

1 International Criminal Court
2 Trial Chamber VI - Courtroom 1
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
8 Thursday, 24 September 2015
9 (The hearing starts in open session at 9.37 a.m.)
10 THE COURT USHER: All rise.
11 International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: Good morning, everybody.
14 Court officer, please call the case.
15 THE COURT OFFICER: Thank you, Mr President.
16 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
17 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
18 We are in open session.
19 PRESIDING JUDGE FREMR: Now, appearances please, as usual starting with
20 Prosecution.
21 MS SAMSON: Good morning, Mr President, your Honours. The Prosecution
22 today is represented by Mr Eric Iverson, trial lawyer; Mr James Pace, assistant trial
23 lawyer; Ms Selam Yirgou, case manager; and myself, Nicole Samson, senior trial
24 lawyer.
25 PRESIDING JUDGE FREMR: Thank you.

1 Defence.

2 MR BOURGON: (Interpretation) Good morning, your Honours. Good morning

3 to everyone here in the courtroom. Representing Mr Bosco Ntaganda, who is

4 present today, we have Ms Berta Casas Rochel, one of our trainees;

5 Ms Margaux Portier, case manager; Isabelle Martineau, William St-Michel; and myself,

6 Stéphane Bourgon. Thank you, your Honour.

7 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

8 Legal Representatives of Victims.

9 MR SUPRUN: (Interpretation) Good morning, your Honours. The victims of the

10 attacks against civilians are represented by the OPCV, Anne Grabowski, associate

11 counsel, and myself, Dmytro Suprun, counsel.

12 PRESIDING JUDGE FREMR: Thank you, Mr Suprun.

13 MR ABDOU: (Interpretation) Good morning, your Honours. The former child

14 soldiers are represented by myself, Mohamed Abdou, associate counsel at the OPCV.

15 PRESIDING JUDGE FREMR: Thank you very much Mr, Abdou.

16 At the moment we don't have Mr Bahougne, but I think it's because even Mr Witness

17 is not with us, so I guess they will come together soon.

18 The reason why we would like to start without witness, and it is also the reason why

19 we are a little late, because I would like to apologise for that, otherwise we were

20 ready to enter at half past 9, but we had still some ongoing deliberations on the issue

21 of the audio that had been tendered by Prosecution.

22 And in order to decide properly, we would like maybe to get some further

23 clarification. Ms Samson, just maybe you -- a couple of or a few quick questions on

24 that issue. The first one: You said, if my recollection is right, that you would like

25 this audio would be admitted as a whole. Does it mean that you would like to admit

1 it, not only the excerpts that had been played during our session, but the whole
2 content of the audio?

3 MS SAMSON: Yes, your Honour, that's correct.

4 PRESIDING JUDGE FREMR: In this connection, may we know why you didn't
5 submit us with the transcript?

6 MS SAMSON: Yes, your Honour. Perhaps due to oversight I didn't provide the
7 transcript to the Judges because I wanted the witness to advise the Court what was on
8 the audio without itself seeing the transcripts. I can certainly provide the transcripts,
9 which you may already have access to via eCourt, using the ERNs that I provided last
10 week.

11 PRESIDING JUDGE FREMR: So now it's for 99 percent clear, even to me, but to be
12 100 percent sure, so the purpose of tendering this evidence is not just to prove that
13 witness was able to recognize voices that he understood and was familiar with this
14 kind of communication, but also as concern content, meaning all sentences and words
15 expressed during this conversation or communication?

16 MS SAMSON: Yes, your Honour, that's correct.

17 PRESIDING JUDGE FREMR: And the last issue I would like to clarify, you said that
18 the origin of this audio is -- it comes from witness, I just forgot the number, but you
19 don't intend, I understood, to call this witness. Could you maybe be more specific
20 about the origin of this audio in order to increase authenticity of that.

21 MS SAMSON: Yes, your Honour. I had prepared an email, which I haven't yet
22 sent, with further details because I recognize that the submission on Monday may not
23 have been perfectly clear.
24 The witness who provided the audio cassette and other documents, including some of
25 the photographs that we've viewed with Witness P-805 of the (Redacted), that

1 witness was interviewed by the Office of the Prosecutor in July 2005. Subsequently,
2 after Mr Ntaganda's surrender, we have been unable to resume contact with this
3 witness to locate him in order to call him as a Prosecution witness. The witness's
4 number is P-0101.

5 The email that I intend to send will provide further details that I can't give in open
6 session in relation to the identity of the witness, but he is a Lendu male who received
7 the audiotape and the photographs of the (Redacted) on 2 April 2003 from another
8 Lendu male.

9 And the Lendu male who provided him with the audio had recorded it, had
10 identified it as being an audio recording that had taken place during a UPC battle in
11 Lipri, Kobu, Bambu, Buli and Nyangarai in February 2003. This individual told
12 Witness 101 that during the fighting, the Lendu combatants had been able to take
13 control of a radio device of the UPC and could hear the conversations being
14 transmitted, which they recorded at the time.

15 Thereafter, in 2005, Witness P-101 provided the audio recording to the Office of the
16 Prosecutor and provided some of the photographs that your Honours admitted
17 through Witness P-0805. And as I said, I can supplement in the course of the email
18 that I intend to send.

19 In relation, your Honour, to the photographs that came from Witness P101, which
20 were admitted via Witness P-805, the source of the documents was not an issue
21 during the admission of those photographs. P-805 himself was not present when the
22 photographs were taken; however, he was able to authenticate the photographs
23 because he was at the site in question shortly before the photographs were taken and
24 he recognized the images and the individuals in the photographs. Thank you.

25 PRESIDING JUDGE FREMR: Thank you very much, Ms Samson, for this

1 clarification.

2 Mr Bourgon, do you want to react in anyway?

3 MR BOURGON: Indeed, Mr President, very quickly. I believe that the information
4 that was just given is information that shows why it is important to have more
5 information on the record as evidence before this audio recording can be admitted.

6 What the Prosecution intends to do with the recording is the key here.

7 The only thing I will say is the issue of reliability is an issue that goes to admissibility.

8 Evidence can only be reliable when we know where it comes from, especially if we're
9 talking about an audio recording, an audio recording of an event and that is now

10 recognized by someone who was not present during this event.

