

1 International Criminal Court

2 Trial Chamber I

3 Situation in the Democratic Republic of Congo - ICC-01/04-01/06

4 Case against Thomas Lubanga Dyilo

5 Hearing - Open Session.

6 Wednesday, 17 June 2009

7 The hearing starts at 9.36 a.m.

8 COURT USHER: All rise. The International Criminal Court is now
9 in session. Please be seated.

10 PRESIDING JUDGE FULFORD: Good morning. I'm sorry you've been
11 kept waiting, but the court computer system had a malfunction that
12 apparently has now been corrected.

13 Ms. Samson, the first thing we wish to address is the e-mail sent
14 by you last night, time 1647. Two observations. The first is, to the
15 extent that we wish to express a view on this, we take you back to the
16 transcript of yesterday in the English version, page 192, where we made
17 it abundantly clear there, in our view, that this witness is entitled to
18 proper and full advice in relation to the issue of self-incrimination.

19 Now, in your e-mail you have raised the issue of whether or not
20 he requires advice in relation to providing false information to
21 investigators. Now, that is separate to the issue of self-incrimination.
22 And if you wish for guidance from the Bench on this issue as a general
23 point, it is going to have to be done in the usual way with a written
24 filing with an opportunity to the Defence and the participants to respond
25 with a decision being given by us thereafter. We're not prepared to

1 give, as it were, extempore advice on an issue that doesn't directly
2 arise out of the indication that we gave yesterday morning.

3 The second thing that we want to say is we -- you should not take
4 our silence as indicating that we agree with the last sentence of your
5 e-mail, which refers to Article 69(1) and Article 70(1). Having
6 discussed this between us, we're not sure if we fully understand the
7 point that's been made, but to the extent that we do, we are doubtful as
8 to whether what you've set out accurately reflects the position. And
9 once again, if the Prosecution seek guidance on this it is going to have
10 to be dealt with fully and properly in the way that I've just outlined.
11 Now I hope that's clear.

12 MS. SAMSON: That's very clear. Thank you for that
13 clarification.

14 There is one other point, your Honour, if you will permit, that
15 may require clarification and your Honour can advise the Prosecution
16 whether or not it's most appropriately done by way of a filing in the way
17 in which you've set out, but it is an issue linked to the statement that
18 will be taken during the re-interview of Witness 15 once that process
19 commences. Discussions that we have had internally in terms of the
20 solemn undertaking that may be made has risen -- has caused a question to
21 arise in our minds as to whether or not the Chamber is of the view that
22 the witness remains under oath for the purpose of the out-of-court
23 interview and the new statement that will be taken. He has of course
24 made a solemn declaration before the Chamber, his testimony, should he
25 re-appear and insofar as he gave testimony yesterday is subject to

1 sanctions for intentionally being made under false -- a false basis.

2 PRESIDING JUDGE FULFORD: I think summarizing it, you're really
3 asking whether the process of giving a further witness statement is an
4 extension of his evidence under oath in the witness box; is that right?

5 MS. SAMSON: That's correct.

6 PRESIDING JUDGE FULFORD: I'll take a moment.

7 (Trial Chamber confers)

8 PRESIDING JUDGE FULFORD: Ms. Samson, we are prepared to help you
9 on this. Our firm view is that his evidence under oath is his evidence
10 under oath in this courtroom before us. When he leaves the courtroom, he
11 is no longer bound in what he says and does by the oath that he took
12 before us; otherwise, there could be absurd results. Yes. Thank you
13 very much.

14 MS. SAMSON: I thank you for the clarification.

15 PRESIDING JUDGE FULFORD: This is our oral decision on the
16 application by certain victims to examine Mr. Garreton.

17 Submissions.

18 Mr. Walley (document 1939) applies to examine Mr. Garreton on
19 the economic and political factors that influenced the conflict in Ituri,
20 along with certain general issues concerning the recruitment of child
21 soldiers. By way of detail, he seeks to address the economic interests
22 of various public and private individuals who contributed to this
23 conflict and their objectives, and the support they gave to the warring
24 parties; the extent of any profit they made from their involvement and
25 the destination of their gains; the general practice of recruitment of

1 child soldiers in the DRC and particularly in Ituri, and their living
2 conditions in the training camps; and the role of foreign powers in the
3 phenomenon of child recruitment.

4 By way of justification for this application, he argues that
5 victims have an interest in establishing the context in which these
6 events occurred, and he suggests they have a legitimate interest in
7 arriving at the truth, not only as to the events they endured, but also
8 as regards the underlying causes of the conflict.

9 Mr. Keta filed a similar request (document 1943), in which he set
10 out his wish to examine Mr. Garreton on the ethnic character of the
11 conflict; the origins of the conflict in Ituri; the conflict's local or
12 international nature; the exploitation of natural resources in Ituri; the
13 material damage caused by the conflict, and particularly in the Mahagi
14 region; the manner in which child recruitment was carried out (forcibly
15 or voluntarily); the identity of the armed groups or forces that were
16 involved; and the psychological harm inflicted on the victims of child
17 recruitment.

18 He submits that victims have an interest in examining this expert
19 in order to establish that the enlistment, recruitment, and use of child
20 soldiers extended beyond the Bunia region, particularly to Mahagi.
21 Further he argues that his clients have an interest in establishing the
22 general context of these alleged crimes.

23 The Prosecution does not oppose either application.

24 The Defence resists both requests, and it set out its arguments
25 during the hearing on the 12th of June, 2009 (transcript 191, page 61 and

1 following). It submitted that since the matters dealt with by the expert
2 are of general interest, they do not engage the personal and individual
3 interests of any of these applicants. It is submitted that the
4 individual interests of particular victims cannot be merged with the
5 general interests of a wider community. It is suggested that the
6 "general interests" described in these applications are better addressed
7 by the Prosecution and that victims should not become a secondary body
8 which deals with matters of public concern. It was argued that some of
9 the areas covered by the victims' requests are in any event not dealt
10 with by Mr. Garreton in his report (e.g. questions directed at the
11 economic applications of the conflict and the living conditions of child
12 soldiers in the camps, as well as the detail of the proposed examination
13 concerning the victims of crimes committed by the UPC and the harm
14 suffered by child soldiers).

15 Mr. Walley, by way of reply, argued that as an expert on
16 context, Mr. Garreton has not been called to give evidence on the guilt
17 or innocence of the accused, but rather he will address general issues in
18 order to provide the Court with a better understanding of the relevant
19 context. He contended that even though Mr. Garreton's testimony is of
20 general interest, extending beyond the victims he represents, their
21 personal interests are also engaged by his evidence. He further argued
22 that Article 68 does not require victims to show that they have an
23 "individual interest" in the evidence, but rather that their interest is
24 "personal." Therefore, in his submission, his clients are personally
25 affected by the crimes in question and they have a forensic interest in

1 the context within which these crimes occurred; the latter had a direct
2 impact on their lives. Accordingly, it is argued that their personal
3 interests are to be distinguished from the more general areas of public
4 interest that are the responsibility of the Prosecution (transcript 191,
5 page 65 and following).

6 Mr. Keta suggested that while the general interest of the
7 Prosecution is to demonstrate that crimes were committed, the individual
8 interest of victims is particularly focused on the damage that has been
9 caused to them, as well as in reparations; they wish to establish a
10 causal link between the crimes and the harm experienced by individual
11 victims. He contended that before addressing the twin issues of damage
12 and reparations, it is important to understand the context in which these
13 events unfolded. He indicated that he will not seek to go beyond the
14 scope of Mr. Garreton's report, although by way of questioning he may
15 compare the reports of Mr. Prunier and Mr. Garreton on certain issues in
16 order to achieve clarity (transcript page 191, page 68 and following).

17 The previous rulings and the approach of the Chamber.

18 In its Decision on victims' participation (document 1119, 18th of
19 January, 2008, paragraphs 96 to 100) the Chamber concluded that in order
20 to participate at any specific stage in the proceedings, the victim under
21 consideration shall show, in a discrete written application, the reasons
22 why his or her interests are affected by the evidence or issue then
23 arising in the case and the nature and extent of the participation they
24 seek. The Chamber affirmed that the question of whether "personal
25 interests" are affected is necessarily fact-dependent and that

1 involvement in or presence at a particular incident which the Chamber is
2 considering, or if the victim has suffered identifiable harm from that
3 incident, are examples of the factors that the Chamber will be looking
4 for prior to granting the right to participate at any particular stage in
5 the case. The Chamber further stated that a general interest in the
6 outcome of the case or in the issues or evidence the Chamber will be
7 considering at that stage is likely to be insufficient.

8 Throughout the trial, participating victims have been granted the
9 right to examine a variety of witnesses and some of them questioned the
10 other expert witnesses who have been called (e.g. Elisabeth Schauer, who,
11 as with Mr. Garreton, is an expert of the Court and the experts on teeth
12 and bone development). Ms. Schauer was appointed to give expert
13 testimony on the trauma experienced by victims and generally on the
14 circumstances of children who were recruited (transcript 166, the 7th of
15 April, 2009). It is of note that Ms. Schauer's instructions were, in
16 part, based on questions submitted by the parties and participants,
17 following the Chamber's request for observations on the issues that
18 should be dealt with by this expert witness (documents 1559 and 1773),
19 and the victims have made joint submissions on the questions to be put to
20 the expert witness on names.

21 Analysis and conclusions.

22 The Appeals Chamber (document 1432, paragraph 62) has indicated
23 that:

24 "Once the charges in a case against an accused have been
25 confirmed in accordance with Article 61 of the Statute, the subject

1 matter of the proceedings in that case is defined by the crimes charged."

2 It has further established (same document, paragraph 62) that:

3 "The parameters set forth in the charges define the issues to be
4 determined at trial and limit the Trial Chamber's authority to the
5 determination of those issues."

6 The Chamber, by instructing Mr. Garreton, has indicated its
7 interest in establishing the underlying context in which these alleged
8 crimes were committed. This exercise may lead the Chamber to investigate
9 facts and events outside the time-frame of the charges. In the view of
10 the Bench, it is appropriate to explore matters of history in this way,
11 solely to assist on the issues that are to be determined in this trial
12 (i.e., the crimes charged) by placing those issues in their alleged
13 factual context. In the view of the Chamber, Mr. Garreton should be able
14 to contribute to this endeavour.

15 Given these issues are to be investigated in this case, the
16 participating victims, in the judgement of the Chamber, have an undoubted
17 interest in setting their personal experiences, and the harm it is said
18 they individually experienced, in their true historical, economic, and
19 social context, which is, inter alia, the underlying circumstances in
20 which the alleged crimes of enlisting, recruiting, or using child
21 soldiers were committed. Therefore, the victims are entitled to explore
22 such aspects of these background matters as are relevant to each of them
23 provided, and to the extent, that the areas are relevant to, and are of
24 assistance in, establishing the context in which the alleged crimes have
25 been committed. Although their personal interests may coincide with

1 those of others - possibly many others - that factor does not undermine
2 the merits of these applications; their interests have to be personal,
3 but they do not have to be unique or singular. However, that said, the
4 victims must apply the instruction given by the Chamber in its Decision
5 on victims' participation, set out above, that "a general interest ...
6 in the issue or evidence the Chamber (is) considering ... is likely to be
7 insufficient" in order to participate. It is critical that the areas of
8 context and historical background have real relevance to the victims on
9 whose behalf the questioning is being conducted.

10 In particular, the Chamber is persuaded, put generally, that
11 these victims have demonstrated that they have a general interest in
12 exploring the following matters within the framework of the charges (to
13 the extent that they have not already been covered by the witness's
14 earlier testimony):

15 The economic, ethnic, and political underpinnings of the conflict
16 in Ituri, and its origins; the economic interests of those principally
17 involved, the role they played, and the identities of the relevant armed
18 groups; the extent to which individuals profited from the conflict and
19 the destination of any financial or other gains, together with the
20 exploitation of natural resources in this context; the general practice
21 of recruiting child soldiers in the DRC, including Ituri, whether it was
22 voluntary or enforced and the living conditions in the training camps;
23 the role of foreign powers in the use of child soldiers, and the extent
24 to which the conflict was national or international; and the damage
25 caused by the conflict (including the psychological harm inflicted on

1 children), particularly in the Mahagi region.

2 This questioning must be confined to matters within the expertise
3 of Mr. Garreton, although the issues canvassed do not necessarily have to
4 have been set out in his report. Therefore, the examination may go
5 outside the ambit of the written report, so long as the issues raised
6 fulfil the criteria for questioning by victims.

7 Accordingly, this examination by participating victims will be
8 confined to: (i) the issues and areas in which the victims have a
9 personal interest; (ii) the context and history which is relevant to the
10 charges the accused faces; and (iii), the matters within the expertise of
11 Mr. Garreton. To date the questions by the representatives of victims
12 have been proportionate, relevant, and focused, and notwithstanding the
13 wide range of issues raised by these applications, this approach must be
14 maintained.

15 This observation applies particularly to Mr. Keta's suggested
16 comparison, by way of questioning, of the reports of Messrs. Garreton and
17 Prunier. Counsel must ensure that questioning is not used as a
18 substitute for advancing submissions, when the latter is the more
19 appropriate course to adopt. Whilst in principle this tactic is
20 legitimate, it must be used economically.

21 That completes our oral ruling on that issue.

22 Finally before Mr. Garreton is called, there are two issues that
23 we need not to discuss with counsel but just to flag up. The first is
24 that at a convenient moment, either today or tomorrow, depending on how
25 Mr. Garreton's evidence unfolds, we propose to hold a short ex parte

1 Status Conference with the Defence only being present to discuss issues
2 of timing. Unless we hear from Maitre Mabilille to the contrary, we will
3 assume that she is in a position, either today or tomorrow, at least in
4 general terms, to discuss those issues with the Bench, as we say, on an
5 ex parte basis.

6 The second is some time ago we requested feedback from the
7 Registry in relation to an issue that arose as regards information which
8 was inadvertently distributed publicly which should have remained private
9 which may have affected the security position of a particular witness.
10 To date we have not had a report from the Registry on this issue. That
11 must be furnished to us by 9.00 a.m. tomorrow morning.

12 Ladies and gentlemen, is there anything else that anybody wishes
13 to raise before Mr. Garreton comes into court?

14 Maitre Mabilille.

15 MS. MABILLE (interpretation): I would like to make a point with
16 respect to the previous witness. I did not take the floor immediately
17 because my colleague had sat down and -- but can I make that point very
18 quickly now or would you prefer -- all right.

19 I wanted to tell you the Defence is certainly concerned that the
20 previous witness should be heard rapidly and the witness not be able to
21 think that his turnaround has led to disapproval. The decision to refuse
22 to uphold statements that were not exact is certainly a difficult one.
23 Therefore, I believe that by dragging out the time we take before
24 listening to the witness again, we end up by making this even more
25 difficult for the witness.

1 We are therefore concerned that this witness should be heard
2 again as quickly as possible. I would like to add that something upset
3 us, if I may dare say so, is the fact that should my colleague intend to
4 make a filing to -- we are supposed to answer. So we are not going to
5 hear this witness again before a few days, and in my opinion, this is not
6 really reasonable given the situation.

7 Those are the points I wanted to make.

8 PRESIDING JUDGE FULFORD: Maitre Mabilille, thank you for that
9 intervention. I'm going to deal with it very shortly, and only to say
10 this: There is no doubt but that the process of taking a further
11 statement from the witness should be concluded as speedily as is
12 reasonably possible. It is highly undesirable for everyone in this case
13 for this issue to be allowed unnecessarily to drag on.

14 Accordingly, if they haven't already been made, arrangements need
15 to be put in place instantaneously for the witness to receive advice in
16 relation to self-incrimination, and as soon as that process is complete,
17 if the witness is willing to provide a further statement, that process
18 also should begin immediately and should be conducted with all reasonable
19 dispatch. I think it's unnecessary to say anything else.

20 We expect the Prosecution to inform us if anything occurs which
21 indicates that this process is going to take longer than one may
22 otherwise understandably have assumed. And so, Ms. Samson, you're under
23 an obligation to get back to the Chamber if for some reason this
24 procedure becomes protracted.

25 MS. SAMSON: Yes, your Honour, we will do so. Just so that the

1 Chamber and the Defence and participants are aware, yesterday the
2 Prosecution has been liaising with the Victims and Witnesses Unit during
3 the course of the entire afternoon with a view to preparing the logistics
4 in relation to the re-interview. And we are now certain of a location
5 that is protected. We now know the language in which the interview will
6 take place. We are securing the interpreters this morning. The team of
7 investigators that will be conducting the investigation has been composed
8 and they are currently getting themselves up to speed with the content of
9 that interview. The -- a lawyer has been secured by way of Victims and
10 Witnesses Unit to deal with the issues that may arise in
11 self-incrimination. So the process is proceeding at a pace that, we
12 would submit, is as quick as possible and there's no intention to delay
13 the process in any way.

14 The investigators who will be taking care of the issue need time
15 to prepare and they propose that that be done during the course of the
16 day today, and that once the final arrangements are secure logistically
17 that we could commence that re-interview process, witness willing,
18 tomorrow morning. The witness will be advised today that he can have
19 access to the counsel that was proposed yesterday afternoon.

