

1 International Criminal Court

2 Trial Chamber II - Courtroom 1

3 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra and

4 Judge Christine Van den Wyngaert

5 Situation: Democratic Republic of the Congo - ICC-01/04-01/07

6 In the case of The Prosecutor v. Germain Katanga and

7 Mathieu Ngudjolo Chui

8 Trial Hearing

9 Tuesday, 26 August, 2010

10 (The hearing starts at 9.07 a.m.)

11 (Open session)

12 THE COURT USHER: All rise. The International
13 Criminal Court is now in session.

14 PRESIDING JUDGE COTTE: (Interpretation) Court is in
15 session. Please be seated. The accused persons are in the
16 courtroom. We can therefore begin our hearing in the absence
17 of the witness so that we can discuss some general issues.

18 Yesterday we adjourned before Mr O'Shea could make
19 certain reservations regarding the proposal made by Mr Dutertre.
20 Before Mr O'Shea takes the floor, does the Prosecution have any
21 further details which would allow Mr O'Shea to make a complete
22 reaction?

23 MR MACDONALD: (Interpretation) Good morning, your
24 Honours. The only additional point is that there are still
25 certain minor differences. We discussed them yesterday with

1 Mr O'Shea. I believe that the parties agree on the
2 proposal that was done; that is, that the Registry should
3 cross-check the extracts in light of the information that has
4 already been corrected in the binders distributed to everyone.

5 I discussed with Mr Dubuisson. We also gave him an
6 indication of the total duration of the extracts and the languages
7 used. We told him that it might be preferable to use the original
8 source, that is the original VHS or V8 cassettes, (expunged)
9 (expunged). All those materials were

10 digitalised and this could have led to some loss of quality,
11 and yesterday by the end of the evening we hoped that by using
12 the original recordings the sound quality would be much better.

13 And so for Witness P2 - and my colleagues will give
14 us their own opinion - it would be preferable for the parties
15 to agree on the transcriptions of the original language, after
16 corrections by the Registry, and after that those transcripts
17 will be submitted to the Chamber and they will become part of
18 the record, and this would avoid any further delays because of
19 interpretation problems.

20 I believe it is in the interests of all to find a solution,
21 and this is particularly so in the case of the OTP because, in
22 light of the extracts that we chose for Witness P2, we believe
23 that they are very important when it comes to enlightening the
24 Chamber and it provides a lot of information.

25 So when it comes to the admissibility of the video

1 extracts, if the Chamber decides that this has to be done, then
2 that would be the procedure we would like to follow. The OTP
3 would like to present those 40 or 41 extracts. A great deal
4 of work was done by the OTP to prepare those binders that have
5 been distributed to you. There was also a lot of work that went
6 into the selection of those extracts to make sure that we present
7 the most relevant ones, so it is a long duration, there were
8 many videos, but we limited ourselves to the crucial elements,
9 taking into consideration the nature of the charges and the
10 context.

11 The Prosecution would also like to inform the Chamber,
12 because this is an issue that was mentioned, the issue of
13 postponing the appearance - the appearance of Witness P2 - and
14 have another witness appear instead. This would be difficult,
15 unless we lose some hearing days, because the witness after P2
16 would normally be Witness P12 and there are materials related
17 to that witness, including transcripts which are voluminous.
18 So, in order to carry out a reasonable familiarisation process
19 with that witness, this would require him to arrive much earlier,
20 whereas the schedule had already been set and so this would disrupt
21 the schedule for familiarisation.

22 After Witness P12, we were to have Witness 219. This
23 is a rather important witness, who has a lot of documents to
24 re-read within the context of his familiarisation, and there
25 are also many personal and family issues that make it impossible

1 to expedite his travel.

2 After that we have Witness 166, and we are expecting
3 a decision of the Chamber for that witness as well as for another
4 witness.

5 Then we have Witness 160. What I'm actually saying,
6 Mr President, is that it is preferable that we keep the programme
7 as it is. We should try to find a solution that is acceptable
8 to everyone because, if you accept that proposal, the time
9 necessary for the Registry to revise or review those transcripts
10 would be equivalent to the time that we will save during the
11 proceedings.

12 Next week we have only three days of hearing,
13 Mr President, so we would expect that Witness P3 would continue
14 for today and the entire day of tomorrow. He can complete his
15 testimony on Friday and/or Monday at the very latest, so we will
16 have only Monday and Wednesday -- no, Tuesday and Wednesday.

17 The only problem for the Registry is that the same
18 members of staff who are working here in the courtroom are the
19 ones who are going to have to review the recordings.

20 Maybe in the worst case scenario, Mr President, the
21 hearings of Tuesday and Wednesday could be cancelled so that
22 the Registry should carry out the review and we resume on 6
23 September. I believe that the Chamber needs to proceed
24 expeditiously, but if cancelling those two days makes it possible
25 for us to resume the following Monday the 6th without any technical

1 problems, then it is clear that in the final analysis it is the
2 quality of the evidence that will be improved for everyone.

3 These were the comments that we wanted to make, and
4 there is something else that I would like to raise from the very
5 outset. Witness P2 has to travel to The Hague, and VWU would
6 like to know this morning - that is, if it is possible - whether
7 Witness P2 has to testify this week. We do not believe that
8 that will be possible, and if we are all agreed then we can inform
9 the Unit that Witness P2 can start his testimony on Monday, at
10 the very earliest.

11 Obviously, this will be subject to the submissions that
12 the parties will make to you now; that is, to determine whether
13 P2 will even testify next week, after the Registry would have
14 reviewed the transcripts.

15 Lastly, we submitted the materials to the Registry
16 yesterday. Unfortunately, when it came to certain details, it
17 was later in the afternoon and in the evening that we had to
18 correct some of the information so as to be clear with the Registry.
19 So, regarding the proposal, if it is accepted then we have to
20 contact the Registry with the total number of hours, the extracts,
21 the languages used and their availability in terms of resources
22 and so that they can indicate how long they will need to carry
23 out their review.

24 Thank you, Mr President.

25 PRESIDING JUDGE COTTE: (Interpretation) Thank you,

1 Mr Prosecutor. Before Mr O'Shea or Professor Fofé takes the
2 floor, the Chamber will have to be certain about the foundation
3 of this discussion. We agree that we must not rush anything,
4 and the quality of the proceedings has to be safeguarded. In
5 the ideal scenario, everything should have been done before the
6 beginning of the testimony.

7 We have encountered difficulties with Witness P30 and
8 we have to try not to have the same difficulties with Witness
9 P2. So, Mr Prosecutor, you are asking that the Registry should
10 take the transcripts and the translations of the transcripts
11 for P2 so that the Registry should ensure that the translations
12 of those transcriptions made by your office are reliable enough
13 to be submitted to the entire Chamber; is that correct?

14 MR MACDONALD: (Interpretation) Yes, indeed,
15 Mr President, but I also said that the audio of the original
16 recordings should also be examined to ensure that they are
17 faithful.

18 PRESIDING JUDGE COTTE: (Interpretation) And that is
19 why we have to use the interpreters, who cannot be in the courtroom
20 and reviewing the transcripts at the same time.

21 MR MACDONALD: (Interpretation) Some of the languages
22 used in the recordings are Swahili and French, and the OTP have
23 transcriptions of those recordings in their original languages,
24 so the Registry will review those recordings. For the parts
25 that are inaudible, the Registry would also indicate that they

1 are inaudible, we would have no problem with certain parts being
2 identified as "inaudible," even if we have to talk about them
3 in the courtroom if necessary. So this is a review exercise
4 by the Registry.

5 PRESIDING JUDGE COTTE: (Interpretation) Very well.
6 That is the basis of the work to be done.

7 Now, regarding the conversation that you had with Mr
8 Dubuisson yesterday, regarding the time necessary to carry out
9 this work, did he give you any indication about that?

10 MR MACDONALD: (Interpretation) I did not have any
11 discussion with Mr Dubuisson this morning, but yesterday the
12 information that we were given is that with the original recordings
13 if the sound quality is better that would accelerate the work.
14 That is the only information that we have at this stage.

15 We do not know how much time they will need, how many
16 resource persons they have available to do that work. We cannot
17 tell you that it will take one day, two days, three days, so
18 maybe the Registry can provide that information to you.

19 PRESIDING JUDGE COTTE: (Interpretation) Very well.
20 That is something to be discussed with the Registry after telling
21 them the volume, the exact volume of work that has to be done.
22 It is obvious, therefore, that we cannot begin the testimony
23 of Witness P2 in the same conditions as the testimony of P30,
24 so if it is indispensable we might cancel some days next week.
25 Maybe tomorrow, we would conclude the testimony of Witness P30.

1 It is highly likely that he will be with us again on Monday.

2 So if the Registry tells you that it is necessary for
3 them to have Monday and -- or, rather, Tuesday and Wednesday
4 also, then we will cancel those days. I believe that the Defence
5 teams agree with us, if that will ensure that we proceed correctly.
6 So that said, what is the position of Mr O'Shea and also of the
7 Defence team of Matthew Ngudjolo? Mr O'Shea, please.

8 MR O'SHEA: Yes. Good morning, your Honours.

9 Two preliminary observations on this issue. First,
10 I would like to re-emphasise what your Honour has quite rightly
11 and succinctly stated, which is that the quality of the proceedings
12 must not be compromised and I would add the fairness of the
13 proceedings to the accused.

14 So if time is needed to get proper translations, it
15 is time well spent so that we don't lose time during the testimony
16 of P2, and one can see how one can lose considerable amount of
17 time, one has seen with P30. But it also ensures that the Defence
18 will not be wrong-footed with - forgive the expression - a
19 half-baked translation.