11 So for all these reasons I urge you respectfully, Mr President, to wait until the end of
12 cross-examination before rendering your decision as you had previously decided.

13 Thank you, Mr President.

14 PRESIDING JUDGE FREMR: Thank you very much, Mr Bourgon.

15 Now I think we can continue with testimony so -- no. Ms Samson you have the
16 floor.

17 MS SAMSON: A clarification on a different matter, your Honour. Mr Bahougne, I
18 believe, Rule 74 counsel for the witness, I believe he does not intend to be in the
19 courtroom today or tomorrow. That was what he had advised me on Tuesday.

20 PRESIDING JUDGE FREMR: Thank you very much.

21 Yes, now I got -- thank you very much, Ms Samson. Now I got the same

22 confirmation from the court officer. So just for the record I am repeating that

23 Mr Bahougne will not be present in the courtroom, but is available by phone for his
24 client.

25 So we have now that in the record and we can really continue with the witness.

1 So, court officer, please escort the witness. But before that we have to go to closed
2 session for that purpose, please.

3 (Closed session at 9.49 a.m.)

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13 (Open session at 9.53 a.m.)

14 THE COURT OFFICER: We are in open session, Mr President.

15 PRESIDING JUDGE FREMR: Thank you.

16 You may proceed, Mr Bourgon.

17 MR BOURGON: (Interpretation)

18 Q. Mr Witness, I'd like to hark back to the time when a group of people was sent to
19 Kyankwanzi for military training, namely in the month of January 2001. I would put
20 it to you, Mr Witness, that at that time the aim of the people who were sent to Uganda
21 to be trained, to receive military training, was to receive such training and then come
22 back to Bunia so that they could protect their families. Would you agree with that
23 statement?

24 A. As far as I'm concerned, well, I'm really not in a purpose -- in a position, rather,
25 to know what the aim of the training was.

1 Q. You've already given testimony, sir, about the songs that were sung by the
2 various recruits at the time they were in Kyankwanzi. I think you know which song
3 I'm talking about, don't you?

4 A. I don't know. There were many songs.

5 Q. Witness, I'd like to repeat your very words, page 60 of transcript 30, lines 19 to
6 21. You said the following: You said that the recruits who were leaving Bunia on
7 their way to Kyankwanzi, all the recruits were calling out the name of Afande
8 Ntaganda, Bosco. That's what they were calling out.

9 A. Yes, there were some songs during which his name was mentioned or sung.

10 Q. I would put it to you, Witness, that the reason for singing his name is that the
11 recruits thought that Afande Bosco was the military leader who could protect them,
12 them and their families, thanks to his courage?

13 A. We were singing those songs to say that he was our leader.

14 Q. I would put it to you, sir, that the song really stressed the courage of
15 Bosco Ntaganda and his ability to protect your families?

16 A. I said that we were singing these songs and that he was our leader, and that if
17 the enemy saw him, they would tremble. That was the content or the back story, if
18 you will, of that song.

19 Q. Indeed. This is the very point of my next question. Can you confirm that
20 already, even at that time, Afande Bosco Ntaganda had a reputation of being a
21 courageous military leader who was feared by his enemies?

22 A. He was our leader and he was the one who we thought of as our chief, our
23 leader. I know that he was our leader, and that is why we were singing that he was
24 our Afande, and if the enemy saw him, they would tremble. That is what we were
25 singing about him.

1 Q. Thank you, Mr Witness. Now let me move on to the time when you were in
2 (Redacted). You've already given testimony and you said --

3 PRESIDING JUDGE FREMR: Ms Samson.

4 MS SAMSON: Thank you, Mr President. I'm just noting that much of this was
5 elicited in private session previously, and it may be best to continue that.

6 PRESIDING JUDGE FREMR: Mr Bourgon, maybe this question is on you. Do you
7 think that you will try to elicit facts that could reveal identity of Mr Witness or you
8 will just stay in a general, at the general level, it depends?

9 MR BOURGON: (Interpretation) Up until that question, I think I've been fairly
10 general, because according to the testimony more than 900 people went to
11 Kyankwanzi for training. But now indeed I would like to go into private session for
12 these next questions. Thank you.

13 PRESIDING JUDGE FREMR: Otherwise I would agree with you that until now it
14 was at a general level.

15 So now we will have to move to private session. Court officer, please.

16 (Private session at 10.00 a.m.)

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6 (Recess taken at 11.01 a.m.)

7 (Upon resuming in open session at 11.33 a.m.)

8 THE COURT USHER: All rise.

9 Please be seated.

10 PRESIDING JUDGE FREMR: So we will continue with cross-examination of the
11 witness by the Defence. Just one remark, Mr Bourgon. We were told that you
12 asked for an annotated version of a map produced by the witness. It was other, you
13 know, in the last-minute request because this map has been already archived. But
14 I think our court officers are working on that and you will be provided with that soon,
15 so just as regards that.

16 Now you may continue in cross-examination. And important question: Do you
17 want to proceed in private or closed session -- private or open session, sorry?

18 MR BOURGON: (Interpretation) Thank you.

19 (Speaks English) I realise that I could have spent a portion of my last questions in
20 public session, and I will be more vigilant in the future. The questions that I'm about
21 to ask now require still private session.

22 PRESIDING JUDGE FREMR: Maybe for the sake of interest of public, do you have
23 any estimation of how much time you will remain in public or is there any chance
24 that in the close future you will back to open session?

25 MR BOURGON: I believe, Mr President, that I can go for a very short time in private

1 session and to come back into public session thereafter.

2 PRESIDING JUDGE FREMR: Thank you very much, Mr Bourgon.

3 So now we have to move into private session, please, court officer.

4 (Private session at 11.36 a.m.)

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6 (Open session at 11.38 a.m.)

7 THE COURT OFFICER: We are in open session, Mr President.

8 PRESIDING JUDGE FREMR: Thank you.

9 Mr Bourgon, you may proceed.

10 MR BOURGON: (Interpretation) Thank you, your Honour.

11 Q. Witness, now before the break you answered a question about the situation
12 between Mbusa, the president, and Thomas Lubanga, the defence minister. You said
13 that the situation was not conducive, and you added that Mbusa was of the opinion
14 that Lubanga was placing his trusted men in key positions.

