponding
4 version in French reads "September 2002" and it has to do with the decrees business.

5 I would just like to clarify which of the two dates, which one is correct. Thank you.

6 PRESIDING JUDGE FREMR: [10:44:05] Thank you.

7 MS SAMSON: [10:44:18] Page 22 in the English transcript, page 22, line --

8 MR BOURGON: [10:44:27] Line 12.

9 MS SAMSON: [10:44:32] Twelve. September. The English transcript says "in
10 April 2002 and onwards", with a highlight, that I believe means it needs to be
11 reviewed. It's in my question. My question should relate to September 2002: "The
12 UPC issued decrees, Thomas Lubanga in particular, in September 2002". So that
13 could be corrected in the transcript. It's in my question.

14 PRESIDING JUDGE FREMR: [10:45:00] Well noted.

15 MS SAMSON: [10:45:09]

16 Q. [10:45:09] Now coming back to the 17 -- or the April 2002 period. You went
17 to Kasese, Uganda with Thomas Lubanga and his delegation.

18 A. [10:45:38] We did not leave on the 17th of April.

19 Q. [10:45:48] No, I hadn't actually finished my question. You went to Kasese,
20 Uganda with Thomas Lubanga and a delegation in April 2002, correct?

21 A. [10:46:12] It is true that we went with a delegation and the Ugandans took us
22 in a plane to Kasese. I do remember that.

23 Q. [10:46:28] And your delegation included some of the people who had signed
24 the 17 April declaration, including Thomas Lubanga, Ndukute, Avochi, Tinanzabo,
25 correct?

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 A. [10:47:05] When we went to Kasese, I was not aware that they had signed that
2 document. So for me, these are two different issues. However, we went to Kasese
3 with the help of the Ugandans. There was also an RCD-Kisangani delegation which
4 came from Beni. That is what I can remember.

5 Q. [10:47:47] And your delegation who left with Thomas Lubanga also included
6 Floribert Kisembo, Chef Kahwa?

7 A. [10:48:11] They were part of those who had indeed been selected by the
8 Ugandans.

9 Q. [10:48:25] I'd like to show you a photograph. It's DRC-OTP-0127-0115. It is
10 item 270 on the list. And it's a public document.

11 This is a photo, is it not, of your delegation in Kasese who attended the meetings in
12 Kasese?

13 A. [10:49:44] I remember this photograph. It was taken after the incident when
14 Claude fell. The Ugandans subsequently tried to find a solution to the problem and
15 they organised a meeting between us, the mutineers, and the RCD-K/ML.

16 Q. [10:50:21] Your delegation was headed by Thomas Lubanga, who we see on
17 the right in a red and white shirt with his head turned slightly to the left, behind a
18 woman in blue and white, correct?

19 A. [10:50:49] Yes, he's wearing what is known as a boubou, which is reddish in
20 colour.

21 Q. [10:51:05] He was the head of your delegation, correct?

22 A. [10:51:11] Yes, but we met up with other persons in Kampala such as
23 Mama Lotsove, because she no longer came back to the Congo and the Ugandans
24 were providing security for her in Kampala. We also have other members of the
25 delegation with whom we travelled on the photograph.

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 Q. [10:51:46] Mama Lotsove is the woman smiling in the centre of the photograph
2 in a light green shirt?

3 A. [10:52:15] Yes, that is correct. She is the one standing behind Kisembo and
4 smiling.

5 Q. [10:52:26] Kisembo is kneeling in the front of the photograph in a blue shirt,
6 looking away from the camera?

7 A. [10:52:37] Yes. He is also holding a notebook in his hand.

8 Q. [10:52:54] And you are standing in the back of the image in a beige shirt,
9 correct?

10 A. [10:53:16] Yes. Behind Mama Lotsove, that's me.

11 Q. [10:53:26] Next to Mama Lotsove and also in front of you in a white shirt is
12 Tinanzabo?

13 A. [10:53:40] Yes. Slightly to my left, yes. In front of me. That is Tinanzabo,
14 indeed.

15 Q. [10:54:02] Now, in the back of the photograph standing in a blue shirt is
16 Chef Kahwa, correct?

17 A. [10:54:18] Yes, that indeed is Chef Kahwa. Let me specify that we also met
18 him in Uganda, we didn't travel with him.

19 Q. [10:54:45] And the man who has a multi-coloured shirt in front of Chef Kahwa
20 is Avochi?

21 A. [10:54:59] Yes. That is Avochi, yes.

22 Q. [10:55:20] The man in a white T-shirt with glasses in the far left of the picture is
23 Adubango Biri?

24 A. [10:55:44] Yes, that is correct. That man's name is Adubango.

25 Q. [10:55:59] The man who is kneeling in the photograph to Kisembo's right, he's

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 got a grey, blue and white-striped shirt, that's Tchaligonza?

2 A. [10:56:24] Yes, that is Tchaligonza. He is also holding a notebook in his hand.

3 Q. [10:56:38] And the man between yourself and Chef Kahwa in a green shirt, is
4 that Ndukute?

5 A. [10:57:00] Yes, that is Ndukute, he is standing behind Mama Lotsove.

6 Q. [10:57:12] And the man on the other side of Chef Kahwa, is that Lonema?

7 A. [10:57:31] Yes, that is Lonema.

8 Q. [10:57:36] Now this delegation, some of whom you travelled with from Bunia,
9 others you met in Kampala to attend meetings in Kasese, this delegation represented
10 itself during the meetings as the FRP, correct?

11 A. [10:58:04] No. Let me explain things to you. We had been fighting when
12 Claude fell and so I went with Thomas Lubanga to seek refuge in the UPDF side.
13 They had some -- they had taken some of our officers and so all those people were
14 working and had duties within the RCD-K/ML and they had been taken away by the
15 UPDF and brought along in the delegation, but we did not know why. We travelled
16 together, but they were part of the RCD-K/ML.

17 Now, when they spoke of any problems, they mentioned issues of the bad leadership
18 of their party. I did not hear them introduce themselves as members of the FRP.

19 Even Thomas Lubanga himself introduced himself as the minister of defence. What
20 happened is that they were objecting to the decree that Thomas Lubanga had signed
21 regarding the restructuring. So this was not in relation to any other problem. That
22 was the only issue at hand, namely that they were opposed to the decree signed by
23 Thomas Lubanga relating to the restructuring.

24 Q. [10:59:53] We'll explore that after the break. But I neglected to mention, in
25 the photograph before you the woman in blue and white, a blue and white dress, is

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 Mama Akiki, correct?

2 A. [11:00:11] Yes. That is my mother-in-law.

3 MS SAMSON: [11:00:25] Thank you, Mr President. I can resume after the break.

4 PRESIDING JUDGE FREMR: [11:00:30] Yes.

5 So we take our regular 30-minute break now and we will reconvene at 11.30.

6 THE COURT USHER: [11:00:40] All rise.

7 (Recess taken at 11.00 a.m.)

8 (Upon resuming in open session at 11.30 a.m.)

9 THE COURT USHER: [11:30:33] All rise.

10 Please be seated.

11 PRESIDING JUDGE FREMR: [11:30:53] We can directly continue with next part of
12 cross-examination of Mr Ntaganda conducted by the Prosecution.

13 Ms Samson, you have the floor.

14 MS SAMSON: [11:31:10] Thank you, Mr President.

15 Q. [11:31:14] Sir, I'd like to take you back to the photograph of the Kasese meeting
16 one more time to identify one additional individual on the picture.

17 The ERN is DRC-OTP-0127-0115, item 270.

18 The man kneeling in front of Mama Akiki in the white shirt is Didier; is that right?

19 A. [11:32:24] No. The person on his knees before Mama Akiki is taxi man, the
20 person who drove Mama Akiki, because we didn't travel together with Mama Akiki.

21 This person isn't Didier. That's the taxi man. Didier is another person on my left, if
22 I'm speaking about my position here.

23 Q. [11:33:08] So Didier is the person that we can see -- well, we can see his head
24 standing between -- next to you in the back of the photograph and his head is visible

25 between your head and that of Thomas Lubanga's?

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 A. [11:33:35] Didier is very visible here next to this elderly man that you said was
2 Adubango, next to Avochi, that's commander Didier. He's wearing a grey shirt -- a
3 green shirt with jeans, black jeans.

4 Q. [11:34:10] And to be clear, he has his hands in his pockets, partly in his pockets,
5 that's the gentleman?

6 A. [11:34:25] Yes, that's Didier.

7 Q. [11:34:28] Now, you've spoken about what you say was the purpose of the
8 meeting, which was to deal with the issue of the appointments or deployments of
9 yourself and others in the APC. I put to you that the purpose of the meetings in
10 Kasese was to ensure that the RCD left power and that your group took power in Ituri.
11 Do you agree?

12 A. [11:35:11] No. It was to discuss the attacks that we'd been victims of, the
13 conflict that had taken place in Bunia, the way in which Molondo had attacked us.
14 That's what it was about. * And I took part in that meeting. And why, why
15 was there conflict? What was the reason for that conflict? That's what it was about
16 at Kasese. We discussed all of that at the meeting.

17 Q. [11:36:14] Now, Chief Kahwa was not part of the APC, was he?

18 A. [11:36:31] No. I don't even know if he was in the RCD-K/ML. He was the
19 customary chief, the chief of Mandro collectivity.

20 Q. [11:36:54] And yourself and Thomas Lubanga, Floribert Kisembo, Tchaligonza,
21 Didier, you had been working with Chef Kahwa since the Chui mobile force days,
22 correct?

23 A. [11:37:24] I would say the following: This was a chief who gave us his
24 support. When we created Chui mobile force we appreciated him as a chief of a
25 collectivity. Perhaps he noted that our cause was just and that's the reason why he

Trial Hearing
WITNESS: DRC-D18-D-0300

(Private Session)

ICC-01/04-02/06

1 was on our side.

2 Q. [11:38:07] And I put to you that the outcome of the Kasese meeting was that
3 the RCD would leave power and the FRP would start the management of Ituri. And
4 that's right, isn't it?

5 A. [11:38:38] In realty, the FRP that you speak about, well, I've heard about that
6 here before this Court, but I didn't know it. And now, during this meeting we didn't
7 speak about a political party or two political parties. The idea was to know what the
8 problems were within the RCD-K/ML, where was the internal conflict within the
9 RCD-K/ML. That was what the issue was during the Kasese meeting.

10 MS SAMSON: [11:39:19] Mr President, if I may ask for the session to move into
11 private session for a few questions, please.

12 PRESIDING JUDGE FREMR: [11:39:26] All right.

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

14 (Private session at 11.39 a.m.) * Reclassified partially in public

15 THE COURT OFFICER: [11:39:36] We're in private session, Mr President.

16 PRESIDING JUDGE FREMR: [11:39:44] Thank you, court officer.

17 Ms Samson, please.

18 MS SAMSON: [11:39:48] Thank you.

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 A. [11:40:56] I found that out.

Trial Hearing
WITNESS: DRC-D18-D-0300

(Private Session)

ICC-01/04-02/06

1 Q. [11:41:00] And in this case you know that the Chamber admitted portions of
2 his prior testimony and his statement to the Office of the Prosecutor in this case?

3 A. [11:41:15] I don't know that.

4 Q. [11:41:33] I would like to read a portion of (Redacted) statement that's been
5 admitted by the Chamber in this case to you. And I'm referring to
6 DRC-OTP-0147-0002 and it is item number 1565. It is not a public document, it's a
7 confidential document.

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Speaks English) And I put to you that that's true, isn't it, that your group as set out

22 (Redacted)

23 A. [11:45:44] There you want to put something to me for which I'm not prepared.

24 When I arrived in Bunia it was at the time of the APC. I was a mutineer at the time

25 so I didn't know the FLP. Now, these people, they were RCD-K/ML. Now, if they

Trial Hearing
WITNESS: DRC-D18-D-0300

(Private Session)

ICC-01/04-02/06

1 had an organisation before I arrived, I don't know, I never had a meeting with these
2 people. (Redacted)

3 (Redacted) And before

4 April 2002 I didn't work with this person. I arrived in the month of March and the
5 conflict broke out immediately.

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 became a member of the UPC. So my name is not among the members of the FRP.

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-D18-D-0300

(Private Session)

ICC-01/04-02/06

1 PRESIDING JUDGE FREMR: [11:49:58] Sorry.

2 Mr Bourgon.

3 MR BOURGON: [11:50:00] Thank you, Mr President.

4 My colleague is using a statement in the possession of the Office of the Prosecution
5 that was admitted in evidence. But in order to contradict the witness, in all fairness
6 to him, we should not skip only the parts that are of interest to the Prosecution,
7 because at paragraph 41 there are some very interesting wording there, as well as in
8 44, which talks about the nonexistence of the FRP and that there is no statute and the
9 like. So we should put the complete picture before we contradict the witness.

