

1 International Criminal Court
2 Trial Chamber I - Courtroom II
3 Presiding Judge Adrian Fulford, Judge Elizabeth Odio Benito and
4 Judge René Blattmann
5 Situation in the Democratic Republic of Congo - ICC-01/04-01/06
6 In the case of the Prosecutor versus Thomas Lubanga Dyilo
7 Trial hearing
8 Monday, 4 April 2011
9 The hearing starts at 9.31 a.m.
10 (Open session)
11 (The witness entered court)
12 COURT USHER: All rise. The International Criminal Court is now
13 in session. Please be seated.
14 PRESIDING JUDGE FULFORD: Yes, Mr. Omofade.
15 MR. OMOFADE: Your Honours, just in terms of the batting order,
16 Ms. Struyven will be asking the witness some questions this morning that
17 will probably take us up to the luncheon adjournment. Afterwards, there
18 will some further questions from myself, your Honour, and subsequently by
19 Mr. Sachdeva.
20 PRESIDING JUDGE FULFORD: Right.
21 MR. OMOFADE: We're glad to state that we'll finish today.
22 PRESIDING JUDGE FULFORD: It's a multi-handed effort.
23 MR. OMOFADE: Yes.
24 PRESIDING JUDGE FULFORD: Mr. Biju-Duval.
25 MR. BIJU-DUVAL: (Interpretation) Thank you, your Honour. Just

1 one word. I would like to inform the Chamber that this weekend the
2 Defence received more than 20 documents which the Prosecutor would like
3 to rely on during the cross-examination. We received this notification
4 very late. I would even say that one of these documents had already been
5 disclosed to the Defence.

6 I am saying this so that the Chamber would not be surprised if
7 the Defence has to raise objections, objections which had not been raised
8 earlier. We have not been able to discuss with our client about this
9 document in order to appreciate its importance, and so we have these new
10 documents, and it's difficult for us to raise any objections at this
11 point in time.

12 PRESIDING JUDGE FULFORD: Well, Mr. Biju-Duval, the result of
13 late disclosure of documents that are to be relied on by the Prosecution
14 should not operate in a way that is unfair to the accused, and so if it's
15 acceptable to you, I suggest we proceed in the way that I'm now going to
16 outline, which is rather than attempting to deal with the documents
17 globally now, we wait to see how the questioning unfolds, and with each
18 new document in relation to which notice had not been given before, at
19 the moment when counsel seeks to introduce it, if you have an objection,
20 please indicate, and if you need time to discuss it with the accused, of
21 course time will be given to you. So what is critical in all of this is
22 that if you have an objection, you are put in the position of being able
23 to address us properly and comprehensively in relation to the matters
24 about which you're concerned.

25 Is that acceptable?

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1 MR. BIJU-DUVAL: (Interpretation) Yes, your Honour.

2 PRESIDING JUDGE FULFORD: Excellent.

3 Right. Ms. Struyven, you'll be acutely aware of the new
4 documents, so as and when you reach any one of them, please don't move
5 too swiftly. Wait to see whether Mr. Biju-Duval has an objection so that
6 we can deal with it before you start asking questions based on it. And
7 for reasons that we needn't go into, we give our leave for you to conduct
8 your questioning whilst seated.

9 MS. STRUYVEN: Thank you very much, Mr. President.

10 PRESIDING JUDGE FULFORD: Good. Please proceed.

11 WITNESS: WITNESS DRC-D01-WWWW-0019 (Resumed)

12 (Witness answered through interpreter)

13 Questioned by Ms. Struyven:

14 Q. Mr. Witness, my name is Olivia Struyven. I'm going to ask you
15 questions today on behalf of the Prosecutor. We briefly met last week.

16 Before I start, I would like seek some clarifications. Last
17 week, you indicated that the August 2002 takeover of Bunia was not linked
18 to the UPC of Thomas Lubanga. You indicated that the mutineers had to
19 choose political leadership to whom they would give the control over
20 Ituri. Could you indicate to us when exactly they decide on who to give
21 that political control.

22 A. I think that it was only at the end of the month of August. I
23 repeat, end of the month of August that the mutineers decided to entrust
24 the leadership to Thomas Lubanga.

25 Q. Now, I would like to go back with you to the summer of 2000.

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1 Before the creation of the UPC, in the summer of 2000 some APC soldiers
2 revolted against Wamba Dia Wamba, who was in charge at that time over
3 Ituri; correct?

4 A. Yes.

5 Q. And amongst the mutineers were Bosco Ntaganda, Floribert Kisembo,
6 Tchaligonza, Kasangaki, and Bagonza.

7 A. Well, I could not identify all the mutineers. I knew that a
8 mutiny took place at the time of Wamba, but I cannot identify all the
9 mutineers. Of all the names which you have cited, yes, Bosco Ntaganda
10 was one of them, Bagonza, Tchaligonza as well. I cannot vouch for the
11 presence of the others.

12 Q. The mutineers called themselves the Chui Mobile Force; correct?

13 A. Could you repeat that, please?

14 Q. These mutineers, they called themselves the Chui Mobile Force.

15 A. Well, I'm learning from you.

16 Q. They were stationed around Nyankunde. Do you remember that?

17 A. Radio Candip talked about the presence of the mutineers in the
18 mountainous regions towards Nyankunde and around that area, yes.

19 Q. You were in Bunia at that time, were you not?

20 A. When the mutiny broke out, on that same day I was in the
21 headquarters of the capital city of the Mambasa Territory.

22 Q. And when did you return to Bunia in -- in the summer of 2002 --
23 2000, sorry.

24 A. I returned to Bunia, if I have to situate my return with respect
25 to the mutiny, I returned to Bunia three days after the mutiny started.

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1 Q. And because of this "*mutinerie*," "mutiny" in English,
2 Wamba Dia Wamba sought the help of the Ugandan authorities; correct?

3 A. Yes.

4 Q. And Ugandan authorities indeed sent soldiers who were supposed to
5 attack the mutineers; correct?

6 A. Well, I cannot say that Uganda sent soldiers. According to the
7 information which we heard from the media, Uganda was determined. Uganda
8 was mobilising itself, was deploying troops in order to put an end to the
9 mutiny. That is the information we obtained from the media.

10 Q. And so the mutineers, they hid in the bush, basically afraid of
11 this attack; correct?

12 A. I think only the mutineers can tell you that.

13 Q. Do you remember that in that period there was a group of people
14 that called themselves *Les parents de mutins*, the Parents of the
15 Mutineers?

16 A. Well, there were certain prominent figures. Every time I talk
17 about prominent figures or notables, as we call them in French, you have
18 to understand that these are people who wielded a lot of influence. It's
19 like a community of wise men. It's like a senate, even though we did not
20 have an entity of that nature. In any case, the prominent figures of the
21 area understood that this mutiny could be dangerous and especially if it
22 spread to the city, and so there were certain prominent figures who tried
23 to examine the matter.

24 Q. (* Previous translation continues) ... very distinct group that
25 called themselves the Parents of the Mutineers, or in French, *Les parents*

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1 *des mutins*, who were linked to these mutineers and who took it up for
2 them; correct?

3 A. Parents of the Mutineers? I know that the father or the brother
4 of Tchaligonza never said anything about this. I also know that the
5 father of Kasangaki or his older brother or any other relative has never
6 said anything about that. I really don't know.

7 Q. So Kasangaki was part of them; correct? Because earlier you only
8 mentioned Bosco, Bagonza, and Tchaligonza.

9 A. Bosco, Bagonza, Tchaligonza, yes. Kasangaki, Tchaligonza, well,
10 the two go together, if I can put it in those terms.

11 Q. Do you remember Mama Akiki taking it up as one of the parents of
12 the mutineers for her son Bagonza?

13 A. No. I do not remember that.

14 Q. You don't remember that the delegation which called themselves
15 the Parents of the Mutineers went to Kampala to talk to the Ugandan
16 authorities about the mutiny?

17 A. What I know at least is that when the prominent figures of the
18 area examined the matter, they tried to assess the danger that the
19 arrival of the mutineers of the town could represent, and they felt that
20 certain people should be delegated to meet the Ugandan authorities and
21 dissuade them from such action such as attacks and bombardment in the
22 hills and the mountainous areas of the western part of the town.

23 Q. So a delegation discussed the issue with the Ugandan authorities
24 in order to avoid the Ugandan authorities to attack the mutineers;
25 correct?

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1 A. Yes.

2 Q. And that delegation was supposed of Mama Akiki, Chakuahire -- my
3 pronunciation is certainly completely wrong but it's spelled
4 C-h-a-k-u-a-h-i-r-e. Do you remember that?

5 A. Are you talking about my knowledge of the spelling of the name?

6 Q. (* Previous translation continues) ... discuss the issue with the
7 Ugandan authorities?

8 A. I cannot attest to that. I cannot attest to that. However, I
9 know who Uliera is. Uliera was part of the group. I also heard his
10 voice over the BBC, and he was talking about this matter.

11 Q. And apart from Wele Uliera, there was also Honoré Musoko?

12 A. Yes, yes.

13 Q. And finally, there was also Thomas Lubanga?

14 A. Yes.

15 MS. STRUYVEN: Your Honours, I would like to show one document to
16 this witness. It's DRC-OTP-0037-0007, and it's under tab 55.

17 PRESIDING JUDGE FULFORD: Now, I think that's the most recent
18 binder that's been provided to the Court, Ms. Struyven.

19 MS. STRUYVEN: Yes.

20 PRESIDING JUDGE FULFORD: Right. Mr. Biju-Duval, any objections
21 to the document behind tab 55? And additionally, have you had an
22 opportunity, if necessary, to discuss it with Mr. Lubanga?

23 MR. BIJU-DUVAL: (Interpretation) Your Honour, we received this
24 document over the weekend, and we did not have the opportunity to discuss
25 it with Mr. Lubanga. What I mean is that, of course, we've had this

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1 document for a while, but with respect to the examination of this
2 witness, we have not had the opportunity to discuss the document with
3 Mr. Lubanga. At this point I have no objection to the use of the
4 document. However -- anyway, thank you.

5 PRESIDING JUDGE FULFORD: It may well be, Mr. Biju-Duval, that
6 although there are no objections to its use by the Prosecution now,
7 before you ask your questions, as it were, at the end of this witness's
8 evidence, we will need to ensure that you've had time to raise it with
9 Mr. Lubanga so that you can ask any supplementary questions if necessary,
10 but thank you for adopting that approach.

11 You may proceed, Ms. Struyven.

12 MS. STRUYVEN:

13 Q. Witness, if you look at the second page of this document. So you
14 see that on the 27th of July, 2000, the four people I just mentioned,
15 Honoré Musoko, Akiki Chakuahire, Uliera Wele, and Thomas Lubanga signed
16 this letter or drafted this letter --

17 PRESIDING JUDGE FULFORD: (* Overlapping speakers) ...
18 Ms. Struyven.

19 Mr. Biju-Duval.

20 MR. BIJU-DUVAL: (Interpretation) I think the Prosecutor
21 deforming the content of this document. There is no signature on the
22 document.

23 MS. STRUYVEN: I'm sorry for that. I'll rephrase.

24 Q. They didn't sign it, but it was drafted and their names are put
25 under the nomination that they are the parents of the soldiers that

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1 literally to the bush. Does this refresh your memory on the event?

2 A. Well, could you please rephrase your question. I think

3 Mr. Biju-Duval objected a bit earlier than I. I was going to say exactly

4 the same thing. It looks like a draft document. What opinion can I give

5 on a document which hasn't got any legal force?

6 Q. You agree that Thomas Lubanga represented the mutineers in the
7 summer of 2000; right?

8 A. A mutiny took place. Thomas Lubanga, from what I obtained from
9 the media, was sent by the prominent figures of the area. He was
10 representing the prominent figures. He was not representing the
11 mutineers. I think we have to make this distinction clear, and the
12 concern of these prominent figures was to preserve the stability of the
13 town of Bunia, to protect the town from any attacks that might be
14 launched by the mutineers if Uganda attacked them.

15 Q. The attacks were taking place in Nyankunde, not in Bunia, were
16 they?

17 A. Well, they were in Nyankunde, but the mutineers could also attack
18 the town. There was nothing to stop them. There was nothing to prevent
19 such a possibility from happening.

20 Q. (* Previous translation continues) ... would have attacked. They
21 would have attacked in Nyankunde, not in Bunia, because the mutineers
22 were in Nyankunde; correct?

23 A. The mutineers attacked Nyankunde, but they did not settle down in
24 Nyankunde. They attacked Nyankunde, and after that they withdrew and
25 stayed in the hills, the hills which are located close to the town. And

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1 this was matter of concern to the people in the town, because the town
2 could also be attacked. And this is what prompted the prominent figures
3 to anticipate the events and not wait for the attack to come.

4 Q. And so you agree that Thomas Lubanga went to Uganda to discuss
5 with President Museveni the fate of these mutineers; correct?

6 A. No, I did not say -- or I will not say that Thomas went to meet
7 Museveni. There was a team that was delegated to meet the officials of
8 the Ugandan government, and this is information which we obtained from
9 the media.

10 Q. But this is in the summer of 2000 at a time where you were very
11 much involved, as you indicated yesterday --

12 THE INTERPRETER: Microphone, please.

13 MS. STRUYVEN:

14 Q. -- with the initial --

15 PRESIDING JUDGE FULFORD: Ms. Struyven, microphone. You're going
16 to need the start the question again.

17 MS. STRUYVEN:

18 Q. At that time, you were about to create the UPC with
19 Thomas Lubanga and others. You must have had information on this outside
20 of the press.

21 A. I think we should try to make a distinction between these various
22 periods. My presence in the town -- well, first of all, before the
23 period 2002, before April 2002, to make things clear, I think you should
24 try to find out first of all why I was in Mambasa. I could not
25 understand all the minute details. At that point in time, I was holding

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1 administrative responsibilities, but I was also involved in the politics
2 of the area. You have to understand that. I told you that I was in
3 Mambasa, in the capital -- or headquarters of Mambasa. I went there
4 because I was a resident territorial administrator in one of the
5 districts of the territory.

6 In Mambasa, at the district headquarters, one night we were
7 informed that soldiers had arrived and had seized a Land Rover at the
8 headquarters.

9 Q. (* Previous translation continues) ... need to go into the
10 details of every second that was happening around that period. I'm just
11 asking you to indicate whether or not you were aware of what was going on
12 at that time in Bunia?

