

1 International Criminal Court
2 Trial Chamber II - Courtroom 1
3 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra and
4 Judge Christine Van den Wyngaert
5 Situation: Democratic Republic of the Congo - ICC-01/04-01/07
6 In the case of The Prosecutor v. Germain Katanga and
7 Mathieu Ngudjolo Chui
8 Trial Hearing
9 Wednesday, 1 September 2010

10 (The hearing starts at 9.04 a.m.)

11 * (Open session)

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

14 PRESIDING JUDGE COTTE: (No interpretation.)

15 (Interpretation) The hearing now begins. Before we
16 call Witness 30 into the courtroom, Mr Macdonald wishes to discuss
17 an issue and I think it may be Mr Dutertre's turn and this matter
18 does not have to do with Witness 30. Professor Fofé would also
19 like to raise something; something in connection with Witness
20 30.

21 Now, before I give Mr Macdonald the opportunity to
22 address the Court, I just want to make sure --

23 MR O'SHEA: Not at all. I would have informed your
24 Honours if there is any -- any difficulty. There is no difficulty
25 at all. It just has a confidence perhaps misplaced in me. I

1 don't know.

2 PRESIDING JUDGE COTTE: (Interpretation) Very well.

3 Mr Macdonald.

4 MR MACDONALD: (Interpretation) Good morning, your
5 Honours. I would like to take five minutes of the Chamber's
6 time to provide some information and make a joint application
7 with Mr Luvengika regarding the issue of the delay; their delay
8 in informing the Chamber whether they will be calling witnesses
9 after the Prosecution's witnesses.

10 We are in open session. I can't reveal -- I beg your
11 pardon? We are in closed -- we are in private session.

12 PRESIDING JUDGE COTTE: (Interpretation) We are in
13 private session. Apparently your issue was such that we had
14 to go into private session.

15 MR MACDONALD: (Interpretation) Very well.
16 Basically, Mr Luvengika has spoken to us about certain
17 information that could potentially be exoneratory regarding
18 certain evidence that was heard so far. With this information
19 we received last week and in light of the difficulties in setting
20 up an investigation team to go to the field, the Prosecution
21 must conduct investigations into these facts, or these items
22 of information, because we have exculpatory and incriminatory
23 obligations throughout the entire proceedings.

24 The Prosecution will be in a position to conduct these
25 investigations next week. After that, once the information has

1 been gathered it is possible that we will not be in a position
2 to continue. It will depend on whether or exactly where the
3 exculpatory material takes us to, and then after that a decision
4 will be taken first of all with regard to disclosure to the Defence
5 teams, but potentially - and this is still just a possibility - we
6 have information that we still need to verify, but the Prosecution
7 may be called upon to make a request of the Chamber to present
8 witnesses who could potentially be common witnesses with the
9 witnesses that Mr Luvengika may be calling.

10 All that to say, your Honour, that in light of the time
11 frame that you gave or mentioned to Mr Luvengika, 15 September,
12 and given the investigation of the Prosecution on similar points
13 that may be raised by Mr Luvengika, I spoke to Mr Luvengika - and,
14 of course, Mr Luvengika will confirm this point later - it may
15 be difficult for the legal representatives to inform the Chamber
16 by the 15th as to whether or not he intends to call witnesses.

17 If the Prosecution after the investigations decides
18 to call these witnesses ourselves, then Mr Luvengika may not
19 be calling witnesses, but it remains to be seen. The Prosecution
20 is not in a position to say how many witnesses we may call, or
21 whether additional time will be needed in light of the
22 investigation to be held next week. Your Honour, we are all
23 trying to move expeditiously. There are a number of technical
24 imperatives that are such that Witness 30 is taking more time
25 than expected.

1 The Chamber also has informed the participants that
2 the last week of October would be free. In light of the number
3 of witnesses remaining, in light of the length of the proceedings
4 so far ever since we have resumed after the recess, I think it's
5 clear that at this particular point the presentation of the
6 Prosecution's evidence will not be finished before the week recess
7 at the end of October.

8 So, I wanted to inform the Chamber of this. We were
9 informed last week of items that could be exonerating and immediately,
10 once we received that information, we began our processes,
11 considering the amount of time that -- it took a certain amount
12 of time to get things underway because of various administrative
13 reasons, including the internal rules of the Court.

14 Perhaps there may be nothing to all of this. The items
15 may not really be exonerating in nature, but at this particular
16 stage it is a possibility and so we do have this obligation under
17 the Statute to conduct investigations, particularly since these
18 items are related to material that has already been presented.

19 I will limit myself to that for the time being, your
20 Honour, because the investigations are confidential until the
21 obligations of the Prosecutor with regard to disclosure are met,
22 and then at that particular point we will inform the parties.

23 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
24 Mr Prosecutor. One clarification: If by some chance the trip
25 to the Congo and the investigations that your teams will undertake

1 are confirmed, and if it is -- if there is exonerating material
2 and if there is good reason to bring other witnesses, these are
3 witnesses that you would bring before the end of the presentation
4 of your case; is that what you are saying?

5 MR MACDONALD: (Interpretation) At this particular
6 stage all options are open, your Honour, and this leads me to
7 raise an issue, an issue that you have not issued an order on,
8 in light of decision 1665; namely, does the OTP have the
9 opportunity to conduct a rebuttal, or to provide rebuttal evidence
10 as we say in English:

11 Presentation by the Prosecution first, by the legal
12 reps, then the presentation of evidence from the Defence teams
13 and then, as was the case in the Lubanga case, there is that
14 possibility of the Prosecution to respond to items presented
15 by the legal representatives, or the Defence teams, among other
16 things raise the issues that were touched upon during their
17 cross-examination and at what point would the Prosecution respond
18 to these points raised during cross-examination?

19 At this particular stage I don't know if this is -- has
20 been on purpose, or if it's an oversight. Your orders or your
21 directives are not clear on this point. So, we are rather
22 dependent on this factor and we are dependent on -- we haven't
23 finalised the meeting, or the gathering of information before
24 being in a position to respond to your question
25 on -- substantively.

1 So, will we have this opportunity? It may be possible
2 for the Prosecution to conduct a disclosure and not call a witness,
3 but Mr Luvengika may call a witness.

4 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
5 Prosecutor. Your remarks touched upon many different areas,
6 and this leads us to remind all that the Chamber has an obligation
7 to ensure a speedy trial.

8 Now, this should not mean neglect of exoneratory materials,
9 if found. Now, this requirement for a speedy trial to proceed
10 in a rapid manner, and you have asked whether we deliberately
11 did not rule on this point, that is, the possibility of the
12 Prosecution having a chance to bring in rebuttal evidence.

13 Our hearings, as was provided for in Ruling 1665,
14 subject to Regulation 140, states that the Prosecution presents
15 a case, the legal representatives ask for permission to cite
16 witnesses and then the Defence teams present their arguments
17 and then the Chamber, if we wish to call witnesses, and this
18 is to provide for the best possible overview and analysis of
19 the situation. By giving the Prosecution another opportunity
20 to present evidence to the Court, this may lead to a second round,
21 and this would be rather time-consuming. Once the people are
22 detained, they're entitled to a trial within a reasonable
23 time-frame.

24 Now, to get back to another point in your remarks.
25 Mr Luvengika, we are not going to ask you whether -- we're not

1 going to ask you exactly how many witnesses you are thinking
2 of bringing before the Chamber as of the 15th.

3 Now, how many witnesses have you in mind, considering
4 the Prosecution's remarks, this date of 15 September? Now, it
5 is possible that another person might be called to give testimony
6 in light of the investigations that the Prosecution is about
7 to begin in the field. Are you in a position to respond? Or
8 will it all depend - and I realise this depends on the number
9 of witnesses you will be calling, but is this all dependent on
10 the Prosecution's investigations?

11 MR NSITA: Thank you very much, your Honour, for this
12 opportunity to address the Court. For the time being, the number
13 of witnesses concerned by this problem that was raised are -- well,
14 there are two witnesses.

15 As for the other witnesses that we may be bringing before
16 the Chamber, some additional work remains to be done. We must
17 finish this work, and the investigation that will be conducted
18 by the OTP, we have, at the request of our victims, our clients,
19 we have deemed it necessary to be present at the time of those
20 investigations.

21 The two assistants of the team will be in the field
22 with the investigators from the OTP and they will take
23 part -- rather, they will attend -- correction, they will assist
24 the victims during the investigations that the OTP has announced.
25 And, apparently, they will be rather long, several days per victim

1 or potential witness. And so we will not be in a position to
2 end our work and we will not be able to meet this deadline of
3 15 September.

4 So we -- and our work depends to some extent on the
5 investigations done by the OTP on these two other potential
6 witnesses because this will keep the team from being able to
7 focus on the others. We will be blocked. We will have to attend
8 for this work to be done with these two potential witnesses from
9 the OTP.

10 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
11 Mr Luvengika. Above all, remember that, by 15 September, the
12 Chamber wishes to receive a filing specifying, insofar as -- as
13 much as possible, the number of witnesses you are planning to
14 call. Some of them perhaps will have nothing to do with this
15 investigation that the Prosecution will be doing. You speak
16 of a number of difficulties, if that were to be the case, to
17 respect the deadline of 15 September completely.

18 Now, Prosecution - Prosecutor, you have said, and we're
19 counting on you - you have announced these unexpected
20 investigations, and they are required because of this possibility
21 of exonerating material. They must be done as quickly as possible.
22 And please pass on a message, so to speak, to Mr Ocampo: All
23 resources must be provided to you so that these investigations
24 can be done as quickly as possible.

25 We cannot, in this Court, while a single Chamber is

1 sitting, be obliged to suspend because of insufficient resources
2 that keep you from continuing the work. That has to be very
3 clear, and I'm sorry that I have to say this in private session.
4 I realise that there are always unforeseen circumstances, but
5 this place has to do everything, has to implement everything
6 so that matters can be attended to and so that we can ensure
7 a speedy trial.

8 MR MACDONALD: (Interpretation) Entirely. It's not
9 a matter of resources setting up, as the Defence teams know very
10 well. There are some rules, minimal rules, that have to be
11 respected. If the Chamber were to travel to Bogoro, the Chamber
12 would be in a position to see that. So it's not just a matter
13 of seeing Bogoro; you have to realise all the logistics: The
14 travel, having the various parties and participants travelling.
15 That means a certain amount of time, and there is no way of getting
16 around some of these requirements. There are some things that
17 we don't have control over. Some units have their own rules.

18 PRESIDING JUDGE COTTE: (Interpretation)
19 Mr Prosecutor, forgive me for interrupting. I will take the
20 liberty of interrupting you. The Chamber is entirely aware of
21 these things. We realise that travel in the Congo is not something
22 you do just like that, and that there are security rules and
23 other logistics that have to be respected.

24 For the time being, since I must summarise, we realise
25 that the deadline of the end of October for the -- we realize

1 this may have to be pushed back, but let us all remember that
2 we don't want to be overly hasty, we don't want to rush, but
3 we do have to continue moving along at a good rate. That's my
4 first point.

5 Now, second point: Mr Luvengika, send to us a filing
6 by 15 September stating where you are at, the difficulties you
7 have come up against and, if there is one witness for which you
8 are thinking of an application, please go ahead with that because
9 there will be consultations and those consultations can be done
10 one after the other for one application, and then the others
11 will come later.

12 The later unfolding of our proceedings will depend on
13 this, but please keep us informed of developments, Mr Prosecutor,
14 by way of oral arguments before the Chamber or by way of a filing,
15 if specific difficulties come up.