20 PRESIDING JUDGE FULFORD: Thank you.

21 One issue, Ms. Samson, that will need to be considered is, by
22 both the Prosecution and the Defence, is that - of course it all depends
23 on the decision you take as to whether or not you continue to rely on his
24 evidence - if the Prosecution do not call him, I have no idea whether you
25 will or not, then we will have to consider whether, if the Defence wish

1 to call him, he should be called now, given that he is in The Hague,
2 called by the Defence now, or whether that should wait until an
3 appropriate moment during the course of the presentation of the Defence
4 evidence, but I don't invite submissions now. We need to get on with
5 Mr. Garreton, but that is a bridge that we may have to cross within the
6 next few days. Thank you.

7 Mr. Garreton, please.

8 (The witness entered court)

9 PRESIDING JUDGE FULFORD: Good morning, sir. I'm extremely sorry
10 that we've kept you waiting, but we had some administrative matters to
11 deal with first of all. Can I ask whether you, via the interpreter, are
12 able to hear everything that I'm saying? Good.

13 Before we do anything at all, I'm afraid I must set out a few
14 ground rules for your evidence in this sense. As I know will be fully
15 clear to you, we are assisted by interpreters and transcribers, who work
16 hard and diligently, but we make their life extremely difficult if those
17 of us who speak in court speak too quickly. Additionally, and this is
18 probably the worst sin that either counsel, Judges, or witnesses can
19 commit is if two of us speak at the same time. So can I ask you, however
20 artificial it may be, to speak no quicker than I'm speaking now, so as to
21 give the interpreters and the transcribers an opportunity to get down
22 reliably and accurately everything you say.

23 The other thing is that when a questioner puts a question to you,
24 can you pause just momentarily before coming in with your answer so that
25 the stenographers can have an opportunity of getting down the end of your

Witness: Witness DRC-CHM-WWW-0002 (Open Session)
Questioned by the Court

Page 15

1 answer -- sorry, the end of the answer before they embark upon the
2 beginning of the question.

3 If at any stage you see me rather bizarrely waving my hand like
4 this, it is a gentle encouragement to you to slow down.

5 Now, can I ask you, first of all, to read out the words that I
6 hope have been provided to you on a card which should be in front of you.
7 It hasn't yet been provided? Can you check? Excellent. Sir, can you
8 just read that out loud and it's your solemn undertaking to the Court.

9 THE WITNESS (interpretation): Should I stand?

10 Your Honour, I solemnly declare that I will tell the truth, the
11 whole truth, and nothing but the truth.

12 PRESIDING JUDGE FULFORD: Thank you very much indeed.

13 WITNESS: WITNESS DRC-CHM-WWW-0002

14 (Witness answered through interpreter)

15 Questioned by the Court:

16 PRESIDING JUDGE FULFORD: Can I ask you to give your full name to
17 the Court.

18 A. My name is Roberto Garreton and I am a Chilean lawyer.

19 PRESIDING JUDGE FULFORD: And I think, Mr. Garreton, you very
20 helpfully provided a report for the Court which is dated the 27th of
21 January of this year.

22 A. That's correct, your Honour.

23 PRESIDING JUDGE FULFORD: And can I ask you whether to the best
24 of your knowledge and to the best of your professional skill and ability
25 that report is accurate and reliable?

Witness: Witness DRC-CHM-WWW-0002 (Open Session)
Questioned by the Court

Page 16

1 A. It is accurate, it's reliable, but when I started preparing my
2 report I did observe that there were a few errors concerning the dates in
3 some of the documents, but it was already on the internet and I was not
4 able to correct that.

5 PRESIDING JUDGE FULFORD: At a convenient moment during one of
6 the adjournments, I will ask you to point out to the Court Officer those
7 dates that you noted as being inaccurate so that we can find a mechanism
8 for making an appropriate amendment.

9 Mr. Garreton's report will therefore become part of his evidence.

10 Can I next ask you, sir, whether the curriculum vitae that you
11 provided, whether that also is accurate and reliable to the best of your
12 knowledge?

13 A. Yes, your Honour, it is accurate.

14 PRESIDING JUDGE FULFORD: That also will become part of the
15 evidence of this witness.

16 Now, sir, I hope it's convenient to you. It's certainly been of
17 assistance to us with previous expert witnesses, if at this stage rather
18 than me asking you a series of questions to which you give answers, if
19 you could use however long you feel is appropriate, 20 minutes, half an
20 hour, or longer if you need, to summarize really in your own words what
21 you consider to be the main elements of your report and your evidence
22 based on what you know about the scope of the trial that we're
23 conducting. In order to perform that undertaking, if you're able to do
24 it, you are of course entitled to rely on any written notes that you've
25 brought with you and any other documentary material. So you're entirely

1 free to follow your own course and to use such aids as will facilitate
2 your evidence.

3 So if you could take your time, remember what I said about the
4 speed of delivery, and I'm now formally going to ask you to give your
5 presentation, as I say, if that is convenient to you.

6 A. Thank you very much, your Honour. Thank you to the Court for
7 giving me this opportunity to share with you my knowledge as a former
8 Special Rapporteur for the UNHCR in the country which was known as Zaire,
9 now known as the Democratic Republic of Congo. So I took the liberty of
10 bringing some of my notes with me. These are essentially the report that
11 I submitted to the Court, and as much as possible I shall try to correct
12 some of the minor errors that I noted but I also wanted to give
13 additional information. I was asked that my report contain about
14 20 pages, but I realised that my final report was closer to 50 pages. So
15 I had to reduce the size of my document, and as a result, some important
16 elements have been left out but I would like to add those missing
17 elements here today.

18 I would also like to thank the Court for giving me the
19 opportunity of expressing myself in my mother tongue, Spanish. I do
20 speak French, I don't speak English, but I feel much more comfortable
21 speaking in Spanish.

22 In order to understand what is going on in the situation in the
23 Great Lakes region, I feel is that we have to go back in rather remote
24 history. I do know, your Honour, that I'm here as a contextual witness.
25 I'm supposed to offer background information and not the facts themselves

Witness: Witness DRC-CHM-WWW-0002 (Open Session)
Questioned by the Court

Page 18

1 as concern the accused which occurred later in the piece than my mandate
2 as Special Rapporteur. Therefore, I will refer to context and the
3 context has to be understood in relation to the context before the Berlin
4 Conference of 1885 when the -- when the country's boundaries were drawn.

5 Your Honour, in the region in question I am going to try to show
6 here on this map that you can see the region of Rwanda, the kingdom of
7 Rwanda Burundi included part of what is today the DRC. Is the screen
8 working?

9 PRESIDING JUDGE FULFORD: (Microphone not activated)

10 A. Fine. The Kingdom of Rwanda-Urundi included part of what is
11 today the Democratic Republic of Congo. In the map you can see a few
12 words like Goma, which is next to Rwanda. Further north, you can't see
13 it on this map because it's a small map, but we can see the regions of
14 Rutshuru or Masisi or Walikale and these were the part of the Kingdom of
15 Rwanda-Urundi.

16 In the Berlin Conference this -- these borders, these natural
17 borders, were not respected and this, I feel, is one of the major causes
18 of the tragic events that we came to learn of later. Therefore, in this
19 region currently known as Congo there were already people known as -- is
20 everything okay, sir? There were people known in the Congo as
21 Banyarwanda. "Banyarwanda" means "people from Rwanda." And these people
22 from Rwanda, Tutsi and Hutus, were there although they weren't considered
23 Congolese. There was an ethnic difference between Banyarwanda and the
24 others, notably the Bantu people and the Rwanda people, such as the Hutus
25 who are also from the Bantu.

1 In that period of colonisation, part of the Rwanda-Urundi kingdom
2 came to be part of Belgian Congo. Let's not get into the history of
3 Belgian Congo, but part of this kingdom became part of the Congo and they
4 were seen as foreigners, but even though there weren't major rivalries at
5 the time, just as there weren't major rivalries between Congolese
6 ethnicities. There are about 400 different ethnicities in Congo. I'm
7 not sure of the exact number, but out of the 400 ethnicities and some
8 130 different languages and two ethnicities in this region and a third
9 one from other countries, which are the Twa or pygmies are also in the
10 region, these pygmies were very much a minority group; and moreover, they
11 did not have any major political influence in the region. They're
12 neither major victims nor trigger factors in the region. They are
13 victims but no one ever tried to eradicate pygmies, which was not always
14 the case in this tragic situation.

15 In this region - and now I'm referring to the
16 DRC - colonialization (as interpreted) on the part of Belgium saw major
17 migrations, notably from Rwanda to the DRC, and this was essentially in
18 the so-called Kivus, the North Kivu region, the South Kivu region, and
19 also to a lesser extent to the Katanga region which is further south.
20 The Katanga region is considered - and here in Europe it's called - a
21 scandalous geological phenomenon. It's an -- there is absolute wealth of
22 precious woods, metals, gold, diamonds. There is no oil but there are
23 all other kinds of mineral wealth in this region. It is a very rich
24 region and this is also a major factor in the conflicts. Do remember
25 that days after independence a war began in the Katanga region. With all

1 of its wealth, this region wanted to become independent from Congo, and
2 this occurred just days after independence, and after that there were
3 other wars of other natures.

4 In the Katanga region, too, there are small groups of Tutsi and
5 Hutus. After independence there were years of turbulence, the prime
6 minister Patrice Lumumba was murdered. This persisted until 1965 when
7 the well-known dictator Joseph-Desire Mobutu took over, Sese Seko took
8 over. As the years went by he added words to his name becoming Mobutu
9 Sese Seko Nkuku Ngbendu wa Za Banga. This means, in fact, the warrior
10 who flies from victory to victory leaving blood in his trail. He was an
11 extremely corrupt dictator. He was cruel. Like any dictatorship there
12 were periods of extreme violence and others of lesser violence, but after
13 1973, he was always the ally of Juvenal Habyarimana in Rwanda who was the
14 dictator who took power in Rwanda in 1973. They remained allies all the
15 time.

16 Mobutu with his huge power, thanks to his enormous country and
17 the backing of Western countries, from London to Vienna, from Helsinki to
18 Naples, all of Western Europe along with Rwanda and Mobutu -- I mean,
19 Zaire being as large as Western Europe, compared with Rwanda, always
20 talked about Rwanda as Zaire's little brother.

21 During Mobutu's dictatorship -- sorry, before Mobutu became a
22 dictator, I must talk about displacements of the populations from
23 Rwanda -- in particular from Rwanda, also from Burundi but to a lesser
24 extent, into the Kivu. Why did the population move in this way? First
25 of all, because there was excess population in Rwanda and Burundi. These

1 are very small countries in which population density is extremely high;
2 whereas Kivu is a huge region and population density is low. And given
3 the natural wealth in Kivu, Belgium needed to bring labour to be able to
4 exploit these huge natural resources in the interest of the colonizing
5 power.

6 As these population displacements occurred, 85 per cent were
7 Bahutu, 15 per cent Batutsis, those who had migrated into Kivu from
8 Rwanda and therefore increased the Banyarwanda population in the area,
9 the ones who benefitted from the best treatment and given the best land
10 were the Batutsi. They got the best land. They were given better access
11 to education, including access to Belgian universities, such as Leuven.

12 The Batutsi were the winners in the situation and the Bahutus
13 were, in fact, left the role of being farmers. And later this became the
14 huge difference between the two ethnic groups. The Batutsis claim that
15 they are wealthier because they work in the longer term. A peasant
16 simply sows and gathers his crop. A herdsman such as the Tutsi needs to
17 take care of his cattle and it's only seven years later that he will
18 actually benefit from his work. Therefore, I was told by a Bahema that
19 this was the rationale that explained why the Tutsi and the Hutu are so
20 different, this fact that the herdsmen have a longer-term approach to
21 life.

22 During -- sorry, well, once colonization ended and then we had
23 Mobutu at the helm in 1965, when he established his dictatorship, he
24 changed the name of the country, changed the name of rivers, of cities.
25 He launched a so-called Africanization initiatives and ruled in a very

1 authoritarian way.

2 In the Kivu region, there was already a significant population of
3 Rwanda -- who had come from Rwanda who had lived there before there were
4 actually borders between countries; others who had been brought to Kivu
5 by the Belgians; and thirdly, other Rwandese, people from Rwanda who had
6 left the country because of domestic developments. The government had
7 been overthrown in 1959, and note, and this is important, that when the
8 king, Kigeli V, was overthrown in 1959, a 5-year-old child, Kagame, like
9 many other Tutsi, fled into exile. A lot of them left for Uganda, others
10 for Tanzania, Zambia, Kenya, but primarily left for Zaire. But we'll
11 talk about the 5-year-old Kagame later on.

12 Therefore, a significant part of the population left for Congo,
13 and as this population moved into Congo, they were, in fact -- they
14 were -- they came into a region where there already many Tutsi who had
15 left Rwanda during the period of colonization or earlier. There were no
16 conflicts between Tutsi during this period. They more or less tended to
17 feel that they were all Banyarwanda, and solidarity with respect to the
18 other ethnic groups, the Temba, the Bemba and so forth, who tend to, in
19 fact, be more numerous in the south in Kivu.

20 Therefore, there were two or three groups. And then in 1973, a
21 coup d'etat was carried out by Juvenal Habyarimana, a new repression
22 against Tutsi and once again a flight of Tutsi into the Kivu region.
23 Accordingly, among the Banyarwanda the Batutsi remained a minority, but
24 they shared something with the Bahutu; they weren't Banyarwanda and
25 people here don't like us, we are being discriminated against whether

1 we're Batutsi or Bahutu. Whatever conflicts they had were settled in the
2 traditional African way, with the traditional chiefs or headsmen who
3 managed to solve most problems that did arise.

4 A significant problem arose because the nationality of
5 Banyarwanda was not precisely determined when independence occurred.
6 This led to huge conflicts since 1993, one year before the genocide
7 occurred in Rwanda, because in 1960, at independence, the Belgians had
8 handed out nationalities, whether Congolese, at the (indiscernible)
9 conference in 1960, on the eve of independence. So the Belgians said
10 that Banyarwanda were given Congolese nationality. I mean, a lot of them
11 had lived there for generations. They were given, therefore, Congolese
12 nationality. A law in 1960 -- 1971, under Mobutu, confirmed this
13 Congolese nationality and granted it to everybody -- all Banyarwanda.

14 1981 or 1982 the situation changed, and the new act retroactively
15 determined that Congolese nationality was granted to anybody who could
16 demonstrate that in 1885, nearly a hundred years beforehand, they already
17 were living in Congo. As a result, Batutsi, Bahutu, i.e., Banyarwanda,
18 lost their Congolese nationality with a retroactive effect, and they
19 could only get it back if they could demonstrate they had an ancestor who
20 was living in Congo nearly a hundred years beforehand. The 1961 law had
21 granted Congolese nationality collectively to all Banyarwanda people, but
22 the new law said no, Congolese nationality can only be awarded following
23 an individual request, and that sparked a problem since there was clear
24 discrimination. This was on political grounds and had nothing to do with
25 what felt the people who were living in Kivu, the zone that was most

1 affected by this decision since a lot of people had migrated into the
2 Kivu region. And until then people had got on reasonably well with one
3 another without any major clashes, and this decision created an
4 absolutely artificial conflict thanks to Mr. Mobutu's decision. Nobody's
5 ever been able to solve this problem. People were not able to vote in
6 the elections that were held and certainly did not meet any democratic
7 standard under the Mobutu regime, but in the Conference on National
8 Sovereignty held in 1990, something significant also occurred and needs
9 to be borne in mind.

10 Mobutu was protected by the west, Juvenal Habyarimana was
11 protected by the west, and defence of Central African against the
12 communist threat was seen as a priority. So this was a reality. It did
13 not matter whether these dictators were criminals or not. They were
14 ramparts of the West against the communist threat in Central Africa. I
15 mean, Congo is the third largest African country after Algeria and Sudan,
16 but Congo is a far more populated country.

17 In 1990 the wall of Berlin fell and the situation changed
18 radically for Mobutu. He was no longer a crucial player for the West.
19 Already in the West shame was felt given the crimes he'd committed. So
20 his status changed from being a darling of the West to somebody who was
21 hated in the West. Therefore, in 1990 nobody really cared as -- about
22 what Mobutu was doing. Until 1990, nobody had launched an investigation
23 into what was occurring in Zaire.

24 The first report on Zaire was drafted by myself in 1994. In 1994
25 they -- the French ambassador in Congo had been murdered and this

1 certainly played a role in the change of opinion in the West. They
2 murdered him in 1993 in the -- the French ambassador in Kinshasa, but no
3 scandal broke out at the time, as would have been the case had this
4 occurred later.

5 Mobutu, therefore, lost the influence as given in his power and
6 saw himself forced to launch some kind of democratic reform. In 1990,
7 when he realised that his power was endangered, he opened the possibility
8 of other political parties. Until then there was only one, the Popular
9 Movement for Revolution, the state-run party, but overnight he announced
10 that other political parties could be formed, and within a month more
11 than a thousand political parties were created in the country. He also
12 allowed several organisations to be created and you had two or three
13 thousands created in the next month. Demonstrations occurred in the
14 street. There was repression with dozens of people killed, and
15 ultimately this Conference on Nationality Sovereignty was opened and
16 representatives from all regions elected democratically were able to
17 attend. But the exception was, of course, Banyarwanda people who were
18 not allowed to take part in the vote or be elected and, therefore, could
19 not play a role in this conference. So the Conference on National
20 Sovereignty was summoned.