13 PRESIDING JUDGE FULFORD: Mr. Biju-Duval.

14 MR. BIJU-DUVAL: (Interpretation) Your Honour, I understand --
15 or I think that the witness is explaining the situation he was in at the
16 time, the situation in which he could have access to certain information.
17 The witness's information is important, and I believe it is inappropriate
18 for the Prosecution to brutally interrupt the witness in the course of
19 explaining these things.

20 PRESIDING JUDGE FULFORD: I think in fairness to Mr. Biju-Duval
21 and the witness, Ms. Struyven, you had asked a very broad and general
22 question which was:

23 "At that time you were about to create the UPC with Thomas
24 Lubanga and others. You must have had information on this outside the
25 press."

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1 And I think given you asked that question, the witness is fully
2 entitled to answer it in whatever way he thinks is appropriate.

3 So, sir, I'm going to ask you to continue with your answer. The
4 last thing you've said was, that's been translated:

5 "In Mambasa, at the district headquarters, one night we were
6 informed that soldiers had arrived," and then you made reference to a
7 Land Rover at the headquarters.

8 Please continue.

9 THE WITNESS: (Interpretation) Thank you very much, your Honour.

10 So I believe that this is a very important detail, because given
11 the situation I was in at the time, I couldn't have more detailed
12 information. It's not for no reason that I insist on the fact that this
13 information came from the media at the time, because I was a resident
14 territorial administrator to Lolwa at the time. That is in the area of
15 Mambasa. I was invited to a meeting at Mambasa, and that took me to the
16 district HQ in Mambasa. One morning there was a meeting of the security
17 committee, and at that meeting I learned that there was a group of APC
18 soldiers that had arrived in Mambasa in the night and had seized or
19 commandeered a Land Rover of Father Silviano, and on that occasion there
20 were soldiers who got into the vehicle and left.

21 On the following day there was Komanda in Irumu, and they stopped
22 at Komanda, at the place called Komanda. On the following day, in the
23 evening, over Radio Candip we heard that they had gone from Komanda to
24 Nyankunde and they had driven out other elements in Nyankunde, and they
25 had rallied others to their cause, and then they were no longer in

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1 Nyankunde. They were in the surroundings. This is information from the
2 press.

3 Now, why am I not sufficiently informed of what subsequently
4 happened? I was with those who had intervened at the beginning to create
5 the UPC. But nevertheless, it's simple. The explanation is simple,
6 because I didn't spend any more time in Bunia at the time.

7 Q. Well, have you heard, then, that as a result of these
8 negotiations with the Ugandan authorities, the Ugandans offered to
9 provide training for these mutineers in Uganda and more precisely in
10 Kyankwanzi and in Djindja?

11 A. Well, this was information that was conveyed through the press,
12 information that could be read in the press.

13 Q. And so the mutineers, they came to -- they left the bush, they
14 came out of the bush, they came to Bunia to take a plane to go to Uganda;
15 correct?

16 A. Yes, yes.

17 Q. And they transited through the house of Thomas Lubanga; correct?

18 A. I'm not in a position to say so.

19 Q. Have you heard about that through your sources?

20 A. Well, in fact, I had already returned to Lolwa.

21 Q. Yes, but did you hear about it through your sources?

22 A. I know that the UPDF elements were in charge of evacuating these
23 people. That, at least, is something that I do know. And I don't know
24 where they did that from.

25 Q. (* Previous translation continues) ... not heard about these

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1 mutineers transiting through the house of Thomas Lubanga?

2 A. I said that I wasn't aware of that.

3 MS. STRUYVEN: Your Honours, I would like to show a picture to
4 the witness. It is DRC-OTP-0137-0711, and it is tab 72.

5 PRESIDING JUDGE FULFORD: Any objections, Mr. Biju-Duval?

6 MR. BIJU-DUVAL: (Interpretation) Not objections, strictly
7 speaking, but my comment would be the same as the one I made for the
8 previous document.

9 PRESIDING JUDGE FULFORD: We shall ensure that you have a full
10 opportunity of discussing that with Mr. Lubanga before you ask your final
11 questions therefore.

12 Good. So tab 72 is in front of the witness, and your question,
13 Ms. Struyven, is?

14 MS. STRUYVEN:

15 Q. This picture has been published in the newspaper. Have you seen
16 this picture before?

17 A. No, I haven't.

18 Q. Do you recognise the people on this picture?

19 A. Here I can see Kisembo. Yes, it's Kisembo. I can see Rafiki. I
20 can see Bosco Ntaganda. I can also see Lubanga. So these are the four
21 individuals that I can identify.

22 Q. I can help you. There is also Kasangaki --

23 PRESIDING JUDGE FULFORD: Are you about to give evidence,
24 Ms. Struyven? It's not generally a good idea for counsel to give
25 evidence.

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1 MS. STRUYVEN:

2 Q. Could the person next to Bosco be Kasangaki?

3 A. I don't know.

4 Q. This picture was taken in that summer of 2000, was it not?

5 A. I don't know that either. I've never seen this photograph. How
6 could I know when it was taken?

7 Q. If you look at the uniforms, would it make sense to you that this
8 picture was taken in the summer of 2000? The way they're dressed, the
9 fact that they're all together?

10 A. Well, the uniforms are the uniforms that we have seen, uniforms
11 that they used, the same elements used in the FLC and also in the
12 RCD-K/ML, Kisangani K/ML under Mbusa Nyamwisi. These are the same
13 uniforms. I can see Bosco with the same blue beret. These aren't
14 uniforms that are specifically related to the period of the summer of
15 2000, as you say.

16 Q. (* Previous translation continues) ... uniforms?

17 A. These are not UPC uniforms.

18 Q. (* Previous translation continues) ... was taken before the UPC
19 got their uniforms.

20 PRESIDING JUDGE FULFORD: Mr. Biju-Duval, I think Ms. Struyven
21 can put the question, I think.

22 So what you're suggesting, Ms. Struyven, is that this photograph,
23 you are suggesting, must have been taken before the UPC got their
24 uniforms.

25 Well, sir, are you able to comment on that or not?

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1 THE WITNESS: (Interpretation) Well, the uniforms that we can
2 see here are uniforms -- well, amongst the soldiers there's one who is to
3 the right of Bosco. He's to the right of Bosco, and he is wearing a
4 uniform that resembles UPC, D -- FPLC uniforms, the one to the right. I
5 couldn't say exactly whether this photo was taken -- or what point in
6 time this photo was taken. I couldn't say when it was taken, because the
7 same soldiers we have here during the UPC period must have kept the APC
8 uniforms. They did that, in fact. So it's a photograph I've never seen
9 before, and I really couldn't comment on it in any way.

10 MS. STRUYVEN:

11 Q. I will try to help you further. Do you know the newspaper
12 "La Colombe Plus"?

13 A. Yes.

14 Q. (* Previous translation continues) ... is Alidor Mwanza?

15 A. Yes.

16 Q. I'll say it again for the transcript. The editor is Alidor
17 Mwanza, M-w-a-n-z-a. He was at some point also involved in the creation
18 of the UPC; correct?

19 A. Well, I couldn't really confirm that because Mwanza, I saw him at
20 one point in time because it's a bit vague. I saw him at one point in
21 time, but when exactly? Could you help me perhaps locate that moment,
22 situate that moment.

23 Q. (* Previous translation continues) ... have a document of the
24 15th of September, 2000, so the moment of the creation of the UPC, that
25 mentions his name. So you're telling us that you were involved in the

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1 creation of the UPC, but you don't know the others that were involved in
2 the creation of the UPC?

3 A. That can't be surprising. That really can't be surprising,
4 because all those who participated in the creation of the UPC and who
5 always attended the meetings, well, I know all these people. I'm very
6 familiar with them. I must say so. Alidor Mwanza, given his status, the
7 work he carried out, was one of the most irregular members. He was a
8 journalist, and he didn't want to demonstrate that he was a UPC member.
9 He wanted to have the freedom to enter all the various halls without
10 being seen as a UPC member.

11 You must understand the case of Alidor Mwanza. You have to
12 understand his case. A journalist is with us but doesn't make it known,
13 and in the various meeting halls, he didn't want to demonstrate that
14 because he wanted to have access to other places in order to obtain
15 information. He also wanted to make money, because as a journalist,
16 perhaps you know this, perhaps not, but if you're a journalist, this is a
17 profession that resembles that of a beggar's profession. Excuse me for
18 saying that.

19 Q. (* Previous translation continues) ... the creation of the UPC?

20 A. Yes.

21 THE INTERPRETER: The interpreter notes that there are
22 overlapping speakers.

23 PRESIDING JUDGE FULFORD: Yes. Consistently this morning, I'm
24 afraid, Ms. Struyven, you've been coming in too quickly and you can see
25 it on the English transcript. You have got to leave a gap between the

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1 end of his answer and before you come in, otherwise, the evidence is --
2 is lost, effectively, for all time. So please put a break in it.

3 MS. STRUYVEN: I apologise, your Honours. I would like to show a
4 news article of "La Colombe Plus," and it is DRC-OTP-0134-0002, and it is
5 at tab 69. And I would like you to look at page 15.

6 PRESIDING JUDGE FULFORD: Now, sir, before you look at this
7 document.

8 Ms. Struyven, what's the purpose of newspaper articles, please.

9 MS. STRUYVEN: I would like to -- well, at page 15, the picture
10 that I have just shown is included in the news article. This news
11 article is dated August 2002, so obviously it helps us to put the picture
12 in a time-frame, because obviously this shows that the picture was taken
13 before the publication of this newspaper; and secondly, the article gives
14 a background of the mutiny that took place in 2000 against
15 Wamba Dia Wamba, and more precisely --

16 PRESIDING JUDGE FULFORD: Forgive me interrupting. Are you
17 suggesting that we should read a piece of journalism in order to obtain
18 the background, the factual background, to a mutiny?

19 MS. STRUYVEN: The purpose was just to put some portions of this
20 article to the witness to see if he could comment on that and if he would
21 remember the link that is established in this article between
22 Thomas Lubanga and the mutineers.

23 PRESIDING JUDGE FULFORD: Before I take this any further,
24 Mr. Biju-Duval, two separate parts to this. The first is whether it's
25 necessary, in fact, to do it with the witness at all is a different

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1 matter, but the first is in a sense the straightforward factual issue
2 that the photograph is to be found in a newspaper bearing a particular
3 date. Well, that's point one, to demonstrate that the photograph with
4 these people dressed the way that they are in the photograph was
5 existence by that date. Point one.

6 Point two is to use the article as a means of asking the witness
7 questions about the actual circumstances, presumably, I hope within his
8 knowledge, as to the circumstances of the mutiny. So taking them in
9 turn, what's your approach to those two suggestions?

10 MR. BIJU-DUVAL: (Interpretation) Yes, your Honours. As far as
11 the first point concerned, I believe there is only one question that can
12 be put to the witness, and that is, "Are you familiar with this article?
13 Do you know when it was published?" But I don't think that we can go
14 beyond that.

15 As far as the second point is concerned, it seems to me that it
16 would be inappropriate for the witness to be examined, questioned, about
17 the opinion of a journalist whose name itself is not specified. The
18 article doesn't specify the journalist's identity. It seems to me that
19 it would be inappropriate for the witness to be questioned about a
20 journalist who hasn't been identified. Although I have much respect for
21 the nationals of the DRC, we do, nevertheless, know that certain
22 newspapers do not merit much attention.

23 PRESIDING JUDGE FULFORD: Anything else, Ms. Struyven?

24 MS. STRUYVEN: No. Alternatively, your Honours, I can just put
25 the content of the article to the witness.

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1 PRESIDING JUDGE FULFORD: Or neither, Ms. Struyven. Thank you.

2 (Trial Chamber confers)

3 PRESIDING JUDGE FULFORD: Ms. Struyven, the view of the Bench is
4 that as regards the date of the photograph, although it is probably not
5 necessary to do -- to undertake the exercise with the witness, for the
6 sake of convenience we are content for you to ask him whether he sees the
7 photograph that you have referred to a little while ago in a newspaper
8 that bears a particular date. So that exercise can be undertaken.

9 As to your second proposal, the Bench is very firmly against the
10 suggestion that the Prosecution should seek through questioning to
11 establish facts relevant to this case, in this instance in relation to a
12 suggested mutiny, on the basis of what is set out in a newspaper article.
13 This is not trial by journalism, Ms. Struyven.

14 If there are facts within that article which you wish to put to
15 the witness without showing him the article by way of freestanding
16 questions, of course you are entitled to do so. What you are not
17 entitled to do is somehow to attempt to give those questions extra force
18 or validity because you happen to be quoting from a piece of journalism
19 when you are framing the question. So we will not, please, have
20 questions that are, in a sense, given apparent additional weight because
21 they appear in a newspaper report.

22 Right. We're going to take the short break of the morning now.
23 We will sit again at 25 to 11.00.

24 Sir, thank you very much, indeed, for your assistance so far this
25 morning. We look forward to seeing you again in just over 10 minutes'

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1 time. Thank you.

2 COURT USHER: All rise.

3 Recess taken at 10.25 a.m.

4 On resuming at 10.36 a.m.

5 COURT USHER: All rise. Please be seated.

6 PRESIDING JUDGE FULFORD: Yes. Please continue, Ms. Struyven.

7 MS. STRUYVEN: Thank you, Mr. President.

8 Q. So, Mr. Witness, if you look at that picture on page 15 and you
9 look at the first page of this news article, would you agree that this
10 picture was published in August of 2002?

11 A. Yes.

12 Q. Now, having seen this picture, would this refresh your memory
13 that Floribert Kisembo was also part of this group of mutineers?

14 MR. BIJU-DUVAL: (Interpretation) In my opinion, the witness has
15 already stated his opinion on that subject.

16 PRESIDING JUDGE FULFORD: (* Microphone not activated) ... to the
17 question in principle. So one last time, sir, having seen this picture
18 within the context of a date of publication of August 2002, does this in
19 any way affect your memory as regards whether or not Floribert Kisembo
20 was one of the mutineers?

21 THE WITNESS: (Interpretation) I've already said so, but this is
22 the first time I see this photo. I can't say whether this photo is a
23 photo of mutineers. I wouldn't be able to say so, because, of course,
24 there are some mutineers among them. I can see that. But is this photo
25 a snapshot of mutineers? Are these mutineers? I mean I can't say

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1 really.

2 PRESIDING JUDGE FULFORD: Thank you very much.

3 Yes, Ms. Struyven.

4 MS. STRUYVEN: I forgot to ask EVD numbers for the last two
5 documents. The second document had an EVD number, but the first and
6 third don't have EVD numbers.

7 PRESIDING JUDGE FULFORD: Court Officer, for those documents that
8 don't have EVD numbers which have been put to the witness, can you please
9 now do so.

