

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 Judge Chang-ho Chung
6 Trial Hearing - Courtroom 2
7 Monday, 20 June 2016
8 (The hearing starts in open session at 9.31 a.m.)
9 THE COURT USHER: All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE FREMR: Good morning, everybody.
13 Court officer, please call the case.
14 THE COURT OFFICER: Thank you, Mr President.
15 The situation in the Democratic Republic of the Congo, in the case of the Prosecutor
16 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
17 We are in open session.
18 PRESIDING JUDGE FREMR: Thank you, court officer.
19 Now appearances please starting with Prosecution.
20 MS LUPING: Good morning, Mr President, your Honours. Appearing this
21 morning on behalf of the Prosecution are Selam Yirgou, case manager; Mr James Pace,
22 assistant trial lawyer; and myself, Dianne Luping, trial lawyer.
23 PRESIDING JUDGE FREMR: Thank you, Ms Luping.
24 Defence now.
25 MR BOURGON: (Interpretation) Good morning, your Honour, your Honours, as

1 well as everybody else present in the courtroom.

2 Representing Bosco Ntaganda, who is present in the courtroom this morning,

3 Maître Chloé Grandon and myself, Stéphane Bourgon. Thank you, your Honour.

4 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

5 And now Legal Representatives of Victims, please.

6 MR ABDOU: Good morning, Mr President, your Honours. The former child

7 soldiers are today represented by myself, Mohamed Abdou, associate legal office with

8 the OPCV.

9 MS GRABOWSKI: Good morning, Mr President, your Honours. The victims of the

10 attacks are today represented by myself, Ms Anne Grabowski, associate legal officer

11 at the Office of the Public Counsel for Victims. Thank you.

12 PRESIDING JUDGE FREMR: Thank you, Mr Abdou. Thank you, Ms Grabowski.

13 And the Chamber was informed that the Prosecution would like to address us. So

14 Ms Luping you have the floor.

15 MS LUPING: Thank you, Mr President. With your indulgence, I would seek to

16 make my oral submissions in private session. They are of a slightly identifying

17 nature.

18 PRESIDING JUDGE FREMR: All right.

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

20 (Private session at 9.34 a.m.)

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23 (Open session at 9.39 a.m.)

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

25 PRESIDING JUDGE FREMR: Thank you.

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1 So on Friday our Chamber rendered an oral decision granting protective measures to
2 this next witness. Also on Friday, the Chamber received the VWU's vulnerability
3 assessment for the witness and hereby grants it as follows:

4 First, reading assistance should be available for the witness for French text if required;
5 second, the Chamber will permit the witness to take breaks during his testimony
6 should that be deemed necessary.

7 Requests for other special measures made by the Prosecution are rejected at this time.
8 The Chamber will, however, remain vigilant as to whether any further measures may
9 be required as we proceed.

10 As to the timing, as we said, we will decide ultimately after the first session. We will
11 also address any objections to the use or admission of documents as they arise, as
12 usually.

13 And now we can tend to the scheduled testimony.

14 So now, court usher, please bring Mr Witness into the courtroom.
15 into the courtroom.

16 (The witness enters the courtroom)

17 PRESIDING JUDGE FREMR: Good morning, Mr Witness. Can you hear me?

18 WITNESS: DRC-OTP-P-0888

19 (The witness speaks Swahili)

20 THE WITNESS: (Interpretation) Yes, I can hear you. Yes, I can hear you very
21 well.

22 PRESIDING JUDGE FREMR: Very well. Mr Witness, on behalf of the Chamber, I
23 would like to welcome you to the courtroom. You are called to testify in the case
24 against Mr Bosco Ntaganda. You will be soon asked questions both by the Judges
25 and lawyers in the courtroom, and in this connection I would like to guide you as

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1 follows.

2 Please listen carefully to those questions. If you do not understand, feel free to ask
3 for the question to be repeated. We want you to tell the truth and tell us what you
4 saw, heard and sensed yourself. If you didn't see or hear it yourself but you found
5 out some other way, then you should explain how. Please testify just on that which
6 you remember. Don't guess. Don't make things up. There is nothing wrong in
7 saying "I don't know" or "I don't remember." Do you understand all this,
8 Mr Witness?

9 THE WITNESS: (Interpretation) Yes, I've understood well, your Honour.

10 PRESIDING JUDGE FREMR: Very good. Mr Witness, protective measures are put
11 in place to ensure that your identity is not revealed to the public. It means that the
12 public cannot see your face today and that your voice is being disguised so that the
13 public cannot recognize you. We will refer to you as "Mr Witness" and ensure that
14 your name and any other information that risks revealing who you are is not
15 broadcast to the public. Therefore, whenever you need to describe anything that
16 might reveal your identity, we will do so in private session so that no one outside the
17 courtroom can hear your answer.

18 Do you understand that?

19 THE WITNESS: (Interpretation) Yes, I've understood very well, your Honour.

20 PRESIDING JUDGE FREMR: Fine. Mr Witness, you will find a piece of paper in
21 front of you with the solemn undertaking. Do you have it?

22 THE WITNESS: (Interpretation) Yes, I can see the document very well.

23 PRESIDING JUDGE FREMR: So please now make your solemn undertaking to tell
24 the truth by reading out the declaration on the piece of paper in front of you.

25 THE WITNESS: (Interpretation) I solemnly declare that I will tell the truth, the

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1 whole truth and nothing but the truth.

2 PRESIDING JUDGE FREMR: Thank you, Mr Witness. It means you are now under
3 oath. You need to be aware that it is an offence within the jurisdiction of this Court
4 to give false testimony. Do you understand that?

5 THE WITNESS: (Interpretation) Yes, I've understood well.

6 PRESIDING JUDGE FREMR: Good. Now a few practical matters you should have
7 in mind.

8 It's important to speak at a slow pace. When a question is asked, do not respond
9 immediately, but please count in your head to three and only then give your answer.

10 This pause is essential for us to properly translate and record what you are saying. If
11 you have any questions during your testimony, or if you feel that you would like a
12 short break, please do not hesitate to let us know by raising your hand.