16 The Chamber has only one desire: We do not want to
17 remain lost in the fog, so to speak. We have an obligation to
18 ensure a speedy trial and we must obtain all necessary information
19 from you so that we can meet this obligation. Mr Dutertre, I
20 believe -- ah, Mr Macdonald. Mr Macdonald.

21 MR MACDONALD: (Interpretation) Thank you, your
22 Honour. I will now leave the courtroom and allow my colleague
23 to address the Court and he will be able to make his remarks
24 in open session.

25 PRESIDING JUDGE COTTE: (Interpretation) Thank you,

1 Mr Prosecutor.

2 Mr O'Shea, before Mr Macdonald leaves, on the same --

3 MR O'SHEA: Mr President, your Honours, let me make
4 it plain that from the side of the Defence of Mr Katanga --

5 PRESIDING JUDGE COTTE: (Interpretation) Mr O'Shea,
6 this is not a remark for you. You have just begun, but the
7 interpreters have asked us to ensure that we don't speak too
8 quickly. You haven't yet. Please proceed.

9 MR O'SHEA: Yes. Let me be quite frank, that if there
10 is any question -- it's not entirely clear from what Mr Macdonald
11 says, but if there is any question of the Prosecution requesting
12 to add witnesses at this stage of the proceedings, such an
13 application will be vigorously opposed by this team.

14 Mr Katanga had a legitimate expectation that the
15 Prosecution case would be finished by now. Obviously, there
16 have been reasons - some legitimate, some not - why that has
17 occurred, but we will be vigorously opposed to the addition of
18 new witnesses, whether it is done through the veil of common
19 witnesses or individually through the Prosecution.

20 That's tied up with the question of the legal
21 representatives and the deadline of 15 September. It's my
22 recollection that at the status conference of 9 July, your Honours
23 gave quite a firm undertaking to the legal representatives, for
24 the very reason that the Defence would need a reasonable
25 opportunity to address any new evidence which was coming their

1 way.

2 Your Honours will remember that the Defence has
3 strenuously argued before this Chamber and before the Appeals
4 Chamber, unsuccessfully in the main but, nonetheless,
5 strenuously argued that the Defence has a right to know the case
6 against it before the commencement of the trial, even if it comes
7 from the legal representatives.

8 That's a position which has not been upheld by the
9 Appeals Chamber, but the fact remains that the accused has a
10 right to a fair trial and a trial without undue delay, and a
11 trial where all the parameters are set in place early and where
12 he's not taken by surprise and where neither the legal
13 representatives or the Prosecution are permitted to mold the
14 case as the trial proceeds.

15 We are now coming close or we hope we are coming close
16 to the end of the Prosecution case. We hear today from
17 Mr Luvengika that there are difficulties with regard to the
18 obligations which he has undertaken on the basis that some of
19 his team are needed for assistance to the investigations of the
20 Prosecution.

21 My understanding is that the individuals who may be
22 interviewed by the Prosecution might be clients of the legal
23 representatives and therefore they may need to be present during
24 these interviews. I may or may not have understood that
25 correctly.

1 But our understanding is that on 15 September
2 Mr Luvengika will tell this Court if there are witnesses coming
3 from the legal representatives of the victims, or if there is
4 that intention, and we were under the impression that we would
5 be given the names of those witnesses and the statements of those
6 witnesses so that we could begin our investigations.

7 If there is an intention to change the deadline of 15
8 September, I think your Honours envisaged that in the original
9 decision of 9 July, but it would be up to the legal representatives
10 of the victims to show good cause why that deadline should be
11 changed. And in our submission, reverting resources for
12 additional investigations of the Prosecution would not be good
13 cause.

14 It's entirely up to the legal representatives how they
15 distribute their resources and if they choose to distribute their
16 resources towards an exercise which is being conducted late by
17 the Prosecution albeit on the basis of information from themselves,
18 that is of course their choice. But it will not necessarily
19 amount to good cause for the purpose of extending the 15 September
20 deadline.

21 In our submission, if the legal representatives cannot
22 show good cause on 15 September why that deadline should not
23 be extended then that should be the end of the matter because
24 Mr Katanga has the right to clarity.

25 The second point is this, your Honours: My learned

1 friend, Mr Macdonald, is making reference to the possibility
2 of new evidence which he initially dressed up as a question of
3 exculpatory evidence and then moved into the question of potential
4 common witnesses.

5 He does that while at the same time we are -- we remain
6 unclear as to the position of three witnesses that are already
7 on the Prosecution list. Surely it is time that we know the
8 position with regard to the witnesses that are already on the
9 list. Are they being called or are they not being called? We,
10 in my respectful submission, have a right to know.

11 And thirdly and finally with regard to this indirect
12 reference to rebuttal evidence, your Honours have stepped in
13 there and I'm grateful for the indications which have been given
14 but let me indicate that we are somewhat surprised that that
15 discussion comes up at all from the side of the Prosecution at
16 this stage of the proceedings. As far as we understand it,
17 rebuttal evidence is an exceptional procedure and there can be
18 no basis upon which the Prosecution can make decisions on rebuttal
19 evidence at this stage of the proceedings as a basis of making
20 their decisions about evidence during the Prosecution case.

21 Thank you, your Honours.

22 MR KILENDA: (No interpretation.)

23 PRESIDING JUDGE COTTE: (Interpretation)

24 Mr Kilenda.

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

1 The Defence for Mathieu Ngudjolo has listened carefully to the
2 parties and participants as well as the Chamber. This trial
3 has to end one day, and that is why you issued directives in
4 decision 1665 so that all the parties should be focused.

5 Here, we have learned that there was consultation
6 between Mr Fidel Luvengika and the Prosecution on the possibility
7 of certain exculpatory witnesses. The Prosecutor said that he
8 has an obligation to investigate whether it is incriminating
9 or exculpatory evidence, and in principle he's correct but we
10 have to be sure that these are potentially exculpatory witnesses.

11 It is out of the question to add incriminating witnesses,
12 and if by chance the Prosecutor intends to add incriminating
13 witnesses to subscribe to what Mr O'Shea said, we will vigorously
14 oppose it.

15 PRESIDING JUDGE COTTE: (Interpretation) Thank you.
16 We would like some time to consult. Well, Mr Macdonald, please.

17 MR MACDONALD: (Interpretation) I have listened to my
18 colleague Mr O'Shea. Let us stay calm.

19 PRESIDING JUDGE COTTE: (Interpretation) But we are
20 all calm.

21 MR MACDONALD: (Interpretation) Once again, let us
22 not jump to conclusions. I announced something; I think everyone
23 should be happy about it. The legal representative announced
24 that they there would be some possible exculpatory witness, and
25 what do we do? The Prosecution decides to investigate

1 immediately.

2 Please do not be afraid, the Prosecution will inform
3 everyone in writing. Let us not jump to conclusions before we
4 can see what these investigations are all about. The Prosecution
5 is simply implementing its obligations. At this point, the
6 intention is not to add any incriminating evidence. There are
7 simply elements that can potentially be exculpatory, and this
8 may lead to the calling of additional witnesses. And this is
9 not necessarily going to be additional incriminating evidence.

10 This might be difficult to explain because of course
11 I cannot disclose the information at this stage, but in other
12 words I believe it is -- there is no point on climbing on your
13 high horses and accuse the Prosecution of distorting due process.

14 PRESIDING JUDGE COTTE: (Interpretation) Very well.
15 We are going to suspend for 15 minutes to try to absorb the various
16 submissions that have been made. It is 20 minutes to 10. We
17 will meet again at 10 a.m. So this hearing is suspended.

18 (Recess taken at 9.37 a.m.)

19 (Upon resuming at 10.00 a.m.)

20 * (Open session)

21 THE COURT USHER: All rise.

22 PRESIDING JUDGE COTTE: (Interpretation) So, we are
23 therefore back after this short break. Please be seated.

24 We shall therefore proceed by making some observations,
25 given the interventions that have been made. Perhaps we could

1 go into open session. I don't think that the comments that we
2 have to make are of such nature that they would give rise to
3 prejudice to anyone.

4 (Open session at 10.02 a.m.)

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

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

9 So, after a certain number of interventions that have
10 been made in private session, the Chamber would like to express
11 its position firstly where it concerns the deadlines. Counsel
12 O'Shea has stated a certain apprehension with regards to a risk,
13 if I use this expression, of overshooting the deadlines, but
14 without going too much into this, and without spending too much
15 time on this, Counsel Luvengika for 15 September as agreed has
16 to provide the Chamber with the name of the witness that he would
17 like to call. Counsel Gilissen has this possibility which is
18 offered to him.

19 Now, this will make it possible to take the observations
20 of the Defence team and will make it possible for the Chamber
21 to rule thereon. If it would appear that one or two persons
22 pose a problem and that it was not possible to have an application
23 with regards to that date in that regard, this shall be mentioned
24 in the submissions with all the necessary grounds.

25 Therefore for this date of 15 September as well, in

1 the hearing of 15 September, at the starting point of that meeting,
2 the Prosecutor - if necessary in closed session - will provide
3 us with an update with regard to the investigations which have
4 been undertaken in order to collect, if this is the case,
5 exonerating evidence which might exist.

6 Now, with regards to the deadlines or time frames,
7 substantively the first comment is that, if it would appear that
8 the team of the Prosecutor highlights exonerating evidence, then
9 it is necessary to disclose it. That is obvious, applying Article
10 67, or Rule 77 of the Rules of Procedure and Evidence, if that
11 is the grounds for this disclosure. The Prosecutor shall,
12 therefore, disclose possible exonerating evidence.

13 Another comment: If Counsel Luvengika considers that
14 it is appropriate to seize the Chamber of an application with
15 a view to be given leave to call as a witness the person or persons
16 who are victims, who he is the legal representative of, and who
17 could possibly be behind exonerating evidence, this is something
18 that will be done. He will call these people by an application.
19 If the Chamber gives leave for that, given the observation of
20 the Defence gives leave for the appearance in the hearing of
21 this witness, or witnesses, the Defence team will of course have
22 the possibility to cross-examine that person.

23 If Counsel Luvengika, for reasons known to him, that
24 it's not necessary to seize the Chamber with an application with
25 a view to the appearance of this person, or persons, then the

1 Defence teams -- which prior to that will have received from
2 the Prosecutor through the disclosure process possible
3 exonerating evidence that we have spoken about this morning,
4 then of course they would also have time to call these persons
5 within the framework of their own case.

6 Another comment: In order to answer a concern which
7 was also shown by Counsel O'Shea, any subsequent calling of a
8 Prosecution or incriminating witness by the Prosecutor is subject,
9 and it should be recalled to, the leave of the Chamber being
10 granted with regards to Regulation 35.

11 A final comment to be made, which provides a
12 clarification with regards to the last part of the intervention
13 of the Prosecutor when he wanted to know if it would be possible
14 after calling a possible witness by the Chamber to react.

15 The Chamber would, first of all, like to remind everyone
16 of the spirit in which it envisaged the possibility for it to
17 call witnesses once that all the parties and participants had
18 called their witnesses. This possibility, which it has opened
19 up to itself, has the objective of having a summary of all the
20 substantive proceedings to try to find, if it exists, or try
21 to locate any lacunae that the calling of a witness might be
22 able to fill.

23 Before we come to this final phase, whereby the Chamber
24 calls witnesses itself, it is of course clear that each of the
25 parties and participants will be able to provide the Chamber

1 with its own proposals, indicating for example that such-and-such
2 a point does need to be made clear and that such-and-such a witness
3 could possibly give such precision, and the Chamber shall assess
4 this. It shall assess whether -- if it considers such a
5 suggestion is useful and necessary with regards to the
6 manifestation of the truth, it will grant this. If it considers,
7 however, that this is a suggestion which shall not bring anything,
8 then it shall not.