10 COURT OFFICER: Thank you, Mr. President. Document
11 DRC-OTP-0037-0007 will bear the following EVD number: EVD-OTP-00669.
12 Document DRC-OTP-0134-0002 will bear the following EVD number:
13 EVD-OTP-00670.

14 Could counsel also confirm the level of confidentiality of the
15 documents, please.

16 MS. STRUYVEN: Since this photograph was part of a public
17 newspaper, the photograph is public. For the latter, I would prefer to
18 send an e-mail just to be hundred per cent sure that it can be classified
19 as public.

20 PRESIDING JUDGE FULFORD: Yes, Ms. Struyven.

21 MS. STRUYVEN:

22 Q. So you have -- back in the summer of 2000 you have this mutiny,
23 and you have Thomas Lubanga who represents the mutineers in Uganda;
24 correct?

25 A. In fact, as I've said, Thomas Lubanga was sent by the sort of

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1 note -- influential people, and he did not represent the mutineers.

2 Q. (* Previous translation continues) ... mutineers are sent to
3 Uganda for training?

4 A. Well, as far as I know, the mutineers were called back by
5 Lubanga. That's what I know. But was it to undergo training? I mean,
6 it's up to the Ugandan authorities to answer that question.

7 Q. And Thomas Lubanga visited them in Kyankwanzi in Uganda in the
8 autumn of 2000; correct?

9 A. I don't know. I really don't know.

10 Q. Had you heard about that through the press or other sources?

11 PRESIDING JUDGE FULFORD: Ms. Struyven, we've allowed an element
12 of hearsay in during the course of this trial for reasons that we've made
13 very clear in the various written and oral decisions that we've given,
14 but when a witness answers a very specific question of the kind that you
15 put and answers, "I don't know, I really don't know," I'm not sure
16 whether our understanding of the facts in this case is going to be
17 improved if the witness were to say that he had heard something about it
18 having read it in the press. I just don't see how that's going to help
19 us. So can you please reflect very carefully. It's not the first time
20 you've asked a question of that kind this morning. Can you reflect very
21 carefully before you do so again to ensure that there is really a basis
22 for putting question which is going to assist us in our understanding of
23 the evidence in this case.

24 MS. STRUYVEN:

25 Q. Mr. Witness, let's move to the next month, basically, September

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1 of 2000. You testified that in September of 2000 the UPC was created;
2 correct?

3 A. Yes.

4 Q. And you were part of the discussions of that creation; correct?

5 A. Yes.

6 Q. And so if I understand you correctly, there was no link
7 whatsoever between the mutiny that we just discussed and about which you
8 say you don't know anything and the creation of the UPC.

9 A. Absolutely.

10 Q. Do you remember that in the UPC a lot of -- do you remember any
11 chronology of the events of the UPC being drafted?

12 A. Could you talk about that a bit more, because I mean it is a
13 moment where the UPC was set up, and then when we drafted up the bylaws,
14 I mean, what are you talking -- what are you referring to? Could you
15 explain a bit better?

16 Q. I agree I was not very clear. Do you remember while you were a
17 member of the UPC that UPC drafted several documents about the history of
18 the UPC?

19 A. Several documents about the history of the UPC. Yes, I know that
20 the UPC did draft some documents covering its history. Yes, I know that.

21 Q. And do you remember that sometimes these documents would first be
22 written in handwriting before they were typed up? Does that ring a bell?

23 A. Yes. Yes, they were written out first, then they were typed up.

24 MS. STRUYVEN: I would like to show one document to the witness.

25 This is the document that was only disclosed this weekend. It's a

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1 handwritten chronology of the UPC, and it can be found at tab 61. The
2 ERN is DRC-OTP-0091-0879.

3 PRESIDING JUDGE FULFORD: Mr. Biju-Duval.

4 MR. BIJU-DUVAL: (Interpretation) Your Honour, we have already
5 formally objected using this document. This document had never
6 previously been disclosed to the Defence at any point of time whatever.
7 That's my first point.

8 Second point: No chain of possession has been revealed to the
9 Defence. We don't know where this document comes from, in other words.

10 Third, this document is not dated. It has not been signed, and,
11 therefore, we don't know who wrote it. It consists in a sort of
12 historical chronology that, in any event, will not be of any use whatever
13 for the Court. Therefore, we object to using this document.

14 (Trial Chamber and Court Officer confer)

15 PRESIDING JUDGE FULFORD: Mr. Biju-Duval, I think we should have
16 a discussion with the Prosecution about this, and I think since this
17 document concerns the evidence of the witness, I'm going to ask
18 Witness 19 to leave court, please, for a moment so that we can discuss it
19 in his absence because it may prejudice his evidence if the discussion
20 takes place in his presence.

21 Sir, I'm sorry to disturb you. Could you just for a moment
22 please leave court, and we'll call for you again as soon as I've finished
23 the discussion with counsel. Thank you.

24 (The witness stands down)

25 PRESIDING JUDGE FULFORD: Two issues in particular, Ms. Struyven.

1 Firstly, why not disclosed earlier? Secondly, what is the suggested
2 provenance of this document?

3 MS. STRUYVEN: As to your first question, your Honours, we didn't
4 think originally that this document was relevant because it deals,
5 indeed, specifically with the period of the mutiny, and we did not
6 imagine that certain allegations were going to be made in respect of this
7 period. This document basically establishes the link between the mutiny
8 that we just discussed and the creation of the UPC thereafter.
9 Originally we didn't believe that that was going to be relevant in the
10 sense that we believed that it was in a sense quite clear.

11 As to the provenance of this document, this document was given to
12 us by one of the key persons of the UPC during an interview that we
13 conducted with this individual. I'm hesitating to give the name in
14 public session, but -- so the document was given to us by this person and
15 was commented upon by this key person of the UPC. He still has a key
16 position in the UPC today, and he indicated to us that the document was
17 drafted by the UPC office for information and communication. And I can
18 actually refer your Honours to the statement of this individual in which
19 he explains this. It is document -- well, DRC-OTP-0113-0072, and the
20 discussion about this document is at page DRC-OTP-0113-0081 and further.

21 As I said, this key -- this person was --

22 PRESIDING JUDGE FULFORD: I'll interrupt, Ms. Struyven. Are
23 those two documents in the binders before us?

24 MS. STRUYVEN: So the statement that I use referred to, it's just
25 one statement, it is not, because -- it has formed part of this trial.

1 It is in the records of the trial --

2 PRESIDING JUDGE FULFORD: No, but --

3 MS. STRUYVEN: -- but it's not in the --

4 PRESIDING JUDGE FULFORD: Is it part of the evidence in the case?

5 Have we admitted this statement as part of the evidence in the case?

6 MS. STRUYVEN: It was admitted only at confirmation.

7 PRESIDING JUDGE FULFORD: Fine. So that's not before us. And
8 you then referred to a second document, a discussion about this document
9 ending 0081. Is that part of the materials before us?

10 MS. STRUYVEN: That's the page in the statement.

11 PRESIDING JUDGE FULFORD: Right.

12 MS. STRUYVEN: So it's one statement, and I've referred -- the
13 ERN number ending at 81 is the portion in the statement that discusses
14 this document.

15 PRESIDING JUDGE FULFORD: Right. Thank you.

16 MS. STRUYVEN: Your Honour, I can give the name, but I think it's
17 safer in private session.

18 PRESIDING JUDGE FULFORD: Private session, please.

19 * (Private session at 10.55 a.m.) Reclassified as open session

20 COURT OFFICER: We're in private session, your Honours.

21 PRESIDING JUDGE FULFORD: Yes, Ms. Struyven.

22 MS. STRUYVEN: So the -- the individual I'm -- I'm talking about
23 is John de Dieu Tinanzabo.

24 PRESIDING JUDGE FULFORD: Could you spell that, please?

25 MS. STRUYVEN: Or John Tinanzabo. It's T-i-n-a-n-z-a-b-o.

1 PRESIDING JUDGE FULFORD: Thank you.

2 MS. STRUYVEN: And I made a mistake in the ERN, the first ERN I
3 that gave about the statement. It's not 72 at the end, but it's 73 at
4 the end. I apologise for that.

5 PRESIDING JUDGE FULFORD: Right. So getting this clear then --
6 it's not good manners, Ms. Struyven, to talk to someone else whilst a
7 Judge is addressing you.

8 Right. To understand this, the position, therefore, is that you
9 would want to suggest to the witness that this is a document of -- about
10 which he would have been aware because it was one of the drafts made
11 during the period of the creation of the UPC. Is that right? That's the
12 question that you would want to put to him.

13 MS. STRUYVEN: The document gives the chronology of the events in
14 the UPC up until August of 2002. So it was not drafted at the creation
15 of the UPC, but it was drafted later on and indicates the different
16 events that lead -- or led to the creation of the UPC.

17 PRESIDING JUDGE FULFORD: Right. I'm going to interrupt.
18 Forgive me for doing so, because I really want to understand what you're
19 saying about this. So you're not saying that this witness drafted it.
20 No. Are you saying that this witness was ever shown it?

21 MS. STRUYVEN: Because this was drafted by the UPC and because
22 the witness was a member of the UPC, an official member of the UPC in
23 2002 onwards, what we're saying is that he would have been aware of these
24 events that are described in these documents, and, therefore, he would be
25 able to confirm that these events that are drafted here, the chronology,

1 is correct.

2 PRESIDING JUDGE FULFORD: Right. It's given to you by a
3 prominent UPC individual. So that's how you have it in your possession,
4 but you are unable to suggest either that the witness wrote it or that he
5 has ever seen it before; is that right?

6 MS. STRUYVEN: He may have seen it, and he may recognise the
7 handwriting. That is something that I don't know at this stage.

8 PRESIDING JUDGE FULFORD: Right. So you're saying that because
9 it's a UPC document and given his role, there is at least the possibility
10 that he might have seen it before. Right?

11 MS. STRUYVEN: Yes, your Honours.

12 PRESIDING JUDGE FULFORD: And then independently of that, you
13 want to put to him a series of events to see whether he can confirm or
14 not the accuracy of that chronology; is that right?

15 MS. STRUYVEN: I would like to go with him over a few of these
16 events indicated in this document, drafted in this document, to indeed
17 ask him to confirm that that is what happened.

18 PRESIDING JUDGE FULFORD: Thank you.

19 Public session, please.

20 (Open session at 11.00 a.m.)

21 COURT OFFICER: We're in open session your Honours.

22 PRESIDING JUDGE FULFORD: Mr. Biju-Duval, please come back on any
23 aspect of this, but one particular approach I'd ask you to focus on along
24 with everything else is whether you would object in the first instance to
25 the witness seeing the document to establish, first of all, whether he

1 wrote it; secondly, whether he recognises the handwriting; and thirdly,
2 whether he has ever seen it before, because if he didn't write it and if
3 he has never seen it before, well, then there may be certain consequences
4 in terms of him being allowed to consider it further, whereas if he did
5 write it and if he has seen it before in a appropriate context, then it
6 may be said it's unobjectionable to him being asked further questions
7 about it.

8 Now, I don't want to prejudice your response, but could you
9 include an answer to those matters in what you're about to say.

10 MR. BIJU-DUVAL: (Interpretation) Your Honour, we would see no
11 objection to questions which are put in the manner which is suggested if
12 this document was duly disclosed. We are in an inadmissible situation
13 today.

14 This document presents a chronology of the history of UPC/RP on
15 one page and should have been sent to the Office of the Prosecutor by an
16 official of the UPC. For the first time we received this document only
17 yesterday, last night, last night, and today the OTP is stating that they
18 could not imagine that this document would turn out to be relevant. I
19 don't think that is serious. That is not serious. And we cannot accept
20 that a document of this nature, which is allegedly provided by an
21 official of the UPC and which deals with the history of the UPC/RP, that
22 such a document is disclosed only yesterday, yesterday night.

23 I think it's a question of principle here. If we start admitting
24 such documents under such disclosure circumstances which do not tally
25 with our rules, then we risk opening a Pandora's box here. That is what

1 I would like to say.

2 With respect to the questions which you suggested, in principle
3 we have no objection to questions of that nature.

4 PRESIDING JUDGE FULFORD: So if Ms. Struyven were to confine her
5 questions in the way that I've indicated, asking the witness whether he
6 wrote it, whether he recognises the handwriting and whether he's seen it
7 before, you would not object to those questions? Do I understand you
8 correctly, Mr. Biju-Duval?

9 MR. BIJU-DUVAL: (Interpretation) We are raising a fundamental
10 objection regardless of the questions because of the nature in which
11 disclosure has been made. But if that objection is set aside, well, then
12 we will have to accept the questions as you formulated them.

13 (Trial Chamber confers)

14 PRESIDING JUDGE FULFORD: Ms. Struyven has indicated that she
15 wishes to ask the witness about a handwritten document which comes behind
16 tab 61 of the most recent documents provided to the Chamber. This
17 document was disclosed for the first time to the Defence during
18 yesterday. It is suggested that it had not been provided to the Defence
19 at an earlier stage in these proceedings because it had been assumed that
20 its contents were irrelevant to the matters in issue in this trial and
21 that, in particular, the issue currently being explored in relation to
22 the mutiny was believed to be a matter of irrelevance as regards these
23 proceedings.

24 The provenance of the document is dependent on the evidence of
25 somebody who has provided a statement to the Prosecution but who has not

1 given evidence at all during the course of these proceedings.
2 Additionally, the Prosecution are not in possession of any evidence that
3 would indicate that this witness either wrote the document, was present
4 at the time it was compiled, or indeed was at any stage aware of its
5 existence.

6 In our judgement, there are two reasons for concluding that it
7 would be inappropriate and unfair to allow questions based on this
8 document to proceed. First, we are concerned at the late stage of the
9 disclosure. It seems to us that a document of this nature, given the
10 kinds of documents that have been disclosed, of which there have been
11 very many in the past, should have been supplied to the Defence a very
12 long time ago.

13 Secondly, there is at present no proper basis for putting the
14 document to the witness. As I have just said, there is no suggestion, as
15 we understand it, that he wrote it, that he was present when it was
16 written, or that he was even aware of it.

17 What Ms. Struyven is entitled to do is to use the facts which
18 appear in the chronology to form the basis of freestanding questions as
19 to the history which she now suggests is correct, and so she can use the
20 material within it to see whether or not the witness accepts the history
21 or part of it which is set out within this particular piece of paper.

22 Good. We'll take the longer morning break now and sit again at
23 20 to 12.00. Thank you very much.

24 COURT USHER: All rise.

25 Recess taken at 11.08 a.m.

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1 On resuming at 11.40 a.m.

