

1 The International Criminal Court

2 Trial Chamber II - Courtroom 1

3 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra and Judge Christine

4 Van den Wyngaert

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

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

7 Mathieu Ngudjolo Chui

8 Trial Hearing

9 Tuesday, 28 September 2010

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

11 (Closed session)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Open session at 9.03 a.m.)

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

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

24 court officer.

25 (The accused enter the courtroom)

1 PRESIDING JUDGE COTTE: (Interpretation) The accused are with us.
2 The witness is with us as well.

3 Before giving the floor back to Counsel Kilenda, the Chamber would
4 like to issue an oral decision with regards to the application of the common legal
5 representatives of the group of victims with a view to
6 filing a reply in accordance with the Regulation 24(5) and 34(c) of the Regulations of
7 the Court. We would just like to issue a brief procedural reminder.

8 On 15 September 2010 the common legal representatives of the principle
9 group of victims filed an application with a view to have leave to have appear four of
10 the 365 victims to appear in accordance with the decision 1665 of the 1 December 2009
11 on Rule 140.

12 The parties in the present case submitted their submissions on
13 23 September 2010. The Prosecutor intends to support the application of the legal
14 representatives and the two Defence teams declare themselves to be opposed to it.

15 In application 2417 of September 2010, the legal representatives of
16 victims asked the Chamber for leave to reply to these two last submissions, which
17 have the numbers 2405-Conf with regards to the reply to Mathieu Ngudjolo and 2407
18 for the reply of the Defence team of Germain Katanga.

19 With regards to this application for leave to reply, the Chamber notes
20 that the issue raised by this application with a view to have leave to have victims
21 appear as witnesses, this does present a new element incontestably and it does raise
22 legal issues which should be dealt with, with a view to having the most amount of
23 information available. The Chamber also considers that it has authorised this leave to
24 reply to the legal representatives to file its submissions in a short time frame which
25 will expire on this Friday, 1 October 2010, at 1600 hours.

1 Counsel Kilenda, you have the floor. Witness, can you hear me well?

2 THE WITNESS: Yes.

3 PRESIDING JUDGE COTTE: (Interpretation) So, Counsel Kilenda.

4 MR KILENDA: (Interpretation) Thank you, your Honour. Your
5 Honour, Judges. Good morning.

6 QUESTIONED BY MR KILENDA: (Interpretation) (Continuing)

7 Q. Good morning, Witness.

8 A. Good morning.

9 MR KILENDA: (Interpretation) Your Honour, I would like to call up
10 the last excerpt, which has the number DRC-D03-0001-0445, reference to the
11 translation of the transcript DRC-OTP-1030-0024, line 1703 to 1824. It comes from the
12 Prosecution video, and the reference for that is DRC-OTP-0080-0011, which starts at
13 1.27.29 and goes to 1 hour, 34 minutes, with sound and interpretation.

14 (Video extract played)

15 THE INTERPRETER: (Interpretation) "(Inaudible). (Inaudible). They
16 gave us a communiqué. It's called Kulaije. He's the captain, Captain Felix Kulaije,
17 responsible for information within the UPDF here in Ituri. Good morning. Good
18 morning. Thank you. Good morning to the listeners. We are in the framework of the
19 participation (inaudible) and we have a press release which comes from the
20 information department of the UPDF. Can you give me the press release? What do
21 you want to say? (Inaudible).

22 First of all, I would like to say to the listeners that today, the 24th of
23 March, the UPDF (inaudible) has in Rwampara and see people here that (inaudible). I
24 want to tell you that yesterday you saw soldiers who had red berets. Well, these are
25 military police of the UPDF, and their work is to keep the peace (inaudible).

1 Question: (Inaudible). Keep the peace. (Inaudible).

2 Answer: The difference is that their work is the work of police here in
3 Bunia and they are going to keep the peace here.

4 Question: (Inaudible).

5 Answer: (Inaudible). Their work is to fight against the enemy. Thank
6 you very much. (Inaudible). You are responsible for information and the Brigade
7 Commander Kale Kayihura (inaudible). Thank you very much. (Inaudible). The
8 work of the committee, pacification committee of Ituri, has started with MONUC,
9 with MONUC's help and (inaudible) the 1st or the 2nd of April, that's going to start
10 (inaudible). How much time the spokespersons are going to take and this committee
11 (inaudible) represented by Mr Simba and the brigadier -- the brigade general or
12 Brigadier-General Kayihura (inaudible). There are Lendu Sud and the Lendu Sud
13 and Nord and the Alur as well. (Inaudible). All these people have sworn an oath
14 within this committee.

15 There are also -- or there is also a political group (inaudible) PUSIC,
16 P-U-S-I-C, the FNI, FPDC (inaudible). Yesterday, we sent them a message to
17 participate in the pacification committee for Ituri, the aim being to achieve peace and
18 we want to tell our listeners in Ituri (inaudible). We're going to help the Congolese
19 with the help of MONUC (inaudible). Perhaps you think that we are reinforcing the
20 troops. (Inaudible). I have explanations from the President's cabinet. The Ugandan
21 president gave an order that the forces, the Ugandan forces of the UPDF have to stop
22 fighting. They should withdraw from Mandro and all localities and he said that the
23 UPDF should keep peace in Ituri.

24 The commission for pacification in Ituri should be left to do its work.
25 After the commission we are going to take our bags and go home. Pack our bags and

1 go home. Then there's an agreement between MONUC and the pacification
2 commission. There'll be another neutral force (inaudible). For that (inaudible) the
3 representatives of the Ugandan government (inaudible)."

4 MR KILENDA: (Interpretation) The witness raised his hand.

5 Q. Thank you, Witness. In this extract they spoke about 24 March. Is that
6 24 March 2003?

7 A. Captain Felix Kulaije is speaking about explosions, anti-personnel mines.
8 That took place on 24 March. There were anti-personnel mines which exploded. The
9 captain informed the population of the fact that there would be explosions and he
10 told people not to panic. And he spoke --

11 THE INTERPRETER: The interpreter did not hear what the witness said
12 in the last stage.

13 PRESIDING JUDGE COTTE: (Interpretation) The interpreter did not
14 understand the last part of what you said. If you could please repeat what you said,
15 Witness.

16 THE WITNESS: The captain in question was speaking about a radio
17 station called Canal Revelation. He was in the radio station. He was in -- he was at
18 this radio station.

19 MR KILENDA: (Interpretation)

20 Q. And that was 24 March 2003, was it not?

21 A. Yes, it was. That is what Afande Felix Kulaije has just said in the excerpt.
22 He also speaks about the military police who intervene and he asked the population
23 not to panic when they see these soldiers wearing red berets. He said these were
24 troops who had come to help the police in Bunia.

25 Q. Thank you very much, Witness. You told us a moment ago that Captain

1 Felix spoke about -- or he was speaking on the radio on Canal Revelation. Do you
2 know why it's called Canal Revelation or Radio Revelation?

3 A. In my opinion -- well, I followed the journalist. This is a radio for young
4 people; this radio that's called Canal Revelation. I think the journalist said that it was
5 a radio station for young people.

6 Q. Thank you very much, Witness. I just have a last question to ask you: In
7 following the excerpt, there are different parties taking part in the pacification
8 committee for -- commission for Ituri, but I didn't hear the UPC among those groups.
9 Do you know why the UPC wasn't there, if you know?

10 A. We have gone into this subject on several occasions here, that is to say that
11 with regards to the lack of presence of the UPC, we have spoken at length about it.
12 It's not the first time. It wasn't the first time that the UPC wasn't participating in the
13 work of the pacification commission. The UPC had its reasons and I can't express
14 myself on that.

15 Q. Thank you very much, Witness.

16 Your Honour, would there be a problem if we ask for an EVD number
17 for this excerpt and the reference of the translation of the transcript?

18 PRESIDING JUDGE COTTE: (Interpretation) Court officer, if you
19 please.

20 THE COURT OFFICER: Good morning, your Honours. The EVD
21 number would be given as follows: EVD-D03-00062 and the extract is admitted as a
22 public exhibit. Thank you.

23 PRESIDING JUDGE COTTE: (Interpretation) Counsel Kilenda.

24 MR KILENDA: (Interpretation) Thank you very much, your Honour.
25 Witness, Mr Mathieu Ngudjolo and his whole team would like to thank you sincerely

1 for all the answers you have provided us with to your questions. We do note that you
2 have a brain, you have intelligence, and you are no robot by any means. We would
3 like to thank you for that. Your Honour, we have finished.

4 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much,
5 Counsel Kilenda. Prosecutor, for your re-examination, you have the floor.

6 MR DUTERTRE: (Interpretation) Good morning, your Honour. Good
7 morning, Judges.

8 THE INTERPRETER: The English booth would like to point out a
9 terrible hum on the line.

10 MR DUTERTRE: (Interpretation) I have a very short re-examination to
11 carry out.

12 QUESTIONED BY MR DUTERTRE: (Interpretation)

13 Q. Witness, good morning.

14 A. Good morning.

15 Q. Counsel Kilenda yesterday showed you an extract of the video 0081-0009.
16 And in particular a passage where General Kale Kayihura speaks, minute 13.11 to
17 15.58, page 55 of the non-corrected version of the transcript. Thereafter, your Honour,
18 I would -- there was a question (expunged) and
19 you said that was in March, page 58. So I would like to have some clarification with
20 regards to this issue of date and, with your leave, your Honour, I would like to show
21 the cover of this video image thereof.

22 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor, in order to
23 make it possible for the Court to identify this video, can you give the EVD number
24 that was given yesterday thereto, if that is possible for you. We've seen a lot of
25 excerpt. We saw a lot of excerpts yesterday and, personally, I'm not able to find this

1 video.

2 MR DUTERTRE: (Interpretation) If you would give me just a moment.
3 Unless I am wrong, it is EVD-DRC-D03-00054.

4 MR KILENDA: (Interpretation) Your Honour, that can't be EVD-DRC;
5 it has to be D03.

6 MR DUTERTRE: (Interpretation) That's correct.

7 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Please
8 ensure that the witness can identify the video himself but the floor is over to you,
9 Prosecutor.

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

11 Q. Witness, can you remember this video that I'm speaking about, where you
12 can see General Kale Kayihura speaking, speaking about Bogoro?

13 A. Yes, I do remember. I do remember this video extract.

14 MR DUTERTRE: (Interpretation) Your Honour, I would now like to
15 show the cover of this video but perhaps we should go into private session in order to
16 do that.

17 PRESIDING JUDGE COTTE: (Interpretation) Court officer, please take
18 us into private session for a moment.

19 (Private session at 9.26 a.m.)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

1

2

3

4

5

6

7

8

9

10

11 Page 9 expunged. Private session.

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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 (Open session at 9.34 a.m.)

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

17 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Prosecutor --
18 the Prosecutor has finished his re-examination and now he is asking for an EVD
19 number to be assigned to these images of these videotapes that have been shown with
20 labels, at the side and on the top, and there were questions regarding these labels.
21 Court officer, could you see to that.

22 THE COURT OFFICER: Your Honours, the first label will therefore
23 become EVD-OTP-00191 and the second will be given the number EVD-OTP-00192.
24 Thank you.

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

1 Prosecutor.

2 MR DUTERTRE: (Interpretation) Yes, your Honour, one detail. These
3 sleeves, or labels, of the tapes can be public.

4 PRESIDING JUDGE COTTE: (Interpretation) Court officer, these shall
5 be public exhibits.

6 Mr O'Shea, at this particular stage in the testimony from the witness,
7 have you any final remarks?

8 MR O'SHEA: Mr President, I have no ultimate examination. Thank you
9 very much. Thank you, Mr Witness.

10 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr O'Shea.
11 Mr Kilenda?