9 That is it. We are now going to end this exchange.
10 Counsel Luvengika, we count on you for 15 September. With what
11 you are able to give us and with the means that you have available
12 to you, which we are very aware of, is asking for your team -- if
13 any of your team have to go to the DRC, then we all have a requirement
14 which could lead to -- for us going beyond our usual limits,
15 even if those limits are very high.

16 Prosecutor, we also count on you for 15 September to
17 have a precise update on the investigations that are underway.
18 The Chamber, once again, would like to ensure that the diligence
19 which it is incumbent upon it to ensure is respected. This is
20 with regards to all of you. It is accountable for the image
21 that the International Criminal Court has.

22 Thank you very much. Now, it's now over to you,
23 Prosecutor. Yes, please go ahead.

24 MR MACDONALD: (Interpretation) Very briefly, your
25 Honour. Just to provide some precision with regards to your

1 decision 1665, and having noted the intervention of Counsel O'Shea
2 with regards to the exceptional nature of evidence that I would
3 call rebuttal, which is réfutatoire in French, the Prosecution
4 would like to have a debate with regards to this matter with
5 concrete examples because, beyond the remarks that the Chamber
6 has made that it has the power to call for evidence, I think
7 that we should have a debate with regards to this given that
8 the Defence can cross-examine with regards to documents that
9 should have an EVD number and I would also like to give certain
10 examples.

11 You have EVD-D02-00033. This is a document of the
12 sister -- a student card, rather, of the sister of Witness 002.
13 This is something that we all have to discuss. Despite the fact
14 that this document is authentic and that it has been presented
15 as such, with regard to its content this is severely challenged
16 in light of the statements that we have taken (Expunged)
17 which were disclosed to everybody, including the Chamber.

18 The question that we would like to debate is how the
19 Prosecution can present - and at what time can it present - this
20 evidence via (Expunged)
21 (Expunged) This is something that was made from in April or
22 May 2010.

23 So the question is, with regards to rebuttal evidence,
24 we don't want to recommence incriminating evidence. We want
25 to respond to very precise elements which were raised by the

1 Defence, also at the cross-examination stage, and this makes
2 me want to say the following point.

3 This is the difficulty that there is. When the Defence
4 has the right to produce evidence which has not been disclosed
5 prior thereto, the Prosecutor has not been able to investigate
6 on that. We only have three days in order to react. Even this
7 deadline is rarely respected, we get this the day before, so
8 how can the Prosecutor react?

9 The Chamber gives EVD numbers. When an EVD number is
10 accorded it's in the case record, but if all the evidence which
11 is presented just receives MFI numbers and then they have the
12 obligation to present evidence to be able to authenticate the
13 documentation by presenting witnesses, for example, or doing
14 what we do ourselves, a Bar table motion, and then the Prosecutor
15 has to respond to that, then at that time there would be equality
16 of arms. At that time perhaps the Prosecution is not in a situation
17 where we have to refute something.

18 Now, it is this issue, your Honour, that I think we
19 have to spend a complete day on, to have pleadings thereon, because
20 in writing 20 pages wouldn't be enough, but it is clear that,
21 perhaps with a concern of due diligence, rebuttal is not envisaged.

22 Obviously, when the decision is issued we can't
23 necessarily presume of what the Defence -- presume what the
24 Defence is doing, but this does have an impact, an impact which
25 we don't know the Defence line. There is no disclosure. And

1 when the Defence is going to start its defence, we are going
2 to receive documents, possibly at the last minute, how are we
3 going to react?

4 How are we going to bring to the Chamber the possibility
5 of finding the truth with regards to the authenticity of the
6 documentation? So there's this phase and then there's later
7 when the Defence will present its witnesses.

8 MR KILENDA: (Interpretation) If you would allow me.
9 Very briefly, with regard to the issue the Prosecutor raises,
10 these are issues that are very important, and this shows the
11 complexity of evidence before the Court. We would have
12 wished - and this is only a proposal that I'm making here - that
13 everything could be submitted for your examination through
14 submissions which the Defence team will respond to. And then,
15 if you so wish, we could discuss that in open session.

16 The argument which consists of saying that we only have
17 20 pages for written submission, this doesn't hold water because
18 you have the Rules of Procedure before this Court allow an
19 application to ask for an extension in the number of pages. That's
20 what I wanted to say, your Honour.

21 PRESIDING JUDGE COTTE: (Interpretation) Counsel
22 O'Shea, please go ahead.

23 MR O'SHEA: Yes, also briefly, Mr President. The
24 appropriate time for a discussion about rebuttal evidence is
25 after the close of the Defence case, and my learned friend

1 Mr Macdonald is at liberty to put in an application at that time.

2 If I may raise a small procedural point. We had quietly
3 a lengthy discussion earlier which involved all the parties in
4 this room and your Honours, which was, as your Honour has noted,
5 all in closed session or private session. And, in our submission,
6 there was nothing said by any counsel, including the Prosecution,
7 which justified that that discussion be in private session, and
8 we would request that that discussion be reclassified. It's
9 exactly the kind of discussion which the public should know about
10 and which represents the transparency of these proceedings.

11 MR GILISSEN: (Interpretation) Your Honour, with
12 your leave, just a very short point I wanted to make. Counsel
13 Macdonald raised a problem which concerns us, and this is no
14 secret; it has been concerning us a while. The idea, like all
15 ideas, it's simple, and it is as follows: When the procedural
16 choices are made by your Chamber and which we all respect, that
17 is obvious, but you have the practice of attributing EVD numbers
18 and there, room for reflection -- it is quite heavy. There might
19 not be equality in this regard, when we talk about equality of
20 arms here. This is an important element. It would seem to me
21 that my intervention is only about that matter.

22 I think, with prudence, in the coming time, we are going
23 to make progress, but we should avoid attributing EVD numbers
24 to evidence provided by the Defence in the case of
25 cross-examination, at least before the Chamber has taken a

1 position on this issue which, believe us, the more you reflect
2 on it, it is a very sensitive matter.

3 Because, as Counsel Luvengika said, this is the whole
4 problem of evidence with its multiple consequences as an accordion
5 theory, with all the different aspects that that has. Once you
6 have seen the problem, then you really see that it's quite real.
7 That's what I wanted to say.

8 I think it's respectful towards the Defence. Of course,
9 an MFI number can be attributed; we are not in any way trying
10 to prevent the presentation of evidence within the framework
11 of cross-examination, or do anything against the rights of the
12 Defence, absolutely not, but what we want to do is to say that
13 the attribution of an EVD number has such significant consequences
14 that we believe that this is problematic. Thank you very much.

15 PRESIDING JUDGE COTTE: (Interpretation) Very well.
16 Since 9 o'clock this morning we have had a hearing which really
17 does seem to have been like a Russian doll: You have one big
18 doll and you go into it and you find lots of little dolls therein.
19 But this is the rules of the game. Right at the existence,
20 beginning of existence of this Court, Chambers have to sit and
21 they take decisions. Some of them lead to case law, jurisprudence.
22 And what we are doing, we are trying to make sure is that the
23 time we spent in this jurisprudential field is time that at
24 least will save time for other Chambers who sit within this Court.

25 Counsel O'Shea, now, where it concerns the

1 reclassification of part of the transcript, we are in agreement
2 with you. Court officer.

3 And I think the Prosecutor wouldn't have any obstacle
4 to this. Do you feel that we have taken up issues this morning
5 which could be prejudicial to anyone at all, given that I myself
6 have stated the position of the Chamber in open session?

7 MR MACDONALD: (Interpretation) If you allow me to
8 reread the transcript. There's no difficulty at first sight,
9 but when we speak about the time and the presence of missions,
10 these aspects, I just want to check what was said in that regard.

11 PRESIDING JUDGE COTTE: (Interpretation) Please
12 take the time to check that and, hopefully, you could tell us
13 at 11.30 what you think such that this issue has been dealt with,
14 but it certainly would be interesting for this debate to be known
15 by the public who are interested in our work and for it also
16 to be known -- or for them also to know the doctrine that forms
17 our work. And, if necessary, it will help us to improve because
18 that is what doctrine serves to do.

19 Now, with regards to the intervention of Counsel Kilenda,
20 he is a wise person, he remembers to be clear. And with regards
21 to this issue of rebuttal which you mentioned, which Prosecutor
22 Macdonald mentioned, the importance of which Counsel Gilissen
23 wanted to stress, this is subject to an exchange of submissions
24 which makes it possible for everybody to state precisely what
25 their questions are, what their concerns are, and what their

1 proposals are. You are all very busy; this is something that
2 we understand.

3 The legal representatives of victims can perhaps come
4 together with regards to this issue of principle. They can
5 perhaps bring their teams together in that regard. Are -- the
6 submissions have to be submitted. Is there -- Monday, 20
7 September, is that correct? If there is, then submissions have
8 to be made by Monday, 20 September, at 4 o'clock.

9 Now, with regard to these submissions, we will thank
10 you very much.

11 Yes, it is indeed Monday, 20 September.

12 Now, with regards to these submissions, we will also
13 see whether they have to be subject to a written response from
14 us, or if they should be dealt with during a hearing, with an
15 exchange of points of views, or if indeed there is a hearing
16 and a written response which is needed. This is something that
17 we will have to see.

18 Now I think that it is time to end this debate of a
19 procedural nature and to give the floor to Mr Dutertre, who is
20 going to speak to us about something which is quite different
21 to what we have been talking about so far.

22 Mr Dutertre, you have the floor.

23 MR O'SHEA: Mr President, just one point of
24 clarification.

25 PRESIDING JUDGE COTTE: Yes.

1 MR O'SHEA: I'm to understand that the 20 September
2 deadline is for the Prosecution, and then we can respond; correct?
3 This is not a deadline for everybody?

4 PRESIDING JUDGE COTTE: (Interpretation) We
5 envisage that everybody could, at the same time, provide something,
6 but perhaps it is preferable to respect the classical circuit,
7 if you like. So, in this case, the Prosecutor Macdonald and
8 parties, please provide us with your submissions before the
9 weekend; that is to say, Sunday is the 19th, Saturday is the
10 18th, Friday is a holiday at the Court, I do believe. No, let's
11 keep to the 20th. Let's keep to the 20th but please, everybody,
12 start to reflect with regard to your own positions so that you
13 can react quickly to what the Prosecutor says and what the
14 Prosecutor writes with regards to your concerns and your proposals
15 as well. It is not ruled out. You will have -- understand that
16 we -- reducing the deadline because there is a matter of sufficient
17 interest for it to be solved quickly.

18 Now, Prosecutor Dutertre, you're in a -- been in a
19 starting block since 9.05, so we're going to fire that pistol
20 and let you go.

21 MR DUTERTRE: (Interpretation) Your Honour, very
22 ably put; that's my position. A purely technical point, with
23 regards to P2, Witness P2, and the video DRC-OTP -- excuse me,
24 0081-0004, and in particular extracts 2 and 7 thereof. They
25 are in binder 1 and following. For technical reasons, tab 1

1 and following, what we've done is that we've arranged these
2 different extracts and open to the Defence. There is no objection
3 to substituting new extracts with the same number. And I would
4 ask for the leave of the Chamber in this regard.

5 PRESIDING JUDGE COTTE: (Interpretation) If there is
6 no objection from the Defence teams and the legal representatives,
7 we have to react. Now, you've already done this for this same
8 Witness P2, and I think for three or four extracts, and you have
9 transmitted the table form in a modulated format; is that correct?

10 MR DUTERTRE: (Interpretation) Yes. Two modified
11 tables will be transmitted by us, as well as three tables. There
12 were a couple of mistakes but that doesn't affect anything.

