

Trial Hearing

(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, 17 October 2017
9 (The hearing starts in open session at 9.32 a.m.)
10 THE COURT USHER: [9:32:15] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: [9:32:41] Good morning, everybody.
14 Court officer, please call the case.
15 THE COURT OFFICER: [9:32:46] Thank you, Mr President.
16 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
17 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
18 And we are in open session.
19 PRESIDING JUDGE FREMR: [9:33:02] Thank you, court officer.
20 Now appearances as usually, please.
21 MS LUPING: [9:33:07] Good morning, Mr President. Good morning,
22 your Honours. Appearing this morning on behalf of the Prosecution are myself,
23 Dianne Luping, Nicole Samson, Laura Morris and Selam Yirgou.
24 PRESIDING JUDGE FREMR: [9:33:20] Thank you, Ms Luping.
25 Defence please.

- 1 MR GOSNELL: [9:33:24] Good morning, Mr President and your Honours.
- 2 Christopher Gosnell for Mr Ntaganda this morning, assisted by Didace Nyirinkwaya,
- 3 Chloé Grandon and Marie Mescam. Thank you, Mr President.
- 4 PRESIDING JUDGE FREMR: [9:33:39] Thank you, Mr Gosnell.
- 5 And Legal Representative of Victims, please.
- 6 MS PELLET: [9:33:44] (Interpretation) Thank you, your Honour. The former
- 7 child soldiers are represented by Vony Rambolamanana and myself, Sarah Pellet,
- 8 counsel with the Office of Public Counsel for Victims.
- 9 MR SUPRUN: [9:34:07] (Interpretation) Good morning, your Honour,
- 10 your Honours. The victims of the attacks are represented by Anne Grabowski,
- 11 associate lawyer; Claire Lefevre, intern; and myself, Dmytro Suprun, counsel with the
- 12 Office of Public Counsel for Victims.
- 13 PRESIDING JUDGE FREMR: [9:34:24] Thank you, Ms Pellet.
- 14 Thank you, Mr Suprun.
- 15 Today we are going to commence the fourth evidentiary block of the presentation of
- 16 evidence by the Defence, which shall run from today to 10 November 2017.
- 17 We will begin with the testimony of Witness D-0038 shortly, but before proceeding
- 18 with this testimony there are a few pending matters that I will address.
- 19 I will start by putting on the record some submissions communicated to the Chamber
- 20 by email and the Chamber's ruling thereon.
- 21 By email of 3 October 2017 and with reference to paragraph 16 of the updated
- 22 Defence list of witnesses, bearing filing number 2045, the Chamber directed that any
- 23 Defence requests pursuant to Regulation 35(2) of the Regulations and Rule 68(2) of
- 24 the Rules be submitted by Monday, 16 October 2017.
- 25 By email of 9 October 2017, the Chamber, referring to the procedure previously set

1 out in paragraphs 52 and 53 of its decision on the conduct of proceedings, bearing
2 filing number 619, set the deadline for the filing of any Defence requests for
3 admission of documentary evidence, other than through the remaining witnesses it
4 intends to call, for Tuesday, 31 October 2017, to be complemented, if necessary, in
5 light of the evidence presented after this deadline.

6 In this respect, the Chamber notes that the Defence has filed a request for revision of
7 this deadline, bearing filing number 2062, specifically the Defence requests that the
8 Chamber order the Defence to submit its proposal for the admission of documentary
9 evidence to the Prosecution no later than 10 November 2017 and submit its motion for
10 the admission of documentary evidence three days after the Prosecution's response
11 regarding the proposed documents.

12 I will refer to this filing as "request". The Chamber has taken note of the arguments
13 brought in support of the request and would like to hear from the Prosecution
14 whether it has any observation in relation to this request.

15 So now, Prosecution, do you have any observations in response to that request?

16 Ms Samson, please.

17 MS SAMSON: [9:37:45] Thank you, Mr President.

18 The Prosecution does not object to the Defence filing its request by 10 November.

19 The procedure, as the Defence articulated in the request, that the Chamber had set out
20 previously did indeed include a period of consultation between the parties. In the
21 Prosecution's submission, however, that procedure did not particularly enhance the
22 efficiency of the request in and of itself, because following consultations the
23 Defence -- that the Prosecution filed its request and the Defence thereafter had 21
24 further days to make its observations. And the Prosecution -- in the Prosecution's
25 submission, greater efficiency could be reached if the Defence simply makes its

1 request on 10 November and the Prosecution has 21 days to respond, thereby
2 eliminating the consultation which, as I said, did not in fact shorten the response time
3 to the eventual filing.

4 That's the proposal the Prosecution makes in relation to the issue. Should the
5 Chamber decide to uphold the regime of initial consultations first, then the
6 Prosecution requests that it have until the end of November to provide its responses
7 to Defence. It will endeavour to do so on a rolling basis throughout the period.
8 Thereafter, as I understand, the Defence will file its formal request three days later
9 and the Prosecution will have, as the Defence did, the usual 21 days to respond.

10 Thank you.

11 PRESIDING JUDGE FREMR: [9:39:24] Thank you, Ms Samson.

12 Mr Gosnell, any reaction from your part on the Prosecution's submission?

13 MR GOSNELL: [9:39:32] Yes, Mr President. Very briefly. Regardless of whether
14 or not the process was, and the procedure that was followed previously was useful or
15 not, or to what extent it was useful, it's nonetheless our submission that the same
16 procedure should be followed in this case for the Defence as for the Prosecution in
17 respect to the Bar table motion. Thank you, Mr President.

18 PRESIDING JUDGE FREMR: [9:39:54] Thank you.

19 So the Chamber will deliberate on that. And I believe that we will be able to render a
20 decision on that shortly.

21 Now, with regard to the schedule for the remaining Defence witnesses, on 6
22 October 2017 the Defence informed the Chamber, the Prosecution and the participants
23 via email of a further reduction of its number of witnesses as compared to the list
24 provided on 27 September 2017 bearing filing number 2045.

25 The Defence also advised on certain changes in the scheduling and the order of

1 appearance of its remaining witnesses. Those changes were later reflected in the
2 updated Defence list of witnesses filed on 12 October 2017 and bearing filing
3 number 2060, as well as in an updated forthcoming witnesses list for the fourth
4 evidentiary block which was sent via email on the same day.

5 In an email sent on 10 October 2017, the Chamber noted that the proposed change of
6 schedule and the Defence intention to call three witnesses during the current
7 evidentiary block left a significant amount of scheduled courtroom time unused and
8 directed the Defence to, inter alia, first, explore the possibility of calling at least one
9 additional witness to testify during this block and/or, second, identify any reserve
10 witnesses who would be available in the event that any of the three scheduled
11 witnesses would fail to testify.

12 The Chamber further advised the Defence to explore the possibility of hearing the
13 testimony of D-12 and/or D-17 via video link in the event of continued logistical
14 difficulties related to the witness's travel to the seat of the Court.

15 The Defence replied by email of 11 October 2017 and indicated that, due to logistical
16 reasons, it was not possible to move any of the witnesses scheduled to testify during
17 the fifth evidentiary block to the fourth block. It also indicated that with regard to
18 Witnesses D-12 and D-17, should logistical difficulties arise concerning their travel to
19 the seat of the Court, it would be possible to hear their testimony via video link.

20 And now I would like to render our oral decision. It can be made in public session.

21 And it's the Chamber's oral ruling on the Prosecution's request to use Detention
22 Centre conversations obtained in the context of Article 70 proceedings, which I will
23 refer to as "Detention Centre conversations".

24 During the fourth Defence evidentiary block, filed on 25 September 2017 with filing
25 number 2044, I will refer to this filing as "request".

Trial Hearing

(Open Session)

ICC-01/04-02/06

1 The Prosecution seeks the Chamber's authorisation to use for its cross-examination of,
2 inter alia, Witness D-12, whom I will refer to as "Witness", one of the Detention Centre
3 conversations allegedly involving the accused and the witness, as well as the
4 corresponding transcript and translation. I will refer to these items collectively as
5 "conversation".

6 On 2 October 2017, the Defence opposed the request in filing number 2048. The
7 Chamber recalls that in its decision with filing number 1883, it ruled that the
8 Prosecution shall not be allowed to use the material obtained in the context of the
9 Article 70 proceedings during the Defence presentation of evidence unless specifically
10 authorised by the Chamber as necessary for the determination of the truth pursuant
11 to its duty under Article 69(3) of the Statute upon receipt of a substantiated request to
12 be filed sufficiently in advance of the intended use.

13 In its decision with filing number 1918 -- sorry, Mr Gosnell.

14 MR GOSNELL: [9:45:47] Mr President, I'm terribly sorry to stand up while you're
15 in the middle of a ruling, but I think that it's incumbent upon me to advise
16 your Honours that the last information that I received, and I understand that it is firm
17 information, is that Witness D-12 will not be called by the Defence. And I think it's
18 important that I advise you of that because you render your decision because I would
19 not wish your Honours to be rendering a decision that is in respect of a matter that is
20 moot.

21 PRESIDING JUDGE FREMR: [9:46:23] All right. So I will break rendering
22 of our decision.

23 Prosecution, your position?

24 MS SAMSON: [9:46:32] Mr President, this is the first that we have heard that the
25 witness may not come. We have not received any reasons for that but have no

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0038

1 further observations at this present time.

2 PRESIDING JUDGE FREMR: [9:46:45] All right. So I will stop at this moment

3 and we will during the break again deliberate to what extent this information have

4 impact on our ruling and it's very likely that we will then proceed accordingly.

5 So I will stop reading out this decision and can continue with the rest of our

6 introductory agenda. And we can now turn to matters related to today's witness.

7 The Chamber recalls its decision dated 12 October 2017, bearing filing number 2061,

8 granting the Defence request for protective measures in relation to the witness in the

9 form of voice and face distortion during the witness's testimony and the use of a

10 pseudonym for the purposes of the trial.

11 For the record, I would also like to indicate that pursuant to the vulnerability

12 assessment for the witness provided by the VWU on 12 October 2017, no special

13 measures are recommended for the witness.

14 And finally, I recall that the Defence has indicated that it estimates to need four hours

15 for its examination-in-chief of the witness.

16 That completes the preliminary matters for this morning. So if there are no further

17 requests for the floor, which I don't think it's the case, we can commence with the

18 examination-in-chief of Witness D-38.

19 So now, court officer, please invite Mr Witness into the courtroom.

20 (The witness enters the courtroom)

21 PRESIDING JUDGE FREMR: [9:50:12] Mr Witness, good morning.

22 WITNESS: DRC-D18-D-0038

23 (The witness speaks Swahili)

24 THE WITNESS: [9:50:23] (Interpretation) Good morning.

25 PRESIDING JUDGE FREMR: [9:50:24] Can you hear me and can you also hear

Trial Hearing
WITNESS: DRC-D18-D-0038

(Open Session)

ICC-01/04-02/06

1 translation well in your headphones?

2 THE WITNESS: [9:50:36] (Interpretation) Yes. I'm very well.

3 PRESIDING JUDGE FREMR: [9:50:42] All right. So, Mr Witness, welcome. You
4 are called to testify in the case against Mr Bosco Ntaganda. You will be soon asked
5 questions both by the Judges and lawyers hear in the courtroom. And in that
6 connection I would like to provide you with some guidance for answering the
7 questions.

8 Please listen carefully to the questions that you will be asked. We want you to tell
9 the truth and tell us what you saw, heard or sensed yourself. If you do not
10 understand any question, feel free to ask for the question to be repeated. You may
11 not remember all details, and it does not matter, please testify just on that which you
12 really remember. Don't guess, don't make things up. There is nothing wrong in
13 saying "I don't know" or "I don't remember".

14 Do you understand all this, Mr Witness?

15 THE WITNESS: [9:52:03] (Interpretation) Yes, I've followed you.

16 THE INTERPRETER: [9:52:06] Your Honour, could the witness be asked to speak a
17 bit more loudly, asks the Swahili booth.

18 PRESIDING JUDGE FREMR: [9:52:12] And I believe it would assist if we could
19 move microphone a little bit closer to Mr Witness.

20 But, Mr Witness, anyway -- yes, I also got a message from the interpreters that if you
21 could speak a bit more loudly it would assist because they sometimes have problem
22 to understand fully, so please try to speak a bit more loudly, okay?

23 Now, Mr Witness, protective measures are put in place to ensure that your identity is
24 not revealed to the public. It means that the public cannot see your face today and
25 that your voice is being disguised so that the public cannot recognise it. We will

Trial Hearing
WITNESS: DRC-D18-D-0038

(Open Session)

ICC-01/04-02/06

1 refer to you as "Mr Witness" only and ensure that your name and any other
2 information that risks revealing who you are is not broadcast to the public; therefore,
3 whenever you need to describe anything that might reveal your identity, we will do
4 so in so-called private session so that no one outside of the courtroom can hear your
5 answer.

6 Do you understand that, Mr Witness?

7 THE WITNESS: [9:54:00] (Interpretation) Yes, I've understood.

8 PRESIDING JUDGE FREMR: [9:54:03] And now, Mr Witness, you should be
9 provided with the text of the solemn undertaking, or maybe it will be easier I will
10 read it out myself and please repeat after me.

11 So please repeat after me: I solemnly declare --

12 THE WITNESS: [9:54:36] (Interpretation) I solemnly declare --

13 PRESIDING JUDGE FREMR: [9:54:40] -- that I will speak the truth --

14 THE WITNESS: [9:54:46] (Interpretation) -- that I will speak the truth --

15 PRESIDING JUDGE FREMR: [9:54:52] -- the whole truth --

16 THE WITNESS: [9:55:00] (Interpretation) -- the whole truth --

17 PRESIDING JUDGE FREMR: [9:55:04] -- and nothing but the truth.

18 THE WITNESS: [9:55:08] (Interpretation) -- and nothing but the truth.

19 PRESIDING JUDGE FREMR: [9:55:17] Thank you, Mr Witness.

20 So now you are under oath. And you need to be aware that it is an offence to give
21 false testimony. Do you understand that?

22 THE WITNESS: [9:55:44] (Interpretation) Yes.

23 PRESIDING JUDGE FREMR: [9:55:45] And finally, Mr Witness, a few practical
24 matters you should have in mind when giving your testimony: It's important to
25 speak clearly, to speak at a slow pace to allow the interpreters to translate everything.

Trial Hearing
WITNESS: DRC-D18-D-0038

(Open Session)

ICC-01/04-02/06

1 You should also only start speaking when the person asking you the question has
2 finished. And what is also quite important, when a question is asked, please do not
3 respond immediately, but rather count in your head to three and only then give your
4 answer because this pause of approximately three seconds between the question and
5 your answer is essential for us to properly hear, record and translate what you are
6 saying.

7 Have you understood all that, Mr Witness?

8 THE WITNESS: [9:56:58] (Interpretation) Yes, I've understood.

9 PRESIDING JUDGE FREMR: [9:57:00] Very well.

10 So that's it from my part, Mr Witness. And now I will give floor to the Defence
11 counsel, Mr Gosnell, who will start your examination.

12 Mr Gosnell, you have the floor and we are in open session.

13 MR GOSNELL: [9:57:18] Thank you, Mr President. Before I begin, could I ask the
14 Registrar to please lower the Elmo. I'd like to be able to see the witness. My vision
15 is blocked.

16 PRESIDING JUDGE FREMR: [9:57:30] Court usher, please assist in that regard.

17 MR GOSNELL: [9:57:40] And while that's happening, Mr President, may I ask that
18 we move into private session, please.

19 PRESIDING JUDGE FREMR: [9:57:46] Certainly.

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

21 And for the information of public, can you estimate at this moment how much time
22 you will spend in private session, Mr Gosnell?

23 MR GOSNELL: [9:58:03] I think, Mr President, after a few minutes I will be able to
24 move back into public.

25 PRESIDING JUDGE FREMR: [9:58:14] Thank you for that clarification.

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1 Are we in private? Not yet, all right. We will have to wait.

2 (Private session at 9.58 a.m.) *(Reclassified partially in public)

3 THE COURT OFFICER: [9:58:30] We are in private session, Mr President.

4 PRESIDING JUDGE FREMR: [9:58:34] Thank you, court officer.

5 Now, Mr Gosnell, you may proceed.

6 MR GOSNELL: [9:58:40] Thank you, Mr President.

7 QUESTIONED BY MR GOSNELL:

8 Q. [9:58:42] Good morning, Mr Witness. We are now in private session. My
9 name is Christopher Gosnell and I represent Mr Ntaganda in these proceedings.

