

1 Trial Chamber II - Courtroom 1

2 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra
3 and Judge Christine Van den Wyngaert

4 Situation: Democratic Republic of the Congo -

5 ICC-01/04-01/07

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

7 Mathieu Ngudjolo Chui

8 Trial Hearing

9 Thursday, 23 September 2010

10 (The hearing starts at 9.03 a.m.)

11 (Closed session)

12 (Expunged)

13 (Expunged)

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22 (Open session at 9.04 a.m.)

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

25 PRESIDING JUDGE COTTE: (Interpretation) Thank

1 you.

2 (The accused enter the courtroom)

3 PRESIDING JUDGE COTTE: (Interpretation) The
4 accused are with us. Good morning. We had to leave in a
5 hurry yesterday because the tape ran out and so we weren't
6 able to greet you before you left. So, we would like to
7 re-establish things as they should be and, as such, we
8 didn't thank the interpreters either and all of those who
9 assist us in the booth, taking into account the speed at
10 which we had to finish the hearing.

11 WITNESS: DRC-OTP-P-002 (On former oath)

12 (The witness answers through interpreter)

13 PRESIDING JUDGE COTTE: (Interpretation)
14 Witness, good morning. Can you hear me well? Perfect.
15 We can therefore continue with our work.

16 Counsel O'Shea, you have the floor. We are
17 listening to you.

18 MR O'SHEA: Yes, thank you very much. Good
19 morning, your Honours.

20 QUESTIONED BY MR O'SHEA: (Continuing)

21 Q. Good morning, Mr Witness. As yesterday, I will
22 do my very best to get through this quickly. Now, would
23 it be right that the acronym ADF refers to the Allied
24 Democratic Front and is a Ugandan rebel group?

25 A. Yes.

1 Q. Yes, thank you. And this group was active in
2 Ituri in 2003, was it?

3 A. Yes.

4 Q. And do you know in which areas geographically it
5 was fighting?

6 A. I can say that the ADF was fighting, but it
7 wasn't involved in a lot of battles. It was allied with
8 Lubanga's organisation and they fought the UPDF. Some
9 UPDF were taken hostage and were identified as ADF rebels
10 allied to the UPC.

11 Q. Yes, thank you. Can you confirm that there were
12 effectively areas all around the outskirts of Bunia where
13 Lendu were living?

14 A. Yes, I think that the Lendu were living in the
15 mountains and, in particular, Zumbe, Mublay (phon) and
16 Lipri. There are Lendu who live around Bunia.

17 THE INTERPRETER: It was "Mont Bleu" and not
18 "Mublay," States the Swahili booth.

19 MR O'SHEA: Yes, thank you, Mr Interpreter. All
20 right, I'm going to make my learned friend very happy and
21 give him a little present for today and show a little
22 video footage. It would be 1.4 in the binder and it is
23 EVD-OTP-00166 and it's public, and we can -- I think we
24 can play the entire extract because it's very short.
25 Before I proceed, just for the benefit of the

1 interpreters, there's only one page, which is page 27 in
2 the French translation. So I will proceed now, your
3 Honours. Sorry, with translation.

4 (Video extract played)

5 THE INTERPRETER: (Interpretation) "So, we were
6 blamed for having cut access to Bogoro, but we didn't cut
7 access to Bogoro. Moreover, since the start of the
8 fighting we've always left Bogoro free and its access free
9 to it and from now, and even yesterday, there was fighting
10 there, but the inhabitants were at Bogoro market, where
11 they had taken flour here to Bunia. Is that true? Go and
12 check. But why? Why? And even at this moment there are
13 people in Bogoro who are buying flour which they're
14 bringing here to Bunia. From here to Bunia? Yes, because
15 since the trouble started we moved the market and that was
16 a market which was in our sector. Mm-hm. We moved it
17 here towards the place which we call the third market, so
18 a lot of flour ended up here in Bunia. We were also --
19 were able to get oil, salt and soap from this market."

20 MR O'SHEA:

21 Q. Now, I understand that you -- that you did not
22 go to this area at the relevant time; you've made that
23 clear. Now, we hear Dark here explaining that people are
24 able to go to the market at Bogoro. Now, can you -- can
25 you confirm -- can you confirm that that was the case at

1 that time; that people were able to go to the market at
2 Bogoro, obviously based on your knowledge, based on what
3 you heard at the time, because we know that you weren't
4 actually at Bogoro?

5 A. I learnt that from the relation between Kale and
6 Dark. I heard it said that it was true. It was confirmed
7 that people went there. I learnt from this in the same
8 way as other people did. There were people who were able
9 to check this, but I don't know that. I did hear Dark say
10 that people could go there.

11 Q. Now, prior to 24 February, is it right that it
12 was very difficult, if not impossible - and I am talking
13 about the time when the UPC was in control of Bogoro -
14 that it was difficult, if not impossible, for people to
15 move from Walendu Bindi to Bunia through Bogoro?

16 A. Congolese areas of Bunia had problems. The
17 Lendu stayed at home and the people who were living in
18 Bogoro were from the Hema ethnicity, and the Hema were in
19 conflict with the Lendu. UPC forces were present, but the
20 access Bogoro-Kasenyi was one which -- on which vehicles
21 could drive. They could go from Bunia to Kasenyi and
22 vice-versa, and this road helped people to transport goods
23 from Kampala to Bunia and I think that from February this
24 road was usable. At one -- when there was a fighting,
25 when there was fighting, this road was closed and then it

1 would be opened again and -- when things had calmed down.
2 That's the picture I can paint of it as far as I am
3 concerned. I have to admit, however, that the Hema were
4 going through a difficult period. That is true.

5 Q. Now --

6 MR FOFÉ: (Interpretation) Excuse me, President.
7 I am just reacting quickly because I am currently
8 following the witness in Swahili and I notice that on page
9 6 there is a problem with regards to the interpretation.
10 On line 18 -- lines 18 and 19 --

11 PRESIDING JUDGE COTTE: (Interpretation) Line
12 18, we can read it here. "This is the picture that I can
13 paint where it concerns myself. I have to admit, however,
14 that the Hema were going through a difficult period. That
15 is true."

16 MR FOFÉ: (Interpretation) I think that that
17 isn't what the witness said.

18 PRESIDING JUDGE COTTE: (Interpretation) The
19 most simple thing then is if the witness would then repeat
20 what he said, say it again, so that the interpretation can
21 be done as well as possible. In the courtroom there are
22 certain parties or participants who understand Swahili and
23 sometimes make observations as Professor Fofé has just
24 done. This is rarely done, but this does occasionally
25 happen, so please could you repeat your phrase so we can

1 all be certain that we have understood what you wanted to
2 say. Please go ahead.

3 THE WITNESS: Okay. With regards to this aspect
4 that the counsel raised, I wanted to say that the road was
5 open. The Lendu were in conflict with the Hema. There
6 was fighting between the two. The UPC controlled this
7 area, but the Lendu, they too had problems.

8 MR FOFÉ: (Interpretation) Please confirm what
9 he said. The witness finished his answer by saying that,
10 yes, he has to recognise that the Lendu also had
11 difficulties and not the Hema. The Lendu had
12 difficulties. Thank you, Witness.

13 PRESIDING JUDGE COTTE: (Interpretation) Thank
14 you. Very well. So we shall all go to this additional
15 transcript afterwards. Thank you very much, Counsel
16 O'Shea. Please continue.

17 MR O'SHEA: Yes, I am grateful to my learned
18 friend for that indication.

19 Q. Now, you have dated this video excerpt with Dark
20 speaking there together with the other video excerpts that
21 precede it as being 6 or 7 March; is that right? 6 or
22 7 March 2003?

23 A. Yes, this extract was filmed in the month of
24 March 2003.

25 Q. Okay. Now I am going to show you another part

1 of the same video and I am going to ask you a question
2 about that. Just give me one moment, your Honour. So, I
3 am going to show -- this is the video DRC-0081-0004 and
4 the time-stamp is 000042, so 42 seconds. I am actually
5 referring to -- for the benefit of the Prosecution, I am
6 actually referring to a Prosecution document DRC-0008-7226
7 where the time-stamp is marked as 28 seconds, but I think
8 that that's a mistake, but we will see. That will clear
9 itself up.

10 Now, do you see that image in front of you,
11 Mr Witness?

12 A. Yes.

13 THE INTERPRETER: The Swahili booth would ask for
14 the reference, the tab number for the interpreters.

15 PRESIDING JUDGE COTTE: (Interpretation) Counsel
16 O'Shea, if you have the reference of the words, the line
17 number of the translation, please could you give it to the
18 interpreters, or are you just going to show the picture?

19 MR O'SHEA: I am just going to show the picture,
20 so it is not possible for anybody to speak. It is on a
21 one-second freeze.

22 PRESIDING JUDGE COTTE: (Interpretation) Thank
23 you very much.

24 MR O'SHEA:

25 Q. Okay. Could you please tell us who is in the

1 centre of that photograph?

2 A. This is Lobho Gokpa Justin of the FRPI.

3 Q. And who is behind Lobho?

4 A. The person who is standing up behind Lobho is
5 Lieutenant Asa, the camp aide of Kale Kayihura.

6 Q. And the picture that you see in front of you, is
7 that part of the same meeting as the previous extract you
8 saw where Dark appeared?

9 MR DUTERTRE: (Interpretation) Your Honour, I
10 don't have a problem with the question, but I am just a
11 bit lost, I have to admit, because - and perhaps this is
12 me who is not following and please excuse me if that is
13 the case - but Counsel O'Shea mentioned a video
14 DRC-0081-0004 and on the screen what we see is
15 DRC-0083-0006. I think -- are we speaking about the same
16 thing? I don't know if there is a mistake in this regard.

17 PRESIDING JUDGE COTTE: (Interpretation) Counsel
18 O'Shea, I think you are the only person who can help us in
19 this regard.