13 PRESIDING JUDGE COTTE: (Interpretation) If you could
14 do so relatively quickly because the manual of material management
15 of this table is necessary in order to well prepare the coming
16 session, so we need the time to put tabs into this in order to
17 be able to interview P2 with the due diligence that's required.

18 Professor Fofé, now going back to P30 before he comes
19 in, could you speak in open session. We are listening to you.

20 PROFESSOR FOFÉ: (Interpretation) Thank you, your
21 Honour. Good morning, your Honours. The Mathieu Ngudjolo
22 Defence team has understood and has taken note of the observations
23 made by the Chamber yesterday regarding documents taken from
24 the UPC website received from the Prosecutor. We are aware of
25 the importance of making good use of Court time and the need

1 to make careful and thrifty use of this time.

2 In light of the remarks made by the Chamber, we have
3 looked at the rest of the documents even more carefully, the
4 rest of the documents that we were intending to show to Witness
5 30. And we came to the conclusion that the extracts of the videos,
6 in and of themselves, were sufficient with -- in terms of the
7 manifestation that we wish to make before the Chamber, and we
8 believe that we have provided you the very essence of these
9 extracts yesterday morning at the beginning of the hearing. We
10 will not be calling the other documents taken from the UPC website.
11 We will make use of them at a later point.

12 These are the following documents; there are ten,
13 actually: D03-001-0352. And let me repeat, DRC-D03-0001-0352;
14 then next, 0354; then third extract, 0355; four, 0352; five,
15 0367; 0371; seven, 0376; eight, 0374; nine, 375; and ten, 0378.
16 These relevant materials for the Defence of Mr Ngudjolo are ready
17 to be found in the eCourt system, and we will be in a position
18 to make use of them later when we call other witnesses.

19 Similarly, we will be using at a later time, by way
20 of other witnesses -- we will be making use of the following
21 documents received from the Prosecution: DRC-OTP-00037-301,
22 and DRC-OTP-0014-391.

23 Furthermore, we will continue our cross-examination
24 of Witness 30 using only extracts, video extracts that we have
25 selected. With regard to the video extracts, we have also looked

1 at them and reduced the number. We will not be using five of
2 these extracts, namely, extract -- our extracts number 11,
3 DRC-D03-0001-0392; extract 13, DRC-D03-001-0384 -- 394,
4 correction -- 14, DRC-D03-001-0395; and finally, extract 16,
5 DRC-D03-001-0397. And by reducing the number of video extracts
6 we hope we will not take too much time with Witness 30. We do
7 hope to conclude today, but since we are beginning late, we are
8 no longer very sure of that, but we have made an effort to reduce
9 the amount of materials so as to save courtroom time, which is
10 such a precious asset.

11 Thank you.

12 PRESIDING JUDGE COTTE: (Interpretation) No, no, it
13 is the Chamber that thanks you for your work, your attempts to
14 reduce the number of testimonies.

15 Now, we have 20 minutes. If possible, could we have
16 the witness come in. Court officer, if we could go into closed
17 session.

18 Now, spectators in the public gallery, we are going
19 to go into closed session because the witness about to come into
20 the courtroom is benefiting from protective measures.

21 Now, court usher, if you could go fetch the witness
22 for us.

23 (Closed session at 10.37 a.m.)

24 (Expunged)

25 (Expunged)

1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Open session at 10.39 a.m.)

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

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

13 Witness, good morning.

14 THE WITNESS: Good morning.

15 PRESIDING JUDGE COTTE: (Interpretation) You'll be
16 with us for slightly more than 15 minutes and then we'll have
17 a two-hour session. We had a long procedural discussion this
18 morning. That is why we were so late in calling you into the
19 courtroom.

20 Professor Fofé, please proceed.

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

22 QUESTIONED BY MR FOFÉ: (Continuing)

23 Q. Good morning, Witness.

24 A. Good morning.

25 Q. We will continue with the cross-examination, just like

1 yesterday. And once again, I would like to stress one thing.
2 Some questions may appear to be repetitive, and don't be annoyed
3 by that. It is for procedural reasons. You will see that our
4 questions are simple. We will just -- we are just going to ask
5 you to answer the questions in a very simple way, and things
6 will move more quickly. Now yesterday, we stopped at extract
7 10.

8 MR FOFÉ: We won't play extract 11, and we will move
9 on, Madam Court Officer, if we could, to extract 12. Could we
10 have extract 12 played. This is DRC-D03-001-0393.

11 (Video extract played)

12 THE INTERPRETER: I'd like to say that --

13 MR FOFÉ: (Interpretation) With sound and
14 interpretation, if at all possible.

15 (Video extract played)

16 THE INTERPRETER: * (Inaudible) with (inaudible) the
17 concerns expressed centre essentially around peace and
18 (inaudible) of the UPDF troops. I think that's it.

19 (Inaudible). (Inaudible).

20 I consider it to be an important and urgent issue. And
21 fortunately, we are in the presence of all of the leaders whose
22 contribution might be a lifesaver for the distressed and
23 traumatised population of Ituri.

24 We have Ugandan officials, Monuc is present. This
25 presence is not superfluous, because even though Monuc

1 representatives wanted to slightly avoid the response that had
2 been hoped for, but its presence - rather their presence - at
3 this meeting is known officially and (inaudible) very kindly,
4 are at this meeting with us with (inaudible) ... and upon leaving
5 here, we will hear (inaudible) information to this effect.
6 Therefore, in this regard, we must discharge all of our
7 responsibilities, even if you cannot provide a response
8 (inaudible) organisation.

9 I would like (inaudible) for us to be able to give our
10 brothers sleepless nights after (inaudible) in question.

11 (Inaudible) You have (inaudible) you have expressed
12 your concerns with complete clarity. I see that they've followed
13 you. Everyone has followed each other and to, perhaps, to save
14 time - because today I should go to Kampala with them...If, if...
15 We will see to what extent (inaudible) certain things ... If we
16 can't go there, we can have a think so that, perhaps, certain
17 discussions can still continue here.

18 I am going to hand them the microphone so that they
19 can think in overall terms and respond. I know that there can't
20 be a precise answer so that immediately (inaudible) of the UPDF
21 to do and so that the (inaudible) can accompany them (inaudible).

22 It is not possible but (inaudible) which essentially
23 explains something (inaudible)."

24 MR FOFÉ: (Interpretation) Thank you very much, court
25 officer. Your Honour, could we briefly go into closed session?

1 PRESIDING JUDGE COTTE: (Interpretation) Certainly,
2 for the beginning of the presentation. Court officer, we'll
3 go into private session for a moment.

4 (Private session at 10.47 a.m.)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Open session at 10.48 a.m.)

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

20 PRESIDING JUDGE COTTE: (Interpretation) Very well.
21 Professor Fofé, please continue.

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

23 Q. Witness, on that particular day, the people of
24 Bunia who were present in that hall were opposed as well as that
25 to Thomas Lubanga going to Kampala. It was a protest, the people

1 didn't want Thomas Lubanga to go to Kampala; is that not so?

2 A. Yes, the people didn't want him to go to Kampala.

3 Q. To your knowledge, did the UPC accuse Uganda of
4 wanting to deliver Thomas Lubanga to Kinshasa?

5 MS LUPING: Mr President.

6 PRESIDING JUDGE COTTE: (Interpretation) Madam
7 Luping?

8 MS LUPING: Just wanting to state an objection to this
9 last question, and it calls for the witness to speculate. He
10 can only give evidence on the basis of his own direct knowledge.

11 MR FOFÉ: (Interpretation) Indeed. I began my
12 question with that phrase "to your knowledge."

13 PRESIDING JUDGE COTTE: (Interpretation) Please go
14 ahead.

15 MR FOFÉ: (Interpretation) Thank you.

16 Q. Witness, to your knowledge, did the UPC accuse
17 Uganda of wanting to deliver Thomas Lubanga to Kinshasa?

18 A. To my knowledge, the answer is, "no." At that time,
19 the objective was quite different. The UPC didn't think that.
20 I think that the UPC just wanted to manage Ituri alone; and above
21 all, the airport. Thanks to the airport, there were considerable
22 amounts of money coming in.

23 Q. Once again, to your knowledge, after the rally
24 of 23 January 2003, to the best of your knowledge, was Thomas
25 Lubanga arrested in Kinshasa, to your knowledge?

1 A. All I know is that Thomas Lubanga was not arrested in
2 Kinshasa, in the immediate time. He was never actually
3 arrested in Kinshasa. I do think that Thomas Lubanga was arrested
4 and put into prison by the -- by this institution.

5 Q. Thank you very much, Witness.

6 MR FOFÉ: (Interpretation) Your Honour, could we give
7 an EVD number to this extract?

8 PRESIDING JUDGE COTTE: (Interpretation) With
9 regard to this video extract from the OTP, we will continue and
10 do as we did yesterday; that is to say, we will give an EVD number
11 to it, Madam Court Officer.

12 THE COURT OFFICER: Your Honours, extract 12 of the
13 document DRC-D03-0001-0393 will be given an evidence number
14 EVD-D03-00040. The extract was played with the sound and
15 interpretation and is admitted publicly. Thank you.

16 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
17 court officer. Would you like us to end at this particular point?

18 MR FOFÉ: (Interpretation) Exactly.

19 PRESIDING JUDGE COTTE: (Interpretation) It will be
20 difficult for you to begin a new video extract.

21 Witness, now you've only been in the courtroom for a
22 very short period of time, but you will have a chance to catch
23 up in half-an-hour. We will now suspend the hearing and resume
24 at 11.25. We will go into closed session so the witness can
25 now leave the courtroom.

1 (Closed session at 10.54 a.m.)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 (Open session at 10.55 a.m.)

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

12 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
13 court officer. Prosecutors, please remind Mr Macdonald that
14 at 11.30 we would like to know whether the reclassification of
15 the beginning of the hearing can be done or not. So, we do want
16 to see about that. Our hearing is now suspended.

17 (Recess taken at 10.55 a.m.)

18 (Upon resuming at 11.31 a.m.)

19 (Closed session)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

1 (Expunged)

2 (Open session at 11.33 a.m.)

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

5 PRESIDING JUDGE COTTE: (Interpretation) Thank you
6 very much.

7 Mr Witness, we will continue with our hearing and I
8 believe the issue of reclassification of the beginning of the
9 hearing in open session is resolved and it also applies to the
10 end of our previous hearing. So, Mr O'Shea, I believe your very
11 legitimate request has been satisfied.

12 Mr Fofé, you can now continue.

13 MR FOFÉ: (Interpretation) Thank you very much, your
14 Honour.

15 Q. Good morning once again, Witness.

16 A. Good morning.

17 Q. Mr Witness, before we continue, I will like to
18 ask you a small question for clarification. In the last extract
19 that we saw before the break, that is extract number 12, there
20 is a person addressing the assembly. Who is that person?

21 A. That was Thomas Lubanga himself.

22 Q. Thank you.

23 PRESIDING JUDGE COTTE: (Interpretation) That
24 clarification was indeed very useful. Please proceed, Mr Fofé.

25 MR FOFÉ: (Interpretation) Thank you, your Honour.

1 We will not show extracts 13 and 14, so we will move on to extract
2 number 15, which is DRC-D03-001-0396, from time stamp 3.09 to
3 36.40. We will begin by showing that extract in its entirety,
4 that is from 03.09 to 36.40, and then we will come back
5 to freeze the images at certain points. We will not show the
6 entire extract. We will go directly to the images at the time
7 stamps which I will indicate to the court officer. So we can
8 begin by viewing that extract in its entirety. Thank you, court
9 officer.

