

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 3
 8 Thursday, 8 December 2016
 9 (The hearing starts in open session at 9.31 a.m.)
 10 THE COURT USHER: [9:31:04] All rise.
 11 The International Criminal Court is now in session.
 12 Please be seated.
 13 PRESIDING JUDGE FREMR: [9:31:33] Good morning, everybody.
 14 Court officer, please call the case.
 15 THE COURT OFFICER: [9:31:38] 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 for the record, we are in open session.
 19 PRESIDING JUDGE FREMR: [9:31:53] Thank you, court officer.
 20 Now appearances, starting with Prosecution.
 21 MS SAMSON: [9:31:59] Good morning, Mr President and your Honours. For
 22 the Prosecution today are Mr James Pace, Ms Selam Yirgou and myself,
 23 Nicole Samson.
 24 PRESIDING JUDGE FREMR: [9:32:09] Thank you, Ms Samson.
 25 Defence, please.

1 MR BOURGON: [9:32:18] (Interpretation) Good morning, your Honour. For
2 the Defence this morning, Han Catherine Morin, Isabelle Martineau and myself,
3 Stéphane Bourgon. Thank you.

4 PRESIDING JUDGE FREMR: [9:32:37] Thank you, Mr Bourgon.

5 And Legal Representative of Victims, please.

6 MS PELLET: [9:32:42] (Interpretation) Thank you, your Honour. Former child
7 soldier are represented by Mohamed Abdou and myself, Sarah Pellet, counsel with
8 the Office of Public Counsel for Victims.

9 MR SUPRUN: [9:32:55] (Interpretation) Good morning, your Honour, your Honours.
10 The victims of the attacks are represented by myself, Dmytro Suprun, counsel with
11 the Office of Public Counsel for Victims.

12 PRESIDING JUDGE FREMR: [9:33:07] Thank you, Ms Pellet. Thank you,
13 Mr Suprun.

14 Before we start we were informed that the Defence would like to address the
15 Chamber.

16 Mr Bourgon, you have the floor. And we are in open session.

17 MR BOURGON: [9:33:22] Thank you, Mr President.

18 Mr President, I would like to, with the leave of the Chamber, address one document
19 to which we objected in our list of objections. We believe that it is important to make
20 this objection at this time in the absence of the witness because this document was
21 actually used during the preparation session with the witness and we believe that if
22 the document is raised or is even mentioned in his presence it could influence what
23 he would have to say on this document.

24 I am talking about the document, Mr President, DRC-OTP-0138-0112.

25 Mr President, this document has been in the possession of the Prosecution since

1 December of 2005. This document was not on the Prosecution's list of exhibit in
2 March 2015 and it was only disclosed to the Defence on 11 November and added to
3 the Prosecution's list of exhibits to be used on 10 November.

4 Mr President, I would like to recall that in respect of Witness P-31 he was first
5 interviewed by the Prosecution in November of 2005 for four days. This was
6 followed by a nine-month interval and then he was interviewed again for five days in
7 August of 2006. The document we are talking about now was obtained during the
8 interval between the first series of interviews in November 2005 and the second series
9 of interviews in August 2006. Mr President, I would like to also add that from 2005
10 to 2008, based on the information that we have, witness -- I think we need to move
11 into private session, Mr President.

12 PRESIDING JUDGE FREMR: [9:35:51] Court officer, let's move into private session.

13 (Private session at 9.35 a.m.)

14 THE COURT OFFICER: [9:35:56] We are in private session, Mr President.

15 PRESIDING JUDGE FREMR: [9:36:09] Mr Bourgon, please proceed.

16 MR BOURGON: [9:36:11] Thank you, Mr President. So based on the information
17 that we have, (Redacted),

18 during which -- that includes of course the time period during which this document
19 was obtained. (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted).

24 Mr President, the Prosecution has provided no reason for the late disclosure of this
25 document obtained more than 10 years ago. While of course it is open to
26 the Prosecution to add whatever document it wishes to add on its list of exhibits

1 pursuant to the Chamber's decision, the Chamber has also made it clear that
2 the Defence may object to the use or admission of any of the documents also at any
3 time. In this case, Mr President, the document added contains a list of names of
4 persons who would have been in the UPC.

5 The late disclosure of this document at this time brings prejudice, as there was no
6 possibility for the Defence to investigate the names contained on this document
7 during the period from mid-November to this day. In these circumstances, we -- the
8 document we say, we respectfully submit, should neither be used by the Prosecution
9 with the witness, nor should it be admitted in evidence.

10 Mr President, this concludes my submissions concerning this document. However, I
11 have a second issue I would like also to address the Chamber on, dealing with
12 disclosure of the security concerns of Witness P-31.

13 This issue is addressed this morning because we had disclosure of a document two
14 days ago which drew our attention to the security concerns of the witness.

15 Again, just to recall the history of this witness, (Redacted)

16 (Redacted). Based on the information that we have,

17 (Redacted) the witness was reported instances of threats and there was -- also

18 would have been (Redacted). On the basis of the

19 allegations brought forward by the witness, (Redacted)

20 (Redacted), at least that's our understanding, (Redacted)

21 (Redacted)

22 (Redacted).

23 During the same period, (Redacted), based again on our

24 information, (Redacted)

25 (Redacted) and this was of course dealing with alleged

1 (Redacted).

2 So the Chamber can see, Mr President, (Redacted)

3 (Redacted)

4 (Redacted). I also note that the witness was introduced to the Prosecution by

5 (Redacted) who is probably well-known by this time to

6 the Chamber, (Redacted)

7 (Redacted).

8 In these circumstances, Mr President, we submit that the security concerns of

9 Witness P-31 are definitely material to the preparation of the Defence.

10 The Chamber has previously held that security concerns or material in the possession

11 of the Prosecution related to security concerns of a witness may be material to the

12 preparation of the Defence. We say, Mr President, that this is one of these cases.

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 Accordingly, we request disclosure of such information and we would like, of course,

17 to get this material before proceeding with the cross-examination of the witness.

18 Last night we addressed a request to the Prosecution to obtain this information. We

19 were in contact by electronic correspondence *with this witness. There might have

20 been a misunderstanding as to what exactly we were looking for. I talked to my

21 colleague again a few minutes ago. She said she would look into it and provide us

22 the information as soon as she can. So of course if -- if we do obtain the disclosure,

23 then there is no problem, but we wanted to alert the Chamber to this fact.

24 This concludes my submissions on the second issue. Thank you, Mr President.

25 PRESIDING JUDGE FREMR: [9:42:41] Thank you, Mr Bourgon. And before I give

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1 floor to Ms Samson, one technical point, next time you prefer, especially as concerns
2 objection, to address the Chamber in writing because, okay, maybe the last issue was
3 very recent, but as to the objection. Now we spent 15 minutes to listen to you, you
4 know, our schedule is very tight, so please we would really prefer if you could next
5 time address us on these kind of issues in writing.

6 Ms Samson.

7 MS SAMSON: [9:43:15] Thank you, Mr President. And I will endeavour to be brief
8 in my response. I will deal first with the second issue that the Defence has raised.

9 This Witness P-31 was somebody who worked within the domain of child protection
10 and the protection of other vulnerable people such as women and children in the
11 relevant time period of the charges, so prior to and after 2002 and 2003. (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 (Redacted)

2 Now, the security concerns, indeed the Defence sent an email at about 9 o'clock last
3 night asking for additional disclosure related to what precise security concerns the
4 witness had (Redacted).

5 And I responded this morning before 9 o'clock to say that we would provide the
6 information to the Defence. I also indicated to the Defence that significant
7 information related to the witness's security concerns (Redacted).

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 Now, as I said, we will provide the Defence with that information as soon -- more of
14 the underlying information as it was explained to us by the witness as soon as
15 possible, but the request for that information came extremely late. (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 So had the Defence asked for this information earlier, we would have endeavoured to
23 provide it earlier, but we'll do our best to give it now. I don't believe that this
24 particular point merits any delay in starting cross-examination. It's an issue that
25 could be addressed discretely tomorrow, if necessary, but in any event, as soon as

1 I can, I will provide the information to the Defence as I indicated in my email this
2 morning.

3 On the --

4 PRESIDING JUDGE FREMR: [9:47:47] Sorry to interrupt you. And what we
5 should understand under this term "as soon as possible"?

6 MS SAMSON: [9:47:55] Well, your Honour, I am in court today, as is the person
7 who is assisting me with this witness, and we are of course engaging other people to
8 put the material together. I am hopeful that I can provide something by the lunch
9 break. That's my goal. But I would like to have a chance to review it prior to it
10 being sent, as I always do, and so that will require me not to be in court.

11 PRESIDING JUDGE FREMR: [9:48:21] All right. And now the first, first issue.

12 MS SAMSON: [9:48:24] Yes. The first issue, so the Defence is correct that we
13 disclosed this document recently to the Defence. (Redacted)

14 (Redacted)

15 (Redacted). And some of those children, as we

16 know, were under the age of 15. The witness provided us with this document,
17 which is a four-page report, (Redacted). It

18 details (Redacted), as well as a list

19 of some of the children (Redacted), their ages, their weight,

20 their height and the armed group (Redacted) has

21 noted the children belonged.

22 Now, because this document was dated (Redacted), we did not initially seek to ask
23 questions of the witness about it, but it occurred to us more recently that as was the

24 case with other documents from this witness, these children may have been in the

25 UPC or other armed groups (Redacted). And

1 so consistent with the Chamber's guidance on the witness preparation protocol, we
2 asked the witness some questions about this document solely for the purpose of
3 determining whether or not it would be useful and relevant to show this document to
4 the witness when he testified. And indeed the witness told us in witness
5 preparation that the ages of some of these children, as recorded in (Redacted) as being
6 13 years old, 14 years old, 15, et cetera, was the age at the time (Redacted)
7 (Redacted) but that they had been part of the UPC
8 in an earlier time period, including 2002 and 2003.

9 And so in our assessment this document is one that is relevant for the Chamber to see
10 in its assessment of this witness's evidence and in its assessment of the evidence going
11 to the issue of child soldiers. Thank you.

12 PRESIDING JUDGE FREMR: [9:50:53] Thank you.

13 Mr Bourgon, if you want to respond, but please briefly.

14 MR BOURGON: [9:50:56] Thank you, Mr President. With respect to the first issue
15 about the security concerns, what my colleague informed the Chamber this morning
16 is not known to the Defence (Redacted).