20 The second point is this: That from the perspective
21 of the Katanga team. we would like to insist, at least for the
22 time being, on the order of appearance of witnesses remaining
23 the same. We do not, again, want to be wrong-footed because
24 of technical problems with one witness that we find ourselves
25 put into the domain of another substantial witness before we

1 are ready for that witness.

2 Now, with regard to the specific exercise which has
3 been mentioned by the Prosecution, it is true that we've been
4 in discussions and I think we're in broad agreement as to the
5 solution which is being proposed. The way in which the
6 Prosecution puts it is to take the translation which has been
7 done within the Prosecutor's office and to review or correct
8 that translation.

9 Now, what I would like to emphasise is that that comment
10 should be confined to the methodology and not the objective of
11 the exercise. The objective of the exercise must remain the
12 production of an impartial translation. And the reason why I
13 emphasise this point is because it is important that the
14 translators who are undertaking this exercise understand that
15 that is their objective and not the correction of a previous
16 translation, as such.

17 So that, for example, it's not just a question of seeing
18 whether what is said on paper broadly corresponds with what is
19 said on the tape, but also, for example, that if something is
20 inaudible that it is marked by the translators as "inaudible,"
21 even if an expression or a word is found on paper in the Prosecutor's
22 translation.

23 So, in other words, we want a fidel translation. We
24 don't mind the methodology which is employed. We understand
25 the difficulty of this exercise; and it's always been our position

1 that the translators can be assisted with the Prosecution
2 documents. And, in a sense, what's being said about the
3 correction of the Prosecution documents is allowing them to
4 perhaps assist themselves a little more than they would otherwise
5 do, but with the same objective.

6 So those are the nuances which I wanted to add to this
7 issue.

8 MR KILENDA: (Interpretation) Thank you, your Honours.
9 The Prosecutor contacted us yesterday about their proposals.
10 We agreed in principle, but we were slightly worried because
11 we thought that they added that EVD references had to be assigned
12 to the extracts, but I believe that is not the case. After
13 listening to the Prosecutor today, we really do not have any
14 further reservations.

15 Our concern is to have P2 heard under the best conditions
16 necessary. If we have to cancel certain days of hearing, then
17 that would be acceptable to us. Thank you. I am sorry for having
18 been too fast.

19 PRESIDING JUDGE COTTE: (Interpretation) Yes, too fast,
20 but you were quite understood. I thank the two Defence teams
21 for their constructive contributions.

22 Let me say a few things. The interpreters of the Court
23 and the translation services of the Court are professional
24 services working under the authority of the Registry, which is
25 a neutral organ. We have understood your point of view perfectly,

1 Mr O'Shea. You have reiterated the need to have an impartial
2 and faithful translation.

3 We will therefore not vary the order of appearances,
4 because that would disrupt our schedule. If for unknown reasons
5 P30 has to be with us right up to next Wednesday then the issue
6 would be resolved automatically and, if the testimony ends on
7 Monday and Mr Dubuisson asks us to be allowed to work next week,
8 then we will cancel the hearings of Tuesday and Wednesday because
9 this is necessary for the quality of the testimony of P2.

10 Mr O'Shea, the Registry and the interpreters present
11 here, I would like to point out that our objective is not to
12 have a new translation of the transcriptions of the audio and
13 video recordings, because that would require much longer time.

14 The point is also not to have the translation and
15 translation -- interpretation and translation services provide
16 us with a perfect translation. We simply aim to have a reliable
17 and faithful translation. So they should review those
18 translations extract by extract, include a small sheet of papers
19 indicating either that they are perfectly in agreement with the
20 translation made, or that they would like to make such-and-such
21 a remark regarding the difference in translation. I believe
22 that is what we really want.

23 As for the EVD matter we will deal with that later,
24 but for the time being we want to have material that will make
25 it possible for all of us to work correctly.

1 Mr Macdonald?

2 MR MACDONALD: (Interpretation) There is a point that
3 I haven't had the opportunity to check internally, but I am pretty
4 certain that we have Word original versions of these
5 transcriptions and so we should be able to provide them as such
6 to the Registry with tracking of the changes given. It could
7 then be made available to all of the parties subsequently. The
8 track change would be indicated so that it will be possible for
9 everybody to see where the Registry considers that changes have
10 to be introduced.

11 PRESIDING JUDGE COTTE: (Interpretation) It is
12 essential, Mr Macdonald, that as quickly as possible you get
13 in touch with the Director of the Court Services - and we hope
14 that he will, notwithstanding the meeting of the CBF, be
15 available - and that you make it clear to him that we would like
16 to know how much time will be required. If it transpires that
17 the entire week next week will be required then we will cancel
18 Tuesday and Wednesday if P30 finishes on Monday, but we have
19 to make sure that when we start our work with P2 that we are
20 in the right conditions.

21 I think there is full agreement on that, but the Director
22 of the Court Services has to understand that we cannot go beyond
23 next week. On Monday the 6th, at the absolute latest, we must
24 be here with P2 and if possible with the translations that are
25 accepted by everybody. This discussion is taking an awful lot

1 of time, so we can only hope that it is going to be possible
2 to do so.

3 I do apologise to the court reporters and the
4 interpreters because I was rather fast, but I was saying that
5 on Monday, 6 September at the latest we must be able to begin
6 the hearing with P30 (sic) with translations that are not
7 challenged by anybody.

8 MR KILENDA: (Interpretation) P2.

9 PRESIDING JUDGE COTTE: (Interpretation) I am so
10 sorry, that was a very good point. You are quite correct, P2.

11 For the time being we don't have the schedule available
12 for what's happening at the end of September. I think what we
13 have for the time being goes through to the end of September.

14 The Registry services that produce the schedule,
15 together with Judge Fulford and also Judge Steiner, who is the
16 Presiding Judge of Trial Chamber III, cannot do anything for
17 the time being because we don't yet know how long the suspension
18 of the Lubanga trial will last, nor do we know when the Bemba
19 trial is going to begin.

20 You are all aware of the fact that, when there are three
21 trials in parallel in just two courtrooms, then there are going
22 to have to be all sorts of very tough decisions taken as to the
23 sharing out of the premises and resources. So we are aware of
24 the fact that, with two accused persons, it is only possible
25 for us to have the hearing in this courtroom. It is quite simply

1 practically impossible for us to be in the other one.

2 The Chamber is doing it's utmost to make sure that we
3 can maintain and preserve the organisation that we have worked
4 out together, in other words Monday afternoon and then the mornings
5 for the rest of the week so that we have afternoons available
6 for the personal work we all have to carry out. That is useful
7 for all of us.

8 Obviously we will give you any information that we have
9 as soon as possible, but please bear in mind that it is highly
10 likely that the Chamber will not be able to have a hearing in
11 the last week of October. I think that's something you ought
12 to know as of now. So cancelling two days next week is tough
13 for us all but, if we have to do so, then we will have to do
14 it.

15 Prosecutor?

16 MR MACDONALD: (Interpretation) Would it be possible
17 to add hearings, because we are the only ones in session at the
18 time being? I know that there are the compulsory holidays of
19 the Court, but every couple of weeks there is maintenance activity.
20 Is it necessary for that maintenance to take up a full day? Perhaps
21 there might be certain Fridays where for the time being we are
22 not in session, but it might be possible for us to have a hearing.
23 I don't know whether the Chamber could perhaps get in touch with
24 the Registry on this matter? It might be possible to add hearing
25 days. I see Mr Hooper is nodding.

1 THE INTERPRETER: No, I am sorry, he is shaking his head.
2 Interpreter's correction.

3 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
4 Prosecutor. Well, as to the last point, we know that the Chamber
5 is very keen to work hard. We want the trial to move ahead.
6 We are aware of the fact that the accused persons are detained
7 persons, in other words they have to know when they are going
8 to have their fate sealed, but the proposals we get from the
9 Registry as regards the schedule then determine the organisation
10 of our work as a group, or the individual work of either the
11 Judges or their colleagues, their teams, so it's rather difficult
12 between now and the end of September to think in terms of adding
13 extra hearing days.

14 You probably have seen the programmes - the
15 schedules - that you have been given and, on the basis of that,
16 you make other commitments and it might not always be possible
17 for you to postpone them. So, notwithstanding a very sound
18 proposal that you have made, it was -- it is something that
19 actually would be rather difficult to put into practice.

20 But, anyhow, thank you all of you for having shown
21 willing to improve the work that we will be involved in with
22 Witness P2. You are to get in touch with Mr Dubuisson. You have
23 to tell him that one week, including tomorrow, is an absolute
24 deadline as far as we are concerned. If the parties don't object,
25 and if it were necessary for Mr Dubuisson to meet me as the President

1 of the Chamber, then I am happy to do so so that I can explain
2 to him what our restrictions and constraints are, because they
3 are shared by everybody here in this courtroom. We will certainly
4 have to improve our working conditions and I am sure that we
5 are going to manage to do so. So, thank you all of you.

6 MR MACDONALD: (Interpretation) Can I tell the VWU
7 that P2 will come at the earliest next week and that we will
8 have to inform them?

9 PRESIDING JUDGE COTTE: (Interpretation) Well, I
10 think we will have to inform them. We will see what happens
11 as regards the remaining hearing. I would say at best P2 could
12 come for Wednesday, that is my view, and I turn to the Defence
13 teams on this point. You will know this once you have seen
14 Mr Dubuisson. If Mr Dubuisson says they need all of next week
15 to do the necessary work correctly -- because we are all aware
16 of the fact that it shouldn't be done over-hastily. There has
17 to be a faithful and impartial verification made of the
18 translations. I am taking your terms again - your words
19 again - Mr O'Shea. So if Mr Dubuisson says we need all of next
20 week, then P2 will have to come on the 6th. So, let's not avoid
21 any unnecessary travel or expenditure.

