

Witness: Witness DRC-OTP-WWW-0360(Open Session)
Questioned by Mr. Biju-Duval

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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 Thursday, 26 March 2009

7 (Mr. Lubanga entered court)

8 The hearing starts at 9.31 a.m.

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

11 PRESIDING JUDGE FULFORD: Good morning. Ms. Samson, just before
12 we came into Court a message was relayed to us that there may be some
13 issues in relation to the next witness which ought to be resolved before
14 he comes into Court. At the moment I'm not going to say anything more
15 about this publicly. I'm going to ask you, if you haven't done so
16 already, to communicate the same message to Maitre Mabilie as was relayed
17 to us via the Court Officer, and I'm going to instruct a representative
18 of the Victims and Witnesses Unit to speak immediately to the next
19 witness. And as soon as that conversation has taken place and the
20 picture is clear, for the representative to come to see the Judges in
21 their room so that we can understand what the position is. And of
22 course, in the usual way, if there are matters that need to be
23 communicated to the parties and the participants, of course we will
24 faithfully and loyally do so.

25 Are there any aspects to that proposal on which you would wish to

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1 comment?

2 MS. SAMSON: No, your Honour. Thank you very much. I have
3 communicated what information I have, which is little, to the Defence
4 this morning.

5 PRESIDING JUDGE FULFORD: I think in light of what we were told,
6 it would be wholly inappropriate for us to call the witness and then seek
7 to resolve the matters in a public forum, and I see that you gently nod
8 your head in agreement. Good.

9 On an entirely different subject, Ms. Samson, you can use the
10 time profitably by reflecting on an aspect of an ex parte hearing that
11 occurred on the 5th of March when I think you were asked to make an
12 inquiry of the United Nations in relation to a particular document or
13 individual. We are awaiting the fruits of that inquiry, Ms. Samson. I'm
14 asking you to say nothing about it now, but could you please by e-mail
15 bring the legal advisor to the division up-to-date as to the present
16 position.

17 MS. SAMSON: Thank you, Your Honour. I will do so.

18 PRESIDING JUDGE FULFORD: Anything you wish to say, Maitre
19 Mabilie?

20 (Defence counsel confer)

21 MR. BIJU-DUVAL (interpretation): No, your Honour.

22 PRESIDING JUDGE FULFORD: Well, I am -- I apologise to everyone
23 for this disruption, but the information brought to our attention, in our
24 view, clearly necessitates immediate resolution and we will adjourn until
25 such time as this matter has been resolved. Thank you all very much.

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1 COURT USHER: All rise.

2 Break taken at 9.35 a.m.

3 On resuming at 10.03 a.m.

4 COURT USHER: All rise. Please be seated.

5 PRESIDING JUDGE FULFORD: Ms. Samson, if I can address the bar
6 through you. The request that is made is limited to one factor, as you
7 may well already know. The witness who from time to time works in the
8 Congo and most particularly in Ituri is concerned that if his image is
9 broadcast via the television link, when he next goes to Ituri that in --
10 he will be under increased risk of reprisals from anyone who has seen him
11 and who may resent his participation in this trial, having been called by
12 the Prosecution.

13 Do you have any observations to make as regards that request from
14 the witness?

15 MS. SAMSON: Thank you, Your Honour. The Prosecution has no
16 observations. We've been apprised of the -- of the situation very
17 recently. We're not opposing the request of the witness, but we have no
18 additional information in support of it.

19 PRESIDING JUDGE FULFORD: The position of the Prosecution is one
20 of neutrality then, is that right?

21 MS. SAMSON: Yes, Mr. President, that's correct.

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

23 Mr. Biju-Duval, anything you wish to say?

24 MR. BIJU-DUVAL (interpretation): Your Honour, if the protection
25 measures are limited to that, well, it won't be a problem.

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1 PRESIDING JUDGE FULFORD: Thank you very much, Mr. Biju-Duval.
2 This witness is an expert in Congolese affairs who works from time to
3 time in Ituri. He is concerned that if his image is freely available via
4 the television link, when he next goes to the DRC he will be at risk of
5 reprisals from anyone who has seen his face and who resents his
6 participation in this case. Therefore, he requests that his image is not
7 broadcast over the live stream and that his image is "marbled."
8 Otherwise, his identity and everything he says will be wholly public.

9 For the Prosecution, Ms. Samson has indicated that their position
10 is one of neutrality; and the Defence have not raised any opposition to
11 this request. In our judgement, this is a reasonable and proportionate
12 request. The concerns that the expert expresses are understandable and,
13 most importantly, they do not -- the request that is made does not
14 undermine the essential public nature of the evidence which he is going
15 to give. Nothing in this trial could conceivably turn on the appearance
16 of this witness. Accordingly, we grant the application that has been
17 made for this protective measure.

18 Its consequence is that the witness will be able to come into
19 Court with the Court configured as it is now. The witness will not be
20 hidden by the curtain. He doesn't request that he is concealed from the
21 public gallery. And so the only limitation is that there will be a
22 marbling effect on the live stream.

23 Thank you all very much for your consideration of this. Can the
24 witness please be brought into Court.

25 (The witness entered court)

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1 PRESIDING JUDGE FULFORD: Sir, please have a seat.

2 Good morning, sir.

3 THE WITNESS (interpretation): Good morning.

4 PRESIDING JUDGE FULFORD: To re-assure you, we have just made an
5 order implementing the request that was communicated to us a little
6 earlier today, so I need say no more about that. Mr. Prunier, we would
7 like to thank you for taking the time to come and give evidence before
8 this Court. We understand that you have an extremely busy personal and
9 professional schedule. One matter that I wanted to raise with you, if I
10 may, straight away is whether or not you feel able at some stage during
11 your evidence to deal with the most recent communications that have been
12 made with you over the issue of the use of names in the Democratic
13 Republic of Congo and perhaps in Ituri in particular.

14 Before you answer can I say we readily recognise that these have
15 been sent to you extremely late, and we will wholly understand if you
16 feel that you have not been given a sufficient opportunity to reflect on
17 the matters that have been raised so that you can give an expert opinion
18 on them. But in case you in fact were able to deal with them, even at
19 short notice, we had the questions sent to you, and I would be grateful
20 now if you would be able to indicate whether you feel you would be able
21 to deal in a substantive and sufficient way with the matters that were
22 set out for you in writing.

23 THE WITNESS (interpretation): Yes, I don't think that that will
24 pose a particular problem, but I'm not an expert anthropologist. These
25 are questions of anthroponomy and I'm a historian and political science

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1 expert. I know the region. I have some quite simple ideas on
2 that but -- and the report from the two Congolese experts, the 12 pages I
3 have received seem very reasonable, very serious. But what I might be
4 able to add is just an approval of what they've said, and I might express
5 some uncertainties concerning the -- the civil status in North America
6 and Europe. So I might be able to add some complementary information but
7 not much.

8 PRESIDING JUDGE FULFORD: Reading between the lines, Mr. Prunier,
9 do we take it therefore that this is something that in reality is really
10 outside of your real expertise?

11 THE WITNESS (interpretation): Yes, indeed.

12 PRESIDING JUDGE FULFORD: Ms. Samson, I'm going to give the
13 parties and the participants an opportunity to reflect on that, and at an
14 appropriate stage we will seek assistance from you and Mr. Biju-Duval as
15 to whether or not in those circumstances it is appropriate for us to
16 address any questions to Mr. Prunier about those matters. But we needn't
17 deal with that now because we have time for reflection.

18 Sir, I hope that somewhere in front of you there is a card
19 written in French which contains a solemn undertaking. Could I ask you,
20 please, to read out the words on that card so we can all hear what you
21 say.

22 THE WITNESS (interpretation): I solemnly declare that I will
23 tell the truth, the whole truth, and nothing but the truth.

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25 (Witness answered through interpreter)

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1 PRESIDING JUDGE FULFORD: Thank you, Mr. Prunier.

2 Yes, Ms. Samson.

3 MS. SAMSON: Thank you, Mr. President.

4 Questioned by Ms. Samson:

5 Q. Good morning, sir.

6 A. Good morning.

7 Q. We've been introduced briefly, but I will repeat for you that my
8 name is Nicole Samson, and I will be asking you questions today on behalf
9 of the Office of the Prosecutor.

10 A. Very well.

11 Q. Sir, could you please state your full name.

12 A. Civil status French, Gérard Alexandre Philippe Prunier.

13 Q. What is your date of birth?

14 A. 14 October 1942.

15 Q. And where were you born?

16 A. Neuilly-sur-Seine, in the Parisian region.

17 Q. Thank you, sir.

18 MS. SAMSON: Mr. President, I now have a binder of materials that
19 I would ask to be provided to the witness and to the Chamber. I also
20 have a copy for the Defence.

21 PRESIDING JUDGE FULFORD: I hope my assumption is correct,
22 Ms. Samson, that the Defence have had prior knowledge of these materials
23 that you wish to give to the witness?

24 MS. SAMSON: Yes, your Honour, in the sense that I had
25 communicated to the Defence that I would be asking some leading questions

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1 in respect of Mr. Prunier's educational background, employment
2 background, and then tendering his reports into evidence, and that is all
3 that is contained in the binders.

4 PRESIDING JUDGE FULFORD: Good. I'm sure that once
5 Mr. Biju-Duval sees the folder, if there are any difficulties, he will
6 not be slow rising to his feet.

7 Yes, Ms. Samson, please distribute it. Can you and I please
8 remember that we mustn't have rapid-fire exchanges in English because
9 otherwise the translators will have a particularly difficult time, and I
10 see some nods in that direction from above us. Good.

11 Yes, Ms. Samson.

12 MS. SAMSON: Thank you.

13 Q. Sir, I would like to take you to the first tab of the binder?

14 A. Yes.

15 Q. And the document there is a copy of a curriculum vitae. Can you
16 confirm, sir, this is a copy of your curriculum vitae?

17 A. Yes, yes, indeed.

18 Q. And in scanning the document, does it accurately reflect your
19 education and employment history?

20 A. Yes, yes.

21 Q. So, sir, did you receive a Ph.D. in African history from the
22 University of Paris in 1981?

23 A. Yes, I did. However, administratively speaking, it's not Paris I,
24 It's the Etudes Politiques -- Ecole de
25 Hautes Etudes Sociales. It's an institute that is not directly linked to

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1 one university, it's multi-university -- actually, with the current
2 university reforms the status of that institute is being changed.

3 THE INTERPRETER: Ecole de Hautes Etudes -- de Hautes Etudes en
4 Sciences Sociales was the exact name, says the interpreter.

5 MS. SAMSON:

6 Q. Thank you, sir, for that clarification. And going further into
7 your employment history, it's correct that between 1984 and 2001 you
8 conducted research on east African history and politics for the National
9 Centre for Scientific Research; is that correct?

10 A. Yes, indeed -- actually, I went back, as after I left my
11 position as director of the French Centre for Ethiopian Studies in
12 Addis Ababa, I was made part again of the CNRS, and I'm actually there
13 at present.

14 Q. Thank you. So is it correct that after 2001 you left the CNRS to
15 take up a position as the director of the French centre for Ethiopian
16 studies, which took you until 2006, and is it after 2006 that you
17 returned to the CNRS?

18 A. Yes -- actually, I didn't leave the CNRS, as in both cases you're
19 a French civil servant. It's what you -- it's called "détachement,"
20 you're seconded. So in 2001-2006 I was an employee of the Ministry of
21 Foreign Affairs to which the Addis Ababa section is attached.

22 Q. Thank you. And during the time that you were working for the
23 CNRS, what titles or positions did you hold?

24 A. We are just called "chargé de recherche," researcher, actually.

25 Q. Thank you, sir.

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1 MS. SAMSON: Mr. President, would it be a convenient moment to have
2 an EVD number assigned to the curriculum vitae.

3 PRESIDING JUDGE FULFORD: Yes, I think each of these documents should
4 receive a separate number rather than giving a number to the file,
5 shouldn't it. So have you now -- is that the end of your questions in
6 relation to the curriculum vitae, Ms. Samson?

7 MS. SAMSON: Yes, your Honour, there is a second document behind
8 tab 1 which is a list of publications.

9 PRESIDING JUDGE FULFORD: Yes.

10 MS. SAMSON: It may need to get a separate number if your
11 Honour thinks that's appropriate. It is behind the same tab, and I do
12 want to ask a question or two about that document.

13 PRESIDING JUDGE FULFORD: Right. Out of an abundance of caution,
14 let's give them two numbers, Ms. Samson, and if the Court Officer could
15 do that for both of them now, please. Do they have DRC numbers or not?
16 No.

17 MS. SAMSON: No, these two do not.

18 PRESIDING JUDGE FULFORD: Right. So could we give, therefore,
19 the curriculum vitae and the publications on the great lakes separate
20 numbers, please.

21 COURT OFFICER: (Interpretation) Curriculum vitae will have the
22 number DRC-OTP- -- sorry, EVD-OTP-00401 and the publication list will
23 have the number EVD-OTP-00402, and just I would like to remind you, could
24 the Registry receive a copy of the documents or the original of
25 the file -- for the record.

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1 MS. SAMSON: Absolutely. Indeed, they've been filed by way of
2 Court filings. The CV was filed in filing 1566, Annex 1, and the list of
3 publications was filed in filing 1569, also Annex 1.

4 Q. Sir, if I could just ask you to turn within tab 1 to the second
5 document, it's a list of publications.

6 A. Yes.

7 Q. Does this list of publications accurately reflect your
8 publications on the Great Lakes, Congo, and Central Africa?

9 A. Yes -- well, actually it's limited to what is -- concerns the
10 Congo. I have written a lot about Rwanda, Uganda, and all that, but if
11 you speak in geographical terms, that's what a geographer would call the
12 Great Lakes regions. I've even written something about Burundi. So
13 that's really for the Congo and Great Lakes, multi-nationally speaking.
14 So in an article or in a text I don't only talk about one country, but
15 three or four times, I have probably three or four times more
16 scriptural productions if you look at Uganda, Rwanda, and Burundi and
17 what I wrote about those countries.

18 Q. Thank you very much. If you turn to the second page of the list
19 of publications before you, there's a note of -- a publication entitled:
20 "From Genocide to Continental War," and in this document it's listed as
21 being forthcoming in 2009, and I wonder if there has been an update on a
22 publication of this article or book?

23 A. No, actually it was published in January. It's from genocide,
24 not genocidal, it's not the adjective because the genocide I'm talking about
25 is the Rwandan genocide. The book covers the whole of the Great Lakes

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1 history and the central African history from the end of the Rwandan
2 genocide until the period that followed the Congolese elections, so up
3 until 2007 approximately, so it's the period from 1994 until 2007. What
4 I would like to flag is that there are two different titles and that can
5 lead to confusion.

6 The reasons are impossible to understand, but my American editor,
7 Oxford University Press America, decided to give it a different title.
8 But in both cases it's exactly the same book. The content of the book is
9 exactly the same, so if you look at it on Amazon.com it can lead to
10 confusion because there are different titles, whether or not the book was
11 published in Britain or in the United States.

12 Q. Thank you very much. Now, Mr. Prunier, I would like to ask
13 whether you were indeed requested by the Office of the Prosecutor to
14 provide a report on the characteristics and features of the conflict in
15 Ituri in the north-eastern Democratic Republic of Congo, including the
16 history of that region?

17 A. Yes, yes, of course.

18 Q. And did you in fact provide such a report to the Office of the
19 Prosecutor?

20 A. It's in the next tab, June 2008 is the date.

21 Q. Thank you. So at tab 2 of the binder before you is a copy of the
22 report that you provided to the Office of the Prosecutor; is that
23 correct?

24 A. Yes.

25 Q. Were you subsequently asked additional questions on the substance

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1 of this report from June 2008?

2 A. Yes, yes, indeed -- actually, that's also in the next tab.

3 Q. So the document at tab 3 of the binder contains a supplementary
4 report that you prepared; is that correct?

5 A. Yes, indeed.

6 Q. And, sir, if you move now to tab 4 of that binder, can you
7 confirm whether this is a third supplementary report that you provided to
8 the Office of the Prosecutor?

9 A. Yes, indeed. Actually, with this one we go a bit further than
10 Ituri, and it shows a very strange period of the history of the Congo, a
11 period in which there wasn't a war but wasn't a peace either, the period
12 after the Sun City agreements.

13 Q. And the -- this report that you're referring to now is titled:
14 "The Influence of Rwanda and Uganda Inside the DRC in General and the
15 Ituri in Particular During the Semi-Post-War Period." Is that correct?

16 A. Yes, yes, indeed.

17 MS. SAMSON: Mr. President, I think we can have EVD numbers for
18 these three reports, if it's an appropriate time for that.