15 My question is thus as follows: On the basis of (Redacted)

16 (Redacted), can you confirm

17 that in actual fact Mbusa did not want Hema officers who might block the APC from
18 supporting the Lendu combatants in their attacks on the civilian population? Can
19 you confirm that?

20 A. I didn't say that Mbusa agreed that Thomas Lubanga would appoint his
21 right-hand men in the document he published. I did not say that.

22 Q. Let me be more specific. I would put it to you that you (Redacted)
23 (Redacted) that

24 the real reason for Mbusa refusing the appointments of Thomas Lubanga, the reason
25 was that he wanted to keep or make sure that Hema officers who could block the

1 APC in supporting the Lendu combatants during their attacks on the civilian
2 population. Can you confirm that?

3 A. I can't confirm that. However, I do know that Mbusa was not in agreement
4 with Lubanga about these appointments of officers. The reason is that in his opinion
5 Lubanga allegedly placed his right-hand men in key positions.

6 When we got there I had not taken part in the meetings or the discussions that had
7 been held amongst them, the meeting between Kisembo, Bosco, Lubanga. When
8 they were talking, I did not take part in their meeting at that time.

9 Q. Thank you, Mr Witness. Now, the group that used to meet or, well, at two
10 places, at Thomas Lubanga's residence and at another residence close by, how many
11 people were in that group at that time?

12 PRESIDING JUDGE FREMR: Just for the record, Mr Witness rose his hand in order
13 to indicate that this response could reveal his identity. It means that we now will
14 have to return back into private session if Mr Bourgon insists on this question, which
15 probably is the case.

16 MR BOURGON: (Interpretation) I must maintain that question, your Honour.

17 PRESIDING JUDGE FREMR: Well, then we have to move into private session,
18 please.

19 (Private session at 11.43 a.m.)

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25 (Open session at 11.52 a.m.)

1 THE COURT OFFICER: We are in open session, Mr President.

2 PRESIDING JUDGE FREMR: Thank you.

3 Mr Bourgon, you may proceed.

4 MR BOURGON: (Interpretation) Thank you, Mr President.

5 Q. Witness, can you confirm that we can use the word "ultimatum", the group had
6 been given an ultimatum to set down their weapons. And can you confirm that this
7 ultimatum was refused? Was that what happened?

8 A. The AEO Yango was working with Claude. He was a Hema person. Claude
9 had sent him to the residence where Kisémbó was so that he could tell him that in the
10 afternoon they were supposed to set down their arms, and if they didn't, they would
11 be attacked. And Kisémbó answered saying that he was not going to obey that
12 order.

13 Q. And it was after that conversation that Claude was shot, which what provoked
14 the intense anger of Lompondo; is that not so?

15 A. Yes.

16 Q. And Lompondo's anger gave rise to a conflict. Lompondo's men attacked the
17 group that was at the residence of Thomas Lubanga; is that what happened?

18 A. After Claude died, the soldiers following Claude's orders tried to get his body,
19 and to do that they had to attack. That afternoon they attacked two or three times.
20 And at 7 p.m. they were able to get to the place where the body laid and they took
21 that body away with them.

22 Q. Can you confirm, Mr Witness, that the fighting that was held that day, in
23 particular the three attacks you just mentioned -- in actual fact, the fight was unfair
24 because, you see, Lompondo's men, they definitely had the upper hand. They had
25 far more forces. It was quite an uneven fight, wouldn't you say?

1 A. Well, the numbers of men on each side, Claude versus the escort group, yes, you
2 are right, the number was not equal.

3 Q. I'll try to put my question more simply. Were there -- were Claude's men more
4 numerous than the other group?

5 A. Claude's men were many in number because he had gone to get reinforcements
6 once we got to Bunia. The reinforcements he obtained from Beni.

7 Q. Can you confirm that without the intervention of the Ugandans to end the
8 conflict on that day, it would have been quite likely that the people in Thomas
9 Lubanga's residence would have been beaten and even killed?

10 A. The Ugandans arrived in the morning, not in the afternoon, if I recall correctly.
11 They arrived in the morning.

12 Q. Can you confirm that it was the Ugandans who ended the clashes between
13 Claude's soldiers and the people who were at Thomas Lubanga's residence?

14 A. After Claude died that afternoon, there were clashes. And at night, at about 7
15 in the evening, they were able to get his corpse. And then the people who were at
16 the residence attacked once again. And that is when the Ugandans arrived later, and
17 they took us to the headquarters to disarm the soldiers before the MONUC
18 representatives. That was the next morning.

19 Q. Can you confirm, Mr Witness, that after being disarmed by the Ugandans, as
20 you said, in front of MONUC representatives, in actual fact, after that point in time,
21 the town was divided, at least from a military point of view, between two parties; one
22 part where the military men with Thomas Lubanga and Kisembo, and then the other
23 part with Lompondo's men? Can you confirm that that was the case?

24 A. After the disarmament, there was a negotiating meeting in Uganda between
25 Thomas Lubanga's group and the APC group who had come from Beni. That was in

1 Kasese in Uganda. The outcome of the negotiations was that Thomas Lubanga's
2 men had to go back to Thomas Lubanga's residence, and the others had to go back to
3 where they had come from, and thus the town was controlled by Lompondo's men.
4 And north of the town, towards the large market, that area was controlled by Thomas
5 Lubanga's men.

6 Q. Can you confirm that during that period of time the civilian population could
7 move about freely and they go back and forth between the two areas, it was only the
8 military people who were divided into these two areas? Was that so?

9 A. Because of that event, the Hema, who live near the zone of Lompondo's men,
10 left and they went to the north of the city. And those who were not in security -- in a
11 secure situation because it was occupied by Lubanga's men left that zone and went to
12 the area where Lompondo's men were. And that's how the city was divided at the
13 time.

14 Q. Thank you for that explanation. Can you confirm that the civilian population,
15 even though there had been certain moves, that people could go from one part of
16 town to the other; is that correct?