13 Have you understood all that?

14 THE WITNESS: (Interpretation) Yes, I've understood very well.

15 PRESIDING JUDGE FREMR: Fine. So now we will start your testimony. And
16 first you will be examined by Prosecution. So, Ms Luping, you have the floor.

17 MS LUPING: Thank you, Mr President, your Honours.

18 QUESTIONED BY MS LUPING:

19 Q. Good morning, Mr Witness. We've met briefly before. As you may recall, my
20 name is Dianne Luping and I will be questioning you on behalf of the Prosecution.
21 Mr Witness, I've just noticed actually your microphone is down very low and you
22 appear to be having some problems with it. You can move it and you can move it
23 up till you're comfortable. Is that better? Thank you.

24 A. Yes, that's much better.

25 Q. And just before we start, just a reminder, that everything that you and I are

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1 saying is being transcribed, it's being recorded, and we are communicating through
2 interpreters. So if you could try as much as possible to speak as loudly as you
3 comfortably can and slowly.

4 MS LUPING: Now, with your leave, Mr President, if we could move into private
5 session for a few questions of an identifying nature.

6 PRESIDING JUDGE FREMR: Court officer, let's move into private session.

7 (Private session at 9.48 a.m.)

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5 (Open session at 10.51 a.m.)

6 THE COURT OFFICER: We're in open session, Mr President.

7 PRESIDING JUDGE FREMR: Thank you, court officer.

8 Ms Luping, please proceed.

9 MS LUPING: Thank you.

10 Q. You've described also how you were taught how to use a weapon called an
11 LMG. Could you describe for the Judges what an LMG looked like and how you
12 used it, if you can remember.

13 A. The LMG is a weapon that has a belt containing ammunition. And that was
14 put on a bipod. So if you used it you had to set up the bipod and then you had to
15 start shooting with that weapon once the weapon was set up on top of the bipod.

16 Q. And other than the SMG an LMG, was there any other type of weapons that you
17 recall you were taught how to use during this training?

18 A. Yes. We were also taught to use a rocket launcher. But in order to use it, you
19 had to be pretty strong. You had to block your ears because the explosions were so
20 loud you could damage your ears. So you had to block your ears in order to use the
21 weapon.

22 Q. And did you yourself receive that training on how to use a rocket launcher?

23 A. No. I wasn't the only person. What I would say is that the majority or
24 everybody learnt how to use these different weapons.

25 Q. And can you describe the rocket launcher and how it was used?

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1 A. The rocket launcher, well, it's a weapon that in the form of a long pipe and
2 there's a place where you put the shell in, and in order to use it, you have to put the
3 weapon on your shoulder and you have to block your ears before using it. And we
4 were also taught that you needed a 5 square metre area for which other people
5 couldn't go into when somebody was using that weapon.

6 Q. And you said that at the end of the training that you received a weapon. What
7 kind of weapon did you receive at the end of your training?

8 A. At the end of the training, I was given an SMG.

9 Q. Now we have five minutes before the break. I'm just going to bring you back
10 to where you said you arrived at Mandro training camp and you were introduced to
11 some commanders who were instructing you at Mandro. Can you recall any
12 commanders who were at Mandro?

13 A. Yes. (Redacted)
14 (Redacted).

15 MS LUPING: Mr President, if we could briefly go into private session.

16 PRESIDING JUDGE FREMR: For sure. Court officer, let's move into private
17 session now.

18 (Private session at 10.56 a.m.)

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7 (Open session at 11.05 a.m.)

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

9 PRESIDING JUDGE FREMR: Thank you, court officer.

10 Now we are going to take 30 minutes break, and since it's 11.05, we will resume

11 at 11.35.

12 THE COURT USHER: All rise.

13 (Recess taken at 11.05 a.m.)

14 (Upon resuming in open session at 11.36 a.m.)

15 THE COURT USHER: All rise.

16 Please be seated.

17 PRESIDING JUDGE FREMR: We start this session without witness because I would

18 like just briefly, yes, just briefly give you a reasoning of, and also the decision itself on

19 the Prosecution request for granting some additional time. So our ruling is that we

20 are granting you additional 30 minutes, which means 4 hours 30 minutes in total.

21 And briefly, we are aware of the fact that examination of this witness is not easy, but

22 at the same time first we consider you, Ms Luping, very experienced counsel.

23 Moreover, even you proved that with this witness you are able to find the efficient

24 way how to examine him and you make it -- and you made it perfectly not to put to

25 him too complex, too complex questions. At the same time he also proved that he's

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1 able to provide some narrative.

2 And the last issue, as we already highlighted on previous decisions, this witness or
3 his testimony could be comprehensive. But we believe you should focus on those
4 aspects of his testimony that are really specific to him, because he also could testify to
5 issues we have already listened to from previous witnesses.

6 So 4 hour and 30 minutes. Now, court usher, please bring Mr Witness into the
7 courtroom.

8 MS LUPING: Thank you, Mr President, your Honours.

9 PRESIDING JUDGE FREMR: Ms Luping, do you want to proceed in open or in
10 private?

11 MS LUPING: I think the first line of questions can be in open session, Mr President.

12 PRESIDING JUDGE FREMR: All right then.

13 (The witness enters the courtroom)

14 PRESIDING JUDGE FREMR: Mr Witness, are you ready to continue?

15 THE WITNESS: (Interpretation) Yes, I'm ready.

16 PRESIDING JUDGE FREMR: Very good. Then, Ms Luping, you have the floor.

17 MS LUPING: Thank you. Mr President.

18 Q. Now, Mr Witness, we were still discussing life in Mandro training camp and
19 before I ask you about, some more questions about life was like there, I wanted to go
20 back to ask you a few more questions about the commanders at Mandro training
21 camp. You described how you arrived with a group of other new recruits to Mandro
22 training camp for the first time. Now, my question is this, when you arrived at
23 Mandro training camp, was there any commander or commanders who were with
24 you in the convoy travelling from Bunia to Mandro, from what you can recall?

25 A. Well, I remember that when we went to Mandro, there was no other

1 commander.

2 Q. In your time in Mandro training camp, who were the most senior commanders
3 that you saw at Mandro training camp in your time there?