12 MR KILENDA: (Interpretation) We have no further observations at this
13 stage. Just to say to the witness we wish you a safe trip home. Goodbye, Witness.

14 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Kilenda.

15 THE WITNESS: (No interpretation).

16 PRESIDING JUDGE COTTE: (Interpretation) Now, I believe
17 Mr Kilenda -- I beg your pardon, I didn't see that the witness was responding. We
18 apologise, Witness. Could our interpreters interpret what the witness just said.

19 THE WITNESS: You're welcome. I would like to thank you and I wish
20 you all best wishes with your work.

21 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Witness.

22 Prosecutor, you wished to address the Court?

23 MR DUTERTRE: (Interpretation) Thank you, your Honour. Two
24 remarks. First of all, these are related points. I'd like to ask my colleague, Ms Varga,
25 to address the first point.

1 PRESIDING JUDGE COTTE: (Interpretation) Madam Varga.

2 MS VARGA: Good morning, Mr President, your Honours. Just very
3 briefly, you may all recall that during the cross-examination by the Defence on
4 23 September, Mr O'Shea played an excerpt from video DRC-OTP-0081-0004.

5 When playing this video we were confronted with a technical issue that
6 led to some degree of confusion, as on the bottom of our screens the ERN reference
7 0083-0004 was displayed instead of the correct reference which would have been
8 0081-0004.

9 I can provide the transcript reference to the discussions that ensued on
10 this subject for everyone's reference, and that is in transcript number 191, confidential
11 English edited version of 23 September 2010 from pages 9 to 23.

12 As it has already been clarified at the time - and we can once again
13 confirm this - the footage played by Mr O'Shea was indeed from video 0081-0004 and
14 that the wrong ERN reference displayed on the bottom of the screens was the result of
15 a technical error, the source of which still remains to be ascertained.

16 We looked into the matter and, without going into details of a very
17 technical nature, we can confirm that regrettably a rather unusual error occurred
18 when saving the video files properties; that is, as we stated before, only the metadata
19 of the video file was affected and the error can be rectified by simply correcting the
20 metadata of video 0081-004 in eCourt. There is no need to replace the entire video
21 file, as the file itself was not affected by this technical error.

22 So, with your Honour's permission, this replacement of the metadata
23 can take place immediately so as to avoid any further confusion in relation to this
24 video, and of course we apologise for any misunderstanding that ensued from this
25 technical problem. Thank you.

1 PRESIDING JUDGE COTTE: (Interpretation) Please proceed,
2 Mr O'Shea.

3 MR O'SHEA: I am grateful to my friend for that indication and of
4 course she has already corrected the record in what she's just said, but of course
5 there's no objection to what she's suggesting.

6 PRESIDING JUDGE COTTE: (Interpretation) Thanks to both of you for
7 that constructive approach, and this will allow people to consult the transcripts of the
8 proceedings easily in the future.

9 Now, I'll give a reference. There were references to the English
10 transcript. In the French transcript, unless I'm mistaken, this matter was raised on
11 23 September, transcript 191, page 15, line 16 and line 17 on the next page.

12 Prosecutor, your second point.

13 MR DUTERTRE: (Interpretation) Thank you, your Honour. I presume
14 that Mr Silence -- Mr Kilenda's silence and that of his colleague equal consent.

15 MR KILENDA: (Interpretation) We don't want to destroy this
16 constructive approach that is being taken.

17 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor, your second
18 point.

19 MR DUTERTRE: (Interpretation) Yes, your Honour. And once again
20 with regard to this video 0081-0004, now that the mystery of the reference numbers
21 has been cleared up I require an EVD number for the first few minutes of this video
22 0081-0004. This was played during the cross-examination conducted by Mr O'Shea,
23 transcript 191, page 11 and on -- 15 and on.

24 Why? Well, for four reasons. First of all, it took some time to play this
25 footage last Thursday and I think we need to ensure that a record remains of this,

1 particularly since the words that were uttered on the tape were not all transcribed and
2 are not to be found on the transcript of the hearing. Thus, information will be lost
3 unless we give an MFI number to that particular segment.

4 Secondly - and in this particular case I think we need an EVD number -
5 when we saw the first part of the video this was linked to a central issue of the
6 cross-examination, and I'm referring to the question of dates, the dates on which the
7 footage was filmed, and you yourself, your Honour, you stressed the importance of
8 this matter for the Defence. If we do not give an EVD number to this, we will not be
9 giving a number to part of the evidence that is being discussed and which was used
10 for -- by the witness in order to provide a reply.

11 Thirdly, the Prosecution believes that it is important for the Chamber to
12 have these three minutes of footage on the case file, particularly when it comes to the
13 date of the footage found on this video.

14 Fourthly, we must stress that neither the origin -- correction -- that the
15 origin is not being contested and that the video itself was authenticated, and this can
16 only be beneficial.

17 To conclude, I require an EVD number for this particular extract,
18 realising that, in actual fact, we played somewhere between 3 and 4 minutes of the
19 footage and the transcript does not show exactly when we stopped and, to be entirely
20 certain, I am asking for this number be provided for these first three minutes.

21 MR O'SHEA: I'm afraid I oppose this application. It goes to an
22 important procedural principle, which is the adversarial nature of these proceedings.
23 Your Honours will remember that the party who was conducting cross-examination
24 at that time was the Defence for Mr Katanga.

25 There are matters which are discussed or things which are shown in

1 Court during the course of proceedings which don't necessarily become evidence in
2 court. It is up to a party to make an application to put something in evidence which
3 they show to a witness, and it is up to that party. It would be wrong procedurally to
4 allow what my learned friend is attempting to do now, which is to effectively
5 hijack a part of my cross-examination for his own benefit.

6 The proper procedure which he should have undertaken would have
7 been to ask questions in re-examination of the witness and, through those questions
8 in re-examination, if he showed a video extract to the witness, if it was a legitimate
9 re-examination, then he could -- he could then ask for an EVD number of the three
10 minutes that he's asking for. But by doing what he's doing now he is evading the
11 technicalities of re-examination and the difficulties of re-examination.

12 MR DUTERTRE: (Interpretation) Just to save some time, because I
13 think I can --

14 PRESIDING JUDGE COTTE: (Interpretation) Mr O'Shea shall conclude
15 and then you, Prosecutor, will speak. Now, Mr O'Shea.

16 MR O'SHEA: The other point I would like to make is to remind your
17 Honours of how we were confronted with this particular situation.

18 Your Honours will remember that I very carefully -- your Honours will
19 remember that I very carefully tried to avoid showing video extracts during the
20 course of my cross-examination. I showed certain very specific and very short video
21 extracts, and when I asked questions which I felt could be asked without wasting the
22 Court's time by going to the video extracts themselves, it was my learned friend who
23 got to his feet and insisted upon me showing video extracts. On one or two occasions
24 your Honour turned to the witness for his opinion and the witness expressed the
25 opinion that he would prefer to see the extract.

1 Now, it was not my intention to show those three minutes of video
2 footage. It was done despite every effort on my part not to do so. So, in my
3 respectful submission, it would be procedurally unfair to allow the Prosecutor to give
4 an EVD number for something that was shown during my cross-examination, which I
5 in fact never intended to show, but which was forced about by what I would suggest
6 were unreasonable and repetitive interventions on the part of my learned friend to
7 force about the showing of video footage that I never intended to show.

8 PRESIDING JUDGE COTTE: (Interpretation) Mr Kilenda, do you wish
9 to comment on this procedural matter that we need to deal with as quickly as
10 possible, you or your team?

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

12 The Ngudjolo Defence team thinks, quite honestly, that the position
13 taken by Mr O'Shea is in keeping with the principles and we endorse this approach.

14 PRESIDING JUDGE COTTE: (Interpretation) Mr Dutertre, you may
15 proceed, but very quickly. This will be the last exchange of views in front of the
16 witness.

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

18 This video was shown because the Chamber thought it was proper to do
19 so, and the Defence and, as is the case for the Prosecution and the legal
20 representatives, must respect the decision taken by the Chambers. We wanted to save
21 time and not necessarily replay the footage, but it was to simplify matters and allow
22 the witness to leave. If we must play it, we have no choice. We will have to play it
23 again, and we will ask a question and then ask for an EVD number. But everything
24 was done to simplify matters. We can provide an EVD number Prosecution but,
25 really, our goal is to conduct proceedings quickly.

1 PRESIDING JUDGE COTTE: (Interpretation) Very well. Ever since
2 23 August - and we will return to this point - ever since 23 August, the Chamber has
3 tried very hard, as you have as well, but the Chamber has personally made very
4 strenuous efforts to follow all the technical subtleties of playing videos and we have
5 dealt with a number of major difficulties. We are now at the very end of this witness's
6 testimony. Prosecutor, you have just raised this matter once your re-direct was
7 finished.

8 The Chamber is having a hard time understanding exactly what points
9 were said at what stage. There were various procedural stages and you should have
10 made remarks or objections at the appropriate time in the proceedings. Now we are
11 at the very final remarks and we are returning to a discussion once again. We take
12 note of Mr O'Shea's remarks.

13 We would like to thank the witness for his contribution over many long
14 days. Witness, witness, you have made a very useful contribution. These hearings
15 have been long and often difficult, no doubt a trial for you at times, and we thank
16 you. We thank you for being here at the Court and providing us with your assistance.
17 We wish you a safe trip home and best of luck in all your endeavours at the present
18 time. Once again, thank you, Witness.

19 And we would remind you that everything that you have heard here,
20 everything that you have said here during these hearings, must be kept to yourself.
21 You should not repeat any of these remarks to others, any remarks you might have
22 heard or remarks you have made during the hearing, as well as remarks made just for
23 the Chambers or one of the parties.

24 So we wish you a safe trip home, Witness, and thank you very much.

25 We will now go into closed session so the witness can leave the

1 courtroom. The security officers will ask Mr Ngudjolo and Mr Katanga to leave the
2 courtroom for a moment, and once the witness has left the courtroom, the accused
3 will return to the courtroom. The Chamber will await the new team from the
4 Prosecution and will provide some general information.

5 Court usher, if you could escort the witness out of the courtroom.

6 (The accused exit the courtroom)

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

8 (Closed session at 9.55 a.m.)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Open session at 9.56 a.m.)

14 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor -- Madam
15 Court Officer -- I'll just wait until we're in open session. I beg your pardon.

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

17 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Prosecutor, I
18 believe you need some time to ensure the handover, so to speak, to the new team
19 from the OTP. How much time do you require?

20 MR DUTERTRE: (Interpretation) Five to ten minutes for handing over.

21 PRESIDING JUDGE COTTE: (Interpretation) Very well. Now, at this
22 point we are saying good-bye to our previous witness and just about to welcome a
23 new witness. Are there any technical issues to be dealt with? I am told that we need
24 a 15 minutes -- a 15-minute break. It's a good thing I didn't ask for the witnesses to be
25 brought back in. So we will take a 15-minute break. We will resume at 10.15, and

1 before we bring in the new witness, the Chamber will discuss protective measures
2 during the hearing and will also mention a few other considerations of a general
3 nature for that -- that are based on the six weeks that we have just concluded.

4 Now, before we take our break, once again the Chamber would like to
5 thank the interpreters and the court reporters because the two witnesses that we have
6 just heard from testified on the basis of video footage which required a great deal of
7 effort of all and was the source of a great deal of nervous tension for them. So we
8 thank them for their efforts. And apparently they have done so in good -- with good
9 grace and with good humour, which is a very good thing.

10 (Recess taken at 9.58 a.m.)

11 (Upon resuming at 10.18 a.m.)