19 PRESIDING JUDGE FULFORD: Certainly, and again does the Court
20 Officer need DRC numbers?

21 MS. SAMSON: The -- the registration number for the first report
22 entitled: "The Ituri Conflict, a Background Study" is DRC-OTP-0203-0054.

23 COURT OFFICER: (Interpretation) The report will be given the
24 number EVD-OTP-00403.

25 MS. SAMSON: Thank you. The registration number of the

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1 supplementary report entitled: "Answers to the ICC questions on Gerard
2 Prunier's Report" is DRC-OTP-0203-0028.

3 COURT OFFICER: (Interpretation) The document will be given number
4 EVD-OTP-00404.

5 MS. SAMSON: Thank you. And finally, the registration number for
6 the third report entitled: "The Influence of Rwanda and Uganda Inside
7 the DRC in General and the Ituri in Particular During the Semi-Post-War
8 Period" is DRC-OTP-0203-0002.

9 COURT OFFICER: (Interpretation) Did you say 0002? Could you
10 repeat that, please, the last four figures.

11 MS. SAMSON: Yes, I did, 0002.

12 COURT OFFICER: (Interpretation) The number of this document will
13 be EVD-OTP-00405.

14 MS. SAMSON: Thank you very much.

15 Mr. President, the Prosecution relies on the totality of these
16 three reports and does not at this point anticipate reading in any
17 summaries of them, and subject to your Honours' views we have no further
18 questions for this witness at this time.

19 PRESIDING JUDGE FULFORD: That's very helpful, Ms. Samson. Thank
20 you. As far as the public is concerned, will the reports be publicly
21 available in some electronic format?

22 MS. SAMSON: Thank you, Your Honour. Yes, indeed, they are
23 attached currently as public filings in the public domain from filings
24 1505, Annex 1, and additionally as I understand it such reports get
25 uploaded on to the Court web site in addition to any public statements

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1 that are made.

2 PRESIDING JUDGE FULFORD: Good. So the public can understand
3 that the evidence presented by this witness as far as the Prosecution is
4 concerned is wholly available to be read should anybody wish to avail
5 themselves of that opportunity?

6 MS. SAMSON: Yes, that's correct.

7 PRESIDING JUDGE FULFORD: Excellent. Thank you very much,
8 Ms. Samson.

9 I wanted to ask if there have been any applications by
10 participating victims to ask this witness any questions.

11 No. Thank you very much, Ms. Massidda.

12 Mr. Biju-Duval.

13 Questioned by Mr. Biju-Duval:

14 Q. (Interpretation) Good day, sir.

15 A. Good day.

16 Q. We were introduced this morning. I'd like to put to you a few
17 questions. I'm a lawyer representing Mr. Thomas Lubanga. I'll put some
18 questions to you on his behalf. The questions concern your report, the
19 various subjects that you dealt with. We'd like some information on
20 certain subjects. And--- I think there are---.

21 THE INTERPRETER: The interpreter notes there's a lot of
22 interference.

23 MR. BIJU-DUVAL (interpretation):

24 Q. I won't go back to the analysis which was very interesting --

25 PRESIDING JUDGE FULFORD: I'm sorry, Mr. Biju-Duval. I

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1 understand in the French version there is some bad interference. Can I
2 ask the Court Officer to engage the assistance of a technician, please.

3 I'm very sorry, Mr. Biju-Duval. Let's try again and see whether
4 we've rectified the problem.

5 MR. BIJU-DUVAL (interpretation): Thank you, Your Honour.

6 Q. So to facilitate our exchange, to make it easier for everyone to
7 understand my questions, I'm going to hand some documents over to you.
8 First of all I'll give you the French version of your report and the
9 annexes to the report. This is the version that I have worked with, and
10 it's on the basis of this document that I will put my questions to you.
11 I believe that the translation is more or less reliable. If not, please
12 let us know. I'll also show you a binder with a certain number of
13 documents that we'll consult in the course of my cross-examination.

14 PRESIDING JUDGE FULFORD: If the usher could please help with the
15 distribution of these documents.

16 Thank you, Mr. Biju-Duval.

17 MR. BIJU-DUVAL (interpretation): As far as the Chamber is
18 concerned, I have the very same documents for the Chamber.

19 Q. Sir, one suggestion of a technical kind. We both speak French.
20 It's necessary to make sure that there are pauses between questions and
21 answers. This will facilitate the work that the interpreters have to do;
22 isn't that correct?

23 A. Yes, yes.

24 Q. You can leave these documents aside for the moment. I'll get
25 back to them. We'll go through them one by one. As I put questions to

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1 you, I don't want to go back to the very interesting analysis that you
2 made of the history of the Congo, the history that preceded the events in
3 Ituri; that is to say, the period prior to 1997/1998. I'm going to
4 concentrate on Ituri itself and the period that commences in 1998 and
5 extends up until 2004. This is a period that you cover in your report.

6 First of all, I'd like to go back to certain basic pieces of
7 information that are useful with regard to Ituri. You have a short
8 chapter on the geographic and historical situation; isn't that correct?

9 A. Yes.

10 Q. And you provide useful information with regard to the population
11 of Ituri, and in particular with regard to two peoples, the two
12 communities that are concerned in particular, the Hema and the Lendu
13 communities; isn't that correct?

14 A. Yes.

15 Q. So as far as the demographic information, the basic demographic
16 information provided is concerned, you said that Ituri had about three
17 and a half million inhabitants - isn't that correct? - it's page 50 in
18 the French version of your report?

19 A. Yes.

20 Q. And as far as the Lendu community is concerned, you say that
21 there are about 700,000 members of that community?

22 A. Yes.

23 Q. As far as the Hema community is concerned, the number is 250,000;
24 isn't that correct?

25 A. Yes.

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1 Q. So we've tried to go into the details of the demographic
2 situation. It may turn out to be of importance.

3 THE INTERPRETER: Microphone for counsel, please.

4 MR. BIJU-DUVAL (interpretation):

5 Q. And could you have a look at the document under tab 9 in the
6 binder. It's a document DRC-D-01-0003-0535 -- 534. Have you got it?

7 A. Yes.

8 Q. Tell us what we should think about this document. It seems to me
9 that it's a report titled: "The Demographic Situation in Province
10 Orientale," it comes from the government of that province, of Province
11 Orientale, and it's dated the 9th of September, 2008, if you have a look
12 at the end of the document. It contains demographic information that
13 concerns Province Orientale. And on page 6, can you see the part that
14 refers to the Ituri district?

15 A. Yes.

16 Q. So these statistics dated December 2007 show that there is
17 6,587,584 inhabitants in Ituri, so it's almost twice the figure that you
18 mentioned. Could you perhaps provide us with some information about this
19 demographic information. Perhaps you could tell us what sort of sources
20 you used for providing information on the demography.

21 A. Well, you know demographic information in Africa -- well, here you can
22 see that the gentleman who provided this information -- well, he gave a very
23 precise number. It says 6,587,584 individuals, but the factor that he used
24 to obtain this result -- well, it's just a matter of mathematics, it's pure
25 mathematics, and he says with regard to Kisangani 3---for 3.76; 1.929 for

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1 the districts, so these figures are not certain, and you multiply it by an
2 unknown factor to obtain a result down to the last digit. I'm not a
3 mathematician, but I must say that this makes me wonder. One thing allows
4 you to measure the population in demography and that is
5 a census, and censuses have to follow certain strict rules. It's
6 not easy to do this. Even in Western countries, censuses often contain
7 errors. So you have to go back to the last
8 census that was made according to the rules of the trade as one says. I
9 can't remember when that was last done in Zaire. I wouldn't be able to
10 tell you. Was there ever such a census? And then how did one proceed to
11 update it? These figures, 3,376, where were they obtained from, from a
12 demographer, did the UN provide these estimates? Individuals involved in
13 humanitarian aid?

14 It's really a black hole when it comes to having knowledge of
15 certain phenomena in Africa. It's not just a -- something characteristic
16 of the Congo but also of Darfur, and in particular, with regard to the
17 number of dead there. One's basing oneself on unknown figures that are
18 multiplied by factors that are estimates, and then one believes one has
19 obtained a result. So, yes, you can obtain - I'm not sure what the term
20 is - you can obtain certain discrepancies -- or there can be certain
21 discrepancies, contradictions, variations of an incredible magnitude.
22 That's all I can say.

23 Q. Thank you. But as far as you are concerned, what were your
24 references, what were your sources when you drafted your report?

25 A. Well, interviews that I conducted with administrative officials

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1 who were refugees in Uganda at the time. I was involved or they were
2 involved with refugees, plans for refugees, et cetera. These were people
3 who were administrators in Province Orientale as well in the years that
4 preceded the conflict. So these were their personal estimates, and in
5 this case I tend to trust people in the field more than people who have
6 documents. Documents are a lot nicer and a lot more elegant. You have
7 figures, even down to the last 585 persons. It's intellectually a lot
8 more satisfying, but people in the field tend to base themselves on
9 practical measurements, how much fuel is consumed, when food is
10 distributed, how many people come to collect such food, but discrepancies
11 between figures can be absolutely enormous. And personally, in a
12 situation that is uncertain with regard to demography - and this has
13 nothing to do with what one might be familiar with, not only in Western
14 countries but also in certain African countries where censuses are
15 performed in a better way, carried out in a far better way, e.g. Kenya; well,
16 I would say in such a case, an administrator is someone one can trust, so I
17 tend to trust such individuals more.

18 Q. Thank you. These are the same sources that provided you
19 information on the ethnic composition of the Hema and Lendu communities?

20 A. Yes, well, the Hema and the Lendu, well, here the matter is even
21 more uncertain. You see, there is a ratio of about 1 to 3. This ratio --
22 well, I believe that it is more or less reliable. Perhaps you might
23 say -- well, there were a million Lendu and then there were 380,000
24 Hema -- well, even in this case the ratio would remain about the same
25 and that also is something that administrative officials are familiar

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1 with. As for the ethnic origin of people, well the matter is even more
2 complicated. 75 per cent -- in 75 per cent of the cases, it's not even a
3 matter that is addressed.

4 Q. Thank you. Can you provide us with the names of your sources?
5 Would it be inconvenient?

6 A. Yes, it would.

7 Q. Perhaps in private session?

8 A. Yes, perhaps, but these are people who are refugees, they are
9 still refugees today. We can't say that the region is free of troubles
10 at the moment and of difficulties.

11 Q. Thank you. So -- yes, if I suggested that a census was carried
12 out in 1995, do you know anything about this?

13 A. That's possible, but if there was such a census I really wouldn't
14 rely on the results, especially not in 1995. When you see the extent of
15 the disorder in the Mobutu administration, throughout the country and
16 particularly in the eastern part of the country, well the census of 1995,
17 it's not reliable.

18 Q. Thank you. I'd like to briefly address the question of the
19 origin of the population. I think we agree that the story of origins is
20 always important in the history of a people. There's the question of the
21 origin -- the ancient origin of the Hema and Lendu communities. In page
22 51 of the French version of your report you said that the Hema were of
23 Bantu origin and not of Nilotic origin as may have been claimed; isn't
24 that correct?

25 A. Yes.

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1 Q. Is this a unanimous opinion or is it a matter of debate?

2 A. Well, look, I have no idea, but I've never met anyone who didn't
3 agree with this because there's a very simple thing. It's practically
4 the Ruynoro language that these people speak. Runyoro is a Bantu
5 language. We know the Banyoro well. They are present in Uganda. They've
6 been well-identified, you can't see what would be Nilotic about that.
7 But there's an ideological problem, because the Hema after the Rwanda
8 genocide tried to Tutsify themselves. I apologise, because these are
9 matters that are anthropologically precise but politically delicate. The
10 Rwandan genocide was directed against the Tutsi. The Tutsi were thought
11 to be of non-Bantu origin, that's at least what the Hutu thought.
12 Whether you agree or not, that's a different matter. But as far as the
13 regime's propaganda is concerned, in Kigali before the genocide, the
14 Tutsi were considered to be people of Nilotic origin. And then there is
15 a conflict in Ituri which has nothing to do with all of this, but there
16 are two groups, but there are many other ethnic groups, not just the
17 Lendu and the Hema, but the groups in a politically intense atmosphere.

18 The genocide in Rwanda left an impression on everyone, it shocked
19 everyone throughout the world. You have people who because of their Hema
20 name have the possibility of attaching themselves to a group that is
21 supposed to be like the Tutsi, the Banyankole Himas from Uganda. I
22 apologise if this is a little complicated, but that's how things are.
23 You can draw parallels with ethnic problems in Europe and from Africa
24 these problems would also be complicated. The Hema belong to a group
25 which is Bantu. If they wanted to pretend that they were martyrs, they

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1 should suggest that they too were the victims of violence directed
2 against them by malicious Bantus who wanted to attack people who were
3 also supposedly of Nilotic origin. Whether it's true or not, well that's
4 a different matter. This is the same case as in the case of the debates
5 about what a Slav is, what a Semitic person is, according to the racist
6 thoughts in Europe in the 19th century. We are close to this debate
7 because the white anthropologists who defined these categories were from
8 Belgium, and they thought as did colonial administrators around the year
9 1910. It's very difficult for a contemporary Westerner -- it's difficult
10 because we weren't born in 1910, but it's difficult to understand how one
11 perceived race. Now, race is seen as black or white now, but it was much
12 more complicated. The Bretons in France were a
13 race. There's a Flemish origin and Walloonian origin in Belgium, also a
14 case in point. Both white, but there are discussions about race in their
15 relations. These relations -- these relationships were projected on
16 to the Africans. It was like a cinema projection. One imposed European
17 racial categories on African realities, and then you have people who can
18 use or recycle these ideological elements within the framework of a
19 political struggle, a political fight. This has always been done, not only
20 in Africa. For example, it's good to be able to say "I belong to a group
21 that is under threat, that has been victimised", because that gives you a
22 political advantage.

23 PRESIDING JUDGE FULFORD: Mr. Biju-Duval, just give me a moment.

24 Sir, these are undoubtedly extremely complicated matters that in
25 order to do them real justice do require a considerable amount of

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1 explanation. However, I suspect that Mr. Biju-Duval has a fairly
2 considerable number of questions, and I fear that if each is addressed by
3 you in the extremely helpful and comprehensive way that you dealt with
4 the last question, we will probably be detaining you for some weeks,
5 which may not suit. Therefore, without in any way seeking artificially
6 to shorten or to truncate your evidence, could I ask you to focus on the
7 heart of the question on each occasion that's asked, because otherwise
8 I'm concerned for you that you'll be detained in the witness box for a
9 very long period of time indeed. But I want to make it clear that I'm
10 not in any way trying artificially to shorten the evidence that you give.

11 Mr. Biju-Duval, we're now very nearly at 11.00 when we have a
12 near statutory obligation to those in the booths above us, and so I think
13 we'll rise now and take our break and sit again at half past 11.00.

14 Sir, thank you very much indeed for your assistance so far. We
15 look forward to seeing you again in half an hour.

16 Could the usher very kindly escort Mr. Prunier back to the
17 witness waiting-room, where hopefully there will be some refreshment
18 for him.

19 (The witness stands down)

20 PRESIDING JUDGE FULFORD: Half past 11.00.

21 Recess taken at 10.58 a.m.

22 On resuming at 11.30 a.m.

23 COURT USHER: All rise. Please be seated.

24 PRESIDING JUDGE FULFORD: Witness please.

25 (The witness takes the stand)

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1 PRESIDING JUDGE FULFORD: Thank you very much, Mr. Prunier.

2 Mr. Biju-Duval, just before you continue, the Court Officer is
3 going to give numbers to the various documents that have been given to
4 us. Yes.

5 COURT OFFICER: (Interpretation) The document entitled:
6 "Demographical Data of Orientale Province", DRC-D-01-0003-0536,
7 will bear MFI-D-00088. The French
8 translation of the report bearing the code DRC-D-01-0003-0164
9 will bear MFI-D-00089.

10 PRESIDING JUDGE FULFORD: Thank you.

11 Mr. Biju-Duval.

12 MR. BIJU-DUVAL (interpretation): Thank you, Your Honour.

13 Q. Sir, I would like to confirm to you -- sorry, I'd like to tell you
14 that we will come back later to the political aspects of this ethnic
15 classification. What I would like us to do now is to examine the issue
16 of the current classification of the Hema community without looking at
17 the political challenges that are related to such classification. We
18 will return to that later on if you so wish.

19 A. Yes.

20 Q. You said that with respect to the fact that the Hema population
21 belonged to Bantu group and that they are not Nilotic, you said that
22 there was a unanimous consensus on that, right?