10 (Video extract played)

11 MR FOFÉ: (Interpretation) I am sorry, this should be
12 shown with sound and interpretation to the extent possible.

13 (Video extract played)

14 THE INTERPRETER: * "(Inaudible) We consider that
15 (inaudible). I consider that it's pointless, (inaudible).

16 (Inaudible) easy to pass (inaudible) witness and
17 facilitator and we turned to (inaudible) the government,
18 (inaudible) together. The pacification commission was not
19 established by Monuc, they are ... we are (inaudible) of ...

20 Now, everybody thinks that we have to go through that
21 process to achieve peace here. OK, let's go ahead. In that case,
22 if we have to discuss the timetable with Monuc ... it's just to
23 say to you that we want to move quickly, so (inaudible) in which
24 (inaudible) to see really, (inaudible) of that commission. If,
25 once again, the Iturians really want it. We've seen that

1 committee's conclusion (inaudible)

2 (Inaudible) the committee (inaudible) representing
3 each of the parties (inaudible) that would be ... and therefore,
4 two representatives from Ituri (inaudible). (Inaudible) to
5 return to that question (inaudible) A proposal was made by one
6 of the parties at ... at the (inaudible) the Iturians. So, it will
7 be somehow divided in two. So, I think that's what (inaudible)
8 to speak with the President of the UPC. (Inaudible) that's what
9 it relates to. (Inaudible) composed of ...

10 But, do the others agree with this?

11 Yes, the others agree with it. (Inaudible) the other
12 representatives (inaudible) who constituted this preparatory
13 committee? (Inaudible) people have to ..."

14 PRESIDING JUDGE COTTE: (Interpretation) Court
15 officer, if you can stop for just a moment. The question that
16 we are asking ourselves is this: If you want the 30 minutes
17 to be shown then they will be shown, but given that the sound
18 quality is very bad and we cannot hear anything but just bits
19 and pieces of words, do you want the entire thing to be shown,
20 or don't you think it would be better to just show the images
21 that you wanted to show? We have a lot of difficulty listening
22 to the audio.

23 What are your comments, Mr Fofé?

24 MR FOFÉ: (Interpretation) Yes, your Honour, the
25 essential thing for us is to have an EVD reference assigned to

1 this extract, and this should happen obviously after the questions
2 that would have been put to the witness. We have listened to
3 that extract several times and we think that the sound quality
4 actually improves. At one point we hope that will be the case.

5 We also think that we can finish with all our extracts
6 before the end of the hearing, so we can continue with the
7 interpreters doing their possible best and, indeed, my learned
8 friend, Mr O'Shea, has said that he has no interpretation into
9 English.

10 PRESIDING JUDGE COTTE: (Interpretation) Well, the
11 Chamber does not want to delay the proceedings. We will continue
12 as you have proposed, but if you know that the sound quality
13 is very good at one point or the other, we can move directly
14 to those excerpts. It is up to you to make that determination
15 and, obviously, the EVD numbers will be given later after the
16 questions would have been asked.

17 Madam Luping.

18 MS LUPING: Yes, just a question for Professor Fofé,
19 just an issue of clarification. The time-stamps that were given
20 previously of 3 minutes 9 seconds to 36 minutes 40 seconds, that
21 doesn't correlate to the information we were provided or the
22 information being shown on the extract. Perhaps if you could
23 just simply for the record, if you could confirm what are the
24 correct time-stamps. The information we were given was
25 36 minutes 42 seconds to 1 hour and 45 minutes.

1 MR FOFÉ: (Interpretation) Just one moment, your
2 Honour.

3 Yes, Madam Prosecutor, that is a technical issue. In
4 the correspondence to the parties and participants,
5 we referred to the time-stamps of the original video extract;
6 that is DRC-OTP-0127-0061. Right now we are using the time-stamp
7 of the extract. I communicated the relevant extract to the court
8 officer, and this was from 03 minutes 09 seconds to 36 minutes
9 40 seconds.

10 I note just as you have realised, that the extract was
11 shown from the very beginning; that is 0000. I do not know whether
12 I have answered your question.

13 PRESIDING JUDGE COTTE: (Interpretation) Is that the
14 case?

15 MS LUPING: Yes, Mr President. I'm just -- I've
16 referred to the time-stamps from the original video just now.
17 At least we have that on record as well. Thank you.

18 PRESIDING JUDGE COTTE: (Interpretation) Very well.
19 Mr Fofé, we can continue, or indeed, court officer, we can resume
20 the viewing of that video extract.

21 (Video extract played)

22 THE INTERPRETER: It is the UPC (inaudible).

23 MR FOFÉ: (Interpretation) I'm sorry, your Honour.
24 Let me point out that the sound seems to be good and, if you
25 increase the volume, you can actually hear what is being said.

1 PRESIDING JUDGE COTTE: (Interpretation) Thank you.
2 Court officer, please continue.

3 (Video extract played)

4 THE INTERPRETER: * "That's what blocked the process.
5 We said: there has to be a preparatory committee where the
6 signatories to this Luanda Accord ... we will discuss (inaudible)
7 OK. (Inaudible) Everytime that we (inaudible) ask for goodwill,
8 we manage (inaudible) other things (inaudible). We were in Dar
9 es Salaam, and we, that's how we decided it.
10 (Inaudible) a preparatory committee is necessary.

11 (Inaudible)

12 In Dar es Salaam, was there a ... the composition had been decided.
13 Precisely.

14 And what was decided?

15 Two from Monuc, two from ... from Uganda, two for Kinshasa and
16 four (inaudible).

17 (Inaudible) the two from Uganda are already here.

18 (Inaudible) we didn't talk about (inaudible).

19 (Inaudible)

20 There are six. There are two, Uganda (inaudible).

21 We are taking note, because we haven't seen that anywhere. Of
22 course, we ... even Mr (inaudible) wasn't in Dar es Salaam.

23 Furthermore, I recall that we had (inaudible) because ... not to
24 participate in just any summit, but we think that it would have
25 been good for us to be there (inaudible).

1 We never spoke about ... We never spoke about the UPC.
2 Therefore, it was very difficult to remark that (inaudible).
3 In Dar es Salaam, in the final communiqué, we didn't talk about
4 the UPC. We're talking about (inaudible).

5 The stakeholders.

6 (Inaudible) even in ... Rwanda, Rwanda, yes. (Inaudible),
7 I'm talking about Dar es Salaam, (inaudible). And that, that
8 bothered us a lot.

9 (Inaudible) President Museveni who received us
10 afterwards, he said that he wanted us to include (inaudible)
11 the others ... Kabila refused to include the UPC.

12 (Inaudible) that, the Dar es Salaam proposal was not
13 in that communiqué, in any case in the documents that came out
14 of that meeting. So you, you're insisting on the composition
15 as you proposed it.

16 Not proposed, but on instruction (inaudible)

17 Secondly ... those are the two (inaudible) so, and we
18 haven't (inaudible) the composition has been repeated. How many
19 are in the preparatory committee in total? After Uganda,
20 (inaudible) two, (inaudible) Kinshasa of ... it amounts to 12.
21 That was the figure to a great extent (inaudible) you have ...
22 it's clear (inaudible) it amounts to 12. (Inaudible) Iturian.

23 If we assume that the four Iturians are the UPC, the
24 rest, do you have it or not?

25 (Inaudible) Mr President, you said 10, even Mr (Inaudible) it

1 doesn't bother us at all.

2 But on condition that the four come from the UPC (inaudible)
3 we leave it to your discretion, we don't want to look like people
4 who are blocking it.

5 These figures came out of Luanda, the meeting of the 14th and
6 in people's minds, that's what we were told, it's: Four there;
7 you, half, the others, half.

8 (Inaudible) from the UPC, really (inaudible) that as
9 someone who ... like such details, that's not what's essential.
10 We have just what's essential. (Inaudible) the adjustment that
11 can be made.

12 (Inaudible) Pilot; precisely. We, we asked for it.
13 Nobody had thought about it. We were the ones who asked, we said
14 that the disagreement about this Ituri Pacification Commission
15 exists, and somehow, we are the ones who look like the bottleneck,
16 whereas we would like there to be a preparatory committee to
17 set up the IPC to harmonise opinion and make this commission
18 operational. And that was adopted. You see. When we did the press
19 release, if we (inaudible) it was thanks to the openness that
20 we ... that we ... we showed in Dar es Salaam.

21 But (inaudible) everything that happened in Kampala
22 (inaudible) that, that could not (inaudible) that someone with
23 common sense. It was not (inaudible) by the rest of us. Therefore,
24 it bothered us, hurt us a bit in (inaudible) preparatory, so
25 that we can accelerate the process, so that we don't continue

1 insulting Thomas Lubanga, insulting the UPC; it's disgraceful.
2 Somewhere, people are coming home from war, we get it back in
3 some way or another etc. I will (inaudible) it's not the UPC ...
4 which (inaudible) listen, even (inaudible) since he's there,
5 it would have clarified, it would have changed, it would have
6 allowed us to understand.

7 But we, we don't know about it, that it was you who
8 had proposed it, nor did we know that there had been an agreement,
9 as you say on the allocation since Dar es Salaam.
10 We, what we have, are these 12 in the allocation that you have
11 just been given.

12 Now, the mandate we have, was to propose to you for
13 the four, two, two.

14 Yes? The timetable here.

15 Yes? At the end we gave (inaudible) we were unable to
16 decide on this timetable ...

17 (Inaudible) in Dar es Salaam.

18 The timetable of 17 (inaudible) the content (inaudible)
19 no. This timetable was a bit (inaudible) it's a proposal. We
20 really have to talk about the content of the timetable. Don't
21 you (inaudible) that's what we're here for.

22 I'm wondering (inaudible) whether the UPC agrees that
23 the preparatory committee, I think that in that regard, it's ...
24 they are ... matters to be raised precisely at the preparatory
25 committee, if you agree with the UPC.

1 My General, as we have said ... the President said it,
2 we accept everything provided that there is peace in Ituri; but
3 one question does occur to us, why (inaudible) every time
4 (inaudible) the Iturian problem separately from the Congolese
5 problem?

6 We Iturians, we've had enough.

7 You know that the process has been set in motion. I
8 am Congolese. I simply believe, unfortunately, the Iturian
9 problem arose quite some time afterwards.

10 No, no came after the signing of the accord (inaudible).
11 History of the Congo ...

12 You lead (inaudible) People started dying here in 1999.

13 That, is that all of the Congo?

14 No.

15 Even beforehand.

16 Here people (inaudible) since 1999 and if we are able
17 to ask the various communities (inaudible) Thank God (inaudible)
18 you have to stop. It is necessary to (inaudible) everyone lodges
19 a complaint with the international ... international tribunal.

20 He has to come. Perhaps he is the one that is being
21 suggested that all the Congolese accept as everybody's President.
22 You can stop him here. (Inaudible) you really have to deal with
23 this problem impartially, as you always do, and not believe certain
24 people that such and such are saints and the others are devils.

25 We have always, when we do the reading, Ituri is not

1 entitled to the Congo, but the Congo is entitled is entitled
2 to Ituri, that's a conclusion because there are political things
3 that have to be settled in Pretoria but nobody wants to help
4 the group which is making progress here to also go over there.
5 Pacification here is good.

6 No, careful, I think that (inaudible) and if that process
7 had been able to start slightly earlier, it was a matter, on
8 all sides, of finding ways and means of involving you in the
9 peace process at a national level.

10 I know that the government said so, the DRC, all the
11 more so, said so when the President was over there (inaudible)
12 so, everybody over there agreed. And I even think that it's
13 reiterated in the Dar es Salaam and Luanda communiqué. Can you
14 get out for me the (inaudible) here.

15 However, in the spirit of communication, how will refer
16 to what will come from Ituri in the inter-Congolese dialogue?

17 But I'm talking to you about the inter-Congolese
18 dialogue (inaudible) There was already an agreement in principle
19 to include the Iturians.

