

1 INTERNATIONAL CRIMINAL COURT

2 SITUATION DEMOCRATIC REPUBLIC OF CONGO

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

4 Transcription No: ICC-01/04-01/06-T-45-EN

5 Monday, 27 November 2006 at 9.38 a.m.

6

OPEN SESSION

7

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Before: His Honour Judge Claude Jorda (Presiding Judge)

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Her Honour Judge Sylvia Steiner

Her Honour Judge Akua Kuenyehia

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PRE-TRIAL CHAMBER I

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1 OPEN SESSION

ICC-01/04-01/06-T-45-EN

09:28:11 2 [9:38 a.m.]

09:38:30 3 THE USHER: All rise. The International Criminal Court is
09:38:42 4 now in session.

09:38:43 5 PRESIDING JUDGE JORDA (interpretation): So the Court is now
09:38:49 6 in session. Please be seated and could we now bring in
09:38:55 7 Mr Thomas Lubanga Dyilo into the courtroom.

09:38:58 8 [Mr Thomas Lubanga Dyilo entered the courtroom]

09:39:15 9 [9:39 a.m.]

09:39:15 10 PRESIDING JUDGE JORDA (interpretation): Please be seated,
09:39:20 11 Mr Lubanga Dyilo. Yes, Mr Walleyne?

09:39:26 12 MR WALLEYN (interpretation): Mr President, we have a small
09:39:27 13 request to formulate concerning the communication of a piece
09:39:29 14 of evidence that was in the hearing of 24 -- there was
09:39:34 15 disclosure of -- to the Defence and to the Court of a
09:39:40 16 testimony, or part of a testimony -- of testimony, if I've
09:39:44 17 understood it well -- WWW-0012, and it would be
09:39:54 18 <#EVD-OTP-002#>.

09:39:54 19 [9:39 a.m.]

09:39:55 20 The character -- the nature of this evidence seems to me to be
09:39:59 21 a bit between the two, because the Prosecutor has said that
09:40:04 22 it's in fact the identity of the witness, which is considered
09:40:08 23 as confidential, not so much the content of the declaration.

09:40:14 24 So, we would like to ask if the Court could authorise the
09:40:18 25 Prosecutor to disclose a version -- possibly redacted version

09:40:26 1 of this document or at least those parts of it which were used
09:40:29 2 during the confirmation hearing.

09:40:31 3 PRESIDING JUDGE JORDA (interpretation): Mr Prosecutor.

09:40:34 4 MR WITHOPF: Good morning, Mr President, good morning, your
09:40:37 5 Honours. Mr President, your Honours, we are not opposing the
09:40:40 6 request made by the legal representative for the victims. We
09:40:45 7 would be prepared, however, on an exceptional basis to
09:40:48 8 disclose the statement that has been discussed at length and
09:40:53 9 for that reason only to the legal representatives for the
09:40:55 10 victims. However, we would obviously redact the name of the
09:40:59 11 witness. Thank you.

09:41:00 12 PRESIDING JUDGE JORDA (interpretation): Okay. No further
09:41:05 13 comments? Okay. We are now going to take up our work again.
09:41:13 14 So, I mustn't forget before starting, I think, that our
09:41:17 15 programme -- well, we're going to start a public session for
09:41:21 16 the response of the Prosecutor to the point -- additional
09:41:24 17 points which were presented by the Defence. We will then have
09:41:27 18 a break and afterwards we will continue in closed session with
09:41:31 19 the response of the Prosecutor and then there will be the
09:41:34 20 conclusions in closed session of the Prosecutor, and the
09:41:38 21 conclusions of the Defence.

09:41:39 22 [9:41 a.m.]

09:41:40 23 What I would like to say is that the Chamber is aware that it
09:41:44 24 has had two motions on the part of the Defence. I'll just
09:41:48 25 take advantage of this moment to greet the Defence, and, of

09:41:51 1 course, to greet the representatives of the Prosecutor and
09:41:54 2 victims. So, there's this -- Defence motions -- there are two
09:41:59 3 of them which came in on Friday and the Chamber would like,
09:42:02 4 before starting the response of the Prosecutor with regards to
09:42:06 5 the additional evidence of the Defence -- the Chamber would
09:42:08 6 like to have the observations of the Office of the Prosecutor.
09:42:12 7 MR WITHOPF: Thank you, Mr President; thank you, your
09:42:16 8 Honours, and thank you that you are giving us the opportunity
09:42:19 9 to orally respond to the Defence motions.
09:42:21 10 [9:42 a.m.]
09:42:22 11 The first one I'm going to respond to, Mr President, your
09:42:26 12 Honours, is the request for a withdrawal of evidence, and
09:42:30 13 I think we can discuss this request in open session, as long
09:42:35 14 as we are not mentioning the names of the witnesses concerned.
09:42:40 15 [9:42 a.m.]
09:42:40 16 Mr President, your Honours, the Prosecution opposes the
09:42:44 17 Defence request.
09:42:46 18 The Prosecution is of the view, contrary to the opinion of the
09:42:51 19 Defence, that once a participant -- a participant to the
09:42:56 20 proceedings has submitted evidentiary materials to the
09:43:01 21 Pre-Trial Chamber, these materials become Court evidence, and
09:43:06 22 are not longer -- are not longer at the discretion of the
09:43:11 23 participant who submitted such materials.
09:43:14 24 [9:43 a.m.]
09:43:15 25 Mr President, your Honours, this is, in particular -- in

09:43:19 1 particular the case in light of the fact that the ICC
09:43:23 2 proceedings, contrary -- very contrary, and very different to
09:43:29 3 the proceedings before the ad hoc tribunals, are not -- and
09:43:34 4 I repeat it -- are not characterised by the adversarial
09:43:39 5 principle that leaves it to the parties to determine the use
09:43:42 6 of the evidence they suggested to the Court.

09:43:46 7 [9:43 a.m.]

09:43:46 8 And, Mr President, your Honours, we are also not in civil
09:43:52 9 proceedings, we are in criminal proceedings -- in criminal
09:43:55 10 proceedings that attribute to the Pre-Trial Chamber a certain
09:43:58 11 role, namely, to establish the truth based on materials that
09:44:03 12 were submitted to it as evidence. And the two statements,
09:44:09 13 Mr President, your Honours -- the two statements concerned
09:44:12 14 were submitted to the Pre-Trial Chamber, to the honourable
09:44:17 15 Bench, as evidence by the Defence.

09:44:20 16 [9:44 a.m.]

09:44:20 17 And in this particular context, and in light of this
09:44:25 18 framework, Mr President, your Honours, there are a number of
09:44:28 19 additional factual -- and I add very important factual
09:44:33 20 considerations which militate, in our view -- in the
09:44:36 21 Prosecution's view -- for the denial of the Defence request.

09:44:42 22 [9:44 a.m.]

09:44:43 23 And I'm going to briefly outline these factual considerations.
09:44:48 24 First, the Defence has filed the request 16 days after the
09:44:54 25 commencement of the confirmation hearing -- I emphasise

09:44:59 1 this -- 16 days after the commencement of the confirmation
09:45:03 2 hearing, and five days -- only five days -- prior to its
09:45:07 3 conclusion.
09:45:08 4 [9:45 a.m.]
09:45:09 5 In light of the fact that the Pre-Trial Chamber has decided
09:45:14 6 that it may -- and there's a Pre-Trial Chamber's decision on
09:45:21 7 this issue and we discussed it in the course of the
09:45:24 8 confirmation hearing -- that it may rely on any item on the
09:45:26 9 Defence list of evidence. The Pre-Trial Chamber may have,
09:45:29 10 Mr President, your Honours, and the Prosecution certainly has,
09:45:34 11 already analysed the statements concerned in respect of their
09:45:39 12 evidentiary value. To now allow, Mr President, your
09:45:43 13 Honours -- to now allow the Defence to withdraw the evidence
09:45:46 14 is rendering useless the time and the efforts the Pre-Trial
09:45:50 15 Chamber and the Prosecution have spent in dealing with these
09:45:54 16 statements in their effort to establish the truth.
09:45:58 17 [9:45 a.m.]
09:46:00 18 And there's a second feature, Mr President, your
09:46:05 19 Honours -- there's a second, and it's a very particular
09:46:09 20 feature to the statements concerned. Both statements, as your
09:46:14 21 Honours are aware -- both statements were initially submitted
09:46:18 22 by the Prosecution. They form part of the Prosecution's list
09:46:23 23 of evidence, and the then Single Judge has declared them
09:46:28 24 inadmissible for the only reason of -- related to the security
09:46:34 25 of the Prosecution witnesses, and at the point in time the

09:46:38 1 decision was taken it was well justified.

09:46:41 2 [9:46 a.m.]

09:46:43 3 Mr President, your Honours, the Prosecution has obviously not,
09:46:48 4 without a reason, put these statements -- incorporated these
09:46:52 5 statements in its list of evidence. The content of these
09:46:56 6 statements are indeed highly incriminatory. The Prosecution
09:47:02 7 at this stage gets the impression that the Defence, having
09:47:07 8 realised this aspect late -- obviously too late -- now wants
09:47:11 9 to get rid of the incriminatory aspects -- the highly
09:47:16 10 incriminatory aspects in evidence in these two statements.

09:47:16 11 [9:47 a.m.]

09:47:23 12 And in this context, Mr President, your Honours, it is very
09:47:27 13 telling: the Defence does not detail what they call in their
09:47:30 14 request "unresolved questions over the conduct of the
09:47:35 15 interviews" -- the reason that is put forward by the
09:47:39 16 Defence -- this is not elaborated upon.

09:47:43 17 [9:47 a.m.]

09:47:43 18 And, finally, Mr President, your Honours, one of the
09:47:47 19 statements, as your Honours are very well aware of, is
09:47:52 20 linked -- and is directly linked to a matter pending decision
09:47:56 21 of the Pre-Trial Chamber, namely, in respect of the search in
09:47:58 22 the DRC in 2005, and the statement contains additional
09:48:05 23 information which the Pre-Trial Chamber may take into
09:48:09 24 consideration.