20 MR O'SHEA: Yes, I am also confused by what my
21 learned friend is saying. As far as I can see it is the
22 same video. I am not -- I wasn't -- the number I gave
23 earlier was not the number of the -- the number of the
24 document I gave earlier was the number of the document,
25 not the number of the video. I also gave the number of

1 the video, and the video is DRC-00081-0004 which is the
2 video which we see on the screen, as I understand it, and
3 my learned friend says "No."

4 MR DUTERTRE: (Interpretation) No, indeed.
5 Counsel O'Shea, if you look at the bottom of the screen on
6 the left you can see the ERN number which isn't the same.
7 You have got 004 for the end, but the start is different.
8 You have got 83 instead of 81. That's the difference.

9 PRESIDING JUDGE COTTE: (Interpretation) This
10 video 0008-3004, Prosecutor, is that one of the videos
11 which figures in the binder?

12 MR DUTERTRE: (Interpretation) Yes, from my
13 memory I would say that.

14 PRESIDING JUDGE COTTE: (Interpretation) I can
15 find 0003-0002, and what Mr O'Shea has said when he began
16 this morning's cross-examination was that he was using
17 8104, and this is the first screening we've had this
18 morning. A few minutes later he said he was going to show
19 a different part of the same video, at second 42, and so
20 we all thought we were at the 42nd second of that video
21 and we had the impression of -- that we had seen the same
22 thing before. We have viewed the video a number of times,
23 various extracts of it, and we have the impression we are
24 familiar with it.

25 Now, is there any challenge regarding this video?

1 Yes? No? Must we keep on going with this exercise in
2 identification?

3 MR DUTERTRE: (Interpretation) It's video number
4 7. It's 7.5 or 7.4, perhaps 7.3, and we are not dealing
5 with the same video at all, the same extracts as video
6 number 810-0004. I think there may be some confusion here
7 between the various videos, and I don't want this to lead
8 to any greater confusion.

9 PRESIDING JUDGE COTTE: (Interpretation) If we
10 could all remember the five-second rule. We've just
11 received a reminder on the screen.

12 Now, on the bottom of the screen there is a
13 reference number -- there was a reference number 0083-0004
14 and, at tab 7, we see 00083-0002. Now, as I was saying a
15 few moments ago, I don't see a video numbered 8304, and
16 yet this binder has been with me for three weeks now.

17 Now, at the same time I would suggest, Mr O'Shea,
18 we will show the video extract that you showed at the very
19 beginning of the morning, because I had the impression
20 that the image that we had stopped at was a continuation
21 of your first video extract from this morning. Was that
22 the case?

23 MR O'SHEA: I think so and, you know, I'm hinging
24 myself on a Prosecution document which makes reference to
25 the same video. So, there's been a mistake somewhere with

1 the numbering, but we can -- we can show the -- we can
2 show the video.

3 PRESIDING JUDGE COTTE: (Interpretation) 1.4.
4 If you could reshow video extract 1.4 and see, as you
5 thought and as I thought, there was one moment in video
6 1.4 where we saw the image that you have been
7 cross-examining the witness about.

8 MR O'SHEA: The video 0081-004 at the time-stamp
9 28, we can see what's there. That might resolve the
10 confusion.

11 PRESIDING JUDGE COTTE: (Interpretation) Court
12 officer, court usher, if you could come to our assistance
13 so that -- if you could help us find the correct reference
14 number for the video that was shown to the witness so that
15 we can make sure that we are referring to the right
16 extract when the proper time comes.

17 MR DUTERTRE: (Interpretation) I myself made a
18 mistake after the earlier error. It wasn't extract 5, but
19 I have consulted my data here and 8304 is a video that was
20 disclosed under Regulation 77.

21 PRESIDING JUDGE COTTE: (Interpretation) Very
22 well. Things are clear. We are not dealing with one of
23 the videos found in the binder, but rather a video that
24 was disclosed under 77, Regulation 77. The important
25 thing at this stage is for us to all know. The image that

1 was just shown to the witness bears the following
2 reference, 00083-0004; is that correct?

3 MR DUTERTRE: (Interpretation) It's no longer
4 seen on the screen so I can't refer to --

5 MR O'SHEA: Can I, Mr President, ask that the
6 Registry go to 28 seconds on 008-1004 and then we can
7 verify.

8 PRESIDING JUDGE COTTE: (Interpretation) Court
9 officer, if you could show 81-0004, a video found in this
10 binder.

11 (Video extract played)

12 MR O'SHEA: Sorry, if they could stop it, please.
13 If the Registry could just stop the video then. I believe
14 an excerpt is being played. Could we have this played on
15 the full video, as opposed to the excerpt which was played
16 by the Prosecution at 28 seconds?

17 PRESIDING JUDGE COTTE: (Interpretation) Is
18 there some particular difficulty, court officer?

19 THE INTERPRETER: Your Honour, the interpreters
20 in our booth do not have the reference numbers.

21 PRESIDING JUDGE COTTE: (Interpretation)
22 Interpreters, I think for the time being it is just a
23 matter of identifying the correct video, without your
24 being requested to interpret.

25 (Video extract played)

1 MR O'SHEA: Okay, stop there. Stop at the image
2 just before then.

3 (Video extract played)

4 MR O'SHEA: Yes, if you could -- sorry, if you
5 could go to 42 seconds.

6 (Video extract played)

7 MR O'SHEA: So, apparently the electronics are
8 doing their own thing for the moment and we have to wait a
9 few seconds until they've -- until it's completed its own
10 internal procedures.

11 (Video extract played)

12 MR O'SHEA: That's it. That's a strange thing.
13 Anyway, it doesn't matter. We're there. Yes.

14 Q. So just to confirm for the record, Mr Witness,
15 the image that you see in front of you is the image that I
16 was asking you questions about a few minutes ago; is that
17 correct? It's the same image?

18 A. Yes.

19 Q. Yes, thank you. Now, when you were questioned
20 by Prosecution investigators on this image, you stated
21 that this image was from 8 March 2003. Do you recollect
22 that?

23 A. Yes, I remember. This footage was after the
24 departure of UPDF troops; after the departure of those
25 soldiers. It was in March 2003.

1 THE INTERPRETER: Correction from the English
2 booth. The witness said "UPC," not "UPDC".

3 MR O'SHEA:

4 Q. And is this image from the same day as the day
5 when Dark was speaking on the other image we saw earlier?

6 A. Yes, this footage was taken during the meeting.
7 I believe you stopped at one particular point, but if you
8 continue to play this video -- because, you see, I really
9 need to know what you're looking for by the fact that you
10 are stopping the image at this particular spot.

11 Q. Well, the only purpose of this exercise is to
12 suggest to you that when you said 6 or 7 March for the
13 image of Dark, that was an estimation, right? Because,
14 you see, we now have the 8 March as well. So you're
15 making an estimation?

16 A. Let me tell you this: I see the footage here,
17 the images. You see the house with the straw around it.
18 Several meetings were held in this room and this is not
19 the first time I saw Dark in that place. I saw him three
20 or four different times and this happened on the 7th. It
21 was after the departure of the UPDC -- of the UPC troops.
22 People were called to a meeting and the purpose of the
23 meeting was to determine what to do after the departure,
24 after the UPC troops. You can see that Lobho is not the
25 only person here. There is Dark and there's others. I am

1 wondering, the question is as follows: Why are you
2 stopping just at this particular point, at this particular
3 image? We were not yet at the third month of 2003. If
4 that -- if it were the 4th of that date it might be
5 possible, because there was another meeting with the same
6 people as the ones you see here.

7 Q. Okay. Well, it's not a secret. The reason why
8 I froze at that specific instance is because, you see, we
9 receive some disclosure before these proceedings from the
10 Prosecution and you've had meetings with the Prosecution
11 before you came here. So some of what you said to the
12 Prosecution before you came here is disclosed to us, so we
13 have -- we have information as to what you said about this
14 specific image, you see. So that's the reason why I have
15 frozen on this specific image. I can't speak for the
16 Prosecution, but I am just explaining to you why I froze
17 on the specific image, but that needn't really trouble
18 you, but I am just explaining to you so that you
19 understand it's not a secret. But what you can -- what we
20 can do for you now is we will just play a little bit more
21 of this section so that --

22 MR DUTERTRE: (Interpretation) Mr President --

23 MR O'SHEA: -- can you just let me finish
24 speaking, please, then you can object.

25 Q. We will just play a little bit more of this

1 section so that you can, you know, so that you can
2 recognise it, all right? Now, my learned friend can raise
3 his objection.

4 PRESIDING JUDGE COTTE: (Interpretation)
5 Prosecutor.

6 MR DUTERTRE: (Interpretation) Yes, your Honour,
7 indeed. I would agree that we play more of this extract.
8 It would appear that this snippet doesn't come back again
9 at all in the video; it's part of another video. And so,
10 if we don't play more of the sequence this may be very
11 confusing for the witness himself, and he does -- he may
12 not be able to give the correct date. If we just show
13 snippets here and there, we may not be able to --

14 PRESIDING JUDGE COTTE: (Interpretation) First
15 observation: The Chamber is well aware that for the
16 Katanga Defence team these issues of dates are extremely
17 important. Now, I will start again, because I did not
18 respect the five second rule. The Chamber realises quite
19 well that for the Katanga team this matter of dates is of
20 particular importance.

21 My second observation is this: One way or
22 another, one way or another, we will have to find some way
23 of ensuring that the witness does not feel that he is
24 lost. Twice he has said that he feels confused, not in
25 his mind really, but rather because of these questions

1 that are being asked of him.

2 My third observation is that it is important to
3 give this video sequence the proper number. We are
4 dealing with another alternative. I think this is the
5 continuation of 00081-0004, which is found at tab 4 of the
6 binder, or this may be a different video 00083-0004 as we
7 saw at the bottom of the screen at the left, and this was
8 disclosed apparently under Regulation 77.