17 The sole information in the possession of the Defence (Redacted)

18 (Redacted)

19 (Redacted). We do not have any more details. This

20 information, Mr President, should be disclosed to the Defence way ahead.

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted). So when we look at this

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1 information, Mr President, we could not raise this issue before (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 With the second issue regarding this document, Mr President, I have heard nothing

13 from the Prosecution as to why it was not disclosed for 10 years. I think that's the

14 question that we would ask, and I haven't seen in the Prosecution's response

15 arguments to the fact that there is no prejudice to the Defence. There is prejudice.

16 There are names on this document. (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted).

22 Again, we would not have put this request in this morning until we saw what

23 the Prosecution did during the preparation session and the importance they seem to

24 attach to this document. That's what brings us the prejudice this morning, in

25 addition.

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1 And lastly, Mr President, this document, we did bring it to the attention of the
2 Chamber, both in, I am not sure if it was also in our 68(3) application - it wasn't - but
3 we did in our list of objections bring it and we did explain the fact that it was
4 obtained (Redacted). So we did say it. But I fully
5 understand, Mr President, and maybe next time we will just put our submissions in
6 writing to the Chamber by way of electronic correspondence.

7 Thank you, Mr President.

8 PRESIDING JUDGE FREMR: [9:55:04] Yes, we appreciate. Ms Samson, also, please,
9 very briefly.

10 MS SAMSON: [9:55:06] Indeed, your Honour, and I appreciate being given the time.

11 It is just very quickly.

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 So that's my submission on the prejudice, your Honour. It is very consistent and
2 duplicative in some ways with information that has already been provided. Thank
3 you.

4 PRESIDING JUDGE FREMR: [9:56:49] Mr Bourgon, one minute, please.

5 MR BOURGON: [9:56:51] Mr President, my colleague brings a very interesting issue.

6 When an issue of disclosure violation like this or lack of disclosure happens,
7 the Prosecution must provide reasons as to why it was not provided before. It did
8 not.

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 If it was an essential document on which the Prosecution's case rested, then maybe
14 the Chamber could be inclined to say, regardless of the 10 years, the interests of
15 justice dictate that it be used, but a duplicative document and a document that repeats
16 other information, it is not a document that should be used and the Prosecution
17 should not be permitted to use this document. Thank you.

18 PRESIDING JUDGE FREMR: [9:57:54] All right. I also will be brief as to the
19 security issue and the issue on material benefits. We strongly encourage Prosecution
20 to provide Defence during the lunch break, in order to allow them to work with this
21 during their cross-examination. It seems that they even -- we have problem to start
22 this cross-examination before the lunch break so the majority of the cross-examination
23 will take place after the lunch break.

24 And as to the objection concerning the late disclosure, we noted arguments of both
25 parties. We will even preliminarily deliberate, and as soon as this document will

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1 come and the Prosecution will maintain this, its request to use this, we will decide.

2 And there is no need then in the presence of the witness to repeat arguments, you can
3 just refer to arguments we have heard now.

4 Now, court usher, please bring Mr Witness into the courtroom, and we can again
5 return back into open session.

6 (Open session at 9.59 a.m.)

7 THE COURT OFFICER: [9:59:18] We are in open session, Mr President.

8 PRESIDING JUDGE FREMR: [9:59:20] Thank you, court officer.

9 (The witness enters the courtroom)

10 PRESIDING JUDGE FREMR: [10:00:06] Good morning, Mr Witness, can you hear
11 me?

12 WITNESS: DRC-OTP-P-0031

13 (The witness speaks French)

14 THE WITNESS: [10:00:11] (Interpretation) Yes, I can hear you. Good morning.

15 PRESIDING JUDGE FREMR: [10:00:14] Very well. Mr Witness, on behalf of the
16 Chamber, I would like to welcome you to the courtroom. You are called to testify in
17 the case against Mr Bosco Ntaganda. You will be asked questions soon, both by the
18 Judges and lawyers in the courtroom, and in this connection I would like to guide you
19 as follows. Please listen carefully to those questions. If you do not understand, feel
20 free to ask for the question to be repeated. We want you to tell the truth and tell us
21 what you saw, heard or sensed yourself. If you did not see or hear it yourself but
22 you found out some other way, then you should explain how.

23 Please testify just on that which you remember, don't guess, don't make things up.

24 There is nothing wrong in saying, "I don't know" or "I don't remember." Do you
25 understand all this, Mr Witness?

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1 THE WITNESS: [10:01:21] (Interpretation) Yes, I have understood you well.

2 PRESIDING JUDGE FREMR: [10:01:26] Fine.

3 Mr Witness, protective measures are put in place to ensure that your identity is not
4 revealed to the public. This means that the public cannot see your face and that your
5 voice is being disguised so that the public cannot recognise it. We will refer to you
6 as "Mr Witness" only and ensure that your name and any other information that risks
7 revealing who you are is not broadcast to the public. Therefore, whenever you need
8 to describe anything that might reveal your identity, we will do so in private session
9 so that no one outside the courtroom can hear your answer. Do you understand,
10 Mr Witness?

11 THE WITNESS: [10:02:16] (Interpretation) Yes, I understand.

12 PRESIDING JUDGE FREMR: [10:02:21] Good. Now, Mr Witness, you will be
13 provided with piece of paper containing text of solemn undertaking, so please make
14 your solemn undertaking to tell the truth by reading out the declaration on the piece
15 of paper you have in your hands.

16 THE WITNESS: [10:02:52] (Interpretation) I solemnly declare that I shall tell the
17 truth, the whole truth and nothing but the truth.

18 PRESIDING JUDGE FREMR: [10:03:00] Thank you. So you are now under oath
19 and you need to be aware that it is an offence within the jurisdiction of this Court to
20 give false testimony. Do you understand, Mr Witness?

21 THE WITNESS: [10:03:19] (Interpretation) Yes, I understand.

22 PRESIDING JUDGE FREMR: [10:03:21] And finally, a few practical matters you
23 should have in mind when giving your testimony: It is important to speak into the
24 microphone, to speak clearly, and to speak at a slow pace to allow the interpreters to
25 translate everything. You should only start speaking when the person asking you

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1 the question has finished. When a question is asked, please count in your head to
2 three and only then give your answer because this pause of three seconds between the
3 question and your answer is essential to properly translate and record what you are
4 saying. If you have any questions during your testimony, do not hesitate to let us
5 know by raising your hand. We will then give you the opportunity to speak.

6 Have you understood all that, Mr Witness?

7 THE WITNESS: [10:04:21] (Interpretation) Perfectly.

8 PRESIDING JUDGE FREMR: [10:04:26] Very well. And before we move to the
9 testimony itself, two procedural issues: First, for the purpose of timing for this
10 witness as indicated in the Chamber's preliminary Rule 68(3) oral decision, delivered
11 on 5 December 2016, the Prosecution shall have two hours to examine the witness,
12 which shall include the process of seeking admission of the witness material under
13 Rule 68(3), as well as any supplementary examination.

14 The Defence has been permitted six hours for cross-examination.

15 Now, for the rest, we will have to move into private session.

16 Court officer, please.

17 (Private session at 10.05 a.m.)

18 THE COURT OFFICER: [10:05:17] We are in private session, Mr President.

19 PRESIDING JUDGE FREMR: [10:05:28] Thank you, court officer. (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 Now we can return back into open session.

6 (Open session at 10.06 a.m.)

7 THE COURT OFFICER: [10:06:44] We are back in open session, Mr President.

8 PRESIDING JUDGE FREMR: [10:06:52] Thank you, court officer.

9 The Chamber also has taken note of the Defence notice

10 of objections, including the recent one to the use or admission of certain documents,

11 and it will address any such objections if and when they arise. It is noted that

12 guidance has already been provided in relation to the majority of the objections in

13 the Chamber's preliminary ruling on Rule 68(3).

14 And now we can move to examination of our witness.

15 Prosecution, Ms Samson. You have the floor.

16 MS SAMSON: [10:07:28] Thank you, Mr President.

17 QUESTIONED BY MS SAMSON:

18 Q. [10:07:32] Good morning, Mr Witness.

19 A. [10:07:36] Good morning, Madam.

20 Q. [10:07:38] We have had a chance to meet before. My name is Nicole Samson

21 and I will be asking you questions today on behalf of the Prosecution. My initial set

22 of questions will be about your personal identity and some of your background

23 information.

24 MS SAMSON: And so for that purpose I will ask, Mr President, if we can please

25 move into private session.

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- 1 PRESIDING JUDGE FREMR: [10:08:03] Certainly.
- 2 Court officer, let's move into private session.
- 3 (Private session at 10.08 a.m.)
- 4 THE COURT OFFICER: [10:08:12] We are in private session.
- 5 PRESIDING JUDGE FREMR: [10:08:24] Thank you, court officer.
- 6 Ms Samson, please proceed.
- 7 MS SAMSON: [10:08:28]
- 8 Q. [10:08:28] Sir, could you please tell the Chamber what your full name is?
- 9 A. [10:08:37] My name is (Redacted).
- 10 Q. [10:08:43] Were you born on (Redacted), the Democratic Republic
- 11 of the Congo?
- 12 A. [10:08:58] Yes, I was born on (Redacted), the Democratic Republic
- 13 of Congo. (Redacted).
- 14 Q. [10:09:13] What is your ethnicity, sir?
- 15 A. [10:09:18] I am (Redacted).
- 16 Q. [10:09:24] (Redacted)
- 17 A. [10:09:38] (Redacted).
- 18 Q. [10:09:53] And for the transcript, to be sure we have an accurate transcription,
- 19 can you spell the region where you are from?
- 20 A. [10:10:07] (Redacted).
- 21 Q. [10:10:14] (Redacted)
- 22 (Redacted). Can you repeat it, please.
- 23 A. [10:10:23] Yes. (Redacted).
- 24 Q. [10:10:33] And (Redacted) is spelled how?
- 25 A. [10:10:36] (Redacted).

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1 Q. [10:10:47] Thank you. What is your current occupation?

2 A. [10:10:54] (Redacted).

3 Q. [10:11:04] Now, the next part of your testimony is to review some materials that
4 you have previously reviewed. (Redacted)

5 (Redacted). The Chamber has conditionally

6 accepted to admit these materials once you have had a chance to review them and

7 confirm their accuracy and a few other formalities. So for that purpose, sir, I am

8 going to provide you with a binder which contains the documents that I would like

9 you to quickly review here today and let me know if you confirm their accuracy.