09:48:09 25 [9:48 a.m.]

09:48:11 1 In any event, Mr President, your Honours -- and I come back to
09:48:16 2 my initial observation -- both statements became, with the
09:48:23 3 Defence including them in the Defence list of evidence, Court
09:48:26 4 evidence, and I really wish to emphasise this point, and it is
09:48:32 5 the Pre-Trial Chamber's decision and it's solely the Pre-Trial
09:48:35 6 Chamber's decision whether it wants to use them or not in the
09:48:41 7 determination of the truth.

09:48:43 8 [9:48 a.m.]

09:48:44 9 Thank you very much, Mr President, your Honours. These were
09:48:47 10 our observations on the first Defence request.

09:48:52 11 With your permission, Mr President, I would like to very
09:48:55 12 briefly discuss the second Defence -- the second pending
09:49:01 13 Defence request -- that's directly linked, obviously, to the
09:49:10 14 search in the DRC in 2005.

09:49:14 15 As your Honours may recall, the Prosecution, at the time, made
09:49:21 16 legal submissions -- extensive legal submissions on the
09:49:26 17 legality of the search and on the impact of a possible
09:49:30 18 illegality of the search on the possibility that the
09:49:35 19 Prosecution can use the documents concerned.

09:49:38 20 [9:49 a.m.]

09:49:40 21 The Prosecution did not make factual statements. The
09:49:44 22 Prosecution has chosen to make these statements by submitting
09:49:48 23 a declaration of the Prosecution's -- of an Office of the
09:49:54 24 Prosecutor's investigator within -- within the 21-day time
09:49:58 25 limit, as foreseen in the Rules of Procedure and Evidence, and

09:50:04 1 I believe, Mr President, your Honours, that in the interests
09:50:07 2 of justice, it is very important that the Pre-Trial Chamber
09:50:11 3 takes into account these additional -- or these factual
09:50:19 4 submissions by the Prosecution in order to get the full
09:50:22 5 picture and to make an informed decision.
09:50:23 6 [9:50 a.m.]

09:50:24 7 For that reason, Mr President, your Honours, the Prosecution
09:50:27 8 requests to deny the Defence request. Thank you very much.

09:50:39 9 PRESIDING JUDGE JORDA (interpretation): Thank you. The
09:50:43 10 Chamber will deliberate this question and, of course, you will
09:50:48 11 find in the substantive decision -- which we will give with
09:50:51 12 regards to the question, of course -- you will find the
09:50:55 13 elements of this response to these two requests of the
09:51:02 14 Defence. And now we can make up again -- yes, Mr Flamme?
09:51:05 15 There will be no counter response, if that's what you are
09:51:08 16 asking me for.

09:51:10 17 ME FLAMME (interpretation): Mr President, the Prosecutor is
09:51:13 18 making a number of comments in law. Concerning our first
09:51:19 19 motion, you will understand that it is important for the
09:51:24 20 Defence to be able to respond to that. It is about the
09:51:27 21 security of two persons.

09:51:31 22 PRESIDING JUDGE JORDA (interpretation): Yes, I maintain my
09:51:34 23 decision. I would like to -- I want to insist that we should
09:51:37 24 have the last word. We know that the -- this argument. We
09:51:42 25 are in proceedings which has largely been defined. You're the

09:51:45 1 ones who filed the motion. We asked for the observations of
09:51:49 2 the Prosecutor. The Chamber is now informed. You have the
09:51:52 3 right and you have used this right in your motion to say that
09:51:57 4 -- what your arguments were de facto and de jure. There's
09:52:02 5 been an answer from the Prosecutor; the Chamber is now
09:52:07 6 informed and now we can continue with the agenda as defined.
09:52:10 7 So, please, we're in public session, so could you give a
09:52:13 8 response to your evidence of the Defence.

09:52:17 9 MR WITHOPF: Thank you, Mr President, your Honours. Prior to
09:52:20 10 touching or prior to discussing the Defence evidence, if you
09:52:25 11 permit me I would like to outline the Prosecution's programme
09:52:29 12 of today.

09:52:31 13 [9:52 a.m.]

09:52:32 14 First, my colleague, Ms Samson, will provide -- will provide,
09:52:37 15 as requested by the honourable Bench -- will provide further
09:52:41 16 information and will shed more light on the use of the
09:52:50 17 word "Hema-Gegere". We anticipate that this may take 15 to 20
09:52:55 18 minutes and obviously this presentation can be done in open
09:52:57 19 session.

09:52:58 20 PRESIDING JUDGE JORDA (interpretation): Mr Flamme, you want
09:53:02 21 to intervene again? I don't want to -- want to interrupt you
09:53:06 22 continually in public session obviously -- but perhaps you
09:53:10 23 could let him speak. Well, I'll give you the floor to you.

09:53:14 24 ME FLAMME (interpretation): I'm going to save the Chamber
09:53:15 25 time.

09:53:15 1 PRESIDING JUDGE JORDA (interpretation): Yes, you don't be --
09:53:18 2 seem to be saving us time at the moment. I'm listening to
09:53:22 3 you. I would ask you to please keep all the respect that's
09:53:26 4 allowed for the Chamber. I would just like to say, you are
09:53:28 5 not saving the time of the Chamber very much, so please we are
09:53:32 6 listening to you now.

09:53:34 7 ME FLAMME (interpretation): I would like us to be in
09:53:36 8 agreement with regard to the limits of what the Prosecutor can
09:53:44 9 say today and here I'm referring to your decision. In this --
09:53:49 10 spirit of the Defence this decision is linked in the sense
09:53:52 11 that -- well, the Defence has three lists of evidence. The
09:53:57 12 first is in existence, because we haven't been able to file
09:54:01 13 it -- not having been able to file it.

09:54:01 14 [9:54 a.m.]

09:54:05 15 The second list concerns the evidence which are linked to the
09:54:10 16 testimony of Madame Peduto. It's not understood, as far as
09:54:14 17 we're concerned -- well, in the sense of your decision that
09:54:19 18 the Prosecutor can respond to that. So, the Prosecutor has to
09:54:22 19 limit himself today to discussing our third list -- the
09:54:27 20 materials included in our third list, which is the list of
09:54:31 21 additional evidence. Here we're talking about the Court --
09:54:35 22 the Court of Appeal of Kisangani, the judicial past of some of
09:54:40 23 the witness[sic], and the fourth point, which I would also
09:54:45 24 like to put the Prosecutor on notice on, which is with regard
09:54:49 25 to our legal arguments which we developed on Friday. He can't

09:54:52 1 respond to them, because had[sic] the occasion[sic] develop
09:54:57 2 his points in law; so he can't respond to them without you
09:55:02 3 giving the Defence the last word with -- in this role. So,
09:55:07 4 that will be an extension of the debate for several days if we
09:55:10 5 go into that. So, I think the Prosecutor can only respond to
09:55:14 6 our third list, if I've understood well your decision.

09:55:18 7 PRESIDING JUDGE JORDA (interpretation): Thank you. Yes,
09:55:19 8 it's true that normally you should limit yourself to the third
09:55:22 9 list. Nevertheless, the Chamber did ask that a certain number
09:55:29 10 -- for a certain number of clarifications be given with regard
09:55:32 11 to the problem of Hema-Gegere. I think this was also one of
09:55:37 12 the requests of the Defence as well, which is in my -- it's
09:55:40 13 quite logical, in my opinion, that the Chamber deals with this
09:55:43 14 issue.

09:55:44 15 [9:55 a.m.]

09:55:44 16 So, perhaps you could either through a written note, if you
09:55:48 17 want -- really want us to save time, but then there won't be a
09:55:53 18 response -- when it comes to the communication. Well,
09:55:58 19 Madame Samson can make a written note with regards to the
09:56:01 20 notion of Hema-Gegere. But where it concerns the testimony of
09:56:07 21 Miss Peduto, I don't know what -- if that would prevent the
09:56:11 22 Defence from being able to intervene. I don't know if it's
09:56:14 23 your intention. But as you were cut off, Mr Prosecutor, first
09:56:17 24 of all, I'd like to give you leave to address the Court to be
09:56:20 25 able to say what your programme is, and I will possibly allow

09:56:24 1 Mr Flamme to re-intervene. I'd just like to say it's 5 to 10,
09:56:28 2 so please not let's have too many interruptions of each other,
09:56:34 3 otherwise we will have to really put an end to it. So,
09:56:37 4 Hema-Gegere you choose -- either you shorten your explanations
09:56:42 5 from now, and I authorise you to do so, or you have a written
09:56:47 6 note for the deliberation of the Chamber, but it's also
09:56:50 7 committed to -- it's also passed on to the Defence. So,
09:56:54 8 Mr Flamme, it's an important notion. I do respect his point
09:56:57 9 of view. So, you should respond in priority to the additional
09:57:02 10 list, and then we can see what you're going to say on the
09:57:05 11 other points raised by Mr Flamme. Mr Withopf, the floor is
09:57:10 12 yours.

09:57:12 13 MR WITHOPF: Mr President and your Honours, thank you very
09:57:14 14 much again. I obviously disagree with the observations by my
09:57:18 15 learned friend and we will make -- and we will make very brief
09:57:19 16 submissions on the issue of Hema-Gegere, and I re-emphasise
09:57:24 17 this will be done at the specific request of the honourable
09:57:27 18 Bench, and the Bench has asked us to -- to today provide
09:57:30 19 further information on this matter, and the Prosecution is
09:57:33 20 complying with the Bench's order.

09:57:35 21 [9:57 a.m.]

09:57:37 22 After this is done, Mr President, your Honours, I will then
09:57:41 23 continue in open session with a discussion of the Defence
09:57:46 24 evidence. I estimate at this point in time, Mr President,
09:57:50 25 your Honours, that this discussion may last for an hour, maybe

09:57:53 1 an hour and 15 minutes, roughly -- maybe a bit longer -- with
09:58:00 2 portions being in open session as mentioned, and this will be
09:58:05 3 the main portions and limited portions -- very limited
09:58:08 4 portions in our view need to be discussed in closed session,
09:58:11 5 because we are going to address documents the Defence has
09:58:15 6 discussed in closed session.