9 So, if the Registry or the Katanga Defence team
10 could show the entire video to us, so that we can be quite
11 sure that when we stop at a particular point in the
12 sequence that it indeed corresponds to 0004 or rather --
13 or whether it is part of the other one, 0083-0004. So
14 could the video be played and let us hope that technology
15 does not betray us and leads us to wasting ten minutes.

16 This is 81-0004 and this is extract number 4,
17 1.4; tab 1.4. The entire video. How long does this video
18 last? We are not going to play an entire hour. That is
19 out of the question. So what is the right extract, the
20 useful extract? We are not going to spend an entire hour
21 listening to a video. That's totally out of the question.

22 MR DUTERTRE: (Interpretation) I believe indeed
23 that the beginning should be enough to clarify some
24 things, but we will see whether it is a complete sequence
25 or, rather, there are some interruptions. If necessary,

1 we can go into the details. We will see how things
2 present themselves. We can begin the video and we will
3 see, but, the Chamber will see but, yes, an hour seems to
4 be a bit much.

5 PRESIDING JUDGE COTTE: (Interpretation) Let us
6 begin at the beginning.

7 MR O'SHEA: Yes, Mr President. First of all, you
8 know, I would appreciate if my learned friend doesn't
9 stand up in front of the witness and say it's a different
10 video. We think that there has been a mistake with
11 numbering. Clearly the image in front of us is on the
12 same video as the video which the Prosecution showed as
13 1.1 et cetera, so I would appreciate it if my friend does
14 not make a statement like that.

15 Secondly, if we could just play this video up to
16 the fourth minute I think that might resolve the issue. I
17 hope that will resolve the issue. If it doesn't, I am
18 going to leave this and come back to it.

19 PRESIDING JUDGE COTTE: (Interpretation) Court
20 officer, just to ensure that everything is very clear to
21 you, we are on 00081-0004, and in the binder that
22 corresponds to tab 1. And, Mr O'Shea, initially could you
23 show the first four minutes or, rather, the first five
24 minutes. If we could see -- if we could have the
25 beginning of that video on our screens we would be most

1 grateful, if you could see to that.

2 MR O'SHEA: Yes, I think the Registry is
3 assisting us with that.

4 (Video extract played)

5 "Empty bedroom of Thomas Lubanga of UPC, Union
6 Patriotique of Congo, was looted including the bed and the
7 chairs were all completely spoiled as you can see. The
8 garage of Thomas Lubanga. (No interpretation).

9 THE INTERPRETER: (Interpretation) "TB5".

10 PRESIDING JUDGE COTTE: (Interpretation) Court
11 officer, if you could halt at this point. Twice at the
12 bottom and at the left of my screen I saw the numbers
13 00083-0004, unless I am mistaken. Now, clearly, we have
14 begun with 0004 and then at one point 00083-0004 cropped
15 up. This problem really is beyond the Chamber and we
16 really don't have the skills when it comes to these
17 videos.

18 However, the witness was able to provide some
19 information on the basis of extract 1.4 and what we have
20 seen over the past three minutes comes from a totally
21 different video, referenced 03-0004. So I think we will
22 have to clarify this matter. I am not quite sure how or
23 when, perhaps while we suspend. We really can't continue
24 to find ourselves dealing with these reference numbers,
25 and I think I am familiar with these binders.

1 It seems that we need some clear questions about
2 evidence that is on a clear video support. Perhaps
3 Mr O'Shea could help us with a turnkey solution in a few
4 moments.

5 MR O'SHEA: I would just like to make it clear
6 that this is not a numbering problem from our side. I am
7 not going to suggest whose side it is, but this is not a
8 numbering problem from our side. This is a result of an
9 examination of the video by myself, and one can see that
10 there has been a numbering problem at some stage, and when
11 that was sourced we don't know. But I will simply ask one
12 question to the witness and then I will conclude with the
13 answer to that question.

14 Q. Now, Mr Witness, at the beginning of this
15 footage you saw a number of distinct frozen images that
16 came up and then the footage proper, as it were, started.
17 Now, are you able to clarify for us whether those frozen
18 images that came in sequence were meant to convey the same
19 meeting, or not? And do you feel that you need to answer
20 this in closed session? Is this something that you would
21 need to answer in closed session? You can tell me.

22 A. Let us go into private session.

23 PRESIDING JUDGE COTTE: (Interpretation) For the
24 public's information, we will be going into private
25 session for a few moments because these questions and

1 answers may be identifying in nature and we must ensure
2 the witness's protection. Court officer, if we could go
3 into private session for a few moments, please.

4 (Private session at 10.00 a.m.)

5 (Expunged)

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16 (Open session at 10.11 a.m.)

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

19 PRESIDING JUDGE COTTE: (Interpretation) Thank
20 you, Madam Court Officer. In order for the public
21 segments of the transcript to be legible, the witness has
22 just provided some details that make it possible for the
23 Chamber to understand that the photographs on the video
24 were taken, according to him, as from 6 March, 7 March and
25 8 March, so over a continuous but relatively limited

1 period.

2 Please proceed, Mr O'Shea.

3 MR O'SHEA: Yes, okay.

4 Q. I'm now going to show you another image,
5 Mr Witness, and this is an image of the video cassette
6 itself on which this videotape is taken, and it's
7 DRC-OTP-0081-0004, and it can be found at pages 1 and 2 of
8 the document in eCourt. So, if I -- I'd be most grateful
9 if the Registry could assist by projecting this image.

10 Do you see that image on the screen, sir?

11 A. Yes.

12 MR O'SHEA: Sorry for the inconvenience again to
13 the public, but perhaps if we can go into closed session
14 for one moment.

15 PRESIDING JUDGE COTTE: (Interpretation) Very
16 well. Court officer, let us go back once again briefly
17 into private session.

18 (Private session at 10.14 a.m.)

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Page 28 expunged. Private Session

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4 (Open session at 10.18 a.m.)

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

7 PRESIDING JUDGE COTTE: (Interpretation) Thank
8 you, court officer, and for the public transcript to be
9 understandable later, details were given or added to my
10 description of a short while ago. The witness said that
11 there are -- there is footage on this video, 0081 to 0004,
12 which covers a period from 6 to 11 March 2003.

13 Please proceed, Mr O'Shea, and do not forget the
14 promise that you made this morning to limit your
15 cross-examination to a reasonable period of time.

16 MR O'SHEA: Yes, that's at the forefront of my
17 mind, Mr President. I am now going to come to 1.5 in the
18 Prosecution binder, and this is EVD-OTP-00167. It
19 relates, I hope, to DRC-OTP-0081-0004.

20 (Video extract played)

21 THE INTERPRETER: (Interpretation) "We are in
22 the bush. In reality, Bogoro is causing problems to us to
23 such a point that we do not even have food. This trench
24 should be maintained to preserve security such that we
25 should be able to go back to town to look for money, and

1 if there is flour in town we should be able to buy it, but
2 we are blocked here as if we were not Congolese, and we do
3 not have the right to move about and travel to Bunia.
4 That is why we have decided to forcibly come out of here,
5 because we were harassed through incursions in our houses
6 in Songolo. Most of you know where they pursued us and
7 started a war against us and, as soon as these people go
8 back, there are statements over the radio saying that
9 such-and-such a person has taken over Geti and Lipri.

10 So, because of that, we told ourselves, well,
11 since this is the situation we are going to pursue in this
12 territory and have some peace. We are going to have to
13 open the access through Bogoro so that our brothers should
14 be able to go to the hills and look for potatoes, because
15 they do not even have salt. They will be able to go and
16 find potatoes and bring them to it, because in this
17 situation where we find ourselves, we do not have time to
18 farm. You have anti-personnel mines and they are creating
19 problems, whereas this use of anti-personnel mines is
20 prohibited for everyone. They took the decision and we
21 cannot use anti-personnel mines. Yes, indeed, but the UPC
22 is using them.

23 Regarding the road, that is a pure lie. We do
24 not have the possibility to establish from the forest
25 means of communication for the inhabitants who are in

1 Kasenyi to move about in their vehicles and go to town.
2 So, the conditions were not there for a solution to be
3 found.

4 I believe that UPDF brought people together for
5 dialogue, but after the negotiations they violated the
6 agreement by coming after us."

7 MR O'SHEA: Yes, thank you very much.

8 Q. Now, can you confirm what's being alluded to
9 there; that anti-personnel mines were being used by the
10 UPC on the basis of your knowledge or what you heard?

11 A. Yes, that is true. It is not a lie.

12 Q. Now, I am going to show you part of the same
13 video which was not shown to you by the Prosecution, but
14 is a continuation of the same footage, and it's at minute
15 50 18 seconds to minute 54 and 48 seconds, on video
16 DRC-OTP-0081-0004. Ms Menegon has it in hand. Can we
17 play this with sound and with interpretation.

18 Mr Interpreter, it is fully understood that this
19 is a difficult exercise and there may be bits that you
20 won't be able to interpret, but if there are bits that you
21 can interpret then you are welcome to do so. So, if we
22 can play that short extract now, please.

23 (Video extract played)

24 PRESIDING JUDGE COTTE: (Interpretation)

25 Interpreters, I think it is not possible, because this is

1 an extract that the Prosecutor himself did not show, but
2 is there a transcription and a translation?

3 MR DUTERTRE: (Interpretation) I think there
4 should be, but the Defence did not notify anyone in
5 advance that they were going to play this extract, so the
6 interpreters do not know, but there is a transcript that
7 was disclosed to the Defence, so they could actually
8 indicate the exact texts to the interpreters.

