

1 INTERNATIONAL CRIMINAL COURT

2 SITUATION DEMOCRATIC REPUBLIC OF CONGO

3 Case No: ICC-01/04-01/06

4
5 Transcription No: ICC-01/04-01/06-T-43-EN

6 Thursday, 23 November 2006 at 10.04 a.m.

7 OPEN SESSION

8
9 Before: His Honour Judge Claude Jorda (Presiding Judge)
Her Honour Judge Sylvia Steiner
Her Honour Judge Akua Kuenyehia

10
11 PRE-TRIAL CHAMBER I

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 [10:04 a.m.] ICC-01-04-01-06-T-43-EN

09:54:45 2 OPEN SESSION

10:04:13 3 [10:04 a.m.]

10:04:14 4 THE USHER: All rise. The International Criminal Court is

10:04:34 5 now in session.

10:04:36 6 [10:04 a.m.]

10:04:37 7 PRESIDING JUDGE JORDA (interpretation): Court is in session.

10:04:41 8 Please bring Mr Lubanga Dyilo into the Court. Good morning

10:04:44 9 everyone.

10:04:48 10 [10:04 a.m.]

10:04:49 11 [Mr Thomas Lubanga Dyilo entered the courtroom]

10:05:07 12 PRESIDING JUDGE JORDA (interpretation): I would like to

10:05:14 13 welcome Mr Lubanga Dyilo. Good morning. I would like to

10:05:19 14 welcome all the representatives of the victims, the Office of

10:05:26 15 the Prosecutor and the Defence.

10:05:27 16 [10:05 a.m.]

10:05:27 17 We have a 30-minute delay and we shall try to keep up with

10:05:32 18 this. We cannot catch up over lunchtime, because the canteen

10:05:37 19 closes at a certain time and we would like everybody to have

10:05:40 20 at least one hour of lunch. We are going to stop

10:05:44 21 [as interpreted] from 10 to 11.30. We shall resume at -- and

10:05:50 22 stop at 12. If it is possible, we shall resume at 4.30, for

10:05:57 23 at least half an hour. Is everybody in agreement? All right.

10:06:01 24 If everybody agrees, then I shall ask Mr Flamme now to

10:06:07 25 continue to address the Court.

10:06:09 1 ME FLAMME (interpretation): Thank you, Mr President. Thank
10:06:14 2 you, your Honours. Just to give you the structure of what is
10:06:25 3 going to follow today. I am going to give an overview, the
10:06:39 4 way in which the Prosecutor presented his case, and I shall
10:06:43 5 refer, in the main, to the most important document, which is
10:06:50 6 the document containing the charges.

10:06:51 7 [10:06 a.m.]

10:06:52 8 This document containing the charges will be subjected to an
10:06:59 9 in-depth critique by my colleague, Ms Taylor, tomorrow, but I
10:07:06 10 shall start with matters of fact and law and raise a certain
10:07:15 11 number of fundamental problems that this document containing
10:07:20 12 the charges raises, in our view.

10:07:23 13 [10:07 a.m.]

10:07:23 14 To begin with, this -- I shall try to follow a plan as much as
10:07:30 15 possible and I shall start with the first day in which the
10:07:39 16 Prosecutor presented his evidence -- that is on 13 November,
10:07:45 17 if I remember correctly.

10:07:47 18 [10:07 a.m.]

10:07:47 19 The Prosecutor referred to, I think, at the beginning of his
10:07:50 20 presentation -- he spoke of Mr Thomas Lubanga as not only a
10:07:56 21 politician, but also a military commander, and this allegation
10:08:10 22 is one of the bases of the document containing the charges.

10:08:16 23 The Defence thinks that the Prosecutor has not provided proof.

10:08:23 24 [10:08 a.m.]

10:08:23 25 The Defence would like to point out to the Pre-Trial

10:08:26 1 Chamber -- and this is very important -- that the Prosecutor
10:08:30 2 himself presents the FPLC as a well-structured army. He,
10:08:39 3 himself, said that this army was structured like a
10:08:44 4 conventional army -- I might even say that he's referring, by
10:08:52 5 analogy, to European armies with organisation, and so on, and
10:09:00 6 so forth.

10:09:01 7 As the Prosecutor himself says, there was a Chief-of-Staff,
10:09:08 8 who was Mr Kitembo, as we know, who is a general in the
10:09:12 9 Congolese army today.

10:09:14 10 [10:09 a.m.]

10:09:15 11 In addition, there was a national Minister of Defence -- well,
10:09:19 12 not "national", because Ituri was at the time -- that was not
10:09:27 13 a part of Congo, that was separate from the rest of the
10:09:31 14 country, because this is never what the UPC intended, that is,
10:09:36 15 to secede from Congo.

10:09:39 16 [10:09 a.m.]

10:09:41 17 We are referring here to August 2002, when the Hema genocide
10:09:47 18 was being prepared. We are going to come back to that. In a
10:09:52 19 way, in self-defence, there was this mutiny and this mutiny
10:10:00 20 instituted political power in September 2002, through the
10:10:05 21 military junta. This political power created an
10:10:11 22 administration which was not national, but separate, because
10:10:15 23 the situation was such that the Congolese national government
10:10:23 24 was not in a position to defend the population, and could not
10:10:33 25 meet the needs of the population. So it can be said that

10:10:36 1 there was a vacuum in the State and this is an important

10:10:40 2 aspect of this case.

10:10:43 3 So I said that there was a Minister of Defence, who was Chief

10:10:47 4 Kahwa. Chief Kahwa took over in August 2002, the leadership

10:10:54 5 of the military junta of the mutiny, within the APC in order

10:11:05 6 to counter the genocidal plans of this army, which was the

10:11:10 7 RCD-K/ML Kisangani Liberation Movement. We shall see why

10:11:21 8 later on Chief Kahwa very quickly, this is, as early

10:11:24 9 as November 2002, in turn defected for the second time. This

10:11:31 10 man is a mutineer, because this is the second time that he

10:11:36 11 mutinied. Why did he do this? We shall see that later.

10:11:40 12 However, what I wanted to say here is that there was a

10:11:44 13 Minister of Defence.

10:11:44 14 [10:11 a.m.]

10:11:48 15 Thomas Lubanga was a head of government in the strict sense of

10:11:56 16 the expression. When the Prosecutor seeks to allege that he

10:12:03 17 was a military leader, I would like to say in response that

10:12:08 18 Mr Lubanga never received any military training. He had no

10:12:12 19 rank in the army and he had no military history and, once

10:12:20 20 again, the Prosecutor fails to prove his allegations. You

10:12:23 21 cannot just say things about Mr Lubanga; you must prove them.

10:12:27 22 [10:12 a.m.]

10:12:31 23 And I have seen no evidence adduced to this end, except for

10:12:35 24 very circumstantial evidence which shall -- I shall not

10:12:38 25 describe as evidence in any case.

10:12:41 1 [10:12 a.m.]

10:12:42 2 In the official documents which are in the Prosecutor's case
10:12:46 3 file, we find the personal particulars -- that is, the arrest
10:12:52 4 file -- which identifies Mr Thomas Lubanga. This official
10:12:58 5 Congolese document describes Mr Lubanga as a politician. That
10:13:05 6 is a judicial identification document.

10:13:06 7 [10:13 a.m.]

10:13:09 8 Lastly -- or almost lastly -- if Mr Lubanga was taken to a
10:13:18 9 military court in Congo, it was solely because this court had
10:13:24 10 jurisdiction under Congolese law for war crimes. It did not
10:13:28 11 mean that, in Congo, Mr Lubanga was considered as a soldier.
10:13:34 12 This is a very important point.

10:13:38 13 The decrees to which the Prosecutor made reference, we shall
10:13:45 14 return to these in further detail if we have time, because I
10:13:49 15 don't know whether I will not -- I will have the time to
10:13:53 16 examine the Prosecutor's presentation in detail. That is why
10:13:57 17 I'm starting with these general remarks, which are very
10:14:00 18 important.

10:14:01 19 So, as I was saying, the decree alluded to by the Prosecutor
10:14:06 20 was purely political in the Defence's view. It is not because
10:14:10 21 you are a head of State that you do not have some opinion on
10:14:17 22 the -- your army. It is not for that reason that you will not
10:14:22 23 supervise your Minister of Defence. This Minister has full
10:14:26 24 powers. If the Prosecutor is well informed, I would remind
10:14:29 25 him that -- that the decisions of the UPC government between

10:14:35 1 14 September 2002 and 5 March 2003, on which date the UPC was
10:14:44 2 expelled from Bunia by the Ugandan army -- I will recall that
10:14:49 3 during that very brief period of government decisions were
10:14:54 4 taken in the Cabinet -- at Cabinet level.

10:14:58 5 [10:14 a.m.]

10:15:01 6 Lastly, regarding the point alleging that Thomas Lubanga was a
10:15:07 7 military leader, we have seen on many occasions Thomas Lubanga
10:15:17 8 in military uniform, but this doesn't prove anything at all.

10:15:27 9 First, I would like to inform the Chamber that in Africa, and
10:15:35 10 especially in times of war, it is the custom for political
10:15:40 11 leaders to put on military uniform on some occasions. There
10:15:45 12 are some occasions when the entire government of the UPC put
10:15:49 13 on military uniform for important ceremonies. We do not know
10:15:58 14 why they do this, and we have seen that in Europe, as well.

10:16:04 15 Churchill used to wear military uniform that did not -- this
10:16:08 16 did not in any way mean that he was a soldier and member of
10:16:11 17 the army. I might refer to another example that I know
10:16:15 18 personally, because my father never missed any of the
10:16:20 19 conferences of General De Gaulle and I remember that General
10:16:28 20 De Gaulle also wore a uniform. He was a soldier -- he had
10:16:30 21 been a soldier. He was no longer active in the army when he
10:16:33 22 was head of State, but he sometimes put on a military uniform
10:16:36 23 to give some importance to some of his speeches. So, seeing
10:16:42 24 Thomas Lubanga in military uniform does not mean anything.

10:16:47 25 I would like, in this regard, for the court officer to

10:16:52 1 introduce into evidence <#DRC-D01-0001-0176#>.

10:17:07 2 COURT OFFICER (interpretation): The document number will be

10:17:09 3 <#EVD-D01-00023#>.

10:17:14 4 ME FLAMME (interpretation): Thank you, court officer.

10:17:22 5 Mr President, your Honours, here you can see Mr Lubanga on an

10:17:29 6 occasion that is not known to me -- perhaps this is a visit to

10:17:33 7 some place or other in the field. This is one of the few

10:17:38 8 times when he went into the field because he had obligations

10:17:43 9 elsewhere. We shall refer to that later.

10:17:45 10 We can see that he is in the company, amongst other people, of

10:17:50 11 two soldiers and one policeman. If Thomas Lubanga had been a

10:17:55 12 soldier, and if he had been an active head of the army, then

10:18:03 13 he would never, it is obvious, have appeared in this

10:18:08 14 traditional African dress in the presence of his subordinates.

10:18:13 15 A military leader will never be seen in the presence of

10:18:16 16 soldiers, subordinate officers in civilian dress. But you

10:18:23 17 will see a minister or head of State in that garb.

10:18:23 18 [10:18 a.m.]

10:18:28 19 Furthermore, Thomas Lubanga never took part in military

10:18:35 20 operations as such, which I -- if I remember correctly, the

10:18:43 21 Prosecutor does not allege.

10:18:44 22 [10:18 a.m.]

10:18:47 23 I would like to add, returning to what I raised a while ago,

10:18:55 24 that Mr Thomas Lubanga -- and I will give you the history of

10:19:01 25 that in our presentation -- that during the short time of

10:19:07 1 government Mr Thomas Lubanga was very often abroad for peace
10:19:13 2 negotiations -- in Uganda and in Tanzania. He was working for
10:19:18 3 peace, as I already said. That was, I would say, the main
10:19:24 4 message and mission of his government.

10:19:26 5 [10:19 a.m.]

10:19:28 6 The aim was to extricate Ituri from the chaos that reigned
10:19:35 7 before his government and which returned after his government.
10:19:41 8 In the view of the Defence, the Prosecutor has, in addition,
10:19:46 9 failed to prove the main -- the claimed alleged military
10:19:52 10 training, which the Defence categorically challenges. In this
10:19:56 11 regard, he refers to the end of 2002, without giving an exact
10:20:03 12 date. How can he claim that this alleged fact, which, in his
10:20:17 13 presentation, as a lawyer and a jurist, is not a fact.

10:20:22 14 [10:20 a.m.]

10:20:26 15 In our case law and in our tradition, a fact is a clearly
10:20:32 16 described fact or action which can be situated in time at a
10:20:39 17 precise date and which can be given a precise place where it
10:20:43 18 occurred. So, to say that Thomas Lubanga received military
10:20:49 19 training at the end of 2002 means nothing.

10:20:52 20 [10:20 a.m.]

10:20:56 21 And Mr Thomas Lubanga cannot defend himself against the vague
10:21:01 22 allegations. It's very easy to make allegations, but if
10:21:04 23 you're are going to accuse someone, you must be precise. He
10:21:08 24 does not prove -- the Prosecutor does not prove that this
10:21:12 25 military training took place, and the Defence challenges this

10:21:17 1 view. Mr Thomas Lubanga never received any military training.

10:21:21 2 He didn't even have time for that; it's as simple as that.

10:21:24 3 [10:21 a.m.]

10:21:26 4 I would like to recall, in this regard, that Mr Lubanga came

10:21:32 5 to power amidst chaos and in a manner which he, himself, did

10:21:40 6 not at all expect.

10:21:45 7 The Defence will prove that, as I have said before, that it

10:21:55 8 was when he returned from captivity that Mr Thomas Lubanga

10:22:01 9 arrived in Bunia at the end of August 2002. This captivity of

10:22:08 10 his was related to the fact that he was a disturbing presence

10:22:20 11 for some people, in that he did not want violence, that he

10:22:23 12 refused to play the game, and that he had been sidelined and

10:22:28 13 sent to Kinshasa through the connivance of the

10:23:30 14 well-known RCD-K/ML government of Mr Mbusa and Mr Lomondo,

10:22:45 15 Uganda and the Kinshasa government. So I would say that that

10:22:50 16 fact in itself goes against the Prosecutor's allegations to

10:22:56 17 the effect that the -- Mr Lubanga had military aims as early

10:23:03 18 as September 2002.

10:23:04 19 [10:23 a.m.]

10:23:05 20 How could he have such ambitions when he had no army, when he

10:23:13 21 had a political party only, and when this political party did

10:23:19 22 not even have power and did not represent anything, because,

10:23:25 23 as I might say, Mr Lubanga had been quickly expelled from the

10:23:30 24 RCD-K/ML government, if I might put it as mildly as that.

10:23:34 25

10:23:34 1 [10:23 a.m.]

10:23:37 2 So, what I am saying is that the Prosecutor further fails to
10:23:43 3 prove that Mr Lubanga was actively involved in military
10:23:49 4 operations, apart from purely political instructions. Like,
10:23:56 5 for example -- and we must say this, because this is a
10:24:01 6 political instruction -- for example, banning people from
10:24:04 7 attacking the population or carrying out acts of vengeance.
10:24:13 8 This is, in addition, the reason for the defection of
10:24:18 9 Chief Kahwa, who did not share this view of things. I shall
10:24:23 10 prove it, because the testimony that I submitted to you in
10:24:27 11 closed session refers to that.

10:24:30 12 Chief Kahwa wanted vengeance because he felt that the Hema
10:24:38 13 population had been targeted and attacked by the Lendus -- by
10:24:42 14 the Lendu government -- and that revenge was to be carried
10:24:47 15 out. Mr Lubanga categorically refused that, and this is why
10:24:52 16 Chief Kahwa defected and created PUSIC, which I might describe
10:24:57 17 as the first military movement, the first militia, created
10:25:03 18 with the aim of countermanding my client, who was a problem --
10:25:12 19 many more were created.

10:25:13 20 [10:25 a.m.]

10:25:18 21 Because, if you draw a map of all the militias that were set
10:25:22 22 up a few months later, you cannot -- you can hardly believe
10:25:26 23 what happened. The place was teeming with militias who -
10:25:35 24 which were funded by, amongst other entities, Uganda, and we
10:25:39 25 must not forget the government of Kinshasa. It is cause for

10:25:42 1 concern to observe that Mr Kabila's government was targeting
10:25:48 2 the people of Congo. We shall give the reasons for this.
10:25:50 3 [10:25 a.m.]
10:25:52 4 Now, to move to other matters. The means of communication
10:25:56 5 that the Prosecutor referred to -- and he alludes to
10:26:01 6 correspondence at the bottom of -- which you see that is not
10:26:04 7 at the top of the page -- on the headed notepaper of the UPC
10:26:08 8 we see a fax number and an electronic mail address, a
10:26:14 9 telephone number. I hope that the Prosecutor is not going to
10:26:21 10 try to use this to allege that the FPLC is the UPC. This is
10:26:29 11 the notepaper of the UPC, but we're here to extend that to the
10:26:35 12 FPLC, to say that the FPLC had -- got means of communication
10:26:40 13 that he will try to portray as being exceptional; the whole
10:26:45 14 reasoning seems vague to me. The satellite telephone that he
10:26:49 15 refers to is essential in Congo. I was able to use it myself.
10:26:54 16 [10:26 a.m.]
10:26:54 17 It is essential if you want to be able to communicate at all
10:26:57 18 times in view of the unreliability of normal communication
10:27:01 19 channels. Even today, if you try to call Congo -- and we do
10:27:06 20 try quite often; sometimes it doesn't work; for an entire day
10:27:09 21 you might not be able to telephone. So, a satellite telephone
10:27:16 22 for a head of State is essential and basic, and it no longer
10:27:27 23 costs as much these days.
10:27:29 24 [10:27 a.m.]
10:27:31 25 It is hardly exceptional. Furthermore, the Prosecutor does

10:27:38 1 not prove that these means of communication were used by
10:27:44 2 Mr Thomas Lubanga for military ends. He only proved the
10:27:52 3 mentioning of these means of communication on the notepaper of
10:27:56 4 the UPC party. Nor has he proven the actual operation of
10:28:04 5 these tools.

10:28:05 6 [10:28 a.m.]

10:28:07 7 In this regard, I shall refer to paragraph 17 of the document
10:28:16 8 containing the charges. Paragraph 17 is interesting for
10:28:32 9 another reason: The Prosecutor, in addition to communication
10:28:35 10 tools, also refers to means of transport available to the
10:28:41 11 FPLC, which allegedly allowed its commanders -- I suppose it
10:28:53 12 is suggestion here -- to move around quickly and be everywhere
10:28:58 13 at once, if one might say so.

10:28:59 14 [10:28 a.m.]

10:29:00 15 Mr President, your Honours, these means of transport were none
10:29:08 16 other than the normal ones in Congo -- that is, mainly going
10:29:11 17 on foot.

10:29:15 18 At the very most, the FPLC had a few vehicles, and I'm not
10:29:21 19 even talking about 10 vehicles; sometimes a civilian vehicle
10:29:29 20 had to be used. But it cannot have been very useful because
10:29:37 21 we know, and even if the Chamber does not have precise
10:29:42 22 information in this regard, it would have been the obligation
10:29:50 23 of the Prosecutor in providing exculpatory evidence -- we
10:29:55 24 shall return to that -- it would have been important for the
10:29:58 25 Prosecutor to enlighten the Trial Chamber -- the Pre-Trial

10:30:01 1 Chamber in this regard.

10:30:02 2 [10:30 a.m.]

10:30:02 3 The roads in Congo are not like the roads in Europe. In
10:30:10 4 colonial times -- this was perhaps one of the positive points
10:30:14 5 of the Belgians -- there was a widespread road network, which
10:30:18 6 did allow connection, not quickly, because this is a country
10:30:25 7 that's much larger than France, and perhaps France and other
10:30:30 8 countries put together. Congo is enormous. We are talking
10:30:35 9 about thousands of kilometres here, and we might tend to
10:30:38 10 forget this. So, connection between the important towns of
10:30:41 11 Congo existed from independence.

10:30:48 12 This road network deteriorated, and is barely in existence
10:30:52 13 today and for the time being, there are plans to revive the
10:30:58 14 road network. But the fact is that we are before roads -- we
10:31:04 15 are facing roads that are basically non-existent and sometimes
10:31:06 16 we have paths or on paved roads where covering 15 kilometres
10:31:13 17 requires an hour and a half. That is at the speed of a
10:31:16 18 running man.

10:31:16 19 [10:31 a.m.]

10:31:18 20 So, it can be seen that these vehicles that are alleged to
10:31:24 21 have been old would not have been of much help to the army.
10:31:28 22 When Mr Thomas Lubanga inherited this army, because of
10:31:32 23 circumstances, the FPLC was a conventional Congolese army that
10:31:38 24 moved on foot, and which perhaps may have moved more quickly
10:31:41 25 on foot than it might have done in a vehicle. I would not

10:31:45 1 have to remind you, Mr President, that Mr -- that Napoleon
10:31:53 2 moved on foot, and he moved very quickly, the battle of
10:31:57 3 Austerlitz was won by that means. He came from Pas-de-Calais
10:32:00 4 and took his enemies by surprise.

10:32:04 5 PRESIDING JUDGE JORDA (interpretation): We know that you know
10:32:05 6 things, Mr Flamme, with regards to the battle of Austerlitz.
10:32:08 7 I don't know where the Belgians were at the time.

10:32:13 8 ME FLAMME (interpretation): Thank you, Mr President. So,
10:32:17 9 that's it with regard to the vehicles.

10:32:23 10 Where it concerns now, Mr President, judges, the allegation of
10:32:31 11 the Prosecutor -- and here I'm afraid that, once again, it's
10:32:38 12 not me who's speaking here -- I've had some information --
10:32:42 13 I've basically had to do a little history course, but it is
10:32:46 14 very important, it often clarifies things to us.

10:32:48 15 [10:32 a.m.]

10:32:52 16 And the political world often doesn't take the lessons from
10:32:56 17 history well. That's a little aside. But apart from that,
10:33:01 18 justice always has it in the memory. The Prosecutor speaks
10:33:05 19 about an ethnic group which apparently my client is supposed
10:33:11 20 to belong to, the Hema-Gegere group -- and during the
10:33:16 21 cross-examination we spoke with Madame Peduto, who is an
10:33:22 22 anthropologist and she wasn't able to answer me -- answer well
10:33:27 23 my question, but basically this ethnic group doesn't exist.

10:33:30 24 [10:33 a.m.]

10:33:30 25 Let's make that clear. This ethnic group, which the

10:33:35 1 Prosecutor mentions, has never existed. There is only a
10:33:39 2 difference to be made and it would be useful for the
10:33:45 3 Prosecutor to document this, and if we -- when you come to
10:33:49 4 making documentation on a technical point which goes
10:33:53 5 completely beyond us as a -- a jurist, it's an anthropological
10:34:00 6 point or historical point then you ask an expert to carry out
10:34:02 7 this work, and I've never seen, in your dossier, an expert's
10:34:06 8 report on this subject. Well, you know that I contest this
10:34:08 9 point. There are the Menou who come from Djugo and Hema
10:34:20 10 South, and the Hema South who come from the territory of
10:34:25 11 Irumu, and the difference between these two populations of the
10:34:30 12 same ethnic group is principally, in a - well, bizarre way,
10:34:34 13 the Hema Nord, have taken the Lendu language, they speak
10:34:43 14 Kilendu, while the Hema South, they keep speaking their own
10:34:46 15 language, being Kihema.

10:34:49 16 [10:34 a.m.]