2 (Open session)

3 (The witness takes the stand)

4 COURT USHER: All rise. Please be seated.

5 PRESIDING JUDGE FULFORD: Yes, Ms. Struyven.

6 MS. STRUYVEN: Thank you, Mr. President.

7 Q. Mr. Witness, isn't it correct that in August of 2000, when these
8 mutineers were sent to Uganda, the discussion started in Bunia to create
9 the UPC to recuperate these mutineers upon their return from Uganda?

10 A. That is not correct.

11 MS. STRUYVEN: Your Honours, I would like to send -- show another
12 document to this witness. It is DRC-OTP-0093-0130, and it is tab 63.

13 PRESIDING JUDGE FULFORD: Mr. Biju-Duval, any objections?

14 MR. BIJU-DUVAL: (Interpretation) No objections, your Honour.

15 PRESIDING JUDGE FULFORD: Please continue.

16 MS. STRUYVEN:

17 Q. Mr. Witness, this is a message of Mr. Lubanga on Radio Candip on
18 the 11th of September of 2002, and I would like you to look at the first
19 page, more or less in the middle of the page, where it says, "Chers
20 Compatriotes." And I will read in French:

21 "(Interpretation) The combat which we started since the year 2000
22 has always been misunderstood, either through bad faith or because of
23 ignorance."

24 (* Previous translation continues) (In English) ... of that
25 paragraph says -- well, after having referring to Wamba Dia Wamba, the

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1 last sentence says:

2 "(Interpretation) We have reacted by starting a mutiny, and we
3 have created the Union of Congolese Patriots, UPC."

4 (In English) Thomas Lubanga makes reference to the mutiny here,
5 doesn't he?

6 PRESIDING JUDGE FULFORD: Before you answer that question, sir.

7 Mr. Biju-Duval.

8 MR. BIJU-DUVAL: (Interpretation) Yes, your Honour. A document
9 is being shown to the witness. I think we have to start by asking the
10 witness whether he knows the document before we put a question to him.

11 Secondly, a document, a four-page document, has been given to the
12 witness, and a question is put to him on two lines only. I think the
13 witness should be given time to look through the entirety of the document
14 before a question is put to him.

15 PRESIDING JUDGE FULFORD: I think it's right, Ms. Struyven, that
16 rather than simply putting the two pieces of paper in and launching
17 straight into the question, you need to establish what the document is,
18 whether the witness is aware of its contents, and whether he is, in fact,
19 in a position to answer questions based on the document at all, and to
20 the extent that it's necessary, he obviously needs an opportunity to
21 familiarise himself with it, particularly if he hasn't seen it before.
22 So I think you need to start again rather more slowly, please.

23 MS. STRUYVEN:

24 Q. Mr. Witness, are you aware of this message of Thomas Lubanga that
25 was broadcast on Radio Candip on the 11th of September, 2002, from

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1 Mandro? As you recall --

2 A. Yes, I heard this message over Radio Candip.

3 Q. I think the transcript refers to the third ... I apologise. I
4 was too fast.

5 So, Mr. Witness, Mr. Lubanga himself refers to the mutiny here in
6 this document, doesn't he?

7 A. Well, he said we reacted by engaging in a mutiny. I do not fully
8 understand this reference to mutiny. I know that Thomas Lubanga is not a
9 soldier. I know he's not a soldier.

10 Q. But are you still saying that there was no link between the
11 mutiny of the summer of 2000 and the creation of the UPC?

12 A. Yes.

13 Q. So then let's move on to the next period in -- in September of
14 2000, the UPC was created, as you have testified last week.

15 PRESIDING JUDGE FULFORD: Are you leaving this document,
16 Ms. Struyven?

17 MS. STRUYVEN: Yes, your Honours.

18 PRESIDING JUDGE FULFORD: I just want to see how we -- how we are
19 to treat this document in due course. What has happened is, as I
20 understand it, in the last two or three minutes that the witness has said
21 that he heard the radio broadcast at the time that it occurred. At the
22 moment, I don't think there's any evidence that the witness has seen
23 this -- I don't know what this is, whether this is supposed to be a
24 transcript of what was said or whether this is the speaking notes it's
25 suggested were used by Mr. Lubanga. At the moment, Ms. Struyven, these

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1 are two pieces of paper which you're about to move away from, and at the
2 minute it's not clear to me at all as to how we should view them or deal
3 with them in due course.

4 MS. STRUYVEN:

5 Q. Mr. Witness, you said that you heard this message on Radio Candip
6 on the 11th of September of 2002. In your opinion, is this a correct
7 reflection of what you heard back then?

8 A. I am not in a position to say. Looking at the title, "Message of
9 peace by Lubanga," yes, I did hear him make a message on peace over the
10 radio, but the text itself, the content of this document, I have to read
11 it before I can tell you whether it tallies or not with what I heard.
12 But he did, indeed, give this message on peace over the radio.

13 Q. (* Previous translation continues) ... aside the rest of the
14 text. The paragraph that we discussed, do you remember if that was
15 indeed broadcast over Radio Candip?

16 A. Well, I cannot -- I have no recollection of everything that was
17 said at this moment, but the message itself was a strong one. It was a
18 message inviting people to peace, to a culture of peace, to good
19 neighbourliness.

20 MS. STRUYVEN: Your Honours, we would request an EVD number for
21 this document.

22 PRESIDING JUDGE FULFORD: Yes. It can have an EVD number, but as
23 with all other documents, Ms. Struyven, you will, of course, bear in mind
24 that we are only going to pay attention to it to the extent that it's
25 been dealt with by the witness. So there's not very much that you're

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1 going to be able to take from this document, but subject to that
2 observation, an EVD number, please.

3 COURT OFFICER: Document DRC-OTP-0093-0130 will bear the
4 following EVD number: EVD-OTP-00671. Thank you.

5 PRESIDING JUDGE FULFORD: Thank you.

6 Yes, Ms. Struyven.

7 MS. STRUYVEN:

8 Q. So if we can now move to the creation of the UPC in -- on
9 15 September 2000. You've testified that you participated in the
10 discussions leading up to the actual signing of the UPC statute; is that
11 correct?

12 A. Yes.

13 Q. And amongst those who were founders of the UPC, there was
14 Mama Akiki; is that correct?

15 A. No.

16 Q. Was there Uliera Wele who together with Mama Akiki also went with
17 Mr. Lubanga to Uganda?

18 A. I knew that Uliera Wele is a cofounder of the UPC.

19 Q. There was also Rafiki Saba?

20 A. As cofounder, yes.

21 Q. Adele Lotsove?

22 A. No.

23 Q. Pilo Kamaragi?

24 A. No.

25 Q. Was there Eloy Mafuta?

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1 A. No.

2 Q. Dieudonné Mbuna?

3 A. I think so.

4 Q. And, of course, Tinanzabo?

5 A. Yes.

6 MS. STRUYVEN: Your Honours, I would like to show another
7 document to this witness. It is document DRC-OTP-0089-0165. It's at
8 tab 59.

9 PRESIDING JUDGE FULFORD: Mr. Biju-Duval.

10 MR. BIJU-DUVAL: (Interpretation) We have no objections in
11 principle to this document being shown to the witness. However, we would
12 wish to make the general remark, to maintain the general remark which we
13 made at the beginning on the documents which were disclosed this weekend.

14 PRESIDING JUDGE FULFORD: Thank you, Mr. Biju-Duval, and again,
15 we will give you every opportunity you need to discuss them with
16 Mr. Lubanga.

17 Yes, Ms. Struyven.

18 MS. STRUYVEN: I apologise, but this document has been disclosed
19 well in advance and actually already has an EVD number. It has
20 EVD number EVD-OTP-00154, which is -- from the numbers, I think is a
21 Confirmation Hearing EVD number. So this document was certainly -- if
22 I'm not mistaken was certainly disclosed beforehand.

23 PRESIDING JUDGE FULFORD: That's very good to hear, Ms. Struyven.
24 Please continue.

25 MS. STRUYVEN:

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1 Q. If you look at the first page, Mr. Witness, does this document
2 look familiar to you?

3 A. No.

4 Q. You have never seen this document?

5 A. I did say no.

6 Q. But you were part of the discussions on the creation of the UPC;
7 correct?

8 A. Yes.

9 Q. Can you look at the second page of this document. Now, I see the
10 names of Mama Akiki, Adele Lotsove, and Pilo Kamaragi listed as the
11 members of the UPC.

12 PRESIDING JUDGE FULFORD: Ms. Struyven, we have a document which
13 bears an EVD number, as I understand it, from the pre-trial phase, so
14 correct me if I am wrong, but as I understand it thus far not introduced
15 during the course of the trial proceedings. You've shown it to the
16 within. He says he's never seen it before. So it's a document at the
17 moment that has no provenance at all as far as this trial is concerned,
18 and you're about to ask him questions about names which appear on it.
19 I'm afraid I think that is a futile exercise. You're asking him to
20 comment on the contents of a document he's never seen before, about which
21 we know nothing. So applying the usual principles, that is not an
22 exercise that's going to assist us in the course of this trial.

23 MS. STRUYVEN:

24 Q. Could it be that the members I just mentioned were part of the
25 discussions on the creation of the UPC without you knowing it?

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1 PRESIDING JUDGE FULFORD: Yes, Mr. Biju-Duval.

2 MR. BIJU-DUVAL: (Interpretation) A certain number of names have
3 been mentioned to the witness, and he has given various answers depending
4 on each of the names read out to him. I would like the Prosecutor to be
5 more specific with regard to the names that she would like the witness to
6 react on now.

7 PRESIDING JUDGE FULFORD: Yes. As I understand it,
8 Mr. Biju-Duval, Ms. Struyven is now, as it were, moving away from the
9 document, but is asking the witness whether Mama Akiki, Adele Lotsove and
10 Pilo Kamaragi may have been involved in the discussions but he, the
11 witness, may have been unaware that they were involved in the
12 discussions. So she's asking whether it is possible that they could have
13 been involved and he was unaware of it.

14 What is the answer to that question, sir?

15 THE WITNESS: (Interpretation) Well, as I said, I have
16 absolutely no knowledge about the participation or support of the people
17 mentioned here in these discussions, and I could even add that Lotsove,
18 Adele, wasn't in Bunia at the time. He was in Kampala. He wasn't in
19 Bunia. So that person was in Kampala, wasn't even in Bunia, as I said.

20 PRESIDING JUDGE FULFORD: Thank you. Where do we go now,
21 Ms. Struyven.

22 THE INTERPRETER: Interpreter's correction: She was not in
23 Bunia. She was in Kampala.

24 MS. STRUYVEN: I'm just verifying one thing, your Honours.

25 PRESIDING JUDGE FULFORD: Certainly. If you want moment, take

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1 it.

2 MS. STRUYVEN:

3 Q. So you explained about Adele Lotsove, who is female, just for the
4 transcript. What about the other two individuals, Pilo Kamaragi and
5 Mama Akiki?

6 A. I never met Professor Pilo Kamaragi. As I have said, I never met
7 him in a discussion with regard to the creation of the UPC. I never met
8 him. And the same is the case with regard to Mama Akiki. I saw this
9 lady one day on a motorbike, but I've never seen her in a meeting hall or
10 in a discussion concerning the UPC.

11 Q. Very well. Now, moving on to the period after the creation of
12 the UPC. As I think you've indicated, in November 2000, Wamba Dia Wamba
13 was removed of his position, and the RCD-K/ML was created under the
14 control of Mbusa Nyamwisi, a Nande person, and Tibasima. Is that
15 correct?

16 A. November, but which year? Could we be more precise? So you want
17 to go back to all those matters that we were dealing with a while ago.
18 When Wamba withdrew -- could you back to your thoughts such as you were
19 developing then?

20 Q. In September of 2000, the UPC is created clandestinely; correct?

21 A. The UPC was created in September 2000. Clandestinely or not,
22 well, that's your claim, but I'm telling you the UPC was created on the
23 15th of September, 2000.

24 Q. And so in November of 2000, two months later, Wamba Dia Wamba is
25 removed from the RCD-K, and Mbusa Nyamwisi, who is Nande, he's of Nande

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1 ethnicity, and Tibasima take over from Wamba Dia Wamba; correct?

2 A. That's not correct. In November 2000, at the beginning of
3 November, from the 3rd to the 8th, there was an attempt at a coup
4 organised by Mbusa Nyamwisi, who was number two in RCD Kisangani. Mbusa
5 was supported by Tibasima in that coup, obviously.

6 Unfortunately, the coup did not succeed. There were dead among
7 the civilians and the soldiers in Bunia, however. So it was Uganda that
8 then called back Mbusa Nyamwisi and Wamba Dia Wamba. They were called
9 back to Kampala, all of them. They all went to Kampala.

10 And in January, Jean-Pierre Bemba was the card that was played.
11 Jean-Pierre Bemba appeared with the Front for the Liberation of Congo.
12 Up until that point in time, Mbusa didn't take over. He didn't assume
13 authority. And in the FLC, Mbusa was called upon to play the role of
14 commissioner general. A certain state advisor, the first state advisor,
15 something like that. Wamba Dia Wamba, within that framework,
16 Wamba Dia Wamba was to be the president of the assembly, of the national
17 assembly, of the body that deliberates. So that was the idea that had
18 been conceived of by the architects in Uganda. Bemba was to be the FLC
19 president and the first state commissioner. Number two was supposed to
20 be Mbusa Nyamwisi, and then at the level of the assembly that
21 deliberates, there was Professor Wamba dia Wamba.
22 Professor Wamba dia Wamba declined to accept the offer. He accepted to
23 go to Dar es Salaam to give courses. He preferred to do that than to be
24 humiliated in this manner. So that is of essential importance. We have
25 to put these things right.

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1 Q. After the FLC -- at some point in 2001, the FLC is re-replaced by
2 the RCD-K/ML; correct?

3 A. Yes.

4 Q. And the RCD-K/ML, from that moment onwards, is controlled by
5 Mbusa Nyamwisi and Tibasima; correct?

6 A. Should one affirm that the RCD-K/ML was controlled by
7 Mbusa Nyamwisi and Tibasima? I think that's going too far, because one
8 thing should be borne in mind. We have to tell the story, otherwise
9 nothing will be learned here. You will allow me to establish the truth
10 when necessary, the historical truth when necessary.

11 The FLC was to disintegrate because the FLC was a platform, the
12 Presidency of which was to have a rotational nature. One year Bemba
13 himself was to be in charge of it, the president of the FLC, and another
14 year, the second year, was to be under the control of a RCD leader. That
15 was the situation.