9 PRESIDING JUDGE COTTE: (Interpretation) Thank
10 you. Mr O'Shea, Ms Menegon, are you able to identify the
11 corresponding part of the transcript so that the
12 interpreters should be able to work better? If that is
13 not possible, then the interpreters would try to do what
14 they can, and on the transcript we will have only what
15 they would have been able to provide as interpretation.

16 MR O'SHEA: Yes. First of all, my learned friend
17 is incorrect in saying that we didn't notify anybody that
18 we were going to play this excerpt. Let me make that
19 clear, first of all.

20 And, secondly, I don't want to rely on the
21 Prosecution translation. As I said at the outset, I made
22 a comment to the interpreters and, Mr Interpreter, I
23 understand that this is a difficult exercise, but from our
24 point of view we prefer to have your interpretation
25 without the assistance of the Prosecution interpretation.

1 We are now dealing with the Defence case, well, the
2 Defence cross-examination, and it is simply a question of
3 doing your best. And if there are parts that you cannot
4 translate or you are having difficulty with, then so be
5 it.

6 If there are parts that you can hear well, then
7 please translate them. Thank you.

8 PRESIDING JUDGE COTTE: (Interpretation) Thank
9 you, Mr O'Shea. The Chamber intervened because the
10 interpreters had asked for clarification. Now things are
11 clear. They are not expected to do the impossible. They
12 are going to do what they can. So, please show the
13 excerpt with sound and images.

14 (Video extract played)

15 THE INTERPRETER: (Interpretation) "This was
16 brought back by the UPC, all of this? There is something
17 written there. Are those mines? Yes, the United Nations
18 does not accept these types of mines. All these are
19 anti-personnel mines. Including those? Yes. All these
20 were in the hands of the UPC. We were able to capture
21 these yesterday, all these items, including these mines,
22 all of this, including these. These are very bad mines.
23 And they belong to whom? To them."

24 MR O'SHEA:

25 Q. So, Mr Witness, you've seen that video footage

1 and those have been described by someone in that video as
2 weapons of the UPC. Can you shed light on this footage -
3 this video footage?

4 A. Thank you. You have just seen that the person
5 who appeared on the screen was speaking about the UPC.
6 There's also statements that were made which were rejected
7 by the United Nations. We are together following these
8 pictures and I think that I have no comments to make on
9 them.

10 Q. Yes, fine. And those round discs that we saw in
11 the image, were those anti-personnel mines?

12 PRESIDING JUDGE COTTE: (No interpretation).

13 MR DUTERTRE: (Interpretation) Your Honour, a
14 couple of points. One point, certainly. Counsel O'Shea
15 did state that this part would be played. Please excuse
16 me in that regard. Just in the French transcript the
17 minutes as indicated to him are not what he indicated.
18 Please excuse me for the intervention here.

19 Secondly, I don't think that the witness is a
20 weapon (sic) in munitions and, as such, I don't think it
21 is possible to ask such a question of him.

22 PRESIDING JUDGE COTTE: (Interpretation) Thank
23 you, Prosecutor, for the two comments that you have just
24 made. Counsel O'Shea takes note of the first.

25 Now, with regards to the second observation, he's

1 not talking as an expert in weapons, but as an observer
2 perhaps, an observer who was able to note certain things
3 when he took part in conferences, et cetera, et cetera.

4 So, Witness, please reply to the question to the
5 extent that you are able to. If you have no knowledge
6 with regards to this question, then just say so.

7 THE WITNESS: I think that I already answered
8 this in the following way: I said that there was an
9 officer who was demonstrating or showing the arms, the
10 munitions and the mines. He referred to the UPC. We
11 followed. We saw that together. I'm not an expert in
12 munitions. We all followed this. We all heard what these
13 soldiers were saying. They said that they were
14 anti-personnel mines. They were munitions belonging to
15 the UPC. I saw that. We saw it all together. I think
16 that I would stop there.

17 PRESIDING JUDGE COTTE: (Interpretation)
18 Perfect, Witness. So, you are going back to what you have
19 just said. If you can't say any more, then don't.
20 Counsel O'Shea, please continue.

21 MR O'SHEA:

22 Q. Yes, thank you very much, Witness, and that is
23 as helpful an answer as I could have expected. Thank you.
24 Now, you were shown a video extract with Mr Kisembo
25 Bitamara speaking. Do you remember that?

1 PRESIDING JUDGE COTTE: (Interpretation) Counsel
2 O'Shea, we are in an area that's a bit sensitive. The
3 witness has to be able either to see the extract, but you
4 are calling upon his memory. If he is able to answer he
5 will, but you are asking to go into the depths of his
6 memory. What extract? So I would like to draw your
7 attention to that.

8 MR DUTERTRE: (Interpretation) Not on that
9 point, you have said what needs to be said, but with
10 regards to the transcript, please be aware that the
11 extract that Counsel O'Shea has just shown, it stopped at
12 49 minutes 46 seconds, I think that didn't appear, and for
13 the record I think it is important.

14 PRESIDING JUDGE COTTE: (Interpretation)
15 Perfect. Witness, please answer Counsel O'Shea if you are
16 able to do so. Do you remember his question?

17 THE WITNESS: I remember the sequence where this
18 person was speaking to the others, but I would like to ask
19 to go back to the pictures so that I can answer this
20 question correctly.

21 PRESIDING JUDGE COTTE: (Interpretation) If you
22 are able to identify the video extract which was perhaps
23 shown yesterday, I don't remember, but you can show where
24 Mr Kisembo appears such that -- or Mr Kisembo Bitamara
25 appears so that the witness can really answer in full

1 awareness of the facts.

2 The Chamber is well aware that you are trying to
3 save time, we have all understood that, by not
4 systematically reshowing extracts, but this -- there were
5 40 extracts I think. Some were admitted. There are those
6 which you are showing yourself, while the Prosecutor
7 didn't show them. For a witness this isn't very simple
8 and it is important that he is able to answer questions
9 when they are based on a video extract which speaks to
10 him. So, if you want to ask this question, then it is
11 preferable to show the appropriate extract.

12 Prosecutor.

13 MR DUTERTRE: (Interpretation) Yes, it's tab 8,
14 the extract which was cut off at the beginning, so I would
15 just like to draw the Defence's attention to the fact that
16 they would have to start from 18 seconds. If they have
17 the new version, then they have to play it from there.

18 PRESIDING JUDGE COTTE: (Interpretation) Thank
19 you very much, Prosecutor, for your contribution.

20 So the extract is 8.2. Court officer, or Madam
21 Menegon, I don't know how you are distributing your roles,
22 but could somebody show 8.2 bearing in mind that the
23 beginning thereof was cut off. If you don't have the
24 extract which was cut off from the beginning, then the
25 beginning has to be shown in private session.

1 (Video extract played)

2 THE INTERPRETER: (No interpretation).

3 PRESIDING JUDGE COTTE: (Interpretation) We are
4 going to stop for a moment. We are going to stop for a
5 moment, okay, to ask Counsel O'Shea if he wants to
6 continue with this. He didn't have the aim of it being
7 interpreted, it wasn't, but it was just meant to allow the
8 witness to remember the scene, the video in question, in
9 order to better answer the questions put to him. Is this
10 enough, this sequence here, in order to ask your question?
11 The witness now knows exactly what video it is. Please go
12 ahead.

13 MR O'SHEA:

14 Q. Yes. Now, Mr Kitembo Bitamara was the
15 spokesperson for PUSIC; is that right?

16 A. Yes, he said it himself here. He identified
17 himself and he gave his function within the party.
18 I think that he did it in this video.

19 Q. And let me ask you this from your observations:
20 From what you were able to observe, was Mr Bitamara, when
21 he was giving interviews such as this one, aware of the
22 existence of calls for the prosecution of those committing
23 crimes against humanity?

24 A. Kitembo Bitamara was a professor and he knew
25 that, because when he said that they called MONUC officers

1 to observe, if it was a person who was killed he was going
2 to mention it, or they are going to mention it in their
3 report, because it is a human life. I think that this man
4 is clear in his statement and, if you listen carefully to
5 it, he is stating that there will be prosecution because
6 somebody died.

7 Q. Now, we know that the treaty which gives rise to
8 this Court, the International Criminal Court, came into
9 force in July 2002. My question to you is this: In 2003,
10 at the time when Mr Bitamara is speaking, were there any
11 discussions to your knowledge around having prosecutions
12 in the International Criminal Court, or approaching the
13 International Criminal Court?

14 A. You want to know my point of view, or do you
15 want Kisembo's point of view?

16 Q. No, I want your observations in relation to this
17 period of time when Mr Kisembo is speaking, whether there
18 were discussions either that you are aware of, all right,
19 either among these politicians, or through the media,
20 about the International Criminal Court as a possible place
21 to prosecute crimes against humanity committed in the DRC?

22 A. Yes, I knew that. I was informed of that. Yes,
23 I knew that.

24 Q. Now, the head of PUSIC was one Chef Kahwa;
25 correct?

1 A. Yes.

2 Q. And did you hear, or is it within your
3 knowledge, that Chef Kahwa was pronounced to be the
4 beneficiary of an amnesty which would apply to a 20-year
5 prison sentence for crimes against humanity?

6 A. I know that he was arrested, but I didn't have
7 additional information with regards to his trial.

8 MR O'SHEA: Mr President, could you give me a
9 moment to consult with Mr Katanga? Thank you.

10 PRESIDING JUDGE COTTE: (Interpretation) Please
11 go ahead.

12 (Pause in the proceedings)

13 MR O'SHEA: Yes, Mr President, your Honours,
14 those are all my questions for this witness. There are
15 some -- a few EVD numbers which I want to ask for, but
16 just to be sure that I am organised with regard to that, I
17 notice that the time is now, or at least by my watch, yes,
18 it is by the court clock as well, 9 minutes to 11, so I
19 wonder if we might perhaps take the break now?

