

Trial Hearing
WITNESS: DRC-D18-D-0300

(Open Session)

ICC-01/04-02/06

- 1 International Criminal Court
- 2 Trial Chamber VI
- 3 Situation: Democratic Republic of the Congo
- 4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
- 5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and
- 6 Judge Chang-ho Chung
- 7 Trial Hearing - Courtroom 2
- 8 Wednesday, 6 September 2017
- 9 (The hearing starts in open session at 9.31 a.m.)
- 10 THE COURT USHER: [9:31:49] All rise.
- 11 The International Criminal Court is now in session.
- 12 Please be seated.
- 13 PRESIDING JUDGE FREMR: [9:32:24] Good morning, everybody.
- 14 Court officer, please call the case.
- 15 THE COURT OFFICER: [9:32:29] Thank you, Mr President.
- 16 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
- 17 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
- 18 We are in open session.
- 19 PRESIDING JUDGE FREMR: [9:32:43] Thank you, court officer.
- 20 Appearances, please.
- 21 MS SAMSON: [9:32:47] Good morning, Mr President. Good morning,
- 22 your Honours. The Prosecution's composition is the same today as it was yesterday.
- 23 PRESIDING JUDGE FREMR: [9:32:55] Thank you, Ms Samson.
- 24 Defence, please.
- 25 MR BOURGON: [9:33:02] (Interpretation) Good morning, your Honour.

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1 There are a few changes here on the Defence side, the representatives of Mr Ntaganda,
2 Mr David Wagen-Magnon, Ms Isabelle Martineau, Jean-Baptiste Gasominari and
3 myself. We are all here representing Mr Ntaganda.

4 PRESIDING JUDGE FREMR: [9:33:28] Who is present as well.

5 Thank you, Mr Bourgon.

6 And now Legal Representative of Victims, please.

7 MS PELLET: [9:33:35] (Interpretation) Thank you, your Honour. No change for the
8 representatives of the former child soldiers.

9 MS GRABOWSKI: [9:33:48] Good morning, Mr President. Good morning, your
10 Honours. Anne Grabowski for the victims of the attacks.

11 PRESIDING JUDGE FREMR: [09:33:57] Thank you, Ms Pellet.

12 Thank you, Ms Grabowski.

13 Today we are going to conduct next part of cross-examination of Mr Ntaganda by
14 Prosecution.

15 Ms Samson, you have the floor.

16 MS SAMSON: [9:34:12] Thank you, Mr President.

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

18 (The witness speaks Swahili)

19 QUESTIONED BY MS SAMSON: (Continuing)

20 Q. [9:34:21] Good morning, Mr Ntaganda.

21 A. [9:34:24] Good morning.

22 Q. [9:34:37] I would like to ask you a few questions this morning about the
23 unauthorised -- your evidence about the unauthorised attack in Lipri in early 2003.
24 Now, according to you, Commander Linganga was punished because he launched
25 this unauthorised attack on Lipri in, you say, January 2003.

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1 A. [9:35:25] I remember that he said he was patrolling and he came across some
2 Lendu combatants and members of the APC and they clashed. He was punished
3 because this occurred during the pacification campaign.

4 Q. [9:35:48] And according to you, he was not authorised to clash with any Lendu
5 combatants while patrolling, correct?

6 A. [9:36:19] He was not authorised to launch that attack because we had already
7 announced that we were in the process of a pacification campaign. All the
8 commanders were encouraged to do their best to avoid such incidents and that is why
9 he was punished.

10 MS SAMSON: [9:36:44] Mr President, may we move into private session for a few
11 questions, please.

12 PRESIDING JUDGE FREMR: [9:36:49] Certainly. In the interest of public, how
13 much time you estimate you will spend in private, just roughly?

14 MS SAMSON: [9:36:58] Five minutes.

15 PRESIDING JUDGE FREMR: [9:36:59] Thank you.

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

17 (Private session at 9.37 a.m.) *(Reclassified partially in public)

18 THE COURT OFFICER: [9:37:09] We're in private session, Mr President.

19 PRESIDING JUDGE FREMR: [9:37:17] Thank you, court officer.

20 Ms Samson, please.

21 MS SAMSON: [9:37:23]

22 Q. [9:37:25] (Redacted)

23 A. [9:37:37] (Redacted)

24 Q. [9:37:44] (Redacted)

25 (Redacted)

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1 (Redacted)

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7 THE INTERPRETER: [09:45:56] Inaudible.

8 MS SAMSON: [09:46:01] (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 A. [9:47:33] I was telling you that that statement is long and you're only taking

20 parts of it, the ones that are of interest to you. For example, you didn't read the part

21 when he said that he was on patrol and he didn't have authorisation to attack. And

22 he also said that when the commanders arrested him, he went by me and we spoke to

23 one another. I don't know whether I've explained to Ali before Ali took him to

24 Mandro.

25 What is more, (Redacted) there was a Ugandan delegation that was

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1 present when the incident occurred. And myself, I'm telling you today that I put

2 him in detention and I sent him to Ali on the orders of Thomas Lubanga.

3 If I had authorised that attack, I would not have had any reason to put him in prison

4 for that attack which he led. And you should perhaps read my statement -- his

5 statement in its entirety so that things can be viewed from a full perspective.

6 Q. [9:48:54] (Redacted)

7 (Redacted)

8 (Redacted)

9 A. [9:49:25] But if someone is in detention, how can he still go out and walk around

10 freely? He was inside the prison, and I myself went to make sure that he was indeed

11 in prison. I saw him seated in front of the door of his cell. I went to check myself

12 within the prison and there I found him in Mandro. And I can confirm that he was

13 not free.

14 Q. [9:50:05] (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 A. [9:50:57] (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 But as for the events that occurred in February, I was not present and I cannot say

24 anything about events that occurred when I was not present. Maybe ask me

25 a question where I was and I will give you an answer, but I can't agree with that

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- 1 chronology (Redacted).
- 2 PRESIDING JUDGE FREMR: [9:51:51] Hold on, Ms Samson.
- 3 Please, Mr Bourgon.
- 4 MR BOURGON: [9:51:56] Thank you, Mr President.
- 5 The question put by the Prosecution on page 8, line 23, starts by saying,
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 PRESIDING JUDGE FREMR: [9:52:24] (Redacted)
- 10 MS SAMSON: [9:52:27] (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 PRESIDING JUDGE FREMR: [9:52:40] (Redacted)
- 15 (Redacted)
- 16 MS SAMSON: [9:52:46] (Redacted)
- 17 Q. [9:52:47] (Redacted)
- 18 (Redacted)
- 19 A. [9:53:09] (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 MS SAMSON: [9:53:54] Mr President, we may move back into public session, with
- 25 your leave.

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1 PRESIDING JUDGE FREMR: [9:53:58] Well, court officer, let's return back in public
2 session.

3 (Open session at 9.54 a.m.)

4 THE COURT OFFICER: [9:54:09] We are back in open session, Mr President.

5 PRESIDING JUDGE FREMR: [9:54:17] Thank you, court officer.

6 Ms Samson, please proceed.

7 MS SAMSON: [9:54:22] Thank you.

8 Q. [9:54:31] Now, sir, you testified that at the time of your visit to the Rwampara
9 camp in February 2003, you were asked at transcript T-220, page 28, lines 4 to 7:

10 Question: "Were there still people being detained at Mandro at that time?"

11 And you responded, quote: "At that time when the Mongbwalu force left, there
12 were people arrested in Mandro, Kasangaki and Pigwa and they had just been freed
13 by Kisembo. So there were in fact no more people in detention." End quote.

14 Commander Linganga was not detained any longer in Mandro by 12 February 2003
15 when you visited Rwampara training camp, correct?

16 A. [9:55:56] Linganga was being detained. He was released from prison only once
17 the clashes with the Ugandans occurred. The same thing for Pigwa and Abelanga
18 and other officers. I no longer recall all their names. All of that --

19 THE INTERPRETER: Correction, all of them were still in detention in
20 February 2003.

21 THE WITNESS: (Interpretation) They were in detention in Mandro.

22 MS SAMSON:

23 Q. [9:56:30] Well, sir, I have to press you a bit on that because that contradicts your
24 testimony in-chief. As I just read to you, you told the Court that at the time of your
25 visit to the Rwampara training camp, which was on 12 February 2003 -- you were

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1 asked if there were people still being detained at Mandro at that time and you said, "...
2 no" -- quote: "... in fact no more people in detention".

3 So which account is --

4 PRESIDING JUDGE FREMR: [9:57:21] Hold on, hold on, Ms Samson.

5 Mr Bourgon.

6 MR BOURGON: [9:57:25] I would just like to make sure, Mr President, that in the
7 question that is now put to the witness and repeating the quote there is the word "no".
8 That is, I think, added. That does not appear in the original testimony. According
9 to what I have, the original testimony does not say the word "no". It says "at that
10 time" and then it goes on. There is -- the word "no" does not appear there in the
11 original transcript.

12 PRESIDING JUDGE FREMR: [9:57:53] But my understanding was that the quote
13 start, "... in fact no more people in detention". So if Ms Samson said that you said no,
14 it was just, you know, evaluation of the, generally the answer. But the explicit
15 wording then follows, "... in fact no more people in detention". So the position was
16 negative.

17 So please proceed, Ms Samson.

18 MS SAMSON: [9:58:22] Thank you.

19 PRESIDING JUDGE FREMR: [9:58:22] Am I correct in the interpretation of your --

20 MS SAMSON: [9:58:26] Yes, absolutely. If counsel is taking issue with the fact that
21 I said, "You said, 'No'", indeed it's because what the witness clearly said in-chief is
22 that those who had been in detention in Mandro at that time had just been freed by
23 Kisembo, quote, "So there were in fact no more people in detention." No more
24 people in detention.

25 PRESIDING JUDGE FREMR: [9:58:54] All right. So I think it was clarified. Please

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1 proceed.

2 MS SAMSON: [9:58:56] Thank you.

3 Q. [9:58:56] Can you explain this apparent contradiction where in-chief you say
4 that by 12 February 2003 there are no more people in detention in Mandro and today
5 you say that there were people, including Kasangaki, Pigwa and also Linganga, who
6 were in detention at that time, until sometime in March?

7 A. [9:59:35] When I mention Pigwa and Kasangaki, that was the time when
8 Salumu's brigade was established. They left prison and they were put into that
9 brigade. That is a different period. It wasn't February because Linganga was in
10 detention. And I said that some prisoners had been freed when we had some clashes
11 with the Ugandans. So that meant that there were still people in detention. I don't
12 think that the Mandro prison was empty in February.

13 Q. [10:00:32] Thank you. Now I'm going to move to a different topic. In
14 February 2003, when UPC troops attacked villages Kobu, Lipri and Bambu, it was
15 coordinated from different directions, correct?

16 A. [10:01:23] I didn't know that at the time when the attack was carried out. I
17 wasn't present. I therefore was not aware of the attack.

18 Q. [10:01:41] You were in Bunia starting, you say, 17 February 2003?

19 A. [10:02:06] But nobody informed me about the fact that we were going to attack.
20 I did not receive this information.

21 Q. [10:02:26] You would agree that an attack on a location, in fact several locations,
22 from different areas would require careful planning and coordination, in your
23 experience?

24 A. [10:02:52] No. In certain cases the commanders in the field could carry out
25 attacks without notifying us. I remember Mugisa was in Fataki when he went to free

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1 the road from Mahagi. And the commander in the field could carry out operations
2 without warning us.

3 Now, during this period in the month of February I went to visit my son, and I had
4 a lot of other missions on behalf of the president. I therefore had a lot of
5 responsibilities which I had to carry out. I had to do a lot of other things.

6 Q. [10:03:49] My question was about an attack from different directions, and in
7 your military experience such an attack would require careful planning and
8 coordination, wouldn't it?

9 A. [10:04:21] Each commander could leave on their road and use the information from their
10 intelligence officers and attack the enemy without any problem. *A battalion commander
11 and a company commander could plan an attack upon the enemy. That happens.

12 Q. [10:04:45] So, sir, if I understand correctly, your evidence is, I put to you,
13 February 2003 -- well, is it your evidence that in February 2003 the UPC launched
14 attacks in different directions from -- against villages of a predominantly Lendu
15 nature at the time of, you say, intense pacification and that this could be done at the
16 initiative of your junior commanders, subordinate to you?

17 A. [10:05:44] No. That's not what I said. You asked me if, with my experience
18 attacks can be carried out without planning. I gave you a general explanation. I
19 gave you an example. If an attack is carried out at local level, you cannot use this
20 example to describe what happened in the month of February. I didn't say that there
21 were a lot of attacks which were launched from different directions on the Lendu,
22 I was just answering a question that you put to me in my capacity as commander with
23 my experience, and the answer that I gave you does not necessarily correspond with
24 the situation that you describe relating to the attacks apparently or allegedly launched
25 from different directions against the Lendu.

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1 Q. [10:06:50] Let me ask my question again so that it's clear. In February 2003, this
2 is 17, 18, 19, 20, through to the 27th, could UPC commanders decide on their own to
3 attack predominantly Lendu villages in Lipri, Kobu, Bambu and surrounding areas
4 without getting authorisation from you and the UPC hierarchy, and FPLC hierarchy?

5 A. [10:07:59] Your question refers to dates where I perhaps was not there, because
6 before the 17th I had left to see my child and afterwards I received a message from the
7 president who sent me on a mission. I left at night on the 19th. I was therefore
8 busy with that mission. If you therefore ask me questions relating to that date, I
9 could perhaps explain what I did on a specific date on a day-by-day basis.

10 PRESIDING JUDGE FREMR: [10:08:43] Mr Bourgon.

11 MR BOURGON: [10:08:44] Thank you, Mr President.

12 I'm informed that there is some incorrect translation, page 14, lines 20 to 23 in English
13 and page 13, lines 23 to 27 in French. The issue was raised by my colleague in
14 relation to company commander. This is not what the witness said. And either we
15 can -- my colleague can take it up right now or we can have it checked, but there
16 appears to be a major difference between what was said and what was translated.
17 Thank you.

18 PRESIDING JUDGE FREMR: [10:09:27] Ms Samson, what is your position on that
19 information?

20 MS SAMSON: [10:09:33] I'm not sure what the issue is, but I would prefer to press to
21 get an answer to my question, if I may.

22 PRESIDING JUDGE FREMR: [10:09:40] All right.

23 MS SAMSON: [10:09:42]

24 Q. [10:09:42] Now, sir, my question isn't about where you were or what you were
25 doing. Please listen carefully to my question because I think it's actually a simple

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1 yes or no answer.

2 In February 2003 could UPC commanders decide on their own to attack
3 predominantly Lendu villages in Lipri, Kobu, Bambu and surrounding areas without
4 getting authorisation from you and the UPC/FPLC hierarchy, yes or no?

5 A. [10:10:38] I don't know the localities that were attacked. I could explain the
6 circumstances under which these attacks took place if I did, but every commander in
7 their sector had to fight against the enemy that was in their sector without awaiting
8 authorisation from whoever it was.

9 Q. [10:11:18] Now I put to you, sir, that you participated in a preparation meeting
10 with Thomas Lubanga, Floribert Kisembo, Tchaligonza, Commander Salongo and
11 Ali Mbuyi in Thomas Lubanga's residence in Bunia in the days before the attack on
12 Lipri, Bambu, Kobu and surrounding villages in February 2003. Were you there, yes
13 or no?

14 A. [10:12:03] Your Honour, your Honours, within the FPLC, if I saw more than
15 three officers making attacks, plans for attack against the enemy, that was only in the
16 month of March, March 2003 when there were clashes with the Ugandans, 5 March to
17 be precise. But otherwise I do not remember officers being with Thomas Lubanga in
18 order to carry out plans of attack. That is a lie.

19 Q. [10:12:47] And do you remember ordering your G2 to take ammunition from
20 a stock in Centrale to troops that were attacking along the Bambu road in
21 February 2003?

22 A. [10:13:18] I'm not aware of that. I never entrusted such a mission to a G2 when
23 I was in Bunia. I never asked a person to go to Bambu. If you give me the date and
24 the time, then I could explain to you where I was and what I was doing in order to
25 refute those allegations.

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1 Q. [10:14:02] Let's take a look at a logbook message together.

2 If I could ask for the court officer to bring the logbook binder to the witness, please.

3 PRESIDING JUDGE FREMR: [10:14:25] Before doing that, could we, Ms Samson,

4 now briefly return back to the submission made by Mr Bourgon.

5 Mr Bourgon, so according your statement, what is the problem, that the French

6 transcript or French translation does not correspond what has been said in Swahili

7 or --

8 MR BOURGON: [10:14:48] Both of them, Mr President. Page 14 lines 20 to 23 and

9 13 lines -- French, 13, lines 23 to 27. The issue is who is planning what with whom.

10 I will just -- I won't mention any more because I don't want to -- but that was the

11 issue.

12 PRESIDING JUDGE FREMR: [10:15:08] And please, court officer, this time which we

13 need for clarification of the issue will not be included to Prosecution time.

14 MS SAMSON: [10:15:21] I will clarify with the witness, your Honour.

15 PRESIDING JUDGE FREMR: [10:15:24] Please.

16 MS SAMSON: [10:15:25]

17 Q. [10:15:25] Sir, today at page 14, and I will go a bit further back, lines 17 to 23, I

18 asked you a question and you provided an answer. I will read both to you, so listen

19 carefully and please let the Chamber know if the answer you gave is correct or

20 whether it is not correct in any aspect.