23 A. Yes.

24 Q. In the documents which I gave you, you will find an extract of a
25 report prepared by Roberto Garretón, a human rights expert on the Congo

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1 region, publication 2001. It's under tab 27, as well as an excerpt of a
2 report prepared by the AZADHO association on the inter-ethnic conflict
3 between Hemas and the Lendus in Djugu territory in Orientale province.
4 It's under tab number 4. Well, I imagine that the reports of
5 Mr. Garretón are familiar to you.

6 A. I don't know if I have read that report. When I wrote my book, I read
7 about 20 -- about 2,000 documents. I don't know if I read that report.
8 Of course, I know Mr. Garretón and the work he has been doing.

9 THE INTERPRETER: Counsel's microphone is off.

10 MR. BIJU-DUVAL (interpretation):

11 Q. As concerns the report of the AZADHO association, which is a human rights
12 association, I think you alluded to it in your report; is that correct?

13 A. Yes.

14 Q. If I tell you that Mr. Garretón in his report classifies amongst
15 the Nilotic group the Hemas and that the AZADHO association similarly
16 states that the Hemas are a Nilotic people, and this is the terminology
17 used by ethnologists. When I read these reports, I come away with the
18 understanding that they have a different approach to the origin of these
19 peoples; is that correct -

20 A. Yes of course, but---

21 PRESIDING JUDGE FULFORD: I'm going to interrupt you for a
22 moment, I'm very sorry, Sir.

23 Ms. Samson, you're on your feet.

24 MS. SAMSON: Thank you, Mr. President. It's just to have
25 references to the areas in these two reports that my friend is referring

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1 to so I can follow and so that the witness can follow.

2 PRESIDING JUDGE FULFORD: Yes, I do concur with that, Mr. Biju-Duval. You
3 took us to two dividers at the same time, difficult to look at both
4 simultaneously. And I think if you are asking this witness to comment on
5 something that another witness has said, particularly when there's a real
6 possibility that he hasn't read the report, you really must take the witness
7 to the passage that you're relying on so that he understands it, rather than
8 us having questions being put on the basis of the impressions that you have,
9 having read Mr. Garretón's report. So I'm sorry, this slows it down
10 slightly but can we take it in a little bit more of an orderly way.

11 MR. BIJU-DUVAL (interpretation): Thank you. I apologise, your
12 Honour. I was in a hurry and I'm sorry.

13 MS. SAMSON: I'm sorry to make one last comment. It's only so
14 that if the ERN is provided, perhaps other members of the teams can have
15 access to the documents that are being discussed. I have a hard copy but
16 I don't believe everybody else in the courtroom does.

17 PRESIDING JUDGE FULFORD: Yes, it's true. I've been ignoring
18 Ms. Massidda because I think I've - and she'll tell me if I'm wrong - but
19 I think I interpreted an attempt by her a little while ago to stand up as
20 being a precursor to a complaint that they don't have the documents.

21 And, Ms. Massidda, this is an issue on which we owe you a
22 decision, and I'm sorry that you haven't had it by now. We will rectify
23 that in the very near future.

24 But I entirely agree, Ms. Samson, it would be helpful if ERN
25 numbers were provided if Mr. Biju-Duval has them to hand so that the

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1 documents can be followed on screen. Thank you.

2 MR. BIJU-DUVAL (interpretation): The ERN number of the excerpt of Mr.
3 Garretón's report is DRC-D01-0003-0856 tab 27, paragraph 38. In that section
4 Mr. Garretón makes a distinction between the Bantu and Nilotic peoples, and
5 he includes under that category the Hemas, about 380,000 of them, he says.
6 That's for the first report. In the second report which I mentioned, a
7 report by the AZADHO association, code DRC-D01- 0003-0434, page 5 of that
8 report, the first page, where it is stated the historical data in Ituri
9 states that the Hema people, who were classified under the Nilotics according
10 to the terminology of ethnologists, migrated in small waves over about two or
11 three centuries to settle in the part of the country by the west bank of Lake
12 Mobutu (Lake Albert). That is the only sentence that interests me.

13 THE INTERPRETER: Counsel is very fast. The interpreters would
14 like to inform the Court.

15 MR. BIJU-DUVAL (interpretation):

16 Q. Now, Mr. Expert, if I provide you with such information, it is because I'm
17 surprised with -- by your statement that there is a general consensus to the
18 effect that the Hemas were not classified under the category of Nilotic
19 peoples. And so my question is the following: Wouldn't it have been
20 appropriate to mention that there is a different
21 opinion on this point?

22 A. You know, there are challenges to everything. There are people who tell
23 you that Rwandan Tutsis are Ethiopians, and you will notice that in the
24 report of the AZADHO association. The person - I very much doubt that this
25 person who wrote it is from the region because the group comprised mainly

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1 people from the western bank of Lake Mobutu (Lake Albert) - he says "the
2 people classified as Nilotic peoples according to the terms used by
3 ethnologists", I would like to tell you that this person is quoting what he
4 thinks will pass for an authoritative source when he refers to ethnologist.
5 In other words, he doesn't know anything about it himself. And what I find
6 interesting here is that most of the time people cite these sources. The
7 writer from AZADHO who prepared the report, when he speaks about an
8 anthropologist who says that the Hemas are not Bantus and that they are
9 Nilotics, who is he quoting? What is his source? Very frankly, in the Great
10 Lakes region, there is always a controversy. Think about the situation in
11 Darfur as well. People just express these ideas. But the most important
12 thing is to go back to the fundamentals. It's not complicated. I think you
13 just have to, say, meet people on the road, see children on the street, and
14 record their speech, and you will be able tell immediately whether they are
15 speaking a Nilotic or a Bantu language; it's not complicated.

16 Q. Thank you. Now, as far as you are concerned, you used certain sources,
17 but these sources are not stated in your report?

18 A. I did not use the sources of Western anthropologists. My sources were
19 administrators or inhabitants as I said earlier. Maybe I'm a victim of poor
20 information or bad information, especially as I do not speak the languages
21 myself, and so I may not be able to speak authoritatively on this. But I can
22 tell you that I am able to make a distinction between a Nilotic language and
23 a Bantu language, even though I do not speak the languages. It's just the
24 same as a European who can make a distinction between a Slav language and a
25 Germanic language even though he may not be able to speak the languages.

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1 Q. Thank you.

2 MR. BIJU-DUVAL (interpretation): Maybe we should give an MFI
3 code to these documents.

4 COURT OFFICER: (Interpretation) The report of AZADHO on the inter-ethnic
5 conflict in Djugu territory in Orientale province has a code DRC-D01-0003-
6 0434 will bear the code MFI-D-00090. This second document, what you said
7 was not clear. You said number 836, it was DRC-D01-0003-- you said 0--.

8 MR. BIJU-DUVAL (interpretation): 00856

9 COURT OFFICER: (Interpretation): 00856. We can't find it.

10 MR. BIJU-DUVAL (interpretation): I have been informed that it's
11 not yet in the e-court system.

12 COURT OFFICER: (Interpretation) The document will bear the code
13 MFI-D-00091. Thank you.

14 MR. BIJU-DUVAL (interpretation):

15 Q. Well, Mr. Expert, I would like us now to go into the heart of
16 this subject matter, and with your permission --

17 A. Yes.

18 Q. -- with respect to what you identified as one of the origins of the
19 conflict in Ituri, that is, the chapter entitled: "The Origins of the
20 Conflict," which starts in page 55 of your report in the French version
21 thereof, and I would like to discuss with you the issue of the land conflict,
22 which turned out to be the trigger of the conflict in Ituri according to
23 your report. You mention that that land dispute between the Lendus and the
24 Hemas attained a climax in 1999 and produced an incident which related
25 to a Hema farmer's property, a certain Singa Kodjo ---.

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1 THE INTERPRETER: The interpreter did not hear the name.

2 MR. BIJU-DUVAL (interpretation):

3 Q. -- and that the incident led to a massacre, the massacre of
4 Blukwa?

5 A. Yes.

6 Q. Attributed -- a massacre ascribed to the Lendus against the
7 Hema; is that correct?

8 A. Yes.

9 Q. Did you examine this incident in detail, this incident which
10 occurred between the farmer, Kodjo, and the Lendu population concerned.
11 Can you on this point tell us about your research, your information
12 sources with respect to that particular incident?

13 A. I did not examine that or study that in detail. I discussed it
14 with people, again, administrators. I also discussed it with Ugandan
15 officers who knew or had an idea of what happened. Personally, during the
16 war I was not in Ituri, and I did not carry out any field investigation
17 at the time in that particular locality on this point.

18 Q. Thank you. You have mentioned in page 56 of the French version
19 of your report that the land certificates or the land titles of Hema
20 farmers have a legal status that was questionable; is that correct?

21 A. Yes.

22 Q. And you refer to what was called the Zairianisation of land in 1973; is
23 that correct?

24 A. Yes.

25 Q. Now, as concerns the Zairianisation of land in 1973 and its

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1 fall-out in Ituri, can we in summary say - and you would correct me if I
2 am mistaken - can we say that in 1973 the land law
3 entrusted to the state exclusive ownership of land and subsoil resources?
4 Let me be more specific. Can we say that from that time there was a
5 conflict between on the one side, the traditional land tenure system,
6 which was based on collective ownership of land that is under the
7 supervision of local chiefs, and on the other hand the state land
8 tenure system, which stipulates that the state is sole owner of all
9 land and that such land can only be allotted through concession or
10 through other state procedures? Now, do you think this is a correct
11 summary of the land tenure system at the time?

12 A. Yes and no, it was worse than that, because in theory all land
13 belonged to the Belgian State which recognised the possibility or the
14 existence of a traditional land tenure system which was only tolerated.

15 Q. I apologise for interrupting you. Let us leave the Belgian State
16 aside. As concerns the land tenure system after 1973 under Mobutu, can
17 you talk about that?

18 A. You cannot talk about 1973 without talking about the Belgian
19 state. There is a certain continuity. There is a manipulation between
20 the colonial period and the post-colonial period. In 1973 we -- they
21 were still de facto under the Belgian regime, and with Zairianisation
22 there was this ideological announcement, that we as Africans, we as
23 Zaireans, we are going to take control of our land. We are going to
24 recover the concessions that were given to Europeans, but the reality on
25 the ground wasn't only the legal aspects. Because the law is the State,

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1 but who is the state? In a situation of the rule of law, there is an
2 abstract idea of State which is above the the head of state. The president
3 may change but the state and the law remain. But that was not the situation
4 in Zaire, Under Mobutu, the state was actually the president. So
5 it's a throwback to what happened in French history, where Louis XIV
6 would say, "The State is me."

7 THE INTERPRETER: The interpreter would like to say the witness is very fast.

8 THE WITNESS (interpretation): So you had someone like Barthélemy
9 Bisengimana - because Zairianisation wasn't specific to the Kivus, it was
10 over the whole territory. In each province, in each region, there were land
11 problems that stemmed from those measures. But these measures did not stem
12 from a law. The law was actually just an open declaration made by the state,
13 and with regard to the implementation of that law, implementation was
14 different from one place to another. It depended on the specificities of
15 each locality, it depended on the influence of each politician in a
16 particular community, and their relationship with Mobutu. So within the
17 Kivus, in Katanga, in Orientale Province, in Equateur, in Ikele, you know,
18 the implementation was not the same. It was not uniform all over the country.

19 PRESIDING JUDGE FULFORD: Pause a moment, Mr. Biju-Duval. Sir,

20 I'm afraid that most witnesses
21 who've come to give evidence here have had to deal with me interrupting
22 every so often to ask them various things in relation to the way in which
23 evidence is delivered. I'm afraid we can't do this in a normal
24 conversational style because it becomes impossible for the interpreters
25 to keep up. Your delivery, absolutely natural for normal talking, I'm

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1 afraid is too quick for these proceedings. So could I ask you to slow it
2 down somewhat --

3 THE WITNESS (interpretation): I'm sorry.

4 PRESIDING JUDGE FULFORD: -- no, no, it's not your fault. It's very
5 artificial and it's very difficult to get used to. I frequently err myself.
6 Mr. Biju-Duval, can you be careful, please, not to come in too quickly for
7 exactly the same reason. So can we generally put a brake on
8 this, please. Thank you.

9 MR. BIJU-DUVAL (interpretation):

10 Q. Well, let's stick to Ituri, let's stick to the principles. Do
11 you agree with me that from 1973 there were two regimes of land ownership
12 which were in opposition with each other:

13 A so-called modern legal system through
14 administrative concession of land, and a traditional or ancestral land
15 tenure system which was controlled by the traditional rulers; a regime
16 that was disrupted through the promulgation of the law of 1973?

17 A. Yes.

18 Q. I am going to present to you an analysis of that situation
19 through a brief quote with respect to the conflict in Ituri. You know
20 the organisation called International Crisis Group; right?

21 A. Yes.

22 Q. And you even referred to it in your report or in some of your
23 reports?

24 A. I even knew some people who worked for that organisation.

25 Q. This document which is an excerpt of a report of that

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1 organisation is under tab 2. Number DRC-D01-0003-0335. I'm going to give
2 you a brief quote which is on the second page of the document. Which is an
3 analysis, the analysis made by this group of the land tenure system in Ituri
4 in general, and I quote: "The root of the land dispute related to the
5 importance attached to land ownership with respect to ancestral rights, the
6 ancestral rights of various communities over land. The most frequent cases
7 of land dispute is one which opposes the members of the Hema community who
8 have acquired title deeds from the land -- government land
9 services over lands considered by traditional Lendu
10 chiefs as belonging to them by right and by virtue of their custom. When
11 Hema landowners try to take ownership of such land concessions and send
12 police to chase away occupants of such land, the community, their
13 communities try to defend them. And so you have as a result violence."

14 Now, that is an analysis made by this organisation. Now, do you
15 think that this analysis satisfactorily sums up the land dispute
16 situation in Ituri at the time?

17 A. Yes, that is a very general analysis. You know, everyone tried
18 to use the new law and use it to their advantage. There were some who
19 could make use of it and some who could not make use of it. And the
20 position of the Hemas was that they were partial to the law, they liked
21 it, especially given the fact that -- and I apologise for referring back
22 to the Belgian administration, but you should know that at that time
23 under the Belgians the Hemas were considered as the superior race. I
24 apologise to say this, but these are terms, these are words which carry
25 great ideological weight, and these were terms used by Belgian

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1 administrators. And very often in various African communities there is this
2 attempt to classify people as superior, as inferior, and sometimes they
3 actually give some physical classification of these peoples. And so the
4 Hemas were in "better" standing because the Belgians -- the Belgians
5 considered them a superior race. So that meant that that a certain number
6 of positions were filled by them in the administration. The Belgians were
7 very restrictive about the education given to Africans in the administration.
8 And so there was the possibility of having low-level officials at various
9 levels of the administration. And so when the law of 1973 was promulgated -
10 I'm trying to speak slowly, excuse me - when the law of 1973 was promulgated,
11 then the Hemas were in a position, just like the Tutsis in the Rutshuru
12 region in North Kivu, for the same reasons, they were therefore in a
13 position to take advantage of this law. Well, this did not always work, but
14 most of the time it worked and at that time, as has been correctly pointed
15 out by the ICG analysis, they tried to make use of the police. And so you
16 had a situation where the state, which was not very objective and only paid
17 lip service to the law, you have a situation where a particular ethnic group
18 will make use of the state and its facilities in
19 order to get advantage over other groups.

20 Q. Thank you. I think I made a mistake as regards the page number
21 of the document, it's on page 9.

22 COURT OFFICER: (Interpretation) And the number given to the document will be
23 -- the title of the document is -- just a second, please, is: "Congo, Four
24 priorities for a Lasting Peace in Ituri," will be MFI-D-00092. Thank you.

25 MR. BIJU-DUVAL (interpretation): Thank you.

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1 Q. Now, still on the same issue, sir, I would like to give you another
2 analysis that adds further information to this, and this analysis
3 is from an organisation called Justice Plus, which I think you know?

4 A. No, I don't remember.

5 Q. It's an organisation for the defence of human rights in Bunia.
6 Don't you remember?

7 A. No, it doesn't say anything to me now. It might come back to me,
8 but I don't have any recollection of such an organisation at present.

9 Q. So here again it's an analysis that I would like to give you, document
10 is under DRC-OTP-0043-0003, and I will give you the five -- quote
11 the five first lines of the first paragraph. It's at tab 17 of the folder.

12 COURT OFFICER: (Interpretation) Sorry for interrupting you. Can
13 you give us the name of the document but somewhat slower.

