

1 The International Criminal Court
2 Trial Chamber II - Courtroom 1
3 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra
4 and 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, 14 September 2010
10 (The hearing starts at 9.07 a.m.)
11 (Closed session)
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5 (Open session at 9.08 a.m.)

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

8 (The accused enter the courtroom)

9 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
10 court officer. The accused persons will now take their seats.
11 The accused are with us.

12 Good morning, sirs, and good morning, Mr Witness.

13 WITNESS: DRC-OTP-002 (On former oath)

14 (The witness answers through interpreter)

15 THE WITNESS: Good morning.

16 PRESIDING JUDGE COTTE: (Interpretation) I can see
17 that you are able to hear me and everything is working well.

18 Court officer, is the English transcript okay? In
19 which case, we may be able to start. Apparently, the English
20 transcript is working, and maybe we need two minutes to sort
21 out the French transcript and we can begin. Mr Prosecutor.

22 MR DUTERTRE: (Interpretation) Yes, your Honour, I
23 will try to follow the English transcript.

24 PRESIDING JUDGE COTTE: (Interpretation) I will
25 interrupt you briefly to reassure Mr Luvengika, who wanted to

1 have some practical information about the requests that he has
2 to submit to the Chamber before the 15th.

3 Professor Fofé, you were on your feet. Well, I
4 thought I saw someone moving, but you don't want to speak. So
5 maybe, as time goes on, we will have the French transcript.

6 Mr Prosecutor, you can continue.

7 MR DUTERTRE: (Interpretation) I'll be speaking
8 slowly, to assist the technical services. Your Honours, I
9 would like to refer you to tab 4.17 of the binder. This is
10 extract 17. It is extract 17 of video DRC-OTP-0080-0011. The
11 time stamps on the full video footage are 12 minutes 48 seconds
12 to 13 minutes 42 seconds.

13 I believe the French transcript is now operational.
14 The original transcript is number DRC-OTP-1043-1116, page
15 1043-1121, lines 123 to 129. The translation in French is
16 DRC-OTP-1030-0024, pages 1030-0031, lines 142 to 149. This is
17 a public extract that I will play with sound, and we will
18 require interpretation. I'll play it in full, and it is only
19 54 seconds.

20 (Video extract played)

21 THE INTERPRETER: (Interpretation) "And we agreed
22 with the commanders of certain forces. We had a meeting here
23 with those of Zumbe, those from Kpandromo, Urumu, and from
24 various areas, Kasenyi, and the other commanders who are here.
25 We agreed on the principle of a ceasefire. These are the

1 things that I wanted to tell you. Our plan is that after the
2 installation of the CPI, we will leave this place, but we are
3 asking that at the time that we leave this place, there has to
4 be an arrangement on security."

5 MR DUTERTRE: (Interpretation) Once again, pursuant
6 to the usual procedure, the transcript has to be updated. Your
7 Honour, I would like us to go briefly into private session.

8 PRESIDING JUDGE COTTE: (Interpretation) Court
9 officer, please.

10 (Private session at 9.19 a.m.)

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17 (Open session at 9.22 a.m.)

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

19 Honours.

20 PRESIDING JUDGE COTTE: (Interpretation) Please

21 continue, Mr Prosecutor.

22 MR DUTERTRE: (Interpretation) Thank you, your

23 Honour.

24 Q. Mr Witness, at 0 minutes 0 seconds, the person that

25 we are seeing on the image with a green beret is General

1 Kayihura; is that correct?

2 A. Yes.

3 MR DUTERTRE: (Interpretation) Your Honour, I would
4 like an EVD number be assigned to this extract and the
5 corresponding transcripts and translations, and it can be a
6 public document.

7 PRESIDING JUDGE COTTE: (Interpretation) Court
8 officer, please.

9 THE COURT OFFICER: Your Honours, extract 17 of
10 DRC-OTP-0080-0011 will be given evidence number EVD-OTP-00178,
11 and is admitted as a public exhibit. Thank you.

12 PRESIDING JUDGE COTTE: (Interpretation) Thank you.
13 Please continue, Mr Prosecutor.

14 MR DUTERTRE: (Interpretation) Thank you, your
15 Honour. Your Honours, I will now refer you to tab 4.18 of your
16 binder. It is extract number 18 of video DRC-OTP-0080-0011.
17 The time-stamps references on the original video footage are
18 15 minutes 46 seconds to 19 minutes 54 seconds. The transcript
19 is number DRC-OTP-1043-1116, page 1043-1122 to page 1043-1123,
20 lines 146 to 214. The translation in French is
21 DRC-OTP-1030-0024, page 1030-0031 to page 1030-0033, lines 172
22 to 246. I will play this excerpt with sound and
23 interpretation, and this is confidential, Mr President, and I
24 will give you the reasons in private session.

25 PRESIDING JUDGE COTTE: (Interpretation) Let us go

1 into private session so that you should give us the
2 justification for this.

3 (Private session at 9.27 a.m.)

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3 (Open session at 9.51 a.m.)

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

6 PRESIDING JUDGE COTTE: (Interpretation) Thank you.
7 Prosecutor, please go ahead.

8 MR DUTERTRE: (Interpretation) At this stage I'd
9 like to ask for an EVD number for this exhibit, the transcript
10 and the translation as they were corrected by the Registry. As
11 you said, as a public exhibit.

12 PRESIDING JUDGE COTTE: (Interpretation) Court
13 officer, if you could.

14 THE COURT OFFICER: Your Honours, extract 18 is
15 therefore admitted as EVD-OTP-000179, and this is a public
16 exhibit.

17 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
18 court officer. Prosecutor, you may resume.

19 MR DUTERTRE: (Interpretation) Thank you, your
20 Honour. I would now like to move to tab 4.19 in the binder,
21 and this is extract 19 of video DRC-OTP-0080-0011. Now, the
22 references, the time-stamps, for the entire video are as
23 follows: 22 minutes 11 seconds to 23 minutes 2 seconds. The
24 transcript number is as follows: DRC-OTP-1043-1116, page
25 1043-1125, lines 260 to 270. The French translation

1 DRC-OTP-1030-0024, page 1030-0034, lines 296 to 307. This is a
2 public document with sound and I would like to ask for
3 interpretation. This is 51 seconds, this extract, and I will
4 play the entire video excerpt.

5 (Video extract played)

6 THE INTERPRETER: (Interpretation) "Commander
7 Kasangaki, today is truly a memorable day, a historic day,
8 that -- in that you have been able to all meet together. In
9 the past you hated one another and today, today is a day of joy
10 once again. I would like to see all the officers on this side,
11 and you on the other side, please shake hands so that we can
12 see that the unity is truly back here in Bunia. Could you
13 please shake hands and please shake hands, Mr Kasangaki. This
14 is a great joy to see the former commanders shaking hands in
15 this way. Can you see? This is really an extraordinary thing.

16 We can see the colonel over there, the colonel's
17 shaking the hand of Kasangaki, and we can see that the other
18 officers are very happy, so it's quite clear that this is a
19 very fine day for the residents of Bunia. Can you see that?"

20 MR DUTERTRE: (Interpretation) Your Honour, if we
21 could briefly go into private session.

22 PRESIDING JUDGE COTTE: (Interpretation) Court
23 officer, if we could go into private session so as to avoid our
24 witness being identified.

25 (Private session at 9.57 a.m.)

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17 (Open session at 9.58 a.m.)

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

19 Honours.

20 PRESIDING JUDGE COTTE: (Interpretation) Please

21 continue, Prosecutor.

22 MR DUTERTRE: (Interpretation) Thank you, your

23 Honour. I will now play the first few seconds, the first four

24 seconds to be specific, with sound and interpretation.

25 (Video extract played)

1 THE INTERPRETER: (Interpretation) "Commander
2 Kasangaki, today is clearly a memorable day, a historic day."

3 MR DUTERTRE: (Interpretation)

4 Q. Witness, whose voice do we hear in that excerpt, if
5 you can tell us?

6 A. That is the voice of Mike Arereng, a journalist.

7 Q. Now, a detail, Witness. On the transcript I read
8 "Mike." Is the name Mike or Mark?

9 A. No, it's not Mark. His name is Mike Arereng.

10 Q. So Mike Arereng says, and I quote "Commander
11 Kasangaki, today is truly a memorable day." Now, the person
12 who we see at 4 seconds, that's Commander Kasangaki?