12 THE COURT USHER: All rise.

13 PRESIDING JUDGE COTTE: (Interpretation) Please be seated. Before
14 we show the witness into the courtroom, Witness P12, that is, the Chamber would like
15 to inform you of a number of concerns that it has. We have just spent five weeks with
16 Witnesses P30 and P02, and no doubt that during those five weeks there were
17 holidays, public holidays, and a number of unforeseen circumstances such as, for
18 example, the unavailability of our witness over a two-day period.

19 However, our discussions were extremely lengthy and far lengthier than
20 what we had thought previously. And, to a great extent, they really exceeded the
21 time that we deemed should be imparted to the closing of the Prosecution case in the
22 matter. We can but wonder as to the utilisation of videos as evidence, or whatever
23 the case may be, we can but wonder as to the use of videos at such a pace, such a
24 rhythm.

25 We have found ourselves up against a number of technical difficulties

1 which took up a great deal of time and were spread over minutes, and if we add those
2 minutes up, it goes into hours. It was necessary for us to request that the Registry
3 urgently bring audio material up to scratch, and I believe that these -- this process
4 was quite costly.

5 Of course, the Court wishes to establish the truth, but it also needs to
6 take into consideration a certain number of financial constraints and, from time to
7 time, wonder as to the balance that needs to be reached in terms of financial
8 implications and the value of such operations, and the value of the evidence that can
9 be obtained from certain exhibits that are put to use.

10 It is most probable that when the three trials are running concurrently,
11 that is to say the trial of Trial Chamber I, Trial Chamber III and our Trial Chamber,
12 that reductions in hearing time will be incumbent upon each of these trial Chambers,
13 for equipment reasons, associated with the availability of the courtrooms and also for
14 reasons of staffing, and it might be that we shall be lacking in certain technical teams
15 that provide the support for our hearings.

16 In respect to this Trial Chamber, it is important that the Prosecution
17 case, without prejudice to decisions that might be taken in the days to come, and the
18 possible presence of victims that will be called to testify as witnesses, this must be
19 completed before 22 November. This is the objective that we must set ourselves.

20 Unforeseen circumstances are always present in order to keep us on our
21 toes, but we do have to fix ourselves a certain number of objectives. And, in order to
22 obtain these objectives it is imperative, now that we are returning to witnesses that
23 are not bound to some form of video support, it is very important for us to return to
24 examination-in-chief and to cross-examination in-chief that really goes to the crux of
25 what is useful in terms of being presented to the Chamber, so that the Chamber may

1 fulfill its mission.

2 Of course, you will have time allocated, but of course in the back of your
3 mind you should always have the idea of an expeditious -- of expeditious
4 proceedings.

5 The Chamber is mindful that each and every one of you is making an
6 effort in this regard. So we are not reprimanding you or admonishing you as you
7 would have been in school, but we have just lived through five difficult weeks. It is
8 imperative for us to think about this at a time when a witness is about to appear who
9 is quite different from the witnesses we have had since 23 August and, as I say, he is
10 not bound to any strict technical aspect, as we have been noting the limits of this
11 technical approach.

12 And I think that using videos, we need to really think about the manner
13 in which videos are utilised in this courtroom. They should be used only when truly
14 necessary.

15 We shall now welcome Witness P12. Mr Prosecutor, you have the floor.

16 MR MACDONALD: (Interpretation) I'm sorry to interrupt you at this
17 juncture, Mr President. First and foremost I'd like to wish you a good morning, your
18 Honours. And with your leave, if we might solve a small issue that I would like to
19 raise now before the witness is shown into the courtroom, it is an issue of technical
20 nature. In order to make sure that we do not encounter any issues at a later stage, I
21 would like to say that we have a video extract. We have four audio extracts that are
22 limited in nature and, as for the rest, we shall be presenting exhibits, either in
23 documentary form or in photograph form. And I am hopeful that at a technical level
24 we shall not waste any time.

25 Now, in regard to technical problems, I'd like to raise this matter: We

1 sent our list of exhibits, the exhibits that we wanted to present to the witness, and
2 there was an objection raised by the Defence teams with regard to the presentation of
3 an annex, which I shall give the name for, DRC-OTP-0105-0107, and this annex
4 contains photographs and in the left hand margin we have the comments from the
5 witness when the Prosecution interviewed him.

6 We obtained a statement from him. He passed comment on each of the
7 photographs. Our intention is not to present the comments but the photographs
8 themselves, which have already been disclosed on an individual basis to the Defence
9 teams. These are three photographs of the batch, there are three in particular that are
10 of interest to us, and I might give you the ERN numbers of these individual
11 photographs that were disclosed under Rule 67, in order that they might be uploaded
12 into the eCourt system, and we shall then be in a position to use them if of course the
13 Chamber grants us leave to put questions to the witness in this regard.

14 I might provide you therefore with the ERN numbers were this to prove
15 necessary. That's what I wanted to say before the witness is shown into the
16 courtroom. Also, I would like to remind the Chamber and the parties that we sent a
17 list of the names identifying in red those names that we believe should not be
18 mentioned in public session. It's a very limited list. That is the members of the family
19 of this witness and certain locations. And yesterday, if I'm not mistaken, we sent an
20 email as to the subjects that we should broach in closed session with this witness.

21 I shall not revisit this specifically, in open session, of course. With
22 regard to the background, we need to proceed in closed session and then,
23 subsequently, on a case-by-case basis, we might need to go into private session with
24 regard to the location mentioned in my email. However, depending on the context,
25 this mention of a location will not necessarily lead to private session.

1 PRESIDING JUDGE COTTE: (Interpretation) I thank you,
2 Mr Prosecutor. With regard to the annex which has already been the subject of
3 objections on the part of the two Defence teams, we shall broach that issue when you
4 present the annex, and then you will explain your position, as shall the Defence
5 teams. This might be today or it might be tomorrow.

6 Now, in respect of the organisational documents requesting or requiring
7 private sessions, we have indeed received a list of names, some of which are
8 underlined in red, and you will need to provide grounds for moving into private
9 session, unless of course another phrasing can be used.

10 You have also transmitted those subject areas which you believe deserve
11 a private session, that is to say the career path of the witness and a number of other
12 points that each and every one of us has received, and we shall try to discipline
13 ourselves in order to make sure that the witness does not -- is not submitted to any
14 prejudice and that we might move forward in the best possible manner.

15 Mr Prosecutor.

16 MR MACDONALD: (Interpretation) Mr President, with regard to the
17 first point, what we would like to do is request your leave to upload those three
18 photographs into the eCourt system right now. Of course they shall only be shown
19 once the Chamber deems this is appropriate, and the fact that we upload them now
20 into the eCourt system means that each and every one of us will have access to them.
21 I will be able to send an email and copy this to everybody were we to receive leave of
22 the Chamber.

23 PRESIDING JUDGE COTTE: (Interpretation) Indeed, but of course this
24 is without prejudice to the decision to be taken by the Chamber as to the presentation
25 of this annex.

1 Now, in regard to the individual that we shall be welcoming in a
2 moment - this is Witness P12 - in its order 1516 of 7 October 2009 the Chamber
3 indicated that, in compliance with Regulation 42(1) of the Court, it intended to grant
4 this witness the same protective measures during the hearing as those he had
5 benefited from in the Lubanga case; that is to say he will be granted a pseudonym, his
6 voice will be distorted and the image will also be distorted. And in its decision 1667,
7 dated 23 November 2009, on the protective measures for some witnesses, the
8 Chamber recalled that these were the measures that would be granted this witness
9 and the Chamber deems that there are no grounds justifying a rethink of their
10 position.

11 Indeed, during an interview with the VWU on 8 September last, Witness
12 P12 himself expressed the desire to benefit from such measures. In addition, the
13 Chamber notes that this witness is part of the Court's protection programme and,
14 therefore, it believes that his anonymity should be preserved and that only these
15 protective measures enable us to ensure this. This decision will then lead the
16 Chamber to order the -- to order a closed session when the witness comes into and
17 leaves the courtroom. These are the only protective measures envisaged for this
18 witness.

19 The Chamber states that the witness would like to express himself in
20 Swahili. The VWU told us yesterday that because of medical treatment that this
21 witness is taking it is not excluded, in view of the secondary effects or the side effects
22 of this medication, that the witness request to leave the courtroom before continuing
23 his testimony. I just wanted to indicate this detail to everybody if you -- so that you
24 are not surprised that from time to time the witness asks to leave the courtroom for a
25 moment. The Chamber does not believe that it needs to be more explicit in open

1 session with regard to this matter.

2 Court officer, we will ask to move into closed session now in order to
3 show the witness into the courtroom.

4 (Closed session at 10.35 a.m.)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Open session at 10.36 a.m.)

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

13 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much,
14 court officer.

15 Good morning, Witness. Good morning. The Chamber is very pleased to have
16 you here. It's going to listen to your testimony over the coming hours. You are going
17 to help the Court to better understand the crimes that the accused are accused of and
18 the testimony is important for us.

19 You are already familiar with the running of the proceedings, because
20 you've already testified before another Chamber of the International Criminal Court.
21 You, therefore, know that the Prosecution shall ask you questions first; thereafter, if
22 necessary, the legal representative of victims, who are on my left, your right; the
23 Chamber shall possibly ask questions; and then we have the cross-examination of the
24 two Defence teams on my right, therefore on your left. The Prosecutor will therefore
25 take the floor again, and the Defence teams will then make final comments and

1 submissions.

2 The representatives of the VWU I think will have reminded you that
3 what you hear and what you say during the proceedings should be -- you should
4 keep that to yourself. You should not speak of what you have seen, or heard and said
5 inside this courtroom outside the courtroom.

6 During your testimony, you will have the following protection
7 measures applied to you: Your identity will of course not be revealed; a pseudonym
8 will be used; we will call you "Mr Witness," or "Witness 12" using your number; your
9 voice will be distorted with a view to you not being recognised; and your face as
10 appearing on the screen shall also be distorted so that you cannot be identified. These
11 are the protection measures that shall be applied to you.

12 You are, therefore, familiar with such hearings. You know that you
13 have to speak loudly into the microphone, you have to speak strongly and slowly as
14 well and, when a question is put to you, you allow five seconds to pass before
15 answering the question so that the work of the interpreters and the court reporters
16 can be made easier, because it's important for what you say to us to be well
17 interpreted so that it can be well understood.

18 Before asking you to take the solemn undertaking which shall be done
19 in open session, we shall very quickly go into closed session so you can give us your
20 identity. Please take us into private session, court officer.

21 (Public session at 10.40 a.m.)

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 (Open session at 10.42 a.m.)

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

21 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much,

22 court officer.

23 So, Witness, before starting your testimony, you have to take the solemn

24 undertaking to tell the truth. You know that this is a solemn undertaking. I'm going

25 to read it slowly so that you can understand the full importance and scope thereof.

1 Please listen carefully. "I solemnly declare that I shall tell the truth, the
2 whole truth and nothing but the truth." Have you understood me well, Witness?

3 THE WITNESS: (Interpretation) Very well.

4 WITNESS: DRC-OTP-P-0012 (Sworn)

5 (The witness answers through interpreter)

6 PRESIDING JUDGE COTTE: (Interpretation) Therefore, Witness, from
7 now on you commit yourself to telling the truth, the whole truth and nothing but the
8 truth.

9 THE WITNESS: Yes.

10 PRESIDING JUDGE COTTE: (Interpretation) The Court would ask you
11 to listen once again with a lot of attention. You have just committed yourself to
12 telling the truth, the whole truth and nothing but truth. If during your testimony, or
13 in answering questions which are put to you, you do not tell the truth, you can be
14 subject to prosecution before the International Criminal Court for false testimony and,
15 if the facts are demonstrated, you can be subject to conviction. Have you understood
16 that well?