20 The point, I (inaudible) so that we can settle a point,
21 not on questions for which we have no solution.

22 (Inaudible) Along the same lines as colleagues, as
23 a general rule.

24 Why does Monuc consider Ituri as having a dual nature,
25 with antagonists and polarised politics?

1 I this is the impression I'm getting because the last time you
2 came, you suggested going to visit certain sites which were opposed
3 to the UPC.

4 Today in the proposal for the composition of the
5 preparatory committee, Monuc is presenting two candidates for
6 the UPC and two for the other Ituri (Phon). Yes, you did indeed
7 say that it was the committee, the signatory ... but I think that
8 the essential, we want the UPC not to consider Monuc as a party
9 to the conflict. (Inaudible)

10 We're digressing. Every time there is a difficulty,
11 it gets accused; that's not objective.

12 We're coming from the Luanda Accord, but Monuc has been
13 given the mandate to lead the pacification process in Ituri;
14 true or false? In that regard, Monuc is a main stakeholder.
15 Therefore, in Ituri, honestly, there is no duality.

16 No it's not Monuc.

17 No, I am unable to give you an answer, that is to say,
18 it can't essentially be said it is necessary to clear up any
19 inconsistencies.

20 It can't be said that it is being done under the aegis
21 of Monuc, with Monuc as facilitator, and to say, at the same
22 time, that Monuc has ... is (inaudible), Monuc is a party.

23 Now, as regards that which was proposed not by Monuc,
24 once again, but by the parties which are signatories to the Luanda
25 Accord, it's that during the Ituri Pacification Commission, you

1 (inaudible), Mr President, Monuc, which is present there, is
2 participating, but it is neither signatory to the Luanda Accord
3 nor Iturian.

4 (Inaudible) which promoted the Luanda Accord will
5 represent the party mediating the talks. (Inaudible) it must
6 be a (inaudible) ...

7 Good. Wait, wait, wait ...

8 I haven't finished my (inaudible). Well honestly, I
9 would like to end by saying to Monuc that we value a great deal,
10 in view of the role it is playing in the Congo, I would like
11 to say that there was never any duality between (inaudible) even
12 if the UPC had put forward four candidates in Dar es Salaam,
13 it was in accordance with the geopolitics of Ituri. Among the
14 four, all the (inaudible) ethnic sensibilities of Ituri are
15 represented. Obviously, the Special Representative will say in
16 his many press conferences that the UPC has signed the cessation
17 of hostilities agreement with his friends at Radio Okapi.

18 It is - how should I put it - a narrow way of looking
19 at the problem of Ituri. Therefore the UPC was only able to sign
20 the cessation of hostilities agreement with (inaudible) but with
21 all the Congolese tribes involving Ituri. Therefore, it's not
22 possible for there to be any duality. If you at least are willing
23 to understand the problem of Ituri, understand that there has
24 never been any polarisation of Ituri politics.

25 (Inaudible) We talk about politics, what we know is

1 that when we want to make peace, it is made between two people
2 who are clashing with one another, between two groups which are
3 clashing with each other; between people who are clashing with
4 each another; otherwise there's no point in talking about peace.

5 I would like to ask a question. We talked about
6 pacification of Ituri; now, you, you control.

7 Wait, wait, wait ...

8 You, you currently control that which is essential,
9 I believe, in Ituri. There are others still who are opposed to
10 you. You, you've signed. That's what I told you last time. Give
11 the ... the cease-fire that you, you signed. The other groups are
12 continuing to fight each other, for them to stop fighting each
13 other, they must be brought so that they can talk to you and
14 also sign; quite simply.

15 I think they are (inaudible) not very significant
16 because we have to be a bit realistic. We, we accept pacification
17 in our area and I hope that soon you will after (inaudible) there
18 will ... was also (inaudible).

19 (Inaudible) ... there is unrest all over the place
20 (inaudible).

21 Rwanda ... in the Congo not in Uganda otherwise we would
22 be ... (inaudible)

23 As I told you, to your understanding you make the four
24 of them, there were four UPC representatives. I'm telling you
25 that the proposals are: two UPC, two non-UPC. That's where it

1 ends. If you are ...

2 What do you ... Is that what came from those who made
3 the proposal?

4 I will ... I will.

5 I would like us to follow the actual rationale of the
6 proposal of this preparatory committee. I repeat that the
7 preparatory committee was established to avoid the ... the ... let's
8 say, misunderstandings, which remained in relation to, let's
9 say, the actual formal requirements of the Luanda Accord. As
10 a result, until yesterday it was impossible to establish the
11 Pacification Commission (inaudible). Even though the UPC was
12 considered to be the bottleneck, the UPC proposed the creation
13 of that preparatory committee for establishing the Pacification
14 Commission (inaudible) there are no longer any difficulties
15 (inaudible) ... that I ... because it was precisely for (inaudible)
16 the composition of the Pacification Commission.

17 OK, the commission's proposal is a different matter.
18 We won't deal with that, but here the ... the team of experts ...
19 UPC experts with the signatories so that we can remove any doubt.

20 We just found it out here. I've come here with a mandate,
21 as I've said.

22 It was to suggest two plus two to you and no I will
23 (inaudible) I've the impression that there's a problem, a
24 disagreement because they, what they wanted ... it was,
25 as you have just said, the preparation of that commission, for

1 it to be done between the UPC and the signatories. That's clear.
2 Now, I think, once again, that in any event, in terms of the
3 commission, everybody will be included.

4 (Inaudible) The preparatory committee, what is the
5 rationale for setting it up, my dear friends? When you come here,
6 to Bunia, who are you coming to meet? Who, in your view, is being
7 accused? Because I've read the internet, I can't really find
8 anyone other than Thomas Lubanga who is blocking pacification
9 (inaudible).

10 If we were to read the internet, you see that Thomas
11 Lubanga. (Inaudible) you are important. You see.

12 Present anything which can help you (inaudible).

13 He's from the countryside, he is called Ndjabu, he is
14 an Alur from Mahagi. Is there another Alur who is more valuable
15 than him, or more (inaudible) than him.

16 Is there, for example, an Alur, a Bira, a Hema, a Lendu
17 in the preparatory group, who is worth more by virtue of their
18 identity than (inaudible).

19 And that is where we don't really agree. He, he is part
20 of the pacification. He is a Bira. Is there anyone who is more
21 Bira than him, who doesn't know about the Biras' problems? That
22 is often where we don't agree with people. You had (inaudible)
23 several times here. Have you seen any Biras who are more Bira
24 than the Biras who are here?

25 No, they are Biras (inaudible) here.

1 Have you seen any other Biras (inaudible) any other
2 Lendus than the others?

3 (inaudible)

4 The President ... (inaudible)

5 Tomorrow, when we speak out against it, you'll say that
6 it's still the UPC which ... (inaudible) we are very much in agreement.
7 We're leaving ...

8 You, you did not agree with us about that, you agreed with the
9 signatories. We, we didn't know about it.

10 I don't think that we must not be impervious to the rationale.
11 Let's not remain impervious to the rationale. Nowhere in the
12 Luanda Accord is a preparatory committee provided for. (Inaudible)
13 we agree on that. And we wish to inform you that during our Dar
14 es Salaam meeting, the UPC proposed the creation of a preparatory
15 committee so as to agree with the signatories and make the Ituri
16 Pacification Commission operational. (Inaudible) I just wanted
17 to reply if it didn't stop here.

18 Then, he did not want the UPC to be included.

19 No, I don't think that that's the problem.

20 It is a problem. The problem ...

21 (Inaudible) since we, we are in your Dar es Salaam way of thinking.

22 I think that this detail is at variance, there would
23 not be a problem.

24 Once again, that's what I wanted to discuss with you.

25 I can't discuss (inaudible).

1 (Inaudible) no problem.

2 As for this illustrious commission's arrival in Ituri,
3 I think that our visitors have been informed. If there are
4 timetables, perhaps, upon leaving here, if there is a clash,
5 it would be better for our visitors to go back to see the signatories.
6 But on our part, there is no problem. As we had agreed at Dar
7 es Salaam, we're maintaining the position that was optimal at
8 the time and we await the commencement of the Commission. It
9 is better than entering into an argument. And if there are points
10 of a practical nature or something, that's what we wanted to
11 discuss. I think that the point has been settled. When the
12 President gave his agreement in principle and the commission
13 adhered to it, and the remainder will be addressed by the Committee
14 of Experts, and we think that
15 Monuc will do its work if really (inaudible) ...
16 I know that to have an understanding that goes (inaudible) ...
17 we have to agree on... (inaudible). This morning you had (inaudible)
18 to the signatories (inaudible) to see (inaudible) but only to
19 say the meeting agrees on that (inaudible) I told you that
20 (inaudible) it is better for us to agree on something in order
21 to be able to progress.

22 (Inaudible) that's my experience (inaudible) we knew
23 that it was in September that the Luanda Accord was signed. We
24 were not involved for the reasons that everybody is explaining.
25 In Dar es Salaam, (inaudible) there was disagreement.

1 Sometimes, it was said that that Accord ... come; we will
2 talk about it before the commission starts. Those who invited
3 the signatories, it was the UPC, unless the signatories have
4 their own agenda, signatories, and which nobody knows about.
5 But the truth will out. If there was a second group which was
6 perhaps to one side in Dar es Salaam and which also called for
7 (inaudible) the disagreement with the signatories and that they
8 must participate with us, they will be welcome, but we should
9 really know that group (inaudible).

10 I would just like to ask a question of Monuc who is
11 making contact with all the parties for the purpose of moving
12 the process along. My General, tell us, other than Monuc with
13 whom you have to consult, more than once for the process to go
14 forward, have you identified anybody who, as a stakeholder, may
15 contribute to taking up this option of the IPC? Other than us,
16 who ... (inaudible)?

17 MR FOFÉ: (Interpretation) Thank you.

18 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé,
19 before you ask to go back to certain pictures, it is important,
20 and before starting with your cycle of questions, it is important,
21 from the perspective of the attribution of an EVD number, which
22 you, hopeful, that the witness be able to identify each of the
23 persons who were presented throughout this video and that you
24 then after state what the objective is that you are following
25 with the presentation of this video.

1 I give you back the floor.

2 MR FOFÉ: (Interpretation) Thank you very much, your
3 Honour. Your Honour, if we could go into private session.

4 PRESIDING JUDGE COTTE: (Interpretation) Please take
5 us into private session.

6 (Private session at 12.21 p.m.)

7 (Expunged)

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 *A. I think that it was on 24 January 2003. I would
19 state that the date appeared on the video itself.

20 Q. 24 February 2003; is that correct? I put it to
21 you that that was the date.

22 A. Yes, that is correct.

23 (Expunged)

24 (Expunged)

25 (Expunged)

1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Open session at 12.24 p.m.)

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

21 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
22 court officer. Please continue.

23 MR FOFÉ: (Interpretation) Thank you, your Honour.
24 Court officer, without showing the extract again, can we go to
25 the image on minute 04 and 34 seconds, so four minutes and

1 34 seconds, time stamp 04.34, if you please. Thank you very
2 much.

3 Your Honour, I would ask to remain seated in order to
4 put questions with regards to this picture.

5 PRESIDING JUDGE COTTE: (Interpretation) When you
6 have to show a video, you have to be able to see it. Please
7 go ahead.

8 MR FOFÉ: (Interpretation) Thank you.

9 Q. Witness, can you tell us the name, if you know it, of this
10 person who is on the right of the screen and in military uniform?

11 A. I don't have the picture on my screen.

12 MR FOFÉ: (Interpretation) There is no picture on his
13 screen.

14 PRESIDING JUDGE COTTE: (Interpretation) Usher, can
15 you go and help the witness to be able to see the image of four
16 minutes and 34 seconds. Thank you.