21 When I arrived in 1994 in Congo, the Congolese population was
22 happy and had the feeling that it was taking part in a political process
23 that was unprecedented. They were proud. This was a great success for
24 them, this National Conference on Sovereignty, and ended with a
25 transitional parliament chaired by the Catholic archbishop of Kinshasa

1 and he was a guarantee for everybody. The conference ended and left
2 aside for later the problem of Banyarwanda people. No solution was
3 taken. It was postponed. And actually Mobutu ignored all the
4 conclusions from the conference, and the conference, in fact, turned into
5 a show for the people and it had no real impact or result for anybody.

6 1993, in the region of Kivu, was a period when the tensions had
7 begun to rise and that was because the Kinyarwanda did not have a
8 political base. In some areas the Kinyarwanda were the majority over the
9 Congolese population, the Rutshuru and the Masisi. Unfortunately you
10 cannot see this on the map but they were in the north -- a little bit to
11 the north of Goma. The Kinyarwanda were the majority, the Kinyarwanda or
12 the Banyarwanda, but they had no access to power.

13 Furthermore, the person who had the greatest access to power was
14 a Tutsi who became the cabinet chief of Mobutu himself. He was Batutsi;
15 in other words, he was a Tutsi, Bisengimana. He had a great deal of
16 power, he was very close to the dictator, and within the Banyarwanda
17 community this inspired some jealousy. People began to ask for greater
18 power. The Bahutu felt that they were being edged away from power
19 because the Tutsi had Bisengimana close to Mobutu. And so a grouping of
20 farmers in Virunga, which is an enormous forest area, it is called
21 Virunga in the Congo, and in Rwanda I don't remember exactly the name of
22 this forest area, Rwenzori, something like that. I can't quite recall at
23 the moment. But this is a forest area where this gathering together of
24 peoples began to develop a political base. This grouping, this MAGRIVI
25 of farmers through the income from sale of their produce began to buy

1 weapons. And this was all taking place in 1993, a year before the Rwanda
2 genocide began.

3 In 1993, an attack took place in the market of Mantoto (phoen), a
4 small town where Hunde, Nande, Bayanga, Nyeyanga (phoen), Nyanga people
5 perpetrated an attack on the market. There was the Banyarwanda area and
6 in that attack somewhere between 3.000 and 6.000 people died.

7 During the period when I worked in the Congo - I must say I never
8 lived in the Congo but when I was working in the Congo - I noticed a
9 difference between this area and Latin America. In Latin America and in
10 particular in Chile, Argentina and Uruguay, each victim of the
11 dictatorship, an identity, a mother, a father, a home. What is so
12 painful in Africa is the magnitude of the figures involved. So many
13 people died. There are no names, no identification of the victims, and
14 yet the figures are always debatable. They vary by factors of a hundred
15 per cent sometimes. And I was not used to this phenomenon, at least in
16 terms of my experience in my country.

17 From that time, from the time of the attack in the Ngoto (as
18 interpreted) market, rivalries began to develop between Banyarwanda and
19 the Congolese groups or the ethnic groups of Congolese origin because I
20 think all of these groups could be characterised as Congolese. In April
21 of 1994 the Rwandan genocide begins. That genocide lasted some two
22 months, one and a half months perhaps, and at the end of that genocide,
23 that tragic genocide in Rwanda, the people responsible who were
24 fundamentally Bahutu sought refuge in neighbouring countries and they
25 arrived in Zaire. At the time, some 1 million, 1.2 million refugees

1 arrived in the Congo, not all of them in the Kivu region. I understand
2 that for North Kivu it was some 750.000 refugees who arrived, and Mr. --
3 your Honour, they established themselves some metres away from the
4 Rwandan border. I walked from the centre of Goma to the border with
5 Rwanda, I walked in ten minutes. So you can walk from Rwanda to the
6 centre of Goma in ten minutes alone, and this is where all these people
7 settled, 750.000 refugees from Rwanda. Among these people there were
8 people responsible for genocide and essentially they were members of the
9 Interahamwe. "Interahamwe" means in Swahili "those who attack together."

10 The original definition I was given of this word, "Interahamwe,"
11 however, was that, "those who kill together."

12 One way or another these are terrorist groups working in the
13 service of their own ethnic group and against the Tutsi, not against the
14 Congolese, they targeted the Tutsi. It is impossible to claim, as did
15 the Government of Rwanda, that the 700.000 refugees arriving in North
16 Kivu or the 1.2 million refugees from Rwanda were all Interahamwe and all
17 responsible for genocide. Because in the 1.2 million you cannot claim
18 that there were no Tutsi and all of those people were responsible for
19 genocide. That is not the case. Yes, there were people responsible for
20 genocide among them, and many, some 20 per cent perhaps, and that is a
21 shocking figure in itself, they were also members of the Rwandan armed
22 forces of Habyarimana's government. They were also soldiers, and they
23 reached a safe asylum in the Congo in cars, a collective movement of
24 people arriving with their goods upon them and they also arrived with
25 weapons. And as I said, they settled only metres away from the border.

1 Yes, there was a lake between them and Rwanda territory proper but metres
2 away from the border. Among them were Interahamwe, and these people
3 intended to continue the genocide perpetrated in Rwanda, looking for
4 people who could potentially act as witnesses against them in a trial.

5 Secondly, these people joined together with the MAGRIVI, the
6 grouping of farmers formed by Bahutu who had lived for many years in the
7 Congo because they were all of a similar ethnic origin and they targeted
8 the Batutsi. In Zaire you had had Batutsi living since well before the
9 colonial period, during the colonial period, even arriving since the
10 1950s, even since 1993. And here there is a word that hasn't yet been
11 mentioned. These people also committed crimes in Uganda and that was
12 because Uganda had trained the Rwandan Patriotic Army of Tutsi refugees
13 exiled in Uganda since 1959. And so the persecution continued
14 persecuting Ugandans by reason of the support they had given to Kagame.
15 And there is another aside to be added here.

16 The presence of Uganda in these Congolese conflicts, if not
17 direct, was at least an underlying factor. And why was it an underlying
18 factor? Firstly, because the sequence of power in Uganda was Idi Amin
19 Dada, an ally of Mobutu -- an ally of Mobutu as evidenced by certain
20 picturesque anecdotes. Here you can see a lake, Lake Edward and Lake
21 Albert, traditional sources of the Nile. Here is Lake Edward and Lake
22 Albert to the north of it. Lake Edward here, Lake Albert here. In
23 Mobutu's era in Zaire and the era of Idi Amin Dada in Uganda, these lakes
24 were called Lake Mobutu and Lake Idi Amin Dada, such was the relationship
25 between these two men and the situation at the time.

Witness: Witness DRC-CHM-WWW-0002 (Open Session)
Questioned by the Court

Page 30

1 Secondly, following Idi Amin Dada, you had Mobutu and then you
2 had Museveni in Uganda. Museveni was born in Rwanda. There are people
3 who say that that is not the case, that his mother was a Tutsi, and that
4 Museveni's father was Hema, a Hema from Uganda. There is a close
5 connection between Uganda and Kagame. Kagame grew up in Uganda, he
6 arrived in the country as a child, he grew up in Uganda, and he
7 participated in the coup d'etat of Museveni against Mobote who was the
8 successor of Idi Amin Dada. He was a participant -- I don't know if he
9 was directly a participant as a member of the armed forces but he did
10 participate in that coup d'etat against Mobote --

11 PRESIDING JUDGE FULFORD: Sir, please forgive my interruption.
12 You're doing wonderfully, but part of my obligations to those who sit
13 upstairs is every so often to provide them with a break so that they can
14 gather their strength for the next session. So I'm very sorry to have
15 interrupted you. It will no doubt seem very rude. Good. Right --

16 THE WITNESS: No, no, no.

17 PRESIDING JUDGE FULFORD: I can see you understand. That's fine.
18 We're going to take a break now, sir, for half an hour. Can I stress
19 that this is all extremely useful, so thank you very much indeed, and
20 we'll look forward to seeing you again at half past 11.00. The usher
21 will now accompany you back to the witness waiting-room. Thank you very
22 much.

23 THE WITNESS (interpretation): Thank you very much, your Honour.

24 (The witness stands down)

25 PRESIDING JUDGE FULFORD: Two things shortly. The first is a

1 little earlier on in the remarks that I made that were directed at the
2 Registry, it appears that I have done them a disservice in that although
3 there hasn't been a report filed, which I had focused on, there appears
4 to have been an e-mail sent which addresses the issue. So they have
5 complied with our request, and to the extent of what I had said may
6 have -- may be taken as having implied some criticism, can I immediately
7 correct that.

8 The second is although I've been following the transcripts in
9 English and French very carefully and they seem to be working well, could
10 I ask the relevant individuals who are having to work, no doubt, very
11 hard this morning to let the Court Officer know whether working
12 conditions are at least sufficiently reasonable because I will obviously
13 give further directions to the witness if this is proving really too
14 burdensome.

15 Thank you all very much. We'll sit again just after half past
16 11.00.

17 COURT USHER: All rise.

18 Recess taken at 11.01 a.m.

19 On resuming at 11.32 a.m.

20 COURT USHER: All rise. Please be seated.

21 PRESIDING JUDGE FULFORD: Maitre Mabilie, thank you very much for
22 the informal indication that you've given in relation to the timing of
23 the ex parte Status Conference which we will of course now list tomorrow
24 rather than today for your convenience. We understand that there are
25 some matters that you would wholly understandably wish to discuss with

Witness: Witness DRC-CHM-WWW-0002 (Open Session)
Questioned by the Court

Page 32

1 Mr. Lubanga. We will obviously do everything we can to ensure that that
2 conversation can take place here rather than you having to travel to the
3 unit. Once the luncheon adjournment is over, could you at the beginning
4 of the afternoon session inform us as to approximately how long you think
5 you'll need by way of discussion here, and we'll then try and build in an
6 appropriate time for rising that will allow you to speak meaningfully
7 with the accused.

8 MS. MABILLE (interpretation): Yes, absolutely, I shall do that.
9 Thank you again, your Honour, for your assistance.

10 PRESIDING JUDGE FULFORD: Thank you, Maitre Mabilille.

11 Witness, please.

12 (The witness takes the stand)

13 PRESIDING JUDGE FULFORD: Mr. Garreton, thank you very much. As
14 I said when we rose, you're doing excellently, but can I ask you to make
15 sure that, as it were, in the heat of delivery you don't go any faster
16 than you are at the moment. So current rate of delivery is fine, but
17 please don't put your foot on the accelerator pedal. All right. Thank
18 you.

19 So returning then to where you had broken off, I think you had
20 just been dealing with the participation of Kagame in the coup d'etat of
21 President Museveni against Mobutu, who was the successor of Idi Amin. So
22 I'll leave you to pick up the narrative at that point.

23 A. (Microphone not activated)

24 THE INTERPRETER: Microphone, please.

25 THE WITNESS (interpretation): Excuse me, your Honour.

1 Indeed, we have not yet discussed Uganda. Uganda is a very
2 important player in all of this, firstly, because of the link between
3 Museveni and Kagame and the links between the two. Kagame as an exile in
4 Uganda had his life there and he supported Museveni in the coup d'etat in
5 1986 against Milton Obote. Museveni supported Kagame in the attempts to
6 recover, on the part of the Tutsi ethnia (as interpreted), Rwanda in the
7 events 1990 and 1991, and then in the successful attempt in 1994.

8 I will give you one item of information. For Kagame and for
9 Tutsi, the genocide did not begin in 1994, it commenced in 1990 --
10 including in the UN Security Council discussions for the creation of the
11 International Criminal Court, Rwanda was a member of the Security Council
12 and it insisted that the Court should start investigating the genocide
13 since 1990. But in the end, in the official dates of the genocide,
14 everything starts in 1994. But we should not ignore the fact that things
15 did not suddenly start with the fall of the presidential plane in 1994;
16 everything commenced in 1990 beforehand.

17 Furthermore, Uganda and Museveni had another kind of influence in
18 Congo. Why? Because the groups supporting Milton Obote were formed into
19 warring factions joined with Uganda. In Beni, in Lubero, in Bunia, in
20 the Ituri region, they were operating from this region in order to
21 conduct attacks on Museveni's government. Therefore, there was another
22 conflict at hand and that conflict was conducted in another manner, it
23 was a Congolese, or should I say Zairian conflict, against these NALU
24 guerilla forces, the National Ugandan Forces for Liberation, which were
25 fighting against the Ugandan government. Many deaths resulted and a lot

1 of insecurity resulted in the areas currently under investigation here in
2 this trial for which I am your witness.

3 In other words, Uganda was very involved. It was very involved
4 from early on.

5 Let us return to 1994. We have the refugee camps with Hutu,
6 Interahamwe, where the Army of Rwanda was present and there were quite
7 normal citizens of Hutu ethnicity who had also joined this wave and the
8 patriotic Rwandan army might have attacked the Hutus. Therefore, there
9 were Hutus and Interahamwes all mixed because of the attacks that had
10 been made previously on the Tutsi and they feared retaliation. So there
11 were attacks made against the Congolese Tutsis, Tutsis who were still
12 living in Rwanda during the genocide and against the enemy which was
13 Uganda, the protectorate of Kagame.

14 What was happening at the international level? Given this crazy
15 idea of having the refugee camps right on the border, Mobutu was asked to
16 distance the refugees from that area. Instead of having them close to
17 the border they wanted to send them 2.000 kilometres away on the
18 Atlantic -- on the Atlantic coast. Let's have these refugee camps a long
19 way from the border and not a matter of centimetres from the border.
20 These days these parties are enemies. Mobutu did not heed this call, and
21 moreover, it's easy enough to ask for the refugees to be moved, but how
22 do you move 1.2 million people? It's not an easy task at all, and what's
23 more, there is no funding to move these refugees. So they remained where
24 they were.

25 At the Cairo Conference which was to request this movement, this

1 took place, the UN Security Council requested it, the international
2 community asked Mobutu to move them, and the High Commissioner for
3 Refugees also asked for these refugees to be moved, other governments
4 made the same request: Please move these refugees. Mobutu turned a deaf
5 ear to this problem and crimes continued to be committed.

6 In North Kivu there was an absolute witch-hunt against the
7 Tutsis. These were committed by Interahamwe and the MAGRIVI, which was
8 the Hutu Congolese cooperative. Therefore, there were many Tutsis in the
9 North Kivu region who moved away. They sought refuge across the border
10 in Rwanda, the country of their ancestors, and that's why there were
11 refugee camps in -- I think it was called Unamun (phoen) or something
12 like that. I can't remember the exact name. This is because they were
13 being persecuted with the complicity with the Forces Armees Zairoises;
14 this complicity -- or should I say the non-compliance with the obligation
15 to protect refugees on the part of Mobutu in Zaire.

16 15.000 crossed the border, and I'm not saying this to blow my own
17 trumpet, but I do want to say how very latent all of this was. I had an
18 appointment, I had a mandate to investigate this Tutsi hunting that was
19 going on between the 8th and 10th of July, 1996. And July (as
20 interpreted) did not let me enter Congo to conduct the investigation --
21 sorry, this was June 1996. And I requested that all of these victims who
22 were seeking refuge in the refugee camps and the complicity between these
23 groups that I have mentioned, I wanted to have all of this investigated,
24 including the displacement of people, the victims, a number of deaths, et
25 cetera.

1 In North Kivu I added, Beware, this is also going to occur in the
2 South Kivu region. So I submitted my report at the end of that month and
3 I stated that these atrocities were on the brink of occurring in South
4 Kivu and indeed they did. On the 31st of August and the 1st of
5 September, there was an -- a hitherto unknown entity which was the
6 Alliance of Democratic Forces for the Liberation of Congo indeed carried
7 out a raid on the south of Kivu with the support of a Tutsi community
8 which were extremist Congolese long-established Tutsi communities. These
9 are Tutsis who had been there for several centuries on the Congolese
10 territory living in the hill country of Mulenge.

11 You can see this region in the map. You have to -- look, you can
12 see Uvira. Maybe I should show it on this map here. We can see Uvira.
13 Before Makobola they were in this region here. They were Tutsis living
14 in the Mulenge hills, so they were known as persons from Mulenge,
15 Banyamulenge. They supported Tutsis who came under this command of a
16 Congolese individual, and I haven't heard anything about this individual
17 for a long time, his name was Laurent-Desire Kabila.

18 Laurent-Desire Kabila, a former guerilla militia man, in the
19 period when Che Guevara was visiting the region, which Guevara
20 incidentally described as a rather unlikable character, not very serious,
21 well, this man was the spear-head of this armed group which invaded Congo
22 or Zaire in Uvira and then continued moving forward. And we shall soon
23 look at how this occurred.

24 The army was fundamentally a Rwandese army. It was the --
25 Kagame's Patriotic Rwanda Army, yet another military group who was

1 opposed to Mobutu, so the alliance between the Democratic Alliance for
2 Liberation of Congo and Zaire with two components who had two separate
3 enemies. First of all, the Congolese component headed by Kabila, whose
4 enemy was Mobutu. He had fought in the 1960s along side Che Guevara in
5 the Sevisi (phoen) region, also in South Kivu. His enemy was Mobutu,
6 Mobutu's dictatorship, and he was allied to the Patriotic Rwandese Army
7 whose enemy were the Hutu refugees in camps close to the border. Nobody
8 had moved them from there. They moved forward with the greatest ease, it
9 was absolutely staggering.

