

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 Tuesday, 12 September 2017
9 (The hearing starts in open session at 9.17 a.m.)
10 THE COURT USHER: [9:17:01] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: [9:17:33] Good morning, everybody.
14 Court officer, please call the case.
15 THE COURT OFFICER: [9:17:39] Thank you, Mr President.
16 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: [9:17:50] Thank you, court officer.
20 Now appearances, please.
21 MS SAMSON: [9:17:54] Good morning, Mr President. Good morning,
22 your Honours. The Prosecution's composition is the same as it was yesterday after
23 the first morning break.
24 PRESIDING JUDGE FREMR: [9:18:04] Thank you, Ms Samson.
25 Defence, please.

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- 1 MR BOURGON: [9:18:10] (Interpretation) Good morning, your Honours.
- 2 Mr Ntaganda is present in the courtroom today, and there's no change to the
- 3 Defence team. Thank you.
- 4 PRESIDING JUDGE FREMR: [9:18:23] Thank you, Mr Bourgon.
- 5 And Legal Representatives of Victims.
- 6 MS PELLET: [9:18:29] (Interpretation) Thank you, your Honour. The former
- 7 child soldiers are represented by Vony Rambolamanana and myself, Sarah Pellet.
- 8 MR SUPRUN: [9:18:44] (Interpretation) Good morning, your Honours. The
- 9 victims of the attacks are represented by the same team as yesterday. Thank you.
- 10 No changes.
- 11 PRESIDING JUDGE FREMR: [9:18:55] Thank you, Ms Pellet. Thank you,
- 12 Mr Suprun.
- 13 So today we are going to continue with re-direct of Mr Ntaganda conducted by the
- 14 Defence.
- 15 Information about timing, the Defence used 3 hours 54 minutes, according to my
- 16 information, yes, in total of its allocated 8 hours, so four hours and 6 minutes still
- 17 are remaining. And the Chamber encourages Defence to complete re-direct today.
- 18 Mr Bourgon, you have the floor.
- 19 MR BOURGON: [9:19:44] Thank you, Mr President.
- 20 WITNESS: DRC-D18-D-0300 (On former oath)
- 21 (The witness speaks Swahili)
- 22 QUESTIONED BY MR BOURGON: (Continuing)
- 23 Q. [9:19:48] Good morning, Mr Ntaganda.
- 24 A. [9:19:53] Jambo sana.
- 25 Q. [9:19:55] I have a number of issues to address with you today and we --

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1 A. [9:19:59] Good morning, Counsel.

2 THE INTERPRETER: [9:20:01] Overlapping speakers.

3 MR BOURGON: [9:20:07]

4 Q. [9:20:08] So, Mr Ntaganda, I was saying that I have a number of topics to
5 address with you today, and we will be proceeding in the same way which we did
6 yesterday, by making references to questions that were put to you during
7 cross-examination.

8 I would like to begin by one question concerning Mongbwalu, and it has to do with
9 your recollection of Kasangaki.

10 So during cross-examination, questions were put to you by counsel for the
11 Prosecution. And this is at page -- transcript 237, page 2, line 22 until page 3, line
12 6. I'll just refer to one question which was put to you on page 3, and that was at
13 line 2. The question was as follows:

14 "At the time Kasangaki was based at Camp Goli with Salumu's brigade."

15 Your answer was at lines 4 to 6:

16 "No, he was living in the building within the apartments. He was living in a house
17 which was on the edge of the apartments when you go in the direction of the
18 church, the Catholic church."

19 My question to you, Mr Ntaganda, is why, to your knowledge, was Kasangaki
20 living in the apartments at that particular moment?

21 A. [9:22:23] He was living there because when Mongbwalu was captured, and
22 once at the plant, and as you know, the commanders had the road to protect the
23 area where they were, and that road was by the apartments where he was, to see
24 whether the enemy might come in from behind.

25 Behind the Catholic church there is a forest. That is where he had his access point.

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1 Another one had a road towards the airport, another one had a road towards Kilo,
2 and another commander had the road leading towards the plant.

3 So it -- so, you see, that was the road that Commander Salumu had assigned to him.

4 Q. [9:23:32] Thank you.

5 I move to a different topic. And this was raised with you by counsel for the
6 Prosecution at transcript 237, at page 47, line 25 up until page 48, line 2. The
7 question was as follows at line 23:

8 "Did you not visit Kilo yourself on or about 3 December 2002?"

9 Your answer at line 24 was:

10 "I did not go to Kilo, I was in Bunia."

11 My question in this regard is, first, was the road between Bunia and Kilo open on or
12 about 3 December 2002?

13 A. [9:24:38] No. From Bunia to Kilo there was no road that was open. That
14 is to say there was a road, but the APC members and the combatants had blocked
15 that road, so it was not used.

16 Q. [9:25:07] And at what level or in what area was the road blocked by the APC,
17 to your knowledge?

18 A. [9:25:27] At that time, I wasn't very familiar with the region. I had never
19 been there before. I am not a native Ituri. All the same, I do know that they set
20 up some roadblocks along the Nyangarai road, starting at Kilo towards
21 Mongbwalu. Similarly, the road that led to Lipri, after Kobu to get to Kobu and
22 Mongbwalu there was also the road, the main road of Bunia heading towards
23 Barrière, Nizi, Kobu, Bambu -- rather Bambu, Kobu, Kilo and then Mongbwalu.
24 All those roads at that time were not functional, they had been blocked.

25 Q. [9:26:32] Now, just so that I understand your answer, if on or about 3

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1 December 2002 a person was to leave Bunia to go to Kilo, where would the road
2 first be blocked or where would the road not be able for someone to get through
3 Kilo?

4 A. [9:27:08] If you wanted to go to Kilo you would have to go a roundabout
5 way, you would have to go by Barrière, Nizi, Mabanga, Largu, Dala, Mongbwalu,
6 Deni, and then on to Kilo.

7 Q. [9:27:28] Maybe my answer -- my question is not clear. If I depart from
8 Bunia and I travel to Kilo using the road, which are the first towns or villages that I
9 encounter?

10 A. [9:27:49] If you take which road, Counsel? As I told you, there were
11 several roads that were not in service at the time.

12 THE INTERPRETER: [9:28:01] Interpreter correction: From Dala you go
13 directly to Kilo.

14 MR BOURGON: [9:28:11]

15 Q. [9:28:11] What I'm interested in, Mr Ntaganda, is the road when you leave
16 Bunia and not going towards Barrière at all. From the side -- the other side of
17 Bunia, if you want to take that road that leads to Kilo from Bunia directly, what are
18 the first villages that you encounter on that road?

19 A. [9:28:48] Counsel, kindly repeat your question. You see, when you leave
20 Bunia to get to Kilo I don't see what place you would have to go by because, you
21 see, the road was blocked.

22 Q. [9:29:03] Well, that's what I'm trying to get to, but I want you to describe
23 that. I'm talking not the road that goes to Barrière and Mabanga, not the road that
24 goes to -- through Bambu and Kobu, I'm talking about the third road that we've
25 seen in this case that goes from Bunia to Kilo. What are the villages along this

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1 road that you remember?

2 A. [9:29:42] There is another road that takes you to Nyangarai.

3 Q. [9:29:49] And where was that road blocked, if you say that it was not
4 possible to get through that road?

5 A. [9:30:06] Well, there was a roadblock at Nyangarai at Kabakaba at the bridge
6 as you head towards Kilo.

7 Q. [9:30:19] Thank you.

8 I move to a different topic, and that is a topic that was raised by the Prosecution,
9 and we're still on the topic of Mongbwalu, and the topic is your trip to Aru when
10 you met with Jérôme.

11 Now, in transcript 234, page 57, lines to 23 is where this exchange took place. The
12 question that was put to you by the Prosecution at lines 13 and 14 is the following:

13 "In order to mobilise Jérôme Kakwavu's troops to attack Mongbwalu from the
14 north you had to communicate the attack plan to them, right?"

15 Your response was the following, line 15 to 23:

16 "No. That's not what happened. In Kandoyi the enemy had already started
17 attacking Jérôme's forces, combat was already ongoing. So we couldn't ask them
18 to go and launch an attack in Mongbwalu when they hadn't yet finished dealing
19 with the attack in Kandoyi. So until Mbidjo there was the enemy along the whole
20 of the route so we couldn't ask them -- ask them to launch an attack at a distance
21 when there was an enemy 200 metres away from them. There are stages in an
22 operation, we didn't know whether they were even capable of even driving out the
23 enemy, the APC forces in Kandoyi. How then could we have gone up and set up a
24 plan for the attack of Mongbwalu when we had not yet completed the operation in
25 Kandoyi?"

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1 That was your response. Now, when you gave that response, Mr Ntaganda, the
2 counsel for the Prosecution proceeded to read an extract.

3 MR BOURGON: [9:33:06] Mr President, I think we need to go in private session,
4 please.

5 PRESIDING JUDGE FREMR: [9:33:11] All right.

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

7 (Private session at 9.33 a.m.) *(Reclassified partially in public)

8 THE COURT OFFICER: [9:33:18] We are in private session, Mr President.

9 PRESIDING JUDGE FREMR: [9:33:30] Thank you, court officer.

10 Mr Bourgon, please proceed.

11 MR BOURGON: [9:33:37] Thank you, Mr President.

12 Q. [9:33:40] So the counsel for the Prosecution proceeded to read you an extract

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 Now, I'm not going to repeat what was read to you because that is already in the
17 transcript.

18 After reading you this transcript, the Prosecution asked you a further question, and
19 that is on page 61, at lines 3 to 5. And this was the question:

20 "Now, (Redacted) information differs to yours in that he recalls that you
21 gave the go or the go-ahead to troops in Kandoyi for the Mongbwalu operation.

22 What's your response to that?"

23 I will read you the response you gave at the time, Mr Ntaganda, in transcript 234,
24 page 61, lines 6 to 9. Answer:

25 "I am going to give my testimony as to what I did. I am going to tell you the

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1 context in which this took place. As a commander, I could not give the go or the
2 go-ahead for the attack on Mongbwalu. There were troops in Kandoyi which I
3 couldn't send to Mongbwalu. When I left Kandoyi, I didn't even know that there
4 were forces that went to Mongbwalu. I found that out when I got to Aru. If I'd
5 know that things would be different, well, I would have asked these troops to
6 attack Mongbwalu. If I gave the order to attack -- well, I am not going to say that I
7 didn't give the order to attack Mongbwalu. I am just trying to explain the
8 chronology of these events. I am trying to give you my story.

9 At that time they had to be able to attack the enemy who was in Kandoyi and
10 continue to attack the enemy who was towards Mongbwalu. When I arrived in
11 Bunia, they told me that and I gave the order to go to Mongbwalu. He has given
12 you his chronology of events, which is different from mine. I am giving you my
13 story, which accords with the facts as they took place according to me."

14 The first thing I'd like to ask you, Mr Ntaganda, is I was wondering if the -- if -- we
15 tried to check the audio, but we were not able to, at line 10 of this response, on 9
16 and 10 you say the following, please listen carefully so that we can figure out if this
17 is what you said:

18 "When I left Kandoyi, I didn't even know that there were forces that went to
19 Mongbwalu. I found that out when I got to Aru."

20 Is that what you said at the time; do you recall? Or does that matches your
21 recollection of events?

22 A. [9:38:05] I don't think so because I wasn't asked about the forces that had
23 gone to Mongbwalu. I didn't say that, I didn't answer the question that was not
24 asked of me. In truth, I know that forces did go to Mongbwalu, that was when
25 President Thomas had called me himself, that is when I learned about that. Before,

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1 I didn't know about that. All this to say I couldn't have given that answer. So, no,
2 I don't think so.

3 Q. [9:38:39] So where were you when you found out that there were forces that
4 went to Mongbwalu?

5 A. [9:38:56] When I left Kandoyi and got to Aru, directly I learned that forces
6 had gone to Mongbwalu and those forces had been defeated.

7 Q. [9:39:13] The second part of your answer I'd like to clarify, is the following.
8 It was on line 15 and 16. Please listen carefully:

9 "At that time they had to be able to attack the enemy who was in Kandoyi and
10 continue to attack the enemy who was towards Mongbwalu."
11 Can you explain that further for us, please?

12 A. [9:39:54] I couldn't have said that. Why? I had said that I had a mission
13 and it wasn't to prepare for the Mongbwalu battle. As a commander, I couldn't
14 prepare the Mongbwalu battle before driving out the enemy in Kandoyi. That is
15 why I said that they were supposed to go on all the way to Kilo. That was not part
16 of the plan. I didn't have those plans. I didn't have the information about
17 Mongbwalu. I wasn't familiar with Mongbwalu.

18 Q. [9:40:34] Now, just to be clear, Mr Ntaganda, these were your own words
19 that I read, so I'm just trying to ask you to clarify your own words which are in the
20 transcript, and this was at line 15 and 16. So I'll say that again and then we'll move
21 on:

22 "I am trying to give you my story. At that time they had to be able to attack the
23 enemy who was in Kandoyi and continue to attack the enemy who was towards
24 Mongbwalu. When I arrived in Bunia, they told me that and I gave the order to go
25 to Mongbwalu."

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1 I'd just like you to explain exactly this part of your answer.

2 A. [9:41:30] When I was in Bunia I issued an order. The men were not in
3 Kandoyi. They were close to where Salumu was in Ndama and I had asked
4 Jérôme to tell me where those forces were. That's different. They were different
5 to the forces in Kandoyi. When they were in -- the forces in Kandoyi, I did not
6 call.

7 Q. [9:42:03] My next question then, Mr Ntaganda, is, at the time you are in
8 Kandoyi and the troops there are about to fight in Kandoyi, did you know at the
9 time that these forces would then proceed to Mongbwalu if they succeeded the -- in
10 fighting the battle of Kandoyi?

11 A. [9:42:39] No, no. When Jérôme was in the middle of defending himself and
12 fighting -- because, you see, the enemy wanted to take control of Aru -- he had to
13 do everything he could to prevail so that the enemy would not be able to take
14 control of the headquarters. They were around Biringi and the enemy was already
15 at Biringi on the road towards Aru. So you see, there were no plans for
16 Mongbwalu.

17 Q. [9:43:20] Mr Ntaganda, in order to understand your testimony, what I'd like
18 to do is to show you a map and then to ask you to basically indicate for the Trial
19 Chamber where you were in Aru and what you did.

20 Now, this map I would like to show you, and, Mr President, with your leave I
21 would like to use the big screen with this map, and that is DRC-OTP-0003-0028, and
22 it is item 7 on the OTP list of exhibits.

23 PRESIDING JUDGE FREMR: [9:44:04] Prosecution, any objection against the use
24 of that?

25 MS SAMSON: [9:44:08] No, Mr President.

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1 PRESIDING JUDGE FREMR: [9:44:09] All right then.

2 THE COURT OFFICER: [9:44:12] The document will be displayed on the
3 evidence 2 channel.

4 MR BOURGON: [9:44:24]

5 Q. [9:44:25] Mr Ntaganda, I will ask you to get up and look at the map which is
6 displayed on the big screen. And it's a map we haven't used before, but I'd like
7 you to tell us whether you recognise this map, as to what it represents.

8 A. [9:44:54] Yes, I do recognise this map.

9 Q. [9:44:57] What does it represent?

10 A. [9:45:06] It shows Ituri and its territories.

11 Q. [9:45:13] Thank you. Mr Ntaganda --

12 PRESIDING JUDGE FREMR: [9:45:15] Hold on, Mr Bourgon.

13 Ms Samson.

14 MS SAMSON: [9:45:18] Just a quick question to see whether this could be done
15 in public session.

16 PRESIDING JUDGE FREMR: [9:45:25] It was just my concern.

17 Mr Bourgon?

18 MR BOURGON: [9:45:27] Well, it can be, as long as we don't display the map,
19 because it says on the top of the map "UE Confidential Releasable to Non EU TNC."
20 I don't know what that is. So I'm not -- it is a Prosecution exhibit, but if we can do
21 it publicly, I would prefer.

22 PRESIDING JUDGE FREMR: [9:45:45] Ms Samson, could you provide us with
23 advice as concerns confidentiality.

24 MS SAMSON: [9:45:51] Yes, I believe it can be displayed publicly, your Honour.

25 PRESIDING JUDGE FREMR: [9:45:54] It seems to me as well. So let's move

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1 into public session with no restrictions.