10 Court officer, may I please have some assistance in providing the binder to the

11 witness.

12 PRESIDING JUDGE FREMR: [10:12:02] Court usher, please assist.

13 MS SAMSON: [10:12:07] For the purposes of the Chamber, the Defence and the legal

14 representatives, the binder is the same as the binder that everybody else has except

15 that we have removed from that binder documents that the Chamber has not

16 conditionally approved for the Rule 68 procedure.

17 PRESIDING JUDGE FREMR: [10:12:28] Understood.

18 MS SAMSON: [10:12:30] (Redacted)

19 (Redacted).

20 Q. [10:12:59] (Redacted)

21 (Redacted)

22 A. [10:13:10] Yes, I do recall that.

23 Q. [10:13:12] And as I see you are doing it now, could you kindly have a look

24 through tabs 1 to 6 as well as the remaining seven tabs after that to have a brief

25 chance to look at those materials.

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1 (Pause in proceedings)

2 MS SAMSON:

3 Q. [10:16:05] And, sir, the documents that were at the first six tabs of that binder, is
4 that (Redacted)?

5 A. [10:16:23] Yes.

6 Q. [10:16:26] (Redacted)

7 (Redacted)

8 A. [10:16:39] Yes, I took an oath.

9 Q. [10:16:41] (Redacted)

10 (Redacted)

11 A. [10:16:51] Yes.

12 Q. [10:17:04] Similarly with the documents, do you recall that you were asked
13 questions and you gave answers in relation to the seven documents that you have had
14 a chance to look at after tab 6 in your binder? (Redacted)
15 (Redacted)

16 A. [10:17:20] (Overlapping speakers)

17 Q. [10:17:48] I think I heard an answer but it wasn't caught by the interpreters.
18 Could you repeat your answer?

19 A. [10:17:54] Yes, I recognise these documents.

20 Q. [10:17:56] And again, was the information you provided about these documents
21 true and accurate to the best of your information and belief?

22 A. [10:18:10] I didn't follow you.

23 Q. [10:18:19] Was the information that you gave about those documents true and
24 accurate to the best of your information and belief?

25 A. [10:18:30] Yes. The information that I gave is exact.

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1 Q. [10:18:36] Sir, do you consent to (Redacted) and the seven

2 documents being admitted into evidence in this case against Mr Ntaganda?

3 A. [10:18:57] Of course.

4 Q. [10:18:58] And do you consent to being questioned by the Prosecution,
5 the Defence, the Legal Representatives of Victims, and the Chamber, as necessary?

6 A. [10:19:12] That is why I am here.

7 Q. [10:19:15] Thank you, sir.

8 Mr President, at this point I am seeking admission of --

9 PRESIDING JUDGE FREMR: [10:19:21] Sorry, Ms Samson, please could you make
10 this request in open session, I think it would be better.

11 MS SAMSON: [10:19:28] Of course.

12 PRESIDING JUDGE FREMR: [10:19:28] So, court officer, let's move into open
13 session.

14 (Open session at 10.19 a.m.)

15 THE COURT OFFICER: [10:19:33] We are in open session.

16 PRESIDING JUDGE FREMR: [10:19:48] Ms Samson, please proceed.

17 MS SAMSON: [10:19:50] Thank you, Mr President.

18 Q. [10:19:52] Sir, I will just repeat for the public that you have consented to your
19 prior recorded testimony and associated materials being admitted as evidence in this
20 case and you have consented to being questioned by the parties, the participants and
21 the Chamber, as necessary.

22 And on the basis of those formalities, in addition to your confirmation of the accuracy
23 and truthfulness of the prior record testimony and documents, the Prosecution now
24 makes a request to the Chamber to admit the first 12 items on the Prosecution's list of
25 documents it may use, as well as items number 14, 15, 16, 17, 18, 20 and 21 pursuant

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1 to the Chamber's decision on the preliminary ruling.

2 Thank you.

3 PRESIDING JUDGE FREMR: [10:20:52] Defence, your position?

4 MR BOURGON: [10:20:56] No objection, Mr President.

5 PRESIDING JUDGE FREMR: [10:20:59] Give me a second, we will, even if we have
6 made preliminary decision, but we will have to make final decision.

7 (Trial Chamber confer)

8 PRESIDING JUDGE FREMR: [10:21:27] After brief silent deliberation in the
9 courtroom, the Chamber now formally decides that the Prosecution's request for use
10 of Rule 68(3) with this witness, that is filing number 1615, is partially granted in
11 accordance with the Chamber's preliminary ruling of 5 December 2016. And here I
12 refer to transcript 171.

13 And for the remainder of our ruling we will have to go into private session to rule on
14 the specific materials.

15 (Private session at 10.22 a.m.)

16 THE COURT OFFICER: [10:22:19] We are in private session.

17 PRESIDING JUDGE FREMR: [10:22:22] Thank you, court officer.

18 In light of Witness P-31's recent declaration the Chamber admits under Rule 68(3)
19 of the Rules the following materials, and then I refer to the relevant ERN numbers
20 and specific pages that are specified in annex A to filing 1615.

21 Mr Bourgon.

22 MR BOURGON: [10:22:49] Thank you, Mr President. I apologise for interrupting
23 at this time. I just want to confirm, I have item 14, I just want to make sure because
24 in one of our lists item 14 is the statement of (Redacted), but I have another list here,
25 but I am trying to make sure because the ruling of the Chamber was not to admit the

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1 statement of (Redacted). If my colleague can confirm what item 14 is, please.

2 PRESIDING JUDGE FREMR: [10:23:19] Ms Samson.

3 MS SAMSON: [10:23:20] Yes, certainly. On the latest list of items that

4 the Prosecution intends to use number 14 is a notebook, the ERN is

5 DRC-OTP-0140-0200.

6 PRESIDING JUDGE FREMR: [10:23:35] And I don't want to confuse you, but in fact

7 in our decision we refer to annexes to the request so the numbering is a bit different,

8 but it should correspond to the documents now again repeated by Ms Samson.

9 MS SAMSON: [10:23:49] Certainly. If it is of any convenience I could read out the

10 remaining six ERNs of the associated documents. (Redacted)

11 (Redacted)

12 PRESIDING JUDGE FREMR: [10:24:00] I think it is clear.

13 Thank you.

14 So I will continue, in light of the Witness P-31's recent declaration the Chamber

15 admits, under Rule 68(3) of the Rules the following materials, and now I refer to the

16 relevant ERN numbers and specific pages as are specified in annex A to file 1615. So

17 first, the transcripts or relevant passages thereof at annexes 2 to 13 of the request, then

18 annexes 15 to 19 of the request and annexes 21 and 22 of the request.

19 This concludes the Chamber's ruling on this matter and we can now go back into

20 open session, unless Ms Samson would like to continue in private.

21 MS SAMSON: [10:24:52] I request to continue in private session, your Honour.

22 PRESIDING JUDGE FREMR: [10:24:57] All right.

23 So we remain in private session and you may proceed.

24 MS SAMSON: [10:25:00] Thank you.

25 Q. [10:25:01] Sir, I have approximately an hour and a half or so left to ask you some

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- 1 additional questions and I will be, at times, seeking to clarify or get more information
- 2 about information you gave (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 And, sir, you can listen to the interpretation of the question.
- 14 (Redacted)
- 15 (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)

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1 (Redacted)

2 (Redacted): And what did Bosco or Kisembo or the other UPC officials say during
3 (Redacted) if anything?

4 (Redacted): The message was expressed about the demobilisation of children, about
5 the presence of children in these camps, and the reaction was to liberate the children
6 but they couldn't make a decision without speaking to the president of their
7 movement." (Redacted)

8 (Redacted) Do you

9 have any specific recollection whether Mr Ntaganda spoke during (Redacted)

10 (Redacted)?

11 A. [10:29:04] Yes, Ntaganda spoke.

12 Q. [10:29:08] And I would like, if you can --

13 PRESIDING JUDGE FREMR: [10:29:11] Mr Bourgon.

14 MR BOURGON: [10:29:13] Thank you, Mr President.

15 I mean, Mr President, we are under the -- pursuant to Rule 68(3). This specific
16 question was asked and answered in the testimony, so I don't know why we want to
17 come back to exact same question. I refer to the transcript and this is -- was on
18 page 2054-4191 and the question is:

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 PRESIDING JUDGE FREMR: [10:30:35] Mr Bourgon, are you fine with the
8 explanation?

9 MR BOURGON: [10:30:37] Up to the Chamber, Mr President.

10 PRESIDING JUDGE FREMR: [10:30:39] Yes, please proceed, Ms Samson.

11 MS SAMSON: [10:30:41] Thank you.

12 Q. [10:30:44] Now, Mr Witness, you had indicated that indeed you said

13 Mr Ntaganda spoke. And do you remember what it was that he said in particular
14 (Redacted)

15 A. [10:31:06] Yes. His answer was he going to deal with it, but his children are
16 orphans, and that's why the UPC was training them and the enlistment was
17 voluntary.

18 Q. [10:31:25] And did he say anything in particular to the request for
19 demobilisation? Whether or not he would commit to demobilising?

20 A. [10:31:44] That's the answer I just gave a moment ago. He said he would deal
21 with it. But the children were orphans and that's why the UPC was taking charge of
22 them. But enlistment is voluntary.

23 Q. [10:32:10] And did he in fact take care of it, to your knowledge?

24 A. [10:32:23] (Redacted), the UPC never demobilised

25 children, never demobilised children. In fact, quite the contrary, they continued to

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1 enlist children.

2 Q. [10:32:36] (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 And my question on that answer, sir, is did you get to know which UPC commanders
14 were involved in re-enrolling demobilised children?

15 A. [10:34:30] Person responsible for military strategy, chief of general staff, was
16 Bosco Ntaganda. He was responsible for military strategy.

17 Q. [10:34:48] And it may be clear to you, but I would like it to be clear for the
18 record, who was involved, to your knowledge, in the re-enrolment from the UPC, of
19 children into the UPC?

20 A. [10:35:09] What I would say is the following: Bosco Ntaganda is the person
21 who was the chief of general staff responsible for military strategy of the UPC. He
22 was the person who would *re-enlist the children into the Force patriotique pour la
23 libération du Congo within the UPC movement. The armed wing of the UPC.