13 A. Yes.

14 Q. And from which ethnic group is Commander Kasangaki,
15 Witness?

16 A. The Commander Kasangaki is of Hema ethnicity, but
17 the -- he is Hema, but at the time when the picture was taken
18 he had left the UPC and he had gone to Uganda, and he was
19 fighting within the UPDF. Here I am speaking about Commander
20 Kasangaki.

21 MR DUTERTRE: (Interpretation) I am now going to
22 play --

23 MR O'SHEA: If I may just raise one matter, your
24 Honour, before my learned friend proceeds, and it's just this:
25 That in the English transcript, and I am taking this issue now

1 so that it doesn't get too lost because we are proceeding
2 fairly rapidly and it will get lost in our minds otherwise.

3 In the last short excerpt that my learned friend played,
4 1514 on the English transcript, there was a reference on the
5 English transcript to "Kisangani" and we just want to make sure
6 that that is corrected to Kasangaki as it states in the French
7 transcript. The French transcript is correct. The English
8 transcript is incorrect, but if we don't correct it now we
9 might be getting confused later in the case. Yes.

10 PRESIDING JUDGE COTTE: (Interpretation) Thank you
11 very much, counsel. If that is the case, and if Kasenyi (sic)
12 is mentioned in the English transcript in place of Kasangaki,
13 precision which is correct in the French Transcript, then the
14 English transcript would have to be made concordant with the
15 French transcript, which translates faithfully the words which
16 were said and that does seem to be the case.

17 I am trying to find the French transcript. I can't
18 put both in parallel on the same screen, but if it is the case
19 then you have to -- we have to carry out the corrections such
20 that the two transcripts are the same. That's clear. Court
21 officer, please could you ensure this is done.

22 Prosecutor, please continue.

23 MR O'SHEA: Mr President, sorry, and could my learned
24 friend, if it's not inconvenient to him, ask the witness to
25 spell Kasangaki for us?

1 PRESIDING JUDGE COTTE: (Interpretation) So,
2 Prosecutor, so that everything is clear, could you ask this
3 question to the witness, which we can ask ourselves, in fact.
4 Witness, could you please spell slowly the name of the
5 commander that you have just spoken about, Commander Kasangaki.
6 Please could you spell this name, starting with the first
7 letter. We are listening to you.

8 THE WITNESS: Commander Kasangaki, do you want me to
9 write it on the screen next to me?

10 PRESIDING JUDGE COTTE: (Interpretation) If you
11 prefer to write it on a piece of paper, the usher will give you
12 a piece of paper. You can write it. It will be provided to me
13 and I myself shall read out each of the letters of this name.
14 Usher, please provide the witness with a piece of paper and
15 something with which to write.

16 Very well. The witness has written it in a very
17 clear way for everybody who can see it. The word Kasangaki
18 K-A-S-A-N-G-A-K-I. Counsel O'Shea, you have fulfilled your
19 rights where it concerns the transcript. We do not forget that
20 this is real-time transcript so it is provisional. It is
21 important, Counsel O'Shea, to make a request for correction
22 because you noticed this mistake. Prosecutor, please continue.

23 MR DUTERTRE: (Interpretation) Thank you, your
24 Honour. I am therefore going to go from where I was
25 interrupted by Counsel O'Shea and I am going to go to the

1 second -- I am going to play up to 33 seconds. 22.33.

2 (Video extract played)

3 THE INTERPRETER: (Interpretation) "I would like you
4 to all shake hands, those who were part of the UPC and those
5 who are also the visitors who arrived today. I would like to
6 ask Kasangaki to shake hands. It's a great joy to see the
7 former commanders shake hands in this way."

8 MR DUTERTRE: (Interpretation) I stopped at
9 34 seconds.

10 Q. On the screen there's a handshake between Kasangaki
11 and Germain Katanga; is that correct?

12 A. Yes.

13 Q. I am going to continue to 43 seconds.

14 (Video extract played)

15 THE INTERPRETER: (Interpretation) "It is a great
16 joy to see the former commanders shake hands in this way. Do
17 you see that? The colonel there is shaking the hand of
18 Kasangaki and we can see that the other officers are very
19 pleased."

20 MR DUTERTRE: (Interpretation) I am going to
21 43 seconds.

22 Q. Mathieu Ngudjolo and Commander Kasangaki who are
23 shaking hands; is that correct?

24 A. Yes.

25 MR DUTERTRE: (Interpretation) I would like a public

1 EVD number for this with the transcript and the translation
2 corrected by the Registry.

3 PRESIDING JUDGE COTTE: (Interpretation) Court
4 officer, if you would be so kind.

5 THE COURT OFFICER: Your Honours, therefore extract
6 19 shall receive the EVD number EVD-OTP-00180 and is admitted
7 as a public exhibit. Thank you.

8 PRESIDING JUDGE COTTE: (Interpretation) Thank you.
9 Please continue, Prosecutor.

10 MR DUTERTRE: (Interpretation) Your Honour, I am now
11 going on to 4.2 in the binder. This is the extract of the
12 video DRC-OTP-0080-0011. The reference with regard to the
13 time-stamps are 1 hour 0 minutes 52 seconds to 1 hour 2 minutes
14 46 seconds. The transcript number in the original language
15 DRC-OTP-1043-1116, page 1043-1140, lines 876 to 893. The
16 French translation DRC-OTP-1030-0024, page 1030-0051, lines 973
17 to 990. The extract is public with sound and with
18 interpretation. I am going to show it completely, 1 minute and
19 53 seconds.

20 PRESIDING JUDGE COTTE: (Interpretation) Counsel
21 O'Shea, before this is shown?

22 MR O'SHEA: Yes, I just want to draw your Honours'
23 attention, and also the attention of the Prosecution, to the
24 fact that we will have an objection to this extract. However,
25 rather than taking that objection now, it would be my

1 preference, and I would submit it would be in the interests of
2 the smooth running of the proceedings, if the extract is played
3 first and, if necessary, I will take the objection at the time
4 that my learned friend seeks its -- that the admission of the
5 video, because the witness may or may not shed further light on
6 the extract, in the light of my learned friend's questions and,
7 in my submission, that would be the appropriate time for me to
8 take the objection and it may be that in the light of what
9 proceeds I don't take the objection and then we save time, but
10 at the moment there is an objection, and I am just flagging
11 that up for your Honours, but submitting that I would like to
12 take the objection at the moment when my learned friend seeks
13 the admission of the extract.

14 PRESIDING JUDGE COTTE: (Interpretation) Very well.
15 Prosecutor, you have been notified. Please continue.

16 MR DUTERTRE: (Interpretation) I am going to show
17 it, your Honour.

18 (Video extract played)

19 THE INTERPRETER: (Interpretation) "You will have
20 further information with regards to this subject at the end of
21 the journal. You are following the edition of this journal
22 which is presented by the RTNC here in Bunia. Yesterday, some
23 hours after the arrest or the stopping of fighting within the
24 district of Ituri, the UPDF army put an end to the attacks of
25 Ngiti and Sota. The Ngiti carried out a surprise attack

1 against the former UPC camp, that is to say the Union de
2 Patriot Congolaise and they attacked any civilian vehicle.
3 During these attacks the Ngiti cut up a pregnant mother
4 resulting in the loss of two babies, a boy and a girl, who were
5 killed. They threw their bodies onto the side of the road.

6 The Ngiti put up barriers on the roads to stop people
7 from other ethnic groups from the west of Ituri coming here to
8 Bunia. Despite that the UPDF army clashed with them for a
9 half-hour and managed to drive back the Ngiti. It is said that
10 the Ngiti did not want the peace spokesperson to be revealed to
11 anyone. All the health centres were pillaged of their property
12 and medicines. People were hiding in the bush and the army
13 managed to save six children.

14 The UPDF army condemned the acts by these people and
15 launched a firm warning to the authors of such acts and this
16 conforms with the words of Brigadier Kale Kayihura, who is
17 responsible for political affairs within the UPDF army, who is
18 currently here in Bunia setting up the -- directing the Ugandan
19 delegation in the mission for peace in the district of Ituri."

20 MR DUTERTRE: (Interpretation) I would like to
21 briefly go into private session, your Honour.

22 PRESIDING JUDGE COTTE: (Interpretation) Court
23 officer, please could you take us into private session.

24 (Private session at 10.17 a.m.)

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9 (Open session at 10.20 a.m.)

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

12 PRESIDING JUDGE COTTE: (Interpretation) Thank you.
13 Prosecutor?

14 MR DUTERTRE: (Interpretation) I would like an EVD
15 number which is public with the transcription and the
16 translation with it.