16 However, as I have already said, Professor Wamba dia Wamba wasn't
17 happy. Mbusa, too, was not happy. Mbusa didn't continue to stay in the
18 FLC. He left for south -- to South Africa. He went into exile. He was
19 unhappy. He couldn't accept being reduced to that post, whereas his
20 aspirations were to lead the RCD Kisangani. So now when three months
21 later, three months after the creation of the FLC -- well, I'm not going
22 to go into high politics. There was another wind that started blowing,
23 but Uganda was asked to break up the FLC such as it was, and each party
24 was to go back to its starting point. So as the FLC was the union
25 between the MLC and the RCD Kisangani, the MLC was to go back to Equateur

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1 and to control part of the base, and the RCD was to take over control of
2 Northern Kivu up until Haut-Uele and also to take control of Bafwasende.
3 So that is how things were to happen. But Tibasima, who was the
4 godfather at Bemba's marriage -- or best man, rather, didn't want to
5 leave Bemba. So he didn't want to drop Bemba. And now Mbusa, so that he
6 would have political weight in Ituri, Mbusa had to have recourse to
7 Thomas Lubanga, contact Thomas Lubanga. So then finally, because Uganda
8 couldn't do anything, pressure was such that Uganda had to drop
9 Jean-Pierre Bemba, and finally he left Ituri. And then Tibasima wanted
10 to re-assume the leadership.

11 So that's how things transpired. So one can't say that the
12 RCD-K/ML was in support of Tibasima and Mbusa, given that Thomas Lubanga
13 represented a significant force.

14 Q. In this period were you in Bunia or were you back in Mambasa?

15 A. During that period, I was in Bunia. I experienced the mutiny,
16 the coup in Bunia. Everything that happened afterwards, as well, up
17 until when the FLC arrived. During that time period I was in Bunia.
18 When Bemba arrived, I was in Bunia among those who welcomed him, because
19 he was bringing a lot of hope for the people of Ituri at the time.

20 Q. On the 13th of October, 2001, Thomas Lubanga was indeed appointed
21 minister of defence in the RCD-K/ML; correct?

22 A. Could you please repeat your question.

23 Q. On the 13th of October, 2001, Thomas Lubanga was indeed appointed
24 minister of defence in the RCD-K/ML; correct?

25 A. Well, obviously the day is not one I can remember easily, but

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1 what is true is that Thomas was appointed as minister, but he was called
2 defence commissioner within the RCD-K/ML.

3 Q. And so at that moment, just to get it straight, Mbusa Nyamwisi is
4 the president, and Tibasima is the vice-president of the RCD-K/ML;
5 correct?

6 A. Mbusa Nyamwisi was the president of the RCD. Tibasima must have
7 retained his position as commissioner in general and the minister of
8 mines. I think that's a position he never wanted to leave, mines and
9 energy. A lot of mining was involved in that.

10 Q. Could it have been that he, by decree of 13th October 2001,
11 namely and more specifically Article 2, could it be that he would have
12 been appointed vice-president, or do you think that that is absolutely
13 impossible?

14 A. Could you please repeat that question.

15 (Prosecution counsel confer)

16 MS. STRUYVEN:

17 Q. You say that you think Tibasima was commissioner or minister of
18 mines, but could it be that he was officially also appointed
19 vice-president of the RCD-K/ML?

20 A. That can't be excluded. That could have been possible, because
21 within the RCD there were two of them who had remained there. Two of
22 them had remained in the RCD, Mbusa and Tibasima. So I can't exclude
23 that, even though he didn't really politically represent the force that
24 should have been represented.

25 Q. Now, you explained that Mbusa had to have recourse to

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1 Thomas Lubanga. What do you mean by that?

2 A. Yes. I mean Thomas's political support. The UPC's political
3 support was required. That's what I mean.

4 Q. And so he appointed him as the minister of defence.

5 A. Well, is that a question?

6 Q. Yes.

7 A. Yes, but they shared up -- they divided these political posts
8 among themselves and there were portfolios that concerned sovereignty,
9 and some of them were more important than others. A significant ally has
10 to be given an important position that corresponds to the importance of
11 that individual. Perhaps this seems strange to you if you're not
12 involved in politics, but I'll tell you quite simply that there are
13 ministers, like the minister of defence, foreign affairs, finance, and so
14 on and so forth, okay, and these are positions reserved for allies of
15 importance. So you shouldn't be surprised by this, because there wasn't
16 only Thomas. There were other UPC officials for whom other positions had
17 been reserved. One can be minister of defence without being a soldier.
18 That's the case in many countries. So this should not surprise you
19 excessively.

20 Q. Last week you explained that Mbusa Nyamwisi had some sort of a
21 moral leadership over the Lendu fighters and that, therefore, he would
22 have appointed Thomas Lubanga. Does that ring a bell?

23 A. Yes. I said Mbusa Nyamwisi had moral authority. He was someone
24 people listened to. Lendu leaders, Lendu -- prominent individuals, would
25 listen to him. As well as Lendu soldiers. And in this marriage between

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1 the UPC and the RCD-K/ML, this is what the -- well, the UPC expected
2 Museveni Nyamwisi to be involved in certain affairs. He was expected to
3 use his moral authority to bring them to reason. So the objective was
4 pacification, and this was the objective that was, in fact, being
5 followed.

6 Q. And so he appointed Thomas Lubanga as the minister of defence,
7 because Thomas Lubanga still had moral authority over the Hema fighters?
8 Isn't that correct?

9 A. Not at all. I don't know how to explain this to you, how to tell
10 you something about your conclusion, but I've already said that the
11 agreement between the UPC and the RCD, that agreement was a political
12 one. The Hema leaders were well known. Their representatives of the
13 various communities were well known. Thomas was never the leader of the
14 Hema community. No, that was not the case.

15 We shouldn't confuse everything here if we're acting in good
16 faith, because Thomas Lubanga was the leader of a political entity,
17 namely the UPC. Mbusa Nyamwisi was the leader of a political unity, the
18 RCD-K/ML. A union was established between these two entities, but the
19 political leader in Ituri who wanted to play his role of leader, who
20 wanted Ituri to return to its legendary status, that leader would have to
21 believe in a union that was established under certain conditions, and one
22 of the conditions was that with respect to pacification, the UPC expected
23 Mbusa to play his role. He was to use his authority over the attackers,
24 over the Lendu soldiers, he was to use that authority so that peace would
25 be re-established in Ituri. So I don't know what the Hema, the Hema

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1 leaders, and Thomas have to do with it. I'm lost now.

2 Q. You explained that the UPC expected from Mbusa Nyamwisi to apply
3 peace. My question was why did Mbusa Nyamwisi appoint Thomas Lubanga as
4 the minister of defence?

5 A. Could you please rephrase that question.

6 Q. Mbusa Nyamwisi is the president of the RCD-K/ML. Why did he
7 appoint Thomas Lubanga as the minister of defence?

8 A. Well, I don't want to get lost in philosophy now, but I've said
9 as far as politics is concerned, there are certain interests that are at
10 stake. You have a partner of importance. You have a partner of
11 importance, and when you win a political bet with this partner, you don't
12 just give him bread crumbs. That's not done. So it was necessary for
13 you that Thomas hold a different position, not that of defence minister,
14 that could have been possible. Perhaps I can't explain myself properly,
15 but I find this choice to be quite normal, quite rational. I understand
16 this choice very well given the context of everyday political life.

17 Q. Now, in his position as the minister of defence, he had control
18 over the soldiers of the RCD-K/ML; correct?

19 A. The minister of defence -- well, a minister -- if you're a
20 minister, that's a political position. I'm not sure whether a minister
21 can have direct control of troops. What does that mean exactly? When
22 you're a minister, when you're at the top, the technical body that deals
23 with the troops, well, it's the main staff. That is the body, the
24 official body involved. The minister deals with fundamental principles.
25 He is at the highest level. As for having control over men, well, then

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1 the minister would be reduced to the rank of a commander perhaps, but I
2 can't imagine a case where a minister would act in this way.

3 Perhaps you could explain to me what you mean exactly by control
4 over men. Explain this to me more precisely.

5 Q. I think it is quite clear what it means to have control over
6 troops. I'm going to ask you another question. At that time, the army
7 of the RCD-K/ML was still referred to as the APC; correct?

8 A. Yes.

9 Q. Now, going back slightly in time, the group of the mutineers that
10 were sent to Uganda after the summer of 2000, and I'm referring to Bosco,
11 Kisembo, Tchaligonza, Bagonza, Kasangaki, they were first deployed in the
12 Equatorial province, and they returned to Bunia at the end of 2001,
13 beginning of 2002; correct?

14 A. Yes. I spoke about their deployment to Équateur province during
15 the period of the FLC, and then I believe that they returned to Bunia,
16 and they must have been redeployed again to Haut-Uele under the auspices
17 of the RCD-K/ML. They were redeployed in Haut-Uele.

18 Q. But they were certainly back in Bunia in March 2002; correct?

19 A. At some point in time they were back when I was in Bunia too,
20 yes, absolutely.

21 Q. Well, during your testimony last week, you said that they were
22 conducting a new mutiny in April of 2002. So by then they must have
23 returned for sure; right?

24 A. Yes.

25 Q. Now, if we continue chronologically, after Mr. Lubanga is

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1 appointed the minister of defence in 2001, in October of 2001, to be
2 precise, a few months later, in March of 2002, Mr. Nyamwisi appoints
3 Mr. Molondo Loponde as the military governor of Ituri; correct?

4 A. Yes.

5 Q. And Mr. Molondo Loponde is also the chief of military operations
6 at that time?

7 A. Yes. He was commander of operations, yeah.

8 Q. Mr. Lubanga wasn't very pleased with that appointment, was he?

9 A. In fact, how can I say what Mr. Lubanga thought?

10 Q. He openly expressed his disagreement with this appointment, did
11 he not?

12 A. I believe I should specify a point here. Molondo Loponde was
13 appointed military governor and chief of military operations for Ituri
14 province as a whole, and in the document that appointed him, it was
15 stipulated that he was to report only to the president. He could launch
16 military operations without referring to the minister of defence as he
17 wants, but this is a personal assessment, and this meant that
18 Thomas Lubanga had been totally stripped of any power as a minister.

19 Now, this is my viewpoint, my personal assessment of the
20 situation.

21 Q. So you're saying he could launch military operation without
22 referring to the minister of defence. That kind of implies that before
23 he was appointed, the agreement of the minister of defence was necessary.
24 Isn't that correct?

25 A. Well, before being appointed chief of military operations.

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1 Q. Yes.

2 A. Well, yes, in fact, in principle, appointing a chief of military
3 operations with such extensive power as was granted to him in this case
4 should require the opinion of the minister of defence. That's perfectly
5 true, perfectly true. That can hardly not have been noticed. A man on
6 his own who could launch operations without reporting to anybody except
7 reporting back to the president, Mbusa Nyamwisi, who was in South Africa
8 at that time, that was very frustrating for Mr. Lubanga.

9 Q. (Microphone not activated) ... displeasement of Mr. Lubanga;
10 correct?

11 A. It's not just this fact that sparked Thomas's discontent, because
12 one has to take into account what I said previously. I mean, the fact
13 that Mr. Lopondo, in fact, embodied state criminality made into a
14 management system, do you realise what that means? During that period,
15 about 60 vehicles moved into the mining city of Mongbwalu, and coming
16 back from that mining city, those vehicles fell into an ambush, an
17 unprecedented ambush in Niangara (* phon). On that day I said there had
18 been a bloodbath, a bloodbath. And this was an absolute scandal. The
19 minister of defence, Thomas Lubanga, was utterly dismayed, and above all,
20 the fact that the RCD-K/ML was unable at that point in time to play its
21 role of a state, i.e., ensure security on a preventive footing for its
22 citizens, and even that role of hunting down those criminals was not
23 fulfilled.

24 In such a dramatic situation, on top you have to add the fact of
25 that -- this lack of knowledge, I have to say it, this lack of knowledge

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1 that the president was displaying with respect to -- I mean, he had just
2 set up an organisation for the major units of the army with the agreement
3 of Mr. Mbusa Nyamwisi, and this very same Mbusa Nyamwisi came back on his
4 decision and did not at all acknowledge the organisation that had been
5 set up by his minister of defence. At that point, he decided that he
6 could no longer work in this kind of structure.

7 Q. Moreover, in that period between February 2002 and April 2002,
8 there was peace negotiations held in Sun City in South Africa. You
9 referred to that as well last week. The purpose of these negotiations
10 was to end the hostilities in Ituri and create a government national
11 unity, but Mr. Lubanga wasn't invited in these discussions, was he?

12 A. The Sun City meeting did not have as a purpose an end of fighting
13 in Ituri. That would be a very sort of negative viewpoint of the
14 Sun City meeting. The real purpose was to unite the entire country.
15 That was its purpose.

16 There were specific features in Ituri. Ituri had special --
17 special features. And fortunately, Ituri because of the political -- how
18 can I put it? At least at the very beginning, at the very beginning,
19 because we are talking about the situation February to April, in that
20 period, Thomas was not in Sun City, nor was Tibasima in Sun City. I have
21 to say Mbusa went alone to Sun City, obviously, pursuing his own
22 objectives.

23 Q. (Microphone not activated) ... Mr. Lubanga wasn't pleased that he
24 wasn't part of -- or that he wasn't invited to participate in these
25 important negotiations; correct?

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1 A. No. No, because at least what was important, in fact, here was
2 that the Sun City meeting -- at that meeting the political entity under
3 the umbrella of which everybody was working needed to be represented and
4 had to defend the interest of the entire country. It could have been X,
5 Y, or Z, because not everybody could go to Sun City, obviously.

6 Thomas Lubanga never voiced any opinion whatever to -- on the
7 fact that he had not taken part in the negotiations in Sun City.

8 MS. STRUYVEN: Your Honours, I would like to show a document.
9 The ERN is DRC-OTP-0194-0328, and it's tab 74.

10 PRESIDING JUDGE FULFORD: Mr. Biju-Duval.

11 MR. BIJU-DUVAL: (Interpretation) No objection in principle to
12 this document being presented to the witness, but I maintain the same
13 general comment.

14 PRESIDING JUDGE FULFORD: Thank you. Please proceed,
15 Ms. Struyven.

16 MS. STRUYVEN: Yes, your Honours. I do want it put on the record
17 that apart from this one document that we already discussed, the
18 handwritten document, all of the other documents that we intend to show
19 to this witness have been disclosed in due course, that there's no
20 confusion about that.