10 Thank you.

11 PRESIDING JUDGE FREMR: [11:50:38] I wouldn't say "complete picture" but
12 I would agree partially with you: If there is some important connection with the
13 question put to concrete part and has some important connection with the other part,
14 then probably Mr Ntaganda should be also aware of both parts of all context relevant
15 for the question put to him.

16 So even if -- I am not asking you, Ms Samson, to allow Mr Ntaganda to read the
17 whole document, but simply he should be provided with whole relevant context
18 which is relevant for the question put to him.

19 So if like now Mr Bourgon stated it's also another, another paragraph which could
20 have impact on his response, then probably should be also reference to that
21 paragraph.

22 MS SAMSON: [11:51:37]

23 Q. [11:51:38] The point that I wish to make from paragraph 42, which I have just
24 read, in that the objective of the FRP was to get the Ugandans to make the RCD-K/ML
25 leave, doesn't contain any additional information that's relevant to that point.

Trial Hearing
WITNESS: DRC-D18-D-0300

(Private Session)

ICC-01/04-02/06

1 I could read the last sentence of paragraph 42, which also says:

2 (Interpretation) "The aim of the RCD-K/ML is to maintain their leadership and their
3 presence in Ituri. The intentions of the Ugandans were vague."

4 (Speaks English) And the question that I wish to ask has to do with the witness's
5 evidence that the objectives of the FRP were not to take over the management of Ituri,
6 (Redacted)

7 the FRP so that the RCD would leave Ituri.

8 And the question I put to you, Mr Witness, is that the information provided by
9 (Redacted)

10 the RCD-K/ML to leave power and to assume power yourselves in Ituri?

11 A. [11:53:19] That's not in accordance with what I know. *I'm going to repeat
12 myself. When I left Uganda, I arrived where we were attacked. And when we
13 were attacked how could we govern Ituri? I was *not one of the people who *formed
14 the FRP. *I was a soldier. I arrived and I came to join my party, RCD-K/ML, *I was
15 in the APC. We were attacked.

16 If they and the Ugandans had something at the time when I was in prison in Uganda,
17 that's something that I don't know. When we arrived we spoke about an internal
18 conflict which had broken out and meant that there were clashes in Bunia. But I
19 never heard anyone speak about the FRP during that meeting. So you're asking me
20 a question that I don't know anything about.

21 THE INTERPRETER: [11:54:27] Your Honour, could the witness be asked to speak
22 slower, asks the Swahili booth.

23 PRESIDING JUDGE FREMR: [11:54:34] Mr Ntaganda, there is a request from the
24 Swahili booth, if you could kindly speak a bit slower which would facilitate the role
25 of interpreters. Have you understood, Mr Ntaganda, my message? All right.

Trial Hearing
WITNESS: DRC-D18-D-0300

(Private Session)

ICC-01/04-02/06

1 Now, Mr Bourgon.

2 MR BOURGON: [11:54:58] Thank you, Mr President.

3 My colleague asked some questions to the witness regarding the fact that the group
4 would have participated under the acronym or under the title FRP. In this regard
5 paragraph 41 should be put to the attention of the witness before we contradict him.

6 So it's not only what happened at the meeting. My colleague was interested in
7 knowing what the knowledge knew about FRP and in paragraph 41 it talks about FRP.

8 So that paragraph at least, especially that it is in French and that the Trial Chamber
9 cannot by looking at the statement read what is in there, it's very relevant to the
10 questions and to the answers put to the witness.

11 Thank you.

12 PRESIDING JUDGE FREMR: [11:55:44] Ms Samson, please, to be fair to Defence,
13 please follow this request.

14 MS SAMSON: [11:55:48] Certainly.

15 Q. [11:55:50] Now, before I do so, your Honour, there may be an issue with the
16 transcript, in English at least, in page 41, line 4 -- pardon me, line 2 to 3.

17 In English it has captured that you've said "I was one of the people who trained the
18 FRP." Is that what you said?

19 A. [11:56:22] Could you allow me to read it, please.

20 Q. [11:56:26] Certainly. It's in the English transcript, which I'm not sure if that's
21 the one that you're following, but it's page 41, lines 2 to 3, it's captured that you said:
22 "I was one of the people who trained the FRP."

23 And I apologise I don't have the reference in the French any longer. It's already gone
24 from my screen. Did you train people in the FRP?

25 A. [11:57:05] I didn't read it, but if you read it -- I'm trying to read the transcript

Trial Hearing
WITNESS: DRC-D18-D-0300

(Private Session)

ICC-01/04-02/06

1 in French. I haven't found that here. But with regards to the question you asked,

2 I don't know. I never saw FRP troops. I was never part of the FRP.

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Speaks English) Now I'll stop there because I have a question before I continue with

13 the paragraph. But that's correct, isn't it, that the FRP, your group, wanted to put the

14 management of Ituri back into the hands of Iturians because Mbusa's group, the RCD,

15 was in the majority composed of non-Iturians and Mbusa was arming the Lendu and

16 Ngiti who were in conflict with the Hema? So that was one of the platforms and

17 objectives that your group held in the Kasese meeting, correct?

18 A. [11:59:20] If you ask me this question, when I speak about our group -- do you

19 want me to speak about our group? What I would say is as follows: Well, perhaps

20 their group was called the FRP. I can't comment on that because I saw them. After

21 the clashes that we had with Molondo's troops I think that we took -- well, the

22 Ugandans called upon people of Ituri because we met in the plane and during the

23 clashes the civilians were not there. Now, the names that you've given me are the

24 names of members of the FRP. As we have a problem with these clashes, we came

25 together. I'm not Iturian, so I couldn't ask for autonomy for a province of which I

Trial Hearing

(Private Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0300

1 wasn't a native. I'm not Iturian, I'm not one of those people.

2 Q. [12:00:27] And is it your testimony that during your two and a half to three
3 months living with Thomas Lubanga in March, April, May 2002 at the time of these
4 meetings, and travelling with Thomas Lubanga and some members of the delegation
5 to Kasese, you never once discussed or heard anybody from the delegation discuss
6 the objective of driving Mbusa out of power and reclaiming power for Iturians? You
7 never heard that?

8 A. [12:01:11] When we left after the conflict, our objective was to reintegrate RCD
9 Kisangani, and it was the armed branch of APC. We were supporting the
10 organisation that had been suggested but they were opposing it and they more or less
11 attacked. So we were looking at reintegration. We wanted to be -- remain part of
12 RCD-K/ML, and that was what we were saying as military, the organisation that had
13 been proposed by the minister of defence, that we reintegrate, not that we get
14 autonomy. But these ideas here are something that I am discovering for the first
15 time here.

16 PRESIDING JUDGE FREMR: [12:02:27] Ms Samson, sorry to interrupt you.
17 I would like to, at this connection, put to Mr Ntaganda a few questions even at a bit
18 more general level.

19 Mr Ntaganda, the UPC was the political party and FPLC was its military wing, am I
20 correct?

21 THE WITNESS: [12:02:58] (Interpretation) Yes.

22 PRESIDING JUDGE FREMR: [12:03:01] Now, if I remember well, you said during
23 your previous testimony that the ideology was important part of the training of
24 recruits; is it correct?

25 THE WITNESS: [12:03:25] (Interpretation) Yes. The ideology we were giving to

Trial Hearing
WITNESS: DRC-D18-D-0300

(Private Session)

ICC-01/04-02/06

1 them was an important aspect.

2 PRESIDING JUDGE FREMR: [12:03:37] All right. Have you been personally
3 involved in training of ideology given to recruits?

4 THE WITNESS: [12:03:52] (Interpretation) Yes. I've already talked about my
5 participation, particularly as part of what we call kitamaduni sessions. And I gave
6 instructions to Commander Mugisa relating to the content of the training to be given
7 to the recruits because we had to distance ourselves from the APC.

8 PRESIDING JUDGE FREMR: [12:04:40] Good. And was information about the
9 goals of the UPC also part of the training in ideology?

10 THE WITNESS: [12:05:20] (Interpretation) When we started, the UPC had not yet
11 been created. I'm talking about the time when we were mutineers. So we were
12 following Kisembo's example and my own example. The ideology we were
13 following was based on the fact that we had had officer training and that I had been
14 an instructor myself during the APR time. But when the UPC was created, this
15 ideology was reinforced and we were taught how we should behave in the field so
16 that we could distinguish ourselves from APC troops. And this started with Thomas
17 Lubanga as commander-in-chief and it went down through all the levels, brigade
18 commander, battalion commander, right down to the ranks.

19 PRESIDING JUDGE FREMR: [12:06:37] Yes. It obviously depends what we will
20 understand on the term ideology. I would expect that a part of training in how to
21 fight the enemy, the part of the training should be also who is the enemy and why my
22 group is fighting this concrete enemy. And what are the goals, why you would like
23 to win, what would like we to gain from the fight. What is your comment on this,
24 my presumption? If you could just elaborate on that as concerns the time when you
25 have been involved in training of ideology. Have you also covered those issues?

Trial Hearing
WITNESS: DRC-D18-D-0300

(Private Session)

ICC-01/04-02/06

1 THE WITNESS: [12:07:47] (Interpretation) At the time we gave training as a
2 military and not as politicians. But within the army there was this aspect of ideology
3 which was to teach the troops that they needed to protect the citizens and their
4 property, to avoid discrimination. And that was for the military, that's why we were
5 accusing the APC of attacking the civilians. In our ideology when we said we had to
6 fight the military, was because we knew that our enemy was mainly the APC who
7 were killing civilians. That's what we taught our recruits.

8 PRESIDING JUDGE FREMR: [12:08:35] Thank you, Mr Ntaganda.

9 Ms Samson, you may proceed.

10 MS SAMSON: [12:08:39] Thank you.

11 Q. [12:08:41] Now, sir, following on from the questions of the Presiding Judge, in
12 your testimony T-211, page 51, lines 17 to 18, you testified, and I quote: "Generally
13 speaking, the armed wing follows the ideology of the political wing." You stand by
14 that testimony?

15 A. [12:09:28] I cannot change my statement. Even when Thomas Lubanga
16 created the UPC/RP party and we evolved within the FPLC, the chain of command
17 started with him himself, who was a politician. And this went down through the
18 line to the general staff. And that is the framework within which I said the army
19 follows the ideology of the political branch, and within that framework Thomas
20 Lubanga was a politician.

21 Q. [12:10:08] And also in your testimony, transcript T-214, page 4, lines 6 to 11
22 you testified, and I quote:

23 "Later -- well, you know, the political ideology is taught in the army, but at a certain
24 time, after the departure of Lompondo, we used a classroom in order to teach
25 ideology to those who went to our place. That was in order to install military

Trial Hearing
WITNESS: DRC-D18-D-0300

(Private Session)

ICC-01/04-02/06

1 ideology within them. This classroom was situated behind a banana field with
2 eucalyptus. This training was provided in the month of -- in the month of August.
3 After Molondo fled." End quote.

4 And you stand by this testimony that political ideology is taught in the army?

5 A. [12:11:18] I didn't understand you correctly. I can't locate the passage that
6 you're referring to. If you could perhaps give me details so that I can follow it better.

7 Q. [12:11:37] Sir, I'm quoting your testimony where you stated "the political
8 ideology is taught in the army". And you refer to the setting up of a classroom in
9 August to install military ideology within them. And that's right, isn't it? That's
10 your evidence?

11 A. [12:12:07] There is a military ideology. Those who had left Molondo's forces
12 followed the training relating to ideology in our own group in order that they should
13 understand how -- the way that they had behaved towards the civilian population
14 was not good and we wanted to make them understand also that discipline was an
15 important point for a soldier. That's what I stated.

16 Q. [12:12:52] And if the armed wing follows the ideology of the political wing, the
17 armed wing needs to know what the ideology of the political wing is, you would
18 agree?

19 A. [12:13:23] Yes, that's quite clear. The military need to know what their party's
20 policy is, they need to hear the ideas of the politicians. And I gave the example to
21 you. I said that the commander-in-chief gives or communicates this ideology to the
22 general staff and it is then communicated by the general staff to the echelons below.

23 Q. [12:14:02] And the RCD under Mbusa Nyamwisi was, as you've said, attacking
24 civilians, correct?

25 A. [12:14:22] Yes. The APC together with the combatants were attacking

Trial Hearing
WITNESS: DRC-D18-D-0300

(Private Session)

ICC-01/04-02/06

1 civilians, in this case the Hema population.

2 Q. [12:14:41] And Mbusa was arming the Lendu and Ngiti who were in conflict
3 with the Hema, correct?

4 A. [12:15:07] That's correct. The weapons that were being used by the Lendu
5 combatants came from the APC and the RCD-K/ML.

6 Q. [12:15:22] And you wanted to distance yourself from the APC who were doing
7 these things?

8 A. [12:15:50] That depends on the period under consideration. During the
9 Chui mobile forces I left because I wanted to save my skin. In March and April they
10 attacked us. When we proceeded to the creation of our own group, our own party,
11 we were determined to fight them. But before that I had intended to work with
12 them, but they always refused and they preferred to attack us every time.