10 You have take into account, when you look at the map, look at
11 Rwanda, look at the size of Rwanda and look at the size of Zaire. Zaire,
12 as I said before, is as large as western Europe. Rwanda is probably as
13 big as Slovenia. You have to imagine that Slovenia were to invade Europe
14 and its troops reach Ireland within six months. It is absolutely
15 staggering. This can only be understood because of Mobutu's corruption
16 and his absolutely terrible armed forces who were at his service and not
17 of the people of Zaire.

18 So these troops started to move forward and - and this is an
19 extremely important point - it became clear that they intended to get rid
20 of the refugee camps. Huge massacres occurred. They were absolutely
21 horrifying, to the extent that at a given point in time, i.e., March in
22 1997, I was asked to carry out a special mission that had not been
23 foreseen in Congo. The person who asked me to do so was somebody we've
24 always liked very much, Sergio Vieira de Mello, who subsequently died in
25 Iraq when the United Nations office was attacked. He was the head of the

1 humanitarian affairs of the general secretariat.

2 There were rumours that there were up to 500.000 casualties in
3 these refugees camps. So I tried to carry out this mission, but
4 investigating in four days massacres related to around 500.000 victims,
5 helped by an assistant who was a lawyer -- I mean, I protested. I said,
6 This is absolutely impossible. No anthropologist, no archaeologist, no
7 legal forensic experts, I'm to carry out an investigation for four days
8 and then present a report. Therefore, I cannot do this.

9 But I did see mass graves in those four days and I did also see
10 something that is extremely interesting for this trial. When I tried in
11 these four days to go from Goma towards the north, towards the Walikale
12 region in a United Nations vehicle with the UN painted on it, with blue
13 helmets and with a United Nations jeep, a soldier told me, You cannot
14 drive through here, and we were unable to move forward. The soldier at
15 first spoke English. He was from Rwanda, trained in Uganda, i.e., a
16 Tutsi, and he was not 10 years old, and he stopped the United Nations
17 vehicle which was perfectly identified, that had been given
18 authorisation, not by Kabila who was somewhere else carrying out his war,
19 but by his number two, we had been given permission to go to Walikale
20 region, so the Walikale region where I needed to go because there had
21 been a lot of casualties in that area, and we could not drive past this
22 roadblock because a 10-year-old child with a submachine-gun was
23 threatening us and telling us, No, you may not go through. So this has a
24 lot to do with the issue of enrolment of child soldiers obviously.

25 In this war what did we manage to do -- an investigation

1 committee was set up, I was a member of it, they did not let us -- I mean
2 Kabila did not let me enter because he did not like at all the report I
3 wrote about the incident where the child soldier stopped me from driving
4 towards the north, and we can say -- we can see that this investigation
5 we had to carry out from Uganda -- from Rwanda, I apologise, since we
6 could not enter Congo, we drew up the following balance. From all the
7 testimony we have gathered 68.02 per cent of victims had been killed by
8 the FDLA or the Banyamulenge or their allies. The people could not draw
9 a distinction from a soldier from Rwanda or a Banyamulenge from South
10 Kivu because they were cooperating closely. 2.0 per cent had been killed
11 by the Rwandese army.

12 Now, these figures have obviously to be added together.
13 70 per cent had been killed by the FDLA and the Patriotic Rwandese Army.
14 4 per cent had been killed by Burundi, although they -- Burundi claimed
15 to never have entered the region. But there were also atrocities carried
16 out as always by the Zairian armed forces, they accounted for 17 per cent
17 of casualties, and by the armed forces Rwanda, I'm talking about the Hutu
18 armed forces, they counted for 10 per cent of casualties, and mercenaries
19 at Mobutu's service killed 1.5 per cent of these casualties. But as you
20 can see, the overwhelming majority of casualties were accounted for by
21 the Banyamulenge and the Congolese allies of the FDLA.

22 Kabila, since his troops accounted for most of the casualties,
23 banned any kind of investigation. Kabila, in this war that began on the
24 1st of September, 1996, on the 17th of May, 1997, reached Kinshasa and
25 took over in Kinshasa, and one of the things he said was that

1 Mr. Garreton will never again set foot in the territory of the DCR. So
2 he took over and the -- this war of a liberation tallied a huge amount of
3 victims, although an exact figure has never been quantified.

4 The Security Council appointed another committee chaired by a
5 prosecutor from Togo, Mr. Adela (phoen), who remained for ten months in
6 Congo but could not carry out any investigation whatever because Kabila's
7 government, still backed by Rwanda, still backed by Rwanda, as I said,
8 prevented him from doing so.

9 Kabila took over the helm in Kinshasa on the 17th of May, 1997.
10 That was a bloody day in Kinshasa. Any Hutu was chased throughout
11 Kinshasa and he set up a dictatorship with very similar methods to the
12 ones that had been used by Mobutu since 1965, a single-party
13 constitution, so-called Law 13 that established the status of his
14 government. It set out some dictatorial roles with a huge amount of
15 power given to him. Nothing had been foreseen should -- in the event of
16 his death. A garia (phoen) was also set up. Some rather odd standards
17 of a Cuban origin, the so-called -- similar to Cuba's Committees for the
18 Defence of a Revolution. Kabila had known Che Guevara but he had got
19 into power because of support of the United States and the United Kingdom
20 and Rwanda, the Tutsi in Rwanda. And this former Marxist actually used
21 techniques he had taken over from the Cuban regime.

22 But above all, you -- there were a lot of refugees from Mobutu's
23 dictatorship who had found refuge in Cuba and they came back to Congo to
24 set up these committees for the defence of the revolution.

25 So Kabila had a lot of power, but so did the Rwandese, the Tutsi.

1 This importance -- the influence exerted by the Rwandese meant that the
2 people after welcoming Kabila as somebody who had freed them from
3 Mobutu's dictatorship soon became very unhappy because several
4 ministries, several key civil service positions were held by Rwandese.
5 This led to strong political opposition, and after their fight against
6 Mobutu's dictatorship, in fact Kabila's reign lasted not -- lasted for a
7 very short period, i.e., ended on the 25th of July, 1998. There were a
8 lot of demonstrations in the streets against Kabila because of the
9 influence of the Rwandese in Congo.

10 In my opinion, something is very important that I forgot to
11 mention previously. In the first report I drafted with respect to what
12 occurred in 1995 -- I drafted in 1995 about what occurred in 1994, I
13 pointed out that one of the worst problems I had seen and believed could
14 lead to terrible consequences was the anti-Rwandese feeling you could
15 find in Zaire, not only in Kivu but also in the rest of the country. And
16 I quoted a sentence I had heard several times in Zaire: If you want to
17 move ahead in politics, you have to be anti-Rwandese. Once I was sitting
18 in a plane and a gentleman was in fact in my seat, and when I said,
19 Sorry, this is my seat, he said, No, sir, you are lying, just like a
20 Rwandese would. There was a very strong hostility towards the Rwandese
21 among politicians and among the most educated segment of the Zairian --
22 population in Zaire.

23 The fact that Rwandese had become ministers or people who had
24 dual nationality, whose nationality was ambiguous, somebody who had
25 worked in Rwanda, for instance, who had worked for the United Nations in

1 Rwanda as a Rwanda national -- Rwandese national for the United Nations
2 became one of Kabila's ministers and then actually ran in the
3 presidential election. Now, this really upset the -- what was now called
4 the Congolese. So on the 27th of July, 1998, Kabila decided to expel
5 Rwandese. He expelled them and they went on the 27th of July.

6 On the 2nd of August they came back, attacking Congo. A
7 mysterious plane flew over Congo without anybody intercepting it. This
8 should not be possible, but it left from Kangai (phoen) and flew all over
9 Congo, nearly reached the Atlantic Ocean, and then Nteseni (phoen), Ngoma
10 and so forth, they moved forward and that's -- the so-called Second War
11 broke out between people who had been Kabila's allies until the 27th of
12 July, 1998, and who on the 2nd of August became his bitter enemies.

13 Congo's reaction was to back Kabila. Kabila has to defend us was
14 the general feeling, but Kabila knew very well that he did not have any
15 army to rely on. But if he had taken over Zaire in six months, it was
16 not thanks to his army. It was thanks to the Rwandese army. Rwanda's
17 army had won the war.

18 So Kabila's reaction, as well as his government's, was to be very
19 aggressive verbally. One minister of Kabila's, Gerard Mombasi (phoen)
20 talked about the Rwandese as worms, as a virus, mosquitos, and this - and
21 is a well-known case - that a Belgian started legal proceedings against
22 him for trying to provoke racial hatred, and this case I believe has
23 ruled that the minister could not be judged because he was a minister at
24 the time when he made his comments. Rubbish, mosquitos, virus, the same
25 words that Juvenal Habyarimana's, the Hutu government used to talk about

1 the Tutsi, cockroaches. And now the same words were being used by Kabila
2 and his government, his allies, when they reached power.

3 So the war started, first of all, in Goma, close to the border
4 the Congolese democratic movement chaired by a former minister of
5 Mobutu's, Arthur Zahidi Ngoma who was rejected by the Rwandese who'd
6 reached Goma. They didn't like the idea that somebody who had been one
7 of Mobutu's henchmen should take over. Therefore, they removed him and
8 appointed somebody else, i.e., Professor Wamba dia Wamba. So this
9 movement disappeared and was replaced by the CRD (as interpreted).

10 Now, this presented a situation where all the Congolese Tutsi now
11 held power, power they had never held before, apart from Mobutu's former
12 secretary. Many of them had dual nationality or their status was
13 ambiguous. The population in eastern Congo began to suffer from another
14 dictatorship but this time headed by Rwandese, and they started to look
15 as Kabila as somebody who could be their liberator. Why? Because he had
16 expelled Rwandese (indiscernible) now come back with their armed forces.
17 Once more the Rwandese moved forward and practically conquered all of
18 eastern and north-eastern Congo from North Kivu down to more or less the
19 rest of the country underneath, apart from Katanga. They actually held
20 all the area I'm showing now on the map including Kasai. And this
21 occurred very swiftly.

22 Kabila had support at that time which he had not had when he was
23 governing under the Rwandans. At this point -- or with Rwandans in the
24 country. At this point he had a lot of popularity. In the east people
25 had looked at the situation with despair, and now they very much

1 supported him in the West. That was also the case. There were political
2 prisoners, there were incidents going on, but for the time being, people
3 had not complained about murders and massacres. Things would change as
4 time went by.

5 Within the RCD movement, a fracture emerged. Wamba dia Wamba had
6 to leave Goma and he established himself in Kisangani. At that time a
7 movement called the RCD, the Rassemblement Congolais pour la Democratie,
8 was set up. And that was the RCD/Kisangani headed by Wamba dia Wamba.
9 In Goma, Dr. Ilunga remained in power -- Dr. Ngoma, excuse me. In
10 November of the same year in another part of the country, in Gbadolite -
11 I'm looking for it now on the map, here it is on the border with the
12 Central African Republic - Jean Pierre Bemba, a person who is also being
13 held at the disposal of this court, formed the Movement for the
14 Liberation of the Congo, the MLC.

15 Jean-Pierre Bemba was a supporter of Mobutu, the son of Saolona
16 Bemba, the leader of the extremely wealthy Congolese business at the time
17 of Mobutu. Gbadolite was Mobutu's region. He had his enormous palace
18 there. I saw it in ruins, but it was an enormous palace, much bigger
19 than the palace of Versailles. Jean-Pierre Bemba formed an army under
20 the pretext of fighting Kabila who was in the south and was against
21 Mobutu. He began to advance towards the east with his troops and he took
22 a significant part of what constitutes the northern part of the
23 Democratic Republic of Congo, virtually the entire north of the country
24 was in the hands of the MLC, and the MLC entered into conflict with the
25 RCD-Kisangani. And here Uganda comes into play again. Uganda was

1 present in the Congo to fight the guerilla of the NALU and another
2 organisation, I think it was the AFD. I'm trying to remember what it
3 stands for, but in any case, two guerilla movements fighting against
4 Museveni.

5 Bemba was overcome above all by Ugandan forces and there were
6 clashes, very violent clashes, wherein Kabila was the common enemy. In
7 Kinshasa fighting began between movements. And in Kisangani this also
8 took place. There were three or four wars or conflicts, some greater
9 than others, in which the numbers of casualties do not involve Rwandans
10 or Ugandans, they involve Congolese, clashes on the 22nd of May, 1999;
11 the 15th of August, 1999, where the great majority of deaths were
12 Congolese; conflicts in May of 2002, in which on the RCD side, the
13 RCD-Kisangani, Laurent Nkundabatware was fighting, he is better known as
14 Laurent Nkunda, and in that year there were ongoing attacks against
15 Congolese populations in North Kivu.

16 In this conflict or in these conflicts Rwanda was fighting
17 Uganda, or rather, it was the Congolese rally for the Congolese democracy
18 and the MLC. In the NALU against Uganda conflicts, the Ugandan presence
19 was continually growing and this conflict exploded in the year 1999, in
20 June of that year, although there had been some prior clashes. There
21 were clashes in April, for example, which were forerunners to this
22 process and it was a Bahema-Balendu conflict at that point in the region
23 of Ituri. Ituri is within Djugu district in Orientale Province, and also
24 involved was the upper part of the North Kivu province where you have the
25 town of Beni and Lubero.

1 At this point it would be useful to consider how many conflicts
2 were taking place in the Congo and in the region. The conflicts were as
3 follows. Number one, the Government of the Democratic Republic of Congo,
4 Kabila, against the RCD-Goma, the Rassemblement pour la Democratie
5 Congolaise in Goma, so that was a conflict taking place in Goma.

6 Number two, the Rassemblement Congolais pour la Democratie
7 against the Movement pour la Liberation du Congo, MLC, this was taking
8 place or at least in part was taking place in Orientale Province where
9 you have the city of Bunia. It also took place in Beni and Lubero in
10 North Kivu.

11 Number three, the Government of Rwanda against the Interahamwe.
12 The Interahamwe are still there, they have not all been killed. There
13 were still conflicts in this region between the Government of Rwanda
14 helped apparently by the RCD against the Interahamwe.

15 Number four, the Government of Sudan, Sudan at this point,
16 against various opposition groups from the Sudan also present on the
17 Congolese border. And these opposition groups were also operating from
18 Congolese territory attacking the Sudanese government. You had armed
19 groups engaging in conflict also in Orientale Province in this context.

20 Five, the Government of Uganda against various armed opposition
21 groups from that country. Here again you have the conflict involving the
22 NALU, which is the National Army for the Liberation of Uganda, and the
23 Forces Democratique Alliees of Uganda, a guerilla group, again fighting
24 against the Ugandan government.

25 In the south you had more conflicts, another involved the

1 conflict of Burundi against the Front pour la Defence de la Democratie,
2 the Front for the Defence of Democracy. This is a conflict occurring in
3 the Congo, not precisely in the region we're dealing with.

4 Seventh conflict, the Government of Angola against the Angolan
5 Liberation Front.

6 Next, the Government of Rwanda against the Government of Uganda,
7 this is the conflict in Kisangani, and also tribal conflict between the
8 Hemas and the Lendus. And the final three conflicts I've mentioned took
9 place almost entirely in Orientale Province and North Kivu. These are
10 the conflicts which took place in the Congo at that time.

11 Then there was the invasion of Rwanda of the 2nd of August,
12 perpetrated by Kabila. He said before the international community that
13 he was being attacked. Judges know that that terminology is rarely used
14 in international legal circles, it is poorly defined, but Kabila was
15 alleging that he was under attack by -- from Rwanda, Uganda, and Burundi.
16 And so he called on other states for support in accordance with Article
17 51 of the United Nations Charter. And at that point, troops came in from
18 the Sudan, from Chad, Namibia, Angola, and Zimbabwe, I'm forgetting one
19 party here I believe.

20 The Security Council began to address this problem because it was
21 no longer a domestic conflict. We're not dealing with internal conflicts
22 in the plural either. They have become international conflicts. The
23 groups within the country, the non-state, internal parties involved were
24 from Rwanda, for example. You had the RCD-Kisangani, you had the --
25 Bemba's group, the MLC supported by Uganda; and on the other side, in

1 North Kivu, the RCD-Goma, supported by Rwanda. The conflict had thereby
2 become international.

3 The Security Council gave rise to a new element for debate here
4 by calling on the countries which had moved in to support Kabila's
5 government, the Government of the Democratic Republic of Congo, asked
6 these invited forces -- excuse me, addressed the forces invited by
7 Kabila, Sudan, Chad, and the other countries that I mentioned, to
8 withdraw from the country and also asked for the withdrawal from the
9 country of the non-invited forces.

10 This gave rise to horror in the Congo because the United Nations
11 was calling countries participating in the Congolese conflict uninvited.
12 I remember debate among ministers in Kabila's government but also in
13 civil society, among everybody in the Congo, and that was considered an
14 abandonment of the duty to protect the country and a presentation of
15 Kabila as -- or of the country as a victim of uninvited forces rather
16 than aggressive forces.