24 Q. [10:35:38] And how did you get to know about this?

25 A. [10:35:45] Because each time that the children came out of the armed group, they

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1 would *come to our place and mention no other name but that of Bosco Ntaganda.
2 That's a name that came up a lot. He was responsible for all military strategy,
3 enlistment, the training of these children in the camps, in the training camps. He
4 was the person who was responsible for that.

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted), you were describing girls who were in armed groups and

19 you had mentioned one girl whom you testify had been a member of the UPC and

20 who (Redacted).

21 Did you have any information about whether or not the girl who (Redacted)

22 had been raped while in the UPC?

23 A. [10:42:13] Yes, madam. When the girl (Redacted) she even had a child.

24 A small boy. A small baby, a boy.

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 Q. [10:42:58] And to be clear, to which armed groups did those (Redacted) belong?

4 Had those (Redacted) girls belonged?

5 A. [10:43:11] The girls were all from the UPC.

6 Q. [10:43:19] Can you recall what the age range of those girls was, (Redacted)

7 (Redacted)?

8 A. [10:43:32] I gave the ages between 13 and 14 years old.

9 Q. [10:43:38] How many of those (Redacted) had been raped while in the UPC, to
10 your knowledge?

11 A. [10:43:53] (Redacted), most of these girls were

12 no longer virgins. (Redacted)

13 (Redacted) they stated that they had slept with them and they came back

14 with sexually transmitted diseases, and they came with children, as I mentioned, and

15 they were raped. These are girls, you can't keep them in an armed group without

16 sexual acts being committed. That's the experience, they were used in these armed

17 groups.

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 MS SAMSON: [10:46:47] Mr President, at this point I seek to use the document that
13 we had submissions on earlier today. And I am seeking permission to do that.

14 PRESIDING JUDGE FREMR: [10:47:00] Problem is that we wanted to deliberate it
15 during the break, so could you kindly postpone this after the break, after 11 o'clock.

16 MS SAMSON: [10:47:12] Of course.

17 PRESIDING JUDGE FREMR: [10:47:12] Thank you.

18 MS SAMSON: [10:47:33]

19 Q. Sir, (Redacted) I have

20 an additional question or two.

21 And for everybody's reference I am referring to the English transcript, tab 7 and the
22 French transcript is tab 1. I will read from page 101, line 20, to page 102, line 1 in the
23 English transcript. And again it will be interpreted for you, sir.
24 And the answer that you gave was the following, and I quote: "So they intervened,
25 changed the situation, and at one point in time Uganda overthrew Bemba again.

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1 Mbusa went to Beni. They overthrew Bemba. Mbusa returned with Tibasima with
2 a lot of child soldiers. It continued like this. Mbusa wasn't going to lead everything
3 because there were Hema economic agents who were against this, and they were
4 conniving with the Lendu, and this is why I said in April there was a clash when
5 a security chief was killed. Mbusa's security chief, Kiza was his name." End quote.

6 And, sir, you were referring to April, April time period. Do you recall who killed
7 Mbusa's security chief Kiza?

8 A. [10:49:45] Yes. In April 2002 it was Bosco Ntaganda who killed him. (Redacted)
9 (Redacted). Avenue Ituri. He was the one who killed Mbusa's security chief.

10 Q. [10:50:11] And how do you know that specifically? Were you an eyewitness or
11 did you hear about the killing at a later time?

12 A. [10:50:25] Madam, the situation in Ituri was very complex. It wasn't the first
13 person Bosco had killed, he was known in Ituri as the Terminator. Now, *that wasn't
14 the first person. He had already killed Wamba dia Wamba's on the grand boulevard; he
15 had trapped him. Kiza, the same thing. He was the person who did that. It was
16 Kasongo, in front of TV5, he killed him, TV5, and on that day it was the same day as
17 Mosengo. He had to plead the case, he was sent to Ituri to see the situation of the
18 Catholic Church, which was also involved in the conflict. And it was on the same day
19 *that Bosco... his office was at Bralima and he trapped him, he killed Mr. Kiza.

20 Everybody was there. So when calm came back people came out and they saw what the
21 situation was. (Redacted)

22 (Redacted). He wasn't the only person, *there were many people who he had killed like
23 that, even the chief of Andisoma (phon) collectivité, Dieudonné Bulamuzi. (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted).

3 Q. [10:52:35] And now, coming back to Kiza, Mbusa's security chief whom you say
4 that Bosco Ntaganda killed, you have also referenced other killings. But in the case
5 of Kiza, are you saying that Mr Ntaganda personally killed Kiza or ordered his killing,
6 or could you clarify what you mean when you say he killed him?

7 A. [10:53:15] When somebody plans with his team and gives an order to kill
8 somebody, that means he has killed them.

9 Q. [10:53:25] So in the case of Kiza is your evidence that Mr Ntaganda planned and
10 ordered the killing? Is that what I am understanding. I just want to be clear.

11 A. [10:53:48] Should I answer? Yes, that's what I just said, he planned and
12 ordered and participated, he killed him.

13 Q. [10:53:55] And now that that has been clarified I would like to know how you
14 know that Mr Ntaganda ordered the killing of Mr Kiza?

15 A. [10:54:12] Firstly, he was on Thomas Lubanga's side in the conflict. *Kiza was
16 on Mbusa Nyamwisi's side. So you couldn't go over the limit, so the town was cut
17 into two halves, you couldn't cross the limit, but they crossed over that limit to go to
18 the other side.

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 MS SAMSON: [10:55:40]

4 Q. Now, sir, we have another five minutes or so before the first break this morning
5 and I am going to ask you a question that I think should take about that amount of
6 time.

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted), they showed off

11 mass graves which the MONUC did not know about. These children showed us

12 these mass graves. They told us in such and such a place there are mass graves.

13 People have been buried there. People were arrested and were taken to such and

14 such a place and killed and dumped there. (Redacted)

15 (Redacted)

16 (Redacted)

17 And my follow-up questions from that have to do with who, who was killed, to your
18 knowledge, and placed in the these mass graves, and by whom were they killed?

19 A. [10:58:08] Thank you, madam, for the question. The situation in Ituri with the

20 control of the UPC when that started, that started 6 or 7 August 2002. Now, on 6 or

21 7 August 2002 there was a planned massacre from Mudzipela, Bigo, and that crossed

22 through and lots of people, the 9th, were killed in the residence of, Governor

23 Lompondo's residence. Old people, women, children, people who had taken refuge

24 there, and that is where the people who were killed, they were buried in a mass grave

25 there at the residence of the former Governor Lompondo. And next to the hospital,

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1 the general hospital, the massacre which happened in Mudzipela, in Bigo, people
2 were buried not far from the general hospital. *At the Yambi Yaya quartier, opposite
3 the field commonly known as EPO and the current Lumumba primary school, there
4 was the residence of some chiefs or leaders of the UPC there and that is where the
5 children were. Behind it, was a hole there where people were thrown into and we
6 reported this to MONUC and MONUC tried to check the situation.

7 Q. [10:59:53] Now just for the transcript, you mentioned that EPO is in the
8 Lumumba neighbourhood and you mentioned a quartier. Can you please --

9 A. [11:00:04] Quartier Lumumba.

10 Q. [11:00:10] Thank you. Now, did you have information about who was killed
11 and buried in these locations and by whom they were killed?

12 A. [11:00:24] Well UPC had control, it controlled Bunia from 9 August with the prior
13 actions which happened on 6 or 7 August. Now, from 9 August 2002 until 6 March 2003
14 the UPC had control and that is where they had all that. And when the UPC left it came
15 back on 9 May to occupy the same places, occupy Bunia. There were massacres, there
16 were killings, there were abductions. And lots of people were being sought.

17 Q. [11:01:18] (Redacted)

18 (Redacted). The ethnicity, for
19 instance, of those buried or anything about the circumstances, but particularly I
20 would like to know ethnicity, if they told you.

21 A. [11:01:42] Well, it was more the Lendu, the Bira, and those who were not
22 originally from Ituri. That was the majority of the people who were killed and those
23 who were abducted like that and their bodies disappeared. All of those who
24 couldn't go along with the ideas of the UPC or the ideology of the UPC.

25 MS SAMSON: [11:02:15] Thank you, sir.

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1 Mr President, given the time I suppose it's the moment for the break.

2 PRESIDING JUDGE FREMR: [11:02:22] Yes, it is correct.

3 Now let's move into open session.

4 (Open session at 11.02 a.m.)

5 THE COURT OFFICER: [11:02:41] We are in open session, Mr President.

6 PRESIDING JUDGE FREMR: [11:02:44] Thank you, court officer.

7 First, update on timing. Ms Samson, so far you have used 48 minutes so you still
8 have one hour 12 minutes at your disposal. And we will break now and we will
9 reconvene half past 11.

10 THE COURT USHER: [11:03:10] All rise.

11 (Recess taken at 11.03 a.m.)

12 (Upon resuming in session at 11.31 a.m.)

13 THE COURT USHER: [11:31:33] All rise.

14 Please be seated.

15 PRESIDING JUDGE FREMR: [11:32:03] Before Prosecution will continue with
16 examination of our witness, I will deliver Chamber's oral ruling concerning the use of
17 document DRC-OTP-0138-0112, which is item 41 in the Prosecution's list.

18 The Chamber notes that the document appears to have been in the possession of the
19 Prosecution since 2005 but was only disclosed to the Defence on 11 November 2016,
20 and the Chamber is not convinced by the Prosecution's justification for delayed
21 disclosure.

22 The Chamber also notes the content of the information contained in the document,
23 including a list of names, and therefore finds that the Defence may have been
24 prejudiced in its preparation by this late disclosure.

25 Accordingly, the Defence objection is sustained and the Prosecution will not be

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1 allowed to use this item.

2 Now, Ms Samson, please proceed.

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 PRESIDING JUDGE FREMR: [11:33:50] Sorry, we are in open session.

8 MS SAMSON: [11:33:58] Yes, Mr President, we will require a redaction.

9 PRESIDING JUDGE FREMR: [11:34:01] I believe we have to move into --

10 MS SAMSON: [11:34:04] I can continue in open session for these questions if I could
11 have a redaction to the reference I made earlier, please.

12 PRESIDING JUDGE FREMR: [11:34:10] Okay. So maybe the best way how to
13 continue, let's redact the previous question and then Ms Samson, aware of the risk,
14 will safely continue hopefully in open session.