22 MR MACDONALD: (Interpretation) That is duly noted,
23 your Honour.

24 PRESIDING JUDGE COTTE: (Interpretation) Fine.

25 Court officer, usher, I would ask that Witness P30 be

1 escorted into the courtroom and for this we will go into closed
2 session.

3 (Closed session at 9.41 a.m.)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 (Open session at 9.43 a.m.)

10 THE COURT OFFICER: We are in open session, your
11 Honours.

12 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
13 court officer.

14 WITNESS: DRC-OTP-P-0030 (On former oath)

15 (The witness answers through interpreter)

16 PRESIDING JUDGE COTTE: Good morning, Witness.

17 THE WITNESS: Good morning.

18 PRESIDING JUDGE COTTE: (Interpretation) I note that
19 you can hear me and that your equipment is working. That's a
20 very good thing. The Prosecutor is going to continue the
21 examination-in-chief that she embarked upon some time back and
22 you will continue to provide the answers that you've been doing
23 in the same way; in other words, speaking slowly, clearly and
24 loudly.

25 Prosecutor.

1 QUESTIONED BY MS LUPING: (Continued)

2 Q. Good morning, Mr Witness. I'm continuing from
3 yesterday, in dealing with extract 25 found in everybody's binders
4 at divider 25. It's the same video DRC-OTP-0151-0665.
5 Yesterday, I played the whole of the footage. This morning,
6 I propose to play the first two minutes before proceeding with
7 my questions. If you could refrain from making any comments,
8 Mr Witness, whilst I am playing the two minutes.

9 THE COURT OFFICER: I apologise to interrupt. Would
10 the counsel like for it to be confidential?

11 MS LUPING: I should confirm that: As was the case
12 yesterday, it can be shown publicly, and it's with sound. And
13 if we could have interpretation whilst it's being shown. Thank
14 you.

15 THE COURT OFFICER: Thank you.

16 (Video extract played)

17 THE INTERPRETER: ... with his wife. And here we have
18 Dema. Dema and his wife. Yes, Dema and his wife. You can see
19 gunshot wounds here and on the heel, and he was hit in the head.
20 Dema and his wife; someone else and his wife; Jean-Pierre and
21 his wife; someone whose name I don't know. There's a baby. There's
22 a baby here, another baby; three babies attacked. And this is
23 a mother, another woman; I don't know who she is. We've had
24 no news from them.

25 MS LUPING:

1 Q. Mr Witness, I'm pausing here at 2 minutes. My first question
2 is: Can you please describe what is depicted in this footage? And
3 I mean also the whole of the footage I played yesterday.

4 A. Yes. Here, there was killing, two or three days before
5 the arrival of the UPC. It's in the subregion of Bunia. This
6 is the home of a man called Pelerin. He was of the Hema ethnic
7 group.

8 Q. Can you continue in describing the scene that we've
9 been seeing further, including the victims that have been named?

10 A. I was informed of the event on the same day. It's as
11 if the man you saw here, Professor Kilo, knew what had happened
12 before because the UPC came on 12 May. There was a major battle.

13 (Expunged)

14 (Expunged)

15 (Expunged). So that,

16 in general terms, is the explanation I can give.

17 Q. There are some individuals who've been named in the
18 course of the footage, including Dema, Jean-Pierre, Dieudonné,
19 Ngabu, and their respective wives and children. Do you know
20 the ethnicity of these individuals?

21 A. Yes. All of them belong to the same ethnic group. They
22 were all Hema-Gegere. I'm talking here about the victims.

23 Q. And you mention that this was the house of someone of
24 the Hema ethnicity called Pelerin. Can you confirm if the victims
25 were related to Mr Pelerin, if you know the answer?

1 A. Yes. Pelerindidn't live there himself. He lived in Kampala.
2 The people who were there had sought refuge in that house. They thought
3 that in so doing they could save their lives. You see, usually people
4 come from a long way away, to seek refuge in Bunia, and I can confirm
5 that these people had family links with Pelerin, but Pelerin himself
6 didn't live in that home.

7 Q. Thank you. I'm now going to play a specific portion
8 from this extract. It's from minutes 8.49. I'd ask that you
9 make no comments whilst I'm playing this specific portion. If
10 we could please have interpretation. Thank you.

11 (Video extract played)

12 THE INTERPRETER: Miss, can you give us some
13 explanations? What's your name?

14 My name is Lolo.

15 Give your full name.

16 Lolo (inaudible).

17 Explain to us.

18 We were in the bedroom, and then we suddenly heard a
19 noise. I came out. I was looking for a ladder so I could get
20 over the wall to the other side where the MONUC people are. I
21 tried to jump over but I didn't manage to. I went back into
22 the bedroom. They were shooting at the house. They destroyed
23 everything.

24 Question: Did they take you? Did you go with them?

25 Answer: Yes. When I came out of the bedroom, they took

1 me. They wanted to kill me, and I said, "Please, please don't
2 kill me." They left me here. They killed somebody who was in
3 the house. They shot another lady, who was killed. They went
4 out. They kept shooting at this place here. And there was someone
5 who was decapitated here. They used a machete to decapitate
6 that person. And I stayed there under a tree. They called me.
7 I was with a little boy. They took the little boy and they killed
8 him.

9 Question: Is it this boy here?

10 Answer: Yes. The boy fell to the ground. He was
11 decapitated and he was hacked to pieces with the machete. I
12 went and stayed the same place. And I stood and saw how the
13 whole house was being destroyed (inaudible).

14 MS LUPING: Mr President, I will be replaying the last
15 few seconds from the portion that have been currently stated
16 to be inaudible. As you'll appreciate from your binders and
17 looking at the transcript and translation of the specific excerpt,
18 you'll understand the importance of this section. It's
19 the -- it's lines at page DRC-OTP-1050-0338, lines 1121 to 1124
20 in the translation, and you have the extract in your binders,
21 and it's this portion I'm seeking to replay and ask the
22 interpreters to seek to interpret. I will be playing from minute
23 10.

24 (Video extract played)

25 THE INTERPRETER: They wanted to shoot at me. There

1 was a group. And they used another weapon to shoot. They
2 decapitated an old man, and others ran away and I stayed here.
3 They arrested me and they started to throw a young child against
4 a wall. There was one assailant on one side and the other on
5 the other side. And the child fell (inaudible). They asked me
6 to go under a house, and they destroyed the house and the house
7 collapsed on top of me. I stayed there. (Inaudible).

8 MS LUPING: Mr President, I've identified it as being
9 from minute 11. That means it's approximately 12 seconds. With
10 your leave, I would just simply play those 12 seconds and then
11 I would move on to my question.

12 PRESIDING JUDGE COTTE: (Interpretation) Show the 12
13 seconds one more time, Ms Luping.

14 (Video extract played)

15 THE INTERPRETER: Inaudible.

16 PRESIDING JUDGE COTTE: (Interpretation) You will
17 have to move on to questioning now, Ms Luping. The
18 interpretation done of the first part of the footage, with
19 a few inaudibles here and there. And we do thank the interpreter
20 for his very good work, but after a certain point he could not
21 go on.

22 Please proceed.

23 MS LUPING:

24 Q. Mr Witness, do you recall what the ethnicity of the
25 attackers were?

1 A. They were Lendu people.

2 Q. And do you recall how you learnt the ethnicity of these
3 attackers?

4 A. For example, the young woman who was giving testimony
5 said that she left with the assailants to the camp and there
6 was a boy, a Lendu boy, who was there and he was taken off to
7 the side, off to that side.

8 (Expunged)

9 (Expunged)

10 A. It's clear that the assailants were Lendu, because the
11 others were of the Hema group. Since there was a massacre, it
12 had to have been Lendu people. And the Lendus were the ones
13 who had the control of Bunia town, not the government army, nor
14 the UPDF in the town of Bunia. So the Lendu people were the
15 ones who had control over the town of Bunia. They were the
16 strongmen.

17 Q. You said that the young woman who was giving testimony
18 said that she left with the assailants to the camp and that a
19 Lendu boy was taken off to the side. My question is: Do I
20 understand from that that it was the young woman who stated that
21 the assailants were Lendu?

22 A. Yes. She also said that the attackers were Lendu and
23 even the boy who -- who gave testimony, we saw him yesterday
24 in one of the video extracts, he also said that they were Lendu.
25 He was a son of Pelerin, as the French witness said, and also

1 a survivor. He, too, said that they were Lendu people.

2 Q. I'm now going to pause at 11 minutes 1 second. I want
3 to clarify if that's the young woman you're referring to.

4 (Video extract played)

5 The person that you see wearing a blue shirt in the
6 foreground of the screen in the middle, is this the young woman
7 you're referring to?

8 A. Yes, it is indeed that young woman.

9 Q. And I'm now going to pause at 6 minutes and 25 seconds.
10 I'm playing from 6 minutes and 22 seconds.

11 (Video extract played)

12 THE INTERPRETER: (Inaudible).

13 MS LUPING:

14 Q. I've stopped at 6 minutes and 30 seconds. The person
15 that we see in the middle of the screen wearing what appears
16 to be a shawl or something on his head and pointing with his
17 left arm, is that the young boy you're referring to, the Lendu
18 boy?