10:34:52 17 So the difference between these two populations, and the
10:34:57 18 northern Hema and the southern Hema are perhaps more easily
10:35:00 19 adapted to circumstances of life. Well, perhaps some are more
10:35:05 20 trader-oriented, they're more prosperous, and that's exactly
10:35:13 21 why I would like to go to where you have this problem. I'm
10:35:13 22 not saying that the nomination Gegere doesn't exist, but what
10:35:16 23 I'm saying is that there isn't an ethnic group called Gegere,
10:35:20 24 and that the nomination, Gegere, is an insult, which goes back
10:35:28 25 to -- well, probably -- I don't want to affirm this, but a

10:35:33 1 lot of people have explained to me that -- that at the time of
10:35:37 2 the King, because in the Great Lakes region when you had the
10:35:51 3 colonisation there was the King in Burundi, Rwanda, Congo
10:35:51 4 there, and still there are descendents and there's a Royal
10:35:56 5 clan and the ancestors are called Mugere or Muhare and this
10:36:02 6 appellation was probably been taken up by the Lendu to
10:36:07 7 indicate the most prosperous. And afterwards that was used to
10:36:14 8 indicate them taking a step forward to indicate them as those
10:36:18 9 who should disappear from the territory, because -- well, we
10:36:23 10 know -- this dialectic which existed in Rwanda as well towards
10:36:28 11 the Tutsis and that's something that we will speak about, as
10:36:32 12 well, because all that does have an influence and it's all
10:36:34 13 interlinked.

10:36:36 14 PRESIDING JUDGE JORDA (interpretation): I don't want to
10:36:37 15 interfere with what you're saying, but you are, of course,
10:36:40 16 making a reproach to the Prosecutor for not having argued
10:36:44 17 on this, but you're - it's something you're affirming, as
10:36:47 18 well. So it is basically a discourse of anthropologists that
10:36:53 19 we've got at the moment. So don't forget that the Prosecutor
10:36:57 20 has - is the one who has to provide the proof. So, thanks,
10:36:59 21 we're in agreement with that.

10:37:01 22 ME FLAMME (interpretation): As you've said, Mr President,
10:37:01 23 yes -- *actori incumbit probatio*, the Prosecutor has the burden
10:37:08 24 of proof. I don't have to prove anything. My client is
10:37:11 25 presumed innocent.

10:37:11 1 [10:37 a.m.]

10:37:13 2 So we now go to another issue, and this is a very important
10:37:17 3 issue for the Prosecutor. I have said that the document
10:37:21 4 containing the charges contains contradictions on the subject.

10:37:25 5 The Prosecutor says that, in paragraph 4 of the document
10:37:31 6 containing the charges, and in paragraph 9 as well.

10:37:37 7 Unfortunately we saw yesterday, as Ms Pandanzyla said, you
10:37:42 8 can't have two things at the same time, but I think it would
10:37:47 9 perhaps be more -- a bit distracting -- but a political
10:37:52 10 military movement which would have declared itself as such --
10:38:00 11 a self-declared political military movement in 2000. The
10:38:05 12 Prosecutor doesn't prove this, however, and it's false.

10:38:10 13 The UPC, which was created, yes, in 2000, was a political
10:38:16 14 party -- was recognised and it was -- it was founded also by a
10:38:22 15 ministerial decree numbered 20 -- 25/2004, of 2 July 2004.

10:38:30 16 And this recognition came later. That's to say that the UPC,
10:38:33 17 as such, was a political party. It was not a military -- it
10:38:38 18 didn't have anything military about it.

10:38:43 19 Now, with regard to the documents concerning the constitution
10:38:45 20 of the UPC in 2000, nothing makes it possible to establish the
10:38:49 21 thesis of the Prosecutor.

10:38:51 22 [10:38 a.m.]

10:38:51 23 The FPLC -- and here I will insist on the use of the correct
10:38:56 24 terms here -- the armed wing of the UPC -- and this isn't even
10:39:01 25 contested by the Defence -- was established in September 2002

10:39:07 1 following this famous mutiny within the APC in August 2002. A
10:39:13 2 mutiny which, I said, had as its aim to stop the planned
10:39:18 3 genocide by the power in place of the RCD-K/ML on the Hema
10:39:25 4 population.

10:39:26 5 And so, it's in this sense that the Prosecutor has not proved
10:39:33 6 his allegation that already from May 2002 -- that there was an
10:39:39 7 armed conflict between the Lendu and FPLC. These latter
10:39:47 8 didn't exist at the time.

10:39:47 9 [10:39 a.m.]

10:39:48 10 Furthermore, the Prosecutor contradicts -- even -- even in the
10:39:52 11 document containing the charges, the Prosecutor contradicts
10:39:55 12 himself. This document containing the charges, I've read it
10:39:58 13 and I've re-read it and there are several places where it's
10:40:04 14 contradictory. I'm sorry. If you look at paragraph 5 of this
10:40:07 15 document, you say yourself that the FPLC had been founded in
10:40:15 16 mid-September 2002 at the latest -- at the latest. And in
10:40:21 17 another place, you say that it was September --
10:40:26 18 middle September at the latest, but whatever
10:40:29 19 happens -- September that's how I read you in the -- in
10:40:33 20 this -- in the paragraphs concerned. So don't come and tell
10:40:36 21 us that the FPLC existed before.

10:40:38 22 So, as you say that there were Hema militia, perhaps, but
10:40:44 23 you're not very clear on this subject.

10:40:46 24 [10:40 a.m.]

10:40:48 25 And clarity is one of the basic conditions of a document

10:40:53 1 containing the charges if one wants to be able to defend one's
10:40:57 2 self. So this Hema militia who were supposed to have existed
10:41:02 3 before, well, you don't prove their existence. I haven't seen
10:41:05 4 it anywhere.

10:41:06 5 [10:41 a.m.]

10:41:08 6 The Prosecutor -- and this is my next point -- the Prosecutor
10:41:17 7 then goes into a history of the armed conflict in Ituri -- or
10:41:22 8 he tries to, at least, or he doesn't want to -- I think it's
10:41:27 9 that.

10:41:29 10 The Defence considers that the Prosecutor deals with the
10:41:34 11 history in a very superficial way, and that his account isn't
10:41:38 12 reliable, because he puts in fundamental elements which are
10:41:44 13 essential to understanding this conflict, but he does neglect
10:41:49 14 his obligation to also investigate exonerating evidence and he
10:41:55 15 underestimates, for example -- just to give one example -- the
10:41:58 16 number of civilians killed, which he declares to be around
10:42:03 17 8,000 in his presentation -- in his dossier. Well, the real
10:42:07 18 figures are tens of thousands, which -- I mean, that's hardly
10:42:14 19 negligible as a selective representation.

10:42:22 20 [10:42 a.m.]

10:42:23 21 And the next point I would like to go to: the Prosecutor has
10:42:26 22 not proved that the UPC government was an mono-ethnic
10:42:33 23 government, as he claims in paragraph 12, Mr Registrar, in the
10:42:39 24 document containing the charges, or Hema dominance, on the one
10:42:46 25 hand, and that they aim to control Ituri by way of violence;

10:42:53 1 that they aimed at violent ethnic division; and that they

10:43:00 2 targeted the non-Hema population.

10:43:01 3 [10:43 a.m.]

10:43:03 4 PRESIDING JUDGE JORDA (interpretation) Whereabouts are you

10:43:04 5 with regards to the document containing the charges?

10:43:09 6 ME FLAMME (interpretation): At paragraph 12.

10:43:12 7 PRESIDING JUDGE JORDA (interpretation): Okay, we have got it

10:43:13 8 in front of us, thank you.

10:43:16 9 ME FLAMME (interpretation): So the first remark that I

10:43:17 10 wanted to make in this regard because -- here, I mean, these

10:43:19 11 are significant accusations we're talking about. So, you just

10:43:23 12 have to look at the composition of the government that was set

10:43:28 13 up from 14 September 2002 and it was imposed on Mr Lubanga by

10:43:38 14 Chief Kahwa -- that's something we'll come back to -- the

10:43:40 15 condition of his liberation that's -- you can take - you will

10:43:45 16 take political power because -- and this is interesting to

10:43:48 17 know -- Chief Kahwa knew that it was only Thomas Lubanga who

10:43:52 18 had the support of the population. That was -- I mean, that

10:43:55 19 is important. So it was imposed on Mr Lubanga because -- and

10:44:05 20 I -- well, I've said what I wanted to say on this subject.

10:44:08 21 [10:44 a.m.]

10:44:08 22 So, it would have been enough as well, just to carry out

10:44:13 23 research with regards to the ethnicity of all the members of

10:44:17 24 this government -- which the Prosecutor hasn't done, and in

10:44:22 25 this way, again, contravening his obligation -- that's the new

10:44:29 1 element -- that's the new element, judges, within the
10:44:33 2 Statute -- his obligation to examine exonerating evidence, and
10:44:39 3 I think that the Prosecutor thinks it is still before the ICTY
10:44:44 4 where that didn't exist.

10:44:45 5 [10:44 a.m.]

10:44:47 6 Just to give you an example, the Minister of Pacification at
10:44:52 7 the time, Mr John Tinanzabo, was of the Bira ethnicity, and
10:45:01 8 that's just one example. The Prosecutor also had not made
10:45:05 9 this examination concerning the composition as such of the UPC
10:45:10 10 as a party as such.

10:45:12 11 [10:45 a.m.]

10:45:14 12 The next point: The Prosecutor claims that the aim of the UPC
10:45:23 13 was to establish Hema domination through force and -- and that
10:45:35 14 the means of doing so was ethnic division through force. And
10:45:42 15 this is something that's not proved by the Prosecutor. He
10:45:47 16 states with generalisms without establishing or even
10:45:50 17 mentioning any fact in this regard. Of course, I don't have
10:46:01 18 any lessons to give the Prosecutor, who has his office, which
10:46:05 19 is very well equipped, but I do just want to point out that to
10:46:10 20 bring somebody to justice -- criminal justice, you have to
10:46:16 21 have facts.

10:46:17 22 [10:46 a.m.]

10:46:17 23 My next point, judges, President, is that the Prosecutor also
10:46:25 24 claims, but doesn't prove, that Thomas Lubanga was the final
10:46:34 25 and only authority who took all the decisions, while

10:46:41 1 suggesting that he would have taken them alone. So I had the
10:46:47 2 opportunity of saying that all the decisions of his government
10:46:52 3 were taken in a council of ministers, as in a democratic
10:46:59 4 government, which met very regularly.

10:47:02 5 [10:47 a.m.]

10:47:04 6 The fact that the Prosecutor produces decisions of the
10:47:09 7 presidency signed by Thomas Lubanga does not prove anything.
10:47:15 8 In Belgium, for example, the laws and decrees are signed by
10:47:22 9 the King. That doesn't mean that he takes these decisions
10:47:26 10 himself, because it's a political decision. So it's just that
10:47:30 11 the law provides that the formal documents mean that the --
10:47:36 12 which mean that the law becomes law, or judicial -- or royal
10:47:41 13 decree, that you need royal signatures.

10:47:46 14 [10:47 a.m.]

10:47:47 15 So, for example, this signature of Thomas Lubanga is the
10:47:51 16 formalisation of a decision taken within the council of
10:47:55 17 ministers.

10:48:03 18 Furthermore, in one of the documents that the Prosecutor has
10:48:10 19 shown us -- and it concerns a decision by which a member of
10:48:16 20 the Cabinet is taken away -- has his functions taken away,
10:48:22 21 it's a very -- he's removed from his functions -- it's a very
10:48:27 22 selective reading of it, because I just want to highlight the
10:48:30 23 fact that, once again, it's signed by Thomas Lubanga, and the
10:48:35 24 -- and the reason -- this was done in May -- and basically the
10:48:39 25 reason for this reason, he had drunk alcoholic drinks and he

10:48:45 1 had signed documents without being able to.

10:48:49 2 So there was some mistake in writing, and so that led to his
10:48:53 3 being removed from that post. Of course, in a democratic
10:48:56 4 government that might be a reason for that, and in submitting
10:48:59 5 this document I recognise that this does prove that, in the
10:49:03 6 government of Lubanga, things happened in a democratic way.

10:49:03 7 [10:49 a.m.]

10:49:09 8 The next point is that the Prosecutor alleges -- or he claims
10:49:19 9 that, at the latest, in the middle of summer 2002, together
10:49:24 10 with the leaders of the UPC and the FPLC commanders,
10:49:31 11 Mr Thomas Lubanga had established a strategy with a view to
10:49:38 12 undertaking combat with non-Hema militia, and particularly the
10:49:44 13 Lendu militia, and to spread violence through the militia --
10:49:50 14 Lendu militia, and members of other - two other groups in
10:49:57 15 Lendu. This is in paragraph 13, that I'm referring to, which
10:50:01 16 should now be appearing on the screen.

10:50:02 17 [10:50 a.m.]

10:50:03 18 So, the first point -- so, the Prosecutor is quite
10:50:08 19 contradictory in what he says, because he said furthermore,
10:50:11 20 and here we have paragraph 5 of the document containing the
10:50:16 21 charges, that the FPLC was created in mid-September at the
10:50:20 22 latest, in paragraph 5, and certainly in September 2002,
10:50:27 23 paragraph 14.

10:50:30 24 So, then he wasn't sure with what he says later, in paragraph
10:50:38 25 13.

10:50:38 1 [10:50 a.m.]

10:50:40 2 In paragraph 14, he's more affirmative because he says [in

10:50:44 3 French]:

10:50:44 4 "In September 2002 Thomas Lubanga Dyilo founded the FPLC as

10:50:49 5 its military wing."

10:50:56 6 So the Defence considers that it is wrongly the Prosecutor --

10:51:05 7 is basing himself on the document <#EVD-OTP-0007#>, that's to

10:51:16 8 say, the report of the Security Council of 21 February 2003,

10:51:26 9 more specifically, paragraph 15. This is the document

10:51:36 10 <#DRC-0013-1392#>, and, Mr Registrar, perhaps I might be

10:51:47 11 wrong -- yes, that's it, paragraph 15.

10:51:51 12 [10:51 a.m.]

10:51:55 13 This report is -- well, it basically -- it's contradicted by

10:52:02 14 the charging document itself, because the report speaks about

10:52:06 15 the supposed existence in -- in June 2002 of the UPC and -- or

10:52:14 16 -- or that a preliminary Hema militia, which was reinforced

10:52:19 17 and resupplied, which leads us to understand that the

10:52:26 18 Security Council supposed that the FPLC existed a long time

10:52:31 19 before June 2002. But we've seen that the Security Council is

10:52:36 20 sometimes misinformed with regards to what's happening in the

10:52:41 21 field, and I refer to the Prosecution witness.

10:52:43 22 [10:52 a.m.]

10:52:46 23 And, furthermore, it's also wrongly that the Security Council

10:52:54 24 mentions combat on 10 July 2002 between the UPC and the

10:53:03 25 RCD-ML, while it was actually fighting within the APC, as we

10:53:08 1 said. So it's also with regards to August 2002 that the
10:53:20 2 RCD-K/ML left Beni -- fled from Beni, chased out by the
10:53:30 3 mutiny, and in -- this government was already in place and
10:53:35 4 preparing genocide in July. And here I'm referring to the
10:53:39 5 Defence document <#EVD-01-0002#> to <#0005#> -- are documents
6 which have gone into evidence, and a document which is a
7 confidential document which went into the evidence in closed
8 session <#0015#> which - which I can mention in public session
9 if I don't reveal the identity of the witness.

10 [10:54 a.m.]

10:54:16 11 The next point, which I would like to highlight, Mr President,
10:54:20 12 judges, your Honours, is that the Prosecutor sustains that at
10:54:29 13 least in the summer 2002, together with leaders of the APC --
10:54:37 14 I'm sorry, no, I've said that already.

10:54:37 15 [10:54 a.m.]

10:54:44 16 I will now go over to the next point. We know, particularly
10:54:53 17 through a written testimony presented yesterday in this -- in
10:54:58 18 the closed session -- or the day before yesterday, I think --
10:55:06 19 that in the middle of summer -- in August 2002, the APC didn't
10:55:11 20 exist. The Prosecutor, once again in his obligation to
10:55:19 21 investigate -- he didn't investigate with regards to this
10:55:25 22 easily verifiable fact and, furthermore, it certainly wasn't
10:55:30 23 proved as regards to summer 2002 that the FPLC would have
10:55:38 24 existed, which is contradicted by the charging document
10:55:42 25 itself, which is a bit disconcerting, I think.

10:55:45 1 [10:55 a.m.]

10:55:48 2 The next point is when it comes to undertaking an armed
10:55:54 3 conflict against non-Hema militia, who later would have formed
10:56:00 4 the Front des nationalistes et integrationniste, FNI, that's
10:56:07 5 after the PUSIC, I think. The next militia movement came out
10:56:13 6 of a new mutiny within the FPLC -- there were a lot. It's the
10:56:22 7 case that Mr Lubanga had a political philosophy which didn't
10:56:28 8 please a lot of people. It's also a very interesting element
10:56:32 9 to be examined, Mr Prosecutor, and this fact isn't proved.

10:56:36 10 [10:56 a.m.]

10:56:37 11 The document containing the charges doesn't give precise
10:56:41 12 details as to the facts; that is to say, the place and the
10:56:44 13 date of attacks or precise battles. What are we speaking
10:56:49 14 about? We don't know, Mr Prosecutor. You leave us in
10:56:54 15 judicial fog. The Defence considers that, under these
10:57:00 16 circumstances, it's not possible to be able to defend one's
10:57:04 17 self, because you don't mention precise facts.

10:57:06 18 [10:57 a.m.]

10:57:11 19 I would also like to mention that, furthermore, Chief Kahwa,
10:57:20 20 who we often speak about, mentioned by the Prosecutor on
10:57:25 21 paragraph 23 of the document containing the charges, as one of
10:57:31 22 the commanders of the FPLC, as I said, very quickly defected
10:57:41 23 after some weeks. Precisely -- this would have been
10:57:45 24 interesting, Mr Prosecutor, to have some investigation with
10:57:47 25 regards -- because of a disagreement with the policy of the

10:57:50 1 UPC consisting in banning actions of vengeance, attacks on the
10:57:59 2 population, and actions which wouldn't be purely defensive.

10:58:04 3 [10:58 a.m.]

10:58:06 4 And I would -- here I would like to cite in this regard, if
10:58:14 5 the President allows me to do so, but to be totally clear I
10:58:21 6 would like to have a precision in this regard, that it -- here
10:58:26 7 we're talking about the document which was entered in closed
10:58:33 8 session. Of course, I won't cite the author of the document.

10:58:40 9 PRESIDING JUDGE JORDA (interpretation): Please be careful,
10:58:41 10 Mr Flamme.

10:58:44 11 ME FLAMME (interpretation): It's in the middle of page 2,
10:58:46 12 the defection within the FPLC of Chief Kahwa was due to his
10:58:53 13 disagreement with Thomas Lubanga. Chief Kahwa wanted
10:58:56 14 systematic attacks, which was rejected by Thomas Lubanga.
10:59:01 15 Chief Kahwa therefore formed the PUSIC which, in 2002, had the
10:59:06 16 support of Uganda.

10:59:07 17 [10:59 a.m.]

10:59:08 18 And I consider that this is a very important element within
10:59:13 19 the framework of a better understanding of the conflict within
10:59:21 20 the framework of the Prosecutor's document containing the
10:59:25 21 charges.

10:59:25 22 [10:59 a.m.]

10:59:28 23 The next point: the defence also pointed out that the
10:59:33 24 Prosecutor --

10:59:36 25 PRESIDING JUDGE JORDA (interpretation): Did you have a

10:59:38 1 pseudonym for this witness?

10:59:39 2 ME FLAMME (interpretation): We didn't give him one.

10:59:53 3 PRESIDING JUDGE JORDA (interpretation): I would like to
10:59:54 4 remind you that it is under seal, thank you.

10:59:58 5 ME FLAMME (interpretation): So the Defence points out that
11:00:00 6 the Prosecutor again contradicts himself when -- and this is
11:00:08 7 rather disturbing here, because he doesn't bring any charges
11:00:18 8 of war crimes consisting in attacking civilian populations
11:00:24 9 under 8(b)(i) of the Statute -- Article 8(b)(i). So what does
11:00:37 10 that mean, Prosecutor?

11:00:37 11 [11:00 a.m.]

11:00:38 12 I would say that the allegations we are talking about here
11:00:41 13 only serve to create a negative -- negative feelings against
11:00:47 14 Mr Thomas Lubanga to -- in support of the charges that you did
11:00:53 15 decide for, and I think that this is difficult to accept and I
11:00:59 16 don't think it fits in with your obligation to investigate
11:01:06 17 exonerating circumstances equally. And the truth is that you
11:01:09 18 didn't find any proof against Mr Thomas Lubanga for the war
11:01:13 19 crimes I am talking about.

11:01:14 20 [11:01 a.m.]

11:01:17 21 Next point: if we say that the Prosecutor -- and we have
11:01:26 22 already mentioned this -- has created a personalised record
11:01:34 23 against Mr Thomas Lubanga and used his story to bring charges
11:01:38 24 against my client, this is visible in the following points:
11:01:45 25 he doesn't mention in any way any of the genocidal plans of

11:01:49 1 the RCD-K/ML and APC against the Hema; nor does he mention the
11:01:57 2 fighting related to this. These genocidal plans were proven
11:02:03 3 by evidence <#EVD-D01-0002-2005#> -- 0005#> and also through
11:02:14 4 the confidential document 0015, which I mentioned previously.

11:02:21 5 [11:02 a.m.]

11:02:21 6 Next point: the so-called ethnic hatred and violence that the
11:02:29 7 Prosecutor refers to have not been proven, and on top of that
11:02:33 8 they are contradicted by the writings of the UPC
11:02:39 9 which -- they, themselves, contradict what the Prosecutor has
11:02:44 10 mentioned, and here I would like to mention more specifically
11:02:47 11 the following evidence: material 0007 for the Defence, with
11:03:10 12 evidence number <#DRC-D01-0001-0019#>. It is the official
11:03:23 13 statement concerning the administration of the
11:03:30 14 territory -- occupied territory in the north-east of the DRC.
11:03:35 15 And I refer more specifically to page 2, court officer,
11:03:39 16 please.

11:03:39 17 [11:03 a.m.]

11:03:51 18 If we look at the middle of the page, it is written that
11:03:55 19 [in French]: "The UPC put an end to the management of Ituri
11:03:59 20 by the RCD-ML because the RCD-ML was characterised by its
11:04:06 21 cultivation of tribal hatred and by a bad management of state
11:04:12 22 affairs and embezzlement of public funds. The UPC-RP intends
11:04:20 23 to achieve the following objectives in Ituri through a
11:04:24 24 societal project." And the societal project is also part of
11:04:30 25 the evidence which I gave to the -- put in the record, but you

11:04:37 1 can read it calmly when you have time later on.

11:04:40 2 [11:04 a.m.]

11:04:41 3 [In French]: "1. Re-establish human dignity and human
11:04:44 4 rights.

11:04:46 5 2. Initiate an honest dialogue between the populations
11:04:50 6 independently of their ethnic origin for the reconciliation
11:04:55 7 and lasting peace in Ituri and in the Congo.

11:04:58 8 3. To bring back people's security -- personal security and
11:05:04 9 the security of their property by putting an end to the
11:05:07 10 massacres.

11:05:10 11 4. The establishment of a dignified administration for
11:05:13 12 correct management of the state; and.

11:05:17 13 5. Reconstruction and socio-economic development programme.
11:05:22 14 Done in Bunia on 14 September 2002."

11:05:32 15 I would also like to refer to document -- a rather important
11:05:44 16 document to which we gave evidence number 0082, document
11:05:49 17 <#DRC-D01-0001-0046#>. This document is the memorandum
11:06:00 18 intended for the Special Representative and the National
11:06:06 19 Secretary-General of the United Nations, done in Bunia -- or
11:06:14 20 Mr Secretary-General of the United Nations, visiting Bunia on
11:06:18 21 2 December, 2002. It's an important document which I will not
11:06:21 22 fully re-read, but it is interesting to take it into
11:06:27 23 consideration because it is a -- it gives an overview of the
11:06:36 24 situation at the end of the year of 2002 and takes stock of
11:06:41 25 the situation during the first months of Lubanga's government.