20 That will give me the opportunity to ensure that
21 I don't make any mistakes with the EVD numbers.

22 PRESIDING JUDGE COTTE: (Interpretation)
23 Understood, Counsel O'Shea. You will also make an effort
24 if an EVD number has to be asked for to go to the pictures
25 that we were dealing with this morning and you will ensure

1 with the Prosecutor that everything is in place. And if
2 we understand well, once your intervention at the start of
3 the second part of the hearing on the EVD numbers is
4 finished, then it will be possible to give the floor to
5 the Ngudjolo team.

6 MR O'SHEA: Well, I am not sure if it will be
7 possible to give the floor to Lubanga but certainly to
8 Ngudjolo, and I am very grateful for the time. And,
9 Mr Witness, can I say thank you very much for your
10 assistance. My questions lasted a little longer than I
11 anticipated, but we have finally got to the end, so
12 hopefully there won't be too much longer for you.

13 PRESIDING JUDGE COTTE: (Interpretation)
14 Prosecutor.

15 MR DUTERTRE: (Interpretation) Yes, your Honour.
16 I would just like to inform the Chamber that Mr Macdonald
17 would like to come at the start of the next session to
18 give some information on the PEXO investigation that is
19 underway.

20 PRESIDING JUDGE COTTE: (Interpretation)
21 Perfect. The important point is that he gives it to us,
22 of course, briefly, so that we don't cut off the time left
23 for this witness too much.

24 Is the Ngudjolo team ready for its
25 cross-examination?

1 MR KILENDA: (No interpretation).

2 PRESIDING JUDGE COTTE: (Interpretation)

3 Perfect. It is therefore in the starting blocks. So,
4 Witness, thank you very much. We are going to have a
5 break for half-an-hour. You can have a rest. The
6 proceedings probably seem somewhat unrelated to you, but I
7 would say that it is inevitable that this might be the
8 case when it comes to presentations of videos. We are not
9 within the framework of linear area where the witness
10 speaks and answers questions. Everything has been cut up
11 by these different showings of video sequences, but this
12 is something that you can understand.

13 We will therefore be back within a half hour.
14 The security officials, Mr Katanga and Ngudjolo are going
15 to leave the courtroom first. The accused, we will be
16 back at 11.30.

17 (The accused exit the courtroom)

18 PRESIDING JUDGE COTTE: (Interpretation) Court
19 officer, please take us into closed session in order to
20 allow the witness to discreetly leave the courtroom.

21 (Closed session at 10.55 a.m.)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

1 (Expunged)

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3 (Expunged)

4 (Open session at 10.56 a.m.)

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

7 PRESIDING JUDGE COTTE: (Interpretation) We are
8 in open session. We can therefore suspend. We will be
9 back at 11.30. The hearing is suspended.

10 (Recess taken at 10.56 a.m.)

11 (Upon resuming at 11.39 a.m.)

12 (Open session)

13 THE COURT USHER: All rise.

14 PRESIDING JUDGE COTTE: (Interpretation) Please
15 be seated. We are slightly behind schedule owing to the
16 security alert that we all benefited from, so to speak.

17 Prosecutor, before the witness is brought in, you
18 had something to tell us. Please proceed.

19 MR MACDONALD: (Interpretation) I'll try to be
20 brief, your Honours. I would like to take stock of the
21 PEXO investigations that we referred to twice earlier this
22 month.

23 The Prosecution will disclose tomorrow, Friday,
24 after tomorrow's hearing, two statements from victims who
25 are represented by Mr Luvengika. This potentially

1 exonerating evidence refers to testimony of Witness P159.
2 The Prosecution will comply with its obligations to
3 disclose and, of course, it will be up to Luvengika to
4 inform the appropriate parties whether he intends to call
5 one of these two victims.

6 So there you have it. As far as we are
7 concerned, this concludes the urgent investigations. The
8 Prosecution may continue investigations regarding this
9 incident and will disclose as necessary -- any potentially
10 exculpatory material will be disclosed. As for the rest,
11 it is a matter of dealing with details and there may be
12 additional disclosure.

13 PRESIDING JUDGE COTTE: (Interpretation) Thank
14 you, Prosecutor. So two disclosures, so that means two
15 witnesses?

16 MR MACDONALD: (Interpretation) Yes.

17 PRESIDING JUDGE COTTE: (Interpretation) Very
18 well. I didn't think this requires any immediate response
19 from the two Defence teams. You have been told that you
20 will be receiving disclosures tomorrow.

21 Mr Luvengika, please proceed quickly if you need
22 to request leave of the Chamber to call one of these two
23 victims. I think we've come to an agreement that the date
24 of 15 September was not absolutely necessary, or
25 imperative, for these two witnesses.

1 Now, for 15 September, I have received your four
2 applications for authorisation. I believe that today's
3 observations from the Defence teams will be made. Now, if
4 you don't mind -- please proceed.

5 MS NSITA: (Interpretation) Your Honours, your
6 Honour, with your leave I would like to request that the
7 Chamber, when it makes the decision regarding the legal
8 representatives, as far as we are concerned the two
9 victims and independently of the incident that is
10 currently of concern to us.

11 Why I am saying that? Well merely because, if I
12 could make reference to your filing 1665, I believe that
13 the legal representatives have an obligation before asking
14 the Chamber for leave to call witnesses who are victims to
15 meet a number of criteria, and I would prefer to restrict
16 myself to the instructions that were given by the
17 Presiding Judge regarding the appearance of witnesses and
18 the incident regarding the disclosure of potentially
19 exculpatory evidence that the Prosecutor will be dealing
20 with. This is an incident that, from our point of view,
21 this incident should be considered quite independently
22 from our request of the Chamber to call victims to give
23 testimony in these proceedings.

24 I would like to raise another problem that is
25 still in abeyance and this has been the case for quite a

1 while. All the parties have realised that this is an
2 incident that has to do with the family of Witness 159.
3 At the time I had requested from the Katanga Defence team,
4 I had asked them to disclose or forward a copy of the
5 statement that they had got from my client. The Chamber
6 at that particular point in time instructed me to approach
7 my client and to determine whether I could obtain a copy
8 of the statement from my client, and it would appear that
9 my client did not obtain a copy of the statement that he
10 signed, that he had to sign and hand over to the team of
11 investigators from the Katanga Defence team.

12 So I return to the Chamber to ask that the
13 Katanga team be ordered to disclose this statement. This
14 statement will be of great use to us, particularly with
15 regard to any later decisions, particularly if we were to
16 ask the Chamber to call this witness before us, who is
17 also a victim.

18 So those are my initial remarks to the Chamber at
19 this point in time. As for the rest, I make reference to
20 the ruling of the Chamber during the hearing of
21 15 September last, and we wish to analyse this application
22 with regard to the instructions of the Chamber regarding
23 Rule 140 so as to decide whether these victims do meet the
24 criteria set by the Chamber and then, if necessary, we
25 would ask that they appear before the Court as victims and

1 witnesses.

2 Thank you.

3 PRESIDING JUDGE COTTE: (Interpretation) Once
4 again, Mr Luvengika, we are dealing with quite a
5 complicated matter here, like a series of Russian dolls,
6 one nesting within one another.

7 With regard to the statement that you would like
8 to get a copy of, which led to an exchange, that was on a
9 date that I can't quite recall. You said that your client
10 did not keep a copy. All the same, were you able to talk
11 to this victim about the statement that was given to one
12 of the Defence teams? Did the person remember what he
13 said to the Defence? Might it be possible for you to have
14 a discussion with the person and find out what you would
15 like to know from the Defence team? Is it absolutely
16 necessary to have the statement itself? That is my first
17 question to you. You need not reply immediately.

18 With regard to this statement and this episode,
19 we will consult the transcript and review this exchange,
20 on a date that I forget, and if the situation prevails and
21 you wish to obtain a copy, and also we would like to
22 specify if this is not possible, if we cannot -- perhaps
23 it might be possible for you to get what you are after by
24 having another discussion with your client. Why? Because
25 it is absolutely necessary to have your applications for

1 leave to call victims as witnesses as quickly as possible.

2 Now, you have brought four applications before us
3 and, among other things, the Chamber may have to consider
4 the number of applications for leave that you have made
5 and we cannot remain in a state of vagueness.

6 Now, there -- we need to know whether there will
7 be applications, and if these victims will require
8 protective measures, well, all of this will take up time.
9 Please do not forget that the victims who may be
10 authorised to give testimony will be coming immediately
11 after the Prosecution has concluded its case; that is to
12 say this fall.

13 So to sum up with regard to the statement, a
14 short filing with the date of the hearing at which we
15 discussed this matter, with the appropriate transcript,
16 what you are after and, if necessary, an explanation why a
17 brief discussion with the person would not be enough.
18 Under such circumstances the Chamber does think that a
19 discussion may suffice, and after that, if an application
20 for leave is to be made, could it be done as quickly as
21 possible.

22 Now, I think I heard you hinting at something,
23 namely a protocol that did lead to a challenge
24 particularly from the Katanga Defence team, and the
25 Chamber is working on the reply that we had promised. Are

1 we in agreement? Could this filing be made as quickly as
2 possible by tomorrow evening? That would be ideal.

3 MR MACDONALD: (Interpretation) Thank you.

4 PRESIDING JUDGE COTTE: (Interpretation) The
5 investigations seem to have been conducted smoothly. We
6 will now go into private session, so that our witness can
7 enter the courtroom, and we will ask the two accused to
8 briefly leave the courtroom. Thank you, court security
9 officers. Thank you.

10 (Closed session at 11.52 a.m.)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Open session at 11.56 a.m.)