19 A. (No interpretation).

20 MS LUPING: If I could just pause briefly, Mr President.
21 I'm just checking the transcript for a moment.

22 MR O'SHEA: I didn't hear an English --

23 THE INTERPRETER: Apologies from the English booth.
24 The English booth will repeat. "It was the son of ..." --

25 PRESIDING JUDGE COTTE: (Interpretation) Just to make

1 sure that everything is very clear, I think we'll have to go
2 back to minute 11. You stopped in the middle of 11, and from
3 that point the remarks that you made were not -- were not
4 entirely -- were not entirely transcribed, and I think it's
5 important for them to be transcribed. So you will have to back
6 up, so to speak, and repeat that part of the examination-in-chief.

7 And apparently, Mr O'Shea had the same problem, but
8 the French at least is partially -- is not complete. Apparently,
9 in English there was nothing, because my colleague also -- she
10 often looks at the English transcript, and in French it was
11 incomplete as well. So if you could back up, please.

12 Please proceed.

13 MS LUPING: Yes. I was referring to the individual.
14 I paused at time stamp minute 6, 30 seconds, and I asked if the -- I
15 referred to the person in the middle of the screen pointing with
16 his left arm and with something on his head, it looks like a
17 shawl of some sort, and I asked is this the young Lendu boy to
18 whom you were referring.?

19 Q. Mr Witness, just to clarify, the problem is, you did
20 give your answer. I heard your answer, but it wasn't transcribed,
21 so we've been asked -- we've been asked that I repeat my question
22 and you simply have to repeat the answer you gave to me before.

23 I was referring to the person that you see in the middle
24 of the screen, at minute 6, 30 seconds, a person pointing with
25 his left arm and with something on his head - it looks like a

1 shawl of some sort - and I asked you: Is this the young Lendu
2 boy you were referring to previously?

3 A. This young man is not of the Lendu ethnicity; he is
4 a Hema person. He is the son of Pelerin, the owner of this house.

5 Q. Thank you, Mr Witness.

6 MS LUPING: I have no further questions on this extract,
7 Mr President. If an EVD number could please be assigned and
8 it can be a public document.

9 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
10 Madam Prosecutor. I just wanted to point out that in my remarks
11 a few moments ago, I spoke of minute 11, but it was 6 minutes
12 30 seconds, actually. Sometimes it is difficult to find one's
13 spot amongst the various time marks of the transcript.

14 Ma'am, this is extract 25, which we have been listening
15 to since yesterday.

16 THE COURT OFFICER: Thank you, your Honour. The ERN
17 number DRC-OTP-0151-0665, and this is extract 25 of the video
18 played with the sound, will receive the EVD number EVD-OTP-00142
19 and it will be admitted as a public exhibit. Thank you, your
20 Honour.

21 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
22 Madam Court Officer. Madam Prosecutor, please go ahead. And
23 don't forget, you may ask your questions seated, if you prefer.

24 MS LUPING: Thank you, Mr President. I think I am fine
25 for the moment, but I will be seated shortly. The next extract

1 I will be playing is extract 26. It's divider 26 in your binders.
2 This is a different video and the reference is DRC-OTP-0127-0061.
3 The original time stamps are 01.52.32 to 01.54.46.

4 The relevant extract from the translation, as mentioned
5 in the annexes in the binders, the document is DRC-OTP-0206-0062,
6 pages 0074 to 0075, lines 296 to 331. The transcript reference
7 is also found in the annex to the binder. I shall be playing
8 the first minute of this footage. I'm using the first category
9 of methodology, so I'll be playing it with sound and it can be
10 shown publicly, and I do ask there be interpretation each time
11 I play from this video.

12 Q. Mr Witness, if you could simply watch and listen in
13 the first instance and not make any comments at this stage.

14 (Video extract played)

15 THE INTERPRETER: Afande Claude, commander,
16 information to give us before we begin. (Inaudible) We have
17 commander of the battalion (inaudible). This person here. This
18 is chief sergeant (inaudible). We are doing well. There are
19 no problems. Commander Saio, from the battalion (inaudible).

20 MS LUPING: Mr President, if we could move briefly into
21 private session for questions of an identifying nature.

22 PRESIDING JUDGE COTTE: (Interpretation) Madam Court
23 Officer, we'll go into private session for a moment.

24 (Private session at 10.16 a.m.)

25 (Expurgée)

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11 Page 28 expunged. Private session.

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1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Open session at 10.22 a.m.)

18 THE COURT OFFICER: We are in open session, your
19 Honours.

20 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
21 Madam Court Officer. Madam Prosecutor, please continue.

22 MS LUPING:

23 Q. Mr Witness, I'm now going to be playing the whole of
24 the extract of this video.

25 Just for the information of the interpreters, for the

1 first minute or so, I will be pausing in smaller segments and
2 then the rest I would like to ask for interpretation, but I may
3 not necessarily be pausing with as many -- well, not having as
4 many pauses. But if there could be an attempt to interpret the
5 whole of the extract.

6 (Video extract played)

7 THE INTERPRETER: Afande Claude, I see that you're there.
8 I don't know whether any children are with you. Do you have
9 new information to give to the office of the old person?

10 (Inaudible)

11 "Inaudible," says the Swahili booth.

12 This person here is chief sergeant, the chief sergeant
13 (inaudible). We are doing well (inaudible). I don't know
14 whether Commander Saio, from the battalion (inaudible). I don't
15 have much to tell you (inaudible). I will explain to you
16 (inaudible). We had a meeting with the boss. There was also
17 some officers from MONUC who had come from Kinshasa. We learned
18 that there was a conflict. I don't know whether you have learned
19 or heard of anything having to do with that point. (Inaudible).
20 You know, we are counting on (inaudible). (Inaudible).

21 There is background noise that does not allow the
22 interpreter to hear what is being said.

23 MS LUPING:

24 Q. Mr Witness, can you describe the scene depicted in this
25 footage?

1 A. Yes, I can give you some descriptions. As I said earlier,
2 (expunged) in the office of President Thomas Lubanga. The people
3 that you see were waiting. They were to -- he was to have a meeting
4 with the commanders of Bogoro. That is why they said the commander,
5 the CO, of Bogoro. The people were driven out of Bogoro, so they
6 came to give a report to their president, Thomas Lubanga.

7 Q. And in this particular footage, can you explain what
8 was being discussed, what the UPC soldiers were saying?

9 A. Commander Claude, (expunged)

10 (expunged)

11 "Everything is going well," although he had not come from Bogoro.
12 The people who had actually come from Bogoro was the person beside
13 him, his friend beside him, and that is why he was supposed to
14 give an explanation. That is why he had him speak. He provided
15 explanations about what had happened in Bogoro and how they had
16 been driven out of Bogoro.

17 MS LUPING: Mr President, I'm pausing because I'm
18 waiting for the rest of the transcript to appear on the screen.

19 Q. Mr Witness, can you recall the date that this footage
20 was filmed? The date that this discussion took place, that we
21 see?

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 PRESIDING JUDGE COTTE: (Interpretation) Mr O'Shea.

10 MR O'SHEA: Just a note of caution there. We haven't
11 so far had any discussion of specific events at Bogoro. We don't
12 know what this witness knows about one or more events at Bogoro.
13 My learned friend is putting a very pointed question, assuming
14 a specific event at Bogoro.

15 MS LUPING: Mr President, I can --

16 PRESIDING JUDGE COTTE: (Interpretation) Madam.

17 MS LUPING: -- modify the question, because the witness
18 has explicitly referred to the fact that the commander stated
19 they had been chased out of Bogoro. So I shall simply refer
20 to that in my question.

21 Q. Mr Witness, you said that this UPC commander was
22 explaining how they were chased out of Bogoro. My question is:
23 This footage that we see before us, where these UPC soldiers
24 are speaking, (expunged)
25 (expunged)

1 (expunged)

2 A. Yes, there was fighting in Bogoro. It was fighting
3 between the UPC soldiers and Lendu combatants. And as you know,
4 Bogoro was a Hema area, and there was a military position of
5 the UPC in that location. And if I am saying that they were
6 driven out of that area, it means that there was fighting, and
7 the enemies were stronger than the UPC soldiers.

8 MS LUPING: Mr President, if I could move briefly into
9 private session to ask a question of an identifying nature.

10 PRESIDING JUDGE COTTE: (Interpretation) And, in fact,
11 if these questions are of an identifying nature, then we go into
12 private session. Court officer, please.

13 (Private session at 10.34 a.m.)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Open session at 10.36 a.m.)

5 THE COURT OFFICER: We are in open session, your
6 Honours.

7 PRESIDING JUDGE COTTE: (Interpretation) Madam
8 Prosecutor, please.

9 MS LUPING: I have no further questions of the witness
10 for this particular extract. If an EVD number could please be
11 assigned and it can have a public status.

12 PRESIDING JUDGE COTTE: (Interpretation) That is what
13 we will do, Madam Prosecutor. Court officer, please.

14 THE COURT OFFICER: Thank you, your Honour. The ERN
15 DRC-OTP-0127-0061, extract 26 which was played with sound, will
16 be assigned the number EVD-OTP 0143 and it will be admitted as
17 a public exhibit.

18 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
19 court officer. Madam Prosecutor.

20 MS LUPING: Mr President, if I could just briefly go
21 into private session to discuss a point which is of a potentially
22 identifying nature. It's in relation to the next two extracts,
23 extracts 28 and 29.

24 PRESIDING JUDGE COTTE: (Interpretation) Let us go briefly
25 into private session, court officer.

1 (Private session at 10.37 a.m.)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Open session 10.38 a.m.)