09:58:16 7 [9:58 a.m.]

09:58:17 8 And subsequently, Mr President, your Honours, my colleagues
09:58:23 9 Ms Struyven and Ms Solano, in that order, will present the
09:58:32 10 portions of the Prosecutor's closing statement on the
09:58:36 11 individual cases.

09:58:36 12 [9:58 a.m.]

09:58:37 13 This presentation will last about 40 minutes, meaning that the
09:58:44 14 Prosecution anticipates to have finished its today submissions
09:58:50 15 by the usual lunch break.

09:58:52 16 We work, Mr President, your Honours -- we work on the basis
09:58:56 17 that the Defence then, in the course of this afternoon, will
09:58:59 18 submit their portions of the closing Defence statement on the
09:59:02 19 individual cases, and the Prosecution will tomorrow morning,
09:59:07 20 as foreseen in the scheduling order of the honourable Bench of
09:59:11 21 7 November 2006, deliver its closing statement, and we are
09:59:18 22 confident that we can do so within the 90 minutes -- the
09:59:23 23 90 minutes the Pre-Trial Chamber has allocated to us.

09:59:26 24 [9:59 a.m.]

09:59:29 25 If, Mr President, and your Honours -- if you can agree to this

09:59:33 1 programme, I would now invite my colleague, Ms Samson, to make
09:59:37 2 our brief submissions on the Hema-Gegere issue.

09:59:47 3 PRESIDING JUDGE JORDA (interpretation): Do you think that
09:59:48 4 this -- so, it's the closed session could take place after the
09:59:52 5 break, or how do you see the closed session with regards to
09:59:55 6 the break?

09:59:56 7 MR WITHOPF: Thank you very much, Mr President. I actually
09:59:58 8 appreciate that you do raise this issue. Our programme is put
10:00:05 9 together in a way -- deliberately in such a way that we
10:00:09 10 anticipate that we can move, and have to move into closed
10:00:13 11 session immediately after the usual break at 1100 hours, so
10:00:19 12 there would be no delay.

10:00:26 13 PRESIDING JUDGE JORDA (interpretation): Okay. So, please
10:00:32 14 could you start your presentation, Mr Withopf.

10:00:37 15 MR WITHOPF: Again, I invite Ms Samson to make the
10:00:40 16 presentation on the Hema-Gegere issue.

10:00:43 17 PRESIDING JUDGE JORDA (interpretation): So, you have chosen
10:00:45 18 to present -- well, this was a request of the Chamber, which
10:00:51 19 was envisaged in the Regulations of the Court -- the Chamber
10:00:54 20 can ask for clarification. So you have chosen -- so the
10:00:58 21 Chamber authorises you to present it, but I would like you to
10:01:01 22 shorten your presentation, or for you to accompany it by a
10:01:06 23 written note or written presentation which we'll give to the
10:01:12 24 Defence. You could choose to do that; so, please do it quite
10:01:15 25 quickly. What I don't want and -- I don't want there to be

10:01:20 1 one oral presentation and a written document, as well. You
10:01:22 2 choose. Okay?

10:01:24 3 MR WITHOPF: Thank you, Mr President, and we choose to make
10:01:27 4 an oral representation, please.

10:01:30 5 PRESIDING JUDGE JORDA (interpretation): Okay. So, Ms Samson
10:01:33 6 you have the floor. And please don't try and -- please don't
10:01:37 7 try to win on the 15 minutes by speaking very quickly. We
10:01:41 8 just have to think of the interpreters who I greet as well.
10:01:50 9 So the floor is yours. I think I may have mispronounced your
10:02:02 10 name when speaking French. It's Ms Samson, but my other
10:02:06 11 comments are and do remain valid.

10:02:08 12 MS SAMSON: Good morning, Mr President, your Honours.
10:02:26 13 Further to your specific direction on 23 November, the
10:02:28 14 Prosecution will now outline its response to the Defence's
10:02:34 15 challenge or vehement opposition to the use of the
10:02:39 16 words "Hema-Gegere" in the document containing the charges.
10:02:42 17 [10:02 a.m.]

10:02:44 18 More particularly, the Prosecution will respond to the
10:02:48 19 allegation by the Defence that it was improper for the
10:02:52 20 Prosecution to use this term, because, and again according to
10:02:57 21 the Defence, the term "Hema-Gegere" is derogatory and incites
10:03:04 22 racial hatred.
10:03:06 23 [10:03 a.m.]

10:03:07 24 As an aside, the Prosecution notes that the Defence has not
10:03:11 25 tendered any evidence in support of this submission.

10:03:13 1 [10:03 a.m.]

10:03:17 2 And at the same time, the Prosecution wishes to emphasise that
10:03:20 3 it certainly did not use the term "Hema-Gegere" in any manner
10:03:24 4 that was intended to be derogatory.

10:03:26 5 [10:03 a.m.]

10:03:29 6 According to the information at the disposal of the
10:03:31 7 Prosecution, the term "Hema-Gegere" is commonly used by, among
10:03:37 8 others, academics and human rights' organisations, both
10:03:43 9 African and international, to refer to individuals from the
10:03:48 10 territory of Djugu, who are otherwise known as Hema North.

10:03:57 11 [10:03 a.m.]

10:03:58 12 The Prosecution notes that the Defence has acknowledged, in
10:04:02 13 its submission of 23 November 2006, that the Hema North from
10:04:07 14 Djugu and the Hema South from Irumu are two populations of the
10:04:13 15 same ethnic group.

10:04:14 16 [10:04 a.m.]

10:04:20 17 Mr President, your Honours, the Prosecution wishes to provide
10:04:23 18 the Court with additional documents -- four, in
10:04:28 19 particular -- that will assist it in comprehending the issue
10:04:33 20 surrounding the term "Hema-Gegere".

10:05:32 21 [Document handed to the Court]

10:05:54 22 MS SAMSON: Your Honours, the first document to which the
10:05:57 23 Prosecution wishes to refer is a report from L'Asado, which
10:06:01 24 stands for [in French] L'Association Africaine des Droits de
10:06:11 25 L'homme. As we can see from the title it's a report on the

10:06:11 1 inter-ethnic conflict of the Hemu and Lendu in the Djugu
10:06:17 2 territory, and the report was prepared in December 1999.
10:06:27 3 I turn the Chamber's attention to the second page of the
10:06:32 4 document, and the fourth.
10:06:35 5 Full paragraph, which describes the methodology of L'Asado in
10:06:42 6 the preparation of the report and I quote [in French]
10:06:51 7 L'ampleur de ce conflit -- Mr President, I see that the
10:06:52 8 Defence is -- wishes to speak.
10:06:55 9 PRESIDING JUDGE JORDA (interpretation): Mr Flamme, I'm going
10:06:57 10 to hear you out, but not for long. I can tell you that
10:07:01 11 immediately.
10:07:03 12 ME FLAMME (interpretation): That's your decision,
10:07:05 13 Mr President.
10:07:07 14 PRESIDING JUDGE JORDA (interpretation): I'm listening.
10:07:10 15 ME FLAMME (interpretation): I oppose the Prosecutor lodging
10:07:15 16 reports during this hearing, which it wishes to lodge as
10:07:20 17 expert reports, which -- with which the Defence are -- is not
10:07:24 18 familiar and the sources of which are unclear. I see that one
10:07:27 19 of these reports is written by a university professor. We do
10:07:32 20 not know who is this professor, where he is from. I therefore
10:07:36 21 oppose entirely this conduct. It is not foreseen in the
10:07:42 22 Statute or the Rules, and I humbly point out that when the
10:07:47 23 Defence asked to be able to lodge evidence or to have an
10:07:49 24 extension of deadlines, its requests were refused. And so
10:07:54 25 I would suggest that the same procedure should apply.

10:07:58 1 PRESIDING JUDGE JORDA (interpretation): I understand your
10:08:00 2 irritation, Mr Flamme. However, I would remind you that it is
10:08:05 3 you who affirmed to the Chamber that the term "Hema-Gegere"
10:08:11 4 was a pejorative term. You did that in your own fashion in
10:08:17 5 the way in which you wished to do it. You may have submitted
10:08:23 6 evidence or not. The Chamber did not prohibit you in any way.
10:08:27 7 The Chamber, in any case, has one remit -- and one remit
10:08:33 8 only -- and that is to establish the truth and the objective
10:08:37 9 of this confirmation hearing is to supplement the adversarial
10:08:45 10 debate between the parties.

10:08:46 11 [10:08 a.m.]

10:08:47 12 We need a certain number of maps of chronological aids,
10:08:51 13 et cetera. Any democratic jurisdiction in the world needs the
10:08:57 14 assistance of a certain amount of input from experts.

10:09:00 15 Now, you may respond; you may raise your concerns, your
10:09:07 16 doubts, but you cannot always base yourself on -- base your
10:09:12 17 arguments on fairness or injustice. And this is why, earlier,
10:09:20 18 I said that you could not give us a rejoinder on what the
10:09:24 19 Prosecutor had to say.

10:09:26 20 Now, if the Prosecutor were to submit motions vis-a-vis you,
10:09:31 21 I would proceed in exactly the same way. So, please, have the
10:09:34 22 grace to allow Ms Samson to give us the explanations which the
10:09:41 23 Court has asked of her.

10:09:41 24 [10:09 a.m.]

10:09:43 25 Now, we cannot do everything and do the opposite at the same

10:09:46 1 time. You have raised the issue of Hema-Gegere. When the
10:09:50 2 issue has been dealt with, you cannot take to your feet to say
10:09:53 3 this is not what you intended, not what you wanted. The
10:09:57 4 Chamber thanks you for taking the floor, for having given your
10:10:01 5 view. You can respond, as you see fit, in your closing --
10:10:05 6 written -- in your closing arguments. In the meantime, I wish
10:10:08 7 to hand the floor over to Ms Samson. In the meantime we have
10:10:12 8 lost another three minutes, but I don't regret one of them
10:10:15 9 because we want to hear Ms Samson.