10 Can you tell us your complete name, please?

11 A. [9:59:15] You want me to give it to you right now?

12 PRESIDING JUDGE FREMR: [9:59:17] Mr Witness, just maybe to make it
13 absolutely clear, as even Mr Gosnell told you, now we are in private session so you
14 are perfectly protected, no one apart people present here can hear what you are
15 saying now, including your name. So there is no need to fear that. So the question
16 was to put, to give us your name.

17 THE WITNESS: [9:59:58] (Interpretation) Very well. My names are (Redacted)
18 (Redacted).

19 MR GOSNELL: [10:00:11]

20 Q. [10:00:12] Do you have any nicknames or other names by which you're
21 commonly known or referred to?

22 A. [10:00:23] Yes; I have a nickname, (Redacted).

23 Q. [10:00:33] And on what date were you born, if you know?

24 A. [10:00:51] I was born in 1980.

25 Q. [10:00:58] Do you know the date on which you were born, the precise date?

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1 A. [10:01:16] (Redacted).

2 Q. [10:01:22] Where did you grow up as a child?

3 A. [10:01:37] I grew up in (Redacted).

4 Q. [10:01:42] Did you go to school there in (Redacted)?

5 A. [10:01:53] Yes.

6 Q. [10:01:55] Aside from attending school in (Redacted), did you attend school
7 anywhere else?

8 A. [10:02:17] Yes. I attended my fifth year of secondary education at
9 (Redacted) in Bunia.

10 Q. [10:02:33] And what is the highest level of education that you attained, what
11 grade?

12 A. [10:02:48] That's where I ended. I went as far as the fifth year of secondary
13 education.

14 Q. [10:02:57] Have you ever received military training?

15 A. [10:03:09] Yes.

16 Q. [10:03:13] Where was the very first place that you received military training?

17 A. [10:03:33] My first military training was in Tchankwanzi.

18 Q. [10:03:52] How old were you when you went to the military training at
19 Tchankwanzi, if you can recall?

20 A. [10:04:10] I was 19 years old.

21 Q. [10:04:15] If you were 19 years old at the time that you went to receive your
22 training in Tchankwanzi and you were born in the year 1980, am I correct in
23 understanding that the year in which you went for training at Tchankwanzi
24 was 1999?

25 A. [10:04:44] Yes, that is correct.

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1 Q. [10:04:50] How did you hear about the training that was being offered at
2 Tchankwanzi?

3 A. [10:05:18] It was at the time of war when people were being sensitised through
4 the peace committee of the village to go for military training. The idea was to set up
5 the committee for self-protection.

6 Q. [10:05:46] When you refer to the peace committee of the village, to which
7 village are you referring?

8 A. [10:06:03] The village I am referring to is my village, (Redacted).

9 Q. [10:06:36] And what exactly did you hear about the training being offered in
10 Tchankwanzi?

11 A. [10:06:55] Please kindly repeat your question.

12 Q. [10:07:00] You indicated earlier that people were being sensitised through the
13 peace committee, and I was wondering if you could provide us more details about
14 what you mean by "sensitised"?

15 A. [10:07:38] Well, sensitising the people was asking all -- was about asking all
16 youth who were able to undertake military training to do so in order to come to the
17 help of the village.

18 Q. [10:08:00] And when you say "in order to come to the help of the village", why
19 was there a need to come to the help of the village; what were the circumstances?

20 A. [10:08:29] Maybe you could rephrase that question so that I can understand it.

21 Q. [10:08:40] Was (Redacted) at this time in a situation of security or was there a
22 situation of insecurity?

23 A. [10:09:00] Okay. Now, what I can say is that throughout the Ituri, in that
24 region, there was no peace.

25 Q. [10:09:20] And when you say "there was no peace", why was there no peace?

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1 A. [10:09:39] There were killings all over the place.

2 Q. [10:09:45] And who was killing whom?

3 A. [10:10:13] Maybe you can rephrase that question so that I can understand it.

4 Q. [10:10:20] Yes, I'll try to do that. At this time, before you went to

5 Tchankwanzi and there was sensitisation by the peace committee of (Redacted), what

6 groups were involved in fighting or attacks such that there was not security

7 at this time?

8 A. [10:10:59] Okay. There was war between the Lendus and the Hema.

9 Q. [10:11:16] Did you go to Tchankwanzi voluntary or were you forced to go to
10 Tchankwanzi?

11 A. [10:11:36] I went there voluntarily. No one was forced to go there.

12 Everybody was able to see what was going on and people would decide for

13 themselves whether to go or not. And one could come to the conclusion that it was

14 proper for them to go since they would be helping to save the village.

15 PRESIDING JUDGE FREMR: [10:12:06] Hold on, Mr Witness.

16 Ms Luping.

17 MS LUPING: [10:12:09] Mr President, your Honours, I apologise for interrupting.

18 I just wanted to note we are in private session, and I wanted to ask if the current

19 questions and answers needed to be in private session.

20 PRESIDING JUDGE FREMR: [10:12:24] Mr Gosnell, it mainly depends what will
21 be the further questions.

22 MR GOSNELL: [10:12:28] Yes, Mr President. We are moving now away from his
23 village of origin and so, therefore, it may be possible to go into public session. But I

24 would request guidance as to whether references to Tchankwanzi and presence at

25 Tchankwanzi and associations with individuals at Tchankwanzi are matters that are

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1 better dealt with in private session.

2 PRESIDING JUDGE FREMR: [10:12:53] It depends to what extent this information
3 could reveal the identity to what extent is it specific.

4 Ms Luping, your position on the last issue.

5 MS LUPING: [10:13:08] Mr President, obviously, it does indeed depend on what
6 specific information is elicited, but bearing in mind the numbers that attended the
7 training, at this stage the answers given I do not believe should not cause any
8 difficulty.

9 PRESIDING JUDGE FREMR: [10:13:23] I also believe, unless you will put
10 questions concerning some specific task or specific function performed by Mr Witness,
11 unless if the questions will just concern generally the training and way of the training,
12 I still believe regardless that we even will mention the name of the place, we can, in
13 my view, stay in open session. So at the moment could we move or should we still
14 stay in private?

15 MR GOSNELL: [10:13:57] Just before doing that, Mr President, perhaps I can
16 instruct the witness.

17 PRESIDING JUDGE FREMR: [10:14:02] Good point. Please do.

18 MR GOSNELL: [10:14:04]

19 Q. [10:14:04] Sir, we're about to move into public session, and I will ask that if
20 you wish to refer to your home village that you not identify your home village by
21 name, that instead you just say "my home village". Do you understand what I'm
22 saying?

23 A. [10:14:28] Yes, I've understood.

24 MR GOSNELL: [10:14:36] Thank you, Mr President. With that I believe we can
25 go into public session.

Trial Hearing
WITNESS: DRC-D18-D-0038

(Open Session)

ICC-01/04-02/06

1 PRESIDING JUDGE FREMR: [10:14:39] Very well.

2 So court officer, let's move into public session now.

3 (Open session at 10.14 a.m.)

4 THE COURT OFFICER: [10:14:50] We are back to open session, Mr President.

5 PRESIDING JUDGE FREMR: [10:14:57] Thank you, court officer.

6 And, Mr Gosnell, please proceed.

7 MR GOSNELL: [10:15:02]

8 Q. [10:15:11] Your last answer you said that you went there voluntarily and that

9 no one was forced to go there, everybody was able to see what was going on and

10 people could decide for themselves whether to go or not.

11 Sir, can you tell us your own personal motivations, if you had any, for wishing to

12 receive military training at Tchankwanzi?

13 A. [10:15:51] I went there because of the killings. I felt that whether I went there

14 or not nothing would change, given that there were too many killings.

15 Q. [10:16:09] And can you remember the names of places where killings had

16 taken place prior to you going to Tchankwanzi from your home village?

17 A. [10:17:00] Do you want me to give you the names of all the villages, or just a

18 few examples?

19 Q. [10:17:08] Perhaps you could just provide us with a few examples.

20 A. [10:17:27] Okay. For examples there were killings ordinarily around. I was

21 in my village. And throughout my territory there were killings, killings in the

22 villages that had been occupied by the Hema. For example, right next to my village

23 there is a village called (Redacted) and in that area. So that's just one

24 example I can provide. But as a general statement, there were killings throughout

25 the entire territory.

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0038

1 MR GOSNELL: [10:18:15] May I request a redaction, Mr President, at the
2 appropriate time.

3 PRESIDING JUDGE FREMR: [10:18:19] Yes.

4 Please, court officer, follow that request.

5 MR GOSNELL: [10:18:30]

6 Q. [10:18:30] Mr Witness, how did you travel to Tchankwanzi from your
7 home village?

8 A. [10:18:52] At that time the peace committee had been set up and its members
9 provided us with vehicles to go all the way to Bunia.

10 Q. [10:19:09] And from Bunia, how did you travel to Tchankwanzi?

11 A. [10:19:23] From Bunia we travelled by air.

12 Q. [10:19:32] And once you were in Bunia who appeared to be organising
13 travelling by air to Tchankwanzi?

14 A. [10:19:54] Our group, which was the second group, what I can say is that the
15 person who organised our trip was Commander Mugabo.

16 Q. [10:20:09] Was he wearing any type of uniform that you recall and whether the
17 uniform had any insignia on it?

18 A. [10:20:38] Yes, he was wearing a uniform. Now, when you say "insignia", I
19 don't know what that means, what I know is that he was wearing a military uniform.

20 Q. [10:20:52] Were there any marks of any kind on this uniform that indicated an
21 affiliation with a particular force?

22 A. [10:21:23] I no longer remember.

23 Q. [10:21:29] Who conducted the training at Tchankwanzi?

24 A. [10:21:53] We were trained by the UPDF.

25 Q. [10:22:00] And how long did the training at Tchankwanzi last, approximately?

Trial Hearing
WITNESS: DRC-D18-D-0038

(Open Session)

ICC-01/04-02/06

1 A. [10:22:27] I cannot provide a specific answer, but I think it lasted more than
2 eight months. But I cannot be more specific than that.

3 Q. [10:22:40] Can you describe the training? What did the training consist of?
4 What did you learn as part of the training?

5 A. [10:23:11] Can you please repeat or rephrase your question, please?

6 Q. [10:23:19] What kind of training did you receive? Can you describe in a bit
7 more detail how you were trained, what were the subjects?

8 A. [10:23:53] They taught us everything that soldiers are taught, but I don't know
9 whether you want me to give you details.

10 Q. [10:24:04] Were you taught as part of this training how civilians who are not
11 participating in combat should be treated, was that part of your training?

12 A. [10:24:39] We were not taught how to deal with civilians, but we were taught
13 how to protect civilians. That is what I can say, given that we were told that our job
14 was to provide protection for civilians. So that is what I can say; namely, that during
15 our training the term "deal with" was not used, the word used was "protect".

16 Q. [10:25:20] Yes, Mr Witness, perhaps the way that I, the words I used were not
17 the most neutral.

18 And how were you taught to protect civilians during combat?

19 A. [10:26:01] Normally the purpose of the soldiers is to protect civilians and all
20 their property. The army and its soldiers could not fight against civilians. The aim
21 of the army was to fight the enemy, the enemy who had come to attack civilians.

22 Q. [10:26:42] Was there ever discussion of the concept, and here I will speak
23 Swahili, kupiga na kuchaji?

24 A. [10:27:11] When it comes to the expression kupiga na kuchaji, it is a strictly
25 military term in Kiswahili. Kupiga na kuchaji means that when you attack an enemy

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0038

1 camp you can take their weapons and their military equipment that you find at the
2 camp with a view to weakening the enemy. That is the purpose. And so this is the
3 expression we used, kupiga na kuchaji, you go to the enemy's camp and take away
4 the enemy's weapons, all the enemy's weapons in order to weaken the enemy.

5 Q. [10:28:05] Does it encompass taking the goods of civilians?

6 PRESIDING JUDGE FREMR: [10:28:15] Hold on, Mr Witness.

7 Ms Luping.

8 MS LUPING: [10:28:18] Mr President, if I could ask Defence counsel to not use
9 such leading questions. He can rephrase his question to ask in a more open-ended
10 manner exactly what it encapsulates.

11 PRESIDING JUDGE FREMR: [10:28:33] Mr Gosnell.

12 MR GOSNELL: [10:28:34] Mr President, I think it's an appropriate question in the
13 context, given, first of all, that the witness has given a definition already.

14 Secondly, we have a Prosecution case on the table. I think it's appropriate for
15 questions that are in a relatively neutral -- posed in a relatively neutral fashion to put
16 the matters that the Prosecution has indicated is its case on the table for a witness's
17 comment, and I think that, in this case, I posed the question in a neutral manner to
18 allow him to respond directly to what's on the table, so to speak, Mr President.

19 PRESIDING JUDGE FREMR: [10:29:23] Ms Luping, anything else, but please
20 briefly?

21 MS LUPING: [10:29:25] Certainly, just one final comment. If in future if we do
22 make these submissions, I would ask that the witness be asked to remove his
23 headphones also. It's now too late on this point.

24 PRESIDING JUDGE FREMR: [10:29:40] Yeah, all right. Yeah, you're right. But
25 for this issue the objection is overruled. In fact I share the view, argumentation

Trial Hearing
WITNESS: DRC-D18-D-0038

(Open Session)

ICC-01/04-02/06

1 presented by Defence.

2 So, Mr Gosnell, please proceed.

3 MR GOSNELL: [10:29:51] Just in relation to the last comment, Mr President, I will
4 say I chose my words very carefully in order to avoid the problem being raised
5 by my colleague.

6 Q. [10:30:15] Sir, does the term "kupiga na kuchaji" include or allow or authorise
7 taking the goods of civilians?

8 A. [10:30:43] This term was a term which was purely military. It wasn't about
9 taking the property of civilians, no.

10 Q. [10:31:01] How did you come to leave Tchankwanzi?

11 A. [10:31:27] For our group we left there in order to go to Équateur. There were
12 all types of groups there.

13 Q. [10:31:40] Before you left Tchankwanzi to go to Équateur, did any other
14 trainees leave Tchankwanzi?

15 A. [10:32:17] There were two groups that left at the same time, but these two
16 groups went in different directions.

17 Q. [10:32:29] Do you know what direction the other group went in, other than
18 yourself?

19 A. [10:32:52] I don't know.

20 Q. [10:32:52] Was there ever a time when white people came to visit Tchankwanzi
21 for any reason?

22 A. [10:33:12] Yes, there was a visit from white people.

23 Q. [10:33:18] Who were they?

24 A. [10:33:41] They had a UNICEF sign on their car.

25 Q. [10:33:48] And did you come to learn or did you observe why they were there

Trial Hearing
WITNESS: DRC-D18-D-0038

(Open Session)

ICC-01/04-02/06

1 or what they were doing there?

2 A. [10:34:14] I'm sorry, could you repeat the question.

3 Q. [10:34:19] What did they do in Tchankwanzi?

4 A. [10:34:38] When they arrived they chose those who they considered were
5 young, they chose the youngest and they separated them from the others.

6 Q. [10:35:00] You said that they chose those who they considered to be young.

7 What was your impression of the actual ages of those who were chosen by UNICEF in
8 comparison to those who were left behind by UNICEF at Tchankwanzi?

9 PRESIDING JUDGE FREMR: [10:35:27] Sorry to interrupt, Mr Gosnell, but I would
10 rather rephrase this question: What was your knowledge, if any? And then maybe
11 we can move to impression, but there is I believe some chance that there was some
12 knowledge.

13 MR GOSNELL: [10:35:56]

14 Q. [10:35:57] What is your impression of the ages of those who were chosen by
15 UNICEF?

16 PRESIDING JUDGE FREMR: [10:36:16] Sorry, probably you misunderstood,

17 Mr Gosnell, so I will put the question myself because you ask for Mr Witness's

18 impression, but I believe we should start with Mr Witness's knowledge, if any, of the

19 age. Was I clear enough? Because you still insist on putting question concerning

20 his impression. So maybe I can put question myself.

21 Mr Witness, you mentioned the group of the children selected by people from

22 UNICEF. You said, according them, they were the youngest. Did you know the age

23 of those youngest of the members of this group selected by the UNICEF people, at

24 least some of them?