17 THE COURT OFFICER: We are in open session, your
18 Honours.

19 PRESIDING JUDGE COTTE: (Interpretation) Thank you.
20 Madam Prosecutor.

21 MS LUPING: Thank you, Mr President. We will not be
22 showing extracts 28 and 29 of the next video to this witness.
23 And we have no further questions of this witness. And just to
24 simply clarify that we do not intend to play to this witness
25 the last 12 extracts.

1 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
2 MadamProsecutor. Your direct examination has now been concluded.
3 Mr Gilissen, do you have any questions? Mr O'Shea.

4 MR O'SHEA: Sorry to time my intervention badly, your
5 Honour. Your Honour made a ruling at the beginning of the
6 testimony of this witness that the 17 videos would be admitted
7 into evidence, and they have been admitted into evidence, and
8 I do not go back on that ruling.

9 However, Mr President, you will remember that at the
10 time we were making submissions on the video evidence there was
11 a suggestion from my learned friend Ms Luping of the attribution
12 of MFI numbers; and when I made my submissions, I made them on
13 the basis of that suggestion, and I confined my submissions to
14 those videos which I felt should not be shown and did not give
15 all my submissions in relation to the videos.

16 The reason I raise this is because I would like to
17 question, if I may with the Bench, that with regard to video
18 25, while it is admitted into evidence, question with respect
19 to the conditions of admissibility.

20 PRESIDING JUDGE COTTE: (Interpretation) Mr O'Shea,
21 please proceed, but you are not coming back to the decision of
22 the Chamber of 24 August, which was on the admissibility of the
23 17 extracts that the Prosecutor intended to produce.

24 She provided an answer -- or, rather, the Chamber
25 provided an answer that is regarding whether those extracts be

1 assigned MFI or EVD reference numbers.

2 We collectively decided to give them an EVD reference.
3 And the other day we decided to assign HNE references for the
4 transcriptions and translations, and this would be done for the
5 extracts that were interpreted. The HNE numbers should not be
6 assigned to all the extracts, only those that were
7 interpreted -- that were translated, actually. So this should
8 be done before the completion of this testimony. Mr O'Shea,
9 please proceed.

10 MR O'SHEA: Yes, indeed, your Honour. Yes, indeed,
11 your Honour. And indeed, I don't question the application of
12 an EVD number to any of the 17 videos or what has been described
13 as an HNE number to any of the transcripts.

14 However, your Honours are in a position, of course,
15 always to control the fairness of the proceedings. I think your
16 Honours accept that. And at the time that that ruling was
17 made - and I don't question the ruling or the result of it - that
18 at the time that ruling was made, your Honours had not seen the
19 videos and questions had not yet been put to the witness.

20 So my submission relates to controlling the fairness
21 of the proceedings in the light of what has been observed in
22 Court since your Honours' ruling.

23 Video 25 has been given an EVD number, and that EVD
24 number is as I understand it EVD-OTP-00142. We have seen -- when
25 that video was shown, we have seen a scene of dead bodies and

1 an account given by a young lady.

2 Now, obviously, the Defence will not have an opportunity
3 to cross-examine that young lady.

4 She has given an account of the event and some details of the
5 event. This witness has, of course, (expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 (Expunged)

10 (Expunged), is evidence before the Court, plain and
11 simple. But my request to the Chamber is that the testimony
12 given by the young lady on the video, of what occurred that day,
13 while admitted into evidence not be admitted for the truth of
14 its contents, and that's to preserve the rights of the Defence
15 because it's totally impossible for us to deal with the account
16 that that lady has given, and to ask her questions about what
17 she said.

18 So the video has an EVD number; it's admitted into
19 evidence but it's just a question of, if your Honours are
20 sympathetic to my submission, declaring that that specific part
21 of the video will not be admitted for the truth of its contents,
22 simply to preserve the rights of the Defence.

23 PRESIDING JUDGE COTTE: (Interpretation) Madam
24 Luping.

25 MS LUPING: Mr President, just to clarify the objection

1 made by Mr O'Shea, just to make it clear: The suggestion
2 initially of MFI numbers was in fact originally from him and
3 I simply at that point, before the debates started in relation
4 to the 17 extracts, was clarifying that at that point that we
5 would not object to an MFI number being assigned.

6 I now understand his objection is not to the EVD number,
7 as such, because clearly that objection should have been made
8 earlier and a decision has been made in relation to that.

9 As to the comments made by the young lady in the video,
10 I would submit, as I submitted previously, this is simply like
11 (expunged). It is open
12 for the Chamber to assess the weight of that information that
13 is provided. In fact, I specifically questioned the witness
14 in relation to this aspect of the information provided by the
15 young lady. The witness is available to be cross-examined in
16 relation to this aspect, just as any other witness is available
17 to be cross-examined in relation to information provided by the
18 them, by a third party.

19 The only difference in this instance is that instead
20 of having that third party account recorded in a witness statement,
21 we have what I would submit is a more reliable form, arguably;
22 we have the individual themselves speaking contemporaneously,
23 and their comments captured on film.

24 At the end of the day, it is for the Chamber to assess
25 the weight of this evidence. It is premature, we would argue,

1 to make any such determination as requested by Defence as to
2 how that evidence should be treated at this stage. That
3 assessment should only be made at the end of the trial, bearing
4 in mind the totality of all the evidence before the Chamber.

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 Those are my submissions, Mr President.

9 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
10 Madam Prosecutor. Given the time, we are going to take out a
11 moment to react to Mr O'Shea's submissions, so we will break
12 now, and resume at 11.25, not 11.30, since we are breaking early.

13 Court officer, can we go into closed session to allow
14 the witness to leave the courtroom.

15 (Closed session at 10.50 a.m.)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Open session at 10.51 a.m.)

25 THE COURT OFFICER: We are in open session, your Honour.

1 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
2 court officer.

3 Before we break, just a general reminder: When counsel
4 for the accused wish to meet with their client at the end of
5 a hearing, please do not forget to notify the Chamber in the
6 morning, in any case before the beginning of the hearing because
7 there are constraints linked to transferring the accused from
8 the Court to the prison premises, so those who are responsible
9 for that need to be informed. The Registrar provided information
10 about that some time ago. If it is necessary, the Registry officer
11 will repeat that information. So that is when you need to contact
12 your clients.

13 Court is suspended. We'll meet again at 11.25.

14 (Recess taken at 10.51 a.m.)

15 (Upon resuming at 11.31 a.m.)

16 (Closed session)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Open session at 11.33 a.m.)

1 THE COURT OFFICER: We are in open session, your Honours.

2 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
3 court officer. Witness, we are resuming our hearing and so,
4 witness, we are here for a further two hours' hearing. I hope
5 you can hear me?

6 THE WITNESS: Yes, I can hear you.

7 PRESIDING JUDGE COTTE: (Interpretation) Good.
8 Please don't forget to speak clearly into your microphone. We
9 are going to begin by responding to Mr O'Shea's submission just
10 before we broke. Mr O'Shea was expressing concern about the
11 statements made by the young woman in the video footage extract
12 number 27. Mr O'Shea, the fact that Defence cannot
13 cross-examine the young woman in this extract, extract 27,
14 undeniably has a bearing on the weight that the Chamber will
15 attach to these statements; that is a fact.

16 The Chamber considers that these declarations, we
17 believe that these declarations have to be seen as documentary
18 evidence, but in no way, ab initio, and globally do we agree
19 to ignoring the words contained therein, and the Chamber recalls
20 the oral ruling handed down on 12 July this year on the very
21 principle of admissibility of hearsay evidence. So take note
22 from what I am saying that the Chamber is fully aware of the
23 fact that you are in an impossible position from the point of
24 view of the possibility of cross-examining the young woman and
25 this does have a bearing on the weight that in due course the

1 Chamber will attach to these statements.

2 Please, the legal representatives of the victims,
3 Mr Gilissen and Mr Luvengika, you have submitted to us an idea
4 of your questions. Mr Gilissen, we would quite simply ask you
5 to be less general in the questions that you intend to put to
6 the witness, less general from the point of view of time and
7 space.

8 The witness plies a particular trade and in no way should
9 your questions give the impression that they are to do with broader
10 areas, or to larger chunk of time. On the contrary, what you
11 have to do is to make it clear to him that your questions are
12 to do specifically with the period in which the conflict at issue
13 is placed.

14 Mr Luvengika, even before I started to speak, you have
15 probably already noted that some of the questions that you intended
16 to put - and this is the difficulty in what we are asking of
17 you - have already been answered following the questions put
18 by the Prosecutor herself. So, subject to perhaps what you have
19 already planned to do, the Chamber would invite you to limit
20 your questions to quite simply question number 2 in the proposal
21 that you put to us in your submission of 17 August.

22 The very fact of submitting a proposal to us even before
23 the start of the hearing is an exercise that we appreciate is
24 very difficult for you and we would like to express our gratitude
25 to you for having agreed to do so.

1 Mr Gilissen.

2 MR GILISSEN: (Interpretation) Thank you, your Honour.
3 Your Honours, I have to admit that your observations have already
4 been taken on board and I have added a number of elements and,
5 as you have just said your Honour, and you are quite right in
6 so saying, this is part of what we have to do here. I think
7 that the learned colleagues on the Defence teams have realised
8 this as well.

9 What we are trying to do is to take a general tack to
10 matters which, in reading the witnesses' statements or in reading
11 the evidence and the material that is submitted to us, we believe
12 in the light of the interests that we are representing have to
13 be adjusted as things move on on the basis of the information
14 that is obtained such that in some cases we don't have to put
15 questions, whereas in other cases we might have to become more
16 pertinent in the putting of certain questions.