21 So the question I asked you was:

22 "My question was about an attack from different directions and in your military

23 experience such an attack would require careful planning and coordination, wouldn't

24 it?"

25 And your answer was: "Each commander could leave on their road and use the

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1 information from their intelligence officers and attack the enemy without any
2 problem. A company commander could take the decision to attack the enemy.
3 That happens."

4 A. [10:16:41] I don't remember having made such a statement. You asked me
5 a question asking if according to my experience a commander could carry out an
6 operation without our authorisation or coordination and I stated that each
7 commander on his road could carry out a plan with the commanders, the battalion
8 commanders in order to carry out an operation in their sectors and that the battalion
9 commander could make a plan with the company commander without having to get
10 our authorisation because he has his zone to cover and he knows what his
11 responsibilities are, which they -- and he can fulfil his responsibilities without having
12 to turn to us.

13 PRESIDING JUDGE FREMR: [10:17:59] Thank you. Now we can move to logbook.
14 But before doing that, one important correction of the transcript, English version
15 page 18, line 20, I said that this time will not be included into Prosecution time and we
16 now have that it will be included, which is wrong.

17 Now, Ms Samson, you may proceed.

18 So, court officer, there was request to put on the screen the document.

19 Mr Bourgon.

20 MR BOURGON: [10:18:33] Thank you, Mr President. The clarification provided by
21 the witness was corrected in part, what had been missed the first time. But a same
22 word was mentioned again which was missed and I will just suggest what that word
23 is and then we can take it with the audio. It's --

24 PRESIDING JUDGE FREMR: Go ahead.

25 MR BOURGON: [10:18:55] It has to do with the rank.

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1 PRESIDING JUDGE FREMR: [10:18:56] Go ahead.

2 MR BOURGON: [10:18:57] The witness said twice, then and in this response he said
3 brigade commander. And so that's what we can check with the audio. Thank you.

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

5 MS SAMSON: [10:19:23]

6 Q. The logbook message that I would like to show you is DRC-OTP-0017-0033,
7 which is public. And if you could turn, please, to page 0160 in the original. The
8 translation for display is DRC-OTP-2102-3854 at page 3982. If we scroll down,
9 please, to the second message.

10 So, here, sir, we have a message --

11 A. [10:21:25] I am not yet at the message specified. If you could give the reference
12 once again.

13 Q. [10:21:34] Yes, of course. It's page 0160, those are the last four numbers at the
14 bottom of the page in the original logbook.

15 So here we have a logbook message on 13 February 2003 at 1621 in the afternoon.

16 It's sent by commander 409th brigade, Salumu, to Tiger One, copied to the minister of
17 defence, chief of general staff and yourself, chief of general staff operations and
18 organisation. And it reads, in French:

19 (Interpretation) "Situation isn't calm. Stop. There is a clash next to Kilo-Mission.
20 On my side three deaths. One injured at Kobu. I'm asking for RPG bombs.

21 Batches of bombs. For the attacks." End of message.

22 (Speaks English) So on 13 February you, sir, are copied on a message where
23 Commander Salumu is referring to certain clashes at Kilo-Mission and requesting
24 bombs, refers to an injury at Kobu and wants the bombs for the attacks. And you
25 were aware and informed of these attacks, correct?

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1 A. [10:24:09] I remember when my counsel asked me questions about what I knew
2 about the events in Kobu, Bambu and Lipri in the month of February and January and
3 I remember having spoken about this message and stated that I received it before
4 going to visit my child in Rwanda. I remember having spoken about this message in
5 my testimony.

6 Q. [10:24:36] And that was on 13 February. On 14 February we have looked at
7 a press release together by Mr Amboko Bebetu, national secretary for press and
8 communications in the UPC, whereby the UPC was accusing MONUC of being
9 partisan or biased in favour of the government of the DRC and certain ethnic groups.
10 That was 14 February. Do you recall that?

11 A. [10:25:31] Perhaps you showed me this document, but I also explained to you
12 that at certain times I was not in the field. I was away. I therefore can't say
13 precisely what was discussed. Perhaps you can shed further light on it.

14 Q. [10:25:57] I would like to show you a document. It is DRC-OTP-2067-1941,
15 item 386 on our list.

16 MS SAMSON: And because it's a United Nations document, Mr President, we have
17 been dealing with display as confidential.

18 PRESIDING JUDGE FREMR: [10:26:18] Noted.

19 Mr Bourgon.

20 MR BOURGON: [10:26:21] Thank you, Mr President. The document referred to by
21 my colleague about the 14 February press release, I believe it is important to show this
22 document to the witness because -- in order for him to understand where we are
23 going between 13 February and then a press release and now to a different document.
24 It would be fair for him to see that document.

25 PRESIDING JUDGE FREMR: [10:26:43] Ms Samson, any problem with that?

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1 MS SAMSON: [10:26:45] Well, Mr President, it's an issue of time. I would like
2 to -- I spent some time on that document already last week. My intention is simply
3 to refer to it so it's fresh in the witness's mind and then I want to refer to a document
4 now from the UN that makes reference to it.

5 PRESIDING JUDGE FREMR: [10:27:08] Mr Bourgon.

6 MR BOURGON: [10:27:09] Well, at a minimum my colleague should at least recall
7 the witness what he said on the document because now really it's -- I think
8 the Chamber can see that the information provided a press release about a complaint,
9 the witness is entitled to know what he said at least, if not -- if he can't be shown the
10 document.

11 PRESIDING JUDGE FREMR: [10:27:32] Ms Samson, why not, I think we can just at
12 least accept this, briefly refer what -- to refer what Mr Ntaganda said about the
13 original document during the previous testimony.

14 MS SAMSON: [10:27:47] Certainly, Mr President.

15 PRESIDING JUDGE FREMR: [10:27:48] Because anyway I guess you mean confront
16 him with what he said so I think it should be logical part of your question.

17 MS SAMSON: [10:27:56] In fact, I don't intend to confront him with what he said
18 before. I simply wanted to refer to the fact that we looked together at a press release
19 by Mr Amboko Bebetu in relation to accusations against MONUC, because now I
20 would like to move to the United Nations document in relation to that. So it was
21 not -- I do not intend to go over the witness's testimony on the document. But I'm in
22 your Honour's hands.

23 PRESIDING JUDGE FREMR: [10:28:24] But, please, in order to satisfy Defence,
24 make it brief, absolutely.

25 MS SAMSON: [10:28:33] Mr President, may I ask that the review of the testimony,

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1 which I do not have in front of me, not be included in my time.

2 PRESIDING JUDGE FREMR: [10:28:41] For sure, for sure. I confirm.

3 MS SAMSON: [10:28:53] In the meantime, while we are looking for the testimony,

4 I can call up, please, the press release at issue, which is DRC-OTP-0193-0237, item

5 1562.

6 Q. [10:29:43] You can see the UPC press release on your screens, Mr Witness, dated

7 14 February 2003, and if we scroll through it then you can see, and I read some of

8 these passages to you previously, where the UPC accuses MONUC of manipulation

9 in the first paragraph. And if we continue to scroll down, and to the next page, you

10 can read what it says.

11 PRESIDING JUDGE FREMR: [10:30:51] Mr Bourgon.

12 MR BOURGON: [10:30:52] Mr President, the only thing is that's important is that the

13 witness had said that he had never seen that document before. I mean, I don't want

14 to take the time -- my colleague's time.

15 PRESIDING JUDGE FREMR: [10:31:02] All right then.

16 MR BOURGON: [10:31:03] But it's just that --

17 PRESIDING JUDGE FREMR: [10:31:05] So it was your point. All right.

18 MS SAMSON: [10:31:09] I will continue, if it suits your Honour, though, to make

19 sure that it's clear for everybody and the Chamber what I was referring to.

20 So we have -- you can see on the second page of the UPC press release, if we scroll

21 down a little bit further, under the title "La MONUC", and I will read, in French:

22 (Interpretation) "The involvement of MONUC in the pacification of Ituri is proving to

23 be negative because it is partial towards one part of the population. Not only does

24 MONUC try to associate the people of Ituri of the diaspora who are disconnected

25 from the realities in the field and playing on their own selfish interests in this

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1 pacification, but also MONUC is more interested in some groups that have stuck to
2 their positions and targeted, this to the detriment of all communities living in Ituri
3 generally speaking.

4 In actual fact, for a number of weeks now MONUC has been paying too much
5 attention to complex armed group made up for the most part of Lendu combatants
6 who have holed up in Gety and in Kpandroma whereas they are in the localities of
7 Ituri just like Marabo, Nyankunde, Kilo, Mongbwalu, Kparanganza, Mandro,
8 Mokambo, et cetera. The Bira, Nyali, Hema, Alur populations and others have paid
9 the heaviest price for in inter-ethnic war."

10 (Speaks English) Now, sir, your evidence, I believe is that you have never seen this
11 document before?

12 PRESIDING JUDGE FREMR: [10:33:58] Mr Bourgon. No? Okay.

13 So, Mr Ntaganda, please answer the question.

14 THE WITNESS: [10:34:14] (Interpretation) I have never seen this document before.

15 MS SAMSON: [10:34:19]

16 Q. [10:34:19] Now I would like to turn, please, to the United Nations document that
17 I had alluded to earlier. It is DRC-OTP-2067-1941, item 386, please, at page 941, the
18 first page.

19 Sir, this is an outgoing code cable daily report from 14 to 16 February. It is dated
20 17 February 2003. It is a United Nations document, and if we could scroll down,
21 please.

22 And I will read a part of the first paragraph in English, if we could scroll down a bit
23 more, just a bit more. Thank you.

24 Under the heading "Political", paragraph 1:

25 "On 14 February, the Ministers of Foreign Affairs of Angola, Uganda and the DRC,

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1 with MONUC, reviewed the practical modalities for the implementation of the Ituri
2 Pacification Commission provided for in the Luanda Agreement. The parties
3 welcomed MONUC's initiative to arrange for a signing of cessation of hostilities in
4 Bunia and accordingly amended the agreed timetable for the IPC. Despite these
5 intense diplomatic efforts to kick-start the IPC, the UPC/RP clearly jeopardised the
6 process by issuing a press release denouncing" --

7 PRESIDING JUDGE FREMR: [10:36:26] Ms Samson, I guess you are probably too
8 fast. Am I right? Yes.

9 MS SAMSON: [10:36:31] Apologies. I will restart that sentence:

10 "Despite these intense diplomatic efforts to kick-start the IPC, the UPC/RP clearly
11 jeopardised the process by issuing a press release denouncing what it terms as
12 MONUC partiality with regard to the pacification efforts in Ituri and accusing
13 MONUC to be biased in favour of government of the DRC. As a result, the signature
14 of the IPC and the launch of the IPC preparatory committee have been put on hold
15 pending consultations."

16 Now, my question from what we have just read, sir, is that the UPC was not
17 genuinely pursuing peace, was it, if three days -- as we can see from what is set out in
18 the United Nations document? What do you say?

19 A. [10:38:24] Well, as I've said before, this is the first time I've seen this document.
20 What was the UPC going to try to be getting other than peace? What were we
21 looking for? Who wanted disorder?

22 When the UPC was set up, UPC/FPLC, I told you here how we were trying to bring
23 peace back to the region. You saw that in the video. Like in the army, we were
24 looking for discipline. What more can I tell you? We were looking to re-establish
25 peace. We were looking for soldiers who were disciplined to bring about

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1 a sustainable -- a sustained peace in Ituri, particularly throughout the entire territory
2 of the Congo.

3 Q. [10:39:20] And I put to you that the actions of the UPC speak louder than its
4 words, in that its press release halted the launch of the IPC preparatory committee
5 and in that three days after it issued its press release, the UPC/FPLC launched a large
6 attack against predominantly Lendu villages.

7 A. [10:40:14] On that date I was on a mission. I was in charge of other things. I
8 went to visit my son, as I said earlier, amongst other things. I never saw that press
9 release.

10 Q. [10:40:47] You indicated earlier today that you were very busy in February 2003.

11 A. [10:41:08] I had been given a mission and I had been travelling, even at night
12 I was travelling. I would leave at night, I would go here and there. We were in
13 a difficult situation. * There was the UPDF, the FAC wanted to destroy us, and
14 I thought that we would survive, but that was not
15 possible since I had many responsibilities and we were in a very difficult situation.

16 Q. [10:41:44] And in addition, you were visiting the Rwampara training camp and
17 one of those visits was filmed on 12 February 2003.

18 A. [10:42:18] Yes, I got there on the 12th. I'm talking about Rwampara. There is
19 a video that does show that.

20 Q. [10:42:31] And there was an event in early February regarding an alliance
21 between the UPC and the RCD/Goma, a visit in Bunia.

22 A. [10:42:57] That was just after my visit to Rwampara. The RCD/Goma came to
23 Bunia. That movement came to visit us.

24 Q. [10:43:14] And also in mid-February you had worked on the restructuring of the
25 FPLC contained in the logbook.

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1 A. [10:43:40] We carried out a restructuring and I think that the message was given
2 from -- as of 12 February.

3 THE INTERPRETER: [10:43:53] Interpreter correction: In the previous reply, the
4 witness said "just before my visit to Rwampara", line 24 of the English transcript, "just
5 before my visit to Rwampara".

6 MS SAMSON: [10:44:12]

7 Q. [10:44:12] And you were to conduct field missions around Djugu territory in
8 relation to deployments, correct?

9 A. [10:44:48] * Well, the restructuring was established in a general way, it wasn't
10 just Djugu. I'm talking about the FPLC forces, we sent out a message and it was the
11 follow-up so that we could get to Djugu. And as I had promised to
12 Commander Jérôme, that was my task, I too was supposed to go to Djugu. That was
13 a task that President Thomas had entrusted me with.

14 Q. [10:45:21] And there were confrontations and fighting around Nyangarai,
15 Ngongo as well.

16 A. [10:45:49] In Nyangarai, that was 1 January 2003. In Ngongo, that was related
17 to the death of Zero One late in January 2000 and -- these were events that occurred in
18 January, but I would say that the months were different.

19 THE INTERPRETER: January 2003 was what the witness just specified.

20 MS SAMSON: [10:46:32] And according to you, there was some demobilisation
21 activity in February 2003 in the UPC/FPLC.

22 A. [10:46:57] We got a message about demobilisation well before that. When we
23 were at the training wing, we heard that if there were young people under 18, we
24 were to demobilise them. This demobilisation was throughout the entire training.
25 And when the RCD came in, President Lubanga said to us to keep on insisting upon

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1 the demobilisation, that we should not have any young people under 18 within the
2 movement. I remember that very well.

3 Q. [10:47:42] And you say that you issued an order signed by Peter Zito on your
4 behalf on 16 February 2003 in relation to that demobilisation?

5 A. [10:48:10] Can you read the excerpts to me so that I can answer the question and
6 see how I gave the order to Peter?

7 Q. [10:48:27] Sir, I will -- I will do that in a moment, possibly after the break. But
8 do you not recall now that there's an order signed by Peter Zito on your behalf in
9 February 2003 about demobilisation?

10 A. [10:48:58] Peter signed on my behalf a document about demobilisation. Yes, I
11 do remember that document. I do remember that document.

12 THE INTERPRETER: [10:49:09] Corrects the Swahili booth.

13 MS SAMSON: [10:49:12]

14 Q. [10:49:12] And so in the midst of what you've described as a very busy time for
15 you, and I would suggest also for the FPLC, your evidence is that you decide to take
16 a personal trip to meet a child that you had not met for some three to four and a half
17 years previously, in fact, you never met him.

18 A. [10:50:02] I had not yet seen him, not since his birth. His mother had already
19 married someone else and when I learned about that I decided to get my child so that
20 he would not suffer so that I could bring him back. And as a commander I knew full
21 well that I had to take care of my own and that is why I decided to take that child and
22 bring him back to my parents so that they could take care of him.

23 Q. [10:50:39] Do you remember filling in, completing hotel documents during your
24 stay?

25 A. [10:51:13] Yes. When someone gets to a hotel he fills out documents. I

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1 remember that that is what I did when I was asked to identify myself and also to pay
2 for the stay at the hotel.

3 Q. [10:51:34] And who filled in the hotel documents? Who physically wrote them
4 out?

5 A. [10:51:51] I think it was the owners of the hotel who filled out the forms.

6 Q. [10:52:05] In whose room did your son stay at the hotel?

7 A. [10:52:27] The room where I spent the night had two beds. The child and his
8 mother spent the night in one bed and I spent the night in another, in another bed.
9 So I would say that in that room there were two beds.

10 Q. [10:53:00] Now, it didn't seem to you more culturally appropriate for you to stay
11 with your family rather than a hotel?

12 A. [10:53:38] My mother was not in Kigali. If it had been my home, I would have
13 spent the night with my family, but I could not take my child and his mother and take
14 them to another family. That is what my thoughts were, that is what I thought.

15 Q. [10:54:00] Did you personally take your son to meet your family or did you ask
16 someone else to do that?

17 A. [10:54:23] I didn't get to our home, that is to say my family, *(Redacted)
18 was with him and he was the one who brought my son.

19 Q. [10:54:57] Now, given that where your mother was at the time and Kigali isn't so
20 very far away, why wouldn't you have personally gone to introduce your son to your
21 family? Wouldn't that have been more culturally appropriate?