15 MS SAMSON: [11:34:26] Yes, thank you.

16 Q. [11:34:29] And so, sir, you had mentioned that there had been killings at the
17 residence of Governor Lompondo, you mentioned a date of 9 August 2002, and you
18 said that's where people were killed and they were buried in a mass grave there at the
19 residence.

20 I would like you, please, to provide some more detail as to who was taking refuge at
21 Governor Lompondo's residence and who was involved in the attack on that
22 residence, please.

23 A. [11:35:13] All right. Thank you very much, madam. I can explain that from
24 the 6th the UPC sought to take control of the city with the support of the Ugandan
25 army. *In that move from Mandro, the UPC elements who came out started on the

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1 6th and the 7th with what we refer to as the Mudzipela massacres, which was an
2 attack against the non-native people in Mudzipela, the Lendu in Sayo neighbourhood,
3 in Bigo near in the hospital. And that's how many people ended up fleeing from
4 their residences to seek refuge at Governor Lompondo's residence on the other side.
5 That is in the sous-région Yambi-Yaya neighbourhood, that's where they went to seek
6 refuge, believing that the situation would not spread to that part of town.
7 Then on the 6th and 7th and 8th it continued until the UPC captured the city on the
8 9th, with the help of the Ugandan army, the UPDF, and that is where the massacre of
9 all those people took place, that is the non-natives, the Lendus, who had gone to seek
10 refuge in that area. They were killed.

11 Q. [11:36:47] Now, you mentioned the neighbourhood in which Governor
12 Lompondo's residence was located. Could you repeat the name of the
13 neighbourhood, please?

14 A. [11:37:01] Lumumba neighbourhood, which is generally referred to as
15 sous-région because the district offices are located there. It's called sous-région
16 neighbourhood.

17 Q. [11:37:17] And do you have information as to who attacked Governor
18 Molondo's residence and attacked the people who had sought refuge there?

19 A. [11:37:32] The clashes had lasted two days, two, three days, before reaching that
20 residence. Those who carried out the attacks were the UPC, with the support of the
21 Ugandan army. *They were UPC troops and -- since it was a Hema armed group,
22 who were committed and with the support of the UPDF. They are the ones who
23 came to the residence and carried out the massacre. Even in the neighbourhood in
24 some surrounding houses where there were non-natives, all those people also were
25 killed over those three days.

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1 MS SAMSON: [11:38:23] And, Mr President, may we move into private session for
2 my next question. Thank you.

3 PRESIDING JUDGE FREMR: [11:38:27] Certainly.

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

5 (Private session at 11.38 a.m.)

6 THE COURT OFFICER: [11:38:40] We are in private session, Mr President.

7 PRESIDING JUDGE FREMR: [11:38:42] Thank you, court officer.

8 Ms Samson, please proceed.

9 MS SAMSON: [11:38:45]

10 Q. [11:38:46] Where were you, sir, between 6 and 9 August 2002? In what city
11 were you based, or town?

12 A. [11:38:57] I was in Bunia. (Redacted)

13 (Redacted)

14 Q. [11:39:20] And in relation to the attack on the Lompondo residence, were you
15 aware of how those people were killed, with which weapons, in general terms?

16 A. [11:39:35] I don't know the weapons, but some people were struck by bullets
17 while others were cut with machetes.

18 Q. [11:40:01] Now, sir, I'm going to ask you questions about another subject.

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

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11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 Q. [11:42:36] And who to your knowledge was perpetrating rape against girls at
16 that time?

17 A. Well, the city, as of August, from 9 August up to 6 March, was controlled by the
18 UPC, up until 6 March 2003. Thereafter, the town -- since the UPDF had chased out
19 the UPC because of *some falling out following UPC's entering into agreements with
20 RCD-Goma and Rwanda, there was a split and that is how *UPDF drove them out of
21 the city on 6 March. They went to reconstitute and return in the month of May.
22 During that entire period, the town of Bunia was under UPC control and so the rapes
23 that took place in that period were by the UPC, and there was reference to *operation
24 Nyau, otherwise known as operation Chat [Cat], which entailed capturing women
25 and young girls just like that.

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1 Q. [11:44:10] Now, what is operation Nyau? Can you explain that a bit more for
2 us?

3 A. [11:44:28] That operation, well, involved UPC combatants targeting young girls,
4 capturing them and taking them for their wives or concubines as they took them into
5 their groups(Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 There were Lendu girls who were raped and some killed, and the intention was to
10 sabotage the various ethnic groups and to humiliate the ethnic groups that were
11 opposite to them.

12 Q. [11:45:34] Can you recall the date or dates of operation Nyau?

13 A. Well, specific dates, I don't have them, but I know that it was from the month of
14 September that it accelerated in Bunia, that things got worse in Bunia, and then in
15 May.

16 Q. [11:46:08] And when you say September and May, which years are you referring to?

17 A. Well, September 2002, at which time many people had sought refuge in the
18 MONUC premises, when they recaptured the town in May 2003 as well.

19 Q. [11:46:40] What does the word "Nyau" mean?

20 A. [11:46:50] *Nyau is a Swahili or Lingala, mostly Lingala word which stands for
21 "cat" [Chat in French].

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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7 Q. [11:48:14] (Redacted)

8 (Redacted) ever bring the issue of rapes committed by UPC troops to the attention of
9 the UPC hierarchy?

10 A. (Redacted)

11 (Redacted). And that's

12 how the MONUC human rights unit became aware of the entire situation. And it is
13 the MONUC human rights units that would have had to contact *the staff of the UPC
14 and the UPC officials. (Redacted)

15 (Redacted)

16 Q. [11:49:15] (Redacted)

17 (Redacted)

18 A. [11:49:36] (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 Q. [11:50:18] (Redacted)

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9 (Redacted)

10 Q. [11:51:25] (Redacted)

11 (Redacted). Did you hear about cases of punishment or sanctioning by UPC

12 hierarchy for commanders and soldiers who raped either the children within their

13 group or civilian women and girls?

14 A. [11:51:57] Madam, well, those were simply words that they spoke, but they never

15 sanctioned any of the rapists because they themselves were also rapists. When those

16 young girls were picked up, they became their wives. So the idea was that having a

17 young virgin would make someone invincible, so there were never any sanctions. No

18 one was ever sanctioned until the UPC left. There was never any sanction.

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 Q. [11:53:06] Were there any soldiers at (Redacted) the day you were

24 there?

25 A. [11:53:17] *Yes, there were soldiers there. Soldiers on guard. There were even

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1 children there, children of less than 15 who were on guard.

2 Q. [11:53:28] And can you tell us how you conclude that the children who were on
3 guard were less than 15?

4 A. [11:53:46] Well, I believe that the convention on children's rights defines the age
5 of a child and determines who is a child, namely, anyone who is less than 18 years old.

6 *But even our legislation or the constitution of the DRC at Article 41 defines a minor
7 as someone who is less than 18 years old. The children who were on guard were less
8 than 18 years old, but, you know, we can understand people being less than 18, but
9 the youngest of them was not even up to 16 or 15 years old. (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 And I would like to show you a document, sir, which is at DRC-OTP-0113-0070.

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1 Now, sir, the document is on your screen. It's a bit -- maybe a bit difficult to read,
2 but do let me know and if you find it too difficult on your screen, I have a hard copy I
3 could also give you.

4 The item is at tab 22 in the Prosecution's list.

5 Sir, have you finished with the first page?

6 A. Oui.

7 MS SAMSON: Court officer, could we please move to page 2.

8 THE WITNESS: [12:00:55] (Interpretation) Yes.

9 MS SAMSON:

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 Q. [12:02:04] And in his letter where he speaks about a demobilisation programme
21 for child soldiers aged 10 to 15 and 16, is that consistent with the age of the children
22 that you yourself saw within of the ranks of the UPC?

23 A. [12:02:35] That does correspond with it, because there were even children who
24 were nine years old, and then he took ten years old, but there were children who were
25 nine years old.

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9 Q. [12:03:56] And since this letter is referring to demobilisation by the UPC of
10 children aged 10 to 15 or 16 in February 2003, to your knowledge, (Redacted)
11 (Redacted), did such demobilisation take place at or after 12
12 February 2003?

13 A. [12:04:26] As I said from the beginning, I never saw demobilisation while I was
14 in Bunia. I didn't see demobilisation, which was programmed by the UPC. The
15 UPC kept its children until the -- the UPC kept the children until the end. The
16 children were left to their sorry fate. I didn't see demobilisation. The UPC -- that
17 the UPC organised, that is.

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 Q. [12:05:32] Sir, do you know a person named, or did you know a person named
2 Félix Ntumba?

3 A. [12:05:55] Yes, I know Félix Ntumba, the co-ordinator of OCHA. The
4 organisation for the co-ordination of humanitarian organisations in Bunia.

5 Q. [12:06:12] And do you know in which years he was in Bunia?

6 A. [12:06:28] He was present in Bunia until 23 September 2002. 23 September 2002,
7 when he was declared persona non grata by the UPC and he was driven out of Bunia.

8 Q. [12:06:48] Do you know any of the reasons why he was driven out of Bunia or
9 declared persona non grata by the UPC?

10 A. [12:07:02] (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted). He didn't want to serve them, and that's why he was driven out. He
16 became a persona non grata. Not just him, there were other people as well. *You
17 could take the case of Père Declerc (*phon*), the white priest -- who was right behind us,
18 he was also driven out as well, the white father.

19 Q. [12:08:17] I will ask you about the priest that you mentioned, but first, how
20 precisely was it that Mr Ntumba was perceived as countering the UPC in some way
21 by assisting in humanitarian affairs or providing humanitarian assistance?

22 A. Because he didn't go along with the UPC philosophy. (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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7 (Redacted)

8 (Redacted)

9 Q. [12:09:53] Which people or persons was Mr Ntumba or other humanitarian
10 organisations trying to help that ran counter to UPC ideology, as you've described?

11 A. Well, the people who were able to receive humanitarian assistance were people
12 who were in a very difficult situation. What do I mean by that? As the UPC were
13 threatening people, they went to hide at the theological institute at Bunia, lots of
14 people went to hide in certain places. For example the Lendu, the non-originaire,
15 certain Hema who didn't go along with that idea. The carnage that was being
16 carried out. So they became vulnerable persons. We called them, technically,
17 clandestines, who had to be helped, either in Nyakasanza quartier or Sayo, Mudzipela,
18 people who couldn't leave to go and buy things from the market, these are the people
19 who we had to help. And also you had people who were in certain sites such as
20 children, children had to be helped. It was these people who it was not possible to
21 help, that's why Félix Ntumba said that they were vulnerable. Sorry, that's how
22 Félix Ntumba became a persona non grata.