11:06:48 1 And this document, which is addressed to the United Nations,
11:06:53 2 was never dismissed as suspect and, therefore, the presumption
11:07:01 3 of innocence, in my opinion, is safeguarded and if a suspect
11:07:25 4 person shows a document that they wrote themselves in tempore
11:07:34 5 non suspecto -- because Mr Lubanga didn't know that one day he
11:07:36 6 would come to the Court -- it shows the good faith that
11:07:41 7 the -- the good faith of the document, unless it is proven
11:07:45 8 otherwise, should be authoritative.

11:07:51 9 [11:07 a.m.]

11:07:51 10 And I believe in France you would have similar case law on
11:07:57 11 similar matters, and the Court of Cassation in Belgium says
11:08:05 12 constantly that when a suspect or accused has materials in his
11:08:18 13 defence that are consistent with the record, the Prosecutor
11:08:24 14 has to prove the contrary. And this is also important for the
11:08:30 15 presumption of innocence, which is there to protect human
11:08:33 16 rights and to protect also persons against false allegations
11:08:41 17 and is also there to avoid an innocent person spending most of
11:08:46 18 their life in prison, which is one of the worst things you can
11:08:50 19 imagine happening to somebody. It is even worse than people
11:08:55 20 who are guilty and not punished.

11:08:57 21 [11:08 a.m.]

11:09:01 22 And the next point I wanted to mention is that the daily
11:09:06 23 contact that the Prosecutor mentions with General Chief of
11:09:14 24 Staff Kisembo, is not proven. I talked about the
11:09:20 25 unreliability of means of communication, and I talked to you

11:09:23 1 about the realities of transport -- means of transport and of
11:09:30 2 the difficulties in trips, and in travelling in the country,
11:09:39 3 and the difficulty in moving around when there were military
11:09:46 4 attacks, and these contacts I'm referring to are not proven
11:09:49 5 and, moreover, I would like to remark that the Prosecutor did
11:09:52 6 not bring any charges against this person on the one hand,
11:10:00 7 and, on the other, in the document containing the charges, he
11:10:04 8 mentions -- and if I have understood correctly, this is the
11:10:08 9 main mode of responsibility that is alleged, or put
11:10:14 10 forward -- is co-perpetration, without mentioning the other
11:10:20 11 co-perpetrators -- co-perpetrators, sorry for mispronouncing
11:10:35 12 it in French.

11:10:36 13 [11:10 a.m.]

11:10:37 14 The Defence believes that he notified a document containing
11:10:44 15 the charges. That is far too vague to be of any value. And
11:10:49 16 in the paragraph 20 of this document containing the
11:10:54 17 charges -- could the court officer please display it -- in
11:11:05 18 this paragraph 20 he refers to the officers whom he mentions
11:11:09 19 in paragraph 23, and I would also like to refer to
11:11:14 20 paragraph 24. The Prosecutor does not mention Mr Kisembo,
11:11:23 21 which is rather strange, as he was part of the -- as one of
11:11:32 22 the co-perpetrators, which is rather strange, because this
11:11:38 23 would mean as -- for Mr Thomas Lubanga, as the President of
11:11:41 24 the government, that -- and also for the Chief of Staff that
11:11:52 25 leads the military operations and, moreover, some of his

11:11:58 1 subordinates are mentioned and, therefore, by omitting to
11:12:02 2 mention this name the Prosecutor is admitting, in a way, if
11:12:10 3 you may, that the charges are of no value.

11:12:10 4 [11:12 a.m.]

11:12:18 5 The co-perpetrators are mentioned very vaguely as other
11:12:24 6 members of the UPC, and UPC supporters. We don't really know
11:12:32 7 who he is referring to. Who is he referring to -- the
11:12:38 8 electorate, people who support the party?

11:12:47 9 This, we believe, nullifies this document containing the
11:12:50 10 charges, because how can we carry out a Defence if there is no
11:12:56 11 mention of the co-perpetrators? They need to be mentioned
11:13:05 12 just to be able to identify their behaviour in relation to
11:13:08 13 that of Mr Thomas Lubanga. And this is even more visible in
11:13:17 14 paragraph 20 of the document containing the charges where the
11:13:20 15 Prosecutor says that Thomas Lubanga, in order to reach the
11:13:24 16 common goal, coordinated their action and controlled the
11:13:40 17 co-perpetration and the common objective. How can we confirm
11:13:42 18 this? How can we check this if no names are mentioned?

11:13:42 19 [11:13 a.m.]

11:13:46 20 We believe, in the Defence, that it is necessary for the names
11:13:51 21 to be mentioned -- not to have additional suspects, but just
11:13:58 22 to have a proper description of the facts and just to have the
11:14:02 23 proper dates, names, places, victims, as required by any
11:14:12 24 proper criminal proceedings.

11:14:15 25 [11:14 a.m.]

11:14:18 1 And this brings me to my next point. Thomas Lubanga allegedly
11:14:26 2 provided financial resources to attain the common objective
11:14:33 3 and various material was cited, as credible as they are,
11:14:48 4 according to which, allegedly, families would have provided
11:14:53 5 financing. If this type of financing is proven, which the
11:15:00 6 Defence doesn't believe will be, they should be considered as
11:15:04 7 advance payment of taxes, as can happen in Belgium. For
11:15:10 8 instance, you pay in advance -- in advance taxes which are
11:15:15 9 then calculated after and adjusted afterwards. So the
11:15:27 10 Prosecutor says this is a proof, but a proof of what,
11:15:29 11 Mr Prosecutor?
11:15:29 12 [11:15 a.m.]
11:15:32 13 The taxes were paid in advance, but they weren't paid twice;
11:15:36 14 it was a form of advanced payment of taxes.
11:15:40 15 [11:15 a.m.]
11:15:46 16 Secondly, the Prosecutor used and mentioned document
11:15:51 17 <#EVD-OTP-0009#> to prove the existence of an armed
11:16:01 18 conflict -- page 3. The Defence would like to point out that
11:16:13 19 this document, which was signed in Dar Es Salaam on 16 May
11:16:23 20 2003, demonstrates not only that Mr Thomas Lubanga Dyilo was
11:16:28 21 present at the conference, and this was never challenged, but
11:16:32 22 also confirms the presence of President Kabila, page 2, at the
11:16:42 23 top of the page, as well as the presence of Mr Njabu Ngabu,
11:16:49 24 the leader of the FNI. The Defence is of the opinion that
11:16:58 25 this document confirms the document that was introduced by the

11:17:03 1 Defence, confidentially, <#DRC-D01-0001-097#> [sic].

11:17:11 2 [11:17 a.m.]

11:17:23 3 The Prosecutor also referred -- and this is my next

11:17:30 4 point -- to document <#EVD-OTP-0014#>.

11:17:39 5 PRESIDING JUDGE JORDA (interpretation): Sorry, Mr Flamme.

11:17:41 6 ME FLAMME (interpretation): I'm going too fast?

11:17:43 7 PRESIDING JUDGE JORDA (interpretation): No, you are not

11:17:45 8 going too fast, unless there are confidential elements here.

11:17:48 9 What is your point on the armed conflict, because you are

11:17:50 10 saying it is not challenged, that there was a presence of the

11:17:53 11 FNI and Mr Kabila, and then you refer to a document with your

11:17:58 12 Defence number -- can you please say what it is you are

11:18:01 13 getting at?

11:18:02 14 ME FLAMME (interpretation): I can't mention anything in

11:18:05 15 public, but if we have a closed session I can mention it.

11:18:10 16 PRESIDING JUDGE JORDA (interpretation): As you may know, it

11:18:11 17 is important for the Prosecutor to know.

11:18:15 18 ME FLAMME (interpretation): I'll take note of that. So I

11:18:23 19 was mentioning document <#DRC-000-5478#> [sic], which is a

11:18:33 20 chronology and which the Defence believes to be a chronology

11:18:43 21 that alleges that the UPC -- wrongly alleges that the UPC

11:18:53 22 in 2002 and from the 9th of -- 28 August 2002 led military

11:19:01 23 operations, but how could a political party carry out military

11:19:05 24 operations?

11:19:07 25 [11:19 a.m.]

11:19:07 1 And, moreover, Prosecutor -- and this actually is contradicted
11:19:11 2 by your document containing the charges, because you say that
11:19:15 3 the FPLC was only created in September, and probably only in
11:19:19 4 mid-September 2002 -- so my -- so the Prosecutor wrongly
11:19:27 5 relates this to the case, and on top of it my client was
11:19:37 6 imprisoned in Kinshasa. Please take a look at document
11:19:41 7 <#EVD-D01-002 -- 0002#> [sic], I beg your pardon, and please
11:19:47 8 also refer back to Madame Peduto's testimony in chief.

11:19:50 9 [11:19 a.m.]

11:19:51 10 But the Prosecutor, please, if he disagrees, must challenge
11:20:03 11 the fact that my client was imprisoned until September 2002.
11:20:07 12 How can he be held responsible for such acts, as the UPC did
11:20:17 13 not have an army at the time? And if you allege that the
11:20:26 14 protagonists were Hema militias, if you managed to prove their
11:20:32 15 existence, you also have to prove that they were governed or
11:20:36 16 led by Thomas Lubanga from his prison. I think this is rather
11:20:41 17 unlikely, Prosecutor.

11:20:42 18 I would also like to add, President, and your Honours,
11:20:53 19 something about the incriminating period of the Prosecutor
11:20:58 20 from July 2002 until the end of 2003 -- December 2003, to be
11:21:04 21 more precise.

11:21:05 22 [11:21 a.m.]

11:21:05 23 I would like to call your attention to the fact that
11:21:15 24 Mr Lubanga was already in detention in Kinshasa at the
11:21:17 25 beginning of this period, and also at the end of the period,

11:21:24 1 because on 13 August 2003 he was put in final detention, which
11:21:37 2 he has -- a state in which he has remained until today. So
11:21:40 3 how could he have participated in the alleged facts
11:21:46 4 until August 2003?

11:21:50 5 And I would like to add that -- and I believe that the
11:21:56 6 Prosecutor will not challenge what I'm going to say -- I would
11:22:01 7 like to add that 6 August 2003, the date on which Bunia was
11:22:09 8 attacked by the Ugandan army, it is common knowledge that the
11:22:16 9 ensuing battle didn't allow the UPC to get rid of the FPLC,
11:22:28 10 and that it had to use the population, including women and
11:22:33 11 children, to finish the battle. And the FPLC refused and
11:22:40 12 fled, and Mr Thomas Lubanga, from 6 March 2003, wasn't in
11:22:47 13 Bunia any more. He only returned at the end of May, beginning
11:22:54 14 of June.

11:22:54 15 [11:22 a.m.]

11:22:55 16 And we saw -- and this is not challenged by Madame Peduto, who
11:23:02 17 met him on 30 May 2003 in Bunia. It is also rather disturbing
11:23:12 18 to take stock of the fact that on 1 June 2003, on his return,
11:23:22 19 he enacts another document against the enlistment of children
11:23:31 20 under 18 years of age. I emphasise "under 18 years of age".

11:23:44 21 [11:23 a.m.]

11:23:45 22 Should this not lead us to conclude that Mr Thomas Lubanga
11:23:50 23 Dyilo wasn't aware of the new crimes alleged in the document,
11:23:54 24 because he was still -- he still had in mind the Cape Town
11:23:59 25 principles, and he also had his own personal moral standards,

11:24:05 1 according to which he believed that minors shouldn't be
11:24:10 2 engaged in an army, or in combatting. And then he had, the
11:24:16 3 next day, a meeting with the MONUC on 30 May 2003.
11:24:22 4 [11:24 a.m.]
11:24:26 5 My following point concerns document <#EVD-OTP-0015#>,
11:24:37 6 <#DRC-00113-139#> [sic], the document presented by the
11:24:48 7 Prosecutor.
11:24:48 8 [11:24 a.m.]
11:24:50 9 This document is interesting in that Thomas Lubanga -- if you
11:25:12 10 look at the date, it would mean that Thomas Lubanga managed to
11:25:19 11 draft it from Kinshasa, and it exposes an initiative that was
11:25:28 12 taken in order to establish an organisation which never saw
11:25:33 13 the light of day, but which would be called the FRP, the Front
11:25:47 14 for Reconciliation and Peace. This document must be read in
11:25:54 15 whole, because it contradicts the thesis of the
11:25:57 16 Security Council which the Prosecutor equally supports,
11:26:02 17 according -- concerning the massacres in Ituri perpetrated by
11:26:09 18 the RCD-K/ML and the APC. And the project mentions -- the
11:26:14 19 draft mentions -- page 3, the middle of the page -- the
11:26:24 20 creation of the FRP, the motives. In view of the unruly
11:26:39 21 management of the RCD-ML, as described above, all the
11:26:44 22 political leaders of all the territories of Ituri decided on
11:26:49 23 17 April 2002 to publish a political declaration denouncing
11:26:55 24 and rejecting the RCD-ML and in order to create in its place a
11:27:02 25 Front for Reconciliation and Peace.

11:27:04 1 [11:27 a.m.]

11:27:08 2 And page 5, bottom of the page -- bottom of the

11:27:20 3 page [in French]: "For the population of Ituri: the FRP asks

11:27:27 4 all the sons and daughters of Ituri to stop the massacres and

11:27:36 5 destructive acts, and each and every one should work in favour

11:27:39 6 of peace. It should also stop cultivating and showing any

11:27:47 7 acts of violence and hatred; should support the pacification

11:27:53 8 actions undertaken by the government, and the FRP asks the

11:27:59 9 leaders of Ituri to support the pacification plan of the whole

11:28:05 10 of the region. And recommendations to the government: To

11:28:11 11 restore the authority of the State in Ituri in all aspects, in

11:28:22 12 the effective administration of the whole of the territory of

11:28:29 13 Ituri, rehabilitation and reinforcement of the legal system,

11:28:35 14 the deployment of an army and security forces to guarantee

11:28:40 15 security and public order in the whole region."

11:28:44 16 I think that this shows clearly which were my client's ideals.

11:28:59 17 The FRP became later on the UPC-RP -- UPC Reconciliation and

11:29:11 18 Peace.

11:29:11 19 [11:29 a.m.]

11:29:13 20 It is also interesting to note that Mr Thomas Lubanga realised

11:29:23 21 that there was an absence of State authority in Ituri at the

11:29:28 22 time and, therefore, offered a welcoming hand to the

11:29:36 23 established government of the time, RC, and said, "We don't

11:29:43 24 even want a split or an administration that would just serve

11:29:47 25 to give us all of Ituri's riches and resources. All we want

11:29:53 1 is to be integrated in the national government."

11:30:01 2 President, would this be a right moment to break?

11:30:06 3 PRESIDING JUDGE JORDA (interpretation): Yes. I was going to
11:30:08 4 ask you a question. We are going to break. But in your plan
11:30:13 5 have we got to the stage -- and I believe this is the stage
11:30:17 6 you are at -- the criticism of the charging document?

11:30:27 7 ME FLAMME (interpretation): I have almost finished with this
11:30:29 8 part of my presentation, and if we have sufficient time -- I
11:30:35 9 wanted to give you this general presentation to see the
11:30:38 10 material we won't be able to comment on, because we don't have
11:30:41 11 the opportunity to comment on everything, and I don't know
11:30:44 12 it's the aim of this hearing -- confirmation hearing anyway,
11:30:47 13 but it was just to be able to give you all the materials so
11:30:50 14 you can look at it in the light that I have given you in my
11:30:54 15 presentation, and then Madame Pandanzyla will talk to you, as
11:31:01 16 briefly as possible, about one specific piece of evidence,
11:31:05 17 which is a testimony used by the Prosecutor.

11:31:07 18 That is my plan for today.

11:31:11 19 PRESIDING JUDGE JORDA (interpretation): Very well. Then we
11:31:12 20 will break and I would like to say this, especially for the
11:31:17 21 public -- there is a large public today -- that this is a
11:31:23 22 confirmation hearing. We are not here at the trial of
11:31:25 23 somebody. The person concerned being Mr Thomas Lubanga Dyilo.
11:31:30 24 It is 11.30, we are going to break. Thank you.

11:31:34 25 [11:31 a.m.]

11:31:35 1 [Short adjournment]

11:31:35 2 [12:02 p.m.]

12:02:45 3 THE USHER: All rise.

12:02:54 4 PRESIDING JUDGE JORDA (interpretation): The Court is in
12:02:57 5 session. Please be seated. And bring in Mr Lubanga Dyilo.

12:03:04 6 [Mr Thomas Lubanga Dyilo entered the courtroom]

12:03:04 7 [12:03 p.m.]

12:03:49 8 PRESIDING JUDGE JORDA (interpretation): Mr Flamme, when
12:03:54 9 you're ready.

12:04:05 10 ME FLAMME (interpretation): Thank you, Mr President.

12:04:07 11 Mr President, your Honours, before we take leave of the
12:04:10 12 document containing the charges, if I may say so, although
12:04:14 13 I might add that it will never take leave of us, I would like
12:04:19 14 to focus on the parts containing the charges, more
12:04:26 15 specifically, and I'm going to go to paragraphs 25 and 26.
12:04:41 16 First, paragraph 25, the Prosecutor alleges that, with the
12:04:48 17 founding of the UPC in September 2000, Mr Lubanga started to
12:04:59 18 pursue his political, military and economic aims by using, as
12:05:09 19 he says, pre-existing groups of Hema militias.

12:05:21 20 [12:05 p.m.]

12:05:22 21 This is a classic example of the way in which a document
12:05:28 22 containing the charges should not be written. What does that
12:05:32 23 mean? That is a very vague and general allegation, which is
12:05:37 24 not borne out by any precise event or any date, and all I need
12:05:43 25 say is that, for the Prosecutor, obviously, it is enough -- it

12:05:54 1 is not enough to posit that there was a military goal. He
12:05:58 2 must prove, and he must do so in detail in the document
12:06:03 3 containing the charges -- he must tell us that there was a
12:06:08 4 military goal. That is one thing.
12:06:12 5 [12:06 p.m.]
12:06:12 6 And he should prove that, at a certain time and place, the
12:06:19 7 military goal was implemented in such and such a way. I see
12:06:23 8 this nowhere.
12:06:25 9 [12:06 p.m.]
12:06:25 10 In paragraph 26 the Prosecutor submits that even before the
12:06:32 11 foundation of the FPLC and since 2000, at the latest -- 2001
12:06:38 12 [interpreter corrects] at the latest, the UPC recruited
12:06:45 13 children under the age of 15 years in significant numbers.
12:06:51 14 I'm sorry, I'm doing a side translation in English.
12:06:55 15 PRESIDING JUDGE JORDA (interpretation): Mr Flamme,
12:06:58 16 I congratulate you, knowing that you are French speaking.
12:07:02 17 ME FLAMME (interpretation): I don't know whether it's
12:07:03 18 accurate.
12:07:03 19 PRESIDING JUDGE JORDA (interpretation): I think you may
12:07:05 20 proceed. It's accurate and, if there's an error, it will be
12:07:09 21 rectified.
12:07:11 22 ME FLAMME (interpretation): Thank you, Mr President. In
12:07:15 23 this case, also, this is a general allegation, "from 2001".
12:07:22 24 When, in 2001, Mr Prosecutor? 2001 at the latest -- that's
12:07:28 25 12 months, 365 days. Which of these days are you referring

12:07:32 1 to? And recruitment -- that's a very serious charge. The
12:07:42 2 Prosecutor admits that the FPLC, the UPC army did not yet
12:07:48 3 exist. The UPC is a political party with politicians, but
12:07:53 4 I would like to have details as to who recruited when and
12:07:57 5 where, and what child was recruited.

12:08:01 6 [12:08 p.m.]

12:08:02 7 Mention is made of his house in Bunia used as a distribution
12:08:06 8 centre. You must prove it, Mr Prosecutor.

12:08:18 9 In paragraph 28 it is said that Thomas Lubanga Dyilo continued
12:08:32 10 the pre-existing practice, in that each Hema family allegedly
12:08:37 11 contributed to the war effort by making children available to
12:08:44 12 Hema militias. Once more, I would like to know what family;
12:08:49 13 when; who says this; is this reliable, and all of that.

12:08:56 14 [12:08 p.m.]

12:08:57 15 In paragraph 29 there is a little more detail. There is
12:09:03 16 mention made of campaigns from August 2002 where pick-ups and
12:09:13 17 special emissaries were made available, and the emissaries
12:09:18 18 were promised money for recruitment that was to be carried
12:09:22 19 out. I see no date. Was this money really paid? Money was
12:09:32 20 promised. Where -- where was it said? I haven't found it
12:09:38 21 anywhere.

12:09:39 22 [12:09 p.m.]

12:09:39 23 It is true that there's much in the dossier, and we may not
12:09:44 24 have had time to read everything, but in the evidence you have
12:09:47 25 disclosed to us, which I imagine is your main evidence, I have

12:09:52 1 seen nothing of the sort.

12:09:57 2 [12:09 p.m.]

12:09:58 3 Clearly, we're talking about September 2002, since you

12:10:02 4 mentioned the FPLC -- the military officials organising

12:10:07 5 recruitment of children taking part in the meetings with local

12:10:13 6 Hema communities, including in Bunia, you say, but where?

12:10:19 7 Where are these meetings organised? Who spoke at the

12:10:23 8 meetings? What was the date? Give me at least a way to

12:10:29 9 check. How do you expect me to defend my client against this?

12:10:33 10 And a special weekly tax on all civilians, irrespective of

12:10:45 11 their ethnic background. A weekly tax, every week. Could you

12:10:55 12 tell me what government could actually succeed in doing that,

12:10:59 13 imposing a weekly tax?

12:10:59 14 [12:10 p.m.]

12:11:02 15 Once more, Mr Prosecutor, I do not see any evidence of that.

12:11:07 16 Tax can be proven -- this is payment to the government, and it

12:11:12 17 should be proven by a bank statement or a receipt. That is

12:11:17 18 the way you can prove that this payment was made for that

12:11:20 19 purpose. That's evidence, and that's a fact, but I don't find

12:11:25 20 any of that here.

12:11:28 21 [12:11 p.m.].

12:11:29 22 To conclude with the indictment, paragraph 30 [Mr Flamme reads

12:11:41 23 in English]: "And the FPLC from its foundation and throughout

12:11:46 24 2002 and 2003 admitted children under the age of 15 years into

12:11:54 25 their ranks. These children included children who, by their

12:12:02 1 physical appearance, were manifestly under the age of 15

12:12:08 2 years."

12:12:11 3 [12:12 p.m.]

12:12:14 4 I have thought about this -- I have read and reread this.

12:12:19 5 I thought I wasn't seeing correctly, but I'm reading what I'm

12:12:22 6 reading. How can a child be seen to be less than 15 years of

12:12:30 7 age? But, Mr Prosecutor, when you do write that, you are

12:12:44 8 reflecting the state of your case. You have no evidence that

12:12:49 9 the children were less than 15 years of age. We have seen

12:12:52 10 this on numerous occasions. We are not going to dwell on

12:12:55 11 that.

12:12:55 12 [12:12 p.m.]

12:12:56 13 But it is a cause for concern that when we see that a child is

12:13:01 14 said to be 15 years because of his appearance, you may or may

12:13:06 15 not be 15 years old, or less than 15 years old, but it is not

12:13:11 16 because of your appearance. Language and grammar in law are

12:13:18 17 very important, because language, in part, expresses matters

12:13:27 18 of law. But this means nothing to me, quite simply,

12:13:33 19 Mr Prosecutor.

12:13:36 20 [12:13 p.m.]

12:13:36 21 Mr President, your Honours, I am saying that, in my view, this

12:13:43 22 document containing the charges is null. How can you start

12:13:47 23 criminal proceedings with a document containing the charges

12:13:51 24 which is null and vague and doesn't express the facts? Why is

12:13:55 25 it vague, Mr Prosecutor? Because you know that my client is

12:14:00 1 innocent.