4 A. When I was there, the high-ranking commanders were many in number. There
5 was Afande Bosco. He was a high-ranking commander. I don't know exactly what
6 rank he held, but there were other high-ranking commanders there.

7 Q. And starting first with Afande Bosco as you called him, when was the first time
8 you remember seeing him at Mandro training camp?

9 A. The first time I saw him in Mandro, that was on the first day when I got there,
10 when I got to Mandro. I didn't know what rank he held, but I know he was a
11 high-level commander and he was both respected and feared.

12 Q. And you say you saw him for the first time that first day when you arrived in
13 Mandro. Could you describe what happened when you saw Commander Bosco?
14 What -- can you recall what he was doing at Mandro, what you saw him doing at
15 Mandro?

16 A. As best I can remember, I think he was the one who was giving the orders to the
17 other commanders who were responsible for training us. He didn't stay in one place.
18 He would move about. But I don't know exactly what he did regularly.

19 Q. And when you say that it was him who would give the orders to the other
20 commanders who were in charge of training you, how do you know that? How do
21 you know that he was giving orders to these other commanders?

22 A. Well, I knew that because I heard him say this. When introduced to him, he
23 said that we were there to be instructed and I heard him giving instructions then.

24 Q. When you say that the new recruits were presented to him and that you heard
25 him give instructions, can you recall what he said to the new recruits? Only if you

1 can remember.

2 A. I don't remember exactly what order he gave, but I know that he said that the
3 new recruits had to be trained. However, I've forgotten, I can't tell you exactly what
4 other things he said about the order in question.

5 Q. And can you recall the term in Swahili for recruits?

6 A. I've forgotten which words he used.

7 Q. Now, you said you saw Commander Bosco that first time in Mandro. Do you
8 recall seeing him any other times in Mandro?

9 A. Yes. He would come to Mandro. He would come and go between Mandro
10 and Bunia. Yes, I used to see him when he would come and visit the training centre
11 in Mandro.

12 Q. And you described where the recruits would sleep. Can you recall where the
13 commanders including Commander Bosco would sleep when he came to visit
14 Mandro?

15 A. The other commanders would stay at the training centre. That's where we
16 would sleep as well. We were the ones who built the places where the commanders
17 would spend the night. They would stay in one spot and Bosco -- well, I learned that
18 he would spend the night at the centre in Mandro, not the training centre. And his
19 residence was close to the residence of Chief Kahwa.

20 Q. And did you ever see this residence of where Commander Bosco stayed and
21 where Chief Kahwa stayed?

22 A. Yes, I did see him.

23 Q. I'll rephrase my question. I'm not sure if it was captured correctly. Did you
24 ever see the residence where Commander Bosco stayed, the building?

25 A. People said that he would spend the night in a residence that was very close to

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1 Chief Kahwa's residence.

2 Q. And did you ever see this residence physically with your own eyes?

3 A. Yes, I did see the residence where Chief Kahwa lived.

4 Q. Now, moving on, Mr Witness, to your description of what life was like in
5 Mandro when you were living there or staying there, you described, for example, the
6 food that you ate and one question I had is how often did you get to eat on a daily
7 basis?

8 A. We had just one meal per day. At about 6 or 7 in the evening we would be
9 served that meal, just one meal per day.

10 MS LUPING: Mr President, I'm just going to ask a further question, different topic
11 but it needs to be in private session with your leave.

12 PRESIDING JUDGE FREMR: Certainly.

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

14 (Private session at 11.50 a.m.)

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WITNESS: DRC-OTP-P-0888

(Private Session)

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3 (Open session at 12.02 p.m.)

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

5 PRESIDING JUDGE FREMR: Thank you.

6 Ms Luping, please proceed.

7 MS LUPING:

8 Q. Mr Witness, you described how life at the Mandro training camp was difficult
9 for the recruits. From your memory or your recollection, was anything done to try
10 to raise the morale of the recruits? Were you taught anything to help raise your
11 morale?

12 A. Yes. We, we were told a number of things. They asked us to study as we
13 ought to, to learn what needed to be learnt. We were taught how to chase away the
14 enemy and how to get to power, and so we were told about all of these things during
15 the training.

16 Q. When you say you were taught how to chase the enemy and how to get to
17 power, who were the enemy and what do you mean by "getting to power"?

18 A. If I remember correctly, our enemies were those against whom we were fighting,
19 namely, the Lendu and Ngiti. Those are the people referred to as the enemies. We
20 were Gegeres and Hema, and therefore in order to get to power, we needed to drive
21 out those enemies and capture their areas. So we had to chase them out in order to
22 capture their area.

23 Q. And who was teaching this to you?

24 A. The teachings came from several commanders.

25 Q. Which commanders taught this to you? Who were the most senior of the

1 commanders who taught this to you?

2 A. If I recollect properly, one of the commanders was known as chef d'état-major.

3 Then we had Commander Kisémbó and many other commanders, such as Afande

4 Bosco who was there as well. And I do not remember the names of the several other

5 commanders.

6 Q. And you said that Afande Bosco was one of those commanders who was

7 teaching this to you as well. Do you remember hearing him say this with your own

8 words, sorry, with your own ears, rather?

9 A. I heard with my own ears at the Mandro training centre, we had been

10 assembled at some point and the commanders would say those types of things to us

11 in order to raise or boost our morale.

12 Q. And other than these kinds of speeches, do you recall, for example, learning any

13 songs?

14 A. Yes. They taught us to sing many, many songs, but I have forgotten some of

15 them.

16 Q. Can you say the words of any songs that you remember?

17 A. Yes. One of the songs which I remember.

18 Q. And what language did you learn to sing the song?

19 A. It was in Swahili.

20 Q. And in terms of those words in Swahili that you remember that you learnt,

21 could you -- do you think you'd feel comfortable singing the song for the Judges in

22 Swahili?

23 A. Yes, I can sing.

24 Q. And could you sing the words that you remember in Swahili for us now?

25 A. We, we sang the following; the children have gone to the operation. Three

1 may die, two may remain. And the two who remain will go forward. That is what
2 we used to sing.

