

1 International Criminal Court
2 Trial Chamber II - Courtroom 1
3 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele
4 Diarra and Judge Christine Van den Wyngaert
5 Situation: Democratic Republic of the Congo -
6 ICC-01/04-01/07
7 In the case of The Prosecutor v. Germain Katanga and
8 Mathieu Ngudjolo Chui
9 Trial Hearing

10 Wednesday, 15 September 2010

11 (The hearing starts at 9.01 a.m.)

12 (Open session)

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

15 PRESIDING JUDGE COTTE: (Interpretation) Please
16 be seated. Prosecutor, you had some information for us in
17 the presence of the accused. Please proceed.

18 MR MACDONALD: (Interpretation) Good morning,
19 your Honours. I'd like -- when I announce to the Registry
20 that I need to speak with the Chamber, I'm sure people
21 say, "Oh, my goodness, what can we expect?" But no
22 worries, I wish merely to give you a few elements of
23 information, first of all regarding the investigation of
24 the exculpatory material and then, secondly, the presence
25 of the UPF in Bogoro. I'd like to speak to these two

1 points.

2 Now, the first point is to give you an update, as
3 the Chamber wished, regarding a number of exculpatory or
4 potentially exculpatory elements that were provided to us
5 by Mr Luvengika approximately two weeks ago. The
6 investigation, your Honour, is coming along nicely, at a
7 good pace, but, but the investigation is not over.

8 We have interviewed a number of witnesses and we
9 are currently doing so. One of the interviews is nearly
10 finished and then, after that, an analysis will have to be
11 done, a more in-depth analysis, of the items of
12 information that have been gathered so far in one way or
13 another, your Honour, in light of the information that we
14 have gathered, and this is really in a very preliminary
15 fashion. The Prosecution does not believe that this would
16 lead the Prosecution to ask leave of the Chamber to hear
17 witnesses at the stage of presentation of those
18 incriminating items.

19 I discussed the matter with Mr Luvengika
20 yesterday because the people who we have been interviewing
21 are of concern to him, and I will let him tell you whether
22 or not he wishes to call any witnesses. But it stems from
23 our discussions with him yesterday that it's quite clear
24 that the Prosecution has not finished its investigation,
25 and we really don't see how the Prosecution, or possibly

1 Mr Luvengika, would be in a position to inform the Chamber
2 if witnesses were to be called by the Prosecution or by
3 the legal representatives subsequent to these
4 investigations.

5 What the Prosecution would like to suggest is
6 that, taking into account the length of these discussions,
7 that the Chamber grant us an additional period of time and
8 then we would come back before the Chamber. Now, there is
9 a requirement to disclose, and we would do that very
10 quickly. The question for the Chamber is whether the
11 evidence, or the people that the legal representatives
12 would like to call subsequent, subsequent to this
13 investigation.

14 I'll now ask my colleague, Mr Luvengika, to
15 speak, and now, given that our investigations are
16 confidential and still underway, he may not be entirely in
17 a position to tell you whether or not there will be
18 additional witnesses; that would be premature at this
19 point. So those are my comments on this point. I don't
20 know whether the Chamber has any questions for me before
21 Mr Luvengika proceeds?

22 PRESIDING JUDGE COTTE: (Interpretation) Indeed.
23 Just a clarification on the first point because I think
24 you said something about a second point, before we move on
25 to Mr Luvengika.

1 Now, you did say that the investigations were
2 proceeding nicely, and that certainly gave us reason for
3 hope. We were hoping that the investigations were nearly
4 over. Now, do you have some kind of idea of when these
5 investigations will conclude? Are we talking about eight
6 days, 15 days, three weeks? How much time?

7 MR MACDONALD: (Interpretation) Yes, the
8 investigations are coming along nicely, insofar as we have
9 finished a second interview and, once that is finished, we
10 will be in a position to have a good idea. This interview
11 will be concluded soon, very quickly, soon. And then,
12 after that, the Prosecution needs to analyse the
13 information.

14 PRESIDING JUDGE COTTE: (Interpretation) Yes, we
15 did understand that point about the analysis. Now, is
16 there some kind of other reason or how much time will this
17 take? Have staff been assigned to this?

18 MR MACDONALD: (Interpretation) My colleague
19 Mr Luvengika and I have discussed the time frame and I
20 think myself that 15 days would be sufficient for the
21 exercise we must conduct. If we could inform the Chamber
22 before that we would but I believe that 15 days will
23 suffice.

24 PRESIDING JUDGE COTTE: (Interpretation) Before
25 we deal with this, Mr Luvengika, what is your viewpoint on

1 this? Now, when you touched upon the issue the first
2 time, one of the hypotheses that you mentioned was one
3 that would mean you're asking the Chamber to have the
4 victim, or victims, be heard as witnesses. Is that
5 possibility looking more and more likely? Are you still
6 unclear? Do you think that 15 days would be a reasonable
7 time frame?

8 MS NSITA: (Interpretation) Good morning, your
9 Honours. Thank you for giving me this opportunity to
10 address the Court. I hasten to announce to the Chamber
11 this morning that I am considering tabling an application
12 this afternoon to ask for the appearance or, rather,
13 asking for leave to have four victims testify, which is no
14 problem, and we wish to reserve the possibility, after the
15 Prosecution's investigations and subsequent analysis are
16 concluded, to determine whether amongst the group of
17 people in question there might be a victim who needed to
18 be called.

19 I don't really wish to venture any further. I
20 don't wish to disturb the investigations underway, but if
21 15 days is necessary, as the Prosecutor has been asking
22 for, if that is sufficient for us to determine the
23 probability of having a fifth victim come. So there you
24 have it. That is our position for the time being. But
25 this fifth witness -- correction, victim -- may not be

1 coming, all depending on the investigations currently
2 underway.

3 PRESIDING JUDGE COTTE: (Interpretation) Thank
4 you, Mr Luvengika. Mr O'Shea, please proceed.

5 MR O'SHEA: Yes. Good morning, your Honours.
6 Thank you very much to my learned friend Mr Luvengika for
7 updating us on the situation and also Mr Macdonald for the
8 Prosecution. Let me outline for all to see what our
9 understanding of the position is.

10 Our understanding of the position is from the
11 status conference that we had before the recess and from
12 what was said on 23 August and what was said subsequently,
13 that a firm deadline was given to the legal
14 representatives of the victims to state, first of all, if
15 they were going to -- if they were intending to call
16 witnesses and, secondly, to provide information in
17 relation to that to the Chamber and to the accused.
18 That's our understanding.

19 That being the case, if I'm right about that, the
20 legal representative must ask for leave, exceptional
21 leave, if he wants to divert from that ruling with respect
22 to this so-called potential fifth witness. And, in my
23 submission, what happens on the Prosecution bench, and
24 what happens on the bench of the legal representatives,
25 are distinct and separate matters, governed, as is set out

1 in the jurisprudence and in the practice of this Court so
2 far, governed by different principles.

3 The deadline for announcing witnesses to be
4 brought by legal representatives is not dependent, in our
5 submission, on investigations of the Prosecution. It's
6 never been our understanding that that is the case.

7 Counsel for the Prosecution announced a little while ago
8 that they were in the process of investigating potential
9 exonerating evidence, indicated that they had the duty to
10 investigate both exonerating evidence and incriminating
11 elements, and that there was potential for a common
12 witness. And we expressed our position on that as well
13 earlier.

14 But, with respect, we're entitled to assume that
15 whatever investigations or measures to be taken for the
16 purposes of making a decision to call witnesses from the
17 bench of the legal representatives is in the hands of the
18 legal representatives. And it's not for the legal
19 representatives to, as it were, mandate the Prosecution to
20 do incriminating investigations on their behalf.

21 So, in our submission, certainly it is acceptable
22 that the Prosecution have a supplementary period of time,
23 a reasonable supplementary period of time, to conduct
24 their investigations. At the end of those investigations
25 they can carry out their duty, which is to disclose any

1 exculpatory evidence, and they can consider their position
2 with regard to any incriminating elements under the rules
3 and under the statute. But the position of the legal
4 representatives, on the basis of the rulings of your
5 Honours thus far, cannot in my submission depend upon
6 those investigations. It's a distinct matter.

7 Therefore we oppose an extension of time with
8 regard to the decision whether to call a fifth witness is
9 my position, but we accept that it is reasonable to have
10 an extension of time for the Prosecution to carry out the
11 investigations. If there is anything in relation to the
12 incriminating elements coming out of those investigations,
13 then it is for the Prosecution to decide what to do in
14 terms of their obligations and rights independently of the
15 position of the legal representatives.

16 Thank you.

17 MR MACDONALD: (Interpretation) With leave, your
18 Honour, regarding the last point raised by Mr O'Shea and
19 the time-lag for the conduct of investigations?

20 PRESIDING JUDGE COTTE: (Interpretation) Yes.

21 MR MACDONALD: (Interpretation) It's quite clear
22 that no time frame or deadline can be imposed by the
23 Chamber, with all due respect, when it comes to
24 investigating exonerating material. That's an ongoing
25 obligation. When the Prosecution investigates, I'm not

1 asking for an additional extension to conduct an
2 investigation of incriminating material. I'm here to
3 inform the Chamber, as the Chamber requires.

4 We have obligations under 54(1). We are meeting
5 with our obligations. This is what we have done, coming
6 before the Chamber approximately ten days or a week ago to
7 inform the Chamber that we had received material that
8 could be exonerating.

9 The only deadline that the Chamber imposed - and
10 rightly so, as it did yesterday in its ruling - was the
11 disclosure of exonerating -- of incriminating material.
12 There may have been a misspeak by my colleague on this
13 particular point. I want to be very clear about this.
14 The Chamber cannot impose a deadline for the investigation
15 of exonerating material. That's an ongoing obligation.
16 If just before a ruling there was some material that had
17 come forward, we have an obligation to disclose.

18 Regarding the second point -- I will slow down.
19 Your Honour, we took pains to inform the Chamber about ten
20 days ago of a recent development. In this particular
21 case, it is not a matter of collusion between the
22 Prosecution and the legal representatives. It's an
23 entirely unusual or special situation that involves
24 victims represented by Mr Luvengika.

25 At that particular point Mr Luvengika could have

1 done nothing, but he did inform the Prosecution of
2 potentially exonerating elements provided by victims that
3 he was thinking of perhaps calling. That is the
4 situation.

5 It may be true that Mr Luvengika must -- if the
6 deadline set has expired must make an application, but I
7 believe that our entire approach so far has been part of
8 this exercise; namely, informing the Chamber, informing
9 the parties of what is going on, informing the Chamber
10 expeditiously and, indeed, explaining why one or two
11 witnesses Mr Luvengika is not in a position to inform the
12 Chamber whether or not he will call them as a fifth
13 witness, namely because of the fact that he acted in good
14 faith and provided information that in the final analysis
15 may be used by the two Defence teams.

16 I believe there are two stages here. The first
17 one is to file an application to ask for leave to call
18 witnesses -- that the Chamber call witnesses through the
19 legal representatives and this is a discretionary exercise
20 that the Chamber must assess. And then the second stage
21 is, yes, we are late, this is why, but later the Chamber
22 will decide whether witnesses can be called by the legal
23 representatives by Mr Luvengika.

24 So, there are two stages here. We are currently
25 in the stage of informing the Chamber why we -- this is

1 the Prosecution's position in response to Mr O'Shea's
2 remarks. We do not want to infringe upon the territory of
3 Mr Luvengika.

4 MR KILENDA: (Interpretation) May I have the
5 floor?

6 PRESIDING JUDGE COTTE: (Interpretation) Yes.

7 MR KILENDA: (Interpretation) This is all very
8 interesting for our work, your Honours. We are learning
9 many good things today; good pieces of news from
10 Mr Macdonald. We hear that his investigation of
11 potentially exonerating material is proceeding nicely, and
12 then secondly Mr Luvengika has told us that he is ready to
13 call four people and possibly a fifth, if I've properly
14 understood his remarks, in light of these developments
15 that were mentioned by my learned friends opposite,
16 particularly in light of the work done by the Prosecution.

17 The only question that we would ask regarding the
18 information that is being provided by Mr Luvengika is
19 whether the people who will be testifying -- whether this
20 fifth person who may be coming after the analysis done by
21 the Prosecution, if this fifth person will be coming as an
22 exonerating witness, or an incriminating witness, but in
23 all we leave it up to you and your astute judgment. We
24 believe that the proceedings are coming along nicely with
25 the aim of coming to the truth.

1 PRESIDING JUDGE COTTE: (Interpretation) Does
2 Mr Luvengika wish to respond?

3 MS NSITA: (Interpretation) Thank you, your
4 Honour, for this opportunity to address the Court. I
5 would like to begin by responding to my colleague,
6 Mr O'Shea. I would like to reassure him that as a legal
7 representative of victims I do not depend upon the
8 Prosecution, but rather I am here and I act in light of
9 what the Chamber's instructions are.