23 Q. [12:11:29] And you referred as well to another individual, a priest, I believe you
24 said in French "père blanc" by the name of Declerc. What was the circumstance in
25 which he found himself?

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1 A. [12:11:52] Père Declerc was a missionary, he was an African missionary with his
2 congregation. There were problems where people or certain people became
3 homeless. Houses were set on fire in the Kindia neighbourhood. People fled.
4 They didn't find refuge elsewhere and they had to go and find the missionaries, and
5 that was the role of churches at the time. Now, he sheltered these people and the
6 fact that he -- when the UPC found out that he was providing shelter for these people,
7 that was when they gave him 48 hours to leave Ituri. And they seriously threatened
8 him until he left.

9 Q. [12:12:42] And do you know what the ethnicity was of the people that Father
10 Declerc was sheltering?

11 A. Well, the people who he put up were mostly Lendu, Lendus, women and
12 children. These people who had nowhere else to go to take refuge. And they were
13 the ones who were sheltered there and they said that he was pro-Lendu and that he
14 was *against the Hema and that's why they drove him away.

15 Q. [12:13:32] Thank you very much for answering my questions.

16 MS SAMSON: [12:13:36] Mr President, I'm done.

17 PRESIDING JUDGE FREMR: [12:13:42] Thank you for being so focussed and so
18 efficient.

19 Now it's time for Ms Pellet.

20 Ms Pellet, you expressed your intention to question the witness on several areas so, as
21 usual, I'm asking you whether you have any update for us?

22 MS PELLET: [12:14:11] (Interpretation) Yes, your Honour. Thank you. Taking
23 into account the document admitted this morning under Rule 68(3), there were
24 questions from the Prosecution but I just have three questions that I'd like to put to
25 the witness going into the points B and C of my application.

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1 PRESIDING JUDGE FREMR: [12:14:34] Defence, any objection?

2 MS MARTINEAU: Yes, Mr President. My name is Isabelle Martineau, I work as a
3 consultant for the Defence of Mr Ntaganda and I will be addressing the question of
4 the legal representative. To do so, since the witness speaks French and I will be
5 addressing you in French, I would request that the witness be escorted out of the
6 courtroom, please.

7 PRESIDING JUDGE FREMR: [12:15:01] All right, then.

8 So, court usher, please assist.

9 Mr Witness, we are sorry but we will have to discuss this issue in your absence, so
10 this is why I ask you to leave, just for a while, the courtroom.

11 (The witness stands down)

12 PRESIDING JUDGE FREMR: [12:15:32] Now Ms Martineau, you may proceed.

13 MS MARTINEAU: Thank you, Mr President. (Interpretation) Firstly, these two
14 subjects which the representative of victims wants to take up, (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

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3 And also for the reasons expressed, the Defence objects to the questions of the victims.

4 That concludes my objections.

5 I hope I didn't speak to too fast.

6 PRESIDING JUDGE FREMR: [12:19:58] (Interpretation) Ms Pellet, please.

7 MS PELLET: (Interpretation) Thank you.

8 I regret once again that my colleagues from the Defence don't follow the directions

9 when it comes to the scope of objections prior to the questions being put, but I will

10 ask briefly -- answer briefly.

11 The decision of the Chamber asks us to give the fields or areas in which the witnesses

12 can be questioned about. I don't know how my colleague can guess what specific

13 questions I will have. Secondly, where it concerns the questions that the Legal

14 Representatives can put, the only limitation concerns the personal interests of the

15 clients that I represent, and I can assure the Chamber that the three questions that I

16 will put to the witness directly concerns the interests of my client.

17 Thank you, Your Honour.

18 PRESIDING JUDGE FREMR: [12:20:56] Yes, the objection is overruled. Even if I

19 share some arguments presented by Ms Martineau, but at the same time, it's up to

20 you, Ms Pellet, to find those questions which still will be in the limits presented by

21 Ms Martineau and that will not be repetitive, and I can confirm that you were given

22 such a task several times in the task, that you always were able really to put questions

23 that met such conditions. So you are granted the right to put those questions.

24 Now, court usher, please bring Mr Witness back.

25 (The witness enters the courtroom)

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1 PRESIDING JUDGE FREMR: [12:22:16] Mr Witness, welcome back. Sorry for this
2 inconvenience, and now you will be examined by Ms Pellet, who represents former
3 child soldiers in this case.

4 Ms Pellet, you have the floor.

5 MS PELLET: [12:22:33] (Interpretation) Thank you, your Honour.

6 QUESTIONED BY MS PELLET: [12:22:34] (Interpretation)

7 Q. [12:22:38] Good morning, Witness.

8 A. [12:22:40] Good morning.

9 Q. [12:22:41] We haven't had the opportunity to meet prior to the questions that I'm
10 going to put. Brief introduction: I am the legal representative of former child
11 soldiers permitted to participate in the proceedings. (Redacted)

12 (Redacted)

13 MS PELLET: (Interpretation) And in order to do so, your Honour, I will stay in
14 private session.

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

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24 MS PELLET: [12:27:11] (Interpretation) Thank you, Witness. Your Honour, I have
25 no further questions.

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1 PRESIDING JUDGE FREMR: [12:27:18] Thank you, Ms Pellet.

2 Now we can -- commence Defence cross-examination. Who will be cross-examining
3 the witness?

4 Mr Bourgon, all right. Mr Bourgon, do you want to start in open or in -- or should
5 we remain in private session?

6 MR BOURGON: [12:27:41] I believe, Mr President, that we need to remain in private
7 session.

8 PRESIDING JUDGE FREMR: [12:27:47] Understandable. Take your time to
9 prepare yourself.

10 QUESTIONED BY MR BOURGON: [12:28:28] (Interpretation)

11 Q. [12:28:29] Good afternoon, Witness.

12 A. [12:28:31] Good afternoon, counsel.

13 Q. [12:28:33] We had the opportunity to meet, I believe, last week and you know
14 me, you know my colleagues, and we represent Bosco Ntaganda in this case as a
15 team.

16 Let us start by establishing, Mr Witness, who you are. (Redacted)

17 (Redacted)

18 (Redacted)

19 A. [12:29:21] Yes.

20 Q. [12:29:22] (Redacted)

21 A. [12:29:27] (Redacted)

22 (Redacted).

23 Q. [12:29:37] If I were to compare -- (Speaks English) I don't know if I'm too tired,
24 but I'm hearing voices.

25 PRESIDING JUDGE FREMR: [12:29:52] What voices?

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1 MR BOURGON: [12:30:03] I apologise, I'll continue. (Interpretation) Well,

2 Mr President, I heard a voice in my microphone.

3 Q. [12:30:14] But let me point out to you, Mr Witness, that we are speaking the
4 same language and for that reason it is important for both of us to observe a few
5 seconds' pause before answering the question.

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 Q. [12:32:01] (Redacted), it is important (Redacted)

19 (Redacted) to speak the truth. You'll agree with me that this is a very important
20 matter, isn't it?

21 A. Yes.

22 Q. [12:32:17] (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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6 (Redacted)

7 (Redacted)

8 PRESIDING JUDGE FREMR: [12:33:16] Mr Witness, I have to reiterate what

9 Mr Bourgon said. You both speak in French. Your questions and answers are

10 interpreted to English so we really need you not to respond immediately. Please

11 have it in mind, wait for three seconds and only then, please, give your answer.

12 Thank you.

13 MS BOURGON: [12:33:53] (Interpretation) Thank you, Mr President. Mr President,

14 that is the issue I'll be dealing with the witness, that is the neutrality of his testimony

15 and the truth of his testimony.

16 Q. [12:34:08] Now, Mr Witness, let us start by laying the foundation, and I'm

17 referring to your (Redacted) statement to the Prosecutor. According to documents

18 available to me, you met the Prosecutor (Redacted) in relation to that statement in

19 (Redacted); is that correct?

20 Is that correct?

21 A. What did you say? Met who?

22 Q. [12:34:55] What I'm telling you is that I have in my hands here a copy of the

23 statement that you made or you gave, or maybe if I use the specific name that would

24 help: (Redacted), which states on the first page that you

25 met with representatives of the OTP (Redacted). Do you remember that?

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1 A. [12:35:28] Yes, I do remember, (Redacted).

2 Q. [12:35:31] In order to avoid any confusion whatsoever, during your preparation
3 for today's testimony, you re-read this statement; is that correct?

4 It's important for you to answer so that it can be taken down on the record.

5 A. [12:35:51] Yes.

6 Q. [12:35:53] In that statement, this is what is indicated --

7 PRESIDING JUDGE FREMR: [12:36:00] Please, Mr Bourgon, could you specify the
8 ERN Number.

9 MR BOURGON: [12:36:03] Indeed, Mr President, I apologise. (Interpretation) The
10 ERN number for the document which I'm referring to is DRC-OTP-0162-0002.

11 PRESIDING JUDGE FREMR: [12:36:20] Thank you.

12 MR BOURGON: [12:36:30] (Interpretation)

13 Q. [12:36:30] Now, Mr Witness, maybe you don't have that statement before you.
14 Normally, you're not supposed to have it, but let me avail myself of this opportunity
15 to tell you that it is preferable -- rather, not that it's preferable, you're not supposed to
16 use the binder in front of you during your testimony.

17 MS BOURGON: I believe the binder was left for the witness, Mr President, and I
18 don't think it should remain with the witness during my cross-examination.

19 Q. (Interpretation) We shall now display the first page of your statement on the
20 screen, and I would like to call up the document which I just mentioned,
21 DRC-OTP-0162-0002.

22 Now, Mr Witness, I don't know whether you can see that document, the first page of
23 your statement, on the screen now.

24 Maybe I should ask the court usher to help the witness to determine whether he is
25 able to see the document or not.

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1 Mr Witness, can you see that document on your screen?

2 A. [12:37:45] Yes, I can see the document.

3 Q. [12:37:51] Is it then possible now to zoom in on the middle part of the document,
4 to see the segment that addresses the dates of the interview?

5 Mr Witness, you can see some dates on your screen, and according to this information,
6 those are the dates on which you met the representatives of the OTP, namely,
7 (Redacted). Can you confirm that?