25 THE WITNESS: [10:37:29] (Interpretation) When they came, when they came to

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0038

1 choose they did it in a by chance way, because among those who were chosen in a
2 haphazard way they were sometimes older than me. So I don't know what criteria
3 they were using in order to assess the age and to preselect. They were preselecting
4 people in a haphazard way.

5 PRESIDING JUDGE FREMR: [10:38:06] All right. You said among those were
6 even some people "older than me", so did you know the age of the members of the
7 group selected by the UNICEF people?

8 THE WITNESS: [10:38:38] (Interpretation) I didn't know their exact age, but what
9 I said is that among them some of them were older than me because some of them I
10 grew up with, I knew them.

11 PRESIDING JUDGE FREMR: [10:38:53] All right. And according your
12 knowledge, what was the age of the youngest members of this group?

13 THE WITNESS: [10:39:25] (Interpretation) I'm not certain as to the age of the
14 young ones.

15 PRESIDING JUDGE FREMR: [10:39:30] It's fair, Mr Witness, but it is a little bit
16 strange, frankly saying, to me that you are sure that there were some people older
17 than you, so at least you are, it seems to me, make some estimation of the age of the
18 olders, but you are not able to make even any estimation of those who were youngest.
19 So could you at least make it that it's up to you to say, "I was not sure, but I would
20 say". And Mr Gosnell even asked you about your impression. So what was your
21 estimation or impression concerning the age of the youngest members within this
22 group?

23 THE WITNESS: [10:40:34] (Interpretation) It's not easy to know somebody's age
24 precisely if you haven't grown up with them. But among the group none of them
25 was of an age which wouldn't make it possible for them to do military service.

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0038

1 PRESIDING JUDGE FREMR: [10:41:02] Interesting response. What is the age
2 making possible people to do military service?

3 THE WITNESS: [10:41:33] (Interpretation) To do military service, according to
4 Congolese law, you must be 18 years of age.

5 PRESIDING JUDGE FREMR: [10:41:41] All right. So now we are much clearer.
6 So if I understood well, nobody from the group selected by the UNICEF people were,
7 according your knowledge or impression, under 18; am I correct?

8 THE WITNESS: [10:42:36] (Interpretation) I don't have any precisions with
9 regards to the age. Somebody I didn't grow up with, some people can seem very
10 young due to their body size but they're in fact older, and vice versa. But what I do
11 know is that the UNICEF selection was done without any criteria, without
12 precise criteria.

13 PRESIDING JUDGE FREMR: [10:43:11] And, Mr Witness, how can you say that?
14 You discussed that criteria with UNICEF people? How can you say they did it
15 without any criteria?

16 THE WITNESS: [10:43:43] (Interpretation) Please, could you repeat the question.
17 PRESIDING JUDGE FREMR: [10:43:46] Yes, I will. It seems that you are sure and
18 you are at least in translation to English, that you are stating the UNICEF people
19 made their selection without using any criteria. And my question is: How you can
20 be sure about that because I would suppose that you don't know what criteria
21 they did use?

22 THE WITNESS: [10:44:38] (Interpretation) It's true that I didn't know the criteria,
23 but I knew one person who I grew up with who was a year older than me and he was
24 selected in the group. That's the reason why I said I don't know the criteria they use
25 when they carried out their selection.

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0038

1 PRESIDING JUDGE FREMR: [10:45:02] All right. I will give floor back to
2 Mr Gosnell. And one guidance from my part, Mr Witness, when you are giving
3 your response please look at me because -- look at the Chamber, because the Chamber,
4 particularly the Chamber needs to see your face and your reactions in order to
5 evaluate reliability -- sorry, credibility of your testimony. So please follow this
6 guidance.

7 Mr Gosnell, please proceed.

8 MR GOSNELL: [10:45:37] Thank you, Mr President.

9 Q. [10:45:39] Now, Mr Witness, I want to come back to an answer that you just
10 gave and ensure that it's well understood.

11 The answer that you gave in response to Mr President's question about what was
12 your estimate or impression concerning the age of the youngest members within this
13 group, your answer to that question was:

14 "Among the group, none of them was of an age which would not make it possible for
15 them to do military service."

16 When you made that statement, as to what was the age which wouldn't make it
17 possible for them to do military service, what did you have in mind? What age
18 would you say is too young to be able to perform military service? And if you need
19 to give an estimate, an estimate is completely fine.

20 PRESIDING JUDGE FREMR: [10:47:01] Hold on, Mr Witness. Sorry
21 to interrupt you.

22 Ms Luping, is it really necessary to interrupt Mr Witness when he's giving
23 his answer?

24 MS LUPING: [10:47:10] I apologise.

25 PRESIDING JUDGE FREMR: [10:47:12] And it's also possible to hear your

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0038

1 submission with headphones on Mr Witness' head.

2 MS LUPING: [10:47:22] Indeed, if I could request that the witness remove his
3 headphones before I make my submission.

4 PRESIDING JUDGE FREMR: [10:47:27] All right.

5 So Mr Witness, could you kindly take off your headphones for a while.

6 Now Ms Luping, please proceed.

7 MS LUPING: [10:47:37] Thank you, Mr President. I'm just looking at the question
8 that was put to the witness and his response and when he was in fact asked by
9 your Honour as to the age, what is the age making possible people to do military
10 service, an answer has already been provided: To do military service according to
11 Congolese law you must be 18 years of age.

12 So at this stage I see simply a repeat of the question that's already been put
13 to this witness.

14 PRESIDING JUDGE FREMR: [10:48:11] In fact, Mr Gosnell, I have to agree because,
15 in fact, you are now putting the same questions, but in fact you are leading
16 Mr Witness a bit because he spontaneously answered, or this question from the, I
17 would say, a legal point of view, saying what is the age limit.

18 Now you are asking the question a little bit in different way which Mr Witness, you
19 know, made no reference to, so probably at least you should rephrase the question
20 and not to promote that his answer, because his answer was clear and concerned a
21 different criteria, so please rephrase the question having regard -- having into account
22 Ms Luping's comment and my comment as well.

23 Now, Mr Witness, you can take your headphones.

24 And Mr Gosnell, please proceed.

25 MR GOSNELL: [10:49:17] Mr President, I'm going to approach this issue in a

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1 slightly different manner so I can get some specificity. May we have please, and

2 then I'm going to come back to the more general questions. So I'm not abandoning

3 the question I posed there, but maybe it's a bit premature.

4 May we please have DRC-OTP-0134-0638, tab 3 of the Defence list.

5 MS LUPING: [10:50:13] Perhaps just to assist, I do believe Defence counsel meant

6 document ending 0626 at 0638.

7 MR GOSNELL: [10:50:24] That's right. Thank you very much to my colleague

8 for that.

9 PRESIDING JUDGE FREMR: [10:50:29] Thank you, Ms Luping, for your correct.

10 So, court officer, please assist.

11 MR GOSNELL: [10:50:49]

12 Q. [10:50:49] (Redacted);

13 (Redacted);

14 (Redacted);

15 (Redacted);

16 A. [10:51:29] (Redacted);

17 MR GOSNELL: [10:51:33] Mr President, I believe we need to go into

18 private session.

19 PRESIDING JUDGE FREMR: [10:51:37] For sure.

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

21 (Private session at 10.51 a.m.) *(Reclassified partially in public)

22 THE COURT OFFICER: [10:51:44] We're in private session, Mr President.

23 PRESIDING JUDGE FREMR: [10:52:00] Mr Gosnell, do you want to redact the

24 previous answer? Do you mean that it put Mr Witness at some risk of identification

25 saying that he knows –

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1 MR GOSNELL: [10:52:10] Perhaps in the interest of abundance of caution it might
2 be best to redact it.

3 PRESIDING JUDGE FREMR: [10:52:17] All right. So court officer, please follow
4 that. And now you have the floor.

5 MR GOSNELL: [10:52:22]

6 Q. [10:52:23] Sir, how do you know (Redacted)?

7 A. [10:52:43] (Redacted) is from (Redacted). I studied with him and I grew
8 up with him.

9 Q. [10:52:59] Relative to your own age, are you in a position to provide us with an
10 estimate of how old he is or was; is he younger, older or about the same age?

11 A. [10:53:31] We have the same age, me and (Redacted).

12 Q. [10:53:38] How do you know that?

13 A. [10:53:55] We studied in the same class.

14 Q. [10:53:59] Can we scroll down the page slightly, please.

15 Sir, do you recognise the person indicated at number 14 on the bottom of the
16 column - you now need to scroll down again I'm afraid – (Redacted)?

17 A. [10:54:34] I know him.

18 Q. [10:54:36] How do you know him?

19 A. [10:54:51] We grew up in the same village and we were recruited together into
20 military service.

21 Q. [10:55:06] Did you see him at Tchankwanzi?

22 A. [10:55:31] We were together and we shared the same room.

23 Q. [10:55:39] You shared the same room at Tchankwanzi?

24 A. [10:55:59] We didn't sleep in bedrooms. There was a very large room, or
25 several large rooms. He and I were in the same one. It wasn't the same bedroom as

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1 such, but in the same room.

2 Q. [10:56:18] You say that you grew up in the same village. Did he go to school
3 in (Redacted)?

4 A. [10:56:39] He didn't study, but he was a gold digger. After school, I joined
5 him in mining or digging for gold.

6 Q. [10:57:12] And relative to yourself, how old was he; same age, younger or
7 older, if you know?

8 A. [10:57:41] Well, I can't be exact with regard to his age. Nevertheless, he is of
9 my age.

10 Q. [10:57:52] When you say of your age, what do you mean in terms of your
11 estimate? How close would he be, according to you, in age to yourself?

12 A. [10:58:34] We worked together. If he was younger than me, then he would be
13 one year less, otherwise we would be the same age.

14 Q. [10:58:59] If we scroll up on the page a little bit, please, to number 11. I don't
15 know whether it's possible to scroll up.

16 We see the name at number 11, (Redacted). Do you know him?

17 A. [10:59:35] Yes.

18 Q. [10:59:35] How do you know him?

19 A. [10:59:56] (Redacted) lived in (Redacted). (Redacted) is not far from (Redacted),
20 and even in Tchankwanzi we were with him. We also left by plane in the second
21 group with him when we went to Bunia.

22 Q. [11:00:30] Relative to yourself, do you know whether he is -- and, again, an
23 estimate is entirely acceptable, Mr Witness. Do you know whether he is younger,
24 older or the same age as yourself?

25 A. [11:01:05] Well, I knew that he was older than me, but I don't know what age

Trial Hearing

(Private Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0038

1 was taken down for him in this document. What I know, however, is that he is older
2 than me.

3 Q. [11:01:30] And how do you know that?

4 A. [11:01:56] Know what?

5 Q. [11:02:08] That he is older than you?

6 A. [11:02:12] Well, you see, when you grow up together with someone, even
7 without asking for their age, you are able to determine and recognise that someone is
8 older than you even without asking for their age. When you have grown up
9 together with someone, you become aware of these things. I could have asked him
10 for his age, but I grew up with him and I, therefore, I could have asked what his age
11 was, but for now what I can say is that I grew up with him, I know him very well, and
12 I'm able to determine whether he was older or younger than me.

13 MR GOSNELL: Mr President, I do see the time.

14 PRESIDING JUDGE FREMR: [11:03:06] Yes, but I will still -- we will then shift the
15 break -- put two additional questions, taking advantage of having this document on
16 the screen.

17 Mr Witness, please look at this list again. I am particularly interested in two names,
18 number 17, (Redacted), and there is mention that he should be born in 1986. Did you
19 know him, (Redacted)?

20 THE WITNESS: [11:03:51] (Interpretation) Yes, I know (Redacted).

21 PRESIDING JUDGE FREMR: [11:03:56] And do you believe that the year of his
22 describing his age is correct, 1986, which means he should be slightly younger
23 than you?

24 THE WITNESS: [11:04:30] (Interpretation) Well, if you were to take a look at
25 (Redacted), he is the same as he was at that time; he is still a smallish man and

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1 slender.

2 Now, if it is said that he was younger, I cannot agree with that, because even when
3 we were in Tchankwanzi, he had the same height and size as he has to this day. If he
4 had been young or smaller at that time, maybe he would have grown up more or less,
5 but he has remained at the same size.

6 PRESIDING JUDGE FREMR: [11:05:23] And my second and last question concerns
7 the person under number 1, (Redacted). Did you know him?

8 THE WITNESS: [11:05:41] (Interpretation) No, I do not know him. That is a
9 name that I'm not familiar with.

10 PRESIDING JUDGE FREMR: [11:05:51] All right.

11 So we will break now.

12 Let's move into open session just to announce our break.

13 (Open session at 11.06 a.m.)

14 THE COURT USHER: [11:06:03] We are back to open session, Mr President.

15 PRESIDING JUDGE FREMR: [11:06:12] Thank you, court officer.

16 We are taking our regular 30-minute break, which means that we will resume at 11.35.

17 THE COURT USHER: [11:06:24] All rise.

18 (Recess taken at 11.06 a.m.)

19 (Upon resuming in open session at 11.35 a.m.)

20 THE COURT USHER: [11:35:46] All rise.

21 Please be seated.

22 PRESIDING JUDGE FREMR: [11:36:12] Before we continue with the next part of
23 direct examination of our witness, the Chamber would like to react on the recent
24 information provided by Mr Gosnell.

25 So further to the information provided by the Defence this morning, the Chamber will

Trial Hearing

(Private Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0038

1 now provide an update concerning the oral decision it had commenced delivering at
2 the beginning of today's hearing, and the Defence indicated that the witness
3 concerned would no longer testify.

4 The Chamber recalls that on 25 September 2017, in filing number 2044, the
5 Prosecution filed a request to use Detention Centre conversations obtained in the
6 context of Article 70 investigations for its cross-examination of Witnesses D-10 and
7 D-12. And I will refer to this filing as "request".

8 On 2 October 2017, the Defence opposed the request in filing number 2048.

9 On 6 October 2017, the Defence informed the Chamber, the Prosecution and the
10 participants via email that D-10 will no longer be called. This morning the Defence
11 indicated that it would no longer call Witness D-12.

12 As neither of the witnesses referred to in the request will be called by the Defence, the
13 Chamber considers that the ruling on the request is no longer required.

14 And now we can move to the next part of testimony of our witness.

15 Mr Gosnell, you have the floor and at the moment we are in open session.

16 MR GOSNELL: [11:38:31] Mr President, I'm afraid we'll have to go back into
17 private session, please.

18 PRESIDING JUDGE FREMR: [11:38:36] Understandable.

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

20 (Private session at 11.38 a.m.) *(Reclassified partially in public)

21 THE COURT OFFICER: [11:38:46] We are in private session, Mr President.

22 PRESIDING JUDGE FREMR: [11:38:53] Thank you, court officer.

23 Mr Gosnell, please proceed.

24 MR GOSNELL: [11:38:57] May we have the last document that we were looking at,
25 please, tab 3 of the Defence list DRC-OTP-0134-0626, at page 0638.

Trial Hearing

(Private Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0038

1 Q. [11:39:26] Before the break, Mr Witness, you indicated to us that you were not
2 familiar with the name appearing at the top of this list in front of us at number 1.

3 Well, it used to be at the top of the list, but in any event it's number 1 and it says
4 (Redacted), and you said that this is a name that you're not familiar with; do you
5 remember that?

6 A. [11:39:59] Yes.

7 Q. [11:40:06] This list indicates that this person was at Tchankwanzi and that they
8 were born in 1992, which means that he would have been seven years old.

9 PRESIDING JUDGE FREMR: [11:40:25] Hold on, Mr Witness.

10 Ms Luping.

11 MS LUPING: [11:40:28] Yes, Mr President, if the witness could please be first
12 asked to remove his headphones.

13 PRESIDING JUDGE FREMR: [11:40:33] All right.

14 Mr Witness, could you kindly again take off your headphones. Thank you.

15 Ms Luping, you may proceed.

16 MS LUPING: [11:40:43] Yes, Mr President, your Honours, it's simply that we do a
17 different mathematical calculation. If the individual mentioned was born in 1992,
18 then in the year 2000, which is the relevant time period, he would have been eight,
19 anywhere actually between eight to nine years old, not seven years old, so I would
20 not want this -- I'm not suggesting that there's a deliberate attempt to mislead the
21 witness, but I just want to make sure that the information provided to him is the
22 correct information.