13 Q. [12:16:38] And in the period in which Mbusa was arming the Lendu and Ngiti
14 to attack the Hema and was attacking civilians in 2002, you wanted to distance
15 yourself from the APC and the RCD, correct?

16 A. [12:17:11] No. I wanted really to be integrated, but they continued to isolate
17 us so that they could continue to attack members of the civilian population. They
18 knew that if they integrated us, they couldn't attack the civilian population because
19 we would be aware of everything that was happening and that's why they constantly
20 refused to integrate us.

21 Q. [12:17:49] You stated that the persons to be integrated were about 12 people.
22 How could you change the policies of the RCD, APC if you integrated?

23 A. [12:18:21] If I had been integrated as a sector commander, I would have had an
24 army under my orders. And if I had given instructions for these men not to attack
25 civilians, they would have obeyed. There was also Kisembo, Mambasa, he would

Trial Hearing
WITNESS: DRC-D18-D-0300

(Private Session)

ICC-01/04-02/06

1 not have agreed that his men should be attacking civilians. We had battalion
2 commanders and our number was sufficient to put an end to these actions because a
3 battalion commander has at least five to 700 men at his orders. So obviously that
4 depended on the numbers of RCD-K/ML, but the posts that we would have held
5 would have enabled us to deploy our ideology if we had been integrated into the
6 force.

7 Q. [12:19:32] So you wanted to be associated with a group who was committing
8 crimes against, you say, Hema civilians?

9 A. [12:20:08] If I had been part of the group, I would have been able to change the
10 course of events because I would not have been a simple soldier, I would have been a
11 commander and I would not have agreed to -- been part of an army that was killing
12 civilians. That was our objective. And I recall that when Thomas Lubanga was
13 explaining to Mbusa the purpose of the organisation he had suggested, he was saying
14 that this structure would enable peace to return to Ituri.

15 Q. [12:20:53] And you wanted the same leadership to remain in power, Mbusa
16 Nyamwisi as president and Lompondo as commander-in-chief and governor?
17 That's your evidence?

18 A. [12:21:23] That's correct, because according to the structure that was proposed
19 I would have been Lompondo's deputy and --

20 THE INTERPRETER: [12:21:41] Could the witness please be asked to repeat the
21 last part of that sentence. Apologies.

22 MS SAMSON: [12:21:49]

23 Q. [12:21:50] The interpreters didn't catch the last part of your answer. Could
24 you repeat it, please.

25 A. [12:22:07] I said that Mbusa was the president of RCD-K/ML and he would

Trial Hearing
WITNESS: DRC-D18-D-0300

(Private Session)

ICC-01/04-02/06

1 have continued in that role. When we requested reintegration, we were not taking
2 account of the departure of Mbusa Nyamwisi or Molondo.

3 MS SAMSON: [12:22:42] Mr President, we're still in private session. Because we
4 were dealing with the statement which I've moved away from in my series of
5 questions I'd like to continue this line in public session, but I understand that the
6 Chamber has asked that I read the remainder of paragraph 41 to the witness.

7 PRESIDING JUDGE FREMR: [12:23:05] Yes, I think it was in harmony with the
8 request of Mr Bourgon, which we are supporting.

9 MS SAMSON: [12:23:14] So with your leave we could stay in private session so
10 that I could deal with that, and then I'll indicate when we can move.

11 PRESIDING JUDGE FREMR: [12:23:19] All right then.

12 MS SAMSON: [12:23:21]

13 Q. [12:23:22] Sir, I'll continue with that questioning, but I would like to finish
14 with this document so we can move to public session.

15 Paragraph 41 of the transcript, which is -- pardon me, of the statement which we had
16 up a moment ago, it is DRC-OTP-0147-0002, and it's confidential. Paragraph 41 is on
17 page 0009.

18 (Redacted)

19 states that the group who participated in the meeting in Kasese did so under the title
20 FRP and that the FRP wanted to put the management of Ituri into the hands of
21 Iturians, that the group of Mbusa was in majority composed of non-Iturians who
22 armed the Lendu and Ngiti who were in conflict with the Hema.

23 Now I'll continuing reading in French, it stays and I quote:

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-D18-D-0300

(Private Session)

ICC-01/04-02/06

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 My question, sir, now that's the document that we just looked at together is it not, the
6 17 April 2002 declaration?

7 A. [12:25:50] If the Iturians wanted to have the power to run their own region,
8 I was not an Iturian, so they would have not associated me with their aims if they
9 wanted to take the power. They could have put me to one side because I was a
10 foreigner. This is why I don't understand this. What I'm reading here is some
11 reflections or an approach which was written by Iturians, but I was not an Iturian so I
12 do not consider myself as having been part of this group.

13 MS SAMSON: [12:27:09] Now, Mr President, we may move into public session,
14 with your leave.

15 PRESIDING JUDGE FREMR: [12:27:15] Certainly.

16 Mr Bourgon.

17 MR BOURGON: [12:27:17] Thank you, Mr President. I will not insist on reading
18 a few more sentences of this document which I believe are relevant, so I will do that
19 in re-examination in order to save some time. So thank you.

20 PRESIDING JUDGE FREMR: [12:27:28] Noted.

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

22 (Open session at 12.27 p.m.)

23 THE COURT OFFICER: [12:27:45] We are back in open session.

24 PRESIDING JUDGE FREMR: [12:27:47] Thank you, court officer.

25 Ms Samson, please proceed.

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0300

1 MS SAMSON: [12:27:50] Thank you.

2 Q. [12:27:53] Now, sir, in answer to my question moments ago that you wanted
3 the same leadership to remain in power, that is Mbusa Nyamwisi as president and
4 Lompondo as commander-in-chief and governor, you said that's correct. Now, do
5 you know why therefore after the meeting in Kasese on 16 May 2002 Thomas
6 Lubanga publicly declared that the RCD movement had been replaced by the FRP as
7 governors of Ituri, managers of Ituri?

8 A. [12:28:40] I don't recall any such statement, nor the context in which it might
9 have been made.

10 Q. [12:29:08] And that he stated that the management of the territory of Ituri by
11 Mbusa Nyamwisi was characterised by political chaos and disorganisation of the
12 administrative machine. Do you recall that Thomas Lubanga wrote those words on
13 16 May 2002?

14 A. [12:29:51] I don't remember that.

15 Q. [12:29:58] Let's take a look at the document together. It's
16 DRC-OTP-0194-0328. It's a public document. We've looked at it before, you've also
17 given testimony about it in-chief. It's a public document.

18 MR BOURGON: [12:30:31] Can I just have number of item, please.

19 MS SAMSON: [12:30:35] Yes, certainly. It is number 678.

20 Q. [12:31:07] Now, sir, you've had a chance --

21 PRESIDING JUDGE FREMR: [12:31:11] Sorry, Defence, are you ready, or? You
22 are ready? May we proceed?

23 It seems so. So please, Ms Samson, you may proceed.

24 MS SAMSON: [12:31:22] Thank you.

25 Q. [12:31:24] Now sir, you've seen this document before, it's titled memorandum

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 of the political members of Ituri to the intention of the president of the DRC in
2 Kinshasa.

3 And in the introduction, which I'll read, it states in French: "The political leaders of
4 the province of Ituri coming together within the Front for Reconciliation and Peace
5 (FRP), concerned with political, social and economic development of our entity;
6 having carried out a deep analysis of the political, administrative, economic,
7 sociocultural and security situation that has reigned since the rebellion of 1998 to this
8 day, but with a particular note since the taking of power by Mr Mbusa Nyamwisi in
9 November 2001, we have noted the following ..."

10 (Speaks English) And if I look at point 2 or the second bullet point on the page, I'll
11 continue to read in French:

12 (Interpretation) "The management of the territory (of the province) of Ituri by
13 Mr Mbusa Nyamwisi has been characterised by political chaos, disorganisation of the
14 administrative machine, which have made it possible to pillage the economic
15 resources to the detriment of the population."

16 (Speaks English) And if we turn, please, to the second page, page 0329, we see at the
17 top, the first bullet point, in French, I will read:

18 (Interpretation) "Due to his mismanagement at political level, Mr Mbusa Nyamwisi
19 has got rid of the deliberating organs (territorial assemblies as well as provincial
20 assemblies and the Congress) set up at the time of the FLC (Liberation Front of
21 Congo), whereas these provide a safeguard for the executive organised at all levels,
22 with a view to having the population represented in these organs participate in the
23 management of public life."

24 (Speaks English) The next bullet point:

25 (Interpretation) "The whole of his reign has been characterised by deliberate -- by

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 disorganisation which was wished for and entertained in order to guarantee the basis
2 of his absolute reign."

3 (Speaks English) The third bullet point:

4 (Interpretation) "Mr Mbusa Nyamwisi has no societal project."

5 (Speaks English) And under the heading in French (Interpretation) "As regards
6 security" (Speaks English) is written:

7 (Interpretation) "The RCD-KIS/ML of Mr Mbusa Nyamwisi has shown itself to be
8 incapable of ensuring security in Ituri due to the fact that the movement is both judge
9 and party in the disorder and conflicts in Ituri."

10 (Speaks English) And now, if I look at the conclusion, we look together at the
11 conclusion, the drafter is right, and I will read in French from the words underneath
12 "Conclusion" in French:

13 (Interpretation) "Given the above, we bring to your attention the following ..."

14 (Speaks English) And the third bullet point:

15 (Interpretation) "His movement, the RCD-KIS/ML, is replaced by the FRP (Front for
16 Reconciliation and Peace) in Ituri, created for reconciliation between Iturians and to
17 set up dialogue with Kinshasa with a view to reunifying the country and achieving
18 national reconciliation."

19 (Speaks English) And on the third page, 0330, this is done in Bunia on 16 May 2002,
20 and in French (Interpretation): "For the political leaders of Ituri".

21 (Speaks English) And the people that we see here who have signed this memorandum,
22 including Adubango Biri, John Tinanzabo, Avochi, Lubanga, Ndukute, Lonema, these
23 are members of the FRP, are they not?

24 A. [12:37:55] I can see the document as drafted and signed. I'm discovering the
25 existence of this document here. I didn't know before. And I was not a member of

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 the FRP.

2 Q. [12:38:22] These are the -- some of the individuals who went to the Kasese
3 meeting with you, those that I've named, correct?

4 A. [12:38:41] When we arrived at the airport before taking the plane, I saw that
5 the Ugandans were gathering them together. I don't know if they had an agreement
6 with the UPDF. That's something that I didn't know. I hadn't spent a lot of days in
7 Bunia when they attacked us.

8 Q. [12:39:08] My question is simply the individuals I mentioned were with you in
9 Kasese. I mentioned Adubango Biri, John Tinanzabo, Achovi, Thomas Lubanga,
10 Ndukute, Richard Lonema.

11 They signed this document on 16 May 2002 and they were with you in Kasese in
12 April 2002; that's right, isn't it?

13 A. [12:39:38] Yes, these people were in Kasese, but during the fighting we weren't
14 together. We were together in Kasese, that's true.

15 Q. [12:39:59] A few weeks after returning from Kasese, these people who were
16 with your delegation proclaimed to the DRC government in Kinshasa, the president,
17 that the RCD-KIS/ML is replaced by the FRP, correct?

18 A. [12:40:44] Madam, you're speaking about my government, but where is my
19 name? I don't see my name anywhere. I was never a member of the FRP, whose
20 existence I only found out about here. I didn't know about the FRP. I was never a
21 member of that movement, I didn't know in Bunia at the time.

22 Q. [12:41:16] Sir, you've denied to the Chamber that the delegation that you
23 participated in in Kasese, which included a number of the persons who signed this
24 declaration, you've denied that your objective was to get rid of the RCD-K/ML and its
25 leadership in order to put the FRP in the place of management of Ituri. You've

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 denied that. But this document dated 16 May 2002, several weeks later, states that
2 members of that delegation in fact did proclaim the end of the RCD management of
3 Ituri and that the FRP was now taking over.

4 So this, I suggest to you, contradicts your evidence about the intentions of your
5 delegation at the Kasese meeting. Do you agree?

6 A. [12:42:34] You've asked me a lot of questions. I no longer remember the
7 details. But what I can tell you is that I cannot agree with the thesis that I was a
8 member of that organisation. When we left there, we weren't told that we had an
9 intention to replace the RCD-K/ML. That was never a subject of the discussions
10 during the Kasese meeting. We spoke about the restructuring, which was the
11 problem.

12 Q. [12:43:24] And your testimony today is that you wanted Mbusa Nyamwisi and
13 Lompondo to remain in power and have your group integrate into the APC again, but
14 the language used by Thomas Lubanga and others in this memorandum on
15 16 May 2002 is quite severe, is it not, in terms of its criticism of Mbusa Nyamwisi?

16 A. [12:44:10] I have the impression that you want to have a comment from me on
17 the subject of the issue of the points developed in this document, but I wasn't a
18 member of this group. I wasn't a member of the FRP. I didn't even know the FRP
19 at the time.