3 Q. Thank you, Mr Witness. And you described for us life for the recruits at the
4 training camp. And you have previously explained that there were girl recruits also
5 amongst those in Mandro. Other than beatings, can you recall other ways the girl
6 recruits were treated at Mandro?

7 A. Yes. We, we heard that some of them were taken by some commanders and
8 raped. We also heard that some girls were raped by commanders. And when they
9 were raped, they couldn't say no because it is the commanders who were raping them,
10 and the commanders were stronger than the girls. So there was talk of such things
11 happening. We were told about these things by many people.

12 Q. Did you learn of any particular commanders who you say were raping these girl
13 recruits?

14 A. No, I cannot remember their names.

15 Q. And from amongst the commanders that you heard were raping the girls, can
16 you recall were there any senior commanders were raping girls, and if so, whom?

17 A. I do not remember the names of the commanders who raped girls in Mandro.
18 However, it was said that the girls were raped by commanders but I do not know
19 who actually raped them, although people said that the girls were being raped by
20 commanders. In any event, I do not know their names.

21 Q. And you said that you learnt this from different people. Did you ever speak to
22 any of the girls who said they were raped, any of the girl recruits?

23 A. Yes, I did speak to some of them, and they told me that they had been raped by
24 some commanders, and I asked them why they did not say no, and they said they
25 could not say no because they were dealing with high-ranking commanders and

1 therefore could not say no.

2 Many girls actually told us that they had been raped.

3 Q. And amongst the girls that you spoke to who told you they were raped, can you
4 recall the youngest age of any of the girl recruits who told you that they had been
5 raped?

6 A. When it comes to age, I really have no, no idea. But if I were to go by the
7 appearance of the girls as one saw them, they would have been 16 or 17 years old.
8 You know, when you look at a girl, you may be able to say how old they could have
9 been. And I would think that they were between 16 and 17 years old.

10 Q. Now, in that time that you were at Mandro training camp, you said that you
11 had been forced to go with the UPC army soldiers who brought you there. In the
12 time you were at Mandro, could anybody leave if they wanted to, leave the training
13 camp?

14 A. It was difficult to leave the camp. You see, to get to the Mandro training camp,
15 coming in from any direction, whether it be Bunia or another direction, it was, it was
16 difficult because there were many soldiers along the roads, and it was very cold.
17 And anyone who was caught attempting to escape received very harsh punishment.

18 Q. And when you say anybody who attempted to escape received very harsh
19 punishment, do you recall any incidents of any such persons who tried to flee
20 receiving harsh punishment, and if so, can you describe this to the Judges?

21 A. Yes, I do remember that some people who attempted to escape were arrested by
22 soldiers while some were picked up along the roads in the forest, picked up by
23 soldiers who were on patrol.

24 If people were picked up and they were asked who they were and whether they were
25 trying to escape, those people would be taken back to the camp, to the commander

1 and reported accordingly.

2 As soon as they were brought back to the camp, they would be presented to the
3 others and will be beaten up seriously and would receive some form of discipline.

4 Q. And other than punishment for trying to leave Mandro, in your time at Mandro,
5 do you recall seeing any other soldiers being punished, and if so, for what?

6 A. Yes. Some attempted to escape and were punished. Some soldiers were also
7 punished for losing their weapons. But, you see, there were some people who had
8 received training before us and, and at night, maybe because they were tired, they
9 may fall asleep and someone else would steal their weapon. Now, as soon as a
10 weapon is stolen, nobody knows who would have stolen the weapon. And one who
11 gets up in the morning and finds out that their weapon is not there would start
12 looking for the weapon, and then a report would go to the commander in that regard
13 and that person will be punished.

14 Others were also punished because they had lost their weapons and they were
15 accused of selling their weapons to the enemy and therefore they would be killed for
16 that reason.

17 Q. And you said that some would be accused of selling the weapon and were
18 killed. Can you recall any specific incidents or any times when you were at Mandro,
19 any time when a recruit was -- or a soldier, rather, at Mandro was killed for the loss of
20 their weapon, and if so, can you describe what you can recall to the Judges?

21 A. Yes. I remember some who were arrested and who would not come back, who
22 would not be seen returning. I remember one who had lost his weapon and who
23 was arrested and taken away. (Redacted)
24 (Redacted).

25 Q. And do you recall under whose instructions he was killed, which commander

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1 instructed that he should be killed, if you know this?

2 A. Yes, I was told about it, but I didn't hear it myself. I asked who had killed him,
3 and friends told me that the order had come from Afande Bosco to kill that soldier.
4 But I wasn't an eyewitness to his death. But in any event, I heard about it. I was
5 told about it.

6 MS LUPING: Mr President, with your leave if we could briefly go into private
7 session, I just have a couple of extra questions in relation to this.

8 PRESIDING JUDGE FREMR: For sure.

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

10 (Private session at 12.19 p.m.)

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- 18 (Open session at 12.23 p.m.)
- 19 THE COURT OFFICER: We are back in open session, Mr President.
- 20 PRESIDING JUDGE FREMR: Thank you.
- 21 Ms Luping, please proceed.
- 22 MS LUPING: Thank you, Mr President.
- 23 Q. Mr Witness, I just wanted to ask you a few more questions in open session first
- 24 about the weapons and ammunition that you described that you were given when
- 25 you were training.

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1 Now, in your time at Mandro, did you ever see or learn where the weapons and
2 ammunition at Mandro were being stored?

3 A. Yes. There was an arms depot at the training centre where we had boxes of
4 weapons and ammunition. There were some arms or weapons that were already
5 assembled while others were not.

6 Q. And did you see the supply of weapons and ammunition yourself with your
7 own eyes?

8 A. Yes. I do remember how those weapons were brought to the training centre.
9 Sometimes I saw small aircraft hovering around the area without landing and
10 dropping boxes or cases of weapons and ammunition, quite often the weapons were
11 not mounted yet and we would have to assemble them ourselves.

12 MS LUPING: Could I briefly seek your leave, Mr President, and go into private
13 session momentarily?

14 PRESIDING JUDGE FREMR: Let's move into private session.

15 (Private session at 12.25 p.m.)

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23 (Open session at 12.29 p.m.)
24 THE COURT OFFICER: We're in open session, Mr President.
25 PRESIDING JUDGE FREMR: Thank you, court officer.