8 A. [12:38:46] Yes.

9 Q. [12:38:49] Then there was an interruption of about nine months or thereabouts
10 because your next meeting with the representatives of the OTP was from (Redacted)
11 (Redacted); is that correct?

12 A. [12:39:12] That is correct.

13 Q. [12:39:18] First question to you, Mr Witness: After you met the representatives
14 of the OTP in (Redacted), if I understand what happened, you did not sign the
15 statement at that time; is that correct?

16 A. [12:39:43] Yes.

17 Q. [12:39:44] At the end of those (Redacted) days of interviews, were you shown a
18 record or report or notes of what you had said during that interview, notes that had
19 been taken down by the OTP?

20 A. [12:40:04] Please, can you remember repeat your question? I did not quite
21 understand it.

22 Q. [12:40:08] Let me repeat. You met representatives of the OTP over a period of
23 (Redacted). At the end of those (Redacted) days, did they show you a report of what
24 you had discussed with them, what you had discussed with the representatives of the
25 OTP?

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1 A. [12:40:31] Up to now I have not understood your question. What do you mean
2 by "report"? I would like you to be clear. What do you mean by "report"?

3 Q. [12:40:42] Yes, indeed, that is very important. You and I have agreed that you
4 met with the representatives of the OTP over those (Redacted); is that
5 correct?

6 A. Yes. (Redacted). I signed the
7 statement.

8 Q. So my question is as follows: After the (Redacted) meetings, you did not sign
9 any statement; is that correct?

10 A. [12:41:23] The first bits of information that were gathered, they showed me that
11 information. After the collection of that information, I then signed the statement.

12 Q. [12:41:42] That is exactly what I'm trying to establish with you. You had (Redacted)
13 days of meetings and the dates are here, (Redacted). After those (Redacted) days, at
14 the end of those (Redacted) days, did you sign any document whatsoever?

15 A. [12:42:13] I think at each meeting, after each statement, it was necessary for that
16 meeting to be certified.

17 Q. [12:42:23] My question is very simple: Do you remember having signed any
18 document at the end of each of those meetings?

19 A. But that's the document you have before you.

20 Q. [12:42:40] Mr Witness, please understand me clearly because we have (Redacted)
21 meetings on this document and I know that you signed at the end of the very last.
22 This is the record of the interviews that we have here in hand. My question to you is
23 whether you signed any other document.

24 A. [12:43:01] I have said that the document before us is the document which I
25 signed.

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1 Q. [12:43:09] You are a man who can understand my question. You have a
2 meeting on the first day, that is (Redacted). You talked to the Prosecutor from
3 (Redacted). Did you sign any document (Redacted)?

4 PRESIDING JUDGE FREMR: [12:43:36] Hold on, Mr Witness, Ms Samson.

5 MS SAMSON: [12:43:38] Your Honour, I think we've been here before and it seems
6 clear that the witness is saying that the end of the interview which took place on the
7 last day, he signed the document, not before.

8 PRESIDING JUDGE FREMR: [12:43:50] Mr Bourgon, it was also my understanding,
9 so I don't want to push you but --

10 MR BOURGON: [12:43:55] Well, Mr President, I wish to explore, see if there were
11 any other documents that were signed --

12 PRESIDING JUDGE FREMR: So maybe -- (overlapping speakers)

13 MS BOURGON: -- and I'm going to the first step, the first day, whether he signed
14 something on the first day.

15 PRESIDING JUDGE FREMR: [12:44:05] All right. Please proceed.

16 MS BOURGON: [12:44:10] (Interpretation)

17 Q. [12:44:11] Mr Witness, did you sign any document on the first day, at the end of
18 the first day, on (Redacted)?

19 A. [12:44:23] This is what I have said: At the end of the meetings, when all the
20 data was collected, I signed the document which you now have before you, the
21 document we have before us.

22 Q. [12:44:37] So I then can take it that you did not sign any other document?

23 A. That is what you say.

24 Q. [12:44:42] It is not for me to say, it is for you to say.

25 A. [12:44:45] I say the document is here.

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1 Q. [12:44:47] I asked whether you signed any other document. You are not
2 answering my question.

3 A. [12:44:53] What do you mean by that? Data was collected. Whenever we met,
4 we took down information and answers and then at the end I had to sign the
5 document, which is what I signed.

6 PRESIDING JUDGE FREMR: [12:45:14] Mr Bourgon, really, what does it mean, "any
7 other document"? Mr Witness clearly answered as concerns those protocols, so what
8 do you have in mind, "any other document?" If you have something, please be
9 concrete; otherwise move on.

10 MR BOURGON: [12:45:28] Mr President, I am trying to be very concrete with the
11 witness. I want to know whether at the end of each day he met with the Prosecution,
12 whether he is provided with any information as to what he told that day and whether
13 he signed on that day any type of account of what was discussed.

14 PRESIDING JUDGE FREMR: [12:45:44] So every day?

15 MR BOURGON: [12:45:46] Every day, that's all I want to establish with the witness.
16 And the witness is answering in two ways: He's answering that he signed the final
17 document. We know that.

18 PRESIDING JUDGE FREMR: [12:45:54] But Mr Witness, now maybe it was still
19 some misunderstanding, so Mr Bourgon really asked you whether you had signed
20 every day after each day of this examination by Prosecution, whether you signed
21 every day such a protocol.

22 THE WITNESS: [12:46:17] (Interpretation) I do not understand. Mr Bourgon
23 should not intimidate me. At the end of our meetings with the Prosecutor, I signed
24 the document which is here. Please, don't intimidate me and please don't play
25 around with your questions.

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1 PRESIDING JUDGE FREMR: [12:46:34] Mr Witness, I think now you are not fair to
2 Mr Bourgon. He is making his case. Even if some questions are not pleasant to you,
3 you are obliged to -- you are expected to answer them in the same way like you
4 responded to questions put to you by Ms Samson.

5 Now the question was clear. The question was - it was nothing about
6 intimidation - whether you signed every day from those dates mentioned on the
7 paper you have just on the screen, whether you had signed every day your protocol,
8 if you remember, or whether you just signed at the last, on the last day. So I think
9 that the issue is clear. You can either say, "Okay, I signed every day," or "I signed
10 only the last day," or "I don't remember." There are three alternatives. Please
11 choose the right one, the one you remember and you are sure of.

12 THE WITNESS: [12:47:45] (Interpretation) What I have said is that the document I
13 signed is the document which is before the Court.

14 MS BOURGON: [12:47:53] (Interpretation)

15 Q. [12:47:55] Mr Witness, as we look at the dates on this document, we notice that
16 there was an interruption in the meeting between you and the OTP, an interruption of
17 (Redacted). My question is the following: Did the representatives of the OTP tell
18 you why they stopped meeting you in (Redacted) and why they resumed meeting
19 you in (Redacted)?

20 A. [12:48:55] You say there was an interruption with the OTP. Well, they have
21 their reasons, they have their concerns, and I also have mine. I could not force them
22 to interrupt or do anything whatsoever. They had their own tasks to accomplish.
23 That is a question that you should actually put to the OTP.

24 Q. [12:49:23] But did you ask them? Did you ask the Prosecution why they
25 stopped meeting with you without asking you to sign the statement?

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1 A. [12:49:33] No, it was not for me to ask them. At our last meeting they told me
2 that they would see me again.

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 MS BOURGON: [12:51:04] (Interpretation)

15 Q. [12:51:06] (Redacted)

16 (Redacted). So my question is in relation to the period between the

17 two interview sessions. Between those two sessions, how many times, as far as you
18 can remember, did you meet again with the OTP?

19 A. [12:51:35] In (Redacted). That's what is written down.

20 Q. [12:51:40] So am I to understand from your testimony that between (Redacted)
21 (Redacted), there was no other meeting?

22 A. [12:51:50] I don't remember.

23 Q. [12:51:52] If I were to put it to you that you met with the Prosecutor on
24 (Redacted), would that jog your memory?

25 A. [12:52:08] Please come again.

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1 Q. [12:52:16] I'm putting it to you that information available to me indicates that
2 you met with the representatives of the OTP again on (Redacted)

3 (Redacted). Do you

4 have any recollection of that meeting?

5 A. [12:52:41] (Redacted)

6 Q. [12:52:45] You have before you the dates. (Redacted) is the date, the last
7 date on the first page. But after (Redacted) I am putting it to you that you met
8 with them on (Redacted). Do you remember that meeting, yes or no?

9 A. [12:53:04] On (Redacted), I was in (Redacted).

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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25 MR BOURGON: [12:59:31] Mr President, I think we will stop here for the lunch

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1 break and we can resume later.

2 PRESIDING JUDGE FREMR: [12:59:34] Very well. Let's move into open session.

3 (Open session at 12.59 p.m.)

4 THE COURT OFFICER: [12:59:51] We are in open session, Mr President.

5 PRESIDING JUDGE FREMR: [12:59:54] Thank you, court officer. And before we

6 break, the Chamber would like to provide a short clarification for the record, or

7 correction of the record, and it's following today's realtime transcript on page 27, line

8 16 to 22, currently reads that the Chamber admits under Rule 68(3) of the Rules inter

9 alia annexes 19 to 22 of the Prosecution's request number 1615. In this regard the

10 Chamber would like to clarify, as set out in its preliminary ruling of 5 December,

11 which is transcript 171, that the document contained at annex 20, which is

12 DRC-OTP-0138-0106, has already been admitted into evidence and as such would not

13 be considered further. Accordingly, I would like to clarify that the documents

14 admitted under Rule 68(3) are the documents contained at annexes 2 to 13, 15 to 19

15 and 21 to 22 to the Prosecution's request.

16 It concludes our clarification.

17 Now we will take our regular lunch-break and we will reconvene at half past 2.

18 THE COURT USHER: [13:01:32] All rise.

19 (Recess taken at 1.01 p.m.)

20 (Upon resuming in open session at 2.35 p.m.)

21 THE COURT USHER: [14:35:00] All rise.

22 Please be seated.

23 PRESIDING JUDGE FREMR: [14:35:18] If there are no changes in appearances,

24 which I believe is the case, we can directly continue with cross-examination of our

25 witness.

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1 Mr Bourgon, you have the floor and do you want to proceed in private or in open
2 session?

3 MR BOURGON: [14:35:48] Private session, please, Mr President.

4 PRESIDING JUDGE FREMR: [14:35:52] All right.

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

6 (Private session at 2.36 p.m.)