17 A. I didn't understand your question, I'm afraid.

18 Q. Well, let me rephrase it. You have just answered that following the
19 disarmament and following the negotiations, some Hema people moved over to
20 Lompondo's -- from Lompondo's side to Lubanga's side, and others moved from
21 Thomas Lubanga's side to Lompondo's side. So I would put it to you that even
22 though people did move from one area to another, the truth is civilians could
23 continue living normally and go from one side to the other in spite of the ongoing
24 conflict.

25 A. No. It was civilians could only move around in a limited way. Everybody

1 could move around in their own zone, that is where their own -- where the forces
2 were favourable to them.

3 Q. From that point in time, within the group on Lubanga and Kisembo's side, can
4 you confirm that at that point in time that group was trying to protect itself and in
5 order to do that tried to reorganise the Chui mobile force troops that had come back
6 from training in Uganda? Did you witness that?

7 A. I'm afraid I didn't understand your question. Could you repeat it, please?

8 Q. Yes, of course. As from the point in time where the city was divided in two,
9 I'm referring to the period up until when Lompondo was driven out, you already
10 mentioned this, so during this period I'm suggesting that on the one hand you had
11 Thomas Lubanga and his men, they were on the defensive. So my first question is
12 would you agree with that statement?

13 A. The group that belonged with Thomas Lubanga was not in an offensive position,
14 they were in a defensive position.

15 Q. Well, I'll have additional questions about this later on, but during the period
16 that we're referring to when Afande Bosco Ntaganda went on his way to Mandro to
17 train soldiers to become a member of that group, is that correct, it was during this
18 time?

19 A. He didn't leave Mandro. He went to Mandro.

20 Q. Perhaps my question wasn't clear. I indeed meant to say he went to Mandro,
21 where he was in charge of training of those who were going to join Thomas Lubanga's
22 movement; is that correct?

23 A. Yes, he was in charge of training in Mandro. That, I know.

24 Q. And Kisembo, he stayed in Bunia, where he was involved with the organisation
25 of the movement?

1 A. I know that he was there. When there was an attack he could order the
2 soldiers who were there. But as regards the organisation of the armed groups, I can't
3 confirm that.

4 Q. During that period --

5 MR BOURGON: (Interpretation) And, your Honour, could we go into private
6 session, please.

7 PRESIDING JUDGE FREMR: All right. Court officer, please move into private
8 session now.

9 (Private session at 12.07 p.m.)

10 (Redacted)

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21 (Open session at 12.12 p.m.)

22 THE COURT OFFICER: We are in open session, Mr President.

23 PRESIDING JUDGE FREMR: Thank you.

24 Mr Bourgon, you may proceed.

25 MR BOURGON: (Interpretation) Thank you, your Honour.

1 Q. Witness, are you able to confirm that during that period, the same period I've
2 been talking about, that is between the division of the town and the fall of Lompondo,
3 the training of the -- the training camp of Lubanga in Mandro was attacked by
4 Lompondo's forces. Can you confirm that?

5 A. Yes, they were attacked once.

6 Q. And that attack on the part of Lompondo's group -- in fact, they destroyed
7 everything that was there in the training camp and they had to move; is that correct?

8 A. I don't know, but I do know that when that training camp was attacked the
9 recruits were moved because they were not yet able to defend themselves, and even
10 the soldiers who were there were not able to defend them. I know that they were
11 moved.

12 Q. Can you confirm that the training resumed in the region of Mandro but in
13 another location; is that correct?

14 A. The training continued, but I don't know when it started, and I don't know
15 when it stopped. I know where the training camp was. I know what the name was.

16 Q. What was the name?

17 A. Saikpa.

18 Q. Now, was this the location before or after the attack?

19 A. I don't know. All I know is that those recruits were trained there.

20 PRESIDING JUDGE FREMR: Sorry to intervene, Mr Witness. Could you just spell
21 for the record the name of the location, just to assure myself that we have proper
22 wording.

23 THE WITNESS: (Interpretation) S-A-I-K-P-A.

24 PRESIDING JUDGE FREMR: Thank you very much, Mr Witness.

25 Mr Bourgon, you may proceed.

1 MR BOURGON: (Interpretation) Thank you, your Honour.

2 Q. The name that you've just mentioned, how far is that place from Mandro?

3 A. I don't know exactly.

4 Q. Can you give us an estimate? Can you give us a number, a distance on the
5 basis of your knowledge?

6 A. It's a bit complicated. I might be mistaken because there is mountains and
7 valleys that you have to go through to get there.

8 Q. Well, it was a place that you went to according to your testimony when you
9 went to Mandro; is that correct?

10 A. I really can't tell you whether it's that same place or not, but that's where I saw
11 the recruits. But I don't know whether it was there that they were trained or
12 whether we met them there because they had come for a different reason to that
13 place.

14 Q. A moment ago I said that in parallel with the attack on the part of Lompondo's
15 group on the training camp, something else occurred. Can you confirm that during
16 that same attack Lompondo's group attacked the centre of the Mandro collectivity
17 where Afande Bosco lived? Can you confirm that?

18 A. When they said they were going to attack Mandro, it wasn't just Mandro.
19 I don't see the difference between this Mandro and the other Mandro. It's one place
20 called Mandro. We said that the APC had attacked Mandro.

21 Q. Can you confirm that the building where the persons in charge of the Mandro
22 collectivity, where Bosco Ntaganda lived, was completely burned down during that
23 attack? Can you confirm that?

24 A. I don't know because I didn't go there. And even after the attack I didn't go
25 there. But it was said that the APC attacked Mandro.

1 Q. You probably remember, Witness, the member of the group with an arm that
2 had been cut off a dead body saying "Here's Bosco's arm. I killed him." Do you
3 remember that?

4 A. I don't remember that. And I know nothing about that because I never heard
5 anyone talk about that.

6 Q. Thank you, Witness.

7 THE INTERPRETER: Correction from the interpreter: It was a member of
8 Lompondo's group that walked around Bunia.

9 MR BOURGON: (Interpretation)

10 Q. I would like to confirm that during the fall of Bunia, it was the Ugandans that
11 attacked Lompondo; is that correct?

12 A. Yes, that's what happened and everyone knew that.

13 Q. In your deposition you stated that there was a group that came from Mandro
14 that was about to attack before the Ugandans attacked. That's what you said, isn't it?