12:14:06 2 [12:14 p.m.]

12:14:06 3 I shall now move on to a selection of documents which I would
12:14:17 4 like to go over with the Court's leave, but I shall limit
12:14:22 5 myself to a general comment on all these documents. I do not
12:14:28 6 think it is necessary to have the documents up on our screens,
12:14:33 7 but of course I shall give the numbers of the Prosecution
12:14:36 8 evidence tendered. The first one is <#EVD-OTP-0028#>, that
12:14:48 9 is, <#DRC-OTP-0037-0317#>. This is a document that the
12:15:03 10 Prosecutor uses to prove that the UPC defined itself as being
12:15:10 11 political and military. There's a problem at the outset with
12:15:13 12 this document -- it is not signed by Thomas Lubanga.

12:15:15 13 [12:15 p.m.]

12:15:17 14 Secondly, the passage of the document to which the Prosecutor
12:15:24 15 referred -- "The UPC/RP is a political military movement
12:15:36 16 created at the initiative of the Congolese of Ituri on
12:15:40 17 15 September 2002 -- [correction by interpreter] -- 2000."
12:15:41 18 This does not mean, obviously, that at the time it was a
12:15:45 19 political and military movement. I see that Mr Withopf is on
12:15:50 20 his feet.

12:15:51 21 PRESIDING JUDGE JORDA (interpretation): Yes, Mr Withopf?

12:15:53 22 MR WITHOPF: Mr President, your Honours, I believe it would
12:15:57 23 be beneficial to all participants to the proceedings to
12:16:01 24 actually have an opportunity to view the documents.

12:16:08 25 PRESIDING JUDGE JORDA (interpretation): You know that

12:16:09 1 I don't like to extend the discussion too much. I do
12:16:13 2 understand your request. I think this is a document that was
12:16:18 3 exchanged between the parties, so you might have it. This is
12:16:22 4 a piece of evidence tendered by the Prosecutor, so it is your
12:16:27 5 document, Mr Withopf.
12:16:46 6 [Pause while Bench confers]
12:16:59 7 PRESIDING JUDGE JORDA (interpretation): The Chamber has
12:17:05 8 decided that you will make your comments based on the
12:17:09 9 screen -- the document on the screen.
12:17:12 10 ME FLAMME (interpretation): Thank you, Mr President.
12:17:13 11 I would like the court officer to bring up <#EVD-OTP-0028#> on
12:17:19 12 the screen.
12:17:31 13 PRESIDING JUDGE JORDA (interpretation): Would you recall the
12:17:32 14 Prosecution number?
12:17:35 15 ME FLAMME (interpretation): 0037-0317.
12:17:38 16 PRESIDING JUDGE JORDA (interpretation): But the evidence
12:17:39 17 number, that is what I need.
12:17:43 18 ME FLAMME (interpretation): <#EVD-OTP-0028#>. This is a UPC
12:17:47 19 declaration dated 15 May 2003. The Prosecutor uses this
12:18:02 20 document, because it is said in the document the UPC is a
12:18:12 21 political and military movement. The people who are making
12:18:19 22 this statement are doing so on 14 May 2003, and at that time
12:18:26 23 the FPLC was still in existence. After that it no longer
12:18:31 24 existed, because it was absorbed into the Congolese army, but
12:18:35 25 at the time those people were talking about what was in

12:18:40 1 existence.

12:18:43 2 The Prosecutor then extrapolates and tries to go back into

12:18:49 3 time and he seeks by these means to prove that there were

12:18:52 4 military intentions from 2000.

12:18:55 5 [12:18 p.m.]

12:18:56 6 Generally speaking, I shall draw the attention of the

12:19:00 7 Pre-Trial Chamber to the other documents which are often from

12:19:06 8 the UPC, for example, the Constitution of the UPC. That is

12:19:15 9 <#EVD-OTP-0026#>. There is no need to call up the document on

12:19:21 10 the screen, in my view, unless the Prosecutor insists. That

12:19:24 11 is <#DRC-OTP-0091-0039#>.

12:19:32 12 PRESIDING JUDGE JORDA (interpretation): Prosecutor?

12:19:33 13 MR WITHOPF: Thank you very much, Mr President. Again,

12:19:39 14 I think it's beneficial to all participants, including the

12:19:44 15 judges of the honourable Chamber, to view the document whilst

12:19:46 16 it's being discussed.

12:19:47 17 PRESIDING JUDGE JORDA (interpretation): All right. The

12:19:54 18 document will be put up on the screen. It will enable the

12:19:58 19 public also to look at the document. The decision has been

12:20:02 20 taken. Now, if you wish to cite a document, it should be

12:20:05 21 called up on the screen. We shall not return to this matter

12:20:08 22 any further. Thank you.

12:20:12 23 ME FLAMME (interpretation): I shall now refer to a second

12:20:14 24 document, the programme of the UPC. These two documents are

12:20:20 25 dated 15 September 2000. The first document is

12:20:26 1 <#DRC-OTP-0106-069#> [as interpreted] and the evidence number
12:20:37 2 is <#EVD-OTP-0027#>. And to make it easier for the Pre-Trial
12:20:41 3 Chamber, I shall refer to this document on other occasions but
12:20:43 4 I shall not make the same analysis that I shall make now, and
12:20:49 5 the analysis is very brief. As I said, these two documents
12:20:52 6 date from 15 September 2000. None of these documents
12:20:59 7 in tempore non suspecto refers to the military objectives of
12:21:04 8 the movement. From the contents of this document it is
12:21:10 9 evident that the UPC was formed as a purely political party.
12:21:14 10 [12:21 p.m.]
12:21:18 11 So based on the analysis I made before regarding the
12:21:23 12 presumption of innocence and good faith, unless there's proof
12:21:27 13 to the contrary, I can hardly see how the Prosecutor can prove
12:21:33 14 or consider proven that from the moment the UPC was formed
12:21:39 15 there were military aims.
12:21:41 16 [12:21 p.m.]
12:21:42 17 The second document to which I wish to refer is
12:21:53 18 <#EVD-OTP-0029#>, and this is a statement of June and July
12:22:00 19 2005.
12:22:20 20 COURT OFFICER (interpretation): The testimony is
12:22:22 21 confidential. The witness statement is confidential. It
12:22:25 22 cannot be published, Me Flamme.
12:22:29 23 ME FLAMME (interpretation): All right. The Prosecutor
12:22:33 24 refers to paragraph 22 of the document. This is someone from
12:22:38 25 the Nande ethnic group who recounts some facts. The document

12:22:45 1 is being used to seek to prove that the aim was to install

12:22:52 2 Hema dominance to the detriment of other groups.

12:22:57 3 [12:22 p.m.]

12:22:57 4 In the entire paragraph the Prosecutor quoted, all I can

12:23:03 5 see these people -- whose names obviously will not be said out

12:23:08 6 -- must work, and they are being encouraged to work. There's

12:23:12 7 nothing further. This is a time of war, and perhaps a certain

12:23:19 8 degree of discipline was required, but to seek to use this

12:23:24 9 document to buttress a serious allegation about ethnic

12:23:29 10 dominance is not something I consider obvious.

12:23:35 11 [12:23 p.m.]

12:23:35 12 The next document, Mr Court Officer, is <#EVD-OTP-0030#>.

12:23:44 13 That is <#DRC-OTP-126-0086#> [as interpreted]. This is a

12:23:59 14 document that the Prosecutor used to the same end. I would

12:24:07 15 like to point out, first of all, that this is a very difficult

12:24:11 16 document to deal with on the part of the Defence and for the

12:24:16 17 Pre-Trial Chamber, because it has been largely redacted. The

12:24:28 18 Prosecutor quoted paragraphs 26, 34 and 35.

12:24:33 19 [12:24 p.m.]

12:24:33 20 It is impossible for the Defence to counter quotations that it

12:24:39 21 is unable to read. When the Prosecutor presents his case, he,

12:24:45 22 too, should take account of his own redactions and refrain

12:24:51 23 from quoting these passages if we must refer to them as

12:24:56 24 quoting, as they are all largely made of blanks.

12:25:00 25 [12:25 p.m.]

12:25:01 1 Now, second thing in regard to the credibility of this
12:25:07 2 witness: in paragraph 23 the witness says that he was sent to
12:25:12 3 Ituri as part of a group of investigations at the request of
12:25:19 4 President Kabila. I have mentioned, and we shall return to
12:25:27 5 that, the heavy responsibility that Mr Kabila bears in the
12:25:35 6 massacres in Ituri. I do not think that such a witness, who
12:25:42 7 comes as an emissary to someone who has been also considered
12:25:48 8 as involved, can be considered gui -- sorry, reliable. In
12:26:05 9 paragraph 25 he says there were non-Ituri members in the
12:26:11 10 people who were working, so it can be deduced that this
12:26:16 11 witness was certainly not Hema, and so he might have had an
12:26:19 12 interest in charging the Hema.

12:26:21 13 [12:26 p.m.]

12:26:26 14 I will also say that with when we consider this witness
12:26:30 15 statement as a whole -- reports hearsay, which has no
12:26:36 16 probative value. The allegation that the UPC was targeting
12:26:43 17 the Nande population is not proven by this statement.

12:26:50 18 [12:26 p.m.]

12:26:50 19 This witness does not explain how the Nandes were targeted.
12:26:58 20 Was it with violence? Was it with threats? Was it with
12:27:03 21 indifference? So, once more, you must not only state things;
12:27:07 22 you must provide detail.

12:27:10 23 [12:27 p.m.]

12:27:10 24 And, lastly -- or not lastly just yet -- testimony to the
12:27:17 25 effect that the Hema wanted to dominate the other ethnic

12:27:20 1 groups is immediately followed by the witness's admission
12:27:28 2 that, although he had friends amongst the Hema, he knew no-one
12:27:35 3 in the UPC.

12:27:41 4 [12:27 p.m.]

12:27:41 5 I would like to bring to the attention of the Trial
12:27:45 6 Chamber -- the Pre-Trial Chamber -- I did mention a
12:27:50 7 Minister -- Bira -- Tinanzabo also in the UPC government.
12:27:59 8 There was also a Nande Minister in this government. The
12:28:08 9 general argument, rather than testimony, because it's
12:28:16 10 arguing -- not a witness statement -- so the argument here is
12:28:19 11 that, in spite of appearances, the UPC was a mono-ethnic
12:28:31 12 party, and that although the UPC repeatedly proclaimed in
12:28:38 13 public that it was multi-ethnic, it did not reflect the truth.

12:28:49 14 [12:28 p.m.]

12:28:49 15 I think this is the Prosecutor's argument, because he said my
12:28:55 16 client was double-faced -- a Janus, as it were -- and this
12:29:11 17 should be proven. This testimony doesn't prove it. This is
12:29:15 18 an opinion, not testimony, and I will repeat that the
12:29:21 19 Prosecutor had ample opportunity to note for himself the
12:29:29 20 multi-ethnic nature of Mr Lubanga's government.

12:29:35 21 The next document is registered as <#EVD-OTP-0031#>. This is
12:29:43 22 <#DRC-OTP-064-0262#> [as interpreted].

12:30:02 23 [12:30 p.m.]

12:30:02 24 This is another allegation as to the mono-ethnic nature of the
12:30:12 25 UPC, and it is said that this was an organisation one had to

12:30:17 1 be afraid of if one was not a member of this ethnic group.

12:30:21 2 [12:30 p.m.]

12:30:21 3 Considering the credibility of this witness, we find that this
12:30:27 4 is an anonymous witness whose identity, profession, and ethnic
12:30:32 5 origin is not known, and we do not even know in what way this
12:30:38 6 witness took part in the witness -- in the events that we are
12:30:41 7 examining here.

12:30:42 8 [12:30 p.m.]

12:30:43 9 So it is very difficult to bring one's self to believe this
12:30:46 10 person. This is an essential condition, this belief, for
12:30:53 11 weighing evidence. Since this person will not give testimony
12:30:58 12 in court, we cannot cross-examine him, and we will, therefore,
12:31:01 13 need further detail, because he's not coming to give testimony
12:31:07 14 here so we can weigh his credibility.

12:31:10 15 [12:31 p.m.]

12:31:12 16 I would also say that these summaries -- this summary
12:31:22 17 reflects, as Mr Roberts said, the opinions of the investigator
12:31:30 18 rather than testimony.

12:31:35 19 [12:31 p.m.]

12:31:35 20 Now, regarding the credibility of the factual allegations made
12:31:38 21 by this witness, it is said that the public statements of the
12:31:51 22 UPC -- and in this case, Mr President, your Honours, I would
12:31:55 23 like to ask the Prosecutor, when he makes reference to public
12:32:00 24 messages broadcast on Radio Candip -- he referred to
12:32:07 25 Radio Candip; it was portrayed as the propaganda arm of the

12:32:11 1 UPC, so he should give us these messages; to prepare a
12:32:22 2 transcript of these messages. I ask him to do so, because he
12:32:26 3 has failed to do so. All he has done is state that these were
12:32:32 4 an incitement to hatred. I ask him to find one radio message
12:32:36 5 where the UPC's inciting hatred. You will not find it,
12:32:40 6 Mr Prosecutor, but if you find it, we would like to see it.

12:32:44 7 [12:32 p.m.]

12:32:45 8 So what I was saying is that the public messages of the UPC
12:32:50 9 cannot be characterised as being untrue or inaccurate. You
12:32:54 10 must tell us why, and you must buttress your argument with
12:32:58 11 facts.

12:33:01 12 [12:33 p.m.]

12:33:02 13 So, once more, this is an opinion that we're being given. The
12:33:05 14 allegation that some of them were rather pro-Hema, what does
12:33:15 15 that mean? In my country, in Belgium, we do have our own
12:33:26 16 ethnic problems. It is not because a person is more French
12:33:32 17 speaking, or does not like to speak Dutch, for example, that
12:33:36 18 he will be suspected of ethnic hatred. That is quite another
12:33:41 19 thing. To state that some people within the UPC were
12:33:48 20 therefore pro-Hema in no way proves the allegation of the
12:33:52 21 Prosecutor that the UPC was a party that exclusively pursued
12:34:00 22 pro-Hema aims, and that it sought to dominate the other ethnic
12:34:05 23 group. That is another matter entirely.

12:34:10 24 [12:34 p.m.]

12:34:10 25 The allegation that only the Hema population was a supporter

12:34:22 1 of the UPC is not proven. And I would like to point out in
12:34:32 2 this instance that Mr Thomas Lubanga was a politician who was
12:34:38 3 supported by the entire population, without distinction,
12:34:41 4 because these people knew that he had restored peace in a
12:34:45 5 matter of months. They trusted him. The estimate that the
12:34:52 6 UPC was 85 per cent Hema is not borne out by any proven facts.

12:35:00 7 [12:35 p.m.]

12:35:00 8 I would say that in this case the witness contradicts himself,
12:35:05 9 in that he acknowledges the presence of Lendu at very high
12:35:14 10 positions in the party -- Lendus.

12:35:21 11 [12:35 p.m.]

12:35:21 12 I shall conclude with that document. Mr Court Officer, we
12:35:26 13 shall move on to <#EVD-OTP-0032#>, which is
12:35:37 14 <#DRC-OTP-0164-0301#>. Once again, I'm not going to repeat
12:35:55 15 myself. There are problems of credibility with regards to
12:35:58 16 this witness to the extent that we don't know that person's
12:36:02 17 identity, et cetera.

12:36:06 18 [12:36 p.m.]

12:36:08 19 It's furthermore a summary, and I will refer to the
12:36:15 20 submissions of Mr Roberts in this regard. Where it concerns
12:36:21 21 the credibility of certain allegations -- factual allegations,
12:36:29 22 the allegation that certain non-Hema members of the UPC didn't
12:36:34 23 have influence to -- as a counterweight, with regard to their
12:36:39 24 presence in the UPC, well, this is -- this is something that
12:36:43 25 was recognised -- well, this is something that is expressed as

12:36:46 1 a consideration, an opinion of the witness. It is not
12:36:50 2 supported by examples -- by concrete examples of non-Hema
12:36:54 3 Ministers who would not have had power when it comes to taking
12:37:00 4 decisions or participating in decisions taken at collective
12:37:06 5 level.

12:37:07 6 [12:37 p.m.]

12:37:12 7 The assertion that the appointment of non-Hema members to high
12:37:20 8 positions was a facade, well, this is something that is said,
12:37:30 9 but it's not supported by the facts. And this hypothesis is
12:37:35 10 furthermore contradicted by facts and logic.

12:37:41 11 [12:37 p.m.]

12:37:42 12 Even if it was in the interests of the UPC to include within
12:37:50 13 its ranks members purely on a nominative basis and to create a
12:38:00 14 public image of ethnic diversity, why then have non-Hema
12:38:08 15 members -- well, why would they -- why would they join a party
12:38:14 16 that was hostile to their ethnic -- ethnicity and in which
12:38:23 17 they have been given absolutely no power. I mean, it's
12:38:26 18 bizarre to see that none of these, let's say, puppet -- let's
12:38:32 19 say puppets that the UPC is supposed to have used stayed and
12:38:38 20 that they didn't leave the party.

12:38:40 21 [12:38 p.m.]

12:38:40 22 Personally, I don't know, but if I was a Minister and it was
12:38:45 23 said to me that I had to keep quiet or I had nothing to say,
12:38:50 24 well, I'd leave the government. Well, that's it concerning
12:38:55 25 this piece of evidence.

12:38:59 1 [12:38 p.m.]

12:39:01 2 When it comes to <#EVD-OTP-0033#>, <#DRC-OTP-0037-0278#>, this
12:39:17 3 document is used by the Prosecutor to prove his allegation
12:39:25 4 that the aim of the UPC was the control of Ituri, and that at
12:39:30 5 the end of 2002 the UPC and Thomas Lubanga, as its President,
12:39:36 6 controlled Ituri.

12:39:39 7 [12:39 p.m.]

12:39:40 8 Well, this document doesn't prove that. The document, rather,
12:39:52 9 proves something that isn't contested by the Defence; that the
12:39:56 10 UPC, at a certain time, had effective control over a part of
12:40:02 11 Ituri. And I hereby make the provision, Mr President, ladies
12:40:11 12 and gentlemen, the judges, that, as you know, probably, the
12:40:20 13 administrative law in Congo provides that the provinces are
12:40:28 14 divided into districts, and in Ituri -- Ituri is a district of
12:40:35 15 the Province Orientale and the sub-administrative divisions
12:40:43 16 are the collectivity and the territory, among others. So you
12:40:49 17 have the collectivity, which would be, let's say, a village;
12:40:53 18 you have the territory; and you have the district; and then
12:40:56 19 you have the province.

12:40:59 20 [12:40 p.m.]

12:41:00 21 Well, the UPC controlled one part -- just one part of four of
12:41:12 22 the territories of Ituri, and the territory of Djugu, Mahagi,
12:41:22 23 Aru and Irumu. The UPC did not control the territory of
12:41:32 24 Mambassa, which was under the control of the RCD-K/ML, and it
12:41:37 25 also didn't control the south of Irumu, which was also still

12:41:45 1 controlled by the RCD-K/ML which, as you know, who had gone
12:41:50 2 towards the south -- withdrawn towards the south in 2002 and
12:41:54 3 who carried out attacks -- regular attacks on the
12:41:57 4 collectivities which were under the control of the UPC and the
12:41:59 5 FPLC, its armed wing.

12:42:04 6 [12:42 p.m.]

12:42:04 7 It should be added to that, to be completely precise here,
12:42:09 8 that this situation was a situation which lasted
12:42:14 9 until November 2002, because from November 2002 the control of
12:42:24 10 the government -- FPLC was very seriously diminished by the
12:42:36 11 creation of militia, which I've already spoken about. The
12:42:40 12 first was the PUSIC with Chief Kahwa, while the FPDC and the
12:42:49 13 FNI, just to mention a few of them, all these militia were
12:42:55 14 added to the RCD-K/ML -- K/ML. I don't want to say that --
12:43:02 15 that they were part of the RCD-K/ML, but they were added to
12:43:06 16 the threat that the RCD-K/ML constituted.

12:43:09 17 And in other places, for example in the north, they tried to
12:43:18 18 take in the FPLC -- tried to surround the FPLC, because there
12:43:29 19 was the support for -- there was a -- this government was
12:43:33 20 causing annoyance.

12:43:33 21 [12:43 p.m.]

12:43:34 22 So I now go on to the evidence EVD-34, <#DRC-OTP-0037-0271#>,
12:43:50 23 and this is a document which is also used by the Prosecutor to
12:43:55 24 be able to prove, or try to prove, this control of the UPC
12:43:59 25 over all the territory with out any distinction of the time

12:44:04 1 periods that we're talking about.

12:44:08 2 [12:44 p.m.]

12:44:08 3 So this document doesn't prove that, and I will tell you why.

12:44:14 4 This document just says simply that, "Since our movement took

12:44:23 5 the effective political and military control of the area in

12:44:27 6 this territory, which" -- so I've already told you about the

12:44:36 7 administrative decision in DRC, so this witness statement was

12:44:41 8 made over one territory -- one of the five territories of

12:44:44 9 Ituri, of the District of Ituri, and it's probably talking

12:44:48 10 about the territory of Bunia.

12:44:50 11 [12:44 p.m.]

12:44:51 12 So the Prosecutor doesn't prove anything with this document.

12:44:57 13 Document <#EVD-OTP-0035#>, <#DRC-OTP-0113-0005#>, this is a

12:45:20 14 document which is used by the Prosecutor to prove, or to try

12:45:24 15 to prove, the structure of the UPC, and more specifically

12:45:30 16 we're told that this document illustrates that Thomas Lubanga,

12:45:36 17 as a President of the UPC, organised the structures and

12:45:41 18 exercised the functions of President.

12:45:41 19 [12:45 p.m.]

12:45:44 20 So this is a document, which is a presidential decree signed

12:45:53 21 by Mr Thomas Lubanga which names -- mentions names of the

12:45:59 22 executive. Well, this -- this document doesn't prove -- when

12:46:07 23 it comes to who's appointed to the executive, this doesn't

12:46:11 24 prove what the Prosecutor wants to claim. It's a document

12:46:21 25 which is quite limited in its time nature and the document

12:46:24 1 certainly doesn't prove that beyond this date with regards to
12:46:28 2 the -- when the executive had been appointed, that within the
12:46:32 3 framework of this executive things did happen in a dictatorial
12:46:40 4 manner. I've said to you that there was a Council of
12:46:43 5 Ministers which met regularly and decisions were taken within
12:46:47 6 the Council of Ministers.

12:46:48 7 [12:46 p.m.]

12:46:48 8 The document <#EVD-OTP-0036#>, <#DRC-OTP-0091-0016#>, this
12:47:13 9 again is a presidential decree which appoints members of the
12:47:23 10 executive. And here I'll refer to what I said concerning the
12:47:28 11 formalisation of certain decisions by the President, as is the
12:47:33 12 case in -- in most democratic States where you have to have a
12:47:40 13 legally valid signature to be able to have a formal Act, which
12:47:48 14 enters -- which makes the documents have legal force.

12:47:52 15 [12:47 p.m.]

12:47:54 16 So when it comes to the Act -- we have to look at the Act, its
12:48:02 17 formality and its content as well -- you need a certain form
12:48:05 18 to be able to make something legal. The credibility of the
12:48:08 19 document is null as far as we're concerned, because it comes
12:48:10 20 from this illegal seizure that was carried out in the
12:48:15 21 Democratic Republic of the Congo in which the Prosecutor
12:48:19 22 participated.

12:48:21 23 [12:48 p.m.]

12:48:23 24 And the document <#EVD-OTP-0037#>, <#DRC-OTP-089-0093#> [as
12:48:43 25 interpreted], in Belgium we say [in French] for "93",

12:48:49 1 Mr President.

12:48:51 2 PRESIDING JUDGE JORDA (interpretation): We know that very
12:48:54 3 well in France, Mr Flamme.