17 THE WITNESS: Very well.

18 PRESIDING JUDGE COTTE: (Interpretation) So, Witness, the Court
19 notes that it has been satisfied, under the provisions of 69(1) of the Statute and of Rule
20 66(1) and (3) of the Rules of Procedure and Evidence. Once again, it would remind
21 you that it is important to speak into the microphone, to speak slowly, to speak
22 loudly, and to avoid changing languages in the middle of an answer, not to disclose
23 externally what you hear.

24 Please do not hesitate, Witness, if you so wish, to quench your thirst.
25 This is a hot courtroom, so you have the possibility to serve yourself with water

1 without that being a problem for the Court. We all do the same here. Please,
2 therefore, feel at ease for the complete time that you are with us.

3 You also have some handkerchief next to you which you can use
4 without that creating any kind of problem for the Court. And if in the future you
5 wish to leave the courtroom for physiological reasons, then just put up your hand and
6 you can ask to do so. And hopefully we have understood each other well.

7 THE WITNESS: Yes.

8 PRESIDING JUDGE COTTE: (Interpretation) Perfect.

9 So, Prosecutor, we have 15 minutes before the first break. You have the
10 floor.

11 MR MACDONALD: (Interpretation) Thank you, your Honour.

12 QUESTIONED BY MR MACDONALD: (Interpretation)

13 Q. Witness, please allow me to make certain comments before I start with my
14 questions so that you can understand our approach and, inevitably, that of the
15 Chamber as well.

16 A lot of witnesses have already given testimony. Several exhibits have
17 been presented. The Chamber and the parties and participants are well up to speed
18 with a lot of information as regards the conflict in Ituri in 2002 and 2003.

19 Also, as the Chamber reminded us of in open session, there is a limited
20 amount of time for you. The Prosecution has a certain number of hours to present its
21 evidence and, therefore, we have to present it with diligence.

22 We're saying all that because we don't want you to be surprised if my
23 questions are very specific and focused on certain elements. Please do not see
24 anything wrong with me interrupting an answer because my objective through your
25 testimony -- you, who have a very important knowledge of this conflict, is to get

1 precision which perhaps aren't in the case file or to try and get some elements which
2 would corroborate certain evidence. And this is -- what is also important is please do
3 not feel obliged to answer questions if you do not know the answer to them; also,
4 what could lead you to give an answer with information which is not useful when it
5 comes to the search for the truth here in the Court.

6 Also, I would have to indicate to you that at a certain phase within the
7 examination-in-chief, Madam Frolich is also going to ask you certain questions with
8 regards to specific areas.

9 So, before starting with more specific questions, I would ask the
10 permission of the Chamber to be able to proceed with private session with regards to
11 the personal information regarding the witness.

12 PRESIDING JUDGE COTTE: (Interpretation) So, for the attention of the
13 public, we're going to let the Prosecutor -- we're going to let him ask questions he
14 considers identifying. That's why we need to go into private session.

15 Court officer, please take us into private session.

16 Prosecutor, I feel that I omitted to ask the place of birth to the witness.
17 I'm not sure if I asked that case or not. If I did forget to do so --

18 MR MACDONALD: (Interpretation) You did ask that question.

19 PRESIDING JUDGE COTTE: (Interpretation) I therefore withdraw
20 what I've just said, and we're going to private session. Maybe it's just that I couldn't
21 find it in the transcript. Please take us into private session, court officer.

22 (Private session at 10.50 a.m.)

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 31 expunged. Private session.

1

2

3

4

5

6

7

8

9

10

11 Page 32 expunged. Private session.

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 (Expunged)

2 (Open session at 10.55 a.m.)

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

4 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much,
5 court officer. Please continue, Prosecutor.

6 MR MACDONALD: (Interpretation)

7 Q. Witness, let's go back to Bunia in the summer of 2002, more specifically, in
8 July/August, 2002. Were you present in Bunia in these months of July/August 2002?

9 A. I think so.

10 Q. Can you remind us -- just starting with the date, do you remember at what
11 particular time you were in Bunia?

12 A. No, I don't know exactly what the date was.

13 Q. Before the month of July 2002, without revealing to us the place where it
14 could have been, were you in Bunia?

15 A. Before 2002?

16 Q. Before July 2002.

17 A. Yes.

18 Q. In Bunia?

19 A. Yes.

20 Q. Please excuse me to the interpreters, the witness, we also have to have a
21 discipline and respect a rule of five seconds between the question and the answer and
22 the new question as well. If not, the interpreters lose themselves.

23 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor, I would just
24 like to use this short interruption to propose that you continue to 11.15 and then we
25 shall have a break for half-an-hour to 11.45, and then we will continue until 1.15. Is

1 that's okay. So you still have 18 minutes; that means you shouldn't have to cut things
2 up too much. So we shall have a break from 11.15 to 11.45, is that correct? Yes. You
3 have the floor.

4 MR MACDONALD: (Interpretation) Very well.

5 Q. I understand that you were in Bunia. You were in Bunia at the time that
6 the town of Bunia fell in August 2002. This town was taken by the UPC.

7 A. Yes.

8 Q. Can you describe -- I was leading because, just for my colleagues, there are
9 certain points which are no longer subject to debate, they're not contested. I'm going
10 to lead in order to go more quickly. In the leading I'm going to take --

11 MR HOOPER: I'm sorry, we object to that leading because though the
12 facts themselves might be known and established to us, we don't know the extent to
13 which they're known and established in the mind of the witness. So, I'd ask my friend
14 to avoid that. We don't mind, for our part, reasonable moments of leading, but I think
15 that was a leading moment that we're not happy with.

16 PRESIDING JUDGE COTTE: (Interpretation) Please continue,
17 Prosecutor. In the most orthodox manner as possible, please continue.

18 MR MACDONALD: (Interpretation)

19 Q. So, you were in Bunia. In the month of August 2002 when the town of
20 Bunia fell, were you there?

21 A. Yes.

22 Q. Could you briefly describe to us the situation at that time?

23 A. The tension began in April when a soldier from the APC was killed,
24 murdered. There was tension between the Hema soldiers and the Basamyawi (phon)
25 people. I had time to go there and come back because I was going to Uganda and I

1 would go back to Bunia, I was travelling between the two places regularly, and
2 during that time we heard that shooting had begun. We had heard sounds and
3 everyone -- well, people didn't know where they could go.

4 I remember that some neighbours of ours began to move away already,
5 and they headed towards the areas where the governors were, particularly the Ngiti
6 and Lendu people. They didn't want to stay in the town. And at that time we
7 heard -- well, it had been a number of days. People were fighting. We heard artillery
8 fire, we heard weaponry, and when things stopped, personally, well, I went out with
9 some other friends to see what had happened. And we found on the main road of the
10 town of Bunia there were bodies, bodies along the way, and we went on to go and
11 check. We went as far as the residence of the governor and we saw many people had
12 died. I didn't want to stay there for very long, and I went back to Uganda, where my
13 family was.

14 Q. Very well. You just referred to the fact that Ngiti people and Lendu people
15 were leaving the town of Bunia. Where were they heading to? What geographical
16 location were they heading to?

17 A. Geographical location in terms of what point? They were moving on the
18 Dele road, the Dele road that goes towards Kasenyi because in that area one found the
19 residence of the governor.

20 Q. So they were heading towards Dele and this road towards Kasenyi that
21 goes by way of Bogoro?

22 A. Yes.

23 Q. And the governor, do you know what he did?

24 A. I asked one of my friends, a co-worker, who was responsible for the Hema
25 at that time and, according to him, he had approached the governor, Governor

1 Molondo and they wanted to train Lendu soldiers and, when they ended the training
2 in Beni, they met in Bunia and the governor brought them all together and the Hema
3 were not happy about that. They wanted to get rid of them. They wanted to stop the
4 training of the Lendus and so that is how it came to be that they took action against
5 the governor.

6 Q. Governor Molondo. Governor Molondo, did he remain in Bunia?

7 A. No, he didn't stay; he fled.

8 Q. Where did he flee to?

9 A. I don't know exactly, exactly how he left, but apparently he went to Beni.

10 Q. Was he alone? Was he the only person to go back to Beni? What did the
11 people do at that time?

12 A. The people at that time, well, there was tension. We all had to protect
13 ourselves. We weren't sure of what was going on exactly in the town. And Colonel
14 Molondo who was the governor, with those soldiers, they fled towards Nyankunde to
15 go back, and they went back towards Beni. But in the town the people who were not
16 Hema, the people who came from other areas, many of them started to leave the town
17 as well because they did not have a lot of faith in the Hema community, which was
18 going to be leading the town and Governor Molondo, with his soldiers, they were
19 drew. They continued. The Hema chased after them and they had to fight in Sonkolo
20 (phon) and Kumbe (phon) and other places.

21 Q. I see. Now, you say that you travelled to Uganda.

22 A. Yes.

23 MR HOOPER: I am sorry to interrupt at this stage but before, and I
24 notice the time, we've reached an adjournment. In the previous section, the witness
25 stated "There was tension between the Hema and" -- and he named a people that was

1 translated as the "Basama," which -- right. I'm coming off the English translation here.
2 And there's been a number of words that have not been clear, and perhaps the more
3 relevant amongst them is the last phrase where he said the Hema chased after them
4 and they had to fight in -- and there was I think one or two names mentioned. And
5 they had to fight in and there was what appeared to be the names of two places which
6 have not found their way into the transcript and so before we lose the thread of that,
7 it would be of assistance to know what was said.

8 PRESIDING JUDGE COTTE: (Interpretation) With regard to the French
9 transcript, I believe it's page 36, line 19, and page 38 at the top of the page, and this is
10 the provisional transcript of course.

11 Now, Witness, if you could repeat, speaking as slowly as possible, if you
12 could repeat the remarks you made a few moments ago so that we can all make sure
13 that they are recorded properly. From the point, yes, Prosecutor, it was from the
14 point when you were saying the Hema had chased them here and there. If you could
15 resume from that point. Prosecutor.

16 MR MACDONALD: (Interpretation) With leave, your Honour, there
17 are two things here. I understand my colleague's remarks. There's a French
18 transcript and an English transcript so we have to ensure that the two transcripts
19 reflect one another.

20 PRESIDING JUDGE COTTE: (Interpretation) That is why the witness
21 needs to replace -- resume because --

22 MR MACDONALD: (Interpretation) Except that there are revised
23 transcripts, and if after that clarifications aren't clear, there is always the possibility of
24 returning to the point in cross-examination. I can ask the witness to repeat these
25 remarks because we are just starting his testimony, but this can't become systematic

1 because the Prosecution's examination can't be hindered in this manner.

2 PRESIDING JUDGE COTTE: (Interpretation) The Chamber shall
3 ensure that there are no interruptions that are prejudicial to your
4 examination-in-chief, as long as you ask your questions in an orthodox manner. We
5 saw how quickly Mr Hooper responded earlier. But at this particular stage I think it's
6 important to get off to a good start, knowing that during a hearing we cannot base
7 ourselves on provisional transcripts.

8 Witness, please -- well, at this particular point, if you could repeat your
9 remarks so that we can all continue on the same basis, be it in English or in French.
10 What you say is important. Please proceed. We are listening.

11 MR MACDONALD: (Interpretation)

12 Q. You made reference, Witness, to the Governor Molondo feeling, and you
13 mentioned with his soldiers he fled. He took the road of Nyankunde, and you
14 mentioned the name of Nyankunde and also Sangolo. Could you repeat what you
15 said earlier?

16 A. As I said, when the Hema soldiers attacked the governor, Governor
17 Molondo and his troops, Governor Molondo fled with his troops in the direction of
18 Nyankunde. I wasn't there, I was in Bunia, but I heard, I heard before, I believe, that
19 it was -- well, you see, it was a friend who was a commander in the Hema army who
20 explained that to me, what had happened when they had chased them and they
21 started to face one another, and they pushed away, the governor's soldiers had to
22 move towards Beni and so that is how it came to be that there were clashes in Sangolo
23 as well as in Nyankunde.