23 PRESIDING JUDGE FREMR: [11:41:14] Mr Gosnell.

24 MR GOSNELL: [11:41:17] I'm going off what the witness's information was, which
25 was that he went to Tchankwanzi in 1999.

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1 PRESIDING JUDGE FREMR: [11:41:25] So to be fair, maybe you can just slightly
2 rephrase your question. Does it mean that in year 1988 this person was seven years
3 old? I think everybody will be satisfied.

4 Ms Samson. Please go ahead. Ms Samson -- Ms Luping.

5 MS LUPING: [11:41:46] That's all right, Mr President.

6 The only issue here, just in terms of the way the Defence counsel rephrases his
7 question, is that I don't believe it actually should be in contention or controversial that
8 the relevant year was not actually 1999, it was indeed 2000. The period of time after
9 which the training took place, it would have been 2000 that these individuals would
10 have been met by UNICEF. We even have the date in the article, it's noted, it's 2000,
11 not 1999, so that if a question is put to the witness we need to be clear. He may have
12 given wrong information that the year in which he was in Tchankwanzi was 1999.
13 But regardless, the date on which this list is set out is the day the demobilisation,
14 which took place in 2000. So again I would insist that if the witness is asked the
15 question he be referred to the date of demobilisation in 2000, at which point this
16 individual would not have been seven.

17 PRESIDING JUDGE FREMR: [11:42:52] Yes, to me, what is the core of the possible
18 inquiry is the age of the person.

19 So, Mr Gosnell, please put the question in a way that would not mislead or wouldn't
20 lead witness as concerns date of the training, but I think what is the core of the
21 question should be the age of the person concerned.

22 Now, Mr Witness, you may take your headphones back. Thank you.

23 And Mr Gosnell, please proceed.

24 MR GOSNELL: [11:43:33] Thank you, Mr President.

25 Q. [11:43:34] Mr Witness, did you observe anyone who by appearance appeared

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1 to be eight or nine years old at Tchankwanzi?

2 A. [11:44:07] Someone who was eight or nine, no, I did not see anyone of such an
3 appearance.

4 Q. [11:44:23] Did you see anyone at Tchankwanzi who appeared to be younger
5 than yourself? And, again, sir, I am asking you about appearance. Appeared to be
6 younger than yourself at Tchankwanzi?

7 A. [11:44:52] I would like to mention the name of (Redacted), who appeared
8 young due to his physical appearance, even until today.

9 Q. [11:45:14] And aside from (Redacted), was there anyone else who by
10 appearance, in your view, appeared to be younger than you, aside from (Redacted)?

11 A. [11:45:48] You see, people have different appearances. Some were appearing
12 young, and yet I can't tell you their names because I've forgotten them. So there
13 were people who appeared to be young.

14 Q. [11:46:14] And by appearance, and on the basis of appearance, can you give an
15 estimate of the approximate age of the youngest person that you saw at Tchankwanzi?
16 And again, sir, this is on the understanding that we are talking about an estimate on
17 the basis of appearance.

18 A. [11:47:03] Could you ask your question once again, please?

19 Q. [11:47:08] Was there anyone at Tchankwanzi who appeared to be 17 years old
20 who was participating in the training along with you?

21 A. [11:47:42] Your question, you see, is similar to the question you already asked
22 me. I said it would be very hard for me to tell the age very specifically with
23 somebody whom you haven't been to school. So it's really hard to exactly say his
24 age. So I really can't answer this question with precision.

25 Q. [11:48:20] You said in response to an earlier question that some of the people

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1 there appeared young. Did they appear younger than you?

2 A. [11:49:01] Could you be more specific, please? I haven't understood your
3 question.

4 Q. [11:49:07] By appearance, and again I'm asking you strictly on the basis of
5 appearance, were there individuals at Tchankwanzi undergoing training who
6 appeared younger than you?

7 A. [11:49:59] At that time I look different from today. For someone whom I
8 haven't lived with, I really can't say exactly what his age is, but I know that none of
9 the people who were there were below 17.

10 Q. [11:50:38] You are making that estimate on the basis of appearance or on what
11 basis are you making that estimation that no one was under 17 years of age?

12 A. [11:51:11] I already told you before that even people who went to Uganda did
13 so in a random way. People who went with us, or people who wanted to go with us,
14 were prevented from going to Uganda from Bunia. If I was selected to do this
15 training, that means I fulfilled the criteria. And people who were younger than me
16 were not selected for the training.

17 Q. [11:52:06] You said earlier that from Tchankwanzi you went to Équateur.
18 How long did you spend in Équateur?

19 A. [11:52:39] Not a very long time. We returned by the end of 2001, so it was
20 almost a year.

21 Q. [11:52:57] With which group were you with? What group were you a part of
22 when you went to Équateur?

23 A. [11:53:10] I was part of the group that was selected to go to Équateur.

24 Q. [11:53:29] Who was the commander of that group?

25 A. [11:53:51] We did not all go to Équateur in the same plane. There were

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1 several trips made to Équateur from Gulu. So people boarded at Gulu. So it's the
2 group of platoons who boarded first.

3 MR GOSNELL: [11:54:34] Mr President, for this portion, I believe we can be in
4 public session.

5 PRESIDING JUDGE FREMR: [11:54:39] I haven't heard you, sorry. I have an idea
6 what you meant, but you want to move into open? All right.

7 MR GOSNELL: [11:54:47] We can, Mr President.

8 PRESIDING JUDGE FREMR: [11:54:49] Court officer, let's move into open session.
9 (Open session at 11.54 a.m.)

10 THE COURT OFFICER: [11:54:59] We're in open session, Mr President.

11 PRESIDING JUDGE FREMR: [11:55:03] Thank you, court officer.

12 Mr Gosnell, please proceed.

13 MR GOSNELL: [11:55:08]

14 Q. [11:55:08] Sir, it's possible that there was a translation issue. The question
15 that I asked you was, who was the commander of the group with which you went to
16 Équateur? Who was the overall commander?

17 A. [11:55:40] You want to know our commander who was in charge when we
18 arrived in Équateur or before we left?

19 Q. [11:55:53] While you were in Équateur.

20 A. [11:56:07] Once we arrived in Équateur we were deployed in different areas,
21 and that was customary in the army. And each person was in a different position.
22 When I came to Équateur personally, (Redacted)
23 (Redacted).

24 Q. [11:56:42] But do you know the name of the overall commander of the group
25 with which you went to Équateur?

Trial Hearing
WITNESS: DRC-D18-D-0038

(Open Session)

ICC-01/04-02/06

1 A. [11:57:09] Could you please rephrase your question?

2 Q. [11:57:14] Yes. And perhaps I can pose a preliminary question to assist.

3 Once you arrived in Équateur, what was the name of the group that you were a part
4 of, if there was a name?

5 A. [11:57:53] The name of the group that came from Uganda to come to Équateur,
6 is that what you're asking? I haven't actually understood your question.

7 Q. [11:58:06] Yes, that is exactly my question.

8 A. [11:58:18] I would like some precision. Are you referring to the group that
9 went to Équateur from Uganda, or which group are you actually talking about; which
10 group are you referring to? That's what I want to know.

11 Q. [11:58:38] I'm speaking of the group indeed which you went with from
12 Uganda to Équateur. And the question is, and I can specify it further --

13 PRESIDING JUDGE FREMR: [11:58:53] Sorry. We have a technical problem,
14 court officer, because it seems -- it's okay. But maybe just as a caveat for future,
15 several times we had no chance to in fact hear Mr Gosnell because the mic used by the
16 interpreter hasn't been switched off, so I would like to ask the interpreter concerned
17 to have it in mind. Otherwise, then we have some gaps in the record. It's not your
18 problem, Mr Gosnell. It is the problem of the interpreters.

19 THE INTERPRETER: [11:59:34] Noted, your Honour.

20 PRESIDING JUDGE FREMR: [11:59:36] Very well. Now, Mr Gosnell,
21 please proceed.

22 MR GOSNELL: [11:59:40]

23 Q. [11:59:40] Let me try again. Indeed, Mr Witness, I am asking you about the
24 group with which you went from Uganda to Équateur, as you have said, and I would
25 like to know the name of the overall commander of the force in which you -- of which

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0038

1 you were a member in Équateur, so not the platoon, not the company, but the overall
2 commander of the force?

3 A. [12:00:31] It was General Hamuli.

4 Q. [12:00:37] And what was the name of the force that he was a member of?

5 A. [12:00:59] When we arrived in Équateur, he was the one who was general chief
6 of staff of the group, and that group was the MLC.

7 Q. [12:01:19] And how did you come back from Équateur?

8 Well, first of all I should ask you, after Équateur where did you go?

9 A. [12:01:50] You would like to know when I returned, when I arrived in
10 Équateur? I'm sorry, I didn't understand your question. If you could rephrase it.

11 Q. [12:02:00] After your time in Équateur, did you return at any point to your
12 home village? And please do not mention the name of your home village.

13 A. [12:02:28] After my stay in Équateur, I stayed for a few days in town, and
14 afterwards I went back to my village.

15 Q. [12:02:49] How did you travel back from Équateur to your home village, by
16 what means of transportation?

17 A. [12:03:21] You're asking me when I left Équateur to go back to my village?

18 I'm asking do you want to know what happened, or do you want to know the means
19 of transport I used from Équateur to town and from town to my village? Which are
20 you asking me?

21 Q. [12:03:52] Please describe generally the circumstances of your return from
22 Équateur to your village.

23 A. [12:04:18] From Équateur to town I went by aeroplane, and from town to my
24 village I went on foot.

25 Q. [12:04:35] And who was in command of your group when you came back by

Trial Hearing
WITNESS: DRC-D18-D-0038

(Open Session)

ICC-01/04-02/06

1 aeroplane from Équateur?

2 A. [12:04:56] Before leaving we were with Commander Kisémbó.

3 Q. [12:05:04] And was he the commander of the group?

4 A. [12:05:14] Yes, he was the commander of the group. I think that I have to
5 give you some details with regards to that question. I have the impression that you
6 think I don't understand things well. What I would say is that before leaving
7 Équateur all the people from the east gathered together for a briefing, and he spoke to
8 us and said that the alliance with Mbusa Nyamwisi had split with the MLC and, as
9 such, we had to leave. It was at that time that Kisémbó was battalion commander.
10 He was not a general at that time. And that's how we left Équateur and we went to
11 Zongo on the front, on the border with the Central African Republic. There were
12 discussions at that time, and afterwards a compromise was found such that we were
13 able to take the plane and return. We were all ready and we left. And the group
14 commander was Kisémbó.

15 We gathered together and we took the plane with Commander Kisémbó, the first
16 time. There were two trips which were carried out, in fact. Commander David
17 came with the second group. The second group arrived when we were already
18 arriving in town. That was three or four days later.

19 Q. [12:07:36] Thank you very much, Mr Witness, for that.

20 Now, you said that you returned to your home village, and we are in public session,
21 so again without mentioning the name of your home village, can you tell us what the
22 security situation was like at that time when you returned to your home village?

23 A. [12:08:13] When I returned to my village the massacres were continuing. The
24 situation hadn't changed.

25 Q. [12:08:34] When you say that massacres were ongoing, or were continuing,

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0038

1 what kind of massacres were taking place and who were committing them?

2 A. [12:09:11] There were massacres committed by the Lendu.

3 PRESIDING JUDGE FREMR: [12:09:15] Hold on, Mr Witness.

4 Ms Luping.

5 MS LUPING: [12:09:17] Mr President, if I could just ask that the witness remove
6 his headphones just temporarily.

7 PRESIDING JUDGE FREMR: [12:09:22] Mr Witness, could you kindly again take
8 off your headphones.

9 Ms Luping.

10 MS LUPING: [12:09:28] Yes, I didn't want to interrupt Defence counsel, but we've
11 now had confirmation that when the witness returned to his village that massacres
12 were continuing. We haven't at this stage had any indication of time period or time.
13 We haven't had any questions indicating for how long the witness spent in Équateur,
14 at what stage he had left Tchankwanzi.

15 Now, this was going to be very important for Prosecution in the context of
16 cross-examination, so I would ask that there be some attempt to glean that
17 information as to time periods.

18 Thank you.

19 PRESIDING JUDGE FREMR: [12:10:06] Mr Gosnell, before, if you want even to
20 respond, but I have to confirm that even it would be in the interest of the Chamber at
21 least to have timing when Mr Witness returned back and the massacres still were
22 ongoing.

23 MR GOSNELL: [12:10:24] Yes, Mr President.

24 Q. [12:10:27] Mr Witness, can you provide an estimate as to how -- oh, sorry,
25 Mr President, the witness needs his headphones, and he's put them back on I see.

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0038

1 Mr Witness, can you provide an estimation as to how long you spent in Équateur
2 before you returned to your home village?

3 A. [12:11:11] I can't give you a precise date, but I would say it took more or less
4 than a year, because we left at the end of 2001. But I can't give you particular details
5 as regards the day or month.

6 Q. [12:11:35] What political authority or leader, if you can recall, was in control of
7 Bunia at the time that you returned from Équateur?

8 A. [12:12:09] I think that it was Mbusa Nyamwisi.

9 Q. [12:12:16] Now, you've told us that there were massacres ongoing or
10 continuing upon your return to your home village, was your home village directly
11 affected by these massacres?

12 A. [12:12:49] In my village, no. But in the surrounding villages, yes.

13 Q. [12:13:01] Were any measures taken in your home village to assure security or
14 to prevent these massacres?

15 A. [12:13:37] Each village got organised in order to protect itself. There were
16 structures set up for that. The youth president who had to monitor movements, and
17 all that, was under the authority and control of the comité de paix, peace committee.

18 Q. [12:14:13] Did your home village have any weapons with which to defend
19 itself from these attacks and massacres?

20 A. [12:14:40] Yes, there were weapons.

21 Q. [12:14:45] And what kind of weapons were there?

22 A. [12:15:07] There were only AK-47s.

23 Q. [12:15:07] How many AK-47s did your village have at this time, in total?

24 A. [12:15:29] There were four of them.

25 Q. [12:15:35] And where had they been obtained, if you know?

Trial Hearing

(Private Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0038

1 A. [12:15:55] I wasn't the person who obtained the weapons but, according to the
2 information I have, the weapons were bought from the Ugandans.

3 Q. [12:16:15] Did you yourself participate in the defence of your home village that
4 you've described?

5 A. [12:16:49] We had just deserted the army. And one day people wanted to
6 attack our village, but they didn't enter. They stayed in the surrounding villages.
7 And we went there in order to prevent them from entering into the village.

8 Q. [12:17:26] Was there fighting?

9 A. [12:17:37] Yes, there was.

10 Q. [12:17:48] Can you describe the nature of the fighting?

11 A. [12:18:10] If I answer I'll mention the name and details which should not be
12 known outside of here.

13 MR GOSNELL: [12:18:18] Mr President, may we move into private session?

14 PRESIDING JUDGE FREMR: [12:18:21] Certainly.

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

16 (Private session at 12.18 p.m.) *(Reclassified partially in public)

17 THE COURT OFFICER: [12:18:38] We're in private session, Mr President.

18 PRESIDING JUDGE FREMR: [12:18:40] Before I give the floor to you, Mr Gosnell, I
19 would like to put one additional question.

20 Mr Witness, according to English transcript, you said, "and one day people wanted to
21 attack our village, but they didn't enter. They stayed in the surrounding villages."

22 How did you get to know that those people in surrounding villages wanted to attack
23 your village?

24 THE WITNESS: [12:19:20] (Interpretation) Even the surrounding villages are part
25 of our locality. Perhaps it was a problem with the interpretation. But if you would

Trial Hearing

(Private Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0038

1 allow me, your Honour, to try and give the names of these villages, then I could give
2 you a lot more details in order to better explain myself.

3 PRESIDING JUDGE FREMR: [12:19:49] Yes, but for me even, it's not so important
4 the name of the villages, but you said that people who were potential attackers stayed
5 in their villages, but you were convinced that they were going to attack your village.
6 So my question is how you could know that they would attack your village?

7 THE WITNESS: [12:20:29] (Interpretation) All the villages they went through are
8 part of our village, but the place where I was living, precisely, was not attacked. If
9 you take into account the distance of these villages, you will see that it is a village
10 which is full, but the place where I was I wasn't attacked, but all the other places are
11 also part of our village.

12 PRESIDING JUDGE FREMR: [12:21:08] All right. Now I will give floor back to
13 Mr Gosnell, and I am only highlighting that now we are in private session, so it
14 should be no problem to mention name of the village or people if you need to do so.
15 Mr Gosnell, you have the floor.