12:49:00 4 ME FLAMME (interpretation): The credibility of the
12:49:02 5 document -- well, it's the same remark. It comes from the
12:49:05 6 seizure which was declared illegal by the Kisangani Appeals
12:49:10 7 Court, and the Defence points out that, despite the fact that
12:49:18 8 the document is a document that's been typed, there are also
12:49:28 9 handwritten notes on the document. For example, the number of
12:49:31 10 the decree, "03Bis", and the date of "2 June" have been
12:49:39 11 written in handwriting, and so there's perhaps a problem of
12:49:42 12 authenticity when it comes to this document.

12:49:45 13 Document <#EVD-OTP-0038#>, <#DRC-OTP-0091-0773#>, this
12:50:07 14 document is used by the Prosecutor to demonstrate that the UPC
12:50:11 15 had an organisation -- a structured organisation through which
12:50:22 16 the UPC executive reported to its President.

12:50:30 17 [12:50 p.m.]

12:50:30 18 Once again, this document comes from a seizure. This is a
12:50:37 19 document which is addressed to the President of the UPC and
12:50:40 20 it's signed by the National Secretary for Culture, Art and
12:50:46 21 Tourism, and the Secretary transmits a report to the -- with
12:50:49 22 regards to the activities to the President. Well, we consider
12:50:53 23 that this -- this document just established quite simply that
12:50:57 24 this National Secretary sent a report to his President,
12:51:07 25 perhaps as a matter of courtesy. But it's established nowhere

12:51:13 1 that it was a continual practice nor an obligation to
12:51:20 2 report -- on the part of the Secretary to report on a daily
12:51:26 3 basis to the President. I don't see how this President, who
12:51:29 4 had other things to do, could have been able to read all that.
12:51:33 5 [12:51 p.m.]

12:51:33 6 This document <#EVD-OTP-0039#>, <#DRC-OTP-0089-0060#>, once
12:51:57 7 again, this document is used to demonstrate the structure of
12:52:03 8 the UPC and that, when the President gives an instruction, the
12:52:10 9 National Secretary of the UPC respected it. Once again, this
12:52:16 10 document comes from a seizure, and the Prosecutor more
12:52:23 11 specifically, supports that the UPC accorded with the
12:52:32 12 presidential instructions in Decree No. 18 to be able to form
12:52:37 13 a Cabinet.

12:52:39 14 This document only establishes that this particular National
12:52:47 15 Secretary had followed the instructions of his President. It
12:52:54 16 does not establish that, once again, the opinions or the
12:52:59 17 instructions of the President were followed by other private
12:53:06 18 secretaries, and certainly not that all the directives of the
12:53:09 19 President were followed or executed.

12:53:12 20 [12:53 p.m.]

12:53:12 21 We all know that, also, for example, when you are a President
12:53:17 22 there are certain prerogatives -- aside from the title --
12:53:24 23 there is a certain weight, and we all know that a President of
12:53:27 24 a party, even in democratic countries, when it's said that the
12:53:32 25 individual members of the Parliament do not have power or

12:53:39 1 possibilities to put in their personal opinions, we speak
12:53:47 2 about the strength of the party as such -- even if Mr Lubanga
12:53:56 3 maybe had such power, it doesn't mean necessarily, by way of
12:54:03 4 deduction, that we were in the presence of a dictatorship.
12:54:03 5 [12:43 p.m.]
12:54:08 6 When it comes to <#EVD-OTP-0040#> under <#DRC-OTP-0089-0069#>,
12:54:27 7 once again this document refers to the structure of the UPC,
12:54:38 8 and again it's one of the objects that was seized.
12:54:46 9 [12:54 p.m.]
12:54:46 10 The Prosecutor says that this document, which was written by
12:54:51 11 Thomas Lubanga, is a document in which he reminds the members
12:54:56 12 of the executive of the principle that they already know and
12:55:03 13 that they'll be the deciders. But, no, Mr Prosecutor, if
12:55:11 14 I read the document, it says: "In this regard the latter" --
12:55:18 15 and I think this is the second paragraph -- and here we're
12:55:20 16 talking about the President of the UPC -- "has the right to be
12:55:22 17 informed of all your correspondence and, also, to be consulted
12:55:30 18 in advance on important decisions which the movement commits
12:55:37 19 to." So don't take the wrong conclusion from this.
12:55:43 20 [12:55 p.m.]
12:55:46 21 <#EVD-OTP-0041#>, <#DRC-OTP-0089-0057#>, this is a document
12:56:03 22 which is very interesting, which I've selected because --
12:56:15 23 well, this is something that confirms what I've already said
12:56:19 24 before, and that is to say the defection of Chief Kahwa, and
12:56:27 25 the decree is used by the Prosecutor to state that the

12:56:33 1 President of the UPC exercised his power to decide on the --
12:56:47 2 accepting members of his parties within his government or
12:56:51 3 forcing them out. So I would like to remind the Prosecutor,
12:56:54 4 when it comes to this matter of resignations, et cetera, that
12:56:58 5 he was Minister of the National Defence and that he had
12:57:01 6 provoked a mutiny within the army. And so this decree, which
12:57:07 7 is subsequent to this state of affairs, shows us that -- well,
12:57:13 8 we've -- the government had taken, at a certain time, a
12:57:18 9 decree -- issued a decree, where formally it stated that
12:57:23 10 Chief Kahwa was no longer part of the UPC of the government.
12:57:30 11 Well, that's it.
12:57:33 12 [12:57 p.m.]
12:57:34 13 <#EVD-OTP-0042#> -- and I would propose, perhaps,
12:57:43 14 Mr President, that we finish this morning with this document
12:57:49 15 <#EVD-OTP-0042#>, <#DRC-OTP-0104-0107#>. And here it's
12:58:04 16 speaking about the control of my client over the movement. So
12:58:07 17 I would like to make a reminder that this witness statement is
12:58:14 18 very heavily redacted. And it's very difficult for the
12:58:20 19 Defence to be able to take -- understand information which it
12:58:26 20 considers to be crucial.
12:58:30 21 [12:58 p.m.]
12:58:30 22 And when we refer to paragraph 38, here we're speaking
12:58:45 23 about -- or here it's speaking about the resignation of a
12:58:49 24 Minister that the Prosecutor in his presentation made
12:58:54 25 reference to -- he spoke about the official nature of the

12:58:58 1 document to prove his proposition, but he hasn't
12:59:02 2 read -- obviously hasn't read the content of the document.
12:59:04 3 And it's very interesting -- and I know that I've already
12:59:07 4 spoken about that -- it's about a particular person who
12:59:12 5 apparently had an -- alcohol problems and had signed
12:59:17 6 documents, without being able to do so -- without having the
12:59:22 7 authority to do so. We've already said in which government
12:59:28 8 can a Minister who's inebriated and, furthermore, is not
12:59:34 9 authorised to sign things but does so can stay within that
12:59:37 10 government? Well, I don't know. Well, that's what I wanted
12:59:41 11 to say. Thank you.
12:59:44 12 PRESIDING JUDGE JORDA (interpretation): The session is
12:59:48 13 adjourned. It will start again at 2.30.
12:59:48 14 [12:59 p.m.]
13:00:10 15 [Luncheon adjournment]
13:00:13 16 THE USHER: All rise.
14:35:07 17 [2:35 p.m.]
14:35:18 18 PRESIDING JUDGE JORDA (interpretation): The hearing is
14:35:22 19 resumed. Please be seated, and please bring
14:35:26 20 Mr Thomas Lubanga Dyilo back into the room.
14:35:30 21 [2:35 p.m.]
14:35:30 22 [Mr Thomas Lubanga Dyilo entered the courtroom]
14:35:49 23 PRESIDING JUDGE JORDA (interpretation): Mr Flamme?
14:35:51 24 ME FLAMME (interpretation): Thank you, my President. I
14:36:05 25 would like to cover a number of documents with you, your

14:36:10 1 Honours, again, and more especially, document
14:36:15 2 <#EVD-OTP-00044#>, evidence number <#DRC-OTP-0037-0265#>.
14:36:24 3 [2:36 p.m.]
14:36:32 4 It's the official UPC-RP statement 01/2002 whereby the
14:36:41 5 Prosecutor, or by means of which the Prosecutor tries to
14:36:45 6 demonstrate that the RPC [sic] existed at the very creation of
14:36:50 7 the UPC and that the Hema militia only received the name of
14:36:55 8 the RPC [sic] in September 2002, and I believe that this
14:37:06 9 assumption is contradicted in the document containing the
14:37:10 10 charges, and I would like to refer to the document I already
14:37:14 11 quoted about the constitution of the UPC which speaks about --
14:37:20 12 or does not speak about any military objective. And the
14:37:25 13 Prosecutor specifically refers to a quotation by Mr Thomas
14:37:33 14 Lubanga that "To safeguard human rights and people's lives, we
14:37:41 15 have stayed at the law of '99 and the economic reconstruction
14:37:49 16 UPC-RP", and I would like to under line the "RP" which was
14:37:54 17 added, "went up in arms to destroy Ituri and Congo and blacken
14:38:02 18 our image."
14:38:03 19 [2:38 p.m.]
14:38:05 20 This quote is very interesting, and I don't know how the
14:38:13 21 Prosecutor, as we were talking about September 2002, can
14:38:18 22 assert this, because that would mean that the UPC, from its
14:38:21 23 very Constitution, would have been a military movement.
14:38:25 24 [2:38 p.m.]
14:38:27 25 However, this Constitution only states that the political

14:38:30 1 movement took up arms, but you have to see the document in the
14:38:37 2 context that I was outlining, that of August and July 2002, at
14:38:46 3 the time when there was a genocidal plan against the Hema
14:38:52 4 population. So you have to place this quote -- this quote in
14:38:58 5 the context -- in the right context, which is of self-defence.
14:39:04 6 And I would also like to add that the national Congolese army
14:39:12 7 was totally absent, and that the Congolese State did not give
14:39:18 8 its citizens any protection whatsoever.
14:39:22 9 And it's in these circumstances that the UPC -- if you want to
14:39:35 10 integrate the APC's mutiny into this -- that it rejected this
14:39:44 11 plan and this should be considered as a situation in which
14:39:50 12 self-defence is called for, and I explained that the UPC did
14:39:54 13 not control everything. It did not control the whole of the
14:39:59 14 territory. This might be a difficult use -- word to use,
14:40:06 15 because we should perhaps talk more about the surface of -- or
14:40:14 16 the surface area of Ituri, because of the administrative
14:40:18 17 divisions. But you should be conscious of the fact that the
14:40:22 18 threat remains, and that other threats came on top of these
14:40:28 19 threats later on. So the document <#EVD-OTP-00045#>, evidence
14:40:35 20 number <#DRC-OTP-0055-0472#>, calls for the same comments.
14:40:54 21 The analysis of official documents of the Constitution of the
14:40:59 22 UPC contradicts, or proves the contrary to what is asserted
14:41:05 23 and, therefore, it is difficult to believe that the creators
14:41:10 24 of the UPC would have been as intelligent as to be able to
14:41:15 25 predict their future and to predict the fact that the -- one

14:41:22 1 of their leaders would be brought before the International
14:41:26 2 Criminal Court, which just didn't even exist at the time, or
14:41:30 3 hid the truth by saying they're only a political movement, and
14:41:39 4 hid their army in -- backstage. So <#EVD-00047#>, evidence
14:41:50 5 number <#DRC-OTP-0029-0274#> is an official letter from
14:42:01 6 Mr Lubanga to Mr Kisembo, which the Prosecutor would like to
14:42:05 7 use to prove that Mr Lubanga was the Commander-in-Chief, de
14:42:11 8 jure and de facto of the FPLC.

14:42:14 9 [2:42 p.m.]

14:42:25 10 The sentence used by the Prosecutor is "As the concerns are
14:42:33 11 armed -- arm -- the FPLC, I do not believe that the FPLC has a
14:42:48 12 view on the decision taken by the General-Chief-of-Staff."
14:42:54 13 You should be aware of the fact that military issues are
14:42:58 14 subordinate in State to the political level, and it is
14:43:07 15 therefore the political leader who gives general directives --
14:43:16 16 as in the case of Mr Lubanga, the ban on attacking the
14:43:20 17 population, or on taking vengeance from [sic] the population
14:43:26 18 or on carrying out campaigns of violence, and the chief of
14:43:34 19 the -- the head of State just kept himself informed of what
14:43:38 20 happened on a military level.

14:43:40 21 [2:43 p.m.]

14:43:40 22 Now, I would like to move to document <#EVD-OTP-00048#>, which
14:43:50 23 is a copy of an official document of the
14:43:54 24 General-Chief-of-Staff to Mr Lubanga, dated
14:43:58 25 29 November 2002 -- 21 November 2002, and it aims at the same

14:44:09 1 thing -- to obtain supplies, papers, Bristol cards, and there
14:44:20 2 is no proof that Lubanga one day gave any military
14:44:25 3 instructions or that he took part in taking -- in
14:44:32 4 decision-taking concerning military operations.
14:44:34 5 [2:44 p.m.]
14:44:39 6 The title "Chief-of-Staff" would not mean anything in that
14:44:49 7 case and, actually, the Prosecutor does not assert anything
14:44:55 8 along those lines anyway. And when you talk about the title
14:45:00 9 "Commander-in-Chief" of the FPLC, well, I refer to the case --
14:45:13 10 what is the case in Belgium -- the King is officially the
14:45:18 11 Chief of the Army. However, it doesn't mean that he is the
14:45:21 12 one who decides on the tactics and military operations.
14:45:25 13 For instance, as regards NATO or United Nations, you can't
14:45:34 14 imagine the King meddling in anything happening in the field.
14:45:39 15 But his title is the Chief of the Army. This title is solely
14:45:45 16 political; it does not refer to any substance.
14:45:53 17 [2:45 p.m.]
14:45:56 18 I'm referring now to document <#000-49-0129-0122#> the
14:46:03 19 document is not signed -- 0 -- <#109-0122#>, I beg your pardon
14:46:10 20 not a -- so <#DVD-OTP-0050-DRC-0029-0275#> [sic] entitled
14:46:24 21 "Demobilisation of Child Soldiers" dated 27 January 2003.
14:46:34 22 With this document the Prosecutor intends to demonstrate that
14:46:38 23 Thomas Lubanga was Chief of the UPC and at the same time the
14:46:42 24 Chief of the FPLC. This document is very interesting, because
14:46:45 25 it concerns in tempore non suspecto the problem of child

14:46:57 1 soldiers.

14:47:00 2 We all know that there were armed children in the region --

14:47:03 3 not necessarily in the FPLC, but that there were armed

14:47:09 4 children, some of them which were stray children, other

14:47:15 5 children that were seeking revenge, or others that were just

14:47:19 6 looking for protection or shelter, and that had found a

14:47:23 7 weapon.

14:47:24 8 [2:47 p.m.]

14:47:25 9 Thomas Lubanga, in tempore in suspecto, was part of this - or

14:47:33 10 was confronted with this problematic -- the fact that a child

14:47:36 11 of less than 18 -- we're not even talking about 15 years --

14:47:40 12 the fact that a child of less than 18 could have a weapon was

14:47:43 13 for him a big problem, and he had given -- political orders

14:47:49 14 consisting in saying that these children should be disarmed,

14:47:56 15 and he had ordered Kisembo to execute the decree, but Thomas

14:48:00 16 Lubanga wouldn't go and execute the order himself. He

14:48:05 17 wouldn't go on the road as a chief of armies, but what he did

14:48:10 18 was take a political decision that was executed and decided

14:48:15 19 within the Council of Ministers. This is comparable to a

14:48:19 20 decision taken by any head of State in the same situation in

14:48:22 21 wartimes.

14:48:23 22 [2:48 p.m.]

14:48:24 23 We all know that in Europe, not so long ago, we were

14:48:30 24 confronted with a similar problem, even in the Allied armies.

14:48:38 25 A chief -- a head of State who gives out orders to ensure that

14:48:45 1 there aren't any armed children of less than 18 years old
14:48:48 2 gives out a political -- gives out political instructions or a
14:48:54 3 political order. And this is all to my client's honour,
14:49:08 4 <#DVD-OTP-0034#> [sic] -- DV -- <#DVD-0037-00#> [sic] --
14:49:16 5 <#0267#> is an official declaration of the UPC, and the
14:49:22 6 Prosecutor of this document wants to prove that the FPLC
14:49:25 7 existed from the creation of the UPC and that the Hema militia
14:49:30 8 only was given the name in September 2002.
14:49:33 9 [2:49 p.m.]
14:49:34 10 What is interesting to note is the quote that was taken up by
14:49:40 11 the Prosecutor -- but I already quoted this when I said that
14:49:46 12 at the time the UPC and the FPLC and the established power in
14:49:52 13 the region were confronted with a very specific situation, and
14:49:58 14 in this specific situation, took the decision to protect their
14:50:01 15 population.
14:50:02 16 Document <#EVD-OTP-0047#>, evidence number
14:50:14 17 <#DRC-OTP-0029-0274#> is an official letter by
14:50:18 18 Mr Thomas Lubanga to Kisembo, which officially bans the
14:50:22 19 enlistment of children in the FPLC, dated 21 October 2002.
14:50:27 20 [2:50 p.m.]
14:50:30 21 One must realise that at the time Chief Kahwa was about to
14:50:40 22 defect, and I must add that the ensuing mutinies that followed
14:50:48 23 on from November 2002 within the FPLC prove that
14:50:55 24 Thomas Lubanga -- Prosecutor -- did not have the control you
14:50:59 25 allege he does, or did, because there were lots of defections

14:51:07 1 in his troops, and Chief Kahwa was the first one. I explained
14:51:10 2 to you why he defected and that was because he refused to
14:51:14 3 apply what the UPC imposed upon him as a political philosophy;
14:51:19 4 that is to say, the ban on revenge and attacks and the action
14:51:27 5 would only be to protect the population.

14:51:27 6 [2:51 p.m.]

14:51:29 7 He refused this and Thomas Lubanga was conscious of this state
14:51:34 8 of affairs, because there had been the mutiny and before the
14:51:39 9 mutiny there had been very hefty discussions with Chief Kahwa.

14:51:44 10 [2:51 p.m.]

14:51:45 11 And it's because Mr Thomas Lubanga tried to do some
14:51:51 12 forward-thinking that he realised that he needed, moreover, to
14:51:56 13 ban the enlistment of children. And the part of the sentence
14:52:00 14 used by the Prosecutor "as concerns our armed branch, the
14:52:07 15 FPLC" -- because that's what the Prosecutor is getting at
14:52:11 16 here -- is very interesting. I would like to -- us to
14:52:16 17 consider the document in a wider context. It doesn't mean
14:52:19 18 that he was the Commander-in-Chief. He -- Thomas Lubanga took
14:52:23 19 his political responsibilities and said, "I do not want any
14:52:27 20 children in my armies," and he repeated this later on -- and,
14:52:32 21 of course, again, before the fact and not after the fact.

14:52:37 22 [2:52 p.m.]

14:52:39 23 <#EVD-0048#>, <#DRC-OTP-0091-0778#> is another important
14:52:51 24 document, a copy of the Chief-of-Staff --
14:52:55 25 General-Chief-of-Staff to Mr Lubanga, dated 21 November 2002.

14:53:02 1 The subject of this letter is to obtain supplies -- office
14:53:10 2 supplies, among others, and the document <#EVD-00049#>,
14:53:16 3 evidence number <#DRC-OTP-109-122#> is another document which
14:53:26 4 concerns an official order to reopen a training centre --
14:53:32 5 training camp.

14:53:32 6 [2:53 p.m.]

14:53:34 7 The document is not signed, and it is not about a combat or
14:53:41 8 fighting camp, but it is a camp -- a training camp for
14:53:46 9 military intelligence -- security intelligence.

14:53:51 10 Document <#EVD-OTP-0050#>, evidence number
14:54:04 11 <#DRC-OTP-0029-0275#> is a document whereby an attempt is made
14:54:12 12 to show that my client is a chief of the army and
14:54:19 13 Commander-in-Chief of the FPLC. I have already commented on
14:54:30 14 the subject, but this document is very interesting in the
14:54:33 15 context of this case because the document dates back to
14:54:39 16 27 January 2003 when the -- when Lubanga's government was
14:54:47 17 still in power, and Lubanga again gives the order to execute
14:54:59 18 the decree. In his political powers, Lubanga -- with his
14:55:03 19 political powers Lubanga regularly controlled that his
14:55:07 20 instructions to ban the enlistment of children under 18 was
14:55:11 21 executed and applied.

14:55:11 22 [2:55 p.m.]

14:55:13 23 This, again, mentions a letter. The problem was a very
14:55:21 24 pressing one, because there were more and more splinter groups
14:55:28 25 that grew like mushrooms and, as you know, with this type of

14:55:34 1 soil and climate present in the Congo, things grow very
14:55:37 2 quickly, and increasingly he was faced with a situation that
14:55:44 3 was getting more than -- well, a lot to cope with, because he
14:55:51 4 could feel the war coming on and you have to realise that in
14:55:56 5 that type of context, things don't happen as they would
14:56:00 6 normally.

14:56:01 7 [2:56 p.m.]

14:56:02 8 In a situation of war, there are threats and the UPC
14:56:08 9 government was attacked from all sides. And in this
14:56:16 10 context -- and Miss -- Mrs Peduto mentioned this, too. In
14:56:21 11 this context there wasn't a centre for taking in children,
14:56:27 12 there weren't any resources available to do so, and that is
14:56:31 13 why it was all the more important for my client to try to
14:56:37 14 prevent the problem -- problem occurring, and I know that the
14:56:41 15 Prosecutor will probably say that, as Mr Lubanga had the power
14:56:53 16 to ban enlistment; if children were enlisted, and they said
14:57:02 17 that was his responsibility. But, your Honours, I think that
14:57:06 18 is a very theoretical reasonable, it doesn't take the
14:57:10 19 realities of the field into account.

14:57:12 20 [2:57 p.m.]

14:57:13 21 You can always accuse anybody of everything you want, but
14:57:21 22 document <#EVD-OTP-00051#> is another decree.
14:57:33 23 <#DRC-OTP-0151-0299#>, once again this isn't a military order.
14:57:50 24 Political leaders should take responsibilities of this type,
14:57:55 25 even if they concern the army specifically. There is a

14:58:02 1 Minister of Defence in place, and it would be strange if the
14:58:07 2 government couldn't tell the army anything. That would even
14:58:11 3 be what I would call a very tricky situation -- a military
14:58:18 4 junta, if you may, which should be avoided at all costs, even
14:58:24 5 in wartimes.

14:58:25 6 Document <#EVD-OTP-00052#>, evidence number
14:58:37 7 <#DRC-OTP-0014-0254#> is a circular note from Mr Kisémbu, in
14:58:51 8 which he speaks of Mr Thomas Lubanga as the President,
14:58:58 9 Commander-in-Chief of the FPLC.

14:59:04 10 [2:59 p.m.]

14:59:05 11 As I said, he had issued a decree for the demobilisation and a
14:59:13 12 ban on enlistment, prohibiting enlistment, and had --

14:59:27 13 Mr Kisémbu refers in this letter to Mr Thomas Lubanga as the
14:59:31 14 chief of the FPLC, but this doesn't mean anything in practice,
14:59:38 15 as I have already exposed.

14:59:40 16 [2:59 p.m.]

14:59:43 17 Document <#EVD-0053#>, evidence number <#DRC-OTP-0016-0043#>;
14:59:59 18 the Prosecutor here attempts to say that, though he was in
15:00:04 19 gaol, Mr Lubanga Dyilo was still in contact with the UPC and
15:00:10 20 the FPLC. Of course he was still in contact with the FPLC and
15:00:13 21 it was his responsibility to be so, because gaol in Kinshasa
15:00:18 22 is something different to the prisons we have here, because
15:00:23 23 prisoners have a telephone and can communicate much more
15:00:26 24 easily than we can in our European detention centres.

15:00:30 25 [3:00 p.m.]