17 PRESIDING JUDGE COTTE: (Interpretation) Counsel
18 O'Shea, is it at this moment that you want to tell us the
19 grounds for your objection? We are listening to you.

20 MR O'SHEA: This is a legal matter which need not
21 concern the witness, your Honours.

22 PRESIDING JUDGE COTTE: (Interpretation) Should I
23 take from that that you would like the witness to leave the
24 courtroom?

25 MR O'SHEA: Yes, they are not matters which need

1 trouble him at this instant. I am going to be going into legal
2 matters and it need not concern the witness.

3 PRESIDING JUDGE COTTE: (Interpretation) So, we
4 shall not trouble the witness. Security officers, if you would
5 be so kind as to escort Mr Katanga and Ngudjolo outside the
6 courtroom so that the witness can leave this courtroom during
7 the presentation of the objection.

8 (The accused exit the courtroom)

9 PRESIDING JUDGE COTTE: (Interpretation) Court
10 officer, we are now going into closed session in order to allow
11 the witness to leave the courtroom.

12 (Closed session at 10.22 a.m.)

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22 (Open session at 10.23 a.m.)

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

25 PRESIDING JUDGE COTTE: (Interpretation) Perfect.

1 Counsel O'Shea, please briefly present your objection to us, if
2 you would. Counsel Kilenda. Ah, the accused haven't come back
3 in. Thank you, Counsel Kilenda. Security officers, of course,
4 please could you bring back in Mr Katanga and Mr Ngudjolo.

5 (The accused enter the courtroom)

6 PRESIDING JUDGE COTTE: (Interpretation) The two
7 accused have taken their places again. Counsel O'Shea is going
8 to present his objection.

9 MR O'SHEA: Yes, thank you, your Honours. Now, I of
10 course understand that a liberal approach has been taken to
11 video evidence thus far, in that the weight of the evidence can
12 be assessed at the end of the day, and that is a reasonable
13 stance to take.

14 However, the duty remains upon this Court, in my
15 respectful submission, to protect the fairness of the trial for
16 the accused and to ensure that there are appropriate parameters
17 to the type of evidence that is brought before the Court and
18 the statute quite clearly guides us as to the balance which
19 should be made between -- the balance which should be made
20 between the probative value of evidence as against its
21 prejudicial effect.

22 Now, this particular extract has a character which
23 sets it apart from all of the other extracts which your Honours
24 have admitted thus far, and that character puts a particular
25 gloss on how your Honours should view this extract for the

1 purposes of admission in proceedings.

2 It is essentially what I may refer to as a news
3 broadcast and, in my submission, your Honours should take great
4 care when dealing with news broadcasts. I would ask your
5 Honours to bear upon your own experience to understand that
6 news broadcasts can be very unreliable. Those who read the
7 news can put things completely wrongly sometimes, and it is the
8 wholly unreliable character of news broadcasts, as a class of
9 evidence, which is the platform upon which I am making this
10 submission.

11 Now, apart from the character of this evidence, in
12 terms of what probative value it holds, I say this is not
13 simply a question of evaluating hearsay and according it
14 weight; the probative value here is absolutely zero.

15 The events that your Honours are concerned with
16 concern the attack on Bogoro of 24 February 2003. The attack
17 being referred to in this news broadcast does not identify any
18 specific group; it does not identify any specific commander and
19 it is not dated and it is not timed.

20 Now, on the side of prejudice, (expunged)
21 (expunged). He cannot give --

22 MR DUTERTRE: (Interpretation) I would just like to
23 remind my learned friend that we are in open session.

24 MR O'SHEA: Yes, I am sorry.

25 PRESIDING JUDGE COTTE: (Interpretation) That is

1 correct. Thank you, Prosecutor. Please continue, Counsel
2 O'Shea.

3 MR O'SHEA: Let me just simply state it in this way:
4 The witness is not in a position to furnish us with the details
5 that your Honours would require to make this information any
6 more than the general assertion in this news broadcast. On the
7 basis of what the witness has said, he is not in a position to
8 furnish us with a detailed analysis of what the person in the
9 video screen is saying and, even the person in the video
10 screen, if we were to have the opportunity to cross-examine
11 him, being a journalist himself may have great difficulties
12 going back to a news broadcast that he gave several years ago
13 and addressing it for us, the Defence.

14 It being undated, and relating to a place called
15 Sota, we are not placed in a particularly good position to
16 undertake investigations on this incident either. It is a
17 wholly random event of a distasteful nature, but which has no
18 apparent connection to this accused.

19 And that brings me to the reference to the word
20 "Ngiti". It is not because some attackers share the ethnicity
21 of our client that a connection is made with our client. Any
22 assessment of that nature would be wholly unfair. There would
23 have to be other factors which connected this incident to our
24 client. We know, for example, that people of Ngiti ethnicity
25 were in the UPC; we know that people of Ngiti ethnicity were in

1 other groups; and we know that people of Ngiti ethnicity were
2 living in villages, in different villages, in different places,
3 so there is no basis upon which one can automatically connect
4 the accused just because of reference to ethnicity, but it does
5 give a feeling or a sense. It does want the general public,
6 for example, to draw this incident towards our client, because
7 of the reference to the ethnicity.

8 There is no evidence on the record anywhere that our
9 client is connected to an attack on Sota other than this --
10 other than what is being sought here, and if it is only to show
11 the widespread nature of attacks I invite your Honours to bear
12 in mind that in considering whether to admit evidence your
13 Honours are entitled to consider the repetitive nature of
14 evidence and the quality of evidence.

15 Your Honours have evidence of a far better quality
16 with regard to attacks after Bogoro than a single news
17 broadcast of a random act of violence. So, I am inviting your
18 Honours to consider that in this instance the prejudicial
19 effect outweighs the probative value and, being in the class of
20 news broadcasts, it is a classic case of prejudicial effect
21 outweighing probative value; news broadcasts as they are, being
22 so potentially wholly unreliable.

23 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
24 Mr O'Shea. Mr Prosecutor, a few observations on your part
25 regarding the objection that has been raised by Mr O'Shea,

1 briefly please.

2 MR DUTERTRE: (Interpretation) Yes, your Honour,
3 brief, but with a lot of content like Mr O'Shea usually does.

4 To begin with, I am surprised by the late submission
5 of this objection, and I am not referring to the fact that the
6 objection is being raised after I am asking for an EVD number,
7 but I am referring to the decision of the Chamber which was
8 very clear.

9 To the extent possible, objections have to be raised
10 on evidence before the beginning of the trial. These materials
11 have a reference in the Prosecution table of evidence. There
12 is filing 1643 and the annex H, page 60, as well as annex H,
13 page 59.

14 The Defence was called upon to react, but the Defence
15 of Germain Katanga did not do so on this extract. I remember
16 that the Defence of Mathieu Ngudjolo reacted and identified
17 certain extracts and excerpts that they felt were not
18 admissible. We responded to that and the Chamber had wished
19 that these issues be resolved before the beginning of the trial
20 so as to save time and accelerate the proceedings, so I am
21 pointing out that this objection is belated.

22 Now, regarding the substance related to the probative
23 value, your Honours, I can say that this extract has probative
24 value and that it is relevant. Regarding the probative value,
25 there is authentication. We know what we are talking about.

1 There is Ngiti group and there is a date, even if that date is
2 only approximative, and we are talking about the weight to be
3 given to the evidence, not admissibility.

4 We have to look at what the journalist is saying as
5 hearsay and the Chamber will consider what the journalist says
6 as hearsay. So, this is not at all a problem of admissibility
7 because, your Honours, we know that hearsay evidence is
8 admissible before this Court.

9 This decision was also taken in the Lubanga case as
10 well as in this case and, if I am not mistaken, this was an
11 oral decision of 12 July concerning Witness 267.

12 The witness himself has made comments and added other
13 hearsay elements which are admissible also, so the problem here
14 is just a problem of weight.

15 Regarding relevance, it seems to me that it has been
16 established that there is an attack, there is looting, the
17 civilians have been attacked and the people have been killed,
18 so these are contextual elements related to attacks against
19 members of the civilian population.