20 Q. [12:44:57] You were a member of the delegation in Kasese and I put to you that
21 that delegation never wanted Mbusa Nyamwisi and Governor Lompondo to remain
22 in power; they wanted them out. That's my suggestion to you. Do you agree?

23 A. [12:45:19] I don't know what these people think. When we arrived we spoke
24 about the army, the restructuring and the reasons why we were fighting. We didn't
25 address issues in accordance with what these different people thought. I therefore

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 can't speak or make a statement with regards to your suggestion.

2 Q. [12:46:03] Now, a second meeting was scheduled between Thomas Lubanga's
3 delegation and the RCD, this time in Kampala in the weeks following the Kasese
4 meeting, correct?

5 A. [12:46:52] I no longer remember. We took a plane to return to Bunia.

6 Q. [12:47:00] Thomas Lubanga and other members of the second delegation in
7 Kampala were placed under house arrest and transferred to Kinshasa in June 2002?

8 A. [12:47:30] I found out about that when I was in Mandro. I found out that
9 they had been transferred to Kinshasa.

10 Q. [12:47:44] And at this time your group decided to get logistical support,
11 including weapons from Rwanda, correct?

12 A. [12:48:01] I think I already stated something about that and I maintain what I
13 said. We were looking at means of surviving and how to fight the APC because the
14 APC were attacking us all the time with the combatants. Afterwards we received
15 support from RCD-Goma, support in terms of weapons. I already stated that during
16 my testimony.

17 Q. [12:48:48] And now I'm putting to you that the weapons came from Rwanda.

18 A. [12:49:04] If you had representatives there who knew of the provenance of
19 these weapons, you can say that, but I know who provided them. And that's not
20 secondhand information which I have. When the chief of general staff arrived, we
21 had a discussion and we heard about how arms had -- weapons had been sent and
22 who had sent them and I gave the source of provenance of these weapons during my
23 testimony.

24 Q. [12:49:50] Now I just want to be clear in your answer. Are you denying that
25 the weapons came from Rwanda?

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 A. [12:50:05] I can't give a different version from what I know. I can't change my
2 testimony. The weapons came from RCD-Goma.

3 Q. [12:50:30] Now, sir, in the context of this case you have agreed with the
4 Prosecution certain facts and one of the facts, agreed fact number 69, to which you
5 have agreed is, and I'll quote: "Rwanda provided weapons and ammunition to the
6 UPC/FPLC beginning in July 2002."

7 How do you reconcile that agreement on your part with the Prosecution and your
8 current evidence?

9 PRESIDING JUDGE FREMR: [12:51:23] Hold on, Mr Witness.

10 Mr Bourgon.

11 MR BOURGON: [12:51:25] Mr President, there is a difference between an agreed
12 fact, whereas the fact might have been accepted, and the knowledge of the witness.
13 So that's two different things, so we should not mix up the two. Thank you.

14 PRESIDING JUDGE FREMR: [12:51:39] Noted.

15 Please proceed.

16 MS SAMSON: [12:51:43]

17 Q. [12:51:43] Now, sir, you have agreed in these proceedings with the Prosecution
18 that weapons were delivered from Rwanda to the UPC/FPLC beginning in July 2002.
19 Can you explain that?

20 A. [12:52:18] Could you show me that passage. I no longer remember it and I
21 didn't give such a statement.

22 Q. [12:52:24] It's one of a number of facts that the Prosecution and you through
23 your lawyers have discussed about the events in Ituri in 2002 and 2003 and the
24 precise fact or point to which we have obtained your agreement through your
25 lawyers is, quote, "Rwanda provided weapons and ammunition to the UPC/FPLC

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 beginning in July 2002."

2 A. [12:53:18] Could you show me that testimony. I would like to read it --

3 PRESIDING JUDGE FREMR: [12:53:33] Mr Witness --

4 THE WITNESS: [12:53:35]) (Interpretation) -- in order to remind myself thereof.

5 PRESIDING JUDGE FREMR: [12:53:38] Sorry to the interpreters. Sorry, I was
6 premature.

7 Mr Witness, you probably misunderstood, which is no problem because it's legal,
8 legal issue. The statement that Rwanda provided weapons doesn't have origin in
9 any of your previous testimony or statement, it's part of the agreement between
10 parties and one of the parties is Defence representing you. So it's something like
11 legal agreement which is part of the case and then it's a presumption that those facts
12 on which such agreement have been taken are undisputable. So there is also
13 presumption that the Defence team consulted you on that, so they didn't do it without
14 your agreement.

15 Is it now clear to you, that it's not -- we are not -- or Ms Samson doesn't speak about
16 your testimony, it's agreement between the Prosecution and the Defence.

17 THE WITNESS: [12:55:06]) (Interpretation) Your Honour, I didn't study law, but I
18 do know that whenever my counsel asks me questions I told them that I would give
19 them a lot of evidence to show them that we received arms from RCD-Goma. That's
20 what I told them. And I spoke about the same subject here. I don't understand
21 very well what's being said at the moment, or if I don't, that might be because I didn't
22 study law.

23 PRESIDING JUDGE FREMR: [12:55:59] All right.

24 Ms Samson, please proceed.

25 MS SAMSON: [12:56:03]

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 Q. [12:56:04] Sir, it can be a difficult concept. I will certainly grant you that.

2 But I will just ask one more question on this topic.

3 The Prosecution provided to your lawyers a series of statements about the events in

4 Ituri, very short statements about who is who, what events took place on which dates,

5 and your lawyers responded to the Prosecution by telling us whether they, and we

6 assume you, agreed with those statements. And what your lawyers told us and

7 what we've together told the Chamber is that you agree that in July 2002 weapons

8 and ammunition were provided to the UPC/FPLC from Rwanda.

9 A. [12:57:28] No. The weapons didn't come from Rwanda. They came from

10 Goma. I can give you the details. If you speak about Rwanda, I can't give you any

11 precise evidence about that. So how can you describe how the weapons came from

12 Rwanda? If I had to say they came from Rwanda, then I wouldn't be saying what

13 was correct. But I can tell you how they came from Goma in a detailed way.

14 Q. [12:58:16] Goma borders Rwanda, does it not?

15 A. [12:58:28] Yes. Yes, it borders Rwanda.

16 MS SAMSON: [12:58:39] Mr President, I would like to continue this line of

17 questioning in private session and develop it a bit more. Given the time, I'm in your

18 hands as to whether you wish me to proceed now.

19 PRESIDING JUDGE FREMR: [12:58:52] Since I believe that you will need more

20 questions, I would rather prefer to stop now.

21 Mr Bourgon.

22 And by the way, you told us that you would like to continue in private session

23 because it was also my proposal.

24 MS SAMSON: [12:59:05] Yes, that's right when we resume.

25 PRESIDING JUDGE FREMR: [12:59:07] All right.

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 Mr Bourgon.

2 MR BOURGON: [12:59:09] Yes, Mr President. Are we in private session now?

3 No. Because I would like to make sure that we are in public session just to say that I
4 confirm that the agreed facts, Mr Ntaganda was not consulted as he mentioned. I
5 did not say that before. I waited until he would say it. What Mr Ntaganda told us
6 is what he said on the record. He never -- he was not consulted when this document
7 was provided to the Prosecution. And this is my mistake.

8 PRESIDING JUDGE FREMR: [12:59:49] Yes, because my next question would be
9 why not? Because probably everybody would assume that you consulted. Okay,
10 I think it's fine with me.

11 MR BOURGON: [13:00:00] Mr President, I have a few transcript corrections to
12 make in terms of on page 57, line 24 there is a word I'd like a transcript correction
13 whereas the witness would have said were not together instead of were together. So
14 I'd just like to refer to the audio but to refer to page 57, line 24 in English.
15 On page 50, line 3 there's a word missing there and I guess I can say that for the audio
16 to be checked that the witness said deputy sector commander and not only sector
17 commander.

18 On page 35, line 1 the transcript reads "I was preparing for the meeting." This is not
19 what we heard. I would like the audio to be checked.

20 And lastly, a material correction on page 45, line 13 where there's a name mentioned
21 there, the name mentioned now is Ndisa. This is not the name that we heard. I can
22 leave that one to my colleague to ask if the Prosecution would like to have
23 confirmation of the proper that was mentioned at page 45, line 13. Thank you,
24 Mr President.

25 And I wanted this -- and I can -- if the Chamber would like to have explanation as to

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0300

1 why when this document was provided to the Prosecution Mr Ntaganda was not
2 consulted, I will be happy to provide that to the Chamber, Mr President.

3 PRESIDING JUDGE FREMR: [13:01:34] I believe it's not necessary. You just said
4 it's your mistake. I think it's sufficient at least for the Chamber.

5 Otherwise we break now. I also should say that the request for control of the
6 transcript as mentioned by Mr Bourgon is fully
7 supported by the Chamber.

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

9 THE COURT USHER: [13:02:11] All rise.

10 (Recess taken at 1.02 p.m.)

11 (Upon resuming in open session at 2.30 p.m.)

12 THE COURT USHER: [14:30:51] All rise.

13 Please be seated.

14 PRESIDING JUDGE FREMR: [14:31:29] Good afternoon, everybody. I haven't
15 noticed any change in composition of the teams.

16 Mr Bourgon.

17 MR BOURGON: [14:31:41] Mr President, there is a quick change which I did not
18 even note myself this morning. He arrived just before I addressed the Chamber.
19 Jean Baptiste Gasominari came in the courtroom just before we began and I did not
20 put his name on the record and he is here this afternoon also. Thank you.

21 PRESIDING JUDGE FREMR: [14:31:59] And also, sorry, my excuse then, because I
22 have this block of the table with, with files.

23 And before we continue with next part of cross-examination of Mr Ntaganda by
24 the Prosecution, the Chamber is to deliver its oral ruling on request to -- Prosecution
25 request to use non-privileged detention centre communication during the testimony

Trial Hearing
WITNESS: DRC-D18-D-0300

(Private Session)

ICC-01/04-02/06

1 of Witness D-12.

2 And we have to move into private session for that purpose.

3 (Private session at 2.32 pm) * Reclassified entirely in public

4 THE COURT OFFICER: [14:32:39] We're in private session.

5 PRESIDING JUDGE FREMR: [14:32:51] Thank you, court officer.

6 The Chamber shall now deliver its oral ruling on the Prosecution's request pursuant
7 to Regulation 35 and Article 69(3) to use a detention centre call during the testimony
8 of Defence Witness D-12, filed on 16 August 2017 with filing number 2010.

9 I will refer to this filing as "Request" and to Witness D-12 as "Witness".

10 The Prosecution seeks the Chamber's authorisation to use for its cross-examination of
11 the witness one detention centre call of approximately 20 minutes and the

12 corresponding transcription and translation which I will collectively refer to as "Call".

13 The Prosecution acknowledges that it failed to meet the deadline imposed by

14 the Chamber for the filing of such requests and that the reason for this failure does

15 not qualify as good cause. However, it argues that extending the time limit would

16 be in the interest of justice and the determination of the truth and would not unduly

17 prejudice the accused.

18 On 21 August 2017, the Defence filed its response in filing number 2012 opposing the

19 Request. According to the Defence, the Request should be rejected in limine on the

20 basis that, first, the Prosecution failed to demonstrate that it was unable to file the

21 Request within the time limit for reasons outside its control as required under

22 Regulation 35(2); second, the interest of justice standard invoked by the Prosecution is

23 not applicable to applications filed after expiry of the time limit; and, third, use of the

24 Call will not advance the search for the truth.

25 In the alternative, the Defence argues that the Request should be rejected on the

Trial Hearing
WITNESS: DRC-D18-D-0300

(Private Session)

ICC-01/04-02/06

1 merits.

2 On 23 August 2017, in filing number 2014, the Prosecution sought leave to reply to
3 the Defence response in relation to six issues.

4 On 24 August 2017, in filing number 2017, the Defence responded to the request for
5 leave to reply, opposing it on all six issues.

6 With regard to the latter two filings, and as a preliminary matter to its ruling,
7 the Chamber has found that it would not have been assisted by further submissions
8 on any of the six issues identified by the Prosecution. The Chamber therefore
9 decided to reject the request for leave to reply, which is hereby placed on the record.

10 Turning to the merits of the Request, the Chamber recalls that in its decision with
11 filing number 1918 it ruled that "from the third evidentiary block onwards any
12 requests for use of detention centre communications shall be filed within five days of
13 notification of the forthcoming witness list in which any of the witnesses with whom
14 the Prosecution intends to use any of the conversations is listed".

15 As the Defence submitted its forthcoming witnesses list for the third block on
16 28 July 2017, the Request was filed more than two weeks after the expiry of the time
17 limit set by the Chamber and was therefore in accordance with Regulation 35(2) of the
18 regulations subject to the demonstration of reasons outside the Prosecution's control.

19 The Chamber also notes that even if a party fails to demonstrate such reasons,
20 the Chamber has discretion to accept filings filed after expiry of the time limit.