2 (Open session at 9.46 a.m.)

3 THE COURT OFFICER: [9:46:04] We are in open session, Mr President.

4 PRESIDING JUDGE FREMR: [9:46:16] Thank you, court officer.

5 And Mr Bourgon, please proceed.

6 MR BOURGON: [9:46:22] Thank you, Mr President.

7 Q. [9:46:24] Mr Ntaganda, we will try to enlarge this map over the area which
8 covers both Aru and Bunia, and I will ask you to make some markings on this map
9 using the same pencil that you did at the beginning of your testimony.

10 Okay, so we will freeze the map here. And first I would like you to do a small
11 circle over Aru, if you can find Aru on this map.

12 A. [9:47:26] The territory of Aru is here where I'm indicating it.

13 Q. [9:47:34] I'm not referring to the territory of Aru, I'm talking about Aru as a
14 city, a municipality. I'm not sure the pencil is working.

15 Please avoid touching the map with your hand. Go ahead, make a circle around
16 Aru.

17 A. [9:48:18] The pen or pencil that I have doesn't work.

18 PRESIDING JUDGE FREMR: [9:48:22] Usher, please assist or double-check the
19 function of the pencil.

20 Thank you.

21 MR BOURGON: [9:49:32] Thank you very much.

22 Q. Mr. Ntaganda, can you now place a circle around Aru.

23 A. [9:49:45] It's still not working.

24 Q. [9:49:54] Can you try one last time, and if not we'll move on and we'll do it
25 after the break.

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1 A. [9:50:12] Perhaps we could leave what's visible here.

2 Q. [9:50:18] Please, can you return to your seat and I will put to you my next
3 question.

4 Mr Ntaganda, the -- I would like to read you an extract from the interview that was
5 used with the Prosecution.

6 We need to return into private session, please, Mr President.

7 PRESIDING JUDGE FREMR: [9:51:02] All right.

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

9 (Private session at 9.51 a.m.) *(Reclassified partially in public)

10 THE COURT OFFICER: [9:51:09] We are in private session, Mr President.

11 PRESIDING JUDGE FREMR: [9:51:26] Thank you, court officer.

12 Mr Bourgon, please.

13 MR BOURGON: [9:51:31] Thank you, Mr President.

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Speaks English) Did you get a translation or interpretation of this segment?

12 A. [9:55:25] Yes, Counsel, I was able to follow the interpretation.

13 Q. [9:55:28] And does this passage match your recollection of events?

14 A. [9:55:38] Yes. I say that because I -- when I went to Aru we didn't speak

15 about Mongbwalu, me and Commander Jérôme; we hadn't discussed that.

16 Secondly, Mongbwalu is far from Aru.

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 A. [9:57:07] These are APC troops as well as the combatants. They are the

24 ones who carried out this attack against Jérôme's troops. It was, therefore, APC

25 troops that attacked Kandoyi and Biringi.

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- 1 Q. [9:57:34] Thank you.
- 2 MR BOURGON: I move to a different topic.
- 3 Mr President, we can return into public session, please.
- 4 PRESIDING JUDGE FREMR: [9:57:41] All right.
- 5 Court officer, let's return back into open session.
- 6 (Open session at 9.57 a.m.)
- 7 THE COURT OFFICER: [9:57:48] We are in open session, Mr President.
- 8 PRESIDING JUDGE FREMR: [9:58:06] Thank you.
- 9 Mr Bourgon, please proceed.
- 10 MR BOURGON: [9:58:10] Thank you, Mr President.
- 11 Q. [9:58:12] Mr Ntaganda, the next topic I'd like to address a document which
- 12 was shown to you, and I would like to have this document displayed on the screen,
- 13 and that is DRC-OTP-0109-0115. And this is item 1133 on the Prosecution's list of
- 14 items.
- 15 The document, Mr Ntaganda, will appear on the screen. In the meantime, I can
- 16 already tell you that in transcript 234, at page 50, lines 8 and 9, the following
- 17 exchange took place. Line 8:
- 18 Now, sir, are you familiar with this document?
- 19 Sorry, I say again:
- 20 "Now, sir, you are familiar with this document, are you not?"
- 21 Answer, line 9:
- 22 "I don't know this document. I'm seeing it for the first time."
- 23 Based on this answer -- if I can -- if we can reduce or minimise the document so that
- 24 it appears almost in full, without being too small. The question was put to you at
- 25 transcript 234 and that was at line 16 to 20, question, line 16:

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1 "I put to you, sir, based on the information contained in this document signed by
2 officers within the FPLC, that the UPC provided a number of weapons, individual
3 SMG bombs and ammunition, to Jérôme Kakwavu, not just as you've said men
4 with their own weapons, but an independent delivery and distribution of a number
5 of individual weapons, uniforms and magazines, contrary to your evidence."

6 Your response was captured at the following page -- or the same page, line 21 to 25,
7 that is page 50.

8 Answer: "I don't know this document, but I know that I sent men. As I said here,
9 I sent them with their weapons. I don't know if the plane, when they got into the
10 plane they didn't get in with their weapons. So that's something I don't know.
11 What I do know is that I sent a battalion. It was composed of 300 to 350 men. I
12 therefore can't comment on the document because I don't know it." End of
13 quotation.

14 Now, sir, my first question is looking at the document on your screen, we see that
15 there is a name mentioned under the heading (Interpretation) "For the delivery,
16 liaison officer Commander Didier Wanican."

17 (Speaks English) Now, sir, my first question is: If you had been the one who
18 brought these weapons, would it be normal for your name to appear on this
19 document?

20 A. [10:02:36] Absolutely. My name would appear on the document.

21 Q. [10:02:44] Now, you mentioned in response to the questions from
22 Prosecution that you had sent Peter to deliver the -- to accompany the men and
23 weapons to Aru. Now, on this document the name of Peter does not appear. If
24 Peter had brought these weapons along with you, would he have signed this
25 document in your experience at the time?

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1 A. [10:03:30] I think he would have been the liaison officer because he was the
2 one who was bringing the soldiers with their weapons.

3 Q. [10:03:43] Now, sir, to your knowledge, apart from the 300 to 350 men who
4 were sent with weapons, are you aware of any other issue of weapons to
5 Jérôme Kakwavu in Aru?

6 A. [10:04:23] I don't have that information. Apart from what I spoke about,
7 when I spoke about January 2003. Those were weapons aimed at another locality,
8 and there were some weapons and the chief of general staff had given them to him.
9 So apart from the weapons that I sent and the ones which I spoke about where
10 some weapons were given to Jérôme on the orders of the general staff, I don't know
11 about our delivery of arms to Jérôme Kakwavu -- I don't know about another
12 delivery of weapons to Jérôme Kakwavu.

13 Q. [10:05:18] Sir, my next question is do you remember if Didier travelled with
14 you to Aru when you went there?

15 A. [10:05:39] I didn't leave with Didier.

16 Q. [10:05:46] Now, sir, looking at this document that is on the screen, which is a
17 document written in French with three signatures, are you familiar with this type of
18 document at the time?

19 A. [10:06:20] Firstly, the FPLC didn't have a computer. I can see that's a
20 printed document, from a printer. I also have to recognise that I didn't usually see
21 documents of this type or format.

22 Q. [10:06:48] And my last question, Mr Ntaganda: Is there a reason, to your
23 knowledge, why Jérôme Kakwavu needed to approve the delivery and/or reception
24 of weapons?

25 A. [10:07:21] I don't know why this document was drawn up, because when he

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1 was delivered the uniforms there wasn't a document, an approval document like
2 this. However, the uniforms were provided by Peter.

3 Q. [10:07:45] Thank you.

4 I move to a different topic, which has to do with the relationship between yourself
5 and Floribert Kisembo, but more specifically with respect to the composition of
6 forces or FPLC. Now, during cross-examination, counsel for the Prosecution put
7 to you the following question in transcript 225, page 53, lines 12 to 23. Lines 12,
8 question:

9 "Mr Ntaganda, I'll suggest to you further that you did not frequently report to
10 Mr Kisembo, did you?"

11 And you responded to this question, starting at line 14, as follows. Answer:

12 "Yes. When he was my hierarchical superior, he gave me orders and I reported to
13 him as one does in the army."

14 Now, the issue of your relationship between yourself and Floribert Kisembo was
15 raised in cross-examination and, in this regard, the Prosecution quoted an extract
16 taken from a long interview conducted with Floribert Kisembo. I refer to
17 2055-1474, page 2164.

18 Mr Ntaganda, I would like to read you a short extract starting at line 542 to 555. So
19 this is what was asked to Floribert Kisembo, at line 542:

20 (Interpretation) "Interpreter."

21 (Speaks English) It's in French:

22 (Interpretation)

23 "So Bosco decided on the composition of forces.

24 Question: Person interviewed: Responsible for the organisation, training, and
25 operations.

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1 Person interviewed: Because he was my deputy. He had been appointed by
2 decree, as I had.

3 Person interviewed: I'm not the person who chose him, it was the supreme chief
4 commander, the president who put him there.

5 Person interviewed: He just had to give me the organisation and management.
6 He could only (incomprehensible) the administration. Give me reports." Line
7 555.

8 (Speaks English) Mr President, do you agree with the -- with the words mentioned
9 by Kisembo concerning -- in this exchange concerning yourself?

10 A. [10:12:40] I was his deputy and I reported to him as his deputy. That was
11 my function.

12 Q. [10:12:58] I move to a different topic but which was also related to
13 Floribert Kisembo, but this topic was raised in cross-examination in transcript 232,
14 page 37, lines 19 to 25. This was a question put to you by the Presiding Judge, line
15 19:

16 "Yes, it obviously depends what we will understand on the term 'ideology'. I
17 would expect that a part of training in how to fight the enemy, the part of the
18 training should be also who is the enemy and why my group is fighting this
19 concrete enemy, and what are the goals, why you would like to win, what would
20 like we to gain from the fight. What is your comment on this? My presumption,
21 if you could just elaborate on that as concerns the time you have been involved in
22 training of ideology. Have you also covered those issues?"

23 You responded to the question on the following page, 38 at lines 1 to 7, as follows:

24 "At the time, we gave training as a military and not as politicians, but within the
25 army there was this aspect of ideology which was to teach the troops that they

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1 needed to protect the citizens and their property to avoid discrimination. And that
2 was for the military. That's why we were accusing the APC of attacking the
3 civilians. In our ideology, when we said we had to fight the military was because
4 we knew that our enemy was mainly the APC who were killing civilians. That's
5 what we thought, our recruits."

6 Now, did you hear this -- your answer, Mr Ntaganda?

7 A. [10:15:51] Yes, I've heard what you said, Counsel.

8 Q. [10:15:54] Now, what I'd like to do at this point is to refer to the interview
9 conducted by the Prosecution with Floribert Kisembo. And that is 2055-1678, and
10 that is at page 1684 to 1685. This was item 1046 on the Prosecution's list of items.
11 And the extract starts at line 186, as follows, and it is also in French:

12 (Interpretation)

13 "We have all the elements because we had a course, methods of instruction.

14 Interpreter: We have, we have ...

15 Interviewee: Methods of instructions. It's a course in which you learn how you
16 can set up a training centre, what training you can give, according to military level.

17 Interviewee: It's infantry tactics. I can't tell you everything. It's a course. If I
18 explain everything, I think that -- well, it's an entire course. But it's the training,
19 infantry training for a soldier, all the training. But all the same, I can't tell you
20 everything because, well, it's a course, it's training. They received complete
21 military training.

22 Interviewee: At their level.

23 Interpreter: At the basic level?

24 Answer: Yes.

25 Interpreter: And during this training --"

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1 I beg your pardon. I'll go on at line 216:

2 "During this training, did the recruits receive training in the laws of war?

3 Interviewee: Yes.

4 Interpreter: Including the Geneva Conventions?

5 Interviewee: Yes, yes."

6 (Speaks English) Now, this is what Floribert Kisembo said on this topic of ideology
7 and training. Do you agree with those -- that description provided by
8 Floribert Kisembo?

9 A. [10:19:34] Yes, that's what we studied in Jinja. That's what was taught at
10 the training camps for the infantry.

11 Q. [10:19:52] And, Mr Ntaganda, was this the foundation or how did this relate
12 to the training that was provided to recruits within the FPLC?

13 A. [10:20:15] Well, we had experience during the training. Each person just
14 transmitted the experience that he already had to the people that we were training.
15 That is to say, the people, we -- what we taught to the recruits, so that they could
16 become experienced soldiers like us, or even more than us.

17 Q. [10:20:46] Now, when describing your relationship with Kisembo during
18 your responses in cross-examination, you referred to the fact that Kisembo had the
19 same views of you and that he would not tolerate the commission of crimes. What
20 I'd like to do is to refer to the interview of Kisembo and see what he says on this
21 topic. And that is at page 0161-3038. That is the document. And it is item 1095.
22 And I'd like to refer to page 3061 to 3062. I'll start --

23 PRESIDING JUDGE FREMR: [10:21:35] Hold on, Mr Bourgon.

24 Ms Samson.

25 MS SAMSON: [10:21:38] Yes, thank you. Just so that I can follow, may we

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1 please have a transcript reference to the cross-examination. Thank you.

2 MR BOURGON: Mr President, I do not have the exact reference for where,
3 because Mr Ntaganda said this on a number of occasions, where he said, he
4 commented on what was the position of Mr Kisémbu in comparison to his. But I
5 can find it later, and I can move on to this topic later, or we can deal with the
6 question now. But the issue was what Mr Ntaganda stated concerning
7 Floribert Kisémbu's approach to the commission of crimes.

8 PRESIDING JUDGE FREMR: [10:22:21] Ms Samson, do you -- it's up to you.
9 Do you insist?

10 MS SAMSON: [10:22:25] I would like to read the cross-examination, please,
11 because --

12 PRESIDING JUDGE FREMR: [10:22:28] All right. Let's move on, and we will
13 have to return back to that later.

14 MR BOURGON: [10:22:33] Thank you, Mr President. We will do.

15 Q. [10:22:35] Mr Ntaganda, I will leave that topic aside, but we will come back
16 to it as to exactly what you had said in cross-examination before we look at the
17 extract coming from Floribert Kisémbu.

18 I move to another topic, which has to do with gold. Now, during your
19 cross-examination -- this is at transcript 234, page 30, line 13 to page 31, line 1. The
20 following question was put to you, line 13.

21 Question: "According to you, gold was not one of the objectives for the UPC's
22 takeover of Mongbwalu; correct?"

23 Your answer, line 15: "No. That was not the objective."

24 Question: "You knew at the time, though, didn't you, that Mongbwalu was one of
25 the most important gold reserves in the region?"

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1 Answer: "Yes. Mongbwalu is well known for the quantity of gold that it holds."

2 Question: "And nonetheless, you had no discussions with Floribert Kisembo or
3 with Thomas Lubanga about the gold reserves and its exploitation if the UPC could
4 take control of Mongbwalu?"

5 Your answer: "No, we didn't discuss that. Salumu had been asked to go to that
6 place. When I was in Aru, I did not know that forces were supposed to go to
7 Mongbwalu. That is why I have told you that capturing Mongbwalu was not --"
8 And I stop the reference, the citation, here.

9 Do you recall giving this answer on the topic of gold, Mr Ntaganda?

10 A. [10:25:11] Yes, I remember.

11 Q. [10:25:12] I'd like to take a look at the interview of Floribert Kisembo. This
12 is ERN number 2055-1678, and that was item 1046 on the Prosecution list of items.
13 And I'd like to read from page 1703, lines 862 to 887.

14 PRESIDING JUDGE FREMR: [10:25:49] And before this document appears, a
15 small correction to the transcript, line 26 -- page 26, line 6, the word "insist" is
16 missing, because I said, "Ms Samson, do you insist?"

17 MR BOURGON: [10:26:18]

18 Q. [10:26:19] Mr Ntaganda, listen carefully to this exchange, line 862.

19 Interviewer 2 -- this one is in -- well, partly I'll try to read only from the English:
20 "So, was ... huu ... did Lubanga ever talk about the fact that there was gold at
21 Mongbwalu?"

22 Person heard or interviewee: "The problem of gold in Ituri is not that we can
23 inform people because everybody knows about this ... hum ... everybody can ...
24 know how to mine ... hum ... even artisanal mining ... and the ... the children from
25 there ... hum ... earlier age can ... know that there is gold there. It is known to

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1 every Iturian."