24 Q. When you speak about Hema soldiers, what group are you referring to?

25 A. Well, of course those groups could be called the UPC group at that time.

1 Q. And the armed branch had what name?

2 A. Yes, the armed branch, I no longer remember what the name of the armed
3 branch was of the UPC at that time, but I do know that at that time both the -- both
4 soldiers and politicians were together. There really wasn't a distinction between a
5 military branch and a political branch?

6 Q. So the UPC was a political/military organisation?

7 A. Yes.

8 Q. And who was the leader?

9 A. Mr Thomas Lubanga.

10 Q. Now, at that time, do you remember who was the minister of defence, at
11 the time that the town of Bunia was taken, the minister of defence of the UPC?

12 A. When the town of Bunia was taken, Lubanga, Mr Thomas Lubanga, did
13 two things: First of all, he represented his community, the Hema community, and on
14 the other hand he was the minister of defence of the RCD-KML, the Mobisis (phon)
15 movement. He was minister of defence at that time. And when they started to have
16 clashes the soldiers who were in charge stayed in the residence of Mr Thomas
17 Lubanga, and that is where the military operations began to pursue Molondo.
18 Thomas Lubanga was the person responsible and also member of the RCD-KML and
19 he was minister of defence.

20 PRESIDING JUDGE COTTE: (Interpretation) We will leave it at that,
21 Prosecutor, for the reasons that we usually suspend.

22 Witness, we will suspend the hearing for 30 minutes and we will
23 resume at 11.45, so you may leave the courtroom. We are going to go into closed
24 session so that you can leave the courtroom in a low-key fashion. Court officer, if you
25 could, and then we will resume our proceedings at 11.45, continuing until 1.15.

1 (Closed session at 11.15 a.m.)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 (Open session at 11.16 a.m.)

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

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

12 The hearing is now suspended and we will resume at 11.45.

13 (Recess taken at 11.16 a.m.)

14 (Upon resuming at 11.47 a.m.)

15 (Closed session)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Open session at 11.48 a.m.)

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

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

2 We will resume the proceedings, Witness, and please be very careful to respect the
3 five second rule, five seconds between the time that the Prosecutor asks his question
4 and when you begin your answer, and this is a rule that applies to everyone, not just
5 to the witness.

6 Prosecutor.

7 MR MACDONALD: (Interpretation) Thank you.

8 Q. Witness, just before the break we were talking about who held the title of
9 minister of defence within the UPC after the town of Bunia was taken, once the UPC
10 had set up operations in Bunia during the months following September/October, let's
11 say. To your knowledge, was there a change within the political and military
12 hierarchy of the UPC? Any change? Was there a new minister of defence?

13 A. Personally I really didn't know how things were organised but, if I
14 remember correctly, after the organisation of the UPC Chief Kahwa was appointed
15 minister of defence of the UPC.

16 Q. Let us turn our attention to Chief Kahwa. Chief Kahwa told you that he
17 was the minister of defence within the UPC?

18 A. Yes.

19 MR HOOPER: I am sorry. I'm concerned at the way those questions are
20 being put. The question was, "How do you know that he was the minister of
21 defence?", but he was led, "Chef Kahwa told you?" "Yes," says the witness. Please, I
22 must invite my friend to frame his questions more neutrally please.

23 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor, let us not
24 engage in endless discussions regarding this. Please go on with your
25 examination-in-chief, ensuring that questions are entirely orthodox, because I think

1 you've realised that you will not be spared any remarks. So please put your question.

2 MR MACDONALD: (Interpretation) I apologise, your Honour.

3 Perhaps there was some difference between the English transcript and the French
4 transcript in terms of the question I asked, but I will go on.

5 PRESIDING JUDGE COTTE: (Interpretation) Go on.

6 MR MACDONALD: (Interpretation)

7 Q. For how long was Chief Kahwa a member of the UPC?

8 A. How long? Well, it's difficult to say, but he was one of the co-founders of
9 the UPC. He was there right from the very beginning, up until the month of
10 November - November - when he left the UPC and set up another party.

11 Q. And what was this party that he formed?

12 A. The party? The party that Chief Kahwa formed is the Party for the Unity
13 and Safeguard of the Integrity of the Congo; in short PUSIC.

14 Q. You made reference to the month of November. Could you tell us what
15 year you're talking about? In what -- he was a member of the UPC up until the month
16 of November, but November of what year?

17 A. November of 2002.

18 Q. In November 2002, where were you?

19 A. I think I was in Uganda.

20 Q. Could you give us some details briefly about the creation of PUSIC?
21 Where was the party created?

22 A. I had met with Chief Kahwa for the first time in December 2002. At that
23 time, he did not talk to me about PUSIC. He just said that he wanted to create a party
24 that could include all the people from other communities, not just the Hema
25 community. And in January 2003, while I was with a friend, a friend who knew Chef

1 Kahwa very well -- unfortunately, this friend has passed away. Well, they were in a
2 meeting and they were discussing matters and in particular they were talking about
3 the establishment of this party, and so that is how it came to be that I started to attend
4 these meetings. That was in January, but the movement itself had begun in December
5 2002.

6 Q. Now, to make things even clearer for us, could you explain to us why to
7 your knowledge Chief Kahwa left the UPC, or was no longer a member of the UPC?

8 A. I could give you three reasons. First of all, according to what Chief Kahwa
9 said, he was not assuming the responsibilities of minister of defence exactly as it had
10 been called for in the UPC. On the contrary, Mr Thomas Lubanga himself was taking
11 on those responsibilities. Furthermore, no office had been opened up for him where
12 he could work, so he found that he had been neglected. He started to do things in his
13 own way.

14 The second reason is that, while the preparatory work was being done
15 for the Ituri Pacification Commission, the older sister of Chief Kahwa, Anita, left
16 Kinshasa and came to negotiate with Chief Kahwa to have his friends in the UPC
17 understand that they needed to de-block the situation so that we could have the
18 pacification commission in Ituri.

19 At the same time it happened that Mr Lubanga had problems with the
20 neighbouring State, which had supported them in the past, and that person took
21 advantage of the situation to create something that could create a division amongst
22 the Hema. And the -- so the pacification commission was set up. It was supported by
23 the neighbouring country. Chief Kahwa was in contact with the president and --
24 President Kabila in Kinshasa, and he was authorised to start something that could
25 counterbalance the UPC so that the pacification commission could be achieved.

1 Q. When, Witness, you refer to "the neighbouring state", could you name
2 that?

3 A. Yes, when I speak about "the neighbouring state", the state neighbouring
4 Ituri, I'm speaking of Uganda.

5 Q. So I understand that those were the issues in the mind of Chief Kahwa
6 when he created a political party; a party that was to be known as PUSIC?

7 A. Yes, a political and military unit.

8 Q. Yes, you speak of a political and military organisation when you speak of
9 PUSIC?

10 A. Yes.

11 Q. Could you explain or give details about the military branch of the
12 organisation, please?

13 A. The PUSIC party was created on the basis of being a military organisation.
14 Those members who started out as member of PUSIC, including Chief Kahwa
15 himself, were soldiers. They organised a party that could defend, first and foremost,
16 their community. And in Uganda it was said that it was not a good idea to have a
17 party that was entirely military; that this would not be understood by external -- by
18 countries outside. So, those individuals who were not Hema -- well, it was a good
19 idea to have a political branch. At the outset it was a military branch, and it was at
20 this moment in time that we were able to join those two parties together in order to
21 develop the political branch of the party.

22 Q. Very well. Could you please tell us, if you know, when PUSIC was
23 founded and whether it has any statutes or by-laws?

24 A. As to the precise date of the creation of PUSIC, well, I do not know that
25 date. However, the official documents that we used referred to the period during

1 which Chief Kahwa left the UPC; that is to say, in the month of November. And we
2 would use as a date of the foundation of PUSIC, if I am not mistaken, on or about
3 21 November 2002.

4 Q. One moment, please. To date we have heard people speak about the Ituri
5 Pacification Committee by virtue of some of the videos that the Chamber was lucky
6 enough - or maybe unlucky enough - to listen to, or watch.

7 Could you please provide me with details on this Ituri Pacification
8 Commission? And we shall return to this at a later stage in terms of chronology.
9 However, from the end of 2002, what is the aim of the discussions around the Ituri
10 Pacification Commission?

11 A. The aim of the commission was to put a stop to the hostilities in Ituri. And
12 during the meeting that was convened in Lusaka between President Kabila and the
13 political and military movements operating within the Congo, they reached an
14 agreement that hostilities should be put a stop to, or that they should be put off to a
15 later date, and any countries that were implicated or involved in a situation in Ituri
16 should assist in organising the pacification commission.

17 The president of the UPC was approached, as was Thomas Lubanga.
18 However, they did not accept, and conflict broke out between the Hema and the
19 Lendus as to who was going to organise -- as to who was going to start the
20 pacification process. The Hemas wanted to organise this, but the Lendus were not in
21 agreement that this pacification commission be organised around the UPC. They
22 wanted to have somebody come from the outside to organise this, from Kinshasa, and
23 they do not have the occasion to organise this commission until, in the month of
24 February 2003, some Lendu and Hema leaders - I'm talking about PUSIC here - and
25 the FNI and another group that had been set up by the Alur, met with President

1 Kabila in Dar es-Salaam, and the president then invited them to Kinshasa to discuss
2 the feasibility of the commission, with a view to putting a stop to hostilities and
3 achieving peace.

4 Q. I'm sorry. I shall interrupt you there. You made mention of a meeting in
5 Lusaka. Are you able to provide us with a date? And can you tell us precisely when
6 in time the idea or the concept behind the pacification commission came into being?

7 A. I no longer recall the precise date, but I do know that it was in 2002.

8 Q. Are you in a position to clarify at what point during 2003 this occurred,
9 what period during the year?

10 A. If I am not mistaken, the Lusaka agreement took place between the months
11 of May and June, 2002. The agreement was reached during those dates.

12 Q. One thing is certain, and I shall hark back to what you said. You stated
13 that Uganda was the country that was supposed to support this Ituri Pacification
14 Commission. Is that, indeed, what you said?

15 A. Yes, because at that moment in time the Ugandan forces were occupying
16 Ituri, so those were foreign forces occupying Ituri, and it would seem incumbent
17 upon them to organise what was going on inside Ituri.

18 Q. I shall continue in the same vein with regard to what you just mentioned in
19 your last answer. You made reference to PUSIC. You also made reference to the FNI,
20 as well as the Alur, who went to Dar es-Salaam to meet with President Kabila. We
21 shall return to the issue of Dar es-Salaam. However, let us stay with the period of
22 December 2002 to February 2003 and, more specifically, the three groups that you
23 have just mentioned.

24 Please talk to us about the FNI, first of all. Where were they to be found
25 at that moment, and who were they?

1 A. The four nationalists intégristes (phon) and -- well, I became aware of them
2 in January 2003. We met during a meeting organised by the neighbouring countries
3 that I have mentioned previously, with a view to relaunching the pacification process
4 for Ituri. During the month of December, approximately 24 December 2002, Uganda
5 once again convened the Hemas and the Lendus to a meeting in Aru where they were
6 supposed to meet in order to lead discussions as to the manner of collaborating
7 together and ceasing hostilities.