10:10:18 10 MS SAMSON: Indicating on the second page of the first report
10:10:22 11 by L'Asado, the authors indicate their methodology, and I
10:10:27 12 quote from the fourth paragraph [in French]: "The extent of
10:10:31 13 this conflict and the human destruction and material
10:10:35 14 destruction which it engendered are considerable. The African
10:10:40 15 association of Defence of Human Rights, during the month of
10:10:47 16 October, carried out this study.
10:10:50 17 It collected statements from many players, including social
10:10:58 18 players from the two ethnic groups, also political players
10:11:03 19 from each of the two tribes, and leaders of local churches,
10:11:09 20 territorial -- former territorial leaders and current ones as
10:11:16 21 well as statements from numerous victims." Your Honour sets
10:11:20 22 the stage for the in-depth analysis done by these authors.
10:11:20 23 [10:11 a.m.]

10:11:24 24 I would like to turn your attention to the bottom of this
10:11:28 25 page, page 2, to the last paragraph where the authors write

10:11:34 1 and I quote [in French]: "Djugu is the territory where the
10:11:42 2 clashes take place between the Lendu and Hema-Gegere peoples."
10:11:48 3 The authors indicate that the territory is subdivided into
10:11:53 4 five collectivite, including, I note, two Hema collectivite.
10:11:53 5 [10:11 a.m.]
10:11:57 6 And on the third page, under the heading "Population", the
10:12:02 7 second full paragraph is an historical overview, in a way, of
10:12:09 8 the Lendu and the Hema, and it serves to shed further light on
10:12:15 9 this issue and I quote: "The Hema are essentially established
10:12:23 10 on the territory of Djugu and Irumu. They are also subdivided
10:12:29 11 into two groups -- those of the south, who have maintained
10:12:35 12 their culture and their language, which is often called
10:12:39 13 Banyoro. Those of the north, the Bagegere have become
10:12:47 14 intermixed with the Lendu. They speak the Lendu language and,
10:12:51 15 in fact, their mother language is Lendu, unlike that of their
10:12:56 16 brothers in the south. The Gegere are herders, but also
10:13:05 17 merchants; whereas the Nyoro are almost exclusively herders."
10:13:15 18 [10:13 a.m.]
10:13:16 19 The authors of this report, your Honours, repeatedly use the
10:13:19 20 term "Hema-Gegere" throughout the reports and I refer your
10:13:22 21 Honours to the next page, page 4, to the seventh full
10:13:29 22 paragraph from the top, under the second section, the
10:13:35 23 paragraph begins [in French] "En 1923" and I note that in that
10:13:44 24 paragraph the authors use the distinction between the North
10:13:48 25 Hema and the South Hema, by saying that the South Hema are

10:13:52 1 Hema Nyoro and the Djugu Hema from the north are Hema-Gegere.

10:13:59 2 [10:13 a.m.]

10:14:00 3 On the next page, your Honours, page 5, in the sixth full

10:14:09 4 paragraph, starting with [in French] "En 1995": "'95 -- 1995"

10:14:22 5 -- at the beginning of the second sentence the authors use the

10:14:26 6 term "the Hema-Gegere".

10:14:29 7 [10:14 a.m.]

10:14:31 8 On the next page, page 6, under the first point [in French]

10:14:38 9 "Quelques faits immediats", in the first paragraph and the

10:14:40 10 second paragraph, the authors refer to, and in the first

10:14:45 11 paragraph I read, in the second sentence [in French]: "It is

10:14:51 12 noted by way of example that rich Hema, including one rich

10:14:58 13 family, the Savo family, a Gegere family, continues to use the

10:15:05 14 term."

10:15:06 15 [10:15 a.m.]

10:15:07 16 And in the next paragraph, the second-last line, the authors

10:15:14 17 are discussing [in French]: "The Hema-Gegere cultivator". In

10:15:24 18 conclusion, with respect to this document and according to

10:15:26 19 this African association for human rights, the Hema ethnic

10:15:30 20 group is divided into north and south populations and the Hema

10:15:34 21 North are otherwise known as Gegere.

10:15:37 22 [10:15 a.m.]

10:15:38 23 The Prosecution notes that the Article does not provide any

10:15:41 24 indication, historical or otherwise, to the effect that the

10:15:45 25 term "Gegere" or "Hema-Gegere" is or was a derogatory term.

10:15:52 1 [10:15 a.m.]

10:15:53 2 Moving very quickly, your Honours, to the second document in
10:15:57 3 the package that was provided to you. It's an article drafted
10:16:06 4 by an association called DECIDI. The title of the article is
10:16:20 5 [in French] "En Ituri, quelle est l'ethnie la plus minoritaire
10:16:25 6 par rapport aux autres?" The Article is dated 4 July 2003,
10:16:30 7 some four years after the first report we've just seen, and
10:16:36 8 for your Honours' information DECIDI is a Congolese
10:16:41 9 organisation. It stands for [in French], Democratie et
10:16:49 10 Civisme pour le Developpement Integral, which is a network of
10:16:51 11 associations in Ituri, and this association is based in
10:16:55 12 Kinshasa.

10:17:01 13 [10:17 a.m.]

10:17:01 14 In its review of the minority or majority groups in Ituri, and
10:17:07 15 I refer your Honours to the second page of this article. The
10:17:12 16 authors of the report have conducted a study based on the
10:17:17 17 headings that are at the very top of the second page, and
10:17:20 18 I refer to -- they have looked first at [in French] --
10:17:26 19 "Territoire"; secondly, at ethnicity; thirdly, at population
10:17:29 20 and fourth at surface area -- surface area.

10:17:34 21 [10:17 a.m.]

10:17:34 22 And I note -- and I note that the third territory on the
10:17:41 23 second page that they have looked at is Djugu, and in the
10:17:45 24 territory of Djugu the authors indicate that the ethnicities
10:17:49 25 populating that area are the Lendu (Bbale), the Hema (Gegere),

10:17:55 1 the Nyali, the Mbisa, the Ndo-Okebo and the Bindi and the
10:18:02 2 Pygme. The population is provided, as well as the surface
10:18:06 3 area of Djugu.
10:18:09 4 [10:18 a.m.]
10:18:11 5 Slightly further down in that page they divide the areas
10:18:15 6 according to ethnic group, and I read [in French] "Par groupe
10:18:23 7 ethnique cette population": "By ethnic group the population
10:18:25 8 is as follows" [overlapping microphones] "(4) on the page" --
10:18:33 9 Gegere. The population is 220,580 people which represents
10:18:39 10 12.61 per cent of the population.
10:18:45 11 [10:18 a.m.]
10:18:45 12 Mr President, your Honours, I would now like to pass to the
10:18:48 13 academic study that the Prosecution has provided. This is a
10:18:58 14 study conducted in October 2003, it's an occasional paper. It
10:19:03 15 was drafted further to an oral conference presentation. On
10:19:10 16 the second page -- really, the third page of the
10:19:17 17 document -- there's information about the authors of the
10:19:18 18 report, Dr Koen Vlassenroot and Tim Raeymaekers. They belong
10:19:27 19 to the Conflict Research Group at the University of Ghent.
10:19:40 20 And they have written a number of articles on "Conflict in
10:19:42 21 Congo".
10:19:45 22 I refer the Chamber to the fifth page of this report. The
10:19:56 23 page is entitled "History of Local Conflict", and in the
10:20:05 24 second full paragraph I will read starting from the second
10:20:09 25 sentence, where the academics write, and I quote:

10:20:17 1 "The main protagonists are the pastoralist Hema and
10:20:25 2 agriculturalist Lendu communities, who mainly reside in the
10:20:30 3 Irumu and Djugu territories. Both communities can be divided
10:20:36 4 into different subgroups: the Southern Hema are also known as
10:20:44 5 'Banyoro', the northern Hema, the Gegere, integrated with the
10:20:49 6 Lendu and speak the Lendu language Kilendu."

10:20:57 7 [10:20 a.m.]

10:21:02 8 On the twelfth page of the same report, in the third
10:21:18 9 paragraph, towards the centre of that paragraph the academics
10:21:22 10 write: "Thomas Lubanga, a Hema-Gegere."

10:21:34 11 [10:21 a.m.]

10:21:53 12 In the discussion of the conflict in that academic article,
10:21:57 13 the Prosecution notes that there is no reference to the ethnic
10:22:03 14 group Hema-Gegere being insulting, derogatory, or otherwise
10:22:10 15 inciting racial hatred.

10:22:12 16 [10:22 a.m.]

10:22:12 17 Lastly, your Honours, the Prosecution would like to refer to
10:22:16 18 an article by Human Rights Watch, a well-known international
10:22:20 19 NGO, who has provided an overview, a who's who of political
10:22:34 20 groups in Ituri. The Article is dated May 2003. At the
10:22:46 21 bottom of the first page, the Prosecution notes the
10:22:52 22 Human Rights Watch has indicated that the UPC, Union des
10:23:03 23 Patriotes Congolais, is a group that is, in its majority,
10:23:07 24 Hema-Gegere. And on the second page, as a continuation of
10:23:17 25 some information with respect to the UPC, Human Rights Watch

10:23:21 1 writes [in French]: "The current leader, Thomas Lubanga, and
10:23:30 2 the UPC" -- and I quote -- "was apparently set up to promote
10:23:35 3 reconciliation. The UPC rapidly became a political party led,
10:23:42 4 in the majority by the Gegere, who were inclined to promote
10:23:51 5 the interests of the Hema and the Gegere to whom they are
10:23:54 6 related."

10:23:55 7 [10:23 a.m.]

10:24:01 8 Mr President, your Honours, after having reviewed these
10:24:04 9 documents, the Prosecution submits that it can be easily
10:24:09 10 referred that the terms "Gegere" and "Hema-Gegere" are
10:24:13 11 frequently used by local, regional and international writers,
10:24:19 12 and that the Prosecution's use of the term "Hema-Gegere" was
10:24:24 13 firmly rooted in the recurrent use of this term by these
10:24:27 14 writers.

10:24:28 15 [10:24 a.m.]