2 Interviewer 2: "Hum ... But is it ... was it an objective of ... hum ... Lubanga's to be
3 able to control the gold mines?"

4 Interviewee: "No."

5 Interviewee continues, this one, this last part is in French, starting at line 880:

6 (Interpretation) "In any event, it was just to help the people, humanity. It was
7 within a framework because the gold isn't just there. Even at Barrière, there is
8 gold, the part that the UPC controlled completely; Mabanga and all of those people
9 with him. There always has been gold ... there's always been gold somewhere."

10 End of quote, line 883.

11 (Speaks English) Mr Ntaganda, do you agree with the words mentioned by
12 Kisembo when interviewed by the Prosecution?

13 A. [10:29:16] Sir, I think that I didn't read this interview. If you listen to my
14 answer, you must realise I was giving the same answers. Mongbwalu was not the
15 objective of gold. There was gold in other places, all -- Barrière and other places.
16 There was gold all over. So we went to Mongbwalu to help the population who
17 were suffering. So, you see, he gave the same answer as I did. So I think you can
18 realise that the truth in the field was -- was such.

19 Q. [10:29:54] Thank you.

20 I come back, Mr Ntaganda, to the last -- the previous question I was asking you. I
21 now have the reference in cross-examination. And the reference was in
22 transcript 232, page 37, lines 8 to 18. And I can read where this was asked to you
23 by the Presiding Judge, starting at line 8:

24 "Good. And was information about the goals of the UPC also part of the training
25 in ideology?"

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1 Answer, line 10:

2 "When we started, the UPC had not yet been created. I'm talking about the time
3 when we were mutineers. So we were following Kisembo's example and my own
4 example. The ideology we were following was based on the fact that we had had
5 officer training and that I had been an instructor myself during ... APR time."

6 So this is the end of -- well, I can go on:

7 "But when the UPC was created, this ideology was reinforced and we were taught
8 how we should behave in the field so that we could distinguish ourselves from
9 APC troops. And this started with Thomas Lubanga as commander-in-chief and it
10 went down through all the levels, brigade commander, battalion commander, right
11 down to the ranks." End of quotation at line 18.

12 Do you recall giving this answer, Mr Ntaganda?

13 A. [10:32:11] Yes, I remember.

14 Q. [10:32:15] Now, referring to the interview conducted by the Prosecution
15 with Kisembo, the number I provided earlier, but I will say again, 0161-3038, and
16 item number 1095 on the list of Prosecution items, and I would like to read from
17 page 3061 and 3062, starting at line 573. Please listen carefully, Mr Ntaganda.

18 This one is in French. It will be interpreted for you:

19 (Interpretation) "Interviewee: Secondly, the second question, it was that I
20 defended the crimes of my troops. As I told you, I'm an officer. I know full well
21 that the laws of war and human rights. I could never ever authorise my troops
22 under my orders to commit crimes, because that was one of my responsibilities, to
23 protect the population and their possessions." End of quote, line 598.

24 (Speaks English) Does the words of Kisembo in this interview match your own
25 recollection as to what his views and your views were at the time?

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1 A. [10:34:22] Yes, I talked about that. I said that I knew Kisembo and I had
2 respect for him. He couldn't tolerate to see a soldier violating human rights. He
3 could not tolerate human rights violations by his men. That is why I respected
4 him a great deal.

5 PRESIDING JUDGE FREMR: [10:34:47] Mr Bourgon, I didn't prohibit this
6 question, but it was very, very leading. But please proceed. We will just
7 adjudicate response in the light of that. Please proceed.

8 MR BOURGON: [10:34:59] Thank you, Mr President. But please don't hesitate
9 to cut me off because I want -- I'm trying to get the views of the witness based on
10 the comments made by --

11 PRESIDING JUDGE FREMR: [10:35:08] Not a big issue.

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

13 Q. [10:35:13] Mr Ntaganda, I move to a different topic, which has to do with
14 demobilisation, which was addressed in cross-examination in transcript 239,
15 page 15, line 16, to page 16, line 1. Now, at that time you were addressing a
16 demobilisation document of 12 February 2003. And the question put to you was
17 the following, line 16, question:

18 "Was there demobilisation of any children under the age of 18, and in particular 10
19 to 15 or 16, in the FPLC in 2002 or 2003?"

20 Answer, line 18:

21 "I no longer remember the year, but I found out that demobilisation had taken place
22 when Kisembo was there. There were young people in RCD-Goma, RCD-K/ML,
23 and these young people followed Kisembo during the war against the Ugandans.
24 Now, at that time there was demobilisation.

25 And when Kisembo returned, he demobilised the children who had followed him.

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1 That's what I found out with regard to 2002 and 2003. Kisembo had demobilised
2 them and they reintegrated into civilian life."

3 I will stop here in terms of the reference. Do you recall this, giving this response,
4 Mr Ntaganda?

5 A. [10:37:30] Yes, I remember.

6 Q. [10:37:33] What I would like to do at this time is to look at the interview of
7 Floribert Kisembo and to take a look as to what he said on the same issue, to see if
8 that is -- if you can recall his position or make a link between his words and yours.
9 That is 0161-3038, always the same item, 1095 on the Prosecution's list of items.
10 And I would like to read from page 3060, starting at line 540, and this is in French:

11 (Interpretation) "Interviewee: Okay. I think you asked me here about me
12 enrolling child soldiers and me using them in the army.

13 Interpreter: Okay.

14 Interviewee: I think that's the first question. I am a trained officer and I'm very
15 familiar with the fact that there is no room in the army for children, children can
16 never play an important role in operations where ... well, there's no place for
17 children. Thus, that is to say I never enlisted children or used them in the army.
18 It is true that when the DRC process at the time of Artémis, I had handed over 30
19 children that I was taking care of. I handed them over to UNICEF. These
20 children, they were orphans. Euh ...during the massacres in the villages, they fled.
21 They came and they took refuge in the army to ... to ... so that the army would
22 protect them. Perhaps those are the children that people said I had enlisted in the
23 army." End of quote, line 571.

24 (Speaks English) Mr Ntaganda, did you hear this -- the words of Kisembo on the
25 topic of recruitment and use of children in the military?

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1 A. [10:40:59] Yes, I heard. There's no difference between what he said and
2 what I said. I said that they went to the APC. There were attacks, there was a
3 number of them. Some of them followed Ugandans, and they were demobilised.
4 I said that when our -- when we were fighting the children were not supposed to
5 help us, they had no role to play, they actually would be a burden for us. We had
6 to walk, climb mountains, carry our injured, and even cross rivers and streams.
7 Children couldn't do that. There was no room in the -- for children. The children
8 couldn't help us. You just -- you just mentioned -- I said, like his deputy, that I
9 was familiar with this situation we were in, we were fighting the APC and the
10 combatants.

11 Q. [10:42:15] Thank you.

12 Now, both yourself and Floribert Kisembo referred to a group of children who had
13 followed him. My question is the following: Did you at that time, and
14 Mr Kisembo refers to the Artémis period, did you at that time obtain information
15 that they were actually integrated in the FPLC?

16 A. [10:42:58] As I said, they weren't integrated, they followed. They were like
17 internally displaced people, like those IDPs who had been sent or handed over to
18 the NGOs. These children, they didn't represent anything within the army.

19 Q. [10:43:27] And my last question before the break is: Did you obtain any
20 information at the time or later that this group who followed Kisembo were used in
21 any way in the fighting?

22 A. [10:43:55] No, I didn't receive that information. We had the men to fight.

23 Q. [10:44:06] Well, Mr Ntaganda, we have two minutes left I'm told, so I would
24 like to ask you one last question. The topic of demobilisation was raised during
25 cross-examination and without giving you any specific reference, when you say

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1 "demobilisation", for you, what does that mean?

2 A. [10:44:40] Well, to me it means that the person is no longer a soldier and
3 becomes a civilian once again.

4 Q. [10:44:59] And if we talk about demobilisation, based on your knowledge
5 and information at the time, is there a number attached to demobilisation or is that
6 an individual operation or a collective operation?

7 A. [10:45:39] Well, what I saw, my experience when I was in the army, was that
8 when we wanted to return to the government army, the ones who wanted to rejoin
9 the government army went, and the ones who didn't want to they were
10 demobilised, they were given identity cards and they became civilians and they
11 would go on to do something else in civilian life. That was one case.

12 The other case, there were young people who had followed Kisembo. And later I
13 heard that they were demobilised from the army. But they never were part of the
14 FPLC army.

15 Other than that, I really don't know what to say to you about demobilisation.

16 There were those two cases. That's what I saw. When we wanted to integrate the
17 government army, there were some cases of demobilisation, I took part in those
18 operations. And some of my bodyguards were actually demobilised.

19 MR BOURGON: [10:47:00] Mr President, I think we can stop here for -- looking
20 at the time.

21 PRESIDING JUDGE FREMR: [10:47:08] Yes. So we take our regular 30 minutes
22 break and we will reconvene at quarter past 11.

23 THE COURT USHER: [10:47:17] All rise.

24 (Recess taken at 10.47 a.m.)

25 (Upon resuming in open session at 11.17 a.m.)

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1 THE COURT USHER: [11:17:46] All rise.

2 Please be seated.

3 PRESIDING JUDGE FREMR: [11:18:17] Now we can continue with the next part
4 of re-direct conducted by the Defence, re-direct of Mr Ntaganda.

5 Mr Bourgon, you have the floor.

6 MR BOURGON: [11:18:30] Thank you, Mr President. I will take a second, a
7 second shot at this map that I used earlier.

8 Q. [11:18:40] Mr Ntaganda, I will ask you to look, to stand up and look -- go to
9 the board to look at this map. I will say the number of the map again, which was
10 item 7 on the list of Prosecution items, DRC-OTP-0003-0028.

11 Mr Ntaganda, this morning I asked you if you recognise this map and you did.

12 And we stop at the point where I was asking you to draw a circle around the
13 municipality or town of Aru. Are you able to locate Aru and to make such a mark
14 on this map?

15 A. [11:19:54] The municipality of Aru is here.

16 Q. [11:19:59] Can you put number "1" beside Aru.

17 I would now like you to identify on this map the town or the location called
18 Kandoyi and make a circle around it.

19 And if you can put --

20 A. [11:20:30] The locality of Kandoyi is here.

21 Q. [11:20:33] (Overlapping speakers) number "2" beside Kandoyi.

22 A. [11:20:42] I've already done that, Counsel.

23 Q. [11:20:46] Thank you. I would now like you to locate Mongbwalu on this
24 map, if you can, and to put a circle around Mongbwalu.

25 A. [11:21:04] You don't see Mongbwalu clearly, but it's after Pluto. And the

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1 road that goes from Pili-Pili to Mongbwalu is visible here.

2 Q. [11:21:26] If you can put number "3" beside the circle you draw close to
3 Mongbwalu.

4 Starting from close to Mongbwalu, you just mentioned that you find the area called
5 Pluto. Can you do a small circle around Pluto and put the number "4".

6 A. [11:22:15] That's done, Counsel.

7 Q. [11:22:19] Can you do the same with Mbidjo and put the number "5".

8 And you also mentioned Pili-Pili. Can you locate Pili-Pili and put number "6".

9 A. [11:23:09] I've done that, Counsel.

10 Q. [11:23:14] Thank you.

11 Now, can you tell us exactly which way, using a different colour, and identify the
12 road you took between Aru to go and meet the forces in Kandoyi.

13 If you can put --

14 A. [11:24:01] That's done, Counsel.

15 Q. [11:24:05] (Overlapping speakers) "7" in the middle of that road between
16 Aru and Kandoyi.

17 And can you indicate in a different colour the way between Kandoyi to Mongbwalu
18 and to put the number "8".

19 Thank you.

20 My first question, Mr Ntaganda, is when we look at Kandoyi, and bearing in mind
21 that this map is not perfectly to scale, where does Kandoyi fall if you compare it to
22 Aru and Mongbwalu?

23 A. [11:25:22] Kandoyi is near Aru, but I would say that Kandoyi is also far from
24 Mongbwalu.

25 Q. [11:25:44] Are you able to provide any type of distance based on your

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1 recollection, between of -- the distance between Aru and Kandoyi?

2 A. [11:26:11] I would estimate the distance to be between 50 and 60.

3 Q. [11:26:23] And based on your recollection, what would be the distance

4 between Kandoyi and Mongbwalu, if you know? Because you told us you did not

5 drive there, but do you know if you can give us an estimate of the distance between

6 Kandoyi and Mongbwalu?

7 A. [11:26:58] I never went on that road, but I would estimate it at

8 approximately 30 kilometres.

9 THE INTERPRETER: [11:27:12] The witness corrects.

10 THE WITNESS: [11:27:23] (Interpretation) Between 160 and 170.

11 MR BOURGON:

12 Q. [11:27:45] Okay, between 160 and 170, based on your recollection?

13 A. [11:28:02] Yes, that's an estimation. I didn't use or I didn't take that road,

14 but from what people said, also given the knowledge I have of the region, the

15 distance would be between that bracket, between 160 and 170 kilometres.

16 Q. [11:28:35] Thank you.

17 Now, when you are in Kandoyi visiting the troops, you testify -- I'm not going to go

18 over everything you said then, but you did say on a number of occasions that they

19 were about to do the fighting in Kandoyi. What was your knowledge of what the

20 troops were supposed to do after Kandoyi if they managed to defeat the APC in

21 Kandoyi?

22 A. [11:29:31] Usually, when you make plans, you consider the two options, you

23 can win or lose, because even the enemy that you're fighting, it has its forces with

24 its tactics. As regards Kandoyi, if I had to divide it in two, I would say in part A

25 there was FPLC forces and in B there were APC forces. We, therefore, had to

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1 completely drive away the enemy forces which were in Kandoyi and continue into
2 the villages which were situated lower down in order to stop the pressure against
3 our forces when the enemy wanted to take Aru. That was our objective.

4 Q. [11:30:40] Mr Ntaganda, the -- to your knowledge, had any orders been
5 given to the fighting forces from FPLC in Kandoyi as to what they were supposed
6 to do if they defeated the APC in Kandoyi?

7 A. [11:31:05] No. The commander there would have given these orders.
8 Having succeeded in the first operation, he wouldn't have been able to give such
9 orders before the first operation had succeeded. War is carried out in different
10 stages and you have to succeed with the first stage.

11 Q. [11:31:34] When you return to Aru after this visit in Kandoyi, did you know
12 whether the forces, the FPLC forces in Kandoyi, had managed to defeat the APC in
13 that area?

14 A. [11:32:00] No. No, I didn't know that.

15 Q. [11:32:08] When you return to Bunia thereafter, and according to your
16 testimony, contacted Jérôme Kakwavu, did he tell you on that occasion where the
17 fighting forces in Kandoyi were by that time?

18 A. [11:32:40] I'd just asked him where his forces had arrived because I wanted
19 to use them, but I also had information in the message, and that's how I found that
20 the forces were at Damas.

21 Q. [11:33:03] And my last question on this issue: Where were you physically
22 when you learned that there was a failed attack on Mongbwalu by Salumu's forces?

23 A. [11:33:26] I was in Aru, point 1.

24 Q. [11:33:31] Thank you.

25 I would ask you to put your initials at the bottom where there's room to put your

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1 initials -- no, just to put the date, today's date, which is 12 September '17. If you
2 can indicate this somewhere on the map.

3 And maybe I have one last question before we put this map away. We see on this
4 map that there appears to be different territories. Which territory do we see on
5 this map? Let me begin by Aru is in which territory?

6 A. [11:34:52] It's Aru territory.

7 Q. [11:34:59] And Mongbwalu is in which territory?

8 A. [11:35:07] The name of the territory appears here; it's Djugu territory.

9 Q. [11:35:18] Thank you.

10 Mr President, if we can save this exhibit as a Defence exhibit.

11 PRESIDING JUDGE FREMR: [11:35:28] You said "save" but mean "admit."

12 MR BOURGON: [11:35:34] Admit. It was "save and admit." I apologise, yes.

13 PRESIDING JUDGE FREMR: [11:35:38] No problem.

14 Prosecution, your position?

15 MS SAMSON: [11:35:42] No objection, your Honour.

16 PRESIDING JUDGE FREMR: [11:35:43] So annotated by Mr Ntaganda is
17 admitted into evidence as a further Defence exhibit.