17 So, I am sure the Chamber appreciates that I actually
18 have very few questions to put, obviously subject to what might
19 be forthcoming from the witness in his answers.

20 QUESTIONED BY MR GILISSEN:

21 Q. Good day, Witness. My name is Jean-Louis Gilissen.
22 I represent the interests of some of the victims in these
23 proceedings; those referred to as the child soldiers. That is
24 so as you understand who I am and have a better understanding
25 of the reason for my presence here. I would suggest that we

1 both pay special attention, because these questions are being
2 put in open session, unless we hear otherwise from the Presiding
3 Judge or the Judges. In other words, we have to be very careful
4 in our wording so as to avoid there being any risk of
5 identification.

6 So, that is the situation, Witness. We know that at
7 the end of the year 2002, and in early 2003, you were in the
8 eastern province, more particularly in the district of Ituri.
9 Can you confirm - can you tell us - whether at that particular
10 moment you were exclusively in Bunia, or did you travel around
11 the towns?

12 A. I was in Bunia. I also had the opportunity to travel
13 around, around the town of Bunia.

14 Q. Thank you very much. So you had the opportunity to
15 see different situations depending on whether you were in the
16 town, in that town, which is the main town of that area, Bunia,
17 or outside and more specifically in the countryside. What I
18 would like to know is whether you had the opportunity to see
19 things for your own eyes and in that context whether you noted
20 the presence, I should perhaps say the existence or the presence,
21 of children, young individuals under the age of 15, in the
22 different armed groups that you came upon?

23 MR O'SHEA: Mr President, if I may, I entirely
24 understand that my learned friend, Mr Gilissen, is representing
25 child soldiers and that these are matters within the interests

1 of his clients. That much is clear.

2 The difficulty which arises out of this question which
3 has just been asked, in the light of the previous question, is
4 a difficulty of notice to the Defence. We have to, in my submission,
5 be extremely cautious about the nature of this witness and why
6 this witness has been called by the Prosecution. It appears
7 to us that the purpose for which this witness has been called
8 by the Prosecution was in order to admit these videos (expunged)
9 (expunged)
10 (expunged)
11 (expunged)
12 (expunged)
13 (expunged)
14 (expunged)
15 (expunged)
16 (expunged). We are therefore
17 taken by surprise. We're not -- we didn't in any sense expect
18 that there would be a geographical sweep of other areas other
19 than those which feature in the videos for the purposes of
20 questions from the Prosecution, or from the legal
21 representatives.

22 Now, I don't contest that my learned friend, in terms
23 of your decision 1665, is entitled to, under certain restricted
24 conditions, ask questions which go beyond the
25 examination-in-chief, but that's not the issue here. The

1 questions which my learned friend is seeking to ask now go beyond
2 the scope of what the Defence has notice that this witness is
3 going to talk about and, therefore, my learned friend's question
4 carries prejudice to us in that respect.

5 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
6 Mr O'Shea. Mr O'Shea, you have seen that before the legal
7 representatives of the floor took the floor, the Chamber did
8 indeed clarify the precise scope to be covered in their questions,
9 or possible questions, they might have.

10 Mr Gilissen, in the light of what has just been said
11 by Mr O'Shea, I think it is indeed important that you go even
12 further than you have already in limiting the spacial scope of
13 the questions you intend to put. That would also go for
14 Mr Luvengika as well.

15 But please note at the same time, Mr O'Shea, that there
16 is total -- this is to our mind, total fairness in the question
17 that was put, because if my ears do not betray me, I think
18 Mr Gilissen said -- I can't remember what the exact words were,
19 but whoever the combatants were or something, and I'm looking
20 for it in the transcript --

21 MR O'SHEA: I think he said "of the different military
22 groups."

23 PRESIDING JUDGE COTTE: (Interpretation) Yes, "of the
24 different military groups." So that is a general aspect, but
25 in space and time it has to be limited in scope, but the question

1 is more general and it's being put to somebody (expunged)
2 (expunged), and it means that for the
3 legal representatives of a group of victims, the child soldiers,
4 it is possible for them to be better apprised as to the
5 representation of those children and it means that there's going
6 to be better information provided to the Chamber, allowing us
7 to have a better idea of the truth. So, thank you for your
8 intervention. It's a useful one.

9 So please, Mr Gilissen and Mr Luvengika, show caution.
10 We are not in the presence of a witness of the facts themselves,
11 but as in previous cases we have here a contextual witness, but
12 if it makes us possible to move further ahead in acquiring a
13 better understanding of the "phenomenon of child soldiers" so
14 that we can have a better understanding of the facts of the case,
15 then your presence and your questions are extremely useful. But
16 please show caution; otherwise, we'll have constant stopping
17 and starting in the hearing and constant interventions from the
18 Defence.

19 Please proceed, Mr Gilissen.

20 MR GILISSEN: (Interpretation) Thank you, your Honour.
21 I can reformulate the question and we'll see what we get from
22 the witness by way of an answer.

23 Q. Witness, did you see - did you yourself see - the presence
24 of young individuals, what I referred to earlier on as child
25 soldiers, in the groups of combatants that you came upon in Bunia,

1 or in the region of Bunia, at a time which I would say would
2 be between the end of 2002 and the first part of the year 2003?

3 A. Yes, I did note the presence of child soldiers in
4 different groups, inter alia, the four groups that were the best
5 known in Ituri. In all of those groups there were child soldiers.

6 Q. Thank you, Witness. You referred to four groups that
7 were the best known in Ituri. I am not someone who originates
8 from Ituri. Obviously, I have been there, but a long time after
9 the events. So could you identify the four groups in which you
10 personally saw child soldiers?

11 A. I can refer to Thomas Lubanga's UPC, the FAPC group
12 of Jérôme Kakwavu based in Aru and Mahagi - they're also part
13 of Ituri - and also the PUSIC, Chief Kahwa's group, the HQ was
14 in Mandro. There was also the Lendu combatants group. And, in
15 all of those groups, there were child soldiers.

16 Q. Thank you very much. Aside from the groups that you
17 have mentioned, were there other groups than those four and,
18 if there were, on the basis of what you have seen - not just
19 what you know but what you saw with your own eyes - did all of
20 the other groups also include this type of young soldier, or
21 were there any exceptions?

22 A. There were child soldiers in all of those groups and
23 I noted the presence of those child soldiers in the groups. For
24 instance, the Lendu fighters in Yambi in the town of Bunia, there
25 were child soldiers there. I saw them when they came into the

1 town. In the PUSIC group, Chief Kahwa's in Mandro, which is
2 around about 15 kilometres away, there were children I saw there
3 as well. Then there's Jérôme Kakwavu's group, the FAPC in Aru.
4 I went there as well and there were child soldiers. In the UPC
5 group as well, based in Bunia and close to the town of Bunia,
6 there were child soldiers. I saw them for myself.

7 PRESIDING JUDGE COTTE: (Interpretation) Witness,
8 please try to speak slowly. Thank you for your contribution,
9 but please speak more slowly so that both the interpreters and
10 the court reporters can do their work.

11 MR GILISSEN: (Interpretation)

12 Q. Witness, to make sure that we are talking about the
13 same thing and avoid making mistakes or getting confused, I would
14 like to ask you what you would qualify as a child soldier. What
15 does that term "child soldier" mean to you?

16 A. A child soldier for me is anyone carrying a weapon under
17 the age of 17. As of 17 -- or, rather, 17 down to below 15,
18 I would qualify these people as child soldiers.

19 Q. Thank you, witness. Did you see young soldiers, youths,
20 carrying weapons who were members of the groups of soldiers or
21 militia who were under the age of 15, who were clearly without
22 any doubt under the age of 15?

23 A. Yes, I saw with my own eyes children who were under
24 15. They were of different ages. There were some who were 10,
25 12, 15. I saw them for myself and they were carrying weapons:

1 firearms, knives, machetes, axes, and others as well.

2 Q. Witness, we have seen -- we have seen all of us together,
3 as has the public - some footage in which we see a young boy
4 who seems to be leading a column on the Bunia boulevard in the
5 town centre of Bunia, carrying a spear, a young boy wearing a
6 "pagne", I think, and on his arms he has something that could
7 be some sort of fetish. Could you evaluate the age of that boy
8 and, aside from assessing his age, do you personally know how
9 old that young boy is?

10 PRESIDING JUDGE COTTE: Maître O'Shea.

11 MR O'SHEA: If I may -- sorry, I am listening to myself
12 in French. If we remember when that particular extract was
13 shown - I can try to identify it, but there is perhaps no need - this
14 witness quite clearly stated that he did not know that person.
15 Now, in the light of that answer, in my submission, it's not
16 correct for my learned friend to ask this witness for an opinion
17 on his age, because the witness can give no better opinion than
18 the Judges themselves since he's given the answer that he doesn't
19 know the person.

20 PRESIDING JUDGE COTTE: (Interpretation)

21 Mr Gilissen. Sorry, I mixed you up with your colleague; I got
22 the names lumped together. "Luvengissen" is what I said, so
23 merging the two names, but it's not the right place to do so.
24 I do apologise.

25 Mr Gilissen, I'm sure you appreciate how difficult this

1 exercise is and I'm sure you appreciate the difficulty of this
2 question you are putting to the witness, because none of us here
3 can be absolutely certain that we can immediately bring to our
4 minds the precise scene. So you will need to give us a clear
5 reference so that the witness can see precisely which young person
6 you referring to. We saw quite a lot of them yesterday in the
7 footage that we were shown. Some were indeed carrying things
8 that could be understood in many different ways. We might all
9 have a different idea as to what they were carrying if we are
10 talking about the one that you are thinking of. So you either
11 have to make this more specific or move on to another question.