17 And so this led to an increasing feeling of support on behalf of
18 the Congolese community towards Kabila, and a rejection of the movements
19 in the north of the country from the east to the west of the RDC -- of
20 the DRC, excuse me.

21 In these conflicts, the events were as -- I would qualify them
22 internationalised internal conflicts. In discussion with the
23 International Committee of the Red Cross we talked about this description
24 as covering the enormous range of conflicts taking place in the country.

25 Let's turn now to what happened particularly in Orientale

1 Province. During a period in 1999, Wamba dia Wamba of the Rassemblement
2 Congolais pour la Democratie, RCD-Kisangani, was expelled and set up in
3 Bunia, where the third RCD faction was founded. We have RCD-Goma,
4 RCD-Kisangani, and now RCD-Bunia. Here the movement becomes increasingly
5 dependent on Ugandan support, and Bemba also counts increasingly on
6 Ugandan support.

7 When conflict broke out here or when incitements to conflict
8 arose, conflict between the Lendu and the Hema, this conflict was not a
9 naturally occurring clash. It was -- there was incitement. The violence
10 was extreme as a result of the support given to the Hema by the region's
11 occupying forces. Museveni is from the Hima ethnic group. There are
12 many versions of what that means. The Hima is not exactly the same thing
13 as the Hema, although some people say it is simply a difference in
14 pronunciation from one country to the next and the two ethnic groups are
15 in fact the same. I really cannot give an explanation for the situation,
16 but Museveni's ethnic origin -- or Museveni's ethnic group, excuse me,
17 was supporting the Hema.

18 These ethnic groups had lived together perfectly well. There had
19 been conflicts, particularly in 1911, but in 1993 there had also been
20 other clashes and in 1963 there had been clashes and also later. But
21 these conflicts had always been resolved successfully by traditional
22 chiefs. Now a foreign element came into play and that is the Ugandan
23 army, which was absolutely biased in favour of the Hema ethnic group.

24 They acted with a certain degree of arrogance, dividing Orientale
25 Province into two, creating a new Congolese province of Ituri -- a new

1 region, excuse me, I think that is the correct description. Orientale
2 Province was divided into two, the Orientale Province and Ituri region.
3 And the Hema were given power. The constant military presence of the
4 armed forces of Uganda in the streets gave rise to an atmosphere of
5 considerable violence. In this regard, in the report that I presented to
6 this Court, I based my information on the visit that I made to Bunia. I
7 would ask the Court to consult the full text of my report on the United
8 Nations web site. It's available in French and in English, a report on
9 the mission that I undertook in 2001 to Bunia, and that sets out the
10 conflict as it unfolded between these two communities.

11 I visited Bunia in 2001. It was a tragic visit. I was able to
12 observe things with my own eyes. For example, I was able to verify the
13 dreadful violence in the two communities, but in particular the Hema. In
14 the Hema community one key aspect was what is the ICRC doing, what is the
15 UN doing, because they felt that they were not protected, that these
16 other bodies were only protecting the Lendu. So I was able to see that
17 there was a lot of Hema presence in these different conferences that I
18 mentioned. They were seen as winners in the conflict because they were
19 richer, had more power, et cetera.

20 After that meeting I saw that the Bunia Catholic bishop, who is
21 of Hema origin, and who had with him the director of the seminary as a
22 partner and I could not understand this verbal violence expressed against
23 the UN. I had not spoken with them yet. I'd given my report about the
24 rest of the country and the impact on the Congolese people, but I had not
25 actually written anything or hardly anything about the actual conflict

Witness: Witness DRC-CHM-WWW-0002 (Open Session)
Questioned by the Court

Page 51

1 itself. There had been no further development on what I'd already
2 stated. But this aggression that was expressed with this vicar, he had a
3 paper in his hand saying, Oh, look what the UN is doing. But I saw that
4 he was very visceral in his expression against the UN. And when I was in
5 Kinshasa, I had a meeting with the papal representation in Kinshasa and I
6 warned him about what was happening in the east of the country in the
7 Catholic institution. And in that report I mentioned the words of the
8 bishop.

9 But I was also able to observe other facts that I had not
10 actually spoken with yet in my previous reports. In Beni -- in Bunia, I
11 saw holes that were empty in Bunia and Wamba had been using these holes
12 in the previous interior conflicts between the RCD-Bunia, and also in
13 this region with Mbusa Nyamwisi in his house. There was in the garden
14 holes in the ground where -- where there had been, they were no longer
15 there, prisoners held underground with a very small 20-centimetre
16 diameter hole, so very little air could get in, covered with dirt. These
17 were very damp and it was difficult to breathe. And in Beni, which I
18 also visited, there I interviewed Bemba who was the leader of that region
19 with the total support of the Ugandans, and there we saw the places where
20 English-speaking soldiers were living and they had been also using these
21 holes in the ground for similar purposes.

22 So I saw these with my own eyes, and then I was ushered away very
23 quickly from the area. So I could see with my own eyes that the violence
24 had occurred there, and I feel that it came more from the Hema side than
25 from the other.

1 I also had an interview at that time with Lendu people, and I met
2 the International Red Cross Committees, the ICRC. And I found that they
3 were not very forthcoming with information, but here they asked to speak
4 with me and they didn't give me a lot of information but they did give me
5 some elements of information. From there something dramatic happened. I
6 went back to Kinshasa, from there to Chile, where I finished drafting my
7 report. The report was published, and a CICR (as interpreted) vehicle
8 was attacked and the six occupants in the car, all from the ICRC, which
9 were a mixture of a Swiss woman, a Colombian, and some Congolese, they
10 were all murdered.

11 The ICRC version of events is that this was a result of my
12 report. You can understand how upset I was by this. This means -- my
13 defence was that the rapporteur has to speak the whole truth, but if that
14 report did lead to this, then we would have to find a way of creating a
15 report without endangering people involved in humanitarian activities.

16 After that the UN conducted an investigation into these events of
17 the deaths of the officials from ICRC, and it became clear that the
18 participants were from the Ugandan army which was the ally of the Hema
19 community.

20 In that report the United Nations stated that all the
21 interviewees on the Ugandan side or belonging to the Hema community had
22 all needed to understand that official humanitarian staff are not there
23 to defend the Lendu but are there to defend the whole region. In that
24 report there was a mention of Mr. Lubanga who was a sub-lieutenant. He
25 was mentioned in connection with these events. I remained in my position

1 of rapporteur for the rest of the year until I was appointed as
2 representative of High Representative Neil Robinson (as interpreted) for
3 the United Nations, the HCR, the High Commissioner for Refugees in the
4 Latin and Caribbean region. So I left my position as rapporteur and
5 became the representative of the commission for the HCR.

6 Let us move now to the situation of child soldiers. They were
7 still present in the ADL (as interpreted) war of liberation and I
8 remember -- I recall that I had already mentioned this
9 less-than-10-year-old child who blocked our way when we were going, and
10 we -- we didn't really know how old the child was, but we assumed he was
11 roughly 10 years of age. And from that moment onwards this element was
12 always present in my reports, but given the gravity of the situation,
13 particularly in this second war, second Congolese war -- I'm not sure if
14 we should discuss this now, your Honour, or whether we should get into
15 that this afternoon. Personally I've been speaking for such a long time
16 now that I am actually tiring.

17 PRESIDING JUDGE FULFORD: Mr. Garreton, I was getting close to
18 pressing my finger on the -- I was getting close to pressing my finger on
19 the microphone, because although the contribution you've made up until
20 now has obviously been extremely valuable, it has lasted slightly longer
21 than we'd intended and I think we may now have reached the stage where it
22 may be most profitable if we could continue by way of specific questions
23 from counsel, really set against the background that you have very
24 helpfully established to date.

25 If at the end of questioning you feel that there are any

Witness: Witness DRC-CHM-WWW-0002 (Open Session)
Questioned by the Court

Page 54

1 particular areas of real significance that have been omitted, we will
2 provide you with every opportunity to return to those before you leave
3 the witness box.

4 (Trial Chamber confers)

5 PRESIDING JUDGE FULFORD: Mr. Garreton, having had a discussion
6 with my colleagues, as an amendment, really, to what I said just now, we
7 wonder whether it may be more convenient for you, given you've been
8 speaking for quite a long time this morning, if we have a break now so
9 that, as it were, you can - I can see you nodding too, so you can marshal
10 your forces, as it were. And I think we need to reflect on whether you
11 want to complete this introduction in the way that you have been this
12 morning or whether it would be easier for you for Ms. Samson on behalf of
13 the Prosecution to, as it were, pick up from the point which you've
14 reached and to start asking you questions so that you can complete this
15 introduction in that way. We'll very much be guided by you as to which
16 you would prefer, whether to continue as you've been this afternoon or
17 whether you'd find it easier to have questions put to you by Ms. Samson
18 so she can take you through, essentially, to the end of your report.
19 Would you like to think about that over lunch or would you like to
20 respond to that now?

21 THE WITNESS (interpretation): Yes.

22 PRESIDING JUDGE FULFORD: We'll return to that after lunch, then.
23 Good. Thank you very much indeed.

24 Right. We'll take the midday break now. We'll sit again at half
25 past 2.00 this afternoon, and could the usher please take Mr. Garreton

1 back to the witness waiting-room.

2 Thank you very much indeed, sir.

3 (The witness stands down)

4 PRESIDING JUDGE FULFORD: Ms. Samson, two issues of
5 administration that I'm going to raise with you in relation to this
6 witness's evidence that I'd ask you to discuss at the bar, please, over
7 lunch. The first is that within both the French and the English
8 transcripts there are quite a few occasions where very understandably
9 names have been missed by the interpreters and by the court reporters.
10 One solution to this would be at an appropriate moment to give
11 Mr. Garreton a copy of the transcript so that he can simply enter the
12 names which have been missed. And it may be that that would be the
13 quickest and the easiest way of undertaking that task before the edited
14 version is produced. So could I ask you, please, to discuss this with
15 the participants and with Maitre Mabilie.

16 The second is that Mr. Garreton referred to a report on Bunia
17 that he had prepared, which is on the internet, for 2001, and he has
18 invited the Court's attention specifically to that document, in a sense,
19 in place of him developing those issues before us now. We'd be
20 interested to know whether any of the parties or the participants have
21 got an objection in those circumstances to that report becoming a part of
22 this witness's evidence since he has specifically invited our attention
23 to it. And once again, we'll be grateful for your thoughts on that, if
24 necessary, at half past 2.00 this afternoon.

25 Thank you all very much. We'll sit again at half past 2.00.

Witness: Witness DRC-CHM-WWW-0002 (Open Session)
Questioned by the Court

Page 56

1 COURT USHER: All rise.

2 Luncheon recess taken at 12.47 p.m.

3 On resuming at 2.30 p.m.

4 COURT USHER: All rise. Please be seated.

5 PRESIDING JUDGE FULFORD: Yes, witness please.

6 (The witness takes the stand)

7 PRESIDING JUDGE FULFORD: Good afternoon, sir. I understand that
8 having spoken with the Court Officer you've indicated that your preferred
9 course would be to speak for another 20 minutes or so, particularly on
10 the issue of child soldiers, and at that point we can then move when
11 convenient to you into questioning. We're all entirely happy with that
12 way of proceeding. So if you'd like to continue. Thank you very much.

13 A. Thank you very much, your Honour. I would like to say that the
14 clashes I was referring to previously between these two peoples led to
15 many casualties and a great number of displaced people. And the players,
16 generally speaking, used to a great extent kidnapping and enrolment of
17 child soldiers and that is the issue I'd like to discuss now. I beg your
18 pardon. I'm looking for the relevant part of my report.

19 So the situation of these children always was a concern of the
20 rapporteur since his first report. In this initial report I dedicated
21 several paragraphs to the child soldiers and the situation of women.
22 Originally I covered this to a significant extent; unfortunately, because
23 of the war, the political aspect played took over a great part of my
24 report. But after appearing for a second time before the United Nations
25 Security Council I realised that all the delegates from all countries who

1 asked me questions, in fact asked questions about the situation of
2 children. That's why in my report on my visit to Bunia in March 2001, a
3 major part of my report was dedicated to this issue. Initially what
4 worried me about these children was their situation with respect to
5 education, their access to food, and for girls, the lack of opportunities
6 they had to gain access to education because in -- Congolese society had
7 always given preference to enabling boys to gain access to education
8 rather than girls.

9 Subsequently I looked at the situation of children living in the
10 street who are sometimes referred to as "shegues."

11 As for the situation of children in the -- under Mobutu's -- the
12 situation in the armed forces -- I mean, it cannot be said under Mobutu
13 the military did enroll systematically children. There might have been a
14 few cases but that had nothing to do with the scope of what occurred
15 afterwards. The tragedy of child soldiers really became a significant
16 development in September to -- 1996 with the ADFL -- the AFDL, sorry,
17 because the AFDL that was composed above all of Rwandan
18 soldiers - remember the case I told you about earlier where a child
19 soldier stopped me from driving up north - but as time went by, the
20 enrolment of child soldiers became more and more substantial.

21 So this occurred with respect to the AFDL as well as in Congo's
22 military forces under Kabila. But it was also something that the Rwandan
23 military also did to a great extent. When on the 2nd of August, 1998,
24 the Rwandan army invaded Congo, they already had a lot of child soldiers
25 in their ranks; whereas Kabila had also enrolled children for the

1 Congolese military forces. Of course there are advantages in using child
2 soldiers. They are more loyal, they are less scared when fighting, they
3 are better prepared in terms of obeying orders, which means that the
4 armies that were taking part in the second war that began in 1996 really
5 started looking at the development of the enrolment of child soldiers.
6 Children of course were victims of mutilation. They had to stop going to
7 school and there is a lot of testimony that has described their situation
8 more in depth than what I can do as a lawyer.

9 Nobody knows how many children were enrolled but when you look at
10 justifications and denials -- I mean, people claiming, We don't have any
11 child soldiers but they are useful because -- I mean, that is a
12 contradiction that was often heard in this kind of argument that the
13 rapporteur heard very often.

14 Now, not only in the clashes in Bemba but also in the clashes
15 that were occurring between namely Lendu and the Democratic Republic
16 Movement headed by Museveni you had a lot of child soldiers. So this
17 became more and more frequent after 1998 and even Kabila used children in
18 an urban militia he raised. As I said earlier, this was copied on or was
19 similar -- I shouldn't say copied on, but was similar to what was found
20 in Cuba with the Committees for the Defence of the Revolution. And the
21 militia's so-called units of the defence of the Congolese population, you
22 had a lot of child soldiers who probably did not take part, in fact, in
23 the war.

24 In 2000 I was told that a lot of Congolese children had been
25 deported to Rwanda and Uganda, Rwanda to Khartoum, and they were also

1 deported to Uganda. And these children who were Congolese had been
2 enrolled by Rwandans and Ugandans to fight their own country. Now, of
3 course this horrified the Congolese population. These children had been
4 forced to fight against their own homeland. A few attempts, above all
5 headed by UNICEF, were implemented to exert pressure on the governments
6 of Rwanda, Uganda, and Congo to put an end to the enrolment of children.
7 And this possibly led, above all, to a reaction by the Congolese
8 government. But there was a lot of hypocrisy because on the one hand the
9 government stopped enrolling children, but certainly did not let the
10 children soldiers it had in its ranks go home. So what was frequently
11 claimed was, in my brigade of about 800 men, more than 60 per cent are
12 children and a lot of them have already died in the front between the
13 28th and the 29th of November, 2000, in Kisari (phoen). In one day,
14 80 per cent of the 700 children who'd be enrolled in one battalion died.

15 I have certainly never heard of children being enrolled by the
16 so-called forces that had been invited by Kabila. I'm referring to
17 countries such as Angola, Namibia, and Zimbabwe, who had been asked to
18 send troops to help Kabila. There was definitely a lot of propaganda
19 calling on parents to enroll their children with the RDC troops so they
20 should fight against their own country. A lot of them were aged between
21 13 and 17 years old.

22 Certainly the agreement that the government had reached with me
23 with the authority of the RDC, i.e., that they would free these children,
24 well, this agreement was never complied with. They -- the argument was
25 that these children were fulfilling their duty by taking part in this

1 war. There are a lot of cases in my report that I could describe,
2 testimony that I transcribed -- wrote down in my report that is of great
3 importance for the Court. I would like, for instance, to say what
4 Jean-Pierre Bemba told me. I have it here in French so I'll read it out
5 to you in French.

6 He told me:

7 "We took them out of Bunia and Beni to send them to Bhutan so
8 that they should be away from the front line."

9 He added:

10 "As you can understand, Special Rapporteur, those you think are
11 children, child soldiers, are not necessarily children. I mean, there
12 are tribes in Congo where people are extremely short and are adults and
13 not children."

14 I wrote this down in my report because I believe that this was a
15 total lack of respect for the rapporteur to make such outrageous claims.
16 Subsequently he said: "I, Jean-Pierre Bemba, on the 16th -- today on the
17 16th of March, 2001, I undertake to ensure the rapid demobilisation of
18 any child soldiers there may be in our ranks, if there are any." Well,
19 of course there were and he knew it very well. And I certainly have no
20 information about what happened afterwards that year. So this was a
21 constant ground of concern for the UNICEF, this issue of child soldiers.