10:24:29 16 "Gegere" and "Hema-Gegere" are commonly used to refer to
10:24:34 17 individuals from the territory of Djugu who come from North
10:24:40 18 Hema groups.

10:24:41 19 [10:24 a.m.]

10:24:42 20 Subject to any questions you may have, your Honours, those are
10:24:44 21 the Prosecution's submissions with respect to Hema-Gegere
10:24:47 22 ethnic terms.

10:24:56 23 PRESIDING JUDGE JORDA (interpretation): There are no
10:24:58 24 questions from the Chamber. I think that it is Mr Withopf who
10:25:02 25 will now continue. Is that so? Very good. Mr Flamme?

10:25:26 1 ME FLAMME (interpretation): Have I understood rightly that
10:25:27 2 the Defence will not have an opportunity to respond?
10:25:30 3 PRESIDING JUDGE JORDA (interpretation): No, you will have an
10:25:32 4 opportunity to submit a brief during our deliberations.
10:25:36 5 I would remind you that you have until 6 November [sic] to
10:25:41 6 provide your conclusions in writing. You put a question
10:25:44 7 regarding the concept of Hema-Gegere. The Prosecution has
10:25:47 8 provided some information to the Chamber and to yourselves.
10:25:51 9 You may respond if you wish in writing in your closing
10:25:54 10 arguments.
10:26:00 11 MR WITHOPF: Thank you, Mr President, your Honours. As
10:26:05 12 foreshadowed, the Prosecution will now, in line with the
10:26:09 13 decision in the Scheduling Order of 7 November 2006, discuss
10:26:15 14 the Defence evidence.
10:26:18 15 [10:26 a.m.]
10:26:21 16 For your information, Mr President, your Honours, the
10:26:24 17 discussion will follow a certain structure, and the structure
10:26:30 18 is as follows: first, I will make a number of general
10:26:36 19 observations. Subsequently, we will discuss some of the
10:26:41 20 Defence evidentiary materials in groups, and at the end,
10:26:50 21 Mr President, your Honours, we will discuss certain Defence
10:26:56 22 documents in detail -- and Mr President, your Honours, some of
10:27:01 23 these materials we will discuss in great detail.
10:27:04 24 [10:27 a.m.]
10:27:09 25 Since it is the Prosecution's view that a significant portion

10:27:16 1 of the Defence evidentiary materials are only peripherally
10:27:23 2 relevant to the case -- to the case against
10:27:28 3 Thomas Lubanga Dyilo -- the Prosecution has been very
10:27:33 4 selective -- has been very selective in determining which
10:27:39 5 evidentiary materials tendered into evidence by the Defence it
10:27:44 6 will comment on.

10:27:45 7 [10:27 a.m.]

10:27:46 8 As I mentioned earlier on, the Prosecution's discussion of the
10:27:50 9 Defence evidence will include both documents the Defence has
10:27:55 10 presented and discussed in open session, and in closed
10:28:01 11 session. Accordingly, as announced, at a certain point in
10:28:06 12 time we will have to move -- we will have to request moving
10:28:11 13 into closed session, and as I mentioned, this will be towards
10:28:15 14 the end of our presentation.

10:28:17 15 [10:28 a.m.]

10:28:20 16 In light of the fact, Mr President, your Honours, that the
10:28:23 17 Defence has tendered into evidence a limited, if not to say, a
10:28:29 18 very limited number of documents, we will not need the
10:28:34 19 time -- and I recall the time allocated to us were two and a
10:28:39 20 half hours -- we will not need the time allocated to us. As
10:28:45 21 I mentioned, I believe I can make my presentation within an
10:28:49 22 hour, maybe an hour and 15 minutes.

10:28:51 23 [10:28 a.m.]

10:28:54 24 With your permission, Mr President, your Honours, I start with
10:29:00 25 the general observations.

10:29:06 1 In this context the Prosecution draws the attention of the
10:29:10 2 Chamber -- of the Pre-Trial Chamber to the fact that none, or
10:29:16 3 almost none of the materials the Defence tendered into
10:29:20 4 evidence relate to the core of the Prosecution's case, and the
10:29:28 5 core of the Prosecution's case is Thomas Lubanga Dyilo's
10:29:32 6 criminal responsibility for enlisting, for conscripting, and
10:29:37 7 using children under 15 years to participate actively in
10:29:43 8 hostilities.

10:29:45 9 [10:29 a.m.]

10:29:47 10 Indeed, many of the Defence materials are either irrelevant or
10:29:53 11 only marginally relevant. They touch on the periphery of the
10:29:58 12 case only, the margins of the case against Thomas Lubanga
10:30:07 13 Dyilo.

10:30:07 14 [10:30 a.m.]

10:30:08 15 In this context, and at this stage en passant, Mr President,
10:30:14 16 your Honours -- en passant only -- the Prosecution notes that
10:30:18 17 this observation is very characteristic to significant
10:30:24 18 portions of the Defence presentation in the course of last
10:30:27 19 week.

10:30:27 20 [10:30 a.m.]

10:30:31 21 The Defence evidence, in its majority, provides details on the
10:30:39 22 situation in Ituri during the relevant timeframe, but also
10:30:46 23 prior and after the relevant timeframe -- again, an
10:30:54 24 indication, Mr President, your Honours, that a lot of the
10:30:56 25 Defence's evidence is irrelevant or has only limited

10:31:03 1 relevance.

10:31:03 2 [10:31 a.m.]

10:31:08 3 And the Defence evidence, in our submission, Mr President,

10:31:12 4 your Honours -- the Defence evidence, to an extent, confirms

10:31:17 5 the Prosecution's case, in particular in respect of the

10:31:22 6 existence of an armed conflict.

10:31:24 7 [10:31 a.m.]

10:31:28 8 In our view -- in the view of the Prosecution, the Defence

10:31:31 9 evidentiary materials try to convey, and I add

10:31:41 10 unsuccessfully -- the Defence materials try to convey

10:31:44 11 unsuccessfully the following two main messages to the

10:31:49 12 Pre-Trial Chamber and also to the public: first, that the

10:31:55 13 Hema population in Ituri was subjected to an extermination

10:32:01 14 campaign prepared by the RCD-K/ML and that the FPLC had to

10:32:08 15 defend the Hema population. I will discuss this aspect,

10:32:13 16 Mr President, your Honours, later on in detail --

10:32:18 17 PRESIDING JUDGE JORDA (interpretation): Mr Flamme, please

10:32:29 18 understand that it might be a little bit abusive to stand up

10:32:34 19 at this stage.

10:32:37 20 ME FLAMME (interpretation): You haven't heard me yet.

10:32:38 21 PRESIDING JUDGE JORDA (interpretation): Yes, but it's the

10:32:42 22 fourth or fifth time that you are asking to be heard. Please,

10:32:47 23 the rights of the Defence are well known to the professional

10:32:50 24 judges on the Bench. We are listening to you. Go ahead,

10:32:56 25 Mr Flamme.

10:32:57 1 ME FLAMME (interpretation): We just said, President, a few
10:33:00 2 minutes ago, that the Prosecutor must limit himself to the
10:33:04 3 discussion of the evidence on the limited additional evidence,
10:33:11 4 which I called the "third Defence list". But the Prosecutor
10:33:15 5 is starting to talk about evidence that was entered into
10:33:20 6 evidence during the cross-examination of the witness,
10:33:25 7 Madame Peduto and is not allowed to do so. You, yourself,
10:33:29 8 said so in the answer or you -- to my -- or your response to
10:33:36 9 my intervention on the same topic.

10:33:40 10 PRESIDING JUDGE JORDA (interpretation): I would like to turn
10:33:45 11 to Mr Withopf. I had to interrupt you. You were making
10:33:49 12 general observations, but we believe it is on the evidence
10:33:54 13 presented by the Defence. Is that correct; was that your
10:33:58 14 intention?

10:34:00 15 MR WITHOPF: Thank you, Mr President, your Honours. Of
10:34:02 16 course, it's on the evidence presented by the Defence, and the
10:34:06 17 Prosecution disagrees with the observation of the Defence that
10:34:12 18 the Prosecution should be limited to the third list of
10:34:15 19 evidence. And I make reference to the scheduling order,
10:34:20 20 Mr President, your Honours, of 7 November 2006, and I quote
10:34:25 21 from it: "The Prosecution shall be strictly limited to the
10:34:30 22 evidence on which the Defence intends to rely on the
10:34:34 23 confirmation hearing."

10:34:36 24 PRESIDING JUDGE JORDA (interpretation): Yes, this order was
10:34:42 25 just given me and thank you for -- to our listeners, so please

10:34:48 1 bear this in mind, and I hope that this will bring some
10:34:51 2 reassurance to Mr Flamme. So please could you let Mr Withopf
10:34:58 3 continue. If you have to interrupt on certain points, you
10:35:01 4 will be allowed to do so, Mr Flamme, but I believe we all
10:35:05 5 agree, among the judges, and with everybody, that when judges
10:35:12 6 bring out orders you respect them and -- Mr Withopf, so you
10:35:18 7 have to limit yourself to the evidence presented by the
10:35:22 8 Defence, so do not argue on, for instance, the Madame Peduto.
10:35:29 9 Do we agree on both sides? The Defence, do you agree?
10:35:39 10 THE ENGLISH INTERPRETER: Mr Flamme has not turned on his
10:35:40 11 microphone.
10:35:42 12 ME FLAMME (interpretation): I stick to my point of view
10:35:44 13 according to which the Prosecutor may not discuss the evidence
10:35:48 14 that are part of what I call our second list. I know we
10:35:54 15 didn't have a first list, but which belongs to the second
10:35:57 16 list, the additional evidence for witness Peduto. That's how
10:36:03 17 I interpret the decision.
10:36:04 18 PRESIDING JUDGE JORDA (interpretation): We have already
10:36:05 19 answered.
10:36:06 20 ME FLAMME (interpretation): Yes, but I don't share his point
10:36:08 21 of view.
10:36:09 22 PRESIDING JUDGE JORDA (interpretation): Well, it's in the
10:36:12 23 transcript, and you can take -- argue this in your oral
10:36:19 24 presentation, and if Mr Withopf refers to Madame Peduto's
10:36:27 25 testimony, the Chamber will note this.