22 A. [10:55:37] Yes, that would have been better. Even, well, the time that I planned
23 to spend there, I didn't spend all that time. I had planned to spend five days there,
24 but I didn't. I had to leave on an emergency basis. Yes, I know it would have been
25 better for me to take the child myself rather than using another person. But, you see,

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1 the circumstances were such that I couldn't do that.

2 Q. [10:56:11] Who paid for the stay?

3 PRESIDING JUDGE FREMR: [10:56:17] Sorry, Ms Samson, it's not, frankly saying,
4 fully clear to me whether this line of questioning has something to do with charges or
5 with the credibility of the witness. Could you elaborate on that?

6 MS SAMSON: [10:56:31] Yes, certainly, Mr President. It has to do with the
7 witness's whereabouts and the credibility of the whereabouts during 14 to
8 17 February 2003.

9 PRESIDING JUDGE FREMR: [10:56:43] All right then.

10 MS SAMSON: [10:56:46]

11 Q. [10:56:46] Sir, who paid for the hotel stay?

12 A. [10:57:04] I think I did. I think I paid for the hotel.

13 Q. [10:57:12] Since you don't get a salary, can you please help explain where the
14 money came from?

15 A. [10:57:30] When I got there the president gave me some money and said to me
16 "You can use this money to buy some clothes for your son and his mother." It wasn't
17 just for that. It was also to help me personally from a financial point of view so I
18 could buy some nonalcoholic beverages, for example.

19 Q. [10:58:03] You arrived on 15 February at the hotel, 2003?

20 A. [10:58:18] I got to Kigali on the 14th. I spent the night with a friend's place,
21 Dr Michel's place. When I called Biame (phon) I said to he was to meet with me,
22 that is to say, at the hotel the following day, the 15th.

23 Q. [10:59:00] And you paid, you paid a hotel stay until February 19, 2003, correct?

24 A. [10:59:37] I reserved the hotel for five nights. Since I didn't stay the entire time
25 I was called, I had gone long before, so I didn't pay for all the costs of the days I

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1 reserved. I was -- on the 17th -- well, that's fine. I would say if, if I had stayed for
2 five days that would have been just until the 18th or the 19th, but I left on the 17th.

3 Q. [11:00:25] And by what means were you called, you say, to leave?

4 PRESIDING JUDGE FREMR: [11:00:45] Hold on, Mr Witness.

5 Mr Bourgon.

6 MR BOURGON: [11:00:48] Mr President, there is material difference here in the
7 transcript that is important regarding the paying, because I believe my colleague is
8 interested in the paying, and that is on page 34, lines 1 and 2 in the English and the
9 issue is what did the witness pay. So I think my colleague could take that up with
10 the witness so that the record is clear.

11 PRESIDING JUDGE FREMR: [11:01:13] Ms Samson.

12 MR BOURGON: [11:01:14] 1 to 5 on page 34.

13 MS SAMSON: [11:01:19]

14 Q. [11:01:20] Sir, I asked you, "And you paid a hotel stay until February 19, 2003,
15 correct?"

16 And you answered: "I reserved the hotel for five nights. Since I didn't stay the
17 entire time, I was called, I had gone long before, so I didn't pay for all the costs of the
18 days I reserved." That's right, isn't it? Or isn't it?

19 A. [11:02:00] I paid for all five nights, but I was reimbursed for the days -- the
20 nights --

21 THE INTERPRETER: [11:02:11] Correction: Rather, I was reimbursed for the nights
22 that I did not spend at the hotel, that is to say two.

23 MS SAMSON: [11:02:21]

24 Q. [11:02:21] So you stayed three nights at the hotel and you were reimbursed for
25 two nights?

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1 A. [11:02:39] No. I spent the night, the 15th, the 16th, and the 17th in the morning
2 I left very early in the morning, I left.

3 Q. [11:02:57] How early in the morning did you leave on the 17th?

4 A. [11:03:11] We went to the airport. It was still night. I remember we arrived in
5 Mongbwalu very early in the morning, 6.30 or 7 o'clock and it was at that time that we
6 landed at the airport in Mongbwalu.

7 MS SAMSON: [11:03:37] And Mr President, if I may ask one more question before
8 the break, I will go back to the question that I --

9 PRESIDING JUDGE FREMR: [11:03:43] Yes, just one please.

10 MS SAMSON: [11:03:45] -- had asked before the clarification was made by counsel.

11 Q. [11:03:52] You said that, quote: "Since I didn't stay the entire time, I was called,
12 I had gone long before." By what means were you called away from Kigali?

13 A. [11:04:16] In Bunia only Thurayas work. I remember I took my Thuraya with
14 me and I think that I was called on the Thuraya. It was a long time ago that it
15 happened, but I think that it was the Thuraya because there was no other means of
16 communication that was used in Bunia at that time.

17 MS SAMSON: [11:04:41] Thank you for the extra time, Mr President.

18 PRESIDING JUDGE FREMR: [11:04:43] All right. And before we leave for our
19 break, two corrections of English transcript from my part, page 33, line 3 there is one
20 word missing and this word is clear, and instead of is something should be has
21 something, has something.

22 Now we break and we will reconvene, since it's now 11.05 -- anything urgent,
23 Mr Bourgon?

24 MR BOURGON: [11:05:17] Transcript corrections, I can take them at the beginning
25 of the other sessions. Thank you.

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- 1 PRESIDING JUDGE FREMR: [11:05:22] Please.
- 2 So we will reconvene at 11.35.
- 3 THE COURT USHER: [11:05:26] All rise.
- 4 (Recess taken at 11.05 a.m.)
- 5 (Upon resuming in open session at 11.36 a.m.)
- 6 THE COURT USHER: [11:36:28] All rise.
- 7 Please be seated.
- 8 PRESIDING JUDGE FREMR: [11:36:59] So before we continue with next part of
- 9 cross-examination, Mr Bourgon asked for the floor.
- 10 Mr Bourgon.
- 11 MR BOURGON: [11:37:07] Thank you, Mr President. Quickly audio verifications
- 12 requested: English page 28, lines 11 to 15, when compared with French page 26,
- 13 lines 3 to 9. We believe that the French version is the correct version.
- 14 Second verification is page 29 in English, lines 13 to 14, in comparison with page 27 in
- 15 French, line 1. We also believe that the French version is the correct version.
- 16 Page 31 in English, lines 10 to 13, and page 28 in French, 19 to 22, there appears to be
- 17 missing words. We would like those to be verified.
- 18 Thank you, Mr President.
- 19 PRESIDING JUDGE FREMR: [11:38:03] Thank you, Mr Bourgon. Your requests are
- 20 noted and supported by the Chamber.
- 21 Now, Ms Samson, you may proceed with the next part of cross-examination of
- 22 Mr Ntaganda, please.
- 23 MS SAMSON: [11:38:17] Thank you, Mr President.
- 24 Q. [11:38:22] Sir, did you sign any hotel documents in Kigali, for this stay
- 25 purportedly 15/16 February 2003?

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1 A. [11:38:55] When I made the reservation, I remember signing certain documents.

2 Q. [11:39:06] And you say when you made the reservation, did you make the
3 reservation in advance of arriving at the hotel, so before 15 February 2003?

4 A. [11:39:31] How would I have been able to conduct or make the reservation
5 before arriving? I made the reservation once I was there, once I had arrived.

6 Q. [11:39:51] So if I understand correctly, you didn't reserve the room before
7 getting to the hotel, but you just went directly to the hotel and asked if they had any
8 available rooms?

9 A. [11:40:19] I arrived at the hotel and I told them that I was going to stay at the
10 hotel for five days. They prepared their documents. I didn't even check them.
11 And then they asked me to pay. I did that and I signed. Afterwards I continued
12 with my programme but I didn't discuss other matters or subjects with the hotel staff.

13 Q. [11:41:01] Sir, is it correct that you said that, "They prepared their documents.
14 I didn't even check them. And then they asked me to pay. I did that and I signed"?

15 A. [11:41:25] They fulfilled -- they filled in their documents and I paid the money.
16 They asked me for my name and afterwards they showed me where I had to sign, and
17 I signed. Afterwards I went to my room.

18 Q. [11:41:44] And just to be clear, you signed the document but you didn't - or did
19 you - verify the personal information that was contained in it? Did you check that or
20 not?

21 A. [11:42:05] No, I didn't check. I didn't read documents in detail. I signed the
22 document and then I left.

23 MS SAMSON: [11:42:20] Mr President, may we move briefly into private session?

24 PRESIDING JUDGE FREMR: [11:42:27] For sure.

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

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1 (Private session at 11.42 a.m.) *(Reclassified partially in public)

2 THE COURT OFFICER: [11:42:38] We are in private session.

3 PRESIDING JUDGE FREMR: [11:42:43] Thank you, court officer.

4 Ms Samson, please.

5 MS SAMSON: [11:42:48]

6 Q. [11:42:49] You disclosed to the Prosecution documents purportedly coming
7 from your stay in a Kigali hotel in February 2003. Where did you get those hotel
8 documents?

9 A. [11:43:25] When my first team went to carry out investigations, it was explained
10 to me that the documents had been recovered from (Redacted). So it
11 was members of my team which brought the documents.

12 Q. [11:43:48] So if I understand your evidence, your testimony just now, your first
13 team carried out investigations and recovered these documents from
14 (Redacted), the man who accompanied you and your son to Kigali; is that
15 right?

16 A. [11:44:35] When I was asked the different places that I had gone to, I stated that
17 in the month of February I went to see my son.

18 And the person who took my son, *was named (Redacted), and the members of
19 my team therefore went to meet him, and when they met him, *he provided them
20 with these documents. The person who brought my son to see me corrects the
21 interpreter, and that is how this went.

22 Q. [11:45:20] (Redacted) is a Defence witness?

23 A. [11:45:41] I think that his name is on the list of Defence witnesses.

24 Q. [11:45:47] And do you know where (Redacted) kept these hotel
25 documents since February 2003?

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1 A. [11:46:15] I can't know that.

2 Q. [11:46:16] But he had them in his possession all this time?

3 A. [11:46:36] I didn't discuss that with my counsel. And I didn't ask for how long
4 he had kept them or had them for.

5 Q. [11:46:48] Well, do you know if they came from his possession since 2003, or did
6 he acquire them somehow after your investigation team spoke to him?

7 A. [11:47:15] The members of my team didn't give me details on that subject.

8 Q. [11:47:26] And (Redacted) provided the team with receipts and hotel
9 documents related to your stay, as well as his own?

10 A. [11:48:00] I think that he provided them with the documents. When I sent him,
11 he crossed the border between Rwanda and Congo via Uvira and he gave them
12 information relating to the way in which his travel documents have been collected.
13 So first of all, he crossed the border in order to get my child and therefore he showed
14 the Defence team the visas, the Rwandan visa and the Congolese visa on the
15 documents which he had used for that operation.

16 But I did not pay attention when I consulted the documents in order to be able to
17 explain to you further about this. But I know that he provided the travel documents
18 to members of the Defence team, and the travel documents were those which he used
19 to cross the border when he went to get my child.

20 Q. [11:49:37] Sir, to be clear, I'm not talking about any travel documents before
21 arriving in Rwanda. I'm only talking about the documents in relation to a hotel
22 when you allegedly were in Rwanda. So I want to be clear about that.

23 Now, within the materials that you disclosed are two receipts, two of the four relate
24 to you. Did the hotel give you a copy of its initial registration form at the time you
25 were at the hotel when you left?

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1 A. [11:50:27] I didn't take documents with me.

2 Q. [11:50:32] So your companion, (Redacted), stayed in another room?

3 A. [11:50:54] Yes. We didn't spend the night in the same room. He got -- he
4 therefore got another room.

5 Q. [11:51:06] And would he have -- would the hotel have given him the registration
6 card and receipts for a different patron of its hotel in a different room, in this case
7 you?

8 A. [11:51:41] I think that they provided him with these documents, but I don't
9 know under what circumstances he obtained the documents.

10 Q. [11:52:02] Now, these documents state that you arrived at this hotel in Kigali on
11 15 February 2003 and that you departed on 19 February 2003. These documents
12 have not been amended in any way by the hotel to indicate that you actually left it
13 sometime in the wee hours of 17 February 2003, correct?

14 A. [11:52:46] That doesn't come in with my work. I had already told them that I
15 wasn't going to stay there for the trip, the stay that had been envisaged, and I asked
16 them to give me back the amount which corresponded with two nights. I don't
17 know how they had an agreement afterwards with (Redacted). I don't know
18 how he explained things to him that they had to provide him with the documents.
19 All I know is that they didn't provide them to me.

20 Q. [11:53:25] And, sir, I suggest to you that hotels need to be very accurate in their
21 recording of the persons who stay at their hotel and the dates of arrival and departure,
22 for example, for taxation purposes and for their own internal accounting. And I put
23 to you that if you had actually left the hotel in the wee hours of 17 February 2003,
24 your own documents purportedly from the hotel would have accurately captured
25 that change, but they don't.

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1 A. [11:54:14] I didn't discuss with them the exact nature of these documents. I just
2 asked them to give back the money corresponding to two nights and then I left. I
3 wasn't interested in the documents and I never even asked for them.

4 Q. [11:54:37] Let's take a look at the receipt, which is at DRC-D18-0001-5148, item
5 1526.

6 PRESIDING JUDGE FREMR: [11:55:00] Mr Bourgon.

7 MR BOURGON: [11:55:01] Thank you, Mr President. The last answer of the
8 witness is important in terms of what he answered. I refer to page 43, and lines 1
9 and 2. I can't say more than that, but I think my colleague knows what I'm referring
10 to. There's a word here that is wrong in terms of what the witness said.

11 PRESIDING JUDGE FREMR: [11:55:32] Ms Samson, could you return back to that
12 because it seems to be material.

13 MS SAMSON: [11:55:38] Yes. I don't know what the problem is.

14 Q. [11:55:44] Sir, I think that there -- it's quoted here as you having said -- I just
15 want to make sure I have the right lines, as you having said: "I didn't discuss with
16 them the exact nature of these documents. I just asked them to give back the money
17 corresponding to two nights and then I left. I wasn't interested in the documents
18 and I never even asked for them."

19 Is that right?

20 A. [11:56:43] I didn't ask for the documents because I wasn't interested in them.
21 What I was interested in was my money. When I received my money, I left.

22 Q. [11:57:08] (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 A. [11:58:58] Even here I didn't receive this document. At the time I didn't read
3 this document. I just signed. I wasn't interested in the details of the document.

4 Q. [11:59:17] If we move down, sir, if we move down, please, court officer, this
5 deals with the room of -- another room by your friend, a different patron. So you
6 didn't sign for him, he signed for himself. We can go down to the bottom of the
7 page to the signature line. That's your friend's signature, not yours, correct?

8 A. [11:59:52] I don't even remember that my counsel showed me this document
9 when the team came back here from its mission that it carried out. I was shown
10 a document which had my signature, but not this one.

11 Q. [12:00:15] Now if we scroll back up, please, to the dates, it's 15-19 February 2003
12 down, please, you will agree that there is no amendment - down, please - you'll agree
13 that there is no amendment to say that the date of departure is 17 February 2003,
14 you'll agree?

15 A. [12:00:42] I do remember that I arrived on the 15th. I did not see this document
16 while I was at the hotel.

17 Q. [12:00:54] And let's look at your document 2. It's DRC-D18-0001-5147, item
18 1525.

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 A. [12:02:14] I remember the signature, but I don't remember the content of the
25 document because I haven't seen it in a long time. All I remember is that I was

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1 handed something that looked like a book which I signed. And, yes, the signature
2 you see there is indeed mine.

3 Q. [12:02:36] And you have indicated that you didn't receive this document when
4 you left and I suggest to you that these hotel ledgers are typically not returned to the
5 patron of the hotel, they are actually internal hotel documents, correct?

6 A. [12:03:07] When they asked me to provide my identification details, they are the
7 ones who took that information down. Then I paid them the money and they kept
8 the register with the information that is provided by the various visitors who come to
9 the hotel. That's what I can recall.

10 Q. [12:03:32] (Redacted)

11 (Redacted)

12 (Redacted)

13 A. [12:04:09] (Redacted)

14 Q. [12:04:16] (Redacted)

15 (Redacted)

16 A. [12:04:39] (Redacted)

17 I am not the one who filled out this document, I am not the one who drafted this
18 document.

19 Q. [12:04:52] And you have disclosed to us as well two receipts from the hotel
20 dated 15 February 2003 in which you on one receipt and your friend on the second
21 receipt paid for four nights, 60,000 francs for four nights, that would be the nights of
22 the 15 to 19, correct?

23 A. [12:05:53] I believe that my counsel showed me the two receipts. I did not see
24 any other receipts. And I remember clearly that I paid for five nights, but I did not
25 spend the five nights at that location. That is why I was reimbursed the amount that

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1 I was due. I paid for two nights and they did not insert anything in the document.

2 What happened is that I settled my account and I left.

3 Q. [12:06:34] The receipts that you disclosed are for four nights and payment of
4 four nights, but you don't have any receipts, do you, to show that you were
5 reimbursed at all for any nights?