16 MR GOSNELL: [12:21:26] Thank you, Mr President.

17 Q. [12:21:28] Mr Witness, the last question I asked you is whether you could
18 describe the nature of the fighting. Can you please describe the nature of the
19 fighting? And you can refer to place names because we are not in public session.

20 A. [12:22:03] The attackers arrived at the first village called Seyi, and from my
21 house to Seyi, there's a distance of 3 kilometres. The attackers, therefore, advanced,
22 and they came very close to the Catholic sector, which is also my village, and from
23 secteur catholique to the place where I was living, there's a 2 kilometre distance.
24 Now, when the attackers arrived in the first village, people started to flee. You could
25 hear gunfire. And all these localities were under our responsibility where it

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1 concerned control and protection. That's what happened.

2 Q. [12:23:13] Were civilians killed during this attack?

3 A. [12:23:24] Yes.

4 Q. [12:23:27] How many?

5 A. [12:23:37] Two elderly persons died during the attack on the first village.

6 Q. [12:23:52] Were there any other attacks other than this attack that you're
7 referring to?

8 A. [12:24:09] There were other attacks in different villages. There were a lot of
9 other attacks that took place.

10 Q. [12:24:22] Were civilians killed during these other attacks as well?

11 A. [12:24:35] Yes. The attackers made an ambush and they set houses alight.

12 Q. [12:24:50] And who were these attackers? Were you able to identify them?

13 A. [12:25:08] They were Lendus.

14 Q. [12:25:16] What was the attitude of the APC towards these attacks?

15 PRESIDING JUDGE FREMR: [12:25:28] Hold on, Mr Witness.

16 Ms Luping.

17 MS LUPING: [12:25:31] Mr President, again, if the witness could remove his
18 headphones for my next submission.

19 PRESIDING JUDGE FREMR: [12:25:37] Mr Witness, usual exercise, please take off
20 your headphones. Thank you.

21 Ms Luping.

22 MS LUPING: [12:25:46] Mr President, my objection is that this is leading in the
23 way the question has been phrased. At this stage the witness has not referred at all
24 to the group. I won't repeat it, because he'll be able to understand the acronym I'm
25 referring to. So I would ask Defence counsel to rephrase his question. I would ask

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1 him to confirm with what group they were or were not affiliated with at the time.

2 Secondly, we have no sense again of timing. We know that, according to his

3 testimony, he returned from the Équateur at the end of 2001, but at this stage we have

4 no indication as to when what appeared to be several attacks took place. Have we

5 moved now into 2002?

6 So all of this is relevant, your Honours. So if there's an objection as to the leading

7 nature of the question of putting a name of an organisation or a group to the witness

8 that he has not yet uttered, and, secondly, in terms of the time frame, because all of

9 that is important.

10 PRESIDING JUDGE FREMR: [12:26:48] Mr Gosnell.

11 MR GOSNELL: [12:26:50] First, Mr President, there was not the slightest

12 suggestion that the attackers were affiliated with this group, which I will not mention

13 again, because apparently it's a problem. But secondly, I don't think that should be a

14 problem. Surely, there can't be any serious dispute that this group exists, was in the

15 area. And once the chronology of events is elicited from the witnesses, the time

16 period that we are in now will be clearer.

17 But in terms of trying to put an exact date on this or have the witness tell us an exact

18 date -- I could attempt to do that, Mr President, but there's a likelihood that that is not

19 going to produce useful information.

20 PRESIDING JUDGE FREMR: [12:27:34] Ms Luping.

21 MS LUPING: [12:27:35] Very briefly, Mr President, just to make the Prosecution's

22 position clear. It is in dispute as to what group the individuals who went for

23 training in Tchankwanzi may be affiliated with subsequent to that training. The

24 Prosecution case differs, and we do not necessarily agree that the group that the

25 individuals who received that training with joined subsequently was the group that

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1 Defence counsel has named. And for that reason, I would ask that he rephrase his
2 question. And I would repeat my objection.

3 PRESIDING JUDGE FREMR: [12:28:10] Mr Gosnell, so I have no problem with
4 timing, but as to the question focused on group -- we all know which I mean -- I
5 would also prefer if you would start, and then you can focus on that group. But if
6 you can start with a general question, asking whether there were some groups who
7 reacted to those attacks, and then you can move specifically to that group.
8 Please proceed.

9 MR GOSNELL: [12:28:40] Thank you, Mr President.

10 PRESIDING JUDGE FREMR: [12:28:42] Mr Witness, you can take your
11 headphones back.

12 MR GOSNELL: [12:28:57]

13 Q. [12:28:57] During this time period, Mr Witness, of these attacks that you have
14 described, were there any regular armed forces in the area?

15 A. [12:29:27] In which place are you -- which place are you talking about?

16 Q. [12:29:32] In the general region (Redacted), or even more generally,
17 Mr Witness.

18 A. [12:30:07] In (Redacted) there wasn't an armed group, a regular armed group,
19 but elsewhere yes, there were APC forces.

20 Q. [12:30:20] Now, you've testified that the attacks were coming from Lendu
21 combatants. And my question to you is: What was the attitude of the APC
22 towards these attacks by Lendu combatants as far as you were able to observe?

23 A. [12:30:56] The APC troops were not able to defend the civilian population.
24 We knew that the Lendu were in a coalition with the APC. Now, when the Lendu
25 attacked the APC troops would not be seen in the camps. It is only after the attacks

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1 that the APC troops would be seen arriving, and that is why we came to the
2 conclusion that it was the Lendu and the APC forces that had attacked because those
3 of the APC could not defend the members of the civilian population as ought to have
4 been the case.

5 Q. [12:31:48] What was the level or degree of organisation of the structures, as
6 you've described them, including the comité de paix, that were providing defence for
7 your home village?

8 A. [12:32:19] The peace committee was organised as follows: There was the
9 president of the peace committee, there was a secretary of the group, and then there
10 was also the youth president. And the president of the committee would speak with
11 these people whenever there was a problem.

12 Q. [12:32:48] Were civilians participating in the defence of the village of (Redacted);?

13 A. [12:33:11] At the time of the peace committee, all youth were expected to
14 participate in the war in order to defend the village. All the youth were expected to
15 go. Even some of us became the youth of the village and we were no longer under
16 the orders of the soldiers.

17 Q. [12:33:37] And during this time period of these attacks that you have been
18 describing, how young were the youngest individuals who were participating in the
19 defence of the village under the structure of the comité de paix?

20 A. [12:34:13] Well, the youngest? The youngest, well, normally not, not all
21 students or pupils were involved, some were a bit older and even though some were
22 still students. These were times of war. And, again, even during that time some
23 people were still attending school. So those who were at school did not go to fight.
24 Now, when it comes to those who went to fight, well, in our group there were no
25 children. But if what you're asking me now is to give you the ages of those who

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1 went, I really am not in a position to provide that kind of answer.

2 Q. [12:35:05] And relative to the rules that had been taught to you at
3 Tchankwanzi about how combat should be carried out, in particular in respect of not
4 targeting civilians, during this time period of these attacks when the village was
5 protected under the structures of the comité de paix, were those rules followed?

6 PRESIDING JUDGE FREMR: [12:35:46] Hold on, Mr Witness. And I guess you
7 should take off your headphones.

8 MS LUPING: [12:35:53] Yes, please, Mr President.

9 PRESIDING JUDGE FREMR: [12:35:57] Ms Luping, please.

10 MS LUPING: [12:35:58] Well, two objections. First the question is compound,
11 very confusing. Secondly, the proposition that is essentially put by Defence counsel
12 to this witness about the rules that were taught in Tchankwanzi, in particular in
13 respect of not targeting civilians. Now, with due respect I would ask for a transcript
14 reference. My recollection of his testimony is that they received some training about
15 protection of witnesses. There were -- there was no evidence as far as I can recall of
16 any rules about not targeting of civilians, but I may be corrected. But if counsel
17 could please provide me with the transcript reference, please.

18 PRESIDING JUDGE FREMR: [12:36:49] Defence, I see Ms Grandon making an
19 inquiry.

20 MR GOSNELL: [12:36:56] Yes, it's page 22, line 23. But I will pose the question
21 more simply.

22 PRESIDING JUDGE FREMR: [12:37:05] Yes, because even myself, frankly saying, I
23 will be interested because it's not clear whether you mean attackers or those who
24 were involved in defence. So it will be better if you could just simplify or be more
25 specific.

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1 Ms Luping.

2 MS LUPING: [12:37:21] And indeed looking at page 22, at lines 23, it was, as I
3 recalled, "... we were taught how to protect civilians." That's very different in my
4 submission to saying that we were told not to target civilians and it can make a
5 difference as to what civilians we're talking about.

6 PRESIDING JUDGE FREMR: [12:37:44] I have some doubts, but I think we will
7 follow carefully your further questions, Mr Gosnell. And please try to satisfy
8 Ms Luping's concern.

9 Now, Mr Witness, take your headphones back.

10 And, Mr Gosnell, please proceed.

11 MR GOSNELL: [12:38:09]

12 Q. [12:38:10] Sir, were civilians targeted by the Lendu combatants when they
13 attacked?

14 A. [12:38:29] They attacked civilians, they burnt down their houses, they took
15 away all their property. They did not attack only soldiers. The people of the APC
16 were there. They killed all civilians, children, elderly persons and everyone they
17 came across.

18 Q. [12:38:50] And during the periods of these attacks, and again we are speaking
19 of the period when the structure defending (Redacted); is the comité de paix, how did
20 the Hema combatants respond to these attacks that you've described which included
21 targeting civilians and burning down civilian houses?

22 A. [12:39:35] Please kindly rephrase your question. I did not understand it.

23 Q. [12:39:40] Did the Hema fighters engage in combat in the same way as the
24 Lendu combatants, as you've just been describing?

25 A. [12:40:06] Well, you see, if somebody wants to kill you and you end up being

Trial Hearing

(Private Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0038

1 stronger than that person, are you going to let them survive? It was really a wild
2 war. And so there were no specifics in terms of command.

3 Q. [12:40:30] When you say "there were no specifics in terms of command", are
4 you describing the organisation of the defence of (Redacted)?

5 A. [12:41:00] That type of structure was present in all villages, not only in (Redacted).

6 Q. [12:41:11] And what level of organisation was there between the different
7 villages with these different structures?

8 A. [12:41:38] You see, ordinarily they targeted the trading centres, the business
9 places, and they were centres that could control other centres. So in the smaller
10 centres there were subcommittees that were answerable to the committee at the major
11 centres. Now, the subcommittees also had their youth presidents and they were
12 organised according to the same or similar structure. So it was the same set up in
13 every village.

14 Q. [12:42:26] But did the villages coordinate amongst themselves? Did the
15 different villages coordinate with each other?

16 A. [12:42:51] Yes. You see, a subcommittee reports to the committee, and the
17 committee would then report to the peace committee. The president of the youth
18 will report to the president of the committee as well. And that's how it was set up.

19 Q. [12:43:17] Do you know of a place called Mandro?

20 A. [12:43:29] Yes, I do.

21 Q. [12:43:33] Did you ever go there after the attacks that you have been just
22 describing by the Lendu combatants?

23 A. [12:43:59] Yes, I went there.

24 Q. [12:44:02] And why did you go there?

25 A. [12:44:17] I went to Mandro because there was a training centre there and a

Trial Hearing

(Private Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0038

1 military facility was being set up there.

2 Q. [12:44:37] And to help situate us in time, can you remember which political
3 authority was in control of Bunia when you went to Mandro on this occasion?

4 A. [12:45:07] Bunia, I believe the APC was still in Bunia. Who was the governor?
5 I think it was Lompondo. And the UPDF was at the airport.

6 Q. [12:45:28] And on the occasion that you went to Mandro, did you meet
7 with anyone?

8 A. [12:45:46] Yes, there were some people in Mandro.

9 Q. [12:45:52] Who did you go to Mandro with?

10 A. [12:46:07] Well, I really don't know how to answer that question. Is that your
11 full question, or, I don't know, but anyway? Normally when I went --

12 Q. [12:46:26] Mr Witness --

13 A. [12:46:26] -- to Mandro I did not go to Mandro alone.

14 Q. [12:46:29] Mr Witness, let me clarify my question if it's not clear. The meeting
15 that I am, or the time that I am asking you about is this visit that you are talking about
16 now when you went to Mandro after the attacks that you have just been describing,
17 and you said that there was training being offered in Mandro, and my question is
18 about that occasion when you went to Mandro were you accompanied by
19 anyone else?

20 A. [12:47:18] Normally -- that was not the first time I went to Mandro, but the
21 answer to your question is that I did not go to Mandro alone.

22 Q. [12:47:32] And who went with you?

23 A. [12:47:48] When we went there for the first time it was with people with whom
24 we had been in the military service. So we travelled as a group, many of us.

25 Q. [12:48:05] Where did you travel from?

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1 A. [12:48:18] From my village.

2 Q. [12:48:26] And were any decisions taken when you went to Mandro on this
3 occasion?

4 A. [12:48:44] Yes. You see, at that time all the information we received came
5 from the peace committee. And this is what they told us, "All those who have
6 already received military training, please go there and see whatever transpires there."
7 They gave us a vehicle and a member of the peace committee came along with us.

8 Q. [12:49:28] And then what happened when you arrived in Mandro?

9 A. [12:49:41] When we arrived in Mandro we met General Kisémbó and we were
10 provided with military uniforms, as well as the necessary military equipment. Then
11 he ordered us to go back and protect because, you see, from my village there is a road
12 that goes towards Uganda, so he said "The enemy must not take that road." And he
13 gave us a briefing on military service.

14 Q. [12:50:25] Was anything decided at that time that changed the structures of
15 defence of your village and other villages?

16 PRESIDING JUDGE FREMR: [12:50:44] Ms Luping.

17 MS LUPING: [12:50:45] Mr President, I do understand that it can be difficult, but if
18 there can be a rephrasing of the question. It is somewhat leading in its current form.

19 PRESIDING JUDGE FREMR: [12:50:57] Mr Gosnell.

20 MR GOSNELL: [12:51:04] Well, Mr President, it is, I can see, mildly leading, but I
21 don't think it's inappropriate under the circumstances.

22 PRESIDING JUDGE FREMR: [12:51:12] Yes, the objection is overruled. Please
23 proceed. It's not so much leading.

24 MR GOSNELL: [12:51:28]

25 Q. [12:51:28] Mr Witness, you've said that General Kisémbó ordered you to go

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1 back and protect your village. Was anything decided on the occasion of this visit to
2 Mandro when General Kisémbé gave that order that reflected a change in the
3 structures of defence of your village and other villages?

4 A. [12:52:34] Well, when we arrived in Mandro they provided us with military
5 equipment. And we also had the two weapons from our committee which we left
6 there. And he said that the -- it was all over with the committee, the committee was
7 a matter of the past and that henceforth we would be under military service.
8 Normally he did not only send us back to guard (Redacted), but there was a re-definition
9 of roles as is the case with the military. We were based in (Redacted), but we had
10 control over a number of other villages, many other villages. In fact, covering almost
11 two collectivities. So we were not only asked to guard (Redacted) as was the case under
12 the committee. The matter of the committee was behind us.

13 Now, the service, or the instructions that when there are attacks please go there with
14 the civilians, that was all over from that day on, and that is when the military service
15 started.

16 We had to provide protection in the same way as the soldiers would protect civilians.

17 Q. [12:54:04] You said that there was training being provided at Mandro. Did
18 anyone from (Redacted); go to participate in this training in Mandro?

19 A. [12:54:31] Yes.

20 Q. [12:54:34] Did you, yourself, go for training at Mandro?

21 A. [12:54:41] Well, I was already a soldier. I didn't go there for training, but I
22 went there, I took people there who were going to be trained.

23 Q. [12:55:01] And what criteria did you apply in the choice of people to take to
24 Mandro to be trained? Can you describe that for us?

25 A. [12:55:29] Normally, military services would recruit all persons who are fit,

Trial Hearing

(Private Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0038

1 persons must be apt or fit for the task. And then the person who is extremely young
2 is not authorised. A married woman is not authorised. A pregnant woman is not
3 allowed. An old man is not allowed. Such criteria, among others, would apply.
4 And that is what I can say when it comes to matters of recruiting persons or enlisting
5 people for military training. There's a host of criteria and that's what happens. You
6 see, a pregnant woman cannot engage in physical exercises, nor can an old man or a
7 child.