10 With regard to this particular incident that is
11 of concern to us it is true that the Prosecution clearly
12 explained a number of matters and I do not wish to return
13 to them, but I would just like to bring to the attention
14 of the Chamber, the parties and participants, that the
15 analysis that we are thinking of has nothing to do with
16 the analysis that the Prosecution will be conducting after
17 they have finished their investigations.

18 I am preparing to call one victim, and it just so
19 happens that there have been some clarifications because
20 the victim, concerned by an investigation underway -- the
21 two victims are dealing with the same problem that is of
22 concern to me, so I must analyse the entire situation and
23 then see which one of the two will be called, or whether I
24 should even call them. So it is possible - and I was
25 saying this earlier - that the time requested by the

1 Prosecution may be the same sort of time frame that I
2 would need on my side to analyse the situation and finally
3 go back to the Chamber and announce that I am waiving this
4 fifth victim that I may call.

5 So this fifth victim may or may not be called, it
6 all depends on this investigation, but I would like to
7 draw the Chamber's attention to the fact that it would be
8 inappropriate for the time being -- well, I have not
9 finished preparing or dealing with the statement made by
10 the victim. I saw that there were two items that were
11 exculpatory that were relevant, and I thought it was best
12 to have the Prosecution investigate and then I would
13 finalise my work and inform the Chamber of the possible
14 appearance of this fifth victim. So this is the current
15 situation.

16 To respond to my learned friend, Mr Kilenda, if I
17 now begin to tell you that the fifth witness will be
18 testifying as an incriminating witness or an exonerating
19 witness, I think that I would already be violating or
20 getting ahead of myself. For the time being I have
21 nothing at hand to answer your question, I don't have any
22 specific items, but as part of my general approach I shall
23 endeavour to act as the legal representative of the
24 victims, not as some kind of second Prosecutor.

25 I will ensure that victims come and testify about

1 the events that they were subject to, about the truth,
2 what happened to them, about the events that occurred in
3 Bogoro, but I am not going to try to set them down -- set
4 them on a particular path to incriminate people. They
5 will say what they have to say in their own words, they
6 will talk about the events that they experienced in Bogoro
7 and it will up to the Chamber to come to the necessary
8 conclusions.

9 So there you have it. I thank you, your Honour.

10 PRESIDING JUDGE COTTE: (Interpretation) Thank
11 you, Mr Luvengika.

12 Mr O'Shea? And we shall endeavour to end this
13 discussion soon, which I am finding a bit unnecessary.

14 MR O'SHEA: Your Honours, simply our submission
15 is that, when your Honours made the ruling relating to 15
16 September, that ruling was based upon the rights of the
17 accused, the right to adequate time and facilities to
18 prepare a case and the right to a trial without undue
19 delay. Therefore, it is imperative that my learned
20 friend, Mr Luvengika, if he is asking for an extension of
21 time to consider his position with regard to a fifth
22 witness, provide good cause, and in our submission he has
23 not provided good cause on the explanation that he has
24 provided.

25 PRESIDING JUDGE COTTE: (Interpretation) Thank

1 you, Mr O'Shea. One moment, please.

2 Thank you for that moment so that we could
3 confer. Colleagues, on 1 September we had a very long
4 discussion at the initiative of Prosecutor Macdonald, and
5 I think you will remember that after that discussion it
6 was agreed that we would take stock of the situation today
7 and that, in the meantime, alerted by Mr Luvengika, who
8 thought that one of his victims may have exonerating
9 information, the Prosecutor told us that he was proceeding
10 with investigations. And at that time we indicated that
11 if the investigations were to conclude with confirmation
12 that there was exculpatory material, that it would be up
13 to the Prosecutor to disclose immediately those particular
14 items.

15 At that time we did not think that the Prosecutor
16 would himself call that person. We thought that
17 Mr Luvengika would be able to call the victims that he is
18 representing, which would authorise the Defence teams to
19 cross-examine the victims and elicit from them any
20 exculpatory evidence. We also indicated that if
21 Mr Luvengika did not intend to call the victim as a
22 witness, and that if the information provided by the
23 Prosecution was important for the Defence teams, either
24 one of those Defence teams could individually call the
25 victim or call the victim as a common witness.

1 Today we were taking stock, and this was
2 scheduled to be done on 15 September. The Prosecutor says
3 that the investigations are progressing nicely and that he
4 needs further time for analysis and that, if there is
5 exculpatory information, he would disclose it immediately.
6 He has just said that he did not intend to call the
7 witness, and this seems to be wise to us.

8 Mr Luvengika, I was intending to ask him to call
9 this victim as a witness; that is at least apply to the
10 Chamber for leave to call this witness, even if you have
11 to withdraw him from the list afterwards, after the
12 statement of the witness. He has just told us that he did
13 not intend to file an application to the Chamber for
14 calling that witness. So that was the first point.

15 Mr O'Shea, you based yourself on the principle
16 this morning that the deadline of 15 September, which had
17 been set by the Chamber during the status conference in
18 last July, was a fixed deadline. That is not the issue.
19 During that status conference the Chamber tried to take
20 measures that would govern our proceedings and we tried to
21 set some deadlines that seemed wise to us, taking into
22 account the progress in our proceedings.

23 And last 9 July I believe, and if I can correctly
24 remember, that I mentioned the possibility that the last
25 witnesses of the Prosecutor may raise the possibility for

1 the legal representatives to call victims as witnesses,
2 and the Chamber cannot set a fixed deadline for the legal
3 representatives unless the Prosecutor has concluded his
4 case, and, if I remember correctly also, we said that we
5 could not exclude that possibility at that time.

6 This means that insofar as it is not a late
7 presentation of exculpatory information, but an attempt to
8 indicate that exculpatory information might be disclosed
9 to you, this means also that the Prosecutor has to
10 conclude his investigations and analyse them fully and, by
11 27 September, that is on Monday at 4 p.m., he would tell
12 us -- that is 20 September -- it is 27 September,
13 actually, at 4 p.m. Mr Luvengika should be able to tell
14 us at that time whether he intends to call that victim as
15 a witness, together with the statement. When I say
16 "calling this victim as a witness," I actually meant apply
17 to the Chamber for leave to call the witness as -- the
18 victim as a witness. And we will be able to make our
19 remarks as well as the Prosecution also.

20 So let me summarise: Mr Prosecutor, please
21 continue with your investigations. You analyse them, and
22 if there is exculpatory information, you should disclose
23 it immediately by 4 p.m. on the 27th.

24 Mr Luvengika, today we are supposed to receive
25 your filings for leave to call victims as witnesses. We

1 have understood that you intend to apply to call four
2 victims, and this would lead to remarks. So on
3 27 September you will tell us what you intend to do with
4 this potential fifth victim. And I would like to seize
5 the opportunity to remind everyone that immediately after
6 the end of the Prosecution case, you will tell us whether
7 there will be other applications for testimony that, in
8 light of the testimonies of the upcoming witnesses, and
9 without being a Prosecutor bis, you will complete their
10 testimonies. Do we agree on that? I believe so.

11 Mr Prosecutor, you mentioned a second point
12 related to a question that was put to Mr Dutertre
13 yesterday by one of the Defence teams, if I remember
14 correctly. I no longer remember whether it was Mr O'Shea
15 or Mr Kilenda.

16 MR MACDONALD: (Interpretation) It was
17 Mr O'Shea.

18 PRESIDING JUDGE COTTE: (Interpretation) Yes.
19 He wanted that the OTP should give an answer on the
20 presence of UPDF troops in Bogoro.

21 MR MACDONALD: (Interpretation) Mr Dutertre
22 answered and just before the beginning of the testimony of
23 Witness P2 on Monday, you said that it would be a good
24 thing to provide further details on that issue. We will
25 give the position of the Prosecution on this issue but I

1 simply want to backtrack a little bit, your Honour, as
2 Mr Dutertre has already done, and I would like to mention
3 that once again the Defence is coming back in the middle
4 of the case on issues, procedural issues, on which the
5 Chamber has already ruled.

6 During the month of November we were obliged to
7 submit a summary of the confirmation of charges decision
8 which was the basis for our proceedings, and that is what
9 we had done -- we did. The Prosecution tried to submit
10 that the Chamber could decide that we would all work on
11 the basis of the confirmation of charges decision, and
12 Mr O'Shea is subtly coming back once again to ask us what
13 is that theory of the Prosecution case.

14 The Chamber is asking us to answer that question.
15 On Monday, your Honour, you told us that it would be
16 interesting to have the position of the Prosecution. In
17 light of that background given the -- on the issue of the
18 Prosecution theory, and the basis for the charges against
19 the accused, the position of the Prosecution beyond the
20 confirmation of charges decision has always been that
21 there were no UPDF soldiers who fought side-by-side with
22 soldiers from Zumbe known as the FNI or of Walendu Bindi,
23 that is the FRPI, on 24 February 2003 during the attack on
24 Bogoro.

25 In spite of that if, at the end of the trial, the

1 Chamber concluded that it is possible that some deserters
2 or Ugandan citizens might have fought in Bogoro, the
3 position of the Prosecution is that that would have no
4 impact on the liability of the two accused. And that is
5 the position of the Prosecution, and I hope it is clear.

6 PRESIDING JUDGE COTTE: (Interpretation) Thank
7 you, Mr Prosecutor. That is the end of that issue. We
8 will now ask the security officers to briefly escort
9 Mr Germain Katanga and Mathieu Ngudjolo out of the
10 courtroom to enable the witness to come into the room.

11 (The accused exit the courtroom)

12 PRESIDING JUDGE COTTE: (Interpretation) Court
13 officer, please, closed session so that we can bring in
14 the Prosecution witness.

15 (Closed session at 9.44 a.m.)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

1 (Open session at 9.45 a.m.)

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

4 PRESIDING JUDGE COTTE: (Interpretation) Thank
5 you, court officer.

6 I'm waiting for the accused persons to come into
7 the courtroom.

8 (The accused enter the courtroom)

9 PRESIDING JUDGE COTTE: (Interpretation)
10 Mr Witness, they are both there now. Good morning,
11 Mr Witness.

12 THE WITNESS: Good morning.

13 PRESIDING JUDGE COTTE: (Interpretation) Is
14 everything all right with you?

15 THE WITNESS: Yes, I am quite okay.

16 PRESIDING JUDGE COTTE: (Interpretation) Very
17 well. We are going to begin our hearing and you can hear
18 me well. That is the essential thing.

19 Mr Prosecutor, you can proceed.

20 JUDGE DIARRA: (Interpretation) Your Honour,
21 before you give the floor to the Prosecutor, the answer of
22 the witness was a bit nuanced. That means he said he was
23 a little fine only. I would like to know what else is
24 wrong.

25 PRESIDING JUDGE COTTE: (Interpretation)

1 Mr Witness, Madam Judge, or rather Judge Diarra, would
2 like to know whether you are doing very fine, or just
3 slightly fine?

4 THE WITNESS: I said just a bit fine, because my
5 health is not very good. Nevertheless, I have the
6 necessary strength to testify before this courtroom.

7 JUDGE DIARRA: (Interpretation) Are you
8 receiving the medical treatment that you need?

9 THE WITNESS: It was not necessary for me to take
10 any medicines. I am fine. I really do not have any
11 problem.

12 JUDGE DIARRA: (Interpretation) Thank you.

13 PRESIDING JUDGE COTTE: (Interpretation) Very
14 well, Mr Prosecutor, you have a witness who is able to
15 answer your questions and who will soon also be able to
16 answer questions from Mr Luvengika, Mr Gilissen, as well
17 as the Defence teams. You can continue, Mr Prosecutor.

18 MR DUTERTRE: (Interpretation) Good morning,
19 your Honours.

20 QUESTIONED BY MR DUTERTRE: (Continuing)

21 Q. Good morning, Mr Witness.

22 A. Good morning.

23 MR DUTERTRE: (Interpretation) I will begin by
24 confirming that the Prosecution has only three extracts
25 left to show the witness, so this will be done relatively

1 quickly, and we have decided not to show the other
2 extracts, about ten of them, so as to ensure that our
3 hearing is expeditious.

4 Please refer to tab 7.4 of the binder, your
5 Honours. This is extract 4 of video DRC-OTP-0083-0002.
6 The references for the time-stamps are 1 hour 8 minutes 36
7 seconds to 1 hour 10 minutes 57 seconds. The transcript
8 number is DRC-OTP-1042-0049, page 1042-0071 to 1042-0073,
9 lines 778 to 826. Translation DRC-OTP-1041-0484, page
10 1041-0508 to 1041-0509, lines 806 to 853.