18 Mr Bourgon, please proceed.

19 MR BOURGON: [11:35:52] Thank you, Mr President.

20 Q. I move to a different topic, Mr Ntaganda, and this one deals with questions
21 that were put to you regarding the event you said took place in Lipri in January
22 of 2003. Do you recall answering any questions on this issue?

23 A. [11:36:35] Yes, I remember.

24 Q. [11:36:36] I will remind you the question that was put to you in transcript
25 238, page 2, line 22 to page 3, line 9. Line 22, question:

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1 "I would like to ask you a few questions this morning about the
2 unauthorised -- your evidence about the unauthorised attack in Lipri in early 2003.
3 Now, according to you, Commander Linganga was punished because he launched
4 this unauthorised attack on Lipri in, you say, January 2003."

5 And you responded the following. This is on page 23 -- page 3, sorry:

6 "I remember that he said he was patrolling and he came across some Lendu
7 combatants and members of the APC and they clashed. He was punished because
8 this occurred during the pacification campaign."

9 Question:

10 "And according to you, he was not authorised to clash with any Lendu combatants
11 while patrolling?"

12 Answer, line 6:

13 "He was not authorised to launch that attack because we had already announced
14 that we were in the process of a pacification campaign. All the commanders were
15 encouraged to do their best, to avoid such incidents and that is why he was
16 punished."

17 Now, the Prosecution proceeded to read from the statement. I believe,
18 Mr President, it will be necessary to go into private session for this purpose.

19 PRESIDING JUDGE FREMR: [11:38:58] All right.

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

21 And in the meantime, one correction of the transcript, page 40, line 24 should be
22 read as follows: "You said 'save' but mean 'admit.'"

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

24 THE COURT OFFICER: [11:39:29] We are in private session, Mr President.

25 PRESIDING JUDGE FREMR: [11:39:36] Thank you, court officer.

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1 Mr Bourgon, please proceed.

2 MR BOURGON: [11:39:40] Thank you, Mr President.

3 (Redacted)

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21 Q. [11:45:57] Mr Ntaganda, can you share with us what is meant by a

22 "patrouille de combat"? What is that?

23 A. [11:46:17] A combat patrol is done in all forces when, for example, you have

24 a battalion and you patrol a place where the enemy is active. And it is intended to

25 protect your zone as well as the soldiers who are in the ranks further back. These

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1 combat patrols, when you meet the enemy and the enemy wants to attack, these
2 troops must be able to defend themselves. That's what we call a combat patrol.
3 When the men are attacked, they have to be able to defend themselves.
4 Generally speaking, the aim is to go out and then come back making sure that the
5 zone between the troops and the enemy is safe, but at the same time the troops
6 have to be able to defend themselves when attacked, but they're not supposed to
7 defend themselves and then attack after that, no, they just are supposed to defend
8 themselves and then withdraw.

9 Q. [11:47:48] And, sir, what is the difference between a combat patrol, or
10 patrouille de combat, and a recce patrol, patrouille de reconnaissance?

11 A. [11:48:06] Those are two different concepts. A recce is a group that is made
12 up and these men go out and collect information from the enemy. This group
13 leaves, goes out on mission looking for information during the patrol.

14 But when it comes to a combat patrol, that's something different. A combat patrol
15 goes out and then comes back. And often the two patrols resemble one another.

16 Within a patrol there may be an information officer looking for information from
17 the enemy side. It all depends on what the commander wants to do. A
18 commander may decide to put an intelligence officer in a patrol and may tell that
19 person to go out and collect information.

20 I think that a combat patrol and a recce patrol have the same mission, although at
21 the beginning I did say that they were two different concepts.

22 Q. [11:49:38] Sir, did you, yourself, at the time the Linganga was arrested, on
23 that day or in the days previous to that, issue any order to Linganga to attack Lipri?

24 A. [11:50:02] No, not at all.

25 Q. [11:50:07] I move to a different topic, and this topic has to do with a report

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1 or the consequences of a report which was shown to you. The report that was
2 addressed by the Prosecution.
3 We don't need to have the report placed on the screen, but for my colleague for a
4 reference, this was addressed in transcript 233, at page 53, line 19 to page 54, line 14.
5 And I'm not sure if I said the number of the report, but the report itself was
6 DRC-OTP-0109-0136.
7 Now, sir, at line 19, the following question was put to you on this report:
8 "This document" -- Question: "This document is reporting crimes allegedly being
9 committed against populations in Mabanga, Fataki, Largu and Barrière by
10 November 2002. Did you ever get to know of these complaints by the local
11 populations, either by virtue of this written report or through an oral discussion
12 with Eric Mbabazi or in any other way?"
13 Your response was captured at -- starting at line 24:
14 "I did not receive this report and I'm seeing it in this courtroom here for the first
15 time. However in September, October and November I was able to lock up a
16 number of commanders because of what they had done to members of the
17 population and I have already mentioned their names. But this has no bearing on
18 what is written in this report."
19 Line 4:
20 "I said that in September I locked up Pigwa in Mandro when some cows were
21 stolen and he was responsible for that. Then in October and November I
22 also -- there were also some officers who were detained in one of the houses
23 belonging to President Thomas. I also mentioned their names already. Then in
24 November I also locked up Abelanga because he was mistreating the population.
25 Now, if I had learned about these things that are written in this document, I would

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1 have taken measures. Abelanga was detained, Django was detained, Bebwa was
2 detained, as well as others. So all these people, I locked them up during that
3 period, but it has nothing to do with what you are telling me as you refer to this
4 report. I had the habit of punishing soldiers who took it out unjustly on the
5 members of the civilian population."

6 So do you recall this exchange with the Prosecution during cross-examination?

7 A. [11:54:22] Yes, I do remember.

8 Q. [11:54:29] And do you also recall that in cross-examination the Prosecution
9 challenged the fact that Linganga would not have been detained as long as you said
10 during your testimony?

11 A. [11:54:55] Counsel, could you kindly repeat your question so I can
12 understand it?

13 Q. [11:55:01] Yes. It might be a bit complicated, so the best thing is I'll refer to
14 the transcript so that there is no confusion.

15 But I see my colleague standing up.

16 PRESIDING JUDGE FREMR: [11:55:09] Yeah, exactly.

17 Ms Samson please.

18 MS SAMSON: [11:55:12] Yes. Thank you, Mr President. Counsel just read a
19 lengthy exchange of the cross-examination and the response by the witness, but
20 doesn't appear to be asking any questions about it. And so I'm wondering if the
21 exercise is merely to remind the Chamber of disciplinary action by the witness as he
22 said in cross-examination or if there's a re-examination point.

23 PRESIDING JUDGE FREMR: [11:55:34] Mr Bourgon.

24 MR BOURGON: [11:55:36] There is indeed a re-examination point, but in order
25 to get to the re-examination point I need to go first with the issue of (Redacted)

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1 which is related, and that's -- that's what I'm getting to with the next question.

2 PRESIDING JUDGE FREMR: [11:55:50] Fine. But I believe that it's not very
3 convenient for -- comfortable for the witness if you provide him with very
4 extensive part of cross-examination. I know that you need to cover the context,
5 but please try maybe to make it a little bit shorter because then I can even
6 understand. Mr Ntaganda, sometimes he has a problem to be clear what is the
7 core or what is the target of your question.

8 Please proceed.

9 MR BOURGON: [11:56:28] Thank you, Mr President. And I fully agree with
10 the Chamber. My colleague has been insisting on a few references, but I will be
11 glad to give less references and I will endeavour to do so.

12 Q. [11:56:43] Mr Ntaganda, the -- an issue was raised with you in relation to
13 disciplinary measure, which is the last answer I read out to you, and I'll go straight
14 to the issue that was raised. And this is in transcript 238, on page 9, line 14 and 15,
15 where the Prosecution put the following question:

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

18 Your answer was the following:

19 "Linganga was being detained. He was released from prison only once the clashes
20 with the Ugandans occurred. The same thing for Pigwa and Abelanga and other
21 officers. I no longer recall all their names, all of that. Correction, all of them were
22 still in detention in February 2003."

23 (Redacted)

24 (Redacted)

25 (Redacted)

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18 Of course, if the Prosecution says that it is not challenging all the disciplinary
19 measures taken by Mr Ntaganda, then I stop here, and I just put my question to
20 him and I will move on to a different topic.

21 PRESIDING JUDGE FREMR: [12:03:45] Ms Samson.

22 MS SAMSON: [12:03:45] Mr President, that's not the issue, nor is it the
23 Prosecution's position. But re-examination is limited to points that were raised
24 squarely in the context of cross-examination questions. And there are other lines
25 of cross-exam -- on the Prosecution's position that were not put in

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1 cross-examination that fall outside reasonable and allowed re-examination.

2 PRESIDING JUDGE FREMR: [12:04:10] Yes, I still see, as I said, if there is at least
3 some connection, even if it's not a very strong one, I see some connection, so,
4 Mr Bourgon, please proceed.

5 MR BOURGON: [12:04:21] I will make it quick, Mr President, and then move on
6 to a different topic.

7 Q. [12:04:27] Mr Ntaganda, I will simply repeat my question over again, which
8 has to do with disciplinary measures. And my question was at page 50 of the
9 transcript -- well, I believe maybe I did not put the question at all yet. There was
10 no question.

11 Mr Ntaganda, the question is the following: The Prosecution read to you

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

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23 Q. [12:09:15] Mr Ntaganda, I move to a different topic, and this topic has to do
24 with two documents related to a 16 June 2003 meeting which were admitted for the
25 purpose of impeachment. The two documents I'm referring to, and I will show

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1 them to you as part of my questions, but for the record, is DRC-D01-0003-5900, and
2 I'll refer to this as the minutes of the 16 June meeting.

3 And the second document I will be addressing is DRC-OTP-0091-0888, and I will be
4 referring to this document as (Redacted) of a 16 June meeting.

5 Sir, let me begin by the question that was put to you by the Prosecution --

6 PRESIDING JUDGE FREMR: [12:10:39] Hold on, Mr Bourgon.

7 Ms Samson.

8 MS SAMSON: [12:10:41] Thank you. I rise to object to the characterisation of
9 these as (Redacted) and to understand the basis upon which counsel is making
10 that suggestion and putting that in evidence.

11 PRESIDING JUDGE FREMR: [12:10:58] Mr Bourgon.

12 MR BOURGON: [12:11:01] I can use the term "notes of a 16 June meeting", but
13 we -- it's very well known as part of cross-examination that these notes were
14 obtained during a seizure at Mr Rafiki's place and that they -- but I can just use
15 "notes of a 16 June meeting". I have no problem with that.

16 PRESIDING JUDGE FREMR: [12:11:23] Ms Samson, what according you would
17 be the right name for this document?

18 MS SAMSON: [12:11:27] These notes were seized during an operation at John
19 Tinanzabo's home. Mr Rafiki, there was a search and seizure of his person in
20 which other documents were seized, but not these notes.

21 PRESIDING JUDGE FREMR: [12:11:43] All right. So I believe we clarified the
22 point.

23 Mr Bourgon, please proceed.

24 MR BOURGON: [12:11:48] Thank you, Mr President. We don't even need to
25 refer to any names of the documents because we will see with both documents.

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1 PRESIDING JUDGE FREMR: [12:11:55] Yeah, the content is relevant.

2 MR BOURGON: [12:12:01]

3 Q. [12:12:01] Mr Ntaganda, the question was put to you by the Prosecution in
4 transcript 229, page 54, lines 6 to 12. Question:

5 "So, sir, I am going to put it to you one last time ... that we've had a chance to look

6 at the list of participants from a 16 June 2003 meeting, and the handwritten notes

7 from a 16 June 2003 meeting, and the similarity of topics discussed during that

8 meeting with your document dated 16 June 2003, I put to you again that your

9 testimony before the Court was not true and that you were not at any meeting on

10 16 June 2003 covering the subject matters that were covered in this meeting. What

11 do you say?"

12 This is what you responded, Mr Ntaganda, to this question, line 13:

13 "I have just confirmed that I did not take part in the meeting on the 16th, but I took

14 part in another meeting before going to Mongbwalu. I repeat that. I cannot tell

15 you the date on which this meeting took place, but it was before I left for

16 Mongbwalu. And during this meeting, I was promoted to the rank of major

17 general."

18 Do you recall giving this answer, Mr Ntaganda?

19 A. [12:14:10] Ndiyo.

20 Q. [12:14:11] What I would like to do is to explore further your answer and in

21 order to do so I'd like to call up a document in order to ask you one question which

22 is related to this issue.

23 The document I would like to have on the screen is DRC-OTP-0151-0299. And this

24 was item 636 on the list of Prosecution items. If we can have this document on the

25 screen, please.

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1 Sir, this is the question that was put to you by the Prosecution in respect to the
2 document.

3 Is it possible to minimise the document a bit so we can see a bit better what it is.

4 Yes, thank you very much. Transcript 239, page 27, line 21 to page 28, line 13.

5 Line 21, question by the Prosecution:

6 "Now, here again, sir, this time in June would you characterise this as a reminder
7 by Thomas Lubanga not to demobilise child soldiers? Or, rather, as an order from
8 Thomas Lubanga to demobilise the child soldiers under the age of 18 who are at
9 this day demobilised from the FPLC?"

10 You responded, at line 25:

11 "I was not made familiar with this document."

12 Then further to some clarification provided by the Prosecution, you also said at
13 lines 7 and 8:

14 "That's what I just said. I stated that I did not know this letter. I don't know this
15 letter. I haven't seen it."

16 I'm not sure I -- if I need to go through other references, but, Mr Ntaganda, do you
17 recall giving this response concerning the document that is on the screen?

18 A. [12:17:26] Yes, I remember.

19 Q. [12:17:31] This document can be removed from the screen.

20 Mr Ntaganda, I come back now to the issue at hand, which is on transcript 229,
21 page 54, lines 13 to 17. And this is what you said at lines 13 to 17. This is the
22 same answer I read earlier where you say:

23 "I have just confirmed that I did not take part in the meeting on the 16th, but I took
24 part in another meeting before going to Mongbwalu. I repeat that. I cannot tell
25 you the date on which this meeting took place, but it was before I left for

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1 Mongbwalu. And during this meeting I was promoted to the rank of major
2 general."

3 So I'd like to show you this document, which is the document that you are referring
4 to, and the number of this document is DRC-D01-0003-5900. If we can have the
5 first page offer this document on the screen.

6 And Mr President considering that this is a three-page document, actually four
7 pages -- three-page, I would like to have a blank copy given to Mr Ntaganda so that
8 he can refer to it to provide his answers.

9 PRESIDING JUDGE FREMR: [12:19:17] Ms Samson, any problem with the use of
10 this document?

11 MS SAMSON: [12:19:21] No, Mr President.

12 PRESIDING JUDGE FREMR: [12:19:22] All right. So, please, yes, your request
13 is granted. Provide -- court usher, please assist and provide Mr Ntaganda with a
14 hard copy.

15 MR BOURGON: The document is a blank copy. The only addition is the
16 Prosecution item number in the top corner where it says "640".

17 MS SAMSON: [12:20:00] I confirm, Mr President, that the copy is unmarked
18 with the exception of the handwritten notation number "640" at the top.

19 PRESIDING JUDGE FREMR: [12:20:11] Well noted. And thank you,
20 Ms Samson.

21 MR BOURGON: [12:20:17]

22 Q. [12:20:17] Now, Mr Ntaganda, we have this document which was discussed
23 in cross-examination. You have it in your hands so you can really look at all the
24 different paragraphs. But I first draw your attention to the first page of your
25 document, and based on what you have -- on the document you have in your hands,

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1 are there any mention of the fact that you were promoted to major general in this
2 document?

3 A. [12:21:10] I don't think that that figures or is mentioned in this document.
4 At least I don't find this information on the first page of the document. But I had
5 the title of major general. I received this promotion.

6 Q. [12:21:49] My next question is, Mr Ntaganda, in this document, for you
7 to -- or, you have it in your hands so take the time to look at it, is there any
8 discussion or information provided concerning the upcoming operations you were
9 asked to take on in Mongbwalu?

10 A. [12:23:34] I think that what appears in this document relates to discipline
11 and the protection of the population and its property. That's among the points
12 that were discussed on that occasion. Those are points that we always come back
13 to when we go on operations.