6 A. [12:07:06] I do not have any such receipt. I was not given such a receipt. I
7 simply told them that I was not going to spend all the nights there and I informed
8 them that I was going to leave ahead of time. I requested the outstanding balance
9 and then I took my child. And then we left along with my child. (Redacted) took the
10 child and then we left, promptly.

11 Q. [12:07:43] I suggest, sir, that you were not in Rwanda for the personal reasons
12 that you have described in your testimony.

13 A. [12:08:11] I went there for a personal reason. It is during that time that I met
14 with my son and his mother who came to see me. That is the reason for which I
15 went there. My son was very important to me, more important than anything else.

16 MS SAMSON: [12:08:41] Mr President, at this time prior to moving back into open
17 session I simply wish to note that the Prosecution has made a request to the Defence
18 to see the originals of these hotel documents in August, and although initially it
19 appeared that they didn't exist, we have been told that they do and that we should be
20 able to access the originals next week. What I propose to the Chamber is that I
21 continue of course with the cross-examination and complete it as planned and that
22 once we have an opportunity to inspect them, then, if necessary, the Prosecution will
23 make any required applications to the Chamber about the practical effect of our
24 information if it becomes an issue.

25 PRESIDING JUDGE FREMR: [12:09:26] Mr Bourgon, could you comment on that.

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1 MR BOURGON: [12:09:28] We indeed did receive a request from the Prosecution to
2 inspect the originals which are not in our position. We informed the Prosecution
3 that we were looking for the originals. All we had were the photocopies, which
4 were disclosed. Then we -- last week as soon as I got confirmation that we did have
5 the originals, I informed my colleague. And now the originals are in our possession
6 with one of our team members who is expected to travel to the Hague, and as soon as
7 has travelled, this team member arrives in The Hague we will have the receipts, we
8 will turn them over to the Registry and the Prosecution can have access to them. So
9 there has been a lot of communication on this and we have done our best effort to
10 locate these receipts, Mr President. Thank you.

11 PRESIDING JUDGE FREMR: [12:10:15] Yes, so fine. I don't see any bad faith at the
12 moment on your part so we will proceed as Ms Samson was asking us.

13 Now we can now return back into open session. All right.

14 MS SAMSON: [12:10:30] Yes, please.

15 PRESIDING JUDGE FREMR: [12:10:31] Court officer, let's return back into open.

16 (Open session at 12.10 p.m.)

17 THE COURT OFFICER: [12:10:53] We're in open session.

18 PRESIDING JUDGE FREMR: [12:10:55] Thank you, court officer.

19 Ms Samson, please proceed.

20 MS SAMSON: [12:11:03]

21 Q. [12:11:03] Now, sir, you stated that a commander named Zero One, Bosco, and
22 his S4 Kareka died in a failed attack on Lipri at the end of January 2003, yes?

23 A. [12:11:31] Yes, that is correct. They died. Zero One replaced Linganga, he
24 attacked at night --

25 Q. Sir --

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1 A. -- he was killed and his weapon was taken away. The weapon was known as
2 the Saba Saba.

3 Q. [12:11:53] Then you have also indicated that Bebwa Chadrak (phon) was
4 appointed as the Mwanga battalion commander, yes?

5 A. [12:12:17] After Zero One's death Tchaligonza sent Chadrak to serve as interim
6 commander at the time, because the battalion needed to have a commander.

7 Q. [12:12:33] Now I put to you that this failed attack on Lipri took place on
8 17 February 2003, that Kareka was the battalion commander, not Zero One. Yes or
9 no?

10 A. [12:13:09] Zero One's other name is Bosco. That's his call sign. Regarding
11 Kareka, I had suggested that he take up a position during the restructuring, but he
12 did not. He instead became Jérôme's intelligence officer. So Zero One is Bosco.
13 But there are two Karekas. One Kareka died at the same time as Zero One, and there
14 is another Kareka who *was supposed to become a battalion commander. What
15 happened is that Jérôme asked me to appoint him to the position of *his T2. So there
16 are two persons who bear the name Kareka. When the weapon was taken, and I said
17 it was taken between 26 and 28 January when I was in Kasenyi.

18 Q. [12:14:20] Commander Bebwa was not the Mwanga commander at the end of
19 January 2003, was he?

20 A. [12:14:44] No. He was in Mahagi, but I brought him to Bunia at some point
21 because during the restructuring he was appointed commander SP. And this
22 appears in the logbook. So what I am saying is that he was not in Mwanga in the
23 month of January.

24 Q. [12:15:13] He didn't get to Bebwa until sometime in -- pardon me, in Mwanga,
25 until sometime in mid-February, correct?

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1 A. [12:15:41] No. He was called up before and I do recall that I called them up
2 before. He arrived towards the end of January. I brought him there at that time.

3 Q. [12:16:28] I would like to show you the logbook message DRC-OTP-0017-0033 in
4 your original logbook, page 0152. And for the translation to be displayed, it's
5 DRC-OTP-2102-3854, starting at page 4006.

6 Now, sir, do you see on the page before you the message 12 February 2003 at 905 in
7 the morning that you've sent - and if we scroll a bit further down on the -- in the
8 message - so it's the message at, sorry, 12 February at 1332 that you sent to all stations
9 about the new restructuring.

10 And if you -- because as we've looked at during your testimony, the restructuring
11 message starts at page 4006 in the translation, 0184 in the original, and then runs
12 backwards.

13 PRESIDING JUDGE FREMR: [12:19:07] Mr Bourgon.

14 MR BOURGON: [12:19:10] We're just trying to locate the -- we're familiar with the
15 message, but we're trying to match with the number. Thank you.

16 PRESIDING JUDGE FREMR: [12:19:20] All right.

17 Ms Samson, please proceed.

18 MS SAMSON: [12:19:25] In the original it should start at page 0184 and continue on
19 0183 and 0182.

20 Q. [12:19:55] Have you found the message, Mr Witness?

21 A. [12:20:07] Yes, message of 12 February. I am with you, yes.

22 Q. [12:20:15] And if -- that's the beginning of your message to all stations about the
23 restructuring. And if you look at the previous page which you've stated is the
24 continuation of your message at page 0183 in the original, and 4005 in the translation,
25 we can see under section B -- the translation will just have to move to the previous

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1 page, 4005.

2 Under section B for the southeast operational sector under Commander Salongo, from
3 Mwanga we have commander battalion Kareka. That's 12 February 2003, correct?

4 A. [12:21:37] That is another Kareka who was T2 with Jérôme. Then there is
5 a Kareka who died at the same time as Bosco. So that is another Kareka who, by the
6 way, is still alive.

7 Q. [12:21:55] Well, in any event, it is not Bebwa, you'll agree?

8 A. [12:22:11] If you want information about Bebwa look at my message where he
9 was supposed to come at the same time as Yuda, Yuda who is not Koko, because
10 Koko and Yuda were involved in some offences. It is another Koko who came at the
11 same time as Bebwa. They were commanders who had been given new assignments
12 and who came to take them up. And so if you look at that message, you will see
13 Bebwa as one of the commanders whom I had called up from Mahagi.

14 Q. [12:22:49] Well, sir, in your own message on 12 February you've assigned
15 somebody else the responsibility from Mwanga and it was not Bebwa. You assigned
16 Bebwa to the Marabo Komanda brigade. Now is that just a different Bebwa?

17 A. [12:23:32] This is how things unfolded: When Bebwa was waiting to be
18 reassigned after the death of Zero One, Tchaligonza dispatched him to take up the
19 position of interim commander. At the time of the restructuring Bebwa left that
20 position and became the 2 Zero One with Alexi Munyalizi. Kareka was transferred
21 during that restructuring, but later on he was not deployed because he took up the
22 position of T2 under Jérôme. That is what happened.

23 Q. [12:24:25] Now I would like to show you another message on 17 February,
24 DRC-OTP-2012-3854 is the translation at page 3990. And for you, Mr Ntaganda, it's
25 the logbook 0017-0033, the same book you have right now, at page 0168.

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1 And I will refer you to the second message on the page, please. It's the message
2 from Salumu, commander 409 brigade, on 18 February 2003 at 910 in the morning.
3 It's to the southeast operation sector commander and to yourself, chief of general staff
4 operations and organisation.

5 And it reads in French: (Speaks French)

6 PRESIDING JUDGE FREMR: [12:26:01] English booth, we don't have any
7 translation into English.

8 THE INTERPRETER: [12:26:05] There was an overlap in the channels, Mr President.

9 MS SAMSON: [12:26:09] I can repeat.

10 PRESIDING JUDGE FREMR: [12:26:11] Please do.

11 MS SAMSON: [12:26:13]

12 Q. [12:26:13] In French: (Interpretation) "The Commander Américain has refused
13 to go because he is frightened by the way they took our weapon in Lipri." End of
14 quote.

15 (Speaks English) Now, sir, I put to you that Commander Américain was frightened to,
16 to go, or I put to you to advance on 18 February 2003 because the failed attack in
17 which the -- your weapon was taken happened right before this, not several weeks
18 before.

19 A. [12:27:17] Well, this is what happened in Bunia at that time: When the Lendu
20 combatants took our weapon in Lipri, that was the time when Zero One and Kareka
21 died in January 2003, the delegation from Goma arrived.

22 Q. [12:27:46] Do you agree or not, yes or no, with my suggestion that this message
23 about Commander Américain refusing to go, to advance because he is afraid of how
24 "they took our weapon in Lipri" relates to an operation that happened just prior to
25 this message, that the weapon was taken in the day or days prior to 18 February 2003,

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1 do you agree? Yes or no, that's sufficient.

2 A. [12:28:40] I agree because the weapon was taken before. He was afraid because
3 the weapon was taken in January. But here we do not see the specific time, but he
4 was afraid because the enemy had taken the Saba Saba weapon in Lipri. So we're
5 not talking here about another weapon.

6 Q. [12:29:06] Now I would like to show you a document, it's DRC-OTP-0152-0286,
7 it's a United Nations report on an investigation it conducted on abuses committed in
8 Ituri between January and March 2003 in Lipri, Bambu, Kobu, Bogoro, Mandro. It is
9 item 1330 on our list and it is public.

10 May we please move to page 300 of the document, paragraph 57. Apologies,
11 page 301.

12 I will read paragraph 57 which will continue on to the following page, page 302, in
13 English:

14 "On 17 February in Lipri, UPC was reportedly defeated because of lack of munitions;
15 at least two men were killed. 29 UPC soldiers were reportedly killed, including child
16 soldiers. The Lendu recuperated some of their guns, mortars and one Motorola. In
17 Bambu and Nyangarai an unknown number of civilians were killed. In Nyangarai,
18 seven slaughtered bodies were found in a newly dug septic tank." End of quote.

19 Now, sir, I put to you that the 17 February 2003 attack described by the
20 United Nations further to its investigations in Lipri is the attack at which UPC
21 weapons and a Motorola were taken by the enemy and it is this attack to which
22 Américain refers to when he is reported to fear advancing on 18 February; do you
23 agree?

24 A. [12:32:21] Here they're speaking about mortar. I have to tell you that I'm not
25 aware of an attack where mortars were used. I'm talking about the time when our

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1 Saba Saba was taken. When you speak about mortars that were taken, I am not
2 aware of that. I am not aware of that attack.

3 Q. [12:32:53] Now I would like to show you another message. In the logbook in
4 front of you it's page 0168 and for the translation, it's the one we have on the screen at
5 page 3998.

6 Could we have the translation, please, page 3998.

7 And I would like to draw your attention to the message on 18 February. It's the
8 third message on the page, a message you sent at 1644 to Salumu in response to his
9 previous message that we just looked at where he reports about
10 Commander Américain refusing to leave. And you've looked at this message before.
11 If we could scroll down for the translation, to the third message, please, yes. And I
12 will read it out in French:

13 (Interpretation) "You are informed following the message according to which there is
14 a commander who is refusing to advance. Stop. Advance. Stop. That has never
15 happened in the army. Stop. There is no commander who has the power to refuse
16 an order coming from above." End of message.

17 (Speaks English) Now, sir, you knew when you gave this order to Salumu to advance
18 and for his troops, including Américain, to advance, what operation he was
19 advancing to? That is the operation in Lipri, Kobu and Bambu, correct?

20 A. [12:36:09] I think it's the second time you've asked me questions about this
21 message and I'm going to repeat the answer that I already gave you. This message is
22 clear. When I see a message which says that a commander is refusing to advance, as
23 a commander, I would -- I would say in my career I have never seen a commander
24 who refuses an order which comes from above. I was therefore surprised to see that
25 a commander refused to advance. But I didn't specify the direction in which they

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1 should advance.

2 I don't know if there was fighting at this time. The UPC was involved in different
3 fightings from the month of January to the month of October. I didn't give an order
4 because I didn't specify the destination or the place where these troops were meant to
5 be going.

6 Q. [12:37:32] Now, I would like to show another United Nations document to you.
7 It is a daily report at DRC-OTP-2067-1945, item 1357 on our list, and I would ask that
8 it be displayed confidentially in line with the approach with other United Nations
9 documents.

10 PRESIDING JUDGE FREMR: [12:37:57] Noted.

11 Court usher, please do it in that way. Thank you.

12 MS SAMSON: [12:38:20]

13 Q. [12:38:20] Now, this is an outgoing code cable from the United Nations. It is
14 dated 19 February 2003 and the subject is "Daily Report 18 February". And I would
15 ask that we move, please, to paragraph 2 of this daily report. And I will read it out
16 to you:

17 "In the weekly meeting with the diplomatic community, the Security Council
18 members were briefed on the general situation in Ituri and last week diplomatic and
19 political developments on the issue. We encouraged them to exert pressure on
20 Rwanda and Uganda to avoid an escalation of violence in Ituri and calm down the
21 bellicose attitude of both UPC-RP and FIPI. In that connection, we have received
22 unconfirmed reports from our team site in Bunia of a UPC/RP attack against Lendus
23 in Lipri (20 kilometres north of Bunia)." End quote.

24 Now, sir, is it your evidence that the United Nations was receiving reports of attacks
25 in Lipri on Lendus by the UPC/RP on 18 February in its daily report, but that you,

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1 deputy chief of staff in charge of operations and organisation, had no such
2 information?

3 A. [12:40:32] I didn't receive the interpretation of your question.

4 Q. [12:40:35] Certainly. I can repeat it. Is it your evidence that the
5 United Nations was receiving reports of attacks in Lipri on Lendu by the UPC/RP on
6 18 February 2003, as we've seen in its daily report, but that you, the deputy chief of
7 staff in charge of operations and organisation of the UPC, had no such information?

8 A. [12:41:13] Well, it depended on what I was doing at the time and the place I was
9 at the time. When I came back, having met my son, I received the message which
10 said that Commander Américain had refused to advance and I reacted, saying that I
11 had never seen such a situation. And when somebody doesn't give information to
12 me, I can't be informed otherwise. The message that I was aware of are the ones
13 which are registered in the logbook, and I answered every message that I received.

14 Q. [12:42:01] Now, sir, I would like to show you another document,
15 DRC-OTP-0152-0286. We looked at it a moment ago. It is the final report of the
16 MONUC special investigation team on the abuses in Ituri from January to March 2003,
17 in Lipri, Bambu, Kobu, Bogoro, Mandro. If we could turn please again to page 302.
18 I will read paragraph 58 to you, and I quote:

19 "On 18 February, UPC reportedly carried out a new attack on Lipri from its bases in
20 Mwanga and Nyangarai around 5:00 a.m. This time they were very numerous and
21 reportedly attained their objective of settling in Lipri from where they started
22 systematic destruction of the surrounding villages. The Lendu combatants escaped
23 and the population was hunted in the forest. A lot of children were reportedly killed
24 in the forest of Ngoto. UPC arrived in Kobu on that same day."

25 Sir, what information did you have about what your FPLC troops were doing in Lipri

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1 and Kobu on 18 February 2003?

2 A. [12:44:33] I didn't receive the information relating to these alleged attacks. I
3 only received information about the refusal of Commander Américain, who refused
4 to advance. And it was his superior who was complaining. Even in his message,
5 the person who he sent it to does not specify towards where Commander Américain
6 had refused to advance. And where it concerns this United Nations report, I didn't
7 receive it.

8 Q. [12:45:13] Now, on 19 February 2003, I would like to show you a message. It is
9 in the same logbook that you have before you, page 0176, and the translation is
10 DRC-OTP-2102-3854 at page 3998.
11 Have you reached page 0176?

12 A. [12:46:26] I am at the page finishing with 176.

13 Q. [12:46:31] May I ask that the court officer scroll down, please, to the last message.
14 And, Mr Ntaganda, I will focus you on the last message. It's a message dated
15 19 February 2003 at 1430, sent by yourself to the chief of general staff of the FPLC, for
16 info the president and chief and FPLC. And you in this message write, and I quote:
17 (Interpretation) "The work of operations to remain in Lipri. Stop. Mambu and
18 Kobu. Stop. The troops have already arrived into each zone. Stop. You will be
19 informed of the follow-up." End of quote.

20 (Speaks English) And I note for the record that in the original, it says Bambu with a B,
21 although the translation has an M.

22 Now, sir, that's the message in your logbook as having been sent from you on
23 19 February in relation to an operation in Lipri, Bambu and Kobu. The troops have
24 already arrived in each zone and you will be informed of the follow-up. Right?