14 MR. BIJU-DUVAL (interpretation): Sorry. DRC-OTP-0043-0003.

15 COURT OFFICER: (Interpretation) The document will have the
16 number MFI-D-00093.

17 MR. BIJU-DUVAL (interpretation):

18 Q. I quote:

19 "They had lost their right to the land they had been occupying for a long
20 time to the benefit of certain Hema farmers. The Lendu decided to therefore
21 turn to violence to make themselves heard. The concessions of Mr. Ugwaro,
22 Kodjo Singa, and Savo were targeted, and a lot of damage had been recorded.
23 This happened in Djugu in June 1999." So we're going into more detail here,
24 as we're talking about Kodjo Singa and Ugwaro, whom you talk about in your
25 report. Does this fit into your view on the situation?

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1 A. Yes; however, there's a different accent placed on the way in which you
2 look at the rights or non-rights -- actually, I would like to say that it's
3 extraordinarily difficult to be an arbitrator of what was happening because
4 you would have had to have lived there for 20 years to have a reasonable
5 idea of the -- of validity - and I have difficulty saying it in French - the
6 claims, the validity of the claims made by each different group to land.
7 There are no land registers, and one bases oneself on customary law and
8 everybody interprets it in your -- in the most favourable way for themselves.
9 So if you were Lendu, you'd say "this land is Lendu" and if you were Hema,
10 you'd say, "no, it's not". And I didn't live in Ituri for 20 years before
11 that conflict. So I'm trying to give you an opinion on the way
12 in which things are, but what I'm more sure about is about the 1973 law
13 and Zairianisation because that's more of a general procedure. But to say
14 whether the land was really Hema or Lendu before 1973 would be something
15 I don't feel I have an authority to say.

16 Q. Thank you. You talk about a land register. There is, however, a
17 land register and land register service in Bunia, isn't there?

18 A. Yes, however, but that -- and pardon me, but it's quite a joke,
19 but even in Kinshasa the land register -- well, sorry, but I can't take
20 their land register seriously in the Congo -- actually, it's a big
21 problem for mines, for instance, because they involve very important
22 interests and a lot of money, but the Congolese land register isn't
23 reliable. Sometimes it's not that wrong, but in some cases it's been
24 manipulated by everybody and this for 50 years already.

25 Q. Thank you. So you have stated that it's very difficult to say

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1 whether or not property is legitimate or not, and you also recall that
2 the Hema used the law to their advantage?

3 A. Yes.

4 Q. Now, I'd like you to refer to page 56 of your report, the French
5 version of the report. In your report you are much more categorical, if
6 I may put it that way. You say that the Hema farmers started illegally
7 appropriating the land that belonged to the Walendu, and a little bit
8 further in the report you say that they used the Ugandan soldiers' help
9 when they carried out what you call the robbery. And a little bit
10 further down you talk about illegally acquired land. So this procedure
11 comes up again and again, and you also talk about the incident of the
12 Kodjo farm. So should we consider that these statement are perhaps a
13 little bit excessive in view of the complex situation of the time?

14 A. No, we shouldn't mix everything up. There was what one can call
15 judicial precision which isn't possible. The laws are elastic, and on
16 top of that there were social trends and political movements. As regards
17 these, what was going on at the time in Ituri, so what I mean to say is
18 that some people would decide that they could use the law to their
19 advantage, walking all over other people who they thought couldn't enjoy
20 the law, that's quite clear. And the fact that the Ugandan army
21 supported that is quite clear too. But to say in each case that the
22 occupation of such and such a land by such and such a person to the
23 detriment of another is right or wrong is not possible. So as regards
24 the general phenomenon, yes, that's possible. I know that you're a court
25 of justice and I know that you would like to have detailed information

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1 that is reliable and verifiable at all times, but that is not the nature
2 of what we are actually looking at just now.

3 Q. Thank you. In your report on page 56 you're very specific. You
4 talk about a very specific event with a date, April 1999, the illegal
5 appropriation by a farmer, Kodjo, stealing, as you call it, from the Lendu.
6 That's a specific element that you call stealing, isn't it?

7 A. Yes, because you have to confirm that the property taken was used for
8 the benefit of somebody else. So if you find, for example, a wallet on
9 the floor and you take it, are you stealing it? That's the question.

10 Q. The farmer Kodjo's land, the land you're talking about in your
11 report, do you know whether or not it has been challenged or not
12 legally?

13 A. I don't know. But what I do know is that at the time he took it
14 -it, he hadn't been using them previously. Now, what
15 happened thereafter is something I don't
16 know.

17 Q. But you don't know whether the land was part of the concessions
18 that had been given to him administratively according to the 1973 law?

19 A. Yes, that's even why his case was often mentioned because there was
20 something there. A man attempted something and then appealed to the Ugandan
21 army. That was identifiable. But again, I based my argument on statements.

22 Of course, it may all have been a huge setup job, but have difficulty
23 believing this. The name, the date and the incident come up quite
24 regularly; however, it's quite clear - and you probably are aware of this -
25 it's that as a historian the people I listen to most weren't Lendu or Hema.

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1 Q. Thank you. In your report you state that the Hema farmers
2 concerned used the UPDF, the Ugandan soldiers that were present in Ituri
3 to preserve their claims; correct?

4 A. Yes.

5 Q. And they especially used them to guarantee their security
6 vis-à-vis the Lendu populations concerned; correct?

7 A. Yes.

8 Q. Such reactions were very violent; correct?

9 A. Yes, indeed.

10 Q. Is it correct to say that at that time, in that period, and also
11 for the ensuing years the Ugandan troops had the occupying-troop status
12 and that their mission was to ensure public order and the security and
13 safety of people in Ituri?

14 A. It depends on what you mean by security and safety and public
15 order, and there too you're coming back to a very rational European
16 concept, because here again, everything is elastic.

17 Q. My question is very easy, sorry to interrupt you. But the public
18 forces available to ensure the security in case there was any upheaval at
19 the time was the UPDF, wasn't it?

20 A. Yes.

21 Q. Is it correct to say that similarly the Lendu population used
22 these Ugandan troops to ensure -- guarantee their safety and security?

23 A. Later on, because at the beginning they saw the Ugandans as their
24 enemies, to be honest, but after that there was a political evolution
25 that was very complex and that led the Ugandans to try and build a

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1 multi-ethnic coalition, to try and create a pro-Ugandan political
2 party in Ituri. At that time, in 1999, the Lendu
3 couldn't really use the UPDF.

4 Q. In your report, and this is on page 56, you state that at the
5 time of that incident involving the farmer Kodjo, several Lendu were
6 killed by Ugandan soldiers - is that correct? - and that the local Lendu
7 population reacted with reprisals, and this led to the Blukwa massacre,
8 as it's called, in which there were, approximately I imagine, 200 dead
9 among the Hema population as -- 200 dead were counted among the
10 Hema population; correct?

11 A. Yes.

12 Q. So basically are we to take it that this reaction, this vengeance,
13 if I am using the right term, didn't only target the Hema farmers concerned
14 but affected the whole population of the Hema village independently of their
15 social status?

16 A. Yes. That's the beginning of the armed ethnicisation. This
17 spiral actually only increased, that was only the beginning of it.

18 Q. So there was an increase in violence towards the Hema population in
19 general, wasn't there, and I could give you the example of massacres that
20 were committed in Mbambu, in September 1999, 416 dead; and a second in
21 December 1999 with 200 deaths. So there was an increase in violence vis-à-
22 vis the Hema populations independently of their social status and gender,
23 age, et cetera; correct?

24 A. Well, there were only civilians, Hema or Lendu. At the beginning there
25 weren't any armed militia, the armed militia only came later, but at the

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1 beginning those that were killed were just anyone. And that is what is
2 terrible about such a process of ethnic radicalisation and that's not the
3 cause of it, but here there's a situation of social conflict in which the
4 social groups become the losing or winning parties of vengeance and
5 counter-vengeance, and then militias grew because young men had
6 weapons, tried to obtain them, or they were given them. But at the
7 beginning all the victims were civilians, and actually after that with
8 this type of civil war, not only in Ituri but elsewhere too, the safest
9 place is to be an armed militia man. Anybody carrying a weapon incurs much
10 less risk. There were much less deaths among the fighters. The majority of
11 deaths were among the civilians, as you call them, so just anyone.

12 Q. Thank you. On page 57 of your report you conclude this chapter
13 by saying that:

14 "We consider that at the beginning of the month of September,
15 1999, I believe, the number of dead increased to 2,000, the Walendu had
16 been killed by the UPDF" - these are the Ugandan soldiers - "and Wahema
17 were killed by Walendu militia."

18 A. Yes.

19 Q. That's the situation. So vengeance was extended to the civilian
20 population?

21 A. Yes, yes.

22 Q. Would it be correct to say that this situation in which reprisals
23 were taken in this atmosphere of hatred, had manifested itself in the past?

24 I'm referring to this feeling of ethnic hatred that evolved. I'll add,
25 to go to the heart of the matter -- well, I'll ask you: Is it true that

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1 in the 1970s or at the end of the 1960s there was a party called the party
2 for the liberation of the Walendu, PLW, the pronunciation was PELEWE,
3 that's how the population pronounced the abbreviation?

4 A. Yes, yes.

5 Q. This movement, was it formed in order to oppose or rival or to be
6 hostile towards the Hema population?

7 A. Well, it was more with relation to the Belgians' use of the Hema.
8 I apologise to go back to the Belgian administration, but the root of the
9 matter is in how one made everything a matter of ethnic groups. It was a
10 general situation in colonial times. One sought allies. There are
11 certain groups. For example, there's no doubt that the Belgians in Rwanda
12 supported the Tutsi at first and then at the time of independence, when
13 they saw that the Tutsi were becoming nationalist, they turned around and
14 supported the Hutu. So we have such situations, but there is a
15 distinction that has to be made. We're not dealing with the same case,
16 as is the case that we're concerned with now.

17 When you have the PLW, well the people were cutting off other
18 people's heads with machetes. You have a political and ethnic movement
19 throughout the Congo at the time of independence, at the time of the
20 first elections that were held before the Belgians left. Why? Well,
21 because there was never a political life there. At the time of the
22 Belgians, there was no such life. So the people gathered around the
23 lowest common denominator, and that was tribal matters and language, but
24 it's not a matter of cutting off heads in such case. You can have a
25 Breton nationalist movement in France that might want to defend certain

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1 cultural values, regional autonomy and so on and so forth. And then you'll
2 have a movement called the front -- the Liberation Front for Brittany,
3 and they might place bombs around and kill people. You have an ethnic
4 group or you have ethnic groups in both cases, but the political conduct
5 is not the same.

6 Q. Thank you. On page 71 of your report in the French version you
7 mentioned the implementation of propaganda. You mentioned propaganda
8 that was being spread directed against the Hema and followed the
9 procedure used in Rwanda in 1994?

10 A. Yes.

11 Q. It had to do with the idea that the Hema, like the Rwandan
12 Tutsis, allegedly had the plan of imposing a Hima-Tutsi empire on other
13 peoples. So this type of propaganda, and you have demonstrated the
14 falsehood of this type of propaganda, so this type of propaganda
15 developed, in 1999, 2000, and in subsequent years in Ituri?

16 A. Yes, absolutely.

17 Q. It was one form of propaganda amongst others?

18 A. Yes.

19 Q. So this form of propaganda was extremely similar to the
20 propaganda spread by the Rwanda Hutus who committed genocide?

21 A. Yes, but the Hutus had the support of the state; that's an important
22 difference. In this case it's not identical and we have an ethnical
23 group that tries to use the means that it has. But also the Hema tried
24 to claim the status of martyrs. They said "We are like Tutsis, they want
25 to kill us because we are a Nilotic people". And now we go back to the

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1 same matter, "They want to treat us as the Rwandan Tutsis were treated".
2 So again we are faced with a staging of the situation and culturally,
3 ethnically, historically, it's false. It's not a reflection of the
4 Rwandan tragedy. You have in two cases, people who say, "No, we're
5 victims", and then the others say, "No, they are the assassins" and so on
6 and so forth.

7 Q. Thank you. We agree, don't we, that the massacres continued in
8 1999, 2000, 2001, and this will later take us to 2002/2003, we'll deal
9 with that more precisely, won't we?

10 A. Yes.

11 Q. So given the fact that violence spread and affected the Hema
12 civilian population as well, and given that there was this ideology, this
13 extremist ideology that was evolving, could one say that the Hema
14 population may have felt threatened, they may have felt that their very
15 existence was threatened during this troublesome period?

16 A. I have no idea since I wasn't present in the field. That is
17 exactly the type of thing that it is impossible to know without being
18 present in the field, without speaking to people during the time of the
19 events, because as soon as everything is over the entire history is
20 reconstructed. So to say, "Yes, we felt threatened", or, "No, we didn't
21 feel threatened". Well, I really couldn't say what the case is.

22 However, what I could say and what -- the ratio of the ethnic forces
23 wasn't the same, the Hemas were a minority. In any ethnic group, if one
24 ethnic group is smaller than another, they have the tendency of
25 saying "the others who are more numerous are more dangerous because they are

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1 more numerous than we are". But that's what I'd say. It's, however, just
2 an opinion, it's not something I know because I wasn't present. But to
3 know that one group felt threatened, it is necessary to be present in the
4 field. It's necessary to speak to the people involved while the events
5 in question are unfolding. This can't be done subsequently.

6 Q. Thank you. As of the year 2000, 2001, 2002, MONUC was present in
7 Ituri; isn't that the case?

8 A. Yes.

9 Q. Did it take any initiatives, effective ones, when it was
10 confronted with the massacre of the population, the civilian population?

11 A. No, not really. If you like, well, that's one of the problems
12 that the UN is faced with. They always react. It's always a reaction to
13 an event. That's a philosophical military problem of a fundamental kind.
14 The UN forces have no autonomy. In ontological terms, practically
15 speaking, they are forced to react to what happens when there is a
16 massacre. Well, unfortunately tragically, one arrives after the event.
17 But to play the role of officers in indigenous affairs, well, the UN
18 can't do that. There aren't any people who know the culture very well,
19 the language, there aren't any people who can be proactive and who can
20 take preventive action. There is no such thing among the UN forces.

21 Q. Thank you. We're not now dealing with one massacre but a
22 repetition of successive massacres, consecutive massacres. Sir, you don't
23 have any examples of efficient intervention actions carried out by the
24 MONUC during this period of time?

25 A. Well, that was quite impossible. The number of MONUC troops, the

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1 size of the territory, the numerous places where massacres could be
2 committed -- well, if I had been the head of the MONUC in the region I
3 wouldn't have been able to perform better. It's all a matter of the
4 mandate, the structure, and the role that they have to play, but once you
5 are part of a certain system, there's nothing you can do.

6 Q. Thank you. I would now like to deal with the period 2002 and
7 2003. I would specifically like to focus on that period. In your
8 report, in particular on pages 68 and on subsequent pages --

9 THE INTERPRETER: Page 58, interpreter's correction.

10 MR. BIJU-DUVAL (interpretation):

11 Q. -- you said that this conflict, this "ethnic conflict," you put
12 that in inverted commas, was part of the Congolese rebellion at the time
13 and it was naturally part of the political and military issues that
14 concerned this rebellion; isn't that correct?

15 A. Yes.

16 Q. Sir, let's go back to the very beginning of the year 2002. Would
17 it be correct to say that the RCD-ML rebellion movement led by Mr. Mbusa
18 Nyamwisi was in power in Bunia and governed Ituri. So it's the very
19 beginning of the year 2002, and then gradually we'll examine the events
20 that unfolded in that year, but if you agree let's go back to the 1st of
21 January, 2002?

22 A. Yes, Mbusa, he tried to govern Ituri, but I really don't think he
23 was very successful at doing that. Well, yes, he tried to do that but
24 one shouldn't forget that he was a Nande. He wasn't from Province
25 Orientale, he was from Kivu. He was a stranger. As of 1990 when the

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1 Mobutu regime fell apart, well there was what we call geopolitics.
2 Geopolitics is a term that doesn't refer to the scientific discipline
3 that goes by the same name. It was a matter of re-ethnicising Zairean
4 politics through Mobutu. He fought against ethnicity in the first part
5 of his mandate. He was a monarch. And as of 1990 when he lost control
6 of the situation, he tried to set the tribes against each other, and this
7 became something that was done systematically.

8 So you have Mbusa Nyamwisi who is a Nande -- well, if you go back
9 to the last political years, well, he became a stranger, a foreigner, in
10 Province Orientale. That's one thing that was terrible for Zaire at the
11 end of the Mobutu regime. One broke up what one had tried to unify with
12 a lot of difficulty, so you say, well, he was governing Ituri. He was a
13 kind of a proconsul of a rebellion which didn't have a social basis.
14 The rebellion, well, it was mostly Rwandans, Ugandans, foreigners who had
15 come into the Congo, with the exception of very small ethnic groups that
16 sided with the rebellion, like the Banyamulenge, but apart from them you
17 don't have a lot of people who supported the rebels. So Mbusa Nyamwisi was
18 was a Nande. Were the Nande supporters of the rebellion? Well, no, not even
19 his own tribe. So he was a kind of proconsul sitting on a
20 three-legged stool. It wasn't a very comfortable position to be in.