20 We know that even the Defence of Germain Katanga
21 spent quite some time with Witness 267, and also to a lesser
22 extent with P30, asking chronological questions on facts
23 including what had happened in Bunia during the time of the
24 departure of the UPDF, so a lot of elements were analysed
25 which, for the Prosecution, did not have any direct link to

1 Bogoro.

2 So, this is an issue of equality of arms, because
3 this is an adversarial proceeding.

4 The Prosecution has the right to provide evidence
5 that shows the context for the events in Bogoro and these are
6 elements related to widespread attacks against the population.
7 Overall, I believe that the Defence is perfectly able to
8 cross-examine the witness. There is no prejudice, because we
9 are dealing here with professional Judges who can put things in
10 perspective. It is not up to public opinion to judge. It is
11 not public opinion that is sitting here. This is a Chamber
12 made up of professional Judges, so it is simply a question of
13 weight that the Chamber will have to determine.

14 It will be incumbent on the Defence to provide
15 arguments in their final submissions regarding this extract and
16 it is at this point that the submissions made should have been
17 elaborated upon. So, we are not talking about admissibility;
18 we are simply talking about weight.

19 PRESIDING JUDGE COTTE: (Interpretation) You were
20 clear. Mr O'Shea, you have a final comment to make, but we
21 clearly experienced your point of view so you are just adding
22 some information at this point. You have the floor.

23 MR O'SHEA: Well, I will simply reply to those points
24 upon which my learned friend hinges his response. It would be
25 wholly unreasonable to expect the Defence to have addressed the

1 minutiae of every possible objection that it may have to every
2 single line of evidence in the 1064-page table of the
3 Prosecution before the trial. That is an unreasonable
4 position. We are entitled to some extent to consider
5 objections as we go along in the light of the evidence as a
6 whole, as well as the Judges are, to say that this is not a --
7 to say that this is not a question of admissibility, that
8 hearsay evidence is admissible, is mischaracterising the legal
9 regime. Rule 69(4) of the rules clearly accords a discretion
10 to your Honours in this matter. Hearsay "can" be admissible,
11 not "will" be admissible. And it's not helpful to suggest that
12 we can deal with all these matters at the end of the case. At
13 the end of the case we will have page limits, we will have time
14 limits, and we will have central issues in this case that we
15 will be concerned with. We, like your Honours, do not wish to
16 be cluttered with evidence of minimal probative value and high
17 prejudice that we will be forced to address in our closing
18 submissions, but which will affect the quality of our overall
19 submissions on central issues.

20 Thank you very much.

21 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
22 Mr O'Shea.

23 After the exchange that has just taken place, the
24 Chamber is fully aware that we are on a razor edge here. We
25 need to point out the necessity for the fairness in this trial.

1 You also pointed that out and you have realised that, so far,
2 the Chamber has adopted a liberal practice here. The Chamber
3 has postponed the determination of the weight to be given to
4 various pieces of evidence to the end of the trial. For the
5 time being, we have to act on a case-by-case basis. Here we
6 are dealing with extract 4.20. The Chamber does not intend to
7 exclude statements made by journalists during a television or
8 radio broadcast. We have to deal with all this on a
9 case-by-case basis.

10 Regarding the instant case, Mr O'Shea has pointed out
11 that the statements made are highly unspecific. They are not
12 dated. There is mention of Ngiti, but there is no additional
13 information provided, no name of any commander is mentioned, so
14 we do not have any precise information about the date or time.

15 Furthermore, the Chamber notes that ever since the
16 beginning of the trial on the merits, we have received a lot of
17 information, and we will receive some more, on violent acts and
18 attacks that took place on days other than 24 February 2003 and
19 in other places than Bogoro. These elements are important for
20 the Prosecution, to the Defence teams, to the legal
21 representatives and to the Chamber. So, we have a lot of this
22 contextual information and we do not need to be overwhelmed by
23 it.

24 Let us now come back to the fairness of the trial.
25 While presenting evidence, we have to be sure that the

1 probative value should not take too much precedence over the
2 prejudicial effect on the Defence. In this precise case, the
3 Chamber feels that the imprecise nature of this extract, that
4 is extract 4.20, is more important; that is, when it comes to
5 the probative value in relation to the prejudicial effect, the
6 statement made by the journalists are very strong and therefore
7 can have a prejudicial effect on the Defence. So the Chamber
8 has decided not to admit this extract 4.20, and it will
9 therefore not be assigned an EVD number.

10 Mr Prosecutor, you can continue and I believe we are
11 now moving on to video number 5.

12 MR DUTERTRE: (Interpretation) Yes, indeed, your
13 Honour. I am looking at the time, because we will need to
14 bring in the witness.

15 PRESIDING JUDGE COTTE: (Interpretation) Very well.
16 I am proposing that we break now and we will resume at
17 11.20-11.25. 11.20, so that we should be sure to begin
18 effectively at 11.25. The witness is not here and so we will
19 continue at 11.20. Court is suspended.

20 (Recess taken at 10.50 a.m.)

21 (Upon resuming at 11.20 a.m.)

22 (Closed session)

23 (Expunged)

24 (Expunged)

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1 (Expunged)

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7 (Open session at 11.31 a.m.)

8 (The accused enter the courtroom)

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

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

13 The accused are with us. Witness, can you hear me?

14 THE WITNESS: Yes.

15 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor,
16 please proceed with video extract 5.

17 MR DUTERTRE: (Interpretation) Certainly. 5.1 in
18 the binder.

19 PRESIDING JUDGE COTTE: (Interpretation) We are
20 listening.

21 MR DUTERTRE: (Interpretation) Extract 1 from video
22 DRC-OTP-0081-0011. Time-stamp of the entire video, taken from
23 the entire video, 57 seconds to 2 minutes 12 seconds.
24 Transcript number DRC-OTP-1046-0128, page 1046-0131 to
25 1046-0132, lines 12 to 37. Translation reference number

1 DRC-OTP-1046-0022, page 1046-0026 to 1046-0027, lines 12 to 37.

2 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor,
3 before you continue. Now, when a video extract such as number
4 5 includes a number of excerpts that cover the same event, do
5 you think it might be possible to ask the questions in private
6 session all in one go? Would that be possible? I think we
7 still have extracts 5 to 11 to go, and I believe the last
8 extract we saw covered the same event. If we could save some
9 time in terms of private session versus open session, even if
10 we do this in a very irregular fashion, I will leave it up to
11 you. But, in any event, for this particular excerpt, you have
12 already begun, but in the future you might want to consider
13 that other method. Please proceed.

14 MR DUTERTRE: (Interpretation) Well, this extract is
15 somewhat different from the earlier ones and, indeed, this idea
16 - this suggestion - of asking all the private questions in
17 private, we would have to be careful about the identifying
18 characteristics. As they say in German, "sicher ist sicher."

19 PRESIDING JUDGE COTTE: (Interpretation) If you
20 don't think that is a wise approach, do not take any account of
21 that suggestion. Please proceed.

22 MR DUTERTRE: (Interpretation) I will be showing
23 this extract with sound and interpretation, and on a
24 confidential basis for the same reasons as set out earlier.
25 Indeed, we could do it in private session on a provisional

1 basis and then 15 to 16 seconds, at which point there are some
2 audible voices. The Chamber may specify whether you would keep
3 the exhibit private or not.

4 PRESIDING JUDGE COTTE: (Interpretation) Yes, but
5 one must be aware that when proceeding in this manner we are
6 depriving the public of seeing. And when I say "the public,"
7 I mean people here in the gallery or people elsewhere. We
8 would be depriving them of the opportunity to view the video.
9 If you truly feel that the risks are not greater than was the
10 case for the earlier excerpt, we would have to go into open
11 session again. The Chamber certainly does not want to shirk
12 the responsibility of protecting the witness, and that is the
13 case for all people here who have the protection of the witness
14 in mind. But the risks do have to be real, even patent. Now,
15 is there a patent risk here in comparison with the earlier
16 extract?

17 MR DUTERTRE: (Interpretation) The risk is not zero,
18 but this is a short extract. We could play it in public if the
19 Chamber were to rule that way.

20 PRESIDING JUDGE COTTE: (Interpretation) We will
21 show it in private session, and we have not ruled out the
22 possibility of showing it again in public. So, all this to
23 say, court officer, that we will be going into open session.

24 (Private session at 11.39 a.m.)

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Page 44 expunged. Private session.

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6 (Open session at 11.48 a.m.)

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

9 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
10 Madam Court officer. Now, for the public who is listening, we
11 have just come back into open session because there was a
12 discussion regarding a particular point, namely, whether this
13 video extract should remain confidential or not. The Chamber
14 is of the view that it can be shown publicly, so it will be
15 shown again, and the Prosecutor will continue his
16 examination-in-chief once the excerpt has been shown again. So
17 we will go back to the very beginning of extract 5.1.