21 In the present case, however, the Chamber recalls that in its decision with filing
22 number 1883 it ruled that "the Prosecution shall not be allowed to use the material
23 obtained in the context of the Article 70 proceedings during the Defence's
24 presentation of evidence unless specifically authorised by the Chamber as necessary
25 for the determination of the truth pursuant to its duty under Article 69(3) of the

Trial Hearing
WITNESS: DRC-D18-D-0300

(Private Session)

ICC-01/04-02/06

1 Statute upon receipt of substantiated request to be filed sufficiently in advance of the
2 intended use".

3 In its decision with filing number 1918 the Chamber provided additional directions
4 on the requirements for any such request and, as recalled above, set a time limit for
5 the submission of such requests. Considering that the Prosecution filed the Request
6 more than two weeks after the expiry of the time limit set by the Chamber without
7 any justification, the Chamber considers that the Prosecution has failed to apply the
8 necessary diligence to ensure compliance with the aforementioned regime.

9 In addition, the Chamber is not persuaded by the Prosecution's claim that extending
10 the time limit would be in the interest of justice and necessary for the determination
11 of the truth. Indeed, the Chamber is of the view that even without using the Call
12 itself or the information contained in it, the Prosecution may still question the witness
13 on his motivation for testifying and with respect to whether he had any interaction
14 with the accused and thereby explore any allegations of improper influence in
15 relation to his testimony.

16 In these circumstances and without prejudice to a future request, were the Witness's
17 testimony to be postponed, the Chamber rejects the Request.

18 This concludes the Chamber's ruling.

19 Now, court officer, let's return back into open session.

20 Sorry, Ms Samson, you want to make any comment, or --

21 MS SAMSON: [14:41:01] Yes. Solely in that if your Honour is moving back into
22 public session --

23 PRESIDING JUDGE FREMR: [14:41:09] You would prefer to remain in private.

24 MS SAMSON: [14:41:11] If I were to commence now, there is a section that I have to
25 do in private session, but I can start in public session.

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 PRESIDING JUDGE FREMR: [14:41:18] It's up to you.

2 MS SAMSON: [14:41:19] I will start in public session. Thank you.

3 PRESIDING JUDGE FREMR: [14:41:21] All right.

4 So, court officer, as I said, please let's return back into public session.

5 (Open session at 2.41 p.m.)

6 THE COURT OFFICER: [14:41:45] We are back in open session, Mr President.

7 PRESIDING JUDGE FREMR: [14:41:46] Thank you, court officer.

8 Ms Samson, you may proceed.

9 MS SAMSON: [14:41:53] Thank you. I ask your indulgence, Mr President, for one
10 moment while we check one transcript reference.

11 PRESIDING JUDGE FREMR: [14:42:05] No problem. Take your time.

12 (Counsel confers)

13 MS SAMSON: [14:42:18] Thank you.

14 Q. [14:42:21] Now you have testified that an individual named Jacques had
15 a coordination role in the weapons delivery in Mandro in and after July 2002, that's
16 right?

17 A. [14:42:51] Could you please reread me the text of the statement I made so that I
18 can recall the context in which I made the statement about July, please.

19 Q. [14:43:12] The transcript is T-214, page 45, lines 14 to 21. And you were asked
20 by the Presiding Judge:

21 Question: "What was the origin of the weapons? Who was this company or state or
22 people who in fact provided you with those weapons?"

23 And your answer was: "Your Honour, I found out when Jacques and Kahwa arrived.

24 At the time of the dropping late Kisembo was present, but prior to the dropping ..."

25 Your Honour, at this time, although this is an open session transcript, I believe the

Trial Hearing
WITNESS: DRC-D18-D-0300

(Private Session)

ICC-01/04-02/06

1 witness inadvertently made a reference in the public session transcript which it is best
2 that I not repeat again. If I may, we perhaps should move into private session.

3 PRESIDING JUDGE FREMR: [14:44:25] Yes, I fully share, share your view.

4 Court officer, let's return back into private session.

5 (Private session at 2.44 p.m.) * Reclassified partially in public

6 THE COURT OFFICER: [14:44:43] We are back in private session.

7 PRESIDING JUDGE FREMR: [14:44:50] Thank you, court officer.

8 Ms Samson, please.

9 MS SAMSON: [14:44:53] Thank you.

10 Q. [14:44:55] Now, before I continue, sir, Jacques was a pseudonym that you
11 assigned to Mr Safari, correct?

12 A. [14:45:13] Indeed.

13 Q. [14:45:18] And the -- I'll start to read the passage again, your answer again,
14 because in that section you interchangeably refer to Jacques and Safari in open session.

15 But now we're in private session.

16 So your answer was:

17 "Your Honour, I found out when Jacques and Kahwa arrived. At the time of the
18 dropping late Kisembo was present, but prior to the dropping Safari had been talking
19 with Sylvain Mbuki, and these came from RCD/Goma. Safari was talking with
20 RCD/Goma and we could hear them. Then they subsequently visited us, he
21 subsequently visited us and I saw him. So these weapons came from RCD/Goma
22 and he is the one who coordinated the whole thing." End of quote.

23 And coming back to my question, it was: You have testified that an individual
24 named Jacques had a coordination role in the weapons delivery in Mandro in and
25 after July 2002.

Trial Hearing
WITNESS: DRC-D18-D-0300

(Private Session)

ICC-01/04-02/06

1 A. [14:46:57] That's correct. But I don't know whether you have read exactly what
2 I said about the month. But I agree with you that Safari was coordinating the
3 operation and he was talking to Sylvain Mbuki.

4 Q. [14:47:24] And in the passage of your testimony that I just read, you stated,
5 quote: "I found out when Jacques and Kahwa arrived."
6 Chef Kahwa also had a role in the weapons delivery, did he not?

7 A. [14:47:51] I testified that I found out that it was RCD/Goma while Safari was
8 talking to Sylvain Mbuki. But when they arrived, I did not know that RCD/Goma
9 was willing and that was going to -- and was going to supply us with weapons.

10 Q. [14:48:23] Now, I'll come back to my question. It was that you testified, which I
11 just read to you, quote: "I found out when Jacques and Kahwa arrived." End quote.
12 And my question is that Kahwa had a role in the weapons delivery; is that right?

13 A. [14:49:04] Would you please re-read what I said, because I don't remember
14 having said that Kahwa was supplying us with weapons. I simply said that Safari
15 arrived with Chef Kahwa. I don't recall having said that Chef Kahwa was supplying
16 us with weapons. I don't think that I gave this information or stated that in my
17 testimony.

18 Q. [14:49:42] The portion of your prior testimony that I just read out to you, and I'll
19 do it again, is as follows, quote, a question from Presiding Judge Fremr: "What was
20 the origin of the weapons? Who was this company or state or people who in fact
21 provided you with those weapons?"

22 Your answer was: "Your Honour, I found out when Jacques and Kahwa arrived."
23 End quote.

24 Now, based on your testimony, it's right, isn't it, that Kahwa had a role in the delivery
25 of weapons to you?

Trial Hearing
WITNESS: DRC-D18-D-0300

(Private Session)

ICC-01/04-02/06

1 A. [14:50:47] When Safari arrived, Chef Kahwa showed him where we were and
2 those -- speaking on the phone were Safari and he was talking directly to
3 Sylvain Mbuki. And it's in this context that I gave the information that I gave in my
4 testimony.

5 Q. [14:51:14] And so Chef Kahwa and Safari were in contact, correct?

6 A. [14:51:35] The contact between Safari and me was the same as the contact
7 between Safari and Chef Kahwa. Plus Safari was staying with Chef Kahwa.

8 Q. [14:51:53] And -- what I'm putting to you is that Chef Kahwa had a role with
9 Safari in the delivery of weapons. Do you agree with that or do you disagree?

10 A. [14:52:23] The one who -- the person who led Safari to where we were from
11 Goma was Chef Kahwa, because Chef Kahwa himself confirmed to me that he had
12 been to Goma. But with regard to the supply of weapons, I recall that Safari was
13 talking directly to Sylvain Mbuki, but I never saw Chef Kahwa in any direct contact
14 or direct conversation with Sylvain Mbuki.

15 Q. [14:53:08] Now, you just stated that Chef Kahwa confirmed to you that he had
16 been to Goma with -- and my suggestion to you is that that trip was in connection to
17 the supply of weapons to you. Is that right?

18 A. [14:53:43] When he went, he didn't tell us the purpose of his journey. But when
19 he returned, he told me that he had just returned from Goma and he had been tasked
20 with guiding Safari so that he could come and see the situation. And that is what I
21 referred to in my testimony.

22 Q. [14:54:19] And you know, don't you, that Chef Kahwa went from Goma to
23 Kigali to obtain the weapons, correct?

24 A. [14:54:49] He said that he had left Kampala to go to Goma, but he didn't tell me
25 that he had also been to Kigali.

Trial Hearing
WITNESS: DRC-D18-D-0300

(Private Session)

ICC-01/04-02/06

1 Q. [14:55:06] Now, you also testified that Safari gave GPS coordinates and asked
2 you to make fires along the Kudja river before the weapons were airdropped, correct?

3 A. [14:55:51] I would ask you please to re-read to me the passage in which you say
4 that I said that we -- that we lit fires. I would like to make sure whether I said it, it
5 was I myself who lit the fires.

6 Q. [14:56:11] Yes. So I'm referring to transcript T-214, page 42. And I will read
7 lines 10 to 21.

8 The question put to you was: "So who carried out the liaison work between the
9 aeroplanes, the aeroplanes that were dropping the weapons?"

10 Answer: "Jacques. Just him."

11 Question: "How did he do that? What do you know about the subject of the
12 dropping of these weapons? How did it work? How did it go?"

13 Answer: "When the plane arrived, it was foggy. He had a Motorola and he spoke
14 to somebody, saying that the visibility wasn't good. And he gave the GPS
15 coordinates and asked us to make fires, and the recruits set fires alongside the Kudja
16 river in four places. And when the plane arrived, we heard him speaking on the
17 Motorola. I didn't know that the GPS had a satellite telephone as well, and that was
18 when we saw the parachutes being dropped or that the parachutes were dropping
19 these weapons." End quote.

20 And now you stand by that testimony?

21 A. [14:58:04] Yes, that's what happened.

22 Q. [14:58:10] And it's right, isn't it, that Safari, his real name is Célestin Senkoko?

23 A. [14:58:35] This is information that I have heard here during the course of
24 a witness statement. This is not anything I was aware of beforehand.

25 Q. [14:58:49] You were not aware that the individual named Safari was given the

Trial Hearing
WITNESS: DRC-D18-D-0300

(Private Session)

ICC-01/04-02/06

1 name Safari to remove any trace or link between airdropping of weapons and
2 Rwanda?

3 A. [14:59:30] I am not aware of that. When RCD-Goma and
4 RCD-Kisangani -- well, there were agreements between RCD-Goma and
5 RCD-Kisangani. I know that they were working for Wamba Dia Wamba, but I -- or
6 he was working for Wamba Dia Wamba, I didn't know that he was given the name
7 Safari so that there would be no link between the weapons drop and the Rwandan
8 government.

9 Q. [15:00:20] You knew, did you not, that Safari was not this individual's real
10 name?

11 A. [15:00:38] No, I did not know that this was a nickname, because if I had known
12 his real name I would have addressed him by his real name. He came under the
13 name of Safari and I used to call him Safari. I knew him within the RCD-Goma
14 when he arrived with the Ugandans and at that time I knew him by the name Safari.

15 Q. [15:01:05] And you know that Safari is a Rwandan?

16 A. [15:01:25] Well, it is possible that he may have acquired the Rwandan
17 nationality. He used to speak Kinyarwanda without any problems, but he was
18 a native of Biréré and it was easily recognisable in his accent. He had a different
19 accent from the accents of those who are born and bred in Rwanda. So he had
20 grown up in Biréré.

21 Q. [15:02:08] And you know, don't you, that Safari is not a Rwandan name?

22 A. [15:02:32] Yes, I know that it is not a Rwandese name, but many Rwandese go
23 by the name Safari.

24 Q. [15:02:51] Now, Chef Kahwa, he was in Lubanga's delegation in meetings in
25 Kampala in June 2002, correct?

Trial Hearing
WITNESS: DRC-D18-D-0300

(Private Session)

ICC-01/04-02/06

1 A. [15:03:09] When Chef Kahwa left I remained behind in Mandro. I don't know
2 when he joined President Toms in Kampala. I don't know at what time and I don't
3 know how they got to meet. I don't have any information about that. But when he
4 left I remained in Mandro and he went all by himself. And I was in Mandro at that
5 time.

6 Q. [15:03:43] Now I take it from your last answer that you agree that Chef Kahwa
7 was in Kampala in June 2002 with Thomas Lubanga's delegation; is that right?