15:00:32 1 If the Chief-of-Staff always says "at your order" when he
15:00:39 2 signs a document, it means that he remains faithful to his
15:00:42 3 President and that he respects him, even if he is in prison.
15:00:48 4 Document number <#EVD-OTP-00054#>, which is
15:01:00 5 <#DRC-OTP-0132-0237#> which is a decree signed by Mr Lubanga
15:01:06 6 to suspend several members of the UPC and the FPLC, in
15:01:10 7 particular Mr Kisémbu, which was used for the same purpose by
15:01:15 8 the Prosecutor. Mr Kisémbu and Litsha in particular, having
15:01:28 9 organised a new mutiny -- in the case of Litsha the -- and in
15:01:36 10 the case of Kisémbu, the FPLC, Mr Lubanga had to lead the
15:01:44 11 movement. Even if he was in prison, he was still the
15:01:47 12 President. He is trying to dismiss the Ministers and
15:01:53 13 Chiefs-of-Staff. This is a political decision which involves
15:02:00 14 the army.
15:02:00 15 [3:02 p.m.]
15:02:04 16 It is difficult to imagine that this decision, which endorses
15:02:08 17 an already existing situation -- which -- it is difficult to
15:02:12 18 imagine that it would not be taken, as in the case of
15:02:16 19 Mr Chief Kahwa. It is unimaginable. This is Mr Kisémbu who
15:02:23 20 is being dismissed from his duties.
15:02:26 21 Document <#EVD-OTP-00035#>, <#DRC-OTP-0164-0286#> is a summary
15:02:41 22 of a witness statement, which implies that Thomas Lubanga
15:02:46 23 conducted himself, in effect, as the Commander-in-Chief and
15:02:51 24 mention is made of evenings spent with the Chief-of-Staff.
15:02:55 25 The fact that Mr Lubanga spent evenings with some soldiers and

15:03:02 1 some politicians in his government does not prove that he gave
15:03:08 2 them military orders.

15:03:09 3 [3:03 p.m.]

15:03:10 4 All it proves is that this was a man who was working day and
15:03:15 5 night for his government and wished to be kept informed. I
15:03:20 6 say this, and I repeat it: we are talking about a state of
15:03:24 7 war. This is not peacetime.

15:03:32 8 Document number <#EVD-OTP-00057#> which is

15:03:48 9 <#DRC-OTP-0074-0028#> is a report -- a supposed report of an
15:03:58 10 interview with Mr Lubanga which appears on IRIN -- I-R-I-N --
15:04:12 11 on 14 April 2003. The Prosecutor tenders this evidence, or an
15:04:19 12 excerpt thereof, which is on page 3 of the document at the top
15:04:23 13 of the page:

15:04:27 14 "Q. Can you guarantee that your forces will remain under your
15:04:30 15 control after 1 September, when the multinational force will
15:04:35 16 leave?" That is the interim emergency multinational force,
15:04:44 17 ARTEMIS.

15:04:45 18 [3:04 p.m.]

15:04:50 19 Mr President, your Honours, I have problems with this document
15:04:55 20 in its entirety. We are all aware that the ARTEMIS force was
15:05:04 21 only established in July 2003. If my information is correct,
15:05:14 22 this document would be dating from April 2003, but it only
15:05:22 23 mentions 14 April, without giving a year.

15:05:27 24 [3:05 p.m.]

15:05:28 25 This is a first challenge of the authenticity of this

15:05:32 1 document. Secondly, I would like to refer to what Mr Roberts
15:05:38 2 said in regard to the value of press articles, interviews and
15:05:46 3 so on, and so forth. The Defence challenges the fact that the
15:05:54 4 words ascribed to Mr Lubanga were his real words.

15:05:58 5 [3:05 p.m.]

15:06:01 6 Anyone who has been interviewed may well not recognise his
15:06:05 7 words when they are published. So I find that this document
15:06:11 8 has no probative value.

15:06:15 9 Document number <#EVD-OTP-00057#>, which is

15:06:28 10 <#DRC-OTP-0074-0028#> -- it does seem to be the same document,
15:06:34 11 I'm afraid. I have already referred to this document. So,

15:06:40 12 document number <#EVD-OTP-00058#>, which is

15:06:54 13 <#DRC-OTP-0103-0008#>, a film written and produced by a -- one
15:07:01 14 Mr Cohen, produced by Canada and ARTE France, the Peace Prize.

15:07:11 15 I would like to express all my reservations in regard to
15:07:13 16 reports that have no place in a court of justice. A report --
15:07:20 17 a media report is very often a subjective view of the person
15:07:25 18 behind the camera, or the person speaking into the microphone.

15:07:29 19 That is the first thing. We do not know this author. Nor do
15:07:35 20 we know the reasons for his action. He is perhaps trying to
15:07:40 21 convey a message based on convictions of some lobbies that may
15:07:47 22 be supporting him, such as a newspaper, which is rarely
15:07:52 23 objective. We do know -- we do all know that many newspapers
15:08:00 24 only express one part of the truth.

15:08:04 25 [3:08 p.m.]

15:08:09 1 Studies on the increasing lack of independence in large parts
15:08:13 2 of the press, and the overwhelming majority of the press --
15:08:16 3 and I'm not in this case referring to a newspaper such as --
15:08:22 4 such as Le Monde, but to other newspapers all over the world,
15:08:25 5 is legion. So how can we attribute credibility to a
15:08:30 6 newspaper? What is the context of the film? What are the
15:08:32 7 dates? What is the location? Did Mr Coburn [sic] see
15:08:40 8 children less than 18 years, or 15 years of age armed and in
15:08:45 9 uniform next to Mr Lubanga? That is not probable, because he
15:08:48 10 would have filmed them if he had. Did he tape Mr Lubanga's
15:08:52 11 speech? And why did he focus on Mr Lubanga and not on any
15:08:58 12 other militia representative? That is some cause for concern,
15:09:03 13 it must be said.

15:09:04 14 [3:09 p.m.]

15:09:09 15 Document <#EVD-OTP-0059#>, which is <#DRC-OTP-0148-0302#>,
15:09:27 16 this is a documentary called "The Congo Killing Fields", UK
15:09:37 17 private TV channel, Channel 4. We all know the English press.
15:09:41 18 It is sometimes even worse than other presses in other
15:09:46 19 countries. They seek sensation -- sensationalism, and this
15:09:54 20 private channel, which I know and I'm not going to dwell on
15:09:58 21 the quality of the report that it produces, but I have no
15:10:05 22 reason to trust it.

15:10:06 23 [3:10 p.m.]

15:10:07 24 For example, at the end of the excerpt which we were shown,
15:10:13 25 the video shows an interview with a Rwandan. We cannot

15:10:22 1 determine whether this person is male or female. We just see
15:10:25 2 the back of a head, which is fairly blurred. And this
15:10:28 3 unidentified person claims that Mr Lubanga allegedly
15:10:32 4 negotiated the delivery of arms' shipments with Rwanda. You
15:10:41 5 can claim anything. The voice itself was difficult to hear;
15:10:48 6 so we don't know who this person is. It is worse than
15:10:54 7 testimony given anonymously. This is gratuitous; this means
15:10:59 8 nothing. I shall spare you the rest of the film,
15:11:06 9 Mr President, your Honours.
15:11:06 10 [3:11 p.m.]
15:11:11 11 There is no date given for the supposed transaction, the arms
15:11:18 12 deal. Furthermore, as you may have noticed, it is very
15:11:22 13 difficult, even if you look at it several times, to hear
15:11:27 14 Mr Lubanga's voice. It is completely dubbed by the voice of
15:11:33 15 the reporter who can say just anything. The reporter says
15:11:42 16 that this is an exact replica of Mr Lubanga's words, but we no
15:11:47 17 longer can hear Mr Lubanga. I consider that this film, as we
15:11:54 18 may call it, has no value at all.
15:11:55 19 [3:11 p.m.]
15:11:56 20 Now, we move on to <#EVD-OTP-00061#>, document number
15:12:03 21 <#DRC-OTP-0164-0243#> which is a summary of an interview of a
15:12:11 22 witness identified as "BA", in a pseudonym, which implies that
15:12:18 23 from the outset Mr Lubanga was involved in recruiting
15:12:21 24 children. That is from the creation -- the creation of the
15:12:24 25 UPC in September 2000. And it is said that this child said

15:12:33 1 that he was recruited by someone who introduced himself as

15:12:39 2 Thomas Lubanga.

15:12:42 3 First remark: we are outside the period that this court is

15:12:48 4 dealing with. Secondly, in the alternative, there is no

15:12:53 5 precise date. Is it before 1 September 2000, when the UPC was

15:13:03 6 created, or afterwards?

15:13:11 7 The APC still being in existence, as the branch -- the armed

15:13:15 8 branch of the RCD-K/ML, it is not out of the question that

15:13:20 9 someone sought to blame Mr Lubanga, and that such a person

15:13:24 10 might have introduced himself as such, as Mr Lubanga. And we

15:13:28 11 cannot know for sure, which is why we can say that this

15:13:33 12 document has no authenticity and cannot claim any credibility.

15:13:38 13 [3:13 p.m.]

15:13:39 14 Now, to <#EVD-OTP-00062#>, <#DRC-OTP-164-250#> [sic], which

15:13:50 15 claims that Mr Lubanga was involved in recruiting children

15:13:55 16 from the creation of the UPC in 2000.

15:13:57 17 [3:13 p.m.]

15:14:01 18 Now, regarding the credibility of this unknown witness, again,

15:14:06 19 who says that the recruitment of child soldiers began as from

15:14:11 20 the revolution of Thomas Lubanga? If the witness has only

15:14:19 21 been a member of the FPLC only from the time Bunia was taken

15:14:22 22 over in August 2002, how can he be sure that the recruitment

15:14:27 23 of children had begun from 2000? How can he state, then, that

15:14:33 24 there was a militia in existence from the time the UPC was

15:14:37 25 created? We don't know; we are completely confused.

15:14:37 1 [3:14 p.m.]

15:14:47 2 Document <#EVD-OTP-00063#>, which is <#DRC-OTP-160-479#> [sic]

15:14:59 3 which is a report of the interview of witness WWW-0020.

15:15:11 4 In this document the Prosecutor is trying to prove here that

15:15:15 5 the national secretaries did not challenge the inclusion of

15:15:21 6 women and children in the armed ranks of the FPLC, and that

15:15:26 7 the recruitment and use of children through the -- by the FPLC

15:15:30 8 was considered as normal, and a military -- a question of

15:15:34 9 military necessity. I would like to point out that the

15:15:38 10 witness says "according to me", so I think he is making

15:15:44 11 deductions and he is expressing an opinion and that he didn't

15:15:48 12 witness anything.

15:15:50 13 <#EVD-OTP-0003-31#> [sic], that is <#DRC-OTP-0164-0262#>. In

15:16:05 14 this document the Prosecutor is seeking to prove through this

15:16:10 15 witness that there were kadogo, that is, small or young

15:16:14 16 children, inside the UPC/FPLC headquarters.

15:16:18 17 [3:16 p.m.]

15:16:22 18 According to the witness, the children were aged between 10

15:16:24 19 and 15. The witness first uses the word or the term "it would

15:16:38 20 seem", which means that he is not sure of what he is saying.

15:16:40 21 I would like to say that this is another summary. You know

15:16:44 22 how we feel about these summaries, because they involve the

15:16:51 23 opinion of the investigator who is making the summary. So, in

15:16:56 24 one way, this summary is a judgment in itself, so what should

15:17:00 25 we believe? How can we summarise it?

15:17:04 1 [3:17 p.m.]

15:17:06 2 Furthermore, the witness is basing his testimony on rumours
15:17:12 3 about allegations that the UPC was asking each Hema family to
15:17:17 4 give at least a child. That is a rumour. We have discussed
15:17:22 5 these rumours -- we discussed them during the
15:17:25 6 cross-examination of the witness.

15:17:26 7 [3:17 p.m.]

15:17:29 8 Now, to <#EVD-OTP-00064#>, <#DRC-OTP-164-0272#> [sic], a
15:17:42 9 summary of an interview of a witness WWW-0024, which is
15:17:50 10 seeking to prove that the UPC and the FPLC did recruit
15:17:54 11 children less than 15 years of age and that Mr Lubanga was not
15:18:00 12 at all interested in pacification and demobilisation. First
15:18:05 13 of all, we must say that the witness is a Lendu. How can he
15:18:12 14 be impartial? Perhaps it is to his advantage to accuse the
15:18:16 15 Hema. He talks of a recruitment campaign from 2001 to 2002,
15:18:23 16 but he gives no date, no indications as to location and no
15:18:27 17 evidence.

15:18:27 18 [3:18 p.m.]

15:18:32 19 This witness thinks that Mr Lubanga never wanted to demobilise
15:18:39 20 the child soldiers. That is a personal opinion; it is not
15:18:42 21 supported by any proof. This witness, whose pseudonym is, I
15:18:50 22 believe, "AH" talks about public statements made by Mr Lubanga
15:18:55 23 for demobilisation, in particular after the report of an
15:19:01 24 international NGO and states that he heard public statements
15:19:07 25 on the radio made by UPC representatives for the pacification

15:19:12 1 of the region.

15:19:13 2 [3:19 p.m.]

15:19:15 3 This witness talks about pacification meetings between the UPC
15:19:19 4 and representatives of the Lendu community within the context
15:19:25 5 of the Pacification Commission.

15:19:26 6 [3:19 p.m.]

15:19:27 7 He says that he saw children in Bunia who were aged 7 to
15:19:32 8 18 years of age.

15:19:38 9 PRESIDING JUDGE JORDA (interpretation): Could I be given the
15:19:39 10 number of the document, please? Mr Flamme, did you indicate
15:19:48 11 the document number in this case?

15:19:52 12 COURT OFFICER (interpretation): The document number is
15:19:56 13 <#EVD-OTP-OTP-00064#> [sic] the pseudonym of the witness in
15:20:03 14 question is "AH".

15:20:05 15 PRESIDING JUDGE JORDA (interpretation): All right.

15:20:09 16 ME FLAMME (interpretation): So when witness "AH" says that
15:20:11 17 he saw children aged 7 to 18 years of age in Bunia, I wonder
15:20:15 18 when, how -- how many individuals aged less than 15 were there
15:20:20 19 and when he refers to -- refers to families that have to pay
15:20:27 20 up 100 francs -- Congolese francs in taxes for the training of
15:20:33 21 children, how can he refer to taxes without pre -- proof of
15:20:36 22 payment being adduced and, furthermore, without determining
15:20:42 23 for what purpose this money was intended? You mustn't just
15:20:46 24 say that a tax was paid; you must prove that the tax was
15:20:49 25 specifically destined for child recruitment. Is their

15:20:55 1 testimony from a family? Once more, this is mere hearsay.

15:21:02 2 Document number <#EVD-OTP-00055#>, which is a summary of an

15:21:11 3 interview of a witness -- that is WWW-0021 -- aiming to prove

15:21:21 4 that there was generalised recruitment of child soldiers in

15:21:25 5 the Hema community from August 2002, and the problem of

15:21:31 6 funding this recruitment with taxes, in terms of material and

15:21:38 7 property, and money. The witness says that the campaign was

15:21:42 8 aimed -- or consisted in young people in their prime and he

15:21:50 9 only mentions children later. He doesn't seem very coherent.

15:21:56 10 "Young people in their prime"? It doesn't sound like children

15:22:02 11 to me.

15:22:02 12 [3:22 p.m.]

15:22:04 13 Like most armies, young people are considered equally. Wars

15:22:14 14 have always been conducted by young people -- 17, 18 or

15:22:19 15 19 years of age. Because, we know very well -- for example,

15:22:28 16 this was the case in Normandy, these young people had no

15:22:32 17 experience and, of course, they were almost unafraid as a

15:22:36 18 result.

15:22:36 19 [3:22 p.m.]

15:22:37 20 Document number <#EVD-OTP-00065#>, <#DRC-OTP-164#> --

15:22:52 21 Mr Flamme corrects -- <#0164-0273#>, summary of -- interview

15:22:59 22 of witness WWW-0041, which alleges that many children were

15:23:14 23 voluntarily enrolled or enlisted into the UPC army. This is

15:23:19 24 not really enlistment, and this followed propaganda among the

15:23:24 25 Hema community. These children -- or this witness comes from

15:23:30 1 the Ngiti ethnic group. Can he be impartial?

15:23:33 2 Now, regarding the presence of minors, 14 to 17 years of age,
15:23:38 3 how could he have known their age? Can one easily make the
15:23:41 4 difference -- establish the difference between a young person
15:23:44 5 of 14 years and a young person of 15 years?

15:23:52 6 I now come to the comment that has been raised, sufficiently
15:23:56 7 in my view, in regard to evidence. This is of capital
15:24:00 8 importance. I refer to the documents <#EVD-OTP-00067#>, which
15:24:06 9 is <#DRC-OTP-0164-0291#>.

15:24:15 10 [3:24 p.m.]

15:24:21 11 In this case the Prosecutor wishes to prove that
15:24:25 12 Mr Thomas Lubanga Dyilo was aware that there were children in
15:24:27 13 the training camps. The witness says that when Mr Lubanga
15:24:33 14 visited the training camps there were children aged less than
15:24:36 15 15 there. But the witness does not say whether there were
15:24:40 16 child soldiers, whether they were wearing uniforms or whether
15:24:45 17 they were bearing arms.

15:24:46 18 [3:24 p.m.]

15:24:48 19 He says that the student -- that the children had joined the
15:24:52 20 militia willingly because they had lost their parents during
15:24:56 21 the tribal war and had nowhere to go and no other choice than
15:25:01 22 to join the army. They came to the army to have fun and to
15:25:05 23 follow the examples of their friends. Witness -- this witness
15:25:10 24 "BB" did not witness forced enlistment, to my knowledge.

15:25:24 25 COURT OFFICER (interpretation): Minor correction, Me Flamme,

15:25:25 1 for the report, that is <#EVD-OTP-00066#>.

15:25:29 2 ME FLAMME (interpretation): Yes, all right. Thank you. The
15:25:33 3 next document is a video -- that is <#EVD-OTP-00067#>, which
15:25:39 4 is <#DRC-OTP-120#> -- <#0120#> [Mr Flamme corrects] and
15:25:50 5 <#0293#>.

15:25:50 6 [3:25 p.m.]

15:25:52 7 This is the famous video in which Mr Lubanga visits Rwampara
15:25:58 8 and encourages future recruits. This is the first video I
15:26:07 9 watched, Mr Prosecutor, if I remember correctly, in June, and
15:26:14 10 for one reason or another, I was not able to hear the sound.

15:26:18 11 [3:26 p.m.]

15:26:20 12 So, I started by watching this video just watching the
15:26:25 13 pictures without the sound. It was a very interesting study,
15:26:28 14 because it enabled me to study my client's body language, and
15:26:35 15 this is very interesting, because body language also talks.
15:26:42 16 And when we look at Mr Lubanga -- when we see him going to
15:26:45 17 this place and speak to these people who are there -- because
15:26:53 18 they are not only soldiers, they are people, idlers, the
15:26:58 19 general population, who came to listen to him -- well, this --
15:27:02 20 his body language is not one of someone who is inhabited by
15:27:10 21 vengeance, or a thirst for vengeance on tribal hatred or
15:27:16 22 ethnic hatred and the desire to create chaos or to carry out
15:27:22 23 massacres and subsequently, when we see what the text says --
15:27:29 24 that he said, it's even more interesting, because all
15:27:33 25 Mr Lubanga says -- talks about is reconciliation. Of course

15:27:37 1 he talks about the protection of the population, but he talks
15:27:40 2 most of all of ethnic reconciliation, peace, and the fact that
15:27:45 3 it is impossible to live in a state of hate.

15:27:48 4 [3:27 p.m.]

15:27:49 5 I don't see it, Mr Prosecutor. You must show them to me,
15:27:54 6 these young people of whom you claim that they were recruits,
15:27:58 7 who were less than 15 years of old [sic]. Let's look at the
15:28:01 8 film again and then you can show me. I would be very keen to
15:28:04 9 see that, but I didn't see them; I saw young children wearing
15:28:07 10 civilian dress and idlers and who may have been less than 15,
15:28:12 11 I don't know, and neither do you. They are not soldiers,
15:28:15 12 however. That is an entirely different matter. In Africa,
15:28:20 13 when something happens -- is happening, the population comes
15:28:22 14 in, in their numbers, to listen and to watch.

15:28:22 15 [3:28 p.m.]

15:28:25 16 I also asked you about the origin of this video. You failed
15:28:29 17 to tell it to me -- to tell me. I will tell you; this is a
15:28:32 18 MONUC video at the request of Mr Lubanga himself, who invited
15:28:37 19 MONUC to attend on this occasion, and MONUC came and filmed
15:28:45 20 the video.

15:28:45 21 That is the source that we were seeking, but which we learnt
15:28:52 22 about through other channels.

15:28:58 23 Document <#ERN-OTP-00032#> [sic], which is

15:29:12 24 <#DRC-OTP-0164-0301#>, this is witness WWW-00040. Through

15:29:21 25 this witness, the Prosecutor is seeking to establish that

15:29:25 1 Mr Lubanga was aware of what was happening in both the
15:29:29 2 military and the political wings. I think when the witness
15:29:36 3 says "I feel" or "I think", this is a personal opinion, a
15:29:41 4 deduction, and that is not testimony.
15:29:43 5 [3:29 p.m.]
15:29:45 6 Furthermore, the witness does not provide proof of the control
15:29:51 7 that is alleged over Bosco, Kahwa and the others. The witness
15:30:00 8 also knew that the control that Mr Thomas Lubanga had over
15:30:10 9 political matters had considerably reduced for the reasons
15:30:14 10 that I have explained to you. And I also told you about
15:30:18 11 mutinies that followed each other, and these are clear proof
15:30:25 12 that this control didn't exist.
15:30:27 13 [3:30 p.m.]
15:30:29 14 Document <#ERN-OTP-0025#> [sic], which is a summary of the
15:30:36 15 interview of witness WWW-003 [sic], which was used by the
15:30:44 16 Prosecutor to seek to establish that Mr Lubanga and his
15:30:49 17 co-perpetrators, whom we do not know, met regularly at the
15:30:54 18 home of Thomas Lubanga before military operations. I would
15:31:01 19 like to point out that the witness adds that Mr Lubanga did
15:31:07 20 not go to Mongbwalu because he was not interested in soldiers;
15:31:12 21 he didn't have the time.
15:31:13 22 [3:31 p.m.]
15:31:20 23 <#ERN-OTP-0042#> [sic], <#DRC-OTP-0104-0107#>, WWW-0225 [sic].
15:31:40 24 The Prosecutor here is showing once again that Lubanga was the
15:31:45 25 leader of the UPC-FPLC and here I would just like to point out

15:31:55 1 that the witness states that, according to him, the military
15:32:01 2 had taken the decision to attack without Lubanga; that the
15:32:06 3 Minister of the Defence didn't say anything with regards to
15:32:08 4 the military strategy, or with regard to the financing of the
15:32:12 5 soldiers.
15:32:12 6 [3:32 p.m.]
15:32:53 7 PRESIDING JUDGE JORDA (interpretation): Is it - is it a
15:32:54 8 pseudonym "AN"?
15:32:57 9 ME FLAMME (interpretation): It's 0042.
15:33:03 10 PRESIDING JUDGE JORDA (interpretation): On the screen, this
15:33:06 11 is a record of an interview and the pseudonym is "AN". I
15:33:12 12 don't have the pseudonym -- well, nobody has it, in fact.
15:33:18 13 ME FLAMME (interpretation): It's witness "WWW" -- it's a bit
15:33:21 14 of a contradiction, I think -- "025".
15:33:30 15 PRESIDING JUDGE JORDA (interpretation): Okay, it's "AN".
15:33:32 16 ME FLAMME (interpretation): The document <#ERN-OTP-00032#>
15:33:39 17 [sic], <#DRC-OTP-164-0301#> [sic], WWW-00040, which says --
15:33:58 18 aims to state that Mr Lubanga was aware of what happened in
15:34:02 19 the military wing and also in the political wing. And there's
15:34:05 20 a problem with credibility with regards to this witness,
15:34:08 21 because he says that he considers, once again -- or he thinks
15:34:13 22 this once again goes back to a personal deduction on his
15:34:17 23 part -- how can he be -- how can he know what happened in the
15:34:20 24 ranks of the army and the political sphere? There's no
15:34:24 25 specific dates. And the witness doesn't provide proof with

15:34:28 1 regards to the alleged control of Thomas Lubanga on -- on

15:34:34 2 his -- on his general or superior officers.