18 (Video extract played)

19 THE INTERPRETER: (Interpretation) "We are attending
20 these discussions amongst all the commanders who are based in
21 the Ituri district and who are here right now to unify the
22 Congo. (Inaudible) and many people took part in this work, but
23 today we are here (inaudible) as part of this committee for
24 dialogue. Before I give the floor (inaudible), if you allow me
25 this committee which will be chaired by MONUC."

1 MR DUTERTRE: (Interpretation)

2 Q. Witness, after showing this video, I would like to go
3 back to second 9 of this video extract. Could you tell us what
4 is the name of the person who is at the left who is wearing a
5 hat?

6 A. The person who is wearing a hat - an army hat - is
7 Commander Kung-Fu.

8 Q. Thank you. Could you spell -- now the person in the
9 middle who has his hands clasped together, who is he?

10 A. That is also a commander, whose name is Uwechi?

11 Q. And what group does he belong to?

12 A. He is a commander from the FNI.

13 Q. And on the right, the gentleman wearing a light pink
14 sweater, who is he?

15 A. I don't remember his name; it was a long time ago.

16 Q. Do you know which group he belonged to?

17 A. I think he also belonged to the FNI.

18 THE INTERPRETER: Correction from the English booth,
19 the earlier commander was Commander Uwechi.

20 MR DUTERTRE: (Interpretation)

21 Q. You mentioned Kung-Fu. What group did he belong to,
22 the first person that we identified, the one wearing a hat?

23 A. Kung-Fu was a Lendu commander who was based in
24 Mongbwalu. He was a commander from the FNI.

25 MR DUTERTRE: (Interpretation) Thank you. I will

1 continue to show the video and I will stop at second 11.

2 (Video extract played)

3 Q. Witness, who is the person at the very right who is
4 wearing a sleeveless vest and underneath that vest he is
5 wearing a long-sleeved T-shirt that is black with some --
6 correction which is white with some black stripes? I beg your
7 pardon, I used the wrong --

8 THE INTERPRETER: Inaudible.

9 THE WITNESS: Will you play this again, or do you
10 want me to answer?

11 MR DUTERTRE: (Interpretation)

12 Q. The image, if you could reply?

13 A. Very well. To the right there is Mr Ngudjolo,
14 Mathieu Ngudjolo.

15 Q. You mean at the very right of the screen?

16 A. Yes, that is Afande Mathieu Ngudjolo Chui.

17 MR DUTERTRE: (Interpretation) Could I have an EVD
18 number for this, public, with the associated translations and
19 transcript as corrected by the Registry and I believe we can
20 complete that information the same way as before.

21 PRESIDING JUDGE COTTE: (Interpretation) Madam Court
22 Officer, could we give an EVD number.

23 THE COURT OFFICER: Your Honour, therefore extract 1
24 of DRC-OTP-0081-0011 shall be given the EVD number
25 EVD-OTP-00181 and is admitted as a public exhibit.

1 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
2 court officer. Please go ahead, Prosecutor. Mr O'Shea?

3 MR O'SHEA: Can I just ask my learned friend, the
4 gentleman who was referred to as Uwechi I think it was, is it,
5 on the Prosecution list, is it the one that is U-W-E-C-H-I? I
6 just want to be clear.

7 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
8 Mr O'Shea, that is an important point because we all took note
9 of that and we may have jotted it down in a phonetic way.
10 Might it be possible to have the exact spelling of this
11 commander? Uwechi, seemed to be the pronunciation. Perhaps
12 the witness could spell it or perhaps --

13 MR DUTERTRE: (Interpretation) The witness is
14 providing the evidence. Perhaps it would be simpler.

15 PRESIDING JUDGE COTTE: (Interpretation) Witness,
16 would you prefer to write out the person's name on a sheet of
17 paper, or announce the spelling, so that we have the correct
18 spelling both for the transcript and in our own minds?

19 THE WITNESS: I would prefer writing out the name on
20 a sheet of paper.

21 PRESIDING JUDGE COTTE: (Interpretation) Court
22 usher, if you could give a sheet of paper and a pen to the
23 witness, and then give me the document. Thank you, court
24 usher. The witness has, like the last time, quickly written
25 out the name of Commander Uwechi. It is spelt this way:

1 U-W-E-C-H-I. Uwechi.

2 MR O'SHEA: Thank you very much.

3 PRESIDING JUDGE COTTE: (Interpretation) Court
4 officer, court usher, thank you. Prosecutor, you may go ahead
5 with extract 5.2.

6 MR DUTERTRE: (Interpretation) Indeed, there is no
7 surprise there. Thank you, Mr O'Shea. Extract 2 from video
8 DRC-OTP-0081-0011.

9 Now, the references, the time-stamps rather, are
10 3 minutes 15 seconds to 4 minutes 25 seconds, the transcript
11 number DRC-OTP-1046-0128, page 1046-0132, lines 46 to 67, and
12 now the translation reference number DRC-OTP-1046-0022, page --
13 line 46 to 67. It is public. Lines 46 to 67 with sound and
14 interpretation. I will play the entire extract, which is
15 1 minute and 10 seconds.

16 (Video extract played)

17 THE INTERPRETER: (Interpretation) "(Indiscernible)
18 are present now, therefore. We have here a list of the
19 different groups who are members of the dialogue committee,
20 consultation committee. We have the FAPC. Is the FAPC present
21 in the room? Yes, okay. FNI? Is the FNI present? Very good.
22 The FPDC? Yes, very good. The FPLC, that's the UPC, I think
23 that there is nobody here. The FRPI? FRPI here? FRPI? Yes,
24 thank you."

25 MR DUTERTRE: (Interpretation) Once again, we have

1 to complete the transcript. I would like to go into private
2 session if we can briefly, your Honour.

3 PRESIDING JUDGE COTTE: (Interpretation) Let's go
4 into private session for certain identifying questions or
5 questions of an identifying nature.

6 (Private session at 12.03 p.m.)

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14 (Expunged)

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20 (Expunged)

21 (Open session at 12.04 p.m.)

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

24 PRESIDING JUDGE COTTE: (Interpretation) Thank you
25 very much, Prosecutor. Please continue.

1 MR DUTERTRE: (Interpretation) Thank you, your
2 Honour. I am going to go back to 17 seconds. It is clearly a
3 call of different armed groups who are present.

4 Q. Who can we see at second 17, Witness?

5 A. You have in front of you the picture of the Brigade
6 General Kale Kayihura who is from Uganda.

7 Q. We are talking about the person with the glasses, are
8 we not?

9 A. Yes, I was just speaking about him, Brigade
10 General Kale Kayihura.

11 MR DUTERTRE: (Interpretation) I am now going to
12 play from 59 seconds to 1 minute 08.

13 (Video extract played)

14 THE INTERPRETER: (Interpretation) "The FRPI. The
15 FRP."

16 MR DUTERTRE: (Interpretation)

17 Q. Witness, when the FRPI is called, it is
18 Mathieu Ngudjolo who gets up; is that correct?

19 A. Yes, that's him.

20 MR DUTERTRE: (Interpretation) I would like an EVD
21 number to be attributed. Public -- it is public with the
22 transcript and the translation as corrected by the Registry.

23 PRESIDING JUDGE COTTE: (Interpretation) Court
24 officer, please could you give us a common number for these
25 three documents.

1 THE COURT OFFICER: Your Honours, therefore extract 2
2 of the video shall be given EVD number EVD-OTP-00182, and it is
3 admitted as a public exhibit. Thank you.

4 PRESIDING JUDGE COTTE: (Interpretation) Thank you.
5 Prosecutor, you still have the floor.

6 MR DUTERTRE: (Interpretation) Thank you, your
7 Honour. I would like to ask everybody to go to video extract
8 5.3 in the binder. 5.3. This is extract 3 of the video
9 DRC-OTP-0081-0011. The reference with regards to the video is
10 10 minutes 46 seconds to 11 minutes 01 seconds. The transcript
11 number is DRC-OTP-1046-128, page 1046-0136. Page 1046-0136,
12 lines 190 to 195. I repeat, lines 185 to 195. In the
13 translation, this is DRC-OTP-1046-0022, page 1046-0031, lines
14 185 to 195. It is public, with sound and interpretation. The
15 excerpt is only 15 seconds. I'm going to play the complete
16 excerpt.

17 (Video extract played)

18 THE INTERPRETER: (Interpretation) "In the soldiers
19 that we are, we have to achieve this. You understand? We
20 think that you cannot meet up. There is a journalist who
21 addressed the subject of -- "

22 MR DUTERTRE: (Interpretation) Could we quickly go
23 into private session, your Honour?

24 PRESIDING JUDGE COTTE: (Interpretation) Court
25 officer, please could you take us into private session for a

1 question of an identifying nature.