25 A. [12:48:19] I already gave explanations with regard to this message before

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1 the Chamber. This message was sent but there's another message which enters and
2 there's an error there. I could not have sent a message which you -- and you find the
3 message at the same time in the series of messages which are sent here. This is an
4 error made by the radio operator. And when you have the logbook here it's possible
5 to see that. I didn't think this -- I didn't think this had been registered in my logbook
6 in this way. The only message that I had in Bunia was the message which entered,
7 which I -- an in message which I received. Somebody else had sent it to me, sent this
8 message and said that all the forces had arrived on the Kobu, Bambu, Lipri road and
9 we would be informed afterwards.

10 Now, this was a commander on standby and he said that he was going to inform us
11 afterwards, but it didn't specify that there was fighting.

12 Now, where it concerns this message, there is a mistake. It's the operator who
13 committed an error that can be seen relating to other messages. My message can't be
14 seen as an out message and an in message at the same time.

15 Q. [12:50:05] Yes, I understand that you claim that this message could never have
16 been sent by you because the identical message appears in your "in" half of your
17 logbook. But I would like to take a closer look at this message in the "out" section of
18 your logbook with the other messages that you concede were sent by you. At the
19 top of page 0176 in the original and page 3998, so the page that is in front of the court
20 now, if we go to the very top of the page, please, the first message that you send on
21 17 February 2003 at 1655 in the reference line is message number 50, correct?

22 A. [12:51:21] The radio operator drafted the message. I gave him a message and
23 he was the one who took it down in the logbook.

24 Q. [12:51:36] Yes. And he numbered it message number 50.

25 And if you go to your next message that you can see you sent on 17 February 2003,

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1 from you, it's message number 51 at 1700.

2 And if you look at the next message on now 18 February 2003, it's a message from you,
3 number 52.

4 Now if we look at the last message, this is the message that you dispute having sent,
5 19 February 2003 at 1430, it' is message number 53.

6 And if I ask you to look at page 175, which for the translation is page 3997, you will
7 see that your next message on 19 February 2003 is reference number message 54, at
8 the top of the page.

9 And the next message on 21 February 2003 from your signaller, reference number 55.

10 And finally the last message on this page, 3997 and for you, sir, 0175,
11 21 February 2003 at 1020 in the morning, that is message number 56.

12 Now, sir, I suggest to you that your signaller made no mistake when he placed that
13 message squarely where it is located in your logbook between message number 52
14 and message number 54, and that you sent that message regarding the operation in
15 Lipri, Kobu and Bambu because you planned it and you knew exactly that you were
16 coordinating and had a commanding role.

17 A. [12:53:52] It's true that he gave a number to this message, even if it's by mistake.

18 My problem is the same, why is this message also among the messages which were

19 received or in? It is simply because he took his message and here the mistake is

20 a mistake of the person who sent it because this message, it's put in "in" messages, but

21 (Redacted)

22 (Redacted)

23 message, the copy of the message received, I remember having already seen that at
24 the time.

25 Q. [12:55:05] The message that is also contained in your in box is exactly the same

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1 as the message, this message in your out box, isn't it? It's described as being from
2 you with the same content, correct?

3 A. [12:55:38] That's the reason why I say that there was a mistake. I already
4 explained that to my counsel. I would also say if you read the content of the
5 message, it's not speaking about fighting, it's quite simply saying that all the forces
6 have arrived on that road Bambu, Lipri, but it doesn't speak specifically about
7 fighting. It just says that the information will be given subsequently.

8 MS SAMSON: [12:56:17] Mr President, with your leave I would like to move to
9 another sequence which would take longer than the remaining few minutes.

10 PRESIDING JUDGE FREMR: [12:56:27] So you propose to break now?

11 MS SAMSON: [12:56:35] With your permission, your Honour, yes.

12 PRESIDING JUDGE FREMR: [12:56:37] Yes. It's reasonable.

13 So we will take our regular lunch break now and we will reconvene at half past two.

14 THE COURT USHER: [12:56:45] All rise.

15 (Recess taken at 12.56 p.m.)

16 (Upon resuming in open session at 2.36 p.m.)

17 THE COURT USHER: [14:36:45] All rise.

18 Please be seated.

19 PRESIDING JUDGE FREMR: [14:37:04] Good afternoon, everybody. This
20 afternoon we will continue with next part of cross-examination of Mr Ntaganda
21 conducted by the Prosecution. And, Ms Samson, I will just repeat my caveat from
22 yesterday: Please be ready that at quarter past 4, I would like to give floor to
23 Ms Pellet. So you should finish by that time.

24 Mr Bourgon.

25 MR BOURGON: [14:37:53] Thank you, Mr President. With the Chamber's leave,

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1 I'd like to have five minutes to address the Chamber on the issue of re-examination at
2 the same time, at the end of the session, please.

3 PRESIDING JUDGE FREMR: [14:37:56] Frankly saying, you are reading my
4 thought, because I also had idea to do this. So we are on the same page. All right.
5 So that is why we will -- then I will ask you, Ms Samson, to finish at 4.10, to give time
6 also to Mr Bourgon.

7 Mr Bourgon.

8 MR BOURGON: [14:38:12] I apologise. I also have two transcript corrections that
9 I indicated before the break. Page 50 in English, lines 2 to 6, page 46 in French,
10 lines 5 to 8, there appears to be confusion between the terms G2 and T2, Tango 2, and
11 who would have made the nomination. Both are incorrect, in our view.

12 Page 40, line 2 in English, page 36, line 28, to page 37, line 1 in French, there is a
13 difference as to who would have given documents to whom. We believe the French
14 version is the correct one.

15 Thank you, Mr President.

16 PRESIDING JUDGE FREMR: [14:39:01] Ms Samson.

17 Maybe one guidance concerning this process of -- there will be probably in the future
18 also many corrections of the transcript. Generally the Chamber would prefer if this
19 process would be made without involvement of the Chamber, just between the
20 parties. But if there would be some dispute whether this correction should be made
21 or the correction which has been made is not the right one, then you may address the
22 Chamber to give final, final say.

23 Now, Ms Samson, you have the floor.

24 MS SAMSON: [14:39:37] Thank you, Mr President. And the only -- I have three
25 points to make before I begin the cross-examination, the first on the issue of transcript

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1 corrections. Both parties at times have made requests for transcripts to be listened to
2 and edited if necessary. And I'm unclear as to when exactly that review gets
3 conducted, because if the transcript corrections that counsel is asking take place next
4 week, then my opportunity to ask questions, because the transcript is different than
5 what I understood it to be at the time of cross-examination, is lost.

6 Does the Chamber have a sense as to whether the edited transcripts on a daily basis
7 are taking into account these requests or not?

8 PRESIDING JUDGE FREMR: [14:40:29] I have some rough sense, but I would
9 maybe ask court usher.

10 Court usher, could you provide us - or, court officer - with the method or merely
11 timing how these requests for correction will be conducted?

12 THE COURT OFFICER: [14:40:44] I will ask my colleague, the transcript
13 coordinators, and provide you with this information in the course of the session.

14 PRESIDING JUDGE FREMR: [14:40:53] But anyway, in case that will be, we will
15 rely that some material correction has been made with some delay, we then probably
16 should -- you should be entitled to ask -- to ask us for some additional chance to make
17 some limited, limited additional cross-examination.

18 MS SAMSON: [14:41:16] Thank you, Mr President. I also would like to note for
19 the transcript that Ms Kristy Sim has joined the Prosecution team.

20 And, thirdly, I request also a few minutes - five minutes, no more - to provide the
21 Chamber with some responses to questions raised the day before yesterday, I believe.
22 If I could do so at the end of the session as well, and I propose that I break at 4.05, if
23 that's convenient to the Chamber.

24 PRESIDING JUDGE FREMR: [14:41:48] I would rather amend my previous ruling
25 and say that at 4 o'clock, just not to be under time pressure.

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1 So now, I think we can proceed.

2 MS SAMSON: [14:41:58] Thank you, Mr President.

3 Q. [14:42:01] I'd like to show you a document, a daily report of the United
4 Nations on 19 February 2003. It's at DRC-OTP-2067-1949. It is number 1358 on our
5 list. And, Mr President, I would ask that it be displayed confidentially.

6 PRESIDING JUDGE FREMR: [14:42:34] Point taken by court officer.

7 Mr Bourgon.

8 MR BOURGON: [14:43:01] Thank you, Mr President.

9 I note for the record that this document has neither been used nor admitted in
10 evidence during the presentation of the Prosecution's case. Thank you.

11 PRESIDING JUDGE FREMR: [14:43:11] Noted by the Chamber.

12 MS SAMSON: [14:43:15]

13 Q. [14:43:17] This is a daily report for 19 February and the outgoing code cable is
14 sent on 20 February 2003, a United Nations MONUC document. And I would like to
15 read a passage to you, it's at paragraph 9, which is at page 1951. I will read the
16 passage out to you as it's in English. So the MONUC reports under the heading
17 "Military", paragraph 9:

18 "A MONUC patrol for village Lipri (25 kilometres northwest of Bunia), where Lendus
19 were reported attacked by the UPC, was not allowed to progress by the UPC, who
20 sought a special authorisation from their headquarters. The mission is expected to
21 proceed on 20 February."

22 You were aware, were you not, sir, that this incident took place and that the UPC did
23 not allow the MONUC patrol to pass to Lipri?

24 A. [14:44:56] I was not aware of that information. All I know is what is
25 contained in the message I received. When I was told that the forces were at the

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1 Lipri road and -- at the Bambu-Lipri road and we were to receive further information
2 subsequently. But I had no awareness of the MONUC report relating to that
3 incident.

4 Q. [14:45:44] You may not be aware of the MONUC report, but my question is
5 about the content and the veracity of the information being reported. The message
6 indicates that the UPC did not allow a MONUC patrol to progress to Lipri, where
7 Lendu were reported attacked by the UPC, and that those UPC soldiers sought
8 special authorisation from their headquarters. You were at the UPC headquarters on
9 19 February 2003?

10 A. [14:46:50] I was in Bunia getting ready to travel to Fataki on a mission to
11 which I had been assigned by the president.

12 Q. [14:47:04] And while you were in Bunia did you not receive any request for a
13 special authorisation from your military troops about allowing a MONUC patrol to
14 pass?

15 A. [14:47:29] On that day the only mission I had was to go to the location which I
16 have mentioned, and I was getting ready to do so. I did not accomplish any other
17 mission at any other location.

18 Q. [14:47:53] Was it standard practice in the UPC to not allow a MONUC patrol
19 to progress when they were seeking to attain villages reportedly attacked, or seeking
20 to attain villages for any other purpose?

21 A. [14:48:28] Before the Ugandans drove us out of Bunia or drove us out, there
22 were MONUC observers in Bunia, some of whom were protected by us and they
23 didn't carry out any patrols. At the time, during that period around February 2003
24 I was not aware of MONUC troops carrying out any patrols.

25 MS SAMSON: [14:49:25] Mr President, I would like to admit that paragraph for

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1 the purpose of impeachment.

2 PRESIDING JUDGE FREMR: [14:49:32] Defence, your position?

3 MR BOURGON: [14:49:38] No objection, Mr President.

4 PRESIDING JUDGE FREMR: [14:49:42] All right then. So paragraph of the
5 document specified by, read out by Ms Samson is admitted into evidence for the
6 purpose of impeachment.

7 Ms Samson, please proceed.

8 MS SAMSON: [14:49:59]

9 Q. [14:50:00] You testified that the FPLC never names its operations, never gives
10 them names; is that right?

11 A. [14:50:23] Could you please specify the period to which your question refers.

12 Q. [14:50:35] I have transcript reference T-213, page 19, lines 12 and 13:

13 Question: "What name did you use for your operations and attacks?"

14 Answer: "We did not have any names for such attacks."

15 Is that right, your testimony, or did you sometimes have names depending on the
16 period?

17 A. [14:51:04] Okay. Now I understand your question. When an operation is to
18 be conducted, a name to be given to an operation, no, we didn't do that. If you had
19 to attack or liberate Sayo, there was no code name for such an operation, no.

20 Q. [14:51:46] So do I understand that you agree with your testimony in-chief that
21 you never gave names to your operations?

22 A. [14:52:10] I am not aware personally of any operation that had a name, a code
23 name, amongst the operations that were carried out by the FPLC.

24 Q. [14:52:30] I'd like to show you a document. It's DRC-OTP-0016-0137, it's
25 public, number 514 on the Prosecution's list.

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1 Now, this is a document, you can see on the left it's on the FPLC letterhead, 2nd
2 brigade infantry section 1, written in Tatsi on 4 November 2003. It's sent to chief G3
3 of the FPLC in Lopa, and for information we have the chief of general staff of the
4 FPLC in Bunia and yourself, the chief of general -- deputy chief of staff of the FPLC in
5 Bunia. And the subject line is, and I quote, in French: (Interpretation) "The report
6 on the operation on Tchomia. Operation Effacer PUSIC".

7 (Speaks English) And if I could ask that we turn to the second page, to the signature
8 line, it is written "For the commander 2nd brigade", and in French (Interpretation)
9 "Person in charge of the operation 'Effacer PUSIC'". Otherwise, wipe out PUSIC
10 (Speaks English) Colonel Innocent Kaini.

11 Now sir, isn't this a code name for an operation used in the FPLC?

12 A. [14:55:07] I do not know that operation and I did not receive this letter. I am
13 seeing it here for the first time. I have never heard mention of an operation known
14 as Effacer PUSIC.

15 Q. [14:55:42] Sir, as I read to you moments ago, you are copied on this letter. It
16 went to you for information.

17 A. [14:56:06] Well, when an addressee receives a copy, he does acknowledge it by
18 signing. And if I had received a copy of this letter I would have remembered this
19 operation Effacer PUSIC mentioned here and I would have talked about it. And it is
20 because I am not aware of this operation that I have told you that I was never aware
21 of the existence of this operation.

22 Q. [14:56:41] You'll agree with me, I'm sure, that in fact the FPLC did sometimes
23 name their operations using codes, as we can see from this document, correct?

24 A. [14:57:06] I have just told you that I am learning about this for the very first
25 time. As a superior commander, if that had been the practice in place, I would been

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1 familiar with it. If we had had the habit of using code names, I would have been
2 able to provide you with examples. Unfortunately, this is the first time I'm hearing
3 mention of such a thing through this letter.

4 Q. [14:57:40] I would like to move to another topic dealing with the events of
5 24 February 2003. And I would like to play a video. It's one we've seen before, but
6 I have different questions for you. It's a short extract of DRC-OTP-0127-0061,
7 item 877. And the minutes are 1.29.09 to 1.33.09. The transcript in French is at
8 DRC-OTP-2082-1033, page 1075, lines 1447, to 1077, lines 1518. It's item 878. And I
9 request that we have the floor, please.

10 PRESIDING JUDGE FREMR: [14:59:11] All right.

11 MS SAMSON: [14:59:33] Mr President, I'm verifying whether the interpreters have
12 a copy already.

13 PRESIDING JUDGE FREMR: [14:59:38] Very well.

14 THE INTERPRETER: [14:59:39] Message from the English booth: We do not have
15 a copy in the booth right now but we were wondering if it could be displayed.

16 MS SAMSON: [14:59:54] We have a copy here, but in the interests of time, the
17 court officer may be able to display it to the interpreters, as was suggested yesterday,
18 while the video plays for the courtroom.

19 PRESIDING JUDGE FREMR: [15:00:08] Court usher, please assist.

20 THE COURT OFFICER: [15:00:14] This will be displayed on the evidence 1
21 channel whereas the video will be then displayed on the evidence 2 channel.

22 MS SAMSON: [15:00:48] And as I mentioned, we will start playing from 01.29.09.

23 PRESIDING JUDGE FREMR: [15:00:57] Defence.

24 MR BOURGON: [15:00:58] Well, I would just like to obtain confirmation from my
25 colleague that the Prosecution intends to play an extract from the video that is not in

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1 evidence, a new one. I have here -- there's an overlap here, but there's a part of the
2 video that is not in evidence. So I need to confirm that with my colleague, please.

3 MS SAMSON: [15:01:21] That's right, your Honour. It's a portion of this video
4 not admitted.

5 PRESIDING JUDGE FREMR: [15:01:28] Noted.

6 MS SAMSON: [15:01:38]

7 Q. [15:01:39] Mr Witness, can you watch carefully and listen carefully, please.

8 (Viewing of the video excerpt)

9 THE INTERPRETER: [15:01:59] (Interpretation of the video excerpt)

10 "Is there fighting under way?

11 General: Mm-hmm.

12 TL: There were people who blocked the road last week.

13 If this morning, this morning, if there was fighting here --

14 General: Where?

15 TL: In Bogoro this morning.

16 General: Bogoro is to the south, isn't it?

17 TL: Otherwise last week there were people who came close to the road over by

18 Nyangarai, Kobu."

19 THE INTERPRETER: [15:03:02] Message from the interpreters: If the following
20 page of the transcript could be displayed.

21 PRESIDING JUDGE FREMR: [15:03:38] Could you stop? We are not provided
22 now with further interpretation.

23 THE INTERPRETER: [15:03:45] Message from the interpreters: The interpreters
24 did a sight translation of the first page and requested that the next page of the
25 transcript be put up on the screen.