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

24 PRESIDING JUDGE COTTE: (Interpretation) Thank
25 you, court officer.

1 (The accused enter the courtroom)

2 PRESIDING JUDGE COTTE: (Interpretation)

3 Witness, good morning. We will resume for less than two
4 hours. I can see that you can hear me.

5 Mr O'Shea, you wished to conclude your
6 cross-examination by requesting a number of EVD numbers.

7 MR O'SHEA: Yes, indeed, Mr President. So there
8 are four items and they're all public. The first is
9 DRC-OTP-0081-0004, time-stamp 00.48.00 to 00.49.46, and
10 this is the excerpt which showed the ammunition and which
11 was played on 23 September 2010, which is of course today.

12 And the second extract is DRC-OTP-0081-0004,
13 time-stamp 00.00.42, and this was the one second image
14 with Lobho in the centre of the image and this was played
15 on 23 September 2010, today's date.

16 The third item is DRC-OTP-0081-0004, page 1. It
17 was the picture of the video cassette and it was played on
18 23 September 2010, today's date.

19 And lastly the fourth item is DRC-OTP-0080-0011,
20 time-stamp 00.10.46 to 00.12.34, and this is the -- this
21 is the excerpt which shows Kale Kayihura speaking about
22 taking control of Bule, B-U-L-E. And this was played on
23 22 September 2010, yesterday's date. Thank you,
24 Mr President, Madam Registrar.

25 PRESIDING JUDGE COTTE: (Interpretation)

1 Mr Prosecutor.

2 MR DUTERTRE: (Interpretation) Just one comment,
3 your Honour. They're about the three first minutes of
4 video DRC-OTP-0081-0004, which were played during the
5 cross-examination of the Defence, and I am asking that a
6 reference number be assigned to that extract which was the
7 basis of a lengthy debate regarding the date of the events
8 on that footage.

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

11 MR O'SHEA: I'm seeking the EVD numbers which I'm
12 seeking, and if my learned friend wishes to seek a
13 separate EVD number for the Prosecution, he may do so.

14 PRESIDING JUDGE COTTE: (Interpretation) Did
15 you, that is both of you, despite the incident that led us
16 to gather in a different room, were you able to clarify
17 this situation regarding the two numbers, 0081-0004, 0083
18 and 0004? And if that was clarified, then it wouldn't be
19 necessary to assign an EVD number to those first three
20 minutes of 0081-0004.

21 MR DUTERTRE: (Interpretation) Your Honour, we
22 are continuing to cross-check.

23 PRESIDING JUDGE COTTE: (Interpretation)
24 Mr Prosecutor, since you are still continuing with the
25 work, we are going to withhold assigning an EVD number to

1 those first four minutes. We are going to continue with
2 the cross-examination of the Defence counsel for
3 Mr Ngudjolo. So try to remember that and we will see to
4 it later. And court officer, we are going to assign EVD
5 numbers to the four extracts mentioned very clearly by
6 Mr O'Shea.

7 THE COURT OFFICER: Your Honours, therefore, the
8 first extract mentioned by Mr O'Shea, which is
9 DRC-OTP-0081-0004 time-stamps 00.48.00 until 00.49.46
10 shall be given the EVD number EVD-D02-0059.

11 The second extract time-stamps 00.00.42, which is
12 an image, I apologise, your Honour. The image will
13 receive the evidence number EVD-D02-00060. The third
14 image again pertaining to the same video shall be given
15 EVD number EVD-D02-00061. And finally, the video excerpt
16 of DRC-OTP-00080-0011, time-stamps 00.10.46 until 00.12.34
17 shall be given an EVD number EVD-D02-00062. All four
18 exhibits admitted publicly. Thank you.

19 PRESIDING JUDGE COTTE: (Interpretation) Thank
20 you, Madam Court Officer. We will now hand over to the
21 Defence team of Mathieu Ngudjolo which, in a timely
22 manner, communicated to us the documents and the videos
23 that they would like to produce.

24 With regard to the videos, that is in light of
25 what we have just experienced, the Defence team of Mathieu

1 Ngudjolo will determine whether it is necessary to project
2 a brief extract of a video so that the witness should know
3 or have an idea what they're dealing with.

4 Regarding the written documents which were the
5 subject of an objection by the Prosecutor, and this will
6 come up later, the Chamber would like to remind the
7 Defence team of Mr Ngudjolo that when we heard the
8 testimony of Witness 30 we agreed on the necessity, to the
9 extent possible, not to read out all documents; that is if
10 they have been admitted but to select the most relevant
11 excerpts so that the witness should be able to contribute
12 usefully.

13 So we also took the same decision regarding the
14 documents such as those taken down from the UPC website
15 and we began by giving those documents MFI numbers, with
16 the understanding that they would possibly be given EVD
17 numbers later. So that is the procedure. You can
18 introduce yourself to the witness now and begin.

19 MR KILENDA: (Interpretation) Thank you, your
20 Honours.

21 QUESTIONED BY MR KILENDA:

22 Q. Good morning, Witness.

23 A. Good morning.

24 Q. A short while ago we exchanged civilities. I
25 would like to say once again that my name is Jean-Pierre

1 Kilenda. I am Defence counsel, lead counsel, for
2 Mr Mathieu Ngudjolo. We are now going to proceed with the
3 second part of this cross-examination. The Presiding
4 Judge reminded you of the instructions to be followed, and
5 I would like to remind you of them also. You followed
6 that procedure correctly with the Prosecutor, the legal
7 representatives of the victims, and a short while ago with
8 my learned colleague, Mr O'Shea. So do not hesitate to
9 interrupt me if you do not quite understand a question. I
10 will try to rephrase it because it is absolutely crucial
11 that there should be clarity in our proceedings so as to
12 prevent any ambiguity.

13 Mr Witness, my cross-examination will be in three
14 parts. The first part will concern your statement to the
15 investigators of the OTP. The second part will relate to
16 the video extracts produced and presented by the
17 Prosecutor himself, and to which EVD numbers have already
18 been assigned by the court officer. And, lastly, the
19 third part will relate to video extracts selected by the
20 Defence team of Mathieu Ngudjolo, and which do not yet
21 have EVD reference numbers. And if all the criteria are
22 fulfilled, we will seek EVD numbers for those extracts.

23 Your Honour, the Defence of Mathieu Ngudjolo is
24 fully aware of your concern with regard to having an
25 expeditious trial. It is for that reason that today, with

1 regard to the extracts selected by the Prosecutor and to
2 which EVD numbers have already been assigned, we will not
3 be asking the routine questions that you know because
4 those would be identifying questions. So that would
5 increase the time that our proceedings take in open
6 session. Thank you, your Honour.

7 With your leave, I will immediately begin with
8 the first part of my cross-examination, which relates to
9 the statements given by the witness to the OTP. And with
10 your leave I would like to ask for a private session.

11 PRESIDING JUDGE COTTE: (Interpretation) Court
12 officer, let us go briefly into private session, please.

13 (Public session at 12.11 p.m.)

14 (Expunged)

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21 (Expunged)

22 (Open session at 12.35 p.m.)

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

24 Honours.

25 PRESIDING JUDGE COTTE: (Interpretation) Thank

1 you. Counsel Kilenda, please continue.

2 MR KILENDA: (Interpretation) Thank you, your
3 Honour.

4 Q. Witness, I would like to refer to your statement
5 before the investigators of the Office of the Prosecutor.
6 This is document DRC-0008-7146 - DRC-0008-7146 - and
7 namely paragraph 19 thereof, (Expunged)
8 (Expunged)
9 (Expunged)." within the military
10 structure of the Union of Congolese Patriots in 2000 at
11 the time when Thomas Lubanga was arrested for the first
12 time and detained in Kinshasa." I think that a few
13 moments ago you mentioned this arrest of Thomas Lubanga.
14 What do you know about this arrest and of this detention?

15 Do you know the reason for it?

16 A. I did not have detailed information in this
17 regard, with regards to this arrest, so I can't answer
18 this question. I don't have any detailed information in
19 that regard.

20 Q. You don't have any detailed information, but you
21 do have some information, not detailed information?

22 A. All I know is that Lubanga was within the RCD-ML
23 of Mbusa Nyamwisi. According to what was said, he was
24 first minister for sport and leisure and then he was
25 nominated minister of the defence of this movement and

1 then later there were problems. He was arrested.

2 I cannot know all the details, but I know that he did hold
3 a post within this movement. There were problems and he
4 had undergone certain difficulties, and that's what I can
5 tell you in this regard on that subject. However, where
6 it concerns the points that opposed them, I can't say any
7 more about that.

8 Q. Thank you very much, Witness. You tell us what
9 you know and, what you don't know, you don't say. Thank
10 you for that.

11 In paragraph 20 of the same statement, you also
12 talk about the fact that Bunia was divided into two parts.
13 This is something that was just spoken about. On the one
14 hand you say that there was part occupied by Mbusa
15 Nyamwisi and Molondo Lompondo as well - Lompondo - and
16 that occupied by the UPC. Could you -- if you are able to
17 tell us, could you explain to the Chamber the reason why
18 Bunia was split into two parts, if you're able to tell us
19 that?

20 A. You know, we have a leadership problem in our
21 country, in the Congo. This is a major problem.
22 Everybody wants to be a leader. This is what caused
23 problems. It turned out that this movement wanted that
24 the army of Mbusa Nyamwisi be sent to Beni and this meant
25 that there was a split of Bunia, so there was a faction

1 which was directed by Mbusa Nyamwisi and Governor
2 Lompondo. There were -- there was a dispute between this
3 party and the UPC. In fact the UPC, or the bodyguard of
4 Thomas Lubanga which was residing or was based in town, it
5 was they who caused all these problems and I think that
6 led to the splitting of the town into two parts and later
7 there were clashes. The army of the APC went back to Beni
8 and the UPC governed over Bunia, and that's what I was
9 able to know at the time.