14 Q. [12:24:12] Now, sir, in the answer you provided, which I read to you earlier,
15 you said that you took part in another meeting before going to Mongbwalu. Now,
16 the meeting that you took part in, to your recollection, were there discussions about
17 Mongbwalu?

18 A. [12:24:43] Yes, it was on that occasion that I was entrusted with the mission
19 to go to Mongbwalu. Kisembo explained to me that he had left troops in Dhego
20 and I didn't know that before and he entrusted me the mission to go and liberate
21 Mongbwalu. So that was the subject that we discussed on the occasion of that
22 meeting.

23 MS SAMSON: [12:25:10] Yes, Mr President.

24 PRESIDING JUDGE FREMR: [12:25:12] Yes, Ms Samson.

25 MS SAMSON: [12:25:13] Counsel in his last question suggested that the witness

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1 took part in another meeting based on his cross-examination answer, whereas the
2 answer that was quoted on page 58, lines 1 to 17, refers to one meeting, not to
3 another meeting. So I ask where counsel sees in that answer, which he states is
4 transcript T-229 page 54, lines 13 to 17, there's an indication from the witness that
5 he took part in two meetings.

6 PRESIDING JUDGE FREMR: [12:25:59] Mr Bourgon:

7 MR BOURGON: [12:26:00] Thank you, Mr President. The answer of the
8 witness on the record is on transcript 229, page 54, lines 13 to 17. I read that
9 answer to him so that he would know exactly what I was referring to, and this is
10 what he says:

11 "I have just confirmed that I did not take part in the meeting on the 16th, but I took
12 part in another meeting before going to Mongbwalu." And then he mentions that,
13 "And during this meeting I was promoted to the rank of major general." So that's
14 what I'm questioning to see what was discussed in that other meeting.

15 PRESIDING JUDGE FREMR: [12:26:42] Ms Samson. It is satisfactory to you?

16 MS SAMSON: [12:26:47] Yes, I think it may be, your Honour, let's see. My
17 understanding was --

18 PRESIDING JUDGE FREMR: [12:26:52] Yeah, I'm of the same opinion.

19 MS SAMSON: [12:26:55] -- that counsel was suggesting that there were two
20 meetings, but if he's clarifying there was only one in which the witness attended,
21 then I'm satisfied.

22 PRESIDING JUDGE FREMR: [12:27:04] We will see.

23 Mr Bourgon, please proceed.

24 MR BOURGON: [12:27:06] Thank you, Mr President.

25 Q. [12:27:08] Mr Ntaganda, I'd like you to turn to page 2 of the document, and

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1 you'll see at the top it has the number 5901. Let me know if you have the right
2 page.

3 A. [12:27:36] I'm there, Counsel.

4 Q. [12:27:41] I wish you to, Mr Ntaganda, to go to the bottom of this page
5 where it says Q3, Quebec Trois, and I will read you this paragraph, which is in
6 French: (Interpretation)

7 "The same is the case for child soldiers. The president assigned a demobilisation
8 decree. And we order you to demobilise them from our units. Well, we haven't
9 had them since the ban given since the start of the FPLC. And how does this
10 decree concern us?"

11 (Speaks English) And if we can turn, Mr Ntaganda, to the following page, at the
12 top, where it says "Roméo 3 par le AGS".

13 (Interpretation) It's true that this decree gives rise to debates and it has done so in
14 the meetings prior to its signature. The CEMG was present. The -- what's the
15 problem? If we had just signed a report with the FPLC, it had no sense."

16 I'm going to stop here, Mr Ntaganda.

17 (Speaks English) Now, Mr Ntaganda, I move back to English to ask you what I just
18 read out to you, to your recollection, was this issue discussed in the meeting which
19 you attended before going to Mongbwalu? I'm talking about the décret du
20 président?

21 A. [12:30:19] Yes. It was Rafiki who spoke about the decree on demobilisation.
22 We said that from the outset we never conscripted children under the age of 18.
23 But as I told you already, President Lubanga reminded us of that at every
24 opportunity. Rafiki, therefore, spoke. He pointed out the fact that others were
25 demonising us. Rafiki also said that the UPC was not a Hema party.

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1 Q. [12:31:16] Now, Mr Ntaganda, my question to you is the following: The
2 meeting you say you attended before going to Mongbwalu, is it possible it is a
3 meeting that is different from the one described in this document?

4 A. [12:31:47] The date mentioned in the document does not correspond with
5 what I remember, but that might be up to the person who drafted the document.
6 But all the subjects that we discussed on the occasion of the meeting are the same as
7 those which are set out here. I'm speaking, therefore, about the meeting in which I
8 took part prior to my departure from Mongbwalu.

9 Q. [12:32:20] And my last question, the fact that your promotion to major
10 general and the fact that the upcoming operations in Mongbwalu are not
11 mentioned in this document, is that normal, based on your experience?

12 A. [12:32:49] It's not necessary for it to appear in the document. Perhaps after
13 the meeting Kisembo went to hold another meeting, and in the general report that
14 was drafted, the information did figure. It wasn't necessary to mention that
15 Ntaganda was promoted to the rank of major general. The chief of general staff
16 explained that he had held another meeting with other members of the UPC.
17 Perhaps that's the way it went, but I can't confirm that.

18 Q. [12:33:40] Thank you, Mr Ntaganda.

19 I move to a different topic. This topic was discussed in transcript T-228, on page 5,
20 line 16 to page 6, line 15. And this has to do with a message from your logbook.
21 So before I proceed any further, I'd like this -- if the court usher can provide
22 Mr Ntaganda with his logbook.

23 PRESIDING JUDGE FREMR: [12:35:26] Ms Samson.

24 MS SAMSON: [12:35:27] Yes, just to note that we removed a page with

25 Mr Ntaganda's annotated notes from the binder, and I believe we may still be in

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- 1 private session.
- 2 PRESIDING JUDGE FREMR: [12:35:41] Yes.
- 3 MR BOURGON: [12:35:48] Being in private session is certainly my mistake,
- 4 Mr President. We should have turned back to public session.
- 5 PRESIDING JUDGE FREMR: [12:35:55] So court officer, let's return back into
- 6 open session.
- 7 (Open session at 12.35 p.m.)
- 8 THE COURT OFFICER: [12:36:02] We are in open session.
- 9 PRESIDING JUDGE FREMR: [12:36:13] Thank you, court officer.
- 10 Mr Bourgon, please proceed.
- 11 MR BOURGON: [12:36:22] Now, as to the page that was removed, I'm not aware
- 12 of what this page is. I guess the page is with the court usher. Thank you.
- 13 Q. [12:36:40] Mr Ntaganda, you have the logbook. I would like you to turn to
- 14 the small logbook, the one that has the number DRC-OTP- -- no, sorry,
- 15 DRC-D18-0001-5748. This is the original in the order in which you arranged the
- 16 pages, Mr Ntaganda, and it's the small logbook. And I would like you to turn in
- 17 this logbook to page 168 at the top. Let me know, Mr Ntaganda, when you will be
- 18 at the right page.
- 19 A. [12:38:18] I do not find the page 168 in the small logbook.
- 20 THE INTERPRETER: [12:38:26] Note from the interpreters. The interpreters
- 21 also cannot find it with the 168 reference.
- 22 MR BOURGON: [12:38:34] I apologise.
- 23 Q. It's the large notebook, Mr Ntaganda.
- 24 A. [12:38:47] I'm there.
- 25 Q. [12:38:47] And the actual number in the large logbook is

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1 DRC-OTP-0017-0033. And the translation is DRC-OTP-2102-3854.

2 Now, Mr Ntaganda, now you should be able to find the page 168. Let me know
3 when you're there.

4 A. [12:39:56] I'm there, Counsel.

5 Q. [12:40:02] Mr Ntaganda, on transcript 228, page 5, line 16, the following
6 question was put to you. Actually, I'll move straight to the question which is at
7 issue, which is more specifically on page -- it's transcript 238, the page number is 43,
8 and the question is at line 15. Listen carefully, Mr Ntaganda:

9 "Now, sir, I put to you that Commander Américain was frightened to go or I put to
10 you to advance on 18 February ... because the failed attack in which ... your weapon
11 was taken happened right before this" -- and -- "not several weeks before."

12 Your answer was captured at lines 19 to 21:

13 "Well, this is what happened in Bunia at that time. When the Lendu combatants
14 took our weapon in Lipri, that was the time when Zero One and Karika died in
15 January 2003, the delegation from Goma arrived."

16 Do you recall giving this response, Mr Ntaganda?

17 A. [12:41:56] I gave that answer to say that it happened before the Goma
18 delegation arrived in the month of January 2003. I was speaking about the capture
19 of our weapons, which had been identified as Saba Saba --

20 THE INTERPRETER: Of our weapon, which had been identified as a Saba Saba,
21 corrects the interpreter.

22 MR BOURGON: [12:42:28] Now, sir, you already provided responses to the
23 Prosecution in cross-examination. My question is the following: Looking at this
24 message, when you reacted and forwarded your message related in response to this
25 one, was the weapon -- what it says here, (Interpretation) "The way in which they

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1 took our weapon in Lipri", (Speaks English) was that a consideration in you
2 reacting to this message?

3 PRESIDING JUDGE FREMR: [12:43:13] Hold on, Mr Witness.

4 Ms Samson.

5 MS SAMSON: [12:43:16] Yes, leading, Mr President. The question could be
6 asked: What did you take into consideration, for instance, when you responded?

7 PRESIDING JUDGE FREMR: [12:43:23] Yes. Mr Bourgon, please rephrase.

8 MR BOURGON: [12:43:34] Well, I was going for the issue of the weapon,
9 because that -- the question was put that this was the weapon taken elsewhere.

10 But I can rephrase the question.

11 Q. [12:43:46] Mr Ntaganda, first, do you recall that you -- that you responded
12 to this message?

13 A. [12:44:12] I think that when I found out about this message, when I read it, I
14 saw that Américain was afraid. He was afraid to leave. He said he was scared by
15 the way our weapon had been captured, and I think that's the reason why he -- I
16 think that's why he was afraid.

17 But the message that I sent as a commander was to say that I'd never seen such a
18 situation, where a commander gives an order to a subordinate, not just an order to
19 advance, but any order whatsoever, and the subordinate refuses to execute the
20 order. In reality, in my career, I never saw such a situation, where a subordinate
21 refused to follow the orders of a superior. And I wanted to be reassured that this
22 would not or never happen again. I'm not just talking about discipline. It wasn't
23 just about the seizure of a weapon; it was quite simply the fact that I wanted to be
24 sure that discipline was going to be respected.

25 Q. [12:45:57] And, Mr Ntaganda, were the -- no, I guess -- if we look at the

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1 wording of the message, there is mention of a weapon being taken at Lipri. What
2 information did you have about any weapon taken at Lipri at that time?

3 A. [12:46:34] I just had information about our weapon, that it had been
4 captured. The weapon was called the Saba Saba. And it was also about
5 commanders who had disappeared with this weapon. I received this information
6 late in January 2003 when Zero One, Bosco, his S4, Karika, died.

7 Q. [12:47:19] Did you have at that time information about any other weapons
8 taken in Lipri?

9 A. [12:47:40] Up until now, I have not heard about any other weapon belonging
10 to the FPLC that was captured in Lipri.

11 PRESIDING JUDGE FREMR: [12:47:55] Mr Bourgon, you should wrap up
12 because we are even three minutes over or two minutes over our --

13 MR BOURGON: [12:48:01] That's just what I was asking my colleague. So I'm
14 done for this session, Mr President. Thank you.

15 PRESIDING JUDGE FREMR: [12:48:06] All right. Now, for the sake of
16 planning, may I ask court officer what time is still remaining from the time of eight
17 hours allotted to Defence?

18 THE COURT OFFICER: [12:48:21] Yes, Mr President. The Defence has used
19 6 hours and 39 minutes, which means that Mr Bourgon still has 1 hour and
20 21 minutes.

21 PRESIDING JUDGE FREMR: [12:48:32] Mr Bourgon, at the moment your
22 assumption, do you think you will need all that time?

23 MR BOURGON: [12:48:39] I believe so, Mr President, but no more.

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

25 And also a preliminary question to Ms Samson, and I'm not asking for ultimate

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1 request, but at the moment, Ms Samson, what is your estimation, how much time, if
2 any, you would need for re-cross?

3 MS SAMSON: [12:49:00] Thank you, Mr President. I would request
4 45 minutes.

5 PRESIDING JUDGE FREMR: [12:49:05] All right. So it depends what time
6 Mr Bourgon will complete. If it will be at least 15 minutes before the end of the
7 normal hearing, please be ready, Ms Samson, to start with your re-cross.
8 Mr Bourgon.

9 MR BOURGON: [12:49:23] Mr President, I'm somewhat surprised by the request
10 coming from the Prosecution regarding re-cross. Although it has been a practice
11 to -- for some witnesses to have questions after cross-examination, this is not the
12 norm. And even though it is based on the, of course, the power of the Chamber,
13 the appreciation of the Chamber to see if there are any questions in re-cross, this
14 witness is somewhat different from other witnesses in terms of all the time that was
15 spent with the witness. If my colleague is asking for 45 minutes, then in
16 accordance with the right of the Defence to be the last one to speak, then I'm likely
17 to ask for again more time after my colleague.

18 I guess, Mr President, before we authorise any time for the Prosecution to come
19 after cross-examination, the issue should be explained: What issues does the
20 Prosecution wish to take on re-cross, as it is called? And maybe that should be
21 done in the absence of Mr Ntaganda so that we know exactly whether these
22 questions should be permitted, because it is an exception. Re-cross is an exception,
23 especially with a witness who has been on the stand for more than 120 hours.
24 Thank you, Mr President.

25 PRESIDING JUDGE FREMR: [12:50:50] Mr Bourgon, you are rather early but it's

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1 maybe good to know, because I didn't ask for ultimate request. I just make
2 preliminary inquiry for the sake of planning. But before then the Chamber will
3 rule about such a possible request, we will give both of you a chance to express
4 your position.

5 Now we break and we will reconvene at quarter past 2.

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

7 (Recess taken at 12.51 p.m.)

8 (Upon resuming in open session at 2.16 p.m.)

9 THE COURT USHER: [14:16:16] All rise.

10 Please be seated.

11 PRESIDING JUDGE FREMR: [14:16:39] Good afternoon, everybody.

12 This session --

13 Ms Grabowski, please.

14 MS GRABOWSKI: [14:16:48] Mr President, I just wanted to put on the record
15 that Mr Suprun has left the courtroom this afternoon.

16 PRESIDING JUDGE FREMR: [14:16:53] Thank you, Ms Grabowski.

17 And this afternoon the Defence is going to complete its re-direct examination of
18 Mr Ntaganda.

19 So, Mr Bourgon, you have the floor.

20 Sorry, sorry. I have been rightly reminded that before doing that we have to
21 deliver a brief oral ruling, but it has to be made in private session. It will take,
22 according my estimation, not more than 10 minutes.

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

24 (Private session at 2.17 p.m.) *(Reclassified partially in public)

25 THE COURT OFFICER: [14:17:39] We are in private session, Mr President.

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1 PRESIDING JUDGE FREMR: [14:17:49] Thank you, court officer.

2 The Chamber will now deliver its oral ruling on the request for protective measures
3 for Witness D-0054, whom I will refer to as "Witness".

4 In filing number 1890, the Defence requested face and voice distortion as well as
5 use of a pseudonym for, inter alia, the Witness, on the basis that the disclosure of
6 the Witness's identity to the public would create an objectively justifiable risk of
7 retaliation against the Witness and her family, and that the Witness has expressed
8 fears in this regard. It further submits that the Witness will testify about her

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 The Prosecution opposes the request, in filing number 1910, arguing that no
16 objectively justifiable risk has been demonstrated and that the concerns expressed
17 by the Witness amount to unclear and unsubstantiated subjective fears. The
18 Prosecution further submits that the Defence failed to explain the relevance of the
19 witness's health condition to the request.

20 On 11 September 2017, the Chamber received the VWU's protective measures
21 assessment, which provides that the VWU is unable to establish any meaningful
22 facts to support the risk perceived by the witness, and therefore does not support
23 the ordering of in-court protective measures.