15 A. Yes, that's correct.

16 Q. If I were to put to you, Witness, that the group that came from Mandro wasn't
17 going to Bunia, but was going to Mudzipela, where the Lendu combatants had
18 committed a massacre upon the Hema civilian population, and that's where they were
19 going to Afande Bosco Ntaganda, do you remember that?

20 A. I don't remember. What I do remember is that those soldiers intended to
21 attack Lompondo's residence. And when the Ugandan troops learned about that,
22 they spoke with our commanders, our chiefs, and they asked them not to attack and
23 to leave it to them to do so so that they could attack Lompondo and bring them down.

24 Q. Witness, who provided that information to you?

25 A. (Redacted), and there was no way I would not know

1 what the plan was.

2 Q. Witness, let me come back to Mudzipela for a moment. Can you confirm that
3 the day when the Ugandans drove out Lompondo, that day the Lendu combatants,
4 amongst others, attacked Mudzipela where there were numerous victims? Can you
5 confirm that, numerous people killed?

6 A. I don't know whether the day they attacked Lompondo was the same day when
7 Mudzipela was attacked. I'm not certain of that.

8 Q. But you do have a clear memory of the massacre that occurred and the
9 numerous people who died in Mudzipela; is that correct?

10 A. The attack on Mudzipela occurred on a Sunday. I don't remember the date nor
11 the month. There was one of Lompondo's chauffeurs, his name was Brown, who left
12 with the vehicle he was driving toward -- toward Bunia and, according to rumour, it
13 was in that vehicle that they had hidden weapons, and it was with those weapons
14 that they killed many people in Mudzipela. That's what people were saying, but I'm
15 not certain that that occurred the same day as when Lompondo was driven out of
16 Bunia by the Ugandan troops. The vehicle was going toward Lepe (phon) on the
17 way to Bunia.

18 Q. Was it within the group of Thomas Lubanga, who was present, was it then that
19 it was explained to you what had happened and how it happened?

20 A. The attack on Mudzipela, all I know about it was that it took place on a Sunday.
21 And I have just told you the only version I know regarding the attack on Mudzipela.
22 The people who were killed that day, in fact, there's a mass grave near the cathedral
23 in Mudzipela where those people were buried.

24 Q. Thank you for that additional information. But my question was merely the
25 following: You used the word "rumour", and I'm suggesting that it was the men in

1 Thomas Lubanga and Kisémbó's group who gave you that information; unless you
2 tell me, "No, they never gave me that information."

3 A. I didn't say "rumour", I said that what I'm telling you is the version that I'm
4 familiar with. If you say to me that it was Kisémbó or Thomas Lubanga's men who
5 told me -- which soldiers are you talking about? It was the people in Mudzipela
6 who talked about this incident.

7 Q. Thank you, Witness. I'm going to go on to another topic. And we're moving
8 along toward along Mongbwalu and the preparations of the attack on Mongbwalu.
9 But before that I'd like to deal with another theme, as I explained yesterday at the
10 beginning of my cross-examination.

11 Witness, I think can we say (Redacted)

12 (Redacted)

13 A. (Redacted)

14 (Redacted).

15 PRESIDING JUDGE FREMR: (Redacted)

16 (Redacted) move to the regime of

17 private session. I guess you will just follow this direction of questioning.

18 (Private session at 12.30 p.m.)

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6 (Closed session at 1.04 p.m.)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Open session at 1.06 p.m.)

13 THE COURT OFFICER: We are in open session, Mr President.

14 PRESIDING JUDGE FREMR: Thank you.

15 Mr Bourgon, I just got information that until now you used 5 hours and 46 minutes,

16 so as we said we would like to be -- we would like to treat both parties equally, so

17 hypothetically you still have roughly 5 hours more. But you indicated maybe you

18 will not need to utilise all this time. Could you estimate your current perspective of

19 your cross-examination as to the timing?

20 MR BOURGON: (Interpretation) Thank you, your Honour. Yes, this morning I

21 intended when I came here to conclude cross-examination today. Now, as things

22 went along -- (Speaks English) I'm sorry, I'll speak English.

23 As the session was progressing I was looking, I was anticipating your question.

24 Unfortunately, I will need more time than today's session to complete my

25 cross-examination. I will need, I believe, the first session tomorrow in order to

1 complete.

2 The issue, Mr President, I ask for your indulgence, I believe that the Court was able to
3 see that I had to repeat many questions two, three times, and I apologise. But I'd like
4 to have the Court's indulgence for a little more time tomorrow morning,
5 Mr President.

6 PRESIDING JUDGE FREMR: I think it is not about indulgence, because even if
7 now -- I have been corrected, because I got new information that, in fact, you used
8 6 hours, 46 minutes.

9 But still you are fully allowed to use both this afternoon session and tomorrow's
10 session, which would mean 3 hours roughly in total. So no problem.

11 Now we will break and we will resume again at half past 2.

12 Ms Samson would like to add something.

13 MS SAMSON: Yes, your Honour. In terms of timing, I will be making an
14 application to ask several questions in re-examination. I do not anticipate taking a
15 very long time. I will certainly be finished within 20 minutes, if your Honours grant
16 the request.

17 PRESIDING JUDGE FREMR: We will decide after the end of cross-examination.

18 But anyway we appreciate that you have informed us. Thank you.

19 And now we break.

20 THE COURT USHER: All rise.

21 (Recess taken at 1.10 p.m.)

22 (Upon resuming in open session at 2.34 p.m.)

23 THE COURT USHER: All rise.

24 Please be seated.

25 PRESIDING JUDGE FREMR: Good morning, everybody. We will continue in

1 cross-examination of the witness, but before doing that I would like to make one
2 announcement concerning tomorrow. Tomorrow we'll not be sitting here in this courtroom,
3 but in courtroom number 2 because of some organisational reasons, which means that it will
4 be a little bit more crowded than here. And if you would like to come in the same
5 composition of teams like is today, it would be okay, but if somebody would like to bring
6 more numbers of your teams it would maybe cause problems. So please take into account.
7 Most of you you know the space available in courtroom number 2, so please bear it in mind.
8 And now we can continue with cross-examination. Mr Bourgon, you have the floor.