2 (Private session at 12.12 p.m.)

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15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Open session at 12.12 p.m.)

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

20 Honours.

21 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor,
22 please continue. You can remain seated if you so wish. We did
23 say that for video excerpts the Prosecution and the Defence and
24 the legal representatives of victims can remain seated in order
25 to simplify their task. So, please sit yourself at ease.

1 MR DUTERTRE: (Interpretation) Thank you very much,
2 your Honour.

3 Q. Witness, in this short 15-second excerpt, are there
4 people who you recognise, as a general question, but just
5 generally. You don't need to look at the first picture
6 necessarily.

7 A. Yes.

8 Q. At the start of the excerpt, 0 seconds - I'm staying
9 there because afterwards the picture moves very quickly - are
10 there people that you recognise in that picture?

11 A. Yes, I recognise some individuals on the picture that
12 appears before me on the screen.

13 Q. Are you able to say who the people is, or who the
14 person is on the left of the screen?

15 A. The person with glasses is Lobho Gokpa, Justin, and
16 he is on the left of the screen and in the middle there is
17 Commander Tchaligonza, Afande Tchaligonza. The picture of the
18 other one is blurred. The person who is on the far right.

19 Q. Thank you very much. Could you state which group
20 Commander Tchaligonza belonged to?

21 A. Thank you for asking me this question. At the
22 beginning Tchaligonza was one of the UPC commanders, but after
23 the fighting between the UPC and the UPDF Tchaligonza was
24 against the clashes between the UPC and the UPDF?

25 THE INTERPRETER: UPDF, corrects the interpreter.

1 MR DUTERTRE: (Interpretation) I am going to show
2 the video and please raise your hand when you recognise
3 somebody.

4 (Video extract played)

5 Q. Witness, on the screen there is a person who is
6 wearing a red beret. Is this the person that you recognise?

7 A. This here is Commander Mugisa and at that time he was
8 representing the FRPC, the armed group, FAPC.

9 Q. Would you like me to show the end of this excerpt
10 again?

11 A. Yes, you can show it again. There is no problem.

12 MR DUTERTRE: (Interpretation) I will take it from
13 7 seconds.

14 (Video extract played)

15 Q. Witness, I have stopped at 0 minutes and 13 seconds.
16 You raised your arm. Can you tell us who the person is who is
17 on the screen with a cigarette in his mouth?

18 A. It is one of the FNI commanders. I think his name
19 was Bahati. I think that his name is Bahati.

20 Q. I will play it to the end from 13 seconds.

21 A. This is Kung-Fu.

22 Q. The last picture of the video, for the purposes of
23 the transcript?

24 A. Yes. This is Afande Kung-Fu.

25 MR DUTERTRE: (Interpretation) I would like an EVD

1 number public, also for the transcript and translation as
2 reviewed by the Registry.

3 PRESIDING JUDGE COTTE: (Interpretation) Court
4 officer, if you would be so kind.

5 THE COURT OFFICER: Your Honours, extract 3 of the
6 video shall be given an EVD number, EVD-OTP-00183 and is
7 admitted as a public exhibit. Thank you.

8 PRESIDING JUDGE COTTE: (Interpretation) Thank you.
9 Prosecutor, please continue.

10 MR DUTERTRE: (Interpretation) Thank you, your
11 Honour. I would like to ask you to look at the excerpt 5.4 in
12 the binder. This is extract 4 of the video DRC-OTP-0081-0011.
13 The reference with regards to the time-stamp are as follows:
14 34 minutes 7 seconds, 34 minutes 48 seconds. Transcript
15 number: DRC-OTP-1046-0128, page 1046-0153 to 1046-0154, lines
16 779 to 796. In the translation DRC-OTP-1046-0022,
17 DRC-OTP-1046-0022, page 1046-0048 to 1046-0049, lines 789 to
18 806. It is public, with sound and interpretation. It lasts
19 for 41 seconds and I shall show it completely.

20 (Video extract played)

21 THE INTERPRETER: (Interpretation) "Thank you for
22 having given me the floor. I think that we have accepted to be
23 here. There is a MONUC (inaudible). I know that we have met
24 previously. MONUC is here to deal with the problem of
25 pacification. We had to remain with MONUC (inaudible), but

1 there is a problem in the MONUC camp. It is MONUC who should
2 respond to that if there is a problem (inaudible). Thank you
3 very much."

4 MR DUTERTRE: (Interpretation) Then once again the
5 transcript should be completed. I would just like to go very
6 quickly into private session.

7 PRESIDING JUDGE COTTE: (Interpretation) Court
8 officer, once again a short private session.

9 (Private session at 12.24 p.m.)

10 (Expunged)

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17 (Expunged)

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19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Open session at 12.25 p.m.)

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

1 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor,
2 please continue.

3 MR DUTERTRE: (Interpretation) I am just going to
4 play part of this again, your Honour, from second 4 to 20.

5 (Video extract played)

6 THE INTERPRETER: (Interpretation) "Because I know
7 that we are -- that you met previously, if you haven't had a
8 response, MONUC is here to deal with the problem of
9 pacification."

10 MR DUTERTRE: (Interpretation) And I have stopped at
11 22 seconds.

12 Q. The person who is speaking in this extract, and who
13 is seen on the left of the screen, at 00.22 seconds, is that --
14 that is Mathieu Ngudjolo, is it not, Witness?

15 A. Yes.

16 MR DUTERTRE: (Interpretation) I would like an EVD
17 number to be attributed to this document as well as for both of
18 the transcript and for the translation thereof as reviewed by
19 the Registry.

20 PRESIDING JUDGE COTTE: (Interpretation) Court
21 officer.

22 THE COURT OFFICER: Therefore extract 4 shall be
23 given the EVD number EVD-OTP-00184 and is admitted as a public
24 exhibit. Thank you.

25 PRESIDING JUDGE COTTE: (Interpretation) Perfect.

1 Prosecutor, we are looking at 5.5?

2 MR DUTERTRE: (Interpretation) Correct, your Honour.

3 Extract 5 from the video DRC-OTP-0081-0011, the reference with
4 regards to the time-stamp is 55 minutes and 34 seconds to

5 56 minutes and 57 seconds. Transcript number

6 DRC-OTP-1046-0128, page 1046-0169 to 1046-0170, lines 1305 to

7 1334, and the translation DRC-OTP-1046-0064 -- please excuse

8 me. 1046-0022, page 1046-0064 to 1046-0065, lines 1322 to

9 1352. It is public, with sound and interpretation.

10 The extract lasts for 1 minute and 32 seconds. I

11 will show it as a whole.

12 (Video extract played)

13 THE INTERPRETER: The Swahili interpreter is asking

14 for directives from the Chamber because there are sentences in

15 English -- or, rather, in French and in Swahili, so they do not

16 know how to go about it.

17 PRESIDING JUDGE COTTE: (Interpretation) In the

18 French translation there is only French.

19 THE INTERPRETER: The difficulty is that we have to

20 interpret what is in Swahili.

21 PRESIDING JUDGE COTTE: (Interpretation) Haven't you

22 faced that difficulty yet with other extracts where there is

23 alternative French and Swahili?

24 THE INTERPRETER: Yes, there will be Swahili and

25 French.

1 PRESIDING JUDGE COTTE: (Interpretation) Clearly,
2 the interpretation is going to be choppy because the
3 interpreters will interpret only the Swahili, and then there
4 will be French. So everyone should just try to do their best
5 and, after that, we will refer to the translation officially
6 reviewed by the Registry. Thank you, Mr Prosecutor.

7 Mr O'Shea?

8 MR O'SHEA: Just a suggestion. Of course, you know,
9 the interpreters have their expertise, and I don't want to step
10 on their toes. I'm not an expert in linguistics. They are an
11 expert in linguistics. But if there are bits in Swahili and
12 bits in French, is it not possible simply to translate the
13 whole thing in French, including the French, as it were?

14 PRESIDING JUDGE COTTE: (Interpretation) That would
15 be the best approach, but during the testimony of the previous
16 witness the Chamber was made to understand that, whenever
17 French is spoken, French interpreters are not to interpret what
18 is already in French. So, now, if we have switching from
19 Swahili to French, there is translation from Swahili, then you
20 immediately have sentences in French. If we did that, it would
21 be much more coherent for all.