1 Ms Luping, please.

2 MS LUPING: Thank you, Mr President.

3 Q. Mr Witness, you've explained that after your military training in Mandro that
4 you yourself received a weapon and that other recruits received weapons. Do you
5 recall any military operation that you were sent to immediately after your training at
6 Mandro?

7 A. Yes. After the training in Mandro, after receiving my training, I went and I
8 took part in a battle that occurred in Songolo.

9 Q. Now I'd like you to describe the operation, what you remember, first from the
10 moment you received instructions to go to Songolo through to what happened at
11 Songolo and even shortly after the operation at Songolo. Please try to be as
12 descriptive as you can from the moment you first -- first describe the moment you
13 received instructions to go to Songolo and who gave those instructions. Can you
14 please describe this to the Judges?

15 A. Very well. When we left the training centre in Mandro, we went to Bunia,
16 where Afande Bosco was living. We were gathered at a particular spot and we were
17 told that we were going to be going to Songolo for the operation. We spent two days
18 in Bunia. Then after that we went to Songolo. We were on two vehicles. We got
19 to one particular place. We got out of the vehicles and we began to move forward by,
20 on foot.

21 We were told that if we advanced or moved forward in vehicles, the enemies might
22 realise we were there. Once we began to move forward on foot, we saw some
23 soldiers who were already stationed there. And there were several soldiers who had
24 already moved ahead of us. We got there and Commander Bosco gave the order via
25 his Motorola and we began to fight in Songolo. We fought the Lendu and the Ngiti.

1 We defeated them and we killed many of them.
2 After that we completed the operation and drove away those who were not dead.
3 We killed most of them. And during the operation there were men, women, old
4 people who were killed. They were Ngiti and Lendus. After that we began to go
5 house to house and look for people. Orders were received and even Bosco himself
6 received the orders. We were told that we had to check each house to see if anyone
7 was hiding in there. Our enemies were the Lendu and the Ngiti. If we found them
8 we were to take them out and kill them. We killed many of them.
9 We were not supposed to defy those orders. Those orders were given to us by the
10 commanders. And so we found these people. We killed them and we torched their
11 houses.
12 You see, they were straw houses. And we also removed every single item of value.
13 And we handed over these items to our commanders. After the battle in Songolo we
14 went back to Bunia. So that is how the battle of Songolo unfolded.

15 Q. Thank you, Mr Witness.

16 MS LUPING: Mr President, I think my initial question may need to be in private
17 session, with your leave.

18 PRESIDING JUDGE FREMR: Let's move into private session please.

19 (Private session at 12.34 p.m.)

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22 (Open session at 12.37 p.m.)

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

24 PRESIDING JUDGE FREMR: Thank you.

25 Ms Luping, please.

1 MS LUPING: Thank you, Mr President.

2 Q. Mr Witness, you stated that Afande Bosco gave instructions to a group of you to
3 go to Songolo. Can you please describe what you can recall about those instructions,
4 as much detail as you can remember of what Commander Bosco instructed this group
5 to do?

6 A. Well, I can't remember the exact words that he used, but I remember he brought
7 us together, he spoke to us and he said that there was a place that we were to go to.
8 We went to Songolo. But I don't remember exactly the specific names he uttered. It
9 would be difficult for me to remember now.

10 Q. And do you recall, if at all, what he said you were to do at Songolo?

11 A. Yes, he said that we were supposed to go to battle and we were going to drive
12 off the enemy. And he said once you get there, you must drive the enemy away.
13 That's what I remember. He said that we had to go and repel the enemy.

14 Q. And when he gave these instructions, can you -- I see my learned friend is on
15 his feet.

16 PRESIDING JUDGE FREMR: Mr Bourgon.

17 MR BOURGON: Thank you, Mr President.

18 Three questions have been put in terms of instructions that would have been given by
19 Afande Bosco. I refer to page 61 at line 16. This is where my colleague initiated this
20 questioning by saying, "Mr Witness, you stated that Afande Bosco gave instructions
21 to a group of you to go to Songolo."

22 I'd like to have a transcript reference because I don't recall that the witness said this
23 before this question. I'd like to have a reference. I may be wrong, I'd just like to
24 have a reference, please.

25 MS LUPING: One moment with your indulgence, Mr President. I'm just trying to

1 find the exact transcript reference.

2 PRESIDING JUDGE FREMR: Yes, take your time.

3 MS LUPING: Mr President, I've been following the French transcript. It doesn't
4 appear to be in the French, but in the English transcript I believe it is page 59, lines 3
5 to 6.

6 PRESIDING JUDGE FREMR: Mr Bourgon.

7 MR BOURGON: Mr President, this is completely different, what we find at page 59.
8 But we can move on. I just wanted to highlight because this questioning was really
9 leading the witness into an area which, and to giving answers, in an area which he
10 had not embarked on prior to. Thank you.

11 PRESIDING JUDGE FREMR: Point taken.

12 Ms Luping, please proceed.

13 MS LUPING: Mr President, indeed, I will find an exact transcript reference with a
14 bit more time at the break and I will come back to that later to respond to my learned
15 friend. But for now I will continue. Thank you.

16 Q. Now, Mr Witness, I'm going to go back to when you were in Bunia and you
17 were receiving the instructions as to what you were to do at Songolo. Could you
18 please describe for the Chamber what your instructions were as to what you were to
19 do in Songolo?

20 A. We were told about Songolo that we were to drive out the enemy. We were to
21 go and fight the enemy and fight the people who were there. And we knew that our
22 enemies were the Lendus and the Ngiti. We got there and we drove them out.
23 And we were told to go from house to house and look for people. If we found
24 enemy in -- enemies in the house, we were supposed to kill them.

25 Now, I don't know if they were combatants, you see the combatants they had arrows

1 and machetes, but we saw some people who had no, no bladed weapons. They were
2 civilians, but we had received the orders to kill them because they weren't from our
3 ethnic group, they were Lendu and Ngiti. We killed several people in Songolo.

4 Q. And when you say you received these instructions as to what you were to do in
5 Songolo, when gave you those instructions?