24 The Chamber incorporates by reference the applicable law set out in its first
25 decision on protective measures, bearing filing number 824. In assessing whether

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1 an objectively justifiable risk exists, the Chamber recalls that it has previously held
2 that the general security situation in a region may be a relevant consideration in
3 respect of specific witnesses. In this regard, the Chamber notes the information
4 provided by the Registry in its latest report on the security situation in Ituri filed on
5 30 June 2017 pursuant to the Chamber's direction, bearing filing number 1980. The
6 Chamber notes in particular the assessment contained in the report which indicates
7 that the general security situation in the Ituri province, where the witness resides,
8 has deteriorated since the beginning of the year and remains volatile. The
9 Chamber further notes that inter-ethnic violence and attacks by armed groups from
10 different sides are reported to have increased, and therefore considers that a risk to
11 the Witness's security arises therefrom.

12 In spite of the VWU's assessment that it does not support the need for protective
13 measures, the Chamber considered, in particular, the submissions in relation to the
14 fears expressed by the Witness, the nature of the expected testimony, the security
15 situation in the area where the Witness resides, as well as the Witness's position in
16 her community.

17 Noting further the reported instances where other witnesses were allegedly
18 threatened as a result of their involvement with the Court, the Chamber is satisfied
19 that an objectively justifiable risk exists with respect to the Witness's security,
20 warranting the protection of the Witness's identity from the public. Accordingly,
21 the Chamber grants the measures of use of a pseudonym for the purposes of the
22 trial and voice and face distortion during testimony pursuant to Rule 87 of the
23 Rules. The Chamber shall further consider, and, if applicable, order any special
24 measures, if required, upon receipt of the VWU's vulnerability assessment and in
25 advance of the Witness's testimony.

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1 This concludes the Chamber's ruling.

2 Any request for the floor in accordance -- in connection with this decision?

3 It's not the case I see, so now we can move into open session.

4 (Open session at 2.23 p.m.)

5 THE COURT OFFICER: [14:23:54] We are in open session, Mr President.

6 PRESIDING JUDGE FREMR: [14:24:16] Thank you, court officer.

7 And now we can proceed with the last part of re-direct of Mr Ntaganda conducted
8 by the Defence.

9 Mr Bourgon, you have the floor.

10 MR BOURGON: [14:24:29] Thank you, Mr President. Before I begin I would
11 like to state for the record that on the Defence side one member is not here this
12 afternoon, Maître Jean Baptist Gasominari.

13 PRESIDING JUDGE FREMR: [14:24:42] Thank you, Mr Bourgon.

14 MR BOURGON: [14:24:45] I also take this opportunity, Mr President, to state
15 that with respect to the witness for whom a decision was just rendered, we have not
16 yet received the list of cross-examination items from the Prosecution, and it is our
17 understanding that this list should have been communicated to the Defence 24
18 hours in advance.

19 PRESIDING JUDGE FREMR: [14:25:08] Ms Samson, any comment on that?

20 MS SAMSON: [14:25:11] No, Mr President. I will verify if the witness starts
21 tomorrow at some point in the morning and is a three-hour witness, then indeed
22 we should be sending our list to the extent there are any documents at all. I will
23 verify.

24 PRESIDING JUDGE FREMR: [14:25:27] Yes, because according my preliminary
25 estimation it's very likely that this examination could start in the morning, in the

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1 morning tomorrow, maybe at the end of the first session, at the beginning of the
2 second session, but roughly around that time.

3 Mr Bourgon.

4 MR BOURGON: [14:25:46] Thank you, Mr President.

5 Q. [14:25:49] Good afternoon, Mr Ntaganda.

6 A. [14:25:55] Jambo sana.

7 Q. [14:25:56] This is our last session for the re-examination part of your
8 testimony. And I'd like to move to a different topic which was raised by the
9 Prosecution in transcript 239, and that was on the last day of the Prosecution
10 cross-examination, dealing with conversations you had from the detention centre.
11 Do you recall this part of your cross-examination?

12 A. [14:26:41] Yes, I remember.

13 Q. [14:26:43] In this transcript, that was on page 58, lines 9 and 10, the
14 Prosecution put to you the following question:

15 "You were authorised to receive telephone calls from your resource person,
16 Dieudonné Mbuna, correct?"

17 And your answer was:

18 "That is correct. I had this telephone number."

19 Do you recall giving this answer?

20 A. [14:27:24] Yes.

21 Q. [14:27:25] On the same page at lines 16 and 17, the Prosecution put the
22 following question to you:

23 "And you've spoken to some individuals who were not on your authorised list of
24 callers through Mr Mbuna's telephone, correct?"

25 Your response at lines 18 to 20 was the following:

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1 "If there are any people who did not know that I am the one who wanted to talk
2 with them, well, some of them wanted to make sure that I was indeed the one on a
3 number of occasions. And it was thus that I was able to speak to these people."

4 Do you recall giving this answer?

5 A. [14:28:25] Yes, that's the answer I gave.

6 Q. [14:28:27] Now, with respect to the contents of these conversations, the
7 Prosecution put to you on page 59, at lines 20 to 21, the following question:

8 "When you spoke to witnesses you spoke about the events of 2002 and 2003,
9 correct?"

10 And your response was the following:

11 "When I arrived here my counsel asked me to explain to him the various locations
12 at which I had been and to tell him the people with whom I had been and I
13 therefore tried to identify the people who had been with me at the various locations
14 which my counsel had asked information about. So that was part of my duty,
15 arising from what the counsel asked of me when I arrived here in relation to the
16 events of 2002 and 2003."

17 Do you recall giving this response?

18 A. [14:29:50] Yes, I remember.

19 Q. [14:29:53] And on page 60, the Prosecution also put to you the following
20 follow-up question, at lines 3 and 4:

21 "And to be clear, you spoke to your witnesses about your whereabouts and your
22 activities in 2002 and 2003, correct?"

23 I won't read the answer, but did you acknowledge having spoken to witnesses
24 about your whereabouts and your activities in 2002 and 2003?

25 A. [14:30:45] No, no, not at all. I didn't say that. I didn't tell the witnesses

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1 what I was doing. However, I did ask the person that I was with to call me back,
2 or something like that.

3 Q. [14:31:06] Now, what I'm trying to establish at this time is that during the
4 multiple conversations you had from the detention centre that you did discuss the
5 events of 2003 -- 2002, 2003 with a number of persons; do you recall doing that?

6 A. [14:31:39] Yes, with some people whom I knew. If those people were not at
7 the place where I was, I would ask them, "How did things go at that place?"

8 Q. [14:31:56] Now, in these conversations, Mr Ntaganda, what was your
9 purpose in speaking to these persons about the events of 2002-2003?

10 A. [14:32:23] I wanted to remember specifically the events using my memory.
11 I wanted the people that I was with to remind me of the events so that I could
12 explain to my counsel what had happened, what my story was.

13 Q. [14:32:44] Now, looking at the numerous conversations which were
14 disclosed, in these conversations, up to the moment that I arrived as your counsel,
15 did you know that any of these persons would be your witnesses at trial?

16 A. [14:33:17] No, I didn't know at that point. I think that once you -- the time
17 you got here I did not know who would come as a witness and who would not.

18 Q. [14:33:35] Now, the Prosecution put to you the following question at page 59,
19 4 to 6, and I will quote the question, which goes as follows. Question:

20 "And you knew that some -- well, in fact, I'll put to you that you sometimes wanted
21 to speak to those individuals before they had an opportunity to speak to your
22 counsel, correct?"

23 And your response, at lines 7 to 10, was:

24 "Well, I no longer remember that. I, I did not know that this kind of issue would
25 come up. So when a witness desired to make sure that I was indeed the one

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1 asking them to become my witness, then I would intervene at that level to talk to
2 them and reassure them."

3 Do you recall giving this response?

4 A. [14:35:03] I think that it was Mbuna, the resource person. He was the one
5 who thought that if, for example, the person was hesitating or had doubts, I would
6 send Mbuna and it was so that he could go talk to that person, reassure that person.
7 So it was so I could have a conversation with that person.

8 Q. [14:35:39] Now, to be clear, Mr Ntaganda, did you have any particular
9 interest in speaking to persons in the area through Mbuna before your lawyers
10 would meet with such persons?

11 A. [14:36:10] Not at all. I had no interest in that because myself, you see, my
12 version of what happened, my story, I didn't want to share it with a person so that
13 person might twist it around. I never thought of doing that.

14 Q. [14:36:32] In the multiple conversations you had from the detention centre,
15 did you ask any person to mislead your Defence team or Defence team members?

16 A. [14:36:56] Not at all. Not at all. I did not say -- I didn't say anything like
17 "hide this information." No. I never said that to anyone at all. Most of the time,
18 I would say something like "tell the truth because we don't want to say any lies."

19 Q. [14:37:27] Did you in your multiple conversations lead or ask any person
20 whether they would be ready to come and lie for you before the Court?

21 A. [14:37:47] No, not at all. I didn't say that they would come in front of the
22 Judges, and secondly, when I had contacts with those people, I did not say "say
23 this" or "don't say that; "add this, delete that." I didn't say anything of the kind.

24 Q. [14:38:10] During the multiple conversations you had from the detention
25 centre, did you obtain some information, and my question is, did you always

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1 consider the information you received to be true or accurate?

2 A. [14:38:43] When I would speak to someone, often it was people that I had
3 contacts with, not a person who was with or -- I would say "how are things going?"
4 If it was a person who was with me, I would ask him to remind me of a particular
5 event. If I recall, if it was such-and-such or if something had occurred in a certain
6 way, I would say "okay." So everything I remembered, I said during my
7 testimony. I was saying to the people that I had had contact with to go and get
8 such-and-such an item of information.

9 Q. [14:39:28] Well, that's the aim of my next question. Did you in the multiple
10 conversations you had from the detention centre task persons you spoke to to
11 locate some people for you?

12 A. [14:39:57] No, not to talk with those people. No. There was someone that
13 I asked -- well, I asked that person to find people who, for instance, took part in the
14 Mongbwalu battle. I said, "If you find those people, put those people in touch
15 with Mbuna, but I didn't say, "Oh, bring that person back for me to talk to them."
16 No, I did not do that.

17 Q. [14:40:29] Now, what I would like you to do at this time, Mr Ntaganda, is to
18 look at some of these conversations that you had from the detention centre so that
19 you can explain these conversations to the Trial Chamber.

20 And allow me to begin by something that was raised by the Prosecution, and that
21 was on page 87, lines 12 to 15. And here, there's a question which reads as follows,
22 question:

23 "You registered your friend and colleague Aimable Rafiki Saba, under the false
24 name Andrew Mugeni Asimwe to the registry, correct?"

25 And at lines 14 and 15 is your response:

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1 "That is correct. That is the name I gave him. And I gave that name because that
2 was the name he bore when he was still young. When I arrived here ..." And
3 then you go on in your response.

4 Do you recall answering this question, Mr Ntaganda?

5 A. [14:41:49] Yes, I do remember.

6 Q. [14:41:54] And I'd like to, simply, you to confirm the answer you gave to the
7 Prosecution to the following question, which was on page 88, line 4. Question:
8 "... so I suggest that your decision to mask his identity was not about hiding his
9 name from the public, but rather for making it more difficult for the Registry or
10 anyone else to detect with whom you were speaking?"

11 And your response at lines 7 to 10 was the following:

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 Do you recall giving this response?

17 A. [14:43:04] I think I gave that answer, but in private session, Counsel.

18 Q. [14:43:10] You are correct, Mr Ntaganda.

19 MR BOURGON: Mr President, can we go in private session and redact the last
20 question and answer that was put to the witness?

21 PRESIDING JUDGE FREMR: [14:43:18] Yes, you are right.

22 So now let's move into private session.

23 (Private session at 2.43 p.m.) *(Reclassified partially in public)

24 THE COURT OFFICER: [14:43:25] We are in private session, Mr President.

25 PRESIDING JUDGE FREMR: [14:43:39] And now I can add that we also redact

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1 part of the transcript on English version page 82 from line 7 to line 11.

2 Now, Mr Bourgon, please proceed.

3 MR BOURGON: [14:43:58] Thank you, Mr President.

4 Q. [14:43:59] Mr Ntaganda, are you ready to answer the question about
5 Mr Rafiki? All I'm looking for is confirmation that this was the answer you gave
6 in cross-examination?

7 A. [14:44:22] Yes, you said, you gave the answer that I had provided.

8 Q. [14:44:31] Well, what I would like to do at this stage, Mr Ntaganda, is to
9 look at one of the conversations you had with (Redacted) And this conversation
10 is -- bears the following number, it is the item on the Prosecution's list of exhibit is
11 1416, which is the transcript, and item 1417, which is the translation.

12 MR BOURGON: Mr President, when -- I have a few of these conversations I
13 would like to ask some questions to Mr Ntaganda. What I would like to do is to
14 give him a binder with a few of these conversations so that he can look at the
15 transcript and I will put questions to him based on the transcript.

16 PRESIDING JUDGE FREMR: [14:45:36] Prosecution, what is your position to
17 that proposal?

18 MS SAMSON: [14:45:39] Could Mr Ntaganda be provided with transcripts as
19 we move through the questions? Does he -- is it necessary to have a binder of all
20 conversations for all of the questions?

21 PRESIDING JUDGE FREMR: [14:45:55] It will a little bit prolong this exercise,
22 but I think no problem. So could we just start (Overlapping speakers) --

23 MR BOURGON: On by one, Mr President?

24 PRESIDING JUDGE FREMR: -- one by one, please.

25 MR BOURGON: [14:46:05] Fine. As long as I -- as this time is not taken from

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1 my time, Mr President, I have no problems whatsoever.

2 PRESIDING JUDGE FREMR: [14:46:15] Yes, yes, it will not.

3 MR BOURGON: [14:46:17] If I can ask the court usher to give the item. And
4 the number of the item, the transcription is DRC-OTP-2101-0981. And I have the
5 translation as being DRC-OTP-2101-1248. I only want to give the transcription to
6 Mr Ntaganda, nothing else, so that what is in his language. So if the court usher
7 can please provide Mr Ntaganda with this.

8 And, Mr President, we have provided all the interpreters with copies of both
9 transcription and a translation for ease of -- to make it easier.

10 PRESIDING JUDGE FREMR: [14:47:12] Very well. Appreciated by the
11 Chamber.

12 MR BOURGON: [14:47:37]

13 Q. [14:47:38] Mr Ntaganda, do you have the transcript with you?

14 A. [14:47:47] Yes, Counsel.

15 Q. [14:47:48] I will refer you to the lines 1 to 19 to begin with, which I will read

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Speaks English) Mr Ntaganda, from those first 20 lines we see that this

15 conversation takes place on the telephone of Thomas Lubanga. Why is this so?

16 A. [14:50:11] That was 5 April 2013. I'd just spent almost two weeks and I

17 wanted to ask him for his number so that we could speak with each other. And I

18 used the president's telephone, President Thomas' telephone because he had it.

19 You see, it's not my telephone. I didn't have his number.

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 A. [14:52:35] No. Even when Thomas called him I didn't know that he used a
6 different name because he let me join the conversation once the contact had been
7 established. I didn't, therefore, discuss with him the reason why he gave him a
8 pseudonym to this effect.

9 Q. [14:53:02] You mention, Mr Ntaganda, that this conversation took place on 5
10 April 2013. How long had you been in The Hague when this conversation took
11 place?

12 A. [14:53:29] I had spent two weeks because I arrived in The Hague on 23
13 March 2013. And if you calculate this, on 5 April 2013 it's two weeks or a bit less.
14 Let's say two weeks.

15 Q. [14:54:03] What information did you have in your possession two weeks
16 after arriving in The Hague concerning the charges laid against you?

17 A. [14:54:28] I knew nothing. I just wanted to let him know that I had arrived.
18 And when I arrived here, I was provided with different documents which I started
19 to read. But I think it was my counsel who gave me the work or tasks at home.
20 He gave me the subjects that I had to concentrate on by way of preparation of my
21 defence.

22 But where it concerns the allegations or charges, I knew nothing about that. I'd
23 got the documents bit by bit and I read them as I got them. There were documents
24 who came from -- that came from the Office of the Prosecutor, which I received,
25 and I read them as I would get them, but I didn't know exactly what the allegations

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1 were.