8 A. [15:04:05] I am not in a position to know. When he left, it is at that time that
9 the APC and the combatants had not yet attacked us in Mandro. I remember that he
10 left shortly before and then they attacked us later on when he was not there. But I
11 do not recall specifically whether he left in May or in June. I can't be more specific
12 than that. What I know, however, is that he left before the attack on Mandro and
13 Saikpa.

14 Q. [15:04:45] And to be clear for the transcript, when you are talking about "he" in
15 your last answer, you're referring to Chef Kahwa?

16 A. [15:04:59] Yes, I am talking about Chef Kahwa in relation to the time when
17 Chef Kahwa left Mandro and I remained behind in Mandro.

18 Q. [15:05:14] Now it's right, isn't it, that Louis Beiza also went to Kampala with
19 Thomas Lubanga?

20 A. [15:05:34] I saw Beiza for the first time, if memory doesn't fail me, I saw him for
21 the first time when --

22 THE INTERPRETER: [15:05:55] Message from the Swahili booth: Could the
23 witness be asked to repeat his answer.

24 PRESIDING JUDGE FREMR: [15:06:00] Mr Ntaganda, sorry to interrupt you. We
25 got request from the Swahili booth, please could you kindly repeat your last response

Trial Hearing
WITNESS: DRC-D18-D-0300

(Private Session)

ICC-01/04-02/06

1 because it hasn't been captured by the interpreters. Thank you.

2 THE WITNESS: [15:06:25] (Interpretation) Okay. I saw Beiza for the first time
3 when he brought a sofa to my house. That was in November or October 2002, or
4 thereabouts. That was the first time I saw him. And then later on I got to meet him.
5 But before October 2002 I did not know Beiza.

6 MS SAMSON: [15:07:00]

7 Q. [15:07:00] So does that mean that you did not know that Beiza had been in
8 Kampala with Thomas Lubanga in June 2002?

9 A. [15:07:19] I'm not in a position to know. What I'm telling you is that at that
10 time I did not know him yet. I only got to know him later.

11 Q. [15:07:37] My suggestion to you is that both Chef Kahwa and Beiza went to
12 Kampala with Thomas Lubanga and his delegation at the end of May, June 2002, but
13 that they left before Thomas Lubanga and his delegation were arrested and
14 transferred to Kinshasa. Do you know about that?

15 A. [15:08:12] No, I am not aware of that. I don't know at what time President
16 Thomas left Bunia for Kampala. All I learnt is that he was arrested in Kampala and
17 taken to Kinshasa. But when he left Bunia for Kampala I was not aware at that time.
18 I did not have that information.

19 Q. [15:08:34] But you certainly do know that neither Chef Kahwa nor Beiza were
20 detained in Kinshasa with Thomas Lubanga's delegation, correct?

21 A. [15:08:57] They were not arrested. Yes, because Chef Kahwa returned to
22 Mandro and found me there towards the end of the month of July 2003 when
23 President Thomas was under arrest in Kinshasa. That was towards the end of June,
24 June 2002. So Chef Kahwa was not arrested at the time, he was a free man.

25 Q. [15:09:35] I would like to put a document to you. It's the transcript of the

Trial Hearing
WITNESS: DRC-D18-D-0300

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-D18-D-0300

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-D18-D-0300

(Private Session)

ICC-01/04-02/06

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Trial Hearing
WITNESS: DRC-D18-D-0300

(Private Session)

ICC-01/04-02/06

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11 (Redacted)

12 first that he went to Kigali and spoke directly with the army commander to secure the
13 delivery of weapons to his group, correct?

14 A. [15:25:44] I am not in a position to confirm or deny his information. Someone
15 else did this and I am not the one. So when he came back, he didn't provide me with
16 that information. And when the weapons arrived, he himself was surprised. That
17 is what I know.

18 When we were in Mandro and the weapons arrived, he told us, along with
19 Kisembo -- well, he didn't tell us. Safari was the only one who knew what was going
20 on. He simply told us that the merchandise had arrived, and Chef Kahwa himself
21 was quite surprised. So I cannot make any comment on what you have read because
22 when he was there, he was with those people whom you have referred to.

23 Q. [15:26:43] If Chef Kahwa was surprised when the weapons were airdropped at
24 Mandro, it was about how many weapons were airdropped, not about where they
25 came from, correct?

Trial Hearing
WITNESS: DRC-D18-D-0300

(Private Session)

ICC-01/04-02/06

1 A. [15:27:15] He did not tell me that weapons were on the way when he arrived.
2 He did not tell me that he had come back from Rwanda in Safari's company. He told
3 me that he came back from Goma and that he had come to see what our situation was
4 like. And then the weapons arrived. He did not tell me that he had any
5 information about the arrival of weapons.
6 That is what I can remember regarding Chef Kahwa. However, at all the meetings
7 he had, this is the same thing he said. But he never gave me this information which
8 you have just read out to me.

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

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Trial Hearing
WITNESS: DRC-D18-D-0300

(Private Session)

ICC-01/04-02/06

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10 (Redacted)
11 (Redacted)
12 (Redacted)
13 (Redacted)
14 (Redacted)
15 (Redacted)
16 (Redacted)
17 (Speaks English) Now, first, it's correct, isn't it, that when Chief Kahwa, (Redacted)
18 spoke to James Kabarebe, he wanted weapons in order to take control of the town.
19 A. [15:34:03] Personally, this is the first time I'm hearing this information (Redacted)
20 (Redacted) But I was not aware of the fact that there was a link between the chief
21 of the collectivity and the chief of staff of an army like the Rwandan army. At the
22 time I was in Ituri I had no information to this effect at all that Chef Kahwa,
23 Chief Kahwa spoke to the Rwandan army and the Rwandan army supplied him with
24 equipment, this is something I knew nothing about. This is something I have learnt
25 since I arrived here. I really know nothing about a chief of collectivity going to meet

Trial Hearing
WITNESS: DRC-D18-D-0300

(Private Session)

ICC-01/04-02/06

1 with the chief of staff of a national army, and that these contacts apparently led to
2 weapons being supplied by that army in such quantity.

3 Q. [15:35:20] And you know nothing, I take it, then about Chief Kahwa's (Redacted)
4 (Redacted) that he was asking for weapons in order to take control of the
5 town?

6 (Redacted)

7 Q. [15:36:11] Setting that aside, you know nothing, I take it, of Chief Kahwa's
8 information that he wanted weapons to take control of the town?

9 A. [15:36:47] If you're asking me whether I knew of this at the time, I was in
10 Mandro and I knew nothing about his contacts with the chief of the Rwandan army,
11 James Kabarebe. And as to whether he needed this equipment to take control of the
12 town, that was something I knew nothing about either. But it wouldn't be
13 Chef Kahwa, it wasn't Chef Kahwa who took control of the town because it was the
14 Ugandans who got rid of Chief Molondo.

15 Q. [15:37:36] You have already confirmed for the Chamber that Chief Kahwa did
16 not have a military role and training, correct?

17 A. [15:38:04] I know Chief Kahwa in his role as a chief of collectivity. After that he
18 was appointed deputy secretary of defence, but I am not aware of him ever having
19 had any training. And if he did, then I wouldn't know where he would have
20 received such training.

21 Q. [15:38:33] The weapons that you did receive you distributed to your troops in
22 Mandro?

23 A. [15:38:59] Yes. The weapons sent by Sylvain Mbuki were distributed to those
24 who had just completed their training.

25 Q. [15:39:24] And it's true, isn't it, (Redacted)

Trial Hearing
WITNESS: DRC-D18-D-0300

(Private Session)

ICC-01/04-02/06

1 (Redacted) which was that these weapons permitted your group to chase

2 Molondo Lompondo and Mbusa's government from power?

3 A. [15:40:03] We didn't use our weapons to fight against Molondo. That I know

4 quite well because I was at Mwanga. I don't know where Chef Kahwa was at the

5 time, but I can confirm that the Ugandans drove out Molondo. I was at Mwanga

6 and I know exactly what happened. It was not our troops who drove out Molondo.

7 Q. [15:40:34] We'll get to that in a moment.

8 MS SAMSON: Mr President, I have finished with private session. With your leave

9 if we could return to public session, please.

10 PRESIDING JUDGE FREMR: [15:40:48] Certainly.

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

12 (Open session at 3.40 p.m.)

13 THE COURT OFFICER: [15:41:03] We're in open session.

14 PRESIDING JUDGE FREMR: [15:41:05] Thank you, court officer.

15 Ms Samson, please proceed.

16 MS SAMSON: [15:41:08] Thank you.

17 Q. [15:41:09] Now, sir, I would like to show you another document. This time it's

18 a United Nations daily report, it's DRC-OTP-0208-0272. It is item 1340 on our list.

19 And we have, Mr President, been treating these reports as confidential, to be

20 discussed in open session but not displayed on the screens.

21 PRESIDING JUDGE FREMR: [15:41:39] Noted by me and court officer as well.

22 Mr Bourgon.

23 MR BOURGON: [15:41:57] Thank you, Mr President. Considering that my

24 colleague appears to be moving away from the statement of the person

25 she -- the Prosecution was reading from, I would just like to confirm that the status of

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0300

1 all of this reading in the transcript, that this is not evidence, this is merely to get
2 answers from the witness and that it does not have the status of evidence.

3 When -- I'm not sure if the name of the witness was mentioned. When the witness
4 will testify, then it may become evidence. But for the time being it is only merely to
5 get answers from the witness. Thank you.

6 PRESIDING JUDGE FREMR: [15:42:39] Ms Samson.

7 MS SAMSON: [15:42:40] Mr President, the Prosecution will be evaluating precisely
8 what submissions it will make to the Chamber in relation to the evidence we just
9 heard and in relation to the item that I am about to show, because we have been taken
10 by surprise today to discover that an agreed fact which has been accepted by
11 the Chamber, where the Chamber has stated that it no longer requires any evidence
12 on the point, is in fact not an agreed fact in this case.

13 Now the Chamber may on its own determine that the status of that agreed fact
14 remains, but that is uncertain at the moment and as such the Prosecution has
15 proceeded, appropriately, on the basis that the Chamber has accepted the concession
16 from the Defence. Therefore, overnight the Prosecution will assess the state of the
17 evidence adduced and put forward by it on the point of the role of Rwanda in
18 weapons deliveries and will make further submissions to the Chamber tomorrow on
19 any applications we wish to make about that evidence.
20 Thank you.

21 PRESIDING JUDGE FREMR: [15:43:54] All right. Well noted. Please proceed.

22 MS SAMSON: [15:44:04]

23 Q. [15:44:04] Now, sir, the document in front of you is a daily report from the
24 United Nations dated 16 -- pardon me, dated 19 September 2002.

25 And I would ask the court officer to move to the last page of the document, which is

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0300

1 page 0275, item number 12 in the report, and I will read it out.

2 It's in English so it will be translated for you, Mr Witness, quote:

3 "It is reported that on 18 September a Rwandan plane airdropped arms, ammunition
4 and uniforms in camp Mandro (12 kilometres northeast of Bunia). After the airdrop
5 the UPC militia were seen wearing new uniforms and weapons were also seen with
6 them. The Bunia team is trying to verify the report."

7 Now, sir, my suggestion to you is that the report received by the United Nations
8 contained in this daily report is accurate and that Rwandan planes were airdropping
9 weapons, ammunition and uniforms in camp Mandro in September 2002 at least?

10 A. [15:46:20] I was present and at least during September there was no equipment
11 delivered to Mandro camp. The drops that took place were in July. The uniforms
12 were not sent to Mandro. They were sent to Tchomia. There is a significant
13 distance between Tchomia and Mandro.

14 MS SAMSON: [15:47:09] Mr President, the Prosecution reserves its position on the
15 status of its application for admission of a document, with your leave, until tomorrow
16 morning along with the other item of evidence read out.

17 PRESIDING JUDGE FREMR: [15:47:23] All right.

18 MS SAMSON: [15:47:29]

19 Q. Now I will move to the events of 7, 8, 9 August 2002. Your testimony is that
20 Floribert Kisembo asked you to provide soldiers to defend Mudzipela and that you
21 went there with two companies in August 2002, correct?

22 A. [15:48:12] That's correct. It was 9 August.

23 Q. [15:48:35] But you maintain that there was no link whatsoever between the
24 ousting of Molondo and your troops, you had nothing to do with the ousting of
25 Molondo, correct?

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 A. [15:49:10] I and the two companies, we went to drive out the enemy which
2 was come -- which had come to kill the missionaries of Mudzipela and I drove them
3 to Mwanga. Kisémbó himself met me there and we heard the noise of bombs
4 launched by armoured vehicles. So Kisémbó and I, we were at Mwanga when the
5 operation to drive out Molondo was ongoing.

6 Q. [15:49:57] And yet your evidence is also at T-214, page 79, lines 5 to 11, is, and I
7 quote: "When we came from Mwanga to Mudzipela, all the way to Lipri, when we
8 crossed the bridge to Mudzipela, the people were acclaiming us, they were clapping
9 for us. When we got to Kisémbó's residence, the members of the population had
10 surrounded the house and they were celebrating and singing, they were all very
11 happy, drinking alcohol and they were listening to music at very loud volumes and
12 celebrating. Everybody was happy." End quote.