15:34:38 3 [3:34 p.m.]

15:34:39 4 The testimony is drafted in the form of "general

15:34:44 5 observations". It is not supported by verifiable details --

15:34:51 6 doesn't name the place, dates, documentation -- something

15:34:55 7 which is very general, which doesn't give any guarantees in

15:34:59 8 terms of its reliability.

15:35:00 9 [3:35 p.m.]

15:35:01 10 The document <ERN-OTP-00071#> [sic], <#DRC-OTP-0014-02172#>

15:35:17 11 [sic], this document is a letter -- <#0272#>, this document is

15:35:28 12 a letter addressed to Mr Bosco, and it asks for a payment of a

15:35:37 13 bill for the Thuraya telephone, which is a satellite

15:35:44 14 telephone. There's no mention of Mr Lubanga, and the

15:35:49 15 telephone was bought on the account of the FPLC. But nothing

15:35:55 16 says that this is really important, and that Mr Lubanga was

15:36:02 17 aware of this purchase.

15:36:03 18 Document -- so, the WWW-0026, the record of the interview,

15:36:17 19 <#DRC-OTP-0164-0284#> used by the Prosecutor to prove that

15:36:35 20 Mr Lubanga had executed the common aim in coordinating the

15:36:40 21 efforts of other persons who had directly carried out

15:36:46 22 enlistment and conscription of children -- made them

15:36:49 23 participate in combat.

15:36:52 24 [3:36 p.m.]

15:36:55 25 This witness tells us that, to start, that there were

15:37:01 1 consultations and there were decisions taken on a collegial
15:37:06 2 basis. And he also says that, when the UPC took power in
15:37:10 3 Bunia in August of 2002, Mr Lubanga was imprisoned in
15:37:16 4 Kinshasa, and that political decisions in Bunia -- on Bunia
15:37:21 5 were taken mainly by Chief Kahwa. With regards to the rest, I
15:37:27 6 don't think that this testimony can prove what the Prosecutor
15:37:33 7 would like it to prove.

15:37:36 8 We therefore have the witness interview, WWW-0021,
15:37:47 9 <#EVD-OTP-0055#>, <#DRC-OTP-0164-0258#> aiming to prove that
15:38:04 10 Mr Lubanga had a common aim in coordinating the efforts of
15:38:07 11 other persons, who had directly carried out conscription, and
15:38:14 12 we don't know all of them. It's difficult to control this.
15:38:17 13 [3:38 p.m.]

15:38:19 14 Mr Lubanga had reports -- or close relations, rather, with his
15:38:24 15 subordinates who are meant to have carried out the recruitment
15:38:28 16 campaign for recruiting children. We have no idea of the
15:38:35 17 identity of this witness. So, we don't have an idea if this
15:38:38 18 person knew the situation in Bunia, or not.

15:38:40 19 The witness in the passage states that the campaign consisted
15:38:44 20 of recruiting, once again, "young men in full physical
15:38:51 21 strength". And so, here we're talking -- the Defence thinks
15:38:55 22 that this is talking therefore about young adults, and not
15:38:58 23 about children. There's no place that's mentioned, there's no
15:39:01 24 specific time, not even the name of the so-called emissaries
15:39:07 25 of the UPC, or even to see whether -- or how the age of these

15:39:14 1 young men in their prime could be known. "In full physical
15:39:21 2 force" -- well, it can't be a child, can there [sic]?
15:39:25 3 The -- they apparently -- they -- recall came en masse to a
15:39:33 4 call and they had personal aims and the witness in the passage
15:39:36 5 does not mention Mr Lubanga as the authority, which would have
15:39:45 6 been the source of these supposed enlistments.
15:39:53 7 The document <#EVD-OTP-0065#>, <#DRC-OTP-164-0273#>[sic],
15:40:10 8 aiming to, once again, prove the execution of a common aim.
15:40:19 9 [3:40 p.m.]
15:40:20 10 The witness speaks about secret meetings organised by the --
15:40:24 11 those close to Thomas Lubanga and for the Prosecutor there
15:40:30 12 were permanent contacts which Lubanga is said to have had with
15:40:36 13 the co-perpetrators who participated in recruitment -- or the
15:40:41 14 supposed recruitment.
15:40:42 15 [3:40 p.m.]
15:40:45 16 We don't know what to understand by these people who were
15:40:48 17 close, who participated in these meetings. Who are they?
15:40:51 18 There are no names, dates, places. Was the witness there
15:40:54 19 during these meetings, or is it just hearsay? Well, we don't
15:40:58 20 know.
15:40:58 21 [3:40 p.m.]
15:41:02 22 The document <#ERN-OTP-00066#> [sic], WWW-0004,
15:41:21 23 <#DRC-OTP-0164-0291#>, used by the Prosecutor, once again, to
15:41:34 24 try to prove the execution of a common goal.
15:41:40 25 The witness states that Mr Lubanga, Mr Bosco Ntaganda,

15:41:50 1 Mr Kisémbó and Chief Kahwa visited the Mandro camp while the
15:41:54 2 witness "BB" had followed his training of four weeks there.
15:42:01 3 But it's not -- dates with regard to this visit aren't
15:42:05 4 mentioned and, as such, witness "BB" says "having been
15:42:09 5 recruited in 2001 by Bosco, and Kahwa and Mandro" without any
15:42:16 6 precise dates. And I consider that this shouldn't be taken
15:42:21 7 into account, because it is outside the field of jurisdiction
15:42:25 8 of the Court in terms of the temporal jurisdiction of the
15:42:30 9 Court, and "BB" also says that Thomas Lubanga -- while he
15:42:44 10 could have identified him -- because once again we have this
15:42:44 11 problem once again. Is it really Thomas Lubanga that he says
15:42:47 12 he has seen who didn't give orders to the recruits, which
15:42:52 13 would prove the lack of involvement in military matters.
15:42:57 14 [3:42 p.m.]
15:43:01 15 <#ERN-OTP-00066#> [sic], the witness WWW-0004,
15:43:18 16 <#DRC-OTP-164-0291#> [sic]. Once again, trying to prove the
15:43:24 17 execution of a common aim, the witness says that Chief Kahwa
15:43:28 18 recruited children of under 15 years old.
15:43:34 19 PRESIDING JUDGE JORDA (interpretation): Mr Flamme, there's a
15:43:35 20 -- you said it was witness WWW-3 or 4?
15:43:39 21 ME FLAMME (interpretation): 4, according to my information.
15:43:45 22 COURT OFFICER (interpretation): Perhaps you have to mention
15:43:47 23 the reference again, if you could? Court officer, please,
15:43:50 24 could you mention the reference again?
15:43:56 25 ME FLAMME (interpretation): It is <#ERN-OTP-00066#> [sic].

15:43:59 1 COURT OFFICER: No. <#DRC-OTP-164-291#> [sic]. No, this is
15:44:13 2 the -- this is what you have just shown us, the testimony of
15:44:15 3 "BB".

15:44:15 4 ME FLAMME: I will have to verify this then. Perhaps it is
15:44:18 5 an error. I apologise.

15:44:23 6 I will then come on to the testimony <#ERN-OTP-0066#> [sic],
15:44:39 7 <#DRC-OTP-0164-0291#>, witness -- oh, no, well, that would be
15:44:48 8 the witness who I was speaking about.

15:44:53 9 COURT OFFICER (interpretation): We have another reference
15:44:54 10 for the witness -- <#0004#>, and this would be
15:45:03 11 <#DRC-OTP-0041-0002#>.

15:45:09 12 ME FLAMME (interpretation): Yes, there I'm a bit confused.

15:45:15 13 PRESIDING JUDGE JORDA (interpretation): You must be tired,
15:45:17 14 Mr Flamme.

15:45:17 15 ME FLAMME (interpretation): Well, yes, I am tired -- yes, as
15:45:21 16 well, but for the moment I don't feel very strong. Well, I'll
15:45:24 17 have a look at that in a minute.

15:45:27 18 PRESIDING JUDGE JORDA (interpretation): Well, we will take
15:45:28 19 up things again at 4.30 -- so for a half hour. But if we have
15:45:33 20 three quarters of an hour break, then we could do that?

15:45:36 21 ME FLAMME (interpretation): Can I finish what I have got
15:45:38 22 here, and then we've almost finished with the testimony and
15:45:42 23 individual documents, and there's almost nothing more.

15:45:46 24 PRESIDING JUDGE JORDA (interpretation): Yes, please continue
15:45:47 25 then.

15:45:48 1 ME FLAMME (interpretation): So here we are talking about

15:45:49 2 <#ERN-OTP-0074#> [sic], <#DRC-OTP-052-0274#> [sic].

15:46:05 3 [3:46 p.m.]

15:46:12 4 So, here it is also said that Thomas Lubanga pursued a common

15:46:17 5 aim in personally recruiting child soldiers, and the --

15:46:24 6 apparently he was taken in a vehicle where Thomas Lubanga was

15:46:27 7 with six other soldiers. We had the opportunity already to

15:46:30 8 see this testimony in the "individual stories" during the

15:46:35 9 cross-examination and the indirect examination, and I would

15:46:43 10 like to say, once again, that these children were presented by

15:46:49 11 the UPDF, which had fought the UPC, and it had driven out the

15:46:55 12 UPC. And so it could have manipulated the investigators to

15:47:00 13 discredit the UPC, and these children were found under the

15:47:04 14 command of Alex of the -- of PUSIC. And also PUSIC had an

15:47:14 15 advantage in accusing the FPLC.

15:47:17 16 [3:47 p.m.]

15:47:18 17 Of course, there is no additional proof or -- just -- well,

15:47:24 18 there's just no proof quite simply, that these children did --

15:47:27 19 were members of the UPC -- there's no proof with regards to

15:47:31 20 age, other than the declaration, other than the statement.

15:47:36 21 Furthermore, this witness claims to have undergone training of

15:47:42 22 one week, which is contradictory with the other testimonies

15:47:45 23 which refer to training of several weeks, and even of three

15:47:50 24 months.

15:47:50 25 [3:47 p.m.]

15:47:51 1 Ultimately, how, once again, can this young person know that
15:48:00 2 he's in the presence of Thomas Lubanga? I will here give the
15:48:07 3 clarification that, with regard to the information that we
15:48:09 4 have -- and it's Madame Peduto who has stated this -- that
15:48:14 5 there was an open pick-up -- it was open at the back, and that
15:48:17 6 Thomas Lubanga was inside the car. And this young person,
15:48:24 7 when he got into the pick-up, has he been -- was he able to
15:48:26 8 see inside? Was he able to really recognise him? Well, all
15:48:31 9 this seems to be very -- very unclear.

15:48:37 10 [3:48 p.m.]

15:48:38 11 The document <#ERN-OTP-000#> -- sorry, now, I'm --
15:48:47 12 <#DRC-OTP-0074-0003#>, this is a witness who tells us that
15:49:10 13 Radio Okapi, of which we know, which is the radio station
15:49:14 14 which was sponsored by MONUC, had revealed that Mr Lubanga
15:49:26 15 was -- stated that everybody in -- everybody in this should
15:49:30 16 contribute to the war effort within his area in either giving
15:49:34 17 a cow or money or a child -- or two - or a child to join the
15:49:39 18 ranks.

15:49:40 19 [3:49 p.m.]

15:49:41 20 They don't mention dates in this declaration. We don't
15:49:52 21 know -- well, if my memory serves me well, we don't know the
15:49:57 22 real transcript of this report and, ultimately, even if this
15:50:08 23 broadcast did take place, it has no credibility because --
15:50:11 24 well, I had the opportunity to explain to you, during the
15:50:15 25 cross-examination of the witness that there was between

15:50:20 1 Radio Okapi and the FPLC/UPC, there was a tension -- a
15:50:25 2 constant climate of tension and even the UPC, if my memory
15:50:31 3 serves me well, through Mr Tinanzabo, had written a letter to
15:50:37 4 Okapi to refute some of the accusations that were made against
15:50:45 5 the party, and perhaps even the army, and that -- Radio Okapi
15:50:51 6 never reacted to that. There was no denial, but neither was
15:50:54 7 there a reply.

15:50:55 8 [3:50 p.m.]

15:50:56 9 So it's very difficult, and when it comes to the general --
15:51:02 10 and I'm going back to my general remarks -- with regards to
15:51:05 11 articles that came out of the press, <#EVD-OTP-0065#> [sic]
15:51:12 12 that's the witness interview, WWW-0041, the intention of
15:51:24 13 Thomas Lubanga to follow this common aim, that is, supposed to
15:51:30 14 have used children as a bodyguard. The witness says that --
15:51:37 15 that there were children there under 15 years of age. The
15:51:41 16 problem of credibility is, once again, no dates, no places
15:51:45 17 that are mentioned. The witness is contradicted by other
15:51:49 18 documents, for example witness "BB", who we have already cited
15:51:58 19 in <#DRC-OTP-0164-0291#>, because he says the bodyguard of
15:52:06 20 Thomas Lubanga were major -- were large soldiers on the video
15:52:11 21 <#DRC-OTP-00103-0008#> [sic] -- we can see Thomas Lubanga
15:52:21 22 crossing a group of civilians in a village, and he is in
15:52:25 23 military uniform, but with no further accoutrements, just a
15:52:35 24 general uniform, without a weapon, escorted by adult soldiers
15:52:40 25 and who were armed in military uniform. So there's still no

15:52:50 1 proof to this day with regard to this allegation.

15:52:53 2 [3:52 p.m.]

15:52:53 3 Document <#ERN-OTP-00032#> [sic], witness WWW-00040,

15:53:06 4 <#DRC-OTP-164-0301#> [sic], which says that Thomas Lubanga had

15:53:16 5 use of -- major use of children for his presidential guard,

15:53:24 6 and I wanted to state that this witness considers -- and once

15:53:27 7 again this goes back to a personal deduction that's being

15:53:30 8 made -- secondly, that it's contradicted by witness "BB", who

15:53:39 9 is the witness, if I remember well, WWW-0038, who says that he

15:53:47 10 didn't see a lot of children -- he'd not seen children at the

15:53:50 11 residence of Thomas Lubanga and, once again, that his

15:53:54 12 bodyguards were large soldiers. So, there's no dates, no

15:53:59 13 precisions.

15:53:59 14 Document <#DRC-OTP-0093-0130#>, Mr Lubanga and for all the

15:54:32 15 Congolese in Ituri -- well, this is a document which -- it

15:54:35 16 comes under the seized documents. It's a document which

15:54:40 17 doesn't seem to have a signature, and it could have been

15:54:43 18 written by anyone.

15:54:45 19 [3:54 p.m.]

15:54:48 20 And, finally -- and I see that I'm now coming to -- almost

15:54:55 21 perfectly to respecting the time allotted to me.

15:55:01 22 <#EVD-OTP-0055#> [sic], <#DRC-OTP-0164-0258#> should -- or

15:55:15 23 meant -- which were meant to support the accusation that the

15:55:17 24 UPC and FPLC had set up a campaign to recruit soldiers,

15:55:24 25 including children, from October 2002. This is an anonymous

15:55:30 1 witness. We don't know that person's identity, profession,
15:55:33 2 ethnic group, or the nature of that person's participation in
15:55:38 3 the events in question.

15:55:39 4 [3:55 p.m.]

15:55:43 5 Furthermore, it's a summary written by members of the Office
15:55:51 6 of the Prosecutor, and the credibility of the accusations,
15:55:57 7 such as the accusation of having a massive recruitment
15:56:03 8 campaign from the month of August by the FPLC, isn't supported
15:56:08 9 by specific details -- no dates, places or other concrete acts
15:56:15 10 of recruitment, the names of persons involved in this supposed
15:56:20 11 recruitment, and no ages of young people who are meant to have
15:56:28 12 been subject to this recruitment.

15:56:29 13 [3:56 p.m.]

15:56:31 14 Your Honour, thank you for the moment.

15:56:33 15 PRESIDING JUDGE JORDA (interpretation): Well, I would just
15:56:35 16 like to ask you -- well, to first of all ask a couple of
15:56:38 17 questions. Firstly, I'd like to ask you -- you know that this
15:56:41 18 morning there was a half hour which wasn't given over to you.
15:56:46 19 I know we said that we might start again at 4.30. Would you
15:56:50 20 like to do so? And we would do so because you know that
15:56:54 21 tomorrow, imperatively, we have to finish before 4.30, or
15:56:59 22 4 o'clock -- or 4 at the very latest.

15:57:04 23 ME FLAMME (interpretation): Well, I can guarantee you that
15:57:06 24 we will have finished before 4 o'clock, and perhaps even
15:57:10 25 before 3 o'clock, we hope. But I will need --

15:57:10 1 PRESIDING JUDGE JORDA (interpretation): Well, we're going to
15:57:14 2 do so. Okay. There's another point, because we are going to
15:57:15 3 finish the examination of all the documents which have been
15:57:17 4 presented by the Prosecutor. I will now turn towards the
15:57:20 5 Office of the Prosecutor.

15:57:21 6 You have often been questioned by the Defence -- I'm not going
15:57:26 7 to respond to that; that's not my role today but, on the other
15:57:29 8 hand, such that you have prepared for Monday -- you have been
15:57:32 9 questioned directly with regard to the concept of ethnicity
15:57:37 10 Hema-Gegere with regards to which the Defence would like you
15:57:43 11 to provide a report, or an expert's report, or perhaps
15:57:50 12 something in this regard, and whether this -- this
15:57:56 13 Radio Candip* -- because we spoke a lot about these messages
15:57:58 14 which were disseminated, which was the objective of which were
15:58:02 15 supposed to provide threats or pressing threats, and Mr Flamme
15:58:06 16 said to you that "I challenge you" - well, it's a poor
15:58:09 17 expression -- but "I challenge you to find passages of -- from
15:58:15 18 this radio broadcast where you can see incitations to racial
15:58:22 19 hatred."

15:58:23 20 So -- well, you can -- this is something that you can speak
15:58:26 21 about later. That's what I wanted to say before we adjourn
15:58:31 22 the session, which will start again at 4.30. The session is
15:58:37 23 adjourned.

15:58:38 24 [3:58 p.m.]

15:58:41 25 [Short adjournment]

16:38:14 1 [4:38 p.m.]

16:38:14 2 THE USHER: All rise.

16:38:16 3 PRESIDING JUDGE JORDA (interpretation): The hearing is

16:38:32 4 resumed. Please be seating [sic] and please make Thomas

16:38:39 5 Lubanga Dyilo enter, please.

16:38:42 6 [Mr Thomas Lubanga Dyilo entered the courtroom]

16:39:15 7 PRESIDING JUDGE JORDA (interpretation): Ms Pandanzyla?

16:39:17 8 MS PANDANZYLA (interpretation): Hello, President, your

16:39:24 9 Honours. And the last part of the presentation today concerns

16:39:36 10 document <#DRC-OTP-0105-0085#>, which was presented as

16:39:46 11 <#EVD-OTP-00002#>. The Chamber asks for some guidance,

16:40:03 12 because the document had been entered by the OTP into evidence

16:40:08 13 as being confidential -- as confidential, and for my

16:40:13 14 presentation we will need to quote some passages of said

16:40:17 15 document. Therefore, I would like to put this to you.

16:40:24 16 PRESIDING JUDGE JORDA (interpretation): Prosecutor, your

16:40:26 17 opinion?

16:40:27 18 MR WITHOPF: The Prosecution is of the view that these

16:40:34 19 matters can be discussed in public as long as the name of the

16:40:37 20 witness is not mentioned.

16:40:43 21 MS PANDANZYLA (interpretation): Thank you.

16:40:45 22 PRESIDING JUDGE JORDA (interpretation): If both parties

16:40:47 23 agree, I don't think witnesses have any problems either, so

16:40:54 24 I would rather they stayed here. We should try to limit

16:40:58 25 closed sessions as much as possible anyway, so in view of

16:41:03 1 this, and I don't think my colleagues have any objections
16:41:06 2 either, so I will give you the green light, but please be
16:41:09 3 careful.

16:41:10 4 MS PANDANZYLA (interpretation): Thank you, I will. This
16:41:15 5 witness, as we will show, seems to know everything, and is
16:41:21 6 able to count in detail the -- to count [as interpreted] the
16:41:27 7 whole story in detail, and in a self-assured way.

16:41:31 8 PRESIDING JUDGE JORDA (interpretation): I would like to know
16:41:33 9 which witness you are talking about, perhaps even their number
16:41:38 10 or acronym. Uros, could you help us, please? How was he
16:41:43 11 introduced?

16:41:43 12 COURT OFFICER (interpretation): It is witness WWW-0012, but
16:41:57 13 he doesn't have a pseudonym.

16:42:00 14 PRESIDING JUDGE JORDA (interpretation): No pseudonym. Very
16:42:04 15 well. So it's a statement with redacted elements, I suppose,
16:42:13 16 or I guess.

16:42:15 17 MS PANDANZYLA (interpretation): Yes. Witness WWW-0012 --

16:42:21 18 PRESIDING JUDGE JORDA (interpretation): Please?

16:42:23 19 MR WITHOPF: Your Honours, thank you very much. Only for the
16:42:26 20 ease of reference, could the Defence provide paper copies to
16:42:33 21 other participants, since that document cannot be displayed,
16:42:37 22 obviously.

16:42:44 23 MS PANDANZYLA (interpretation): President?

16:42:45 24 PRESIDING JUDGE JORDA (interpretation): Do you have paper
16:42:46 25 copies?

16:42:47 1 MS PANDANZYLA (interpretation): We wanted to, and we asked
16:42:53 2 before starting the hearing to find out whether or not the
16:43:00 3 Chamber still had the documents which had been introduced by
16:43:05 4 the OTP -- tendered by the OTP, but we can make copies if you
16:43:15 5 want.

16:43:15 6 PRESIDING JUDGE JORDA (interpretation): Can you provide the
16:43:17 7 copies immediately so we can follow you during your
16:43:20 8 presentation?

16:43:21 9 MS PANDANZYLA (interpretation): Well, I'd like to ask the
16:43:23 10 court officer for his help.

16:43:25 11 COURT OFFICER (interpretation): I think the usher is able to
16:43:28 12 go and photocopy the documents. However, we need the correct
16:43:32 13 page references. It will take two to three minutes at the
16:43:42 14 most.

16:43:43 15 PRESIDING JUDGE JORDA (interpretation): I apologise to the
16:43:45 16 public. These are small incidents that sometimes occur, but
16:43:52 17 it will only take two or three minutes. Perhaps you could
16:43:56 18 give us a general presentation, not to waste any time whilst
16:44:00 19 we photocopy the document. Thank you.

16:44:05 20 MS PANDANZYLA (interpretation): As we will see, this
16:44:10 21 witness remained in Bunia from 1999 till 2002 and, in view of
16:44:25 22 the situation of insecurity in Bunia, the person in question
16:44:30 23 was on several occasions sheltering in Uganda, too, which
16:44:37 24 leads one to question the sources of the information provided.

16:44:46 25 [4:44 p.m.]