2 Q. [14:55:44] And, sir, to your recollection, do you know whether you had
3 received two weeks after being in The Hague any documents coming from the
4 Prosecution in terms of what is known as disclosure that you are familiar with?
5 Do you recall if you had any such documents two weeks after arriving in The
6 Hague?

7 A. [14:56:22] No. The documents that I received related to the mandate. I
8 arrived on a plane. The Registry official who was with me had already provided
9 me with documents related to the arrest warrant. But as the -- there were a lot of
10 documents, then I could not describe each document to you in a specific way.

11 THE INTERPRETER: [14:57:08] The interpreter corrects: The first time
12 mandate was said in English it was "arrest warrant".

13 MR BOURGON: [14:57:17]

14 Q. [14:57:17] Mr Ntaganda, I will now refer to the transcription which you have
15 in your hands, and I will read from -- in your transcription from line 60 to line 80.
16 And the translation, which is DRC-OTP-2101-1251, it is from line 62 to line 86.
17 Please listen carefully as you can follow on the transcript. We are still in private
18 session, Mr Ntaganda.

19 (Interpretation)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 A. [15:01:45] We were speaking about a subject that I know and he knew. I
2 think I've already spoken about it here. This was in the month of February 2003
3 on the 14th, when we went via Nyangarai going towards Rwanda. I was going to
4 see my son and he was going to visit his mother. And we went through
5 Mongbwalu, as is said in the conversation. We took a plane to Mongbwalu and
6 we also took (Redacted) I say his name because we are in closed session,
7 private session. And we left with him. And it was, therefore, he who was
8 driving the vehicle. I think that I've already spoken about that in my testimony
9 here. That's what we were speaking about in this conversation.

10 Q. [15:02:45] I now refer you, Mr Ntaganda, to the passage which is on line 71
11 to 73 of your transcript, and which are lines 76 to 78 of the translation. I'd like you
12 to explain the following lines when you say: (Interpretation)
13 "I never set foot there, apart from Nyangarai, where we -- apart from on the day
14 when we went through there when we were going to that place in transit."
15 (Speaks English) Please focus on what is (Interpretation) That place there in
16 transit.

17 A. [15:03:45] The transit place was Mongbwalu. We went through there.
18 Our objective wasn't to go to Mongbwalu; we were going through Mongbwalu in
19 order to go to Rwanda. We just had to take the plane in order to go to Rwanda.
20 Same thing for Nyangarai. We went through there to take the plane to
21 Mongbwalu, such that I could go to Rwanda in order to see my son, as I already
22 mentioned during my testimony.

23 Q. [15:04:26] I'd like now to refer you to lines 75 to 77 of your transcript, which
24 corresponds to lines 80 to 82 of the translation, and I'd like you to explain what is
25 meant by the following, in French: (Interpretation)

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1 "You'll remember that at that time I was carrying out this operation to transport
2 material for these people there in the (Speaks English) What is that, Mr Ntaganda?

3 A. [15:05:09] I think that at a particular time Counsel (Redacted) asked me a
4 question about Bambu, Kobu, and Lipri, and I answered that I had never been in
5 those places. Afterwards, I told her that when we came back from Rwanda -- and
6 you'll remember the mission that I had to go and deliver the materials to the Lendu,
7 with whom we were allied, in order to drive out the Ugandans. That's the event
8 that I am referring to here. I was involved in that operation.

9 Q. [15:06:06] Mr Ntaganda, why would you discuss these events with (Redacted) on
10 5 April, two weeks after arriving in The Hague?

11 A. [15:06:30] When I arrived here I spoke to (Redacted) At that time I'd already
12 met my counsel who gave me homework to explain to him where I was at different
13 periods and with whom I was. Here, I spoke to (Redacted) And in the conversation
14 there's a passage where I say that sometimes I spent some time with the
15 missionaries in Fataki or in Drodoro. The person who's quoted here is a priest.
16 And I think that this missionary could accept to meet my counsel, but I knew that
17 (Redacted) could prepare it because I didn't know the other missionaries, who
18 perhaps wouldn't be prepared to meet my counsel. But I thought that, as I knew
19 (Redacted) that person could convince them to meet my counsel and give him
20 details relating to the place that I was staying during this period.

21 Q. [15:07:57] Mr Ntaganda, in this extract that we have just seen, did you
22 provide (Redacted) with any information that is different from your testimony in this
23 case?

24 A. [15:08:20] Not at all. If you read the conversation and you consult my
25 testimony, you will see that both accord with each other.

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1 MR BOURGON: [15:08:38] Mr President, I believe we can move back into public
2 session.

3 PRESIDING JUDGE FREMR: [15:08:41] All right.

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

5 (Open session at 3.08 p.m.)

6 THE COURT OFFICER: [15:08:54] We're in open session, Mr President.

7 PRESIDING JUDGE FREMR: [15:08:58] Thank you, court officer.

8 Mr Bourgon, please.

9 MR BOURGON: [15:09:01] Thank you, Mr President.

10 Q. [15:09:05] Mr Ntaganda, I now refer you to the transcript of
11 cross-examination, and that was on page 91, and this was lines 19 to 22, and the
12 question was as follows:

13 "Now, in one of the telephone calls that you had with Peter Dz'tho in
14 February -- pardon me, on 13 September 2013, you spoke with him about your
15 whereabouts in February 2003, specifically, from 15, 16 and 17 February and the
16 days after, correct?"

17 And then you provided an answer on lines 23 to 25:

18 "I had just spent six months here, or seven months and a half, and my counsel had
19 asked me to explain to him who I had been with and I spoke to him about Peter
20 who had been my secretary."

21 Now, the part that I would like to bring you to is on page 94, where counsel for the
22 Prosecution put the following question to you, and this is the one I'd like to
23 address. This was at lines 10 to 17:

24 "Now, there you do not refer at any time to going to Rwanda, correct?"

25 Do you recall, sir, that this question was put to you?

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1 A. [15:11:06] Yes, I remember that.

2 Q. [15:11:07] Sir, what was your connection or relationship to Peter at the time
3 this conversation took place? I'm talking about the conversation referred to by the
4 Prosecution, and that is a conversation of September 2013.

5 A. [15:11:49] The relationship between myself and Peter is that he had been my
6 secretary. When I arrived here at a particular time my counsel, Marc Desalliers,
7 wanted to make Peter the resource person for the team. At the time I asked him if
8 somebody who had been my secretary could still have his diary or journal in order
9 to give me details referring to the dates when I've been questioned. And I asked
10 him to concentrate on the period between the 20th and 3 March 2003. And as he
11 was my secretary he could look at his diary and find the information and he could
12 refresh my memory. Myself, I had some -- I had some facts that I remembered,
13 but I wanted to see whether it corresponded with what he knew so that I was able
14 to see what information could be -- or see if the information that I was giving to my
15 counsel corresponded with the truth.

16 Q. [15:13:18] Do you recall if you had many conversations with Peter?

17 A. [15:13:35] Yes. I don't have an exact figure, but we spoke with each other
18 on different dates.

19 Q. [15:13:49] Sir, do you recall when you decided that Peter would be a witness
20 for your defence?

21 A. [15:14:13] I think it was after Desalliers left, when you were already my
22 counsel.

23 Q. [15:14:26] Sir, I'd like to look at one of the conversations -- actually, there are
24 four different conversations I would like to look at with you between yourself and
25 Peter. I would like to begin by the conversation which on the Prosecution's list

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1 was item 1452 for the transcript and 1453 for the translation.

2 And if I can get the court usher to give the transcript to Mr Ntaganda and the
3 translation to my colleague from the Prosecution, please. The ERN number for the
4 record --

5 PRESIDING JUDGE FREMR: [15:15:14] Court usher, please assist.

6 MR BOURGON: [15:15:16] -- is transcription DRC-OTP-2101-1147. And
7 translation, DRC-OTP-2101-1436.

8 We provided the wrong transcription to Mr Ntaganda. I was looking at -- it's
9 number 23 on the list of conversations and the item number on the list of
10 Prosecution is 15 -- 1452, 1453.

11 PRESIDING JUDGE FREMR: [15:16:39] Ms Samson.

12 MS SAMSON: [15:16:39] Mr President, if we could verify, please. At tabs 1452
13 and 1453 we have different documents ending in 0342 and 0380.

14 MR BOURGON: [15:17:02] I apologise, I gave the wrong item number but the
15 right translation is given to the Prosecution counsel. What is -- what matters is the
16 ERN number of the translation, which is DRC-OTP-2101-1436. And the
17 transcription given to Mr Ntaganda is DRC-OTP-2101-1147.

18 PRESIDING JUDGE FREMR: [15:17:36] So we will wait until Prosecution will
19 confirm that it's ready.

20 MS SAMSON: [15:17:43] Yes, thank you, we found it. The items, yes.

21 PRESIDING JUDGE FREMR: [15:17:46] All right. So it seems we can proceed.

22 MR BOURGON: [15:17:49] Thank you, Mr President.

23 Q. [15:17:51] Mr Ntaganda, I will go straight to the lines that I am interested in
24 in this conversation because the Prosecution, during cross-examination, read the
25 part from line 35 to line 49 of the translation. The part I'm interested in is

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1 line -- immediately which follow, line 51 right up until line 72. And as far as the
2 transcription that you have with you, Mr Ntaganda, it is line 50 right up to line 69.

3 I will read this extract for you in English. Line 51:

4 "BN: Ah. Ah. Because in ... at the end ... at the end of January, at the end of
5 January, at some point Romeo Kilo and I popped over and we went to Goma by
6 plane.

7 PD: Yes, yes, I remember you returned with erm, with the one we received at our
8 home in Tchomia ... Mmm.

9 BN: Aha, aha ... It was the end of January two thousand ... two thousand and two.
10 Ah, no, no ... The end of December, the end of ... no ... no! January, January two
11 thousand and three. The end of January. I think the previous time we came with
12 Number One. At some point I came back on my own with Romeo Kilo.

13 PD: Well, the ... first time you went with ... with ... with Nozezi, yes, with Number
14 One.

15 BN: With Number One?

16 PD: Afterwards is when you went with Romeo Kilo.

17 BN: Yes, the first time we went with Number One, yes ... But that ... with Romeo
18 Kilo we passed ... we passed by the place where Zulu Mike was, over at the many
19 stones.

20 PD: Mmm.

21 BN: We passed by plane and we went to Golf and we finished the mission, Romeo
22 Kilo and I, we returned ... that ti ... that time Zulu had a ba ... he was based there at
23 the place with the stones ... Ah, well, I just wanted to remind you starting from 15
24 February until around the 3rd, that my activities were about those ... those who
25 came from U, those who were in Kpandroma.

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1 PD: Yes, I know ... that is where I heard about the plan of ... of ... the plan of the ...
2 from U in ...

3 BN: Ah." End of extract.

4 Can you follow with the transcription, Mr Ntaganda?

5 My first question is my first two lines --

6 A. [15:22:15] Yes, Counsel.

7 Q. [15:22:18] I apologise, I did not wait for the answer of the witness.

8 Mr Ntaganda, in the first two lines, 50 and 51, where you say that "Romeo Kilo and
9 I popped over and we went to Goma", what are you referring to?

10 A. [15:22:54] There were two points and Peter understood that we had gone
11 with the president to Goma, and then I went with Romeo Kilo when we went to
12 Rwanda, but I said that Peter didn't know that I had gone to Rwanda and that is
13 when I said I had gone that way twice. We talked about the first time when we
14 went with Number One, Thomas, and the second time when we went by way of the
15 place where Zulu Mike was, Kisembo. And Peter thought that that time we had
16 gone to Goma, and that time that is why we said that we had left twice.

17 Q. [15:23:56] Who is Romeo Kilo?

18 A. [15:24:04] Rafiki.

19 Q. [15:24:07] I refer you, Mr Ntaganda, in the transcription to the last two lines,
20 67 and 68. I will read the translation where Peter, PD, says the following:

21 "Yes, I know ... that is where I heard about the plan of ... of ... the plan of the ... from
22 U ... in Bravo Un ..."

23 What is Peter talking about, Mr Ntaganda?

24 A. [15:24:49] He's saying that when he was in Bunia, Bravo One meant Bunia,
25 that meant he had learned about the plans of the people from Uganda, because the

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1 "U" there stands for Uganda. That is where he learned about the plans that I was
2 preparing to provide the Lendu with weapons.

3 Q. [15:25:33] Mr Ntaganda, in this conversation with Peter on 13
4 September 2013, did you say anything in this conversation that does not match
5 what you said in your testimony in this case?

6 A. [15:26:12] I think that what we're talking about right now is what I've
7 already said during my testimony.

8 Q. [15:26:24] I'd like to refer to another conversation you had with Peter.
9 And this one has to do -- the number, I will ask the court usher to provide the
10 transcription to Mr Ntaganda, and as well as the translation to the Prosecution.
11 This is a conversation of 28 or -- no, sorry, the conversation has to do
12 with -- conversation of 17 August 2013. The number of the conversation, ERN
13 number, is transcription DRC-OTP-2101-1132. ERN number of the translation,
14 DRC-OTP-2101-1420. On the list of Prosecution items it is transcription 1449,
15 translation 1450. If the court usher can assist in providing to Mr Ntaganda the
16 transcription.

17 Mr Ntaganda, if you have the transcription, I will refer you to the lines, the
18 following lines, lines 77 until line 94. For the translation, the lines are 77 also to 94.
19 And I will read that for you, Mr Ntaganda, in English, and you can follow in the
20 transcript. Line 72:

21 "BN: I'm saying when we were there, me and you, we ... we were there. ... Do
22 you remember if we came across ... we came across those of ... the likes of ...

23 PD: Mm.

24 BN: ... the likes of Sierra Rifa [phon] ...

25 PD: Yes, I ... I remember.

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1 BN: ... the likes of Sierra Rifa had already gone to the place with the stones. Do
2 you remember? Yes, is there a way for us to know the date they entered there at
3 the stones, at the stones because we need to know the exact dates they went
4 because I went later on, I went after them. I followed them there afterwards.
5 And we can establish the dates we were over there at the place we went to by
6 airplane, we can remember the dates we were there.

7 PD: Well, I will try to think about it so I can give you an answer but don't know
8 what it will be. I tried to look into it a bit because I remember how we went there
9 and then we came back. After that you indeed followed them. That I remember.
10 But the time, the period, the period is what I don't ...

11 BN: Ah-ha.

12 PD: ... remember well. If you can ...

13 BN: Ah-ha.

14 PD: ... think about it a bit so I know roughly when it was.

15 BN: Ah.

16 PD: Mm.

17 BN: Exactly. That, aha, that's the homework I'm giving you. You will try to
18 remember it little by little, there is no ... there is no, erm, there is no pressure.

19 PD: Eh, yes, yes.

20 BN: It's just about remembering it slowly." End of extract.

21 Mr Ntaganda, the lines 77 to 81 about Sierra Rifa and the stones and the plane,
22 what are you referring to in this paragraph?

23 A. [15:33:13] Sierra Rifa is Salumu. I had already given his call sign. And
24 you know that I was speaking with Peter. I was in Aru. Everything is recorded
25 here. We were trying to remember the time we were in Aru and Salumu was

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1 going to -- I was trying to get him to remind me of those dates and remember they
2 were already gone, and he said, "Yes, you got there and then" -- that was what
3 I -- that was the information I was trying to get, since it was a piece of homework I
4 had received from my counsel, namely, to remember the dates and the activities.
5 So I was asking Peter, my secretary, to remind me of what had happened in Aru
6 because Salumu had already gone, you see. I followed him later. I asked Peter,
7 my secretary, to give me all the dates and all the places where I had gone to and I'd
8 already given testimony. I'd given a timeline about the places I had gone and the
9 dates on which I had travelled.

10 Q. [15:34:38] Thank you.

11 Now, in the same conversation -- May I know, Mr President, how much time I have
12 remaining, please?

13 PRESIDING JUDGE FREMR: [15:34:49] Court officer, please provide
14 Mr Bourgon with the remaining time.

15 THE COURT OFFICER: [15:34:59] You have 16, one-six, minutes left.

16 MR BOURGON: [15:35:05] Thank you.

17 Q. [15:35:16] Mr Ntaganda, I will refer to another conversation between you
18 and Peter, and this one is, actually, it's the same conversation, but the lines are
19 further down in the translation, so I will read to you an extract which begins with
20 the transcription that you have. It starts at 226 and it goes down to 253. And the
21 translation, it is 228 and it goes to 253 and this one is also in English, and it is the
22 same ERN number 2101-1428. I read in English.