12 MR GILISSEN: (Interpretation) Your Honour, I'll try to
13 be more specific. This is extract number 17 at time stamp 3 minutes
14 45.

15 PRESIDING JUDGE COTTE: (Interpretation) Is it
16 possible for us to have this extract 17 at 3.45? That means
17 that everybody including the witness will be able to see the
18 young person to whom you are referring and then you can put your
19 question, but first of all we have to clarify this.

20 MR GILISSEN: (Interpretation) If I may, your Honour,
21 I was expecting an objection from Mr O'Shea and I do understand
22 this. I'm not so much concerned with asking the witness to give
23 his opinion; we are not here to obtain opinions. We want to
24 hear testimony. But it's a question of assessing his ability
25 to assess. I mean, if the witness were to give us a ridiculous

1 age, then I think that would be of assistance to everybody as
2 to the credibility or at least the reliability of the witness.

3 PRESIDING JUDGE COTTE: (Interpretation) That being
4 said, Mr Gilissen, you have heard -- and this is in keeping with
5 the objection from Mr O'Shea, there is the possibility of
6 referring to the videos that are found in the binder, although
7 some were not shown by the Prosecutor, but the binder is available
8 to everyone and that was provided in advance so that there would
9 not be any surprises for anyone.

10 (Expunged)

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16 MR GILISSEN: (Interpretation) Under those
17 conditions, I think it would be best to give up on that question.
18 I realise this is a very difficult area.

19 Q. Sir, please do not answer the question. I will abandon
20 this question. It would appear to be the wiser course of action.

21 PRESIDING JUDGE COTTE: (Interpretation) Indeed.
22 Please proceed with just as much wisdom as you have just shown.

23 MR GILISSEN: (Interpretation)

24 Q. Witness, amongst these young people whom you saw - and
25 let us take that example, that person - you spoke of children,

1 10, 12 or at the most 15 years of age. Did you see only young
2 boys? Did you see young girls? I wouldn't quite say "young
3 women." Did you see young female children amongst the group?
4 Did you notice the genders of the young people whom you saw?

5 A. Yes, therewerewomen. Therewerefemalechildsoldiers.
6 And in the UPC, there were far more females in comparison with
7 the other groups where there were only a few female militia members,
8 or female soldiers.

9 Q. Within the group of Lendu fighters, or the groups of
10 Lendu fighters that you saw, you say that there were young fighters
11 or people bearing arms. Was the proportion significant, or were
12 there only a few people or would you say that there was a fairly
13 large significant number of young people? Did they make up a
14 considerable proportion of the group?

15 A. In particular, within the group of Lendu fighters there
16 were very few women. Furthermore -- well, they were there.

17 THE INTERPRETER: Correction. They were few in
18 number.

19 THE WITNESS: And if I observed properly, I would say
20 I never saw women within the Lendu group, sir. I don't know,
21 perhaps during the time of looting at that time, during that
22 period everyone really was a soldier. And when disorder reigns,
23 everyone becomes a soldier. Amongst the Lendu group, I really
24 didn't really see any women soldiers, but there were male child
25 soldiers.

1 MR GILISSEN: (Interpretation)

2 Q. Thank you, Witness. That was a very useful piece of
3 information that you just gave us. Now, could you tell
4 us -- without speaking of female combatants, could you tell us
5 whether the children themselves were present in considerable
6 numbers within the groups that you saw?

7 A. I think I said that earlier. Within the UPC there were
8 many, whereas within the other groups there were very few female
9 child soldiers. I repeat, within the UPC there were many. They
10 had arms. They were in military uniforms and you can see with
11 your own eyes that they were soldiers.

12 Q. I beg your pardon, Witness. I'm having a hard time.
13 Clearly, I'm having a hard time. I'm asking my question poorly.

14 I wanted to know, now, within the Lendu armed groups
15 that you saw, the male and female child soldiers, if there were
16 female child soldiers, were they present in large numbers or
17 were there only a very few? Were there few child soldiers, perhaps
18 the same number of child soldiers as adults, or were there more
19 child soldiers than adults? Could you give us that information?
20 We weren't there. We didn't see. You have seen and your knowledge
21 is important for us.

22 A. In the Lendu armed group, most of the fighters were
23 adults and the children soldiers were less -- were fewer in number.
24 There were very, very few girls in comparison with the other
25 groups. I can confirm that within the Lendu groups there were

1 child soldiers and for the most part they were boys, but they
2 were not many in comparison with the number of adult soldiers.

3 Q. Thank you very much, Witness. Perhaps one last
4 question.

5 Now, you speak of these child soldiers. Did they have
6 a special name? Were they referred to in a special way? Was
7 there a word or a name given to them that meant child soldiers?
8 Was there a specific word for these people amongst the combatants?
9 As you said earlier, most of the people in the group were adults.

10 A. To the best of my knowledge, within the groups of Lendu
11 fighters and within other groups, the children -- the child
12 soldiers were called kadogos.

13 Q. Witness, was that a generic word used by most people
14 in the Ituri region? Is that the word that most people used
15 or was it an expression that was only used by a few people?

16 A. Kadogo is a common word. Everyone used that word. Even
17 a civilian, when he saw a child soldier he would call that person
18 a kadogo. Even the military officials of those groups were in
19 the habit of calling these children kadogo.

20 Q. Thank you very much, Witness. I believe that if I went
21 any further, I would be going beyond -- as Mr O'Shea said, I
22 would be going beyond the area that your testimony is dealing
23 with.

24 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
25 Mr Gilissen. Mr Luvengika, do you wish to proceed?

1 MR NSITA: (Interpretation) Good morning, Witness.

2 THE INTERPRETER: Correction. Your Honour, your
3 Honours.

4 MR NSITA: (Interpretation) Good morning, Witness.
5 Your Honour, I do not have any questions for this witness. Thank
6 you.

7 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
8 Mr Luvengika. Thank you, too, for your wisdom.

9 Now, Witness, the legal representatives of victims - or
10 at least one of them - have asked you a number of questions.
11 The Chamber at this stage in our proceedings does not have any
12 questions for you, and now the Defence team of Mr Katanga will
13 begin its cross-examination.

14 Mr O'Shea will introduce himself and he will be asking
15 you some questions, and please respond directly and in a simple
16 way just as you have been doing so far in response to the questions
17 that have been put to you.

18 Mr O'Shea.

19 QUESTIONED BY MR O'SHEA:

20 Q. Good afternoon, sir. My name is Andreas O'Shea, and
21 I represent Mr Germain Katanga in these proceedings and I am
22 going to ask you some questions of clarification with regard
23 to the testimony that you've given and perhaps some other questions
24 which may or may not assist in the defence of Mr Katanga.

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11 MR O'SHEA: Yes. Very well.

12 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
13 Ms Luping. On several occasions, I allowed some questions that
14 could indirectly lead to revealing the identity of the person.
15 Now, sir, do you have a group of questions that could be asked
16 in private session?

17 MR O'SHEA: Yes, not many.

18 PRESIDING JUDGE COTTE: (Interpretation) Well, we
19 will go into private session and then you can ask these identifying
20 questions.

21 Madam Court Officer, we will go into private session
22 for a few moments so that Mr Katanga's counsel can ask questions
23 that may be identifying in nature.

24 (Private session at 12.15 p.m.)

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10 (Open session at 12.37 p.m.)

11 THE COURT OFFICER: We are in open session, your
12 Honours.

13 PRESIDING JUDGE COTTE: (Interpretation) Thank you.
14 Mr O'Shea?

15 MR O'SHEA: Yes, thank you, Mr President.

16 Q. Now, we are, as you heard, in open session. That means
17 that everything you say now and everything I say now can be heard
18 by everybody, not only the people in this room, but everyone
19 in the public gallery and potentially everyone in the world,
20 including the DRC. Do you understand?

21 A. Yes, I do understand.

22 Q. So just be careful not to say anything which you think
23 might reveal your identity and, if you're unsure, then you can
24 ask the Judges for guidance. All right?

25 A. Yes.

1 Q. Now, among the video footage which was in the possession
2 of Mr X, was there any video footage which showed dead Lendu?

3 A. I will try to think about that. Video footage showing
4 dead Lendu? Well, I no longer remember.

5 Q. All right, fair enough. Now, you stated that Mr X took
6 footage for the UPC, and I'd like to ask you for some clarification
7 of the procedure which was adopted before footage was taken.

8 PRESIDING JUDGE COTTE: (Interpretation) Madam
9 Luping?

10 MS LUPING: I'm sorry to interrupt. We let the first
11 question go, but our concern is this next one. These questions
12 and the way they are formulated I fear are potentially identifying.
13 Either if the specific nature of these types of questions can
14 be asked in private session, or if they can be reformulated,
15 but I think the way they're currently being asked that they are
16 identifying.

17 PRESIDING JUDGE COTTE: (Interpretation) Madam
18 Prosecutor, the problem is that we cannot hear the entire testimony
19 in private session. That is not possible. But the Defence is
20 making praiseworthy efforts to ensure that the testimony is taken
21 to the extent possible in open session. And, at the same time,
22 I am re-reading the question the way it was formulated. It would
23 in fact be very difficult to identify someone based on that
24 question, so we are going to leave the question as is and,
25 Mr Witness, you will answer while trying to -- well, court

1 officer, let us go into private session briefly, please.

2 (Private session at 12.43 p.m.)