8 Q. [12:56:31] Did you have any role in the selection of individuals to be sent from
9 (Redacted) to Mandro for military training?

10 A. [12:56:55] Please kindly repeat your question.

11 Q. [12:57:00] Did you have any role in the selection of individuals sent to Mandro
12 for training?

13 A. [12:57:21] Even after having repeated the question, I still do not understand it.
14 Please put the question differently. Can you rephrase it? I really don't
15 understand it.

16 Q. [12:57:32] After you went back to (Redacted), did you have any role in organising,
17 choosing, sending or transporting any individuals who went from (Redacted) for
18 training at Mandro?

19 A. [12:58:02] Yes, I was the one indeed who was in charge of that work.

20 Q. [12:58:12] You've just mentioned to us that a person who is extremely young is
21 not authorised. Can you give us a fuller description of what you mean by that, who
22 is too young, who was too young to be sent for training at Mandro?

23 A. [12:58:58] You see, when -- when you use the word "too young" -- can you use
24 another word, please?

25 Q. [12:59:09] Sure. How did you go about assessing whether a person was too

Trial Hearing

(Private Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0038

1 young or was not suitable because of age to be sent for training at Mandro?

2 A. [12:59:44] You see, when it comes to recruiting in a village where you live it's
3 very easy. Why do I say this?

4 It's because you know the people of your village. It is your village and in 90 percent
5 of the times you have the possibility of knowing who these people are. So for those
6 of us who were selecting these people, we took them to Mandro and yet, when we got
7 to Mandro, some were also selected and sent back to the village. So the selection
8 was not only done at the level of our village. We were not the only ones who
9 selected in the village. There were other people who were not lucky enough to be
10 trained in Mandro although we had selected them in the village; when they got to
11 Mandro they were rejected and sent back to the village.

12 Q. [13:00:51] Did you, yourself, reject anyone on the basis that they were too
13 young to receive the training at Mandro?

14 A. [13:01:09] Yes, we rejected many people.

15 Q. [13:01:16] And how did you assess whether someone was too young? Below
16 what standard were they (Overlapping speakers)

17 PRESIDING JUDGE FREMR: [13:01:28] Mr Gosnell, I can't approve this question
18 because he, Mr Witness, said, yeah, we rejected many people, but was not clear on
19 what grounds, and you just selected one important ground, but it's really leading.
20 Sorry, my fault. I overlooked previous question. So sorry, please, you can just put
21 this question. My fault.

22 MR GOSNELL: [13:02:13]

23 Q. [13:02:13] Mr Witness, how did you assess whether individuals were too
24 young to be sent to Mandro?

25 A. [13:02:32] Usually, you see, people did not have an ID card, but we would ask

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1 them how old were they, they would tell us their age and we would try and assess if
2 they were suitable or not. There was no ID to know the age. We were asking them
3 the question orally and they would give us the age and we were supposed to know
4 whether it was right or wrong.

5 Q. [13:03:08] Thank you very much, Mr Witness.

6 Mr President, obviously I'll have to continue this subject after lunch, but I do
7 see the time.

8 PRESIDING JUDGE FREMR: [13:03:16] You are right.

9 So before -- now let's move into open session.

10 (Open session at 1.03 p.m.)

11 THE COURT OFFICER: [13:03:27] We are back to open session, Mr President.

12 PRESIDING JUDGE FREMR: [13:03:36] Thank you, court officer.

13 And before we break one minor correction of the transcript; page 68, line 2, I said,
14 quote, "I overlooked previous question", not overruled.

15 And now we take our lunch break and we will resume at half past 2.

16 THE COURT USHER: [13:04:02] All rise.

17 (Recess taken at 1.04 p.m.)

18 (Upon resuming in open session at 2.31 p.m.)

19 THE COURT USHER: [14:31:49] All rise.

20 Please be seated.

21 PRESIDING JUDGE FREMR: [14:32:28] Good afternoon, everybody.

22 Good afternoon, Mr Witness.

23 I don't see any changes in appearances. But before we continue with the testimony, I
24 have one oral ruling to read out first. And it's oral ruling on the Defence request for
25 revision of the deadline for filing request for admission of documentary evidence

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0038

1 bearing filing number 2062, to which the Prosecution responded in Court this
2 morning.

3 And I will refer to this filing as "Request".

4 The Chamber notes that the Prosecution does not oppose the Request and that it
5 proposes to amend the applicable procedure set out in the decision on the conduct of
6 proceedings with filing number 619. In this regard, the Chamber also takes note of
7 the Defence submission that the same procedure followed during the Prosecution
8 case should apply during the Defence case.

9 Having considered the parties' submissions, the Chamber finds it appropriate to grant
10 the Defence an extension of time to file its request for admission of documentary
11 evidence. Such a request should be filed in accordance with the applicable
12 procedure set out in paragraphs 52 and 53 of the conduct of proceedings decision.

13 With regard to timing, the Defence is directed, as proposed in the Request, to submit
14 its proposals for the admission of documentary evidence to the Prosecution no later
15 than 10 November 2017 and to file a request before the Chamber three days after
16 having received the Prosecution's position in relation to the proposed documents.

17 As for the time needed to conduct prior inter partes consultations, as provided for in
18 paragraph 53 of the conduct of proceedings decision, noting the Prosecution's
19 submission that the consultation procedure did not enhance efficiency in the past, and
20 the fact that the Prosecution will have an opportunity to make further observations
21 after the filing of the request, the Prosecution shall submit to the Defence its initial
22 observations one week after receipt of the proposals, which are to focus mainly on
23 whether any agreement as to the admissibility of any of the items can be reached.

24 Concerning the Prosecution's submission in relation to the timing of the filing of the
25 response to the Request, the Chamber will assess at the time of the filing of the

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0038

1 Request whether an extension of the time limit to file a response is required.

2 Finally, as previously decided, the Chamber recalls that the request may be
3 complemented, if necessary, in light of the evidence presented after its filing.

4 This concludes the Chamber's ruling on the Request.

5 And the second minor point, it is in fact a request addressing Mr Gosnell.

6 Mr Gosnell we take note of your information concerning Witness D-12 and we would
7 like to know as soon as possible what does it mean as regards timing of the Witness
8 D-17? Do you have clarity on that or not?

9 MR GOSNELL: [14:37:03] Mr President, I am in -- I was informed last night by
10 Maître Bourgon concerning these matters and that is the basis of the information that
11 I can convey to you today and that I did convey to you this morning concerning first
12 of all D-12.

13 As for D-17, I do understand that there are some issues concerning the timing of when
14 he is able to travel, certain events that need to take place in terms of formalities that
15 need to be performed before he can travel. I am not fully informed of the schedule
16 for that, so if I could ask your Honours' indulgence, I think it might be best in terms of
17 accurate information for us to provide that information to your Honours and to the
18 parties in an email.

19 PRESIDING JUDGE FREMR: [14:37:57] Yes, it is fine with us and it is
20 understandable. My only concern is just to get information as soon as possible. As
21 you will be in position of that, please provide us with that. Thank you.

22 And now we can continue with the further part of direct examination of our Witness
23 D-38 conducted by Defence counsel Mr Gosnell.

24 Mr Gosnell, you have the floor, and we are in the public session.

25 MR GOSNELL: [14:38:37] And I think we can stay in public session, Mr President.

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0038

1 Q. [14:38:42] Good afternoon, Mr Witness. I would like to just go back to one or
2 two passages from your testimony this morning to receive clarifications. And the
3 first clarification that I would like to seek from you concerns the timing of your visit
4 to Mandro when General Kisémbé gave orders to you and others to return to your
5 home village. And in respect of the timing of that event you said the following, and
6 I will quote:

7 "Question: Can you remember which political authority was in control of Bunia
8 when you went to Mandro on this occasion?

9 Answer: Bunia; I believe the APC was still in Bunia. Who was the governor? I
10 think it was Lompondo, and the UPDF was at the airport."

11 Do you remember having given that answer, sir?

12 A. [14:40:04] Yes, I do.

13 Q. [14:40:06] And I would like to know, please, after this moment when you went
14 to Mandro that we were discussing before the break, was there a time when
15 Lompondo left Bunia?

16 A. [14:40:52] (No interpretation)

17 Q. [14:40:53] The interpretation of the answer did not come through to the
18 transcript.

19 PRESIDING JUDGE FREMR: [14:41:05] I'm afraid I can hear some --

20 THE INTERPRETER: [14:41:09] Sorry, Mr President, your Honour. Translation is
21 a bit late.

22 PRESIDING JUDGE FREMR: Could the interpreters kindly repeat the translation.

23 THE WITNESS: Yes.

24 MR GOSNELL: [14:41:27] Just to make sure, the witness's answer was yes.

25 Q. [14:41:35] Sir, can you estimate how long after your visit to Mandro Lompondo

Trial Hearing
WITNESS: DRC-D18-D-0038

(Open Session)

ICC-01/04-02/06

1 left Bunia? Are you in a position to estimate that?

2 A. [14:42:04] I don't remember. But I don't think it would have been over
3 a month.

4 Q. [14:42:12] Thank you. You also testified before the lunch break that
5 General Kisembo said, and I quote, and this is from page --

6 And I'm not able to read the page, Mr President, but it was said.

7 Mr Witness, you said that General Kisembo said, and I quote: "That it was all over
8 with the committee, the committee was a matter of the past, and that henceforth we
9 would be under military service."

10 And then you said, "The matter of the committee was behind us. Now the service or
11 the instructions that when there are attacks, attacks, please go there with the civilians,
12 was all over from that day on, and that is when the military service started."

13 Sir, did this military service have a name, that you were aware of?

14 A. [14:43:40] I would like some clarification before I can answer the question.

15 Q. [14:43:57] Did the group that Kisembo was telling you about have a name?

16 A. [14:44:26] Perhaps I haven't understood. Are you asking for the name of the
17 whole group that was led by Kisembo? I just want this clarification to better
18 understand the question.

19 Q. [14:44:43] Yes, sir, that is my question.

20 A. [14:44:56] The armed group was called FPLC.

21 Q. [14:45:12] And you say that this group was led by Kisembo. What do you
22 mean by that?

23 A. [14:45:37] Could you please rephrase this question so that I can better
24 understand.

25 Q. [14:45:48] Who was the most senior commander in this group, the FPLC? Or

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0038

1 the top commander, the highest authority, military authority in the FPLC?

2 A. [14:46:07] I think it was the army chief of staff. It was the army chief of staff

3 Kisembo. After Kisembo it was the president, that's all.

4 Q. [14:46:25] And on the occasion of your trip to Mandro when you were informed

5 of these developments by General Kisembo, do you know what role, if any,

6 Bosco Ntaganda had in this force?

7 A. [14:47:06] I did not know, because it was the first time I came to Mandro. I did

8 not have the opportunity to see him. I didn't know if he was there or not. But the

9 day when I reached Mandro I had -- I was clueless; I did not know if he intended to

10 participate or not. I wasn't aware of anything.

11 Q. [14:47:45] Did you later come to learn what role Bosco Ntaganda had in the

12 FPLC?

13 A. [14:48:07] Yes.

14 Q. [14:48:12] What was his position, if you know?

15 A. [14:48:19] He was the deputy army chief of general staff.

16 Q. [14:48:36] Just before the lunch break we were talking about the selection of

17 trainees to be sent to Mandro from (Redacted) and you were telling us that you were asking

18 them orally their age and they were responding and telling you their age orally. Do

19 you remember having said that before lunch?

20 A. [14:49:12] Yes.

21 Q. [14:49:18] As of what age that was communicated to you by individuals would

22 a person be considered old enough to be sent for training at Mandro?

23 A. [14:49:42] Yes, there were people who were -- who had reached the age of

24 undertaking the training.

25 Q. [14:49:57] And what was that age, specifically?

Trial Hearing
WITNESS: DRC-D18-D-0038

(Open Session)

ICC-01/04-02/06

1 A. [14:50:20] I recruited people who confirmed that they were 18.

2 Q. [14:50:34] Did everyone know their age or were there people who did not know
3 their age?

4 A. [14:50:55] In fact, I was also estimating the age, and if I realised that they haven't
5 reached the age I wouldn't induct them in.

6 Q. [14:51:23] Can you explain to us in what circumstances you had to estimate
7 their age?

8 A. [14:51:48] It is easy to find someone who is very young or old. In Africa, even
9 when you are very young, and if you're in fact old, you know that. After having
10 asked for the age, the child may say he is old or not. And it's up to us to check if he
11 was old enough to be inducted in or not.

12 Q. [14:52:40] Yes, thank you for that. I would just like to come back to a question
13 that you didn't answer. And so please listen carefully to this question again. The
14 question was: Did everyone know their age or were there people who did not know
15 their age?

16 A. [14:53:05] In principle, in the group people who were coming with someone
17 could help determine the age. But there were people who came and who knew how
18 old they were.

19 Q. [14:53:50] You say that some people came with someone else who could help
20 determine their age. Did I understand that correctly?

21 A. [14:54:09] Yes.

22 Q. [14:54:12] And why did people need help to determine their age?

23 A. [14:54:33] Could you please rephrase the question.

24 Q. [14:54:38] Yes. Under what circumstances did people, as you've said was the
25 case on some occasions, in what circumstances did people need help giving you

Trial Hearing
WITNESS: DRC-D18-D-0038

(Open Session)

ICC-01/04-02/06

1 their age?

2 A. [14:55:21] Perhaps we haven't understood each other. You see, when people
3 came -- let me give you an example, in fact. When I was recruited as a soldier I did
4 not go there alone. I also had comrades, friends with whom I went. And amongst
5 these friends some could help the others, especially ones who were coming with
6 colleagues. It's not someone else coming from outside. There were people who
7 were friends and they could help the individual determine the age.

8 Q. [14:56:06] Did you ever accompany any of the trainees from (Redacted)?

9 Mr President, I will have to request a redaction.

10 PRESIDING JUDGE FREMR: [14:56:22] Yes, understandable.

11 Court officer, please follow that request.

12 MR GOSNELL: [14:56:34]

13 Q. [14:56:34] Sir, do you remember my question?

14 A. [14:56:46] Could you please ask your question once again?

15 Q. [14:56:52] Yes. Did you ever go with any trainees to Mandro?

16 PRESIDING JUDGE FREMR: [14:57:05] Mr Witness, sorry to interrupt you? Are
17 you comfortable with the headphones? Maybe we can adjust it better to your head?
18 Court usher, please -- court usher, please assist.

19 THE WITNESS: [14:57:29] (Interpretation) Yes, the headsets are moving a
20 bit too much.

21 PRESIDING JUDGE FREMR: [14:57:48] Is it better now, Mr Witness? Is it okay?

22 THE WITNESS: [14:57:56] (Interpretation) Yes.

23 PRESIDING JUDGE FREMR: [14:57:57] Fine.

24 Mr Gosnell, please.

25 MR GOSNELL: [14:58:01] (Microphone not activated)

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0038

1 Q. [14:58:02] Mr Witness, I understand that you just answered yes. Did you mean
2 to say that you did go to Mandro with some of the potential trainees?

3 A. [14:58:25] Are you talking about a single recruit or a group of recruits?

4 Q. [14:58:37] A group, or any group.

5 A. [14:58:47] Yes.

6 Q. [14:58:50] Before lunch you testified, and I quote:

7 "... although we had selected them in the village, when they got to Mandro they were
8 rejected and sent back to the village."

9 And you were just talking there a number that this could happen. Could you
10 explain to us under what circumstances a person whom you had selected at your
11 village was nevertheless rejected once you got to Mandro?

12 A. [14:59:52] In fact, we had to take them to the officer. Once we got there they
13 were selected. Some of them who were taken to the officer were rejected because
14 they did not fulfil the recruitment criteria.

15 Q. [15:00:36] And which amongst the recruitment criteria led to individuals being
16 rejected at Mandro, even when they had been selected at your home village?

17 A. [15:01:07] The criteria were the same. You see, a military service, when I
18 receive orders, those are orders, there is no discussion. But the criteria were the
19 same for everyone.

20 Q. [15:01:35] Did you collect information about the schools that had been attended
21 or were being attended by potential trainees from your village?

22 A. [15:01:51] In principle, those who were at the school, those who went to the
23 school, those who went to school weren't recruited to follow training. Those who
24 were recruited were those who had left school, who were never at school. But at the
25 time of recruitment, even if somebody was of recruitment age, you couldn't take them

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0038

1 while they were still at school.