23 "BN: Yes, you can remember those who know about that incident. Right, so,
24 what I want to know is if that ... that family that we assisted, they ... they ... that
25 young man who committed that robbery at that family's to identify it because it

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1 was a ... a Nande family.

2 PD: Mm, mm.

3 BN: Ah, because what we ... what I ... what I want is because ... it's because ... it's
4 because in their reports, they write that we didn't help that ... that other ethnic
5 group. And we helped them because they ... that sol ... [phon] that ... that bastard
6 went to rob them at night. He used armed robbery, he was an armed robber.

7 PD: Yes.

8 BN: And we did him in.

9 PD: I see it.

10 Yes, now ... now, I wanted to know if that same family is still there in Bravo Un.

11 PD: Mm.

12 BN: Because in that family there was a boy with no arm. They were close to the
13 place where I was living in Bravo Un. Around one hundred metres, one hundred
14 metres; you see, from the place I was living, if you face towards where you were
15 working ...

16 PD: Eh, alright, I'll try.

17 BN: ... it's, it was on the right-hand side, there was a road that goes to the right if
18 you're facing your place, the place you were working. There was a road at around
19 one hundred and fifty metres and that's where he went to commit that act. There
20 was a Nande man there who had a child with no arm.

21 PD: Now, to assist with that ... I gave directives ... I gave some directives and the
22 person who was our superior and whom I am in contact with as well, I provided
23 him with directives so he can try to meet ...

24 BN: And that boy with no arm is the one who identified ... he identified the
25 person who robbed them and he told me. I went with him and we identified him.

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1 And we gave them back all their belongings." End of extract.

2 Mr Ntaganda, what is this extract about?

3 A. [15:39:44] I think I've already given testimony about this excerpt. I've

4 already said before the Judges, I've already said that we were instilling discipline

5 amongst our men. And this person who engaged in armed robbery, robbing a

6 Nande family, I said -- well, the way we told the people about that,

7 President Thomas and Kisembo gave us the order to do and what -- well, Peter was

8 aware of that situation and whether he could find that family. And the day my

9 lawyer went to the field and went to the -- see the family so that the family could

10 tell him about these events, and I was just asking him to go and check whether that

11 family was still there.

12 Q. [15:40:44] And when Peter says he gave some directives to assist, what is he

13 telling you there?

14 A. [15:41:02] I said to him that once he had the information, he was supposed

15 to tell Mbuna to follow up. That was our contact person. I said that if he has that

16 information, I'm talking about Peter, he should give that information to Mbuna.

17 Q. [15:41:25] Sir, after I took over from your previous counsel, did you continue

18 to have telephone conversations with the resource persons?

19 A. [15:41:49] Once you came in, you said I was not allowed to speak to people

20 from outside. I think that was the topic of our conversation when you became my

21 counsel.

22 Q. [15:42:08] Mr Ntaganda, the Prosecution referred during cross-examination

23 to a conversation you had with a lady called Lotsove. I'm not going to return to

24 the contents of the conversation. What I'd like to know from you is, what was

25 your feeling and the feeling of Lotsove when you had this conversation? How did

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1 you feel?

2 PRESIDING JUDGE FREMR: [15:42:39] Hold on, Mr Witness.

3 Ms Samson.

4 MS SAMSON: [15:42:42] Yes, could the question be rephrased to understand
5 precisely what counsel is seeking to get when he asks about the feelings that the
6 witness felt at the time. It is quite unclear to me.

7 PRESIDING JUDGE FREMR: [15:42:57] Mr Bourgon.

8 MR BOURGON: [15:42:58] Yes, Mr President. My aim is to listen to the
9 original and to have the Chamber listen to the original conversation between
10 Mr Ntaganda and the person called Lotsove. And the Trial Chamber in my view
11 will be able to see what the relationship, the kind of relationship that existed
12 between Mr Ntaganda and Ms Lotsove, and I wanted to first make a foundation
13 and then proceed to listen to the conversation.

14 PRESIDING JUDGE FREMR: [15:43:33] All right, then. But we -- you have
15 eight minutes at the moment. So please have it in mind.

16 MR BOURGON: [15:43:41] Thank you, Mr President.

17 Q. [15:43:43] Mr Ntaganda, when Lotsove spoke to you on the phone, what can
18 you -- what could you tell from her reaction?

19 A. [15:44:04] If you listen to the original of that extract, you will understand
20 that when she heard my voice it was as if her father was talking to her. She used
21 the word "mzee", addressing me. We began to -- well, we were happy. We had
22 been together for nine years. She thought of me as her father. That's why she
23 used the word "mzee". The first thing I asked her was whether she was married,
24 whether she had children. I wanted to know what her life had -- how her life had
25 turned out. And when I spoke with the women who were in the army, I asked

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1 them how their lives had turned out. So, you see, there was a feeling of joy in this
2 telephone call. And we were remembering what we had experienced together.

3 And if you listen to the original of this conversation, you will realise that.

4 Q. [15:45:18] Mr President, I would like to listen to this conversation in the
5 original. It is not for the content; it is for what the type of relationship that can be
6 made out from this conversation. The number of the audio, audio recording, with
7 the assistance of the Registry, please, the audio is DRC-OTP-2094-0218, and I would
8 like to play the recording, the audio, live from 0.00 until 2.23.

9 PRESIDING JUDGE FREMR: [15:46:06] Is it confidential or public?

10 MR BOURGON: [15:46:11] Public, Mr President. We have no problems
11 whatsoever with the public listening.

12 PRESIDING JUDGE FREMR: [15:46:15] Ms Samson, any objection to the way
13 how to proceed as proposed by Mr Bourgon?

14 MS SAMSON: [15:46:21] No objection, your Honour.

15 PRESIDING JUDGE FREMR: [15:46:22] All right, then.

16 (Playing of the audio excerpt)

17 MR BOURGON: [15:48:54] Thank you for the assistance of the Registry.

18 Q. [15:48:59] Mr Ntaganda, in this conversation and the content of which is in
19 the transcript, did you try in any way to influence Lotsove about what she would
20 say, either to your counsel, Defence team or anyone else?

21 A. [15:49:29] Not at all.

22 Q. [15:49:32] I have one last issue I would like to address with you which was
23 raised by the Prosecution and that was on page 90 of the cross-examination, and
24 this has to do with an exchange where the Prosecution asked you questions about a
25 conversation with Nduru. This was on page 90, and this was -- sorry, page 89,

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1 lines 19 to 21, where the Prosecution said the following:

2 "Sir, I put it to you that since you arrived at the detention centre and before your

3 (Redacted)

4 (Redacted)

5 I'm not going to go over the answer, but my question is, how good, Mr Ntaganda, is
6 your Kihema?

7 A. [15:51:01] I speak Kihema, but a very low level.

8 Q. [15:51:08] Did you have any difficulties during this conversation with
9 Nduru using Kihema?

10 A. [15:51:26] Yes. I also use Kinyarwanda. If you listen to the conversation,
11 you'll notice that I don't speak Kihema well.

12 Q. [15:51:41] Thank you, Mr Ntaganda.

13 MR BOURGON: [15:51:43] Mr President, this concludes my re-examination of
14 the witness. Thank you.

15 PRESIDING JUDGE FREMR: [15:51:48] Thank you, Mr Bourgon.

16 And now I would like to ask Ms Samson, because I, during the previous session, I
17 asked just for your preliminary indication about possible request on
18 re-examination, re-cross, so now I'm asking for the ultimate request. Ms Samson.

19 MS SAMSON: [15:52:11] Thank you, Mr President. I maintain the request that
20 I made on a preliminary basis prior to the lunch break. The Prosecution requests
21 45 minutes for the recross-examination of the witness. And in response to
22 preliminary objections that were raised by the Defence, we've looked and indeed it
23 does appear to have been a fairly standard procedure during the course of the
24 cross-examination of Prosecution witnesses, and we've identified quite a number of
25 witnesses for whom recross-examination was permitted, without having to explain

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1 to the Chamber in any great detail what questions were to be asked or even on
2 what areas they were to be asked. And I can give some examples for P-10.
3 Counsel asked -- Presiding Judge asked, and I quote:
4 "Mr Bourgon, any need for recross-examination?
5 Mr Bourgon: If you allow me a few seconds just to verify the last answer, Mr
6 President, please.
7 Presiding Judge: Take your time.
8 Mr Bourgon: One very short question, Mr President.
9 Presiding Judge Fremr: Go ahead."
10 And that type of exchange is repeated. Now, it's true that during the
11 recross-examinations, that were fairly standard during the Prosecution case, these
12 were limited in time. I think the most was, that I can find, was the Chamber
13 allowed eight minutes, which was the same amount of time granted to the
14 Prosecution for re-examination in the case of Witness P-800. But without any
15 explanation as to why it would -- the Defence would require eight minutes.
16 In the Prosecution's submission, this witness is no different to any other witness
17 who is appearing for testimony in relation to the format in which the Chamber has
18 conducted examinations thus far. And 45 minutes, in my submission, is not
19 excessive given that we have been examining the witness now for quite some time
20 because of who he is and the key role he will play in relation to the Defence case
21 but also the Prosecution case.
22 PRESIDING JUDGE FREMR: [15:54:43] One additional question. I'm not
23 asking you to provide us with some concrete topics, but I would like to know
24 whether you are sure that you, during those requested 45 minutes, would fill in by
25 questions which will target relevant topics and topics which arose from re-direct.

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1 MS SAMSON: [15:55:05] Yes, Mr President. I intend to limit my questions to,
2 of course, those that were raised in re-examination only, on topics that, in my
3 current assessment, are relevant. It may be that I can finish earlier, but for that I
4 don't know. And also, Mr President, if I may, I would ask that once the Chamber
5 has decided, given the limited time available today, that I be able to commence my
6 re-cross-examination tomorrow morning so that I can get transcript references at
7 the ready just in case they will be asked of me. The witness had no difficulty with
8 questions from counsel in re-examination; however, I would like to be prepared
9 with the references.

10 PRESIDING JUDGE FREMR: [15:55:50] Thank you.

11 Now, Mr Bourgon, it's your turn.

12 MR BOURGON: [15:55:55] Thank you, Mr President. We oppose this request
13 and we say that there are no reasons for the Prosecution to be granted 45 minutes
14 for a -- what is known as a re-cross. The decision on the conduct of proceedings
15 applies to such issues.

16 And I quote, Mr President, the paragraph 43, where it says "on an exceptional basis
17 and upon a showing of good cause, the Chamber may authorise the
18 re-cross-examination and further re-examination of a witness on limited and
19 specific issues."

20 My first, argument, Mr President, is that if there are going to be any
21 re-cross-examination and further re-examination that the issues must be identified
22 prior to the exercise and not during the exercise, which will then turn into a
23 litigation rather than moving forward with the testimony.

24 And in paragraph 43 we also have where it says, "Any questioning after further
25 re-examination should be restricted to matters raised in re-cross-examination."

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1 Mr President, there is also some case law on this both from the ICTY and from this
2 Court. So my first issue is the topics must be identified.

3 Now, the idea is that, in my view, no good cause has been shown. My colleague
4 referred to the fact that something not standard took place. If I understand
5 correctly, Mr President, the Prosecution could certainly raise objection, and the
6 Prosecution did raise objection during the re-examination, so it certainly not good
7 cause that there would be some new issue that was objected to during
8 re-examination.

9 And the right of the Defence, of course, pursuant to Regulation 140(2)(d) for Delta,
10 requires, of course, at least allows the Defence to have the last word. So if any, if
11 any time is granted to the Prosecution to re-cross Mr Ntaganda, then the Defence
12 will also be asking for some time for re-re-examination. And I believe,
13 Mr President, that after 120-some hours I believe that all issues have been dealt
14 with thoroughly on both sides.

15 The paragraph of the Conduct of Proceedings I was referring to is paragraph 30 and
16 not -- and not paragraph 43 which was actually a Prosecution submission that led
17 to the Chamber adopting paragraph 30.

18 Now, I also have some other case law but I'll stop here.

19 And Mr President if any time is granted for re-examination, I believe that it should
20 be done today so that we can allow Mr Ntaganda, who has been on the stand since
21 14 June, to take some rest. Thank you, Mr President.

22 PRESIDING JUDGE FREMR: [15:59:45] Ms Samson, but please briefly.

23 MS SAMSON: [15:59:47] Yes, certainly, your Honour.

24 I just note, in passing, that the Defence request seeking Trial Chamber VI to take
25 measures allowing for the testimony of Mr Ntaganda to take place in conditions

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1 which best favour the Chamber's truth-seeking function, filing 1915, envisage the
2 possibility of Prosecution additional questions if allowed in the two timetables that
3 are proposed to the Chamber.

4 And as I mentioned earlier, the re-cross-examination by the Defence was permitted
5 with Witness 901, 10, 790, 17, 800, 907, 190, 894, 938, 245 and Victim 2. And in
6 none of those examples were any list of questions in advance or topic areas either
7 required by the Chamber or provided by the Defence, other than saying it would be
8 short or there are some new issues to address. Thank you.

9 PRESIDING JUDGE FREMR: [16:00:55] Thank you.

10 Allow me to deliberate.

11 Mr Bourgon, but please brief.

12 MR BOURGON: [16:00:59] If I can add just one quick observation, Mr President.
13 When we did not allow, but envisage the possibility of additional questions, in our
14 view if the Chamber were to ask some questions to Mr Ntaganda, then it would
15 indeed be appropriate for both parties to maybe seek questions of clarification
16 based on the Judges' question, but now the Judges and the Trial Chamber has asked
17 all the questions, and the exercise in our view is complete. Thank you.

18 PRESIDING JUDGE FREMR: [16:01:34] All right. So as I said, give me a
19 minute, I will consult my colleagues.

20 (Trial Chamber confers)

21 PRESIDING JUDGE FREMR: [16:03:09] So after brief silent deliberation in the
22 courtroom, our ruling is that the objection is overruled.

23 Prosecution is granted 45 minutes for its re-cross-examination. We, at the moment,
24 don't see any need to ask for concrete topics, but during the testimony, as soon we
25 will realise that the questions are either repetitive or beyond the scope of re-direct,

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1 we will not prohibit such a questions. And it -- this kind of wrong questions
2 would be high, then we could even cut the rest of the time for re-cross-examination.
3 Main reason, yes, re-direct have been focused on some issues. It took eight hours,
4 so in our view, the request of Prosecution asking for, in fact, one ninth of that time
5 is not exaggerating. So 45 minutes at the moment we see appropriate.
6 One important thing, you said Mr Bourgon that our -- that the Chamber has
7 finished its questioning. It's not, in fact, true. We will still consider possibility to
8 put some additional questions after this re-cross, but in such a case we will give you
9 again chance to put some additional questions, too, in order to respect your right
10 for the -- to be the last, as a Defence, last who examines the witness, especially
11 which also, I think, you highlighted that it's a witness of the special, rather special,
12 special position.
13 And we also find reasonable to start this re-cross tomorrow.
14 So just to sum it up, tomorrow 9.15. We will conduct, or rather Prosecution will
15 conduct re-cross for 45 minutes, then we will see whether we will have some
16 questions or whether the Defence will be given a chance to put some additional
17 questions, if not then we should continue with our next witness.
18 At the moment -- Ms Samson.
19 MS SAMSON: [16:05:48] Yes, Mr President. Thank you. I rise on a different
20 matter. It may be, and I raise it with the Chamber and the with Defence, that at
21 page 107 of today's transcript, line 5, there was a reference to a witness by number
22 and name for whom I believe the Defence has made an application for protective
23 measures.
24 PRESIDING JUDGE FREMR: [16:06:16] So in such a case should be redacted.
25 Any further request for the floor?

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- 1 Mr Bourgon, you are still -- no, so no further request for the floor, so we finish now
- 2 and we will resume tomorrow 9.15.
- 3 THE COURT USHER: [16:06:45] All rise.
- 4 (The hearing ends in open session at 4.06 p.m.)
- 5 RECLASSIFICATION REPORT
- 6 Pursuant to the Trial Chamber VI's Order, ICC-01/04-02/06-1887, dated 4 May 2017,
- 7 the public reclassified and lesser redacted version of this transcript is filed in the case.