13 Now, sir, if the population was clapping for you and if the population was
14 surrounding Kisémbó's residence, it was because you were involved in the takeover
15 of the town of Bunia and you were victorious in having done that.

16 A. [15:51:31] That is not correct. We didn't go to Lipri. We were coming from
17 Mwanga and we went via Mudzipela. A lot of people were very happy because
18 Molondo had been driven out. I showed you the route that we took going through
19 the -- going by the office that housed the APC general staff and that's where Kisémbó
20 was living. And I can say though we were in the northern part of Bunia whereas
21 Molondo and the fighting that led to him being driven out were taking place in the
22 southeast of the city and it was the Ugandans who carried out that operation, it
23 wasn't our forces.

24 Q. [15:52:34] But you testified, sir, that the people were acclaiming you and they
25 were clapping for you. And they surrounded Kisémbó's residence. Now they

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0300

1 would not have done that if you were -- had nothing to do with the events in Ituri, in
2 Bunia in August 2002 and the chasing out of Molondo, would they?

3 A. [15:53:17] I'm going to explain why the members of the population were happy.
4 And I've already testified to this effect. Every time -- on a number of occasions
5 Molondo came to attack Kisembo, but he never managed to drive him out of this
6 building where the chief of staff -- where the general staff was housed. When the
7 population saw Molondo fleeing, having been driven out by the Ugandans, members
8 of the population, the civilians who lived near the general staff building came to
9 demonstrate their satisfaction because they knew that Molondo was the enemy of
10 Kisembo. And that was the context within which I spoke of the members of the
11 population expressing their joy.

12 Q. [15:54:26] But, sir, you've also testified that Kisembo was part of the APC at this
13 time, correct?

14 A. [15:54:53] It was not only him. I was also a member of the APC, but we were
15 being referred to as mutineers. We hadn't actually officially left the APC army, but
16 the attacks against us were against us because we were seen as being mutineers at
17 that time.

18 Q. [15:55:19] You were called mutineers at that time because that's what you were.
19 You were not part of the APC in the summer of 2002. You were building your own
20 army in Mandro, correct?

21 A. [15:56:04] We were setting up a force of mutineers who had come from the APC.
22 We were trying to find a way to protect ourselves because we knew that if we did
23 nothing we were going to be exterminated. But we had no official name or status.
24 We were simply APC mutineers. We didn't have any other organisation to defend
25 our cause.

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 Q. [15:56:44] Well, let's see what you said about this. In your transcript of
2 testimony T-214, page 80, lines 7 to 13, you were asked as follows:

3 "Mr Ntaganda, let me clarify my question. I don't want -- I'm not referring to the
4 people of the APC, I am talking about the ideology of your group. You said that the
5 ideology was put together by three people. When did that happen and in which
6 place?"

7 Answer: "That was before we went to Mandro. At the same time before we went
8 to Mandro, before we started the training we set up the new ideology for the new
9 army that we were creating." End quote.

10 And your testimony on that point was true, was it not? Your testimony, you were
11 creating a new army.

12 A. [15:58:21] When Kisembo sent me to coordinate the Mandro training camp
13 activities when Chef Kahwa went to show me the locality of Saikpa (phon), we were
14 setting up an army, but we were still considered as mutineers of the APC and I don't
15 know where the difference lies between what you are saying and what I am saying
16 today.

17 Q. [15:58:54] Now, as soon as Molondo Lompondo was driven out of Bunia, you
18 swiftly acted to teach your ideology to any APC troops who would come within your
19 new army, correct?

20 A. [15:59:40] That's correct. We were teaching them the new ideology of the new
21 army which we were setting up but which had no official name. So we started to
22 give them lessons in ideology, the ideology of our new army.

23 Q. [16:00:10] You are aware, are you not, that two days following the takeover of
24 Bunia, Thomas Lubanga issued a public declaration claiming the victory and the
25 defeat of Molondo Lompondo as having been done by the mutineers, yourselves?

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 You're aware of that?

2 A. [16:00:54] No. When Molondo was driven out, Thomas spoke in his capacity as
3 minister of defence of RCD/Goma. I had no telephone and I had no other -- I didn't
4 have a Motorola and I had no other means of communication by which I could reach
5 him.

6 Q. [16:01:32] And two days following the takeover of Bunia, in the same public
7 declaration, Thomas Lubanga claimed -- proclaimed the end of the power of the RCD
8 in Ituri and the political, economic and military management of Ituri by the FRP;
9 you're aware of that?

10 A. [16:02:14] No. What I know is that at the time he was considered to be the
11 minister of defence for RCD-K/ML. And I had no contact with him while he was in
12 Kinshasa and I was not aware of his activities while he was there.

13 Q. [16:02:42] Now, let's take a look at Thomas Lubanga's political declaration on
14 11 August 2002. It's DRC-OTP-0113-0133. It's a public document and it is item
15 number 675.

16 PRESIDING JUDGE FREMR: [16:03:08] Mr Bourgon.

17 MR BOURGON: [16:03:09] Thank you, Mr President. I would just like to check
18 because I have something in my transcript that we heard differently and maybe the
19 question should be put again to the witness. I'd just like to refer my colleague to
20 page 97, line 1. And I am checking the French and I think we have the same thing in
21 French but we heard differently. If we can just check this with the witness, please.

22 MS SAMSON: [16:03:38] Mr President, could there be more clarity? I don't want
23 counsel to provide an answer, but I am unclear what I am being asked to do.

24 PRESIDING JUDGE FREMR: [16:03:50] What part of the -- at least if you can
25 indicate what part of the answer is, according to you, incorrect?

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0300

1 MR BOURGON: [16:03:56] Well, the answer, the part of the answer is when it talks
2 about capacity, line -- page 97, line 1. If I say anything more, it would be
3 suggesting, so ...

4 MS SAMSON: [16:04:12] I think I understand, Mr President, and I can clarify.

5 PRESIDING JUDGE FREMR: [16:04:16] I don't, so please.

6 MS SAMSON: [16:04:18]

7 Q. [16:04:19] Sir, in the transcript today in one of your recent answers, you made
8 reference, page 96, line 25, page 97 line 1, "When Molondo was driven out, Thomas
9 spoke in his capacity as minister of defence of RCD/Goma." Is that correct?

10 A. [16:04:56] No. I know that Thomas Lubanga was minister for RCD-K/ML.

11 And I said that while he was in Kinshasa, I was not aware of his activities. You put
12 a suggestion to me in reference to the message he had delivered and I said that I was
13 not aware of that message since I had no contact with him at that time.

14 Q. [16:05:30] Now, we're just waiting, I think, for the political declaration to appear
15 on the screen.

16 Now, the title of this document is "Political Declaration of the FRP", which stands for
17 Front for the Reconciliation and Peace. And if we turn to the second part of the
18 page -- the second page, please, we can see that this declaration was made in
19 Kinshasa on 11 August 2002. It is signed by six persons. You can see on the screen:
20 Number one, Thomas Lubanga, coordinator of the FRP; two is Avochi; three,
21 Ndukute; four, Tinanzabo; five, Ngabu; and six, Bamaraki.

22 First, do you maintain, sir, that you didn't hear of the FRP in April, didn't hear of the
23 FRP in May, didn't hear of the FRP in August 2002?

24 A. [16:07:55] No, no, not at all. I only heard that name here. If I had heard it
25 before, I would have said so. I would have had no problem talking about it.

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 Q. [16:08:10] And I take it that you had no knowledge, never saw the UPC decrees
2 starting from September 2002 on through to December 2003?

3 MR BOURGON: [16:08:24] Asked and answered, Mr President.

4 MS SAMSON: [16:08:29] I'm asking my questions in relation to a different decree,
5 Mr President. My previous questions were in relation to 17 April 2002. This is
6 11 August 2002.

7 PRESIDING JUDGE FREMR: [16:08:43] Mr Bourgon.

8 MR BOURGON: [16:08:43] Previous questions were related to all decrees. Even the
9 Trial Chamber put questions to Mr Ntaganda on the existence of decrees and his
10 knowledge of decrees, and he provided answers already. Thank you.

11 PRESIDING JUDGE FREMR: [16:08:52] We will see, so let's, let's continue, whether
12 it is clear or not.

13 MS SAMSON: [16:08:57]

14 Q. [16:08:57] My question, sir, is that I take it your evidence is you had no
15 knowledge and never saw UPC decrees from September 2002 through to
16 December 2003, and possibly later, where the UPC's president, Thomas Lubanga,
17 referred to this political declaration as a seminal point in the UPC history?

18 A. [16:09:45] I have already answered that question. If the question is in relation
19 to what was not mentioned before, well, I would like you to read back to me what I
20 said and then I may be able to then answer your question.

21 Q. [16:10:07] I can phrase it positively. Were you aware at any time that this
22 11 August 2002 political declaration was mentioned in UPC decrees starting
23 September 2002, or did that escape your attention?

24 A. [16:10:44] I talked about the decree which I saw and which was about me. And
25 that's all. Only that one. And I told you that I was not aware of the other

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 documents. The Presiding Judge even put a question to me on that issue.

2 Q. [16:11:04] Now, I would like to turn back to the first page of this political

3 declaration so that we can see together precisely what Thomas Lubanga and others

4 are declaring. And I will start to read from the beginning some of the bullet points,

5 although not all, in French:

6 (Interpretation) "We, of the Front for Reconciliation and Peace, acronym FRP, bring to

7 the knowledge of the international community:

8 - that our armed troops dissident from the RCD/ML aligned behind the former

9 minister of defence for RCD/ML, Mr Thomas Lubanga, have effectively taken control

10 of Bunia and its surrounding areas following confrontations on 9 August 2002 having

11 led to the defection and disarray of RCD/ML and allied troops."

12 (Speaks English) Now, my first question: Thomas Lubanga describes himself in this

13 first bullet point on 11 August 2002 as the "ex-minister of defence of the RCD/ML",

14 and that's right, isn't it?

15 A. [16:13:26] I do not know whether this is a decree or a statement. I have not

16 read it before. I am seeing it here for the first time and I am reading it at the same

17 time as yourself. And I can only read what is written on it.

18 Q. [16:13:48] It is a political declaration from the FRP for the international

19 community signed by Thomas Lubanga and six other persons as the FRP. I take it

20 you don't dispute Thomas Lubanga's own signed declaration that by August 11, 2002

21 he was the ex-minister of defence of the RCD/ML?

22 A. [16:14:31] At that time he was in Kinshasa. I therefore am not in a position to

23 tell you anything because I am not aware of the existence of this document. You are

24 asking me to analyse something which I am not able to do, particularly in relation to

25 this document.

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 Q. [16:15:02] Well you've testified, sir, that Mr Lubanga was still the minister of
2 defence in August 2002 and here we have a document signed by Thomas Lubanga
3 saying he was not the minister of defence in August 2002. Do you have any reason
4 to dispute Thomas Lubanga's own acknowledgment of his role in August 2002?
5 What's your position?

6 A. [16:15:42] When I make a comment, when I made a comment I did not say what
7 was on this -- what is in this statement. I said he left Bunia for Kampala and that
8 when he went there he was the minister of defence and that he had no other title.
9 That's why I said when he went to Kinshasa he was the minister of defence. Now
10 when he arrived there, I had no contact with him. I had no telephone. I was in
11 Bunia. And I was not aware of the statement that he is said to have made.

12 PRESIDING JUDGE FREMR: [16:16:35] Sorry to interrupt you, Ms Samson. At this
13 moment we reach the four-hour time limit for Mr Ntaganda established by
14 the Chamber for giving testimony.

15 Mr Ntaganda, it is up to you, if you feel tired we will finish. We still have 12,
16 13 minutes. So if you feel strong enough to continue, we may continue. But I am
17 not pushing you. It's up to you.

18 THE WITNESS: [16:17:15] (Interpretation) Mr President, we can continue. I am not
19 tired yet.

20 PRESIDING JUDGE FREMR: [16:17:21] Thank you, Mr Ntaganda. The Chamber
21 appreciates that.

22 Ms Samson, please proceed.

23 MS SAMSON: [16:17:29]

24 Q. [16:17:30] And we see in this declaration signed by Thomas Lubanga and others
25 that they say that their soldiers or elements who are armed and dissidents of the

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0300

1 RCD/ML aligned behind the ex-minister of defence, Thomas Lubanga, took effective
2 control of Bunia and surroundings by -- on 9 August 2002. So we see here, don't we,
3 that Thomas Lubanga and the others of the FRP are claiming the victory and the
4 ousting of the RCD/ML by their forces, armed dissidents of the RCD/ML, correct?