10:36:33 1 ME FLAMME (interpretation): What Mr Withopf wants to do is
10:36:35 2 have a re-examination through the back door.

10:36:38 3 PRESIDING JUDGE JORDA (interpretation): Well, you are
10:36:40 4 responsible for what you have just said. The Chamber will
10:36:44 5 hold its own opinion on this. Please continue, Mr Withopf,
10:36:48 6 and also stick to the Chamber's order. Thank you.

10:36:51 7 MR WITHOPF: Thank you very much again, Mr President, your
10:36:54 8 Honours, for this clarification, and of course the Prosecution
10:36:58 9 has carefully read the Chamber's order and does, as always,
10:37:04 10 comply with the Chamber's order. And the Chamber's order
10:37:07 11 allows the Prosecution to discuss the evidence that has been
10:37:10 12 presented in the course of this confirmation hearing.

10:37:12 13 [10:37 a.m.]

10:37:14 14 I come back to the point I was about to make prior to being,
10:37:22 15 for the third or for the fourth time today, being interrupted
10:37:27 16 by my learned friend from the Defence. What the Defence has
10:37:29 17 tried to do is the following: to convey a message to the
10:37:36 18 honourable Bench that the Hema population in Ituri was
10:37:42 19 subjected to an extermination campaign prepared by the
10:37:46 20 RCD-K/ML, and that therefore the FPLC had to defend the Hema
10:37:53 21 population. And, as I mentioned, I will discuss this aspect
10:37:59 22 later on in detail.

10:38:01 23 [10:38 a.m.]

10:38:03 24 And the second message the Defence tries to convey is that
10:38:07 25 Thomas Lubanga Dyilo was a politician, and a politician only,

10:38:15 1 leading a multi-ethnic political party, the UPC, and that
10:38:22 2 Thomas Lubanga Dyilo's sole aim was, as President of the UPC,
10:38:27 3 to bring peace to a multi-ethnic Ituri and to address -- and
10:38:34 4 to address in detail the problems Ituri was confronted with at
10:38:38 5 the time.

10:38:40 6 [10:38 a.m.]

10:38:42 7 In respect of the latter observation, Mr President, your
10:38:46 8 Honours, I move on to the discussion on groups of documents.
10:38:55 9 This is done to not waste a lot of time, because these
10:39:03 10 groups -- or these groups of documents have certain features,
10:39:08 11 and the Prosecution will address these features. As
10:39:14 12 examples --

10:39:15 13 PRESIDING JUDGE JORDA (interpretation): Are you talking
10:39:16 14 about the material from the Defence? I'd like to know this,
10:39:21 15 because I'd like to avoid any subsequent incidents. Do we
10:39:25 16 agree?

10:39:26 17 MR WITHOPF: Mr President, your Honours, we very much do
10:39:29 18 agree. I have limited my submissions strictly to the
10:39:33 19 evidentiary materials the Defence has presented, I can assure
10:39:37 20 you.

10:39:37 21 PRESIDING JUDGE JORDA (interpretation): Thank you. Please
10:39:41 22 continue.

10:39:44 23 MR WITHOPF: The first group of documents I'm going to
10:39:48 24 discuss -- and, as I mentioned, I discuss them as examples
10:39:54 25 only, is first the 9 June 2003, UPC, Rapport Relatif a La

10:39:54 1 Gestion De L'Ituri Pendant les deux mois D'absence de
10:40:12 2 L'UPC/RP, the evidence number is <#EVD-D01-00009#>. Within
10:40:21 3 that group I will also discuss the 2 December 2002 Memorandum
10:40:21 4 a l'intention de son Excellence Monsieur Representant Special
10:40:21 5 de M. Le Sectretaire General des Nation-Unis, de passage a
10:40:38 6 Bunia. The evidence number is <#EVD-D01-00008#> and, finally,
10:40:45 7 the last document in this context I'm going to discuss is the
10:40:51 8 15 November 2003 UPC Project de Societe. The evidence number
10:41:03 9 is <#EVD-D01-00010#>. Could the court officer, Mr President,
10:41:11 10 your Honours -- could the court officer please be so nice and
10:41:13 11 publish the three documents, displaying document
10:41:21 12 <#EVD-D01-00009#> first, and then please in the order as
10:41:23 13 mentioned. In addition, Mr President, your Honours, for the
10:41:27 14 ease of reference and to facilitate the discussion, I provide
10:41:32 15 paper copies. If the paper copies could please be
10:41:37 16 distributed.
10:41:49 17 [Documents handed to the Court]
10:41:49 18 [10:41 a.m.]
10:42:10 19 As you will see -- and you will see it immediately --
10:42:13 20 Mr President, your Honours, all three documents are UPC
10:42:17 21 documents, and all three documents are designed for public
10:42:24 22 consumption. And all documents -- and all documents in an
10:42:32 23 exceptionally flourish language, Mr President, your Honours,
10:42:39 24 they all detail the efforts made -- and I add -- the efforts
10:42:43 25 allegedly made by the UPC to promote pacification and peace in

10:42:48 1 Ituri.

10:42:50 2 [10:42 a.m.]

10:42:55 3 In the submission of the Prosecution, all documents of this
10:42:58 4 nature must be seen in this context, and thus they cannot
10:43:05 5 carry significant evidentiary value.

10:43:09 6 [10:43 a.m.]

10:43:10 7 To the contrary, Mr President, your Honours, since the content
10:43:16 8 of such documents comes close -- comes very close to
10:43:22 9 self-serving evidence, the evidential value can be limited,
10:43:28 10 and it can be very limited only.

10:43:30 11 [10:43 a.m.]

10:43:32 12 The Prosecution makes this observation in particular in light
10:43:36 13 of the fact that the Defence has not -- has not tendered any
10:43:46 14 evidence stemming from third parties, meaning neutral parties
10:43:50 15 that support the views expressed by the UPC, and the views
10:43:59 16 expressed in the documents tendered into evidence by the
10:44:02 17 Defence. Again, these are views of the UPC on the UPC or, in
10:44:12 18 short, Mr President, your Honours, and to be far more concise,
10:44:16 19 this is propaganda.

10:44:17 20 [10:44 a.m.]

10:44:18 21 The Defence hasn't done so -- they haven't done so simply
10:44:23 22 because there is no such neutral evidence. And I add there
10:44:30 23 cannot be such neutral evidence, because the reality, as the
10:44:33 24 Prosecution has shown, Mr President, the evidence was
10:44:41 25 different, and it was very different.

10:44:43 1 [10:44 a.m.]

10:44:44 2 Accordingly, to summarise, in the Prosecution's view no
10:44:48 3 significant evidentiary value should be attributed to the
10:44:53 4 UPC-generated documents of the nature of the three documents,
10:44:59 5 Mr President, your Honours, I just discussed.

10:45:03 6 [10:45 a.m.]

10:45:09 7 There is, however, another document; namely, the 14 September
10:45:17 8 2002 declaration of the UPC, signed by Thomas Lubanga Dyilo,
10:45:26 9 evidence number <#EVD-D01-00007#>, and I ask the court officer
10:45:34 10 to please display this document and, in particular, page 2 of
10:45:42 11 the document.

10:45:49 12 [10:45 a.m.]

10:45:49 13 Mr President, your Honours, this document, on its face, seems
10:45:54 14 to fall in the same group of documents as the ones just
10:45:59 15 discussed. A closer look at the document, however,
10:46:04 16 Mr President, your Honours, shows that this document is
10:46:08 17 different. It is different, because it contains also the
10:46:17 18 portion on page 2, and the court officer please publish page 2
10:46:22 19 of the document, the top half of the page, please, and I read
10:46:30 20 out [in French]: "The UPC took up arms to stave off all the
10:46:45 21 forces that contribute in destroying Ituri and Congo."

10:46:51 22 [10:46 a.m.]

10:46:52 23 In the Prosecution's view, this is a very revealing statement.
10:46:57 24 It is revealing, because it says what happened. And what
10:47:04 25 happened is the following, Mr President, your Honours: the UPC

10:47:08 1 fought those who were against the ideas promoted by the UPC.

10:47:13 2 [10:47 a.m.]

10:47:16 3 And I recall this is a document signed by Thomas Lubanga Dyilo

10:47:21 4 on 14 September 2002, the point in time when the UPC gave a

10:47:31 5 name to the Hema militia fighting for the UPC, and the name

10:47:38 6 is -- as we all do know, and as the Prosecution has proven,

10:47:42 7 it's the name of the FPLC.

10:47:44 8 [10:47 a.m.]

10:47:46 9 Therefore, Mr President, your Honours, in the Prosecution's

10:47:49 10 view this document does not support the idea of the UPC being

10:47:56 11 a peaceful political party. To the contrary, it supports the

10:48:04 12 Prosecution's case -- it supports the Prosecution's case in

10:48:07 13 showing that the UPC, from mid-September 2002 onwards, was

10:48:14 14 prepared to make it official -- was prepared to make it

10:48:17 15 finally official that it had an armed wing prepared to fight

10:48:24 16 its opponents, and the armed wing was the FPLC.

10:48:27 17 [10:48 a.m.]