7 THE COURT OFFICER: [14:36:01] We are in private session, Mr President.

8 PRESIDING JUDGE FREMR: [14:36:04] Thank you, court officer.

9 Mr Bourgon, please proceed.

10 MR BOURGON: [14:36:06] Thank you, Mr President.

11 Q. [14:36:12] (Interpretation) Good afternoon, Mr Witness.

12 A. [14:36:17] Thank you. Same to you.

13 Q. [14:36:21] We shall continue from where we stopped before the lunch break.

14 At that time we were talking about (Redacted). Information available to us
15 indicates that Marc Malidrale is the one who gave your name to the representatives of
16 the OTP as somebody to be contacted. And so I put it to you that you were aware
17 that (Redacted) was going to give your name to the OTP.

18 A. [14:37:07] Yes.

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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8 THE INTERPRETER: [14:59:51] Mr President, could counsel be advised to observe
9 a pause and a gap between the question and the answer.

10 PRESIDING JUDGE FREMR: [14:59:57] Mr Bourgon, message from the
11 interpreters, please observe pauses.

12 THE INTERPRETER: [15:00:16] Counsel would need to repeat his question,
13 Mr President.

14 PRESIDING JUDGE FREMR: [15:00:20] Sorry, Mr Bourgon, and we would like to
15 ask you to repeat your question.

16 MR BOURGON: [15:00:24] I will, Mr President.

17 Q. [15:00:29] (Interpretation) Witness, I will repeat my question because I was
18 speaking too fast and I didn't wait the three seconds that are required.

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

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Trial Hearing
WITNESS: DRC-OTP-P-0031

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15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 Q. [16:17:12] This morning when the Prosecution was putting questions to you,
20 you were asked the following:

21 "Do you recall specifically a possible conversation in which Mr Ntaganda spoke
22 (Redacted)?"

23 And your answer is on line 12 of page 26:

24 "Yes, Ntaganda spoke."

25 Can you confirm that testimony?

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- 1 A. [16:17:54] Yes, I can confirm.
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
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1 A. [16:21:18] That's not true because in May PUSIC and UPC came back together
2 to take Bunia. They came back together on 9 May to take Bunia and they took Bunia,
3 they occupied it, (Redacted)

4 (Redacted)

5 (Redacted)

6 Q. [16:21:53] On what foundation are you saying that they came back to Bunia on 9 May?

7 A. [16:21:59] 9 May, that's the date when the UPC came back to take Bunia again.

8 It was the date where there was the large battle where 140, 150,000 people fled pêle
9 mêle. They fled Bunia on that day.

10 Q. [16:22:22] I put it to you, Witness, that UPC did indeed liberate the town of
11 Bunia, but I would say that Kisembo went came back on 12 May with the FPLC to
12 Bunia. Does that refresh your memory?

13 A. [16:22:38] You can talk about 12 May, 12 May is the day well, 9 May is
14 when these things happened. *On the 12th the worst happened. Even vaccines
15 were destroyed at the Bunia general hospital and that was done by the elements -- by
16 soldiers of the UPC.

17 Q. [16:23:02] I put it to you, Witness, that the famous vaccinations that you are
18 talking about were destroyed not by the UPC but by the Lendu soldiers during the
19 conflict. Does that refresh your memory?

20 A. [16:23:16] It's not true, Counsel, because you're talking about another area, vaccinations.

21 (Redacted), *there was resistance on the Hema side. They didn't want to. (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 But the UPC arrived, entered and destroyed the vaccines (Redacted), when they were
2 being documented, they established this because that was what was happening on that day,
3 the worst thing that happened and people fled. There was looting on that day. It was
4 the worst and everybody fled. And we sought refuge with MONUC.

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 A. [16:24:34] Counsel, I think you're underestimating certain actions. I under
9 understand, but I can tell you that it was the UPC that destroyed them and everybody
10 knows that. There's testimony to that effect because there was looting. There were
11 the refrigerators that were taken. That's how they destroyed them.

12 Q. [16:25:00] Witness, what I'm trying to establish is the source for your
13 information. Is it what you saw? Is it what you know and on what foundation as
14 regards the events of 12 May in Bunia?

15 A. [16:25:16] The events that occurred between 9 and 12 and continued even
16 beyond that with the destruction of human life, I was in Bunia. (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 Q. [16:25:54] I put it to you, Witness, that PUSIC and UPC did not fight to come
22 into Bunia on 12 May. What is your source of information on this particular matter?

23 A. [16:26:09] Counsel, I said PUSIC and UPC. How could they come in
24 simultaneously on one and the same day if they weren't fighting together? How could
25 they come in at the same time? So what you're saying is not true. They did work

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1 together. They were together. *It's military strategies that they could have used to say
2 something about Nkunda anything or whatever. In any event, they worked together.

3 Q. [16:26:37] It's your evaluation of the military strategy that allows you to draw
4 that conclusion?

5 A. [16:26:43] *It is not like I am drawing a conclusion since I was there when the
6 events occurred in Bunia. I'm not a soldier, so I can't draw lessons as regards
7 military activities. But I can tell you, counsel, that that is how things happened.
8 UPC and PUSIC came in at one and the same time to Bunia on the 12th as of the
9 9th right through to the 12th. And it continued like that with the decimation of
10 human life throughout that time.

11 Q. [16:27:15] Witness, I'm putting it to you that you know full well that in the
12 time between 6 March and at least 6 May, which corresponds to the departure of the
13 UPDF from Bunia, there was a high degree of insecurity prevailing in Bunia to such
14 an extent that people preferred to leave with the UPDF to go to Uganda rather than to
15 stay in Bunia.

16 A. [16:27:47] *That is your evidence. You were not there and that's what you've
17 been told. But this is what I can tell you, Counsel, that the people who left with the
18 UPDF, it's because the Hema were protecting their interests and their cattle. They
19 left with their cattle. They knew what was going to happen afterwards. There
20 were other communities. In saying that they went with the UPDF, it's just
21 inconceivable. As of that date that I've given you, the 9th, the 9th to the 12th and
22 beyond, the UPC took Bunia. It's the UPC that took Bunia.

23 Q. [16:28:36] Witness, I put it to you that in the time between 6 March and the
24 departure of the UPDF, which began before but was concluded on 6 May, the Lendu
25 fighters made a number of attacks in the region of Bunia and there were several

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1 people who died in several regions. Are you aware of that?

2 A. [16:29:04] There was security. What created *more insecurity was the
3 reconquering of Bunia and people reconquered Bunia from the 9th to the 12th.
4 That's when there was the greatest degree of insecurity because that's when people
5 were being killed, whatever happened, and people preferred to flee. And there were
6 people who were taking the road to Beni. People were fleeing.

7 Q. [16:29:40] In order to save their cattle; is that correct?

8 THE INTERPRETER: [16:29:43] Could the witness please wait before answering
9 the question.

10 PRESIDING JUDGE FREMR: [16:29:47] Mr Witness. Mr Witness, sorry, you
11 started too early, so please you have repeat your last response.

12 THE WITNESS: [16:30:01] (Interpretation) This is what I said: When you refer to
13 the UPDF and the departure day of the UPDF, those who left with the UPDF were the
14 Hema with their cattle, they left, they were on foot. And after they left, that's when
15 things started to change because they knew full well what was going to happen.
16 That's why they left before. When the UPC arrived, that's when people started to
17 flee Bunia. An awful lot of people fled, *a lot of non-native people fled. They went
18 to the south, they went off towards Beni. There were even policemen that had been
19 sent by the government. They fled as well.

20 Q. [16:30:57] We will continue tomorrow with the head of the Lendu commander
21 that was on the spear. Thank you very much.

22 A. [16:31:12] Thank you.

23 PRESIDING JUDGE FREMR: [16:31:13] Now let's move into open session.

24 (Open session at 4.31 p.m.)

25 THE COURT OFFICER: [16:31:25] We're in open session, Mr President.

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1 PRESIDING JUDGE FREMR: [16:31:31] Thank you, court officer.

2 Mr Witness, it breaks your testimony. We will continue tomorrow, 9.30. I would
3 any way like to thank you for today because you had to answer many questions and I
4 believe you did your best to respond clearly and accurately to the questions. So I
5 thank you. It's my duty to remind you that till tomorrow you must not discuss your
6 testimony with anybody else. Do you understand?

7 THE WITNESS: [16:32:18] (Interpretation) Discuss my testimony with anyone?
8 I'm not sure I've understood, Mr President.

9 PRESIDING JUDGE FREMR: [16:32:24] Simply you shouldn't now in the evening,
10 for example, to call your family or call your friends and to discuss this testimony. So
11 it's prohibited. Do you understand?

12 THE WITNESS: [16:32:40] (Interpretation) Yes, I understand. But I don't have
13 any phone which I can use to call anyone and I'm not having any conversations with
14 anyone.

15 PRESIDING JUDGE FREMR: [16:32:50] Then even better. So I thank you.

16 Please, court usher, please assist Mr Witness leave the courtroom.

17 And before we adjourn, update on timing, Mr Bourgon, so far you have used 2 hours
18 and 6 minutes.

19 Am I right?

20 (The witness stands down)

21 PRESIDING JUDGE FREMR: [16:33:17] Sorry? Two hours and 57 minutes?

22 Because it was just 30 minutes before this session, now we had two hour session, but
23 there were some objections, so I would rather believe in this information. So we can
24 correct tomorrow, but at the moment I believe that the right number is 2 hours 6
25 minutes so far, which means you still have almost 4 hours, 3.56, in this connection.

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1 For the sake of planning, Mr Bourgon, do you envisage that you will need to use all
2 that remaining time?

3 MR BOURGON: [16:34:04] I do, Mr President.

4 PRESIDING JUDGE FREMR: [16:34:05] All right. But any way it seems that it's
5 some chance to finish this testimony before the end of tomorrow, so Prosecution,
6 please and we also get information that next witness, P 810, the expert witness, is
7 ready to start his testimony tomorrow, so please be ready for such a possibility.

8 Now we adjourn and we will proceed tomorrow, 9.30.

9 THE COURT USHER: [16:34:34] All rise.

10 (The hearing ends in open session at 4.34 p.m.)

11 RECLASSIFICATION REPORT

12 Pursuant to the Trial Chamber VI's Order, ICC-01/04-02/06-1887, dated 4 May 2017,
13 the public reclassified and lesser redacted version of this transcript is filed in the case.