8 When the Hema delegation arrived, it was well structured. There were
9 political leaders present. They also had military leaders in attendance. When the
10 Lendus presented themselves, it was as a military movement. Captain Maguru, who
11 at the time was an adviser to General Salim Saleh, advised the Lendus to organise
12 themselves in a political manner. And when they did so on 28 December, they were
13 then -- they then produced the FNI. And in view of the fact that they had not reached
14 a compromise with a view to organise the Ituri Pacification Commission, Captain
15 Maguru took them back to Uganda in order to meet with President Museveni. And it
16 was during their stay there in the month of January that they were then put in contact
17 with Chief Kahwa of the PUSIC.

18 There was another group, the FPDC, the Alurs whom I mentioned, who
19 then intervened. And the three came together in order to prepare the possibility of
20 launching once again the Ituri Pacification Commission.

21 Q. I shall interrupt you again at that moment. With your leave, Mr President,
22 one moment please.

23 I just have a few points of clarification with regard to this founding or
24 establishment of the FNI. You mentioned the date of 28 December -- are you talking
25 about 2002?

1 A. Yes.

2 Q. You also mentioned a town, the town of Aru. But my question, therefore,
3 has a bearing on the location of the establishment of this party. To your knowledge,
4 did this occur in Mahagi Territory or did it occur in Uganda, on the other side of the
5 border? Because I always get the name of the town mixed up.

6 A. No, it was within Aru territory.

7 Q. And Aru territory is to be found in which country?

8 A. In the Democratic Republic of the Congo.

9 Q. We might be able to return to that point at a later stage. You also
10 mentioned that there was a meeting which was led by the Ugandans, and you said
11 that in attendance there were both Lendu and Hema representatives.

12 A. Yes.

13 Q. To your knowledge, was Thomas Lubanga present or in attendance at
14 those meetings as Hema representative?

15 A. No, Thomas Lubanga was not present. He was represented by Daniel
16 Licha who at the time was the general secretary of the UPC.

17 Q. Do you know who was in attendance as representative of the FNA or
18 representative of the Lendus, I'm sorry, which then became the FNI at a later stage?

19 A. I do not know all of those people who were in attendance, but the people
20 that I did meet with after the meeting, notably Floribert Ndjabu, who had been
21 elected by the group, he was there as president. And I also know Joseph Chura. I
22 know Augusta Linga (phon). I also know somebody called Ngabu, a young man.
23 There are other names that I cannot remember.

24 Q. You stated that you met them -- I apologise. I shall rephrase. After the FNI
25 was founded, they then traveled to Uganda. Where did they travel to? Where did

1 they go?

2 A. They arrived in Kampala. They then went to pay President Museveni a
3 visit in Rwakitura, that is where he lived, and from Rwakitura, the president asked
4 them to form a common front with Chief Kahwa. And at that same moment in time
5 there was another individual, a retired Ugandan military man, Colonel Peter Karim,
6 who was organising the Alurs because he was of that same ethnic origin, he took the
7 Alur group with him and, along with the Lendu, who had just met the president,
8 Chief Kahwa, and they convened a meeting near the University of Kampala.

9 During this meeting I met them and I took part in all the meetings with
10 a view to organising a common front that could then go on to organise the Ituri
11 pacification commission.

12 Q. Did this front bear a name, or does it bear a name?

13 A. Yes, this front was given the name FIPI: front des intégrationnistes et des
14 patriotes de l'Ituri.

15 MR MACDONALD: (Interpretation) With your leave, Mr President, I
16 believe that it might be appropriate to come back on certain names that were
17 mentioned, so that we have spelling for them because those names were not part of
18 our list possibly, the list that we provided, and of course since the list is quite lengthy
19 it might be difficult for the interpreters to know it by heart.

20 MR HOOPER: I'm sorry to interrupt, and I'm not trying to distract my
21 friend, I think it's simply this: I'm listening to the English translation, but when
22 names come up inevitably there are difficulties. The English transcript barely has any
23 of the names on them. None at all. So if I turn to the English transcript I see no
24 names. And it's frankly worthless in an oral hearing for me to wait until I can read
25 the transcript tonight to understand what's going on. I'm very pleased to hear my

1 friend say that in respect of some of the names he's going to now seek that they are
2 fully recorded.

3 We have a spell checklist which I think the interpreters have but it's still
4 posing difficulties clearly in terms of the English transcript. So when we meet these
5 names, it would be very helpful if they can be indicated what they are so that we can
6 follow in the English transcript what isn't necessarily being interpreted because of the
7 complications that names impose, in the actual translation.

8 Can I please ask that that's followed?

9 PRESIDING JUDGE COTTE: (Interpretation) Of course. The common
10 objective would be able -- would for us to be able to have names that were well
11 understood by everybody.

12 Mr Witness, you are the first to be concerned. Of course you're speaking
13 very slowly, and that is fine, but when you provide us with names, you need to speak
14 even more slowly. And do not hesitate to spell them. When you say there was
15 such-and-such an individual, you know, not names that we're all familiar with like,
16 such as Thomas Lubanga, but wherever names come up for the first time, and when
17 you say them for the first time, please slow down and articulate as best you can, for
18 the court reporters to be able to include them in the transcript. This will then avoid
19 any interruptions such as the one we just had which are, of course, legitimate.

20 Mr Prosecutor, which are the names that you would like to have spelled
21 by the witness, either orally or in writing on a piece of paper? But I think it would be
22 simpler for him to spell them out.

23 MR MACDONALD: (Interpretation) Yes, indeed, Mr President. Just to
24 clarify, the list that we provided, I do not know whether this was really the thrust of
25 Mr Hooper's question. Of course, when we're talking about individuals, this is under

1 the title "People," and when we're talking about locations they are identified as such
2 in this list.

3 I shall try to come back to names that might be a little less well-known
4 and place emphasis whenever I can. But I'm trying not to interrupt the witness whilst
5 he answers. And then we might come back to the names with your leave,
6 Mr President, because I believe that this makes the testimony easier. Floribert
7 Ndjabu, well we know -- everyone knows who that is because he's just as well-known
8 as Thomas Lubanga in this case, but you did mention by name Joseph Chura. Joseph
9 Chura. Let's start with him. How do you spell it?

10 THE WITNESS: Mr President, please, might I have a piece of paper and
11 a pen? Then I can write it down because it might be somewhat difficult for me
12 otherwise.

13 PRESIDING JUDGE COTTE: (Interpretation) Yes, Mr Witness, of
14 course, you have the decision in this regard.

15 Usher, please give the witness a piece of paper and a pen. I am referring
16 to the French transcript, page 50, line 23. Please write the name of Joseph Chura.

17 MR MACDONALD: (Interpretation) The family name will suffice, the
18 surname.

19 A. Spelling, C-H-U-R-A.

20 PRESIDING JUDGE COTTE: (Interpretation) Very well. Perfect.

21 MR MACDONALD: (Interpretation) I'm sorry, Mr President. I do have
22 a list with all the names that we need to come back to, but I do have a point of
23 clarification with regard to Joseph Chura. Do you know his full name?

24 A. That is his full name, Joseph Chura. Chura is his surname and Joseph is
25 his first name.

1 Q. And what about his post-name?

2 A. I only know him by two names; that is to say his family name and his first
3 name.

4 Q. If I suggest Chura Bilo, is that the one and the same person, B-I-L-O?

5 A. Yes, indeed.

6 Q. So that is Joseph Chura Bilo, B-I-L-O. This is a Lendu and it is the same
7 person Joseph Chura who you were referring to, is it not?

8 A. Yes.

9 Q. You also referred to Augustin Ninga. Could you please give us his full
10 name and spell it?

11 A. I think that you know how to spell Augustin, N-I-N-G-A.

12 Q. Do you know any other post-name or surname or first name for this
13 Augustin Ninga individual?

14 A. No.

15 Q. Were I to put it to you Augustin Lobho Ninga, does this ring a bell?

16 A. Yes, that is also his name.

17 Q. Lobho, L-O-B-O-H-O. L-O-B-H-O. It is one and the same person. You
18 also mentioned the name -- a person by the name of Ngabu, I believe, family name.
19 How do you spell the family name Ngabu?

20 A. N-G-A-B-U.

21 Q. Very well. At a later stage you mentioned the name, or previously you
22 mentioned the name of Captain Maguru. How do you write that? Spell that, please?

23 A. Maguru, M-A-G-U-R-U.

24 Q. You also referred to a Hema representative, a representative of the UPC.
25 I believe you mentioned the name Daniel Licha. Could you please spell this for us?

1 A. Licha. L-I-C-H-A.

2 Q. And last but not least, Peter Karim, Mr President, is quite a well-known
3 individual, and I don't know whether my learned friends have any objection.
4 K-A-R-I-M and Peter P-E-T-E-R.

5 Very well, Witness. I would now like to discuss the FNI with a point of
6 clarification notably. At that moment in time when the FNI was established, how
7 would you describe the movement at that moment in time? Was it purely political or
8 was it also a political/military movement at the time of its establishment?

9 A. It was a political movement. It did not have an armed branch. In 2003 I
10 spoke with a notable Lendu person, who told me that -- a notable Lendu figure who
11 told me that they had enough of the Hema. Every time that they had meetings with
12 them there weren't solutions, they were tired and they were going to ask us to
13 represent us there and this is how they left. They weren't soldiers but, as all Lendu
14 were fighters, this person when I saw them and we had discussions with them, they
15 really represented a political wing because they spoke about politics.

16 Q. Very well. Just to interrupt you there, you said that you spoke with a
17 notable figure. What do you mean by "notable"? From which ethnic group do you
18 mean?

19 A. The high ranking figure was called Karim Kalimi, K-A-L-I-M-I. That was a
20 Lendu. A Lendu south, Bindi.

21 Q. And, therefore, they mentioned to you the group that represented the
22 Lendu. Do you remember the town of Aru? It was, therefore, politician (sic)?

23 A. Yes.

24 Q. Now, let's continue with the third wing of FIPI. You mentioned that it was
25 the FPDC. Could you tell us what is the full name this acronym refers to in this

1 group?

2 A. I have forgotten what that represented. It was a long time ago.

3 Q. If I suggest it was the Forces Populaires pour la Démocratie au Congo?

4 A. Yes.

5 MR HOOPER: No, I am sorry. I don't accept in these circumstances that
6 my friend should lead the witness to that extent. He asked him if he knew what it
7 stood for. He said he didn't.

8 PRESIDING JUDGE COTTE: (Interpretation) Please continue.

9 MR MACDONALD: (Interpretation) The transcript reflects that I
10 suggested the answer. Just to accelerate things, I don't think that it's contested. Well,
11 I thought that it wasn't contested.

12 Q. But, anyway, who was the representative or the leader of the FPDC?

13 A. It was honourable Unencan. Unencan, U-N-E-N-C-A-N.

14 Q. And you say that he represented the Alur?

15 A. He was FPDC.

16 Q. Are you able to say if that was a political movement, or a political/military
17 movement?

18 A. It was also a political movement. It wasn't a political/military movement.

19 Q. Can you indicate to us when the work of the FIPI -- when it started
20 speaking about this front?

21 A. If my memory serves me well, it started between 13 and 15 January 2003.

22 Q. In Kampala?

23 A. In Kampala, yes. It was in a hotel called Exotique.

24 Q. Do you remember the date on which there was an official announcement
25 of the creation of this front, the FIPI?

1 A. I don't know if there was an official announcement, but the date of
2 signature; date on which it was signed.

3 Q. Perhaps the date it was signed then?

4 A. Yes, it was 4 February 2003.

5 Q. What was the objective of this front?

6 A. As I already said, the FIPI was created with the aim of pushing Mr Thomas
7 Lubanga to accept that there was the pacification commission for Ituri. That was the
8 main aim thereof. The aim was known mainly by the Ugandans themselves who had
9 organised the group, but apparently the participants in the meeting - the parties -
10 thought of going to take the responsibility for Ituri.