11 This is a public extract, with sound, and I would
12 like interpretation to be provided also. I will show the
13 entire extract, and it is only 2 minutes 21 seconds, and I
14 would like the interpreters to tell us whether they want a
15 pause in the middle to catch their breath, or whether
16 I can play that footage in full.

17 PRESIDING JUDGE COTTE: (Interpretation) You
18 should be able to play that video in full, because I can
19 see to my right the interpreters nodding in agreement and
20 also to my left. Mr Prosecutor, please play the extract.

21 (Video extract played)

22 PRESIDING JUDGE COTTE: (Interpretation) I am
23 not sure that the image can be seen on all the screens.

24 MR DUTERTRE: (Interpretation) Yes, indeed that
25 was pointed out to me and yet we had tested the projection

1 this morning.

2 PRESIDING JUDGE COTTE: (Interpretation) This is
3 testing our patience, but we have a lot of it.

4 MR DUTERTRE: (Interpretation) It seems the
5 problem has been resolved. I will begin again.

6 Q. Can you see the image on your screen,
7 Mr Witness?

8 A. Yes.

9 PRESIDING JUDGE COTTE: (Interpretation) Can the
10 accused persons see the image also? Very well, let us
11 begin.

12 (Video extract played)

13 THE INTERPRETER: (Interpretation) "Signed on 18
14 March 2003. Thank you. For the FNI, Mr Ndjabu Ngabu has
15 signed."

16 MR DUTERTRE: (Interpretation) I thank the
17 interpreters. I think it was very fast, it is not their
18 fault and like for the other extracts I believe the
19 transcript has to be reviewed later on.

20 Your Honour, I would like to go into closed
21 session very briefly.

22 PRESIDING JUDGE COTTE: (Interpretation) Madam
23 Court Officer, as always at the beginning of the
24 presentation of an extract I would like us to go into
25 closed or private session, please.

1 (Private session at 9.59 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 (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 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Open session at 10.01 a.m.)

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

11 PRESIDING JUDGE COTTE: (Interpretation) I thank
12 you. Mr Prosecutor.

13 MR DUTERTRE: (Interpretation) I shall now play
14 two very brief excerpts from this extract again, and this
15 goes from time stamp from the beginning of 1.35.

16 (Video extract played)

17 THE INTERPRETER: (Interpretation) "So, general,
18 pleased to meet you. All the representatives from the
19 territory of Djugu have signed."

20 MR DUTERTRE: (Interpretation)

21 Q. So, at the outset, we have an individual who is
22 signing the document and who is indicating that he
23 responds to the name of Colonel Mathieu Ngudjolo, and then
24 we move on to an individual who takes the floor and who in
25 this screen, at time stamp 1.35, 1 minute 35, and who is

1 holding in his hand a microphone and wearing glasses, this
2 is Mr Vital Kamerhe whose name you mentioned previously,
3 or is this somebody else, this person that we see at
4 second time stamp 35?

5 A. No, this is not the minister Vital Kamerhe, no.
6 This individual was a moderator, and if you play the
7 extract a little further, you will see this.

8 Q. Very well. Do you know the name of the
9 individual who is holding the microphone? Do you recall?

10 A. No, I do not know this individual by name.

11 Q. Very well. I shall now play a second extract
12 from this very same extract; that is, from second 46 to
13 second stamp 57.

14 (Video extract played)

15 THE INTERPRETER: (Interpretation) "They are
16 very popular in this neck of the woods."

17 MR DUTERTRE: (Interpretation)

18 Q. Mr witness, do you know the name of the
19 representative of PUSIC, who is sitting down? We see him
20 here at second stamp 57. He is sporting sunglasses and a
21 hat with a red band that seems to be --

22 A. Yes, that is indeed Chief Kahwa. That is the
23 head of PUSIC.

24 MR DUTERTRE: (Interpretation) Mr President, I
25 would like to assign a public EVD number to this extract,

1 in addition to the transcripts and associated translations
2 as corrected by the Registry.

3 PRESIDING JUDGE COTTE: (Interpretation) Madam
4 Court Officer, please.

5 THE COURT OFFICER: Extract number 4 of the
6 ERN-DRC-OTP-0083-0002 shall be given the EVD number
7 EVD-OTP-00188 and is admitted as a public exhibit.

8 PRESIDING JUDGE COTTE: (Interpretation)
9 Prosecutor, you may proceed.

10 MR DUTERTRE: (Interpretation) Thank you,
11 Mr President. I would now like to move on to tab 7.5 of
12 the binder, extract 5 from the video DRC-OTP-0083-0002. I
13 repeat: 0083-0002. A reference with regard to the time
14 stamp in its entirety, 1 hour 036 minutes, 1 hour
15 0 minutes 36 seconds. I apologise. One hour, this is a
16 mistake. One hour 12 minutes 25 seconds to 1 hour
17 12 minutes 30 seconds. I shall repeat: 1 hour 12 minutes
18 25 seconds to 1 hour 12 minutes 30 seconds. Transcript
19 number DRC-OTP-1042-0049, page 1042-0074, line 857 to 858.
20 Translation DRC-OTP-1041-0484, page 1041-0510, lines 884
21 to 885. This is a public excerpt that I shall play with
22 sound and interpretation. It only lasts four seconds and
23 I shall replay the extract were the need to arise, because
24 it is somewhat speedy.

25 (Video extract played)

1 THE INTERPRETER: (Interpretation) "So are the
2 Lendu and Bindi present?"

3 MR DUTERTRE: (Interpretation) Once again, we
4 shall need to complete the transcript. Mr Witness -- I
5 would like to move into private session, Mr President.

6 PRESIDING JUDGE COTTE: (Interpretation) Court
7 officer, might we move into a brief private session,
8 please.

9 (Public session at 10.13 a.m.)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

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 (Expunged)

5 (Expunged)

6 (Open session at 10.15 a.m.)

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

9 PRESIDING JUDGE COTTE: (Interpretation) I thank
10 you.

11 Mr Prosecutor, you may proceed.

12 MR DUTERTRE: (Interpretation) Yes,
13 Mr President. I would like to assign an EVD number to
14 this extract and also to the associated transcript and
15 translations as corrected by the Registry.

16 PRESIDING JUDGE COTTE: (Interpretation) With no
17 further questions to be asked?

18 MR DUTERTRE: (Interpretation) No further
19 questions.

20 THE COURT OFFICER: Your Honours, extract 5 of
21 the video shall be given evidence number EVD-OTP-00181 and
22 is admitted as a public exhibit. 189, I apologise.

23 PRESIDING JUDGE COTTE: (Interpretation) I thank
24 you, court officer.

25 Mr Prosecutor, you may proceed with the following

1 extract, which is 8.2.

2 MR DUTERTRE: (Interpretation) Yes,
3 Mr President. This will be the last extract to be played
4 by the Prosecution in its examination-in-chief, extract 2
5 from the video. This is a new video, DRC-OTP-0080-0006,
6 and the reference with regard to the time-stamp in its
7 entirety - for the video in its entirety - 5 minutes 59
8 seconds to 16 minutes and 16 seconds. Transcript number
9 DRC-OTP-1042-0010, pages 1042-0013 to 1042-0016, lines 55
10 to 174. Translation DRC-OTP-1041-0442, pages 1041-0446 to
11 1041-0449, lines 62 to 202. This is an extract with
12 sound, I would request interpretation and, Mr President, I
13 would request that this be shown as confidential and I can
14 express my desires in private session.

15 MR O'SHEA: Before we go into closed session,
16 Mr President, just to notify the Chamber and the
17 Prosecution that there is an objection in relation to this
18 extract. However, I will take the course as I did with
19 the previous extract, which is to allow my learned friend
20 to take the witness through the extract and in the light
21 of -- in the light of what the witness says we may or may
22 not modify our position.

23 PRESIDING JUDGE COTTE: (Interpretation) Unless
24 I am mistaken, Mr O'Shea, this is an objection that you
25 did not tell us about in your mail dated 3 September at

1 16.12.

2 MR O'SHEA: If that's correct, then there's an
3 error on my part. I was under the impression it was one
4 which had been notified.

5 PRESIDING JUDGE COTTE: (Interpretation) Well, I
6 do note that the Defence for Germain Katanga is objecting
7 to 8.18, 8.20, 6 -- the numbers are too speedy for the
8 interpreter to follow, but extract 8.2 was not presented
9 as being objected to on your part.

10 MR O'SHEA: In fact, your Honours, there were
11 two emails.

12 PRESIDING JUDGE COTTE: (Interpretation) Yes,
13 indeed, there was another mail dated 6 September at 12.41.
14 You did add the extract 8, but you said 8.20. That's what
15 I read in the mail, so this is a mistake. We should read
16 8.02, because there is no extract 8.20.

17 So we shall move into private session for a few
18 moments for the Prosecutor to be able to explain to us why
19 this is to be shown as a confidential item.

20 (Private session at 10.22 a.m.)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page 33 expunged. Private session.

1

2

3

4

5

6

7

8

9

10

11 Page 34 expunged. Private session.

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page 35 expunged. Private session.

1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Open session at 10.29 a.m.)

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

10 PRESIDING JUDGE COTTE: (Interpretation) Thank
11 you, court officer. Now, just for the public's
12 information, we are -- we were in private session and we
13 were discussing whether this video extract would be shown
14 privately or in public. It will be shown publicly.

15 Prosecutor, please proceed.

16 MR DUTERTRE: (Interpretation) I will be
17 starting this footage at second 19, and I will play this
18 video extract until time-stamp 1 minute, with sound and
19 interpretation.

20 (Video extract played)

21 THE INTERPRETER: Message from the Swahili
22 booth. The interpreter in the Swahili booth cannot find
23 the line, the line reference to begin.

24 PRESIDING JUDGE COTTE: (Interpretation)
25 Prosecutor. Prosecutor, if we could just go back.

1 Mr Prosecutor, if we could go back because the Swahili
2 interpreter is having some difficulty finding the specific
3 line reference in the transcript and the translation.

4 MR DUTERTRE: (Interpretation) Line 72, I
5 believe. I believe it's line 72, where the extract
6 begins.

7 PRESIDING JUDGE COTTE: (Interpretation)
8 Translation of this video extract, at line 72.
9 DRC-OTP-1041-0446, second 19. We are providing this
10 information to facilitate interpretation.

11 MR DUTERTRE: (Interpretation) My thanks to the
12 Swahili booth for pointing out this problem.

13 (Video extract played)

14 THE INTERPRETER: (Interpretation) "Today we are
15 honoured to have with us an important person, a VIP, here
16 in the town of Bunia, Mr Kitembo. Mr Kitembo, welcome.
17 Reply: Thank you. The purpose of today's meeting is to
18 meet with the journalists that are here. As you can see
19 each one of them will be giving his name before asking a
20 question about the prevailing situation within this
21 political party.

22 Now, to begin, we will start with this side and
23 the gentleman will be introducing himself. I'm John
24 Kanyanyo, I'm a journalist. Sir, I'd like to ask you a
25 question about the assignment -- about the agreement you

1 signed yesterday, an agreement for the cessation of
2 hostilities in the Ituri district."

3 MR DUTERTRE: (Interpretation) I stopped at 1
4 minute 12 seconds, and I would like for us to briefly go
5 into private session.

6 PRESIDING JUDGE COTTE: (Interpretation)
7 Briefly, we will go into private session. Private session
8 please, court officer.

9 (Private session at 10.34 a.m.)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

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 (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 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Open session at 10.38 a.m.)

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

23 PRESIDING JUDGE COTTE: (Interpretation) Thank
24 you. Prosecutor.

25 MR DUTERTRE: (Interpretation) Your Honour, I

1 will now play this video bit -- segment by segment, and
2 this will allow the interpreters to find their spot
3 regularly. And I will begin at second 21 until second 34.
4 So this should be at approximately line 72 in the French
5 transcript.

6 (Video extract played)

7 THE INTERPRETER: (Interpretation) "Today we are
8 honoured to have a very important person with us from
9 the -- who is right here in the town of Bunia.
10 Mr Kisémbó. Mr Kisémbó, welcome."

11 MR DUTERTRE: (Interpretation)

12 Q. Witness, at second 34, who is the person on the
13 left of the screen who is wearing a light-coloured
14 short-sleeved shirt?

15 A. That is Mike Arerenge, a journalist for Voice Of
16 America.

17 Q. And the person he is speaking to on the
18 right-hand side of the screen, he is saying to this
19 person, "Mr Kisémbó." Do you know the full name of
20 Kisémbó?

21 A. Yes, his name is Kisémbó Bitamara.

22 Q. And what did he do within PUSIC at that
23 particular time?

24 A. If I remember properly, Mr Kisémbó was the Chief
25 of Staff of Chief Kahwa within their party. He played a

1 very important role within this particular group, PUSIC.