17 MR FOFÉ: (Interpretation)

18 Q. Do you have the picture now?

19 A. Yes.

20 Q. Could you tell us who this person is on the right in military
21 uniform?

22 A. It is a MONUC officer. He was delegated by the MONUC office
23 from Kinshasa.

24 Q. Do you know his name?

25 A. I have forgotten his name.

1 Q. May I put it to you - and I might be wrong here, but I put
2 it to you - that it was General Mountaga Diallo?

3 A. I think that could be his name.

4 Q. Thank you very much. And the person who is in the middle,
5 in civilian clothing in the middle, do you know that person?

6 A. Yes.

7 Q. Who is he?

8 A. It is the person who I showed yesterday when we were in the
9 UPC meeting room. He is the head of the MONUC office in Bunia.

10 Q. Do you know his name?

11 A. No, I no longer remember.

12 Q. Many thanks. The third person on the left, on the left of
13 the screen, do you know that person?

14 A. Yes, I know that person.

15 Q. And who is that person?

16 A. It is a MONUC officer in Bunia.

17 Q. Thank you very much, Witness.

18 MR FOFÉ: (Interpretation) Court officer, could we go to the
19 picture at 05.35. The second image, 5 minutes 35 seconds. Time
20 stamp 05.35. Thank you, Madam.

21 Q. Witness, do you recognise the person who is wearing a yellow
22 shirt? He is on the right of the screen; the person wearing
23 a yellow shirt.

24 A. Yes, that is Professor Detchuvi.

25 Q. Could you spell out this person's name?

1 A. Detchuvi is spelled D-E-T-C-H-U-V-E.

2 THE INTERPRETER: Correction by interpreter. "I" at the end.

3 MR FOFÉ: (Interpretation)

4 Q. And what was his duties?

5 A. He was minister of the UPI -- UPC government responsible
6 for foreign affairs.

7 Q. And the person on the left of the screen who is wearing a
8 jacket, do you know that person?

9 A. Yes, that is Mr Djalum.

10 Q. Could you spell out his name for us?

11 A. Djalum is spelt D-J-A-L-U-M. M-U.

12 THE INTERPRETER: Thewitnessrepeatshimself. Djalum.
13 Just Djalum.

14 MR FOFÉ: (Interpretation)

15 Q. And what did he do?

16 A. He was a UPC minister. He was the minister
17 responsible for internal -- the interior.

18 MR FOFÉ: (Interpretation) Thank you. Could we move
19 on to the next footage at 0 minutes 000 seconds. I beg your
20 pardon. 6 minutes 0 seconds. 06.00. Time stamp 06.00.

21 Q. Witness, do you recognise the three people,
22 starting with the person who is wearing glasses? First of all,
23 beginwiththepersonwhoiswearingeyeglasses. Do you recognise
24 that person?

25 A. Yes, that is Mr Mathieu Amboko Bebetu.

1 Q. I believe that is relatively easy to write out,
2 Mr Matthew Amboko Bebetu. And what did he do?

3 A. He was a minister within the UPC government. He
4 was responsible for information and dealings with the press.

5 Q. And the person in the middle - that is to say,
6 left of the gentleman wearing eyeglasses - do you -- yes, please
7 go ahead.

8 A. That is Mr John Tinanzabo.

9 Q. And what was his title?

10 A. He was the Secretary-general responsible for
11 pacification and then later he was appointed Secretary-general
12 of the movement.

13 Q. The third person is to the left. The image is
14 slightly cut off. Could we try to focus on that person? Can
15 you see that person on the left? Do you recognise that person?
16 We saw that person a few moments ago. He is wearing a plaid
17 shirt. Do you recognise that person? Or a checkered shirt.

18 A. Yes, I saw him. That is Mr Litsa Singoma.

19 Q. Litsa Singoma, that's easy to -- Singoma is easy
20 to write out. Could you spell out Litsa for us?

21 A. L-I-T-S-A.

22 Q. And who was he?

23 A. He was an influential member of the UPC, and when
24 the UPC was created he was the one who was appointed
25 Secretary-general. So, he was the first Secretary-general of

1 the UPC.

2 MR FOFÉ: (Interpretation) Court officer, could we
3 move on to the next footage, 20 minutes 56 seconds. Time stamp
4 20 minutes 56 seconds. All right. That's the same person as
5 the person we saw a few moments ago. Court officer, could we
6 go to the footage at 20 minutes 29 seconds, please? Time stamp
7 20 minutes 29 seconds.

8 Q. Witness, can you see this person? Do you recognise
9 this person?

10 A. Yes, that is Mr Thomas Lubanga.

11 Q. And what was his title? What did he do?

12 A. He was the President of the UPC.

13 Q. Thank you very much, Mr Witness.

14 MR FOFÉ: Your Honour, I have no further questions
15 regarding this particular video extract and we would like to
16 ask that an EVD number be given to this extract.

17 PRESIDING JUDGE COTTE: (Interpretation) Could you
18 specify, as you said yesterday, what is the exact objective that
19 you are trying to achieve by showing us this extract, so that
20 the Chamber can understand your aim before we give this extract
21 an EVD number?

22 We have seen -- to repeat from paragraph 178, we have
23 seen a meeting between the executive of the UPC and the MONUC
24 representatives. And in the mind of the Ngudjolo Defence team,
25 now, the presenting of this long extract was for what reason

1 or for what purpose?

2 We are asking you this question because we are always
3 trying to strike a balance between the length of an excerpt and
4 its possible probative value, which led to ruling 2123, and that
5 was pursuant to Rule 68 of the rules of evidence and procedure;
6 and thus, it was decided to shorten the amount of evidence. And
7 this was in relation to this balance between the length of an
8 excerpt and its probative value; this is why we're asking the
9 question.

10 MR FOFÉ: (Interpretation) I do have a possible reply,
11 but I will consult my colleague Mr Kilenda.

12 PRESIDING JUDGE COTTE: (Interpretation) Certainly.

13 THE INTERPRETER: Correction by the English
14 interpreter. Ruling 2230.

15 MR FOFÉ: (Interpretation) Your Honours, since you've
16 asked me the question in front of the witness, I will reply.

17 As I said yesterday, the Ngudjolo Defence team has a
18 particular line of defence -- and this is not really the time
19 to present arguments, I just wanted to say that in this extract
20 we find a great deal of material that has to do with, first of
21 all, the characterisation of the conflict in relation to what
22 occurred in Bogoro on 23 February 2004; a conflict that the
23 Defence has said is a high intensity conflict.

24 Secondly, in this particular video extract - and we
25 will see this in the next one - we see the various stakes at

1 play, the issues that divide the stakeholders. We see the various
2 issues at stake. I will not get into the details. I will be
3 developing these arguments at the right time, at the timely moment.

4 Thirdly, who were the protagonists? We will
5 determine - we will identify - the main players, your Honours.
6 I will not go into the details, but I believe that this answer
7 will be sufficient to justify the attribution of an EVD number
8 to this extract.

9 Now, what I just said also applies to the last extract,
10 and I think it's very important, because it is very
11 important to us, your Honours.

12 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
13 Professor. So, you are keeping to the same line that you -- line
14 of argument that you were presenting yesterday.

15 MR FOFÉ: (Interpretation) Exactly, your Honour.

16 PRESIDING JUDGE COTTE: (Interpretation) Court
17 officer, please give an EVD number to this video extract.

18 THE COURT OFFICER: Your Honours, the -- therefore,
19 extract 15 of the document DRC-D03-0001-0396 shall be given an
20 evidence number EVD-D03-00041. The extract was played with sound
21 and is admitted as public exhibit.

22 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
23 court officer. It would appear that when this video was played
24 the interpretation -- well, the French transcript was relatively
25 faithful, thanks to the work done by our court reporters, although

1 there were several mentions of "inaudible" which was unavoidable
2 because of the background noise. It would appear that the English
3 transcript did not include any interpretation. Is that the case,
4 Mr O'Shea?

5 MR O'SHEA: As far as I am aware, there wasn't actually
6 a translation into English at all. It didn't actually prejudice
7 me. Because the quality was quite good I was able to listen
8 in French and understand in French. I don't know what effect
9 it's going to have when we look at it later, because Mr Hooper
10 would be in more difficulties than me with regard to the French,
11 but the actual situation is that there wasn't an English
12 translation, but it may be possible to get an English translation
13 post facto, I suppose.

14 MR FOFÉ: (Interpretation) I beg your pardon, your
15 Honour. One particular point I'd like to raise. The EVD number
16 that was given to the extract that we viewed with sound and
17 interpretation, so that will be the element; the video that we
18 just viewed with sound and interpretation. If ever later either
19 party were to see that certain passages of the video were
20 interpreted in a rather approximate manner, I think that the
21 party in question could request that the extract be listened
22 to another time.

23 PRESIDING JUDGE COTTE: (Interpretation) You will
24 inform the Chamber if that is the case.

25 Now, to respond to Mr O'Shea, it is important for the

1 entire Katanga Defence team, and I believe there is one member
2 of that team who is English by birth, it's important that the
3 entire team be on a level playing field and they should not be
4 dealing with a blank transcript when it comes to the English,
5 so the Chamber would suggest that the Registrar -- correction,
6 the Registry, court officer, if you could take note of this,
7 the Chamber would suggest that the Registry, aware of the
8 difficulties, that the Registry have the French transcript
9 translated into English; namely, the remarks that were made when
10 the video was shown and this translation into English
11 could be inserted into the English transcript.

12 So, once again, it would be a matter of asking the
13 Registry, a neutral organ of the Court with an interpretation
14 and translation unit, to carry out a translation of the French
15 transcript, translation of the remarks that were picked up by
16 the French court reporters to ensure that today's English
17 transcript is complete, so that everyone will be on a level playing
18 field.

19 Professor, if we could proceed.

20 MR FOFÉ: (Interpretation) Thank you very much, your
21 Honour. Thank you very much, Witness.

22 Your Honour, we will now turn to video DRC-OTP-0127-0063.
23 We will use the same methodology. We will begin by reading out
24 the relevant paragraph from the document DRC-OTP-0151-0583, and
25 these are the paragraphs that have to do with this video;

1 paragraphs 196, 200 to 202.

2 Your Honour, we could begin by briefly going into private
3 session.

4 PRESIDING JUDGE COTTE: (Interpretation) Private
5 session, please.

6 (Private session at 12.50 p.m.)

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Page 70 expunged. Private Session.

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18 (Open session at 12.57 p.m.)

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

21 PRESIDING JUDGE COTTE: (Interpretation) Professor,
22 please go on.

23 MR FOFÉ: (Interpretation) Thank you very much, your
24 Honour.

25 Q. Witness, we shall continue reading. I have

1 provided all the paragraph in private session, but that's not
2 important. With your leave, your Honour, we will view extract
3 number 17. We still have 30 minutes, so I believe we can try
4 to finish.

5 PRESIDING JUDGE COTTE: (Interpretation) It is
6 absolutely necessary for the entire 30 minutes to be viewed?

7 MR FOFÉ: (Interpretation) I think we can stop at
8 minute 22.25, time stamp 22.25.

9 (Video extract played)

10 THE INTERPRETER: "If we say that we will win, don't
11 believe that this is a war or combat. If we say that we will
12 win, that means peace and unity for all Congolese. Have you
13 understood me? Have you understood me? Yes, replies
14 the crowd.

15 Good day. Dear fellow Congolese, dear fellow
16 inhabitants of Ituri. Today we are full of joy because we see
17 that many of you have come here. You are before us. You have
18 come to listen the -- to the few pieces of news that I have for
19 you.