11 And under the circumstances there, the Colonel Peter Karim - Peter
12 Karim - who had asked the person responsible in FIPI, because he couldn't even find
13 a solution because there wasn't a president. They hadn't had a president. The Hema
14 refused that a Lendu was president. The Hema wanted to refuse that the -- or the
15 Hema wanted to refuse the Lendu, the Lendu wanted to refuse the Hema and the
16 Alur were in a minority and they weren't so active in the field and this is how they
17 kept three presidents.

18 And so -- but it was Colonel Peter Karim who said, "It would be better if
19 you signed an official document ...", something that was there, "... before I can go and
20 present you to President Museveni, and then you can also meet your president and
21 discuss the problems." And it's under those circumstances there, despite the fact that
22 the situation hadn't been finalised, that they signed -- that the three presidents signed
23 the document, but the fundamental aim was only to relaunch the pacification in Ituri.

24 MR MACDONALD: (Interpretation) Very well. With your permission,
25 the Prosecution will call up the following exhibit: DRC-OTP-0107-470. Please excuse

1 me. I shall repeat: 0107-0470.

2 PRESIDING JUDGE COTTE: (Interpretation) This is an exhibit which
3 should appear on our screen. Can everybody see this exhibit on their screen? The
4 accused, can you see this exhibit? Witness? No.

5 Usher, please could you help the witness to put on his screen, or at least
6 to get it working?

7 MR MACDONALD: (Interpretation)

8 Q. Witness, you see the first page of this document, which is entitled
9 "Agreement on the Creation of a Political Military Platform bringing together the FNI,
10 the FPDC and PUSIC for the Pacification of Ituri," preamble thereafter. Is this the
11 document that you mentioned a moment ago?

12 A. Yes, I can't see the signature.

13 Q. I can show you the signature. If we can bring up the last part -- page of the
14 document, this finishes with 0480.

15 MR MACDONALD: (Interpretation) Also, your Honour, I think there's
16 perhaps confusion with regards to the confidential or nature -- confidential or public
17 nature of this document. It can be public.

18 PRESIDING JUDGE COTTE: (Interpretation) Perfect.

19 MR MACDONALD: (Interpretation)

20 Q. Witness, in front of you, you have the last page of the document, page 11.
21 If I read this well, there are three signatures. Are these the three signatures you were
22 referring to? We can see Mr Ndjabu, Mr Unencan and Chef Kahwa; is that correct?

23 A. Yes.

24 Q. In this version that you have provided us with, this version isn't dated, but
25 you state that it was signed on 4 February 2003; is that correct?

1 A. Yes.

2 Q. Could you give us an explanation as to why this copy isn't formally dated,
3 despite the fact that it is signed?

4 A. Yes.

5 Q. Why?

6 A. Because, as I said to you, we hadn't yet finished the discussions in our
7 meetings between the three parties and the discussions had to continue. But as
8 Colonel Peter Karim, who was supposed to supervise the work thereof, you had the
9 president who was responsible and he had to go and meet the president and they
10 preferred to sign the document quickly. And that's why they signed that document,
11 the document they provided to the president. They put the date of 4 February --
12 4 February, but each party received a document. And they were waiting for the day
13 when they were going to all finish so we could put the final date on it as the date, but
14 this is something that was signed quickly just to make it possible for the FIPI to go
15 and present themselves before the authorities.

16 Q. Witness, I am now going to show you the second page of the document,
17 which finishes -- which ends in 0471. If it's possible to enlarge it somewhat once
18 again, if that's possible. Very well.

19 I would like to draw your attention, Witness, to the fourth paragraph
20 which starts with the following words: "In reference to the peace agreements in Ituri."
21 Can you read this paragraph to yourself, and afterwards I'm going to go back to it
22 with a subject in that regard. I think that might be a bit too big. We'll just reduce it a
23 bit.

24 Could you tell us when you've finished your reading, please?

25 A. Yes.

1 Q. I am going to ask you the following question: Firstly, the UPC/RP, what
2 was that exactly, if you know?

3 A. The UPC is the Union des patriotes congolais, but I've forgotten what the
4 "RP" means.

5 Q. Well, if you know, if you do remember, you can tell us. Sometimes a night
6 shall bring clarity. But with regards to Arua there was a partial ceasefire agreement
7 signed on 31 December 2002, where the FNI is identified. So my question is as
8 follows: Are you certain that the creation of the FNI took place in Aru or was it,
9 rather, in Arua?

10 A. Yes, it's true, it was in Arua. I made a mistake. It was Arua, because that
11 was where Captain Maguru had met. It was in Arua.

12 Q. You have the best example of aiding somebody's memory with a document
13 which has already been done with other witnesses. I would just like to point that out
14 quite simply. So it was Arua.

15 MR MACDONALD: (Interpretation) I would like to give an EVD
16 number to this exhibit.

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

19 THE COURT OFFICER: Document DRC-OTP-0107-0470 shall be given
20 evidence number EVD-OTP-00193 and is admitted as a public exhibit. Thank you.

21 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Prosecutor,
22 please continue.

23 MR MACDONALD: (Interpretation)

24 Q. So, you mentioned that this group, the three presidents, went to Dar
25 es-Salaam. I understand that's in Tanzania. Do you remember the date on which this

1 group went there?

2 A. I don't know the exact date, but it could be between 5 and 8 of February of
3 2003.

4 Q. So, some days after the signature of this agreement on the creation of this
5 platform?

6 A. Yes.

7 Q. Were you present?

8 A. In Dar es-Salaam, or at the signing thereof?

9 Q. Firstly with regards to the signing thereof, were you present? And then in
10 Dar es-Salaam.

11 A. "Yes" to the signing and, to the second part, I didn't take part.

12 Q. Could you indicate what the objective was of this trip or its reason for
13 being?

14 A. I think that the Ugandan government wanted to show to Kinshasa their
15 good faith and to unblock the situation in Ituri, and that's the reason why they
16 brought together those who are responsible at high level and sent them to Dar
17 es-Salaam to meet President Kabila and try to find a solution with regards to what
18 could be done. This was a way in which Uganda had used to -- this is something that
19 Uganda had done to show its innocence in the situation; at least, that's my point of
20 view.

21 Q. Did you have an account of the discussions that took place in Dar
22 es-Salaam?

23 A. Yes.

24 Q. By whom?

25 A. By my president when he came back, Chef Kahwa.

1 Q. Thomas Lubanga, was he present?

2 A. Yes, he was present at the Dar es-Salaam meeting.

3 Q. Was there an agreement resulting from this meeting in Dar es-Salaam?

4 A. Mr Lubanga had refused to create rapprochement between the UPC and
5 the FNI. That meant that they finished this meeting and there was no solution. It
6 completely refused that. They all went back, Lubanga, too, to Kampala, and in
7 Kampala there was a press conference in which -- in the Speke Hotel, S-P-I-A-K-A; it
8 was in Kampala and he said that we no longer have relations with Uganda. And so
9 he wasn't in agreement with continuing with the rapprochement with this new
10 movement.

11 Q. To your knowledge -- to your knowledge, you mentioned that Lubanga
12 did not -- or was a dissident with regard to the other members who was there. But, to
13 your knowledge, was there, despite everything, in the presence of President Kabila,
14 Floribert Ndjabu, Chef Kahwa and Mr Unencan, was there an agreement among these
15 representatives?

16 A. Well, there wasn't an agreement with Thomas Lubanga, but President
17 Kabila had invited the three new FIPI leaders to go to Kinshasa after -- to follow him
18 to Kinshasa after three days. They did so. They left Dar es-Salaam and went to
19 Kinshasa to meet the president, and together they discussed what they could do in
20 order to help Lubanga discuss -- or, they discussed what they could do.

21 Q. Are you able to say what came out of this discussion with the president in
22 Kinshasa?

23 A. Yes. President Kabila had promised that, if they were well organised, they
24 could help them with weapons in order to fight against the UPC. He gave each group
25 some money, 10,000 American dollars to each group, and the three presidents

1 returned. Unfortunately, the president of the FPDC, Unencan, at the same time he
2 had contacts with the parties of President Kabila and he went back to present to the
3 party, the Alur. He didn't want to continue actively in the party. And when this
4 money was provided, this created problems between the members of the party, and
5 the meeting finished because the sharing out or the splitting of this money,
6 particularly with the FPDC and also with the FNI, was really difficult because there
7 was no means of continuing the meeting because of this money, and everything was
8 suspended.

9 Q. Perhaps, just to shed some light on this for the Chamber, you said that each
10 of the chambers (sic) had received 10,000 American dollars, the same amount of
11 money for each of the groups, but despite that, that created a certain -- I would call it
12 difficulty between the three groups, a quarrel between the three groups?

13 A. Yes. The president had promised two things: financial means and military
14 means. But, while waiting for that, he had given each group \$10,000 for their
15 organisation. But when the -- when he said that the president had \$10,000 to give to
16 them, that did create problems when it came to splitting this money, and the meeting
17 was almost suspended and it continued (sic) the activities that they were carrying out.

18 Q. So the three groups, you mentioned that some members for -- Unencan, he
19 left the FPDC, the movement, to return home. And where was his home?

20 A. When the President Unencan went back the same day that he arrived with
21 his money, he indicated that he was going to Paidha. Paidha was the border of
22 Uganda with Mahagi. Mahagi is his territory, but he stayed in Paidha. He went on
23 the same day. I remember having seen him and said, and it's -- "If you stay, you have
24 to find a compromise, a president of the group." And he said, "No, I'm not going. I
25 just want to go for a walk." But the next day he was gone. And when he came back,

1 that was to go to the meeting with President Kabila, and we didn't see him afterwards
2 in the FIPI meeting in order to find a compromise.

3 Q. I will stop you there. Paidha. Can you spell that, please?

4 A. Paidha, P-A-I-D-H-A.

5 Q. Very well. Let us go back to the PPRD later. So Mr Unencan left and
6 Mr Ndjabu and Kahwa, what did they do? Where were they at that time after this
7 meeting with Kabila? Did they stay in the Congo? Did they travel to some other
8 place?

9 A. After meeting President Kabila in Dar es-Salaam they went back to
10 Uganda. From Uganda they went to Kinshasa and when they went back to Kinshasa
11 they stayed in Kampala that time. They were there. They never went back to the
12 Congo. Ndjabu and Kahwa. Kahwa and Ndjabu.

13 Q. After they came back, did the work of the front continue? Did discussions
14 continue?

15 A. We continued our discussions for a while and then we stopped. We
16 remained in contact with the Ugandan authorities but, amongst ourselves, we really
17 didn't have contact because we didn't find someone to be the leader. We hadn't
18 finished. Everything really stopped at that point. We stayed -- we stopped and we
19 said, "Well, what will the Ugandan authorities say?"

20 Q. Where were you when the town of Bunia -- no, let me rephrase. Where
21 were you when the UPDF were attacked in Bunia on 5 or 6 May 2003?

22 A. I was in Kampala -- correction, March.

23 Q. And what were you doing then?

24 A. At that time I was already active within PUSIC but we took refuge. We
25 took refuge in Uganda because we didn't feel that we were safe in Ituri. So I was

1 there and on 6 March, in the morning, I received a call and I was told that the
2 president needed us, President Museveni, so we left to see him. And he told us that
3 we could go back to Bunia and that Lubanga's troops had fled and that was when we
4 were together, all the groups that were having these meetings. We joined up again
5 there.

6 Q. So I understand that you met in the presence of -- well, who was present?
7 Could you tell us who was present when President Museveni called you?

8 A. Who was at the meeting?

9 Q. So there was President Museveni, the Ugandan president. Who else was
10 there? Who else attended the meeting?

11 A. Well, on the Ugandan side there was the president himself, President
12 Museveni. There was Colonel Mayombo, Mayombo, M-A-Y-O-M-B-O, Colonel
13 Mayombo, who was responsible for military intelligence in Uganda. There was the
14 minister of defence of Uganda, at that time Mr Mbabazi. Mbabazi, M-B-A-B-A-Z-I.