2 Q. I will continue to play this video from 34
3 seconds to 1 minute 01. 1 minute 1 second.

4 (Video extract played)

5 THE INTERPRETER: (Interpretation) "The purpose
6 of our presence here is to meet the journalists and you
7 can see that they are here with us. Each one of them will
8 be giving us his name before asking a question about the
9 situation prevailing within this political party. To
10 begin, we will start with this side, on this side, and the
11 gentleman will introduce himself. I am John Kanyanyo.
12 I am a journalist."

13 MR DUTERTRE: (Interpretation)

14 Q. Witness, at 1 minute 1 second we see a person
15 who is wearing a light brown vest and a short-sleeved
16 shirt. He says that his name is John Kanyanyo. Might you
17 know which organisation or which agency or which newspaper
18 he worked for?

19 A. At the time, Mr Kanyanyo was a journalist
20 working for The Voice of Germany. He was based in Beni.

21 MR DUTERTRE: No interpretation)

22 (Video extract played)

23 THE INTERPRETER: (Interpretation) "I would like
24 to ask you a question about the agreement that you signed
25 yesterday, an agreement regarding cessation of hostilities

1 in the Ituri district. We've learned that there were
2 killings in a number of villages and these killings led
3 you to take another position on this agreement. Could you
4 tell us what this is all about?

5 Thank you very much, Mr Kanyanyo. On the 19th we
6 signed an agreement asking -- calling upon the various
7 groups involved in the war here in Ituri, namely, the
8 Lendu group, the Hema group, the Alur group, and even the
9 group of Aru nationals, to end the hostilities, and as
10 well the members the PUSIC political group. That stands
11 for the Party for the Unity and Safeguarding of the
12 Integrity of the Congo. We asked them to agree to sign,
13 to put down their arms, live together as brothers, and
14 begin dialogue within Ituri. We were the target of very
15 violent attacks. People entered our territory and
16 massacred people, 52 people; badly injured 23 people. The
17 injured are still at the hospital in Bunia. Many
18 inhabitants fled. More than 320 people ..." Correction:
19 "Cows were stolen. And we are asking what is this all
20 about? Things are going all wrong. Our Lendu brothers
21 are invading our territory."

22 MR DUTERTRE: (Interpretation) We could replay
23 this particular passage, or I will go on and, in any
24 event, the Registry will complete the transcript,
25 following the usual procedure. I would now like to resume

1 at 2 minutes 40 seconds. We were at approximately line 86
2 or 87 -- correction, 96 or 97 in the French transcript.

3 (Video extract played)

4 THE INTERPRETER: (interpretation) "They killed
5 people. They killed -- they stole cows. And this is why,
6 at 9 this morning we sent out a press release and we
7 expressed our position. First of all, we spoke to the
8 special representatives of the general secretary of the
9 United Nations. And we also spoke or called upon the head
10 of the delegation of the government, Mr Vital, and we're
11 in the presence of the MONUC representatives as well at
12 the airport, as well as people of the UPDF. We explained
13 the problem. We said to them that we had just signed
14 together, in good faith, an agreement to rebuild Ituri and
15 the Congo of tomorrow.

16 Our requirements: First of all, that MONUC
17 immediately send an investigation team to the village and
18 this group draft a report for everyone, including the UN.
19 That's our first demand. Secondly, we are asking that all
20 injured people be cared for by the MONUC forces. People
21 can't just manage on their own when it comes to medical
22 care. MONUC has to take care of them. Thirdly, we are
23 calling upon the UPDF to resume security, to bring back
24 security in this area. Fourth, we are calling upon all
25 Lendu and Ngiti combatants to return to their territory in

1 their respective administrative districts and then they
2 can organise in their own headquarters to ensure that
3 there are no further clashes, because once they are back
4 in their area, the Hema can go back and they will be in
5 their villages."

6 MR DUTERTRE: (Interpretation) Four minutes
7 34 minutes. We certainly understand the difficulty that
8 this represents for the court reporters and interpreters.

9 I'll start up again after this short break.

10 (Video extract played)

11 THE INTERPRETER: (Interpretation) "... so that
12 there is no possibility of a clash. Those are the three
13 or four points that we are asking for from the UPDF, MONUC
14 and the government. If they are not complied with, we
15 will not be able to keep on sitting down at this same
16 bargaining table while our children and wives are
17 undergoing atrocities. We hope that the UPDF and the
18 government work hard for security. If that is the case,
19 we will see a number of actions implemented, starting this
20 evening, if -- if they comply with our requests."

21 MR DUTERTRE: (Interpretation) Once again, we'll
22 pause at 5 minutes 12 seconds. I will resume showing this
23 video. We are at approximately line 132 in the French
24 transcript.

25 (Video extract played)

1 THE INTERPRETER: (Interpretation) "My name is
2 Marc Uzele Kasamba from the Bunia RTNC station. First of
3 all, I would like to ask the political commissioner to
4 give the names of the people where the incidents occurred.
5 Then I would like to ask you. Now, some people were
6 fleeing. Some people were leaving the town of Bunia last
7 evening and even the day before, and the populace was
8 afraid in the Mudzipela neighbourhood. What is the
9 explanation for this, since the incidents that you speak
10 of did not occur in the town of Bunia? Are you telling us
11 that these incidents which you've just mentioned, whether
12 they occurred in those places, these incidents that are
13 terrorising the people? People are fleeing. They were
14 Hema people. Now, can you confirm these incidents that
15 have caused panic amongst the Hema people?"

16 MR DUTERTRE: (Interpretation) I will stop at
17 5 minutes 56 seconds.

18 PRESIDING JUDGE COTTE: (Interpretation)
19 Prosecutor, we have only four minutes, only four more
20 minutes of recording time.

21 MR DUTERTRE: (Interpretation) I will show
22 another minute or two and then we can have our break. We
23 are at line 142 of the French transcript.

24 (Video extract played)

25 THE INTERPRETER: (Interpretation) "Thank you

1 very much, Mr Kasamba. I am sure that you are familiar
2 with the Ituri region. If the truth be told, there are
3 two different facts here. First of all, it is true that
4 the Lendu and the Ngiti invaded the territory of Bembey,
5 from Bembey all the way to the mountain that is called
6 Mont Bleu and not far from Mandro, and they killed the
7 inhabitants. That happened on the 19th over the night.
8 Yesterday at about 10 in the evening, some rumours were
9 going around in the town. People were saying that the
10 Lendu were getting ready to assault the town, and that is
11 why you see that inhabitants in Simbiliabo and Mudzipela
12 neighbourhood were fleeing and trying to find a spot to be
13 protected. And the strategy was set upon by the Lendu was
14 to encircle the town of Bunia. So you'll see that to the
15 north, at Lipri, for example, people are moving about.
16 They feel threatened. In Zumbe, people are moving around;
17 they feel threatened."

18 MR DUTERTRE: (Interpretation) I stopped at
19 7 minutes 01, and I believe this might be the right moment
20 to have our break.

21 PRESIDING JUDGE COTTE: (Interpretation) Well,
22 the break that we must have. Indeed, we only have a
23 minute or so of recording time. We will suspend the
24 hearing for half-an-hour and resume at 11.30.

25 Before we take our break, and to ensure that the

1 break is used properly, I would like to draw Mr Gilissen's
2 attention to the fact that some questions that he was
3 thinking of asking may need to be rephrased so as to avoid
4 any possibility of identifying the witness because of his
5 line of activity, his line of work, at the time of the
6 events.

7 Security officers, could you please escort
8 Mr Katanga and Mr Ngudjolo out of the courtroom. Accused,
9 we will see you in half-an-hour.

10 (The accused exit the courtroom)

11 PRESIDING JUDGE COTTE: (Interpretation) Court
12 officer, we will go into closed session so that the
13 witness can leave the courtroom.

14 (Closed session at 10.57 a.m.)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Open session at 10.58 a.m.)

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

1 PRESIDING JUDGE COTTE: (Interpretation) Thank
2 you, court officer. The hearing is suspended and we will
3 resume at 11.30.

4 (Recess taken at 11.00 a.m.)

5 (Upon resuming at 11.35 a.m.)

6 (Closed session)

7 (Expunged)

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Open session at 11.37 a.m.)

18 PRESIDING JUDGE COTTE: (Interpretation) Thank
19 you, court officer. One small point of clarification
20 before handing over to the Prosecutor. During our
21 exchanges this morning, on the victim who may have a
22 potentially exculpatory information, I referred to
23 statements made during the status conference of last July,
24 the 9th. If necessary, you can refer to transcript number
25 168 of 9 July 2010, page 24, lines 3 to 13, where it is

1 indicated that the legal representatives would be allowed
2 to apply for leave beyond 15 September and specifically
3 after the presentation of the Prosecution case, that is
4 regarding witnesses to be called to provide additional
5 information.

6 This will be dealt with on a case-by-case basis;
7 that is regarding specifically the victims who might have
8 exculpatory information to provide.

9 Mr Prosecutor, you can now continue.

10 MR DUTERTRE: (Interpretation) Thank you, your
11 Honour. I will continue with the projection of this
12 footage. We will resume at 7 minutes 1 second and this
13 corresponds to line 148 and 162 of the French transcript.

14 (Video extract played)

15 THE INTERPRETER: (No interpretation).

16 MR DUTERTRE: (Interpretation) There is no
17 interpretation. I believe the interpreters needed to
18 locate the segment.

19 PRESIDING JUDGE COTTE: (Interpretation) And the
20 person speaking was so expansive that we could not even
21 intervene, so we will resume at 7 minutes 01 seconds.

22 (Video extract played)

23 THE INTERPRETER: (Interpretation) "You will
24 realise that Bembey has fallen and there is another group
25 of fighters two kilometres away from Dele. They have set

1 fire to Tchai and they are also at Mateu. They are even
2 near Shari. This means that the entire town of Bunia is
3 considering itself as under siege and the civilian
4 population cannot go to their farms. They cannot leave
5 Bunia. They are suffering and if you follow the situation
6 closely you will realise that even in Bogoro roadblocks
7 have been set up and also in Tchai and Makabo. Why are
8 the fighters erecting the roadblocks if they do not have
9 the intention of inflicting suffering on the people?"

10 MR DUTERTRE: (Interpretation) Line 162 of the
11 French transcript.

12 PRESIDING JUDGE COTTE: (Interpretation) The
13 beginning of your intervention was not understood, because
14 you were not speaking into the microphone. So line 6 of
15 the French transcript, page 46, line 16.

16 MR DUTERTRE: (Interpretation) We stopped at
17 7 minutes 41 seconds, your Honour.

18 PRESIDING JUDGE COTTE: (Interpretation) Very
19 well.

20 MR DUTERTRE: (Interpretation) And this
21 corresponds to line 162-163 of the French transcript.

22 PRESIDING JUDGE COTTE: (Interpretation) That is
23 indeed the case.

24 MR DUTERTRE: (Interpretation) I will continue
25 with the projection of that footage.

1 (Video extract played)

2 THE INTERPRETER: (Interpretation) "My last
3 point: Can you confirm to us the number of victims? You
4 have just spoken about 52 dead and that is quite high. If
5 people actually go there to cross-check, are they going to
6 find the dead bodies there, or have the bodies already
7 been buried? In any case, what actually happened? You
8 have said that you are a stakeholder in the agreement to
9 re-establish peace in Ituri, but you also say that each
10 group should stay in their own territory. What kind of
11 reconciliation is this, because you are talking about
12 reconciliation, and then saying that each group should
13 stay in their area.

14 Thank you very much. I want to clarify two
15 points so that everyone should understand throughout the
16 world. We want Bunia town to be demilitarised. This
17 means --"

18 MR DUTERTRE: (Interpretation) 8 minutes 31, and
19 I believe that it corresponds to line 172 of the French
20 transcript.

21 I was saying that I stopped at 8 minutes 31, line
22 172 of the French transcript.

23 PRESIDING JUDGE COTTE: (Interpretation) Very
24 well. Mr Prosecutor, please continue.

25 (Video extract played)

1 THE INTERPRETER: (Interpretation) "We want the
2 RCD/ML to come here and express their difficulties. They
3 should tell us what APC is, because the APC of the RCD/ML
4 fought here. We want Thomas Lubanga, who was chased out,
5 to come back here as the president of his party and tell
6 the inhabitants of the entire world why he is waging war.
7 That is why we want Bunia to be demilitarised.