2 Q. [15:02:42] Did you write down the information that you were taking from
3 potential recruits from Mandro?

4 A. [15:02:59] Yes. We would write it down. We would write the full name,
5 name and post-name, surname and post-name. It would be a list of names. We
6 didn't write a lot of different elements down. There was another group that was
7 responsible for taking information down. What we did is that we just put the people
8 we recruited onto vehicles to take them to the place of training.

9 Q. [15:03:44] And by the place of training are you referring to Mandro?

10 A. [15:03:55] Yes.

11 Q. [15:03:58] And once you arrived there were there any formalities of registration
12 in respect of the recruits that you were bringing from your hometown?

13 A. [15:04:22] It was at the training centre that registration as such was done. We
14 had a list that we would use to put people onto the vehicles. But once we took them
15 to the training centre, these recruits were in the hands of the people responsible for
16 that centre.

17 Q. [15:05:01] And do you know what questions, if any, were asked by the people
18 responsible for that centre to the recruits once they arrived there?

19 A. [15:05:27] No, I can't know that. My role was to take them to that place, then I
20 would return to where I came from. I didn't know what questions were put to them.

21 Q. [15:05:44] May we have, please, Defence tab 8, DRC-OTP-2081-0003. This
22 document is admitted.

23 Sir, have you ever seen this document before?

24 Perhaps I could rephrase the question, Mr President.

25 Mr Witness, at any time when you were involved in taking recruits to Mandro from

Trial Hearing
WITNESS: DRC-D18-D-0038

(Open Session)

ICC-01/04-02/06

1 your home village, did you see this document or a document that looks like this
2 document?

3 A. [15:07:50] I never produced such a document. Perhaps it was produced there.
4 It could be the case that it was written by the person responsible for taking down this
5 information, that that person did it.

6 Q. [15:08:22] Do you recognise the name at line 32?

7 PRESIDING JUDGE FREMR: [15:08:38] Mr Gosnell, we are in open session. Does it
8 mind or not?

9 MR GOSNELL: [15:08:45] I don't know whether this is a confidential document but
10 to be the safe side, perhaps it certainly should not be displayed.

11 PRESIDING JUDGE FREMR: [15:08:54] Yes, I had the same concern about the
12 document. Ms Luping or the court officer, could we verify whether this document is
13 confidential or not.

14 MS LUPING: [15:09:02] My presumption is that it is confidential but it would need
15 to be double-checked.

16 THE COURT OFFICER: [15:09:09] I corroborate the Prosecution. It is confidential
17 in the metadata.

18 PRESIDING JUDGE FREMR: [15:09:13] So it shouldn't be, first of all, presented on
19 the screen for public. And anyway, I would find better to move into private session
20 because we will deal with names, concrete persons, so let's now move into private
21 session.

22 (Private session at 3.09 p.m.) *(Reclassified partially in public)

23 THE COURT OFFICER: [15:09:34] We are in private session, Mr President.

24 PRESIDING JUDGE FREMR: [15:09:44] Thank you, court officer.

25 Mr Gosnell, please proceed.

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1 MR GOSNELL: [15:09:53]

2 Q. [15:09:53] Sir, do you recognise the name at number 32 on the page in front of
3 you, which I hope is coming back up?

4 A. [15:10:18] Yes, I know that person.

5 Q. [15:10:12] How do you know him?

6 A. [15:10:21] We grew up together. That's my friend.

7 PRESIDING JUDGE FREMR: [15:10:31] Sorry, Mr Witness, since we are now in
8 private session, could you kindly pronounce the name of this person just to be sure
9 that we are talking about the same person. So what is the name you are referring to?

10 A. [15:10:51] (Redacted).

11 Q. [15:10:59] Did he ever train at Mandro, to the best of your knowledge, sir?

12 A. [15:11:12] (Redacted) never did military service.

13 Q. [15:11:26] Do you know what he was doing in 2002 and 2003?

14 A. [15:11:44] He was studying.

15 Q. [15:11:46] Do you know where he was studying?

16 A. [15:11:56] When we separated he was going to a school in Bunia. I don't know
17 how much time he was there, but I do know, however, that we went our separate
18 ways when I went to Uganda and Équateur, but all I know about Bunia is that he
19 went to follow his studies at (Redacted), and he finished his studies there.

20 Q. [15:12:42] Do you recognise the name opposite number 36?

21 A. [15:12:55] Yes, I know that person.

22 Q. [15:12:58] How do you know him?

23 A. [15:13:07] He was with me in Tchankwanzi.

24 Q. [15:13:16] Did he also go with you to Équateur?

25 A. [15:13:25] No, he never went to Équateur, but we were together in Tchankwanzi.

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1 Q. [15:13:40] Do you know where he went from Tchankwanzi?

2 A. [15:13:50] What I know is that he went back to the village when he left

3 Tchankwanzi.

4 Q. [15:14:04] Which village was that?

5 A. [15:14:14] He's from (Redacted). That's (Redacted).

6 Q. [15:14:27] Did he ever receive military training at Mandro, to your knowledge?

7 A. [15:14:40] Do you think somebody who was trained in Tchankwanzi needed to

8 be trained in Mandro? He was already a soldier, a trained soldier. He didn't

9 need that.

10 MR GOSNELL: [15:15:14] May we have Defence tab 6, 2081-0072.

11 Q. [15:15:51] Sir, do you recognise the name at line 9?

12 A. [15:16:01] Yes, I see the name.

13 Q. [15:16:05] Do you know a person by that name?

14 A. [15:16:15] I know him very well.

15 Q. [15:16:21] How do you know him very well?

16 A. [15:16:31] He's a friend of mine. We also lived in the same house. He was

17 a member of the family.

18 Q. [15:16:43] When did you live in the same house?

19 A. [15:16:54] Before I went to Tchankwanzi. According to what I can see on the

20 list I can see a name, the name of his grandfather. That's my maternal uncle. So the

21 name that's written here as being his grandfather is my uncle on my mother's side.

22 Q. [15:17:30] And can you comment on the accuracy of the information in the

23 column "nom de la mère"?

24 THE INTERPRETER: Mother's name, mother's surname.

25 THE WITNESS: [15:18:01] I'm not able to read that information on the screen.

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1 I don't see the mother's surname.

2 MR GOSNELL:

3 Q. [15:18:11] That's correct, because it's not there, unfortunately. I will read it if
4 there's no objection. The name is (Redacted). Is that his mother's name to you the
5 best of your knowledge?

6 A. [15:18:33] (Redacted) is the first name of his mother, and she's the daughter of
7 (Redacted), the grandfather of that individual.

8 Q. [15:18:54] Did this person ever receive military training at Mandro, to your
9 knowledge?

10 A. [15:19:11] No. That was someone -- he didn't like hard labour. He couldn't
11 follow military training. He's still alive. He's never done military service. He
12 didn't want to go to Mandro to following military training.

13 Q. [15:19:31] How old is he relative to your own age? Older, younger or
14 approximately the same age?

15 A. [15:19:50] He's one year older than me.

16 Q. [15:19:57] Do you recognise the name opposite line 24.

17 If we can scroll down, please. And, in fact, if we could just stop the bottom margin,
18 right under 24, that would be of assistance.

19 Do you recognise that name at number 24?

20 A. [15:20:28] Yes, I know that person.

21 Q. [15:20:31] How do you know that person?

22 A. [15:20:48] He had parents in (Redacted), members of his wider family. I know that
23 his parents used to live (Redacted). He used to go to (Redacted) a lot. When I lived in
24 (Redacted), I was living in (Redacted). Where I was living wasn't far from the house
25 of his parents.

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1 Q. [15:21:27] Did he ever attend the (Redacted) school?

2 A. [15:21:47] Yes, he went there and that's where he obtained his certificate at the
3 end of his studies.

4 Q. [15:21:55] How old is he relative to yourself, older, younger or approximately
5 the same age, as best you know?

6 A. [15:22:20] We're the same age, but he is less corpulent than I am.

7 Q. [15:22:37] How do you know you're the same age as this person?

8 A. [15:22:41] This is somebody who I lived with. I think I told you that in order to
9 determine somebody's age you have to have lived with them. Now where it
10 concerns this individual, I lived with him.

11 Q. [15:22:58] When did you live with him?

12 A. [15:23:12] Before I went into military service, when I was at school. When he
13 lived in (Redacted), our houses were close to each other, and in (Redacted), we were
14 neighbours.

15 Q. [15:23:33] Did he ever receive training at Mandro, to the best of your
16 knowledge?

17 A. [15:23:52] I don't know anything about that.

18 Q. [15:23:57] Now you've already been asked about the name appearing next to
19 number 19, (Redacted). Do you know whether he was someone who received
20 training at Mandro?

21 A. [15:24:28] (Redacted) was with me in Tchankwanzi. I already said somebody
22 who did training in Tchankwanzi didn't need to follow other training in Mandro, for
23 example. I did the same military training with (Redacted) in Tchankwanzi.
24 He is not from (Redacted); he is from (Redacted).

25 Q. [15:25:18] Do I correctly understand your last answer to mean that you have not

Trial Hearing

(Private Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0038

1 heard or did not hear that he ever did training at Mandro?

2 A. [15:25:49] Returning from Uganda, this young man did not continue with
3 military service, to the best of my knowledge. He was someone who had done
4 military training in Tchankwanzi and, as such, you wouldn't need to be a recruit to
5 follow other military training.

6 MR GOSNELL: [15:26:25] Now I'm done with that document, Mr President.

7 Q. [15:26:28] Mr Witness, after you were ordered by General Kisembo to return to
8 (Redacted), did you have a particular position or role in (Redacted) with the FPLC?

9 A. [15:27:02] When we returned, we were appointed (Redacted).

10 Q. [15:27:22] While you were based in (Redacted); were you involved in any military
11 operations following being ordered to return to (Redacted); by General Kisembo?

12 A. [15:27:49] Yes.

13 Q. [15:27:52] Where were you involved in military operations at that point in time?

14 A. [15:28:14] I participated in lots of operations. We were responsible for ensuring
15 security on the major roads. And we were sent to Gina in order to open up the road
16 such that people could travel along it.

17 Q. [15:28:38] You have just mentioned Gina, could you just spell that for the
18 record, please.

19 A. [15:28:52] I will spell it, G-I-N-A.

20 Q. [15:29:08] Other than the operation at Gina, which you conducted while you
21 were based in (Redacted), did you -- were you involved in any other operations
22 anywhere else?

23 A. [15:29:35] Yes.

24 Q. [15:29:36] And where was that?

25 A. [15:29:43] There were lots of operations. In particular the operation aiming to

Trial Hearing
WITNESS: DRC-D18-D-0038

(Private Session)

ICC-01/04-02/06

1 open up the Kwapalanga (phon) road.

2 THE INTERPRETER: [15:29:57] Your Honour, could the witness be asked to repeat
3 the name of the road in question, asks the Swahili booth.

4 PRESIDING JUDGE FREMR: [15:30:09] Mr Witness, could you kindly repeat the
5 name of the road in question you mentioned during your last response because it
6 hasn't been captured by the interpreters.

7 THE WITNESS: [15:30:25] (Interpretation) Very well. What I said is that there is an
8 agricultural road from Katoto to Kpagaranza (phon), it was a road which was not
9 often plied and we were sent to run that operation with a view to opening up
10 that road.

11 MR GOSNELL:

12 Q. [15:30:57] Were you ever involved in operations in the direction of Bambu?

13 A. [15:31:19] Yes, once. It was a lightening operation which didn't last long.

14 Q. [15:31:34] Against whom were you fighting?

15 PRESIDING JUDGE FREMR: [15:31:37] Sorry, sorry to interrupt. Mr Gosnell, do you
16 think that at this stage of examination is still need to remain in private?

17 MR GOSNELL: [15:31:48] I think we can move into public session, Mr President.

18 PRESIDING JUDGE FREMR: [15:31:51] Very well.

19 Court officer, let's move into private session -- sorry, in open session.

20 (Open session at 3.32 p.m.)

21 THE COURT OFFICER: [15:32:07] We are back to open session, Mr President.

22 PRESIDING JUDGE FREMR: [15:32:09] Thank you, court officer.

23 Mr Gosnell, please.

24 MR GOSNELL: [15:32:14]

25 Q. [15:32:14] Sir, against whom were you fighting in Bambu?

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0038

1 A. [15:32:33] When Lompondo left Bunia, all his soldiers had infiltrated the Lendu
2 already. So it was not an attack between civilians as was the case before, it was
3 fighting between soldiers, and weapons were used for that.

4 Q. [15:33:09] Approximately how long after the departure of Lompondo from
5 Bunia did this operation take place, as best you can recall?

6 A. [15:33:38] I cannot provide any details in that connection because at that time we
7 were not paying attention to the duration as such.

8 Q. [15:33:54] What kind of weapons did the enemy whom you were fighting on
9 this occasion at Bambu use?

10 A. [15:34:18] The enemy was well armed. Before they arrived at the Bambu
11 bridge they were able to launch some rockets and shells, so they were very well
12 armed. But I have no clear idea about the types of weapons that the enemies had,
13 but they had weapons such like the AK-47, the G2 and other weapons which I was
14 not able to identify.

15 Q. [15:35:08] Did FPLC forces kill or target any civilians in Bambu, from what you
16 were able to observe?

17 A. [15:35:29] In Bambu, when I participated in an attack, which, by the way, didn't
18 last long, we had already come under attack at the bridge and when we got to the
19 junction on the parish road, the civilian population was no longer there and the
20 enemy was firing at us. We did not spend much time there and then we left.

21 Q. [15:36:14] Did FPLC forces engage in any pillaging of civilian homes?

22 A. [15:36:34] No, we didn't take control of the entire town of Bambu. Now, if you
23 know Bambu very well, you would realise that from the bridge there was a building
24 which is no longer in place today, right next to the roundabout or to the junction there
25 was a brick building and at that time some people were living further down the slope

Trial Hearing
WITNESS: DRC-D18-D-0038

(Open Session)

ICC-01/04-02/06

1 and in that, in that area. But at that time the civilians had left, they had abandoned
2 that area. There were no civilians and there was no property.

3 Q. [15:37:25] Sir, were you yourself ever disciplined within the context of your
4 participation with the FPLC?

5 A. [15:37:52] Is your question in relation to me myself or in relation to all the other
6 troops that were with us?

7 Q. [15:38:03] Sir, just so my question is clear, I'm not asking you anymore about
8 Bambu. I'm asking you a general question, whether at any time you yourself were
9 the object of discipline within the FPLC?

10 A. [15:38:29] Many times.

11 Q. [15:38:33] Were you ever put in prison as a discipline?

12 THE INTERPRETER: [15:38:52] Message from the Swahili booth, could the witness
13 be asked to repeat his answer and speak closer to the microphone.

14 PRESIDING JUDGE FREMR: [15:39:02] Yes, Mr Witness, there is a request from the
15 interpreters to repeat your last answer, and maybe the troubles could come because
16 you are too far from microphone, so please try to get a little bit closer or -- very well.
17 Thank you. And now please repeat your last response.

18 THE WITNESS: [15:39:40] (Interpretation) What I was saying was that within the
19 FPLC I have already been imprisoned.

20 MR GOSNELL:

21 Q. [15:39:54] Can you tell us about the first time that you were put in prison. Why
22 were you put in prison? What were the circumstances?

23 A. [15:40:16] Now, within the FPLC, I was imprisoned for the first time when we
24 were at a location which was under our control and where a battle had taken place, in
25 Barrière, at the headquarters of the area where we were located, and there was

Trial Hearing
WITNESS: DRC-D18-D-0038

(Open Session)

ICC-01/04-02/06

1 fighting in that area. And so we went to intervene at Barrière, and the enemy
2 attacked on the other side and killed the leader of the collectivité.

3 The chief of the collectivité is a figure of distinction in the community, and that is why
4 we were arrested, because I had failed in my mission to protect.

5 Q. [15:41:23] What was the name of that chief?

6 A. [15:41:37] His name was Bara Risasi.

7 Q. [15:41:47] And where was he killed?

8 A. [15:42:02] He was killed in Risasi. That is the headquarters of his village or the
9 capital of his village.

10 Q. [15:42:11] Was anyone else killed on the same occasion that he was killed?

11 A. [15:42:25] He is the only one who was killed on that day. He was decapitated.

12 Q. [15:42:33] May we have, please, DRC-OTP-2080-0239, tab 16. May I request
13 that the registry give control to the Defence bench so that this document can be
14 shown?