9 MR BOURGON: (Interpretation) Thank you, your Honour.

10 Q. Good afternoon, Witness. Now, for the next series of questions we are going to remain
11 in open session, and I'd like to take advantage of the knowledge that you have regarding the
12 various roads between Bunia and Mongbwalu.

13 Now, you've already given testimony about this. I make reference to transcript 28,
14 page 45, line 17, to page 53, line 13. I'm quoting from the French transcript.

15 Now, madam court officer, if you could call up DRC-RDG-0001-0003.

16 Now, Witness, this is a paper document on which you recorded some information
17 when you gave testimony during examination-in-chief. I do not intend to ask you to
18 place any other markings on this particular document. It shall remain intact.

19 Now, Mr Witness, if you could look at the screen in front of you, or preferably if you
20 could look at the map right before you, now, on this particular part of the map, you
21 showed three roads between Mongbwalu and Bunia. I'd like to ask you a few
22 questions about these three roads. Could you look at the road that you identified
23 first, road number 1, the main road, mainly the one that goes by way of Nizi, Bambu,
24 Kobu, all the way to Mongbwalu. Could you please take -- now, I don't know
25 whether we have a wand or a pointer of some kind that would allow the witness to

1 indicate spots on the map or not?

2 PRESIDING JUDGE FREMR: Mr Bourgon, I think we will provide witness with a pencil, but
3 just use the opposite end, yes.

4 Mr Bourgon, you may proceed.

5 MR BOURGON: (Interpretation)

6 Q. Could you please indicate Bunia on this map?

7 A. Bunia is here.

8 Q. If you could just shift the map somewhat so we could see further up, so we could see
9 Bunia. Now, could you just follow the road that you indicated was the main road? And
10 could you give us the names of the villages that you find along the way, all the way to
11 Mongbwalu?

12 A. Here is --

13 THE INTERPRETER: Inaudible.

14 THE WITNESS: (Interpretation) Miala. Here is Soleniama. Here is Ikabarrier. Nizi is
15 here. Bambu, Kobu and Kilo. And then you go this way to get to Mongbwalu.

16 MR BOURGON: (Interpretation)

17 Q. Thank you, Witness. I do have a few questions to ask you about this particular road.
18 You said that this was the main road between Bunia and Mongbwalu. So that the Court can
19 truly understand this road and what it's like, could you confirm that this is an unpaved road,
20 it is a dirt road with some gravel?

21 A. Yes, that is true. This is not an asphalt road, but it is the main road between Bunia and
22 Mongbwalu.

23 Q. Can you confirm that this road in some spots has only one lane?

24 A. This is a road that vehicles can travel along going in different directions, in opposite
25 directions.

1 Q. Do you agree with me that in some spots two vehicles travelling in opposite
2 directions -- correction, two vehicles, for example heavy vehicles travelling in the same
3 direction, one vehicle could not pass the other vehicle?

4 A. There are some places where the road is narrow. However, what I do know is that this
5 is the main road between Bunia and Mongbwalu.

6 Q. Thank you, Witness. All I'm trying to demonstrate so that the Court can really
7 understand what this road is like. Now, when it rains, Mr Witness, would you agree with
8 me that this road can become impossible to use?

9 A. Even now this is the road that traders use to get to Mongbwalu, even during the rainy
10 season when transportation is difficult. The traders take this road to get to Mongbwalu.

11 Q. And at the time, 2002 and 2003, would the rain be such that heavy vehicles could not
12 take this road?

13 A. Are you talking about 2002 and 2003?

14 Q. Indeed.

15 A. I don't know. After March 2002 I did not take this road. I never went that way.

16 Q. Can you confirm, Mr Witness, that sometimes heavy vehicles, for example, tanker trucks,
17 heavy vehicles do break down along this road and that can block the traffic for quite a long
18 period of time?

19 A. If a truck breaks down or if there are potholes, the drivers find another way to go, they
20 take another path to get around the obstacle. But I know that ever since I've been in that
21 region this has been the only road that is used. It is the road that is used the most often.

22 Q. Thank you, Witness. Now, the road you just showed us on the screen (Redacted)
23 (Redacted) is that correct?

24 PRESIDING JUDGE FREMR: Ms Samson. Ms Samson, please.

25 MS SAMSON: Thank you, Mr President. Perhaps we should be moving into private

1 session for this detail.

2 PRESIDING JUDGE FREMR: All right. Let's move into private session now.

3 Court officer, please.

4 (Private session at 2.48 p.m.)

5 (Redacted)

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11 (Open session at 3.19 p.m.)

12 THE COURT OFFICER: We are back in open session, Mr President.

13 PRESIDING JUDGE FREMR: Thank you.

14 You may proceed, Mr Bourgon. And do we still need work with map, or could witness come
15 back to his original chair?

16 MR BOURGON: (No interpretation)

17 Q. (Interpretation) Witness, I'd like to go back over Losa Ndrama. Can you confirm that
18 this village was burned down by the Lendu in 1999?

19 A. I don't know the history of that town. I only went there when I was a member of the
20 FPLC. Before that I had never been there, so I know nothing about the history of that place.

21 Q. Thank you. I wanted to continue with a question. From Losa Ndrama you
22 mentioned two other places where a vehicle could be left, Dhego and another. Can you
23 show us where Dhego is, please?

24 A. I can't see very well, but I think it's parallel.

25 MR BOURGON: (Interpretation) Your Honour, with the permission of my colleague,

1 perhaps we could mark the map on this exhibit and make it a joint exhibit, if you'll allow me.

2 PRESIDING JUDGE FREMR: Ms Samson, how do you like it?

3 MS SAMSON: I have no objection, your Honour. I just, in practice, not sure how it works
4 in terms of identifying it as a Prosecution exhibit or as a Defence exhibit, unless a copy is
5 made and then the witness is asked to have additional markings on a new version, which
6 would then become a Defence exhibit. It's just practically I don't know how that would
7 actually work.

8 PRESIDING JUDGE FREMR: I see it's not an easy issue. Maybe I would like to consult
9 court officer would be the best -- maybe to answer, please, through the microphone just even
10 to allow parties to say what is the best practice because we don't want to complicated, we
11 want to make it easy to find this document in our evidence.