22 So, I'm addressing myself to the French interpreters
23 now, if they can try to improvise, because you have a dialogue
24 here. This is not theatre, but it would be very useful to us.

25 Mr Prosecutor, please continue. The extract is very

1 short.

2 MR DUTERTRE: (Interpretation) I will play that
3 extract now in a few seconds.

4 (Video extract played)

5 THE INTERPRETER: (Interpretation) "What Commander
6 Jérôme has just said, I was the first person for having written
7 to the CPI that the armed forces are not to be excluded and
8 that we should be able to discuss problems of the armed groups
9 within the CPI. I think the representative of MONUC in the
10 east of the Congo received my letter. This letter was not
11 answered. One of the delegates of the FNI insisted, and they
12 did not take this into consideration. I think that now we have
13 a problem that should have been discussed during the assembly
14 and I believe now that this will give you a lesson in power
15 relating to what you should do. Thank you."

16 MR DUTERTRE: (Interpretation) The transcript will
17 later be completed. And I would like to go into closed
18 session.

19 PRESIDING JUDGE COTTE: (Interpretation) Court
20 officer, as usual, a brief closed session, please.

21 (Private session at 12.35 p.m.)

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11 (Open session at 12.36 p.m.)

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

14 PRESIDING JUDGE COTTE: (Interpretation) Thank you.
15 Please continue, Mr Prosecutor.

16 MR DUTERTRE: (Interpretation) Thank you, your
17 Honour. I will play a brief sequence from the beginning.

18 Q. Mr Witness, the person who is speaking there and who
19 is wearing glasses as well as a suit and a tie, he is standing
20 up. Do you know who he is?

21 A. He is Mr Floribert Ndjabu, President of the FNI.

22 MR DUTERTRE: (Interpretation) Your Honour, I would
23 like an EVD reference to be assigned to this extract and the
24 corresponding transcript and translation as reviewed by the
25 Registry.

1 PRESIDING JUDGE COTTE: (Interpretation) Court
2 officer.

3 THE COURT OFFICER: Your Honours, therefore extract 5
4 will receive the EVD number EVD-OTP-00185 and is admitted as a
5 public exhibit.

6 PRESIDING JUDGE COTTE: (Interpretation) Thank you.
7 Mr Prosecutor.

8 MR DUTERTRE: (Interpretation) Thank you, your
9 Honour. I will now move on to another extract, and please
10 refer to tab 6.3 in your file folders. So this is extract
11 number 3 of video DRC-OTP-0087-0014. You will remember that
12 one of the extracts from this video was discussed by my learned
13 colleague. The references are 5 minutes 1 second to 9 minutes
14 12 seconds. The transcript is DRC-OTP-0181-0309, page
15 0381-0315 to page 0181-0317, lines 50 to 142. The translation
16 is DRC-OTP-0181-0165, pages 0181-0172 to 0181-0175, lines 62 to
17 164. I will play it with sound and interpretation. And it
18 shall be confidential, with your leave, Mr President, because
19 just like the other extract that I referred to, the sound is
20 identifying and it is clearer there than the extracts that were
21 previously projected.

22 PRESIDING JUDGE COTTE: (Interpretation) You are
23 very sure of that, Mr Prosecutor, because we can assess as we
24 go along and have a different view of it. You think this is
25 really something to be shown confidentially?

1 MR DUTERTRE: (Interpretation) As a precautionary
2 measure, I prefer that it be played confidentially, but
3 obviously I am in your hands if you discover -- if you decide
4 that there is no real risk.

5 PRESIDING JUDGE COTTE: (Interpretation) Very well.
6 We will begin by playing it confidentially, but if we decide
7 that it could be public, then it will be reshown publicly. So,
8 we go into private session for the initial projection of that
9 extract. Court officer, please.

10 (Private session at 12.44 p.m.)

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Page 65 expunged. Private session.

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11 Page 67 expunged. Private session.

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17 (Open session at 12.53 p.m.)

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

19 Honours.

20 PRESIDING JUDGE COTTE: (Interpretation) Thank you,

21 Madam Court Officer. Prosecutor, please.

22 MR DUTERTRE: (Interpretation) I am going to play

23 the extract again in full and in public.

24 PRESIDING JUDGE COTTE: (Interpretation) Very well.

25 (Video extract played)

1 THE INTERPRETER: (Interpretation) "Colonel, can you
2 tell us what is happening, because you said it was this night
3 that you arrived here. Yes, I arrived here. I heard a
4 gunshot. And I tried to come close to see where that gunshot
5 was coming from. So we heard a gunshot from that direction,
6 from Mudzipela. Then there was another one in Saio; then
7 another one from the direction of the airport and from the
8 direction of Hoho.

9 When we heard that gunshot, we remained silent. We
10 tried to find out from where the next gunshot would come from.
11 It did not take us long. We heard another gunshot which was
12 not very loud and I said that gunshot is from very nearby. Do
13 you know what time it was? It was 11.30 p.m. The gunshot was
14 heard and then we dispersed. Etienne told me that there was a
15 guard-post of the police station nearby. We could not just go
16 there like that. Maybe they made an error and a gunshot was
17 fired. We said there is no problem, but let us go there all
18 the same and see what caused the gunshot. We therefore got
19 out. We arrived on the road and we tried to spread out to take
20 over control of the area, but that was very difficult because
21 there was confusion amongst us.

22 We moved about silently. He was in a hurry, because
23 he is familiar with the area, so he moved quickly to the road.
24 He saw the night watchman. He saw two soldiers and then he saw
25 a slender person who was light in complexion. What happened?

1 Do you think he was killed, or could he have escaped, because
2 this one is the watchman? He is the one who had shouted who is
3 there? Who is there? And that person instead of going away
4 they stayed there and they were surprised. That person must
5 have shot when they saw that watchman, so we deployed ourselves
6 in the area in order to catch those people, but the wall was
7 very close.

8 They all escaped. We arrived here. We did a check
9 and we found this dead body, and from here we went to the
10 guard-post of the police station so that they could come and
11 protect this house against another attack during the night. We
12 thought that they were not very occupied, but when we arrived
13 there there was no way.

14 He stayed there and so far we have been the ones
15 guarding this house throughout the night. We took the family
16 out and took them to the police station so that they can rest.
17 Then we took the watchman and we brought him to the back; that
18 is behind our position. The family is still in the police
19 station. Their objective was to come and abduct the lady
20 living in this house. What is the ethnicity of this gentleman?
21 His sisters are dead. They are crying. The person who shot
22 him fled in this direction. It was only in the morning that
23 the others passed by here and they all escaped, but what was
24 the reason? Can you once again identify yourself? What is
25 your name? My name is Germain Katanga Simba. Thank you."

1 MR DUTERTRE: (Interpretation) I am going to play
2 the end of the extract again from 4 minutes 5 seconds -- 4.09.

3 PRESIDING JUDGE COTTE: (Interpretation) Very well.
4 (Video extract played)

5 THE INTERPRETER: (Interpretation) "What is your
6 name? Germain Katanga Bin Simba. Thank you."

7 MR DUTERTRE: (Interpretation)

8 Q. Witness, the colonel who was being interviewed in
9 this footage gave his name and he said, "Germain Katanga Bin
10 Simba." What does that mean, "Bin Simba"?

11 A. Do you think that I know what that means? I don't
12 know what it means.

13 MR DUTERTRE: (Interpretation) I see. Your Honour,
14 I would like an EVD number for this extract as well as the
15 translation and the transcript that are associated with it as
16 corrected by the Registry.

17 MR O'SHEA: Just before that's done, Mr President.
18 Obviously, this extract follows clearly from the other extract
19 which we saw where the other gentleman, Mr Lobho, was speaking
20 about the same incident, and your Honours will remember that
21 there was an argument from the Defence on that and your Honours
22 ruled to admit that first extract.

23 Now, even though this is a different extract, we
24 accept that it follows from the previous extract. Although we
25 maintain our objections in relation to both extracts, we

1 understand and recognise that it would be futile to repeat the
2 arguments in relation to this part of the extract because I
3 can't reasonably make a distinction between this and the
4 previous extract. So, I simply make that clear for the record.

5 PRESIDING JUDGE COTTE: (Interpretation) That is how
6 we understood your remarks, Mr O'Shea.

7 Madam Court Officer, you had stopped at EVD?

8 THE COURT OFFICER: Your Honour, extract 3 of the
9 video shall be given the number EVD-OTP-00186, and this is a
10 public exhibit.

11 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
12 court officer. Prosecutor, you may proceed.