21 PRESIDING JUDGE FULFORD: No. Of course I accept that from you,
22 Ms. Struyven. I think the heart of the point is that although they have
23 been disclosed at some earlier stage, in terms of Mr. Biju-Duval being
24 able to ask focused questions on them in the context of you now
25 introducing them, he may well need time with Mr. Lubanga, but please

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1 continue.

2 MS. STRUYVEN:

3 Q. Mr. Witness, can I ask you to go to the third page of this
4 document. It's the third and last page. You see a number of individuals
5 listed, and you see that it was established on the 16th of May of 2002.

6 Do you recognise --

7 A. Yes.

8 Q. -- the names that are listed here?

9 A. Yes.

10 Q. Have you -- do their -- do their signatures seem familiar to you?
11 Do they seem to be the signatures of the people that are listed?

12 A. Well, in fact, I'm not able detect here which gentleman's
13 signature this could be. That's utterly impossible, as far as I'm
14 concerned. In addition, I've never seen this document beforehand.

15 Q. If you look at the fourth signature, next to the name
16 Thomas Lubanga, it's slightly off -- it's slightly off the name, but
17 could that be the signature of Thomas Lubanga?

18 A. Thomas didn't even sign that. I might be able to recognise
19 Thomas's signature, but, I mean, I can't see it here. His signature's
20 not here.

21 PRESIDING JUDGE FULFORD: (* Previous translation continues) ...
22 as to whether or not there's a signature next to the name Thomas Lubanga
23 or not. You're putting it as a definite proposition that there is a
24 signature that corresponds to the typed name, but I'm not sure whether
25 that's a fair comment or a fair basis on which to proceed.

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1 MS. STRUYVEN: Yes. And it was just -- it was just a
2 possibility. I asked if it could be the signature, but I take your
3 point.

4 Q. Witness, if you haven't seen this document, would it surprise you
5 that the delegation that signs this document indicates that Nyamwisi
6 chose the delegation of the RCD-K/ML on an ethnical basis and that it
7 shows fearless incapacity in the way they are defending the interests of
8 the territory that it is controlling?

9 PRESIDING JUDGE FULFORD: Well, Ms. Struyven, he hasn't seen this
10 document before, as I understand it. He -- he hasn't had an opportunity
11 to consider it. What part of the document are you now taking him to?

12 MS. STRUYVEN: Because he hasn't seen it, I'm not taking him to
13 part of the document, your Honour. I'm just --

14 PRESIDING JUDGE FULFORD: Well, what's the foundation for the
15 question?

16 MS. STRUYVEN: I'm asking you -- him if it would surprise him
17 whether at that time the delegation would have had problems with who
18 Nyamwisi sent to the Sun City peace negotiations, whether he's aware of
19 any of the problems that the delegation would have had.

20 PRESIDING JUDGE FULFORD: Fine.

21 Well, were you aware of those problems, sir?

22 THE WITNESS: (Interpretation) Well, before I answer that
23 question, I have to say that when I look at this document, at first sight
24 they talk about the memorandum of Ituri political leaders. We're not
25 talking about the UPC here.

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1 Second point: The problems raised here in terms of the use of
2 ethnical composition of the delegation sent to Sun City, that Mbusa was
3 not in control of the situation in Ituri and so forth, well, in fact at
4 that point in time those were real problems. This is the truth.
5 Tibasima was abandoned in Kampala on the way to Sun City. Dhewi Batsi
6 Lari, Dhewi, D-h-e-w-i, Batsi, B-a-t-s-i, Lari, L-a-r-a
7 (* as interpreted), who was one of Mbusa Nyamwisi's ministers, who Mbusa
8 pretended to like a lot, he pretended he liked him a lot, was left
9 abandoned in a farm with other members of the delegation in a town in
10 South Africa. He never got to Sun City where the negotiations were being
11 held.

12 I can also talk of Ndjabu -- Ndjabu Floribert as well as other
13 young people from the Lendu community who ended up on their own in
14 Kinshasa. This was a real problem, and it wasn't the issue of what
15 social group of Ituri they represented, but this feeling of unease was
16 prevalent among all people of Ituri.

17 Q. There was a problem with the way that Mbusa Nyamwisi had selected
18 the delegation of the RCD-K/ML to go to Sun City.

19 A. That problem was also a real problem.

20 Q. (* Microphone not activated) ... issue which is not necessarily
21 chronological but I just want to clarify something with you. You said
22 that these people that you -- that are listed in this document are not
23 UPC. So I'm going to ask you whether or not every single one of them
24 became a member of the UPC. And we don't need this document to go over
25 this exercise. I can do this without this document.

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1 Let's start with the first one, Adubango Biri. He became a
2 member of the UPC; correct?

3 A. Adubango Biri was a cofounder.

4 Q. (* Previous translation continues) ...

5 A. Yes. He's another cofounder of the UPC.

6 Q. I'm just waiting for the transcript.

7 PRESIDING JUDGE FULFORD: Can you put the name again, please,
8 Ms. Struyven, because it's been lost.

9 MS. STRUYVEN:

10 Q. So the second one is John Tinanzabo. You indicated he was the
11 cofounder of the UPC. Third one is Avochi. He was also a member of the
12 UPC, correct?

13 A. No. No, he was a security agent, and he certainly was not
14 defined as a UPC member. Did he become a member of the UPC later? I
15 learnt that he's a member of the FPGC. I learnt he's a member of the
16 FPGC.

17 Q. But in September 2002 onwards, was he ever a member of the UPC?

18 A. As I was saying, Avochi was a security agent. He went to that
19 meeting as a technical advisor in intelligence. So he was appointed,
20 let's say, like any other civil servant who had no link with the UPC.
21 No. Therefore, he's not a member of the UPC.

22 Q. (* Microphone not activated) ... correct?

23 A. Not everybody appointed by the UPC was not a member of the UPC.
24 Let's agree on that. Well, of course, I mean, for example, let's take
25 the example of a school. When under the UPC regime somebody was

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1 appointed the headmaster of the school or was appointed a head of primary
2 subdivisions in the area, he's not always a UPC member. This is somebody
3 who has technical skill. Otherwise, the UPC would have looked like a
4 totalitarian state if they'd only appointed their own members for any
5 position whatever.

6 Q. Just to be hundred per cent clear, it's a very simple question,
7 he was appointed by the UPC; correct?

8 A. Yes.

9 Q. Then we have number --

10 A. In September, yes.

11 Q. Thomas Lubanga, I think, is obvious, so we'll move on to
12 Mr. Ndukute. He was also appointed in the UPC; correct?

13 A. Yes. Ndukute Mangili, he's a colleague of mine, worked in
14 national security, and I believe he's also a cofounder of the UPC.

15 Q. And we have then Lety. He was also appointed in the UPC.

16 A. Lety, yeah, was also with the UPC, and after, the FAPC where he
17 died. FAPC, Jerome's -- but at this point in time he did not have any
18 political sort of colour, hue.

19 Q. Richard Lonema, cofounder of the UPC?

20 A. UPC, yeah. Yes, that's right.

21 Q. Jéconie Uwek-Nyinga Djalum also appointed in the UPC; correct?

22 A. Later on, yes.

23 PRESIDING JUDGE FULFORD: Ms. Struyven, we'll finish the list
24 after lunch, but as matter of interest, just in a sentence, the relevance
25 of this going through all these names, establishing their position in

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1 relation to the UPC and the use of child soldiers by Thomas Lubanga? Can
2 you just spell out the connection?

3 MS. STRUYVEN: Yes, your Honours. Last week there seemed to have
4 been some confusion about the FRP and the UPC and the UPC/RP. What I'm
5 trying to show here is that it's exactly the same members who were in the
6 UPC originally, who then moved temporarily under the appellation called
7 FRP, to then become members again of the UPC. I'm trying to show that
8 the FRP was a temporary appellation that some politicians gave
9 themselves, but that, in fact, it was exactly the same group of people
10 with the same leadership, namely under the leadership of Thomas Lubanga.

11 PRESIDING JUDGE FULFORD: Okay. Thank you very much.

12 We'll sit again at half past 2.00. Thank you all very much
13 indeed.

14 COURT USHER: All rise.

15 Luncheon recess taken at 12.59 p.m.

16 On resuming at 2.31 p.m.

17 (Open session)

18 COURT USHER: All rise. Please be seated.

19 PRESIDING JUDGE FULFORD: In a moment, Mr. Omofade.

20 Good afternoon. So that you can all make appropriate plans, for
21 a number of reasons, two of which are, first, in the hopes of affording
22 Mr. Lubanga a -- what I'm going to describe as a domestic visit, second,
23 and second although this may not fall perfectly in relation to timing to
24 give an opportunity for consideration of documents, we are not going to
25 sit tomorrow afternoon. Now, I don't know how much longer the

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1 Prosecution are going to be questioning the present witness, and,
2 Mr. Biju-Duval, it may be that you will have to do such questioning of
3 the witness as you can before you have an opportunity of discussing
4 matters with Mr. Lubanga, and we'll have to see where we get before you
5 run out of questions. And we may have to consider commencing Witness
6 0011 with a return to this witness at an appropriate moment, but we won't
7 make any decisions on that now. They're just issues that we'll have to
8 consider in due course. But so you all know, we will rise tomorrow at
9 1.00 p.m. for the day, and we hope that that time will be useful both for
10 the accused personally and for the Defence by way of preparation.

11 Yes, Mr. Omofade.

12 MR. OMOFADE: In a sense your Honour just pre-empted one of the
13 issues I was going to raise. The Prosecution to some extent
14 underestimated the length of the initial questions that Ms. Struyven was
15 proposing to ask of this witness. What we do anticipate now is that
16 Ms. Struyven will go on for the rest of this afternoon, and myself and
17 Mr. Sachdeva will have a go tomorrow morning. We do anticipate, however,
18 that by noon tomorrow we would have finished our questioning. I don't
19 know what impact that has on the arrangements so far.

20 PRESIDING JUDGE FULFORD: Well, it has no effect on the ruling,
21 Mr. Omofade. Thank you for letting us know the position from your point
22 of view. It may have an impact on Witness 0011 and a consequential
23 impact on the commencement of Witness 0037, who is supposed to be
24 beginning his evidence by way of videolink on Friday.

25 Mr. Sachdeva, you shake your head. That was the information that

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1 I took from the last printed schedule that was sent to me. Is that now
2 out-of-date?

3 MR. OMOFADE: Your Honour, my understanding is that Witness 0007
4 comes before Witness 0037.

5 PRESIDING JUDGE FULFORD: Your quite right. Witness 0007 on
6 Thursday, Witness 0037 on Friday. So both Mr. Sachdeva and myself are
7 correct. Consequential effect on both of them.

8 Right. Well, maybe Defence Witness 0011's evidence isn't going
9 to last as long as everyone anticipated. That's maybe an encouragement
10 for a certain amount of focus and concentration on the real issues.

11 Yes, Mr. Omofade.

12 MR. OMOFADE: I do understand from the Defence that Witness 0011
13 at least in chief will take slightly less time than was originally
14 estimated.

15 PRESIDING JUDGE FULFORD: Good to hear that, Mr. Omofade. Thank
16 you.

17 Yes, Ms. Struyven. Please continue.

18 MS. STRUYVEN:

19 Q. So, Mr. Witness, we were -- I was going over a list of
20 individuals, and I was asking you whether or not they became or had been
21 members of the UPC or the UPC/RP, and we were at the point where I was
22 going to ask you the question about Nembe Ngona.

23 A. Yes. Nembe Ngona later on also joined the UPC.

24 Q. And Lonu Lali?

25 A. He's of the UPC.

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1 Q. And Dieudonné Mbuna?

2 A. He too.

3 Q. The only two people I left out are Bayau Wa Naiba and

4 Bandeache Itendey. Can you tell us more about them?

5 A. Bandeache, not Bandichi. Bandeache Itendey was also my colleague
6 within the UPC government. Bayau Wa Naiba was never involved in the UPC.

7 Q. So would you agree that the absolute majority of the people that
8 identified themselves as the FRP in the end became or had been members of
9 the UPC, that it was the same group of people?

10 A. Well, a good number of them ended up in the UPC/RP.

11 Q. All except one were later on joining the UPC/RP; correct?

12 A. Like who? I left or excluded Avochi, Bayau Wa Naiba as well.

13 Q. Now, going back to April 2002, before the break we discussed the
14 discontent with the appointment of Molondo Lopondo and the discontent
15 with the selection of the delegation by Mbusa Nyamwisi to go to the
16 Sun City peace negotiations, and as a result of that the -- Lubanga and
17 others issued a public declaration breaking away from the RCD-K/ML;
18 correct?

19 A. Well, I do not share the view -- I do not share your viewpoint
20 when you tend to split up the events. I do not agree with you when you
21 adopt that approach. I think I should look at the general picture. You
22 should look at all the events that prompted Thomas Lubanga and other
23 politicians to make the declaration or the statement. I think that would
24 have been the proper approach.

25 Q. Were you aware of this public declaration that was issued on the

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1 17th of April, 2002?

2 A. Yes.

3 PRESIDING JUDGE FULFORD: Mr. Biju-Duval? Okay.

4 Yes, please carry on.

5 MS. STRUYVEN:

6 Q. Were you aware of the content of this declaration of the
7 17th of April, 2002?

8 A. Yes.

9 Q. Now, before we go into the substance of this declaration, this
10 declaration of the 17th of April, 2002, is referred to in all the UPC
11 decrees that were issued later on; right?

12 A. Yes.

13 Q. Because this was a key moment in the history of the UPC; correct?

14 A. Yes.

15 MS. STRUYVEN: Your Honours, I would like to show the witness
16 this declaration of the 17th of April, 2002, and it is at -- it's
17 document DRC-OTP-0127-0110, and it is at tab 68.

18 THE INTERPRETER: Your Honours, the interpreters do not have the
19 binder you're referring to. Thank you.

20 PRESIDING JUDGE FULFORD: Now, I've had a message from the
21 interpretation booth that the interpreters don't have the binders,
22 although they have had the relevant number. If there's an enduring
23 problem over this, I'm going to ask the Usher, please, to go and have a
24 quick word and see what we need to do to sort it out. So that's point
25 one.

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1 Point two is Mr. Biju-Duval was on his feet. Yes,
2 Mr. Biju-Duval.

3 MR. BIJU-DUVAL: (Interpretation) Yes, your Honour. We have to
4 be cautious here. This document is written in English, and I am not
5 certain that the witness understands English. If he has to be shown
6 certain passages of this document, then we should make sure that he
7 understands English or that the excerpts are translated for him.