10 Q. Thank you, Witness. Also, did you know a
11 certain commander by the name of Claude Kiza?

12 A. Claude Kiza was the Chief of Staff of the APC in
13 the town of Bunia and, when Bunia was divided in two,
14 Claude was shot. I think that what happened to Claude --
15 well, he's somebody who I knew. And in this vehicle there
16 was a name -- somebody called Afande Bapi (phon). I heard
17 people speak about Claude, but I never saw him. I never
18 knew him either.

19 Q. Do you know who killed him? Who shot him?

20 A. It was a group of the UPC who did so, who
21 attacked him. They occupied part of the town and at that
22 time in Bunia there weren't a lot of armed groups. There
23 was first of all the UPC and the UPC was created at that
24 time, and the APC was also created afterwards and the UPDF
25 was on our side. In fact, the Ugandans were at the

1 airport at that time.

2 MR KILENDA: (Interpretation) Your Honour, in
3 the transcript, line 15 on page 74, it said "UPC and UPC"
4 in the French version. I think it's "APC and UPC".

5 PRESIDING JUDGE COTTE: (Interpretation) You're
6 right. I think we can make a correction, or ask for a
7 correction to be made to that line 15. "UPC" is stated
8 twice in the French version. That's an error, a material
9 error, substantive error. Please continue,
10 Counsel Kilenda. We thank you.

11 MR KILENDA: (Interpretation)

12 Q. Witness, at the time of this assassination of
13 Claude Kiza, what function did Thomas Lubanga hold?

14 A. At that time, I don't remember very well but I
15 think that Thomas Lubanga was not in Bunia. I think at
16 that time he was in Kinshasa, if my memory serves me well.
17 However, he was minister of defence within the RCD-ML
18 which also had an armed wing called the APC. However, he
19 was not in Bunia at that time, and the group in question
20 was created at that time. I don't know if you've
21 understood what I'm saying.

22 Q. Certainly, Witness. Thank you very much. In
23 this same paragraph, paragraph 20, you also speak about
24 the arrival of the delegation from Kinshasa in Bunia for
25 first contact, you state, between Kinshasa and the UPC

1 militia. Could you tell the Court who was part of the
2 Kinshasa delegation?

3 A. The Kinshasa delegation was composed of Colonel
4 Maguru from Ituri and who was of the Alur ethnic group, I
5 think.

6 THE INTERPRETER: The witness did not complete
7 his answer, states the Swahili booth.

8 PRESIDING JUDGE COTTE: (Interpretation)
9 Witness, the interpreters felt that you stopped a moment
10 ago before the end of your answer. Could you -- or do you
11 want to complete it? What we have on the transcript in
12 front of us, or at least in French, line 24, "The
13 delegation of Kinshasa was composed of Colonel Maguru from
14 Ituri and who was of the Alur ethnic group, I think." Do
15 you want to stay with that, or would you like to add to
16 that answer?

17 THE WITNESS: I think that my answer is complete.
18 It was Colonel Maguru. That's enough.

19 PRESIDING JUDGE COTTE: (Interpretation) Thank
20 you. Counsel Kilenda.

21 MR KILENDA: (Interpretation) Thank you, your
22 Honour.

23 Q. Witness, I need a clarification. Is it Colonel
24 Maguru or Aguru?

25 A. It is Maguru, if I haven't misunderstood it, or

1 if I didn't misunderstand it at the time. When he
2 presented -- introduced himself to the assembly at the
3 meeting he was called Maguru. In fact, there were two.
4 There was somebody who was with him called Abedi, who I
5 would say was his camp aide called Abedi.

6 Q. Thank you, Witness. And on this occasion who
7 represented the UPC?

8 A. The UPC was represented by Lonema.

9 Q. What was the function of Lonema?

10 A. He was vice-president of the party. He led the
11 party before the arrival of Lubanga.

12 Q. If you know, Witness. If you don't know, then
13 say you don't know. If you do know, what was the purpose
14 of this meeting between Colonel Maguru and the UPC
15 representative?

16 A. Where it concerns the purpose of the meeting,
17 according to what was said at the time there, the town was
18 divided in two at that time, and one armed group could not
19 go down or go up into the other half. There was the
20 killing of the military chief of the army at the time, and
21 Maguru came in fact to try to reconcile the two armed
22 groups in order to see how they could be reintegrated into
23 the army or to make one military group out of them.

24 At that time the MLC had good relations with the
25 government of Kinshasa and this visit was in the framework

1 of trying to reintegrate these groups within the Kinshasa
2 army. Colonel Maguru was there to speak to these people
3 in order to bring them together so that they could speak
4 with one voice. I think that was the objective, the aim
5 of this meeting.

6 Q. Thank you very much, Witness. Do you know
7 Mr Amboko Bebetu, Mathieu Amboko Bebetu? Who is he?

8 A. He was the minister responsible for
9 communications within the UPC.

10 Q. Do you confirm that in the conflict Mbusa
11 Nyamwisi was opposed to Thomas Lubanga?

12 A. Yes, there was a conflict.

13 Q. Can you speak to us briefly about that?

14 A. I can just say that there was a conflict between
15 the two. Perhaps we should be in private session so that
16 I can speak more about that. I address this application
17 to you, your Honour.

18 PRESIDING JUDGE COTTE: (Interpretation)
19 Witness, going into private session is only justified if
20 your answer will lead to you being identified. However,
21 if your answer only concerns the respective persons of
22 Mbusa Nyamwisi and Thomas Lubanga, then there is no reason
23 for a private session. Once again, it's aimed to protect
24 you.

25 THE WITNESS: Very well. I know that there was a

1 conflict between the two and, myself, I was witness to
2 this conflict between them. When two people don't get on,
3 when you see them, when they meet, you can notice that
4 there's a clash or a dispute between them. So I just
5 wanted to say that there was a clash or an issue of
6 dispute between the two.

7 MR KILENDA: (Interpretation)

8 Q. Can you tell us exactly what it was behind this
9 clash between them? Why didn't they get on?

10 A. I think I told you that in the Congo we have a
11 problem with leadership because everybody wants to be the
12 leader. Everybody wants to be a leader, and that creates
13 a problem. And when the members of the leadership are
14 opposed to each other, there's a problem, and this can
15 cause war or disagreements, disorder between people.

16 Q. Witness, here, we weren't there. You at least
17 had the opportunity to be present and to know that there
18 was a conflict. You speak about a leadership problem, but
19 quite concretely, what happened? Concretely; what was the
20 reason for their dispute?

21 PRESIDING JUDGE COTTE: (Interpretation)

22 Prosecutor.

23 MS VARGA: The witness was asked this question
24 before and he answered, so it's no point in asking him
25 again.

1 PRESIDING JUDGE COTTE: (Interpretation) Very
2 well. Our witness is a big boy. If he's able to give
3 additional details he will provide them. If he can't he
4 will also say that. Can you add additional details, or do
5 you think you have gone into this subject in enough
6 detail, the subject of the conflict that opposed the two?
7 Thomas Lubanga and Mr Nyamwisi. Witness, please, could
8 you answer us. If you think that you've exhausted the
9 subject, please confirm that and Counsel Kilenda will go
10 on to another subject.

11 THE WITNESS: Well, I think that I've shown you
12 the picture as it was. There was a conflict between these
13 people. It was a leadership conflict, from what I could
14 see, and if it wasn't a leadership conflict, well, there
15 wouldn't have been a conflict between the APC army and
16 the -- and Lubanga's party which was created, or which
17 created the UPC group. So there was a leadership problem.
18 And when there's a problem, everybody has their opinion.
19 And we didn't know what to do. I think that all I can
20 give you as my personal opinion is to say that these two
21 people knew each other very well and they knew their
22 positions. Personally, I know that there was a conflict
23 between the two. I think you've understood me well,
24 honourable Judge.

25 PRESIDING JUDGE COTTE: (Interpretation) We have

1 understood, Witness. Counsel Kilenda, please continue.

2 MR KILENDA: (Interpretation) Thank you, Judge.

3 Q. Thank you, Witness. When I started asking you
4 my questions in private session, I did feel at a
5 particular time that you spoke about Ntumba Luaba, the
6 Congolese minister of human rights at the time who was
7 kidnapped by Chef Kahwa, Kahwa Mandro. Could you tell us
8 something about this kidnapping?

9 A. Yes, I remember. During this month the person
10 responsible for, or people responsible for human rights
11 were abducted. The minister rather, the minister
12 responsible for human rights was abducted, but I cannot
13 say more because Thomas Lubanga, when he returned from
14 Kinshasa with this minister of human rights, knew what the
15 plan was, what they wanted to do with the minister of
16 human rights. But with regards to this hostage-taking
17 concerning the minister of human rights, investigations
18 are necessary to find out what happened, when they went,
19 where they went. I'm not going to say that Chef Kahwa
20 ordered the imprisonment of this minister of human rights.
21 There has to be investigations to understand why Chef
22 Kahwa did this. He was part of the group. But the party
23 was also led by Afande Bosco, Afande Kitembo and
24 investigations have to be carried out to know more about
25 that. I wasn't there, I didn't carry out any

1 investigations and there I have to admit that I'm really
2 in the corner there. I can't give you any more details in
3 that regard.

4 PRESIDING JUDGE COTTE: (Interpretation) We'll
5 stay there. Thank you.

6 Prosecutor.

7 MS VARGA: (Interpretation) Mr President, very
8 briefly if Mr Kilenda could give us the reference to the
9 portion in the transcript where the witness spoke about
10 this incident with Mr Luaba, because we cannot -- we
11 cannot find it? Thank you.

12 PRESIDING JUDGE COTTE: (Interpretation)
13 Mr Kilenda, if you couldn't do that immediately, could you
14 interrupt us at some later point in the hearing and
15 provide that answer.

16 Personally speaking, I believe I remember that at
17 the very beginning of the testimony reference was made to
18 that person which led to the answer that we've just heard
19 from the witness; the answer that he wishes to end now
20 because he has nothing further to say. I believe it's at
21 the very beginning of the transcript.