6 A. We were told that it was Afande Bosco who had given those orders.

7 Q. And who told you that it was Afande Bosco who gave you those orders?

8 A. He sent his orders using the Motorola to other commanders, and I learned from
9 my other -- from the other soldiers, from my colleagues, my friends.

10 Q. And when you say he sent his orders using the Motorola to other commanders,
11 how do you know that?

12 A. Well, it was the other soldiers who told me that Afande Bosco had just sent the
13 order. He said go from house to house. Look in there. If you find enemies, kill
14 them. I learned that from the other soldiers, from my friends. I never heard
15 Commander Bosco say it directly because I was with some other commanders, and
16 we were away from him. We were not in the same place.

17 MS LUPING: Mr President, I would just like to ask one follow-up question in
18 private session with your leave.

19 PRESIDING JUDGE FREMR: Let's move into private session, please.

20 (Private session at 12.46 p.m.)

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11 (Open session at 12.51 p.m.)
12 THE COURT OFFICER: We are back in open session, Mr President.
13 PRESIDING JUDGE FREMR: Thank you.
14 And before Ms Luping is continuing, I strongly encourage those who are in charge of
15 computers really to devote it proper attention not to disturb us by the same problems
16 in future.
17 Ms Luping, please proceed.
18 MS LUPING: Thank you, Mr President.
19 Q. Mr Witness, I'm just going to go back to your description of the events in
20 Songolo during the operation. You said that the UPC soldiers that you were with,
21 that you killed many, including women, men and old people.
22 Can you recall the youngest amongst those who were killed during the Songolo
23 operation?
24 A. I remember there were even babies, young children, aged 5 or 6, younger
25 children, even babies who couldn't even walk. They were all killed.

1 Q. And, Mr Witness, you stated that during the operation orders were given to go
2 house to house to check each house, and if people were found, they were taken out
3 and they were to be killed.

4 Can you recall who gave those orders to check for people house to house?

5 A. We learned that Bosco, Afande Bosco himself gave that order. He gave that
6 order.

7 Q. And how do you know that it was Afande Bosco who gave those orders?

8 Sorry, Mr Witness, before you respond to that, if there is any response you think that
9 will identify you, I can ask to go in private session.

10 Maybe to be safe, Mr President, we should simply go into private session with your
11 leave and I can repeat my question.

12 PRESIDING JUDGE FREMR: Mr Bourgon.

13 MR BOURGON: Mr President, I was under the impression that this line of
14 questioning had been already asked and answered.

15 PRESIDING JUDGE FREMR: Ms Luping.

16 MS LUPING: Not at all, Mr President. This is a new line of questioning relating to
17 orders being given during the operation itself and in the context of house-to-house
18 checks and the order to kill people found inside the houses, this is a new line of
19 questioning.

20 PRESIDING JUDGE FREMR: All right. Objection overruled. And let's move into
21 private session.

22 (Private session at 12.54 p.m.)

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2 (Open session at 12.59 p.m.)

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

4 PRESIDING JUDGE FREMR: Thank you.

5 Ms Luping, please.

6 MS LUPING: Thank you, Mr President.

7 Q. Now, Mr Witness, you had explained that you received orders from
8 commanders to torch the houses in Songolo after taking valuables out of those houses.
9 When you received orders to torch the houses, did the commanders explain why you
10 were to set fire to the houses?

11 A. Yes. They explained to us that these were houses belonging to our enemies.
12 So everything that we found we were supposed to destroy because those people were
13 designated as our enemies, and these were the possessions of our enemies and, thus,
14 we were to destroy them.

15 Q. And in terms of the valuables that you took out of the houses, could you, and
16 you said that you were to hand these to the commanders, could you describe what
17 types of valuables were taken out of the houses in Songolo?

18 A. Yes, valuable items in those houses, for example, radio sets, televisions. But
19 there weren't a lot of televisions. There were cameras, for example. We would
20 even go into shops and take all the merchandise, for example, biscuits, sardines,
21 clothing. Each time we took valuable items, the commanders would take them from
22 us. We would hand over all these valuable items to the commanders. We would
23 just keep a few things that weren't very or not all that necessary, for example, some
24 clothing, that kind of thing.

25 MS LUPING: Mr President, this may be an appropriate moment to break, but before

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1 I break, I would just ask for the Chamber's indulgence that when the timing is
2 calculated that the various problems, obviously I'm not blaming anybody, but the
3 problems being experienced by opposing counsel if that could be please deducted
4 from my time. Thank you.

5 PRESIDING JUDGE FREMR: It was just confirmed to me by noting made by court
6 officer that it is the case, so it's not included to your time.

7 We are in open session, so I can just publicly announce that we will break now. We
8 will continue at 2.30. And as to the timing, according our measuring, Ms Luping,
9 you have already exhausted 2 hours 30 minutes, which means you still have 2 hours
10 at your disposal. But one important point, because of some other commitments of
11 the Chamber, we have to finish this afternoon session 4.25 sharp. So have it in mind.
12 Now we break and we will resume half past 2.

13 THE COURT USHER: All rise.

14 (Recess taken at 1.03 p.m.)

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

16 THE COURT USHER: All rise.

17 Please be seated.

18 PRESIDING JUDGE FREMR: Good afternoon, everybody.

19 Good afternoon, Mr Witness. Mr Witness, are you feeling well?

20 THE WITNESS: (Interpretation) Yes, I'm fine.

21 PRESIDING JUDGE FREMR: Very well. Then we can continue with your
22 testimony. So Prosecution and concretely Ms Luping, you have the floor.

23 MS LUPING: Thank you, Mr President.

24 Q. Mr Witness, just before the break, you were describing the operation at Songolo.
25 And I just had a couple of additional questions to ask you which can be asked in open

1 session. Now, you had indicated that when your group arrived in Songolo, there
2 were already some commanders and UPC soldiers there for the operation. Can you
3 recall the names of any of the commanders already present in Songolo when your
4 group arrived?

5 A. No, I do not remember the names of those commanders.

6 Q. And during the operation at Songolo you indicated that Commander Bosco had
7 given instructions via Motorola. At any time during or after the operation did you
8 see Commander Bosco at Songolo?