21 Q. Thank you. The RCD-ML we agree is a political and military group
22 since they had a civilian government in Ituri, but on the other hand they
23 had a military force at their disposal?

24 A. Yes, they had a military force to the extent that their foreign
25 allies were willing to support them. The various branches RCD-ML or RCD-K

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1 or the MLC, Mr. Bemba's MLC, well they never had a total personal military
2 autonomy. They were always dependent on their bosses.

3 Q. At the beginning of the year 2002 Mbusa, his group, his army,
4 depended on the Ugandans; isn't that correct?

5 A. Yes.

6 Q. Could you tell us who the minister of defence in the RCD
7 government was on the 1st of January, 2002, let's take that date as a
8 reference point.

9 A. It's quite possible that it's the current head of state, but I
10 wouldn't swear -- or was he the Chief of Staff then? I don't know. If you
11 gave me the name I would know. I certainly know the name, but I can't
12 remember the name right now, but he didn't have any troops in Ituri.

13 Q. I'm talking about the minister of defence of the government in
14 Bunia.

15 A. I apologise. I thought you were talking about Kinshasa.

16 Q. No. I must have expressed myself inappropriately. Who was the
17 minister of defence in the RCD government in Bunia in January 2002?

18 A. Well, it changed so much in the RCD. The RCD is like an amoeba.
19 It divides, it regroups. I couldn't say who occupied that position in
20 2002.

21 Q. If I put it to you that it was Mr. Thomas Lubanga, would that
22 refresh your memory?

23 A. Yes, yes, that's quite possible.

24 Q. Still dealing with January, February, March 2002, the very
25 beginning of that year, would it be correct to say that in national

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1 terms in the Congo this period was characterised by negotiations that
2 resulted in what we call the Sun City agreements?

3 A. Yes.

4 Q. Signed on the 19th of April, 2002, if I'm not mistaken.

5 A. The first group. The end of the Sun City agreements was December 2002.

6 Q. A first series.

7 A. There were many of them. We were still in Sun City, so that
8 shows that it wasn't concluded. If no one returned, well, that was proof that
9 the negotiations were still ongoing.

10 Q. Thank you. Would it be correct to summarise that -- well, the
11 purpose of the agreements was to share power at the national level within
12 the framework of a transitional government that was to be established?

13 A. Yes.

14 Q. So it was an agreement where one party would be the Kinshasa
15 government, and on the other hand we would have -- on the other hand we
16 would have representatives from the rebellion, a rebellion one was trying
17 to put an end to. Is this summary presentation correct? Would you
18 agree?

19 A. Yes.

20 Q. So on page 63 of your report, in the French version of your
21 report, you spoke about the political and military implications of these
22 negotiations. This is what you emphasised. You spoke about the
23 implications it had with regard to the Ituri conflict?

24 A. Yes.

25 Q. And you mention that within the framework of those ongoing

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1 negotiations, to share power at the national level, Mr. Mbusa, who was
2 the president of the RCD, took two decisions, two important decisions.
3 First of all, he decided to pay allegiance to the government of Kinshasa;
4 in other words, to join the central government of Kinshasa; is that
5 correct?

6 A. Yes.

7 Q. And on the other hand or at the same time to eliminate his rivals
8 within the RCD; is that correct?

9 A. Yes.

10 Q. And in particular his Hema rivals; is that correct?

11 A. Not particularly. Any of them or all of them. The RCD spent a
12 lot of time in infighting, that was the nightmare of the Rwandan and
13 Ugandan sponsors. They had proxies, that is, persons who served as their
14 agents and who never agreed with each other, and so Mbusa and others,
15 Tibasima, Wamba, all these people spent their time infighting, fighting
16 with each other.

17 Q. You talk about Tibasima and you mention him as the main rival of
18 Mbusa, but he's a Hema; right?

19 A. Yes, yes, he is someone who does not have the same pedigree. He
20 worked in the mining sector and he was like half an administrator and
21 half a businessman, so to speak.

22 Q. Thank you. You mentioned that at the beginning of 2002 Mbusa
23 appointed as the governor of Ituri Mr. Jean-Pierre Molondo Lopondo. If I
24 tell you that this happened in February 2002, would that --

25 A. Yes, yes, that's possible, beginning of 2002. Of course this

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1 gentleman was a Nande.

2 Q. Just like Mr. Mbusa?

3 A. That's right.

4 Q. And you say in a footnote, page 63 of the French I think, and I
5 quote:

6 "Molondo Lopondo was a Munande," that is, a Nande, "and Mbusa
7 placed at his disposal a large, skilled militia composed of Wanandes and
8 Walendus..." that is the Lendus. Is that correct?

9 A. Yes.

10 Q. So at that time the forces at the disposal of Governor Lopondo
11 were forces essentially composed of Lendus and Nandes; is that correct?

12 A. As far as I know, yes.

13 Q. Could it have happened that within the context of the extreme
14 conflict that rocked the region at the beginning of 2002, that is, Bunia
15 and its environs, that is, a context of ethnic conflict, could it have
16 happened that these troops, let me say, adapted their behaviour depending
17 on the civilian population they were dealing with?

18 A. I don't know, to my knowledge I don't know, but that would not
19 surprise me.

20 Q. Thank you. I will now move further on in the year 2002 still.
21 Would it be correct to say that a political conflict which became a
22 violent conflict broke out first of all between Mbusa and Molondo on the one
23 hand and on the other hand with other members of the RCD government?

24 A. I cannot use the term "government" to describe the what the RCD
25 was at the time. I would talk about armed movement, a rebellion, an

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1 agent of a foreign force. When you talk about a government, you are
2 talking about legitimacy, you are talking about established
3 administration, you are talking about an entity which enjoys a certain
4 amount recognition by the population, but that was not the case. Now,
5 when you talk about conflicts that occurred within such a microsystem,
6 which the RCD constituted, of course that was possible. So, for example,
7 Mbusa probably told himself "With the peace agreements the central
8 government is going to come back and hold sway over the region, and I
9 will have to adapt to the new situation". Of course, this would have
10 caused renewed conflict between him.

11 Q. Thank you. You have talked about the fact that Mbusa wanted to
12 come back to the -- well, to the national scene, politically speaking, in
13 order to participate in the new government, new national government. Is it
14 correct that within the framework of such negotiations at a national
15 level, the political weight of those who wish to participate in that
16 government depended in large part on their political and military weight
17 or influence within the regions under their control?

18 A. Yes, but for Mbusa the place that was important was not Ituri. He was not
19 at home with Mobutu's geopolitics. I know I'm speaking too fast. I would
20 like to ask the interpreters -- I would like to apologise to the
21 interpreters. He tried to create some sort of a constituency in the
22 province, in Orientale province, but his political base was in the republic
23 of Butembo, that is the heart of the Nande community. That was the
24 population which he could control in Kivu. What he tried to do in Ituri
25 was a bit risky because he was an outsider. He was trying to extend his

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1 power, his influence, beyond his life. I don't think he believed himself
2 that control of Ituri was going to be a major trump card for him, but he felt
3 that he could use it to -- well, I don't think he felt that he could use
4 Ituri to negotiate a better position for himself with Kinshasa.

5 Q. He was president of RCD-ML and RCD-ML was based in Bunia and
6 exercised its influence then over Ituri; right?

7 A. It was a foreign occupying force, so to speak. He was the
8 local commander of that force so to speak.

9 Q. Thank you. I would like to come back to the internal conflicts
10 within the RCD. Would it be correct to say that in particular there was
11 a conflict, and even a falling out, between Mbusa and Molondo on the one
12 hand and Mr. Thomas Lubanga, who was minister of defence of that
13 government, "government," of the RCD?

14 A. Yes.

15 Q. I don't want to go into detail about the evolution of that conflict, but
16 I would like to know, would it indeed be correct to say that on the 9th of
17 August, 2002, the governor, Lomondo, and Mbusa were chased out of Bunia by
18 Ugandan forces and other dissidents, and RCD dissidents?

19 A. Yes, yes.

20 Q. Thank you. Where did the troops of Governor Lomondo retreat to
21 after they were chased out of Bunia?

22 A. I really don't know. I think that they were dissolved. Don't
23 forget that we were talking about -- we are talking about militias. We
24 are not talking about a regular army whose commanders are able to ensure
25 some discipline within the ranks. Very often after a military defeat, it

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1 doesn't need to be a heavy defeat, in any case after a defeat many people
2 just dispersed, they go away, and they may return to or they may come
3 back together again later on, but most of the time they just disperse.

4 Q. To be more precise, do we agree that the armed forces of the RCD
5 were known as the APC, Armee Populaire Congolaise; is that correct?

6 A. Yes.

7 Q. These were soldiers and armed forces that had been trained;
8 right?

9 A. The degree of training received by the various groups in Ituri,
10 well, really I don't think it was very high, that level of training they
11 received.

12 Q. Would it be correct to say that such training was provided to them
13 by Ugandan soldiers in Ituri and in Uganda?

14 A. Certainly. That was what probably happened most of the time.

15 Q. Would it be correct to say that after Bunia was taken over by the
16 UPC, after that defeat of the RCD, would it be correct to say that RCD
17 troops, in other words, the APC, in one way or another tried -- or to
18 attack again in order to reconquer the territory?

19 A. Of course. You know, there were French troops under the Artemis
20 operation at the time, and so there was a lot of movement between the
21 various groups.

22 PRESIDING JUDGE FULFORD: Mr. Biju-Duval, would you find an
23 appropriate moment, please.

24 MR. BIJU-DUVAL (interpretation): I was going to propose to the
25 Bench that I will stop here and I -- because I'm going to deal with a

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1 point which cannot be handled in four minutes.

2 PRESIDING JUDGE FULFORD: Thank you very much.

3 Thank you very much, sir. We're going to have a break now for
4 lunch and we'll sit again at 2.45.

5 So could Mr. Prunier please be taken back to the witness
6 waiting-room. Thank you very much.

7 (The witness stands down)

8 PRESIDING JUDGE FULFORD: Mr. Biju-Duval, I wondered if you could
9 just help me with one point, and I want to introduce it by making it
10 absolutely clear that the whole issue of background evidence was one that
11 was raised by the Judges and this evidence has been called essentially at
12 our request, and I'm not making any complaint at all at the investigation
13 that you're currently conducting. So let me make that absolutely
14 abundantly clear. What it may be helpful for us, and I suspect
15 Ms. Samson, to know is whether there are particular issues that we need
16 to have in mind and she needs to have in mind in relation to the charges
17 which Mr. Lubanga faces.

18 And by that really I mean this: You have put a number of
19 questions, and I'll just identify two in particular, which I could see
20 might have a direct implication for the charges the accused faces, one of
21 which was that the very existence of the Hema was threatened; and a
22 second was that Mbusa wished to eliminate his rivals.

23 Now, there are at least two options. One is that you are simply
24 eliciting further information in relation to the general background to
25 the events that we're considering, completely understandable if that's

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1 the reason. Another possibility is that there is a self-defence-type
2 issue directly linked to the charges which is in fact part of the reason
3 for exploring those issues in that way.

4 Now, I could see that in terms of the Prosecution's
5 re-examination and certainly for our understanding of where we're going
6 with this evidence, it -- well, for us I suspect it would be useful, for
7 Ms. Samson it could be useful, to know whether this is on the one hand
8 just general background material or whether on the other there, is in
9 fact, in your mind a potential real link between this evidence and the
10 charges.

11 Now, I'm not going to ask you to respond now. It may be useful
12 if you could take the luncheon adjournment to think about this. I'm not
13 in any way forcing you to give an answer or attempting to, but I think we
14 have now reached a stage in this trial where it really would be useful to
15 know on issues such as this really exactly where we're going. So it's a
16 gentle inquiry, Mr. Biju-Duval, and I'll give you time to think about
17 whether or not you're able to help us.

18 MR. BIJU-DUVAL (interpretation): I have fully understood the
19 point you are raising, your Honour, and it's a point of law as well. But
20 we are going to give a definite answer on that later. Thanks.

21 PRESIDING JUDGE FULFORD: Very pleased to hear it,
22 Mr. Biju-Duval. Thank you very much. Have a good lunch.

23 And we'll meet again at a quarter to 3.00.

24 Luncheon recess taken at 1.01 p.m.

25 On resuming at 2.45 p.m.

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1 COURT USHER: All rise. Please be seated.

2 PRESIDING JUDGE FULFORD: The witness, Mr. Biju-Duval, or
3 anything to say?

4 MR. BIJU-DUVAL (interpretation): If the Chamber so wishes, I can
5 answer the question I was asked just before the break.

6 PRESIDING JUDGE FULFORD: That would be very helpful.

7 MR. BIJU-DUVAL (interpretation): My answer will be very brief
8 and technical. The Defence would like to inform the Chamber and Office
9 of the Prosecutor that its objective is not to demonstrate the existence of
10 the grounds for exoneration from criminal liability provided under
11 Article 31(c) of the Statute. The issues -- the questions are,
12 therefore, asked in the context of finding out what the background is.
13 This is now the answer of the Defence --

14 PRESIDING JUDGE FULFORD: That's absolutely clear, and so we take
15 it from that that such notions as either self-defence or necessity are
16 not being brought into play by these questions. That's very clear,
17 Mr. Biju-Duval.

18 There is an interesting general issue though that arises out of the
19 question in that we are now about midway through or slightly past midway
20 through the Prosecution case, and I think it's right for me to say, to
21 observe, that we have not yet had formulated for us precisely what the
22 issues in the case are as presented on behalf of the accused. We have
23 paid very careful attention, of course, to the questioning of the
24 witnesses and there has been a perfectly proper investigation of the
25 reliability of their testimonies and their memory, all wholly legitimate

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1 within the context of a criminal trial. But beyond that, I think it is
2 fair to say it is not entirely clear exactly what are the live issues in
3 the case for the accused.

4 Now, I am most assuredly not expecting any answer to these
5 observations now at all, but it might be said that in fact it would be to
6 the accused's advantage, given that the trial is now reasonably far
7 advanced, for the Chamber to have a clear idea as to what the real issues
8 in the case are. Now, as I say, I'm not at all inviting a response now,
9 necessarily at all. It's really up to those acting for Mr. Lubanga as to
10 whether or not it remains somewhat opaque or whether it is made clear.
11 But I would encourage reflection on this so as to help the Chamber in its
12 work of understanding what it is we should really be focusing on.

13 But thank you for the response, Mr. Biju-Duval, very helpful.

14 And could we now have the witness back into Court.

15 (The witness takes the stand)

16 PRESIDING JUDGE FULFORD: Good afternoon, Mr. Prunier.

17 THE WITNESS: Good afternoon.

18 PRESIDING JUDGE FULFORD: Yes, Mr. Prunier.

19 THE WITNESS (interpretation): Hello.

20 MR. BIJU-DUVAL (interpretation): Thank you.

21 Q. Good afternoon, sir. We had just before the break stopped at the
22 time when you were confirming that the armed force of the RCD, the APC,
23 had attempted a reconquering - a war to reconquer after Bunia had been
24 taken, so after August of 2002. Now, I would like to ask you the following:
25 Is it correct to say that during that war, during the military

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1 operations, the APC actively supported Lendu militia and Ngiti militia
2 against the UPC and even participated in fights against
3 the UPC with them? Is that correct?

4 A. Yes. However, I'm afraid you may be giving the APC an
5 institutional meaning which is greater than the one it actually had. I
6 fear we are now entering into the realm of anarchy because groups
7 confront each other. Everybody tries to give themselves a respectable
8 name to try to arrive at the -- to have the trimmings of an institution, but
9 it was nothing more than a confrontation of militia groups.

10 Q. So let's talk about militias instead of armies if you prefer.

11 A. Yes, I would.

12 Q. Would it be correct to say that the APC militia actively
13 supported the Lendu, Ngiti militias during the fighting -- that fighting?

14 A. Yes.

15 Q. And even participated in some fighting with them?

16 A. Yes.

17 Q. Is that what happened, for instance, during the Nyankunde
18 massacre beginning of September 2002 which you briefly mention in your
19 report, pages 70 and 71 of the French version?

20 A. Well, to be honest, I don't have any clear precise knowledge
21 about the participation of what you call the APC, and so therefore again I
22 doubt the coherence and cohesion of this. I don't have a very clear idea
23 of -- well, the idea that there's an institutionalisation or coherence in
24 the way the ethnic groups that we know are confronting each other is -- is
25 doubtful. Now, to give them a label of any sort is secondary anyway.