22 Another military group, the RCD-Bunia or RCD-FL (as interpreted).
23 I mean, all these groups who changed their name as the time went by were
24 enrolling children, whether they were headed by Wamba dia Wamba or under
25 Tibasima or Mbusa Nyamwisi, all three leaders took over their group, all

1 three who were controlled by Uganda but who were actually enemies one
2 another. And so you had a very widespread feeling among observers,
3 according to which the problem was the wealth, natural resources of this
4 region as well as the personal interests of the players in this war,
5 those who are exerting their influence to ensure that the war should
6 continue. And the Province Orientale is an extremely wealthy region, as
7 is Ituri. You have probably already received information about the
8 appearance of coltan, this new mineral that is highly radioactive and can
9 be used for military purposes. This is a highly dense material that --
10 there also is in this region very precious wood in this forest in
11 Equateur Province.

12 Now, I'd like to talk about another group in Congo, Mayi-Mayi.
13 "Mayi" means water and Swahili and the Mayi-Mayi are a group that combine
14 ancestral war traditions with some rites that are not very convincing.
15 They don't use soap. They never look behind themselves. They call out
16 "Mayi-Mayi" in the case of danger, and that's why they've been given this
17 name. Now, a lot of these rites that have been described in the
18 literature developed to a great extent at the beginning of Mobutu's
19 dictatorship and above all after Lumumba's assassination.

20 Lumumba had a disciple, Pierre Mulele, and he had been appointed
21 the governor of the Orientale Province around 1966. He was a highly
22 charismatic personality who was killed reportedly on an order by Mobutu,
23 by Mobutu's very own foreign affairs minister who carved up his corpse.
24 However, a lot of these Mayi-Mayi joined the guerilla against Mobutu and
25 wanted to overthrow him. Then Kabila, before he lived in exile, perhaps

1 in Tanzania, maybe in Kenya, in all sorts of difference locations with
2 these idealistic groups, but with these rather gruesome rituals of these,
3 changed their name as the 1990s unfolded. Originally, they defended in
4 fact the Tutsi, which is quite remarkable, the Banyarwanda, but above all
5 the Tutsi. Why? Because they were enemies of Mobutu, and accordingly,
6 the enemies of my enemies are my friends. Therefore, since our enemy's
7 Mobutu, they were their friends.

8 When the AFDL arrived they ceased to be protectors of Rwandans
9 and became their enemies, and on a number of occasions they joined
10 together with Nande and Ayunde (phoen) groups. As time went by and as
11 the Rwandan and Ugandan influences extended, they began to fiercely fight
12 against the Rwandan and Ugandan forces, but there was a new factor.
13 Intellectuals, professionals, traders, Nande, Hunde, Nyanga encouraged
14 their children to join with the Mayi-Mayi because they couldn't bear the
15 attacks on their country. There were doctors, engineers, and lawyers
16 joining the Mayi-Mayi, and parents were supporting them because they felt
17 the Mayi-Mayi were truly defending their homeland, the Congo, Zaire at
18 the beginning but then named Congo.

19 The Mayi-Mayi recruited many children. I was -- interviewed
20 people in the prison of Beni during my Bunia mission. I spoke with
21 11 children aged between 11 and 14. These children had been recruited by
22 the Mayi-Mayi while they were working in the fields and they joined the
23 Mayi-Mayi. They felt that they had been forcibly enlisted. They cried
24 as they were talking to me, crying because they wanted to go home. They
25 wanted to be reunited with their parents whom they had not seen for some

Witness: Witness DRC-CHM-WWW-0002 (Open Session)
Questioned by the Court

Page 63

1 months. So the Mayi-Mayi also kidnapped children in this way.

2 The NALU and the ASDF, the democratic -- or the Alliance of
3 Democratic Forces that were fighting for Uganda, there was also
4 recruitment of children not just in the region we're talking about but in
5 other parts of the Congo. The Rwandan armed forces were recruiting
6 children. Who were they? These were the forces who were fighting --
7 Hutu forces fighting against the Rwandan government and who had been
8 conducting these campaigns since the beginning of the 21st century, I'm
9 not exactly sure when. And they too had begun to recruit child soldiers.

10 There were human rights organisations complaining about this
11 problem in the Congo at the time. A minister for human rights in the
12 Congo undertook to reduce the problem.

13 And so, your Honour, you have my report concerning the conflicts
14 that took place during my period as Special Rapporteur. Everything
15 appears in my reports, not necessarily my report to the Court which, as I
16 said, was more concise. Human rights rapporteurs for the United Nations
17 are supposed to submit reports of 32 pages, and I was able to report in
18 32 pages on the atrocities committed by six national armies and
19 22 irregular groups, some 29 groups, but I felt that I did not have
20 enough space to account for all these violations of human rights in that
21 space. But there is a summary in my report on my visit to Bunia March
22 2000, which I feel could be of use to the Court. I can, if you wish,
23 submit a list of all of the reports that I presented during my period as
24 Special Rapporteur if the Court should wish to consult them. They are
25 available, as I said, in the archives of the United Nations.

1 I thank you very much, your Honour, and I am now prepared to take
2 questions from the Court and the parties.

3 PRESIDING JUDGE FULFORD: Thank you very -- thank you very much
4 indeed, Mr. Garreton, for that extremely full and informative
5 introduction. Can I just ask one question about the report you've just
6 mentioned. A little bit earlier, certainly as it was interpreted, you'd
7 referred to a report of yours into the situation in Bunia which is on the
8 internet for which I think you gave a date of 2001. Is that the report
9 that you've just referred to or is it another report that we ought to
10 have in mind?

11 THE WITNESS (interpretation): Yes, it is that report.

12 PRESIDING JUDGE FULFORD: It is that report. Good. Thank you
13 very much indeed.

14 Now, Ms. Samson, over to you. Can I remind both you and
15 Mr. Garreton of the great need to keep the pace relatively measured and
16 to make sure that you don't both speak at the same time, but please ask
17 your questions now.

18 MS. SAMSON: Thank you, Mr. President. Just two responses to
19 your Honour's request of the Prosecution and the parties and participants
20 earlier, and it follows on from your Honour's question regarding the
21 report. We have two reports from Mr. Garreton in 2001. There is one
22 general report about human rights violations in the Democratic Republic
23 of Congo dated February 20 -- February 1, 2001, and there is a more
24 specific report further to the mission that Mr. Garreton had conducted in
25 Bunia and Beni which is dated the 27th of March, 2001. So we seek

1 clarification from the witness as to which of the two reports he would
2 like the Court to have access to or both. And at least in terms of the
3 position of the Prosecution and the participants, we have no objection to
4 either or both of the reports being accessible.

5 PRESIDING JUDGE FULFORD: Mr. Garreton, either of those reports
6 or both of them?

7 THE WITNESS (interpretation): Could I make one clarification?
8 The reports in the United Nations system mention a year and that year is
9 the year in which the report is presented to the Human Rights Commission.
10 The report dated February 2001 corresponds to the human rights situation
11 of the year 2000. I made that report in the year 2000. It was
12 translated and so on and finalised in 2001 and submitted to the
13 Commission for Human Rights in 2001.

14 The second report had the same fate. It had to be presented in
15 2001 but it has the same reference EC4, and so on, add 1, addendum 1, and
16 that is because it too had to be submitted to the Human Rights Commission
17 in 2001. I think that the second report would be of more use to the
18 Court; however, I do believe that all of the reports from the year 1996
19 onward make reference to the internal conflicts and wars as well as the
20 international conflicts and wars in the Congo.

21 PRESIDING JUDGE FULFORD: Ms. Samson, I think unless anyone
22 objects, given the approach taken by the parties and the participants,
23 we'll treat both reports as part of the evidential material in the
24 case -- oh, Mr. Biju-Duval. Sorry, I -- perhaps I'd misunderstood the
25 position.

1 Yes, Mr. Biju-Duval.

2 MR. BIJU-DUVAL (interpretation): Excuse me, your Honour. I
3 apologise for not agreeing with what the Chamber and the Office of the
4 Prosecutor has said. The Defence is not in favour of the addition of
5 these reports to the evidence on this case, in particular the report
6 drafted in 2000 and presented in 2001 which does not specifically address
7 Ituri but in fact covers quite different subjects. That is our position.

8 With regard to the report dated March 2001 mentioned by the
9 expert, the date is 27 March 2001, we are not in favour of its admission
10 either. It is relevant to the subject at hand, yes; however, it
11 introduces into the debate a certain number of new elements which did not
12 appear in the report of the expert witness. That raises difficulties for
13 us from a procedural perspective. As a matter of principle we would like
14 to express this objection; however, we will support the decision of the
15 Chamber. We do, however, stress the fact that in our view only the
16 report dated the 27th of March, 2001, could be considered admissible.
17 The first report truly deals with other issues. It may be that
18 occasionally and in an accessory manner it makes reference to Ituri.

19 (Trial Chamber confers)

20 PRESIDING JUDGE FULFORD: Thank you very much, Mr. Biju-Duval.
21 As ever, extremely helpful. Can we proceed on the basis, but
22 particularly given what the Professor himself has said, that we will
23 definitely not treat the first of the two reports he's just mentioned as
24 being part of the evidence in the case, and we'll, as it were,
25 tentatively work on the basis that the second will constitute the corpus

1 of materials in this trial. But if at the end of Mr. Garreton's evidence
2 you have strong views that the second report should not be included, then
3 you have liberty to come back to this issue once he's left the witness
4 box and we can look at it in detail then. So don't worry about the first
5 report, and we'll at the moment say tentatively the second but you have
6 liberty to apply. Thank you very much.

7 Yes, Ms. Samson.

8 MS. SAMSON: Thank you, your Honour. The second issue the
9 Chamber had asked us to look into was the issue of names and spellings.
10 The parties and participants in this case are -- have no objection to
11 Mr. Garreton being provided with a copy of the transcript for his review
12 and for insertion of proper spelling.

13 PRESIDING JUDGE FULFORD: Well, I haven't yet warned Mr. Garreton
14 as to what our proposed homework for him is going to be for him this
15 evening, but perhaps I'll take this opportunity of indicating that it
16 would be later of huge assistance to us, sir, if you'd be able overnight
17 to have a look at the transcript of your evidence because on occasions
18 when you've mentioned names the interpreters haven't heard them correctly
19 and we would be very grateful to you if wherever there's a blank or
20 something has been written incorrectly if you could just fill in the
21 right name. Good. Thank you very much.

22 Yes, Ms. Samson.

23 MS. SAMSON: Thank you.

24 And finally, because I will be referring to passages of
25 Mr. Garreton's report and your Honour has already made reference to it

1 this morning, I have a copy in both English and French for the witness
2 and it may be an appropriate moment for an evidence number to be
3 assigned.

4 PRESIDING JUDGE FULFORD: Yes, I think we need an evidence number
5 for the report and we need an evidence number for Mr. Garreton's
6 curriculum vitae and the map as well, I think. Yes.

7 (Trial Chamber and Court Officer confer)

8 COURT OFFICER (interpretation): With regard to the map used by
9 the expert, Mr. Garreton, the number is ERN-DRC-ICC-001-0299, that was
10 the original number. It will be given the number EVD-CHM-0003. The CV
11 of Mr. Garreton which bears number ERN -- ERN-DRC-ICC-002-0001 will bear
12 number EVD-CHM-0004. The report will bear the number EVD-CHM-0005.

13 PRESIDING JUDGE FULFORD: Right. Copies, please, then, to
14 Mr. Garreton. I imagine he's already got them, but just in case.

15 So, usher, if you could pass those documents, please, to
16 Mr. Garreton.

17 MS. SAMSON: In the meantime, your Honour, should the second
18 report or the report of Mr. Garreton dated March 2001 also be provided
19 with an EVD number?

20 PRESIDING JUDGE FULFORD: If you're just about to ask questions
21 on it -- I don't know whether you're going to ask questions on it,
22 Ms. Samson?

23 MS. SAMSON: No, I'm not.

24 PRESIDING JUDGE FULFORD: Well, we'll leave it for the time
25 being.

Witness: Witness DRC-CHM-WWW-0002 (Open Session)
Questioned by Ms. Samson

Page 69

1 So those three documents, please.

2 Yes, Ms. Samson.

3 MS. SAMSON: Thank you, your Honour.

4 Questioned by Ms. Samson:

5 Q. Good afternoon, Mr. Garreton. We have met briefly before, but
6 let me repeat. My name is Nicole Samson and I have a few questions for
7 you today on behalf of the Prosecution. Although I do have questions
8 about the tribal conflict, I'm going to begin my questioning where you
9 left off and the issue of child soldiers.

10 In your report before you through pages in the English version
11 19 through to 24; in the French version, pages 21 to 28, you generally
12 refer to the issue of child soldiers in the Democratic Republic of Congo.
13 And my question is: Although you've mentioned an age-range today in
14 relation to the RCD, in your experience what generally was the age-range
15 of children recruited and used in armed groups in the Congo?

16 A. I do not have an exact answer because there was talk about
17 children and in these interviews some people would say including children
18 aged 8 or including children aged 9. But I did not conduct in-depth
19 research on this question. The impression I have is that generally the
20 children aged over 10 up to 17 or 18, but by 18 they're no longer
21 considered children. That would be my answer but I don't have an exact
22 response.

23 Q. Thank you. You had mentioned today a comment made to you by
24 Mr. Bemba in relation to children and their relative size. I believe, if
25 I'm not mistaken, that this is a discussion in your report at pages 23 in

Witness: Witness DRC-CHM-WWW-0002 (Open Session)
Questioned by Ms. Samson

Page 70

1 the English version and 25 in the French version --

2 A. Yes.

3 Q. -- where you indicated that you had seen several dozen children,
4 mostly at the Bunia airport. And you've indicated to the Court that
5 Mr. Bemba had suggested that these individuals may not be children
6 because there are ethnic groups within the Congo who are -- have a small
7 stature, small size. And you've told the Court what your view was about
8 that. Could you tell us what you were able to observe of those children,
9 what did they look like, what was their physical appearance?

10 A. I'm trying to remember the image in my mind. They were children
11 that were armed and they were in the airport, which is rather a
12 military-like airport. Most of the aeroplanes that could be seen were UN
13 aeroplanes. It's an airport with few passengers. There was a group of
14 children and I could see them from a distance of, let's say, from here to
15 that wall behind you, possibly from that distance there, and they pointed
16 them out to me. Look, Mr. Garreton, look who's over there, they are
17 children.

18 I looked and, yes, they were children and I would say they were
19 from 9 to 12 years of age and some were perhaps older. But I feel that
20 this was just a verbal impression. When I went to the prison in Beni I
21 asked the question, that's why I knew their age.

22 Q. So that we understand, when you were at the prison in Beni you
23 asked the children their ages? Is that what your evidence was?

24 A. Yes, yes, that's right.

25 Q. Thank you. And you told the Court earlier in respect of this

1 visit to the Bunia airport where Mr. Bemba had made the comment that
2 these children may actually be affected by size in ethnic groups, you
3 indicated that this was outrageous. Can you explain to the Court why you
4 felt that way?

5 A. I saw the children in the Bunia airport without Mr. Bemba. I saw
6 the children and I had the interview with Mr. Bemba, an interview which
7 furthermore because of his activities was to be held at night. I was put
8 out by this but I had no choice, so I accepted and the meeting took place
9 in his house at night. In his house I mentioned this and I said, I saw
10 today some children in the Bunia airport -- sorry, I should rephrase
11 that. Yesterday I saw the children in the Bunia airport. They were
12 there, so you can't tell me that there are no child soldiers. And he
13 replied, Mr. Garreton, here there are ethnicities where the children
14 are -- where children are very small, and therefore you probably confused
15 these people. They're not child soldiers. They're soldiers of small
16 stature. So this occurred after the fact. It was the day after, not in
17 presence of the children.

18 Let me rectify that. I went to the Bunia airport, but this
19 conversation was in Beni with Mr. Bemba two or three days after the fact.
20 Because when I was in Mr. Bemba's house, and it was his house, in his
21 mansion, this was in Beni. That's when we had this exchange. And he
22 said to me that these children were not necessarily children. He also
23 said, If there are any child soldiers we will demobilise them.

24 Q. And I'd like to move now, sir, into an area in your report at
25 page 22 of the English version, page 24 of the French version, where you

Witness: Witness DRC-CHM-WWW-0002 (Open Session)
Questioned by Ms. Samson

Page 72

1 are referring to recruitment campaigns and you state that:

2 "Official recruitment campaigns for the RCD for broadcast on the
3 radio to integrate the 'watoto,' Swahili for 'children,' into both the
4 army and the local defence unit militia."

5 And you mentioned today as well local defence units. Can you
6 explain to us what those are?

7 A. They are a kind of civilian militia which supports the RCD and
8 its arrival in Goma in 1998. They were called local defence units and
9 they enrolled children in these militias. This was done via the local
10 radio. I should clarify that I did not listen to those calls over the
11 radio but I was told of them. Every time I was in a city I was only
12 there for two days or one day. Except in the case of Goma, usually I was
13 three or four days at a time, or in Kinshasa where I was more frequently
14 based. I did not have time to listen to the radio.

15 Q. Thank you. Looking generally at recruitment and in publicising
16 recruitment campaigns on the radio, did you become aware, based on your
17 experience and your work, what other ways there were for groups to hold
18 recruitment campaigns and publicise for recruitment?