16:44:47 1 The person affirmed certain things because they -- he was told
16:44:54 2 these things, and people came to his home. In a paragraph
16:45:06 3 which we will mention as soon as we have the photocopies, we
16:45:11 4 will show also that he has a legal record. He was arrested in
16:45:17 5 Uganda. He was incarcerated for two weeks, and for his
16:45:35 6 defence he blamed or gave as an excuse Congolese solidarity.
16:45:43 7 He was arrested at his residence in Uganda, where there were
16:45:49 8 12 other soldiers, and explained that what he was doing was
16:45:57 9 helping Ndekesire Faustin to type out documents concerning a
16:46:05 10 weapons transaction.
16:46:11 11 He also in his statement explained that this Faustin Ndekesire
16:46:25 12 explained the whole of the transaction, who was involved, how
16:46:29 13 the transaction was going to take place. He was arrested
16:46:35 14 because he was suspected of arms trafficking and, as
16:46:40 15 I mentioned earlier, he said that the persons that were at his
16:46:45 16 residence -- they were soldiers, or members of the military --
16:46:51 17 were at his place, because he wanted to help them.
16:46:57 18 [4:46 p.m.]
16:47:01 19 And now the Defence is quite surprised to hear arguments,
16:47:09 20 which appear to be very weak -- arguments from this witness --
16:47:17 21 and, at the same time, he explained about the security
16:47:21 22 situation in Uganda, that this was normal from -- for a rebel
16:47:25 23 movement, because at the time he was a member of the RCD -- it
16:47:29 24 was normal to find out about the price of weapons in order to
16:47:33 25 purchase them.

16:47:36 1 [4:47 p.m.]

16:47:39 2 What the Defence didn't mention either is that the person is a
16:47:45 3 priest and studied theology, and such words coming from a
16:47:50 4 priest are rather surprising.

16:47:58 5 [4:47 p.m.]

16:47:59 6 According to the statement and what we read in the statement,
16:48:02 7 we wondered what the real link was between this witness 00012
16:48:10 8 and Mr Ndekesire Faustin. How come, as his statement dates
16:48:27 9 back to July 2005, he managed on this date of July 2002 to
16:48:37 10 mention the number of arms that were the object of the
16:48:41 11 transaction, and the quantity of weapons involved, as well as
16:48:47 12 all the details concerning the transaction -- and this by
16:48:52 13 heart.

16:48:52 14 [4:48 p.m.]

16:48:57 15 And how can a priest be involved in arms trafficking and be
16:49:05 16 surrounded by the military? As you can read in the whole of
16:49:13 17 paragraph 61 -- 31, I beg your pardon, once you will have it,
16:49:23 18 the witness has showed how good he is at hiding the truth or
16:49:30 19 reality.

16:49:33 20 [4:49 p.m.]

16:49:36 21 He was freed after two weeks, and for this he mentioned that
16:49:43 22 he had not taken -- or hadn't been involved in the arms
16:49:47 23 trafficking. He also mentions a lot of documents that he had
16:49:56 24 shown during his first interrogation by the investigators of
16:50:01 25 the United Nations.

16:50:03 1 [4:50 p.m.]

16:50:03 2 However, we weren't given any of these documents. The same
16:50:10 3 witness is able to describe the whole of the strategy that was
16:50:19 4 established by this soldier Ndekesire with Bemba to take Beni,
16:50:32 5 Mambassa and Butembo.

16:50:44 6 The witness is inconsistent politically. This is shown on
16:50:51 7 several occasions in the story he gave to us, because at one
16:50:56 8 stage he's a member of the RCD Congo in 2002, and at another
16:51:03 9 time he was general secretary of the PUSIC in 2003, which he
16:51:10 10 seems to -- a position which he seems to -- still seems to
16:51:13 11 hold in 2005 at the time of his statement given to the members
16:51:20 12 of the OTP.

16:51:21 13 [4:51 p.m.]

16:51:22 14 He's also been a member of the APRS, which means the Alliance
16:51:28 15 of Republican and Socialist Patriots. This was in 2000, and
16:51:35 16 should have lasted until 2002. And he was a general adviser
16:51:40 17 to Thomas Unenkan, who was the President of the FPDC, Popular
16:51:45 18 Front for Democracy in Congo, and was also the main adviser to
16:51:56 19 Jerome Kakwavu and, as I also mentioned, he has also been a
16:52:02 20 member of the RCD-K/ML New Look.

16:52:06 21 [4:52 p.m.]

16:52:16 22 This poses a problem to the Defence regarding the coherence
16:52:23 23 and credibility of the witness. Moreover, as a secretary of
16:52:28 24 the PUSIC -- and this is quite an important point -- this also
16:52:35 25 poses a problem, because the PUSIC and the PUSIC of Chief

16:52:43 1 Kahwa -- that which took Thomas Lubanga hostage in 2002 -- is
16:52:50 2 the same person who left the UPC in November 2002 to create
16:52:55 3 his own group, the PUSIC.

16:52:57 4 [4:52 p.m.]

16:53:01 5 This also calls into question the credibility of this witness,
16:53:09 6 as well as his impartiality. This witness also mentions in
16:53:27 7 paragraphs 56 and 58 -- and this I am just mentioning as
16:53:36 8 further information -- that he met Thomas Lubanga Dyilo in
16:53:41 9 Bunia in June or July 2002. But this is not possible, because
16:53:58 10 at that time Mr Thomas Lubanga Dyilo had been gaoled by the DM
16:54:06 11 -- DMIAP, after having been called to Uganda.

16:54:17 12 [4:54 p.m.]

16:54:17 13 The same witness speaks of Madame Lotsove, and what he says is
16:54:34 14 rather puzzling, because in paragraph 82, for instance, Madame
16:54:40 15 Lotsove disappears from the AOC, but how could she because she
16:54:51 16 didn't want Wamba to settle in Bunia. She was the
16:54:55 17 Vice-Governor there at the time in charge of finances of
16:55:05 18 Orientale Province and had been nominated by the RCD-Goma and
16:55:06 19 didn't want the presence of Wamba, as of the RCD-K, which had
16:55:12 20 just hatched following the split. So it's to enable the RCD-K
16:55:20 21 to settle in Bunia that she, Mrs Lotsove, was called back to
16:55:28 22 Uganda.

16:55:29 23 [4:55 p.m.]

16:55:29 24 In the next paragraph, as you can read in paragraphs 82 and
16:55:34 25 83, the same witness says that Mrs Lotsove is a relative of

16:55:42 1 Thomas Lubanga Dyilo. However, Madame -- Mrs Lotsove and
16:55:50 2 Thomas Lubanga Dyilo aren't from the same collectivity. She
16:55:52 3 is from the collectivity of Bahema Barriere of the chiefry of
16:55:59 4 Bule, whereas Thomas Lubanga Dyilo is from the collectivities
16:56:04 5 of Bahema North.
16:56:09 6 This witness, who seems to know a lot, also in paragraph 87
16:56:15 7 talks about a company called Sacricof. However, Sacricof is a
16:56:30 8 private company -- limited company -- established by two
16:56:35 9 brothers called Wikpa and Dhego. These two brothers are
16:56:45 10 Congolese, and therefore can't be white.
16:56:50 11 [4:56 p.m.]
16:56:55 12 And she says that Sacricof [sic] is white. In paragraph 89 he
16:57:01 13 talks about Robert Pimbo and identifies this person as being a
16:57:06 14 member of the UPC. However, Mr Robert Pimbo has never been a
16:57:10 15 member of the UPC.
16:57:13 16 On this, the Defence would like to refer you to the list of
16:57:16 17 members of the executive of the UPC, and you'll see that
16:57:23 18 Robert Pimbo never was part of the executive.
16:57:28 19 [4:57 p.m.]
16:57:35 20 This witness talks about the FIPI, Front for Integration and
16:57:43 21 Peace in Ituri, and in paragraph 215 he talks about the
16:57:47 22 members of the FIPI, and says what they did at what stage.
16:57:54 23 [4:57 p.m.]
16:57:57 24 He seems to be a living encyclopedia. And then he talks about
16:58:05 25 the FNI group, and here again in paragraph 18 he states that

16:58:21 1 [in French]: "I would like to mention that the events that
16:58:24 2 I have just mentioned, which I did not take part in, had been
16:58:32 3 confirmed to me by other persons, and more in particular by
16:58:38 4 Denis Akobi, a Ngiti who became the second vice-president of
16:58:46 5 the UPC and with whom I had a lot of contact."
16:58:53 6 He then describes the FPDC's composition. This is on page 42,
16:59:03 7 paragraph 220.
16:59:06 8 [4:59 p.m.]
16:59:08 9 And then, later, he adds that [in French]: "I would like to
16:59:20 10 mention that whilst a member of the PUSIC I was also a
16:59:26 11 political adviser for Unencan and Jerome Kakwavu." This shows
16:59:34 12 that he knew the composition of the FPDC very well.
16:59:39 13 [4:59 p.m.]
16:59:42 14 The same witness on page 42 says that he had given a copy of
16:59:47 15 the final agreement on the creation of the FIPI.
16:59:59 16 [4:59 p.m.]
17:00:00 17 The Defence would like to note that they never received a copy
17:00:05 18 of this document. This witness again explained to us why
17:00:16 19 Mr Thomas Lubanga Dyilo refused to participate in the
17:00:20 20 Commission for the Pacification of Ituri. He says in
17:00:23 21 paragraph 225 that the Agreement of Luanda was signed in 2002
17:00:32 22 by the Congolese, Angolan and Ugandan governments, which is
17:00:39 23 wrong, because the Luanda Agreement was signed in September
17:00:45 24 2002, but by the DRC and by Uganda under the aegis of Angola,
17:00:57 25 and it was entitled "Agreement between the Government of the

17:00:59 1 Democratic Republic of the Congo and the Republic of Uganda on
17:01:07 2 the withdrawal of Ugandan troops from the Republic of Congo,
17:01:11 3 and on the cooperation, a normalisation of bilateral relations
17:01:23 4 between both countries."

17:01:24 5 [5:01 p.m.]

17:01:26 6 Which is why we do not understand why Angola is cited as one
17:01:34 7 of the signatories to this agreement.

17:01:35 8 [5:01 p.m.]

17:01:36 9 He goes on to say, still on paragraph 222 of page 43 [sic] [in
17:01:43 10 French]: "By telling us about the objective of the meeting of
17:01:50 11 9 February 2003 in Dar Es Salaam was to involve the armed in
17:02:00 12 the Ituri Pacification Commission through an amendment.

17:02:05 13 [5:02 p.m.]

17:02:08 14 Presidents Kabila and Museveni had decided to push Lubanga by
17:02:15 15 showing him that a new movement, that is FIPI, was ready to
17:02:20 16 fight him and overthrow him in case he did not accept to take
17:02:26 17 part in the CPI."

17:02:28 18 [5:02 p.m.]

17:02:29 19 And then he adds that [in French]: "Although I did not
17:02:37 20 participate in the meeting in Dar Es Salaam on 9 February
17:02:44 21 2003, I was perfectly aware of the objectives of all of them,
17:02:47 22 because I was myself a participant, and an actor in these
17:02:54 23 events."

17:02:54 24 [5:02 p.m.]

17:02:58 25 As the Defence stated before, this witness knows a great deal.

17:03:07 1 In paragraph 255 and paragraph 257, we can see here that he
17:03:18 2 received privileged information. Who are all these informers
17:03:29 3 who come to confide in him? The Defence wonders at it.

17:03:34 4 [5:03 p.m.]

17:03:34 5 In paragraphs 259 and 260 the witness goes on to say that he
17:03:40 6 spoke with such and such a person. This witness seems to
17:03:47 7 inspire trust in all these people who come to lean on his
17:03:52 8 shoulder and disclose what is supposedly confidential
17:03:57 9 information.

17:04:00 10 [5:04 p.m.]

17:04:00 11 Now, regarding the Ituri Pacification Commission, the Defence
17:04:07 12 has noted that there are several inconsistencies. On
17:04:18 13 page 52 -- and this is in paragraph 272 -- he tells us of his
17:04:24 14 participation at -- in the Human Rights Observatory of the
17:04:32 15 CPI. In paragraph 274 he talks about his participation in the
17:04:39 16 committee of armed groups.

17:04:44 17 [5:04 p.m.]

17:04:44 18 The Defence is perplexed because either the witness was a
17:04:56 19 member of the observatory or a member of the committee of
17:04:59 20 armed groups. He could not be part of both, and we shall
17:05:03 21 explain why.

17:05:03 22 [5:05 p.m.]

17:05:04 23 In order to understand the objection that the Defence is
17:05:09 24 raising, we need to return to the process of the establishment
17:05:17 25 of the CPI, as according to the provisions of the Luanda

17:05:25 1 Accords which we have referred to, the proceedings of the CPI
17:05:31 2 took place from 4 to 14 April 2003 in Bunia. At the end of
17:05:38 3 these 10 days of proceedings, the CPI set up an interim
17:05:44 4 mechanism for the pacification and provisional administration
17:05:51 5 of Ituri.

17:05:52 6 [5:05 p.m.]

17:05:53 7 This is constituted of a Special Interim Assembly, an Interim
17:06:04 8 Executive, a Prevention and Verification Commission, an
17:06:14 9 Interim Human Rights Observatory, and a Committee For the
17:06:19 10 Meeting of Armed Groups.

17:06:21 11 [5:06 p.m.]

17:06:21 12 This human rights observatory of the CPI has 17 permanent
17:06:27 13 members and 17 alternate members coming from the components of
17:06:37 14 the FAPC, FNI, FPDC, UPC, PUSIC, UPDF, and the central
17:06:48 15 government.

17:06:50 16 [5:06 p.m.]

17:06:50 17 The committee for the meeting of armed groups is chaired by
17:06:55 18 the superior officer of MONUC. It includes 18 members of
17:07:01 19 which nine are permanent and nine are alternate, and they come
17:07:08 20 from the abovementioned groups.

17:07:11 21 [5:07 p.m.]

17:07:12 22 So we wonder what committee was he a member of exactly?

17:07:21 23 In the following paragraph -- that is 313 and 314 on
17:07:29 24 page 59 -- the witness makes baseless allegations, because of
17:07:40 25 course he did not provide any copies of the cease fire

17:07:44 1 agreement that he refers to, which was signed on 18 March, and

17:07:50 2 in which Thomas Lubanga and the UPC did not take part.

17:08:02 3 PRESIDING JUDGE JORDA (interpretation): Thank you. I see

17:08:04 4 that this is an important document and it took the time that

17:08:10 5 it took to prepare it. Thank you.

17:08:40 6 THE INTERPRETER: The interpreters would be grateful if they

17:08:45 7 could be given a copy as well.

17:08:47 8 [5:08 p.m.]

17:10:36 9 [5:10 p.m.]

17:10:36 10 PRESIDING JUDGE JORDA (interpretation): I do not think that

17:10:41 11 the Prosecutor requires that we should return to each of the

17:10:45 12 paragraphs. You can follow them -- you can follow the

17:10:48 13 Defence's argument. If you want the Defence to emphasise such

17:10:51 14 and such a point, then that's all right. So you may proceed,

17:10:55 15 Ms Pandanzyla.

17:10:58 16 MME PANDANZYLA (interpretation): Thank you, Mr President.

17:11:10 17 With the leave of the Court, we had got to page 59,

17:11:18 18 paragraph 313, in which the witness talks about a meeting that

17:11:35 19 took place in Dar Es Salaam, and he says [in French]: "Each

17:11:43 20 group that was present in Dar Es Salaam had received a copy of

17:11:51 21 the ceasefire agreements of 18 March 2003. Lubanga had also

17:11:58 22 received a copy and had refused to endorse its contents.

17:12:02 23 [5:12 p.m.]

17:12:04 24 He asked that the draft agreement be amended. To the best of

17:12:12 25 my recollection he had caused the removal of most of the

17:12:18 1 original text and, in particular, all the part that concerned
17:12:26 2 the sending to Ituri of the Congolese Armed Forces, the
17:12:31 3 National Congolese Police, and the District Commissioners
17:12:36 4 appointed by Kinshasa. He stated that Ituri did not need
17:12:43 5 Kinshasa and had refused to include also the part of the text
17:12:50 6 concerning the integration of militias in the national army.

17:12:50 7 [5:12 p.m.]

17:12:56 8 I continue with paragraph 314 [in French]: "In this case also
17:13:05 9 his stance displayed, if it were necessary to do so still,
17:13:10 10 that the objectives of the UPC were not at all connected to
17:13:17 11 reconciliation and reintegration with national authorities."

17:13:27 12 [5:13 p.m.]

17:13:28 13 All the witness makes is unfounded allegations, because of
17:13:33 14 course he did not provide a copy of the ceasefire agreement of
17:13:38 15 18 March -- that is, the unamended copy -- which would have
17:13:42 16 enabled the Defence to compare it with the final document
17:13:48 17 which was not disclosed to us as well.

17:13:51 18 [5:13 p.m.]

17:13:56 19 On page 60 -- that is the next page -- where paragraph 314
17:14:04 20 continues, he also says that [in French] : "Even if
17:14:14 21 Ntumba Luaba had said that he was not pleased with the
17:14:17 22 amendments requested by Lubanga..." we can see that he had
17:14:27 23 received the confidence -- or he was in the confidence of
17:14:31 24 Mr Ntumba Luaba.

17:14:36 25 [5:14 p.m.]

17:14:36 1 Still on page 60, paragraph 316, he says that he met
17:14:43 2 Mr Thomas Lubanga in Bunia in August 2003, and I quote
17:14:50 3 [in French]: "I met Thomas Lubanga again in Bunia at the time
17:14:57 4 when the French Minister of Defence was visiting during the
17:15:03 5 ARTEMIS operation. During this visit and the meetings that
17:15:08 6 were held, I took some photographs which I have commented on
17:15:18 7 in the Annex entitled 'Bunia ARTEMIS 2003' which is attached
17:15:24 8 to my interview."
17:15:28 9 [5:15 p.m.]
17:15:29 10 The chain ended there because, at the risk of repeating
17:15:35 11 itself, the Defence would like to draw the attention of the
17:15:38 12 Trial Chamber to the fact that it never saw these photographs.
17:15:42 13 [5:15 p.m.]
17:15:42 14 With your leave, I shall return to page 59, paragraph 31 [says
17:15:53 15 Ms Pandanzyla] where a certain feeling of the witness in
17:15:58 16 regard to Mr Lubanga Dyilo can be seen. As the Defence said
17:16:06 17 at the beginning of this presentation, this witness is the
17:16:12 18 Secretary-General of PUSIC. In paragraph 311 he says
17:16:19 19 [in French]: "Lubanga had arrived in Dar Es Salaam wearing a
17:16:27 20 heavy beard. He gave the impression that he hadn't washed
17:16:32 21 himself for a certain length of time and said things which are
17:16:37 22 considered to be odd. Indeed, he was accompanied by
17:16:44 23 Rafiki Saba, and when we saw Kitembo Bitamara, he asked him
17:16:54 24 where the report of the mission that he was supposed to have
17:16:59 25 handed into him was. Speaking to Jerome Kakwavu, he asked him

17:17:09 1 what he was doing there because, as sector commander, he
17:17:13 2 should have been in his position." It is on this part that
17:17:21 3 the Defence wishes to cast the eye of the Court.
17:17:24 4 [5:17 p.m.]
17:17:24 5 He adds [in French]: "Lubanga conducted himself as if the
17:17:29 6 people to whom he was speaking were still part of the UPC.
17:17:32 7 I do not know whether he had given way to madness, or whether
17:17:37 8 he was just -- he just didn't care about his former
17:17:43 9 collaborators." All these remarks lead one to believe that
17:17:50 10 this person is not in the least impartial.
17:17:56 11 [5:17 p.m.]
17:17:58 12 When he was asked about the FAPC and the FADC -- that is on
17:18:05 13 page 63, in paragraph 340 -- the witness is able to talk about
17:18:17 14 this again, and he says [in French]: "I know these two
17:18:23 15 movements and their leaders well, because I have been in
17:18:28 16 regular contact with them in the past years."
17:18:40 17 [5:18 p.m.]
17:18:40 18 On page 64, we see that the witness is also aware of some
17:18:51 19 other crimes in Ituri. The Defence is flabbergasted by the
17:18:57 20 scope of this witness's knowledge. The witness seems to know
17:19:01 21 everything, whereas he was not in Bunia all the time.
17:19:06 22 [5:19 p.m.]
17:19:06 23 As always -- and he always says "they", and I would like to
17:19:17 24 draw the Chamber's attention to this impersonal use of a
17:19:21 25 pronoun, but the Defence has to say "they", or someone,

17:19:25 1 because it is -- because it can see that on this page all the
17:19:34 2 important parts that can elucidate this file have been
17:19:38 3 redacted.
17:19:40 4 [5:19 p.m.]
17:19:41 5 Furthermore, if you look at the end of this statement, the
17:19:50 6 Defence wonders what the link with the charges pending against
17:19:54 7 Mr Thomas Lubanga Dyilo is. Furthermore, this testimony,
17:20:03 8 towards the end, gave the impression to the Defence that this
17:20:07 9 was a guessing game, because most of the important elements of
17:20:14 10 the statement have been redacted, such as dates and places.
17:20:19 11 [5:20 p.m.]
17:20:19 12 I will refer in this regard as an example to page 66,
17:20:26 13 paragraph 355, which says [in French]: "Apart from the crimes
17:20:35 14 committed by the [redacted] in the month of [redacted] and
17:20:42 15 which I have already mentioned, I am aware of other crimes
17:20:46 16 committed by this movement." In paragraph 356, we read
17:20:53 17 [in French]: "As concerns [redacted] I have seen the
17:20:58 18 information from [redacted] and a [redacted] and was at
17:21:04 19 [redacted] the day of the attack."
17:21:09 20 [5:21 p.m.]
17:21:09 21 Paragraph 357 [in French]: "After the attack of [redacted]
17:21:18 22 and his men thus fell back on [redacted]." Conversely, it can
17:21:33 23 be seen that the names of people were provided -- some UPC
17:21:38 24 commanders who took part in given attacks. But unfortunately
17:21:42 25 the names are redacted.

17:21:45 1 [5:21 p.m.]

17:21:46 2 The Defence acknowledges that occasionally this witness

17:21:53 3 admits, as he does on page 68, in paragraph 364, the last line

17:22:08 4 of that paragraph he says this [in French]: "I was not able

17:22:14 5 to check or verify this information." This paragraph begins

17:22:20 6 [in French]: "Still based on my conversations with [then

17:22:25 7 redacted]". And then you have the last sentence which says

17:22:30 8 [in French]: "I was not able to check this information." It

17:22:33 9 must be seen that this witness also says in paragraph 367

17:22:43 10 [in French]: "Regarding [redacted] I do not have [redacted].

17:22:50 11 However, I heard about [redacted]."

17:22:50 12 [7:22 p.m.]

17:22:55 13 And then he says again -- this is important [in French]:

17:22:59 14 "I was not able to check and corroborate this information."

17:23:05 15 [5:23 p.m.]

17:23:06 16 In conclusion, Mr President, your Honours, the Defence wishes

17:23:12 17 to express its serious reservations with regard to the

17:23:15 18 credibility of this person, and will request that the Trial

17:23:22 19 Chamber not give it any weight. I thank you.

17:23:37 20 PRESIDING JUDGE JORDA (interpretation): Mr Flamme, can we

17:23:40 21 conclude for today? Is that the way you planned it?

17:23:46 22 ME FLAMME (interpretation): Mr President, we still have

17:23:47 23 tomorrow, which will be completely, I think, limited to the

17:23:54 24 matters of law, which is a fairly long presentation.

17:24:00 25 PRESIDING JUDGE JORDA (interpretation): All right. In the

17:24:02 1 circumstances, I shall adjourn the hearing till tomorrow

17:24:07 2 morning, 9.30.

17:24:07 3 [5:24 p.m.]

17:24:24 4 [At 5.24 p.m. the Court adjourned to

17:24:38 5 Friday, 24 November 2006, at 9.30 a.m.]

17:24:38 6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 CORRECTION REPORT

2 After verification, the Court Interpretation and Translation Section

3 have made the following modification in the transcript:

4 *p 102 line 13 "Radio Okapi" is replaced by "Radio Candip"