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1 Q. I would like to present you the analysis of an organisation
2 that's quite well-known, Amnesty International. In its report of March
3 2003, a report of March 2003 which is among the documents that you have
4 in the binder in front of you under tab 24. Could you please have a look
5 at it. This document has number DRC-OTP-0163-0208.

6 And I will read a very brief quotation. On page 5 of that
7 document in a chapter entitled: "The Armed Political Groups," and I
8 would like to ask you if possible whether or not the description therein
9 seems to correspond to your analysis. So I quote:

10 "Until they were -- until the recent military retaliation, the
11 RCD-ML seemed to be the political and administrative authority of the
12 whole of the Ituri territory and of the north of the province of North
13 Kivu. It had its headquarters in Bunia and had the military support of
14 the UPDF. The group was chased out of Bunia in August of 2002 and is now
15 concentrated in Beni, in the province of North Kivu, and that is where
16 Mbusa Nyamwisi comes from.

17 As other political groups of the region, the RCD-ML has got
18 closer to specific ethnic groups which it supports. In the case of the
19 RCD-ML, these were Nande and Lendu and Ngiti communities. The RCD-ML and
20 its armed forces, the army of the Congolese population, APC, committed a
21 number of crimes against human rights, including murder, illegal killings
22 of civilians, and in September 2002 the APC forces and Ngiti militia,
23 their allies, attacked the town of Nyankunde. According to some
24 information, the APC forces did not intervene whilst the Ngiti militia
25 massacred hundreds of civilians in the town."

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1 Does this seem to you to correspond with the knowledge you have
2 of the events?

3 A. Yes. Generally speaking, yes, especially about the -- the part
4 about the hospital and what happened at the hospital. And you'll notice
5 also that they switch between the use of an acronym and an ethnic name. So
6 when they say the APC let the
7 Ngiti kill everyone? Why? Because the APC, there were lots of people
8 that weren't even from the province, and I could draw a parallel but that
9 would be going too far. There are other phenomena, similar phenomena,
10 that happened in other regions. You might have ethnic allies, you might
11 not do it yourself but you let the ethnic allies do it for you, and it
12 might actually remind you of what is happening in the Middle East.

13 Q. Thank you. This support of the APC, support to the Ngiti or
14 Lendu militia was especially in the form of weapons?

15 A. Yes, probably, probably.

16 Q. This support given to ethnic militias such as the ones of the
17 Ngiti and Lendu, that were created by the Ngiti and Lendu, is it correct
18 to say that this was an important factor in the continuance of massacres
19 and repetitive nature of their massacres?

20 A. Yes, but they did what everybody else was doing.

21 Q. In your report you mention that - and I think it's at page 64 of
22 the French version - you mention the part in your report in which you
23 explain why at the time of the peace agreements of Sun City the situation
24 escalated -- the gravity of the situation escalated considerably. We
25 looked at one of the factors for this -- for this escalation. It was the

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1 case of Mbusa, we talked about it. But you also say that it was at that
2 time, and I quote, that "Kinshasa joined in the battle after the signing
3 of the peace agreement because Kinshasa felt it had to take control of
4 a region it felt it previously did not have any control of"; is that
5 correct? Just to avoid any misunderstanding, the peace agreement that
6 you're talking about in that part, is it the Sun City peace agreement or
7 Luanda peace agreement of 6 September, 2002?

8 A. Well, I couldn't really say because it's a general movement.
9 Every protagonist positioned themselves - and we have to recognise this
10 because it was -- Ituri was tragic, but it was a theatre of secondary
11 operations. It wasn't at the centre of the war. The war was in Katanga,
12 in Équateur. So they positioned themselves. It wasn't essential for the
13 protagonists. But even the Rwandese did that even though they were far,
14 very far, from home.

15 Q. Thank you. So you don't go into more detail about this aspect to
16 enter the fighting, as you put it, of the government -- of the Kinshasa
17 government. You don't put that in your report. So I would like to
18 suggest the following analysis. It is from a researcher, you might know
19 him, Koen Vlassentoot?

20 A. Yes, yes.

21 Q. And he wrote or published research on the conflict in Ituri, correct?

22 A. Yes.

23 Q. So, I will do the same and refer to an extract from one of his
24 articles entitled: "The Conflict in Ituri," which is under tab 8 of the
25 binder, please, if you would refer to it?

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1 COURT OFFICER: (Interpretation) Sorry, I -- sorry for
2 interrupting you. We have given a number -- so the document, "The
3 Democratic Republic of the Congo at the end -- at the edge of the precipice,
4 aggravation of the situation of human rights and humanitarian
5 situation in Ituri" will have the document number MFI-D-00094, and the
6 document you want to present will have the document MFI-D-00095.

7 MR. BIJU-DUVAL (interpretation): Thank you.

8 The passage I will quote it is at number DRC-D-01-0003-0524, and it's
9 on the first page -- sorry, I apologise. And the first page of the
10 document itself is at number DRC-D-01-0003-0507.

11 Q. So, and I quote:

12 "In the end, the Lubero and Ituri conflicts showed the vicious role that
13 Kabila senior's close circle were playing, incapable of occupying the
14 eastern part of the country by military means, so they opted for a proxy
15 war through its ally from the RCD-ML. This movement increasingly follows
16 the approach of Kinshasa by training the Lendu militia in their
17 training centre in Nyaleke, and on top of that -- in North Kivu. And on
18 top of that the Kinshasa government (we're talking about the government
19 before the transition) continued to fan the fire by providing the Lendu
20 militias in Ituri with supplies and supporting its troops in the RCD-ML
21 territory against the Lusaka agreements. Although Kinshasa says it does
22 not have a presence in North Kivu and Ituri, the Ugandan newspaper
23 *The Monitor* mentioned the arrival of 1,500 troops at Beni airport from
24 Mbuji-Mayi at the end of May 2003. Congolese troops were also quoted in the
25 massacres against the south Hema in Tchomia on the 31st of May, 2003, during

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1 which close to 300 people were killed. Basically the -- Kinshasa's role was
2 increasingly perceived as a danger for the peace process, both by
3 international observers and protagonists in the field."

4 Do you agree with this analysis or do you have any comments?

5 A. I agree with this, but I have some comments I would like to make.
6 This was a political choice. It was -- well, what does Vlassentoot say?
7 On the whole it's true, but what happened happened in an opposite sense
8 on the other side with Ugandan support, the Ugandan support, to the
9 adversaries of the RCD-ML. As for using *The Monitor*, well, it's a very
10 anti-governmental newspaper in Uganda, and given the role that the
11 Ugandans played and given the support of the Ugandans for a fraction in
12 Ituri, well, then naturally the newspaper criticised what the government
13 did. It's an opposition newspaper. 1,300 soldiers coming from
14 Mbuji-Maji and Bunia -- well, that figure, well, I don't know. I
15 wasn't there, I can't confirm that or deny it but that
16 seems like a large number to me. I think it's exaggerated. I'm not
17 saying that what has been quoted is not true, but that's one aspect. We say
18 that people have done terrible things on the one side, but don't say it
19 for the other side -- but in fact the situation was identical on
20 both sides.

21 Q. Very well. We'll go into the issue of Uganda with regard to what
22 took place in Ituri a little later. Similarly, I would like to
23 present you with the analysis of an organisation, the Human Rights Watch
24 organisation, you're familiar with that organisation. In a July 03 report --
25 - it's at tab 23, that's where you can find the relevant report in the

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1 binder. The document is DRC-OTP-0163-0291.

2 PRESIDING JUDGE FULFORD: Can we give it a number?

3 MR. BIJU-DUVAL (interpretation): It's the second page, page 9.

4 COURT OFFICER: (Interpretation) The number will be MFI-D-00096.

5 MR. BIJU-DUVAL (interpretation):

6 Q. I quote, "Military Assistance for the RCD-ML and other Armed
7 Groups," that's the title.

8 "Faced with the growing power of the UPC, the RCD government has
9 sought to reinforce the UPC and to integrate it more efficiently in the
10 DRC government army, the Congolese armed forces (FAC). Kinshasa
11 provided the APC uniforms, ammunition, and trainers from FAC, from the
12 FAC, in a number of camps like Nyaleke, the FAC soldiers took in local
13 soldiers or trained local soldiers, including the Lendu and Ngiti militia,
14 the Mayi-Mayi, local groups of combatants who belonged to various ethnic
15 groups and who were united by their objective of driving out foreigners,
16 strangers. According to local sources about two FAC battalions arrived in
17 the Beni zone in order to support the FAC."

18 It seems to me that this tallies with the first analysis, or any
19 other comments you would like to make?

20 A. Yes. It's the same situation. Kinshasa was trying to help
21 ethnic groups, militia groups that it had identified as having the
22 possibility of replacing it in order to fight the Ugandans. Further south,
23 reference was made to the Rwandans, but there it was the Ugandans and that
24 was because the Congolese army wasn't present, and in both cases there was a
25 war conducted by proxy.

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1 Q. To take up the expression that was used by Vlassentoot, can we
2 talk about a war by proxy between the Kinshasa government, the RDC, and
3 Uganda?

4 A. Yes.

5 Q. That means that the idea according to which the Kinshasa
6 government, the DRC government, controlled or would intervene directly
7 with the APC and the Lendu and Ngiti militia, does this idea seem to be a
8 correct one to you?

9 A. Well, it all depends on what you mean by directly. They provided
10 arms, training. What was said about the camps is true, but this was
11 because they didn't have their own forces in the field, contrary to the
12 Ugandans. The Ugandan army was present there, and apart from that it
13 also had reinforcements. It was there. The Congolese army wasn't there,
14 so there were these proxies who replaced the main military body.

15 Q. This war by proxy between Kinshasa and Uganda continued
16 until when in your opinion?

17 A. Well, until the final evacuation of the Ugandan troops. That
18 must have been in 2004. I can't remember the exact date now. What I do
19 remember is the manner in which they parted. They had to part on foot.
20 It was a quite pathetic sight, the withdrawal of the Ugandan army, but it
21 was in 2004.

22 Q. With regard to the leadership of these military operations by the
23 APC in liaison with Kinshasa on the one hand and the Lendu and Ngiti
24 militia on the other, would you be able to tell us something about what
25 we have called EMOI, E-m-o-i, those are the letters. Do you know what

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1 I'm talking about?

2 A. No.

3 Q. The idea of General Staff or an integrated operation doesn't mean
4 anything to you?

5 A. Do you mean the Rwanda -- this idea of having a joint operation
6 between the Rwandans and the Ugandans?

7 Q. I think we're talking about something else.

8 A. At one point in time there was an attempt to form a joint command
9 between the Rwandans and the Ugandans but that never worked out.

10 Q. Very well.

11 PRESIDING JUDGE FULFORD: Mr. Biju-Duval, I want to warn you against the
12 temptation of turning it into a rapid-fire conversation between you and
13 the witness. It puts the interpreters under quite a lot of stress --
14 well, "stress" I think probably puts it a bit high, but pressure. Yes,
15 please continue.

16 MR. BIJU-DUVAL (interpretation):

17 Q. These strategies in the plural, the RCD-ML strategies and
18 Kinshasa strategies, didn't they play an important role when it came to
19 multiplying the number of local armed groups, and I would also say didn't
20 it also play a role in increasing their capacity for killing? I'm
21 referring to their weaponry.

22 A. Well, no, the fact that ethnic groups and militia groups were
23 multiplied -- well, there were even groups that weren't significant
24 players in the field, such as the Alur, they created a militia as well,
25 but that was more the result of the anarchic situation. It wasn't

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1 a diabolical strategy that had
2 been calculated, intelligently planned, but the situation was such a
3 violent one that even groups that weren't players created militia to
4 protect themselves because an armed group --or, rather, an ethnic group
5 that finds itself in a combat zone and has no fighters -- well, naturally
6 there's the problem of pillaging, the problem of rape, the looting of
7 goods, so an ethnic group that doesn't have any fighters is literally
8 like a beast faced with a predator. So it's a more a result of the
9 disintegration of authority. It is a Hobbesian situation as
10 there's no authority, everyone tries to do as best they
11 can.

12 PRESIDING JUDGE FULFORD: Mr. Biju-Duval, I'm going to interrupt
13 again. The French transcript seems to have frozen, and I think we need
14 to rectify this before we carry on.

15 Maitre Mabilille, given -- this is in French, quite, do you mind us
16 continuing while the technicians sort it out? I mean, we will obviously
17 make sure that the transcript in due course is full, but do you mind us
18 carrying on?

19 MS. MABILLE (interpretation): No, that's not a problem. We can
20 proceed.

21 PRESIDING JUDGE FULFORD: Thank you.

22 I saw you on your feet, Ms. Samson.

23 MS. SAMSON: Thank you, Mr. President, it was also an
24 interpretation issue. In English the witness said it was a diabolical
25 strategy; in French we heard it was not a diabolical strategy, and I

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1 wonder if it could be clarified.

2 THE INTERPRETER: Interpreter's note: The witness said that it
3 was not a diabolical strategy.

4 PRESIDING JUDGE FULFORD: Someone's
5 going to have to establish what it was. Oh.

6 MS. SAMSON: I think the matter has been clarified.

7 PRESIDING JUDGE FULFORD: Right. It has, thank you very much,
8 interpreter, so that it was not a diabolical strategy. There was a
9 negative in there. Good. We will continue then, and the problem with
10 the French transcript will be rectified as we go along. Good.

11 Back to diabolical strategies, Mr. Biju-Duval.

12 MR. BIJU-DUVAL (interpretation): Thank you, Mr. President.

13 Q. The nature and the gravity of the massacres can be influenced by
14 the weapons that the combatants had; isn't that correct?

15 A. No. Well, look at the genocide in Rwanda. 800,000 dead in
16 three months, 80 per cent of those killed were killed with knives. You
17 can kill very efficiently without any guns, and you should also recall
18 the numerous wars in Europe up until the 16th century. Many people were
19 killed with knives.

20 Q. Yes, but when you have such weapons, knives, on the one hand and on
21 the other hand, heavy machine guns, the combat comes to an end quickly?

22 A. Well, not really. Have a look at the situation with the LRA in the north
23 of Congo. Since the 14th of December, there was the Faraja massacre that was
24 quite horrific and knives were used exclusively. Heavy machine-guns, well,
25 they're not very useful for a massacre. Machine-guns, you risk killing your

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1 own soldiers as much as killing anyone else. Everyone running around. But
2 knives work very well, they are very effective. What we can say is that non-
3 combatants, in particular women and children, elderly people, are massacred
4 simply because they don't have the possibility of defending themselves, they
5 can't run very fast, you don't need a Kalashnikov or
6 a machine-gun to kill them.

7 Q. Very well. You said in your report, page 65 in the French
8 version and on the following pages you linked the escalation of the
9 massacres to the multiplication of the organisations that you call
10 ethno-military organisations; isn't that correct? You said with regard
11 to these ethno-military organisations a number of things. You provided
12 some information about them. I'd like to go over that. And in
13 particular in relation to the information that is contained on page 65
14 and further on. You referred to the PUSIC, the PUSIC movement. Would it
15 be correct to say that the PUSIC movement created in November 2002 was
16 directly supported by Uganda?

17 A. Yes -- but, look, now we're getting into subcategories within the Wahema.

18 Q. I apologise. I'd just like to have that information. Is it
19 correct to say that they were supported by the Ugandans?

20 A. Yes, initially.

21 Q. Thank you. Would it be correct to say that the FPDC was created
22 in October 2002 by Uganda?

23 A. Well, now I'm a bit lost. I can't remember what the FPDC is in
24 fact.

25 Q. You speak about it on page 65 --

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1 THE INTERPRETER: 67, interpreter's correction.

2 MR. BIJU-DUVAL (interpretation):

3 Q. -- of your report.

4 A. Yes, yes. That is an example of what I was saying, the creation
5 of an Alur militia. I apologise, I forgot that that's what it was called.
6 You know when you have all these letters it's difficult. When you say
7 the Alur, I know what it's about. The name FPDC didn't ring a bell. Yes,
8 of course, that was part of the proliferation of these ethnic groups
9 and in the case of the Alur or the Lubara, it was a matter of self-defence.
10 No one was in control of anything anymore. So at that point in time you can
11 see the Ugandans saying, "Yes, why not. We are kind people, we are going
12 to assist you".

13 Q. Thank you. Is it correct to say that the FAPC led by Jerome Kakwavu,
14 created in March 2003, was also supported by Uganda?

15 A. Yes, yes, but there is a lot of zigzagging between the northern Hema
16 and Southern Hema, between Uganda and Kigali -- everyone was trying to
17 position themselves in a better position. They had in mind the final
18 outcome, they felt it coming. So there wasn't an agreement between the
19 Hema from the north and from the south. There was a difference of opinion
20 with regard to the type of alliance they should look for. So all of this
21 was of a pragmatic nature. They were only looking for short-term profit.