19 A. On the Mayi-Mayi side of things there was some complicity with
20 the local population generally, in that without the Mayi-Mayi what would
21 have become of us? We need the Mayi-Mayi to defend us.

22 So how did the Mayi-Mayi recruit? I don't know how they did
23 that. What I can say is that of those 11 children that I saw in the Beni
24 prison, recruited by the Mayi-Mayi, they had been conscripted not via
25 radio campaigns but rather by force. They were out there working in the

1 fields and they were taken away.

2 But if I may add a comment, I am not in a position to state with
3 much on all these subtleties, but many Congolese people felt that the
4 Mayi-Mayi and the Nande and the Hunde -- or these two ethnicities were
5 complicit with the Mayi-Mayi. There is a whole lot of subtleties and
6 different ways of doing things that aren't always the same across
7 cultures. And in 1999 things were different to 1998, and different again
8 in 2000 or 2001, because people just did things as best they could in
9 accordance with the way the war developed. That's why the Mayi-Mayi at
10 some point in time were defending the Tutsis, because they were pro-Tutsi
11 and then later things would change. They became the Tutsi enemy.

12 Q. Thank you. I want to come back to the issue of recruitment, and
13 in this question I'm referring to a comment that you made in your report,
14 page 22 in the English version, and page 24 in the French version, where
15 you indicate, and I quote:

16 "As far as the RCD-Goma authorities were concerned, the children
17 volunteered or were volunteered by their parents."

18 And my question to you on that statement is whether you could
19 explain to the Court the circumstances surrounding voluntary enlistment
20 and whether you have observations on the comment made, that the
21 recruitment in the RCD was on a volunteer basis.

22 A. The humiliation that the Congolese people were suffering had --
23 has to be borne in mind. The fact that they were divided into three:
24 Kisangani, Bunyi (as interpreted); Wamba, Tibasima, Nyamwisi in the
25 north; RCD in the east. The total incapacity of the Congolese army to

Witness: Witness DRC-CHM-WWW-0002 (Open Session)
Questioned by Ms. Samson

Page 74

1 defend itself because when all said and done these were the same as
2 Mobutu's situations all those years prior. Kabila did not have neither
3 the time nor the opportunity to form an army, so he did not have an army.
4 There was no one to defend Congo. And the phrase that I heard which
5 impacted on me at the time was that people repeated, What would we have
6 become without the Mayi-Mayi? They are our children. We support them.
7 Because this was a severely humiliated people.

8 Look at the correlation between international forces. This is a
9 very important factor. Who was supporting the Rwandans and the Ugandans?
10 There were the United Kingdom, the United States, the Republic of South
11 Africa. My apologies to people in the courtroom. And who supported
12 Kabila? Sudan, Angola, Zimbabwe, Namibia, Chad. This is totally out of
13 proportion when it comes to international support and local military
14 support. And all of the participants including some of the participants
15 who supported the Kinshasa regime, all of them were interested in the
16 wealth of the region, not only those who were attacking but also those
17 who were attacked. Zimbabwe, for example. And so this feeling meant
18 that parents were prepared to volunteer their children and it was almost
19 an obligation for them.

20 Q. Let me turn now to events that you may have seen or observed
21 during your visits to Bunia and Beni. While you were there in March
22 2001, did you see or come to learn of training camps where children were
23 trained?

24 A. In the only military camp I visited which was in Beni, in that
25 camp -- and I went there by chance because there were -- there was a

Witness: Witness DRC-CHM-WWW-0002 (Open Session)
Questioned by Ms. Samson

Page 75

1 problem passing through, that is where I saw a prisoner held underground.
2 I heard him moaning and that's when I indicated to the soldiers that I
3 wanted them to accompany me so that I could point out to them what was
4 going on. I had seen in the Wamba -- the former casa (as interpreted) of
5 Wamba dia Wamba I had seen a similar pit but it was empty. I did not see
6 any children being trained. I did not see any children being changed. I
7 only have hearsay to go by. And this is one of the weaknesses of the UN
8 system.

9 I was there to investigate half a million deaths in just four
10 days. It was a very short mission and then I was supposed to provide a
11 report on the whole war. So in interviewing witnesses the most difficult
12 thing for a rapporteur is to find out who is telling the truth and who is
13 not telling the truth, if some are not telling the truth. And this is
14 very difficult to create a synthesis and ensure consistency in the
15 report; this is the difficult thing. But one can't usually see for his
16 or herself the battle-field.

17 Q. In your experience in the work that you did in the Congo, did you
18 come to learn of the situation of girl child soldiers, their life in the
19 camp, their experience as they were being used as soldiers; and if you
20 did, what did you learn about that?

21 A. Girl soldiers were also used as soldiers. I did not see girl
22 soldiers the few times I saw uniformed child soldiers. There were
23 reports which mentioned them, but they were usually mentioned as sexual
24 objects. It seems to me that on some occasions, but I can't remember
25 perfectly clearly so I don't want to go into detail, I do remember

Witness: Witness DRC-CHM-WWW-0002 (Open Session)
Questioned by Ms. Samson

Page 76

1 getting information about hearing of children on the battle-field and
2 girls were also recruited for the officials, were recruited by officers.

3 Q. To your knowledge, was the -- were the girl soldiers the same age
4 approximately as the range of soldiers you mentioned to the Court earlier
5 today, that was between more than 10 to 17 years old?

6 A. I don't have any information, but I suppose that that was the
7 case. I imagine that at the end of a battle when they -- when soldiers
8 enter a village they would pick up women and children, but I was not
9 there in the wartime to see that. But I know that there was a lot of
10 recruitment and a lot of violence against women. There was one incident
11 which is a very controversial issue contained in the report not about the
12 war itself but another territory in the DRC where women were accused of
13 witchcraft. And they were murdered, they were burnt or buried alive.
14 And so I heard reports of this nature, but I don't know of their being
15 used for the war effort. These women were accused by the RCD of
16 witchcraft.

17 Q. At page 24 of your English report, and I apologise, I don't have
18 the page reference to the French report for this question, but you did
19 refer to the fact that there were very young girls who were the forced
20 companions of the Ugandan instructors and that these young girls became
21 pregnant or were infected with sexually transmitted diseases. And my
22 question is whether or not you came to know based on your work and
23 experience what happened to the women who were pregnant in military
24 groups, for instance?

25 A. What I did know because I was told by many sources, these were

Witness: Witness DRC-CHM-WWW-0002 (Open Session)
Questioned by Ms. Samson

Page 77

1 credible sources, but what they said seemed so horrible, in my opinion,
2 that I actually expressed doubts in my report about the veracity of these
3 points was that Uganda was sending to Congo soldiers who were suffering
4 from AIDS, knowing very well they had been infected by AIDS, in order to
5 spread AIDS among Congolese women. If I am not wrong, when I wrote upon
6 this issue -- and I asked a lot of questions about this issue because it
7 was really something quite horrendous, but clearly everybody was saying
8 there are reports, there are reports. But there was no report I could
9 draw upon. However, I did talk about this in my report but I added the
10 following observation, "According to reports" to suggest that I was not
11 utterly convinced by these assertions.

12 Now -- no, I can't give you any information to answer your
13 question, but I'm sure there are witnesses who could answer such queries.

14 Q. I'd like to turn now to just a slightly different topic and it's
15 in relation to your report, page 22 of the English report and I believe
16 it's page 25 of the French report, generally having to do with -- in this
17 case the quote is:

18 "The RCD authorities organised meetings in order to encourage
19 people to enlist their children. These campaigns were stopped further to
20 a great deal of sharp international condemnation. Child recruitment
21 continued but less visibly and largely in rural areas."

22 And my questions now are centred around the sharp international
23 condemnation. Who was putting pressure or was condemning these -- this
24 recruitment and how was the condemnation communicated to the armed groups
25 in your experience?

Witness: Witness DRC-CHM-WWW-0002 (Open Session)
Questioned by Ms. Samson

Page 78

1 A. According to what I can remember, the campaign was primarily
2 conducted by UNICEF and the United Nations and a lot of NGOs. And I
3 would like to give them credit for having acted upon this information.
4 As a defender of human rights, I can say that NGOs generally speaking
5 spell things out more bluntly, and certainly their credibility depends on
6 not disseminating lies. Therefore, in 2001, what were the NGOs that
7 condemned this child soldier enrolment? Well, I would have to look back
8 in my archives. I've got huge amount of documents. I'd have to look
9 into this, but I wouldn't -- I cannot answer your question right now. I
10 apologise.

11 Q. Indeed it's a sufficient answer for my purposes that it was NGOs
12 and UNICEF. Thank you for that. But I would like to ask further if you
13 are aware how these NGOs and UNICEF communicated their condemnation. How
14 did they do that?

15 A. UNICEF, generally speaking United Nations organisations have
16 significant operations in the republic -- the Democratic Republic of
17 Congo. They weren't only in Kinshasa. And before the war, I'm talking
18 about the period before the first war, I talked with people from the UNDP
19 in Goma and Bukavu, and Kisangani. They had huge operations and the same
20 was true for the United Nations as well as UNICEF. And before the war,
21 inter-governmental organisations sent more personnel, they were working
22 in the field, and they directly received complaints. So that is with
23 respect to governmental organisations.

24 I believe that UNICEF was in Bunia, certainly in Goma, in
25 Kisangani, as well as Kinshasa. And these were staff who stayed there

Witness: Witness DRC-CHM-WWW-0002 (Open Session)
Questioned by Ms. Samson

Page 79

1 for lengthy periods of time, were carrying out operations in the field,
2 were visiting small villages. NGOs for their part also were receiving
3 information well before I did since I was living in Santiago, in Chile.
4 They passed on this information to governmental organisations, and I, of
5 course, have access to such information received by UNICEF or other
6 organisations that released, and I also had conversations with their
7 staff when I went in the field. I always met staff from the United
8 Nations agencies, if only out of courtesy, but also I must say that I
9 received important information in such meetings.

10 Q. In your experience, would you say that this international
11 condemnation was well known within the DRC and specifically the Ituri
12 region? Were people generally aware that this was -- that the use of
13 child soldiers was internationally disapproved of?

14 A. People who had access to newspapers were very well aware of this.
15 That was difficult enough in Kinshasa. That was otherwise virtually
16 impossible. There were hardly newspapers. Radio is the major medium in
17 Congo, but obviously in most cases did not talk about such information.
18 Now, information was circulating in the networks of NGOs, but the general
19 public certainly did not have information about the way in which it --
20 such child enrolment was being condemned abroad. There was hardly any
21 information on radio stations and certainly TV did not mention this at
22 all.

23 However, I would like to point out that in Kinshasa information
24 about international condemnation of what was going on in the east and the
25 north was available but not about what was happening in Kinshasa or the

1 area controlled by Kabila. This war, like any war, was not conducted in
2 a democracy. Most wars occur between or within dictatorships in which
3 human rights of the country's own people are not respected, the people
4 they control. That is a very important point.

5 Q. Thank you very much, sir. I now have some questions for you in
6 relation to the conflict, some of the information that you provided to
7 the Court this morning. And in particular you testified this morning
8 that the conflict in Ituri was, at least in part, a conflict between the
9 Hema and the Lendu. Could you please elaborate on the causes for the
10 dispute between these two groups that led to conflict?

11 A. These were two ethnic groups of different origin. The Hema,
12 first, are a Nilotic people, like the Tutsi. The Lendu are of Sudanese
13 origin. They -- I believe the Hema arrived in this area before the
14 Lendu, but we're talking about the 16th or 17th or 18th century. They
15 had lived in fairly good friendship. There had been a few clashes. Some
16 of them could have been violent. In 1923, I believe, the Lendu killed a
17 Hema king and a serious conflict broke out. There were other conflicts
18 subsequently. However, in Africa the traditional leaders has a very
19 positive influence. However, in Congo the -- these traditional head men
20 had lost a lot of their legitimacy because Mobutu had corrupted them. So
21 these traditional chiefs had lost a lot of their credibility.

22 As for the conflict between Hema and Lendu, what really sparked
23 the violence was the presence of Rwandans. Tibasima -- I'll put in the
24 names into the report later on, but Tibasima, Wamba dia Wamba were very
25 closely linked to Rwanda. The fact that a gentleman called Ema (as

Witness: Witness DRC-CHM-WWW-0002 (Open Session)
Questioned by Ms. Samson

Page 81

1 interpreted) was appointed governor -- if I remember correctly his name
2 -- he was a Lema -- a Hema and his name was Lotsove, if I remember
3 correctly, and this triggered the first clashes because this -- sorry,
4 this lady was certainly very -- lacked impartiality. When the incidents
5 broke out, at first they were circumscribed originally, And this report
6 that has been added to the file by the Court describes these clashes.
7 And I must say that what was surprising, as far as I am concerned, is
8 that talking with the Hema, they would show me the photo of some Lendu
9 with a spear in their hand and the head of a Hema on top of it walking
10 around the city of Bunia. These were war trophies. They were showing
11 the heads of Hema.

12 When I talked with the Lendu -- sorry, when I talked -- when I
13 talked with the Hema or the Lendu, they would both show me the same kind
14 of photo, it was exactly the same kind of photo -- same photo. Both
15 sides were using the same photos and that really stunned me as well as my
16 deputies. We asked people from the ICCR (as interpreted), How could this
17 occur? And they answered, That's how things go here. Everybody says
18 what everybody likes. There are a lot of versions about these clashes.

19 These clashes, in fact, occurred above all on a specific day in
20 January 2001. I hope you have the number of the page, when the airport
21 of Bunia was attacked, and this incident was one of the fiercest clashes
22 that occurred. Afterwards massacres occurred in the country-side, but
23 this incident led the Security Council, as well as myself, to carry out a
24 visit of the DRC because of this horrifying incident. And in the
25 interviews I had in February 2001 with the Security Council, I was asked

Witness: Witness DRC-CHM-WWW-0002 (Open Session)
Questioned by Ms. Samson

Page 82

1 to please leave for Congo immediately. I'm afraid I can't find the page
2 in the report that describes in detail all of this.

3 Now, in the conversations I had with people, staff of the United
4 Nations, but as well with intellectuals or people who -- trustworthy
5 witnesses, there was certainly a very strong hostility against the Hema
6 because of Uganda's attitude and because of the division of the Orientale
7 province. Another province had fallen under foreign domination and that
8 really hurt a lot of people. That's what I can say. But you can
9 certainly find details about these incidents in the report.

10 Now, after the murder of six members of the ICRC the inquiry
11 carried out by the United Nations concluded to that it had undoubtedly
12 been carried out by Hema.

13 I don't know if I've answered your question completely but that's
14 all I can say right now.

15 PRESIDING JUDGE FULFORD: Ms. Samson, really respecting
16 Mr. Garreton's human rights, I think we'll take a short break now, just
17 ten minutes so that we can all stretch our legs and we'll sit again at
18 4.00.

19 So, sir, if you could kindly go with the usher we'll sit again in
20 ten minutes' time. Thank you.

21 (The witness stands down)

22 PRESIDING JUDGE FULFORD: 4.00.

23 Break taken at 3.49 p.m.

24 On resuming at 4.01 p.m.

25 COURT USHER: All rise. Please be seated.

1 PRESIDING JUDGE FULFORD: Just while the witness is being brought
2 into court, just a couple of matters of administration. Forgive me if
3 I've mentioned this already but I think I haven't. On Friday of this
4 week for the convenience of the Bench we are proposing to sit at 9.00
5 with a two-hour session through to 11.00, then a half-an-hour break, and
6 then sitting from 11.30 to 1.30, when we propose to rise for the day. We
7 don't ask for any submissions on that now, but if that is going to cause
8 any material inconvenience to anyone, could we please have submissions
9 either at the end of the day or tomorrow morning or send an e-mail to the
10 legal advisor of the division, whichever is most convenient.

11 (The witness takes the stand)

12 PRESIDING JUDGE FULFORD: The other matter of administration is
13 that following communication from Maitre Mabilille we in fact needn't rise
14 early today, but for reasons I needn't go into, but the ex parte hearing
15 will be worked into the agenda on Friday. And thank you for your
16 assistance on that, Maitre Mabilille. Good.

17 Welcome back, sir. Forgive us for getting on with our
18 housekeeping.

19 Ms. Samson, if you could continue with your questions.

20 MS. SAMSON: Thank you, your Honour.

21 Your Honour, Mr. Garreton has made reference to an event, a
22 clash, in January of 2001. The reference is not contained in his report
23 to the Court. It's contained in the report to the United Nations, the
24 report that will be in evidence. If it's appropriate I can show him
25 page 13 where I believe that reference is found, and at that point if he

Witness: Witness DRC-CHM-WWW-0002 (Open Session)
Questioned by Ms. Samson

Page 84

1 confirms it, we could potentially mark that document, provide it with an
2 EVD number.

3 PRESIDING JUDGE FULFORD: Certainly, Ms. Samson.

4 COURT OFFICER (interpretation): The document will bear the
5 number EVD-CHM-0006.

6 PRESIDING JUDGE FULFORD: Yes, Ms. Samson, I think the witness
7 already had the document but another copy of it. And what's the
8 question?