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- 1 PRESIDING JUDGE FREMR: [15:03:56] I heard that. So, court usher, we are
2 waiting for the second page.
- 3 THE INTERPRETER: [15:04:30] Sight translation of the following page:
4 "General: So there was fighting nearly all around. To the northwest, towards
5 Mongbwalu, to the south, to the southeast.
- 6 TL: There was, there was -- you're here. Over by Nyangarai, Kobu, et cetera. This
7 morning, there is -- there was a group of armed people who came [inaudible].
8 General: The fighting has stopped now over by Kobu, Lipri.
- 9 TL: Oh, yes, yes, it stopped.
- 10 General: Because we -- the information that we have as well is that it's fine.
11 Apparently our enemies over there have fled into the forest and now in fact they no
12 longer any more -- they are no longer defending themselves. They fled. But
13 apparently they would be chased all of that."
- 14 THE INTERPRETER: [15:05:55] The interpreter would like to ask which line he
15 should continue until.
- 16 MS SAMSON: [15:06:02] Until line -- sorry, I'm going to go back and see what
17 I had mentioned earlier. 1482.
- 18 THE INTERPRETER: [15:06:34] Continuation, line 1479, TL says:
19 "No, no, that's -- that's all wrong. We have -- we were able to gain control over those
20 people. They didn't leave all -- we caught them."
- 21 Line 1482, there's a change of -- a different shot, and then that is the end of the excerpt
22 to be sight translated.
- 23 MS SAMSON: [15:07:10] Mr President, I would like to read out the passage again,
24 1472 through to 1486, and then have it interpreted. In French:
25 (Interpretation) "Lubanga" --

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1 (Speaks English) In fact, I'm going to go back to 1462:

2 (Interpretation) "Otherwise last week there were people who came close to the road
3 by Nyangarai, Kobu.

4 General: So there was fighting here practically all around. To the northwest,
5 towards Mongbwalu, to the south and the southeast.

6 Lubanga: There was, there was -- you're here. Over by Nyangarai, Kobu, et cetera.
7 This morning, there was a group of armed people who came.

8 General: The fighting has stopped now, so over by Kobu, Lipri.

9 Lubanga: Oh, yes, that's over.

10 General: Because we -- the information that we also have is that apparently your
11 enemies there fled into the forest and now in actual fact they are not defending
12 themselves any more. They fled. But they could be chased, they would be chased.

13 Lubanga: No, no, that's -- you've got it all wrong. We've been able to gain control
14 over those people. They haven't left. We've been able to pick them up. And we
15 asked them to set up operations once again.

16 General: But the follow-up of the observers, can they go see that?

17 Lubanga: Yes, they can go." End of quote.

18 (Speaks English) Now, sir, you were shown that video before and you confirmed the
19 date stamp on the video of 24 February 2003, that you recognised President Lubanga.
20 You could not confirm that the general, the man in military uniform, is from MONUC.
21 But what we heard in the video and in the passage that was read out is that Lubanga
22 is confirming his knowledge of attacks in Nyangarai, Kobu and Lipri when he speaks
23 to, I suggest, MONUC representatives on 24 February 2003. You heard him confirm
24 that knowledge, correct?

25 A. [15:11:10] When I listened to the interpretation, I heard that Lubanga was

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1 talking about acts of violence or fighting that was going on at those places.

2 Q. [15:11:31] And you heard that the person whom Mr Lubanga is meeting says
3 that his information is that Thomas Lubanga's adversaries in those places fled to the
4 forest and that they're no longer defending themselves because they fled but that they
5 were being chased by Lubanga's troops. What information did you have at that time
6 about this?

7 A. [15:12:17] At the time I did not have that information at all. If you were
8 aware of the situation that I was in, I was trying to prepare some plans against the
9 UPDF. I already mentioned that. At that time I was not in Bunia. Rather, I was to
10 the north myself, hundreds of kilometres from Bunia, so I did not receive that
11 information.

12 Q. [15:13:07] Sir, just to be clear, your evidence is that Thomas Lubanga,
13 non-military, has more knowledge of operations being conducted by FPLC troops
14 that you're in charge of than you do?

15 A. [15:13:32] At that time, if you knew the situation I found myself in, you would
16 realise that I was travelling all night long and I was afraid the UPDF might set up an
17 ambush, so I was very busy drawing up plans against the UPDF and the fighters.
18 I was afraid that the UPDF would discover my activities. Even the places like
19 Komanda and other places where I would go to, I could no longer go to those places
20 during that period of time.

21 Q. [15:14:25] Now, sir, I'm going to come back to my question: Did Thomas
22 Lubanga have more information and knowledge about FPLC operations and what
23 was happening on the ground, and who was chasing who within troops and enemy
24 forces on 24 November 2003 and before, did he have more information about than
25 you, deputy chief of staff in charge of operations and organisation of the FPLC?

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1 A. [15:15:00] I wasn't in Bunia on the 24th. I was on another mission. And if
2 you ask me questions about that other mission, I could perhaps explain things to you.
3 How could I have been aware of this information that was going about in Bunia when
4 I was not there?

5 PRESIDING JUDGE FREMR: [15:15:39] Mr Bourgon.

6 MR BOURGON: [15:15:40] Mr President, just to be sure, at page 77, at line 14 the
7 date mentioned on the transcript, both in French and English, is 24 November. I'm
8 not sure what I heard, but I don't think that November is correct in that question.

9 MS SAMSON: [15:16:03] Thank you. That's true, Mr President. I can't recall if I
10 said November, but certainly we're dealing with 24 February 2003.

11 PRESIDING JUDGE FREMR: [15:16:14] Noted.

12 MS SAMSON: [15:16:20] And Mr President, before leaving, I seek to admit this
13 section of the video and corresponding transcript for the purposes of impeachment.

14 PRESIDING JUDGE FREMR: [15:16:40] Decision -- not decision. Defence?

15 MR BOURGON: [15:16:52] No objection, Mr President.

16 PRESIDING JUDGE FREMR: [15:16:56] So video played, the excerpt played by
17 now Prosecution and corresponding transcript are admitted into evidence for the
18 purposes of impeachment.

19 Ms Samson, please proceed.

20 MS SAMSON: [15:17:12]

21 Q. [15:17:17] Now I would like to show another report to you. It is
22 DRC-OTP-2078-0586, item 1374. It's a United Nations daily report dated
23 25 February 2003.

24 And Mr President, I would ask that it be displayed confidentially.

25 PRESIDING JUDGE FREMR: [15:17:43] All right. Point taken by court usher.

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1 Mr Bourgon.

2 MR BOURGON: [15:18:05] Thank you, Mr President.

3 Same observation with this document, never used or admitted during the
4 presentation of the Prosecution's case. Thank you.

5 PRESIDING JUDGE FREMR: [15:18:13] Noted by the Chamber.

6 MS SAMSON: [15:18:23]

7 Q. [15:18:24] Now this document is, as I mentioned, a MONUC United Nations
8 daily report for 25 February. It is sent or transmitted on 26 February 2003.

9 And I would ask that we move to page 0588, paragraph 10.

10 And I will read from the last two sentences of this MONUC report for
11 25 February 2003:

12 "According to an unconfirmed report UPC soldiers have burnt Ngongo, a Biri village
13 located on the outskirts of Bunia. The Bunia team is ascertaining the details,
14 although fighting around Bunia in the last few days restricts MILOBS activity to
15 travel out of Bunia."

16 Now, sir, Ngongo is the village where the UPC military and political representatives
17 met with Lendu leaders on 14 January 2003, correct?

18 A. [15:20:19] Yes. Ngongo is a place inhabited by Bira people. I don't know
19 whether there was another place called Ngongo. But I do know that Ngongo is the
20 place where the discussions occurred with the Lendus from Lipri.

21 Q. [15:20:40] And this was a meeting in the context of peace, you said, right?

22 A. [15:21:03] On the 14th they had begun the dialogue for pacification as the UPC
23 movement had planned for. It was on the 14th of January 2003.

24 Q. [15:21:19] And I suggest to you that the information in the United Nations
25 daily report is true and accurate, in that the UPC burnt the village of Ngongo by

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1 25 February 2003?

2 A. [15:21:49] At that time I was not in Bunia. I was 130 to 150 kilometres north
3 of Bunia. I was not in Bunia. This is the first time I've seen this report, so I did not
4 receive that information.

5 MS SAMSON: [15:22:10] Mr President, I seek to admit the passage I've read for the
6 purposes of impeachment.

7 PRESIDING JUDGE FREMR: [15:22:17] Defence?

8 MR BOURGON: [15:22:19] We fail to see any impeachment value, but with the
9 guidance from the Chamber we have no objection, Mr President.

10 PRESIDING JUDGE FREMR: [15:22:39] It even refers to unconfirmed information,
11 but all right. As we said, and I can repeat it, the Chamber will take this piece of
12 evidence for the purpose of impeachment with great caution.

13 So anyway, this part of report quoted by Ms Samson is admitted into evidence for the
14 purpose of impeachment.

15 MS SAMSON: [15:23:12]

16 Q. [15:23:13] Now, sir, I suggest to you that the FPLC used as a pacification -- as a
17 pretext for launching operations and luring unarmed Lendu and other non-Hema
18 civilians to Sangi, purportedly to continue a peace discussion in February 2003.

19 PRESIDING JUDGE FREMR: [15:23:48] Hold on, Mr Witness.

20 Mr Bourgon.

21 MR BOURGON: [15:23:51] May we have some kind of a basis or a foundation for
22 this assertion, Mr President?

23 PRESIDING JUDGE FREMR: [15:23:57] Ms Samson.

24 MS SAMSON: [15:23:58] Mr President, the Prosecution has a good-faith basis in
25 that its case is that the FPLC used pacification, and we've heard evidence from many

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1 witnesses and some documents to the effect, that the FPLC engaged in an invitation to
2 a peace meeting that turned into a bloody massacre and the murder of a number of
3 unarmed civilians, their rape, and other abuses.

4 PRESIDING JUDGE FREMR: [15:24:37] It's okay with me. It's still suggestion.
5 So it's up to Mr Witness to take his position to that suggestion.

6 MS SAMSON: [15:24:53]

7 Q. [15:24:54] Would you like me to rephrase my question?

8 A. [15:25:06] Yes. Could you repeat your question so I can understand it
9 properly and answer.

10 Q. [15:25:16] Yes. I put to you that the FPLC lured unarmed civilians to Sangi in
11 February 2003 under the pretext of pacification meetings, and thereafter forced them
12 to carry goods, captured them, detained them, brought some to Kobu, raped some of
13 them. What do you say?

14 PRESIDING JUDGE FREMR: [15:26:07] Mr Bourgon.

15 MR BOURGON: [15:26:08] I object to the form of the question, Mr President. It
16 has to be a suggestion, but --

17 PRESIDING JUDGE FREMR: [15:26:13] Mr Bourgon, enough. Even for me, I
18 don't also, I don't like this kind of question, very, very compound. There is very
19 important pieces putting together pretext, then several aspects of this event which, in
20 my view, is not possible to answer by one way, one sentence.

21 So please try to rephrase and maybe try at least to divide all that aspects contained
22 step by step, whether this meeting occurred, what was the reason for that meeting,
23 whether it was pretext or not. But it is phrased like this, I think it's even impossible
24 to answer it easily. So please rephrase, Ms Samson.

25 MS SAMSON: [15:27:06] Yes, Mr President. I will come back to this question and

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1 unpack it. But first I will move to a slightly different question.

2 Q. [15:27:18] You testified that you heard about a massacre of civilians in Kobu
3 for the first time in 2004?

4 A. [15:27:42] Could you read out to me the statement so that I can understand the
5 context better, the context in which I apparently or might have said that.

6 Q. [15:27:57] When did you hear that civilians in Kobu were allegedly massacred
7 by UPC?

8 PRESIDING JUDGE FREMR: [15:28:16] Hold on, Mr Witness.

9 Mr Bourgon.

10 MR BOURGON: [15:28:18] Mr President, there has to be a date to the question,
11 because when the witness testified on this issue in-chief there was a date to the
12 question. If my colleague does not agree with the date or wants to contradict the
13 witness, at least we should use the same foundation, the same basis.

14 PRESIDING JUDGE FREMR: [15:28:38] Ms Samson.

15 MS SAMSON: [15:28:39] Is there a dispute as to the date of these events? Because
16 I'm looking at the questions that were given in -- asked in-chief --

17 MR BOURGON: [15:28:57] Mr President, for the sake of assistance I can say what
18 the question was in-chief, and the question was: "Did you receive information
19 regarding rumours of accounts of civilians being killed by members of FPLC in Kobu
20 in February or March 2003?" That was the question.

21 PRESIDING JUDGE FREMR: [15:29:16] I think it was fair to quote the question.
22 So it's fine.

23 MS SAMSON: [15:29:37]

24 Q. [15:29:38] Now, sir, what is your answer? Did you receive information
25 regarding rumours of accounts of civilians being killed by members of the FPLC in

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1 Kobu in February or March 2003?

2 A. [15:30:02] No, I did not receive that information.

3 Q. [15:30:06] Now, you never received that information or you received it on the
4 radio in 2004?

5 PRESIDING JUDGE FREMR: [15:30:45] Mr Bourgon.

6 MR BOURGON: [15:30:46] Mr President, the question refers to radio, whereas the
7 witness never said that, to our recollection. So we need a reference, please.

8 PRESIDING JUDGE FREMR: [15:30:59] Ms Samson.

9 MS SAMSON: [15:31:00] Yes. The answer given by the witness in transcript
10 T-223, lines 19 to 21, quote: "Well, this was the first time that I had learnt that -- this
11 news. It was being disseminated via the radio stations and so I asked him about it
12 because I didn't know anything about it prior to this point in time."

13 Q. [15:31:42] So, sir, you heard about this on the radio, you say?

14 PRESIDING JUDGE FREMR: [15:31:53] Mr Bourgon.

15 MR BOURGON: [15:31:54] Mr President, the reference given by my colleague right
16 now about the radio refers to a different set of events, it refers to the knowledge of the
17 witness when he was in Bule and Mr Kisémbu was heading for Mongbwalu, which is
18 a completely different question from what my colleague is getting to right now.
19 What we have here in the transcript based on the witness's previous answer, he
20 referred to the media but he did not say radio. He did say radio when he was
21 talking about Kisémbu and when he left to Bule, but not at that point in time, not in
22 2004. Thank you.

23 PRESIDING JUDGE FREMR: [15:32:33] Ms Samson.

24 MS SAMSON: [15:32:33] Yes. Mr President, is this coming out of my time,
25 because I am going to read the passage where this is a radio related to Kobu?

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1 PRESIDING JUDGE FREMR: [15:32:44] It depends. If you are right, then it
2 should be subtracted from your time. If you are not right then it should be included
3 in your time. It depends whether this objection is well founded or not.

4 MS SAMSON: [15:32:58] Now let me read the passage to your Honour so your
5 Honour can make a determination on that point.

6 It is T-223 and I will start from page -- I will start from page 12 -- 14, page 14, starting
7 lines 5:

8 "Mr Ntaganda, in January, February or March 2003, did you receive information
9 regarding civilians killed by members of the FPLC in Kobu in February or March?"

10 Answer: "No, not at all."

11 Question: "Now, during the period April 2003 and November 2003 did you receive
12 information regarding civilians killed by members of the FPLC in Kobu in February
13 or March 2003?"

14 Answer: "No."

15 Question: "Did you receive information regarding rumours or accounts of civilians
16 being killed by members of the FPLC in Kobu in February or March 2003? And did
17 you receive any such information at any time?"

18 Answer: "Yes. I recall that when we were preparing to join the Kinshasa army
19 early in 2004 I learnt that and I learnt about it via the media."

20 Question: "Mr Ntaganda, what in fact did you" --

21 PRESIDING JUDGE FREMR: [15:34:36] Please slow down a bit, Ms Samson, you
22 are very fast.

23 MS SAMSON: [15:34:39] Certainly.

24 "Mr Ntaganda, what in fact did you learn from the media at that stage?"

25 Answer: "It was announced that the UPC had killed a large number of local people

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1 in Kobu and that there was a mass grave. That's what I learnt."

2 Question: "Now, when you heard this, where were you?"

3 Answer: "I recall that I was in Lopa. We had a meeting of the general staff to
4 prepare for our departure to Kinshasa. And at the start of the meeting I put a
5 question to the commander who had led the fighting there."

6 Question: "What was your role at that time?"

7 Answer: "I was chief of the general staff of the FPLC."

8 Question: "Now, the name that you just mentioned was not recorded in the
9 transcript, so I'll put the question to you. What is the name of the officer who you
10 mentioned a moment ago?"

11 Answer: "His name was Deba."

12 Question: "And what was Deba's position at that time?"

13 Answer: "I'm afraid I don't understand the question."

14 Question: "Who was Deba and what was he doing with you then in 2004?"

15 Answer: "He was a deputy brigade commander. In 2004 he was the deputy
16 brigade commander, but at the time of the fighting he was OC."

17 Question: "Mr Ntaganda, what I'd like to know is what he was doing in 2004, so
18 2004 when you were speaking with him?"

19 Answer: "He was deputy brigade commander."

20 Question: "And why did you speak to him then?"

21 Answer: "Well, this was the first time that I had learnt ... this news. It was being
22 disseminated via the radio stations and so I asked him about it because I didn't know
23 anything about it prior to this point in time." End quote.

24 PRESIDING JUDGE FREMR: [15:36:51] So, Mr Bourgon, you also can express your
25 own view, but in my view this question originally put by Ms Samson was well

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1 founded.