8 Secondly, there is space for people to live in
9 Tchai, that is for all the different communities. We want
10 those people to live in peace. A Lendu should be able to
11 protect other Lendus, and Hemas should be able to protect
12 other Hemas. That is why we are asking them to go back to
13 their areas. The military and political leaders should
14 come here to dialogue. You asked me whether we are sure
15 about the 32 people who are supposed to have died. In
16 fact, that is why we are asking MONUC, a neutral
17 organisation, to go there and find out how many people
18 were killed. If that number is higher, okay. If it is
19 lower than our number, then we will apologise, but the
20 main thing is that people were killed. Even if it is only
21 one person who died, the MONUC would tell everyone that
22 only one person died."

23 MR DUTERTRE: (Interpretation) I stopped at
24 9 minutes 52 seconds, and this seems to correspond to line
25 196 of the French transcript.

1 (Video extract played)

2 PRESIDING JUDGE COTTE: (Interpretation)

3 Unfortunately, we can still hear the hum and it even
4 started before the break. Mr Prosecutor, please continue.

5 MR DUTERTRE: (Interpretation) It would be a
6 good thing to conclude, your Honour. I do not have the
7 French transcript.

8 PRESIDING JUDGE COTTE: (No interpretation)

9 MR DUTERTRE: (Interpretation) I will now
10 project the end of the extract from 9 minutes 52 seconds.

11 (Video extract played)

12 THE INTERPRETER: (Interpretation) "However, we
13 denounce the fact that MONUC was quiet in Bogoro almost
14 three weeks later and Bogoro is still in distress. There
15 are bodies decomposing in the open air. People are taking
16 human blood and smearing it on the walls of houses. Why
17 is it that MONUC cannot go there and carry out
18 investigations and publish their results? We realise that
19 MONUC is keeping quiet and they are not doing their work
20 unless pressure is put on them."

21 MR DUTERTRE: (Interpretation) That is the end
22 of the extract, your Honour, and I would like to have an
23 EVD number assigned to that extract. Given that this
24 extract contains the initial sequence which we did not
25 show, and I will tell you the reasons, it has to be

1 confidential, and then we can take out the sequence that
2 was shown and assign a number to it which can be changed
3 later on.

4 PRESIDING JUDGE COTTE: (Interpretation) Thank
5 you, Mr Prosecutor. Regarding the confidentiality on
6 public nature of the extract, we will come back to that
7 later.

8 Mr O'Shea, you wanted to raise an objection?
9 Please, you can go ahead.

10 MR O'SHEA: Yes, and I keep in mind that the
11 matters that I am going to deal with are of a technical
12 nature, do not -- need not concern the witness. And I
13 bear in mind that he's indicated that he's "un peu bien"
14 in the sense that he's not feeling well, but he has the
15 force to testify. But we can let him have a five-minute
16 rest while I make this submission, your Honours.

17 PRESIDING JUDGE COTTE: (Interpretation) Very
18 well. This will simply mean that the two accused will
19 have to briefly leave the courtroom to enable the witness
20 to go out, and then they will return after the objection
21 has been heard.

22 Court officer, let us go into closed session for
23 the witness to leave the courtroom before this procedural
24 matter is discussed.

25 (The accused exit the courtroom)

1 (Closed session at 11.53 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 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Open session at 11.54 a.m.)

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

24 (The accused enter the courtroom)

25 PRESIDING JUDGE COTTE: (Interpretation) Very

1 well. Mr Katanga and Mr Ngudjolo have now taken their
2 seats. And, Mr O'Shea, we are now waiting for you to make
3 a brief submission.

4 There is a humming noise. I do not know whether
5 everyone can hear it. Madam Court Officer, that is quite
6 testing, particularly if it's going to last for another
7 one-hour-and-a-half. If something can be done about it,
8 then that would be better for everyone. We also have
9 music.

10 Mr O'Shea, please.

11 MR O'SHEA: Mr President, for this particular extract I
12 will be bringing the Court's attention back to our famous
13 Rule 68 and, just to summarise the position in relation to
14 this extract, we essentially have the interview by certain
15 journalists -- (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 MR DUTERTRE: (Interpretation) I would like to
22 remind Mr O'Shea that we are in open session and we should
23 not provide identifying information.

24 PRESIDING JUDGE COTTE: (Interpretation) The
25 Chamber noted the immediate reaction of your collaborator,

1 so we should take the measures to redress the situation.

2 Mr O'Shea, please continue.

3 MR O'SHEA: Now, this gentleman, Kisembo
4 Bitamara, has obviously a position where, at the very
5 least, he has an interest in putting a good light on one
6 side of the conflict and a bad light on the other side of
7 the conflict, so he is prima facie, obviously depending on
8 the words that he pronounces, operating from a position of
9 bias.

10 What he says is -- he says that Lendu are coming
11 into his territory. He refers to an incident, essentially
12 an unidentified incident involving a village, where cows
13 were stolen and where there were killings. He invites
14 Lendu and Ngiti combatants to return to their territory.
15 He makes a general statement to the effect that children
16 and wives -- children and their wives are undergoing
17 atrocities. He goes on to refer to the fact that Lendu
18 and Ngiti have invaded the territories of Bembey, he says
19 not far from Mandro, and have killed inhabitants. And he
20 says that was on the 19th. He then goes on to talk about
21 Bogoro.

22 I'm obviously not going into every detail, but
23 into the significant details. He then goes on to talk
24 about Bogoro and talks about the fact that bodies are
25 being left to decompose and that blood is being smeared on

1 the walls.

2 Now, Rule 68. Rule 68 allows for prior recorded
3 testimony of a witness to be presented in court: (a) If
4 the witness who gave the previously recorded testimony is
5 not present before the Trial Chamber, both the Prosecutor
6 and the Defence had the opportunity to examine the witness
7 during the recording; or (b) if the witness who gave
8 previously recorded testimony is present before the Trial
9 Chamber, he or she does not object to the submission of
10 the previously recorded testimony and the Prosecutor, the
11 Defence and the Chamber have the opportunity to examine
12 the witness during the proceedings.

13 In my submission, it is clear, on the plain reading of
14 those words, that the person who gave the prior recorded
15 testimony (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged), that would distort the meaning of Rule 68, in
24 my submission, and would be a nonsensical interpretation,
25 because it would open the floodgates, which is exactly

1 what Rule 68 is designed not to do.

2 The only question, in my respectful submission,
3 is: Are we dealing with testimony in this instance? And
4 I will offer this definition to the Chamber of
5 "testimony." Testimony, in my submission, is an account
6 given by a person of the commission of crimes. I would
7 put it as simply as that and I give the definition in that
8 way bearing in mind the object and purpose of Rule 68.

9 That's not a definition which I would invite your
10 Honours to cast in stone but a definition of guidance.
11 And, as your Honours frequently say, one has to look at
12 these things on a case-by-case basis, and I think that
13 that expression can also apply to this rule. Your Honours
14 have, on a previous occasion, mentioned the fact that
15 there is distinction between testimony and a speech. This
16 was a ruling that your Honour gave earlier to one of my
17 earlier submissions, which of course is quite a sensible
18 distinction.

19 One can also distinguish a situation where you
20 have a video excerpt which involves a combination of
21 factors. It might involve a person speaking, together
22 with the view of dead bodies, together with the view of
23 people packing their bags, or whatever. The kind of
24 things that we have seen in some of these video extracts,
25 where your Honours might be able to say, "Well, there are

1 parts of this extract which enable this extract to be
2 brought in through another route than Rule 68." So it is
3 not the testimony, per se, which we are dealing with here,
4 but the images.

5 But what we are dealing with here is simply the
6 image of a person's face telling a story. And there is
7 essentially no difference between that, and if that person
8 were here in this room telling the same story. The only
9 real difference is that we are deprived of the opportunity
10 of cross-examining Mr Kisémbó.

11 I would invite your Honours to bear in mind a
12 general principle of law, something which I would assert
13 as a general principle of law at any rate, which is
14 referred to as the best evidence rule.

15 Your Honours will be aware that there is somebody
16 else in these proceedings who is in a position to provide
17 the information provided in this excerpt on oath, and if
18 your Honours need further clarification I can go into
19 closed session to clarify that, but I don't think I need
20 to.

21 By going into the details of circumstantial
22 evidence relating to the attack on Bogoro, the blood on
23 the walls and the decomposing bodies, this witness is
24 putting himself or, sorry, this person is putting himself
25 in the category of somebody who is giving an account which

1 goes directly to the issues which your Honours are to
2 decide, and in that sense he should be here.

3 That's my submission.

4 PRESIDING JUDGE COTTE: (Interpretation) I thank
5 you, Mr O'Shea. Mr Prosecutor.

6 MR DUTERTRE: (Interpretation) Thank you,
7 Mr President. If I have understood correctly, what was
8 said yesterday and today, when these matters about Bogoro
9 cannot be admitted when they are not directly linked to
10 Bogoro, they can't be admitted either, and when they are
11 admitted to Bogoro neither can they be admitted. With
12 regard to the question of authenticity I do not believe
13 that this is an issue here. The Defence has admitted to
14 the fact previously; I don't think this is an issue.

15 As regards to the relevance, I would like to
16 reassure my learned colleague, and provide clarification
17 to the Chamber, why is it that we played this extract,
18 this ten-minute extract in its entirety? It is because
19 those people speaking were introduced at the outset; the
20 dates were provided at the beginning and, indeed, there is
21 certain information provided with regard to attacks on the
22 subject of Bembey, Tchai and at a given point in time
23 Bogoro is made mention of in the beginning and then in the
24 middle and then at the end again Bogoro is mentioned.

25 However, what is of interest to the Prosecution,

1 it is why we showed this extract, it is not, and I
2 reassure my learned friend, it is not the mention made of
3 Bembey and Tchai. The Prosecution is not going to base
4 its arguments on this extract and then talk about these
5 possible attacks. No, the interest of this extract is
6 other.

7 The point of showing this extract is to provide
8 information on Bogoro, the Bogoro information which is
9 mentioned halfway through and at the end, and for which
10 the contextual information has been provided at the outset
11 of those first -- of those ten minutes of the extract.

12 So, Bogoro is only -- the only matter of interest
13 to the Prosecution in this extract, and principally, or in
14 the main, we have two types of information here. If I
15 refer to the transcript, there is indeed a piece of
16 relevant information here. You will note that "Even in
17 Bogoro road blocks have been set up." That is what is
18 indicated at lines 159 and 160, and we know that a number
19 of extracts has been shown -- have been shown previously.
20 I do not want to argue on the merits of this, but in one
21 of these extracts Mr Dark from the FRPI recognised the
22 fact that a civilian cannot move around with anything,
23 even during times of peace, he says.

24 Now, so they were talking about roadblocks, about
25 moving around in Bogoro, and this is relevant with regard

1 to who took control of Bogoro and who exerted power in the
2 area of Bogoro at the time of the attack in February 2003.

3 So, this is very relevant indeed, and this has a
4 link with the second point mentioned on the subject of
5 Bogoro, indeed. At the end Mr Kisémbé Bitamara makes
6 mention of the fact that the decomposed bodies -- he
7 mentions the decomposed bodies and the role of MONUC and
8 he goes on to add that blood - human blood - has been
9 smeared on the walls of the buildings.

10 I would like to draw your attention to the fact,
11 Mr President, that this information is highly relevant
12 with regard to the events of which you are seized and,
13 what is more, they are even more relevant -- it is even
14 more relevant in the sense that it can corroborate what a
15 witness who will be called to testify might indicate when
16 talking about a visit made to Bogoro a few days only after
17 the intervention of Kisémbé Bitamara. And I do not want
18 to influence the witness. I might move on to this point
19 in private session, Mr President.

20 PRESIDING JUDGE COTTE: (Interpretation) Court
21 officer, please, in order to allow the Prosecutor to bring
22 his demonstration to a close.

23 (Private session at 12.13 p.m.)

24 (Expunged)

25 (Expunged)

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 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Open session at 12.15 p.m.)

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

23 MR DUTERTRE: (Interpretation) So, indeed, this
24 is a relevant element that can be cross-referenced with
25 other evidence that the Prosecution intends to provide

1 and, as a result, deserves to be admitted into evidence.

2 As I said, it is not Bembey that will be made use
3 of by the Prosecution. However, we could not provide our
4 cross-referencing by slicing this up. We had to play it
5 in its entirety.

6 I would also say that when I speak of items of
7 evidence that the Prosecution intends to produce, this is
8 not only testimony but also written reports that are
9 provided in the list of evidence and that will enable us
10 to substantiate and corroborate what was said about Bogoro
11 in this video excerpt.

12 So, Mr President, your Honours, I say that it is
13 totally erroneous to say in regard to a second aspect that
14 we are attempting to show that this is a testimony that
15 was recorded previously and that it might have been
16 circumventing Rule 68 of the Rules of Procedure and
17 Evidence and that this is what the Prosecution has tried
18 to do.