22 MR KILENDA: (Interpretation) If you don't mind,
23 I think I could give that reference to the Prosecution
24 tomorrow.

25 PRESIDING JUDGE COTTE: (Interpretation) Would

1 that be suitable? It could be sent. Yes, just to ensure
2 that it's all shown in the transcript.

3 MR KILENDA: (Interpretation) Thank you.

4 PRESIDING JUDGE COTTE: (Interpretation) Please
5 consider that possibility, Madam Prosecutor.

6 Mr Kilenda, please proceed.

7 MR KILENDA: (Interpretation)

8 Q. I also noticed, Witness, that in response to one
9 of the questions that I asked at the beginning of my
10 cross-examination, you said that you had travelled to a
11 number of foreign countries with Mr Thomas Lubanga. At
12 paragraph 30 of your statement to the OTP investigators
13 you said, and I quote, "I was also present at a press
14 conference held at Speke Hotel in Kampala when the UPC
15 turned its back on Uganda. That was in February 2003.
16 Could you explain to the Chamber whether you know --
17 or what do you mean by this when you say "... when the UPC
18 turned its back on Uganda"?

19 A. Well, I meant -- when I said that I meant that
20 initially the UPC was cooperating with the Ugandan army in
21 the town of Bunia, they were together and after the UPC
22 fought the Ugandans, so if you're with someone and then
23 later you fight them that means that you've turned your
24 back on them. They had been allies initially, but then
25 they fought one another as enemies. So I think that my

1 statement is in keeping with that.

2 Q. Do you remember the date of that conference that
3 was held in February 2003?

4 A. I do not recall.

5 Q. And if I put it to you it was 11 February 2003 -
6 11 February 2003 - what would you say in response to that?

7 A. 11 February 2003, or 2002? What are you saying?

8 Q. 2003. 11 February 2003, a press conference that
9 was held at the Speke Hotel in Kampala. You said that at
10 that time the UPC turned its back on Uganda.

11 A. I think there is a cassette that shows that
12 meeting of 11 February 2003. Perhaps you have the date on
13 the tape - on the recording. A video was filmed at that
14 time and it is possible that the date may be shown on the
15 video; namely, 11 February 2003. That is possible.

16 Q. Since you were at that press conference, could
17 you tell us what was the purpose of this press conference?

18 A. If I recall, as of 11 February there were
19 meetings. There was another meeting held by Lubanga in
20 Bunia, during which he spoke saying that the residents had
21 to help him. I don't really remember very well. All I do
22 know is that I was with him, I travelled with him to
23 Kampala, but I am not in a position to know more than
24 that. I can know what was said openly in a way that you
25 may have heard things, just as you may have heard things

1 yourselves.

2 Q. Thank you, Witness. At paragraph 31 of your
3 statement to the OTP Prosecutors you said, and I quote, "I
4 was also at a meeting when the UPC wanted to talk to
5 General Salim Saleh about security, so Lubanga contacted
6 ...", it is said here, "... his committee, his executive
7 committee of the UPC, and said to them that they should
8 not be afraid of Salim Saleh, or Colonel Mayombo. Lubanga
9 wanted the U ..." -- and I am quoting directly from the
10 text. "Lubanga wanted the UPC to drive out the Ugandan
11 forces from Ituri and the UPC even -- that the UPC
12 controlled the town of Bunia and Ituri in general.
13 Lubanga also wanted the UPC to control the pacification
14 themselves. The minister of the UPC responsible for
15 pacification was John Tinanzabo."

16 Could you tell the Court where this meeting was
17 held and on what date?

18 A. That meeting was held in Bunia in the building
19 found not far from the water board authority building,
20 quite close to the EPO field. Before the meeting, Salim
21 Saleh was there and Mayombo was there. I was in Bunia.
22 That happened in Bunia. It was in February, but I don't
23 remember the specific date. It was in February. Or, no,
24 it was in 2003, in February, before the fighting of
25 6 March 2003. Before the fighting between the UPDF and

1 the UPF that occurred on 6 March 2003.

2 Q. I put it to you that it was on 23 February 2003.
3 How do you respond to that?

4 A. You may be correct. I am telling you that it
5 occurred before the clashes of 6 March 2003 but, if you
6 put it to me that way, that is fine. You know, there is
7 some video footage that we could view that could refresh
8 our memories, because there are some images that have to
9 do with that meeting and they are subdivided into various
10 smaller segments. There is one meeting that was held at
11 the building of the water authority and the other one was
12 at the Azanga field.

13 Q. Exactly what happened at these two places that
14 you just mentioned?

15 PRESIDING JUDGE COTTE: (Interpretation) When
16 you're talking about the two places, do you mean Azanga
17 and the water authority building? Is that not so?
18 Witness, are you able to answer that question? The
19 Chamber is well aware that we are asking you to go seven
20 years back in your memory, which is a difficult challenge.

21 THE WITNESS: I think that during that meeting
22 explanations were given by the team of Lubanga and
23 Mayombo. There are videos, you can view them and listen
24 to what is being -- what was said during that meeting,
25 rather than having me tell you what was said. I think

1 that, if we were to view the footage, we would understand
2 what was said during that meeting.

3 MR KILENDA: (Interpretation)

4 Q. I'm not so sure that you're answering the
5 question, but I will make another attempt. You said that
6 you have a brain. I will try. If you can't answer, don't
7 answer.

8 A. Agreed.

9 Q. During that press conference, if we analyse the
10 situation we say -- see that Lubanga had some harsh words
11 about Salim Saleh and they were not to be afraid of him.
12 What justified such language from Mr Thomas Lubanga?

13 PRESIDING JUDGE COTTE: (Interpretation) Madam
14 Prosecutor.

15 MS VARGA: We object to this question because
16 it's asking for the witness to speculate.

17 PRESIDING JUDGE COTTE: (Interpretation) Yes,
18 indeed. Mr Kilenda, move on to another question.

19 MR KILENDA: (Interpretation) I withdraw that
20 question, your Honour, thank you.

21 Q. Witness, when you were working for the UPC, did
22 you ever go to Dar es-Salaam?

23 A. No, I never travelled to Dar es-Salaam with the
24 UPC. I told you that I had gone to Kampala, and I also
25 said that I travelled to Aru with UPC leaders.

1 MR KILENDA: Thank you, Witness.

2 If we could go that private session for just a
3 moment, your Honour.

4 PRESIDING JUDGE COTTE: (Interpretation) Court
5 officer.

6 (Private session at 1.16 p.m.)

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15 (Open session at 1.25 p.m.)

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

18 PRESIDING JUDGE COTTE: (Interpretation) Thank
19 you. Mr Kilenda, please proceed, but remember we only
20 have five minutes.

21 MR KILENDA: (Interpretation) Thank you. Now,
22 if I've understood correctly, the witness is having some
23 trouble with some dates when he listens to the
24 interpreters. I would suggest to the Chamber that we
25 conclude at this point. It's just a suggestion. And

1 tomorrow morning, when we are in private session, I could
2 resume the reading out of this paragraph, paragraph 11,
3 and ask for a reply. So I could ask the question that I
4 want.

5 PRESIDING JUDGE COTTE: (Interpretation) Could
6 you perhaps spare us a lengthy reading of the statement if
7 the witness has a copy before him and the paragraph in
8 question, paragraph 11?

9 MR KILENDA: (Interpretation) That would be a
10 better strategy.

11 PRESIDING JUDGE COTTE: (Interpretation) This
12 would allow the witness to read over the passage in
13 question and will spare you the task of reading out the
14 entire paragraph. We will proceed in that manner tomorrow
15 morning.

16 MR DUTERTRE: (Interpretation) In which language
17 will Mr Kilenda be giving the statement, Swahili or
18 French? What would the witness prefer?

19 PRESIDING JUDGE COTTE: (Interpretation)
20 Witness, now, paragraph 11 of this statement that
21 Mr Kilenda has just read out, tomorrow we will be asking
22 you to read it over. Would you prefer to read it in
23 French or in Swahili?

24 THE WITNESS: I think that it would be better for
25 it to be read in the original language. The problem that

1 I raised is that it was said that the march was held
2 after, but it was before. So these are events that
3 occurred before march but, in the interpretation, I heard
4 "after the departure of the UPC."

5 PRESIDING JUDGE COTTE: (Interpretation) I
6 think, just to ensure that everything is clear tomorrow,
7 unlike my earlier suggestion, it would be better for you,
8 Mr Kilenda, to read out paragraph 11, and it will be shown
9 in the transcript in both French and English, translated
10 for the witness, and then we will resume from that point
11 tomorrow.

12 Witness, thank you for your contribution this
13 morning. Thank you for your replies. We will ask the
14 accused to please leave the courtroom so that the witness
15 can then leave. And accused, we will see you tomorrow at
16 9 a.m., to continue with the cross-examination of
17 Mr Kilenda.

18 Mr Kilenda, I would imagine you will need the
19 four hours and more or --

20 THE INTERPRETER: Inaudible, no microphone.
21 (The accused exit the courtroom)

22 PRESIDING JUDGE COTTE: (Interpretation) If you
23 would like to have more information about your stay here,
24 I think you can expect to still be with us on Monday.

25 Court officer, we shall now go into closed

1 session so that the witness can leave the courtroom.

2 Once again, thank you, Witness. Thank you,
3 everyone who has been of assistance today. We will go
4 into closed session, courtroom officer.

5 (Closed session at 1.29 p.m.)

6 (Expunged)

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8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

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

14 RECLASSIFICATION REPORT

15 * Pursuant to Trial Chamber II's oral order dated 23rd
16 September 2010, the excerpt of the transcript starting
17 page 60 line 17 to page 61 line 3 is reclassified from
18 Private session to Open Session

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