20 As the secretary-general of our party stated, it is
21 important at every moment, every time there is news, be it here
22 in Ituri, it is important for us as the people responsible, it
23 is our duty as the people responsible, responsible for this
24 territory, to come and give you information so that you will
25 be aware of the news or the latest developments.

1 Above all, on behalf of the Union Of Congolese Patriots
2 for Reconstruction and Peace, and speaking on my own behalf,
3 I wish you a good year. This year, 2003, should be for us a
4 year of peace, reconstruction and a new era in our work.

5 Dear friends, if I decided to meet with you today, it
6 was to give you four items of information. Firstly, we have
7 received information from the members of the population asking
8 us many questions about the Pretoria meeting. People are
9 wondering whether it is the UPC that has power here in Ituri.
10 UPC was not represented during the Pretoria negotiations. What
11 will be the situation of the population of Ituri under the UPC?
12 Those are questions that are being asked every day.

13 I would like to react to that concern. You all followed
14 what the Congolese did within the context of the
15 mediation of the African Union and the facilitators. They
16 discussed the issue of power sharing in Pretoria. The meeting
17 of Pretoria had as objective to share political power without
18 any regard for the grievances of the population. As members
19 of the UPC, we were never worried at all about not being present
20 during those negotiations, and the reason is because we realised
21 that those 3 million people or those 5 million people under our
22 authority rely on the way that we act.

23 We could have attended those negotiations and yet come
24 back to Ituri and find out that everyone has been killed. We
25 decided to take action to assist the population of Ituri to live

1 in peace. That was our objective.

2 It is true that if we are able to come before you today,
3 it is because we realise that there is peace. Information from
4 certain areas indicating that there were massacres here and there
5 is no longer coming in, so we realise that there is peace.

6 I'm asking the members of the population not to believe
7 that the UPC had a hidden agenda because they did not participate
8 in the Pretoria meeting. The people should not vilify us because
9 certain newspapers said that Thomas Lubanga wanted to create
10 the Republic of Ituri. That is not true.

11 We felt that, outside of the negotiations carried out
12 in Pretoria, we could find alternative solutions to our problems.
13 We can begin with some robust diplomacy.

14 The second point is as follows: Yesterday you heard
15 that the leaders of the UPC left the town to go to Goma. When
16 people heard that we had left for Goma, they started thinking
17 that by going to Goma we were on our way to Rwanda, just like
18 some people believe that Bunia is the same as Uganda. If we
19 went to Goma, it is because Goma is in Congo. We went to meet
20 our Congolese compatriots to discuss politics amongst Congolese
21 and to discuss our needs amongst the Congolese. We went to discuss
22 ways and means of accomplishing Congolese unity, even if these
23 initiatives are outside of the Pretoria Accords.

24 It was for that reason that we went to Goma, to discuss
25 with our compatriots of the RCD. Before I give your details

1 about discussions in Goma, I would like to convey to you the
2 greetings of the Congolese people living under the authority
3 of the RCD. This is what they told us: As soon as you arrive
4 in Bunia, tell them that we are together. Do you accept those
5 greetings? The crowd answers back yes.

6 We went to Goma to achieve unity between the Congolese
7 and, tomorrow, if the Pretoria agreements are successful, people
8 should bear in mind that there is another part of the republic
9 that exists and has to be taken into consideration. The people
10 were quite happy with my message.

11 In order for the Congolese to be united, we signed a
12 document concretising the collaboration between the UPC and the
13 RCD. We entered this alliance because it would be useful to
14 us in several ways. The first reason is that we need
15 to have a common policy in the area of Congolese politics. The
16 second reason is that we should be able to re-establish peace
17 in Ituri in the areas controlled by the UPC and the RCD.

18 You have all heard that there were statements to the
19 effect that such-and-such a zone or area was controlled by Rwandans,
20 Ugandans, Zimbabweans or Angolans. The Congolese people were
21 divided. It is for that reason that we decided to go beyond
22 those artificial boundaries that were imposed on us. We decided
23 to bring together all the Congolese people. We decided to
24 facilitate air travel. A plane can now leave Bunia to Kisangani
25 to Bukavu. In that way we can enable all Congolese to travel

1 to all parts of the country without any difficulty.

2 We also discussed the social issues, particularly
3 education. We lack lecturers in our universities and higher
4 education institutions, whereas there are many teachers in
5 Kisangani, Goma and Bukavu, but because there were artificial
6 boundaries it was difficult for those teachers to move about.
7 We also resolved that issue by breaking down those barriers and
8 making it possible for those people to move about easily.

9 We also discussed issues linked to the actions of some
10 enemies of peace, both in the areas under the control of the
11 UPC and the RCD, where enemies of peace are distributing weapons
12 to some people to facilitate attacks on Congo and break down
13 the peace. We discussed that issue and discussed strategies
14 to be implemented to put an end to such activities so
15 that the members of our population should continue to live in
16 peace.

17 We also talked about the foreign troops which are present
18 here in Congo. Those soldiers arrived here at a specific time
19 and when there were specific circumstances, but things have
20 evolved and now the Congolese people want to go back to unity
21 and peace. We decided that there was no reason for foreign troops
22 to continue living here in Congo.

23 We entered into an alliance with our Congolese brothers.
24 The person who signed that document is Dr Onusumba, the president
25 of the RCD. He is a Congolese like myself. And for the UPC Thomas

1 Lubanga signed that document. That is an agreement between the
2 Congolese people.

3 We believe that there is no one person who can help
4 us achieve unity amongst ourselves except ourselves, the
5 Congolese people. Today the RCD has realised that if the
6 Congolese people have to be united, they have to take into account
7 the voice of the UPC and we have made it possible for the voice
8 of the people of Ituri to be heard in the Congo.

9 Tomorrow it is possible for us to sign an agreement
10 with another movement, for example, the MLC, if this will assist
11 us in re-establishing peace in our region. That was the purpose
12 of our mission to Goma.

13 The third thing is that when we were preparing to come
14 back here, when we were in the Goma airport we heard that there
15 was a small problem here in Bunia. We heard it said
16 that there were noises from fighting between the UPC and the
17 UPDF. We were worried. We wondered whether the UPDF came to
18 the Congo to fight against the UPC.

19 Why would the UPDF shoot at UPC soldiers? We did not
20 understand the reason for that. We wondered why a pointless
21 war should be started here in our country. We do not want our
22 people to continue living in a situation of suffering similar
23 to what happened to our compatriots in Kisangani. We.

24 Asked our friends of the UPF -- UPDF not to start any
25 fighting here in the area under our control. I was not pleased

1 with this development. I was even asked not to come here because
2 there could be fighting and I could be shot, even at the airport.
3 I told them that as a Congolese, as the president of the party,
4 I cannot be afraid. I am not afraid to die in my home and I
5 will be there, and that is why yesterday I took the flight and
6 I came back here.

7 MR FOFÉ: (Interpretation) Thank you very much, Madam.
8 We would like to use the five minutes that are remaining. Can
9 we go into private session, your Honour?

10 PRESIDING JUDGE COTTE: (Interpretation) Court
11 officer, please.

12 (Private session at 1.21 p.m.)

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2 (Open session at 1.22 p.m.)

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

5 PRESIDING JUDGE COTTE: (Interpretation) Thank you.
6 Mr Fofé.

7 MR FOFÉ: (Interpretation) Thank you very much, your
8 Honour. I still have a few questions. I am looking at the time.
9 I think if we have five more minutes we'll be able to conclude
10 today.

11 PRESIDING JUDGE COTTE: (Interpretation) In any case,
12 we have to have the re-examination of the Prosecutor, so we are
13 compelled to meet on Monday afternoon, but we still have three
14 minutes for the one or two questions that you can ask during
15 that time.

16 MR FOFÉ: (Interpretation) Thank you, your Honour. I
17 am reassured.

18 Q. Witness, my first question is as follows: Who is
19 the person addressing the population?

20 A. It is Mr Thomas Lubanga.

21 Q. And where did this event take place?

22 A. It was in Bunia stade de la cité, or Bunia city
23 stadium.

24 Q. And when was that?

25 A. I believe it was on 11 January 2003.

1 Q. So this must have been after the visit of Thomas
2 Lubanga to Goma and the signing of the alliance with RCD-Congo,
3 or rather, RCD-Goma.

4 A. Yes.

5 Q. Witness, in this extract that we have just seen,
6 Thomas Lubanga says, amongst other things, that he had been accused
7 of creating a Republic of Ituri. Was this accusation publicly
8 known at that time? Was everyone aware of this allegation that
9 Thomas Lubanga wanted to create the Republic of Ituri?

10 A. No, not everyone was aware of that. Maybe some
11 people knew about it. For example, someone such as myself, I
12 did not know this information.

13 Q. If you still have your written statement, I will
14 seek the indulgence of the President to conclude on this issue.
15 Mr Witness, let me refer you to page 10 of your written statement.
16 Do you still have it with you? At the bottom of the page, I
17 will begin with paragraph 70. Can you see it? I will
18 read out paragraphs 70, 71 and 72, and I quote you:

19 "In the speeches the UPC representatives mentioned the
20 relationship with the Kinshasa government on several occasions."

21 Paragraph 71, and I quote you:

22 "In my opinion, Thomas Lubanga wanted to be recognised
23 by Kinshasa, just like the others who had come before him, like
24 Mbusa or Wamba, with the objective of participating in the
25 negotiations and obtaining positions in the government."

1 Paragraph 72, and I quote you:

2 "There were even rumours circulating in the streets
3 to the effect that Thomas Lubanga wanted the cessation, or rather,
4 wanted cessation from the Democratic Republic of the Congo, which
5 would lead to Ituri becoming an independent country led by himself.
6 Thomas Lubanga did not speak about this in public."

7 Is that, indeed, your statement, Mr Witness?

8 A. Yes.

9 Q. Thank you very much, Witness.

10 MR FOFÉ: (Interpretation) Your Honour, I believe we
11 can stop here and continue just for a brief moment on Monday.

12 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
13 Mr Fofé. Thank you, Mr Witness. We will adjourn now and we will
14 meet again on Monday afternoon for the end of the cross-examination,
15 as well as the re-examination of the Prosecutor and final comments
16 from the Defence teams.

17 Court officer, let us go into closed session for the
18 witness to leave the courtroom. And we thank the interpreters
19 and court reporters very much for their work, which was quite
20 difficult.

21 See you on Monday, Witness.

22 (Closed session at 1.30 p.m.)

23 (Expunged)

24 (Expunged)

25 (Expunged)

1 (Open session at 1.31 p.m.)

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

4 PRESIDING JUDGE COTTE: (Interpretation) We are in
5 open session. We'll meet again on Monday at 2 p.m. for the
6 conclusion of the testimony of P30. Mr Prosecutor, I believe
7 Witness P2 should be ready for Monday.

8 Court is adjourned.

9 (The hearing ends at 1.31 p.m.)

10 CORRECTIONS REPORT

11 The following parts of the transcript:

12 - page 33 line 16 to page 34 line 23,

13 - page 40 line 14 to page 41 line 13,

14 - page 44 line 4 to page 57 line 16,

15 have been translated by the Court Interpretation and Translation
16 Section after the hearing (from French to English).

17 RECLASSIFICATION REPORT

18 * Pursuant to Trial Chamber II's oral decision dated 1st
19 September 2010, the excerpt of the transcript starting page
20 1 line 11 to page 17 line 3 is reclassified from Private session
21 to Open Session

22 SECOND RECLASSIFICATION REPORT

23 *Pursuant to Trial Chamber II's email instructions dated 10
24 July 2012, the excerpt of the transcript page 58 lines 18
25 to 22 is reclassified as public, as ordered by the Chamber.