19 This person is not a witness. Mr Kitembo
20 Bitamara is not a witness and this excerpt has not been
21 produced as an attempt to enter it into evidence before
22 the Chamber. We are showing what went on in 2003, and I
23 believe that the Court was not yet built at that time.

24 This is not a witness. This is not a testimony
25 that falls within the scope of Rule 68. This is, on the

1 contrary, Mr President, your Honours, documentary evidence
2 and it is hearsay, and it should be treated as such, and
3 you will ascribe a certain amount of importance to it once
4 all evidence has been admitted.

5 We are not talking about admissibility here. We
6 are talking about the importance that should be ascribed
7 to this piece of evidence, and between having a witness
8 that -- who might relate to us what he remembered of a
9 conversation between Kitembo and journalists, between that
10 and having the actual recording of the conversation, when
11 we talk of this, I believe that we should suggest or we
12 should select the second option, because, to my mind, this
13 is a whole. It can be considered to be a whole and it is
14 true to reality.

15 However, when talking of hearsay, it is no more
16 than that, and if the Defence does wish to cross-examine
17 the witness, it will be able to submit what it intends to
18 do in line with the interests it ascribes to certain
19 things that have been said. And it's only in Gide that
20 there is murder without motivation. Of course, there's
21 always cause and effect, and it is behoves the Trial
22 Chamber to determine the matter with regards to the
23 evidence in its entirety, and what Mr Kitembo Bitamara
24 says should not be assimilated with testimony in a
25 hearing. This is not what the Prosecution is attempting

1 to do. This is quite simply documentary evidence that the
2 Defence can explore itself and will be able to explore
3 through the witnesses that shall appear. I made mention
4 of a certain witness, and the Defence will have full and
5 ample possibility of doing so.

6 So, my submissions, I hope, have not been too
7 lengthy and are now complete.

8 PRESIDING JUDGE COTTE: (Interpretation) Maître
9 Kilenda.

10 MR KILENDA: (Interpretation) Yes, thank you,
11 your Honours. The Prosecutor is saying that Mr Kitembo is
12 not a witness. Now, the Defence for Mr Mathieu Ngudjolo
13 is wondering what credibility your Chamber will ascribe to
14 his story.

15 Secondly, the Prosecutor is saying that the
16 information provided at the end of the extract on Bogoro
17 and also in the middle, and then once again at the end of
18 the extract, well, he's saying that this is the whole
19 point of showing this extract. However, this piece of
20 information, your Honour, is unilateral and has not been
21 submitted to an adversarial debate. And how is it that a
22 Chamber such as yours can take this into consideration
23 when basing your conviction of this -- on this?

24 The Prosecutor, in third place, is saying to us
25 that this evidence should be deemed to be documentary

1 evidence. I shall refer you, your Honour, to paragraph 97
2 of your decision 1665 which prescribes, I quote, that "If
3 a documentary item of evidence which is linked to a
4 specific witness, the party calling this witness can then
5 enter this into evidence via this witness. However, this
6 should not be mentioned before it is being presented
7 through the witness."

8 However, this witness who is appearing before you
9 is not directly linked to this item of evidence, in no
10 manner is he so linked. So, we do not see on what basis,
11 what legal plausible basis, your Court can take this into
12 account.

13 There was another matter raised in private
14 session by the Prosecutor - I'm sure you know what I am
15 talking about - and I do not want to mention identifying
16 information here. The Prosecutor talked about a witness
17 who will be called to testify, who will, it seems, be
18 called to corroborate this story that we've just heard.
19 However, the Defence will have time to cross-examine this
20 witness and this would enable us to examine what he said.

21 However, Mr President, we do not believe that it
22 is possible to attribute or assign an EVD number to this
23 extract and we submit, therefore, that all the submissions
24 made by Mr O'Shea can be supported by our Defence team.
25 And I thank you.

1 PRESIDING JUDGE COTTE: (Interpretation) I thank
2 you, Mr Kilenda. Would Mr O'Shea like to reply --

3 MR DUTERTRE: (Interpretation) Yes,
4 Mr President, I thank you. Briefly, I believe that
5 Witness P12 might also be questioned by the Defence.

6 To return to the submissions of Maître Kilenda, I
7 believe I have covered the others but I am only
8 concentrating on one here. With regard to paragraph 97,
9 the link between this item of evidence and the witness has
10 been explored only too clearly when we were in private
11 session and, indeed, this should be treated like hearsay
12 with regard to this witness. This is hearsay. This is
13 intrinsically linked to this witness. And I thank you,
14 Mr President.

15 PRESIDING JUDGE COTTE: (Interpretation)
16 Mr O'Shea, a last observation on your part.

17 MR O'SHEA: I certainly don't want to teach my
18 grandmother to suck eggs, so I'll be careful how I express
19 myself, but the notion of hearsay is repeatedly raised in
20 this Court as the ultimate shield to Defence objections.
21 It doesn't get my learned friend around Rule 68, I'm
22 afraid. When Rule 68(a) talks about a recording, a
23 recording is what we're dealing with here. And hearsay is
24 exactly what it says: It's saying something that you've
25 heard.

1 We're going through an artificial exercise by placing too
2 much emphasis on this notion of hearsay, because it's not
3 the witness who is telling us what he has heard; it is the
4 recording, the TV screen, which is telling us what it has
5 heard. And I can't cross-examine a TV screen. It can't
6 possibly be asserted that the prejudice to (Expunged)

7 (Expunged)

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 MR DUTERTRE: (Interpretation) I do apologise, but we are
19 in open session.

20 MR O'SHEA: All right so far. In fact, still all right, I
21 would assert. Bogoro was not one of the places mentioned.
22 So, it's a completely artificial exercise to say that this
23 is hearsay, and hearsay is admissible. We have to look at
24 what is the proper meaning of Rule 68. If this is
25 testimony, then it should not be admitted under these

1 circumstances because it is not being admitted under the
2 circumstances as set out in Rule 68. The only way it can
3 be admitted, in my submission, is if it is not testimony.
4 And to say that it is not testimony, in our respectful
5 submission, would be artificial.

6 PRESIDING JUDGE COTTE: (Interpretation) So this
7 is the last retort, because otherwise it will give rise to
8 another one.

9 MR DUTETRE: (Interpretation) Yes, indeed,
10 Mr President. We are not talking about Rule 68 here at
11 all, which refers to Article 56, which really talks about
12 testimony. We're not talking -- we're not falling within
13 the scope here of that at all. Somebody can hear
14 something and remember it or write it down or record it,
15 and better still if it is recorded because it is more
16 faithful. However, it should be treated as hearsay, and
17 he can be questioned on it by the Defence. So, really
18 is -- there really is a similarity here. And we're not
19 talking about a testimony before the Court. This does not
20 fall at all between -- under Article 68 -- or Rule 68.

21 PRESIDING JUDGE COTTE: (Interpretation) May the
22 Defence have the last word.

23 MR GILISSEN: (Interpretation) Mr President,
24 might I just say one little word?

25 PRESIDING JUDGE COTTE: (Interpretation) Just

1 one little word because I do believe that we have broached
2 this in the past. We would listen to you with interest,
3 of course, but I believe this is ground covered
4 previously.

5 MR GILISSEN: (Interpretation) Of course. Yes,
6 that's what I wanted to say. That's what I wanted to
7 underscore: I believe that we have already covered this
8 ground. That's one thing and I think, Mr President --

9 PRESIDING JUDGE COTTE: (Interpretation) No, I
10 believe that it has been refined somewhat over time.

11 MR GILISSEN: (Interpretation) I believe that
12 we're reading from the same hymn sheet here. I believe
13 that this discussion is becoming increasingly refined.

14 My learned friends are trying to make it even
15 more intricate and, in so doing, they are trying to hark
16 back to previous discussion and also to your decision,
17 because you have handed down a decision in the matter.

18 So I said I was going to be brief. I am not
19 going to return to the issue of hearsay. What I do
20 believe is that we did not really -- what I want to bring
21 here is that we are talking about documentary evidence, so
22 it is Article 69(3) that comes into play here, article of
23 the Statute. What is an item of documentary evidence? It
24 is anything that contains information and this is a form,
25 something that contains information that is admissible

1 under the conditions that you are aware of and, of course,
2 if there is any doubt in the matter there is a grey
3 relevant decision, that is Chamber I in the Lubanga case,
4 they reunited four conditions for this, but you know them
5 all.

6 However, what has been said, Mr President, I am
7 under the impression that it has been said in order to
8 circumvent this even better. I believe that you will be
9 called upon to determine this matter, Mr President. What
10 we are talking about here is admissibility in this regard,
11 but I am under the impression that we are covering old
12 ground again.

13 Of course it might make me younger, but I would
14 rather we didn't.

15 PRESIDING JUDGE COTTE: (Interpretation)
16 Mr O'Shea, you are the person who began with this
17 objection and so you shall have the last word.

18 MR O'SHEA: You must clearly understand that I am
19 not going back on previous rulings. I think that's clear
20 and I will spare you any other submissions.

21 PRESIDING JUDGE COTTE: (Interpretation) Thank
22 you. Thank you to all parties. My first observation is
23 as follows: This Chamber has a job to do. We have to
24 work with parties who enjoy the practice of law. We are
25 lawyers.

1 Secondly, Mr O'Shea had the good idea of
2 suggesting that the witness not be present during this
3 discussion, which might be somewhat beyond him, unless he
4 had some yearning to become a student of law. We also see
5 that Mr O'Shea is a man with a very agile mind, because
6 more than once he has led us to the grounds that are known
7 as Article 68, and this perhaps is a little bit excessive.
8 We will get back to that point in a few moments.

9 My next observation is that since 23 August we
10 have been examining, often with difficulty, a number of
11 video excerpts and by way of these video excerpts we are
12 listening to remarks made by third parties who were filmed
13 because of the very remarks they were making. They are
14 making remarks and that is why the Prosecution wished to
15 introduce this information during his
16 examination-in-chief, and some of you wished to
17 cross-examine on these points following your own
18 objectives as Defence counsel.

19 Very briefly, let us address the judicial
20 aspects; namely, the challenge to admissibility of this
21 relevance. Now, this video extract refers, at least
22 twice, to Bogoro and that is quite clear; it's obvious.
23 We will not dwell on relevance. The authenticity, there
24 are no doubts there. We know who is making the remarks
25 and we know where the video comes from, the video that

1 allows us to hear these remarks today.

2 Let us move to Article 68 and behind Article 68,
3 and Mr O'Shea's analysis, the prejudice that may be caused
4 to the Defence, that is important and that is what the
5 Chamber must bear in mind. We said on 24 August, and I
6 quote the oral ruling that Mr O'Shea referred to earlier,
7 we said, "With regard to remarks made during a speech, or
8 by people who are present when videos are being recorded,
9 the Chamber would remind all that we must make a clear
10 distinction between testimony and speeches, or just
11 ordinary commentary.

12 Furthermore, the Chamber reminds all that in this
13 particular case the people who gave these speeches or made
14 these comments did not make them with having in mind a
15 legal trial being -- that they would be used in a trial.

16 Now, the Chamber would also make reference to
17 ruling 2362 of September 3, 2010. One moment, if you will
18 indulge me. The Chamber thinks it would be useful to
19 refer you to ruling 2362 dated 3 September 2010,
20 paragraphs 10, 11 and on. These paragraphs dealt with the
21 question of whether it was possible to admit portions of
22 testimony of Witness 166 and Witness 219. You know the
23 answer, but I would refer you to paragraphs 10 and 11 that
24 are relevant. They speak of testimony.

25 With regard to remarks that are made in the video

1 extract that we have just viewed, we cannot call this
2 testimony in the legal sense of the word. The person in
3 question is speaking on his own behalf, completely unaware
4 that his remarks one day might be used in a court of law.

5 Thus, like 24 August last, we are confronted with
6 a particular item of information and the probative value
7 thereof may appear to some people to be weak, insofar as
8 Mr Kisémbu is not a neutral person - he is speaking of the
9 Lendu, of the Ngiti, he is talking about specific militia
10 that Mr Katanga and Mr Ngudjolo belong to. All the same,
11 there is some probative -- the probative value seems to be
12 sufficient because, unlike the decision ruling yesterday,
13 really, when we bear all the factors in consideration
14 there seems to be an imbalance -- there seemed to be an
15 imbalance yesterday, and it goes without saying that at
16 the end of the proceedings, once a position must be taken
17 on all evidence, the Chamber will make its own assessment
18 in a general context of everything that you have
19 presented; by you, by you, perhaps by you, Mr Luvengika.