10:48:35 18 Mr President, your Honours, the second group, and it's again a

10:48:42 19 group -- a group of evidentiary materials -- the second group

10:48:46 20 of such materials the Prosecution will discuss, and we will

10:48:49 21 address this group in greater detail -- the second group are

10:48:54 22 the emails from Jean-Pierre Molondo Lopondo, and I hasten to

10:49:01 23 add, and I will show in detail why I do so, the alleged emails

10:49:09 24 of Jean-Pierre Molondo Lopondo. Mr President, your Honours,

10:49:16 25 I have again paper copies of these documents with me in order

10:49:22 1 to facilitate the discussion -- to facilitate it because
10:49:25 2 I will discuss these emails together.
10:49:45 3 [Documents handed to the Court]
10:49:48 4 [10:49 a.m.]
10:49:49 5 Upon dissemination of the paper copies, Mr President, your
10:49:54 6 Honours, you will realise that I will address the following
10:49:58 7 Defence materials: the email of 19 July 2002, evidence number
10:50:03 8 <#EVD-D01-00002#>; the email of 20 July 2002, with the
10:50:10 9 evidence number <#EVD-D01-00003#>; the email of 21 July 2002,
10:50:20 10 <#EVD-D01-00004#>; the email of 23 July 2002,
10:50:31 11 <#EVD-D01-00006#>; and, finally, the email of 5 August 2002,
10:50:36 12 <#EVD-D01-00005#>.
10:50:40 13 [10:50 a.m.]
10:50:43 14 Since I have distributed the paper copies I would nevertheless
10:50:48 15 ask the court officer, and mostly for the benefit of the
10:50:52 16 public, to display the documents I just mentioned, and please
10:50:57 17 first the email of 20 July 2002, evidence number
10:51:05 18 <#EVD-D01-00003#>.
10:51:23 19 Thank you very much.
10:51:23 20 [10:51 a.m.]
10:51:26 21 Mr President, your Honours, the Prosecution makes the
10:51:28 22 following observations, and it challenges the authenticity of
10:51:33 23 these emails. First, the content of these emails is very
10:51:38 24 unusual, because all of the emails describe in detail, and
10:51:46 25 they describe in very detail what is called, and I quote from

10:51:50 1 the email dated 20 July 2002, and this email, Mr President,
10:51:57 2 your Honours, serves perfectly as an example for all the other
10:52:01 3 emails, and can the court officer please publish the third
10:52:06 4 paragraph of the email of 20 July 2002. It makes reference or
10:52:19 5 it details what is called, and I quote [in French]: "The
10:52:33 6 operation for the general extermination of Hema."
10:52:36 7 [10:52 a.m.]
10:52:37 8 The email messages provide further information along the lines
10:52:41 9 that concrete preparation for this operation took place,
10:52:46 10 including listing the addresses of Hema. In this context,
10:52:49 11 I draw the attention of the Pre-Trial Chamber again to the
10:52:54 12 20 July 2002 email, where this is detailed in the fourth
10:52:58 13 paragraph, and to the 21 July 2002 email where this is again
10:53:06 14 detailed in the second-last paragraph from the bottom. And
10:53:11 15 I ask the court officer, and I ask him politely, to please
10:53:15 16 display this portion of the email of 21 July 2002,
10:53:24 17 <#EVD-D01-0004#> [sic], and again, since the participants have
10:53:28 18 the paper copies, mainly for the benefit of the public.
10:53:32 19 [10:53 a.m.]
10:53:37 20 Mr President, your Honours, I repeat what I said: the content
10:53:42 21 of these email messages is very unusual. It is unusual,
10:53:47 22 because one would not -- one would not expect that such
10:53:52 23 messages discussing details of an operation -- an operation
10:53:57 24 which is very clearly aimed -- allegedly aimed at the
10:54:02 25 extermination of the members of the Hema ethnicity -- that

10:54:06 1 such messages are sent and discussed via email. And

10:54:12 2 Mr President, your Honours, we all know that emails are a

10:54:19 3 communication system that is not safe and that is easily

10:54:22 4 accessible to everybody.

10:54:24 5 [10:54 a.m.]

10:54:25 6 Accordingly, already the content of the messages is suspicious

10:54:30 7 and raises doubts in respect of their authenticity. And, in

10:54:37 8 addition, Mr President, your Honours, there's no evidence that

10:54:43 9 Jean-Pierre Molondo Lopondo himself used the account the email

10:54:47 10 messages tendered into evidence by the Defence stem from.

10:54:51 11 [10:54 a.m.]

10:54:54 12 These doubts are aggravated by the fact that any person can

10:54:59 13 create an email account under any other person's name without

10:55:05 14 that person's authorisation, and the Prosecution submits that

10:55:11 15 this is exactly -- this is exactly what had happened in the

10:55:15 16 instant case concerning Jean-Pierre Molondo Lopondo.

10:55:22 17 [10:55 a.m.]

10:55:23 18 And President, your Honours, the Prosecution is making this

10:55:26 19 observation not without a basis, and I will provide details in

10:55:30 20 respect of that basis, and I will provide these details as

10:55:36 21 follows: because there were doubts, the Office of the

10:55:45 22 Prosecutor has asked the French authorities, namely, the

10:55:50 23 Cour d'Appel de Paris, to subject these messages to forensic

10:55:56 24 examination. The forensic examination has revealed that the

10:56:01 25 internet address of jp-molondo@yahoo.fr -- and this is the

10:56:13 1 email account that was used for sending the messages
10:56:15 2 concerned -- was created in Rwanda, and I repeat, in Rwanda.
10:56:19 3 [10:56 a.m.]
10:56:23 4 Mr President, your Honours, for very obvious reasons, it's
10:56:27 5 hard to believe -- and it's very hard to believe that
10:56:33 6 Jean-Pierre Molondo Lopondo created an email account in
10:56:36 7 Rwanda, or made somebody else create, on behalf of him, an
10:56:41 8 email account in Rwanda. Rwanda is a country which
10:56:47 9 Jean-Pierre Molondo tried to avoid, and he tried to avoid it
10:56:51 10 by all means, and from his perspective, for very good reasons,
10:56:54 11 Rwanda being a country that considered him as an enemy.
10:56:59 12 [10:56 a.m.]
10:56:59 13 And, indeed, Mr President, your Honours, Jean-Pierre Molondo
10:57:03 14 Lopondo, at the time, he was not in Rwanda; he was in Ituri.
10:57:09 15 [10:57 a.m.]
10:57:11 16 To keep it short, the Prosecution submits that these emails
10:57:17 17 are falsely fabricated emails, and I add that we don't know
10:57:23 18 for sure who sent them.
10:57:26 19 [10:57 a.m.]
10:57:27 20 The emails, however, whoever sent them, served a purpose at
10:57:31 21 the time; namely, to trigger hate, and we all know -- and this
10:57:37 22 can be seen from the Prosecution's evidence -- that
10:57:42 23 Jean-Pierre Molondo Lopondo, soon after these email messages
10:57:47 24 were sent -- namely, on 9 August 2002 -- was made to flee
10:57:52 25 Bunia, and he was forced to do so by the Hema militia fighting

10:57:58 1 for the UPC.

10:57:58 2 [10:57 a.m.]

10:58:01 3 He was made to flee following a UPC operation which resulted

10:58:05 4 in the death of numerous civilians -- civilians who had sought

10:58:11 5 shelter in Jean-Pierre Molondo Lopondo's residence in Bunia.

10:58:18 6 [10:58 a.m.]

10:58:19 7 Mr President, your Honours, these emails served a purpose at

10:58:25 8 the time. And Thomas Lubanga Dyilo wants them to serve a

10:58:31 9 purpose again now in the proceedings against him before this

10:58:38 10 honourable Court.

10:58:38 11 [10:58 a.m.]

10:58:41 12 Whilst the plan, Mr President, your Honours -- whilst this

10:58:44 13 plan, whoever sent the emails in 2002, was successful at the

10:58:49 14 time, Thomas Lubanga Dyilo will not be successful in using

10:58:53 15 these emails in 2006 before this honourable Court, and the

10:58:58 16 result of the forensic examination of the emails will prohibit

10:59:05 17 it.

10:59:06 18 [10:59 a.m.]

10:59:06 19 Mr President, your Honours, the Prosecution submits that the

10:59:10 20 emails concerned have been falsely fabricated and, as such,

10:59:16 21 they cannot -- they cannot have any evidentiary value.

10:59:20 22 [10:59 a.m.]

10:59:21 23 I have copies of the forensic examination obviously with me,

10:59:25 24 Mr President, your Honour -- your Honours, and I wish to hand

10:59:30 25 them over and I wish to tend them -- tender them into

10:59:32 1 evidence, and I ask the court officer to please assign an
10:59:35 2 evidence number.

10:59:41 3 PRESIDING JUDGE JORDA (interpretation): Mr Flamme?
10:59:47 4 ME FLAMME (interpretation): Once again, I am categorically
10:59:50 5 against bringing a scientific piece of evidence, which we
10:59:57 6 don't know -- of which we don't know the origin or the
11:00:00 7 authors, at the last minute. This is a surprise to the
11:00:04 8 Defence and of course the Defence won't be able to respond to
11:00:06 9 it, so I'm categorically against filing this evidence.

11:00:10 10 PRESIDING JUDGE JORDA (interpretation): The President of the
11:00:14 11 Chamber decides that the evidence will be added to the file.
11:00:18 12 I just want to know, though, Mr Withopf, what is the main line
11:00:21 13 of argument? These emails existed in your mind, did they?
11:00:28 14 I don't quite understand, because at the same time you say
11:00:31 15 they are false, you say that they existed, that they developed
11:00:38 16 racial hatred from Jean-Pierre Molondo. Could you please
11:00:45 17 explain?

11:00:46 18 MR WITHOPF: Certainly, Mr President, your Honours. In the
11:00:49 19 Prosecution showing that these emails were fabricated -- were
11:00:53 20 falsely fabricated, the Prosecution is able to give an
11:00:57 21 impression about the evidential value of these emails, and the
11:01:02 22 Prosecution in doing so will be able to disprove the
11:01:06 23 suggestion of the Defence that the UPC was a peaceful
11:01:11 24 political party, and that Thomas Lubanga Dyilo was the
11:01:14 25 President of a peaceful political party.

11:01:17 1 The point we wish to make is the following: the UPC was using
11:01:22 2 Hema militia, which were finally named FPLC, for exactly the
11:01:28 3 opposite -- as suggested by the Defence; namely, to fight the
11:01:33 4 other ethnic groups in the region of Ituri.

11:01:39 5 [11:01 a.m.]

11:01:41 6 If this answer, Mr President, your Honours, would provide
11:01:46 7 sufficient information, I can make the following
11:01:52 8 suggestion -- either to continue for about 10 more minutes and
11:01:55 9 then move into closed session -- what would spare us time
11:02:00 10 later on -- or to have the break now, then discuss 10 more
11:02:04 11 minutes in open session and then have a break.