5 A. [16:18:46] I have repeatedly said that we did not fight Molondo were his
6 residence. If I had done so, that would have been a victory for us, because we would
7 have beaten our enemy Molondo because that was our goal. But I cannot tell a lie by
8 saying that we are the ones who drove him out of his residence in Bunia. That was
9 done by the Ugandans. If they had not done so, maybe we would have, but later on.

10 Q. [16:19:27] Now --

11 PRESIDING JUDGE FREMR: [16:19:28] Sorry, Ms Samson.

12 Mr Bourgon.

13 MR BOURGON: [16:19:30] Thank you, Mr President. My colleague is putting
14 questions to the witness with respect to that paragraph. But I note, Mr President,
15 that we did not make an objection to the use of the document because it's a document
16 that is in evidence. However, I do note that the first paragraph is something that is
17 open for interpretation as to what it means. So we can put questions to the witness,
18 but there are various interpretations that can be put to the same paragraph. Thank
19 you.

20 PRESIDING JUDGE FREMR: [16:20:01] Yes, we note it and we also will note it in the
21 evaluation of the responses of Mr Ntaganda.

22 Ms Samson, please proceed.

23 MS SAMSON: [16:20:09] Thank you. I will, Mr President. But I would ask that
24 counsel refrain from making closing argument submissions in the middle of
25 cross-examination.

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 PRESIDING JUDGE FREMR: [16:20:19] Mr Bourgon.

2 MR BOURGON: [16:20:20] I waited until the witness had answered the question
3 before I did this submission because it has to do with the use of a document which the
4 witness has not seen. I am trying to help and to try and save some time. Thank
5 you.

6 PRESIDING JUDGE FREMR: [16:20:35] Yes, but I think it was also part of our
7 decision that -- and any, any counsel, not only you, should refrain from indirect
8 coaching of witness if giving some indication how the next response should look like.
9 So I am not saying that you are doing that, but I think it could be some tendency to
10 that. So please be careful and refrain from something that could be taken like that.
11 Ms Samson.

12 MS SAMSON: [16:21:17]

13 Q. [16:21:17] Now, sir, are you suggesting that Thomas Lubanga is making
14 inaccurate statements to the international community when he writes that "our armed
15 elements, dissidents from the RCD/ML aligned behind Thomas Lubanga took the
16 effective control of Bunia on 9 August 2002"?

17 A. [16:22:01] I cannot make any comment on this document which I am not familiar
18 with. I can only react to your comments whereby we are said to have driven out
19 Molondo.

20 PRESIDING JUDGE FREMR: [16:22:18] Ms Samson, sorry to interrupt you. I have
21 to make two corrections of the transcript of my intervention. Page 104, line 16
22 instead of "it should", I believe I said "it could be tendency to that". And please also
23 delete from the transcript the word employees.

24 Now please proceed, Ms Samson.

25 MS SAMSON: [16:22:49]

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 Q. [16:22:50] Now, Mr Witness, Thomas Lubanga and his group does not say this
2 once in the document. They say it again at the -- in the last bullet point where they
3 write, on the first page of the document, where they write in French, and I will read it
4 out:

5 (Interpretation) "Exacerbated by this conduct the FRP took control of the town of
6 Bunia".

7 (Speaks English) And in French it was "le FRP".

8 (Interpretation) "APC dissidents aligned between Mr Thomas Lubanga" in French
9 "took control of the town of Bunia."

10 (Speaks English) Now, sorry, my question is: Here we see again that
11 Thomas Lubanga is telling the international community that the FRP with its APC
12 dissidents aligned behind Thomas Lubanga has taken control of the town of Bunia.
13 And that was correct, right?

14 A. [16:24:35] Let me repeat what I said. I was not aware of this statement and I
15 insist on that.

16 Q. [16:24:47] Whether or not you were aware of this statement, you are either
17 suggesting that Thomas Lubanga lied to the international community in a signed
18 written declaration, or -- well, let's start with that. Is that what you're suggesting?

19 A. [16:25:23] Since I was not aware of this statement, how should I -- or what
20 should I rely on to make any comments about what is in the statement? He was in
21 Kinshasa while I was in Bunia, and I had no means of communication by which to
22 communicate with him.

23 Q. [16:25:47] Sir, Thomas Lubanga is saying that the RCD, APC dissidents were
24 behind him and took control of Bunia. That is what he is saying in this signed
25 declaration to the international community. Is Thomas Lubanga lying?

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 A. [16:26:16] I did not follow that statement when he delivered it.

2 PRESIDING JUDGE FREMR: [16:26:25] If you allow, Ms Samson, I would rephrase
3 the question because I think to ask Mr Ntaganda whether Mr Lubanga was lying or
4 not maybe is not the ideal way.

5 But what is I think, what could be relevant, Mr Ntaganda, is the second part of the
6 quotation, whether APC dissidents, according to your knowledge, whether APC
7 dissidents were aligned behind Mr Lubanga and helped him to take control of the
8 town of Bunia. Is the information which could be relevant. Regardless whether
9 Mr Lubanga said it or not. But is it true that APC dissidents aligned to Mr Lubanga
10 helped him to take control over the town of Bunia?

11 THE WITNESS: (Speaks English) No interpretation, your Honour.

12 PRESIDING JUDGE FREMR: All right. So --

13 THE INTERPRETER: [16:27:24] Witness says he did not receive interpretation,
14 Mr President.

15 PRESIDING JUDGE FREMR: [16:27:31] Okay. I will repeat that what is relevant,
16 what could be of relevance for the Chamber is the second part of the quotation
17 containing information that APC dissidents aligned behind Thomas Lubanga has
18 taken control of the town of Bunia. And we are not asking you whether Mr Lubanga
19 was lying or not, but is this part of information, according your knowledge, correct or
20 not?

21 And, Mr Bourgon, I believe that you don't want to assist Mr Ntaganda how to, how to
22 respond.

23 MR BOURGON: [16:28:21] Absolutely not, Mr President. But this is not what this
24 paragraph reads as to who took control of the town. So I would like at least the
25 question to be clear.

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 PRESIDING JUDGE FREMR: [16:28:35] All right. So give me a minute. I will
2 find -- or, Ms Samson, could you please just rephrase, rephrase the question
3 concentrated on this part of quotation yourself to be, to be precise.

4 MS SAMSON: [16:29:07] Certainly, Mr President.

5 Q. [16:29:10] Now, sir, is it true that the FRP supported by the dissidents from the
6 APC aligned behind Mr Thomas Lubanga took effective control -- took control of the
7 town of Bunia on 9 August 2002?

8 A. [16:29:51] As I already stated, I was in Mwanga and I also said that we got
9 together with other persons to drive out Molondo. But we were not part of the war
10 which drove out Molondo. This was done by the Ugandans, they are the ones who
11 forced him out. They forced him out with their tanks.

12 Q. [16:30:29] So this statement is not true?

13 A. [16:30:38] I am not taking this statement into account. I am simply telling you
14 what happened in Bunia, the things that happened in Bunia as I experienced them.
15 I am not relying on this written statement to make my comments.

16 PRESIDING JUDGE FREMR: [16:30:59] Ms Samson, there is no need to push
17 Mr Ntaganda to say this was true or not. It's clear that his knowledge seems to be
18 different from the content of this report.

19 Ms Samson, it's half past four, so I don't know, is it a convenient point for you to
20 break?

21 MS SAMSON: [16:31:25] Yes, Mr President. It's convenient. We can resume in the
22 morning.

23 PRESIDING JUDGE FREMR: [16:31:29] Mr Bourgon.

24 MR BOURGON: [16:31:31] Thank you, Mr President. I would like to address
25 the Chamber in the absence of Mr Ntaganda for a very quick period of time.

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0300

1 PRESIDING JUDGE FREMR: [16:31:39] (Microphone not activated)

2 THE INTERPRETER: [16:31:44] Microphone, Mr President.

3 PRESIDING JUDGE FREMR: [16:31:45] Sorry. Mr Bourgon, could we release

4 Mr Ntaganda? No need to keep him waiting. All right.

5 So now please we can, we can take Mr Ntaganda out of the courtroom.

6 Thank you very much, Mr Ntaganda, for patiently responding all the questions, even

7 over the time limit. Thank you.

8 PRESIDING JUDGE FREMR: [16:32:14] And, Mr Bourgon, for your submission

9 could we remain in open session?

10 MR BOURGON: [16:32:20] I believe so, Mr President.

11 PRESIDING JUDGE FREMR: [16:32:21] All right.

12 (The witness stands down)

13 PRESIDING JUDGE FREMR: [16:32:31] Mr Ntaganda left the courtroom.

14 Mr Bourgon, floor is yours.

15 MR BOURGON: [16:32:35] Thank you, Mr President. Very briefly when we are

16 putting a lot of questions to the witness on the content of a document, the paragraph

17 that was read to the witness talks about the FRP taking control of the town. Taking

18 control of the town can be through fighting, can be the conflict. Taking control of the

19 town can be political control. Taking control of the town might be further to the

20 events of, of Uganda fighting Lompondo out. It could be anything. And now we

21 are insisting on the witness saying something he is not aware of. He's not aware of

22 this political movement called FRP.

23 PRESIDING JUDGE FREMR: [16:33:18] Mr Bourgon, I am sorry, I have to interrupt

24 you. I get your point, but I would recommend not to come with this, it's not

25 objection, but not now at the end of the testimony, but just at the first question put in

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0300

1 the absence of Mr Ntaganda put by Ms Samson. I also can remember there was
2 some questions about playing a role. I agree with you playing of role is also very
3 general term. But I think to come with this objection now is a little bit late. So
4 please next time come at the first moment as soon as possible.

5 MR BOURGON: [16:33:52] I could not, Mr President, because of the way the
6 document was presented. I respectfully refer you to the record and the way the
7 document was presented. The procedure followed is exactly the procedure that I
8 objected to this morning and that the Chamber decided contrary to me. I said I
9 would be filing for clarification, I will tonight, but because of the procedure used I
10 could not, I am deprived of the opportunity to make submissions not to refrain
11 the Prosecution from using a document. And then what happens is later on if I try to
12 do it, then of course I can't do it later. I can't do it before, I can't do it during, I can't
13 do it later. That, Mr President, is -- we are -- we're talking about time. You can
14 always look at the Defence in a bad way, that's -- I don't have -- I don't have
15 a problem with that. My problem is we are wasting time. The Prosecution will be
16 complaining later on that it is lacking time to do its cross-examination. We spent
17 half an hour on a document that the witness has no knowledge of. That's what I'm
18 saying, Mr President. I think there's a better way to do things. Thank you.

19 PRESIDING JUDGE FREMR: [16:35:00] First of all, I think I don't believe that me
20 and the Chamber looks at Defence in a bad way. But I think we should make
21 distinction case by case. There are some cases in my view, and I decided in
22 accordingly, if you really went too far and you try to advise Ms Samson how she
23 should put her questions, which in my view is improper. On the other hand, if you
24 would come like in this case to conclusion that the question put by her is wrong in
25 some, some way, for example, as you now propose, that it's too general, even doesn't

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

1 give chance for clear response, then you can ask for the floor in the absence of the, of
2 the accused and explain what is your objection or suggestion.

3 So please follow my guidance in this way tomorrow. But as I said, I really see
4 a difference in cases you mentioned. I don't believe there is a tendency to deprive
5 you of your right to represent your client, including objections made towards to
6 questions put by Ms Samson.

7 Ms Samson, do you want to make any comment from your part, if you want, please?

8 MS SAMSON: [16:36:27] The only comment I wish to make, Mr President -- well,
9 there are two. The first is certainly the direction of the Chamber that substantive
10 submissions and objections need to be made in the absence of the witness.
11 And secondly, that arguments that actually go towards a closing brief or aimed at not
12 the scope of the question but, rather, an interpretation of the documents ought not to
13 be made by counsel in the course of cross-examination under the guise of an objection
14 to a question. And that would be in the absence or not of the witness.

15 Thank you.

16 PRESIDING JUDGE FREMR: [16:37:13] Mr Bourgon, do you agree with the last part
17 of Ms Samson's submission because I would support that?

18 MR BOURGON: [16:37:20] I do, Mr President. If I read to the transcript, yesterday
19 and today, I invite respectfully the Chamber to look at who is making allegations in
20 this courtroom of wrongdoings and it is not the Defence.

21 Thank you, Mr President.

22 PRESIDING JUDGE FREMR: [16:37:39] All right. So again I am recalling and
23 highlighting my yesterday final encouragement to conduct these proceedings in a
24 collegial and a dignified way, and I believe you both are highly respected and very
25 experienced counsel so I believe that we will, we will make it tomorrow.

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0300

- 1 Now the Court is adjourned and we will continue tomorrow 9.30.
- 2 THE COURT USHER: [16:38:12] All rise.
- 3 (The hearing ends in open session at 4.38 p.m.)
- 4 RECLASSIFICATION REPORT
- 5 Pursuant to the Trial Chamber VI's Order, ICC-01/04-02/06-1887, dated 4 May 2017,
- 6 the public reclassified and lesser redacted version of this transcript is filed in the case.