20 The Chamber will assess the appropriate weight to
21 be given to these remarks by Mr Kisémbu. He is not
22 testifying in the legal sense of the word and the Defence
23 could conduct an indirect examination -- cross-examination
24 by way of this witness, it is not totally impossible, so
25 we shall give an EVD number to this video extract 8.2, and

1 the Chamber wishes this item of evidence to be public in
2 nature and, Prosecutor, in the cooperation with the
3 Registry, and using the usual arrangements, we shall
4 ensure that -- correction, you shall ensure that the first
5 parts that could be identifying are not to be shown in
6 that particular extract.

7 If that means classifying it as confidential, and
8 then later reclassifying it as public, you can do that.
9 You know what our aim is. This is an aim that is shared
10 by all parties and participants who wish our proceedings
11 to be held in public as much as possible.

12 Court officer, if we could begin with a
13 confidential EVD number.

14 THE COURT OFFICER: EVD-OTP-00 --

15 PRESIDING JUDGE COTTE: (Interpretation) Please
16 proceed.

17 THE COURT OFFICER: Your Honours, it would be
18 EVD-OTP-00190 and this will be the confidential version.

19 PRESIDING JUDGE COTTE: (Interpretation)
20 Confidential. This will be confidential, Madam Court
21 Officer. We will not have two versions. The court
22 officer was asking me that question. I think it is
23 important for you to know what we were just speaking of.
24 We will not have two versions. At one particular point we
25 will have a single version, a public version. Let us not

1 overburden the case file.

2 THE COURT OFFICER: This case, once the proper
3 version of the video is released in eCourt, it will be
4 classified as public. Thank you.

5 PRESIDING JUDGE COTTE: (Interpretation)
6 Mr Katanga, Mr Ngudjolo, once again we would like to ask
7 you to leave the courtroom so that the witness may enter
8 and we will see you back in a few moments.

9 (The accused exit the courtroom)

10 (Closed session at 12.42 p.m.)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Open session at 12.43 p.m.)

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

25 (The accused enter the courtroom)

1 PRESIDING JUDGE COTTE: (Interpretation) Now the
2 two accused are back with us. Witness, welcome back after
3 that short interruption. We had a procedural discussion
4 while you were away and now Mr Dutertre, please.

5 MR DUTERTRE: (Interpretation) I had finished my
6 questions and my examination-in-chief, but I do have three
7 technical points to raise. Really, it is a matter of case
8 management.

9 PRESIDING JUDGE COTTE: (Interpretation) Please
10 proceed.

11 MR DUTERTRE: (Interpretation) My first point is
12 as follows: It appears to me that there was an email sent
13 on 12 July that indicated that the videos themselves would
14 receive an MFI number.

15 I don't know whether that should be done now,
16 whether the numbers should be assigned now, or whether
17 that is done by the Registry. It's an email that was sent
18 to everyone which set out the procedure to be followed for
19 video excerpts shown in hearings.

20 PRESIDING JUDGE COTTE: (Interpretation) Now, I
21 don't have that email in mind. You say that there was
22 some talk of assigning an MFI number to the entire video?

23 MR DUTERTRE: (Interpretation) No, the videos in
24 their entirety. I quote, "It was also asked of the
25 participants to create a hyperlink to that information and

1 later an MFI number would be assigned."

2 PRESIDING JUDGE COTTE: (Interpretation) We are
3 being told that we must speak more slowly. Unless my two
4 colleagues are able to assist me, I have no kind of answer
5 what to -- to give you. Where did this email come from?

6 MR DUTERTRE: (Interpretation) From Ms Toumaj.

7 PRESIDING JUDGE COTTE: (Interpretation) Very
8 well. I think we will ask the lady who is replacing
9 Ms Toumaj to look into that. When it comes to categories
10 and classifications, there are some very complicated
11 aspects and I find myself unable to get through that maze
12 of rules and regulations. It's very difficult for a
13 French Judge such as mine -- such as me.

14 Court officer, if you could look into that. If
15 you could do so, I would be delighted.

16 Now, your second issue?

17 MR DUTERTRE: (Interpretation) Another email --

18 THE INTERPRETER: Date given too quickly.

19 MR DUTERTRE: (Interpretation) Email

20 12 July 2010 at 14.33.

21 Now, my second point, your Honour, is as follows.
22 We have reviewed the corrected and edited transcripts from
23 Monday's hearing and we saw that remarks made in the
24 extracts were not reflected in the transcript of the
25 hearing, not in their entirety, and it had been agreed,

1 yesterday it was -- no, rather, Monday, it had been agreed
2 that the transcripts would be completed in comparison with
3 the transcripts that were checked by the Registry.

4 Now, on the version that we saw, for example, for
5 extract 1.4, the transcript does not reflect the remarks
6 that were made in their entirety on the tape.

7 PRESIDING JUDGE COTTE: (Interpretation) All the
8 preparatory work that was done before the testimony of our
9 current witness was intended to allow the parties and
10 participants and the Chamber to have an official
11 translation from the Registry of the transcripts of the
12 videos that were shown to us, to the video extracts that
13 were shown to us. This official translations done by the
14 Registry has allowed our interpreters to work in much
15 better conditions than when we compare the situation to
16 that of Witness P30.

17 Furthermore, it was agreed that the transcripts
18 -- when the final version of the transcripts were
19 prepared, reference could be made to the official
20 translations so that the transcripts would be of use. So,
21 similarly, just as sometimes transcript corrections are
22 made because inaccuracies may have crept into a
23 transcript, or elsewhere, similarly, could you please
24 point out any passages where there are major shortcomings
25 and to liaise with the court officer, who has a difficult

1 task to do, with a view to having the transcripts
2 corrected or fleshed out? It is in our interest. We all
3 want to have transcripts that are a faithful reflection of
4 what we have heard during the hearing.

5 Third point?

6 MR DUTERTRE: (Interpretation) Your Honour.
7 With your leave, your Honour, so we would verify the fact
8 that the interloc -- a great deal of explanations may be
9 necessary. It might be better for the Registry to proceed
10 by way of copy and paste. I think that would take far
11 less time, and all the extracts are involved.

12 PRESIDING JUDGE COTTE: (Interpretation) I think
13 this involves -- and I think you did this very well at the
14 beginning of each excerpt. So, you will have to clearly
15 indicate the passages that you gave reference numbers for
16 and the line reference numbers. If that was the case, if
17 it was something that we all heard, it was a long and
18 painful process for all of us, but I really think that
19 this procedure must be followed for us to have a useful
20 final product.

21 MR DUTERTRE: (Interpretation) Extract 1.5, we
22 used the improved version, the version with improved
23 sound, but it's shorter than the original version. As a
24 result, the line references that we gave were not
25 accurate. We will review all of that calmly and after a

1 bit of a rest and we will ensure everything is proper, and
2 the Registry will be able to proceed by way of copy and
3 paste.

4 PRESIDING JUDGE COTTE: (Interpretation) Very
5 well, but make sure that each time you have the impression
6 that it is important for your learned friends to be aware
7 of these things, please consult with them to avoid any
8 later challenges.

9 MR DUTERTRE: (Interpretation) Certainly, it
10 will be done by way of email.

11 PRESIDING JUDGE COTTE: (Interpretation) Fine.

12 Witness, Mr Jean-Louis Gilissen, who is the legal
13 representative of a number of victims, will now be asking
14 you a number of questions.

15 Mr Gilissen, in accordance with our ruling 1665,
16 informed the Chamber of a number of questions that he
17 intended to ask and, in the eyes of the Chamber, these
18 questions were indeed related to the very specific
19 interests of the victims he represents.

20 Mr Gilissen, please proceed. We are in open
21 session and we await your questions.

22 MR GILISSEN: (Interpretation) Thank you very
23 much, your Honours.

24 QUESTIONED BY MR GILISSEN: (Interpretation)

25 Q. Good morning, Witness. I am Jean-Louis Gilissen

1 and I represent the interests of a number of victims,
2 child soldiers, in this particular trial. As the
3 Presiding Judge just told you, I represent the very
4 specific interests and limited interest of my victims. I
5 will be very restrictive in terms of my questions. I
6 would like to reassure you immediately that I do not have
7 a great many questions to ask of you.

8 Now, these questions deal with extract 2.4 which
9 received an open EVD number, EVD-OTP-00162 and to allow --
10 171, and to allow everyone to have reference to this
11 particular matter, I make reference to line 403. This is
12 an extract that we will all recall. It had to do with a
13 televised discussion that was held in a garden on
14 30 March 2003. One of the people taking part in the
15 discussion introduced himself. He said he was the
16 Brigadier-Commander Mago Paluku.

17 Witness, I would like to ask you, Mr Mago Paluku,
18 who says he was a commander of a brigade, to the best of
19 your personal knowledge, did he belong to a militia group
20 and, if you know, which militia did he belong to?

21 A. When we viewed the video, the footage that was
22 shown on RTNC, when Mago Paluku identified himself, he was
23 a member of the FRPI, because he himself said that. He
24 gave his title. He also added and said his superiors were
25 there as well. If you view the footage again, you will

1 identify him.

2 Q. That is exactly so, Witness. He was very clear
3 about that and, since the extract is public in this
4 infamous line, line 403, he went on to say that he led the
5 children and I would like to know - this is the point of
6 my question - to your personal knowledge in this group,
7 this militia group called the FRPI, were there children in
8 this group?

9 A. It's difficult for me to answer that question,
10 because I don't have tangible evidence. *All the same, you
11 see, anyone would take up arms. But it is difficult to
12 identify children in these groups because we would see
13 children with weapons and they would be doing just any old
14 thing. I really don't have additional information to add.

15 If there are people who have proof or who have
16 photographs I believe it would be better for you to
17 investigate that and you will have the information you are
18 seeking.

19 Q. I thank you, Witness. This allows me to reduce
20 the scope of my questions, because I certainly do not want
21 to ask you what your feeling was, or to give testimony
22 about something you don't know about. Absolutely not.

23 Now I would like to speak more generally, if the
24 Chamber allows me. In the Ituri region, when this
25 programme was being broadcast from a garden of a radio

1 station in February or March of 2003, the children who
2 took up arms, the children you mentioned, was that
3 something seen in all the militia groups? Was it a sort
4 of generic or general phenomenon, or was it more
5 restrictive? To the best of your own knowledge. If you
6 are not able to answer just tell me that you don't know.

7 PRESIDING JUDGE COTTE: (Interpretation)

8 Mr O'Shea, please go ahead.

9 MR O'SHEA: First of all, the video 2.4 is dated
10 30 March 2003, and I think that my learned friend is
11 constrained to the time frames of the evidence which has
12 been presented by the Prosecution, and is not entitled to
13 take this witness back to February on a video which is not
14 dated February. That's the first point.

15 And the second point is that this witness is not
16 an expert, is not an expert on children or child soldiers,
17 and he has made that abundantly clear in his last
18 response. So, a general question of the nature of "Were
19 there or were there not in Ituri in all the armed groups,"
20 is too general, because by being so general it seeks an
21 opinion from the witness, and it is focused on a time
22 frame that we do not have notice that this witness is
23 going to talk about on the basis of his personal
24 knowledge.

25 We have noticed that this witness (Expunged),

1 (Expunged), yes, there is
2 a parameter within which questions may be asked about
3 those video extracts, about what people say in those video
4 extracts, but in my submission the legal representatives
5 at this stage of the proceedings are not entitled to
6 expand the parameters of what the Defence has notice this
7 witness is going to deal with. And we certainly do not
8 have notice that this witness is going to deal with
9 general impressions or opinions of general situations in
10 armed groups in the month of February, based on his
11 personal knowledge. That's not something that we have any
12 notice that either the legal representatives or the
13 Prosecution are going to deal with through this witness.

14 PRESIDING JUDGE COTTE: (Interpretation)

15 Mr O'Shea, Mr Gilissen will give his point of view
16 regarding the time frame - the reduced time frame - that
17 you have just mentioned.

18 Furthermore, unless I am mistaken, it seems to me
19 that when Witness P30 testified Mr Gilissen asked similar
20 questions of a general nature relating to the presence of
21 child soldiers in Ituri, and the Chamber did not have any
22 objection to that.

23 In the French transcript, page 77, line 11, the
24 witness has just said, "It would be difficult for me to
25 answer that question, because I do not have any tangible

1 evidence. However, you know that just about everyone
2 could take up weapons, but it is difficult to identify
3 children in the group because it was possible to see
4 children with weapons and they did anything they wanted.
5 I really do not have any further information to add."

6 For a few days now we have been hearing the
7 testimony of a witness who, at the time of the events, had
8 an occupation that led him to move about in Ituri and the
9 representative of the victims who are child soldiers are
10 trying to elicit information from this witness who has
11 proven to us that he is capable of providing objection --
12 objective and sometimes critical information on what he
13 witnessed or heard. So, that is not a problem for us.