15 PRESIDING JUDGE FREMR: [15:42:59] I believe it shouldn't be any problem.

16 THE COURT OFFICER: [15:43:03] The Defence has the floor, evidence channel 2.

17 MR GOSNELL: [15:43:16] Now, if we could just please scroll down a little bit on the
18 screen. I'm not sure whether the witness is able to see the --

19 PRESIDING JUDGE FREMR: [15:43:27] Mr Witness, can you see the map on the
20 screen?

21 THE WITNESS: [15:43:32] (Interpretation) No. I don't see it.

22 Now I do.

23 MR GOSNELL: [15:43:47]

24 Q. [15:43:48] Now, sir, here we have a map and down at the bottom of the map we
25 can see Bunia, and then if we follow the road north, it passes along Iga-Barrière and

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0038

1 then it comes close to a place called Gina and just below that there's a place called
2 Risasi.

3 Can you tell us whether the name, the place that you have referred to named Risasi is
4 accurately marked on this map as its location?

5 PRESIDING JUDGE FREMR: [15:44:53] Mr Witness, did you find this place?

6 THE WITNESS: [15:45:09] (Interpretation) I am looking for it.

7 PRESIDING JUDGE FREMR: [15:45:10] I think you are free to indicate by cursor
8 where is this place.

9 MR GOSNELL: [15:45:17] Thank you, Mr President. Perhaps the cursor could be
10 circled around Risasi several times.

11 Q. [15:45:24] Sir, if you look at the screen, in red it says Bahema-Nord.

12 A. [15:45:43] I'm there.

13 Q. [15:45:43] Is that the location of Risasi?

14 A. [15:46:00] Well, I believe that it is around that area, around that locality. But
15 since you started off from Bunia, to go to Risasi you go to the right, and you get to
16 Risasi before you get to Gina; Gina, which is on the main road, and Risasi is next to
17 Gina, right next to Gina. So you can see here Gina is somewhat far off from the
18 high -- or the main road, whereas Gina is right on the main road, and Risasi is further
19 away from the main road.

20 Q. [15:46:56] Who ordered your detention in relation to this event?

21 A. [15:47:11] Well, we received an announcement that the deputy minister of
22 defence, Chef Kahwa, had called us up, so when we got to Bunia, the deputy chief of
23 general staff, Bosco, gave orders to the chief escort, to his chief escort, whose name
24 was Claude, Uniform Zulu, and that is how we ended up being detained.

25 So the order came from the deputy chief of general staff, but I don't know whether he

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0038

1 got that order from someone else, someone higher up than him. What I know is that
2 he is the one who asked that I be put in detention.

3 Q. [15:48:12] Did Mr Ntaganda speak to you on this occasion of being placed in
4 detention?

5 A. [15:48:35] On that day I did not meet him. And I'm referring there to the day
6 on which we arrived. The next day he arrived, and this is what I can say. We were
7 detained for the first time and had to spend the night in a building in Leguma where
8 our soldiers were staying. And today that place serves as a patrol station. At that
9 time there was a tank at that location.

10 Now, he arrived on the third day, and we were brought out, and then he asked us
11 why we made it possible for the chief to be eliminated. Then he asked where he was,
12 and then he continued to speak and then subsequently left.

13 Q. [15:49:54] Did you stay in detention at Leguma or did you go somewhere else,
14 or were you placed in detention somewhere else?

15 A. [15:50:14] We were in detention in Leguma. We spent the night near the battle
16 tank belonging to the Ugandans. Then the next day we were taken to another
17 location which had been prepared for our detention proper.

18 Q. [15:50:42] And how long did you remain in detention?

19 A. [15:50:51] Please can you repeat your question?

20 Q. [15:50:57] Yes. How long did you stay in detention on this occasion?

21 A. [15:51:14] At that time one was not counting days, but I could estimate that we
22 were detained for about a month, although I don't have any specific dates to give you.

23 Q. [15:51:44] Where did you go after you were released from detention after this
24 month?

25 A. [15:52:09] I spent about one week at the general staff headquarters, and then

Trial Hearing
WITNESS: DRC-D18-D-0038

(Open Session)

ICC-01/04-02/06

1 I was subsequently asked to return to my village and to wait for redeployment.

2 Q. [15:52:29] Did you in fact subsequently return to your village and wait for
3 redeployment?

4 A. [15:52:52] When I returned to my village, there was a company commander
5 already there and I was handed over to him. But I did not spend much time there.
6 I subsequently went to Lingo.

7 Q. [15:53:20] Before you went to Lingo and while you were at your home village,
8 did you see any preparations for a military operation?

9 A. [15:53:40] Before going to Lingo, where I did not spend much time, there was
10 a gathering of the troops at Barrière and I wasn't involved in those preparations, so
11 I didn't pay much attention to that.

12 Q. [15:54:14] What position did you assume when you went to Lingo?

13 A. [15:54:42] I was a (Redacted) in Lingo.

14 Q. [15:54:51] Either when you -- at the moment that you went to Lingo or
15 afterwards, did you at any point learn where that gathering of troops at Barrière went
16 to, whether they went to a place and engaged in any operation?

17 A. [15:55:21] The troops (Redacted) they didn't go anywhere.

18 Q. [15:55:34] I think there may be a translation issue, Mr Witness. I was not
19 asking you about the troops (Redacted), but, rather, the troops that you have
20 described who gathered at Barrière. Did you hear whether those troops who had
21 gathered at Barrière went to participate in any operation?

22 A. [15:56:04] The troops were going to Mongbwalu. The idea was for them to go
23 to Mongbwalu, but I don't know in what direction they went. What I know is that
24 the plan was for them to go to Mongbwalu.

25 Q. [15:56:30] How long did you remain at Lingo (Redacted)?

Trial Hearing
WITNESS: DRC-D18-D-0038

(Open Session)

ICC-01/04-02/06

1 A. [15:56:52] I did not spend much time at Lingo. Just a few weeks. Not
2 much time.

3 Q. [15:57:01] Where were you posted after that?

4 A. [15:57:18] From Lingo I was deployed to Largu.

5 Q. [15:57:24] How long did you spend in Largu?

6 A. [15:57:43] Largu, I spent a few months there. But what I know is that I left
7 Largu after the battle with the Ugandans.

8 Q. [15:58:06] While you were posted at Largu, did you go to any other villages or
9 visit any other villages in the area?

10 A. [15:58:33] When I was in Largu, well, let me say that it was (Redacted)
11 (Redacted). I was in Blukwa, and (Redacted), and from there I was deployed to
12 Bule along the lake road, which is further away. And these are areas which I used
13 to visit as well.

14 Q. [15:59:18] Could you please spell Blukwa?

15 A. [15:59:24] B-L-U-K-W-A, Blukwa.

16 Q. [15:59:46] Did you ever see Bosco Ntaganda in Blukwa?

17 A. [16:00:04] Can you please repeat your question?

18 Q. [16:00:12] Yes. Did you ever see Bosco Ntaganda in Blukwa?

19 A. [16:00:32] Are you asking that in relation to the time when I was (Redacted)
20 in that area?

21 Q. [16:00:38] Yes.

22 A. [16:00:51] I did not see him in Blukwa at that time. I saw him when he was
23 leaving.

24 Q. [16:01:01] When was he leaving when you saw him at Blukwa? What were the
25 circumstances?

Trial Hearing
WITNESS: DRC-D18-D-0038

(Open Session)

ICC-01/04-02/06

1 A. [16:01:19] The Ugandans had took possession of Bunia and they were -- and
2 everyone in Bunia had to go to Bule and Fataki. These places were occupied but by
3 the Ugandans and this is why people had to leave and this is when people from
4 Blukwa left definitively and this is the last time I saw him.

5 Q. [16:02:05] You have just said "this is the last time I saw him", are you saying that
6 at Blukwa was the last time you saw Bosco Ntaganda?

7 A. [16:02:28] The first time I saw him, it was the only time actually I saw him, when
8 he was leaving. In Blukwa, this is when I saw him the first and the last time.

9 Q. [16:02:48] I just want to be clear because I think there -- there is either an
10 interpretation or a transcription issue, Mr President, but I can clarify perhaps with an
11 additional question.

12 PRESIDING JUDGE FREMR: [16:03:00] Please.

13 MR GOSNELL: [16:03:03]

14 Q. [16:03:05] Are you saying, sir, that this was the one and only time that you saw
15 him, in Blukwa?

16 A. [16:03:19] I said that when I was working in Blukwa before the war with
17 Ugandans I had never seen him. But when the Ugandans drove us away, that was
18 the last time I saw him in Blukwa.

19 Q. [16:03:46] And how did he leave Blukwa?

20 A. [16:04:03] By air.

21 Q. [16:04:07] And was he with anyone on that occasion?

22 A. [16:04:14] He was with Thomas Lubanga.

23 Q. [16:04:26] After they had left where did you go?

24 A. [16:04:42] (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DRC-D18-D-0038

(Open Session)

ICC-01/04-02/06

- 1 (Redacted)
- 2 Q. [16:05:12] (Redacted)
- 3 (Redacted)
- 4 A. [16:05:22] (Redacted)
- 5 Q. [16:05:36] (Redacted)
- 6 A. [16:05:42] (Redacted).
- 7 Q. [16:05:46] (Redacted)
- 8 A. [16:05:58] (Redacted)
- 9 Q. [16:06:23] (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 A. [16:06:56] (Redacted)
- 13 (Redacted)
- 14 Q. [16:07:08] Did something happen in Drodoro soon after, in the days or weeks
- 15 following the time that you were (Redacted) there?
- 16 A. [16:07:29] Are you saying that after my departure? I don't know. One week
- 17 down the line there was a lot of murder in Largu, in Drodoro, but that was after me.
- 18 Q. [16:07:53] Who was committing that murder in Drodoro?
- 19 A. [16:08:05] The Lendu combatants.
- 20 Q. [16:08:20] Did you do anything to stop this murder that was going on in Drodoro
- 21 by the Lendu combatants?
- 22 A. [16:08:30] Right, this happened when I had already left. Because the UPDF
- 23 were already there. So I had already left and I really couldn't step in.
- 24 Q. [16:08:54] What about the FPLC? Can you tell us why the FPLC did not step in
- 25 to stop these murders?

Trial Hearing
WITNESS: DRC-D18-D-0038

(Open Session)

ICC-01/04-02/06

1 A. [16:09:13] The FPLC's soldiers were quite dispersed, and everything was
2 controlled by the UPDF. The question is, why did UPDF did not step in. If we
3 were there, we would have been imprisoned. How could we even intervene?

4 Q. [16:09:44] When you went to (Redacted) did you have your weapon with you or
5 any weapon with you?

6 A. [16:09:56] I had my weapon on me.

7 Q. [16:10:14] After this event, and perhaps I should first of all ask you, did you hear
8 any stories from people from Drodro about what had happened there?

9 A. [16:10:49] Which events are you referring to? The killings, the murder?

10 Q. [16:10:54] Indeed.

11 A. [16:11:09] So you are asking if people, if I heard people speak about these
12 killings. I would actually like to understand the question. Could you please repeat
13 it again.

14 Q. [16:11:22] Yes, sir, you have understood my question well, just as you have
15 repeated it.

16 A. [16:11:36] Right. In Drodro Largu everyone knew, even the international
17 media was talking about; even RFI spoke about it, because many people died.

18 Q. [16:12:05] Where did you go (Redacted)?

19 A. [16:12:20] Now, what time are you referring to?

20 Q. [16:12:29] After these events at Drodro, after you had left Blukwa, you have told
21 us (Redacted)

22 (Redacted)

23 A. [16:12:56] Right. At that point of time when (Redacted)
24 (Redacted) UPDF withdrew, sorry, we tried to recover Bunia, the next day.

25 Q. [16:13:24] When you say "we", who are you referring to?

Trial Hearing
WITNESS: DRC-D18-D-0038

(Open Session)

ICC-01/04-02/06

1 A. [16:13:33] We were many in numbers, because I couldn't do it on my own.

2 There was a group from Katoto and there was another group from Lopa, Barrière.

3 And people who were around Bunia.

4 Q. [16:14:04] When you say you tried to recover Bunia, did you succeed?

5 A. [16:14:20] No. We did not succeed. We stopped at the Lokoto bridge. If you
6 go to Mudzipela and you continue, but before going, we just stopped there before
7 actually entering the city.

8 Q. [16:14:51] Was that the only occasion that you participated in an attempt to
9 retake Bunia or was there any other attempt?

10 A. [16:15:11] The second time wasn't an attempt, because we succeeded. Kisembo,
11 the General Kisembo was already there.

12 Q. [16:15:25] To your knowledge did Bosco Ntaganda participate in this successful
13 attempt to take Bunia?

14 A. [16:15:43] He was not there. He did not participate. If you have been given
15 this information, it's false.

16 Q. [16:16:01] Who was in command of the operation to take Bunia when that was
17 successful?

18 A. [16:16:17] It was Kisembo himself.

19 Q. [16:16:22] Was there, based on what you could observe, looting or pillaging
20 committed by soldiers under his command in Bunia?

21 A. [16:16:48] It's unfortunate that you weren't there. When UPDF chased out
22 FPLC, they put Lendu combatants in Bunia. Bunia was completely pillaged. The
23 houses were open. All the goods were taken. Many people were killed. In fact,
24 when we arrived we buried many people. There were no people in Bunia.
25 There was nothing that you could find inside the houses in Bunia.

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0038

1 Q. [16:17:44] Who had committed this pillage, according to what you knew?

2 A. [16:17:54] These were the Lendu combatants. Because when UPDF recovered
3 Bunia, they introduced these combatants, and they are the ones who did this pillaging
4 and the Ugandans just let this happen. Bunia was controlled practically by the
5 Lendu combatants.

6 MR GOSNELL: [16:18:20] Mr President, may I enquire how much time I have
7 remaining?

8 PRESIDING JUDGE FREMR: [16:18:25] Court officer, could we know how much
9 time is still remaining till four hours allotted to Defence.

10 THE COURT OFFICER: [16:18:36] Three hours 47 minutes so far used by
11 the Defence.

12 PRESIDING JUDGE FREMR: [16:18:43] It seems you still have 13 minutes to the
13 normal limit.

14 MR GOSNELL: [16:18:50] Mr President, I would request an additional 15 minutes,
15 and I could do that very efficiently tomorrow morning, if you allow me to.

16 PRESIDING JUDGE FREMR: [16:19:02] I think, yeah, we did it several times, other
17 times, and 15 minutes is not so much. So you would like to continue with the
18 remaining 12 minutes or -- we will grant you extra 15 minutes. But it is now up to
19 you whether you want to continue now with the -- all remaining 20, 25 or 27 minutes
20 or whether you would like to keep it for tomorrow.

21 MR GOSNELL: [16:19:31] It would be most efficient if I could break now because
22 I am going to start looking at a rather long document.

23 PRESIDING JUDGE FREMR: [16:19:40] It was exactly my idea. So we will break
24 now and we will continue with the, roughly, last 30 minutes of the
25 examination-in-chief tomorrow.

Trial Hearing

(Open Session)

ICC-01/04-02/06

WITNESS: DRC-D18-D-0038

1 Now, we are still in public, yes.

2 So, Mr Witness, I thank you very much for today, for your cooperation. You

3 responded patiently, you, I believe, tried to respond clearly. We will continue

4 tomorrow with the rest of direct examination and then with cross-examination

5 conducted by Prosecution. And it's my duty to remind you that in the meantime till

6 tomorrow you must not discuss your today testimony with anybody else. Do you

7 understand that?

8 THE WITNESS: [16:20:35] (Interpretation) Yes, I have understood. There is no one

9 with whom I can speak about. I don't even have a phone. I have nothing. And

10 there's no one with whom I can discuss all this.

11 PRESIDING JUDGE FREMR: [16:20:53] Thank you for assurance. So we break now

12 and we will resume tomorrow at 9.30.

13 THE COURT USHER: [16:21:01] All rise.

14 (The hearing ends in open session at 4.21 p.m.)

15 RECLASSIFICATION REPORT

16 Pursuant to the Trial Chamber VI's Order, ICC-01/04-02/06-1887, dated 4 May 2017,

17 the public reclassified and lesser redacted version of this transcript is filed in the case.