13 MR DUTERTRE: (Interpretation) Thank you, your
14 Honour. In order to move quickly and only with that aim in
15 mind, we will not be showing 6.4, and we will be moving on to
16 the seventh video. And there may be some explanations that the
17 Chamber would like to hear without the witness's presence.
18 It's part of the category of videos.

19 PRESIDING JUDGE COTTE: (Interpretation) Quite so.
20 We will ask the security officers to escort Mr Katanga and
21 Mr Ngudjolo out of the courtroom for a moment so the witness
22 can leave.

23 MR DUTERTRE: (Interpretation) Just a moment, your
24 Honour. One question that might allow us to clarify things and
25 will --

1 PRESIDING JUDGE COTTE: (Interpretation) And that
2 can be asked with the witness being present? Thank you,
3 security officers. Sorry about that.

4 Prosecutor, so this is one of the four extracts
5 whose origin may be in question.

6 MR DUTERTRE: (Interpretation)

7 Q. Witness, you mentioned earlier -- you mentioned the
8 ceasefire agreement and you mentioned the date of 6 March --
9 16 March 2003, page 13, lines 17 and 18 of today's transcript.
10 Were you present when the ceasefire agreement was signed? Were
11 you there? Were you at that event at any particular point?

12 A. Yes, I was there right from the beginning of the
13 pacification commission right to the end of the work of that
14 commission. I was there during that entire period.

15 MR DUTERTRE: (Interpretation) Just a moment, if you
16 don't mind, your Honour.

17 Q. Witness, I am speaking about your presence during the
18 signing of the agreement for cessation of hostilities. My
19 question had to do with the cessation of hostilities.

20 A. Yes, I was there and video footage was taken and that
21 footage shows all the armed groups who were represented there
22 and who signed the agreement, the ceasefire treaty. And you do
23 have that video footage.

24 MR DUTERTRE: (Interpretation) Your Honour, I think
25 therefore, if the Defence submits questions of admissibility,

1 we could have the remaining discussion without the witness
2 being present.

3 PRESIDING JUDGE COTTE: (Interpretation) Mr O'Shea,
4 with regard to the remarks that were just made by the witness
5 and, therefore, since the witness is telling us that he was
6 present during the signing ceremony, the agreement that ended
7 the work of the Ituri Pacification Commission, and since video
8 7 has to do with footage that was filmed during the signing
9 ceremony when hostilities ceased, do you still maintain your
10 objection?

11 MR O'SHEA: No.

12 PRESIDING JUDGE COTTE: (Interpretation) That was a
13 remarkably succinct response which does you honour, Mr O'Shea.

14 So please proceed, Prosecutor. Indeed, the Chamber
15 is of the view that the two parameters that I just spoke of do
16 allow us to ask the witness later what his opinion is of the
17 extracts that you selected. If you still have the impression,
18 Prosecutor, that some extracts are not necessary, please don't
19 hesitate to skip over them. You have the floor.

20 MR DUTERTRE: (Interpretation) Thank you. I will
21 very briefly go into private session for one particular matter.

22 PRESIDING JUDGE COTTE: (Interpretation) If this is
23 an identifying question, we will go into private session.
24 Courtroom officer.

25 (Private session at 1.09 p.m.)

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14 (Open session at 1.10 p.m.)

15 THE COURT OFFICER: We are in open session, your

16 Honours.

17 PRESIDING JUDGE COTTE: (Interpretation) Very well.

18 Prosecutor, please go on.

19 MR DUTERTRE: (Interpretation) Thank you, your

20 Honour. I would like to ask you to move to tab 7.28 in the

21 binder, extract 28 of DRC-OTP-0083-0002, reference - time-stamp

22 reference - 59 minutes 19 seconds to 59 minutes 36 seconds.

23 Transcript number DRC-OTP-1042-0049, page 1042-0067 to page

24 1042-0068, lines 626 to 628. Translation reference number

25 DRC-OTP-1041-048, page 1041-0504, line 654 to 656. Public,

1 with sound and interpretation. The extract is 17 seconds and I
2 will be playing it in its entirety.

3 (Video extract played)

4 THE INTERPRETER: (Interpretation) "No more turning
5 warlords into princes. The Ituri region must enjoy proper
6 legal administration. There must be peace in Ituri."

7 MR DUTERTRE: (Interpretation) A few questions of an
8 identifying nature and then we could go into open session.

9 PRESIDING JUDGE COTTE: (Interpretation) If we could
10 go into private session for a few moments for identifying
11 questions.

12 (Private session at 1.13 p.m.)

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23 (Open session at 1.16 p.m.)

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

1 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor,
2 please go ahead.

3 MR DUTERTRE: (Interpretation) Thank you, your
4 Honour.

5 Q. If I am to understand correctly, this event was in
6 Bunia, was it not?

7 A. Yes, quite so. It was an event - a ceremony - that
8 was held in Bunia.

9 Q. I am going to play the extract, Witness, and please
10 raise your hand when you recognise someone, if you recognise
11 someone.

12 (Video extract played)

13 THE INTERPRETER: (Interpretation) "No more spiral of
14 turning warlords into --"

15 MR DUTERTRE: (Interpretation)

16 Q. You raised your hand and I stopped at second 3 and on
17 this image is there someone who you recognise?

18 A. I recognised Afande Ngudjolo who you see on the
19 image. He is wearing a military cap.

20 Q. Now, there are many people on this image and
21 different kinds of hats. I will continue the image and you can
22 tell us which person you are speaking of.

23 (Video extract played)

24 There is a person who raises his hand and touches a
25 watch. Is that the person you are talking about?

1 A. Yes.

2 MR DUTERTRE: (Interpretation) That was 7 seconds on
3 this particular tape. Your Honour, I would like to ask for an
4 EVD number for this extract as well as the transcript and the
5 translations that are associated with it as they were reviewed
6 by the Registry.

7 PRESIDING JUDGE COTTE: (Interpretation) Court
8 officer, if you could.

9 THE COURT OFFICER: Therefore, extract 28 of
10 DRC-OTP-0083-0002 shall be given the evidence number
11 EVD-OTP-00187 and is admitted as a public exhibit. Thank you.

12 PRESIDING JUDGE COTTE: (Interpretation) Thank you.
13 Prosecutor.

14 MR DUTERTRE: (Interpretation) Yes, your Honour, I
15 will try to move on to the next extract in the few minutes we
16 have remaining.

17 Now, this is extract 7.4. 7.4. In actual fact, with
18 the time that it will take to give the references et cetera,
19 et cetera, I won't have the time to complete. I would prefer
20 to halt at this particular moment, your Honour.

21 I would like to mention as well that the legal
22 representatives will have to be ready tomorrow for their
23 questioning if that occurs, because I do not have much left and
24 I am trying to move expeditiously and select the material
25 carefully.

1 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
2 Prosecutor, and thank you for being so specific. That will
3 help with the clarity of the transcript.

4 Witness, we will conclude our hearing today. We
5 thank you for your contribution this morning and we will see
6 you tomorrow morning at 9 a.m. I would like to ask the
7 security officers to escort the two accused persons out of the
8 room. Mr Katanga, Mr Ngudjolo, we will see you again tomorrow
9 at 9 a.m. See you tomorrow.

10 (The accused exit the courtroom)

11 PRESIDING JUDGE COTTE: (Interpretation) Court
12 officer, we will go into closed session so that the witness can
13 leave the courtroom in a discreet fashion. Until tomorrow,
14 witness.

15 (Closed session at 1.22 p.m.)

16 (Expunged)

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19 (Expunged)

20 (Expunged)

21 (Open session at 1.23 p.m.)

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

24 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
25 court officer. Prosecutor, at the risk of appearing to be very

1 strict, now, you said that perhaps you would go through the
2 excerpts again, and you said that it might be necessary for the
3 legal representatives of victims to be ready and you mean that
4 for the second part of the hearing? I would imagine you have
5 about three more hours? If you are unable to tell us now,
6 don't say so, don't say anything.

7 MR DUTERTRE: (Interpretation) Well, if the truth be
8 told, it depends on the witness. It also depends on the end --
9 perhaps towards the end of the first session. I don't want my
10 colleagues to be taken short.

11 PRESIDING JUDGE COTTE: (Interpretation) And they
12 too do not wish to be caught unexpected. Very well. We will
13 see you all tomorrow at 9 a.m. Have a good afternoon, a
14 studios afternoon. The hearing is now adjourned.

15 (The hearing ends at 1.24 p.m.)