14 So, Mr Gilissen, please ask your question, but
15 you have to limit the time frame and we have just viewed
16 video 2.4 which was filmed on 30 March 2003. Please, we
17 should be talking about March 2003.

18 MR GILISSEN: (Interpretation) Thank you, your
19 Honour. I will rephrase in light of Mr O'Shea's
20 objection.

21 Q. Mr Witness, I think you heard my question.
22 I can repeat it to you briefly, and it may be rephrased so
23 that everybody should understand me. On 30 March 2003,
24 that brigade commander said that his job was to lead
25 children. Did that personally surprise you? Does this

1 correspond to a reality that you were able to perceive, or
2 was this something that could be perceived in Ituri in
3 March 2003? That is the fact that children should be
4 members of militia groups or should bear weapons.

5 A. Thank you. I have understood your question
6 well. We are taking into account this period when
7 Commander Mago was making his remarks. What he said was
8 this: If we are considering this period, that is the
9 month of March 2003, it is true that we were in the town
10 and the children were moving about with weapons. Yes, it
11 is true. There was also the demobilisation programme and,
12 when that programme was implemented, it was not out of
13 nowhere.

14 Children were seen with arms and when Commander
15 Mago Paluku spoke he was referring to that issue, but at
16 that time I did not focus on this because what I was doing
17 at that time did not require me to concentrate on that
18 particular aspect. That period passed by, but you can
19 also look or see in other extracts children making
20 comments. I believe you can consult the OTP and view the
21 other extracts.

22 Q. Thank you very much, Mr Witness. I have seen
23 the other extracts, but they were not necessarily shown in
24 open session. What I want is that the information that
25 you have should be provided in open session, and you are

1 referring to video extracts that were not shown in open
2 session, and the Defence would find that this is unfair.
3 That is why I need to elicit from you some information on
4 what we refer to as child soldiers.

5 So far we have talked about children and armed
6 children. Regarding what you saw, Mr Witness, because you
7 have told us that you saw something, did you see children
8 who were armed? Based on your knowledge, were there
9 children who were clearly younger than 15 years old? Did
10 you see any?

11 A. That is a good question but, in order to have
12 precise information, it is necessary to speak with those
13 young people and ask them how old they are. Sometimes it
14 is difficult to say. When you see someone, it is
15 difficult to know their age. I was not an expert who
16 could have had further knowledge on this aspect. We
17 talked about these extracts, but in Ituri there were
18 children who were armed, but I did not concentrate on
19 that. I did not discuss with those children to ask them
20 the specific details.

21 Q. Thank you, Mr Witness, and I congratulate you
22 for your caution. I am going to ask you one of my last
23 questions. Please assist us. When you are talking about
24 children, what age bracket are you referring to? When
25 does a person cease to be a child? 14 years, 15 years,

1 20, 21? That is just according to you, your own personal
2 criteria, which I will not dispute. I am simply trying to
3 understand you so as not to betray your opinion when I
4 will have to plead on the basis of your testimony.

5 A. I think that in Africa and in Congo, as from the
6 age of 15 years, well, you can no longer call somebody a
7 child, but at 13/14 years someone would still be a child,
8 because they are not very wise or intelligent yet, but
9 regarding the age of someone, before speaking with that
10 person, you can see them, you can be mistaken, but, if you
11 speak with that person you can be certain of their age, if
12 you ask the person, but you could also have other
13 problems.

14 Sometimes, the children do not know their own
15 ages. No one told them. Even the parents did not tell
16 them when they were born. That's another problem. A
17 child may tell you, "I am so many years old," but it is
18 possible that the child did not attend school and is not
19 able to count, but it is possible to ask questions and get
20 to know their ages.

21 Q. Mr Witness, you would allow me to elicit
22 information that is more objective. Amongst the children
23 that you saw who were armed, did you personally see young
24 women, young girls, who were child soldiers?

25 A. In March 2003, I do not remember having seen any

1 young girls. Young boys, yes, but not girls.

2 MR GILISSEN: (Interpretation) Your Honours, I
3 do not know whether I have leave to ask the witness
4 whether he saw what I am asking at a different time, or
5 whether the Chamber can ask the question.

6 PRESIDING JUDGE COTTE: (Interpretation) Well,
7 it is no problem to us, but this is something that it is
8 important for the ascertainment of the truth. Mr Witness,
9 I will ask you the question: February 2003,
10 December 2002, that is during a broader time frame, when
11 you travelled around, did you personally see any
12 combatants who appeared to you to be young and by
13 "combatant" I am referring to people who were armed, who
14 seemed to belong to a group? Once again, please answer
15 if -- only if you know.

16 THE WITNESS: What I can say is this: It is
17 possible that I could have seen girls in the UPC, but
18 these were older girls, one or two adult women who had a
19 certain level of intelligence. As you know, for the
20 combatants of the FNI and FRPI, from the 6th in 2003, they
21 were fighting against the UPC, but I was no longer there
22 myself.

23 PRESIDING JUDGE COTTE: (Interpretation)
24 Mr Witness, the question that I put to you was much more
25 limited. The question was as follows: In November 2002,

1 December 2002, January, February, March 2003, were you
2 able to see any children who appeared to you to be young
3 or very young and who were bearing arms and who could have
4 been considered to belong to a group, rather than just
5 moving around on their own? That is the question.

6 THE WITNESS: I saw children.

7 PRESIDING JUDGE COTTE: (Interpretation) So
8 during that period of time you were able to see children
9 who appeared to you to be young and armed, without any
10 further details; is that correct?

11 THE WITNESS: Yes, I saw young people who were
12 carrying weapons and others who handed in weapons.

13 PRESIDING JUDGE COTTE: (Interpretation) And
14 when you saw these young people, and please try to
15 remember, are you in a position to tell us today whether
16 those children were members of the UPC, the FNI, the FRPI,
17 or any other group? The question that was put to you a
18 short while ago was whether this was a current and
19 widespread practice in Ituri. That is what we would like
20 to know.

21 THE WITNESS: Yes, in all the groups which were
22 present in Ituri, there were young people who were bearing
23 weapons. There was no exception to that. There were no
24 structures that would limit age. It was possible to see
25 children carrying weapons. This phenomenon was usual in

1 all the groups.

2 PRESIDING JUDGE COTTE: (Interpretation)

3 Mr Gilissen, do you have any further questions?

4 MR GILISSEN: (Interpretation) Thank you, your
5 Honour.

6 Q. Mr Witness, the children that you have just
7 talked to us about, these armed children who were members
8 of groups, all the armed groups, can you tell us whether
9 there was any particular way of identifying them? Were
10 they known by any particular terminology; that is, when
11 someone was referring to them, how were they called?

12 A. They were called kadogos. This is the word that
13 was used to refer to them, "kadogos".

14 Q. Thank you, Mr Witness. One last question, if
15 the Chamber allows. In the extract that we have talked
16 about, mention is made of a colonel. Were there many
17 colonels present during that debate, or was there only
18 one?

19 A. I believe that everyone introduced and
20 identified themselves in the course of that meeting. I
21 believe that the person who identified himself as a
22 colonel was Mathieu Ngudjolo Chui of the FRPI. He was
23 talking about his group. I believe that is what I can
24 remember. This is the only colonel I can remember who was
25 there at that time.

1 Q. Still within that context, when Mr Mago Paluku
2 stated - and that is line 400 of the French handwritten
3 translation - when he stated, "I am the brigade commander
4 of the FRPI and I am leading the group, together with the
5 colonel sitting there," so that we should not be mistaken,
6 who is referred to as this one who is sitting? He was
7 referred to maybe correctly or incorrectly, but who did
8 Mr Paluku refer to?

9 A. I believe that Mago Paluku was referring to
10 Mathieu Ngudjolo of the FRPI. This means that at that
11 time he was talking about Mathieu Ngudjolo of the FRPI.

12 MR GILISSEN: (Interpretation) Thank you, your
13 Honours, I have no further questions.

14 Thank you very much, Mr Witness. I had told you
15 that I would be brief. Thank you for your testimony.
16 Please believe me, the information that you are providing
17 to us who were not present in Ituri in 2003 are absolutely
18 important.

19 PRESIDING JUDGE COTTE: (Interpretation)
20 Mr Luvengika, you did not indicate that you were going to
21 ask a question. Do you wish to do so now?

22 MR NSITA: (Interpretation) Thank you, your
23 Honour. Yes, indeed, initially, I had not intended to ask
24 this witness any questions. However, in the course of his
25 testimony and in light of everything that we have seen and

1 heard, I have just one question to ask him. It is a point
2 of clarification on Bogoro.

3 PRESIDING JUDGE COTTE: (Interpretation) Very
4 well, ask your question. The Chamber will ask a question
5 and then we will adjourn, so that Mr O'Shea will begin his
6 cross-examination tomorrow. Mr Luvengika, please, and be
7 brief.

8 QUESTIONED BY MR NSITA: (Interpretation)

9 Q. Good afternoon, Witness. I am Fidel Luvengika.
10 I am the legal representative of the victims of Bogoro,
11 and I would like to ask you a question, but -- I am
12 referring to video DRC-OTP-0081-0004. That is extract
13 number 2 and extract number 3. For number 2, it is
14 General Kale Kayihura who is speaking and who mentions
15 various localities: Songolo, Lipri, Tchai, Bogoro. That
16 is the places which are supposed to have been attacked and
17 people killed there. In extract number 3 it is
18 Commander Dark who confirms that the FRPI was in control
19 of Bogoro.

20 I am not going to ask you questions on what those
21 speakers said, but based on your knowledge and
22 professionalism, given that you have said that apart from
23 your main activity on the basis of which you came to
24 testify, you have other activities linked to the same
25 profession. And in answer to a question asked by my

1 learned colleague, Mr O'Shea, wondering -- who was
2 wondering whether you practice or you carried out your
3 activities only in Bunia, you said that you had worked out
4 of Bunia, you talked about Tchomia, Kasenyi and others.

5 My question to you is this: As part of your
6 work, during the period that is of interest to us, did you
7 have the opportunity to travel to Bogoro or to travel
8 through Bogoro?

9 A. At that time I can say that I only heard about
10 Bogoro and, as you have seen in the video extracts, people
11 said that there was a problem in Bogoro, that people had
12 been killed in Bogoro, but, personally I heard what people
13 were saying. And Dark, for example, said that he was the
14 commander of Bogoro.

15 Regarding travelling through Bogoro, I travelled
16 through Bogoro once, but after what happened there I do
17 remember the date, but when will -- and I will tell you
18 the details when we go into closed session. I remember
19 the day that I travelled through Bogoro, but this was
20 after that incident, after the killings that had taken
21 place in Bogoro.

22 Q. Yes, thank you, Mr Witness, but before we go
23 into closed session, I would like to ask you another
24 question. Generally speaking, was this during the month
25 of March, or was this after the month of March?

1 A. It was after March.

2 Q. And was this before the departure of the UPDF
3 troops?

4 A. It was after the departure of the UPDF troops.

5 MR NSITA: (Interpretation) Thank you. And
6 thank you, your Honour. I have no further questions for
7 this witness.

8 PRESIDING JUDGE COTTE: (Interpretation) Thank
9 you, Mr Luvengika. The Chamber will ask its question
10 tomorrow morning, because we do not have any time left.

11 Before we adjourn, once again, we have to be
12 clear about what we want to do with the last exhibit
13 produced by Mr Dutertre. We agreed that it had been cut
14 in the beginning, so the Chamber will consider as an
15 exhibit only that part that was cut. We agree on that.
16 That is the essential thing.

17 Mr Witness, thank you for your contribution this
18 morning. We will meet again tomorrow morning. I will ask
19 you one question. Then it will be the turn of Mr O'Shea
20 on behalf of the Germain Katanga Defence team who will
21 start his cross-examination.

22 Security officers, please escort Mr Ngudjolo and
23 Mr Katanga out of the courtroom. See you tomorrow
24 morning. And court officer, let us go into closed session
25 so that the witness can be led out of the room.

1 (The accused exit the courtroom)

2 (Closed session at 1.29 p.m.)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Open session at 1.30 p.m.)

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

14 PRESIDING JUDGE COTTE: (Interpretation) Thank
15 you, Madam Court Officer.

16 The hearing is adjourned. We will meet again
17 tomorrow morning at 9 a.m.

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

19 CORRECTIONS REPORT

20 On page 85 lines 11-15: "All the same, you do know not
21 just anyone took up arms. It would be difficult to
22 identify children in these groups because we saw children
23 with weapons and they would just do any old thing. I
24 really don't have additional information to add." has been
25 replaced by "All the same, you see, anyone would take up

1 arms. But it is difficult to identify children in these
2 groups because we would see children with weapons and they
3 would be doing just any old thing. I really don't have
4 additional information to add".