22 Q. As for the FAPC you said that they had the support of the local
23 population and of the Ugandans which allowed
24 them to maintain control over the region, et cetera;
25 that's on page 67; isn't that correct?

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1 A. Yes.

2 Q. Is it correct to say that the FNI is a Lendu militia created at
3 the beginning of 2003?

4 A. Yes.

5 Q. That it also received the support of Uganda?

6 A short while ago I think someone made an error of translation talking
7 about a diabolical strategy, and I was thinking that maybe you were
8 disturbed by my allusion to Thomas Hobbes. I said in French that it was a
9 Hobbesian situation. You know, we were in a situation of social
10 disintegration. I would use another term, Durkheim's term, anomie,
11 whereby everyone is trying to hang on to the little they know, the people
12 who share their culture and their language, and that is why you see the
13 Ugandans supporting the Lendu, whereas in the past they used to support the
14 Hemas against the Lendu. And so you find that there is this sudden
15 switching of allegiances in the region, which became alarming in 2003-2004

16 Q. Thank you. Is it correct that the FRPI was also a militia, a
17 Lendu or Ngiti militia?

18 A. Yes, yes.

19 Q. Sorry, Ngiti?

20 A. Yes, it was a subset.

21 Q. Created in November 2002?

22 A. Yes.

23 Q. And that it also joined the Ugandans in chasing the UPC out of Bunia?

24 A. At some point the Ugandans tried to bring everyone together, feeling
25 that since they had the most financial and military resources they could

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1 create a trans-ethnic alliance, but this did not work.

2 Q. This Ugandan support was in the form of arms supplies, military training?

3 A. And money.

4 Q. As well as direct support during combat?

5 A. Well, it varied. At the time the feeling was that the Ugandans
6 were beginning to have enough of the situation, and part of their effort
7 was to make sure that other people carried out or prosecuted the war on
8 their behalf, by proxy so to speak. So from time to time they would
9 intervene. The same applied to the MLC, Mr. Bemba's MLC. In 1998 the
10 Ugandans were waging the war on behalf of Mr. Bemba. In 2002 that was
11 over and they depended on their allies to prosecute the war for them.

12 Q. So in that case we can also talk of a war by proxy waged by
13 the Ugandans through the militias we talked about?

14 A. Yes, but it was very inefficient because if you wish to carry out
15 a war by proxy, then the person to whom you give such proxy should be
16 efficient and that person should obey you, but that was not the case.
17 The Ugandans were not able to control their agents on the ground.

18 Q. But they continued to support these groups?

19 A. Yes, for want of a better solution.

20 Q. And these groups fought against the UPC in particular?

21 A. Yes, because the vision, the Ugandan vision of the UPC was that
22 Lubanga had betrayed them by going to Kigali to look for support. It's a
23 paradox because Uganda and Rwanda were allies, but after the events of
24 Kisangani in 1998 they fell out and they started fighting each other,
25 that is, in 1999. And so the situation changed completely.

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1 Q. Now, this war by proxy, don't you think it was also waged in one
2 way or another against Rwanda?

3 A. Certainly.

4 Q. As well as against the government of Kinshasa?

5 A. Yes. It became sort of a triangular war, if you like.

6 Q. Can you give us some details on that configuration?

7 A. It's very difficult, it's very complicated, because it related to
8 the relations between Rwanda and Uganda, and they date back to the period
9 of the war of conquest of the FPR in Rwanda. And Ugandans have always
10 had this paternalistic attitude, this superior attitude vis-a-vis Rwanda.
11 They feel that Mr. Kagame and his regime are their product, their
12 creation. So they were together -- acted together during the first and
13 the second wars of Congo, but after some time they fell out. There was a
14 dispute on the manner in which they were going to prosecute the war, on
15 strategy as well as disputes over the sharing of war plunder. And this
16 culminated in the events of Kisangani in 1999 and a real war between Rwanda
17 and Uganda. And all of this happened while they were fighting against
18 Kinshasa, and so there were three combats -- episodes of combat between
19 the Ugandans and the Rwandans. When the Ugandans would find people who could
20 act as their substitutes, they were afraid that these substitutes would go
21 and seek support from their "allies" who have now become their enemies.

22 Q. What about Kinshasa?

23 A. I would like to say that paradoxically President Museveni had -- was
24 closer to Kinshasa. It was something like the enemy of my enemy is a
25 friend of sorts. That resulted in the agreement in Angola, which was

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1 separate and went ahead without the Rwandans.

2 Q. Thank you. Now, the agreements which are referred to as the Luanda
3 agreements which were signed between the DRC and Uganda under the auspices
4 of Angola; is that what you are talking about?

5 A. Yes.

6 Q. Signed on the 6th of September, 2002?

7 A. Yes.

8 Q. These Luanda agreements, therefore - and correct me if I'm
9 mistaken in my analysis of the situation - provided for the departure of
10 Ugandan troops during a 100-day time-frame, and it also made provision
11 for the pacification of Ituri in particular through the creation of what
12 was referred to as the Ituri pacification committee; right?

13 A. Yes.

14 Q. So these agreements, which were international because they were between
15 two states, had as their main objective the pacification of Ituri; right?

16 A. Yes. A fundamental objective? Yes, it was an objective but I
17 don't think it was a fundamental or an essential objective.

18 Q. I think we have a paradoxical situation here because you just
19 talked about the conditions under which in the subsequent years,
20 2002/2003, the subsequent months Kinshasa actively supported the armed
21 groups via the APC and other militias; and at the same time Uganda was
22 actively supporting armed groups; is that correct?

23 A. Yes.

24 Q. Can we therefore consider that paradoxically they rather fuelled
25 the conflict in Ituri?

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1 A. They did not fuel the conflict but they did not put an end to it,
2 that is why I expressed some reservations when you said that the aim of the
3 Luanda agreements was primarily the pacification of Ituri. That is not
4 exactly true. You know, this region has always been a secondary theatre of
5 operations. Ituri is not at the core of the problem. It is at the core
6 of your discussions here as a court, but from the geopolitical standpoint
7 given the situation in Congo, Ituri is only a secondary theatre of
8 operations. So global peace agreements can be signed which may be
9 respected in Equateur or in Katanga or other theatres of operation, but
10 it's not going to quell the situation in Ituri. Ituri is not alone.
11 What about the situation in Kivu?

12 As we talk now, the strife continues in Kivu. The recent
13 operation of the Rwandan army in the Kivu is an extension of the war. This
14 time supposedly with the agreement of Kinshasa under very complex
15 modalities, terms and conditions. So, as in Ituri, it took a long time
16 for it to end after the official end of the war; in Kivu it still has not
17 ended.

18 Q. Thank you. I would now like to talk about relations between
19 Uganda or Ugandan authorities and the UPC. The UPC led by Thomas
20 Lubanga. Would it be true to say that -- well, to your knowledge, is it
21 true that when the UPC was created in September 2000, Mr. Lubanga was
22 arrested by the UPDF, that is, the Ugandan troops in Bunia. He was
23 imprisoned and then transferred to Kampala, where he was placed under
24 house arrest for three months. Are you aware of that?

25 A. Yes.

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1 Q. Now, I would like to talk about the end of May 2002. Is it
2 correct that Mr. Lubanga went with a delegation to Kampala to try to
3 discuss about the situation in Ituri, that he was arrested by Ugandan
4 authorities, transferred to Kinshasa, where he was imprisoned at the
5 DEMIAP, the political prison. Are you aware of that?

6 A. Certainly, yes.

7 Q. Is it correct that as after -- when he returned to Bunia after
8 Bunia was taken over on the 9th of August, 2002, is it correct that
9 Mr. Lubanga as soon as he's arrived very rapidly requested the retreat or
10 withdrawal of Uganda's troops from Ituri?

11 A. Yes, I think it possibly started as early as that. With regard to the
12 time-frame, I'm not very sure. Yes, there was a request that Ugandan
13 troops should withdraw, but when this was, I cannot say.

14 Q. Well, just to help you clarify things, I'm going to show you a
15 document which is under tab 14 of the file you have in front of you. It
16 is a document entitled: "Official Declaration of the UPC" and so on and
17 so forth. The code of the document is DRC-OTP-0037-0266.

18 Do you have that document?

19 A. Yes.

20 Q. That's an official declaration, point number 5, second page. And I quote:

21 "The UPC/RP supports the withdrawal of

22 Ugandan troops from Congolese territory,

23 as stipulated in the agreement signed in Luanda on

24 the 6th of September, 2002, between Uganda and the Democratic Republic of

25 the Congo. The UPC/RP also supports the withdrawal of all other foreign

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1 troops from the national territory."

2 That document is -- was published on the 14th of September, 2002,
3 and that -- does that coincide with your memories or your recollection?

4 A. I have no recollection of this, but this is possible. Yes.

5 Q. Well, sir, I would like you to go to page 117 of the French
6 version of your report, that is almost at the end of your report. Where
7 you give additional explanations I think. That is the page number
8 117 of 145. And at the bottom of the page I'm going to
9 read what is written there.

10 "Secondly, Kampala very early established a special relationship
11 with the Hemas. In September 2002, when Uganda and Congo signed their own
12 separate peace agreement in Luanda, the leaders of the Hemas, that is the
13 leaders of Hema UPC militias, said they did not wish the Ugandans to
14 retreat or to withdraw; whereas, the FNI and the FRPI, which belonged to
15 the Lendu, immediately announced I quote: 'Peace will automatically return
16 when the Ugandans leave.'"

17 Now, when you talk about the Hema leaders and UPC militias -- in
18 any case, you're not talking about Thomas Lubanga?

19 A. No, I was mistaken. Everyone can be mistaken. It's an error.
20 You know, it's difficult to follow what was happening between the Ugandan
21 alliance, trying to win the support of the Rwandans. I think the same
22 thing happened to the FNI. Sometimes they will work with the Ugandans,
23 sometimes they will work with the Rwandans. So in this case this is an
24 error I made. That said, these alliances were created and broken at
25 a very rapid pace and this may account for this error.

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1 Q. You state in your report very briefly but very clearly that
2 between September 2002 and the 6th of January, 2003, the UPC moved
3 towards Rwanda because they signed an agreement on the 6th of January,
4 2003, with RCD/Goma. That is what you have stated in your report.
5 Well -- now, there's one detail here which I find important. On pages 72
6 and 73 of the French version of your report, you say that the UPDF and
7 their allies of the FNI attacked and took Bunia, you're talking about the
8 capture of Bunia on the 6th of March, 2003; is that correct?

9 A. Yes.

10 Q. If I put it to you that rather it was the UPC soldiers who
11 launched the offensive against the Ugandans, will that tally with your
12 understanding of the events?

13 A. You know, in conflict it's common to hear each party say it's the
14 other party that started. Well, I was not there so I cannot tell you
15 which party started the conflict. What is certain is that a conflict
16 took place.

17 Q. Thank you. We looked briefly at the attitude of the UDP -- of
18 Uganda towards Thomas Lubanga before Bunia was taken. We looked at the
19 UPC's attitude towards Uganda after Bunia was taken. Now, I would like
20 to come to a statement made in your report on page 72 --

21 PRESIDING JUDGE FULFORD: Mr. Biju-Duval, before we do so, quite
22 understandably - and I repeat that, quite understandably, this is quite
23 dense material and a lot of questions have been put to the witness. I'm
24 wondering whether it would be an act of mercy to give you and him a 10 or
25 15-minute break before we continue. Would you appreciate that or not?

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1 Good. Yes. We'll take a break until 4.00 so the witness can
2 stretch his legs and to take some of the pressure off him. Good.

3 Could Mr. Prunier please be taken to the
4 witness room. Thank you.

5 (Trial Chamber and Court Officer confer)

6 PRESIDING JUDGE FULFORD: Yes, he can. He most certainly can.
7 Yes, absolutely.

8 (The witness stands down)

9 PRESIDING JUDGE FULFORD: We'll sit again at five past 4.00.

10 Recess taken at 3.48 p.m.

11 On resuming at 4.06 p.m.

12 COURT USHER: All rise. Please be seated.

13 PRESIDING JUDGE FULFORD: Witness, please.

14 While the witness is being brought, earlier today at page 14 of
15 the transcript at line 13 Ms. Samson gave a reference which was 1501
16 which should read 1505. In order to ensure that there are no mistakes in
17 the future because somebody reads an incorrect number, I request that the
18 perfected transcript is amended so that instead of 1501 it reads 1505.
19 If there are any difficulties with this, could the Court officials please
20 contact me sometime between now and 4.00 p.m. tomorrow.

21 (The witness takes the stand)

22 PRESIDING JUDGE FULFORD: Thank you.

23 Mr. Biju-Duval.

24 MR. BIJU-DUVAL (interpretation): Thank you, Your Honour.

25 I think we should give an MFI code to the document which has the

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1 UPC letterhead, the document we talked about, DRC-OTP-00037-0266.

2 COURT OFFICER: (Interpretation) Thank you. The document will
3 bear the number MFI-D-00097.

4 MR. BIJU-DUVAL (interpretation):

5 Q. Witness, just before the break we were examining the reciprocal
6 attitudes of Lubanga and the UPC vis-a-vis Ugandan authorities. They
7 seem to have been characterised by a certain number of episodes which tend
8 to show that there was more hostility than any situation of
9 cooperation or alliance. In your report in page 72 of the French
10 version, talking about the agreement of 6th January 2003 between the UPC
11 and RCD/Goma, you mentioned that up to then, if I understood you well,
12 Lubanga I quote "was the main ally of Uganda in Ituri." Now I would like
13 you to throw some light on that statement. Can you tell us at what moment
14 precisely did the UPC and Mr. Lubanga, at what moment precisely did they
15 become the main ally of Uganda in Ituri?

16 A. Up to that moment, and I think that, sir, you want to read into
17 all of that more coherence than there actually is. The change of
18 alliance of the UPC in January 2003 was -- was because they wanted to
19 look for an alternative to an arrangement that had been working earlier
20 and which had stopped working. You know, when
21 you talk about militias, this is not a specificity of Ituri. It's all
22 over in Africa. I've seen it in Uganda, in Somalia, in Sudan. You know,
23 groups keep changing, they change alliances at lightning speed because
24 really there is no ideology driving them, there are no fundamental
25 beliefs. They resort to pragmatic arrangements, and if they don't work

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1 then they move on to other strategies. That's what I have to tell you.

2 Q. Thank you. Let's talk about the UPC and Thomas Lubanga
3 specifically. Do you agree with me that between the end of May and the
4 end of August 2002, he was detained in Kinshasa after having been
5 arrested by Ugandan authorities in Kampala; is that correct?

6 A. Yes.

7 Q. It wasn't at that time that Lubanga was the main ally of the
8 Ugandans at least?

9 A. No, he has men. He's not alone, otherwise he cannot have any
10 political existence. Besides, a minister of Kinshasa was kidnapped and
11 Mr. Lubanga is someone who has his faction. He represents a certain
12 number of people and so his people, his men, work for him and they work
13 for their party.

14 Q. What you are saying is that on the one hand Lubanga was arrested,
15 manu militari in Kampala, and at the same time his men worked
16 hand in hand with the Ugandan authorities; is that what you are saying?

17 A. No, no. You can't look at things with such simplicity. His men
18 were working, doing everything to have him released because he was their
19 leader and he was detained. The Ugandans were the first to betray him.
20 You know, they were looking at each other to see who was going to betray the
21 other first. The agreement of Luanda was signed between the government
22 of Uganda and the DRC, and if he went to Kampala it was because he had --
23 he believed in the good-will of the Ugandans, but he discovered that he
24 was arrested instead. So it's obvious. This happened in Europe, you had
25 the pact signed between Germany and the Soviets, but then Germany was

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1 attacked by the Soviet Union in June 1941. So you have to understand that
2 interests are only temporary, and that most of the time alliances are
3 based on the specific interests of the parties?

4 Q. Should I understand, therefore, that the alliance you're talking
5 about ended with the arrest of Lubanga in Kampala?

6 A. I think so, that would make sense.

7 Q. Is that your analysis?

8 A. Well, with the possibility that things may work out again for
9 them in the future.

10 Q. Thank you. Is it correct, still with respect to Uganda, is it
11 correct that during this period -- well, I'm talking about the date of
12 the signing of the Luanda agreements in September 2002, is it correct
13 that MONUC, the United Nations entity was fully informed of the role
14 played by Uganda in the conflict in Ituri?