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7 (Open session at 12.48 p.m.)

8 THE COURT OFFICER: We are in open session, your
9 Honours.

10 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
11 court officer. Mr O'Shea, I believe you have to rephrase your
12 question, because the witness might have forgotten. Let us
13 proceed.

14 MR O'SHEA: Well, so far, I've just given a preamble,
15 so I can put a question.

16 Q. Sir, now, within your knowledge, before Mr X went to
17 the scene of a crime, would it always be the same person from
18 the UPC that would contact him or was it different people?

19 A. I'm wondering whether you might not have to ask the question
20 that you asked before, if possible; that is, regarding the
21 possibility of dead Lendus. (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 PRESIDING JUDGE COTTE: (Interpretation) Let us go

1 back to private session, court officer. Things have to be very
2 clear.

3 (Private session at 12.50 p.m.)

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19 (Expunged)

20 (Expunged)

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22 (Open session at 12.52 p.m.)

23 Court officer, did you -- were you on your feet, Madam Prosecutor?

24 MS LUPING: Yes. I was hoping to be able to make my

25 comments still in private session.

1 PRESIDING JUDGE COTTE: (Interpretation) Are these
2 observations that absolutely have to be made? We can go back
3 to private session if necessary, because we have become very
4 flexible now and we are able to move back to private session
5 and open session all the time.

6 So, court officer, please let us go back to private
7 session, and those who will read our transcripts later will know
8 that it is our concern to protect the witnesses.

9 (Public session at 12.53 p.m.)

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8 (Open session at 12.55 p.m.)

9 THE COURT OFFICER: Thank you, Mr President. We are
10 in open session.

11 PRESIDING JUDGE COTTE: (Interpretation) Mr O'Shea,
12 please proceed.

13 MR O'SHEA: Thank you.

14 Q. So, again within your knowledge, when Mr X was
15 approached by the UPC, was he always approached by the same person
16 or was he approached by different individuals on different filming
17 occasions?

18 A. The UPC did not always request Mr X's services on the
19 field. Sometimes the UPC could request Mr X to carry out a certain
20 assignment or Mr X himself could go to the field without any
21 request from the UPC.

22 Q. And on those occasions when the initiative came from
23 the UPC, was it always the same individual within the UPC or
24 different individuals who would approach Mr X within your
25 knowledge?

1 A. Mr X was contacted by different individuals within the UPC
2 for such assignments.

3 Q. And within your knowledge, when Mr X went to a scene
4 on the request of the UPC, would he go alone or would he go with
5 somebody from the UPC?

6 A. Yes. Whenever there was a mission involving Mr X and
7 members of the UPC, there would be different members of the team,
8 soldiers and politicians; that is, the politicians of the UPC.

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 A. All those assignments involving Mr X and the UPC did
13 not only concern crimes. There were also assignments involving
14 political events. When it was something involving a crime scene,
15 it was possible for Mr X to travel to that scene alone.

16 Q. To your knowledge, did Mr X ever receive requests to
17 film from Lendu?

18 A. No. As far as crimes or politics are concerned, Mr X
19 never received any request from the Lendu.

20 Q. Okay. I'm going to take you to some specific video
21 extracts which have already been shown to you by the Prosecution,
22 and I will begin by playing those extracts, or parts of those
23 extracts, just to remind you of the context in which we are talking
24 before I put my questions, all right?

25 A. Yes, fine.

1 Q. So I will begin with extract number 1 and it doesn't --

2 PRESIDING JUDGE COTTE: (Interpretation) Mr O'Shea,
3 apparently, for a purely technical reason, before we can show
4 extract number 1 that you would like to show, we have to wait
5 for a moment.

6 (Pause in proceedings)

7 PRESIDING JUDGE COTTE: (Interpretation) We are
8 falling foul of the technicalities, Mr O'Shea, and that makes
9 things difficult for you, because you're being frequently
10 interrupted here, and it's even harder on the witness and we
11 would very much like to thank him for his patience.

12 (Pause in proceedings)

13 PRESIDING JUDGE COTTE: (Interpretation) For
14 everyone's information, court officer, the time required, is
15 the time that we've just needed, is it going to be the same for
16 each time around, for each extract, because I know that when
17 we move from one part to the next there is a certain amount of
18 adaptations required. For instance, when we move to the
19 cross-examination for Mathieu Ngudjolo's team, will we also need
20 to wait for ten to 15 minutes, which is rather complex because
21 just when we will be able to start we will have to adjourn. It
22 would seem that it's an external problem, nothing to do with
23 the normal running. It's not really a consolation, but it does
24 provide us at least with a better understanding of what's
25 happening.

1 THE COURT OFFICER: Before the video is shown I would
2 kindly ask the participants to press the PC1 button. Thank you.

3 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
4 court officer. Mr O'Shea, you may now proceed with your question
5 and the witness will be able to answer.

6 MR O'SHEA: Thank you, Mr President.

7 Q. So, I am going to just play this video, and it will
8 have sound, but there's no need for interpretation of this
9 particular extract, so we can simply play it and, Mr Witness,
10 you look at it just to remind yourself of the content and at
11 a certain point I will stop it and I will ask you further questions;
12 all right?

13 THE COURT OFFICER: Could the counsel please confirm
14 that the video is public?

15 MR O'SHEA: Yes, the video already has an EVD number,
16 which is EVD-OTP-00130 and it is public and it can remain public
17 and it won't be readmitted. It's just -- we're just showing
18 something that's already in evidence, so it can be played.

19 (Video extract played)

20 Q. So, the gentleman who is speaking now is speaking on
21 behalf of the UPC, is he?

22 A. Yes, it is the representative of the UPC on that occasion.

23 Q. And his name was John Tinanzabo; is that correct?

24 A. Yes, John Tinanzabo.

25 Q. And I will attempt to spell that, and if I make an error

1 you can correct me, that would be T-I-N-A-N-Z-A-B-O?

2 A. Let me spell it: T-I-N-A-N-Z-A-B-O, Tinanzabo.

3 Q. And he was the - at that time that this video footage
4 is being taken - he was the secretary-general of the party of
5 the UPC; is that correct?

6 A. Let me say the following: As regards the
7 secretary-general, it was a rotating post.

8 He did end up secretary-general, but I don't know whether
9 at that particular moment he was secretary-general. He had
10 already been secretary-general once before, but I am not too
11 sure whether at that particular moment he was secretary-general
12 because at the time the UPC did not have control over the town.
13 The UPDF had driven them out, so I can't really tell you whether
14 at that particular moment he was indeed secretary-general or
15 whether he was occupying some other function.

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 time know the function of Mr Tinanzabo?

20 MS LUPING: Mr President, I believe this question has
21 been asked and answered.

22 PRESIDING JUDGE COTTE: (Interpretation) Mr O'Shea,
23 there was a very detailed answer that was given just before as
24 to the rotational function of Secretary-General. Is that not
25 enough for you?

1 MR O'SHEA: My question is a different one. I asked
2 him if this gentleman held the post of secretary-general. His
3 answer was that he didn't know -- he doesn't know, rather - in
4 the present tense - doesn't know what function the gentleman
5 held.

6 My question is -- just a moment. My question is: When
7 the event was actually filmed, at the time the event was actually
8 filmed, did the witness know the function? He may have forgotten
9 it now, you see, but at the time did he know the function. I
10 don't think it is controversial.

11 PRESIDING JUDGE COTTE: (Interpretation) Listen,
12 Prosecutor, honestly I don't think there's any need to have a
13 lengthy debate about this. Witness, you can answer the question.
14 Then we can proceed.

15 THE WITNESS: I've answered that question. This is
16 what I said: In his life, he had already been secretary-general
17 of the UPC. He had already been minister for pacification, but
18 at that particular moment he represented -- he was representing
19 the UPC in that room. The UPC was not even present in Bunia.
20 As for the function that he held at that particular moment, I
21 do not know. I cannot confirm, but I do know that at that moment,
22 at that event he was representing the UPC in that room.

23 JUDGE DIARRA: (Interpretation) The difficulty of all
24 of this is to do with the French term "à ce moment," at that
25 time or for the moment. It's a difficulty to do with the French

1 language. It's a tough language.

2 PRESIDING JUDGE COTTE: (Interpretation) Yes, I would
3 agree with that, and I congratulate everybody who is trying to
4 speak French in this room because of what is moreover an assistance
5 to me. Anyhow, I do think that the witness has given a very
6 clear answer to the further question that's been put by Mr O'Shea,
7 and we would like to thank you, Witness. So we can see how keen
8 we are to seek the truth and how this can lead to our persecuting
9 you. Mr O'Shea.

10 MR O'SHEA: Yes. You see, Mr President, my first
11 question was in the present tense and my second question was
12 in the past tense, and then obviously somewhere in translation
13 it got confusing I think. Can I go into closed session for a
14 moment, please?

15 PRESIDING JUDGE COTTE: (Interpretation) We will now
16 go into private session, court officer.

17 (Private session at 1.20 p.m.)

18 (Expunged)

19 (Expunged)

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11 Page 79 expunged. Private session.

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11 Page 81 expunged. Private session.

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1 (Expunged)

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4 (Closed session at 1.29 p.m.)

5 (Expunged)

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10 (Expunged)

11 (Expunged)

12 (Open session at 1.29 p.m.)

13 THE COURT OFFICER: We are in open session, your
14 Honours.

15 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
16 court officer. So, we will have to make sure that all precautions
17 are taken to avoid any problems technically tomorrow, so we will
18 see you all tomorrow at 9. The hearing is adjourned.

19 (The hearing ends at 1.30 p.m.)