9 MS. SAMSON:

10 Q. Sir, was this the incident that you were making reference to, a
11 January 2001 conflict?

12 A. The 19th of January, 2000, yes. 2001, excuse me.

13 Q. Thank you for confirming that, sir. In the course of your last
14 answer you had made reference to a woman named Adele Lotsove. And I
15 would like to refer you to a page of your report. It's page 16 in the
16 English report, page 17 in the French report. And in the report you
17 indicate that:

18 "For example, there was the case of a Muhema governor being
19 appointed who obviously acted in defence of his ethnic group by stirring
20 people up and inciting the clashes."

21 And I wondered if this was a reference to Adele Lotsove that you
22 mentioned or is the Muhema governor somebody else?

23 A. Excuse me, which part of page 17 are you referring to? Looking
24 at the French version I cannot see it. Ah, I have it. Yes, this does
25 refer to Ms. Lotsove.

Witness: Witness DRC-CHM-WWW-0002 (Open Session)
Questioned by Ms. Samson

Page 85

1 Q. Thank you. And in relation to my earlier question regarding the
2 reasons for the conflict between the two ethnic groups, the Lendu and the
3 Hema, perhaps you could give the Court some information on the social
4 and/or economic position that the Hema were in and the Lendu were in.

5 A. Yes, exactly. In the conflict or the conflicts which had
6 occurred historically, there had always been difficulties concerning land
7 use, how -- because the Lendu are crop farmers, they need a lot of land
8 to grow crops; however, the Hema are livestock raisers and they also need
9 land to graze their animals. These conflicts would be resolved such that
10 the animals could share certain land with the farmers and it would be the
11 traditional chieftains who would resolve this dispute. When there wasn't
12 an adequate solution, then there would be some sort of a violent clash.

13 But at the time where Ms. Lotsove was appointed -- and in fact,
14 that was no accident, it was no accident that Ms. Lotsove was appointed
15 because she was appointed by the Ugandans. The feeling of the Congolese
16 population was that everything happening in the north-east -- in fact,
17 the north of the country as a whole was being decided in Kampala. This
18 is what everyone was saying. The Bemba were not the problem, they said,
19 it is Kampala, it is Museveni that is the problem. And Ms. Lotsove's
20 appointment was considered a provocation.

21 The Hema denied the accusation that they were the favourites of
22 the Belgian, as had been the Tutsi. They were favoured with regard to
23 education. They were given the best land. That made it possible for
24 them to become more wealthy than other groups. In the sources I used to
25 prepare this report, I had a letter from the Hemas saying that what I was

1 saying was wrong. They listed all of these schools, all of the hospitals
2 established by the Belgians in areas where the population majority was
3 Lendu.

4 But let's look at things in greater detail. There are far more
5 Lendu than Hema in fact, and nothing that was established by the Belgian
6 was established for the benefit of the Lendu. The Hema were the
7 favourites and the Hema would try and counter that by saying, no, this
8 is -- these are services being set up for the Lendu.

9 As a result of all of this, the Hema had a much higher level of
10 education. The Hema tended to live in comfortable conditions and the
11 rapporteur was always received in very comfortable lodgings by the Hema
12 who were well off. You could see it in the way they dressed, you could
13 see it in many different factors. When you asked about the number of
14 professionals of the different ethnic groups, the number of doctors, the
15 number of lawyers in each of the ethnic groups, it was clear that there
16 were far more professionals among the Hema than among the Lendu. I don't
17 have exact figures, but the trend was clear. The Hema would say, We were
18 livestock raisers, we were herdsmen, that is why we had access to these
19 better conditions, we had greater access than did the Lendu. That was
20 their explanation.

21 And -- however, one way or another I would say that services were
22 set up for the benefit of the Hema rather than for the Lendu. There were
23 some towns which were Hema towns, others that were Lendu towns, others
24 were Alur or Ngiti towns in the region, and that was quite a clear trend
25 in the north, perhaps less so in the south. The communities were divided

1 in that way, and what I heard in the various towns was that the Hema were
2 better off than the Lendu. That is really what I can tell you in
3 response to your question. I could give you more detailed information,
4 but I don't want to take up too much time.

5 Based on the information that I have, I don't think that I could
6 claim to be a historian of the events but I can give testimony concerning
7 the events that I witnessed, what I saw.

8 Q. Yes, thank you. And in your report - and the references are
9 page 16 in the English report, page 17 in the French report - you
10 indicated in relation to land ownership and distribution that the UPDF
11 soldiers distributed Lendu land amongst the Hema.

12 Could you please explain to the Court how this happened, how this
13 came about and how the distribution was made.

14 A. One of the conflicts concerned this point. The arrival of the
15 Ugandans made it possible for some of the land used by the Lendu to be
16 reassigned to the Hema. That is one factor. In addition to the Hema who
17 were already there, with the Ugandans new colonists arrived, new Hemas,
18 new civilians, not soldiers. Civilian Hema arrived from Uganda. They
19 were also herds people and they came to settle on these lands.

20 There is a very important difference between Uganda and Rwanda in
21 one sense. Uganda was not aiming to conquer any territory; apparently it
22 was not their aim. The war was aimed at defending against attacks.
23 Fundamentally, this was not a people aiming to conquer new lands. In
24 contrast to Kagame in Rwanda, his expressed interest was in achieving
25 Berlin II, which was an absolute taboo in Africa at the time. Berlin II

1 would mean completely reviewing all of the borders in Africa. That is
2 what Rwanda was aiming for. They didn't want to conquer the whole
3 continent, but they did want to conquer Kivu to provide lands for their
4 population.

5 The Ugandans were not interested in new Berlin conferences but
6 they did bring people in to strengthen their position in the north of the
7 Congo. These new Hema settlers, sometimes not Hema but these new
8 settlers and the members of the UDPF -- the UDPF, excuse me, United
9 People's Defence Forces of Uganda did introduce new Hema citizens into
10 Congolese territory to settle those lands, and that was made easier by
11 the presence of a Hema governor, Ms. Lotsove.

12 Q. Following on from that answer, if Uganda's interest wasn't in
13 annexing or conquering lands to its territory, what were the underlying
14 interests of Uganda to be involved at some level in the conflict in
15 Ituri, to your knowledge?

16 A. In that sense they had similar interests to many other parties,
17 access to the riches of the Congo. They didn't want Congolese land.
18 They did want the timber and other goods. In Ituri -- I think that's the
19 only part of the Congo. I don't know if there are other regions, I
20 haven't heard so, the only part that has oil in Malengitvini (phoen), for
21 example, there is oil and it has not been exploited, it has not been
22 mined. Diamonds, gold, timbers, coltan.

23 I would like to say a few more words about coltan. This amazing
24 mineral which is very radioactive and which is also present in the zone
25 occupied by Rwanda. It is the worst of the scourges of the Congo, the

1 fact that it has coltan deposits because it is there present on the
2 surface of the land. For a family man out of work, a victim of the wars,
3 it is an easy thing to send out children to collect coltan, this
4 radioactive substance. Send out your children to collect this product
5 then you can sell it for a huge profit to large international companies.
6 This spectacular natural resource has thereby become one of the greatest
7 tragedies affecting the Congolese people. But in addition to this, there
8 are other goods like timbers.

9 Rwanda, in contrast, needs new land; Uganda does not.

10 Q. And on the issue of land distribution, how did the Lendu
11 communities react to the redistribution of its land to the Hema?

12 A. I can't offer a precise answer, but many of the incidents within
13 these conflicts, not the wars themselves but the incidents that formed
14 part of these conflicts, were related to this. They were caused by
15 Lendus reacting against this distribution of land to Hema. Conflicts
16 were sparked and either of the two parties would get involved and then
17 other ethnic groups would get involved, supporting either one party or
18 the other. Historically the Ngiti, Lendu, and they offer their support.
19 Others don't get so involved, such as the Alur who tend to support Lendu,
20 they tend to maintain a certain distance from these conflicts. But of
21 course, yes, violent reactions were sparked among the Lendu people given
22 this redistribution of land. I don't have a precise information on that,
23 but I am sure that this is written in the report too about incidents
24 sparked by Lendu.

25 Q. Coming back now briefly to the visits that you yourself made to

Witness: Witness DRC-CHM-WWW-0002 (Open Session)
Questioned by Ms. Samson

Page 90

1 Bunia and Beni in March 2001, did you have the opportunity to meet with
2 the leaders of armed groups? You've mentioned Mr. Bemba. Did you meet
3 with any other armed group leaders?

4 A. No. I met with the civil society representatives mainly, with
5 the bishop, I interviewed him in the morning in Bunia, and with
6 collectivities representing these two ethnicities in conflict. I also
7 met with the ICRC, representatives of the UN, non-governmental
8 organisations, and that's all. Not with other leaders.

9 Q. When you spoke to Mr. Bemba, you alluded or indicated today that
10 you spoke to him about the issue of child soldiers within his group. Do
11 you remember what it was you said to him about that?

12 A. Mr. Bemba denied the existence of child soldiers to me, and
13 that's where he swore that if he had any among his ranks he would
14 demobilise them, if there were any, and I repeat, because he maintained
15 that there weren't any. I said that I had seen some in Bunia, I had seen
16 them two or three days prior at the airport. And he said that I might
17 have confused them with older people from small-statured ethnicities.
18 That's the way the conversation went. And I wrote a full transcription
19 of that conversation in my 2001 report just as I did in this report.
20 It's not normal to be able to cite word for word a conversation, but I
21 was so struck by this obviously false information that I included it.

22 This man had such enormous influence in Congo. In Kinshasa,
23 despite the arrival of the Ugandan forces' presence, many pro-Mobutu
24 supporters turned to Bemba. I met with people who said, I spoke with
25 Bemba, this was a former MP. That's why I was so indignant to hear these

Witness: Witness DRC-CHM-WWW-0002 (Open Session)
Questioned by Mr. Keta

Page 91

1 false words from Bemba, his manner of trying to deceive me was so
2 shocking to me that I wrote the conversation in full. He did say that
3 the Mayi-Mayi recruited child soldiers and the RCD recruited child
4 soldiers and that Kabila also used child soldiers, but him, no. And he
5 swore that he would release any if he did have any.

6 PRESIDING JUDGE FULFORD: Now, Ms. Samson, I think that's the
7 third time we've been over that area, so I think we need to move on now.

8 MS. SAMSON: Indeed. Thank you, your Honour. If I may have a
9 moment.

10 PRESIDING JUDGE FULFORD: Yes, of course.

11 (Prosecution counsel confer)

12 MS. SAMSON: Thank you, your Honour. I have no further
13 questions.

14 PRESIDING JUDGE FULFORD: Thank you, Ms. Samson.

15 Now, Mr. Diakiese, are you asking questions?

16 MR. DIAKIESE (interpretation): Your Honour, we agreed with
17 Maitre Keta -- for deontological (as interpreted) reasons we thought this
18 would be better to start with -- with this if that's okay.

19 PRESIDING JUDGE FULFORD: (Previous translation continues) ...
20 yes, Mr. Keta.

21 MR. KETA (interpretation): Thank you very much, your Honour.

22 Questioned by Mr. Keta:

23 Q. (Interpretation) Good afternoon, Witness. My name is Keta. I am
24 a lawyer from Bunia, Ituri, and also I am also attached to the bar in
25 Brussels. I would like to ask you a few questions in a methodical manner

1 on three contextual issues, and there'll be two issues concerning the
2 personal interests of my client. In order to understand I shall go
3 directly to the Ituri conflict. Throughout the whole of your report I
4 will look at the conflict itself.

5 In order to understand the phenomenon of child soldier
6 recruitment in Ituri we have to place this in its context. And the very
7 first question that I would like to ask you is to request some
8 clarification and that is the ethnic origins of the Hema and Lendu in the
9 framework of the Ituri conflict. On this issue I refer to your report
10 because I think there is some confusion in it, if not a contradiction.
11 I'm referring to page 5 and page 15 on your report. On the third line
12 you say that the DRC is a country similar in size to Western Europe and
13 it's similar to going from London to Naples and there are over 400
14 ethnicities who belong to two major ethnic groups; the Bantu on the one
15 hand and in the Bantu you've put the Luba and the others; second, the
16 Sudanese; third, the Nilotic peoples; fourth, the pygmies or the Twa; and
17 then you added Bambutis and the Hamites, and there I think there is some
18 confusion.

19 On page 15 of your report you say that in the Ituri region there
20 are about 4.6 million people with four major ethnic groups. And here we
21 have in the DRC, the Bantu and you put there the Bira and others; the
22 Nilotic peoples, and there you've put the Alur and you've also put the
23 Hema people; and under Sudanese you've put Lendu and the Twa, pygmies
24 after that.

25 So my question is: According to you the -- according to your

Witness: Witness DRC-CHM-WWW-0002 (Open Session)
Questioned by Mr. Keta

Page 93

1 report, what is written on page 5 and 15, which one is correct?

2 According to you, first of all, the Hema people, which ethnic group did
3 they belong to and which ethnic group do the Lendu group belong to so
4 that we can clarify this issue?

5 A. Indeed there is a mistake. First on page 17 with the figures on
6 page 15 it's incorrect to say that, and this is one of the figures that I
7 wanted to correct, sir. Living in four major groups -- no, four of the
8 major ethnic groups would be a correct way -- because I did say on page 5
9 that there were six ethnic groups. That was the first thing I wanted to
10 correct and this was in my draft list of things to correct.

11 The Hema people in my opinion are Nilotic in origin. And I see
12 that you are quite right. Nilotic does figure on page -- Lendus are
13 Sudanese, that goes without saying. The Lendu people are not mentioned
14 on page 5 indeed. On page 5, I mentioned that they were Sudanese in
15 origin, and naturally the Hema are Nilotic.

16 PRESIDING JUDGE FULFORD: Now, Mr. Keta, in your enthusiasm you
17 went rather too quickly and at one point I think the French transcript
18 started to disintegrate. Not their fault; your fault. So please can you
19 make sure that you don't speak too quickly. Thank you. Right.

20 Next question then, please.

21 MR. KETA (interpretation): Thank you for clarifying that. I
22 agree with the witness. I think that it's page 5 that needs to be borne
23 in mind, it is more correct, and you need to insert Lendu in the Sudanese
24 group and the Hema in the other one.

25 Q. My second question is about the origin of the conflict and I make

Witness: Witness DRC-CHM-WWW-0002 (Open Session)
Questioned by Mr. Keta

Page 94

1 a distinction between the origin, the cause, and the objectives of the
2 conflict. First, the origins of the conflict. Before going too far I
3 wanted to look at your declaration where you made -- which you made
4 recently and you said that the origin of the conflict was related to land
5 and distribution of the land. And this was done under Governor Adele
6 Lotsove. Is there a suggestion, then, that the conflict of land and
7 distribution of land in Congo is done in accordance with the law, and
8 then this was not an arbitrary distribution of land, and that if Lendu
9 don't own land that land belongs to the state, then the phenomenon that
10 occurred in Ituri would be that the Hema that occupied the land are --
11 but this was not in accordance with the law, then I would say that the
12 origin -- according to Congolese law, we have the certificate of
13 registration which means that when you want access to the land you're
14 given this document. So for Ituri as concerns Ituri there was this
15 conflict between the landowners who had been given land concessions and
16 the Lendu population.

17 I would say - and I'd like to hear your opinion on this - I would
18 say that the origin of the conflict was in fact a judicial decision which
19 dates from 1999, an April decision, and this sparked the conflict. But
20 the Hema occupied the land thanks to the certificate registration. So we
21 can say either corruption stepped in to cause a problem or there were
22 other facts, but Hema occupied the land according -- or in accordance
23 with the law because of the certificates. What would you say to that
24 suggestion, sir?

25 A. Firstly, there -- you cannot compare the problem of land and the

1 appointment of the governor. The land conflict goes back much deeper
2 than the appointment of the governor. These were concurrent issues. On
3 the one hand you have the land conflict which was exacerbated, which was
4 sparked, which became visible with the appointment of this governor, but
5 in both situations cannot be set on the same level. It's true that I did
6 not know there was a difference -- I did not understand that all land
7 belonged to the state. And we always talked about the land of Lendu or
8 the land of Hema in all the reports. What does exacerbate the decision
9 is that with the new Hema people turned up according to the in full --
10 the reports submitted to the rapporteur, the beneficiaries of the land
11 distribution which were occupied or owned by Lendu caused a problem.
12 This is what you can find in the 2001 report.

13 PRESIDING JUDGE FULFORD: Mr. Keta, I'm afraid I'd forgotten that
14 we sat at half past 2.00 rather than quarter to 3.00, and again I'm
15 afraid the Cinderella phenomenon has hit us. We're about to run out of
16 time and the tapes are about to stop working. Forgive me interrupting
17 your questioning. We are going to have to break off there, otherwise
18 everything is going to be lost, to say nothing of us all turning into
19 pumpkins.

20 Right. We'll break off there, sir. I'm afraid we've got no
21 choice because the equipment won't let us go on longer. Thank you very
22 much indeed for your assistance. We'll look forward to seeing you again
23 at half past 9.00 tomorrow morning. Thank you very much.

24 Usher, if you could accompany the witness.

25 (The witness stands down)

1 (Trial Chamber and Court Officer confer)

2 PRESIDING JUDGE FULFORD: While Mr. Garreton leaves, an
3 arrangement is going to be made for a copy of the transcript in unedited
4 form to be given to him so that he can do the exercise of filling in the
5 names.

6 Thank you all very much. Half past 9.00.

7 COURT OFFICER: All rise.

8 The hearing ends at 4.39 p.m.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25