8 PRESIDING JUDGE FULFORD: Bear that in mind, Ms. Struyven.

9 MS. STRUYVEN:

10 Q. Witness, can I ask you to go to the last page of this document.
11 So there we see the date, 17th of April, 2002, and we see a list of
12 people, which is, I think, identical to the list of individuals we just
13 evaluated five minutes ago; is that correct?

14 A. Yes. It's almost the same list, yes.

15 PRESIDING JUDGE FULFORD: Now, Ms. Struyven, a question or two
16 about this document, please. It is perhaps slightly unexpectedly in the
17 form that it appears before us in English. Are you proceeding
18 confidently on the basis that what we have in our files below divider 68
19 in photocopied form is a true reflection of the original? So this hasn't
20 in some way been copied and pasted so that the signatures appear, for
21 instance, below a translation. If one looks at the document it may have
22 no significance at all, and I'm not engaging in any kind of documentary
23 analysis, but it is of note that there is a line down the side of the
24 signatures on the left-hand side which commences immediately after the
25 English text has finished.

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1 Now, what's the provenance of this?

2 MS. STRUYVEN: Your Honours, may I confer with my colleagues
3 briefly?

4 PRESIDING JUDGE FULFORD: You certainly can.

5 (Prosecution counsel confer)

6 MS. STRUYVEN: Your Honours, we're going to check to be
7 absolutely certain. What I can say is that some of the members of the
8 UPC, including one of them -- of those that is indicated here, we are
9 aware that he was able to draft in English and that he drafted other
10 documents in English. It's number 2 on -- on this list. It's the
11 individual identified as -- under number 2. So to us it wouldn't be
12 coming as a surprise that this document was drafted in English, but we're
13 checking that indeed this is where this document came from.

14 PRESIDING JUDGE FULFORD: All right. Put your questions,
15 Ms. Struyven, but proceed with care.

16 MS. STRUYVEN:

17 Q. Mr. Witness, you indicated that you are aware of the content of
18 this document; correct?

19 A. Yes.

20 Q. Now, as you --

21 PRESIDING JUDGE FULFORD: I'm sorry, Ms. Struyven.

22 Yes?

23 MR. BIJU-DUVAL: (Interpretation) I think the question should be
24 clear and accurate. The witness said that he was aware of the
25 declaration made on the 17th of April, 2002. The question as to whether

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1 or not he's aware of the content of this document before him is
2 different. I think the first question should have been whether the
3 witness knows this document or not.

4 PRESIDING JUDGE FULFORD: Sir, if you could turn the page quickly
5 of this four-page document. Have you seen it before?

6 THE WITNESS: (Interpretation) I will say I have never seen this
7 document before, but as I said earlier, the political declaration of the
8 17th of April was a reference for the UPC. It was a landmark event for
9 the UPC, but I never saw the document itself.

10 PRESIDING JUDGE FULFORD: In English or in French.

11 THE WITNESS: (Interpretation) Moreover, it's in English. I
12 didn't see it in English or in French.

13 PRESIDING JUDGE FULFORD: Right. So, Ms. Struyven, this is,
14 therefore, as I understand it, and the witness will correct me if I've
15 got this wrong, he was aware of the existence of a declaration, but he
16 has not seen this before, and your questions must therefore be --

17 THE WITNESS: (Interpretation) That's right, your Honour.

18 PRESIDING JUDGE FULFORD: Your questions must, therefore, be
19 appropriately tailored given that level of knowledge.

20 MS. STRUYVEN:

21 Q. Can you -- Mr. Witness, can you explain to us what then according
22 to you was the content of that political declaration of the
23 17th of April, 2002?

24 A. I told you that since I was not able to read the document in
25 English or in French, what content do you expect me to give you? What do

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1 you expect me to tell you? I don't have any content to tell you about.

2 Q. But you just repeated twice that this is a key document in the
3 history of the UPC and that you're aware of its -- of the content of the
4 declaration that was mentioned in -- on the 17th of April. Are you now
5 saying that you're not aware of what that declaration (* indiscernible)?
6 I'm not asking you about every word of that declaration, but in summary
7 format, can you not tell us what that declaration entailed?

8 A. Well, I don't know what you expect from me precisely. On the
9 17th of April, 2002, well, that was the date on which President Thomas
10 decided to throw in the towel, so to speak.

11 A political declaration was made on at that date, and I did not
12 read the text of that declaration. In subsequent documents, notably the
13 decree of the president, reference is made to this declaration, and the
14 way I understood it, the purpose of this reference was to enshrine the
15 moment when the UPC broke the silence to distance itself from the power
16 of RCD-K/ML, from that regime. That was my understanding of things.

17 Q. And from that moment onwards, the members of the UPC, as you
18 called them, wanted to remove the RCD-K/ML; correct?

19 A. Could you please repeat the question.

20 Q. In this declaration, the members of the UPC that we -- that you
21 referred to earlier wanted to remove the RCD-K/ML; correct?

22 A. I don't want to start imagining things here. I don't want to go
23 making up things. If you took the time to translate this document for me
24 into French, I would have understood the details thereof, but given the
25 way things stand, I don't think I will engage in any fabrication of

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1 events here.

2 Q. (* Previous translation continues) ... declarations of the UPC.

3 Is that your testimony?

4 A. I have told you that I heard mention of the declaration, but I
5 have never read its content. That's what I told you.

6 PRESIDING JUDGE FULFORD: Ms. Struyven, your last intervention,
7 you badly interrupted the translation of the witness's answer. It
8 mustn't happen.

9 MS. STRUYVEN:

10 Q. I'll try to help you, Mr. Witness. In the declaration, the
11 members that we just listed request the immediate departure of the
12 responsables of the RCD-K/ML. Does that sound familiar?

13 A. Are you talking about the period 2002, April 2002?

14 Q. We're indeed discussing the 17th of April, 2002, declaration,
15 yes.

16 A. Well, I don't know whether you want me to engage in suppositions
17 here. I asked you is it possible for me to have a translation of this
18 document so that I can have an overall picture of what it's talking
19 about. I do not want to start talking about things which may not tally
20 with what is stated in this declaration. That is why I said it would be
21 relevant for me to have a translation of this document. That would help
22 me to understand the content of this document.

23 As I said earlier, the month of April of that year was a landmark
24 date for the political life of the Ituri District.

25 PRESIDING JUDGE FULFORD: We're back to where we've been before.

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1 The witness said that he has not seen this document before. He's not its
2 author, and he did not, on his evidence, contribute to it. Therefore,
3 you should not be, as it were, cross-examining him on the basis of a
4 document of which he has no detailed knowledge at all, and he's said that
5 he was simply aware that there was a declaration.

6 You can, of course, put freestanding questions on the basis of
7 the information that is within the declaration, but we are going to
8 continually run into a difficulty if you persist in questioning him about
9 a document which he has no knowledge of, he tells us, and which, in any
10 event, is in a language other than French.

11 MS. STRUYVEN:

12 Q. So if we leave the document aside, Mr. Witness, would you agree
13 that in April 2002, Thomas Lubanga and his people broke away from the
14 RCD-K/ML?

15 A. Yes.

16 Q. And that they denounced what they called the Nande favouritism of
17 Mbusa Nyamwisi?

18 A. They denounced a number of facts at the same time, that one
19 included.

20 Q. And that they requested the immediate departure of Molondo
21 Loponde, Nyamwisi and the RCD-K/ML from Ituri?

22 A. I know that the departure of the RCD from Ituri had already been
23 requested at the time, and as the departure of Molondo is concerned, he
24 was the macabre image of the RCD-K/ML.

25 Q. (* Previous translation continues) ... you correctly, you agree

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1 that Thomas Lubanga and the others requested the departure of the
2 RCD-K/ML, Molondo Lopondo, and Nyamwisi; correct?

3 A. This request was the request of the entire population of Ituri.

4 Q. And at the same time they asked the soldiers that would have been
5 discriminated upon to join under one flag, to join one group?

6 A. Well, if that's what the document says, I should have the
7 document before me. I can't just make claims without being sufficiently
8 informed.

9 PRESIDING JUDGE FULFORD: Sir, don't worry about the document.
10 Ms. Struyven is now asking you to deal with these things simply from your
11 own memory. So from your own knowledge of events, she is suggesting to
12 you that at that time they asked the soldiers that would have been
13 discriminated to join under one flag, to join one group. So forgetting
14 the document, from your own memory is that correct or incorrect?

15 THE WITNESS: (Interpretation) I never followed this request
16 that was addressed to the troops.

17 MS. STRUYVEN:

18 Q. Would you agree that that group of people, Lubanga and the
19 others, ensured that they would be able to provide peace and security at
20 that time?

21 A. Could you please repeat that question?

22 PRESIDING JUDGE FULFORD: Yes. And do you mean, Ms. Struyven,
23 ensured or promised?

24 MS. STRUYVEN: They would assure.

25 PRESIDING JUDGE FULFORD: Assure. All right.

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1 MS. STRUYVEN: Assure. Yeah, sorry. Assure, yeah.

2 Q. So, Mr. Witness, I'll repeat. Would you agree that the group of
3 Thomas Lubanga assured the population that they would be able to provide
4 peace and security at that time?

5 A. Well, the man that he was with believed that it was first
6 necessary to get rid of the evil incarnated by the RCD, and
7 Molondo Loponde was the military governor and the commander of
8 operations. And naturally, if that had been done in the group that
9 Thomas Lubanga was in, all the communities from Ituri were represented
10 and peace would then be sought after in a different manner. Peace would
11 be sought after differently, in a different manner, although at the same
12 time certain possibilities would be pursued. One would put into place
13 certain possibilities for all the communities, and naturally, at that
14 time at such a point in time the occupation army, the UPDF, would also
15 have to make a contribution to ensure that peace was re-established
16 throughout the territory of Ituri.

17 Q. But in the declaration, if you remember, maybe, the group of
18 Lubanga didn't say that UPDF would provide peace and security. They said
19 that they would provide peace and security; correct?

20 PRESIDING JUDGE FULFORD: Ms. Struyven, you're back to a document
21 that this witness has said he didn't see and his level of awareness was
22 that he had heard there was a declaration. Now, you are right at the
23 beginning of your question taking him right back to that declaration, as
24 it were, really stating a fact that you are asserting is within it, and I
25 already indicated that that creates a problem given the level of

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1 awareness of this witness and the fact that not helped by the piece of
2 paper in this court is in English and not in French.

3 Now, you've got to frame your questions in a way that avoids us
4 going down that route, and you can think about it while we have a short
5 mid-afternoon break, and we'll sit again at 20 past 3.00.

6 COURT USHER: All rise.

7 Recess taken at 2.58 p.m.

8 On resuming at 3.19 p.m.

9 (Open session)

10 COURT USHER: All rise. Please be seated.

11 PRESIDING JUDGE FULFORD: Yes, Ms. Struyven.

12 MS. STRUYVEN: Thank you, Mr. President. Maybe just one
13 clarification as to the earlier question. The document was given to us
14 by Witness 0041, who testified before this Court and who actually gave
15 evidence on the document. I have the reference. It's transcript 125,
16 page 85, lines 17 and further, and he confirmed -- he's one of the
17 signatories of this document. For security reasons, I will not say which
18 one. And he confirmed indeed that at the time they drafted two versions,
19 a French one and an English one.

20 PRESIDING JUDGE FULFORD: That's very helpful. Thank you very
21 much, but please continue.

22 MS. STRUYVEN:

23 Q. Mr. Witness, I'm not asking you to look or to comment on the
24 document, just from your recollection, in April 2002, when the group of
25 Thomas Lubanga assured the population that it could provide peace and

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1 security, it wasn't referring to the UPDF, was it? It was referring to
2 themselves being able to provide peace and security.

3 A. Well, since you are referring to the situation that prevailed in
4 April 2002, and you have also implied that there was a political
5 declaration involved, since that is the case, it is important, if one is
6 to understand everything, that one also understands the context within
7 these -- within which these events transpired, because the declaration
8 was drafted, but this declaration in Ituri wasn't made public, because
9 there was no appropriate framework that would make it possible to make
10 this document public, which would make it possible for everyone to have
11 access to this document. The press, the radio, the media and so on and
12 so forth were under the exclusive management of the RCD-K/ML. So, here
13 and now, I don't want to refer or allude to a promise that was made by
14 Thomas's group, a promise made by them to the population, given that
15 there is no means used by this group to address the population.

16 The declaration is there. It came out, and it was naturally sent
17 to Uganda to be used there. So I can't put myself in the shoes of those
18 who drafted the declaration and tell you that in order to provide
19 security for the population that the signatories of the declaration
20 decide to do such and such a thing, because I am not one of those
21 involved in the drafting of the declaration. So I can't go any further
22 in that direction that you are -- I'm just trying to tell you how things
23 must have unfolded.

24 Q. Would you agree that if they wanted to chase the military
25 governor, Molondo Loondo from Bunia, and if they wanted to chase the

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1 leadership of the political military group called the RCD-K/ML, they
2 would have to -- they would have needed military action?

3 A. Not necessarily, because given the means the UPC had at its
4 disposal, the means of persuasion, political means that they could use,
5 it was the UPC's understanding or belief that it was necessary to
6 convince Uganda, and Uganda should in turn ask the RCD-K/ML to leave the
7 territory. And given the force that Uganda had at its disposal, the RCD
8 would understand that it was necessary to leave. Otherwise, forced or
9 military evacuation would be carried out. And this is the plan used by
10 the UPC throughout that period of time -- throughout that period of time,
11 and up to the time that the plan yielded fruit on the 9th of August,
12 because the UPDF troops, who are under the orders of Kampala, finally
13 drove out the RCD -- the RCD and Mr. Lopondo.

14 Q. Would you agree that --

15 A. With his APC.

16 Q. -- provide peace and security authority the region that they
17 would have needed a military force?

18 A. To bring peace and security, that Thomas Lubanga's group would
19 need military force? Is that the question that you're putting to me, in
20 fact?

21 Q. Yes.

22 A. I believe that if, and only if, this group constituted itself as
23 a power that could lead, at that point in time, and only at that point in
24 time, would that group also have the need of a legitimate force, a
25 military force, because at that point in time the group would have

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1 constituted itself as a state with the objective of managing -- or
2 governing, rather, a certain territory.

3 Q. So you agree that in order to be in control over the territory,
4 they would have needed a military force; right?

5 PRESIDING JUDGE FULFORD: He's just agreed with that,
6 Ms. Struyven, I think. If you read the answer in English, "Also had the
7 need of legitimate force, a military force." I don't think the witness
8 was at all disagreeing with you.