9 A. No, I did not see him personally. The orders were issued by Motorola. I did
10 not see him.

11 Q. And in terms of the various orders or instructions for the operation in Songolo,
12 did you ever receive any instructions on how you were to treat civilians, if at all?

13 A. Yes, the commanders gave us orders which had been received from
14 Commander Bosco.

15 Q. And could you explain to the judges what those orders were in relation to
16 civilians?

17 A. I have not quite understood your question. Are you talking about cohabiting
18 with civilians and if so, in what manner.

19 Q. I'm talking about the Songolo operation, if you recall of any orders or
20 instructions were given to you about how civilians at Songolo were to be treated, if
21 there were any such orders about civilians?

22 A. When it comes to civilians, they were Lendu and Ngiti civilians. We were
23 fighting against them because they were civilians who did not support our own
24 cause.

25 Q. And did you receive any orders or instructions about those civilians or not?

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1 And I'm still talking about the Songolo operation.

2 A. Yes, our commanders gave us the following orders or they gave us orders in
3 that connection.

4 Q. And what were those orders, Mr Witness?

5 A. We were ordered to chase out civilians who did not belong to our tribe, namely
6 the Lendus and Ngitis. We beat up some of them and we killed others.

7 MS LUPING: Mr President, could I please ask that we move into private session
8 with your leave for the next questions.

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

10 (Private session at 2.40 p.m.)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

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6 (Open session at 4.01 p.m.)

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

8 PRESIDING JUDGE FREMR: Thank you, court officer.

9 Ms Luping, please proceed.

10 MS LUPING: Yes.

11 Q. Mr Witness, can you please describe the operation in Bunia, from what you can
12 recall, from the moment you first receive instructions for the operation and then what
13 happened during the operation? And if there's anything that might identify you, if
14 you could please stop and say you need to go to private session.

15 A. Yes, where it concerns the Bunia operation, we fought against the UPDF
16 government, the troops come from Uganda. When we fought the UPDF we saw that
17 there were Lendu and Ngiti combatants with them, were fighting together. We
18 started the attack at 5 in the morning, and it was a very harsh attack and we lost a lot
19 of our troops.

20 The battle became very hard. We wanted to drive the Ugandans from the airport,
21 but we weren't able to. We weren't able to take over the airport. And around 1800
22 hours, we got the order to withdraw and we heard that we had failed. We had to
23 leave Bunia. We left Bunia around 1800 hours, and 1900 hours we fled and we went
24 to a place called Centrale, and it was 15, 10 to 15 kilometres from Bunia.

25 MS LUPING: Mr President, if we could briefly go into private session, with your

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1 leave, for a few additional questions I need to ask.

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

4 (Private session at 4.04 p.m.)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

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12 (Redacted)

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3 (Open session at 4.12 p.m.)

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

5 PRESIDING JUDGE FREMR: Thank you, court officer.

6 Mr Witness, I also would like to thank you because you followed our guidance, you
7 responded clearly and patiently all day. So thank you very much. Now you can
8 take some rest and we will continue tomorrow 9.30. And one important caveat, you
9 must not discuss your testimony in the meantime with anybody else. Do you
10 understand that?

11 THE WITNESS: (Interpretation) I have understood you well, your Honour.

12 PRESIDING JUDGE FREMR: Thank you and see you tomorrow.

13 Mr Bourgon, in the presence of the witness?

14 MR BOURGON: Yes, yes, Mr President --

15 PRESIDING JUDGE FREMR: So --

16 MR BOURGON: -- because there's just one word I would like to clarify because this
17 will be important for my preparation for tonight, and this is on page 111, at line 16.

18 The witness answers that:

19 "Yes, there were other operations and we heard people speak about" their command.
20 And then he says, command. "I heard that ... was a difficult operation."
21 Maybe I missed something. I would like to -- is he talking about those in command
22 of operation or is he talking about the name of an operation? That will be important.
23 I think we can clarify with the witness.

24 PRESIDING JUDGE FREMR: Ms Luping, maybe take it, just the word Komanda.

25 MS LUPING:

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1 Q. Mr Witness, there is a question of clarity on the record. There is a reference to
2 the word "Komanda".

3 MR BOURGON: If it says "Komanda" it's fine. I just I did not have "Komanda" on
4 my screen.

5 MS LUPING: I see "Komanda" in the English transcript. But it does say --

6 MR BOURGON: Thank you.

7 MS LUPING: -- "their command Komanda."

8 Q. Is Komanda the name of one of the operations you are referring to, Mr Witness?
9 There are the words "their command" and then "Komanda" that follows it. Were you
10 referring to "Komanda" as one of the places where the operation took place?

11 THE WITNESS: (Interpretation) The operation took place in a locality called
12 Komanda, Komanda is not close to Bunia. To go there you have to go through
13 Nyankunde in order to go to Komanda. It's a -- it's a locality which is far from Bunia
14 called Komanda.

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

16 So now, court usher, you can just guide Mr Witness out of the courtroom.

17 (The witness stands down)

18 PRESIDING JUDGE FREMR: Now my question goes to the court officer, how much
19 time -- I do have it here, how much time still is available to Ms Luping? So you have
20 already used, Ms Luping, 4 hours 1 minute so you still have 29 minutes for tomorrow.
21 And now I will deliver that oral ruling as I indicated. It's oral ruling on the
22 Prosecution request, filing number 1333, seeking the admission under Rule 68(3) of
23 the prior recorded testimony and associated documents of Witness P-315.
24 In its request, the Prosecution seeks admission of, first, Witness P-315's statement, as
25 well as the two documents annexed to it; second, three Human Rights Watch reports

1 which the witness researched and authored; and, third, certain other related materials.

2 The Prosecution indicates that, in addition to admission of these materials, it seeks to
3 conduct a brief supplementary examination of the witness of one hour.

4 The Defence responded to the request in filing 1386, indicating that it does not oppose
5 admission of specific passages of the statement, the 12 photographs related thereto,
6 and annex 1 to the statement. It objects, however, to the admission of other portions
7 of the statement and certain other associated documents. It further requests that the
8 Chamber defer its decision on the admissibility of three specific documents until after
9 the witness's testimony.