2 MR BOURGON: [15:37:04] But it would be so easy to just go straight to the point
3 and quote radio. This would save a lot of time. But if my colleague wants to repeat
4 the whole testimony in-chief.

5 PRESIDING JUDGE FREMR: [15:37:17] Anyway, now you may proceed. And
6 this time, as I guarantee, it will not be included in your time, Ms Samson.

7 And next time, Mr Bourgon, if you, you personally would put better question, it's fine,
8 but it's up to the examining party to take their way. So if it is not completely,
9 completely wrong, we should, you and me, we should leave the party put the
10 question.

11 Please proceed, Ms Samson.

12 MS SAMSON: [15:37:50] Thank you, Mr President.

13 And I only note that the need to review the whole testimony of the witness in-chief
14 was at the request of the Defence, because the suggestion was that the radio, the radio
15 message that I had put in my question referred to a different event.

16 PRESIDING JUDGE FREMR: [15:38:16] All right.

17 Mr Bourgon?

18 MR BOURGON: [15:38:25] Well I note, Mr President, that when I put the question
19 my colleague referred to a sentence where the word radio was and that sentence was,
20 as I've mentioned, referring to a different situation. That is why I made this
21 objection. Thank you.

22 PRESIDING JUDGE FREMR: [15:38:41] Ms Samson, frankly saying, I am afraid
23 that we all are wasting the time because, in my view, even this issue and it's even
24 possible there were some, you know, different understanding of the issue, but to my
25 opinion it was not material. Ms Samson, please proceed.

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1 MS SAMSON: [15:39:02] Thank you, Mr President.

2 Q. [15:39:06] Now, sir, your evidence, as we've just heard, in-chief is that you
3 knew nothing about the killing of civilians in Kobu until you heard it on the radio in
4 2004. Thereafter you say you spoke to a commander involved in that operation,
5 Commander Deba. How did you know to speak to Commander Deba if you had no
6 knowledge of those attacks?

7 A. [15:40:09] I said that I talked to that commander because I heard the
8 information on radio, and the radios were saying that there was a mass grave in Kobu.
9 And so I put the question to him because I had heard the news over radio and he was
10 present with me at the meeting. That's why I asked him to explain to me what
11 actually transpired. And I understood from his explanations that what he was
12 telling me was different from what I had learnt from the radio.

13 Q. [15:40:49] And you knew that he was involved in that operation?

14 A. [15:41:07] Well, it was said that it was Salumu who was leading up the brigade.
15 And when you look at the video from Mandro you can see Deba on it and he was
16 therefore with Salumu in Mandro, and I was fully aware of that.

17 Q. [15:41:31] Now, according to you, you didn't continue to look for any more
18 information on these allegations after you spoke to Commander Deba?

19 A. [15:42:06] In 2004 we were getting ready to go to Kinshasa and I asked the
20 question to the commander who was *on the spot and who was the deputy
21 commander of the *brigade. He explained to me what had happened. Why would I
22 have had to look for another source whereas I had already talked with somebody
23 who was on the spot?

24 Q. [15:42:39] Because, sir, this is an allegation of such severity that the UPC/FPLC,
25 and you are the deputy chief of staff and then chief of staff, murdered civilians who

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1 were buried in a mass grave. Is the extent of your duty, you think, solely to ask a
2 member of the operation whether or not the allegations are true and to look no
3 further?

4 A. [15:43:39] I had never heard mention of the fact that the FPLC may have killed
5 people in Kobu. I had not learnt about that. But when I became aware of it through
6 the radio, I put the question to that commander, who then explained things to me.
7 But his explanations were different from what was being broadcast on the airwaves of
8 the radio. He said that they had been attacked, that there were a number of them,
9 and that they fought back and the attackers fled. After those explanations, I didn't
10 deem it necessary to take the matter any further.

11 Q. [15:44:26] Sir, the G2 spoke to you about this massacre shortly after it took
12 place, didn't he?

13 A. [15:44:55] No. No. The G2 -- I explained my role to him when we met, but
14 he did not inform me of such an incident. The last time we met was at a meeting at
15 President Thomas's on 5 May. Thereafter, he left us, he abandoned us.

16 Q. [15:45:30] Now, sir, isn't it true that after Thomas Lubanga has a meeting with
17 MONUC in February 2003, where it's clear the MONUC knows or is hearing reports
18 about what's happening, Thomas Lubanga spoke to the G2, who provided a report to
19 Thomas Lubanga and spoke to you and you already knew about it?

20 A. [15:46:24] I was not in Bunia. I only got to Bunia on the 3rd at night and then
21 I went on to Mandro. I saw the G2 again on the 5th and on that very day he
22 abandoned us. He left us. Now, if he has provided or had provided some
23 explanations to Thomas Lubanga, I was not aware of that. I was not with them.

24 Q. [15:46:59] Sir, did you not visit Kobu and speak to Salumu Mulenda at some
25 time between 18 and 25 February 2003?

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1 A. [15:47:29] Mr President, your Honours, I am here before you and I want to say
2 that I have never set foot in Lipri, nor in Kobu. I never went beyond Nizi to cross the
3 bridge all the way to Kobu. So I do not know what Kobu looks like. I know Kobu
4 and its hills simply from photographs. To this day, I don't know Lipri, I don't know
5 Kobu. I have never been to those locations, to this very day.

6 Q. [15:48:11] Now, sir, I'm briefly going to change topics. Now, you selected
7 military camps that were -- that met certain criteria, such as they were near water and
8 they were away from civilian populations?

9 A. [15:48:46] I am not sure I have understood your question. You say that I
10 chose military camps? What do you mean? Can you be more specific?

11 Q. [15:49:05] Yes. So in your evidence-in-chief, transcript T-214, page 20, lines 6
12 to 14, you were asked:

13 "Who chose Kudja as a place, who chose that location?"

14 And you said: "I did. I was going according to a certain criteria which made it
15 possible to set up the training centre there."

16 Question: "Well, you've mentioned certain criteria, well, what were these criteria?"

17 Answer: "Firstly there must be water there and the centre cannot be close to the
18 population. There were just a few members of the population not far from there."

19 Do you remember now?

20 A. [15:50:18] If you are talking about the training centre, going by my experience,
21 we needed to find an area where there was water so that the recruits could have
22 access to water and to toilet facilities. That's why it was necessary also to look for a
23 place that was far away from the civilian population.

24 Q. [15:50:43] And it's important to be away from the civilian population also
25 because training camps or military camps are places where you have confidential

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1 information that you don't want members of the public to know, correct?

2 A. [15:51:12] That must be an absolute criterion for selection. Members of the
3 population do not have to mix up or be mixed up with the recruits.

4 Q. [15:51:26] And not only is the information at the military camp highly
5 confidential to the military, but also it would potentially be very dangerous for
6 civilians to be there, wouldn't it, because they could access weapons and there could
7 be accidents if they were to seek to in any way use those weapons?

8 A. [15:52:09] Those who use weapons must have the necessary experience, but
9 the recruits do not use weapons. That happens only after they have finished their
10 training and they have some experience. That is when they can use weapons.
11 Otherwise it is not recommended to set up a training centre or a training camp within
12 the proximity of the population, but in so doing the population is kept safe.

13 Q. [15:52:46] Yes, and for the safety of the population and the confidentiality of
14 your work, the same applies to military camps, whether they are training camps or
15 whether they are camps where you have trained soldiers, correct?

16 A. [15:53:28] Yes. It is normal for a training camp to be far away from the
17 members of the population. That is the practice.

18 THE INTERPRETER: [15:53:36] And in the previous answer the witness stated that
19 the training camps should only be accessible to those who are authorised to follow the
20 training. Correction from the interpreter.

21 MS SAMSON: [15:53:49]

22 Q. [15:53:50] Now, I'd like to show you a logbook message, and it is in the
23 logbook 0017-0033 at page 0185 in the original, and for the display it is 2102-3854 at
24 page 4007.

25 If I could ask you to focus on page 0185, and if I could ask you please to focus in on

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1 the second message on the page. It's 11 February 2003, a message that you send to
2 all FPLC stations at 1605, and your message is, and I quote, in French:

3 (Interpretation) "You are informed that following the problem that happened in
4 Mabanga, a spouse burnt some weapons, 15 SMGs, a machine gun, in the house,
5 consequently all the spouses must leave the camp." End of quote.

6 THE INTERPRETER: [15:56:46] Spouses being wives in this case.

7 MS SAMSON: [15:56:48]

8 Q. [15:56:49] And your reference to wives is not, I suggest to you, a reference to
9 the legally married couples within a family, is it?

10 A. [15:57:27] Our soldiers had wives, some of them even had children. When I
11 issued this order, because of the wives of some soldiers who had burnt some weapons,
12 the order was intended to have the wives leave the camp because these were civilians
13 who had become part of our camp defence arrangements, and when they lit some
14 fires for cooking, the fire spread and destroyed our weapons.

15 That is why the order was given, so that married soldiers should find a place to lodge
16 their wives at a location separate from the camp.

17 I do not know whether all the wives had been taken as wives officially by our soldiers,
18 but what I know is that the woman who was behind that incident was the wife of a
19 soldier. And so I took the order in order to ensure that similar incidents would not
20 happen in the future.

21 Q. [15:58:50] Now, sir, we just spent some time on the reasons why you
22 confirmed the civilian population not authorised to attend training or be at camps
23 should be far away from camps, because you have confidential information for the
24 protection of the civilians. Now are you suggesting that the FPLC military camps
25 were akin to family stations where you had families and children residing in them?

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1 A. [15:59:46] Mr President, your Honours, what I have said is clear. When it
2 came to the training centre, it had to be located far away from the members of the
3 population.

4 Now the wife mentioned here is the wife who came to visit her husband and sparked
5 a fire which destroyed the weapons of the defence systems of the camp. And it is
6 following that incident that I issued this message prohibiting soldiers' wives from
7 living within the defence setup of the camp. And I think the message was quite
8 clear.

9 Q. [16:00:39] Sir, I suggest that these are not legally married wives of your
10 soldiers, nor that your FPLC camps had become places where civilian families with
11 soldiers were residing. I suggest that the épouse or wives that you are asking to
12 leave the camp are women who have been taken to the camp and have become the
13 so-called wives of your soldiers and commanders for the purposes of having sex with
14 them.

15 PRESIDING JUDGE FREMR: [16:01:27] Hold on, Mr Witness.

16 Mr Bourgon.

17 MR BOURGON: [16:01:29] Mr President, I object to the form of the question and
18 I'd like to have the Prosecution's basis. It might be a part of the updated Documents
19 Containing the Charges, but what is the basis for such a proposition made to the
20 witness?

21 PRESIDING JUDGE FREMR: [16:01:47] Ms Samson.

22 MS SAMSON: [16:01:48] Your Honour, the Prosecution has a good-faith basis in
23 the evidence that was adduced that commanders ordered civilians to be taken to
24 camps, that UPC soldiers raped civilian women and brought them back to camps.
25 And that is indeed part of the charges in this case, the FPLC committed rape, and the

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1 accused is charged accordingly.

2 PRESIDING JUDGE FREMR: [16:02:16] All right. Please proceed. But it should
3 be the last issue because, as I said, I originally wanted to interrupt you or to break
4 cross-examination at 4 o'clock. So please try to wrap up as soon as possible.

5 MS SAMSON: [16:02:31] Yes, your Honour.

6 Q. [16:02:33] Sir, I'll ask my question again, unless it's clear to you. Would you
7 like me to repeat it?

8 A. [16:02:45] Please repeat the question so I can better understand what your
9 question is.

10 Q. [16:02:52] Certainly. I suggest that the wives that you're asking to leave the
11 camp in this message are women who have been taken to the camp for the purposes
12 of having sex with soldiers and commanders, as opposed to being legally married
13 wives in the camps. Do you agree?

14 A. [16:03:21] I don't agree at all with you. If it was a situation of rape, I would
15 have sent a clear message. I remind you of the case Koko Yuda. I asked that the
16 people responsible for that offence be arrested and put in prison.

17 As for this message, this is a message I sent because of that incident that occurred in
18 Mabanga camp. I did not want the wives in the camp to continue living there.
19 They had to leave. They were the wives of soldiers and they -- when the wives
20 wanted to visit their husbands they ended up involved in the defence systems of the
21 camp. I didn't want these incidents to occur again. I wanted them to leave and I
22 wanted soldiers to ask for leave to go -- to leave the camp and live with the wives
23 outside of the camp.

24 So you see, in this message it's quite clear that I was talking about the legal spouses of
25 the soldiers.

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1 MS SAMSON: [16:04:55] Thank you for the extra time, Mr President.

2 PRESIDING JUDGE FREMR: [16:04:59] So for the remaining 25 minutes we have
3 three, three items on our agenda: Submissions on LRV questioning, then
4 Mr Bourgon asked to be given floor on redirect, and then Ms Samson as well asked
5 for her five minutes with the Chamber.

6 But before doing that, I would like to get precise information about time remaining
7 for the rest of cross-examination, court officer, please.

8 THE COURT OFFICER: [16:05:37] The Prosecution has used 52 hours and
9 17 minutes so far, so that will make two hours and 43 minutes, if I'm right.

10 PRESIDING JUDGE FREMR: [16:05:49] Thank you, court officer. So ideally we
11 should finish cross-examination by the end of the second morning session tomorrow.
12 But that depends on other circumstances.

13 Now, Ms Pellet, I have in front of me your filing dated 8 June 2017 when you, in
14 accordance with our guidance, when you specified six areas you would like to touch
15 during your examination of the witness. But in the meantime there were very
16 extensive direct and cross-examination, so I would like to now to get update from
17 your part what is your current position?

18 MS PELLET: [16:06:43] (Interpretation) Thank you, your Honour. At this
19 particular stage I wish to stick to my request to question the witness on four out of six
20 points that are found in paragraph 8.

21 In light of the questions that have been put during examination-in-chief and
22 cross-examination I would like to drop point B and point D in my filing. B has to do
23 with disciplinary measures that were applied to people within the FPLC. Point D
24 had to do with the living conditions of the accused person's military escorts.

25 At this particular stage in the proceedings before the end of the cross-examination by

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1 the Prosecution, that is my position. I do note that you make reference to extensive
2 questioning throughout these many hours, nearly a hundred hours that have gone by.
3 The questions have dealt with other points already found within my application.
4 What is more, in accordance with paragraph 44 of your decision, decision on further
5 matters relating (Speaks English) of evidence by the Defence (Interpretation) and
6 announced in paragraph 10 of my application, in light of the terminology used by the
7 witness during examination-in-chief and cross-examination I do wish to ask two
8 follow-up questions to Mr Ntaganda in this regard. Questions which of course have
9 to do with the personal interests of the 282 former child soldiers whom I am
10 representing and who are parties -- rather, participants in the proceedings.
11 Now, of course, your Honour, since the cross-examination has not concluded, it is
12 possible that I decrease my ambitions, but for the time being that is where I stand and
13 I would require three hours to deal with the four points that I would like to deal with.
14 These three hours are necessary in relation to the way that Mr Ntaganda has
15 answered a number of questions put to him, and also in light of the need, the constant
16 need to remind him of remarks he made earlier.

17 I thank you, your Honour.

18 PRESIDING JUDGE FREMR: [16:09:42] Thank you, Ms Pellet.

19 Now I would like to hear position of the parties.

20 Prosecution, your position to the request now updated by Ms Pellet.

21 MS SAMSON: [16:09:52] We have no objection, your Honour.

22 PRESIDING JUDGE FREMR: [16:09:54] No objection.

23 Defence?

24 MS MARTINEAU: [16:10:00] (Interpretation) I'll be brief, your Honour. The

25 Defence has no objection in principle to the Legal Representatives of Victims putting

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1 questions to Mr Ntaganda, of course as long as the various parameters are respected,
2 namely, the questions should deal with the views and concerns of the victims. We
3 will make objections to individual questions that go beyond those parameters and we
4 may wish to follow up on some of the points raised by the Legal Representatives.

5 Methods and policies of recruitment of child soldiers, in our view, that is very much a
6 factual matter and the Defence of course sees that the Prosecution did not deal with
7 those issues in cross-examination.

8 Of course we must remember that such an issue has to be examined in respect to the
9 consequences of the recruitment methods used by the child soldiers in question,
10 namely, the clients of the LRV.

11 As for living conditions in the recruitment camps, the Prosecution did spend or
12 devote two pages to this matter, namely, living conditions in the FPLC training camps,
13 and the Defence shall raise objections if the same questions are put again.

14 As for the wording itself, the Defence wishes to stress that the Legal Representative of
15 Victims should put questions regarding the impact of such conditions and the impact
16 on their -- on her clients, namely, the alleged child soldiers.

17 Now turning to the last two points, the Defence, regarding the fifth, wishes to stress
18 that the Legal Representative of Victims has said specifically that she intends to
19 address demobilisation of child soldiers who were recruited forcibly. We plan to
20 oppose any questions that go beyond the four corners of that particular area.

21 And finally, rape and sexual violence perpetrated upon FPLC child soldiers, that was
22 briefly touched upon by the Prosecution and, once again, the Defence does reserve the
23 right to raise individual objections to questions put. Once again, the Defence wishes
24 to state that questioning should deal with the impacts on the child soldiers and not on
25 the actions themselves.