9 MS. STRUYVEN:

10 Q. So when in April 2002 they wanted to chase the RCD-K/ML and take
11 political control, as you call it, over the region, they would need a
12 military force. You agree with that.

13 A. No. What I said is that to hunt the RCD-K/ML -- to drive them
14 out, rather, sorry, with its notorious military chief of operations
15 Lopondo, at that point in time the UPC -- of course, you are referring,
16 in fact, to Thomas and his group, implying with whom they signed the
17 statement. Well, in fact, they had a greater need for backing from
18 Uganda, convincing Uganda to ask RCD to pull out from that area, because
19 they knew very well that Uganda had the means and the capacity to enforce
20 such a wish, because if ever the RCD-K/ML had stubbornly refused to move,
21 the RCD-K/ML would have been, as I said, been driven out. And, in fact,
22 to prove that's what actually occurred, you just have to look at what
23 happened on the 9th of August, I said earlier. The spearhead of that
24 attack and -- or, rather, in other words, on the 9th of August, to drive
25 out the RCD, and its officers were taking shelter in the Ituri hotel, and

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1 in the area around there where they had powerfully militarised positions,
2 well, at that point in time Uganda had to use substantial force to drive
3 them out. So it was certainly nothing to do with the UPC, and certainly
4 even less for that group. The members' names are found here -- whose
5 members' names are found here.

6 Q. (* Microphone not activated) ... were UPDF soldiers?

7 A. I'm not saying you only had UPDF troops, but at the very least,
8 UPDF soldiers played the greatest part, the decisive role. Without them,
9 Lopondo and the RCD would have never left.

10 Q. Now, bringing you back to April 2002, last week you testified
11 that also in April 2002 there was a mutiny of some APC soldiers; correct?

12 A. Yes.

13 Q. And amongst those soldiers that were revolting in April 2002, you
14 had Kisémbó, Bosco, Tchaligonza, Kasangaki, and you also had Bagonza;
15 correct?

16 A. Yes.

17 Q. So on the one hand, you had Lubanga and his people revolting in a
18 way, and on the other hand, they had Kisémbó and his people revolting in
19 a way; correct?

20 A. Well, yes. On the one hand, you had the mutiny of some troops of
21 the APC, but their (* indiscernible) occurred a bit later, because at the
22 level of the political structure of the RCD-K/ML, the UPC partisans first
23 stormed out because they understood they could not move forward with this
24 system as it was bad. And you had UPC members at every level, and you
25 also need to understand that in their turn the military came to

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1 understand that the RCD was not interesting, and if they made that
2 choice, in my opinion, they did so after having weighed up everything
3 carefully.

4 Q. But so if I understood your testimony, the two had nothing to do
5 with each other; correct?

6 A. Yes.

7 Q. And so as a result of the mutiny of the soldiers that we just
8 mentioned, Bunia was split into two parts; correct?

9 A. Yeah.

10 Q. I have another document that I would like to show you. It's
11 DRC-OTP-0091-0065, and it's at tab 60. And I'm going to ask you to go to
12 the last page, which is page 9.

13 PRESIDING JUDGE FULFORD: Just before you do, Ms. Struyven.

14 Yes, Mr. Biju-Duval.

15 MR. BIJU-DUVAL: (Interpretation) Yes, your Honour. This
16 document is part of the documents we were notified about this weekend.
17 Before the witness is shown some excerpts, I believe at the very least
18 the witness should have time to read through the document. And
19 subsequently, we should seek to ascertain whether he knows this document
20 or not. This document is not signed, and there are issues as to its
21 reliability.

22 PRESIDING JUDGE FULFORD: Yes. Ms. Struyven, before going
23 straight to a part of the document, unless this is, in fact, what you
24 were doing, maybe it was, but we need first of all to establish that this
25 is something the witness can properly give evidence about. So lay the

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1 foundations, please, first before going to the detail.

2 MS. STRUYVEN: I was actually intending to do that, your Honours,
3 and I think that the objections as the ones that were just made by my
4 colleague are inappropriately made in front of the witness, but I will
5 just bring the witness to the last page.

6 Q. You see here the reference to John Tinanzabo, 30 of June, 2004,
7 and you see some handwriting on the last page of the document. Do you,
8 by accident, recognise this handwriting?

9 A. Yes. That -- is that Thomas's handwriting (* as interpreted)?

10 Q. Do you mean Thomas Lubanga?

11 A. Absolutely.

12 Q. Now, this document lists again the history of the UPC, and --

13 PRESIDING JUDGE FULFORD: Ms. Struyven, all we've established so
14 far is that the witness has asked you whether this is Thomas Lubanga's
15 handwriting. Now, that's not a very good beginning, and you're just
16 about to go into the detail of a document in relation to which the
17 witness has simply asked you a question.

18 Now, let me take it for a moment.

19 Sir, can you have a look quickly through the nine pages of this
20 document. You needn't read them in detail, but just quickly have a look
21 at them so you get an idea of the layout and the sort of things dealt
22 with in it. So take a moment to do that, and please let me know what
23 you've had a sufficient opportunity not to read it in detail but just to
24 have a quick look at it.

25 Sir, I'm not asking you to read it in detail now. I want to

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1 know, first of all, whether you've seen this document before.

2 THE WITNESS: (Interpretation) Yes, I've seen a similar
3 document.

4 PRESIDING JUDGE FULFORD: You say "a similar document." What was
5 the difference --

6 THE WITNESS: (Interpretation) Well, yes.

7 PRESIDING JUDGE FULFORD: (* Overlapping speakers) ... have the
8 handwriting on the last page.

9 THE WITNESS: (Interpretation) In fact, this document was being
10 drafted. It was a rough copy. So we were still working on it in our
11 party, and that's why you have that handwritten addition. It was not yet
12 finished, because everybody had to make their own contribution to ensure
13 that it could become a document that could be used for -- definitively.

14 PRESIDING JUDGE FULFORD: Excellent. Thank you very much.
15 Ms. Struyven, you may ask questions about it.

16 MS. STRUYVEN: Thank you, your Honours. And I do want to make a
17 clarification. The confusion earlier on about the author of the
18 handwritten part may have been a confusion between the French and the
19 English, because upon verification, the French transcript did say -- and
20 I'm, of course, only listening to the French answers. The French
21 transcript did say that it was Thomas Lubanga's handwriting, instead of
22 asking the question whether it was Thomas Lubanga's question.

23 PRESIDING JUDGE FULFORD: Ms. Struyven, even if the witness said,
24 "I recognise Thomas Lubanga's handwriting on the document," that has
25 nothing to do with whether the witness had seen the document before and

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1 is in a position to answer questions about it.

2 Now, we now know that the witness is able to answer questions
3 about it, because this is a document that they were working on. As I've
4 just said, you have permission to ask questions about it, so please
5 proceed.

6 MS. STRUYVEN:

7 Q. Mr. Witness, from your recollection, would the content of this
8 document be truthful as you remember drafting it and working on it?

9 A. I did not say that I'd worked on drafting it. I said this was a
10 rough copy that had been written by John Tinanzabo and that had to be
11 corrected. For instance, I had not yet made my corrections. That's
12 something I have to say, because it's really important. It needs to be
13 taken into account.

14 As to whether the content is exact or not, truthful or not, I
15 would say it's precisely because the content was not yet definitive that
16 it had to be corrected.

17 Q. But would the main ideas in this document be correct?

18 PRESIDING JUDGE FULFORD: I really don't know what that means,
19 and I'm not sure whether the witness is going to be any better placed,
20 Ms. Struyven, given that he's already referred to it as a rough draft.
21 Now, if there are particular items in the document that you want him to
22 address for the purposes of establishing whether or not they're accurate,
23 can you please take the witness to them.

24 MS. STRUYVEN:

25 Q. Mr. Witness, could I ask you to have a look at page 6 of this

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1 document. It's at DRC-OTP-0091-0070, and I'll read out the first
2 paragraph of this document. Or maybe just to be a hundred per cent
3 clear, I'll -- no. I'm sorry. I'll stay where I am.

4 So I'll read out the first paragraph --

5 PRESIDING JUDGE FULFORD: Microphone, please.

6 MS. STRUYVEN:

7 Q. So I'll read out the first paragraph of this page in French.

8 "(Interpretation) Feeling his authority was being rejected,

9 *Lubanga rejected the political compromise between the UPC and the RCD-K/ML
10 to manage -- or to run Ituri and, above all, restore peace there. This
11 attitude divided the rebel army, and that led to the city being carved up
12 into two zones of influence, one held by partisans of Thomas Lubanga and
13 the other by the men of Governor Mulondo.

14 "On the 17th of April, through a political statement, the UPC
15 withdrew its trust from Mbusa, and the UPC turned itself into a military
16 political movement. This is because part of the army joined Lubanga's
17 ranks and created the nucleus of the armed unit of the UPC.

18 "Several attempts at solving the political and military crisis
19 between the UPC and the RCD-K/ML failed because of the bad faith and the
20 arrogance of Mbusa Nyamwisi, who benefitted from the support of the
21 former Kinshasa government and its allies in Ituri. This was because
22 they promised to stamp out with military force the new political
23 movement, i.e., the UPC, after the Cascade Hotel agreement was signed in
24 Sun City in South Africa.

25 "Mr. Mbusa Nyamwisi also drew on the support of the occupation

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1 force still in the field to have UPC leaders arrested in Kampala, and
2 extradition to Kinshasa in May 2003.

3 "The armed unit still on the ground chased Mulondo from Ituri,
4 starting off with Bunia, although Thomas Lubanga was not there, as well
5 as eight of his political associates. At that point, the UPC started to
6 manage Ituri as the de facto power on the 2nd of August, 2002, while
7 waiting for the end of the inter-Congolese dialogue."

8 (In English) Would you agree with that proposition?

9 A. If you don't mind, what does that mean, "in agreement with that
10 proposal"? Could you explain what you mean?

11 Q. Let's start with the first paragraph. It says that, as we
12 discussed recently, the city of Bunia - and this must have been in
13 April of 2002 - was split in two parts. On the one hand, the soldiers
14 that were loyal to Lubanga. On the other hand, the soldiers loyal to
15 Molondo Loondo; correct?

16 A. I've already said that the city had been split into two. On one
17 hand, you had the mutineers. On the other side, you had the loyal
18 troops. That's what I said earlier, and I'm repeating it again today.

19 Q. And these mutineers were loyal to Lubanga, weren't they?

20 A. No.

21 Q. These mutineers that we listed earlier on, namely Kisembo, Bosco,
22 Tchaligonza, Kasangaki, and Bagonza, were the same mutineers as the ones
23 that Lubanga had represented in the summer of 2000; correct?

24 A. Hold on. I believe, first of all, that you're talking about
25 names of mutineers in 2000, and I'd already told you this morning, I'm

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1 sure, that Thomas Lubanga and the others did not represent the mutineers.
2 They represented people of influence in the area, and there's a big
3 difference. Here, as well, these mutineers set themselves up as a group,
4 took control of part of the city while Thomas was not there.

5 Q. We agree that Thomas Lubanga only left the region at the
6 beginning of June 2002; correct?

7 PRESIDING JUDGE FULFORD: Mr. Biju-Duval.

8 MR. BIJU-DUVAL: (Interpretation) I withdraw my objection.

9 PRESIDING JUDGE FULFORD: Sir, I think you are, therefore, being
10 asked the question as to whether or not Mr. Lubanga left the region at
11 the beginning of June 2002.

12 THE WITNESS: (Interpretation) Thomas must have left Bunia in
13 April -- or he'd already gone in April, left for Uganda, and in May, if
14 I'm not wrong, he was transferred to Kinshasa in May 2002.

15 MS. STRUYVEN:

16 Q. We will come back to his trips to Uganda probably tomorrow, but
17 would you agree that after this political declaration in April 2002,
18 Thomas Lubanga didn't immediately leave Bunia? He still stayed in Bunia
19 for a while.

20 A. He did not leave immediately.

21 Q. So, to come back to the earlier point, when there was a mutiny in
22 April of 2002 and the city of Bunia was divided into two parts, you
23 had -- on the one hand, you had the soldiers of Thomas Lubanga, and on
24 the other hand, you had those that were loyal to Molondo Lopondo;
25 correct?

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1 A. No. I reassert what I had said beforehand. On the one hand you
2 had the mutineers, and then soldiers, on the other hand, who were loyal
3 to Lopondo.

4 Q. So if we look at that first paragraph of page number 6, when it
5 says that the city's divided into two zones, one controlled by the people
6 that are loyal to Thomas Lubanga and the other one that are controlled by
7 the people that are loyal to Molondo Lopondo, that is not correct.

8 A. That is not correct. And that should not surprise you, because
9 the history of my country, the history of Congo, is still being updated
10 because of new major events and facts. As long as you have people who
11 are still alive, history will be rewritten. Look at the history of
12 colonialism. Look at the era when Mobutu was in power and the sort of
13 history that was written singing his praise. It was only afterwards that
14 a more sober version of history was written.

15 What I want to say is this shouldn't surprise you. It can't be
16 surprising, because I repeat what I have said earlier, this is a very
17 determined, definite context. We're talking about politics here.

18 Q. (* Previous translation continues) ... the -- or that you
19 recognised the handwriting of Thomas Lubanga on the last page. So he
20 must have looked at this document; correct?

21 A. Yes, probably he did read this document.

22 Q. And he didn't make any corrections to that first paragraph of
23 page 6; correct?

24 A. No. I mean, I agree, he did not do that for obvious reasons.

25 Q. Now, if you look at the second paragraph, we have the

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1 reference --

2 PRESIDING JUDGE FULFORD: I think we'll look at the
3 second paragraph tomorrow, Ms. Struyven.

4 Documents 59 and 74 at the moment don't have EVD numbers. I'd
5 ask counsel to discuss overnight whether in light of the fairly minimal
6 evidence that's been given about those items whether they should receive
7 EVD numbers, and could the Chamber please be given your joint views
8 tomorrow morning.

9 We'll sit again at half past 9.00 in this court tomorrow morning.

10 Thank you, sir, for your assistance. We look forward to seeing
11 you tomorrow.

12 COURT USHER: All rise.

13 The hearing ends at 4.01 p.m.

14 CORRECTION REPORT

15 The Court Interpretation and Translation Section has made the following
16 correction in the transcript:

17 *Page 81 line 9

18 "Uganda rejected" Is corrected by "Lubanga rejected"

19 RECLASSIFICATION REPORT

20 Pursuant to Trial Chamber I's email instruction dated 25th October 2011,
21 the transcript is reclassified as public .

22 The only private session (*) is now available to the public