11:02:07 12 PRESIDING JUDGE JORDA (interpretation): The Chamber has
11:02:20 13 decided we'll continue for 10 or 15 minutes and then have a
11:02:24 14 break. Thank you.

11:02:25 15 MR WITHOPF: Thank you, Mr President, your Honours. This is
11:02:28 16 very much appreciated.

11:02:30 17 PRESIDING JUDGE JORDA (interpretation): I just want to add
11:02:34 18 that this piece of evidence will be filed, and I would like to
11:02:39 19 reassure Mr Flamme the admissibility of this evidence will be
11:02:43 20 examined during deliberations and after having received the
11:02:48 21 possible comments or observations of the Defence. Yes,
11:02:51 22 Mr Flamme, I thought I had responded already to your
11:02:54 23 observation.

11:02:55 24 ME FLAMME (interpretation): I just wanted to flag that I
11:02:57 25 don't know if Mr Withopf can all -- can still answer your

11:03:00 1 question, but he didn't answer.

11:03:02 2 PRESIDING JUDGE JORDA (interpretation): I recorded his

11:03:04 3 answer, and that will be the subject of our

11:03:08 4 deliberations -- one of the subjects of our deliberations. If

11:03:12 5 a party doesn't answer fully or correctly to a question, the

11:03:18 6 Chamber decides during the deliberations. And thank you for

11:03:26 7 your smile, Mr Flamme. We will continue for 10 minutes --

11:03:31 8 10 minutes, Mr Withopf. Go ahead.

11:03:32 9 [11:03 a.m.]

11:03:32 10 MR WITHOPF: Thank you, Mr President, your Honours. As

11:03:34 11 I mentioned, I will continue to discuss some of the Defence

11:03:38 12 documents one by one, and I will discuss them in more detail.

11:03:41 13 First, I will briefly discuss the letter of John Tinanzabo

11:03:49 14 Zeremani, General-Secretary of the UPC, to Radio Okapi,

11:03:55 15 evidence number <#EVD-D01-00011#> and I ask -- and I kindly

11:03:59 16 ask the court officer to please display the document.

11:04:03 17 [11:04 a.m.]

11:04:04 18 In respect of this document, the Prosecution makes the

11:04:07 19 following brief observations: the letter, as such, is not

11:04:13 20 dated. The footer, however, at each page, and the court

11:04:18 21 officer please displays the footer where it says [in French]:

11:04:27 22 "Ministerial decree of registration of a party". And then

11:04:34 23 comes the reference to the 2 July 2004, the footer already

11:04:36 24 reveals, Mr President, your Honours, that the letter was

11:04:38 25 written at a date which obviously lies outside the timeframe

11:04:44 1 relevant to the document containing the charges.

11:04:48 2 [11:04 a.m.]

11:04:48 3 Furthermore, at page 3, and the court officer please displays

11:04:52 4 page 3 of the document, in the first and the second line from

11:04:58 5 the top reference is made first to 17 July 2004, and in the

11:05:05 6 sixth line from the top reference is made to 26 November 2004.

11:05:10 7 [11:05 a.m.]

11:05:12 8 Since this letter refers to events that have taken place even

11:05:16 9 past the date indicated in the footer, such as a declaration

11:05:22 10 given on 26 November 2004, this clearly, and it very clearly

11:05:28 11 indicates, that this letter was written way past the relevant

11:05:32 12 time periods for the present case -- more precisely, at the

11:05:36 13 very end of 2004 at the earliest.

11:05:41 14 [11:05 a.m.]

11:05:42 15 Accordingly, the Prosecution submits that the honourable Bench

11:05:46 16 should not attach evidential value to this document.

11:05:53 17 [11:05 a.m.]

11:05:55 18 Very briefly, we will comment on the photograph of Thomas

11:06:02 19 Lubanga Dyilo in civilian clothes, <#EVD-D01-00023#>, and

11:06:08 20 would the court officer please display that photograph. As

11:06:16 21 I said, we will not spend much time on this photograph, yet it

11:06:22 22 appears, Mr President, your Honours, that one of the persons

11:06:25 23 on the photograph may or may not indeed be Thomas Lubanga

11:06:30 24 Dyilo, and the person is wearing civilian clothes.

11:06:34 25 [11:06 a.m.]

11:06:34 1 The evidential value of this document is limited. No date was
11:06:39 2 provided as to when this photograph was taken.

11:06:41 3 [11:06 a.m.]

11:06:43 4 And, in any event, this photograph does not even contradict
11:06:46 5 the Prosecution's case. The Prosecution did never suggest
11:06:51 6 that Thomas Lubanga Dyilo did not exercise his functions as
11:06:55 7 the President of the UPC in wearing civilian clothes, and the
11:07:00 8 Prosecution itself has tendered into evidence materials which
11:07:05 9 shows Thomas Lubanga Dyilo in civilian clothes.

11:07:10 10 [11:07 a.m.]

11:07:10 11 The Prosecution's point, however, is -- and I recall the
11:07:13 12 Prosecution's opening statement -- that Thomas Lubanga Dyilo
11:07:17 13 was a man with a double face, a politician and a military
11:07:21 14 commander. Here, the Defence has chosen to show just one face
11:07:28 15 and, in doing so, to show just half of the truth.

11:07:31 16 [11:07 a.m.]

11:07:33 17 Furthermore, Mr President, your Honours, as the Rwampara video
11:07:37 18 shows, where we have seen Bosco Ntaganda, at the time the
11:07:46 19 Deputy Chief of the General Staff in charge of military
11:07:49 20 operations of the FPLC, in the traditional local civilian
11:07:53 21 clothes, the Boubou, the Rwampara video shows that the fact
11:07:57 22 that somebody is wearing civilian clothes does not at all
11:08:00 23 exclude that the same person enjoys a high -- a very high
11:08:05 24 military rank.

11:08:06 25 [11:08 a.m.]

11:08:08 1 Mr President, your Honours, the last document I will address
11:08:14 2 in public session is the Save the Children's report "Going
11:08:21 3 Home" -- it's titled "Going Home" -- of February 2003,
11:08:26 4 <#EVD-D01-00001#>, and could the court officer please display
11:08:35 5 that report?

11:08:46 6 The Prosecution makes the following observations: can the
11:08:56 7 court officer please publish page 4 of the report? And I draw
11:09:01 8 the attention of the honourable judges to the first line under
11:09:06 9 the word "Acknowledgements", and here it says "North and South
11:09:15 10 Kivu". And this is also an observation that witness Peduto
11:09:27 11 made in cross-examination. This is a report about the Kivus,
11:09:34 12 thus it's not a report about Ituri. And, therefore, it
11:09:43 13 cannot -- certainly not in all aspects, and certainly not to
11:09:47 14 the extent the Defence has emphasised -- it cannot be
11:09:57 15 applicable to the situation in Ituri, and it is not.

11:10:05 16 [11:10 a.m.]

11:10:05 17 And there is no need, Mr President, your Honours, to
11:10:08 18 re-emphasise what has been said repeatedly, including by my
11:10:13 19 learned friends from the Defence, that the timeframe in this
11:10:17 20 report -- the time period covered in the report is not even
11:10:21 21 overlapping with the relevant timeframe for the charges.

11:10:25 22 [11:10 a.m.]

11:10:26 23 Accordingly, the Prosecution submits that the Pre-Trial
11:10:31 24 Chamber should not attach the evidential value to the report
11:10:35 25 the Defence wishes to have attached to it.

11:10:38 1 [11:10 a.m.]

11:10:40 2 Finally, Mr President, your Honours, and I keep my promise to
11:10:47 3 not extend my further observations beyond 10 to 15 minutes,
11:10:52 4 I want to address one further aspect in open session, one
11:10:57 5 aspect which is characteristic -- is very characteristic for
11:11:03 6 the last week's presentation of the Defence evidence.

11:11:07 7 [11:11 a.m.]

11:11:10 8 Members of the Defence team have repeatedly made
11:11:17 9 statements -- factual statements on behalf of Thomas Lubanga
11:11:24 10 Dyilo. The Defence team members have made factual statements,
11:11:29 11 and they have provided opinions. What means, Mr President,
11:11:35 12 your Honours -- what means in short that members of the
11:11:39 13 Defence team tried to become witnesses -- witnesses for Thomas
11:11:46 14 Lubanga Dyilo.

11:11:46 15 [11:11 a.m.]

11:11:47 16 The Prosecution submits that members of the Defence team
11:11:53 17 testifying for Thomas Lubanga Dyilo --
11:11:55 18 PRESIDING JUDGE JORDA (interpretation): With regard to this
11:11:57 19 point, I would be in agreement with the Defence now. I think
11:12:00 20 you are anticipating your final observations, Mr Withopf. We
11:12:04 21 need to have a break soon as well, please. Continue.
11:12:07 22 MR WITHOPF: That's well understood, and I'm actually
11:12:11 23 close -- and I'm very close to my submissions. The point
11:12:14 24 I wish to make is that the Defence -- or that the honourable
11:12:17 25 Bench, I do apologise -- that the honourable Bench should not

11:12:23 1 attribute any evidential value to any factual statements made,
11:12:29 2 or any opinion provided by the Defence team that is not
11:12:34 3 supported by evidence. And these factual statements and these
11:12:39 4 opinions, in the Prosecution's submissions, have not been
11:12:43 5 supported by any evidence.

11:12:45 6 [11:12 a.m.]

11:12:47 7 Mr President, your Honours, this concludes my observations in
11:12:51 8 open session. I have two further documents I wish to discuss
11:12:55 9 after the break in closed session, and it may take me about
11:12:59 10 20 minutes to discuss these further two documents.

11:13:04 11 PRESIDING JUDGE JORDA (interpretation): So it's now 11.15.

11:13:09 12 We'll take up again at 11.45 in closed session. I say for the
11:13:14 13 members of the public, the Court is adjourned.

11:13:18 14 THE USHER: All rise.

11:13:18 15 [11:13 a.m.]

11:13:23 16 [Short adjournment to enable proceedings to continue in closed
11:13:26 17 session]

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