15 A. I don't know what you mean by "fully informed." As to their
16 knowing about it, yes, but knowing about it officially, that is something
17 else. There are certain things that we know and there are certain things
18 that we get to know about them officially. For a long time, the
19 international community has shown a tolerance - and that's putting it
20 mildly - a certain degree of tolerance towards Kampala and Kigali, for
21 various reasons. There was guilt because of the genocide, there was also
22 the personality of Mr. Kabila, who was not an easy person, his communist
23 past, and the international community has a lot of influence over the
24 United Nations. Now, was MONUC officially aware of what the Ugandans
25 were doing in Ituri? I don't know. I think that between real awareness

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1 and the type of awareness that leads to a political action, I think a
2 clear distinction has to be made.

3 Q. Thank you. If I inform you that the report of the expert group
4 on the illegal exploitation of the natural resources and other resources
5 of the Democratic Republic of the Congo was submitted in October 2002, first
6 of all, does that -- is that correct?

7 A. Yes, yes.

8 Q. Can we therefore agree that these experts had the opportunity to
9 analyse not only the issue of the exploitation or the tapping of the
10 natural resources of the country, but also the situation in general in
11 Ituri and the role played by Uganda, before submitting their report?

12 A. No. First of all, they did not focus on Ituri; secondly, there is a
13 lot of controversy about that report because it was a report which was
14 very critical of the political, military, and economic action of Uganda
15 and Rwanda. And it did not actually correspond or tally with the
16 attitude adopted by the UN up to then. So that report was very
17 controversial and the experts were criticised. I think you're right to
18 touch on that episode. We cannot say that the United Nations adopted a
19 common position on this point. You know, when you talk about an expert,
20 an expert is like a free electron, he is independent. An expert can say
21 things that are unexpected. I have seen that happen on several occasions.
22 The United Nations requires or calls an expert to produce a report, and then
23 the UN ends up being shocked by the content of the report
24 which is submitted, and that is the case with the
25 report you just talked about.

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1 Q. Should I understand, therefore, that the political choices that
2 the United Nations wished to make at that time, that such decisions were
3 made difficult by the publication of that report? Let me be clearer and
4 put it bluntly. Is it correct that that panel of experts concluded that
5 Uganda had heavy responsibility, or bore great responsibility in the
6 pillaging of Ituri and in fomenting the strife in the district and
7 that this did not coincide with what the UN thought?

8 A. You talk all the time about Ituri, but that's not correct. The report
9 focused on Kivu because the mineral resources, especially columbium
10 tantallite, the price of which was high at the time. And it wasn't only the
11 Ugandans but also the Rwandans. The volume of resources looted in Orientale
12 -- in Province Orientale was much smaller than what was looted from the
13 Kivu, but that was not the focus of the report. You were right to say that
14 this was on -- an uncomfortable position for the United Nations to be in
15 because there was heavy criticism directed against Ugandan and Rwandan trade
16 networks, not only in Orientale province and Ituri, but much more generally.

17 Q. I'd like to read an extract, excerpt, from a report by the general -
18 Secretary-General of the United Nations Mission in the Democratic Republic
19 of the Congo. The document has the number DRC-D01-003-0842, it is under
20 tab 26, tab 26. We'd need an MFI number for it. And so it's an excerpt --

21 COURT OFFICER: (Interpretation) Please, the number of the
22 document for -- from the Secretary-General for the special mission of the
23 United Nations in the Democratic Republic of the Congo is MFI-D-00098.

24 MR. BIJU-DUVAL (interpretation):

25 Q. I'm going to refer to the chapter entitled: "Re-Establishing

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1 Security in the North-East," and I would like to quote some passages in
2 paragraph 58. I would like to first give you the date of the report, the
3 10th September, 2002. And I quote:

4 "In view of the current instability, the Ugandan popular defence
5 forces will continue to carry out security functions impartially until
6 they can be replaced by a police force which is capable and representing
7 a legitimate authority which is acceptable for the Ituri community."

8 So this position adopted by the United Nations at the time,
9 doesn't it seem to you to be somewhat contradictory? They probably knew
10 about Uganda's responsibility and tasks in Ituri?

11 A. Yes, that brings us back to precisely what we were saying a
12 minute ago. There are two -- two theses, that's the official United
13 Nations' one, but I had a problem with the terms "impartial security
14 functions." I don't think that the Ugandan armed forces in 2002 and
15 previous years, really represented or carried out impartial security
16 tasks. However, the expert group has -- says that there's a problem
17 economically. So if we look at the difference between what we can call
18 the heart of the United Nations' problem and the expert group, which
19 acted more independently, that shows where the difference lies.

20 Q. Is it correct to say that similarly, to be more precise, the
21 Luanda agreements imparted upon Uganda or Ugandan authorities, gave them a
22 role in the Ituri pacification commission?

23 A. Yes.

24 Q. Now I'd like to finish with this issue. What do you think of this
25 situation, in which -- in a way the people committing arsons are asked to

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1 go and put out the fire, if I could express it this way?

2 A. Fortunately, history has unexpected outcomes and
3 actually things ended quite well. Why? Well, not because the Kampala
4 authorities in -- being overgenerous suddenly became neutral and fair as
5 regards this whole issue, but because it gave MONUC the opportunity to
6 support a number of changes in administrative appointments as regards
7 local administration, because this pacification commission was not only
8 in the hands of the Ugandans. It was a place where horse trading would
9 take place and there was this situation of unilateralism for whoever won
10 militarily. And all of a sudden they ended up in a situation in which
11 they could trade. And after the most dangerous administrative appointments,
12 at the time of Madam Lotsove in what we called Kibali- Ituri, this
13 led to -- this was a pacifying factor, even if it led to a paradoxical
14 outcome thanks to the pacification -- or around, rather, the pacification
15 commission.

16 Q. Could I say that that's the position you take retrospectively as
17 a historian?

18 A. Yes, indeed.

19 Q. But could we say that at that time in the field, in September
20 2002, one could have some hesitations, legitimate ones, about this set-up
21 that gave Uganda a preponderant role in the pacification of Ituri?

22 A. Yes, of course you could have doubts about it, but in the
23 situation at the time any solution was bad. So you had to opt for the
24 least-bad solution. And nobody would know until they tried. So this
25 solution which maybe didn't serve any purpose and didn't have a good

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1 anchor outcome, however, led to the beginning of pacification. But
2 I'm -- I agree, it's only retroactively that you can assess this.
3 However, in that situation if somebody had the perfect solution, I don't
4 think we should have taken them seriously because nobody could have had a
5 win-win solution which you could be sure would function.

6 Q. As regards this commission for the pacification of Ituri, that we call
7 the CPI, you say in your report, page 72 of the French version, that, and
8 I quote:

9 "Lubanga simply refused to cooperate with the
10 pacification commission of the Ituri -- of Ituri, CPI."

11 Basically, to simplify things I will give you a document which I
12 think is rather inconsistent with that statement for you to give us your
13 views on this. I'm talking about the document -- first the document
14 under tab 15, tab 15 of the binder, it's an official statement made by
15 the UPC Presidency which was signed by Thomas Lubanga and is dated 14th
16 September 2002 at number DRC-OTP-00037-0268.

17 COURT OFFICER: (Interpretation) The document will have number
18 MFI-D-00099.

19 MR. BIJU-DUVAL (interpretation):

20 Q. I would like to quote the first point. It's a document that has
21 five points, so, one:

22 "The UPC/RP agrees with the spirit of the Luanda agreement signed
23 on the 6th of September, 2002, between Uganda and the Democratic Republic
24 of the Congo with regard to the establishment of a commission for the
25 pacification of Ituri; however, subject to conditions which will be

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1 submitted at the time the commission is established."

2 Does this document in any way make you change the opinion you
3 expressed in your report or add any details to it?

4 A. No, not really because look at the date, it was just one week
5 later, so there's the international community which supports an
6 agreement. They're part of the things that one wants to hear, but you
7 can't expect that a political movement will say, I'll just take this
8 document that's been signed between governments to please everyone and
9 throw it away. That wouldn't be very smart, and I don't think that the
10 UPC members wanted to do so. Practically, what we have to look at is
11 what happened afterwards, and you can see it's stated in such a way that
12 it says, "Subject to certain conditions". And under point number 5,
13 "Negotiations will be in Ituri and according to what the protagonists in
14 the conflict will say".

15 So basically that means, well, I agree for everything that's good, but
16 afterwards we'll see what happens. What went on was that there had been
17 a -- a disagreement between the UPC and Uganda or a separation, rather,
18 and then Mr. Lubanga and the UPC tried to adopt a different course which
19 ask -- brought them to ask Rwanda for Rwanda's support, which never
20 came to much, it would have just brought them problems. So, no, there
21 wasn't really any cooperation with the UPC and that wasn't in their
22 interest anyway because several of the people who were replaced at that
23 time were people who had been nominated by the UPC, either directly or
24 indirectly. So I don't see why the UPC would have self-censured itself
25 or contradicted itself.

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1 Q. If I were to say that no refusal was made in principle, however,
2 there were serious difficulties in the implementation and effective
3 participation in this, would that -- would that be consistent with your
4 approach?

5 A. No. When the desire for Ituri's independence was expressed,
6 well, I think that's going on a tangent. I don't even think Mr. Lubanga
7 believed in that when he said that. It was just an argument like many
8 others, but it would be difficult to see Ituri ever becoming independent
9 and requesting to have a seat in the United Nations.

10 Q. Thank you. Now, still on the same topic and following on from
11 your statement on their refusal to cooperate with the international --
12 with the Ituri pacification commission, you said that Thomas Lubanga
13 started declaring that Ituri belonged to the Ituri people and that the
14 region should secede and create its own state. It's on page 72 of the
15 French version of your own report, and actually you state that the
16 expression -- you mentioned the expression: "Ituri for the people of
17 Ituri", in quotation marks as if that was a quote of Mr. Lubanga.

18 A. Well, I don't know if those words were stated by himself. He wasn't the
19 only one. There were people who -- other people who had said that too. I
20 think the FNI said the same thing. So it's a little bit of a case of
21 Beckett, it's the end of the game, it's a cul-de-sac, people don't know
22 what to do anymore. The Darfur movements never wanted to be independent, but
23 now some people are starting to talk about it. When you don't have any
24 arguments anymore, things are going around in circles, people say that
25 other places have done it. There were the Eritreans, the Western Saharans.

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1 They all tried to create something; however, the thoughts aren't really
2 serious or coordinated. Those words might have been pronounced, it was
3 something discussed but not only within the UPC.

4 Q. Can you look at the document under tab 14. We've already looked at it. It
5 has the document number MFI-D-00097. It's an official statement that was
6 made by the UPC Presidency dated 14th September 2002. It contains six
7 points and the first point, I quote:

8 "The UPC/RP remains attached to the principle of a united,
9 strong, and prosperous Congo."

10 So before I ask you any questions, I would like to save time to
11 ask you to refer to the document which is under tab 16. Which is also an
12 official statement from the national secretariat for foreign affairs of
13 the UPC dated 22 October 2002 under number DRC-OTP-00037-0271.

14 COURT OFFICER: (Interpretation) This document will be given
15 number MFI-D-00100.

16 MR. BIJU-DUVAL (interpretation):

17 Q. So if you look at it there are several points. I would like to
18 refer you to point number 2 entitled, The UPC/RP's Political Objectives
19 - Peace and Reconciliation in Ituri specifically and in
20 the Congo generally, and the unification of the DRC through an
21 inclusive and general inter-Congolese dialogue. So I'd also like to
22 refer you to the last page of the document just before the conclusion, so
23 just before point number 8 in the part concerning the UPC's and --
24 UPC/RP's current concerns. And under the point number 3:

25 "The immediate and effective reunification of the Democratic

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1 Republic of Congo following a general and inclusive agreement between the
2 protagonists of the Congolese political -- political scene."

3 Now, my question is the following: Contrary to what you seem to
4 be affirming, the UPC does seek the reunification of the Congo and of Ituri
5 in Congo and certainly not a secession and even less its independence from
6 the Congo?

7 A. Yes, but I'm sorry here, sir. Since when do political people say clearly
8 what they want to do and when did we start taking them literally? Because if
9 you read further then there's something I didn't know and which amuses me:
10 "Ituri must represent 15 per cent in the government resulting from the
11 inter-Congolese dialogue". That's a measure that doesn't really make sense,
12 but it's in the same document. I don't think that it would be reasonable for
13 a movement to say, "Yes, we are secessionists, that's what we want". Even
14 the Eritreans who fought 30 years didn't say they were secessionists until
15 the referendum on independence. If you look at the climate in the African
16 Union, people that say they're secessionists are not popular, they're not
17 well seen. They have no friends. There are secessionist movements in
18 Kivu, too, that were protected by the Rwandans. They never came to say
19 they were secessionists out loud. So to say, "We remain attached to the
20 principle of a strong, united, and prosperous Congo", it's basically to say
21 that we're in favour of the good against the bad, it's basically to say
22 that we're good, honest, nice people.

23 Q. Thank you. What you said in your report is clear. The UPC/RP,
24 Thomas Lubanga to be precise, declared that he wanted the secession and
25 independence of Ituri. Can you tell us precisely on the basis of which

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1 document or what other source you can make such a claim?

2 A. Well, sir, we're dealing with Africa. Pity, please, a little common

3 sense. This isn't how things work there. That happens in speeches. There's

4 also the issue of language, first of all. Do we speak a local language?

5 Swahili, or French? For example, in Rwanda the discourse is summoning

6 people to massacre the Tutsi, it was in Kinyarwanda. It wasn't said in

7 French because they knew the Whites were there listening. I don't think

8 that Mr. Lubanga really believed in the possibility. I think he's too

9 intelligent. I don't believe that he thought that Ituri could be

10 independent. I think one didn't really know

11 what to do, but there was a dual or triple game that was being played.

12 One wanted to tell ordinary people who had had enough of massacres, of the

13 catastrophe that they were living in, they wanted to tell them: "Wouldn't

14 it be a good thing if we had our own country", even if one didn't believe

15 in that, but one knew that in the short term the people, the man or woman

16 who heard that might say, "Well yes, my God, that might be a solution".

17 But an official document wouldn't be drafted to that effect, sir.

18 MR. BIJU-DUVAL (interpretation): Just one last question, your Honour.

19 Q. The last document that I showed you, the 22nd of October, 2002,

20 is the date on the document. I quote the title:

21 "The participation of the UPC in the global and inclusive

22 dialogue, a general and inclusive inter-Congolese dialogue."

23 Doesn't it seem to you that the UPC at that point in time was

24 concerned with finding its own position. In this national dialogue in

25 Congo; it wasn't a matter of illusory independence?

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1 A. Yes, but why not use a threat of illusory independence, as you say,
2 in order to negotiate something. After all, it's an old political
3 procedure, one makes an exaggerated request. That's also the case in
4 markets. I ask for a high price for an object and I know that I'll
5 bargain later. So the UPC was trying to have a little seat somewhere.
6 They weren't looking for an important role, but they were trying to find
7 a role within the framework of Congolese negotiations -- well, that's
8 certainly the case, and there was certain affirmations, official,
9 unofficial that were used as part of a strategy to attain that objective.
10 Well, yes, that was certainly the case. I think that these things are
11 negotiable. I don't see the UPC as being resolutely, monolithically,
12 powerfully organised in favour of secession, no.

13 MR. BIJU-DUVAL (interpretation): Your Honour.

14 PRESIDING JUDGE FULFORD: Now, Mr. Biju-Duval, how are we doing?

15 MR. BIJU-DUVAL (interpretation): As far as the duration of my
16 cross-examination is concerned, your Honour, as far as the time that I
17 will still need is concerned, I think that it won't be more than two
18 hours.

19 PRESIDING JUDGE FULFORD: Mr. Prunier, we need, therefore, to ask
20 you, please, to come back tomorrow. Mr. Biju-Duval indicates that he
21 will be in -- of the order of about two more hours.

22 Ms. Samson, do you have any sense as to -- looking at the
23 issues raised by Mr. Biju-Duval, any sense of how long?

24 MS. SAMSON: At this point, your Honour, I don't think it will be
25 terribly long, but there will be some re-examination.

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1 PRESIDING JUDGE FULFORD: Good. Well, I think we definitely
2 therefore need to have the last witness brought back, but we will say
3 that he need not be here before the mid-morning break. So if that
4 witness, please, could be available from half past 11.00 onwards to
5 restart his evidence during the course of tomorrow.

6 Thank you very much indeed, sir. We look forward to seeing you
7 again tomorrow at 9.00, and would you please now go with the usher.
8 Thank you.

9 (The witness stands down)

10 PRESIDING JUDGE FULFORD: Thank you all very much for your
11 assistance. 9.00 tomorrow.

12 The hearing ends at 4.48 p.m.

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