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1 Finally, the Defence notes that there has been quite a liberal approach taken to
2 questioning by the Legal Representatives of Victims because -- and in relation
3 to -- that is to say in relation to Mr Ntaganda, and then henceforth in relation to
4 upcoming Defence witnesses.

5 Thank you.

6 PRESIDING JUDGE FREMR: [16:13:24] Ms Pellet, please.

7 MS PELLET: [16:13:28] (Interpretation) Thank you. Very briefly, regarding the
8 references that were provided by my learned friend regarding living conditions, I
9 would need further information, I must say. I am not quite able to understand the
10 relevance of the questions having to do with point C in my application, but perhaps
11 it's just a pagination problem.

12 Now, as for point E found in my application and the references made to forcible
13 recruitment of children, my learned friend mentioned that any questioning should be
14 limited to forcible recruitment. I'm sure you're aware, your Honour, because this
15 point has been made many times. To our mind, the children under 15 could not
16 have been recruited voluntarily, and thus we systematically have made reference to
17 forcible recruitment, and that includes recruitment -- well, forced recruitment, in
18 other words abduction, and the fact that some children were allegedly sent --

19 THE INTERPRETER: [16:14:55] Inaudible.

20 MS PELLET: [16:14:58] (Interpretation) -- by their parents.

21 THE INTERPRETER: [16:15:00] Correction, sent to the militia by their parents.

22 MS PELLET: [16:15:01] (Interpretation) Finally regarding the arguments from my
23 learned friend saying that my questions should focus on the impact of actions taken
24 and not the actions. Your Honour, unfortunately I'm obliged to speak -- put
25 questions to the actions themselves if I wish to explore the impact. My questions

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1 will not be repetitive of questions -- point made -- raised earlier by my learned friends
2 in the Prosecution.

3 I thank you, your Honour.

4 PRESIDING JUDGE FREMR: [16:15:34] Thank you. Even if you mentioned,
5 Ms Pellet, that you can also update your request in the light of the last three hours
6 roughly, I think we can afford to make a decision now, and in case that will be such a
7 need, you can address us again and we can even change our current decision.

8 But allow me now to briefly deliberate with my colleagues.

9 (Trial Chamber confers)

10 PRESIDING JUDGE FREMR: [16:16:33] So after silent brief deliberation, our ruling
11 is that in fact the request is at the moment granted. As to the topics, in my view, it's
12 not so important because, as Ms Martineau rightly pointed out, we will decide rather
13 on single objections concerning individual or concrete, concrete questions.

14 The general principle should be that even -- you know, there is a part of jurisprudence
15 which is still highly discussed, that the LRV shouldn't be the second prosecutor. But
16 in my view at least, it doesn't mean that he couldn't deal with some questions which
17 even normally belong to Prosecutor if those questions were not put by Prosecutor and
18 has impact on the interests of the victims represented by Ms Pellet, which also could
19 mean that even acts could be part of her questioning.

20 Those questions should take relevant, relevant facts, should also -- shouldn't be
21 repetitive. And yes, it's not easy to give general reasoning because it's -- probably
22 I'm not correct of that, but probably you will have to provide with further reasoning
23 in the light of concrete questions and concrete objections.

24 At the moment we see time requested, three hours, as reasonable. So we even grant
25 for the moment three hours for that -- for that examination.

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1 Ms Pellet.

2 MS PELLET: [16:18:22] (Interpretation) Thank you. Thank you, your Honour.

3 In light of your ruling, I would like to merely ask for an exception to your ruling
4 and -- regarding the list of materials I may use. I will need a little bit more time. In
5 light of the amount of time that I have, I will not be able to meet the deadline for
6 providing this list of materials I may rely upon.

7 PRESIDING JUDGE FREMR: [16:18:55] I believe it's understandable. Again, it
8 would be some objection to that, Ms Martineau?

9 MS MARTINEAU: [16:19:02] Your Honour, it seems clear that the documents that
10 the Legal Representative of Victims intends to use should be -- should have been
11 mentioned in her application. I don't think any exemption should be provided
12 because it's been known for a long time that Mr Ntaganda would be testifying and the
13 examination-in-chief began quite a long time ago, even before the judicial recess.
14 Thank you, your Honour.

15 PRESIDING JUDGE FREMR: [16:19:39] Ms Pellet, two questions on that regard.
16 First of all, how extensive will be your list and what time you think you will be able to
17 provide parties and Chamber with that?

18 MS PELLET: [16:19:51] (Interpretation) Thank you, your Honour. I'm not quite
19 sure I've understood the objections from my learned friend, because I couldn't draw
20 up my list before being sure that I would receive leave from the Chamber and I did
21 not know what areas I would be allowed to question the witness.

22 That being the case, my list is ready. I would like to reassure my Defence colleague
23 that all the documents are on the list of the OTP and there will be no surprises.

24 None of the documents will come as a surprise to the Defence. There will be no new
25 materials.

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1 I thank you, your Honour. Thus I will be able to disclose the list within the
2 20 minutes following the end of this hearing.

3 PRESIDING JUDGE FREMR: [16:20:45] Very well. The main issue is that such a
4 list which you promised, it will not be the case shouldn't surprise or cause any
5 prejudice to any party, neither Defence nor Prosecution.

6 Okay. We can move to the second point on our agenda, which is Mr Bourgon's
7 request to address the Chamber on the issue of redirect.

8 Mr Bourgon, you have the floor.

9 MR BOURGON: [16:21:14] Thank you, Mr President. As the Chamber will
10 understand, this is an important issue for matters of planning and preparation, to see
11 how much time we will have to prepare our questions for re-examination.

12 Mr President, I note that at the beginning of Mr Ntaganda's testimony, or at least
13 when we came back from the summer recess, the Chamber indicated that it was
14 looking for the Defence to provide a new list of witnesses within two weeks, on the
15 basis that the testimony of the accused, as indicated by the Defence, should lead to a
16 reduction in the list of Defence witnesses.

17 Mr President, immediately I can inform the Chamber that further to Mr Ntaganda's
18 examination-in-chief and cross-examination -- and cross-examination, although it is
19 not yet completed, I can already announce that we have 11 witnesses that we
20 are -- that we no longer intend to call at this stage. And this list is likely to be even
21 more once we fully analyse the examination-in-chief and the whole of Mr Ntaganda's
22 testimony.

23 Mr President, at the beginning of the -- of the Defence case, we were authorised, we
24 being the Defence, we were authorised 289 hours for the presentation of the Defence
25 case. So far, we have used 55 for Mr Ntaganda and 2.5 for the first witness, for a

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1 total of 57.5. Theoretically speaking, we still have at our disposal 231.5 hours.

2 Mr President, I say this because that should be the basis in terms of one of the factors

3 to consider with respect to re-examination and the scheduling of re-examination.

4 We have two issues. One is, of course, how much time, and then is when do we do

5 the re-examination? Throughout the testimony or the cross-examination, I

6 highlighted on a number of occasions new documents used by the Prosecution.

7 During the cross-examination - my cut-off date for this submission is as of the

8 lunchtime today - the Prosecution had used 135 documents during its

9 cross-examination.

10 Thirty-two of these documents were also used by the Defence. So there's an overlap

11 of 32 documents, leaving 103 new items used by the Prosecution which were not

12 referred to by the Defence.

13 On the total of those 103 new documents, there are 32 that were drawn from the

14 logbooks, one of the two logbooks. So we can put them together and count this as

15 one big document or two big documents.

16 All this to say, Mr President, that we have 73 new documents, including a minimum

17 of 10 which are of a large size - those are the witness statements that were used and

18 the two logbooks, for example - 73 that we need to explore again with Mr Ntaganda

19 during re-examination.

20 We have prepared a table, Mr President, with all of these documents and where they

21 were used exactly, with the transcript references, so that the Chamber would be

22 aware exactly what -- when these documents were used and the extent to which each

23 was used.

24 It is important, Mr President, that many of these documents, not only were they new

25 because the Defence did not use them, but they were new because they were not

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1 either in evidence at all and never addressed by the Prosecution before, which of
2 course makes it all the more important for us to address these documents in
3 re-examination. So of course we need the time to do this so that at least those
4 documents can be put again to Mr Ntaganda if necessary. I'm not saying all of them,
5 but most of them, yes, in order to --

6 PRESIDING JUDGE FREMR: [16:26:01] Sorry to interrupt you. I think you -- now
7 you, in my view, mentioned the right one, which I would like to elaborate on, because
8 in my view it's not only about the number of documents, but also about their
9 probative value. So you should also take into account whether they are really worth,
10 even some of them, of redirect, because the fact that the Prosecution used
11 100-something documents doesn't, in my view -- that all of them were of the very
12 high probative value. So I think you also should take into your account quality of
13 those documents and the real impact on testimony of your witness.

14 Please proceed.

15 MR BOURGON: [16:26:40] I fully agree with the Chamber on this issue,
16 Mr President. Not all documents -- in our view, many of them do not have
17 probative value. But can we take that chance? If we believe that there is
18 clarification that Mr Ntaganda can provide in order to assist the Chamber, we believe
19 that it is important for him to do so.

20 Now, in addition to new documents, there are the issues, new issues, or proposition
21 put to Mr Ntaganda that are not found in the examination-in-chief of Mr Ntaganda.
22 And that is significant because we do seek leave to re-examine when the Prosecution
23 put a new proposition to Mr Ntaganda that was not addressed during his
24 examination-in-chief.

25 I'll try to make it short, Mr President. When we look at the documents and the new

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1 issues put to Mr Ntaganda, we believe that we will require ten hours to address these
2 issues, and if I try to cut it down, I would say at least not less than eight hours.

3 Now, of course, that depends on how much time we have to prepare. If we have a
4 bit of time to prepare, then we can be more focussed.

5 I move to the issue of scheduling: Today is the third day this week, third full day,
6 tomorrow will be a fourth full day, and it is likely with the questioning of the Legal
7 Representative that we will use all of tomorrow.

8 So far, Mr President, since the beginning of Mr Ntaganda's testimony we have not sat
9 every week, we sat for four days maximum except for one week, which is the week
10 before, the week before the summer recess.

11 So what we suggest and request at the same time, Mr President, is to use the same
12 approach and to begin re-examination on Monday morning and that we would be
13 complete -- to complete that re-examination in two days. We believe that this will
14 allow, first of all, the witness to have the proper rest and to be alert when answering
15 these questions. It will allow us, the Defence, to prepare and be much more focussed
16 in our questioning. It will allow the Prosecution to be in a much better position if
17 they want to object to some of the questions we want to ask. And of course it will
18 allow the Chamber also to fully evaluate the testimony so far and determine if they
19 have more questions for Mr Ntaganda.

20 We've said many times, Mr President, this is the most important witness in this case.

21 I don't think this is disputed by anyone. We believe that it is in the interests of
22 justice to complete the exercise and to go all the way. And that's why we make this
23 request.

24 Now, in light of the number of witnesses that will not be called as a result of his
25 testimony, then -- and even though this has not been the practice so far -- we are

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1 willing to subtract those eight hours from the total number of hours at our disposal.

2 Even though that's not the practice we're willing to do that because we will, in any

3 event, have a lesser amount of hours.

4 Mr President, if we get those two days, that will not only be in the interests of justice,

5 but there will be no prejudice to the witnesses who will come to testify. We have

6 seven witnesses lined up for next week. The first five of these witnesses are video

7 link witnesses. So these witnesses, it's not like if they were called two or three weeks

8 in advance like had happened before, they are available to testify by video link and

9 there will be no prejudice to them if we go into Monday or Tuesday. And of course

10 we still have those three backup witnesses which are there if anything happens, so

11 I can guarantee, Mr President, that we will fill the next two weeks and that we will

12 not lose one day of court time. All hours in the block will definitely be used.

13 So that's for all of these reasons. And I was a bit -- I was asking myself why is the

14 Chamber not asking as it usually does how much time is left for chief, how much time

15 for re-exam. I know that I mentioned the issue on a number of occasions, but I

16 thought it was the right time is to make a submission now so that we are in the better

17 position for planning purposes.

18 Thank you, Mr President.

19 PRESIDING JUDGE FREMR: [16:31:42] Yes, I fully agree with your last sentence.

20 Now Prosecution, your position to the Defence submission?

21 MS SAMSON: [16:31:50] So, Mr President, on the 11 witnesses that will not come,

22 we look forward to receiving that list as soon as possible. I understand that perhaps

23 it would be reduced. It's not significantly shorter. It looks as though we still are

24 going to have 101 Defence witnesses, but I understand that there may be some further

25 reductions when the Defence provides the update.

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1 I note that the procedure in general in relation to cross-examination and
2 re-examination is the same, or should be, for Mr Ntaganda as it is for any other
3 witness. Of course cross-examination is not limited to examination-in-chief, but
4 cross-examination is -- re-examination is limited to what was raised in
5 cross-examination.

6 Now, we have indeed spent a long time on Mr Ntaganda's testimony. He will
7 undoubtedly be one of the key witnesses in the case and so the Prosecution has no
8 objection to re-examination of eight hours, as requested. And no principled
9 objection to commencing on Monday, if the Chamber is inclined to do that.

10 In the Prosecution's submission, any deduction of time taken for Mr Ntaganda's
11 examination must also include a deduction for the time spent in re-examination.

12 And, Mr President, at this point I will rise to make a counter request, and that is, if
13 we're going to begin on Monday in any event, I request one extra hour with
14 Mr Ntaganda. And briefly, as the Chamber has seen over the course of the
15 cross-examination, I have had to spend time going through the evidence-in-chief,
16 transcript testimony in my questions and I have often had to ask the same question
17 several times before getting an answer. Even in one case this week your Honour the
18 Presiding Judge intervened and obtained an answer when my question was the same.
19 And, your Honour, given the importance as the Defence has conceded to this witness
20 in the case, in my submission granting one extra hour to the Prosecution to put its
21 case to the witness will not prejudice Mr Ntaganda and will be in the interests of
22 justice.

23 PRESIDING JUDGE FREMR: [16:34:38] Thank you. So now allow me to
24 deliberate with my colleagues on all (Microphone not activated)
25 Mr Bourgon.

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1 MR BOURGON: [16:34:54] Thank you, Mr President.

2 I'd like to respond to the request presented by my colleague. The Chamber notes for
3 sure that whenever there was a request for time, from my point of view I never
4 objected, and I myself have requested some time on occasion to have longer
5 examination-in-chief -- or, a longer cross-examination.

6 I'm not going to make any comments as to how the time was used by the Prosecution.
7 This is not my role, this is for the Chamber to appreciate. What I will do however is I
8 will highlight the fact that 55 hours to cross-examine an accused is a very, very, very
9 long time and that additional hour is an hour that we will not have as
10 examination-in-chief.

11 I believe, Mr President, that the -- I was trying to look at statistics today and we think
12 that so far there has never been an accused who was on the stand for so long as
13 Mr Ntaganda was, and that includes based on our -- what we could find on
14 Charles Taylor, who testified for a total of 81 hours.

15 And despite what my colleague has raised with the questioning, I don't see anything
16 during those 55 hours that preempted the Prosecution from completing its
17 cross-examination. So I -- and I do it with -- I'm not pleased to do so because my
18 colleague accepts my eight hours for re-exam. But out of -- for legal concerns I must
19 oppose this request for this additional hour. Thank you, Mr President.

20 PRESIDING JUDGE FREMR: [16:36:51] I think it's enough for us to deliberate. So
21 please give us.

22 (Trial Chamber confers)

23 PRESIDING JUDGE FREMR: [16:40:00] So after silent deliberation in the
24 courtroom, our ruling is following:

25 Since we agreed to start with redirect, as requested, on Monday, we believe that

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1 eight hours should be enough because then Defence will have some additional time
2 for its preparation. So start on Monday, eight hours for redirect.

3 And we also, even after some, you know, thorough deliberation we agreed to grant
4 one extra hour to Ms Samson. Even, I have to say, I fully agree with Mr Bourgon

5 that 55 hours should be enough and that, in my view, experienced lawyer like

6 Ms Samson should even create some reserve to be sure that if there would be some
7 problem that this time would be sufficient. But, at the same time, I have to admit

8 that extensive time of her cross-examination have been, for example, devoted to

9 repetition of questions on the request of Mr Ntaganda, which was in fact time not

10 productivity used for cross, that is why we decided to grant this one hour extra.

11 So I believe that is everything what we have been asked decide on.

12 Ms Samson, you indicated that you would like to address Chamber. It was in fact
13 the point mentioned this or do you have some extra point?

14 MS SAMSON: [16:41:42] Yes, your Honour, I can deal with it now or tomorrow

15 morning, as you wish. It's in relation to the Defence request about discussions with

16 the United Nations for lifting.

17 PRESIDING JUDGE FREMR: [16:41:55] Sorry, give me a second. Now I have

18 been informed that we have to finish because there is something planned for this

19 courtroom very soon. So if it's not absolutely urgent we can postpone it on Monday.

20 Fine with you, Ms Samson?

21 MS SAMSON: [16:42:20] Yes, I can address the Court tomorrow morning.

22 PRESIDING JUDGE FREMR: [16:42:27] All right.

23 So now we adjourn and we resume tomorrow 9.30.

24 THE COURT USHER: [16:42:33] All rise.

25 (The hearing ends in open session at 4.42 p.m.)

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1 RECLASSIFICATION REPORT

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

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