15 (Expunged)

16 (Expunged). As

17 for the FNI, there was Ndjabu Floribert. There was Augustin Lobho Ninga, there was
18 Chura Bilo Joseph. As for the FPDC, there was two people, old people. I've forgotten
19 their names. And there was someone else. He was -- well, we didn't know why he
20 was there, but he was a former colonel, Ali, from the UPC, who found himself at that
21 meeting in the morning. He was responsible for intelligence for the UPC. And
22 President Museveni said, "You must resume your meetings and reorganise so that
23 you can go and manage the administrative situation in Ituri.

24 Q. Ali, is that spelt A-L-I?

25 A. Yes.

1 Q. Did President Museveni say anything else other than people should try to
2 get along?

3 A. During the meeting there was an incident because already on 25 February,
4 I believe, no, the 24th, 24 February, Chef Kahwa had called Misembuda (phon) at his
5 residence and asked him what was going on, in Bogoro, since we had heard that there
6 had been killings and massacres, and we thought that we had made a common front,
7 and that there was no longer any reason for us to be fighting or having problems
8 when Mbagago (phon) was the president of the FNI and we hoped that he was
9 representing all the Lendu people, and we called him to ask him what was going on,
10 and he said, "No, I don't know about anything. I don't have any information about
11 that. And can you tell me anything?" But on the 25th, in the morning, the radio, I
12 think it was Canal France, announced that Ivando (phon) was claiming responsibility
13 for the attacks on Bogoro. He claimed responsibility. He said that he, his group, had
14 done that. So that depressed and we tried to meet. We didn't see. And then we went
15 to see President Museveni. And at that meeting there was another incident that
16 occurred on 4 March. That was in Mandro.

17 People were attacked in Mandro and Chief Kahwa, and actually the
18 remains of his father were unearthed, and we really didn't know who to turn to.
19 Kahwa expressed his anger to Ndjabu in front of the president. He couldn't
20 understand. How can we cooperate with people like this? We're at a meeting. We
21 formed a coalition and just yesterday, and then they claimed responsibility for these
22 killings on the radio. So what's the point of all this?

23 Ndjabu replied in an nasty way to Chief Kahwa. He said, "Well, there
24 were a lot of Lendu." And President Museveni managed to calm things down, but
25 Chief Kahwa said, "I'm not so sure that Ndjabu is familiar with the situation in

1 Mandro or Bogoro because he's irresponsible." And that must come from Ngiti and I
2 don't want to deal anymore with Ndjabu because he is unable to solve the problem. I
3 want to deal with the Ngiti leader. I want to see Dr Iriko." And, at that time, the
4 president said, "Well, go back to the meeting. I will bring him from the Congo" and
5 that was the incident, of course. Two days later the doctor had come back and was in
6 the meeting so that's what happened during that meeting there.

7 Q. Very well. Just a moment, with leave, your Honour. I'm looking at the
8 clock. I may be mistaken or perhaps I misunderstood but I think you wanted us to
9 conclude at 1.15.

10 PRESIDING JUDGE COTTE: (Interpretation) Yes. Usually it would be
11 1.15 because the various interruptions. I think we started at 9. There was a bit of an
12 interruption because we needed to reconfigure the hearing room for a new witness,
13 and I believe we will end at 1.15. That was what was agreed to. We will end at that
14 time.

15 MR MACDONALD: (Interpretation) If you wish, we can keep on going
16 for another 15 minutes, if you wish. I don't know whether my colleagues are willing.

17 PRESIDING JUDGE COTTE: (Interpretation) We will -- well, then, we
18 will continue until 1.30, as is usually the case.

19 MR MACDONALD: (Interpretation) Very well. Let us keep on going,
20 now that we've developed some momentum.

21 I beg your pardon.

22 Q. Now, there was this confrontation between Chief Kahwa and Floribert
23 Ndjabu, and you mentioned that Chief Kahwa was doubtful of the responsibility of
24 Ndjabu in terms of these attacks on Mandro and Bogoro. And I think you said the
25 word "irresponsible." That he thought he was irresponsible. What did you mean by

1 that? What did you understand from that?

2 A. According to Chief Kahwa, who was familiar with the situation, and the
3 reports he had received from the field, from the places where people had come from
4 to attack Mandro and Bogoro, according to Chief Kahwa, those attacks could have
5 come only from the Ngiti, from the South Lendu people. So he himself understood
6 that Ndjabu allegedly claimed responsibility for these attacks without understanding
7 anything, so we said to ourselves: If he's claimed responsibility for the attacks, and
8 we just signed a platform for pacification, for a cessation of hostilities, he can't ask his
9 people to stop because apparently he is the president, the leader of that group, but
10 Chief Kahwa said, "No, I think -- I'm not so sure that Ndjabu really is in charge of
11 those people. There's someone else in charge of them and we want to talk with that
12 person. We want to know what happened with these Ngiti people, the South Lendu
13 people," and so we preferred to bring in Dr Adirodo, who was amongst the
14 co-founders of the FRPI. Two days later the doctor, Dr Adirodo, we reached him in
15 Kampala and he shed light on the situation.

16 Q. I'll interrupt you just for a moment. Now, once again, that morning, the
17 morning of 6 March, with President Museveni, Floribert Ndjabu said during this
18 exchange, "Was there some question -- was there some question of Lendu soldiers?"

19 MR FOFÉ: (Interpretation) Your Honour.

20 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé.

21 MR FOFÉ: (Interpretation) I think you'll realise that the witness did not
22 mention what the Prosecutor has just said. The witness never mentioned that.

23 MR MACDONALD: (Interpretation) That is why I'm asking the
24 question.

25 MR FOFÉ: (Interpretation) Your question is a leading one.

1 MR MACDONALD: (Interpretation) That's another matter.

2 MR FOFÉ: (Interpretation) Please rephrase your question.

3 MR MACDONALD: (Interpretation)

4 Q. Was there any speaking -- was there any talk of the FRPI during that
5 meeting?

6 A. I don't understand your question.

7 Q. When there was this exchange between Chief Kahwa and Floribert Ndjabu
8 --

9 A. Yes.

10 Q. -- did you talk about the FRPI?

11 A. No, just Ndjabu had accused Chief Kahwa of killing many Lendu people
12 and the Lendu never complained, so he can't claim to be a saint. He's worse than a
13 criminal, like all the others. He even said to President Museveni, he said, "President,
14 if you continue to have dealings with people like that, you are going to -- that will be
15 the end of your career," And we concluded the discussions there and we provided to
16 the minister of defence -- it was said, "Finish the problem over there and deal with
17 Adirodo," because Chief Kahwa thought that Adirodo must know the soldiers who
18 came from the South Lendu area to attack Bogoro and Mandro as well.

19 Q. Let us now turn to the arrival of Dr Adirodo, A-D-I-R-O-D-O. Now, the
20 meeting of this person was held where?

21 A. Well, we had all the meetings at the military security centre of Uganda,
22 within the offices of Colonel Mayombo, and Dr Adirodo came as well to that place,
23 but this time the meeting had changed. Ever since we came from the president's
24 office, well, we found that day in the meeting that there were new faces, people that
25 we didn't know, and when we were in the meeting for the FRPI, so we went and saw

1 for the first time an Ngiti person, a south Lendu person, who was to be at the
2 meeting. Pichou Iribi. So, we saw him as well. Pichou Iribi. Pichou is P-I-C-H-O-U
3 and Iribi is I-R-I-B-I. So we saw him there for the first time in one of our meetings and
4 he said, "No, I have come. I am the representative of the South Lendu people." And
5 there was another person as well, Didier Angaika, who also attended the meeting.
6 Angaika, A-N-G-A-I-K-A. Angaika.

7 Q. Angaika and you said his first name was Didier? Was he also known -- is
8 he also known Did, D-I-D-I, standing for Didier I suppose?

9 A. I don't know, but we always called him Didier. Perhaps people called him
10 Didi, but his name was Angaika. We saw him at that meeting and also at meetings of
11 the pacification commission, and there are documents from the CPI that he had
12 signed and his name is to be found there.

13 Q. We will go back to those documents later. So you are saying that two new
14 people joined the meetings, Didier Angaika? Didier?

15 A. Yes, and they appeared there. Now, the Dr Adirodo said, "No, the FRPI
16 has nothing to with the FNI. The FRPI was a movement for everyone; for all
17 Congolese. It is not a movement for Lendu, or Hema. It's for everyone. And if
18 someone claims responsibility for a massacre in Bogoro, or elsewhere, they are
19 speaking only for themselves, because in the FRPI we do not know the FNI." And
20 immediately Angaika said, "No, I have come from Aveba. I was sent by Germain
21 Katanga to come and represent the FRPI. I'm here as a member of the FRPI," and that
22 is why he was there.

23 How could Adirodo say that the FRPI had nothing to do with the FNI
24 and that the massacres -- the meeting became stormy and so stormy that the Lendu
25 asked if the Adirodo -- Adirodo could be ejected from the meeting. He was sent by a

1 certain Franck, who represented a group in Kampala, and we asked for Franck to
2 leave, but we insist -- we said, "Listen, leave," but he didn't have much to say. And so
3 he did ultimately remain and Angaika claimed -- he said, "Yes, I come from there. I
4 represent the Lendu of the south and we are here at this meeting for that."

5 Q. Perhaps my last question for the day and we will resume tomorrow in the
6 morning. With this confusion, some of us seem to be confused about the FNI and the
7 FRPI, these various acronyms, and we will try to clarify a number of things, but
8 Angaika Didier, what was the link -- well, did he have a link of some kind to Germain
9 Katanga other than the fact that he represented him at that meeting, to your
10 knowledge?

11 A. When he came to the meeting, I didn't know him. I didn't know him, he
12 was a person just like the others there, but I met them during the meetings of the Ituri
13 Pacification Commission later. Later, when -- when we began the activities
14 themselves in Ituri, at that point we established many dealings with him, and
15 Germain will say that Angaika was his brother-in-law because the wife of Germain is
16 the sister of Angaika.

17 MR MACDONALD: (Interpretation) Thank you. Those are the
18 questions that I had for today, your Honour. I would suggest that we take -- that we
19 adjourn until tomorrow at this particular point.

20 PRESIDING JUDGE COTTE: (Interpretation) That's a good suggestion.
21 We will conclude this hearing. Mr Witness, thank you for your contribution this
22 morning. We will see you again tomorrow at 9 in the morning for four hours of
23 hearings.

24 Prosecutor, at this particular stage of your examination-in-chief, have
25 you any idea of how much time your examination-in-chief will last, unless there are

1 procedural difficulties?

2 MR MACDONALD: (Interpretation) I believe that there may be some
3 later. I would say for all of tomorrow -- that we have questions for all of tomorrow
4 and possibly Thursday as well; Thursday.

5 Now, when we calculated the 120 hours, we thought that we would
6 reduce our questioning of this witness by a certain number of hours, so we would
7 restrict it to six hours, but as you can see he is providing a great deal of contextual
8 information and direct information, so approximately six hours in all.

9 PRESIDING JUDGE COTTE: (Interpretation) Very well, we will take
10 stock of that tomorrow. Thank you very much.

11 Court officer, if we could go into closed session so the witness can
12 quietly leave the courtroom.

13 Witness, until tomorrow. Thank you.

14 (Closed session at 1.28 p.m.)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

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 71 expunged. Closed session.

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 72 expunged. Closed session.

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 73 expunged. Closed session.

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 74 expunged. Closed session.

1 (Expunged)

2 (The hearing ends at 1.40 p.m.)