12 THE COURT OFFICER: Mr Bourgon, as this is the very first time I would suggest first
13 maybe my colleague to go and make a colour copy of this document so that we can keep that
14 document now on the retro projector as an OTP document and then you will have a colour
15 copy where the witness could add some information, if that would suit you.

16 MR BOURGON: (Interpretation) Thank you, madam court officer.

17 Well, your Honour, perhaps I will skip it. I can ask another witness. It's not really
18 extremely important in my questions to this witness. So to save time, I'll just skip it.

19 Q. Witness, can you confirm that when you take the road and you go to Dhego, Dhego is
20 on a small secondary path that leads to Mbidjo; do you agree?

21 A. When you go through Dhego to go to the big road from the main road, from Aru, to
22 Mbidjo.

23 Q. Perhaps I have one more question about this map. In your testimony, and here I'm
24 referring to T-28 in the French version, page 52, lines 7 to 13, you stated that everyone took
25 that itinerary, including Afande Bosco Ntaganda, Salumu in order to -- as well as Salumu to

1 go to Mongbwalu. That was your testimony.

2 And I have a question for clarification: You agree that Salumu and Afande Bosco
3 Ntaganda did not take that road at the same time, are you not?

4 A. I don't know.

5 Q. Thank you.

6 MR BOURGON: (Interpretation) Your Honour, we've finished with the map.

7 PRESIDING JUDGE FREMR: Thank you.

8 So, Mr Witness, you can move back again to a more comfortable position.

9 And Mr Bourgon, you may proceed.

10 MR BOURGON: (Interpretation)

11 Q. Witness, in your testimony, you talked about an alliance between Jérôme and the FPLC.
12 Jérôme had deserted the APC and he joined the FPLC. Do you remember that?

13 A. Yes.

14 Q. You also stated that Jérôme had sent recruits from Mont Awa to Mandro?

15 A. There were APC recruits who were in Mont Awa as we call it, and when Jérôme left the
16 APC, those recruits were still in the same place, and he sent them through Salumu.

17 Q. And the other way around, there were Mandro recruits who were sent to Jérôme to the
18 northeast sector, is that correct?

19 A. That's what happened.

20 Q. Can you confirm that Mont Awa in fact was a training school for the APC recruits for
21 the north, for the northeast sector?

22 A. Mont Awa was a former military camp under Mobutu and the APC used it thereafter.

23 Q. Can you confirm why a group of recruits was exchanged between Mandro and Aru and
24 another group from Aru to Mandro?

25 A. The recruits who left Mandro to go to Aru had weapons. They were armed. The ones

1 who left Mont Awa to go to Bunia and to Mandro did not have weapons. The idea was to
2 mix up the soldiers.

3 Q. Well, because the idea was to mix them up, to combine them, perhaps there was an
4 additional reason for wanting to combine them was that Afande Bosco Ntaganda insisted that
5 all of the FPL soldiers apply the same code of ethics. And since Jérôme had just joined the
6 movement, they wanted to have an exchange of troops so that everyone be applying the same
7 ideology. Can you confirm that?

8 A. I can't confirm that. That's something that lies in the heart of people, their intentions.
9 What I know is the actual acts that were committed. I know nothing about the intentions.

10 Q. If I were to put to you that an additional reason is one that you mention in your own
11 statement, which is that Salumu thought that if Jérôme wanted to join the FPLC, well, he
12 might as well send his soldiers to be able to check his loyalty in fact; do you agree with that?

13 A. That is what, that is what Salumu thought. That would have been his thinking. I
14 couldn't have known it.

15 Q. Talking about the ideology, Mr Witness, you are familiar with the FPLC ideology, is that
16 correct?

17 A. I no longer remember.

18 Q. But you were trained, you were taught an ideology at the time you joined the FPLC?

19 A. I knew that every member of the FPLC had the objective of providing security in their
20 areas.

21 Q. Try to remember and try to see whether you can remember the FPLC ideology. They
22 wanted to win the trust of the entire population irrespective of ethnic affiliation, isn't that
23 correct?

24 A. The FPLC wanted to show the population that they were a neutral movement. But
25 they were not able to win the trust of the population.

1 Q. And you agree that one of the main aspects of the ideology of the FPLC was the respect
2 of the right to war, isn't that true?

3 A. It was the commanders -- it is the commanders who were in the field who can answer
4 that question. I was not one of them, so I cannot answer.

5 Q. My question is this. You received training. Were you told that the movement that
6 you have joined has as part of its ideology to respect the right of war, the right to war? Did
7 you know that as a member of the FPLC?

8 A. Personally, I do not remember. I cannot tell a lie.

9 Q. Do you remember that another major aspect of the ideology of the FPLC was that
10 whoever wanted to join would join on an equal basis depending on competence and skills
11 without any discrimination? Do you remember that?

12 A. As I said previously, the efforts that the FPLC was making were not successful. I do
13 not know whether the Bahema -- well, what I can say is that there were no Lendus within the
14 FPLC. There were some Banyalis and some Alurs. And the Banyalis who joined the FPLC
15 did so because of Kitembo because his mother was a Banyali. He sensitised a few Banyali
16 and that is why some of them joined the FPLC. There were also some Babira.

17 Q. Thank you for that clarification. What I'm interested in is from the beginning you
18 knew that there were members, many members of the APC like Jérôme who deserted the APC
19 to join the FPLC. You are aware of that, is that correct?

20 A. Are you talking of the change that Jérôme made in Aru or in Bunia?

21 Q. I'm talking generally about the several soldiers who deserted the APC and joined the
22 FPLC. You are aware of that, aren't you?

23 A. Initially there were some of them who joined the FPLC, but they did not stay for long.
24 The majority joined Jérôme's party.

25 Q. Let me move on to another question, because I can see that there are difficulties in really

1 correctly expressing my questions.

2 Now, did you receive any training in ideology within the FPLC, any ideological
3 training?

4 A. I did not receive any training on the FPLC ideology.

5 Q. Are you able to confirm that all APC officers who joined the FPLC had to necessarily
6 receive training in ideology before actually being sent to the field? Can you confirm that?