10 On 14 June 2016, in filing number 1396, the Prosecution sought leave to reply to the
11 response on six discrete points, or alternatively, it requested that the Chamber defer
12 its decision regarding the admissibility challenges to the witness's evidence in order
13 to allow the parties to make their oral submissions in court.

14 The Defence responded by way of email on 15 June, in which it indicates that,
15 although these issues should have been foreseen, it does not object to the request for
16 leave to reply.

17 Having considered the specific issues identified by the Prosecution as well as the
18 Defence's response thereto, the Chamber does not consider that it would be assisted
19 by further submissions on these issues. Accordingly, the request for leave to reply is
20 rejected.

21 Turning now to the request itself, as indicated previously, the Chamber will only
22 decide on the admission of evidence tendered pursuant to Rule 68(3) once all
23 requirements have been met, namely, in the present case, the Witness P-315, first, is
24 present before the Chamber; second, is available for questioning by the parties and by
25 the Chamber; and, third, does not object to the submission of the materials in question.

1 At this time, having considered the submissions before it, and in light of its previous
2 guidance on the examination of upcoming witnesses, the Chamber indicates that, in
3 principle, the application of Rule 68(3) is appropriate for Witness P-315.

4 It will address now the scope of the materials it considers may be admitted under
5 Rule 68(3).

6 With regard to the Defence submissions arguing for the need to hear portions of the
7 statement viva voce, in particular those dealings with, first, the substance of the three
8 Human Rights Watch reports which the witness authored or reviewed; and, second,
9 the witness's meeting with Mr Ntaganda and Mr Lubanga, the Chamber does not
10 consider that admission of this material under Rule 68(3) would be prejudicial. The
11 witness will be present in court, will be required to attest to the accuracy of the
12 information and will be available to be cross-examined.

13 With regard to information outside of the geographical and temporal scope of the
14 charges, the Chamber recalls that it had held that a case-by-case assessment is
15 required, is decision number 1181. In this particular instance, the Chamber
16 considers that the potential prejudicial effect of the information pertaining to North
17 Kivu and relating to the period after the charges outweighs its limited probative value,
18 noting the remoteness of such information from the charges. Consequently, the
19 Chamber intends, subject to the caveats already mentioned, to admit the witness's
20 statement bearing the ERN DRC-OTP-2058-0990, with the exception of paragraphs
21 142-151 and will also not admit annex 2 to the statement.

22 The Chamber will admit the first accompanying annex, which is DRC-OTP-2058-1020
23 and the related 12 photographs, DRC-OTP-2058-1058 to DRC-OTP-2058-1069.

24 With regard to the Defence challenges and submissions concerning the admissibility
25 of the remaining associated documents, the Chamber recalls previous decisions by

1 this and other Chambers in similar situations, for example, ICC-01/04-02/06-1029,
2 para 23; that exhibits associated with a previously recorded testimony are admissible
3 if the witness uses or explains them in the prior recorded testimony, and particularly
4 when these are necessary to read and understand the prior recorded testimony being
5 introduced. The Chamber shall consider whether the admission of associated
6 exhibits is not unduly prejudicial to the accused in accordance with Article 69(4) of
7 the Statute.

8 In light of this, with regard to the Defence objections to the admissibility of the HRW
9 reports, which are DRC-OTP-0074-0797, then DRC-OTP-0074-0628 and
10 DRC-OTP-2003-0497, the Chamber notes that in the statement the witness
11 acknowledges that she was the lead author of the first two of them, and the reviewer
12 and editor of the third one; and explained the methodology leading to their drafting.
13 It is noted, however, that only limited portions of the three reports, consisting
14 respectively of 57, 159 and 53 pages, were referred to by the witness in her statement,
15 and not all of the remaining contents appear to be relevant. The Chamber has
16 indicated that it will exercise caution with respect to reports of this nature, this is
17 particularly so where anonymous accounts are provided. The Chamber notes that
18 the reports, in particular the first two, were used and explained by P-315 in her
19 statement and are necessary to fully understand parts thereof. For these reasons,
20 and without prejudice to the weight that will be attributed to the information
21 contained therein, the Chamber considers that DRC-OTP-0074-0797 and
22 DRC-OTP-0074-0628 are admissible under Rule 68(3). Having considered the extent
23 to which it is addressed in the statement and the relevance thereof, the Chamber will
24 not, however, admit DRC-OTP-2003-0497.

25 The Chamber notes that the letter dated 1 October 2002 and its annex, which is

1 DRC-OTP-0136-0161, was mentioned and briefly explained in the statement and that
2 is therefore admissible under Rule 68(3).

3 The Chamber does not consider that the video, which is DRC-OTP-2058-0251, which
4 is only briefly mentioned in the statement, is necessary to understand the witness's
5 testimony. With regard to Prosecution's notes of the meeting with the witness,
6 which is DRC-OTP-2061-0719 and DRC-OTP-2078-2804, the Chamber notes that they
7 are not used or explained in the statement and for this reason it considers that they
8 are also not admissible under Rule 68(3).

9 This ruling is without prejudice to these three items being tendered separately during
10 the examination-in-chief.

11 As to the notes of the witness meeting with Mr Ntaganda and Mr Lubanga, which are
12 DRC-OTP-2062-0363, then DRC-OTP-2062-0367 and DRC-OTP-0172-0296, the
13 Chamber observes that they are simply mentioned in the statement without any
14 further reference or explanation.

15 In light of the Defence submissions and request, the Chamber will defer its decision
16 on their admissibility until the witness's testimony.

17 In light of the above, the Chamber considers that the supplementary examination of
18 the witness shall not exceed 1 hour and should not be merely repetitive of the witness
19 statement. In order to elicit any corrections to the witness statement, the Prosecution
20 may show the statement to the witness, including drawing her attention to particular
21 paragraphs.

22 As a final matter, the Chamber orders that public redacted versions of filings 1333,
23 1386 and 1396 be filed within two weeks.

24 This concludes the Chamber's ruling.

25 So we finish for today and we will reconvene tomorrow 9.30.

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(Open Session)

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- 1 THE COURT USHER: All rise.
- 2 (The hearing ends in open session at 4.27 p.m.)