7 A. The people who had just reconciled with the others were sent to Mandro.

8 Q. And as far as you can remember, what happened in Mandro, that is in relation to these
9 people?

10 A. Personally, I was never in Mandro. But all I know is that all those who joined the FPLC
11 were first of all sent to Mandro. It was only thereafter that they were brought back, because
12 the FPLC training camp was in Mandro, but I don't have any more details about Mandro.

13 Q. Thank you, Mr Witness. In your statement, you stated that Afande Bosco Ntaganda
14 and Kisémbó went to Aru to seal the agreement between Jérôme, who was leaving the APC,
15 to join the FPLC, that was your testimony, wasn't it?

16 A. Yes. Afande Kisémbó went to Aru. Afande Bosco also went to Aru. However, I was
17 not part of the delegation.

18 Q. I put it to you that when Afande Bosco Ntaganda went to Aru, it was not at the same
19 time with Kisémbó. Are you aware of that?

20 A. That is not what I said.

21 Q. They did not go there together. Do you agree with that?

22 A. I know that they did not go there together.

23 Q. (Redacted)

24 (Redacted)

25 (Redacted)

1 A. (Redacted)
2 (Redacted).
3 Q. (Redacted)
4 PRESIDING JUDGE FREMR: (Redacted)
5 (Redacted)
6 (Private session at 3.42 p.m.)
7 (Redacted)
8 (Redacted)
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Trial Hearing

(Private Session)

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10 (Closed session at 3.58 p.m.)
11 (Redacted)
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16 (Open session at 3.59 p.m.)
17 THE COURT OFFICER: We're in open session, Mr President.
18 PRESIDING JUDGE FREMR: Thank you very much, court officer.
19 So I was informed that until now, Mr Bourgon used 8 hours, 8 minutes, which means
20 that in accordance with our ruling on equal treatment and equal duration of
21 examination-in-chief and cross-examination, you should have at your disposal
22 approximately two and a half hours. Do you think it will be fine with you, or do you
23 even maybe, you would need less time?
24 MR BOURGON: (Interpretation) I think I would need less time. I believe that two hours
25 at the most. My goal is to be done within an hour and a half. Thank you, your Honour.

1 PRESIDING JUDGE FREMR: Thank you very much for this good news because our goal is
2 to start with the third witness tomorrow.

3 In this connection, I know that Ms Samson informed us that she would like to put a
4 few questions for re-examination, but I guess it will not take too much time?

5 MS SAMSON: No, your Honour. I estimate it will not take more than 20 minutes.

6 PRESIDING JUDGE FREMR: Thank you.

7 It brings me to the second point. As you know, we issued a conditional ruling that
8 prior or recorded testimony of Witness P-931 will be admitted into evidence pursuant
9 to Rule 68(3) subject to the witness appearing before the Chamber and attesting to the
10 accuracy of the material concerned.

11 As far as I remember, I think the Prosecution indicated that they would need two
12 hours to examine this witness, but having into account likelihood that this provisional
13 or conditional ruling will be made ultimate, then, we even also said it in our ruling,
14 then the Chamber would ask you to -- just to put, make some supplementary, but
15 very brief supplementary examination. So under such a conditional subject to such
16 ultimate decision, how much time you estimate you would need?

17 MS SAMSON: Mr President, I can verify with the examining lawyer to be sure, but my
18 understanding is that we would be taking certainly less than one hour, perhaps it could be 30
19 minutes. But I can be more precise in the time estimate between 30 minutes and one hour by
20 email once I get out of the courtroom.

21 PRESIDING JUDGE FREMR: To be candid, we, the Chamber, just thought that we will set
22 up limit around 30 minutes, so please be -- rather, ready for that alternative.

23 Mr Bourgon, any comments from your part to this issue? What is your estimation?

24 I know it's very hard for you because I think it's now easier for Prosecution to

25 estimate duration of examination of the expert witness. Could you provide us with

1 an estimation on that?

2 MR BOURGON: (Interpretation) Indeed. I won't be cross-examining the expert witness.

3 It's one of my colleagues. I have discussed this with Mr Boutin, and he will be rather brief

4 and at the most he'll take two hours. But perhaps even less than that.

5 All the same, your Honour, I would like to say that as Defence, we are sticking to a

6 principle, we have no objection to the provision having to do with the expert witness.

7 I think that would be a good approach, and we are very grateful to the Chamber in

8 that the time has been limited for the number of time, particularly under Rule 68(3)

9 you see. Before other tribunals there were abuses. I remember that there would be

10 extensive witness testimony given and then exhaustive examination. So I'm quite

11 grateful, and I think we should limit the examination-in-chief of our next witness, the

12 expert witness.

13 PRESIDING JUDGE FREMR: Having heard your time estimation, I know it's still an

14 estimation since we can't simply exclude that he will be longer, but still I think it brings to my

15 mind, I guess, maybe it would be even realistic to finish this expert witness by Friday

16 and -- because, to me, it wouldn't be quite reasonable to adjourn for I think, for example, 30

17 minutes of the rest of his testimony. So please still have in mind that in case that really it

18 would be just such a short piece missing, you can even use this catastrophic version and to

19 make the last session -- to prolong the last session from 90 minutes to 2 hours. I know

20 it's -- it's Friday, it wouldn't be probably very popular decision, but just take this into account.

21 Otherwise, thank you very much.

22 Ms Samson, please.

23 MS SAMSON: Thank you, Mr President. My colleague has confirmed that she will not

24 require more than 30 minutes tomorrow for the witness.

25 PRESIDING JUDGE FREMR: Thank you very much, Ms Samson. So it means

1 we -- Mr Bourgon.

2 MR BOURGON: (Interpretation) I do have good news. My colleague has informed me
3 that he doesn't think he will take longer than an hour. Thank you.

4 PRESIDING JUDGE FREMR: Even better. We are leaving with very good news at the end.
5 So thank you very much.

6 Now we are adjourning and we will reconvene tomorrow, 9.30. Again, I'm reminding you
7 not here, but in courtroom number 2. Thank you.

8 THE COURT USHER: All rise.

9 (The hearing ends in open session at 4.06 p.m.)